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**2016 FOURTH SPECIAL SESSION
61st LEGISLATURE**

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LAWS
of the
STATE OF UTAH, 2016

Passed at the
FOURTH SPECIAL SESSION
of the
SIXTY-FIRST LEGISLATURE

Convened at the State Capitol in the City of Salt Lake
November 16, 2016
and Adjourned Sine Die on
November 16, 2016

STATE OF UTAH



OFFICE OF THE LIEUTENANT GOVERNOR

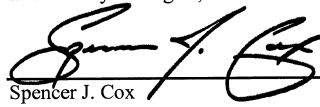
CERTIFICATE

THIS IS TO CERTIFY that the acts and resolutions published in this volume are, according to our best information and belief, full and correct copies of the originals passed at the 2016 Fourth Special Session of the 61st Legislature of the state of Utah, as they appear of record in the Office of the Lieutenant Governor; and

That the 2016 Fourth Special Session of the 61st Legislature of the state of Utah convened at the Capitol in Salt Lake City on the 16th of November, 2016, and adjourned on the 16th day of November, 2016.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Utah at Salt Lake City, this 17th day of August, 2017.


Spencer J. Cox
Lieutenant Governor

CHAPTER 1**H. B. 4001**

Passed November 16, 2016
 Approved November 21, 2016
 Effective January 16, 2017

SOLID WASTE AMENDMENTS

Chief Sponsor: Curtis Oda
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill clarifies the definitions of the terms “solid waste” and “solid waste management facility.”

Highlighted Provisions:

This bill:

- ▶ clarifies the definitions of the terms “solid waste” and “solid waste management facility”; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

19-6-102, as last amended by Laws of Utah 2015, Chapters 42 and 451
 19-6-502, as last amended by Laws of Utah 2014, Chapter 183

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

Section 1. Section 19-6-102 is amended to read:**19-6-102. Definitions.**

As used in this part:

(1) “Board” means the Waste Management and Radiation Control Board created in Section 19-1-106.

(2) “Closure plan” means a plan under Section 19-6-108 to close a facility or site at which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the facility or site.

(3) (a) “Commercial nonhazardous solid waste treatment, storage, or disposal facility” means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or disposal.

(b) “Commercial nonhazardous solid waste treatment, storage, or disposal facility” does not include a facility that:

- (i) receives waste for recycling;
- (ii) receives waste to be used as fuel, in compliance with federal and state requirements; or
- (iii) is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(4) “Construction waste or demolition waste”:

(a) means waste from building materials, packaging, and rubble resulting from construction, demolition, remodeling, and repair of pavements, houses, commercial buildings, and other structures, and from road building and land clearing; and

(b) does not include: asbestos; contaminated soils or tanks resulting from remediation or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar hazardous or potentially hazardous materials.

(5) “Demolition waste” has the same meaning as the definition of construction waste in this section.

(6) “Director” means the director of the Division of Waste Management and Radiation Control.

(7) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

(8) “Division” means the Division of Waste Management and Radiation Control, created in Subsection 19-1-105(1)(d).

(9) “Generation” or “generated” means the act or process of producing nonhazardous solid or hazardous waste.

(10) “Hazardous waste” means a solid waste or combination of solid wastes other than household waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(11) “Health facility” means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for people with an intellectual disability, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, and state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries.

(12) “Household waste” means any waste material, including garbage, trash, and sanitary wastes in septic tanks, derived from households, including single-family and multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(13) “Infectious waste” means a solid waste that contains or may reasonably be expected to contain

pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.

(14) “Manifest” means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(15) “Mixed waste” means any material that is a hazardous waste as defined in this chapter and is also radioactive as defined in Section 19-3-102.

(16) “Modification plan” means a plan under Section 19-6-108 to modify a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.

(17) “Operation plan” or “nonhazardous solid or hazardous waste operation plan” means a plan or approval under Section 19-6-108, including:

(a) a plan to own, construct, or operate a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste;

(b) a closure plan;

(c) a modification plan; or

(d) an approval that the director is authorized to issue.

(18) “Permittee” means a person who is obligated under an operation plan.

(19) (a) “Solid waste” means any garbage, refuse, sludge, including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality Act, or under the Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

(b) “Solid waste” does not include any of the following wastes unless the waste causes a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

(i) certain large volume wastes, such as inert construction debris used as fill material;

(ii) drilling muds, produced waters, and other wastes associated with the exploration, development, or production of oil, gas, or geothermal energy;

(iii) solid wastes from the extraction, beneficiation, and processing of ores and minerals; [ø]

(iv) cement kiln dust[-]; or

(v) metal that is:

(A) purchased as a valuable commercial commodity; and

(B) not otherwise hazardous waste or subject to conditions of the federal hazardous waste regulations, including the requirements for recyclable materials found at 40 C.F.R. 261.6.

(20) “Solid waste management facility” means the same as that term is defined in Section 19-6-502.

[~~(20)~~ (21) “Storage” means the actual or intended containment of solid or hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of the waste.

[~~(21)~~ (22) “Transportation” means the off-site movement of solid or hazardous waste to any intermediate point or to any point of storage, treatment, or disposal.

[~~(22)~~ (23) “Treatment” means a method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for recovery, amenable to storage, or reduced in volume.

[~~(23)~~ (24) “Underground storage tank” means a tank which is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991 et seq.

Section 2. Section 19-6-502 is amended to read:

19-6-502. Definitions.

As used in this part:

(1) “Governing body” means the governing board, commission, or council of a public entity.

(2) “Jurisdiction” means the area within the incorporated limits of:

(a) a municipality;

(b) a special service district;

(c) a municipal-type service district;

(d) a service area; or

(e) the territorial area of a county not lying within a municipality.

(3) “Long-term agreement” means an agreement or contract having a term of more than five years but less than 50 years.

(4) “Municipal residential waste” means solid waste that is:

(a) discarded or rejected at a residence within the public entity’s jurisdiction; and

(b) collected at or near the residence by:

(i) a public entity; or

(ii) a person with whom the public entity has an agreement to provide solid waste management.

(5) “Public entity” means:

- (a) a county;
- (b) a municipality;
- (c) a special service district under Title 17D, Chapter 1, Special Service District Act;
- (d) a service area under Title 17B, Chapter 2a, Part 9, Service Area Act; or
- (e) a municipal-type service district created under Title 17, Chapter 34, Municipal-Type Services to Unincorporated Areas.
- (6) "Requirement" means an ordinance, policy, rule, mandate, or other directive that imposes a legal duty on a person.
- (7) "Residence" means an improvement to real property used or occupied as a primary or secondary detached single-family dwelling.
- (8) "Resource recovery" means the separation, extraction, recycling, or recovery of usable material, energy, fuel, or heat from solid waste and the disposition of it.
- (9) "Short-term agreement" means a contract or agreement having a term of five years or less.
- (10) (a) "Solid waste" means a putrescible or nonputrescible material or substance discarded or rejected as being spent, useless, worthless, or in excess of the owner's needs at the time of discard or rejection, including:

- (i) garbage;
- (ii) refuse;
- (iii) industrial and commercial waste;
- (iv) sludge from an air or water control facility;
- (v) rubbish;
- (vi) ash;
- (vii) contained gaseous material;
- (viii) incinerator residue;
- (ix) demolition and construction debris;
- (x) a discarded automobile; and
- (xi) offal.

(b) "Solid waste" does not include sewage or another highly diluted water carried material or substance and those in gaseous form.

(11) "Solid waste management" means the purposeful and systematic collection, transportation, storage, processing, recovery, or disposal of solid waste.

(12) (a) "Solid waste management facility" means a facility employed for solid waste management, including:

- ~~[(a)]~~ (i) a transfer station;
- ~~[(b)]~~ (ii) a transport system;
- ~~[(c)]~~ (iii) a baling facility;
- ~~[(d)]~~ (iv) a landfill; and

- ~~[(e)]~~ (v) a processing system, including:
- ~~[(f)]~~ (A) a resource recovery facility;
- ~~[(g)]~~ (B) a facility for reducing solid waste volume;
- ~~[(h)]~~ (C) a plant or facility for compacting, composting, or pyrolyzation of solid waste;
- ~~[(i)]~~ (D) an incinerator;
- ~~[(j)]~~ (E) a solid waste disposal, reduction, or conversion facility;
- ~~[(k)]~~ (F) a facility for resource recovery of energy consisting of:

~~[(A)]~~ (I) a facility for the production, transmission, distribution, and sale of heat and steam;

~~[(B)]~~ (II) a facility for the generation and sale of electric energy to a public utility, municipality, or other public entity that owns and operates an electric power system on March 15, 1982; and

~~[(C)]~~ (III) a facility for the generation, sale, and transmission of electric energy on an emergency basis only to a military installation of the United States; and

~~[(vii)]~~ (G) an auxiliary energy facility that is connected to a facility for resource recovery of energy as described in Subsection (12)~~[(e)(vi)]~~(a)(v)(F), that:

~~[(A)]~~ (I) is fueled by natural gas, landfill gas, or both;

~~[(B)]~~ (II) consists of a facility for the production, transmission, distribution, and sale of supplemental heat and steam to meet all or a portion of the heat and steam requirements of a military installation of the United States; and

~~[(C)]~~ (III) consists of a facility for the generation, transmission, distribution, and sale of electric energy to a public utility, a municipality described in Subsection (12)~~[(e)(vi)]~~(B)(a)(v)(F)(II), or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(b) "Solid waste management facility" does not mean a facility that:

(i) accepts and processes metal, as defined in Subsection 19-6-102(19)(b), by separating, shearing, sorting, shredding, compacting, baling, cutting, or sizing to produce a principle commodity grade product of prepared scrap metal for sale or use for remelting purposes provided that any byproduct or residual that would qualify as solid waste is managed at a solid waste management facility; or

(ii) accepts and processes paper, plastic, rubber, glass, or textiles that:

(A) have been source-separated or otherwise diverted from the solid waste stream before acceptance at the facility and that are not otherwise hazardous waste or subject to conditions of federal hazardous waste regulations; and

(B) are reused or recycled as a valuable commercial commodity by separating, shearing,

sorting, shredding, compacting, baling, cutting, or sizing to produce a principle commodity grade product, provided that any byproduct or residual that would qualify as solid waste is managed at a solid waste management facility.

CHAPTER 2
H. B. 4002

Passed November 16, 2016
Approved November 21, 2016
Effective November 21, 2016

(Retrospective operation to May 1, 2016)

CLASS B AND CLASS C
ROAD FUND AMENDMENTS

Chief Sponsor: Johnny Anderson
Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies provisions relating to funding for class B and class C roads.

Highlighted Provisions:

This bill:

- ▶ amends the apportionment formula for funds available for use on class B and class C roads; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2017:

- ▶ to Transportation - B and C Roads Additional Support, as a one-time appropriation:
 - from the General Fund, \$3,000,000; and
 - from the Transportation Fund, \$2,000,000; and
- ▶ to Transportation - B and C Roads, as a one-time appropriation:
 - from the Transportation Fund, \$5,678,000.

Other Special Clauses:

This bill provides a special effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

63I-2-272, as renumbered and amended by Laws of Utah 2008, Chapter 382

72-2-108, as last amended by Laws of Utah 2016, Chapter 1

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

Section 1. Section 63I-2-272 is amended to read:

63I-2-272. Repeal dates -- Title 72.

(1) On July 1, 2018:

(a) in Subsection 72-2-108(2), the language that states "and except as provided in Subsection (10)" is repealed;

(b) in Subsection 72-2-108(4)(c)(ii)(A), the language that states "excluding any amounts appropriated as additional support for class B and class C roads under Subsection (10)," is repealed; and

(c) Subsection 72-2-108(10) is repealed.

(2) Section 72-3-113 is repealed January 1, 2020.

Section 2. Section 72-2-108 is amended to read:

72-2-108. Apportionment of funds available for use on class B and class C roads -- Bonds.

(1) For purposes of this section:

(a) "Graveled road" means a road:

(i) that is:

(A) graded; and

(B) drained by transverse drainage systems to prevent serious impairment of the road by surface water;

(ii) that has an improved surface; and

(iii) that has a wearing surface made of:

(A) gravel;

(B) broken stone;

(C) slag;

(D) iron ore;

(E) shale; or

(F) other material that is:

(I) similar to a material described in Subsection (1)(a)(iii)(A) through (E); and

(II) coarser than sand.

(b) "Paved road" includes a gravelled road with a chip seal surface.

(c) "Road mile" means a one-mile length of road, regardless of:

(i) the width of the road; or

(ii) the number of lanes into which the road is divided.

(d) "Weighted mileage" means the sum of the following:

(i) paved road miles multiplied by five; and

(ii) all other road type road miles multiplied by two.

(2) Subject to the provisions of Subsections (3) through [(5)] (8) and except as provided in Subsection (10), funds in the class B and class C roads account shall be apportioned among counties and municipalities in the following manner:

(a) 50% in the ratio that the class B roads weighted mileage within each county and class C roads weighted mileage within each municipality bear to the total class B and class C roads weighted mileage within the state; and

(b) 50% in the ratio that the population of a county or municipality bears to the total population of the state as of the last official federal census or the United States Bureau of Census estimate, whichever is most recent, except that if population estimates are not available from the United States Bureau of Census, population figures shall be derived from the estimate from the Utah Population Estimates Committee.

(3) For purposes of Subsection (2)(b), “the population of a county” means:

(a) the population of a county outside the corporate limits of municipalities in that county, if the population of the county outside the corporate limits of municipalities in that county is not less than 14% of the total population of that county, including municipalities; and

(b) if the population of a county outside the corporate limits of municipalities in the county is less than 14% of the total population:

(i) the aggregate percentage of the population apportioned to municipalities in that county shall be reduced by an amount equal to the difference between:

(A) 14%; and

(B) the actual percentage of population outside the corporate limits of municipalities in that county; and

(ii) the population apportioned to the county shall be 14% of the total population of that county, including incorporated municipalities.

(4) ~~[(a)]~~ If an apportionment under Subsection (2) made in the current fiscal year [2013–14] to a county or municipality with a population of less than 14,000 is less than 120% of the amount apportioned to the county or municipality from the class B and class C roads account in fiscal year 1996–97, the department shall ~~[(4)]~~ reapportion the funds under Subsection (2) to ensure that the county or municipality receives ~~[an amount equal to]~~:

~~[(A) the amount apportioned to the county or municipality from the class B and class C roads account in fiscal year 1996–97; plus]~~

~~[(B) the amount apportioned to the county or municipality from the class B and class C roads account in fiscal year 1996–97 multiplied by the percentage increase in the class B and class C roads account from fiscal year 1996–97 to the most recently completed fiscal year; and]~~

(a) subject to the requirement in Subsection (5) and for fiscal year 2016 only, an amount equal to:

(i) the amount apportioned to the county or municipality for class B and class C roads in fiscal year 2015 multiplied by 120%; plus

(ii) an amount equal to the amount apportioned to the county or municipality in fiscal year 2015 multiplied by the percentage increase or decrease in the total funds available for class B and class C roads between fiscal year 2015 and fiscal year 2016;

(b) for fiscal year 2017 only, an amount equal to the greater of:

(i) the amount apportioned to the county or municipality for class B and class C roads in the current fiscal year under Subsection (2); or

(ii) (A) the amount apportioned to the county for class B and class C roads in fiscal year 2015 multiplied by 120%; plus

(B) the amount calculated as described in Subsection (7); or

(c) for a fiscal year beginning on or after July 1, 2017, an amount equal to the greater of:

(i) the amount apportioned to the county or municipality for class B and class C roads in the current fiscal year under Subsection (2); or

(ii) (A) the amount apportioned to the county or municipality for class B and class C roads through the apportionment formula under Subsection (2) or this Subsection (4), excluding any amounts appropriated as additional support for class B and class C roads under Subsection (10), in the prior fiscal year; plus

(B) the amount calculated as described in Subsection (7).

(5) For the purposes of calculating a final distribution of money collected in fiscal year 2016, the department shall subtract the payments previously made to a county or municipality for money collected in fiscal year 2016 for class B and class C roads from the fiscal year 2016 total calculated in Subsection (4)(a).

~~[(ii)]~~ (6) (a) The department shall decrease proportionately as provided in Subsection ~~[(4)]~~ (6)(b) the apportionments to counties and municipalities for which the reapportionment under Subsection (4)(a)~~[(4)]~~, (b)(ii), or (c)(ii) does not apply.

(b) The aggregate amount of the funds that the department shall decrease proportionately from the apportionments under Subsection ~~[(4)]~~ (6)(a)~~[(ii)]~~ is an amount equal to the aggregate amount reapportioned to counties and municipalities under Subsection (4)(a)~~[(4)]~~, (b)(ii), or (c)(ii).

~~[(5)]~~ (7) (a) In addition to the apportionment adjustments made under Subsection (4), a county or municipality that qualifies for reapportioned money under Subsection (4)~~[(a)(i)]~~(b)(ii) or (c)(ii) shall receive ~~[the percentage change in the class B and class C roads account compounded annually beginning in fiscal year 2006–07.]~~ an amount equal to the amount apportioned to the county or municipality under Subsection (4)(b)(ii) or (c)(ii) for class B and class C roads in the prior fiscal year multiplied by the percentage increase or decrease in the total funds available for class B and class C roads between the prior fiscal year and the fiscal year that immediately preceded the prior fiscal year.

(b) The adjustment under Subsection ~~[(5)]~~ (7)(a) shall be made in the same way as provided in ~~[Subsection (4)(a)(ii)]~~ Subsections (6)(a) and (b).

(8) (a) If a county or municipality does not qualify for a reapportionment under Subsection (4)(c) in the current fiscal year but previously qualified for a reapportionment under Subsection (4)(c) on or after July 1, 2017, the county or municipality shall receive an amount equal to the greater of:

(i) the amount apportioned to the county or municipality for class B and class C roads in the current fiscal year under Subsection (2); or

(ii) the amount apportioned to the county or municipality for class B and class C roads in the prior fiscal year.

(b) The adjustment under Subsection (8)(a) shall be made in the same way as provided in Subsections (6)(a) and (b).

[46] (9) The governing body of any municipality or county may issue bonds redeemable up to a period of 10 years under Title 11, Chapter 14, Local Government Bonding Act, to pay the costs of constructing, repairing, and maintaining class B or class C roads and may pledge class B or class C road funds received pursuant to this section to pay principal, interest, premiums, and reserves for the bonds.

(10) (a) For fiscal year 2017 only, the department shall distribute \$5,000,000 of the funds appropriated for additional support for class B and class C roads among the counties and municipalities that qualified for reapportioned funds under Subsection (4) before May 1, 2016.

(b) The department shall distribute an amount to each county or municipality described in Subsection (10)(a) considering the projected amount of revenue that each county or municipality would have received under the reapportionment formula in effect before May 1, 2016.

(c) The department may consult with local government entities to determine the distribution amounts under Subsection (10)(b).

(d) Before making the distributions required under this section, the department shall report to the Executive Appropriations Committee of the Legislature by no later than December 31, 2016, the amount of funds the department will distribute to each county or municipality that qualifies for a distribution under this Subsection (10).

(e) The Executive Appropriations Committee of the Legislature shall review and comment on the amount of funds proposed to be distributed to each county or municipality that qualifies for a distribution under this Subsection (10).

Section 3. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2016, and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Transportation - B and C Roads Additional Support

From General Fund, One-time \$3,000,000

From Transportation Fund, One-time \$2,000,000

Schedule of Programs:

B and C Roads Additional Support \$5,000,000

ITEM 2

To Transportation - B and C Roads

From Transportation Fund, One-time \$5,678,000

Schedule of Programs:

B and C Roads \$5,678,000

The Legislature intends that the \$2,000,000 appropriation in ITEM 1 and the \$5,678,000 appropriation in ITEM 2 represent the portion of the fiscal year 2016 Transportation Fund revenue surplus apportioned for class B and class C roads under the formula described in Subsection 72-2-107(1).

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 5. Retrospective operation.

The amendments to Section 72-2-108 in this bill have retrospective operation to May 1, 2016.

LAWS
of the
STATE OF UTAH, 2017

Passed at the
GENERAL SESSION
of the
SIXTY-SECOND LEGISLATURE

Convened at the State Capitol in the City of Salt Lake
January 23, 2017
and Adjourned Sine Die on
March 9, 2017

STATE OF UTAH



OFFICE OF THE LIEUTENANT GOVERNOR

CERTIFICATE

THIS IS TO CERTIFY that the acts and resolutions published in this volume are, according to our best information and belief, full and correct copies of the originals passed at the 2017 General Session of the 62nd Legislature of the State of Utah, as they appear of record in the Office of the Lieutenant Governor; and

That the 2017 General Session of the 62nd Legislature of the State of Utah convened at the Capitol in Salt Lake City on the 23rd of January, 2017, and adjourned on the 9th day of March, 2017.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Utah at Salt Lake City, this 17th day of August, 2017.


Spencer J. Cox
Lieutenant Governor

**CHAPTER 1
H.B. 1**

Passed February 7, 2017
Approved February 16, 2017
Effective July 1, 2017

HIGHER EDUCATION BASE BUDGET

Chief Sponsor: Keith Grover
Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill supplements or reduces appropriations previously provided for the use and operation of Higher Education for the fiscal year beginning July 1, 2016 and ending June 30, 2017; and appropriates funds for the support and operation of Higher Education for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides appropriations for the use and support of certain state agencies;
- ▶ provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates \$1,499,000 in operating and capital budgets for fiscal year 2017, all of which is from the Education Fund.

This bill appropriates \$1,719,682,500 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$315,344,700 from the General Fund;
- ▶ \$621,044,400 from the Education Fund;
- ▶ \$783,293,400 from various sources as detailed in this bill.

Other Special Clauses:

Section 1 of this bill takes effect immediately.
Section 2 of this bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2017 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2016 and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

UTAH STATE UNIVERSITY

Item 1

To Utah State University - Education and General
From Education Fund, One-Time 90,000

Schedule of Programs:
Education and General 90,000

WEBER STATE UNIVERSITY

Item 2

To Weber State University - Education and General
From Education Fund, One-Time 220,000
Schedule of Programs:
Education and General 220,000

SNOW COLLEGE

Item 3

To Snow College - Education and General
From Education Fund, One-Time 299,000
Schedule of Programs:
Education and General 299,000

DIXIE STATE UNIVERSITY

Item 4

To Dixie State University - Education and General
From Education Fund, One-Time 95,000
Schedule of Programs:
Education and General 95,000

UTAH COLLEGE OF APPLIED TECHNOLOGY

Item 5

To Utah College of Applied Technology - Bridgerland Applied Technology College
From Education Fund, One-Time 190,000
Schedule of Programs:
Bridgerland Applied Technology College 190,000

Item 6

To Utah College of Applied Technology - Davis Applied Technology College
From Education Fund, One-Time 450,000
Schedule of Programs:
Davis Applied Technology College 450,000

Item 7

To Utah College of Applied Technology - Dixie Applied Technology College
From Education Fund, One-Time 125,000
Schedule of Programs:
Dixie Applied Technology College 125,000

Item 8

To Utah College of Applied Technology - Ogden/Weber Applied Technology College
From Education Fund, One-Time 30,000
Schedule of Programs:
Ogden/Weber Applied Technology College 30,000

Section 2. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Subsection 2(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use

and support of the government of the State of Utah.

UNIVERSITY OF UTAH

Item 9

To University of Utah - Education and General
 From General Fund 7,245,800
 From Education Fund 224,448,900
 From Education Fund, One-Time (1,275,800)
 From Dedicated Credits Revenue ... 260,940,400
 From Beginning Nonlapsing
 Balances 21,542,800
 From Closing Nonlapsing
 Balances (21,542,800)
 Schedule of Programs:
 Education and General 487,006,100
 Operations and Maintenance 4,353,200

The Legislature intends that the University of Utah report on the following performance measures for the Education and General line item, whose mission is: "To serve the people of Utah and the world through the discovery, creation and application of knowledge; through the dissemination of knowledge by teaching, publication, artistic presentation and technology transfer; and through community engagement": (1) Graduation Rates (Target = Greater than the three year average percentage), (2) Degrees awarded (Target = Greater than the three year average percentage), and (3) Excellence in research (Target = Exceed the current extramural research awards at 0.45% of the total and applied research dollars from the annual federal budget by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 10

To University of Utah -
 Educationally Disadvantaged
 From General Fund 612,100
 From Education Fund 89,200
 From Revenue Transfers 34,500
 From Beginning Nonlapsing Balances ... 375,200
 From Closing Nonlapsing Balances (375,200)
 Schedule of Programs:
 Educationally Disadvantaged 735,800

The Legislature intends that the University of Utah report on the following performance measures for the Educationally Disadvantaged line item, whose mission is: "The Center for Disability & Access is dedicated to students with disabilities by providing the opportunity for success and equal access at the University of Utah. We are committed to providing reasonable accommodations as outlined by Federal and State law. We also strive to create an inclusive, safe and respectful environment. By promoting awareness, knowledge and equity, we aspire to impact positive change within individuals and the campus community": (1) Students with disabilities registered and receiving services (Target = 2%-5% of total university enrollment), (2)

Provision of alternative format services, including Braille and Video Captioning (Target = provide accessible materials in a timely manner - prior to materials being needed/utilized in coursework), and (3) Provide Interpreting Services for Deaf and Hard of Hearing students (Target = Maintain a highly qualified and 100% certified interpreting staff. Achieve 100% delivery of properly requested interpreting needs) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 11

To University of Utah - School of Medicine
 From General Fund 906,100
 From Education Fund 33,009,300
 From Dedicated Credits Revenue 19,656,200
 From Beginning Nonlapsing
 Balances 7,930,200
 From Closing Nonlapsing Balances ... (7,930,200)
 Schedule of Programs:
 School of Medicine 53,571,600

The Legislature intends that the University of Utah report on the following performance measures for the School of Medicine line item, whose mission is: "The University of Utah School of Medicine serves the people of Utah and beyond by continually improving individual and community health and quality of life. This is achieved through excellence in patient care, education, and research. Each is vital to our mission and each makes the others stronger": (1) Number of medical school applications (Target = Exceed number of applications as an average of the prior three years), (2) Number of student enrolled in medical school (Target = Maintain full cohort based on enrollment levels), (3) Number of applicants to matriculates (Target = Maintain healthy ratio to insure a class of strong academic quality), (4) Number of miners served (Target = Maintain or exceed historical number served), and (5) Number of miners enrolled (Target = Maintain or exceed historical number enrolled) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 12

To University of Utah - Health Sciences
 From General Fund 1,762,100
 From General Fund Restricted - Cigarette
 Tax Restricted Account 4,800,000
 From General Fund Restricted -
 Tobacco Settlement Account 4,000,000
 From Beginning Nonlapsing Balances 17,200
 From Closing Nonlapsing Balances (17,200)
 Schedule of Programs:
 Health Sciences 10,562,100

The Legislature intends that the University of Utah report on the following performance measures for the Health Sciences Huntsman Cancer Institute line item, whose mission is: "To understand cancer from its beginnings, to use that knowledge in the creation and improvement of cancer treatments, to relieve the suffering

of cancer patients, and to provide education about cancer risk, prevention, and care”: (1) Extramural cancer research funding help by HCI investigators (Target = Increase the funding by between 3-6% from 2015 level \$55.9M), (2) Cancer clinical trials available to HCI patients. (Target = Enrollment at or above 12 percent of new HCI cancer patients, and (3) Expand cancer research programs (Target = Launch a new research initiative in Health Outcomes and Population Equity (HOPE), and continue the HCI PathMaker program) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 13

To University of Utah - University Hospital
 From General Fund 3,866,400
 From Education Fund 1,116,200
 From Dedicated Credits Revenue 455,800
 From Beginning Nonlapsing Balances (281,800)
 From Closing Nonlapsing Balances 281,800
 Schedule of Programs:
 University Hospital 4,868,400
 Miners’ Hospital 570,000

The Legislature intends that the University of Utah report on the following performance measures for the University Hospital line item, whose mission is: “The University of Utah Health Sciences Center serves the people of Utah and beyond by continually improving individual and community health and quality of life. This is achieved through excellence in patient care, education, and research; each is vital to our mission and each makes the others stronger”: (1) Number of annual residents in training (Target = 578), (2) Number of annual resident training hours (Target = 2,080,800), and (3) Percentage of total resident training costs appropriated by the legislature (Target = 20.7%) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 14

To University of Utah - School of Dentistry
 From General Fund 481,000
 From Education Fund 140,600
 From Dedicated Credits Revenue 2,528,600
 From Beginning Nonlapsing Balances 1,400
 From Closing Nonlapsing Balances (1,400)
 Schedule of Programs:
 School of Dentistry 3,150,200

The Legislature intends that the University of Utah report on the following performance measures for the Regional Dental Education Program line item, whose mission is: “To improve the oral and overall health of the community through education, research, and service”: (1) Number of RDEP Beneficiaries Practicing in Utah (Target = 40% of RDEP beneficiaries), (2) Number of RDEP Beneficiaries Admitted to Advanced Practice Residency (Target = 20% of RDEP beneficiaries), and (3) Number of total RDEP Beneficiaries admitted to Program (Target =

10 beneficiaries) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 15

To University of Utah - Public Service
 From General Fund 155,800
 From Education Fund 1,793,300
 From Beginning Nonlapsing Balances ... 175,800
 From Closing Nonlapsing Balances (175,800)
 Schedule of Programs:
 Seismograph Stations 729,700
 Natural History Museum of Utah ... 1,098,500
 State Arboretum 120,900

The Legislature intends that the University of Utah report on the following performance measures for the Seismograph Station Program, whose mission is: “Reducing the risk from earthquakes in Utah through research, education, and public service”: (1) Timeliness of response to earthquakes in the Utah region. (Target = For 100% of earthquakes with magnitude 3.5 or greater that occur in the Utah region UUSS will transmit an alarm to the Utah Department of Emergency Management within 5 minutes and post event information to the web within 10 minutes), (2) Publications and presentations related to earthquakes. (Target = Each year UUSS researchers will publish at least five papers in peer-reviewed journals. Make at least ten presentations at professional meetings, and make at least ten oral presentations to local stakeholders), and (3) External funds raised to support UUSS mission (Target = Each year UUSS will generate external funds that equal or exceed the amount provided by the State of Utah by October 15, 2018 to the Higher Education Appropriations Subcommittee.

The Legislature intends that the University of Utah report on the following performance measures for the Natural History Museum of Utah Program, whose mission is: “The Natural History Museum of Utah illuminates the natural world and the place of humans within it”: (1) Total on-site attendance (Target = Meet or exceed 282,000 for FY 2017), (2) Total off-site attendance (Target = Meet or exceed 200,000 for FY 2017), and (3) Number of school interactions (Target = Meet or exceed 1,250 for FY 2017) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

The Legislature intends that the University of Utah report on the following performance measures for the State Arboretum Program, whose mission is: “To connect people with plants and the beauty of living landscapes”: (1) Number of memberships (Target = Increase number of memberships by 3% annually from June 30, 2016 to June 30, 2019), (2) Number of admissions (Target: = Increase number of admission by 3% annually from June 30, 2016 to June 30, 2019), and (3) Number of school children participating in on-site field classes

(Target = Maintain present level of participation until Education Center is build that will permit expansion beyond what current facilities permit) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 16

To University of Utah -

Statewide TV Administration

From General Fund	2,095,300
From Education Fund	458,400
From Beginning Nonlapsing Balances	42,900
From Closing Nonlapsing Balances	(42,900)

Schedule of Programs:

Public Broadcasting	2,553,700
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The Legislature intends that the University of Utah report on the following performance measures for the Statewide TV Administration Program, whose mission is: "KUED entertains, informs, and enriches our viewers with exceptional content and is a valued community resource. Our mission is to be a community resource that is trusted, valued, and essential": (1) Determine number of television households that tune in to KUED (Target = Measurement during Nielsen "sweeps" greater than or equal to the prior three year percentages), (2) Number of visitors to KUEDs informational page and KUEDs video page (Target = Measure Google Analytics to meet or exceed prior three year percentages), and (3) Number of people participating in KUED Community Outreach Events (Target = Equal or greater to the number of viewers in the past three years) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 17

To University of Utah - Poison Control Center

From General Fund	2,199,100
From Beginning Nonlapsing Balances ...	674,100
From Closing Nonlapsing Balances	(674,100)

Schedule of Programs:

Poison Control Center	2,199,100
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The Legislature intends that the University of Utah report on the following performance measures for the Poison Control Center line item, whose mission is: "To prevent and minimize adverse health effects from a poison exposure through education, service, and research": (1) Poison Center Utilization (Target = exceed Nationwide Average), (2) Health care costs averted per dollar invested (Target = \$10.00 savings for every dollar invested in the center), and (3) Service level - speed to answer (Target = answer 85% of cases within 20 seconds) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 18

To University of Utah - Center on Aging

From General Fund	106,500
From Beginning Nonlapsing Balances	5,600
From Closing Nonlapsing Balances	(5,600)

Schedule of Programs:

Center on Aging	106,500
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The Legislature intends that the University of Utah report on the following performance measures for the Center on Aging line item, whose mission is: "To provide educational and research programs in gerontology at the University of Utah": (1) Increased penetration of UCOA influence by measuring how many stakeholders including UCOA members, community guests, engaged in meetings, events, consults directly as a result of UCOA efforts and facilitation (Target = Annual increase of 25% of qualified UCOA engagements with aging stakeholders), (2) Access to the ADRC - Cover to Cover Program (Target = To provide services to 100% of the people of Utah over age 65), and (3) Increased penetration of iPods placed through facilities and service organizations throughout the state of Utah (Target = Annual increase of 15% of aggregated placements of iPods through the Music & Memory program) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 19

To University of Utah - Rocky Mountain Center for Occupational and Environmental Health from General Fund Restricted -

Workplace Safety Account	160,800
From Beginning Nonlapsing Balances	12,000
From Closing Nonlapsing Balances	(12,000)

Schedule of Programs:

Center for Occupational and

Environmental Health	160,800
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The Legislature intends that the University of Utah report on the following performance measures for the Rocky Mountain Center for Occupational and Environmental Health line item, whose mission is: "To maintain with our customers an impeccable reputation for professionalism, objectivity, promptness, and evenhandedness. To promote, create and maintain a safe and healthful campus environment": (1) Number of Students in the degree programs (Target = Greater than or equal to 45 students), (2) Number of students trained (Target = Greater than or equal to 600), and (3) Number of businesses represented in continuing education courses (Target = Greater than or equal to 1,000) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

UTAH STATE UNIVERSITY

Item 20

To Utah State University - Education and General

From General Fund	99,181,900
From Education Fund	35,891,300
From Education Fund, One-Time	(1,463,800)
From Dedicated Credits Revenue ...	111,283,600
From Revenue Transfers	(238,500)
From Beginning Nonlapsing Balances	17,124,400
From Closing Nonlapsing Balances	(17,124,400)

Schedule of Programs:

Education and General	236,641,400
USU - School of Veterinary	
Medicine	5,147,200
Operations and Maintenance	2,865,900

The Legislature intends that Utah State University report on the following performance measures for the Education and General line item, whose mission is: “to be one of the nations premier student-centered land-grant and space-grant universities by fostering the principle that academics come first, by cultivating diversity of thought and culture and by serving the public through learning, discovery and engagement”: (1) IPEDS Overall Graduation Rate [150%] for all first-time, full-time, degree-seeking students; this includes all bachelors and associate degree seeking students who complete within 150% of when they start their program of study (within 6 yrs. For Bachelors and 3 yrs. For Associates) (Target = 49% with a 0.5% increase per annum), (2) Utah State University will maintain or exceed in extramural research awards at 0.2% of the total basic and applied research dollars from the annual federal budget (Target = 0.2%), and (3) Degrees and Certificates awarded annually (Target = 6,200) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 21

To Utah State University - USU - Eastern Education and General

From General Fund	41,000
From Education Fund	11,800,700
From Dedicated Credits Revenue	2,937,000
From Beginning Nonlapsing Balances	1,220,400
From Closing Nonlapsing Balances ...	(1,220,400)

Schedule of Programs:

USU - Eastern Education and General	14,778,700
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The Legislature intends that Utah State University report on the following performance measures for the USU Eastern Education and General line item, whose mission is: “with efficiency, innovation, and excellence, Utah State University Eastern prepares the people who create and sustain our region”: (1) Degrees & certificates awarded by USUE (Target = 365), (2) FTE student enrollment (Fall Day-15 Budget-Related) (Target = 950), and (3) IPEDS Overall Graduation Rate [150%] for all first-time, full-time, degree-seeking students; this includes all bachelors and associate degree seeking students who complete within 150% of when they start their program of study (within 6 yrs. For Bachelors and 3 yrs. For Associates) (Target 49% with a 0.5% increase per annum) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 22

To Utah State University - Educationally Disadvantaged

From General Fund	100,000
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Schedule of Programs:

Educationally Disadvantaged	100,000
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The Legislature intends that Utah State University report on the following performance measures for the Educationally Disadvantaged line item, whose mission is: “to provide services to educationally disadvantaged students”: (1) Students served (Target = 20), (2) Average aid per student (Target = \$4,000), and (3) Transfer and retention rate (Target = 80%) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 23

To Utah State University - USU - Eastern Educationally Disadvantaged

From General Fund	103,100
From Education Fund	1,900
From Beginning Nonlapsing Balances	66,100
From Closing Nonlapsing Balances	(66,100)

Schedule of Programs:

USU - Eastern Educationally Disadvantaged	105,000
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The Legislature intends that Utah State University report on the following performance measures for the Eastern Educationally Disadvantaged line item, whose mission is: “to provide services to educationally disadvantaged students”: (1) Students served (Target = 275), (2) Average aid per student (Target = \$500), and (3) Transfer and retention rate (Target = 50%) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 24

To Utah State University - USU - Eastern Career and Technical Education

From General Fund	170,100
From Education Fund	1,210,700
From Beginning Nonlapsing Balances	282,700
From Closing Nonlapsing Balances	(282,700)

Schedule of Programs:

USU - Eastern Career and Technical Education	1,380,800
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The Legislature intends that Utah State University report on the following performance measures for the Eastern Career and Technical Education line item, whose mission is: “to provide open-entry, open-exit competency-based career and technical education programs, and emphasize short-term job training and retraining for southeastern Utah”: (1) CTE licenses and certifications (Target = 100), (2) CTE Graduate placements (Target = 45), and (3) CTE Completions (Target = 50) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 25

To Utah State University - Uintah Basin Regional Campus

From General Fund 2,264,900
 From Education Fund 1,816,600
 From Dedicated Credits Revenue 2,174,000
 From General Fund Restricted -
 Infrastructure and Economic
 Diversification Investment Account 250,000
 From Beginning Nonlapsing Balances 280,100
 From Closing Nonlapsing Balances (280,100)
 Schedule of Programs:

 Uintah Basin Regional Campus 6,505,500

The Legislature intends that Utah State University report on the following performance measures for the Uintah Basin Regional Campus line item, whose mission is: “to provide education opportunities to citizens in the Uintah Basin”: (1) Degrees & certificates awarded by RC/AIS (Target = 850), (2) FTE student enrollment (Fall Day-15 Budget-Related) (Target = 375), and (3) IPEDS Overall Graduation Rate [150%] for all first-time, full-time, degree-seeking students; this includes all bachelors and associate degree seeking students who complete within 150% of when they start their program of study (within 6 yrs. For Bachelors and 3 yrs. For Associates) (Target 49% with a 0.5% increase per annum) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 26

To Utah State University -
 Southeastern Continuing Education Center
 From General Fund 577,700
 From Education Fund 146,200
 From Dedicated Credits Revenue 1,521,000
 From Beginning Nonlapsing Balances 253,300
 From Closing Nonlapsing Balances (253,300)
 Schedule of Programs:

 Southeastern Continuing Education
 Center 2,244,900

The Legislature intends that Utah State University report on the following performance measures for the Southeastern Continuing Education Center line item, whose mission is: “To provide education opportunities to citizens in the southeastern Utah”: (1) Degrees & certificates awarded by RC/AIS (Target = 850), (2) FTE student enrollment (Fall Day-15 Budget-Related) (Target 185), and (3) IPEDS Overall Graduation Rate [150%] for all first-time, full-time, degree-seeking students; this includes all bachelors and associate degree seeking students who complete within 150% of when they start their program of study (within 6 yrs. For Bachelors and 3 yrs. For Associates) (Target 49% with a 0.5% increase per annum) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 27

To Utah State University - Brigham City
 Regional Campus
 From General Fund 987,600
 From Education Fund 2,621,600
 From Dedicated Credits Revenue 11,903,000
 From Revenue Transfers 1,242,400

From Beginning Nonlapsing
 Balances 1,864,600
 From Closing Nonlapsing Balances (1,864,600)
 Schedule of Programs:
 Brigham City Regional Campus 16,754,600

The Legislature intends that Utah State University report on the following performance measures for the Brigham City Regional Campus line item, whose mission is: “To provide education opportunities to citizens in Brigham City and surrounding communities”: (1) Degrees & certificates awarded by RC/AIS (Target = 850), (2) FTE student enrollment (Fall Day-15 Budget-Related) (Target = 650), and (3) IPEDS Overall Graduation Rate [150%] for all first-time, full-time, degree-seeking students; this includes all bachelors and associate degree seeking students who complete within 150% of when they start their program of study (within 6 yrs. For Bachelors and 3 yrs. For Associates) (Target = 49% with a 0.5% increase per annum) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 28

To Utah State University - Tooele
 Regional Campus
 From General Fund 649,800
 From Education Fund 3,662,100
 From Dedicated Credits Revenue 9,419,000
 From Revenue Transfers (1,242,400)
 From Beginning Nonlapsing Balances 470,100
 From Closing Nonlapsing Balances (470,100)
 Schedule of Programs:
 Tooele Regional Campus 12,488,500

The Legislature intends that Utah State University report on the following performance measures for the Tooele Regional Campus line item, whose mission is: “To provide education opportunities to citizens in Tooele and along the Wasatch Front”: (1) Degrees & certificates awarded by RC/AIS (Target = 850), (2) FTE student enrollment (Fall Day-15 Budget-Related) (Target = 1,200), and (3) IPEDS Overall Graduation Rate [150%] for all first-time, full-time, degree-seeking students; this includes all bachelors and associate degree seeking students who complete within 150% of when they start their program of study (within 6 yrs. For Bachelors and 3 yrs. For Associates) (Target 49% with a 0.5% increase per annum) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 29

To Utah State University - Water
 Research Laboratory
 From General Fund 1,323,900
 From Education Fund 479,700
 From General Fund Restricted -
 Mineral Lease 1,745,800
 From General Fund Restricted - Land
 Exchange Distribution Account 66,400
 From Beginning Nonlapsing
 Balances 3,368,000

From Closing Nonlapsing Balances ... (3,368,000)

Schedule of Programs:

Water Research Laboratory 3,615,800

The Legislature intends that Utah State University report on the following performance measures for the Water Research Laboratory line item, whose mission is: “to work with academic departments at USU to generate, transmit, apply, and preserve knowledge in ways that are consistent with the land-grant mission of the University”: (1) Peer-reviewed journal articles published (Target = 10), (2) Number of students supported (Target = 150), and (3) Research projects and training activities (Target = 200) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 30

To Utah State University - Agriculture

Experiment Station

From General Fund 958,200

From Education Fund 11,482,300

From Federal Funds 1,813,800

From Revenue Transfers 116,000

From Beginning Nonlapsing

Balances 4,397,600

From Closing Nonlapsing Balances ... (4,397,600)

Schedule of Programs:

Agriculture Experiment Station 14,370,300

The Legislature intends that Utah State University report on the following performance measures for the Agriculture Experiment Station line item, whose mission is: “to facilitate research that promotes agriculture and human nutrition, and enhance the quality of rural life: (1) Number of students mentored (Target = 300), (2) Journal articles published (Target = 300), and (3) Lab accessions (Target = 100,000) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 31

To Utah State University - Cooperative

Extension

From General Fund 1,010,000

From Education Fund 13,531,500

From Federal Funds 2,088,500

From Revenue Transfers 122,500

From Beginning Nonlapsing

Balances 4,759,200

From Closing Nonlapsing Balances ... (4,759,200)

Schedule of Programs:

Cooperative Extension 16,752,500

The Legislature intends that Utah State University report on the following performance measures for the Cooperative Extension line item, whose mission is: “To deliver research-based education and information throughout the State in cooperation with federal, state, and county partnerships”: (1) Direct contacts (Adult and Youth) (Target = 722,000 - 3 year rolling average), (2) Faculty-delivered activities and events (Target = 2,000 - 3 year rolling

average), and (3) Faculty publications (Target = 300 - 3 year rolling average) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 32

To Utah State University - Prehistoric Museum

From General Fund 145,100

From Education Fund 300,500

From Beginning Nonlapsing Balances ... 149,800

From Closing Nonlapsing Balances (149,800)

Schedule of Programs:

Prehistoric Museum 445,600

The Legislature intends that Utah State University report on the following performance measures for the Eastern Prehistoric Museum line item, whose mission is: “The Prehistoric Museum creates understanding and appreciation of natural and cultural processes that formed the geologic, fossil and prehistoric human records found in eastern Utah. We do this through educational and interpretive programs based upon our academic research, preservation programs, authentic exhibits, and the creative efforts of our staff and community”: (1) Museum admissions (Target = 18,000), (2) Number of offsite outreach contacts (Target = 1,000), and (3) Number of scientific specimens added (Target = 800) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 33

To Utah State University - Blanding Campus

From General Fund 1,635,700

From Education Fund 1,222,300

From Dedicated Credits Revenue 1,255,000

From Beginning Nonlapsing Balances ... 204,000

From Closing Nonlapsing Balances (204,000)

Schedule of Programs:

Blanding Campus 4,113,000

The Legislature intends that Utah State University report on the following performance measures for the Blanding Campus line item, whose mission is: “with efficiency, innovation, and excellence, Utah State University Eastern prepares the people who create and sustain our region”: (1) Degrees & certificates awarded by USUE (Target = 365), (2) FTE student enrollment (Fall Day-15 Budget-Related) (Target = 375), and (3) IPEDS Overall Graduation Rate [150%] for all first-time, full-time, degree-seeking students; this includes all bachelors and associate degree seeking students who complete within 150% of when they start their program of study (within 6 yrs. For Bachelors and 3 yrs. For Associates) (Target 49% with a 0.5% increase per annum) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

WEBER STATE UNIVERSITY

Item 34

To Weber State University - Education and General

From General Fund 62,518,700

From Education Fund	16,329,100
From Dedicated Credits Revenue	72,604,100
From Beginning Nonlapsing Balances	4,377,200
From Closing Nonlapsing Balances	(4,377,200)
Schedule of Programs:	
Education and General	150,005,000
Operations and Maintenance	1,446,900

The Legislature intends that Weber State University report on the following performance measures for the Education and General line item, whose mission is: “To ensure quality academic experiences for students to be successful and graduate with an associate, bachelor, or master degree from programs that are responsive to community needs”: (1) Degrees per 100 FTE (Target = 25), (2) 6 Year bachelor completion rate (Target = 40%), and (3) High need occupations (Target = Majority 50%+ of graduates aligned to Utah high need occupations) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 35

To Weber State University -

 Educationally Disadvantaged

From General Fund	296,700
From Education Fund	73,900
From Beginning Nonlapsing Balances	106,900
From Closing Nonlapsing Balances	(106,900)
Schedule of Programs:	
Educationally Disadvantaged	370,600

The Legislature intends that Weber State University report on the following performance measures for the Educationally Disadvantaged line item, whose mission is: “To enhance the college experiences of students from traditionally underrepresented backgrounds”: (1) Awarding degrees to underrepresented students (Target = Increase to average of 6% of all degrees awarded), (2) Bachelors degrees within six years (Target = Average 5 year graduation rate of 25%), and (3) First year to second year enrollment (Target = 50%) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

SOUTHERN UTAH UNIVERSITY

Item 36

To Southern Utah University - Education and General

From General Fund	11,353,000
From Education Fund	23,251,900
From Education Fund, One-Time	(349,000)
From Dedicated Credits Revenue	41,798,000
From Revenue Transfers	391,500
From Beginning Nonlapsing Balances	5,742,800
From Closing Nonlapsing Balances	(5,742,800)
Schedule of Programs:	
Education and General	76,116,600
Operations and Maintenance	328,800

The Legislature intends that Southern Utah University report on the following

performance measures for the Education and General line item, whose mission is: “Southern Utah University leads students to successful educational outcomes”: (1) Budget related annualized FTE (Target = 25% increase in 5 years), (2) Overall graduation rate (Target = 10% higher than the next highest public, regional university in the eight Intermountain West states, and (3) First to second year retention rate (Target = Increase retention rate annually in support of the graduation rate five-year goal by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 37

To Southern Utah University -
 Educationally Disadvantaged

From General Fund	81,400
From Education Fund	12,100
From Beginning Nonlapsing Balances	700
From Closing Nonlapsing Balances	(700)
Schedule of Programs:	
Educationally Disadvantaged	93,500

The Legislature intends that Southern Utah University report on the following performance measures for the Educationally Disadvantaged line item, whose mission is: “Southern Utah University leads educationally disadvantaged students to successful educational outcomes”: (1) Graduation rate for educationally disadvantaged students (Target = Increase ED students equivalent to SUU overall rate), (2) Retention rate for educationally disadvantaged students (Target = Increase ED students equivalent to SUU overall rate), and (3) Minimum 33% of ED scholarships offered to minority students (Target = 33% Min.) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 38

To Southern Utah University -
 Shakespeare Festival

From General Fund	9,100
From Education Fund	12,500
Schedule of Programs:	
Shakespeare Festival	21,600

The Legislature intends that Southern Utah University report on the following performance measures for the Shakespeare Festival line item, whose mission is: “The Utah Shakespeare Festival through its Education department cultivates creative communities and human development through Shakespeare and instructional play for individuals, schools and communities with emphasis on at-risk and low income populations”: (1) Professional outreach program in the schools instructional hours (Target = 25% increase in 5 years), (2) Education seminars & orientation attendees (Target = 25% increase in 5 years), and (3) USF annual fundraising (Target = 50% increase in 5 years) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 39

To Southern Utah University - Rural Development

From General Fund	82,700
From Education Fund	19,700
From Beginning Nonlapsing Balances	17,200
From Closing Nonlapsing Balances	(17,200)
Schedule of Programs:	
Rural Development	102,400

The Legislature intends that Southern Utah University report on the following performance measures for the Rural Development line item, whose mission is: "Southern Utah University through the Office of Regional Services assists our rural Utah communities with economic and business development": (1) Rural businesses assisted (Target = 25% increase in 5 years), (2) Business training events (Target = 10% increase in 5 years), and (3) Individuals trained (Target = 10% increase in 5 years) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

UTAH VALLEY UNIVERSITY

Item 40

To Utah Valley University - Education and General

From General Fund	57,893,800
From Education Fund	42,120,800
From Education Fund, One-Time	(1,168,000)
From Dedicated Credits Revenue	119,121,400
From Beginning Nonlapsing Balances	23,988,200
From Closing Nonlapsing Balances	(23,988,200)
Schedule of Programs:	
Education and General	214,677,900
Operations and Maintenance	3,290,100

The Legislature intends that Utah Valley University report on the following performance measures for the Education and General line item, whose mission is: "A teaching institution which provides opportunity, promotes student success, and meets regional educational needs. UVU builds on a foundation of substantive scholarly and creative work to foster engaged learning": (1) First to second year student retention rate for first-time, full-time bachelor degree-seeking students (Target = 60%), (2) Graduate rate within 150% of program time for all first-time, full-time degree seeking students (Target = 30%), and (3) Number of awards earned each academic year (Target = 4,800) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 41

To Utah Valley University - Educationally Disadvantaged

From General Fund	138,900
From Education Fund	31,500
From Beginning Nonlapsing Balances	9,000
From Closing Nonlapsing Balances	(9,000)
Schedule of Programs:	

Educationally Disadvantaged	170,400
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The Legislature intends that Utah Valley University report on the following performance measures for the Educationally Disadvantaged line item, whose mission is: "Accessible and equitable educational opportunities for all students and support students achievement of academic success at the University": (1) Portion of degree-seeking undergraduate students receiving need-based financial aid (Target = 45%), (2) Number of students served in mental health counseling (Target = 4,000), and (3) Number of tutoring hours provided to students (Target = 22,000) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

SNOW COLLEGE

Item 42

To Snow College - Education and General

From General Fund	1,611,400
From Education Fund	19,603,500
From Education Fund, One-Time	(25,600)
From Dedicated Credits Revenue	12,269,600
From Beginning Nonlapsing Balances	1,393,800
From Closing Nonlapsing Balances	(1,393,800)
Schedule of Programs:	
Education and General	32,699,300
Operations and Maintenance	759,600

The Legislature intends that Snow College report on the following performance measures for the Education and General line item, whose mission is: "Snow College centralizes its mission around a tradition of excellence, a culture of innovation, and an atmosphere of engagement to advance students in the achievement of their educational goals": (1) Number of degrees conferred (Target = 1,000), (2) Budget-Related FTE student enrollment (Target = 3,700), (3) Combined graduation and transfer success rate (Target = 80%), and (4) Degrees per 100 FTE students (Target = 30) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 43

To Snow College - Educationally Disadvantaged

From General Fund	32,000
Schedule of Programs:	
Educationally Disadvantaged	32,000

The Legislature intends that Snow College report on the following performance measures for the Educationally Disadvantaged line item, whose mission is: "Snow College supports the academic preparation of students least likely to attend college": (1) Number educationally disadvantaged awards to students (Target = 75), (2) Average amount of aid awarded (Target = \$500), and (3) Percentage of remedial students completing a college-level course in the same subject within two academic years of entry (Target = 75%) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 44

To Snow College - Career and Technical Education

From General Fund 1,256,200
From Education Fund 102,500
Schedule of Programs:

Career and Technical Education 1,358,700

The Legislature intends that Snow College report on the following performance measures for the Career and Technical Education line item, whose mission is: "Provide relevant technical education and training that supports local and statewide industry and business development": (1) Headcount enrollment of post-secondary students in CTE programs (Target 1,200), (2) Number of degree, certificate, and/or licensure programs offered in industry-relevant areas of study (Target = 4 new programs/certificates/degrees), and (3) Number of degrees, certificates, awards, and/or licensures (Target = 100) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

DIXIE STATE UNIVERSITY**Item 45**

To Dixie State University - Education and General

From General Fund 2,323,100
From Education Fund 30,196,500
From Dedicated Credits Revenue 27,055,000
From Revenue Transfers 150,000
From Beginning Nonlapsing

Balances 2,687,200
From Closing Nonlapsing Balances . . . (2,687,200)
Schedule of Programs:

Education and General 59,005,400
Operations and Maintenance 719,200

The Legislature intends that Dixie State University report on the following performance measures for the Education and General line item, whose mission is: "Dixie State University is a public comprehensive university dedicated to rigorous learning and the enrichment of the professional and personal lives of its students and community by providing opportunities that engage the unique Southern Utah environment and resources": (1) Budget-related FTE student enrollment (Target = 6,500), (2) Number of bachelors degree majors offered (Target = 35), and (3) Number of students served by student success programs (Target = 1,000) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 46

To Dixie State University -
Educationally Disadvantaged

From General Fund 25,500
Schedule of Programs:

Educationally Disadvantaged 25,500

The Legislature intends that Dixie State University report on the following performance measures for the Educationally

Disadvantaged line item, whose mission is: "To support the academic success of culturally diverse students": (1) Number of students served (Target = 20), (2) Number of minority students served (Target = 15), and (3) Expenditures per student (Target = \$1,000) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 47

To Dixie State University -
Zion Park Amphitheater

From General Fund 47,000
From Education Fund 8,100
From Dedicated Credits Revenue 33,500
From Beginning Nonlapsing Balances 1,100
From Closing Nonlapsing Balances (1,100)
Schedule of Programs:

Zion Park Amphitheater 88,600

The Legislature intends that Dixie State University report on the following performance measures for the Zion Park Amphitheater line item, whose mission is: "to provide a world-class outdoor venue combining learning and the arts in Southern Utah": (1) Number of performances (Target = 15), (2) Ticket sales revenue (Target = \$35,000), and (3) Performances featuring Utah artists (Target = 10) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

SALT LAKE COMMUNITY COLLEGE**Item 48**

To Salt Lake Community College -
Education and General

From General Fund 10,049,400
From Education Fund 74,928,100
From Education Fund, One-Time (719,500)
From Dedicated Credits Revenue 61,625,500
From Beginning Nonlapsing

Balances 4,039,600
From Closing Nonlapsing Balances . . . (4,039,600)
Schedule of Programs:

Education and General 144,925,700
Operations and Maintenance 957,800

The Legislature intends that Salt Lake Community College report on the following performance measures for the Education and General line item, whose mission is: "Salt Lake Community College is your community college. We engage and support students in educational pathways leading to successful transfer and meaningful employment": (1) Equity in student access (Target = Ratio of 0.9:1 by 2020), (2) Six year completion rate (Target = 33% by 2020), and (3) Annualized FTE Enrollment (Target = 17,500 by 2020) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 49

To Salt Lake Community College -
Educationally Disadvantaged

From General Fund 178,400
From Beginning Nonlapsing Balances . . (44,800)
From Closing Nonlapsing Balances 44,800
Schedule of Programs:

Educationally Disadvantaged 178,400

The Legislature intends that Salt Lake Community College report on the following performance measures for the Educationally Disadvantaged line item, whose mission is: “Benefitting disadvantaged students, including minority students, and to be used for scholarships, tutoring, counseling, and related support services for educationally disadvantaged students”: (1) Number of Needs-based scholarships awarded (Target = 200), (2) Percentage of needs-based recipients returning (Target = 50%), and (3) Graduation rate of needs based scholarship recipients (Target = 50%) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 50

To Salt Lake Community College -
School of Applied Technology

From General Fund 4,140,200
From Education Fund 2,356,200
From Dedicated Credits Revenue 1,160,600
From Beginning Nonlapsing Balances . . 418,700
From Closing Nonlapsing Balances . . . (418,700)
Schedule of Programs:
School of Applied Technology 7,657,000

The Legislature intends that Salt Lake Community College report on the following performance measures for the School of Applied Technology line item, whose mission is: “Developing innovative, short-term, competency-based education to create a skilled workforce for Salt Lake County and the State of Utah”: (1) Membership hours (Target = 350,000), (2) Certificates awarded (Target = 200), and (3) Pass rate for certificate or licensure exams (Target 85%) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

STATE BOARD OF REGENTS

Item 51

To State Board of Regents - Administration

From General Fund 2,924,300
From Education Fund 723,400
From Federal Funds 303,100
From Beginning Nonlapsing
Balances 1,542,700
From Closing Nonlapsing Balances . . (1,542,700)
Schedule of Programs:
Administration 3,647,700
Federal Programs 303,100

The Legislature intends that the State Board of Regents report on the following performance measures for the Administration line item, whose mission is: “Support the Board of Regents in all responsibilities”: (1) Number of New/Split/Consolidated Degree Programs Approved (Target = 40), (2) Educators reached through professional development (Target = 1,600), and (3) Federal grant dollars received (Target = \$415,000) by October 15,

2018 to the Higher Education Appropriations Subcommittee.

Item 52

To State Board of Regents - Student Assistance

From General Fund 7,574,500
From Education Fund 5,954,300
From Beginning Nonlapsing Balances . . . 63,800
From Closing Nonlapsing Balances . . . (63,800)
Schedule of Programs:
Regents’ Scholarship 4,422,400
Student Financial Aid 3,252,800
Minority Scholarships 36,200
New Century Scholarships 1,983,900
Success Stipend 1,391,200
Western Interstate Commission
for Higher Education 839,600
T.H. Bell Teaching Incentive Loans
Program 1,477,700
Veterans Tuition Gap Program 125,000

The Legislature intends that the State Board of Regents report on the following performance measures for the Student Assistance line item, whose mission is: “To process, award, and appropriate student scholarships and financial assistance; including Regents Scholarship, New Century Scholarship, Student Financial Aid, Minority Scholarship, Veterans Tuition Gap Program, Success Stipend, and WICHE”: (1) Regents Scholarship (Target = Allocate all appropriations to qualified students, less overhead), (2) New Century (Target = Allocate all appropriations to qualified students, less overhead); (3) WICHE (Target = Allocate all appropriations to qualified students, less overhead) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 53

To State Board of Regents - Student Support

From General Fund 766,900
From Education Fund 822,900
From Revenue Transfers 5,100
From Beginning Nonlapsing Balances . . . 85,200
From Closing Nonlapsing Balances . . . (85,200)
Schedule of Programs:
Services for Hearing Impaired
Students 769,600
Concurrent Enrollment 455,000
Articulation Support 286,100
Campus Compact 84,200

The Legislature intends that the State Board of Regents report on the following performance measures for the Student Support line item, whose mission is: “Programmatic support for students with special needs, concurrent enrollment, transfer students, and Campus Compact initiatives”: (1) Hearing Impaired (Target = Allocate all appropriations to institutions), (2) Concurrent Enrollment (Target = Increase total student credit hours by 1%) and (3) Campus Compact - Hours of Service completed by Utah college students (Target = 1.3M) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 54

To State Board of Regents - Technology

From General Fund	3,997,200
From Education Fund	3,042,600
From Beginning Nonlapsing Balances	300
From Closing Nonlapsing Balances	(300)

Schedule of Programs:

Higher Education Technology

Initiative	4,429,800
Utah Academic Library Consortium ..	2,610,000

The Legislature intends that the State Board of Regents report on the following performance measures for the Technology line item, whose mission is: "Support System-wide information technology and library needs": (1) HETI Group purchases (Target = \$3.7M savings), (2) UALC Database searches (Target = 33.1M searches), and (3) UALC Text articles downloaded (Target = 5.1M downloads) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 55

To State Board of Regents - Economic Development

From General Fund	352,300
From Education Fund	13,700
From Beginning Nonlapsing Balances ..	271,600
From Closing Nonlapsing Balances	(271,600)

Schedule of Programs:

Engineering Loan Repayment	38,400
Economic Development Initiatives	327,600

The Legislature intends that the State Board of Regents report on the following performance measures for the Economic Development line item, whose mission is: "Support Engineering Initiative, Engineering Loan Repayment program, and promote economic development initiatives within the state": (1) Engineering Initiative degrees (Target = 6% annual increase), and (2) Engineering Scholarship (Target = Contingent on funding, allocate appropriations to student scholarships, less overhead) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 56

To State Board of Regents - Education Excellence

From Education Fund	995,200
From Beginning Nonlapsing Balances	1,007,400
From Closing Nonlapsing Balances ..	(1,007,400)

Schedule of Programs:

Education Excellence	995,200
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The Legislature intends that the State Board of Regents report on the following performance measures for the Education Excellence line item, whose mission is: "Support the Governors Education Excellence Commission goal of having 66 percent of Utah adult citizens (25-34) having earned a postsecondary degree or certificate by the year 2020": (1) Cumulative awards (Target = 226,910 for 2016-17), (2) Completions (Target = Increase 5 year rolling

average by 1%), and (3) 150% Graduation rate (Target = Increase 5 year rolling average by 1%) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 57

To State Board of Regents - Math

Competency Initiative

From Education Fund	1,886,500
From Beginning Nonlapsing Balances ..	523,700
From Closing Nonlapsing Balances	(523,700)

Schedule of Programs:

Math Competency Initiative	1,886,500
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The Legislature intends that the State Board of Regents report on the following performance measures for the Math Competency line item, whose mission is: "Increase the number of high school students taking QL mathematics": (1) Increase the number of high school math teachers qualified to teach concurrent enrollment math classes (Target = Year 1 of 72, Year 2 of 127), (2) Develop web-based tools to oversee CE program (Target = All tools in place by July 1, 2017), and (3) Increase the number of QL students taking math through concurrent enrollment (Target = Increase 5%) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 58

To State Board of Regents - Medical Education Council

From General Fund	578,100
From Dedicated Credits Revenue	500,000
From Revenue Transfers	161,500
From Beginning Nonlapsing Balances ..	537,400
From Closing Nonlapsing Balances	(537,400)

Schedule of Programs:

Medical Education Council	1,239,600
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The Legislature intends that the State Board of Regents report on the following performance measures for the Medical Education Council line item, whose mission is: "Retaining the Utah trained healthcare workforce, facilitating rural training opportunities, and strengthening public-private partnerships": (1) Graduate medical education growth (Target = 2.2% growth), (2) Retention for residency and fellowship programs (Target = 52%, 35%), and (3) Utah health provider to 100,000 population ratio (Target = 258) by October 15, 2018 to the Higher Education Appropriations Subcommittee.

UTAH COLLEGE OF APPLIED TECHNOLOGY

Item 59

To Utah College of Applied Technology -

Administration

From General Fund	2,844,900
From Education Fund	2,910,700

Schedule of Programs:

Administration	1,861,100
Equipment	14,500
Custom Fit	3,880,000

The Legislature intends that the Utah College of Applied Technology report on the following performance measures for the Administration line item, the mission of which is, "To support career and technical education throughout the State of Utah": (1) Alignment of UCAT Policy with that of the Council on Occupational Education (target = completion and continued enforcement); (2) Annual analysis of alignment of UCAT offerings with Department of Workforce Service's job projections (target = 100% alignment); (3) Companies served by Custom Fit training (target = 2% increase from FY 2016); (4) Trainees served by Custom Fit training (target = 8% increase from FY 2016); and (5) Hours of instruction provided by Custom Fit (target = 6% increase from FY 2016), by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 60

To Utah College of Applied Technology -

Bridgerland Applied Technology College	
From General Fund	4,100,600
From Education Fund	8,031,900
From Dedicated Credits Revenue	1,330,900
From Beginning Nonlapsing Balances	1,300
From Closing Nonlapsing Balances	(1,300)
Schedule of Programs:	

Bridgerland Applied Technology	
College	13,276,800
Bridgerland ATC Equipment	186,600

The Legislature intends that the Utah College of Applied Technology report on the following performance measures for the Bridgerland Applied Technology College line item, the mission of which is, "To meet the needs of Utah's employers for technically-skilled workers and to promote local and statewide economic development by providing market-driven technical education to secondary and adult students": (1) Membership hours of technical education provided (target = 3% increase from FY 2016); (2) Certificates awarded to students for completion of accredited programs (target = 3% increase from FY 2016); (3) Certificate-seeking adult students placed in related employment, continued education, or military service (target = 3% increase from FY 2016); (4) Continuing occupational education students enrolled (target = 3% increase from FY 2016); and (5) Secondary students enrolled (target = 3% increase from FY 2016), by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 61

To Utah College of Applied Technology -

Davis Applied Technology College	
From General Fund	4,168,400
From Education Fund	9,732,700
From Dedicated Credits Revenue	1,891,000
Schedule of Programs:	

Davis Applied Technology	
College	15,573,000
Davis ATC Equipment	219,100

The Legislature intends that the Utah College of Applied Technology report on the following performance measures for the Davis Applied Technology College line item, the mission of which is, "To meet the needs of Utah's employers for technically-skilled workers and to promote local and statewide economic development by providing market-driven technical education to secondary and adult students": (1) Membership hours of technical education provided (target = 2% increase from FY 2016); (2) Certificates awarded to students for completion of accredited programs (target = 10% increase from FY 2016); (3) Certificate-seeking adult students placed in related employment, continued education, or military service (target = 1% increase from FY 2016); (4) Continuing occupational education students enrolled (target = maintain FY 2016 performance); and (5) Secondary students enrolled (target = 3% increase from FY 2016), by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 62

To Utah College of Applied Technology -

Dixie Applied Technology College	
From General Fund	82,800
From Education Fund	6,241,000
From Education Fund, One-Time	(374,400)
From Dedicated Credits Revenue	252,000
Schedule of Programs:	

Dixie Applied Technology College ...	6,116,200
Dixie ATC Equipment	85,200

The Legislature intends that the Utah College of Applied Technology report on the following performance measures for the Dixie Applied Technology College line item, the mission of which is, "To meet the needs of Utah's employers for technically-skilled workers and to promote local and statewide economic development by providing market-driven technical education to secondary and adult students": (1) Membership hours of technical education provided (target = 3% increase from FY 2016); (2) Certificates awarded to students for completion of accredited programs (target = 3% increase from FY 2016); (3) Certificate-seeking adult students placed in related employment, continued education, or military service (target = 3% increase from FY 2016); (4) Continuing occupational education students enrolled (target = 3% increase from FY 2016); and (5) Secondary students enrolled (target = maintain FY 2016 performance), by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 63

To Utah College of Applied Technology -

Mountainland Applied Technology College	
From Education Fund	10,356,800
From Dedicated Credits Revenue	1,037,400
Schedule of Programs:	

Mountainland Applied Technology	
College	11,246,400
Mountainland ATC Equipment	147,800

The Legislature intends that the Utah College of Applied Technology report on the following performance measures for the Mountainland Applied Technology College line item, the mission of which is, "To meet the needs of Utah's employers for technically-skilled workers and to promote local and statewide economic development by providing market-driven technical education to secondary and adult students": (1) Membership hours of technical education provided (target = 7% increase from FY 2016); (2) Certificates awarded to students for completion of accredited programs (target = 3% increase from FY 2016); (3) Certificate-seeking adult students placed in related employment, continued education, or military service (target = 6% increase from FY 2016); (4) Continuing occupational education students enrolled (target = maintain FY 2016 performance); and (5) Secondary students enrolled (target = 2% increase from FY 2016), by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 64

To Utah College of Applied Technology -
Ogden/Weber Applied Technology College

From General Fund	5,057,400
From Education Fund	8,686,400
From Education Fund, One-Time	(14,000)
From Dedicated Credits Revenue	1,695,500

Schedule of Programs:
Ogden/Weber Applied Technology

College	15,221,100
Ogden/Weber ATC Equipment	204,200

The Legislature intends that the Utah College of Applied Technology report on the following performance measures for the Ogden-Weber Applied Technology College line item, the mission of which is, "To meet the needs of Utah's employers for technically-skilled workers and to promote local and statewide economic development by providing market-driven technical education to secondary and adult students": (1) Membership hours of technical education provided (target = 2% increase from FY 2016); (2) Certificates awarded to students for completion of accredited programs (target = 2% increase from FY 2016); (3) Certificate-seeking adult students placed in related employment, continued education, or military service (target = 2% increase from FY 2016); (4) Continuing occupational education students enrolled (target = 5% increase from FY 2016); and (5) Secondary students enrolled (target = 10% increase from FY 2016), by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 65

To Utah College of Applied Technology -
Southwest Applied Technology College

From General Fund	161,400
From Education Fund	4,380,600
From Dedicated Credits Revenue	184,300

Schedule of Programs:
Southwest Applied Technology

College	4,650,000
Southwest ATC Equipment	76,300

The Legislature intends that the Utah College of Applied Technology report on the following performance measures for the Southwest Applied Technology College line item, the mission of which is, "To meet the needs of Utah's employers for technically-skilled workers and to promote local and statewide economic development by providing market-driven technical education to secondary and adult students": (1) Membership hours of technical education provided (target = 3% increase from FY 2016); (2) Certificates awarded to students for completion of accredited programs (target = 4% increase from FY 2016); (3) Certificate-seeking adult students placed in related employment, continued education, or military service (target = 6% increase from FY 2016); (4) Continuing occupational education students enrolled (target = 3% increase from FY 2016); and (5) Secondary students enrolled (target = 3% increase from FY 2016), by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 66

To Utah College of Applied Technology -
Tooele Applied Technology College

From General Fund	844,000
From Education Fund	2,545,500
From Dedicated Credits Revenue	203,000

Schedule of Programs:
Tooele Applied Technology College ..

Tooele Applied Technology College ..	3,513,800
Tooele ATC Equipment	78,700

The Legislature intends that the Utah College of Applied Technology report on the following performance measures for the Tooele Applied Technology College line item, the mission of which is, "To meet the needs of Utah's employers for technically-skilled workers and to promote local and statewide economic development by providing market-driven technical education to secondary and adult students": (1) Membership hours of technical education provided (target = 18% increase from FY 2016); (2) Certificates awarded to students for completion of accredited programs (target = 13% increase from FY 2016); (3) Certificate-seeking adult students placed in related employment, continued education, or military service (target = 20% increase from FY 2016); (4) Continuing occupational education students enrolled (target = 18% increase from FY 2016); and (5) Secondary students enrolled (target = 13% increase from

FY 2016), by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Item 67

To Utah College of Applied Technology -

Uintah Basin Applied Technology College	
From General Fund	1,275,200
From Education Fund	5,840,600
From Dedicated Credits Revenue	487,000

Schedule of Programs:

Uintah Basin Applied Technology	
College	7,477,300
Uintah Basin ATC Equipment	125,500

The Legislature intends that the Utah College of Applied Technology report on the following performance measures for the Uintah Basin Applied Technology College line item, the mission of which is, "To meet the needs of Utah's employers for technically-skilled workers and to promote local and statewide economic development by providing market-driven technical education to secondary and adult students": (1) Membership hours of technical education provided (target = 8% increase from FY 2016); (2) Certificates awarded to students for completion of accredited programs (target = 10% increase from FY 2016); (3) Certificate-seeking adult students placed in related employment, continued education, or military service (target = 15% increase from FY 2016); (4) Continuing occupational education students enrolled (target = 5% increase from FY 2016); and (5) Secondary students enrolled (target = 5% increase from FY 2016), by October 15, 2018 to the Higher Education Appropriations Subcommittee.

Section 3. Effective Date.

If approved by two-thirds of all the members elected to each house, Section 1 of this bill takes effect upon approval by the Governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override. Section 2 of this bill takes effect on July 1, 2017.

CHAPTER 2

H.B. 4

Passed February 7, 2017
Approved February 16, 2017
Effective July 1, 2017

BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR BASE BUDGET

Chief Sponsor: R. Curt Webb
Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of certain state agencies;
provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates \$324,445,000 in operating and capital budgets for fiscal year 2018, including:

- \$100,415,600 from the General Fund;
\$21,507,600 from the Education Fund;
\$202,521,800 from various sources as detailed in this bill.

This bill appropriates \$19,356,500 in expendable funds and accounts for fiscal year 2018.

This bill appropriates \$265,000 in business-like activities for fiscal year 2018.

This bill appropriates \$21,950,800 in restricted fund and account transfers for fiscal year 2018, including:

- \$18,555,000 from the General Fund;
\$3,395,800 from various sources as detailed in this bill.

This bill appropriates \$19,082,100 in fiduciary funds for fiscal year 2018.

Other Special Clauses:

This bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

DEPARTMENT OF HERITAGE AND ARTS

Item 1

To Department of Heritage and Arts - Administration

Table with 2 columns: Description and Amount. Rows include: From General Fund (3,568,800), From Dedicated Credits Revenue (115,800), From General Fund Restricted - Humanitarian Service Rest. Acct (2,000), From General Fund Restricted - Martin Luther King Jr Civil (7,500), From Beginning Nonlapsing Balances (709,900), From Closing Nonlapsing Balances (330,300), Schedule of Programs: Executive Director's Office (558,900), Information Technology (1,525,000), Administrative Services (1,608,100), Utah Multicultural Affairs Office (381,700).

The legislature intends that the Department of Heritage and Arts report on the following performance measures for the Administrative line item, whose mission is to "Increase value to customers through leveraged collaboration between divisions and foster a culture of continuous improvement to find operational efficiencies." 1) The division measures the percentage of division programs that complete customer opportunity assessments or are engaged in collaborative projects annually (Target = 66% annually); 2) Number of internal performance audits in division programs or evaluations of department process or systems completed annually (Target = 6 annually); 3) Number of community outreach projects or events created or managed annually by the Office of Multicultural Affairs (Target = 24 annually).

Item 2

To Department of Heritage and Arts - Historical Society

Table with 2 columns: Description and Amount. Rows include: From Dedicated Credits Revenue (85,200), From Beginning Nonlapsing Balances (93,000), From Closing Nonlapsing Balances (112,400), Schedule of Programs: State Historical Society (65,800).

Item 3

To Department of Heritage and Arts - State History

Table with 2 columns: Description and Amount. Rows include: From General Fund (2,145,600), From Federal Funds (990,000), From Dedicated Credits Revenue (82,300), Schedule of Programs: Administration (325,300), Library and Collections (537,600), Public History, Communication and Information (572,300), Historic Preservation and Antiquities (1,757,700), History Projects and Grants (25,000).

The legislature intends that the Department of Heritage and Arts report on the following performance measures for the Division of State History line item, whose mission is: "to preserve and share the past for a better present and future." 1) The Division of State History measures the percent of Section 106 reviews completed within 20 days annually (Target = 90%); 2) The percent of Certified Local Governments actively involved in historic preservation by applying

for a grant at least once within a four-year period and successfully completing the grant-funded project (Target = 60% active CLGs); 3) The percent increase of customers accessing services online (Target = 10% year over year increase).

Item 4

To Department of Heritage and Arts - Division of Arts and Museums

From General Fund	2,598,200
From Federal Funds	731,600
From Dedicated Credits Revenue	71,800
From General Fund Restricted - National Professional Men's Soccer Team Support of Building Communities	12,500
From Pass-through	800,000
From Beginning Nonlapsing Balances	1,921,400
From Closing Nonlapsing Balances ...	(1,718,400)
Schedule of Programs:	
Administration	576,300
Grants to Non-profits	1,140,700
Community Arts Outreach	2,700,100

The legislature intends that the Department of Heritage and Arts report on the following performance measures for the Arts and Museums line item, whose mission is to "connect people and communities through arts and museums." 1) The Division measures the percent of counties served by the Traveling Exhibits program annually (Target = 69% of counties annually); 2) The percent of school districts served by the Arts Education workshops annually (Target = 73% of school districts annually); 3) Number of grant applications received annually (Target = 210 grant applicants annually).

Item 5

To Department of Heritage and Arts - Division of Arts and Museums - Office of Museum Services

From General Fund	263,300
From Dedicated Credits Revenue	1,000
Schedule of Programs:	
Office of Museum Services	264,300

The legislature intends that the Department of Heritage and Arts report on the following performance measures for the Museum Services line item, whose mission is to "advance the value of museums in Utah and to enable the broadest access to museums." 1) Museum Services measures the number of grants awarded annually (Target = 40 grants annually); 2) The number of museums provided in-person consultation annually (Target = 30 museums annually); 3) The number of museum professionals attending workshops annually (Target = 225 professionals annually).

Item 6

To Department of Heritage and Arts - State Library

From General Fund	4,479,800
From Federal Funds	1,850,000
From Dedicated Credits Revenue	2,159,200

Schedule of Programs:

Administration	1,563,900
Blind and Disabled	1,845,300
Library Development	2,398,700
Library Resources	2,681,100

The legislature intends that the Department of Heritage and Arts report on the following performance measures for the Division of State Library line item, whose mission is: "to develop, advance, promote library services and equal access to resources." 1) The Division measures the number of online and in-person training hours provided annually (Target = 11,700 training hours annually); 2) The total Bookmobile circulation annually (Target = 413,000 items annually); 3) The total Blind and Disabled circulation annually (Target = 328,900 items annually); 4) Digital downloads from Utahs Online Library annually (Target = 1.3 million items annually).

Item 7

To Department of Heritage and Arts - Indian Affairs

From General Fund	249,700
From Dedicated Credits Revenue	52,000
From Beginning Nonlapsing Balances	19,300
Schedule of Programs:	
Indian Affairs	321,000

The legislature intends that the Department of Heritage and Arts report on the following performance measures for the Division of State Library line item, whose mission is: "to address the socio-cultural challenges of the eight federally-recognized Tribes residing in Utah." 1) Attendees to the Governors Native American Summit, Utah Indigenous Day and American Indian Caucus Day (Target = 1,000 attendees annually); 2) Number of in-person meetings and consultations with Tribal officials or staff (Target = 22 events annually); 3) Percentage of ancient human remains repatriated to federally-recognized Tribes annually (Target = 20% successful repatriated annually).

Item 8

To Department of Heritage and Arts - Pass-Through

From General Fund	292,000
Schedule of Programs:	
Pass-Through	292,000

Item 9

To Department of Heritage and Arts - Commission on Service and Volunteerism

From General Fund	233,200
From Federal Funds	4,290,200
From Dedicated Credits Revenue	7,300
Schedule of Programs:	
Commission on Service and	
Volunteerism	4,530,700

The legislature intends that the Department of Heritage and Arts report on the following performance measures for the Commission on Service and Volunteerism line item, 1) Percentage of organizations

trained by the Commission on Service and Volunteerism which demonstrate improved organizational effectiveness in one or more federal focus measures annually (Target = 85%).

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Item 10

To Governor's Office of Economic Development - Administration

From General Fund	3,278,700
From Dedicated Credits Revenue	845,100
Schedule of Programs:	
Administration	4,123,800

The legislature intends that the Governors Office of Economic Development report on the following performance measures for the Administrative line item, whose mission is to "Enhance quality of life by increasing and diversifying Utahs revenue base and improving employment opportunities." 1) Finance processing: invoices and reimbursements will be processed and remitted for payment within five days (Target = 90%) with 5% error rate (Target = 95%) , 2) Contract processing efficiency: all contracts will be drafted within 14 days and all signed contracts will be processed and filed within 10 days of receiving the partially executed contract. (Target = 95%), 3) Public and Community Relations - Increase development, dissemination, facilitation and support of media releases, media advisories, interviews, cultivated articles and executive presentations. (Target = 10%).

Item 11

To Governor's Office of Economic Development - STEM Action Center

From General Fund	9,519,700
From Dedicated Credits Revenue	1,500,000
Schedule of Programs:	
STEM Action Center	6,019,700
STEM College Ready Math	5,000,000

The Legislature intends that the Governors Office of Economic Development report on the following performance measures for the Utah STEM Action Center line item, whose mission is "to promote science, technology, engineering and math through best practices in education to ensure connection with industry and Utah's long-term economic prosperity.": 1) Complete reimbursements for classroom grants by end of fiscal year June 30 (Target = 90%); 2) Contract processing efficiency: all contracts will be drafted within 14 days and all signed contracts will be processed and filed within 10 days of receiving the partially executed contract. (Target = 60%); and 3) collect all end of year impact reports for sponsorships by fiscal end, June 30 (Target = 90%).

Item 12

To Governor's Office of Economic Development - Office of Tourism

From General Fund	4,185,600
From Transportation Fund	118,000
From Dedicated Credits Revenue	327,700
From General Fund Restricted -	
Tourism Marketing Performance ...	18,000,000
Schedule of Programs:	
Administration	1,177,500
Operations and Fulfillment	2,654,800
Marketing and Advertising	18,000,000
Film Commission	799,000

The Legislature intends that the Governors Office of Economic Development report on the following performance measures for the Tourism and Film line item, whose mission is "to promote Utah as a vacation destination to out-of-state travelers, generating state and local tax revenues to strengthen Utah's economy and to market the entire State Of Utah for film, television and commercial production by promoting the use of local professional cast & crew, support services, locations and the Motion Picture Incentive Program." 1) Tourism Marketing Performance Account - Increase state sales tax revenues in weighted travel-related NAICS categories as outlined in Utah Code 63N-7-301 (Target = Revenue Growth over 3% or Consumer Price Index - whichever baseline is higher). 2) Tourism SUCCESS Metric - increase number of engaged visitors to VisitUtah.com website (engaged website visitors are those who meet specific thresholds for time on site and page views) (Target = 20% increase annually). 3) Film Commission Metric - Increase film production spending in Utah (Target = 5% annually).

Item 13

To Governor's Office of Economic Development - Business Development

From General Fund	7,787,300
From Federal Funds	864,300
From Dedicated Credits Revenue	374,000
From General Fund Restricted -	
Industrial Assistance Account	250,000
Schedule of Programs:	
Outreach and International Trade ...	4,397,600
Corporate Recruitment and Business	
Services	4,878,000

The Legislature intends that the Governors Office of Economic Development report on the following performance measures for the Business Development line item whose mission is "to grow the economy by identifying, nurturing, and closing proactive corporate recruitment opportunities and by providing robust business services to organizations throughout the state." 1) Corporate Recruitment metrics include: forecasted jobs, capex, and new state revenue, with an emphasis on quality projects, the needs of the economy at the time, and consistency in incentive terms. 2) Business services: the number of businesses served and increasing the total number of businesses served by 4% per year; and 3) Cluster: creating industry ecosystem solutions, such

as through the pathways programs and creation and support of new industry associations (penetration and sustainability), with the ultimate goal of catalyzing industry growth with increasing the annual number of solutions developed.

Item 14

To Governor’s Office of Economic Development -
 Pete Suazo Utah Athletics Commission
 From General Fund 163,900
 From Dedicated Credits Revenue 65,200
 Schedule of Programs:
 Pete Suazo Utah Athletics
 Commission 229,100

The Legislature intends that the Governors Office of Economic Development report on the following performance measures for the Pete Suazo Athletic Commission line item, whose mission is: “Maintaining the health, safety, and welfare of the participants and the public as they are involved in the professional unarmed combat sports. Promoters, managers, contestants, seconds, referees and judges will be held to the highest standard which will ensure economic growth and the development of athletics in the State of Utah.”: 1) High Profile Events - The Pete Suazo Utah Athletic Commission (PSUAC) averages 37 “Combat Sports” events and one “high profile event” per year. PSUAC will target one additional “high profile event” next year. 2)) Licensure Efficiency -The PSUAC has averaged 991 licenses issued annually over the last 3 years, with less than 5% of those licenses issued in advance of the events. Implementation of an online registration will improve efficiency (Target = 90%). 3) Increase revenue - Annual average revenue of nearly \$30,000 over the last 3 years. (Target = 12%).

Item 15

To Governor’s Office of Economic Development -
 Utah Broadband Outreach Center
 From General Fund 353,800
 Schedule of Programs:
 Utah Broadband Outreach Center 353,800

The Legislature intends that the Governors Office of Economic Development report on the following performance measures for the Utah Broadband Outreach Center line item whose mission is to “To promote the expansion of broadband infrastructure throughout Utah so residents and businesses can fully participate in economic development, education, healthcare, transportation and other vital activities in both rural and urban settings.” 1) Percentage increase in number of county and local governments actively working with the outreach center to develop strategies to work with providers to improve services (Target Increase =15%); 2) Percentage of infrastructure owning broadband providers participating in map collection activities through state and federal data submissions (Target = 90%); 3) Percentage increase in public utilization of

the centers website and mapping tools (Target Increase =10%).

Item 16

To Governor’s Office of Economic Development -
 Pass-Through
 From General Fund 5,153,800
 Schedule of Programs:
 Pass-Through 5,153,800

The legislature intends that the Governors Office of Economic Development report on the following performance measures for the Pass-through line item, whose mission is to “Enhance quality of life by increasing and diversifying Utah’s revenue base and improving employment opportunities.” 1) Contract processing efficiency: all contracts will be drafted within 14 days following proper legislative intent and all signed contracts will be processed and filed within 10 days of receiving the partially executed contract. (Target = 95%); 2) Assessment: Completed contracts will be assessed against scope of work, budget, and contract, (Target = 100%); 3) Finance processing: invoices will be processed and remitted for payment within five days. (Target = 90%).

UTAH STATE TAX COMMISSION

Item 17

To Utah State Tax Commission -
 Tax Administration
 From General Fund 27,629,300
 From Education Fund 21,507,600
 From Transportation Fund 5,857,400
 From Federal Funds 563,600
 From Dedicated Credits Revenue 6,700,700
 From General Fund Restricted -
 Electronic Payment Fee Rest. Acct .. 7,109,700
 From General Fund Restricted -
 Motor Vehicle Enforcement Division
 Temporary Permit Account 4,013,400
 From General Fund Restricted - Sales
 and Use Tax Admin Fees 10,179,900
 From General Fund Restricted -
 Tobacco Settlement Account 18,500
 From Revenue Transfers 158,800
 From Uninsured Motorist Identification
 Restricted Account 133,800
 From Beginning Nonlapsing
 Balances 1,308,800
 From Closing Nonlapsing Balances (709,300)
 Schedule of Programs:
 Administration Division 9,787,300
 Auditing Division 11,987,700
 Multi-State Tax Compact 262,200
 Technology Management 11,309,300
 Tax Processing Division 6,637,700
 Seasonal Employees 158,800
 Tax Payer Services 11,334,200
 Property Tax Division 5,181,300
 Motor Vehicles 23,614,400
 Motor Vehicle Enforcement
 Division 4,199,300

The Legislature intends that the Utah State Tax Commission report by October 15, 2018 on the following performance measures

for the Tax Administration Line Item, whose mission is to collect revenues for the state and local governments and to equitably administer tax and assigned motor vehicle laws: (1) Tax returns processed electronically (Target = 81%), (2) Closed Delinquent Accounts from assigned inventory (Target 5% improvement), (3) Motor Vehicle Large Office Wait Times (Target: 94% served in 20 minutes or less) to the Business Labor and Economic Development Appropriations Subcommittee.

Item 18

To Utah State Tax Commission -
 License Plates Production
 From Dedicated Credits Revenue 3,152,200
 From Beginning Nonlapsing Balances ... 525,100
 From Closing Nonlapsing Balances (391,900)
 Schedule of Programs:
 License Plates Production 3,285,400

Item 19

To Utah State Tax Commission - Rural
 Health Care Facilities Distribution
 From General Fund Restricted - Rural
 Healthcare Facilities Account 555,000
 From Lapsing Balance (336,200)
 Schedule of Programs:
 Rural Health Care Facilities
 Distribution 218,800

Item 20

To Utah State Tax Commission -
 Liquor Profit Distribution
 From General Fund Restricted-
 Alcoholic Beverage Enforcement &
 Treatment 5,406,400
 Schedule of Programs:
 Liquor Profit Distribution 5,406,400

UTAH SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY

Item 21

To Utah Science Technology and Research
 Governing Authority - USTAR Administration
 From General Fund 1,741,700
 From Dedicated Credits Revenue 431,100
 From Beginning Nonlapsing Balances ... 658,400
 Schedule of Programs:
 Administration 1,220,400
 Project Management &
 Compliance 1,610,800

The Legislature intends that The Utah Science Technology Research (USTAR) initiative report on the following performance measures for the USTAR Project Management and Compliance line item, whose mission is to accelerate the commercialization of science and technology ideas generated from the private sector, entrepreneurial and university researchers in order to positively elevate tax revenue, employment and corporate retention in the State of Utah.: (1) percent of USTAR appropriation used for administration expenditures (Target =4%), (2) number of unique visitors to website (Target = 4,000), (3)

staff professional development participation (Target = 100%), and (4) Confluence (USTAR annual meeting) attendance (Target=150) by October 15, 2018 to the Business, Economic Development, and Labor (BEDL) Appropriations Subcommittee.

Item 22

To Utah Science Technology and
 Research Governing Authority -
 Research Capacity Building
 From General Fund 6,519,000
 From Beginning Nonlapsing
 Balances 8,643,200
 Schedule of Programs:
 U of U Legacy Salary 3,880,000
 U of U Legacy Support 120,000
 U of U Start Up, Carry Over,
 Commercialization 8,413,000
 USU Legacy Salary 1,095,000
 USU Legacy Support 305,000
 USU Start Up, Carry Over,
 Commercialization 1,349,200

The Legislature intends that The Utah Science Technology Research (USTAR) initiative report on the following performance measures for the USTAR Research Capacity Building line item, whose mission is help research universities honor commitments to USTAR principal researchers: (1) percent of USTAR principal researchers receiving grants (Target = 100%), and (2) amount of research and development (R&D) funds to universities compared to national average (Target = above national average) by October 15, 2018 to the Business, Economic Development, and Labor Appropriations Subcommittee.

Item 23

To Utah Science Technology and
 Research Governing Authority -
 Grant Programs
 From General Fund 10,600,000
 Schedule of Programs:
 University Technology Acceleration
 Grant 3,000,000
 Science and Technology Initiation
 Grants 200,000
 Industry Partnership Program 2,500,000
 Technology Acceleration Program ... 4,500,000
 Energy Research Triangle 400,000

The Legislature intends that The Utah Science Technology Research (USTAR) initiative report on the following performance measures for the USTAR Grant Programs, whose mission is to “serve as a resource for technology entrepreneurs to connect with resources for developing their technology, gaining access to public and private funding and growing their businesses.”: (1) number of “High-Quality” jobs created (Target = 50), (2) percentage of grant recipients client companies receiving follow-on investment (50%), and (3) percentage of grant recipients that introduce new products (Target = 50%) by October 15, 2018 to the Business,

Economic Development, and Labor (BEDL)
Appropriations Subcommittee.

Item 24

To Utah Science Technology and
Research Governing Authority -
Support Programs

From General Fund	3,280,300
From Dedicated Credits Revenue	15,800

Schedule of Programs:

SBIR/STTR Assistance Center	333,900
Regional Outreach	783,700
Incubation Programs	2,178,500

The Legislature intends that The Utah Science Technology Research (USTAR) initiative report on the following performance measures for the USTAR Support Programs, whose mission is to serve as a resource for technology entrepreneurs to connect with resources for developing their technology, gaining access to public and private funding and growing their businesses.: (1) USTAR assisted companies portion of total Utah SBIR-STTR Grant Obligations (Target = 5%), (2) USTAR assisted companies portion of total Utah SBIR-STTR Awards (Target = 5%), (3) number of "High-Quality" jobs created (Target = 50), (4) number of USTAR client companies assisted (Target = 150), (5) percentage of USTAR client companies receiving follow-on investment (50%), and (6) percentage of USTAR client companies that introduce new products (Target = 50%) by October 15, 2018 to the Business, Economic Development, and Labor (BEDL) Appropriations Subcommittee.

**DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL**

Item 25

To Department of Alcoholic Beverage Control -
DABC Operations

From Liquor Control Fund	45,299,000
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Schedule of Programs:

Executive Director	1,955,100
Administration	899,200
Operations	2,805,700
Warehouse and Distribution	4,862,900
Stores and Agencies	34,776,100

The legislature intends that the Department of Alcoholic Beverage Control report on the following performance measures for the Department of Alcoholic Beverage Control line item, whose mission is to "Conduct, license, and regulated the sale of alcoholic products in a manner and at prices that: Reasonably satisfy the public demand and protect the public interest, including the rights of citizens who do not wish to be involved with alcoholic products." 1) On Premise licensee audits conducted (Target = 80%); 2) Percentage of net profit to sales (Target = 23%); Supply chain (Target = 97% in stock); 4) Liquor payments processed within 30 days of invoices received (Target = 97%).

Item 26

To Department of Alcoholic Beverage Control -
Parents Empowered

From GFR - Underage Drinking Prevention
Media and Education Campaign

Restricted Account	2,435,500
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Schedule of Programs:

Parents Empowered	2,435,500
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The legislature intends that the Department of Alcoholic Beverage Control report on the following performance measures for the Parents Empowered line item, whose mission is to "pursue a leadership role in the prevention of underage alcohol consumption and other forms of alcohol misuse and abuse. Serve as a resource and provider of alcohol educational, awareness, and prevention programs and materials. Partner with other government authorities, advocacy groups, legislators, parents, communities, schools, law enforcement, business and community leaders, youth, local municipalities, state and national organizations, alcohol industry members, alcohol licensees, etc., to work collaboratively to serve in the interest of public health, safety, and social well-being, for the benefit of everyone in our communities." 1) Ad awareness of the dangers of underage drinking and prevention tips (Target = 80%); 2) Ad awareness of "Parents Empowered" (Target = 68%); 3) Percentage of students who used alcohol during their lifetime (Target = 17%).

LABOR COMMISSION

Item 27

To Labor Commission

From General Fund	6,321,500
From Federal Funds	2,922,700
From Dedicated Credits Revenue	100,100
From Employers' Reinsurance Fund	77,200

From General Fund Restricted -

Industrial Accident Rest. Account ...	3,256,500
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From General Fund Restricted -

Workplace Safety Account	1,629,800
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Schedule of Programs:

Administration	2,014,900
Industrial Accidents	1,967,000
Appeals Board	15,500
Adjudication	1,403,400
Boiler, Elevator and Coal Mine Safety Division	1,563,600
Workplace Safety	1,217,600
Antidiscrimination and Labor	2,182,800

Utah Occupational Safety and
Health

Health	3,783,000
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Building Operations and
Maintenance

Maintenance	160,000
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DEPARTMENT OF COMMERCE

Item 28

To Department of Commerce - Commerce
General Regulation

From General Fund	46,000
From Federal Funds	392,000

From Dedicated Credits Revenue	1,835,900
From General Fund Restricted - Commerce Service Account - Public Utilities Regulatory Fee	4,996,200
From General Fund Restricted - Commerce Service Account	22,426,100
From General Fund Restricted - Factory Built Housing Fees	100,000
From General Fund Restricted - Geologist Education and Enforcement Account	10,000
From General Fund Restricted - Nurse Education & Enforcement Account	14,700
From General Fund Restricted - Pawnbroker Operations	132,400
From General Fund Restricted - Utah Housing Opportunity Restricted Account	20,000
From Pass-through	50,000
Schedule of Programs:	
Administration	4,235,900
Occupational and Professional Licensing	10,749,100
Securities	2,273,800
Consumer Protection	2,051,600
Corporations and Commercial Code	2,567,000
Real Estate	2,355,100
Public Utilities	4,427,000
Office of Consumer Services	1,091,200
Building Operations and Maintenance	272,600

The legislature intends that the Utah Dept. of Commerce report on the following performance measures for the Commerce General Regulation Line Item, whose mission is to “to protect the public and to enhance commerce through licensing and regulation” : 1) Increase the percentage of all available licensing renewals to be performed online by licensees in the Division of Occupational and Professional Licensing. (Target = Ratio of potential online renewal licensees who actually complete their license renewal online instead of in person on paper to be greater than 94%) 2) Increase the utility of and overall searches within the Controlled Substance Database by enhancing the functionality of the database and providing outreach. (Target = 5% increase in the number of controlled substance database searches by providers and enforcement through increased outreach) 3) Achieve and maintain corporation annual business online filings vs. paper filings above to or above (Target = 97% of the total filings managed to mitigate costs to the division and filer in submitting filing information).

Item 29

To Department of Commerce - Building
Inspector Training

From Dedicated Credits Revenue	267,200
From Beginning Nonlapsing Balances . . .	352,700

Schedule of Programs:

Building Inspector Training	619,900
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The legislature intends that the Utah Dept. of Commerce report on the following performance measures for the Uniform Building Code line item whose mission is “to protect the public and to enhance commerce through licensing and regulation”: 1) facilitate and approve vendors to provide building code education to building inspectors and construction trade licensees, with a goal focused on improving (Target = 50% ratio of courses approved for contractors vs. building inspectors); 2) Provide an average of at least one hour of CE annually to construction trade licensees through course approvals (Target= 34,000 hours); and 3) Ensure that program administrative expenses for employees are minimized by focusing on disbursements of fund revenue for qualified courses with minimal staff (Target = maximum of 20% of expenses will be employee related).

Item 30

To Department of Commerce - Public
Utilities Professional and Technical Services

From General Fund Restricted - Commerce Service Account - Public Utilities Regulatory Fee	150,000
From Beginning Nonlapsing Balances	3,098,500
From Closing Nonlapsing Balances . . .	(1,898,500)

Schedule of Programs:

Professional and Technical Services	1,350,000
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The legislature intends that the Utah Dept. of Commerce report on the following performance measures for the Division of Public Utilities Professional and Technical line item, whose mission is to “retain professional and technical consultants to augment division staff expertise in energy rate cases”; 1) contract with industry professional consultants who possess expertise that the Division of Public Utilities requires for rate and revenue discussion and analysis of regulated utilities (Target = A fraction of consultant dollars spent vs. the projected cost of having full time employees with the extensive expertise needed on staff to complete the consultant work target of 40% average savings.)

Item 31

To Department of Commerce - Office of Consumer
Services Professional and Technical Services

From General Fund Restricted - Commerce Service Account - Public Utilities Regulatory Fee	503,100
From Beginning Nonlapsing Balances	2,342,200
From Closing Nonlapsing Balances . . .	(1,541,500)

Schedule of Programs:

Professional and Technical Services	1,303,800
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The legislature intends that the Utah Dept. of Commerce report on the following performance measures for the Office of Consumer Services Professional and Technical line item, whose mission is to

“Assess the impact of utility regulatory actions and advocate positions advantageous to residential, small commercial, and irrigation consumers of natural gas, electric and telephone public utility service”: 1) evaluate total “dollars at stake” in the individual rate cases or other utility regulatory actions to ensure that this fund is hiring contract experts in cases that overall have high potential dollar impact on customers. (Target = 10%, i.e. total dollars spent on contract experts will not exceed 10% of the annual potential dollar impact of the utility actions.); 2) The premise of having a state agency advocate for small utility customers is that for each individual customer the impact of a utility action might be small, but in aggregate the impact is large. To ensure that contract experts are used in cases that impact large numbers of small customers, consistent with the vision for this line item, the dollars spent per each instance of customer impact could be measured. (Target = less than 10 cents spent per customer impact).

FINANCIAL INSTITUTIONS

Item 32

To Financial Institutions - Financial Institutions Administration
 From General Fund Restricted -
 Financial Institutions 7,474,400
 Schedule of Programs:
 Administration 7,228,400
 Building Operations and Maintenance 246,000

The Legislature intends that the Department of Financial Institutions report by October 15, 2018 on the following performance measures for the Financial Institutions Administration line item, whose mission is “to charter, regulate, and supervise persons, firms, organizations, associations, and other business entities furnishing financial services to the citizens of the state of Utah”: (1) Depository Institutions not on the Departments “Watched Institutions” list (Target = 80.0%), (2) Number of Safety and Soundness Examinations (Target = Equal to the number of depository institutions chartered at the beginning of the fiscal year), and (3) Total Assets Under Supervision Per Examiner (Target = \$3.8 billion) to the Business, Economic Development, and Labor Appropriations Subcommittee.

INSURANCE DEPARTMENT

Item 33

To Insurance Department - Insurance Department Administration
 From Federal Funds 686,700
 From Dedicated Credits Revenue 8,600
 From General Fund Restricted -
 Captive Insurance 1,272,700

From General Fund Restricted -
 Criminal Background Check 165,000
 From General Fund Restricted -
 Guaranteed Asset Protection Waiver .. 129,100
 From General Fund Restricted -
 Insurance Department Account 7,953,600
 From General Fund Restricted -
 Insurance Fraud
 Investigation Acct 2,357,500
 From General Fund Restricted -
 Relative Value Study Account 119,000
 From General Fund Restricted -
 Technology Development 630,500
 From Beginning Nonlapsing
 Balances 2,428,000
 From Closing Nonlapsing Balances ... (2,020,400)
 Schedule of Programs:
 Administration 8,600,300
 Relative Value Study 64,000
 Insurance Fraud Program 2,627,900
 Captive Insurers 1,379,600
 Electronic Commerce Fee 805,500
 GAP Waiver Program 88,000
 Criminal Background Checks 165,000

The Legislature intends that the Insurance Department report on the following performance measures for the Insurance Administration line item, whose mission is “to foster a healthy insurance market by promoting fair and reasonable practices that ensure available, affordable and reliable insurance products and services.”: 1) timeliness of processing work product (Target = 95% within 45 days); 2) timeliness of resident licenses processed (Target = 75% within 15 days); 3) increase the number of certified examination and captive auditors to include Accredited Financial Examiners and Certified Financial Examiners (Target = 25% increase); 4) timely response to reported allegations of violations of insurance statute and rule (Target = 90% within 75 days).

Item 34

To Insurance Department - Health Insurance Actuary
 From General Fund Restricted - Health Insurance Actuarial Review Account ... 147,000
 From Beginning Nonlapsing Balances ... 284,800
 From Closing Nonlapsing Balances (294,000)
 Schedule of Programs:
 Health Insurance Actuary 137,800

Item 35

To Insurance Department - Bail Bond Program
 From General Fund Restricted - Bail Bond Surety Administration 24,400
 From Beginning Nonlapsing Balances 400
 From Closing Nonlapsing Balances (400)
 Schedule of Programs:
 Bail Bond Program 24,400

The Legislature intends that the Insurance Department report on the following performance measures for the Insurance Bail Bond Program line item, whose mission is “to foster a healthy insurance market by promoting fair and reasonable practices that ensure available, affordable and reliable

insurance products and services”: 1) timely response to reported allegations of violations of insurance statute and rule (Target = 90% within 75 days).

Item 36

To Insurance Department - Title Insurance Program
 From General Fund 4,400
 From General Fund Restricted -
 Title Licensee Enforcement Account ... 120,300
 From Beginning Nonlapsing Balances ... 54,800
 From Closing Nonlapsing Balances (54,800)
 Schedule of Programs:
 Title Insurance Program 124,700

The Legislature intends that the Insurance Department report on the following performance measures for the Title Insurance Program line item, whose mission is “to foster a healthy insurance market by promoting fair and reasonable practices that ensure available, affordable and reliable insurance products and services”: 1) timely response to reported allegations of violations of insurance statute and rule (Target = 90% within 75 days).

PUBLIC SERVICE COMMISSION

Item 37

To Public Service Commission
 From General Fund Restricted - Commerce Service Account - Public Utilities
 Regulatory Fee 2,472,600
 From Revenue Transfers 9,200
 From Beginning Nonlapsing Balances ... 540,100
 From Closing Nonlapsing Balances (387,900)
 Schedule of Programs:
 Administration 2,605,300
 Building Operations and
 Maintenance 28,700

The Legislature intends that the Public Service Commission report by October 15, 2018 on the following performance measures for the Public Service Commission line item, whose mission is to provide balanced regulation ensuring safe, reliable, adequate, and reasonably priced utility service: (1) Electric or natural gas rate changes within a fiscal year not consistent or comparable with other states served by the same utility (Target = 0); (2) Number of appellate court cases within a fiscal year modifying or reversing electricity or natural gas PSC decisions (Target = 0); (3) Number, within a fiscal year, of financial sector analyses of Utahs public utility regulatory climate resulting in an unfavorable or unbalanced assessment (Target = 0); to the Business, Economic Development, and Labor Appropriations Subcommittee.

Item 38

To Public Service Commission -
 Speech and Hearing Impaired
 From Dedicated Credits Revenue 715,000

From Beginning Nonlapsing
 Balances 2,138,600
 From Closing Nonlapsing Balances ... (1,604,400)
 Schedule of Programs:
 Speech and Hearing Impaired 1,249,200

The Legislature intends that the Public Service Commission report by October 15, 2018 on the following performance measures for the Speech and Hearing Impaired line item, whose mission is “To manage a program whereby a certified deaf or severely hearing or speech impaired customer of a telecommunications corporation that provides service through a local exchange or of a wireless telecommunications provider may obtain a telecommunication device capable of serving the customer at no charge to the customer beyond the rate for basic service”: (1) Total outreach activities and exhibits within a fiscal year (Target = 75); (2) Number of times a change to the fund surcharge occurred more than once every three fiscal years (Target = 0); (3) Total adoption and usage of Telecommunications Relay Service and Caption Telephone Service within a fiscal year (Target = 50,000); to the Business, Economic Development, and Labor Appropriations Subcommittee.

Subsection 1(b). Expendable Funds and

Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account’s applicable authorizing statute.

DEPARTMENT OF HERITAGE AND ARTS

Item 39

To Department of Heritage and Arts -
 State Library Donation Fund
 From Dedicated Credits Revenue 2,200
 From Interest Income 8,200
 From Beginning Fund Balance 1,026,700
 From Closing Fund Balance (837,100)
 Schedule of Programs:
 State Library Donation Fund 200,000

Item 40

To Department of Heritage and Arts -
 History Donation Fund
 From Dedicated Credits Revenue 1,000
 From Interest Income 500
 From Beginning Fund Balance 318,300
 From Closing Fund Balance (319,800)

Item 41

To Department of Heritage and Arts -
 State Arts Endowment Fund
 From Dedicated Credits Revenue 10,500
 From Interest Income 1,500
 From Beginning Fund Balance 323,500
 From Closing Fund Balance (323,500)
 Schedule of Programs:

State Arts Endowment Fund 12,000

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Item 42

To Governor's Office of Economic Development - Private Proposal Restricted Revenue Fund
 From Beginning Fund Balance 7,000
 From Closing Fund Balance (7,000)

Item 43

To Governor's Office of Economic Development - Transient Room Tax Fund
 From Revenue Transfers 2,922,000
 Schedule of Programs:
 Transient Room Tax Fund 2,922,000

DEPARTMENT OF COMMERCE

Item 44

To Department of Commerce - Architecture Education and Enforcement Fund
 From Licenses/Fees 20,600
 From Beginning Fund Balance 33,000
 From Closing Fund Balance (18,600)
 Schedule of Programs:
 Architecture Education and Enforcement Fund 35,000

Item 45

To Department of Commerce - Consumer Protection Education and Training Fund
 From Licenses/Fees 295,000
 From Interest Income 5,000
 From Beginning Fund Balance 500,000
 From Closing Fund Balance (500,000)
 Schedule of Programs:
 Consumer Protection Education and Training Fund 300,000

Item 46

To Department of Commerce - Cosmetologist/Barber, Esthetician, Electrologist Fund
 From Licenses/Fees 30,000
 From Interest Income 1,000
 From Beginning Fund Balance 84,800
 From Closing Fund Balance (65,800)
 Schedule of Programs:
 Cosmetologist/Barber, Esthetician, Electrologist Fund 50,000

Item 47

To Department of Commerce - Land Surveyor/Engineer Education and Enforcement Fund
 From Licenses/Fees 12,300
 From Beginning Fund Balance 32,700
 Schedule of Programs:
 Land Surveyor/Engineer Education and Enforcement Fund 45,000

Item 48

To Department of Commerce - Landscapes Architects Education and Enforcement Fund
 From Licenses/Fees 8,000
 From Beginning Fund Balance 6,800
 From Closing Fund Balance (4,800)
 Schedule of Programs:

Landscapes Architects Education and Enforcement Fund 10,000

Item 49

To Department of Commerce - Physicians Education Fund
 From Licenses/Fees 9,900
 From Interest Income 100
 From Beginning Fund Balance 80,000
 From Closing Fund Balance (60,000)
 Schedule of Programs:
 Physicians Education Fund 30,000

Item 50

To Department of Commerce - Real Estate Education, Research, and Recovery Fund
 From Licenses/Fees 147,000
 From Interest Income 3,000
 From Beginning Fund Balance 745,900
 From Closing Fund Balance (595,900)
 Schedule of Programs:
 Real Estate Education, Research, and Recovery Fund 300,000

Item 51

To Department of Commerce - Residence Lien Recovery Fund
 From Licenses/Fees 190,000
 From Beginning Fund Balance 961,300
 From Closing Fund Balance (161,300)
 Schedule of Programs:
 Residence Lien Recovery Fund 990,000

Item 52

To Department of Commerce - Residential Mortgage Loan Education, Research, and Recovery Fund
 From Licenses/Fees 147,000
 From Interest Income 3,000
 From Beginning Fund Balance 482,600
 From Closing Fund Balance (412,600)
 Schedule of Programs:
 RMLERR Fund 220,000

Item 53

To Department of Commerce - Securities Investor Education/Training/Enforcement Fund
 From Licenses/Fees 253,900
 From Interest Income 5,000
 From Beginning Fund Balance 41,100
 Schedule of Programs:
 Securities Investor Education/Training/Enforcement Fund 300,000

INSURANCE DEPARTMENT

Item 54

To Insurance Department - Insurance Fraud Victim Restitution Fund
 From Licenses/Fees 400,000
 Schedule of Programs:
 Insurance Fraud Victim Restitution Fund 400,000

Item 55

To Insurance Department - Title Insurance Recovery Education and Research Fund
 From Dedicated Credits Revenue 48,000
 From Beginning Fund Balance 503,000
 From Closing Fund Balance (508,500)
 Schedule of Programs:

Title Insurance Recovery Education
and Research Fund 42,500

PUBLIC SERVICE COMMISSION

Item 56

To Public Service Commission -
Universal Telecommunications Support Fund
From Licenses/Fees 13,500,000
Schedule of Programs:
Universal Telecom Service Fund ... 13,500,000

The Legislature intends that the Public Service Commission report by October 15, 2018 on the following performance measures for the Universal Telecommunications Support Fund line item, whose mission is to provide balanced operation of the fund that is nondiscriminatory and competitively and technologically neutral, neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any telecommunications provider operating in Utah: (1) Number of months within a fiscal year during which the Fund did not maintain a balance equal to at least three months of fund payments (Target = 0); (2) Number of appellate court cases within a fiscal year modifying or reversing cases involving fund disbursements (Target = 0); (3) Number of times a change to the fund surcharge occurred more than once every three fiscal years (Target = 0); to the Business, Economic Development, and Labor Appropriations Subcommittee.

Subsection 1(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

INSURANCE DEPARTMENT

Item 57

To Insurance Department - Individual & Small
Employer Risk Adjustment Enterprise Fund
From Licenses/Fees 265,000
Schedule of Programs:
Individual & Small Employer Risk
Adjustment Enterprise Fund 265,000

The Legislature intends that the Insurance Department report on the following performance measures for the Health Insurance Actuarial Program (Risk Adjuster) line item, whose mission is “to foster a healthy insurance market by promoting fair and reasonable practices that ensure available, affordable and reliable insurance products and services”: 1) timeliness of processing work product (Target = 95% within 45 days).

Subsection 1(d). Restricted Fund and Account Transfers.

The Legislature authorizes the State Division of Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere in an appropriations act.

Item 58

To GFR - Industrial Assistance Account
From Interest Income 170,300
From Revenue Transfers (250,000)
From Beginning Nonlapsing
Balances 20,249,300
From Closing Nonlapsing
Balances (16,773,800)
Schedule of Programs:

General Fund Restricted - Industrial
Assistance Account 3,395,800

“The Legislature finds and declares that the fostering and development of industry in Utah is a state public purpose necessary to assure the welfare of its citizens, the growth of its economy, and adequate employment for its citizens.” Funds within the IAF are used for corporate recruitment, including workforce training, economic opportunities, and rural development. 1) Corporate Recruitment and Workforce Training: jobs and cap ex, including ratio of private funding to public funding, which should exceed 6:1, 2) ability to execute on unique economic opportunities as such opportunities arise throughout the year; and 3) rural development through the rural fast track and business expansion and resources program, measuring jobs, capital expenditure, and the number of businesses served.

Item 59

To General Fund Restricted - Rural Health
Care Facilities Fund
From General Fund 555,000
Schedule of Programs:
GFR - Rural Health Care Facilities
Fund 555,000

Item 60

To GFR - Tourism Marketing Performance
Fund
From General Fund 18,000,000
Schedule of Programs:
GFR - Tourism Marketing Performance
Fund 18,000,000

Subsection 1(e). Fiduciary Funds.

The Legislature has reviewed proposed revenues, expenditures, fund balances and changes in fund balances for the following fiduciary funds.

LABOR COMMISSION

Item 61

To Labor Commission - Employers
Reinsurance Fund
From Interest Income 4,652,200
From Premium Tax Collections 17,247,000
From Beginning Fund Balance (308,900)
From Closing Fund Balance (8,611,000)

Schedule of Programs:
 Employers Reinsurance Fund 12,979,300

Item 62

To Labor Commission - Uninsured
 Employers Fund
 From Dedicated Credits Revenue 2,611,000
 From Interest Income 1,075,000
 From Premium Tax Collections 1,953,000
 From Beginning Fund Balance 12,271,200
 From Closing Fund Balance (12,257,400)

Schedule of Programs:
 Uninsured Employers Fund 5,652,800

Item 63

To Labor Commission - Wage Claim Agency Fund
 From Trust and Agency Funds 2,300,000
 From Beginning Fund Balance 17,722,700
 From Closing Fund Balance (19,572,700)

Schedule of Programs:
 Wage Claim Agency Fund 450,000

Section 2. Effective Date.

This bill takes effect on July 1, 2017.

**CHAPTER 3
H.B. 5**

Passed February 7, 2017
Approved February 16, 2017
Effective February 16, 2017

**RETIREMENT AND INDEPENDENT
ENTITIES BASE BUDGET**

Chief Sponsor: LaVar Christensen
Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill supplements or reduces appropriations previously provided for the use and operation of state government for the fiscal year beginning July 1, 2016 and ending June 30, 2017; and appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides appropriations for the use and support of certain state agencies;
- ▶ provides appropriations for other purposes as described;
- ▶ approves employment levels for internal service funds; and
- ▶ approves capital acquisition amounts for internal service funds.

Money Appropriated in this Bill:

This bill appropriates (\$62,400) in operating and capital budgets for fiscal year 2017, including:

- ▶ (\$42,400) from the General Fund;
- ▶ (\$20,000) from various sources as detailed in this bill.

This bill appropriates \$45,870,800 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$1,080,100 from the General Fund;
- ▶ \$22,275,400 from the Education Fund;
- ▶ \$22,515,300 from various sources as detailed in this bill.

This bill appropriates \$14,223,700 in business-like activities for fiscal year 2018.

Other Special Clauses:

Section 1 of this bill takes effect immediately. Section 2 of this bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2017 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2016 and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use

and support of the government of the State of Utah.

CAREER SERVICE REVIEW OFFICE

Item 1

To Career Service Review Office

Under the terms of Section 63J-1-603 of the Utah Code, the Legislature intends that \$30,000 of appropriations provided for the Career Service Review Office in Laws of Utah 2016, Chapter 8, Item 1 shall not lapse at the close of fiscal year 2017. The use of any nonlapsing funds is limited to grievance resolution.

**DEPARTMENT OF HUMAN
RESOURCE MANAGEMENT**

Item 2

To Department of Human Resource Management - Human Resource Management

From General Fund, One-Time (42,400)
 From Beginning Nonlapsing Balances 50,000
 From Closing Nonlapsing Balances (70,000)

Schedule of Programs:

ALJ Compliance (62,400)

Under the terms of Section 63J-1-603 of the Utah Code, the Legislature intends that \$70,000 of appropriations provided for the Department of Human Resource Management in Laws of Utah 2016, Chapter 8, Item 2 shall not lapse at the close of fiscal year 2017. The use of any nonlapsing funds is limited to \$50,000 for statewide management training and \$20,000 for administrative law judge compliance.

The Legislature authorizes the Department of Human Resource Management to transfer \$100,000 of capital assets from the Human Resource Management line item to the Human Resources Internal Service Fund.

Subsection 1(b). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

**DEPARTMENT OF HUMAN
RESOURCE MANAGEMENT**

Item 3

To Department of Human Resource Management - Human Resources Internal Service Fund

Schedule of Programs:

Administration 747,300
 Information Technology 989,700
 ISF - Core HR Services 2,900
 ISF - Field Services (2,111,800)

ISF - Legal Services	(122,300)
ISF - Payroll Field Services	9,200
Policy	485,000
Authorized Capital Outlay	525,000

Section 2. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Subsection 2(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

CAREER SERVICE REVIEW OFFICE

Item 4

To Career Service Review Office

From General Fund	272,300
From Beginning Nonlapsing Balances	30,000

Schedule of Programs:

Career Service Review Office	302,300
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The Legislature intends that the Career Service Review Office report on the following performance measure: (1) days to issue a jurisdictional decision (Target=15 or less), (2) days to conduct an evidentiary hearing (Target=150 or less), and (3) working days to issue the evidentiary hearing written decision (Target=20 or less) by October 31, 2017 to the Retirement and Independent Entities Appropriations Subcommittee.

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Item 5

To Department of Human Resource Management - Human Resource Management

From General Fund	20,000
From Dedicated Credits Revenue	200,000
From Beginning Nonlapsing Balances	70,000

Schedule of Programs:

ALJ Compliance	40,000
Statewide Management Liability Training	250,000

The Legislature intends that the Department of Human Resource Management report on the following performance measures for the Human Resource Management line item: (1) percent of administrative law judge evaluations completed on time (Target=100%), (2) number of graduates from the Certified Public Manager course (Target=70), and (3) number of participant hours in leadership classes (Target=2,500) by October 31, 2017 to the Retirement and Independent Entities Appropriations Subcommittee.

UTAH EDUCATION AND TELEHEALTH NETWORK

Item 6

To Utah Education and Telehealth Network - Digital Teaching and Learning Program

From Education Fund	160,000
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Schedule of Programs:

Digital Teaching and Learning Program	160,000
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Item 7

To Utah Education and Telehealth Network

From General Fund	787,800
From Education Fund	22,115,400
From Federal Funds	3,501,200
From Dedicated Credits Revenue	17,682,300
From Other Financing Sources	151,000

From Beginning Nonlapsing Balances

Balances	3,016,200
From Closing Nonlapsing Balances ...	(2,135,400)

Schedule of Programs:

Administration	3,686,200
Course Management Systems	515,100
Instructional Support	3,930,600
KUEN Broadcast	667,200
Operations and Maintenance	405,500
Public Information	266,900
Statewide Data Alliance	645,000
Technical Services	33,400,300
Utah Telehealth Network	1,601,700

The Legislature intends that the Utah Education and Telehealth Network report on the following performance measures: (1) Circuit connections to institutions, with a FY 2017 target of 97%; (2) Number of interactive video conferences (IVC) occurring over the Utah Education Network IVC systems, with a FY 2017 target of 39,000 classes delivered over the UEN System; and (3) The percentage of customers using the shared-cost Utah Education Network course management system, with a FY 2017 target of 25% for K-12 customers by October 31, 2017 to the Retirement and Independent Entities Appropriations Subcommittee.

Subsection 2(b). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

Item 8

To Department of Human Resource Management - Human Resources Internal Service Fund

From Dedicated Credits Revenue	14,223,700
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Schedule of Programs:

Administration	747,300
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Information Technology	989,700
ISF - Core HR Services	240,500
ISF - Field Services	11,082,600
ISF - Payroll Field Services	678,600
Policy	485,000
Budgeted FTE	145.0
Authorized Capital Outlay	1,500,000

The Legislature intends that the Department of Human Resource Management report on the following performance measures for the DHRM Internal Service Fund line item: (1) days of operating expenses held in retained earnings (Target=60 or less), (2) ratio of HR staff to customer agency staff (Target=30% or more below industry average), and (3) customer agency satisfaction rate (Target=85%) by October 31, 2017 to the Retirement and Independent Entities Appropriations Subcommittee.

Section 3. Effective Date.

If approved by two-thirds of all the members elected to each house, Section 1 of this bill takes effect upon approval by the Governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override. Section 2 of this bill takes effect on July 1, 2017.

**CHAPTER 4
H.B. 6**

Passed February 7, 2017
Approved February 16, 2017
Effective February 16, 2017

**INFRASTRUCTURE AND GENERAL
GOVERNMENT BASE BUDGET**

Chief Sponsor: Gage Froerer
Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill supplements or reduces appropriations previously provided for the use and operation of state government for the fiscal year beginning July 1, 2016 and ending June 30, 2017; and appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides appropriations for the use and support of certain state agencies; and
- ▶ provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates \$13,072,600 in operating and capital budgets for fiscal year 2017, including:

- ▶ \$209,000 from the General Fund;
- ▶ (\$1,499,000) from the Education Fund;
- ▶ \$14,362,600 from various sources as detailed in this bill.

This bill appropriates \$1,918,460,900 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$138,639,100 from the General Fund;
- ▶ \$92,686,700 from the Education Fund;
- ▶ \$1,687,135,100 from various sources as detailed in this bill.

This bill appropriates \$3,229,200 in expendable funds and accounts for fiscal year 2018.

This bill appropriates \$278,794,500 in business-like activities for fiscal year 2018.

This bill appropriates \$14,200,000 in transfers to unrestricted funds for fiscal year 2018.

This bill appropriates \$1,952,600 in fiduciary funds for fiscal year 2018.

This bill appropriates \$1,362,848,400 in capital project funds for fiscal year 2018.

Other Special Clauses:

Section 1 of this bill takes effect immediately. Section 2 of this bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2017 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2016 and ending June 30, 2017. These are additions to

amounts previously appropriated for fiscal year 2017.

Subsection 1(a). Operating and Capital Budgets.

Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

Item 1

To Department of Administrative Services -

Inspector General of Medicaid Services

From Revenue Transfers, One-Time . . . 1,140,000
Schedule of Programs:

Inspector General of Medicaid

Services 1,140,000

Item 2

To Department of Administrative Services -

Finance - Mandated

From Education Fund, One-Time . . . (1,499,000)
Schedule of Programs:

Strategic Workforce Investments . . . (1,499,000)

**STATE BOARD OF BONDING
COMMISSIONERS - DEBT SERVICE**

Item 3

To State Board of Bonding Commissioners -

Debt Service - Debt Service

From General Fund, One-Time 209,000
From Transportation Investment

Fund of 2005, One-Time 12,500

From Federal Funds, One-Time 68,100
From Dedicated Credits Revenue,

One-Time 2,268,200

From County of First Class Highway

Projects Fund, One-Time 500

From Revenue Transfers, One-Time 14,000
From Beginning Nonlapsing

Balances 10,455,600

From Closing Nonlapsing Balances 403,700
Schedule of Programs:

General Obligation Bonds Debt

Service 331,700

Revenue Bonds Debt Service 13,099,900

Subsection 1(b). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

**DEPARTMENT OF ADMINISTRATIVE
SERVICES INTERNAL SERVICE FUNDS**

Item 4

To Department of Administrative Services

Internal Service Funds - Risk Management

Budgeted FTE (1.0)

Section 2. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Subsection 2(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

TRANSPORTATION

Item 5

To Transportation - Support Services

From Transportation Fund	32,092,100
From Federal Funds	2,029,500

Schedule of Programs:

Administrative Services	2,568,100
Risk Management	2,989,300
Building and Grounds	987,500
Human Resources Management	2,326,900
Procurement	1,267,900
Comptroller	2,720,200
Data Processing	11,633,500
Internal Auditor	887,100
Community Relations	790,500
Ports of Entry	7,950,600

The Legislature intends that the Department of Transportation report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the goal of reducing crashes, injuries, and fatalities: (1) traffic fatalities (target: 2% reduction from 3-year rolling average); (2) traffic serious injuries (target: 2% reduction from 3-year rolling average); (3) traffic crashes (2% reduction from 3-year rolling average); (4) internal fatalities (target: zero); (5) internal injuries (target: injury rate below 6.5%); and (6) internal equipment damage (target: equipment damage rate below 7.5%). The department will use the strategies contained in the 2017 UDOT Strategic Direction Document to accomplish these targets including implementing safety infrastructure improvements, partnering with law enforcement and emergency services, improving employee safety, and public outreach and education.

The Legislature intends that the Department of Transportation report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the goal of preserving infrastructure: (1) pavement performance (target: 50% of pavements in good condition and less than 10% of pavements in poor condition); (2) maintain the health of structures (target: 80% in fair or good condition); (3) maintain the health of

Automated Transportation Management Systems (ATMS) (target: 90% in good condition); and (4) maintain the health of signals (target: 90% in good condition). The department will use the strategies contained in the 2017 UDOT Strategic Direction Document to accomplish these targets including pavement management, bridge management, and ATMS/Signal system management.

The Legislature intends that the Department of Transportation report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the goal of optimizing mobility: (1) delay along I-15 (target: overall composite annual score above 90); (2) maintain a reliable fast condition on I-15 along the Wasatch Front (target: 85% of segments); (3) achieve optimal use of snow and ice equipment and materials (target: greater than 92% effectiveness); and (4) support increase of trips by public transit (target: 10%). The department will use the strategies contained in the 2017 UDOT Strategic Direction Document to accomplish these targets including; strategic capacity improvements, efficient operations, and facilitating travel choices.

Item 6

To Transportation - Engineering Services

From Transportation Fund	18,937,700
From Federal Funds	15,287,200
From Dedicated Credits Revenue	1,150,000

Schedule of Programs:

Program Development	11,514,300
Preconstruction Admin	1,627,300
Environmental	1,880,100
Structures	3,334,200
Materials Lab	5,013,800
Engineering Services	2,694,700
Right-of-Way	2,327,900
Research	2,809,900
Construction Management	1,583,800
Civil Rights	223,900
Engineer Development Pool	2,018,300
Highway Project Management Team	346,700

Item 7

To Transportation - Operations/
Maintenance Management

From Transportation Fund	143,933,900
From Transportation Investment Fund of 2005	6,901,400
From Federal Funds	8,887,500
From Dedicated Credits Revenue	1,295,400

Schedule of Programs:

Maintenance Administration	16,677,600
Region 1	22,169,000
Region 2	25,415,600
Region 3	21,039,000
Region 4	43,679,200
Seasonal Pools	1,093,600
Lands and Buildings	2,992,000
Field Crews	12,978,200
Traffic Safety/Tramway	3,231,100
Traffic Operations/Tram Center	10,029,600

Maintenance Planning 1,713,300

Item 8

To Transportation – Construction Management
 From Transportation Fund 71,579,200
 From Federal Funds 152,831,400
 From Dedicated Credits Revenue 1,550,000
 From Designated Sales Tax 46,682,500
 Schedule of Programs:
 Federal Construction – New 198,917,800
 Rehabilitation/Preservation 73,725,300

Item 9

To Transportation – Region Management
 From Transportation Fund 23,973,800
 From Federal Funds 3,691,200
 From Dedicated Credits Revenue 1,147,200
 Schedule of Programs:
 Region 1 5,896,300
 Region 2 10,179,900
 Region 3 5,177,500
 Region 4 6,844,500
 Richfield 69,700
 Price 312,500
 Cedar City 331,800

Item 10

To Transportation – Equipment Management
 From Transportation Fund 1,639,700
 From Dedicated Credits Revenue 27,593,700
 Schedule of Programs:
 Equipment Purchases 6,620,900
 Shops 22,612,500

Item 11

To Transportation – Aeronautics
 From Dedicated Credits Revenue 383,600
 From Aeronautics Restricted Account .. 7,042,900
 Schedule of Programs:
 Administration 547,900
 Airport Construction 3,536,100
 Civil Air Patrol 80,000
 Aid to Local Airports 2,240,000
 Airplane Operations 1,022,500

Item 12

To Transportation – B and C Roads
 From Transportation Fund 155,127,400
 Schedule of Programs:
 B and C Roads 155,127,400

Item 13

To Transportation – Safe Sidewalk Construction
 From Transportation Fund 500,000
 Schedule of Programs:
 Sidewalk Construction 500,000

Item 14

To Transportation – Mineral Lease
 From General Fund Restricted -
 Mineral Lease 56,448,100
 Schedule of Programs:
 Mineral Lease Payments 53,979,100
 Payment in Lieu 2,469,000

Item 15

To Transportation – Share the Road
 From General Fund Restricted - Share
 the Road Bicycle Support 30,000
 Schedule of Programs:
 Share the Road 30,000

Item 16

To Transportation – Transportation
 Investment Fund Capacity Program
 From Transportation Investment
 Fund of 2005 578,001,400
 Schedule of Programs:
 Transportation Investment Fund
 Capacity Program 578,001,400

**DEPARTMENT OF
 ADMINISTRATIVE SERVICES**

Item 17

To Department of Administrative Services -
 Executive Director
 From General Fund 1,112,100
 From Dedicated Credits Revenue 10,500
 From Beginning Nonlapsing Balances 47,900
 Schedule of Programs:
 Executive Director 1,170,500

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Executive Directors Office line item whose mission is "to deliver support services of the highest quality and best value to government agencies and the public": (1) independent evaluation/audit of each division (baseline: 28% complete; target: 57%); and (2) increase in number of energy conscious/air quality improvement activities across state agencies (baseline: 12; target: 24) (see UCA 63A-1-116).

Item 18

To Department of Administrative Services -
 Inspector General of Medicaid Services
 From General Fund 1,154,600
 From Revenue Transfers 2,294,600
 From Pass-through 1,400
 From Beginning Nonlapsing Balances ... 245,500
 From Closing Nonlapsing Balances (531,500)
 Schedule of Programs:
 Inspector General of Medicaid
 Services 3,164,600

Item 19

To Department of Administrative Services -
 Administrative Rules
 From General Fund 427,400
 From Beginning Nonlapsing Balances ... 310,100
 From Closing Nonlapsing Balances (49,400)
 Schedule of Programs:
 DAR Administration 688,100

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Office of Administrative Rules line item whose mission is "to enable citizen participation in their own government by supporting agency rulemaking and ensuring agency compliance with the Utah Administrative Rulemaking Act": (1) timely

publication of Utah State Bulletin (baseline: 1st and 15th; target: 1 day prior to rule deadline requirement); (2) average number of business days to review rule filings (baseline: 11 days; target: 9 days); and (3) average number of days to update the Utah Administrative Code on the Internet (baseline: 12 days; target: 10 days).

Item 20

To Department of Administrative Services -
DFCM Administration

From General Fund	2,475,100
From Dedicated Credits Revenue	854,200
From Capital Projects Fund	1,900,900
From Capital Project Fund - Contingency Reserve	82,300
From Capital Project Fund - Project Reserve	200,000
From Beginning Nonlapsing Balances ...	763,900
From Closing Nonlapsing Balances	(104,100)
Schedule of Programs:	
DFCM Administration	5,542,200
Governor's Residence	152,100
Energy Program	478,000

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the DFCM Administration line item whose mission is "to provide professional services to assist State entities in meeting their facility needs for the benefit of the public": (1) capital improvement projects started in the fiscal year they are funded (baseline: 84%; target: 86% or above); and (2) percentage of state building inventory for which DFCM detailed accurate utility consumption data (baseline: 15%; target: 50%).

Item 21

To Department of Administrative Services -
Building Board Program

From Capital Projects Fund	1,276,300
From Beginning Nonlapsing Balances ...	154,500
From Closing Nonlapsing Balances	(106,800)
Schedule of Programs:	
Building Board Program	1,324,000

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Building Board Program line item whose mission is "to serve as a policy board to assess and prioritize the States capital facility needs; ensuring that the State of Utah's capital facility programs are efficiently managed and effectively implemented, provide accurate, up-to-date data on facility assets, including facility condition assessments, facility maintenance audits, track operation and maintenance expenditures, allocate appropriations of capital improvement funds and

recommendations of capital development projects in meeting the mandate to provide quality facilities in a timely and cost effective manner to ensure they support the agencies core mission; and to oversee the planning, design, construction and maintenance of the States capital facilities." (1) O&M expenditures at individual building level (baseline: 70%; Target: 80%); and (2) statutorily mandated space utilization evaluations completed (Baseline: 0; Target: 10%).

Item 22

To Department of Administrative Services -
State Archives

From General Fund	3,010,100
From Federal Funds	40,000
From Dedicated Credits Revenue	51,000
From Beginning Nonlapsing Balances ...	216,300
From Closing Nonlapsing Balances	(272,400)
Schedule of Programs:	
Archives Administration	991,000
Records Analysis	251,000
Preservation Services	260,000
Patron Services	543,500
Records Services	348,000
Open Records	651,500

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the State Archives line item, whose mission is "to assist Utah government agencies in the efficient management of their records, to preserve those records of enduring value, and to provide quality access to public information.(1) Historic records, images and metadata, posted online and free to the public, through mass digitization, volume increased per patron research reporting period (Target: 10% increase of accumulative volume); (2) Reformat government records from obsolete and other media to appropriate preservation or access media to meet or exceed BRC'S CPD Digital standards per quarterly reporting period (Baseline: 80%; Target: 90%); and (3) Government employees trained and certified in records management and Government Records Access and Management Act responsibilities per fiscal year (Target: 10% increase).

Item 23

To Department of Administrative Services -
Finance Administration

From General Fund	6,965,100
From Transportation Fund	450,000
From Dedicated Credits Revenue	1,800,100
From General Fund Restricted - Internal Service Fund Overhead	1,299,600
From Beginning Nonlapsing Balances	1,737,500
From Closing Nonlapsing Balances	(564,400)
Schedule of Programs:	
Finance Director's Office	605,200

Payroll	2,233,300
Payables/Disbursing	1,932,300
Technical Services	1,258,000
Financial Reporting	1,989,500
Financial Information Systems	3,669,600

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Finance Administration line item, whose mission is “to serve Utah citizens and state agencies with fiscal leadership and quality financial systems, processes, and information.” (1) Increase the percentage of participating entities posting information to the transparency website (baseline: 66% of 838 participating entities; target: 90% of 838 participating entities).

Item 24

To Department of Administrative Services - Finance - Mandated

From General Fund	4,500,000
From Education Fund	495,000
From General Fund Restricted - Economic Incentive Restricted Account	3,255,000
From General Fund Restricted - Land Exchange Distribution Account	1,517,600
Schedule of Programs:	
Land Exchange Distribution	1,517,600
State Employee Benefits	4,500,000
Development Zone Partial Rebates ..	3,255,000
Strategic Workforce Investments	495,000

Item 25

To Department of Administrative Services - Finance - Mandated - Parental Defense

From General Fund	95,200
From Dedicated Credits Revenue	30,000
From Beginning Nonlapsing Balances	38,600
From Closing Nonlapsing Balances	(49,000)
Schedule of Programs:	
Parental Defense	114,800

Item 26

To Department of Administrative Services - Finance - Elected Official Post-Retirement Benefits Contribution

From General Fund	1,387,600
Schedule of Programs:	
Elected Official Post-Retirement Trust Fund	1,387,600

Item 27

To Department of Administrative Services - Finance - Mandated - Ethics Commission

From General Fund	3,000
From Beginning Nonlapsing Balances	46,200
From Closing Nonlapsing Balances	(44,600)
Schedule of Programs:	
Executive Branch Ethics Commission	4,600

Item 28

To Department of Administrative Services - Post Conviction Indigent Defense

From General Fund	33,900
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From Beginning Nonlapsing Balances ...	147,500
From Closing Nonlapsing Balances	(91,400)
Schedule of Programs:	
Post Conviction Indigent Defense Fund	90,000

Item 29

To Department of Administrative Services - Judicial Conduct Commission

From General Fund	256,000
From Beginning Nonlapsing Balances	10,900
Schedule of Programs:	
Judicial Conduct Commission	266,900

Item 30

To Department of Administrative Services - Purchasing

From General Fund	663,900
Schedule of Programs:	
Purchasing and General Services	663,900

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Division of Purchasing Administrative line item, whose mission is to “provide our customers best value goods and services.” (1) Increase the number of attendees at the Division of Purchasing quarterly training on the Utah Procurement Code for public procurement professionals. (baseline: FY2016 the average attendance for the quarterly training was 145; target: average quarterly attendance for FY2017 is anticipated to be 155 and for FY2018 is anticipated to be 165).

DEPARTMENT OF TECHNOLOGY SERVICES

Item 31

To Department of Technology Services - Chief Information Officer

From General Fund	546,500
Schedule of Programs:	
Chief Information Officer	546,500

The Legislature intends that the Department of Technology Services (DTS) report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Chief Information Officer line item, whose mission is “to enable our partner agencies to securely leverage technology to better serve the residents of the State of Utah.” (1) data security - reduce high data security risk areas across the state (target = 25% improvement); (2) application development - collect satisfaction score on application development projects from agencies via scorecard (target = average scorecard result 83%); and (3) procurement and deployment - ensure state employees receive computers in a timely manner (Target = 25% increase in timeliness).

Item 32

To Department of Technology Services -
 Integrated Technology Division
 From General Fund 844,200
 From Federal Funds 535,000
 From Dedicated Credits Revenue 960,600
 From General Fund Restricted - Statewide
 Unified E-911 Emergency Account 329,800
 Schedule of Programs:
 Automated Geographic Reference
 Center 2,669,600

The Legislature intends that the Department of Technology Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Automated Geographic Reference Center (AGRC) line item, whose mission is “to encourage and facilitate beneficial uses of geospatial information and technology for Utah.” (1) application availability for AGRC’s state geographic information database connection services (target 99% uptime); (2) county-sourced updates to Utah’s statewide road and address map layers (target: 120 update cycles, including 50 update cycles from Utah’s class I and II counties); and (3) application availability for AGRC’s The Utah Reference Network (TURN) GPS service (target = 99% system-wide uptime).

CAPITAL BUDGET

Item 33

To Capital Budget - Capital Development Fund
 From Education Fund 20,000,000
 From Education Fund,
 One-Time (20,000,000)

Item 34

To Capital Budget - Capital Development -
 Higher Education
 From Education Fund, One-Time 20,000,000
 Schedule of Programs:
 USU Biological Sciences Building .. 10,000,000
 UVU Performing Arts Building 10,000,000

Item 35

To Capital Budget - Capital Improvements
 From General Fund 58,912,100
 From Education Fund 58,912,000
 Schedule of Programs:
 Capital Improvements 117,824,100

**STATE BOARD OF BONDING
 COMMISSIONERS - DEBT SERVICE**

Item 36

To State Board of Bonding Commissioners -
 Debt Service - Debt Service
 From General Fund 54,535,800
 From General Fund, One-Time 1,716,500
 From Education Fund 17,221,800
 From Education Fund, One-Time (3,942,100)
 From Transportation Investment
 Fund of 2005 275,181,800
 From Federal Funds 15,827,000
 From Dedicated Credits Revenue 24,959,400

From County of First Class Highway
 Projects Fund 7,835,900
 From Revenue Transfers,
 One-Time (14,200,000)
 From Beginning Nonlapsing
 Balances 7,931,500
 From Closing Nonlapsing Balances ... (7,931,500)
 Schedule of Programs:
 Revenue Bonds Debt Service 26,809,400
 G.O. Bonds - Higher Ed 36,866,500
 G.O. Bonds - Transportation 297,217,700
 G.O. Bonds - State Govt 18,242,500

Subsection 2(b). Expendable Funds and

Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account’s applicable authorizing statute.

**DEPARTMENT OF
 ADMINISTRATIVE SERVICES**

Item 37

To Department of Administrative Services -
 Child Welfare Parental Defense Fund
 From Beginning Fund Balance 48,800
 From Closing Fund Balance (41,300)
 Schedule of Programs:
 Child Welfare Parental Defense Fund ... 7,500

Item 38

To Department of Administrative Services -
 State Archives Fund
 From Beginning Fund Balance 2,500
 From Closing Fund Balance (2,500)

Item 39

To Department of Administrative Services -
 State Debt Collection Fund
 From Dedicated Credits Revenue 3,062,400
 From Trust and Agency Funds 1,600
 From Beginning Fund Balance 157,700
 Schedule of Programs:
 State Debt Collection Fund 3,221,700

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the State Debt Collection Fund line item, whose mission is “to maximize accounts receivable collections to the State of Utah by effectively managing and collecting state receivables.”: (1) Increase gross collections by 10% by the end of fiscal year 2018 (baseline: \$10.47M; target: 10% increase).

Subsection 2(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as

indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

TRANSPORTATION

Item 40

To Transportation - Transportation Infrastructure Loan Fund

From Interest Income	189,100
From Beginning Fund Balance	24,807,700
From Closing Fund Balance	(24,996,800)

DEPARTMENT OF ADMINISTRATIVE SERVICES INTERNAL SERVICE FUNDS

Item 41

To Department of Administrative Services Internal Service Funds - Division of Finance
 From Dedicated Credits Revenue 2,010,700
 Schedule of Programs:

ISF - Purchasing Card	372,200
ISF - Consolidated Budget and Accounting	1,638,500
Budgeted FTE	20.0

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Finance Consolidated Budget & Accounting (CBA) line item, whose mission is “to provide fiscal leadership and quality financial systems, processes, and information.” (1) For the CBA, the performance measure is tracking the time it takes for the processing and approving of payments transactions, through the Accounting System for the State of Utah (FINET) program, within the stated service level agreement time frame for each customer. (baseline: 5 days; target: 3 days).

Item 42

To Department of Administrative Services Internal Service Funds - Division of Purchasing and General Services

From Dedicated Credits Revenue 20,139,700
 Schedule of Programs:

ISF - Central Mailing	13,276,700
ISF - Cooperative Contracting	3,753,500
ISF - Print Services	2,514,000
ISF - State Surplus Property	556,000
ISF - Federal Surplus Property	39,500
Budgeted FTE	93.0
Authorized Capital Outlay	3,125,800

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Division of Purchasing ISF line item, whose mission is to “provide our customers best value goods and services.” (1) increase the

number of State of Utah Best Value Cooperative Contracts for public entities to use. (baseline: 782 cooperative contracts for FY2016, target: 825 cooperative contracts for FY2017, 875 cooperative contracts for FY2018); and (2) increase the amount of contract spend on State of Utah Best Value Cooperative Contracts. (baseline: total spend for FY2016 on cooperative contracts was \$1,691,957,643.97, target: total spend for FY2017 cooperative contracts is anticipated to be \$1,776,957,643.00 and total spend for FY2018 cooperative contracts is anticipated to be \$1,866,957,643.00).

Item 43

To Department of Administrative Services Internal Service Funds - Division of Fleet Operations

From Dedicated Credits Revenue 56,335,700
 Schedule of Programs:

ISF - Fleet Administration	10,100
ISF - Motor Pool	28,590,700
ISF - Fuel Network	27,187,900
ISF - Travel Office	547,000
Budgeted FTE	26.0
Authorized Capital Outlay	29,208,700

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Division of Fleet Operations line item, whose mission is “emphasizing customer service, we provide safe, efficient, dependable, and cost-effective services.” (1) fleet administrative costs as a percentage of division costs. (target: <1%); (2) reduce motor pool debt to the general fund. (target: reduce debt by 10%); and (3) provide access to an increasing number of fleet management reports and data through online fleet focus and Cognos. (baseline: 29 reports; target: 35 reports).

Item 44

To Department of Administrative Services Internal Service Funds - Risk Management

From Dedicated Credits Revenue 55,000
 From Premiums

34,278,700	
From Interest Income	394,500
From Risk Management - Workers Compensation Fund	7,607,400
From Lapsing Balance	382,500
Schedule of Programs:	
ISF - Risk Management	
Administration	43,000
ISF - Workers' Compensation	8,001,900
Risk Management OCIP	6,400
Risk Management - Property	15,864,600
Risk Management - Auto	2,037,300
Risk Management - Liability	16,764,900
Budgeted FTE	32.0
Authorized Capital Outlay	250,000

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government

Appropriations Subcommittee on the following performance measures for the Division of Risk Management line item, whose mission is “to protect State assets, to promote safety, and to control against property, liability, and auto losses’ consistent with the Departments mission to ”deliver products and services of the highest quality and best value.” (1) SUCCESS Program, follow up on life safety findings of on-site inspections (baseline: 71%; target: 95%).

Item 45

To Department of Administrative Services Internal Service Funds - Division of Facilities Construction and Management - Facilities Management

From Dedicated Credits Revenue 32,408,300
 Schedule of Programs:

ISF - Facilities Management	32,408,300
Budgeted FTE	134.0
Authorized Capital Outlay	65,300

The Legislature intends that the Department of Administrative Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Division of Facilities Construction and Management Facilities Management ISF line item, whose mission is “to provide professional building maintenance services to State facilities, agency customers and the general public.” (1) average maintenance cost per square foot compared to the private sector (baseline: 24% less; target: 26% less).

**DEPARTMENT OF TECHNOLOGY
 SERVICES INTERNAL SERVICE FUNDS**

Item 46

To Department of Technology Services Internal Service Funds - Enterprise Technology Division From Dedicated Credits Revenue . . . 125,182,000
 Schedule of Programs:

ISF - Enterprise Technology	
Division	125,182,000
Budgeted FTE	733.0
Authorized Capital Outlay	6,000,000

The Legislature intends that the Department of Technology Services report by October 31, 2017 to the Infrastructure and General Government Appropriations Subcommittee on the following performance measures for the Internal Service Fund line item, whose mission is “to enable our partner agencies to securely leverage technology to better serve the residents of the State of Utah.” (1) customer satisfaction survey - measure the customers experience and satisfaction with IT services. (target =4.5 out of 5); (2) application availability - monitor DTS performance and availability of key agency business applications/systems (target = 99%); and (3) competitive rates - ensure all DTS rates are market competitive or better (target = 100%).

Subsection 2(d). Transfers to Unrestricted Funds. The Legislature authorizes the State Division of Finance to transfer the following amounts to the unrestricted General, Education, or Uniform School Fund as indicated from the restricted funds or accounts indicated. Expenditures and outlays from the General, Education, or Uniform School Fund must be authorized elsewhere in an appropriations act.

Item 47

To General Fund	
From Nonlapsing Balances - Debt	
Service	14,200,000
Schedule of Programs:	
General Fund, One-time	14,200,000

Subsection 2(e). Fiduciary Funds. The Legislature has reviewed proposed revenues, expenditures, fund balances and changes in fund balances for the following fiduciary funds.

**DEPARTMENT OF
 ADMINISTRATIVE SERVICES**

Item 48

To Department of Administrative Services - Utah Navajo Royalties Holding Fund	
From Revenue Transfers	3,000
From Other Financing Sources	5,862,200
From Beginning Fund Balance	72,314,400
From Closing Fund Balance	(76,227,000)
Schedule of Programs:	
Navajo Trust Fund	1,952,600

Subsection 2(f). Capital Project Funds. The Legislature has reviewed the following capital project funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

TRANSPORTATION

Item 49

To Transportation - Transportation Investment Fund of 2005	
From Licenses/Fees	83,642,000
From Interest Income	596,700
From Designated Sales Tax	571,488,300
From Beginning Fund Balance	335,037,500
From Closing Fund Balance	(137,581,300)
Schedule of Programs:	
Transportation Investment Fund	853,183,200

CAPITAL BUDGET

Item 50

To Capital Budget - DFCM Capital Projects Fund	
From Revenue Transfers	145,824,100
From Beginning Fund Balance	254,014,000
From Closing Fund Balance	(202,248,600)
Schedule of Programs:	
DFCM Capital Projects Fund	197,589,500

Item 51

To Capital Budget - DFCM Prison Project Fund	
From Other Financing Sources,	
One-Time	125,000,000

Schedule of Programs:

DFCM Prison Project Fund 125,000,000

The \$125,000,000 in this item is from anticipated issuance of general obligation bonds as authorized by H.B. 454, 2015 General Session.

Item 52

To Capital Budget - SBOA Capital Projects Fund

From Beginning Fund Balance 188,324,800

From Closing Fund Balance (1,249,100)

Schedule of Programs:

SBOA Capital Projects Fund 187,075,700

Section 3. Effective Date.

If approved by two-thirds of all the members elected to each house, Section 1 of this bill takes effect upon approval by the Governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override. Section 2 of this bill takes effect on July 1, 2017.

CHAPTER 5

H.B. 7

Passed February 7, 2017
Approved February 16, 2017
Effective July 1, 2017

NATIONAL GUARD, VETERANS' AFFAIRS, AND LEGISLATURE BASE BUDGET

Chief Sponsor: Dean Sanpei
Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of certain state agencies;
provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates \$108,706,307 in operating and capital budgets for fiscal year 2018, including:

- \$40,896,800 from the General Fund;
\$67,809,500 from various sources as detailed in this bill.

This bill appropriates \$23,624,100 in expendable funds and accounts for fiscal year 2018.

This bill appropriates \$9,500 in restricted fund and account transfers for fiscal year 2018, all of which is from the General Fund.

Other Special Clauses:

This bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

CAPITOL PRESERVATION BOARD

Item 1

To Capitol Preservation Board
From General Fund 4,342,100
Schedule of Programs:
Capitol Preservation Board 4,342,100

The Legislature intends that the Capitol Preservation Board report by October 17, 2017 to the Executive Appropriations Committee on the following performance

measures for the Capitol Preservation Board line item: (1) Stewardship plan for a safe, sustainable environment through maintenance, facility operations, and improvements (Target = 100 year life); (2) Provision of high quality tours, information, and education to the public (Target = 50,000 students and 200,000 visitors annually); (3) Provision of event and scheduling program for all government meetings, free speech activities, and public events (Target = 4,000 annually); and (4) Provision of exhibit and curatorial services on Capitol Hill to maintain the collections of artifacts for use and enjoyment of the general public (Target = 9,000 items).

UTAH NATIONAL GUARD

Item 2

To Utah National Guard
From General Fund 6,770,300
From Federal Funds 66,760,000
From Dedicated Credits Revenue 20,000
Schedule of Programs:
Administration 1,236,700
Operations and Maintenance 71,313,600
Tuition Assistance 1,000,000

The Legislature intends that the Utah National Guard report by October 17, 2017 to the Executive Appropriations Committee on the following performance measures for the National Guard line item: (1) Personnel readiness (Target = 100% assigned strength); (2) Individual training readiness (Target = 90% Military Occupational Specialty qualification); (3) Collective unit training readiness (Target = 100% fulfillment of every mission assigned by the Commander in Chief and, for units in training years 3 and 4 of the Sustainment Readiness Model, 80% attendance at unit annual training); and (4) Installation readiness (Target = Installation Status Report of category 2 or higher for each facility).

DEPARTMENT OF VETERANS' AND MILITARY AFFAIRS

Item 3

To Department of Veterans' and Military Affairs - Veterans' and Military Affairs
From General Fund 3,278,600
From Federal Funds 459,000
From Dedicated Credits Revenue 225,300
From Beginning Nonlapsing Balances . . . 301,200
From Closing Nonlapsing Balances . . . (208,200)
Schedule of Programs:
Administration 612,200
Cemetery 676,300
State Approving Agency 159,000
Outreach Services 1,794,800
Military Affairs 813,600

The Legislature intends that the Department of Veterans' and Military Affairs report by October 17, 2017 to the Executive Appropriations Committee on the following performance measures for the Veterans' and

Military Affairs line item: (1) Provide programs that assist veterans with filing and receiving compensation, pension, and educational benefits administered by the U.S. Veterans' Administration (Target = 5% annual growth); (2) Assist in ensuring veterans are employed in the Utah workforce (Target = Veterans' unemployment rate no greater than the statewide unemployment rate); (3) Increase the number of current conflict veterans that are connected to appropriate services (Target = 10% annual increase); (4) Provide veterans with a full range of burial services and related benefits that reflect dignity, compassion, and respect (Target = 95% satisfaction); and (5) Identify, plan, and advise on military mission workload opportunities through engagement with federal and state parties and decision makers (Target = 95%).

LEGISLATURE

Item 4

To Legislature - Senate
 From General Fund 2,936,800
 From Beginning Nonlapsing Balances 1,789,800
 From Closing Nonlapsing Balances . . . (1,789,800)
 Schedule of Programs:
 Administration 2,936,800

Item 5

To Legislature - House of Representatives
 From General Fund 4,962,000
 From Beginning Nonlapsing Balances 2,987,100
 From Closing Nonlapsing Balances . . . (2,987,100)
 Schedule of Programs:
 Administration 4,962,000

Item 6

To Legislature - Legislative Printing
 From General Fund 590,500
 From Dedicated Credits Revenue 252,200
 From Beginning Nonlapsing Balances . . . 445,900
 From Closing Nonlapsing Balances . . . (445,900)
 Schedule of Programs:
 Administration 842,700

Item 7

To Legislature - Office of Legislative Research and General Counsel
 From General Fund 9,467,400
 From Beginning Nonlapsing Balances 1,566,800
 From Closing Nonlapsing Balances . . . (1,566,800)
 Schedule of Programs:
 Administration 9,467,400

The Legislature intends that the Office of Legislative Research and General Counsel report by July 1, 2018 to the Subcommittee on Oversight on the following performance measures for the Legislative Research and General Counsel line item, based on average scores from legislative surveys with a possible

rating of 1-5 (5 being highest): (1) Timeliness of research and information provided by LRG (Target = Greater than 4.15); (2) Contact by staff in a timely manner after opening bill files (Target = Greater than 4.22); (3) Quality of research and information provided by LRG (Target = Greater than 4.48; and (4) Staff presentations at interim meetings (Target = Greater than 4.49).

Item 8

To Legislature - Legislative Services
 From General Fund 1,273,700
 From Beginning Nonlapsing Balances . . . 652,700
 From Closing Nonlapsing Balances . . . (652,700)
 Schedule of Programs:
 Administration 1,273,700

Item 9

To Legislature - Office of the Legislative Fiscal Analyst
 From General Fund 3,384,800
 From Beginning Nonlapsing Balances 1,379,700
 From Closing Nonlapsing Balances . . . (1,379,700)
 Schedule of Programs:
 Administration and Research 3,384,800

The Legislature intends that the Legislative Fiscal Analyst report by October 17, 2017 to the Subcommittee on Oversight on the following performance measures for the Legislative Fiscal Analyst line item: (1) On-target revenue estimates (Target = 92% accurate for estimates 18 months out, 98% accurate for estimates four months out); (2) Correct appropriations bills (Target = 99%); (3) Unrevised fiscal notes (Target = 99.5%); and (4) Timely fiscal notes (Target = 95%).

Item 10

To Legislature - Office of the Legislative Auditor General
 From General Fund 3,890,600
 From Beginning Nonlapsing Balances . . . 894,700
 From Closing Nonlapsing Balances . . . (894,700)
 Schedule of Programs:
 Administration 3,890,600

The Legislature intends that the Legislative Auditor General report by October 17, 2017 to the Subcommittee on Oversight on the following performance measures for the Legislative Auditor General line item: (1) Total audits completed each year (Target = 18); (2) Agency recommendations implemented (Target = 98%); and (3) Legislative recommendations implemented (Target = 85%).

Subsection 1(b). Expendable Funds and

Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further

legislative action according to a fund or account's applicable authorizing statute.

funds must be authorized elsewhere in an appropriations act.

CAPITOL PRESERVATION BOARD

Item 11

To Capitol Preservation Board - State
 Capitol Restricted Special Revenue Fund
 From Dedicated Credits Revenue 481,000
 From Beginning Fund Balance 572,700
 From Closing Fund Balance (441,100)
 Schedule of Programs:
 State Capitol Fund 612,600

Item 14

To GFR - National Guard Death Benefits Account
 From General Fund 9,500
 Schedule of Programs:
 National Guard Death Benefits Account . . 9,500

Section 2. Effective Date.

This bill takes effect on July 1, 2017.

UTAH NATIONAL GUARD

Item 12

To Utah National Guard - National Guard
 MWR Fund
 From Dedicated Credits Revenue 1,500,000
 Schedule of Programs:
 National Guard MWR Fund 1,500,000

The Legislature intends that the Utah National Guard report by October 17, 2017 to the Executive Appropriations Committee on the following performance measures for the Morale, Welfare, and Recreation Fund line item: (1) Sustainability (Target = Income equal to or greater than expenses); and (2) Enhanced morale (Target = 70% positive feedback).

DEPARTMENT OF VETERANS' AND MILITARY AFFAIRS

Item 13

To Department of Veterans' and Military Affairs -
 Utah Veterans' Nursing Home Fund
 From Federal Funds 21,400,000
 From Dedicated Credits Revenue 80,500
 From Interest Income 31,000
 From Beginning Fund Balance 4,789,700
 From Closing Fund Balance (4,789,700)
 Schedule of Programs:
 Veterans' Nursing Home Fund 21,511,500

The Legislature intends that the Department of Veterans' and Military Affairs report by October 17, 2017 to the Executive Appropriations Committee on the following performance measures for the Veterans' Nursing Home Fund line item: (1) Occupancy rate (Target = 95% average); (2) Compliance with all state and federal regulations for operations, licensing, and payments (Target = 95%); (3) Best in class rating in all national customer satisfaction surveys (Target = 80%); and (4) Deviations in operations, safety, or payments are addressed within specified times (Target = 95%).

Subsection 1(c). Restricted Fund and Account Transfers.

The Legislature authorizes the State Division of Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient

CHAPTER 6**S. B. 1**

Passed February 7, 2017
 Approved February 16, 2017
 Effective July 1, 2017

**PUBLIC EDUCATION
 BASE BUDGET AMENDMENTS**

Chief Sponsor: Lyle W. Hillyard
 House Sponsor: Daniel McCay

LONG TITLE**General Description:**

This bill appropriates funds for the support and operation of public education for the fiscal year beginning July 1, 2017, and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides appropriations for the use and support of state education agencies;
- ▶ provides appropriations for the use and support of school districts and charter schools;
- ▶ sets the value of the weighted pupil unit (WPU) initially at \$3,184 for fiscal year 2018;
- ▶ sets the estimated minimum basic tax rate at .001596 for fiscal year 2018;
- ▶ provides appropriations for other purposes as described; and
- ▶ provides intent language.

Monies Appropriated in this Bill:

This bill appropriates for fiscal year 2018:

- ▶ \$4,309,500 from the General Fund;
- ▶ \$23,000,000 from the Uniform School Fund;
- ▶ \$3,048,635,500 from the Education Fund; and
- ▶ \$1,523,226,100 from various sources as detailed in this bill.

This bill appropriates \$2,977,000 in expendable funds and accounts for fiscal year 2018.

This bill appropriates \$78,000,000 in restricted fund and account transfers for fiscal year 2018, including:

- ▶ \$3,000,000 from the General Fund; and
- ▶ \$75,000,000 from the Education Fund.

This bill appropriates \$147,900 in fiduciary funds for fiscal year 2018.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

53A-17a-135, as last amended by Laws of Utah 2016, Chapter 2

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 6. Section 53A-17a-135 is amended to read:

53A-17a-135. Minimum basic tax rate -- Certified revenue levy.

(1) As used in this section, "basic levy increment rate" means a tax rate that will generate an amount of revenue equal to \$75,000,000.

(2) (a) In order to qualify for receipt of the state contribution toward the basic program and as its contribution toward its costs of the basic program, each school district shall impose a minimum basic tax rate per dollar of taxable value that generates [~~\$392,266,800~~] \$399,041,300 in revenues statewide.

(b) The preliminary estimate for the [~~2016-17~~] 2017-18 minimum basic tax rate is [~~.001695~~] .001596.

(c) The State Tax Commission shall certify on or before June 22 the rate that generates [~~\$392,266,800~~] \$399,041,300 in revenues statewide.

(d) If the minimum basic tax rate exceeds the certified revenue levy as defined in Section 53A-17a-103, the state is subject to the notice requirements of Section 59-2-926.

(3) (a) The state shall contribute to each district toward the cost of the basic program in the district that portion which exceeds the proceeds of the difference between:

(i) the minimum basic tax rate to be imposed under Subsection (2); and

(ii) the basic levy increment rate.

(b) In accordance with the state strategic plan for public education and to fulfill its responsibility for the development and implementation of that plan, the Legislature instructs the State Board of Education, the governor, and the Office of Legislative Fiscal Analyst in each of the coming five years to develop budgets that will fully fund student enrollment growth.

(4) (a) If the difference described in Subsection (3)(a) equals or exceeds the cost of the basic program in a school district, no state contribution shall be made to the basic program.

(b) The proceeds of the difference described in Subsection (3)(a) that exceed the cost of the basic program shall be paid into the Uniform School Fund as provided by law.

(5) The State Board of Education shall:

(a) deduct from state funds that a school district is authorized to receive under this chapter an amount equal to the proceeds generated within the school district by the basic levy increment rate; and

(b) deposit the money described in Subsection (5)(a) into the Minimum Basic Growth Account created in Section 53A-17a-135.1.

Section 7. Appropriations for state education agencies, school districts, and charter schools -- Value of weighted pupil unit.

(1) The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

(2) The value of the weighted pupil unit for fiscal year 2018 is initially set at \$3,184.

Item 1

To State Board of Education - Minimum School Program - Basic School Program

From Uniform School Fund	23,000,000
From Education Fund	2,273,000,500
From Local Revenue	399,041,300
From Beginning Nonlapsing Balances	11,042,700
From Closing Nonlapsing Balances	(11,042,700)
Schedule of Programs:	
Kindergarten (27,529 WPUs)	87,652,300
Grades 1 - 12 (576,394 WPUs)	1,842,013,000
Foreign Exchange (328 WPUs)	1,044,400
Necessarily Existent Small Schools (9,514 WPUs)	30,292,700
Professional Staff (55,577 WPUs)	176,957,200
Administrative Costs (1,490 WPUs)	4,744,200
Special Education - Add-On (77,514 WPUs)	246,804,500
Special Education - Preschool (10,238 WPUs)	32,597,800
Special Education - Self-Contained (13,940 WPUs)	44,385,000
Special Education - Extended School Year (429 WPUs)	1,365,900
Special Education - Impact Aid (2,016 WPUs)	6,418,900
Special Education - Intensive Services (397 WPUs)	1,264,000
Special Education - Extended Year for Special Educators (909 WPUs)	2,894,300
Career and Technical Education - Add-On (28,040 WPUs)	89,279,400
Class Size Reduction (39,990 WPUs)	127,328,200

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the Basic School Program:

- (a) High School Graduation (Target = 90%);
- (b) ACT Performance (Target = increase the number of students earning an 18 composite score);
- (c) Career and Technical Education Career Pathway Completer (Target = 40%); and
- (d) Career and Technical Education Career Pathway Concentrator (Target = 75%).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 2

To State Board of Education - Minimum School Program - Related to Basic School Programs

From Education Fund	531,326,900
From Interest and Dividends Account	45,000,000
From Beginning Nonlapsing Balances	14,044,400
From Closing Nonlapsing Balances	(14,044,400)
Schedule of Programs:	
To and From School - Pupil Transportation	79,265,300
Pupil Transportation Grants for Unsafe Routes	500,000
Guarantee Transportation Program	500,000
Flexible Allocation - WPU Distribution	7,788,000
Enhancement for At-Risk Students	26,539,500
Youth in Custody	21,505,000
Adult Education	10,563,900
Enhancement for Accelerated Students	4,764,000
Centennial Scholarship Program	250,000
Concurrent Enrollment	10,209,200
Title I Schools Paraeducators Program	300,000
School LAND Trust Program	45,000,000
Charter School Local Replacement	135,356,000
Charter School Administration	7,463,700
K-3 Reading Improvement	15,000,000
Educator Salary Adjustments	167,094,400
USFR Teacher Salary Supplement Restricted Account	6,799,900
School Library Books and Electronic Resources	850,000
Matching Fund for School Nurses	1,002,000
Critical Languages and Dual Immersion	2,956,000
USTAR Centers (Year-Round Math and Science)	6,200,000
Beverly Taylor Sorenson Elementary Arts	8,880,000
Early Intervention	7,500,000
Digital Teaching and Learning Program	10,040,000

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the Related to Basic School Program:

- (a) Students Earning At Least One Advanced Credit (Target = 98%);
- (b) Students Earning At Least One Advanced Credit Above Graduation Requirement (Target = 89%); and
- (c) Advanced Coursework Offered in High School (Target = increase from the current average of 69 courses).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better

reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 3

To State Board of Education - Minimum School Program - Voted and Board Local Levy Programs

From Education Fund	123,416,200
From Education Fund Restricted -	
Minimum Basic Growth Account	56,250,000
From Local Revenue	414,776,500
Schedule of Programs:	
Voted Local Levy Program	444,226,900
Board Local Levy Program	135,215,800
Board Local Levy Program -	
Reading Improvement	15,000,000

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for Voted and Board Local Levy Programs:

- (a) School Districts Maximizing State Guarantee Tax Increments (Target = 41 school districts);
- (b) Equalization Funding -- Voted Local Levy Program (Target = none); and
- (c) Equalization Funding -- Board Local Levy Program (Target = none).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 4

To State Board of Education - School Building Programs

From Education Fund	14,499,700
From Education Fund Restricted -	
Minimum Basic Growth Account	18,750,000
Schedule of Programs:	
Foundation Program	27,610,900
Enrollment Growth Program	5,638,800

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the School Building Program:

- (a) Equalization Funding (Target = none);
- (b) State Funding Reach to School Districts (Target = 41 school districts); and
- (c) State Funding Impact (Target = none).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 5

To State Board of Education - State Administrative Office

From General Fund	307,800
From Education Fund	35,289,900
From Federal Funds	340,891,900
From Dedicated Credits Revenue	6,008,900
From General Fund Restricted -	
Mineral Lease	1,688,500
From General Fund Restricted - Land	
Exchange Distribution Account	16,900
From General Fund Restricted -	
Substance Abuse Prevention	506,400
From Interest and Dividends	
Account	635,100
From Land Grant Management Fund	2,000
From Revenue Transfers	1,482,500

Schedule of Programs:

Assessment and Accountability	17,895,500
Educational Equity	128,300
Board and Administration	13,627,100
Business Services	972,200
Career and Technical Education	20,581,900
District Computer Services	6,307,100
Federal Elementary and Secondary	
Education Act	112,889,400
Law and Legislation	230,400
Math Teacher Training	500,000
Public Relations	162,500
School Trust	592,700
Special Education	181,065,300
Teaching and Learning	30,877,500
Statewide Online Education	
Program	750,000
Pilot Teacher Retention	
Grant Program	250,000

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the State Administrative Office line item:

- (a) LEA IDEA noncompliance correction (Target = 100%);
- (b) Special Education funding alignment with formula and State Board of Education board rule (Target = 95%); and
- (c) LEA professional development (Target = 100%).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 6

To State Board of Education - Minimum School Program Categorical Program Administration

From Education Fund	1,442,500
From Revenue Transfers	(148,700)
From Beginning Nonlapsing Balances	100
From Closing Nonlapsing Balances	(200)

Schedule of Programs:

CTE Comprehensive Guidance	150,300
Enhancement for At-Risk Students	257,100
Youth-In-Custody	404,800
Adult Education	206,100
Dual Immersion	181,000
Beverly Taylor Sorenson Elementary Arts	94,400

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the Minimum School Program Categorical Program Administration line item:

(a) Professional development for dual immersion teachers (Target = 500 teachers);

(b) Support for guest dual immersion teachers (Target = 100 teachers);

(c) Advanced coursework offered in high schools (Target = 15 schools/5,000 students);

(d) Beverly Taylor Sorenson (BTS) program application processing (Target = 34 districts/22 charter schools);

(e) Process applications for BTS professional development (Target = 7 colleges); and

(f) BTS fidelity of program implementation (Target = 50 site visits and 100% review of annual reports).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 7

To State Board of Education - Initiative Programs

From General Fund	4,001,700
From Education Fund	27,616,000
From General Fund Restricted - Autism Awareness Account	10,000
From Revenue Transfers (Beginning Nonlapsing Balances)	40,200
From Closing Nonlapsing Balances	(40,200)
Schedule of Programs:	
Contracts and Grants	300,000
Electronic High School	2,600
Upstart Early Childhood Education	6,263,900
ProStart Culinary Arts Program	403,100
CTE Online Assessments	341,000
General Financial Literacy	178,000
Carson Smith Scholarships	3,981,100
Paraeducator to Teacher Scholarships	24,500
Electronic Elementary Reading Tool	2,100,000

ELL Software Licenses	3,000,000
Autism Awareness	10,000
Early Intervention	4,600,000
Peer Assistance	400,000
Intergenerational Poverty Interventions	1,000,000
School Turnaround and Leadership Development Act	6,974,800
Partnerships for Student Success	1,980,400

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the Initiative Programs line item:

(a) Carson Smith Scholarship (CSS) annual compliance reporting (Target = 100%);

(b) CSS on-site compliance verification (Target = 33%);

(c) CSS document review compliance verification (Target = 100%);

(d) Award Paraeducator to Teacher Scholarships (PETTS) (Target = 100%);

(e) Geographical distribution of PETTS recipients (Target = 100%);

(f) Report PETTS award winners annually to Utah State Board of Education (Target = 100%);

(g) Autism Awareness annual compliance reporting (Target = 100%);

(h) Autism Awareness compliance with statute (Target = 100%); and

(i) Distribution of Autism Awareness funding (Target = 100%).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 8

To State Board of Education - State Charter School Board

From Education Fund	3,854,400
From Revenue Transfers	(181,600)

Schedule of Programs:	
State Charter School Board	3,672,800

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the State Charter School Board line item:

(a) Communication survey average score from stakeholders (Target = 5);

(b) Increase charter schools in compliance with charter agreement (Target = 75%); and

(c) Develop plan for restructuring the Charter board staff (Target = complete plan).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 9

To State Board of Education - Utah
Charter School Finance Authority
From Education Fund Restricted -
Charter School Reserve Account 50,000
Schedule of Programs:
Utah Charter School Finance
Authority 50,000

Item 10

To State Board of Education - Educator
Licensing Professional Practices
From Dedicated Credits Revenue 34,500
From Professional Practices
Restricted Subfund 2,423,000
From Revenue Transfers (317,500)
Schedule of Programs:
Educator Licensing 2,140,000

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the Educator Licensing line item:

- (a) Background checks for educators (Target = 100%);
- (b) Background check response and notification of LEA within 72 hours (Target = 100%);
- (c) Licensing standards (Target = 95%);
- (d) Teacher preparation in assigned subject area (Target = 95%); and
- (e) Educator license support (Target = 90% of educators responded to within 72 hours and 75% of all issues resolved within 5 business days).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 11

To State Board of Education - Child Nutrition
From Education Fund 143,800
From Federal Funds 159,619,700
From Dedicated Credit -
Liquor Tax 39,262,300
From Revenue Transfers (321,600)
Schedule of Programs:
Child Nutrition 198,704,200

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations

Subcommittee on the following performance measures for the Child Nutrition line item:

- (a) School districts served (Target = 41);
- (b) Administrative reviews completed (Target = 100% over a three-year cycle); and
- (c) Programming at new sites (Target = 70).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 12

To State Board of Education -
Child Nutrition - Federal Commodities
From Federal Funds 19,159,300
Schedule of Programs:
Child Nutrition - Federal
Commodities 19,159,300

Item 13

To State Board of Education - Fine Arts Outreach
From Education Fund 3,925,000
Schedule of Programs:
Professional Outreach Programs . . . 3,871,000
Subsidy Program 54,000

(1) (a) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for Fine Arts Outreach -- Professional Outreach in the Schools Program:

- (i) Local Education Agencies Served in a Three-Year Period (Target = 95%);
- (ii) Number of Students and Educators Receiving Services (Target = 450,000 students/ 25,000 teachers); and
- (iii) Efficacy of Education Programming as Determined by Peer Review (Target = 85%).

(b) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

(2) (a) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for Fine Arts Outreach -- Subsidy Program:

- (i) Local Education Agencies Served in a Three-Year Period (Target = 85%);
- (ii) Number of Students and Educators Receiving Services (Target = 140,000 students/ 5,000 teachers); and
- (iii) Efficacy of Education Programming as Determined by Peer Review (Target = 90%).

(b) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 14

To State Board of Education - Science Outreach
From Education Fund 4,390,000
Schedule of Programs:
Informal Science Education
Enhancement 4,115,000
Provisional Program 225,000
Integrated Student and New
Facility Learning 50,000

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for Science Outreach:

- (a) Student Science Experiences (Target = 250,000);
- (b) Student Field Trips (Target = 200,000); and
- (c) Teacher Professional Development (Target = 7,000).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 15

To State Board of Education - Educational Contracts
From Education Fund 3,140,300
Schedule of Programs:
Youth Center 1,153,200
Corrections Institutions 1,987,100

Item 16

To State Board of Education - Utah Schools for the Deaf and the Blind
From Education Fund 26,470,300
From Federal Funds 99,100
From Dedicated Credits Revenue 1,584,200
From Revenue Transfers 5,671,700
From Beginning Nonlapsing
Balances 2,347,800
From Closing Nonlapsing
Balances (900,300)
Schedule of Programs:
Educational Services 16,040,400
Support Services 19,232,400

(1) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the Utah Schools for the Deaf and the Blind line item:

(a) Campus educational services (Target = increase K-12 literacy scores by 3%);

(b) Outreach educational services (Target = increase K-12 literacy scores by 5%); and

(c) Deaf-Blind Educational Services (Target = improve communication matrix scores by 3%).

(2) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

Item 17

To State Board of Education - Teaching and Learning
From Education Fund 120,000
From Revenue Transfers 8,974,800
Schedule of Programs:
Student Access to High Quality
School Readiness Programs 9,094,800

(1) (a) The Legislature intends that the State Board of Education report on or before September 30, 2017, to the Public Education Appropriations Subcommittee on the following performance measures for the Teaching and Learning line item: Preschool proficiency (Target = 10 percentage points greater than peers; and

(b) The Legislature further intends that the State Board of Education include in the report a mission for each line item, any recommended changes to these initial performance measures that may better reflect that mission, as well as the broader goals for the public education system established by the State Board of Education.

(2) The Legislature intends that:

(a) for fiscal years 2018 and 2019, the Department of Workforce Services shall allocate up to \$11,000,000 of Temporary Assistance for Needy Families funding to fund programs described in Title 53A, Chapter 1b, Part 2, Expanded Access to High Quality School Readiness Programs Act;

(b) the State Board of Education shall use funds appropriated from Revenue Transfer - Temporary Assistance for Needy Families consistent with federal requirements for those funds; and

(c) the State Board of Education may:

(i) use up to \$140,000 of the appropriation to the State Board of Education to contract with an independent evaluator to conduct an evaluation, as required by Section 53A-1b-208;

(ii) use up to \$2,000,000 of the appropriation to the State Board of Education to provide grants for home-based technology school readiness programs, as described in Section 53A-1b-205; and

(iii) use the ongoing appropriation to the State Board of Education from the Education Fund for administrative costs.

Item 18

To School and Institutional Trust Fund Office
 From School and Institutional Trust
 Fund Management Account 877,800
 Schedule of Programs:
 School and Institutional Trust
 Fund Office 877,800

Section 8. Expendable funds and accounts.

The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account's applicable authorizing statute.

Item 19

To State Board of Education - Charter
 School Revolving Account
 From Interest Income 56,200
 From Repayments 1,511,400
 From Beginning Nonlapsing
 Balances 6,989,300
 From Closing Nonlapsing
 Balances (7,045,500)
 Schedule of Programs:
 Charter School Revolving
 Account 1,511,400

Item 20

To State Board of Education - School
 Building Revolving Account
 From Interest Income 83,900
 From Repayments 1,465,600
 From Beginning Nonlapsing
 Balances 9,833,600
 From Closing Nonlapsing
 Balances (9,917,500)
 Schedule of Programs:
 School Building Revolving
 Account 1,465,600

Item 21

To State Board of Education - Child
 Nutrition Program Commodities Fund
 From Dedicated Credits Revenue 200
 From Beginning Nonlapsing Balances 200
 From Closing Nonlapsing Balances (400)

Section 9. Fund and account transfers.

The Legislature authorizes the State Division of Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere in an appropriations act.

Item 22

To General Fund Restricted - School
 Readiness Account
 From General Fund 3,000,000
 Schedule of Programs:
 General Fund Restricted - School
 Readiness Account 3,000,000

Item 23

To Education Fund Restricted - Minimum
 Basic Growth Account
 From Education Fund 75,000,000
 Schedule of Programs:
 Education Fund Restricted - Minimum
 Basic Growth Account 75,000,000

Section 10. Fiduciary funds.

The Legislature has reviewed proposed revenues, expenditures, fund balances, and changes in fund balances for the following fiduciary funds.

Item 24

To State Board of Education - Schools for
 the Deaf and the Blind Donation Fund
 From Dedicated Credits Revenue 115,000
 From Interest Income 5,400
 From Beginning Nonlapsing
 Balances 687,800
 From Closing Nonlapsing
 Balances (687,800)
 Schedule of Programs:
 Schools for the Deaf and the
 Blind Donation Fund 120,400

Item 25

To State Board of Education - Education
 Tax Check-Off Lease Refunding
 From Trust and Agency Funds 27,500
 From Beginning Nonlapsing
 Balances 28,700
 From Closing Nonlapsing
 Balances (28,700)
 Schedule of Programs:
 Education Tax Check-Off Lease
 Refunding 27,500

Section 11. Effective date.

This bill takes effect on July 1, 2017.

**CHAPTER 7
S.B. 5**

Passed February 7, 2017
Approved February 16, 2017
Effective July 1, 2017

**NATURAL RESOURCES, AGRICULTURE,
AND ENVIRONMENTAL QUALITY BASE
BUDGET**

Chief Sponsor: David P. Hinkins
House Sponsor: Ken Ivory

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides appropriations for the use and support of certain state agencies; and
- ▶ provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates \$343,805,600 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$67,780,700 from the General Fund;
- ▶ \$276,024,900 from various sources as detailed in this bill.

This bill appropriates \$15,147,100 in expendable funds and accounts for fiscal year 2018.

This bill appropriates \$60,946,600 in business-like activities for fiscal year 2018.

This bill appropriates \$5,379,800 in restricted fund and account transfers for fiscal year 2018, including:

- ▶ \$4,171,100 from the General Fund;
- ▶ \$1,208,700 from various sources as detailed in this bill.

Other Special Clauses:

This bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

DEPARTMENT OF NATURAL RESOURCES

Item 1

To Department of Natural Resources -
Administration

From General Fund	2,552,900
From General Fund Restricted -	
Sovereign Land Management	78,000
From Beginning Nonlapsing Balances . . .	100,000
Schedule of Programs:	
Executive Director	1,252,400
Administrative Services	970,000
Public Information Office	214,900
Lake Commissions	78,700
Law Enforcement	214,900

The Legislature intends that the Department of Natural Resources report on the following performance measures for the DNR Administration line item, whose mission is “to facilitate economic development and wise use of natural resources to enhance the quality of life in Utah”: (1) To keep the ratio of total employees in DNR in proportion to the employees in DNR administration at greater than or equal to 55:1 (Target = 55:1), (2) To continue to grow non-general fund revenue sources in order to maintain a total DNR non-general fund ratio to total funds at 80% or higher (Target = 80%), (3) To complete regionalization of the DNR operations to improve customer support services in field locations (Target = 100%) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 2

To Department of Natural Resources -
Species Protection

From General Fund	300
From Dedicated Credits Revenue	2,450,000
From General Fund Restricted -	
Species Protection	637,800
From Beginning Nonlapsing Balances . . .	200,000
Schedule of Programs:	
Species Protection	3,288,100

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Species Protection line item, whose mission is “To eliminate the need in Utah for federal regulatory intervention and oversight associated with the Endangered Species Act: (1) Utah Lake Carp Removal (Target = 75% reduction in the number of carp while accounting for recruitment of young each year), (2) Red Shiner Eradication (Target = Eliminate 100% of Red Shiner from 37 miles of the Virgin River in Utah), and (3) June Sucker Population Enhancement (Target = 5,000 adult spawning June Sucker) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 3

To Department of Natural Resources -
Building Operations

From General Fund	1,788,800
Schedule of Programs:	
Building Operations	1,788,800

The Legislature intends that the Department of Natural Resources report on

the following performance measures for the Building Operations line item, whose mission is “to facilitate economic development and wise use of natural resources to enhance the quality of life in Utah”: (1) With two aging facilities we have a goal to request DFCM keep our O&M rates at the current cost of \$4.25 (Target = 100%), (2) The current DFCM O&M rate at \$4.25 is comparable to the private sector rate of \$6.45. The goal is to have the DFCM O&M rate remain 32% more cost competitive than the private sector rate. (Target = 32%) (3) Establish a baseline of customer service satisfaction with HVAC operation, facility cleanliness and general operations through a customer service survey conducted by the DNR audit team before July of 2017. The goal is to improve building services customer satisfaction with DFCM facility operations by 10% in the following survey date in 2018. (Target = 10%) by October 15, 2018 to the Natural Resources Appropriations Subcommittee.

Item 4

To Department of Natural Resources -
 DNR Pass Through
 From General Fund 908,400
 Schedule of Programs:
 DNR Pass Through 908,400

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Pass Through line item, whose mission is “to facilitate economic development and wise use of natural resources to enhance the quality of life in Utah”: (1) To pass funding from legislative appropriations to other entities such as zoos, counties and other public and non-public entities. The goal is to complete these transactions in accordance with legislative direction (Target = 100%), (2) To keep the charges to this account and the costs of auditing and administering these funds at 8% or less of the funding appropriated for pass through (Target = 8%), (3) To complete the project(s) within the established timeframe(s) and budget (Target = 100%) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 5

To Department of Natural Resources - Watershed
 From General Fund 1,705,600
 From Dedicated Credits Revenue 500,000
 From General Fund Restricted -
 Sovereign Land Management 2,000,000
 From Beginning Nonlapsing Balances ... 700,000
 Schedule of Programs:
 Watershed 4,905,600

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Watershed line item, whose mission is the “rehabilitation or restoration of priority watershed areas in order to address the needs

of water quality and yield, wildlife, agriculture and human needs”: (1) Number of acres treated (Target = 100,000 acres per year), (2) Ratio of DNR funds to partner contributions (Target = 5), and (3) Miles of stream and riparian areas restored (Target = 50 miles) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 6

To Department of Natural Resources -
 Forestry, Fire and State Lands
 From General Fund 2,538,100
 From Federal Funds 6,500,000
 From Dedicated Credits Revenue 6,500,000
 From General Fund Restricted -
 Sovereign Land Management 6,247,600
 From Beginning Nonlapsing
 Balances 5,000,000
 Schedule of Programs:
 Division Administration 1,146,000
 Fire Management 1,337,600
 Fire Suppression Emergencies 2,600,000
 Lands Management 862,300
 Forest Management 5,195,000
 Program Delivery 7,070,500
 Lone Peak Center 3,097,700
 Project Management 5,476,600

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Forestry, Fire, and State Lands line item, whose mission is “to manage, sustain, and strengthen Utah’s forests, range lands, sovereign lands and watersheds for its citizens and visitors”: (1) Fuel Reduction Treatment Acres (Target = 4,062), (2) Fire Fighters Trained to Meet Standards (Target = 2,391), and (3) Communities With Tree City USA Status (Target = 91) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 7

To Department of Natural Resources -
 Oil, Gas and Mining
 From General Fund 2,599,300
 From Federal Funds 7,540,000
 From Dedicated Credits Revenue 242,500
 From General Fund Restricted -
 Oil & Gas Conservation Account 4,415,200
 From Beginning Nonlapsing
 Balances 1,940,000
 Schedule of Programs:
 Administration 2,217,000
 Board 50,000
 Oil and Gas Program 4,289,200
 Minerals Reclamation 1,038,100
 Coal Program 2,127,700
 OGM Misc. Nonlapsing 1,940,000
 Abandoned Mine 5,075,000

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Oil, Gas, and Mining line item, whose mission is “The Division of Oil, Gas and Mining

regulates and ensures industry compliance and site restoration while facilitating oil, gas and mining activities”: (1) Timing of Issuing Coal Permits (Target = 100%), (2) Customer Satisfaction from Survey (Target = 4.4), and (3) Well Drilling Inspections without Violations (Target = 100%) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 8

To Department of Natural Resources -
 Wildlife Resources
 From General Fund 6,303,000
 From Federal Funds 26,190,900
 From Dedicated Credits Revenue 105,300
 From General Fund Restricted -
 Boating 700,000
 From General Fund Restricted -
 Mule Deer Protection Account 500,000
 From General Fund Restricted -
 Predator Control Account 800,000
 From Revenue Transfers 106,900
 From General Fund Restricted -
 Wildlife Conservation Easement
 Account 15,000
 From General Fund Restricted -
 Wildlife Habitat 2,923,100
 From General Fund Restricted -
 Wildlife Resources 36,172,300
 From Beginning Nonlapsing Balances ... 850,000
 Schedule of Programs:
 Director’s Office 2,491,500
 Administrative Services 8,747,600
 Conservation Outreach 5,354,200
 Law Enforcement 8,624,600
 Habitat Council 2,900,000
 Habitat Section 8,236,700
 Wildlife Section 17,557,900
 Aquatic Section 20,754,000

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Wildlife Resources Operations line item, whose mission is: “To serve the people of Utah as trustee and guardian of states wildlife”: (1) Number of people participating in hunting and fishing in Utah (Targets = 475,000 anglers and 230,000 hunters), (2) Percentage of law enforcement contacts without a violation (Target = 95%), and (3) Number of participants at DWR shooting ranges (Target = 65,000) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 9

To Department of Natural Resources -
 Predator Control
 From General Fund 59,600
 Schedule of Programs:
 Predator Control 59,600

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Wildlife Resources Predator Control line item, whose mission is “To serve the people of

Utah as trustee and guardian of states wildlife”: (1) That the funds were transferred (Target 100%), (2) That DWR review the use of these funds (Target = 1), and (3) DWR be able to report on the use of these funds as needed (Target = 1) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 10

To Department of Natural Resources -
 Contributed Research
 From Dedicated Credits Revenue 1,503,100
 Schedule of Programs:
 Contributed Research 1,503,100

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Wildlife Resources Contributed Research line item, whose mission is “To serve the people of Utah as trustee and guardian of states wildlife”: (1) Percentage of mule deer units at or exceeding 90% of their population objective (Target = 50%), (2) Percentage of elk units at or exceeding 90% of their population objective (Target = 75%), and (3) Maintain positive hunter satisfaction index for general season deer hunt (Target = 3.3) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 11

To Department of Natural Resources -
 Cooperative Agreements
 From Federal Funds 12,359,100
 From Dedicated Credits Revenue 1,104,600
 From Revenue Transfers 5,603,800
 Schedule of Programs:
 Cooperative Agreements 19,067,500

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Wildlife Resources Cooperative Studies line item, whose mission is “To serve the people of Utah as trustee and guardian of states wildlife”: (1) Aquatic Invasive Species containment - number of public contacts and boat decontaminations (Targets = 135,000 contacts and 2,000 decontaminations), (2) Number of new wildlife species listed under the Endangered Species Act (Target = 0), and (3) Number of habitat acres restored annually (Target = 100,000) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 12

To Department of Natural Resources -
 Wildlife Resources Capital Budget
 From General Fund 649,400
 From Federal Funds 1,350,000
 From General Fund Restricted -
 State Fish Hatchery Maintenance ... 1,205,000
 Schedule of Programs:
 Fisheries 3,204,400

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Wildlife Resources Capital Facilities line item, whose mission is “To serve the people of Utah as trustee and guardian of states wildlife”: (1) Average score from annual DFCM facility audits (Target = 90%), (2) New Motor Boat Access projects (Target = 10), and (3) Number of hatcheries in operation (Target = 12) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 13

To Department of Natural Resources -
Parks and Recreation

From General Fund	4,548,600
From Federal Funds	1,500,300
From Dedicated Credits Revenue	1,033,400
From General Fund Restricted - Boating	4,623,800
From General Fund Restricted - Off-highway Access and Education	17,500
From General Fund Restricted - Off-highway Vehicle	6,073,700
From General Fund Restricted - State Park Fees	17,241,700
From Revenue Transfers	35,300
From General Fund Restricted - Zion National Park Support Programs ...	4,000
Schedule of Programs:	
Executive Management	815,800
Park Operation Management	28,981,900
Planning and Design	857,000
Support Services	1,863,200
Recreation Services	1,556,400
Park Management Contracts	1,004,000

The Legislature intends that the Division of Parks and Recreation report on the following performance measures for the Operations line item, whose mission is “To enhance the quality of life by preserving and providing natural, cultural, and recreational resources for the enjoyment, education, and inspiration of this and future generations”: (1) Total Revenue Collections (Target = \$29,250,000), (2) Gate Revenue (Target = \$19,150,000), and (3) Expenditures (Target = \$28,500,000) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 14

To Department of Natural Resources -
Parks and Recreation Capital Budget

From General Fund	39,700
From Federal Funds	3,119,700
From Dedicated Credits Revenue	25,000
From General Fund Restricted - Boating	575,000
From General Fund Restricted - Off-highway Vehicle	400,000
From General Fund Restricted - State Park Fees	433,000
From Beginning Nonlapsing Balances	2,722,800
Schedule of Programs:	

Renovation and Development	2,213,900
Major Renovation	458,500
Trails Program	2,702,100
Donated Capital Projects	25,000
Region Renovation	100,000
Land and Water Conservation	447,600
Boat Access Grants	603,000
Off-highway Vehicle Grants	765,100

The Legislature intends that the Division of Parks and Recreation report on the following performance measures for the Capital line item, whose mission is “To enhance the quality of life by preserving and providing natural, cultural, and recreational resources for the enjoyment, education, and inspiration of this and future generations”: (1) Donations Revenue (Target = \$137,000), (2) Capital renovation projects completed (Target = 11), and (3) Boating projects completed (Target = 17) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 15

To Department of Natural Resources -
Utah Geological Survey

From General Fund	4,155,900
From Federal Funds	856,100
From Dedicated Credits Revenue	953,200
From General Fund Restricted - Mineral Lease	1,490,100
From General Fund Restricted - Mineral Lease, One-Time	169,500
From Beginning Nonlapsing Balances ...	191,500
Schedule of Programs:	
Administration	743,300
Geologic Hazards	1,116,800
Board	3,500
Geologic Mapping	1,162,600
Energy and Minerals	1,460,500
Ground Water and Paleontology	1,559,100
Information and Outreach	1,770,500

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Utah Geological Survey line item, whose mission is “to provide timely, scientific information about Utahs geologic environment, resources, and hazards”: (1) Geologic Hazards Studies/Maps (Target = 25), (2) Public Inquires Answered (Target = 4,000), and (3) External Revenue Collected - Federal Funds and Dedicated Credits (Target = \$2 Million) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 16

To Department of Natural Resources -
Water Resources

From General Fund	2,980,800
From Federal Funds	500,000
From Dedicated Credits Revenue	150,000
From Water Resources Conservation and Development Fund	3,160,700
From Beginning Nonlapsing Balances ...	100,000
Schedule of Programs:	
Administration	826,000

Board	34,000
Interstate Streams	370,300
Planning	2,702,900
Cloudseeding	300,000
Construction	2,653,300
West Desert Operations	5,000

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Water Resources line item, whose mission is to “plan, conserve, develop and protect Utah’s water resources”: (1) Water conservation and development projects funded (Target = 15), (2) Reduction of per capita M&I water use (Target = 25%), and (3) Percentage of precipitation increase due to cloud seeding efforts (Target = 7%) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 17

To Department of Natural Resources -
Water Rights

From General Fund	8,627,000
From Federal Funds	115,000
From Dedicated Credits Revenue	2,232,400
From Beginning Nonlapsing Balances	200,000
Schedule of Programs:	
Administration	919,500
Applications and Records	4,567,900
Dam Safety	1,028,000
Field Services	1,243,200
Adjudication	1,413,200
Technical Services	1,863,600
Canal Safety	139,000

The Legislature intends that the Division of Water Rights report on the following performance measures for the Division of Water Rights line item, whose mission is “to promote order and certainty in the beneficial use of public water”: (1) Timely Application processing (Target = 80 days for uncontested applications), (2) Use of technology to provide information (Target = 1000 unique web users per month), and (3) (complete comprehensive adjudications) (Target = 2000 parties who’s claims have been addressed) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Item 18

To Department of Environmental Quality -
Executive Director’s Office

From General Fund	1,571,500
From Federal Funds	253,000
From Dedicated Credits Revenue	1,000
From General Fund Restricted - Environmental Quality	802,500
From Revenue Transfers	2,768,900
Schedule of Programs:	
Executive Director’s Office	5,396,900

The Legislature intends that the Department of Environmental Quality report

on the following performance measures for the Executive Directors Office, whose mission is “safeguarding and improving Utah’s air, land and water through balanced regulation”:

(1) Percent of systems within the Department involved in a continuous improvement project in the last year (Target-100%), (2) Percent of customers surveyed that reported good or exceptional customer service (Target = 90%), and (3) Number of state audit findings/Percent of state audit findings resolved within 30 days (Target = 0 and 100%), by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 19

To Department of Environmental Quality -
Air Quality

From General Fund	5,705,000
From Federal Funds	5,908,400
From Dedicated Credits Revenue	5,725,200
From Clean Fuel Conversion Fund	114,000
From Revenue Transfers	(1,113,900)
Schedule of Programs:	
Air Quality	16,338,700

The Legislature intends that the Department of Environmental Quality report on the following performance measures for the Division of Air Quality, whose mission is “to protect public health and the environment from the harmful effects of air pollution.” (1) Percent of facilities inspected that are in compliance with permit requirements (Target-100%), (2) Percent of approval orders that are issued within 180-days after the receipt of a complete application (Target = 95%), (3) Percent of data availability from the established network of air monitoring samplers for criteria air pollutants (Target = 100%). (4) Per Capita Rate of State-Wide Air Emissions (Target = 0.63), by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 20

To Department of Environmental Quality -
Environmental Response and Remediation

From General Fund	803,600
From Federal Funds	4,341,900
From Dedicated Credits Revenue	732,300
From General Fund Restricted - Petroleum Storage Tank	50,000
From Petroleum Storage Tank Trust Fund	1,803,500
From Revenue Transfers	(559,600)
From General Fund Restricted - Voluntary Cleanup	672,500
Schedule of Programs:	
Environmental Response and Remediation	7,844,200

The Legislature intends that the Department of Environmental Quality report on the following performance measures for the Division of Environmental Response and Remediation, whose mission is “to protect public health and Utah’s environment by

cleaning up contaminated sites, helping to return contaminated properties to a state of beneficial reuse, ensuring underground storage tanks are managed and used properly, and providing chemical usage and emission data to the public and local response agencies”: (1) Percent of UST facilities in Significant Operational Compliance at time of inspection, and in compliance within 60 days of inspection (Target = 90%), (2) Leaking Underground Storage Tank (LUST) site release closures, (Target = 70), (3) Issued brownfields tools facilitating cleanup and redevelopment of impaired properties, (Target = 10), by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 21

To Department of Environmental Quality -
Water Quality

From General Fund	3,190,300
From Federal Funds	5,418,000
From Dedicated Credits Revenue	1,585,600
From Revenue Transfers	141,200
From General Fund Restricted - Underground Wastewater System	76,000
From Water Dev. Security Fund - Utah Wastewater Loan Program	1,415,200
From Water Dev. Security Fund - Water Quality Origination Fee	100,000
Schedule of Programs: Water Quality	11,926,300

The Legislature intends that the Department of Environmental Quality report on the following performance measures for the Division of Water Quality, whose mission is “to protect, maintain and enhance the quality of Utah’s surface and underground waters for appropriate beneficial uses; and protect the public health through eliminating and preventing water related health hazards which can occur as a result of improper disposal of human, animal or industrial wastes while giving reasonable consideration to the economic impact”: (1) Percent of permits renewed “On-time”, (Target = 100%), (2) Percent of permit holders in compliance, (Target = 100%), (3) Municipal wastewater effluent quality (mg/L oxygen consumption potential), (Target = 331 mg/L oxygen consumption potential {state average} by 2025), by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 22

To Department of Environmental Quality -
Drinking Water

From General Fund	1,115,300
From Federal Funds	3,874,800
From Dedicated Credits Revenue	191,200
From Revenue Transfers	(406,800)
From Water Dev. Security Fund - Drinking Water Loan Program	953,100
From Water Dev. Security Fund - Drinking Water Origination Fee	213,900

Schedule of Programs:

Drinking Water	5,941,500
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The Legislature intends that the Department of Environmental Quality report on the following performance measures for the Division of Drinking Water, whose mission is “to cooperatively work with drinking water professionals and the public to ensure a safe and reliable supply of drinking water”: (1) Percent of population served by approved public water systems (Target = 99%), (2) Percent of water systems with an approved rating (Target = 95%), and (3) Number of water borne disease outbreaks (Target = 0), by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 23

To Department of Environmental Quality - Waste
Management and Radiation Control

From General Fund	733,200
From Federal Funds	1,338,700
From Dedicated Credits Revenue	2,112,400
From General Fund Restricted - Environmental Quality	6,007,200
From Revenue Transfers	(246,000)
From General Fund Restricted - Used Oil Collection Administration	792,800
From Waste Tire Recycling Fund	144,200

Schedule of Programs:

Waste Management and Radiation Control	10,882,500
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The Legislature intends that the Department of Environmental Quality report on the following performance measures for the Division of Waste Management and Radiation Control, whose mission is “to protect human health and the environment by ensuring proper management of solid wastes, hazardous wastes and used oil, and to protect the general public and occupationally exposed employees from sources of radiation that constitute a health hazard”: (1) Percent of x-ray machines in compliance (Target = 90%), (2) Percent of permits issued/modified within set timeframes (Target = 85%), (3) Percent of monitoring inspections completed within set time frame (Target = 100%), (4) Compliance Assistance for Small Businesses (Target = 50 businesses), by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

**PUBLIC LANDS POLICY
COORDINATING OFFICE**

Item 24

To Public Lands Policy Coordinating Office

From General Fund	1,400,100
From General Fund Restricted - Constitutional Defense	213,300
From Beginning Nonlapsing Balances	2,408,500

Schedule of Programs:

Public Lands Policy Coordinating Office	4,021,900
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The Legislature intends that the Public Lands Policy Coordinating Office (PLPCO), whose mission is “to preserve and defend rights to access, use and benefit from public lands within the State” report on the following performance measures: (1) County Customer Service: Percentage of Utah Counties which reported PLPCOs work as “very good” (Target = 70%), (2) Percentage of State Natural Resource Agencies working with PLPCOs which reported PLPCOs work as “very good” (Target = 70%), (3) Number of Public Land disputes in Utah directly engaged by PLPCO compared to the number of disputes that go unchallenged (Target 70%), by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 25

To Public Lands Policy Coordinating Office -
 Commission for Stewardship of Public Lands
 From Beginning Nonlapsing
 Balances 2,175,000
 Schedule of Programs:
 Commission for Stewardship of
 Public Lands 2,175,000

Item 26

To Public Lands Policy Coordinating Office -
 Public Lands Litigation
 From General Fund Restricted -
 Constitutional Defense 15,300
 From Beginning Nonlapsing
 Balances 1,047,600
 Schedule of Programs:
 Public Lands Litigation 1,062,900

GOVERNOR’S OFFICE

Item 27

To Governor’s Office - Office
 of Energy Development
 From General Fund 1,433,700
 From Federal Funds 400,300
 From Dedicated Credits Revenue 90,000
 From General Fund Rest. -
 Stripper Well-Petroleum Violation
 Escrow 12,800
 From Utah State Energy Program
 Revolving Loan Fund (ARRA) 110,000
 Schedule of Programs:
 Office of Energy Development 2,046,800

The Legislature intends that the Office of Energy Development, whose mission is “to advance Utahs energy and minerals economy through: energy policy, energy infrastructure and business development, energy efficiency and renewable energy programs, energy research, education and workforce development” report on the following performance measures: (1) Private Investment Leveraged (FY2017 Target = \$123,377,935), (2) Growth in Energy Production (FY2017 Target = -3.4%), (3) Constituents Directly Educated (FY2017 Target = 3,000), by October 15, 2018 to the Natural Resources, Agriculture, and

Environmental Quality Appropriations Subcommittee.

DEPARTMENT OF AGRICULTURE AND FOOD

Item 28

To Department of Agriculture and Food -
 Administration
 From General Fund 2,791,800
 From Federal Funds 467,200
 From Dedicated Credits Revenue 383,400
 From General Fund Restricted -
 Cat and Dog Community Spay and
 Neuter Program Restricted Account 30,000
 From General Fund Restricted -
 Horse Racing 21,700
 From Revenue Transfers 57,200
 From General Fund Rest. - Agriculture
 and Wildlife Damage Prevention 30,000
 Schedule of Programs:
 General Administration 2,679,200
 Chemistry Laboratory 1,048,100
 Sheep Promotion 30,000
 Utah Horse Commission 24,000

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Administration line item, whose mission is “Promote the healthy growth of Utah agriculture, conserve our natural resources and protect our food supply”: (1) Sample turnaround time (Target = 12 days), (2) Cost per sample (Target = \$175), and (3) Cost per test (Target = \$35) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 29

To Department of Agriculture and Food -
 Animal Health
 From General Fund 3,014,400
 From Federal Funds 1,607,700
 From Dedicated Credits Revenue 397,100
 From General Fund Restricted -
 Livestock Brand 1,076,500
 From Revenue Transfers 3,900
 Schedule of Programs:
 Animal Health 2,144,500
 Auction Market Veterinarians 72,700
 Brand Inspection 1,786,900
 Meat Inspection 2,095,500

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Animal Health line item, Livestock Inspection Program, whose mission is “to deny a market to potential thieves & to detect the true owners of livestock. It is the mission of the Livestock Inspection Bureau to provide quality, timely, and courteous service to the livestock men and women of the state, in an effort to protect the cattle and horse industry”: (1) Return of branded estrays to rightful owner within 10 days (Target = 80%), proceeds from sale of estrays returned to rightful owner within one year (Target 100%).

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Animal Health line item, Animal Health Program, whose mission is to “protect Utah livestock from, and reduce the effects of foreign and domestic diseases; increase the market value of Utah livestock; promote and ensure animal health and productivity; protect human health; and prepare for and respond to emergency situations involving animals”: (1) Percentage of herd owners issued livestock commuter permits to the Designated Surveillance Areas (DSAs) in Montana, Idaho and Wyoming with an at least 20% *Brucella abortus* testing requirement of each breeding cattle herd before they leave the DSA or within two weeks upon return to Utah (Target = 80%) and within one month of return date (Target = 100%), (2) Percentage of certificates of veterinary inspection (CVIs) received by the Animal Import / Export Desk from accredited veterinarians within seven working days (Target = 95%) and percentage of these CVIs forwarded to receiving states within seven working days after receipt (Target 100%).

Item 30

To Department of Agriculture and Food -
Plant Industry

From General Fund	1,245,100
From Federal Funds	2,957,100
From Dedicated Credits Revenue	2,067,600
From Agriculture Resource	
Development Fund	194,600
From Revenue Transfers	551,900
From Pass-through	3,100
Schedule of Programs:	
Environmental Quality	2,354,700
Grain Inspection	520,800
Insect Infestation	690,000
Plant Industry	2,441,400
Grazing Improvement Program	1,012,500

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Plant Industry line item, whose mission is “ensuring consumers of disease free and pest free plants, grains, seeds, as well as properly labeled agricultural commodities, and the safe application of pesticides and farm chemicals”: (1) Pesticide Compound Enforcement Action Rate (Target = 40%), (2) Fertilizer Compliance Violation Rate (Target = 20%), and (3) Seed Compliance Violation Rate (Target = 10%) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 31

To Department of Agriculture and Food
Regulatory Services

From General Fund	2,131,800
From Federal Funds	557,800
From Dedicated Credits Revenue	1,965,600
From Revenue Transfers	1,300

From Pass-through	55,400
Schedule of Programs:	
Regulatory Services	4,711,900

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Regulatory Services line item, whose mission is “Through continuous improvement, become a world class leader in regulatory excellence through our commitment to food safety, public health and fair and equitable trade of agricultural and industrial commodities”: (1) Reduce the number of “two in a row” violations observed on dairy farms and thereby reduce the number of follow up inspections required (Target = 10% of current), (2) Reduce the number of retail fuel station follow up inspections by our weights and measures program (Target = increase to 95% compliance), and (3) Reduce the number of observed Temperature Control violations observed by our food program inspectors at retail (Target = 25% improvement) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 32

To Department of Agriculture and Food -
Marketing and Development

From General Fund	711,400
Schedule of Programs:	
Marketing and Development	711,400

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Marketing line item, whose mission is “Promoting the healthy growth of Utah agriculture ”: (1) Increased web traffic to utahsown.org by the primary shopper (female 25-55) which visits three or more pages (Target = 25% increase from previous year), (2) Marketing dollars spent to create an impression on consumers (Target = \$5 per impression), and (3) Visits to the market news reporting page on ag.utah.gov (Target = 6,000 visits a year) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 33

To Department of Agriculture and Food -
Building Operations

From General Fund	356,600
Schedule of Programs:	
Building Operations	356,600

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Building Operations line item, whose mission is “to promote the healthy growth of the Utah agriculture, conserve our natural resources and protect our food supply”: (1) With an aging primary facility the goal is to work with DFCM to maintain the DFCM rates at the current rate of \$7.98 per square

foot (Target = 100%), (2) With the Chemistry Lab moving to the Unified Lab #2, the Department will optimize square foot usage by moving individuals currently located in halls and corridors to established work areas (Target 100%), and (3) According to a Tier 1 Seismic evaluation conducted in August of 2015, the William Spry Building does not meet the Life Safety Performance Level for the hazard level. When a structure does not meet this level, the structure may experience failure and/or collapse, risking the lives of those working in the facility. The department will work with DFCM and the Programming Services contractor to complete specifications and justification for a new facility (Target 100% participation) by June 30, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 34

To Department of Agriculture and Food -
 Predatory Animal Control
 From General Fund 830,100
 From Revenue Transfers 697,300
 From General Fund Rest. - Agriculture
 and Wildlife Damage Prevention 656,300
 Schedule of Programs:
 Predatory Animal Control 2,183,700

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Predatory Animal Control line item, whose mission is “protecting Utah’s agriculture including protecting livestock, with the majority of the programs efforts directed at protecting adult sheep, lambs and calves from predation”: (1) Minimize loss of adult sheep to predatory animals (Target =3%); (2) Minimize loss of lambs to predatory animals (Target = 5%); and (3) Minimize loss of calves to predatory animals (Target = 1%) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 35

To Department of Agriculture and Food -
 Resource Conservation
 From General Fund 1,289,400
 From Federal Funds 400,000
 From Agriculture Resource Development
 Fund 696,800
 From Revenue Transfers 348,000
 From Utah Rural Rehabilitation
 Loan State Fund 131,600
 Schedule of Programs:
 Resource Conservation
 Administration 391,300
 Conservation Commission 11,900
 Resource Conservation 2,462,600

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Resource Conservation line item, whose mission is “for UDAF to assist Utah’s

agricultural producers in caring for and enhancing our states vast natural resources”: (1) Agriculture Resource Development Loans to keep the delinquency rates as low as possible, so that funds can be repaid and loaned out again to meet the intent of the program (Target = 2%), (2) Utah Conservation Commission Capital Funds Project will be evaluated by the conservation units divided by costs per project (Target = >Conservation units for Air, soil and water resources), and (3) Increase the average amount and number of ARDL Loans per year by 7% (Target = \$71,917; 31 Loans) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 36

To Department of Agriculture and Food -
 Invasive Species Mitigation
 From General Fund Restricted - Invasive
 Species Mitigation Account 2,003,400
 Schedule of Programs:
 Invasive Species Mitigation 2,003,400

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Invasive Species Mitigation line item, whose mission is “to help government and private entities control noxious weeds in the state through providing project funding and help those entities meet the requirements of the Noxious Weed Act”: (1) Treated Acres (Target = 30,000), (2) Number of Private, Government, and Other Groups Cooperated (Target = 120), and (3) Number of Utah Watersheds Impacted by Projects (Target = 60) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 37

To Department of Agriculture and Food -
 Rangeland Improvement
 From General Fund Restricted -
 Rangeland Improvement Account ... 1,496,700
 Schedule of Programs:
 Rangeland Improvement 1,496,700

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Rangeland Improvement line item, whose mission is “to improve the productivity, health and sustainability of our rangelands and watersheds”: (1) Number of Animal Unit Months Affected by GIP Projects per Year (Target = 150,000), (2) Number of Projects with Water Systems Installed Per Year (Target = 50/year), and (3) Number of GIP Projects that Time, Timing, and Intensity Grazing Management to Improve Grazing Operations (Target = To be determined in next few months as previous year’s data is assessed) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 38

To Department of Agriculture and Food - Utah State Fair Corporation
 From Dedicated Credits Revenue 3,592,400
 Schedule of Programs:
 State Fair Corporation 3,592,400

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the State Fair line item, whose mission is “maximize revenue opportunities by establishing strategic partnerships to develop the Fairpark”: (1) identify opportunities (Target = update master plan for Fairpark area that identifies strategic opportunities by July 1st 2017), (2) Develop a minimum of “one” new project on Fairpark or adjacent property that provides economic opportunity to the Fairpark and surrounding area (Target = ONE by October 2017), and (3) increase Fairpark NET revenue increase (Target = 150%) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the State Fair line item, whose mission is “Showcase agriculture and innovative technology with an emphasis on families”: (1) Develop Student Handbooks to be distributed to schools PTA, and students attending the Fair as part of school field trips (Target = 10% increase in field trip attendance), (2) Host Little Hands on the Farm and Barnyard Friends educational exhibits (Target = 10% increase in attendance and engagement), and (3) Partner with ROOTS Charter High School or similar program to provide youth hands-on learning by raising livestock projects (Target = provide learning opportunity that otherwise would not be available) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

Item 39

To School and Institutional Trust Lands Administration
 From Land Grant Management Fund 10,239,800
 Schedule of Programs:
 Board 94,100
 Director 528,100
 External Relations 271,600
 Administration 962,300
 Accounting 443,500
 Auditing 475,500
 Oil and Gas 936,000
 Mining 725,000
 Surface 1,871,400
 Development - Operating 1,576,800
 Legal/Contracts 751,300

Information Technology Group 1,217,700
 Grazing and Forestry 386,500

The Legislature intends that the School and Institutional Trust Lands Administration report on the following performance measures for the Operations line item, whose mission is “Administering trust lands prudently and profitably for Utah’s schoolchildren and other trust beneficiaries”: (1) Oil and Gas gross revenue (Target = \$50,000,000), (2) Mining gross revenue (Target = \$8,350,000), and (3) Surface gross revenue (Target = \$11,363,000) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 40

To School and Institutional Trust Lands Administration - Land Stewardship and Restoration
 From Land Grant Management Fund . . 2,185,600
 Schedule of Programs:
 Land Stewardship and Restoration . . 2,185,600

The Legislature intends that the School and Institutional Trust Lands Administration report on the following performance measures for the Stewardship line item, whose mission is “Administering trust lands prudently and profitably for Utah’s schoolchildren and other trust beneficiaries”: (1) Mitigation, facilitation of de-listing or preventing the listing of sensitive species such as Sage Grouse, Penstemon and the Utah Prairie Dog (Target = \$300,000), (2) Fire rehabilitation on trust parcels (Target = \$100,000), (3) Actions that need to be taken on trust parcels to reduce resource degradation and minimize environmental liability (Target = \$200,000) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 41

To School and Institutional Trust Lands Administration - School and Institutional Trust Lands Administration Capital
 From Land Grant Management Fund . . 5,000,000
 Schedule of Programs:
 Capital 5,000,000

The Legislature intends that the School and Institutional Trust Lands Administration report on the following performance measures for the Development Capital line item, whose mission is “Administering trust lands prudently and profitably for Utah’s schoolchildren and other trust beneficiaries”: (1) Expend capital for road, utilities, and bridges to open 1,000 acres of the South Block in Washington County (Target = \$3,000,000), (2) Produce higher revenues than the ten year Planning and Development group average (Target => \$13,700,000), (3) Acquire water rights for future developments (Target = \$1,000,000) by October 15, 2018 to the Natural Resources, Agriculture, and

Environmental Quality Appropriations Subcommittee.

Subsection 1(b). Expendable Funds and

Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account's applicable authorizing statute.

DEPARTMENT OF NATURAL RESOURCES

Item 42

To Department of Natural Resources -
Wildland Fire Suppression Fund
From General Fund Restricted -
Mineral Bonus 345,900
From Beginning Fund Balance 9,926,000
From Closing Fund Balance (2,345,900)
Schedule of Programs:

Wildland Fire Suppression Fund 7,926,000

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Wildland Fire Suppression Fund line item managed by the Division of Forestry, Fire, and State Lands, whose mission is "to manage, sustain, and strengthen Utah's forests, range lands, sovereign lands and watersheds for its citizens and visitors": (1) Non-federal wildland fire acres burned (Target = 32,351), (2) Human-caused wildfire rate (Target = 50%), and (3) Participating Entities (Target = 50 entities) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 43

To Department of Natural Resources -
UGS Sample Library Fund
From Dedicated Credits Revenue 400
From Beginning Fund Balance 76,500
From Closing Fund Balance (76,900)

The Legislature intends that the Department of Natural Resources report on the following performance measures for the UGS Sample Library Fund line item (an expendable special revenue fund, consisting of money from donations and interest, whose purpose is to support the sample library): (1) Annual Interest Earned (Target = \$500), and (2) Utah Core Research Center workshops (Target = 10) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Item 44

To Department of Environmental Quality -
Hazardous Substance Mitigation Fund

From Dedicated Credits Revenue 64,300
From Beginning Fund Balance 5,471,300
From Closing Fund Balance (1,501,500)
Schedule of Programs:

Hazardous Substance Mitigation

Fund 4,034,100

The Legislature intends that the Department of Environmental Quality report on the following performance measures for the Hazardous Substances Mitigation Fund line item, whose mission is "to provide special revenue funding to be used in protecting Public Health and the Environment and to help clean up contaminated sites and return properties to beneficial reuse": (1) To provide the states portion of the cleanup costs under authority of CERCLA as appropriated by the Legislature within the required timeframe (Target = 100%), by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 45

To Department of Environmental Quality -
Waste Tire Recycling Fund
From Dedicated Credits Revenue 3,674,700
From Beginning Fund Balance 4,091,600
From Closing Fund Balance (4,724,200)
Schedule of Programs:

Waste Tire Recycling Fund 3,042,100

The Legislature intends that the Department of Environmental Quality report on the following performance measure for the Waste Tire Recycling fund, whose funding shall be used "for partial reimbursement of the costs of transporting, processing, recycling, or disposing of waste tires and payment of administrative costs of local health departments or costs of the Department of Environmental Quality in administering and enforcing this fund": (1) Number of Waste Tires Cleaned-Up (Target = 40,000), by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

DEPARTMENT OF AGRICULTURE AND FOOD

Item 46

To Department of Agriculture and Food -
Salinity Offset Fund
From Dedicated Credits Revenue,
One-Time 144,900
From Beginning Fund Balance 2,858,300
From Closing Fund Balance (2,858,300)
Schedule of Programs:
Salinity Offset Fund 144,900

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Colorado River Basin Salinity Control Program, whose mission is to "reduce salinity in the Colorado River and its tributaries and encourage improved irrigation practices": (1) Cost Per Ton of Salt Controlled (Target = \$60 / ton for canal improvement and \$80 / ton for on

farm irrigation improvements), (2) Put available funding to reduce salinity (Target =85% of available funds put into on-the-ground projects), and (3) Process all grant documents including payments within 3 days (Target = 98% of documents processed by program manager in 3 days on average) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Subsection 1(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

DEPARTMENT OF NATURAL RESOURCES

Item 47

To Department of Natural Resources -
 Water Resources Revolving Construction Fund
 From Water Resources Conservation
 and Development Fund 3,800,000
 Schedule of Programs:
 Construction Fund 3,800,000

The Legislature intends that the Department of Natural Resources report on the following performance measures for the Water Resources Revolving Construction Fund line item, whose mission is to “plan, conserve, develop and protect Utah’s water resources”: (1) Dam Safety minimum standards upgrade projects funded per fiscal year (Target = 2), (2) Percent of appropriated funding to be spent on Dam Safety projects (Target = 100%), and (3) Timeframe by which all state monitored high hazard dams will be brought up to minimum safety standards (Target = year 2100) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Item 48

To Department of Natural Resources -
 Internal Service Fund
 From Dedicated Credits Revenue 684,500
 Schedule of Programs:
 ISF - DNR Warehouse 684,500
 Budgeted FTE 2.0

The Legislature intends that the Department of Natural Resources report on the following performance measures for the DNR ISF line item, whose mission is to facilitate economic development and wise use of natural resources to enhance the quality of life in Utah: (1) To achieve \$36,000 of net income in 2017 (Target = \$36,000), (2) To achieve \$40,000 of income in 2018 (Target =

\$40,000), (3) To adjust rates such that retained earnings are within plus or minus 5% of annual revenues (Target = plus or minus 5% of revenues) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Item 49

To Department of Environmental Quality - Water
 Development Security Fund - Water Quality
 From Federal Funds 7,200,000
 From Dedicated Credits Revenue 5,597,700
 From Designated Sales Tax 3,587,500
 From Repayments 14,097,900
 Schedule of Programs:
 Water Quality 30,483,100

Item 50

To Department of Environmental Quality - Water
 Development Security Fund - Drinking Water
 From Federal Funds 7,000,000
 From Dedicated Credits Revenue 5,180,000
 From Designated Sales Tax 3,587,500
 From Repayments 9,779,000
 Schedule of Programs:
 Drinking Water 25,546,500

DEPARTMENT OF AGRICULTURE AND FOOD

Item 51

To Department of Agriculture and Food -
 Agriculture Loan Programs
 From Agriculture Resource Development
 Fund 281,200
 From Utah Rural Rehabilitation Loan
 State Fund 151,300
 Schedule of Programs:
 Agriculture Loan Program 432,500

The Legislature intends that the Department of Agriculture and Food report on the following performance measures for the Agriculture Loan Programs line item, whose mission is “To serve and deliver financial services to our agricultural clients and partners through delivery of effective customer service and efficiency with good ethics and fiscal responsibility”: (1) Default rate - To keep our default rate lower than average bank default rates of 3% in our annual fiscal year. (Target = 2% or less), (2) Loan Process Time - Reduce the loan process time from start to finish with increased communication with the borrower. (Target = 20%), and (3) Investigate and initiate acceptance and use of electronic documents - Electronic documentation has been proven to be: quicker, less expensive, of higher quality, and easier to maintain and store (Target = 100% use) by October 15, 2018 to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee.

Subsection 1(d). Restricted Fund and Account Transfers. The Legislature

authorizes the State Division of Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere in an appropriations act.

Item 52

To GFR - Rangeland Improvement Account
From General Fund 1,346,300
Schedule of Programs:
Rangeland Improvement Account . . . 1,346,300

Item 53

To General Fund Restricted - Wildlife Resources
From General Fund 74,800
Schedule of Programs:
General Fund Restricted - Wildlife
Resources 74,800

Item 54

To General Fund Restricted - Constitutional
Defense Restricted Account
From General Fund Restricted -
Land Exchange Distribution Account 1,208,700
Schedule of Programs:
Constitutional Defense Restricted
Account 1,208,700

Item 55

To GFR - Invasive Species Mitigation Account
From General Fund 2,000,000
Schedule of Programs:
Invasive Species Mitigation
Account 2,000,000

Item 56

To General Fund Restricted - Mule Deer
Protection Account
From General Fund 500,000
Schedule of Programs:
General Fund Restricted - Mule Deer
Protection 500,000

Item 57

To General Fund Restricted - Agriculture
and Wildlife Damage Prevention Account
From General Fund 250,000
Schedule of Programs:
General Fund Restricted - Agriculture
and Wildlife Damage Prevention
Account 250,000

Section 2. Effective Date.

This bill takes effect on July 1, 2017.

CHAPTER 8

S.B. 6

Passed February 7, 2017
 Approved February 16, 2017
 Effective July 1, 2017

**EXECUTIVE OFFICES AND
 CRIMINAL JUSTICE BASE BUDGET**

Chief Sponsor: Daniel W. Thatcher
 House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides appropriations for the use and support of certain state agencies; and
- ▶ provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates \$902,260,000 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$667,093,300 from the General Fund;
- ▶ \$49,000 from the Education Fund;
- ▶ \$235,117,700 from various sources as detailed in this bill.

This bill appropriates \$16,827,900 in expendable funds and accounts for fiscal year 2018.

This bill appropriates \$49,140,300 in business-like activities for fiscal year 2018.

This bill appropriates \$731,000 in restricted fund and account transfers for fiscal year 2018, all of which is from the General Fund.

This bill appropriates \$800,000 in fiduciary funds for fiscal year 2018.

Other Special Clauses:

This bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

GOVERNOR'S OFFICE

Item 1

To Governor's Office
 From General Fund 5,742,300

From Dedicated Credits Revenue 1,113,400
 From General Fund Restricted -
 Constitutional Defense 250,000
 From Beginning Nonlapsing Balances . . . 215,000
 Schedule of Programs:
 Administration 4,055,100
 Governor's Residence 327,700
 Washington Funding 250,100
 Lt. Governor's Office 2,428,800
 Literacy Projects 9,000
 Commission on Federalism 250,000

The Legislature intends that the Governors Office report on the following performance measure for the Governor's Office line item: (1) Number of vacancies in boards or commissions filled (not including those that require Senate approval) divided by operating expenses for the process (Target = 25 percent improvement) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 2

To Governor's Office - Constitutional Defense Council
 From Beginning Nonlapsing Balances . . . 283,300
 From Closing Nonlapsing Balances (283,300)

Item 3

To Governor's Office - Character Education
 From General Fund 203,500
 From Beginning Nonlapsing Balances . . . 205,800
 From Closing Nonlapsing Balances (85,800)
 Schedule of Programs:
 Character Education 323,500

Item 4

To Governor's Office - Indigent Defense Commission
 From General Fund Restricted - Indigent Defense Resources Account 500,000
 Schedule of Programs:
 Indigent Defense Commission 500,000

The Legislature intends that the Commission on Criminal and Juvenile Justice report on the following performance measures for the Indigent Defense Commission, line item whose mission is to assist the state in meeting the state's obligations for the provision of indigent criminal defense services, consistent with the United States Constitution, the Utah Constitution, and state law. (1) Percent of indigent defense providers identified (Target = 90%); (2) Identify existing baseline budgets for indigent defense providers (Target = 80%); and (3) Develop a website for reporting statutorily-mandated information about the Commission and state indigent defense services (Target = 80% complete) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 5

To Governor's Office - Emergency Fund
 From Beginning Nonlapsing Balances . . . 100,100
 From Closing Nonlapsing Balances (100,100)

Item 6

To Governor’s Office – School Readiness Initiative
 From General Fund Restricted – School
 Readiness Account 2,800,000
 From Beginning Nonlapsing
 Balances 4,898,800
 From Closing Nonlapsing Balances ... (6,421,600)
 Schedule of Programs:
 School Readiness Initiative 1,277,200

The Legislature intends that the Governors Office report on the following performance measure for the School Readiness Initiative line item, whose mission is “to oversee the High Quality School Readiness Grant Program and Pay-for-Success School Readiness Program”: (1) The change in scores on the Peabody Picture Vocabulary Test (PPVT) from the start to the end of a preschool year, among four-year-old students participating in the programs (Target = mean post-test score above 85) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 7

To Governor’s Office – Governor’s Office
 of Management and Budget
 From General Fund 3,971,100
 From Dedicated Credits Revenue 26,000
 From General Fund Restricted –
 School Readiness Account 200,000
 From Beginning Nonlapsing Balances ... 701,100
 From Closing Nonlapsing Balances (551,100)
 Schedule of Programs:
 Administration 1,311,400
 Planning and Budget Analysis 1,747,700
 Operational Excellence 1,085,300
 State and Local Planning 202,700

The Legislature intends that the Governors Office report on the following performance measure for the Governor’s Office of Management and Budget line item, whose mission is “to create more value for every tax dollar invested” : (1) Quality Throughput divided by Operating Expenses for all systems reporting SUCCESS measures (Target = 25 percent improvement) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 8

To Governor’s Office – Commission on Criminal
 and Juvenile Justice
 From General Fund 4,897,800
 From Federal Funds 29,336,400
 From Dedicated Credits Revenue 103,500
 From Crime Victim Reparations
 Fund 1,838,000
 From General Fund Restricted –
 Criminal Forfeiture Restricted
 Account 2,090,400
 From General Fund Restricted –
 Law Enforcement Operations 1,826,600
 From General Fund Restricted –
 Law Enforcement Services 617,900
 From Beginning Nonlapsing
 Balances 1,250,000

From Closing Nonlapsing Balances ... (1,245,300)
 Schedule of Programs:
 CCJJ Commission 8,501,700
 Utah Office for Victims of Crime ... 24,289,000
 Extraditions 377,300
 Substance Use and Mental Health
 Advisory Council 155,500
 Sentencing Commission 154,700
 State Task Force Grants 1,826,600
 State Asset Forfeiture Grant
 Program 2,090,400
 Law Enforcement Services Grants 617,900
 Judicial Performance Evaluation
 Commission 483,500
 County Incentive Grant Program 2,218,700

The Legislature intends that the Commission on Criminal and Juvenile Justice report on the following performance measures for the Commission on Criminal and Juvenile Justice, line item whose mission is “to (a) promote broad philosophical agreement concerning the objectives of the criminal and juvenile justice system in Utah; (b) provide a mechanism for coordinating the functions of the various branches and levels of government concerned with criminal and juvenile justice to achieve those objectives; and (c) coordinate statewide efforts to reduce crime and victimization in Utah”: (1) Percent of victim reparations claims processed within 30 days or less (Target = 75%); (2) Number of grants monitored (Target = 180 or 84%); (3) Percent of offenders booked into larger county jails (Cache, Salt Lake, Utah, Washington, and Weber) that adequately meet CCJJ JRI guidelines that volunteer to receive a risk and needs screen (Target = 65%) by October 15, 2018 to the Executive Offices and Criminal Justice Subcommittee.

Item 9

To Governor’s Office – CCJJ Factual
 Innocence Payments
 From Beginning Nonlapsing Balances ... 319,600
 From Closing Nonlapsing Balances (273,900)
 Schedule of Programs:
 Factual Innocence Payments 45,700

Item 10

To Governor’s Office – CCJJ Jail Reimbursement
 From General Fund 13,967,100
 Schedule of Programs:
 Jail Reimbursement 13,967,100

The Legislature intends that the Commission on Criminal and Juvenile Justice report on the following performance measures the for Jail Reimbursement, line item, whose mission is “to reimburse up to 50 percent of the average final daily incarceration rate to house an inmate in county jails for (1) felony offenders placed on probation and given jail time as a condition of probation; and (2) parolees on a 72 hour hold”: (1) Percent of the 50 percent of the average final daily incarceration rate paid to counties (Target equal = 87 percent) by October 15, 2018 to the Executive Offices and Criminal Justice Subcommittee.

OFFICE OF THE STATE AUDITOR

Item 11

To Office of the State Auditor - State Auditor

From General Fund	3,259,000
From Dedicated Credits Revenue	1,901,100
From Beginning Nonlapsing Balances ...	710,300
Schedule of Programs:	
State Auditor	5,870,400

The Legislature intends that the Office of the State Auditor report on the following performance measures for the Office of the State Auditor line item, whose mission is “to provide Utah taxpayers and government officials with an independent assessment of financial operation, statutory compliance, and performance management for state and local government.”: (1) Annual financial statement audits completed in a timely manner (w/in six months) - excluding State CAFR) (Target = 65%); (2) State of Utah Comprehensive Annual Financial Report (CAFR) audit completed and released in a timely manner (w/in five months or 153 days) (Target = 153 days or less); (3) State of Utah Single Audit Report (Federal Compliance Report) completed and released in a timely manner (w/in six months or 184 days). Federal requirement is nine months. (Target = 184 days or less); (4) Monitoring of CPA firms performing local government financial audits. (Target = 100% over three-year period) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

STATE TREASURER

Item 12

To State Treasurer

From General Fund	991,800
From Dedicated Credits Revenue	650,000
From Unclaimed Property Trust	1,941,700
Schedule of Programs:	
Treasury and Investment	1,554,500
Unclaimed Property	1,934,600
Money Management Council	94,400

The Legislature intends that the State Treasurer’s Office report on the following performance measures for the State Treasurer line item, whose mission is “to serve the people of Utah by safeguarding public funds, prudently managing and investing the States financial assets, borrowing from the capital markets at the lowest prudently available cost to taxpayers, and reuniting individuals and businesses with their unclaimed property: (1) Spread Between PTIF Interest Rate and Benchmark Rate (Target = .30%) (2) Ratio of Claim Dollars Paid to Claim Dollars Collected (Target = 50%), and (3) Total Value of Unclaimed Property Claims Paid by October 15, 2018 (Target = \$20 MM) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

ATTORNEY GENERAL

Item 13

To Attorney General

From General Fund	35,306,000
From Federal Funds	2,204,700
From Dedicated Credits Revenue	20,363,100
From Attorney General Litigation Fund ...	7,900
From General Fund Restricted -	
Constitutional Defense	42,000
From General Fund Restricted -	
Tobacco Settlement Account	66,600
From Revenue Transfers	1,007,500
Schedule of Programs:	
Administration	6,542,500
Child Protection	8,818,400
Criminal Prosecution	19,899,600
Civil	23,737,300

The Legislature intends that the Attorney Generals Office, whose mission is: to uphold the constitutions of the United States and of Utah, enforce the law, and protect the interests of Utah, its people, environment and resources” report on the following performance measures: (1) The Attorney Generals Office shall represent, defend and advise the State of Utah, its elected officials and nearly 200 State agencies, boards and committees, as well as, when appropriate, its systems of public- and higher- education, in civil, criminal, appellate and administrative matters; (2) The Attorney Generals Office shall hire and mentor attorneys, investigators and staff to contribute positively to the Office while demonstrating professionalism and integrity in the handling of complex legal issues; (3) The Attorney Generals Office shall adopt productivity tools to track performance, improve communication, provide additional fiscal detail and address other metrics to improve effectiveness and financial efficiency of the Office by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 14

To Attorney General - Contract Attorneys

From Dedicated Credits Revenue	1,500,000
Schedule of Programs:	
Contract Attorneys	1,500,000

The Legislature intends that the Attorney Generals Office, whose mission is “to uphold the constitutions of the United States and of Utah, enforce the law, and protect the interests of Utah, its people, environment and resources” report on the following performance measure: (1) Collaborate and contract, as necessary, with subject matter experts and outside counsel to assist in the performance of its duties by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 15

To Attorney General - Children’s Justice Centers

From General Fund	3,724,900
From Federal Funds	232,800
From Dedicated Credits Revenue	292,900

Schedule of Programs:

Children’s Justice Centers 4,250,600

The Legislature intends that the Attorney Generals Offices report on the following performance measures for the Children’s Justice Centers line item, whose mission is “to provide a comprehensive, multidisciplinary, intergovernmental response to child abuse victims in a facility known as a Children’s Justice Center, to facilitate healing for children and caregivers, and to utilize the multidisciplinary approach to foster more collaborative and efficient case investigations”: (1) Percentage of caregivers that strongly agreed that the CJC provided them with resources to support them and their children (Target = 88.7%); (2) Percentage of caregivers that strongly agreed that if they knew anyone else who was dealing with a situation like the one their family faced, they would tell that person about the CJC (Target = 90.9%); (3) Percentage of multidisciplinary team (MDT) members that strongly believe clients benefit from the collaborative approach of the MDT (Target = 89.1%), by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 16

To Attorney General - Prosecution Council

From Federal Funds 32,500
 From Dedicated Credits Revenue 102,000
 From General Fund Restricted - Public Safety Support 526,400
 From Revenue Transfers 250,300
 Schedule of Programs:
 Prosecution Council 911,200

The Legislature intends that the Attorney Generals Office report on the following performance measures for the Utah Prosecution Council (UPC), whose mission is “to provide training and continuing legal education and provide assistance for state and local prosecutors”: (1) UPC will hold conferences/meetings each year as funds allow, including the Spring Legislative and Case Law Update, the Utah Prosecutor Assistant’s Association (UPAA) conference, the Utah Misdemeanor Prosecutor Association (UMPA) conference, the Basic Prosecutor Course, the Fall Prosecutor Conference, the Government Civil Conference, the County Executive Seminar, the Regional Legislative Update Training, as well as quarterly council meetings, training committee meetings, conference planning meetings, advanced trial skills training, domestic violence and child abuse training, mental health training, impaired driving training, sexual assault training and white collar crime training; (2) UPC will hold New County Attorney Training every four (4) years or as new County Attorneys take office; (3) UPC will provide services to prosecutors statewide that include maintaining UPC’s webpage to include current and future

training opportunities, recent case summaries, resource prosecutor information, prosecutor offices contact information, and other prosecutor requested information as well as the Prosecutor Google Forum where prosecutors can pose questions and share information with other prosecutors by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 17

To Attorney General - Domestic Violence

From General Fund Restricted - Victims of Domestic Violence Services Account . . 78,300
 Schedule of Programs:
 Domestic Violence 78,300

UTAH DEPARTMENT OF CORRECTIONS

Item 18

To Utah Department of Corrections -

Programs and Operations
 From General Fund 229,340,900
 From Education Fund 49,000
 From Federal Funds 344,700
 From Dedicated Credits Revenue 4,158,500
 From G.F.R. - Interstate Compact for Adult Offender Supervision 29,000
 From General Fund Restricted - Prison Telephone Surcharge Account 1,500,000
 Schedule of Programs:
 Department Executive Director 5,975,000
 Department Administrative Services 26,087,800
 Department Training 1,691,200
 Adult Probation and Parole Administration 1,563,700
 Adult Probation and Parole Programs 68,814,400
 Prison Operations Administration . . . 4,308,400
 Prison Operations Draper Facility 67,918,000
 Prison Operations Central Utah/Gunnison 37,613,600
 Prison Operations Inmate Placement 3,089,100
 Programming Administration 455,000
 Programming Treatment 5,355,700
 Programming Skill Enhancement . . 10,606,500
 Programming Education 1,943,700

The Legislature intends that the Department of Corrections report on the following performance measures for the Programs and Operations line item, whose mission is “Our dedicated team of professionals ensures public safety by effectively managing offenders while maintaining close collaboration with partner agencies and the community. Our team is devoted to providing maximum opportunities for offenders to make lasting changes through accountability, treatment, education, and positive reinforcement within a safe environment” (1) AP&P: Percentage of offender discharging supervision successfully (2) DPO: Rate of disciplinary events inside the prisons (3) IPD: Percentage of inmates in state prisons actively involved in programs or

classes by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 19

To Utah Department of Corrections -
 Department Medical Services
 From General Fund 31,252,100
 From Dedicated Credits Revenue 609,200
 Schedule of Programs:
 Medical Services 31,861,300

The Legislature intends that the Department of Corrections report on the following performance measures for the Medical Services line item, whose mission is “Our dedicated team of professionals ensures public safety by effectively managing offenders while maintaining close collaboration with partner agencies and the community. Our team is devoted to providing maximum opportunities for offenders to make lasting changes through accountability, treatment, education, and positive reinforcement within a safe environment” (1) Percentage of Health Care Requests closed out within 3 business days of submittal, (2) Percentage of Dental Requests closed out within 7 days of submittal, (3) Average number of days after intake for an inmate to be assigned a mental health level, by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 20

To Utah Department of Corrections -
 Jail Contracting
 From General Fund 33,008,200
 From Federal Funds 50,000
 Schedule of Programs:
 Jail Contracting 33,058,200

The Legislature intends that the Department of Corrections report on the following performance measures for the Jail Contracting line item, whose mission is “Our dedicated team of professionals ensures public safety by effectively managing offenders while maintaining close collaboration with partner agencies and the community. Our team is devoted to providing maximum opportunities for offenders to make lasting changes through accountability, treatment, education, and positive reinforcement within a safe environment” (1) Rate of positive urinalysis tests in jails (for state inmates), (2) Rate of disciplinary events inside the jails (for state inmates), (3) Percentage of state inmates in county jails actively involved in programs or classes, by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

BOARD OF PARDONS AND PAROLE

Item 21

To Board of Pardons and Parole
 From General Fund 4,680,000

From Dedicated Credits Revenue 2,200
 Schedule of Programs:
 Board of Pardons and Parole 4,682,200

The Legislature intends that the Board of Pardons and Parole report on the following performance measures for their line item, whose mission is “The mission of the Utah Board of Pardons and Parole is to provide fair and balanced release, supervision, and clemency decisions that address community safety, victim needs, offender accountability, risk reduction, and reintegration.” (1) percent of decisions completed within 7 Days of the Hearing (Target 75%), (2) percent of results completed within 3 Days of decision (Target 90%), (3) percent of mandatory JRI (77-27-5.4) time cuts processed electronically (Target 90%) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

**DEPARTMENT OF HUMAN SERVICES -
 DIVISION OF JUVENILE JUSTICE
 SERVICES**

Item 22

To Department of Human Services -
 Division of Juvenile Justice Services -
 Programs and Operations
 From General Fund 92,170,400
 From Federal Funds 4,529,600
 From Dedicated Credits Revenue 1,558,900
 From Revenue Transfers (502,300)
 Schedule of Programs:
 Administration 4,768,500
 Early Intervention Services 25,264,300
 Community Programs 23,939,700
 Correctional Facilities 17,466,200
 Rural Programs 25,942,400
 Youth Parole Authority 375,500

The Legislature intends that the Department of Human Services, Division of Juvenile Justice Services report on the following performance measures for the DHS Juvenile Justice Services (KJAA) line item, whose mission is “to be a leader in the field of juvenile justice by changing young lives, supporting families and keeping communities safe”: (1) Percent of youth free of new charges while in diversion from detention programming (Target = 95%), (2) Percent of youth without a new felony charge within 360 days of release from community residential programs (Target = 85%), and (3) Percent of youth without a new felony charge within 360 days of release from long-term secure care (Target = 75%) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

**JUDICIAL COUNCIL/STATE
 COURT ADMINISTRATOR**

Item 23

To Judicial Council/State Court Administrator -
 Administration
 From General Fund 103,095,200
 From Federal Funds 761,300

From Dedicated Credits Revenue	2,972,900
From General Fund Restricted -	
Children's Legal Defense	456,200
From General Fund Restricted -	
Court Security Account	11,170,600
From General Fund Restricted -	
Court Trust Interest	250,000
From General Fund Restricted -	
Dispute Resolution Account	550,100
From General Fund Restricted -	
DNA Specimen Account	262,400
From General Fund Rest. - Justice	
Court Tech., Security & Training	1,200,700
From General Fund Restricted -	
Nonjudicial Adjustment Account	1,028,100
From General Fund Restricted -	
Online Court Assistance Account	230,100
From General Fund Restricted -	
State Court Complex Account	313,400
From General Fund Restricted -	
Substance Abuse Prevention	556,500
From General Fund Restricted -	
Tobacco Settlement Account	193,700
From Revenue Transfers	1,084,900
Schedule of Programs:	
Supreme Court	3,186,000
Law Library	1,068,000
Court of Appeals	4,266,000
District Courts	47,906,600
Juvenile Courts	41,326,700
Justice Courts	1,373,200
Courts Security	11,170,600
Administrative Office	4,634,800
Judicial Education	715,100
Data Processing	7,002,700
Grants Program	1,476,400

The Legislature intends that the Utah State Courts report on the following performance measures for their Administration line item, whose mission is "To provide the people an open, fair, efficient, and independent system for the advancement of justice under the law" (1) Target the recommended time standards in District and Juvenile Courts for all case types, as per the published Utah State Courts Performance Measures, (2) Access and Fairness Survey re satisfaction with my experience in court question, as per the published Utah State Courts Performance Measures (Target 90%), (3) Clearance rate in all courts, as per the published Utah State Courts Performance Measures (Target 100%) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 24

To Judicial Council/State Court Administrator -	
Grand Jury	
From General Fund	800
Schedule of Programs:	
Grand Jury	800

The Legislature intends that the Utah State Courts report on the following performance measure for their Grand Jury line item, whose mission is "To provide the people an open, fair, efficient, and

independent system for the advancement of justice under the law" (1) Administer called Grand Juries (Target 100%) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 25

To Judicial Council/State Court Administrator -	
Contracts and Leases	
From General Fund	15,927,300
From Dedicated Credits Revenue	250,000
From General Fund Restricted -	
State Court Complex Account	4,593,500
Schedule of Programs:	
Contracts and Leases	20,770,800

The Legislature intends that the Utah State Courts report on the following performance measure for their Contract and Leases line item, whose mission is "To provide the people an open, fair, efficient, and independent system for the advancement of justice under the law" (1) Execute and administer required contracts within the terms of the contracts and appropriations (Target 100%) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 26

To Judicial Council/State Court Administrator -	
Jury and Witness Fees	
From General Fund	1,579,100
From Dedicated Credits Revenue	10,000
From Beginning Nonlapsing	
Balances	(1,885,900)
From Closing Nonlapsing Balances	2,860,900
Schedule of Programs:	
Jury, Witness, and Interpreter	2,564,100

The Legislature intends that the Utah State Courts report on the following performance measure for their Jury and Witness Fees line item, whose mission is "To provide the people an open, fair, efficient, and independent system for the advancement of justice under the law" (1) Timely pay all required jurors, witnesses and interpreters (Target 100%), by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 27

To Judicial Council/State Court Administrator -	
Guardian ad Litem	
From General Fund	7,512,100
From Dedicated Credits Revenue	77,000
From General Fund Restricted -	
Children's Legal Defense	492,100
From General Fund Restricted -	
Guardian Ad Litem Services	388,100
Schedule of Programs:	
Guardian ad Litem	8,469,300

The Legislature intends that the Guardian ad Litem report on the seven performance measures for their line item found in the Utah Office of Guardian ad Litem and CASA Annual Report by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

DEPARTMENT OF PUBLIC SAFETY

Item 28

To Department of Public Safety -
 Programs & Operations

From General Fund	74,089,300
From Transportation Fund	5,495,500
From Federal Funds	3,774,000
From Dedicated Credits Revenue	16,670,400
From General Fund Restricted - Canine Body Armor	25,000
From General Fund Restricted - Concealed Weapons Account	3,214,000
From Department of Public Safety Restricted Account	3,582,700
From General Fund Restricted - DNA Specimen Account	1,813,400
From General Fund Restricted - DNA Specimen Account, One-Time	(1,360,000)
From General Fund Restricted - Fire Academy Support	7,318,300
From General Fund Restricted - Firearm Safety Account	85,000
From General Fund Restricted - Firefighter Support Account	132,000
From General Fund Restricted - Public Safety Honoring Heroes Account	50,000
From General Fund Restricted - Reduced Cigarette Ignition Propensity & Firefighter Protection Account	76,500
From General Fund Restricted - Statewide Warrant Operations	577,900
From Revenue Transfers	1,687,600
From General Fund Restricted - Utah Highway Patrol Aero Bureau	210,400
From General Fund Restricted - Utah Law Enforcement Memorial Support Restricted Account	17,500
From Pass-through	4,516,500
From Beginning Nonlapsing Balances	150,100

Schedule of Programs:

Department Commissioner's Office	4,385,900
Aero Bureau	999,900
Department Intelligence Center	1,077,900
Department Grants	2,794,000
Department Fleet Management	504,400
CITS Administration	523,200
CITS Bureau of Criminal Identification	15,633,900
CITS Communications	8,867,100
CITS State Crime Labs	5,727,300
CITS State Bureau of Investigation	3,297,800
Highway Patrol - Administration	1,260,600
Highway Patrol - Field Operations	44,965,200
Highway Patrol - Commercial Vehicle	3,949,500
Highway Patrol - Safety Inspections	1,407,700
Highway Patrol - Federal/State Projects	6,430,100
Highway Patrol - Protective Services	5,361,900
Highway Patrol - Special Services	3,769,200

Highway Patrol - Special Enforcement	600,900
Highway Patrol - Technology Services	1,405,800
Information Management - Operations	1,317,200
Fire Marshall - Fire Operations	3,053,400
Fire Marshall - Fire Fighter Training	4,793,200

The Legislature intends that the Department of Public Safety report on the following performance measures for the Utah Highway Patrol in the Public Safety Programs and Operations line item, whose mission is "to provide professional police and traffic services and to protect the constitutional rights of all people in Utah" (1) percentage of DUI reports submitted for administrative action within specified timeframes divided by operating expenses for the process (Target=25 percent improvement) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

The Legislature intends that the Department of Public Safety report on the following performance measures for the Bureau of Forensic Services in the Public Safety Programs and Operations line item, whose mission is "to provide a safe and secure environment for the citizens of Utah through the application of the forensic sciences" (1) median DNA case turnaround time (Target=60 days) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

The Legislature intends that the Department of Public Safety report on the following performance measures for the Bureau of Criminal Identification in the Public Safety Programs and Operations line item, whose mission is "to provide public safety agencies and the general public with technical services, expertise, training, criminal justice information, permits and related resources" (1) percentage of LiveScan fingerprint card data entered into the Utah Computerized Criminal History (UCCH) and Automated fingerprint identification System (AFIS) databases, or deleted from the queue (Target=5 working days) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 29

To Department of Public Safety -
 Emergency Management

From General Fund	2,188,700
From Federal Funds	24,611,000
From Dedicated Credits Revenue	508,000

Schedule of Programs:

Emergency Management	27,307,700
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The Legislature intends that the Department of Public Safety report on the following performance measures for their Emergency Management line item, whose mission is "to unite the emergency

management community and to coordinate the efforts necessary to mitigate, prepare for, respond to, and recover from emergencies, disasters, and catastrophic events” (1) percentage compliance with standards and elements required to achieve and maintain National Emergency Management Program Accreditation (Target=100 percent), (2) percentage of personnel that have completed the required National Incident Management System training (Target=100 percent), (3) percentage of 98 state agencies that have updated their Continuity of Operation Plans (Target=100 percent) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 30

To Department of Public Safety - Emergency Management - National Guard Response
 From Beginning Nonlapsing Balances ... 150,000
 From Closing Nonlapsing Balances (150,000)

The Legislature intends that the Department of Public Safety report on the following performance measures for their Emergency Management - National Guard Response line item, (1) distribution of funds as reimbursement to the National Guard of authorized and approved expenses (Target 100%) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 31

To Department of Public Safety - Division of Homeland Security - Emergency and Disaster Management
 From Beginning Nonlapsing Balances 2,280,200
 From Closing Nonlapsing Balances ... (2,280,200)

The Legislature intends that the Department of Public Safety report on the following performance measures for their Division of Homeland Security - Emergency and Disaster Management line item, (1) distribution of funds for appropriate and approved expenses (Target 100%) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 32

To Department of Public Safety - Peace Officers' Standards and Training
 From General Fund 129,000
 From Dedicated Credits Revenue 70,000
 From General Fund Restricted - Public Safety Support 3,956,800
 Schedule of Programs:
 Basic Training 1,786,400
 Regional/Inservice Training 799,200
 POST Administration 1,570,200

The Legislature intends that the Department of Public Safety report on the following performance measures for their Peace Officers Standards and Training line item, whose mission is “to provide law enforcement with leadership and innovative

training while enhancing the integrity of the profession” (1) percentage of POST investigations completed within specified timeframes divided by the operating expenses for the process (Target=25 percent improvement), (2) percentage of presented cases of law enforcement personnel complaints or misconduct allegations ratified by POST Council (Target=95 percent), (3) percentage of law enforcement officers completing 40 hours of mandatory annual training (Target= 100 percent) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 33

To Department of Public Safety - Driver License
 From Federal Funds 300,000
 From Dedicated Credits Revenue 9,100
 From Department of Public Safety Restricted Account 28,786,300
 From Public Safety Motorcycle Education Fund 332,500
 From Uninsured Motorist Identification Restricted Account 2,373,100
 From Pass-through 53,700
 From Beginning Nonlapsing Balances 6,104,700
 From Closing Nonlapsing Balances ... (5,008,600)
 Schedule of Programs:
 Driver License Administration 2,462,300
 Driver Services 18,225,800
 Driver Records 9,251,600
 Motorcycle Safety 338,000
 Uninsured Motorist 2,373,100
 DL Federal Grants 300,000

The Legislature intends that the Department of Public Safety report on the following performance measures for their Driver License line item, whose mission is “to license and regulate drivers in Utah and promote public safety” (1) average customer wait time measured in 13 driver license field offices (Target=8 minutes), (2) average customer call wait time (Target=30 seconds), (3) percentage of driver license medical forms processed within 5 days divided by the operating expenses for the process (Target=25 percent improvement) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Item 34

To Department of Public Safety - Highway Safety
 From General Fund 56,700
 From Federal Funds 6,362,300
 From Dedicated Credits Revenue 10,600
 From Department of Public Safety Restricted Account 1,323,800
 From Pass-through 2,200
 Schedule of Programs:
 Highway Safety 7,755,600

The Legislature intends that the Department of Public Safety report on the following performance measures for their Highway Safety line item, whose mission is

“to develop, promote and coordinate traffic safety initiatives designed to reduce traffic crashes, injuries and fatalities on Utah’s roadways” (1) percentage of persons wearing a seatbelt, as captures on the Utah Safety Belt Observational Survey (Target=greater than 85 percent), (2) number of motor vehicle crash fatalities (Target=2 percent reduction), (3) number of pedestrian fatalities (Target=3 percent reduction) by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

UTAH COMMUNICATIONS AUTHORITY

Item 35

To Utah Communications Authority -
 Administrative Services Division
 From General Fund Restricted -
 Computer Aided Dispatch Account .. 2,573,500
 From General Fund Restricted - Statewide
 Unified E-911 Emergency Account .. 2,990,600
 Schedule of Programs:
 911 Division 5,564,100

The Legislature intends that the Department of Public Safety report on the following submitted performance measures: “(1) UCA will complete 70% of its scheduled construction projects in 2017; (2) UCAs 911 Division personnel will conduct site visits to every PSAP in the state to discuss options to improve interoperability, including development of NG9-1-1 education and best practices; and (3) UCA has been the subject of multiple audits. Not all of those audits have concluded. UCA has responded to all of the State Auditors recommendations and implemented all of his recommendations. Once the other audits have concluded, UCA will comply with the terms and conditions, if any, recommended by those audits.” by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Subsection 1(b). Expendable Funds and Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account’s applicable authorizing statute.

GOVERNOR’S OFFICE

Item 36

To Governor’s Office - Crime Victim
 Reparations Fund
 From Federal Funds 2,800,000
 From Dedicated Credits Revenue 7,225,000
 From Interest Income 8,000
 From Beginning Fund Balance 3,312,700
 From Closing Fund Balance (3,307,700)
 Schedule of Programs:
 Crime Victim Reparations Fund 10,038,000

Item 37

To Governor’s Office - Juvenile
 Accountability Incentive Block Grant Fund
 From Federal Funds 500
 From Beginning Fund Balance 164,300
 From Closing Fund Balance (5,700)
 Schedule of Programs:
 Juvenile Accountability Incentive
 Block Grant Fund 159,100

Item 38

To Governor’s Office - State Elections Grant Fund
 From Federal Funds 214,400
 From Interest Income 5,500
 Schedule of Programs:
 State Elections Grant Fund 219,900

Item 39

To Governor’s Office - Justice Assistance
 Grant Fund
 From Federal Funds 1,616,000
 From Beginning Fund Balance 1,383,200
 From Closing Fund Balance (1,168,600)
 Schedule of Programs:
 Justice Assistance Grant Fund 1,830,600

ATTORNEY GENERAL

Item 40

To Attorney General - Crime and
 Violence Prevention Fund
 From Beginning Fund Balance 15,000
 From Closing Fund Balance (13,000)
 Schedule of Programs:
 Crime and Violence Prevention Fund 2,000

Item 41

To Attorney General - Litigation Fund
 From Dedicated Credits Revenue 800,000
 From Beginning Fund Balance 1,070,300
 From Closing Fund Balance (1,070,300)
 Schedule of Programs:
 Litigation Fund 800,000

DEPARTMENT OF PUBLIC SAFETY

Item 42

To Department of Public Safety - Alcoholic
 Beverage Control Act Enforcement Fund
 From Dedicated Credits Revenue 3,778,300
 From Beginning Fund Balance 3,212,300
 From Closing Fund Balance (3,212,300)
 Schedule of Programs:
 Alcoholic Beverage Control Act
 Enforcement Fund 3,778,300

The Legislature intends that the Department of Public Safety report on the following performance measures for their Alcoholic Beverage Control Act Enforcement Fund line item, whose mission is “to enforce the state laws and regulations governing the sale and use of alcoholic beverages in a manner that provides a safe and secure environment” (1) percentage of covert operations initiated by intelligence (Target=80 percent), (2) percentage of licensees that did not sell to minors (Target=90 percent), (3) rate of alcohol-related crash fatalities per 100 million vehicle miles traveled (Target=0.10)

by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Subsection 1(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

ATTORNEY GENERAL

Item 43

To Attorney General - ISF - Attorney General
From Dedicated Credits Revenue 20,985,300
Schedule of Programs:
ISF - Attorney General 20,985,300
Budgeted FTE 160.0

UTAH DEPARTMENT OF CORRECTIONS

Item 44

To Utah Department of Corrections -
Utah Correctional Industries
From Dedicated Credits Revenue 28,439,200
From Beginning Fund Balance 6,085,400
From Closing Fund Balance (6,369,600)
Schedule of Programs:
Utah Correctional Industries 28,155,000

The Legislature intends that the Department of Corrections report on the following performance measures for the Utah Correctional Industries line item, whose mission is "Our dedicated team of professionals ensures public safety by effectively managing offenders while maintaining close collaboration with partner agencies and the community. Our team is devoted to providing maximum opportunities for offenders to make lasting changes through accountability, treatment, education, and positive reinforcement within a safe environment" (1) Percentage of UCI graduates who gain employment within the first two quarters post-release (2) Percentage of work-eligible inmates employed by UCI in prison , (3) Percentage of workers leaving UCI who are successfully completing the program by October 15, 2018 to the Executive Offices and Criminal Justice Appropriations Subcommittee.

Subsection 1(d). Restricted Fund and Account Transfers.

The Legislature authorizes the State Division of Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient

funds must be authorized elsewhere in an appropriations act.

Item 45

To General Fund Restricted - DNA
Specimen Account
From General Fund 216,000
Schedule of Programs:
General Fund Restricted - DNA
Specimen Account 216,000

Item 46

To General Fund Restricted -
Firearm Safety Account
From General Fund 15,000
Schedule of Programs:
General Fund Restricted -
Firearm Safety Account 15,000

Item 47

To General Fund Restricted - Indigent
Defense Resources Account
From General Fund 500,000
Schedule of Programs:
Indigent Defense Resources Account . . . 500,000

Subsection 1(e). Fiduciary Funds. The Legislature has reviewed proposed revenues, expenditures, fund balances and changes in fund balances for the following fiduciary funds.

ATTORNEY GENERAL

Item 48

To Attorney General - Financial Crimes
Trust Fund
From Trust and Agency Funds 800,000
From Beginning Fund Balance 477,300
From Closing Fund Balance (477,300)
Schedule of Programs:
Financial Crimes Trust Fund 800,000

Section 2. Effective Date.

This bill takes effect on July 1, 2017.

**CHAPTER 9
S.B. 7**

Passed February 7, 2017
Approved February 16, 2017
Effective February 16, 2017

SOCIAL SERVICES BASE BUDGET

Chief Sponsor: Allen M. Christensen
House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill supplements or reduces appropriations previously provided for the use and operation of state government for the fiscal year beginning July 1, 2016 and ending June 30, 2017; and appropriates funds for the support and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides appropriations for the use and support of certain state agencies;
- ▶ provides appropriations for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates \$1,492,100 in operating and capital budgets for fiscal year 2017, including:

- ▶ (\$15,860,600) from the General Fund;
- ▶ \$17,352,700 from various sources as detailed in this bill.

This bill appropriates (\$10,822,800) in expendable funds and accounts for fiscal year 2017, including:

- ▶ (\$4,096,600) from the General Fund;
- ▶ (\$6,726,200) from various sources as detailed in this bill.

This bill appropriates \$142,200 in fiduciary funds for fiscal year 2017.

This bill appropriates \$4,949,781,400 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$929,505,500 from the General Fund;
- ▶ \$4,020,275,900 from various sources as detailed in this bill.

This bill appropriates \$141,264,100 in expendable funds and accounts for fiscal year 2018, including:

- ▶ \$17,319,300 from the General Fund;
- ▶ \$123,944,800 from various sources as detailed in this bill.

This bill appropriates \$250,459,000 in business-like activities for fiscal year 2018.

This bill appropriates \$5,517,400 in restricted fund and account transfers for fiscal year 2018, all of which is from the General Fund.

This bill appropriates \$218,086,400 in fiduciary funds for fiscal year 2018.

Other Special Clauses:

Section 1 of this bill takes effect immediately. Section 2 of this bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2017 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2016 and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

DEPARTMENT OF HEALTH

Item 1

To Department of Health - Executive Director's Operations	
From General Fund, One-Time	(69,600)
From Federal Funds, One-Time	178,700
From General Fund Restricted - Children with Heart Disease Support	
Restr Act, One-Time	(5,000)
From Closing Nonlapsing Balances	(400,000)
Schedule of Programs:	
Center for Health Data and Informatics	(25,000)
Program Operations	(270,900)

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$300,000 of Item 24 of Chapter 5, Laws of Utah 2016 for the Department of Health's Executive Director's Operations line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to: (1) replace and update information technology servers, equipment, and software or personal computers, printers, and software, (2) fund a temporary information technology manager to support the server consolidation project, and (3) fund major software programming projects such as SharePoint upgrades or new SharePoint processes.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$200,000 of Item 24 of Chapter 5, Laws of Utah 2016 for the Department of Health's Executive Director's Operations line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to ongoing development and maintenance of the vital records application portal.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$50,000 of Item 24 of Chapter 5, Laws of Utah 2016 for the Department of Health's Executive Director's Operations line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to ongoing maintenance and upgrades of the database in the Office of Medical Examiner and the Electronic Death Entry Network or replacement of personal computers and information technology equipment.

Item 2

To Department of Health – Family Health and Preparedness

From General Fund, One-Time	400
From Federal Funds, One-Time	3,922,200
From Beginning Nonlapsing Balances	(996,100)
From Closing Nonlapsing Balances ...	(2,763,000)

Schedule of Programs:

Director’s Office	400
Maternal and Child Health	3,922,200
Health Facility Licensing and Certification	(996,100)
Emergency Medical Services and Preparedness	(2,763,000)

Under Section 63J-1-603 of the Utah Code, the Legislature intends that civil money penalties collected in the Child Care Licensing and Health Care Licensing programs of Item 25 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Family Health and Preparedness line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to trainings for providers and staff, as well as upgrades to the Child Care Licensing database.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that criminal fines and forfeitures collected in the Emergency Medical Services program of Item 25 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Family Health and Preparedness line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to purposes outlined in Section 26-8a-207(2).

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$50,000 of Item 25 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Family Health and Preparedness line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to the services to eligible clients in the Assistance for People with Bleeding Disorders Program.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$250,000 of Item 25 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Family Health and Preparedness line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to testing, certifications, background screenings, replacement testing equipment and testing supplies.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$210,000 of Item 25 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Family Health and Preparedness line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to health facility plan review activities.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$245,000 of

Item 25 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Family Health and Preparedness line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to health facility licensure and certification activities.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that funds collected as a result of sanctions imposed under Section 1919 or Title XIX of the Federal Social Security Act and authorized in Section 26-18-3 of the Utah Code of Item 25 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Family Health and Preparedness line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to purposes outlined in Section 1919.

Item 3

To Department of Health – Disease Control and Prevention

From General Fund, One-Time	(2,500)
From Federal Funds, One-Time	3,936,500
From Dedicated Credits Revenue, One-Time	4,047,500
From General Fund Restricted – Children with Heart Disease Support Restr Acct, One-Time	5,000
From Closing Nonlapsing Balances ...	(1,261,900)

Schedule of Programs:

General Administration	13,400
Health Promotion	1,580,900
Epidemiology	3,465,400
Laboratory Operations and Testing	1,513,500
Clinical and Environmental Laboratory Certification Programs ...	151,400

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$15,000 of Item 122 of Chapter 396, Laws of Utah 2016 for the Department of Health’s Disease Control and Prevention line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to drug overdose prevention initiatives.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$20,000 of Item 122 of Chapter 396, Laws of Utah 2016 for the Department of Health’s Disease Control and Prevention line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to funding a Parkinson Disease registry.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$15,000 of Item 57 of Chapter 395, Laws of Utah 2016 for the Department of Health’s Disease Control and Prevention line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to public education regarding the effects of radon.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$525,000 of Item 26 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Disease Control and Prevention line item shall not lapse at the

close of Fiscal Year 2017. The use of any nonlapsing funds is limited to laboratory equipment, computer equipment, software, and building improvements, and temporary and one-time personnel needs within the Public Health Laboratory and the Office of the Medical Examiner.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$500,000 of Item 26 of Chapter 5, Laws of Utah 2016 in the Department of Health's Disease Control and Prevention line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to alcohol, tobacco, and other drug prevention, reduction, cessation, and control programs or for emergent disease control and prevention needs.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$175,000 of Item 26 of Chapter 5, Laws of Utah 2016 in the Department of Health's Disease Control and Prevention line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to maintenance or replacement of computer equipment, software, or other purchases or services that improve or expand services provided by the Bureau of Epidemiology.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$250,000 of Item 26 of Chapter 5, Laws of Utah 2016 fees collected for the Newborn Screening Program in the Department of Health's Disease Control and Prevention line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to maintenance, upgrading, replacement, or purchase of laboratory or computer equipment and software.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$25,000 of Item 26 of Chapter 5, Laws of Utah 2016 in the Department of Health's Disease Control and Prevention line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to local health department expenses in responding to a local health emergency.

Item 4

To Department of Health - Medicaid and Health Financing

From General Fund, One-Time	(36,800)
From Federal Funds, One-Time	(223,100)
From General Fund Restricted - Nursing Care Facilities Account, One-Time	37,600
From Closing Nonlapsing Balances	(415,700)
Schedule of Programs:	
Director's Office	30,800
Financial Services	(415,700)
Medicaid Operations	(253,100)

The Legislature intends that the \$500,000 in Beginning Nonlapsing provided to the Department of Health's Medicaid and Health Financing line item for State Match to

improve existing application level security and provide redundancy for core Medicaid applications is dependent upon up to \$500,000 funds not otherwise designated as nonlapsing to the Department of Health's Medicaid Mandatory Services line item, Optional Services line item, Medicaid and Health Financing line item or a combination from all three line items not to exceed \$500,000 being retained as nonlapsing in Fiscal Year 2017.

Under Section 63J-1-603 of the Utah Code, the Legislature intends up to \$475,000 of Item 31 of Chapter 5, Laws of Utah 2016 in the Department of Health's Medicaid and Health Financing line item shall not lapse at the close of Fiscal Year 2017. The use of nonlapsing funds is limited to compliance with federally mandated projects and the purchase of computer equipment and software.

Under Section 63J-1-603 of the Utah Code, the Legislature intends up to \$500,000 of Item 31 of Chapter 5, Laws of Utah 2016 in the Department of Health's Medicaid and Health Financing line item shall not lapse at the close of Fiscal Year 2017. The use of nonlapsing funds is limited to improving existing application level security and providing redundancy for core Medicaid applications.

Item 5

To Department of Health - Medicaid Sanctions

From Beginning Nonlapsing Balances ...	996,100
From Closing Nonlapsing Balances	(996,100)

Under Section 63J-1-603 of the Utah Code, the Legislature intends that funds collected as a result of sanctions imposed under Section 1919 or Title XIX of the Federal Social Security Act and authorized in Section 26-18-3 of the Utah Code of Item 32 of Chapter 5, Laws of Utah 2016 in the Department of Health's Medicaid Sanctions line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to purposes outlined in Section 1919.

Item 6

To Department of Health - Medicaid Mandatory Services

From General Fund, One-Time	(11,864,000)
From Federal Funds, One-Time ...	(29,078,400)
From Ambulance Service Provider Assess Exp Rev Fund, One-Time	3,217,400
From General Fund Restricted - Nursing Care Facilities Account, One-Time ...	(37,600)
From Closing Nonlapsing Balances ...	(7,500,000)
Schedule of Programs:	
Managed Health Care	(42,145,600)
Nursing Home	11,951,000
Inpatient Hospital	437,400
Outpatient Hospital	(1,233,600)
Physician Services	1,699,200
Medicaid Management Information System Replacement	(7,500,000)
Crossover Services	566,400
Medical Supplies	566,400

Other Mandatory Services (9,603,800)

The Legislature authorizes the Department of Health to spend all available money in the Hospital Provider Assessment Expendable Special Revenue Fund for FY 2017 regardless of the amount appropriated as allowed by the fund’s authorizing statute.

The Legislature authorizes the Department of Health to spend all available money in the Ambulance Service Provider Assessment Expendable Revenue Fund for FY 2017 regardless of the amount appropriated as allowed by the fund’s authorizing statute.

Under Section 63J-1-603 of the Utah Code, the Legislature intends up to \$7,324,200 of Item 34 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Medicaid Mandatory Services line item shall not lapse at the close of Fiscal Year 2017. The use of nonlapsing funds is limited to the redesign and replacement of the Medicaid Management Information System.

Under Section 63J-1-603 of the Utah Code, the Legislature intends up to \$500,000 of Item 34 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Medicaid Mandatory Services line item shall not lapse at the close of Fiscal Year 2017. The use of nonlapsing funds is limited to improving existing application level security and providing redundancy for core Medicaid applications.

Item 7

To Department of Health - Medicaid

Optional Services	
From General Fund, One-Time	(4,205,000)
From Federal Funds, One-Time	(23,935,300)
From Federal Funds - American Recovery and Reinvestment Act, One-Time	2,725,000
From General Fund Restricted - Medicaid Restricted Account, One-Time	8,441,900
From Closing Nonlapsing Balances	(2,544,000)
Schedule of Programs:	
Home and Community Based Waiver Services	10,827,900
Capitated Mental Health Services	(23,954,700)
Pharmacy	(45,948,800)
Non-service Expenses	299,900
Intermediate Care Facilities for Intellectually Disabled	4,564,400
Dental Services	1,432,600
Buy-in/Buy-out	14,259,500
Clawback Payments	3,250,000
Disproportionate Share Hospital Payments	(866,200)
Hospice Care Services	1,883,400
Vision Care	(299,900)
Other Optional Services	15,034,500

Under Section 63J-1-603 of the Utah Code, the Legislature intends that any actual savings greater than \$164,800 that are due to

inclusion of psychotropic drugs on the preferred drug list and accrue to the Department of Health’s Medicaid Optional Services line item from the appropriation provided in Item 35, Chapter 5, Laws of Utah 2016 shall not lapse at the close of Fiscal Year 2017. The Division of Finance shall transfer these funds to the Medicaid Expansion Fund created in Section 26-36b-208 of the Utah Code.

Under Section 63J-1-603 of the Utah Code, the Legislature intends up to \$2,959,700 of Item 35 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Medicaid Optional Services line item shall not lapse at the close of Fiscal Year 2017. The use of nonlapsing funds is limited to a pilot program for assistance for children with disabilities and complex medical conditions for the duration of the pilot.

Under Section 63J-1-603 of the Utah Code, the Legislature intends up to \$500,000 of Item 35 of Chapter 5, Laws of Utah 2016 in the Department of Health’s Medicaid Optional Services line item shall not lapse at the close of Fiscal Year 2017. The use of nonlapsing funds is limited to improving existing application level security and providing redundancy for core Medicaid applications.

Item 8

To Department of Health - Medicaid Expansion 2017

From Federal Funds, One-Time	30,348,100
From Medicaid Expansion Fund, One-Time	494,300
Schedule of Programs:	
Medicaid Expansion 2017	30,842,400

The Legislature authorizes the Department of Health to spend all available money in the Medicaid Expansion Fund for FY 2017 regardless of the amount appropriated as allowed by the fund’s authorizing statute.

DEPARTMENT OF WORKFORCE SERVICES

Item 9

To Department of Workforce Services - Administration

From General Fund Restricted - Special Admin. Expense Account, One-Time	(201,300)
From Closing Nonlapsing Balances	(200,000)
Schedule of Programs:	
Executive Director’s Office	(200,000)
Administrative Support	(201,300)

Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$200,000 of the appropriations provided for the Administration line item in Item 36 of Chapter 5 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to equipment and software and special projects and studies.

Item 10

To Department of Workforce Services -
 Operations and Policy

From General Fund, One-Time	(144,000)
From Federal Funds, One-Time	30,832,800
From Dedicated Credits Revenue, One-Time	1,340,100
From General Fund Restricted - Special Admin. Expense Account, One-Time	(26,200)
From Revenue Transfers, One-Time . .	(150,000)
From Unemployment Compensation Fund, One-Time	(20,000)
From Closing Nonlapsing Balances . .	(5,600,000)

Schedule of Programs:

Facilities and Pass-Through	32,015,900
Workforce Development	(5,763,200)
Information Technology	(20,000)

Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$3,100,000 of the appropriations provided for the Operation and Policy line item in Item 37 of Chapter 5 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to equipment and software, one-time studies, one-time projects associated with addressing client services due to caseload growth or refugee services, and implementation of VoIP.

Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$2,500,000 of the appropriations provided for the Operation and Policy line item in Item 37 of Chapter 5 Laws of Utah 2016 for the Special Administrative Expense Account not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to employment development projects and activities or one-time projects associated with client services.

Item 11

To Department of Workforce Services -
 General Assistance

From Closing Nonlapsing Balances . .	(1,500,000)
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Schedule of Programs:

General Assistance	(1,500,000)
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Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$1,500,000 of the appropriations provided for the General Assistance line item in Item 39 of Chapter 5 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to equipment, software, and one-time projects associated with client services.

Item 12

To Department of Workforce Services -
 Unemployment Insurance

From General Fund, One-Time	144,000
From General Fund Restricted - Special Admin. Expense Account, One-Time	227,500
From Unemployment Compensation Fund, One-Time	20,000

From Closing Nonlapsing Balances	(60,000)
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Schedule of Programs:

Unemployment Insurance Administration	331,500
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Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$60,000 of the appropriations provided for the Unemployment Insurance line item in Item 40 of Chapter 5 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to equipment and software and onetime projects associated with addressing appeals or public assistance overpayment caseload growth.

Item 13

To Department of Workforce Services -
 Housing and Community Development

From Federal Funds, One-Time	4,552,300
From Revenue Transfers, One-Time	150,000
From Closing Nonlapsing Balances	(150,000)

Schedule of Programs:

Housing Development	4,702,300
Homeless Committee	(150,000)

Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$150,000 of the appropriation provided for the Housing and Community Development line item in item 15 of Chapter 5 Laws of Utah 2017 not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to costs associated with the new Youth Impact building.

DEPARTMENT OF HUMAN SERVICES

Item 14

To Department of Human Services -
 Executive Director Operations

From General Fund, One-Time	(51,200)
From Dedicated Credits Revenue, One-Time	20,000
From Revenue Transfers, One-Time	(7,000)
From Beginning Nonlapsing Balances	38,400

Schedule of Programs:

Executive Director's Office	16,600
Legal Affairs	(47,800)
Information Technology	4,700
Fiscal Operations	(1,700)
Human Resources	3,300
Office of Services Review	300
Office of Licensing	24,800

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$500,000 of appropriations provided in Item 44, Chapter 5, Laws of Utah 2016 for the Department of Human Services - Executive Director Operations line item not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to expenditures for data processing and technology based expenditures; facility repairs, maintenance, and improvements; short-term projects and studies that promote efficiency and service improvement; and expenditures for H.B. 259, "Fraud Prevention Legislation," 2016 General Session.

Item 15

To Department of Human Services - Division of Substance Abuse and Mental Health
 From General Fund, One-Time 700,000
 From Beginning Nonlapsing Balances (119,900)
 Schedule of Programs:
 Administration - DSAMH 71,900
 Community Mental Health Services (1,106,100)
 Mental Health Centers 20,500
 State Hospital 336,900
 State Substance Abuse Services 777,400
 Local Substance Abuse Services 479,500

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$3,000,000 of appropriations provided in Item 45, Chapter 5, Laws of Utah 2016 for the Department of Human Services - Division of Substance Abuse and Mental Health not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to expenditures for data processing and technology based expenditures; facility repairs, maintenance, and improvements; pass-through expenditures to local authorities providing direct services; short-term projects and studies that promote efficiency and service improvement; and expenditures for the Forensic Competency Restoration Unit.

Item 16

To Department of Human Services - Division of Services for People with Disabilities
 From General Fund, One-Time (383,100)
 From Revenue Transfers, One-Time .. (901,100)
 From Beginning Nonlapsing Balances ... 439,900
 Schedule of Programs:
 Community Supports Waiver (844,300)

Item 17

To Department of Human Services - Division of Child and Family Services
 From Beginning Nonlapsing Balances ... 519,000
 Schedule of Programs:
 Service Delivery (125,000)
 In-Home Services 36,500
 Out-of-Home Care 270,700
 Adoption Assistance 216,800
 Child Welfare Management Information System 120,000

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$3,500,000 of appropriations provided in Item 48, Chapter 5, Laws of Utah 2016 for the Department of Human Services - Division of Child and Family Services not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to facility repair, maintenance, and improvements; Adoption Assistance; Out of Home Care; Service Delivery; In-Home Services; Special Needs; SAFE Management Information System modernization consistent with the requirements found at UCA 63J-1-603(3)(b); expenditures for S.B. 82, "Child Welfare

Modifications," 2016 General Session; and pass-throughs to the Utah Foster Care Foundation.

The Legislature intends the Department of Human Services - Division of Child and Family Services use nonlapsing state funds originally appropriated for Out of Home Care to enhance Service Delivery or In-Home Services consistent with the requirements found at UCA 63J-1-603(3)(b). The purpose of this reinvestment of funds is to increase capacity to keep children safely at home and reduce the need for foster care, in accordance with Utah's Child Welfare Demonstration Project authorized under Section 1130 of the Social Security Act (Act) (42 U.S.C. 1320a-9), which grants a waiver for certain foster care funding requirements under Title IV-E of the Act. These funds shall only be used for child welfare services allowable under Title IV-B or Title IV-E of the Act.

The Legislature intends the Department of Human Services - Division of Child and Family Services use nonlapsing state funds originally appropriated for Adoption Assistance non-Title IV-E monthly subsidies for any children that were not initially Title IV-E eligible in foster care, but that now qualify for Title IV-E adoption assistance monthly subsidies under eligibility exception criteria specified in P.L. 112-34 [Social Security Act Section 473(e)]. These funds shall only be used for child welfare services allowable under Title IV-B or Title IV-E of the Social Security Act consistent with the requirements found at UCA 63J-1-603(3)(b).

Item 18

To Department of Human Services - Division of Aging and Adult Services
 From Beginning Nonlapsing Balances (52,900)
 Schedule of Programs:
 Adult Protective Services 50,000
 Aging Waiver Services (102,900)

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$50,000 of appropriations provided in Item 49, Chapter 5, Laws of Utah 2016 for the Department of Human Services - Division of Aging and Adult Services - Adult Protective Services not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to the purchase of computer equipment and software; capital equipment or improvements; equipment; or supplies.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$350,000 of appropriations provided in Item 49, Chapter 5, Laws of Utah 2016 for the Department of Human Services - Division of Aging and Adult Services - Aging Waiver Services not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to client services for the Aging Waiver.

Item 19

To Department of Human Services - Office of Public Guardian
 From General Fund, One-Time 51,200
 From Revenue Transfers, One-Time 7,000
 Schedule of Programs:
 Office of Public Guardian 58,200

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$50,000 of appropriations provided in Item 50, Chapter 5, Laws of Utah 2016 for the Department of Human Services - Office of Public Guardian not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to the purchase of computer equipment and software; capital equipment or improvements; other equipment or supplies; and special projects or studies.

Subsection 1(b). Expendable Funds and Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account's applicable authorizing statute.

DEPARTMENT OF HEALTH

Item 20

To Department of Health - Medicaid Expansion Fund
 From General Fund, One-Time (4,096,600)
 From Dedicated Credits Revenue, One-Time (6,800,000)
 Schedule of Programs:
 Medicaid Expansion Fund (10,896,600)

DEPARTMENT OF WORKFORCE SERVICES

Item 21

To Department of Workforce Services - Olene Walker Housing Loan Fund
 From Federal Funds, One-Time 115,000
 Schedule of Programs:
 Olene Walker Housing Loan Fund 115,000

DEPARTMENT OF HUMAN SERVICES

Item 22

To Department of Human Services - Out and About Homebound Transportation Assistance Fund
 From Beginning Fund Balance (100)
 From Closing Fund Balance 300
 Schedule of Programs:
 Out and About Homebound Transportation Assistance Fund 200

Item 23

To Department of Human Services - State Development Center Miscellaneous Donation Fund
 From Beginning Fund Balance 8,800
 From Closing Fund Balance (8,800)

Item 24

To Department of Human Services - State Development Center Workshop Fund
 From Beginning Fund Balance (800)
 From Closing Fund Balance 800

Item 25

To Department of Human Services - State Hospital Unit Fund
 From Beginning Fund Balance (3,700)
 From Closing Fund Balance 3,700

Item 26

To Department of Human Services - Utah State Developmental Center Land Fund
 From Beginning Fund Balance 2,300
 From Closing Fund Balance (43,700)
 Schedule of Programs:
 Utah State Developmental Center Land Fund (41,400)

Subsection 1(c). Fiduciary Funds. The Legislature has reviewed proposed revenues, expenditures, fund balances and changes in fund balances for the following fiduciary funds.

DEPARTMENT OF HUMAN SERVICES

Item 27

To Department of Human Services - Human Services Client Trust Fund
 From Beginning Fund Balance (123,600)
 From Closing Fund Balance 123,600

Item 28

To Department of Human Services - Maurice N. Warshaw Trust Fund
 From Beginning Fund Balance (3,900)
 From Closing Fund Balance 3,900

Item 29

To Department of Human Services - State Developmental Center Patient Account
 From Beginning Fund Balance (68,900)
 From Closing Fund Balance 68,900

Item 30

To Department of Human Services - State Hospital Patient Trust Fund
 From Beginning Fund Balance 57,700
 From Closing Fund Balance 84,500
 Schedule of Programs:
 State Hospital Patient Trust Fund 142,200

Section 2. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Subsection 2(a). Operating and Capital Budgets.

Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

DEPARTMENT OF HEALTH

Item 31

To Department of Health - Executive Director's Operations
 From General Fund 6,475,500

From Federal Funds	5,997,700
From Dedicated Credits Revenue	2,905,600
From General Fund Restricted - Children with Cancer Support Restricted Account	2,000
From General Fund Restricted - Children with Heart Disease Support Restr Acct	2,000
From Revenue Transfers	781,500
From Beginning Nonlapsing Balances ...	400,000
Schedule of Programs:	
Executive Director	3,597,900
Center for Health Data and Informatics	6,566,800
Program Operations	5,740,500
Office of Internal Audit	603,800
Adoption Records Access	55,300

The Legislature intends that the Department of Health report on the following performance measures for the Executive Director's Operations line item, whose mission is to (1) "The Utah Center for Health Data and Informatics serves all Utahns by collecting, registering, securing, analyzing, and making available accurate vital records and health data; and conducting public health and community health assessments to promote better health and health care." and (2 and 3) "The mission of the Office of Vital Records and Statistics (OVRs) is to administer the statewide system of vital records and statistics by: documenting and certifying facts related to Utahs vital events including births, deaths, adoption and family formation; reporting Utahs vital event data to the National Vital Statistics System; and responding to requests for data from health programs, health care providers, businesses, researchers, educational institutions, and the public.": (1) percent of UDOH restricted applications /systems that have reviewed, planned for, or mitigated identified risks according to procedure (Goal 95%), (2) births occurring in a hospital are entered accurately by hospital staff into the electronic birth registration system within 10 calendar days (Target = 99%), and (3) percentage of all deaths registered using the electronic death registration system (Target = 75% or more) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 32

To Department of Health - Family Health and Preparedness

From General Fund	19,406,500
From Federal Funds	78,466,600
From Dedicated Credits Revenue	14,016,700
From General Fund Restricted - Children's Hearing Aid Pilot Program Account	122,000
From General Fund Restricted - Kurt Oscarson Children's Organ Transplant	101,300
From Revenue Transfers	5,205,100
From Beginning Nonlapsing Balances	3,109,900

Schedule of Programs:

Director's Office	2,152,100
Maternal and Child Health	60,797,300
Child Development	25,169,200
Children with Special Health Care Needs	8,242,100
Public Health and Health Care Preparedness	7,952,200
Health Facility Licensing and Certification	5,621,500
Primary Care	3,859,800
Emergency Medical Services and Preparedness	6,633,900

The Legislature intends that the Department of Health report on the following performance measures for the Family Health and Preparedness line item, whose mission is to "The mission of the Division of Family Health and Preparedness is to assure care for many of Utah's most vulnerable citizens. The division accomplishes this through programs designed to provide direct services, and to be prepared to serve all populations that may suffer the adverse health impacts of a disaster, be it man-made or natural.": (1) the percent of children who demonstrated improvement in social-emotional skills, including social relationships (Goal = 70% or more), (2) annually perform on-site survey inspections of health care facilities (Goal = 75%), and (3) the percentage of ambulance providers receiving enough but not more than 8% of gross revenue or 14% return on assets (Goal = 72%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 33

To Department of Health - Disease Control and Prevention

From General Fund	14,370,400
From General Fund, One-Time	(7,900)
From Federal Funds	38,463,100
From Dedicated Credits Revenue	14,803,700
From General Fund Restricted - Cancer Research Account	20,000
From General Fund Restricted - Children with Cancer Support Restricted Account	10,500
From General Fund Restricted - Children with Heart Disease Support Restr Acct	10,500
From General Fund Restricted - Cigarette Tax Restricted Account	3,159,700
From Department of Public Safety Restricted Account	100,000
From General Fund Restricted - Prostate Cancer Support Account	26,600
From General Fund Restricted - State Lab Drug Testing Account	704,000
From General Fund Restricted - Tobacco Settlement Account	3,847,100
From Revenue Transfers	3,548,800
From Beginning Nonlapsing Balances	1,261,900
Schedule of Programs:	
General Administration	2,427,300
Health Promotion	30,319,600
Epidemiology	28,365,300

Laboratory Operations and
 Testing 12,780,000
 Office of the Medical Examiner 5,798,300
 Clinical and Environmental
 Laboratory Certification Programs . . . 627,900

The Legislature intends that the Department of Health report on the following performance measures for the Disease Control and Prevention line item, whose mission is to (1) “Improve the overall health of Utah’s vulnerable populations through improved health outcomes, increased access to services and expanded understanding of the impact of communicable diseases.” and (2) “The Tobacco Prevention and Control Program leads the fight to improve the health of Utah residents by promoting tobacco-free lifestyles and environments.” and (3) “The Utah Public Health Laboratory provides high-quality testing and consultation services to entities fulfilling a public health mandate to protect the citizens of Utah.”: (1) gonorrhea cases per 100,000 population (Target = 62.3 people or less), (2) percentage of adults who are current smokers (Target = 9% or less), and (3) percentage of toxicology cases completed within 20 day goal (Target = 100%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 34

To Department of Health - Vaccine Commodities
 From Federal Funds 27,154,000
 Schedule of Programs:
 Vaccine Commodities 27,154,000

The Legislature intends that the Department of Health report on the following performance measures for the Vaccine Commodities line item, whose mission is to “The mission of the Utah Department of Health Immunization Program is to improve the health of Utah’s citizens through vaccinations to reduce illness, disability, and death from vaccine-preventable infections. We seek to promote a healthy lifestyle that emphasizes immunizations across the lifespan by partnering with the 13 local health departments throughout the state and other community partners. From providing educational materials for the general public and healthcare providers to assessing clinic immunization records to collecting immunization data through online reporting systems, the Utah Immunization Program recognizes the importance of immunizations as part of a well-balanced healthcare approach.”: (1) Ensure that Utah children, adolescents and adults can receive vaccine in accordance with state and federal guidelines (Target = done), (2) Validate that Vaccines for Children-enrolled providers comply with Vaccines for Children program requirements as defined by Centers for Disease Control Operations Guide. (Target = 100%), and (3) Continue to improve & sustain immunization coverage levels among children, adolescents and adults (Target = done) by October 15,

2017 to the Social Services Appropriations Subcommittee.

Item 35

To Department of Health - Local
 Health Departments
 From General Fund 2,137,500
 Schedule of Programs:
 Local Health Department Funding . . . 2,137,500

The Legislature intends that the Department of Health report on the following performance measures for the Local Health Departments line item, whose mission is to “To prevent sickness and death from infectious diseases and environmental hazards; to monitor diseases to reduce spread; and to monitor and respond to potential bioterrorism threats or events, communicable disease outbreaks, epidemics and other unusual occurrences of illness.”: (1) number of local health departments that maintain a board of health that annually adopts a budget, appoints a local health officer, conducts an annual performance review for the local health officer, and reports to county commissioners on health issues (Target = 13 or 100%), (2) number of local health departments that provide communicable disease epidemiology and control services including disease reporting, response to outbreaks, and measures to control tuberculosis (Target = 13 or 100%), (3) number of local health departments that maintain a program of environmental sanitation which provides oversight of restaurants food safety, swimming pools, and the indoor clean air act (Target = 13 or 100%), (4) achieve and maintain an effective coverage rate for universally recommended vaccinations among young children up to 35 months of age (Target = 90%), (5) reduce the number of cases of pertussis among children under 1 year of age, and among adolescents aged 11 to 18 years (Target = 73 or less for infants and 322 cases or less for youth), and (6) local health departments will increase the number of health and safety related school buildings and premises inspections by 10% (from 80% to 90%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 36

To Department of Health - Rural Physicians
 Loan Repayment Assistance
 From General Fund 300,000
 From Beginning Nonlapsing Balances . . . 267,200
 From Closing Nonlapsing Balances (406,900)
 Schedule of Programs:
 Rural Physicians Loan Repayment
 Program 160,300

The Legislature intends that the Department of Health report on the following performance measures for the Rural Physicians Loan Repayment Assistance line item, whose mission is to “As the lead state primary care organization, our mission is to elevate the quality of health care through

assistance and coordination of health care interests, resources and activities which promote and increase quality healthcare for rural and underserved populations.”: (1) health care professionals serving rural areas (Target = 9) and (2) rural physicians serving rural areas (Target = 9) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 37

To Department of Health - Primary

Care Workforce Financial Assistance

From General Fund	500
From Beginning Nonlapsing Balances ...	391,800
From Closing Nonlapsing Balances	(197,300)

Schedule of Programs:

Primary Care Workforce Financial

Assistance	195,000
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The Legislature intends that the Department of Health report on the following performance measures for the Workforce Financial Assistance line item, whose mission is to “As the lead state primary care organization, our mission is to elevate the quality of health care through assistance and coordination of health care interests, resources and activities which promote and increase quality healthcare for rural and underserved populations.”: (1) the number of applications received for this program (Target = 4), (2) the number of awards given (Target = 4), and (3) the average time to process applications through time of award (Target = 15 work days) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 38

To Department of Health - Medicaid and

Health Financing

From General Fund	4,884,200
From Federal Funds	71,303,400
From Federal Funds, One-Time	(1,200,000)

From Federal Funds - American

Recovery and Reinvestment Act,

One-Time	1,200,000
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From Dedicated Credits Revenue	9,859,700
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From General Fund Restricted -

Nursing Care Facilities Account	831,600
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From Revenue Transfers	26,347,400
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From Beginning Nonlapsing Balances ...	415,700
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Schedule of Programs:

Director’s Office	2,484,300
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Financial Services	15,642,000
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Managed Health Care	4,574,900
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Medicaid Operations	3,656,000
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Authorization and Community

Based Services	2,901,600
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Eligibility Policy	2,552,300
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Coverage and Reimbursement

Policy	2,529,300
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Contracts	1,263,100
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Department of Workforce Services’

Seeded Services	38,497,400
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Other Seeded Services	39,541,100
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All General Funds appropriated to the Department of Health - Medicaid and Health

Financing line item are contingent upon expenditures from Federal Funds - American Recovery and Reinvestment Act (H.R. 1, 111th United States Congress) not exceeding amounts appropriated from Federal Funds - American Recovery and Reinvestment Act in all appropriation bills passed for FY 2018. If expenditures in the Medicaid and Health Financing line item from Federal Funds - American Recovery and Reinvestment Act exceed amounts appropriated to the Medicaid and Health Financing line item from Federal Funds - American Recovery and Reinvestment Act in FY 2018, the Division of Finance shall reduce the General Fund allocations to the Medicaid and Health Financing line item by one dollar for every one dollar in Federal Funds - American Recovery and Reinvestment Act expenditures that exceed Federal Funds - American Recovery and Reinvestment Act appropriations.

The Legislature intends that the Department of Health work with the Utah State Office of Education to explore using Medicaid funding for school nurses and report to the Office of the Legislative Fiscal Analyst by August 31, 2017. The report should answer at least the following questions: (1) Can Medicaid dollars be used to fund school nurses?, (2) In what circumstances can Medicaid dollars be used to fund school nurses?, and (3) How much Medicaid funding could be used for school nurses?

The Legislature intends that the Inspector General of Medicaid Services pay the Attorney General’s Office the full state cost of the one attorney FTE that it is using at the Department of Health.

The Legislature intends that the Department of Health report to the Office of the Legislative Fiscal Analyst by December 15, 2017 on the October 2016 policy change to restrict initial prescriptions for short acting opiates. The report should include at a minimum the results of the first 12 months and detail the financial impacts as well as the impacts to the supply of opiates.

The Legislature intends that the Department of Health report on the following performance measures for the Medicaid and Health Financing line item, whose mission is to “We provide access to quality, cost-effective health care for eligible Utahns.”: (1) average decision time on pharmacy prior authorizations (Target = 24 hours or less), (2) percent of clean claims adjudicated within 30 days of submission (Target = 98%), and (3) total count of Medicaid and CHIP clients educated on proper benefit use and plan selection (Target = 115,000 or more) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 39

To Department of Health - Medicaid Sanctions

From Beginning Nonlapsing	
Balances	1,979,000
From Closing Nonlapsing Balances ...	(1,979,000)

The Legislature intends that the Department of Health report on how expenditures from the Medicaid Sanctions line item, whose mission is to “We provide access to quality, cost-effective health care for eligible Utahns,” met federal requirements which constrain its use by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 40

To Department of Health - Children’s Health Insurance Program

From General Fund	5,679,400
From General Fund, One-Time	(4,033,100)
From Federal Funds	109,183,600
From Federal Funds, One-Time	10,082,700
From Dedicated Credits Revenue	8,122,400
From General Fund Restricted - Tobacco Settlement Account	10,452,900
From General Fund Restricted - Tobacco Settlement Account, One-Time	(6,049,600)
Schedule of Programs:	
Children’s Health Insurance Program	133,438,300

The Legislature intends that the Department of Health report on the following performance measures for the Children’s Health Insurance Program line item, whose mission is to “We provide access to quality, cost-effective health care for eligible Utahns.”: (1) percent of children less than 15 months old that received at least six or more well-child visits (Target = 70% or more), (2) percent of members (12 - 21 years of age) who had at least one comprehensive well-care visit (Target = 39% or more), and (3) percent of adolescents who received one meningococcal vaccine and one TDAP (tetanus, diphtheria, and pertussis) between the members 10th and 13th birthdays (Target = 73%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 41

To Department of Health - Medicaid Mandatory Services

From General Fund	351,884,900
From General Fund, One-Time	(9,309,600)
From Federal Funds	1,150,962,400
From Federal Funds, One-Time	(7,668,600)
From Dedicated Credits Revenue	44,526,200
From Ambulance Service Provider Assess Exp Rev Fund	3,217,400
From Hospital Provider Assessment Fund	48,500,000
From General Fund Restricted - Nursing Care Facilities Account	24,947,100
From General Fund Restricted - Tobacco Settlement Account, One-Time	6,049,600
From Revenue Transfers	2,478,000
From Pass-through	9,002,200

From Beginning Nonlapsing	
Balances	7,500,000
Schedule of Programs:	
Managed Health Care	1,035,756,400
Nursing Home	230,389,300
Inpatient Hospital	141,446,000
Outpatient Hospital	59,186,200
Physician Services	47,451,200
Medicaid Management Information System Replacement	21,554,400
Crossover Services	10,263,900
Medical Supplies	9,591,200
Other Mandatory Services	76,451,000

The Legislature intends that the Department of Health report on the following performance measures for the Medicaid Mandatory Services line item, whose mission is to “We provide access to quality, cost-effective health care for eligible Utahns.”: (1) percent of adults age 45-64 with ambulatory or preventive care visits (Target = 88% or more), (2) percent of deliveries that had a post partum visit between 21 and 56 days after delivery (Target = 60% or more), and (3) percent of customers satisfied with their managed care plan (Target = 85% or more) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 42

To Department of Health - Medicaid Optional Services

From General Fund	118,844,500
From Federal Funds	624,484,300
From Federal Funds, One-Time ...	(13,500,000)
From Federal Funds - American Recovery and Reinvestment Act, One-Time	13,500,000
From Dedicated Credits Revenue ...	204,334,700
From General Fund Restricted - Nursing Care Facilities Account	3,480,100
From Revenue Transfers	107,519,000
From Beginning Nonlapsing Balances	3,544,000
Schedule of Programs:	
Home and Community Based Waiver Services	271,724,800
Capitated Mental Health Services	241,296,000
Pharmacy	88,418,200
Non-service Expenses	84,135,100
Intermediate Care Facilities for Intellectually Disabled	84,545,400
Dental Services	62,947,200
Buy-in/Buy-out	56,582,300
Clawback Payments	36,208,500
Disproportionate Share Hospital Payments	33,604,300
Hospice Care Services	19,630,600
Vision Care	1,552,900
Other Optional Services	81,561,300

The Legislature intends that the Department of Health report on the following performance measures for the Medicaid Optional Services line item, whose mission is to “We provide access to quality, cost-effective health care for eligible Utahns.”: (1) annual state general funds

saved through preferred drug list (Target = \$14.0 million general fund or more), (2) count of new choices waiver clients coming out of nursing homes into community based care (Target = 390 or more), and (3) emergency dental program savings (Target = \$500,000 General Fund savings or more) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 43

To Department of Health - Medicaid Expansion 2017

From Federal Funds	64,592,500
From Medicaid Expansion Fund	28,476,400
Schedule of Programs:	
Medicaid Expansion 2017	93,068,900

DEPARTMENT OF WORKFORCE SERVICES

Item 44

To Department of Workforce Services - Administration

From General Fund	3,201,000
From Federal Funds	7,039,300
From Federal Funds, One-Time	79,100
From Dedicated Credits Revenue	133,000
From Permanent Community Impact Loan Fund	136,800
From Revenue Transfers	2,526,800
From Beginning Nonlapsing Balances	200,000
Schedule of Programs:	
Executive Director's Office	1,197,000
Communications	1,540,500
Human Resources	1,625,500
Administrative Support	8,364,300
Internal Audit	588,700

The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Administration line item is limited to one-time projects associated with Unemployment Insurance modernization. All General Funds appropriated to the Department of Workforce Services Administration line item are contingent upon expenditures from Federal Funds - American Recovery and Reinvestment Act (H.R. 1, 111th United States Congress) not exceeding amounts appropriated from Federal Funds - American Recovery and Reinvestment Act in all appropriation bills passed for FY 2018. If expenditures in the Administration line item from Federal Funds - American Recovery and Reinvestment Act exceed amounts appropriated to the Administration line item from Federal Funds - American Recovery and Reinvestment Act in FY 2018, the Division of Finance shall reduce the General Fund allocations to the Administration line item by one dollar for every one dollar in Federal Funds - American Recovery and Reinvestment Act expenditures that exceed Federal Funds - American Recovery and Reinvestment Act appropriations.

The Legislature intends that the Department of Workforce Services report on the following performance measure for the Administration line item: provide accurate and timely department-wide fiscal administration. Target: manage, account and reconcile all funds within state finance close out time lines and with zero audit findings by October 15, 2017 to the Social Services Appropriations Subcommittee.

The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Administration line item is limited to one-time projects associated with Unemployment Insurance modernization.

Item 45

To Department of Workforce Services - Operations and Policy

From General Fund	46,874,600
From Federal Funds	248,136,800
From Federal Funds, One-Time	2,643,500
From Dedicated Credits Revenue	2,911,600
From Revenue Transfers	43,072,100
From Beginning Nonlapsing Balances	5,600,000
Schedule of Programs:	
Facilities and Pass-Through	13,641,700
Workforce Development	77,363,300
Temporary Assistance for Needy Families	78,300,000
Refugee Assistance	7,776,000
Workforce Research and Analysis	2,463,300
Trade Adjustment Act Assistance	950,000
Eligibility Services	62,462,600
Child Care Assistance	59,000,000
Nutrition Assistance	79,000
Workforce Investment Act Assistance	6,500,000
Other Assistance	366,500
Information Technology	40,336,200

The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Operations and Policy line item is limited to one-time projects associated with Unemployment Insurance modernization.

The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Operations and Policy line item is limited to one-time projects associated with Unemployment Insurance modernization and (2) All General Funds appropriated to the Department of Workforce Services - Operations and Policy line item are contingent upon expenditures from Federal Funds - American Recovery and Reinvestment Act (H.R. 1, 111th United States Congress) not exceeding amounts appropriated from Federal Funds - American Recovery and Reinvestment Act in all appropriation bills passed for Fiscal Year 2018. If expenditures in the Operations and Policy line item from Federal Funds - American Recovery and Reinvestment Act exceed amounts appropriated to the

Operations and Policy line item from Federal Funds American Recovery and Reinvestment Act in Fiscal Year 2018, the Division of Finance shall reduce the General Fund allocations to the Operations and Policy line item by one dollar for every one dollar in Federal Funds - American Recovery and Reinvestment Act expenditures that exceed Federal Funds - American Recovery and Reinvestment Act appropriations.

The Legislature intends that the Department of Workforce Services report to the Office of the Legislative Fiscal Analyst by August 15, 2017 what it has done in response to each of the recommendations in "A Performance Audit of Data Analytics Techniques to Detect SNAP Abuse." The report shall further include what the impacts current and projected, financial and otherwise of the changes have been and will be.

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Operations and Policy line item: (1) labor exchange - total job placements (Target = 45,000 placements per calendar quarter), (2) TANF recipients - positive closure rate (Target = 72% per calendar month), and (3) Eligibility Services - internal review compliance accuracy (Target = 95%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Administration line item is limited to one-time projects associated with Unemployment Insurance modernization.

Item 46

To Department of Workforce Services -
 Nutrition Assistance - SNAP
 From Federal Funds 311,096,000
 From Federal Funds, One-Time (997,000)
 Schedule of Programs:
 Nutrition Assistance - SNAP 310,099,000

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Nutrition Assistance line item: (1) Federal SNAP Quality Control Accuracy - Actives (Target= 97%), (2) Food Stamps - Certification Timeliness (Target = 95%), and (3) Food Stamps - Certification Days to Decision (Target = 12 days) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 47

To Department of Workforce Services -
 General Assistance
 From General Fund 4,694,900
 From Dedicated Credits Revenue 250,000
 From Beginning Nonlapsing
 Balances 1,500,000
 Schedule of Programs:

General Assistance 6,444,900

Item 48

To Department of Workforce Services -
 Unemployment Insurance
 From General Fund 724,800
 From Federal Funds 20,527,900
 From Federal Funds, One-Time 677,400
 From Dedicated Credits Revenue 691,600
 From Revenue Transfers 506,800
 From Beginning Nonlapsing Balances 60,000
 Schedule of Programs:
 Unemployment Insurance
 Administration 19,761,000
 Adjudication 3,427,500

The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Unemployment Insurance line item is limited to one-time projects associated with Unemployment Insurance modernization and all General Funds appropriated to the Department of Workforce Services - Unemployment Insurance line item are contingent upon expenditures from Federal Funds - American Recovery and Reinvestment Act (H.R. 1, 111th United States Congress) not exceeding amounts appropriated from Federal Funds - American Recovery and Reinvestment Act in all appropriation bills passed for Fiscal Year 2018. If expenditures in the Unemployment Insurance line item from Federal Funds American Recovery and Reinvestment Act exceed amounts appropriated to the Unemployment Insurance line item from Federal Funds American Recovery and Reinvestment Act in Fiscal Year 2018, the Division of Finance shall reduce the General Fund allocations to the Unemployment Insurance line item by one dollar for every one dollar in Federal Funds - American Recovery and Reinvestment Act expenditures that exceed Federal Funds - American Recovery and Reinvestment Act appropriations.

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Unemployment Insurance line item: (1) percentage of new employer status determinations made within 90 days of the last day in the quarter in which the business became liable (Target => 95.5%), (2) percentage of Unemployment Insurance separation determinations with quality scores equal to or greater than 95 points, based on the evaluation results of quarterly samples selected from all determinations (Target => 90%), and (3) percentage of Unemployment Insurance benefits payments made within 14 days after the week ending date of the first compensable week in the benefit year (Target => 95%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

The Legislature intends that the Department of Workforce Services report on the following performance measures for the

Unemployment Compensation Fund: (1) Unemployment Insurance Trust Fund balance is greater than the minimum adequate reserve amount and less than the maximum adequate reserve amount (Target = \$716 million to \$954 million), (2) the average high cost multiple is the Unemployment Insurance Trust Fund balance as a percentage of total Unemployment Insurance wages divided by the average high cost rate (Target => 1), and (3) contributory employers Unemployment Insurance contributions due paid timely (Target => 95%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Unemployment Insurance line item is limited to one-time projects associated with Unemployment Insurance modernization.

Item 49

To Department of Workforce Services -
 Community Development Capital Budget
 From Permanent Community Impact
 Loan Fund 93,060,000
 Schedule of Programs:
 Community Impact Board 93,060,000

Item 50

To Department of Workforce Services -
 State Office of Rehabilitation
 From General Fund 21,834,200
 From Federal Funds 63,758,600
 From Dedicated Credits Revenue 811,900
 Schedule of Programs:
 Executive Director 3,206,200
 Blind and Visually Impaired 4,279,600
 Rehabilitation Services 47,679,900
 Disability Determination 16,083,800
 Deaf and Hard of Hearing 3,155,200
 Aspire Grant 12,000,000

The Legislature intends that the Department of Workforce Services report on the following performance measures for its Utah State Office of Rehabilitation line item: (1) Vocational Rehabilitation - Increase the percentage of clients served who are youth (age 14 to 24 years) by 3% over the 2015 rate of 25.3% (Target 28.3%), (2) Vocational Rehabilitation - maintain or increase a successful rehabilitation closure rate (Target =55%), and (3) Deaf and Hard of Hearing - Increase in the number of individuals served by DSDHH programs (Target = 7,144) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 51

To Department of Workforce Services -
 Housing and Community Development
 From General Fund 2,671,900
 From Federal Funds 48,107,000
 From Dedicated Credits Revenue 3,352,200
 From General Fund Restricted - Pamela Atkinson Homeless Account 1,087,500

From General Fund Restricted -
 Homeless Housing Reform
 Restricted Account 4,500,000
 From Permanent Community Impact
 Loan Fund 1,260,400
 From General Fund Restricted -
 Youth Character Organization 10,000
 From General Fund Restricted -
 Youth Development Organization 10,000
 From Beginning Nonlapsing Balances ... 150,000
 Schedule of Programs:
 Community Development
 Administration 594,000
 HEAT 24,722,700
 Housing Development 4,157,200
 Weatherization Assistance 11,333,900
 Homeless to Housing Reform
 Program 4,500,000
 Community Development 7,212,800
 Homeless Committee 4,461,800
 Community Services 3,716,600
 Emergency Food Network 296,700
 Special Housing 153,300

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Housing and Community Development line item: (1) utilities assistance for low-income households - number of eligible households assisted with home energy costs (Target = 35,000 households), and (2) Weatherization Assistance - number of low income households assisted by installing permanent energy conservation measures in their homes (Target = 530 homes) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 52

To Department of Workforce Services -
 Special Service Districts
 From General Fund Restricted - Mineral
 Lease 4,816,900
 Schedule of Programs:
 Special Service Districts 4,816,900

The Legislature intends that the Department of Workforce Services report on the following performance measure for the Special Service Districts line item: the total pass through of funds to qualifying special service districts in counties of the 5th, 6th and 7th class (this is completed quarterly) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 53

To Department of Workforce Services -
 Office of Child Care
 From General Fund 75,000
 From Federal Funds 2,000,000
 Schedule of Programs:
 Student Access to High Quality School
 Readiness Grant 1,000,000
 Intergenerational Poverty School
 Readiness Scholarship 1,075,000

The Legislature intends that the Department of Workforce Services report on the following performance measures for the

Office of Child Care line item: (1) Child Development Associate Credential (CDA)--# of people successfully obtaining CDA. No target at present. First year would help establish a benchmark moving forward (2) High Quality School Readiness expansion (HQSR-E) grants--number of eligible children served through expansion grants annually. No target at present. The first year would help establish a benchmark moving forward and (3) Intergenerational Poverty (IGP) scholarships-- (i) # of scholarships issued to eligible 4 year olds; and (ii) # of eligible 4 year olds enrolled in high-quality preschool with the scholarships. No targets at present. The first year would help establish a benchmark moving forward by October 15, 2017 to the Social Services Appropriations Subcommittee.

DEPARTMENT OF HUMAN SERVICES

Item 54

To Department of Human Services - Executive Director Operations

From General Fund	8,042,000
From Federal Funds	7,626,900
From Dedicated Credits Revenue	56,000
From Revenue Transfers	3,196,100

Schedule of Programs:

Executive Director's Office	6,486,500
Legal Affairs	851,800
Information Technology	1,820,500
Fiscal Operations	3,086,600
Human Resources	32,300
Local Discretionary Pass-Through ..	1,140,700
Office of Services Review	1,463,900
Office of Licensing	3,195,700
Utah Developmental Disabilities Council	843,000

The Legislature intends that the Department of Human Services provide a report on the System of Care program to the Office of the Legislative Fiscal Analyst no later than October 1, 2017. The report shall include: (1) the geographic areas of the State where the program has been implemented; (2) the number of children and families served; (3) the total population of children and families that could be eligible; (4) a description of how the department determines which children and families to serve; (5) a measure of cost per child and cost per family; and (6) a plan for how funding for the program will be sustained over the next five years.

The Legislature intends that the Department of Human Services report on the following performance measures for the Executive Director Operations line item, whose mission is "To strengthen lives by providing children, youth, families and adults individualized services to thrive in their homes, schools and communities": (1) Corrected department-wide reported fiscal issues -- per reporting process and June 30 quarterly report involving Bureaus of

Finance and EDO Bureau of Internal Review and Audit (Target = 70%), (2) Percentage of initial foster care homes licensed within 3 months of application completion (Target = 60%), and (3) double-read (reviewed) Case Process Reviews will be accurate in The Office of Services Review (Target = 96%) by October 15, 2017 to the Social Services Appropriations Subcommittee. The Legislature further intends that the Department of Human Services consider revising the target for measure (1) and submit any proposed changes.

Item 55

To Department of Human Services - Division of Substance Abuse and Mental Health

From General Fund	97,236,000
From Federal Funds	27,190,900
From Dedicated Credits Revenue	2,519,100
From General Fund Restricted - Intoxicated Driver Rehabilitation Account	1,500,000
From General Fund Restricted - Tobacco Settlement Account	2,325,400
From Revenue Transfers	18,445,400

Schedule of Programs:

Administration - DSAMH	3,277,600
Community Mental Health Services	14,018,500
Mental Health Centers	27,125,700
Residential Mental Health Services	221,900
State Hospital	60,664,700
State Substance Abuse Services	8,910,200
Local Substance Abuse Services	26,622,200
Driving Under the Influence (DUI) Fines	1,500,000
Drug Offender Reform Act (DORA) ..	2,747,100
Drug Courts	4,128,900

The Legislature intends that the Department of Human Services report on the following performance measures for the Substance Abuse and Mental Health line item, whose mission is to "To promote hope, health and healing, by reducing the impact of substance abuse and mental illness to Utah citizens, families and communities": (1) Local Substance Abuse Services - Successful completion rate (Target = 44%), (2) Mental Health Services - Adult Outcomes Questionnaire - Percent of clients stable, improved, or in recovery while in current treatment (Target = 84%), and (3) Mental Health Centers - Youth Outcomes Questionnaire - Percent of clients stable, improved, or in recovery while in current treatment (Target = 84%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

The Legislature intends the Department of Human Services provide to the Office of the Legislative Fiscal Analyst no later than August 15, 2017 the following information for the Medication Assisted Treatment Pilot Program: (1) cost per client, (2) changes in employment, housing, education, and income among clients, (3) the number of new charge bookings among clients, (4) measures of

cost-effectiveness, (5) options for reducing the cost of treatment, including obtaining naltrexone from compounding pharmacies, and (6) options for continued funding beyond the current one-time funding, if the pilot shows positive outcome measures.

Item 56

To Department of Human Services - Division of Services for People with Disabilities

From General Fund	90,110,500
From General Fund, One-Time	(300,000)
From Federal Funds	1,577,100
From Dedicated Credits Revenue	2,420,800
From Revenue Transfers	213,903,800
From Revenue Transfers, One-Time ..	(705,700)

Schedule of Programs:

Administration - DSPD	4,624,600
Service Delivery	6,227,300
Utah State Developmental Center ..	38,764,800
Community Supports Waiver	248,065,100
Acquired Brain Injury Waiver	5,264,700
Physical Disabilities Waiver	2,381,500
Non-waiver Services	1,678,500

The Legislature intends that the Department of Human Services report on the following performance measures for the Services for People with Disabilities line item, whose mission is to “To promote opportunities and provide supports for persons with disabilities to lead self-determined lives”: (1) Community Supports, Brain Injury, Physical Disability Waivers, Non-waiver Services - % providers meeting fiscal requirements of contract (Target = 100%), (2) Community Supports, Brain Injury, Physical Disability Waivers, Non-waiver Services - % providers meeting non-fiscal requirements of contracts (Target = 100%), and (3) People receive supports in employment settings rather than day programs (National ranking) (Target = #1 nationally) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Under Subsection 62A-5-102(7)(a) of the Utah Code, the Legislature intends that the Department of Human Services - Division of Services for People with Disabilities (DSPD) use Fiscal Year 2018 beginning nonlapsing funds to provide services for individuals needing emergency services; individuals needing additional waiver services; individuals who turn 18 years old and leave state custody from the Divisions of Child and Family Services and Juvenile Justice Services; individuals court ordered into DSPD services; and to provide increases to providers for direct care staff salaries. The Legislature further intends that DSPD report to the Office of Legislative Fiscal Analyst by October 15, 2018 on the use of these nonlapsing funds.

Item 57

To Department of Human Services - Office of Recovery Services

From General Fund	13,658,400
From Federal Funds	21,005,800

From Dedicated Credits Revenue	7,514,000
From Revenue Transfers	2,667,900
Schedule of Programs:	
Administration - ORS	1,016,300
Financial Services	2,532,500
Electronic Technology	8,969,000
Child Support Services	23,949,800
Children in Care Collections	700,200
Attorney General Contract	4,714,800
Medical Collections	2,963,500

The Legislature intends that the Department of Human Services report on the following performance measures for the Office of Recovery Services line item, whose mission is to “To serve children and families by promoting independence by providing services on behalf of children and families in obtaining financial and medical support, through locating parents, establishing paternity and support obligations, and enforcing those obligations when necessary”: (1) ORS Total Collections (Target = \$265 million), (2) Child Support Services Collections (Target = \$225 million), and (3) Ratio: ORS Collections to Cost (Target = > \$6.25 to \$1) by October 15, 2017 to the Social Services Appropriations Subcommittee. The Legislature further intends that the Department of Human Services consider changing measure (2) and submit any proposed changes.

Item 58

To Department of Human Services - Division of Child and Family Services

From General Fund	115,974,500
From Federal Funds	62,244,500
From Dedicated Credits Revenue	2,662,400
From General Fund Restricted - Children's Account	450,000
From General Fund Restricted - Choose Life Adoption Support Account ...	1,000
From General Fund Restricted - Victims of Domestic Violence Services Account	705,000
From General Fund Restricted - National Professional Men's Basketball Team Support of Women and Children Issues	12,500
From Revenue Transfers	(8,701,400)
Schedule of Programs:	
Administration - DCFS	4,771,800
Service Delivery	81,412,000
In-Home Services	3,743,400
Out-of-Home Care	37,976,500
Facility-based Services	3,842,600
Minor Grants	6,995,300
Selected Programs	3,754,200
Special Needs	2,020,900
Domestic Violence	5,638,200
Children's Account	450,000
Adoption Assistance	16,975,500
Child Welfare Management Information System	5,768,100

The Legislature intends that the Department of Human Services report on the following performance measures for the Child and Family Services line item, whose mission

is “To keep children safe from abuse and neglect and provide domestic violence services by working with communities and strengthening families”: (1) Administrative Performance: Percent satisfactory outcomes on qualitative case reviews/system performance (Target = 85%/85%), (2) Child Protective Services: Absence of maltreatment recurrence within 6 months (Target = 94.6%), and (3) Out of home services: Percent of children reunified within 12 months (Target = 74.2%) by October 15, 2017 to the Social Services Appropriations Subcommittee. The Legislature further intends that the Department of Human Services consider revising the target for measure (1) and submit any proposed changes.

Item 59

To Department of Human Services - Division of Aging and Adult Services

From General Fund	13,606,400
From Federal Funds	11,753,600
From Dedicated Credits Revenue	100
From Revenue Transfers	(932,400)
Schedule of Programs:	
Administration - DAAS	1,597,600
Local Government Grants -	
Formula Funds	13,553,700
Non-Formula Funds	1,191,400
Adult Protective Services	3,173,300
Aging Waiver Services	928,300
Aging Alternatives	3,983,400

The Legislature intends that the Department of Human Services report on the following performance measures for the Aging and Adult Services line item, whose mission is “To provide leadership and advocacy in addressing issues that impact older Utahns, and serve elder and disabled adults needing protection from abuse, neglect or exploitation”: (1) Medicaid Aging Waiver: Average Cost of Client at 15% or less of Nursing Home Cost (Target = 15%), (2) Adult Protective Services: Protective needs resolved positively (Target = 95%), and (3) Meals on Wheels: Total meals served (Target = 10,115) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 60

To Department of Human Services - Office of Public Guardian

From General Fund	468,500
From Federal Funds	40,000
From Revenue Transfers	310,700
Schedule of Programs:	
Office of Public Guardian	819,200

The Legislature intends that the Department of Human Services report on the following performance measures for the Office of Public Guardian (OPG) line item, whose mission is “To ensure quality coordinated services in the least restrictive, most community-based environment to meet the safety and treatment needs of those we serve while maximizing independence and

community and family involvement”: (1) OPG strives to ensure all other available family or associate resources for guardianship are explored before and during involvement with OPG (Target = 10% of cases being transferred to a family member or associate), (2) OPG will obtain an annual cumulative score of at least 85% on their quarterly case process reviews (Target = 85%), and (3) OPG eligible staff will obtain and maintain National Guardianship certification (Target = 100%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Subsection 2(b). Expendable Funds and Accounts.

The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account’s applicable authorizing statute.

DEPARTMENT OF HEALTH

Item 61

To Department of Health - Hospital Provider Assessment Expendable Revenue Fund

From Dedicated Credits Revenue	48,500,000
From Beginning Fund Balance	4,877,900
From Closing Fund Balance	(4,877,900)
Schedule of Programs:	

Hospital Provider Assessment

Expendable Revenue Fund	48,500,000
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The Legislature intends that the Department of Health report on the following performance measures for the Hospital Provider Assessment Expendable Revenue Fund, whose mission is to “We provide access to quality, cost-effective health care for eligible Utahns.”: (1) percentage of hospitals invoiced (Target = 100%), (2) percentage of hospitals who have paid by the due date (Target => 85%), and (3) percentage of hospitals who have paid within 30 days after the due date (Target => 97%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 62

To Department of Health - Medicaid Expansion Fund

From General Fund	18,912,000
From General Fund, One-Time	(4,035,600)
From Dedicated Credits Revenue	13,600,000
Schedule of Programs:	
Medicaid Expansion Fund	28,476,400

The Legislature intends that the Department of Health report on the following performance measures for the Medicaid Expansion Fund, whose mission is to “We provide access to quality, cost-effective health care for eligible Utahns.”: (1) percentage of hospitals invoiced (Target = 100%), (2) percentage of hospitals who have paid by the due date (Target => 85%), and (3) percentage of hospitals who have paid within

30 days after the due date (Target => 97%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 63

To Department of Health – Ambulance Service Provider Assessment Fund

The Legislature intends that the Department of Health report on the following performance measures for the Ambulance Service Provider Assessment Fund, whose mission is to “We provide access to quality, cost-effective health care for eligible Utahns.”: (1) percentage of providers invoiced (Target = 100%), (2) percentage of providers who have paid by the due date (Target = 85%), and (3) percentage of providers who have paid within 30 days after the due date (Target = 97%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 64

To Department of Health – Traumatic Brain Injury Fund

From General Fund 200,000
From Beginning Fund Balance 149,900
From Closing Fund Balance (137,300)

Schedule of Programs:
Traumatic Brain Injury Fund 212,600

The Legislature intends that the Department of Health report on the following performance measures for the Traumatic Brain Injury Fund, whose mission is to “The Violence and Injury Prevention Program is a trusted and comprehensive resource for data related to violence and injury. Through education, this information helps promote partnerships and programs to prevent injuries and improve public health.”: (1) number of individuals with traumatic brain injury that received resource facilitation services through the traumatic brain injury Fund contractors (Target = 300), (2) number of Traumatic Brain Injury Fund clients referred for a neuro-psych exam or MRI (Magnetic Resonance Imaging) that receive an exam (Target = 40), and (3) number of community and professional education presentations and trainings (Target = 50) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 65

To Department of Health – Traumatic Head and Spinal Cord Injury Rehabilitation Fund

From Dedicated Credits Revenue 170,400
From Beginning Fund Balance 262,400
From Closing Fund Balance (190,500)

Schedule of Programs:
Traumatic Head and Spinal Cord Injury Rehabilitation Fund 242,300

The Legislature intends that the Department of Health report on the following performance measures for the Traumatic Head and Spinal Cord Injury Rehabilitation Fund, whose mission is to “The Violence and Injury Prevention Program is a trusted and comprehensive resource for data related to

violence and injury. Through education, this information helps promote partnerships and programs to prevent injuries and improve public health.”: (1) number of clients that received an intake assessment (Target = 101), (2) number of physical, speech or occupational therapy services provided (Target = 1,200), and (3) percent of clients that returned to work and/or school (Target = 50%) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 66

To Department of Health – Organ Donation Contribution Fund

From Dedicated Credits Revenue 90,400
From Interest Income 1,400
From Beginning Fund Balance 256,100
From Closing Fund Balance (297,900)

Schedule of Programs:
Organ Donation Contribution Fund 50,000

The Legislature intends that the Department of Health report on the following performance measures for the Organ Donation Contribution Fund, whose mission is to “The mission of the Division of Family Health and Preparedness is to assure care for many of Utah’s most vulnerable citizens. The division accomplishes this through programs designed to provide direct services, and to be prepared to serve all populations that may suffer the adverse health impacts of a disaster, be it man-made or natural.”: (1) increase Division of Motor Vehicles/Drivers License Division donations from a base of \$90,000 (Target = 3%), (2) increase donor registrants from a base of 1.5 million (Target = 2%), and (3) increase donor awareness education by obtaining one new audience (Target = 1) by October 15, 2017 to the Social Services Appropriations Subcommittee.

DEPARTMENT OF WORKFORCE SERVICES

Item 67

To Department of Workforce Services – Individuals with Visual Impairment Fund

From Dedicated Credits Revenue 15,700
From Beginning Fund Balance 1,032,600
From Closing Fund Balance (1,041,300)

Schedule of Programs:
Individuals with Visual Impairment Fund 7,000

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Visual Impairment Fund: (1) the total of funds expended compiled by category of use, (2) the year end Fund balance, and (3) the yearly results/profit from the investment of the fund by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 68

To Department of Workforce Services – Utah Community Center for the Deaf Fund

From Trust and Agency Funds 6,800
From Beginning Fund Balance 18,500

From Closing Fund Balance (18,500)
 Schedule of Programs:
 Utah Community Center for the
 Deaf Fund 6,800

Item 69

To Department of Workforce Services -
 Permanent Community Impact Fund
 From Restricted Revenue 1,005,000
 From General Fund Restricted -
 Mineral Lease 32,300,900
 From General Fund Restricted -
 Land Exchange Distribution Account ... 30,200
 From Beginning Fund Balance 314,843,800
 From Closing Fund Balance (315,362,400)
 Schedule of Programs:
 Permanent Community Impact
 Fund 32,817,500

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Permanent Community Impact Fund: (1) new receipts invested in communities annually (Target = 100%), (2) support the Rural Planning Group (Target = completing 10 community plans), and (3) provide information to board 2 weeks prior to monthly meetings by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 70

To Department of Workforce Services -
 Permanent Community Impact Bonus Fund
 From Restricted Revenue 8,127,500
 From General Fund Restricted -
 Land Exchange Distribution Account ... 12,000
 From General Fund Restricted -
 Land Exchange Distribution Account,
 One-Time (11,900)
 From General Fund Restricted -
 Mineral Bonus 4,976,200
 From General Fund Restricted -
 Mineral Bonus, One-Time (2,286,200)
 From Beginning Fund Balance 362,322,500
 From Closing Fund Balance (373,140,100)

Item 71

To Department of Workforce Services -
 Olene Walker Housing Loan Fund
 From General Fund 2,242,900
 From Federal Funds 7,615,000
 From Dedicated Credits Revenue 8,210,300
 From Restricted Revenue 2,211,100
 From Beginning Fund Balance 136,823,600
 From Closing Fund Balance (136,823,600)
 Schedule of Programs:
 Olene Walker Housing Loan Fund .. 20,279,300

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Olene Walker Housing Loan Fund: (1) housing units preserved or created (Target = 800), (2) construction jobs preserved or created (Target = 1,200), and (3) leveraging of other funds in each project to Olene Walker Housing Loan Fund monies (Target = 9:1) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 72

To Department of Workforce Services -
 Uintah Basin Revitalization Fund
 From Dedicated Credits Revenue 150,000
 From Other Financing Sources 6,000,000
 From Beginning Fund Balance 24,589,100
 From Closing Fund Balance (24,589,100)
 Schedule of Programs:
 Uintah Basin Revitalization Fund ... 6,150,000

The Legislature intends that the Department of Workforce Services report on the following performance measure for the Uintah Basin Revitalization Fund: provide Revitalization Board with support, resources and data to allocate new and re-allocated funds to improve the quality of life for those living in the Uintah Basin (Target = allocate annual allocation from tax revenues within one year) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 73

To Department of Workforce Services -
 Navajo Revitalization Fund
 From Dedicated Credits Revenue 75,000
 From Other Financing Sources 3,000,000
 From Beginning Fund Balance 12,420,300
 From Closing Fund Balance (12,420,300)
 Schedule of Programs:
 Navajo Revitalization Fund 3,075,000

The Legislature intends that the Department of Workforce Services report on the following performance measure for the Navajo Revitalization Fund: provide support to Navajo Revitalization Board with resources and data to enable allocation of new and re-allocated funds to improve quality of life for those living on the Utah portion of the Navajo Reservation (Target = allocate annual allocation from tax revenues within one year) by October 15, 2017 to the Social Services Appropriations Subcommittee.

Item 74

To Department of Workforce Services -
 Qualified Emergency Food Agencies Fund
 From Designated Sales Tax 915,000
 From Beginning Fund Balance 505,900
 From Closing Fund Balance (505,900)
 Schedule of Programs:
 Emergency Food Agencies Fund 915,000

The Legislature intends that the Department of Workforce Services report on the following performance measure for the Qualified Emergency Food Agencies Fund: Total pounds of food distributed by qualified agencies (Target = 42 million pounds).

Item 75

To Department of Workforce Services -
 Intermountain Weatherization Training Fund
 From Dedicated Credits Revenue 12,000
 From Dedicated Credits Revenue,
 One-Time 18,000
 From Beginning Fund Balance 1,800
 From Closing Fund Balance (1,800)
 Schedule of Programs:
 Intermountain Weatherization
 Training Fund 30,000

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Intermountain Weatherization Training Fund: (1) number of individuals trained each year (Target => 20).

Item 76

To Department of Workforce Services -
Child Care Fund

From Dedicated Credits Revenue 200
From Beginning Fund Balance 7,500
From Closing Fund Balance (7,700)

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Child Care Fund: report on activities or projects paid for by the fund in the prior fiscal year by October 15, 2017 to the Social Services Appropriations Subcommittee.

DEPARTMENT OF HUMAN SERVICES**Item 77**

To Department of Human Services - Out and About
Homebound Transportation Assistance Fund

From Dedicated Credits Revenue 31,300
From Interest Income 1,300
From Beginning Fund Balance 213,500
From Closing Fund Balance (246,100)

Item 78

To Department of Human Services -
State Development Center
Miscellaneous Donation Fund

From Dedicated Credits Revenue 270,000
From Interest Income 4,200
From Beginning Fund Balance 570,600
From Closing Fund Balance (570,600)

Schedule of Programs:

State Development Center
Miscellaneous Donation Fund 274,200

Item 79

To Department of Human Services -
State Development Center Workshop Fund

From Dedicated Credits Revenue 138,100
From Beginning Fund Balance 9,100
From Closing Fund Balance (9,100)

Schedule of Programs:

State Development Center
Workshop Fund 138,100

Item 80

To Department of Human Services - State
Hospital Unit Fund

From Dedicated Credits Revenue 33,500
From Interest Income 1,400
From Beginning Fund Balance 207,700
From Closing Fund Balance (207,700)

Schedule of Programs:

State Hospital Unit Fund 34,900

Item 81

To Department of Human Services - Utah
State Developmental Center Land Fund

From Dedicated Credits Revenue 14,100
From Interest Income 2,700
From Revenue Transfers 38,700

From Beginning Fund Balance 654,900
From Closing Fund Balance (655,400)

Schedule of Programs:

Utah State Developmental Center

Land Fund 55,000

Subsection 2(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

**DEPARTMENT OF
WORKFORCE SERVICES****Item 82**

To Department of Workforce Services -
Unemployment Compensation Fund

From Federal Funds 1,275,000
From Dedicated Credits Revenue 19,416,000
From Restricted Revenue 510,000
From Trust and Agency Funds 228,620,000
From Beginning Fund Balance 1,036,599,300
From Closing Fund Balance (1,037,311,300)

Schedule of Programs:

Unemployment Compensation
Fund 249,109,000

Item 83

To Department of Workforce Services - State Small
Business Credit Initiative Program Fund

From Federal Funds 1,300,000
From Dedicated Credits Revenue 50,000
From Beginning Fund Balance 9,165,100
From Closing Fund Balance (9,165,100)

Schedule of Programs:

State Small Business Credit Initiative
Program Fund 1,350,000

The Legislature intends that the Department of Workforce Services report on the following performance measures for the State Small Business Credit Initiative Program Fund: (1) Minimize loan losses (Target <3%).

**Subsection 2(d). Restricted Fund and
Account Transfers.**

The Legislature authorizes the State Division of Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere in an appropriations act.

Item 84

To Homeless Housing Reform Restricted Account
From General Fund 4,500,000

Schedule of Programs:

Homeless Housing Reform Restricted
Account 4,500,000

Item 85

To GFR - Homeless Account

From General Fund 917,400
 Schedule of Programs:
 General Fund Restricted - Pamela
 Atkinson Homeless Account 917,400

Item 86

To Children’s Hearing Aid Program Account
 From General Fund 100,000
 Schedule of Programs:
 GFR - Children’s Hearing Aid
 Program Account 100,000

Subsection 2(e). Fiduciary Funds. The Legislature has reviewed proposed revenues, expenditures, fund balances and changes in fund balances for the following fiduciary funds.

**DEPARTMENT OF
 WORKFORCE SERVICES**

Item 87

To Department of Workforce Services - Individuals with Visual Impairment Vendor Fund
 From Trust and Agency Funds 125,800
 From Beginning Fund Balance 25,300
 From Closing Fund Balance (700)
 Schedule of Programs:
 Individuals with Visual Disabilities
 Vendor Fund 150,400

The Legislature intends that the Department of Workforce Services report on the following performance measures for the Individuals with Visual Impairment Vendor Fund: (1) Fund will be used to assist different business locations with purchasing upgraded equipment (Target = 8), (2) Fund will be used to assist different business locations with repairing and maintaining of equipment (Target = 25), and (3) Maintain or increase total yearly contributions to the Business Enterprise Program Owner Set Aside Fund (part of the Visual Impairment Vendor fund) (Target = \$53,900 yearly contribution amount) by October 15, 2017 to the Social Services Appropriations Subcommittee.

DEPARTMENT OF HUMAN SERVICES

Item 88

To Department of Human Services - Human Services Client Trust Fund
 From Interest Income 6,700
 From Trust and Agency Funds 3,890,700
 From Beginning Fund Balance 1,163,500
 From Closing Fund Balance (1,163,500)
 Schedule of Programs:
 Human Services Client Trust Fund .. 3,897,400

Item 89

To Department of Human Services - Maurice N. Warshaw Trust Fund
 From Interest Income 1,100
 From Beginning Fund Balance 145,700
 From Closing Fund Balance (145,700)
 Schedule of Programs:
 Maurice N. Warshaw Trust Fund 1,100

Item 90

To Department of Human Services - State Developmental Center Patient Account

From Interest Income 1,700
 From Trust and Agency Funds 1,744,800
 From Beginning Fund Balance 648,800
 From Closing Fund Balance (648,800)
 Schedule of Programs:
 State Developmental Center Patient
 Account 1,746,500

Item 91

To Department of Human Services - State Hospital Patient Trust Fund
 From Trust and Agency Funds 1,100,000
 Schedule of Programs:
 State Hospital Patient Trust Fund . . . 1,100,000

Item 92

To Department of Human Services - Human Services ORS Support Collections
 From Trust and Agency Funds 211,191,000
 Schedule of Programs:
 Human Services ORS Support
 Collections 211,191,000

Section 3. Effective Date.

If approved by two-thirds of all the members elected to each house, Section 1 of this bill takes effect upon approval by the Governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8 without the Governor’s signature, or in the case of a veto, the date of override. Section 2 of this bill takes effect on July 1, 2017.

CHAPTER 10**S. B. 20**

Passed February 8, 2017
 Approved February 17, 2017
 Effective February 17, 2017

PHASED RETIREMENT AMENDMENTS

Chief Sponsor: Daniel Hemmert
 House Sponsor: Jefferson Moss

LONG TITLE**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions relating to phased retirement.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ modifies the application procedures for a phased retirement agreement;
- ▶ modifies provisions regarding the beginning and termination periods for phased retirement employment; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

49-11-1301, as enacted by Laws of Utah 2016, Chapter 280
 49-11-1303, as enacted by Laws of Utah 2016, Chapter 280

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

Section 1. Section 49-11-1301 is amended to read:**49-11-1301. Definitions.**

As used in this part:

(1) "Amortization rate" means the amortization rate, as defined in Section 49-11-102, to be applied to the system that would have covered the retiree if the retiree's part-time position were considered to be an eligible, full-time position within that system.

(2) "Full-time" means a:

(a) regular full-time employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 40 hours or more per week and who receives benefits normally provided by the participating employer;

(b) teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches full time;

(c) firefighter service employee whose employment normally requires an average of 2,080

hours of regularly scheduled firefighter service per year; and

(d) public safety service employee whose employment normally requires an average of 2,080 hours of regularly scheduled public safety service per year.

(3) "Half-time" means a:

(a) regular employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours per week and who receives benefits normally provided by the participating employer;

(b) teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half time;

(c) firefighter service employee whose employment normally requires an average of 1,040 hours of regularly scheduled firefighter service per year; and

(d) public safety service employee whose employment normally requires an average of 1,040 hours of regularly scheduled public safety service per year.

(4) "Phased retirement" means continuing employment on a half-time basis of a retiree with the same participating employer [~~immediately after~~] following the retiree's retirement date while the retiree receives a reduced retirement allowance.

Section 2. Section 49-11-1303 is amended to read:**49-11-1303. Phased retirement -- Eligibility -- Restrictions -- Amortization rate.**

(1) A retiree is eligible for employment with only one position for only one participating employer under phased retirement following the retiree's retirement date if:

(a) the retiree:

(i) is eligible to retire and retires in accordance with this title;

(ii) has been employed full time, for not less than four years immediately before the retiree's retirement date;

(iii) completes and submits all required retirement forms to the office; and

~~[(iv) completes and submits any phased retirement forms required by rules established under Section 49-11-1308; and]~~

(iv) prior to the retiree's retirement date, completes and submits all required phased retirement forms to the office; and

(b) the retiree and the participating employer enter into an agreement described under Section 49-11-1304.

(2) A retiree shall begin phased retirement employment after the retiree's retirement date but

no later than 120 days after the retiree's retirement date.

~~[(2)]~~ (3) For the period of the phased retirement:

(a) the retiree receives 50% of the retiree's monthly allowance;

(b) the participating employer employs the retiree on a half-time basis;

(c) a participating employer that employs the retiree shall contribute to the office the amortization rate;

(d) the retiree or an alternate payee may not receive an annual cost-of-living adjustment to the retiree's or alternate payee's allowance;

(e) any death benefits payable to a surviving spouse or other beneficiary shall be paid based on 100% of the retiree's retirement allowance;

(f) the retiree may not receive any employer provided retirement benefits, service credit accruals, or any retirement related contributions from the participating employer; and

(g) except as specified under this section, a retiree working under phased retirement shall be treated in the same manner as any other part-time employee working a similar position and number of hours with the participating employer, including:

(i) any non-retirement related benefits;

(ii) leave benefits;

(iii) medical benefits; and

(iv) other benefits.

(4) The office shall begin paying 100% of the retiree's retirement allowance on the first day of the month following the month in which the office receives written notification and any required supporting documentation that the retiree's phased retirement has been irrevocably terminated.

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 11**S. B. 137**

Passed February 16, 2017

Approved March 1, 2017

Effective March 1, 2017

**STATE AUDITOR FISCAL AUDITING
AND REPORTING AMENDMENTS**

Chief Sponsor: Curtis S. Bramble

House Sponsor: Steve Eliason

LONG TITLE**General Description:**

This bill modifies provisions related to fiscal reporting requirements to the state auditor and auditing duties of the state auditor.

Highlighted Provisions:

This bill:

- ▶ amends the threshold for certain accounting reports;
- ▶ amends the threshold for different levels of review for certain nonprofit corporations' financial information;
- ▶ authorizes the state auditor to seek judicial relief to take temporary custody of public funds if the state auditor determines an action is necessary to protect public funds from being improperly diverted from their intended public purpose;
- ▶ provides that the state treasurer may take temporary custody of public funds if ordered by a court to do so; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 17B-1-641, as last amended by Laws of Utah 2014, Chapter 377
- 51-2a-201, as last amended by Laws of Utah 2015, Chapter 138
- 51-2a-201.5, as enacted by Laws of Utah 2015, Chapter 138
- 63G-2-502, as last amended by Laws of Utah 2015, Chapter 174
- 67-3-1, as last amended by Laws of Utah 2015, Chapter 174
- 67-4-1, as last amended by Laws of Utah 1998, Chapter 14

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

Section 1. Section 17B-1-641 is amended to read:**17B-1-641. Local district may expand uniform procedures -- Limitation.**

(1) Subject to Subsection (2), a local district may expand the uniform accounting, budgeting, and reporting procedure prescribed in the Uniform Accounting Manual for Local Districts prepared by the state auditor under Subsection

67-3-1[(14)](15), to better serve the needs of the district.

(2) A local district may not deviate from or alter the basic prescribed classification systems for the identity of funds and accounts set forth in the Uniform Accounting Manual for Local Districts.

Section 2. Section 51-2a-201 is amended to read:**51-2a-201. Accounting reports required.**

(1) The governing board of an entity whose revenues or expenditures of all funds is [~~\$750,000~~] \$1,000,000 or more shall cause an audit to be made of its accounts by a competent certified public accountant.

(2) The governing board of an entity whose revenues or expenditures of all funds is less than [~~\$750,000~~] \$1,000,000 shall cause a financial report to be made in the manner prescribed by the state auditor.

Section 3. Section 51-2a-201.5 is amended to read:**51-2a-201.5. Accounting reports required -- Reporting to state auditor.**

(1) As used in this section:

(a) (i) "Federal pass through money" means federal money received by a nonprofit corporation through a subaward or contract from the state or a political subdivision.

(ii) "Federal pass through money" does not include federal money received by a nonprofit corporation as payment for goods or services purchased by the state or political subdivision from the nonprofit corporation.

(b) (i) "Local money" means money that is owned, held, or administered by a political subdivision of the state that is derived from fee or tax revenues.

(ii) "Local money" does not include:

(A) money received by a nonprofit corporation as payment for goods or services purchased from the nonprofit corporation; or

(B) contributions or donations received by the political subdivision.

(c) (i) "State money" means money that is owned, held, or administered by a state agency and derived from state fee or tax revenues.

(ii) "State money" does not include:

(A) money received by a nonprofit corporation as payment for goods or services purchased from the nonprofit corporation; or

(B) contributions or donations received by the state agency.

(2) (a) The governing board of a nonprofit corporation whose revenues or expenditures of federal pass through money, state money, and local money is [~~\$750,000~~] \$1,000,000 or more shall cause an audit to be made of its accounts by an independent certified public accountant.

(b) The governing board of a nonprofit corporation whose revenues or expenditures of federal pass through money, state money, and local money is at least \$350,000 but less than ~~[\$750,000]~~ \$1,000,000 shall cause a review to be made of its accounts by an independent certified public accountant.

(c) The governing board of a nonprofit corporation whose revenues or expenditures of federal pass through money, state money, and local money is at least \$100,000 but less than \$350,000 shall cause a compilation to be made of its accounts by an independent certified public accountant.

(d) The governing board of a nonprofit corporation whose revenues or expenditures of federal pass through money, state money, and local money is less than \$100,000 but greater than \$25,000 shall cause a fiscal report to be made in a format prescribed by the state auditor.

(3) A nonprofit corporation described in Subsection 51-2a-102(6)(f) shall provide the state auditor a copy of an accounting report prepared under this section within six months of the end of the nonprofit corporation's fiscal year.

(4) (a) A state agency that disburses federal pass through money or state money to a nonprofit corporation shall enter into a written agreement with the nonprofit corporation that requires the nonprofit corporation to annually disclose whether:

(i) the nonprofit corporation met or exceeded the dollar amounts listed in Subsection (2) in the previous fiscal year of the nonprofit corporation; or

(ii) the nonprofit corporation anticipates meeting or exceeding the dollar amounts listed in Subsection (2) in the fiscal year the money is disbursed.

(b) If the nonprofit corporation discloses to the state agency that the nonprofit corporation meets or exceeds the dollar amounts as described in Subsection (4)(a), the state agency shall notify the state auditor.

(5) This section does not apply to a nonprofit corporation that is a charter school created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act. A charter school is subject to the requirements of Section 53A-1a-507.

(6) A nonprofit corporation is exempt from Section 51-2a-201.

Section 4. Section 63G-2-502 is amended to read:

63G-2-502. State Records Committee -- Duties.

(1) The records committee shall:

(a) meet at least once every three months;

(b) review and approve schedules for the retention and disposal of records;

(c) hear appeals from determinations of access as provided by Section 63G-2-403;

(d) determine disputes submitted by the state auditor under Subsection 67-3-1~~(15)~~(16)(d); and

(e) appoint a chairman from among its members.

(2) The records committee may:

(a) make rules to govern its own proceedings as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.

(3) The records committee shall annually appoint an executive secretary to the records committee. The executive secretary may not serve as a voting member of the committee.

(4) Five members of the records committee are a quorum for the transaction of business.

(5) The state archives shall provide staff and support services for the records committee.

(6) If the records committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental entity or any other interested person may appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.

(7) The Office of the Attorney General shall provide counsel to the records committee and shall review proposed retention schedules.

Section 5. Section 67-3-1 is amended to read:

67-3-1. Functions and duties.

(1) (a) The state auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state.

(b) The state auditor is not limited in the selection of personnel or in the determination of the reasonable and necessary expenses of the state auditor's office.

(2) The state auditor shall examine and certify annually in respect to each fiscal year, financial statements showing:

(a) the condition of the state's finances;

(b) the revenues received or accrued;

(c) expenditures paid or accrued;

(d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and

(e) the cash balances of the funds in the custody of the state treasurer.

(3) (a) The state auditor shall:

(i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any

independent agency or public corporation as the law requires, as the auditor determines is necessary, or upon request of the governor or the Legislature;

(ii) perform the audits in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies;

(iii) as the auditor determines is necessary, conduct the audits to determine:

(A) honesty and integrity in fiscal affairs;

(B) accuracy and reliability of financial statements;

(C) effectiveness and adequacy of financial controls; and

(D) compliance with the law.

(b) If any state entity receives federal funding, the state auditor shall ensure that the audit is performed in accordance with federal audit requirements.

(c) (i) The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund.

(ii) If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding bears to the total federal funds received by the state.

(iii) The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time obtained through the use of internal auditors working under the direction of the state auditor.

(4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to financial audits, and as the auditor determines is necessary, conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds, including a determination of any or all of the following:

(i) the honesty and integrity of all its fiscal affairs;

(ii) whether or not its administrators have faithfully complied with legislative intent;

(iii) whether or not its operations have been conducted in an efficient, effective, and cost-efficient manner;

(iv) whether or not its programs have been effective in accomplishing the intended objectives; and

(v) whether or not its management, control, and information systems are adequate, effective, and secure.

(b) The auditor may not conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds if the entity:

(i) has an elected auditor; and

(ii) has, within the entity's last budget year, had its financial statements or performance formally reviewed by another outside auditor.

(5) The state auditor shall administer any oath or affirmation necessary to the performance of the duties of the auditor's office, and may subpoena witnesses and documents, whether electronic or otherwise, and examine into any matter that the auditor considers necessary.

(6) The state auditor may require all persons who have had the disposition or management of any property of this state or its political subdivisions to submit statements regarding it at the time and in the form that the auditor requires.

(7) The state auditor shall:

(a) except where otherwise provided by law, institute suits in Salt Lake County in relation to the assessment, collection, and payment of its revenues against:

(i) persons who by any means have become entrusted with public money or property and have failed to pay over or deliver the money or property; and

(ii) all debtors of the state;

(b) collect and pay into the state treasury all fees received by the state auditor;

(c) perform the duties of a member of all boards of which the state auditor is a member by the constitution or laws of the state, and any other duties that are prescribed by the constitution and by law;

(d) stop the payment of the salary of any state official or state employee who:

(i) refuses to settle accounts or provide required statements about the custody and disposition of public funds or other state property;

(ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds; or

(iii) fails to correct any delinquencies, improper procedures, and errors brought to the official's or employee's attention;

(e) establish accounting systems, methods, and forms for public accounts in all taxing or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

(f) superintend the contractual auditing of all state accounts;

(g) subject to Subsection (8)(a), withhold state allocated funds or the disbursement of property taxes from a state or local taxing or fee-assessing unit, if necessary, to ensure that officials and employees in those taxing units comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds; and

(h) subject to Subsection (9), withhold the disbursement of tax money from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1.

(8) (a) Except as otherwise provided by law, the state auditor may not withhold funds under Subsection (7)(g) until a state or local taxing or fee-assessing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(b) If, after receiving notice under Subsection (8)(a), a state or independent local fee-assessing unit that exclusively assesses fees has not made corrections to comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds, the state auditor:

(i) shall provide a recommended timeline for corrective actions; and

(ii) may prohibit the state or local fee-assessing unit from accessing money held by the state; and

(iii) may prohibit a state or local fee-assessing unit from accessing money held in an account of a financial institution by filing an action in district court requesting an order of the court to prohibit a financial institution from providing the fee-assessing unit access to an account.

(c) The state auditor shall remove a limitation on accessing funds under Subsection (8)(b) upon compliance with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds.

(d) If a local taxing or fee-assessing unit has not adopted a budget in compliance with state law, the state auditor:

(i) shall provide notice to the taxing or fee-assessing unit of the unit's failure to comply;

(ii) may prohibit the taxing or fee-assessing unit from accessing money held by the state; and

(iii) may prohibit a taxing or fee-assessing unit from accessing money held in an account of a financial institution by:

(A) contacting the taxing or fee-assessing unit's financial institution and requesting that the institution prohibit access to the account; or

(B) filing an action in district court requesting an order of the court to prohibit a financial institution from providing the taxing or fee-assessing unit access to an account.

(e) If the local taxing or fee-assessing unit adopts a budget in compliance with state law, the state auditor shall eliminate a limitation on accessing funds described in Subsection (8)(d).

(9) The state auditor may not withhold funds under Subsection (7)(h) until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(10) Notwithstanding Subsection (7)(g), (7)(h), (8)(b), or (8)(d) the state auditor:

(a) shall authorize a disbursement by a state or local taxing or fee-assessing unit if the disbursement is necessary to:

(i) avoid a major disruption in the operations of the state or local taxing or fee-assessing unit; or

(ii) meet debt service obligations; and

(b) may authorize a disbursement by a state or local taxing or fee-assessing unit as the state auditor determines is appropriate.

(11) (a) The state auditor may seek relief under the Utah Rules of Civil Procedure to take temporary custody of public funds if an action is necessary to protect public funds from being improperly diverted from their intended public purpose.

(b) If the state auditor seeks relief under Subsection (11)(a):

(i) the state auditor is not required to exhaust the procedures in Subsection (7) or (8); and

(ii) the state treasurer may hold the public funds in accordance with Section 67-4-1 if a court orders the public funds to be protected from improper diversion from their public purpose.

~~(11)~~ (12) The state auditor shall:

(a) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, and Part 3, Local Mental Health Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and Mental Health Act; and

(b) ensure that those guidelines and procedures provide assurances to the state that:

(i) state and federal funds appropriated to local mental health authorities are used for mental health purposes;

(ii) a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for a local mental health authority is in compliance with state and local contract requirements, and state and federal law;

(iii) state and federal funds appropriated to local substance abuse authorities are used for substance abuse programs and services; and

(iv) a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for a local substance abuse authority is in compliance with state and local contract requirements, and state and federal law.

~~(12)~~ (13) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political

Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.

~~[(13)]~~ (14) (a) The state auditor may not audit work that the state auditor performed before becoming state auditor.

(b) If the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall:

- (i) designate how that work shall be audited; and
- (ii) provide additional funding for those audits, if necessary.

~~[(14)]~~ (15) The state auditor shall:

(a) with the assistance, advice, and recommendations of an advisory committee appointed by the state auditor from among local district boards of trustees, officers, and employees and special service district boards, officers, and employees:

(i) prepare a Uniform Accounting Manual for Local Districts that:

(A) prescribes a uniform system of accounting and uniform budgeting and reporting procedures for local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts, and special service districts under Title 17D, Chapter 1, Special Service District Act;

(B) conforms with generally accepted accounting principles; and

(C) prescribes reasonable exceptions and modifications for smaller districts to the uniform system of accounting, budgeting, and reporting;

(ii) maintain the manual under this Subsection ~~[(44)]~~ (15)(a) so that it continues to reflect generally accepted accounting principles;

(iii) conduct a continuing review and modification of procedures in order to improve them;

(iv) prepare and supply each district with suitable budget and reporting forms; and

(v) prepare instructional materials, conduct training programs, and render other services considered necessary to assist local districts and special service districts in implementing the uniform accounting, budgeting, and reporting procedures; and

(b) continually analyze and evaluate the accounting, budgeting, and reporting practices and experiences of specific local districts and special service districts selected by the state auditor and make the information available to all districts.

~~[(15)]~~ (16) (a) The following records in the custody or control of the state auditor are protected records under Title 63G, Chapter 2, Government Records Access and Management Act:

(i) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in preparing a final audit report;

(ii) records and audit workpapers to the extent they would disclose the identity of a person who during the course of an audit, communicated the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(iii) before an audit is completed and the final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for their response or information;

(iv) records that would disclose an outline or part of any audit survey plans or audit program; and

(v) requests for audits, if disclosure would risk circumvention of an audit.

(b) The provisions of Subsections ~~[(15)]~~ (16)(a)(i), (ii), and (iii) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer.

(c) The provisions of this Subsection ~~[(15)]~~ (16) do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

(d) (i) As used in this Subsection ~~[(15)]~~ (16)(d), "record dispute" means a dispute between the state auditor and the subject of an audit performed by the state auditor as to whether the state auditor may release a record, as defined in Section 63G-2-103, to the public that the state auditor gained access to in the course of the state auditor's audit but which the subject of the audit claims is not subject to disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.

(ii) The state auditor may submit a record dispute to the State Records Committee, created in Section 63G-2-501, for a determination of whether the state auditor may, in conjunction with the state auditor's release of an audit report, release to the public the record that is the subject of the record dispute.

(iii) The state auditor or the subject of the audit may seek judicial review of a State Records Committee determination under Subsection ~~[(15)]~~ (16)(d)(ii), as provided in Section 63G-2-404.

~~[(16)]~~ (17) If the state auditor conducts an audit of an entity that the state auditor has previously audited and finds that the entity has not

implemented a recommendation made by the state auditor in a previous audit, the state auditor shall notify the Legislative Management Committee through its audit subcommittee that the entity has not implemented that recommendation.

Section 6. Section 67-4-1 is amended to read:

67-4-1. Duties.

- (1) The state treasurer shall:
- (a) receive and maintain custody of all state funds;
 - (b) unless otherwise provided by law, invest all funds delivered into the state treasurer's custody according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act;
 - (c) pay warrants drawn by the Division of Finance as they are presented;
 - (d) return each redeemed warrant to the Division of Finance for purposes of reconciliation, post-audit, and verification;
 - (e) ensure that state warrants not presented to the state treasurer for payment within one year from the date of issue, or a shorter period if required by federal regulation or contract, are canceled and credited to the proper fund;
 - (f) account for all money received and disbursed;
 - (g) keep separate account of the different funds;
 - (h) keep safe all bonds, warrants, and securities delivered into his custody;
 - (i) at the request of either house of the Legislature, or of any legislative committee, give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office;
 - (j) keep the books open at all times for the inspection by the governor, the state auditor, or any member of the Legislature, or any committee appointed to examine them by either house of the Legislature;
 - (k) authenticate and validate documents when necessary;
 - (l) adopt a seal and file a description and an impression of it with the Division of Archives; and
 - (m) discharge the duties of a member of all official boards of which he is or may be made a member by the Constitution or laws of Utah.
- (2) When necessary to perform his duties, the state treasurer may inspect the books, papers, and accounts of any state entity.
- (3) The state treasurer may take temporary custody of public funds if ordered by a court to do so under Subsection 67-3-1(11).

Section 7. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the

constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 12**S. B. 97**

Passed March 1, 2017
 Approved March 14, 2017
 Effective March 14, 2017

**PUBLIC MEETING
 MINUTES AMENDMENTS**

Chief Sponsor: Kevin T. Van Tassell
 House Sponsor: Robert M. Spendlove

LONG TITLE**General Description:**

This bill modifies a provision of the Open and Public Meetings Act relating to minutes of open meetings.

Highlighted Provisions:

This bill:

- ▶ modifies a requirement relating to minutes of open meetings;
- ▶ provides that the requirement to include in minutes the substance of certain matters addressed at the meeting is met by publicly available online minutes that provide a link to the meeting recording;
- ▶ modifies a provision relating to the availability of approved minutes and public meeting materials; and
- ▶ modifies what constitutes the official record of an open meeting.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

52-4-203, as last amended by Laws of Utah 2014, Chapter 83

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

Section 1. Section 52-4-203 is amended to read:

52-4-203. Written minutes of open meetings -- Public records -- Recording of meetings.

(1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.

(2) (a) Written minutes of an open meeting shall include:

(a) (i) the date, time, and place of the meeting;

(a) (ii) the names of members present and absent;

(a) (iii) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;

(a) (iv) a record, by individual member, of each vote taken by the public body;

(a) (v) the name of each person who:

(a) (i) is not a member of the public body; and

(a) (ii) (B) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;

(a) (vi) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(a)(v); and

(a) (vii) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.

(b) A public body may satisfy the requirement under Subsection (2)(a)(iii) or (vi) that minutes include the substance of matters proposed, discussed, or decided or the substance of testimony or comments by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments provided.

(3) A recording of an open meeting shall:

(a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and

(b) be properly labeled or identified with the date, time, and place of the meeting.

(4) (a) As used in this Subsection (4):

(i) "Approved minutes" means written minutes:

(A) of an open meeting; and

(B) that have been approved by the public body that held the open meeting.

(ii) "Electronic information" means information presented or provided in an electronic format.

(iii) "Pending minutes" means written minutes:

(A) of an open meeting; and

(B) that have been prepared in draft form and are subject to change before being approved by the public body that held the open meeting.

(iv) "Specified local public body" means a legislative body of a county, city, or town.

(v) "State public body" means a public body that is an administrative, advisory, executive, or legislative body of the state.

(vi) "Website" means the Utah Public Notice Website created under Section 63F-1-701.

(b) Pending minutes, approved minutes, and a recording of a public meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) Pending minutes shall contain a clear indication that the public body has not yet approved the minutes or that the minutes are subject to change until the public body approves them.

(d) A state public body and a specified local public body shall require an individual who, at an open meeting of the public body, publicly presents or

provides electronic information, relating to an item on the public body's meeting agenda, to provide the public body, at the time of the meeting, an electronic or hard copy of the electronic information for inclusion in the public record.

(e) A state public body shall:

(i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes of an open meeting, ~~post to the website and make available to the public at the public body's primary office a copy of the approved minutes and any public materials distributed at the meeting~~;

(A) post to the website a copy of the approved minutes and any public materials distributed at the meeting;

(B) make the approved minutes and public materials available to the public at the public body's primary office; and

(C) if the public body provides online minutes under Subsection (2)(b), post approved minutes that comply with Subsection (2)(b) and the public materials on the public body's website; and

(iii) within three business days after holding an open meeting, post on the website an audio recording of the open meeting, or a link to the recording.

(f) (i) A specified local public body shall:

(A) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

(B) subject to Subsection (4)(f)(ii), within three business days after approving written minutes of an open meeting, ~~post to the website and make available to the public at the public body's primary office~~ post and make available a copy of the approved minutes and any public materials distributed at the meeting, as provided in Subsection (4)(e)(ii); and

(C) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(ii) A specified local public body of a city of the fifth class or town is encouraged to comply with Subsection (4)(f)(i)(B) but is not required to comply until January 1, 2015.

(g) A public body that is not a state public body or a specified local public body shall:

(i) make pending minutes available to the public within a reasonable time after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes, make the approved minutes available to the public; and

(iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(h) A public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

(i) Approved minutes of an open meeting are the official record of the meeting.

(5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.

(6) The written minutes or recording of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(7) Notwithstanding Subsection (1), a recording is not required to be kept of:

(a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or

(b) an open meeting of a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 13**S. B. 138**

Passed March 2, 2017

Approved March 14, 2017

Effective March 14, 2017

(Retrospective operation to January 1, 2017)

METRO TOWNSHIP AMENDMENTS

Chief Sponsor: Karen Mayne

House Sponsor: Eric K. Hutchings

LONG TITLE**General Description:**

This bill modifies provisions related to metro townships.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the authority of a metro township that is included in a municipal services district to enact certain ordinances;
- ▶ addresses the budget of a metro township that is included in a municipal services district;
- ▶ includes metro townships as a specified local body in the Open and Public Meetings Act for purposes of written minutes and audio recordings of a public meeting of a metro township council;
- ▶ requires a municipality located within a municipal services district to remit to the municipal services district certain funds that the municipality receives;
- ▶ modifies provisions regarding the local sales tax distribution for metro townships; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 10-3b-504, as repealed and reenacted by Laws of Utah 2015, Chapter 352
- 10-3c-202, as enacted by Laws of Utah 2015, Chapter 352
- 10-3c-203, as last amended by Laws of Utah 2016, Chapters 176 and 348
- 17B-2a-1108, as enacted by Laws of Utah 2014, Chapter 405
- 52-4-203, as last amended by Laws of Utah 2014, Chapter 83
- 53-2a-102, as renumbered and amended by Laws of Utah 2013, Chapter 295
- 59-12-203, as last amended by Laws of Utah 2015, Chapter 352

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

Section 1. Section 10-3b-504 is amended to read:

10-3b-504. Council in a metro township that is included in a municipal services district.

(1) The council in a metro township that is included in a municipal services district:

(a) exercises any executive or administrative power and performs or supervises the performance of any executive or administrative power, duty, or function that has not been given to the chair under Section 10-3b-503 unless the council removes that power, duty, or function from the chair in accordance with Subsection (2);

(b) may:

(i) subject to Subsections (1)(c) and (2), adopt an ordinance:

(A) removing from the chair any power, duty, or function of the chair; and

(B) reinstating to the chair any power, duty, or function previously removed under Subsection (1)(b)(i)(A); and

(ii) adopt an ordinance delegating to the chair any executive or administrative power, duty, or function that the council has under Subsection (1)(a); and

(c) may not remove from the chair or delegate:

(i) any of the chair's legislative or judicial powers or ceremonial functions;

(ii) the chair's position as chair of the council; or

(iii) any ex officio position that the chair holds.

(2) Adopting an ordinance under Subsection (1)(b)(i) removing from or reinstating to the chair a power, duty, or function provided for in Section 10-3b-503 requires the affirmative vote of:

(a) the chair and a majority of all other council members; or

(b) all council members except the chair.

(3) The metro township council of a metro township that is included in a municipal services district:

(a) shall:

(i) by ordinance, provide for the manner in which a subdivision is approved, disapproved, or otherwise regulated;

(ii) review municipal administration, and, subject to Subsection (5), pass ordinances;

(iii) perform all duties that the law imposes on the council; and

(iv) elect one of its members to be chair of the metro township and the chair of the council;

(b) may:

(i) (A) notwithstanding Subsection (3)(c), appoint a committee of council members or citizens to conduct an investigation into an officer, department, or agency of the municipality, or any other matter relating to the welfare of the municipality; and

(B) delegate to an appointed committee powers of inquiry that the council considers necessary;

(ii) make and enforce any additional rule or regulation for the government of the council, the preservation of order, and the transaction of the council's business that the council considers necessary; and

(iii) subject to the limitations provided in Subsection (5), take any action allowed under Section 10-8-84 that is reasonably related to the safety, health, morals, and welfare of the metro township inhabitants; and

(c) may not:

(i) direct or request, other than in writing, the appointment of a person to or the removal of a person from an executive municipal office;

(ii) interfere in any way with an executive officer's performance of the officer's duties; or

(iii) publicly or privately give orders to a subordinate of the chair.

(4) A member of a metro township council as described in this section may not have any other compensated employment with the metro township.

~~[(5) The council of a metro township that is included in a municipal services district may not adopt an ordinance or resolution that authorizes, provides, or otherwise governs a municipal service, as defined in Section 17B-2a-1102, that is provided by a municipal services district created under Title 17B, Chapter 2a, Part 11, Municipal Services District Act.]~~

Section 2. Section 10-3c-202 is amended to read:

10-3c-202. Budget.

[A] (1) Except as provided in Subsection (2), a metro township is subject to and shall comply with Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

(2) For a metro township that is included in a municipal services district, created in accordance with Title 17B, Chapter 2a, Part 11, Municipal Services District Act, the fiscal year for the metro township budget is the calendar year.

Section 3. Section 10-3c-203 is amended to read:

10-3c-203. Administrative and operational services -- Staff provided by county or municipal services district -- Recording of open meetings.

(1) (a) The following officials elected or appointed, or persons employed by, the county in which a metro township is located shall, for the purposes of interpreting and complying with applicable law, fulfill the responsibilities and hold the following metro township offices or positions:

(i) the county treasurer shall fulfill the duties and hold the powers of treasurer for the metro township;

(ii) the county clerk shall fulfill the duties and hold the powers of recorder and clerk for the metro township;

(iii) the county surveyor shall fulfill, on behalf of the metro township, all surveyor duties imposed by law;

(iv) the county engineer shall fulfill the duties and hold the powers of engineer for the metro township; and

(v) subject to Subsection (1)(b), the county auditor shall fulfill the duties and hold the powers of auditor for the metro township.

(b) (i) The county auditor shall fulfill the duties and hold the powers of auditor for the metro township to the extent that the county auditor's powers and duties are described in and delegated to the county auditor in accordance with Title 17, Chapter 19a, County Auditor, and a municipal auditor's powers and duties described in this title are the same.

(ii) Notwithstanding Subsection (1)(b), in a metro township, services described in Sections 17-19a-203, 17-19a-204, and 17-19a-205, and services other than those described in Subsection (1)(b)(i) that are provided by a municipal auditor in accordance with this title that are required by law, shall be performed by county staff other than the county auditor.

(2) (a) Nothing in Subsection (1) may be construed to relieve an official described in Subsections (1)(a)(i) through (iv) of a duty to either the county or metro township or a duty to fulfill that official's position as required by law.

(b) Notwithstanding Subsection (2)(a), an official or the official's deputy or other person described in Subsections (1)(a)(i) through (iv):

(i) is elected, appointed, or otherwise employed, in accordance with the provisions of Title 17, Counties, as applicable to that official's or person's county office;

(ii) is paid a salary and benefits and subject to employment discipline in accordance with the provisions of Title 17, Counties, as applicable to that official's or person's county office;

(iii) is not subject to:

(A) Chapter 3, Part 11, Personnel Rules and Benefits; or

(B) Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act; and

(iv) is not required to provide a bond for the applicable municipal office if a bond for the office is required by this title.

(3) The district attorney of the county in which a metro township is located may provide legal counsel to the metro township if the county and the metro township agree.

(4) The metro township may establish a planning commission in accordance with Section 10-9a-301 and an appeal authority in accordance with Section 10-9a-701.

(5) A municipal services district established in accordance with Title 17B, Chapter 2a, Part 11, Municipal Services District Act, and of which the metro township is a part, may provide staff to the metro township planning commission and appeal authority.

(6) Notwithstanding Title 52, Chapter 4, Open and Public Meetings Act, and Section 10-6-137:

(a) the county clerk may choose to not attend an open meeting of the metro township council; and

(b) if the county clerk does not attend an open meeting of the metro township council, the county clerk shall ensure that the chair of the metro township council or a designee of the county clerk, in accordance with Section 52-4-203, makes a recording of the meeting and prepares written minutes of the meeting.

[~~(6)~~] (7) (a) This section applies only to a metro township in which:

(i) the electors at an election under Section 10-2a-404 chose a metro township that is included in a municipal services district and has limited municipal powers; or

(ii) the metro township subsequently joins a municipal services district.

(b) This section does not apply to a metro township described in Subsection (6)(a) if the municipal services district is dissolved.

Section 4. Section 17B-2a-1108 is amended to read:

17B-2a-1108. Municipality required to remit local option sales and use tax.

(1) (a) [~~If, after incorporation, a municipal legislative body of a~~] A municipality located in whole or in part within a municipal services district [does not adopt and deliver a resolution to withdraw in accordance with Subsection 17B-1-502(3)(a)(iii), the municipality] shall remit to the municipal services district:

(i) an amount equal to the amount the municipality receives under Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act[-]; and

(ii) an amount equal to the amount of transportation funds the municipality receives under Section 72-2-108.

(b) The municipality shall remit to the municipal services district the amounts required in Subsection (1)(a) within 30 days after the day on which the municipality receives the funds identified in Subsections (1)(a)(i) and (1)(a)(ii).

(2) For purposes of Subsection (1)(a)(i), the amount of local sales tax a municipality is required to remit to a municipal services district is an amount:

(a) determined after subtracting amounts required under Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act, to be deducted from the amount a municipality would otherwise receive

under Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act; and

(b) representative of only those taxes collected in the area of the municipality that is also located within the municipal services district.

(3) For purposes of Subsection (1)(a)(ii), the amount of transportation funds a municipality is required to remit to a municipal services district is an amount equal to the amount of class B and class C road miles in that part of the municipality located within the municipal services district divided by the total class B and class C road miles in the municipality.

(4) If the municipal legislative body of a municipality located in whole or in part within a municipal services district adopts and delivers a resolution to withdraw in accordance with Subsection 17B-1-502(3)(a)(iii), the municipality shall only remit to the municipal services district the amounts described in Subsection (1) that relate to the period that the municipality is in the municipal services district, regardless of when the municipality receives those amounts.

Section 5. Section 52-4-203 is amended to read:

52-4-203. Written minutes of open meetings -- Public records -- Recording of meetings.

(1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.

(2) Written minutes of an open meeting shall include:

(a) the date, time, and place of the meeting;

(b) the names of members present and absent;

(c) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;

(d) a record, by individual member, of each vote taken by the public body;

(e) the name of each person who:

(i) is not a member of the public body; and

(ii) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;

(f) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(e); and

(g) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.

(3) A recording of an open meeting shall:

(a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and

(b) be properly labeled or identified with the date, time, and place of the meeting.

(4) (a) As used in this Subsection (4):

(i) "Approved minutes" means written minutes:

(A) of an open meeting; and

(B) that have been approved by the public body that held the open meeting.

(ii) "Electronic information" means information presented or provided in an electronic format.

(iii) "Pending minutes" means written minutes:

(A) of an open meeting; and

(B) that have been prepared in draft form and are subject to change before being approved by the public body that held the open meeting.

(iv) "Specified local public body" means a legislative body of a county, city, ~~or~~ town, or metro township.

(v) "State public body" means a public body that is an administrative, advisory, executive, or legislative body of the state.

(vi) "Website" means the Utah Public Notice Website created under Section 63F-1-701.

(b) Pending minutes, approved minutes, and a recording of a public meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) Pending minutes shall contain a clear indication that the public body has not yet approved the minutes or that the minutes are subject to change until the public body approves them.

(d) A state public body and a specified local public body shall require an individual who, at an open meeting of the public body, publicly presents or provides electronic information, relating to an item on the public body's meeting agenda, to provide the public body, at the time of the meeting, an electronic or hard copy of the electronic information for inclusion in the public record.

(e) A state public body shall:

(i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes of an open meeting, post to the website and make available to the public at the public body's primary office a copy of the approved minutes and any public materials distributed at the meeting; and

(iii) within three business days after holding an open meeting, post on the website an audio recording of the open meeting, or a link to the recording.

(f) ~~(i)~~ A specified local public body shall:

~~(A)~~ (i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

~~(B)~~ (ii) ~~[subject to Subsection (4)(f)(ii),]~~ within three business days after approving written minutes of an open meeting, post to the website and make available to the public at the public body's primary office a copy of the approved minutes and any public materials distributed at the meeting; and

~~(C)~~ (iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

~~(ii) A specified local public body of a city of the fifth class or town is encouraged to comply with Subsection (4)(f)(i)(B) but is not required to comply until January 1, 2015.~~

(g) A public body that is not a state public body or a specified local public body shall:

(i) make pending minutes available to the public within a reasonable time after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes, make the approved minutes available to the public; and

(iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(h) A public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

(i) Approved minutes of an open meeting are the official record of the meeting.

(5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.

(6) The written minutes or recording of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(7) Notwithstanding Subsection (1), a recording is not required to be kept of:

(a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or

(b) an open meeting of a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

Section 6. Section 53-2a-102 is amended to read:

53-2a-102. Definitions.

As used in this chapter:

(1) "Attack" means a nuclear, cyber, conventional, biological, act of terrorism, or chemical warfare action against the United States of America or this state.

(2) "Commissioner" means the commissioner of the Department of Public Safety or the commissioner's designee.

(3) "Director" means the division director appointed under Section 53-2a-103 or the director's designee.

(4) "Disaster" means an event that:

(a) causes, or threatens to cause, loss of life, human suffering, public or private property damage, or economic or social disruption resulting from attack, internal disturbance, natural phenomena, or technological hazard; and

(b) requires resources that are beyond the scope of local agencies in routine responses to emergencies and accidents and may be of a magnitude or involve unusual circumstances that require response by government, not-for-profit, or private entities.

(5) "Division" means the Division of Emergency Management created in Section 53-2a-103.

(6) "Energy" includes the energy resources defined in this chapter.

(7) "Expenses" means actual labor costs of government and volunteer personnel, and materials.

(8) "Hazardous materials emergency" means a sudden and unexpected release of any substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics presents a direct and immediate threat to public safety or the environment and requires immediate action to mitigate the threat.

(9) "Internal disturbance" means a riot, prison break, terrorism, or strike.

(10) "Municipality" means the same as that term is defined in Section 10-1-104.

~~(11)~~ (11) "Natural phenomena" means any earthquake, tornado, storm, flood, landslide, avalanche, forest or range fire, drought, or epidemic.

~~(12)~~ (12) "State of emergency" means a condition in any part of this state that requires state government emergency assistance to supplement the local efforts of the affected political subdivision to save lives and to protect property, public health, welfare, or safety in the event of a disaster, or to avoid or reduce the threat of a disaster.

~~(13)~~ (13) "Technological hazard" means any hazardous materials accident, mine accident, train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

~~(14)~~ (14) "Terrorism" means activities or the threat of activities that:

(a) involve acts dangerous to human life;

(b) are a violation of the criminal laws of the United States or of this state; and

(c) to a reasonable person, would appear to be intended to:

(i) intimidate or coerce a civilian population;

(ii) influence the policy of a government by intimidation or coercion; or

(iii) affect the conduct of a government by mass destruction, assassination, or kidnapping.

~~(14)~~ (15) "Urban search and rescue" means the location, extrication, and initial medical stabilization of victims trapped in a confined space as the result of a structural collapse, transportation accident, mining accident, or collapsed trench.

Section 7. Section 59-12-203 is amended to read:

59-12-203. County, city, town, or metro township may levy tax -- Contracts pursuant to Interlocal Cooperation Act.

(1) A county, city, town, or metro township may impose a sales and use tax under this part.

(2) ~~[(f)]~~ The State Tax Commission shall treat a metro township that imposes a tax under this part, ~~the metro township is subject to the same requirements a city is required to meet~~ as a city under this part.

(3) The State Tax Commission shall calculate the amount of a distribution to a metro township under this part in the same manner as the State Tax Commission calculates a distribution to a city under Section 59-12-205.

~~[(3)]~~ (4) (a) Except as provided in Subsection ~~[(3)(b) and notwithstanding any other provision of this part]~~ (4)(b), if a metro township imposes a tax under this part, the State Tax Commission shall distribute the ~~[revenues collected from the tax]~~ amount that the State Tax Commission calculates under Section 59-12-205 to the metro township.

(b) The State Tax Commission shall transfer the ~~[revenues collected within]~~ amount that would otherwise be distributed to a metro township under this part to a municipal services district created under Title 17B, Chapter 2a, Part 11, Municipal Services District Act, if the metro township:

(i) provides written notice to the State Tax Commission requesting the transfer; and

(ii) designates the municipal services district to which the metro township requests the State Tax Commission to transfer the revenues.

(4) A county, city, town, or metro township that imposes a sales and use tax under this part may:

(a) enter into agreements authorized by Title 11, Chapter 13, Interlocal Cooperation Act; and

(b) use any or all of the revenue collected from the tax for the mutual benefit of local governments that elect to contract with one another pursuant to Title 11, Chapter 13, Interlocal Cooperation Act.

Section 8. Effective date -- Retrospective operation.

(1) Except as provided in Subsection (2), if approved by two-thirds of all the members elected

to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) Notwithstanding Subsection (1), the amendments to Sections 17B-2a-1108 and 59-12-203 in this bill have retrospective operation for the taxable year beginning on or after January 1, 2017.

CHAPTER 14**S. B. 145**

Passed March 3, 2017
 Approved March 14, 2017
 Effective March 14, 2017

NAIL SALON AMENDMENTS

Chief Sponsor: Todd Weiler
 House Sponsor: James A. Dunnigan

LONG TITLE**General Description:**

This bill amends provisions related to nail salons.

Highlighted Provisions:

This bill:

- ▶ requires a nail salon that files or shapes an acrylic nail to be equipped with a source capture system under certain circumstances;
- ▶ requires a nail salon to provide inlets for a source capture system near the point of acrylic chemical application under certain circumstances; and
- ▶ exempts a nail salon from certain source capture system labeling and testing requirements under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

15A-3-401, as last amended by Laws of Utah 2016, Chapter 249

ENACTS:

15A-3-402, Utah Code Annotated 1953

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

Section 1. Section 15A-3-401 is amended to read:**15A-3-401. General provisions.**

(1) The [following] amendments in this part are adopted as amendments to the IMC to be applicable statewide[;].

[4] (2) In IMC, Section 1004.2, the first sentence is deleted and replaced with the following: “ In accordance with Title 34A, Chapter 7, Safety, and requirements made by rule by the Labor Commission, boilers and pressure vessels in Utah are regulated by the Utah Labor Commission, Division of Boiler, Elevator and Coal Mine Safety, except those located in private residences or in apartment houses of less than five family units. Boilers shall be installed in accordance with their listing and labeling, with minimum clearances as prescribed by the manufacturer’s installation instructions and the state boiler code, whichever is greater.”

[2] (3) In IMC, Section 1004.3.1, the word “unlisted” is inserted before the word “boilers”.

[3] (4) IMC, Section 1101.10, is deleted.

[4] (5) In IMC, Section 1209.3, the following words are added at the end of the section: “or other methods approved for the application.”

Section 2. Section 15A-3-402 is enacted to read:**15A-3-402. Amendments to Chapters 1 through 5 of the International Mechanical Code.**

(1) In IMC, Table 403.3, note h is deleted and replaced with the following:

“h. 1. A nail salon shall provide each manicure station where a nail technician files or shapes an acrylic nail, as defined by rule by the Division of Occupational and Professional Licensing, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, with:

a. a source capture system equipped with, at minimum, a MERV 8 particulate filter and an activated carbon filter that is capable of filtering and recirculating air to inside space at a rate not less than 50 cfm per station; or

b. a source capture system capable of exhausting not less than 50 cfm per station.

c. A nail salon that complies with Note h.1.a or h.1.b is not required to comply with the labeling, listing, or testing requirements described in International Mechanical Code sections 301.7 or 301.8.

2. For a source capture system described in paragraph 1, the source capture system inlets for exhausting or recirculating air shall be located in accordance with Section 502.20.

3. Where one or more exhausting source capture systems described in paragraph 1 operate continuously during occupancy, the source capture system exhaust rate shall be permitted to be applied to the exhaust flow rate required by Table 403.3.1.1 for the nail salon.

4. The requirements of this note apply to:

a. an existing nail salon that remodels the nail salon after July 1, 2017;

b. a new nail salon that begins construction after July 1, 2017; and

c. all nail salons beginning on July 1, 2020.”

(2) In IMC, Section 502.20 is deleted and rewritten as follows:

“502.20 Manicure stations. A nail salon that files or shapes an acrylic nail shall provide each manicure station with a source capture system in accordance with Table 403.3.1.1, note h. For a manicure table that does not have factory-installed source capture system inlets for recirculating or exhausting air, a nail salon shall provide the manicure table with inlets for recirculating or exhausting air located not more than 12 inches (305 mm) horizontally and vertically from the point of any acrylic chemical application.

Exception: Section 502.20 applies to a manicure station in:

a. an existing nail salon that remodels the nail salon after July 1, 2017;

b. a new nail salon that begins construction after July 1, 2017; and

c. all nail salons beginning on July 1, 2020.”

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor’s signature, or in the case of a veto, the date of veto override.

CHAPTER 15**S. B. 179**

Passed February 23, 2017

Approved March 14, 2017

Effective March 14, 2017

**ANIMAL CARE AND
CONTROL APPRECIATION WEEK**

Chief Sponsor: J. Stuart Adams

House Sponsor: Stephen G. Handy

LONG TITLE**General Description:**

This bill designates Animal Care and Control Appreciation Week.

Highlighted Provisions:

This bill:

- ▶ designates a week in April as Animal Care and Control Appreciation Week.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

63G-1-401, as last amended by Laws of Utah 2016, Chapter 218

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

Section 1. Section 63G-1-401 is amended to read:**63G-1-401. Commemorative periods.**

(1) The following days shall be commemorated annually:

- (a) Bill of Rights Day, on December 15;
- (b) Constitution Day, on September 17;
- (c) Yellow Ribbon Day, on the third Monday in May, in honor of men and women who are serving or have served in the United States Armed Forces around the world in defense of freedom;
- (d) POW/MIA Recognition Day, on the third Friday in September;
- (e) Indigenous People Day, on the Monday immediately preceding Thanksgiving;
- (f) Utah State Flag Day, on March 9;
- (g) Vietnam Veterans Recognition Day, on March 29;
- (h) Utah History Day at the Capitol, on the Friday immediately following the fourth Monday in January, to encourage citizens of the state, including students, to participate in activities that recognize Utah's history; and
- (i) Juneteenth Freedom Day, on the third Saturday in June, in honor of Union General Gordon Granger proclaiming the freedom of all slaves on June 19, 1865, in Galveston, Texas.

(2) The Department of Veterans' and Military Affairs shall coordinate activities, special programs, and promotional information to heighten public awareness and involvement relating to Subsections (1)(c) and (d).

(3) The month of October shall be commemorated annually as Italian-American Heritage Month.

(4) The month of November shall be commemorated annually as American Indian Heritage Month.

(5) The month of April shall be commemorated annually as Clean Out the Medicine Cabinet Month to:

(a) recognize the urgent need to make Utah homes and neighborhoods safe from prescription medication abuse and poisonings by the proper home storage and disposal of prescription and over-the-counter medications; and

(b) educate citizens about the permanent medication disposal sites in Utah listed on useonlyasdirected.org that allow disposal throughout the year.

(6) The first full week of May shall be commemorated annually as State Water Week to recognize the importance of water conservation, quality, and supply in the state.

(7) The second Friday and Saturday in August shall be commemorated annually as Utah Fallen Heroes Days to:

(a) honor fallen heroes who, during service in the military or public safety, have sacrificed their lives to protect the country and the citizens of the state; and

(b) encourage political subdivisions to acknowledge and honor fallen heroes.

(8) The third full week in August shall be commemorated annually as Drowsy Driving Awareness Week to:

(a) educate the public about the relationship between fatigue and driving performance; and

(b) encourage the Department of Public Safety and the Department of Transportation to recognize and promote educational efforts on the dangers of drowsy driving.

(9) The third full week of June shall be commemorated annually as Workplace Safety Week to heighten public awareness regarding the importance of safety in the workplace.

(10) The second full week of April shall be commemorated annually as Animal Care and Control Appreciation Week to recognize and increase awareness within the community of the services that animal care and control professionals provide.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution,

Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 16**H. B. 13**

Passed February 16, 2017

Approved March 15, 2017

Effective May 9, 2017

**UNIFORM FIDUCIARY ACCESS
TO DIGITAL ASSETS ACT**

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Lyle W. Hillyard

Cosponsor: Kelly B. Miles

LONG TITLE**General Description:**

This bill creates a new chapter within the Utah Uniform Probate Code addressing access to digital assets when a person is incapacitated or deceased.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ specifies who has access to the digital assets of an incapacitated or deceased person;
- ▶ sets out responsibilities for agents and fiduciaries with access to a person's digital assets; and
- ▶ provides for the responsibilities of the custodian of a digital asset upon request of an agent or fiduciary.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

75-10-101, Utah Code Annotated 1953
 75-10-102, Utah Code Annotated 1953
 75-10-103, Utah Code Annotated 1953
 75-10-104, Utah Code Annotated 1953
 75-10-105, Utah Code Annotated 1953
 75-10-106, Utah Code Annotated 1953
 75-10-107, Utah Code Annotated 1953
 75-10-108, Utah Code Annotated 1953
 75-10-109, Utah Code Annotated 1953
 75-10-110, Utah Code Annotated 1953
 75-10-111, Utah Code Annotated 1953
 75-10-112, Utah Code Annotated 1953
 75-10-113, Utah Code Annotated 1953
 75-10-114, Utah Code Annotated 1953
 75-10-115, Utah Code Annotated 1953
 75-10-116, Utah Code Annotated 1953
 75-10-117, Utah Code Annotated 1953
 75-10-118, Utah Code Annotated 1953

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

Section 1. Section 75-10-101 is enacted to read:**CHAPTER 10. UNIFORM FIDUCIARY
ACCESS TO DIGITAL ASSETS ACT****75-10-101. Title.**

This chapter may be cited as the "Uniform Fiduciary Access to Digital Assets Act."

Section 2. Section 75-10-102 is enacted to read:**75-10-102. Definitions.**

As used in this chapter:

(1) "Account" means an arrangement under a terms of service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) "Agent" means an attorney in fact granted authority under a durable or nondurable power of attorney.

(3) "Carries" means engages in the transmission of an electronic communication.

(4) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) (a) "Conservator" means a person appointed by a court to manage the estate of a living individual.

(b) "Conservator" includes a limited conservator.

(6) "Content of an electronic communication" means information concerning the substance or meaning of the communication that:

(a) has been sent or received by a user;

(b) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(c) is not readily accessible to the public.

(7) "Court" means the district court.

(8) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(9) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(10) (a) "Digital asset" means an electronic record in which an individual has a right or interest.

(b) "Digital asset" does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) "Electronic communication" has the same meaning as the definition in 18 U.S.C. Sec. 2510(12).

(13) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) "Fiduciary" means an original, additional, or successor personal representative, conservator, guardian, agent, or trustee.

(15) (a) “Guardian” means a person appointed by a court to manage the affairs of a living individual.

(b) “Guardian” includes a limited guardian.

(16) “Information” means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(17) “Online tool” means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms of service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(18) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.

(19) “Personal representative” means an executor, administrator, special administrator, or person that performs substantially the same function under the law of this state other than this chapter.

(20) “Power of attorney” means a record that grants an agent authority to act in the place of a principal.

(21) “Principal” means an individual who grants authority to an agent in a power of attorney.

(22) (a) “Protected person” means an individual for whom a conservator or guardian has been appointed.

(b) “Protected person” includes an individual for whom an application for the appointment of a conservator or guardian is pending.

(23) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(24) “Remote computing service” means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Sec. 2510(14).

(25) “Terms of service agreement” means an agreement that controls the relationship between a user and a custodian.

(26) (a) “Trustee” means a fiduciary with legal title to property pursuant to an agreement or declaration that creates a beneficial interest in another.

(b) “Trustee” includes a successor trustee.

(27) “User” means a person that has an account with a custodian.

(28) “Will” includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

Section 3. Section 75-10-103 is enacted to read:

75-10-103. Applicability.

(1) This chapter applies to:

(a) a fiduciary or agent acting under a will or power of attorney executed before, on, or after May 9, 2017;

(b) a personal representative acting for a decedent who died before, on, or after May 9, 2017;

(c) a conservatorship or guardianship proceeding commenced before, on, or after May 9, 2017; and

(d) a trustee acting under a trust created before, on, or after May 9, 2017.

(2) This chapter applies to a custodian if the user resides in this state or resided in this state at the time of the user’s death.

(3) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer’s business.

Section 4. Section 75-10-104 is enacted to read:

75-10-104. User direction for disclosure of digital assets.

(1) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user’s digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(2) If a user has not used an online tool to give direction under Subsection (1) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record disclosure to a fiduciary of some or all of the user’s digital assets, including the content of electronic communications sent or received by the user.

(3) A user’s direction under Subsection (1) or (2) overrides a contrary provision in a terms of service agreement that does not require the user to act affirmatively and distinctly from the user’s assent to the terms of service.

Section 5. Section 75-10-105 is enacted to read:

75-10-105. Terms of service agreement.

(1) This chapter does not change or impair a right of a custodian or a user under a terms of service agreement to access and use digital assets of the user.

(2) This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(3) A fiduciary’s or designated recipient’s access to digital assets may be modified or eliminated by a

user, by federal law, or by a terms of service agreement if the user has not provided direction under Section 75-10-104.

Section 6. Section 75-10-106 is enacted to read:

75-10-106. Procedure for disclosing digital assets.

(1) When disclosing digital assets of a user under this chapter, the custodian may at the custodian's sole discretion:

(a) grant a fiduciary or designated recipient full access to the user's account;

(b) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(c) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(3) A custodian need not disclose under this chapter a digital asset deleted by a user.

(4) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(a) a subset limited by date of the user's digital assets;

(b) all of the user's digital assets to the fiduciary or designated recipient;

(c) none of the user's digital assets; or

(d) all of the user's digital assets to the court for review in camera.

Section 7. Section 75-10-107 is enacted to read:

75-10-107. Disclosure of content of electronic communications of deceased user.

If a deceased user consented to or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letter of appointment of the representative or a small estate affidavit or court order;

(4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user; or

(c) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in Subsection (5)(a);

(ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Sec. 2701 et seq., 47 U.S.C. Sec. 222, or other applicable law;

(iii) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

Section 8. Section 75-10-108 is enacted to read:

75-10-108. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letter of appointment of the representative, a small estate affidavit, or court order; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user;

(c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(d) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in Subsection (4)(a); or

(ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

Section 9. Section 75-10-109 is enacted to read:

75-10-109. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) evidence linking the account to the principal.

Section 10. Section 75-10-110 is enacted to read:

75-10-110. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets, or general authority to act on behalf of a principal, a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) evidence linking the account to the principal.

Section 11. Section 75-10-111 is enacted to read:

75-10-111. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

Section 12. Section 75-10-112 is enacted to read:

75-10-112. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under Section 75-7-1013 that includes consent to disclosure of the content of electronic communications to the trustee;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

Section 13. Section 75-10-113 is enacted to read:

75-10-113. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under Section 75-7-1013;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

Section 14. Section 75-10-114 is enacted to read:

75-10-114. Disclosure of digital assets to conservator or guardian of protected person.

(1) After an opportunity for a hearing under Chapter 5b, Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the court may grant a conservator or guardian access to the digital assets of a protected person.

(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator or guardian the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator or guardian gives the custodian:

(a) a written request for disclosure in physical or electronic form;

(b) a certified copy of the court order that gives the conservator or guardian authority over the digital assets of the protected person; and

(c) if requested by the custodian:

(i) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(ii) evidence linking the account to the protected person.

(3) A conservator or guardian with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator or guardian authority over the protected person's property.

Section 15. Section 75-10-115 is enacted to read:

75-10-115. Fiduciary duty and authority.

(1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(a) the duty of care;

(b) the duty of loyalty; and

(c) the duty of confidentiality.

(2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(a) except as otherwise provided in Section 75-10-104, is subject to the applicable terms of service;

(b) is subject to other applicable law, including copyright law;

(c) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(d) may not be used to impersonate the user.

(3) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms of service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws.

(5) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:

(a) has the right to access the property and any digital asset stored in it; and

(b) is an authorized user for the purpose of computer fraud and unauthorized computer access laws.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination shall be in writing, in either physical or electronic form, and accompanied by:

(a) if the user is deceased, a certified copy of the death certificate of the user;

(b) a certified copy of the letter of appointment of the representative, a small estate affidavit, or court order, power of attorney, or trust giving the fiduciary authority over the account; and

(c) if requested by the custodian:

(i) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(ii) evidence linking the account to the user; or

(iii) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in Subsection (7)(c)(i).

Section 16. Section 75-10-116 is enacted to read:

75-10-116. Custodian compliance and immunity.

(1) Not later than 60 days after receipt of the information required under Sections 75-10-107

through 75-10-115, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(2) An order under Subsection (1) directing compliance shall contain a finding that compliance is not in violation of 18 U.S.C. Sec. 2702.

(3) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(4) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(5) This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order that:

(a) specifies that an account belongs to the protected person or principal;

(b) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(c) contains a finding required by law other than this chapter.

(6) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

Section 17. Section 75-10-117 is enacted to read:

75-10-117. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 18. Section 75-10-118 is enacted to read:

75-10-118. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act or 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act or 15 U.S.C. Sec. 7003(b).

CHAPTER 17**H. B. 30**

Passed February 17, 2017

Approved March 15, 2017

Effective May 9, 2017

HISTORIC PRESERVATION AMENDMENTS

Chief Sponsor: R. Curt Webb
Senate Sponsor: Daniel W. Thatcher

LONG TITLE**General Description:**

This bill addresses administrative decisions and appeals related to land use applications in historic preservation districts or areas.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes a legislative body to designate a historic preservation authority to make administrative decisions on land use applications related to historically significant real property;
- ▶ requires the establishment of an appeal authority to review decisions of a historic preservation authority; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-9a-103, as last amended by Laws of Utah 2015, Chapter 327
- 10-9a-503, as last amended by Laws of Utah 2016, Chapter 404
- 10-9a-701, as last amended by Laws of Utah 2011, Chapter 92
- 10-9a-703, as last amended by Laws of Utah 2008, Chapter 326
- 10-9a-704, as last amended by Laws of Utah 2006, Chapter 240

ENACTS:

10-9a-527, Utah Code Annotated 1953

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

Section 1. Section 10-9a-103 is amended to read:**10-9a-103. Definitions.**

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, property owner, property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) (a) "Charter school" means:

(i) an operating charter school;

(ii) a charter school applicant that has its application approved by a charter school authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or

(iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(b) "Charter school" does not include a therapeutic school.

(5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(6) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution, Article I, Section 22.

(7) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(8) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) “Disability” means a physical or mental impairment that substantially limits one or more of a person’s major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) “Disability” does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) “Educational facility”:

(a) means:

(i) a school district’s building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district’s administrative personnel; and

(b) does not include:

(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(A) not located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the purposes of a building described in Subsection (10)(a)(i); or

(ii) a therapeutic school.

(11) “Fire authority” means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(12) “Flood plain” means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(13) “General plan” means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

(14) “Geologic hazard” means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(15) “Historic preservation authority” means a person, board, commission, or other body designated by a legislative body to:

(a) recommend land use regulations to preserve local historic districts or areas; and

(b) administer local historic preservation land use regulations within a local historic district or area.

[45] (16) “Hookup fee” means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

[46] (17) “Identical plans” means building plans submitted to a municipality that:

(a) are clearly marked as “identical plans”;

(b) are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality; and

(c) describe a building that:

(i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;

(ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;

(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the municipality; and

(iv) does not require any additional engineering or analysis.

[47] (18) “Impact fee” means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

[48] (19) “Improvement completion assurance” means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a municipality to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

(a) recording a subdivision plat; or

(b) development of a commercial, industrial, mixed use, or multifamily project.

[(19)] (20) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

(a) complies with the municipality's written standards for design, materials, and workmanship; and

(b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

[(20)] (21) "Improvement warranty period" means a period:

(a) no later than one year after a municipality's acceptance of required landscaping; or

(b) no later than one year after a municipality's acceptance of required infrastructure, unless the municipality:

(i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and

(ii) has substantial evidence, on record:

(A) of prior poor performance by the applicant; or

(B) that the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.

[(21)] (22) "Infrastructure improvement" means permanent infrastructure that an applicant must install:

(a) pursuant to published installation and inspection specifications for public improvements; and

(b) as a condition of:

(i) recording a subdivision plat; or

(ii) development of a commercial, industrial, mixed use, condominium, or multifamily project.

[(22)] (23) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

[(23)] (24) "Land use application" means an application required by a municipality's land use ordinance.

[(24)] (25) "Land use authority" means:

(a) a person, board, commission, agency, or body, including the local legislative body, designated by

the local legislative body to act upon a land use application; or

(b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

[(25)] (26) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

[(26)] (27) "Land use permit" means a permit issued by a land use authority.

[(27)] (28) "Legislative body" means the municipal council.

[(28)] (29) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(30) "Local historic district or area" means a geographically definable area that:

(a) contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body; and

(b) is subject to land use regulations to preserve the historic significance of the local historic district or area.

[(29)] (31) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

[(30)] (32) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

[(31)] (33) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

[(32)] (34) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

[(33)] (35) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

[(34)] (36) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the municipality's general plan.

[(35)] (37) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(a) no additional parcel is created; and

(b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.

[(36)] (38) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

[(37)] (39) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the city;

(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the city's program to encourage an adequate supply of moderate income housing.

[(38)] (40) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

[(39)] (41) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

[(40)] (42) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

[(41)] (43) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

[(42)] (44) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

[(43)] (45) "Receiving zone" means an area of a municipality that the municipality designates, by ordinance, as an area in which an owner of land may receive a transferable development right.

[(44)] (46) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

[(45)] (47) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) which is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

[(46)] (48) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

[(47)] (49) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

[(48)] (50) "Sending zone" means an area of a municipality that the municipality designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

[(49)] (51) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

[450] (52) “Specified public utility” means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

[451] (53) “State” includes any department, division, or agency of the state.

[452] (54) “Street” means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

[453] (55) (a) “Subdivision” means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) “Subdivision” includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection [453] (55)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) “Subdivision” does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance;

(v) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels; or

(vi) a parcel boundary adjustment.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection [453] (55) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality’s subdivision ordinance.

[454] (56) “Suspect soil” means soil that has:

(a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;

(b) bedrock units with high shrink or swell susceptibility; or

(c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

[455] (57) “Therapeutic school” means a residential group living facility:

(a) for four or more individuals who are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

[456] (58) “Transferable development right” means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

[457] (59) “Unincorporated” means the area outside of the incorporated area of a city or town.

[458] (60) “Water interest” means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

[~~(59)~~] (61) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section 10-9a-503 is amended to read:

10-9a-503. Land use ordinance or zoning map amendments -- Historic district or area.

(1) The legislative body may amend:

(a) the number, shape, boundaries, or area of any zoning district;

(b) any regulation of or within the zoning district; or

(c) any other provision of a land use ordinance.

(2) The legislative body may not make any amendment authorized by this section unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation.

(3) The legislative body shall comply with the procedure specified in Section 10-9a-502 in preparing and adopting an amendment to a land use ordinance or a zoning map.

(4) (a) As used in this Subsection (4):

(i) "Condominium project" means the same as that term is defined in Section 57-8-3.

~~[(ii) "Local historic district or area" means a geographically or thematically definable area that contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body.]~~

~~[(iii)]~~ (ii) "Unit" means the same as that term is defined in Section 57-8-3.

(b) If a municipality provides a process by which one or more residents of the municipality may initiate the creation of a local historic district or area, the process shall require that:

(i) more than 33% of the property owners within the boundaries of the proposed local historic district or area agree in writing to the creation of the proposed local historic district or area;

(ii) before any property owner agrees to the creation of a proposed local historic district or area under Subsection (4)(b)(i), the municipality prepare and distribute, to each property owner within the boundaries of the proposed local historic district or area, a neutral information pamphlet that:

(A) describes the process to create a local historic district or area; and

(B) lists the pros and cons of a local historic district or area;

(iii) after the property owners satisfy the requirement described in Subsection (4)(b)(i), for each parcel or, if the parcel contains a condominium project, each unit, within the boundaries of the proposed local historic district or area, the municipality provide:

(A) a second copy of the neutral information pamphlet described in Subsection (4)(b)(ii); and

(B) one public support ballot that, subject to Subsection (4)(c), allows the owner or owners of record to vote in favor of or against the creation of the proposed local historic district or area;

(iv) in a vote described in Subsection (4)(b)(iii)(B), the returned public support ballots that reflect a vote in favor of the creation of the proposed local historic district or area:

(A) equal at least two-thirds of the returned public support ballots; and

(B) represent more than 50% of the parcels and units within the proposed local historic district or area;

(v) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B), the legislative body may override the vote and create the proposed local historic district or area with an affirmative vote of two-thirds of the members of the legislative body; and

(vi) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B) and the legislative body does not override the vote under Subsection (4)(b)(v), a resident may not initiate the creation of a local historic district or area that includes more than 50% of the same property as the failed local historic district or area proposal for four years after the day on which the public support ballots for the vote are due.

(c) In a vote described in Subsection (4)(b)(iii)(B):

(i) a property owner is eligible to vote regardless of whether the property owner is an individual, a private entity, or a public entity;

(ii) the municipality shall count no more than one public support ballot for:

(A) each parcel within the boundaries of the proposed local historic district or area; or

(B) if the parcel contains a condominium project, each unit within the boundaries of the proposed local historic district or area; and

(iii) if a parcel or unit has more than one owner of record, the municipality shall count a public support ballot for the parcel or unit only if the public support ballot reflects the vote of the property owners who own at least a 50% interest in the parcel or unit.

(d) The requirements described in Subsection (4)(b)(iv) apply to the creation of a local historic district or area that is:

(i) initiated in accordance with a municipal process described in Subsection (4)(b); and

(ii) not complete on or before January 1, 2016.

(e) A vote described in Subsection (4)(b)(iii)(B) is not subject to Title 20A, Election Code.

Section 3. Section 10-9a-527 is enacted to read:

10-9a-527. Historic preservation authority.

(1) (a) A legislative body may designate a historic preservation authority.

(b) A legislative body may not designate the legislative body or the municipality's governing body as a historic preservation authority.

(2) In making administrative decisions on land use applications, a historic preservation authority shall apply the plain language of the land use regulations to a land use application.

(3) If a land use regulation does not plainly restrict a land use application, the historic preservation authority shall interpret and apply the land use regulation to favor the land use application.

Section 4. Section 10-9a-701 is amended to read:

10-9a-701. Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.

(1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:

(a) requests for variances from the terms of the land use ordinances;

(b) appeals from decisions applying the land use ordinances; and

(c) appeals from a fee charged in accordance with Section 10-9a-510.

(2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.

(3) An appeal authority:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

(4) By ordinance, a municipality may:

(a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;

(b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;

(c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;

(d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and

(e) provide that specified types of land use decisions may be appealed directly to the district court.

(5) If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:

(a) notify each of its members of any meeting or hearing of the board, body, or panel;

(b) provide each of its members with the same information and access to municipal resources as any other member;

(c) convene only if a quorum of its members is present; and

(d) act only upon the vote of a majority of its convened members.

(6) (a) Each municipality that designates a historic preservation district or area shall, by ordinance, establish or designate a historic preservation appeal authority.

(b) A historic preservation appeal authority shall:

(i) be comprised of the members of the governing body;

(ii) exercise only administrative authority and act in a quasi-judicial manner; and

(iii) hear and decide appeals from administrative decisions of the historic preservation authority.

(c) An applicant appealing an administrative decision of the historic preservation authority may appeal to either:

(i) the historic preservation appeal authority; or

(ii) the land use appeal authority established under Subsection (1).

Section 5. Section 10-9a-703 is amended to read:

10-9a-703. Appealing a land use authority's decision -- Panel of experts for appeals of geologic hazard decisions -- Automatic appeal for certain decisions.

(1) The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the applicable time period [~~provided by ordinance~~], appeal that decision to the appeal authority by

alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

(2) (a) An applicant who has appealed a decision of the land use authority administering or interpreting the municipality's geologic hazard ordinance may request the municipality to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

(b) If an applicant makes a request under Subsection (2)(a), the municipality shall assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the applicant and municipality:

- (i) one expert designated by the municipality;
- (ii) one expert designated by the applicant; and
- (iii) one expert chosen jointly by the municipality's designated expert and the applicant's designated expert.

(c) A member of the panel assembled by the municipality under Subsection (2)(b) may not be associated with the application that is the subject of the appeal.

(d) The applicant shall pay:

- (i) 1/2 of the cost of the panel; and
- (ii) the municipality's published appeal fee.

Section 6. Section 10-9a-704 is amended to read:

10-9a-704. Time to appeal.

(1) The municipality shall enact an ordinance establishing a reasonable time of not less than 10 days to appeal to an appeal authority a written decision issued by a land use authority.

(2) In the absence of an ordinance establishing a reasonable time to appeal, an adversely affected party shall have 10 calendar days to appeal to an appeal authority a written decision issued by a land use authority.

(3) Notwithstanding Subsections (1) and (2), for an appeal from a decision of a historic preservation authority regarding a land use application, the applicant may appeal the decision within 30 days after the day on which the historic preservation authority issues a written decision.

CHAPTER 18**H. B. 38**

Passed February 2, 2017
 Approved March 15, 2017
 Effective May 9, 2017

**STATUTORY REQUIRED
 REPORTS AMENDMENTS**

Chief Sponsor: Val L. Peterson
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies provisions regarding statutory related reports.

Highlighted Provisions:

This bill:

- ▶ clarifies that various reports are to be written;
- ▶ clarifies the Business and Labor Interim Committee's study requirements;
- ▶ changes dates when certain reports are due;
- ▶ deletes obsolete language;
- ▶ provides that certain reports go to staff of committees; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 13-14-310, as last amended by Laws of Utah 2016, Chapter 187
- 15A-1-204, as last amended by Laws of Utah 2016, Chapters 249 and 286
- 15A-1-403, as last amended by Laws of Utah 2016, Chapter 249
- 31A-3-305, as enacted by Laws of Utah 2011, Chapter 275
- 31A-22-614.7, as enacted by Laws of Utah 2013, Chapter 361
- 34-47-202, as last amended by Laws of Utah 2016, Chapter 187
- 34A-2-107, as last amended by Laws of Utah 2016, Chapter 242
- 34A-5-104, as last amended by Laws of Utah 2016, Chapter 132
- 36-23-106, as last amended by Laws of Utah 2013, Chapter 323
- 53-2a-204, as last amended by Laws of Utah 2016, Chapter 329
- 53-7-204, as last amended by Laws of Utah 2011, Chapter 14
- 63M-2-802, as enacted by Laws of Utah 2016, Chapter 240
- 63N-6-301, as last amended by Laws of Utah 2015, Chapter 420 and renumbered and amended by Laws of Utah 2015, Chapter 283
- 63N-11-106, as renumbered and amended by Laws of Utah 2015, Chapter 283
- 67-5-32, as last amended by Laws of Utah 2014, Chapter 209

68-3-14, as repealed and reenacted by Laws of Utah 2013, Chapter 271

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

Section 1. Section 13-14-310 is amended to read:

13-14-310. Reporting requirement.

By September 1 of each year, the advisory board shall submit, in accordance with Section 68-3-14, an annual written report to the Business and Labor Interim Committee that, for the fiscal year immediately preceding the day on which the report is submitted, describes:

- (1) the number of applications for a new or relocated dealership that the advisory board received; and
- (2) for each application described in Subsection (1):
 - (a) the number of protests that the advisory board received;
 - (b) whether the advisory board conducted a hearing;
 - (c) if the advisory board conducted a hearing, the disposition of the hearing; and
 - (d) the basis for any disposition described in Subsection (2)(c).

Section 2. Section 15A-1-204 is amended to read:

15A-1-204. Adoption of State Construction Code -- Amendments by commission -- Approved codes -- Exemptions.

- (1) (a) The State Construction Code is the construction codes adopted with any modifications in accordance with this section that the state and each political subdivision of the state shall follow.
- (b) A person shall comply with the applicable provisions of the State Construction Code when:
 - (i) new construction is involved; and
 - (ii) the owner of an existing building, or the owner's agent, is voluntarily engaged in:
 - (A) the repair, renovation, remodeling, alteration, enlargement, rehabilitation, conservation, or reconstruction of the building; or
 - (B) changing the character or use of the building in a manner that increases the occupancy loads, other demands, or safety risks of the building.
- (c) On and after July 1, 2010, the State Construction Code is the State Construction Code in effect on July 1, 2010, until in accordance with this section:
 - (i) a new State Construction Code is adopted; or
 - (ii) one or more provisions of the State Construction Code are amended or repealed in accordance with this section.
- (d) A provision of the State Construction Code may be applicable:

- (i) to the entire state; or
 - (ii) within a county, city, or town.
- (2) (a) The Legislature shall adopt a State Construction Code by enacting legislation that adopts a nationally recognized construction code with any modifications.
- (b) Legislation described in Subsection (2)(a) shall state that the legislation takes effect on the July 1 after the day on which the legislation is enacted, unless otherwise stated in the legislation.
- (c) Subject to Subsection (6), a State Construction Code adopted by the Legislature is the State Construction Code until, in accordance with this section, the Legislature adopts a new State Construction Code by:
- (i) adopting a new State Construction Code in its entirety; or
 - (ii) amending or repealing one or more provisions of the State Construction Code.
- (3) (a) Except as provided in Subsection (3)(b), for each update of a nationally recognized construction code, the commission shall prepare a report described in Subsection (4).
- (b) For the provisions of a nationally recognized construction code that apply only to detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with separate means of egress and their accessory structures, the commission shall:
- (i) prepare a report described in Subsection (4) in 2021 and, thereafter, for every second update of the nationally recognized construction code; and
 - (ii) not prepare a report described in Subsection (4) in 2018.
- (4) (a) In accordance with Subsection (3), on or before September 1 of the same year as the year designated in the title of a nationally recognized construction code, the commission shall prepare and submit, in accordance with Section 68-3-14, a written report to the Business and Labor Interim Committee that:
- (i) states whether the commission recommends the Legislature adopt the update with any modifications; and
 - (ii) describes the costs and benefits of each recommended change in the update or in any modification.
- (b) After the Business and Labor Interim Committee receives the report described in Subsection (4)(a), the Business and Labor Interim Committee shall:
- (i) study the recommendations [~~during the remainder of the interim~~]; and
 - (ii) if the Business and Labor Interim Committee decides to recommend legislative action to the Legislature, prepare legislation for consideration by the Legislature in the next general session.

- (5) (a) (i) The commission shall, by no later than ~~November 30~~ September 1 of each year in which the commission is not required to submit a report described in Subsection (4), ~~recommend in a~~ submit, in accordance with Section 68-3-14, a written report to the Business and Labor Interim Committee recommending whether the Legislature should amend or repeal one or more provisions of the State Construction Code.
- (ii) As part of a recommendation described in Subsection (5)(a)(i), the commission shall describe the costs and benefits of each proposed amendment or repeal.
- (b) The commission may recommend legislative action related to the State Construction Code:
 - (i) on its own initiative;
 - (ii) upon the recommendation of the division; or
 - (iii) upon the receipt of a request by one of the following that the commission recommend legislative action related to the State Construction Code:
 - (A) a local regulator;
 - (B) a state regulator;
 - (C) a state agency involved with the construction and design of a building;
 - (D) the Construction Services Commission;
 - (E) the Electrician Licensing Board;
 - (F) the Plumbers Licensing Board; or
 - (G) a recognized construction-related association.
- (c) If the Business and Labor Interim Committee decides to recommend legislative action to the Legislature, the Business and Labor Interim Committee shall prepare legislation for consideration by the Legislature in the next general session.
- (6) (a) Notwithstanding the provisions of this section, the commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, amend the State Construction Code if the commission determines that waiting for legislative action in the next general legislative session would:
 - (i) cause an imminent peril to the public health, safety, or welfare; or
 - (ii) place a person in violation of federal or other state law.
- (b) If the commission amends the State Construction Code in accordance with this Subsection (6), the commission shall file with the division:
 - (i) the text of the amendment to the State Construction Code; and
 - (ii) an analysis that includes the specific reasons and justifications for the commission's findings.
- (c) If the State Construction Code is amended under this Subsection (6), the division shall:

(i) publish the amendment to the State Construction Code in accordance with Section 15A-1-205; and

(ii) [notify] prepare and submit, in accordance with Section 68-3-14, a written notice to the Business and Labor Interim Committee [of] containing the amendment to the State Construction Code, including a copy of the commission's analysis described in Subsection (6)(b)(ii).

(d) If not formally adopted by the Legislature at the next annual general session, an amendment to the State Construction Code under this Subsection (6) is repealed on the July 1 immediately following the next annual general session that follows the adoption of the amendment.

(7) (a) The division, in consultation with the commission, may approve, without adopting, one or more approved codes, including a specific edition of a construction code, for use by a compliance agency.

(b) If the code adopted by a compliance agency is an approved code described in Subsection (7)(a), the compliance agency may:

(i) adopt an ordinance requiring removal, demolition, or repair of a building;

(ii) adopt, by ordinance or rule, a dangerous building code; or

(iii) adopt, by ordinance or rule, a building rehabilitation code.

(8) Except as provided in Subsections (6), (7), (9), and (10), or as expressly provided in state law, a state executive branch entity or political subdivision of the state may not, after December 1, 2016, adopt or enforce a rule, ordinance, or requirement that applies to a subject specifically addressed by, and that is more restrictive than, the State Construction Code.

(9) A state executive branch entity or political subdivision of the state may:

(a) enforce a federal law or regulation;

(b) adopt or enforce a rule, ordinance, or requirement if the rule, ordinance, or requirement applies only to a facility or construction owned or used by a state entity or a political subdivision of the state; or

(c) enforce a rule, ordinance, or requirement:

(i) that the state executive branch entity or political subdivision adopted or made effective before July 1, 2015; and

(ii) for which the state executive branch entity or political subdivision can demonstrate, with substantial evidence, that the rule, ordinance, or requirement is necessary to protect an individual from a condition likely to cause imminent injury or death.

(10) The Department of Health or the Department of Environmental Quality may enforce

a rule or requirement adopted before January 1, 2015.

(11) (a) Except as provided in Subsection (11)(b), a structure used solely in conjunction with agriculture use, and not for human occupancy, or a structure that is no more than 1,500 square feet and used solely for the type of sales described in Subsection 59-12-104(20), is exempt from the permit requirements of the State Construction Code.

(b) (i) Unless exempted by a provision other than Subsection (11)(a), a plumbing, electrical, and mechanical permit may be required when that work is included in a structure described in Subsection (11)(a).

(ii) Unless located in whole or in part in an agricultural protection area created under Title 17, Chapter 41, Agriculture and Industrial Protection Areas, a structure described in Subsection (11)(a) is not exempt from a permit requirement if the structure is located on land that is:

(A) within the boundaries of a city or town, and less than five contiguous acres; or

(B) within a subdivision for which the county has approved a subdivision plat under Title 17, Chapter 27a, Part 6, Subdivisions, and less than two contiguous acres.

Section 3. Section 15A-1-403 is amended to read:

15A-1-403. Adoption of State Fire Code.

(1) (a) The State Fire Code is:

(i) a code promulgated by a nationally recognized code authority that is adopted by the Legislature under this section with any modifications; and

(ii) a code to which cities, counties, fire protection districts, and the state shall adhere in safeguarding life and property from the hazards of fire and explosion.

(b) On and after July 1, 2010, the State Fire Code is the State Fire Code in effect on July 1, 2010, until in accordance with this section:

(i) a new State Fire Code is adopted; or

(ii) one or more provisions of the State Fire Code are amended or repealed in accordance with this section.

(c) A provision of the State Fire Code may be applicable:

(i) to the entire state; or

(ii) within a city, county, or fire protection district.

(2) (a) The Legislature shall adopt a State Fire Code by enacting legislation that adopts a nationally recognized fire code with any modifications.

(b) Legislation described in Subsection (2)(a) shall state that the legislation takes effect on the July 1 after the day on which the legislation is enacted, unless otherwise stated in the legislation.

(c) Subject to Subsection (6), a State Fire Code adopted by the Legislature is the State Fire Code until in accordance with this section the Legislature adopts a new State Fire Code by:

(i) adopting a new State Fire Code in its entirety; or

(ii) amending or repealing one or more provisions of the State Fire Code.

(3) (a) Except as provided in Subsection (3)(b), for each update of a nationally recognized fire code, the board shall prepare a report described in Subsection (4).

(b) For the provisions of a nationally recognized fire code that apply only to detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with separate means of egress and their accessory structures, the board shall:

(i) prepare a report described in Subsection (4) in 2021 and, thereafter, for every second update of the nationally recognized fire code; and

(ii) not prepare a report described in Subsection (4) in 2018.

(4) (a) In accordance with Subsection (3), on or before September 1 of the same year as the year designated in the title of an update of a nationally recognized fire code, the board shall prepare and submit, in accordance with Section 68-3-14, a written report to the Business and Labor Interim Committee that:

(i) states whether the board recommends the Legislature adopt the update with any modifications; and

(ii) describes the costs and benefits of each recommended change in the update or in any modification.

(b) After the Business and Labor Interim Committee receives the report described in Subsection (4)(a), the Business and Labor Interim Committee shall:

(i) study the recommendations [~~during the remainder of the interim~~]; and

(ii) if the Business and Labor Interim Committee decides to recommend legislative action to the Legislature, prepare legislation for consideration by the Legislature in the next general session.

(5) (a) (i) The board shall, by no later than [~~November 30~~] September 1 of each year in which the board is not required to submit a report described in Subsection (4), [~~recommend in a~~] submit, in accordance with Section 68-3-14, a written report to the Business and Labor Interim Committee recommending whether the Legislature should amend or repeal one or more provisions of the State Fire Code.

(ii) As part of a recommendation described in Subsection (5)(a)(i), the board shall describe the costs and benefits of each proposed amendment or repeal.

(b) The board may recommend legislative action related to the State Fire Code:

(i) on its own initiative; or

(ii) upon the receipt of a request by a city, county, or fire protection district that the board recommend legislative action related to the State Fire Code.

(c) Within 45 days after the day on which the board receives a request under Subsection (5)(b), the board shall direct the division to convene an informal hearing concerning the request.

(d) The board shall conduct a hearing under this section in accordance with the rules of the board.

(e) The board shall decide whether to include the request in the report described in Subsection (5)(a).

(f) (i) Within 15 days after the day on which the board conducts a hearing, the board shall direct the division to notify the entity that made the request of the board's decision regarding the request.

(ii) The division shall provide the notice:

(A) in writing; and

(B) in a form prescribed by the board.

(g) If the Business and Labor Interim Committee decides to recommend legislative action to the Legislature, the Business and Labor Interim Committee shall prepare legislation for consideration by the Legislature in the next general session that, if passed by the Legislature, would amend or repeal one or more provisions of the State Fire Code.

(6) (a) Notwithstanding the provisions of this section, the board may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, amend a State Fire Code if the board determines that waiting for legislative action in the next general legislative session would:

(i) cause an imminent peril to the public health, safety, or welfare; or

(ii) place a person in violation of federal or other state law.

(b) If the board amends a State Fire Code in accordance with this Subsection (6), the board shall:

(i) publish the State Fire Code with the amendment; and

(ii) [~~notify~~] prepare and submit, in accordance with Section 68-3-14, written notice to the Business and Labor Interim Committee of the adoption, including a copy of an analysis by the board identifying specific reasons and justifications for its findings.

(c) If not formally adopted by the Legislature at the next annual general session, an amendment to a State Fire Code adopted under this Subsection (6) is repealed on the July 1 immediately following the next annual general session that follows the adoption of the amendment.

(7) (a) Except as provided in Subsection (7)(b), a legislative body of a political subdivision may enact

an ordinance in the political subdivision's fire code that is more restrictive than the State Fire Code:

(i) in order to meet a public safety need of the political subdivision; and

(ii) subject to the requirements of Subsection (7)(c).

(b) Except as provided in Subsections (7)(c), (10), and (11), or as expressly provided in state law, a political subdivision may not, after December 1, 2016, enact or enforce a rule or ordinance that applies to a structure built in accordance with the International Residential Code, as adopted in the State Construction Code, that is more restrictive than the State Fire Code.

(c) A political subdivision may adopt:

(i) the appendices of the International Fire Code, 2015 edition; and

(ii) a fire sprinkler ordinance in accordance with Section 15A-5-203.

(d) A legislative body of a political subdivision that enacts an ordinance under Subsection (7)(a) shall:

(i) notify the board in writing at least 30 days before the day on which the legislative body enacts the ordinance and include in the notice a statement as to the proposed subject matter of the ordinance; and

(ii) after the legislative body enacts the ordinance, report to the board before the board makes the report required under Subsection (7)(e), including providing the board:

(A) a copy of the ordinance enacted under this Subsection (7); and

(B) a description of the public safety need that is the basis of enacting the ordinance.

(e) The board shall submit, in accordance with Section 68-3-14, to the Business and Labor Interim Committee each year with the recommendations submitted in accordance with Subsection (4):

(i) a list of the ordinances enacted under this Subsection (7) during the fiscal year immediately preceding the report; and

(ii) recommendations, if any, for legislative action related to an ordinance enacted under this Subsection (7).

(f) (i) The state fire marshal shall keep an indexed copy of an ordinance enacted under this Subsection (7).

(ii) The state fire marshal shall make a copy of an ordinance enacted under this Subsection (7) available on request.

(g) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures for a legislative body of a political subdivision to follow to provide the notice and report required under this Subsection (7).

(8) Except as provided in Subsections (9), (10), and (11), or as expressly provided in state law, a state executive branch entity may not, after December 1, 2016, adopt or enforce a rule or requirement that:

(a) is more restrictive than the State Fire Code; and

(b) applies to detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures.

(9) A state government entity may adopt a rule or requirement regarding a residential occupancy that is regulated by:

(a) the State Fire Prevention Board;

(b) the Department of Health; or

(c) the Department of Human Services.

(10) A state executive branch entity or political subdivision of the state may:

(a) enforce a federal law or regulation;

(b) adopt or enforce a rule, ordinance, or requirement if the rule, ordinance, or requirement applies only to a facility or construction owned or used by a state entity or a political subdivision of the state; or

(c) enforce a rule, ordinance, or requirement:

(i) that the state executive branch entity or political subdivision adopted or made effective before July 1, 2015; and

(ii) for which the state executive branch entity or political subdivision can demonstrate, with substantial evidence, that the rule, ordinance, or requirement is necessary to protect an individual from a condition likely to cause imminent injury or death.

(11) The Department of Health or the Department of Environmental Quality may enforce a rule or requirement adopted before January 1, 2015.

Section 4. Section 31A-3-305 is amended to read:

31A-3-305. Agreement related to nonadmitted insurance taxes.

(1) As used in this section:

(a) "Agreement" means a cooperative agreement, reciprocal agreement, or compact with one or more other states.

(b) (i) "Home state," except as provided in Subsections (1)(b)(ii) and (iii), with respect to an insured, means:

(A) the state in which the insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(B) if 100% of the insured risk is located out of the state described in Subsection (1)(b)(i)(A), the state to which the greatest percentage of the insured's

taxable premium for that insurance contract is allocated.

(ii) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, "home state" means the home state determined under Subsection (1)(b)(i) of the member of the affiliated group that has the largest percentage of premium attributed to it under the nonadmitted insurance contract.

(iii) (A) When a group policyholder pays 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group policy holder.

(B) When a group policyholder does not pay 100% of the premium from its own money, "home state" means the home state determined under Subsection (1)(b)(i) of the group member.

(c) "Principal place of business," for purposes of determining the home state of an insured, means:

(i) the state where the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities;

(ii) if the insured's high-level officers direct, control, and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or

(iii) if the insured maintains its headquarters or the insured's high-level officers direct, control, and coordinate the business activities outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(d) "Principal residence," with respect to determining the home state of an insured, means:

(i) the state where the insured resides for the greatest number of days during a calendar year; or

(ii) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(2) The commissioner may enter into an agreement to:

(a) facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance;

(b) provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications; and

(c) share information among states relating to nonadmitted insurance premium taxes.

(3) If the commissioner enters into an agreement under Subsection (2), the following apply:

(a) In addition to the full amount of gross premiums charged by the insurer for the insurance, a surplus lines producer shall collect and pay to the

commissioner a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the surplus lines producer.

(b) When surplus lines insurance covers property, risks, or exposures located or to be performed in and out of this state, the sum payable is calculated as follows:

(i) calculate an amount equal to the applicable tax rates under this part on that portion of the gross premiums allocated to this state pursuant to the agreement;

(ii) add to the amount under Subsection (3)(b)(i) an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks, or exposures located or to be performed outside of this state pursuant to the agreement; and

(iii) subtract from the amount under Subsection (3)(b)(ii) the amount of gross premiums allocated to this state and returned to the insured.

(c) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines producer. A surplus lines producer may not absorb or rebate, for any reason, any part of the tax.

(4) The commissioner may participate in a clearinghouse established through an agreement described in Subsection (2) for the purpose of collecting or disbursing to reciprocal states any money collected pursuant to Subsection (3) applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into an agreement with this state, the state shall retain the net premium tax collected.

(5) The commissioner may adopt an allocation schedule included in an agreement described in Subsection (2) for the purpose of allocating risk and computing the tax due on the portion of premium attributable to each risk classification and to each state where properties, risks, or exposures reside.

(6) The commissioner may apply the definition of "home state" in Subsection (1) when implementing an agreement described in Subsection (2).

(7) The commissioner shall submit, in accordance with Section 68-3-14, a written report to the Business and Labor Interim Committee regarding the nature and status of any agreement into which the commissioner enters under Subsection (2).

Section 5. Section 31A-22-614.7 is amended to read:

31A-22-614.7. Uniform claims processing -- Electronic exchange of prescription drug pre-authorization.

[4] The commissioner shall consult with national and state organizations involved with the standardized exchange of health data, and the

electronic exchange of health data, to study and review:

~~[(a)]~~ (1) the process of prior authorization of prescription drugs; and

~~[(b)]~~ (2) the standards for the use and electronic exchange of a uniform prescription drug prior authorization form that meet federal mandatory minimum standards and follow the adoption of national requirements for transaction and data elements in the federal Health Insurance Portability and Accountability Act.

~~[(2) The commissioner and the organization described in Subsection (1) shall report their progress and findings to the Legislature's Business and Labor Interim Committee before October 1, 2013 and before November 1, 2014.]~~

Section 6. Section 34-47-202 is amended to read:

34-47-202. Duties and powers of the council.

(1) The council shall meet at least quarterly with the attorney general or a designee of the attorney general to coordinate regulatory and law enforcement efforts related to misclassification.

(2) (a) The council shall ~~[provide]~~ submit, in accordance with Section 68-3-14, a written report by no later than September 1 of each year regarding the previous fiscal year to:

- (i) the governor; and
- (ii) the Business and Labor Interim Committee.

(b) The report required by this Subsection (2) shall include:

- (i) the nature and extent of misclassification in this state;
- (ii) the results of regulatory and law enforcement efforts related to the council;
- (iii) the status of sharing information by member agencies; and
- (iv) recommended legislative changes, if any.

(c) As part of the report required by this Subsection (2), the council shall provide an opportunity to the following to include in the report comments on the effectiveness of the council:

- (i) the attorney general; and
- (ii) each member agency.

(3) The council may study:

- (a) how to reduce costs to the state resulting from misclassification;
- (b) how to extend outreach and education efforts regarding the nature and requirements of classifying an individual;
- (c) how to promote efficient and effective information sharing amongst the member agencies; and

(d) the need, if any, to create by statute a database or other method to facilitate sharing of information related to misclassification.

(4) A member agency shall cooperate with the commission and council to provide information related to misclassification to the extent that:

- (a) the information is public information; or
- (b) providing the information is otherwise permitted by law other than this chapter.

(5) (a) A record provided to the commission or council under this chapter is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, unless otherwise classified as private or controlled under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding Subsection (5)(a), the commission or council may disclose the record to the extent:

- (i) necessary to take an administrative action by a member agency;
- (ii) necessary to prosecute a criminal act; or
- (iii) that the record is:

(A) obtainable from a source other than the member agency that provides the record to the commission or council; or

(B) public information or permitted to be disclosed by a law other than this chapter.

Section 7. Section 34A-2-107 is amended to read:

34A-2-107. Appointment of workers' compensation advisory council -- Composition -- Terms of members -- Duties -- Compensation.

(1) The commissioner shall appoint a workers' compensation advisory council composed of:

- (a) the following voting members:
 - (i) five employer representatives; and
 - (ii) five employee representatives; and
- (b) the following nonvoting members:
 - (i) a representative of the Workers' Compensation Fund;
 - (ii) a representative of a private insurance carrier;
 - (iii) a representative of health care providers;
 - (iv) the Utah insurance commissioner or the insurance commissioner's designee; and
 - (v) the commissioner or the commissioner's designee.

(2) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(3) (a) Except as required by Subsection (3)(b), as terms of current council members expire, the commissioner shall appoint each new member or reappointed member to a two-year term beginning July 1 and ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(4) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) The commissioner shall terminate the term of a council member who ceases to be representative as designated by the member's original appointment.

(5) The council shall confer at least quarterly for the purpose of advising the commission, the division, and the Legislature on:

(a) the Utah workers' compensation and occupational disease laws;

(b) the administration of the laws described in Subsection (5)(a); and

(c) rules related to the laws described in Subsection (5)(a).

(6) Regarding workers' compensation, rehabilitation, and reemployment of employees who acquire a disability because of an industrial injury or occupational disease the council shall:

(a) offer advice on issues requested by:

(i) the commission;

(ii) the division; and

(iii) the Legislature; and

(b) make recommendations to:

(i) the commission; and

(ii) the division.

(7) The council shall study how hospital costs may be reduced for purposes of medical benefits for workers' compensation. [The] By no later than November 30, 2017, the council shall submit, in accordance with Section 68-3-14, a written report to the Business and Labor Interim Committee containing the council's recommendations [by no later than November 30, 2017].

(8) The commissioner or the commissioner's designee shall serve as the chair of the council and call the necessary meetings.

(9) The commission shall provide staff support to the council.

(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 8. Section 34A-5-104 is amended to read:

34A-5-104. Powers.

(1) (a) The commission has jurisdiction over the subject of employment practices and discrimination made unlawful by this chapter.

(b) The commission may adopt, publish, amend, and rescind rules, consistent with, and for the enforcement of this chapter.

(2) The division may:

(a) appoint and prescribe the duties of an investigator, other employee, or agent of the commission that the commission considers necessary for the enforcement of this chapter;

(b) receive, reject, investigate, and pass upon complaints alleging:

(i) discrimination in:

(A) employment;

(B) an apprenticeship program;

(C) an on-the-job training program; or

(D) a vocational school; or

(ii) the existence of a discriminatory or prohibited employment practice by:

(A) a person;

(B) an employer;

(C) an employment agency;

(D) a labor organization;

(E) an employee or member of an employment agency or labor organization;

(F) a joint apprenticeship committee; and

(G) a vocational school;

(c) investigate and study the existence, character, causes, and extent of discrimination in employment, apprenticeship programs, on-the-job training programs, and vocational schools in this state by:

(i) employers;

(ii) employment agencies;

(iii) labor organizations;

(iv) joint apprenticeship committees; and

(v) vocational schools;

(d) formulate plans for the elimination of discrimination by educational or other means;

(e) hold hearings upon complaint made against:

(i) a person;

(ii) an employer;

- (iii) an employment agency;
- (iv) a labor organization;
- (v) an employee or member of an employment agency or labor organization;
- (vi) a joint apprenticeship committee; or
- (vii) a vocational school;
- (f) issue publications and reports of investigations and research that:
 - (i) promote good will among the various racial, religious, and ethnic groups of the state; and
 - (ii) minimize or eliminate discrimination in employment because of race, color, sex, religion, national origin, age, disability, sexual orientation, or gender identity;
 - (g) prepare and transmit to the governor, at least once each year, reports describing:
 - (i) the division's proceedings, investigations, and hearings;
 - (ii) the outcome of those hearings;
 - (iii) decisions the division renders; and
 - (iv) the other work performed by the division;
 - (h) recommend policies to the governor, and submit recommendation to employers, employment agencies, and labor organizations to implement those policies;
 - (i) recommend legislation to the governor that the division considers necessary concerning discrimination because of:
 - (i) race;
 - (ii) sex;
 - (iii) color;
 - (iv) national origin;
 - (v) religion;
 - (vi) age;
 - (vii) disability;
 - (viii) sexual orientation; or
 - (ix) gender identity; and
 - (j) within the limits of appropriations made for its operation, cooperate with other agencies or organizations, both public and private, in the planning and conducting of educational programs designed to eliminate discriminatory practices prohibited under this chapter.
 - (3) The division shall investigate an alleged discriminatory practice involving an officer or employee of state government if requested to do so by the Career Service Review Office.
 - (4) (a) In a hearing held under this chapter, the division may:
 - (i) subpoena witnesses and compel their attendance at the hearing;

(ii) administer oaths and take the testimony of a person under oath; and

(iii) compel a person to produce for examination a book, paper, or other information relating to the matters raised by the complaint.

(b) The division director or a hearing examiner appointed by the division director may conduct a hearing.

(c) If a witness fails or refuses to obey a subpoena issued by the division, the division may petition the district court to enforce the subpoena.

(d) If a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

(5) In 2018, before November 1, the division shall submit, in accordance with Section 68-3-14, a written report to the Business and Labor Interim Committee on the effectiveness of the commission and state law in addressing discrimination in matters of compensation.

Section 9. Section 36-23-106 is amended to read:

36-23-106. Duties -- Reporting.

(1) The committee shall:

(a) for each application submitted in accordance with Section 36-23-105, conduct a sunrise review in accordance with Section 36-23-107 before November 1:

(i) of the year in which the application is submitted, if the application is submitted on or before July 1; or

(ii) of the year following the year in which the application is submitted, if the application is submitted after July 1;

(b) (i) conduct a sunset review for all statutes regarding a licensed occupation or profession under Title 58, Occupations and Professions, that are scheduled for termination under Section 63I-1-258;

(ii) conduct a sunset review under this Subsection (1)(b) before November 1 of the year prior to the last general session of the Legislature that is scheduled to meet before the scheduled termination date; and

(iii) conduct a review or study regarding any other occupational or professional licensure matter referred to the committee by the Legislature, the Legislative Management Committee, or other legislative committee.

(2) The committee shall submit, in accordance with Section 68-3-14, an annual written report before November 1 to:

(a) the Legislative Management Committee; and

(b) the Business and Labor Interim Committee.

(3) The written report required by Subsection (2) shall include:

(a) all findings and recommendations made by the committee in the calendar year; and

(b) a summary report of each review or study conducted by the committee stating:

(i) whether the review or study included a review of specific proposed or existing statutory language;

(ii) action taken by the committee as a result of the review or study; and

(iii) a record of the vote for each action taken by the committee.

Section 10. Section 53-2a-204 is amended to read:

53-2a-204. Authority of governor -- Federal assistance -- Fraud or willful misstatement in application for financial assistance -- Penalty.

(1) In addition to any other authorities conferred upon the governor, if the governor issues an executive order declaring a state of emergency, the governor may:

(a) utilize all available resources of state government as reasonably necessary to cope with a state of emergency;

(b) employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with the provisions of this part and with orders, rules, and regulations made pursuant to this part;

(c) recommend and advise the evacuation of all or part of the population from any stricken or threatened area within the state if necessary for the preservation of life;

(d) recommend routes, modes of transportation, and destination in connection with evacuation;

(e) in connection with evacuation, suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not to include the lawful bearing of arms;

(f) control ingress and egress to and from a disaster area, the movement of persons within the area, and recommend the occupancy or evacuation of premises in a disaster area;

(g) clear or remove from publicly or privately owned land or water debris or wreckage that is an immediate threat to public health, public safety, or private property, including allowing an employee of a state department or agency designated by the governor to enter upon private land or waters and perform any tasks necessary for the removal or clearance operation if the political subdivision, corporation, organization, or individual that is affected by the removal of the debris or wreckage:

(i) presents an unconditional authorization for removal of the debris or wreckage from private property; and

(ii) agrees to indemnify the state against any claim arising from the removal of the debris or wreckage;

(h) enter into agreement with any agency of the United States:

(i) for temporary housing units to be occupied by victims of a state of emergency or persons who assist victims of a state of emergency; and

(ii) to make the housing units described in Subsection (1)(h)(i) available to a political subdivision of this state;

(i) assist any political subdivision of this state to acquire sites and utilities necessary for temporary housing units described in Subsection (1)(h)(i) by passing through any funds made available to the governor by an agency of the United States for this purpose;

(j) subject to Sections 53-2a-209 and 53-2a-214, temporarily suspend or modify by executive order, during the state of emergency, any public health, safety, zoning, transportation, or other requirement of a statute or administrative rule within this state if such action is essential to provide temporary housing described in Subsection (1)(h)(i);

(k) upon determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues because of a state of emergency and the political subdivision so affected has demonstrated a need for financial assistance to perform its governmental functions, in accordance with Utah Constitution, Article XIV, Sections 3 and 4, and Section 10-8-6:

(i) apply to the federal government for a loan on behalf of the political subdivision if the amount of the loan that the governor applies for does not exceed 25% of the annual operating budget of the political subdivision for the fiscal year in which the state of emergency occurs; and

(ii) receive and disburse the amount of the loan to the political subdivision;

(l) accept funds from the federal government and make grants to any political subdivision for the purpose of removing debris or wreckage from publicly owned land or water;

(m) upon determination that financial assistance is essential to meet expenses related to a state of emergency of individuals or families adversely affected by the state of emergency that cannot be sufficiently met from other means of assistance, apply for, accept, and expend a grant by the federal government to fund the financial assistance, subject to the terms and conditions imposed upon the grant;

(n) recommend to the Legislature other actions the governor considers to be necessary to address a state of emergency; or

(o) authorize the use of all water sources as necessary for fire suppression.

(2) A person who fraudulently or willfully makes a misstatement of fact in connection with an application for financial assistance under this section shall, upon conviction of each offense, be

subject to a fine of not more than \$5,000 or imprisonment for not more than one year, or both.

~~[(3) The division shall conduct a feasibility study regarding the establishment of an agreement with the United States Postal Service regarding the use of employees, resources, and assets within the Postal Service Network to provide the following services:]~~

~~[(a) identify residential or commercial structures that have been damaged;]~~

~~[(b) identify persons who reside in a damaged area and the emergent medical or physical needs of those persons;]~~

~~[(c) help assess the damage to neighborhoods or communities; and]~~

~~[(d) any other activity that the division determines to be necessary to assist in responding to a declared disaster.]~~

~~[(4) The division shall provide a report to the Business and Labor Interim Committee and the Law Enforcement and Criminal Justice Interim Committee regarding the feasibility study conducted under Subsection (3) no later than November 30, 2016.]~~

Section 11. Section 53-7-204 is amended to read:

53-7-204. Duties of Utah Fire Prevention Board -- Unified Code Analysis Council -- Local administrative duties.

(1) The board shall:

(a) administer the state fire code as the standard in the state;

(b) subject to the state fire code, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) establishing standards for the prevention of fire and for the protection of life and property against fire and panic in any:

(A) publicly owned building, including all public and private schools, colleges, and university buildings;

(B) building or structure used or intended for use as an asylum, a mental hospital, a hospital, a sanitarium, a home for the elderly, an assisted living facility, a children's home or day care center, or any building or structure used for a similar purpose; or

(C) place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education;

(ii) establishing safety and other requirements for placement and discharge of display fireworks on the basis of:

(A) the state fire code; and

(B) relevant publications of the National Fire Protection Association;

(iii) establishing safety standards for retail storage, handling, and sale of class C common state approved explosives;

(iv) defining methods to establish proof of competence to place and discharge display fireworks, special effects fireworks, and flame effects;

(v) deputizing qualified persons to act as deputy fire marshals, and to secure special services in emergencies;

(vi) implementing Section 15A-1-403;

(vii) setting guidelines for use of funding;

(viii) establishing criteria for training and safety equipment grants for fire departments enrolled in firefighter certification; and

(ix) establishing ongoing training standards for hazardous materials emergency response agencies;

(c) recommend to the commissioner a state fire marshal;

(d) develop policies under which the state fire marshal and the state fire marshal's authorized representatives will perform;

(e) provide for the employment of field assistants and other salaried personnel as required;

(f) prescribe the duties of the state fire marshal and the state fire marshal's authorized representatives;

(g) establish a statewide fire prevention, fire education, and fire service training program in cooperation with the Board of Regents;

(h) establish a statewide fire statistics program for the purpose of gathering fire data from all political subdivisions of the state;

(i) establish a fire academy in accordance with Section 53-7-204.2;

(j) coordinate the efforts of all people engaged in fire suppression in the state;

(k) work aggressively with the local political subdivisions to reduce fire losses;

(l) regulate the sale and servicing of portable fire extinguishers and automatic fire suppression systems in the interest of safeguarding lives and property;

(m) establish a certification program for persons who inspect and test automatic fire sprinkler systems;

(n) establish a certification program for persons who inspect and test fire alarm systems;

(o) establish a certification for persons who provide response services regarding hazardous materials emergencies;

(p) in accordance with ~~[Section --]~~ Sections 15A-1-403 and 68-3-14, submit a written report to the Business and Labor Interim Committee; and

(q) jointly create the Unified Code Analysis Council with the Uniform Building Code

Commission in accordance with Section 15A-1-203.

(2) The board may incorporate in its rules by reference, in whole or in part:

(a) the state fire code; or

(b) subject to the state fire code, a nationally recognized and readily available standard pertaining to the protection of life and property from fire, explosion, or panic.

(3) The following functions shall be administered locally by a city, county, or fire protection district:

(a) issuing permits, including open burning permits pursuant to Sections 11-7-1 and 19-2-114;

(b) creating a local board of appeals in accordance with the state fire code; and

(c) subject to the state fire code and the other provisions of this chapter, establishing, modifying, or deleting fire flow and water supply requirements.

Section 12. Section 63M-2-802 is amended to read:

63M-2-802. USTAR annual report.

(1) (a) On or before October 1 of each year, the governing authority shall submit, in accordance with Section 68-3-14, an annual written report for the preceding fiscal year to:

(i) the Business, Economic Development, and Labor Appropriations Subcommittee;

(ii) the Economic Development and Workforce Services Interim Committee;

(iii) the Business and Labor Interim Committee; and

(iv) the governor.

(b) An annual report under Subsection (1)(a) is subject to modification as provided in Subsection (5) after an audit described in Section 63M-2-803 is released.

(2) An annual report described in Subsection (1) shall include:

(a) information reported to the governing authority:

(i) by an institution of higher education under Section 63M-2-702;

(ii) through the survey described in Section 63M-2-703; and

(iii) by a research university, under Section 63M-2-705;

(b) a clear description of the methodology used to arrive at any information in the report that is based on an estimate;

(c) starting with fiscal year 2017 data as a baseline, data from previous years for comparison

with the annual data reported under this Subsection (2);

(d) relevant federal and state statutory references and requirements;

(e) contact information for the executive director;

(f) other information determined by the governing authority that promotes accountability and transparency; and

(g) the written economic development objectives required under Subsection 63M-2-302(1)(e) and a description of progress or challenges in meeting the objectives.

(3) The governing authority shall design the annual report to provide clear, accurate, and accessible information to the public, the governor, and the Legislature.

(4) The governing authority shall:

(a) submit the annual report in accordance with Section 68-3-14; and

(b) place a link to the annual report and previous annual reports on USTAR's website.

(5) Following the completion of an annual audit described in Section 63M-2-803, the governing authority shall:

(a) publicly issue a revised annual report that:

(i) addresses the audit;

(ii) responds to audit findings; and

(iii) incorporates any revisions to the annual report based on audit findings;

(b) publish the revised annual report on USTAR's website, with a link to the audit; and

(c) [provide] submit, in accordance with Section 68-3-14, written notification of any revisions of the annual report to:

(i) the Business, Economic Development, and Labor Appropriations Subcommittee;

(ii) the Economic Development and Workforce Services Interim Committee;

(iii) the Business and Labor Interim Committee; and

(iv) the governor.

(6) In addition to the annual written report described in this section, the governing authority shall:

(a) provide information and progress reports to a legislative committee upon request; and

(b) on or before October 1, 2019, and every five years after October 1, 2019, include with the annual report described in this section a written analysis and recommendations concerning the usefulness of the information required in the annual report and USTAR's ongoing effectiveness, including whether:

(i) the reporting requirements are effective at measuring USTAR's performance;

(ii) the reporting requirements should be modified; and

(iii) USTAR is beneficial to the state and should continue.

Section 13. Section 63N-6-301 is amended to read:

63N-6-301. Utah Capital Investment Corporation -- Powers and purposes.

(1) (a) There is created an independent quasi-public nonprofit corporation known as the Utah Capital Investment Corporation.

(b) The corporation:

(i) may exercise all powers conferred on independent corporations under Section 63E-2-106;

(ii) is subject to the prohibited participation provisions of Section 63E-2-107; and

(iii) is subject to the other provisions of Title 63E, Chapter 2, Independent Corporations Act, except as otherwise provided in this part.

(c) The corporation shall file with the Division of Corporations and Commercial Code:

(i) articles of incorporation; and

(ii) any amendment to its articles of incorporation.

(d) In addition to the articles of incorporation, the corporation may adopt bylaws and operational policies that are consistent with this chapter.

(e) Except as otherwise provided in this part, this part does not exempt the corporation from the requirements under state law which apply to other corporations organized under Title 63E, Chapter 2, Independent Corporations Act.

(2) The purposes of the corporation are to:

(a) organize the Utah fund of funds;

(b) select an investment fund allocation manager to make venture capital and private equity fund investments by the Utah fund of funds;

(c) negotiate the terms of a contract with the investment fund allocation manager;

(d) execute the contract with the selected investment fund manager on behalf of the Utah fund of funds;

(e) receive funds paid by designated investors for the issuance of certificates by the board for private investment in the Utah fund of funds;

(f) receive investment returns from the Utah fund of funds; and

(g) establish the redemption reserve to be used by the corporation to redeem certificates.

(3) The corporation may not:

(a) exercise governmental functions;

(b) have members;

(c) pledge the credit or taxing power of the state or any political subdivision of the state; or

(d) make its debts payable out of any money except money of the corporation.

(4) The obligations of the corporation are not obligations of the state or any political subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds.

(5) The corporation may:

(a) engage consultants and legal counsel;

(b) expend funds;

(c) invest funds;

(d) issue debt and equity, and borrow funds;

(e) enter into contracts;

(f) insure against loss;

(g) hire employees; and

(h) perform any other act necessary to carry out its purposes.

(6) (a) The corporation shall, in consultation with the board, publish on or before September 1 an annual report of the activities conducted by the Utah fund of funds and submit, in accordance with Section 68-3-14, the written report to:

(i) the governor;

(ii) the Business, Economic Development, and Labor Appropriations Subcommittee;

(iii) the Business and Labor Interim Committee; and

(iv) the Retirement and Independent Entities Interim Committee.

(b) The annual report shall:

(i) be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature;

(ii) include a copy of the audit of the Utah fund of funds described in Section 63N-6-405;

(iii) include a detailed balance sheet, revenue and expenses statement, and cash flow statement;

(iv) include detailed information regarding new fund commitments made during the year, including the amount of money committed;

(v) include the net rate of return of the Utah fund of funds from the inception of the Utah fund of funds, after accounting for all expenses, including administrative and financing costs;

(vi) include detailed information regarding:

(A) realized gains from investments and any realized losses; and

(B) unrealized gains and any unrealized losses based on the net present value of ongoing investments;

(vii) include detailed information regarding all yearly expenditures, including:

(A) administrative, operating, and financing costs;

(B) aggregate compensation information for full- and part-time employees, including benefit and travel expenses; and

(C) expenses related to the allocation manager;

(viii) include detailed information regarding all funding sources for administrative, operations, and financing expenses, including expenses charged by or to the Utah fund of funds, including management and placement fees;

(ix) review the progress of the investment fund allocation manager in implementing its investment plan and provide a general description of the investment plan;

(x) for each individual fund that the Utah fund of funds is invested in that represents at least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and the percentage of the total value of the fund held by the Utah fund of funds;

(xi) include the number of companies in Utah where an investment was made from a fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time employees in the state added by all companies where investments were made by funds that the Utah fund of funds is invested in;

(xii) include an aggregate total value for all funds the Utah fund of funds is invested in, and an aggregate total amount of money invested in the state by the funds the Utah fund of funds is invested in;

(xiii) describe any redemption or transfer of a certificate issued under this part;

(xiv) include actual and estimated potential appropriations the Legislature will be required to provide as a result of redeemed certificates or tax credits during the following five years;

(xv) include an evaluation of the state's progress in accomplishing the purposes stated in Section 63N-6-102; and

(xvi) be directly accessible to the public via a link from the main page of the Utah fund of fund's website.

(c) The annual report may not identify a specific designated investor who has redeemed or transferred a certificate.

Section 14. Section 63N-11-106 is amended to read:

63N-11-106. Reporting on federal health reform -- Prohibition of individual mandate.

(1) The Legislature finds that:

(a) the state has embarked on a rigorous process of implementing a strategic plan for health system reform under Section 63N-11-105;

(b) the health system reform efforts for the state were developed to address the unique circumstances within Utah and to provide solutions that work for Utah;

(c) Utah is a leader in the nation for health system reform which includes:

(i) developing and using health data to control costs and quality; and

(ii) creating a defined contribution insurance market to increase options for employers and employees; and

(d) the federal government proposals for health system reform:

(i) infringe on state powers;

(ii) impose a uniform solution to a problem that requires different responses in different states;

(iii) threaten the progress Utah has made towards health system reform; and

(iv) infringe on the rights of citizens of this state to provide for their own health care by:

(A) requiring a person to enroll in a third party payment system;

(B) imposing fines, penalties, and taxes on a person who chooses to pay directly for health care rather than use a third party payer;

(C) imposing fines, penalties, and taxes on an employer that does not meet federal standards for providing health care benefits for employees; and

(D) threatening private health care systems with competing government supported health care systems.

(2) (a) For purposes of this section:

(i) "Implementation" includes adopting or changing an administrative rule, applying for or spending federal grant money, issuing a request for proposal to carry out a requirement of PPACA, entering into a memorandum of understanding with the federal government regarding a provision of PPACA, or amending the state Medicaid plan.

(ii) "PPACA" has the same meaning as defined in Section 31A-1-301.

(b) A department or agency of the state may not implement any part of PPACA unless, prior to implementation, the department or agency ~~reports in writing,~~ submits, in accordance with Section 68-3-14, a written report and, if practicable, reports in person if requested, to the ~~Legislature's~~ Business and Labor Interim Committee, the Health Reform Task Force, or the legislative Executive Appropriations Committee in accordance with Subsection (2)(d).

(c) The Legislature may pass legislation specifically authorizing or prohibiting the state's compliance with, or participation in provisions of PPACA.

(d) The report required under Subsection (2)(b) shall include:

(i) the specific federal statute or regulation that requires the state to implement a provision of PPACA;

(ii) whether PPACA has any state waiver or options;

(iii) exactly what PPACA requires the state to do, and how it would be implemented;

(iv) who in the state will be impacted by adopting the federal reform provision, or not adopting the federal reform provision;

(v) what is the cost to the state or citizens of the state to implement the federal reform provision;

(vi) the consequences to the state if the state does not comply with PPACA;

(vii) the impact, if any, of the PPACA requirements regarding:

(A) the state's protection of a health care provider's refusal to perform an abortion on religious or moral grounds as provided in Section 76-7-306; and

(B) abortion insurance coverage restrictions provided in Section 31A-22-726.

(3) (a) The state ~~shall~~ may not require an individual in the state to obtain or maintain health insurance as defined in PPACA, regardless of whether the individual has or is eligible for health insurance coverage under any policy or program provided by or through the individual's employer or a plan sponsored by the state or federal government.

(b) The provisions of this title may not be used to facilitate the federal PPACA individual mandate or to hold an individual in this state liable for any penalty, assessment, fee, or fine as a result of the individual's failure to procure or obtain health insurance coverage.

(c) This section does not apply to an individual who voluntarily applies for coverage under a state administered program pursuant to Title XIX or Title XXI of the Social Security Act.

Section 15. Section 67-5-32 is amended to read:

67-5-32. Rulemaking authority regarding the procurement of outside counsel, expert witnesses, and other litigation support services.

(1) ~~(a)~~ The attorney general shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to establish public disclosure, transparency, accountability, reasonable fees and limits on fees, and reporting in relation to the procurement of outside counsel, expert witnesses, and other litigation support services.

~~(b) On or before May 30, 2014, the attorney general shall submit to the Business and Labor~~

~~Interim Committee, for its review, comment, and recommendations, the attorney general's proposed rules under Subsection (1)(a) relating to fee limits for outside counsel, including any provisions relating to exceptions to or a waiver of the fee limits.]~~

~~[(c) Before September 1, 2014, the Business and Labor Interim Committee shall include the attorney general's proposed rules described in Subsection (1)(b) on a committee agenda for the purpose of allowing the committee to review, comment, and make recommendations on the proposed rules.]~~

(2) The rules described in Subsection (1) shall:

(a) ensure that a procurement for outside counsel is supported by a determination by the attorney general that the procurement is in the best interests of the state, in light of available resources of the attorney general's office;

(b) provide for the fair and equitable treatment of all potential providers of outside counsel, expert witnesses, and other litigation support services;

(c) ensure a competitive process, to the greatest extent possible, for the procurement of outside counsel, expert witnesses, and other litigation support services;

(d) ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and consistent with industry standards;

(e) ensure that contingency fee arrangements do not encourage high risk litigation that is not in the best interests of the citizens of the state;

(f) provide for oversight and control, by the attorney general's office, in relation to outside counsel, regardless of the type of fee arrangement under which outside counsel is hired;

(g) prohibit outside counsel from adding a party to a lawsuit or causing a new party to be served with process without the express written authorization of the attorney general's office;

(h) establish for transparency regarding the procurement of outside counsel, expert witnesses, and other litigation support services, subject to:

(i) Title 63G, Chapter 2, Government Records Access and Management Act; and

(ii) other applicable provisions of law and the Utah Rules of Professional Conduct;

(i) establish standard contractual terms for the procurement of outside counsel, expert witnesses, and other litigation support services; and

(j) provide for the retention of records relating to the procurement of outside counsel, expert witnesses, and other litigation support services.

Section 16. Section 68-3-14 is amended to read:

68-3-14. Submitting reports to the Legislature, governor, and state auditor.

(1) As used in this section:

- (a) "Governmental entity" means:
- (i) the state or any department, division, agency, or other instrumentality of the state; or
 - (ii) a political subdivision of the state.
- (b) "Legislative committee" means a standing, interim, or other committee of the Legislature.
- (c) "Required annual report" means a written annual report that a governmental entity is required by statute to submit to the governor, whether or not the governmental entity is also required to submit the report to someone other than the governor.
- (d) "Required financial report" means a written report that a governmental entity is required by statute to submit to the state auditor.
- (e) "Specified report" means:
- (i) a written annual or other report that a governmental entity is required by statute to submit to the Legislature or a legislative committee, whether or not the governmental entity is also required to submit the report to someone other than the Legislature or a legislative committee; or
 - (ii) a written report that a governmental entity submits to the Legislature or a legislative committee without a statutory requirement to do so.
- (2) A governmental entity may fulfill a statutory requirement to submit a required annual report to the governor by:
- (a) sending the governor:
 - (i) an executive summary of the report, highlighting the contents of the report; and
 - (ii) (A) the address of an electronic copy of the report; or
 - (B) a hard copy of the report; and
 - (b) providing an electronic copy of the report on the state's Internet web site.
- (3) ~~[In order to]~~ To submit a specified report to the Legislature or a legislative committee, a governmental entity shall:
- (a) electronically submit the report to:
 - (i) each member of the Legislature, if the governmental entity submits the report to the Legislature; or
 - (ii) each member of the legislative committee, if the governmental entity submits the report to a legislative committee;
 - (b) provide a printed copy of the report to each member of the Legislature who requests a printed copy, but only if one or more members request a printed copy and only to the one or more members who request a printed copy;
 - (c) (i) post an electronic copy of the report on the state's Internet web site, if the governmental entity

is the state or a department, division, agency, or other instrumentality of the state; or

(ii) post an electronic copy of the report on the Internet web site of the governmental entity, if the governmental entity is a political subdivision that has an Internet web site; and

(d) (i) submit an electronic copy of the report to the director of the Office of Legislative Research and General Counsel, if the governmental entity submits the report to the Legislature~~[-];~~ and

(ii) submit an electronic copy of the report to staff of the legislative committee, if the governmental entity submits the report to a legislative committee.

(4) ~~[In order to]~~ To submit a required financial report to the state auditor, a governmental entity shall:

(a) submit the report electronically to the state auditor, in the manner prescribed by the state auditor; and

(b) provide a printed copy of the report to the state auditor, but only if the state auditor requests a printed copy.

(5) Subsections (3) and (4) supersede any other statutory provision specifying the manner of a governmental entity submitting:

(a) a specified report to the Legislature or a legislative committee; and

(b) a required financial report to the state auditor.

(6) Nothing in this section may be construed to require the disclosure of a report or information in a report that is not subject to disclosure under Title 63G, Chapter 2, Government Records Access and Management Act, or other applicable law.

CHAPTER 19**H. B. 83**

Passed March 7, 2017

Approved March 15, 2017

Effective May 9, 2017

**RENTAL APPLICATION
DISCLOSURE AMENDMENTS**

Chief Sponsor: Bruce R. Cutler

Senate Sponsor: Todd Weiler

Cosponsor: Steve Eliason

LONG TITLE**General Description:**

This bill amends and enacts provisions related to rental units.

Highlighted Provisions:

This bill:

- ▶ requires an owner to make certain disclosures to an applicant for a rental unit before the owner accepts a rental application from the applicant; and
- ▶ prohibits an owner from charging an application fee or accepting a rental deposit from an applicant before the owner makes the required disclosures.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

57-22-2, as enacted by Laws of Utah 1990, Chapter 314

57-22-4, as last amended by Laws of Utah 2012, Chapter 98

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

Section 1. Section 57-22-2 is amended to read:**57-22-2. Definitions.**

As used in this chapter:

(1) "Owner" means the owner, lessor, or sublessor of a residential rental unit. A managing agent, leasing agent, or resident manager is considered an owner for purposes of notice and other communication required or allowed under this chapter unless the agent or manager specifies otherwise in writing in the rental agreement.

(2) "Rental agreement" means any agreement, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions regarding the use and occupancy of a residential rental unit.

(3) "Rental application" means an application required by an owner as a prerequisite to the owner entering into a rental agreement for a residential rental unit.

[~~(3)~~] (4) "Renter" means any person entitled under a rental agreement to occupy a residential rental unit to the exclusion of others.

[~~(4)~~] (5) "Residential rental unit" means a renter's principal place of residence and includes the appurtenances, grounds, and facilities held out for the use of the residential renter generally, and any other area or facility provided to the renter in the rental agreement. It does not include facilities contained in a boarding or rooming house or similar facility, mobile home lot, or recreational property rented on an occasional basis.

Section 2. Section 57-22-4 is amended to read:**57-22-4. Owner's duties.**

(1) To protect the physical health and safety of the ordinary renter, an owner:

(a) may not rent the premises unless they are safe, sanitary, and fit for human occupancy; and

(b) shall:

(i) maintain common areas of the residential rental unit in a sanitary and safe condition;

(ii) maintain electrical systems, plumbing, heating, and hot and cold water;

(iii) maintain any air conditioning system in an operable condition;

(iv) maintain other appliances and facilities as specifically contracted in the rental agreement; and

(v) for buildings containing more than two residential rental units, provide and maintain appropriate receptacles for garbage and other waste and arrange for its removal, except to the extent that the renter and owner otherwise agree.

(2) Except as otherwise provided in the rental agreement, an owner shall provide the renter at least 24 hours prior notice of the owner's entry into the renter's residential rental unit.

(3) Before an owner and a prospective renter enter into a rental agreement, the owner shall:

(a) provide the prospective renter a written inventory of the condition of the residential rental unit, excluding ordinary wear and tear;

(b) furnish the renter a form to document the condition of the residential rental unit and then allow the resident a reasonable time after the renter's occupancy of the residential rental unit to complete and return the form; or

(c) provide the prospective renter an opportunity to conduct a walkthrough inspection of the residential rental unit.

(4) At or before the commencement of the rental term under a rental agreement, an owner shall:

(a) disclose in writing to the renter:

(i) the owner's name, address, and telephone number; or

(ii) (A) the name, address, and telephone number of any person authorized to manage the residential rental unit; or

(B) the name, address, and telephone number of any person authorized to act for and on behalf of the

owner for purposes of receiving notice under this chapter or performing the owner's duties under this chapter or under the rental agreement, if the person authorized to manage the residential rental unit does not have authority to receive notice under this chapter; and

(b) provide the renter:

(i) an executed copy of the rental agreement, if the rental agreement is a written agreement; and

(ii) a copy of any rules and regulations applicable to the residential rental unit.

(5) (a) An owner shall disclose in writing to an applicant for a residential rental unit:

(i) if there is an anticipated availability in the residential rental unit; and

(ii) the criteria that the owner will review as a condition of accepting the applicant as a tenant in the residential rental unit, including criteria related to the applicant's criminal history, credit, income, employment, or rental history.

(b) An owner may not accept a rental application from an applicant, or charge an applicant a rental application fee, before the owner complies with the disclosure requirement in Subsection (5)(a).

[~~(5)~~] (6) An owner's failure to comply with a requirement of Subsection (2), (3), [~~or~~] (4), or (5) may not:

(a) be used by the renter as a basis to excuse the renter's compliance with a rental agreement; or

(b) give rise to any cause of action against the owner.

CHAPTER 20**H. B. 165**

Passed March 3, 2017

Approved March 15, 2017

Effective March 15, 2017

**HIGHER EDUCATION
RETIREMENT AMENDMENTS**

Chief Sponsor: John R. Westwood

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions relating to higher education retirement participation.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides that the Board of Directors of each applied technology college, rather than the State Board of Regents, shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of each applied technology college is eligible to participate in under certain retirement systems or plans; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

49-11-102, as last amended by Laws of Utah 2016, Chapters 84 and 310

49-12-203, as last amended by Laws of Utah 2015, Chapters 315 and 364

49-12-204, as last amended by Laws of Utah 2014, Chapter 15

49-13-203, as last amended by Laws of Utah 2015, Chapters 315 and 364

49-13-204, as last amended by Laws of Utah 2014, Chapter 15

49-22-203, as last amended by Laws of Utah 2015, Chapters 315 and 364

49-22-204, as last amended by Laws of Utah 2014, Chapter 15

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

Section 1. Section 49-11-102 is amended to read:**49-11-102. Definitions.**

As used in this title:

- (1) (a) "Active member" means a member who:
 - (i) is employed by a participating employer and accruing service credit; or
 - (ii) within the previous 120 days:
 - (A) has been employed by a participating employer; and

(B) accrued service credit.

(b) "Active member" does not include a retiree.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of mortality tables as recommended by the actuary and adopted by the executive director, including regular interest.

(3) "Actuarial interest rate" means the interest rate as recommended by the actuary and adopted by the board upon which the funding of system costs and benefits are computed.

(4) (a) "Agency" means:

(i) a department, division, agency, office, authority, commission, board, institution, or hospital of the state;

(ii) a county, municipality, school district, local district, or special service district;

(iii) a state college or university; or

(iv) any other participating employer.

(b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a subdivision of another entity listed under Subsection (4)(a).

(5) "Allowance" or "retirement allowance" means the pension plus the annuity, including any cost of living or other authorized adjustments to the pension and annuity.

(6) "Alternate payee" means a member's former spouse or family member eligible to receive payments under a Domestic Relations Order in compliance with Section 49-11-612.

(7) "Amortization rate" means the board certified percent of salary required to amortize the unfunded actuarial accrued liability in accordance with policies established by the board upon the advice of the actuary.

(8) "Annuity" means monthly payments derived from member contributions.

(9) "Applied technology college" means the same as that term is defined in Section 53B-2a-101.

[49] (10) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of a participating employer whose appointed position is designated in the participating employer's charter, creation document, or similar document, and:

(a) who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-12-407 for a Tier I appointive officer; and

(b) whose appointive position is full-time as certified by the participating employer for a Tier II appointive officer.

[49] (11) (a) "At-will employee" means a person who is employed by a participating employer and:

(i) who is not entitled to merit or civil service protection and is generally considered exempt from a participating employer's merit or career service personnel systems;

(ii) whose on-going employment status is entirely at the discretion of the person's employer; or

(iii) who may be terminated without cause by a designated supervisor, manager, or director.

(b) "At-will employee" does not include a career employee who has obtained a reasonable expectation of continued employment based on inclusion in a participating employer's merit system, civil service protection system, or career service personnel systems, policies, or plans.

~~[(41)]~~ (12) "Beneficiary" means any person entitled to receive a payment under this title through a relationship with or designated by a member, participant, covered individual, or alternate payee of a defined contribution plan.

~~[(42)]~~ (13) "Board" means the Utah State Retirement Board established under Section 49-11-202.

~~[(43)]~~ (14) "Board member" means a person serving on the Utah State Retirement Board as established under Section 49-11-202.

(15) "Board of Regents" or "State Board of Regents" means the State Board of Regents established in Section 53B-1-103.

~~[(44)]~~ (16) "Certified contribution rate" means the board certified percent of salary paid on behalf of an active member to the office to maintain the system on a financially and actuarially sound basis.

~~[(45)]~~ (17) "Contributions" means the total amount paid by the participating employer and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governors' and Legislators' Retirement Act.

~~[(46)]~~ (18) "Council member" means a person serving on the Membership Council established under Section 49-11-202.

~~[(47)]~~ (19) "Covered individual" means any individual covered under Chapter 20, Public Employees' Benefit and Insurance Program Act.

~~[(48)]~~ (20) "Current service" means covered service under:

(a) Chapter 12, Public Employees' Contributory Retirement Act;

(b) Chapter 13, Public Employees' Noncontributory Retirement Act;

(c) Chapter 14, Public Safety Contributory Retirement Act;

(d) Chapter 15, Public Safety Noncontributory Retirement Act;

(e) Chapter 16, Firefighters' Retirement Act;

(f) Chapter 17, Judges' Contributory Retirement Act;

(g) Chapter 18, Judges' Noncontributory Retirement Act;

(h) Chapter 19, Utah Governors' and Legislators' Retirement Act;

(i) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or

(j) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.

~~[(49)]~~ (21) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a system or plan offered under this title to provide a specified allowance to a retiree or a retiree's spouse after retirement that is based on a set formula involving one or more of the following factors:

(a) years of service;

(b) final average monthly salary; or

(c) a retirement multiplier.

~~[(20)]~~ (22) "Defined contribution" or "defined contribution plan" means any defined contribution plan or deferred compensation plan authorized under the Internal Revenue Code and administered by the board.

~~[(21)]~~ (23) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including:

(a) the State Board of Education and its instrumentalities;

(b) any institution of higher education and its branches;

(c) any school district and its instrumentalities;

(d) any vocational and technical school; and

(e) any entity arising out of a consolidation agreement between entities described under this Subsection ~~[(21)]~~ (23).

~~[(22)]~~ (24) "Elected official":

(a) means a person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office;

(b) includes a person who is appointed to serve an unexpired term of office described under Subsection ~~[(22)]~~ (24)(a); and

(c) does not include a judge or justice who is subject to a retention election under Section 20A-12-201.

~~[(23)]~~ (25) (a) "Employer" means any department, educational institution, or political subdivision of the state eligible to participate in a government-sponsored retirement system under federal law.

(b) "Employer" may also include an agency financed in whole or in part by public funds.

~~[(24)]~~ (26) "Exempt employee" means an employee working for a participating employer:

(a) who is not eligible for service credit under Section 49-12-203, 49-13-203, 49-14-203, 49-15-203, or 49-16-203; and

(b) for whom a participating employer is not required to pay contributions or nonelective contributions.

~~(25)~~ (27) “Final average monthly salary” means the amount computed by dividing the compensation received during the final average salary period under each system by the number of months in the final average salary period.

~~(26)~~ (28) “Fund” means any fund created under this title for the purpose of paying benefits or costs of administering a system, plan, or program.

~~(27)~~ (29) (a) “Inactive member” means a member who has not been employed by a participating employer for a period of at least 120 days.

(b) “Inactive member” does not include retirees.

~~(28)~~ (30) (a) “Initially entering” means hired, appointed, or elected for the first time, in current service as a member with any participating employer.

(b) “Initially entering” does not include a person who has any prior service credit on file with the office.

(c) “Initially entering” includes an employee of a participating employer, except for an employee that is not eligible under a system or plan under this title, who:

(i) does not have any prior service credit on file with the office;

(ii) is covered by a retirement plan other than a retirement plan created under this title; and

(iii) moves to a position with a participating employer that is covered by this title.

~~(29)~~ (31) “Institution of higher education” means an institution described in Section 53B-1-102.

~~(30)~~ (32) (a) “Member” means a person, except a retiree, with contributions on deposit with a system, the Utah Governors’ and Legislators’ Retirement Plan under Chapter 19, Utah Governors’ and Legislators’ Retirement Act, or with a terminated system.

(b) “Member” also includes leased employees within the meaning of Section 414(n)(2) of the Internal Revenue Code, if the employees have contributions on deposit with the office. If leased employees constitute less than 20% of the participating employer’s work force that is not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code, “member” does not include leased employees covered by a plan described in Section 414(n)(5) of the federal Internal Revenue Code.

~~(31)~~ (33) “Member contributions” means the sum of the contributions paid to a system or the Utah Governors’ and Legislators’ Retirement Plan, including refund interest if allowed by a system, and which are made by:

(a) the member; and

(b) the participating employer on the member’s behalf under Section 414(h) of the Internal Revenue Code.

~~(32)~~ (34) “Nonelective contribution” means an amount contributed by a participating employer into a participant’s defined contribution account.

~~(33)~~ (35) “Normal cost rate”:

(a) means the percent of salary that is necessary for a retirement system that is fully funded to maintain its fully funded status; and

(b) is determined by the actuary based on the assumed rate of return established by the board.

~~(34)~~ (36) “Office” means the Utah State Retirement Office.

~~(35)~~ (37) “Participant” means an individual with voluntary deferrals or nonelective contributions on deposit with the defined contribution plans administered under this title.

~~(36)~~ (38) “Participating employer” means a participating employer, as defined by Chapter 12, Public Employees’ Contributory Retirement Act, Chapter 13, Public Employees’ Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters’ Retirement Act, Chapter 17, Judges’ Contributory Retirement Act, and Chapter 18, Judges’ Noncontributory Retirement Act, or an agency financed in whole or in part by public funds which is participating in a system or plan as of January 1, 2002.

~~(37)~~ (39) “Part-time appointed board member” means a person:

(a) who is appointed to serve as a member of a board, commission, council, committee, or panel of a participating employer; and

(b) whose service as a part-time appointed board member does not qualify as a regular full-time employee as defined under Section 49-12-102, 49-13-102, or 49-22-102.

~~(38)~~ (40) “Pension” means monthly payments derived from participating employer contributions.

~~(39)~~ (41) “Plan” means the Utah Governors’ and Legislators’ Retirement Plan created by Chapter 19, Utah Governors’ and Legislators’ Retirement Act, the New Public Employees’ Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution Plan, the New Public Safety and Firefighter Tier II Defined Contribution Plan created by Chapter 23, Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created under Section 49-11-801.

~~(40)~~ (42) (a) “Political subdivision” means any local government entity, including cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally separate and distinct from the state and only if its employees are not by virtue of their relationship to the entity employees of the state.

(b) “Political subdivision” includes local districts, special service districts, or authorities created by

the Legislature or by local governments, including the office.

(c) “Political subdivision” does not include a project entity created under Title 11, Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.

[441] (43) “Program” means the Public Employees’ Insurance Program created under Chapter 20, Public Employees’ Benefit and Insurance Program Act, or the Public Employees’ Long-Term Disability program created under Chapter 21, Public Employees’ Long-Term Disability Act.

[442] (44) “Public funds” means those funds derived, either directly or indirectly, from public taxes or public revenue, dues or contributions paid or donated by the membership of the organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.

[443] (45) “Qualified defined contribution plan” means a defined contribution plan that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

[444] (46) “Refund interest” means the amount accrued on member contributions at a rate adopted by the board.

[445] (47) “Retiree” means an individual who has qualified for an allowance under this title.

[446] (48) “Retirement” means the status of an individual who has become eligible, applies for, and is entitled to receive an allowance under this title.

[447] (49) “Retirement date” means the date selected by the member on which the member’s retirement becomes effective with the office.

[448] (50) “Retirement related contribution”:

(a) means any employer payment to any type of retirement plan or program made on behalf of an employee; and

(b) does not include Social Security payments or Social Security substitute payments made on behalf of an employee.

[449] (51) “Service credit” means:

(a) the period during which an employee is employed and compensated by a participating employer and meets the eligibility requirements for membership in a system or the Utah Governors’ and Legislators’ Retirement Plan, provided that any required contributions are paid to the office; and

(b) periods of time otherwise purchasable under this title.

[450] (52) “Surviving spouse” means:

(a) the lawful spouse who has been married to a member for at least six months immediately before the death date of the member; or

(b) a former lawful spouse of a member with a valid domestic relations order benefits on file with the office before the member’s death date in accordance with Section 49-11-612.

[451] (53) “System” means the individual retirement systems created by Chapter 12, Public Employees’ Contributory Retirement Act, Chapter 13, Public Employees’ Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters’ Retirement Act, Chapter 17, Judges’ Contributory Retirement Act, Chapter 18, Judges’ Noncontributory Retirement Act, and Chapter 19, Utah Governors’ and Legislators’ Retirement Act, the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 22, Part 3, Tier II Hybrid Retirement System, and the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 23, Part 3, Tier II Hybrid Retirement System.

[452] (54) “Tier I” means a system or plan under this title for which:

(a) an employee is eligible to participate if the employee initially enters regular full-time employment before July 1, 2011; or

(b) a governor or legislator who initially enters office before July 1, 2011.

[453] (55) (a) “Tier II” means a system or plan under this title provided in lieu of a Tier I system or plan for an employee, governor, legislator, or full-time elected official who does not have Tier I service credit in a system or plan under this title:

(i) if the employee initially enters regular full-time employment on or after July 1, 2011; or

(ii) if the governor, legislator, or full-time elected official initially enters office on or after July 1, 2011.

(b) “Tier II” includes:

(i) the Tier II hybrid system established under:

(A) Chapter 22, Part 3, Tier II Hybrid Retirement System; or

(B) Chapter 23, Part 3, Tier II Hybrid Retirement System; and

(ii) the Tier II Defined Contribution Plan (Tier II DC Plan) established under:

(A) Chapter 22, Part 4, Tier II Defined Contribution Plan; or

(B) Chapter 23, Part 4, Tier II Defined Contribution Plan.

[454] (56) “Unfunded actuarial accrued liability” or “UAAL”:

(a) is determined by the system’s actuary; and

(b) means the excess, if any, of the accrued liability of a retirement system over the actuarial value of its assets.

[455] (57) “Voluntary deferrals” means an amount contributed by a participant into that participant’s defined contribution account.

Section 2. Section 49-12-203 is amended to read:

49-12-203. Exclusions from membership in system.

(1) The following employees are not eligible for service credit in this system:

(a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;

(b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents, or the Board of Directors of each applied technology college for an employee of each applied technology college, during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;

(c) an employee serving as an exchange employee from outside the state;

(d) an executive department head of the state, a member of the State Tax Commission, the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;

(e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

(f) an employee who is employed on or after July 1, 2009, with an employer that has elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection 49-12-202(2)(c);

(g) an employee who is employed on or after July 1, 2014, with an employer that has elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection 49-12-202(2)(d); or

(h) an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude:

(i) new employees from participation in this system under Subsection 49-11-623(3)(a); or

(ii) all employees from participation in this system under Subsection 49-11-623(3)(b).

(2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:

(a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or

(b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by

the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.

(3) (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.

(b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before July 1, 2009 is not affected under Subsection (1)(f).

(c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service credit earned by an employee under this chapter before July 1, 2014, is not affected under Subsection (1)(g).

(4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:

(a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

(b) an elected official;

(c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;

(d) an employee of the Governor's Office of Management and Budget;

(e) an employee of the Governor's Office of Economic Development;

(f) an employee of the Commission on Criminal and Juvenile Justice;

(g) an employee of the Governor's Office;

(h) an employee of the State Auditor's Office;

(i) an employee of the State Treasurer's Office;

(j) any other member who is permitted to make an election under Section 49-11-406;

(k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee; and

(l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members.

(5) (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (4).

(b) An employee may not be exempted unless the employee is employed in an exempted position designated by the participating employer.

(6) (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a municipality,

county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is less.

(b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

(7) Each participating employer shall:

(a) file employee exemptions annually with the office; and

(b) update the employee exemptions in the event of any change.

(8) The office may make rules to implement this section.

Section 3. Section 49-12-204 is amended to read:

49-12-204. Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- One-time election window -- Rulemaking.

(1) (a) A regular full-time employee of an institution of higher education who is eligible to participate in either this system or a public or private retirement system, organization, or company, designated ~~[by the Board of Regents]~~ as described in Subsection (1)(c) or (d), shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1).

(b) The election is final, and no right exists to make any further election.

(c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of an institution of higher education is eligible to participate in under Subsection (1)(a).

(d) The Board of Directors of each applied technology college shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of each applied technology college is eligible to participate in under Subsection (1)(a).

(2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.

(b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Board of Regents, or the Board of Directors of each applied technology college for each applied technology college, so that each classification is assigned with either:

(i) this system; or

(ii) a public or private system, organization, or company designated by:

(A) except as provided in Subsection (2)(b)(ii)(B), the Board of Regents; or

(B) the Board of Directors of each applied technology college for regular full-time employees of each applied technology college.

(c) Notwithstanding a person's employment classification assignment under Subsection (2)(b), a regular full-time employee who begins employment with an institution of higher education on or after May 11, 2010, has a one-time irrevocable election to continue participation in this system, if the employee has service credit in this system before the date of employment.

(3) Notwithstanding an employment classification assignment change made under Subsection (2)(b), a regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system may elect to continue participation in this system.

(4) A regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system shall participate in this system.

(5) (a) Notwithstanding any other provision of this section, a regular full-time employee of an institution of higher education shall have a one-time irrevocable election to participate in this system if the employee:

(i) was hired after January 1, 1979;

(ii) whose employment classification assignment under Subsection (2)(b) required participation in a retirement program other than this system; and

(iii) has service credit in a system under this title.

(b) The election under Subsection (5)(a) shall be made before June 30, 2010.

(c) All forms required by the office must be completed and received by the office no later than June 30, 2010, for the election to participate in this system to be effective.

(d) Beginning July 1, 2010, a regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (5)(a) may begin to accrue service credit in this system.

(6) A regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment while covered under another retirement program sponsored by the institution of higher education by complying with the requirements of Section 49-11-403.

(7) The board shall make rules to implement this section.

Section 4. Section 49-13-203 is amended to read:

49-13-203. Exclusions from membership in system.

(1) The following employees are not eligible for service credit in this system:

(a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;

(b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents, or the Board of Directors of each applied technology college for an employee of each applied technology college, during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;

(c) an employee serving as an exchange employee from outside the state;

(d) an executive department head of the state or a legislative director, senior executive employed by the governor's office, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;

(e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

(f) an employee who is employed with an employer that has elected to be excluded from participation in this system under Subsection 49-13-202(5), effective on or after the date of the employer's election under Subsection 49-13-202(5); or

(g) an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude:

(i) new employees from participation in this system under Subsection 49-11-623(3)(a); or

(ii) all employees from participation in this system under Subsection 49-11-623(3)(b).

(2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:

(a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or

(b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the

employee otherwise qualifies for service credits in this system.

(3) (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.

(b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before the date of the election under Subsection 49-13-202(5) is not affected under Subsection (1)(f).

(4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:

(a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

(b) an elected official;

(c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;

(d) an employee of the Governor's Office of Management and Budget;

(e) an employee of the Governor's Office of Economic Development;

(f) an employee of the Commission on Criminal and Juvenile Justice;

(g) an employee of the Governor's Office;

(h) an employee of the State Auditor's Office;

(i) an employee of the State Treasurer's Office;

(j) any other member who is permitted to make an election under Section 49-11-406;

(k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee;

(l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and

(m) an employee of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

(5) (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (4).

(b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer.

(6) (a) In accordance with this section, Section 49-12-203, and Section 49-22-205, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to

10% of the employees of the municipality, county, or political subdivision, whichever is less.

(b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

(7) Each participating employer shall:

(a) file employee exemptions annually with the office; and

(b) update the employee exemptions in the event of any change.

(8) The office may make rules to implement this section.

Section 5. Section 49-13-204 is amended to read:

49-13-204. Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- One-time election window -- Rulemaking.

(1) (a) A regular full-time employee of an institution of higher education who is eligible to participate in either this system or in a retirement system with a public or private retirement system, organization, or company, designated ~~by the Board of Regents~~ as described in Subsection (1)(c) or (d), shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1)(a).

(b) The election is final, and no right exists to make any further election.

(c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of an institution of higher education is eligible to participate in under Subsection (1)(a).

(d) The Board of Directors of each applied technology college shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of each applied technology college is eligible to participate in under Subsection (1)(a).

(2) (a) Except as provided under Subsection (2)(c), a regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.

(b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Board of Regents, or the Board of Directors of each applied technology college for regular full-time employees of each applied technology college, so that each classification is assigned with either:

(i) this system; or

(ii) a public or private system, organization, or company designated by:

(A) except as provided in Subsection (2)(b)(ii)(B), the Board of Regents[-]; or

(B) the Board of Directors of each applied technology college for regular full-time employees of each applied technology college.

(c) Notwithstanding a person's employment classification assignment under Subsection (2)(b), a regular full-time employee who begins employment with an institution of higher education on or after May 11, 2010, has a one-time irrevocable election to continue participation in this system, if the employee has service credit in this system before the date of employment.

(3) Notwithstanding an employment classification assignment change made under Subsection (2)(b), a regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system may elect to continue participation in this system.

(4) A regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system shall participate in this system.

(5) (a) Notwithstanding any other provision of this section, a regular full-time employee of an institution of higher education whose employment classification assignment under Subsection (2)(b) required participation in a retirement program other than this system shall have a one-time irrevocable election to participate in this system.

(b) The election under Subsection (5)(a) shall be made before June 30, 2010.

(c) All forms required by the office must be completed and received by the office no later than June 30, 2010, for the election to participate in this system to be effective.

(d) Beginning July 1, 2010, a regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (5)(a) may begin to accrue service credit in this system.

(6) A regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (2)(c) or (5)(a) may purchase periods of employment while covered under another retirement program by complying with the requirements of Section 49-11-403.

(7) The board shall make rules to implement this section.

Section 6. Section 49-22-203 is amended to read:

49-22-203. Exclusions from membership in system.

(1) The following employees are not eligible for service credit in this system:

(a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;

(b) except as provided under Subsection (3), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents, or the Board of Directors of each applied technology college for an employee of each applied technology college, during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;

(c) an employee serving as an exchange employee from outside the state;

(d) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

(e) an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude:

(i) new employees from participation in this system under Subsection 49-11-623(3)(a); or

(ii) all employees from participation in this system under Subsection 49-11-623(3)(b); or

(f) a person who files a written request for exemption with the office under Section 49-22-205.

(2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:

(a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or

(b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.

(3) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.

Section 7. Section 49-22-204 is amended to read:

49-22-204. Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems.

(1) (a) A regular full-time [employees—of institutions] employee of an institution of higher education who [are] is eligible to participate in either this system or in a retirement annuity contract with a public or private system,

organization, or company, designated [by the Board of Regents] as described in Subsection (1)(c) or (d), shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1)(~~a~~).

(b) The election is final, and no right exists to make any further election.

(c) Except as provided in Subsection (1)(d), the Board of Regents shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of an institution of higher education is eligible to participate in under Subsection (1)(a).

(d) The Board of Directors of each applied technology college shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of each applied technology college is eligible to participate in under Subsection (1)(a).

(2) (a) A regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.

(b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Board of Regents, or the Board of Directors of each applied technology college for each applied technology college, so that each classification is assigned with either:

(i) this system; or

(ii) a public or private system, organization, or company designated by:

(A) except as provided under Subsection (2)(b)(ii)(B), the Board of Regents; or

(B) the Board of Directors of each applied technology college for regular full-time employees of each applied technology college.

(3) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system may elect to continue participation in this system upon change to an employment classification which requires participation in a public or private system, organization, or company designated by:

(a) except as provided in Subsection (3)(b), the Board of Regents; or

(b) the Board of Directors of each applied technology college for regular full-time employees of each applied technology college.

(4) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system shall participate in this system.

Section 8. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon

approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 21**H. B. 441**

Passed March 9, 2017
 Approved March 15, 2017
 Effective March 15, 2017

**HOUSING AND HOMELESS
 REFORM INITIATIVE AMENDMENTS**

Chief Sponsor: Francis D. Gibson
 Senate Sponsor: Ann Millner
 Cosponsor: Steve Eliason

LONG TITLE**General Description:**

This bill modifies provisions related to homelessness and homeless shelters.

Highlighted Provisions:

This bill:

- ▶ modifies the ordinances and other regulations that a municipality may enforce for a homeless shelter;
- ▶ modifies the requirements for the Homeless Coordinating Committee and the Housing and Community Development Division to award grants or contracts related to a facility that will provide shelter or other services to the homeless; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to the General Fund Restricted -- Homeless to Housing Reform Restricted Account, as a one-time appropriation:
 - from the General Fund, \$9,850,000;
- ▶ to the General Fund Restricted -- Homeless to Housing Reform Restricted Account, as an ongoing appropriation:
 - from the General Fund, \$250,000;
- ▶ to the Department of Workforce Services -- Housing and Community Development, as a one-time appropriation:
 - from the General Fund Restricted -- Homeless to Housing Reform Restricted Account, \$9,850,000;
- ▶ to the Department of Workforce Services -- Housing and Community Development, as an ongoing appropriation:
 - from the General Fund Restricted -- Homeless to Housing Reform Restricted Account, \$250,000; and
- ▶ to the Olene Walker Housing Loan Fund, as a one-time appropriation:
 - from the General Fund, \$700,000.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

10-9a-526, as enacted by Laws of Utah 2016, Chapter 131
 35A-8-604, as enacted by Laws of Utah 2016, Chapter 278

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

Section 1. Section 10-9a-526 is amended to read:**10-9a-526. Homeless shelters.**

(1) As used in this section, "homeless shelter" means a facility that:

(a) is or is proposed to be located within a municipality;

(b) provides or is proposed to provide temporary shelter to homeless ~~families with children~~ individuals; and

(c) has or is proposed to have the capacity to provide temporary shelter to at least ~~[200]~~ 50 individuals per night~~;~~ and.

~~[(d) began operation on or before January 1, 2016.]~~

(2) A municipality may not adopt or enforce an ordinance or other regulation that prohibits a homeless shelter:

(a) from operating year-round~~[-]~~ if the homeless shelter began operation on or before January 1, 2016; or

(b) from being built if the site of the homeless shelter is approved by and receives funding through the Homeless Coordinating Committee, with the concurrence of the Housing and Community Development Division within the Department of Workforce Services, in accordance with the requirements of Section 35A-8-604.

Section 2. Section 35A-8-604 is amended to read:**35A-8-604. Uses of Homeless to Housing Reform Restricted Account.**

(1) With the concurrence of the division and in accordance with this section, the Homeless Coordinating Committee members designated in Subsection 35A-8-601(2) may award ongoing or one-time grants or contracts funded from the Homeless to Housing Reform Restricted Account created in Section 35A-8-605.

(2) Before final approval of a grant or contract awarded under this section, the Homeless Coordinating Committee and the division shall provide written information regarding the grant or contract to, and shall consider the recommendations of, ~~[the Legislative Management Committee and]~~ the Executive Appropriations Committee.

(3) As a condition of receiving money, including any ongoing money, from the Homeless to Housing Reform Restricted Account, an entity awarded a grant or contract under this section shall provide detailed and accurate reporting on at least an annual basis to the division and the Homeless Coordinating Committee that describes:

(a) how money provided from the Homeless to Housing Reform Restricted Account has been spent by the entity; and

(b) the progress towards measurable outcome-based benchmarks agreed to between the

entity and the Homeless Coordinating Committee before the awarding of the grant or contract.

(4) In determining the awarding of a grant or contract under this section, the Homeless Coordinating Committee, with the concurrence of the division, shall:

(a) ensure that the services to be provided through the grant or contract will be provided in a cost-effective manner;

(b) consider the advice of committee members designated in Subsection 35A-8-601(3);

(c) give priority to a project or contract that will include significant additional or matching funds from a private organization, nonprofit organization, or local government entity;

(d) ensure that the project or contract will target the distinct housing needs of one or more at-risk or homeless subpopulations, which may include:

(i) families with children;

(ii) transitional-aged youth;

(iii) single men or single women;

(iv) veterans;

(v) victims of domestic violence;

(vi) individuals with behavioral health disorders, including mental health or substance use disorders;

(vii) individuals who are medically frail or terminally ill;

(viii) individuals exiting prison or jail; or

(ix) individuals who are homeless without shelter; and

(e) consider whether the project will address one or more of the following goals:

(i) diverting homeless or imminently homeless individuals and families from emergency shelters by providing better housing-based solutions;

(ii) meeting the basic needs of homeless individuals and families in crisis;

(iii) providing homeless individuals and families with needed stabilization services;

(iv) decreasing the state's homeless rate;

(v) implementing a coordinated entry system with consistent assessment tools to provide appropriate and timely access to services for homeless individuals and families;

(vi) providing access to caseworkers or other individualized support for homeless individuals and families;

(vii) encouraging employment and increased financial stability for individuals and families being diverted from or exiting homelessness;

(viii) creating additional affordable housing for state residents;

(ix) providing services and support to prevent homelessness among at-risk individuals and adults;

(x) providing services and support to prevent homelessness among at-risk children, adolescents, and young adults; and

(xi) preventing the reoccurrence of homelessness among individuals and families exiting homelessness.

(5) In addition to the other provisions of this section, in determining the awarding of a grant or contract under this section to design, build, create, or renovate a facility that will provide shelter or other resources for the homeless, the Homeless Coordinating Committee, with the concurrence of the division[:(a)], may consider whether the facility will be:

~~(i)~~ (a) located near mass transit services;

~~(ii)~~ (b) located in an area that meets or will meet all zoning regulations before a final dispersal of funds;

~~(iii)~~ (c) safe and welcoming both for individuals using the facility and for members of the surrounding community; and

~~(iv)~~ (d) located in an area with access to employment, job training, and positive activities[; and].

~~(b) may not award a grant or contract under this Subsection (5), unless the grant or contract is endorsed by the county and, if applicable, the municipality where the facility will be located.]~~

(6) In accordance with Subsection (5), and subject to the approval of the Homeless Coordinating Committee with the concurrence of the division, the following may recommend a site location, acquire a site location, and hold title to real property, buildings, fixtures, and appurtenances of a facility that provides or will provide shelter or other resources for the homeless:

(a) the county executive of a county of the first class on behalf of the county of the first class if the facility is or will be located in the county of the first class in a location other than Salt Lake City;

(b) the state;

(c) a nonprofit entity approved by the Homeless Coordinating Committee with the concurrence of the division; and

(d) a mayor of a municipality on behalf of the municipality where a facility is or will be located.

(7) Subject to the requirements of Subsections (5) and (6), on or before March 30, 2017, the county executive of a county of the first class shall make a recommendation to the Homeless Coordinating Committee identifying a site location for one facility within the county of the first class that will provide shelter for the homeless in a location other than Salt Lake City.

~~(6)~~ (8) (a) As used in this Subsection ~~(6)~~ (8), "homeless shelter" means a facility that:

- (i) is located within a municipality;
- (ii) provides temporary shelter year-round to homeless individuals; and
- (iii) has the capacity to provide temporary shelter to at least [200] 50 individuals per night[;].
- ~~[(iv) began operation on or before January 1, 2016;]~~
- ~~[(v) did not operate more than nine-months per year before January 1, 2016; and]~~
- ~~[(vi) currently operates year-round.]~~

(b) In addition to the other provisions of this section, the Homeless Coordinating Committee, with the concurrence of the division, may award a grant or contract:

- (i) to a municipality to improve sidewalks, pathways, or roadways near a homeless shelter to provide greater safety to homeless individuals; and
- (ii) to a municipality to hire [a] one or more peace [officer] officers to provide greater safety to homeless individuals.

~~[(7)]~~ (9) The division may expend money from the Homeless to Housing Reform Restricted Account to offset actual division and Homeless Coordinating Committee expenses related to administering this section.

Section 3. Appropriation.

For Item 1 and Item 2, the following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Fund and Account Transfers -- General Fund Restricted -- Homeless to Housing Reform Restricted Account

From General Fund, One-time	\$9,850,000
From General Fund	\$250,000
Schedule of Programs:	
General Fund Restricted -- Homeless to Housing Reform Restricted Account	\$10,100,000

ITEM 2

To Department of Workforce Services -- Housing and Community Development

From General Fund Restricted -- Homeless to Housing Reform Restricted Account, One-time	\$9,850,000
From General Fund Restricted -- Homeless to Housing Reform Restricted Account	\$250,000
Schedule of Programs:	
Homeless to Housing Reform Program	\$10,100,000

For Item 3, the following sums of money are appropriated for the fiscal year beginning July 1, 2016, and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 3

To Fund and Account Transfers -- Olene Walker Housing Loan Fund

From General Fund, One-time	\$700,000
Schedule of Programs:	
Olene Walker Housing Loan Fund	\$700,000

The Legislature intends that:

- (1) under Section 63J-1-603 appropriations provided under this section not lapse at the close of fiscal year 2017 or 2018;
- (2) the one-time appropriation to the Olene Walker Housing Loan Fund be used by the Olene Walker Housing Loan Fund Board to provide a grant in fiscal year 2017 to a homeless shelter and soup kitchen located in a city of the second class and in a county of the second class that:

- (a) is open year-round;
- (b) provides meals and other services to homeless families and individuals; and
- (c) has the capacity to provide temporary shelter to at least 250 individuals per night; and

(3) any ongoing or future appropriations to the Homeless to Housing Reform Restricted Account that may be awarded by the Homeless Coordinating Committee for the purpose of funding one or more homeless shelters in a city of the first class or a county of the first class are contingent upon city and county leaders working with stakeholders to close the Salt Lake Community Shelter located at 210 South Rio Grande Street, Salt Lake City, Utah, on or before June 30, 2019.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 22**S. B. 28**

Passed February 6, 2017
 Approved March 15, 2017
 Effective May 9, 2017

REPEAL OF HEALTH AND HUMAN SERVICES REPORTS

Chief Sponsor: Evan J. Vickers
 House Sponsor: Brad M. Daw

LONG TITLE**General Description:**

This bill repeals and amends Utah Code provisions that require reports to the Health and Human Services Interim Committee.

Highlighted Provisions:

This bill:

- ▶ repeals and amends provisions that require reports to the Health and Human Services Interim Committee.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-2-3, as last amended by Laws of Utah 2015, Chapter 183
 26-18-2.6, as last amended by Laws of Utah 2013, Chapter 278
 26-18-407, as last amended by Laws of Utah 2014, Chapter 302
 26-18-408, as last amended by Laws of Utah 2015, Chapter 246
 26-56-103, as last amended by Laws of Utah 2016, Chapter 89
 49-20-106, as enacted by Laws of Utah 2016, Chapter 119
 62A-15-1102, as enacted by Laws of Utah 2016, Chapter 164
 62A-17-103, as enacted by Laws of Utah 2013, Chapter 24

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

Section 1. Section 26-2-3 is amended to read:**26-2-3. Department duties and authority.**

(1) As used in this section:

(a) “Compact” means the Compact for Interstate Sharing of Putative Father Registry Information created in Section 78B-6-121.5, effective on May 10, 2016.

(b) “Putative father”:

(i) means the same as that term is as defined in Section 78B-6-121.5; and

(ii) includes an unmarried biological father.

(c) “State registrar” means the state registrar of vital records appointed under Subsection (2)(e).

(d) “Unmarried biological father” means the same as that term is defined in Section 78B-6-103.

(2) The department shall:

(a) provide offices properly equipped for the preservation of vital records made or received under this chapter;

(b) establish a statewide vital records system for the registration, collection, preservation, amendment, and certification of vital records and other similar documents required by this chapter and activities related to them, including the tabulation, analysis, and publication of vital statistics;

(c) prescribe forms for certificates, certification, reports, and other documents and records necessary to establish and maintain a statewide system of vital records;

(d) prepare an annual compilation, analysis, and publication of statistics derived from vital records; and

(e) appoint a state registrar to direct the statewide system of vital records.

(3) The department may:

(a) divide the state from time to time into registration districts; and

(b) appoint local registrars for registration districts who under the direction and supervision of the state registrar shall perform all duties required of them by this chapter and department rules.

(4) The state registrar appointed under Subsection (2)(e) shall~~[-(a)]~~, with the input of Utah stakeholders and the Uniform Law Commission, study the following items for the state’s implementation of the compact:

~~(i)~~ (a) the feasibility of using systems developed by the National Association for Public Health Statistics and Information Systems, including the State and Territorial Exchange of Vital Events (STEVE) system and the Electronic Verification of Vital Events (EVVE) system, or similar systems, to exchange putative father registry information with states that are parties to the compact;

~~(ii)~~ (b) procedures necessary to share putative father information, located in the confidential registry maintained by the state registrar, upon request from the state registrar of another state that is a party to the compact;

~~(iii)~~ (c) procedures necessary for the state registrar to access putative father information located in a state that is a party to the compact, and share that information with persons who request a certificate from the state registrar;

~~(iv)~~ (d) procedures necessary to ensure that the name of the mother of the child who is the subject of a putative father’s notice of commencement, filed pursuant to Section 78B-6-121, is kept confidential when a state that is a party to the compact accesses this state’s confidential registry through the state registrar; and

~~(v)~~ (e) procedures necessary to ensure that a putative father’s registration with a state that is a

party to the compact is given the same effect as a putative father's notice of commencement filed pursuant to Section 78B-6-121[; and].

~~[(b) report to the Health and Human Services Interim Committee before November 1, 2015, on the study items described in Subsection (4)(a).]~~

Section 2. Section 26-18-2.6 is amended to read:

26-18-2.6. Dental benefits.

(1) (a) Except as provided in Subsection (8), the division shall establish a competitive bid process to bid out Medicaid dental benefits under this chapter.

(b) The division may bid out the Medicaid dental benefits separately from other program benefits.

(2) The division shall use the following criteria to evaluate dental bids:

- (a) ability to manage dental expenses;
- (b) proven ability to handle dental insurance;
- (c) efficiency of claim paying procedures;
- (d) provider contracting, discounts, and adequacy of network; and
- (e) other criteria established by the department.

(3) The division shall request bids for the program's benefits:

- (a) in 2011; and
- (b) at least once every five years thereafter.

(4) The division's contract with dental plans for the program's benefits shall include risk sharing provisions in which the dental plan must accept 100% of the risk for any difference between the division's premium payments per client and actual dental expenditures.

(5) The division may not award contracts to:

- (a) more than three responsive bidders under this section; or
- (b) an insurer that does not have a current license in the state.

(6) (a) The division may cancel the request for proposals if:

- (i) there are no responsive bidders; or
- (ii) the division determines that accepting the bids would increase the program's costs.

(b) If the division cancels the request for proposals under Subsection (6)(a), the division shall report to the Health and Human Services Interim Committee regarding the reasons for the decision.

(7) Title 63G, Chapter 6a, Utah Procurement Code, shall apply to this section.

(8) (a) The division may:

- (i) establish a dental health care delivery system and payment reform pilot program for Medicaid dental benefits to increase access to cost effective and quality dental health care by increasing the

number of dentists available for Medicaid dental services; and

(ii) target specific Medicaid populations or geographic areas in the state.

(b) The pilot program shall establish compensation models for dentists and dental hygienists that:

(i) increase access to quality, cost effective dental care; and

(ii) use funds from the Division of Family Health and Preparedness that are available to reimburse dentists for educational loans in exchange for the dentist agreeing to serve Medicaid and under-served populations.

(c) The division may amend the state plan and apply to the Secretary of Health and Human Services for waivers or pilot programs if necessary to establish the new dental care delivery and payment reform model. The division shall evaluate the pilot program's effect on the cost of dental care and access to dental care for the targeted Medicaid populations. ~~[The division shall report to the Legislature's Health and Human Services Interim Committee by November 30th of each year that the pilot project is in effect.]~~

Section 3. Section 26-18-407 is amended to read:

26-18-407. Medicaid waiver for autism spectrum disorder.

(1) As used in this section:

(a) "Autism spectrum disorder" is as defined by the most recent edition of the Diagnostic and Statistical Manual on Mental Disorders or a recent edition of a professionally accepted diagnostic manual.

(b) "Program" means the autism spectrum disorder program created in Subsection (3).

(c) "Qualified child" means a child who is:

(i) at least two years of age but less than seven years of age; and

(ii) diagnosed with an autism spectrum disorder by a qualified professional.

(2) The department shall apply for a Medicaid waiver with the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services to implement, within the state Medicaid program, the program described in Subsection (3).

(3) The department shall offer an autism spectrum disorder program that:

(a) as funding permits, provides treatment for autism spectrum disorders to qualified children; and

(b) accepts applications for the program during periods of open enrollment.

(4) The department shall:

(a) convene a public process with the Department of Human Services to determine the benefits and

services the program shall offer qualified children that considers, in addition to any other relevant factor:

- (i) demonstrated effective treatments;
- (ii) methods to engage family members in the treatment process; and
- (iii) outreach to qualified children in rural and underserved areas of the state; and
- (b) evaluate the ongoing results, cost, and effectiveness of the program.

~~[(5) The department shall annually report to the Legislature's Health and Human Services Interim Committee before each November 30 while the waiver is in effect regarding:]~~

~~[(a) the number of qualified children served under the waiver;]~~

~~[(b) success involving families in supporting treatment plans for autistic children;]~~

~~[(c) the cost of the program; and]~~

~~[(d) the results and effectiveness of the program.]~~

Section 4. Section 26-18-408 is amended to read:

26-18-408. Incentives to appropriately use emergency department services.

(1) (a) This section applies to the Medicaid program and to the Utah Children's Health Insurance Program created in Chapter 40, Utah Children's Health Insurance Act.

(b) For purposes of this section:

(i) "Accountable care organization" means a Medicaid or Children's Health Insurance Program administrator that contracts with the Medicaid program or the Children's Health Insurance Program to deliver health care through an accountable care plan.

(ii) "Accountable care plan" means a risk based delivery service model authorized by Section 26-18-405 and administered by an accountable care organization.

(iii) "Nonemergent care":

(A) means use of the emergency department to receive health care that is nonemergent as defined by the department by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the Emergency Medical Treatment and Active Labor Act; and

(B) does not mean the medical services provided to a recipient required by the Emergency Medical Treatment and Active Labor Act, including services to conduct a medical screening examination to determine if the recipient has an emergent or nonemergent condition.

(iv) "Professional compensation" means payment made for services rendered to a Medicaid recipient

by an individual licensed to provide health care services.

(v) "Super-utilizer" means a Medicaid recipient who has been identified by the recipient's accountable care organization as a person who uses the emergency department excessively, as defined by the accountable care organization.

(2) (a) An accountable care organization may, in accordance with Subsections (2)(b) and (c):

(i) audit emergency department services provided to a recipient enrolled in the accountable care plan to determine if nonemergent care was provided to the recipient; and

(ii) establish differential payment for emergent and nonemergent care provided in an emergency department.

(b) (i) The differential payments under Subsection (2)(a)(ii) do not apply to professional compensation for services rendered in an emergency department.

(ii) Except in cases of suspected fraud, waste, and abuse, an accountable care organization's audit of payment under Subsection (2)(a)(i) is limited to the 18-month period of time after the date on which the medical services were provided to the recipient. If fraud, waste, or abuse is alleged, the accountable care organization's audit of payment under Subsection (2)(a)(i) is limited to three years after the date on which the medical services were provided to the recipient.

(c) The audits and differential payments under Subsections (2)(a) and (b) apply to services provided to a recipient on or after July 1, 2015.

(3) An accountable care organization shall:

(a) use the savings under Subsection (2) to maintain and improve access to primary care and urgent care services for all of the recipients enrolled in the accountable care plan;

(b) provide viable alternatives for increasing primary care provider reimbursement rates to incentivize after hours primary care access for recipients; and

(c) report to the department on how the accountable care organization complied with this Subsection (3).

(4) The department shall:

(a) through administrative rule adopted by the department, develop quality measurements that evaluate an accountable care organization's delivery of:

(i) appropriate emergency department services to recipients enrolled in the accountable care plan;

(ii) expanded primary care and urgent care for recipients enrolled in the accountable care plan, with consideration of the accountable care organization's:

(A) delivery of primary care, urgent care, and after hours care through means other than the emergency department;

(B) recipient access to primary care providers and community health centers including evening and weekend access; and

(C) other innovations for expanding access to primary care; and

(iii) quality of care for the accountable care plan members;

(b) compare the quality measures developed under Subsection (4)(a) for each accountable care organization and share the data and quality measures developed under Subsection (4)(a) with the Health Data Committee created in Chapter 33a, Utah Health Data Authority Act;

(c) apply for a Medicaid waiver and a Children's Health Insurance Program waiver with the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services, to:

(i) allow the program to charge recipients who are enrolled in an accountable care plan a higher copayment for emergency department services; and

(ii) develop, by administrative rule, an algorithm to determine assignment of new, unassigned recipients to specific accountable care plans based on the plan's performance in relation to the quality measures developed pursuant to Subsection (4)(a); and

(d) before July 1, 2015, convene representatives from the accountable care organizations, pre-paid mental health plans, an organization representing hospitals, an organization representing physicians, and a county mental health and substance abuse authority to discuss alternatives to emergency department care, including:

(i) creating increased access to primary care services;

(ii) alternative care settings for super-utilizers and individuals with behavioral health or substance abuse issues;

(iii) primary care medical and health homes that can be created and supported through enhanced federal match rates, a state plan amendment for integrated care models, or other Medicaid waivers;

(iv) case management programs that can:

(A) schedule prompt visits with primary care providers within 72 to 96 hours of an emergency department visit;

(B) help super-utilizers with behavioral health or substance abuse issues to obtain care in appropriate care settings; and

(C) assist with transportation to primary care visits if transportation is a barrier to appropriate care for the recipient; and

(v) sharing of medical records between health care providers and emergency departments for Medicaid recipients.

(5) The Health Data Committee may publish data in accordance with Chapter 33a, Utah Health Data Authority Act, which compares the quality measures for the accountable care plans.

(6) The department shall report to the Legislature's Health and Human Services Interim Committee ~~on or before October 1, 2016,~~ every two years regarding implementation of this section.

Section 5. Section 26-56-103 is amended to read:

26-56-103. Hemp extract registration card -- Application -- Fees -- Database.

(1) The department shall issue a hemp extract registration card to an individual who:

(a) is at least 18 years of age;

(b) is a Utah resident;

(c) provides the department with a statement signed by a neurologist that:

(i) indicates that the individual:

(A) suffers from intractable epilepsy; and

(B) may benefit from treatment with hemp extract; and

(ii) is consistent with a record from the neurologist, concerning the individual, contained in the database described in Subsection (8);

(d) pays the department a fee in an amount established by the department under Subsection (5); and

(e) submits an application to the department, on a form created by the department, that contains:

(i) the individual's name and address;

(ii) a copy of the individual's valid photo identification; and

(iii) any other information the department considers necessary to implement this chapter.

(2) The department shall issue a hemp extract registration card to a parent who:

(a) is at least 18 years of age;

(b) is a Utah resident;

(c) provides the department with a statement signed by a neurologist that:

(i) indicates that a minor in the parent's care:

(A) suffers from intractable epilepsy; and

(B) may benefit from treatment with hemp extract; and

(ii) is consistent with a record from the neurologist, concerning the minor, contained in the database described in Subsection (8);

(d) pays the department a fee in an amount established by the department under Subsection (5); and

(e) submits an application to the department, on a form created by the department, that contains:

- (i) the parent's name and address;
 - (ii) the minor's name;
 - (iii) a copy of the parent's valid photo identification; and
 - (iv) any other information the department considers necessary to implement this chapter.
- (3) The department shall maintain a record of:
- (a) the name of each registrant; and
 - (b) the name of each minor receiving care from a registrant.
- (4) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
- (a) establish the information an applicant is required to provide to the department under Subsections (1)(e)(iii) and (2)(e)(iv); and
 - (b) establish, in accordance with recommendations from the Department of Public Safety, the form and content of the hemp extract registration card.
- (5) The department shall establish fees in accordance with Section 63J-1-504 that are no greater than the amount necessary to cover the cost the department incurs to implement this chapter.
- (6) The registration cards issued under Subsections (1) and (2) are:
- (a) valid for one year; and
 - (b) renewable, if, at the time of renewal, the registrant meets the requirements of either Subsection (1) or (2).
- (7) The neurologist who signs the statement described in Subsection (1)(c) or (2)(c) shall:
- (a) keep a record of the neurologist's evaluation and observation of a patient who is a registrant or minor under a registrant's care, including the patient's response to hemp extract; and
 - (b) transmit the record described in Subsection (7)(a) to the department.
- (8) The department shall:
- (a) maintain a database of the records described in Subsection (7);
 - (b) treat the records as identifiable health data, as defined in Section 26-3-1; and
 - (c) establish a procedure for ensuring that neurologists transmit the records described in Subsection (7).
- (9) (a) The department shall prepare a de-identified set of data based on records described in Subsection (8) and make the set of data available to researchers at a higher education institution for the purpose of studying hemp extract.
- (b) No later than July 1, 2016, the department shall, in accordance with Title 63G, Chapter 6a,

Utah Procurement Code, request proposals to conduct a study of hemp extract.

(c) The study of hemp extract shall include at least the following:

- (i) analysis of data from the records of patients who have held hemp extract registration cards for one year or more;
- (ii) the effect of hemp extract on the patient's seizure control; and
- (iii) any adverse effects or other effects on the patient that may be attributable to the patient's use of hemp extract.

(d) The department shall report to the Health and Human Services Interim Committee [~~of the Legislature on or before the November 2016 interim meeting~~] by November 30 of each year until November 30, 2019, on the study of hemp extract.

Section 6. Section 49-20-106 is amended to read:

49-20-106. Obesity report.

(1) The Public Employees' Health Plan shall report to the Health and Human Services Interim Committee every two years by no later than the Health and Human Services Interim Committee's November [2016] interim meeting regarding the analysis required by Subsection (2).

(2) For purposes of the report required by Subsection (1), the Public Employees' Health Plan shall:

(a) estimate the costs and benefits to the Public Employees' Health Plan associated with providing insurance coverage for anti-obesity treatment, including:

- (i) counseling;
- (ii) medication; and
- (iii) surgery;

(b) compare the costs and benefits estimated under Subsection (2)(a) with the costs and benefits to the Public Employees' Health Plan associated with treating diseases caused by or linked to obesity, including:

- (i) diabetes;
- (ii) hypertension;
- (iii) heart disease; and
- (iv) other diseases; and

(c) analyze whether there would be cost savings by providing the insurance coverage described in Subsection (2)(a).

(3) The Public Employees' Health Plan may work with other insurers or other interested persons in developing the report required by this section.

Section 7. Section 62A-15-1102 is amended to read:

62A-15-1102. Study on gun use -- Report.

- (1) As used in this section:

(a) "Coordinator" means the state suicide prevention coordinator described in Section 62A-15-1101.

(b) "Legal intervention" means an incident in which an individual is shot by another individual who has legal authority to use deadly force.

(c) "Shooter" means an individual who uses a gun in an act that results in the death of the actor or another individual, whether the act was a suicide, homicide, legal intervention, act of self-defense, or accident.

(2) The coordinator shall, by October 30, 2018, conduct a study on use of guns in the state and on an ongoing basis report on the progress and findings of the study to the Health and Human Services Interim Committee.

~~[(3) By October 30, 2016, the coordinator shall:]~~

~~[(a) determine what information, and from which state, local, and federal agencies, will be necessary to complete the study;]~~

~~[(b) determine how much the study will cost;]~~

~~[(c) make recommendations for legislation, if any, that will be necessary to facilitate information-sharing between local, state, federal, and private entities and the coordinator; and]~~

~~[(d) report the findings described in Subsections (3)(a) through (c) to the Health and Human Services Interim Committee.]~~

~~[(4)] (3) The study described in Subsection (2) shall investigate:~~

(a) the number of deaths in the state that involved a gun, including deaths from suicide, homicide including gang-related violence, legal intervention, self-defense, and accidents;

(b) where and how a gun that was involved in a death described in Subsection ~~[(4)] (3)(a)~~ was procured, and whether that procurement was legal;

(c) demographic information on the shooter and, where applicable, a victim of a death described in Subsection ~~[(4)] (3)(a)~~, including gender, race, age, criminal history, and gang affiliation, if any;

(d) the total estimated number of gun owners in the state;

(e) information on the shooter, including whether the shooter has a history of:

(i) mental illness; or

(ii) domestic violence; and

(f) whether gun deaths are seasonal.

(5) The coordinator shall ensure that the study described in Subsection (2) is conducted in an unbiased manner, with no preconceived conclusions about potential results.

(6) The coordinator may contract with another state agency, private entity, or research institution to assist the coordinator and office with the study required by Subsection (2).

(7) (a) The coordinator shall submit a final report on the study described in Subsection (2), including proposed legislation and recommendations, to the Health and Human Services Interim Committee before November 30, 2018.

(b) The final report shall include references to all sources of information and data used in the report and study.

Section 8. Section 62A-17-103 is amended to read:

62A-17-103. Designated approved 211 service provider -- Department responsibilities.

(1) The department shall designate an approved 211 service provider to provide information to Utah citizens about health and human services available in the citizen's community.

(2) Only a service provider approved by the department may provide 211 telephone services in this state.

(3) The department shall approve a 211 service provider after considering the following:

(a) the ability of the proposed 211 service provider to meet the national 211 standards recommended by the Alliance of Information and Referral Systems;

(b) the financial stability of the proposed 211 service provider;

(c) the community support for the proposed 211 service provider;

(d) the relationship between the proposed 211 service provider and other information and referral services; and

(e) other criteria as the department considers appropriate.

(4) The department shall coordinate with the approved 211 service provider and ~~[(a)]~~ other state and local agencies to ensure the joint development and maintenance of a statewide information database for use by the approved 211 service provider ~~[-and]~~.

~~[(b) other interested parties, including public, private, and non-profit transportation operators, who shall form a work group and issue a report to the Health and Human Services Interim Committee by November 15, 2013 that addresses the following issues:]~~

~~[(i) an assessment of transportation needs for individuals with disabilities, the elderly, and other receiving services from the department;]~~

~~[(ii) an assessment of available services and current transportation providers throughout Utah;]~~

~~[(iii) identification of opportunities to achieve efficiency in service delivery, including the viability of a single dispatch system; and]~~

~~[(iv) priorities for implementation of efficiency, based on resources and feasibility.]~~

CHAPTER 23**S. B. 37**

Passed February 21, 2017

Approved March 15, 2017

Effective May 9, 2017

STATEWIDE CRISIS LINE

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Steve Eliason

LONG TITLE**General Description:**

This bill enacts provisions related to the creation of a statewide mental health crisis line.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Mental Health Crisis Line Commission;
- ▶ addresses the membership and duties of the Mental Health Crisis Line Commission;
- ▶ requires the Mental Health Crisis Line Commission to report to the Political Subdivisions Interim Committee; and
- ▶ provides a repeal date.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-263, as last amended by Laws of Utah 2016, Chapters 65, 136, 156, 322, and 408

ENACTS:

63C-18-101, Utah Code Annotated 1953

63C-18-102, Utah Code Annotated 1953

63C-18-201, Utah Code Annotated 1953

63C-18-202, Utah Code Annotated 1953

63C-18-203, Utah Code Annotated 1953

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

Section 1. Section 63C-18-101 is enacted to read:**CHAPTER 18. MENTAL HEALTH CRISIS LINE COMMISSION****Part 1. General Provisions****63C-18-101. Title.**

(1) This chapter is known as the “Mental Health Crisis Line Commission.”

(2) This part is known as “General Provisions.”

Section 2. Section 63C-18-102 is enacted to read:**63C-18-102. Definitions.**

As used in this chapter:

(1) “Commission” means the Mental Health Crisis Line Commission created in Section 63C-18-202.

(2) “Local mental health crisis line” means a phone number or other response system that is:

(a) accessible within a particular geographic area of the state; and

(b) intended to allow an individual to contact and interact with a qualified mental or behavioral health professional.

(3) “Statewide mental health crisis line” means a statewide phone number or other response system that allows an individual to contact and interact with a qualified mental or behavioral health professional 24 hours per day, 365 days per year.

Section 3. Section 63C-18-201 is enacted to read:**Part 2. Commission Creation****63C-18-201. Title.**

This part is known as “Commission Creation.”

Section 4. Section 63C-18-202 is enacted to read:**63C-18-202. Commission established -- Members.**

(1) There is created the Mental Health Crisis Line Commission, composed of the following 11 members:

(a) the executive director of the University Neuropsychiatric Institute;

(b) the governor or the governor’s designee;

(c) the director of the Division of Substance Abuse and Mental Health;

(d) one representative of the Office of the Attorney General, appointed by the attorney general;

(e) one member of the public, appointed by the chair of the commission;

(f) two individuals who are mental or behavioral health clinicians licensed to practice in the state, appointed by the chair of the commission, at least one of whom is an individual who:

(i) is licensed as a physician under:

(A) Title 58, Chapter 67, Utah Medical Practice Act;

(B) Title 58, Chapter 67b, Interstate Medical Licensure Compact; or

(C) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

(ii) is board eligible for a psychiatry specialization recognized by the American Board of Medical Specialists or the American Osteopathic Association’s Bureau of Osteopathic Specialists;

(g) one individual who represents a county of the first or second class, appointed by the Utah Association of Counties;

(h) one individual who represents a county of the third, fourth, or fifth class, appointed by the Utah Association of Counties;

(i) one member of the House of Representatives, appointed by the speaker of the House of Representatives; and

(j) one member of the Senate, appointed by the president of the Senate.

(2) (a) The executive director of the University Neuropsychiatric Institute is the chair of the commission.

(b) The chair of the commission shall appoint a member of the commission to serve as the vice chair of the commission, with the approval of the commission.

(c) The chair of the commission shall set the agenda for each commission meeting.

(3) (a) A majority of the members of the commission constitutes a quorum.

(b) The action of a majority of a quorum constitutes the action of the commission.

(4) (a) Except as provided in Subsection (4)(b), a member may not receive compensation, benefits, per diem, or travel expenses for the member's service on the commission.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(5) The Office of the Attorney General shall provide staff support to the commission.

Section 5. Section 63C-18-203 is enacted to read:

63C-18-203. Commission duties -- Reporting requirements.

(1) (a) The commission shall:

(i) identify a method to integrate existing local mental health crisis lines to ensure each individual who accesses a local mental health crisis line is connected to a qualified mental or behavioral health professional, regardless of the time, date, or number of individuals trying to simultaneously access the local mental health crisis line;

(ii) study how to establish and implement a statewide mental health crisis line, including identifying:

(A) a statewide phone number or other means for an individual to easily access the statewide mental health crisis line;

(B) a supply of qualified mental or behavioral health professionals to staff the statewide mental health crisis line; and

(C) a funding mechanism to operate and maintain the statewide mental health crisis line; and

(iii) coordinate with local mental health authorities in fulfilling the commission's duties described in Subsections (1)(a)(i) and (ii).

(b) The commission may conduct other business related to the commission's duties described in Subsection (1)(a).

(2) Before November 30, 2017, the commission shall report to the Political Subdivisions Interim Committee regarding:

(a) the extent to which the commission fulfilled the commission's duties described in Subsection (1); and

(b) recommendations for future legislation related to integrating local mental health crisis lines or establishing a statewide mental health crisis line.

Section 6. Section 63I-1-263 is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63N.

(1) Subsection 63A-5-104(4)(h) is repealed on July 1, 2024.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2018.

(4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is repealed November 30, 2019.

(5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.

(6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(7) Title 63C, Chapter 18, Mental Health Crisis Line Commission, is repealed July 1, 2018.

[~~(7)~~] (8) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

[~~(8)~~] (9) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

[~~(9)~~] (10) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states "the Resource Development Coordinating Committee," is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read "(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.;"

(c) in Subsection 23-14-21(3), the language that states "and the Resource Development Coordinating Committee" is repealed;

(d) in Subsection 23-21-2.3(1), the language that states "the Resource Development Coordinating Committee created in Section 63J-4-501 and" is repealed;

(e) in Subsection 23-21-2.3(2), the language that states "the Resource Development Coordinating Committee and" is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word “and” is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed; and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

~~[(40)]~~ (11) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

~~[(44)]~~ (12) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2017.

~~[(42)]~~ (13) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.

~~[(43)]~~ (14) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection ~~[(43)]~~ (14)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections ~~[(43)]~~ (14)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

~~[(44)]~~ (15) Section 63N-2-512 is repealed on July 1, 2021.

~~[(45)]~~ (16) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection ~~[(45)]~~ (16)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

~~[(46)]~~ (17) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed July 1, 2018.

CHAPTER 24**S. B. 38**

Passed February 8, 2017
Approved March 15, 2017
Effective May 9, 2017

**SPECIALIZED LICENSE
PLATE AMENDMENTS**

Chief Sponsor: Wayne A. Harper
House Sponsor: Ken Ivory

LONG TITLE**General Description:**

This bill amends provisions related to license plates on apportioned vehicles.

Highlighted Provisions:

This bill:

- ▶ allows the division to issue a second license plate to an owner or operator of an apportioned vehicle; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-1a-222, as last amended by Laws of Utah 2005, Chapters 217 and 244

41-1a-301, as last amended by Laws of Utah 2015, Chapter 412

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

Section 1. Section 41-1a-222 is amended to read:**41-1a-222. Application for multiyear registration -- Payment of taxes -- Penalties.**

(1) The owner of any intrastate fleet of commercial vehicles which is based in the state may apply to the commission for registration in accordance with this section.

(a) The application shall be made on a form prescribed by the commission.

(b) Upon payment of required fees and meeting other requirements prescribed by the commission, the division shall issue, to each vehicle for which application has been made, a multiyear license plate and registration card.

(i) The license plate decal and the registration card shall bear an expiration date fixed by the division and are valid until ownership of the vehicle to which they are issued is transferred by the applicant or until the expiration date, whichever comes first.

(ii) An annual renewal application must be made by the owner if registration identification has been issued on an annual installment fee basis and the required fees must be paid on an annual basis.

(iii) License plates and registration cards issued pursuant to this section are valid for an eight-year period, commencing with the year of initial application in this state.

(c) When application for registration or renewal is made on an installment payment basis, the applicant shall submit acceptable evidence of a surety bond in a form, and with a surety, approved by the commission and in an amount equal to the total annual fees required for all vehicles registered to the applicant in accordance with this section.

(2) Each vehicle registered as part of a fleet of commercial vehicles must be titled in the name of the fleet.

(3) Each owner who registers fleets pursuant to this section shall pay the taxes or in lieu fees otherwise due pursuant to:

- (a) Section 41-1a-206;
- (b) Section 41-1a-207;
- (c) Subsection 41-1a-301~~(41)~~(12);
- (d) Section 59-2-405.1;
- (e) Section 59-2-405.2; or
- (f) Section 59-2-405.3.

(4) An owner who fails to comply with the provisions of this section is subject to the penalties in Section 41-1a-1301 and, if the commission so determines, will result in the loss of the privileges granted in this section.

Section 2. Section 41-1a-301 is amended to read:**41-1a-301. Apportioned registration and licensing of interstate vehicles.**

(1) For purposes of this section, "registrant" means an owner or operator of one or more commercial vehicles operating in two or more jurisdictions applying for apportioned registration and licensing of a commercial vehicle.

~~(4)~~ (2) (a) An owner or operator of a fleet of commercial vehicles based in this state and operating in two or more jurisdictions may register commercial vehicles for operation under the International Registration Plan or the Uniform Vehicle Registration Proration and Reciprocity Agreement by filing an application with the division.

(b) The application shall include information that identifies the vehicle owner, the vehicle, the miles traveled in each jurisdiction, and other information pertinent to the registration of apportioned vehicles.

(c) ~~[Vehieles]~~ The division may not grant apportioned registration for vehicles operated exclusively in this state ~~[may not be apportioned]~~.

~~(2)~~ (3) (a) If no operations were conducted during the preceding year, in computing fees due:

(i) the application shall contain a statement of the proposed operations; and ~~[an estimate of annual mileage for each jurisdiction. (b) The division may~~

adjust the estimate if the division is not satisfied with its correctness.]

(ii) the division shall determine fees based on average per vehicle distance requirements under the International Registration Plan.

[~~(e)~~] (b) At renewal, the registrant shall use the actual mileage from the preceding year in computing fees due each jurisdiction.

[~~(3)~~] (4) The division shall determine the registration fee for apportioned vehicles [shall be determined] as follows:

(a) divide the in-jurisdiction miles by the total miles generated during the preceding year;

(b) total the fees for each vehicle based on the fees prescribed in Section 41-1a-1206; and

(c) multiply the sum obtained under Subsection [~~(3)~~] (4)(b) by the quotient obtained under Subsection [~~(3)~~] (4)(a).

[~~(4) Trailers~~] (5) The registrant may list trailers or semitrailers of apportioned fleets [may be listed] separately as "trailer fleets" on the application, with the fees paid according to the total distance those trailers were towed in all jurisdictions during the preceding year mileage reporting period.

[~~(5)~~] (6) (a) (i) When the registrant has paid the proper fees [have been paid] and cleared the property tax or in lieu fee [has been cleared] under Section 41-1a-206 or 41-1a-207, the division shall issue a registration card, annual decal, and where necessary, license plate, [will be issued] for each unit listed on the application.

(ii) [~~An~~] The owner or operator shall carry an original registration [must be carried] in each vehicle at all times.

(b) [~~Original~~] The owner or operator may carry original registration cards for trailers or semitrailers [may be carried] in the power unit.

(c) (i) In lieu of a permanent registration card or license plate, the division may issue one temporary permit authorizing operation of new or unlicensed vehicles until the permanent registration is completed.

(ii) Once a temporary permit is issued[, the]:

(A) neither the registrant nor the division may cancel the registration process [may not be cancelled. Registration must be completed]; and

(B) the division shall complete registration and the registrant shall pay the fees and any property tax or in lieu fee due [must be paid] for the vehicle for which the permit was issued.

(iii) [~~Temporary~~] The division may not issue temporary permits [may not be issued] for renewals.

(d) (i) The division shall issue one distinctive license plate [that displays the letters APP] for apportioned vehicles.

(ii) The owner or operator shall display the plate [shall be displayed] on the front of an apportioned truck tractor or power unit or on the rear of any other apportioned vehicle.

(iii) [~~Distinctive~~] The division shall issue distinctive decals displaying the word "apportioned" and the month and year of expiration [shall be issued] for each apportioned vehicle.

(iv) At the request of a registrant of an apportioned vehicle, the division may issue a second license plate, for a total of two, to display on both the front and rear of the apportioned vehicle.

(e) [~~A~~] The division shall charge a nonrefundable administrative fee, determined by the commission pursuant to Section 63J-1-504, [shall be charged] for each temporary permit, registration, or both.

[~~(6)~~] (7) Vehicles that are apportionally registered are fully registered for intrastate and interstate movements, providing the registrant has secured proper interstate and intrastate authority [has been secured].

[~~(7) (a) Vehicles~~] (8) (a) The division shall register vehicles added to an apportioned fleet after the beginning of the registration year [shall be registered] by applying the quotient under Subsection [~~(3)~~] (4)(a) for the original application to the fees due for the remainder of the registration year.

(b) (i) The owner shall maintain and submit complete annual mileage for each vehicle in each jurisdiction, showing all miles operated by the lessor and lessee.

(ii) The fiscal mileage reporting period begins July 1, and continues through June 30 of the year immediately preceding the calendar year in which the registration year begins.

(c) (i) An owner-operator, who is a lessor, may [~~be the registrant and~~] register the vehicle [may be registered] in the name of the owner-operator.

(ii) The identification plates and registration card shall be the property of the lessor and may reflect both the owner-operator's name and that of the carrier as lessee.

(iii) The [~~allocation of fees shall be~~] division shall allocate the fees according to the operational records of the owner-operator.

(d) (i) [~~The~~] At the option of the lessor, the lessee may [be the registrant of] register a leased vehicle [at the option of the lessor].

(ii) If a lessee is the registrant of a leased vehicle, both the lessor's and lessee's name shall appear on the registration.

(iii) The [~~allocation of fees shall be~~] division shall allocate the fees according to the records of the carrier.

[~~(8) (a) Any registrant whose~~]

(9) (a) When the division has accepted an application for apportioned registration [has been

accepted], the registrant shall preserve the records on which the application is based for a period of three years after the close of the registration year.

(b) ~~[The records shall be made available to the division upon]~~ Upon request for audit as to accuracy of computations, payments, and assessments for deficiencies, or allowances for credits, the registrant shall provide the records to the division.

(c) ~~[An]~~ The division may not make an assessment for deficiency or claim for credit ~~[may not be made]~~ for any period for which records are no longer required.

(d) ~~[Interest]~~ The division may assess interest in the amount prescribed by Section 59-1-402 ~~[shall be assessed or paid]~~ from the date due until paid on deficiencies found due after audit.

(e) Registrants with deficiencies are subject to the penalties under Section 59-1-401.

(f) The division may enter into agreements with other International Registration Plan jurisdictions for joint audits.

~~[(9)]~~ (10) (a) Except as provided in Subsection ~~[(9)]~~ (10)(b), the division shall deposit all state fees collected under this section ~~[shall be deposited]~~ in the Transportation Fund.

(b) The commission may use the following fees ~~[may be used by the commission]~~ as a dedicated credit to cover the costs of electronic credentialing as provided in Section 41-1a-303:

(i) \$5 of each temporary registration permit fee paid under Subsection ~~[(12)]~~ (13)(a)(i) for a single unit; and

(ii) \$10 of each temporary registration permit fee paid under Subsection ~~[(12)]~~ (13)(a)(ii) for multiple units.

~~[(40)]~~ (11) If registration is for less than a full year, the division shall assess fees for apportioned registration ~~[shall be assessed]~~ according to Section 41-1a-1207.

(a) (i) If the registrant is replacing a vehicle for one withdrawn from the fleet and the new vehicle is of the same weight category as the replaced vehicle, the registrant ~~[must]~~ shall file a supplemental application.

~~[(ii) A registration card that transfers the license plate to the new vehicle shall be issued.]~~

~~[(iii) When a replacement vehicle is of greater weight than the replaced vehicle, additional registration fees are due.]~~

(ii) If the registrant is replacing a vehicle for one withdrawn from the fleet and the new vehicle is heavier than the replaced vehicle, the division shall assess additional registration fees.

(iii) If the registrant is replacing a vehicle for one withdrawn from the fleet, the division shall issue a new registration card.

(b) If a vehicle is withdrawn from an apportioned fleet during the period for which it is registered, the

registrant shall notify the division and surrender the registration card and license plate of the withdrawn vehicle.

~~[(11)]~~ (12) (a) An out-of-state carrier with an apportionally registered vehicle who has not presented a certificate of property tax or in lieu fee as required by Section 41-1a-206 or 41-1a-207, shall pay, at the time of registration, a proportional part of an equalized highway use tax computed as follows:

(i) Multiply the number of vehicles or combination vehicles registered in each weight class by the equivalent tax figure from the following tables:

Vehicle or Combination Registered Weight	Age of Vehicle	Equivalent Tax
12,000 pounds or less	12 or more years	\$10
12,000 pounds or less	9 or more years but less than 12 years	\$50
12,000 pounds or less	6 or more years but less than 9 years	\$80
12,000 pounds or less	3 or more years but less than 6 years	\$110
12,000 pounds or less	Less than 3 years	\$150

Vehicle or Combination Registered Weight	Equivalent Tax
12,001 - 18,000 pounds	\$150
18,001 - 34,000 pounds	200
34,001 - 48,000 pounds	300
48,001 - 64,000 pounds	450
64,001 pounds and over	600

(ii) Multiply the equivalent tax value for the total fleet determined under Subsection ~~[(11)]~~ (12)(a)(i) by the fraction computed under Subsection ~~[(3)]~~ (4) for the apportioned fleet for the registration year.

(b) ~~[Fees shall be assessed]~~ For registration described in Subsection (12)(a), the division shall assess fees as provided in Section 41-1a-1207.

~~[(12)]~~ (13) (a) Commercial vehicles meeting the registration requirements of another jurisdiction may, as an alternative to full or apportioned registration, secure a temporary registration permit for a period not to exceed 96 hours or until they leave the state, whichever is less, for a fee of:

- (i) \$25 for a single unit; and
- (ii) \$50 for multiple units.

(b) A state temporary permit or registration fee is not required from nonresident owners or operators of vehicles or combination of vehicles having a gross laden weight of 26,000 pounds or less for each single unit or combination.

~~[(13) A]~~ (14) The division may not register a park model recreational vehicle ~~[may not be registered]~~ under this section.

~~[(14)]~~ (15) A violation of this section is an infraction.

CHAPTER 25**S. B. 39**

Passed February 8, 2017
 Approved March 15, 2017
 Effective May 9, 2017

ROAD CLASSIFICATION AMENDMENTS

Chief Sponsor: Wayne A. Harper
 House Sponsor: Kay J. Christofferson

LONG TITLE**General Description:**

This bill modifies provisions related to state highway system classification.

Highlighted Provisions:

This bill:

- modifies provisions related to roads included in the definition of a state highway.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

72-4-102.5, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 72-4-102.5 is amended to read:**72-4-102.5. Definitions -- Rulemaking -- Criteria for state highways.**

(1) As used in this section:

(a) "Arterial highway" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines[§].

(b) "Collector highway," "collector road," or "collector street" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines[§].

(c) "Local street" or "local road" means a highway that is not an arterial highway or a collector highway and that is under the jurisdiction of a county or municipality[§].

(d) "Major collector highway," "major collector road," or "major collector street" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines[§].

(e) "Minor collector road" or "minor collector street" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines[§].

(f) "Minor arterial highway" or "minor arterial street" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines[§].

(g) "Principal arterial highway" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines[§].

(h) "Rural area" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines[§].

(i) "Tourist area" means an area of the state frequented by tourists for the purpose of visiting national parks, national recreation areas, national monuments, or state parks[§ and].

(j) "Urban area" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines.

(2) (a) Subject to the provisions of Title 72, Chapter 3, Highway Jurisdiction and Classification Act, and this chapter, a state highway shall meet the criteria provided under this section.

(b) The highway authorities of this state or their representatives shall cooperate to match the criteria provided under this section with the state highways designated under this title.

(c) The primary function of state highways is to provide for the safe and efficient movement of traffic, while providing access to property is a secondary function.

(d) The primary function of county and municipal highways is to provide access to property.

(e) For purposes of this section, if a highway is within 10 miles of a location identified under this section, the location is considered to be served by that highway.

(3) A state highway shall:

(a) serve a statewide purpose by accommodating interstate movement of traffic or interregion movement of traffic within the state;

(b) primarily move higher traffic volumes over longer distances than highways under local jurisdiction;

(c) connect major population centers;

(d) be spaced so that:

(i) all developed areas in the state are within a reasonable distance of a state highway; and

(ii) duplicative state routes are avoided;

(e) provide state highway system continuity and efficiency of state highway system operation and maintenance activities;

(f) include all interstate routes, all expressways, and all highways on the National Highway System as designated by the Federal Highway Administration under 23 C.F.R. Section 470, Subpart A, as of January 1, 2005; and

(g) exclude parking lots, driving ranges, and campus roads.

(4) ~~[In addition to]~~ Consistent with the provisions of Subsection (3), in rural areas a state highway ~~[shall]~~ may:

- (a) include all minor arterial highways;
- (b) include a major collector highway that:
 - (i) serves a county seat;
 - (ii) serves a municipality with a population of 1,000 or more;
 - (iii) serves a major industrial, commercial, or recreation areas that generate traffic volumes equivalent to a population of 1,000 or more;
 - (iv) provides continuity for the state highway system by providing major connections between other state highways;
 - (v) provides service between two or more counties; or
 - (vi) serves a compelling statewide public safety interest; and
- (c) exclude all minor collector streets and local roads.

(5) ~~[In addition to]~~ Consistent with the provisions of Subsection (3), in urban areas a state highway ~~[shall]~~ may:

- (a) include all principal arterial highways;
- (b) include a minor arterial highway that:
 - (i) provides continuity for the state highway system by providing major connections between other state highways;
 - (ii) is a route that is expected to be a principal arterial highway within 10 years; or
 - (iii) is needed to provide access to state highways; and
- (c) exclude all collector highways and local roads.

(6) In addition to the provisions of Subsections (3) and (4), in tourist areas, a state highway:

- (a) shall include a highway that:
 - (i) serves a national park or a national recreational area; or
 - (ii) serves a national monument with visitation greater than 100,000 per year; or
- (b) may include a highway that:
 - (i) serves a state park with visitation greater than 100,000 per year; or
 - (ii) serves a recreation site with visitation greater than 100,000 per year.

(7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules:

- (i) establishing and defining a functional classification of highways for the purpose of implementing this section;

(ii) defining and designating regionally significant arterial highways; and

(iii) establishing an access management policy consistent with the functional classification of roadways.

(b) The definitions under Subsection (7)(a) shall provide a separate functional classification system for urban and rural highways recognizing the unique differences in the character of services provided by urban and rural highways.

(c) The rules under Subsection (7)(a):

(i) shall conform as nearly as practical to the Federal Highway Administration Functional Classification Guidelines; and

(ii) may incorporate by reference, in whole or in part, the federal guidelines under Subsection (7)(c)(i).

CHAPTER 26**S. B. 48**

Passed February 16, 2017

Approved March 15, 2017

Effective May 9, 2017

NURSE LICENSURE COMPACT

Chief Sponsor: Evan J. Vickers
House Sponsor: Raymond P. Ward

LONG TITLE**General Description:**

This bill enacts a Nurse Licensure Compact that will replace the state's current Nurse Licensure Compact if certain conditions are met.

Highlighted Provisions:

This bill:

- ▶ establishes findings for the Nurse Licensure Compact;
- ▶ defines terms;
- ▶ creates general provisions and jurisdiction for the compact;
- ▶ establishes a licensure process for party states;
- ▶ invests authority in party state licensing boards;
- ▶ coordinates licensure information systems and exchange of information;
- ▶ establishes the Interstate Commission of Nurse Licensure Compact Administrators;
- ▶ provides rulemaking to the commission;
- ▶ provides oversight and dispute resolution; and
- ▶ establishes an effective date for the compact.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

58-31e-101, Utah Code Annotated 1953

58-31e-102, Utah Code Annotated 1953

58-31e-103, Utah Code Annotated 1953

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

Section 1. Section 58-31e-101 is enacted to read:**CHAPTER 31e. NURSE LICENSURE COMPACT - REVISED****58-31e-101. Title.**

This chapter is known as the "Nurse Licensure Compact - Revised."

Section 2. Section 58-31e-102 is enacted to read:**58-31e-102. Nurse Licensure Compact.**

The Nurse Licensure Compact is hereby enacted and entered into with all other jurisdictions that legally join in the compact, which is in form, substantially as follows:

NURSE LICENSURE COMPACT**ARTICLE I****Findings and Declaration of Purpose****a. The party states find that:**

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

2. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

6. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

b. The general purposes of this Compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety;

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction;

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

6. Decrease redundancies in the consideration and issuance of nurse licenses; and

7. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE II**Definitions****As used in this Compact:**

a. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

b. “Alternative program” means a non-disciplinary monitoring program approved by a licensing board.

c. “Coordinated licensure information system” means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

d. “Current significant investigative information” means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

e. “Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

f. “Home state” means the party state which is the nurse’s primary state of residence.

g. “Licensing board” means a party state’s regulatory body responsible for issuing nurse licenses.

h. “Multistate license” means a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

i. “Multistate licensure privilege” means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.

j. “Nurse” means an RN or LPN/VN, as those terms are defined by each party state’s practice laws.

k. “Party state” means any state that has adopted this Compact.

l. “Remote state” means a party state, other than the home state.

m. “Single-state license” means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

n. “State” means a state, territory, or possession of the United States and the District of Columbia.

o. “State practice laws” means a party state’s laws, rules, and regulations that govern the

practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. “State practice laws” do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III

General Provisions and Jurisdiction

a. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

b. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant’s criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records.

c. Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:

1. Meets the home state’s qualifications for licensure or renewal of licensure, as well as all other applicable state laws;

2. i. Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prec licensure education program; or

ii. Has graduated from a foreign RN or LPN/VN prec licensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prec licensure education program;

3. Has, if a graduate of a foreign prec licensure education program not taught in English or if English is not the individual’s native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;

4. Has successfully passed an NCLEX–RN or NCLEX–PN Examination or recognized predecessor, as applicable;

5. Is eligible for or holds an active, unencumbered license;

6. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records;

7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony

offense under applicable state or federal criminal law;

8. Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

9. Is not currently enrolled in an alternative program;

10. Is subject to self-disclosure requirements regarding current participation in an alternative program; and

11. Has a valid United States social security number.

d. All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

e. A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.

f. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this Compact shall affect the requirements established by a party state for the issuance of a single-state license.

g. Any nurse holding a home state multistate license, on the effective date of this Compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

1. A nurse, who changes primary state of residence after this Compact's effective date, must meet all applicable Article III.c. requirements to obtain a multistate license from a new home state; and

2. A nurse who fails to satisfy the multistate licensure requirements in Article III.c. due to a disqualifying event occurring after this Compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate

license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("Commission").

ARTICLE IV

Applications for Licensure in a Party State

a. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

b. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

c. If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the Commission.

1. The nurse may apply for licensure in advance of a change in primary state of residence.

2. A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

d. If a nurse changes primary state of residence by moving from a party state to a non-party state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

ARTICLE V

Additional Authorities Invested in Party State Licensing Boards

a. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

1. Take adverse action against a nurse's multistate licensure privilege to practice within that party state.

i. Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

ii. For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

2. Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

3. Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

5. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks, and use the results in making licensure decisions.

6. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

7. Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

b. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

c. Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

ARTICLE VI

Coordinated Licensure Information System and Exchange of Information

a. All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

b. The Commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

c. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

d. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

e. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

f. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

g. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

h. The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum:

1. Identifying information;
2. Licensure data;
3. Information related to alternative program participation; and
4. Other information that may facilitate the administration of this Compact, as determined by Commission rules.

i. The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII

Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

a. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

1. The Commission is an instrumentality of the party states.

2. Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

b. Membership, Voting, and Meetings

1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

2. Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.

5. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

i. Noncompliance of a party state with its obligations under this Compact;

ii. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees, or other matters related to the Commission's internal personnel practices and procedures;

iii. Current, threatened, or reasonably anticipated litigation;

iv. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

v. Accusing any person of a crime or formally censuring any person;

vi. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

vii. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

viii. Disclosure of investigatory records compiled for law enforcement purposes;

ix. Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this Compact; or

x. Matters specifically exempted from disclosure by federal or state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

c. The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this Compact, including but not limited to:

1. Establishing the fiscal year of the Commission;

2. Providing reasonable standards and procedures:

i. For the establishment and meetings of other committees; and

ii. Governing any general or specific delegation of any authority or function of the Commission;

3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the Commission must make public a copy of the vote

to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

4. Establishing the titles, duties and authority, and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the Commission; and

6. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of this Compact after the payment or reserving of all of its debts and obligations.

d. The Commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the Commission.

e. The Commission shall maintain its financial records in accordance with the bylaws.

f. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

g. The Commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all party states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations;

5. To cooperate with other organizations that administer state compacts related to the regulation of nursing, including but not limited to sharing administrative or staff expenses, office space, or other resources;

6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

7. To accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, whether real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

9. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

10. To establish a budget and make expenditures;

11. To borrow money;

12. To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons;

13. To provide and receive information from, and to cooperate with, law enforcement agencies;

14. To adopt and use an official seal; and

15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of nurse licensure and practice.

h. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule that is binding upon all party states.

3. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

4. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

i. Qualified Immunity, Defense, and Indemnification

1. The administrators, officers, executive director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person

against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.

2. The Commission shall defend any administrator, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.

3. The Commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

ARTICLE VIII Rulemaking

a. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this Compact.

b. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

c. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the website of the Commission; and

2. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

d. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment, and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

e. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

f. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

g. The Commission shall publish the place, time, and date of the scheduled public hearing.

1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

2. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

h. If no one appears at the public hearing, the Commission may proceed with promulgation of the proposed rule.

i. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

j. The Commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

k. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or party state funds; or

3. Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

1. The Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE IX

Oversight, Dispute Resolution, and Enforcement

a. Oversight

1. Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent.

2. The Commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the Commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

b. Default, Technical Assistance, and Termination

1. If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

i. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the Commission; and

ii. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state's membership in this Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

4. A state whose membership in this Compact has been terminated is responsible for all assessments,

obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

c. Dispute Resolution

1. Upon request by a party state, the Commission shall attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. In the event the Commission cannot resolve disputes among party states arising under this Compact:

i. The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

ii. The decision of a majority of the arbitrators shall be final and binding.

d. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE X

Effective Date, Withdrawal, and Amendment

a. This Compact, enacted in Title 58, Chapter 31e, Nurse Licensure Compact - Revised ("This Compact"), shall become effective and binding on

the earlier of the date of legislative enactment of this Compact into law by no less than twenty-six (26) states or December 31, 2018. All party states to this Compact, that also were parties to the prior Nurse Licensure Compact, enacted in Title 58, Chapter 31c, Nurse Licensure Compact, superseded by this Compact, ("Prior Compact"), shall be deemed to have withdrawn from said Prior Compact within six (6) months after the effective date of this Compact.

b. Each party state to this Compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the Prior Compact until such party state has withdrawn from the Prior Compact.

c. Any party state may withdraw from this Compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

d. A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

e. Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this Compact.

f. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

g. Representatives of non-party states to this Compact shall be invited to participate in the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact by all states.

ARTICLE XI

Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held to be contrary to the constitution of any party state, this Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Section 3. Section 58-31e-103 is enacted to read:

58-31e-103. Implementation and rulemaking authority.

(1) The term "head of the state licensing board," as used in Article VII b(1) of the Nurse Licensure Compact in Section 58-31e-102, means an individual who is an ex-officio member of the Board of Nursing created in Section 58-31b-201 and is appointed by the director to serve as the head of the state licensing board for purposes of Article VII b(1) of the Nurse Licensure Compact.

(2) The division may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules necessary to implement the provisions of this chapter.

CHAPTER 27**S. B. 55**

Passed February 6, 2017
 Approved March 15, 2017
 Effective May 9, 2017

**INSURANCE AND SERVICE
 CONTRACT AMENDMENTS**

Chief Sponsor: Curtis S. Bramble
 House Sponsor: James A. Dunnigan

LONG TITLE**General Description:**

This bill modifies provisions of the Insurance Code related to service contracts.

Highlighted Provisions:

This bill:

- ▶ amends the scope and applicability of the Insurance Code;
- ▶ amends the definition of “service contract”; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

31A-1-103, as last amended by Laws of Utah 2010, Chapter 274
 31A-6a-101, as last amended by Laws of Utah 2016, Chapter 138

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

Section 1. Section 31A-1-103 is amended to read:

31A-1-103. Scope and applicability of title.

- (1) This title does not apply to:
- (a) a retainer contract made by an attorney-at-law:
- (i) with an individual client; and
- (ii) under which fees are based on estimates of the nature and amount of services to be provided to the specific client;
- (b) a contract similar to a contract described in Subsection (1)(a) made with a group of clients involved in the same or closely related legal matters;
- (c) an arrangement for providing benefits that do not exceed a limited amount of consultations, advice on simple legal matters, either alone or in combination with referral services, or the promise of fee discounts for handling other legal matters;
- (d) limited legal assistance on an informal basis involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, educational, or similar relationship;

(e) legal assistance by employee organizations to their members in matters relating to employment; [or]

(f) death, accident, health, or disability benefits provided to a person by an organization or its affiliate if:

(i) the organization is tax exempt under Section 501(c)(3) of the Internal Revenue Code and has had its principal place of business in Utah for at least five years;

(ii) the person is not an employee of the organization; and

(iii) (A) substantially all the person’s time in the organization is spent providing voluntary services:

(I) in furtherance of the organization’s purposes;

(II) for a designated period of time; and

(III) for which no compensation, other than expenses, is paid; or

(B) the time since the service under Subsection (1)(f)(iii)(A) was completed is no more than 18 months[-]; or

(g) a prepaid contract of limited duration that provides for scheduled maintenance only.

(2) (a) This title restricts otherwise legitimate business activity.

(b) What this title does not prohibit is permitted unless contrary to other provisions of Utah law.

(3) Except as otherwise expressly provided, this title does not apply to:

(a) those activities of an insurer where state jurisdiction is preempted by Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended;

(b) ocean marine insurance;

(c) death, accident, health, or disability benefits provided by an organization if the organization:

(i) has as its principal purpose to achieve charitable, educational, social, or religious objectives rather than to provide death, accident, health, or disability benefits;

(ii) does not incur a legal obligation to pay a specified amount; and

(iii) does not create reasonable expectations of receiving a specified amount on the part of an insured person;

(d) other business specified in rules adopted by the commissioner on a finding that:

(i) the transaction of the business in this state does not require regulation for the protection of the interests of the residents of this state; or

(ii) it would be impracticable to require compliance with this title;

(e) except as provided in Subsection (4), a transaction independently procured through negotiations under Section 31A-15-104;

<p>(f) self-insurance;</p> <p>(g) reinsurance;</p> <p>(h) subject to Subsection (5), employee and labor union group or blanket insurance covering risks in this state if:</p> <p>(i) the policyholder exists primarily for purposes other than to procure insurance;</p> <p>(ii) the policyholder:</p> <p>(A) is not a resident of this state;</p> <p>(B) is not a domestic corporation; or</p> <p>(C) does not have its principal office in this state;</p> <p>(iii) no more than 25% of the certificate holders or insureds are residents of this state;</p> <p>(iv) on request of the commissioner, the insurer files with the department a copy of the policy and a copy of each form or certificate; and</p> <p>(v) (A) the insurer agrees to pay premium taxes on the Utah portion of its business, as if it were authorized to do business in this state; and</p> <p>(B) the insurer provides the commissioner with the security the commissioner considers necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted Insurers;</p> <p>(i) to the extent provided in Subsection (6):</p> <p>(i) a manufacturer's or seller's warranty; and</p> <p>(ii) a manufacturer's or seller's service contract;</p> <p>(j) except to the extent provided in Subsection (7), a public agency insurance mutual; or</p> <p>(k) except as provided in Chapter 6b, Guaranteed Asset Protection Waiver Act, a guaranteed asset protection waiver.</p> <p>(4) A transaction described in Subsection (3)(e) is subject to taxation under Section 31A-3-301.</p> <p>(5) (a) After a hearing, the commissioner may order an insurer of certain group or blanket contracts to transfer the Utah portion of the business otherwise exempted under Subsection (3)(h) to an authorized insurer if the contracts have been written by an unauthorized insurer.</p> <p>(b) If the commissioner finds that the conditions required for the exemption of a group or blanket insurer are not satisfied or that adequate protection to residents of this state is not provided, the commissioner may require:</p> <p>(i) the insurer to be authorized to do business in this state; or</p> <p>(ii) that any of the insurer's transactions be subject to this title.</p> <p>(6) (a) As used in Subsection (3)(i) and this Subsection (6):</p> <p>(i) "manufacturer's or seller's service contract" means a service contract:</p>	<p>(A) made available by:</p> <p>(I) a manufacturer of a product;</p> <p>(II) a seller of a product; or</p> <p>(III) an affiliate of a manufacturer or seller of a product;</p> <p>(B) made available:</p> <p>(I) on one or more specific products; or</p> <p>(II) on products that are components of a system; and</p> <p>(C) under which the person described in Subsection (6)(a)(i)(A) is liable for services to be provided under the service contract including, if the manufacturer's or seller's service contract designates, providing parts and labor;</p> <p>(ii) "manufacturer's or seller's warranty" means the guaranty of:</p> <p>(A) (I) the manufacturer of a product;</p> <p>(II) a seller of a product; or</p> <p>(III) an affiliate of a manufacturer or seller of a product;</p> <p>(B) (I) on one or more specific products; or</p> <p>(II) on products that are components of a system; and</p> <p>(C) under which the person described in Subsection (6)(a)(ii)(A) is liable for services to be provided under the warranty, including, if the manufacturer's or seller's warranty designates, providing parts and labor; and</p> <p>(iii) "service contract" <u>[is-as] means the same as that term is defined in Section 31A-6a-101.</u></p> <p>(b) A manufacturer's or seller's warranty may be designated as:</p> <p>(i) a warranty;</p> <p>(ii) a guaranty; or</p> <p>(iii) a term similar to a term described in Subsection (6)(b)(i) or (ii).</p> <p>(c) This title does not apply to:</p> <p>(i) a manufacturer's or seller's warranty;</p> <p>(ii) a manufacturer's or seller's service contract paid for with consideration that is in addition to the consideration paid for the product itself; and</p> <p>(iii) a service contract that is not a manufacturer's or seller's warranty or manufacturer's or seller's service contract if:</p> <p>(A) the service contract is paid for with consideration that is in addition to the consideration paid for the product itself;</p> <p>(B) the service contract is for the repair or maintenance of goods;</p> <p>(C) the cost of the product is equal to an amount determined in accordance with Subsection (6)(e); and</p>
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(D) the product is not a motor vehicle.

(d) This title does not apply to a manufacturer's or seller's warranty or service contract paid for with consideration that is in addition to the consideration paid for the product itself regardless of whether the manufacturer's or seller's warranty or service contract is sold:

(i) at the time of the purchase of the product; or

(ii) at a time other than the time of the purchase of the product.

(e) (i) For fiscal year 2001-02, the amount described in Subsection (6)(c)(iii)(C) shall be equal to \$3,700 or less.

(ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually determine whether the amount described in Subsection (6)(c)(iii)(C) should be adjusted in accordance with changes in the Consumer Price Index published by the United States Bureau of Labor Statistics selected by the commissioner by rule, between:

(A) the Consumer Price Index for the February immediately preceding the adjustment; and

(B) the Consumer Price Index for February 2001.

(iii) If under Subsection (6)(e)(ii) the commissioner determines that an adjustment should be made, the commissioner shall make the adjustment by rule.

(7) (a) For purposes of this Subsection (7), "public agency insurance mutual" means an entity formed by two or more political subdivisions or public agencies of the state:

(i) under Title 11, Chapter 13, Interlocal Cooperation Act; and

(ii) for the purpose of providing for the political subdivisions or public agencies:

(A) subject to Subsection (7)(b), insurance coverage; or

(B) risk management.

(b) Notwithstanding Subsection (7)(a)(ii)(A), a public agency insurance mutual may not provide health insurance unless the public agency insurance mutual provides the health insurance using:

(i) a third party administrator licensed under Chapter 25, Third Party Administrators;

(ii) an admitted insurer; or

(iii) a program authorized by Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

(c) Except for this Subsection (7), a public agency insurance mutual is exempt from this title.

(d) A public agency insurance mutual is considered to be a governmental entity and political subdivision of the state with all of the rights, privileges, and immunities of a governmental entity

or political subdivision of the state including all the rights and benefits of Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Section 2. Section 31A-6a-101 is amended to read:

31A-6a-101. Definitions.

As used in this chapter:

(1) "Mechanical breakdown insurance" means a policy, contract, or agreement issued by an insurance company that has complied with either Chapter 5, Domestic Stock and Mutual Insurance Corporations, or Chapter 14, Foreign Insurers, that undertakes to perform or provide repair or replacement service on goods or property, or indemnification for repair or replacement service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear.

(2) "Nonmanufacturers' parts" means replacement parts not made for or by the original manufacturer of the goods commonly referred to as "after market parts."

(3) (a) "Road hazard" means a hazard that is encountered while driving a motor vehicle.

(b) "Road hazard" includes potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

(4) (a) "Service contract" means a contract or agreement to perform or reimburse for the repair or maintenance of goods or property, for their operational or structural failure due to a defect in materials, workmanship, [œ] normal wear and tear, power surge or interruption, or accidental damage from handling, with or without additional provision for incidental payment of indemnity under limited circumstances, including towing, providing a rental car, providing emergency road service, and covering food spoilage.

(b) "Service contract" does not include:

(i) mechanical breakdown insurance[-]; or

(ii) a prepaid contract of limited duration that provides for scheduled maintenance only, regardless of whether the contract is executed before, on, or after May 9, 2017.

(c) "Service contract" includes any contract or agreement to perform or reimburse the service contract holder for any one or more of the following services:

(i) the repair or replacement of tires, wheels, or both on a motor vehicle damaged as a result of coming into contact with a road hazard;

(ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

(iii) the repair of chips or cracks in or the replacement of a motor vehicle windshield as a result of damage caused by a road hazard, that is

primary to the coverage offered by the motor vehicle owner's motor vehicle insurance policy; or

(iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes inoperable, lost, or stolen, except that the replacement of lost or stolen property is limited to only the replacement of a lost or stolen motor vehicle key or key-fob.

(5) "Service contract holder" or "contract holder" means a person who purchases a service contract.

(6) "Service contract provider" means a person who issues, makes, provides, administers, sells or offers to sell a service contract, or who is contractually obligated to provide service under a service contract.

(7) "Service contract reimbursement policy" or "reimbursement insurance policy" means a policy of insurance providing coverage for all obligations and liabilities incurred by the service contract provider or warrantor under the terms of the service contract or vehicle protection product warranty issued by the provider or warrantor.

(8) (a) "Vehicle protection product" means a device or system that is:

- (i) installed on or applied to a motor vehicle; and
- (ii) designed to prevent the theft of the vehicle.

(b) "Vehicle protection product" includes:

- (i) a vehicle protection product warranty;
- (ii) an alarm system;
- (iii) a body part marking product;
- (iv) a steering lock;
- (v) a window etch product;
- (vi) a pedal and ignition lock;
- (vii) a fuel and ignition kill switch; and
- (viii) an electronic, radio, or satellite tracking device.

(9) "Vehicle protection product warranty" means a written agreement by a warrantor that provides if the vehicle protection product fails to prevent the theft of the motor vehicle, that the warrantor will reimburse the warranty holder under the warranty in a fixed amount specified in the warranty, not to exceed \$5,000.

(10) "Warrantor" means a person who is contractually obligated to the warranty holder under the terms of a vehicle protection product warranty.

(11) "Warranty holder" means the person who purchases a vehicle protection product, any authorized transferee or assignee of the purchaser, or any other person legally assuming the purchaser's rights under the vehicle protection product warranty.

CHAPTER 28**S. B. 57**

Passed February 6, 2017
 Approved March 15, 2017
 Effective May 9, 2017

**WORKERS' COMPENSATION
 RELATED PREMIUM ASSESSMENTS**

Chief Sponsor: Karen Mayne
 House Sponsor: James A. Dunnigan

LONG TITLE**General Description:**

This bill addresses workers' compensation related premium assessments.

Highlighted Provisions:

This bill:

- ▶ changes certain dates; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-9-101, as last amended by Laws of Utah 2016, Chapter 135

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

Section 1. Section 59-9-101 is amended to read:**59-9-101. Tax basis -- Rates -- Exemptions -- Rate reductions.**

(1) (a) Except as provided in Subsection (1)(b), (1)(d), or (5), an admitted insurer shall pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the total premiums received by it during the preceding calendar year from insurance covering property or risks located in this state.

(b) This Subsection (1) does not apply to:

- (i) workers' compensation insurance, assessed under Subsection (2);
- (ii) title insurance premiums taxed under Subsection (3);
- (iii) annuity considerations;
- (iv) insurance premiums paid by an institution within the state system of higher education as specified in Section 53B-1-102; and
- (v) ocean marine insurance.

(c) The taxable premium under this Subsection (1) shall be reduced by:

- (i) the premiums returned or credited to policyholders on direct business subject to tax in this state;
- (ii) the premiums received for reinsurance of property or risks located in this state; and

(iii) the dividends, including premium reduction benefits maturing within the year:

(A) paid or credited to policyholders in this state; or

(B) applied in abatement or reduction of premiums due during the preceding calendar year.

(d) (i) For purposes of this Subsection (1)(d):

(A) "Utah variable life insurance premium" means an insurance premium paid:

(I) by:

(Aa) a corporation; or

(Bb) a trust established or funded by a corporation; and

(II) for variable life insurance covering risks located within the state.

(B) "Variable life insurance" means an insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of one or more separate accounts that are established and maintained by the insurer pursuant to Title 31A, Insurance Code.

(ii) Notwithstanding Subsection (1)(a), beginning on January 1, 2006, the tax on that portion of the total premiums subject to a tax under Subsection (1)(a) that is a Utah variable life insurance premium shall be calculated as follows:

(A) 2-1/4% of the first \$100,000 of Utah variable life insurance premiums:

(I) paid for each variable life insurance policy; and

(II) received by the admitted insurer in the preceding calendar year; and

(B) [~~0.08%~~] .08% of the Utah variable life insurance premiums that exceed \$100,000:

(I) paid for the policy described in Subsection (1)(d)(ii)(A); and

(II) received by the admitted insurer in the preceding calendar year.

(2) (a) An admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund, shall pay to the tax commission, on or before March 31 in each year, a premium assessment on the basis of the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year as follows:

(i) on or before December 31, 2010, an amount of equal to or greater than 1%, but equal to or less than 5.75% of the total workers' compensation premium income described in this Subsection (2);

(ii) on and after January 1, 2011, but on or before December 31, [~~2017~~] 2022, an amount of equal to or greater than 1%, but equal to or less than 4.25% of the total workers' compensation premium income described in this Subsection (2); and

(iii) on and after January 1, [~~2018~~] 2023, an amount equal to 1.25% of the total workers'

compensation premium income described in this Subsection (2).

(b) Total workers' compensation premium income means the net written premium as calculated before any premium reduction for any insured employer's deductible, retention, or reimbursement amounts and also those amounts equivalent to premiums as provided in Section 34A-2-202.

(c) The percentage of premium assessment applicable for a calendar year shall be determined by the Labor Commission under Subsection (2)(d). The total premium income shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not as provided in Subsection (1)(c)(iii). The commission shall promptly remit from the premium assessment collected under this Subsection (2):

(i) income to the state treasurer for credit to the Employers' Reinsurance Fund created under Subsection 34A-2-702(1) as follows:

(A) on or before December 31, 2009, an amount of up to 5% of the total workers' compensation premium income;

(B) on and after January 1, 2010, but on or before December 31, 2010, an amount of up to 4.5% of the total workers' compensation premium income;

(C) on and after January 1, 2011, but on or before December 31, ~~2017~~ 2022, an amount of up to 3% of the total workers' compensation premium income; and

(D) on and after January 1, ~~2018~~ 2023, 0% of the total workers' compensation premium income;

(ii) an amount equal to ~~0.25%~~ .25% of the total workers' compensation premium income to the state treasurer for credit to the Workplace Safety Account created by Section 34A-2-701;

(iii) an amount of up to ~~0.5%~~ .5% and any remaining assessed percentage of the total workers' compensation premium income to the state treasurer for credit to the Uninsured Employers' Fund created under Section 34A-2-704; and

(iv) beginning on January 1, 2010, ~~0.5%~~ .5% of the total workers' compensation premium income to the state treasurer for credit to the Industrial Accident Restricted Account created in Section 34A-2-705.

(d) (i) The Labor Commission shall determine the amount of the premium assessment for each year on or before each October 15 of the preceding year. The Labor Commission shall make this determination following a public hearing. The determination shall be based upon the recommendations of a qualified actuary.

(ii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Employers' Reinsurance Fund and to project a funded condition with assets greater than liabilities by no later than June 30, 2025.

(iii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a funded condition with assets equal to or greater than liabilities.

(iv) At the end of each fiscal year the minimum approximate assets in the Employers' Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(v) The requirements of Subsection (2)(d)(iv) cease when the future annual disbursements from the Employers' Reinsurance Fund are projected to be less than the calculations of the corresponding future minimum required assets. The Labor Commission shall, after a public hearing, determine if the future annual disbursements are less than the corresponding future minimum required assets from projections provided by the actuary.

(vi) At the end of each fiscal year the minimum approximate assets in the Uninsured Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(e) A premium assessment that is to be transferred into the General Fund may be collected on premiums received from Utah public agencies.

(3) An admitted insurer writing title insurance in this state shall pay to the commission, on or before March 31 in each year, a tax of .45% of the total premium received by either the insurer or by its agents during the preceding calendar year from title insurance concerning property located in this state. In calculating this tax, "premium" includes the charges made to an insured under or to an applicant for a policy or contract of title insurance for:

(a) the assumption by the title insurer of the risks assumed by the issuance of the policy or contract of title insurance; and

(b) abstracting title, title searching, examining title, or determining the insurability of title, and every other activity, exclusive of escrow, settlement, or closing charges, whether denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title insurance producer, or any of them.

(4) Beginning July 1, 1986, a former county mutual and a former mutual benefit association shall pay the premium tax or assessment due under this chapter. Premiums received after July 1, 1986, shall be considered in determining the tax or assessment.

(5) The following insurers are not subject to the premium tax on health care insurance that would otherwise be applicable under Subsection (1):

(a) an insurer licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(b) an insurer licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance Corporations;

(c) an insurer licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(d) an insurer licensed under Title 31A, Chapter 9, Insurance Fraternal;

(e) an insurer licensed under Title 31A, Chapter 11, Motor Clubs; and

~~[(f) an insurer licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans; and]~~

~~[(g)]~~ (f) an insurer licensed under Title 31A, Chapter 14, Foreign Insurers.

(6) An insurer issuing multiple policies to an insured may not artificially allocate the premiums among the policies for purposes of reducing the aggregate premium tax or assessment applicable to the policies.

(7) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and Taxes, apply to the tax or assessment imposed under this chapter.

CHAPTER 29**S. B. 85**

Passed February 8, 2017
 Approved March 15, 2017
 Effective May 9, 2017

AMENDMENTS TO CHILD WELFARE

Chief Sponsor: Wayne A. Harper
 House Sponsor: Stewart E. Barlow

LONG TITLE**General Description:**

This bill amends the numerical limits of foster children residing in a foster home.

Highlighted Provisions:

This bill:

- ▶ amends the definition of “foster home”; and
- ▶ allows the division to exceed the numerical limit of foster children placed in a foster home to permit a sibling group who re-enters foster care to return to a previous foster home.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-2-101, as last amended by Laws of Utah 2016, Chapters 122, 211, and 342

ENACTS:

62A-2-116.5, Utah Code Annotated 1953

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

Section 1. Section 62A-2-101 is amended to read:**62A-2-101. Definitions.**

As used in this chapter:

(1) “Adult day care” means nonresidential care and supervision:

(a) for three or more adults for at least four but less than 24 hours a day; and

(b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(2) “Applicant” means a person who applies for an initial license or a license renewal under this chapter.

(3) (a) “Associated with the licensee” means that an individual is:

(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or

(ii) applying to become affiliated with a licensee in a capacity described in Subsection (3)(a)(i).

(b) “Associated with the licensee” does not include:

(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:

(A) a local mental health authority described in Section 17-43-301;

(B) a local substance abuse authority described in Section 17-43-201; or

(C) a board of an organization operating under a contract to provide mental health or substance abuse programs, or services for the local mental health authority or substance abuse authority; or

(ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised at all times.

(4) (a) “Boarding school” means a private school that:

(i) uses a regionally accredited education program;

(ii) provides a residence to the school’s students:

(A) for the purpose of enabling the school’s students to attend classes at the school; and

(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school’s students with an education, as defined in Subsection (4)(b)(i); and

(iv) (A) does not provide the treatment or services described in Subsection (28)(a); or

(B) provides the treatment or services described in Subsection (28)(a) on a limited basis, as described in Subsection (4)(b)(ii).

(b) (i) For purposes of Subsection (4)(a)(iii), “education” means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or services described in Subsection (28)(a) on a limited basis if:

(A) the treatment or services described in Subsection (28)(a) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (28)(a); or

(II) have a primary purpose of providing the treatment or services described in Subsection (28)(a).

(c) “Boarding school” does not include a therapeutic school.

(5) “Child” means a person under 18 years of age.

(6) “Child placing” means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:

(a) finding a person to adopt the child;

(b) placing the child in a home for adoption; or

- (c) foster home placement.
- (7) “Client” means an individual who receives or has received services from a licensee.
- (8) “Day treatment” means specialized treatment that is provided to:
- (a) a client less than 24 hours a day; and
 - (b) four or more persons who:
 - (i) are unrelated to the owner or provider; and
 - (ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.
- (9) “Department” means the Department of Human Services.
- (10) “Department contractor” means an individual who:
- (a) provides services under a contract with the department; and
 - (b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.
- (11) “Direct access” means that an individual has, or likely will have:
- (a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or
 - (b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child’s parents or legal guardians, or the vulnerable adult.
- (12) “Directly supervised” means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.
- (13) “Director” means the director of the Office of Licensing.
- (14) “Domestic violence” means the same as that term is defined in Section 77-36-1.
- (15) “Domestic violence treatment program” means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.
- (16) “Elder adult” means a person 65 years of age or older.
- (17) “Executive director” means the executive director of the department.
- (18) “Foster home” means a ~~temporary residential living environment for the care of;~~ residence that is licensed or certified by the Office of Licensing for the full-time substitute care of a child.
- ~~[(a) (i) fewer than five foster children in the home of a licensed foster parent; or]~~
- ~~[(ii) five or more foster children in the home of a licensed foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group; or]~~
- ~~[(b) (i) fewer than four foster children in the home of a certified foster parent; or]~~
- ~~[(ii) four or more foster children in the home of a certified foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group.]~~
- (19) (a) “Human services program” means a:
- (i) foster home;
 - (ii) therapeutic school;
 - (iii) youth program;
 - (iv) resource family home;
 - (v) recovery residence; or
 - (vi) facility or program that provides:
 - (A) secure treatment;
 - (B) inpatient treatment;
 - (C) residential treatment;
 - (D) residential support;
 - (E) adult day care;
 - (F) day treatment;
 - (G) outpatient treatment;
 - (H) domestic violence treatment;
 - (I) child placing services;
 - (J) social detoxification; or
 - (K) any other human services that are required by contract with the department to be licensed with the department.
- (b) “Human services program” does not include a boarding school.
- (20) “Licensee” means an individual or a human services program licensed by the office.
- (21) “Local government” means a city, town, metro township, or county.
- (22) “Minor” has the same meaning as “child.”
- (23) “Office” means the Office of Licensing within the Department of Human Services.
- (24) “Outpatient treatment” means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.
- (25) (a) “Recovery residence” means a home, residence, or facility that meets at least two of the following requirements:

(i) provides a supervised living environment for individuals recovering from a substance abuse disorder;

(ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance abuse disorder;

(iii) provides or arranges for residents to receive services related to their recovery from a substance abuse disorder, either on or off site;

(iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or

(v) (A) receives public funding; or

(B) is run as a business venture, either for-profit or not-for-profit.

(b) "Recovery residence" does not mean:

(i) a residential treatment program;

(ii) residential support; or

(iii) a home, residence, or facility, in which:

(A) residents, by their majority vote, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;

(B) residents equitably share rent and housing-related expenses; and

(C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.

(26) "Regular business hours" means:

(a) the hours during which services of any kind are provided to a client; or

(b) the hours during which a client is present at the facility of a licensee.

(27) (a) "Residential support" means arranging for or providing the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) "Residential support" includes providing a supervised living environment for persons with dysfunctions or impairments that are:

(i) emotional;

(ii) psychological;

(iii) developmental; or

(iv) behavioral.

(c) Treatment is not a necessary component of residential support.

(d) "Residential support" does not include:

(i) a recovery residence; or

(ii) residential services that are performed:

(A) exclusively under contract with the Division of Services for People with Disabilities; or

(B) in a facility that serves fewer than four individuals.

(28) (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) "Residential treatment" does not include a:

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

(29) "Residential treatment program" means a human services program that provides:

(a) residential treatment; or

(b) secure treatment.

(30) (a) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.

(b) "Secure treatment" differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures that are imposed on residents with neither their consent nor control.

(31) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

(a) room and board for persons who are unrelated to the owner or manager of the facility;

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

(32) "Substance abuse treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

(iii) habilitation services; and

(b) that provides the treatment or services described in Subsection (32)(a) to persons with:

(i) a diagnosed substance abuse disorder; or

(ii) chemical dependency disorder.

(33) “Therapeutic school” means a residential group living facility:

(a) for four or more individuals that are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to:

(I) a disability;

(II) emotional development;

(III) behavioral development;

(IV) familial development; or

(V) social development.

(34) “Unrelated persons” means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

(35) “Vulnerable adult” means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person’s ability to:

(a) provide personal protection;

(b) provide necessities such as food, shelter, clothing, or mental or other health care;

(c) obtain services necessary for health, safety, or welfare;

(d) carry out the activities of daily living;

(e) manage the adult’s own resources; or

(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(36) (a) “Youth program” means a nonresidential program designed to provide behavioral, substance abuse, or mental health services to minors that:

(i) serves adjudicated or nonadjudicated youth;

(ii) charges a fee for its services;

(iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;

(iv) may or may not provide all or part of its services in the outdoors;

(v) may or may not limit or censor access to parents or guardians; and

(vi) prohibits or restricts a minor’s ability to leave the program at any time of the minor’s own free will.

(b) “Youth program” does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

Section 2. Section 62A-2-116.5 is enacted to read:

62A-2-116.5. Numerical limit of foster children in a foster home.

(1) Except as provided in Subsection (2) or (3), no more than:

(a) four foster children may reside in the foster home of a licensed foster parent; or

(b) three foster children may reside in the foster home of a certified foster parent.

(2) When placing a sibling group into a foster home, the limits in Subsection (1) may be exceeded if:

(a) no other foster children reside in the foster home;

(b) only one other foster child resides in the foster home at the time of a sibling group’s placement into the foster home; or

(c) a sibling group re-enters foster care and is placed into the foster home where the sibling group previously resided.

(3) When placing a child into a foster home, the limits in Subsection (1) may be exceeded:

(a) to place a child into a foster home where a sibling of the child currently resides; or

(b) to place a child in a foster home where the child previously resided.

CHAPTER 30**S. B. 102**

Passed March 2, 2017

Approved March 15, 2017

Effective May 9, 2017

UTAH STUDENT PRIVACY ACT

Chief Sponsor: Karen Mayne

House Sponsor: Eric K. Hutchings

LONG TITLE**General Description:**

This bill enacts provisions regarding access to education records.

Highlighted Provisions:

This bill:

- ▶ provides that a local school board or charter school governing board require a public school to make a list of individuals who are authorized to access education records;
- ▶ requires a local school governing board or charter school governing board to:
 - provide training on student privacy laws; and
 - require individuals who are authorized to access education records to complete training on student privacy laws and certify to the local school board or the charter school governing board that they have completed the required training and understand student privacy requirements; and
- ▶ prohibits a local school board, charter school governing board, public school, or school employee from sharing an education record with a school employee who is not authorized.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-1-708, as last amended by Laws of Utah 2016, Chapters 144 and 221

53A-11a-203, as last amended by Laws of Utah 2016, Chapter 221

53A-13-301, as last amended by Laws of Utah 2016, Chapter 221

ENACTS:

53A-13-303, Utah Code Annotated 1953

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

Section 1. Section 53A-1-708 is amended to read:**53A-1-708. Grants for online delivery of U-PASS tests.**

(1) As used in this section:

(a) "Adaptive tests" means tests administered during the school year using an online adaptive test system.

(b) "Core standards for Utah public schools" means the standards developed and adopted by the State Board of Education that define the knowledge and skills students should have in kindergarten

through grade 12 to enable students to be prepared for college or workforce training.

(c) "Summative tests" means tests administered near the end of a course to assess overall achievement of course goals.

(d) "Uniform online summative test system" means a single system for the online delivery of summative tests required under U-PASS that:

- (i) is coordinated by the State Board of Education;
- (ii) ensures the reliability and security of U-PASS tests; and

(iii) is selected through collaboration between the State Board of Education and school district representatives with expertise in technology, assessment, and administration.

(e) "U-PASS" means the Utah Performance Assessment System for Students.

(2) The State Board of Education may award grants to school districts and charter schools to implement [one or both of the following]:

(a) a uniform online summative test system to enable [~~parents of students and~~ school staff and parents of students to review U-PASS test scores by the end of the school year; or

(b) an online adaptive test system to enable parents of students and school staff to measure and monitor a student's academic progress during a school year.

(3) (a) Grant money may be used to pay for any of the following, provided it is directly related to implementing a uniform online summative test system, an online adaptive test system, or both:

- (i) computer equipment and peripherals, including electronic data capture devices designed for electronic test administration and scoring;
- (ii) software;
- (iii) networking equipment;
- (iv) upgrades of existing equipment or software;
- (v) upgrades of existing physical plant facilities;
- (vi) personnel to provide technical support or coordination and management; and
- (vii) teacher professional development.

(b) Equipment purchased in compliance with Subsection (3)(a), when not in use for the online delivery of summative tests or adaptive tests required under U-PASS may be used for other purposes.

(4) [~~The~~] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules:

- (a) establishing procedures for applying for and awarding grants;
- (b) specifying how grant money [~~shall be~~] is allocated among school districts and charter schools;

(c) requiring reporting of grant money expenditures and evidence showing that the grant money has been used to implement a uniform online summative test system, an online adaptive test system, or both;

(d) establishing technology standards for an online adaptive testing system;

(e) requiring a school district or charter school that receives a grant under this section to implement, in compliance with ~~Chapter 1,~~ Part 14, Student Data Protection Act, and Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act, an online adaptive test system by the 2014-15 school year that:

(i) meets the technology standards established under Subsection (4)(d); and

(ii) is aligned with the core standards for Utah public schools;

(f) requiring a school district or charter school to provide matching funds to implement a uniform online summative test system, an online adaptive test system, or both in an amount that is greater than or equal to the amount of a grant received under this section; and

(g) ensuring that student identifiable data is not released to any person, except as provided by ~~Chapter 1,~~ Part 14, Student Data Protection Act, ~~Section 53A-13-301~~ Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act, and rules of the State Board of Education adopted under ~~that section~~ the authority of those parts.

(5) If a school district or charter school uses grant money for purposes other than those stated in Subsection (3), the school district or charter school is liable for reimbursing the State Board of Education in the amount of the grant money improperly used.

(6) A school district or charter school may not use federal funds to provide the matching funds required to receive a grant under this section.

(7) A school district may not impose a tax rate above the certified tax rate for the purpose of generating revenue to provide matching funds for a grant under this section.

Section 2. Section 53A-11a-203 is amended to read:

53A-11a-203. Parental notification of certain incidents and threats required.

(1) For purposes of this section, "parent" includes a student's guardian.

(2) A school shall:

(a) notify a parent if the parent's student threatens to commit suicide; or

(b) notify the parents of each student involved in an incident of bullying, cyber-bullying, harassment, hazing, or retaliation, of the incident involving each parent's student.

(3) (a) If a school notifies a parent of an incident or threat required to be reported under Subsection (2), the school shall produce and maintain a record that verifies that the parent was notified of the incident or threat.

(b) A school shall maintain a record described in Subsection (3)(a) in accordance with the requirements of:

(i) Chapter 1, Part 14, Student Data Protection Act;

~~(ii) Sections 53A-13-301 and 53A-13-302;~~

(ii) Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act;

(iii) ~~Federal~~ the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; and

(iv) 34 C.F.R. Part 99.

(4) A local school board or charter school governing board shall adopt a policy regarding the process for:

(a) notifying a parent as required in Subsection (2); and

(b) producing and retaining a record that verifies that a parent was notified of an incident or threat as required in Subsection (3).

(5) At the request of a parent, a school may provide information and make recommendations related to an incident or threat described in Subsection (2).

(6) A school shall:

(a) provide a student a copy of a record maintained in accordance with this section that relates to the student if the student requests a copy of the record; and

(b) expunge a record maintained in accordance with this section that relates to a student if the student:

(i) has graduated from high school; and

(ii) requests the record be expunged.

Section 3. Section 53A-13-301 is amended to read:

53A-13-301. Application of state and federal law to the administration and operation of public schools -- Local school board and charter school governing board policies.

(1) As used in this section "education entity" means:

(a) the State Board of Education;

(b) a local school board or charter school governing board;

(c) a school district;

(d) a public school; or

(e) the Utah Schools for the Deaf and the Blind.

(2) An education entity and an employee, student aide, volunteer, third party contractor, or other

agent of an education entity shall protect the privacy of a student, the student's parents, and the student's family and support parental involvement in the education of their children through compliance with the protections provided for family and student privacy under ~~[Section 53A-13-302]~~ this part and the Family Educational Rights and Privacy Act and related provisions under 20 U.S.C. Secs. 1232g and 1232h, in the administration and operation of all public school programs, regardless of the source of funding.

(3) A local school board or charter school governing board shall enact policies governing the protection of family and student privacy as required by this ~~[section and Section 53A-13-302]~~ part.

Section 4. Section 53A-13-303 is enacted to read:

53A-13-303. Access to education records -- Training requirement -- Certification.

(1) As used in this section, "education record" means the same as that term is defined in the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g.

(2) A local school board or charter school governing board shall require each public school to:

(a) create and maintain a list that includes the name and position of each school employee who the public school authorizes, in accordance with Subsection (4), to have access to an education record; and

(b) provide the list described in Subsection (2)(a) to the school's local school board or charter school governing board.

(3) A local school board or charter school governing board shall:

(a) provide training on student privacy laws; and

(b) require a school employee on the list described in Subsection (2) to:

(i) complete the training described in Subsection (3)(a); and

(ii) provide to the local school board or charter school governing board a certified statement, signed by the school employee, that certifies that the school employee completed the training described in Subsection (3)(a) and that the school employee understands student privacy requirements.

(4) (a) Except as provided in Subsection (4)(b), a local school board, charter school governing board, public school, or school employee may only share an education record with a school employee if:

(i) that school employee's name is on the list described in Subsection (2); and

(ii) federal and state privacy laws authorize the education record to be shared with that school employee.

(b) A local school board, charter school governing board, public school, or school employee may share

an education record with a school employee if the board, school, or employee obtains written consent from:

(i) the parent or legal guardian of the student to whom the education record relates, if the student is younger than 18 years old; or

(ii) the student to whom the education record relates, if the student is 18 years old or older.

CHAPTER 31**H. B. 15**

Passed March 6, 2017
 Approved March 17, 2017
 Effective May 9, 2017

ALIMONY AMENDMENTS

Chief Sponsor: Keven J. Stratton
 Senate Sponsor: Lyle W. Hillyard

LONG TITLE**General Description:**

This bill amends provisions related to the Utah Child Support Act.

Highlighted Provisions:

This bill:

- ▶ provides that the court shall consider whether a parent has lost workplace experience opportunities while caring for a child.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

30-3-5, as last amended by Laws of Utah 2013, Chapters 264 and 373

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

Section 1. Section 30-3-5 is amended to read:

30-3-5. Disposition of property -- Maintenance and health care of parties and children -- Division of debts -- Court to have continuing jurisdiction -- Custody and parent-time -- Determination of alimony -- Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children including responsibility for health insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

(b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children; and

(ii) a designation of which health, hospital, or dental insurance plan is primary and which health, hospital, or dental insurance plan is secondary in accordance with the provisions of Section 30-3-5.4 which will take effect if at any time a dependent

child is covered by both parents' health, hospital, or dental insurance plans;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders;

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services; and

(e) if either party owns a life insurance policy or an annuity contract, an acknowledgment by the court that the owner:

(i) has reviewed and updated, where appropriate, the list of beneficiaries;

(ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries after the divorce becomes final; and

(iii) understands that if no changes are made to the policy or contract, the beneficiaries currently listed will receive any funds paid by the insurance company under the terms of the policy or contract.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) Child support, custody, visitation, and other matters related to children born to the mother and father after entry of the decree of divorce may be added to the decree by modification.

(5) (a) In determining parent-time rights of parents and visitation rights of grandparents and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a parent-time or visitation schedule a provision, among other things,

authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

(8) (a) The court shall consider at least the following factors in determining alimony:

(i) the financial condition and needs of the recipient spouse;

(ii) the recipient's earning capacity or ability to produce income, including the impact of diminished workplace experience resulting from primarily caring for a child of the payor spouse;

(iii) the ability of the payor spouse to provide support;

(iv) the length of the marriage;

(v) whether the recipient spouse has custody of minor children requiring support;

(vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and

(vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or enabling the payor spouse to attend school during the marriage.

(b) The court may consider the fault of the parties in determining whether to award alimony and the terms thereof.

(c) "Fault" means any of the following wrongful conduct during the marriage that substantially contributed to the breakup of the marriage relationship:

(i) engaging in sexual relations with a person other than the party's spouse;

(ii) knowingly and intentionally causing or attempting to cause physical harm to the other party or minor children;

(iii) knowingly and intentionally causing the other party or minor children to reasonably fear life-threatening harm; or

(iv) substantially undermining the financial stability of the other party or the minor children.

(d) The court may, when fault is at issue, close the proceedings and seal the court records.

(e) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(f) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(g) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(h) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(i) (i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(j) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(9) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of

alimony shall resume if the party paying alimony is made a party to the action of annulment and the payor party's rights are determined.

(10) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

CHAPTER 32**H. B. 16**

Passed March 8, 2017
Approved March 17, 2017
Effective May 9, 2017

VOTING REVISIONS

Chief Sponsor: Brad M. Daw
Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill addresses the certification and purchase of new voting equipment.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ reorganizes existing code related to the selection of voting equipment;
- ▶ changes the requirements by which voting equipment is certified;
- ▶ modifies the authority of a Voting Equipment Selection Committee; and
- ▶ creates the Voting Equipment Grant Program.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to the Governor's Office -- Lieutenant Governor's Office, as a one-time appropriation:
 - from the General Fund, \$275,000, subject to intent language stating that the appropriation is non-lapsing and restricting the use of funds to a specific program.

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

631-2-220, as last amended by Laws of Utah 2016, Chapters 28 and 348

ENACTS:

20A-5-801, Utah Code Annotated 1953

20A-5-804, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

20A-5-802, (Renumbered from 20A-5-402.5, as last amended by Laws of Utah 2010, Chapter 8)

20A-5-803, (Renumbered from 20A-5-402.7, as last amended by Laws of Utah 2010, Chapter 286)

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

Section 1. Section 20A-5-801 is enacted to read:**Part 8. Voting Equipment Selection and Certification****20A-5-801. Definitions.**

As used in this part:

(1) "New voting equipment system" means voting equipment that is operated in a materially different way or that functions in a materially different way than the equipment being replaced.

(2) "Voting equipment" means the following equipment used for an election:

- (a) automatic tabulating equipment;
- (b) an electronic voting system;
- (c) a voting device; or
- (d) a voting machine.

Section 2. Section 20A-5-802, which is renumbered from Section 20A-5-402.5 is renumbered and amended to read:**[20A-5-402.5]. 20A-5-802. Certification of voting equipment.**

~~[(1) As used in this section, "voting equipment" means automatic tabulating equipment, electronic voting systems, voting devices, and voting machines.]~~

~~[(2) Each election officer shall ensure that:]~~

~~[(a) the voting equipment used by the election officer is certified by the Election Assistance Commission; and]~~

(1) For the voting equipment used in the jurisdiction over which an election officer has authority, the election officer shall:

(a) before each election, use logic and accuracy tests to ensure that the voting equipment performs the voting equipment's functions accurately;

(b) develop and implement a procedure to protect the physical security of the voting equipment; and

~~[(b)]~~ (c) ensure that the voting equipment is certified by the lieutenant governor under Subsection (2) as having met the requirements of this section.

~~[(3)]~~ (2) (a) The lieutenant governor shall ensure that all voting equipment used ~~[complies with the requirements of this section.]~~ in the state is independently tested using security testing protocols and standards that:

(i) are generally accepted in the industry at the time the lieutenant governor reviews the voting equipment for certification; and

(ii) meet the requirements of Subsection (2)(b).

(b) The testing protocols and standards described in Subsection (2)(a) shall require that a voting system:

(i) is accurate and reliable;

(ii) possesses established and maintained access controls;

(iii) has not been fraudulently manipulated or tampered with;

(iv) is able to identify fraudulent or erroneous changes to the voting equipment; and

(v) protects the secrecy of a voter's ballot.

(c) The lieutenant governor may comply with the requirements of Subsection (2)(a) by certifying voting equipment that has been certified by:

(i) the United States Election Assistance Commission; or

(ii) a laboratory that has been accredited by the United States Election Assistance Commission to test voting equipment.

(d) Voting equipment used in the state may include technology that allows for ranked-choice voting.

Section 3. Section 20A-5-803, which is renumbered from Section 20A-5-402.7 is renumbered and amended to read:

[20A-5-402.7]. 20A-5-803. Voting Equipment Selection Committee.

[(1) As used in this section, "new voting equipment system" means voting equipment that is operated in a materially different way or that functions in a materially different way than the equipment being replaced.]

[(2)] (1) Before selecting or purchasing a new voting equipment system [after January 1, 2007], the lieutenant governor shall:

(a) appoint a Voting Equipment Selection Committee; and

(b) ensure that the committee includes persons having experience in:

- (i) election procedures and administration;
- (ii) computer technology;
- (iii) data security;
- (iv) auditing; and
- (v) access for persons with disabilities.

[(3)] (2) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

[(4)] (3) The lieutenant governor shall select a chair from the committee membership.

[(5)] (4) The lieutenant governor may fill any vacancies that occur on the committee.

[(6) The lieutenant governor's office]

(5) The Office of the Lieutenant Governor shall provide staffing for the committee.

[(7)] (6) The Voting Equipment Selection Committee shall:

- (a) evaluate new voting equipment systems proposed for purchase by the state; and
- (b) provide information and recommendations to assist the lieutenant governor with the purchase of new voting equipment systems.

[(8)] (7) The lieutenant governor may designate individuals, including committee members, to inspect and review proprietary software as part of an evaluation of new voting equipment systems under consideration for purchase.

(8) (a) The Voting Equipment Selection Committee may establish requirements for a new voting equipment system purchased under Section 20A-5-804 through the Voting Equipment Grant Program.

(b) A requirement established under Subsection (8)(a) is not binding unless the recommendation:

(i) is consistent with the requirements described in Section 20A-5-804 for the Voting Equipment Grant Program; and

(ii) specifically states that the recommendation is for voting equipment purchased through the Voting Equipment Grant Program.

(9) Before making any selection or purchase, the lieutenant governor shall provide for a period of public review and comment on new voting equipment systems under consideration for purchase by the state.

Section 4. Section 20A-5-804 is enacted to read:

20A-5-804. Voting Equipment Grant Program -- Qualifications for receipt -- Matching funds -- Acceptable uses.

(1) As used in this section:

(a) "Program" means the Voting Equipment Grant Program created in this section.

(b) "Proportional reimbursement rate" means the dollar amount equal to the product of:

(i) the total amount of funds appropriated by the Legislature to the program; and

(ii) the quotient of:

(A) the total number of active voters in a county; and

(B) the total number of registered voters in the state.

(2) (a) There is created the Voting Equipment Grant Program as a grant program to assist counties in purchasing new voting equipment systems.

(b) The lieutenant governor shall administer the program using funds appropriated by the Legislature for the purpose of administering the program.

(3) (a) After January 1, 2018, a county may submit a proposal to the Office of the Lieutenant Governor to participate in and receive funds from the program.

(b) A proposal described in Subsection (3)(a) shall:

(i) describe the current condition of the voting equipment used by the county;

(ii) describe the county's need for a new voting equipment system;

(iii) describe how the county plans to comply with the requirements described in Subsection (4), including:

(A) a description of how the county plans to provide the matching funds described in Subsection (4)(b) if the proposal is accepted; and

(B) a schedule by which the requirements will be met; and

(iv) contain a detailed estimate of the gross cost of procuring a new voting equipment system.

(4) A county that receives funds through a program grant:

(a) shall use the funds to purchase a new voting equipment system that:

(i) meets the requirements of Section 20A-5-802;

(ii) creates a secure and auditable paper record of each vote; and

(iii) complies with any additional binding requirement made under Subsection 20A-5-803(8) by the Voting Equipment Selection Committee;

(b) shall, for the purpose of purchasing a new voting equipment system, appropriate matching funds equal to or greater than the difference of:

(i) the amount described in Subsection (3)(b)(iv) in the proposal that the lieutenant governor accepts under Subsection (6)(b); and

(ii) the amount the lieutenant governor is required to disburse to the county under Subsection (7)(a);

(c) may not use funds disbursed under Subsection (6)(b)(i)(D) or appropriated under Subsection (4)(b) for a purpose or in a manner that is not authorized by this section;

(d) except as provided in Subsection (5), may not, after using a new voting equipment system in an election that was purchased under this section, use voting equipment that does not meet the requirements described in Subsection (4)(a); and

(e) shall purchase a new voting equipment system described under Subsection (4)(a) that provides the best value to the county with consideration for the new voting equipment system's:

(i) cost of maintenance;

(ii) estimated operational lifetime; and

(iii) cost of replacement.

(5) A county that receives funds through the program may use voting equipment that does not comply with the requirements described in Subsection (4)(a)(ii) or (iii):

(a) to the extent that using the voting equipment is necessary to accommodate a person with a disability in accordance with the requirements described in Subsection 20A-3-302(6)(b),

20A-3-603(1)(c), 20A-5-303(8), or 20A-5-403(2)(b)(iii); or

(b) if the county purchased the voting equipment before receiving grant funds under Subsection (7)(a).

(6) Upon receipt of a proposal described in Subsection (3), the lieutenant governor shall:

(a) review the proposal to ensure that:

(i) the proposal complies with the requirements described in Subsection (3); and

(ii) the cost estimate described in Subsection (3)(b)(iv) appears to be reasonable; and

(b) (i) if the proposal complies with the requirements described in Subsection (3), the cost estimate appears to be reasonably accurate, and sufficient program funds are available:

(A) accept the proposal;

(B) notify the county clerk of the county that submitted the proposal that the proposal is accepted;

(C) notify the county clerk of the requirements described in Subsection (7); and

(D) disburse the funds described in Subsection (7)(a), in accordance with the requirements described in Subsection (7)(b), to the county that submitted the proposal; or

(ii) if the proposal does not comply with the requirements described in Subsection (3), the cost estimate does not appear to be reasonable, or sufficient program funds are not available:

(A) reject the proposal; and

(B) notify the county clerk of the county that submitted the proposal that the proposal is rejected, indicating the reason that the proposal is rejected.

(7) The lieutenant governor:

(a) shall disburse funds under Subsection (6)(b)(i)(D) equal to the lesser of:

(i) 50% of the amount described in Subsection (3)(b)(iv) in the proposal that the lieutenant governor accepts under Subsection (6)(b); or

(ii) the proportional reimbursement rate; and

(b) may not disburse funds under Subsection (6)(b)(i)(D):

(i) until the county appropriates the matching funds described in Subsection (4)(b); or

(ii) if the disbursement would cause the county's total receipt of funds from the program to exceed the proportional reimbursement rate.

Section 5. Section 63I-2-220 is amended to read:

63I-2-220. Repeal dates, Title 20A.

[On January 1, 2017:]

~~[(1) in Subsection 20A-1-102(71), the language that states “State Board of Education and” is repealed;]~~

~~[(2) in Subsection 20A-9-201(4)(a), the language that states “and State Board of Education candidates” is repealed;]~~

~~[(3) Subsection 20A-9-201(9) is repealed;]~~

~~[(4) in Subsection 20A-9-403(4)(c), the language that states “State Board of Education and” is repealed;]~~

~~[(5) in Subsection 20A-9-403(5)(a), the language that states “State Board of Education or” is repealed; and]~~

~~[(6) Section 20A-14-104 is repealed.]~~

(1) Subsection 20A-5-803(8) is repealed July 1, 2023.

(2) Section 20A-5-804 is repealed July 1, 2023.

Section 6. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To the Governor’s Office

<u>From General Fund, One-time</u>	<u>\$275,000</u>
<u>Schedule of Programs:</u>	

<u>Lieutenant Governor’s Office</u>	<u>\$275,000</u>
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The Legislature intends that:

(1) the Office of the Lieutenant Governor expend appropriations provided under this item to implement the Voting Equipment Grant Program created under Section 20A-5-804; and

(2) under Section 63J-1-603, appropriations provided by this item not lapse at the close of fiscal year 2018.

CHAPTER 33**H. B. 23**

Passed February 23, 2017

Approved March 17, 2017

Effective May 9, 2017

INCOME TAX CREDIT MODIFICATIONS

Chief Sponsor: Jeremy A. Peterson

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends the individual income tax credit for certain residential renewable energy systems.

Highlighted Provisions:

This bill:

- ▶ phases out the individual income tax credit for certain residential renewable energy systems; and
- ▶ amends the maximum individual income tax credit for certain residential renewable energy systems.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-10-1014, as last amended by Laws of Utah 2016, Third Special Session, Chapter 1

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

Section 1. Section 59-10-1014 is amended to read:**59-10-1014. Nonrefundable renewable energy systems tax credits -- Definitions -- Certification -- Rulemaking authority.**

(1) As used in this section:

(a) (i) "Active solar system" means a system of equipment that is capable of:

(A) collecting and converting incident solar radiation into thermal, mechanical, or electrical energy; and

(B) transferring a form of energy described in Subsection (1)(a)(i)(A) by a separate apparatus to storage or to the point of use.

(ii) "Active solar system" includes water heating, space heating or cooling, and electrical or mechanical energy generation.

(b) "Biomass system" means a system of apparatus and equipment for use in:

(i) converting material into biomass energy, as defined in Section 59-12-102; and

(ii) transporting the biomass energy by separate apparatus to the point of use or storage.

(c) "Direct use geothermal system" means a system of apparatus and equipment that enables the direct use of geothermal energy to meet energy

needs, including heating a building, an industrial process, and aquaculture.

(d) "Geothermal electricity" means energy that is:

(i) contained in heat that continuously flows outward from the earth; and

(ii) used as a sole source of energy to produce electricity.

(e) "Geothermal energy" means energy generated by heat that is contained in the earth.

(f) "Geothermal heat pump system" means a system of apparatus and equipment that:

(i) enables the use of thermal properties contained in the earth at temperatures well below 100 degrees Fahrenheit; and

(ii) helps meet heating and cooling needs of a structure.

(g) "Hydroenergy system" means a system of apparatus and equipment that is capable of:

(i) intercepting and converting kinetic water energy into electrical or mechanical energy; and

(ii) transferring this form of energy by separate apparatus to the point of use or storage.

(h) "Office" means the Office of Energy Development created in Section 63M-4-401.

(i) (i) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site.

(ii) "Passive solar system" includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(j) "Photovoltaic system" means an active solar system that generates electricity from sunlight.

~~(j)~~ (k) (i) "Principal recovery portion" means the portion of a lease payment that constitutes the cost a person incurs in acquiring a residential energy system.

(ii) "Principal recovery portion" does not include:

(A) an interest charge; or

(B) a maintenance expense.

~~(k)~~ (l) "Residential energy system" means the following used to supply energy to or for a residential unit:

(i) an active solar system;

(ii) a biomass system;

(iii) a direct use geothermal system;

(iv) a geothermal heat pump system;

(v) a hydroenergy system;

(vi) a passive solar system; or

(vii) a wind system.

~~[(4)]~~ (m) (i) “Residential unit” means a house, condominium, apartment, or similar dwelling unit that:

(A) is located in the state; and

(B) serves as a dwelling for a person, group of persons, or a family.

(ii) “Residential unit” does not include property subject to a fee under:

(A) Section 59-2-404;

(B) Section 59-2-405;

(C) Section 59-2-405.1;

(D) Section 59-2-405.2; or

(E) Section 59-2-405.3.

~~[(m)]~~ (n) “Wind system” means a system of apparatus and equipment that is capable of:

(i) intercepting and converting wind energy into mechanical or electrical energy; and

(ii) transferring these forms of energy by a separate apparatus to the point of use or storage.

(2) A claimant, estate, or trust may claim an energy system tax credit as provided in this section against a tax due under this chapter for a taxable year.

(3) ~~[(a) Subject to the other provisions of this Subsection (3),]~~ For a taxable year beginning on or before December 31, 2021, a claimant, estate, or trust may claim a nonrefundable tax credit under this ~~[Subsection (3)]~~ section with respect to a residential unit the claimant, estate, or trust owns or uses if:

~~[(4)]~~ (a) the claimant, estate, or trust:

~~[(A)]~~ (i) purchases and completes a residential energy system to supply all or part of the energy required for the residential unit; or

~~[(B)]~~ (ii) participates in the financing of a residential energy system to supply all or part of the energy required for the residential unit;

~~[(ii)]~~ (b) the residential energy system is ~~[completed and placed in service]~~ installed on or after January 1, 2007; and

~~[(iii)]~~ (c) the claimant, estate, or trust obtains a written certification from the office in accordance with Subsection ~~[(4)]~~ (5).

~~[(b) (i) Subject to Subsections (3)(b)(ii) through (vi), the tax credit is equal to]~~

(4) (a) For a residential energy system, other than a photovoltaic system, the tax credit described in this section is equal to the lesser of:

(i) 25% of the reasonable costs, including installation costs, of each residential energy system installed with respect to each residential unit the claimant, estate, or trust owns or uses; ~~[(ii) A tax credit under this Subsection (3) may include installation costs.]; and~~

(ii) \$2,000.

(b) Subject to Subsection (5)(d), for a residential energy system that is a photovoltaic system, the tax credit described in this section is equal to the lesser of:

(i) 25% of the reasonable costs, including installation costs, of each system installed with respect to each residential unit the claimant, estate, or trust owns or uses; or

(ii) (A) for a system installed on or after January 1, 2007, but before December 31, 2017, \$2,000;

(B) for a system installed on or after January 1, 2018, but on or before December 31, 2018, \$1,600;

(C) for a system installed on or after January 1, 2019, but on or before December 31, 2019, \$1,200;

(D) for a system installed on or after January 1, 2020, but on or before December 31, 2020, \$800; and

(E) for a system installed on or after January 1, 2021, but on or before December 31, 2021, \$400.

(c) (i) The office shall determine the amount of the tax credit that a claimant, estate, or trust may claim and list that amount on the written certification that the office issues under Subsection (5).

(ii) The claimant, estate, or trust may claim the tax credit in the amount listed on the written certification that the office issues under Subsection (5).

~~[(iii)]~~ (d) A claimant, estate, or trust may claim a tax credit under ~~[this]~~ Subsection (3) for the taxable year in which the residential energy system is ~~[completed and placed in service]~~ installed.

~~[(iv)]~~ (e) If the amount of a tax credit ~~[under this Subsection (3)]~~ listed on the written certification exceeds a claimant’s, estate’s, or trust’s tax liability under this chapter for a taxable year, the claimant, estate, or trust may carry forward the amount of the tax credit exceeding the liability ~~[may be carried forward]~~ for a period that does not exceed the next four taxable years.

~~[(v) The total amount of tax credit a claimant, estate, or trust may claim under this Subsection (3) may not exceed \$2,000 per residential unit.]~~

~~[(vi)]~~ (f) A claimant, estate, or trust may claim a tax credit with respect to additional residential energy systems or parts of residential energy systems for a subsequent taxable year if the total amount of tax credit the claimant, estate, or trust claims does not exceed \$2,000 per residential unit.

[(e)] (g) (i) Subject to Subsections ~~[(3)(e)]~~ (4)(g)(ii) and ~~(iii)~~, a claimant, estate, or trust that leases a residential energy system installed on a residential unit may claim a tax credit under ~~[this]~~ Subsection (3) if the claimant, estate, or trust confirms that the lessor irrevocably elects not to claim the tax credit.

(ii) A claimant, estate, or trust described in Subsection ~~[(3)(e)]~~ (4)(g)(i) that leases a residential energy system may claim as a tax credit under ~~[this]~~ Subsection (3) only the principal recovery portion of the lease payments.

(iii) A claimant, estate, or trust described in Subsection ~~[(3)(e)]~~ (4)(g)(i) that leases a residential energy system may claim a tax credit under ~~[this]~~ Subsection (3) for a period that does not exceed seven taxable years after the date the lease begins, as stated in the lease agreement.

~~[(4)]~~ (h) If a claimant, estate, or trust sells a residential unit to another person before the claimant, estate, or trust claims the tax credit under ~~[this]~~ Subsection (3):

(i) the claimant, estate, or trust may assign the tax credit to the other person; and

(ii) (A) if the other person files a return under Chapter 7, Corporate Franchise and Income Taxes, the other person may claim the tax credit as if the other person had met the requirements of Section 59-7-614 to claim the tax credit; or

(B) if the other person files a return under this chapter, the other person may claim the tax credit under this section as if the other person had met the requirements of this section to claim the tax credit.

~~[(4)]~~ (5) (a) Before a claimant, estate, or trust may claim a tax credit under this section, the claimant, estate, or trust shall obtain a written certification from the office.

(b) The office shall issue a claimant, estate, or trust a written certification if the office determines that:

(i) the claimant, estate, or trust meets the requirements of this section to receive a tax credit; and

(ii) the office determines that the residential energy system with respect to which the claimant, estate, or trust seeks to claim a tax credit:

(A) has been completely installed;

(B) is a viable system for saving or producing energy from renewable resources; and

(C) is safe, reliable, efficient, and technically feasible to ensure that the residential energy system uses the state's renewable and nonrenewable energy resources in an appropriate and economic manner.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules:

(i) for determining whether a residential energy system meets the requirements of Subsection ~~[(4)]~~ (5)(b)(ii); and

(ii) for purposes of determining the amount of a tax credit that a claimant, estate, or trust may receive under Subsection ~~[(3)]~~ (4), establishing the reasonable costs of a residential energy system, as an amount per unit of energy production.

(d) A claimant, estate, or trust that obtains a written certification from the office shall retain the certification for the same time period a person is required to keep books and records under Section 59-1-1406.

~~[(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to address the certification of a tax credit under this section.]~~

(6) A tax credit under this section is in addition to any tax credits provided under the laws or rules and regulations of the United States.

(7) A purchaser of one or more solar units that claims a tax credit under Section 59-10-1024 for the purchase of the one or more solar units may not claim a tax credit under this section for that purchase.

CHAPTER 34**H. B. 28**

Passed February 17, 2017

Approved March 17, 2017

Effective July 1, 2017

**PUBLIC EMPLOYEES LONG-TERM
DISABILITY ACT AMENDMENTS**

Chief Sponsor: Susan Duckworth

Senate Sponsor: Karen Mayne

LONG TITLE**General Description:**

This bill modifies the Public Employees' Long-Term Disability Act by amending provisions relating to long-term disability benefits.

Highlighted Provisions:

This bill:

- ▶ modifies the circumstances when a monthly long-term disability benefit shall be reduced or reimbursed;
- ▶ requires an eligible employee that is under a total disability to inform the Public Employees' Insurance Program of certain information;
- ▶ provides penalties if an eligible employee knowingly misrepresents or fails to disclose certain information; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

49-21-402, as last amended by Laws of Utah 2013, Chapter 316

ENACTS:

49-21-409, Utah Code Annotated 1953

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

Section 1. Section 49-21-402 is amended to read:**49-21-402. Reduction or reimbursement of benefit -- Circumstances -- Application for other benefits required.**

(1) A monthly disability benefit may be terminated unless:

(a) the eligible employee is under the ongoing care and treatment of a physician other than the eligible employee; and

(b) the eligible employee provides the information and documentation requested by the office.

(2) The monthly disability benefit shall be reduced or reimbursed by any amount received by, or payable to, the eligible employee from the following sources for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit:

(a) Social Security disability benefits, including all benefits received by the eligible employee, the

eligible employee's spouse, and the eligible employee's children as determined by the Social Security Administration;

(b) workers' compensation indemnity benefits;

(c) any money received by judgment, legal action, or settlement from a third party liable to the employee for the disability;

(d) unemployment compensation benefits;

(e) automobile no-fault, medical payments, or similar insurance payments;

(f) any money received by a judgment, settlement, or other payment as a result of a claim against an employer; ~~and~~

(g) any payments made for sick leave, annual leave, or similar payments~~[-]; and~~

(h) compensation received for employment, including self-employment, except for eligible amounts from approved rehabilitative employment in accordance with Section 49-21-406.

(3) The monthly disability benefit shall be reduced by any amount in excess of one-third of the eligible employee's regular monthly salary received by, or payable to, the eligible employee from the following sources for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit:

(a) any retirement payment earned through or provided by public or private employment; and

(b) any disability benefit resulting from the disability for which benefits are being received under this chapter.

(4) After the date of disability, cost-of-living increases to any of the benefits listed in Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability benefit.

(5) Any amounts payable to the eligible employee from one or more of the sources under Subsection (2) are considered as amounts received whether or not the amounts were actually received by the eligible employee.

(6) (a) An eligible employee shall first apply for all disability benefits from governmental entities under Subsection (2) to which the eligible employee is or may be entitled, and provide to the office evidence of the applications.

(b) If the eligible employee fails to make application under this Subsection (6), the monthly disability benefit shall be suspended.

(7) During a period of total disability, an eligible employee has an affirmative duty to keep the program informed regarding:

(a) the award or receipt of an amount from a source that could result in the monthly disability benefit being reduced or reimbursed under this section within 10 days of the award or receipt of the amount; and

(b) any employment, including self-employment, of the eligible employee and the compensation for

that employment within 10 days of beginning the employment or a material change in the compensation from that employment.

(8) The program shall use commercially reasonable means to collect any amounts of overpayments and reimbursements.

Section 2. Section 49-21-409 is enacted to read:

49-21-409. Violations -- Penalties.

In addition to other remedies provided in this title, if an eligible employee knowingly makes a material misrepresentation to the program or knowingly fails to disclose the award or receipt of amounts to the program as required under Section 49-21-402, the program may:

(1) suspend the monthly disability benefits to the eligible employee;

(2) terminate all monthly disability benefits to the eligible employee;

(3) terminate or cancel any other benefits provided under this title during a period of total disability; or

(4) require the eligible employee to repay the amount of any overpayment resulting from the violation to the program.

Section 3. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 35**H. B. 33**

Passed February 3, 2017
 Approved March 17, 2017
 Effective May 9, 2017

**MERCURY SWITCH REMOVAL
 ACT REAUTHORIZATION**

Chief Sponsor: Lee B. Perry
 Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill extends the repeal date of the Mercury Switch Removal Act.

Highlighted Provisions:

This bill:

- ▶ extends the repeal date of the Mercury Switch Removal Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-219, as last amended by Laws of Utah 2016,
 Chapter 36

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

Section 1. Section 63I-1-219 is amended to read:

63I-1-219. Repeal dates, Title 19.

(1) Title 19, Chapter 2, Air Conservation Act, is repealed July 1, 2019.

(2) Title 19, Chapter 4, Safe Drinking Water Act, is repealed July 1, 2019.

(3) Title 19, Chapter 5, Water Quality Act, is repealed July 1, 2019.

(4) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, is repealed July 1, 2019.

(5) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, is repealed July 1, 2020.

(6) Title 19, Chapter 6, Part 4, Underground Storage Tank Act, is repealed July 1, 2018.

(7) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal, is repealed July 1, 2026.

(8) Title 19, Chapter 6, Part 7, Used Oil Management Act, is repealed July 1, 2019.

(9) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act, is repealed July 1, 2020.

(10) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, is repealed July 1, [2017] 2027.

CHAPTER 36**H. B. 39**

Passed February 7, 2017
 Approved March 17, 2017
 Effective May 9, 2017

LOCAL OFFICER AMENDMENTS

Chief Sponsor: R. Curt Webb
 Senate Sponsor: Daniel W. Thatcher

LONG TITLE**General Description:**

This bill modifies provisions related to the appointment of the recorder and treasurer in certain municipalities.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to the date by which the mayor of certain municipalities shall appoint, with the advice and consent of the city council, a city recorder or treasurer.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-3-916, as last amended by Laws of Utah 2003, Chapter 292

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

Section 1. Section 10-3-916 is amended to read:**10-3-916. Appointment of recorder and treasurer in a city of third, fourth, or fifth class or a town -- Vacancies in office.**

(1) (a) In each city of the third, fourth, or fifth class and in each town, [~~on or before the first Monday in February following a municipal election,~~] the mayor, with the advice and consent of the city council, shall appoint a qualified person to [~~each of the offices~~] the office of city recorder and a qualified person to the office of city treasurer.

(b) The mayor and city council shall use best efforts to ensure the office of city recorder or office of city treasurer is not vacant.

(2) The city recorder is ex officio the city auditor and shall perform the duties of that office.

(3) The mayor, with the advice and consent of the council, may also appoint and fill vacancies in all offices provided for by law or ordinance.

(4) All appointed officers shall continue in office until their successors are appointed and qualified.

CHAPTER 37**H. B. 40**

Passed February 6, 2017
 Approved March 17, 2017
 Effective May 9, 2017

CHECK CASHING AND DEFERRED DEPOSIT LENDING AMENDMENTS

Chief Sponsor: Brad M. Daw
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies provisions related to check cashing and deferred deposit lending.

Highlighted Provisions:

This bill:

- ▶ amends the definition provision;
- ▶ modifies requirements for registration under the Check Cashing and Deferred Deposit Lending Registration Act;
- ▶ grants rulemaking authority;
- ▶ addresses restrictions on extensions of deferred deposit loans;
- ▶ addresses examinations by the Department of Financial Institutions; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 7-23-102, as last amended by Laws of Utah 2013, Chapter 73
 7-23-201, as last amended by Laws of Utah 2016, Chapter 248
 7-23-401, as last amended by Laws of Utah 2016, Chapter 248
 7-23-502, as renumbered and amended by Laws of Utah 2008, Chapter 96

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

Section 1. Section 7-23-102 is amended to read:**7-23-102. Definitions.**

As used in this chapter:

- (1) "Annual percentage rate" has the same meaning as in 15 U.S.C. Sec. 1606, as implemented by regulations issued under that section.
- (2) "Business of cashing checks" means cashing a check for consideration.
- (3) "Business of deferred deposit lending" means extending a deferred deposit loan.
- (4) "Check" is as defined in Section 70A-3-104.
- (5) "Check casher" means a person that engages in the business of cashing checks.
- (6) "Deferred deposit lender" means a person that engages in the business of deferred deposit lending.

(7) "Deferred deposit loan" means a transaction where:

(a) a person:

(i) presents to a deferred deposit lender a check written on that person's account; or

(ii) provides written or electronic authorization to a deferred deposit lender to effect a debit from that person's account using an electronic payment; and

(b) the deferred deposit lender:

(i) provides the person described in Subsection (7)(a) an amount of money that is equal to the face value of the check or the amount of the debit less any fee or interest charged for the transaction; and

(ii) agrees not to cash the check or process the debit until a specific date.

(8) (a) "Electronic payment" means an electronic method by which a person:

(i) accepts a payment from another person; or

(ii) makes a payment to another person.

(b) "Electronic payment" includes a payment made through:

(i) an automated clearing house transaction;

(ii) an electronic check;

(iii) a stored value card; or

(iv) an Internet transfer.

(9) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements for mortgage loan originators.

(10) (a) "Refinance" means a new deferred deposit loan transaction whose proceeds are meant to satisfy the term or amount owed on an existing deferred deposit loan.

(b) "Refinance" does not mean:

(i) an extended payment plan under Section 7-23-403; or

(ii) a rollover.

[40] (11) "Rollover" means the extension or renewal of the term of a deferred deposit loan.

Section 2. Section 7-23-201 is amended to read:**7-23-201. Registration -- Rulemaking.**

(1) (a) It is unlawful for a person to engage in the business of cashing checks or the business of deferred deposit lending in Utah or with a Utah resident unless the person:

(i) registers with the department in accordance with this chapter; and

(ii) maintains a valid registration.

(b) It is unlawful for a person to operate a mobile facility in this state to engage in the business of:

(i) cashing checks; or

- (ii) deferred deposit lending.
- (2) (a) A registration and a renewal of a registration expires on December 31 of each year unless on or before that date the person renews the registration.
- (b) To register under this section, a person shall:
- (i) pay an original registration fee established under Subsection 7-1-401(8);
- (ii) submit a registration statement containing the information described in Subsection (2)(d);
- (iii) submit evidence satisfactory to the commissioner that the person is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48, Unincorporated Business Entity Act; and
- (iv) if the person engages in the business of deferred deposit lending, submit evidence satisfactory to the commissioner that the person is registered with the nationwide database.
- (c) To renew a registration under this section, a person shall:
- (i) pay the annual fee established under Subsection 7-1-401(5);
- (ii) submit a renewal statement containing the information described in Subsection (2)(d);
- (iii) submit evidence satisfactory to the commissioner that the person is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48, Unincorporated Business Entity Act;
- (iv) if the person engages in the business of deferred deposit lending, submit evidence satisfactory to the commissioner that the person is registered with the nationwide database; and
- (v) if the person engages in the business of deferred deposit lending, submit an operations statement containing the information described in Subsection (2)(e).
- (d) A registration or renewal statement shall state:
- (i) the name of the person;
- (ii) the name in which the business will be transacted if different from that required in Subsection (2)(d)(i);
- (iii) the address of the person's principal business office, which may be outside this state;
- (iv) the addresses of all offices in this state at which the person conducts the business of:
- (A) cashing checks; or
- (B) deferred deposit lending;
- (v) if the person conducts the business of cashing checks or the business of deferred deposit lending in this state but does not maintain an office in this state, a brief description of the manner in which the business is conducted;
- (vi) the name and address in this state of a designated agent upon whom service of process may be made;
- (vii) ~~[disclosure of an injunction, judgment, administrative order, or]~~ whether there is a conviction of a crime:
- (A) involving [moral turpitude] an act of fraud, dishonesty, breach of trust, or money laundering; and
- (B) with respect to that person [or], an officer, director, manager, operator, or principal of that person, or an employee of that person engaged in the business described in this chapter; and
- (viii) any other information required by the rules of the department.
- (e) An operations statement required for a deferred deposit lender to renew a registration shall state for the immediately preceding calendar year:
- (i) the average principal amount of the deferred deposit loans extended by the deferred deposit lender;
- (ii) for deferred deposit loans paid in full, the average number of days a deferred deposit loan is outstanding for the duration of time that interest is charged;
- (iii) the minimum and maximum dollar amount of interest and fees charged by the deferred deposit lender for a deferred deposit loan of \$100 with a loan term of seven days;
- (iv) the total number of deferred deposit loans rescinded by the deferred deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- (v) of the persons to whom the deferred deposit lender extended a deferred deposit loan, the percentage that entered into an extended payment plan under Section 7-23-403;
- (vi) the total dollar amount of deferred deposit loans rescinded by the deferred deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);
- (vii) the average annual percentage rate charged on deferred deposit loans;
- (viii) the average dollar amount of extended payment plans entered into under Section 7-23-403 by the deferred deposit lender;
- (ix) the number of deferred deposit loans carried to the maximum 10 weeks;
- (x) the total dollar amount of deferred deposit loans carried to the maximum 10 weeks;
- (xi) the number of deferred deposit loans not paid in full at the end of 10 weeks;

(xii) the total dollar amount of deferred deposit loans not paid in full at the end of 10 weeks;

(xiii) the percentage of deferred deposit loans against which the deferred deposit lender initiates civil action to collect on the deferred deposit loan; and

(xiv) for the civil actions described in Subsection (2)(e)(xiii), the percentage of those civil actions whose deferred deposit loans have the following payment history:

- (A) no payments;
- (B) one payment;
- (C) two payments;
- (D) three payments;
- (E) four payments;
- (F) five payments;
- (G) six payments;
- (H) seven payments;
- (I) eight payments;
- (J) nine payments; and
- (K) 10 or more payments.

(f) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons registering with the nationwide database.

(3) Information provided by a deferred deposit lender under Subsection (2)(e) is:

(a) confidential in accordance with Section 7-1-802; and

(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(4) (a) The commissioner may impose an administrative fine determined under Subsection (4)(b) on a person if:

(i) the person is required to be registered under this chapter;

(ii) the person fails to register or renew a registration in accordance with this chapter;

(iii) the department notifies the person that the person is in violation of this chapter for failure to be registered; and

(iv) the person fails to register within 30 days after the day on which the person receives the notice described in Subsection (4)(a)(iii).

(b) Subject to Subsection (4)(c), the administrative fine imposed under this section is:

(i) \$500 if the person:

(A) has no office in this state at which the person conducts the business of:

(I) cashing checks; or

(II) deferred deposit lending; or

(B) has one office in this state at which the person conducts the business of:

(I) cashing checks; or

(II) deferred deposit lending; or

(ii) if the person has two or more offices in this state at which the person conducts the business of cashing checks or the business of deferred deposit lending, \$500 for each office at which the person conducts the business of:

(A) cashing checks; or

(B) deferred deposit lending.

(c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if the person shows good cause.

(5) If the information in a registration, renewal, or operations statement required under Subsection (2) becomes inaccurate after filing, a person is not required to notify the department until:

(a) that person is required to renew the registration; or

(b) the department specifically requests earlier notification.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules consistent with this section providing for:

(a) the form, content, and filing of a registration and renewal statement described in Subsection (2)(d); and

(b) the form and filing of an operations statement described in Subsection (2)(e).

(7) A deferred deposit loan that is made by a person who is required to be registered under this chapter but who is not registered is void, and the person may not collect, receive, or retain any principal or other interest or fees in connection with the deferred deposit loan.

(8) (a) At the time a person registers under this section, the person shall disclose a conviction of a crime described in Subsection (2)(d)(vii) that is:

(i) known to the person; or

(ii) included in:

(A) a Utah Bureau of Criminal Identification report; or

(B) a background check acceptable to the department that provides information similar to a Utah Bureau of Criminal Identification report.

(b) To comply with Subsection (8)(a), a person registered under this chapter shall, for each individual described in Subsection (2)(d)(vii):

(i) obtain a Utah Bureau of Criminal Identification report; or

(ii) conduct a background check acceptable to the commissioner that provides information similar to a Utah Bureau of Criminal Identification report.

(c) A person registered under this section shall keep a record of the information described in Subsection (8)(b) for the time period required by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 3. Section 7-23-401 is amended to read:

7-23-401. Operational requirements for deferred deposit loans.

(1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit lender shall:

(a) post in a conspicuous location on its premises that can be viewed by a person seeking a deferred deposit loan:

(i) a complete schedule of any interest or fees charged for a deferred deposit loan that states the interest and fees using dollar amounts;

(ii) a number the person can call to make a complaint to the department regarding the deferred deposit loan; and

(iii) a list of states where the deferred deposit lender is registered or authorized to offer deferred deposit loans through the Internet or other electronic means;

(b) enter into a written contract for the deferred deposit loan;

(c) conspicuously disclose in the written contract:

(i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;

(ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;

(iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;

(iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is executed; and

(v) (A) the name and address of a designated agent required to be provided the department under Subsection 7-23-201(2)(d)(vi); and

(B) a statement that service of process may be made to the designated agent;

(d) provide the person seeking the deferred deposit loan:

(i) a copy of the written contract described in Subsection (1)(c); and

(ii) written notice that the person seeking the deferred deposit loan is eligible to enter into an extended payment plan described in Section 7-23-403;

(e) orally review with the person seeking the deferred deposit loan the terms of the deferred deposit loan including:

(i) the amount of any interest rate or fee;

(ii) the date on which the full amount of the deferred deposit loan is due;

(iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;

(iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;

(v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan; and

(vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is executed;

(f) comply with the following as in effect on the date the deferred deposit loan is extended:

(i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

(iv) Title 70C, Utah Consumer Credit Code;

(g) in accordance with Subsection (6), make an inquiry to determine whether a person attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan in the ordinary course, which may include rollovers or extended payment plans as allowed under this chapter;

(h) in accordance with Subsection (7), receive a signed acknowledgment from a person attempting to receive a deferred deposit loan that the person has the ability to repay the deferred deposit loan, which may include rollovers or extended payment plans as allowed by this chapter; and

(i) report the original loan amount, payment in full, or default of a deferred deposit loan to a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a, in accordance with procedures established by the consumer reporting agency.

(2) If a deferred deposit lender extends a deferred deposit loan through the Internet or other electronic means, the deferred deposit lender shall provide the information described in Subsection (1)(a) to the person receiving the deferred deposit loan:

(a) in a conspicuous manner; and

(b) prior to the person entering into the deferred deposit loan.

(3) A deferred deposit lender that engages in a deferred deposit loan shall permit a person receiving a deferred deposit loan to:

(a) make partial payments in increments of at least \$5 on the principal owed on the deferred deposit loan at any time prior to maturity without incurring additional charges above the charges provided in the written contract; and

(b) rescind the deferred deposit loan without incurring any charges by returning the deferred deposit loan amount to the deferred deposit lender on or before 5 p.m. the next business day following the deferred deposit loan transaction.

(4) A deferred deposit lender that engages in a deferred deposit loan may not:

(a) collect additional interest on a deferred deposit loan with an outstanding principal balance 10 weeks after the day on which the deferred deposit loan is executed;

(b) roll over a deferred deposit loan without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;

(c) roll over a deferred deposit loan if the rollover requires a person to pay the amount owed by the person under a deferred deposit loan in whole or in part more than 10 weeks from the day on which the deferred deposit loan is first executed;

(d) extend a new deferred deposit loan to a person on the same business day that the person makes a payment on another deferred deposit loan if ~~the payment~~:

~~[(i) is made at least 10 weeks after the day on which that deferred deposit loan is extended; and]~~

~~[(ii)] (i) the payment results in the principal of that deferred deposit loan being paid in full; and~~

~~[(ii)] (ii) the combined terms of the original deferred deposit loan and the new deferred deposit loan total more than 10 weeks of consecutive interest;~~

~~(e) avoid the limitations of Subsections (4)(a) and (4)(c) by extending a new deferred deposit loan whose proceeds are used to satisfy or refinance any portion of an existing deferred deposit loan;~~

~~[(e)] (f) threaten to use or use the criminal process in any state to collect on the deferred deposit loan;~~

~~[(f)] (g) in connection with the collection of money owed on a deferred deposit loan, communicate with a person who owes money on a deferred deposit loan at the person's place of employment if the person or~~

the person's employer communicates, orally or in writing, to the deferred deposit lender that the person's employer prohibits the person from receiving these communications; or

~~[(g)] (h) modify by contract the venue provisions in Title 78B, Chapter 3, Actions and Venue.~~

(5) Notwithstanding Subsections (4)(a) and ~~[(e)]~~ (f), a deferred deposit lender that is the holder of a check used to obtain a deferred deposit loan that is dishonored may use the remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that the issuer, as defined in Section 7-15-1, of the check may not be:

(a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a condition of the holder not filing a civil action; or

(b) held liable for the damages described in Subsection 7-15-1(7)(b)(vi).

(6) (a) The inquiry required by Subsection (1)(g) applies solely to the initial period of a deferred deposit loan transaction with a person and does not apply to any rollover or extended payment plan of a deferred deposit loan.

(b) Subject to Subsection (6)(c), a deferred deposit lender is in compliance with Subsection (1)(g) if the deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction~~],~~:

~~(i)~~ obtains one of the following regarding the person seeking the deferred deposit loan:

~~[(i)] (A) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a; or~~

~~[(ii)] (B) written proof or verification of income from the person seeking the deferred deposit loan; or~~

~~[(iii)] (ii) relies on the prior repayment history with the deferred deposit ~~loan~~ lender from the records of the deferred deposit lender.~~

(c) If a person seeking a deferred deposit loan has not previously received a deferred deposit loan from that deferred deposit lender, to be in compliance with Subsection (1)(g), the deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction, shall obtain a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a.

(7) A deferred deposit lender is in compliance with Subsection (1)(h) if the deferred deposit lender obtains from the person seeking the deferred deposit loan a signed acknowledgment that is in 14-point bold font, that the person seeking the deferred deposit loan has:

(a) reviewed the payment terms of the deferred deposit loan agreement;

(b) received a disclosure that a deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part

more than 10 weeks after the day on which the deferred deposit loan is first executed;

(c) received a disclosure explaining the extended payment plan options; and

(d) acknowledged the ability to repay the deferred deposit loan in the ordinary course, which may include rollovers, or extended payment plans as allowed under this chapter.

(8) (a) Before initiating a civil action against a person who owes money on a deferred deposit loan, a deferred deposit lender shall provide the person at least 10 days notice of default, describing that:

(i) the person must remedy the default; and

(ii) the deferred deposit lender may initiate a civil action against the person if the person fails to cure the default within the 10-day period or through an extended payment plan meeting the requirements of Section 7-23-403.

(b) A deferred deposit lender may provide the notice required under this Subsection (8):

(i) by sending written notice to the address provided by the person to the deferred deposit lender;

(ii) by sending an electronic transmission to a person if electronic contact information is provided to the deferred deposit lender; or

(iii) pursuant to the Utah Rules of Civil Procedure.

(c) A notice under this Subsection (8), in addition to complying with Subsection (8)(a), shall:

(i) be in English, if the initial transaction is conducted in English;

(ii) state the date by which the person must act to enter into an extended payment plan;

(iii) explain the procedures the person must follow to enter into an extended payment plan;

(iv) subject to Subsection 7-23-403(7), if the deferred deposit lender requires the person to make an initial payment to enter into an extended payment plan:

(A) explain the requirement; and

(B) state the amount of the initial payment and the date the initial payment shall be made;

(v) state that the person has the opportunity to enter into an extended payment plan for a time period meeting the requirements of Subsection 7-23-403(2)(b); and

(vi) include the following amounts:

(A) the remaining balance on the original deferred deposit loan;

(B) the total payments made on the deferred deposit loan;

(C) any charges added to the deferred deposit loan amount allowed pursuant to this chapter; and

(D) the total amount due if the person enters into an extended payment plan.

Section 4. Section 7-23-502 is amended to read:

7-23-502. Examination of books, accounts, and records by the department.

(1) At least annually the department shall, for each ~~[premise]~~ person registered under this chapter and engaging in the business of cashing checks or the business of deferred deposit lending:

(a) examine the books, accounts, and records; and

(b) make investigations to determine compliance with this chapter.

(2) In accordance with Section 7-1-401, a person examined under Subsection (1) shall pay a fee for the examination conducted under Subsection (1).

CHAPTER 38**H. B. 51**

Passed February 10, 2017

Approved March 17, 2017

Effective May 9, 2017

OFF-HIGHWAY VEHICLE AMENDMENTS

Chief Sponsor: Derrin R. Owens
Senate Sponsor: Kevin T. Van Tassell

LONG TITLE**General Description:**

This bill amends provisions of the Motor Vehicle Code relating to off-highway vehicles.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to off-highway vehicles and safety requirements;
- ▶ modifies provisions relating to safety courses; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-22-2, as last amended by Laws of Utah 2014, Chapter 229

41-22-29, as last amended by Laws of Utah 2008, Chapter 382

41-22-30, as last amended by Laws of Utah 2008, Chapter 79

41-22-31, as last amended by Laws of Utah 2008, Chapter 382

41-22-33, as last amended by Laws of Utah 2009, Chapter 183

REPEALS AND REENACTS:

41-22-32, as last amended by Laws of Utah 2005, Chapter 2

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

Section 1. Section 41-22-2 is amended to read:**41-22-2. Definitions.**

As used in this chapter:

(1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by the Board of Parks and Recreation.

(2) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain.

(3) (a) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (11), or (22), designed for or capable of travel over unimproved terrain.

(b) "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(4) "Board" means the Board of Parks and Recreation.

(5) "Cross-country" means across natural terrain and off an existing highway, road, route, or trail.

(6) "Dealer" means a person engaged in the business of selling off-highway vehicles at wholesale or retail.

(7) "Division" means the Division of Parks and Recreation.

(8) "Low pressure tire" means any pneumatic tire six inches or more in width designed for use on wheels with rim diameter of 14 inches or less and utilizing an operating pressure of 10 pounds per square inch or less as recommended by the vehicle manufacturer.

(9) "Manufacturer" means a person engaged in the business of manufacturing off-highway vehicles.

(10) "Motorcycle" means every motor vehicle having a saddle for the use of the operator and designed to travel on not more than two tires.

(11) (a) "Motor vehicle" means every vehicle which is self-propelled.

(b) "Motor vehicle" includes an off-highway vehicle.

(12) "Off-highway implement of husbandry" means every all-terrain type I vehicle, all-terrain type II vehicle, motorcycle, or snowmobile that is used by the owner or the owner's agent for agricultural operations.

(13) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(14) "Operate" means to control the movement of or otherwise use an off-highway vehicle.

(15) "Operator" means the person who is in actual physical control of an off-highway vehicle.

(16) "Organized user group" means an off-highway vehicle organization incorporated as a nonprofit corporation in the state under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, for the purpose of promoting the interests of off-highway vehicle recreation.

(17) "Owner" means a person, other than a person with a security interest, having a property interest or title to an off-highway vehicle and entitled to the use and possession of that vehicle.

(18) "Public land" means land owned or administered by any federal or state agency or any political subdivision of the state.

(19) "Register" means the act of assigning a registration number to an off-highway vehicle.

(20) "Roadway" is used as defined in Section 41-6a-102.

(21) "Snowmobile" means any motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

[~~(23)~~ (22) "Street-legal all-terrain vehicle" or "street-legal ATV" has the same meaning as defined in Section 41-6a-102.

[~~(22)~~ (23) "Street or highway" means the entire width between boundary lines of every way or place of whatever nature, when any part of it is open to the use of the public for vehicular travel.

Section 2. Section 41-22-29 is amended to read:

41-22-29. Operation by persons under eight years of age prohibited -- Definitions -- Exception -- Penalty.

(1) As used in this section:

(a) "Organized practice" means a scheduled [~~motoreycle~~] off-highway vehicle practice held in an off-road vehicle facility designated by the division and conducted by an organization carrying liability insurance in at least the amounts specified by the division under Subsection (5) covering all activities associated with the practice.

(b) "Sanctioned race" means [~~a motoreycle~~] an off-highway vehicle race conducted on a closed course and sponsored and sanctioned by an organization carrying liability insurance in at least the amounts specified by the division under Subsection (5) covering all activities associated with the race.

(2) Except as provided under Subsection (3), a person under eight years of age may not operate and an owner may not give another person who is under eight years of age permission to operate an off-highway vehicle on any public land, trail, street, or highway of this state.

(3) A child under eight years of age may participate in a sanctioned race or organized practice if:

(a) the child is under the [~~immediate~~] direct supervision of an adult as described in Subsection 41-22-30(1); and

(b) emergency medical service personnel, as defined in Section 26-8a-102, are on the premises and immediately available to provide assistance at all times during the sanctioned race or organized practice[~~; and~~].

[~~(c) an ambulance provider, as defined in Section 26-8a-102, is on the premises and immediately available to provide assistance for a sanctioned race.~~]

(4) Any person convicted of a violation of this section is guilty of an infraction and shall be fined not more than \$50 per offense.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules specifying the minimum amounts of

liability coverage for an organized practice or sanctioned race.

Section 3. Section 41-22-30 is amended to read:

41-22-30. Supervision, safety certificate, or driver license required -- Penalty.

(1) As used in this section, "direct supervision" means oversight at a distance:

(a) of no more than 300 feet; and

(b) within which:

(i) visual contact is maintained; and

(ii) advice and assistance can be given and received.

(2) A person may not operate and an owner may not give that person permission to operate an off-highway vehicle on any public land, trail, street, or highway of this state unless the person:

(a) is under the direct supervision of [~~a certified~~] an off-highway vehicle safety instructor during a scheduled safety training course approved by the board pursuant to Section 41-22-32;

(b) (i) has in the person's possession the appropriate safety certificate issued or approved by the division; and

(ii) if under 18 years of age, is under the direct supervision of a person who is at least 18 years of age if operating on a public highway that is:

(A) open to motor vehicles; and

(B) not exclusively reserved for off-highway vehicle use; or

(c) has in the person's immediate possession a valid motor vehicle operator's license, as provided in Title 53, Chapter 3, Uniform Driver License Act.

(3) (a) A person convicted of a violation of this section is guilty of an infraction and shall be fined not more than \$100 per offense.

(b) It is a defense to a charge under this section, if the person charged:

(i) produces in court a license or an appropriate safety certificate that was:

(A) valid at the time of the citation or arrest; and

(B) issued to the person operating the off-highway vehicle; and

(ii) can show that the direct supervision requirement under Subsection (2)(b) was not violated at the time of citation or arrest.

(4) The requirements of this section do not apply to an operator of an off-highway implement of husbandry.

Section 4. Section 41-22-31 is amended to read:

41-22-31. Board to set standards for safety program -- Safety certificates issued -- Cooperation with public and private entities -- State immunity from suit.

(1) ~~[The]~~ (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules that establish curriculum standards for a comprehensive off-highway vehicle safety education and training program and shall implement this program.

~~[(a)]~~ (b) The program shall be designed to develop and instill the knowledge, attitudes, habits, and skills necessary for the safe operation of an off-highway vehicle.

~~[(b)]~~ (c) Components of the program shall include the preparation and dissemination of off-highway vehicle information and safety advice to the public and the training of off-highway vehicle operators.

~~[(e)]~~ (d) Off-highway vehicle safety certificates shall be issued to those who successfully complete training or pass the knowledge and skills test established under the program.

(2) The division shall cooperate with appropriate private organizations and associations, private and public corporations, and local government units to implement the program established under this section.

(3) In addition to the governmental immunity granted in Title 63G, Chapter 7, Governmental Immunity Act of Utah, the state is immune from suit for any act, or failure to act, in any capacity relating to the off-highway vehicle safety education and training program. The state is also not responsible for any insufficiency or inadequacy in the quality of training provided by this program.

Section 5. Section 41-22-32 is repealed and reenacted to read:

41-22-32. Approval of safety courses.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules that establish standards for an off-highway vehicle safety course for instruction on the safe operation of an off-highway vehicle.

(2) If a private organization meets the standards set by the division under Subsection (1), the division shall approve the off-highway safety course as compliant with the standards and purposes of this chapter.

Section 6. Section 41-22-33 is amended to read:

41-22-33. Fees for safety and education program -- Penalty -- Unlawful acts.

(1) ~~[(a)]~~ A fee set by the board in accordance with Section 63J-1-504 shall be added to the registration fee required to register an off-highway vehicle under Section 41-22-8 to help fund the off-highway vehicle safety and education program.

~~[(b)]~~ The division may also collect a fee set by the board in accordance with Section 63J-1-504 from each person who:

~~[(i)]~~ receives the training and takes the knowledge and skills test for off-highway vehicle use; or

~~[(ii)]~~ takes the knowledge and skills test for off-highway vehicle use.]

~~[(e)]~~ (2) If the board modifies the fee under Subsection (1)~~[(a)]~~, the modification shall take effect on the first day of the calendar quarter after 90 days from the day on which the board provides the State Tax Commission:

~~[(i)]~~ (a) notice from the board stating that the board will modify the fee; and

~~[(ii)]~~ (b) a copy of the fee modification.

~~[(2)]~~ (a) To help defray instructors' costs, the division may reimburse volunteer certified off-highway vehicle safety instructors up to \$6 for each student who receives the training and takes the knowledge and skills test.]

~~[(b)]~~ On or before the 10th day of each calendar month, volunteer off-highway vehicle safety instructors shall report to the division all fees collected and students trained and shall accompany the report with all money received for off-highway vehicle training.]

~~[(c)]~~ If a volunteer off-highway vehicle safety instructor intentionally or negligently fails to pay the amount due, the division may assess a penalty of 20% of the amount due. All delinquent payments shall bear interest at the rate of 1% per month. If the amount due is not paid because of bad faith or fraud, the division shall assess a penalty of 100% of the total due together with interest.]

~~[(d)]~~ All fees collected from students shall be kept separate and apart from private funds of the instructor and shall at all times belong to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state shall have a preferred claim against the instructor, receiver, or trustee for all money owing the state for training and shall not be stopped from asserting the claim by reason of commingling of funds or otherwise.]

~~[(e)]~~ A person may not:

~~[(i)]~~ willfully misdate an off-highway vehicle education safety certificate;]

~~[(ii)]~~ issue an incomplete certificate; or]

~~[(iii)]~~ issue a receipt in lieu of a certificate.]

CHAPTER 39**H. B. 52**

Passed March 2, 2017

Approved March 17, 2017

Effective May 9, 2017

**POLITICAL CONTRIBUTION
REPORTING AMENDMENTS**Chief Sponsor: Brad M. Daw
Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends the Election Code in relation to reporting campaign contributions.

Highlighted Provisions:

This bill:

- ▶ makes it a class B misdemeanor to conspire to make a campaign contribution through one or more persons in order to avoid disclosing the original source of the campaign contribution.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

20A-11-101.7, Utah Code Annotated 1953

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

Section 1. Section 20A-11-101.7 is enacted to read:**20A-11-101.7. Concealing contributor's identity.**

A person is guilty of a class B misdemeanor if the person conspires with another to make a contribution through one or more persons with the intent that:

(1) the contribution will ultimately be made to a filing entity specified by the original contributor or a designee of the original contributor; and

(2) by making the contribution through one or more persons, the original contributor's identity will not be disclosed in a manner that would be required by law.

CHAPTER 40**H. B. 53**

Passed February 16, 2017

Approved March 17, 2017

Effective May 9, 2017

**MISSING AND EXPLOITED
CHILDREN'S DAY**

Chief Sponsor: Stephen G. Handy

Senate Sponsor: J. Stuart Adams

Cosponsors: Rebecca P. Edwards

Steve Eliason

Adam Gardiner

Sandra Hollins

Kelly B. Miles

Lee B. Perry

Dixon M. Pitcher

Paul Ray

Edward H. Redd

Angela Romero

Elizabeth Weight

LONG TITLE**General Description:**

This bill modifies provisions relating to commemorative periods.

Highlighted Provisions:

This bill:

- ▶ provides that Rachael Runyan/Missing and Exploited Children's Day shall be commemorated annually on August 26.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-1-401, as last amended by Laws of Utah 2016, Chapter 218

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

Section 1. Section 63G-1-401 is amended to read:**63G-1-401. Commemorative periods.**

(1) The following days shall be commemorated annually:

- (a) Bill of Rights Day, on December 15;
- (b) Constitution Day, on September 17;
- (c) Yellow Ribbon Day, on the third Monday in May, in honor of men and women who are serving or have served in the United States Armed Forces around the world in defense of freedom;
- (d) POW/MIA Recognition Day, on the third Friday in September;
- (e) Indigenous People Day, on the Monday immediately preceding Thanksgiving;
- (f) Utah State Flag Day, on March 9;
- (g) Vietnam Veterans Recognition Day, on March 29;

(h) Utah History Day at the Capitol, on the Friday immediately following the fourth Monday in January, to encourage citizens of the state, including students, to participate in activities that recognize Utah's history; ~~and~~

(i) Juneteenth Freedom Day, on the third Saturday in June, in honor of Union General Gordon Granger proclaiming the freedom of all slaves on June 19, 1865, in Galveston, Texas[-]; and

(j) Rachael Runyan/Missing and Exploited Children's Day, on August 26, the anniversary of the day three-year-old Rachael Runyan was kidnapped from a playground in Sunset, Utah, to:

(i) encourage individuals to make child safety a priority;

(ii) remember the importance of continued efforts to reunite missing children with their families; and

(iii) honor Rachael Runyan and all Utah children who have been abducted or exploited.

(2) The Department of Veterans' and Military Affairs shall coordinate activities, special programs, and promotional information to heighten public awareness and involvement relating to Subsections (1)(c) and (d).

(3) The month of October shall be commemorated annually as Italian-American Heritage Month.

(4) The month of November shall be commemorated annually as American Indian Heritage Month.

(5) The month of April shall be commemorated annually as Clean Out the Medicine Cabinet Month to:

(a) recognize the urgent need to make Utah homes and neighborhoods safe from prescription medication abuse and poisonings by the proper home storage and disposal of prescription and over-the-counter medications; and

(b) educate citizens about the permanent medication disposal sites in Utah listed on useonlyasdirected.org that allow disposal throughout the year.

(6) The first full week of May shall be commemorated annually as State Water Week to recognize the importance of water conservation, quality, and supply in the state.

(7) The second Friday and Saturday in August shall be commemorated annually as Utah Fallen Heroes Days to:

(a) honor fallen heroes who, during service in the military or public safety, have sacrificed their lives to protect the country and the citizens of the state; and

(b) encourage political subdivisions to acknowledge and honor fallen heroes.

(8) The third full week in August shall be commemorated annually as Drowsy Driving Awareness Week to:

(a) educate the public about the relationship between fatigue and driving performance; and

(b) encourage the Department of Public Safety and the Department of Transportation to recognize and promote educational efforts on the dangers of drowsy driving.

(9) The third full week of June shall be commemorated annually as Workplace Safety Week to heighten public awareness regarding the importance of safety in the workplace.

CHAPTER 41**H. B. 56**

Passed February 22, 2017

Approved March 17, 2017

Effective January 1, 2018

ACCESSIBLE PARKING AMENDMENTS

Chief Sponsor: Keven J. Stratton

Senate Sponsor: David P. Hinkins

LONG TITLE**General Description:**

This bill amends provisions related to accessible parking spaces.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes criteria for parking in certain accessible parking spaces;
- ▶ creates a windshield placard for use by a person with a disability that requires the use of a wheelchair or other walking-assistive device; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

41-1a-414, as last amended by Laws of Utah 2015, Chapter 412

41-1a-420, as last amended by Laws of Utah 2009, Chapter 66

41-1a-1306, as last amended by Laws of Utah 2014, Chapter 30

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

Section 1. Section 41-1a-414 is amended to read:**41-1a-414. Parking privileges for persons with disabilities.**

(1) As used in this section[;]:

(a) "Accessible parking space" means a parking space that is clearly identified as reserved for use by a person with a disability and includes:

~~[(a)]~~ (i) vertical signage, including the international symbol of accessibility, that is visible from a passing vehicle; and

~~[(b)]~~ (ii) a clearly marked access aisle, if provided, that is adjacent to and considered part of the parking space.

(b) "Temporary wheelchair user placard" means the same as that term is defined in Section 41-1a-420.

(c) "Van accessible parking space" means an accessible parking space that is marked for use by a qualifying person with a walking disability who has

a temporary wheelchair user placard or a wheelchair user placard and includes:

(i) vertical signage with the international symbol of accessibility and the words "van accessible" that is visible from a passing vehicle; and

(ii) a clearly marked access aisle that is adjacent to and considered part of the parking space.

(d) "Walking disability" means a physical disability that requires the use of a walking-assistive device or wheelchair or similar low-powered motorized or mechanically propelled vehicle that is specifically designed to assist a person who has a limited or impaired ability to walk.

(e) "Wheelchair user placard" means the same as that term is defined in Section 41-1a-420.

(2) Except in parking areas designated for emergency use, a person with a disability, qualifying under rules made in accordance with Section 41-1a-420, may park an appropriately marked vehicle for reasonable periods without charge in metered parking zones and restricted parking areas, in a manner that allows proper access to the vehicle by the person with a disability.

(3) (a) Only those vehicles carrying a person with a disability special group license plate, temporary removable windshield placard, or removable windshield placard and transporting a qualifying person with a disability may park in an accessible parking space.

(b) A violation of Subsection (3)(a) is a class C misdemeanor.

(c) A person described in Subsection (3)(a) is encouraged to avoid parking in a van accessible parking space unless:

(i) the person has a walking disability and has a temporary wheelchair user placard;

(ii) the person has a wheelchair user placard; or

(iii) all other accessible parking spaces that are not van accessible parking spaces are occupied.

(4) This section applies to and may be enforced on public property and on private property that is used or intended for use by the public.

(5) The parking privileges granted by this section also apply to vehicles displaying a person with a disability special group license plate, temporary removable windshield placard, or removable windshield placard issued by another jurisdiction if displayed on a vehicle being used by a person with a disability.

Section 2. Section 41-1a-420 is amended to read:**41-1a-420. Disability special group license plates -- Application and qualifications -- Rulemaking.**

(1) As used in this section:

(a) "Advanced practice registered nurse" means a person licensed to practice as an advanced practice

registered nurse in this state under Title 58, Chapter 31b, Nurse Practice Act.

(b) “Nurse practitioner” means an advanced practice registered nurse specializing as a nurse practitioner.

(c) “Physician” means a person licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(d) “Temporary wheelchair user placard” means a removable windshield placard that is issued to a qualifying person, as provided in this section, who has a walking disability that is not permanent.

(e) “Walking disability” means a physical disability that requires the use of a walking-assistive device or wheelchair or similar low-powered motorized or mechanically propelled vehicle that is designed to specifically assist a person who has a limited or impaired ability to walk.

(f) “Wheelchair user placard” means a removable windshield placard that is issued to a qualifying person, as provided in this section, who has a walking disability.

(2) (a) The division shall issue a disability special group license plate, a temporary removable windshield placard, or a removable windshield placard to an applicant who is either:

~~(a)~~ (i) a qualifying person with a disability; or

~~(b)~~ (ii) the registered owner of a vehicle that an organization uses primarily for the transportation of persons with disabilities that limit or impair the ability to walk.

(b) The division shall issue a temporary wheelchair user placard or a wheelchair user placard to an applicant who is either:

(i) a qualifying person with a walking disability; or

(ii) the registered owner of a vehicle that an organization uses primarily for the transportation of persons with walking disabilities.

(c) The division shall require that an applicant under Subsection (2)(b) certifies that the person travels in a vehicle equipped with a wheelchair lift or a vehicle carrying the person’s walking-assistive device or wheelchair and requires a van accessible parking space.

(3) (a) The ~~initial application of a~~ person with a disability shall ~~be accompanied by~~ ensure that the initial application contains the certification of a physician or nurse practitioner that:

(i) ~~that~~ the applicant meets the definition of a person with a disability that limits or impairs the ability to walk as defined in the federal Uniform System for Parking for Persons with Disabilities, 23 C.F.R. Ch. II, Subch. B, Pt. 1235.2 (1991); ~~and~~

(ii) if the person is applying for a temporary wheelchair user placard or a wheelchair user placard, the applicant has a walking disability; and

~~(ii) specifying~~ (iii) specifies the period of time that the physician or nurse practitioner determines the applicant will have the disability, not to exceed six months in the case of a temporary disability or a temporary walking disability.

(b) The division shall issue a disability special group license plate ~~[øø]~~, a removable windshield placard, or a wheelchair user placard, as applicable, to a person with a permanent disability.

(c) The issuance of a person with a disability special group license plate does not preclude the issuance to the same applicant of a removable windshield placard or wheelchair user placard.

(d) (i) On request of an applicant with a disability special group license plate, a temporary removable windshield placard, or a removable windshield placard, the division shall issue one additional placard.

(ii) On request of a qualified applicant with a disability special group license plate, the division shall issue up to two temporary wheelchair user placards or two wheelchair user placards.

(iii) On request of a qualified applicant with a temporary wheelchair user placard or a wheelchair user placard, the division shall issue one additional placard.

(e) The division shall ensure that a temporary wheelchair user placard and a wheelchair user placard have the following visible features:

(i) a large “W” next to the internationally recognized disabled persons symbol; and

(ii) the words “Wheelchair User” printed on a portion of the placard.

~~(e)~~ (f) A disability special group license plate, temporary removable windshield placard, or removable windshield placard may be used to allow one motorcycle to share a parking space reserved for persons with a disability if:

(i) the person with a disability:

(A) is using a motorcycle; and

(B) displays on the motorcycle a disability special group license plate, temporary removable windshield placard, or a removable windshield placard;

(ii) the person who shares the parking space assists the person with a disability with the parking accommodation; and

(iii) the parking space is sufficient size to accommodate both motorcycles without interfering with other parking spaces or traffic movement.

~~(4) (a) The temporary removable windshield placard or removable windshield placard shall be hung from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities so that it is visible from the front and rear of the vehicle.~~

(4) (a) When a vehicle is parked in a parking space reserved for persons with disabilities, a temporary removable windshield placard, a removable windshield placard, a temporary wheelchair user placard, or a wheelchair user placard shall be displayed so that the placard is visible from the front of the vehicle.

(b) If a motorcycle is being used, the temporary removable windshield placard or removable windshield placard shall be displayed in plain sight on or near the handle bars of the motorcycle.

(5) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) establish qualifying criteria for persons to receive, renew, or surrender a disability special group license ~~[plates]~~ plate, a temporary removable windshield placard, ~~[or]~~ a removable windshield placard, a temporary wheelchair user placard, or a wheelchair user placard in accordance with this section;

(b) establish the maximum number of numerals or characters for a disability special group license ~~[plates; and]~~ plate;

(c) require all temporary removable windshield placards ~~[and]~~, removable windshield placards, temporary wheelchair user placards, and wheelchair user placards to include:

(i) an identification number;

(ii) an expiration date not to exceed:

(A) six months for a temporary removable windshield placard; and

(B) two years for a removable windshield placard; and

(iii) the seal or other identifying mark of the division.

(6) The commission shall insert the following on motor vehicle registration certificates:

“State law prohibits persons who do not lawfully possess a disability placard or disability special group license plate from parking in an accessible parking space designated for persons with disabilities. Persons who possess a disability placard or disability special group license plate are discouraged from parking in an accessible parking space designated as van accessible unless they have a temporary wheelchair user placard or a wheelchair user placard.”

Section 3. Section 41-1a-1306 is amended to read:

41-1a-1306. Abuse of persons with disabilities parking privileges -- Revocation of special plate or transferable ID card -- Fine.

~~[(4)]~~ A person with a disability who abuses the rights and privileges conferred under Section 41-1a-414 or allows an individual who is not a person with a disability to use those parking privileges may have the person's disability special

group license plate, temporary removable windshield placard, ~~[or]~~ removable windshield placard, temporary wheelchair user placard, or wheelchair user placard revoked by the division.

~~[(2) (a) Except as provided in Subsection (2)(b), a person who violates Section 41-1a-414 shall pay a minimum fine of \$125.]~~

~~[(b) A court may waive up to \$100 of the fine charged to a person for a violation of Section 41-1a-414 under Subsection (2)(a) if the operator of the vehicle presents evidence to the court that the individual had been issued a disability special group license plate, temporary removable windshield placard, or removable windshield placard at the time of the violation.]~~

Section 4. Effective date.

This bill takes effect on January 1, 2018.

CHAPTER 42

H. B. 58

Passed March 7, 2017

Approved March 17, 2017

Effective May 9, 2017

DIRECT FOOD SALES AMENDMENTS

Chief Sponsor: Scott D. Sandall

Senate Sponsor: Evan J. Vickers

Cosponsor: Marc K. Roberts

LONG TITLE

General Description:

This bill modifies the requirements for a cottage food production operation.

Highlighted Provisions:

This bill:

- ▶ modifies definitions and defines terms;
- ▶ modifies the rulemaking authority of the Department of Agriculture and Food in regard to a cottage food production operation;
- ▶ requires the operator of a cottage food production operation to package a cottage food product with a label, as specified by the Department of Agriculture and Food in rule; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

4-5-9.5, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 4-5-9.5 is amended to read:

4-5-9.5. Cottage food production operations.

(1) For purposes of this chapter:

(a) “Cottage food [production] operation” means a person[, who in the person’s home, produces a food product that is not a potentially hazardous food or a food that requires time/temperature controls for safety] who produces a cottage food product in a home kitchen.

(b) “Home” means a primary residence:]

(i) occupied by the individual who is operating a cottage food production operation; and]

(ii) which contains:]

(A) a kitchen designed for common residential usage; and]

(B) appliances designed for common residential usage.]

(b) “Cottage food product” means a non-potentially hazardous baked good, jam, jelly, or other non-potentially hazardous food produced in a home kitchen.

(c) “Home kitchen” means a kitchen:

(i) designed and intended for use by the residents of a home; and

(ii) used by a resident of the home for the production of a cottage food product.

[~~(e) (d) “Potentially hazardous food” [or “food that requires time/temperature controls for safety”;~~ (i) means a food] means:

(i) a food of animal origin;

(ii) raw seed sprouts; or

(iii) a food that requires time [and] or temperature control, or both, for safety to limit pathogenic microorganism growth or toxin formation [and is in a form capable of supporting;], as identified by the department in rule.

[~~(A) the rapid and progressive growth of infections or toxigenic microorganisms;]~~

[~~(B) the growth and toxin production of Clostridium botulinum; or]~~

[~~(C) in shell eggs, the growth of Salmonella enteritidis;]~~

(iii) includes:]

(A) an animal food;]

(B) a food of animal origin that is raw or heat treated;]

(C) a food of plant origin that is heat treated or consists of raw seed sprouts;]

(D) cut melons;]

(E) cut tomatoes; and]

[~~(F) garlic and oil mixtures that are not acidified or otherwise modified at a food establishment in a way that results in mixtures that do not support growth as specified under Subsection (1)(c)(i); and]~~

(iii) does not include:]

(A) an air-cooled hard-boiled egg with shell intact;]

(B) a food with an actual weight or water activity value of 0.85 or less;]

(C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;]

[~~(D) a food, in an unopened hermetically sealed container, that is processed to achieve and maintain sterility under conditions of nonrefrigerated storage and distribution;]~~

[~~(E) a food for which laboratory evidence demonstrates that the rapid and progressive growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:]~~

(I) has an actual weight and a pH level that are above the levels specified under Subsections (1)(c)(iii)(B) and (C); or]

(II) contains a preservative or other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or]

~~[(F) a food that does not support the growth of microorganisms as specified under Subsection (1)(e)(i) even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.]~~

(2) ~~[(a)]~~ The department shall adopt rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food supply.

~~[(b) Rules adopted pursuant to this Subsection (2) shall provide for:]~~

~~[(i) the registration of cottage food production operations as food establishments under this chapter;]~~

~~[(ii) the labeling of products from a cottage food production operation as "Home Produced"; and]~~

~~[(iii) other exceptions to the chapter that the department determines are appropriate and that are consistent with this section.]~~

(3) Rules adopted pursuant to Subsection (2) may not require:

~~[(a) may not require:]~~

~~[(i)]~~ (a) the use of commercial surfaces such as stainless steel counters or cabinets;

~~[(ii)]~~ (b) the use of a commercial grade:

~~[(A)]~~ (i) sink;

~~[(B)]~~ (ii) dishwasher; or

~~[(C)]~~ (iii) oven;

~~[(iii)]~~ (c) a separate kitchen for the cottage food production operation; or

~~[(iv)]~~ (d) the submission of plans and specifications before construction of, or remodel of, a cottage food production operation~~]; and].~~

~~[(b) may require:]~~

~~[(i) an inspection of a cottage food production operation:]~~

~~[(A) prior to issuing a registration for the cottage food production operation; and]~~

~~[(B) at other times if the department has reason to believe the cottage food production operation is operating:]~~

~~[(I) in violation of this chapter or an administrative rule adopted pursuant to this section; or]~~

~~[(II) in an unsanitary manner; and]~~

~~[(ii) the use of finished and cleanable surfaces.]~~

(4) ~~[(a)]~~ The operator of a cottage food production operation shall:

~~[(i)]~~ (a) register with the department as a cottage food production operation before operating as a cottage food production operation; ~~[and]~~

~~[(ii)]~~ (b) hold a valid food handler's permit~~[-]; and~~

(c) package a cottage food product with a label, as specified by the department in rule.

~~[(b)]~~ (5) Notwithstanding the provisions of Subsections 4-5-9(1)(a) and (c), the department shall issue a registration to an applicant for a cottage food production operation if the applicant for the registration:

~~[(i) passes the inspection required by Subsection (3)(b);]~~

~~[(ii)]~~ (a) pays the fees required by the department; and

~~[(iii)]~~ (b) meets the requirements of this section.

~~[(5)]~~ (6) Notwithstanding the provisions of Section 26A-1-114, a local health department:

(a) does not have jurisdiction to regulate the production of food at a cottage food production operation operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and

(b) does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.

~~[(6)]~~ (7) A food service establishment as defined in Section 26-15a-102 may not use a product produced in a cottage food production operation as an ingredient in any food that is prepared by the food establishment and offered by the food establishment to the public for consumption.

CHAPTER 43**H. B. 60**

Passed February 17, 2017

Approved March 17, 2017

Effective May 9, 2017

DEAF AND HARD OF HEARING AMENDMENTS

Chief Sponsor: Norman K Thurston

Senate Sponsor: Peter C. Knudson

LONG TITLE**General Description:**

This bill modifies terminology throughout the Utah Code related to individuals who are deaf or hard of hearing.

Highlighted Provisions:

This bill:

- ▶ changes “hearing impairment” to “deaf or hard of hearing” throughout the Utah Code; and
- ▶ makes “deaf or hard of hearing” and “hearing loss” consistent throughout the Utah Code.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 34A-2-501, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 34A-2-504, as renumbered and amended by Laws of Utah 1997, Chapter 375
- 53A-1a-704, as last amended by Laws of Utah 2015, Chapter 374
- 53A-25b-102, as enacted by Laws of Utah 2009, Chapter 294
- 53A-25b-307, as enacted by Laws of Utah 2009, Chapter 294
- 53B-6-104, as last amended by Laws of Utah 2016, Chapter 144
- 54-8b-10, as last amended by Laws of Utah 2016, Chapter 271
- 58-41-2, as last amended by Laws of Utah 1998, Chapter 249
- 58-41-17, as last amended by Laws of Utah 2015, Chapter 252
- 58-46a-102, as enacted by Laws of Utah 1994, Chapter 28
- 62A-5-101, as last amended by Laws of Utah 2016, Chapter 300
- 77-7-6, as last amended by Laws of Utah 2008, Chapter 3
- 78B-1-201, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-1-202, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-1-203, as last amended by Laws of Utah 2016, Chapter 271
- 78B-1-205, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-1-206, as last amended by Laws of Utah 2016, Chapter 271
- 78B-1-209, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-1-210, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-1-211, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 34A-2-501 is amended to read:**34A-2-501. Definitions.**

(1) “Harmful industrial noise” means:

(a) sound that results in acoustic trauma such as sudden instantaneous temporary noise or impulsive or impact noise exceeding 140 dB peak sound pressure levels; or

(b) the sound emanating from equipment and machines during employment exceeding the following permissible sound levels, dBA slow response, and corresponding durations per day, in hours:

Sound level	Duration
90	8
92	6
95	4
97	3
100	2
102	1.5
105	1.0
110	0.5
115	0.25 or less

(2) “Loss of hearing” means binaural hearing loss measured in decibels with frequencies of 500, 1,000, 2,000, and 3,000 cycles per second (Hertz). If the average decibel loss at 500, 1,000, 2,000, and 3,000 cycles per second (Hertz) is 25 decibels or less, usually no [hearing impairment] loss of hearing exists.

Section 2. Section 34A-2-504 is amended to read:**34A-2-504. Hearing loss -- Extent of employer's liability.**

(1) An employer is liable only for the hearing loss of an employee that arises out of and in the course of the employee's employment for that employer.

(2) If previous occupational hearing loss or nonoccupational hearing [impairment] loss is established by competent evidence, the employer may not be liable for the prior hearing loss so established, whether or not compensation has previously been paid or awarded. The employer is liable only for the difference between the percentage of hearing loss presently established and that percentage of prior hearing loss established by preemployment audiogram or other competent evidence.

(3) The date for compensation for occupational hearing loss shall be determined by the date of direct head injury or the last date when harmful industrial noise contributed substantially in causing the hearing loss.

Section 3. Section 53A-1a-704 is amended to read:

53A-1a-704. Scholarship program created -- Qualifications.

(1) The Carson Smith Scholarship Program is created to award scholarships to students with disabilities to attend a private school.

(2) To qualify for a scholarship:

(a) the student's custodial parent or legal guardian shall reside within Utah;

(b) the student shall have one or more of the following disabilities:

(i) an intellectual disability;

(ii) ~~[a hearing impairment]~~ deafness or being hard of hearing;

(iii) a speech or language impairment;

(iv) a visual impairment;

(v) a serious emotional disturbance;

(vi) an orthopedic impairment;

(vii) autism;

(viii) traumatic brain injury;

(ix) other health impairment;

(x) specific learning disabilities; or

(xi) a developmental delay, provided the student is at least three years of age, pursuant to Subsection (2)(c), and is younger than eight years of age;

(c) the student shall be at least three years of age before September 2 of the year in which admission to a private school is sought and under 19 years of age on the last day of the school year as determined by the private school, or, if the individual has not graduated from high school, will be under 22 years of age on the last day of the school year as determined by the private school; and

(d) except as provided in Subsection (3), the student shall:

(i) be enrolled in a Utah public school in the school year prior to the school year the student will be enrolled in a private school;

(ii) have an IEP; and

(iii) have obtained acceptance for admission to an eligible private school.

(3) The requirements of Subsection (2)(d) do not apply in the following circumstances:

(a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and

(b) an assessment team is able to readily determine with reasonable certainty:

(i) that the student has a disability listed in Subsection (2)(b) and would qualify for special education services, if enrolled in a public school; and

(ii) for the purpose of establishing the scholarship amount, the appropriate level of special education services which should be provided to the student.

(4) (a) To receive a full-year scholarship under this part, a parent of a student shall submit to the LEA where the student is enrolled an application on or before the August 15 immediately preceding the first day of the school year for which the student would receive the scholarship.

(b) The board may waive the full-year scholarship deadline described in Subsection (4)(a).

(c) An application for a scholarship shall contain an acknowledgment by the parent that the selected school is qualified and capable of providing the level of special education services required for the student.

(5) (a) The scholarship application form shall contain the following statement:

"I acknowledge that:

(1) A private school may not provide the same level of special education services that are provided in a public school;

(2) I will assume full financial responsibility for the education of my scholarship student if I accept this scholarship;

(3) Acceptance of this scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and

(4) My child may return to a public school at any time."

(b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student.

(c) Acceptance of a scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

(d) The creation of the scholarship program or granting of a scholarship does not:

(i) imply that a public school did not provide a free and appropriate public education for a student; or

(ii) constitute a waiver or admission by the state.

(6) (a) A scholarship shall remain in force for three years.

(b) A scholarship shall be extended for an additional three years, if:

(i) the student is evaluated by an assessment team; and

(ii) the assessment team determines that the student would qualify for special education services, if enrolled in a public school.

(c) The assessment team shall determine the appropriate level of special education services which should be provided to the student for the purpose of setting the scholarship amount.

(d) A scholarship shall be extended for successive three-year periods as provided in Subsections (6)(a) and (b):

(i) until the student graduates from high school; or

(ii) if the student does not graduate from high school, until the student is age 22.

(7) A student's parent, at any time, may remove the student from a private school and place the student in another eligible private school and retain the scholarship.

(8) A scholarship student may not participate in a dual enrollment program pursuant to Section 53A-11-102.5.

(9) The parents or guardians of a scholarship student have the authority to choose the private school that will best serve the interests and educational needs of that student, which may be a sectarian or nonsectarian school, and to direct the scholarship resources available for that student solely as a result of their genuine and independent private choices.

(10) (a) An LEA shall notify in writing the parents or guardians of students enrolled in the LEA who have an IEP of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

(b) The notice described under Subsection (10)(a) shall:

(i) be provided no later than 30 days after the student initially qualifies for an IEP;

(ii) be provided annually no later than February 1 to all students who have an IEP; and

(iii) include the address of the Internet website maintained by the board that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program.

(c) An LEA or school within an LEA that has an enrolled student who has an IEP shall post the address of the Internet website maintained by the board that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program on the LEA's or school's website, if the LEA or school has one.

Section 4. Section 53A-25b-102 is amended to read:

53A-25b-102. Definitions.

As used in this chapter:

(1) "Advisory council" means the Advisory Council for the Utah Schools for the Deaf and the Blind.

(2) "Alternate format" includes braille, audio, or digital text, or large print.

(3) "Associate superintendent" means:

(a) the associate superintendent of the Utah School for the Deaf; or

(b) the associate superintendent of the Utah School for the Blind.

(4) "Blind" means:

(a) if the person is three years of age or older but younger than 22 years of age, having a visual impairment that, even with correction, adversely affects educational performance or substantially limits one or more major life activities; and

(b) if the person is younger than three years of age, having a visual impairment.

(5) "Blindness" means an impairment in vision in which central visual acuity:

(a) does not exceed 20/200 in the better eye with correcting lenses; or

(b) is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(6) "Board" means the State Board of Education.

(7) "Cortical visual impairment" means a neurological visual disorder:

(a) that:

(i) affects the visual cortex or visual tracts of the brain;

(ii) is caused by damage to the visual pathways to the brain;

(iii) affects a person's visual discrimination, acuity, processing, and interpretation; and

(iv) is often present in conjunction with other disabilities or eye conditions that cause visual impairment; and

(b) in which the eyes and optic nerves of the affected person appear normal and the person's pupil responses are normal.

(8) "Deaf" means:

(a) if the person is three years of age or older but younger than 22 years of age, having [~~a hearing impairment~~] hearing loss, whether permanent or fluctuating, ~~that,~~ even with amplification, adversely affects educational performance or substantially limits one or more major life activities; and

(b) if the person is younger than three years of age, having [~~a hearing impairment~~] hearing loss.

(9) "Deafblind" means:

(a) if the person is three years of age or older but younger than 22 years of age:

(i) deaf;

(ii) blind; and

(iii) having hearing loss and visual impairments that cause such severe communication and other developmental and educational needs that the

person cannot be accommodated in special education programs solely for students who are deaf or blind; or

(b) if the person is younger than three years of age, having both hearing loss and vision impairments that are diagnosed as provided in Section 53A-25b-301.

(10) "Deafness" means a hearing loss so severe that the person is impaired in processing linguistic information through hearing, with or without amplification.

(11) "Educator" means a person who holds:

(a) (i) a license issued under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act; and

(ii) a position as:

(A) a teacher;

(B) a speech pathologist;

(C) a librarian or media specialist;

(D) a preschool teacher;

(E) a guidance counselor;

(F) a school psychologist;

(G) an audiologist; or

(H) an orientation and mobility specialist; or

(b) (i) a bachelor's degree or higher;

(ii) credentials from the governing body of the professional's area of practice; and

(iii) a position as:

(A) a Parent Infant Program consultant;

(B) a deafblind consultant;

(C) a school nurse;

(D) a physical therapist;

(E) an occupational therapist;

(F) a social worker; or

(G) a low vision specialist.

(12) "Functional blindness" means a disorder in which the physical structures of the eye may be functioning, but the person does not attend to, examine, utilize, or accurately process visual information.

(13) "Functional hearing loss" means a central nervous system impairment that results in abnormal auditory perception, including an auditory processing disorder or auditory neuropathy/dys-synchrony, in which parts of the auditory system may be functioning, but the person does not attend to, respond to, localize, utilize, or accurately process auditory information.

(14) "Hard of hearing" means having a hearing loss, excluding deafness.

~~[(15) "Hearing impairment" includes hard of hearing, deafness, or functional hearing loss.]~~

~~[(16)] (15) "Individualized education program" or "IEP" means:~~

(a) a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; or

(b) an individualized family service plan developed:

(i) for a child with a disability who is younger than three years of age; and

(ii) in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

~~[(17)] (16) "LEA" means a local education agency that has administrative control and direction for public education.~~

~~[(18)] (17) "LEA of record" means the school district of residence of a student as determined under Section 53A-2-201.~~

~~[(19)] (18) "Low vision" means an impairment in vision in which:~~

(a) visual acuity is at 20/70 or worse; or

(b) the visual field is reduced to less than 20 degrees.

~~[(20)] (19) "Parent Infant Program" means a program at the Utah Schools for the Deaf and the Blind that provides services:~~

(a) through an interagency agreement with the Department of Health to children younger than three years of age who are deaf, blind, or deafblind; and

(b) to children younger than three years of age who are deafblind through Deafblind Services of the Utah Schools for the Deaf and the Blind.

~~[(21)] (20) "Section 504" means Section 504 of the Rehabilitation Act of 1973.~~

~~[(22)] (21) "Section 504 accommodation plan" means a plan developed pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, to provide appropriate accommodations to an individual with a disability to ensure access to major life activities.~~

~~[(23)] (22) "Superintendent" means the superintendent of the Utah Schools for the Deaf and the Blind.~~

~~[(24)] (23) "Visual impairment" includes partial sightedness, low vision, blindness, cortical visual impairment, functional blindness, and degenerative conditions that lead to blindness or severe loss of vision.~~

Section 5. Section 53A-25b-307 is amended to read:

53A-25b-307. Educational Enrichment Program for Deaf, Hard of Hearing, and Visually Impaired Students -- Funding for the program.

(1) There is established the Educational Enrichment Program for ~~[Hearing]~~ Deaf, Hard of Hearing, and Visually Impaired Students.

(2) The purpose of the program is to provide opportunities that will, in a family friendly environment, enhance the educational services required for deaf, hard of hearing, blind, or deafblind students.

(3) The advisory council shall design and implement the program, subject to the approval by the board.

(4) The program shall be funded from the interest and dividends derived from the permanent funds created for the Utah Schools for the Deaf and the Blind pursuant to Section 12 of the Utah Enabling Act and distributed by the director of the School and Institutional Trust Lands Administration under Section 53C-3-103.

Section 6. Section 53B-6-104 is amended to read:

53B-6-104. Multi-University Consortium for Teacher Training in Sensory Impairments -- Purposes -- Appropriation.

(1) (a) In conjunction with the State Board of Regents' master plan for higher education, there is established a Multi-University Consortium for Teacher Training in Sensory Impairments which is an outgrowth of a consortium established by the federal government.

(b) The consortium shall include within its membership the University of Utah, Utah State University, Brigham Young University, the Utah Schools for the Deaf and the Blind, the Services for At-Risk Students section under the State Board of Education, and local school districts.

(2) The consortium, in collaboration with the State Board of Regents and the State Board of Education, shall develop and implement teacher preparation programs that qualify and certify instructors to work with students who are visually impaired, ~~[hearing impaired]~~ deaf, or hard of hearing, or both visually impaired and ~~[hearing impaired]~~ deaf or hard of hearing.

(3) (a) There is appropriated from the General Fund for fiscal year 1994-95, \$200,000 to the State Board of Regents to fund the consortium's teacher preparation programs referred to in Subsection (2).

(b) The appropriation is nonlapsing.

(c) The State Board of Regents shall consider including within its annual budget recommendations a line item appropriation to provide ongoing funding for the programs provided pursuant to this section.

Section 7. Section 54-8b-10 is amended to read:

54-8b-10. Imposing a surcharge to provide deaf, hard of hearing, and speech impaired persons with telecommunication devices

-- Definitions -- Procedures for establishing program -- Surcharge -- Administration and disposition of surcharge money.

(1) As used in this section:

(a) "Certified deaf ~~[or severely hearing or speech impaired person]~~, hard of hearing, or severely speech impaired individual" means any state resident who:

(i) is so certified by:

(A) a licensed physician;

(B) an otolaryngologist;

(C) a speech language pathologist;

(D) an audiologist; or

(E) a qualified state agency; and

(ii) qualifies for assistance under any low income public assistance program administered by a state agency.

(b) "Certified interpreter" means a person who is a certified interpreter under Title 35A, Chapter 13, Part 6, Interpreter Services for the Deaf and Hard of Hearing Act.

(c) (i) "Telecommunication device" means any mechanical adaptation device that enables a deaf ~~[or severely hearing or speech impaired person]~~, hard of hearing, or severely speech impaired individual to use the telephone.

(ii) "Telecommunication device" includes:

(A) telecommunication devices for the deaf (TDD);

(B) telephone amplifiers;

(C) telephone signal devices;

(D) artificial larynxes; and

(E) adaptive equipment for TDD keyboard access.

(2) The commission shall hold hearings to establish a program whereby a certified deaf ~~[or severely hearing or speech impaired]~~, hard of hearing, or severely speech impaired customer of a telecommunications corporation that provides service through a local exchange or of a wireless telecommunications provider may obtain a telecommunication device capable of serving the customer at no charge to the customer beyond the rate for basic service.

(3) (a) The program described in Subsection (2) shall provide a dual party relay system using third party intervention to connect a certified deaf ~~[or severely hearing or speech impaired person]~~, hard of hearing, or severely speech impaired individual with a normal hearing ~~[person]~~ individual by way of telecommunication devices designed for that purpose.

(b) The commission may, by rule, establish the type of telecommunications device to be provided to ensure functional equivalence.

(4) (a) The commission shall impose a surcharge on each residential and business access line of each customer of local-exchange telephone service in this state, and each residential and business telephone number of each customer of mobile telephone service in this state, not including a telephone number used exclusively to transfer data to and from a mobile device, which shall be collected by the telecommunications corporation providing public telecommunications service to the customer, to cover the costs of:

- (i) the program described in Subsection (2); and
- (ii) payments made under Subsection (5).

(b) The commission shall establish by rule the amount to be charged under this section, provided that:

(i) the surcharge does not exceed 20 cents per month for each residential and business access line for local-exchange telephone service, and for each residential and business telephone number for mobile telephone service, not including a telephone number used exclusively to transfer data to and from a mobile device; and

(ii) if the surcharge is related to a mobile telecommunications service, the surcharge may be imposed, billed, and collected only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(c) The telecommunications corporation shall collect the surcharge from its customers and transfer the money collected to the commission under rules adopted by the commission.

(d) The surcharge shall be separately identified on each bill to a customer.

(5) (a) Money collected from the surcharge imposed under Subsection (4) shall be deposited in the state treasury as dedicated credits to be administered as determined by the commission.

(b) These dedicated credits may be used only:

(i) for the purchase, maintenance, repair, and distribution of telecommunication devices;

(ii) for the acquisition, operation, maintenance, and repair of a dual party relay system;

(iii) to reimburse telephone corporations for the expenses incurred in collecting and transferring to the commission the surcharge imposed by the commission;

(iv) for the general administration of the program;

(v) to train persons in the use of telecommunications devices; and

(vi) by the commission to contract, in compliance with Title 63G, Chapter 6a, Utah Procurement Code, with:

(A) an institution within the state system of higher education listed in Section 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as certified interpreters; or

(B) the Utah State Office of Rehabilitation created in Section 35A-1-202 for a program that trains persons to qualify as certified interpreters.

(c) (i) The commission shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the administration of money under Subsection (5)(b)(vi).

(ii) In the initial rulemaking to determine the administration of money under Subsection (5)(b)(vi), the commission shall give notice and hold a public hearing.

(d) Money received by the commission under Subsection (4) is nonlapsing.

(6) (a) The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of the collection.

(b) If Subsection (6)(a) applies, the telecommunications corporation shall submit to the commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection, showing that the costs exceed the revenue.

(7) The commission shall solicit the advice, counsel, and physical assistance of [~~severely hearing or speech impaired persons~~] deaf, hard of hearing, or severely speech impaired individuals and the organizations serving them in the design and implementation of the program.

Section 8. Section 58-41-2 is amended to read:

58-41-2. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "ASHA" means the American Speech[~~and~~]-Language-Hearing Association.

(2) "Association" means the Utah Speech[~~and~~]-Language-Hearing Association.

(3) "Audiologist" means a person who practices audiology or who holds himself out to the public directly or indirectly by any means, act, title, identification, performance, method, or procedure as one who nonmedically examines, measures, tests, interprets, evaluates, assesses, diagnoses, directs, instructs, treats, counsels, prescribes, and recommends for persons affected by or suspected of having disorders of or conditions of [~~impaired~~] hearing loss, or assists persons in achieving the reception, communication, and perception of sound and determines the range, nature, and degree of hearing function related to communication needs, or provides audiology services and uses audio electronic equipment and provides audiology services and consultation regarding noise control and hearing conservation, conducts tests and interpretation of vestibular function and nystagmus, prepares ear impressions and provides ear molds, aids, accessories, prescriptions, and prostheses for hearing, evaluates sound environment and equipment, and calibrates

instruments used in testing and supplementing auditory function. A person is deemed to be an audiologist if he directly or indirectly provides or offers to provide these services or functions set forth in Subsection (4) or any related function.

(4) "Audiology" means the application of principles, methods, and procedures, and measuring, testing, examining, interpreting, diagnosing, predicting, evaluating, prescribing, consulting, treating, instructing, and researching, which is related to hearing, vestibular function, and the disorders of hearing, to related language and speech disorders and to aberrant behavior related to [loss of] hearing loss or vestibular function, for the purpose of preventing and modifying disorders related to [loss of] hearing loss or vestibular function, and planning, directing, managing, conducting, and participating in hearing conservation, evoked potentials evaluation, nonmedical tinnitus evaluation or treatment, noise control, habilitation, and rehabilitation programs, including hearing aid evaluation, assistive listening device evaluation, prescription, preparation, and dispensing, and auditory training and lip reading.

(5) "Audiology aide" means an individual who:

(a) meets the minimum qualifications established by the board for audiology aides. Those qualifications shall be substantial but less than those established by this chapter for licensing an audiologist;

(b) does not act independently; and

(c) works under the personal direction and direct supervision of a licensed audiologist who accepts responsibility for the acts and performance of that audiology aide under this chapter.

(6) "Board" means the Speech-language Pathology and Audiology Licensing Board created under Section 58-41-6.

(7) "CCC" means the certificate of clinical competence awarded by the American Speech-Language-Hearing Association.

(8) "CFY" means the clinical fellowship year prescribed by ASHA.

(9) "Disorder" means the condition of decreased, absent, or impaired auditory, speech, voice, or language function.

(10) "Hearing aid dealer" means one who sells, repairs, and adjusts hearing aids.

(11) "Licensed audiologist" means any individual to whom a license has been issued under this chapter if that license is in force and has not been suspended or revoked.

(12) "Licensed speech-language pathologist" means any individual licensed under this chapter whose license is in force and has not been suspended or revoked.

(13) "Person" means any individual, group, organization, partnership, or corporate body,

except that only an individual may be licensed under this chapter.

(14) "Practice of audiology" means rendering or offering to render to individuals, groups, agencies, organizations, industries, or the public any performance or service in audiology.

(15) "Practice of speech-language pathology" means rendering, prescribing, or offering to render to individuals, groups, agencies, organizations, industries or the public any service in speech-language pathology.

(16) "Prescribe" means to:

(a) determine, specify, and give the directions, procedures, or rules for a person to follow in determining and ordering the preparation, delivery, and use of specific mechanical, acoustic, or electronic aids to hearing or speech; and

(b) determine or designate a remedy for a person.

(17) "Prescription" means a written or oral order for the delivery or execution of that which has been prescribed.

(18) "Speech-language pathologist" means:

(a) a person who practices speech-language pathology or who holds himself out to the public by any means, or by any service or function he performs, directly or indirectly, or by using the terms "speech-language pathologist," "speech-language therapist," "language disability specialist," or any variation, derivation, synonym, coinage, or whatever expresses, employs, or implies these terms, names, or functions; or

(b) a person who performs any of the functions described in Subsection (19) or any related functions.

(19) "Speech-language pathology" means the application of principles, methods, and procedures for the examination, measurement, prevention, testing, identification, evaluation, diagnosis, treatment, instruction, modification, prescription, restoration, counseling, habilitation, prediction, management, and research related to the development and the disorders or disabilities of human communication, speech, voice, language, cognitive communication, or oral, pharyngeal, or laryngeal sensorimotor competencies, for the purpose of identifying, evaluating, diagnosing, prescribing, preventing, managing, correcting, ameliorating, or modifying those disorders and their effects in individuals or groups of individuals.

(20) "Speech-language pathology aide" means an individual who:

(a) meets the minimum qualifications established by the board for speech-language pathology aides. Those qualifications shall be substantial but less than those established by this chapter for licensing a speech-language pathologist;

(b) does not act independently; and

(c) works under the personal direction and direct supervision of a licensed speech-language

pathologist who accepts the responsibility for the acts and performances of that speech-language pathology aide while working under this chapter.

(21) "Treatment" means the services of a speech-language pathologist or audiologist to examine, diagnose, correct, or ameliorate speech or hearing disorders, abnormalities, behavior, or their effects.

(22) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failing to maintain a level of professional practice consistent with all initial and subsequent requirements by which a license is achieved or maintained under this chapter;

(b) utilizing substandard or inappropriate facilities or equipment;

(c) treating any disorder for which the licensee has not had the necessary training and experience; or

(d) failing to comply with the requirements of Section 58-41-17.

Section 9. Section 58-41-17 is amended to read:

58-41-17. Requirements for selling hearing aids.

(1) As used in this section:

(a) "Hearing aid" means a wearable instrument or device designed or offered for the purpose of aiding or compensating for [~~impaired human hearing~~] human hearing loss, including its parts, attachments, or accessories.

(b) "Hearing aid" does not include a device that is surgically implanted in the cochlea or under the skin near the ear.

(2) A person licensed under this chapter who offers to sell a hearing aid to a consumer shall inform the consumer about hearing aids that work with assistive listening systems that are compliant with the ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.

(3) A person licensed under this chapter who sells a hearing aid to a consumer shall provide a written receipt or written contract to the consumer that provides the consumer with a 30-day right to cancel the purchase and to obtain a refund if the consumer returns the hearing aid to the seller in the same condition as when purchased, excluding ordinary wear and tear.

(4) The written receipt or contract shall notify the consumer of the 30-day right to cancel in at least 12-point font.

(5) The 30-day right to cancel shall commence from the date the hearing aid is originally delivered to the consumer or the date the written receipt or contract is delivered to the consumer, whichever is later.

(6) The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.

(7) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee equal to the actual cost that will be incurred by the seller in order to return the hearing aid to the manufacturer, provided that the written receipt or contract states the exact amount that will be retained by the seller as a cancellation fee.

Section 10. Section 58-46a-102 is amended to read:

58-46a-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Hearing Instrument Specialist Licensing Board created in Section 58-46a-201.

(2) "Direct supervision" means that the supervising hearing instrument specialist is present in the same facility as is the person being supervised and is available for immediate in person consultation.

[4] (3) "Hearing instrument" or "hearing aid" means any device designed or offered to be worn on or by an individual to enhance [~~impaired human hearing~~] human hearing, including the device's specialized parts, attachments, or accessories.

[3] (4) "Hearing instrument intern" means a person licensed under this chapter who is obtaining education and experience in the practice of a hearing instrument specialist under the supervision of a supervising hearing instrument specialist.

(5) "Indirect supervision" means that the supervising hearing instrument specialist is not required to be present in the same facility as is the person being supervised, but is available for voice to voice contact by telephone, radio, or other means at the initiation of the person being supervised.

(6) "Practice of a hearing instrument specialist" means:

(a) establishing a place of business to practice as a hearing instrument specialist;

(b) testing the hearing of a human patient over the age of 17 for the sole purpose of determining whether a hearing loss will be sufficiently improved by the use of a hearing instrument to justify prescribing and selling the hearing instrument and whether that hearing instrument will be in the best interest of the patient;

(c) providing the patient a written statement of prognosis regarding the need for or usefulness of a hearing instrument for the patient's condition;

(d) prescribing an appropriate hearing instrument;

(e) making impressions or earmolds for the fitting of a hearing instrument;

(f) sale and professional placement of the hearing instrument on a patient;

(g) evaluating the hearing loss overcome by the installation of the hearing instrument and evaluating the hearing recovery against the representations made to the patient by the hearing instrument specialist;

(h) necessary intervention to produce satisfactory hearing recovery results from a hearing instrument; or

(i) instructing the patient on the use and care of the hearing instrument.

(7) "Supervising hearing instrument specialist" means a hearing instrument specialist who:

(a) is licensed by and in good standing with the division;

(b) has practiced full-time as a hearing instrument specialist for not less than two years; and

(c) is approved as a supervisor by the division in collaboration with the board.

(8) "Unlawful conduct" [is-as] means the same as that term is defined in Section 58-1-501.

(9) "Unprofessional conduct" [is-as] means the same as that term is defined in Sections 58-1-501 and 58-46a-501.

Section 11. Section 62A-5-101 is amended to read:

62A-5-101. Definitions.

As used in this chapter:

(1) "Approved provider" means a person approved by the division to provide home-based services.

(2) "Board" means the Utah State Developmental Center Board created under Section 62A-5-202.5.

(3) (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a cerebral vascular accident.

(b) "Brain injury" does not include a deteriorating disease.

(4) "Designated intellectual disability professional" means:

(a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:

(i) (A) has at least one year of specialized training in working with persons with an intellectual disability; or

(B) has at least one year of clinical experience with persons with an intellectual disability; and

(ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability; or

(b) a clinical social worker, certified social worker, marriage and family therapist, or professional counselor, licensed under Title 58,

Chapter 60, Mental Health Professional Practice Act, who:

(i) has at least two years of clinical experience with persons with an intellectual disability; and

(ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability.

(5) "Deteriorating disease" includes:

(a) multiple sclerosis;

(b) muscular dystrophy;

(c) Huntington's chorea;

(d) Alzheimer's disease;

(e) ataxia; or

(f) cancer.

(6) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 2, Utah State Developmental Center.

[~~48~~] (7) "Director" means the director of the Division of Services for People with Disabilities.

[~~7~~] (8) "Direct service worker" means a person who provides services to a person with a disability:

(a) when the services are rendered in:

(i) the physical presence of the person with a disability; or

(ii) a location where the person rendering the services has access to the physical presence of the person with a disability; and

(b) (i) under a contract with the division;

(ii) under a grant agreement with the division; or

(iii) as an employee of the division.

(9) (a) "Disability" means a severe, chronic disability that:

(i) is attributable to:

(A) an intellectual disability;

(B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. 435.1009;

(C) a physical disability; or

(D) a brain injury;

(ii) is likely to continue indefinitely;

(iii) (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a substantial functional limitation in three or more of the following areas of major life activity:

(I) self-care;

(II) receptive and expressive language;

(III) learning;

(IV) mobility;

(V) self-direction;

- (VI) capacity for independent living; or
- (VII) economic self-sufficiency; or
- (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial limitation in three or more of the following areas:
- (I) memory or cognition;
- (II) activities of daily life;
- (III) judgment and self-protection;
- (IV) control of emotions;
- (V) communication;
- (VI) physical health; or
- (VII) employment; and
- (iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that:
- (A) may continue throughout life; and
- (B) must be individually planned and coordinated.
- (b) "Disability" does not include a condition due solely to:
- (i) mental illness;
- (ii) personality disorder;
- (iii) ~~hearing impairment~~ deafness or being hard of hearing;
- (iv) visual impairment;
- (v) learning disability;
- (vi) behavior disorder;
- (vii) substance abuse; or
- (viii) the aging process.
- (10) "Division" means the Division of Services for People with Disabilities.
- (11) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division in accordance with Subsection 62A-5-102(4), to receive services that are administered by the division.
- (12) "Endorsed program" means a facility or program that:
- (a) is operated:
- (i) by the division; or
- (ii) under contract with the division; or
- (b) provides services to a person committed to the division under Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.
- (13) "Licensed physician" means:
- (a) an individual licensed to practice medicine under:

(i) Title 58, Chapter 67, Utah Medical Practice Act; or

(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(b) a medical officer of the United States Government while in this state in the performance of official duties.

(14) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.

(15) "Public funds" means state or federal funds that are disbursed by the division.

(16) "Resident" means an individual under observation, care, or treatment in an intermediate care facility for people with an intellectual disability.

Section 12. Section 77-7-6 is amended to read:

77-7-6. Manner of making arrest.

(1) The person making the arrest shall inform the person being arrested of his intention, cause, and authority to arrest him. Such notice shall not be required when:

(a) there is reason to believe the notice will endanger the life or safety of the officer or another person or will likely enable the party being arrested to escape;

(b) the person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or

(c) the person being arrested is pursued immediately after the commission of an offense or an escape.

(2) (a) If a ~~hearing-impaired~~ deaf or hard of hearing person, as defined in Subsection 78B-1-201(2), is arrested for an alleged violation of a criminal law, including a local ordinance, the arresting officer shall assess the communicative abilities of the ~~hearing-impaired~~ deaf or hard of hearing person and conduct this notification, and any further notifications of rights, warnings, interrogations, or taking of statements, in a manner that accurately and effectively communicates with the ~~hearing-impaired~~ deaf or hard of hearing person, including qualified interpreters, lip reading, pen and paper, typewriters, computers with print-out capability, and telecommunications devices for the deaf.

(b) Compliance with this ~~subsection~~ Subsection (2) is a factor to be considered by any court when evaluating whether statements of a ~~hearing-impaired~~ deaf or hard of hearing person were made knowingly, voluntarily, and intelligently.

Section 13. Section 78B-1-201 is amended to read:

78B-1-201. Definitions.

As used in this part:

(1) "Appointing authority" means the presiding officer or similar official of any court, board, commission, authority, department, agency, legislative body, or of any proceeding of any nature where a qualified interpreter is required under this part.

(2) "[~~Hearing-impaired~~] Deaf or hard of hearing person" and "[~~hearing-impaired~~] deaf or hard of hearing parent" means a deaf or hard of hearing person who, because of sensory or environmental conditions, requires the assistance of a qualified interpreter or other special assistance for communicative purposes.

(3) "Necessary steps" or "necessary services" include provisions of qualified interpreters, lip reading, pen and paper, typewriters, closed-circuit television with closed-caption translations, computers with print-out capability, and telecommunications devices for the deaf or similar devices.

(4) "Qualified interpreter" means a sign language or oral interpreter as provided in Sections 78B-1-203 and 78B-1-206 of this part.

Section 14. Section 78B-1-202 is amended to read:

78B-1-202. Proceedings at which interpreter is to be provided for the deaf or hard of hearing.

(1) If a [~~hearing-impaired~~] deaf or hard of hearing person is a party or witness at any stage of any judicial or quasi-judicial proceeding in this state or in its political subdivisions, including civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a [~~hearing-impaired~~] deaf or hard of hearing person may be subjected to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings to the [~~hearing-impaired~~] deaf or hard of hearing person and to interpret the [~~hearing-impaired~~] deaf or hard of hearing person's testimony. If the [~~hearing-impaired~~] deaf or hard of hearing person does not understand sign language, the appointing authority shall take necessary steps to ensure that the [~~hearing-impaired~~] deaf or hard of hearing person may effectively and accurately communicate in the proceeding.

(2) If a juvenile whose parent or parents are [~~hearing-impaired~~] deaf or hard of hearing is brought before a court for any reason whatsoever, the court shall appoint and pay for a qualified interpreter to interpret the proceedings to the [~~hearing-impaired~~] deaf or hard of hearing parent and to interpret the [~~hearing-impaired~~] deaf or hard of hearing parent's testimony. If the [~~hearing-impaired~~] deaf or hard of hearing parent or parents do not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that the [~~hearing-impaired person~~] deaf or hard of hearing

parent may effectively and accurately communicate in the proceeding.

(3) In any hearing, proceeding, or other program or activity of any department, board, licensing authority, commission, or administrative agency of the state or of its political subdivisions, the appointing authority shall appoint and pay for a qualified interpreter for the [~~hearing-impaired~~] deaf or hard of hearing participants if the interpreter is not otherwise compensated for those services. If the [~~hearing-impaired~~] deaf or hard of hearing participants do not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that [~~hearing-impaired persons~~] the deaf or hard of hearing participant may effectively and accurately communicate in the proceeding.

(4) If a [~~hearing-impaired~~] deaf or hard of hearing person is a witness before any legislative committee or subcommittee, or legislative research or interim committee or subcommittee or commission authorized by the state Legislature or by the legislative body of any political subdivision of the state, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings to the [~~hearing-impaired person~~] deaf or hard of hearing witness and to interpret the [~~hearing-impaired person's~~] deaf or hard of hearing witness's testimony. If the [~~hearing-impaired~~] deaf or hard of hearing witness does not understand sign language, the appointing authority shall take any reasonable, necessary steps to ensure that [~~hearing-impaired~~] the deaf or hard of hearing witness may effectively and accurately communicate in the proceeding.

(5) If it is the policy and practice of a court of this state or of its political subdivisions to appoint counsel for indigent people, the appointing authority shall appoint and pay for a qualified interpreter or other necessary services for [~~hearing-impaired~~] deaf or hard of hearing, indigent people to assist in communication with counsel in all phases of the preparation and presentation of the case.

(6) If a [~~hearing-impaired~~] deaf or hard of hearing person is involved in administrative, legislative, or judicial proceedings, the appointing authority shall recognize that family relationship between the particular [~~hearing-impaired~~] deaf or hard of hearing person and an interpreter may constitute a possible conflict of interest and select a qualified interpreter who will be impartial in the proceedings.

Section 15. Section 78B-1-203 is amended to read:

78B-1-203. Effectiveness of interpreter determined.

(1) Before appointing an interpreter, the appointing authority shall make a preliminary determination, on the basis of the proficiency level established by the Utah State Office of Rehabilitation created in Section 35A-1-202 and on the basis of the [~~hearing-impaired~~] deaf or hard of hearing person's testimony, that the interpreter

is able to accurately communicate with and translate information to and from the hearing-impaired person involved.

(2) If the interpreter is not able to provide effective communication with the hearing-impaired deaf or hard of hearing person, the appointing authority shall appoint another qualified interpreter.

Section 16. Section 78B-1-205 is amended to read:

78B-1-205. Readiness of interpreter prerequisite to commencement of proceeding.

If an interpreter is required to be appointed under this part, the appointing authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure effective communication with the hearing-impaired deaf or hard of hearing participants.

Section 17. Section 78B-1-206 is amended to read:

78B-1-206. List of qualified interpreters -- Use -- Appointment of another.

(1) The Utah State Office of Rehabilitation created in Section 35A-1-202 shall establish, maintain, update, and distribute a list of qualified interpreters.

(2) (a) When an interpreter is required under this part, the appointing authority shall use one of the interpreters on the list provided by the Utah State Office of Rehabilitation.

(b) If none of the listed interpreters are available or are able to provide effective interpreting with the particular hearing-impaired deaf or hard of hearing person, then the appointing authority shall appoint another qualified interpreter who is able to accurately and simultaneously communicate with and translate information to and from the particular hearing-impaired deaf or hard of hearing person involved.

Section 18. Section 78B-1-209 is amended to read:

78B-1-209. Waiver of right to interpreter.

The right of a hearing-impaired deaf or hard of hearing person to an interpreter may not be waived, except by a hearing-impaired deaf or hard of hearing person who requests a waiver in writing. The waiver is subject to the approval of counsel to the hearing-impaired deaf or hard of hearing person, if existent, and is subject to the approval of the appointing authority. In no event may the failure of the hearing-impaired deaf or hard of hearing person to request an interpreter be considered a waiver of that right.

Section 19. Section 78B-1-210 is amended to read:

78B-1-210. Privileged communications.

If a hearing-impaired deaf or hard of hearing person communicates through an interpreter to any person under such circumstances that the communication would be privileged and the person could not be compelled to testify as to the communications, this privilege shall apply to the interpreter as well.

Section 20. Section 78B-1-211 is amended to read:

78B-1-211. Video recording of testimony of deaf or hard of hearing person.

The appointing authority, on his or her own motion or on the motion of a party to the proceedings, may order that the testimony of the hearing-impaired deaf or hard of hearing person and its interpretation be electronically recorded by a video recording device for use in verification of the official transcript of the proceedings.

CHAPTER 44**H. B. 61**

Passed February 17, 2017

Approved March 17, 2017

Effective May 9, 2017

**PHARMACY SERVICE FOR
DISCHARGED HOSPITAL PATIENTS**

Chief Sponsor: Edward H. Redd

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill allows a hospital pharmacy to dispense a limited supply of a prescription drug to a discharged patient under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ allows a hospital pharmacy to dispense a limited supply of a prescription drug to a discharged patient, under certain circumstances, when the patient's regular retail pharmacy is not available; and
- ▶ requires the Division of Occupational and Professional Licensing to make rules.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

58-17b-610.6, Utah Code Annotated 1953

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

Section 1. Section 58-17b-610.6 is enacted to read:**58-17b-610.6. Hospital pharmacy dispensing prescription drugs to patients at discharge.**

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in consultation with hospital pharmacies, to establish guidelines under which a hospital pharmacy may dispense a limited supply of a prescription drug to an individual who is no longer a patient in the hospital setting if:

(a) the individual is discharged from the hospital on the same day that the hospital pharmacy dispenses the prescription drug to the individual;

(b) the prescription drug relates to the reason for which the individual was a patient at the hospital before being discharged;

(c) the class A pharmacy with which the patient has an established pharmacy-patient relationship is not open at the time of the patient's discharge;

(d) the hospital pharmacy dispenses a quantity of the prescription drug that is the lesser of:

(i) a 72-hour supply; or

(ii) an adequate amount to treat the discharged patient through the first day on which the

pharmacy described in Subsection (1)(c) is open after the patient's discharge from the hospital; and

(e) dispensing the prescription drug complies with protocols established by the hospital pharmacy.

(2) A hospital pharmacy may dispense a prescription drug in accordance with rules made under Subsection (1).

CHAPTER 45**H. B. 63**

Passed February 13, 2017

Approved March 17, 2017

Effective May 9, 2017

HOLE IN THE ROCK STATE PARK

Chief Sponsor: Keven J. Stratton
Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill deals with the creation of the Hole in the Rock State Park.

Highlighted Provisions:

This bill:

- ▶ authorizes the Division of Parks and Recreation to enter into agreements with the United States Bureau of Land Management and the United States National Park Service to acquire the Hole in the Rock area as a state park; and
- ▶ states that the Hole in the Rock area shall be included within the state park system upon the division entering into the agreement described above.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

79-4-605, Utah Code Annotated 1953

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

Section 1. Section 79-4-605 is enacted to read:**79-4-605. Hole in the Rock included within state park system.**

(1) As used in this section, "Hole in the Rock area" means the area of land in Garfield County on the western rim of Glen Canyon National Recreation Area, which includes a trail used by Mormon pioneers to reach the southeastern area of Utah.

(2) The division may:

(a) enter into an agreement to acquire the Hole in the Rock area, or part of the area, as a state park with the United States Bureau of Land Management and the United States National Park Service; and

(b) receive donations of land or facilities at the Hole in the Rock area for inclusion within the state park.

(3) In entering the agreement described in Subsection (2)(a), the division may:

(a) pursue a land transfer agreement with the United States Bureau of Land Management and the United States National Park Service;

(b) if a land transfer agreement is not possible, seek to purchase or lease the land from the United States Bureau of Land Management and the United

States National Park Service through the Recreation and Public Purposes Act, 43 U.S.C. Sec. 869 et seq.; and

(c) finalize an agreement to receive land by transfer, purchase, or lease, as described in Subsections (3)(a) and (b), if:

(i) the resulting state park, including the cost of law enforcement, would be financially self-sustaining;

(ii) all current grazing allotments shall be maintained; and

(iii) the Legislative Management Committee and the Natural Resources, Agriculture, and Environment Interim Committee approve the plan to expand the state park system by including the Hole in the Rock area.

(4) In pursuing state park status for the Hole in the Rock area, the division shall consult with affected counties, the Hole in the Rock Foundation, and other parties as appropriate.

(5) If the division successfully enters into the agreement described in Subsection (2)(a), the division shall negotiate in good faith with the School and Institutional Trust Lands Administration to attempt to:

(a) purchase parcels of school and institutional trust land located within the boundaries of the Hole in the Rock area; or

(b) exchange parcels of school and institutional trust land located within the boundaries of the Hole in the Rock area for other parcels of state land or other lands administered by the United States government.

(6) The Hole in the Rock area shall be included within the state park system upon the division entering into the agreement described in Subsection (2)(a).

(7) Upon its inclusion in the state park system, the state shall be responsible for the cost of law enforcement within the Hole in the Rock area.

CHAPTER 46**H. B. 67**

Passed February 8, 2017

Approved March 17, 2017

Effective May 9, 2017

WILDLIFE AMENDMENTS

Chief Sponsor: Mike K. McKell
 Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill modifies the procedure for the acquisition or possession of a hunting license or permit or a furbearer license.

Highlighted Provisions:

This bill:

- ▶ prohibits an individual from acquiring or possessing a hunting license or permit unless the individual has successfully completed a Division of Wildlife-approved hunter education course;
- ▶ prohibits an individual from acquiring or possessing a furbearer license unless the individual has successfully completed a Division of Wildlife-approved furharvester education course; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

23-19-11, as last amended by Laws of Utah 2014, Chapter 33

23-19-11.1, as enacted by Laws of Utah 2008, Chapter 217

23-19-11.5, as last amended by Laws of Utah 2000, Chapter 86

23-19-15, as last amended by Laws of Utah 2005, Chapter 68

23-19-17.5, as last amended by Laws of Utah 2011, Chapter 297

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

Section 1. Section 23-19-11 is amended to read:**23-19-11. Age restriction -- Hunter education required.**

(1) Except as provided in Section 23-19-14.6, [a person] an individual born after December 31, 1965, may not [purchase] acquire or possess a hunting license or permit unless the individual [presents proof to the division or one of its authorized wildlife license agents that the person has passed] has successfully completed a division-approved hunter education course [offered by a state, province, or country].

[~~(2) For purposes of this section, "proof" means:~~

[~~(a) a certificate of completion of a hunter education course;~~

[~~(b) a preceding year's hunting license or permit issued by a state, province, or country with the applicant's hunter education number noted on the hunting license or permit; or]~~

[~~(c) verification of completion of a hunter education course pursuant to Subsections (3) and (4).]~~

[~~(3) If an applicant for a nonresident hunting license or permit is not able to present a hunting license, permit, or a certificate of completion as provided in Subsections (1) and (2), the division may contact another state, province, or country to verify the completion of a hunter education course so that a nonresident hunting license or permit may be issued.]~~

[~~(4) If an applicant for a resident or nonresident hunting license or permit has completed a hunter education course in Utah but is not able to present a hunting license, permit, or a certificate of completion as provided in Subsections (1) and (2), the division may research the division's hunter education records to verify that the applicant has completed the hunter education course.]~~

[~~(5) (a) If an applicant for a resident or nonresident hunting license has completed a hunter education course and is applying for a hunting permit or license through the division's drawings, Internet site, or other electronic means authorized by the division, the applicant's hunter education number and the name of the state, province, or country that issued the number may constitute proof of completion of a hunter education course under this section.]~~

[~~(b) The division may research the hunter education number to verify that the applicant has completed a division-approved hunter education course.]~~

[~~(6) Upon issuance of the hunting license or permit, the division shall indicate the applicant's hunter education number on the face of the hunting license or permit.]~~

[~~(7) The division may charge a fee for a service provided in Subsection (3) or (4).]~~

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Wildlife Board may make rules establishing:

(a) criteria and standards for approving a hunter education course, including a course offered in another state or country; and

(b) procedures for verifying and documenting that an individual seeking a hunting license or permit has successfully completed a division-approved hunter education course.

(3) (a) It is unlawful for an individual to obtain, attempt to obtain, or possess a hunting license or permit in violation of the hunter education requirements in Subsection (1).

(b) A hunting license or permit obtained or possessed in violation of this section is invalid.

Section 2. Section 23-19-11.1 is amended to read:

23-19-11.1. Hunter education practical shooting test -- Exemptions.

(1) Except as provided in Subsection (2), the Wildlife Board may require that the division-approved hunter education course required by ~~[Subsection 23-19-11(1)]~~ Section 23-19-11 include a practical shooting test.

(2) A member of the United States Armed Forces, including the Utah National Guard, is exempt from a practical shooting test that may be required under Subsection (1) if the member has passed firearms training in the United States Armed Forces or Utah National Guard.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Wildlife Board may make rules establishing firearms test verification requirements.

Section 3. Section 23-19-11.5 is amended to read:

23-19-11.5. Age restriction -- Proof of furharvester education required.

(1) ~~[(a)]~~ A resident born after December 31, 1984, may not ~~[purchase a resident]~~ acquire or possess a furbearer license unless the [applicant presents:] individual has successfully completed a division-approved furharvester education course.

~~[(i) a certificate of completion of a division approved furharvester education course; or]~~

~~[(ii) an immediately preceding year's furbearer license with the furharvester education number noted on the furbearer license.]~~

~~[(b) Upon issuance of the resident furbearer license, the division or authorized wildlife license agent shall indicate the applicant's furharvester education number on the face of the furbearer license.]~~

~~[(2) If an applicant for a resident furbearer license has completed a furharvester education course in Utah but is not able to present a furbearer license or a certificate of completion as provided in Subsection (1), the division may research the division's furharvester education records to verify that the applicant has completed a furharvester education course in Utah.]~~

~~[(3) (a) If an applicant for a resident furbearer license has completed a furharvester education course and is applying for a furbearer license through the division's Internet site or other electronic means authorized by the division, the applicant's Utah furharvester education number may constitute proof of completion of a furharvester education course under this section.]~~

~~[(b) The division may research the furharvester education number to verify that the applicant has completed a division approved furharvester education course.]~~

~~[(4) The division may charge a fee for the service specified in Subsection (2).]~~

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Wildlife Board may make rules establishing:

(a) criteria and standards for approving a furharvester education course, including a course offered in another state or country; and

(b) procedures for verifying and documenting that an individual seeking a furbearer license has successfully completed a division-approved furharvester education course.

(3) (a) It is unlawful for an individual to obtain, attempt to obtain, or possess a furbearer license in violation of the furharvester education requirements in Subsection (1).

(b) A furbearer license or permit obtained or possessed in violation of this section is invalid.

Section 4. Section 23-19-15 is amended to read:

23-19-15. License agents -- Authority -- Bond -- Compensation -- Violations.

(1) The director of the division may designate wildlife license agents to sell licenses, permits, and tags.

(2) Wildlife license agents may:

(a) sell licenses, permits, and tags to all eligible applicants, except those licenses, permits, and tags specified in Subsection 23-19-16(2) which may be sold only by the division; and

(b) collect a fee for each license, permit, or tag sold.

(3) A wildlife license agent shall receive:

(a) for any wildlife license, permit, or tag having a fee \$10 or less and greater than \$1, 50 cents for each wildlife license, permit, or tag sold; and

(b) for any wildlife license, permit, or tag having a fee greater than \$10, 5% of the fee.

(4) The division may require wildlife license agents to obtain a bond in a reasonable amount.

(5) (a) As directed by the division, each wildlife license agent shall:

(i) report all sales to the division; and

(ii) submit all of the fees obtained from the sale of licenses, permits, and tags less the remuneration provided in Subsection (3).

(b) If a wildlife license agent fails to pay the amount due, the division may assess a penalty of 20% of the amount due. All delinquent payments shall bear interest at the rate of 1% per month. If the amount due is not paid because of bad faith or fraud, the division shall assess a penalty of 100% of the total amount due together with interest.

(c) All fees, except the remuneration provided in Subsection (3), shall:

(i) be kept separate from the private funds of the wildlife license agents; and

(ii) belong to the state.

(6) A wildlife license agent may not intentionally:

(a) fail to date or misdate a license, permit, or tag; [or]

(b) issue a hunting license or permit to [any person] an individual until that [person] individual furnishes proof of [having passed] successful completion of a division-approved hunter education course as provided in Section 23-19-11; or

(c) issue a furbearer license to an individual until that individual furnishes proof of [having passed] successful completion of a division-approved [fur harvester] furharvester education course as provided in Section 23-19-11.5.

(7) (a) Except as provided in Subsections (7)(b) and (c), a violation of this section is a class B misdemeanor.

(b) A violation of this section is a class A misdemeanor if the aggregate amount required under Subsection (5)(a):

- (i) is at least \$1,000, but less than \$10,000;
- (ii) is not submitted for one or more months; and
- (iii) remains uncollectable.

(c) A violation of this section is a felony of the third degree if the aggregate amount required under Subsection (5)(a):

- (i) is \$10,000 or more;
- (ii) is not submitted for one or more months; and
- (iii) remains uncollectable.

(8) Violation of any provision of this section may be cause for revocation of the wildlife license agent authorization.

Section 5. Section 23-19-17.5 is amended to read:

23-19-17.5. Lifetime hunting and fishing licenses.

(1) Lifetime licensees born after December 31, 1965, shall [~~be certified~~] complete the hunter education requirements under Section 23-19-11 before engaging in hunting.

(2) A lifetime license shall remain valid if the residency of the lifetime licensee changes to another state or country.

(3) (a) A lifetime license may be used in lieu of a hunting or fishing license.

(b) Each year, a lifetime licensee is entitled to receive without charge a permit and tag of the lifetime licensee's choice for one of the following general season deer hunts:

- (i) archery;
- (ii) rifle; or
- (iii) muzzleloader.

(c) A lifetime licensee is subject to each requirement for special hunting and fishing

permits and tags, except as provided in Subsections (3)(a) and (b).

(4) The Wildlife Board may adopt rules necessary to carry out the provisions of this section.

CHAPTER 47**H. B. 68**

Passed March 8, 2017

Approved March 17, 2017

Effective May 9, 2017

**CRIME VICTIMS REPARATION
BOARD SUNSET EXTENSION**

Chief Sponsor: LaVar Christensen

Senate Sponsor: Daniel Hemmert

LONG TITLE**General Description:**

This bill extends the sunset date on the Crime Victim Reparations and Assistance Board.

Highlighted Provisions:

This bill:

- ▶ extends the sunset date on the Crime Victim Reparations and Assistance Board to July 1, 2027.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-263, as last amended by Laws of Utah 2016, Chapters 65, 136, 156, 322, and 408

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

Section 1. Section 63I-1-263 is amended to read:**63I-1-263. Repeal dates, Titles 63A to 63M.**

(1) Subsection 63A-5-104(4)(h) is repealed on July 1, 2024.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2018.

(4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is repealed November 30, 2019.

(5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.

(6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(7) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

(8) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(9) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states “the Resource Development Coordinating Committee,” is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read “(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.”;

(c) in Subsection 23-14-21(3), the language that states “and the Resource Development Coordinating Committee” is repealed;

(d) in Subsection 23-21-2.3(1), the language that states “the Resource Development Coordinating Committee created in Section 63J-4-501 and” is repealed;

(e) in Subsection 23-21-2.3(2), the language that states “the Resource Development Coordinating Committee and” is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word “and” is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed; and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

(10) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, [2017] 2027.

(11) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2017.

(12) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.

(13) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection (13)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections (13)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

(14) Section 63N-2-512 is repealed on July 1, 2021.

(15) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection (15)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

(16) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed July 1, 2018.

CHAPTER 48**H. B. 69**

Passed February 9, 2017
 Approved March 17, 2017
 Effective May 9, 2017

CAPITAL FACILITIES REVISIONS

Chief Sponsor: Rebecca P. Edwards
 Senate Sponsor: Jerry W. Stevenson

LONG TITLE**General Description:**

This bill modifies provisions related to the Department of Heritage and Arts.

Highlighted Provisions:

This bill:

- ▶ defines pass-through funding;
- ▶ provides department duties related to pass-through funding;
- ▶ removes references and certain requirements related to pass-through funding and capital facilities grants; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 9-1-102, as last amended by Laws of Utah 2012, Chapter 212
- 9-1-201, as last amended by Laws of Utah 2014, Chapter 371
- 9-6-102, as last amended by Laws of Utah 2012, Chapter 212
- 9-6-201, as last amended by Laws of Utah 2015, Chapter 350
- 9-6-205, as last amended by Laws of Utah 2014, Chapter 189
- 9-6-603, as last amended by Laws of Utah 2010, Chapter 111
- 9-6-605, as last amended by Laws of Utah 2012, Chapter 212
- 9-7-101, as last amended by Laws of Utah 2010, Chapter 111
- 9-7-203, as last amended by Laws of Utah 2010, Chapter 111
- 9-7-205, as last amended by Laws of Utah 2010, Chapter 111
- 9-8-102, as last amended by Laws of Utah 2010, Chapter 111
- 9-8-203, as last amended by Laws of Utah 2014, Chapter 123
- 9-8-205, as last amended by Laws of Utah 2010, Chapter 111

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

Section 1. Section 9-1-102 is amended to read:**9-1-102. Definitions.**

As used in this title:

[(2)] (1) "Department" means the Department of Heritage and Arts.

[(4)] (2) "Executive director" means the executive director of the Department of Heritage and Arts.

(3) (a) "Pass-through funding" means funding from an appropriation by the Legislature to a state agency that is intended to be passed through the state agency to:

(i) a government or local government entity;

(ii) a private entity, including a not-for-profit entity; or

(iii) a person in the form of a loan or a grant.

(b) The funding may come from general funds, federal funds, dedicated credits, or a combination of funding sources.

Section 2. Section 9-1-201 is amended to read:**9-1-201. Department of Heritage and Arts -- Creation -- Powers and duties.**

(1) There is created the Department of Heritage and Arts.

(2) The department shall:

(a) be responsible for preserving and promoting the heritage of the state, the arts in the state, and cultural development within the state;

(b) perform heritage, arts, and cultural development planning for the state;

(c) coordinate the program plans of the various divisions within the department;

(d) administer and coordinate all state or federal grant programs which are, or become, available for heritage, arts, and cultural development;

(e) administer any other programs over which the department is given administrative supervision by the governor;

(f) submit an annual written report to the governor and the Legislature as described in Section 9-1-208; and

(g) perform any other duties as provided by the Legislature.

(3) The department may solicit and accept contributions of money, services, and facilities from any other sources, public or private, but may not use those contributions for publicizing the exclusive interest of the donor.

(4) Money received under Subsection (3) shall be deposited in the General Fund as restricted revenues of the department.

(5) (a) For a pass-through funding grant of \$25,000 or more, the department shall make quarterly disbursements to the pass-through funding grant recipient, contingent upon the department receiving a quarterly progress report from the pass-through funding grant recipient.

(b) The department shall:

(i) provide the pass-through funding grant recipient with a progress report form for the reporting purposes described in Subsection (5)(a); and

(ii) include reporting requirement instructions with the form.

Section 3. Section 9-6-102 is amended to read:

9-6-102. Definitions.

As used in this chapter:

(1) "Advisory board" means the Museum Services Advisory Board created in Section 9-6-604.

(2) "Board" means the Board of Directors of the Utah Arts Council created in Section 9-6-204.

(3) "Council" means the Utah Arts Council created in Section 9-6-301.

(4) "Director" means the director of the Division of Arts and Museums.

(5) "Division" means the Division of Arts and Museums.

(6) "Museum" means an organized and permanent institution that:

(a) is owned or controlled by the state, a county, or a municipality, or is a nonprofit organization;

(b) has an educational or aesthetic purpose;

(c) owns or curates a tangible collection; and

(d) exhibits the collection to the public on a regular schedule.

(7) "Office" means the Office of Museum Services created in Section 9-6-602.

~~[(8) (a) "Pass-through funding" means funds appropriated by the Legislature to a state agency that are intended to be passed through the state agency to:]~~

~~[(i) local governments;]~~

~~[(ii) other government agencies;]~~

~~[(iii) private organizations, including not for profits; or]~~

~~[(iv) persons in the form of a loan or grant.]~~

~~[(b) The funding may be:]~~

~~[(i) general funds, federal funds, dedicated credits, or any combination of funding sources; and]~~

~~[(ii) ongoing or one-time.]~~

Section 4. Section 9-6-201 is amended to read:

9-6-201. Division of Arts and Museums -- Creation -- Powers and duties.

(1) There is created within the department the Division of Arts and Museums under the administration and general supervision of the executive director or the designee of the executive director.

(2) The division shall be under the policy direction of the board.

(3) The division shall advance the interests of the arts, in all their phases, within the state, and to that end shall:

(a) cooperate with and locally sponsor federal agencies and projects directed to similar undertakings;

(b) develop the influence of arts in education;

(c) involve the private sector, including businesses, charitable interests, educational interests, manufacturers, agriculturalists, and industrialists in these endeavors;

(d) utilize broadcasting facilities and the power of the press in disseminating information; and

(e) foster, promote, encourage, and facilitate, not only a more general and lively study of the arts, but take all necessary and useful means to stimulate a more abundant production of an indigenous art in this state.

(4) The board shall set policy to guide the division in accomplishing the purposes set forth in Subsection (3).

(5) Except for arts development projects under Section 9-6-804, the division may not grant funds for the support of any arts project under this section unless the project has been first approved by the board.

~~[(6) (a) For a pass-through funding grant of at least \$25,000, the division shall make quarterly disbursements to the pass-through funding grant recipient, contingent upon the division receiving a quarterly progress report from the pass-through grant recipient.]~~

~~[(b) The division shall:]~~

~~[(i) provide the pass-through grant recipient with a progress report form for the reporting purposes of Subsection (6)(a); and]~~

~~[(ii) include reporting requirement instructions with the form.]~~

Section 5. Section 9-6-205 is amended to read:

9-6-205. Board powers and duties.

(1) The board may:

(a) make, amend, or repeal rules for the conduct of its business in governing the council in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) receive gifts, bequests, and property; and

(c) issue certificates and offer and confer prizes, certificates, and awards for works of art and achievement in the arts.

(2) The board shall make policy for the council.

~~[(3) (a) By September 30 of each year, the board shall prepare and submit a request to the governor and the Legislature for prioritized capital facilities~~

grants to be awarded to eligible individuals and organizations under this part, Part 3, Utah Arts Council, Part 4, Utah Percent for Art Act, and Part 5, State Arts Endowment.]

~~[(b) The board shall prepare a list of the requested capital facilities grants in a prioritized order and include a written explanation of:]~~

~~[(i) the total grant amount requested in the list; and]~~

~~[(ii) the basis of its prioritization of requested grants on the list.]~~

~~[(c) The board shall accept applications for capital facilities grants through June 1 of each year, prior to compiling and submitting its yearly request to the governor and the Legislature under Subsection (3)(a).]~~

Section 6. Section 9-6-603 is amended to read:

9-6-603. Duties of office.

~~[(4)]~~ The office shall:

~~[(a)]~~ (1) recommend to the Museum Services Advisory Board:

~~[(i)]~~ (a) policies regarding:

~~[(A)]~~ (i) a grants program; and

~~[(B)]~~ (ii) the equitable dissemination of office technical assistance; and

~~[(ii)]~~ (b) guidelines for determining eligibility for office grants;

~~[(b)]~~ (2) advise state and local government agencies and employees regarding museum related issues, including museum capital development projects;

~~[(e)]~~ (3) provide to Utah museums technical advice and information about sources of direct technical assistance;

~~[(d)]~~ (4) assist and advise Utah museums in locating sources of training for ~~[their]~~ museum staff members;

~~[(e)]~~ (5) develop and coordinate programs, workshops, seminars, and similar activities designed to provide training for staff members of Utah museums;

~~[(f)]~~ (6) undertake scholarly research as necessary to understand the training needs of the museum community and to assess how those needs could best be met;

~~[(g)]~~ (7) administer a state Museum Grant Program to assist eligible Utah museums; and

~~[(h)]~~ (8) establish a program by January 1, 2009, by rule, creating a certified local museum designation, including any provisions necessary to ensure public confidence in charitable solicitation undertaken by a certified local museum.

~~[(2) (a) For a pass-through funding grant of at least \$25,000, the office shall make quarterly disbursements to the pass-through funding~~

~~recipient, contingent upon the office receiving a quarterly progress report from the pass-through grant recipient.]~~

~~[(b) The office shall:]~~

~~[(i) provide the pass-through grant recipient with a progress report form for the reporting purposes of Subsection (2)(a); and]~~

~~[(ii) include reporting requirement instructions with the form.]~~

Section 7. Section 9-6-605 is amended to read:

9-6-605. Advisory board -- Duties.

(1) The advisory board is the policymaking body for the office.

(2) The advisory board shall, in consultation with the director of the office:

(a) set policies and, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules governing:

(i) the office grants program; and

(ii) the awarding of grants to assist Utah's eligible museums; and

(b) set eligibility guidelines for grants administered through the office.

~~[(3) (a) By September 30 of each year, the advisory board shall prepare and submit a request to the governor and the Legislature for prioritized capital facilities grants to be awarded to eligible museums under this part.]~~

~~[(b) The advisory board shall prepare a list of the requested capital facilities grants in a prioritized order and include a written explanation of:]~~

~~[(i) the total grant amount requested in the list; and]~~

~~[(ii) the basis of its prioritization of requested grants on the list.]~~

~~[(c) The advisory board shall accept applications for capital facilities grants through June 1 of each year, prior to compiling and submitting its yearly request to the governor and the Legislature under Subsection (3)(a).]~~

Section 8. Section 9-7-101 is amended to read:

9-7-101. Definitions.

As used in this chapter:

(1) "Division" means the State Library Division.

(2) "Library board" means the library board of directors appointed locally as authorized by Section 9-7-402 or 9-7-502 and which exercises general policy authority for library services within a city or county of the state, regardless of the title by which ~~[it]~~ the board is known locally.

~~[(3) (a) "Pass-through funding" means funds appropriated by the Legislature to a state agency that are intended to be passed through the state agency to:]~~

~~[(i) local governments;]~~

~~[(ii) other government agencies;]~~

~~[(iii) private organizations, including not-for-profits; or]~~

~~[(iv) persons in the form of a loan or grant.]~~

~~[(b) The funding may be:]~~

~~[(i) general funds, federal funds, dedicated credits, or any combination of funding sources; and]~~

~~[(ii) ongoing or one-time.]~~

~~[(4)] (3) "Physical format" means a transportable medium in which analog or digital information is published, such as print, microform, magnetic disk, or optical disk.~~

~~[(5)] (4) "Policy" means the public library online access policy adopted by a library board to meet the requirements of Section 9-7-215.~~

~~[(6)] (5) "Political subdivision" means a county, city, town, school district, public transit district, redevelopment agency, or special improvement or taxing district.~~

~~[(7)] (6) "State agency" means the state, an office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.~~

~~[(8)] (7) (a) "State publication" means a book, compilation, directory, document, contract or grant report, hearing memorandum, journal, law, legislative bill, magazine, map, monograph, order, ordinance, pamphlet, periodical, proceeding, public memorandum, resolution, register, rule, report, statute, audiovisual material, electronic publication, micrographic form and tape or disc recording regardless of format or method of reproduction, issued or published by a state agency or political subdivision for distribution.~~

~~(b) "State publication" does not include correspondence, internal confidential publications, office memoranda, university press publications, or publications of the state historical society.~~

Section 9. Section 9-7-203 is amended to read:

9-7-203. Division duties.

~~[(4)]~~ The division shall:

~~[(a)]~~ (1) establish, operate, and maintain a state publications collection, a digital library of state publications, a bibliographic control system, and depositories as provided in this part;

~~[(b)]~~ (2) cooperate with:

~~[(i)]~~ (a) other agencies to facilitate public access to government information through electronic networks or other means;

~~[(ii)]~~ (b) other state or national libraries or library agencies; and

~~[(iii)]~~ (c) the federal government or agencies in accepting federal aid whether in the form of funds or otherwise;

~~[(e)]~~ (3) receive bequests, gifts, and endowments of money and deposit the funds with the state treasurer to be placed in the State Library Donation Fund, which funds shall be held for the purpose, if any, specifically directed by the donor; and

~~[(d)]~~ (4) receive bequests, gifts, and endowments of property to be held, used, or disposed of, as directed by the donor, with the approval of the Division of Finance.

~~[(2) (a) For a pass-through funding grant of at least \$25,000, the division shall make quarterly disbursements to the pass-through funding grant recipient, contingent upon the division receiving a quarterly progress report from the pass-through grant recipient.]~~

~~[(b) The division shall:]~~

~~[(i) provide the pass-through grant recipient with a progress report form for the reporting purposes of Subsection (2)(a); and]~~

~~[(ii) include reporting requirement instructions with the form.]~~

Section 10. Section 9-7-205 is amended to read:

9-7-205. Duties of board and director.

(1) The board shall:

(a) promote, develop, and organize a state library and make provisions for its housing;

(b) promote and develop library services throughout the state in cooperation with other state or municipal libraries, schools, or other agencies wherever practical;

(c) promote the establishment of district, regional, or multicounty libraries as conditions within particular areas of the state may require;

(d) supervise the books and materials of the state library and require the keeping of careful and complete records of the condition and affairs of the state library;

(e) establish policies for the administration of the division and for the control, distribution, and lending of books and materials to those libraries, institutions, groups, or individuals entitled to them under this chapter;

(f) serve as the agency of the state for the administration of state or federal funds that may be appropriated to further library development within the state;

(g) aid and provide general advisory assistance in the development of statewide school library service and encourage contractual and cooperative relations between school and public libraries;

(h) give assistance, advice, and counsel to all tax-supported libraries within the state and to all communities or persons proposing to establish

~~[them]~~ a tax-supported library and conduct courses and institutes on the approved methods of operation, selection of books, or other activities necessary to the proper administration of a library;

(i) furnish or contract for the furnishing of library or information service to state officials, state departments, or any groups that in the opinion of the director warrant the furnishing of those services, particularly through the facilities of traveling libraries to those parts of the state otherwise inadequately supplied by libraries;

(j) where sufficient need exists and if the director considers it advisable, establish and maintain special departments in the state library to provide services for the blind, visually impaired, persons with disabilities, and professional, occupational, and other groups;

(k) administer a depository library program by collecting state publications, and providing a bibliographic information system;

(l) require the collection of information and statistics necessary to the work of the state library and the distribution of findings and reports;

(m) make any report concerning the activities of the state library to the governor as the governor may require; and

(n) develop standards for public libraries.

~~[(2) (a) By September 30 of each year, the board shall prepare and submit a request to the governor and the Legislature for prioritized capital facilities grants to be awarded to eligible libraries under this chapter.]~~

~~[(b) The board shall prepare a list of the requested capital facilities grants in a prioritized order and include a written explanation of:]~~

~~[(i) the total grant amount requested in the list; and]~~

~~[(ii) the basis of its prioritization of requested grants on the list.]~~

~~[(c) The board shall accept applications for capital facilities grants through June 1 of each year, prior to compiling and submitting its yearly request to the governor and Legislature under Subsection (2)(a).]~~

~~[(3)]~~ (2) The director shall, under the policy direction of the board, carry out the responsibilities under Subsection (1).

Section 11. Section 9-8-102 is amended to read:

9-8-102. Definitions.

As used in this chapter:

(1) "Board" means the Board of State History.

(2) "Director" means the director of the Division of State History.

(3) "Division" means the Division of State History.

(4) "Documentary materials" means written or documentary information contained in published materials, manuscript collections, archival materials, photographs, sound recordings, motion pictures, and other written, visual, and aural materials, except government records.

(5) "Historical artifacts" means objects produced or shaped by human efforts, a natural object deliberately selected and used by a human, an object of aesthetic interest, and any human-made objects produced, used, or valued by the historic peoples of Utah.

~~[(6) (a) "Pass-through funding" means funds appropriated by the Legislature to a state agency that are intended to be passed through the state agency to:]~~

~~[(i) local governments;]~~

~~[(ii) other government agencies;]~~

~~[(iii) private organizations, including not-for-profits; or]~~

~~[(iv) persons in the form of a loan or grant.]~~

~~[(b) The funding may be:]~~

~~[(i) general funds, federal funds, dedicated credits, or any combination of funding sources; and]~~

~~[(ii) ongoing or one-time.]~~

~~[(7)]~~ (6) "Society" means the Utah State Historical Society.

Section 12. Section 9-8-203 is amended to read:

9-8-203. Division duties.

(1) The division shall:

(a) stimulate research, study, and activity in the field of Utah history and related history;

(b) maintain a specialized history library;

(c) mark and preserve historic sites, areas, and remains;

(d) collect, preserve, and administer historical records relating to the history of Utah;

(e) administer, collect, preserve, document, interpret, develop, and exhibit historical artifacts, documentary materials, and other objects relating to the history of Utah for educational and cultural purposes;

(f) edit and publish historical records;

(g) cooperate with local, state, and federal agencies and schools and museums to provide coordinated and organized activities for the collection, documentation, preservation, interpretation, and exhibition of historical artifacts related to the state;

(h) promote, coordinate, and administer:

(i) Utah History Day at the Capitol designated under Section 63G-1-401; and

(ii) the Utah History Day program affiliated with National History Day, which includes a series of

regional, state, and national activities and competitions for students from grades 4 through 12;

(i) provide grants and technical assistance as necessary and appropriate; and

(j) comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in [its] adjudicative proceedings.

(2) The division may acquire or produce reproductions of historical artifacts and documentary materials for educational and cultural use.

(3) To promote an appreciation of Utah history and to increase heritage tourism in the state, the division shall:

(a) (i) create and maintain an inventory of all historic markers and monuments that are accessible to the public throughout the state;

(ii) enter into cooperative agreements with other groups and organizations to collect and maintain the information needed for the inventory;

(iii) encourage the use of volunteers to help collect the information and to maintain the inventory;

(iv) publicize the information in the inventory in a variety of forms and media, especially to encourage Utah citizens and tourists to visit the markers and monuments;

(v) work with public and private landowners, heritage organizations, and volunteer groups to help maintain, repair, and landscape around the markers and monuments; and

(vi) make the inventory available upon request to all other public and private history and heritage organizations, tourism organizations and businesses, and others;

(b) (i) create and maintain an inventory of all active and inactive cemeteries throughout the state;

(ii) enter into cooperative agreements with local governments and other groups and organizations to collect and maintain the information needed for the inventory;

(iii) encourage the use of volunteers to help collect the information and to maintain the inventory;

(iv) encourage cemetery owners to create and maintain geographic information systems to record burial sites and encourage volunteers to do so for inactive and small historic cemeteries;

(v) publicize the information in the inventory in a variety of forms and media, especially to encourage Utah citizens to participate in the care and upkeep of historic cemeteries;

(vi) work with public and private cemeteries, heritage organizations, genealogical groups, and volunteer groups to help maintain, repair, and landscape cemeteries, grave sites, and tombstones; and

(vii) make the inventory available upon request to all other public and private history and heritage organizations, tourism organizations and businesses, and others; and

(c) (i) create and maintain a computerized record of cemeteries and burial locations in a state-coordinated and publicly accessible information system;

(ii) gather information for the information system created and maintained under Subsection (3)(c)(i) by providing matching grants, upon approval by the board, to:

(A) municipal cemeteries;

(B) cemetery maintenance districts;

(C) endowment care cemeteries;

(D) private nonprofit cemeteries;

(E) genealogical associations; and

(F) other nonprofit groups with an interest in cemeteries; and

(iii) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for granting matching funds under Subsection (3)(c)(ii) to ensure that:

(A) professional standards are met; and

(B) projects are cost effective.

~~[(4) (a) For a pass-through funding grant of at least \$25,000, the division shall make quarterly disbursements to the pass-through funding grant recipient, contingent upon the division receiving a quarterly progress report from the pass-through grant recipient.]~~

~~[(b) The division shall:]~~

~~[(i) provide the pass-through grant recipient with a progress report form for the reporting purposes of Subsection (4)(a); and]~~

~~[(ii) include reporting requirement instructions with the form.]~~

~~[(5)] (4) This chapter may not be construed to authorize the division to acquire by purchase any historical artifacts, documentary materials, or specimens that are restricted from sale by federal law or the laws of any state, territory, or foreign nation.~~

Section 13. Section 9-8-205 is amended to read:

9-8-205. Board duties and powers.

(1) The board shall:

(a) make policies to direct the division director in carrying out the director's duties;

(b) approve the division's rules;

(c) assist the division in development programs consistent with this chapter;

(d) function as the State Review Board for purposes of the historic preservation program;

(e) recommend districts, sites, buildings, structures, and objects for listing on the State and National Historic Registers to the director; and

(f) review and approve, if appropriate, matching grants under Subsection 9-8-203(3)(c)(ii); and].

~~[(g) function as the board of the society.]~~

~~[(2) (a) By September 30 of each year, the board shall prepare and submit a request to the governor and the Legislature for prioritized capital facilities grants to be awarded to eligible institutions under this chapter.]~~

~~[(b) The board shall prepare a list of the requested capital facilities grants in a prioritized order and include a written explanation of:]~~

~~[(i) the total grant amount requested in the list; and]~~

~~[(ii) the basis of its prioritization of requested grants on the list.]~~

~~[(c) The board shall accept applications for capital facilities grants by June 1 of each year, prior to compiling and submitting its yearly request to the governor and Legislature under Subsection (2)(a).]~~

~~[(3)] (2) The board may establish advisory committees to assist [it] the board and the division in carrying out [their] the responsibilities under this chapter.~~

CHAPTER 49**H. B. 70**

Passed February 9, 2017

Approved March 17, 2017

Effective May 9, 2017

**COMMON AREA
ASSESSMENT AMENDMENTS**

Chief Sponsor: Gage Froerer

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends a provision related to assessment of property by a county assessor.

Highlighted Provisions:

This bill:

- ▶ allows a county assessor to consider that a property is a common area or facility when assessing the fair market value of the property.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-2-301.1, as last amended by Laws of Utah 2011, Chapter 157

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

Section 1. Section 59-2-301.1 is amended to read:**59-2-301.1. Assessment of property subject to a conservation easement -- Assessment of golf course or hunting club -- Assessment of common areas.**

(1) In assessing the fair market value of property subject to a conservation easement under Title 57, Chapter 18, Land Conservation Easement Act, a county assessor shall consider factors relating to the property and neighboring property that affect the fair market value of the property being assessed, including:

(a) value that transfers to neighboring property because of the presence of a conservation easement on the property being assessed;

(b) practical and legal restrictions on the development potential of the property because of the presence of the conservation easement;

(c) the absence of neighboring property similarly situated to a conservation easement to provide a basis for comparing values between properties; and

(d) any other factor that causes the fair market value of the property to be affected because of the presence of a conservation easement.

(2) (a) In assessing the fair market value of a golf course or hunting club, a county assessor shall consider factors relating to the golf course or hunting club and neighboring property that affect

the fair market value of the golf course or hunting club, including:

(i) value that transfers to neighboring property because of the presence of the golf course or hunting club;

(ii) practical and legal restrictions on the development potential of the golf course or hunting club; and

(iii) the history of operation of the golf course or hunting club and the likelihood that the present use will continue into the future.

(b) The valuation method a county assessor may use in determining the fair market value of a golf course or hunting club includes:

(i) the cost approach;

(ii) the income capitalization approach; and

(iii) the sales comparison approach.

(3) In assessing the fair market value of property that is a common area or facility under Title 57, Chapter 8, Condominium Ownership Act, or a common area under Title 57, Chapter 8a, Community Association Act, a county assessor shall consider factors relating to the property and neighboring property that affect the fair market value of the property being assessed, including:

(a) value that transfers to neighboring property because the property is a common area or facility;

(b) practical and legal restrictions on the development potential of the property because the property is a common area or facility;

(c) the absence of neighboring property similarly situated as a common area or facility to provide a basis for comparing values between properties; and

(d) any other factor that causes the fair market value of the property to be affected because the property is a common area or facility.

CHAPTER 50**H. B. 77**

Passed March 7, 2017

Approved March 17, 2017

Effective May 9, 2017

FIFTH DISTRICT COURT JUDGE

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill adds a judge to the fifth judicial district.

Highlighted Provisions:

This bill:

- ▶ adds a judge to the fifth judicial district.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**78A-1-103, as last amended by Laws of Utah 2013,
Chapter 67*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 78A-1-103 is amended to read:****78A-1-103. Number of district judges.**

The number of district court judges shall be:

- (1) four district judges in the First District;
 - (2) 14 district judges in the Second District;
 - (3) 28 district judges in the Third District;
 - (4) 13 district judges in the Fourth District;
 - (5) [~~five~~] six district judges in the Fifth District;
 - (6) two district judges in the Sixth District;
 - (7) three district judges in the Seventh District;
- and
- (8) three district judges in the Eighth District.

CHAPTER 51**H. B. 85**

Passed March 7, 2017

Approved March 17, 2017

Effective May 9, 2017

**QUALITY GROWTH
COMMISSION AMENDMENTS**Chief Sponsor: Gage Froerer
Senate Sponsor: D. Gregg Buxton

LONG TITLE**General Description:**

This bill modifies reporting requirements of the LeRay McAllister Critical Land Conservation Program.

Highlighted Provisions:

This bill:

- ▶ requires the Quality Growth Commission to provide an annual written report to the Infrastructure and General Government Appropriations Subcommittee; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

11-38-304, as last amended by Laws of Utah 2010,
Chapter 323

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

Section 1. Section 11-38-304 is amended to read:**11-38-304. Commission to report annually.**

The commission shall submit an annual report to the ~~[Executive Offices and Criminal Justice]~~ Infrastructure and General Government and Natural Resources, Agriculture, and Environmental Quality Appropriations [Subcommittee] Subcommittees:

- (1) specifying the amount of each disbursement from the program;
- (2) identifying the recipient of each disbursement and describing the project for which money was disbursed; and
- (3) detailing the conditions, if any, placed by the commission on disbursements from the program.

CHAPTER 52**H. B. 86**

Passed February 13, 2017

Approved March 17, 2017

Effective May 9, 2017

INACTIVE VOTER AMENDMENTS

Chief Sponsor: Craig Hall
Senate Sponsor: Karen Mayne

LONG TITLE**General Description:**

This bill amends provisions of the Election Code relating to inactive voters.

Highlighted Provisions:

This bill:

- ▶ permits a county clerk to list a voter as inactive if the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter;
- ▶ repeals the authority of a county clerk to remove a voter described in the preceding paragraph from the official register; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-1-102, as last amended by Laws of Utah 2016, Chapters 28, 66, and 176

20A-2-305, as last amended by Laws of Utah 2012, Chapters 33 and 52

20A-2-306, as last amended by Laws of Utah 2014, Chapter 373

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

Section 1. Section 20A-1-102 is amended to read:**20A-1-102. Definitions.**

As used in this title:

(1) "Active voter" means a registered voter who has not been classified as an inactive voter by the county clerk.

(2) "Automatic tabulating equipment" means apparatus that automatically examines and counts votes recorded on paper ballots or ballot sheets and tabulates the results.

(3) (a) "Ballot" means the storage medium, whether paper, mechanical, or electronic, upon which a voter records the voter's votes.

(b) "Ballot" includes ballot sheets, paper ballots, electronic ballots, and secrecy envelopes.

(4) "Ballot label" means the cards, papers, booklet, pages, or other materials that:

(a) contain the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) are used in conjunction with ballot sheets that do not display that information.

(5) "Ballot proposition" means a question, issue, or proposal that is submitted to voters on the ballot for their approval or rejection including:

(a) an opinion question specifically authorized by the Legislature;

(b) a constitutional amendment;

(c) an initiative;

(d) a referendum;

(e) a bond proposition;

(f) a judicial retention question;

(g) an incorporation of a city or town; or

(h) any other ballot question specifically authorized by the Legislature.

(6) "Ballot sheet":

(a) means a ballot that:

(i) consists of paper or a card where the voter's votes are marked or recorded; and

(ii) can be counted using automatic tabulating equipment; and

(b) includes punch card ballots and other ballots that are machine-countable.

(7) "Bind," "binding," or "bound" means securing more than one piece of paper together with a staple or stitch in at least three places across the top of the paper in the blank space reserved for securing the paper.

(8) "Board of canvassers" means the entities established by Sections 20A-4-301 and 20A-4-306 to canvass election returns.

(9) "Bond election" means an election held for the purpose of approving or rejecting the proposed issuance of bonds by a government entity.

(10) "Book voter registration form" means voter registration forms contained in a bound book that are used by election officers and registration agents to register persons to vote.

(11) "Business reply mail envelope" means an envelope that may be mailed free of charge by the sender.

(12) "By-mail voter registration form" means a voter registration form designed to be completed by the voter and mailed to the election officer.

(13) "Canvass" means the review of election returns and the official declaration of election results by the board of canvassers.

(14) "Canvassing judge" means a poll worker designated to assist in counting ballots at the canvass.

(15) "Contracting election officer" means an election officer who enters into a contract or

interlocal agreement with a provider election officer.

(16) “Convention” means the political party convention at which party officers and delegates are selected.

(17) “Counting center” means one or more locations selected by the election officer in charge of the election for the automatic counting of ballots.

(18) “Counting judge” means a poll worker designated to count the ballots during election day.

(19) “Counting poll watcher” means a person selected as provided in Section 20A-3-201 to witness the counting of ballots.

(20) “Counting room” means a suitable and convenient private place or room, immediately adjoining the place where the election is being held, for use by the poll workers and counting judges to count ballots during election day.

(21) “County officers” means those county officers that are required by law to be elected.

(22) “Date of the election” or “election day” or “day of the election”:

(a) means the day that is specified in the calendar year as the day that the election occurs; and

(b) does not include:

(i) deadlines established for absentee voting; or
(ii) any early voting or early voting period as provided under Chapter 3, Part 6, Early Voting.

(23) “Elected official” means:

(a) a person elected to an office under Section 20A-1-303;

(b) a person who is considered to be elected to a municipal office in accordance with Subsection 20A-1-206(1)(c)(ii); or

(c) a person who is considered to be elected to a local district office in accordance with Subsection 20A-1-206(3)(c)(ii).

(24) “Election” means a regular general election, a municipal general election, a statewide special election, a local special election, a regular primary election, a municipal primary election, and a local district election.

(25) “Election Assistance Commission” means the commission established by the Help America Vote Act of 2002, Pub. L. No. 107-252.

(26) “Election cycle” means the period beginning on the first day persons are eligible to file declarations of candidacy and ending when the canvass is completed.

(27) “Election judge” means a poll worker that is assigned to:

(a) preside over other poll workers at a polling place;

(b) act as the presiding election judge; or

(c) serve as a canvassing judge, counting judge, or receiving judge.

(28) “Election officer” means:

(a) the lieutenant governor, for all statewide ballots and elections;

(b) the county clerk for:

(i) a county ballot and election; and

(ii) a ballot and election as a provider election officer as provided in Section 20A-5-400.1 or 20A-5-400.5;

(c) the municipal clerk for:

(i) a municipal ballot and election; and

(ii) a ballot and election as a provider election officer as provided in Section 20A-5-400.1 or 20A-5-400.5;

(d) the local district clerk or chief executive officer for:

(i) a local district ballot and election; and

(ii) a ballot and election as a provider election officer as provided in Section 20A-5-400.1 or 20A-5-400.5; or

(e) the business administrator or superintendent of a school district for:

(i) a school district ballot and election; and

(ii) a ballot and election as a provider election officer as provided in Section 20A-5-400.1 or 20A-5-400.5.

(29) “Election official” means any election officer, election judge, or poll worker.

(30) “Election results” means:

(a) for an election other than a bond election, the count of votes cast in the election and the election returns requested by the board of canvassers; or

(b) for bond elections, the count of those votes cast for and against the bond proposition plus any or all of the election returns that the board of canvassers may request.

(31) “Election returns” includes the pollbook, the military and overseas absentee voter registration and voting certificates, one of the tally sheets, any unprocessed absentee ballots, all counted ballots, all excess ballots, all unused ballots, all spoiled ballots, the ballot disposition form, and the total votes cast form.

(32) “Electronic ballot” means a ballot that is recorded using a direct electronic voting device or other voting device that records and stores ballot information by electronic means.

(33) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(34) (a) “Electronic voting device” means a voting device that uses electronic ballots.

(b) “Electronic voting device” includes a direct recording electronic voting device.

(35) “Inactive voter” means a registered voter who ~~has: (a) been sent the notice required by Section 20A-2-306; and (b) failed to respond to that notice.]~~ is listed as inactive by a county clerk under Subsection 20A-2-306(4)(c)(i) or (ii).

(36) “Inspecting poll watcher” means a person selected as provided in this title to witness the receipt and safe deposit of voted and counted ballots.

(37) “Judicial office” means the office filled by any judicial officer.

(38) “Judicial officer” means any justice or judge of a court of record or any county court judge.

(39) “Local district” means a local government entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and includes a special service district under Title 17D, Chapter 1, Special Service District Act.

(40) “Local district officers” means those local district board members that are required by law to be elected.

(41) “Local election” means a regular county election, a regular municipal election, a municipal primary election, a local special election, a local district election, and a bond election.

(42) “Local political subdivision” means a county, a municipality, a local district, or a local school district.

(43) “Local special election” means a special election called by the governing body of a local political subdivision in which all registered voters of the local political subdivision may vote.

(44) “Municipal executive” means:

(a) the mayor in the council-mayor form of government defined in Section 10-3b-102;

(b) the mayor in the council-manager form of government defined in Subsection 10-3b-103(7); or

(c) the chair of a metro township form of government defined in Section 10-3b-102.

(45) “Municipal general election” means the election held in municipalities and, as applicable, local districts on the first Tuesday after the first Monday in November of each odd-numbered year for the purposes established in Section 20A-1-202.

(46) “Municipal legislative body” means:

(a) the council of the city or town in any form of municipal government; or

(b) the council of a metro township.

(47) “Municipal office” means an elective office in a municipality.

(48) “Municipal officers” means those municipal officers that are required by law to be elected.

(49) “Municipal primary election” means an election held to nominate candidates for municipal office.

(50) “Municipality” means a city, town, or metro township.

(51) “Official ballot” means the ballots distributed by the election officer to the poll workers to be given to voters to record their votes.

(52) “Official endorsement” means:

(a) the information on the ballot that identifies:

(i) the ballot as an official ballot;

(ii) the date of the election; and

(iii) (A) for a ballot prepared by an election officer other than a county clerk, the facsimile signature required by Subsection 20A-6-401(1)(b)(iii); or

(B) for a ballot prepared by a county clerk, the words required by Subsection 20A-6-301(1)(c)(iii); and

(b) the information on the ballot stub that identifies:

(i) the poll worker’s initials; and

(ii) the ballot number.

(53) “Official register” means the official record furnished to election officials by the election officer that contains the information required by Section 20A-5-401.

(54) “Paper ballot” means a paper that contains:

(a) the names of offices and candidates and statements of ballot propositions to be voted on; and

(b) spaces for the voter to record the voter’s vote for each office and for or against each ballot proposition.

(55) “Political party” means an organization of registered voters that has qualified to participate in an election by meeting the requirements of Chapter 8, Political Party Formation and Procedures.

(56) “Pollbook” means a record of the names of voters in the order that they appear to cast votes.

(57) “Polling place” means the building where voting is conducted.

(58) (a) “Poll worker” means a person assigned by an election official to assist with an election, voting, or counting votes.

(b) “Poll worker” includes election judges.

(c) “Poll worker” does not include a watcher.

(59) “Position” means a square, circle, rectangle, or other geometric shape on a ballot in which the voter marks the voter’s choice.

(60) “Primary convention” means the political party conventions held during the year of the regular general election.

(61) “Protective counter” means a separate counter, which cannot be reset, that:

(a) is built into a voting machine; and

(b) records the total number of movements of the operating lever.

(62) “Provider election officer” means an election officer who enters into a contract or interlocal agreement with a contracting election officer to conduct an election for the contracting election officer’s local political subdivision in accordance with Section 20A-5-400.1.

(63) “Provisional ballot” means a ballot voted provisionally by a person:

(a) whose name is not listed on the official register at the polling place;

(b) whose legal right to vote is challenged as provided in this title; or

(c) whose identity was not sufficiently established by a poll worker.

(64) “Provisional ballot envelope” means an envelope printed in the form required by Section 20A-6-105 that is used to identify provisional ballots and to provide information to verify a person’s legal right to vote.

(65) “Qualify” or “qualified” means to take the oath of office and begin performing the duties of the position for which the person was elected.

(66) “Receiving judge” means the poll worker that checks the voter’s name in the official register, provides the voter with a ballot, and removes the ballot stub from the ballot after the voter has voted.

(67) “Registration form” means a book voter registration form and a by-mail voter registration form.

(68) “Regular ballot” means a ballot that is not a provisional ballot.

(69) “Regular general election” means the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year for the purposes established in Section 20A-1-201.

(70) “Regular primary election” means the election on the fourth Tuesday of June of each even-numbered year, to nominate candidates of political parties and candidates for nonpartisan local school board positions to advance to the regular general election.

(71) “Resident” means a person who resides within a specific voting precinct in Utah.

(72) “Sample ballot” means a mock ballot similar in form to the official ballot printed and distributed as provided in Section 20A-5-405.

(73) “Scratch vote” means to mark or punch the straight party ticket and then mark or punch the ballot for one or more candidates who are members of different political parties or who are unaffiliated.

(74) “Secrecy envelope” means the envelope given to a voter along with the ballot into which the voter places the ballot after the voter has voted it in order to preserve the secrecy of the voter’s vote.

(75) “Special election” means an election held as authorized by Section 20A-1-203.

(76) “Spoiled ballot” means each ballot that:

(a) is spoiled by the voter;

(b) is unable to be voted because it was spoiled by the printer or a poll worker; or

(c) lacks the official endorsement.

(77) “Statewide special election” means a special election called by the governor or the Legislature in which all registered voters in Utah may vote.

(78) “Stub” means the detachable part of each ballot.

(79) “Substitute ballots” means replacement ballots provided by an election officer to the poll workers when the official ballots are lost or stolen.

(80) “Ticket” means a list of:

(a) political parties;

(b) candidates for an office; or

(c) ballot propositions.

(81) “Transfer case” means the sealed box used to transport voted ballots to the counting center.

(82) “Vacancy” means the absence of a person to serve in any position created by statute, whether that absence occurs because of death, disability, disqualification, resignation, or other cause.

(83) “Valid voter identification” means:

(a) a form of identification that bears the name and photograph of the voter which may include:

(i) a currently valid Utah driver license;

(ii) a currently valid identification card that is issued by:

(A) the state; or

(B) a branch, department, or agency of the United States;

(iii) a currently valid Utah permit to carry a concealed weapon;

(iv) a currently valid United States passport; or

(v) a currently valid United States military identification card;

(b) one of the following identification cards, whether or not the card includes a photograph of the voter:

(i) a valid tribal identification card;

(ii) a Bureau of Indian Affairs card; or

(iii) a tribal treaty card; or

(c) two forms of identification not listed under Subsection (83)(a) or (b) but that bear the name of the voter and provide evidence that the voter resides in the voting precinct, which may include:

(i) a current utility bill or a legible copy thereof, dated within the 90 days before the election;

(ii) a bank or other financial account statement, or a legible copy thereof;

- (iii) a certified birth certificate;
 - (iv) a valid social security card;
 - (v) a check issued by the state or the federal government or a legible copy thereof;
 - (vi) a paycheck from the voter's employer, or a legible copy thereof;
 - (vii) a currently valid Utah hunting or fishing license;
 - (viii) certified naturalization documentation;
 - (ix) a currently valid license issued by an authorized agency of the United States;
 - (x) a certified copy of court records showing the voter's adoption or name change;
 - (xi) a valid Medicaid card, Medicare card, or Electronic Benefits Transfer Card;
 - (xii) a currently valid identification card issued by:
 - (A) a local government within the state;
 - (B) an employer for an employee; or
 - (C) a college, university, technical school, or professional school located within the state; or
 - (xiii) a current Utah vehicle registration.
- (84) "Valid write-in candidate" means a candidate who has qualified as a write-in candidate by following the procedures and requirements of this title.
- (85) "Voter" means a person who:
- (a) meets the requirements for voting in an election;
 - (b) meets the requirements of election registration;
 - (c) is registered to vote; and
 - (d) is listed in the official register book.
- (86) "Voter registration deadline" means the registration deadline provided in Section 20A-2-102.5.
- (87) "Voting area" means the area within six feet of the voting booths, voting machines, and ballot box.
- (88) "Voting booth" means:
- (a) the space or compartment within a polling place that is provided for the preparation of ballots, including the voting machine enclosure or curtain; or
 - (b) a voting device that is free standing.
- (89) "Voting device" means:
- (a) an apparatus in which ballot sheets are used in connection with a punch device for piercing the ballots by the voter;
 - (b) a device for marking the ballots with ink or another substance;

- (c) an electronic voting device or other device used to make selections and cast a ballot electronically, or any component thereof;
- (d) an automated voting system under Section 20A-5-302; or
- (e) any other method for recording votes on ballots so that the ballot may be tabulated by means of automatic tabulating equipment.

(90) "Voting machine" means a machine designed for the sole purpose of recording and tabulating votes cast by voters at an election.

(91) "Voting poll watcher" means a person appointed as provided in this title to witness the distribution of ballots and the voting process.

(92) "Voting precinct" means the smallest voting unit established as provided by law within which qualified voters vote at one polling place.

(93) "Watcher" means a voting poll watcher, a counting poll watcher, an inspecting poll watcher, and a testing watcher.

(94) "Western States Presidential Primary" means the election established in Chapter 9, Part 8, Western States Presidential Primary.

(95) "Write-in ballot" means a ballot containing any write-in votes.

(96) "Write-in vote" means a vote cast for a person whose name is not printed on the ballot according to the procedures established in this title.

Section 2. Section 20A-2-305 is amended to read:

20A-2-305. Removing names from the official register -- General requirements.

(1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.

(2) The county clerk shall remove a voter's name from the official register if:

- (a) the voter dies and the requirements of Subsection (3) are met;

- (b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;

- (c) the county clerk has:

- (i) obtained evidence that the voter's residence has changed;

- (ii) mailed notice to the voter as required by Section 20A-2-306;

- (iii) (A) received no response from the voter; or

- (B) not received information that confirms the voter's residence; and

- (iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice;

(d) the voter requests, in writing, that the voter's name be removed from the official register;

~~[(e) the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter;]~~

~~[(f)] (e)~~ the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section 20A-2-101.3 or 20A-2-101.5; or

~~[(g)] (f)~~ the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.

(3) The county clerk shall remove a voter's name from the registration list within 21 days of receipt of confirmation from the Department of Health's Bureau of Vital Records that a voter is deceased.

Section 3. Section 20A-2-306 is amended to read:

20A-2-306. Removing names from the official register -- Determining and confirming change of residence.

(1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:

(a) confirms in writing that the voter has changed residence to a place outside the county; or

(b) (i) has not voted in an election during the period beginning on the date of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and

(ii) has failed to respond to the notice required by Subsection (3).

(2) (a) When a county clerk obtains information that a voter's address has changed and it appears that the voter still resides within the same county, the county clerk shall:

(i) change the official register to show the voter's new address; and

(ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed:

"VOTER REGISTRATION NOTICE

We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?

Street City County State Zip

If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:

- you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or

- if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

Signature of Voter"

"The portion of a voter registration form that lists a person's driver license or identification card number, social security number, and email address is a private record. The portion of a voter registration form that lists a person's date of birth is a private record, the use of which is restricted to government officials, government employees, political parties, or certain other persons.

If you believe that disclosure of any information contained in this voter registration form to a person other than a government official or government employee is likely to put you or a member of your household's life or safety at risk, or to put you or a member of your household at risk of being stalked or harassed, you may apply to the lieutenant governor or your county clerk to have your entire voter registration record classified as private."

(4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.

(b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:

(i) the voter requests, in writing, that the voter's name be removed; or

(ii) the voter has died.

(c) (i) After a county clerk mails a notice as required in this section, the county clerk may list that voter as inactive.

(ii) If a county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and

has no further information to contact the voter, the county clerk may list that voter as inactive.

~~(iii)~~ (iii) An inactive voter shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.

~~(iii)~~ (iv) A county is not required to send routine mailings to an inactive ~~[voters]~~ voter and is not required to count inactive voters when dividing precincts and preparing supplies.

CHAPTER 53**H. B. 90**

Passed February 23, 2017

Approved March 17, 2017

Effective May 9, 2017

INSURANCE OPIOID REGULATION

Chief Sponsor: Raymond P. Ward

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill authorizes commercial insurers, the state Medicaid program, workers' compensation insurers, and public employee insurers to implement policies to minimize the risk of prescribing certain controlled substances.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes a health insurance policy, a health plan offered to state employees, the Medicaid program, and workers' compensation insurance to establish policies to minimize the risk of opioid addiction and overdose;
- ▶ applies to insurance plans entered into or renewed on or after July 1, 2017;
- ▶ requires a report to the Health and Human Services Interim Committee; and
- ▶ sunsets the requirement for prescribing policies on July 1, 2022.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-231, as last amended by Laws of Utah 2015, Chapter 50

ENACTS:

26-18-21, Utah Code Annotated 1953

31A-22-615, Utah Code Annotated 1953

34A-2-424, Utah Code Annotated 1953

49-20-414, Utah Code Annotated 1953

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

Section 1. Section 26-18-21 is enacted to read:**26-18-21. Prescribing policies for opioid prescriptions.**

(1) The department may implement a prescribing policy for certain opioid prescriptions that is substantially similar to the prescribing policies required in Section 31A-22-615.

(2) The department may amend the state program and apply for waivers for the state program, if necessary, to implement Subsection (1).

Section 2. Section 31A-22-615 is enacted to read:**31A-22-615. Insurance coverage for opioids -- Policies -- Reports.**

(1) For purposes of this section:

(a) "Health care provider" means an individual, other than a veterinarian, who:

(i) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act; and

(ii) possesses the authority, in accordance with the individual's scope of practice, to prescribe Schedule II controlled substances and Schedule III controlled substances that are applicable to opioids and benzodiazapines.

(b) "Health insurer" means:

(i) an insurer who offers health care insurance as that term is defined in Section 31A-1-301;

(ii) health benefits offered to state employees under Section 49-20-202; and

(iii) a workers' compensation insurer:

(A) authorized to provide workers' compensation insurance in the state; or

(B) that is a self-insured employer as defined in Section 34A-2-201.

(c) "Opioid" has the same meaning as "opiate," as that term is defined in Section 58-37-2.

(d) "Prescribing policy" means a policy developed by a health insurer that includes evidence based guidelines for prescribing opioids, and may include the 2016 Center for Disease Control Guidelines for Prescribing Opioids for Chronic Pain, or the Utah Clinical Guidelines on Prescribing Opioids for the treatment of pain.

(2) A health insurer that provides prescription drug coverage may enact a policy to minimize the risk of opioid addiction and overdose from:

(a) chronic co-prescription of opioids with benzodiazapines and other sedating substances;

(b) prescription of very high dose opioids in the primary care setting; and

(c) the inadvertent transition of short-term opioids for an acute injury into long-term opioid dependence.

(3) A health insurer that provides prescription drug coverage may enact policies to facilitate:

(a) non-narcotic treatment alternatives for patients who have chronic pain; and

(b) medication-assisted treatment for patients who have opioid dependence disorder.

(4) The requirements of this section apply to insurance plans entered into or renewed on or after July 1, 2017.

(5) (a) A health insurer subject to this section shall on or before September 1, 2017, and before each September 1 thereafter, submit a written report to the Utah Insurance Department regarding whether the insurer has adopted a policy and a general description of the policy.

(b) The Utah Insurance Department shall, on or before October 1, 2017, and before each October 1

thereafter, submit a written summary of the information under Subsection (5)(a) to the Health and Human Services Interim Committee.

(6) A health insurer subject to this section may share the policies developed under this section with other health insurers and the public.

(7) This section sunsets in accordance with Section 63I-1-231.

Section 3. Section 34A-2-424 is enacted to read:

34A-2-424. Prescribing policies for certain opioid prescriptions.

(1) This section applies to a person regulated by this chapter or Chapter 3, Utah Occupational Disease Act.

(2) A self-insured employer, as that term is defined in Section 34A-2-201.5, an insurance carrier, and a managed health care program under Section 34A-2-111 may implement a prescribing policy for certain opioid prescriptions in accordance with Section 31A-22-615.

Section 4. Section 49-20-414 is enacted to read:

49-20-414. Prescribing policies for certain opioid prescriptions.

A plan offered to state employees under this chapter may implement a prescribing policy for certain opioid prescriptions in accordance with Section 31A-22-615.

Section 5. Section 63I-1-231 is amended to read:

63I-1-231. Repeal dates, Title 31A.

(1) Section 31A-2-217, Coordination with other states, is repealed July 1, 2023.

(2) Section 31A-22-615 is repealed July 1, 2022.

~~[(2)]~~ (3) Section 31A-22-619.6, Coordination of benefits with workers' compensation claim--Health insurer's duty to pay, is repealed on July 1, 2018.

~~[(3) Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act, is repealed July 1, 2015.]~~

(4) Section 31A-22-642, Insurance coverage for autism spectrum disorder, is repealed on January 1, 2019.

CHAPTER 54**H. B. 91**

Passed March 3, 2017
 Approved March 17, 2017
 Effective May 9, 2017

**COUNTY COMMISSION
 ELECTION AMENDMENTS**

Chief Sponsor: Norman K Thurston
 Senate Sponsor: J. Stuart Adams

LONG TITLE**General Description:**

This bill amends provisions related to county commissioner elections.

Highlighted Provisions:

This bill:

- ▶ allows a county to modify the process by which a candidate for a county commission is elected when there is more than one vacant county commission position; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 17-52-401, as last amended by Laws of Utah 2012, Chapter 17
- 17-52-501, as renumbered and amended by Laws of Utah 2000, Chapter 133
- 17-52-502, as last amended by Laws of Utah 2005, Chapter 42
- 20A-1-508, as last amended by Laws of Utah 2011, Chapters 35, 297, and 327
- 20A-9-409, as enacted by Laws of Utah 2014, Chapter 17

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

Section 1. Section 17-52-401 is amended to read:

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

(1) Each optional plan proposed under this chapter:

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

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

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

(ii) retention, elimination, or combining of existing offices and, if an office is eliminated, the division or department of county government

responsible for performing the duties of the eliminated office;

(iii) continuity of existing ordinances and regulations;

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

(v) making of interim and temporary appointments; and

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

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

(d) notwithstanding any other provision of this title and except with respect to an optional plan that proposes the adoption of the county commission or expanded county commission form of government, with respect to the county budget shall provide that the county executive's role is to prepare and present a proposed budget to the county legislative body, and the county legislative body's role is to adopt a final budget.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) if any members of the county commission are to be elected from districts, the district residency requirements for those commission members~~[-]; and~~

(e) if any members of the county commission are to be elected at large, whether the election of county commission members is subject to the provisions of Subsection 17-52-501(6) or Subsection 17-52-502(6).

Section 2. Section 17-52-501 is amended to read:

17-52-501. County commission form of government -- Commission member elections.

(1) As used in this section:

(a) "Midterm vacancy" means a county commission position that is being filled at an election for less than the position's full term as established in:

(i) Subsection (4)(a); or

(ii) a county's optional plan under Subsection 17-52-401(5)(b).

(b) "Open position" means a county commission position that is being filled at a regular general election for the position's full term as established in:

(i) Subsection (4)(a); or

(ii) a county's optional plan under Subsection 17-52-401(5)(b).

(c) "Opt-in county" means a county that has, in accordance with Subsection (6)(a), chosen to conduct county commissioner elections in accordance with Subsection (6).

[4] (2) Each county operating under the county commission form of government shall be governed by a county commission consisting of three members.

[2] (3) A county commission under a county commission form of government is both the county legislative body and the county executive and has the powers, duties, and functions of a county legislative body under Chapter 53, Part 2, County Legislative Body, and the powers, duties, and functions of a county executive under Chapter 53, Part 3, County Executive.

[3] (4) Except as otherwise provided in an optional plan adopted under this chapter:

(a) the term of office of each county commission member is four years;

(b) the terms of county commission members shall be staggered so that two members are elected at a regular general election date that alternates with the regular general election date of the other member; and

(c) each county commission member shall be elected:

(i) at large, unless otherwise required by court order~~[-]; and~~

(ii) subject to the provisions of this section, in accordance with Title 20A, Election Code.

(5) Except as provided in Subsection (6):

[4] (a) if two county commission positions are vacant for an election, the positions shall be designated "county commission seat A" and "county commission seat B~~[-]~~";

(b) each candidate who files a declaration of candidacy when two positions are vacant shall designate on the declaration of candidacy form whether the candidate is a candidate for seat A or seat B~~[-]; and~~

(c) no person may file a declaration of candidacy for, be a candidate for, or be elected to two county commission positions in the same election.

(6) (a) A county of the first or second class may, through an alternate plan as described in Subsection 17-52-401(5) or by ordinance, choose to conduct county commissioner elections in accordance with this Subsection (6).

(b) When issuing the notice of election required by Subsection 20A-5-101(2), the clerk of an opt-in county shall, if there is at least one open position and at least one midterm vacancy, designate:

(i) each open position as "open position"; and

(ii) each midterm vacancy as "midterm vacancy."

(c) An individual who files a declaration of candidacy for the office of county commissioner in an opt-in county:

(i) if there is more than one open position, is not required to indicate which open position the individual is running for;

(ii) if there is at least one open position and at least one midterm vacancy, shall designate on the declaration of candidacy whether the individual is filing for an open position or a midterm vacancy; and

(iii) may not file a declaration of candidacy for an open position and a midterm vacancy in the same election.

(d) If there is an open position and a midterm vacancy being voted upon in the same election in an opt-in county, the county clerk shall indicate on the ballot for the election which positions are open

positions and which positions are midterm vacancies.

(e) In an opt-in county:

(i) the candidates for open positions, in a number equal to the number of open positions, who receive the highest number of votes are:

(A) for the purposes of a regular primary election, nominated by the candidates' party for the open positions; and

(B) for the purposes of a regular general election, elected to fill the open positions; and

(ii) the candidates for midterm vacancies, in a number equal to the number of midterm vacancies, who receive the highest number of votes are:

(A) for the purposes of a regular primary election, nominated by the candidates' party for the midterm vacancies; and

(B) for the purposes of a regular general election, elected to fill the midterm vacancies.

Section 3. Section 17-52-502 is amended to read:

17-52-502. Expanded county commission form of government -- Commission member elections.

(1) As used in this section:

(a) "Midterm vacancy" means the same as that term is defined in Section 17-52-501.

(b) "Open position" means the same as that term is defined in Section 17-52-501.

(c) "Opt-in county" means a county that has, in accordance with Subsection (6)(a), chosen to conduct county commissioner elections in accordance with Subsection (6).

[(4)] (2) Each county operating under an expanded county commission form of government shall be governed by a county commission consisting of five or seven members.

[(2)] (3) A county commission under the expanded county commission form of government is both the county legislative body and the county executive and has the powers, duties, and functions of a county legislative body under Chapter 53, Part 2, County Legislative Body, and the powers, duties, and functions of a county executive under Chapter 53, Part 3, County Executive.

[(3)] (4) Except as otherwise provided in an optional plan adopted under this chapter:

(a) the term of office of each county commission member is four years;

(b) the terms of county commission members shall be staggered so that approximately half the members are elected at alternating regular general election dates; and

(c) each county commission member shall be elected[-];

(i) at large, unless otherwise required by court order; and

(ii) subject to the provisions of this section, in accordance with Title 20A, Election Code.

(5) Except as provided in Subsection (6):

[(4)] (a) if multiple at-large county commission positions are vacant for an election, the positions shall be designated "county commission seat A," "county commission seat B," and so on as necessary for the number of vacant positions[-];

(b) each candidate who files a declaration of candidacy when multiple positions are vacant shall designate the letter of the county commission seat for which the candidate is a candidate[-]; and

(c) no person may file a declaration of candidacy for, be a candidate for, or be elected to two county commission positions in the same election.

(6) (a) A county of the first or second class may, through an alternate plan as described in Subsection 17-52-401(5) or by ordinance, choose to conduct county commissioner elections in accordance with this Subsection (6).

(b) When issuing the notice of election required by Subsection 20A-5-101(2), the clerk of an opt-in county shall, if there is at least one open position and at least one midterm vacancy, designate:

(i) each open position as "open position"; and

(ii) each midterm vacancy as "midterm vacancy."

(c) An individual who files a declaration of candidacy for the office of county commissioner in an opt-in county:

(i) if there is more than one open position, is not required to indicate which open position the individual is running for;

(ii) if there is at least one open position and at least one midterm vacancy, shall designate on the declaration of candidacy whether the individual is filing for an open position or a midterm vacancy; and

(iii) may not file a declaration of candidacy for an open position and a midterm vacancy in the same election.

(d) If there is an open position and a midterm vacancy being voted upon in the same election in an opt-in county, the county clerk shall indicate on the ballot for the election which positions are open positions and which positions are midterm vacancies.

(e) In an opt-in county:

(i) the candidates for open positions, in a number equal to the number of open positions, who receive the highest number of votes are:

(A) for the purposes of a regular primary election, nominated by the candidates' party for the open positions; and

(B) for the purposes of a regular general election, elected to fill the open positions; and

(ii) the candidates for midterm vacancies, in a number equal to the number of midterm vacancies, who receive the highest number of votes are:

(A) for the purposes of a regular primary election, nominated by the candidates' party for the midterm vacancies; and

(B) for the purposes of a regular general election, elected to fill the midterm vacancies.

Section 4. Section 20A-1-508 is amended to read:

20A-1-508. Midterm vacancies in county elected offices.

(1) As used in this section:

(a) (i) "County offices" includes the county executive, members of the county legislative body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county recorder, the county surveyor, and the county assessor.

(ii) "County offices" does not mean the offices of president and vice president of the United States, United States senators and representatives, members of the Utah Legislature, state constitutional officers, county attorneys, district attorneys, and judges.

(b) "Party liaison" means the political party officer designated to serve as a liaison with each county legislative body on all matters relating to the political party's relationship with a county as required by Section 20A-8-401.

(2) (a) Until a replacement is selected as provided in this section and has qualified, the county legislative body shall appoint an interim replacement to fill the vacant office by following the procedures and requirements of this Subsection (2).

(b) (i) To appoint an interim replacement, the county legislative body shall give notice of the vacancy to the party liaison of the same political party of the prior office holder and invite that party liaison to submit the name of a person to fill the vacancy.

(ii) That party liaison shall, within 30 days, submit the name of the person selected in accordance with the party constitution or bylaws as described in Section 20A-8-401 for the interim replacement to the county legislative body.

(iii) The county legislative body shall no later than five days after the day on which a party liaison submits the name of the person for the interim replacement appoint the person to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint an interim replacement to fill the vacancy in accordance with Subsection (2)(b)(iii), the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a replacement within the statutory time period; and

(B) contains the name of the person to fill the vacancy submitted by the party liaison.

(ii) The governor shall appoint the person named by the party liaison as an interim replacement to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed as interim replacement under this Subsection (2) shall hold office until their successor is elected and has qualified.

(3) (a) The requirements of this Subsection (3) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after the election at which the person was elected but before April 10 of the next even-numbered year.

(b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk shall notify the public and each registered political party that the vacancy exists.

(ii) ~~[All persons]~~ An individual intending to become ~~[candidates]~~ a candidate for the vacant office shall ~~[-(A)]~~ file a declaration of candidacy ~~[according to the procedures and requirements of]~~ in accordance with:

(A) Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

(B) for a county commission office, Subsection 17-52-501(6) or 17-52-502(6), if applicable.

~~(B) if~~ (iii) An individual who is nominated as a party candidate for the vacant office or qualified as an independent or write-in candidate under Chapter 8, Political Party Formation and Procedures, for the vacant office shall run in the regular general election.

(4) (a) The requirements of this Subsection (4) apply to all county offices that become vacant if:

(i) the vacant office has an unexpired term of two years or more; and

(ii) the vacancy occurs after April 9 of the next even-numbered year but more than 75 days before the regular primary election.

(b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk shall notify the public and each registered political party that:

(A) the vacancy exists; and

(B) identifies the date and time by which a person interested in becoming a candidate shall file a declaration of candidacy.

(ii) ~~[All persons]~~ An individual intending to become ~~[candidates for the vacant offices]~~ a candidate for a vacant office shall, within five days after the date that the notice is made, ending at the close of normal office hours on the fifth day, file a declaration of candidacy for the vacant office ~~[as required by]~~ in accordance with:

(A) Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy[.]; and

(B) for a county commission office, Subsection 17-52-501(6) or 17-52-502(6), if applicable.

(iii) The county central committee of each party shall:

(A) select a candidate or candidates from among those qualified candidates who have filed declarations of candidacy; and

(B) certify the name of the candidate or candidates to the county clerk at least 60 days before the regular primary election.

(5) (a) The requirements of this Subsection (5) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of two years or more; and

(ii) when 75 days or less remain before the regular primary election but more than 65 days remain before the regular general election.

(b) When the conditions established in Subsection (5)(a) are met, the county central committees of each political party registered under this title that wishes to submit a candidate for the office shall summarily certify the name of one candidate to the county clerk for placement on the regular general election ballot.

(6) (a) The requirements of this Subsection (6) apply to all county offices that become vacant:

(i) if the vacant office has an unexpired term of less than two years; or

(ii) if the vacant office has an unexpired term of two years or more but 65 days or less remain before the next regular general election.

(b) (i) When the conditions established in Subsection (6)(a) are met, the county legislative body shall give notice of the vacancy to the party liaison of the same political party as the prior office holder and invite that party liaison to submit the name of a person to fill the vacancy.

(ii) That party liaison shall, within 30 days, submit the name of the person to fill the vacancy to the county legislative body.

(iii) The county legislative body shall no later than five days after the day on which a party liaison submits the name of the person to fill the vacancy appoint the person to serve out the unexpired term.

(c) (i) If the county legislative body fails to appoint a person to fill the vacancy in accordance with Subsection (6)(b)(iii), the county clerk shall send to the governor a letter that:

(A) informs the governor that the county legislative body has failed to appoint a person to fill the vacancy within the statutory time period; and

(B) contains the name of the person to fill the vacancy submitted by the party liaison.

(ii) The governor shall appoint the person named by the party liaison to fill the vacancy within 30 days after receipt of the letter.

(d) A person appointed to fill the vacancy under this Subsection (6) shall hold office until their successor is elected and has qualified.

(7) Except as otherwise provided by law, the county legislative body may appoint replacements to fill all vacancies that occur in those offices filled by appointment of the county legislative body.

(8) Nothing in this section prevents or prohibits independent candidates from filing a declaration of candidacy for the office within the same time limits.

(9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a county office shall serve for the remainder of the unexpired term of the person who created the vacancy and until a successor is elected and qualified.

(b) Nothing in this section may be construed to contradict or alter the provisions of Section 17-16-6.

Section 5. Section 20A-9-409 is amended to read:

20A-9-409. Primary election provisions relating to qualified political party.

(1) The fourth Tuesday of June of each even-numbered year is designated as a regular primary election day.

(2) (a) A qualified political party that nominates one or more candidates for an elective office under Section 20A-9-407 and does not have a candidate qualify as a candidate for that office under Section 20A-9-408, may, but is not required to, participate in the primary election for that office.

(~~3~~) (b) A qualified political party that has only one candidate qualify as a candidate for an elective office under Section 20A-9-408 and does not nominate a candidate for that office under Section 20A-9-407, may, but is not required to, participate in the primary election for that office.

(~~4~~) (c) A qualified political party that nominates one or more candidates for an elective office under Section 20A-9-407 and has one or more candidates qualify as a candidate for that office under Section 20A-9-408 shall participate in the primary election for that office.

(~~5~~) (d) A qualified political party that has two or more candidates qualify as candidates for an elective office under Section 20A-9-408 and does not nominate a candidate for that office under Section 20A-9-407 shall participate in the primary election for that office.

(3) Notwithstanding Subsection (2), in an opt-in county, as defined in Section 17-52-501 or Section 17-52-502, a qualified political party shall participate in the primary election for a county commission office if:

(a) there is more than one:

(i) open position as defined in Section 17-52-501; or

(ii) midterm vacancy as defined in Section 17-52-501; and

(b) the number of candidates nominated under Section 20A-9-407 or qualified under Section 20A-9-408 for the respective open positions or midterm vacancies exceeds the number of respective open positions or midterm vacancies.

CHAPTER 55

H. B. 92

Passed March 8, 2017

Approved March 17, 2017

Effective May 9, 2017

PHYSICAL RESTRAINT IN SCHOOLS

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill amends provisions related to the use of physical restraint in schools.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions related to the infliction of corporal punishment on a student;
- ▶ amends provisions related to the use of physical restraint in schools;
- ▶ amends provisions related to a student who willfully defaces or otherwise damages school property; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-11-801, as enacted by Laws of Utah 1992, Chapter 251

53A-11-802, as enacted by Laws of Utah 1992, Chapter 251

53A-11-806, as last amended by Laws of Utah 2008, Chapter 3

53A-11-902, as last amended by Laws of Utah 2015, Chapter 442

62A-4a-1002, as last amended by Laws of Utah 2008, Chapters 45 and 299

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

Section 1. Section 53A-11-801 is amended to read:**53A-11-801. Definitions.**

As used in this part:

~~[(1) "Child" or "minor child" means a person:]~~

~~[(a) under the age of 18; or]~~

~~[(b) under the age of 23 who is receiving educational services as an individual with a disability.]~~

~~[(2)] (1) "Corporal punishment" means the intentional infliction of physical pain upon the body of a [minor child] student as a disciplinary measure.~~

~~[(3) "School" means any public or private elementary or secondary school, pre-school, care center, nursery school, or business which receives compensation for supervising or educating a child.]~~

(2) "Physical escort" means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of guiding a student to another location.

(3) "Physical restraint" means a personal restriction that immobilizes or significantly reduces the ability of a student to move the student's arms, legs, body, or head freely.

(4) "School" means a public or private elementary school, secondary school, or preschool.

(5) "Student" means an individual who is:

(a) under the age of 19 and receiving educational services; or

(b) under the age of 23 and receiving educational services as an individual with a disability.

Section 2. Section 53A-11-802 is amended to read:**53A-11-802. Prohibition of corporal punishment -- Use of reasonable and necessary physical restraint.**

(1) A school employee may not inflict or cause the infliction of corporal punishment upon a ~~[child who is receiving services from the school, unless written permission has been given by the student's parent or guardian to do so.]~~ student.

(2) ~~[This section does not prohibit the use of]~~ A school employee may use reasonable and necessary physical restraint ~~[or force]~~ in self defense or when otherwise appropriate to the circumstances to:

(a) obtain possession of a weapon or other dangerous object in the possession or under the control of a ~~[child]~~ student;

(b) protect ~~[the child]~~ a student or another ~~[person]~~ individual from physical injury;

(c) remove from a situation a ~~[child]~~ student who is violent ~~[or disruptive]~~; or

(d) protect property from being damaged, when physical safety is at risk.

(3) Nothing in this section prohibits a school employee from using less intrusive means, including a physical escort, to address circumstances described in Subsection (2).

~~[(3)] (4)~~ (a) Any rule, ordinance, policy, practice, or directive which purports to direct or permit the commission of an act prohibited by this part is void and unenforceable.

(b) An employee may not be subjected to any sanction for failure or refusal to commit an act prohibited under this part.

~~[(4)] (5)~~ A parochial or private school that does not receive state funds to provide for the education of a student may exempt itself from the provisions of this section by adopting a policy to that effect and notifying the parents or guardians of ~~[children]~~ students in the school of the exemption.

(6) This section does not apply to a law enforcement officer as defined in Section 53-13-103.

Section 3. Section 53A-11-806 is amended to read:

53A-11-806. Defacing or damaging school property -- Student's liability -- Work program alternative.

(1) ~~[Any]~~ A student who willfully defaces or otherwise ~~[injures]~~ damages any school property may be suspended or otherwise disciplined.

(2) (a) ~~[Any school district whose]~~ If a school's property has been lost or willfully cut, defaced, or otherwise ~~[injured may]~~ damaged, the school may withhold the issuance of an official written grade ~~[reports]~~ report, diploma, ~~[and transcripts]~~ or transcript of the student responsible for the damage or loss until the student or the student's parent or guardian has paid for the damages.

(b) The student's parent or guardian is liable for damages as otherwise provided in Section 78A-6-1113.

(3) (a) If the student and the student's parent or guardian are unable to pay for the damages or if it is determined by the school in consultation with the student's ~~[parents]~~ parent or guardian that the student's interests would not be served if the ~~[parents]~~ parent or guardian were to pay for the damages, ~~[then,]~~ the school ~~[district]~~ shall provide for a program of ~~[voluntary]~~ work ~~[for]~~ the student may complete in lieu of the payment.

(b) The ~~[district]~~ school shall release the official grades, diploma, and transcripts of the student upon completion of the ~~[voluntary]~~ work.

(4) Before any penalties are assessed under this section, the ~~[local school board]~~ school shall adopt procedures to ~~[insure]~~ ensure that the student's right to due process is protected.

(5) No penalty may be assessed for damages which may be reasonably attributed to normal wear and tear.

(6) If the Department of Human Services or a licensed child-placing agency has been granted custody of the student, ~~[that]~~ the student's records, if requested by the department or agency, may not be withheld from the department or agency for nonpayment of damages under this section.

Section 4. Section 53A-11-902 is amended to read:

53A-11-902. Conduct and discipline policies and procedures.

The conduct and discipline policies required under Section 53A-11-901 shall include:

(1) provisions governing student conduct, safety, and welfare;

(2) standards and procedures for dealing with students who cause disruption in the classroom, on school grounds, on school vehicles, or in connection with school-related activities or events;

(3) procedures for the development of remedial discipline plans for students who cause a disruption at any of the places referred to in Subsection (2);

(4) procedures for the use of reasonable and necessary physical restraint ~~[or force]~~ in dealing with ~~[disruptive]~~ students posing a danger to themselves or others, consistent with Section 53A-11-802;

(5) standards and procedures for dealing with student conduct in locations other than those referred to in Subsection (2), if the conduct threatens harm or does harm to:

(a) the school;

(b) school property;

(c) a person associated with the school; or

(d) property associated with a person described in Subsection (5)(c);

(6) procedures for the imposition of disciplinary sanctions, including suspension and expulsion;

(7) specific provisions, consistent with Section 53A-15-603, for preventing and responding to gang-related activities in the school, on school grounds, on school vehicles, or in connection with school-related activities or events;

(8) standards and procedures for dealing with habitual disruptive or unsafe student behavior in accordance with the provisions of this part; and

(9) procedures for responding to reports received through the School Safety and Crisis Line under Subsection 53A-11-1503(3).

Section 5. Section 62A-4a-1002 is amended to read:

62A-4a-1002. Definitions.

As used in this part:

(1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect" means:

(i) if committed by a person 18 years of age or older:

(A) chronic abuse;

(B) severe abuse;

(C) sexual abuse;

(D) sexual exploitation;

(E) abandonment;

(F) chronic neglect; or

(G) severe neglect; or

(ii) if committed by a person under the age of 18:

(A) serious physical injury, as defined in Subsection 76-5-109(1), to another child which indicates a significant risk to other children; or

(B) sexual behavior with or upon another child which indicates a significant risk to other children.

(b) "Severe type of child abuse or neglect" does not include:

(i) the use of reasonable and necessary physical restraint ~~[or force]~~ by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401;

(ii) a person's conduct that:

(A) is justified under Section 76-2-401; or

(B) constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury; or

(iii) a health care decision made for a child by the child's parent or guardian, unless, subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(2) "Significant risk" means a risk of harm that is determined to be significant in accordance with risk assessment tools and rules established by the division that focus on:

- (a) age;
- (b) social factors;
- (c) emotional factors;
- (d) sexual factors;
- (e) intellectual factors;
- (f) family risk factors; and
- (g) other related considerations.

CHAPTER 56**H. B. 98**

Passed March 3, 2017

Approved March 17, 2017

Effective May 9, 2017

DEPARTMENT OF ADMINISTRATIVE SERVICES AMENDMENTS

Chief Sponsor: Steve Eliason
Senate Sponsor: Deidre M. Henderson

LONG TITLE**General Description:**

This bill modifies and repeals provisions related to the Department of Administrative Services and funds administered by the Division of Finance.

Highlighted Provisions:

This bill:

- ▶ repeals certain funds and accounts administered by the Division of Finance;
- ▶ modifies the duties of the director of the Division of Finance;
- ▶ removes certain reporting requirements from the Division of Finance;
- ▶ repeals provisions relating to adoption and use of a seal by the Division of Facilities Construction and Management; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 53A-17a-156, as last amended by Laws of Utah 2016, Chapter 217
63A-3-103, as last amended by Laws of Utah 2015, Chapter 175
63A-3-203, as last amended by Laws of Utah 2016, Chapter 298
63A-3-205, as last amended by Laws of Utah 2014, Chapter 227
63A-3-502, as last amended by Laws of Utah 2016, Chapter 129
63A-5-204, as last amended by Laws of Utah 2016, Chapters 298 and 300
77-32-201, as last amended by Laws of Utah 2016, Chapter 177
77-32-401.5, as last amended by Laws of Utah 2010, Chapter 286
77-32-402, as enacted by Laws of Utah 1997, Chapter 354
78B-1-119, as last amended by Laws of Utah 2014, Chapter 138

REPEALS:

- 53A-17a-157, as last amended by Laws of Utah 2015, Chapter 122
59-12-120, as last amended by Laws of Utah 2011, Chapter 303
77-32-701, as last amended by Laws of Utah 2011, Chapter 303
77-32-702, as last amended by Laws of Utah 1998, Chapter 333

77-32-703, as last amended by Laws of Utah 1998, Chapter 333

77-32-704, as last amended by Laws of Utah 1998, Chapter 333

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

Section 1. Section 53A-17a-156 is amended to read:**53A-17a-156. Teacher Salary Supplement Program -- Appeal process.**

- (1) As used in this section:
- (a) "Board" means the State Board of Education.
- (b) "Certificate teacher" means a teacher who holds a National Board certification.
- (c) "Eligible teacher" means a teacher who:
- (i) has an assignment to teach:
- (A) a secondary school level mathematics course;
- (B) integrated science in grade seven or eight;
- (C) chemistry;
- (D) physics; or
- (E) computer science;
- (ii) holds the appropriate endorsement for the assigned course;
- (iii) has qualifying educational background; and
- (iv) (A) is a new employee; or
- (B) received a satisfactory rating or above on the teacher's most recent evaluation.
- (d) "National Board certification" means the same as that term is defined in Section 53A-6-103.
- (e) "Qualifying educational background" means:
- (i) for a teacher who is assigned a secondary school level mathematics course:
- (A) a bachelor's degree major, master's degree, or doctoral degree in mathematics; or
- (B) a bachelor's degree major, master's degree, or doctoral degree that has course requirements that are substantially equivalent to the course requirements for a bachelor's degree major, master's degree, or doctoral degree in mathematics;
- (ii) for a teacher who is assigned a grade seven or eight integrated science course, chemistry course, or physics course, a bachelor's degree major, master's degree, or doctoral degree in:
- (A) integrated science;
- (B) chemistry;
- (C) physics;
- (D) physical science;
- (E) general science; or
- (F) a bachelor's degree major, master's degree, or doctoral degree that has course requirements that are substantially equivalent to the course

requirements of those required for a degree listed in Subsections (1)(e)(ii)(A) through (E);

(iii) for a teacher who is assigned a computer science course, a bachelor's degree major, master's degree, or doctoral degree in:

- (A) computer science;
- (B) computer information technology; or

(C) a bachelor's degree major, master's degree, or doctoral degree that has course requirements that are substantially equivalent to the course requirements of those required for a degree listed in Subsections (1)(e)(iii)(A) and (B).

(f) "Title I school" means a school that receives funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

(g) "Title I school certificate teacher" means a certificate teacher who is assigned to teach at a Title I school.

(2) (a) Subject to future budget constraints, the Legislature shall annually appropriate money to ~~[the Teacher Salary Supplement Restricted Account established in Section 53A-17a-157 to fund]~~ the Teacher Salary Supplement Program.

(b) Money appropriated for the Teacher Salary Supplement Program shall include money for the following employer-paid benefits:

- (i) retirement;
- (ii) workers' compensation;
- (iii) Social Security; and
- (iv) Medicare.

(3) (a) (i) The annual salary supplement for an eligible teacher who is assigned full time to teach one or more courses listed in Subsections (1)(c)(i)(A) through (E) is \$4,100.

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

(b) The annual salary supplement for a certificate teacher is \$750.

(c) (i) The annual salary supplement for a Title I school certificate teacher is \$1,500.

(ii) A certificate teacher who qualifies for a salary supplement under Subsections (3)(b) and (c) may only receive the salary supplement that is greater in value.

(4) The board shall:

(a) create an online application system for a teacher to apply to receive a salary supplement through the Teacher Salary Supplement Program;

(b) determine if a teacher:

- (i) (A) is an eligible teacher; and

(B) has a course assignment as listed in Subsections (1)(c)(i)(A) through (E);

(ii) is a certificate teacher; or

(iii) is a Title I school certificate teacher;

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

(d) certify a list of eligible teachers, certificate teachers, and Title I school certificate teachers.

(5) (a) An eligible teacher, a certificate teacher, or a Title I school certificate teacher shall apply with the board before the conclusion of a school year to receive the salary supplement authorized in this section.

(b) An eligible teacher, a certificate teacher, or a Title I school certificate teacher may apply with the board, after verification that the requirements under this section have been satisfied, to receive a salary supplement after the completion of:

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

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

(6) (a) The board shall establish and administer an appeal process for a teacher to follow if the teacher applies for the salary supplement and is not certified under Subsection (4).

(b) (i) The appeal process established in Subsection (6)(a) shall allow a teacher to appeal eligibility as an eligible teacher on the basis that the teacher has a degree or degree major with course requirements that are substantially equivalent to the course requirements for a degree listed in:

- (A) Subsection (1)(e)(i)(A);
- (B) Subsections (1)(e)(ii)(A) through (E); or
- (C) Subsections (1)(e)(iii)(A) and (B).

(ii) A teacher shall provide transcripts and other documentation to the board in order for the board to determine if the teacher has a degree or degree major with course requirements that are substantially equivalent to the course requirements for a degree listed in:

- (A) Subsection (1)(e)(i)(A);
- (B) Subsections (1)(e)(ii)(A) through (E); or
- (C) Subsections (1)(e)(iii)(A) and (B).

(c) (i) The appeal process established under Subsection (6)(a) shall allow a teacher to appeal eligibility as a certificate teacher on the basis that the teacher holds a current certificate.

(ii) A teacher shall provide to the board a certificate or other related documentation in order for the board to determine if the teacher holds a current certificate.

(d) (i) The appeal process established under Subsection (6)(a) shall allow a teacher to appeal eligibility as a Title I school certificate teacher on the basis that the teacher:

- (A) holds a current certificate; and
 - (B) is assigned to teach at a Title I school.
- (ii) A teacher shall provide to the board:
- (A) information described in Subsection (6)(c)(ii); and
 - (B) verification that the teacher is assigned to teach at a Title I school.

(7) (a) The board shall distribute money ~~from~~ appropriated to the Teacher Salary Supplement ~~[Restricted Account]~~ Program to school districts and charter schools for the Teacher Salary Supplement Program in accordance with the provisions of this section.

(b) The board shall include the employer-paid benefits described under Subsection (2)(b) in the amount of each salary supplement.

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

(8) (a) Money received from the Teacher Salary Supplement ~~[Restricted Account]~~ Program shall be used by a school district or charter school to provide a salary supplement equal to the amount specified in Subsection (3) for each eligible teacher, certificate teacher, or Title I school certificate teacher.

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

(9) Notwithstanding the provisions of this section, if the appropriation for the program is insufficient to cover the costs associated with salary supplements, the board may limit or reduce the salary supplements.

Section 2. Section 63A-3-103 is amended to read:

63A-3-103. Duties of director of division -- Application to institutions of higher education.

- (1) The director of the Division of Finance shall:
- (a) define fiscal procedures relating to approval and allocation of funds;
 - (b) provide for the accounting control of funds;
- ~~[(c) approve proposed expenditures for the purchase of supplies and services;]~~
- ~~[(d)]~~ (c) promulgate rules that:
- (i) establish procedures for maintaining detailed records of all types of leases;
 - (ii) account for all types of leases in accordance with generally accepted accounting principles;
 - (iii) require the performance of a lease with an option to purchase study by state agencies prior to any lease with an option to purchase acquisition of capital equipment; and

(iv) require that the completed lease with an option to purchase study be approved by the director of the Division of Finance;

~~[(e)]~~ (d) if the department operates the Division of Finance as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:

- (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
- (ii) other information or analysis requested by the Rate Committee;

~~[(f)]~~ (e) oversee the Office of State Debt Collection;

~~[(g)]~~ (f) publish the state's current constitutional debt limit on the Utah Public Finance Website, created in Section 63A-3-402; and

~~[(h)]~~ (g) prescribe other fiscal functions required by law or under the constitutional authority of the governor to transact all executive business for the state.

(2) (a) Institutions of higher education are subject to the provisions of Title 63A, Chapter 3, Part 1, General Provisions, and Title 63A, Chapter 3, Part 2, Accounting System, only to the extent expressly authorized or required by the State Board of Regents under Title 53B, State System of Higher Education.

(b) Institutions of higher education shall submit financial data for the past fiscal year conforming to generally accepted accounting principles to the director of the Division of Finance.

(3) The Division of Finance shall prepare financial statements and other reports in accordance with legal requirements and generally accepted accounting principles for the state auditor's examination and certification:

- (a) not later than 60 days after a request from the state auditor; and
- (b) at the end of each fiscal year.

Section 3. Section 63A-3-203 is amended to read:

63A-3-203. Accounting control over state departments and agencies -- Prescription and approval of financial forms, accounting systems, and fees.

- (1) The director of the Division of Finance shall:
- (a) exercise accounting control over all state departments and agencies except institutions of higher education; and
 - (b) prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations.
- (2) The director shall audit all claims against the state for which an appropriation has been made.
- (3) (a) The director shall prescribe:
- (i) ~~prescribe~~ all forms of requisitions, receipts, vouchers, bills, or claims to be used by all state departments and agencies; and

~~[(ii) prescribe the forms, procedures, and records to be maintained by all departmental, institutional, or agency store rooms;]~~

~~[(iii) exercise inventory control over the store rooms; and]~~

~~[(iv) prescribe]~~ (ii) all forms to be used by the division.

(b) Before approving the forms in Subsection (3)(a), the director shall obtain approval from the state auditor that the forms will adequately facilitate the post-audit of public accounts.

(4) Before implementation by any state agency, the director of the Division of Finance shall review and approve~~[-(a)]~~ any accounting system developed by a state agency~~[-and]~~.

~~[(b) any fees established by any state agency to recover the costs of operations.]~~

Section 4. Section 63A-3-205 is amended to read:

63A-3-205. Revolving loan funds -- Standards and procedures.

(1) As used in this section, "revolving loan fund" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act;

(e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;

(f) the Agriculture Resource Development Fund, created in Section 4-18-106;

(g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

(h) the Permanent Community Impact Fund, created in Section ~~[35A-8-603]~~ 35A-8-303;

(i) the Petroleum Storage Tank Trust Fund, created in Section 19-6-409;

(j) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;

(k) the Navajo Revitalization Fund, created in Section 35A-8-1704; and

(l) the Energy Efficiency Fund, created in Section 11-45-201.

(2) The division shall for each revolving loan fund~~[-(a)]~~ make rules establishing standards and procedures governing:

~~[(i)]~~ (a) payment schedules and due dates;

~~[(iii)]~~ (b) interest rate effective dates;

~~[(iii)]~~ (c) loan documentation requirements; and

~~[(iv)]~~ (d) interest rate calculation requirements~~[-and]~~.

~~[(b) make an annual report to the Legislature containing:]~~

~~[(i) the total dollars loaned by that fund during the last fiscal year;]~~

~~[(ii) a listing of each loan currently more than 90 days delinquent, in default, or that was restructured during the last fiscal year;]~~

~~[(iii) a description of each project that received money from that revolving loan fund;]~~

~~[(iv) the amount of each loan made to that project;]~~

~~[(v) the specific purpose for which the proceeds of the loan were to be used, if any;]~~

~~[(vi) any restrictions on the use of the loan proceeds;]~~

~~[(vii) the present value of each loan at the end of the fiscal year calculated using the interest rate paid by the state on the bonds providing the revenue on which the loan is based or, if that is unknown, on the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold; and]~~

~~[(viii) the financial position of each revolving loan fund, including the fund's cash investments, cash forecasts, and equity position.]~~

Section 5. Section 63A-3-502 is amended to read:

63A-3-502. Office of State Debt Collection created -- Duties.

(1) The state and each state agency shall comply with the requirements of this chapter and any rules established by the Office of State Debt Collection.

(2) There is created the Office of State Debt Collection in the Division of Finance.

(3) The office shall:

(a) have overall responsibility for collecting and managing state receivables;

(b) assist the Division of Finance to develop consistent policies governing the collection and management of state receivables;

(c) oversee and monitor state receivables to ensure that state agencies are:

(i) implementing all appropriate collection methods;

(ii) following established receivables guidelines; and

(iii) accounting for and reporting receivables in the appropriate manner;

(d) assist the Division of Finance to develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;

(e) provide information, training, and technical assistance to each state agency on various collection-related topics;

(f) write an inclusive receivables management and collection manual for use by each state agency;

(g) prepare quarterly and annual reports of the state's receivables;

(h) create or coordinate a state accounts receivable database;

(i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program;

(j) identify any state agency that is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;

(k) coordinate information, systems, and procedures between each state agency to maximize the collection of past-due accounts receivable;

(l) establish an automated cash receipt process between each state agency;

(m) assist the Division of Finance to establish procedures for writing off accounts receivable for accounting and collection purposes;

(n) establish standard time limits after which an agency will delegate responsibility to collect state receivables to the office or its designee;

(o) be a real party in interest for an account receivable referred to the office by any state agency or for any restitution to victims referred to the office by a court; and

(p) allocate money collected for judgments registered under Section 77-18-6 in accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.

(4) The office may:

(a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;

(b) collect accounts receivables for higher education entities, if the higher education entity agrees;

(c) prepare a request for proposal for consulting services to:

(i) analyze the state's receivable management and collection efforts; and

(ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;

(d) contract with private or state agencies to collect past-due accounts;

(e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;

(f) obtain access to records and databases of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206, including the financial disclosure form described in Section 77-38a-204;

(g) collect interest and fees related to the collection of receivables under this chapter, and establish, by following the procedures and requirements of Section 63J-1-504:

(i) a fee to cover the administrative costs of collection, on accounts administered by the office;

(ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;

(iii) an interest charge that is:

(A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or

(B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and

(iv) fees to collect accounts receivable for higher education;

(h) collect reasonable attorney fees and reasonable costs of collection that are related to the collection of receivables under this chapter;

(i) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;

(j) file a satisfaction of judgment in the court by following the procedures and requirements of the Utah Rules of Civil Procedure;

(k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary;

(l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f) with private sector vendors under contract with the state to assist state agencies in collecting debts owed to the state agencies without changing the classification of any private, controlled, or protected record into a public record;

(m) enter into written agreements with other governmental agencies to obtain information for the purpose of collecting state accounts receivable and restitution for victims; and

(n) collect accounts receivable for a political subdivision of the state, if the political subdivision enters into an agreement or contract with the office under Title 11, Chapter 13, Interlocal Cooperation Act, for the office to collect the political subdivision's accounts receivable.

(5) The office shall ensure that:

(a) a record obtained by the office or a private sector vendor as referred to in Subsection (4)(l):

(i) is used only for the limited purpose of collecting accounts receivable; and

(ii) is subject to federal, state, and local agency records restrictions; and

(b) any person employed by, or formerly employed by, the office or a private sector vendor as referred to in Subsection (4)(l) is subject to:

(i) the same duty of confidentiality with respect to the record imposed by law on officers and employees

of the state agency from which the record was obtained; and

(ii) any civil or criminal penalties imposed by law for violations of lawful access to a private, controlled, or protected record.

(6) (a) The office shall collect accounts receivable ordered by a court as a result of prosecution for a criminal offense that have been transferred to the office under Subsection 76-3-201.1(5)(h) ~~or (8)~~.

(b) The office may not assess the interest charge established by the office under Subsection (4) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.

(7) The office shall require a state agency to:

(a) transfer collection responsibilities to the office or its designee according to time limits established by the office;

(b) make annual progress towards implementing collection techniques and improved accounts receivable collections;

(c) use the state's accounts receivable system or develop systems that are adequate to properly account for and report their receivables;

(d) develop and implement internal policies and procedures that comply with the collections policies and guidelines established by the office;

(e) provide internal accounts receivable training to staff involved in the management and collection of receivables as a supplement to statewide training;

(f) bill for and make initial collection efforts of its receivables up to the time the accounts must be transferred; and

(g) submit quarterly receivable reports to the office that identify the age, collection status, and funding source of each receivable.

~~[(8) The office shall use the information provided by the agencies and any additional information from the office's records to compile a one-page summary report of each agency.]~~

~~[(9) The summary shall include:]~~

~~[(a) the type of revenue that is owed to the agency;]~~

~~[(b) any attempted collection activity; and]~~

~~[(c) any costs incurred in the collection process.]~~

~~[(10) The office shall annually provide copies of each agency's summary to the governor and to the Legislature.]~~

~~[(11)]~~ (8) All interest, fees, and other amounts authorized to be charged by the office under Subsection (4):

(a) are penalties that may be charged by the office; and

(b) are not compensation for actual pecuniary loss.

Section 6. Section 63A-5-204 is amended to read:

63A-5-204. Specific powers and duties of director.

(1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the same meaning as provided in Section 63C-9-102.

(2) (a) The director shall:

(i) recommend rules to the executive director for the use and management of facilities and grounds owned or occupied by the state for the use of its departments and agencies;

(ii) supervise and control the allocation of space, in accordance with legislative directive through annual appropriations acts or other specific legislation, to the various departments, commissions, institutions, and agencies in all buildings or space owned, leased, or rented by or to the state, except capitol hill facilities and capitol hill grounds and except as otherwise provided by law;

(iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3, Division of Facilities Construction and Management Leasing;

(iv) except as provided in Subsection (2)(b), acquire, as authorized by the Legislature through the appropriations act or other specific legislation, and hold title to, in the name of the division, all real property, buildings, fixtures, or appurtenances owned by the state or any of its agencies;

~~[(v) adopt and use a common seal, of a form and design determined by the director, and of which courts shall take judicial notice;]~~

~~[(vi) file a description and impression of the seal with the Division of Archives;]~~

~~[(vii)]~~ (v) collect and maintain all deeds, abstracts of title, and all other documents evidencing title to or interest in property belonging to the state or any of its departments, except institutions of higher education and the School and Institutional Trust Lands Administration;

~~[(viii)]~~ (vi) report all properties acquired by the state, except those acquired by institutions of higher education, to the director of the Division of Finance for inclusion in the state's financial records;

~~[(ix)]~~ (vii) before charging a rate, fee, or other amount for services provided by the division's internal service fund to an executive branch agency, or to a subscriber of services other than an executive branch agency:

(A) submit the proposed rates, fees, and cost analysis to the Rate Committee established in Section 63A-1-114; and

(B) obtain the approval of the Legislature as required by Section 63J-1-410;

~~[(x)]~~ (viii) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed rates and fees, which analysis shall include a comparison of the division's rates and fees with the fees of other

public or private sector providers where comparable services and rates are reasonably available;

~~(xii)~~ (ix) implement the State Building Energy Efficiency Program under Section 63A-5-701;

~~(xiii)~~ (x) convey, lease, or dispose of the real property or water rights associated with the Utah State Developmental Center according to the Utah State Developmental Center Board's determination, as described in Subsection 62A-5-206.6(5); and

~~(xiv)~~ (xi) take all other action necessary for carrying out the purposes of this chapter.

(b) Legislative approval is not required for acquisitions by the division that cost less than \$250,000.

(3) (a) The director shall direct or delegate maintenance and operations, preventive maintenance, and facilities inspection programs and activities for any agency, except:

- (i) the State Capitol Preservation Board; and
- (ii) state institutions of higher education.

(b) The director may choose to delegate responsibility for these functions only when the director determines that:

- (i) the agency has requested the responsibility;
- (ii) the agency has the necessary resources and skills to comply with facility maintenance standards approved by the State Building Board; and
- (iii) the delegation would result in net cost savings to the state as a whole.

(c) The State Capitol Preservation Board and state institutions of higher education are exempt from Division of Facilities Construction and Management oversight.

(d) Each state institution of higher education shall comply with the facility maintenance standards approved by the State Building Board.

(e) Except for the State Capitol Preservation Board, agencies and institutions that are exempt from division oversight shall annually report their compliance with the facility maintenance standards to the division in the format required by the division.

(f) The division shall:

- (i) prescribe a standard format for reporting compliance with the facility maintenance standards;
- (ii) report agency compliance or noncompliance with the standards to the Legislature; and
- (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are complying with the standards.

(4) (a) In making any allocations of space under Subsection (2), the director shall:

- (i) conduct studies to determine the actual needs of each agency; and
- (ii) comply with the restrictions contained in this Subsection (4).

(b) The supervision and control of the legislative area is reserved to the Legislature.

(c) The supervision and control of the judicial area is reserved to the judiciary for trial courts only.

(d) The director may not supervise or control the allocation of space for entities in the public and higher education systems.

(e) The supervision and control of capitol hill facilities and capitol hill grounds is reserved to the State Capitol Preservation Board.

(5) The director may:

(a) hire or otherwise procure assistance and services, professional, skilled, or otherwise, that are necessary to carry out the director's responsibilities, and may expend funds provided for that purpose either through annual operating budget appropriations or from nonlapsing project funds;

(b) sue and be sued in the name of the division; and

(c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the Legislature, whatever real or personal property that is necessary for the discharge of the director's duties.

(6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes other than administration that are under their control and management:

- (a) the Office of Trust Administrator;
- (b) the Department of Transportation;
- (c) the Division of Forestry, Fire, and State Lands;
- (d) the Department of Natural Resources;
- (e) the Utah National Guard;
- (f) any area vocational center or other institution administered by the State Board of Education;
- (g) any institution of higher education; and
- (h) the Utah Science Technology and Research Governing Authority.

(7) The director shall ensure that any firm performing testing and inspection work governed by the American Society for Testing Materials Standard E-329 on public buildings under the director's supervision shall:

- (a) fully comply with the American Society for Testing Materials standard specifications for agencies engaged in the testing and inspection of materials known as ASTM E-329; and

(b) carry a minimum of \$1,000,000 of errors and omissions insurance.

(8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances held by it that are under its control.

Section 7. Section 77-32-201 is amended to read:

77-32-201. Definitions.

For the purposes of this chapter:

(1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.

(2) "Commission" means the Utah Indigent Defense Commission created in Section 77-32-801.

(3) "Compelling reason" shall include one or more of the following circumstances relating to the contracting attorney:

(a) a conflict of interest;

(b) the contracting attorney does not have sufficient expertise to provide an effective defense of the indigent; or

(c) the legal defense is insufficient or lacks expertise to provide a complete defense.

(4) "Defense resources" means a competent investigator, expert witness, scientific or medical testing, or other appropriate means necessary, for an effective defense of an indigent, but does not include legal counsel.

(5) "Defense services provider" means a legal aid association, legal defender's office, regional legal defense association, law firm, attorney, or attorneys contracting with a county or municipality to provide legal defense and includes any combination of counties or municipalities to provide regional indigent criminal defense services.

(6) "Effective representation" means legal representation consistent with the Sixth Amendment to the United States Constitution, and Utah Constitution, Article I, Section 12, as interpreted through federal and Utah state appellate courts.

(7) "Indigent" means a person qualifying as an indigent under indigency standards established in Part 3, Counsel for Indigents.

(8) "Indigent criminal defense services" means the provision of a defense services provider and defense resources to a defendant who is:

(a) being prosecuted or sentenced for a crime for which the defendant may be incarcerated upon conviction, beginning with the defendant's initial appearance in court to answer to the criminal charge; and

(b) determined to be indigent under Section 77-32-202.

(9) "Indigent criminal defense system" means:

(a) indigent criminal defense services provided by local units of government, including counties, cities, and towns funded by state and local government; or

(b) indigent criminal defense services provided by regional legal defense funded by state and local government.

(10) "Legal aid association" means a nonprofit defense association or society that provides legal defense for indigent defendants.

(11) "Legal defender's office" means a division of county government created and authorized by the county legislative body to provide legal representation in criminal matters to indigent defendants.

(12) "Legal defense" means to:

(a) provide defense counsel for each indigent who faces the potential deprivation of the indigent's liberty;

(b) afford timely representation by defense counsel;

(c) provide the defense resources necessary for a complete defense;

(d) assure undivided loyalty of defense counsel to the client;

(e) provide a first appeal of right; and

(f) prosecute other remedies before or after a conviction, considered by defense counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

(13) "Local funding" includes funding by an indigent criminal defense system for defense services. Local funding may be adjusted annually to reflect population growth and inflation for consideration of state funding for indigent criminal defense resources and critical need indigent criminal defense providers.

(14) "Participating county" means a county that has complied with the provisions of this chapter for participation in the Indigent Aggravated Murder Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 ~~or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703~~.

(15) "Regional legal defense" means a defense services provider which provides legal defense to any combination of counties or municipalities through an interlocal cooperation agreement pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, and Subsection 77-32-306(3).

(16) "Serious offense" means a felony or capital felony.

~~(18)~~ (17) "Shared state and local funding" means the recognition of the state's constitutional responsibility for the provision of indigent defense services and the collaborative assistance by indigent criminal defense systems to fairly provide effective representation in the state, consistent with the safeguards of the United States

Constitution, the Utah Constitution, and this chapter.

[~~(17)~~] (18) "State funding" means funding by the state for:

- (a) the establishment of a statewide indigent criminal defense data collection system;
- (b) defense resources; and
- (c) critical need defense services providers.

Section 8. Section 77-32-401.5 is amended to read:

77-32-401.5. Interim board -- Members -- Administrative support -- Duties.

(1) Until the Indigent Defense Funds Board authorized by Section 77-32-401 is constituted after achieving the number of participating counties required by [~~Sections~~] Section 77-32-604 [~~and 77-32-704~~], an interim board may be created within the Division of Finance composed of the following three members:

(a) a county commissioner from a county participating in the Indigent Inmate Trust Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties;

(b) a county attorney from a county participating in the Indigent Inmate Trust Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties; and

(c) a representative appointed by the Administrative Office of the Courts.

(2) The Division of Finance shall provide administrative support to the interim board.

(3) (a) Members shall serve until the Indigent Defense Funds Board is constituted.

(b) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) The per diem and travel expenses for board members under Subsection (4) shall be paid from the Indigent Inmate Trust Fund in Section 77-32-502.

(6) Until the Indigent Defense Funds Board is constituted, the interim board shall be authorized to carry out any responsibility provided to the Indigent Defense Funds Board in statute as it relates to Chapter 32, Part 5, Indigent Inmates.

(7) The action by two members present shall constitute the action of the board.

Section 9. Section 77-32-402 is amended to read:

77-32-402. Duties of board.

(1) The board shall:

(a) establish rules and procedures for the application by counties for disbursements, and the screening and approval of the applications for money from the:

(i) Indigent Inmate Trust Fund established in Part 5, Indigent Inmates; and

(ii) Indigent Capital Defense Trust Fund established in Part 6, Indigent Capital Defense Trust Fund; [~~and~~]

[~~(iii) Indigent Felony Defense Trust Fund established in Part 7, Indigent Felony Defense Trust Fund;~~]

(b) receive, screen, and approve or disapprove the application of counties for disbursements from each fund;

(c) calculate the amount of the annual contribution to be made to the funds by each participating county;

(d) prescribe forms for the application for money from each fund;

(e) oversee and approve the disbursement of money from each fund as provided in Sections [~~77-32-401,~~] 77-32-502[~~,~~] and 77-32-601[~~,~~ and 77-32-701];

(f) establish its own rules of procedure, elect its own officers, and appoint committees of its members and other people as may be reasonable and necessary; and

(g) negotiate, enter into, and administer contracts with legal counsel, qualified under and meeting the standards consistent with this chapter, to provide defense counsel services to:

(i) indigents prosecuted in participating counties for serious offenses in violation of state law; and

(ii) an indigent inmate who is incarcerated in certain counties.

(2) The board may provide to the court a list of attorneys qualified under Utah Rules of Criminal Procedure, Rule 8, with which the board has a preliminary contract to defend indigent cases for an assigned rate.

Section 10. Section 78B-1-119 is amended to read:

78B-1-119. Jurors and witnesses -- Fees and mileage.

(1) Every juror and witness legally required or in good faith requested to attend a trial court of record or not of record or a grand jury is entitled to:

(a) \$18.50 for the first day of attendance and \$49 per day for each subsequent day of attendance; and

(b) if traveling more than 50 miles, \$1 for each four miles in excess of 50 miles actually and necessarily traveled in going only, regardless of county lines.

(2) Persons in the custody of a penal institution upon conviction of a criminal offense are not entitled to a witness fee.

(3) A witness attending from outside the state in a civil case is allowed mileage at the rate of 25 cents per mile and is taxed for the distance actually and necessarily traveled inside the state in going only.

(4) If the witness is attending from outside the state in a criminal case, the state shall reimburse the witness under Section 77-21-3.

(5) A prosecution witness or a witness subpoenaed by an indigent defendant attending from outside the county but within the state may receive reimbursement for necessary lodging and meal expenses under rule of the Judicial Council.

(6) A witness subpoenaed to testify in court proceedings in a civil action shall receive reimbursement for necessary and reasonable parking expenses from the attorney issuing the subpoena under rule of the Judicial Council or Supreme Court.

~~[(7) There is created within the General Fund, a restricted account known as the CASA Volunteer Account. A juror may donate the juror's fee to the CASA Volunteer Account in \$18.50 or \$49 increments. The Legislature shall annually appropriate money from the CASA Volunteer Account to the Administrative Office of the Courts for the purpose of recruiting, training, and supervising volunteers for the Court Appointed Special Advocate program established pursuant to Section 78A-6-902.]~~

Section 11. Repealer.

This bill repeals:

Section 53A-17a-157, Teacher Salary Supplement Restricted Account.

Section 59-12-120, Investment incentive to ski resorts for lease or purchase of certain equipment -- Ski Resort Capital Investment Restricted Account created -- Conditions and restrictions on receiving incentive -- State Tax Commission to administer.

Section 77-32-701, Establishment of Indigent Felony Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.

Section 77-32-702, County participation.

Section 77-32-703, Computing participating county assessments.

Section 77-32-704, Application and qualification for fund money.

CHAPTER 57**H. B. 104**

Passed February 23, 2017

Approved March 17, 2017

Effective May 9, 2017

MOTOR VEHICLE EMISSION

Chief Sponsor: Logan Wilde
 Senate Sponsor: Allen M. Christensen
 Cosponsors: Walt Brooks
 Jefferson Moss
 Christine F. Watkins
 Mike Winder

LONG TITLE**General Description:**

This bill amends provisions relating to local emissions compliance fees.

Highlighted Provisions:

This bill:

- modifies provisions relating to the use of local emissions compliance fee revenues.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-6a-1642, as last amended by Laws of Utah 2015, Chapter 258

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

Section 1. Section 41-6a-1642 is amended to read:**41-6a-1642. Emissions inspection -- County program.**

(1) The legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard shall require:

(a) a certificate of emissions inspection, a waiver, or other evidence the motor vehicle is exempt from emissions inspection and maintenance program requirements be presented:

(i) as a condition of registration or renewal of registration; and

(ii) at other times as the county legislative body may require to enforce inspection requirements for individual motor vehicles, except that the county legislative body may not routinely require a certificate of emission inspection, or waiver of the certificate, more often than required under Subsection (6); and

(b) compliance with this section for a motor vehicle registered or principally operated in the county and owned by or being used by a department, division, instrumentality, agency, or employee of:

(i) the federal government;

(ii) the state and any of its agencies; or

(iii) a political subdivision of the state, including school districts.

(2) (a) The legislative body of a county identified in Subsection (1), in consultation with the Air Quality Board created under Section 19-1-106, shall make regulations or ordinances regarding:

(i) emissions standards;

(ii) test procedures;

(iii) inspections stations;

(iv) repair requirements and dollar limits for correction of deficiencies; and

(v) certificates of emissions inspections.

(b) The regulations or ordinances shall:

(i) be made to attain or maintain ambient air quality standards in the county, consistent with the state implementation plan and federal requirements;

(ii) may allow for a phase-in of the program by geographical area; and

(iii) be compliant with the analyzer design and certification requirements contained in the state implementation plan prepared under Title 19, Chapter 2, Air Conservation Act.

(c) The county legislative body and the Air Quality Board shall give preference to an inspection and maintenance program that is:

(i) decentralized, to the extent the decentralized program will attain and maintain ambient air quality standards and meet federal requirements;

(ii) the most cost effective means to achieve and maintain the maximum benefit with regard to ambient air quality standards and to meet federal air quality requirements as related to vehicle emissions; and

(iii) providing a reasonable phase-out period for replacement of air pollution emission testing equipment made obsolete by the program.

(d) The provisions of Subsection (2)(c)(iii) apply only to the extent the phase-out:

(i) may be accomplished in accordance with applicable federal requirements; and

(ii) does not otherwise interfere with the attainment and maintenance of ambient air quality standards.

(3) The following vehicles are exempt from the provisions of this section:

(a) an implement of husbandry;

(b) a motor vehicle that:

(i) meets the definition of a farm truck under Section 41-1a-102; and

(ii) has a gross vehicle weight rating of 12,001 pounds or more;

(c) a vintage vehicle as defined in Section 41-21-1;

(d) a custom vehicle as defined in Section 41-6a-1507; and

(e) to the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401, et seq., a motor vehicle that is less than two years old on January 1 based on the age of the vehicle as determined by the model year identified by the manufacturer.

(4) (a) The legislative body of a county identified in Subsection (1) shall exempt a pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or less from the emission inspection requirements of this section, if the registered owner of the pickup truck provides a signed statement to the legislative body stating the truck is used:

(i) by the owner or operator of a farm located on property that qualifies as land in agricultural use under Sections 59-2-502 and 59-2-503; and

(ii) exclusively for the following purposes in operating the farm:

(A) for the transportation of farm products, including livestock and its products, poultry and its products, floricultural and horticultural products; and

(B) in the transportation of farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production and maintenance.

(b) The county shall provide to the registered owner who signs and submits a signed statement under this section a certificate of exemption from emission inspection requirements for purposes of registering the exempt vehicle.

(5) (a) Subject to Subsection (5)(c), the legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard may require each college or university located in a county subject to this section to require its students and employees who park a motor vehicle not registered in a county subject to this section to provide proof of compliance with an emissions inspection accepted by the county legislative body if the motor vehicle is parked on the college or university campus or property.

(b) College or university parking areas that are metered or for which payment is required per use are not subject to the requirements of this Subsection (5).

(c) The legislative body of a county shall make the reasons for implementing the provisions of this Subsection (5) part of the record at the time that the county legislative body takes its official action to implement the provisions of this Subsection (5).

(6) (a) An emissions inspection station shall issue a certificate of emissions inspection for each motor vehicle that meets the inspection and maintenance program requirements established in rules made under Subsection (2).

(b) The frequency of the emissions inspection shall be determined based on the age of the vehicle as determined by model year and shall be required annually subject to the provisions of Subsection (6)(c).

(c) (i) To the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401 et seq., the legislative body of a county identified in Subsection (1) shall only require the emissions inspection every two years for each vehicle.

(ii) The provisions of Subsection (6)(c)(i) apply only to a vehicle that is less than six years old on January 1.

(iii) For a county required to implement a new vehicle emissions inspection and maintenance program on or after December 1, 2012, under Subsection (1), but for which no current federally approved state implementation plan exists, a vehicle shall be tested at a frequency determined by the county legislative body, in consultation with the Air Quality Board created under Section 19-1-106, that is necessary to comply with federal law or attain or maintain any national ambient air quality standard.

(iv) If a county legislative body establishes or changes the frequency of a vehicle emissions inspection and maintenance program under Subsection (6)(c)(iii), the establishment or change shall take effect on January 1 if the Tax Commission receives notice meeting the requirements of Subsection (6)(c)(v) from the county prior to October 1.

(v) The notice described in Subsection (6)(c)(iv) shall:

(A) state that the county will establish or change the frequency of the vehicle emissions inspection and maintenance program under this section;

(B) include a copy of the ordinance establishing or changing the frequency; and

(C) if the county establishes or changes the frequency under this section, state how frequently the emissions testing will be required.

(d) If an emissions inspection is only required every two years for a vehicle under Subsection (6)(c), the inspection shall be required for the vehicle in:

(i) odd-numbered years for vehicles with odd-numbered model years; or

(ii) in even-numbered years for vehicles with even-numbered model years.

(7) The emissions inspection shall be required within the same time limit applicable to a safety inspection under Section 41-1a-205.

(8) (a) A county identified in Subsection (1) shall collect information about and monitor the program.

(b) A county identified in Subsection (1) shall supply this information to an appropriate legislative committee, as designated by the Legislative Management Committee, at times determined by the designated committee to identify program needs, including funding needs.

(9) If approved by the county legislative body, a county that had an established emissions inspection fee as of January 1, 2002, may increase the established fee that an emissions inspection station may charge by \$2.50 for each year that is exempted from emissions inspections under Subsection (6)(c) up to a \$7.50 increase.

(10) (a) A county identified in Subsection (1) may impose a local emissions compliance fee on each motor vehicle registration within the county in accordance with the procedures and requirements of Section 41-1a-1223.

(b) A county that imposes a local emissions compliance fee ~~shall~~ may use revenues generated from the fee for the establishment and enforcement of an emissions inspection and maintenance program in accordance with the requirements of this section.

(c) A county that imposes a local emissions compliance fee may use revenues generated from the fee to promote programs to maintain a local, state, or national ambient air quality standard.

CHAPTER 58**H. B. 105**

Passed February 22, 2017

Approved March 17, 2017

Effective May 9, 2017

EARLY VOTING AMENDMENTS

Chief Sponsor: Craig Hall
Senate Sponsor: Daniel W. Thatcher

LONG TITLE**General Description:**

This bill amends the Election Code in relation to early voting.

Highlighted Provisions:

This bill:

- ▶ permits an election officer to extend the last day of the early voting period to the day before the election date.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-3-601, as last amended by Laws of Utah 2015, Chapter 79

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

Section 1. Section 20A-3-601 is amended to read:**20A-3-601. Early voting.**

(1) (a) An individual who is registered to vote may vote before the election date in accordance with this section.

(b) An individual who is not registered to vote may register to vote and vote before the election date in accordance with this section if the individual:

(i) is otherwise legally entitled to vote the ballot in a jurisdiction that is approved by the lieutenant governor to participate in the pilot project described in Section 20A-4-108; and

(ii) casts a provisional ballot in accordance with Section 20A-4-108.

(2) Except as provided in Section 20A-1-308 or Subsection (3), the early voting period shall:

(a) begin on the date that is 14 days before the date of the election; and

(b) continue through the Friday before the election if the election date is a Tuesday.

(3) An election officer may extend the end of the early voting period to the day before the election date if the election officer provides notice of the extension in accordance with Section 20A-3-604.

~~[(3)]~~ (4) Except as provided in Section 20A-1-308, during the early voting period, the election officer:

(a) for a local special election, a municipal primary election, and a municipal general election:

(i) shall conduct early voting on a minimum of four days during each week of the early voting period; and

(ii) shall conduct early voting on the last day of the early voting period; and

(b) for all other elections:

(i) shall conduct early voting on each weekday; and

(ii) may elect to conduct early voting on a Saturday, Sunday, or holiday.

[4] (5) Except as specifically provided in this Part 6, Early Voting, or Section 20A-1-308, early voting shall be administered according to the requirements of this title.

CHAPTER 59**H. B. 106**

Passed February 14, 2017

Approved March 17, 2017

Effective May 9, 2017

**UTAH UNIFORM SECURITIES
ACT AMENDMENTS**Chief Sponsor: Craig Hall
Senate Sponsor: Lyle W. Hillyard**LONG TITLE****General Description:**

This bill modifies the Utah Uniform Securities Act.

Highlighted Provisions:

This bill:

- ▶ clarifies the calculation of damages for certain violations of the Utah Uniform Securities Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**61-1-22, as last amended by Laws of Utah 2012,
Chapter 191*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 61-1-22 is amended to read:****61-1-22. Sales and purchases in violation -- Remedies -- Limitation of actions.**

(1) (a) This Subsection (1) applies to a person who:

(i) offers or sells a security in violation of:

(A) Subsection 61-1-3(1);

(B) Section 61-1-7;

(C) Subsection 61-1-17(2);

(D) a rule or order under Section 61-1-15, which requires the affirmative approval of sales literature before it is used; or

(E) a condition imposed under Subsection 61-1-10(4) or 61-1-11(7); or

(ii) offers, sells, or purchases a security in violation of Subsection 61-1-1(2).

(b) A person described in Subsection (1)(a) is liable to a person selling the security to or buying the security from the person described in Subsection (1)(a). The person to whom the person described in Subsection (1)(a) is liable may sue either at law or in equity to recover the consideration paid for the security, together with interest at 12% per year from the date of payment, costs, and reasonable attorney fees, less the amount of income received on the security, upon the tender of the security or for damages if the person no longer owns the security.

(c) Damages are an amount calculated as follows:

(i) subtract from the amount that would be recoverable upon a tender under Subsection [(7)] (1)(b), excluding interest, the value of the security when the buyer disposed of the security; and

(ii) add to the amount calculated under Subsection (1)(c)(i) interest at:

(A) 12% per year:

(I) beginning the day on which the security is purchased by the buyer; and

(II) ending on the date of disposition; and

(B) after the period described in Subsection (1)(c)(ii)(A), 12% per year on the amount lost at disposition.

(2) The court in a suit brought under Subsection (1) may award an amount equal to three times the consideration paid for the security, together with interest, costs, and attorney fees, less any amounts, all as specified in Subsection (1) upon a showing that:

(a) the violation was reckless or intentional; or

(b) the violation was of Subsection 61-1-1(2), was negligent, and it is demonstrated by clear and convincing evidence that the violation involved an investment by a person over whom the violator exercised undue influence.

(3) A person who offers or sells a security in violation of Subsection 61-1-1(2) is not liable under Subsection (1)(a) if the purchaser knew of the untruth or omission, or the seller did not know and in the exercise of reasonable care could not have known of the untrue statement or misleading omission.

(4) (a) Every person who directly or indirectly controls a seller or buyer liable under Subsection (1), every partner, officer, or director of such a seller or buyer, every person occupying a similar status or performing similar functions, every employee of such a seller or buyer who materially aids in the sale or purchase, and every broker-dealer or agent who materially aids in the sale or purchase are also liable jointly and severally with and to the same extent as the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains the burden of proof that the nonseller or nonpurchaser did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(b) There is contribution as in cases of contract among the several persons so liable.

(5) A tender specified in this section may be made at any time before entry of judgment.

(6) A cause of action under this section survives the death of a person who might have been a plaintiff or defendant.

(7) (a) An action may not be maintained to enforce liability under this section unless brought before the earlier of:

(i) the expiration of five years after the act or transaction constituting the violation; or

(ii) the expiration of two years after the discovery by the plaintiff of the facts constituting the violation.

(b) A person may not sue under this section if:

(i) the buyer or seller received a written offer, before suit and at a time when the buyer or seller owned the security, to refund the consideration paid together with interest at 12% per year from the date of payment, less the amount of any income received on the security, and the buyer or seller failed to accept the offer within 30 days of its receipt; or

(ii) the buyer or seller received such an offer before suit and at a time when the buyer or seller did not own the security, unless the buyer or seller rejected the offer in writing within 30 days of its receipt.

(8) A person who has made or engaged in the performance of any contract in violation of this chapter or any rule or order issued under this chapter, or who has acquired a purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may not base a suit on the contract.

(9) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order issued under this chapter is void.

(10) (a) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist at law or in equity.

(b) This chapter does not create a cause of action not specified in this section or Subsection 61-1-4(6).

CHAPTER 60**H. B. 118**

Passed March 2, 2017

Approved March 17, 2017

Effective May 9, 2017

AUTHORITY OF STATE ENGINEER

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill clarifies the duties of the state engineer.

Highlighted Provisions:

This bill:

- ▶ states that the state engineer shall make rules regarding the duty of water; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

73-2-1, as last amended by Laws of Utah 2013, Chapter 221

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

Section 1. Section 73-2-1 is amended to read:**73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.**

- (1) There shall be a state engineer.
- (2) The state engineer shall:
 - (a) be appointed by the governor with the consent of the Senate;
 - (b) hold office for the term of four years and until a successor is appointed; and
 - (c) have five years experience as a practical engineer or the theoretical knowledge, practical experience, and skill necessary for the position.
- (3) (a) The state engineer shall be responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters.
 - (b) The state engineer may secure the equitable apportionment and distribution of the water according to the respective rights of appropriators.
 - (4) The state engineer shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and provisions of this title, regarding:
 - (a) reports of water right conveyances;
 - (b) the construction of water wells and the licensing of water well drillers;

- (c) dam construction and safety;
- (d) the alteration of natural streams;
- (e) geothermal resource conservation; [and]
- (f) enforcement orders and the imposition of fines and penalties[-]; and
- (g) the duty of water.

(5) The state engineer may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and provisions of this title, governing:

- (a) water distribution systems and water commissioners;
 - (b) water measurement and reporting;
 - (c) groundwater recharge and recovery;
 - (d) wastewater reuse;
 - (e) the form, content, and processing procedure for a claim under Section 73-5-13 to surface or underground water that is not represented by a certificate of appropriation;
 - (f) the form and content of a proof submitted to the state engineer under Section 73-3-16;
 - (g) the determination of water rights; or
 - (h) the form and content of applications and related documents, maps, and reports.
- (6) The state engineer may bring suit in courts of competent jurisdiction to:
- (a) enjoin the unlawful appropriation, diversion, and use of surface and underground water without first seeking redress through the administrative process;
 - (b) prevent theft, waste, loss, or pollution of those waters;
 - (c) enable him to carry out the duties of the state engineer's office; and
 - (d) enforce administrative orders and collect fines and penalties.
- (7) The state engineer may:
- (a) upon request from the board of trustees of an irrigation district under Title 17B, Chapter 2a, Part 5, Irrigation District Act, or another local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act, that operates an irrigation water system, cause a water survey to be made of all lands proposed to be annexed to the district in order to determine and allot the maximum amount of water that could be beneficially used on the land, with a separate survey and allotment being made for each 40-acre or smaller tract in separate ownership; and
 - (b) upon completion of the survey and allotment under Subsection (7)(a), file with the district board a return of the survey and report of the allotment.

(8) (a) The state engineer may establish water distribution systems and define their boundaries.

(b) The water distribution systems shall be formed in a manner that:

(i) secures the best protection to the water claimants; and

(ii) is the most economical for the state to supervise.

CHAPTER 61**H. B. 119**

Passed February 24, 2017

Approved March 17, 2017

Effective May 9, 2017

**SCHOOL BOARD MIDTERM
REPLACEMENT PROCESS**Chief Sponsor: Susan Pulsipher
Senate Sponsor: Wayne A. Harper**LONG TITLE****General Description:**

This bill addresses the process by which a midterm vacancy is filled on a local school board.

Highlighted Provisions:

This bill:

- ▶ allows a local school board to make an appointment to fill a vacancy on the local school board after a member of the local school board submits a letter of resignation; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-1-511, as last amended by Laws of Utah 2012, Chapter 327

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

Section 1. Section 20A-1-511 is amended to read:**20A-1-511. Midterm vacancies on local school boards.**

(1) (a) A local school board shall fill vacancies on the board by appointment, except as otherwise provided in Subsection (2).

(b) If the board fails to make an appointment within 30 days after a vacancy occurs, the county legislative body, or municipal legislative body in a city district, shall fill the vacancy by appointment.

(c) A member appointed and qualified under this ~~[subsection]~~ Subsection (1) shall serve until a successor is elected or appointed and qualified.

(2) (a) A vacancy on the board shall be filled by an interim appointment, followed by an election to fill a two-year term if:

(i) the vacancy on the board occurs, or a letter of resignation is received by the board, at least 14 days before the deadline for filing a declaration of candidacy; and

(ii) two years of the vacated term will remain after the first Monday of January following the next school board election.

(b) Members elected under this ~~[subsection]~~ Subsection (2) shall serve for the remaining two years of the vacated term and until a successor is elected and qualified.

(3) Before appointing ~~[a person]~~ an individual to fill a vacancy under this section, ~~the local school board shall:~~

(a) give public notice of the vacancy at least two weeks before the local school board meets to fill the vacancy;

(b) identify, in the notice:

(i) the date, time, and place of the meeting where the vacancy will be filled; and

(ii) the person to whom ~~[a person]~~ and date by which an individual interested in being appointed to fill the vacancy may submit ~~[his]~~ the individual's name for consideration ~~[and any deadline for submitting it]; and~~

(c) in an open meeting, interview each ~~[person]~~ individual, whose name ~~[was]~~ is submitted for consideration and who meets the qualifications for office, regarding the ~~[person's]~~ individual's qualifications.

(4) (a) Subject to Subsection (4)(b), a local school board may appoint an individual to fill a vacancy described in Subsection (1) or (2) before the vacancy occurs if a member of the local school board submits a letter of resignation.

(b) An individual appointed under Subsection (4)(a) may not take office until on or after the day on which the vacancy occurs for which the individual is appointed.

(c) A member of a local school board who submits a letter of resignation under Subsection (4)(a) may not rescind the resignation after the local school board makes an appointment to fill the vacancy created by the resignation.

CHAPTER 62**H. B. 124**

Passed March 3, 2017

Approved March 17, 2017

Effective May 9, 2017

ASSAULT ON A PEACE OFFICER AMENDMENTS

Chief Sponsor: A. Cory Maloy

Senate Sponsor: Ann Millner

LONG TITLE**General Description:**

This bill adds more peace officer classifications to the assault against a peace officer statute.

Highlighted Provisions:

This bill:

- ▶ adds the following to the assault against a peace officer statute:
 - correctional officers;
 - special function officers; and
 - federal officers.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-5-102.4, as last amended by Laws of Utah 2014, Chapter 189

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

Section 1. Section 76-5-102.4 is amended to read:**76-5-102.4. Assault against peace officer or a military servicemember in uniform -- Penalties.**

- (1) As used in this section:
 - (a) "Military servicemember in uniform" means:
 - (i) a member of any branch of the United States military who is wearing a uniform as authorized by the member's branch of service; or
 - (ii) a member of the National Guard serving as provided in Section 39-1-5 or 39-1-9.
 - (b) "Peace officer" means:
 - (i) a law enforcement officer certified under Section 53-13-103[.];
 - (ii) a correctional officer under Section 53-13-104;
 - (iii) a special function officer under Section 53-13-105; or
 - (iv) a federal officer under Section 53-13-106.

(2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3) and (4), who:

- (a) assaults a peace officer, with knowledge that the person is a peace officer, and when the peace

officer is acting within the scope of authority as a peace officer; or

(b) assaults a military servicemember in uniform when that servicemember is on orders and acting within the scope of authority granted to the military servicemember in uniform.

(3) A person who violates Subsection (2) is guilty of a third degree felony if the person:

(a) has been previously convicted of a class A misdemeanor or a felony violation of this section; or

(b) the person causes substantial bodily injury.

(4) A person who violates Subsection (2) is guilty of a second degree felony if the person uses:

(a) a dangerous weapon as defined in Section 76-1-601; or

(b) other means or force likely to produce death or serious bodily injury.

(5) A person who violates this section shall serve, in jail or another correctional facility, a minimum of:

(a) 90 consecutive days for a second offense; and

(b) 180 consecutive days for each subsequent offense.

(6) The court may suspend the imposition or execution of the sentence required under Subsection (5) if the court finds that the interests of justice would be best served by the suspension and the court makes specific findings concerning the disposition on the record.

(7) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech, the right of assembly, or any other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.

CHAPTER 63**H. B. 133**

Passed March 3, 2017

Approved March 17, 2017

Effective May 9, 2017

CANDIDATE FILING REQUIREMENTS

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Luz Escamilla

Cosponsors: Patrice M. Arant

Rebecca Chavez-Houck

Marie H. Poulson

LONG TITLE**General Description:**

This bill requires a candidate for vice president of the United States to file a declaration of candidacy and meet other related requirements.

Highlighted Provisions:

This bill:

- ▶ requires a candidate for vice president of the United States to file a declaration of candidacy and meet other related requirements;
- ▶ creates requirements for a declaration of candidacy for vice president of the United States; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-9-201, as last amended by Laws of Utah 2016, Chapter 28

20A-9-202, as last amended by Laws of Utah 2015, Chapter 296

20A-9-504, as enacted by Laws of Utah 1996, Chapter 258

20A-9-601, as last amended by Laws of Utah 2014, Chapter 169

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

Section 1. Section 20A-9-201 is amended to read:

20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of more than one political party prohibited with exceptions -- General filing and form requirements -- Affidavit of impecuniosity.

(1) Before filing a declaration of candidacy for election to any office, a person shall:

- (a) be a United States citizen;
- (b) meet the legal requirements of that office; and
- (c) if seeking a registered political party's nomination as a candidate for elective office, state:
 - (i) the registered political party of which the person is a member; or

(ii) that the person is not a member of a registered political party.

(2) (a) Except as provided in Subsection (2)(b), an individual may not:

(i) file a declaration of candidacy for, or be a candidate for, more than one office in Utah during any election year;

(ii) appear on the ballot as the candidate of more than one political party; or

(iii) file a declaration of candidacy for a registered political party of which the individual is not a member, except to the extent that the registered political party permits otherwise in the registered political party's bylaws.

(b) (i) A person may file a declaration of candidacy for, or be a candidate for, president or vice president of the United States and another office, if the person resigns the person's candidacy for the other office after the person is officially nominated for president or vice president of the United States.

(ii) A person may file a declaration of candidacy for, or be a candidate for, more than one justice court judge office.

(iii) A person may file a declaration of candidacy for lieutenant governor even if the person filed a declaration of candidacy for another office in the same election year if the person withdraws as a candidate for the other office in accordance with Subsection 20A-9-202(6) before filing the declaration of candidacy for lieutenant governor.

(3) (a) (i) Except for ~~[presidential candidates]~~ a candidate for president or vice president of the United States, before the filing officer may accept any declaration of candidacy, the filing officer shall:

(A) read to the prospective candidate the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(B) require the candidate to state whether the candidate meets those requirements.

(ii) Before accepting a declaration of candidacy for the office of county attorney, the county clerk shall ensure that the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the county in which the person is seeking office; and

(D) a current resident of the county in which the person is seeking office and either has been a resident of that county for at least one year or was appointed and is currently serving as county attorney and became a resident of the county within 30 days after appointment to the office.

(iii) Before accepting a declaration of candidacy for the office of district attorney, the county clerk

shall ensure that, as of the date of the election, the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the prosecution district in which the person is seeking office; and

(D) a current resident of the prosecution district in which the person is seeking office and either will have been a resident of that prosecution district for at least one year as of the date of the election or was appointed and is currently serving as district attorney and became a resident of the prosecution district within 30 days after receiving appointment to the office.

(iv) Before accepting a declaration of candidacy for the office of county sheriff, the county clerk shall ensure that the person filing the declaration of candidacy:

(A) as of the date of filing:

(I) is a United States citizen;

(II) is a registered voter in the county in which the person seeks office;

(III) (Aa) has successfully met the standards and training requirements established for law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; or

(Bb) has met the waiver requirements in Section 53-6-206; and

(IV) is qualified to be certified as a law enforcement officer, as defined in Section 53-13-103; and

(B) as of the date of the election, shall have been a resident of the county in which the person seeks office for at least one year.

(v) Before accepting a declaration of candidacy for the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, state legislator, or State Board of Education member, the filing officer shall ensure:

(A) that the person filing the declaration of candidacy also files the financial disclosure required by Section 20A-11-1603; and

(B) if the filing officer is not the lieutenant governor, that the financial disclosure is provided to the lieutenant governor according to the procedures and requirements of Section 20A-11-1603.

(b) If the prospective candidate states that the qualification requirements for the office are not met, the filing officer may not accept the prospective candidate's declaration of candidacy.

(c) If the candidate meets the requirements of Subsection (3)(a) and states that the requirements of candidacy are met, the filing officer shall:

(i) inform the candidate that:

(A) the candidate's name will appear on the ballot as the candidate's name is written on the declaration of candidacy;

(B) the candidate may be required to comply with state or local campaign finance disclosure laws; and

(C) the candidate is required to file a financial statement before the candidate's political convention under:

(I) Section 20A-11-204 for a candidate for constitutional office;

(II) Section 20A-11-303 for a candidate for the Legislature; or

(III) local campaign finance disclosure laws, if applicable;

(ii) except for a presidential candidate, provide the candidate with a copy of the current campaign financial disclosure laws for the office the candidate is seeking and inform the candidate that failure to comply will result in disqualification as a candidate and removal of the candidate's name from the ballot;

(iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide Electronic Voter Information Website Program and inform the candidate of the submission deadline under Subsection 20A-7-801(4)(a);

(iv) provide the candidate with a copy of the pledge of fair campaign practices described under Section 20A-9-206 and inform the candidate that:

(A) signing the pledge is voluntary; and

(B) signed pledges shall be filed with the filing officer;

(v) accept the candidate's declaration of candidacy; and

(vi) if the candidate has filed for a partisan office, provide a certified copy of the declaration of candidacy to the chair of the county or state political party of which the candidate is a member.

(d) If the candidate elects to sign the pledge of fair campaign practices, the filing officer shall:

(i) accept the candidate's pledge; and

(ii) if the candidate has filed for a partisan office, provide a certified copy of the candidate's pledge to the chair of the county or state political party of which the candidate is a member.

(4) (a) Except for ~~[presidential candidates]~~ a candidate for president or vice president of the United States, the form of the declaration of candidacy shall:

(i) be substantially as follows:

"State of Utah, County of ____

I, _____, declare my candidacy for the office of _____, seeking the nomination of the _____ party. I do solemnly swear that: I will meet the qualifications to hold the office, both legally and constitutionally, if selected; I reside at _____ in the City or Town of _____, Utah, Zip

Code ____ Phone No. ____; I will not knowingly violate any law governing campaigns and elections; I will file all campaign financial disclosure reports as required by law; and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot. The mailing address that I designate for receiving official election notices is _____.

Subscribed and sworn before me this _____(month\day\year).Notary Public (or other officer qualified to administer oath).”; and

(ii) require the candidate to state, in the sworn statement described in Subsection (4)(a)(i):

(A) the registered political party of which the candidate is a member; or

(B) that the candidate is not a member of a registered political party.

(b) An agent designated to file a declaration of candidacy under Section 20A-9-202 may not sign the form described in Subsection (4)(a).

(5) (a) Except for presidential candidates, the fee for filing a declaration of candidacy is:

(i) \$50 for candidates for the local school district board; and

(ii) \$50 plus 1/8 of 1% of the total salary for the full term of office legally paid to the person holding the office for all other federal, state, and county offices.

(b) Except for presidential candidates, the filing officer shall refund the filing fee to any candidate:

(i) who is disqualified; or

(ii) who the filing officer determines has filed improperly.

(c) (i) The county clerk shall immediately pay to the county treasurer all fees received from candidates.

(ii) The lieutenant governor shall:

(A) apportion to and pay to the county treasurers of the various counties all fees received for filing of nomination certificates or acceptances; and

(B) ensure that each county receives that proportion of the total amount paid to the lieutenant governor from the congressional district that the total vote of that county for all candidates for representative in Congress bears to the total vote of all counties within the congressional district for all candidates for representative in Congress.

(d) (i) A person who is unable to pay the filing fee may file a declaration of candidacy without payment of the filing fee upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed with the filing officer and, if requested by the filing officer, a financial statement filed at the time the affidavit is submitted.

(ii) A person who is able to pay the filing fee may not claim impecuniosity.

(iii) (A) False statements made on an affidavit of impecuniosity or a financial statement filed under this section shall be subject to the criminal penalties provided under Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

(B) Conviction of a criminal offense under Subsection (5)(d)(iii)(A) shall be considered an offense under this title for the purposes of assessing the penalties provided in Subsection 20A-1-609(2).

(iv) The filing officer shall ensure that the affidavit of impecuniosity is printed in substantially the following form:

“Affidavit of Impecuniosity

Individual Name _____Address _____

Phone Number _____

I, _____(name), do solemnly [swear] [affirm], under penalty of law for false statements, that, owing to my poverty, I am unable to pay the filing fee required by law.

Date _____ Signature _____

Affiant

Subscribed and sworn to before me on _____ (month\day\year) _____(signature)

Name and Title of Officer Authorized to Administer Oath _____”

(v) The filing officer shall provide to a person who requests an affidavit of impecuniosity a statement printed in substantially the following form, which may be included on the affidavit of impecuniosity:

”Filing a false statement is a criminal offense. In accordance with Section 20A-1-609, a candidate who is found guilty of filing a false statement, in addition to being subject to criminal penalties, will be removed from the ballot.”

(vi) The filing officer may request that a person who makes a claim of impecuniosity under this Subsection (5)(d) file a financial statement on a form prepared by the election official.

(6) (a) If there is no legislative appropriation for the Western States Presidential Primary election, as provided in Part 8, Western States Presidential Primary, a candidate for president of the United States who is affiliated with a registered political party and chooses to participate in the regular primary election shall:

(i) file a declaration of candidacy, in person or via a designated agent, with the lieutenant governor:

(A) on a form developed and provided by the lieutenant governor; and

(B) on or after the second Friday in March and before 5 p.m. on the third Thursday in March before the next regular primary election;

(ii) identify the registered political party whose nomination the candidate is seeking;

(iii) provide a letter from the registered political party certifying that the candidate may participate

as a candidate for that party in that party's presidential primary election; and

(iv) pay the filing fee of \$500.

(b) An agent designated to file a declaration of candidacy may not sign the form described in Subsection (6)(a)(i)(A).

(7) Any person who fails to file a declaration of candidacy or certificate of nomination within the time provided in this chapter is ineligible for nomination to office.

(8) A declaration of candidacy filed under this section may not be amended or modified after the final date established for filing a declaration of candidacy.

Section 2. Section 20A-9-202 is amended to read:

20A-9-202. Declarations of candidacy for regular general elections.

(1) (a) Each person seeking to become a candidate for an elective office that is to be filled at the next regular general election shall:

(i) file a declaration of candidacy in person with the filing officer on or after January 1 of the regular general election year, and, if applicable, before the candidate circulates nomination petitions under Section 20A-9-405; and

(ii) pay the filing fee.

(b) Each county clerk who receives a declaration of candidacy from a candidate for multicounty office shall transmit the filing fee and a copy of the candidate's declaration of candidacy to the lieutenant governor within one working day after it is filed.

(c) Each day during the filing period, each county clerk shall notify the lieutenant governor electronically or by telephone of candidates who have filed in their office.

(d) Each person seeking the office of lieutenant governor, the office of district attorney, or the office of president or vice president of the United States shall comply with the specific declaration of candidacy requirements established by this section.

(2) (a) Each person intending to become a candidate for the office of district attorney within a multicounty prosecution district that is to be filled at the next regular general election shall:

(i) file a declaration of candidacy with the clerk designated in the interlocal agreement creating the prosecution district on or after January 1 of the regular general election year, and before the candidate circulates nomination petitions under Section 20A-9-405; and

(ii) pay the filing fee.

(b) The designated clerk shall provide to the county clerk of each county in the prosecution district a certified copy of each declaration of candidacy filed for the office of district attorney.

(3) (a) On or before 5 p.m. on the first Monday after the third Saturday in April, each lieutenant governor candidate shall:

(i) file a declaration of candidacy with the lieutenant governor;

(ii) pay the filing fee; and

(iii) submit a letter from a candidate for governor who has received certification for the primary-election ballot under Section 20A-9-403 that names the lieutenant governor candidate as a joint-ticket running mate.

(b) Any candidate for lieutenant governor who fails to timely file is disqualified. If a lieutenant governor is disqualified, another candidate shall file to replace the disqualified candidate.

(4) ~~Each~~ On or before August 31, each registered political party shall:

(a) certify the names of its candidates for president and vice president of the United States to the lieutenant governor ~~[no later than August 31]~~; or

(b) provide written authorization for the lieutenant governor to accept the certification of candidates for president and vice president of the United States from the national office of the registered political party.

(5) (a) A declaration of candidacy filed under this section is valid unless a written objection is filed with the clerk or lieutenant governor within five days after the last day for filing.

(b) If an objection is made, the clerk or lieutenant governor shall:

(i) mail or personally deliver notice of the objection to the affected candidate immediately; and

(ii) decide any objection within 48 hours after it is filed.

(c) If the clerk or lieutenant governor sustains the objection, the candidate may cure the problem by amending the declaration or petition within three days after the objection is sustained or by filing a new declaration within three days after the objection is sustained.

(d) (i) The clerk's or lieutenant governor's decision upon objections to form is final.

(ii) The clerk's or lieutenant governor's decision upon substantive matters is reviewable by a district court if prompt application is made to the court.

(iii) The decision of the district court is final unless the Supreme Court, in the exercise of its discretion, agrees to review the lower court decision.

(6) Any person who filed a declaration of candidacy may withdraw as a candidate by filing a written affidavit with the clerk.

(7) Except as provided in Subsection 20A-9-201(4)(b), notwithstanding a requirement in this section to file a declaration of candidacy in

person, a person may designate an agent to file the form described in Subsection 20A-9-201(4) in person with the filing officer if:

(a) the person is located outside the state during the filing period because:

(i) of employment with the state or the United States; or

(ii) the person is a member of:

(A) the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;

(B) the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(C) the National Guard on activated status;

(b) the person communicates with the filing officer using an electronic device that allows the person and filing officer to see and hear each other; and

(c) the person provides the filing officer with an email address to which the filing officer may send the copies described in Subsection 20A-9-201(3).

(8) (a) Except for a candidate who is certified by a registered political party under Subsection (4), and except as provided in Section 20A-9-504, on or before August 31 of a general election year, each individual running as a candidate for vice president of the United States shall:

(i) file a declaration of candidacy, in person or via designated agent, on a form developed by the lieutenant governor, that:

(A) contains the individual's name, address, and telephone number;

(B) states that the individual meets the qualifications for the office of vice president of the United States;

(C) names the presidential candidate, who has qualified for the general election ballot, with which the individual is running as a joint-ticket running mate;

(D) states that the individual agrees to be the running mate of the presidential candidate described in Subsection (8)(a)(i)(C); and

(E) contains any other necessary information identified by the lieutenant governor;

(ii) pay the filing fee, if applicable; and

(iii) submit a letter from the presidential candidate described in Subsection (8)(a)(i)(C) that names the individual as a joint-ticket running mate as a vice presidential candidate.

(b) A designated agent described in Subsection (8)(a)(i) may not sign the declaration of candidacy.

(c) A vice presidential candidate who fails to meet the requirements described in this Subsection (8) may not appear on the general election ballot.

Section 3. Section 20A-9-504 is amended to read:

20A-9-504. Unaffiliated candidates -- Governor and president of the United States.

(1) (a) Each unaffiliated candidate for governor shall, before July 1 of the regular general election year, select a running mate to file as an unaffiliated candidate for the office of lieutenant governor.

~~(2)~~ (b) The unaffiliated lieutenant governor candidate shall, by July 1 of the regular general election year, file as an unaffiliated candidate by following the procedures and requirements of this part.

(2) (a) Each unaffiliated candidate for president of the United States shall, before 5 p.m. on August 15 of a regular general election year, select a running mate to file as an unaffiliated candidate for the office of vice president of the United States.

(b) Before 5 p.m. on August 15 of a regular general election year, the unaffiliated candidate for vice president of the United States described in Subsection (2)(a) shall comply with the requirements of Subsection 20A-9-202(8).

Section 4. Section 20A-9-601 is amended to read:

20A-9-601. Qualifying as a write-in candidate.

(1) (a) Each person wishing to become a valid write-in candidate shall file a declaration of candidacy in person, or through a designated agent for a candidate for president or vice president of the United States, with the appropriate filing officer not later than 60 days before the regular general election or a municipal general election in which the person intends to be a write-in candidate.

(b) (i) The form of the declaration of candidacy for all offices, except president or vice president of the United States, is substantially as follows:

"State of Utah, County of _____

I, _____, declare my intention of becoming a candidate for the office of _____ for the _____ district (if applicable). I do solemnly swear that: I will meet the qualifications to hold the office, both legally and constitutionally, if selected; I reside at _____ in the City or Town of _____, Utah, Zip Code _____, Phone No. _____; I will not knowingly violate any law governing campaigns and elections; I will file all campaign financial disclosure reports as required by law; and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot. The mailing address that I designate for receiving official election notices is _____.

Subscribed and sworn before me this _____ (month \ day \ year).

Notary Public (or other officer qualified to administer oath).”

(ii) The form of the declaration of candidacy for president of the United States is substantially as follows:

“State of Utah, County of ____

I, _____, declare my intention of becoming a candidate for the office of the president of the United States. I do solemnly swear that: I will meet the qualifications to hold the office, both legally and constitutionally, if selected; I reside at _____ in the City or Town of _____, State _____, Zip Code _____, Phone No. _____; I will not knowingly violate any law governing campaigns and elections. The mailing address that I designate for receiving official election notices is _____. I designate _____ as my vice presidential candidate.

Subscribed and sworn before me this _____(month\day\year).

Notary Public (or other officer qualified to administer oath.)”

(iii) A declaration of candidacy for a write-in candidate for vice president of the United States shall be in substantially the same form as a declaration of candidacy described in Subsection 20A-9-202(8).

~~(iii)~~ (iv) An agent designated to file a declaration of candidacy under Subsection (2) may not sign the form described in Subsection (1)(b)(i) or (ii).

(c) (i) The filing officer shall:

(A) read to the candidate the constitutional and statutory requirements for the office; and

(B) ask the candidate whether or not the candidate meets the requirements.

(ii) If the candidate cannot meet the requirements of office, the filing officer may not accept the write-in candidate’s declaration of candidacy.

(2) Notwithstanding the requirement in Subsection (1) to file a declaration of candidacy in person, a person may designate an agent to file the declaration of candidacy in person with the filing officer if:

(a) the person is located outside the state during the filing period because:

(i) of employment with the state or the United States; or

(ii) the person is a member of:

(A) the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;

(B) the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and

Atmospheric Administration of the United States; or

(C) the National Guard on activated status; and

(b) the person communicates with the filing officer using an electronic device that allows the person and filing officer to see and hear each other.

(3) By November 1 of each regular general election year, the lieutenant governor shall certify to each county clerk the names of all write-in candidates who filed their declaration of candidacy with the lieutenant governor.

CHAPTER 64**H. B. 135**

Passed February 13, 2017

Approved March 17, 2017

Effective May 9, 2017

DEPOSIT OF PUBLIC FUNDS

Chief Sponsor: Adam Gardiner
Senate Sponsor: Lincoln Fillmore

LONG TITLE**General Description:**

This bill modifies provisions relating to deposits of public funds by a political subdivision.

Highlighted Provisions:

This bill:

- ▶ amends the time frame requirement for an officer of a political subdivision to deposit public funds; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

51-4-2, as last amended by Laws of Utah 2007, Chapter 329

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

Section 1. Section 51-4-2 is amended to read:**51-4-2. Deposits by political subdivisions.**

(1) As used in this section:

(a) "Officer" means each:

(i) county treasurer, county auditor, county assessor, county clerk, clerk of the district court, city treasurer, city clerk, justice court judge; and

(ii) other officer of a political subdivision.

(b) "Political subdivision" means a county, city, town, school district, local district, and special service district.

(2) (a) Each officer shall deposit all public funds daily [~~whenever~~], if practicable, but [~~not~~] no later than [~~three days after receipt~~] once every three banking days.

(b) Each officer shall deposit all public funds only in qualified depositories unless the public funds need to be deposited in a bank outside Utah in order to provide for:

(i) payment of maturing bonds or other evidences of indebtedness; or

(ii) payment of the interest on bonds or other evidences of indebtedness.

(3) (a) (i) Each officer shall require all checks to be made payable to the office of the officer receiving funds or to the political subdivision's treasurer.

(ii) An officer may not accept a check unless it is made payable to the office of the officer receiving funds or to the political subdivision's treasurer.

(b) Each officer shall deposit all money [~~he~~] the officer collects into an account controlled by [~~his~~] the political subdivision's treasurer.

(4) (a) Except as provided in Subsection (4)(b) and unless a shorter time for depositing funds is otherwise required by law, each political subdivision that has collected funds that are due to the state or to another political subdivision of the state shall, on or before the tenth day of each month, pay all of those funds that were received during the last month:

(i) to a qualified depository for the credit of the appropriate public treasurer; or

(ii) to the appropriate public treasurer.

(b) Property tax collections shall be apportioned and paid according to Section 59-2-1365.

CHAPTER 65**H. B. 138**

Passed February 16, 2017

Approved March 17, 2017

Effective May 9, 2017

PUBLIC SAFETY AMENDMENTS

Chief Sponsor: Edward H. Redd
Senate Sponsor: Daniel W. Thatcher

LONG TITLE**General Description:**

This bill modifies the Utah Criminal Code regarding custodial sexual offenses.

Highlighted Provisions:

This bill:

- ▶ adds special function officers as actors who are subject to prosecution for custodial sexual relations or custodial sexual misconduct.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-5-412, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8

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

Section 1. Section 76-5-412 is amended to read:**76-5-412. Custodial sexual relations -- Custodial sexual misconduct -- Definitions -- Penalties -- Defenses.**

(1) As used in this section:

(a) "Actor" means:

(i) a correctional officer, as defined in Section 53-13-104;

(ii) a special function officer, as defined in Section 53-13-105;

~~(iii)~~ (iii) a law enforcement officer, as defined in Section 53-13-103; or

~~(iii)~~ (iv) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is:

(i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 62A-15-601 or other medical facility;

(ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(iii) under lawful or unlawful arrest, either with or without a warrant.

(c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a person in custody;

(b) engaging in any sexual act with a person in custody involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty

under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a person in custody;

(b) touching the breast of a female person in custody;

(c) otherwise taking indecent liberties with a person in custody; or

(d) causing a person in custody to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor:

(i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the person in custody.

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

CHAPTER 66**H. B. 146**

Passed February 16, 2017

Approved March 17, 2017

Effective May 9, 2017

**PARTIAL FILLING OF A
SCHEDULE II CONTROLLED
SUBSTANCE PRESCRIPTION**

Chief Sponsor: Stewart E. Barlow

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill addresses the partial filling of prescriptions for Schedule II controlled substances.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ requires that the partial filling of a Schedule II controlled substance prescription for certain patients must be made in accordance with federal law and rules made by the Division of Occupational and Professional Licensing; and
- ▶ requires rulemaking.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

58-17b-610.6, Utah Code Annotated 1953

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

Section 1. Section 58-17b-610.6 is enacted to read:**58-17b-610.6. Partial filling of a Schedule II controlled substance prescription.**

(1) For purposes of this section, "Schedule II controlled substance" means a substance classified as a Schedule II controlled substance by the federal Controlled Substances Act, Title II, Pub. L. No. 91-513 et seq., or Section 58-37-4.

(2) A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a terminal illness may be partially filled in accordance with federal law.

(3) A prescription for a Schedule II controlled substance for a patient other than a patient described in Subsection (2) may be partially filled:

(a) in accordance with federal law and rules made under Subsection (5); and

(b) at the request of the practitioner who issued the prescription, or the patient.

(4) For purposes of Subsection (3), "partially filled" means that less than the full amount of the prescription is dispensed.

(5) For purposes of Subsection (3), the division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) specifying how to record the date, quantity supplied, and quantity remaining of a prescription partially filled under Subsection (3); and

(b) otherwise necessary for the implementation of Subsections (2) and (3).

CHAPTER 67**H. B. 150**

Passed February 16, 2017

Approved March 17, 2017

Effective May 9, 2017

CUSTODY AMENDMENTS RELATED TO PARENTS WITH DISABILITIES

Chief Sponsor: Patrice M. Arent

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies provisions related to custody of children in a divorce.

Highlighted Provisions:

This bill:

- ▶ addresses a court taking into consideration the disability of a parent in determining custody; and
- ▶ makes technical changes, including modifying references to husband and wife and mother or father.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

30-3-10, as last amended by Laws of Utah 2014, Chapter 409

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

Section 1. Section 30-3-10 is amended to read:**30-3-10. Custody of children in case of separation or divorce -- Custody consideration.**

(1) If a ~~husband and wife having~~ married couple having one or more minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate.

(a) In determining any form of custody, including a change in custody, the court shall consider the best interests of the child without preference for either ~~the mother or father~~ parent solely because of the biological sex of the parent and, among other factors the court finds relevant, the following:

(i) the past conduct and demonstrated moral standards of each of the parties;

(ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent;

(iii) the extent of bonding between the parent and child, meaning the depth, quality, and nature of the relationship between a parent and child;

(iv) whether the parent has intentionally exposed the child to pornography or material harmful to a minor, as defined in Section 76-10-1201; and

(v) those factors outlined in Section 30-3-10.2.

(b) There ~~shall be~~ is a rebuttable presumption that joint legal custody, as defined in Section 30-3-10.1, is in the best interest of the child, except in cases where there is:

(i) domestic violence in the home or in the presence of the child;

(ii) special physical or mental needs of a parent or child, making joint legal custody unreasonable;

(iii) physical distance between the residences of the parents, making joint decision making impractical in certain circumstances; or

(iv) any other factor the court considers relevant including those listed in this section and Section 30-3-10.2.

(c) The person who desires joint legal custody shall file a proposed parenting plan in accordance with Sections 30-3-10.8 and 30-3-10.9. A presumption for joint legal custody may be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of the child.

(d) ~~The children~~ A child may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the ~~children~~ child be heard and there is no other reasonable method to present ~~their~~ the child's testimony.

(e) The court may inquire of ~~the children~~ a child and take into consideration the ~~children's~~ child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the ~~children's~~ child's custody or parent-time otherwise. The desires of a child 14 years of age or older shall be given added weight, but is not the single controlling factor.

(f) ~~If interviews with the children are~~ If an interview with a child is conducted by the court pursuant to Subsection (1)(e), ~~they~~ the interview shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with ~~the children~~ a child is the only method to ascertain the child's desires regarding custody.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, the court shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a parent due to a

disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

~~[(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising from the disability by showing that:]~~

(b) The court may not consider the disability of a parent as a factor in awarding custody or modifying an award of custody based on a determination of a substantial change in circumstances, unless the court makes specific findings that:

(i) the disability [does not] significantly or substantially [inhibit] inhibits the parent's ability to provide for the physical and emotional needs of the child at issue; [or] and

(ii) the parent with a disability [has] lacks sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

(5) This section establishes neither a preference nor a presumption for or against joint physical custody or sole physical custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

CHAPTER 68**H. B. 160**

Passed March 6, 2017

Approved March 17, 2017

Effective May 9, 2017

**CAMPAIGN CONTRIBUTION
SOLICITATION AMENDMENTS**Chief Sponsor: Patrice M. Arent
Senate Sponsor: Margaret Dayton**LONG TITLE****General Description:**

This bill amends the Election Code in relation to soliciting campaign contributions.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ prohibits a person from using the email of a public entity to solicit a campaign contribution.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-11-1202, as last amended by Laws of Utah 2015, Chapter 435

20A-11-1205, as enacted by Laws of Utah 2015, Chapter 435

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

Section 1. Section 20A-11-1202 is amended to read:**20A-11-1202. Definitions.**

As used in this part:

- (1) "Applicable election officer" means:
 - (a) a county clerk, if the email relates only to a local election; or
 - (b) the lieutenant governor, if the email relates to an election other than a local election.
- (2) "Ballot proposition" means constitutional amendments, initiatives, referenda, judicial retention questions, opinion questions, bond approvals, or other questions submitted to the voters for their approval or rejection.
- (3) "Campaign contribution" means any of the following when done for a political purpose or to advocate for or against a ballot proposition:
 - (a) a gift, subscription, donation, loan, advance, deposit of money, or anything of value given to a filing entity;
 - (b) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, deposit of money, or anything of value to a filing entity;

(c) any transfer of funds from another reporting entity to a filing entity;

(d) compensation paid by any person or reporting entity other than the filing entity for personal services provided without charge to the filing entity;

(e) remuneration from:

(i) any organization or the organization's directly affiliated organization that has a registered lobbyist; or

(ii) any agency or subdivision of the state, including a school district; or

(f) an in-kind contribution.

[~~3~~] (4) (a) "Commercial interlocal cooperation agency" means an interlocal cooperation agency that receives its revenues from conduct of its commercial operations.

(b) "Commercial interlocal cooperation agency" does not mean an interlocal cooperation agency that receives some or all of its revenues from:

(i) government appropriations;

(ii) taxes;

(iii) government fees imposed for regulatory or revenue raising purposes; or

(iv) interest earned on public funds or other returns on investment of public funds.

[4] (5) "Expenditure" means:

(a) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value;

(b) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value;

(c) a transfer of funds between a public entity and a candidate's personal campaign committee;

(d) a transfer of funds between a public entity and a political issues committee; or

(e) goods or services provided to or for the benefit of a candidate, a candidate's personal campaign committee, or a political issues committee for political purposes at less than fair market value.

(6) "Filing entity" means the same as that term is defined in Section 20A-11-101.

[~~5~~] (7) "Governmental interlocal cooperation agency" means an interlocal cooperation agency that receives some or all of its revenues from:

(a) government appropriations;

(b) taxes;

(c) government fees imposed for regulatory or revenue raising purposes; or

(d) interest earned on public funds or other returns on investment of public funds.

[46] (8) (a) “Influence” means to campaign or advocate for or against a ballot proposition.

(b) “Influence” does not mean providing a brief statement about a public entity’s position on a ballot proposition and the reason for that position.

[47] (9) “Interlocal cooperation agency” means an entity created by interlocal agreement under the authority of Title 11, Chapter 13, Interlocal Cooperation Act.

[48] (10) “Local district” means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and includes a special service district under Title 17D, Chapter 1, Special Service District Act.

[49] (11) “Political purposes” means an act done with the intent or in a way to influence or intend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any:

(a) candidate for public office at any caucus, political convention, primary, or election; or

(b) judge standing for retention at any election.

[40] (12) (a) “Public entity” includes the state, each state agency, each county, municipality, school district, local district, governmental interlocal cooperation agency, and each administrative subunit of each of them.

(b) “Public entity” does not include a commercial interlocal cooperation agency.

(c) “Public entity” includes local health departments created under Title 26, Chapter 1, Department of Health Organization.

[41] (13) (a) “Public funds” means any money received by a public entity from appropriations, taxes, fees, interest, or other returns on investment.

(b) “Public funds” does not include money donated to a public entity by a person or entity.

[42] (14) (a) “Public official” means an elected or appointed member of government with authority to make or determine public policy.

(b) “Public official” includes the person or group that:

(i) has supervisory authority over the personnel and affairs of a public entity; and

(ii) approves the expenditure of funds for the public entity.

(15) “Reporting entity” means the same as that term is defined in Section 20A-11-101.

[43] (16) (a) “State agency” means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) “State agency” includes the legislative branch, the Board of Regents, the institutional councils of each higher education institution, and each higher education institution.

Section 2. Section 20A-11-1205 is amended to read:

20A-11-1205. Use of public email for a political purpose.

(1) Except as provided in Subsection (5), a person may not send an email using the email of a public entity^[,]:

(a) for a political purpose ~~[or]~~;

(b) to advocate for or against a ballot proposition~~[,]~~; or

(c) to solicit a campaign contribution.

(2) The applicable election officer shall impose a civil fine against a person who violates Subsection (1) as follows:

(a) up to \$250 for a first violation; and

(b) except as provided in Subsection (3), for each subsequent violation committed after any applicable election officer imposes a fine against the person for a first violation, \$1,000 multiplied by the number of violations committed by the person.

(3) The applicable election officer shall consider a violation of this section as a first violation if the violation is committed more than seven years after the day on which the person last committed a violation of this section.

(4) For purposes of this section, one violation means one act of sending an email, regardless of the number of recipients of the email.

(5) A person does not violate this section if the lieutenant governor finds that the email described in Subsection (1) was inadvertently sent~~[, as a reply to an email received]~~ by the person described in Subsection (1), using the email of a public entity.

(6) A violation of this section does not invalidate an otherwise valid election.

CHAPTER 69**H. B. 161**

Passed February 23, 2017

Approved March 17, 2017

Effective May 9, 2017

PEDESTRIAN SAFETY AMENDMENTS

Chief Sponsor: Steve Eliason
 Senate Sponsor: Curtis S. Bramble
 Cosponsors: Bruce R. Cutler
 Susan Pulsipher
 Mike Winder

LONG TITLE**General Description:**

This bill amends provisions relating to conduct that impedes or blocks traffic.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to impeding or blocking traffic; and
- ▶ prohibits the transfer of money or property between a pedestrian and an occupant of a motor vehicle while the motor vehicle is within certain roadways.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-6a-1009, as last amended by Laws of Utah 2015, Chapter 412

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

Section 1. Section 41-6a-1009 is amended to read:**41-6a-1009. Use of roadway by pedestrians -- Prohibited activities.**

(1) Where there is a sidewalk provided and its use is practicable, a pedestrian may not walk along or on an adjacent roadway.

(2) Where a sidewalk is not provided, a pedestrian walking along or on a highway shall walk only on the shoulder, as far as practicable from the edge of the roadway.

(3) Where a sidewalk or a shoulder is not available, a pedestrian walking along or on a highway shall:

(a) walk as near as practicable to the outside edge of the roadway; and

(b) if on a two-way roadway, walk only on the left side of the roadway facing traffic.

(4) (a) An individual may not ~~engage in conduct that impedes or blocks~~ impede or block traffic within any of the following:

(i) an interstate system, as defined in Section 72-1-102;

(ii) a freeway, as defined in Section 41-6a-102;

(iii) a state highway, as defined in Title 72, Chapter 4, Designation of State Highways Act; ~~or~~

(iv) a state route, or "SR," as defined in Section 72-1-102~~[-]~~; or

(v) a highway, as defined in Section 72-1-102, that:

(A) is paved; and

(B) has a speed limit of 35 miles per hour or higher.

(b) The locations described in Subsection (4)(a) include:

(i) shoulder areas, as defined in Section 41-6a-102;

(ii) on-ramps;

(iii) off-ramps; and

(iv) an area between the roadways of a divided highway, as defined in Section 41-6a-102.

(c) The locations described in Subsection (4)(a) do not include sidewalks, as defined in Section 41-6a-102.

(d) Conduct that ~~impedes or blocks traffic may include~~ may impede or block traffic includes:

~~(i) loitering;~~

~~(ii) demonstrating or picketing;~~

~~(iii) distributing materials;~~

~~(iv) gathering signatures;~~

~~(v) holding signs; or~~

~~(vi) soliciting rides, contributions, or other business.~~

(i) while a pedestrian, accepting, transacting, exchanging, or otherwise taking possession or control of money or property from a person within a motor vehicle while that motor vehicle is within an area described in Subsection (4)(a); or

(ii) while a driver or passenger of a motor vehicle within an area described in Subsection (4)(a), accepting, transacting, exchanging, or otherwise taking possession or control of money or property from a pedestrian.

(e) Conduct that impedes or blocks traffic does not include:

(i) the conduct described in Section 41-6a-209~~[-]~~ or other lawful direction of a peace officer;

(ii) conduct or actions resulting from a traffic accident, medical emergency, or similar exigent circumstance, including:

(A) exchanging insurance information; or

(B) exchanging contact information; or

(iii) conduct or actions that occur while the motor vehicle is legally parked.

(f) A county or municipality may adopt a resolution, ordinance, or regulation prohibiting conduct in locations described in Subsections (4)(a) and (b) within any of the roadways under its jurisdiction.

(g) (i) The state, a county, or a municipality shall create a permitting process for granting a person an exemption from this Subsection (4).

(ii) Upon receipt of a valid permit application, the state, a county, or a municipality shall grant a person a temporary exemption from this Subsection (4) for a specified location or time.

(h) Nothing in this section prohibits a temporary spontaneous demonstration.

(5) A pedestrian who is under the influence of alcohol or any drug to a degree which renders the pedestrian a hazard may not walk or be on a highway except on a sidewalk or sidewalk area.

(6) Except as otherwise provided in this chapter, a pedestrian on a roadway shall yield the right-of-way to all vehicles on the roadway.

(7) A pedestrian may not walk along or on a no-access freeway facility except during an emergency.

(8) (a) As used in this Subsection (8):

(i) "Aggressive manner" means intentionally:

(A) persisting in approaching or following an individual after the individual has negatively responded to the solicitation;

(B) engaging in conduct that would cause a reasonable individual to fear imminent bodily harm;

(C) engaging in conduct that would intimidate a reasonable individual into giving money or goods;

(D) blocking the path of an individual; or

(E) physically contacting an individual or the individual's personal property without that individual's consent.

(ii) "Bank" is as defined in Section 13-42-102.

(iii) "Sidewalk" is as defined in Section 41-6a-102.

(b) An individual may not solicit money or goods from another individual in an aggressive manner:

(i) during the business hours of a bank if either the individual soliciting, or the individual being solicited, is on the portion of a sidewalk that is within 10 feet of the bank's entrance or exit; or

(ii) on the portion of a sidewalk that is within 10 feet of an automated teller machine.

(9) [A] (a) Except as provided in Subsection (9)(b), a violation of this section is an infraction.

(b) A third or subsequent violation of Subsection (4) in a one-year period is a class C misdemeanor.

CHAPTER 70**H. B. 163**

Passed March 6, 2017

Approved March 17, 2017

Effective May 9, 2017

MUNICIPALITY PER DIEM AMENDMENTS

Chief Sponsor: Craig Hall
Senate Sponsor: Deidre M. Henderson

LONG TITLE**General Description:**

This bill modifies provisions related to per diem and travel expenses.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires that local per diem and travel expenses for board members serving on a board created by or within a political subdivision not exceed rates established by the Division of Finance; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-9a-301, as last amended by Laws of Utah 2011, Chapter 107
17-16-16, as last amended by Laws of Utah 2011, Chapter 297
17-27a-301, as last amended by Laws of Utah 2016, Chapter 411
17-31-8, as last amended by Laws of Utah 2006, Chapter 134
17-33-4, as last amended by Laws of Utah 2016, Chapter 145
17B-1-307, as last amended by Laws of Utah 2013, Chapter 448
17B-1-312, as last amended by Laws of Utah 2016, Chapter 273
17B-2a-807, as last amended by Laws of Utah 2016, Chapter 205
17D-3-301, as enacted by Laws of Utah 2008, Chapter 360

ENACTS:

- 11-55-101, Utah Code Annotated 1953
11-55-102, Utah Code Annotated 1953
11-55-103, Utah Code Annotated 1953

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

Section 1. Section 10-9a-301 is amended to read:**10-9a-301. Ordinance establishing planning commission required -- Ordinance requirements -- Compensation.**

(1) (a) Each municipality shall enact an ordinance establishing a planning commission.

(b) The ordinance shall define:

(i) the number and terms of the members and, if the municipality chooses, alternate members;

(ii) the mode of appointment;

(iii) the procedures for filling vacancies and removal from office;

(iv) the authority of the planning commission;

(v) subject to Subsection (1)(c), the rules of order and procedure for use by the planning commission in a public meeting; and

(vi) other details relating to the organization and procedures of the planning commission.

(c) Subsection (1)(b)(v) does not affect the planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(2) The legislative body may ~~[fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.]~~ authorize a member to receive per diem and travel expenses for meetings actually attended, in accordance with Section 11-55-103.

Section 2. Section 11-55-101 is enacted to read:**CHAPTER 55. POLITICAL SUBDIVISION BOARD COMPENSATION****11-55-101. Title.**

This chapter is known as "Political Subdivision Board Compensation."

Section 3. Section 11-55-102 is enacted to read:**11-55-102. Definitions.**

As used in this chapter:

(1) "Board" means the same as that term is defined in Section 63A-3-106.

(2) "Board member" means the same as that term is defined in Section 63A-3-106.

(3) "Municipality" means the same as that term is defined in Section 10-1-104.

(4) "Political subdivision" means a county, municipality, school district, limited purpose local government entity described in Title 17B, Limited Purpose Local Government Entities - Local Districts, Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act, or Title 17D, Limited Purpose Local Government Entities - Other Entities, or an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental subdivision or public corporation.

Section 4. Section 11-55-103 is enacted to read:**11-55-103. General provisions.**

(1) A political subdivision may authorize a board member who serves on a board within or created by the political subdivision to receive per diem and

travel expenses for meetings actually attended at a rate that the political subdivision establishes, subject to Subsection (2).

(2) A political subdivision may not establish rates for payment of per diem and travel expenses described in Subsection (1) that exceed the rates established in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) a rule adopted by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

(3) Nothing in this section limits or supercedes the authority of a political subdivision to set compensation in accordance with Section 10-3-818, 11-13-403, 17-28-2, 17-33-4, 17B-1-307, or 17D-1-305.

Section 5. Section 17-16-16 is amended to read:

17-16-16. Commissioners' traveling expenses.

(1) The members of the board of county commissioners may not receive any compensation in addition to that provided in Section 17-16-14 for any special or committee work, but, subject to Subsection (2), each member shall ~~be paid the amount of the member's actual and reasonable traveling expenses in~~ receive travel expenses for attending the regular and special sessions of the board and in the discharge of necessary duties, in accordance with Section 11-55-103.

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

(a) submit an itemized statement showing in detail the expenses incurred; and

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

Section 6. Section 17-27a-301 is amended to read:

17-27a-301. Ordinance establishing planning commission required -- Exception -- Ordinance requirements -- Planning advisory area planning commission -- Compensation.

(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a planning advisory area.

(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

(i) municipalities;

(ii) planning advisory areas with their own planning commissions; and

(iii) mountainous planning districts.

(c) (i) Notwithstanding Subsection (1)(a), and except as provided in Subsection (1)(c)(ii), a county that designates a mountainous planning district shall enact an ordinance, subject to Subsection (1)(c)(ii), establishing a planning commission that has jurisdiction over the entire mountainous planning district, including areas of the mountainous planning district that are also located within a municipality or are unincorporated.

(ii) A planning commission described in Subsection (1)(c)(i):

(A) does not have jurisdiction over a municipality described in Subsection 10-9a-304(2)(b); and

(B) has jurisdiction subject to a local health department exercising its authority in accordance with Title 26A, Chapter 1, Local Health Departments and a municipality exercising the municipality's authority in accordance with Section 10-8-15.

(iii) The ordinance shall require that:

(A) members of the planning commission represent areas located in the unincorporated and incorporated county;

(B) members of the planning commission be registered voters who reside either in the unincorporated or incorporated county;

(C) at least one member of the planning commission resides within the mountainous planning district; and

(D) the county designate up to four seats on the planning commission, and fill each vacancy in the designated seats in accordance with the procedure described in Subsection (7).

(2) (a) The ordinance described in Subsection (1)(a) or (c) shall define:

(i) the number and terms of the members and, if the county chooses, alternate members;

(ii) the mode of appointment;

(iii) the procedures for filling vacancies and removal from office;

(iv) the authority of the planning commission;

(v) subject to Subsection (2)(b), the rules of order and procedure for use by the planning commission in a public meeting; and

(vi) other details relating to the organization and procedures of the planning commission.

(b) Subsection (2)(a)(v) does not affect the planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(3) (a) (i) If the county establishes a planning advisory area planning commission, the county legislative body shall enact an ordinance that defines:

(A) appointment procedures;

(B) procedures for filling vacancies and removing members from office;

(C) subject to Subsection (3)(a)(ii), the rules of order and procedure for use by the planning

advisory area planning commission in a public meeting; and

(D) details relating to the organization and procedures of each planning advisory area planning commission.

(ii) Subsection (3)(a)(i)(C) does not affect the planning advisory area planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(b) The planning commission for each planning advisory area shall consist of seven members who shall be appointed by:

(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice and consent of the county legislative body; or

(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

(c) (i) Members shall serve four-year terms and until their successors are appointed and qualified.

(ii) Notwithstanding the provisions of Subsection (3)(c)(i), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

(d) (i) Each member of a planning advisory area planning commission shall be a registered voter residing within the planning advisory area.

(ii) Subsection (3)(d)(i) does not apply to a member described in Subsection (4)(a) if that member was, prior to May 12, 2015, authorized to reside outside of the planning advisory area.

(4) (a) A member of a planning commission who was elected to and served on a planning commission on May 12, 2015, shall serve out the term to which the member was elected.

(b) Upon the expiration of an elected term described in Subsection (4)(a), the vacant seat shall be filled by appointment in accordance with this section.

(5) Upon the appointment of all members of a planning advisory area planning commission, each planning advisory area planning commission under this section shall begin to exercise the powers and perform the duties provided in Section 17-27a-302 with respect to all matters then pending that previously had been under the jurisdiction of the countywide planning commission or planning advisory area planning and zoning board.

(6) The legislative body may ~~[fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.]~~ authorize a member of a planning commission to receive per diem and travel expenses for meetings actually attended, in accordance with Section 11-55-103.

(7) (a) Subject to Subsection (7)(f), a county shall fill a vacancy in a planning commission seat described in Subsection (1)(c)(iii)(D) in accordance with this Subsection (7).

(b) If a county designates one or more planning commission seats under Subsection (1)(c)(iii)(D), the county shall identify at least one and up to four cities that:

(i) (A) are adjacent to the mountainous planning district; and

(B) border the entrance to a canyon that is located within the boundaries of the mountainous planning district and accessed by a paved road maintained by the county or the state; or

(ii) exercise extraterritorial jurisdiction in accordance with Section 10-8-15.

(c) When there is a vacancy in a planning commission seat described in Subsection (1)(c)(iii)(D), the county shall send a written request to one of the cities described in Subsection (7)(b), on a rotating basis, if applicable, for a list of three individuals, who satisfy the requirements described in Subsection (1)(c)(iii)(B), to fill the vacancy.

(d) The city shall respond to a written request described in Subsection (7)(c) within 60 days after the day on which the city receives the written request.

(e) After the county receives the city's list of three individuals, the county shall submit one of the individuals on the list for appointment to the vacant planning commission seat in accordance with county ordinance.

(f) The county shall fill the vacancy in accordance with the county's standard procedure if the city fails to timely respond to the written request.

Section 7. Section 17-31-8 is amended to read:

17-31-8. Tourism tax advisory boards.

(1) (a) Except as provided in Subsection (1)(b), any county that collects the following taxes shall operate a tourism tax advisory board:

(i) the tax allowed under Section 59-12-301; or

(ii) the tax allowed under Section 59-12-603.

(b) Notwithstanding Subsection (1)(a), a county is exempt from Subsection (1)(a) if the county has an existing board, council, committee, convention visitor's bureau, or body that substantially conforms with Subsections (2), (3), and (4).

(2) A tourism tax advisory board created under Subsection (1) shall consist of at least five members.

(3) A tourism tax advisory board shall be composed of the following members that are residents of the county:

(a) a majority of the members shall be current employees of entities in the county that are subject to the taxes referred to in Section 59-12-301 or 59-12-603; and

(b) the balance of the board's membership shall be employees of recreational facilities, convention facilities, museums, cultural attractions, or other tourism related industries located within the county.

(4) (a) Each tourism tax advisory board shall advise the county legislative body on the best use of revenues collected from the tax allowed under Section 59-12-301 by providing the legislative body with a priority listing for proposed expenditures based on projected available tax revenues supplied to the board by the county legislative body on an annual basis.

(b) Each tourism tax advisory board in a county operating under the county commission form of government under Section 17-52-501 or the expanded county commission form under Section 17-52-502 shall advise the county legislative body on the best use of revenues collected from the tax allowed under Section 59-12-603 by providing the legislative body with a priority listing for proposed expenditures based on projected available tax revenues supplied to the board by the county legislative body on an annual basis.

(5) A member of any county tourism tax advisory board:

(a) may not receive compensation or benefits for the member's services; and

(b) may receive per diem and travel expenses incurred in the performance of the member's official duties, in accordance with Section 11-55-103.

Section 8. Section 17-33-4 is amended to read:

17-33-4. Career service council -- Members and alternate members -- Powers and duties -- Appeals -- Time limit -- Qualifications, appointment, terms, and compensation of council members.

(1) (a) (i) There shall be in each county establishing a system a three-member bipartisan career service council appointed by the county executive. The members of the council shall be persons in sympathy with the application of merit principles to public employment.

(ii) (A) The county executive may appoint alternate members of the career service council to hear appeals that one or more regular career service council members are unable to hear.

(B) The term of an alternate member of the career service council may not exceed one year.

(b) The council shall hear appeals not resolved at lower levels in the cases of career service employees suspended, transferred, demoted, or dismissed as well in the cases of other grievances not resolved by the grievance procedure at the division or departmental level.

(c) The career service council:

(i) may make an initial determination in each appeal whether the appeal is one of the types of

matters under Subsection (1)(b) over which the council has jurisdiction;

(ii) shall, subject to Section 17-33-4.5, review written appeals in cases of applicants rejected for examination and report final binding appeals decisions, in writing, to the county legislative body;

(iii) may not hear any other personnel matter; and

(iv) may affirm, modify, vacate, or set aside an order for disciplinary action.

(d) (i) A person adversely affected by a decision of the career service council may appeal the decision to the district court.

(ii) An appeal to the district court under this Subsection (1)(d) is barred unless it is filed within 30 days after the career service council issues its decision.

(iii) If there is a record of the career service council proceedings, the district court review shall be limited to the record provided by the career service council.

(iv) In reviewing a decision of the career service council, the district court shall presume that the decision is valid and may determine only whether the decision is arbitrary or capricious.

(2) Each council member shall serve a term of three years to expire on June 30, three years after the date of his or her appointment, except that original appointees shall be chosen as follows: one member for a term expiring June 30, 1982; one member for a term expiring June 30, 1983; and one member for a term expiring June 30, 1984. Successors of original council members shall be chosen for three-year terms. An appointment to fill a vacancy on the council shall be for only the unexpired term of the appointee's successor. Each member of the board shall hold office until his successor is appointed and confirmed. A member of the council may be removed by the county executive for cause, after having been given a copy of the charges against him or her and an opportunity to be heard publicly on the charges before the county legislative body. Adequate annual appropriations shall be made available to enable the council effectively to carry out its duties under this law.

(3) Members and alternates of the council shall be United States citizens and be actual and bona fide residents of the state of Utah and the county from which appointed for a period of not less than one year preceding the date of appointment and a member may not hold another government office or be employed by the county.

(4) The council shall elect one of its members as chairperson, and two or more members of the council shall constitute a quorum necessary for carrying on the business and activity of the council.

(5) The council shall have subpoena power to compel attendance of witnesses, and to authorize witness fees where it deems appropriate, to be paid at the same rate as in justice courts.

(6) (a) [(4)] Council members shall receive compensation for each day or partial day they are in

session at a per diem rate ~~[determined by the county legislative body]~~ established in accordance with Section 11-55-103.

~~[(ii)]~~ (b) An alternate member shall receive compensation for each day or partial day that the alternate member is required to replace a regular council member, at a per diem rate ~~[determined by the county legislative body]~~ established in accordance with Section 11-55-103.

~~[(b) The county legislative body may periodically adjust the compensation rate for inflation.]~~

Section 9. Section 17B-1-307 is amended to read:

17B-1-307. Annual compensation -- Per diem compensation -- Participation in group insurance plan -- Reimbursement of expenses.

(1) (a) Except as provided in Subsection 17B-1-308(1)(e), a member of a board of trustees may receive compensation for service on the board, as determined by the board of trustees.

(b) The amount of compensation under this Subsection (1) may not exceed \$5,000 per year.

(c) (i) As determined by the board of trustees, a member of the board of trustees may participate in a group insurance plan provided to employees of the local district on the same basis as employees of the local district.

(ii) The amount that the local district pays to provide a member with coverage under a group insurance plan shall be included as part of the member's compensation for purposes of Subsection (1)(b).

(d) The amount that a local district pays employer-matching employment taxes, if a member of the board of trustees is treated as an employee for federal tax purposes, does not constitute compensation under Subsection (1).

(2) In addition to the compensation provided under Subsection (1), the board of trustees may elect to allow a member to receive per diem and travel expenses for up to 12 meetings or activities per year in accordance with Section 11-55-103.

~~[(a) Section 63A-3-106;]~~

~~[(b) Section 63A-3-107; and]~~

~~[(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.]~~

Section 10. Section 17B-1-312 is amended to read:

17B-1-312. Training for board members.

(1) (a) Each member of a board of trustees of a local district shall, within one year after taking office, complete the training described in Subsection (2).

(b) For the purposes of Subsection (1)(a), a member of a board of trustees of a local district takes office each time the member is elected or appointed to a new term, including an appointment

to fill a midterm vacancy in accordance with Subsection 17B-1-303(5) or (6).

(2) In conjunction with the Utah Association of Special Districts, the state auditor shall:

(a) develop a training curriculum for the members of local district boards; and

(b) with the assistance of other state offices and departments the state auditor considers appropriate and at times and locations established by the state auditor, carry out the training of members of local district boards.

(3) (a) A local district board of trustees may compensate each member of the board ~~[up to \$100 per day]~~ for each day of training described in Subsection (2) that the member completes, in accordance with Section 11-55-103.

(b) The ~~[per diem amount]~~ compensation authorized under Subsection (3)(a) is in addition to all other amounts of compensation and expense reimbursement authorized under this chapter.

(c) A board of trustees may not pay compensation under Subsection (3)(a) to any board member more than once per year.

(4) The state auditor shall issue a certificate of completion to each board member that completes the training described in Subsection (2).

Section 11. Section 17B-2a-807 is amended to read:

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

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

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

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

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

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

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

(i) 11 members:

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

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

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

(iii) one voting member appointed as provided in Subsection (11); and

(iv) one nonvoting member appointed as provided in Subsection (12).

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

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

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

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

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

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

(e) If the population of a county is at least 750,000, the county executive, with the advice and consent of

the county legislative body, shall appoint one voting member to represent the population of the county.

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

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

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

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

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

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

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

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

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

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

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

(ii) If population estimates are not available from the United States Bureau of Census, population

figures shall be derived from the estimate from the Utah Population Estimates Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) one member appointed by the governor.

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

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

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

(c) If the appointing official under Subsection (2) does not fill the vacancy within 90 days, the

governor, with the advice and consent of the Senate, shall fill the vacancy.

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

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

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

(8) Each public transit district shall pay to each member~~[:]~~ per diem and travel expenses for meetings actually attended, in accordance with Section 11-55-103.

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

~~[(b) reasonable mileage and expenses necessarily incurred to attend board or committee meetings.]~~

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

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

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

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

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

(b) A member appointed by a county or municipality may hold employment with the county or municipality if the employment is disclosed in writing and the public transit district board of trustees ratifies the appointment.

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

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

(b) for a public transit district serving a population of more than 200,000 people, shall appoint a commissioner of the Transportation

Commission to serve on the board of trustees as a voting member.

(12) (a) The board of trustees of a public transit district serving a population of more than 200,000 people shall include a nonvoting member who represents all municipalities and unincorporated areas within the district that are located within a county that is not annexed into the public transit district.

(b) The nonvoting member representing the combination of municipalities and unincorporated areas described in Subsection (12)(a) shall be designated and appointed by a weighted vote of the majority of the chief executive officers of the municipalities described in Subsection (12)(a).

(c) Each municipality's vote under Subsection (12)(b) shall be weighted using the proportion of the public transit district population that resides within that municipality and the adjacent unincorporated areas within the same county.

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

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

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

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

(c) Except as provided in Section 17B-2a-807.5, if a board member is recalled or resigns under this Subsection (13), the vacancy shall be filled as provided in Subsection (6).

Section 12. Section 17D-3-301 is amended to read:

17D-3-301. Board of supervisors -- Number -- Term -- Chair and officers -- Quorum -- Compensation.

(1) Each conservation district shall be governed by a board of supervisors.

(2) (a) The board of supervisors of a conservation district consists of five members elected as provided in this part, at least three of whom shall be private agricultural land operators.

(b) If the board of supervisors divides the conservation district into watershed voting areas under Section 17D-3-308, at least one member of the board of supervisors shall reside within each watershed voting area.

(3) (a) The term of office of each member of a board of supervisors is four years.

(b) Notwithstanding Subsection (3)(a), if multiple conservation districts are consolidated or a single conservation district divided or dissolved under

Part 2, Creation, Consolidation, Division, and Dissolution of Conservation Districts:

(i) the term of each member of the board of supervisors of the consolidated conservation districts or the divided or dissolved conservation district terminates immediately upon consolidation, division, or dissolution; and

(ii) (A) the commission shall hold an election, as provided in this part, for all board of supervisors members of the consolidated conservation district or divided conservation districts, as the case may be; and

(B) the term of the two candidates receiving the highest number of votes at an election under Subsection (3)(b)(ii)(A) shall be four years, and the term of the three candidates receiving the next highest number of votes shall be two years.

(4) The board of supervisors shall elect a chair from among their number, and may elect other officers from among their number that the board considers necessary.

(5) A majority of the board of supervisors constitutes a quorum for the transaction of board business, and action by a majority of a quorum present at a meeting of the board constitutes action of the board.

(6) For performing official duties, each member of the board of supervisors of a conservation district shall receive:

~~[(a) compensation for travel and time, as fixed by the commission; and]~~

(a) per diem and travel expenses in accordance with Section 11-55-103; and

(b) actual and necessary expenses.

CHAPTER 71**H. B. 164**

Passed March 6, 2017
 Approved March 17, 2017
 Effective May 9, 2017

**MUNICIPAL ENTERPRISE
 FUND AMENDMENTS**

Chief Sponsor: Jefferson Moss
 Senate Sponsor: Howard A. Stephenson

LONG TITLE**General Description:**

This bill modifies provisions relating to municipal budgets.

Highlighted Provisions:

This bill:

- ▶ modifies language relating to transfers of money from a municipal enterprise fund to another fund;
- ▶ requires a municipality that intends to transfer money from an enterprise fund to another fund to provide public notice of the intended transfer, clearly identify the intended transfer in the tentative budget or budget amendment, and hold a separate and independent public hearing;
- ▶ requires a municipality that adopts a budget or budget amendment that includes an enterprise fund transfer to provide specified public notice; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-5-107, as last amended by Laws of Utah 2016, Chapter 353
 10-6-135, as last amended by Laws of Utah 2016, Chapters 348 and 353

ENACTS:

10-5-107.5, Utah Code Annotated 1953
 10-6-135.5, Utah Code Annotated 1953

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

Section 1. Section 10-5-107 is amended to read:

10-5-107. Tentative budgets required for public inspection -- Contents -- Adoption of tentative budget.

(1) (a) On or before the first regularly scheduled town council meeting of May, the mayor shall:

(i) in accordance with Subsection (1)(b), prepare for the ensuing year a tentative budget for each fund for which a budget is required;

(ii) make the tentative budget available for public inspection; and

(iii) submit the tentative budget to the town council.

(b) The tentative budget for each fund shall set forth in tabular form:

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

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

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

(2) (a) The mayor shall:

(i) estimate the amount of revenue available to serve the needs of each fund;

(ii) estimate the portion to be derived from all sources other than general property taxes; and

(iii) estimate the portion that shall be derived from general property taxes.

(b) From the estimates required by Subsection (2)(a), the mayor shall compute and disclose in the budget the lowest rate of property tax levy that will raise the required amount of revenue, calculating the levy on the latest taxable value.

~~[(3) A governing body may spend or transfer money deposited in an enterprise fund for a good, service, project, venture, or other purpose that is not directly related to the goods or services provided by the enterprise for which the enterprise fund was created, if the governing body:]~~

~~[(a) transfers the money from the enterprise fund to another fund; and]~~

~~[(b) complies with the hearing and notice requirements of Subsections (5)(a), (b), and (c).]~~

~~[(4) (3) (a) Before the public hearing required under Section 10-5-108, the town council:~~

~~(i) shall review, consider, and tentatively adopt the tentative budget in any regular meeting or special meeting called for that purpose; and~~

~~(ii) may amend or revise the tentative budget.~~

~~(b) At the meeting at which the town council adopts the tentative budget, the council shall establish the time and place of the public hearing required under Section 10-5-108.~~

~~[(5) (a) Except as provided in Subsection (5)(d), if a town council includes in a tentative budget, or an amendment to a budget, allocations or transfers from an enterprise fund to another fund for a good, service, project, venture, or purpose other than reasonable allocations of costs between the enterprise fund and the other fund, the governing body shall:]~~

~~[(i) hold a public hearing;]~~

~~[(ii) prepare a written notice of the date, time, place, and purpose of the hearing as described in Subsection (5)(b); and]~~

~~[(iii) subject to Subsection (5)(c), mail the notice to each enterprise fund customer at least seven days before the day of the hearing.]~~

~~[(b) The purpose portion of the written notice shall identify:]~~

~~(i) the enterprise fund from which money is being allocated or transferred;~~

~~(ii) the amount being allocated or transferred; and~~

~~(iii) the fund to which the money is being allocated or transferred.~~

~~(c) The town council;~~

~~(i) may print the written notice required under Subsection (5)(a)(ii) on the enterprise fund customer's bill; and~~

~~(ii) shall include the written notice required under Subsection (5)(a)(ii) as separate notification mailed or transmitted with the enterprise fund customer's bill.~~

~~(d) A governing body is not required to repeat the notice and hearing requirements in this Subsection (5) if the funds to be allocated or transferred for the current year were previously approved by the governing body during the current year and at a public hearing that complies with the notice and hearing requirements of this Subsection (5).~~

Section 2. Section 10-5-107.5 is enacted to read:

10-5-107.5. Transfer of enterprise fund money to another fund.

(1) As used in this section:

(a) "Budget hearing" means a public hearing required under Section 10-5-108.

(b) "Enterprise fund accounting data" means a detailed overview of the various enterprise funds of the town that includes:

(i) a cost accounting breakdown of how money in the enterprise fund is being used to cover, as applicable:

(A) administrative and overhead costs of the town attributable to the operation of the enterprise for which the enterprise fund was created; and

(B) other costs not associated with the enterprise for which the enterprise fund was created; and

(ii) specific enterprise fund information.

(c) "Enterprise fund hearing" means the public hearing required under Subsection (3)(d).

(d) "Specific enterprise fund information" means:

(i) the dollar amount of transfers from an enterprise fund to another fund; and

(ii) the percentage of the total enterprise fund expenditures represented by each transfer to another fund.

(2) Subject to the requirements of this section, a town may transfer money in an enterprise fund to another fund to pay for a good, service, project, venture, or other purpose that is not directly related to the goods or services provided by the enterprise for which the enterprise fund was created.

(3) The governing body of a town that intends to transfer money in an enterprise fund to another fund shall:

(a) provide notice of the intended transfer as required under Subsection (4);

(b) clearly identify in a separate section or document accompanying the town's tentative budget or, if an amendment to the town's budget includes or is based on an intended transfer, in a separate section or document accompanying the amendment to the town's budget:

(i) the enterprise fund from which money is intended to be transferred; and

(ii) the specific enterprise fund information for that enterprise fund;

(c) provide notice of an enterprise fund hearing, as required in Subsection (4); and

(d) hold an enterprise fund hearing before the adoption of the town's budget or, if applicable, the amendment to the budget.

(4) (a) At least seven days before holding an enterprise fund hearing, a governing body shall:

(i) provide the notice described in Subsection (4)(b) by:

(A) mailing a copy of the notice to users of the goods or services provided by the enterprise for which the enterprise fund was created, if the town regularly mails users a periodic billing for the goods or services;

(B) emailing a copy of the notice to users of the goods or services provided by the enterprise for which the enterprise fund was created, if the town regularly emails users a periodic billing for the goods or services;

(C) posting the notice on the Utah Public Notice Website created in Section 63F-1-701; and

(D) if the town has a website, prominently posting the notice on the town's website until the enterprise fund hearing is concluded; and

(ii) if the town communicates with the public through a social media platform, publish notice of the date, time, place, and purpose of the enterprise fund hearing using the social media platform.

(b) The notice required under Subsection (4)(a)(i) shall:

(i) explain the intended transfer of enterprise fund money to another fund;

(ii) include specific enterprise fund information for each enterprise fund from which money is intended to be transferred;

(iii) provide the date, time, and place of the enterprise fund hearing; and

(iv) explain the purpose of the enterprise fund hearing.

(5) (a) An enterprise fund hearing shall be separate and independent from a budget hearing and any other public hearing.

(b) At an enterprise fund hearing, the governing body shall:

(i) explain the intended transfer of enterprise fund money to another fund;

(ii) provide enterprise fund accounting data to the public; and

(iii) allow members of the public in attendance at the hearing to comment on:

(A) the intended transfer of enterprise fund money to another fund; and

(B) the enterprise fund accounting data.

(6) (a) If a governing body adopts a budget or a budget amendment that includes or is based on a transfer of money from an enterprise fund to another fund, the governing body shall:

(i) within 60 days after adopting the budget or budget amendment:

(A) mail a notice to users of the goods or services provided by the enterprise for which the enterprise fund was created, if the town regularly mails users a periodic billing for the goods or services; and

(B) email a notice to users of the goods or services provided by the enterprise for which the enterprise fund was created, if the town regularly emails users a periodic billing for the goods or services;

(ii) within seven days after adopting the budget or budget amendment:

(A) post enterprise fund accounting data on the town's website, if the town has a website;

(B) using the town's social media platform, publish notice of the adoption of a budget or budget amendment that includes or is based on a transfer of money from an enterprise fund to another fund, if the town communicates with the public through a social media platform; and

(iii) within 30 days after adopting the budget, submit to the state auditor the specific enterprise fund information for each enterprise fund from which money will be transferred.

(b) A notice required under Subsection (6)(a)(i) shall:

(i) announce the adoption of a budget or budget amendment that includes or is based on a transfer of money from an enterprise fund to another fund; and

(ii) include the specific enterprise fund information.

(c) The governing body shall maintain the website posting required under Subsection (6)(a)(ii)(A) continuously until another posting is required under Subsection (4)(a)(i)(C).

Section 3. Section 10-6-135 is amended to read:

10-6-135. Operating and capital budgets.

(1) (a) As used in this section, "operating and capital budget" means a plan of financial operation

for an enterprise fund or other required special fund that includes estimates of operating resources, expenses, and other outlays for a fiscal period.

(b) Except as otherwise expressly provided, any reference to "budget" or "budgets" and the procedures and controls relating to a budget or budgets in other sections of this chapter do not apply or refer to the operating and capital budgets described in this section.

(2) At or before the time the governing body adopts budgets for the funds described in Section 10-6-109, the governing body shall adopt:

(a) an operating and capital budget for each enterprise fund for the ensuing fiscal period; and

(b) the type of budget for other special funds as required by the Uniform Accounting Manual for Utah Cities.

(3) (a) The governing body shall adopt and administer an operating and capital budget in accordance with this Subsection (3).

~~[(b) A governing body may spend or transfer money deposited in an enterprise fund for a good, service, project, venture, or other purpose that is not directly related to the goods or services provided by the enterprise for which the enterprise fund was created, if the governing body:]~~

~~[(i) transfers the money from the enterprise fund to another fund; and]~~

~~[(ii) complies with the hearing and notice requirements of Subsections (3)(f)(i), (ii), and (iii).]~~

~~[(e) (b) At or before the first regularly scheduled meeting of the governing body in the last May of the current fiscal period, the budget officer shall:~~

~~(i) prepare for the ensuing fiscal period and file with the governing body a tentative operating and capital budget for:~~

~~(A) each enterprise fund; and~~

~~(B) other required special funds;~~

~~(ii) include with the tentative operating and capital budget described in Subsection (3)(c) specific work programs as submitted by each department head; and~~

~~(iii) include any other supporting data required by the governing body.~~

~~[(d) (c) Each city of the first or second class shall, and each city of the third, fourth, or fifth class may, submit a supplementary estimate of all capital projects which a department head believes should be undertaken within the three next succeeding fiscal periods.~~

~~[(e) (d) (i) Subject to Subsection (3)[(e)](d)(ii), the budget officer shall prepare all estimates after review and consultation with each department head described in Subsection (3)[(d)](c).~~

~~(ii) After complying with Subsection (3)[(e)](d)(i), the budget officer may revise any departmental estimate before it is filed with the governing body.~~

~~[(f) (i) Except as provided in Subsection (3)(f)(iv), if the governing body includes in a tentative budget~~

~~or an amendment to a budget allocations or transfers from an enterprise fund to another fund or a good, service, project, venture, or purpose other than reasonable allocations of costs between the enterprise fund and the other fund, the governing body shall:]~~

~~[(A) hold a public hearing;]~~

~~[(B) prepare a written notice of the date, time, place, and purpose of the hearing, as described in Subsection (3)(f)(ii); and]~~

~~[(C) subject to Subsection (3)(f)(iii), mail the written notice to each enterprise fund customer at least seven days before the day of the hearing.]~~

~~[(ii) The purpose portion of the written notice required under Subsection (3)(f)(i)(B) shall identify:]~~

~~[(A) the enterprise fund from which money is being transferred;]~~

~~[(B) the amount being transferred; and]~~

~~[(C) the fund to which the money is being transferred.]~~

~~[(iii) The governing body:]~~

~~[(A) may print the written notice required under Subsection (3)(f)(i) on the enterprise fund customer's bill; and]~~

~~[(B) shall include the written notice required under Subsection (3)(f)(i) as a separate notification mailed or transmitted with the enterprise fund customer's bill.]~~

~~[(iv) A governing body is not required to repeat the notice and hearing requirements in this Subsection (3)(f) if the funds to be allocated or transferred for the current year were previously approved by the governing body during the current year and at a public hearing that complies with the notice and hearing requirements of this Subsection (3)(f).]~~

(4) (a) Each tentative budget, amendment to a budget, or budget shall be reviewed and considered by the governing body at any regular meeting or special meeting called for that purpose.

(b) The governing body may make changes in the tentative budgets.

(5) Budgets for enterprise or other required special funds shall comply with the public hearing requirements established in Sections 10-6-113 and 10-6-114.

(6) (a) Before the last June 30 of each fiscal period, or, in the case of a property tax increase under Sections 59-2-919 through 59-2-923, before August 17 of the year for which a property tax increase is proposed, the governing body shall adopt an operating and capital budget for each applicable fund for the ensuing fiscal period.

(b) A copy of the budget as finally adopted for each fund shall be:

(i) certified by the budget officer;

(ii) filed by the budget officer in the office of the city auditor or city recorder;

(iii) available to the public during regular business hours; and

(iv) filed with the state auditor within 30 days after the day on which the budget is adopted.

(7) (a) Upon final adoption, the operating and capital budget is in effect for the budget period, subject to later amendment.

(b) During the budget period the governing body may, in any regular meeting or special meeting called for that purpose, review any one or more of the operating and capital budgets for the purpose of determining if the total of any of them should be increased.

(c) If the governing body decides that the budget total of one or more of the funds should be increased under Subsection (7)(b), the governing body shall follow the procedures set forth in Section 10-6-136.

(8) Expenditures from operating and capital budgets shall conform to the requirements relating to budgets specified in Sections 10-6-121 through 10-6-126.

Section 4. Section 10-6-135.5 is enacted to read:

10-6-135.5. Transfer of enterprise fund money to another fund.

(1) As used in this section:

(a) "Budget hearing" means a public hearing required under Section 10-6-114.

(b) "Enterprise fund accounting data" means a detailed overview of the various enterprise funds of the city that includes:

(i) a cost accounting breakdown of how money in the enterprise fund is being used to cover, as applicable:

(A) administrative and overhead costs of the city attributable to the operation of the enterprise for which the enterprise fund was created; and

(B) other costs not associated with the enterprise for which the enterprise fund was created; and

(ii) specific enterprise fund information.

(c) "Enterprise fund hearing" means the public hearing required under Subsection (3)(d).

(d) "Specific enterprise fund information" means:

(i) the dollar amount of transfers from an enterprise fund to another fund; and

(ii) the percentage of the total enterprise fund expenditures represented by each transfer to another fund.

(2) Subject to the requirements of this section, a city may transfer money in an enterprise fund to another fund to pay for a good, service, project, venture, or other purpose that is not directly related

to the goods or services provided by the enterprise for which the enterprise fund was created.

(3) The governing body of a city that intends to transfer money in an enterprise fund to another fund shall:

(a) provide notice of the intended transfer as required under Subsection (4);

(b) clearly identify in a separate section or document accompanying the city's tentative budget or, if an amendment to the city's budget includes or is based on an intended transfer, in a separate section or document accompanying the amendment to the city's budget:

(i) the enterprise fund from which money is intended to be transferred; and

(ii) the specific enterprise fund information for that enterprise fund;

(c) provide notice of an enterprise fund hearing, as required in Subsection (4); and

(d) hold an enterprise fund hearing before the adoption of the city's budget or, if applicable, the amendment to the budget.

(4) (a) At least seven days before holding an enterprise fund hearing, a governing body shall:

(i) provide the notice described in Subsection (4)(b) by:

(A) mailing a copy of the notice to users of the goods or services provided by the enterprise for which the enterprise fund was created, if the city regularly mails users a periodic billing for the goods or services;

(B) emailing a copy of the notice to users of the goods or services provided by the enterprise for which the enterprise fund was created, if the city regularly emails users a periodic billing for the goods or services;

(C) posting the notice on the Utah Public Notice Website created in Section 63F-1-701; and

(D) if the city has a website, prominently posting the notice on the city's website until the enterprise fund hearing is concluded; and

(ii) if the city communicates with the public through a social media platform, publish notice of the date, time, place, and purpose of the enterprise fund hearing using the social media platform.

(b) The notice required under Subsection (4)(a)(i) shall:

(i) explain the intended transfer of enterprise fund money to another fund;

(ii) include specific enterprise fund information for each enterprise fund from which money is intended to be transferred;

(iii) provide the date, time, and place of the enterprise fund hearing; and

(iv) explain the purpose of the enterprise fund hearing.

(5) (a) An enterprise fund hearing shall be separate and independent from a budget hearing and any other public hearing.

(b) At an enterprise fund hearing, the governing body shall:

(i) explain the intended transfer of enterprise fund money to another fund;

(ii) provide enterprise fund accounting data to the public; and

(iii) allow members of the public in attendance at the hearing to comment on:

(A) the intended transfer of enterprise fund money to another fund; and

(B) the enterprise fund accounting data.

(6) (a) If a governing body adopts a budget or a budget amendment that includes or is based on a transfer of money from an enterprise fund to another fund, the governing body shall:

(i) within 60 days after adopting the budget or budget amendment:

(A) mail a notice to users of the goods or services provided by the enterprise for which the enterprise fund was created, if the city regularly mails users a periodic billing for the goods or services; and

(B) email a notice to users of the goods or services provided by the enterprise for which the enterprise fund was created, if the city regularly emails users a periodic billing for the goods or services;

(ii) within seven days after adopting the budget or budget amendment:

(A) post enterprise fund accounting data on the city's website, if the city has a website;

(B) using the city's social media platform, publish notice of the adoption of a budget or budget amendment that includes or is based on a transfer of money from an enterprise fund to another fund, if the city communicates with the public through a social media platform; and

(iii) within 30 days after adopting the budget, submit to the state auditor the specific enterprise fund information for each enterprise fund from which money will be transferred.

(b) A notice required under Subsection (6)(a)(i) shall:

(i) announce the adoption of a budget or budget amendment that includes or is based on a transfer of money from an enterprise fund to another fund; and

(ii) include the specific enterprise fund information.

(c) The governing body shall maintain the website posting required under Subsection (6)(a)(ii)(A) continuously until another posting is required under Subsection (4)(a)(i)(C).

CHAPTER 72**H. B. 168**

Passed March 8, 2017
 Approved March 17, 2017
 Effective May 9, 2017

KINDERGARTEN SUPPLEMENTAL ENRICHMENT PROGRAM

Chief Sponsor: V. Lowry Snow
 Senate Sponsor: Ann Millner
 Cosponsors: Susan Duckworth
 Marie H. Poulson

LONG TITLE**General Description:**

This bill establishes the kindergarten supplemental enrichment program.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes the kindergarten supplemental enrichment program;
- ▶ requires the State Board of Education to:
 - develop kindergarten entry and exist assessments for use in a kindergarten supplemental enrichment program; and
 - administer a grant program to support certain kindergarten supplemental enrichment programs; and
- ▶ gives rulemaking authority.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to the State Board of Education -- Initiative Programs, as an ongoing appropriation:
 - from the Education Fund, \$20,000;
- ▶ to the State Board of Education -- Initiative Programs, as a one-time appropriation:
 - from the Education Fund, \$186,600;
- ▶ to the State Board of Education -- Initiative Programs, as a one-time appropriation:
 - from the Revenue Transfer -- Temporary Assistance for Needy Families, \$2,880,000; and
- ▶ to Department of Workforce Services -- Operations and Policy, as a one-time appropriation:
 - from Federal Funds, \$2,880,000.

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

53A-15-2001, Utah Code Annotated 1953
 53A-15-2002, Utah Code Annotated 1953
 53A-15-2003, Utah Code Annotated 1953

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

Section 1. Section 53A-15-2001 is enacted to read:**Part 20. Kindergarten Supplemental Enrichment Program****53A-15-2001. Title.**

This part is known as "Kindergarten Supplemental Enrichment Program."

Section 2. Section 53A-15-2002 is enacted to read:**53A-15-2002. Definitions.**

As used in this part:

- (1) "Board" means the State Board of Education.
- (2) "Eligible school" means a charter or school district school in which:
 - (a) at least 10% of the students experience intergenerational poverty; or
 - (b) 50% of students were eligible to receive free or reduced lunch in the previous school year.
- (3) "Intergenerational poverty" means the same as that term is defined in Section 35A-9-102.

(4) "Kindergarten supplemental enrichment program" means a program to improve the academic competency of kindergarten students that:

- (a) meets the criteria described in Section 53A-15-2003;
- (b) receives funding from a grant program described in Section 53A-15-2003; and
- (c) is administered by an eligible school.

Section 3. Section 53A-15-2003 is enacted to read:**53A-15-2003. Grant funding for kindergarten supplemental enrichment programs.**

(1) (a) In accordance with this section, the board shall distribute funds appropriated under this section to support kindergarten supplemental enrichment programs, giving priority first to awarding funds to an eligible school with at least 10% of the students experiencing intergenerational poverty and second priority to an eligible school in which 50% of students were eligible to receive free or reduced lunch in the previous school year.

(b) The board shall develop kindergarten entry and exit assessments for use by a kindergarten supplemental enrichment program.

(2) (a) The board shall administer a qualifying grant program as described in this Subsection (2) to distribute funds described in Subsection (1)(a) to an eligible school:

- (i) that applies for a grant;
- (ii) that offers a kindergarten supplemental enrichment program that meets the requirements described in Subsection (3);
- (iii) that has an overall need for a kindergarten supplemental enrichment program, based on the results of the eligible school's kindergarten entry and exit assessments described in Subsection (3)(b)(ii);
- (iv) if the eligible school has previously established a kindergarten supplemental

enrichment program under this section, that shows success of the eligible school's kindergarten supplemental enrichment program, based on the results of the eligible school's kindergarten entry and exit assessments described in Subsection (3)(b)(ii); and

(v) that proposes a kindergarten supplemental enrichment program that addresses the particular needs of students at risk of experiencing intergenerational poverty.

(b) An eligible school shall include in a grant application a letter from the principal of the eligible school certifying that the eligible school's proposed kindergarten supplemental enrichment program will meet the needs of either children in intergenerational poverty or children who are eligible to receive free or reduced lunch as appropriate for the eligible school.

(3) An eligible school that receives a grant as described in Subsection (2) shall:

(a) use the grant money to offer a kindergarten supplemental enrichment program to:

(i) target kindergarten students at risk for not meeting grade 3 core standards for Utah public schools, established by the board under Section 53A-1-402.6, by the end of each student's grade 3 year;

(ii) use an evidence-based early intervention model;

(iii) focus on academically improving age-appropriate literacy and numeracy skills;

(iv) emphasize the use of live instruction;

(v) administer the kindergarten entry and exit assessments described in Subsection (1)(c); and

(vi) deliver the kindergarten supplemental enrichment program through additional hours or other means; and

(b) report to the board annually regarding:

(i) how the eligible school used grant money received under Subsection (2);

(ii) the results of the eligible school's kindergarten entry and exit assessments for the prior year;

(iii) with assistance from board employees, the number of students served, including the number of students who are eligible for free or reduced lunch; and

(iv) with assistance from board employees, student performance outcomes achieved by the eligible school's kindergarten supplemental enrichment program, disaggregated by economic and ethnic subgroups.

(4) An eligible school that receives a grant as described in Subsection (2) may not receive funds appropriated under Section 53A-17a-167.

(5) A parent or legal guardian may decline participation of the parent or legal guardian's

kindergarten student in an eligible school's kindergarten supplemental enrichment program.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules to establish reporting procedures and administer this section.

Section 4. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To State Board of Education - Initiative Programs

From Education Fund	\$20,000
From Education Fund, One-time	\$186,600
From Revenue Transfer - Temporary Assistance for Needy Families, One-time	\$2,880,000
Schedule of Programs:	
Kindergarten Supplement Enrichment Program	\$3,086,600

ITEM 2

To Department of Workforce Services - Operations and Policy

From Federal Funds, One-time	\$2,880,000
Schedule of Programs:	
Temporary Assistance for Needy Families	\$2,880,000

The Legislature intends that the Department of Workforce Services (DWS) authorize Temporary Assistance for Needy Families (TANF) for three years for the Kindergarten Supplemental Enrichment Program (\$2,880,000 per year). This TANF funding is dependent upon availability of TANF funding and expenditures meeting the necessary requirements to qualify for the federal Temporary Assistance for Needy Families program. The Legislature further intends that DWS report to the Office of the Legislative Fiscal Analyst no later than September 1, 2017, regarding the status of these efforts.

CHAPTER 73**H. B. 170**

Passed February 21, 2017

Approved March 17, 2017

Effective May 9, 2017

SMALL CLAIMS AMENDMENTS

Chief Sponsor: Karen Kwan
Senate Sponsor: Wayne A. Harper

LONG TITLE**General Description:**

This bill modifies provisions regarding a small claims court.

Highlighted Provisions:

This bill:

- ▶ addresses jurisdictional limits for small claims court;
- ▶ modifies a provision regarding a motor vehicle accident; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78A-8-102, as last amended by Laws of Utah 2013, Chapter 368

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

Section 1. Section 78A-8-102 is amended to read:

**78A-8-102. Small claims -- Defined --
Counsel not necessary -- Removal from
district court -- Deferring multiple claims
of one plaintiff -- Supreme Court to
govern procedures.**

- (1) A small claims action is a civil action:
- (a) for the recovery of money ~~[where]~~ when:
- (i) the amount claimed does not exceed ~~[\$10,000]~~ \$11,000 including attorney fees, but exclusive of court costs and interest; and
- (ii) the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or
- (b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed ~~[\$10,000]~~ \$11,000 including attorney fees, but exclusive of court costs and interest.

(2) (a) A defendant in an action filed in the district court that meets the requirement of Subsection (1)(a)(i) may remove, if agreed to by the plaintiff, the action to a small claims court within the same district by:

(i) giving notice, including the small claims filing number, to the district court of removal during the time afforded for a responsive pleading; and

(ii) paying the applicable small claims filing fee.

(b) ~~[No]~~ A filing fee may not be charged to a plaintiff to appeal a judgment on an action removed under Subsection (2)(a) to the district court where the action was originally filed.

(3) The judgment in a small claims action may not exceed ~~[\$10,000]~~ \$11,000 including attorney fees, but exclusive of court costs and interest.

(4) ~~[Counter-claims]~~ A counter claim may be maintained in a small claims ~~[actions]~~ action if the counter claim arises out of the transaction or occurrence which is the subject matter of the plaintiff's claim. A counter claim may not be raised for the first time in the trial de novo of the small claims action.

(5) ~~[Claims]~~ A claim involving property damage ~~[to]~~ from a motor vehicle accident may be maintained in a small claims ~~[actions]~~ action, and any removal or appeal ~~[thereof]~~ of the small claims action, without limiting the ability of a plaintiff to make a claim for bodily injury against the same defendant in a separate legal action. In the event that a property damage claim is brought as a small claims action:

(a) ~~[any]~~ a liability decision in an original small claims action or appeal ~~[thereof]~~ of the original small claims action is not binding in ~~[any]~~ a separate legal action for bodily injury; and

(b) ~~[no]~~ an additional property damage ~~[claims can]~~ claim may not be brought in ~~[any]~~ a separate legal action for bodily injury.

(6) (a) With or without counsel, persons or corporations may litigate actions on behalf of themselves:

(i) in person; or

(ii) through authorized employees.

(b) A person or corporation may be represented in an action by an individual who is not an employee of the person or corporation and is not licensed to practice law only in accordance with the Utah ~~[rules of small claims procedure as promulgated]~~ Rules of Small Claims Procedure as made by the Supreme Court.

(7) If a person or corporation other than a municipality or a political subdivision of the state files multiple small claims in any one court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims matters. ~~[Claims]~~ A claim so removed shall be rescheduled as permitted by the court's calendar.

(8) ~~[Small claims matters]~~ A small claims matter shall be managed in accordance with simplified rules of procedure and evidence ~~[promulgated]~~ made by the Supreme Court.

CHAPTER 74**H. B. 172**

Passed March 2, 2017

Approved March 17, 2017

Effective May 9, 2017

**UTAH EDUCATIONAL SAVINGS
PLAN MEDICAID EXEMPTIONS**Chief Sponsor: Bruce R. Cutler
Senate Sponsor: Brian E. Shiozawa**LONG TITLE****General Description:**

This bill amends the Medical Assistance Act in the Utah Health Code.

Highlighted Provisions:

This bill:

- ▶ instructs the state Medicaid program to:
 - seek a plan amendment to disregard resources held by an applicant in a Utah Educational Savings Plan account when determining eligibility for certain benefits in the Medicaid program; and
 - implement the plan amendment for benefit determinations made on or after the date of the approval of the state plan amendment; and
- ▶ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-18-3, as last amended by Laws of Utah 2016, Chapter 168

26-18-10, as last amended by Laws of Utah 2013, Chapter 167

26-40-103, as last amended by Laws of Utah 2013, Chapter 167

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

Section 1. Section 26-18-3 is amended to read:

26-18-3. Administration of Medicaid program by department -- Reporting to the Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility standards -- Internal audits -- Health opportunity accounts.

(1) The department shall be the single state agency responsible for the administration of the Medicaid program in connection with the United States Department of Health and Human Services pursuant to Title XIX of the Social Security Act.

(2) (a) The department shall implement the Medicaid program through administrative rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements of Title XIX, and applicable federal regulations.

(b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules necessary to implement the program:

- (i) the standards used by the department for determining eligibility for Medicaid services;
- (ii) the services and benefits to be covered by the Medicaid program;
- (iii) reimbursement methodologies for providers under the Medicaid program; and
- (iv) a requirement that:

(A) a person receiving Medicaid services shall participate in the electronic exchange of clinical health records established in accordance with Section 26-1-37 unless the individual opts out of participation;

(B) prior to enrollment in the electronic exchange of clinical health records the enrollee shall receive notice of enrollment in the electronic exchange of clinical health records and the right to opt out of participation at any time; and

(C) beginning July 1, 2012, when the program sends enrollment or renewal information to the enrollee and when the enrollee logs onto the program's website, the enrollee shall receive notice of the right to opt out of the electronic exchange of clinical health records.

(3) (a) The department shall, in accordance with Subsection (3)(b), report to the Social Services Appropriations Subcommittee when the department:

- (i) implements a change in the Medicaid State Plan;
- (ii) initiates a new Medicaid waiver;
- (iii) initiates an amendment to an existing Medicaid waiver;
- (iv) applies for an extension of an application for a waiver or an existing Medicaid waiver; or
- (v) initiates a rate change that requires public notice under state or federal law.

(b) The report required by Subsection (3)(a) shall:

(i) be submitted to the Social Services Appropriations Subcommittee prior to the department implementing the proposed change; and

(ii) include:

(A) a description of the department's current practice or policy that the department is proposing to change;

(B) an explanation of why the department is proposing the change;

(C) the proposed change in services or reimbursement, including a description of the effect of the change;

(D) the effect of an increase or decrease in services or benefits on individuals and families;

(E) the degree to which any proposed cut may result in cost-shifting to more expensive services in health or human service programs; and

(F) the fiscal impact of the proposed change, including:

(I) the effect of the proposed change on current or future appropriations from the Legislature to the department;

(II) the effect the proposed change may have on federal matching dollars received by the state Medicaid program;

(III) any cost shifting or cost savings within the department's budget that may result from the proposed change; and

(IV) identification of the funds that will be used for the proposed change, including any transfer of funds within the department's budget.

(4) Any rules adopted by the department under Subsection (2) are subject to review and reauthorization by the Legislature in accordance with Section 63G-3-502.

(5) The department may, in its discretion, contract with the Department of Human Services or other qualified agencies for services in connection with the administration of the Medicaid program, including:

(a) the determination of the eligibility of individuals for the program;

(b) recovery of overpayments; and

(c) consistent with Section 26-20-13, and to the extent permitted by law and quality control services, enforcement of fraud and abuse laws.

(6) The department shall provide, by rule, disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the program, provided that sanctions imposed administratively may not extend beyond:

(a) termination from the program;

(b) recovery of claim reimbursements incorrectly paid; and

(c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

(7) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to be used by the division in accordance with the requirements of Section 1919 of Title XIX of the federal Social Security Act.

(8) (a) In determining whether an applicant or recipient is eligible for a service or benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle designated by the applicant or recipient.

(b) Before Subsection (8)(a) may be applied:

(i) the federal government shall:

(A) determine that Subsection (8)(a) may be implemented within the state's existing public assistance-related waivers as of January 1, 1999;

(B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or

(C) determine that the state's waivers that permit dual eligibility determinations for cash assistance and Medicaid are no longer valid; and

(ii) the department shall determine that Subsection (8)(a) can be implemented within existing funding.

(9) (a) For purposes of this Subsection (9):

(i) "aged, blind, or has a disability" means an aged, blind, or disabled individual, as defined in 42 U.S.C. Sec. 1382c(a)(1); and

(ii) "spend down" means an amount of income in excess of the allowable income standard that shall be paid in cash to the department or incurred through the medical services not paid by Medicaid.

(b) In determining whether an applicant or recipient who is aged, blind, or has a disability is eligible for a service or benefit under this chapter, the department shall use 100% of the federal poverty level as:

(i) the allowable income standard for eligibility for services or benefits; and

(ii) the allowable income standard for eligibility as a result of spend down.

(10) The department shall conduct internal audits of the Medicaid program.

(11) (a) The department may apply for and, if approved, implement a demonstration program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

(b) A health opportunity account established under Subsection (11)(a) shall be an alternative to the existing benefits received by an individual eligible to receive Medicaid under this chapter.

(c) Subsection (11)(a) is not intended to expand the coverage of the Medicaid program.

(12) (a) (i) The department shall apply for, and if approved, implement an amendment to the state plan under this Subsection (12) for benefits for:

(A) medically needy pregnant women;

(B) medically needy children; and

(C) medically needy parents and caretaker relatives.

(ii) The department may implement the eligibility standards of Subsection (12)(b) for eligibility determinations made on or after the date of the approval of the amendment to the state plan.

(b) In determining whether an applicant is eligible for benefits described in Subsection (12)(a)(i), the department shall:

(i) disregard resources held in an account in the savings plan created under Title 53B, Chapter 8a,

Utah Educational Savings Plan, if the beneficiary of the account is:

(A) under the age of 26; and

(B) living with the account owner, as that term is defined in Section 53B-8a-102, or temporarily absent from the residence of the account owner; and

(ii) include the withdrawals from an account in the Utah Educational Savings Plan as resources for a benefit determination, if the withdrawal was not used for qualified higher education costs as that term is defined in Section 53B-8a-102.

Section 2. Section 26-18-10 is amended to read:

26-18-10. Utah Medical Assistance Program -- Policies and standards.

(1) The division shall develop a medical assistance program, which shall be known as the Utah Medical Assistance Program, for low income persons who are not eligible under the state plan for Medicaid under Title XIX of the Social Security Act or Medicare under Title XVIII of that act.

(2) Persons in the custody of prisons, jails, halfway houses, and other nonmedical government institutions are not eligible for services provided under this section.

(3) The department shall develop standards and administer policies relating to eligibility requirements, consistent with [Subsection] Section 26-18-3[(8)], for participation in the program, and for payment of medical claims for eligible persons.

(4) The program shall be a payor of last resort. Before assistance is rendered the division shall investigate the availability of the resources of the spouse, father, mother, and adult children of the person making application.

(5) The department shall determine what medically necessary care or services are covered under the program, including duration of care, and method of payment, which may be partial or in full.

(6) The department may not provide public assistance for medical, hospital, or other medical expenditures or medical services to otherwise eligible persons where the purpose of the assistance is for the performance of an abortion, unless the life of the mother would be endangered if an abortion were not performed.

(7) The department may establish rules to carry out the provisions of this section.

Section 3. Section 26-40-103 is amended to read:

26-40-103. Creation and administration of the Utah Children's Health Insurance Program.

(1) There is created the Utah Children's Health Insurance Program to be administered by the department in accordance with the provisions of:

(a) this chapter; and

(b) the State Children's Health Insurance Program, 42 U.S.C. Sec. 1397aa et seq.

(2) The department shall:

(a) prepare and submit the state's children's health insurance plan before May 1, 1998, and any amendments to the federal Department of Health and Human Services in accordance with 42 U.S.C. Sec. 1397ff; and

(b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act regarding:

(i) eligibility requirements consistent with [Subsection] Section 26-18-3[(8)];

(ii) program benefits;

(iii) the level of coverage for each program benefit;

(iv) cost-sharing requirements for enrollees, which may not:

(A) exceed the guidelines set forth in 42 U.S.C. Sec. 1397ee; or

(B) impose deductible, copayment, or coinsurance requirements on an enrollee for well-child, well-baby, and immunizations;

(v) the administration of the program; and

(vi) a requirement that:

(A) enrollees in the program shall participate in the electronic exchange of clinical health records established in accordance with Section 26-1-37 unless the enrollee opts out of participation;

(B) prior to enrollment in the electronic exchange of clinical health records the enrollee shall receive notice of the enrollment in the electronic exchange of clinical health records and the right to opt out of participation at any time; and

(C) beginning July 1, 2012, when the program sends enrollment or renewal information to the enrollee and when the enrollee logs onto the program's website, the enrollee shall receive notice of the right to opt out of the electronic exchange of clinical health records.

CHAPTER 75**H. B. 180**

Passed March 6, 2017

Approved March 17, 2017

Effective May 9, 2017

**WATER RIGHTS
TRANSFER AMENDMENTS**Chief Sponsor: Logan Wilde
Senate Sponsor: D. Gregg Buxton**LONG TITLE****General Description:**

This bill modifies provisions in regard to assigning water rights by a written instrument.

Highlighted Provisions:

This bill:

- ▶ states that a right claimed under an application for the appropriation of water may be assigned including by a form provided by the state engineer's office;
- ▶ provides that, beginning July 1, 2017, the state engineer shall consider an assignment that is recorded and forwarded to the state engineer as a submitted report of water right conveyance; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

73-3-18, as last amended by Laws of Utah 2014, Chapter 369

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

Section 1. Section 73-3-18 is amended to read:**73-3-18. Lapse of application -- Notice -- Reinstatement -- Priorities -- Assignment of application -- Filing and recording -- Constructive notice -- Effect of failure to record.**

(1) If an application lapses for failure of the applicant to comply with a provision of this title or an order of the state engineer, the state engineer shall promptly give notice of the lapse to the applicant by regular mail.

(2) Within 60 days after notice of a lapse described in Subsection (1), the state engineer may, upon a showing of reasonable cause, reinstate the application with the date of priority changed to the date of reinstatement.

(3) The original priority date of a lapsed application may not be reinstated, except upon a showing of fraud or mistake of the state engineer.

(4) Except as provided in Section 73-3-5.6, Section 73-3-12, Section 73-3-20, or Subsection (2), the priority of an application is determined by

the day on which the state engineer's office receives the written application.

(5) Before the state engineer issues a certificate of appropriation, a right claimed under an application for the appropriation of water may be ~~transferred or~~ assigned by a written instrument, including by use of a form provided by the state engineer's office.

(6) (a) An instrument ~~transferring or~~ assigning a right described in Subsection (5) shall be recorded in the office of the applicable county recorder to provide notice of the instrument's contents.

(b) Beginning July 1, 2017, the state engineer shall consider an assignment using the state engineer's form described in Subsection (5) that is recorded and forwarded to the state engineer as a submitted report of water right conveyance for purposes of fulfilling Subsection 73-1-10(3)(a).

(7) An instrument described in Subsection ~~(6)~~ (5) that is not recorded as described in Subsection (6) is void against any subsequent assignee in good faith and for valuable consideration of the same application or any portion of the same application, if the subsequent assignee's own assignment is recorded as described in Subsection (6) first.

CHAPTER 76**H. B. 181**

Passed March 2, 2017
 Approved March 17, 2017
 Effective May 9, 2017

**STATE ENGINEER FEE
 APPLICATION AMENDMENTS**

Chief Sponsor: Logan Wilde
 Senate Sponsor: D. Gregg Buxton

LONG TITLE**General Description:**

This bill clarifies the authority of the state engineer to charge fees.

Highlighted Provisions:

This bill:

- clarifies that the state engineer shall charge a fee for an application for nonuse of water.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

73-2-14, as last amended by Laws of Utah 2009, Chapter 183

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

Section 1. Section 73-2-14 is amended to read:

73-2-14. Fees of state engineer -- Deposited as a dedicated credit.

(1) The state engineer shall charge fees pursuant to Section 63J-1-504 for the following:

- (a) applications to appropriate water;
- (b) applications to temporarily appropriate water;
- (c) applications for permanent or temporary change;
- (d) applications for exchange;
- (e) applications for ~~an extension of time in which to resume use~~ nonuse of water;
- (f) applications to appropriate water, or make a permanent or temporary change, for use outside the state filed pursuant to Title 73, Chapter 3a, Water Exports;
- (g) groundwater recovery permits;
- (h) diligence claims for surface or underground water filed pursuant to Section 73-5-13;
- (i) republication of notice to water users after amendment of application where required by this title;
- (j) applications to segregate;
- (k) requests for an extension of time in which to submit proof of appropriation not to exceed 14 years after the date of approval of the application;

(l) requests for an extension of time in which to submit proof of appropriation 14 years or more after the date of approval of the application;

(m) groundwater recharge permits;

(n) applications for a well driller's license, annual renewal of a well driller's license, and late annual renewal of a well driller's license;

(o) certification of copies;

(p) preparing copies of documents;

(q) reports of water right conveyance; and

(r) requests for a livestock water use certificate under Section 73-3-31.

(2) Fees for the services specified in Subsections (1)(a) through (i) shall be based upon the rate of flow or volume of water. If it is proposed to appropriate by both direct flow and storage, the fee shall be based upon either the rate of flow or annual volume of water stored, whichever fee is greater.

(3) Fees collected under this section:

(a) shall be deposited in the General Fund as a dedicated credit to be used by the Division of Water Rights; and

(b) may only be used by the Division of Water Rights to:

(i) meet the publication of notice requirements under this title;

(ii) process reports of water right conveyance;

(iii) process a request for a livestock water use certificate; and

(iv) hire an employee to assist with processing an application.

CHAPTER 77**H. B. 182**

Passed February 14, 2017

Approved March 17, 2017

Effective May 9, 2017

**LABELING REQUIREMENTS
FOR TYPES OF RETAIL GOODS**

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill amends provisions related to labeling certain retail goods.

Highlighted Provisions:

This bill:

- ▶ provides for alternate disclosure labeling of secondhand goods;
- ▶ provides disclosure requirements; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

4-10-9, as enacted by Laws of Utah 1979, Chapter 2

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

Section 1. Section 4-10-9 is amended to read:

4-10-9. Sale of bedding, upholstered furniture, quilted clothing, or filling material -- Tag, stamp, or stencil required -- Secondhand material -- Presumption -- Owner's own material to be tagged.

~~[No]~~ (1) A wholesaler or retailer ~~[shall]~~ may sell ~~[any]~~ bedding, upholstered furniture, quilted clothing, or prefabricated filling material, ~~whether the point of origin of such article is inside or outside the state, unless~~ if it is ~~[appropriately]~~ properly tagged ~~[under]~~, stamped, or stenciled as required by Section 4-10-7, ~~or unless it is appropriately stamped or stenciled under Section 4-10-7]~~ or 4-10-8.

~~[A]~~ (2) Notwithstanding the requirements of Section 4-10-7, a retailer who sells used articles shall:

(a) attach a secondhand material tag to each used article before sale[-]; or

(b) clearly display a disclosure statement as provided in Subsection (3).

(3) The disclosure statement required under Subsection (2)(b) shall:

(a) state "ALL ITEMS OFFERED FOR SALE IN THIS ESTABLISHMENT ARE SECONDHAND UNLESS SPECIFICALLY LABELED AS NEW";

(b) be printed:

(i) in black capital letters using Arial, Calibri, Cambria, or Times New Roman in no smaller than 48-point font; and

(ii) on bright yellow paper, at least 8.5 inches by 6.5 inches in size; and

(c) be displayed at each public entrance and checkstand at each retail location.

(4) Possession of an article by a person who regularly engages in the manufacture, repair, wholesale, or supply of such articles is presumptive evidence of intent to sell.

(5) (a) A person who repairs "owner's own material" shall immediately upon its receipt attach an owner's material tag to the article.

(b) The tag shall remain attached to the article until it is actually in the process of repair and shall be reattached upon completion of repair.

CHAPTER 78**H. B. 185**

Passed February 16, 2017

Approved March 17, 2017

Effective May 9, 2017

OFFICE OF LICENSING AMENDMENTS

Chief Sponsor: Dean Sanpei
Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends provisions of the background check requirements for individuals who have direct access to children or vulnerable adults.

Highlighted Provisions:

This bill:

- ▶ defines “incidental care”;
- ▶ shortens the automatic denial time frame;
- ▶ modifies background check exemptions; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-2-108, as last amended by Laws of Utah 2016, Chapter 211

62A-2-120, as last amended by Laws of Utah 2016, Chapter 122

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

Section 1. Section 62A-2-108 is amended to read:**62A-2-108. Licensure requirements -- Expiration -- Renewal.**

(1) Except as provided in Section 62A-2-110, [a person] an individual, agency, firm, corporation, association, or governmental unit[,] acting severally or jointly with any other [person] individual, agency, firm, corporation, association, or governmental unit[,] may not establish, conduct, or maintain a human services program in this state without a valid and current license issued by and under the authority of the office as provided by this chapter and the rules under the authority of this chapter.

(2) (a) For purposes of this Subsection (2), “member” means a person or entity that is associated with another person or entity:

- (i) as a member;
- (ii) as a partner;
- (iii) as a shareholder; or

(iv) as a person or entity involved in the ownership or management of a human services program owned or managed by the other person or entity.

(b) A license issued under this chapter may not be assigned or transferred.

(c) An application for a license under this chapter shall be treated as an application for reinstatement of a revoked license if:

(i) (A) the person or entity applying for the license had a license revoked under this chapter; and

(B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or

(ii) a member of an entity applying for the license:

(A) (I) had a license revoked under this chapter; and

(II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or

(B) (I) was a member of an entity that had a license revoked under this chapter at any time before the license was revoked; and

(II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before the application described in this Subsection (2)(c) is made.

(3) A current license shall at all times be posted in the facility where each human services program is operated, in a place that is visible and readily accessible to the public.

(4) (a) Except as provided in Subsection (4)(c), each license issued under this chapter expires at midnight [~~12 months from the date of issuance~~] on the last day of the same month the license was issued, one year following the date of issuance unless [it] the license has been:

(i) previously revoked by the office; [or]

(ii) voluntarily returned to the office by the licensee[.]; or

(iii) extended by the office.

(b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee:

(i) is not in compliance with the:

(A) provisions of this chapter; or

(B) rules made under this chapter;

(ii) has engaged in a pattern of noncompliance with the:

(A) provisions of this chapter; or

(B) rules made under this chapter;

(iii) has engaged in conduct that is grounds for denying a license under Section 62A-2-112; or

(iv) has engaged in conduct that poses a substantial risk of harm to any person.

(c) The office may issue a renewal license that expires at midnight [~~24 months after the day on~~

which it is issued if] on the last day of the same month the license was issued, two years following the date of issuance, if:

(i) the licensee has maintained a human services license for at least 24 months before the day on which the licensee applies for the renewal; and

(ii) the licensee has not violated this chapter or a rule made under this chapter.

(5) Any licensee that is in operation at the time rules are made in accordance with this chapter shall be given a reasonable time for compliance as determined by the rule.

(6) (a) A license for a human services program issued under this section shall apply to a specific human services program site.

(b) A human services program shall obtain a separate license for each site where the human services program is operated.

Section 2. Section 62A-2-120 is amended to read:

62A-2-120. Background check -- Direct access to children or vulnerable adults.

(1) As used in this section:

(a) "Applicant" means:

(i) a person described in Section 62A-2-101;

(ii) an individual who:

(A) is associated with a licensee; and

(B) has or will likely have direct access to a child or a vulnerable adult;

(iii) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;

(iv) a department contractor; or

(v) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and:

(A) resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or

(B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).

(b) "Application" means a background screening application to the office.

(c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.

(d) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.

~~(d)~~ (e) "Personal identifying information" means:

(i) current name, former names, nicknames, and aliases;

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

(v) driver license [number] or other government-issued identification [number];

(vi) social security number;

(vii) only for applicants who are 18 years of age or older, fingerprints, in a form specified by the office; and

(viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) Except as provided in ~~[Subsection]~~ Subsections (13) and (14), an applicant shall submit the following to the office:

(i) personal identifying information;

(ii) a fee established by the office under Section 63J-1-504; and

(iii) a form, specified by the office, for consent for:

(A) an initial background check upon submission of the information described under Subsection (2)(a);

(B) a background check at the applicant's annual renewal;

(C) a background check when the office determines that reasonable cause exists; and

(D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).

(b) In addition to the requirements described in Subsection (2)(a), if an applicant spent time outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (2)(a) is submitted to the office, the office may require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant spent outside of the United States or its territories.

(3) The office:

(a) shall perform the following duties as part of a background check of an applicant:

(i) check state and regional criminal background databases for the applicant's criminal history by:

(A) submitting personal identifying information to the Bureau for a search; or

(B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;

(ii) submit the applicant's personal identifying information and fingerprints to the Bureau for a

criminal history search of applicable national criminal background databases;

(iii) search the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006;

(iv) search the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(v) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 78A-6-323; and

(vi) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

(b) shall conduct a background check of an applicant for an initial background check upon submission of the information described under Subsection (2)(a);

(c) may conduct all or portions of a background check of an applicant, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) for an annual renewal; or

(ii) when the office determines that reasonable cause exists;

(d) may submit an applicant's personal identifying information, including fingerprints, to the Bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;

(e) shall track the status of an approved applicant under this section to ensure that an approved applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:

(i) more than one license;

(ii) direct access to a child or a vulnerable adult in more than one human services program; or

(iii) direct access to a child or a vulnerable adult under a contract with the department;

(f) shall track the status of each license and each individual with direct access to a child or a vulnerable adult and notify the Bureau when the license has expired or the individual's direct access to a child or a vulnerable adult has ceased;

(g) shall adopt measures to strictly limit access to personal identifying information solely to the office employees responsible for processing the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3); and

(h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

Act, to implement the provisions of this Subsection (3) relating to background checks.

(4) (a) With the personal identifying information the office submits to the Bureau under Subsection (3), the Bureau shall check against state and regional criminal background databases for the applicant's criminal history.

(b) With the personal identifying information and fingerprints the office submits to the Bureau under Subsection (3), the Bureau shall check against national criminal background databases for the applicant's criminal history.

(c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the Bureau under Subsection (3)(d), the Bureau shall:

(i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and

(ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.

(d) The Bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

(i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and

(ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.

(e) The Bureau shall notify and release to the office all information of criminal activity associated with the applicant.

(f) Upon notice from the office that a license has expired or an individual's direct access to a child or a vulnerable adult has ceased, the Bureau shall:

(i) discard and destroy any retained fingerprints; and

(ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.

(5) (a) After conducting the background check described in Subsections (3) and (4), the office shall deny an application to an applicant who, within [10] three years before the day on which the applicant submits information to the office under Subsection (2) for a background check, has been convicted of any of the following, regardless of whether the offense is a felony, a misdemeanor, or an infraction:

(i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;

(ii) a violation of any pornography law, including sexual exploitation of a minor;

(iii) prostitution;

(iv) an offense included in:

(A) Title 76, Chapter 5, Offenses Against the Person;

(B) Section 76-5b-201, Sexual Exploitation of a Minor; or

(C) Title 76, Chapter 7, Offenses Against the Family;

(v) aggravated arson, as described in Section 76-6-103;

(vi) aggravated burglary, as described in Section 76-6-203;

(vii) aggravated robbery, as described in Section 76-6-302;

(viii) identity fraud crime, as described in Section 76-6-1102; or

(ix) a conviction for a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (5)(a)(i) through (viii).

(b) If the office denies an application to an applicant based on a conviction described in Subsection (5)(a), the applicant is not entitled to a comprehensive review described in Subsection (6).

(6) (a) The office shall conduct a comprehensive review of an applicant's background check if the applicant [has]:

(i) has a conviction for any felony offense, not described in Subsection (5)(a), regardless of the date of the conviction;

(ii) has a conviction for a misdemeanor offense, not described in Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the conviction is within five years before the day on which the applicant submits information to the office under Subsection (2) for a background check;

(iii) has a conviction for any offense described in Subsection (5)(a) that occurred more than [10] three years before the day on which the applicant submitted information under Subsection (2)(a);

(iv) [pleaded no contest to or] is currently subject to a plea in abeyance or diversion agreement for any offense described in Subsection (5)(a);

(v) has a listing in the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006;

(vi) has a listing in the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(vii) has a record in the juvenile court of a substantiated finding of severe child abuse or neglect described in Section 78A-6-323;

(viii) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:

(A) under 28 years of age; or

(B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a); or

(ix) has a pending charge for an offense described in Subsection (5)(a).

(b) The comprehensive review described in Subsection (6)(a) shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(A) actual or threatened, nonaccidental physical or mental harm;

(B) sexual abuse;

(C) sexual exploitation; or

(D) negligent treatment;

(vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed; and

(viii) any other pertinent information.

(c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely create a risk of harm to a child or a vulnerable adult.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, to establish procedures for the comprehensive review described in this Subsection (6).

(7) Subject to Subsection (10), the office shall approve an application to an applicant who is not denied under Subsection (5), (6), or (13).

(8) (a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant under Subsection (12), without requiring that the applicant be directly supervised, if the office:

(i) is awaiting the results of the criminal history search of national criminal background databases; and

(ii) would otherwise approve an application of the applicant under Subsection (7).

(b) Upon receiving the results of the criminal history search of national criminal background databases, the office shall approve or deny the application of the applicant in accordance with Subsections (5) through (7).

(9) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult unless, subject to Subsection (10):

(a) the individual is associated with the licensee or department contractor and:

(i) the individual's application is approved by the office under this section;

(ii) the individual's application is conditionally approved by the office under Subsection (8); or

(iii) (A) the individual has submitted the background check information described in Subsection (2) to the office;

(B) the office has not determined whether to approve the applicant's application; and

(C) the individual is directly supervised by an individual who has a current background screening approval issued by the office under this section and is associated with the licensee or department contractor;

(b) (i) the individual is associated with the licensee or department contractor;

(ii) the individual has a current background screening approval issued by the office under this section;

(iii) one of the following circumstances, that the office has not yet reviewed under Subsection (6), applies to the individual:

(A) the individual was charged with an offense described in Subsection (5)(a);

(B) the individual is listed in the Licensing Information System, described in Section 62A-4a-1006;

(C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation database, described in Section 62A-3-311.1;

(D) the individual has a record in the juvenile court of a substantiated finding of severe child abuse or neglect, described in Section 78A-6-323; or

(E) the individual has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or a misdemeanor; and

(iv) the individual is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this section; and

(B) is associated with the licensee or department contractor;

(c) the individual:

(i) is not associated with the licensee or department contractor; and

(ii) is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this section; and

(B) is associated with the licensee or department contractor;

(d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;

(e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult; ~~or~~

(f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit~~[-];~~ or

(g) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.

(10) An individual may not have direct access to a child or a vulnerable adult if the individual is prohibited by court order from having that access.

(11) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have supervised or unsupervised direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.

(12) (a) Within 30 days after the day on which the office receives the background check information for an applicant, the office shall give written notice to:

(i) the applicant, and the licensee or department contractor, of the office's decision regarding the background check and findings; and

(ii) the applicant of any convictions and potentially disqualifying charges and adjudications found in the search.

(b) With the notice described in Subsection (12)(a), the office shall also give the applicant the details of any comprehensive review conducted under Subsection (6).

(c) If the notice under Subsection (12)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant

may, under Subsection 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

(i) defining procedures for the challenge of its background check decision described in Subsection (12)(c); and

(ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

~~[(13) This section does not apply to a department contractor, or an applicant for an initial license, or license renewal, regarding a substance abuse program that provides services to adults only.]~~

(13) An individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule, is exempt from this section. This exemption does not extend to a program director or a member, as defined by Section 62A-2-108, of the program.

(14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody, the office shall:

(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (14)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(b) The requirements described in Subsection (14)(a) do not apply to the extent that:

(i) federal law or rule permits otherwise; or

(ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:

(A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

(B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (5).

(c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a license renewal to a prospective foster parent or a prospective adoptive parent if the applicant has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Section 76-5-109;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-109.1;

(C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

(D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

(E) aggravated murder, as described in Section 76-5-202;

(F) murder, as described in Section 76-5-203;

(G) manslaughter, as described in Section 76-5-205;

(H) child abuse homicide, as described in Section 76-5-208;

(I) homicide by assault, as described in Section 76-5-209;

(J) kidnapping, as described in Section 76-5-301;

(K) child kidnapping, as described in Section 76-5-301.1;

(L) aggravated kidnapping, as described in Section 76-5-302;

(M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

(N) sexual exploitation of a minor, as described in Section 76-5b-201;

(O) aggravated arson, as described in Section 76-6-103;

(P) aggravated burglary, as described in Section 76-6-203;

(Q) aggravated robbery, as described in Section 76-6-302; or

(R) domestic violence, as described in Section 77-36-1; or

(ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).

(d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:

(i) aggravated assault, as described in Section 76-5-103;

(ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

(iii) mayhem, as described in Section 76-5-105;

(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

CHAPTER 79**H. B. 188**

Passed February 24, 2017

Approved March 17, 2017

Effective May 9, 2017

**LOCAL HISTORIC
DISTRICT AMENDMENTS**Chief Sponsor: Brad R. Wilson
Senate Sponsor: J. Stuart Adams**LONG TITLE****General Description:**

This bill modifies provisions related to local historic districts.

Highlighted Provisions:

This bill:

- ▶ clarifies the applicability of certain provisions related to the creation of a local historic district or area.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-9a-503, as last amended by Laws of Utah 2016, Chapter 404

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

Section 1. Section 10-9a-503 is amended to read:**10-9a-503. Land use ordinance or zoning map amendments -- Historic district or area.**

- (1) The legislative body may amend:
 - (a) the number, shape, boundaries, or area of any zoning district;
 - (b) any regulation of or within the zoning district; or
 - (c) any other provision of a land use ordinance.
- (2) The legislative body may not make any amendment authorized by this section unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation.
- (3) The legislative body shall comply with the procedure specified in Section 10-9a-502 in preparing and adopting an amendment to a land use ordinance or a zoning map.
 - (4) (a) As used in this Subsection (4):
 - (i) “Citizen-led process” means a process established by a municipality to create a local historic district or area that requires:
 - (A) a petition signed by a minimum number of property owners within the boundaries of the proposed local historic district or area; or

(B) a vote of the property owners within the boundaries of the proposed local historic district or area.

~~(i)~~ (ii) “Condominium project” means the same as that term is defined in Section 57-8-3.

~~(ii)~~ (iii) “Local historic district or area” means a geographically or thematically definable area that contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body.

~~(iii)~~ (iv) “Unit” means the same as that term is defined in Section 57-8-3.

(b) If a municipality provides a citizen-led process ~~[by which one or more residents of the municipality may initiate the creation of a local historic district or area]~~, the process shall require that:

(i) more than 33% of the property owners within the boundaries of the proposed local historic district or area agree in writing to the creation of the proposed local historic district or area;

(ii) before any property owner agrees to the creation of a proposed local historic district or area under Subsection (4)(b)(i), the municipality prepare and distribute, to each property owner within the boundaries of the proposed local historic district or area, a neutral information pamphlet that:

(A) describes the process to create a local historic district or area; and

(B) lists the pros and cons of a local historic district or area;

(iii) after the property owners satisfy the requirement described in Subsection (4)(b)(i), for each parcel or, if the parcel contains a condominium project, each unit, within the boundaries of the proposed local historic district or area, the municipality provide:

(A) a second copy of the neutral information pamphlet described in Subsection (4)(b)(ii); and

(B) one public support ballot that, subject to Subsection (4)(c), allows the owner or owners of record to vote in favor of or against the creation of the proposed local historic district or area;

(iv) in a vote described in Subsection (4)(b)(iii)(B), the returned public support ballots that reflect a vote in favor of the creation of the proposed local historic district or area:

(A) equal at least two-thirds of the returned public support ballots; and

(B) represent more than 50% of the parcels and units within the proposed local historic district or area;

(v) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B), the legislative body may override the vote and create the proposed local historic district or area with an affirmative vote of two-thirds of the members of the legislative body; and

(vi) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B) and the legislative body does not override the vote under Subsection (4)(b)(v), a resident may not initiate the creation of a local historic district or area that includes more than 50% of the same property as the failed local historic district or area proposal for four years after the day on which the public support ballots for the vote are due.

(c) In a vote described in Subsection (4)(b)(iii)(B):

(i) a property owner is eligible to vote regardless of whether the property owner is an individual, a private entity, or a public entity;

(ii) the municipality shall count no more than one public support ballot for:

(A) each parcel within the boundaries of the proposed local historic district or area; or

(B) if the parcel contains a condominium project, each unit within the boundaries of the proposed local historic district or area; and

(iii) if a parcel or unit has more than one owner of record, the municipality shall count a public support ballot for the parcel or unit only if the public support ballot reflects the vote of the property owners who own at least a 50% interest in the parcel or unit.

(d) The requirements described in Subsection (4)(b)(iv) apply to the creation of a local historic district or area that is:

(i) initiated in accordance with a municipal process described in Subsection (4)(b); and

(ii) not complete on or before January 1, 2016.

(e) A vote described in Subsection (4)(b)(iii)(B) is not subject to Title 20A, Election Code.

CHAPTER 80**H. B. 190**

Passed February 15, 2017

Approved March 17, 2017

Effective May 9, 2017

**TELECOMMUNICATIONS
ADVISORY COUNCIL REPEAL**

Chief Sponsor: Stephen G. Handy

Senate Sponsor: J. Stuart Adams

LONG TITLE**General Description:**

This bill repeals the section of the Transportation Code creating the Telecommunications Advisory Council.

Highlighted Provisions:

This bill:

- ▶ repeals the section of the Transportation Code creating the Telecommunications Advisory Council; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

72-7-108, as last amended by Laws of Utah 2008, Chapter 382

REPEALS:

72-7-109, as last amended by Laws of Utah 2014, Chapter 63

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

Section 1. Section 72-7-108 is amended to read:**72-7-108. Longitudinal telecommunication access in the interstate highway system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

(1) As used in this section:

(a) "Longitudinal access" means access to or use of any part of a right-of-way of a highway on the interstate system that extends generally parallel to the right-of-way for a total of 30 or more linear meters.

(b) "Statewide telecommunications purposes" means the further development of the statewide network that meets the telecommunications needs of state agencies and enhances the learning purposes of higher and public education.

(c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, or other equipment, system, and device used to transmit, receive, produce, or distribute via wireless,

wireline, electronic, or optical signal for communication purposes.

(2) (a) Except as provided in Subsection (4), the department may allow a telecommunication facility provider longitudinal access to the right-of-way of a highway on the interstate system for the installation, operation, and maintenance of a telecommunication facility.

(b) The department shall enter into an agreement with a telecommunication facility provider and issue a permit before granting it any longitudinal access under this section.

(i) Except as specifically provided by the agreement, a property interest in a right-of-way may not be granted under the provisions of this section.

(ii) An agreement entered into by the department under this section shall:

(A) specify the terms and conditions for the renegotiation of the agreement;

(B) specify maintenance responsibilities for each telecommunication facility;

(C) be nonexclusive; and

(D) be limited to a maximum term of 30 years.

(3) (a) The department shall require compensation from a telecommunication facility provider under this section for longitudinal access to the right-of-way of a highway on the interstate system.

(b) The compensation charged shall be:

(i) fair and reasonable;

(ii) competitively neutral;

(iii) nondiscriminatory;

(iv) open to public inspection;

(v) established to promote access by multiple telecommunication facility providers;

(vi) established for zones of the state, with zones determined based upon factors that include population density, distance, numbers of telecommunication subscribers, and the impact upon private right-of-way users;

(vii) established to encourage the deployment of digital infrastructure within the state;

(viii) set after the department conducts a market analysis to determine the fair and reasonable values of the right-of-way based upon adjacent property values;

(ix) a lump sum payment or annual installment, at the option of the telecommunications facility provider; and

(x) set in accordance with Subsection (3)(f).

(c) (i) The compensation charged may be cash, in-kind compensation, or a combination of cash and in-kind compensation.

(ii) In-kind compensation requires the agreement of both the telecommunication facility provider and the department.

(iii) The department shall~~[, in consultation with the Telecommunications Advisory Council created in Section 72-7-109,]~~ determine the present value of any in-kind compensation based upon the incremental cost to the telecommunication facility provider.

(iv) The value of in-kind compensation or a combination of cash and in-kind compensation shall be equal to or greater than the amount of cash compensation that would be charged if the compensation is cash only.

(d) (i) The department shall provide for the proportionate sharing of costs among the department and telecommunications providers for joint trenching or trench sharing based on the amount of conduit innerduct space that is authorized in the agreement for the trench.

(ii) If two or more telecommunications facility providers are required to share a single trench, each telecommunications facility provider in the trench shall share the cost and benefits of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively neutral, and nondiscriminatory basis.

(e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every five years and any adjustments warranted shall apply only to agreements entered after the date of the new market analysis.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish a schedule of rates of compensation for any longitudinal access granted under this section.

(4) The department may not grant any longitudinal access under this section that results in a significant compromise of the safe, efficient, and convenient use of the interstate system for the traveling public.

(5) The department may not pay any cost of relocation of a telecommunication facility granted longitudinal access to the right-of-way of a highway on the interstate system under this section.

(6) (a) Monetary compensation collected by the department in accordance with this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(b) Any telecommunications capacity acquired as in-kind compensation shall be used~~[:—(i)]~~ exclusively for statewide telecommunications purposes and may not be sold or leased in competition with telecommunication or Internet service providers~~[: and]~~.

~~[(ii) as determined by the department after consultation with the Telecommunications Advisory Council created in Section 72-7-109.]~~

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules:

(a) governing the installation, operation, and maintenance of a telecommunication facility granted longitudinal access under this section;

(b) specifying the procedures for establishing an agreement for longitudinal access for a telecommunication facility provider;

(c) providing for the relocation or removal of a telecommunication facility for:

(i) needed changes to a highway on the interstate system;

(ii) expiration of an agreement; or

(iii) a breach of an agreement; and

(d) providing an opportunity for all interested providers to apply for access within open right-of-way segments.

(8) (a) Except for a right-of-way of a highway on the interstate system, nothing in this section shall be construed to allow a highway authority to require compensation from a telecommunication facility provider for longitudinal access to the right-of-way of a highway under the highway authority's jurisdiction.

(b) Nothing in this section shall affect the authority of a municipality under:

(i) Section 10-1-203;

(ii) Section 11-26-1;

(iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

(iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

(9) Compensation paid to the department under Subsection (3) may not be used by any person as evidence of the market or other value of the access for any other purpose, including condemnation proceedings, other litigation, or the application of rates of taxation or the establishment of franchise fees relating to longitudinal access rights.

Section 2. Repealer.

This bill repeals:

Section 72-7-109, Telecommunications Advisory Council -- Membership -- Duties.

CHAPTER 81**H. B. 191**

Passed March 6, 2017

Approved March 17, 2017

Effective May 9, 2017

JUDICIARY RELATED AMENDMENTS

Chief Sponsor: V. Lowry Snow
Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies provisions related to the judiciary.

Highlighted Provisions:

This bill:

- ▶ addresses judicial candidacy;
- ▶ modifies provisions related to when the commission shall allow a judge to appear before the commission;
- ▶ provides for reconsideration if the Utah Supreme Court issues a public sanction of a judge before the voter information pamphlet is published;
- ▶ modifies survey requirements;
- ▶ addresses confidentiality and anonymity of survey responses;
- ▶ modifies minimum performance standards;
- ▶ addresses intercept surveys for justice court judges administered by the commission; and
- ▶ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-12-201, as last amended by Laws of Utah 2014, Chapter 207

78A-12-203, as last amended by Laws of Utah 2013, Chapter 209

78A-12-204, as last amended by Laws of Utah 2011, Chapter 80

78A-12-205, as last amended by Laws of Utah 2011, Chapter 80

78A-12-207, as enacted by Laws of Utah 2014, Chapter 152

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

Section 1. Section 20A-12-201 is amended to read:**20A-12-201. Judicial appointees -- Retention elections.**

(1) (a) Each judicial appointee to a court is subject to an unopposed retention election at the first general election held more than three years after the judge or justice was appointed.

(b) After the first retention election:

(i) each Supreme Court justice shall be on the regular general election ballot for an unopposed retention election every tenth year; and

(ii) each judge of other courts shall be on the regular general election ballot for an unopposed retention election every sixth year.

(2) (a) Each justice or judge of a court of record who wishes to retain office shall, in the year the justice or judge is subject to a retention election:

(i) file a declaration of candidacy with the lieutenant governor, or with the county clerk in the candidate's county of residence, within the period beginning on [April] July 1 and ending at 5 p.m. on [April] July 15 in the year of a regular general election; and

(ii) pay a filing fee of \$50.

(b) (i) Each justice court judge who wishes to retain office shall, in the year the justice court judge is subject to a retention election:

(A) file a declaration of candidacy with the lieutenant governor, or with the county clerk in the candidate's county of residence, within the period beginning on [April] July 1 and ending at 5 p.m. on [April] July 15 in the year of a regular general election; and

(B) pay a filing fee of \$25 for each judicial office.

(ii) If a justice court judge is appointed or elected to more than one judicial office, the declaration of candidacy shall identify all of the courts included in the same general election.

(iii) If a justice court judge is appointed or elected to more than one judicial office, filing a declaration of candidacy in one county in which one of those courts is located is valid for the courts in any other county.

(3) (a) The lieutenant governor shall, no later than August 31 of each regular general election year:

(i) transmit a certified list containing the names of the justices of the Supreme Court and judges of the Court of Appeals declaring their candidacy to the county clerk of each county; and

(ii) transmit a certified list containing the names of judges of other courts declaring their candidacy to the county clerk of each county in the geographic division in which the judge filing the declaration holds office.

(b) Each county clerk shall place the names of justices and judges standing for retention election in the nonpartisan section of the ballot.

(4) (a) At the general election, the ballots shall contain, as to each justice or judge of any court to be voted on in the county, the following question:

"Shall _____ (name of justice or judge) be retained in the office of _____? (name of office, such as "Justice of the Supreme Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the Third Judicial District"; "Judge of the Juvenile Court of the Fourth Juvenile Court District"; "Justice Court Judge of (name of county) County or (name of municipality)")

Yes ()

No ()”

(b) If a justice court exists by means of an interlocal agreement under Section 78A-7-102, the ballot question for the judge shall include the name of that court.

(5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge is retained for the term of office provided by law.

(b) If the justice or judge does not receive more yes votes than no votes, the justice or judge is not retained, and a vacancy exists in the office on the first Monday in January after the regular general election.

(6) A justice or judge not retained is ineligible for appointment to the office for which the justice or judge was defeated until after the expiration of that term of office.

(7) If a justice court judge is standing for retention for more than one office, the county clerk shall place the judge's name on the ballot separately for each office. If the justice court judge receives more no votes than yes votes in one office, but more yes votes than no votes in the other, the justice court judge shall be retained only in the office for which the judge received more yes votes than no votes.

Section 2. Section 78A-12-203 is amended to read:

78A-12-203. Judicial performance evaluations.

(1) Beginning with the 2012 judicial retention elections, the commission shall prepare a performance evaluation for:

(a) each judge in the third and fifth year of the judge's term if the judge is not a justice of the Supreme Court; and

(b) each justice of the Utah Supreme Court in the third, seventh, and ninth year of the justice's term.

(2) Except as provided in Subsection (3), the performance evaluation for a judge under Subsection (1) shall consider only:

(a) the results of the judge's most recent judicial performance survey that is conducted by a third party in accordance with Section 78A-12-204;

(b) information concerning the judge's compliance with minimum performance standards established in accordance with Section 78A-12-205;

(c) courtroom observation;

(d) the judge's judicial disciplinary record, if any;

(e) public comment solicited by the commission;

(f) information from an earlier judicial performance evaluation concerning the judge; and

(g) any other factor that the commission:

(i) considers relevant to evaluating the judge's performance for the purpose of a retention election; and

(ii) establishes by rule.

(3) The commission shall make rules concerning the conduct of courtroom observation under Subsection (2), which shall include the following:

(a) an indication of who may perform the courtroom observation;

(b) a determination of whether the courtroom observation shall be made in person or may be made by electronic means; and

(c) a list of principles and standards used to evaluate the behavior observed.

(4) (a) As part of the evaluation conducted under this section, the commission shall determine whether to recommend that the voters retain the judge.

(b) (i) If a judge meets the minimum performance standards established in accordance with Section 78A-12-205, there is a rebuttable presumption that the commission will recommend the voters retain the judge.

(ii) If a judge fails to meet the minimum performance standards established in accordance with Section 78A-12-205, there is a rebuttable presumption that the commission will recommend the voters not retain the judge.

(c) The commission may elect to make no recommendation on whether the voters should retain a judge if the commission determines that the information concerning the judge is insufficient to make a recommendation.

(d) (i) If the commission deviates from a presumption for or against recommending the voters retain a judge or elects to make no recommendation on whether the voters should retain a judge, the commission shall provide a detailed explanation of the reason for that deviation or election in the commission's report under Section 78A-12-206.

(ii) If the commission makes no recommendation because of a tie vote, the commission shall note that fact in the commission's report.

(5) (a) The commission shall allow a judge who is the subject of a judicial performance retention evaluation and who has not passed one or more of the minimum performance standards ~~on the midterm evaluation or~~ on the retention evaluation to appear and speak at any commission meeting~~, except a closed meeting,~~ during which the judge's judicial performance evaluation is considered.

(b) The commission may invite any judge to appear before the commission to discuss concerns about the judge's judicial performance.

(c) The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.

(d) Any record of an individual commissioner's vote on whether ~~or not~~ to recommend that the voters retain a judge is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(e) The commission may only disclose the final commission vote on whether or not to recommend that the voters retain a judge.

(6) (a) If the Utah Supreme Court issues a public sanction of a judge after the commission makes a decision on whether to recommend the judge for retention, but before the publication of the voter information pamphlet in accordance with Section 20A-7-702, the commission may elect to reconsider the commission's recommendation.

(b) The commission shall invite the judge described in Subsection (6)(a) to appear before the commission during a closed meeting for the purpose of reconsidering the commission's recommendation.

(c) The judge described in Subsection (6)(a) may provide a written statement, not to exceed 100 words, that shall be included in the judge's evaluation report.

(d) The commission shall include in the judge's evaluation report:

(i) the date of the reconsideration;

(ii) any change in the decision of whether to recommend that the voters retain the judge; and

(iii) a brief statement explaining the reconsideration.

(e) The commission shall submit revisions to the judge's evaluation report to the lieutenant governor by no later than August 31 of a regular general election year for publication in the voter information pamphlet, and publish the revisions on the commission's website, and through any other means the commission considers appropriate and within budgetary constraints.

~~[(6)]~~ (7) (a) The commission shall compile a midterm report of [its] the commission's judicial performance evaluation of a judge.

(b) The midterm report of a judicial performance evaluation shall include information that the commission considers appropriate for purposes of judicial self-improvement.

(c) The report shall be provided to the evaluated judge and the presiding judge of the district in which the evaluated judge serves. If the evaluated judge is the presiding judge, the midterm report shall be provided to the chair of the board of judges for the court level on which the evaluated judge serves.

~~[(7)]~~ (8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by this section.

Section 3. Section 78A-12-204 is amended to read:

78A-12-204. Judicial performance survey.

(1) [The] A third party under contract to the commission shall conduct, on an ongoing basis during the judge's term in office, the judicial performance survey required by Section

78A-12-203 concerning a judge who is subject to a retention election [shall be conducted on an ongoing basis during the judge's term in office by a third party under contract to the commission].

(2) The judicial performance survey shall include as respondents a sample of each of the following groups as applicable:

(a) attorneys who have appeared before the judge as counsel;

(b) jurors who have served in a case before the judge; and

(c) court staff who have worked with the judge.

(3) The commission may include an additional classification of respondents if the commission:

(a) considers a survey of that classification of respondents helpful to voters in determining whether to vote to retain a judge; and

(b) establishes the additional classification of respondents by rule.

(4) All survey responses are [anonymous] confidential, including comments included with a survey response.

(5) If the commission provides [any] information to a judge or the Judicial Council, the commission shall provide the information [shall be provided] in such a way as to protect the [confidentiality] anonymity of a survey respondent.

(6) A survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appears in the judge's court is closed, exclusive of any appeal, except for court staff and attorneys, who may be surveyed at any time during the survey period.

(7) Survey categories shall include questions concerning a judge's:

(a) legal ability, including the following:

(i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;

(ii) attentiveness to factual and legal issues before the court;

(iii) adherence to precedent and ability to clearly explain departures from precedent;

(iv) grasp of the practical impact on the parties of the judge's rulings, including the effect of delay and increased litigation expense;

(v) ability to write clear judicial opinions; and

(vi) ability to clearly explain the legal basis for judicial opinions;

(b) judicial temperament and integrity, including the following:

(i) demonstration of courtesy toward attorneys, court staff, and others in the judge's court;

(ii) maintenance of decorum in the courtroom;

(iii) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the judicial system;

- (iv) preparedness for oral argument;
 - (v) avoidance of impropriety or the appearance of impropriety;
 - (vi) display of fairness and impartiality toward all parties; and
 - (vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions; and
- (c) administrative performance, including the following:
- (i) management of workload;
 - (ii) sharing proportionally the workload within the court or district; and
 - (iii) issuance of opinions and orders without unnecessary delay.

(8) If the commission determines that a certain survey question or category of questions is not appropriate for a respondent group, the commission may omit that question or category of questions from the survey provided to that respondent group.

(9) (a) The survey shall allow respondents to indicate responses in a manner determined by the commission, which shall be:

(i) on a numerical scale from one to five~~[-with one representing inadequate performance and five representing outstanding performance]~~; or

(ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.

(b) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the commission may allow respondents to provide written comments.

(10) The commission shall compile and make available to each judge that judge's survey results with each of the judge's judicial performance evaluations.

(11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

Section 4. Section 78A-12-205 is amended to read:

78A-12-205. Minimum performance standards.

(1) The commission shall establish minimum performance standards requiring that:

(a) the judge have no more than one public ~~[reprimand]~~ sanction issued by ~~[the Judicial Conduct Commission or]~~ the Utah Supreme Court during the judge's current term; and

(b) the judge receive a minimum score on the judicial performance survey as follows:

(i) an average score of no less than 65% on each survey category as provided in Subsection 78A-12-204(7); and

(ii) if the commission includes a question on the survey that does not use the numerical scale, the commission shall establish the minimum performance standard for all questions that do not use the numerical scale to be substantially equivalent to the standard required under Subsection (1)(b)(i).

(2) The commission may establish an additional minimum performance standard if the commission by at least two-thirds vote:

(a) determines that satisfaction of the standard is necessary to the satisfactory performance of the judge; and

(b) adopts the standard.

(3) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a minimum performance standard.

Section 5. Section 78A-12-207 is amended to read:

78A-12-207. Evaluation of justice court judges.

(1) The Judicial Performance Evaluation Commission shall:

(a) conduct a performance evaluation for each justice court judge in the third and fifth year of the justice court judge's term;

(b) classify each justice court judge into one of the following three categories:

(i) full evaluation;

(ii) midlevel evaluation; or

(iii) basic evaluation; and

(c) establish evaluation criteria for each of the three categories.

(2) A full evaluation justice court judge shall be subject to the requirements of ~~[the Judicial Performance Evaluation Commission Act]~~ this chapter.

(3) A midlevel evaluation justice court judge shall be governed by ~~[the Judicial Performance Evaluation Commission Act]~~ this chapter, except as provided below:

(a) the commission shall administer an ~~[electronic]~~ intercept survey ~~[shall be administered by the commission]~~ periodically outside the courtroom of the evaluated justice court judge in lieu of the survey specified in Section 78A-12-204; and

(b) courtroom observation may not be conducted for midlevel evaluation justice court judges.

(4) A basic evaluation justice court judge shall be governed by ~~[the Judicial Performance Evaluation Commission Act]~~ this chapter, except as provided below:

(a) basic evaluation justice court judges shall comply with minimum performance standards for judicial education, judicial conduct, cases under

advisement, and any other standards the commission may promulgate by administrative rule; and

(b) courtroom observation and surveys may not be conducted for basic evaluation justice court judges.

CHAPTER 82**H. B. 192**

Passed February 23, 2017

Approved March 17, 2017

Effective May 9, 2017

MINUTEMAN HIGHWAY DESIGNATION

Chief Sponsor: Norman K Thurston

Senate Sponsor: Peter C. Knudson

LONG TITLE**General Description:**

This bill designates a portion of Highway 85 in Salt Lake County as Minuteman Highway.

Highlighted Provisions:

This bill:

- ▶ designates the portion of Highway 85 between Porter Rockwell Boulevard in Herriman and 7800 South in West Jordan as Minuteman Highway.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

72-4-217, Utah Code Annotated 1953

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

Section 1. Section 72-4-217 is enacted to read:**72-4-217. Minuteman Highway.**

(1) There is established the Minuteman Highway composed of the existing Highway 85 in Salt Lake County from Porter Rockwell Boulevard to 7800 South in West Jordan.

(2) In addition to other official designations, the Department of Transportation shall designate the portions of the highway identified in Subsection (1) as the Minuteman Highway on future state highway maps.

CHAPTER 83**H. B. 210**

Passed February 15, 2017

Approved March 17, 2017

Effective May 9, 2017

FLASHING BRAKE LIGHT REVISIONS

Chief Sponsor: Stephen G. Handy

Senate Sponsor: J. Stuart Adams

LONG TITLE**General Description:**

This bill revises provisions related to continuously flashing light systems for supplemental stop lamps.

Highlighted Provisions:

This bill:

- ▶ revises the definition of “continuously flashing light system”;
- ▶ removes the provision regarding the lock-out period after the release of the brake as relating to continuously flashing light systems; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-6a-1604, as last amended by Laws of Utah 2015, Chapters 270 and 412

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

Section 1. Section 41-6a-1604 is amended to read:**41-6a-1604. Motor vehicle head lamps, tail lamps, stop lamps, and other lamps -- Requirements -- Penalty.**

(1) A motor vehicle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle.

(2) (a) A motor vehicle, trailer, semitrailer, pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be equipped with at least two tail lamps and two or more red reflectors mounted on the rear.

(b) (i) Except as provided under Subsections (2)(b)(ii), (2)(c), and Section 41-6a-1612, all stop lamps or other lamps and reflectors mounted on the rear of a vehicle shall display or reflect a red color.

(ii) A turn signal or hazard warning light may be red or yellow.

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate.

(3) (a) A motor vehicle, trailer, semitrailer, and pole trailer shall be equipped with two or more stop lamps and flashing turn signals.

(b) A supplemental stop lamp may be mounted on the rear of a vehicle, if the supplemental stop lamp:

(i) emits a red light;

(ii) is mounted:

(A) and constructed so that no light emitted from the device, either direct or reflected, is visible to the driver;

(B) not lower than 15 inches above the roadway; and

(C) on the vertical center line of the vehicle; and

(iii) is the size, design, and candle power that conforms to federal standards regulating stop lamps.

(4) (a) Each head lamp, tail lamp, supplemental stop lamp, flashing turn lamp, other lamp, or reflector required under this part shall comply with the requirements and limitations established under Section 41-6a-1601.

(b) The department, by rules made under Section 41-6a-1601, may require trucks, buses, motor homes, motor vehicles with truck-campers, trailers, semitrailers, and pole trailers to have additional lamps and reflectors.

(5) The department, by rules made under Section 41-6a-1601, may allow:

(a) one tail lamp on any vehicle equipped with only one when it was made;

(b) one stop lamp on any vehicle equipped with only one when it was made; and

(c) passenger cars and trucks with a width less than 80 inches and manufactured or assembled prior to January 1, 1953, need not be equipped with electric turn signal lamps.

(6) (a) As used in this section, “continuously flashing light system” means a light system for a supplemental stop lamp described in Subsection (3)(b) in which~~[-(i)]~~ the stop lamp or reflector pulses rapidly for no more than five seconds when the brake is applied and then converts to a continuous light as a normal stop lamp or reflector until the time that the brake is released~~[-and]~~.

~~[(ii) the rapid pulsing described in Subsection (6)(a)(i) may not be repeated upon a subsequent application of the brakes for a lock-out time period of at least five seconds after the release of the brakes under Subsection (6)(a)(i).]~~

(b) A motor vehicle, trailer, semitrailer, and pole trailer may be equipped with a continuously flashing light system.

(7) A violation of this section is an infraction.

CHAPTER 84**H. B. 232**

Passed March 8, 2017
 Approved March 17, 2017
 Effective May 9, 2017

LAND USE AMENDMENTS

Chief Sponsor: Mike Schultz
 Senate Sponsor: J. Stuart Adams

LONG TITLE**General Description:**

This bill modifies county and municipal land use provisions.

Highlighted Provisions:

This bill:

- ▶ enacts and modifies definitions applicable to county and municipal land use provisions;
- ▶ addresses a provision relating to the imposition of stricter requirements or higher standards than required by state law;
- ▶ enacts a provision directing a land use authority on how to interpret and apply land use regulations and specifying the nature of a land use authority's land use decision;
- ▶ addresses provisions relating to the preparation, recommendation, and enactment of land use regulations;
- ▶ addresses a provision relating to the authority to adopt and amend land use regulations; and
- ▶ addresses provisions relating to appeals of land use decisions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-9a-103, as last amended by Laws of Utah 2015, Chapter 327
 10-9a-104, as last amended by Laws of Utah 2013, Chapter 309
 10-9a-205, as last amended by Laws of Utah 2013, Chapter 324
 10-9a-302, as renumbered and amended by Laws of Utah 2005, Chapter 254
 10-9a-501, as last amended by Laws of Utah 2006, Chapter 240
 10-9a-502, as last amended by Laws of Utah 2013, Chapter 324
 10-9a-503, as last amended by Laws of Utah 2016, Chapter 404
 10-9a-509, as last amended by Laws of Utah 2014, Chapter 136
 10-9a-707, as enacted by Laws of Utah 2005, Chapter 254
 10-9a-801, as last amended by Laws of Utah 2007, Chapters 306 and 363
 11-36a-504, as enacted by Laws of Utah 2011, Chapter 47
 17-27a-103, as last amended by Laws of Utah 2015, Chapters 327, 352, and 465
 17-27a-104, as last amended by Laws of Utah 2013, Chapter 309

- 17-27a-205, as last amended by Laws of Utah 2014, Chapter 189
 17-27a-302, as last amended by Laws of Utah 2015, Chapters 352 and 465
 17-27a-501, as last amended by Laws of Utah 2006, Chapter 240
 17-27a-502, as last amended by Laws of Utah 2015, Chapter 465
 17-27a-503, as renumbered and amended by Laws of Utah 2005, Chapter 254
 17-27a-508, as last amended by Laws of Utah 2014, Chapter 136
 17-27a-707, as enacted by Laws of Utah 2005, Chapter 254
 17-27a-801, as last amended by Laws of Utah 2007, Chapters 306 and 363
 17C-1-104, as enacted by Laws of Utah 2006, Chapter 359
 63I-2-217, as last amended by Laws of Utah 2016, Chapters 348 and 411

ENACTS:

- 10-9a-306, Utah Code Annotated 1953
 17-27a-308, Utah Code Annotated 1953

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

Section 1. Section 10-9a-103 is amended to read:**10-9a-103. Definitions.**

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, property owner, property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) (a) "Charter school" means:

(i) an operating charter school;

(ii) a charter school applicant that has its application approved by a charter school authorizer

in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or

(iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(b) “Charter school” does not include a therapeutic school.

(5) “Conditional use” means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(6) “Constitutional taking” means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(7) “Culinary water authority” means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(8) “Development activity” means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) “Disability” means a physical or mental impairment that substantially limits one or more of a person’s major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) “Disability” does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) “Educational facility”:

(a) means:

(i) a school district’s building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district’s administrative personnel; and

(b) does not include:

(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(A) not located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the purposes of a building described in Subsection (10)(a)(i); or

(ii) a therapeutic school.

(11) “Fire authority” means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(12) “Flood plain” means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(13) “General plan” means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

(14) “Geologic hazard” means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(15) “Hookup fee” means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

(16) “Identical plans” means building plans submitted to a municipality that:

(a) are clearly marked as “identical plans”;

(b) are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality; and

(c) describe a building that:

(i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;

(ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;

(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the municipality; and

(iv) does not require any additional engineering or analysis.

(17) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

(18) "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a municipality to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

(a) recording a subdivision plat; or

(b) development of a commercial, industrial, mixed use, or multifamily project.

(19) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

(a) complies with the municipality's written standards for design, materials, and workmanship; and

(b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

(20) "Improvement warranty period" means a period:

(a) no later than one year after a municipality's acceptance of required landscaping; or

(b) no later than one year after a municipality's acceptance of required infrastructure, unless the municipality:

(i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and

(ii) has substantial evidence, on record:

(A) of prior poor performance by the applicant; or

(B) that the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.

(21) "Infrastructure improvement" means permanent infrastructure that an applicant must install:

(a) pursuant to published installation and inspection specifications for public improvements; and

(b) as a condition of:

(i) recording a subdivision plat; or

(ii) development of a commercial, industrial, mixed use, condominium, or multifamily project.

(22) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(23) "Land use applicant" means a property owner, or the property owner's designee, who submits a land use application regarding the property owner's land.

~~[(23)]~~ (24) "Land use application":

(a) means an application that is:

(i) required by a ~~municipality's land use ordinance.~~ municipality; and

(ii) submitted by a land use applicant to obtain a land use decision; and

(b) does not mean an application to enact, amend, or repeal a land use regulation.

~~[(24)]~~ (25) "Land use authority" means:

(a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or

(b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

~~[(25)]~~ "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

(26) "Land use decision" means a final action of a land use authority or appeal authority regarding:

(a) a land use permit;

(b) a land use application; or

(c) the enforcement of a land use regulation, land use permit, or development agreement.

~~[(26)]~~ (27) "Land use permit" means a permit issued by a land use authority.

(28) "Land use regulation":

(a) means an ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land; and

(b) does not include:

(i) a general plan;

(ii) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or

(iii) a temporary revision to an engineering specification that does not materially:

(A) increase a land use applicant's cost of development compared to the existing specification; or

(B) impact a land use applicant's use of land.

[27] (29) "Legislative body" means the municipal council.

[28] (30) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

[29] (31) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

[30] (32) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

[31] (33) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

[32] (34) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

[33] (35) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

[34] (36) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the municipality's general plan.

[35] (37) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(a) no additional parcel is created; and

(b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.

[36] (38) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

[37] (39) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the city;

(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the city's program to encourage an adequate supply of moderate income housing.

[38] (40) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

[39] (41) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

[40] (42) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

[441] (43) “Public hearing” means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

[442] (44) “Public meeting” means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

[443] (45) “Receiving zone” means an area of a municipality that the municipality designates, by ordinance, as an area in which an owner of land may receive a transferable development right.

[444] (46) “Record of survey map” means a map of a survey of land prepared in accordance with Section 17-23-17.

[445] (47) “Residential facility for persons with a disability” means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) which is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

[446] (48) “Rules of order and procedure” means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

[447] (49) “Sanitary sewer authority” means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

[448] (50) “Sending zone” means an area of a municipality that the municipality designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

[449] (51) “Specified public agency” means:

(a) the state;

(b) a school district; or

(c) a charter school.

[450] (52) “Specified public utility” means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

[451] (53) “State” includes any department, division, or agency of the state.

[452] (54) “Street” means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

[453] (55) (a) “Subdivision” means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) “Subdivision” includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection [453] (55)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) “Subdivision” does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance;

(v) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels; or

(vi) a parcel boundary adjustment.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection ~~[(53)]~~ (55) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

~~[(54)]~~ (56) "Suspect soil" means soil that has:

(a) a high susceptibility for volumetric change, typically a clay rich, having more than a 3% swell potential;

(b) bedrock units with high shrink or swell susceptibility; or

(c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

~~[(55)]~~ (57) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals who are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

~~[(56)]~~ (58) "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

~~[(57)]~~ (59) "Unincorporated" means the area outside of the incorporated area of a city or town.

~~[(58)]~~ (60) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

~~[(59)]~~ (61) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section 10-9a-104 is amended to read:

10-9a-104. Stricter requirements or higher standards.

(1) Except as provided in Subsection (2), a municipality may enact ~~[an ordinance]~~ a land use regulation imposing stricter requirements or higher standards than are required by this chapter.

(2) A municipality may not impose ~~[stricter requirements or higher standards than are required by:]~~ a requirement or standard that conflicts with a provision of this chapter, other state law, or federal law.

~~[(a) Section 10-9a-305; and]~~

~~[(b) Section 10-9a-514.]~~

Section 3. Section 10-9a-205 is amended to read:

10-9a-205. Notice of public hearings and public meetings on adoption or modification of land use regulation.

(1) Each municipality shall give:

(a) notice of the date, time, and place of the first public hearing to consider the adoption or any modification of a land use ~~[ordinance]~~ regulation; and

(b) notice of each public meeting on the subject.

(2) Each notice of a public hearing under Subsection (1)(a) shall be:

(a) mailed to each affected entity at least 10 calendar days before the public hearing;

(b) posted:

(i) in at least three public locations within the municipality; or

(ii) on the municipality's official website; and

(c) (i) (A) published in a newspaper of general circulation in the area at least 10 calendar days before the public hearing; and

(B) published on the Utah Public Notice Website created in Section 63F-1-701, at least 10 calendar days before the public hearing; or

(ii) mailed at least 10 days before the public hearing to:

(A) each property owner whose land is directly affected by the land use ordinance change; and

(B) each adjacent property owner within the parameters specified by municipal ordinance.

(3) Each notice of a public meeting under Subsection (1)(b) shall be at least 24 hours before the meeting and shall be posted:

(a) in at least three public locations within the municipality; or

(b) on the municipality's official website.

~~(4) (a) [If a municipality plans to hold a public hearing in accordance with Section 10-9a-502 to adopt a zoning map or map amendment, the] A~~ municipality shall send a courtesy notice to each owner of private real property whose property is located entirely or partially within ~~[the]~~ a proposed zoning map enactment or amendment at least 10 days ~~[prior to]~~ before the scheduled day of the public hearing.

(b) The notice shall:

(i) identify with specificity each owner of record of real property that will be affected by the proposed zoning map or map amendments;

(ii) state the current zone in which the real property is located;

(iii) state the proposed new zone for the real property;

(iv) provide information regarding or a reference to the proposed regulations, prohibitions, and permitted uses that the property will be subject to if the zoning map or map amendment is adopted;

(v) state that the owner of real property may no later than 10 days after the day of the first public hearing file a written objection to the inclusion of the owner's property in the proposed zoning map or map amendment;

(vi) state the address where the property owner should file the protest;

(vii) notify the property owner that each written objection filed with the municipality will be provided to the municipal legislative body; and

(viii) state the location, date, and time of the public hearing described in Section 10-9a-502.

(c) If a municipality mails notice to a property owner in accordance with Subsection (2)(c)(ii) for a public hearing on a zoning map or map amendment, the notice required in this Subsection (4) may be included in or part of the notice described in Subsection (2)(c)(ii) rather than sent separately.

Section 4. Section 10-9a-302 is amended to read:

Part 3. General Land Use Provisions

10-9a-302. Planning commission powers and duties.

The planning commission shall make a recommendation to the legislative body for:

(1) a general plan and amendments to the general plan;

(2) land use ~~[ordinances, zoning maps, official maps, and amendments]~~ regulations;

(3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;

(4) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and

(5) application processes that:

(a) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and

(b) shall protect the right of each:

(i) applicant and third party to require formal consideration of any application by a land use authority;

(ii) applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and

(iii) participant to be heard in each public hearing on a contested application.

Section 5. Section 10-9a-306 is enacted to read:

10-9a-306. Land use authority requirements -- Nature of land use decision.

(1) A land use authority shall apply the plain language of land use regulations.

(2) If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.

(3) A land use decision of a land use authority is an administrative act, even if the land use authority is the legislative body.

Section 6. Section 10-9a-501 is amended to read:

Part 5. Land Use Regulations

10-9a-501. Enactment of land use regulation.

(1) ~~[The] Only~~ a legislative body may enact a land use ~~[ordinances and a zoning map] regulation.~~

(2) (a) Except as provided in Subsection (2)(b), a legislative body may enact a land use regulation only by ordinance.

(b) A legislative body may, by ordinance or resolution, enact a land use regulation that imposes a fee.

(3) A land use regulation shall be consistent with the purposes set forth in this chapter.

Section 7. Section 10-9a-502 is amended to read:

10-9a-502. Preparation and adoption of land use regulation.

(1) The planning commission shall:

(a) provide notice as required by Subsection 10-9a-205(1)(a) and, if applicable, Subsection 10-9a-205(4);

(b) hold a public hearing on a proposed land use ~~[ordinance or zoning map] regulation;~~

(c) if applicable, consider each written objection filed in accordance with Subsection 10-9a-205(4) prior to the public hearing; and

(d) (i) prepare and recommend to the legislative body a proposed land use ~~[ordinance or ordinances and zoning map that represent]~~ regulation that represents the planning commission's recommendation for regulating the use and development of land within all or any part of the area of the municipality; and

(ii) forward to the legislative body all objections filed in accordance with Subsection 10-9a-205(4).

(2) The ~~[municipal]~~ legislative body shall consider each proposed land use ~~[ordinance and zoning map]~~ regulation recommended to ~~[it]~~ the legislative body by the planning commission, and, after providing notice as required by Subsection 10-9a-205(1)(b) and holding a public meeting, the legislative body may adopt or reject the ~~[ordinance or map]~~ land use regulation either as proposed by the planning commission or after making any revision the ~~[municipal]~~ legislative body considers appropriate.

Section 8. Section 10-9a-503 is amended to read:

10-9a-503. Zoning district or land use regulation amendments -- Historic district or area.

(1) ~~[The]~~ Only legislative body may amend:

(a) the number, shape, boundaries, or area of any zoning district;

(b) any regulation of or within the zoning district; or

(c) any other provision of a land use ~~[ordinance]~~ regulation.

(2) The legislative body may not make any amendment authorized by this section unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation.

(3) The legislative body shall comply with the procedure specified in Section 10-9a-502 in preparing and adopting an amendment to a land use ~~[ordinance or a zoning map]~~ regulation.

(4) (a) As used in this Subsection (4):

(i) "Condominium project" means the same as that term is defined in Section 57-8-3.

(ii) "Local historic district or area" means a geographically or thematically definable area that contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body.

(iii) "Unit" means the same as that term is defined in Section 57-8-3.

(b) If a municipality provides a process by which one or more residents of the municipality may

initiate the creation of a local historic district or area, the process shall require that:

(i) more than 33% of the property owners within the boundaries of the proposed local historic district or area agree in writing to the creation of the proposed local historic district or area;

(ii) before any property owner agrees to the creation of a proposed local historic district or area under Subsection (4)(b)(i), the municipality prepare and distribute, to each property owner within the boundaries of the proposed local historic district or area, a neutral information pamphlet that:

(A) describes the process to create a local historic district or area; and

(B) lists the pros and cons of a local historic district or area;

(iii) after the property owners satisfy the requirement described in Subsection (4)(b)(i), for each parcel or, if the parcel contains a condominium project, each unit, within the boundaries of the proposed local historic district or area, the municipality provide:

(A) a second copy of the neutral information pamphlet described in Subsection (4)(b)(ii); and

(B) one public support ballot that, subject to Subsection (4)(c), allows the owner or owners of record to vote in favor of or against the creation of the proposed local historic district or area;

(iv) in a vote described in Subsection (4)(b)(iii)(B), the returned public support ballots that reflect a vote in favor of the creation of the proposed local historic district or area:

(A) equal at least two-thirds of the returned public support ballots; and

(B) represent more than 50% of the parcels and units within the proposed local historic district or area;

(v) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B), the legislative body may override the vote and create the proposed local historic district or area with an affirmative vote of two-thirds of the members of the legislative body; and

(vi) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B) and the legislative body does not override the vote under Subsection (4)(b)(v), a resident may not initiate the creation of a local historic district or area that includes more than 50% of the same property as the failed local historic district or area proposal for four years after the day on which the public support ballots for the vote are due.

(c) In a vote described in Subsection (4)(b)(iii)(B):

(i) a property owner is eligible to vote regardless of whether the property owner is an individual, a private entity, or a public entity;

(ii) the municipality shall count no more than one public support ballot for:

(A) each parcel within the boundaries of the proposed local historic district or area; or

(B) if the parcel contains a condominium project, each unit within the boundaries of the proposed local historic district or area; and

(iii) if a parcel or unit has more than one owner of record, the municipality shall count a public support ballot for the parcel or unit only if the public support ballot reflects the vote of the property owners who own at least a 50% interest in the parcel or unit.

(d) The requirements described in Subsection (4)(b)(iv) apply to the creation of a local historic district or area that is:

(i) initiated in accordance with a municipal process described in Subsection (4)(b); and

(ii) not complete on or before January 1, 2016.

(e) A vote described in Subsection (4)(b)(iii)(B) is not subject to Title 20A, Election Code.

Section 9. Section 10-9a-509 is amended to read:

10-9a-509. Applicant's entitlement to land use application approval -- Exceptions -- Application relating to land in a high priority transportation corridor -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.

(1) (a) (i) An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use [laws] regulations in effect on the date that the application is complete and as further provided in this section.

(ii) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use [~~maps, zoning map, a municipal specification for public improvements applicable to a subdivision or development, and an applicable land use ordinance~~] regulations in effect when a complete application is submitted and all application fees have been paid, unless:

(A) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(B) in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend [~~its ordinances~~] the municipality's land use regulations in a manner that would prohibit approval of the application as submitted.

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this

Subsection (1)(b) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A municipality shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a municipality may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for a building permit; or

(B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for any land use other than a building permit.

(iv) (A) If an application is an application for a subdivision approval, including any land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal, the land use authority shall:

(I) within 30 days after the day on which the application is filed, notify the canal company or canal operator responsible for the canal, if the canal company or canal operator has provided information under Section 10-9a-211; and

(II) wait at least 10 days after the day on which the land use authority notifies a canal company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the subdivision application described in Subsection (1)(b)(iv)(A).

(B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by certified or registered mail to the canal company or canal operator contact described in Section 10-9a-211.

(C) The location of land described in Subsection (1)(b)(iv)(A) shall be:

(I) provided by a canal company or canal operator to the land use authority; and

(II) (Aa) determined by use of mapping-grade global positioning satellite units; or

(Bb) digitized from the most recent aerial photo available to the canal company or canal operator.

(c) (i) A land use application is exempt from the requirements of Subsections (1)(b)(i) and (ii) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(ii) A municipality may approve a land use application without making the required notifications under Subsection (1)(b)(ii)(A) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(d) After a municipality has complied with the requirements of Subsection (1)(b) for a land use application, the municipality may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The municipality shall process an application without regard to proceedings initiated to amend the municipality's ordinances as provided in Subsection (1)(a)(ii)(B) if:

(i) 180 days have passed since the proceedings were initiated; and

(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.

(f) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

(g) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

(h) A municipality may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed in:

(i) this chapter;

(ii) a municipal ordinance; or

(iii) a municipal specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

(i) A municipality may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:

(i) in a land use permit;

(ii) on the subdivision plat;

(iii) in a document on which the land use permit or subdivision plat is based;

(iv) in the written record evidencing approval of the land use permit or subdivision plat;

(v) in this chapter; or

(vi) in a municipal ordinance.

(j) A municipality may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the municipality's ordinances.

(2) A municipality is bound by the terms and standards of applicable land use ~~ordinances~~ regulations and shall comply with mandatory provisions of those ~~ordinances~~ regulations.

(3) A municipality may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 10-9a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the municipality's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ~~ordinances~~ regulations in effect on the date of submission.

Section 10. Section 10-9a-707 is amended to read:

10-9a-707. Scope of review of factual matters on appeal -- Appeal authority requirements.

(1) A municipality may, by ordinance, designate the ~~standard~~ scope of review of factual matters for appeals of land use authority decisions.

(2) If the municipality fails to designate a ~~standard~~ scope of review of factual matters, the appeal authority shall review the matter de novo, without deference to the land use authority's determination of factual matters.

(3) If the scope of review of factual matters is on the record, the appeal authority shall determine whether the record on appeal includes substantial evidence for each essential finding of fact.

~~(3)~~ (4) The appeal authority shall:

(a) determine the correctness of ~~[a decision of]~~ the land use ~~authority in its~~ authority's interpretation and application of ~~[a]~~ the plain meaning of the land use ~~ordinance.~~ regulations; and

(b) interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

(5) An appeal authority's land use decision is a quasi-judicial act, even if the appeal authority is the legislative body.

[4] (6) Only ~~[those decisions]~~ a decision in which a land use authority has applied a land use ~~[ordinance]~~ regulation to a particular land use application, person, or parcel may be appealed to an appeal authority.

Section 11. Section 10-9a-801 is amended to read:

10-9a-801. No district court review until administrative remedies exhausted -- Time for filing -- Tolling of time -- Standards governing court review -- Record on review -- Staying of decision.

(1) No person may challenge in district court a ~~[municipality's]~~ land use decision ~~[made under this chapter, or under a regulation made under authority of this chapter,]~~ until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.

(2) (a) Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the ~~[local land use]~~ decision is final.

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the property rights ombudsman under Section 13-43-204 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the property rights ombudsman issues a written statement under Subsection 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issue that is the subject of the request for arbitration filed with the property rights ombudsman by a property owner.

(iii) A request for arbitration filed with the property rights ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3) (a) ~~[The courts]~~ A court shall:

(i) presume that a ~~[decision, ordinance, or]~~ land use regulation ~~[made]~~ properly enacted under the authority of this chapter is valid; and

(ii) determine only whether ~~[or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.];~~

~~[(b) A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the purposes of this chapter and is not otherwise illegal.]~~

~~[(c) A final decision of a land use authority or an appeal authority is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.]~~

~~[(d) A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.]~~

(A) the land use regulation is expressly preempted by, or was enacted contrary to, state or federal law; and

(B) it is reasonably debatable that the land use regulation is consistent with this chapter.

(b) A court shall:

(i) presume that a final decision of a land use authority or an appeal authority is valid; and

(ii) uphold the decision unless the decision is:

(A) arbitrary and capricious; or

(B) illegal.

(c) (i) A decision is arbitrary and capricious unless the decision is supported by substantial evidence in the record.

(ii) A decision is illegal if the decision is:

(A) based on an incorrect interpretation of a land use regulation; or

(B) contrary to law.

(4) The provisions of Subsection (2)(a) apply from the date on which the municipality takes final action on a land use application for any adversely affected third party, if the municipality conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice of the pending decision.

(5) If the municipality has complied with Section 10-9a-205, a challenge to the enactment of a land use ~~[ordinance]~~ regulation or general plan may not be filed with the district court more than 30 days after the enactment.

(6) ~~[The petition]~~ A challenge to a land use decision is barred unless ~~[it]~~ the challenge is filed within 30 days after the ~~[appeal authority's]~~ land use decision is final.

(7) (a) The land use authority or appeal authority, as the case may be, shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, orders, and, if available, a true and correct transcript of its proceedings.

(b) If the proceeding was ~~[tape]~~ recorded, a transcript of that ~~[tape]~~ recording is a true and correct transcript for purposes of this Subsection (7).

(8) (a) (i) If there is a record, the district court's review is limited to the record provided by the land use authority or appeal authority, as the case may be.

(ii) The court may not accept or consider any evidence outside the record of the land use authority or appeal authority, as the case may be, unless that evidence was offered to the land use authority or appeal authority, respectively, and the court determines that it was improperly excluded.

(b) If there is no record, the court may call witnesses and take evidence.

(9) (a) The filing of a petition does not stay the decision of the land use authority or authority appeal authority, as the case may be.

(b) (i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may petition the appeal authority to stay its decision.

(ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed pending district court review if the appeal authority finds it to be in the best interest of the municipality.

(iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an injunction staying the appeal authority's decision.

Section 12. Section 11-36a-504 is amended to read:

11-36a-504. Notice of intent to adopt impact fee enactment -- Hearing -- Protections.

(1) Before adopting an impact fee enactment:

(a) a municipality legislative body shall:

(i) comply with the notice requirements of Section 10-9a-205 as if the impact fee enactment were a land use ordinance regulation;

(ii) hold a hearing in accordance with Section 10-9a-502 as if the impact fee enactment were a land use ordinance regulation; and

(iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Section 10-9a-801 as if the impact fee were a land use ordinance regulation;

(b) a county legislative body shall:

(i) comply with the notice requirements of Section 17-27a-205 as if the impact fee enactment were a land use ordinance regulation;

(ii) hold a hearing in accordance with Section 17-27a-502 as if the impact fee enactment were a land use ordinance regulation; and

(iii) except as provided in Subsection 11-36a-701(3)(b)(ii), receive the protections of Section 17-27a-801 as if the impact fee were a land use ordinance regulation;

(c) a local district or special service district shall:

(i) comply with the notice and hearing requirements of Section 17B-1-111; and

(ii) receive the protections of Section 17B-1-111;

(d) a local political subdivision shall at least 10 days before the day on which a public hearing is scheduled in accordance with this section:

(i) make a copy of the impact fee enactment available to the public; and

(ii) post notice of the local political subdivision's intent to enact or modify the impact fee, specifying the type of impact fee being enacted or modified, on the Utah Public Notice Website created under Section 63F-1-701; and

(e) a local political subdivision shall submit a copy of the impact fee analysis and a copy of the summary of the impact fee analysis prepared in accordance with Section 11-36a-303 on its website or to each public library within the local political subdivision.

(2) Subsection (1)(a) or (b) may not be construed to require involvement by a planning commission in the impact fee enactment process.

Section 13. Section 17-27a-103 is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owners association, public utility, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the county a copy of the entity's general or long-range plan; or

(c) the entity has filed with the county a request for notice during the same calendar year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) (a) "Charter school" means:

(i) an operating charter school;

(ii) a charter school applicant that has its application approved by a charter school authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or

(iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(b) “Charter school” does not include a therapeutic school.

(5) “Chief executive officer” means the person or body that exercises the executive powers of the county.

(6) “Conditional use” means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(7) “Constitutional taking” means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution, Article I, Section 22.

(8) “Culinary water authority” means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(9) “Development activity” means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(10) (a) “Disability” means a physical or mental impairment that substantially limits one or more of a person’s major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) “Disability” does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(11) “Educational facility”:

(a) means:

(i) a school district’s building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (11)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district’s administrative personnel; and

(b) does not include:

(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(A) not located on the same property as a building described in Subsection (11)(a)(i); and

(B) used in support of the purposes of a building described in Subsection (11)(a)(i); or

(ii) a therapeutic school.

(12) “Fire authority” means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(13) “Flood plain” means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(14) “Gas corporation” has the same meaning as defined in Section 54-2-1.

(15) “General plan” means a document that a county adopts that sets forth general guidelines for proposed future development of:

(a) the unincorporated land within the county; or

(b) for a mountainous planning district, the land within the mountainous planning district.

(16) “Geologic hazard” means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(17) “Hookup fee” means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility system.

(18) “Identical plans” means building plans submitted to a county that:

(a) are clearly marked as “identical plans”;

(b) are substantially identical building plans that were previously submitted to and reviewed and approved by the county; and

(c) describe a building that:

(i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;

(ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;

(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the county; and

(iv) does not require any additional engineering or analysis.

(19) “Impact fee” means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

(20) “Improvement completion assurance” means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a county to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

(a) recording a subdivision plat; or

(b) development of a commercial, industrial, mixed use, or multifamily project.

(21) “Improvement warranty” means an applicant’s unconditional warranty that the applicant’s installed and accepted landscaping or infrastructure improvement:

(a) complies with the county’s written standards for design, materials, and workmanship; and

(b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

(22) “Improvement warranty period” means a period:

(a) no later than one year after a county’s acceptance of required landscaping; or

(b) no later than one year after a county’s acceptance of required infrastructure, unless the county:

(i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and

(ii) has substantial evidence, on record:

(A) of prior poor performance by the applicant; or

(B) that the area upon which the infrastructure will be constructed contains suspect soil and the county has not otherwise required the applicant to mitigate the suspect soil.

(23) “Infrastructure improvement” means permanent infrastructure that an applicant must install:

(a) pursuant to published installation and inspection specifications for public improvements; and

(b) as a condition of:

(i) recording a subdivision plat; or

(ii) development of a commercial, industrial, mixed use, condominium, or multifamily project.

(24) “Internal lot restriction” means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(25) “Interstate pipeline company” means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(26) “Intrastate pipeline company” means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(27) “Land use applicant” means a property owner, or the property owner’s designee, who submits a land use application regarding the property owner’s land.

~~[(27)]~~ (28) “Land use application”:

(a) means an application that is:

(i) required by a [county’s land use ordinance.] county; and

(ii) submitted by a land use applicant to obtain a land use decision; and

(b) does not mean an application to enact, amend, or repeal a land use regulation.

~~[(28)]~~ (29) “Land use authority” means:

(a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or

(b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

~~[(29) “Land use ordinance” means a planning, zoning, development, or subdivision ordinance of the county, but does not include the general plan.]~~

(30) “Land use decision” means a final action of a land use authority or appeal authority regarding:

- (a) a land use permit;
- (b) a land use application; or
- (c) the enforcement of a land use regulation, land use permit, or development agreement.

[(30)] (31) "Land use permit" means a permit issued by a land use authority.

(32) "Land use regulation":

(a) means an ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land; and

(b) does not include:

- (i) a general plan;
- (ii) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or
- (iii) a temporary revision to an engineering specification that does not materially:

(A) increase a land use applicant's cost of development compared to the existing specification; or

(B) impact a land use applicant's use of land.

[(31)] (33) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

[(32)] (34) "Local district" means any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

[(33)] (35) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

[(34)] (36) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the housing is located.

[(35)] (37) "Mountainous planning district" means an area:

- (a) designated by a county legislative body in accordance with Section 17-27a-901; and
- (b) that is not otherwise exempt under [Subsection] Section 10-9a-304[(2)(b)].

[(36)] (38) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

- (a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

[(37)] (39) "Noncomplying structure" means a structure that:

- (a) legally existed before its current land use designation; and
- (b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

[(38)] (40) "Nonconforming use" means a use of land that:

- (a) legally existed before its current land use designation;
- (b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

[(39)] (41) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:

- (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;
- (b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
- (c) has been adopted as an element of the county's general plan.

[(40)] (42) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

- (a) no additional parcel is created; and
- (b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.

[(41)] (43) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

[(42)] (44) "Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

- (a) an estimate of the existing supply of moderate income housing located within the county;
- (b) an estimate of the need for moderate income housing in the county for the next five years as revised biennially;
- (c) a survey of total residential land use;
- (d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the county's program to encourage an adequate supply of moderate income housing.

[443] (45) "Planning advisory area" means a contiguous, geographically defined portion of the unincorporated area of a county established under this part with planning and zoning functions as exercised through the planning advisory area planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority.

[444] (46) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

[445] (47) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

[446] (48) "Public agency" means:

- (a) the federal government;
- (b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

[447] (49) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

[448] (50) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

[449] (51) "Receiving zone" means an unincorporated area of a county that the county designates, by ordinance, as an area in which an owner of land may receive a transferable development right.

[450] (52) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

[451] (53) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) which is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

[452] (54) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

- (a) parliamentary order and procedure;
- (b) ethical behavior; and
- (c) civil discourse.

[453] (55) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

[454] (56) "Sending zone" means an unincorporated area of a county that the county designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

[455] (57) "Site plan" means a document or map that may be required by a county during a preliminary review preceding the issuance of a building permit to demonstrate that an owner's or developer's proposed development activity meets a land use requirement.

[456] (58) "Specified public agency" means:

- (a) the state;
- (b) a school district; or
- (c) a charter school.

[457] (59) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

[458] (60) "State" includes any department, division, or agency of the state.

[459] (61) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

[460] (62) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection [460] (62)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for agricultural purposes;

(ii) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:

(A) an electrical transmission line or a substation;

(B) a natural gas pipeline or a regulation station; or

(C) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility;

(v) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance;

(vi) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels; or

(vii) a parcel boundary adjustment.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection [(60)] (62) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

[(61)] (63) "Suspect soil" means soil that has:

(a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;

(b) bedrock units with high shrink or swell susceptibility; or

(c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

[(62)] (64) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals who are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

[(63)] (65) "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

[(64)] (66) "Unincorporated" means the area outside of the incorporated area of a municipality.

[(65)] (67) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

[(66)] (68) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 14. Section 17-27a-104 is amended to read:

17-27a-104. Stricter requirements or higher standards.

(1) Except as provided in Subsection (2), a county may enact [an ordinance] a land use regulation imposing stricter requirements or higher standards than are required by this chapter.

(2) A county may not impose [stricter requirements or higher standards than are required by:] a requirement or standard that

conflicts with a provision of this chapter, other state law, or federal law.

~~[(a) Section 17-27a-305; and]~~

~~[(b) Section 17-27a-513.]~~

Section 15. Section 17-27a-205 is amended to read:

17-27a-205. Notice of public hearings and public meetings on adoption or modification of land use regulation.

(1) Each county shall give:

(a) notice of the date, time, and place of the first public hearing to consider the adoption or modification of a land use ~~[ordinance]~~ regulation; and

(b) notice of each public meeting on the subject.

(2) Each notice of a public hearing under Subsection (1)(a) shall be:

(a) mailed to each affected entity at least 10 calendar days before the public hearing;

(b) posted:

(i) in at least three public locations within the county; or

(ii) on the county's official website; and

(c) (i) published:

(A) in a newspaper of general circulation in the area at least 10 calendar days before the public hearing; and

(B) on the Utah Public Notice Website created in Section 63F-1-701, at least 10 calendar days before the public hearing; or

(ii) mailed at least 10 days before the public hearing to:

(A) each property owner whose land is directly affected by the land use ordinance change; and

(B) each adjacent property owner within the parameters specified by county ordinance.

(3) Each notice of a public meeting under Subsection (1)(b) shall be at least 24 hours before the hearing and shall be posted:

(a) in at least three public locations within the county; or

(b) on the county's official website.

(4) (a) ~~[If a county plans to hold a public hearing in accordance with Section 17-27a-502 to adopt a zoning map or map amendment, the]~~ A county shall send a courtesy notice to each owner of private real property whose property is located entirely or partially within the proposed zoning map enactment or amendment at least 10 days ~~[prior to]~~ before the scheduled day of the public hearing.

(b) The notice shall:

(i) identify with specificity each owner of record of real property that will be affected by the proposed zoning map or map amendments;

(ii) state the current zone in which the real property is located;

(iii) state the proposed new zone for the real property;

(iv) provide information regarding or a reference to the proposed regulations, prohibitions, and permitted uses that the property will be subject to if the zoning map or map amendment is adopted;

(v) state that the owner of real property may no later than 10 days after the day of the first public hearing file a written objection to the inclusion of the owner's property in the proposed zoning map or map amendment;

(vi) state the address where the property owner should file the protest;

(vii) notify the property owner that each written objection filed with the county will be provided to the county legislative body; and

(viii) state the location, date, and time of the public hearing described in Section 17-27a-502.

(c) If a county mails notice to a property owner in accordance with Subsection (2)(c)(ii) for a public hearing on a zoning map or map amendment, the notice required in this Subsection (4) may be included in or part of the notice described in Subsection (2)(c)(ii) rather than sent separately.

Section 16. Section 17-27a-302 is amended to read:

Part 3. General Land Use Provisions

17-27a-302. Planning commission powers and duties.

Each countywide planning advisory area or mountainous planning district planning commission shall, with respect to the unincorporated area of the county, the planning advisory area, or the mountainous planning district, make a recommendation to the county legislative body for:

(1) a general plan and amendments to the general plan;

(2) land use ~~[ordinances, zoning maps, official maps, and amendments]~~ regulations;

(3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;

(4) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and

(5) application processes that:

(a) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and

(b) shall protect the right of each:

(i) applicant and third party to require formal consideration of any application by a land use authority;

(ii) applicant, adversely affected party, or county officer or employee to appeal a land use authority's decision to a separate appeal authority; and

(iii) participant to be heard in each public hearing on a contested application.

Section 17. Section 17-27a-308 is enacted to read:

17-27a-308. Land use authority requirements -- Nature of land use decision.

(1) A land use authority shall apply the plain language of land use regulations.

(2) If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.

(3) A land use decision of a land use authority is an administrative act, even if the land use authority is the legislative body.

Section 18. Section 17-27a-501 is amended to read:

Part 5. Land Use Regulations

17-27a-501. Enactment of land use regulation.

(1) [The] Only a legislative body may enact a land use [ordinances and a zoning map] regulation.

(2) (a) Except as provided in Subsection (2)(b), a legislative body may enact a land use regulation only by ordinance.

(b) A legislative body may, by ordinance or resolution, enact a land use regulation that imposes a fee.

(3) A land use regulation shall be consistent with the purposes set forth in this chapter.

Section 19. Section 17-27a-502 is amended to read:

17-27a-502. Preparation and adoption of land use regulation.

(1) The planning commission shall:

(a) provide notice as required by Subsection 17-27a-205(1)(a) and, if applicable, Subsection 17-27a-205(4);

(b) hold a public hearing on a proposed land use [ordinance or zoning map] regulation;

(c) if applicable, consider each written objection filed in accordance with Subsection 17-27a-205(4) prior to the public hearing; and

(d) (i) prepare and recommend to the legislative body a proposed land use [ordinance or ordinances and zoning map that represent] regulation that represents the planning commission's recommendation for regulating the use and development of land within:

(A) all or any part of the unincorporated area of the county; or

(B) for a mountainous planning district, all or any part of the area in the mountainous planning district; and

(ii) forward to the legislative body all objections filed in accordance with Subsection 17-27a-205(4).

(2) The [county] legislative body shall consider each proposed land use [ordinance and zoning map] regulation recommended to [it] the legislative body by the planning commission, and, after providing notice as required by Subsection 17-27a-205(1)(b) and holding a public meeting, the legislative body may adopt or reject the proposed [ordinance or map] land use regulation either as proposed by the planning commission or after making any revision the [county] legislative body considers appropriate.

Section 20. Section 17-27a-503 is amended to read:

17-27a-503. Zoning district or land use regulation amendments.

(1) [The] Only a legislative body may amend:

(a) the number, shape, boundaries, or area of any zoning district;

(b) any regulation of or within the zoning district; or

(c) any other provision of a land use [ordinance] regulation.

(2) The legislative body may not make any amendment authorized by this [subsection] section unless the amendment was proposed by the planning commission or is first submitted to the planning commission for its recommendation.

(3) The legislative body shall comply with the procedure specified in Section 17-27a-502 in preparing and adopting an amendment to a land use [ordinance or a zoning map] regulation.

Section 21. Section 17-27a-508 is amended to read:

17-27a-508. Applicant's entitlement to land use application approval -- Exceptions -- Application relating to land in a high priority transportation corridor -- County's requirements and limitations -- Vesting upon submission of development plan and schedule.

(1) (a) (i) An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use [laws] regulations in effect on the date that the application is complete and as further provided in this section.

(ii) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the county's land use [maps, zoning map, and applicable land use ordinance] regulations in effect when a complete application is submitted and all application fees have been paid, unless:

(A) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(B) in the manner provided by local ordinance and before the application is submitted, the county has formally initiated proceedings to amend [its ordinances] the county's land use regulations in a manner that would prohibit approval of the application as submitted.

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b)(i) and Subsection (1)(b)(ii) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A county shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a county may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for a building permit; or

(B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for any land use other than a building permit.

(iv) (A) If an application is an application for a subdivision approval, including any land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal, the land use authority shall:

(I) within 30 days after the day on which the application is filed, notify the canal company or canal operator responsible for the canal, if the canal company or canal owner has provided information under Section 17-27a-211; and

(II) wait at least 10 days after the day on which the land use authority notifies a canal company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the subdivision application described in Subsection (1)(b)(iv)(A).

(B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by certified or registered mail to the canal company or canal operator contact described in Section 17-27a-211.

(C) The location of land described in Subsection (1)(b)(iv)(A) shall be:

(I) provided by a canal company or canal operator to the land use authority; and

(II) (Aa) determined by use of mapping-grade global positioning satellite units; or

(Bb) digitized from the most recent aerial photo available to the canal company or canal operator.

(c) (i) A land use application is exempt from the requirements of Subsection (1)(b)(i) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(ii) A county may approve a land use application without making the required notifications under Subsections (1)(b)(i) and (ii) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(d) After a county has complied with the requirements of Subsection (1)(b) for a land use application, the county may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The county shall process an application without regard to proceedings initiated to amend the county's ordinances as provided in Subsection (1)(a)(ii)(B) if:

(i) 180 days have passed since the proceedings were initiated; and

(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.

(f) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

(g) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

(h) A county may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed:

(i) in this chapter;

(ii) in a county ordinance; or

(iii) in a county specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

(i) A county may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:

- (i) in a land use permit;
- (ii) on the subdivision plat;

(iii) in a document on which the land use permit or subdivision plat is based;

(iv) in the written record evidencing approval of the land use permit or subdivision plat;

- (v) in this chapter; or
- (vi) in a county ordinance.

(j) A county may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the building permit or subdivision plat; or

- (ii) in this chapter or the county's ordinances.

(2) A county is bound by the terms and standards of applicable land use ~~[ordinances]~~ regulations and shall comply with mandatory provisions of those ~~[ordinances]~~ regulations.

(3) A county may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 17-27a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the county's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ~~[ordinances]~~ regulations in effect on the date of submission.

Section 22. Section 17-27a-707 is amended to read:

17-27a-707. Scope of review of factual matters on appeal -- Appeal authority requirements.

(1) A county may, by ordinance, designate the ~~[standard]~~ scope of review of factual matters for appeals of land use authority decisions.

(2) If the county fails to designate a ~~[standard]~~ scope of review of factual matters, the appeal authority shall review the matter de novo, without deference to the land use authority's determination of factual matters.

(3) If the scope of review of factual matters is on the record, the appeal authority shall determine

whether the record on appeal includes substantial evidence for each essential finding of fact.

~~[(3)]~~ (4) The appeal authority shall:

(a) determine the correctness of [a decision of] the land use [authority in its] authority's interpretation and application of [a] the plain meaning of the land use [ordinance.] regulations; and

(b) interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

(5) An appeal authority's land use decision is a quasi-judicial act, even if the appeal authority is the legislative body.

~~[(4)]~~ (6) Only [these decisions] a decision in which a land use authority has applied a land use [ordinance] regulation to a particular land use application, person, or parcel may be appealed to an appeal authority.

Section 23. Section 17-27a-801 is amended to read:

17-27a-801. No district court review until administrative remedies exhausted -- Time for filing -- Tolling of time -- Standards governing court review -- Record on review -- Staying of decision.

(1) No person may challenge in district court a ~~[county's] land use decision [made under this chapter, or under a regulation made under authority of this chapter,]~~ until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.

(2) (a) Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the ~~[local land use]~~ decision is final.

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the property rights ombudsman under Section 13-43-204 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the property rights ombudsman issues a written statement under Subsection 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issue that is the subject of the request for arbitration filed with the property rights ombudsman by a property owner.

(iii) A request for arbitration filed with the property rights ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3) (a) ~~[The courts]~~ A court shall:

(i) presume that a ~~[decision, ordinance, or]~~ land use regulation ~~[made]~~ properly enacted under the authority of this chapter is valid; and

(ii) determine only whether ~~[or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.];~~

(A) the land use regulation is expressly preempted by, or was enacted contrary to, state or federal law; and

(B) it is reasonably debatable that the land use regulation is consistent with this chapter.

(b) A court shall:

(i) presume that a final decision of a land use authority or an appeal authority is valid; and

(ii) uphold the decision unless the decision is:

(A) arbitrary and capricious; or

(B) illegal.

(c) (i) A decision is arbitrary and capricious unless the decision is supported by substantial evidence in the record.

(ii) A decision is illegal if the decision is:

(A) based on an incorrect interpretation of a land use regulation; or

(B) contrary to law.

~~[(b) A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the purposes of this chapter and is not otherwise illegal.]~~

~~[(c) A final decision of a land use authority or an appeal authority is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.]~~

~~[(d) A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.]~~

(4) The provisions of Subsection (2)(a) apply from the date on which the county takes final action on a land use application for any adversely affected third party, if the county conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice of the pending decision.

(5) If the county has complied with Section 17-27a-205, a challenge to the enactment of a land use ~~[ordinance]~~ regulation or general plan may not be filed with the district court more than 30 days after the enactment.

(6) ~~[The petition]~~ A challenge to a land use decision is barred unless ~~[it]~~ the challenge is filed within 30 days after the land use ~~[authority or the appeal authority's]~~ decision is final.

(7) (a) The land use authority or appeal authority, as the case may be, shall transmit to the reviewing court the record of its proceedings, including its

minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

(b) If the proceeding was ~~[tape]~~ recorded, a transcript of that ~~[tape]~~ recording is a true and correct transcript for purposes of this Subsection (7).

(8) (a) (i) If there is a record, the district court's review is limited to the record provided by the land use authority or appeal authority, as the case may be.

(ii) The court may not accept or consider any evidence outside the record of the land use authority or appeal authority, as the case may be, unless that evidence was offered to the land use authority or appeal authority, respectively, and the court determines that it was improperly excluded.

(b) If there is no record, the court may call witnesses and take evidence.

(9) (a) The filing of a petition does not stay the decision of the land use authority or appeal authority, as the case may be.

(b) (i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may petition the appeal authority to stay its decision.

(ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed pending district court review if the appeal authority finds it to be in the best interest of the county.

(iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an injunction staying the appeal authority's decision.

Section 24. Section 17C-1-104 is amended to read:

17C-1-104. Actions not subject to land use laws.

(1) An action taken under this title is not subject to Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act or Title 17, Chapter 27a, County Land Use, Development, and Management Act.

(2) An ordinance or resolution adopted under this title is not a land use ~~[ordinance]~~ regulation as defined in Sections 10-9a-103 and 17-27a-103.

Section 25. Section 63I-2-217 is amended to read:

63I-2-217. Repeal dates -- Title 17.

(1) Subsection 17-27a-102(1)(b), the language that states "or a designated mountainous planning district" is repealed June 1, 2017.

(2) (a) Subsection 17-27a-103(15)(b) is repealed June 1, 2017.

(b) Subsection 17-27a-103~~[(34)]~~(37) is repealed June 1, 2017.

(3) Subsection 17-27a-210(2)(a), the language that states "or the mountainous planning district area" is repealed June 1, 2017.

(4) (a) Subsection 17-27a-301(1)(b)(iii) is repealed June 1, 2017.

(b) Subsection 17-27a-301(1)(c) is repealed June 1, 2017.

(c) Subsection 17-27a-301(2)(a), the language that states “described in Subsection (1)(a) or (c)” is repealed June 1, 2017.

(5) Subsection 17-27a-302(1), the language that states “, or mountainous planning district” and “or the mountainous planning district,” is repealed June 1, 2017.

(6) Subsection 17-27a-305(1)(a), the language that states “a mountainous planning district or” and “, as applicable” is repealed June 1, 2017.

(7) (a) Subsection 17-27a-401(1)(b)(ii) is repealed June 1, 2017.

(b) Subsection 17-27a-401(6) is repealed June 1, 2017.

(8) (a) Subsection 17-27a-403(1)(b)(ii) is repealed June 1, 2017.

(b) Subsection 17-27a-403(1)(c)(iii) is repealed June 1, 2017.

(c) Subsection (2)(a)(iii), the language that states “or the mountainous planning district” is repealed June 1, 2017.

(d) Subsection 17-27a-403(2)(c)(i), the language that states “or mountainous planning district” is repealed June 1, 2017.

(9) Subsection 17-27a-502(1)(d)(i)(B) is repealed June 1, 2017.

(10) Subsection 17-27a-505.5(2)(a)(iii) is repealed June 1, 2017.

(11) Subsection 17-27a-602(1)(b), the language that states “or, in the case of a mountainous planning district, the mountainous planning district” is repealed June 1, 2017.

(12) Subsection 17-27a-604(1)(b)(i)(B) is repealed June 1, 2017.

(13) Subsection 17-27a-605(1), the language that states “or mountainous planning district land” is repealed June 1, 2017.

(14) Title 17, Chapter 27a, Part 9, Mountainous Planning District, is repealed June 1, 2017.

(15) On June 1, 2016, when making the changes in this section, the Office of Legislative Research and General Counsel shall:

(a) in addition to its authority under Subsection 36-12-12(3), make corrections necessary to ensure that sections and subsections identified in this section are complete sentences and accurately reflect the office’s perception of the Legislature’s intent; and

(b) identify the text of the affected sections and subsections based upon the section and subsection numbers used in Laws of Utah 2015, Chapter 465.

CHAPTER 85**H. B. 238**

Passed March 7, 2017

Approved March 17, 2017

Effective May 9, 2017

PAYMENT OF WAGES ACT AMENDMENTS

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: D. Gregg Buxton

LONG TITLE**General Description:**

This bill modifies provisions related to the payment of wages.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of “employer” under Title 34, Chapter 28, Payment of Wages;
- ▶ requires that an employee file certain wage claims with the Labor Commission; and
- ▶ provides a private cause of action against an employer for certain wage claims.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

34-28-2, as last amended by Laws of Utah 2016, Chapter 370

ENACTS:

34-28-9.5, Utah Code Annotated 1953

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

Section 1. Section 34-28-2 is amended to read:**34-28-2. Definitions -- Unincorporated entities -- Joint employers -- Franchisors.**

- (1) As used in this chapter:
- (a) “Commission” means the Labor Commission.
- (b) “Division” means the Division of Antidiscrimination and Labor.
- (c) “Employer” [~~includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this state, and any agent or officer of any of the above-mentioned classes, employing any person in this state.~~] means the same as that term is defined in 29 U.S.C. Sec. 203.
- (d) “Federal executive agency” means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
- (e) “Franchise” means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (f) “Franchisee” means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (g) “Franchisor” means the same as that term is defined in 16 C.F.R. Sec. 436.1.

(h) “Unincorporated entity” means an entity organized or doing business in the state that is not:

- (i) an individual;
- (ii) a corporation; or
- (iii) publicly traded.

(i) “Wages” means the amounts due the employee for labor or services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.

(2) (a) For purposes of this chapter, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who, directly or indirectly, holds an ownership interest in the unincorporated entity.

(b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that the individual:

- (i) is an active manager of the unincorporated entity;
- (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
- (iii) is not subject to supervision or control in the performance of work by:

(A) the unincorporated entity; or

(B) a person with whom the unincorporated entity contracts.

(c) As part of the rules made under Subsection (2)(b), the commission may define:

(i) “active manager”;

(ii) “directly or indirectly holds at least an 8% ownership interest”; and

(iii) “subject to supervision or control in the performance of work.”

(d) The commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may establish a procedure, consistent with Section 34-28-7, under which an unincorporated entity may seek approval of a mutual agreement to pay wages on non-regular paydays.

(3) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule.

(4) (a) For purposes of this chapter, a franchisor is not considered to be an employer of:

- (i) a franchisee; or
- (ii) a franchisee’s employee.

(b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (4) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Section 2. Section 34-28-9.5 is enacted to read:

34-28-9.5. Private cause of action.

(1) Except as provided in Subsection (2), for a wage claim that is less than or equal to \$10,000, the employee shall exhaust the employee's administrative remedies described in Section 34-28-9 and rules made by the commission under Section 34-28-9 before the employee may file an action in district court.

(2) An employee may file an action for a wage claim in district court without exhausting the administrative remedies described in Section 34-28-9 and rules made by the commission under Section 34-28-9 if:

(a) the employee's wage claim is over \$10,000;

(b) (i) the employee's wage claim is less than or equal to \$10,000;

(ii) the employee asserts one or more additional claims against the same employer; and

(iii) the aggregate amount of damages resulting from the claims described in this Subsection (2)(b) is greater than \$10,000; or

(c) (i) in the same civil action, more than one employee files a wage claim against an employer; and

(ii) the aggregate amount of the employees' combined wage claim is greater than \$10,000.

(3) In an action under this section, the court may award an employee:

(a) actual damages;

(b) an amount equal to 2.5% of the unpaid wages owed to the employee, assessed daily for the lesser of:

(i) the period beginning the day on which the court issues a final order and ending the day on which the employer pays the unpaid wages owed to the employee; or

(ii) 20 days after the day on which the court issues a final order; and

(c) a penalty described in Subsection 34-28-5(1)(c), if applicable.

CHAPTER 86**H. B. 280**

Passed March 8, 2017

Approved March 17, 2017

Effective May 9, 2017

**AGRICULTURE REGULATION
PREEMPTION AMENDMENTS**

Chief Sponsor: Stephen G. Handy

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill provides that state regulation of commercial feed, fertilizer, pesticides, and seeds preempts local regulation.

Highlighted Provisions:

This bill:

- ▶ states that the Department of Agriculture and Food, subject to relevant federal law, has exclusive jurisdiction to regulate commercial feed, fertilizer, pesticides, and seeds in the state;
- ▶ states that the regulation of commercial feed, fertilizer, pesticides, and seeds is of statewide concern and state code occupies the whole field of potential regulation; and
- ▶ states that, subject to an exemption, a political subdivision of the state is prohibited from regulating commercial feed, fertilizer, pesticides, or seeds, and local ordinances that seek to regulate commercial feed, fertilizer, pesticides, or seeds are void.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

4-2-16, Utah Code Annotated 1953

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

Section 1. Section 4-2-16 is enacted to read:**4-2-16. Preemption.**

(1) Subject to concurrence with relevant federal laws and except as provided in Subsection (4), the department has exclusive jurisdiction over regulation regarding:

(a) commercial feed, as described in Chapter 12, Utah Commercial Feed Act;

(b) fertilizer, as described in Chapter 13, Utah Fertilizer Act;

(c) pesticides, as described in Chapter 14, Utah Pesticide Control Act; and

(d) seeds, as described in Chapter 16, Utah Seed Act.

(2) The regulation of commercial feed, fertilizer, pesticides, and seeds within the state is of statewide concern, except as provided in Subsection (4), and this title occupies the whole field of potential regulation.

(3) Except as provided in Subsection (4), a political subdivision of the state is prohibited from regulating commercial feed, fertilizer, pesticides, and seeds, and local ordinances, resolutions, amendments, regulations, or laws that seek to do so are void.

(4) Nothing in this section preempts or otherwise limits the authority of a political subdivision to:

(a) adopt and enforce zoning regulations, fire codes, building codes, or waste disposal restrictions; or

(b) in consultation with the department, enforce, maintain, amend, or otherwise continue to implement a regulation created on or before January 1, 2017, related to the use of pesticides and fertilizers in surface water and groundwater source water protection areas.

CHAPTER 87**H. B. 292**

Passed February 28, 2017

Approved March 17, 2017

Effective May 9, 2017

**CHARTER SCHOOL
ADMISSION AMENDMENTS**Chief Sponsor: Justin L. Fawson
Senate Sponsor: Deidre M. Henderson**LONG TITLE****General Description:**

This bill modifies provisions related to charter school enrollment preferences.

Highlighted Provisions:

This bill:

- ▶ allows a charter school to give an enrollment preference to the sibling of an individual who was previously enrolled in the charter school.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-1a-506, as last amended by Laws of Utah 2014, Chapters 291, 363, and 406

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

Section 1. Section 53A-1a-506 is amended to read:**53A-1a-506. Eligible students.**

(1) As used in this section:

(a) "District school" means a public school under the control of a local school board elected pursuant to Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(b) "Refugee" means a person who is eligible to receive benefits and services from the federal Office of Refugee Resettlement.

(2) All resident students of the state qualify for admission to a charter school, subject to the limitations set forth in this section and Section 53A-1a-506.5.

(3) (a) A charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or the charter school.

(b) If the number of applications exceeds the capacity of a program, class, grade level, or the charter school, the charter school shall select students [~~shall be selected~~] on a random basis, except as provided in Subsections (4) through (8).

(4) A charter school may give an enrollment preference to:

(a) a child or grandchild of an individual who has actively participated in the development of the charter school;

(b) a child or grandchild of a member of the charter school governing board;

(c) a sibling of [~~a student~~] an individual who was previously or is presently enrolled in the charter school;

(d) a child of an employee of the charter school;

(e) [~~students~~] a student articulating between charter schools offering similar programs that are governed by the same charter school governing board;

(f) [~~students~~] a student articulating from one charter school to another pursuant to an articulation agreement between the charter schools that is approved by the State Charter School Board; or

(g) students who reside within:

(i) the school district in which the charter school is located;

(ii) the municipality in which the charter school is located; or

(iii) a two-mile radius of the charter school.

(5) (a) Except as provided in Subsection (5)(b), a charter school that is approved by the State Board of Education after May 13, 2014, and is located in a high growth area shall give an enrollment preference to [~~students~~] a student who [reside] resides within a two-mile radius of the charter school.

(b) The requirement to give an enrollment preference under Subsection (5)(a) does not apply to a charter school that was approved without a high priority status pursuant to Subsection 53A-1a-502.5~~(6)~~(7)(b).

(6) If a district school converts to charter status, the charter school shall give an enrollment preference to students who would have otherwise attended it as a district school.

(7) (a) A charter school whose mission is to enhance learning opportunities for refugees or children of refugee families may give an enrollment preference to refugees or children of refugee families.

(b) A charter school whose mission is to enhance learning opportunities for English language learners may give an enrollment preference to English language learners.

(8) A charter school may weight [~~its~~] the charter school's lottery to give a slightly better chance of admission to educationally disadvantaged students, including:

(a) low-income students;

(b) students with disabilities;

(c) English language learners;

(d) migrant students;

(e) neglected or delinquent students; and

(f) homeless students.

(9) A charter school may not discriminate in its admission policies or practices on the same basis as other public schools may not discriminate in [their] admission policies and practices.

CHAPTER 88**H. B. 394**

Passed March 7, 2017
Approved March 17, 2017
Effective May 9, 2017

**NATIVE AMERICAN
REMAINS REPATRIATION**

Chief Sponsor: Michael E. Noel
Senate Sponsor: Jani Iwamoto

LONG TITLE**General Description:**

This bill modifies provisions related to state parks and the burial of ancient Native American remains.

Highlighted Provisions:

This bill:

- ▶ creates the Native American Repatriation Restricted Account, including:
 - making appropriations from it nonlapsing; and
 - providing for grants; and
- ▶ requires a study of whether, and if so, how, to bury ancient Native American remains in state parks.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2018:

- ▶ to the Native American Repatriation Restricted Account:
 - from the General Fund, \$20,000.
 - from the General Fund, One-time \$20,000.

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63J-1-602.1, as last amended by Laws of Utah 2016, Chapters 46, 70, 71, and 202

ENACTS:

9-9-407, Utah Code Annotated 1953
9-9-408, Utah Code Annotated 1953

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

Section 1. Section 9-9-407 is enacted to read:**9-9-407. Native American Repatriation Restricted Account.**

(1) There is created a restricted account within the General Fund known as the "Native American Repatriation Restricted Account."

(2) (a) The Native American Repatriation Restricted Account shall consist of appropriations from the Legislature.

(b) All interest earned on Native American Repatriation Restricted Account money shall be deposited into the Native American Repatriation Restricted Account.

(3) Subject to appropriation from the Legislature, the division may use the money in the Native

American Repatriation Restricted Account as follows:

(a) for a grant issued in accordance with Subsection (6) to an Indian Tribe to pay the following costs of reburial of Native American remains:

- (i) use of equipment;
- (ii) labor for use of the equipment;
- (iii) reseeding and vegetation efforts;
- (iv) compliance with Section 9-8-404; and
- (v) caskets; and

(b) no more than 5% of the annual expenditures from the Native American Repatriation Restricted Account may be used for training for tribal elders and councils on the processes under this part, including costs for:

- (i) lodging and transportation of employees of the department; or
- (ii) travel grants issued in accordance with Subsection (6) for tribal representatives.

(4) If the balance in the Native American Repatriation Restricted Account exceeds \$100,000 at the close of any fiscal year, the excess shall be transferred into the General Fund.

(5) In accordance with Section 63J-1-602.1, appropriations from the account are nonlapsing.

(6) To issue a grant under this section, the division shall:

(a) require that an Indian Tribe request the grant in writing and specify how the grant money will be expended; and

(b) enter into an agreement with the Indian Tribe to ensure that the grant money is expended in accordance with Subsection (3).

Section 2. Section 9-9-408 is enacted to read:**9-9-408. Burial of ancient Native American remains in state parks.**

(1) As used in this section:

(a) "Ancient Native American remains" means ancient human remains, as defined in Section 9-8-302, that are Native American remains, as defined in Section 9-9-402.

(b) "Antiquities Section" means the Antiquities Section of the Division of State History created in Section 9-8-304.

(2) (a) The division, the Antiquities Section, and the Division of Parks and Recreation shall cooperate in a study of the feasibility of burying ancient Native American remains in state parks.

(b) The study shall include:

(i) the process and criteria for determining which state parks would have land sufficient and appropriate to reserve a portion of the land for the burial of ancient Native American remains;

(ii) the process for burying the ancient Native American remains on the lands within state parks, including the responsibilities of state agencies and the assurance of cultural sensitivity;

(iii) how to keep a record of the locations in which specific ancient Native American remains are buried;

(iv) how to account for the costs of:

(A) burying the ancient Native American remains on lands found within state parks; and

(B) securing and maintaining burial sites in state parks; and

(v) any issues related to burying ancient Native American remains in state parks.

(3) The division, the Antiquities Section, and the Division of Parks and Recreation shall report to the Native American Legislative Liaison Committee by no later than November 1, 2017, regarding the study required by Subsection (2).

Section 3. Section 63J-1-602.1 is amended to read:

63J-1-602.1. List of nonlapsing accounts and funds -- General authority and Title 1 through Title 30.

(1) Appropriations made to the Legislature and its committees.

(2) The Percent-for-Art Program created in Section 9-6-404.

(3) The Native American Repatriation Restricted Account created in Section 9-9-407.

~~[(3)]~~ (4) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102.

~~[(4)]~~ (5) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.

~~[(5)]~~ (6) The LeRay McAllister Critical Land Conservation Program created in Section 11-38-301.

~~[(6)]~~ (7) An appropriation made to the Division of Wildlife Resources for the appraisal and purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.

~~[(7)]~~ (8) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.

~~[(8)]~~ (9) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.

~~[(9)]~~ (10) Funds collected from the emergency medical services grant program, as provided in Section 26-8a-207.

~~[(10)]~~ (11) The primary care grant program created in Section 26-10b-102.

~~[(11)]~~ (12) The Prostate Cancer Support Restricted Account created in Section 26-21a-303.

~~[(12)]~~ (13) The Children with Cancer Support Restricted Account created in Section 26-21a-304.

~~[(13)]~~ (14) State funds appropriated for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.

~~[(14)]~~ (15) The Utah Health Care Workforce Financial Assistance Program created in Section 26-46-102.

~~[(15)]~~ (16) The Rural Physician Loan Repayment Program created in Section 26-46a-103.

~~[(16)]~~ (17) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.

~~[(17)]~~ (18) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.

Section 4. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

To GFR - Native American Repatriation Restricted Account

<u>From General Fund, One-time</u>	<u>\$20,000</u>
<u>From General Fund</u>	<u>\$20,000</u>

Schedule of Programs:

<u>GFR - Native American Repatriation Restricted Account</u>	<u>\$40,000</u>
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CHAPTER 89**H. B. 460**

Passed March 8, 2017

Approved March 17, 2017

Effective May 9, 2017

**CAPITAL DEVELOPMENT
PROJECTS BONDING AMENDMENTS**

Chief Sponsor: Gage Froerer

Senate Sponsor: Wayne A. Harper

LONG TITLE**General Description:**

This bill modifies provisions relating to the issuance of bonds for the prison project.

Highlighted Provisions:

This bill:

- ▶ increases the authorization for the issuance and extends the maximum maturity date of bonds for the prison project; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63B-25-101, as enacted by Laws of Utah 2015, Chapter 182

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

Section 1. Section 63B-25-101 is amended to read:**63B-25-101. General obligation bonds for prison project -- Maximum amount -- Use of proceeds.**

(1) As used in this section:

(a) "Prison project" means the same as that term is defined in Section 63C-16-102.

(b) "Prison project fund" means the capital projects fund created in Subsection 63A-5-225(7).

(2) The commission may issue general obligation bonds as provided in this section.

(3) (a) The total amount of bonds to be issued under this section may not exceed [~~\$470,000,000~~] \$570,000,000, plus additional amounts necessary to pay costs of issuance, to pay capitalized interest, and to fund any debt service reserve requirements, with the total amount of the bonds not to exceed [~~\$474,700,000~~] \$575,700,000.

(b) The maturity of bonds issued under this section [~~shall be seven~~] may not exceed 10 years.

(4) The commission shall ensure that proceeds from the issuance of bonds under this section are deposited into the Prison Project Fund for use by the division to pay all or part of the cost of the prison project, including:

(a) interest estimated to accrue on the bonds authorized in this section until the completion of

construction of the prison project, plus a period of 12 months after the end of construction; and

(b) all related engineering, architectural, and legal fees.

(5) (a) The division may enter into agreements related to the prison project before the receipt of proceeds of bonds issued under this section.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Prison Project Fund.

(c) The division shall reimburse the Prison Project Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The state intends to use proceeds of tax-exempt bonds to reimburse itself for expenditures for costs of the prison project.

(6) Before issuing bonds authorized under this section, the commission shall request and consider a recommendation from the Prison Development Commission, created in Section 63C-16-201, regarding the timing and amount of the issuance.

CHAPTER 90**S. B. 10**

Passed February 22, 2017

Approved March 17, 2017

Effective May 9, 2017

**VETERANS' AND MILITARY
AFFAIRS COMMISSION AMENDMENTS**

Chief Sponsor: Peter C. Knudson

House Sponsor: Paul Ray

LONG TITLE**General Description:**

This bill adds a representative of the Veterans Health Administration to the commission and removes the sunset date.

Highlighted Provisions:

This bill:

- ▶ adds a representative of the Veterans Health Administration to the membership of the commission;
- ▶ removes the sunset date for the commission; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

36-28-102, as last amended by Laws of Utah 2016, Chapter 62

63I-2-236, as last amended by Laws of Utah 2015, Chapters 118 and 219

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

Section 1. Section 36-28-102 is amended to read:**36-28-102. Veterans' and Military Affairs Commission -- Creation -- Membership -- Chairs -- Terms -- Per diem and expenses.**

(1) There is created the Veterans' and Military Affairs Commission.

(2) The commission membership is composed of [18] 19 permanent members, but may not exceed [23] 24 members, and is as follows:

(a) five legislative members to be appointed as follows:

(i) three members from the House of Representatives, appointed by the speaker of the House of Representatives, no more than two of whom may be from the same political party; and

(ii) two members from the Senate, appointed by the president of the Senate, no more than one of whom may be from the same political party;

(b) the executive director of the Department of Veterans' and Military Affairs or the director's designee;

(c) the chair of the Utah Veterans' Advisory Council;

(d) the executive director of the Department of Workforce Services or the director's designee;

(e) the executive director of the Department of Health or the director's designee;

(f) the executive director of the Department of Human Services or the director's designee;

(g) ~~a representative from~~ the adjutant general of the Utah National Guard ~~appointed by~~ or the adjutant ~~general~~ general's designee;

(h) the Guard and Reserve Transition Assistance Advisor;

(i) a ~~representative from~~ member of the Board of Regents or that member's designee;

(j) three representatives of veteran service organizations ~~as~~ recommended by the Veterans Advisory Council and confirmed by the commission;

(k) one ~~representative from~~ member of the Executive Committee of the Utah Defense Alliance; ~~and~~

(l) one military affairs representative from a chamber of commerce ~~recommended~~ member, appointed by the Utah State Chamber of Commerce~~;~~; and

(m) a representative from the Veterans Health Administration.

(3) The commission may appoint by majority vote of the entire commission up to five pro tempore members, representing:

(a) state or local government agencies;

(b) interest groups concerned with veterans issues; or

(c) the general public.

(4) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(a) as a cochair of the commission.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(a) as a cochair of the commission.

(5) A majority of the members of the commission shall constitute a quorum. The action of a majority of a quorum constitutes the action of the commission.

(6) The term for each pro tempore member appointed in accordance with Subsection (3) shall be two years from the date of appointment. A pro tempore member may not serve more than three terms.

(7) If a member leaves office or is unable to serve, the vacancy shall be filled as it was originally appointed. A person appointed to fill a vacancy under this section does not serve the remaining unexpired term of the member being replaced but begins serving a new term.

(8) A member may not receive compensation or benefits for the member's service but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 2. Section 63I-2-236 is amended to read:

63I-2-236. Repeal dates -- Title 36.

~~[(1) Sections 36-28-101 through 36-28-104 are repealed July 1, 2019.]~~

~~[(2)]~~ Section 36-29-102 is repealed July 1, 2016.

CHAPTER 91**S. B. 13**

Passed February 6, 2017
 Approved March 17, 2017
 Effective May 9, 2017

AMENDMENTS TO ELECTION LAW

Chief Sponsor: Margaret Dayton
 House Sponsor: Lee B. Perry

LONG TITLE**General Description:**

This bill amends provisions relating to elections.

Highlighted Provisions:

This bill:

- ▶ changes the deadline for publication of a municipal election notice;
- ▶ amends provisions relating to a midterm vacancy in a municipal office;
- ▶ provides a deadline for informing a voter registration applicant of action taken on the application;
- ▶ amends provisions relating to a local voter information pamphlet;
- ▶ amends political party registration petition requirements;
- ▶ amends provisions relating to municipal elections;
- ▶ amends provisions relating to the certification provided by the lieutenant governor for a regular primary election;
- ▶ changes the deadline for a qualified political party to provide certification regarding who may vote for the qualified political party's candidates in a primary election;
- ▶ amends provisions relating to the declaration of candidacy for the office of lieutenant governor;
- ▶ amends provisions relating to an election to create a new school district; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-2a-214, as last amended by Laws of Utah 2015, Chapter 111 and renumbered and amended by Laws of Utah 2015, Chapter 352
- 10-2a-305.1, as enacted by Laws of Utah 2015, Chapter 111 and last amended by Coordination Clause, Laws of Utah 2015, Chapter 352
- 10-3-301, as last amended by Laws of Utah 2014, Chapter 38
- 20A-1-510, as last amended by Laws of Utah 2012, Chapter 327
- 20A-2-304, as last amended by Laws of Utah 2006, Chapter 264
- 20A-7-402, as last amended by Laws of Utah 2016, Chapter 53
- 20A-8-103, as last amended by Laws of Utah 2013, Chapter 253

- 20A-9-203, as last amended by Laws of Utah 2014, Chapter 38
- 20A-9-403, as last amended by Laws of Utah 2016, Chapter 28
- 20A-9-404, as last amended by Laws of Utah 2013, Chapter 402
- 20A-9-406, as last amended by Laws of Utah 2016, Chapters 16 and 66
- 20A-9-407, as last amended by Laws of Utah 2015, Chapter 296
- 20A-9-408, as last amended by Laws of Utah 2016, Chapter 28
- 20A-9-409, as enacted by Laws of Utah 2014, Chapter 17
- 53A-2-117, as last amended by Laws of Utah 2011, Chapters 300 and 369
- 53A-2-118, as last amended by Laws of Utah 2010, Chapter 230
- 53A-2-118.1, as last amended by Laws of Utah 2011, Chapter 300

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

Section 1. Section 10-2a-214 is amended to read:**10-2a-214. Notice of number of commission or council members to be elected and of district boundaries -- Declaration of candidacy for city office.**

(1) (a) Within 20 days of the county legislative body's receipt of the information under Subsection 10-2a-213(1)(d), the county clerk shall publish, in accordance with Subsection (1)(b), notice containing:

(i) the number of commission or council members to be elected for the new city;

(ii) if some or all of the commission or council members are to be elected by district, a description of the boundaries of those districts as designated by the petition sponsors under Subsection 10-2a-213(1)(b);

(iii) information about the deadline for filing a declaration of candidacy for those seeking to become candidates for mayor or city commission or council; and

(iv) information about the length of the initial term of each of the city officers, as determined by the petition sponsors under Subsection 10-2a-213(1)(c).

(b) The notice under Subsection (1)(a) shall be published:

(i) in a newspaper of general circulation within the future city at least once a week for two successive weeks; and

(ii) in accordance with Section 45-1-101 for two weeks.

(c) (i) In accordance with Subsection (1)(b)(i), if there is no newspaper of general circulation within the future city, the county clerk shall post at least one notice per 1,000 population in conspicuous places within the future city that are most likely to give notice to the residents of the future city.

(ii) The notice under Subsection (1)(c)(i) shall contain the information required under Subsection (1)(a).

(iii) The petition sponsors shall post the notices under Subsection (1)(c)(i) at least seven days before the deadline for filing a declaration of candidacy under Subsection (2).

(2) Notwithstanding Subsection 20A-9-203~~(2)~~(3)(a), each ~~[person]~~ individual seeking to become a candidate for mayor or city commission or council of a city incorporating under this part shall file a declaration of candidacy with the clerk of the county in which the future city is located and in accordance with the deadlines set by the clerk as authorized by Section 10-2a-215.

Section 2. Section 10-2a-305.1 is amended to read:

10-2a-305.1. Notice of number of council members to be elected and of district boundaries -- Declaration of candidacy for city office -- Occupation of office.

(1) (a) Within 20 days of the county legislative body's receipt of the information under Subsection 10-2a-305(2)(b), the county clerk shall publish, in accordance with Subsection (1)(b), notice containing:

(i) information about the deadline for filing a declaration of candidacy for those seeking to become candidates for mayor or town council; and

(ii) information about the length of the initial term of each of the town officers, as determined by the petition sponsors under Subsection 10-2a-305(2)(a).

(b) The notice under Subsection (1)(a) shall be published:

(i) in a newspaper of general circulation within the future town at least once a week for two successive weeks; and

(ii) in accordance with Section 45-1-101 for two weeks.

(c) (i) In accordance with Subsection (1)(b)(i), if there is no newspaper of general circulation within the future city, the county clerk shall post at least one notice per 1,000 population in conspicuous places within the future town that are most likely to give notice to the residents of the future town.

(ii) The notice under Subsection (1)(c)(i) shall contain the information required under Subsection (1)(a).

(iii) The petition sponsors shall post the notices under Subsection (1)(c)(i) at least seven days before the deadline for filing a declaration of candidacy under Subsection (2).

(2) Notwithstanding Subsection 20A-9-203~~(2)~~(3)(a), each ~~[person]~~ individual seeking to become a candidate for mayor or town council of a town incorporating under this part shall, within 45 days of the incorporation election

under Section 10-2a-304, file a declaration of candidacy with the clerk of the county in which the future town is located.

Section 3. Section 10-3-301 is amended to read:

10-3-301. Notice -- Eligibility and residency requirements for elected municipal office -- Mayor and recorder limitations.

(1) (a) On or before ~~[February]~~ May 1 in a year in which there is a municipal general election, the municipal clerk shall publish a notice that identifies:

(i) the municipal offices to be voted on in the municipal general election; and

(ii) the dates for filing a declaration of candidacy for the offices identified under Subsection (1)(a)(i).

(b) The municipal clerk shall publish the notice described in Subsection (1)(a):

(i) on the Utah Public Notice Website established by Section 63F-1-701; and

(ii) in at least one of the following ways:

(A) at the principal office of the municipality;

(B) in a newspaper of general circulation within the municipality at least once a week for two successive weeks in accordance with Section 45-1-101;

(C) in a newsletter produced by the municipality;

(D) on a website operated by the municipality; or

(E) with a utility enterprise fund customer's bill.

(2) (a) ~~[A person filing]~~ An individual who files a declaration of candidacy for a municipal office shall ~~[meet]~~ comply with the requirements ~~[of]~~ described in Section 20A-9-203.

(b) (i) Except as provided in Subsection (2)(b)(ii), the city recorder or town clerk of each municipality shall maintain office hours 8 a.m. to 5 p.m. on the dates described in Subsections 20A-9-203~~(2)~~(3)(a)(i) and (b)(i) unless the date occurs on a:

(A) Saturday or Sunday; or

(B) state holiday as listed in Section 63G-1-301.

(ii) If on a regular basis a city recorder or town clerk maintains an office schedule that is less than 40 hours per week, the city recorder or town clerk may comply with Subsection (2)(b)(i) without maintaining office hours by:

(A) posting the recorder's or clerk's contact information, including a phone number and email address, on the recorder's or clerk's office door, the main door to the municipal offices, and, if available, on the municipal website; and

(B) being available ~~[at that contact information]~~ from 8 a.m. to 5 p.m. on the dates described in Subsection (2)(b)(i), via the contact information described in Subsection (2)(b)(ii)(A).

(3) ~~[Any person]~~ An individual elected to municipal office shall be a registered voter in the municipality in which the ~~[person was]~~ individual is elected.

(4) (a) Each elected officer of a municipality shall maintain residency within the boundaries of the municipality during the officer's term of office.

(b) If an elected officer of a municipality establishes a principal place of residence as provided in Section 20A-2-105 outside the municipality during the officer's term of office, the office is automatically vacant.

(5) If an elected municipal officer is absent from the municipality any time during the officer's term of office for a continuous period of more than 60 days without the consent of the municipal legislative body, the municipal office is automatically vacant.

(6) (a) A mayor of a municipality may not also serve as the municipal recorder or treasurer.

(b) The recorder of a municipality may not also serve as the municipal treasurer.

Section 4. Section 20A-1-510 is amended to read:

20A-1-510. Midterm vacancies in municipal offices.

(1) (a) Except as otherwise provided in Subsection (2), if any vacancy occurs in the office of municipal executive or member of a municipal legislative body, the municipal legislative body shall appoint a registered voter in the municipality who meets the qualifications for office ~~[established]~~ described in Section 10-3-301 to fill the unexpired term of the vacated office ~~[vacated until the January following the next municipal election]~~.

(b) Before acting to fill the vacancy, the municipal legislative body shall:

(i) give public notice of the vacancy at least two weeks before the municipal legislative body meets to fill the vacancy;

(ii) identify, in the notice:

(A) the date, time, and place of the meeting where the vacancy will be filled;

(B) the person to whom ~~[a person]~~ an individual interested in being appointed to fill the vacancy may submit the interested ~~[person's]~~ individual's name for consideration; and

(C) the deadline for submitting an interested ~~[person's]~~ individual's name; and

(iii) in an open meeting, interview each ~~[person]~~ individual whose name ~~[was]~~ is submitted for consideration, and who meets the qualifications for office, regarding the ~~[person's]~~ individual's qualifications.

(c) (i) If, for any reason, the municipal legislative body does not fill the vacancy within 30 days after the day on which the vacancy occurs, the municipal

legislative body shall fill the vacancy from among the names that have been submitted.

(ii) The two ~~[persons]~~ individuals having the highest number of votes of the municipal legislative body after a first vote is taken shall appear before the municipal legislative body and the municipal legislative body shall vote again.

(iii) If neither candidate receives a majority vote of the municipal legislative body at that time, the vacancy shall be filled by lot in the presence of the municipal legislative body.

(2) (a) A vacancy in the office of municipal executive or member of a municipal legislative body shall be filled by an interim appointment, followed by an election to fill a two-year term, if:

(i) the vacancy occurs, or a letter of resignation is received, by the municipal executive at least 14 days before the deadline for filing for election in an odd-numbered year; and

(ii) two years of the vacated term will remain after the first Monday of January following the next municipal election.

(b) In appointing an interim replacement, the municipal legislative body shall:

(i) comply with the notice requirements of this section; and

(ii) in an open meeting, interview each ~~[person]~~ individual whose name ~~[was]~~ is submitted for consideration, and who meets the qualifications for office, regarding the ~~[person's]~~ individual's qualifications.

(3) (a) In a municipality operating under the council-mayor form of government, as defined in Section 10-3b-102:

(i) the council may appoint ~~[a person]~~ an individual to fill a vacancy in the office of mayor before the effective date of the mayor's resignation by making the effective date of the appointment the same as the effective date of the mayor's resignation; and

(ii) if a vacancy in the office of mayor occurs before the effective date of an appointment under Subsection (1) or (2) to fill the vacancy, the council chair shall serve as acting mayor during the time between the creation of the vacancy and the effective date of the appointment to fill the vacancy.

(b) While serving as acting mayor under Subsection (3)(a)(ii), the council chair continues to:

(i) act as a council member; and

(ii) vote at council meetings.

Section 5. Section 20A-2-304 is amended to read:

20A-2-304. County clerk's responsibilities -- Notice of disposition.

Each county clerk shall:

(1) register to vote each applicant for registration who meets the requirements for registration and who:

(a) submits a completed voter registration form to the county clerk on or before the voter registration deadline;

(b) submits a completed voter registration form to the Driver License Division, a public assistance agency, or a discretionary voter registration agency on or before the voter registration deadline; or

(c) mails a completed by-mail voter registration form to the county clerk on or before the voter registration deadline; and

(2) within 30 days after the day on which the county clerk processes a voter registration application, send a notice to the [voter informing the voter] individual who submits the application that:

(a) [the voter's] informs the individual that the individual's application for voter registration has been accepted and that the [voter] individual is registered to vote;

(b) [the voter's] informs the individual that the individual's application for voter registration has been rejected and the reason for the rejection; or

(c) (i) informs the individual that the application for voter registration is being returned to the [voter] individual for further action because the application is incomplete; and [giving]

(ii) gives instructions to the [voter about] individual on how to properly complete the application.

Section 6. Section 20A-7-402 is amended to read:

20A-7-402. Local voter information pamphlet -- Contents -- Limitations -- Preparation -- Statement on front cover.

(1) The county or municipality that is subject to a ballot proposition shall prepare a local voter information pamphlet that [meets] complies with the requirements of this part.

(2) (a) The arguments for or against a ballot proposition shall conform to the requirements of this section.

(b) To prepare an argument for or against a ballot proposition, an eligible voter shall file a request with the election officer at least 65 days before the election at which the ballot proposition is to be voted on.

(c) If more than one eligible voter requests the opportunity to prepare an argument for or against a ballot proposition, the election officer shall make the final designation according to the following criteria:

(i) sponsors have priority in preparing an argument regarding a ballot proposition; and

(ii) members of the local legislative body have priority over others.

(d) (i) Except as provided in Subsection (2)(e), a sponsor of a ballot proposition may prepare an argument in favor of the ballot proposition.

(ii) Except as provided in Subsection (2)(e), and subject to Subsection (2)(c), an eligible voter opposed to the ballot proposition who submits a request under Subsection (2)(b) may prepare an argument against the ballot proposition.

(e) (i) For a referendum, subject to Subsection (2)(c), an eligible voter who is in favor of a law that is referred to the voters and who submits a request under Subsection (2)(b) may prepare an argument for adoption of the law.

(ii) The sponsors of a referendum may prepare an argument against the adoption of a law that is referred to the voters.

(f) An eligible voter who submits an argument under this section shall:

(i) ensure that the argument does not exceed 500 words in length;

(ii) ensure that the argument does not list more than five names as sponsors;

(iii) submit the argument to the election officer no later than 60 days before the election day on which the ballot proposition will be submitted to the voters; and

(iv) include with the argument the eligible voter's name, residential address, postal address, email address if available, and phone number.

(g) An election officer shall refuse to accept and publish an argument that is submitted after the deadline described in Subsection (2)(f)(iii).

(3) (a) An election officer who timely receives the arguments in favor of and against a ballot proposition shall, within one business day after the day on which the election office receives both arguments, send, via mail or email:

(i) a copy of the argument in favor of the ballot proposition to the eligible voter who submitted the argument against the ballot proposition; and

(ii) a copy of the argument against the ballot proposition to the eligible voter who submitted the argument in favor of the ballot proposition.

(b) The eligible voter who submitted a timely argument in favor of the ballot proposition:

(i) may submit to the election officer a rebuttal argument of the argument against the ballot proposition;

(ii) shall ensure that the rebuttal argument does not exceed 250 words in length; and

(iii) shall submit the rebuttal argument no later than 45 days before the election day on which the ballot proposition will be submitted to the voters.

(c) The eligible voter who submitted a timely argument against the ballot proposition:

(i) may submit to the election officer a rebuttal argument of the argument in favor of the ballot proposition;

(ii) shall ensure that the rebuttal argument does not exceed 250 words in length; and

(iii) shall submit the rebuttal argument no later than 45 days before the election day on which the ballot proposition will be submitted to the voters.

(d) An election officer shall refuse to accept and publish a rebuttal argument that is submitted after the deadline described in Subsection (3)(b)(iii) or (3)(c)(iii).

(4) (a) Except as provided in Subsection (4)(b):

(i) an eligible voter may not modify an argument or rebuttal argument after the eligible voter submits the argument or rebuttal argument to the election officer; and

(ii) a person other than the eligible voter described in Subsection (4)(a)(i) may not modify an argument or rebuttal argument.

(b) The election officer, and the eligible voter who submits an argument or rebuttal argument, may jointly agree to modify an argument or rebuttal argument in order to:

(i) correct factual, grammatical, or spelling errors; and

(ii) reduce the number of words to come into compliance with the requirements of this section.

(c) An election officer shall refuse to accept and publish an argument or rebuttal argument if the eligible voter who submits the argument or rebuttal argument fails to negotiate, in good faith, to modify the argument or rebuttal argument in accordance with Subsection (4)(b).

(5) An election officer may designate another eligible voter to take the place of an eligible voter described in this section if the original eligible voter is, due to injury, illness, death, or another circumstance, unable to continue to fulfill the duties of an eligible voter described in this section.

(6) The local voter information pamphlet shall include a copy of the initial fiscal impact estimate prepared for each initiative under Section 20A-7-502.5.

(7) (a) In preparing the local voter information pamphlet, the election officer shall:

(i) ensure that the arguments are printed on the same sheet of paper upon which the ballot proposition is also printed;

(ii) ensure that the following statement is printed on the front cover or the heading of the first page of the printed arguments:

“The arguments for or against a ballot proposition are the opinions of the authors.”;

(iii) pay for the printing and binding of the local voter information pamphlet; and

(iv) ~~distribute either the pamphlets or the notice described in Subsection (7)(c) either by mail or carrier~~ not less than 15 days before, but not more than 45 days before, the election at which the ballot

~~[propositions are to be voted upon.]~~ proposition will be voted on, distribute, by mail or carrier, to each registered voter entitled to vote on the ballot proposition:

(A) a voter information pamphlet; or

(B) the notice described in Subsection (7)(c).

(b) (i) If the proposed measure exceeds 500 words in length, the election officer may summarize the measure in 500 words or less.

(ii) The summary shall state where a complete copy of the ballot proposition is available for public review.

(c) (i) The election officer may distribute a notice printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail.

(ii) The notice described in Subsection (7)(c)(i) shall include:

(A) the address of the Statewide Electronic Voter Information Website authorized by Section 20A-7-801; and

(B) the phone number a voter may call to request delivery of a voter information pamphlet by mail or carrier.

Section 7. Section 20A-8-103 is amended to read:

20A-8-103. Petition procedures -- Criminal penalty.

(1) As used in this section, the proposed name or emblem of a registered political party is “distinguishable” if a reasonable person of average intelligence will be able to perceive a difference between the proposed name or emblem and any name or emblem currently being used by another registered political party.

(2) To become a registered political party, an organization of registered voters that is not a continuing political party shall:

(a) circulate a petition seeking registered political party status beginning no earlier than the date of the statewide canvass held after the last regular general election and ending no later than ~~[the February 15]~~ November 30 of the year before the year in which the next regular general election will be held; ~~and~~

(b) file a petition with the lieutenant governor that is signed, with a holographic signature, by at least 2,000 registered voters on or before ~~[February 15]~~ November 30 of the year in which a regular general election will be held[-]; and

(c) file, with the petition described in Subsection (2)(b), a document certifying:

(i) the identity of one or more registered political parties whose members may vote for the organization’s candidates;

(ii) whether unaffiliated voters may vote for the organization’s candidates; and

(iii) whether, for the next election, the organization intends to nominate the organization’s

candidates in accordance with the provisions of Section 20A-9-406.

(3) The petition shall:

(a) be on sheets of paper 8-1/2 inches long and 11 inches wide;

(b) be ruled with a horizontal line 3/4 inch from the top, with the space above that line blank for the purpose of binding;

(c) contain the name of the political party and the words "Political Party Registration Petition" printed directly below the horizontal line;

(d) contain the word "Warning" printed directly under the words described in Subsection (3)(c);

(e) contain, to the right of the word "Warning," the following statement printed in not less than eight-point, single leaded type:

"It is a class A misdemeanor for anyone to knowingly sign a political party registration petition signature sheet with any name other than the [person's] individual's own name or more than once for the same party or if the [person] individual is not registered to vote in this state and does not intend to become registered to vote in this state before the petition is submitted to the lieutenant governor.";

(f) contain the following statement directly under the statement described in Subsection (3)(e):

"POLITICAL PARTY REGISTRATION PETITION To the Honorable ____, Lieutenant Governor:

We, the undersigned citizens of Utah, seek registered political party status for ____ (name);

Each signer says:

I have personally signed this petition with a holographic signature;

I am registered to vote in Utah or will register to vote in Utah before the petition is submitted to the lieutenant governor;

I am or desire to become a member of the political party; and

My street address is written correctly after my name."; and

(g) be vertically divided into columns as follows:

(i) the first column shall appear at the extreme left of the sheet, be 5/8 inch wide, be headed with "For Office Use Only," and be subdivided with a light vertical line down the middle;

(ii) the next column shall be 2-1/2 inches wide, headed "Registered Voter's Printed Name (must be legible to be counted)";

(iii) the next column shall be 2-1/2 inches wide, headed "Holographic Signature of Registered Voter";

(iv) the next column shall be one inch wide, headed "Birth Date or Age (Optional)";

(v) the final column shall be 4-3/8 inches wide, headed "Street Address, City, Zip Code"; and

(vi) at the bottom of the sheet, contain the following statement: "Birth date or age information is not required, but it may be used to verify your identity with voter registration records. If you choose not to provide it, your signature may not be certified as a valid signature if you change your address before petition signatures are certified or if the information you provide does not match your voter registration records.";

(h) have a final page bound to one or more signature sheets that are bound together that contains the following printed statement:

"Verification

State of Utah, County of ____

I, _____, of _____, hereby state that:

I am a Utah resident and am at least 18 years old;

All the names that appear on the signature sheets bound to this page were signed by [persons] individuals who professed to be the [persons] individuals whose names appear on the signature sheets, and each [of them] individual signed the [person's] individual's name on the signature sheets in my presence;

I believe that each individual has printed and signed the [person's] individual's name and written the [person's] individual's street address correctly, and that each [signer] individual is registered to vote in Utah or will register to vote in Utah before the petition is submitted to the lieutenant governor.

(Signature) (Residence Address) (Date)"; and

(i) be bound to a cover sheet that:

(i) identifies the political party's name, which may not exceed four words, and the emblem of the party;

(ii) states the process that the organization will follow to organize and adopt a constitution and bylaws; and

(iii) is signed by a filing officer, who agrees to receive communications on behalf of the organization.

(4) The filing officer described in Subsection (3)(i)(iii) shall ensure that the [person] individual in whose presence each signature sheet is signed:

(a) is at least 18 years old;

(b) meets the residency requirements of Section 20A-2-105; and

(c) verifies each signature sheet by completing the verification bound to one or more signature sheets that are bound together.

(5) [A person] An individual may not sign the verification if the [person] individual signed a signature sheet bound to the verification.

(6) The lieutenant governor shall:

(a) determine whether the required number of voters appears on the petition;

(b) review the proposed name and emblem to determine if they are “distinguishable” from the names and emblems of other registered political parties; and

(c) certify the lieutenant governor’s findings to the filing officer described in Subsection (3)(i)(iii) within 30 days of the filing of the petition.

(7) (a) If the lieutenant governor determines that the petition meets the requirements of this section, and that the proposed name and emblem are distinguishable, the lieutenant governor shall authorize the filing officer described in Subsection (3)(i)(iii) to organize the prospective political party.

(b) If the lieutenant governor finds that the name, emblem, or both are not distinguishable from the names and emblems of other registered political parties, the lieutenant governor shall notify the filing officer that the filing officer has seven days to submit a new name or emblem to the lieutenant governor.

(8) A registered political party may not change its name or emblem during the regular general election cycle.

(9) (a) It is unlawful for [any person] an individual to:

(i) knowingly sign a political party registration petition:

(A) with any name other than the [person’s] individual’s own name;

(B) more than once for the same political party; or

(C) if the [person] individual is not registered to vote in this state and does not intend to become registered to vote in this state before the petition is submitted to the lieutenant governor; or

(ii) sign the verification of a political party registration petition signature sheet if the [person] individual:

(A) does not meet the residency requirements of Section 20A-2-105;

(B) has not witnessed the signing by those [persons] individuals whose names appear on the political party registration petition signature sheet; or

(C) knows that [a person] an individual whose signature appears on the political party registration petition signature sheet is not registered to vote in this state and does not intend to become registered to vote in this state.

(b) [Any person violating] An individual who violates this Subsection (9) is guilty of a class A misdemeanor.

Section 8. Section 20A-9-203 is amended to read:

**20A-9-203. Declarations of candidacy --
Municipal general elections.**

(1) [(a)-(i) A person] An individual may become a candidate for any municipal office if:

[(A) the person] (a) the individual is a registered voter; and

[(B) (I) the person] (b) (i) the individual has resided within the municipality in which [that person] the individual seeks to hold elective office for the 12 consecutive months immediately before the date of the election; or

[(II) -if] (ii) the territory in which the [person] individual resides was annexed into the municipality, the [person] individual has resided within the annexed territory or the municipality the 12 consecutive months immediately before the date of the election.

[(iii)] (2) (a) For purposes of determining whether [a person] an individual meets the residency requirement of Subsection [(1)(a)(i)(B)-(D) (1)(b)(i)] in a municipality that was incorporated less than 12 months before the election, the municipality [shall be] is considered to have been incorporated 12 months before the date of the election.

(b) In addition to the requirements of Subsection (1)[(a)], each candidate for a municipal council position shall, if elected from a district, be a resident of the council district from which the candidate is elected.

(c) In accordance with Utah Constitution, Article IV, Section 6, any mentally incompetent person, any person convicted of a felony, or any person convicted of treason or a crime against the elective franchise may not hold office in this state until the right to hold elective office is restored under Section 20A-2-101.3 or 20A-2-101.5.

[(2)-(a) A person] (3) (a) An individual seeking to become a candidate for a municipal office shall, regardless of the nomination method by which the individual is seeking to become a candidate:

(i) file a declaration of candidacy, in person with the city recorder or town clerk, during the office hours described in Section 10-3-301 and not later than the close of those office hours, between June 1 and June 7 of any odd-numbered year; and

(ii) pay the filing fee, if one is required by municipal ordinance.

(b) Any resident of a municipality may nominate a candidate for a municipal office by:

(i) filing a nomination petition with the city recorder or town clerk during the office hours described in Section 10-3-301 and not later than the close of those office hours, between June 1 and June 7 of any odd-numbered year; and

(ii) paying the filing fee, if one is required by municipal ordinance.

[(3)] (4) (a) Before the filing officer may accept any declaration of candidacy or nomination petition, the filing officer shall:

(i) read to the prospective candidate or [person] individual filing the petition the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(ii) require the candidate or [person] individual filing the petition to state whether the candidate meets those requirements.

(b) If the prospective candidate does not meet the qualification requirements for the office, the filing officer may not accept the declaration of candidacy or nomination petition.

(c) If it appears that the prospective candidate meets the requirements of candidacy, the filing officer shall:

(i) inform the candidate that the candidate's name will appear on the ballot as it is written on the declaration of candidacy;

(ii) provide the candidate with a copy of the current campaign financial disclosure laws for the office the candidate is seeking and inform the candidate that failure to comply will result in disqualification as a candidate and removal of the candidate's name from the ballot;

(iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide Electronic Voter Information Website Program and inform the candidate of the submission deadline under Subsection 20A-7-801(4)(a);

(iv) provide the candidate with a copy of the pledge of fair campaign practices described under Section 20A-9-206 and inform the candidate that:

(A) signing the pledge is voluntary; and

(B) signed pledges shall be filed with the filing officer; and

(v) accept the declaration of candidacy or nomination petition.

(d) If the candidate elects to sign the pledge of fair campaign practices, the filing officer shall:

(i) accept the candidate's pledge; and

(ii) if the candidate has filed for a partisan office, provide a certified copy of the candidate's pledge to the chair of the county or state political party of which the candidate is a member.

[44] (5) Notwithstanding the requirement in Subsection [2] (3)(a)(i) to file a declaration of candidacy in person, [a person] an individual may designate an agent to file the form described in Subsection [5] (6) in person with the city recorder or town clerk if:

(a) the [person] individual is located outside the state during the filing period because:

(i) of employment with the state or the United States; or

(ii) the [person] individual is a member of:

(A) the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;

(B) the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and

Atmospheric Administration of the United States; or

(C) the National Guard on activated status;

(b) the [person] individual makes the declaration of candidacy described in Subsection [5] to a person (6) to an individual qualified to administer an oath;

(c) the [person] individual communicates with the city recorder or town clerk using an electronic device that allows the [person] individual and the city recorder or town clerk to see and hear each other; and

(d) the [person] individual provides the city recorder or town clerk with an email address to which the filing officer may send the copies described in Subsection [3] (4).

[5] (6) (a) The declaration of candidacy shall substantially comply with the following form:

"I, (print name) ____, being first sworn, say that I reside at ____ Street, City of ____, County of ____, state of Utah, Zip Code ____, Telephone Number (if any) ____; that I am a registered voter; and that I am a candidate for the office of ____ (stating the term). I will meet the legal qualifications required of candidates for this office. I will file all campaign financial disclosure reports as required by law and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot. I request that my name be printed upon the applicable official ballots. (Signed) _____

Subscribed and sworn to (or affirmed) before me by ____ on this _____ (month \ day \ year).

(Signed) _____ (Clerk or other officer qualified to administer oath)".

(b) An agent designated to file a declaration of candidacy under Subsection [4] (5) may not sign the form described in Subsection [5] (6)(a).

[6] (7) (a) A registered voter may be nominated for municipal office by submitting a petition signed, with a holographic signature, by:

(i) 25 residents of the municipality who are at least 18 years old; or

(ii) 20% of the residents of the municipality who are at least 18 years old.

(b) (i) The petition shall substantially conform to the following form:

"NOMINATION PETITION

The undersigned residents of (name of municipality) being 18 years old or older nominate (name of nominee) to the office of ____ for the (two or four-year term, whichever is applicable)."

(ii) The remainder of the petition shall contain lines and columns for the signatures of [persons] individuals signing the petition and [their] the individuals' addresses and telephone numbers.

[7] (8) If the declaration of candidacy or nomination petition fails to state whether the nomination is for the two-year or four-year term,

the clerk shall consider the nomination to be for the four-year term.

~~[(8)]~~ (9) (a) The clerk shall verify with the county clerk that all candidates are registered voters.

(b) Any candidate who is not registered to vote is disqualified and the clerk may not print the candidate's name on the ballot.

~~[(9)]~~ (10) Immediately after expiration of the period for filing a declaration of candidacy, the clerk shall:

(a) cause the names of the candidates as they will appear on the ballot to be published:

(i) in at least two successive publications of a newspaper with general circulation in the municipality; and

(ii) as required in Section 45-1-101; and

(b) notify the lieutenant governor of the names of the candidates as they will appear on the ballot.

~~[(49)]~~ (11) A declaration of candidacy or nomination petition filed under this section may not be amended after the expiration of the period for filing a declaration of candidacy.

~~[(41)]~~ (12) (a) A declaration of candidacy or nomination petition filed under this section is valid unless a written objection is filed with the clerk within five days after the last day for filing.

(b) If an objection is made, the clerk shall:

(i) mail or personally deliver notice of the objection to the affected candidate immediately; and

(ii) decide any objection within 48 hours after ~~[(#)]~~ the objection is filed.

(c) If the clerk sustains the objection, the candidate may correct the problem by amending the declaration or petition within three days after the objection is sustained or by filing a new declaration within three days after the objection is sustained.

(d) (i) The clerk's decision upon objections to form is final.

(ii) The clerk's decision upon substantive matters is reviewable by a district court if prompt application is made to the district court.

(iii) The decision of the district court is final unless the Supreme Court, in the exercise of its discretion, agrees to review the lower court decision.

~~[(12)]~~ (13) ~~[Any person who filed]~~ An individual who files a declaration of candidacy and ~~[was]~~ is nominated, and ~~[any person who was]~~ an individual who is nominated by a nomination petition, may, any time up to 23 days before the election, withdraw the nomination by filing a written affidavit with the clerk.

Section 9. Section 20A-9-403 is amended to read:

20A-9-403. Regular primary elections.

(1) (a) Candidates for elective office that are to be filled at the next regular general election shall be nominated in a regular primary election by direct vote of the people in the manner prescribed in this section. The fourth Tuesday of June of each even-numbered year is designated as regular primary election day. Nothing in this section shall affect a candidate's ability to qualify for a regular general election's ballot as an unaffiliated candidate under Section 20A-9-501 or to participate in a regular general election as a write-in candidate under Section 20A-9-601.

(b) Each registered political party that chooses to have the names of ~~[(its)]~~ the registered political party's candidates for elective office featured with party affiliation on the ballot at a regular general election shall comply with the requirements of this section and shall nominate ~~[(its)]~~ the registered political party's candidates for elective office in the manner ~~[(prescribed)]~~ described in this section.

(c) A filing officer may not permit an official ballot at a regular general election to be produced or used if the ballot denotes affiliation between a registered political party or any other political group and a candidate for elective office who ~~[was]~~ is not nominated in the manner prescribed in this section or in Subsection 20A-9-202(4).

(d) Unless noted otherwise, the dates in this section refer to those that occur in each even-numbered year in which a regular general election will be held.

(2) (a) Each registered political party, in a statement filed with the lieutenant governor, shall:

(i) either declare ~~[(their)]~~ the registered political party's intent to participate in the next regular primary election or declare that the registered political party chooses not to have the names of ~~[(its)]~~ the registered political party's candidates for elective office featured on the ballot at the next regular general election; and

(ii) if the registered political party participates in the upcoming regular primary election, identify one or more registered political parties whose members may vote for the registered political party's candidates and whether ~~[(or not persons)]~~ individuals identified as unaffiliated with a political party may vote for the registered political party's candidates.

(b) (i) A registered political party that is a continuing political party ~~[(must)]~~ shall file the statement described in Subsection (2)(a) with the lieutenant governor no later than 5 p.m. on November ~~[(15)]~~ 30 of each odd-numbered year.

(ii) An organization that is seeking to become a registered political party under Section 20A-8-103 ~~[(must)]~~ shall file the statement described in Subsection (2)(a) at the time that the registered political party files the petition described in Section 20A-8-103.

(3) (a) Except as provided in Subsection (3)(e), ~~[(a person who has submitted)]~~ an individual who submits a declaration of candidacy under Section 20A-9-202 shall appear as a candidate for elective

office on the regular primary ballot of the registered political party listed on the declaration of candidacy only if the ~~[person]~~ individual is certified by the appropriate filing officer as having submitted a set of nomination petitions that was:

(i) circulated and completed in accordance with Section 20A-9-405; and

(ii) signed by at least ~~[two percent]~~ 2% of the registered political party's members who reside in the political division of the office that the ~~[person]~~ individual seeks.

(b) (i) A candidate for elective office shall submit nomination petitions to the appropriate filing officer for verification and certification no later than 5 p.m. on the final day in March. ~~[Candidates]~~

(ii) A candidate may supplement ~~[their]~~ the candidate's submissions at any time on or before the filing deadline.

(c) (i) The lieutenant governor shall determine for each elective office the total number of signatures that must be submitted under Subsection (3)(a)(ii) by counting the aggregate number of ~~[persons]~~ individuals residing in each elective office's political division who have designated a particular registered political party on ~~[their]~~ the individuals' voter registration forms ~~[as of]~~ on or before November ~~[1]~~ 15 of each odd-numbered year.

(ii) The lieutenant governor shall publish ~~[this]~~ the determination for each elective office no later than November ~~[15]~~ 30 of each odd-numbered year.

(d) The filing officer shall:

(i) verify signatures on nomination petitions in a transparent and orderly manner;

(ii) for all qualifying candidates for elective office who ~~[submitted]~~ submit nomination petitions to the filing officer, issue certifications referenced in Subsection (3)(a) no later than 5 p.m. on the first Monday after the third Saturday in April;

(iii) consider active and inactive voters eligible to sign nomination petitions;

(iv) consider ~~[a person]~~ an individual who signs a nomination petition a member of a registered political party for purposes of Subsection (3)(a)(ii) if the ~~[person]~~ individual has designated that registered political party as the ~~[person's]~~ individual's party membership on the ~~[person's]~~ individual's voter registration form; and

(v) utilize procedures described in Section 20A-7-206.3 to verify submitted nomination petition signatures, or use statistical sampling procedures to verify submitted nomination petition signatures ~~[pursuant to]~~ in accordance with rules made under Subsection (3)(f).

(e) Notwithstanding any other provision in this Subsection (3), a candidate for lieutenant governor may appear on the regular primary ballot of a registered political party without submitting nomination petitions if the candidate files a declaration of candidacy and complies with Subsection 20A-9-202(3).

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director of elections, within the Office of the Lieutenant Governor, shall make rules that:

(i) provide for the use of statistical sampling procedures that:

(A) filing officers are required to use to verify signatures under Subsection (3)(d); and

(B) reflect a bona fide effort to determine the validity of a candidate's entire submission, using widely recognized statistical sampling techniques; and

(ii) provide for the transparent, orderly, and timely submission, verification, and certification of nomination petition signatures.

(g) The county clerk shall:

(i) review the declarations of candidacy filed by candidates for local boards of education to determine if more than two candidates have filed for the same seat;

(ii) place the names of all candidates who have filed a declaration of candidacy for a local board of education seat on the nonpartisan section of the ballot if more than two candidates have filed for the same seat; and

(iii) determine the order of the local board of education candidates' names on the ballot in accordance with Section 20A-6-305.

(4) (a) By 5 p.m. on the first Wednesday after the third Saturday in April, the lieutenant governor shall provide to the county clerks:

(i) a list of the names of all candidates for federal, constitutional, multi-county, single county, and county offices who have received certifications under Subsection (3), along with instructions on how those names shall appear on the ~~[primary election]~~ primary election ballot in accordance with Section 20A-6-305; and

(ii) a list of unopposed candidates for elective office who have been nominated by a registered political party under Subsection (5)(c) and instruct the county clerks to exclude ~~[such]~~ the unopposed candidates from the ~~[primary election]~~ primary election ballot.

(b) A candidate for lieutenant governor and a candidate for governor campaigning as joint-ticket running mates shall appear jointly on the ~~[primary election]~~ primary election ballot.

(c) After the county clerk receives the certified list from the lieutenant governor under Subsection (4)(a), the county clerk shall post or publish a primary election notice in substantially the following form:

"Notice is given that a primary election will be held Tuesday, June ____, ____ (year), to nominate party candidates for the parties and candidates for nonpartisan local school board positions listed on the primary ballot. The polling place for voting precinct ____ is _____. The polls will open at 7 a.m. and continue open until 8 p.m. of the same day. Attest: county clerk."

(5) (a) ~~[Candidates]~~ A candidate, other than a presidential ~~[candidate, receiving]~~ candidate, who, at the regular primary election, receives the highest number of votes cast for ~~[each office at the regular primary election are]~~ the office sought by the candidate is:

(i) nominated for that office by ~~[their]~~ the candidate's registered political party ~~[for that office or are nominated as a candidate];~~ or

(ii) for a nonpartisan local school board position, nominated for that office.

(b) If two or more candidates, other than presidential candidates, are to be elected to the office at the regular general election, those party candidates equal in number to positions to be filled who receive the highest number of votes at the regular primary election are the nominees of ~~[their]~~ the candidates' party for those positions.

~~[(c) A candidate who is unopposed for an elective office in the regular primary election of a registered political party is nominated by the party for that office without appearing on the primary ballot. A]~~

(c) (i) As used in this Subsection (5)(c), a candidate is "unopposed" if:

(A) no ~~[person]~~ individual other than the candidate ~~[has received]~~ receives a certification under Subsection (3) for the regular primary election ballot of the candidate's registered political party for a particular elective office~~[-];~~ or

(B) for an office where more than one individual is to be elected or nominated, the number of candidates who receive certification under Subsection (3) for the regular primary election of the candidate's registered political party does not exceed the total number of candidates to be elected or nominated for that office.

(ii) A candidate who is unopposed for an elective office in the regular primary election of a registered political party is nominated by the party for that office without appearing on the primary election ballot.

(6) (a) When a tie vote occurs in any primary election for any national, state, or other office that represents more than one county, the governor, lieutenant governor, and attorney general shall, at a public meeting called by the governor and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the governor determines.

(b) When a tie vote occurs in any primary election for any county office, the district court judges of the district in which the county is located shall, at a public meeting called by the judges and in the presence of the candidates involved, select the nominee by lot cast in whatever manner the judges determine.

(7) The expense of providing all ballots, blanks, or other supplies to be used at any primary election provided for by this section, and all expenses necessarily incurred in the preparation for or the conduct of that primary election shall be paid out of

the treasury of the county or state, in the same manner as for the regular general elections.

(8) An individual may not file a declaration of candidacy for a registered political party of which the individual is not a member, except to the extent that the registered political party permits otherwise under the registered political party's bylaws.

Section 10. Section 20A-9-404 is amended to read:

20A-9-404. Municipal primary elections.

(1) (a) Except as otherwise provided in this section, candidates for municipal office in all municipalities shall be nominated at a municipal primary election.

(b) Municipal primary elections shall be held:

(i) consistent with Section 20A-1-201.5, on the second Tuesday following the first Monday in the August before the regular municipal election; and

(ii) whenever possible, at the same polling places as the regular municipal election.

(2) If the number of candidates for a particular municipal office does not exceed twice the number of ~~[persons]~~ individuals needed to fill that office, a primary election for that office may not be held and the candidates are considered nominated.

(3) (a) For purposes of this Subsection (3), "convention" means an organized assembly of voters or delegates.

(b) (i) By ordinance adopted before the May 1 that falls before a regular municipal election, any third, fourth, or fifth class city or town may exempt itself from a primary election by providing that the nomination of candidates for municipal office to be voted upon at a municipal election be nominated by a political party convention or committee.

(ii) Any primary election exemption ordinance adopted under the authority of this ~~[subsection]~~ Subsection (3) remains in effect until repealed by ordinance.

(c) (i) A convention or committee may not nominate:

(A) an individual who has not submitted a declaration of candidacy, or has not been nominated by a nomination petition, under Section 20A-9-203; or

(B) more than one group of candidates, or have placed on the ballot more than one group of candidates, for the municipal offices to be voted upon at the municipal election.

(ii) A convention or committee may nominate ~~[a person]~~ an individual who has been nominated by a different convention or committee.

(iii) A political party may not have more than one group of candidates placed upon the ballot and may not group the same candidates on different tickets by the same party under a different name or emblem.

(d) (i) The convention or committee shall prepare a certificate of nomination for each ~~[person]~~ individual nominated.

(ii) The certificate of nomination shall:

(A) contain the name of the office for which each ~~[person]~~ individual is nominated, the name, post office address, and, if in a city, the street number of residence and place of business, if any, of each ~~[person]~~ individual nominated;

(B) designate in not more than five words the political party that the convention or committee represents;

(C) contain a copy of the resolution passed at the convention that authorized the committee to make the nomination;

(D) contain a statement certifying that the name of the candidate nominated by the political party will not appear on the ballot as a candidate for any other political party;

(E) be signed by the presiding officer and secretary of the convention or committee; and

(F) contain a statement identifying the residence and post office address of the presiding officer and secretary and certifying that the presiding officer and secretary were officers of the convention or committee and that the certificates are true to the best of their knowledge and belief.

(iii) Certificates of nomination shall be filed with the clerk not later than 80 days before the municipal general election.

(e) A committee appointed at a convention, if authorized by an enabling resolution, may also make nominations or fill vacancies in nominations made at a convention.

(f) The election ballot shall substantially comply with the form prescribed in Title 20A, Chapter 6, Part 4, Ballot Form Requirements for Municipal Elections, but the party name shall be included with the candidate's name.

(4) (a) Any third, fourth, or fifth class city may adopt an ordinance before the May 1 that falls before the regular municipal election that:

(i) exempts the city from the other methods of nominating candidates to municipal office provided in this section; and

(ii) provides for a partisan primary election method of nominating candidates as provided in this Subsection (4).

(b) (i) Any party that was a registered political party at the last regular general election or regular municipal election is a municipal political party under this section.

(ii) Any political party may qualify as a municipal political party by presenting a petition to the city recorder that:

(A) is signed, with a holographic signature, by registered voters within the municipality equal to at least 20% of the number of votes cast for all candidates for mayor in the last municipal election at which a mayor was elected;

(B) is filed with the city recorder by May 31 of any odd-numbered year;

(C) is substantially similar to the form of the signature sheets described in Section 20A-7-303; and

(D) contains the name of the municipal political party using not more than five words.

(c) (i) If the number of candidates for a particular office does not exceed twice the number of offices to be filled at the regular municipal election, no partisan primary election for that office shall be held and the candidates are considered to be nominated.

(ii) If the number of candidates for a particular office exceeds twice the number of offices to be filled at the regular municipal election, those candidates for municipal office shall be nominated at a partisan primary election.

(d) The clerk shall ensure that:

(i) the partisan municipal primary ballot is similar to the ballot forms required by Sections 20A-6-401 and 20A-6-401.1;

(ii) the candidates for each municipal political party are listed in one or more columns under their party name and emblem;

(iii) the names of candidates of all parties are printed on the same ballot, but under their party designation;

(iv) every ballot is folded and perforated ~~[so as to separate]~~ in a manner that separates the candidates of one party from those of the other parties and ~~[so as to enable the elector]~~ enables the voter to separate the part of the ballot containing the names of the party of ~~[his]~~ the voter's choice from the remainder of the ballot; and

(v) the side edges of all ballots are perforated so that the outside sections of the ballots, when detached, are similar in appearance to inside sections when detached.

(e) After marking a municipal primary ballot, the voter shall:

(i) detach the part of the ballot containing the names of the candidates of the party ~~[he]~~ the voter has voted from the rest of the ballot;

(ii) fold the detached part so that its face is concealed and deposit it in the ballot box; and

(iii) fold the remainder of the ballot containing the names of the candidates of the parties for whom the elector did not vote and deposit it in the blank ballot box.

(f) Immediately after the canvass, the election judges shall, without examination, destroy the tickets deposited in the blank ballot box.

Section 11. Section 20A-9-406 is amended to read:

20A-9-406. Qualified political party -- Requirements and exemptions.

The following provisions apply to a qualified political party:

(1) the qualified political party shall, no later than 5 p.m. on ~~[March 1 of each even-numbered]~~ November 30 of each odd-numbered year, certify to the lieutenant governor the identity of one or more registered political parties whose members may vote for the qualified political party's candidates and whether unaffiliated voters may vote for the qualified political party's candidates;

(2) the provisions of Subsections 20A-9-403(1) through (4)(a), Subsection 20A-9-403(5)(c), and Section 20A-9-405 do not apply to a nomination for the qualified political party;

(3) an individual may only seek the nomination of the qualified political party by using a method described in Section 20A-9-407, Section 20A-9-408, or both;

(4) the qualified political party shall comply with the provisions of Sections 20A-9-407, 20A-9-408, and 20A-9-409;

(5) notwithstanding Subsection 20A-6-301(1)(a), (1)(g), or (2)(a), each election officer shall ensure that a ballot described in Section 20A-6-301 includes each ~~[person]~~ individual nominated by a qualified political party:

(a) under the qualified political party's name, if any; or

(b) under the title of the qualified registered political party as designated by the qualified political party in the certification described in Subsection (1), or, if none is designated, then under some suitable title;

(6) notwithstanding Subsection 20A-6-302(1)(a), each election officer shall ensure, for paper ballots in regular general elections, that each candidate who is nominated by the qualified political party is listed by party;

(7) notwithstanding Subsection 20A-6-303(1)(d), each election officer shall ensure that the party designation of each candidate who is nominated by the qualified political party is printed immediately adjacent to the candidate's name on ballot sheets or ballot labels;

(8) notwithstanding Subsection 20A-6-304(1)(e), each election officer shall ensure that the party designation of each candidate who is nominated by the qualified political party is displayed adjacent to the candidate's name on an electronic ballot;

(9) "candidates for elective office," defined in Subsection 20A-9-101(1)(a), also includes an individual who files a declaration of candidacy under Section 20A-9-407 or 20A-9-408 to run in a regular general election for a federal office, constitutional office, multicounty office, or county office;

(10) an individual who is nominated by, or seeking the nomination of, the qualified political

party is not required to comply with Subsection 20A-9-201(1)(c);

(11) notwithstanding Subsection 20A-9-403(3), the qualified political party is entitled to have each of the qualified political party's candidates for elective office appear on the primary ballot of the qualified political party with an indication that each candidate is a candidate for the qualified political party;

(12) notwithstanding Subsection 20A-9-403(4)(a), the lieutenant governor shall include on the list provided by the lieutenant governor to the county clerks:

(a) the names of all candidates of the qualified political party for federal, constitutional, multicounty, and county offices; and

(b) the names of unopposed candidates for elective office who have been nominated by the qualified political party and instruct the county clerks to exclude such candidates from the primary-election ballot;

(13) notwithstanding Subsection 20A-9-403(5)(c), a candidate who is unopposed for an elective office in the regular primary election of the qualified political party is nominated by the party for that office without appearing on the primary ballot; and

(14) notwithstanding the provisions of Subsections 20A-9-403(1) and (2) and Section 20A-9-405, the qualified political party is entitled to have the names of its candidates for elective office featured with party affiliation on the ballot at a regular general election.

Section 12. Section 20A-9-407 is amended to read:

20A-9-407. Convention process to seek the nomination of a qualified political party.

(1) This section describes the requirements for a member of a qualified political party who is seeking the nomination of a qualified political party for an elective office through the qualified political party's convention process.

(2) Notwithstanding Subsection 20A-9-201(4)(a), the form of the declaration of candidacy for a member of a qualified political party who is nominated by, or who is seeking the nomination of, the qualified political party under this section shall be substantially as described in Section 20A-9-408.5.

(3) Notwithstanding Subsection 20A-9-202(1)(a), and except as provided in Subsection 20A-9-202(4), a member of a qualified political party who, under this section, is seeking the nomination of the qualified political party for an elective office that is to be filled at the next general election, shall:

(a) file a declaration of candidacy in person with the filing officer on or after the second Friday in March and before 5 p.m. on the third Thursday in March before the next regular general election; and

(b) pay the filing fee.

(4) Notwithstanding Subsection 20A-9-202(2)(a), a member of a qualified political party who, under this section, is seeking the nomination of the qualified political party for the office of district attorney within a multicounty prosecution district that is to be filled at the next general election shall:

(a) file a declaration of candidacy with the county clerk designated in the interlocal agreement creating the prosecution district on or after the second Friday in March and before 5 p.m. on the third Thursday in March before the next regular general election; and

(b) pay the filing fee.

(5) Notwithstanding Subsection 20A-9-202(3)(a)(iii), a lieutenant governor candidate who files as the joint-ticket running mate of an individual who is nominated by a qualified political party, under this section, for the office of governor shall, on or before 5 p.m. on the first Monday after the third Saturday in April, file a declaration of candidacy and submit a letter from the candidate for governor that names the lieutenant governor candidate as a joint-ticket running mate.

(6) (a) A qualified political party that nominates a candidate under this section shall certify the name of the candidate to the lieutenant governor before 5 p.m. on the first Monday after the fourth Saturday in April.

(b) The lieutenant governor shall ensure that the certification described in Subsection 20A-9-701(1) also includes the name of each candidate nominated by a qualified political party under this section.

(7) Notwithstanding Subsection 20A-9-701(2), the ballot shall, for each candidate who is nominated by a qualified political party under this section, designate the qualified political party that nominated the candidate.

Section 13. Section 20A-9-408 is amended to read:

20A-9-408. Signature-gathering process to seek the nomination of a qualified political party.

(1) This section describes the requirements for a member of a qualified political party who is seeking the nomination of the qualified political party for an elective office through the signature-gathering process described in this section.

(2) Notwithstanding Subsection 20A-9-201(4)(a), the form of the declaration of candidacy for a member of a qualified political party who is nominated by, or who is seeking the nomination of, the qualified political party under this section shall be substantially as described in Section 20A-9-408.5.

(3) Notwithstanding Subsection 20A-9-202(1)(a), and except as provided in Subsection 20A-9-202(4), a member of a qualified

political party who, under this section, is seeking the nomination of the qualified political party for an elective office that is to be filled at the next general election shall:

(a) within the period beginning on January 1 before the next regular general election and ending on the third Thursday in March of the same year, and before gathering signatures under this section, file with the filing officer on a form approved by the lieutenant governor a notice of intent to gather signatures for candidacy that includes:

(i) the name of the member who will attempt to become a candidate for a registered political party under this section;

(ii) the name of the registered political party for which the member is seeking nomination;

(iii) the office for which the member is seeking to become a candidate;

(iv) the address and telephone number of the member; and

(v) other information required by the lieutenant governor;

(b) file a declaration of candidacy, in person, with the filing officer on or after the second Friday in March and before 5 p.m. on the third Thursday in March before the next regular general election; and

(c) pay the filing fee.

(4) Notwithstanding Subsection 20A-9-202(2)(a), a member of a qualified political party who, under this section, is seeking the nomination of the qualified political party for the office of district attorney within a multicounty prosecution district that is to be filled at the next general election shall:

(a) on or after January 1 before the next regular general election, and before gathering signatures under this section, file with the filing officer on a form approved by the lieutenant governor a notice of intent to gather signatures for candidacy that includes:

(i) the name of the member who will attempt to become a candidate for a registered political party under this section;

(ii) the name of the registered political party for which the member is seeking nomination;

(iii) the office for which the member is seeking to become a candidate;

(iv) the address and telephone number of the member; and

(v) other information required by the lieutenant governor;

(b) file a declaration of candidacy, in person, with the filing officer on or after the second Friday in March and before 5 p.m. on the third Thursday in March before the next regular general election; and

(c) pay the filing fee.

(5) Notwithstanding Subsection 20A-9-202(3)(a)(iii), a lieutenant governor

candidate who files as the joint-ticket running mate of an individual who is nominated by a qualified political party, under this section, for the office of governor shall, on or before 5 p.m. on the first Monday after the third Saturday in April, file a declaration of candidacy and submit a letter from the candidate for governor that names the lieutenant governor candidate as a joint-ticket running mate.

(6) The lieutenant governor shall ensure that the certification described in Subsection 20A-9-701(1) also includes the name of each candidate nominated by a qualified political party under this section.

(7) Notwithstanding Subsection 20A-9-701(2), the ballot shall, for each candidate who is nominated by a qualified political party under this section, designate the qualified political party that nominated the candidate.

(8) A member of a qualified political party may seek the nomination of the qualified political party for an elective office by:

(a) complying with the requirements described in this section; and

(b) collecting signatures, on a form approved by the lieutenant governor, during the period beginning on January 1 of an even-numbered year and ending 14 days before the day on which the qualified political party's convention for the office is held, in the following amounts:

(i) for a statewide race, 28,000 signatures of registered voters in the state who are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election;

(ii) for a congressional district race, 7,000 signatures of registered voters who are residents of the congressional district and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election;

(iii) for a state Senate district race, 2,000 signatures of registered voters who are residents of the state Senate district and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election;

(iv) for a state House district race, 1,000 signatures of registered voters who are residents of the state House district and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election;

(v) for a State Board of Education race, the lesser of:

(A) 2,000 signatures of registered voters who are residents of the State Board of Education district and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election; or

(B) 3% of the registered voters of the qualified political party who are residents of the applicable State Board of Education district; and

(vi) for a county office race, signatures of 3% of the registered voters who are residents of the area

permitted to vote for the county office and are permitted by the qualified political party to vote for the qualified political party's candidates in a primary election.

(9) (a) In order for a member of the qualified political party to qualify as a candidate for the qualified political party's nomination for an elective office under this section, the member shall:

(i) collect the signatures on a form approved by the lieutenant governor, using the same circulation and verification requirements described in Sections 20A-7-204 and 20A-7-205; and

(ii) submit the signatures to the election officer no later than 14 days before the day on which the qualified political party holds its convention to select candidates, for the elective office, for the qualified political party's nomination.

(b) An individual may not gather signatures under this section until after the individual files a notice of intent to gather signatures for candidacy described in this section.

(c) An individual who files a notice of intent to gather signatures for candidacy, described in Subsection (3)(a) or (4)(a), is, beginning on the day on which the individual files the notice of intent to gather signatures for candidacy:

(i) required to comply with the reporting requirements that a candidate for office is required to comply with; and

(ii) subject to the same enforcement provisions, and civil and criminal penalties, that apply to a candidate for office in relation to the reporting requirements described in Subsection (9)(c)(i).

(d) Upon timely receipt of the signatures described in Subsections (8) and (9)(a), the election officer shall, no later than one day before the day on which the qualified political party holds the convention to select a nominee for the elective office to which the signature packets relate:

(i) check the name of each individual who completes the verification for a signature packet to determine whether each individual is a resident of Utah and is at least 18 years old;

(ii) submit the name of each individual described in Subsection (9)(d)(i) who is not a Utah resident or who is not at least 18 years old to the attorney general and the county attorney;

(iii) determine whether each signer is a registered voter who is qualified to sign the petition, using the same method, described in Section 20A-7-206.3, used to verify a signature on a petition;

(iv) certify whether each name is that of a registered voter who is qualified to sign the signature packet; and

(v) notify the qualified political party and the lieutenant governor of the name of each member of the qualified political party who qualifies as a nominee of the qualified political party, under this section, for the elective office to which the convention relates.

(e) Upon receipt of a notice of intent to gather signatures for candidacy described in this section, the lieutenant governor shall post the notice of intent to gather signatures for candidacy on the lieutenant governor's website in the same location that the lieutenant governor posts a declaration of candidacy.

Section 14. Section 20A-9-409 is amended to read:

20A-9-409. Primary election provisions relating to qualified political party.

(1) The fourth Tuesday of June of each even-numbered year is designated as a regular primary election day.

(2) A qualified political party that nominates one or more candidates for an elective office under Section 20A-9-407 and does not have a candidate qualify as a candidate for that office under Section 20A-9-408, may, but is not required to, participate in the primary election for that office.

(3) A qualified political party that has only one candidate qualify as a candidate for an elective office under Section 20A-9-408 and does not nominate a candidate for that office under Section 20A-9-407, may, but is not required to, participate in the primary election for that office.

(4) A qualified political party that nominates one or more candidates for an elective office under Section 20A-9-407 and has one or more candidates qualify as a candidate for that office under Section 20A-9-408 shall participate in the primary election for that office.

(5) A qualified political party that has two or more candidates qualify as candidates for an elective office under Section 20A-9-408 and does not nominate a candidate for that office under Section 20A-9-407 shall participate in the primary election for that office.

(6) (a) As used in this Subsection (6), a candidate is "unopposed" if:

(i) no individual other than the candidate receives a certification, from the appropriate filing officer, for the regular primary election ballot of the candidate's registered political party for a particular elective office; or

(ii) for an office where more than one individual is to be elected or nominated, the number of candidates who receive certification, from the appropriate filing officer, for the regular primary election of the candidate's registered political party does not exceed the total number of candidates to be elected or nominated for that office.

(b) By 5 p.m. on the first Wednesday after the third Saturday in April, the lieutenant governor shall:

(i) provide to the county clerks:

(A) a list of the names of all candidates for federal, constitutional, multi-county, single county, and county offices who have received certifications from the appropriate filing officer, along with

instructions on how those names shall appear on the primary election ballot in accordance with Section 20A-6-305; and

(B) a list of unopposed candidates for elective office who have been nominated by a registered political party; and

(ii) instruct the county clerks to exclude unopposed candidates from the primary election ballot.

Section 15. Section 53A-2-117 is amended to read:

53A-2-117. Definitions.

As used in Sections 53A-2-117 through 53A-2-122, except Section 53A-2-118.4:

(1) "Allocation date" means:

(a) June 30 of the second calendar year after the local school board general election date described in Subsection 53A-2-118.1(3)(a)(i); or

(b) another date that the transition teams under Section 53A-2-118.1 mutually agree to.

(2) "Canvass date" means the date of the canvass of an election under Subsection 53A-2-118.1(5)(9) at which voters approve the creation of a new school district under Section 53A-2-118.1.

(3) "Creation election date" means the date of the election under Subsection 53A-2-118.1(5)(9) at which voters approve the creation of a new school district under Section 53A-2-118.1.

(4) "Divided school district," "existing district," or "existing school district" means a school district from which a new district is created.

(5) "New district" or "new school district" means a school district created under Section 53A-2-118 or 53A-2-118.1.

(6) "Remaining district" or "remaining school district" means an existing district after the creation of a new district.

Section 16. Section 53A-2-118 is amended to read:

53A-2-118. Creation of new school district -- Initiation of process -- Procedures to be followed.

(1) A new school district may be created from one or more existing school districts, as provided in this section.

(2) ~~[(a)]~~ The process to create a new school district may be initiated:

~~[(i)]~~ (a) through a citizens' initiative petition;

~~[(ii)]~~ (b) at the request of the board of the existing district or districts to be affected by the creation of the new district; or

~~[(iii)]~~ (c) at the request of a city within the boundaries of the school district or at the request of interlocal agreement participants, pursuant to Section 53A-2-118.1.

~~[(b) (i) — Each]~~ (3) (a) An initiative petition submitted under Subsection (2)(a)~~[(i)]~~ shall be

signed by qualified electors residing within the geographical boundaries of the proposed new school district in an amount equal ~~[in number]~~ to at least 15% of ~~[the number of electors in the area who voted for the office of governor]~~ all votes cast within the geographic boundaries of the proposed new school district for all candidates for president of the United States at the last regular general election at which a president of the United States was elected.

~~[(ii)]~~ (b) Each request or petition submitted under Subsection (2)~~[(a)]~~ shall:

~~[(A)]~~ (i) be filed with the clerk of each county in which any part of the proposed new school district is located;

~~[(B)]~~ (ii) indicate the typed or printed name and current residence address of each governing board member making a request, or registered voter signing a petition, as the case may be;

~~[(C)]~~ (iii) describe the proposed new school district boundaries; and

~~[(D)]~~ (iv) designate up to five signers of the petition or request as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each.

~~[(c)]~~ A signer of a petition under Subsection (2)(a)(i) may withdraw or, once withdrawn, reinstate the signer's signature at any time before the filing of the petition by filing a written withdrawal or reinstatement with the county clerk.

~~[(d)]~~ (c) The process ~~[under]~~ described in Subsection (2)(a)~~[(i)]~~ may only be initiated once during any four-year period.

~~[(e)]~~ (d) A new district may not be formed ~~[pursuant to]~~ under Subsection (2)~~[(a)]~~ if the student population of the proposed new district is less than 3,000 or the existing district's student population would be less than 3,000 because of the creation of the new school district.

(4) A signer of a petition described in Subsection (2)(a) may withdraw or, once withdrawn, reinstate the signer's signature at any time before the filing of the petition by filing a written request for withdrawal or reinstatement with the county clerk.

~~[(f)]~~ (5) Within 45 days after the ~~[filing of]~~ day on which a petition ~~[under]~~ described in Subsection (2)(a)~~[(i)]~~ is filed, or five business days after the ~~[filing of]~~ day on which a request ~~[under]~~ described in Subsection (2)~~[(a)(ii) or (iii)]~~(b) or (c) is filed, the clerk of each county with which ~~[a]~~ the request or petition is filed shall:

~~[(i)]~~ (a) determine whether the request or petition complies with Subsections (2)~~[(a), (b), (d), and (e)]~~ and (3), as applicable; and

~~[(ii)]~~ (A) (b) (i) if the county clerk determines that the request or petition complies with the applicable requirements:

~~[(i)]~~ (A) certify the request or petition and deliver the certified request or petition to the county legislative body; and

~~[(ii)]~~ (B) mail or deliver written notification of the certification to the contact sponsor; or

~~[(B)]~~ (ii) if the county clerk determines that the request or petition fails to comply with any of the applicable requirements, reject the request or petition and notify the contact sponsor in writing of the rejection and reasons for the rejection.

~~[(g)]~~ (6) (a) If the county clerk fails to certify or reject a request or petition within the time specified in Subsection ~~[(2)(f)]~~ (5), the request or petition ~~[shall be]~~ is considered to be certified.

~~[(h)]~~ (b) (i) If the county clerk rejects a request or petition, the person that submitted the request or petition may ~~[be amended]~~ amend the request or petition to correct the deficiencies for which ~~[it]~~ the request or petition was rejected, and ~~[then refiled]~~ refile the request or petition.

(ii) Subsection ~~[(2)(d)]~~ (3)(c) does not apply to a request or petition that is amended and refiled after having been rejected by a county clerk.

~~[(i)]~~ (c) If, on or before December 1, a county legislative body receives a request from a school board under Subsection (2)~~[(a)(ii)]~~(b) or a petition under Subsection (2)(a)~~[(i)]~~ which ~~[that]~~ is certified by the county clerk ~~[on or before December 1]~~:

(i) the county legislative body shall appoint an ad hoc advisory committee, as provided ~~[by]~~ in Subsection ~~[(3)]~~ (7), on or before January 1;

(ii) the ad hoc advisory committee shall submit its report and recommendations to the county legislative body, as provided ~~[by]~~ in Subsection ~~[(3)]~~ (7), on or before July 1; and

(iii) if the legislative body of each county with which a request or petition is filed approves a proposal to create a new district, ~~[the proposal shall be submitted]~~ each legislative body shall submit the proposal to the respective county clerk to be voted on by the electors of each existing district at the regular general or municipal general election held in November.

~~[(3)]~~ (7) (a) The legislative body of each county with which a request or petition is filed shall appoint an ad hoc advisory committee to review and make recommendations on a request for the creation of a new school district submitted under Subsection (2)(a)~~[(i) or (ii)]~~ or (b).

(b) The advisory committee shall:

(i) seek input from:

(A) those requesting the creation of the new school district;

(B) the school board and school personnel of each existing school district;

(C) those citizens residing within the geographical boundaries of each existing school district;

(D) the State Board of Education; and

(E) other interested parties;

(ii) review data and gather information on at least:

(A) the financial viability of the proposed new school district;

(B) the proposal's financial impact on each existing school district;

(C) the exact placement of school district boundaries; and

(D) the positive and negative effects of creating a new school district and whether the positive effects outweigh the negative if a new school district were to be created; and

(iii) make a report to the county legislative body in a public meeting on the committee's activities, together with a recommendation on whether to create a new school district.

[4] (8) For a request or petition submitted under Subsection (2)(a)[(i) or (2)(a)(ii)] or (b):

(a) The county legislative body shall provide for a 45-day public comment period on the report and recommendation to begin on the day the report is given under Subsection [(3)] (7)(b)(iii).

(b) Within 14 days after the end of the comment period, the legislative body of each county with which a request or petition is filed shall vote on the creation of the proposed new school district.

(c) The proposal is approved if a majority of the members of the legislative body of each county with which a request or petition is filed votes in favor of the proposal.

(d) If the proposal is approved, the legislative body of each county with which a request or petition is filed shall submit the proposal to the county clerk to be voted on:

(i) by the legal voters of each existing school district affected by the proposal;

(ii) in accordance with the procedures and requirements applicable to a regular general election under Title 20A, Election Code; and

(iii) at the next regular general election or municipal general election, whichever is first.

(e) Creation of the new school district shall occur if a majority of the electors within both the proposed school district and each remaining school district voting on the proposal vote in favor of the creation of the new district.

(f) Each county legislative body shall comply with the requirements of Section 53A-2-101.5.

(g) If a proposal submitted under Subsection (2)(a)[(i) or (ii)] or (b) to create a new district is approved by the electors, the existing district's documented costs to study and implement the proposal shall be reimbursed by the new district.

[45] (9) (a) If a proposal submitted under Subsection (2)[(a)(iii)](c) is certified under Subsection [(2)(f) or (g)] (5) or (6)(a), the legislative body of each county in which part of the proposed new school district is located shall submit the proposal to the respective clerk of each county to be voted on:

(i) by the legal voters residing within the proposed new school district boundaries;

(ii) in accordance with the procedures and requirements applicable to a regular general election under Title 20A, Election Code; and

(iii) at the next regular general election or municipal general election, whichever is first.

(b) (i) If a majority of the legal voters within the proposed new school district boundaries voting on the proposal at an election under Subsection [(45)] (9)(a) vote in favor of the creation of the new district:

(A) each county legislative body shall comply with the requirements of Section 53A-2-101.5; and

(B) upon the lieutenant governor's issuance of the certificate under Section 67-1a-6.5, the new district is created.

(ii) Notwithstanding the creation of a new district as provided in Subsection [(45)] (9)(b)(i)(B):

(A) a new school district may not begin to provide educational services to the area within the new district until July 1 of the second calendar year following the school board general election date described in Subsection 53A-2-118.1(3)(a)(i);

(B) a remaining district may not begin to provide educational services to the area within the remaining district until the time specified in Subsection [(45)] (9)(b)(ii)(A); and

(C) each existing district shall continue, until the time specified in Subsection [(45)] (9)(b)(ii)(A), to provide educational services within the entire area covered by the existing district.

Section 17. Section 53A-2-118.1 is amended to read:

53A-2-118.1. Proposal initiated by a city or by interlocal agreement participants to create a school district -- Boundaries -- Election of local school board members -- Allocation of assets and liabilities -- Startup costs -- Transfer of title.

(1) (a) After conducting a feasibility study, a city with a population of at least 50,000, as determined by the lieutenant governor using the process described in Subsection 67-1a-2(3), may by majority vote of the legislative body, submit for voter approval a measure to create a new school district with boundaries contiguous with that city's boundaries, in accordance with Section 53A-2-118.

(b) (i) The determination of all matters relating to the scope, adequacy, and other aspects of a feasibility study under Subsection (1)(a) is within the exclusive discretion of the city's legislative body.

(ii) An inadequacy of a feasibility study under Subsection (1)(a) may not be the basis of a legal action or other challenge to:

(A) an election for voter approval of the creation of a new school district; or

(B) the creation of the new school district.

(2) (a) By majority vote of the legislative body, a city of any class, a town, or a county, may, together

with one or more other cities, towns, or the county enter into an interlocal agreement, in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, for the purpose of submitting for voter approval a measure to create a new school district.

(b) (i) In accordance with Section 53A-2-118, interlocal agreement participants under Subsection (2)(a) may submit a proposal for voter approval if:

(A) the interlocal agreement participants conduct a feasibility study prior to submitting the proposal to the county;

(B) the combined population within the proposed new school district boundaries is at least 50,000;

(C) the new school district boundaries:

(I) are contiguous;

(II) do not completely surround or otherwise completely geographically isolate a portion of an existing school district that is not part of the proposed new school district from the remaining part of that existing school district, except as provided in Subsection (2)(d)(iii);

(III) include the entire boundaries of each participant city or town, except as provided in Subsection (2)(d)(ii); and

(IV) subject to Subsection (2)(b)(ii), do not cross county lines; and

(D) the combined population within the proposed new school district of interlocal agreement participants that have entered into an interlocal agreement proposing to create a new school district is at least 80% of the total population of the proposed new school district.

(i) The determination of all matters relating to the scope, adequacy, and other aspects of a feasibility study under Subsection (2)(b)(i)(A), including whether to conduct a new feasibility study or revise a previous feasibility study due to a change in the proposed new school district boundaries, is within the exclusive discretion of the legislative bodies of the interlocal agreement participants that enter into an interlocal agreement to submit for voter approval a measure to create a new school district.

(iii) An inadequacy of a feasibility study under Subsection (2)(b)(i)(A) may not be the basis of a legal action or other challenge to:

(A) an election for voter approval of the creation of a new school district; or

(B) the creation of the new school district.

(iv) For purposes of determining whether the boundaries of a proposed new school district cross county lines under Subsection (2)(b)(i)(C)(IV):

(A) a municipality located in more than one county and entirely within the boundaries of a single school district is considered to be entirely within the same county as other participants in an interlocal agreement under Subsection (2)(a) if

more of the municipality's land area and population is located in that same county than outside the county; and

(B) a municipality located in more than one county that participates in an interlocal agreement under Subsection (2)(a) with respect to some but not all of the area within the municipality's boundaries on the basis of the exception stated in Subsection (2)(d)(ii)(B) may not be considered to cross county lines.

(c) (i) A county may only participate in an interlocal agreement under this Subsection (2) for the unincorporated areas of the county.

(ii) Boundaries of a new school district created under this section may include:

(A) a portion of one or more existing school districts; and

(B) a portion of the unincorporated area of a county, including a portion of a township.

(d) (i) As used in this Subsection (2)(d):

(A) "Isolated area" means an area that:

(I) is entirely within the boundaries of a municipality that, except for that area, is entirely within a school district different than the school district in which the area is located; and

(II) would, because of the creation of a new school district from the existing district in which the area is located, become completely geographically isolated.

(B) "Municipality's school district" means the school district that includes all of the municipality in which the isolated area is located except the isolated area.

(ii) Notwithstanding Subsection (2)(b)(i)(C)(III), a municipality may be a participant in an interlocal agreement under Subsection (2)(a) with respect to some but not all of the area within the municipality's boundaries if:

(A) the portion of the municipality proposed to be included in the new school district would, if not included, become an isolated area upon the creation of the new school district; or

(B) (I) the portion of the municipality proposed to be included in the new school district is within the boundaries of the same school district that includes the other interlocal agreement participants; and

(II) the portion of the municipality proposed to be excluded from the new school district is within the boundaries of a school district other than the school district that includes the other interlocal agreement participants.

(iii) (A) Notwithstanding Subsection (2)(b)(i)(C)(II), a proposal to create a new school district may be submitted for voter approval pursuant to an interlocal agreement under Subsection (2)(a), even though the new school district boundaries would create an isolated area, if:

(I) the potential isolated area is contiguous to one or more of the interlocal agreement participants;

(II) the interlocal participants submit a written request to the municipality in which the potential isolated area is located, requesting the municipality to enter into an interlocal agreement under Subsection (2)(a) that proposes to submit for voter approval a measure to create a new school district that includes the potential isolated area; and

(III) 90 days after a request under Subsection (2)(d)(iii)(A)(II) is submitted, the municipality has not entered into an interlocal agreement as requested in the request.

(B) Each municipality receiving a request under Subsection (2)(d)(iii)(A)(II) shall hold one or more public hearings to allow input from the public and affected school districts regarding whether or not the municipality should enter into an interlocal agreement with respect to the potential isolated area.

(C) (I) This Subsection (2)(d)(iii)(C) applies if:

(Aa) a new school district is created under this section after a measure is submitted to voters based on the authority of Subsection (2)(d)(iii)(A); and

(Bb) the creation of the new school district results in an isolated area.

(II) The isolated area shall, on July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i), become part of the municipality's school district.

(III) Unless the isolated area is the only remaining part of the existing district, the process described in Subsection (4) shall be modified to:

(Aa) include a third transition team, appointed by the local school board of the municipality's school district, to represent that school district; and

(Bb) require allocation of the existing district's assets and liabilities among the new district, the remaining district, and the municipality's school district.

(IV) The existing district shall continue to provide educational services to the isolated area until July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i).

(3) (a) If a proposal under this section is approved by voters:

(i) an election shall be held at the next regular general election to elect:

(A) members to the local school board of the existing school district whose terms are expiring;

(B) all members to the local school board of the new school district; and

(C) all members to the local school board of the remaining district;

(ii) the assets and liabilities of the existing school district shall be divided between the remaining school district and the new school district as provided in Subsection (5) and Section 53A-2-121;

(iii) transferred employees shall be treated in accordance with Sections 53A-2-116 and 53A-2-122;

(iv) (A) an individual residing within the boundaries of a new school district at the time the new school district is created may, for six school years after the creation of the new school district, elect to enroll in a secondary school located outside the boundaries of the new school district if:

(I) the individual resides within the boundaries of that secondary school as of the day before the new school district is created; and

(II) the individual would have been eligible to enroll in that secondary school had the new school district not been created; and

(B) the school district in which the secondary school is located shall provide educational services, including, if provided before the creation of the new school district, busing, to each individual making an election under Subsection (3)(a)(iv)(A) for each school year for which the individual makes the election; and

(v) within one year after the new district begins providing educational services, the superintendent of each remaining district affected and the superintendent of the new district shall meet, together with the Superintendent of Public Instruction, to determine if further boundary changes should be proposed in accordance with Section 53A-2-104.

(b) (i) The terms of the initial members of the local school board of the new district and remaining district shall be staggered and adjusted by the county legislative body so that approximately half of the local school board is elected every two years.

(ii) The term of a member of the existing local school board, including a member elected under Subsection (3)(a)(i)(A), terminates on July 1 of the second year after the local school board general election date described in Subsection (3)(a)(i), regardless of when the term would otherwise have terminated.

(iii) Notwithstanding the existence of a local school board for the new district and a local school board for the remaining district under Subsection (3)(a)(i), the local school board of the existing district shall continue, until the time specified in Subsection 53A-2-118~~(5)~~(9)(b)(ii)(A), to function and exercise authority as a local school board to the extent necessary to continue to provide educational services to the entire existing district.

(iv) ~~A person~~ An individual may simultaneously serve as or be elected to be a member of the local school board of an existing district and a member of the local school board of:

(A) a new district; or

(B) a remaining district.

(4) (a) Within 45 days after the canvass date for the election at which voters approve the creation of a new district:

(i) a transition team to represent the remaining district shall be appointed by the members of the

existing local school board who reside within the area of the remaining district, in consultation with:

(A) the legislative bodies of all municipalities in the area of the remaining district; and

(B) the legislative body of the county in which the remaining district is located, if the remaining district includes one or more unincorporated areas of the county; and

(ii) another transition team to represent the new district shall be appointed by:

(A) for a new district located entirely within the boundaries of a single city, the legislative body of that city; or

(B) for each other new district, the legislative bodies of all interlocal agreement participants.

(b) The local school board of the existing school district shall, within 60 days after the canvass date for the election at which voters approve the creation of a new district:

(i) prepare an inventory of the existing district's:

(A) assets, both tangible and intangible, real and personal; and

(B) liabilities; and

(ii) deliver a copy of the inventory to each of the transition teams.

(c) The transition teams appointed under Subsection (4)(a) shall:

(i) determine the allocation of the existing district's assets and, except for indebtedness under Section 53A-2-121, liabilities between the remaining district and the new district in accordance with Subsection (5);

(ii) prepare a written report detailing how the existing district's assets and, except for indebtedness under Section 53A-2-121, liabilities are to be allocated; and

(iii) deliver a copy of the written report to:

(A) the local school board of the existing district;

(B) the local school board of the remaining district; and

(C) the local school board of the new district.

(d) The transition teams shall determine the allocation under Subsection (4)(c)(i) and deliver the report required under Subsection (4)(c)(ii) before August 1 of the year following the election at which voters approve the creation of a new district, unless that deadline is extended by the mutual agreement of:

(i) the local school board of the existing district; and

(ii) (A) the legislative body of the city in which the new district is located, for a new district located entirely within a single city; or

(B) the legislative bodies of all interlocal agreement participants, for each other new district.

(e) (i) All costs and expenses of the transition team that represents a remaining district shall be borne by the remaining district.

(ii) All costs and expenses of the transition team that represents a new district shall initially be borne by:

(A) the city whose legislative body appoints the transition team, if the transition team is appointed by the legislative body of a single city; or

(B) the interlocal agreement participants, if the transition team is appointed by the legislative bodies of interlocal agreement participants.

(iii) The new district may, to a maximum of \$500,000, reimburse the city or interlocal agreement participants for:

(A) transition team costs and expenses; and

(B) startup costs and expenses incurred by the city or interlocal agreement participants on behalf of the new district.

(5) (a) As used in this Subsection (5):

(i) "Associated property" means furniture, equipment, or supplies located in or specifically associated with a physical asset.

(ii) (A) "Discretionary asset or liability" means, except as provided in Subsection (5)(a)(ii)(B), an asset or liability that is not tied to a specific project, school, student, or employee by law or school district accounting practice.

(B) "Discretionary asset or liability" does not include a physical asset, associated property, a vehicle, or bonded indebtedness.

(iii) (A) "Nondiscretionary asset or liability" means, except as provided in Subsection (5)(a)(iii)(B), an asset or liability that is tied to a specific project, school, student, or employee by law or school district accounting practice.

(B) "Nondiscretionary asset or liability" does not include a physical asset, associated property, a vehicle, or bonded indebtedness.

(iv) "Physical asset" means a building, land, or water right together with revenue derived from the lease or use of the building, land, or water right.

(b) Except as provided in Subsection (5)(c), the transition teams appointed under Subsection (4)(a) shall allocate all assets and liabilities the existing district owns on the allocation date, both tangible and intangible, real and personal, to the new district and remaining district as follows:

(i) a physical asset and associated property shall be allocated to the school district in which the physical asset is located;

(ii) a discretionary asset or liability shall be allocated between the new district and remaining district in proportion to the student populations of the school districts;

(iii) a nondiscretionary asset shall be allocated to the school district where the project, school, student, or employee to which the nondiscretionary asset is tied will be located;

(iv) vehicles used for pupil transportation shall be allocated:

(A) according to the transportation needs of schools, as measured by the number and assortment of vehicles used to serve transportation routes serving schools within the new district and remaining district; and

(B) in a manner that gives each school district a fleet of vehicles for pupil transportation that is equivalent in terms of age, condition, and variety of carrying capacities; and

(v) other vehicles shall be allocated:

(A) in proportion to the student populations of the school districts; and

(B) in a manner that gives each district a fleet of vehicles that is similar in terms of age, condition, and carrying capacities.

(c) By mutual agreement, the transition teams may allocate an asset or liability in a manner different than the allocation method specified in Subsection (5)(b).

(6) (a) As used in this Subsection (6):

(i) "New district startup costs" means:

(A) costs and expenses incurred by a new district in order to prepare to begin providing educational services on July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i); and

(B) the costs and expenses of the transition team that represents the new district.

(ii) "Remaining district startup costs" means:

(A) costs and expenses incurred by a remaining district in order to:

(I) make necessary adjustments to deal with the impacts resulting from the creation of the new district; and

(II) prepare to provide educational services within the remaining district once the new district begins providing educational services within the new district; and

(B) the costs and expenses of the transition team that represents the remaining district.

(b) (i) By January 1 of the year following the local school board general election date described in Subsection (3)(a)(i), the existing district shall make half of the undistributed reserve from its General Fund, to a maximum of \$9,000,000, available for the use of the remaining district and the new district, as provided in this Subsection (6).

(ii) The existing district may make additional funds available for the use of the remaining district and the new district beyond the amount specified in Subsection (6)(b)(i) through an interlocal agreement.

(c) The existing district shall make the money under Subsection (6)(b) available to the remaining

district and the new district proportionately based on student population.

(d) The money made available under Subsection (6)(b) may be accessed and spent by:

(i) for the remaining district, the local school board of the remaining district; and

(ii) for the new district, the local school board of the new district.

(e) (i) The remaining district may use its portion of the money made available under Subsection (6)(b) to pay for remaining district startup costs.

(ii) The new district may use its portion of the money made available under Subsection (6)(b) to pay for new district startup costs.

(7) (a) The existing district shall transfer title or, if applicable, partial title of property to the new school district in accordance with the allocation of property by the transition teams, as stated in the report under Subsection (4)(c)(ii).

(b) The existing district shall complete each transfer of title or, if applicable, partial title to real property and vehicles by July 1 of the second calendar year following the local school board general election date described in Subsection (3)(a)(i), except as that date is changed by the mutual agreement of:

(i) the local school board of the existing district;

(ii) the local school board of the remaining district; and

(iii) the local school board of the new district.

(c) The existing district shall complete the transfer of all property not included in Subsection (7)(b) by November 1 of the second calendar year after the local school board general election date described in Subsection (3)(a)(i).

(8) Except as provided in Subsections (6) and (7), after the creation election date an existing school district may not transfer or agree to transfer title to district property without the prior consent of:

(a) the legislative body of the city in which the new district is located, for a new district located entirely within a single city; or

(b) the legislative bodies of all interlocal agreement participants, for each other new district.

(9) This section does not apply to the creation of a new district initiated through a citizens' initiative petition or at the request of a local school board under Section 53A-2-118.

CHAPTER 92**S. B. 15**

Passed February 8, 2017

Approved March 17, 2017

Effective May 9, 2017

**AGRICULTURE PROTECTION AREA
AND INDUSTRIAL PROTECTION
AREA AMENDMENTS**

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE**General Description:**

This bill amends provisions relating to the review of agriculture protection areas and industrial protection areas by the applicable legislative body.

Highlighted Provisions:

This bill:

- ▶ amends provisions relating to the review of agriculture protection areas and industrial protection areas by the applicable legislative body.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

17-41-307, as last amended by Laws of Utah 2006, Chapter 194

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

Section 1. Section 17-41-307 is amended to read:**17-41-307. Review of agriculture protection areas and industrial protection areas.**

(1) In the 20th calendar year after its creation under this part, each agriculture protection area or industrial protection area, as the case may be, shall be reviewed, under the provisions of this section, by:

(a) the county legislative body, if the agriculture protection area or industrial protection area is within the unincorporated part of the county; or

(b) the municipal legislative body, if the agriculture protection area or industrial protection area is within the municipality.

(2) (a) In the 20th year, the applicable legislative body ~~shall~~ may:

(i) request the planning commission and advisory board to submit recommendations about whether the agriculture protection area or industrial protection area, as the case may be, should be continued, modified, or terminated;

(ii) at least 120 days before the end of the calendar year, hold a public hearing to discuss whether the agriculture protection area or industrial protection area, as the case may be, should be continued, modified, or terminated;

(iii) give notice of the hearing using the same procedures required by Section 17-41-302; and

(iv) after the public hearing, continue, modify, or terminate the agriculture protection area or industrial protection area.

(b) If the applicable legislative body modifies or terminates the agriculture protection area or industrial protection area, it shall file an executed document containing the legal description of the agriculture protection area or industrial protection area, respectively, with the county recorder of deeds.

(3) If the applicable legislative body fails affirmatively to continue, modify, or terminate the agriculture protection area or industrial protection area, as the case may be, in the 20th calendar year, the agriculture protection area or industrial protection area is considered to be reauthorized for another 20 years.

CHAPTER 93**S. B. 18**

Passed February 10, 2017

Approved March 17, 2017

Effective July 1, 2017

**FIREFIGHTERS' DISABILITY
RETIREMENT BENEFIT AMENDMENTS**

Chief Sponsor: Karen Mayne

House Sponsor: Daniel McCay

LONG TITLE**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions relating to firefighter disability benefits.

Highlighted Provisions:

This bill:

- ▶ provides and amends definitions;
- ▶ modifies the standard for determining a disability for members of the Firefighters' Retirement System; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

49-16-102, as last amended by Laws of Utah 2016, Chapter 227

49-16-601, as last amended by Laws of Utah 2005, Chapter 116

49-16-601.5, as last amended by Laws of Utah 2013, Chapter 40

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

Section 1. Section 49-16-102 is amended to read:**49-16-102. Definitions.**

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable as gross income which are received by a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of member contributions or any amounts the firefighter service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.

(c) "Compensation" does not include:

- (i) overtime;
- (ii) sick pay incentives;
- (iii) retirement pay incentives;

(iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel, or similar payments;

(v) a lump-sum payment or special payments covering accumulated leave; and

(vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Section 401(a)(17), Internal Revenue Code.

~~[(2) (a) "Disability" means a physical or mental condition that, in the judgment of the office, is total and presumably permanent, and prevents a member from performing firefighter service.]~~

~~[(b) The determination of disability is based upon medical and other evidence satisfactory to the office.]~~

(2) (a) "Disability" means the complete inability, due to objective medical impairment, whether physical or mental, to perform firefighter service.

(b) "Disability" does not include the inability to meet an employer's required standards or tests relating to fitness, physical ability, or agility that is not a result of a disability as defined under Subsection (2)(a).

(3) "Final average salary" means the amount calculated by averaging the highest three years of annual compensation preceding retirement subject to Subsections (3)(a), (b), and (c).

(a) Except as provided in Subsection (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office the limitation in Subsection (3)(a) may be exceeded if:

- (i) the member has transferred from another agency; or
- (ii) the member has been promoted to a new position.

(c) The annual compensation used to calculate final average salary shall be based on:

(i) a calendar year for a member employed by a participating employer that is not an educational institution; or

(ii) a contract year for a member employed by an educational institution.

(4) (a) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:

(i) a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department; or

(ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire marshal.

(b) "Firefighter service" does not include secretarial staff or other similar employees.

(5) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter. An employee of a regularly constituted fire department who does not perform firefighter service is not a firefighter service employee.

(6) (a) "Line-of-duty death or disability" means a death or ~~[any physical or mental]~~ disability resulting from:

(i) external force, violence, or disease directly resulting from firefighter service; or

(ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a firefighter service employee.

(b) "Line-of-duty death or disability" does not include a death or ~~[any physical or mental]~~ disability that:

(i) occurs during an activity that is required as an act of duty as a firefighter service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;

(ii) occurs during the commission of a crime committed by the employee;

(iii) occurs when the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death or disability; or

(iv) occurs in a manner other than as described in Subsection (6)(a).

(c) "Line-of-duty death or disability" includes the death or disability of a paid firefighter resulting from heart disease, lung disease, or a respiratory tract condition if the paid firefighter has five years of firefighter service credit.

(7) "Objective medical impairment" means an impairment resulting from an injury or illness which is diagnosed by a physician and which is based on accepted objective medical tests or findings rather than subjective complaints.

(8) (8) "Participating employer" means an employer which meets the participation requirements of Section 49-16-201.

(9) (9) "Regularly constituted fire department" means a fire department that employs a fire chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid employment per year.

(10) (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.

(b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.

(11) (11) "System" means the Firefighters' Retirement System created under this chapter.

(12) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter service employee, but who:

(i) has been trained in firefighter techniques and skills;

(ii) continues to receive regular firefighter training; and

(iii) is on the rolls of a legally organized volunteer fire department which provides ongoing training and serves a political subdivision of the state.

(b) An individual that volunteers assistance but does not meet the requirements of Subsection (12)(a) is not a volunteer firefighter for purposes of this chapter.

(13) (13) "Years of service credit" means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a firefighter service employee was employed by a participating employer or received full-time pay while on sick leave, including any time the firefighter service employee was absent in the service of the United States on military duty.

Section 2. Section 49-16-601 is amended to read:

49-16-601. Disability benefit -- Nonline-of-duty disability -- Benefits -- Monthly allowance.

(1) An active member of this system ~~[who is unable to perform firefighter service due to a physical or mental condition]~~ with a disability that was not incurred in the line-of-duty may apply to the office for a disability retirement benefit subject to the following provisions:

(a) if the member has less than five years of service credit in this system, disability benefits are not payable; and

(b) if the condition is classified by the office as a nonline-of-duty disability and if the member has five or more years of service credit in this system, the member shall be granted a disability retirement benefit subject to Section 49-16-602.

(2) The monthly disability retirement benefit is 50% of the member's final average monthly salary.

Section 3. Section 49-16-601.5 is amended to read:

49-16-601.5. Line-of-duty disability benefit -- Benefits -- Monthly allowance.

(1) An active member of this system ~~[who is unable to perform firefighter service due to a physical or mental condition]~~ with a disability incurred in the line-of-duty may apply to the office for a disability retirement benefit under this section.

(2) If the condition is classified by the office as a line-of-duty disability, the member shall be granted a disability retirement benefit subject to Section 49-16-602.

(3) A paid firefighter who has five years of firefighter service credit is eligible for a line-of-duty disability benefit resulting from heart disease, lung disease, or a respiratory tract condition.

(4) A paid firefighter who receives a service connected disability benefit for more than six months due to violence or illness other than heart disease, lung disease, or respiratory tract condition, and then returns to paid firefighter service, may not be eligible for a line-of-duty disability benefit due to heart disease, lung disease, or respiratory tract condition for two years after the firefighter returned to work unless clear and convincing evidence is presented that the heart disease, lung disease, or respiratory tract condition was directly a result of firefighter service.

(5) The monthly disability retirement benefit is 50% of the member's final average salary.

Section 4. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 94**S. B. 19**

Passed February 8, 2017

Approved March 17, 2017

Effective July 1, 2017

**RETIREMENT SYSTEMS PAYMENTS
TO SURVIVORS AMENDMENTS**

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE**General Description:**

This bill modifies the Utah State Retirement and Benefit Insurance Act by amending provisions relating to retirement beneficiary designations.

Highlighted Provisions:

This bill:

- ▶ provides that the divorce or annulment of a member's marriage revokes any beneficiary designation naming the divorced member's former spouse;
- ▶ specifies the methods for reviving a former spouse as a member's designated beneficiary in certain circumstances; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

49-11-609, as last amended by Laws of Utah 2016, Chapter 227

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

Section 1. Section 49-11-609 is amended to read:

49-11-609. Beneficiary designations -- Revocation of beneficiary designation -- Procedure -- Beneficiary not designated -- Payment to survivors in order established under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's expenses.

(1) As used in this section, "member" includes a member, retiree, participant, covered individual, a spouse of a retiree participating in the insurance benefits created by Sections 49-12-404 ~~and~~, 49-13-404, 49-22-307, and 49-23-306, or an alternate payee under a domestic relations order dividing a defined contribution account.

(2) ~~The~~ (a) Except as provided under Subsection (2)(b) or (c), the most recent beneficiary designations signed by the member and filed with the office, including electronic records, at the time of the member's death are binding in the payment of any benefits due under this title.

(b) (i) The divorce or annulment of a member's marriage shall revoke the member's former spouse as a beneficiary from any of the member's beneficiary designations.

(ii) A revocation of a former spouse as a beneficiary in accordance with Subsection (2)(b)(i) does not revoke any other beneficiaries named on the member's beneficiary designations.

(c) A former spouse whose beneficiary designation is revoked solely under Subsection (2)(b) shall be revived on the member's beneficiary designations by:

(i) the member's remarriage to the former spouse;
or

(ii) a nullification of the divorce or annulment.

(d) A revocation under Subsection (2)(b) does not apply to a former spouse named as a beneficiary in a beneficiary designation signed by the member and filed with the office after the date of the divorce or annulment.

(e) The office is not liable for having made a payment of any benefits to a beneficiary designated in a beneficiary designation affected by a divorce, annulment, or remarriage before the office received written notice of the divorce, annulment, or remarriage.

(3) (a) Except where an optional continuing benefit is chosen, or the law makes a specific benefit designation to a dependent spouse, a member may revoke a beneficiary designation at any time and may execute and file a different beneficiary designation with the office.

(b) A beneficiary designation or change of beneficiary designation shall be completed on forms provided by the office.

(4) (a) All benefits payable by the office may be paid or applied to the benefit of the ~~surviving next of kin of the deceased~~ descendant's heirs in the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills, if:

(i) no beneficiary is designated or if all designated beneficiaries have predeceased the member;

(ii) the location of the beneficiary or secondary beneficiaries cannot be ascertained by the office within 12 months of the date a reasonable attempt is made by the office to locate the beneficiaries; or

(iii) the beneficiary has not completed the forms necessary to pay the benefits within six months of the date that beneficiary forms are sent to the beneficiary's last-known address.

(b) (i) A payment may not be made to a person included in any of the groups referred to in Subsection (4)(a) if at the date of payment there is a living person in any of the groups preceding it.

(ii) Payment to a person in any group based upon receipt from the person of an affidavit in a form satisfactory to the office that:

(A) there are no living individuals in the group preceding it;

(B) the probate of the estate of the deceased has not been commenced; and

(C) more than 30 days have elapsed since the date of death of the decedent.

(5) Benefits paid under this section shall be:

- (a) a full satisfaction and discharge of all claims for benefits under this title; and
- (b) payable by reason of the death of the decedent.

Section 2. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 95**S. B. 22**

Passed February 9, 2017

Approved March 17, 2017

Effective May 9, 2017

**UTAH COMMISSION ON
AGING SUNSET AMENDMENTS**

Chief Sponsor: Brian E. Shiozawa

House Sponsor: Stewart E. Barlow

LONG TITLE**General Description:**

This bill modifies Title 63I, Chapter 1, Legislative Oversight and Sunset Act, by reauthorizing Title 63M, Chapter 11, Utah Commission on Aging, until July 1, 2027.

Highlighted Provisions:

This bill:

- ▶ modifies Title 63I, Chapter 1, Legislative Oversight and Sunset Act, by reauthorizing Title 63M, Chapter 11, Utah Commission on Aging, until July 1, 2027;
- ▶ adds a voting member to the commission; and
- ▶ reduces the number of mandatory meetings held by the commission.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-263, as last amended by Laws of Utah 2016, Chapters 65, 136, 156, 322, and 408

63M-11-201, as renumbered and amended by Laws of Utah 2008, Chapter 382

63M-11-205, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 63I-1-263 is amended to read:**63I-1-263. Repeal dates, Titles 63A to 63M.**

(1) Subsection 63A-5-104(4)(h) is repealed on July 1, 2024.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2018.

(4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is repealed November 30, 2019.

(5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.

(6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(7) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

(8) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(9) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states “the Resource Development Coordinating Committee,” is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read “(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.”;

(c) in Subsection 23-14-21(3), the language that states “and the Resource Development Coordinating Committee” is repealed;

(d) in Subsection 23-21-2.3(1), the language that states “the Resource Development Coordinating Committee created in Section 63J-4-501 and” is repealed;

(e) in Subsection 23-21-2.3(2), the language that states “the Resource Development Coordinating Committee and” is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word “and” is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed; and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

(10) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

(11) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, ~~2017~~ 2027.

(12) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.

(13) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection (13)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or

59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections (13)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

(14) Section 63N-2-512 is repealed on July 1, 2021.

(15) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection (15)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

(16) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed July 1, 2018.

Section 2. Section 63M-11-201 is amended to read:

63M-11-201. Composition -- Appointments -- Terms -- Removal.

(1) The commission shall be composed of ~~[21]~~ 22 voting members as follows:

(a) one senator, appointed by the president of the Senate;

(b) one representative, appointed by the speaker of the House of Representatives;

(c) the executive director of the Department of Health;

(d) the executive director of the Department of Human Services;

(e) the executive director of the Governor's Office of Economic Development;

(f) the executive director of the Department of Workforce Services; and

(g) ~~[15]~~ 16 voting members, appointed by the governor, representing each of the following:

(i) the Utah Association of Area Agencies on Aging;

(ii) higher education in Utah;

(iii) the business community;

(iv) the Utah Association of Counties;

(v) the Utah League of Cities and Towns;

(vi) charitable organizations;

(vii) the health care provider industry;

(viii) financial institutions;

(ix) the legal profession;

(x) the public safety sector;

(xi) public transportation;

(xii) ethnic minorities;

(xiii) the industry that provides long-term care for the elderly;

(xiv) organizations or associations that advocate for the aging population; ~~and~~

(xv) the Alzheimer's Association; and

~~[(xxv)]~~ (xvi) the general public.

(2) (a) A member appointed under Subsection (1)(g) shall serve a two-year term.

(b) Notwithstanding the term requirements of Subsection (2)(a), the governor may adjust the length of the initial commission members' terms to ensure that the terms are staggered so that approximately 1/2 of the members appointed under Subsection (1)(g) are appointed each year.

(c) When, for any reason, a vacancy occurs in a position appointed by the governor under Subsection (1)(g), the governor shall appoint a person to fill the vacancy for the unexpired term of the commission member being replaced.

(d) Members appointed under Subsection (1)(g) may be removed by the governor for cause.

(e) A member appointed under Subsection (1)(g) shall be removed from the commission and replaced by the governor if the member is absent for three consecutive meetings of the commission without being excused by the chair of the commission.

(3) In appointing the members under Subsection (1)(g), the governor shall:

(a) take into account the geographical makeup of the commission; and

(b) strive to appoint members who are knowledgeable or have an interest in issues relating to the aging population.

Section 3. Section 63M-11-205 is amended to read:

63M-11-205. Appointment of chair -- Meetings.

(1) The governor shall appoint a member of the commission to serve as chair.

(2) (a) Subject to the other provisions of this Subsection (2), the chair is responsible for the call and conduct of meetings.

(b) The chair shall call and hold meetings of the commission at least ~~bimonthly~~ quarterly.

(c) One of the ~~bimonthly~~ quarterly meetings described in Subsection (2)(b) shall be held while the Legislature is convened in its annual session.

(d) One or more additional meetings may be called upon request by a majority of the commission's members.

(3) (a) A majority of the members of the commission constitute a quorum.

(b) The action of a majority of a quorum constitutes the action of the commission.

CHAPTER 96**S. B. 25**

Passed February 8, 2017

Approved March 17, 2017

Effective May 9, 2017

MOTOR CARRIER AMENDMENTS

Chief Sponsor: Kevin T. Van Tassell
House Sponsor: Kay J. Christofferson

LONG TITLE**General Description:**

This bill amends portions of the Transportation Code relating to motor carriers.

Highlighted Provisions:

This bill:

- ▶ changes the length restrictions of motor carriers;
- ▶ modifies provisions relating to permits;
- ▶ modifies rulemaking authority;
- ▶ amends provisions related to lettering on motor carriers;
- ▶ amends provisions related to meetings of the Motor Carrier Advisory Board; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

72-2-103, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 13

72-7-402, as last amended by Laws of Utah 2015, Chapter 412

72-7-406, as last amended by Laws of Utah 2016, Chapter 303

72-9-102, as last amended by Laws of Utah 2009, Chapter 155

72-9-103, as last amended by Laws of Utah 2011, Chapter 274

72-9-105, as last amended by Laws of Utah 2009, Chapter 155

72-9-201, as last amended by Laws of Utah 2010, Chapter 286

REPEALS:

72-9-706, as renumbered and amended by Laws of Utah 1998, Chapter 270

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

Section 1. Section 72-2-103 is amended to read:**72-2-103. Limitations on Transportation Fund appropriations to agencies not a part of the Department of Transportation -- Exceptions.**

(1) Except as provided under Subsection (2), the amount appropriated or transferred from the Transportation Fund each year may not exceed a combined total of \$11,600,000 to:

- (a) the Department of Public Safety;
- (b) the State Tax Commission;

(c) the Division of Finance; and

(d) any other state agency that is not a part of the Department of Transportation.

(2) The following amounts are exempt from the appropriation and transfer limitations of Subsection (1):

(a) amounts deposited in the Department of Public Safety Restricted Account created under Section 53-3-106;

(b) revenue generated by the uninsured motorist identification fee under Section 41-1a-1218;

(c) revenue generated by the motor carrier fee under Section 41-1a-1219 ~~or Section 72-9-706~~; and

(d) revenue generated by the Motorcycle Rider Education Program under Section 53-3-905.

Section 2. Section 72-7-402 is amended to read:**72-7-402. Limitations as to vehicle width, height, length, and load extensions.**

(1) (a) Except as provided by statute, all state or federally approved safety devices and any other lawful appurtenant devices, including refrigeration units, hitches, air line connections, and load securing devices related to the safe operation of a vehicle are excluded for purposes of measuring the width and length of a vehicle under the provisions of this part, if the devices are not designed or used for carrying cargo.

(b) Load-induced tire bulge is excluded for purposes of measuring the width of vehicles under the provisions of this part.

(c) Appurtenances attached to the sides or rear of a recreational vehicle that is not a commercial motor vehicle are excluded for purposes of measuring the width and length of the recreational vehicle if the additional width or length of the appurtenances does not exceed six inches.

(2) A vehicle unladen or with a load may not exceed a width of 8-1/2 feet.

(3) A vehicle unladen or with a load may not exceed a height of 14 feet.

(4) (a) (i) A single-unit vehicle, unladen or with a load, may not exceed a length of 45 feet including front and rear bumpers.

(ii) In this section, a truck tractor coupled to one or more semitrailers or trailers is not considered a single-unit vehicle.

(b) (i) ~~[Except as provided under Subsection (4)(b)(iii), a]~~ A semitrailer, unladen or with a load, may not exceed a length of ~~[48]~~ 53 feet excluding refrigeration units, hitches, air line connections, and safety appurtenances.

(ii) There is no overall length limitation on a truck tractor and semitrailer combination when the semitrailer length is ~~[48]~~ 53 feet or less.

~~[(iii) A semitrailer that exceeds a length of 48 feet but does not exceed a length of 53 feet may operate~~

on a route designated by the department or within one mile of that route.]

(c) (i) Two trailers coupled together, unladen or with a load, may not exceed an overall length of 61 feet, measured from the front of the first trailer to the rear of the second trailer.

(ii) There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.

(d) All other combinations of vehicles, unladen or with a load, when coupled together, may not exceed a total length of 65 feet, except the length limitations do not apply to combinations of vehicles operated at night by a public utility when required for emergency repair of public service facilities or properties, or when operated under a permit under Section 72-7-406.

(5) (a) Subject to Subsection (4), a vehicle or combination of vehicles may not carry any load extending more than three feet beyond the front of the body of the vehicle or more than six feet beyond the rear of the bed or body of the vehicle.

(b) A passenger vehicle may not carry any load extending beyond the line of the fenders on the left side of the vehicle nor extending more than six inches beyond the line of the fenders on the right side of the vehicle.

(6) Any exception to this section must be authorized by a permit as provided under Section 72-7-406.

(7) Any person who violates this section is guilty of a class C misdemeanor.

Section 3. Section 72-7-406 is amended to read:

72-7-406. Oversize permits and oversize and overweight permits for vehicles of excessive size or weight -- Applications -- Restrictions -- Fees -- Rulemaking provisions -- Penalty.

(1) (a) The department may, upon receipt of an application and good cause shown, issue in writing an oversize permit or an oversize and overweight permit. The oversize permit or oversize and overweight permit may authorize the applicant to operate or move upon a highway:

(i) a vehicle or combination of vehicles, unladen or with a load weighing more than the maximum weight specified in Section 72-7-404 for any wheel, axle, group of axles, or total gross weight; or

(ii) a vehicle or combination of vehicles that exceeds the vehicle width, height, or length provisions under Section 72-7-402 or draw-bar length restriction under Subsection 72-7-403(1)(a).

(b) Except as provided under Subsection (8), the department may not issue an oversize and overweight permit ~~may not be issued~~ under this section to allow the transportation of a load that is reasonably divisible.

(c) The department may not authorize a maximum size or weight ~~authorized by a~~ permit under this section ~~shall be within limits that do not~~ that could impair the state's ability to qualify for federal-aid highway funds.

(d) The department may deny or issue a permit under this section to protect the safety of the traveling public and to protect highway foundation, surfaces, or structures from undue damage by one or more of the following:

(i) limiting the number of trips the vehicle may make;

(ii) establishing seasonal or other time limits within which the vehicle may operate or move on the highway indicated;

(iii) requiring ~~security~~ insurance in addition to the permit to compensate for any potential damage by the vehicle to any highway; and

(iv) otherwise limiting the conditions of operation or movement of the vehicle.

(e) Prior to granting a permit under this section, the department shall approve the route of any vehicle or combination of vehicles.

(2) An application for a permit under this section shall state:

(a) the proposed maximum wheel loads, maximum axle loads, all axle spacings of each vehicle or combination of vehicles;

(b) the proposed maximum load size and maximum size of each vehicle or combination of vehicles;

(c) the specific roads requested to be used under authority of the permit; and

(d) if the permit is requested for a single trip or if other seasonal limits or time limits apply.

~~(3) Each~~ (3) (a) The driver of each vehicle requiring an oversize permit or oversize and overweight permit shall ~~be carried in~~ ensure that the permit is present in the vehicle or combination of vehicles to which ~~it~~ the permit refers and ~~shall be~~ available for inspection by any peace officer, special function officer, port of entry agent, or other personnel authorized by the department.

(b) A driver may provide proof of an oversize permit or oversize and overweight permit as required in Subsection (3)(a) by showing an electronic copy of the permit.

(4) [A] The department may not issue a permit under this section ~~may not be issued or~~, and a permit is not valid, unless the vehicle or combination of vehicles is:

(a) properly registered for the weight authorized by the permit; or

(b) registered for a gross laden weight of 78,001 pounds or over, if the gross laden weight authorized by the permit exceeds 80,000 pounds.

(5) (a) (i) [Aa] The department may issue an oversize permit ~~may be issued~~ under this section

for a vehicle or combination of vehicles that exceeds one or more of the maximum width, height, or length provisions under Section 72-7-402.

(ii) Except for an annual oversize permit for an implement of husbandry under Section 72-7-407 or for an annual oversize permit issued under Subsection (5)(a)(iii), the department may issue only a single trip oversize permit ~~may be issued~~ for a vehicle or combination of vehicles that is more than 14 feet 6 inches wide, 14 feet high, or 105 feet long.

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules for the issuance of an annual oversize permit for a vehicle or combination of vehicles that is more than 14 feet 6 inches wide, 14 feet high, or 105 feet long if the department determines that the permit is needed to accommodate highway transportation needs for multiple trips on a specified route.

(b) The fee is \$30 for a single trip oversize permit under this Subsection (5). This permit is valid for not more than 96 continuous hours.

(c) The fee is \$75 for a semiannual oversize permit under this Subsection (5). This permit is valid for not more than 180 continuous days.

(d) The fee is \$90 for an annual oversize permit under this Subsection (5). This permit is valid for not more than 365 continuous days.

(6) (a) ~~An~~ The department may issue an oversize and overweight permit ~~may be issued~~ under this section for a vehicle or combination of vehicles carrying a nondivisible load that exceeds one or more of the maximum weight provisions of Section 72-7-404 up to a gross weight of 125,000 pounds.

(b) The fee is \$60 for a single trip oversize and overweight permit under this Subsection (6). This permit is valid for not more than 96 continuous hours.

(c) A semiannual oversize and overweight permit under this Subsection (6) is valid for not more than 180 continuous days. The fee for this permit is:

(i) \$180 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) \$320 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) \$420 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 125,000 pounds.

(d) An annual oversize and overweight permit under this Subsection (6) is valid for not more than 365 continuous days. The fee for this permit is:

(i) \$240 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) \$480 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) \$540 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 125,000 pounds.

(7) (a) ~~A~~ The department may issue a single trip oversize and overweight permit ~~may be issued~~ under this section for a vehicle or combination of vehicles carrying a nondivisible load that exceeds:

(i) one or more of the maximum weight provisions of Section 72-7-404; or

(ii) a gross weight of 125,000 pounds.

(b) (i) The fee for a single trip oversize and overweight permit under this Subsection (7), which is valid for not more than 96 continuous hours, is \$.012 per mile for each 1,000 pounds above 80,000 pounds subject to the rounding described in Subsection (7)(c).

(ii) The minimum fee that may be charged under this Subsection (7) is \$80.

(iii) The maximum fee that may be charged under this Subsection (7) is \$540.

(c) (i) The miles used to calculate the fee under this Subsection (7) shall be rounded up to the nearest 50 mile increment.

(ii) The pounds used to calculate the fee under this Subsection (7) shall be rounded up to the nearest 25,000 pound increment.

(iii) The department shall round the dollar amount used to calculate the fee under this Subsection (7) ~~shall be rounded~~ to the nearest \$10 increment.

(8) (a) ~~An~~ The department may issue an oversize and overweight permit ~~may be issued~~ under this section for a vehicle or combination of vehicles carrying a divisible load if:

(i) the bridge formula under Subsection 72-7-404(3) is not exceeded; and

(ii) the length of the vehicle or combination of vehicles is:

(A) more than the limitations specified under Subsections 72-7-402(4)(c) and (d) or Subsection 72-7-403(1)(a) but not exceeding 81 feet in cargo carrying length and the application is for a single trip, semiannual trip, or annual trip permit; or

(B) more than 81 feet in cargo carrying length but not exceeding 95 feet in cargo carrying length and the application is for an annual trip permit.

(b) The fee is \$60 for a single trip oversize and overweight permit under this Subsection (8). The permit is valid for not more than 96 continuous hours.

(c) The fee for a semiannual oversize and overweight permit under this Subsection (8), which permit is valid for not more than 180 continuous days is:

(i) \$180 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) \$320 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) \$420 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 129,000 pounds.

(d) The fee for an annual oversize and overweight permit under this Subsection (8), which permit is valid for not more than 365 continuous days is:

(i) \$240 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) \$480 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) \$540 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 129,000 pounds.

(9) Permit fees collected under this section shall be credited monthly to the Transportation Fund.

(10) The department shall prepare maps, drawings, and instructions as guidance when issuing permits under this section.

(11) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the issuance and revocation of all permits under this section and Section 72-7-407.

(12) Any person who violates any of the terms or conditions of a permit issued under this section:

(a) may have the person's permit revoked; and

(b) is guilty of an infraction, except that a violation of any rule made under Subsection (11) is not subject to a criminal penalty.

Section 4. Section 72-9-102 is amended to read:

72-9-102. Definitions.

As used in this chapter:

(1) (a) "Commercial vehicle" includes:

(i) an interstate commercial vehicle; and

(ii) an intrastate commercial vehicle.

(b) "Commercial vehicle" does not include the following vehicles for purposes of this chapter:

(i) equipment owned and operated by the United States Department of Defense when driven by any active duty military personnel and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training, and national guard military technicians and civilians who are required to wear military uniforms and are subject to the code of military justice;

(ii) firefighting and emergency vehicles, operated by emergency personnel, not including commercial tow trucks; ~~and~~

(iii) recreational vehicles that are driven solely as family or personal conveyances for noncommercial purposes~~[-];~~ or

(iv) vehicles owned by the state or a local government.

(2) "Interstate commercial vehicle" means a self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property if the vehicle:

(a) has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds;

(b) is designed or used to transport more than eight passengers, including the driver, for compensation;

(c) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(d) (i) is used to transport materials designated as hazardous in accordance with 49 U.S.C. Sec. 5103; and

(ii) is required to be placarded in accordance with regulations under 49 C.F.R., Subtitle B, Chapter I, Subchapter C.

(3) "Intrastate commercial vehicle" means a motor vehicle, vehicle, trailer, or semitrailer used or maintained for business, compensation, or profit to transport passengers or property on a highway only within the boundaries of this state if the commercial vehicle:

(a) has a manufacturer's gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used in the transportation of hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

(4) "Motor carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property by a commercial vehicle on a highway within this state and includes a tow truck business.

(5) "Tow truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, or impounded vehicles from a highway or other place by means of a crane, hoist, tow bar, tow line, dolly, tilt bed, or other means.

(6) "Tow truck service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(7) "Transportation" means the actual movement of property or passengers by motor vehicle,

including loading, unloading, and any ancillary service provided by the motor carrier in connection with movement by motor vehicle, which is performed by or on behalf of the motor carrier, its employees or agents, or under the authority of the motor carrier, its employees or agents, or under the apparent authority and with the knowledge of the motor carrier.

Section 5. Section 72-9-103 is amended to read:

72-9-103. Rulemaking -- Motor vehicle liability coverage for certain motor carriers -- Adjudicative proceedings.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules:

(a) adopting by reference in whole or in part the Federal Motor Carrier Safety Regulations including minimum security requirements for motor carriers;

(b) specifying the equipment required to be carried in each tow truck, including limits on loads that may be moved based on equipment capacity and load weight; and

~~[(c) specifying collection procedures, in conjunction with the administration and enforcement of the safety or security requirements, for the motor carrier fee under Section 72-9-706; and]~~

~~[(d)]~~ (c) providing for the necessary administration and enforcement of this chapter.

(2) (a) Notwithstanding Subsection (1)(a), the department shall not require a motor carrier to comply with 49 C.F.R. Part 387 Subpart B if the motor carrier is:

(i) engaging in or transacting the business of transporting passengers by an intrastate commercial vehicle that has a seating capacity of no more than 30 passengers; and

(ii) a licensed child care provider under Section 26-39-401.

(b) Policies containing motor vehicle liability coverage for a motor carrier described under Subsection (2)(a) shall require minimum coverage of:

(i) \$1,000,000 for a vehicle with a seating capacity of up to 20 passengers; or

(ii) \$1,500,000 for a vehicle with a seating capacity of up to 30 passengers.

(3) The department shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Section 6. Section 72-9-105 is amended to read:

72-9-105. Information lettered on vehicle -- Exceptions.

(1) Except under Subsection (4), a motor carrier shall have lettered on both sides of any vehicle used

for transportation of persons or property ~~[-(a)]~~ the name of the motor carrier company ~~[-(b)]~~ the location of domicile by city and state for an intrastate commercial vehicle ~~[-]~~.

(2) The motor carrier shall ensure that the lettering ~~[shall be]~~ is free from obstruction and legible from a distance of at least 50 feet.

(3) (a) In addition to the lettering required under Subsection (1), the department may require a motor carrier to display an identification number assigned by the department ~~[to be displayed]~~ in accordance with this section.

(b) The department may issue an identification number ~~[may be used to assist the department]~~ in conjunction with the [U.S.] United States Department of Transportation to develop a program to improve motor carrier safety enforcement.

(4) An intrastate commercial vehicle primarily used by a farmer for the production of agricultural products is exempt from the provisions of this section.

Section 7. Section 72-9-201 is amended to read:

72-9-201. Motor Carrier Advisory Board created -- Appointment -- Terms -- Meetings -- Per diem and expenses -- Duties.

(1) There is created within the department the Motor Carrier Advisory Board consisting of five members appointed by the governor.

(2) Each member of the board shall:

(a) represent experience and expertise in the areas of motor carrier transportation, commerce, agriculture, economics, shipping, or highway safety;

(b) be selected at large on a nonpartisan basis; and

(c) have been a legal resident of the state for at least one year immediately preceding the date of appointment.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) A member shall serve from the date of appointment until a replacement is appointed.

(4) When a vacancy occurs in the membership for any reason, the governor shall appoint the replacement ~~[shall be appointed for]~~ to serve for the remainder of the unexpired term beginning the day following the ~~[expiration of the preceding term.]~~ day on which the vacancy occurs.

(5) The board shall elect its own chair and vice chair at the first regular meeting of each calendar year.

(6) The board shall meet at least [~~quarterly~~] twice per year or as needed when called by the chair.

(7) Any three voting members constitute a quorum for the transaction of business that comes before the board.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(9) The board shall advise the department and the commission on interpretation, adoption, and implementation of this chapter and other motor carrier related issues.

(10) The department shall provide staff support to the board.

Section 8. Repealer.

This bill repeals:

Section 72-9-706, Motor carrier fee for certain vehicles -- Collection.

CHAPTER 97**S. B. 26**

Passed February 9, 2017
 Approved March 17, 2017
 Effective May 9, 2017

**TRANSPORTATION DIVISIONS AND
STRUCTURE AMENDMENTS**

Chief Sponsor: Wayne A. Harper
 House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill modifies the Transportation Code by amending provisions relating to the divisions of the Department of Transportation.

Highlighted Provisions:

This bill:

- ▶ modifies the structure and responsibilities of the divisions of the Department of Transportation; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

72-1-204, as renumbered and amended by Laws of Utah 1998, Chapter 270

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

Section 1. Section 72-1-204 is amended to read:**72-1-204. Divisions enumerated -- Duties.**

The divisions of the department are:

~~[(1) the Administrative Services Division responsible for:]~~

~~[(a) all personnel management including recruiting, training, testing, developing, and assisting the transition of personnel into the department;]~~

~~[(b) maintaining records;]~~

~~[(c) data processing;]~~

~~[(d) procuring administrative supplies and equipment; and]~~

~~[(e) risk management;]~~

~~[(2) (1) the Comptroller Division responsible for:~~

~~(a) all financial aspects of the department, including budgeting, accounting, and contracting; and]~~

~~(b) providing all material data and documentation necessary for effective fiscal planning and programming; and]~~

~~(c) procuring administrative supplies;~~

~~[(3) (2) the Internal Audit Division responsible for:~~

~~(a) conducting and verifying all internal audits and reviews within the department;~~

~~(b) performing financial and compliance audits to determine the allowability and reasonableness of proposals, accounting records, and final costs of consultants, contractors, utility companies, and other entities used by the department; and]~~

~~(c) implementing audit procedures that meet or exceed generally accepted auditing standards relating to revenues, expenditures, and funding;~~

~~[(4) the Community Relations] (3) the Communications Division responsible for:~~

~~(a) [coordinating, organizing, and managing] developing, managing, and implementing the department's public hearing [process] processes and programs;~~

~~(b) responding to [citizens'] public complaints [and], requests, and input;~~

~~[(c) developing and implementing the department's public information programs;]~~

~~[(d) (c) assisting the divisions and regions in the department's [citizen] public involvement programs; and]~~

~~[(e) preparing and distributing] (d) developing and managing internal department communications; and]~~

~~(e) managing and overseeing department media relations;~~

~~[(5) (4) the Program Development Division responsible for:~~

~~(a) developing transportation plans for state transportation systems;~~

~~(b) collecting, processing, and storing transportation data to support department's engineering functions;~~

~~(c) maintaining and operating the asset management systems;~~

~~[(e) (d) designating state transportation systems qualifications;~~

~~[(d) (e) developing a statewide transportation improvement program for approval by the commission;~~

~~[(e) (f) providing cartographic services to the department; and]~~

~~[(f) (g) assisting local governments in participating in federal-aid transportation programs; and]~~

~~(h) providing research services associated with transportation programs;~~

~~[(6) (5) the Project Development Division responsible for:~~

~~(a) developing statewide standards for project design and construction;~~

(b) providing support for project development in the areas of design environment, right-of-way, materials testing, structures, value engineering, and construction; and

(c) designing specialty projects; and

~~[(d) performing research into materials and methods for construction of state transportation systems; and]~~

~~[(7)]~~ (6) the Operations Division responsible for:

(a) maintaining the state transportation systems;

(b) state transportation systems safety;

(c) operating state ports-of-entry;

(d) operating state motor carrier safety programs in accordance with this title and federal law;

(e) aeronautical operations; ~~[and]~~

(f) providing equipment for department engineering and maintenance functions[-]; and

(g) risk management.

CHAPTER 98**S. B. 33**

Passed February 6, 2017
 Approved March 17, 2017
 Effective May 9, 2017

CONSUMER PROTECTION REVISIONS

Chief Sponsor: Curtis S. Bramble
 House Sponsor: Val L. Peterson

LONG TITLE**General Description:**

This bill modifies statutes administered by the Division of Consumer Protection.

Highlighted Provisions:

This bill:

- ▶ updates the list of statutes administered by the Division of Consumer Protection;
- ▶ amends the Utah Consumer Sales Practices Act to address penalties;
- ▶ amends the Business Opportunity Disclosure Act to require the seller of an assisted marketing plan to, annually, file information and pay a fee;
- ▶ amends the Charitable Solicitations Act, including:
 - modifying the definition of a charitable organization;
 - eliminating the general membership solicitation exemption for a charitable organization; and
 - adding a solicitation exemption;
- ▶ amends the Health Spa Services Protection Act to specify the grounds for denial, suspension, or revocation of a health spa registration;
- ▶ modifies the registration exemptions in the Telephone Fraud Prevention Act;
- ▶ amends the Utah Postsecondary School State Authorization Act to:
 - modify definitions;
 - modify the exemption for interstate reciprocity agreements to include agreements signed by the State Board of Regents;
 - allow a postsecondary school to maintain state authorization while it is within a grace period provided by the United States Department of Education or is considered accredited by the United States Department of Education;
 - allow the Division of Consumer Protection to stagger postsecondary school renewal deadlines; and
 - modify the timing and type of information to be provided by a postsecondary school that is closing; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 13-2-1, as last amended by Laws of Utah 2015, Chapter 461
- 13-11-17, as last amended by Laws of Utah 2013, Chapter 124
- 13-15-4, as last amended by Laws of Utah 2010, Chapter 378
- 13-22-2, as last amended by Laws of Utah 2015, Chapter 120
- 13-22-8, as last amended by Laws of Utah 2016, Chapter 377
- 13-22-21, as last amended by Laws of Utah 1996, Chapter 187
- 13-26-4, as last amended by Laws of Utah 2014, Chapter 189
- 13-34a-102, as enacted by Laws of Utah 2014, Chapter 360
- 13-34a-104, as enacted by Laws of Utah 2014, Chapter 360
- 13-34a-204, as enacted by Laws of Utah 2014, Chapter 360
- 13-34a-207, as enacted by Laws of Utah 2014, Chapter 360

ENACTS:

- 13-23-8, Utah Code Annotated 1953

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

Section 1. Section 13-2-1 is amended to read:**13-2-1. Consumer protection division established -- Functions.**

- (1) There is established within the Department of Commerce the Division of Consumer Protection.
- (2) The division shall administer and enforce the following:
 - (a) Chapter 5, Unfair Practices Act;
 - (b) Chapter 10a, Music Licensing Practices Act;
 - (c) Chapter 11, Utah Consumer Sales Practices Act;
 - (d) Chapter 15, Business Opportunity Disclosure Act;
 - (e) Chapter 20, New Motor Vehicle Warranties Act;
 - (f) Chapter 21, Credit Services Organizations Act;
 - (g) Chapter 22, Charitable Solicitations Act;
 - (h) Chapter 23, Health Spa Services Protection Act;
 - (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
 - (j) Chapter 26, Telephone Fraud Prevention Act;
 - (k) Chapter 28, Prize Notices Regulation Act;
 - (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
 - (m) Chapter 34, Utah Postsecondary Proprietary School Act;

(n) Chapter 34a, Utah Postsecondary School State Authorization Act;

(o) Chapter 39, Child Protection Registry;

~~(p)~~ (p) Chapter 41, Price Controls During Emergencies Act;

~~(q)~~ (q) Chapter 42, Uniform Debt-Management Services Act;

~~(r)~~ (r) Chapter 49, Immigration Consultants Registration Act; and

~~(s)~~ (s) Chapter 51, Transportation Network Company Registration Act.

Section 2. Section 13-11-17 is amended to read:

13-11-17. Actions by enforcing authority.

(1) The enforcing authority may bring an action in a court of competent jurisdiction to:

(a) ~~(p)~~ obtain a declaratory judgment that an act or practice violates this chapter;

(b) ~~(p)~~ enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is otherwise likely to violate this chapter; ~~and~~

(c) ~~(p)~~ recover, for each violation, actual damages, or obtain relief under Subsection (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable time after it instituted proceedings under this chapter~~[-]; and~~

~~(d)~~ obtain a fine in an amount determined after considering the factors in Subsection (6).

(2) (a) The enforcing authority may bring a class action on behalf of consumers for the actual damages caused by an act or practice specified as violating this chapter in a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts of general jurisdiction and appellate courts of this state that was either reported officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the consumer transactions on which the action is based, or, with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment that became final before the consumer transactions on which the action is based.

(b) (i) On motion of the enforcing authority and without bond in an action under this Subsection (2), the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, but only if it appears that the defendant is threatening or is about to remove, conceal, or dispose of the defendant's property to the damage of persons for whom relief is requested. An appropriate order may include an order to:

(A) ~~(p)~~ reimburse consumers found to have been damaged;

(B) ~~(p)~~ carry out a transaction in accordance with consumers' reasonable expectations;

(C) ~~(p)~~ strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; ~~(p)~~

~~(D)~~ impose a fine in an amount determined after considering the factors listed in Subsection (6); or

~~(D)~~ ~~(p)~~ (E) grant other appropriate relief.

(ii) The court may assess the expenses of a master or receiver against a supplier.

(c) If an act or practice that violates this chapter unjustly enriches a supplier and damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

(d) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this Subsection (2) is limited to the amount, if any, by which the supplier was unjustly enriched by the violation.

(e) An action may not be brought by the enforcing authority under this Subsection (2) more than two years after the occurrence of a violation of this chapter.

(3) (a) The enforcing authority may terminate an investigation or an action other than a class action upon acceptance of the supplier's written assurance of voluntary compliance with this chapter. Acceptance of an assurance may be conditioned on a commitment to reimburse consumers or take other appropriate corrective action.

(b) An assurance is not evidence of a prior violation of this chapter. Unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation.

(4) (a) In addition to other penalties and remedies set out under this chapter, and in addition to its other enforcement powers under ~~[Title 13,]~~ Chapter 2, Division of Consumer Protection, the division director may issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.

(b) All money received through ~~[administrative]~~ fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.

(5) (a) Within 30 days after agency or judicial review of a final division order imposing an administrative fine, the supplier on whom the fine is imposed shall pay the fine in full.

(b) The unpaid amount of a fine is increased by 10%:

(i) if the fine has not been paid in full within 60 days after the final division order imposing the fine; and

(ii) unless the division waives the 10% increase in a stipulated payment plan.

(6) A fine imposed under Subsection (1)(d) or Subsection (2)(b)(i)(D) shall be determined after considering the following factors:

(a) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;

(b) the harm to other persons resulting either directly or indirectly from the violation;

(c) cooperation by the supplier in an inquiry or investigation conducted by the enforcing authority concerning the violation;

(d) efforts by the supplier to prevent occurrences of the violation;

(e) efforts by the supplier to mitigate the harm caused by the violation, including a reimbursement made to a consumer injured by the act of the supplier;

(f) the history of previous violations by the supplier;

(g) the need to deter the supplier or other suppliers from committing the violation in the future; and

(h) other matters as justice may require.

Section 3. Section 13-15-4 is amended to read:

13-15-4. Information to be filed by seller annually -- Representations -- Fees.

(1) ~~[Any]~~ A seller of an assisted marketing plan shall annually file the following information with the division:

(a) the name, address, and principal place of business of the seller, and the name, address, and principal place of business of the parent or holding company of the seller, if any, who is responsible for statements made by the seller;

(b) ~~[all]~~ the trademarks, trade names, service marks, or advertising or other commercial symbols that identify the products, equipment, supplies, or services to be offered, sold, or distributed by the prospective purchaser;

(c) an individual detailed statement covering the past five years of the business experience of each of the seller's current directors and executive officers and an individual statement covering the same period for the seller and the seller's parent company, if any, including the length of time each:

(i) has conducted a business of the type advertised or solicited for operation by a prospective purchaser;

(ii) has offered or sold the assisted marketing plan; and

(iii) has offered for sale or sold assisted marketing plans in other lines of business, together with a description of the other lines of business;

(d) (i) a statement of the total amount that shall be ~~paid~~ by the purchaser to obtain or commence the business opportunity such as initial fees, deposits, down payments, prepaid rent, and equipment and inventory purchases; ~~[provided, that]~~ and

(ii) if all or part of ~~[these]~~ the fees or deposits described in Subsection (1)(d)(i) are returnable, the conditions under which ~~[they]~~ the fees or deposits are returnable ~~[shall also be disclosed]~~;

(e) a complete statement of the actual services the seller will perform for the purchaser;

(f) a complete statement of ~~[all]~~ the oral, written, or visual representations that ~~will~~ be made to prospective purchasers about specific levels of potential sales, income, gross and net profits, or any other representations that suggest a specific level;

(g) a complete description of the type and length of any training promised to prospective purchasers;

(h) (i) a complete description of any services promised to be performed by the seller in connection with the placement of the equipment, products, or supplies at any location from which they will be sold or used; and

(ii) a complete description of ~~[those]~~ the services described in Subsection (1)(h)(i) together with any agreements that will be made by the seller with the owner or manager of the location where the purchaser's equipment, products, or supplies will be placed;

(i) a statement that discloses any person identified in Subsection (1)(a) who:

(i) has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if the felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(ii) has been held liable or consented to the entry of a stipulated judgment in ~~[any]~~ a civil action based upon fraud, embezzlement, fraudulent conversion, misappropriation of property, or the use of untrue or misleading representations in the sale or attempted sale of any real or personal property, or upon the use of any unfair, unlawful or deceptive business practice; or

(iii) is subject to an injunction or restrictive order relating to business activity as the result of an action brought by a public agency;

(j) a financial statement that is less than 13 months old of the seller signed by one of the seller's officers, directors, trustees, or general or limited partners, under a declaration that certifies that to the signatory's knowledge and belief the information in the financial statement is true and accurate; ~~[a financial statement that is more than 13 months old is unacceptable];~~

(k) a copy of the entire marketing plan contract;

(l) the number of marketing plans sold to date, and the number of plans under negotiation;

(m) geographical information, including ~~[all]~~ the states in which the seller's assisted marketing

plans have been sold, and the number of plans in each ~~[such]~~ state;

(n) the total number of marketing plans that were cancelled by the seller in the past 12 months; and

(o) the number of marketing plans that were voluntarily terminated by purchasers within the past 12 months and the total number of such voluntary terminations to date.

(2) The seller of an assisted marketing plan filing information under Subsection (1) shall pay ~~[a]~~ an annual fee as determined by the department in accordance with Section 63J-1-504 when the seller files the information required under Subsection (1).

(3) ~~(a)~~ Before commencing business in this state, [the] a seller of an assisted marketing plan shall file the information required under Subsection (1) and receive from the division proof of receipt of the filing.

~~(b)~~ A seller shall annually comply with Subsections (1) and (2) by no later than the anniversary of the day on which the seller receives from the division proof of receipt of the filing.

(4) A seller of an assisted marketing plan claiming an exemption from filing under this chapter shall file a notice of claim of exemption from filing with the division. A seller claiming an exemption from filing bears the burden of proving the exemption. The division shall collect a fee for filing a notice of claim of exemption, as determined by the department in accordance with Section 63J-1-504.

(5) A representation described in Subsection (1)(f) shall be relevant to the geographic market in which the business opportunity is to be located. When the statements or representations are made, a warning after the representation in not less than 12 point upper and lower case boldface type shall appear as follows:

“CAUTION

No guarantee of earnings or ranges of earnings can be made. The number of purchasers who have earned through this business an amount in excess of the amount of their initial payment is at least _____ which represents _____% of the total number of purchasers of this business opportunity.”

Section 4. Section 13-22-2 is amended to read:

13-22-2. Definitions.

As used in this chapter:

(1) “Chapter” means a chapter, branch, area, office, or similar affiliate of a charitable organization.

~~[(4)]~~ (2) (a) “Charitable organization” or “organization” means any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:

(i) who is or holds itself out to be:

(A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;

(B) for the benefit of a public safety, law enforcement, or firefighter fraternal association; or

(C) established for any charitable purpose;

(ii) who solicits or obtains contributions solicited from the public for a charitable purpose; or

(iii) in any manner employs a charitable appeal as the basis of any solicitation or employs an appeal that reasonably suggests or implies that there is a charitable purpose to any solicitation.

(b) “Charitable organization” includes a chapter[, branch, area, office, or similar affiliate] or ~~[any]~~ a person who solicits contributions within the state for a charitable organization ~~[whose principal place of business is outside the state].~~

~~[(2)]~~ (3) “Charitable purpose” means any benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective or for the benefit of a public safety, law enforcement, or firefighter fraternal association.

~~[(3)]~~ (4) “Charitable sales promotion” means an advertising or sales campaign, conducted by a commercial co-venturer, which represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or purpose.

~~[(4)]~~ (5) (a) “Charitable solicitation” or “solicitation” means any request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose.

(b) “Charitable solicitation” or “solicitation” includes:

(i) any oral or written request, including any request by telephone, radio ~~[or]~~, television, or other advertising or communications media;

(ii) the distribution, circulation, or posting of any handbill, written advertisement, or publication;

(iii) an application or other request for a grant; or

(iv) the sale of, offer or attempt to sell, or request of donations in exchange for any advertisement, membership, subscription, or other article in connection with which any appeal is made for any charitable purpose, or the use of the name of any charitable organization or movement as an inducement or reason for making any purchase donation, or, in connection with any sale or donation, stating or implying that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose.

~~[(5)]~~ (6) “Commercial co-venturer” means a person who for profit is regularly and primarily

engaged in trade or commerce other than in connection with soliciting for a charitable organization or purpose.

[~~(6)~~] (7) (a) “Contribution” means the pledge or grant for a charitable purpose of any money or property of any kind, including any of the following:

(i) a gift, subscription, loan, advance, or deposit of money or anything of value;

(ii) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for charitable purposes; or

(iii) fees, dues, or assessments paid by members, when membership is conferred solely as consideration for making a contribution.

(b) “Contribution” does not include:

(i) money loaned to a charitable organization by a financial institution in the ordinary course of business; or

(ii) fees, dues, or assessments paid by members when membership is not conferred solely as consideration for making a contribution.

[~~(7)~~] (8) “Contributor” means ~~any~~ a donor, pledgor, purchaser, or other person who makes a contribution.

[~~(8)~~] (9) “Director” means the director of the Division of Consumer Protection.

[~~(9)~~] (10) “Division” means the Division of Consumer Protection of the Department of Commerce.

[~~(10)~~] (11) “Material fact” means information that a person of ordinary intelligence and prudence would consider relevant in deciding whether or not to make a contribution in response to a charitable solicitation.

[~~(11)~~] (12) (a) “Professional fund raiser” means a person who:

(i) for compensation or any other consideration, solicits contributions for charitable purposes, or plans or manages the solicitation of contributions for or on behalf of any charitable organization or any other person;

(ii) engages in, or represents being independently engaged in, the business of soliciting contributions for a charitable organization;

(iii) manages, supervises, or trains any solicitor whether as an employee or otherwise; or

(iv) uses a vending device or vending device decal for financial or other consideration that implies a solicitation of contributions or donations for any charitable organization or charitable purposes.

(b) “Professional fund raiser” does not include a bona fide officer, director, volunteer, or full-time employee of a charitable organization.

[~~(12)~~] (13) (a) “Professional fund raising counsel or consultant” or other comparable designation or title means a person who:

(i) for compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable organization, whether or not at any time the person has custody of contributions from a solicitation;

(ii) does not solicit contributions; and

(iii) does not employ, procure, or engage any compensated person to solicit or receive contributions.

(b) “Professional fund raising counsel or consultant” does not include an attorney, investment counselor, or banker who in the conduct of that person’s profession advises a client when actually engaged in the giving of legal, investment, or financial advice.

[~~(13)~~] (14) (a) “Vending device” means a container used by a charitable organization or professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or donation whether or not the device offers a product or item in return for the contribution or donation.

(b) “Vending device” includes machines, boxes, jars, wishing wells, barrels, or any other container.

[~~(14)~~] (15) “Vending device decal” means any decal, tag, or similar designation material that is attached to a vending device, whether or not used or placed by a charitable organization or professional fund raiser, that would indicate that all or a portion of the proceeds from the purchase of items from the vending device will go to a specific charitable organization.

Section 5. Section 13-22-8 is amended to read:

13-22-8. Exemptions.

(1) Section 13-22-5 does not apply to:

~~[(a) a solicitation that an organization conducts among the organization’s own established and bona fide membership exclusively through the voluntarily donated efforts of other members or officers of the organization;]~~

[~~(b)~~] (a) a bona fide religious, ecclesiastical, or denominational organization if:

(i) the solicitation is made for a church, missionary, religious, or humanitarian purpose; and

(ii) the organization is either:

(A) a lawfully organized corporation, institution, society, church, or established physical place of worship, at which nonprofit religious services and activities are regularly conducted and carried on;

(B) a bona fide religious group:

(I) that does not maintain specific places of worship;

(II) that is not subject to federal income tax; and

(III) not required to file an IRS Form 990 under any circumstance; or

(C) a separate group or corporation that is an integral part of an institution that is an income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported by funds solicited outside the group's or corporation's own membership or congregation;

~~[(e)]~~ (b) a solicitation by a broadcast media owned or operated by an educational institution or governmental entity, or any entity organized solely for the support of that broadcast media;

~~[(d)]~~ (c) except as provided in Subsection 13-22-21(1), a solicitation for the relief of any person sustaining a life-threatening illness or injury specified by name at the time of solicitation if the entire amount collected without any deduction is turned over to the named person;

~~[(e)]~~ (d) a political party authorized to transact the political party's affairs within this state and any candidate and campaign worker of the political party if the content and manner of any solicitation make clear that the solicitation is for the benefit of the political party or candidate;

~~[(f)]~~ (e) a political action committee or group soliciting funds relating to issues or candidates on the ballot if the committee or group is required to file financial information with a federal or state election commission;

~~[(g)]~~ (f) (i) a public school;

(ii) a public institution of higher learning;

(iii) a school accredited by an accreditation body recognized within the state or the United States;

(iv) an institution of higher learning accredited by an accreditation body recognized within the state or the United States;

(v) an organization within, and authorized by, an entity described in Subsections (1)~~[(g)]~~(f)(i) through (iv); or

(vi) a parent organization, teacher organization, or student organization authorized by an entity described in Subsection (1)~~[(g)]~~(f)(i) or (iii) if:

(A) the parent organization, teacher organization, or student organization is a branch of, or is affiliated with, a central organization;

(B) the parent organization, teacher organization, or student organization is subject to the central organization's general control and supervision;

(C) the central organization holds a United States Internal Revenue Service group tax exemption that covers the parent organization, teacher organization, or student organization; and

(D) the central organization is registered with the division under this chapter;

~~[(h)]~~ (g) a public or higher education foundation established under Title 53A, State System of Public Education, or Title 53B, State System of Higher Education;

~~[(i)]~~ (h) a television station, radio station, or newspaper of general circulation that donates air time or print space for no consideration as part of a cooperative solicitation effort on behalf of a charitable organization, whether or not that organization is required to register under this chapter;

~~[(j)]~~ (i) a volunteer fire department, rescue squad, or local civil defense organization whose financial oversight is under the control of a local governmental entity;

~~[(k)]~~ (j) any governmental unit of any state or the United States;

~~[(l)]~~ (k) any corporation:

(i) established by an act of the United States Congress; and

(ii) that is required by federal law to submit an annual report:

(A) on the activities of the corporation, including an itemized report of all receipts and expenditures of the corporation; and

(B) to the United States Secretary of Defense to be:

(I) audited; and

(II) submitted to the United States Congress; ~~[and]~~

~~[(m)]~~ (l) a solicitation by an applicant for a grant offered by a state agency if:

(i) the terms of the grant provide that the state agency monitors a grant recipient to ensure that grant funds are used in accordance with the grant's purpose; and

(ii) the sum of the amount available to the applicant under grants offered by a state agency that the applicant applies for in a calendar year is less than or equal to \$1,500~~[-]~~; and

(m) a chapter of a charitable organization or a person who solicits contributions for a charitable organization, if the charitable organization is registered with the division pursuant to Section 13-22-5, and:

(i) all contributions solicited by the chapter or person are delivered directly to the control of the charitable organization; or

(ii) (A) the charitable organization holds a United States Internal Revenue Service group tax exemption that covers the chapter;

(B) the charitable organization provides a list of its chapters to the division with its registration or renewal of registration;

(C) the chapter is on the list provided under Subsection (2)(m)(ii)(B);

(D) the chapter maintains the information required under Section 13-22-15 and provides the information to the division upon request; and

(E) solicitations by the chapter or the person are limited to the collection of membership-related

fees, dues, or assessments from new and existing members.

(2) ~~[Any]~~ An organization claiming an exemption under this section bears the burden of proving ~~[its]~~ the organization's eligibility for, or the applicability of, the exemption claimed.

(3) ~~[Each]~~ An organization exempt from registration pursuant to this section that makes a material change in the organization's legal status, officers, address, or similar changes shall file a report informing the division of the organization's current legal status, business address, business phone, officers, and primary contact person within 30 days of the change.

(4) The division may by rule:

(a) require an organization that is exempt from registration under this section to:

(i) file a notice of claim of exemption; and

(ii) file a renewal of a notice of claim of exemption;

(b) prescribe the contents of a notice of claim of exemption and a renewal of a notice of claim of exemption; and

(c) require a filing fee for a notice of claim of exemption and a renewal of a notice of claim of exemption as determined under Section 63J-1-504.

Section 6. Section 13-22-21 is amended to read:

13-22-21. Appeal on behalf of individual.

(1) If a charitable campaign consisting of exempt solicitations for the relief of a named individual sustaining a life-threatening illness or injury, as described in Subsection 13-22-8(1)~~(d)~~(c), collects proceeds in excess of \$1,000, the organizer of the campaign shall give the division written notice of the following:

(a) the organizer's name and address;

(b) the name, whereabouts, and present condition of the person for whose relief the contributions are solicited including a letter from the person's attending physician detailing the illness or injury;

(c) the date the charitable campaign commenced; and

(d) the purpose to which the collected contributions are to be applied.

(2) Notice under Subsection (1) is due within 10 days after commencing the appeal or collecting in excess of \$1,000, whichever is later.

(3) If the organizer fails to file timely notice, the division shall inform the organizer of the notice requirement and give the organizer 10 additional days as a grace period within which to file the notice. If the organizer fails to file the notice within the grace period, the division may issue a cease and desist order against the organizer.

(4) If, at any time, the division has reasonable cause to believe that the organizer is perpetrating a fraud against the public, or in any other way intends to profit from harming the public through the charitable campaign, it shall issue a cease and desist order against the organizer.

Section 7. Section 13-23-8 is enacted to read:

13-23-8. Grounds for denial, suspension, or revocation.

The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke an application or registration upon a finding that the order is in the public interest and that:

(1) the application for registration or renewal is incomplete or misleading in a material respect;

(2) the applicant or person registered under this chapter or an officer, director, agent, or employee of the applicant or registrant has:

(a) violated this chapter;

(b) violated Chapter 11, Utah Consumer Sales Practices Act;

(c) been enjoined by a court, or is the subject of an administrative order issued in this or another state, if the injunction or order:

(i) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or

(ii) is based on a finding of lack of integrity, truthfulness, or mental competence of the applicant;

(d) obtained or attempted to obtain a registration by misrepresentation;

(e) failed to timely provide the division with any information required by this chapter; or

(f) failed to pay a fine imposed by the division;

(3) the applicant's or registrant's bond, letter of credit, or certificate of deposit ceases to be in effect;

(4) the applicant or registrant requested an exemption from maintaining a bond, letter of credit, or certificate of deposit under Section 13-23-6, but does not meet the requirements for exemption; or

(5) the applicant or registrant ceases to provide health spa services.

Section 8. Section 13-26-4 is amended to read:

13-26-4. Exemptions from registration.

(1) In any enforcement action initiated by the division, the person claiming an exemption has the burden of proving that the person is entitled to the exemption.

(2) The following are exempt from the requirements of this chapter except for the requirements of Sections 13-26-8 and 13-26-11:

(a) a broker, agent, dealer, or sales professional licensed under the licensure laws of this state, when soliciting sales within the scope of his license;

(b) the solicitation of sales by:

(i) a public utility that is regulated under Title 54, Public Utilities, or by an affiliate of the utility;

(ii) a newspaper of general circulation;

(iii) a solicitation of sales made by a broadcaster licensed by any state or federal authority;

(iv) a nonprofit organization if no part of the net earnings from the sale inures to the benefit of any member, officer, trustee, or serving board member of the organization, or individual, or family member of an individual, holding a position of authority or trust in the organization; and

(v) a person who periodically publishes and delivers a catalog of the solicitor's merchandise to prospective purchasers, if the catalog:

(A) contains the price and a written description or illustration of each item offered for sale;

(B) includes the business address of the solicitor;

(C) includes at least 24 pages of written material and illustrations;

(D) is distributed in more than one state; and

(E) has an annual circulation by mailing of not less than 250,000;

(c) any publicly-traded corporation registered with the Securities and Exchange Commission, or any subsidiary of the corporation;

(d) the solicitation of any depository institution as defined in Section 7-1-103, a subsidiary of a depository institution, personal property broker, securities broker, investment adviser, consumer finance lender, or insurer subject to regulation by an official agency of this state or the United States;

(e) the solicitation by a person soliciting only the sale of telephone services to be provided by the person or the person's employer;

(f) the solicitation of a person relating to a transaction regulated by the Commodities Futures Trading Commission, if:

(i) the person is registered with or temporarily licensed by the commission to conduct that activity under the Commodity Exchange Act; and

(ii) the registration or license has not expired or been suspended or revoked;

(g) the solicitation of a contract for the maintenance or repair of goods previously purchased from the person:

(i) who is making the solicitation; or

(ii) on whose behalf the solicitation is made;

(h) the solicitation of previous customers of the business on whose behalf the call is made if the person making the call:

(i) does not offer any premium in conjunction with a sale or offer;

(ii) is not selling an investment or an opportunity for an investment that is not registered with any state or federal authority; and

(iii) is not regularly engaged in telephone sales;

(i) the solicitation of a sale that is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature;

(j) the solicitation of a person by a retail business establishment that has been in operation for at least five years in Utah under the same name as that used in connection with telemarketing if both of the following occur on a continuing basis:

(i) products are displayed and offered for sale at the place of business, or services are offered for sale and provided at the place of business; and

(ii) a majority of the seller's business involves the buyer obtaining the products or services at the seller's place of business;

(k) a person primarily soliciting the sale of a magazine or periodical sold by the publisher or the publisher's agent through a written agreement, or printed or recorded material through a contractual plan, such as a book or record club, continuity plan, subscription, standing order arrangement, or supplement or series arrangement if:

(i) the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise, and the arrangement is regulated by the Federal Trade Commission trade regulation concerning use of negative option plans by sellers in commerce; or

(ii) (A) the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis; and

(B) the consumer retains the right to cancel at any time and receive a full refund for the unused portion; [ø]

(l) a telephone marketing service company that provides telemarketing sales services under contract to sellers if:

(i) it has been doing business regularly with customers in Utah for at least five years under the same business name and with its principal office in the same location;

(ii) at least 75% of its contracts are performed on behalf of persons exempted from registration under this chapter; and

(iii) neither the company nor its principals have been enjoined from doing business or subjected to criminal actions for their business activities in this or any other state[-];

(m) a credit services organization that holds a current registration with the division under Chapter 21, Credit Services Organizations Act, if the credit services organization's telephone solicitations are limited to the solicitation of

services regulated under Chapter 21, Credit Services Organizations Act; and

(n) a provider that holds a current registration with the division under Chapter 42, Uniform Debt-Management Services Act, if the provider's telephone solicitations are limited to the solicitation of services regulated under Chapter 21, Uniform Debt-Management Services Act.

Section 9. Section 13-34a-102 is amended to read:

13-34a-102. Definitions.

As used in this chapter:

(1) "Accredited institution" means a postsecondary school that is accredited by an accrediting agency.

(2) "Accrediting agency" means a regional or national private educational association that:

(a) is recognized by the United States Department of Education;

(b) develops evaluation criteria; and

(c) conducts peer evaluations to assess whether a postsecondary school meets the criteria described in Subsection (2)(b).

(3) "Agent" means a person who:

(a) (i) owns an interest in a postsecondary school; or

(ii) is employed by a postsecondary school; and

(b) (i) enrolls or attempts to enroll a Utah resident in a postsecondary school;

(ii) offers to award an educational credential for remuneration on behalf of a postsecondary school; or

(iii) holds oneself out to Utah residents as representing a postsecondary school for any purpose.

(4) "Certificate of postsecondary state authorization" means a certificate issued by the division to a postsecondary school in accordance with the provisions of this chapter.

(5) "Division" means the Division of Consumer Protection.

(6) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letter of designation, mark, or series of letters, numbers, or words that represent enrollment, attendance, or satisfactory completion of the requirements or prerequisites of an educational program.

(7) "Intentional violation" means a violation of a provision of this chapter that occurs or continues after the division, the attorney general, a county attorney, or a district attorney gives the violator written notice, delivered by certified mail, that the violator is or has been in violation of the provision.

(8) "Operate" means to:

(a) maintain a place of business in the state;

(b) conduct significant educational activities within the state; or

(c) provide postsecondary education to a Utah resident that:

(i) is intended to lead to a postsecondary degree or certificate; and

(ii) is provided from a location outside the state by correspondence or telecommunications or electronic media technology.

(9) "Operating history" means a report, written evaluation, publication, or other documentation regarding:

(a) the current accreditation status of a postsecondary school with an accrediting agency; and

(b) an action taken by an accrediting agency that:

(i) places [a] the postsecondary school on probation;

(ii) imposes disciplinary action against [a] the postsecondary school; [or]

(iii) requires [a] the postsecondary school to take corrective action[-]; or

(iv) provides the postsecondary school with a warning or directive to show cause.

(10) "Ownership" means:

(a) the controlling interest in a postsecondary school; or

(b) if an entity holds the controlling interest in the postsecondary school, the controlling interest in the entity that holds the controlling interest in the postsecondary school.

(11) "Postsecondary education" means education or educational services offered primarily to individuals who:

(a) have completed or terminated their secondary or high school education; or

(b) are beyond the age of compulsory school attendance.

(12) (a) "Postsecondary school" means a person that provides or offers educational services to individuals who:

(i) have completed or terminated secondary or high school education; or

(ii) are beyond the age of compulsory school attendance.

(b) "Postsecondary school" does not include an institution that is part of the state system of higher education under Section 53B-1-102.

(13) "Private postsecondary school" means a postsecondary school that is not a public postsecondary school.

(14) "Public postsecondary school" means a postsecondary school:

(a) established by a state or other governmental entity; and

(b) substantially supported with government funds.

Section 10. Section 13-34a-104 is amended to read:

13-34a-104. Authority to execute interstate reciprocity agreement -- Rulemaking.

(1) The division may execute an interstate reciprocity agreement that:

(a) is for purposes of state authorization under 34 C.F.R. Sec. 600.9; and

(b) is for the benefit of:

(i) postsecondary schools in the state; or

(ii) (A) postsecondary schools in the state; and

(B) institutions that are part of the state system of higher education under Section 53B-1-102.

(2) If the division executes an interstate reciprocity agreement described in Subsection (1) or the State Board of Regents executes an interstate reciprocity agreement under Section 53B-16-109:

(a) except as provided by division rule, [~~the provisions of this chapter do~~] this chapter does not apply to a postsecondary school that obtains state authorization under the reciprocity agreement; and

(b) the division may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules relating to:

(i) the standards for granting a postsecondary school state authorization under a reciprocity agreement;

(ii) any filing, document, or fee required for a postsecondary school to obtain authorization under a reciprocity agreement; and

(iii) penalties if a postsecondary school fails to comply with the rules that the division makes under this Subsection (2).

(3) If the division executes an interstate reciprocity agreement described in Subsection (1) that includes institutions that are part of the state system of higher education under Section 53B-1-102, the State Board of Regents may make rules that:

(a) implement the reciprocity agreement; and

(b) relate to institutions that are part of the state system of higher education under Section 53B-1-102.

Section 11. Section 13-34a-204 is amended to read:

13-34a-204. Postsecondary school -- Procedure to obtain certificate of postsecondary state authorization.

(1) The division shall, in accordance with the provisions of this section, issue a certificate of

postsecondary state authorization to a postsecondary school.

(2) To obtain a certificate of postsecondary state authorization under this section, a postsecondary school shall:

(a) submit a completed registration form to the division that includes:

(i) proof of current accreditation from the postsecondary school's accrediting agency;

(ii) proof that the postsecondary school is fiscally responsible and can reasonably fulfill the postsecondary school's financial obligations, including:

(A) a copy of an audit of the postsecondary school's financial statements, with all applicable footnotes, including a balance sheet, an income statement, a statement of retained earnings, and a statement of cash flow, that was performed by a certified public accountant;

(B) at the postsecondary school's election, a copy of an audit of the postsecondary school's parent company's financial statements, with all applicable footnotes, including a balance sheet, an income statement, a statement of retained earnings, and a statement of cash flow, that was performed by a certified public accountant; and

(C) a copy of all other financial documentation that the postsecondary school provided to the postsecondary school's accrediting agency since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a completed registration form under this section, whichever is longer;

(iii) proof of good standing in the state where the postsecondary school is organized;

(iv) the postsecondary school's operating history with the postsecondary school's accrediting agency since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a completed registration form under this section, whichever is longer;

(v) the number of Utah residents who enrolled in the postsecondary school since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a completed registration form under this section, whichever is longer;

(vi) satisfactory documentation that the postsecondary school has complied with the complaint process requirements described in Section 13-34a-206;

(vii) (A) the number of complaints that a Utah resident has filed against the postsecondary school since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a completed registration form under this section, whichever is longer; and

(B) upon request, includes copies of the complaints described in Subsection (2)(a)(vii)(A);

(viii) a disclosure that states whether the postsecondary school or an owner, officer, director, or administrator of the postsecondary school has been:

(A) convicted of a crime;

(B) subject to an order issued by a court; or

(C) subject to an order issued by an administrative agency that imposed disciplinary action; and

(ix) a notarized personal verification by the owner or a responsible officer of the postsecondary school that the information provided under this Subsection (2)(a) is complete and accurate; and

(b) pay a nonrefundable fee, established by the division, in accordance with Subsection 13-34a-103(2)(c) to pay for the cost of processing the registration form and issuing the certificate of postsecondary state authorization.

(3) If a postsecondary school's accreditor loses its recognition by the United States Department of Education, the postsecondary school may satisfy the requirement of Subsection (2)(a)(i) by demonstrating to the division that the postsecondary school is within a grace period provided by the United States Department of Education for obtaining new accreditation or is otherwise considered by the United States Department of Education to have recognized accreditation.

[43] (4) The division shall develop and make available to the public a registration form described in Subsection (2)(a).

[44] (5) The division shall deposit money that the division receives under Subsection (2)(b) into the Commerce Service Account, created in Section 13-1-2.

[45] (6) If a postsecondary school maintains more than one physical campus in the state, the postsecondary school shall file a separate registration form for each physical campus in the state.

[46] (7) (a) A certificate of postsecondary state authorization issued under this section is not transferrable.

(b) (i) If a postsecondary school's ownership or governing body changes after the postsecondary school obtains a certificate of postsecondary state authorization under this section, the postsecondary school shall submit a new completed registration form in accordance with Subsection (2) within 60 days after the day on which the change in ownership or governing body occurs.

(ii) If a postsecondary school fails to timely comply with the requirements described in Subsection [46] (7)(b)(i), the postsecondary school's certificate of postsecondary state authorization immediately and automatically expires.

(c) If there is a change in circumstance that may affect a postsecondary school's status under this section, the postsecondary school shall notify the division in writing of the change within 30 days after the day on which the change occurs.

[7] (8) (a) A certificate of postsecondary state authorization issued under this section expires one year after the day on which the certificate of postsecondary state authorization is issued.

(b) Notwithstanding Subsection (8)(a), the division may extend the period for which the exemption certificate is effective so that expiration dates are staggered throughout the year.

Section 12. Section 13-34a-207 is amended to read:

13-34a-207. Discontinuance of operations.

(1) If a postsecondary school [ceases] determines that the postsecondary school will cease to operate, [at least] no later than 30 days [before] after the day on which the postsecondary school [ceases] determines it will cease to operate, the postsecondary school shall give the division written notice that includes:

(a) the date on which the postsecondary school will cease to operate; [and]

(b) [for an accredited institution,] a written certification, signed by the postsecondary school's owner or officer, that the postsecondary school [has complied] is compliant and will continue to be compliant with the postsecondary school's accrediting agency's closure requirements~~[-]~~;

(c) a copy of any teach-out plan, as defined under 34 C.F.R. Sec. 602.3, approved by the postsecondary school's accrediting agency; and

(d) to the extent permitted by law:

(i) a current list of students residing in the state who are enrolled in the postsecondary school; and

(ii) for each student described in Subsection (1)(d)(i):

(A) a list of the one or more programs in which the student is enrolled; and

(B) the student's anticipated graduation date.

(2) After a postsecondary school submits a written notice described in Subsection (1), the postsecondary school may not recruit or enroll new students in the state.

(3) (a) The provisions of this Subsection (3) apply to the extent not prohibited by federal law.

(b) If a postsecondary school that ceases operation has a student transcript or student diploma, the postsecondary school shall:

(i) provide for the storage of the student transcript or student diploma; and

(ii) make the student transcript or student diploma available to the same extent that an education record is available under the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

(c) The division may:

(i) accept a copy of a student transcript or student diploma from a postsecondary school that ceases operation; and

(ii) charge a reasonable fee for providing a copy of a student transcript or student diploma.

(d) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, for a student transcript or student diploma held by the division under this chapter, the division shall treat the student transcript or student diploma as if it were an education record under the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental entity and apply the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, as it relates to disclosure of the student transcript or student diploma.

CHAPTER 99**S. B. 41**

Passed February 9, 2017

Approved March 17, 2017

Effective May 9, 2017

STATE HIGHWAY SYSTEM AMENDMENTS

Chief Sponsor: Wayne A. Harper

House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill modifies the Designation of State Highways Act by amending state highway descriptions.

Highlighted Provisions:

This bill:

- ▶ amends the description of SR-7 in St. George;
- ▶ creates SR-131 in Bluffdale;
- ▶ creates SR-135 from Lindon to Pleasant Grove;
- ▶ amends the description of SR-140 in Bluffdale;
- ▶ creates SR-176 in Vineyard; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

72-4-106, as last amended by Laws of Utah 2011, Chapter 127

72-4-119, as last amended by Laws of Utah 2005, Chapter 21

72-4-123, as last amended by Laws of Utah 2009, Chapter 118

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

Section**Section 72-4-106 is amended to read:****72-4-106. State highways -- SR-6 to SR-10.**

State highways include:

(1) SR-6. From the Utah-Nevada state line easterly through Delta and Tintic Junction to the northbound ramps of the North Santaquin Interchange of Route 15; then beginning again at the Moark Connection Interchange of Route 15 easterly through Spanish Fork Canyon and Price to Route 70 west of Green River.

(2) SR-7. From Route 15 in St. George easterly via Southern Parkway to ~~[Airport Parkway]~~ Sand Hollow Road.

(3) SR-8. From Dixie Downs Road to Route 18 in St. George on Sunset Boulevard.

(4) SR-9. From Route 15 at Harrisburg Junction easterly to Zion National Park south boundary, and from Zion National Park east boundary to Route 89 at Mt. Carmel Junction.

(5) SR-10. From a junction with Route 70 east of Fremont Junction northeasterly to Route 55 in Price.

Section 13. Section 72-4-119 is amended to read:**72-4-119. State highways -- SR-131 to SR-140.**

State highways include:

(1) ~~SR-131. From Freedom Point Way in Bluffdale northeasterly on Porter Rockwell Boulevard to Route 140.~~

~~(4)~~ (2) SR-132. From Route 6 in Lynndyl northeasterly through Leamington to Nephi; then southeasterly through Fountain Green and Moroni to Route 89 at Pigeon Hollow Junction.

~~(2)~~ (3) SR-133. From Kanosh south city limits north through Meadow to Route 15 north of Meadow.

~~(3)~~ (4) SR-134. From Route 37 at Kaneshville northerly to Plain City; then easterly to Route 235 in North Ogden.

(5) SR-135. From 2800 West in Lindon easterly via Pleasant Grove Boulevard to Route 129 in Pleasant Grove.

~~(4)~~ (6) SR-136. From a junction with Route 50 and 125 east of Delta north to Route 6.

~~(5)~~ (7) SR-137. From Route 89 in Gunnison easterly to Mayfield; then northerly to Route 89.

~~(6)~~ (8) SR-138. From Route 80 at Stansbury Interchange southeasterly through Grantsville to Route 36 at Mills Junction.

~~(7)~~ (9) SR-139. From Route 6 northerly to Route 157 near Spring Glen.

~~(8)~~ (10) SR-140. ~~[From Route 68 at Bluffdale easterly coincident with the Bluffdale Road] From 800 West in Bluffdale easterly on 14600 South to the on and off access ramps on the east side of Route 15.~~

Section 14. Section 72-4-123 is amended to read:**72-4-123. State highways -- SR-171 to SR-176, SR-178, SR-180.**

State highways include:

(1) SR-171. From Route 111 at Eighty-fourth West Street and Thirty-fifth South Street easterly on Thirty-fifth South Street and Thirty-third South Street to Route 215 at the east-side belt route.

(2) SR-172. From 6200 South north on 5600 West to Route 80.

(3) SR-173. From Route 111 southeast of Magna easterly through Kearns and Murray to Route 89 at 5300 South Street in Murray.

(4) SR-174. From Intermountain Power Plant maingate southeasterly to Route 6 south of Lynndyl.

(5) SR-175. From Route 89 westerly on 11400 South to Route 154.

(6) SR-176. From Route 114 westerly on Vineyard Connector to Main Street in Vineyard.

~~[(6)]~~ (7) SR-178. From the southbound on and off ramps of Route 15 east on 800 South in Payson to Route 198.

~~[(7)]~~ (8) SR-180. From Route 15 southeast of American Fork northerly on Fifth East Street to Route 89 in American Fork.

CHAPTER 100**S. B. 42**

Passed February 9, 2017
 Approved March 17, 2017
 Effective May 9, 2017

**DUI IMPOUND FEE
 REFUND AMENDMENTS**

Chief Sponsor: Wayne A. Harper
 House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill modifies provisions relating to DUI impound fee refunds.

Highlighted Provisions:

This bill:

- ▶ modifies the time frame for submission of documents for DUI impound fee refunds.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-6a-1406, as last amended by Laws of Utah 2016, Chapters 100 and 148

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

Section 1. Section 41-6a-1406 is amended to read:**41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification requirements -- Administrative impound fee -- Refunds -- Possessory lien -- Rulemaking.**

(1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 by an order of a peace officer or by an order of a person acting on behalf of a law enforcement agency or highway authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the expense of the owner.

(2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or impounded to:

- (a) a state impound yard; or
- (b) if none, a garage, docking area, or other place of safety.
- (3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be removed by a tow truck motor carrier that meets standards established:

(a) under Title 72, Chapter 9, Motor Carrier Safety Act; and

(b) by the department under Subsection (10).

(4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report of the

removal shall be sent to the Motor Vehicle Division by:

(i) the peace officer or agency by whom the peace officer is employed; and

(ii) the tow truck operator or the tow truck motor carrier by whom the tow truck operator is employed.

(b) The report shall be in a form specified by the Motor Vehicle Division and shall include:

- (i) the operator's name, if known;
- (ii) a description of the vehicle, vessel, or outboard motor;
- (iii) the vehicle identification number or vessel or outboard motor identification number;
- (iv) the license number, temporary permit number, or other identification number issued by a state agency;
- (v) the date, time, and place of impoundment;
- (vi) the reason for removal or impoundment;
- (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or outboard motor; and
- (viii) the place where the vehicle, vessel, or outboard motor is stored.

(c) Until the tow truck operator or tow truck motor carrier reports the removal as required under this Subsection (4), a tow truck motor carrier or impound yard may not:

- (i) collect any fee associated with the removal; and
- (ii) begin charging storage fees.

(5) (a) Except as provided in Subsection (5)(e) and upon receipt of the report, the Motor Vehicle Division shall give notice, in the manner described in Section 41-1a-114, to the following parties with an interest in the vehicle, vessel, or outboard motor, as applicable:

- (i) the registered owner;
- (ii) any lien holder; or
- (iii) a dealer, as defined in Section 41-1a-102, if the vehicle, vessel, or outboard motor is currently operating under a temporary permit issued by the dealer, as described in Section 41-3-302.

(b) The notice shall:

(i) state the date, time, and place of removal, the name, if applicable, of the person operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal, and the place where the vehicle, vessel, or outboard motor is stored;

(ii) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle, vessel, or outboard motor;

(iii) state the conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and

(iv) inform the parties described in Subsection (5)(a) of the division's intent to sell the vehicle, vessel, or outboard motor, if, within 30 days after the day of the removal or impoundment under this section, one of the parties fails to make a claim for release of the vehicle, vessel, or outboard motor.

(c) Except as provided in Subsection (5)(e) and if the vehicle, vessel, or outboard motor is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the parties described in Subsection (5)(a) of the removal and the place where the vehicle, vessel, or outboard motor is stored.

(d) The Motor Vehicle Division shall forward a copy of the notice to the place where the vehicle, vessel, or outboard motor is stored.

(e) The Motor Vehicle Division is not required to give notice under this Subsection (5) if a report was received by a tow truck operator or tow truck motor carrier reporting a tow truck service in accordance with Subsection 72-9-603(1)(a)(i).

(6) (a) The vehicle, vessel, or outboard motor shall be released after a party described in Subsection (5)(a):

(i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of the State Tax Commission;

(ii) presents identification sufficient to prove ownership of the impounded vehicle, vessel, or outboard motor;

(iii) completes the registration, if needed, and pays the appropriate fees;

(iv) if the impoundment was made under Section 41-6a-527, pays an administrative impound fee of \$400; and

(v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

(b) (i) Twenty-nine dollars of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;

(ii) \$147 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the Department of Public Safety Restricted Account created in Section 53-3-106;

(iii) \$20 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the Traumatic Spinal Cord and Brain Injury Rehabilitation Fund; and

(iv) the remainder of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the General Fund.

(c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refunded by the State Tax Commission if the registered owner, lien holder, or owner's agent presents written evidence to the State Tax Commission that:

(i) the Driver License Division determined that the arrested person's driver license should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter or other report from the Driver License Division presented within ~~[30 days of the final notification from]~~ 180 days after the day on which the Driver License Division mailed the final notification; or

(ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the stolen vehicle report presented within ~~[30 days]~~ 180 days after the day of the impoundment.

(d) A tow truck operator, a tow truck motor carrier, and an impound yard shall accept payment by cash and debit or credit card for a removal or impoundment under Subsection (1) or any service rendered, performed, or supplied in connection with a removal or impoundment under Subsection (1).

(e) The owner of an impounded vehicle may not be charged a fee for the storage of the impounded vehicle, vessel, or outboard motor if:

(i) the vehicle, vessel, or outboard motor is being held as evidence; and

(ii) the vehicle, vessel, or outboard motor is not being released to a party described in Subsection 5(a), even if the party satisfies the requirements to release the vehicle, vessel, or outboard motor under this Subsection (6).

(7) (a) An impounded vehicle, vessel, or outboard motor not claimed by a party described in Subsection (5)(a) within the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the proceeds, if any, shall be disposed of as provided under Section 41-1a-1104.

(b) The date of impoundment is considered the date of seizure for computing the time period provided under Section 41-1a-1103.

(8) A party described in Subsection (5)(a) that pays all fees and charges incurred in the impoundment of the owner's vehicle, vessel, or outboard motor has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vehicle, vessel, or outboard motor whose actions caused the removal or impoundment.

(9) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel, or outboard motor.

(10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules setting the performance standards for towing companies to be used by the department.

(11) (a) The Motor Vehicle Division may specify that a report required under Subsection (4) be submitted in electronic form utilizing a database for submission, storage, and retrieval of the information.

(b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the administrator of the database may adopt a schedule of fees assessed for utilizing the database.

- (ii) The fees under this Subsection (11)(b) shall:
 - (A) be reasonable and fair; and
 - (B) reflect the cost of administering the database.

CHAPTER 101**S. B. 44**

Passed February 21, 2017

Approved March 17, 2017

Effective May 9, 2017

DENTAL INSURANCE AMENDMENTS

Chief Sponsor: Allen M. Christensen

House Sponsor: Raymond P. Ward

LONG TITLE**General Description:**

This bill regulates certain contract provisions for dental services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a dental insurer from setting fees for dental services that are not covered services under the dental insurance; and
- ▶ applies to dental plans entered into or renewed on or after January 1, 2018.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

31A-22-645, Utah Code Annotated 1953

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

Section 1. Section 31A-22-645 is enacted to read:**31A-22-645. Dental insurance -- Contract provision for noncovered services.**

(1) For purposes of this section:

(a) “Covered services” means dental services for which reimbursement:

(i) is available or would be reimbursable under an enrollee’s dental plan but for the application of one or more of the following contractual provisions:

(A) deductibles[₇];

(B) copayments[₇];

(C) coinsurance[₇];

(D) waiting periods[₇];

(E) annual or lifetime maximums[₇];

(F) frequency limitations[₇]; or

(G) alternative benefit payments[₇ or any other limitation]; and

(ii) is not merely nominal, for the purpose of avoiding the requirements of this section.

(b) “Dental plan” means:

(i) a health benefit plan that includes coverage for dental services; and

(ii) a policy or certificate that provides coverage solely for dental services.

(c) “Dentist” means an individual licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act.

(2) (a) This section applies to:

(i) a dental plan that is entered into or renewed on or after January 1, 2018; and

(ii) an administrator providing third-party administration services or a provider network for a dental plan.

(b) This section does not apply to a self-insured dental plan that is regulated by federal law.

(3) A contract between a dental plan and a dentist to provide covered services may not:

(a) require, directly or indirectly, that a dentist provide dental services to a covered individual at a fee set by, or a fee subject to the approval of, the dental plan unless:

(i) the dental services are covered services under the dental plan; or

(ii) (A) the dental services are not reimbursed by the dental plan;

(B) the dental services are discounted for individuals who are part of a discount dental rates plan; and

(C) the dentist who provided the dental services has elected to participate in the discount dental rates plan; and

(b) prohibit a dentist from offering or providing noncovered dental services to a covered individual at a fee determined by the dentist and the individual who will receive the noncovered services.

CHAPTER 102**S. B. 45**

Passed February 16, 2017

Approved March 17, 2017

Effective May 9, 2017

**RETAIL WATER LINE
DISCLOSURE AMENDMENTS**

Chief Sponsor: Karen Mayne

House Sponsor: Stephen G. Handy

LONG TITLE**General Description:**

This bill enacts provisions relating to service of culinary water.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ requires each public provider of culinary water to provide certain disclosures related to liability for the repair or replacement of a retail water line.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

11-8-4, as enacted by Laws of Utah 2016, Chapter 283

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

Section 1. Section 11-8-4 is amended to read:**CHAPTER 8. SEWAGE AND
CULINARY WATER SYSTEMS****11-8-4. Sewer lateral disclosure required.**

(1) As used in this section:

(a) "Public owner" means the same as that term is defined in Section 11-8-1.

(b) "Public provider" means a public owner or a public retail water provider.

(c) "Public retail water provider" means a public entity that provides culinary water to end users.

(d) "Retail water line" means a pipe that connects a property to a public retail water provider's water main line.

(~~(b)~~) (e) "Sanitary sewer service" means service provided by a public owner's sanitary sewer facilities.

(~~(e)~~) (f) "Sewer lateral" means a pipe that connects a property to a public owner's sanitary sewer main line.

(2) (a) [~~Each~~] Twice per calendar year, a public [~~owner~~] provider shall, in accordance with Subsection (2)(b), distribute a disclosure that:

(i) (A) for a public owner, includes the definition of a sewer lateral; ~~and~~ or

(B) for a public retail water provider, includes the definition of a retail water line; and

(ii) states whether the record owner of the property or the public [~~owner~~] provider is responsible for repair and replacement of the sewer lateral or retail water line that serves [a] the property.

(b) A public [~~owner~~] provider may distribute the disclosure described in Subsection (2)(a) by:

(i) [~~once—each~~] twice per calendar year conspicuously placing the disclosure:

(A) on each bill for sanitary sewer service or culinary water service in a particular billing cycle; or

(B) in a newsletter that is circulated within the boundaries of the area served by the public [~~owner~~] provider;

(ii) conspicuously placing the disclosure on the public [~~owner's~~] provider's website;

(iii) including the disclosure in a broad based social media campaign; or

(iv) any other means reasonably calculated to make the disclosure available to individuals served by the public [~~owner~~] provider.

(c) A public [~~owner's~~] provider's failure to comply with a provision of this Subsection (2) does not result in any liability for the public [~~owner~~] provider based on the public [~~owner's~~] provider's failure to comply.

CHAPTER 103**S. B. 53**

Passed February 27, 2017

Approved March 17, 2017

Effective May 9, 2017

LIS PENDENS AMENDMENTS

Chief Sponsor: Todd Weiler
House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill addresses certain lien actions and general lis pendens requirements.

Highlighted Provisions:

This bill:

- ▶ addresses lis pendens requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78B-6-1204, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-1304, as last amended by Laws of Utah 2016, Chapter 306

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

Section 1. Section 78B-6-1204 is amended to read:**78B-6-1204. Lis pendens required.**

(1) The plaintiff shall file a notice of the action with the recorders of all the counties in which the property is situated. The notice shall contain:

- (a) a copy of such complaint; or
- (b) a notice of the pendency of the action, containing:
 - (i) the names of all known parties;
 - (ii) the object of the action; and
 - (iii) a description of the property affected.

(2) Once the notice is filed, all persons having an interest in the property shall be considered to have notice of the pendency of the action.

(3) This section does not apply if a plaintiff satisfies the requirements of a notice of pendency of an action required by Section 38-1a-701 or Section 38-10-106.

(4) If a complaint described in Subsection (1)(a) is amended after the notice is recorded, the plaintiff is not required to file an amended notice unless the property description has changed.

Section 2. Section 78B-6-1304 is amended to read:**78B-6-1304. Motions related to a notice of pendency of an action.**

(1) Any time after a notice has been filed pursuant to Section 78B-6-1303, any of the following may make a motion to the court in which the action is pending to release the notice:

- (a) a party to the action; or
- (b) a person with an interest in the real property affected by the notice, including a prospective purchaser with an executed purchase contract.

(2) A court shall order notice of pendency of action released if:

- (a) the court receives a motion to release under Subsection (1); and
- (b) after a notice and hearing if determined to be necessary by the court, the court finds that the claimant has not established by a preponderance of the evidence the validity of the real property claim that is the subject of the notice.

(3) In deciding a motion under Subsection (2), if the underlying action for which a notice of pendency of action is filed is an action for specific performance, a court shall order a notice released if:

- (a) the court finds that the party filing the action has failed to satisfy the statute of frauds for the transaction under which the claim is asserted relating to the real property; or
- (b) the court finds that the elements necessary to require specific performance have not been established by a preponderance of the evidence.

(4) If a court releases a claimant's notice pursuant to this section, that claimant may not record another notice with respect to the same property without an order from the court in which the action is pending that authorizes the recording of a new notice of pendency.

(5) Upon a motion by any person with an interest in the real property that is the subject of a notice of pendency, a court may, at anytime after the notice has been recorded, require, as a condition of maintaining the notice, that the claimant provide security to the moving party in the amount and form directed by the court, regardless of whether the court has received an application to release under Subsection (1).

(6) A person who receives security under Subsection (5) may recover from the surety an amount not to exceed the amount of the security upon a showing that:

- (a) the claimant did not prevail on the real property claim; and
- (b) the person receiving the security suffered damages as a result of the maintenance of the notice.

(7) The amount of security required by the court under Subsection (5) does not establish or limit the amount of damages or reasonable attorney fees and costs that may be awarded to a party who is found to have been damaged by a wrongfully filed notice of pendency.

(8) A court shall award costs and attorney fees to a prevailing party on any motion under this section unless the court finds that:

(a) the nonprevailing party acted with substantial justification; or

(b) other circumstances make the imposition of attorney fees and costs unjust.

(9) The motion permitted by this section does not apply to a notice of pendency of an action required by Section 38-1a-701 or Section 38-10-106.

CHAPTER 104**S. B. 67**

Passed February 16, 2017

Approved March 17, 2017

Effective May 9, 2017

HUNTING MENTOR PROGRAM

Chief Sponsor: Allen M. Christensen

House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill modifies the requirements for a resident minor to use the hunting permit of another person.

Highlighted Provisions:

This bill:

- ▶ states that a resident minor may use the resident or nonresident hunting permit of another person if:
 - the resident minor is otherwise legally eligible to hunt; and
 - the permit holder receives no form of compensation, obtains the division's written approval, and accompanies the minor in person; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

23-19-1, as last amended by Laws of Utah 2016, Chapter 258

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

Section 1. Section 23-19-1 is amended to read:

23-19-1. Possession of licenses, certificates of registration, permits, and tags required -- Nonassignability -- Exceptions -- Free fishing day -- Nature of licenses, permits, and tags issued by the division.

(1) Except as provided in Subsection (5), a person may not take, hunt, fish, or seine protected wildlife or sell, trade, or barter protected wildlife or wildlife parts unless the person:

(a) procures the necessary licenses, certificates of registration, permits, or tags required under this title, by rule made by the Wildlife Board under this title, or by an order or proclamation issued in accordance with a rule made by the Wildlife Board under this title; and

(b) carries in the person's possession while engaging in the activities described in Subsection (1) the license, certificate of registration, permit, or tag required under this title, by rule made by the Wildlife Board under this title, or by an order or proclamation issued in accordance with a rule made by the Wildlife Board under this title.

(2) Except as provided in Subsection (3) a person may not:

(a) lend, transfer, sell, give, or assign:

(i) a license, certificate of registration, permit, or tag belonging to the person; or

(ii) a right granted by a license, certificate of registration, permit, or tag; or

(b) use or attempt to use a license, certificate of registration, permit, or tag of another person.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Wildlife Board may, by rule, make exceptions to the prohibitions described in Subsection (2) to:

(a) transport wildlife;

(b) allow a person to take protected wildlife for another person if:

(i) the person possessing the license, certificate of registration, permit, or tag has a permanent physical impairment due to a congenital or acquired injury or disease; and

(ii) the injury or disease described in Subsection (3)(b)(i) results in the person having a disability that renders the person physically unable to use a legal hunting weapon or fishing device;

(c) allow a resident minor under 18 years of age to use the resident or nonresident hunting permit of another person if:

(i) the resident minor is[:] otherwise legally eligible to hunt; and

~~[(A) the permit holder's child, stepchild, grandchild, or legal ward, if the permit holder's guardianship of the legal ward is based solely on the minor's age; or]~~

~~[(B) suffering from a life threatening medical condition; and]~~

(ii) the permit holder:

(A) receives no form of compensation or remuneration for allowing the minor to use the permit;

(B) obtains the division's prior written approval to allow the minor to use the permit; and

(C) accompanies the minor, for the purposes of advising and assisting during the hunt, at a distance where the permit holder can communicate with the minor, in person, by voice or visual signals; or

(d) subject to the requirements of Subsection (4), transfer to another person a certificate of registration to harvest brine shrimp and brine shrimp eggs, if the certificate is transferred in connection with the sale or transfer of the brine shrimp harvest operation or harvesting equipment.

(4) A person may transfer a certificate of registration to harvest brine shrimp and brine shrimp eggs if:

(a) the person submits to the division an application to transfer the certificate on a form provided by the division;

(b) the proposed transferee meets all requirements necessary to obtain an original certificate of registration; and

(c) the division approves the transfer of the certificate.

(5) A person is not required to obtain a license, certificate of registration, permit, or tag to:

(a) fish on a free fishing day that the Wildlife Board may establish each year by rule made by the Wildlife Board under this title or by an order or proclamation issued in accordance with a rule made by the Wildlife Board under this title;

(b) fish at a private fish pond operated in accordance with Section 23-15-10; or

(c) hunt birds on a commercial hunting area that the owner or operator is authorized to propagate, keep, and release for shooting in accordance with a certificate of registration issued under Section 23-17-6.

(6) (a) A license, permit, tag, or certificate of registration issued under this title, or the rules of the Wildlife Board issued pursuant to authority granted by this title, to take protected wildlife is:

(i) a privilege; and

(ii) not a right or property for any purpose.

(b) A point or other form of credit issued to, or accumulated by, a person under procedures established by the Wildlife Board in rule to improve the likelihood of obtaining a hunting permit in a division-administered drawing:

(i) may not be transferred, sold, or assigned to another person; and

(ii) is not a right or property for any purpose.

CHAPTER 105**S. B. 106**

Passed March 7, 2017

Approved March 17, 2017

Effective May 9, 2017

**PSYCHOLOGY
INTERJURISDICTIONAL COMPACT**

Chief Sponsor: Brian E. Shiozawa

House Sponsor: Edward H. Redd

LONG TITLE**General Description:**

This bill enacts a multi-state compact for psychologist telehealth.

Highlighted Provisions:

This bill:

- ▶ creates a chapter in the Occupations and Professions Code to establish the Psychologist Interjurisdictional Compact; and
- ▶ provides administrative rulemaking authority to the Division of Occupational and Professional Licensing to implement the multi-state compact.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

58-61b-101, Utah Code Annotated 1953

58-61b-102, Utah Code Annotated 1953

58-61b-103, Utah Code Annotated 1953

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

Section 1. Section 58-61b-101 is enacted to read:**CHAPTER 61b. PSYCHOLOGY
INTERJURISDICTIONAL COMPACT****58-61b-101. Title.**

This chapter is known as the “Psychology Interjurisdictional Compact.”

Section 2. Section 58-61b-102 is enacted to read:**58-61b-102. Psychology Interjurisdictional Compact.**

The Psychology Interjurisdictional Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which is, in form, substantially as follows:

**ARTICLE I
PURPOSE**

Whereas, states license psychologists, in order to protect the public through verification of education, training, and experience and ensure accountability for professional practice;

Whereas, this Compact is intended to regulate the day to day practice of telepsychology (i.e. the provision of psychological services using telecommunication technologies) by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority;

Whereas, this Compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for 30 days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority;

Whereas, this Compact is intended to authorize State Psychology Regulatory Authorities to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state;

Whereas, this Compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of psychologists and that such state regulation will best protect public health and safety;

Whereas, this Compact does not apply when a psychologist is licensed in both the Home and Receiving States; and

Whereas, this Compact does not apply to permanent in-person, face-to-face practice, it does allow for authorization of temporary psychological practice.

Consistent with these principles, this Compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state in which the psychologist is not licensed to practice psychology;

2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;

3. Encourage the cooperation of Compact States in the areas of psychology licensure and regulation;

4. Facilitate the exchange of information between Compact States regarding psychologist licensure, adverse actions, and disciplinary history;

5. Promote compliance with the laws governing psychological practice in each Compact State; and

6. Invest all Compact States with the authority to hold licensed psychologists accountable through the mutual recognition of Compact State licenses.

**ARTICLE II
DEFINITIONS**

A. “Adverse Action” means: any action taken by a State Psychology Regulatory Authority which finds a violation of a statute or regulation that is identified by the State Psychology Regulatory Authority as discipline and is a matter of public record.

B. “Association of State and Provincial Psychology Boards (ASPPB)” means: the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.

C. “Authority to Practice Interjurisdictional Telepsychology” means: a licensed psychologist’s authority to practice telepsychology, within the limits authorized under this Compact, in another Compact State.

D. “Bylaws” means: those Bylaws established by the Psychology Interjurisdictional Compact Commission pursuant to Section X for its governance, or for directing and controlling its actions and conduct.

E. “Client/Patient” means: the recipient of psychological services, whether psychological services are delivered in the context of healthcare, corporate, supervision, and/or consulting services.

F. “Commissioner” means: the voting representative appointed by each State Psychology Regulatory Authority pursuant to Section X.

G. “Compact State” means: a state, the District of Columbia, or United States territory that has enacted this Compact legislation and which has not withdrawn pursuant to Article XIII, Section C or been terminated pursuant to Article XII, Section B.

H. “Coordinated Licensure Information System” also referred to as “Coordinated Database” means: an integrated process for collecting, storing, and sharing information on psychologists’ licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

I. “Confidentiality” means: the principle that data or information is not made available or disclosed to unauthorized persons and/or processes.

J. “Day” means: any part of a day in which psychological work is performed.

K. “Distant State” means: the Compact State where a psychologist is physically present (not through the use of telecommunications technologies), to provide temporary in-person, face-to-face psychological services.

L. “E.Passport” means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

M. “Executive Board” means: a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

N. “Home State” means: a Compact State where a psychologist is licensed to practice psychology. If the

psychologist is licensed in more than one Compact State and is practicing under the Authorization to Practice Interjurisdictional Telepsychology, the Home State is the Compact State where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one Compact State and is practicing under the Temporary Authorization to Practice, the Home State is any Compact State where the psychologist is licensed.

O. “Identity History Summary” means: a summary of information retained by the FBI, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.

P. “In-Person, Face-to-Face” means: interactions in which the psychologist and the client/patient are in the same physical space and which do not include interactions that may occur through the use of telecommunication technologies.

Q. “Interjurisdictional Practice Certificate (IPC)” means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that grants temporary authority to practice based on notification to the State Psychology Regulatory Authority of intention to practice temporarily, and verification of one’s qualifications for such practice.

R. “License” means: authorization by a State Psychology Regulatory Authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

S. “Non-Compact State” means: any state which is not at the time a Compact State.

T. “Psychologist” means: an individual licensed for the independent practice of psychology.

U. “Psychology Interjurisdictional Compact Commission” also referred to as “Commission” means: the national administration of which all Compact States are members.

V. “Receiving State” means: a Compact State where the client/patient is physically located when the telepsychological services are delivered.

W. “Rule” means: a written statement by the Psychology Interjurisdictional Compact Commission promulgated pursuant to Section XI of the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a Compact State, and includes the amendment, repeal, or suspension of an existing rule.

X. “Significant Investigatory Information” means:

1. investigative information that a State Psychology Regulatory Authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or

2. investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified and/or had an opportunity to respond.

Y. “State” means: a state, commonwealth, territory, or possession of the United States, or the District of Columbia.

Z. “State Psychology Regulatory Authority” means: the Board, office, or other agency with the legislative mandate to license and regulate the practice of psychology.

AA. “Telepsychology” means: the provision of psychological services using telecommunication technologies.

BB. “Temporary Authorization to Practice” means: a licensed psychologist’s authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this Compact, in another Compact State.

CC. “Temporary In-Person, Face-to-Face Practice” means: where a psychologist is physically present (not through the use of telecommunications technologies), in the Distant State to provide for the practice of psychology for 30 days within a calendar year and based on notification to the Distant State.

ARTICLE III HOME STATE LICENSURE

A. The Home State shall be a Compact State where a psychologist is licensed to practice psychology.

B. A psychologist may hold one or more Compact State licenses at a time. If the psychologist is licensed in more than one Compact State, the Home State is the Compact State where the psychologist is physically present when the services are delivered as authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

C. Any Compact State may require a psychologist not previously licensed in a Compact State to obtain and retain a license to be authorized to practice in the Compact State under circumstances not authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

D. Any Compact State may require a psychologist to obtain and retain a license to be authorized to practice in a Compact State under circumstances not authorized by Temporary Authorization to Practice under the terms of this Compact.

E. A Home State’s license authorizes a psychologist to practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only if the Compact State:

1. Currently requires the psychologist to hold an active E.Passport;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation (FBI), or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the Bylaws and Rules of the Commission.

F. A Home State’s license grants Temporary Authorization to Practice to a psychologist in a Distant State only if the Compact State:

1. Currently requires the psychologist to hold an active IPC;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation (FBI), or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the Bylaws and Rules of the Commission.

ARTICLE IV COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

A. Compact States shall recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice telepsychology in other Compact States (Receiving States) in which the psychologist is not licensed, under the Authority to Practice Interjurisdictional Telepsychology as provided in the Compact.

B. To exercise the Authority to Practice Interjurisdictional Telepsychology under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, or authorized by Provincial Statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to Article IV, Subsection B.1.a., by a foreign credential evaluation service that is a member of the National Association of Credential

Evaluation Services (NACES) or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees; and

j. The program includes an acceptable residency as defined by the Rules of the Commission.

3. Possess a current, full, and unrestricted license to practice psychology in a Home State which is a Compact State;

4. Have no history of adverse action that violates the Rules of the Commission;

5. Have no criminal record history reported on an Identity History Summary that violates the Rules of the Commission;

6. Possess a current, active E.Passport;

7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, and competence in telepsychology technology, criminal background; and knowledge and adherence to legal requirements in the Home and Receiving States, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the Rules of the Commission.

C. The Home State maintains authority over the license of any psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology.

D. A psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology will be subject to the Receiving State's scope of practice. A Receiving State may, in accordance with that state's due process law, limit or revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology in the Receiving State and may take any other necessary actions under the Receiving State's applicable law to protect the health and safety of the Receiving State's citizens. If a Receiving State takes action, the state shall promptly notify the Home State and the Commission.

E. If a psychologist's license in any Home State or another Compact State, or any Authority to Practice Interjurisdictional Telepsychology in any Receiving State, is restricted, suspended, or otherwise limited, the E.Passport shall be revoked and therefore the psychologist shall not be eligible to practice telepsychology in a Compact State under the Authority to Practice Interjurisdictional Telepsychology.

ARTICLE V COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

A. Compact States shall also recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice temporarily in other Compact States (Distant States) in which the psychologist is not licensed, as provided in the Compact.

B. To exercise the Temporary Authorization to Practice under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, or authorized by Provincial Statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to Article V, Subsection B.1.a., by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees; and

j. The program includes an acceptable residency as defined by the Rules of the Commission.

3. Possess a current, full, and unrestricted license to practice psychology in a Home State which is a Compact State;

4. No history of adverse action that violates the Rules of the Commission;

5. No criminal record history that violates the Rules of the Commission;

6. Possess a current, active IPC;

7. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the Rules of the Commission.

C. A psychologist practicing into a Distant State under the Temporary Authorization to Practice shall practice within the scope of practice authorized by the Distant State.

D. A psychologist practicing into a Distant State under the Temporary Authorization to Practice will be subject to the Distant State's authority and law. A Distant State may, in accordance with that state's due process law, limit or revoke a psychologist's Temporary Authorization to Practice in the Distant State and may take any other necessary actions under the Distant State's applicable law to protect the health and safety of the Distant State's citizens. If a Distant State takes action, the state shall

promptly notify the Home State and the Commission.

E. If a psychologist's license in any Home State or another Compact State, or any Temporary Authorization to Practice in any Distant State, is restricted, suspended, or otherwise limited, the IPC shall be revoked and therefore the psychologist shall not be eligible to practice in a Compact State under the Temporary Authorization to Practice.

ARTICLE VI CONDITIONS OF TELEPSYCHOLOGY PRACTICE IN A RECEIVING STATE

A. A psychologist may practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate State Psychology Regulatory Authority, as defined in the Rules of the Commission, and under the following circumstances:

1. The psychologist initiates a client/patient contact in a Home State via telecommunications technologies with a client/patient in a Receiving State; and

2. Other conditions regarding telepsychology as determined by Rules promulgated by the Commission.

ARTICLE VII ADVERSE ACTIONS

A. A Home State shall have the power to impose adverse action against a psychologist's license issued by the Home State. A Distant State shall have the power to take adverse action on a psychologist's Temporary Authorization to Practice within that Distant State.

B. A Receiving State may take adverse action on a psychologist's Authority to Practice Interjurisdictional Telepsychology within that Receiving State. A Home State may take adverse action against a psychologist based on an adverse action taken by a Distant State regarding temporary in-person, face-to-face practice.

C. If a Home State takes adverse action against a psychologist's license, that psychologist's Authority to Practice Interjurisdictional Telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's Temporary Authorization to Practice is terminated and the IPC is revoked.

1. All Home State disciplinary orders which impose adverse action shall be reported to the Commission in accordance with the Rules promulgated by the Commission. A Compact State shall report adverse actions in accordance with the Rules of the Commission.

2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the Rules of the Commission.

3. Other actions may be imposed as determined by the Rules promulgated by the Commission.

D. A Home State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a Receiving State as it would if such conduct had occurred by a licensee within the Home State. In such cases, the Home State's law shall control in determining any adverse action against a psychologist's license.

E. A Distant State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under Temporary Authorization to Practice which occurred in that Distant State as it would if such conduct had occurred by a licensee within the Home State. In such cases, Distant State's law shall control in determining any adverse action against a psychologist's Temporary Authorization to Practice.

F. Nothing in this Compact shall override a Compact State's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the Compact State's law. Compact States must require psychologists who enter any alternative programs to not provide telepsychology services under the Authority to Practice Interjurisdictional Telepsychology or provide temporary psychological services under the Temporary Authorization to Practice in any other Compact State during the term of the alternative program.

G. No other judicial or administrative remedies shall be available to a psychologist in the event a Compact State imposes an adverse action pursuant to Article VII, Section C.

ARTICLE VIII
ADDITIONAL AUTHORITIES
INVESTED IN A COMPACT
STATE'S PSYCHOLOGY
REGULATORY AUTHORITY

A. In addition to any other powers granted under state law, a Compact State's Psychology Regulatory Authority shall have the authority under this Compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a Compact State's Psychology Regulatory Authority for the attendance and testimony of witnesses, and/or the production of evidence from another Compact State, shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing State Psychology Regulatory Authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

2. Issue cease and desist and/or injunctive relief orders to revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice.

B. During the course of any investigation, a psychologist may not change his/her Home State licensure. A Home State Psychology Regulatory Authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The Home State Psychology Regulatory Authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change his/her Home State licensure. The Commission shall promptly notify the new Home State of any such decisions as provided in the Rules of the Commission. All information provided to the Commission or distributed by Compact States pursuant to the psychologist shall be confidential, filed under seal, and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated or discretionary sharing of information by Compact States.

ARTICLE IX
COORDINATED LICENSURE
INFORMATION SYSTEM

A. The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists to whom this Compact is applicable in all Compact States as defined by the Rules of the Commission.

B. Notwithstanding any other provision of state law to the contrary, a Compact State shall submit a uniform data set to the Coordinated Database on all licensees as required by the Rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Significant investigatory information;
4. Adverse actions against a psychologist's license;
5. An indicator that a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice is revoked;
6. Non-confidential information related to alternative program participation information;
7. Any denial of application for licensure, and the reasons for such denial; and
8. Other information which may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. The Coordinated Database administrator shall promptly notify all Compact States of any adverse action taken against, or significant investigative information on, any licensee in a Compact State.

D. Compact States reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the Compact State reporting the information.

E. Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the Compact State reporting the information shall be removed from the Coordinated Database.

ARTICLE X
ESTABLISHMENT OF THE PSYCHOLOGY
INTERJURISDICTIONAL
COMPACT COMMISSION

A. The Compact States hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.

1. The Commission is a body politic and an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, voting, and meetings

1. The Commission shall consist of one voting representative appointed by each Compact State who shall serve as that state's Commissioner. The State Psychology Regulatory Authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the Compact State. This delegate shall be limited to:

a. Executive Director, Executive Secretary, or similar executive;

b. Current member of the State Psychology Regulatory Authority of a Compact State; or

c. Designee empowered with the appropriate delegate authority to act on behalf of the Compact State.

2. Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compact State in which the vacancy exists.

3. Each Commissioner shall be entitled to one (1) vote with regard to the promulgation of Rules and creation of Bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.

4. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article XI.

6. The Commission may convene in a closed, non-public meeting if the Commission must discuss:

a. Non-compliance of a Compact State with its obligations under the Compact;

b. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees, or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation against the Commission;

d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

e. Accusation against any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information which is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law enforcement purposes;

i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal and state statute.

7. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

C. The Commission shall, by a majority vote of the Commissioners, prescribe Bylaws and/or Rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including but not limited to:

1. Establishing the fiscal year of the Commission;
2. Providing reasonable standards and procedures:

a. for the establishment and meetings of other committees; and

b. governing any general or specific delegation of any authority or function of the Commission;

3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;

4. Establishing the titles, duties and authority, and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar law of any Compact State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;

6. Promulgating a Code of Ethics to address permissible and prohibited activities of Commission members and employees;

7. Providing a mechanism for concluding the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

8. The Commission shall publish its Bylaws in a convenient form and file a copy thereof, and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compact States;

9. The Commission shall maintain its financial records in accordance with the Bylaws; and

10. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

D. The Commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rule shall have the force and effect of law and shall be binding in all Compact States;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Psychology

Regulatory Authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Compact State;

5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

8. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

9. To establish a budget and make expenditures;

10. To borrow money;

11. To appoint committees, including advisory committees comprised of Members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the Bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice, and telepsychology practice.

E. The Executive Board

The elected officers shall serve as the Executive Board, which shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Board shall be comprised of six members:

a. Five voting members who are elected from the current membership of the Commission by the Commission; and

b. One ex-officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

2. The ex-officio member must have served as staff or member on a State Psychology Regulatory Authority and will be selected by its respective organization.

3. The Commission may remove any member of the Executive Board as provided in Bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or Bylaws, changes to this Compact legislation, and fees paid by Compact States such as annual dues and any other applicable fees;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or Bylaws.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources and donations and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Compact State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission which shall promulgate a rule binding upon all Compact States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Compact States, except by and with the authority of the Compact State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its Bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall

be included in and become part of the annual report of the Commission.

G. Qualified immunity, defense, and indemnification

1. The members, officers, Executive Director, employees, and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, Executive Director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, Executive Director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE XI RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the Compact States rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any Compact State.

C. Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or Rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission; and

2. On the website of each Compact States' Psychology Regulatory Authority or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons who submit comments independently of each other;

2. A governmental subdivision or agency; or

3. A duly appointed person in an association that has at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the Executive Director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which

case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Compact State funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the Chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE XII
OVERSIGHT, DISPUTE
RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The Executive, Legislative, and Judicial branches of state government in each Compact State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a Compact State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Compact State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other Compact States of the nature of the default, the proposed means of remedying the default, and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the Compact States, and all rights, privileges, and benefits conferred by this Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the Compact States.

4. A Compact State which has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

5. The Commission shall not bear any costs incurred by the state which is found to be in default

or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the state of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a Compact State, the Commission shall attempt to resolve disputes related to the Compact which arise among Compact States and between Compact and Non-Compact States.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the Commission.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the U.S. District Court for the state of Georgia or the federal district where the Compact has its principal offices against a Compact State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and Bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE XIII
DATE OF IMPLEMENTATION
OF THE PSYCHOLOGY
INTERJURISDICTIONAL COMPACT
COMMISSION AND ASSOCIATED
RULES, WITHDRAWAL, AND AMENDMENTS

A. The Compact shall come into effect on the date on which the Compact is enacted into law in the seventh Compact State. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state which joins the Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the Commission shall have the full force and effect of

law on the day the Compact becomes law in that state.

C. Any Compact State may withdraw from this Compact by enacting a statute repealing the same.

1. A Compact State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Psychology Regulatory Authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a Compact State and a Non-Compact State which does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Compact States. No amendment to this Compact shall become effective and binding upon any Compact State until it is enacted into the law of all Compact States.

ARTICLE XIV

CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. If this Compact shall be held contrary to the constitution of any state member thereto, the Compact shall remain in full force and effect as to the remaining Compact States.

Section 3. Section 58-61b-103 is enacted to read:

58-61b-103. Rulemaking Authority.

The division may make administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement Section 58-61b-102.

CHAPTER 106**S. B. 108**

Passed March 2, 2017

Approved March 17, 2017

Effective May 9, 2017

**EMERGENCY ADMINISTRATION
OF EPINEPHRINE AMENDMENTS**

Chief Sponsor: Brian E. Shiozawa

House Sponsor: Edward H. Redd

LONG TITLE**General Description:**

This bill amends the Emergency Injection for Anaphylactic Reaction Act.

Highlighted Provisions:

This bill:

- ▶ amends the definition of epinephrine auto-injector to allow the use of more than one manufacturer of a device.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-41-102, as last amended by Laws of Utah 2015, Chapter 332

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

Section 1. Section 26-41-102 is amended to read:**26-41-102. Definitions.**

As used in this chapter:

(1) "Anaphylaxis" means a potentially life-threatening hypersensitivity to a substance.

(a) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.

(b) Causes of anaphylaxis may include insect sting, food allergy, drug reaction, and exercise.

(2) "Epinephrine auto-injector" means a portable, disposable drug delivery ~~[system with a spring-activated concealed needle that is designed for emergency administration of epinephrine to provide rapid, convenient first-aid for persons]~~ device that contains a measured, single dose of epinephrine that is used to treat a person suffering a potentially fatal anaphylactic reaction.

(3) "Qualified adult" means a person who:

(a) is 18 years of age or older; and

(b) has successfully completed the training program established in Section 26-41-104.

(4) "Qualified entity":

(a) means a facility or organization that employs, contracts with, or has a similar relationship with a

qualified adult who is likely to have contact with another person who may experience anaphylaxis; and

(b) includes:

(i) recreation camps;

(ii) an education facility, school, or university;

(iii) a day care facility;

(iv) youth sports leagues;

(v) amusement parks;

(vi) food establishments;

(vii) places of employment; and

(viii) recreation areas.

CHAPTER 107**S. B. 112**

Passed February 24, 2017

Approved March 17, 2017

Effective May 9, 2017

(Exception clause in Section 5)

**SPECIAL GROUP
LICENSE PLATE REPEAL**

Chief Sponsor: Allen M. Christensen

House Sponsor: Lee B. Perry

LONG TITLE**General Description:**

This bill removes the prostate cancer special group license plate from the list of license plates that may be issued.

Highlighted Provisions:

This bill:

- ▶ removes the prostate cancer support special group license plate from the list of plates that may be issued;
- ▶ repeals the Prostate Cancer Support Restricted Account;
- ▶ allows a person who acquired a prostate cancer support special group license plate before October 1, 2017, to retain the licence plate;
- ▶ prohibits issuance of a new prostate cancer support special group license plate after September 30, 2017;
- ▶ directs the contribution for a renewed prostate cancer support special group license plate to be distributed to the Cancer Research Restricted Account; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

41-1a-418, as last amended by Laws of Utah 2016, Chapters 46, 52, 70, 71, and 102

41-1a-422, as last amended by Laws of Utah 2016, Chapters 46, 52, 70, and 71

63J-1-602.1, as last amended by Laws of Utah 2016, Chapters 46, 70, 71, and 202

REPEALS:

26-21a-303, as enacted by Laws of Utah 2011, Chapter 440

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

Section 1. Section 41-1a-418 is amended to read:**41-1a-418. Authorized special group license plates.**

(1) The division shall only issue special group license plates in accordance with this section through Section 41-1a-422 to a person who is specified under this section within the categories listed as follows:

(a) disability special group license plates issued in accordance with Section 41-1a-420;

(b) honor special group license plates, as in a war hero, which plates are issued for a:

(i) survivor of the Japanese attack on Pearl Harbor;

(ii) former prisoner of war;

(iii) recipient of a Purple Heart;

(iv) disabled veteran;

(v) recipient of a gold star award issued by the United States Secretary of Defense; or

(vi) recipient of a campaign or combat theater award determined by the Department of Veterans' and Military Affairs;

(c) unique vehicle type special group license plates, as for historical, collectors value, or other unique vehicle type, which plates are issued for:

(i) a special interest vehicle;

(ii) a vintage vehicle;

(iii) a farm truck; or

(iv) (A) until Subsection (1)(c)(iv)(B) or (4) applies, a vehicle powered by clean fuel as defined in Section 59-13-102; or

(B) beginning on the effective date of rules made by the Department of Transportation authorized under Subsection 41-6a-702(5)(b) and until Subsection (4) applies, a vehicle powered by clean fuel that meets the standards established by the Department of Transportation in rules authorized under Subsection 41-6a-702(5)(b);

(d) recognition special group license plates, which plates are issued for:

(i) a current member of the Legislature;

(ii) a current member of the United States Congress;

(iii) a current member of the National Guard;

(iv) a licensed amateur radio operator;

(v) a currently employed, volunteer, or retired firefighter until June 30, 2009;

(vi) an emergency medical technician;

(vii) a current member of a search and rescue team; or

(viii) a current honorary consulate designated by the United States Department of State;

(e) support special group license plates, as for a contributor to an institution or cause, which plates are issued for a contributor to:

(i) an institution's scholastic scholarship fund;

(ii) the Division of Wildlife Resources;

(iii) the Department of Veterans' and Military Affairs;

(iv) the Division of Parks and Recreation;

- (v) the Department of Agriculture and Food;
 - (vi) the Guardian Ad Litem Services Account and the Children's Museum of Utah;
 - (vii) the Boy Scouts of America;
 - (viii) spay and neuter programs through No More Homeless Pets in Utah;
 - (ix) the Boys and Girls Clubs of America;
 - (x) Utah public education;
 - (xi) programs that provide support to organizations that create affordable housing for those in severe need through the Division of Real Estate;
 - (xii) the Department of Public Safety;
 - (xiii) programs that support Zion National Park;
 - (xiv) beginning on July 1, 2009, programs that provide support to firefighter organizations;
 - (xv) programs that promote bicycle operation and safety awareness;
 - (xvi) programs that conduct or support cancer research;
 - (xvii) programs that create or support autism awareness;
 - (xviii) programs that create or support humanitarian service and educational and cultural exchanges;
 - (xix) until September 30, 2017, programs that conduct or support prostate cancer awareness, screening, detection, or prevention;
 - (xx) programs that support and promote adoptions;
 - (xxi) programs that create or support civil rights education and awareness;
 - (xxii) programs that support issues affecting women and children through an organization affiliated with a national professional men's basketball organization;
 - (xxiii) programs that strengthen youth soccer, build communities, and promote environmental sustainability through an organization affiliated with a professional men's soccer organization;
 - (xxiv) programs that support children with heart disease;
 - (xxv) programs that support the operation and maintenance of the Utah Law Enforcement Memorial; or
 - (xxvi) programs that provide assistance to children with cancer.
- (2) (a) The division may not issue a new type of special group license plate or decal unless the division receives:

(i) (A) a private donation for the start-up fee established under Section 63J-1-504 for the

production and administrative costs of providing the new special group license plates or decals; or

(B) a legislative appropriation for the start-up fee provided under Subsection (2)(a)(i)(A); and

(ii) beginning on January 1, 2012, and for the issuance of a support special group license plate authorized in Section 41-1a-422, at least 500 completed applications for the new type of support special group license plate or decal to be issued with all fees required under this part for the support special group license plate or decal issuance paid by each applicant.

(b) (i) Beginning on January 1, 2012, each participating organization shall collect and hold applications for support special group license plates or decals authorized in Section 41-1a-422 on or after January 1, 2012, until it has received at least 500 applications.

(ii) Once a participating organization has received at least 500 applications, it shall submit the applications, along with the necessary fees, to the division for the division to begin working on the design and issuance of the new type of support special group license plate or decal to be issued.

(iii) Beginning on January 1, 2012, the division may not work on the issuance or design of a new support special group license plate or decal authorized in Section 41-1a-422 until the applications and fees required under this Subsection (2) have been received by the division.

(iv) The division shall begin issuance of a new support special group license plate or decal authorized in Section 41-1a-422 on or after January 1, 2012, no later than six months after receiving the applications and fees required under this Subsection (2).

(c) (i) Beginning on July 1, 2009, the division may not renew a motor vehicle registration of a motor vehicle that has been issued a firefighter recognition special group license plate unless the applicant is a contributor as defined in Subsection 41-1a-422(1)(a)(ii)(D) to the Firefighter Support Restricted Account.

(ii) A registered owner of a vehicle that has been issued a firefighter recognition special group license plate prior to July 1, 2009, upon renewal of the owner's motor vehicle registration shall:

(A) be a contributor to the Firefighter Support Restricted Account as required under Subsection (2)(c)(i); or

(B) replace the firefighter recognition special group license plate with a new license plate.

(3) Beginning on July 1, 2011, if a support special group license plate or decal type authorized in Section 41-1a-422 and issued on or after January 1, 2012, has fewer than 500 license plates issued each year for a three consecutive year time period that begins on July 1, the division may not issue that type of support special group license plate or decal to a new applicant beginning on January 1 of the following calendar year after the three consecutive

year time period for which that type of support special group license plate or decal has fewer than 500 license plates issued each year.

(4) Beginning on July 1, 2011, the division may not issue to an applicant a unique vehicle type license plate for a vehicle powered by clean fuel under Subsection (1)(c)(iv).

(5) (a) Beginning on October 1, 2017, the division may not issue a new prostate cancer support special group license plate.

(b) A registered owner of a vehicle that has been issued a prostate cancer support special group license plate before October 1, 2017, may renew the owner's motor vehicle registration, with the contribution allocated as described in Section 41-1a-422.

Section 2. Section 41-1a-422 is amended to read:

41-1a-422. Support special group license plates -- Contributor -- Voluntary contribution collection procedures.

(1) As used in this section:

(a) (i) Except as provided in Subsection (1)(a)(ii), "contributor" means a person who has donated or in whose name at least \$25 has been donated to:

(A) a scholastic scholarship fund of a single named institution;

(B) the Department of Veterans' and Military Affairs for veterans' programs;

(C) the Division of Wildlife Resources for the Wildlife Resources Account created in Section 23-14-13, for conservation of wildlife and the enhancement, preservation, protection, access, and management of wildlife habitat;

(D) the Department of Agriculture and Food for the benefit of conservation districts;

(E) the Division of Parks and Recreation for the benefit of snowmobile programs;

(F) the Guardian Ad Litem Services Account and the Children's Museum of Utah, with the donation evenly divided between the two;

(G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America council as specified by the contributor;

(H) No More Homeless Pets in Utah for distribution to organizations or individuals that provide spay and neuter programs that subsidize the sterilization of domestic animals;

(I) the Utah Alliance of Boys and Girls Clubs, Inc. to provide and enhance youth development programs;

(J) the Utah Association of Public School Foundations to support public education;

(K) the Utah Housing Opportunity Restricted Account created in Section 61-2-204 to assist people who have severe housing needs;

(L) the Public Safety Honoring Heroes Restricted Account created in Section 53-1-118 to support the families of fallen Utah Highway Patrol troopers and other Department of Public Safety employees;

(M) the Division of Parks and Recreation for distribution to organizations that provide support for Zion National Park;

(N) the Firefighter Support Restricted Account created in Section 53-7-109 to support firefighter organizations;

(O) the Share the Road Bicycle Support Restricted Account created in Section 72-2-127 to support bicycle operation and safety awareness programs;

(P) the Cancer Research Restricted Account created in Section 26-21a-302 to support cancer research programs;

(Q) Autism Awareness Restricted Account created in Section 53A-1-304 to support autism awareness programs;

(R) Humanitarian Service and Educational and Cultural Exchange Restricted Account created in Section 9-17-102 to support humanitarian service and educational and cultural programs;

(S) Prostate Cancer Support Restricted Account created in Section 26-21a-303 for programs that conduct or support prostate cancer awareness, screening, detection, or prevention until September 30, 2017, and beginning on October 1, 2017, upon renewal of a prostate cancer support special group license plate, to the Cancer Research Restricted Account created in Section 26-21a-302 to support cancer research programs;

(T) the Choose Life Adoption Support Restricted Account created in Section 62A-4a-608 to support programs that promote adoption;

(U) the Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102;

(V) the National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 62A-1-202;

(W) the Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120;

(X) the Children with Cancer Support Restricted Account created in Section 26-21a-304 for programs that provide assistance to children with cancer;

(Y) the National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102; or

(Z) the Children with Heart Disease Support Restricted Account created in Section 26-58-102.

(ii) (A) For a veterans' special group license plate, "contributor" means a person who has donated or in whose name at least a \$25 donation at the time of application and \$10 annual donation thereafter has been made.

(B) For a Utah Housing Opportunity special group license plate, “contributor” means a person who:

(I) has donated or in whose name at least \$30 has been donated at the time of application and annually after the time of application; and

(II) is a member of a trade organization for real estate licensees that has more than 15,000 Utah members.

(C) For an Honoring Heroes special group license plate, “contributor” means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually thereafter.

(D) For a firefighter support special group license plate, “contributor” means a person who:

(I) has donated or in whose name at least \$15 has been donated at the time of application and annually after the time of application; and

(II) is a currently employed, volunteer, or retired firefighter.

(E) For a cancer research special group license plate, “contributor” means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually after the time of application.

(F) For a Martin Luther King, Jr. Civil Rights Support special group license plate, “contributor” means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually thereafter.

(G) For a Utah Law Enforcement Memorial Support special group license plate, “contributor” means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually thereafter.

(b) “Institution” means a state institution of higher education as defined under Section 53B-3-102 or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(2) (a) An applicant for original or renewal collegiate special group license plates under Subsection (1)(a)(i) must be a contributor to the institution named in the application and present the original contribution verification form under Subsection (2)(b) or make a contribution to the division at the time of application under Subsection (3).

(b) An institution with a support special group license plate shall issue to a contributor a verification form designed by the commission containing:

- (i) the name of the contributor;
- (ii) the institution to which a donation was made;
- (iii) the date of the donation; and

(iv) an attestation that the donation was for a scholastic scholarship.

(c) The state auditor may audit each institution to verify that the money collected by the institutions from contributors is used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63J-1-504 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

(e) If the contribution is made at the time of application, the contribution shall be collected, treated, and deposited as provided under Subsection (3).

(3) (a) An applicant for original or renewal support special group license plates under this section must be a contributor to the sponsoring organization associated with the license plate.

(b) This contribution shall be:

(i) unless collected by the named institution under Subsection (2), collected by the division;

(ii) considered a voluntary contribution for the funding of the activities specified under this section and not a motor vehicle registration fee;

(iii) deposited into the appropriate account less actual administrative costs associated with issuing the license plates; and

(iv) for a firefighter special group license plate, deposited into the appropriate account less:

(A) the costs of reordering firefighter special group license plate decals; and

(B) the costs of replacing recognition special group license plates with new license plates under Subsection 41-1a-1211(13).

(c) The donation described in Subsection (1)(a) must be made in the 12 months prior to registration or renewal of registration.

(d) The donation described in Subsection (1)(a) shall be a one-time donation made to the division when issuing original:

- (i) snowmobile license plates; or
- (ii) conservation license plates.

(4) Veterans’ license plates shall display one of the symbols representing the Army, Navy, Air Force, Marines, Coast Guard, or American Legion.

Section 3. Section 63J-1-602.1 is amended to read:

63J-1-602.1. List of nonlapsing accounts and funds -- General authority and Title 1 through Title 30.

(1) Appropriations made to the Legislature and its committees.

(2) The Percent-for-Art Program created in Section 9-6-404.

(3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102.

(4) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.

(5) The LeRay McAllister Critical Land Conservation Program created in Section 11-38-301.

(6) An appropriation made to the Division of Wildlife Resources for the appraisal and purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.

(7) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.

(8) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.

(9) Funds collected from the emergency medical services grant program, as provided in Section 26-8a-207.

(10) The primary care grant program created in Section 26-10b-102.

~~[(11) The Prostate Cancer Support Restricted Account created in Section 26-21a-303.]~~

~~[(12) (11) The Children with Cancer Support Restricted Account created in Section 26-21a-304.]~~

~~[(13) (12) State funds appropriated for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.]~~

~~[(14) (13) The Utah Health Care Workforce Financial Assistance Program created in Section 26-46-102.]~~

~~[(15) (14) The Rural Physician Loan Repayment Program created in Section 26-46a-103.]~~

~~[(16) (15) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.]~~

~~[(17) (16) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.]~~

Section 4. Repealer.

This bill repeals:

Section 26-21a-303, Prostate Cancer Support Restricted Account.

Section 5. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on May 9, 2017.

(2) The actions affecting the following sections take effect on September 30, 2018:

(a) Section 26-21a-303; and

(b) Section 63J-1-602.1.

CHAPTER 108**S. B. 116**

Passed March 1, 2017

Approved March 17, 2017

Effective May 9, 2017

POLLING LOCATION AMENDMENTS

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Michael E. Noel

LONG TITLE**General Description:**

This bill addresses lines at a polling location.

Highlighted Provisions:

This bill:

- ▶ requires a county clerk, to the extent possible, to ensure that the waiting time in line at a polling location does not exceed 30 minutes; and
- ▶ permits the lieutenant governor to require a county clerk to submit a line management plan at the next election if an individual waits in line more than 30 minutes before the individual can vote at a polling location.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-5-403, as last amended by Laws of Utah 2011, Chapter 297

*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 20A-5-403 is amended to read:****20A-5-403. Polling places -- Booths -- Ballot boxes -- Inspections -- Arrangements.**

(1) Each election officer shall:

(a) designate polling places for each voting precinct in the jurisdiction; and

(b) obtain the approval of the county or municipal legislative body or local district governing board for those polling places.

(2) (a) For each polling place, the election officer shall provide:

(i) an American flag;

(ii) a sufficient number of voting booths or compartments;

(iii) the voting devices, voting booths, ballots, ballot boxes, ballot labels, ballot sheets, write-in ballots, and any other records and supplies necessary to enable a voter to vote;

(iv) the constitutional amendment cards required by Part 1, Election Notices and Instructions;

(v) voter information pamphlets required by Chapter 7, Part 7, Voter Information Pamphlet;

(vi) the instruction cards required by Section 20A-5-102; and

(vii) a sign, to be prominently displayed in the polling place, indicating that valid voter identification is required for every voter before the voter may vote and listing the forms of identification that constitute valid voter identification.

(b) Each election officer shall ensure that:

(i) each voting booth is at a convenient height for writing, and is arranged so that the voter can prepare the voter's ballot screened from observation;

(ii) there are a sufficient number of voting booths or voting devices to accommodate the voters at that polling place; and

(iii) there is at least one voting booth or voting device that is configured to accommodate persons with disabilities.

(c) Each county clerk shall provide a ballot box for each polling place that is large enough to properly receive and hold the ballots to be cast.

(3) (a) All polling places shall be physically inspected by each county clerk to ensure access by a person with a disability.

(b) Any issues concerning inaccessibility to polling places by a person with a disability discovered during the inspections referred to in Subsection (3)(a) or reported to the county clerk shall be:

(i) forwarded to the Office of the Lieutenant Governor; and

(ii) within six months of the time of the complaint, the issue of inaccessibility shall be either:

(A) remedied at the particular location by the county clerk;

(B) the county clerk shall designate an alternative accessible location for the particular precinct; or

(C) if no practical solution can be identified, file with the Office of the Lieutenant Governor a written explanation identifying the reasons compliance cannot reasonably be met.

(4) (a) The municipality in which the election is held shall pay the cost of conducting each municipal election, including the cost of printing and supplies.

(b) (i) Costs assessed by a county clerk to a municipality under this section may not exceed the actual costs incurred by the county clerk.

(ii) The actual costs shall include:

(A) costs of or rental fees associated with the use of election equipment and supplies; and

(B) reasonable and necessary administrative costs.

(5) The county clerk shall make detailed entries of all proceedings had under this chapter.

(6) (a) Each county clerk shall, to the extent possible, ensure that the amount of time that an

individual waits in line before the individual can vote at a polling location in the county does not exceed 30 minutes.

(b) The lieutenant governor may require a county clerk to submit a line management plan before the next election if an individual waits in line at a polling location in the county longer than 30 minutes before the individual can vote.

(c) The lieutenant governor may consider extenuating circumstances in deciding whether to require the county clerk to submit a plan described in Subsection (6)(b).

(d) The lieutenant governor shall review each plan submitted under Subsection (6)(b) and consult with the county clerk submitting the plan to ensure, to the extent possible, that the amount of time an individual waits in line before the individual can vote at a polling location in the county does not exceed 30 minutes.

CHAPTER 109**S. B. 120**

Passed February 27, 2017

Approved March 17, 2017

Effective May 9, 2017

**WORKERS' COMPENSATION
DEPENDENT BENEFITS**

Chief Sponsor: Karen Mayne

House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill modifies provisions related to workers' compensation death benefits.

Highlighted Provisions:

This bill:

- ▶ modifies the calculation of death benefits paid to one or more dependents of a deceased employee; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

34A-2-702, as last amended by Laws of Utah 2008, Chapters 27 and 90

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

Section 1. Section 34A-2-702 is amended to read:**34A-2-702. Employers' Reinsurance Fund
-- Injury causing death -- Burial expenses
-- Payments to dependents.**

(1) (a) There is created an Employers' Reinsurance Fund for the purpose of making a payment for an industrial accident or occupational disease occurring on or before June 30, 1994. A payment made under this section shall be made in accordance with this chapter or Chapter 3, Utah Occupational Disease Act. The Employers' Reinsurance Fund has no liability for an industrial accident or occupational disease occurring on or after July 1, 1994.

(b) The Employers' Reinsurance Fund succeeds to all money previously held in the "Special Fund," the "Combined Injury Fund," or the "Second Injury Fund."

(c) The commissioner shall appoint an administrator of the Employers' Reinsurance Fund.

(d) The state treasurer shall be the custodian of the Employers' Reinsurance Fund.

(e) The administrator shall make provisions for and direct a distribution from the Employers' Reinsurance Fund.

(f) Reasonable costs of administering the Employers' Reinsurance Fund or other fees may be paid from the Employers' Reinsurance Fund.

(2) The state treasurer shall:

(a) receive workers' compensation premium assessments from the State Tax Commission; and

(b) invest the Employers' Reinsurance Fund to ensure maximum investment return for both long and short term investments in accordance with Section 51-7-12.5.

(3) (a) The administrator may employ, retain, or appoint counsel to represent the Employers' Reinsurance Fund in a proceeding brought to enforce a claim against or on behalf of the Employers' Reinsurance Fund.

(b) If requested by the commission, the attorney general shall aid in representation of the Employers' Reinsurance Fund.

(4) The liability of the state, its departments, agencies, instrumentalities, elected or appointed officials, or other duly authorized agents, with respect to payment of compensation benefits, expenses, fees, medical expenses, or disbursement properly chargeable against the Employers' Reinsurance Fund, is limited to the cash or assets in the Employers' Reinsurance Fund, and they are not otherwise, in any way, liable for the operation, debts, or obligations of the Employers' Reinsurance Fund.

(5) (a) If injury causes death within a period of 312 weeks from the date of the accident, the employer or insurance carrier shall pay:

(i) the burial expenses of the deceased as provided in Section 34A-2-418; and

(ii) benefits in the amount and to a person provided for in this Subsection (5).

(b) (i) If there is a wholly dependent person at the time of the death, the payment by the employer or [its] the employer's insurance carrier shall be:

(A) subject to Subsections (5)(b)(i)(B) and (C), 66-2/3% of the decedent's average weekly wage at the time of the injury;

(B) not more than a maximum of 85% of the state average weekly wage at the time of the injury per week; and

(C) (I) not less than a minimum of \$45 per week, plus:

(Aa) [\$5] \$20 for a dependent spouse; and

(Bb) [\$5] \$20 for each dependent minor child under the age of 18 years, up to a maximum of four such dependent minor children; and

(II) not exceeding:

(Aa) the average weekly wage of the employee at the time of the injury; and

(Bb) 85% of the state average weekly wage at the time of the injury per week.

(ii) Compensation shall continue during dependency for the remainder of the period between the date of the death and the expiration of 312 weeks after the date of the injury.

(iii) (A) The payment by the employer or [its] the employer's insurance carrier to a wholly dependent person during dependency following the expiration of the first 312-week period described in Subsection (5)(b)(ii) shall be an amount equal to the weekly benefits paid to the wholly dependent person during the initial 312-week period, reduced by 50% of the federal social security death benefits the wholly dependent person:

(I) is eligible to receive for a week as of the first day the employee is eligible to receive a Social Security death benefit; and

(II) receives.

(B) An employer or [its] the employer's insurance carrier may not reduce compensation payable under this Subsection (5)(b)(iii) on or after May 5, 2008, to a wholly dependent person by an amount related to a cost-of-living increase to the social security death benefits that the wholly dependent person is first eligible to receive for a week, notwithstanding whether the employee is injured on or before May 4, 2008.

(C) For purposes of a wholly dependent person whose compensation payable is reduced under this Subsection (5)(b)(iii) on or before May 4, 2008, the reduction is limited to the amount of the reduction as of May 4, 2008.

(iv) The issue of dependency is subject to review at the end of the initial 312-week period and annually after the initial 312-week period. If in a review it is determined that, under the facts and circumstances existing at that time, the applicant is no longer a wholly dependent person, the applicant:

(A) may be considered a partly dependent or nondependent person; and

(B) shall be paid the benefits as may be determined under Subsection (5)(d)(iii).

(c) (i) For purposes of a dependency determination, a surviving spouse of a deceased employee is conclusively presumed to be wholly dependent for a 312-week period from the date of death of the employee. This presumption does not apply after the initial 312-week period.

(ii) (A) In determining the annual income of the surviving spouse after the initial 312-week period, there shall be excluded 50% of a federal social security death benefit that the surviving spouse:

(I) is eligible to receive for a week as of the first day the surviving spouse is eligible to receive a Social Security death benefit; and

(II) receives.

(B) An employer or [its] the employer's insurance carrier may not reduce compensation payable under this Subsection (5)(c)(ii) on or after May 5, 2008, to a surviving spouse by an amount related to

a cost-of-living increase to the social security death benefits that the surviving spouse is first eligible to receive for a week, notwithstanding whether the employee is injured on or before May 4, 2008.

(C) For purposes of a surviving spouse whose compensation payable is reduced under this Subsection (5)(c)(ii) on or before May 4, 2008, the reduction is limited to the amount of the reduction as of May 4, 2008.

(d) (i) If there is a partly dependent person at the time of the death, the payment shall be:

(A) subject to Subsections (5)(d)(i)(B) and (C), 66-2/3% of the decedent's average weekly wage at the time of the injury;

(B) not more than a maximum of 85% of the state average weekly wage at the time of the injury per week; and

(C) not less than a minimum of \$45 per week.

(ii) Compensation shall continue during dependency for the remainder of the period between the date of death and the expiration of 312 weeks after the date of injury. Compensation may not amount to more than a maximum of \$30,000.

(iii) The benefits provided for in this Subsection (5)(d) shall be in keeping with the circumstances and conditions of dependency existing at the date of injury, and any amount paid under this Subsection (5)(d) shall be consistent with the general provisions of this chapter and Chapter 3, Utah Occupational Disease Act.

(iv) Benefits to a person determined to be partly dependent under Subsection (5)(c):

(A) shall be determined in keeping with the circumstances and conditions of dependency existing at the time of the dependency review; and

(B) may be paid in an amount not exceeding the maximum weekly rate that a partly dependent person would receive if wholly dependent.

(v) A payment under this section shall be paid to a person during a person's dependency by the employer or [its] the employer's insurance carrier.

(e) (i) Subject to Subsection (5)(e)(ii), if there is a wholly dependent person and also a partly dependent person at the time of death, the benefits may be apportioned in a manner consistent with Section 34A-2-414.

(ii) The total benefits awarded to all parties concerned may not exceed the maximum provided for by law.

(6) The Employers' Reinsurance Fund:

(a) shall be:

(i) used only in accordance with Subsection (1) for:

(A) the purpose of making a payment for an industrial accident or occupational disease occurring on or before June 30, 1994, in accordance with this section and Section 34A-2-703; and

(B) payment of:

(I) reasonable costs of administering the Employers' Reinsurance Fund; or

(II) fees required to be paid by the Employers' Reinsurance Fund;

(ii) expended according to processes that can be verified by audit; and

(b) may not be used for:

(i) administrative costs unrelated to the Employers' Reinsurance Fund; or

(ii) an activity of the commission other than an activity described in Subsection (6)(a).

CHAPTER 110**S. B. 121**

Passed February 23, 2017

Approved March 17, 2017

Effective May 9, 2017

ADOPTION ACT AMENDMENTS

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Val K. Potter

Cosponsor: Ralph Okerlund

LONG TITLE**General Description:**

This bill modifies the Utah Adoption Act relating to professional counselors.

Highlighted Provisions:

This bill:

- ▶ replaces “professional counselor” with “clinical mental health counselor”; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78B-6-103, as last amended by Laws of Utah 2015, Chapters 137 and 194

78B-6-128, as last amended by Laws of Utah 2013, Chapter 458

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

Section 1. Section 78B-6-103 is amended to read:**78B-6-103. Definitions.**

As used in this part:

- (1) “Adoptee” means a person who:
 - (a) is the subject of an adoption proceeding; or
 - (b) has been legally adopted.
- (2) “Adoption” means the judicial act that:
 - (a) creates the relationship of parent and child where it did not previously exist; and
 - (b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of any other person with respect to the child.
- (3) “Adoption document” means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.
- (4) “Adoption service provider” means a:
 - (a) child-placing agency; or
 - (b) licensed counselor who has at least one year of experience providing professional social work services to:
 - (i) adoptive parents;

(ii) prospective adoptive parents; or

(iii) birth parents.

(5) “Adoptive parent” means ~~a person~~ an individual who has legally adopted an adoptee.

(6) “Adult” means ~~a person~~ an individual who is 18 years of age or older.

(7) “Adult adoptee” means an adoptee who is 18 years of age or older and was adopted as a minor.

(8) “Adult sibling” means [a] an adoptee’s brother or sister ~~[of the adoptee]~~, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.

(9) “Birth mother” means the biological mother of a child.

(10) “Birth parent” means:

- (a) a birth mother;
- (b) a man whose paternity of a child is established;
- (c) a man who:
 - (i) has been identified as the father of a child by the child’s birth mother; and
 - (ii) has not denied paternity; or
- (d) an unmarried biological father.

(11) “Child-placing agency” means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.

(12) “Cohabiting” means residing with another person and being involved in a sexual relationship with that person.

(13) “Division” means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.

(14) “Extra-jurisdictional child-placing agency” means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.

(15) “Genetic and social history” means a comprehensive report, when obtainable, ~~[on an adoptee’s birth parents, aunts, uncles, and grandparents, which]~~ that contains the following information on an adoptee’s birth parents, aunts, uncles, and grandparents:

- (a) medical history;
- (b) health status;
- (c) cause of and age at death;
- (d) height, weight, and eye and hair color;
- (e) ethnic origins;
- (f) where appropriate, levels of education and professional achievement; and
- (g) religion, if any.

(16) “Health history” means a comprehensive report of the adoptee’s health status at the time of placement for adoption, and medical history,

including neonatal, psychological, physiological, and medical care history.

(17) “Identifying information” means information that is in the possession of the office[, which] and that contains the name and address of a pre-existing parent or an adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify [~~that person~~] a pre-existing parent or an adult adoptee, including information on a birth certificate or in an adoption document.

(18) “Licensed counselor” means [~~a person~~] an individual who is licensed by the state, or another state, district, or territory of the United States as a:

- (a) certified social worker;
- (b) clinical social worker;
- (c) psychologist;
- (d) marriage and family therapist;
- (e) [~~professional counselor~~] clinical mental health counselor; or
- (f) an equivalent licensed professional of another state, district, or territory of the United States.

(19) “Man” means a male individual, regardless of age.

(20) “Mature adoptee” means an adoptee who is adopted when the adoptee is an adult.

(21) “Office” means the Office of Vital Records and Statistics within the Department of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

(22) “Parent,” for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

(23) “Potential birth father” means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother’s child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (23)(a) at the time of the child’s conception or birth.

(24) “Pre-existing parent” means:

- (a) a birth parent; or
- (b) [~~a person~~] an individual who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

(25) “Prospective adoptive parent” means [~~a person~~] an individual who seeks to adopt an adoptee.

(26) “Relative” means:

(a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle,

brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or first cousin of [~~the~~] a child’s parent; and

(b) in the case of a child defined as an “Indian child” under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, an “extended family member” as defined by that statute.

(27) “Unmarried biological father” means a [~~person~~] man who:

- (a) is the biological father of a child; and
- (b) was not married to the biological mother of the child described in Subsection (27)(a) at the time of the child’s conception or birth.

Section 2. Section 78B-6-128 is amended to read:

78B-6-128. Preplacement adoptive evaluations -- Exceptions.

(1) (a) Except as otherwise provided in this section, a child may not be placed in an adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.

(b) Except as provided in Section 78B-6-131, the court may, at any time, authorize temporary placement of a child in a potential adoptive home pending completion of a preplacement adoptive evaluation described in this section.

(c) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child or the pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the evaluation is otherwise requested by the court. The prospective adoptive parent described in this Subsection (1)(c) shall obtain the information described in Subsections (2)(a) and (b)[,] and file that documentation with the court prior to finalization of the adoption.

(d) The required preplacement adoptive evaluation must be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent. If the prospective adoptive parent has previously received custody of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent and after the placement of the previous child with the prospective adoptive parent.

(2) The preplacement adoptive evaluation shall include:

(a) criminal history record information regarding each prospective adoptive parent and any other adult living in the prospective home, prepared no earlier than 18 months immediately preceding placement of the child in accordance with the following:

(i) if the child is in state custody, each prospective adoptive parent and any other adult living in the prospective home shall:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history record check through the Criminal and Technical Services Division of the Department of Public Safety in accordance with the provisions of Section 62A-2-120; or

(B) submit to a fingerprint based Federal Bureau of Investigation national criminal history record check through a law enforcement agency in another state, district, or territory of the United States; or

(ii) subject to Subsection (3), if the child is not in state custody, each prospective adoptive parent and any other adult living in the prospective home shall:

(A) submit fingerprints for a Federal Bureau of Investigation national criminal history records check as a personal records check; or

(B) complete a criminal records check, if available, for each state and country where the prospective adoptive parent and any adult living in the prospective adoptive home resided during the five years immediately preceding the day on which the adoption petition is to be finalized;

(b) a report containing all information regarding reports and investigations of child abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other adult living in the prospective home, obtained no earlier than 18 months immediately preceding the day on which the child is placed in the prospective home, pursuant to waivers executed by each prospective adoptive parent and any other adult living in the prospective home, that:

(i) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is a resident of Utah, is prepared by the Department of Human Services from the records of the Department of Human Services; or

(ii) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is not a resident of Utah, prepared by the Department of Human Services, or a similar agency in another state, district, or territory of the United States, where each prospective adoptive parent and any other adult living in the prospective home resided in the five years immediately preceding the day on which the child is placed in the prospective adoptive home;

(c) in accordance with Subsection (6), an evaluation conducted by:

(i) an expert in family relations approved by the court;

(ii) a certified social worker;

(iii) a clinical social worker;

(iv) a marriage and family therapist;

(v) a psychologist;

(vi) a social service worker, if supervised by a certified or clinical social worker; or

(vii) a ~~[professional counselor]~~ clinical mental health counselor; and

(d) in accordance with Subsection (7), if the child to be adopted is a child who is in the custody of any public child welfare agency, and is a child who has a special need as defined in Section 62A-4a-902, the preplacement evaluation shall be conducted by the Department of Human Services or a child-placing agency that has entered into a contract with the department to conduct the preplacement evaluations for children with special needs.

(3) For purposes of Subsection (2)(a)(ii):

(a) if the adoption is being handled by a human services program, as defined in Section 62A-2-101:

(i) the criminal history check described in Subsection (2)(a)(ii)(A) shall be submitted through the Criminal Investigations and Technical Services Division of the Department of Public Safety, in accordance with the provisions of Section 62A-2-120; and

(ii) subject to Subsection (4), the criminal history check described in Subsection (2)(a)(ii)(B) shall be submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or other interested party; and

(b) if the adoption is being handled by a private attorney, and not a human services program, the criminal history checks described in Subsection (2)(a)(ii) shall be:

(i) submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; or

(ii) subject to Subsection (4), submitted in a manner acceptable to the court that will:

(A) preserve the chain of custody of the results; and

(B) not permit tampering with the results by a prospective adoptive parent or other interested party.

(4) In order to comply with Subsection (3)(a)(ii) or (b)(ii), the manner in which the criminal history check is submitted shall be approved by the court.

(5) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Human Services shall comply with Section 78B-6-131.

(6) (a) ~~[A person]~~ An individual described in Subsection (2)(c) shall be licensed to practice under the laws of:

(i) this state; or

(ii) the state, district, or territory of the United States where the prospective adoptive parent or other person living in the prospective adoptive home resides.

(b) The evaluation described in Subsection (2)(c) shall be in a form approved by the Department of Human Services.

(c) Neither the Department of Human Services nor any of its divisions may proscribe who qualifies as an expert in family relations or who may conduct evaluations under Subsection (2)(c).

(7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the responsibility of the adopting parent or parents.

(8) The person [~~or agency~~] conducting the preplacement adoptive evaluation shall, in connection with the evaluation, provide the prospective adoptive parent or parents with literature approved by the Division of Child and Family Services relating to adoption, including information relating to:

(a) the adoption process;

(b) developmental issues that may require early intervention; and

(c) community resources that are available to the prospective adoptive parent or parents.

(9) A copy of the preplacement adoptive evaluation shall be filed with the court.

CHAPTER 111**S. B. 134**

Passed March 7, 2017
 Approved March 17, 2017
 Effective May 9, 2017

**INDIGENT DEFENSE
 COMMISSION AMENDMENTS**

Chief Sponsor: Todd Weiler
 House Sponsor: Craig Hall

LONG TITLE**General Description:**

This bill modifies the Indigent Defense Act.

Highlighted Provisions:

This bill:

- ▶ expands the Utah Indigent Defense Commission to include juvenile defense;
- ▶ addresses the make up of the commission;
- ▶ addresses the qualifications and duties of the director, including the hiring of staff;
- ▶ addresses the powers and duties of the commission;
- ▶ modifies provisions related to the Indigent Defense Resources Account;
- ▶ addresses indigent criminal and juvenile defense system participation;
- ▶ amends provisions related to application for grant money;
- ▶ addresses cooperation with the commission; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 77-32-801, as enacted by Laws of Utah 2016, Chapter 177
 77-32-802, as enacted by Laws of Utah 2016, Chapter 177
 77-32-803, as enacted by Laws of Utah 2016, Chapter 177
 77-32-804, as enacted by Laws of Utah 2016, Chapter 177
 77-32-805, as enacted by Laws of Utah 2016, Chapter 177
 77-32-806, as enacted by Laws of Utah 2016, Chapter 177
 77-32-807, as enacted by Laws of Utah 2016, Chapter 177
 77-32-808, as enacted by Laws of Utah 2016, Chapter 177
 77-32-809, as enacted by Laws of Utah 2016, Chapter 177

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

Section 1. Section 77-32-801 is amended to read:

77-32-801. Indigent Defense Commission creation -- Purpose -- Definition.

(1) There is created within the Commission on Criminal and Juvenile Justice the Utah Indigent Defense Commission.

(2) The purpose of the commission is to assist the state in meeting the state's obligations for the provision of indigent [~~criminal~~] defense services, consistent with the United States Constitution, the Utah Constitution, and [~~this chapter~~] the Utah Code.

(3) Notwithstanding Section 77-32-201, for purposes of this part:

(a) "Indigent defense services" means the representation of indigent persons in criminal, juvenile delinquency, and child welfare cases.

(b) "Indigent defense system" means indigent defense services provided by:

- (i) local units of government, including a county, city, or town; or
- (ii) a regional legal defense organization.

Section 2. Section 77-32-802 is amended to read:

77-32-802. Commission members -- Membership qualifications -- Terms -- Vacancy -- Administrative support.

(1) The commission is composed of [~~11~~] 13 voting and two ex officio, nonvoting members.

(a) The governor, with the consent of the Senate, shall appoint the following [~~nine~~] 12 members:

(i) two practicing criminal defense attorneys and one attorney practicing in the area of juvenile delinquency defense recommended by the Utah Association of Criminal Defense Lawyers;

(ii) an attorney representing minority interests recommended by the Utah Minority Bar Association;

(iii) one member recommended by the Utah Association of Counties from a county of the first or second class;

(iv) one member recommended by the Utah Association of Counties from a county of the third through sixth class;

(v) a director of a county public defender organization recommended by the Utah Association of Criminal Defense Lawyers;

(vi) two members recommended by the Utah League of Cities and Towns from its membership;

(vii) a retired judge recommended by the Judicial Council; [~~and~~]

(viii) one member of the Utah Legislature selected jointly by the Speaker of the House and President of the Senate[.]; and

(ix) one attorney practicing in the area of parental defense, recommended by an entity funded under Title 63A, Chapter 11, Child Welfare Parental Defense Program.

(b) The executive director of the Commission on Criminal and Juvenile Justice or the executive

director's designee shall be a voting member of the commission.

(c) The ex officio, nonvoting members of the commission are:

(i) the director of the ~~[Utah Indigent Defense Commission]~~ commission appointed in Section 77-32-803; and

(ii) a representative from the Administrative Office of the Courts appointed by the Judicial Council.

(2) Members appointed by the governor shall serve four-year terms, except as provided in Subsection (3).

(3) The governor shall stagger the initial terms of appointees so that approximately half of the commission is appointed every two years.

(4) Members appointed to the commission shall have significant experience in indigent criminal defense, child welfare parental defense, or juvenile defense in delinquency proceedings or have otherwise demonstrated a strong commitment to providing effective representation in indigent ~~[criminal]~~ defense services.

(5) A person who is currently employed solely as a criminal prosecuting attorney may not serve as a member of the commission.

~~[(5)]~~ (6) Commission members shall hold office until their successors are appointed.

~~[(6)]~~ (7) The commission may remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or for any other good cause.

~~[(7)]~~ (8) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

~~[(8)]~~ (9) The governor shall appoint one of the initial commission members to serve as chair of the commission for a term of one year. At the expiration of that year, or upon the vacancy in the membership of the appointed chair, the commission shall annually elect a chair from the commission's membership to serve a one-year term. A commission member may not serve as chair of the commission for more than three consecutive terms.

~~[(9)]~~ (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

~~[(10)]~~ (11) Six members constitute a quorum, however, the affirmative vote of at least six

members of the commission is required for official action of the commission.

Section 3. Section 77-32-803 is amended to read:

77-32-803. Director -- Qualifications -- Staff.

(1) The commission shall appoint a director to carry out the following duties:

(a) establish an annual budget;

(b) assist the commission in ~~[developing and regularly reviewing advisory caseload guidelines and procedures, including recommending to the commission suggested changes to the criteria for an indigent defendant's eligibility to receive criminal defense services under this chapter; and] the performance of the commission's statutory duties;~~

(c) assist the commission in developing and regularly reviewing advisory caseload guidelines and procedures, including recommending to the commission suggested changes to the criteria for an indigent person's eligibility to receive defense services under this chapter; and

~~[(e)]~~ (d) perform all other duties as assigned.

(2) The director shall be ~~[a full-time licensed attorney]~~ an active member of the Utah State Bar with an appropriate background and experience to serve as the full-time director.

(3) The director shall hire staff as necessary to carry out the duties of the commission, including ~~[at least one individual with data collection and analysis skills to carry out duties as outlined in Subsection 77-32-804(1)(a).];~~

(a) one individual who is an active member of the Utah State Bar to serve as a full-time assistant director; and

(b) one individual with data collection and analysis skills to carry out duties as outlined in Subsection 77-32-804(1)(a).

(4) The commission in appointing the director, and the director in hiring the assistant director, shall give a preference to individuals with experience in adult criminal defense, child welfare parental defense, or juvenile delinquency defense.

Section 4. Section 77-32-804 is amended to read:

77-32-804. Powers and duties of the commission -- Annual report.

(1) The commission shall:

(a) develop and adopt guiding principles for the assessment and oversight of ~~[criminal]~~ indigent defense systems with the state that, at a minimum, address the following:

(i) Indigent defense service providers shall have independent judgment without fear of retaliation.

(ii) Service providers shall provide conflict-free representation, including the need for a separate contract for conflict counsel.

(iii) Service providers shall provide contracts that separately account for indigent criminal defense, parental defense, and juvenile delinquency defense.

~~[(iii)]~~ (iv) The state may not interfere with the service provider's access to clients and the service provider is free to defend the client based on the service provider's own independent judgment[.];

~~[(iv)]~~ (A) Accused persons in criminal cases shall be provided counsel at all critical stages [of the criminal process].

(B) Indigent parties in juvenile delinquency and child welfare proceedings shall be provided counsel at all stages.

~~[(v)]~~ (v) Counsel shall be free to provide meaningful[, adversarial testing of the evidence] representation, including:

(A) adequate access to defense resources; and

(B) workloads that allow for time to meet with clients, investigate cases, and file appropriate motions.

~~[(vi)]~~ (vi) Service providers shall be fairly compensated and incentivized to represent clients fully through:

(A) compensation, that shall be independent from prosecutors' compensation;

(B) incentives that are structured to effectively represent [criminal defendants well; and] indigent persons;

(C) contract provisions that address legal training and education in the areas of the law relevant to the types of cases the service provider is contracted to appear on;

~~[(C)]~~ (D) separate contracts [that are offered] for appellate attorneys to ensure the right to appeal[.]; and

(E) compensation sufficient to attract applicants qualified with adequate experience in the relevant areas of the law to provide effective representation in the defense of clients.

(vii) Contracts that address counsel's obligation under the Utah Rules of Professional Conduct, including expectations on client communications and managing conflicts of interest.

~~[(vii)]~~ (viii) The commission may maintain oversight to collect data, audit attorney performance, establish standards, and enforce the principles listed [above] in this Subsection (1)(a);

(b) identify and collect data necessary for the commission to:

(i) review compliance by [criminal] indigent defense systems of minimum principles for effective representation;

(ii) establish procedures for the collection and analysis of the data; and

(iii) provide reports regarding the operation of the commission and the provision of indigent

~~[criminal]~~ defense services by each indigent ~~[criminal]~~ defense system;

(c) develop and oversee the establishment of advisory caseload principles and guidelines to aid indigent [criminal] defense systems in delivering effective representation in the state consistent with the safeguards of the United States Constitution, the Utah Constitution, and [this chapter] the Utah Code;

(d) review [all] contracts and interlocal agreements in the state for the provision of indigent [criminal] defense services and provide assistance and recommendations regarding compliance with minimum principles for effective representation of indigent individuals in court;

(e) investigate, audit, and review the provision of indigent [criminal] defense services for compliance with minimum principles;

(f) establish procedures for the receipt, acceptance, and resolution of complaints regarding the provision of indigent [criminal] defense services;

(g) establish procedures that enable indigent [criminal] defense systems to apply for state funding as provided under Section 77-32-805;

(h) establish procedures for annually reporting to the governor, Legislature, and Judicial Council, [and indigent criminal defense systems throughout the state that] which include reporting the following:

(i) the operations of the commission;

(ii) the operations of each indigent [criminal] defense system to which the commission has granted money; and

(iii) the compliance by each indigent [criminal] defense [system's compliance] system that has received a grant of money from the commission, with minimum [standards] principles for the provision of indigent [criminal] defense services and for effective representation of indigent individuals in court;

(i) award grants to indigent [criminal] defense systems consistent with metrics established by the commission under this part and appropriations by the state;

(j) encourage and aid in the regionalization of indigent [criminal] defense services within the state for effective representation and for efficiency and cost savings to local systems;

(k) submit to legislative, executive, and judicial leadership, from time to time, proposed recommendations for improvement in the provision of indigent [criminal] defense services to ensure effective representation in the state, consistent with the safeguards of the United States Constitution [and], the Utah Constitution, and the Utah Code; and

(l) identify and encourage best practices for effective representation [to indigent defendants charged with crimes].

(2) The commission shall emphasize the importance of effective indigent ~~[criminal]~~ defense services ~~[provided to defendants, whether charged with a misdemeanor or felony].~~

(3) The commission shall establish procedures for the conduct of the commission's affairs and internal policies necessary to carry out the commission's duties and responsibilities under this part.

(4) Commission policies shall be ~~[placed in an appropriate manual,]~~ made publicly available on a website, ~~and made available to all attorneys and professionals providing indigent criminal defense services, the Judicial Council, the governor, and the Legislature].~~

(5) The delivery of indigent ~~[criminal]~~ defense services shall be independent of the judiciary, but the commission shall ensure that judges are permitted and encouraged to contribute information and advice concerning the delivery of indigent ~~[criminal]~~ defense services.

(6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish guiding principles for the constitutional provision of indigent defense services in the state.

~~[(6)]~~ (7) An indigent ~~[criminal]~~ defense system that is in compliance with minimum principles and procedures may not be required to provide indigent ~~[criminal]~~ defense services in excess of those principles and procedures.

~~[(7)]~~ (8) The commission shall ~~[submit a]~~ report annually to the Judiciary Interim Committee on the commission's efforts to improve the provision of indigent ~~[criminal]~~ defense services statewide.

Section 5. Section 77-32-805 is amended to read:

77-32-805. Indigent Defense Resources Account -- Administration.

(1) For purposes of this part, "account" means the Indigent Defense Resources Account.

(2) (a) There is created within the General Fund a restricted account known as the "Indigent Defense Resources Restricted Account."

(b) [Funds] Money in the account shall be nonlapsing.

(c) Subject to appropriation, [funds] money from the account shall be disbursed by the ~~[Utah Indigent Defense Commission]~~ commission in accordance with ~~[the provisions of this chapter]~~ this part.

(3) The account consists of:

(a) [funds] money appropriated by the Legislature based upon recommendations from the commission consistent with principles of shared state and local funding;

(b) other ~~[moneys]~~ money received by the commission pursuant to Subsection 77-32-809(3); and

(c) interest and earnings from the investment of account ~~[funds]~~ money.

(4) [Funds] Money from the account shall be invested by the state treasurer with the earnings and interest accruing to the account.

(5) The account shall be administered by the commission for:

(a) the establishment and maintenance of a statewide indigent ~~[criminal]~~ defense data collection system;

(b) grants to indigent ~~[criminal]~~ defense systems for defense resources; and

(c) grants to indigent ~~[criminal]~~ defense systems for defense services providers.

(6) Money allocated to or deposited into the account shall be used:

(a) to reimburse participating systems for commission-approved expenditures for the purposes listed in Subsection (5); and

(b) for administrative costs.

Section 6. Section 77-32-806 is amended to read:

77-32-806. Indigent and juvenile defense system participation.

(1) To qualify for grant ~~[funds]~~ money described in Subsection 77-32-805(5), the legislative body responsible for an indigent ~~[criminal]~~ defense system shall:

(a) adopt a resolution stating the intent to apply for grant ~~[funds]~~ money from the account and committing that the indigent ~~[criminal]~~ defense system shall meet minimum principles for the effective representation of indigent individuals in court; and

(b) submit a certified copy of that resolution together with an application to the commission.

(2) The commission may revoke an indigent ~~[criminal]~~ defense system's grant award if the system fails to meet minimum principles for the effective representation of indigent individuals in court or other grant conditions established by the commission.

Section 7. Section 77-32-807 is amended to read:

77-32-807. Application for grant money.

(1) Applications for grant ~~[moneys]~~ money from the commission may seek resources for the following expenses:

(a) establishment and maintenance of an indigent ~~[criminal]~~ defense data collection system;

(b) defense resources;

(c) matching ~~[fund]~~ money grants for defense services providers; and

(d) critical need grants for defense services providers.

(2) (a) Matching ~~[fund]~~ money grants, as described in Subsection (1)(c), may be awarded if

the indigent ~~[criminal]~~ defense system spends an amount greater than the system's baseline budget, as described in Subsection 77-32-809(2)(a), for defense services providers.

(b) For the purposes of Subsection (2)(a), ~~matching [funds is an amount equal to the product of]~~ money grants may be awarded by the commission in an amount up to:

(i) for a city or town, the indigent ~~[criminal]~~ defense system's spending above the system's baseline budget; and

(ii) for a county, the product of the indigent defense system's spending above the system's baseline budget and:

(A) 50% for counties of the first class;

(B) 100% for counties of the second or third class; or

(C) 200% for counties of the fourth through sixth class.

(3) Critical need grant ~~[moneys]~~ money, as described in Subsection (1)(d), may be awarded if the indigent ~~[criminal]~~ defense system can demonstrate to the commission's satisfaction that:

(a) the system has incurred or reasonably anticipates incurring expenses in excess of the system's annual local funding, as adjusted for population growth and inflation;

(b) the funding for the expenses described in Subsection (3)(a) is necessary for the indigent ~~[criminal]~~ defense system to meet minimum ~~[standards]~~ principles for effective representation; and

(c) increasing the system's local share for indigent ~~[criminal]~~ defense providers would constitute an undue burden on the indigent ~~[criminal]~~ defense system.

(4) If the application of a participating indigent ~~[criminal]~~ defense system is approved by the commission, the director of the commission shall negotiate, enter into, and administer a contract with the participating indigent ~~[criminal]~~ defense system for the purposes listed in Subsection (1).

(5) Nonparticipating systems remain responsible for meeting minimum principles for effective representation but may not be eligible for any legislative relief.

(6) A county or municipality may not be required to increase the county or municipality's certified tax rate pursuant to Section 59-2-924 to participate in the fund.

Section 8. Section 77-32-808 is amended to read:

77-32-808. Annual report, budget, and listing of expenditures -- Availability on website.

(1) As used in this section, "expenditures" means all payments or disbursements of commission

~~[funds]~~ money, received from any source, made by the commission.

(2) The commission shall publish and make available to the public on a website the commission's annual report, budget, salary information, a listing of all expenditures, and a list of all indigent ~~[criminal]~~ defense systems.

(3) Publication and availability of the listing of expenditures shall be on a quarterly basis. The commission's budget and salary information may be published and made available on an annual basis.

Section 9. Section 77-32-809 is amended to read:

77-32-809. Investigation, audit, and review of indigent and juvenile defense services -- Cooperation and participation with commission -- Maintenance of local share -- Necessity for excess funding.

(1) ~~[All indigent criminal]~~ Indigent defense systems and attorneys engaged in providing indigent ~~[criminal]~~ defense services shall cooperate and participate with the commission in the investigation, audit, and review of all indigent ~~[criminal]~~ defense services.

(2) (a) For purposes of this part, "baseline budget" means an indigent ~~[criminal]~~ defense system's ~~[share of local funding, adjusted annually for growth in population and inflation]~~ annual expenditure for the indigent defense services. The baseline budget shall be adjusted for indigent defense case load fluctuations and inflations whenever subsequent grant requests are submitted to the commission.

(b) An indigent ~~[criminal]~~ defense system shall maintain the system's baseline budget each year.

(c) If the commission determines that ~~[funding]~~ money in excess of the indigent ~~[criminal]~~ defense system's baseline budget is necessary to achieve minimum principles for effective representation, the excess ~~[funding]~~ money shall be paid from state or local funding, or a combination of both, as determined by the grant application process described in Section 77-32-807.

(d) An indigent ~~[criminal]~~ defense system is not required to expend all of the system's local funding if minimum principles for effective representation may be met for less than local funding.

(3) The commission may apply for and obtain state funding from any source to carry out the purposes of this part. ~~[All funds]~~ Money received by the commission, from any source, are state funds and shall be appropriated as provided by law.

CHAPTER 112**S. B. 143**

Passed February 22, 2017

Approved March 17, 2017

Effective May 9, 2017

LOCAL DISTRICT BOARD AMENDMENTS

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Stephen G. Handy

LONG TITLE**General Description:**

This bill clarifies appointment provisions regarding local district boards of trustees.

Highlighted Provisions:

This bill:

- ▶ modifies the number of voters required to approve a certain tax or levy;
- ▶ clarifies the application of certain residency requirements for appointed members of local district boards of trustees;
- ▶ clarifies when appointment procedures apply in the case of a board vacancy; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 17B-1-203, as last amended by Laws of Utah 2013, Chapter 70
- 17B-1-208, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 17B-1-302, as last amended by Laws of Utah 2016, Chapter 140
- 17B-1-303, as last amended by Laws of Utah 2016, Chapter 233
- 17B-1-304, as last amended by Laws of Utah 2014, Chapter 377
- 17B-1-1001, as last amended by Laws of Utah 2013, Chapter 415
- 17B-2a-404, as last amended by Laws of Utah 2015, Chapter 258
- 17B-2a-405, as last amended by Laws of Utah 2015, Chapter 258
- 17B-2a-604, as last amended by Laws of Utah 2010, Chapter 159
- 17B-2a-608, as last amended by Laws of Utah 2013, Chapters 278 and 415
- 17B-2a-704, as last amended by Laws of Utah 2012, Chapter 97
- 17B-2a-905, as last amended by Laws of Utah 2014, Chapter 189
- 17B-2a-1009, as last amended by Laws of Utah 2013, Chapter 415

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

Section 1. Section 17B-1-203 is amended to read:**17B-1-203. Process to initiate the creation of a local district -- Petition or resolution.**

(1) The process to create a local district may be initiated by:

(a) unless the proposed local district is a local district to acquire or assess a groundwater right under Section 17B-1-202, and subject to Section 17B-1-204, a petition signed by the owners of private real property that:

(i) is located within the proposed local district;

(ii) covers at least 33% of the total private land area within the proposed local district as a whole and within each applicable area;

(iii) is equal in value to at least 25% of the value of all private real property within the proposed local district as a whole and within each applicable area; and

(iv) complies with the requirements of Subsection 17B-1-205(1) and Section 17B-1-208;

(b) subject to Section 17B-1-204, a petition that:

(i) is signed by registered voters residing within the proposed local district as a whole and within each applicable area, equal in number to at least 33% of the number of votes cast in the proposed local district as a whole and in each applicable area, respectively, for the office of governor at the last regular general election prior to the filing of the petition; and

(ii) complies with the requirements of Subsection 17B-1-205(1) and Section 17B-1-208;

(c) if the proposed local district is a local district to acquire or assess a groundwater right under Section 17B-1-202, and subject to Section 17B-1-204, a petition signed by the owners of groundwater rights that:

(i) are diverted within the proposed local district;

(ii) cover at least 33% of the total amount of groundwater diverted in accordance with groundwater rights within the proposed local district as a whole and within each applicable area; and

(iii) comply with the requirements of Subsection 17B-1-205(1) and Section 17B-1-208;

(d) a resolution proposing the creation of a local district, adopted by the legislative body of each county whose unincorporated area, whether in whole or in part, includes and each municipality whose boundaries include any of the proposed local district; or

(e) a resolution proposing the creation of a local district, adopted by the board of trustees of an existing local district whose boundaries completely encompass the proposed local district, if:

(i) the proposed local district is being created to provide one or more components of the same service that the initiating local district is authorized to provide; and

(ii) the initiating local district is not providing to the area of the proposed local district any of the components that the proposed local district is being created to provide.

(2) (a) Each resolution under Subsection (1)(d) or (e) shall:

(i) describe the area proposed to be included in the proposed local district;

(ii) be accompanied by a map that shows the boundaries of the proposed local district;

(iii) describe the service proposed to be provided by the proposed local district;

(iv) if the resolution proposes the creation of a specialized local district, specify the type of specialized local district proposed to be created;

(v) explain the anticipated method of paying the costs of providing the proposed service;

(vi) state the estimated average financial impact on a household within the proposed local district;

(vii) state the number of members that the board of trustees of the proposed local district will have, consistent with the requirements of Subsection 17B-1-302~~(2)~~(4);

(viii) for a proposed basic local district:

(A) state whether the members of the board of trustees will be elected or appointed or whether some members will be elected and some appointed, as provided in Section 17B-1-1402;

(B) if one or more members will be elected, state the basis upon which each elected member will be elected; and

(C) if applicable, explain how the election or appointment of board members will transition from one method to another based on stated milestones or events, as provided in Section 17B-1-1402;

(ix) for a proposed improvement district whose remaining area members or county members, as those terms are defined in Section 17B-2a-404, are to be elected, state that those members will be elected; and

(x) for a proposed service area that is entirely within the unincorporated area of a single county, state whether the initial board of trustees will be:

(A) the county legislative body;

(B) appointed as provided in Section 17B-1-304; or

(C) elected as provided in Section 17B-1-306.

(b) Each county or municipal legislative body adopting a resolution under Subsection (1)(d) shall, on or before the first public hearing under Section 17B-1-210, mail or deliver a copy of the resolution to the responsible body if the county or municipal legislative body's resolution is one of multiple resolutions adopted by multiple county or municipal legislative bodies proposing the creation of the same local district.

Section 2. Section 17B-1-208 is amended to read:

17B-1-208. Additional petition requirements and limitations.

(1) Each petition shall:

(a) be filed with the responsible clerk;

(b) separately group signatures by county and municipality, so that all signatures of the owners of real property located within or of registered voters residing within each county whose unincorporated area includes and each municipality whose boundaries include part of the proposed local district are grouped separately; and

(c) state the number of members that the board of trustees of the proposed local district will have, consistent with the requirements of Subsection 17B-1-302~~(2)~~(4).

(2) (a) A petition may not propose the creation of a local district that includes an area located within the unincorporated part of a county or within a municipality if the legislative body of that county or municipality has adopted a resolution under Subsection 17B-1-212(1) indicating that the county or municipality will provide to that area the service proposed to be provided by the proposed local district.

(b) Subsection (2)(a) does not apply if the county or municipal legislative body is considered to have declined to provide the requested service under Subsection 17B-1-212(3).

(c) Subsection (2)(a) may not be construed to prevent the filing of a petition that proposes the creation of a local district whose area excludes that part of the unincorporated area of a county or that part of a municipality to which the county or municipality has indicated, in a resolution adopted under Section 17B-1-212, it will provide the requested service.

(3) A petition may not propose the creation of a local district whose area includes:

(a) some or all of an area described in a previously filed petition that, subject to Subsection 17B-1-202(4)(b):

(i) proposes the creation of a local district to provide the same service as proposed by the later filed petition; and

(ii) is still pending at the time the later petition is filed; or

(b) some or all of an area within a political subdivision that provides in that area the same service proposed to be provided by the proposed local district.

(4) A petition may not be filed more than 12 months after a county or municipal legislative body declines to provide the requested service under Subsection 17B-1-212(1) or is considered to have declined to provide the requested service under Subsection 17B-1-212(2) or (3).

Section 3. Section 17B-1-302 is amended to read:

17B-1-302. Board member qualifications -- Number of board members.

(1) ~~(a)~~ Each member of a local district board of trustees shall be:

~~(i)~~ (a) a registered voter at the location of the member's residence; and

~~(ii)~~ (b) except as otherwise provided in ~~this~~ Subsection ~~(1)~~ (2) or (3), a resident within:

~~(A)~~ (i) the boundaries of the local district; and

~~(B)~~ (ii) if applicable, the boundaries of the division of the local district from which the member is elected or appointed.

~~(b)~~ (i) (2) (a) As used in this Subsection ~~(1)~~ (b) (2):

~~(A)~~ (i) "Proportional number" means the number of members of a board of trustees that bears, as close as mathematically possible, the same proportion to all members of the board that the number of seasonally occupied homes bears to all residences within the district that receive service from the district.

~~(B)~~ (ii) "Seasonally occupied home" means a single-family residence:

~~(A)~~ (A) that is located within the local district;

~~(B)~~ (B) that receives service from the local district; and

~~(C)~~ (C) whose owner~~[-(Aa)]~~ does not reside permanently at the residence~~[- and (Bb)]~~ but may occupy the residence on a temporary or seasonal basis.

~~(b)~~ (b) If over 50% of the residences within a local district that receive service from the local district are seasonally occupied homes, the requirement under Subsection (1)~~(a)~~~~(ii)~~(b) is replaced, for a proportional number of members of the board of trustees, with the requirement that the member be an owner of land, or an agent or officer of the owner of land, that:

~~(A)~~ (i) receives service from the district; and

~~(B)~~ (ii) is located within~~[-(D)]~~ the local district~~[- and (E)]~~ and, if applicable, the division from which the member is elected.

~~(e)~~ (3) (a) For a board of trustees member in a basic local district that has within ~~its~~ the district's boundaries fewer than one residential dwelling unit per 10 acres of land, the requirement under Subsection (1)~~(a)~~~~(ii)~~(b) is replaced with the requirement that the member be an owner of land within the local district that receives service from the district, or an agent or officer of the owner.

~~(b)~~ (b) A member of the board of trustees of a service area described in Subsection 17B-2a-905(2)(a) or (3)(a), who is an elected official of the county appointing the individual, is not subject to the requirements described in Subsection (1)~~(a)~~~~(ii)~~(b) if the elected official was elected at large by the voters of the county.

~~(2)~~ (4) Except as otherwise provided by statute, the number of members of each board of trustees of

a local district shall be an odd number that is no less than three.

~~(3)~~ (5) For a newly created local district, the number of members of the initial board of trustees shall be the number specified:

(a) for a local district whose creation was initiated by a petition under Subsection 17B-1-203(1)(a), (b), or (c), in the petition; or

(b) for a local district whose creation was initiated by a resolution under Subsection 17B-1-203(1)(d) or (e), in the resolution.

~~(4)~~ (6) (a) For an existing local district, the number of members of the board of trustees may be changed by a two-thirds vote of the board of trustees.

(b) No change in the number of members of a board of trustees under Subsection ~~(4)~~ (6)(a) may:

(i) violate Subsection ~~(2)~~ (4); or

(ii) serve to shorten the term of any member of the board.

Section 4. Section 17B-1-303 is amended to read:

17B-1-303. Term of board of trustees members -- Oath of office -- Bond -- Notice of board member contact information.

(1) (a) Except as provided in Subsections (1)(b) and (c), the term of each member of a board of trustees shall begin at noon on the January 1 following the member's election or appointment.

(b) The term of each member of the initial board of trustees of a newly created local district shall begin:

(i) upon appointment, for an appointed member; and

(ii) upon the member taking the oath of office after the canvass of the election at which the member is elected, for an elected member.

(c) The term of each water conservancy district board member appointed by the governor as provided in Subsection 17B-2a-1005(2)(c) shall:

(i) begin on the later of the following:

(A) the date on which the Senate consents to the appointment; or

(B) the expiration date of the prior term; and

(ii) end on the February 1 that is approximately four years after the date described in Subsection (1)(c)(i)(A) or (B).

(2) (a) (i) Except as provided in Subsection (8), and subject to Subsection (2)(a)(ii), the term of each member of a board of trustees shall be four years, except that approximately half the members of the initial board of trustees, chosen by lot, shall serve a two-year term so that the term of approximately half the board members expires every two years.

(ii) (A) If the terms of members of the initial board of trustees of a newly created local district do not

begin on January 1 because of application of Subsection (1)(b), the terms of those members shall be adjusted as necessary, subject to Subsection (2)(a)(ii)(B), to result in the terms of their successors complying with:

(I) the requirement under Subsection (1)(a) for a term to begin on January 1 following a member's election or appointment; and

(II) the requirement under Subsection (2)(a)(i) that terms be four years.

(B) An adjustment under Subsection (2)(a)(ii)(A) may not add more than a year to or subtract more than a year from a member's term.

(b) Each board of trustees member shall serve until a successor is duly elected or appointed and qualified, unless the member earlier is removed from office or resigns or otherwise leaves office.

(c) If a member of a board of trustees no longer meets the qualifications of Subsection 17B-1-302(1), (2), or (3), or if the member's term expires without a duly elected or appointed successor:

(i) the member's position is considered vacant, subject to Subsection (2)(c)(ii); and

(ii) the member may continue to serve until a successor is duly elected or appointed and qualified.

(3) (a) (i) Before entering upon the duties of office, each member of a board of trustees shall take the oath of office specified in Utah Constitution, Article IV, Section 10.

(ii) An oath of office may be administered by a judge, county clerk, notary public, or the local district clerk.

(b) Each oath of office shall be filed with the clerk of the local district.

(c) The failure of a board of trustees member to take the oath required by Subsection (3)(a) does not invalidate any official act of that member.

(4) A board of trustees member is not limited in the number of terms the member may serve.

(5) Except as provided in Subsection (6), each midterm vacancy in a board of trustees position shall be filled as provided in Section 20A-1-512.

(6) (a) For purposes of this Subsection (6):

(i) "Appointed official" means a person who:

(A) is appointed as a member of a local district board of trustees by a county or municipality entitled to appoint a member to the board; and

(B) holds an elected position with the appointing county or municipality.

(ii) "Appointing entity" means the county or municipality that appointed the appointed official to the board of trustees.

(b) The board of trustees shall declare a midterm vacancy for the board position held by an appointed official if:

(i) during the appointed official's term on the board of trustees, the appointed official ceases to hold the elected position with the appointing entity; and

(ii) the appointing entity submits a written request to the board to declare the vacancy.

(c) Upon the board's declaring a midterm vacancy under Subsection (6)(b), the appointing entity shall appoint another person to fill the remaining unexpired term on the board of trustees.

(7) (a) Each member of a board of trustees shall give a bond for the faithful performance of the member's duties, in the amount and with the sureties prescribed by the board of trustees.

(b) The local district shall pay the cost of each bond required under Subsection (7)(a).

(8) The lieutenant governor may extend the term of an elected district board member by one year in order to compensate for a change in the election year under Subsection 17B-1-306(13).

(9) (a) A local district shall:

(i) post on the Utah Public Notice Website created in Section 63F-1-701 the name, phone number, and email address of each member of the local district's board of trustees;

(ii) update the information described in Subsection (9)(a)(i) when:

(A) the membership of the board of trustees changes; or

(B) a member of the board of trustees' phone number or email address changes; and

(iii) post any update required under Subsection (9)(a)(ii) within 30 days after the day on which the change requiring the update occurs.

(b) This Subsection (9) applies regardless of whether the county or municipal legislative body also serves as the board of trustees of the local district.

Section 5. Section 17B-1-304 is amended to read:

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

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

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

(i) the positions that are vacant that shall be filled by appointment;

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

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

(iv) the person to be contacted and any deadlines that a person shall meet who wishes to be considered for appointment to those positions.

(b) The appointing authority shall:

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

(ii) ~~[(A)]~~ publish the notice of vacancy:

~~[(4)]~~ (A) in a daily newspaper of general circulation within the local district for five consecutive days before the deadline for accepting nominees for appointment; or

~~[(11)]~~ (B) in a local weekly newspaper circulated within the local district in the week before the deadline for accepting nominees for appointment; and

~~[(8)]~~ (iii) publish the notice of vacancy in accordance with Section 45-1-101 for five days before the deadline for accepting nominees for appointment.

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

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

(b) The appointing authority shall:

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

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

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

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

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

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

(b) Notwithstanding Subsection (5)(a), a board member may continue to serve until a successor is

~~duly~~ elected or appointed and qualified in accordance with Subsection 17B-1-303(2)(b).

(6) Notwithstanding any other provision of this section, if the appointing authority appoints one of its own members and that member meets all applicable statutory board member qualifications, the appointing authority need not comply with Subsection (2) or (3).

Section 6. Section 17B-1-1001 is amended to read:

17B-1-1001. Provisions applicable to property tax levy.

(1) Each local district that levies and collects property taxes shall levy and collect them according to the provisions of Title 59, Chapter 2, Property Tax Act.

(2) As used in this section, "elected official" means a local district board of trustees member who:

(a) is elected to the board of trustees by local district voters at an election held for that purpose, including a member elected under Subsection (4);

(b) holds, at the time of appointment to the board of trustees, an elected position with a municipality, county, or another local district that is partially or completely included within the boundaries of the local district;

(c) is appointed in accordance with Subsection 17B-1-303(5) or 17B-1-306(4)(f); or

(d) is considered to be elected in accordance with Subsection 17B-1-306(4)(g).

(3) (a) Except as provided in Subsection (3)(b), a local district may not levy or collect property tax revenue that exceeds the certified tax rate during a taxable year that begins on or after January 1, 2011.

(b) Notwithstanding Subsection (3)(a), a local district may levy or collect property tax revenue that exceeds the certified tax rate during a taxable year that begins on or after January 1, 2011, if:

(i) and to the extent that the revenue from the property tax was pledged before January 1, 2011, to pay for bonds or other obligations of the local district;

(ii) the members of the board of trustees are all elected officials;

(iii) the majority of the board of trustees are elected officials; or

(iv) the proposed tax or increase in the property tax rate has been approved by:

(A) a majority of the registered voters within the local district ~~at~~ who vote in an election held for that purpose on a date specified in Section 20A-1-204;

(B) the legislative body of the appointing authority; or

(C) the legislative body of:

(I) a majority of the municipalities partially or completely included within the boundary of the specified local district; or

(II) the county in which the specified local district is located, if the county has some or all of its unincorporated area included within the boundary of the specified local district.

(4) (a) Notwithstanding provisions to the contrary in Title 17B, Chapter 2a, Provisions Applicable to Different Types of Local Districts, and for purposes of Subsection (3)(b), members of the board of trustees of a local district shall be elected, if, subject to Subsection (4)(b):

(i) two-thirds of all members of the board of trustees of the local district vote in favor of changing to an elected board; and

(ii) the legislative body of each municipality or county that appoints a member to the board of trustees adopts a resolution approving the change to an elected board.

(b) A change to an elected board of trustees under Subsection (4)(a) may not shorten the term of any member of the board of trustees serving at the time of the change.

(5) Subsections (2), (3), and (4) do not apply to:

(a) Title 17B, Chapter 2a, Part 6, Metropolitan Water District Act;

(b) Title 17B, Chapter 2a, Part 10, Water Conservancy District Act; or

(c) a local district in which:

(i) the board of trustees consists solely of:

(A) land owners or the land owners' agents; or

(B) as described in Subsection 17B-1-302[(1)(e)](3), land owners or the land owners' agents or officers; and

(ii) there are no residents within the local district at the time a property tax is levied.

Section 7. Section 17B-2a-404 is amended to read:

17B-2a-404. Improvement district board of trustees.

(1) As used in this section:

(a) "County district" means an improvement district that does not include within its boundaries any territory of a municipality.

(b) "County member" means a member of a board of trustees of a county district.

(c) "Electric district" means an improvement district that was created for the purpose of providing electric service.

(d) "Included municipality" means a municipality whose boundaries are entirely contained within but do not coincide with the boundaries of an improvement district.

(e) "Municipal district" means an improvement district whose boundaries coincide with the boundaries of a single municipality.

(f) "Regular district" means an improvement district that is not a county district, electric district, or municipal district.

(g) "Remaining area" means the area of a regular district that:

(i) is outside the boundaries of an included municipality; and

(ii) includes the area of an included municipality whose legislative body elects, under Subsection (5)(a)(ii), not to appoint a member to the board of trustees of the regular district.

(h) "Remaining area member" means a member of a board of trustees of a regular district who is appointed, or, if applicable, elected to represent the remaining area of the district.

(2) The legislative body of the municipality included within a municipal district may:

(a) elect, at the time of the creation of the district, to be the board of trustees of the district; and

(b) adopt at any time a resolution providing for:

(i) the election of board of trustees members, as provided in Section 17B-1-306; or

(ii) the appointment of board of trustees members, as provided in Section 17B-1-304.

(3) (a) The legislative body of a county whose unincorporated area is partly or completely within a county district may:

(i) elect, at the time of the creation of the district, to be the board of trustees of the district, even though a member of the legislative body of the county may not meet the requirements of Subsection 17B-1-302(1)[(a)];

(ii) adopt at any time a resolution providing for:

(A) the election of board of trustees members, as provided in Section 17B-1-306; or

(B) except as provided in Subsection (4), the appointment of board of trustees members, as provided in Section 17B-1-304; and

(iii) if the conditions of Subsection (3)(b) are met, appoint a member of the legislative body of the county to the board of trustees, except that the legislative body of the county may not appoint more than three members of the legislative body of the county to the board of trustees.

(b) A legislative body of a county whose unincorporated area is partly or completely within a county district may take an action under Subsection (3)(a)(iii) if:

(i) more than 35% of the residences within a county district that receive service from the district are seasonally occupied homes, as defined in Subsection 17B-1-302[(1)(b)(i)(B)](2)(a)(ii);

(ii) the board of trustees are appointed by the legislative body of the county; and

(iii) there are at least two appointed board members who meet the requirements of [Subsection] Subsections 17B-1-302(1), (2), and

(3), except that a member of the legislative body of the county need not satisfy the requirements of [Subsection] Subsections 17B-1-302(1), (2), and (3).

(4) Subject to Subsection (6)(d), the legislative body of a county may not adopt a resolution providing for the appointment of board of trustees members as provided in Subsection (3)(a)(ii)(B) at any time after the county district is governed by an elected board of trustees unless:

(a) the elected board has ceased to function;

(b) the terms of all of the elected board members have expired without the board having called an election; or

(c) the elected board of trustees unanimously adopts a resolution approving the change from an elected to an appointed board.

(5) (a) (i) Except as provided in Subsection (5)(a)(ii), the legislative body of each included municipality shall each appoint one member to the board of trustees of a regular district.

(ii) The legislative body of an included municipality may elect not to appoint a member to the board under Subsection (5)(a)(i).

(b) Except as provided in Subsection (6), the legislative body of each county whose boundaries include a remaining area shall appoint all other members to the board of trustees of a regular district.

(6) Notwithstanding Subsection (3), each remaining area member of a regular district and each county member of a county district shall be elected, as provided in Section 17B-1-306, if:

(a) the petition or resolution initiating the creation of the district provides for remaining area or county members to be elected;

(b) the district holds an election to approve the district's issuance of bonds;

(c) for a regular district, an included municipality elects, under Subsection (5)(a)(ii), not to appoint a member to the board of trustees; or

(d) (i) at least 90 days before the municipal general election or regular general election, as applicable, a petition is filed with the district's board of trustees requesting remaining area members or county members, as the case may be, to be elected; and

(ii) the petition is signed by registered voters within the remaining area or county district, as the case may be, equal in number to at least 10% of the number of registered voters within the remaining area or county district, respectively, who voted in the last gubernatorial election.

(7) Subject to Section 17B-1-302, the number of members of a board of trustees of a regular district shall be:

(a) the number of included municipalities within the district, if:

(i) the number is an odd number; and

(ii) the district does not include a remaining area;

(b) the number of included municipalities plus one, if the number of included municipalities within the district is even; and

(c) the number of included municipalities plus two, if:

(i) the number of included municipalities is odd; and

(ii) the district includes a remaining area.

(8) (a) Except as provided in Subsection (8)(b), each remaining area member of the board of trustees of a regular district shall reside within the remaining area.

(b) Notwithstanding Subsection (8)(a) and subject to Subsection (8)(c), each remaining area member shall be chosen from the district at large if:

(i) the population of the remaining area is less than 5% of the total district population; or

(ii) (A) the population of the remaining area is less than 50% of the total district population; and

(B) the majority of the members of the board of trustees are remaining area members.

(c) Application of Subsection (8)(b) may not prematurely shorten the term of any remaining area member serving the remaining area member's elected or appointed term on May 11, 2010.

(9) If the election of remaining area or county members of the board of trustees is required because of a bond election, as provided in Subsection (6)(b):

(a) a person may file a declaration of candidacy if:

(i) the person resides within:

(A) the remaining area, for a regular district; or

(B) the county district, for a county district; and

(ii) otherwise qualifies as a candidate;

(b) the board of trustees shall, if required, provide a ballot separate from the bond election ballot, containing the names of candidates and blanks in which a voter may write additional names; and

(c) the election shall otherwise be governed by Title 20A, Election Code.

(10) (a) (i) This Subsection (10) applies to the board of trustees members of an electric district.

(ii) Subsections (2) through (9) do not apply to an electric district.

(b) The legislative body of the county in which an electric district is located may appoint the initial board of trustees of the electric district as provided in Section 17B-1-304.

(c) After the initial board of trustees is appointed as provided in Subsection (10)(b), each member of the board of trustees of an electric district shall be elected by persons using electricity from and within the district.

(d) Each member of the board of trustees of an electric district shall be a user of electricity from the district and, if applicable, the division of the district from which elected.

(e) The board of trustees of an electric district may be elected from geographic divisions within the district.

(f) A municipality within an electric district is not entitled to automatic representation on the board of trustees.

Section 8. Section 17B-2a-405 is amended to read:

17B-2a-405. Board of trustees of certain sewer improvement districts.

(1) As used in this section:

(a) "Jurisdictional boundaries" means:

(i) for a qualified county, the boundaries that include:

(A) the area of the unincorporated part of the county that is included within a sewer improvement district; and

(B) the area of each nonappointing municipality that is included within the sewer improvement district; and

(ii) for a qualified municipality, the boundaries that include the area of the municipality that is included within a sewer improvement district.

(b) "Nonappointing municipality" means a municipality that:

(i) is partly included within a sewer improvement district; and

(ii) is not a qualified municipality.

(c) "Qualified county" means a county:

(i) some or all of whose unincorporated area is included within a sewer improvement district; or

(ii) which includes within its boundaries a nonappointing municipality.

(d) "Qualified county member" means a member of a board of trustees of a sewer improvement district appointed under Subsection (3)(a)(ii).

(e) "Qualified municipality" means a municipality that is partly or entirely included within a sewer improvement district that includes:

(i) all of the municipality that is capable of receiving sewage treatment service from the sewer improvement district; and

(ii) more than half of:

(A) the municipality's land area; or

(B) the assessed value of all private real property within the municipality.

(f) "Qualified municipality member" means a member of a board of trustees of a sewer improvement district appointed under Subsection (3)(a)(i).

(g) "Sewer improvement district" means an improvement district that:

(i) provides sewage collection, treatment, and disposal service; and

(ii) made an election before 1954 under Laws of Utah 1953, Chapter 29, to enable it to continue to appoint its board of trustees members as provided in this section.

(2) (a) Notwithstanding Section 17B-2a-404, the board of trustees members of a sewer improvement district shall be appointed as provided in this section.

(b) The board of trustees of a sewer improvement district may revoke the election under Subsection (1)(d) and become subject to the provisions of Section 17B-2a-404 only by the unanimous vote of all members of the sewer improvement district's board of trustees at a time when there is no vacancy on the board.

(3) (a) The board of trustees of each sewer improvement district shall consist of:

(i) at least one person but not more than three persons appointed by the mayor of each qualified municipality, with the consent of the legislative body of that municipality; and

(ii) at least one person but not more than three persons appointed by:

(A) the county executive, with the consent of the county legislative body, for a qualified county operating under a county executive-council form of county government; or

(B) the county legislative body, for each other qualified county.

(b) Each qualified county member appointed under Subsection (3)(a)(ii) shall represent the area within the jurisdictional boundaries of the qualified county.

(4) Notwithstanding Subsection 17B-1-302~~(2)~~(4), the number of board of trustees members of a sewer improvement district shall be the number that results from application of Subsection (3)(a).

(5) Except as provided in this section, an appointment to the board of trustees of a sewer improvement district is governed by Section 17B-1-304.

(6) A quorum of a board of trustees of a sewer improvement district consists of members representing more than 50% of the total number of qualified county and qualified municipality votes under Subsection (7).

(7) (a) Subject to Subsection (7)(b), each qualified county and each qualified municipality is entitled to one vote on the board of trustees of a sewer improvement district for each \$10,000,000, or fractional part larger than 1/2 of that amount, of assessed valuation of private real property taxable for district purposes within the respective jurisdictional boundaries, as shown by the assessment records of the county and evidenced by a certificate of the county auditor.

(b) Notwithstanding Subsection (7)(a), each qualified county and each qualified municipality shall have at least one vote.

(8) If a qualified county or qualified municipality appoints more than one board member, all the votes to which the qualified county or qualified municipality is entitled under Subsection (7) for an item of board business shall collectively be cast by a majority of the qualified county members or qualified municipal members, respectively, present at a meeting of the board of trustees.

Section 9. Section 17B-2a-604 is amended to read:

17B-2a-604. Metropolitan water district board of trustees.

(1) Members of the board of trustees of a metropolitan water district shall be:

(a) elected in accordance with:

(i) the petition or resolution that initiated the process of creating the metropolitan water district; and

(ii) Section 17B-1-306;

(b) appointed in accordance with Subsection (2); or

(c) elected under Subsection (3)(a).

(2) (a) This Subsection (2) shall apply to an appointed board of trustees of a metropolitan water district.

(b) If a district contains the area of a single municipality:

(i) the legislative body of that municipality shall appoint each member of the board of trustees; and

(ii) one member shall be the officer with responsibility over the municipality's water supply and distribution system, if the system is municipally owned.

(c) If a district contains some or all of the retail water service area of more than one municipality:

(i) the legislative body of each municipality shall appoint the number of members for that municipality as determined under Subsection (2)(c)(ii);

(ii) subject to Subsection (2)(c)(iii), the number of members appointed by each municipality shall be determined:

(A) by agreement between the metropolitan water district and the municipalities, subject to the maximum stated in Subsection 17B-1-302~~(2)~~(4); or

(B) as provided in Chapter 1, Part 3, Board of Trustees; and

(iii) at least one member shall be appointed by each municipality.

(d) Each trustee shall be appointed without regard to partisan political affiliations from among

citizens of the highest integrity, attainment, competence, and standing in the community.

(3) (a) Members of the board of trustees of a metropolitan water district shall be elected in accordance with Section 17B-1-306, if, subject to Subsection (3)(b):

(i) three-fourths of all members of the board of trustees of the metropolitan water district vote in favor of changing to an elected board; and

(ii) the legislative body of each municipality that appoints a member to the board of trustees adopts a resolution approving the change to an elected board.

(b) A change to an elected board of trustees under Subsection (3)(a) may not shorten the term of any member of the board of trustees serving at the time of the change.

(4) A member of the board of trustees of a metropolitan water district shall be:

(a) a registered voter;

(b) a property taxpayer; and

(c) a resident of:

(i) the metropolitan water district; and

(ii) the retail water service area of the municipality that:

(A) elects the member; or

(B) the member is appointed to represent.

(5) (a) Except as provided in Subsection (7), a member shall immediately forfeit the member's seat on the board of trustees if the member becomes elected or appointed to office in or becomes an employee of the municipality whose legislative body appointed the member under Subsection (2).

(b) The position of the member described in Subsection (5)(a) is vacant until filled as provided in Section 17B-1-304.

(6) Except as provided in Subsection (7), the term of office of each member of the board of trustees is as provided in Section 17B-1-303.

(7) Subsections (4), (5)(a), and (6) do not apply to a member who is a member under Subsection (2)(b)(ii).

Section 10. Section 17B-2a-608 is amended to read:

17B-2a-608. Limit on property tax authority -- Exceptions.

(1) As used in this section, "elected official" means a metropolitan water district board of trustee member who is elected to the board of trustees by metropolitan water district voters at an election held for that purpose.

(2) The board of trustees of a metropolitan water district may not collect property tax revenue in a tax year beginning on or after January 1, 2015, that would exceed the certified tax rate under Section 59-2-924 unless:

(a) the members of the board of trustees are all elected officials; or

(b) the proposed tax levy has previously been approved by:

(i) a majority of the metropolitan water district voters [a&t] who vote in an election held for that purpose on a date specified in Section 20A-1-204; or

(ii) the legislative body of each municipality that appoints a member to the board of trustees under Section 17B-2a-604.

Section 11. Section 17B-2a-704 is amended to read:

17B-2a-704. Mosquito abatement district board of trustees.

(1) (a) Notwithstanding Subsection 17B-1-302~~(2)~~(4):

(i) the board of trustees of a mosquito abatement district shall consist of no less than five members appointed in accordance with this section; and

(ii) subject to Subsection (1)(b), the legislative body of each municipality that is entirely or partly included within a mosquito abatement district shall appoint one member to the board of trustees.

(b) If 75% or more of the area of a mosquito abatement district is within the boundaries of a single municipality:

(i) the board of trustees shall consist of five members; and

(ii) the legislative body of that municipality shall appoint all five members of the board.

(2) The legislative body of each county in which a mosquito abatement district is located shall appoint at least one member but no more than three members to the district's board of trustees as follows:

(a) one member may be appointed if:

(i) some or all of the county's unincorporated area is included within the boundaries of the mosquito abatement district and Subsection (2)(b) does not apply; or

(ii) (A) the number of municipalities that are entirely or partly included within the district is an even number less than nine; and

(B) Subsection (1)(b) does not apply; or

(b) subject to Subsection (3), up to and including three members may be appointed if:

(i) more than 25% of the population of the mosquito abatement district resides outside the boundaries of all municipalities that may appoint members to the board of trustees; and

(ii) at least four members of the board of trustees are appointed by a municipality.

(3) A member appointed in accordance with Subsection (2)(b) may not reside within a

municipality that may appoint a member to the board of trustees.

(4) If the number of board members appointed by application of Subsections (1) and (2)(a) is an even number less than nine, the legislative body of the county in which the district is located shall appoint an additional member.

(5) Notwithstanding Subsection (2):

(a) if the mosquito abatement district is located entirely within one county and, in accordance with this section, only one municipality may appoint a member of the board of trustees, the county legislative body shall appoint at least four members to the district's board of trustees; and

(b) if the mosquito abatement district is located entirely within one county and no municipality may appoint a member of the board of trustees, all of the members of the board shall be appointed by the county legislative body.

(6) Each board of trustees member shall be appointed as provided in Section 17B-1-304.

(7) Each vacancy on a mosquito abatement district board of trustees shall be filled by the applicable appointing authority as provided in Section 17B-1-304, or if the vacancy is a midterm vacancy, as provided in Section 20A-1-512.

Section 12. Section 17B-2a-905 is amended to read:

17B-2a-905. Service area board of trustees.

(1) (a) Except as provided in Subsection (2) or (3):

(i) the initial board of trustees of a service area located entirely within the unincorporated area of a single county may, as stated in the petition or resolution that initiated the process of creating the service area:

(A) consist of the county legislative body;

(B) be appointed, as provided in Section 17B-1-304; or

(C) be elected, as provided in Section 17B-1-306;

(ii) if the board of trustees of a service area consists of the county legislative body, the board may adopt a resolution providing for future board members to be appointed, as provided in Section 17B-1-304, or elected, as provided in Section 17B-1-306; and

(iii) members of the board of trustees of a service area shall be elected, as provided in Section 17B-1-306, if:

(A) the service area is not entirely within the unincorporated area of a single county;

(B) a petition is filed with the board of trustees requesting that board members be elected, and the petition is signed by registered voters within the service area equal in number to at least 10% of the number of registered voters within the service area who voted at the last gubernatorial election; or

(C) an election is held to authorize the service area's issuance of bonds.

(b) If members of the board of trustees of a service area are required to be elected under Subsection (1)(a)(iii)(C) because of a bond election:

(i) board members shall be elected in conjunction with the bond election;

(ii) the board of trustees shall:

(A) establish a process to enable potential candidates to file a declaration of candidacy sufficiently in advance of the election; and

(B) provide a ballot for the election of board members separate from the bond ballot; and

(iii) except as provided in this Subsection (1)(b), the election shall be held as provided in Section 17B-1-306.

(2) (a) This Subsection (2) applies to a service area created on or after May 5, 2003, if:

(i) the service area was created to provide:

(A) fire protection, paramedic, and emergency services; or

(B) law enforcement service;

(ii) in the creation of the service area, an election was not required under Subsection 17B-1-214(3)(d); and

(iii) the service area is not a service area described in Subsection (3).

(b) (i) Each county whose unincorporated area is included within a service area described in Subsection (2)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint three members to the board of trustees.

(ii) Each municipality whose area is included within a service area described in Subsection (2)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint one member to the board of trustees.

(iii) Each member appointed by a county or municipality under Subsection (2)(b)(i) or (ii) shall be an elected official of the appointing county or municipality, respectively.

(c) Notwithstanding Subsection 17B-1-302[(2)](4), the number of members of a board of trustees of a service area described in Subsection (2)(a) shall be the number resulting from application of Subsection (2)(b).

(3) (a) This Subsection (3) applies to a service area created on or after May 14, 2013, if:

(i) the service area was created to provide fire protection, paramedic, and emergency services;

(ii) in the creation of the service area, an election was not required under Subsection 17B-1-214(3)(d); and

(iii) each municipality whose area is included within the service area or county whose unincorporated area, whether in whole or in part, is

included within a service area is a party to an agreement:

(A) entered into in accordance with Title 11, Chapter 13, Interlocal Cooperation Act with all the other municipalities or counties whose area is included in the service area;

(B) to provide the services described in Subsection (3)(a)(i); and

(C) at the time a resolution proposing the creation of the service area is adopted by each applicable municipal or county legislative body in accordance with Subsection 17B-1-203(1)(d).

(b) (i) Each county whose unincorporated area, whether in whole or in part, is included within a service area described in Subsection (3)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint one member to the board of trustees.

(ii) Each municipality whose area is included within a service area described in Subsection (3)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint one member to the board of trustees.

(iii) Each member appointed by a county or municipality under Subsection (3)(b)(i) or (ii) shall be an elected official of the appointing county or municipality, respectively.

(iv) A vote by a member of the board of trustees may be weighted or proportional.

(c) Notwithstanding Subsection 17B-1-302[(2)](4), the number of members of a board of trustees of a service area described in Subsection (3)(a) shall be the number resulting from the application of Subsection (3)(b).

Section 13. Section 17B-2a-1009 is amended to read:

17B-2a-1009. Limit on property tax authority -- Exceptions.

(1) As used in this section, "elected official" means a water conservancy district board of trustee member who:

(a) is elected to the board of trustees by water conservancy district voters at an election held for that purpose;

(b) holds, at the time of appointment to the board of trustees, an elected position with a municipality, county, or local district that is partially or completely included within the boundaries of the water conservancy district; or

(c) is appointed in accordance with Subsection 17B-1-303(5) or 17B-1-306(4)(f) or (g).

(2) The board of trustees of a water conservancy district may not collect property tax revenue in a tax year beginning on or after January 1, 2015, that would exceed the certified tax rate under Section 59-2-924 unless:

(a) the members of the board of trustees are all elected officials;

(b) the majority of the board of trustees are elected officials; or

(c) the proposed tax levy has previously been approved by:

(i) a majority of the water conservancy district voters ~~at~~ who vote in an election held for that purpose on a date specified in Section 20A-1-204; or

(ii) for a district described in Subsection 17B-2a-1005(2)(b), the appointing authority.

CHAPTER 113**S. B. 160**

Passed March 2, 2017

Approved March 17, 2017

Effective May 9, 2017

HOMELESS YOUTH HEALTH CARE AMENDMENTS

Chief Sponsor: Brian E. Shiozawa
House Sponsor: Michael S. Kennedy

LONG TITLE**General Description:**

This bill amends consent provisions of the Utah Health Care Malpractice Act.

Highlighted Provisions:

This bill:

- ▶ authorizes an unaccompanied, homeless minor, who is age 15 or older, to consent to certain health care services; and
- ▶ makes other conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78B-3-406, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 78B-3-406 is amended to read:**78B-3-406. Failure to obtain informed consent -- Proof required of patient -- Defenses -- Consent to health care.**

(1) When a person submits to health care rendered by a health care provider, it is presumed that actions taken by the health care provider are either expressly or impliedly authorized to be done. For a patient to recover damages from a health care provider in an action based upon the provider's failure to obtain informed consent, the patient must prove the following:

(a) that a provider-patient relationship existed between the patient and health care provider;

(b) the health care provider rendered health care to the patient;

(c) the patient suffered personal injuries arising out of the health care rendered;

(d) the health care rendered carried with it a substantial and significant risk of causing the patient serious harm;

(e) the patient was not informed of the substantial and significant risk;

(f) a reasonable, prudent person in the patient's position would not have consented to the health care rendered after having been fully informed as to all facts relevant to the decision to give consent; and

(g) the unauthorized part of the health care rendered was the proximate cause of personal injuries suffered by the patient.

(2) In determining what a reasonable, prudent person in the patient's position would do under the circumstances, the finder of fact shall use the viewpoint of the patient before health care was provided and before the occurrence of any personal injuries alleged to have arisen from said health care.

(3) It shall be a defense to any malpractice action against a health care provider based upon alleged failure to obtain informed consent if:

(a) the risk of the serious harm which the patient actually suffered was relatively minor;

(b) the risk of serious harm to the patient from the health care provider was commonly known to the public;

(c) the patient stated, prior to receiving the health care complained of, that he would accept the health care involved regardless of the risk; or that he did not want to be informed of the matters to which he would be entitled to be informed;

(d) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which risks were disclosed, if the health care provider reasonably believed that additional disclosures could be expected to have a substantial and adverse effect on the patient's condition; or

(e) the patient or his representative executed a written consent which sets forth the nature and purpose of the intended health care and which contains a declaration that the patient accepts the risk of substantial and serious harm, if any, in hopes of obtaining desired beneficial results of health care and which acknowledges that health care providers involved have explained his condition and the proposed health care in a satisfactory manner and that all questions asked about the health care and its attendant risks have been answered in a manner satisfactory to the patient or his representative.

(4) The written consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked capacity to consent or shows by clear and convincing evidence that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts.

(5) This act may not be construed to prevent any person 18 years of age or over from refusing to consent to health care for his own person upon personal or religious grounds.

(6) Except as provided in Section 76-7-304.5, the following persons are authorized and empowered to consent to any health care not prohibited by law:

(a) any parent, whether an adult or a minor, for the parent's minor child;

(b) any married person, for a spouse;

(c) any person temporarily standing in loco parentis, whether formally serving or not, for the minor under that person's care and any guardian for the guardian's ward;

(d) any person 18 years of age or over for that person's parent who is unable by reason of age, physical or mental condition, to provide such consent;

(e) any patient 18 years of age or over;

(f) any female regardless of age or marital status, when given in connection with her pregnancy or childbirth;

(g) in the absence of a parent, any adult for the adult's minor brother or sister; ~~and~~

(h) in the absence of a parent, any grandparent for the grandparent's minor grandchild[-];

(i) an emancipated minor as provided in Section 78A-6-805;

(j) a minor who has contracted a lawful marriage;
and

(k) an unaccompanied homeless minor, as that term is defined in the McKinney-Vento Homeless Assistance Act of 1987, Pub. L. 100-77, as amended, who is 15 years of age or older.

(7) A person who in good faith consents or authorizes health care treatment or procedures for another as provided by this act may not be subject to civil liability.

CHAPTER 114

S. B. 166

Passed February 21, 2017

Approved March 17, 2017

Effective May 9, 2017

OCCUPATIONAL AND PROFESSIONAL
LICENSING AMENDMENTS

Chief Sponsor: Deidre M. Henderson

House Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill modifies provisions of the Direct-Entry Midwife Act.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of the “practice of direct-entry midwifery” to include giving one dose of oxytocin to a client after the delivery of a baby; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-77-102, as last amended by Laws of Utah 2008, Chapter 365

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

Section 1. Section 58-77-102 is amended to read:**58-77-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) “Board” means the Licensed Direct-entry Midwife Board created in Section 58-77-201.

(2) “Certified nurse-midwife” means a person licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(3) “Client” means a woman [~~under the care of a direct-entry midwife~~] and her fetus or newborn baby under the care of a direct-entry midwife.

(4) “Direct-entry midwife” means an individual who is engaging in the practice of direct-entry midwifery.

(5) “Licensed direct-entry midwife” means a person licensed under this chapter.

(6) “Low risk” means a labor and delivery and postpartum, newborn, and interconceptual care that does not include a condition that requires a mandatory transfer under administrative rules adopted by the division.

(7) “Physician” means an individual licensed as a physician and surgeon, osteopathic physician, or naturopathic physician.

(8) “Practice of direct-entry midwifery” means the practice of providing the necessary supervision, care, and advice to a client during essentially normal pregnancy, labor, delivery, postpartum, and newborn periods that is consistent with national professional midwifery standards and that is based upon the acquisition of clinical skills necessary for the care of a pregnant [~~women and newborns~~] woman and a newborn baby, including antepartum, intrapartum, postpartum, newborn, and limited interconceptual care, and includes:

(a) obtaining an informed consent to provide services;

(b) obtaining a health history, including a physical examination;

(c) developing a plan of care for a client;

(d) evaluating the results of client care;

(e) consulting and collaborating with and referring and transferring care to licensed health care professionals, as is appropriate, regarding the care of a client;

(f) obtaining medications, as specified in this Subsection (8)(f), to administer to [~~clients~~] a client, including:

(i) prescription vitamins;

(ii) Rho D immunoglobulin;

(iii) sterile water;

(iv) one dose of intramuscular oxytocin after the delivery of [~~the placenta~~] a baby to minimize a client's blood loss;

(v) an additional single dose of oxytocin if a hemorrhage occurs, in which case the licensed direct-entry midwife must initiate transfer if [~~the~~] a client's condition does not immediately improve;

(vi) oxygen;

(vii) local anesthetics without epinephrine used in accordance with Subsection (8)(1);

(viii) vitamin K to prevent hemorrhagic disease of [~~the~~] a newborn baby;

(ix) as required by law, eye prophylaxis to prevent ophthalmia neonatorum [~~as required by law~~]; and

(x) any other medication approved by a licensed health care provider with authority to prescribe that medication;

(g) obtaining food, food extracts, dietary supplements, as defined by the federal Food, Drug, and Cosmetic Act, homeopathic remedies, plant substances that are not designated as prescription drugs or controlled substances, and over-the-counter medications to administer to clients;

(h) obtaining and using appropriate equipment and devices such as a Doppler, a blood pressure cuff, phlebotomy supplies, instruments, and sutures;

(i) obtaining appropriate screening and testing, including laboratory tests, urinalysis, and ultrasound scans;

- (j) managing the antepartum period;
- (k) managing the intrapartum period, including:
 - (i) monitoring and evaluating the condition of a mother and a fetus;
 - (ii) performing an emergency episiotomy; and
 - (iii) delivering a baby in any out-of-hospital setting;
- (l) managing the postpartum period, including the suturing of an episiotomy [ø] and the suturing of first and second degree natural perineal and labial lacerations, including the administration of a local anesthetic;
- (m) managing the newborn period, including:
 - (i) providing care for [the] a newborn baby, including performing a normal newborn baby examination; and
 - (ii) resuscitating a newborn baby;
 - (n) providing limited interconceptual services in order to provide continuity of care, including:
 - (i) breastfeeding support and counseling;
 - (ii) family planning, limited to natural family planning, cervical caps, and diaphragms; and
 - (iii) pap smears, where ~~[all clients with abnormal results are]~~ each client with an abnormal result is to be referred to an appropriate licensed health care provider; and
 - (o) executing the orders of a licensed health care professional, [only] if the orders are within the education, knowledge, and skill of the direct-entry midwife.
- (9) “Unlawful conduct” [is as] means the same as that term is defined in Sections 58-1-501 and 58-77-501.
- (10) “Unprofessional conduct” [is as] means the same as that term is defined in Sections 58-1-501 and 58-77-502 and as may be further defined by rule.

CHAPTER 115**S. B. 169**

Passed March 6, 2017

Approved March 17, 2017

Effective May 9, 2017

JUDICIARY AMENDMENTS

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill amends provisions regarding the judiciary and judges.

Highlighted Provisions:

This bill:

- ▶ requires a mayor of a city or town to fill the vacancy of a municipal justice court judge and, until the position is filled, allows the city or town to contract with another jurisdiction for judicial services;
- ▶ requires a county appointing authority to fill the vacancy of a county justice court judge;
- ▶ repeals the provision allowing a will to be deposited with a court for safekeeping during the testator's lifetime;
- ▶ modifies a provision concerning delivery of a will;
- ▶ amends provisions regarding the Online Court Assistance Program;
- ▶ amends provisions regarding an appeal to the district court of a justice court decision;
- ▶ amends a provision regarding an appeal of a small claims court decision;
- ▶ amends provisions regarding jury selection and service; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-1-506, as last amended by Laws of Utah 2008, Chapters 3 and 19

75-2-902, as repealed and reenacted by Laws of Utah 1998, Chapter 39

77-10a-5, as last amended by Laws of Utah 2008, Chapters 3 and 382

78A-2-501, as last amended by Laws of Utah 2014, Chapters 94 and 263

78A-2-502, as last amended by Laws of Utah 2014, Chapter 387

78A-7-118, as last amended by Laws of Utah 2016, Chapter 33

78A-8-106, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-1-102, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-1-106, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-1-107, as last amended by Laws of Utah 2013, Chapter 202

78B-1-110, as last amended by Laws of Utah 2015, Chapter 17

REPEALS:

75-2-901, as repealed and reenacted by Laws of Utah 1998, Chapter 39

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

Section 1. Section 20A-1-506 is amended to read:**20A-1-506. Vacancy in the office of justice court judge.**

(1) As used in this section:

(a) "Appointing authority" means:

(i) for a county:

(A) the chair of the county commission in a county having the county commission or expanded county commission form of county government; and

(B) the county executive in a county having the county executive-council form of government; and

(ii) for a city or town, the mayor of the city or town.

(b) "Local legislative body" means:

(i) for a county, the county commission or county council; and

(ii) for a city or town, the council of the city or town.

(2) (a) If a vacancy occurs in the office of a municipal justice court judge before the completion of [his] the judge's term of office, the appointing authority [may]:

(i) shall fill the vacancy [by appointment for the unexpired term] by following the procedures and requirements for appointments in Section 78A-7-202; [or] and

(ii) may contract with a justice court judge of the county, an adjacent county, or another municipality within those counties for judicial services until the vacancy is filled.

~~[(b) When the appointing authority chooses to contract under Subsection (2)(a)(ii), it shall ensure that the contract is for the same term as the term of office of the judge whose services are replaced by the contract.]~~

~~[(e) (b) The appointing authority shall notify the Office of the State Court Administrator in writing of [the] an appointment[, resignation, or the contractual agreement for services] of a municipal justice court judge under this section within 30 days after [filling the vacancy] the appointment is made.~~

(3) (a) If a vacancy occurs in the office of a county justice court judge before the completion of [that] the judge's term of office, the appointing authority [may] shall fill the vacancy [by appointment for the unexpired term] by following the procedures and requirements for appointments in Section 78A-7-202.

(b) The appointing authority shall notify the Office of the State Court Administrator in writing of [any] an appointment of a county justice court judge under this section within 30 days after the appointment is made.

(4) (a) When a vacancy occurs in the office of a justice court judge, the appointing authority shall:

(i) advertise the vacancy and solicit applications for the vacancy;

(ii) appoint the best qualified candidate to office based solely upon fitness for office;

(iii) comply with the procedures and requirements of Title 52, Chapter 3, Prohibiting Employment of Relatives, in making appointments to fill the vacancy; and

(iv) submit the name of the appointee to the local legislative body.

(b) If the local legislative body does not confirm the appointment within 30 days of submission, the appointing authority may either appoint another of the applicants or reopen the vacancy by advertisement and solicitations of applications.

Section 2. Section 75-2-902 is amended to read:

75-2-902. Duty of custodian of will -- Liability.

After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate ~~or to an appropriate court~~. A person who wilfully fails to deliver a will is liable to ~~any~~ a person aggrieved for ~~any~~ damages that may be sustained by the failure. A person who wilfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

Section 3. Section 77-10a-5 is amended to read:

77-10a-5. Grand jurors -- Qualification and selection -- Limits on disclosure.

(1) Grand jurors shall meet the qualifications provided for jurors generally in Title 78B, Chapter 1, Part 1, Jury and Witness Act. Grand jurors shall be selected from the ~~qualified~~ prospective jury list as provided in Section 78B-1-107.

(2) The names of grand jurors are classified as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 4. Section 78A-2-501 is amended to read:

78A-2-501. Definitions -- Online Court Assistance Program -- Purpose of program -- Online Court Assistance Account -- User's fee.

(1) As used in this part:

(a) "Account" means the Online Court Assistance Account created in this section.

(b) "Board" means the Online Court Assistance Program Policy Board created in Section 78A-2-502.

(c) "Program" means the Online Court Assistance Program created in this section.

~~(1)~~ (2) There is ~~established an online court assistance program~~ created the "Online Court Assistance Program" administered by the Administrative Office of the Courts to provide the public with information about civil procedures and to assist the public in preparing and filing civil pleadings and other papers in:

(a) uncontested divorces;

(b) enforcement of orders in the divorce decree;

(c) landlord and tenant actions;

(d) guardianship actions; and

(e) other types of proceedings approved by the ~~Online Court Assistance Program Policy Board~~ board.

~~(2)~~ (3) The purpose of the ~~online court assistance~~ program shall be to:

(a) minimize the costs of civil litigation;

(b) improve access to the courts; and

(c) provide for informed use of the courts and the law by pro se litigants.

~~(3)~~ (4) (a) An additional \$20 shall be added to the filing fee established by Sections 78A-2-301 and 78A-2-301.5 if a person files a complaint, petition, answer, or response prepared through the program. There shall be no fee for using the program or for papers filed subsequent to the initial pleading.

(b) There is created within the General Fund a restricted account known as the Online Court Assistance Account. The fees collected under this Subsection ~~(3)~~ (4) shall be deposited in the restricted account and appropriated by the Legislature to the Administrative Office of the Courts to develop, operate, and maintain the program and to support the use of the program through education of the public.

(4) (5) The Administrative Office of the Courts shall provide on the front page of the ~~Online Court Assistance Program~~ program website a listing of all forms and proceedings available to all pro se litigants within the program.

Section 5. Section 78A-2-502 is amended to read:

78A-2-502. Creation of policy board -- Membership -- Terms -- Chair -- Quorum -- Expenses.

(1) There is created a 13 member policy board to be known as the "Online Court Assistance Program Policy Board," which shall:

(a) identify the subject matter included in the ~~Online Court Assistance Program~~ program;

(b) develop information and ~~forms in conformity with the rules of procedure and evidence; and~~ instructions on how to use the program;

(c) conform court-approved forms for use in the program; and

[~~(e)~~] (d) advise the Administrative Office of the Courts regarding the administration of the program.

(2) The voting membership shall consist of:

(a) two members of the House of Representatives designated by the speaker, with one member from each party;

(b) two members of the Senate designated by the president, with one member from each party;

(c) two attorneys actively practicing in domestic relations designated by the Family Law Section of the Utah State Bar;

(d) one attorney actively practicing in civil litigation designated by the Civil Litigation Section of the Utah State Bar;

(e) one court commissioner designated by the chief justice of the Utah Supreme Court;

(f) one district court judge designated by the chief justice of the Utah Supreme Court;

(g) one attorney from Utah Legal Services designated by its director;

(h) one attorney from Legal Aid designated by its director; and

(i) two persons from the Administrative Office of the Courts designated by the state court administrator.

(3) (a) The terms of the members shall be four years and staggered so that approximately half of the board expires every two years.

(b) The board shall meet as needed.

(4) The board shall select one of its members to serve as chair.

(5) A majority of the members of the board constitutes a quorum.

(6) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section 6. Section 78A-7-118 is amended to read:

78A-7-118. Appeals from justice court -- Trial or hearing de novo in district court.

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 28 days of:

(a) sentencing, except as provided in Subsection (4)(b); or

(b) a plea of guilty or no contest in the justice court that is held in abeyance.

(2) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice court shall be stayed as provided for in Section 77-20-10 and the Rules of Criminal Procedure.

(3) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(4) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if the defendant files a notice of appeal within 28 days of:

(a) an order revoking probation;

(b) imposition of a sentence, following a determination that a defendant failed to fulfill the terms of a plea in abeyance agreement;

(c) an order denying a motion to withdraw a plea, if the plea is being held in abeyance and the motion to withdraw the plea is filed within 28 days of the entry of the plea;

(d) a postsentence order fixing total or court ordered restitution; or

(e) an order denying expungement.

(5) The prosecutor is entitled to a hearing de novo in the district court if an appeal is filed within 28 days of the court entering:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution of an infraction or class C misdemeanor;

(f) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence impairs continued prosecution of a class B misdemeanor;

(g) an order granting a motion to withdraw a plea of guilty or no contest;

(h) an order fixing total restitution at an amount less than requested by a crime victim; or

(i) an order granting an expungement, if the expungement was opposed by the prosecution or a victim before the order was entered.

(6) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case; or

(b) ~~[with agreement of the parties,] the hearing de novo was on a pretrial order and the parties and the district court [consents to] agree to have the district court retain jurisdiction[; or].~~

~~[(c) the defendant enters a plea of guilty or no contest in the district court.]~~

(7) The district court shall retain jurisdiction over the case on trial de novo.

(8) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Section 7. Section 78A-8-106 is amended to read:

78A-8-106. Appeals -- Who may take and jurisdiction.

(1) Either party may appeal the judgment in a small claims action to the district court of the county by filing a notice of appeal in the original trial court within ~~[30]~~ 28 days of entry of the judgment. If the judgment in a small claims action is entered by a judge or judge pro tempore of the district court, the notice of appeal shall be filed with the district court.

(2) The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions. A record of the trial shall be maintained. The trial de novo may not be heard by a judge pro tempore appointed under Section 78A-8-108. The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance.

Section 8. Section 78B-1-102 is amended to read:

78B-1-102. Definitions.

As used in this part:

(1) "Clerk" or "clerk of the court" means the person so designated by title and includes any deputy clerk.

(2) "Court" means trial court.

(3) "Jury" means a body of persons temporarily selected from the citizens of a particular county invested with the power to present and indict a person for a public offense or to try a question of fact.

(4) "Master jury list" means the source lists as prescribed by the Judicial Council under Section 78B-1-106.

~~[(6)]~~ (5) "[Qualified] Prospective jury list" means the list of prospective jurors whose names are drawn at random from the master jury list and are determined to be qualified to serve as jurors.

~~[(5)]~~ (6) "Public necessity" means circumstances in which services performed by the prospective juror to members of the public in either a public or a private capacity cannot adequately be performed by others.

(7) "Trial jury" means a body of persons selected from the citizens of a particular county before a court or officer of competent jurisdiction and sworn to try and determine by verdict a question of fact.

(8) "Undue hardship" means circumstances in which the prospective juror would:

(a) be required to abandon a person under his or her personal care or incur the cost of substitute care which is unreasonable under the circumstances;

(b) suffer extreme physical hardship due to an illness, injury, or disability; or

(c) incur substantial costs or lost opportunities due to missing an event that was scheduled prior to the initial notice of potential jury service.

Section 9. Section 78B-1-106 is amended to read:

78B-1-106. Master jury list -- Inclusive -- Review -- Renewal -- Public examination.

(1) The Judicial Council shall designate one or more regularly maintained lists of persons residing in each county as the source lists for the master jury list ~~[for that county]~~. The master jury list shall be as inclusive of the adult population ~~[of the county]~~ as is reasonably practicable.

(2) The Judicial Council shall by rule provide for the biannual review of the master jury list to evaluate ~~[its]~~ the master jury list's inclusiveness of the adult population ~~[of the county]~~.

(3) Not less than once every six months the Administrative Office of the Courts shall renew the master jury list ~~[for a county]~~ by incorporating any additions, deletions, or amendments to the source lists. The Administrative Office of the Courts shall include any additional source lists designated by the Judicial Council upon the next renewal of the master jury list ~~[for a county]~~.

(4) The person having custody, possession, or control of any list used in compiling the master jury list shall make the list available to the Administrative Office of the Courts at all reasonable times without charge.

Section 10. Section 78B-1-107 is amended to read:

78B-1-107. Master prospective jury list -- Juror qualification form -- Content.

~~[(1) Prospective jurors shall be selected at random from the master jury list and, if qualified, placed on the qualified jury list. Except if necessary to complete service in a particular case, a prospective juror shall remain on the qualified jury list for no longer than six months or for such shorter period established by rule of the Judicial Council. The qualified jury list may be used by all courts within the county, but no person shall be summoned to serve as a juror in more than one court.]~~

(1) When a jury trial is anticipated, the jury clerk shall obtain from the master jury list the number of prospective jurors necessary to qualify jurors to empanel a jury in that case.

(2) Prospective jurors shall be randomly selected from the county in which the trial will be held. A

prospective juror shall remain on the prospective jury list until there is no longer a need to empanel a jury in that case.

~~[(2)] (3) The Judicial Council shall by rule govern the process for the qualification of jurors and the selection of qualified jurors for voir dire.~~

~~[(3) The state court administrator shall develop a standard form for the qualification of jurors. The form shall include:]~~

(4) The process shall gather the following from a prospective juror:

(a) ~~[the]~~ confirmation of the prospective juror's name, address, email address, and daytime telephone number ~~[of the prospective juror];~~

~~(b) [questions suitable for determining] information on whether the prospective juror is competent under statute to serve as a juror; and~~

~~(c) the [person's] prospective juror's declaration that the responses to [questions on the qualification form] the requests for information are true to the best of the person's knowledge.~~

Section 11. Section 78B-1-110 is amended to read:

78B-1-110. Limitations on jury service.

(1) In any two-year period, a person may not:

(a) be required to serve on more than one grand jury;

(b) be required to serve as both a grand and trial juror;

(c) be required to attend court ~~[for prospective jury service]~~ as a trial juror more than one court day, except if necessary to complete service in a particular case; or

(d) if summoned for ~~[prospective]~~ jury service and the summons is complied with as directed, be selected for the ~~[qualified]~~ prospective jury list more than once.

(2) (a) Subsection (1)(d) does not apply to counties of the fourth, fifth, and sixth class and counties of the third class with populations up to 75,000.

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

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

Section 12. Repealer.

This bill repeals:

Section 75-2-901, Deposit of will with court in testator's lifetime.

CHAPTER 116**S. B. 170**

Passed March 6, 2017

Approved March 17, 2017

Effective May 9, 2017

**WORKERS' COMPENSATION
WORKGROUP**

Chief Sponsor: Karen Mayne

House Sponsor: Rebecca P. Edwards

LONG TITLE**General Description:**

This bill creates the Workers' Compensation Workgroup.

Highlighted Provisions:

This bill:

- ▶ creates the Workers' Compensation Workgroup;
- ▶ establishes the workgroup's membership, chair, and duties;
- ▶ addresses member compensation; and
- ▶ requires the workgroup to present a final report.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

631-2-234, as renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

34A-2-107.1, Utah Code Annotated 1953

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

Section 1. Section 34A-2-107.1 is enacted to read:**34A-2-107.1. Workers' Compensation Workgroup -- Creation -- Membership -- Compensation -- Duties -- Report.**

(1) There is created the Workers' Compensation Workgroup within the commission consisting of the following members:

(a) the commissioner or the commissioner's designee;

(b) one member of the Senate, appointed by the president of the Senate, and one member of the House, appointed by the speaker of the House;

(c) four representatives of the workers' compensation insurance industry, including one member of the workers' compensation advisory council, appointed by the chair:

(i) two of whom are practicing attorneys with significant experience with workers' compensation; and

(ii) two of whom represent the Workers' Compensation Fund, an insurance carrier other than the Workers' Compensation Fund, or the self-insured industry; and

(d) four representatives of the labor side of workers' compensation, appointed by the chair:

(i) two of whom are practicing attorneys with significant experience with workers' compensation; and

(ii) one of whom is a member of the workers' compensation advisory council.

(2) The chair may appoint one or more individuals with an interest in workers' compensation to serve as ex officio, nonvoting members of the workgroup.

(3) The commissioner or the commissioner's designee is the chair of the workgroup.

(4) (a) A majority of the members of the workgroup constitutes a quorum.

(b) The action of a majority of a quorum constitutes the action of the workgroup.

(c) In the case of a tie vote, the chair and the member of the Senate appointed under Subsection (1)(b) shall break the tie.

(5) (a) The salary and expenses of each member of the workgroup who is a legislator shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(b) A member of the workgroup who is not a legislator may not receive compensation, benefits, per diem, or travel expenses for the member's service on the workgroup.

(6) The commission shall provide staff support to the workgroup.

(7) The workgroup shall review and make recommendations on the following issues:

(a) the award of attorney fees in workers' compensation cases, including a draft rule to propose to the Utah Supreme Court;

(b) medical examinations by insurance companies;

(c) a general guideline for claims adjusters in handling claims;

(d) medical panel utilization and consistency;

(e) the change in dependant compensation amounts for temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability;

(f) improving injured workers' accessibility to the Division of Industrial Accidents, including the feasibility of the Division of Industrial Accidents making the initial contact with an injured worker rather than relying on the injured worker to make the initial contact;

(g) the prevalence of and possible penalties for bad faith denials of workers' compensation claims by insurance carriers; and

(h) any additional issue that the workgroup:

(i) determines is an important issue related to workers' compensation; and

(ii) decides to review.

(8) The workgroup shall present a final report on the items described in Subsection (7), including any legislative recommendations, to the Business and Labor Interim Committee before November 30, 2017.

Section 2. Section 63I-2-234 is amended to read:

63I-2-234. Repeal dates -- Title 34A.

Section 34A-2-107.1 is repealed November 30, 2017.

CHAPTER 117**S. B. 177**

Passed February 22, 2017

Approved March 17, 2017

Effective May 9, 2017

**ARTHROGRYPOSIS MULTIPLEX
CONGENITA AWARENESS DAY**

Chief Sponsor: David P. Hinkins

House Sponsor: Christine F. Watkins

LONG TITLE**General Description:**

This bill designates Arthrogyposis Multiplex Congenita Awareness Day.

Highlighted Provisions:

This bill:

- ▶ designates Arthrogyposis Multiplex Congenita Awareness Day; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-1-401, as last amended by Laws of Utah 2016, Chapter 218

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

Section 1. Section 63G-1-401 is amended to read:**63G-1-401. Commemorative periods.**

(1) The following days shall be commemorated annually:

- (a) Bill of Rights Day, on December 15;
- (b) Constitution Day, on September 17;
- (c) Yellow Ribbon Day, on the third Monday in May, in honor of men and women who are serving or have served in the United States Armed Forces around the world in defense of freedom;
- (d) POW/MIA Recognition Day, on the third Friday in September;
- (e) Indigenous People Day, on the Monday immediately preceding Thanksgiving;
- (f) Utah State Flag Day, on March 9;
- (g) Vietnam Veterans Recognition Day, on March 29;
- (h) Utah History Day at the Capitol, on the Friday immediately following the fourth Monday in January, to encourage citizens of the state, including students, to participate in activities that recognize Utah's history; and

(i) Juneteenth Freedom Day, on the third Saturday in June, in honor of Union General Gordon Granger proclaiming the freedom of all slaves on June 19, 1865, in Galveston, Texas[-]; and

(j) Arthrogyposis Multiplex Congenita Awareness Day, on June 30.

(2) The Department of Veterans' and Military Affairs shall coordinate activities, special programs, and promotional information to heighten public awareness and involvement relating to Subsections (1)(c) and (d).

(3) The month of October shall be commemorated annually as Italian-American Heritage Month.

(4) The month of November shall be commemorated annually as American Indian Heritage Month.

(5) The month of April shall be commemorated annually as Clean Out the Medicine Cabinet Month to:

(a) recognize the urgent need to make Utah homes and neighborhoods safe from prescription medication abuse and poisonings by the proper home storage and disposal of prescription and over-the-counter medications; and

(b) educate citizens about the permanent medication disposal sites in Utah listed on useonlyasdirected.org that allow disposal throughout the year.

(6) The first full week of May shall be commemorated annually as State Water Week to recognize the importance of water conservation, quality, and supply in the state.

(7) The second Friday and Saturday in August shall be commemorated annually as Utah Fallen Heroes Days to:

(a) honor fallen heroes who, during service in the military or public safety, have sacrificed their lives to protect the country and the citizens of the state; and

(b) encourage political subdivisions to acknowledge and honor fallen heroes.

(8) The third full week in August shall be commemorated annually as Drowsy Driving Awareness Week to:

(a) educate the public about the relationship between fatigue and driving performance; and

(b) encourage the Department of Public Safety and the Department of Transportation to recognize and promote educational efforts on the dangers of drowsy driving.

(9) The third full week of June shall be commemorated annually as Workplace Safety Week to heighten public awareness regarding the importance of safety in the workplace.

CHAPTER 118**S. B. 183**

Passed February 22, 2017

Approved March 17, 2017

Effective May 9, 2017

HIGH LOAD MOTOR VEHICLES

Chief Sponsor: Wayne A. Harper

House Sponsor: Scott D. Sandall

LONG TITLE**General Description:**

This bill modifies provisions related to oversize load permits issued by the Department of Transportation.

Highlighted Provisions:

This bill:

- ▶ allows the Department of Transportation to issue an oversize load permit to a vehicle transporting a divisible load with a height in excess of 14 feet 6 inches high; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

72-7-406, as last amended by Laws of Utah 2016, Chapter 303

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

Section 1. Section 72-7-406 is amended to read:

72-7-406. Oversize permits and oversize and overweight permits for vehicles of excessive size or weight -- Applications -- Restrictions -- Fees -- Rulemaking provisions -- Penalty.

(1) (a) The department may, upon receipt of an application and good cause shown, issue in writing an oversize permit or an oversize and overweight permit. The oversize permit or oversize and overweight permit may authorize the applicant to operate or move upon a highway:

(i) a vehicle or combination of vehicles, unladen or with a load weighing more than the maximum weight specified in Section 72-7-404 for any wheel, axle, group of axles, or total gross weight; or

(ii) a vehicle or combination of vehicles that exceeds the vehicle width, height, or length provisions under Section 72-7-402 or draw-bar length restriction under Subsection 72-7-403(1)(a).

(b) Except as provided under [Subsection] Subsections (5) and (8), an oversize and overweight permit may not be issued under this section to allow the transportation of a load that is reasonably divisible.

(c) The maximum size or weight authorized by a permit under this section shall be within limits that do not impair the state's ability to qualify for federal-aid highway funds.

(d) The department may deny or issue a permit under this section to protect the safety of the traveling public and to protect highway foundation, surfaces, or structures from undue damage by one or more of the following:

(i) limiting the number of trips the vehicle may make;

(ii) establishing seasonal or other time limits within which the vehicle may operate or move on the highway indicated;

(iii) requiring security in addition to the permit to compensate for any potential damage by the vehicle to any highway; and

(iv) otherwise limiting the conditions of operation or movement of the vehicle.

(e) Prior to granting a permit under this section, the department shall approve the route of any vehicle or combination of vehicles.

(2) An application for a permit under this section shall state:

(a) the proposed maximum wheel loads, maximum axle loads, all axle spacings of each vehicle or combination of vehicles;

(b) the proposed maximum load size and maximum size of each vehicle or combination of vehicles;

(c) the specific roads requested to be used under authority of the permit; and

(d) if the permit is requested for a single trip or if other seasonal limits or time limits apply.

(3) Each oversize permit or oversize and overweight permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be available for inspection by any peace officer, special function officer, port of entry agent, or other personnel authorized by the department.

(4) A permit under this section may not be issued or is not valid unless the vehicle or combination of vehicles is:

(a) properly registered for the weight authorized by the permit; or

(b) registered for a gross laden weight of 78,001 pounds or over, if the gross laden weight authorized by the permit exceeds 80,000 pounds.

(5) (a) (i) An oversize permit may be issued under this section for a vehicle or combination of vehicles that exceeds one or more of the maximum width, height, or length provisions under Section 72-7-402.

(ii) Except for an annual oversize permit for an implement of husbandry under Section 72-7-407 [Ø], for a permit issued under Subsection (5)(a)(iii) [Ø], or for an annual oversize permit issued under Subsection [(5)(a)(iii)] (5)(a)(iv), only a single trip

oversize permit may be issued for a vehicle or combination of vehicles that is more than 14 feet 6 inches wide, 14 feet high, or 105 feet long.

(iii) An oversize permit may be issued for a vehicle or combination of vehicles with a maximum height of 14 feet 6 inches high to allow the transportation of a load that is reasonably divisible.

~~(iii)~~ (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules for the issuance of an annual oversize permit for a vehicle or combination of vehicles that is more than 14 feet 6 inches wide, 14 feet high, or 105 feet long if the department determines that the permit is needed to accommodate highway transportation needs for multiple trips on a specified route.

(b) The fee is \$30 for a single trip oversize permit under this Subsection (5). This permit is valid for not more than 96 continuous hours.

(c) The fee is \$75 for a semiannual oversize permit under this Subsection (5). This permit is valid for not more than 180 continuous days.

(d) The fee is \$90 for an annual oversize permit under this Subsection (5). This permit is valid for not more than 365 continuous days.

(6) (a) An oversize and overweight permit may be issued under this section for a vehicle or combination of vehicles carrying a nondivisible load that exceeds one or more of the maximum weight provisions of Section 72-7-404 up to a gross weight of 125,000 pounds.

(b) The fee is \$60 for a single trip oversize and overweight permit under this Subsection (6). This permit is valid for not more than 96 continuous hours.

(c) A semiannual oversize and overweight permit under this Subsection (6) is valid for not more than 180 continuous days. The fee for this permit is:

(i) \$180 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) \$320 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) \$420 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 125,000 pounds.

(d) An annual oversize and overweight permit under this Subsection (6) is valid for not more than 365 continuous days. The fee for this permit is:

(i) \$240 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) \$480 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) \$540 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 125,000 pounds.

(7) (a) A single trip oversize and overweight permit may be issued under this section for a vehicle or combination of vehicles carrying a nondivisible load that exceeds:

(i) one or more of the maximum weight provisions of Section 72-7-404; or

(ii) a gross weight of 125,000 pounds.

(b) (i) The fee for a single trip oversize and overweight permit under this Subsection (7), which is valid for not more than 96 continuous hours, is \$.012 per mile for each 1,000 pounds above 80,000 pounds subject to the rounding described in Subsection (7)(c).

(ii) The minimum fee that may be charged under this Subsection (7) is \$80.

(iii) The maximum fee that may be charged under this Subsection (7) is \$540.

(c) (i) The miles used to calculate the fee under this Subsection (7) shall be rounded up to the nearest 50 mile increment.

(ii) The pounds used to calculate the fee under this Subsection (7) shall be rounded up to the nearest 25,000 pound increment.

(iii) The dollar amount used to calculate the fee under this Subsection (7) shall be rounded to the nearest \$10 increment.

(8) (a) An oversize and overweight permit may be issued under this section for a vehicle or combination of vehicles carrying a divisible load if:

(i) the bridge formula under Subsection 72-7-404(3) is not exceeded; and

(ii) the length of the vehicle or combination of vehicles is:

(A) more than the limitations specified under Subsections 72-7-402(4)(c) and (d) or Subsection 72-7-403(1)(a) but not exceeding 81 feet in cargo carrying length and the application is for a single trip, semiannual trip, or annual trip permit; or

(B) more than 81 feet in cargo carrying length but not exceeding 95 feet in cargo carrying length and the application is for an annual trip permit.

(b) The fee is \$60 for a single trip oversize and overweight permit under this Subsection (8). The permit is valid for not more than 96 continuous hours.

(c) The fee for a semiannual oversize and overweight permit under this Subsection (8), which permit is valid for not more than 180 continuous days is:

(i) \$180 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) \$320 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) \$420 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 129,000 pounds.

(d) The fee for an annual oversize and overweight permit under this Subsection (8), which permit is valid for not more than 365 continuous days is:

(i) \$240 for a vehicle or combination of vehicles with gross vehicle weight of more than 80,000 pounds, but not exceeding 84,000 pounds;

(ii) \$480 for a vehicle or combination of vehicles with gross vehicle weight of more than 84,000 pounds, but not exceeding 112,000 pounds; and

(iii) \$540 for a vehicle or combination of vehicles with gross vehicle weight of more than 112,000 pounds, but not exceeding 129,000 pounds.

(9) Permit fees collected under this section shall be credited monthly to the Transportation Fund.

(10) The department shall prepare maps, drawings, and instructions as guidance when issuing permits under this section.

(11) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the issuance and revocation of all permits under this section and Section 72-7-407.

(12) Any person who violates any of the terms or conditions of a permit issued under this section:

(a) may have the person's permit revoked; and

(b) is guilty of an infraction, except that a violation of any rule made under Subsection (11) is not subject to a criminal penalty.

CHAPTER 119**S. B. 192**

Passed February 24, 2017

Approved March 17, 2017

Effective January 1, 2018

BOAT REGISTRATION AMENDMENTS

Chief Sponsor: Curtis S. Bramble

House Sponsor: Mike K. McKell

LONG TITLE**General Description:**

This bill amends boating registration provisions.

Highlighted Provisions:

This bill:

- ▶ modifies registration card requirements relating to addresses.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

41-1a-213, as last amended by Laws of Utah 2013, Chapter 91

*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 41-1a-213 is amended to read:****41-1a-213. Contents of registration cards.**

(1) The registration card shall be delivered to the owner and shall contain:

- (a) the date issued;
- (b) the name of the owner;
- (c) a description of the vehicle registered including the year, the make, the identification number, and the license plate assigned to the vehicle;
- (d) the expiration date; and
- (e) other information as determined by the commission.

(2) If a vehicle is leased for a period in excess of 45 days, the registration shall contain:

- (a) the owner's name; and
- (b) the name of the lessee.

(3) On all vehicles registered under Subsections 41-1a-1206(1)(d) and (1)(e), the registration card shall also contain the gross laden weight as given in the application for registration.

(4) (a) Except as provided in Subsection (4)(b), a new registration card issued by the commission on or after November 1, 2013, may not display the address of the owner or the lessee on the registration card.

(b) A new registration card issued by the commission [~~for a vehicle registered under Section~~

41-1a-301] under one of the following provisions shall display the address of the owner or the lessee on the registration card[-]:

- (i) Section 41-1a-301 for a vehicle; or
- (ii) Section 73-18-7 for a vessel.

Section 2. Effective date.This bill takes effect on January 1, 2018.

CHAPTER 120**S. B. 202**

Passed March 7, 2017

Approved March 17, 2017

Effective May 9, 2017

PARENT-TIME AMENDMENTS

Chief Sponsor: J. Stuart Adams

House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill modifies provisions related to parent-time.

Highlighted Provisions:

This bill:

- ▶ addresses parent-time when children's school schedules differ; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

30-3-32, as last amended by Laws of Utah 2014, Chapter 239

30-3-35, as last amended by Laws of Utah 2010, Chapter 228

30-3-35.1, as enacted by Laws of Utah 2015, Chapter 18

30-3-35.5, as last amended by Laws of Utah 2010, Chapter 228

*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 30-3-32 is amended to read:****30-3-32. Parent-time -- Intent -- Policy -- Definitions.**

(1) It is the intent of the Legislature to promote parent-time at a level consistent with all parties' interests.

(2) (a) A court shall consider as primary the safety and well-being of the child and the parent who experiences domestic or family violence.

(b) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(i) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(ii) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with [his] the parent's child consistent with the child's best interests; and

(iii) it is in the best interests of the child to have both parents actively involved in parenting the child.

(c) An order issued by a court pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, shall be considered evidence of real harm or substantiated potential harm to the child.

(3) For purposes of Sections 30-3-32 through 30-3-37:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) Subject to Subsection (5), "Christmas school vacation" means:

(i) for a single child, the time period beginning on the evening the child [gets out of] is released from school for the Christmas or winter school break [until] and ending the evening before the child returns to school[-]; and

(ii) for multiple children when the children's school schedules differ, the time period beginning on the first evening all children's schools are released for the Christmas or winter school break and ending the evening before any of the children returns to school.

(c) "Extended parent-time" means a period of parent-time other than a weekend, holiday as provided in Subsections 30-3-35(2)(f) and (2)(g), religious holidays as provided in Subsections 30-3-33(3) and (17), and "Christmas school vacation."

(d) "Supervised parent-time" means parent-time that requires the noncustodial parent to be accompanied during parent-time by an individual approved by the court.

(e) "Surrogate care" means care by any individual other than the parent of the child.

(f) "Uninterrupted time" means parent-time exercised by one parent without interruption at any time by the presence of the other parent.

(g) "Virtual parent-time" means parent-time facilitated by tools such as telephone, email, instant messaging, video conferencing, and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits between a noncustodial parent and a child or between a child and the custodial parent when the child is staying with the noncustodial parent. Virtual parent-time is designed to supplement, not replace, in-person parent-time.

(4) If a parent relocates because of an act of domestic violence or family violence by the other parent, the court shall make specific findings and orders with regards to the application of Section 30-3-37.

(5) A Christmas school vacation shall be divided equally as required by Section 30-3-35.

Section 2. Section 30-3-35 is amended to read:**30-3-35. Minimum schedule for parent-time for children 5 to 18 years of age.**

(1) The parent-time schedule in this section applies to children 5 to 18 years of age.

(2) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled.

(a) (i) (A) One weekday evening to be specified by the noncustodial parent or the court, or Wednesday evening if not specified, from 5:30 p.m. until 8:30 p.m.;

(B) at the election of the noncustodial parent, one weekday from the time the child's school is regularly dismissed until 8:30 p.m., unless the court directs the application of Subsection (2)(a)(i); or

(C) at the election of the noncustodial parent, if school is not in session, one weekday from approximately 9 a.m., accommodating the custodial parent's work schedule, until 8:30 p.m. if the noncustodial parent is available to be with the child, unless the court directs the application of Subsection (2)(a)(i)(A) or (2)(a)(i)(B).

(ii) Once the election of the weekday for the weekday evening parent-time is made, it may not be changed except by mutual written agreement or court order.

(b) (i) (A) Alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(B) at the election of the noncustodial parent, from the time the child's school is regularly dismissed on Friday until 7 p.m. on Sunday, unless the court directs the application of Subsection (2)(b)(i)(A); or

(C) at the election of the noncustodial parent, if school is not in session, on Friday from approximately 9 a.m., accommodating the custodial parent's work schedule, until 7 p.m. on Sunday, if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(b)(i)(A) or (2)(b)(i)(B).

(ii) A step-parent, grandparent, or other responsible adult designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.

(iii) ~~Elections~~ An election should be made by the noncustodial parent at the time of entry of the divorce decree or court order, and may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule.

(iv) Weekends include any "snow" days, teacher development days, or other days when school is not scheduled and which are contiguous to the weekend period.

(c) Holidays include any "snow" days, teacher development days after the children begin the school year, or other days when school is not scheduled, contiguous to the holiday period, and take precedence over the weekend parent-time. Changes may not be made to the regular rotation of

the alternating weekend parent-time schedule^[s], however^[r]:

(i) birthdays take precedence over holidays and extended parent-time, except Mother's Day and Father's Day; and

(ii) birthdays do not take precedence over uninterrupted parent-time if the parent exercising uninterrupted time takes the child away from that parent's residence for the uninterrupted extended parent-time.

(d) If a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day.

(e) (i) If a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period.

(ii) (A) At the election of the noncustodial parent, parent-time over a scheduled holiday weekend may begin from the time the child's school is regularly dismissed at the beginning of the holiday weekend until 7 p.m. on the last day of the holiday weekend; or

(B) at the election of the noncustodial parent, if school is not in session, parent-time over a scheduled holiday weekend may begin at approximately 9 a.m., accommodating the custodial parent's work schedule, the first day of the holiday weekend until 7 p.m. on the last day of the holiday weekend, if the noncustodial parent is available to be with the child unless the court directs the application of Subsection (2)(e)(ii)(A).

(iii) A step-parent, grandparent, or other responsible individual designated by the noncustodial parent, may pick up the child if the custodial parent is aware of the identity of the individual, and the parent will be with the child by 7 p.m.

(iv) ~~Elections~~ An election should be made by the noncustodial parent at the time of the divorce decree or court order, and may be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule.

(f) In years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.^[s], at the discretion of the noncustodial parent, ~~he~~ the noncustodial parent may take other siblings along for the birthday;

(ii) Martin Luther King, Jr. beginning 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) subject to Subsection (2)(i), spring break beginning at 6 p.m. on the day school lets out for the

holiday until 7 p.m. on the ~~[Sunday]~~ evening before school resumes;

(iv) July 4 beginning 6 p.m. the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday;

(v) Labor Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vii) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(viii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) including Christmas Eve and Christmas Day, continuing until 1 p.m. on the day halfway through the holiday period, if there are an odd number of days for the holiday period, or until 7 p.m. if there are an even number of days for the holiday period, so long as the entire holiday period is equally divided.

(g) In years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.~~;~~, at the discretion of the noncustodial parent, ~~[he]~~ the noncustodial parent may take other siblings along for the birthday;

(ii) President's Day beginning at 6 p.m. on Friday until 7 p.m. on Monday unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iii) Memorial Day beginning at 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iv) July 24 beginning at 6 p.m. on the day before the holiday until 11 p.m. or no later than 6 p.m. on the day following the holiday, at the option of the parent exercising the holiday;

(v) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(vi) Halloween on October 31 or the day Halloween is traditionally celebrated in the local community from after school until 9 p.m. if on a school day, or from 4 p.m. until 9 p.m.;

(vii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m.; and

(viii) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b), beginning 1 p.m. on the day halfway through the holiday period, if there are an odd number of days

for the holiday period, or at 7 p.m. if there are an even number of days for the holiday period, so long as the entire Christmas holiday period is equally divided.

(h) The custodial parent is entitled to the odd year holidays in even years and the even year holidays in odd years.

(i) If there is more than one child and the children's school schedules vary for purpose of a holiday, it is presumed that the children will remain together for the holiday period beginning the first evening all children's schools are let out for the holiday and ending the evening before any child returns to school.

~~[(4)]~~ (j) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday.

~~[(4)]~~ (k) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday.

~~[(4)]~~ (l) Extended parent-time with the noncustodial parent may be:

(i) up to four consecutive weeks when school is not in session at the option of the noncustodial parent, including weekends normally exercised by the noncustodial parent, but not holidays;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to parent-time for the custodial parent for weekday parent-time but not weekends, except for a holiday to be exercised by the other parent.

~~[(4)]~~ (m) The custodial parent shall have an identical two-week period of uninterrupted time when school is not in session for purposes of vacation.

~~[(4)]~~ (n) Both parents shall provide notification of extended parent-time or vacation weeks with the child at least 30 days ~~[prior to]~~ before the end of the child's school year to the other parent and if notification is not provided timely the complying parent may determine the schedule for extended parent-time for the noncomplying parent.

~~[(4)]~~ (o) Telephone contact shall be at reasonable hours and for a reasonable duration.

~~[(4)]~~ (p) Virtual parent-time, if the equipment is reasonably available and the parents reside at least 100 miles apart, shall be at reasonable hours and for reasonable duration, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(i) the best interests of the child;

(ii) each parent's ability to handle any additional expenses for virtual parent-time; and

(iii) any other factors the court considers material.

(3) ~~[Any elections]~~ An election required to be made in accordance with this section by either

parent concerning parent-time shall be made a part of the decree and made a part of the parent-time order.

(4) Notwithstanding Subsection (2)(e)(i), the Halloween holiday may not be extended beyond the hours designated in Subsection (2)(g)(vi).

Section 3. Section 30-3-35.1 is amended to read:

30-3-35.1. Optional schedule for parent-time for children 5 to 18 years of age.

(1) The optional parent-time schedule in this section applies to children 5 to 18 years of age. This schedule is 145 overnights. Any impact on child support shall be consistent with Subsection 78B-12-102(14).

(2) The parents and the court may consider the following increased parent-time schedule as a minimum when the parties agree or the noncustodial parent can demonstrate the following:

(a) the noncustodial parent has been actively involved in the child's life;

(b) the parties are able to communicate effectively regarding the child, or the noncustodial parent has a plan to accomplish effective communications regarding the child;

(c) the noncustodial parent has the ability to facilitate the increased parent-time;

(d) the increased parent-time would be in the best interest of the child; and

(e) any other factor the court considers relevant.

(3) In determining whether a noncustodial parent has been actively involved in the child's life, the court shall consider:

(a) demonstrated responsibility in caring for the child;

(b) involvement in day care;

(c) presence or volunteer efforts in the child's school and at extracurricular activities;

(d) assistance with the child's homework;

(e) involvement in preparation of meals, bath time, and bedtime for the child;

(f) bonding with the child; and

(g) any other factor the court considers relevant.

(4) In determining whether a noncustodial parent has the ability to facilitate the increased parent-time, the court shall consider:

(a) the geographic distance between the residences of the parents and the distance between the parents' residences and the child's school;

(b) the noncustodial parent's ability to assist with after school care;

(c) the health of the child and the noncustodial parent, consistent with Subsection 30-3-10(4);

(d) flexibility of employment or other schedule of the parent;

(e) ability to provide appropriate playtime with the child;

(f) history and ability of the parent to implement a flexible schedule for the child;

(g) physical facilities of the noncustodial parent's residence; and

(h) any other factor the court considers relevant.

(5) ~~[Any elections]~~ An election required to be made in accordance with this section by either parent concerning parent-time shall be made a part of the decree and made a part of the parent-time order. ~~[Elections]~~ An election may only be changed by mutual agreement, court order, or by the noncustodial parent in the event of a change in the child's schedule.

(6) If the parties agree or the court enters an order for the optional parent-time schedule as set forth in this section, a parenting plan in compliance with Sections 30-3-10.7 through 30-3-10.10 shall be filed with any order incorporating the following optional parent-time schedule:

(a) The noncustodial parent or the court may specify one weekday for parent-time. If no day is specified, weekday parent-time shall be on Wednesday from 5:30 p.m. until the following day when delivering the child to school, or until 8 a.m., if there is no school the following day. Once the election of the weekday is made, it may only be changed in accordance with Subsection (5). At the election of the noncustodial parent, weekday parent-time may commence:

(i) from the time the child's school is regularly dismissed; or

(ii) if school is not in session, and the parent is available to be with the child, at approximately 8 a.m., accommodating the custodial parent's work schedule.

(b) Beginning on the first weekend after the entry of the decree, the noncustodial parent shall be entitled to alternating weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until Monday when delivering the child to school, or until 8 a.m. if there is no school on Monday. At the election of the noncustodial parent, weekend parent-time may commence:

(i) from the time the child's school is regularly dismissed on Friday; or

(ii) if school is not in session, and the parent is available to be with the child, at approximately 8 a.m. on Friday, accommodating the custodial parent's work schedule.

(c) ~~[The provisions of]~~ Subsections 30-3-35(2)(f) through ~~(e)~~ (p) are incorporated ~~[here]~~ into this section and constitute the parent-time schedule with the exception that all instances that require the noncustodial parent to return the child at any time after 6 p.m. be changed so that the noncustodial parent is required to return the child

to school the next morning or at 8 a.m., if there is no school.

(7) A stepparent, grandparent, or other responsible adult designated by the noncustodial parent may pick up the child if the custodial parent is aware of the identity of the individual, and if the noncustodial parent will be with the child by 7 p.m.

(8) Weekends include any “snow” days, teacher development days, or other days when school is not scheduled and that are contiguous to the weekend period.

(9) Holidays include any “snow” days, teacher development days after the child begins the school year, or other days when school is not scheduled, contiguous to the holiday period, and take precedence over weekend parent-time. Changes may not be made to the regular rotation of the alternating weekend parent-time schedule.

(a) If a holiday falls on a school day, the noncustodial parent shall be responsible for the child’s attendance at school for that school day.

(b) If a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period.

(c) At the election of the noncustodial parent, parent-time over a scheduled holiday weekend may begin from the time the child’s school is dismissed at the beginning of the holiday weekend or, if school is not in session, and if the noncustodial parent is available to be with the child, parent-time over a scheduled holiday weekend may begin at approximately 8 a.m., accommodating the custodial parent’s work schedule, unless the court directs the application of Subsection (6)(a).

(10) Birthdays take precedence over holidays and extended parent-time, except Mother’s Day and Father’s Day. Birthdays do not take precedence over uninterrupted parent-time if the parent exercising uninterrupted time is out of town for the uninterrupted extended parent-time. At the discretion of the noncustodial parent, other siblings may be taken along for birthdays.

(11) Notwithstanding Subsection (9)(b), the Halloween holiday may not be extended beyond the hours designated in Subsection 30-3-35(2)(g)(vi).

(12) If there are children aged 5 to 18 and children under the age of five who are the natural or adopted children of the parties, the parents and the court should consider an upward deviation for parent-time with all the minor children so that parent-time is uniform based on a schedule pursuant to this section.

Section 4. Section 30-3-35.5 is amended to read:

30-3-35.5. Minimum schedule for parent-time for children under five years of age.

(1) The parent-time schedule in this section applies to children under five years old.

(2) All holidays in this section refer to the same holidays referenced in Section 30-3-35.

(3) If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled.

(a) For children under five months of age:

(i) six hours of parent-time per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three parent-time periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child; and

(ii) two hours on holidays and in the years specified in Subsections 30-3-35(2)(f) through [(j)] (k) preferably in the custodial home, the established child care setting, or other environment familiar to the child.

(b) For children five months of age or older, but younger than nine months of age:

(i) nine hours of parent-time per week to be specified by the court or the noncustodial parent preferably:

(A) divided into three parent-time periods; and

(B) in the custodial home, established child care setting, or other environment familiar to the child; and

(ii) two hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through [(j)] (k) preferably in the custodial home, the established child care setting, or other environment familiar to the child.

(c) For children nine months of age or older, but younger than 12 months of age:

(i) one eight hour visit per week to be specified by the noncustodial parent or court;

(ii) one three hour visit per week to be specified by the noncustodial parent or court;

(iii) eight hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through [(j)] (k); and

(iv) brief telephone contact and other virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent’s ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(d) For children 12 months of age or older, but younger than 18 months of age:

(i) one eight-hour visit per alternating weekend to be specified by the noncustodial parent or court;

(ii) on opposite weekends from Subsection (3)(d)(i), from 6 p.m. on Friday until noon on Saturday;

(iii) one three-hour visit per week to be specified by the noncustodial parent or court;

(iv) eight hours on the holidays and in the years specified in Subsections 30-3-35(2)(f) through [(j)] (k); and

(v) brief telephone contact and other virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(e) For children 18 months of age or older, but younger than three years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(iii) parent-time on holidays as specified in Subsections 30-3-35(2)(c) through [(j)] (k);

(iv) extended parent-time may be:

(A) two one-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one week shall be uninterrupted time for the noncustodial parent;

(C) the remaining week shall be subject to parent-time for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical one-week period of uninterrupted time for vacation; and

(v) brief telephone contact and virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot

agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(f) For children three years of age or older, but younger than five years of age:

(i) one weekday evening between 5:30 p.m. and 8:30 p.m. to be specified by the noncustodial parent or court; however, if the child is being cared for during the day outside his regular place of residence, the noncustodial parent may, with advance notice to the custodial parent, pick up the child from the caregiver at an earlier time and return him to the custodial parent by 8:30 p.m.;

(ii) alternative weekends beginning on the first weekend after the entry of the decree from 6 p.m. on Friday until 7 p.m. on Sunday continuing each year;

(iii) parent-time on holidays as specified in Subsections 30-3-35(2)(c) through [(j)] (k);

(iv) extended parent-time with the noncustodial parent may be:

(A) two two-week periods, separated by at least four weeks, at the option of the noncustodial parent;

(B) one two-week period shall be uninterrupted time for the noncustodial parent;

(C) the remaining two-week period shall be subject to parent-time for the custodial parent consistent with these guidelines; and

(D) the custodial parent shall have an identical two-week period of uninterrupted time for vacation; and

(v) brief telephone contact and virtual parent-time, if the equipment is reasonably available, with the noncustodial parent at least two times per week, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(A) the best interests of the child;

(B) each parent's ability to handle any additional expenses for virtual parent-time; and

(C) any other factors the court considers material.

(4) A parent shall notify the other parent at least 30 days in advance of extended parent-time or vacation weeks.

(5) Virtual parent-time shall be at reasonable hours and for reasonable duration.

CHAPTER 121**S. B. 222**

Passed March 8, 2017

Approved March 17, 2017

Effective May 9, 2017

**EQUITABLE ALLOCATION OF PUBLIC
TRANSIT DISTRICT FUNDING**

Chief Sponsor: Karen Mayne

House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill requires a public transit district to consider mass-transit facilities and population in allocating funds.

Highlighted Provisions:

This bill:

- ▶ allows a public transit district to allocate funds based on access to rail lines and population distribution; and
- ▶ requires a report of the criteria and data considered in the funding decisions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

17B-2a-806, as enacted by Laws of Utah 2007,
Chapter 329

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

**Section 1. Section 17B-2a-806 is amended
to read:**

17B-2a-806. Authority of the state or an agency of the state with respect to a public transit district -- Counties and municipalities authorized to provide funds to public transit district -- Equitable allocation of resources within the public transit district.

(1) The state or an agency of the state may:

(a) make public contributions to a public transit district as in the judgment of the Legislature or governing board of the agency are necessary or proper;

(b) authorize a public transit district to perform, or aid and assist a public transit district in performing, an activity that the state or agency is authorized by law to perform.

(2) (a) A county or municipality involved in the establishment and operation of a public transit district may provide funds necessary for the operation and maintenance of the district.

(b) A county's use of property tax funds to establish and operate a public transit district within any part of the county is a county purpose under Section 17-53-220.

(3) (a) To allocate resources and funds for development and operation of a public transit district, whether received under this section or from other sources, a public transit district may:

(i) give priority to public transit services that feed rail fixed guideway services; and

(ii) allocate funds according to population distribution within the public transit district.

(b) The comptroller of a public transit district shall report the criteria and data supporting the allocation of resources and funds in the statement required in Section 17B-2a-812.

CHAPTER 122**S. B. 231**

Passed March 2, 2017

Approved March 17, 2017

Effective May 9, 2017

BUSINESS ENTITIES AMENDMENTS

Chief Sponsor: Lyle W. Hillyard

House Sponsor: R. Curt Webb

LONG TITLE**General Description:**

This bill modifies provisions related to reinstatement of a corporation or nonprofit corporation.

Highlighted Provisions:

This bill:

- ▶ provides that the division may reinstate a dissolved corporation or a dissolved nonprofit corporation that owes taxes, fees, or penalties to the State Tax Commission if the corporation or nonprofit corporation is current on a payment plan with the State Tax Commission; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

16-6a-1412, as last amended by Laws of Utah 2009, Chapter 386

16-10a-1422, as last amended by Laws of Utah 2009, Chapter 386

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

Section 1. Section 16-6a-1412 is amended to read:**16-6a-1412. Reinstatement following administrative dissolution -- Reinstatement after voluntary dissolution.**

(1) A nonprofit corporation administratively dissolved under Section 16-6a-1411 may apply to the division for reinstatement within two years after the effective date of dissolution by delivering to the division for filing an application for reinstatement that states:

(a) the effective date of its administrative dissolution and its corporate name on the effective date of dissolution;

(b) that the ground or grounds for dissolution:

(i) did not exist; or

(ii) have been eliminated;

(c) (i) the corporate name under which the nonprofit corporation is being reinstated; and

(ii) the corporate name that satisfies the requirements of Section 16-6a-401;

(d) that the nonprofit corporation has paid all [taxes,] fees[,] or penalties imposed [pursuant to]

~~under this chapter[, otherwise owed by the nonprofit corporation to the State Tax Commission, or otherwise imposed by the applicable laws of this state have been paid]~~ or other applicable state law;

(e) that the nonprofit corporation:

(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or

(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or penalties owed to the State Tax Commission;

[~~(e)~~] (f) the address of [its] the nonprofit corporation's registered office;

[~~(f)~~] (g) the name of [its] the nonprofit corporation's registered agent at the office stated in Subsection (1)[~~(e)~~](f); and

[~~(g)~~] (h) [the] any additional information [as] the division determines is necessary or appropriate.

(2) The nonprofit corporation shall include in or with the application for reinstatement:

(a) the written consent to appointment by the designated registered agent; and

(b) a certificate from the State Tax Commission [~~reciting that all taxes owed by the nonprofit corporation have been paid.~~] that states that the nonprofit corporation:

(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or

(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or penalties owed to the State Tax Commission.

(3) (a) The division shall revoke the administrative dissolution if:

(i) the division determines that the application for reinstatement contains the information required by Subsections (1) and (2); and

(ii) that the information is correct.

(b) The division shall mail written notice of the revocation to the nonprofit corporation in the manner provided in Subsection 16-6a-1411(5) stating the effective date of the dissolution.

(4) When the reinstatement is effective:

(a) the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(b) the nonprofit corporation may carry on its activities, under the name stated pursuant to Subsection (1)(c), as if the administrative dissolution had never occurred; and

(c) an act of the nonprofit corporation during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred.

(5) (a) The division may make rules for the reinstatement of a nonprofit corporation voluntarily dissolved.

(b) The rules made under Subsection (5)(a) shall be substantially similar to the requirements of this

section for reinstatement of a nonprofit corporation that is administratively dissolved.

Section 2. Section 16-10a-1422 is amended to read:

16-10a-1422. Reinstatement following dissolution.

(1) A corporation dissolved under Section 16-10a-1403 or 16-10a-1421 may apply to the division for reinstatement within two years after the effective date of dissolution by delivering to the division for filing an application for reinstatement that states:

(a) the effective date of the corporation's dissolution;

(b) the corporation's corporate name as of the effective date of dissolution;

(c) that the grounds for dissolution either did not exist or have been eliminated;

(d) the corporate name under which the corporation is being reinstated;

(e) that the name stated in Subsection (1)(d) satisfies the requirements of Section 16-10a-401;

(f) that the corporation has paid all ~~taxes,~~ fees~~,~~ or penalties imposed ~~pursuant to~~ under this chapter~~,~~ otherwise owed by the corporation to the State Tax Commission, or otherwise imposed by applicable laws of this state have been paid ~~or other applicable state law~~;

(g) that the corporation:

(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or

(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or penalties owed to the State Tax Commission;

~~(g)~~ (h) the address of ~~its~~ the corporation's registered office in this state;

~~(h)~~ (i) the name of ~~its~~ the corporation's registered agent at the office stated in Subsection (1)~~(g)~~(h); and

~~(i)~~ (j) any additional information the division determines to be necessary or appropriate.

(2) The corporation shall include in or with the application for reinstatement:

(a) the written consent to appointment by the designated registered agent; and

(b) a certificate from the State Tax Commission ~~reciting that all taxes owed by the corporation have been paid.~~ that states that the corporation:

(i) has paid any taxes, fees, or penalties owed to the State Tax Commission; or

(ii) is current on a payment plan with the State Tax Commission for any taxes, fees, or penalties owed to the State Tax Commission.

(3) If the division determines that the application for reinstatement contains the information

required by Subsections (1) and (2) and that the information is correct, the division shall revoke the administrative dissolution. The division shall mail to the corporation in the manner provided in Subsection 16-10a-1421(5) written notice of:

(a) the revocation; and

(b) the effective date of the revocation.

(4) When the reinstatement is effective, it relates back to the effective date of the administrative dissolution. Upon reinstatement:

(a) an act of the corporation during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred; and

(b) the corporation may carry on its business, under the name stated pursuant to Subsection (1)(d), as if the administrative dissolution had never occurred.

CHAPTER 123**S. B. 235**

Passed March 7, 2017

Approved March 17, 2017

Effective May 9, 2017

ASSAULT AND THREAT OF VIOLENCE AMENDMENTS

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Paul Ray

LONG TITLE**General Description:**

This bill modifies the Utah Criminal Code regarding the offense of assault.

Highlighted Provisions:

This bill:

- ▶ modifies the offense of assault against certain persons to include a threat of violence; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-5-102.3, as enacted by Laws of Utah 1992, Chapter 163

76-5-102.4, as last amended by Laws of Utah 2014, Chapter 189

76-5-102.7, as last amended by Laws of Utah 2016, Chapter 339

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

Section 1. Section 76-5-102.3 is amended to read:**76-5-102.3. Assault against school employees.**

(1) Any person who ~~assaults~~ commits an assault as defined in Section 76-5-102, or commits a threat of violence as defined in Section 76-5-107, against an employee of a public or private school, with knowledge that the individual is an employee, and when the employee is acting within the scope of his authority as an employee, is guilty of a class A misdemeanor.

(2) As used in this section, "employee" includes a volunteer.

Section 2. Section 76-5-102.4 is amended to read:**76-5-102.4. Assault against peace officer or a military servicemember in uniform -- Penalties.**

(1) As used in this section:

(a) "Assault" means the same as that term is defined in Section 76-5-102.

~~(a)~~ (b) "Military servicemember in uniform" means:

(i) a member of any branch of the United States military who is wearing a uniform as authorized by the member's branch of service; or

(ii) a member of the National Guard serving as provided in Section 39-1-5 or 39-1-9.

~~(b)~~ (c) "Peace officer" means a law enforcement officer certified under Section 53-13-103.

(d) "Threat of violence" means the same as that term is defined in Section 76-5-107.

(2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3) and (4), who:

(a) ~~assaults~~ commits an assault or threat of violence against a peace officer, with knowledge that the person is a peace officer, and when the peace officer is acting within the scope of authority as a peace officer; or

(b) ~~assaults~~ commits an assault or threat of violence against a military servicemember in uniform when that servicemember is on orders and acting within the scope of authority granted to the military servicemember in uniform.

(3) A person who violates Subsection (2) is guilty of a third degree felony if the person:

(a) has been previously convicted of a class A misdemeanor or a felony violation of this section; or

(b) the person causes substantial bodily injury.

(4) A person who violates Subsection (2) is guilty of a second degree felony if the person uses:

(a) a dangerous weapon as defined in Section 76-1-601; or

(b) other means or force likely to produce death or serious bodily injury.

(5) A person who violates this section shall serve, in jail or another correctional facility, a minimum of:

(a) 90 consecutive days for a second offense; and

(b) 180 consecutive days for each subsequent offense.

(6) The court may suspend the imposition or execution of the sentence required under Subsection (5) if the court finds that the interests of justice would be best served by the suspension and the court makes specific findings concerning the disposition on the record.

(7) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech, the right of assembly, or any other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.

Section 3. Section 76-5-102.7 is amended to read:**76-5-102.7. Assault against health care provider and emergency medical service worker -- Penalty.**

(1) A person who ~~assaults~~ commits an assault or threat of violence against a health care provider or

emergency medical service worker is guilty of a class A misdemeanor if:

(a) the person is not a prisoner or a person detained under Section 77-7-15;

(b) the person knew that the victim was a health care provider or emergency medical service worker; and

(c) the health care provider or emergency medical service worker was performing emergency or life saving duties within the scope of his or her authority at the time of the assault.

(2) A person who violates Subsection (1) is guilty of a third degree felony if the person:

(a) causes substantial bodily injury, as defined in Section 76-1-601; and

(b) acts intentionally or knowingly.

(3) As used in this section:

(a) “Assault” means the same as that term is defined in Section 76-5-102.

~~[(a)]~~ (b) “Emergency medical service worker” means a person certified under Section 26-8a-302.

~~[(b)]~~ (c) “Health care provider” means the same as that term is defined in Section 78B-3-403.

(d) “Threat of violence” means the same as that term is defined in Section 76-5-107.

CHAPTER 124**H. B. 18**

Passed February 2, 2017

Approved March 20, 2017

Effective October 1, 2017

**MOTOR VEHICLE BUSINESS
LICENSING AMENDMENTS**Chief Sponsor: Kim F. Coleman
Senate Sponsor: Wayne A. Harper**LONG TITLE****General Description:**

This bill amends provisions related to licensure of motor vehicle dealers.

Highlighted Provisions:

This bill:

- ▶ directs the motor vehicle enforcement administrator within the State Tax Commission to:
 - issue a provisional license under certain circumstances; and
 - issue a provisional license holder a standard license without an additional application or fee once the license holder complies with all of the standard license qualifications.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**ENACTS:**

41-3-202.2, Utah Code Annotated 1953

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

Section 1. Section 41-3-202.2 is enacted to read:**41-3-202.2. Provisional license.**

(1) As used in this section:

(a) "Provisional license" means a provisional version of a particular class of standard license.

(b) "Standard license" means a license that the administrator is authorized to issue under Section 41-3-202 for a class for which a principal place of business is required under Section 41-3-204.

(2) The administrator may issue a provisional license for any class of standard license the administrator issues under Section 41-3-202.

(3) A person may apply to the administrator for a provisional license using the same procedure described in this chapter and under other applicable state law for a standard license of the same class as the provisional license.

(4) Subject to Subsection (5), the administrator shall grant a provisional license to an applicant who:

(a) demonstrates that the applicant meets all of the qualifications described in this chapter and under other applicable state law for a standard

license of the same class as the provisional license, except for the requirement that the applicant maintain a principal place of business as required by Section 41-3-204;

(b) complies with procedures established by the administrator; and

(c) pays a fee established by the administrator.

(5) In addition to demonstrating the qualifications described in Subsection (4), an applicant for a provisional license shall:

(a) submit to the administrator a site acquisition plan that describes the applicant's anticipated principal place of business; and

(b) demonstrate that the applicant's site acquisition plan describes a principal place of business that would comply with the requirements described in this chapter and under other applicable state law for the principal place of business of a licensee with a standard license of the same class as the provisional license.

(6) A provisional license does not allow a person to act as a licensee with a standard license.

(7) Subject to Subsections (8) and (9), once a person with a provisional license demonstrates to the administrator that the person meets all of the qualifications under this chapter and under other applicable state law for a standard license of the same class as the provisional license, the administrator shall grant the person a standard license of the same class as the provisional license without requiring that the person:

(a) submit an additional application; or

(b) pay an additional fee.

(8) (a) A provisional license is valid for three months.

(b) The commission may extend the term of a provisional license for an additional three months at the commission's discretion.

(9) The commission may create application procedures for a provisional license in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(10) The commission may require and determine the amount of an application fee for a provisional license in compliance with Section 63J-1-504.

Section 2. Effective date.

This bill takes effect on October 1, 2017.

CHAPTER 125**H. B. 21**

Passed March 3, 2017
 Approved March 20, 2017
 Effective May 9, 2017

UNIFORM POWERS OF APPOINTMENT ACT

Chief Sponsor: V. Lowry Snow
 Senate Sponsor: Lyle W. Hillyard

LONG TITLE**General Description:**

This bill modifies provisions related to powers of appointment.

Highlighted Provisions:

This bill:

- ▶ addresses compliance with specific reference requirements;
- ▶ enacts the Uniform Powers of Appointment Act, including:
 - general provisions, definitions, governing law, and the relationship of common law and principles of equity;
 - providing for the creation, revocation, and amendment of the power of appointment;
 - addressing the exercise of a power of appointment;
 - addressing disclaimer or release and the contract to appoint or not appoint;
 - addressing the rights of a powerholder's creditors in appointive property; and
 - miscellaneous provisions; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

75-2-208, as last amended by Laws of Utah 1999, Chapter 142

75-7-505, as enacted by Laws of Utah 2004, Chapter 89

ENACTS:

75-10-101, Utah Code Annotated 1953
 75-10-102, Utah Code Annotated 1953
 75-10-103, Utah Code Annotated 1953
 75-10-104, Utah Code Annotated 1953
 75-10-201, Utah Code Annotated 1953
 75-10-202, Utah Code Annotated 1953
 75-10-203, Utah Code Annotated 1953
 75-10-204, Utah Code Annotated 1953
 75-10-205, Utah Code Annotated 1953
 75-10-206, Utah Code Annotated 1953
 75-10-301, Utah Code Annotated 1953
 75-10-302, Utah Code Annotated 1953
 75-10-303, Utah Code Annotated 1953
 75-10-304, Utah Code Annotated 1953
 75-10-305, Utah Code Annotated 1953
 75-10-306, Utah Code Annotated 1953
 75-10-307, Utah Code Annotated 1953

75-10-308, Utah Code Annotated 1953
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 75-10-311, Utah Code Annotated 1953
 75-10-312, Utah Code Annotated 1953
 75-10-313, Utah Code Annotated 1953
 75-10-314, Utah Code Annotated 1953
 75-10-401, Utah Code Annotated 1953
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 75-10-405, Utah Code Annotated 1953
 75-10-406, Utah Code Annotated 1953
 75-10-407, Utah Code Annotated 1953
 75-10-501, Utah Code Annotated 1953
 75-10-502, Utah Code Annotated 1953
 75-10-503, Utah Code Annotated 1953
 75-10-601, Utah Code Annotated 1953
 75-10-602, Utah Code Annotated 1953
 75-10-603, Utah Code Annotated 1953

REPEALS:

75-2-608, as repealed and reenacted by Laws of Utah 1998, Chapter 39
 75-2-704, as enacted by Laws of Utah 1998, Chapter 39

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

Section 1. Section 75-2-208 is amended to read:**75-2-208. Exclusions, valuation, and overlapping application.**

(1) The value of any separate property of the decedent or the decedent's surviving spouse is excluded from the augmented estate even if it otherwise would be included in the augmented estate under Sections 75-2-204, 75-2-205, 75-2-206, and 75-2-207. Property is separate property if it was:

(a) owned at the date of the most recent marriage of the decedent and the decedent's surviving spouse;

(b) acquired by gift or disposition at death from a person other than the decedent or the decedent's surviving spouse;

(c) subject to a presently exercisable power of appointment not created by the decedent or the decedent's spouse that is exempt under Section 75-10-502;

~~(e)~~ (d) acquired in exchange for or with the proceeds of other separate property;

~~(d)~~ (e) designated as separate property by written waiver under Section 75-2-213; or

~~(e)~~ (f) acquired as a recovery for personal injury but only to the extent attributable to expenses paid or otherwise satisfied from separate property.

(2) Income attributable to investment, rental, licensing or other use of separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property.

(3) Appreciation in the value of separate property during the most recent marriage of the decedent

and the decedent's surviving spouse is separate property.

(4) Except as provided in this Subsection (4), any increase in the value of separate property due to improvements to or the reduction in debt owed against separate property during the most recent marriage of the decedent and the decedent's surviving spouse is separate property. An amount equal to any payment for improvements to or the reduction in debt owed against separate property of the decedent made during the most recent marriage of the decedent and the decedent's surviving spouse from the joint or commingled funds of the decedent and the decedent's surviving spouse, or from the separate property of the surviving spouse, shall not be separate property to the extent of the amount actually paid for the improvements or the amount actually paid for the reduction in debt, including principal, interest, and other payments under the note, owed against separate property. The amount that is determined not to be separate property may not exceed the value of the separate property.

(5) All property of the decedent or the decedent's surviving spouse, whether or not commingled, is rebuttably presumed not to be separate property.

(6) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse.

(7) The value of property:

(a) included in the augmented estate under Section 75-2-205, 75-2-206, or 75-2-207 is reduced in each category by enforceable claims against the included property; and

(b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal Social Security system.

(8) In case of overlapping application to the same property of the section or subsections of Section 75-2-205, 75-2-206, or 75-2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

Section 2. Section 75-7-505 is amended to read:

75-7-505. Creditor's claim against settlor.

[1] Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

[a] (1) During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. If a trust has more than

one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

[b] (2) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 25-6-14, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If the trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

[c] (3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but not property received by the trust as a result of the death of the settlor which is otherwise exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

~~[(2) For purposes of this section:]~~

~~[(a) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and]~~

~~[(b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1, 2004.]~~

Section 3. Section 75-10-101 is enacted to read:

CHAPTER 10. UNIFORM POWERS OF APPOINTMENT ACT

Part 1. General Provisions

75-10-101. Title.

This chapter is known as the "Uniform Powers of Appointment Act."

Section 4. Section 75-10-102 is enacted to read:

75-10-102. Definitions.

As used in this chapter:

(1) "Appointee" means a person to which a powerholder makes an appointment of appointive property.

(2) "Appointive property" means the property or property interest subject to a power of appointment.

(3) “Blanket-exercise clause” means a clause in an instrument that exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:

(a) expressly uses the words “any power” in exercising any power of appointment the powerholder has;

(b) expressly uses the words “any property” in appointing any property over which the powerholder has a power of appointment; or

(c) disposes of all property subject to disposition by the powerholder.

(4) “Donor” means a person that creates a power of appointment.

(5) “Exclusionary power of appointment” means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) “General power of appointment” means a power of appointment exercisable in favor of the powerholder, the powerholder’s estate, a creditor of the powerholder, or a creditor of the powerholder’s estate.

(7) “Gift-in-default clause” means a clause identifying a taker in default of appointment.

(8) “Impermissible appointee” means a person that is not a permissible appointee.

(9) “Instrument” means a record.

(10) “Nongeneral power of appointment” means a power of appointment that is not a general power of appointment. The terms “special power of appointment,” “limited power of appointment,” or similar terminology used in an instrument creating a power that does not grant powers making it a general power of appointment as defined in this chapter mean the same as and may be used interchangeably with the term nongeneral power of appointment.

(11) “Permissible appointee” means a person in whose favor a powerholder may exercise a power of appointment.

(12) “Person” means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity.

(13) “Powerholder” means a person in whom a donor creates a power of appointment.

(14) “Power of appointment” means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an interest in, or another power of appointment over, the appointive property. The term does not include a power of attorney.

(15) “Presently exercisable power of appointment” means a power of appointment exercisable by the powerholder at a relevant time. The term:

(a) includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(b) does not include a power exercisable only at the powerholder’s death.

(16) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) “Specific-exercise clause” means a clause in an instrument that specifically refers to and exercises a particular power of appointment.

(18) “Taker in default of appointment” means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(19) “Terms of the instrument” means the manifestation of the intent of the maker of the instrument regarding the instrument’s provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

Section 5. Section 75-10-103 is enacted to read:

75-10-103. Governing law.

(1) Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(a) the creation, revocation, amendment, interpretation and definition of terms, or the determination of the rights of the appointee of the power is governed by the law of the donor’s domicile at the relevant time; and

(b) the formalities for the exercise, release, or disclaimer of the power, or the revocation or amendment of the exercise, release, or disclaimer of the power is governed by the law of the powerholder’s state of domicile at the relevant time.

(2) The law of the powerholder’s state of domicile may not govern the interpretation and definition of terms, or the determination of the rights of the appointee of the power, which shall be governed by the law of the donor’s domicile at the relevant time.

(3) Claims of creditors, including creditor claims regarding a power not created by a powerholder as set forth in Section 75-10-502, and other parties claiming an interest in property or rights subject to a power will be governed by the laws of the donor’s domicile at the time of the creation of the power and not the powerholder’s state of domicile either at the time of the creation of the power or at the time of exercise of the power.

Section 6. Section 75-10-104 is enacted to read:

75-10-104. Common law and principles of equity.

The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or laws of this state other than this chapter.

Section 7. Section 75-10-201 is enacted to read:

Part 2. Creation, Revocation, and Amendment of Power of Appointment

75-10-201. Creation of power of appointment.

(1) A power of appointment is created only if:

(a) the instrument creating the power:

(i) is valid under applicable law; and

(ii) except as otherwise provided in Subsection (2), transfers the appointive property; and

(b) the terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(2) Subsection (1)(a)(ii) does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(3) A power of appointment may not be created in a deceased individual.

(4) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

Section 8. Section 75-10-202 is enacted to read:

75-10-202. Nontransferability.

A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

Section 9. Section 75-10-203 is enacted to read:

75-10-203. Presumption of unlimited authority.

Subject to Section 75-10-205, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(1) presently exercisable;

(2) exclusionary; and

(3) except as otherwise provided in Section 75-10-204, general.

Section 10. Section 75-10-204 is enacted to read:

75-10-204. Exception to presumption of unlimited authority.

Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

(1) the power is exercisable only at the powerholder's death; and

(2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

Section 11. Section 75-10-205 is enacted to read:

75-10-205. Rules of classification.

(1) In this section, "adverse party" means a person with a substantial beneficial interest in property that would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(2) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(3) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

Section 12. Section 75-10-206 is enacted to read:

75-10-206. Donor's power to revoke or amend.

A donor may revoke or amend a power of appointment unless or to the extent the instrument creating the power is made irrevocable by the donor or the exercise of a presently exercisable power has been irrevocably made or effected.

Section 13. Section 75-10-301 is enacted to read:

Part 3. Exercise of Power of Appointment

75-10-301. Requisites for exercise of power of appointment.

A power of appointment is exercised only:

(1) if the instrument exercising the power is valid under applicable law;

(2) if the terms of the instrument exercising the power:

(a) manifest the powerholder's intent to exercise the power; and

(b) satisfy the requirements of exercise, if any, imposed by the donor; and

(3) to the extent the appointment is a permissible exercise of the power.

Section 14. Section 75-10-302 is enacted to read:

75-10-302. Intent to exercise -- Determining intent from residuary clause.

(1) As used in this section:

(a) "Residuary clause" does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) “Will” includes a codicil and a testamentary instrument that revises another will.

(2) A residuary clause in a powerholder’s will, or a comparable clause in the powerholder’s revocable trust, manifests the powerholder’s intent to exercise a power of appointment only if:

(a) the terms of the instrument containing the residuary clause do not manifest a contrary intent;

(b) the power is a general power exercisable in favor of the powerholder’s estate;

(c) there is no gift-in-default clause or the clause is ineffective; and

(d) the powerholder did not release the power.

Section 15. Section 75-10-303 is enacted to read:

75-10-303. Intent to exercise -- After-acquired power.

Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

(1) except as otherwise provided in Subsection (2), a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

(2) if the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.

Section 16. Section 75-10-304 is enacted to read:

75-10-304. Compliance with donor-imposed formal requirements.

(1) A powerholder’s compliance with formal requirements of appointment imposed by the donor is sufficient only if the powerholder substantially complies with the conditions, requirements, and formalities set forth in the power of appointment, including complying with all the requirements for making specific reference to the power, that the power shall be exercised in a specific document such as a will, or that the document exercising the power shall be witnessed or notarized. If the donor limited the powerholder’s exercise to a validly executed will, substantial compliance may not include the exercise of the power by a trust or another document not meeting the requirements of a properly executed will.

(2) Unless required by the instrument creating the power, the probate of a properly executed will is not required for the exercise of a power to be valid and complete.

Section 17. Section 75-10-305 is enacted to read:

75-10-305. Permissible appointment.

(1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder’s estate may make any appointment, including an appointment in

trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder’s own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder’s estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(b) create a general power in a permissible appointee; or

(c) create a nongeneral power in any person to appoint one or more of the permissible appointees of the original nongeneral power.

Section 18. Section 75-10-306 is enacted to read:

75-10-306. Appointment to deceased appointee or permissible appointee’s descendant.

(1) Subject to Sections 75-2-603 and 75-2-604, an appointment to a deceased appointee is ineffective.

(2) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

Section 19. Section 75-10-307 is enacted to read:

75-10-307. Impermissible appointment.

(1) Except as otherwise provided in Section 75-10-306, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(2) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Section 20. Section 75-10-308 is enacted to read:

75-10-308. Elective allocation doctrine.

If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property shall be allocated in the permissible manner that best carries out the powerholder’s intent.

Section 21. Section 75-10-309 is enacted to read:

75-10-309. Capture doctrine -- Disposition of ineffectively appointed property under general power.

To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) the gift-in-default clause controls the disposition of the ineffectively appointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(a) passes to:

(i) the powerholder if the powerholder is a permissible appointee and is living; or

(ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 22. Section 75-10-310 is enacted to read:

75-10-310. Disposition of unappointed property under released or unexercised general power.

To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective:

(a) except as otherwise provided in Subsection (2)(b), the unappointed property passes to:

(i) the powerholder if the powerholder is a permissible appointee and is living; or

(ii) if the powerholder is an impermissible appointee or is deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) to the extent the powerholder released the power, or if there is no taker under Subsection (2)(a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 23. Section 75-10-311 is enacted to read:

75-10-311. Disposition of unappointed property under released or unexercised nongeneral power.

To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) the gift-in-default clause controls the disposition of the unappointed property; or

(2) if there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(a) passes to the permissible appointees if:

(i) the permissible appointees are defined and limited; and

(ii) the terms of the instrument creating the power do not manifest a contrary intent; or

(b) if there is no taker under Subsection (2)(a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Section 24. Section 75-10-312 is enacted to read:

75-10-312. Disposition of unappointed property if partial appointment to taker in default.

Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

Section 25. Section 75-10-313 is enacted to read:

75-10-313. Appointment to taker in default.

If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is considered not to have been exercised and the appointee takes under the clause.

Section 26. Section 75-10-314 is enacted to read:

75-10-314. Powerholder's authority to revoke or amend exercise.

Unless the terms of the instrument creating the power of appointment or the instrument exercising the power of appointment provide that the exercise is irrevocable or unamendable, a powerholder may revoke or amend an exercise of a power of appointment made by an instrument effective during the life of the powerholder where the exercise is to become effective at some future time or contingency and where that future time and contingency has not yet occurred, as long as the revocation or amendment is done with the same formality as the original exercise of the power of appointment.

Section 27. Section 75-10-401 is enacted to read:

Part 4. Disclaimer or Release - Contract to Appoint or Not to Appoint

75-10-401. Disclaimer.

As provided by Section 75-2-801:

(1) A powerholder may disclaim all or part of a power of appointment.

(2) A permissible appointee, an appointee, or a taker in default of appointment may disclaim all or part of an interest in appointive property.

Section 28. Section 75-10-402 is enacted to read:

75-10-402. Authority to release.

A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

Section 29. Section 75-10-403 is enacted to read:

75-10-403. Method of release.

A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) by substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence.

Section 30. Section 75-10-404 is enacted to read:

75-10-404. Revocation or amendment of release.

A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) the instrument of release is revocable by the powerholder; or

(2) the powerholder reserves a power of revocation or amendment in the instrument of release.

Section 31. Section 75-10-405 is enacted to read:

75-10-405. Power to contract -- Presently exercisable power of appointment.

A powerholder of a presently exercisable power of appointment may contract:

(1) not to exercise the power; or

(2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

Section 32. Section 75-10-406 is enacted to read:

75-10-406. Power to contract -- Power of appointment not presently exercisable.

A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

(1) is also the donor of the power; and

(2) has reserved the power in a revocable trust.

Section 33. Section 75-10-407 is enacted to read:

75-10-407. Remedy for breach of contract to appoint or not to appoint.

The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Section 34. Section 75-10-501 is enacted to read:

Part 5. Rights of Powerholder's Creditors in Appointive Property

75-10-501. Creditor claim -- General power created by powerholder.

(1) In this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(2) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in Title 25, Chapter 6, Uniform Fraudulent Transfer Act.

(3) Subject to Subsection (2), appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(4) Subject to Subsections (2) and (3), and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(a) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(b) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

Section 35. Section 75-10-502 is enacted to read:

75-10-502. Creditor claim -- Power not created by powerholder.

(1) The property subject to a general or a nongeneral power of appointment not created by the powerholder, including a presently exercisable general or nongeneral power of appointment, is exempt from a claim of a creditor of the powerholder or the powerholder's estate. The powerholder of such a power may not be compelled to exercise the power and the powerholder's creditors may not

acquire the power, any rights thereto, or reach the trust property or beneficial interests by any other means. A court may not exercise or require the powerholder to exercise the power of appointment.

(2) As set forth in Section 75-10-103, the law of the donor's domicile at the time of creation shall govern claims of creditors and other parties claiming an interest in property or rights subject to a power of appointment.

Section 36. Section 75-10-503 is enacted to read:

75-10-503. Power to withdraw.

(1) For purposes of this part, and except as otherwise provided in Subsection (2), a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(2) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in 26 U.S.C. Sec. 2041(b)(2) and 26 U.S.C. Sec. 2514(e) or the amount specified in 26 U.S.C. Sec. 2503(b).

Section 37. Section 75-10-601 is enacted to read:

Part 6. Miscellaneous Provisions

75-10-601. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 38. Section 75-10-602 is enacted to read:

75-10-602. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Section 39. Section 75-10-603 is enacted to read:

75-10-603. Application to existing relationships.

(1) Except as otherwise provided in this chapter, on and after May 9, 2017:

(a) this chapter applies to a power of appointment created before, on, or after May 9, 2017;

(b) this chapter applies to a judicial proceeding concerning a power of appointment commenced on or after May 9, 2017;

(c) this chapter applies to a judicial proceeding concerning a power of appointment commenced before May 9, 2017, unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies; and

(d) a rule of construction or presumption provided in this chapter applies to an instrument executed before May 9, 2017, unless there is a clear indication of a contrary intent in the terms of the instrument.

(2) Except as otherwise provided in Subsections (1)(a) through (d), an action done before May 9, 2017, is not affected by this chapter.

(3) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than this chapter before May 9, 2017, the law continues to apply to the right.

Section 40. Repealer.

This bill repeals:

Section 75-2-608, Exercise of power of appointment.

Section 75-2-704, Power of appointment -- Meaning of specific reference requirement.

CHAPTER 126**H. B. 31**

Passed February 2, 2017
 Approved March 20, 2017
 Effective May 9, 2017

**UTAH HEALTH CARE WORKFORCE
 FINANCIAL ASSISTANCE PROGRAM
 REAUTHORIZATION**

Chief Sponsor: Edward H. Redd

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill reauthorizes the Utah Health Care Workforce Financial Assistance Program and repeals certain outdated provisions.

Highlighted Provisions:

This bill:

- ▶ amends the membership of the Utah Health Care Workforce Financial Assistance Program Advisory Committee;
- ▶ amends the repeal date for the Utah Health Care Workforce Financial Assistance Program; and
- ▶ repeals provisions related to certain contracts and applications that no longer exist.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-46-103, as last amended by Laws of Utah 2010, Chapter 286

63I-2-226, as last amended by Laws of Utah 2016, Chapter 345

REPEALS:

26-46-104, as enacted by Laws of Utah 2002, Chapter 307

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

Section 1. Section 26-46-103 is amended to read:**26-46-103. Advisory committee -- Membership -- Compensation -- Duties.**

(1) There is created the Utah Health Care Workforce Financial Assistance Program Advisory Committee consisting of the following 13 members appointed by the executive director, eight of whom shall be residents of rural communities:

(a) one rural representative of Utah Hospitals and Health Systems, nominated by the association;

(b) two rural representatives of the Utah Medical Association, nominated by the association;

(c) one representative of the Utah Academy of Physician Assistants, nominated by the association;

(d) one representative of the Association for Utah Community Health, nominated by the association;

(e) one representative of the Utah Dental Association, nominated by the association;

(f) one representative of mental health therapists, selected from nominees submitted by mental health therapist professional associations;

(g) one representative of the Association of Local Health Officers, nominated by the association;

(h) one representative of ~~the~~ a low-income advocacy ~~community~~ group, nominated by ~~the Utah Human Services Coalition~~ a Utah health and human services coalition that represents underserved populations;

(i) one nursing program faculty member, nominated by the Statewide Deans and Directors Committee;

(j) one administrator of a long-term care facility, nominated by the Utah Health Care Association;

(k) one nursing administrator, nominated by the Utah Nurses Association; and

(l) one geriatric professional who is:

(i) determined by the department to have adequate advanced training in geriatrics to prepare the person to provide specialized geriatric care within the scope of the person's profession; and

(ii) nominated by a professional association for the profession of which the person is a member.

(2) An appointment to the committee shall be for a four-year term unless the member is appointed to complete an unexpired term. The executive director may also adjust the length of term at the time of appointment or reappointment so that approximately 1/2 the committee is appointed every two years. The executive director shall annually appoint a committee chair from among the members of the committee.

(3) The committee shall meet at the call of the chair, at least three members of the committee, or the executive director, but no less frequently than once each calendar year.

(4) A majority of the members of the committee constitutes a quorum. The action of a majority of a quorum constitutes the action of the committee.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) The committee shall:

(a) make recommendations to the department for the development and modification of rules to administer the Utah Health Care Workforce Financial Assistance Program; and

(b) advise the department on the development of a needs assessment tool for identifying underserved areas.

(7) As funding permits, the department shall provide staff and other administrative support to the committee.

Section 2. Section 63I-2-226 is amended to read:

63I-2-226. Repeal dates -- Title 26.

(1) Title 26, Chapter 46, Utah Health Care Workforce Financial Assistance Program, is repealed July 1, [~~2017~~] 2027.

(2) Section 26-18-412 is repealed December 31, 2016.

Section 3. Repealer.

This bill repeals:

Section 26-46-104, Continuity between programs.

CHAPTER 127**H. B. 32**

Passed February 14, 2017

Approved March 20, 2017

Effective May 9, 2017

ASSESSMENT AREA ACT AMENDMENTS

Chief Sponsor: R. Curt Webb
Senate Sponsor: Daniel W. Thatcher

LONG TITLE**General Description:**

This bill modifies provisions of the Assessment Area Act.

Highlighted Provisions:

This bill:

- ▶ clarifies the required contents of a notice of a proposed assessment area designation;
- ▶ provides that a local entity that levies an assessment for economic promotion activities shall assess each benefitted property; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

11-42-202, as last amended by Laws of Utah 2016, Chapters 85 and 371

11-42-409, as last amended by Laws of Utah 2015, Chapter 396

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

Section 1. Section 11-42-202 is amended to read:**11-42-202. Requirements applicable to a notice of a proposed assessment area designation.**

(1) Each notice required under Subsection 11-42-201(2)(a) shall:

- (a) state that the local entity proposes to:
 - (i) designate one or more areas within the local entity's jurisdictional boundaries as an assessment area;
 - (ii) provide an improvement to property within the proposed assessment area; and
 - (iii) finance some or all of the cost of improvements by an assessment on benefitted property within the assessment area;
- (b) describe the proposed assessment area by any reasonable method that allows an owner of property in the proposed assessment area to determine that the owner's property is within the proposed assessment area;
- (c) describe, in a general and reasonably accurate way, the improvements to be provided to the assessment area, including:
 - (i) the nature of the improvements; and

(ii) the location of the improvements, by reference to streets or portions or extensions of streets or by any other means that the governing body chooses that reasonably describes the general location of the improvements;

(d) state the estimated cost of the improvements as determined by a project engineer;

(e) for the version of notice mailed in accordance with Subsection (4)(b), state the estimated total assessment specific to the benefitted property for which the notice is mailed;

(f) state that the local entity proposes to levy an assessment on benefitted property within the assessment area to pay some or all of the cost of the improvements according to the estimated benefits to the property from the improvements;

(g) if applicable, state that an unassessed benefitted government property will receive improvements for which the cost will be allocated proportionately to the remaining benefitted properties within the proposed assessment area and that a description of each unassessed benefitted government property is available for public review at the location or website described in Subsection (6);

(h) state the assessment method by which the governing body proposes to [levy the] calculate the proposed assessment, including, if the local entity is a municipality or county, whether the assessment will be collected:

- (i) by directly billing a property owner; or
- (ii) by inclusion on a property tax notice issued in accordance with Section 59-2-1317 and in compliance with Section 11-42-401;

(i) state:

(i) the date described in Section 11-42-203 and the location at which protests against designation of the proposed assessment area or of the proposed improvements are required to be filed;

(ii) the method by which the governing body will determine the number of protests required to defeat the designation of the proposed assessment area or acquisition or construction of the proposed improvements; and

(iii) in large, boldface, and conspicuous type that a property owner must protest the designation of the assessment area in writing if the owner objects to the area designation or being assessed for the proposed improvements, operation and maintenance costs, or economic promotion activities;

(j) state the date, time, and place of the public hearing required in Section 11-42-204;

(k) if the governing body elects to create and fund a reserve fund under Section 11-42-702, include a description of:

(i) how the reserve fund will be funded and replenished; and

(ii) how remaining money in the reserve fund is to be disbursed upon full payment of the bonds;

(l) if the governing body intends to designate a voluntary assessment area, include a property owner consent form that:

(i) estimates the total assessment to be levied against the particular parcel of property;

(ii) describes any additional benefits that the governing body expects the assessed property to receive from the improvements;

(iii) designates the date and time by which the fully executed consent form is required to be submitted to the governing body; and

(iv) if the governing body intends to enforce an assessment lien on the property in accordance with Subsection 11-42-502.1(2)(c):

(A) appoints a trustee that satisfies the requirements described in Section 57-1-21;

(B) gives the trustee the power of sale; and

(C) explains that if an assessment or an installment of an assessment is not paid when due, the local entity may sell the property owner's property to satisfy the amount due plus interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances;

(m) if the local entity intends to levy an assessment to pay operation and maintenance costs or for economic promotion activities, include:

(i) a description of the operation and maintenance costs or economic promotion activities to be paid by assessments and the initial estimated annual assessment to be levied;

(ii) a description of how the estimated assessment will be determined;

(iii) a description of how and when the governing body will adjust the assessment to reflect the costs of:

(A) in accordance with Section 11-42-406, current economic promotion activities; or

(B) current operation and maintenance costs;

(iv) a description of the method of assessment if different from the method of assessment to be used for financing any improvement; and

(v) a statement of the maximum number of years over which the assessment will be levied for:

(A) operation and maintenance costs; or

(B) economic promotion activities;

(n) if the governing body intends to divide the proposed assessment area into classifications under Subsection 11-42-201(1)(b), include a description of the proposed classifications;

(o) if applicable, state the portion and value of the improvement that will be increased in size or capacity to serve property outside of the assessment area and how the increases will be financed; and

(p) state whether the improvements will be financed with a bond and, if so, the currently

estimated interest rate and term of financing, subject to Subsection (2), for which the benefitted properties within the assessment area may be obligated.

(2) The estimated interest rate and term of financing in Subsection (1)(p) may not be interpreted as a limitation to the actual interest rate incurred or the actual term of financing as subject to the market rate at the time of the issuance of the bond.

(3) A notice required under Subsection 11-42-201(2)(a) may contain other information that the governing body considers to be appropriate, including:

(a) the amount or proportion of the cost of the improvement to be paid by the local entity or from sources other than an assessment;

(b) the estimated total amount of each type of assessment for the various improvements to be financed according to the method of assessment that the governing body chooses; and

(c) provisions for any improvements described in Subsection 11-42-102(26)(a)(ii).

(4) Each notice required under Subsection 11-42-201(2)(a) shall:

(a) (i) (A) be published in a newspaper of general circulation within the local entity's jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at least five but not more than 20 days before the day of the hearing required in Section 11-42-204; or

(B) if there is no newspaper of general circulation within the local entity's jurisdictional boundaries, be posted in at least three public places within the local entity's jurisdictional boundaries at least 20 but not more than 35 days before the day of the hearing required in Section 11-42-204; and

(ii) be published on the Utah Public Notice Website described in Section 63F-1-701 for four weeks before the deadline for filing protests specified in the notice under Subsection (1)(i); and

(b) be mailed, postage prepaid, within 10 days after the first publication or posting of the notice under Subsection (4)(a) to each owner of property to be assessed within the proposed assessment area at the property owner's mailing address.

(5) (a) The local entity may record the version of the notice that is published or posted in accordance with Subsection (4)(a) with the office of the county recorder, by legal description and tax identification number as identified in county records, against the property proposed to be assessed.

(b) The notice recorded under Subsection (5)(a) expires and is no longer valid one year after the day on which the local entity records the notice if the local entity has failed to adopt the designation ordinance or resolution under Section 11-42-201 designating the assessment area for which the notice was recorded.

(6) A local entity shall make available on the local entity's website, or, if no website is available, at the

local entity's place of business, the address and type of use of each unassessed benefitted government property described in Subsection (1)(g).

(7) If a governing body fails to provide actual or constructive notice under this section, the local entity may not assess a levy against a benefitted property omitted from the notice unless:

(a) the property owner gives written consent;

(b) the property owner received notice under Subsection 11-42-401(2)(a)(iii) and did not object to the levy of the assessment before the final hearing of the board of equalization; or

(c) the benefitted property is conveyed to a subsequent purchaser and, before the date of conveyance, the requirements of Subsections 11-42-206(3)(a)(i) and (ii), or, if applicable, Subsection 11-42-207(1)(d)(i) are met.

Section 2. Section 11-42-409 is amended to read:

11-42-409. Assessment requirements and prohibitions -- Economic promotion activities assessment requirements and prohibitions -- Allocation for unassessed benefitted government property.

(1) (a) Each local entity that levies an assessment under this chapter:

(i) except for an appropriate allocation for an unassessed benefitted government property, may not assess a property for more than the amount that the property benefits by the improvement, operation and maintenance, or economic promotion activities;

(ii) may levy an assessment only for the actual costs that are reasonable; and

(iii) shall levy an assessment on a benefitted property in an amount that reflects an equitable portion, subject to Subsection (1)(b), of the benefit the property will receive from an improvement, operation and maintenance, or economic promotion activities for which the assessment is levied.

(b) The local entity, in accounting for a property's benefit or portion of a benefit received from an improvement, operation and maintenance, or economic promotion activities, shall consider:

(i) any benefit that can be directly identified with the property; and

(ii) the property's roughly equivalent portion of the benefit that is collectively shared by all the assessed properties in the entire assessment area or classification.

(c) The validity of an otherwise valid assessment is not affected by the fact that the benefit to the property from the improvement does not increase the fair market value of the property.

(2) [The] Subject to Subsection (4), the assessment method a governing body uses to calculate an assessment may be according to frontage, area, taxable value, fair market value, lot, parcel, number of connections, equivalent

residential unit, or any combination of these methods, or any other method as the governing body considers appropriate to comply with Subsections (1)(a) and (b).

(3) A local entity that levies an assessment under this chapter for an improvement:

(a) shall:

(i) (A) levy the assessment on each block, lot, tract, or parcel of property that benefits from the improvement; and

(B) to whatever depth, including full depth, on the parcel of property that the governing body determines but that still complies with Subsections (1)(a) and (b);

(ii) make an allowance for each corner lot receiving the same improvement on both sides so that the property is not assessed at the full rate on both sides; and

(iii) pay for any increase in size or capacity that serves property outside of the assessment area with funds other than those levied by an assessment;

(b) may:

(i) use different methods for different improvements in an assessment area;

(ii) assess different amounts in different classifications, even when using the same method, if acquisition or construction costs differ from classification to classification;

(iii) allocate a corner lot allowance under Subsection (3)(a)(ii) to all other benefitted property within the assessment area by increasing the assessment levied against the other assessed property in the same proportion as the improvement is assessed;

(iv) to comply with Subsection (1)(a), levy an assessment within classifications; and

(v) assess property to replace improvements that are approaching or have exceeded their useful life or to increase the level of service of an existing improvement; and

(c) may not:

(i) consider the costs of the additional size or capacity of an improvement that will be increased in size or capacity to serve property outside of the assessment area when calculating an assessment or determining an assessment method; or

(ii) except for in a voluntary assessment area or as provided in Subsection (3)(b)(v), assess a property for an improvement that would duplicate or provide a reasonably similar service that is already provided to the property.

(4) A local entity that levies an assessment under this chapter for economic promotion activities:

(a) shall:

(i) subject to Section 11-42-408, levy the assessment on each benefitted property; and

(ii) subject to Subsection (4)(d), use an assessment method that, when applied to a

benefitted property, meets the requirements of Subsection (1)(a);

~~[(a)]~~ (b) may:

(i) levy an assessment only on commercial or industrial real property; and

(ii) create classifications based on property use, or other distinguishing factors, to determine the estimated benefit to the assessed property;

~~[(b)]~~ (c) subject to Subsection (4)(d), may rely on, in addition to the assessment methods described in Subsection (2), estimated benefits from an increase in:

(i) office lease rates;

(ii) retail sales rates;

(iii) customer base;

(iv) public perception;

(v) hotel room rates and occupancy levels;

(vi) property values;

(vii) the commercial environment from enhanced services;

(viii) another articulable method of estimating benefits; or

(ix) a combination of the methods described in Subsections (4)~~[(b)]~~(c)(i) through (viii); and

~~[(c) subject to Subsection (4)(d), shall use an assessment method that, when applied to a benefitted property, meets the requirements of Subsection (1)(a); and]~~

(d) may not use taxable value, fair market value, or any other assessment method based on the value of the property as the sole assessment method.

(5) A local entity may levy an assessment that would otherwise violate a provision of this chapter if the owners of all property to be assessed voluntarily enter into a written agreement with the local entity consenting to the assessment.

(6) A local entity may allocate the cost of a benefit received by an unassessed benefitted government property to all other benefitted property within the assessment area by increasing the assessment levied against the other assessed property in the same proportion as the improvement, operation and maintenance, or economic promotion activities are assessed.

CHAPTER 128**H. B. 34**

Passed February 2, 2017
Approved March 20, 2017
Effective May 9, 2017

**EMPLOYMENT SECURITY
ACT SUNSET EXTENSION**

Chief Sponsor: Rebecca P. Edwards
Senate Sponsor: Brian E. Shiozawa

LONG TITLE**General Description:**

This bill modifies provisions of the Legislative Oversight and Sunset Act.

Highlighted Provisions:

This bill:

- ▶ extends the sunset date of certain statutory provisions related to the Department of Workforce Services sharing certain information with the Wage and Hour Division of the United States Department of Labor.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-235, as last amended by Laws of Utah 2016,
Chapter 43

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

Section 1. Section 63I-1-235 is amended to read:**63I-1-235. Repeal dates, Title 35A.**

(1) Subsection 35A-4-312(5)(p) is repealed July 1, [2017] 2019.

(2) Title 35A, Chapter 5, Part 4, Career and Technical Education Board, is repealed July 1, 2018.

CHAPTER 129**H. B. 48**

Passed February 23, 2017

Approved March 20, 2017

Effective May 9, 2017

**WILDLIFE SPECIES
INTRODUCTION AMENDMENTS**Chief Sponsor: Carl R. Albrecht
Senate Sponsor: Margaret Dayton**LONG TITLE****General Description:**

This bill modifies provisions related to the release or transplantation of species.

Highlighted Provisions:

This bill:

- ▶ prohibits the release or transplantation of live terrestrial or aquatic wildlife into the wild without a certificate of registration issued by the Division of Wildlife Resources or as otherwise provided by Title 23, Wildlife Resources Code of Utah;
- ▶ states that the Division of Wildlife Resources may only authorize the transplanting of big game, turkeys, wolves, threatened or endangered species, or sensitive species as described in Section 23-14-21; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

23-13-14, as last amended by Laws of Utah 2015, Chapter 231

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

Section 1. Section 23-13-14 is amended to read:**23-13-14. Release of wildlife unlawful -- Penalty.**

(1) (a) A person may not release or transplant a live terrestrial or aquatic wildlife into the wild;

(i) without a certificate of registration issued by the division authorizing the release; or

(ii) except as provided in this title and rules and regulations established by the Wildlife Board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The division may only authorize the transplanting of big game, turkeys, wolves, threatened or endangered species, or sensitive species as provided in Section 23-14-21.

(2) Except as provided in Subsection (3), a person who violates Subsection (1) is guilty of a class A misdemeanor.

(3) A person who knowingly and without lawful authority imports, transports, or releases a live

species of wildlife that the person knows is listed as threatened or endangered, or is a candidate to be listed under the Endangered Species Act, 16 U.S.C. Sec. 1531 et seq., with the intent to establish the presence of that species in an area of the state not currently known to be occupied by a reproducing population of that species is guilty of a third degree felony.

CHAPTER 130**H. B. 59**

Passed February 17, 2017

Approved March 20, 2017

Effective May 9, 2017

**PUBLIC SERVICE
COMMISSION AMENDMENTS**

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: Wayne A. Harper

LONG TITLE**General Description:**

This bill amends a provision related to telecommunications.

Highlighted Provisions:

This bill:

- ▶ allows the Public Service Commission to issue an order exempting a telecommunications corporation or public telecommunications service from a requirement of the Public Utilities Code after an informal adjudication, without a hearing, under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

54-8b-3, as last amended by Laws of Utah 1995, Chapter 269

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

Section 1. Section 54-8b-3 is amended to read:**54-8b-3. Exemptions from requirements.**

(1) (a) The commission, on its own initiative or in response to an application by a telecommunications corporation, a public agency, or a user of a public telecommunications service, may, after public notice and a hearing, issue an order exempting any telecommunications corporation or public telecommunications service from any requirement of this title, including any requirement or limitation relating to a telecommunication corporation's earnings, rate base, or pricing of public telecommunications services.

(b) The commission may issue an order described in Subsection (1)(a), after an informal adjudication, without a hearing if:

(i) the matter is not a proceeding described in Subsection 54-1-3(2)(a);

(ii) a party to an application submitted under Subsection (1)(a) requests an informal adjudication; and

(iii) no person opposes the request for informal adjudication before 10 business days after the day on which the party files the request.

(2) The commission shall specify in the order any requirements, terms, or conditions which may apply to any exemption.

(3) An exemption may be granted for the entire service territory of a telecommunications corporation or for a specific geographic area of the service territory.

(4) The commission may issue an order for an exemption only if it finds that:

(a) the telecommunications corporation or service is subject to effective competition; and

(b) the exemption is in the public interest.

(5) In determining if the telecommunications corporation or service is subject to effective competition, the commission shall consider all relevant factors, which may include:

(a) the extent to which competing telecommunications services are available from alternative telecommunications providers;

(b) the ability of alternative telecommunications providers to offer competing telecommunications services that are functionally equivalent or substitutable and reasonably available at comparable prices, terms, quality, and conditions;

(c) the market share of the telecommunications corporation for which an exemption is proposed;

(d) the extent of economic or regulatory barriers to entry;

(e) the impact of potential competition; and

(f) the type and degree of exemptions to this title that are proposed.

(6) In determining if the proposed exemption is in the public interest, the commission shall consider, in addition to other relevant factors, the impact the proposed exemption would have on captive customers of the telecommunications corporation.

(7) (a) The commission shall approve or deny any application for exemption under this section within 240 days, except that the commission may by order defer action for an additional 30-day period.

(b) If the commission has not acted on any application within the permitted time period, the application is considered granted.

CHAPTER 131**H. B. 75**

Passed March 8, 2017

Approved March 20, 2017

Effective May 9, 2017

COMMON OWNERSHIP AMENDMENTS

Chief Sponsor: Gage Froerer
Senate Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill modifies provisions related to condominium and community associations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that an association rule may, for a lot that an owner leases for a short term, impose a reasonable limit on the number of individuals that may use the common areas and facilities as guests;
- ▶ provides that an association board may take binding action only at a board meeting;
- ▶ provides circumstances under which an association may place a restriction on a rental lot or rental unit; and
- ▶ provides that a matter discussed at a closed board meeting is not subject to discovery in a civil action in a state court under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 57-8-3, as last amended by Laws of Utah 2016, Chapters 210 and 255
- 57-8-10.1, as last amended by Laws of Utah 2015, Chapter 22
- 57-8-57, as enacted by Laws of Utah 2015, Chapter 387
- 57-8a-102, as last amended by Laws of Utah 2015, Chapters 22, 34, 213, 325, and 387
- 57-8a-209, as last amended by Laws of Utah 2015, Chapters 22 and 258
- 57-8a-218, as last amended by Laws of Utah 2015, Chapter 22
- 57-8a-226, as enacted by Laws of Utah 2015, Chapter 387

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

Section 1. Section 57-8-3 is amended to read:**57-8-3. Definitions.**

As used in this chapter:

- (1) "Assessment" means any charge imposed by the association, including:
- (a) common expenses on or against a unit owner pursuant to the provisions of the declaration, bylaws, or this chapter; and

(b) an amount that an association of unit owners assesses to a unit owner under Subsection 57-8-43(9)(g).

(2) "Association of unit owners" or "association" means all of the unit owners:

(a) acting as a group in accordance with the declaration and bylaws; or

(b) organized as a legal entity in accordance with the declaration.

(3) "Building" means a building, containing units, and comprising a part of the property.

(4) "Commercial condominium project" means a condominium project that has no residential units within the project.

(5) "Common areas and facilities" unless otherwise provided in the declaration or lawful amendments to the declaration means:

(a) the land included within the condominium project, whether leasehold or in fee simple;

(b) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and storage spaces;

(d) the premises for lodging of janitors or persons in charge of the property;

(e) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;

(f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(g) such community and commercial facilities as may be provided for in the declaration; and

(h) all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

(6) "Common expenses" means:

(a) all sums lawfully assessed against the unit owners;

(b) expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(c) expenses agreed upon as common expenses by the association of unit owners; and

(d) expenses declared common expenses by this chapter, or by the declaration or the bylaws.

(7) "Common profits," unless otherwise provided in the declaration or lawful amendments to the declaration, means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(8) "Condominium" means the ownership of a single unit in a multiunit project together with an

undivided interest in common in the common areas and facilities of the property.

(9) “Condominium plat” means a plat or plats of survey of land and units prepared in accordance with Section 57-8-13.

(10) “Condominium project” means a real estate condominium project; a plan or project whereby two or more units, whether contained in existing or proposed apartments, commercial or industrial buildings or structures, or otherwise, are separately offered or proposed to be offered for sale. Condominium project also means the property when the context so requires.

(11) “Condominium unit” means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference in this chapter to a condominium unit includes both a physical unit together with its appurtenant undivided interest in the common areas and facilities and a time period unit together with its appurtenant undivided interest, unless the reference is specifically limited to a time period unit.

(12) “Contractible condominium” means a condominium project from which one or more portions of the land within the project may be withdrawn in accordance with provisions of the declaration and of this chapter. If the withdrawal can occur only by the expiration or termination of one or more leases, then the condominium project is not a contractible condominium within the meaning of this chapter.

(13) “Convertible land” means a building site which is a portion of the common areas and facilities, described by metes and bounds, within which additional units or limited common areas and facilities may be created in accordance with this chapter.

(14) “Convertible space” means a portion of the structure within the condominium project, which portion may be converted into one or more units or common areas and facilities, including limited common areas and facilities in accordance with this chapter.

(15) “Declarant” means all persons who execute the declaration or on whose behalf the declaration is executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this subsection who come to stand in the same relation to the condominium project as their predecessors also come within this definition.

(16) “Declaration” means the instrument by which the property is submitted to the provisions of this act, as it from time to time may be lawfully amended.

(17) “Electrical corporation” means the same as that term is defined in Section 54-2-1.

(18) “Expandable condominium” means a condominium project to which additional land or an interest in it may be added in accordance with the declaration and this chapter.

(19) “Gas corporation” means the same as that term is defined in Section 54-2-1.

(20) “Governing documents”:

(a) means a written instrument by which an association of unit owners may:

(i) exercise powers; or

(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association of unit owners; and

(b) includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

(iv) a declaration of covenants, conditions, and restrictions; and

(v) rules of the association of unit owners.

(21) “Independent third party” means a person that:

(a) is not related to the unit owner;

(b) shares no pecuniary interests with the unit owner; and

(c) purchases the unit in good faith and without the intent to defraud a current or future lienholder.

(22) “Leasehold condominium” means a condominium project in all or any portion of which each unit owner owns an estate for years in his unit, or in the land upon which that unit is situated, or both, with all those leasehold interests to expire naturally at the same time. A condominium project including leased land, or an interest in the land, upon which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.

(23) “Limited common areas and facilities” means those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units.

(24) “Majority” or “majority of the unit owners,” unless otherwise provided in the declaration or lawful amendments to the declaration, means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common areas and facilities.

(25) “Management committee” means the committee as provided in the declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules covering the operation and maintenance of the property.

~~(27)~~ (26) “[~~Meeting~~] Management committee meeting” means a gathering of a management committee, whether in person or by means of

electronic communication, at which the management committee can take binding action.

~~[(26)]~~ (27) (a) “Means of electronic communication” means an electronic system that allows individuals to communicate orally in real time.

(b) “Means of electronic communication” includes:

- (i) web conferencing;
- (ii) video conferencing; and
- (iii) telephone conferencing.

(28) “Mixed-use condominium project” means a condominium project that has both residential and commercial units in the condominium project.

(29) “Par value” means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement may not be considered to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure may affect the par value of any unit, or any undivided interest in the common areas and facilities, voting rights in the unit owners’ association, liability for common expenses, or right to common profits, assigned on the basis thereof.

(30) “Period of administrative control” means the period of control described in Subsection 57-8-16.5(1).

(31) “Person” means an individual, corporation, partnership, association, trustee, or other legal entity.

(32) “Property” means the land, whether leasehold or in fee simple, the building, if any, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(33) “Record,” “recording,” “recorded,” and “recorder” have the meaning stated in Chapter 3, Recording of Documents.

(34) “Rentals” or “rental unit” means:

(a) a unit that:

(i) is not owned by an entity or trust; and

(ii) is occupied by an individual while the unit owner is not occupying the unit as the unit owner’s primary residence; or

(b) an occupied unit owned by an entity or trust, regardless of who occupies the unit.

~~[(34)]~~ (35) “Size” means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the record of survey map and rounded off to a whole number. Certain spaces within the units including attic, basement, or garage space may be omitted from the calculation or be partially discounted by the use of a ratio, if the same basis of calculation is employed for all units in the condominium project and if that basis is described in the declaration.

~~[(35)]~~ (36) “Time period unit” means an annually recurring part or parts of a year specified in the declaration as a period for which a unit is separately owned and includes a timeshare estate as defined in Section 57-19-2.

~~[(36)]~~ (37) “Unconstructed unit” means a unit that:

(a) is intended, as depicted in the condominium plat, to be fully or partially contained in a building; and

(b) is not constructed.

~~[(37)]~~ (38) (a) “Unit” means a separate part of the property intended for any type of independent use, which is created by the recording of a declaration and a condominium plat that describes the unit boundaries.

(b) “Unit” includes one or more rooms or spaces located in one or more floors or a portion of a floor in a building.

(c) “Unit” includes a convertible space, in accordance with Subsection 57-8-13.4(3).

~~[(38)]~~ (39) “Unit number” means the number, letter, or combination of numbers and letters designating the unit in the declaration and in the record of survey map.

~~[(39)]~~ (40) “Unit owner” means the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in the declaration or, in the case of a leasehold condominium project, the person or persons whose leasehold interest or interests in the condominium unit extend for the entire balance of the unexpired term or terms.

Section 2. Section 57-8-10.1 is amended to read:

57-8-10.1. Rental restrictions.

(1) (a) Subject to Subsections (1)(b), (5), and (6), an association of unit owners may:

(i) create restrictions on the number and term of rentals in a condominium project; or

(ii) prohibit rentals in the condominium project.

(b) An association of unit owners that creates a rental restriction or prohibition in accordance with Subsection (1)(a) shall create the rental restriction or prohibition in a declaration or by amending the declaration.

(2) If an association of unit owners prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:

(a) a provision that requires a condominium project to exempt from the rental restrictions the following unit owner and the unit owner's unit:

(i) a unit owner in the military for the period of the unit owner's deployment;

(ii) a unit occupied by a unit owner's parent, child, or sibling;

(iii) a unit owner whose employer has relocated the unit owner for no less than two years; ~~or~~

(iv) a unit owned by an entity that is occupied by an individual who:

(A) has voting rights under the entity's organizing documents; and

(B) has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or

~~(iv)~~ (v) a unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:

(A) a current resident of the unit; or

(B) the parent, child, or sibling of the current resident of the unit;

(b) a provision that allows a unit owner who has a rental in the condominium project before the time the rental restriction described in Subsection (1)(a) is recorded with the county recorder of the county in which the condominium project is located to continue renting until:

(i) the unit owner occupies the unit; or

(ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the unit, occupies the unit; and

(c) a requirement that the association of unit owners create, by rule or resolution, procedures to:

(i) determine and track the number of rentals and units in the condominium project subject to the provisions described in Subsections (2)(a) and (b); and

(ii) ensure consistent administration and enforcement of the rental restrictions.

(3) For purposes of Subsection (2)(b), a transfer occurs when one or more of the following occur:

(a) the conveyance, sale, or other transfer of a unit by deed;

(b) the granting of a life estate in the unit; or

(c) if the unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

(4) This section does not limit or affect residency age requirements for an association of unit owners that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.

(5) A declaration or amendment to a declaration recorded before transfer of the first unit from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (2)(~~a~~).

(6) (a) Subsections (1) through (5) do not apply to:

~~(a)~~ (i) a condominium project that contains a time period unit as defined in Section 57-8-3;

~~(b)~~ (ii) any other form of timeshare interest as defined in Section 57-19-2; or

~~(c)~~ (iii) subject to Subsection (6)(b), a condominium project in which the initial declaration is recorded before May 12, 2009, unless, on or after May 12, 2015, the association of unit owners:

~~(i)~~ (A) adopts a rental restriction or prohibition; or

~~(ii)~~ (B) amends an existing rental restriction or prohibition.

(b) An association that adopts a rental restriction or amends an existing rental restriction or prohibition before May 9, 2017, is not required to include the exemption described in Subsection (2)(a)(iv).

(7) Notwithstanding this section, an association of unit owners may restrict or prohibit rentals without an exception described in Subsection (2) if:

(a) the restriction or prohibition receives unanimous approval by all unit owners; and

(b) when the restriction or prohibition requires an amendment to the association of unit owners' declaration, the association of unit owners fulfills all other requirements for amending the declaration described in the association of unit owners' governing documents.

(8) Except as provided in Subsection (9), an association of unit owners may not require a unit owner who owns a rental unit to:

(a) obtain the association of unit owners' approval of a prospective renter;

(b) give the association of unit owners:

(i) a copy of a rental application;

(ii) a copy of a renter's or prospective renter's credit information or credit report;

(iii) a copy of a renter's or prospective renter's background check; or

(iv) documentation to verify the renter's age; or

(c) pay an additional assessment, fine, or fee because the unit is a rental unit.

(9) (a) A unit owner who owns a rental unit shall give an association of unit owners the documents described in Subsection (8)(b) if the unit owner is

required to provide the documents by court order or as part of discovery under the Utah Rules of Civil Procedure.

(b) If an association of unit owners' declaration lawfully prohibits or restricts occupancy of the units by a certain class of individuals, the association of unit owners may require a unit owner who owns a rental unit to give the association of unit owners the information described in Subsection (8)(b), if:

(i) the information helps the association of unit owners determine whether the renter's occupancy of the unit complies with the association of unit owners' declaration; and

(ii) the association of unit owners uses the information to determine whether the renter's occupancy of the unit complies with the association of unit owners' declaration.

(10) The provisions of Subsections (8) and (9) apply to an association of unit owners regardless of when the association of unit owners is created.

Section 3. Section 57-8-57 is amended to read:

57-8-57. Management committee meetings -- Open meetings.

(1) Except for an action taken without a meeting in accordance with Section 16-6a-813, a management committee may take action only at a management committee meeting.

[(4)] (2) (a) At least 48 hours before a management committee meeting, the association of unit owners shall give written notice of the management committee meeting via email to each unit owner who requests notice of a management committee meeting, unless:

(i) notice of the management committee meeting is included in a meeting schedule that was previously provided to the unit owner; or

(ii) (A) the management committee meeting is to address an emergency; and

(B) each management committee member receives notice of the management committee meeting less than 48 hours before the management committee meeting.

(b) A notice described in Subsection [(4)] (2)(a) shall:

(i) be delivered to the unit owner by email, to the email address that the unit owner provides to the management committee or the association of unit owners;

(ii) state the time and date of the management committee meeting;

(iii) state the location of the management committee meeting; and

(iv) if a management committee member may participate by means of electronic communication, provide the information necessary to allow the unit owner to participate by the available means of electronic communication.

[(2)] (3) (a) Except as provided in Subsection [(2)] (3)(b), a management committee meeting shall be open to each unit owner or the unit owner's representative if the representative is designated in writing.

(b) A management committee may close a management committee meeting to:

(i) consult with an attorney for the purpose of obtaining legal advice;

(ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings;

(iii) discuss a personnel matter;

(iv) discuss a matter relating to contract negotiations, including review of a bid or proposal;

(v) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or

(vi) discuss a delinquent assessment or fine.

[(3)] (4) (a) At each management committee meeting, the management committee shall provide each unit owner a reasonable opportunity to offer comments.

(b) The management committee may limit the comments described in Subsection [(3)] (4)(a) to one specific time period during the meeting.

[(4)] (5) A management committee member may not avoid or obstruct the requirements of this section.

[(5)] (6) Nothing in this section shall affect the validity or enforceability of an action of a management committee.

[(6)] (7) The provisions of this section do not apply during the period of administrative control.

[(7)] (8) The provisions of this section apply regardless of when the condominium project's initial declaration was recorded.

[(8)] (9) (a) Subject to Subsection [(8)] (9)(d), if an association of unit owners fails to comply with a provision of Subsections (1) through [(4)] (5) and fails to remedy the noncompliance during the 90-day period described in Subsection [(8)] (9)(d), a unit owner may file an action in court for:

(i) injunctive relief requiring the association of unit owners to comply with the provisions of Subsections (1) through [(4)] (5);

(ii) \$500 or actual damages, whichever is greater; or

(iii) any other relief provided by law.

(b) In an action described in Subsection [(8)] (9)(a), the court may award costs and reasonable attorney fees to the prevailing party.

(c) Upon motion from the unit owner, notice to the association of unit owners, and a hearing in which the court finds a likelihood that the association of unit owners has failed to comply with a provision of

Subsections (1) through [(4)] (5), the court may order the association of unit owners to immediately comply with the provisions of Subsections (1) through [(4)] (5).

(d) At least 90 days before the day on which a unit owner files an action described in Subsection [(8)] (9)(a), the unit owner shall deliver a written notice to the association of unit owners that states:

(i) the unit owner's name, address, telephone number, and email address;

(ii) each requirement of Subsections (1) through [(4)] (5) with which the association of unit owners has failed to comply;

(iii) a demand that the association of unit owners comply with each requirement with which the association of unit owners has failed to comply; and

(iv) a date by which the association of unit owners shall remedy the association of unit owners' noncompliance that is at least 90 days after the day on which the unit owner delivers the notice to the association of unit owners.

Section 4. Section 57-8a-102 is amended to read:

57-8a-102. Definitions.

As used in this chapter:

(1) (a) "Assessment" means a charge imposed or levied:

(i) by the association;

(ii) on or against a lot or a lot owner; and

(iii) pursuant to a governing document recorded with the county recorder.

(b) "Assessment" includes:

(i) a common expense; and

(ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).

(2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or other legal entity, any member of which:

(i) is an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents; and

(ii) by virtue of membership or ownership of a residential lot is obligated to pay:

(A) real property taxes;

(B) insurance premiums;

(C) maintenance costs; or

(D) for improvement of real property not owned by the member.

(b) "Association" or "homeowner association" does not include an association created under Title 57, Chapter 8, Condominium Ownership Act.

[(16)] (3) "[Meeting] Board meeting" means a gathering of a board, whether in person or by means

of electronic communication, at which the board can take binding action.

[(3)] (4) "Board of directors" or "board" means the entity, regardless of name, with primary authority to manage the affairs of the association.

[(4)] (5) "Common areas" means property that the association:

(a) owns;

(b) maintains;

(c) repairs; or

(d) administers.

[(5)] (6) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.

[(6)] (7) "Declarant":

(a) means the person who executes a declaration and submits it for recording in the office of the recorder of the county in which the property described in the declaration is located; and

(b) includes the person's successor and assign.

[(7)] (8) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

[(8)] (9) "Gas corporation" means the same as that term is defined in Section 54-2-1.

[(9)] (10) (a) "Governing documents" means a written instrument by which the association may:

(i) exercise powers; or

(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association.

(b) "Governing documents" includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

(iv) a declaration of covenants, conditions, and restrictions; and

(v) rules of the association.

[(10)] (11) "Independent third party" means a person that:

(a) is not related to the owner of the residential lot;

(b) shares no pecuniary interests with the owner of the residential lot; and

(c) purchases the residential lot in good faith and without the intent to defraud a current or future lienholder.

[(11)] (12) "Judicial foreclosure" means a foreclosure of a lot:

(a) for the nonpayment of an assessment; and

(b) (i) in the manner provided by law for the foreclosure of a mortgage on real property; and

(ii) as provided in Part 3, Collection of Assessments.

~~[(42)]~~ (13) “Lease” or “leasing” means regular, exclusive occupancy of a lot:

(a) by a person or persons other than the owner; and

(b) for which the owner receives a consideration or benefit, including a fee, service, gratuity, or emolument.

~~[(43)]~~ (14) “Limited common areas” means common areas described in the declaration and allocated for the exclusive use of one or more lot owners.

~~[(44)]~~ (15) “Lot” means:

(a) a lot, parcel, plot, or other division of land:

(i) designated for separate ownership or occupancy; and

(ii) (A) shown on a recorded subdivision plat; or

(B) the boundaries of which are described in a recorded governing document; or

(b) (i) a unit in a condominium association if the condominium association is a part of a development; or

(ii) a unit in a real estate cooperative if the real estate cooperative is part of a development.

~~[(45)]~~ (16) (a) “Means of electronic communication” means an electronic system that allows individuals to communicate orally in real time.

(b) “Means of electronic communication” includes:

(i) web conferencing;

(ii) video conferencing; and

(iii) telephone conferencing.

(17) “Mixed-use project” means a project under this chapter that has both residential and commercial lots in the project.

(18) “Nonjudicial foreclosure” means the sale of a lot:

(a) for the nonpayment of an assessment; and

(b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through 57-1-34; and

(ii) as provided in Part 3, Collection of Assessments.

(19) “Period of administrative control” means the period during which the person who filed the association’s governing documents or the person’s successor in interest retains authority to:

(a) appoint or remove members of the association’s board of directors; or

(b) exercise power or authority assigned to the association under the association’s governing documents.

(20) “Rentals” or “rental lot” means:

(a) a lot that:

(i) is not owned by an entity or trust; and

(ii) is occupied by an individual while the lot owner is not occupying the lot as the lot owner’s primary residence; or

(b) an occupied lot owned by an entity or trust, regardless of who occupies the lot.

~~[(20)]~~ (21) “Residential lot” means a lot, the use of which is limited by law, covenant, or otherwise to primarily residential or recreational purposes.

Section 5. Section 57-8a-209 is amended to read:

57-8a-209. Rental restrictions.

(1) (a) Subject to Subsections (1)(b), (5), and (6), an association may:

(i) create restrictions on the number and term of rentals in an association; or

(ii) prohibit rentals in the association.

(b) An association that creates a rental restriction or prohibition in accordance with Subsection (1)(a) shall create the rental restriction or prohibition in a recorded declaration of covenants, conditions, and restrictions, or by amending the recorded declaration of covenants, conditions, and restrictions.

(2) If an association prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:

(a) a provision that requires the association to exempt from the rental restrictions the following lot owner and the lot owner’s lot:

(i) a lot owner in the military for the period of the lot owner’s deployment;

(ii) a lot occupied by a lot owner’s parent, child, or sibling;

(iii) a lot owner whose employer has relocated the lot owner for no less than two years; ~~or~~

(iv) a lot owned by an entity that is occupied by an individual who:

(A) has voting rights under the entity’s organizing documents; and

(B) has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or

~~[(iv)]~~ (v) a lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:

(A) the estate of a current resident of the lot; or

(B) the parent, child, or sibling of the current resident of the lot;

(b) a provision that allows a lot owner who has a rental in the association before the time the rental restriction described in Subsection (1)(a) is recorded with the county recorder of the county in which the association is located to continue renting until:

(i) the lot owner occupies the lot; or

(ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot; and

(c) a requirement that the association create, by rule or resolution, procedures to:

(i) determine and track the number of rentals and lots in the association subject to the provisions described in Subsections (2)(a) and (b); and

(ii) ensure consistent administration and enforcement of the rental restrictions.

(3) For purposes of Subsection (2)(b), a transfer occurs when one or more of the following occur:

(a) the conveyance, sale, or other transfer of a lot by deed;

(b) the granting of a life estate in the lot; or

(c) if the lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

(4) This section does not limit or affect residency age requirements for an association that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.

(5) A declaration of covenants, conditions, and restrictions or amendments to the declaration of covenants, conditions, and restrictions recorded before the transfer of the first lot from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (2)(a).

(6) (a) Subsections (1) through (5) do not apply to:

(a) (i) an association that contains a time period unit as defined in Section 57-8-3;

(a) (ii) any other form of timeshare interest as defined in Section 57-19-2; or

(a) (iii) subject to Subsection (6)(b), an association ~~in which the initial declaration of covenants, conditions, and restrictions is recorded~~ that is formed before May 12, 2009, unless, on or after May 12, 2015, the association:

(A) adopts a rental restriction or prohibition; or

(B) amends an existing rental restriction or prohibition.

(b) An association that adopts a rental restriction or amends an existing rental restriction or

prohibition before May 9, 2017, is not required to include the exemption described in Subsection (2)(a)(iv).

(7) Notwithstanding this section, an association may restrict or prohibit rentals without an exception described in Subsection (2) if:

(a) the restriction or prohibition receives unanimous approval by all lot owners; and

(b) when the restriction or prohibition requires an amendment to the association's recorded declaration of covenants, conditions, and restrictions, the association fulfills all other requirements for amending the recorded declaration of covenants, conditions, and restrictions described in the association's governing documents.

(8) Except as provided in Subsection (9), an association may not require a lot owner who owns a rental lot to:

(a) obtain the association's approval of a prospective renter;

(b) give the association:

(i) a copy of a rental application;

(ii) a copy of a renter's or prospective renter's credit information or credit report;

(iii) a copy of a renter's or prospective renter's background check; or

(iv) documentation to verify the renter's age; or

(c) pay an additional assessment, fine, or fee because the lot is a rental lot.

(9) (a) A lot owner who owns a rental lot shall give an association the documents described in Subsection (8)(b) if the lot owner is required to provide the documents by court order or as part of discovery under the Utah Rules of Civil Procedure.

(b) If an association's declaration of covenants, conditions, and restrictions lawfully prohibits or restricts occupancy of the lots by a certain class of individuals, the association may require a lot owner who owns a rental lot to give the association the information described in Subsection (8)(b), if:

(i) the information helps the association determine whether the renter's occupancy of the lot complies with the association's declaration of covenants, conditions, and restrictions; and

(ii) the association uses the information to determine whether the renter's occupancy of the lot complies with the association's declaration of covenants, conditions, and restrictions.

(10) The provisions of Subsections (8) and (9) apply to an association regardless of when the association is created.

Section 6. Section 57-8a-218 is amended to read:

57-8a-218. Equal treatment by rules required -- Limits on association rules and design criteria.

(1) (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated lot owners similarly.

(b) Notwithstanding Subsection (1)(a), a rule may:

(i) vary according to the level and type of service that the association provides to lot owners; ~~and~~

(ii) differ between residential and nonresidential uses~~[-]; and~~

(iii) for a lot that an owner leases for a term of less than 30 days, impose a reasonable limit on the number of individuals who may use the common areas and facilities as guests of the lot tenant or lot owner.

(2) (a) If a lot owner owns a rental lot and is in compliance with the association's governing documents and any rule that the association adopts under Subsection (4), a rule may not treat the lot owner differently because the lot owner owns a rental lot.

(b) Notwithstanding Subsection (2)(a), a rule may:

(i) limit or prohibit a rental lot owner from using the common areas for purposes other than attending an association meeting or managing the rental lot;

(ii) if the rental lot owner retains the right to use the association's common areas, even occasionally~~[-];~~

(A) charge a rental lot owner a fee to use the common areas; or

(B) for a lot that an owner leases for a term of less than 30 days, impose a reasonable limit on the number of individuals who may use the common areas and facilities as guests of the lot tenant or lot owner; or

(iii) include a provision in the association's governing documents that:

(A) requires each tenant of a rental lot to abide by the terms of the governing documents; and

(B) holds the tenant and the rental lot owner jointly and severally liable for a violation of a provision of the governing documents.

(3) (a) A rule criterion may not abridge the rights of a lot owner to display religious and holiday signs, symbols, and decorations inside a dwelling on a lot.

(b) Notwithstanding Subsection (3)(a), the association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling or lot.

(4) (a) A rule may not regulate the content of political signs.

(b) Notwithstanding Subsection (4)(a):

(i) a rule may regulate the time, place, and manner of posting a political sign; and

(ii) an association design provision may establish design criteria for political signs.

(5) (a) A rule may not interfere with the freedom of a lot owner to determine the composition of the lot owner's household.

(b) Notwithstanding Subsection (5)(a), an association may:

(i) require that all occupants of a dwelling be members of a single housekeeping unit; or

(ii) limit the total number of occupants permitted in each residential dwelling on the basis of the residential dwelling's:

(A) size and facilities; and

(B) fair use of the common areas.

(6) (a) A rule may not interfere with an activity of a lot owner within the confines of a dwelling or lot, to the extent that the activity is in compliance with local laws and ordinances.

(b) Notwithstanding Subsection (6)(a), a rule may prohibit an activity within a dwelling on an owner's lot if the activity:

(i) is not normally associated with a project restricted to residential use; or

(ii) (A) creates monetary costs for the association or other lot owners;

(B) creates a danger to the health or safety of occupants of other lots;

(C) generates excessive noise or traffic;

(D) creates unsightly conditions visible from outside the dwelling;

(E) creates an unreasonable source of annoyance to persons outside the lot; or

(F) if there are attached dwellings, creates the potential for smoke to enter another lot owner's dwelling, the common areas, or limited common areas.

(c) If permitted by law, an association may adopt rules described in Subsection (6)(b) that affect the use of or behavior inside the dwelling.

(7) (a) A rule may not, to the detriment of a lot owner and over the lot owner's written objection to the board, alter the allocation of financial burdens among the various lots.

(b) Notwithstanding Subsection (7)(a), an association may:

(i) change the common areas available to a lot owner;

(ii) adopt generally applicable rules for the use of common areas; or

(iii) deny use privileges to a lot owner who:

(A) is delinquent in paying assessments;

(B) abuses the common areas; or

(C) violates the governing documents.

(c) This Subsection (7) does not permit a rule that:

(i) alters the method of levying assessments; or
 (ii) increases the amount of assessments as provided in the declaration.

(8) (a) Subject to Subsection (8)(b), a rule may not:

(i) prohibit the transfer of a lot; or
 (ii) require the consent of the association or board to transfer a lot.

(b) Unless contrary to a declaration, a rule may require a minimum lease term.

(9) (a) A rule may not require a lot owner to dispose of personal property that was in or on a lot before the adoption of the rule or design criteria if the personal property was in compliance with all rules and other governing documents previously in force.

(b) The exemption in Subsection (9)(a):

(i) applies during the period of the lot owner's ownership of the lot; and

(ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of the rule described in Subsection (9)(a).

(10) A rule or action by the association or action by the board may not unreasonably impede a declarant's ability to satisfy existing development financing for community improvements and right to develop:

(a) the project; or

(b) other properties in the vicinity of the project.

(11) A rule or association or board action may not interfere with:

(a) the use or operation of an amenity that the association does not own or control; or

(b) the exercise of a right associated with an easement.

(12) A rule may not divest a lot owner of the right to proceed in accordance with a completed application for design review, or to proceed in accordance with another approval process, under the terms of the governing documents in existence at the time the completed application was submitted by the owner for review.

(13) Unless otherwise provided in the declaration, an association may by rule:

(a) regulate the use, maintenance, repair, replacement, and modification of common areas;

(b) impose and receive any payment, fee, or charge for:

(i) the use, rental, or operation of the common areas, except limited common areas; and

(ii) a service provided to a lot owner;

(c) impose a charge for a late payment of an assessment; or

(d) provide for the indemnification of the association's officers and board consistent with

Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

(14) A rule shall be reasonable.

(15) A declaration, or an amendment to a declaration, may vary any of the requirements of Subsections (1) through (13), except Subsection (1)(b)(ii).

(16) A rule may not be inconsistent with a provision of the association's declaration, bylaws, or articles of incorporation.

(17) This section applies to an association regardless of when the association is created.

Section 7. Section 57-8a-226 is amended to read:

57-8a-226. Board meetings -- Open board meetings.

(1) Except for an action taken without a meeting in accordance with Section 16-6a-813, a board may take action only at a board meeting.

[~~(1)~~] (2) (a) At least 48 hours before a board meeting, the association shall give written notice of the board meeting via email to each lot owner who requests notice of a board meeting, unless:

(i) notice of the board meeting is included in a board meeting schedule that was previously provided to the lot owner; or

(ii) (A) the board meeting is to address an emergency; and

(B) each board member receives notice of the board meeting less than 48 hours before the board meeting.

(b) A notice described in Subsection [~~(1)~~] (2)(a) shall:

(i) be delivered to the lot owner by email, to the email address that the lot owner provides to the board or the association;

(ii) state the time and date of the board meeting;

(iii) state the location of the board meeting; and

(iv) if a board member may participate by means of electronic communication, provide the information necessary to allow the lot owner to participate by the available means of electronic communication.

[~~(2)~~] (3) (a) Except as provided in Subsection [~~(2)~~] (3)(b), a board meeting shall be open to each lot owner or the lot owner's representative if the representative is designated in writing.

(b) A board may close a board meeting to:

(i) consult with an attorney for the purpose of obtaining legal advice;

(ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings;

(iii) discuss a personnel matter;

(iv) discuss a matter relating to contract negotiations, including review of a bid or proposal;

(v) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or

(vi) discuss a delinquent assessment or fine.

(c) Any matter discussed at a board meeting closed pursuant to Subsection (3)(b)(ii) is not subject to discovery in a civil action in a state court under the Utah Rules of Civil Procedure.

~~[(3)]~~ (4) (a) At each board meeting, the board shall provide each lot owner a reasonable opportunity to offer comments.

(b) The board may limit the comments described in Subsection ~~[(3)]~~ (4)(a) to one specific time period during the board meeting.

~~[(4)]~~ (5) A board member may not avoid or obstruct the requirements of this section.

~~[(5)]~~ (6) Nothing in this section shall affect the validity or enforceability of an action of a board.

~~[(6)]~~ (7) The provisions of this section do not apply during the period of administrative control.

~~[(7)]~~ (8) The provisions of this section apply regardless of when the association's first governing document was recorded.

~~[(8)]~~ (9) (a) Subject to Subsection ~~[(8)]~~ (9)(d), if an association fails to comply with a provision of Subsections (1) through ~~[(4)]~~ (5) and fails to remedy the noncompliance during the 90-day period described in Subsection ~~[(8)]~~ (9)(d), a lot owner may file an action in court for:

(i) injunctive relief requiring the association to comply with the provisions of Subsections (1) through ~~[(4)]~~ (5);

(ii) \$500 or actual damages, whichever is greater; or

(iii) any other relief provided by law.

(b) In an action described in Subsection ~~[(8)]~~ (9)(a), the court may award costs and reasonable attorney fees to the prevailing party.

(c) Upon motion from the lot owner, notice to the association, and a hearing in which the court finds a likelihood that the association has failed to comply with a provision of Subsections (1) through ~~[(4)]~~ (5), the court may order the association to immediately comply with the provisions of Subsections (1) through ~~[(4)]~~ (5).

(d) At least 90 days before the day on which a lot owner files an action described in Subsection ~~[(8)]~~ (9)(a), the lot owner shall deliver a written notice to the association that states:

(i) the lot owner's name, address, telephone number, and email address;

(ii) each requirement of Subsections (1) through ~~[(4)]~~ (5) with which the association has failed to comply;

(iii) a demand that the association comply with each requirement with which the association has failed to comply; and

(iv) a date by which the association shall remedy the association's noncompliance that is at least 90 days after the day on which the lot owner delivers the notice to the association.

CHAPTER 132**H. B. 84**

Passed March 2, 2017

Approved March 20, 2017

Effective May 9, 2017

WATER LAW - NONUSE APPLICATIONS

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill modifies provisions regarding a nonuse application.

Highlighted Provisions:

This bill:

- ▶ states that an approved nonuse application excuses the requirement of beneficial use of water from the date of filing;
- ▶ states that the time during which an approved nonuse application is in effect does not count toward the seven-year time limit for purposes of forfeiture;
- ▶ states that the filing or approval of a nonuse application or a series of nonuse applications does not:
 - constitute a beneficial use of a water right;
 - protect a water right that is already subject to forfeiture; and
 - bar a water right owner from using the water under the water right, as permitted under the water right, or claiming a forfeiture defense;
- ▶ modifies the procedure for instituting a forfeiture action; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

73-1-4, as last amended by Laws of Utah 2016, Chapter 54

73-1-4.5, as enacted by Laws of Utah 2002, Chapter 19

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

Section 1. Section 73-1-4 is amended to read:**73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within seven years -- Nonuse application.**

(1) As used in this section:

(a) "Public entity" means:

- (i) the United States;
- (ii) an agency of the United States;
- (iii) the state;
- (iv) a state agency;

(v) a political subdivision of the state; or

(vi) an agency of a political subdivision of the state.

(b) "Public water supplier" means an entity that:

(i) supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and

(ii) is:

(A) a public entity;

(B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public Service Commission;

(C) a community water system:

(I) that:

(Aa) supplies water to at least 100 service connections used by year-round residents; or

(Bb) regularly serves at least 200 year-round residents; and

(II) whose voting members:

(Aa) own a share in the community water system;

(Bb) receive water from the community water system in proportion to the member's share in the community water system; and

(Cc) pay the rate set by the community water system based on the water the member receives; or

(D) a water users association:

(I) in which one or more public entities own at least 70% of the outstanding shares; and

(II) that is a local sponsor of a water project constructed by the United States Bureau of Reclamation.

(c) "Shareholder" means the same as that term is defined in Section 73-3-3.5.

(d) "Water company" means the same as that term is defined in Section 73-3-3.5.

(e) "Water supply entity" means an entity that supplies water as a utility service or for irrigation purposes and is also:

(i) a municipality, water conservancy district, metropolitan water district, irrigation district, or other public agency;

(ii) a water company regulated by the Public Service Commission; or

(iii) any other owner of a community water system.

(2) (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the appropriator's successor in interest abandons or ceases to beneficially use all or a portion of a water right for a period of at least seven years, the water right or the unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c).

(b) (i) An appropriator or the appropriator's successor in interest may file an application for nonuse with the state engineer.

~~(ii) If a person described in Subsection (2)(b)(i) files and receives approval on a nonuse application, nonuse of the water right subject to the application is not counted toward a seven-year period described in Subsection (2)(a) during the period of time beginning on the day on which the person files the application and ending on the day on which the application expires without being renewed.]~~

~~(iii) If a person described in Subsection (2)(b)(i) files and receives approval on successive, overlapping nonuse applications, nonuse of the water right subject to the applications is not counted toward a seven-year period described in Subsection (2)(a) during the period of time beginning on the day on which the person files the first application and ending on the day on which the last application expires without being renewed.]~~

~~(iv) Approval of one or more nonuse applications, or successive overlapping nonuse applications, does not protect a water right that is already subject to forfeiture under Subsection (2)(a) for full or partial nonuse of the water right, nor does the approval of one or more nonuse applications constitute beneficial use of the water for purposes of calculating the 15-year period in Subsection (2)(e)(i-).]~~

~~(v) (ii) A nonuse application may be filed on all or a portion of the water right, including water rights held by a water company.~~

~~(vi) (iii) After giving written notice to the water company, a shareholder may file a nonuse application with the state engineer on the water represented by the stock.~~

~~(vii) (A) The approval of a nonuse application excuses the requirement of beneficial use of water from the date of filing.~~

~~(viii) (B) The time during which an approved nonuse application is in effect does not count toward the seven-year period described in Subsection (2)(a).~~

~~(ix) The filing or approval of a nonuse application or a series of nonuse applications under Subsection (3) does not:~~

~~(A) constitute beneficial use of a water right;~~

~~(B) protect a water right that is already subject to forfeiture under this section; or~~

~~(C) bar a water right owner from:~~

~~(I) using the water under the water right as permitted under the water right; or~~

~~(II) claiming the benefit of Subsection (2)(e) or any other forfeiture defense provided by law.~~

~~(c) (i) Except as provided in Subsection (2)(e)(ii), a water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced:~~

~~(A) within 15 years from the end of the latest period of nonuse of at least seven years[-]; or~~

~~(B) within the combined time of 15 years from the end of the most recent period of nonuse of at least~~

~~seven years and the time the water right was subject to one or more nonuse applications.~~

~~(ii) (A) The state engineer, in a proposed determination of rights filed with the court and prepared in accordance with Section 73-4-11, may not assert that a water right was forfeited unless [a] the most recent period of nonuse of seven years ends or occurs:~~

~~(I) during the 15 years immediately preceding the day on which the state engineer files the proposed determination of rights with the court[-]; or~~

~~(II) during the combined time immediately preceding the day on which the state engineer files the proposed determination of rights consisting of 15 years and the time the water right was subject to one or more approved nonuse applications.~~

~~(B) After the day on which a proposed determination of rights is filed with the court a person may not assert that a water right subject to that determination was forfeited [during the 15-year period described in Subsection (2)(e)(ii)(A),] before the issuance of the proposed determination, unless the state engineer asserts forfeiture in the proposed determination, or a person [makes], in accordance with Section 73-4-11, makes an objection to the proposed determination that asserts forfeiture.~~

~~(iii) A water right, found to be valid in a decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim of forfeiture based on a seven-year period of nonuse that begins after the day on which the state engineer filed the related proposed determination of rights with the court, unless the decree provides otherwise.~~

~~(iv) If in a judicial action a court declares a water right forfeited, on the date on which the water right is forfeited:~~

~~(A) the right to beneficially use the water reverts to the public; and~~

~~(B) the water made available by the forfeiture:~~

~~(I) first, satisfies other water rights in the hydrologic system in order of priority date; and~~

~~(II) second, may be appropriated as provided in this title.~~

~~(d) Except as provided in Subsection (2)(e), this section applies whether the unused or abandoned water or a portion of the water is:~~

~~(i) permitted to run to waste; or~~

~~(ii) beneficially used by others without right with the knowledge of the water right holder.~~

~~(e) This section does not apply to:~~

~~(i) the beneficial use of water according to a lease or other agreement with the appropriator or the appropriator's successor in interest;~~

~~(ii) a water right if its place of use is contracted under an approved state agreement or federal conservation following program;~~

(iii) those periods of time when a surface water or groundwater source fails to yield sufficient water to satisfy the water right;

(iv) a water right when water is unavailable because of the water right's priority date;

(v) a water right to store water in a surface reservoir or an aquifer, in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:

(A) the water is stored for present or future beneficial use; or

(B) storage is limited by a safety, regulatory, or engineering restraint that the appropriator or the appropriator's successor in interest cannot reasonably correct;

(vi) a water right if a water user has beneficially used substantially all of the water right within a seven-year period, provided that this exemption does not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights;

(vii) except as provided by Subsection (2)(g), a water right:

(A) (I) owned by a public water supplier;

(II) represented by a public water supplier's ownership interest in a water company; or

(III) to which a public water supplier owns the right of beneficial use; and

(B) conserved or held for the reasonable future water requirement of the public, which is determined according to Subsection (2)(f);

(viii) a supplemental water right during a period of time when another water right available to the appropriator or the appropriator's successor in interest provides sufficient water so as to not require beneficial use of the supplemental water right; or

(ix) a period of nonuse of a water right during the time the water right is subject to an approved change application where the applicant is diligently pursuing certification.

(f) (i) The reasonable future water requirement of the public is the amount of water needed in the next 40 years by:

(A) the persons within the public water supplier's reasonably anticipated service area based on reasonably anticipated population growth; or

(B) other water use demand.

(ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably anticipated service area:

(A) is the area served by the community water system's distribution facilities; and

(B) expands as the community water system expands the distribution facilities in accordance with Title 19, Chapter 4, Safe Drinking Water Act.

(g) For a water right acquired by a public water supplier on or after May 5, 2008, Subsection (2)(e)(vii) applies if:

(i) the public water supplier submits a change application under Section 73-3-3; and

(ii) the state engineer approves the change application.

(3) (a) The state engineer shall furnish a nonuse application form requiring the following information:

(i) the name and address of the applicant;

(ii) a description of the water right or a portion of the water right, including the point of diversion, place of use, and priority;

(iii) the quantity of water;

(iv) the period of use;

(v) the extension of time applied for;

(vi) a statement of the reason for the nonuse of the water; and

(vii) any other information that the state engineer requires.

(b) (i) Upon receipt of the application, the state engineer shall publish a notice of the application once a week for two successive weeks:

(A) in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be beneficially used; and

(B) as required in Section 45-1-101.

(ii) The notice shall:

(A) state that an application has been made; and

(B) specify where the interested party may obtain additional information relating to the application.

(c) Any interested person may file a written protest with the state engineer against the granting of the application:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(d) In any proceedings to determine whether the nonuse application should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(e) After further investigation, the state engineer may approve or reject the application.

(4) (a) The state engineer shall grant a nonuse application on all or a portion of a water right for a period of time not exceeding seven years if the applicant shows a reasonable cause for nonuse.

(b) A reasonable cause for nonuse includes:

(i) a demonstrable financial hardship or economic depression;

(ii) physical causes or changes that render use beyond the reasonable control of the water right owner so long as the water right owner acts with reasonable diligence to resume or restore the use;

(iii) the initiation of water conservation or efficiency practices, or the operation of a groundwater recharge recovery program approved by the state engineer;

(iv) operation of legal proceedings;

(v) the holding of a water right or stock in a mutual water company without use by any water supply entity to meet the reasonable future requirements of the public;

(vi) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an existing, approved water management plan; or

(vii) the loss of capacity caused by deterioration of the water supply or delivery equipment if the applicant submits, with the application, a specific plan to resume full use of the water right by replacing, restoring, or improving the equipment.

(5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall notify the applicant by mail or by any form of electronic communication through which receipt is verifiable, of the date when the nonuse application will expire.

(b) An applicant may file a subsequent nonuse application in accordance with this section.

Section 2. Section 73-1-4.5 is amended to read:

73-1-4.5. Authorization for water companies to allocate water rights lost by forfeiture or nonuse -- Redemption and retirement of water shares.

(1) (a) If a water right, to which a [mutual] water company holds title, ceases or is lost due to forfeiture or abandonment for lack of beneficial use, in whole or in part, the water company shall, through procedures consistent with this section, and as defined in the company's articles of incorporation or bylaws, apportion the loss to each stockholder whose failure to make beneficial use caused the loss of the water right.

(b) The water company shall make an apportionment if [~~the Utah Division of Water Rights or~~] a court of proper jurisdiction makes a final decision that a loss has occurred.

(c) The water company shall also reduce the amount of water provided to the shareholder in proportion to the amount of the lost water right during an appeal of a decision that reduced the company water rights, unless otherwise ordered by a court of proper jurisdiction.

(d) The water company may take any action under this Subsection (1), whether the loss occurred:

(i) under Utah Code Annotated Section 73-1-4, including losses that occur as part of a general determination under Title 73, Chapter 4, Determination of Water Rights; or

(ii) through any other decision by a court of proper jurisdiction.

(2) (a) If the water company apportions a water right under Subsection (1), a sufficient number of shares to account for the water right lost, including necessary transport or "carrier water" losses, shall be treated by the water company as shares redeemed by the company from the stockholder responsible for the loss.

(b) The number of shares owned by that shareholder shall be reduced accordingly on the records of the company.

(c) Upon the redemption, the authorized shares of the company shall be reduced by the amount of shares that were redeemed under this Subsection (2).

(3) The redemption and retirement under this section of shares belonging to a stockholder does not relieve the stockholder of liability for unpaid assessments on the stock or debts the shareholder may owe to the water company.

CHAPTER 133**H. B. 94**

Passed March 6, 2017
 Approved March 20, 2017
 Effective May 9, 2017

**OCCUPATIONAL AND PROFESSIONAL
 LICENSURE REVIEW COMMITTEE
 AMENDMENTS**

Chief Sponsor: Brian M. Greene
 Senate Sponsor: Wayne A. Harper

LONG TITLE**General Description:**

This bill modifies the Occupational and Professional Licensure Review Committee Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the responsibilities of the Occupational and Professional Licensure Review Committee; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 36-23-101.5, as last amended by Laws of Utah 2013, Chapter 323
 36-23-102, as last amended by Laws of Utah 2013, Chapter 323
 36-23-105, as last amended by Laws of Utah 2013, Chapter 323
 36-23-106, as last amended by Laws of Utah 2013, Chapter 323
 36-23-107, as last amended by Laws of Utah 2013, Chapter 323
 36-23-109, as last amended by Laws of Utah 2014, Chapter 189

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

Section 1. Section 36-23-101.5 is amended to read:**36-23-101.5. Definitions.**

As used in this chapter:

- (1) "Committee" means the Occupational and Professional Licensure Review Committee created in Section 36-23-102.
- (2) "Government requestor" means:
 - (a) the governor;
 - (b) an executive branch officer other than the governor;
 - (c) an executive branch agency;
 - (d) a legislator; or
 - (e) a legislative committee.

(3) "Newly regulate" means to ~~[regulate under Title 58, Occupations and Professions, an occupation or profession not regulated under Title 58, Occupations and Professions, before the enactment of the new regulation]~~ create by statute or administrative rule a new license, certification, registration, or exemption classification regarding an occupation or profession.

(4) "Proposal" means:

(a) an application submitted under Section 36-23-105, with or without specific proposed statutory language;

(b) a request for review by a legislator of the possibility of newly regulating an occupation or profession, with or without specific proposed statutory language; or

(c) proposed legislation to newly regulate an occupation or profession referred to the committee by another legislative committee.

(5) "Sunrise review" means a review under this chapter of a proposal to newly regulate an occupation or profession.

(6) "Sunset review" means a review under this chapter of a statute:

(a) regarding a ~~[licensed]~~ regulated occupation or profession ~~[under Title 58, Occupations and Professions];~~ and

(b) that is scheduled for termination under ~~[Section 63I-1-258]~~ Title 63I, Chapter 1, Part 2, Repeal Dates Requiring Committee Review by Title.

Section 2. Section 36-23-102 is amended to read:**36-23-102. Occupational and Professional Licensure Review Committee.**

(1) There is created the Occupational and Professional Licensure Review Committee.

(2) The committee consists of nine members appointed as follows:

(a) three members of the House of Representatives, appointed by the speaker of the House of Representatives, with no more than two appointees from the same political party;

(b) three members of the Senate, appointed by the president of the Senate, with no more than two appointees from the same political party; and

(c) three public members appointed jointly by the speaker of the House of Representatives and the president of the Senate from the following two groups:

(i) at least one member who has previously served, but is no longer serving, on ~~[any]~~ an advisory board created under Title 58, Occupations and Professions; and

(ii) at least one member from the general public who does not hold ~~[any type of]~~ a license issued by the Division of Occupational and Professional Licensing.

(3) (a) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(a) as a cochair of the committee.

(b) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(b) as a cochair of the committee.

Section 3. Section 36-23-105 is amended to read:

36-23-105. Applications -- Fees.

(1) If a government requestor or a representative of an occupation or profession that is not licensed by the state proposes that the state license or newly regulate an occupation or profession, the requestor or representative shall, prior to the introduction of any proposed legislation, submit an application for sunrise review to the Office of Legislative Research and General Counsel in a form approved by the committee.

(2) If an application is submitted by a representative of an occupation or profession, the application shall include a nonrefundable fee of \$500.

(3) All application fees shall be deposited in the General Fund.

Section 4. Section 36-23-106 is amended to read:

36-23-106. Duties -- Reporting.

(1) The committee shall:

(a) for each application submitted in accordance with Section 36-23-105, conduct a sunrise review in accordance with Section 36-23-107 before November 1:

(i) of the year in which the application is submitted, if the application is submitted on or before July 1; or

(ii) of the year following the year in which the application is submitted, if the application is submitted after July 1;

(b) (i) conduct a sunset review for ~~[all statutes]~~ each statute regarding a ~~[licensed]~~ regulated occupation or profession ~~[under Title 58, Occupations and Professions, that are]~~ that is scheduled for termination under ~~[Section 63I-1-258]~~ Title 63I, Chapter 1, Part 2, Repeal Dates Requiring Committee Review by Title;

(ii) conduct a sunset review under this Subsection (1)(b) before November 1 of the year prior to the last general session of the Legislature that is scheduled to meet before the scheduled termination date; and

(iii) conduct a review or study regarding any other occupational or professional licensure matter referred to the committee by the Legislature, the Legislative Management Committee, or other legislative committee.

(2) (a) For the purpose of making recommendations to the Legislature, the committee

may conduct a review or study of the existing regulations for any occupation or profession.

(b) In conducting a review or study under this Subsection (2), the committee shall:

(i) consider whether state regulation of the occupation or profession is necessary to address a compelling state interest in protecting against present, recognizable, and significant harm to the health or safety of the public;

(ii) consider if the committee's recommendations would negatively affect the interests of members of the regulated occupation or profession, including the effect on matters of reciprocity with other states; and

(iii) recommend to the Legislature any necessary changes to existing regulations of the occupation or profession to ensure the regulations are narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public.

~~[(2)]~~ (3) The committee shall submit an annual written report before November 1 to:

- (a) the Legislative Management Committee; and
- (b) the Business and Labor Interim Committee.

~~[(3)]~~ (4) The written report required by Subsection ~~[(2)]~~ (3) shall include:

- (a) all findings and recommendations made by the committee in the calendar year; and
- (b) a summary report of each review or study conducted by the committee stating:

(i) whether the review or study included a review of specific proposed or existing statutory language;

(ii) action taken by the committee as a result of the review or study; and

(iii) a record of the vote for each action taken by the committee.

Section 5. Section 36-23-107 is amended to read:

36-23-107. Sunrise or sunset review -- Criteria.

(1) In conducting a sunrise review or a sunset review under this chapter, the committee may:

(a) receive information from:

(i) representatives of the occupation or profession proposed to be newly regulated or that is subject to a sunset review;

(ii) the Division of Occupational and Professional Licensing; or

(iii) any other person; and

(b) review a proposal with or without considering proposed statutory language.

(2) When conducting a sunrise review or sunset review under this chapter, the committee shall:

(a) consider whether state regulation of the occupation or profession is necessary to address a

compelling state interest in protecting against present, recognizable, and significant harm to the health or safety of the public;

(b) consider if the committee's recommendations to the Legislature would negatively affect the interests of members of the regulated occupation or profession, including the effect on matters of reciprocity with other states;

~~(b)~~ (c) if the committee determines that state regulation of the occupation or profession is not necessary to protect against present, recognizable, and significant harm to the health or safety of the public, recommend to the Legislature that the state not regulate the profession;

~~(c)~~ (d) if the committee determines that state regulation of the occupation or profession is necessary in protecting against present, recognizable, and significant harm to the health or safety of the public, consider whether:

(i) the proposed or existing statute is narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public; and

(ii) a potentially less restrictive alternative to licensing, including registration, certification, or exemption, would avoid unnecessary regulation while still protecting the health and safety of the public; and

~~(d)~~ (e) recommend to the Legislature any necessary changes to the proposed or existing statute to ensure it is narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public.

(3) In its performance of each sunrise review or sunset review, the committee may apply the following criteria, to the extent that it is applicable:

(a) whether the unregulated practice of the occupation or profession has clearly harmed or may harm or endanger the health, safety, or welfare of the public;

(b) whether the potential for harm or endangerment described in Subsection (3)(a) is easily recognizable and not remote;

(c) whether regulation of the occupation or profession will significantly diminish an identified risk to the health, safety, or welfare of the public;

(d) whether regulation of the occupation or profession:

(i) imposes significant new economic hardship on the public;

(ii) significantly diminishes the supply of qualified practitioners; or

(iii) otherwise creates barriers to service that are not consistent with the public welfare or interest;

(e) whether the occupation or profession requires knowledge, skills, and abilities that are:

(i) teachable; and

(ii) testable;

(f) whether the occupation or profession is clearly distinguishable from other occupations or professions that are already regulated;

(g) whether the occupation or profession has:

(i) an established code of ethics;

(ii) a voluntary certification program; or

(iii) other measures to ensure a minimum quality of service;

(h) whether:

(i) the occupation or profession involves the treatment of an illness, injury, or health care condition; and

(ii) practitioners of the occupation or profession will request payment of benefits for the treatment under an insurance contract subject to Section 31A-22-618;

(i) whether the public can be adequately protected by means other than regulation; and

(j) other appropriate criteria as determined by the committee.

Section 6. Section 36-23-109 is amended to read:

36-23-109. Review of state regulation of occupations and professions.

~~[Before the annual written report]~~ As part of the annual report described in Section 36-23-106 [is submitted for 2013], the committee [shall] may study and make recommendations regarding potentially less restrictive alternatives to licensing for the regulation of occupations and professions, including registration [and], certification, or exemption, if appropriate, that would [better] avoid unnecessary regulation [and intrusion upon individual liberties by the state,] while still protecting the health and safety of the public.

CHAPTER 134**H. B. 95**

Passed March 6, 2017
 Approved March 20, 2017
 Effective May 9, 2017

**LITTLE SAHARA STATE
 PARK DESIGNATION**

Chief Sponsor: Steve Eliason
 Senate Sponsor: Ralph Okerlund

LONG TITLE**General Description:**

This bill deals with the creation of the Little Sahara State Park.

Highlighted Provisions:

This bill:

- ▶ authorizes the Division of Parks and Recreation to enter into an agreement with the United States Bureau of Land Management to use the Little Sahara Recreation Area as a state park; and
- ▶ states that the Little Sahara Recreation Area shall be included within the state park system upon the division entering into the agreement described above.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

79-4-605, Utah Code Annotated 1953

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

Section 1. Section 79-4-605 is enacted to read:

79-4-605. Little Sahara included within state park system.

(1) As used in this section, "Little Sahara Recreation Area" means the area of land in the Sevier Desert, approximately 55,905 acres, fully described by the map and legal description on file with the division.

(2) The division may:

(a) enter into an agreement for the use of the Little Sahara Recreation Area as a state park with the United States Bureau of Land Management; and

(b) receive donations of land or facilities at the Little Sahara Recreation Area for inclusion within the state park.

(3) In entering the agreement described in Subsection (2)(a), the division may:

(a) pursue a land transfer agreement with the United States Bureau of Land Management;

(b) if a land transfer agreement is not possible, seek to purchase or lease the land from the United States Bureau of Land Management through the

Recreation and Public Purposes Act, 43 U.S.C. Sec. 869 et seq.; and

(c) finalize an agreement to receive land by transfer, purchase, or lease, as described in Subsections (3)(a) and (b), if:

(i) the resulting state park, including the cost of law enforcement, would be financially self-sustaining;

(ii) all current grazing allotments would be maintained in their existing form; and

(iii) the Legislative Management Committee and the Natural Resources, Agriculture, and Environment Interim Committee approve the plan to expand the state park system by including the Little Sahara Recreation Area.

(4) If the division successfully enters into the agreement described in Subsection (2)(a), the division shall negotiate in good faith with the School and Institutional Trust Lands Administration to attempt to:

(a) purchase parcels of school and institutional trust land located within the boundaries of the Little Sahara Recreation Area; or

(b) exchange parcels of school and institutional trust land located within the boundaries of the Little Sahara Recreation Area for other parcels of state land or other lands administered by the United States government.

(5) The Little Sahara Recreation Area shall be included within the state park system upon the division entering into the agreement described in Subsection (2)(a).

(6) (a) Upon the division entering into the agreement described in Subsection (2)(a), the division shall rename the approximately 9,000-acre area known as the Rockwell Outstanding Natural Area to the "Bill Orton State Wilderness Area," with the ranch within the area being named the "Porter Rockwell Ranch."

(b) The director shall recommend the Bill Orton State Wilderness Area to the governor for designation as a protected wilderness area, as described in Section 63L-7-105.

(7) Upon the Little Sahara Recreation Area's inclusion in the state park system, the state shall be responsible for the cost of law enforcement within the Little Sahara Recreation Area.

CHAPTER 135**H. B. 148**

Passed March 8, 2017

Approved March 20, 2017

Effective May 1, 2017

**REAUTHORIZATION OF
ADMINISTRATIVE RULES**

Chief Sponsor: Brian M. Greene

Senate Sponsor: Howard A. Stephenson

LONG TITLE**General Description:**

This bill provides legislative action regarding administrative rules.

Highlighted Provisions:

This bill:

- ▶ reauthorizes all state agency administrative rules.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Rules reauthorized.

All rules of Utah state agencies are reauthorized.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect on May 1, 2017.

CHAPTER 136

H. B. 178

Passed March 3, 2017
 Approved March 20, 2017
 Effective May 9, 2017

GOOD LANDLORD AMENDMENTS

Chief Sponsor: Brian S. King
 Senate Sponsor: Curtis S. Bramble
 Cosponsors: Patrice M. Arent
 Joel K. Briscoe
 Rebecca Chavez-Houck
 Susan Duckworth
 Rebecca P. Edwards
 Steve Eliason
 Francis D. Gibson
 Lynn N. Hemingway
 Sandra Hollins
 John Knotwell
 Karen Kwan
 Michael E. Noel
 Marie H. Poulson
 Marc K. Roberts
 Angela Romero
 Elizabeth Wheatly
 Mark A. Wheatley

LONG TITLE

General Description:

This bill modifies provisions related to disproportionate rental fees.

Highlighted Provisions:

This bill:

- ▶ prohibits a municipality from requiring a residential landlord to deny tenancy to an individual based on the individual’s criminal history.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-1-203.5, as last amended by Laws of Utah 2016, Chapter 86

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

Section 1. Section 10-1-203.5 is amended to read:

10-1-203.5. Disproportionate rental fee -- Good landlord training program -- Fee reduction.

(1) As used in this section:

(a) “Business” means the rental of one or more residential units within a municipality.

(b) “Disproportionate rental fee” means a fee adopted by a municipality to recover its disproportionate costs of providing municipal services to residential rental units compared to similarly-situated owner-occupied housing.

(c) “Disproportionate rental fee reduction” means a reduction of a disproportionate rental fee as a condition of complying with the requirements of a good landlord training program.

(d) “Exempt business” means the rental of a residential unit within a single structure that contains:

- (i) no more than four residential units; and
- (ii) one unit occupied by the owner.

(e) “Exempt landlord” means a residential landlord who demonstrates to a municipality:

- (i) completion of any live good landlord training program offered by any other Utah city that offers a good landlord program;
- (ii) that the residential landlord has a current professional designation of “property manager”; or
- (iii) compliance with a requirement described in Subsection (6).

(f) “Good landlord training program” means a program offered by a municipality to encourage business practices that are designed to reduce the disproportionate cost of municipal services to residential rental units by offering a disproportionate rental fee reduction for any residential landlord who:

- (i) (A) completes a landlord training program provided by the municipality; or
- (B) is an exempt landlord;
- (ii) implements measures to reduce crime in rental housing as specified in a municipal ordinance or policy; and
- (iii) operates and manages rental housing in accordance with an applicable municipal ordinance.

(g) “Municipal services” means:

- (i) public utilities;
- (ii) police;
- (iii) fire;
- (iv) code enforcement;
- (v) storm water runoff;
- (vi) traffic control;
- (vii) parking;
- (viii) transportation;
- (ix) beautification; or
- (x) snow removal.

(h) “Municipal services study” means a study of the cost of all municipal services to rental housing that:

- (i) are reasonably attributable to the rental housing; and
- (ii) exceed the municipality’s cost to serve similarly-situated, owner-occupied housing.

(i) “Residential landlord” means:

(i) the owner of record of residential real property that is leased or rented to another; or

(ii) a third-party provider that has an agreement with the owner of record to manage the owner's real property.

(2) The legislative body of a municipality may charge and collect a disproportionate rental fee on a business that causes disproportionate costs to municipal services if the municipality:

(a) has performed a municipal services study; and

(b) adopts a disproportionate rental fee that does not exceed the amount that is justified by the municipal services study on a per residential rental unit basis.

(3) A municipality may not:

(a) impose a disproportionate rental fee on an exempt business;

(b) require a residential landlord to deny tenancy to an individual ~~released from probation or parole whose conviction date occurred more than four years before the date of tenancy~~ based on the individual's criminal history unless a halfway house, as that term is defined in Section 51-9-412, is located within the municipality;

(c) without cause and notice, require a residential landlord to submit to a random building inspection;

(d) unless agreed to by a residential landlord and in compliance with state and federal law, collect from a residential landlord or retain:

(i) a tenant's consumer report, as defined in 15 U.S.C. Sec. 1681a, in violation of 15 U.S.C. Sec. 1681b as amended;

(ii) a tenant's criminal history record information in violation of Section 53-10-108; or

(iii) a copy of an agreement between the residential landlord and a tenant regarding the tenant's term of occupancy, rent, or any other condition of occupancy;

(e) require that any documents required from the landlord be notarized; or

(f) prohibit a residential landlord from passing on to the tenant the license or disproportionate fee.

(4) Nothing in this section shall limit:

(a) a municipality's right to audit and inspect an exempt residential landlord's records to ensure compliance with a disproportionate rental fee reduction program; or

(b) the right of a municipality with a short-term or vacation rental ordinance to review an owner's rental agreement to verify compliance with the municipality's ordinance.

(5) Notwithstanding Section 10-11-2, a residential landlord may provide the name and address of a person to whom all correspondence regarding the property shall be sent. If the landlord provides the name and address in writing, the municipality shall provide all further

correspondence regarding the property to the designated person. The municipality may also provide copies of notices to the residential landlord.

(6) In addition to a requirement or qualification described in Subsection (1)(e), a municipality may recognize a good landlord training program described in its ordinance.

(7) (a) If a municipality adopts a good landlord program, the municipality shall provide an appeal procedure affording due process of law to a residential landlord who is denied a disproportionate rental fee reduction.

(b) A municipality may not adopt a new disproportionate rental fee unless the municipality provides a disproportionate rental fee reduction.

(8) A property manager who represents an owner of property that qualifies for a municipal disproportionate rental fee may not be restricted from simultaneously representing another owner of property that does not qualify for a municipal disproportionate rental fee.

CHAPTER 137**H. B. 186**

Passed March 7, 2017
 Approved March 20, 2017
 Effective May 9, 2017

**LOCAL GOVERNMENT OFFICIAL
 RESIDENCY AMENDMENTS**

Chief Sponsor: Lee B. Perry
 Senate Sponsor: Wayne A. Harper

LONG TITLE**General Description:**

This bill modifies provisions related to residency requirements for elected municipal officers.

Highlighted Provisions:

This bill:

- ▶ addresses the circumstances under which an elected municipal office is automatically vacant; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-3-301, as last amended by Laws of Utah 2014, Chapter 38

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

Section 1. Section 10-3-301 is amended to read:

10-3-301. Notice -- Eligibility and residency requirements for elected municipal office -- Mayor and recorder limitations.

(1) As used in this section:

(a) "Absent" means that an elected municipal officer fails to perform official duties, including the officer's failure to attend each regularly scheduled meeting that the officer is required to attend.

(b) "Principal place of residence" means the same as that term is defined in Section 20A-2-105.

(c) "Secondary residence" means a place where an individual resides other than the individual's principal place of residence.

(4)(2) (a) On or before February 1 in a year in which there is a municipal general election, the municipal clerk shall publish a notice that identifies:

(i) the municipal offices to be voted on in the municipal general election; and

(ii) the dates for filing a declaration of candidacy for the offices identified under Subsection (4)(2)(a)(i).

(b) The municipal clerk shall publish the notice described in Subsection (4)(2)(a):

(i) on the Utah Public Notice Website established by Section 63F-1-701; and

(ii) in at least one of the following ways:

(A) at the principal office of the municipality;

(B) in a newspaper of general circulation within the municipality at least once a week for two successive weeks in accordance with Section 45-1-101;

(C) in a newsletter produced by the municipality;

(D) on a website operated by the municipality; or

(E) with a utility enterprise fund customer's bill.

(2) (3) (a) A person filing a declaration of candidacy for a municipal office shall meet the requirements of Section 20A-9-203.

(b) (i) Except as provided in Subsection (2) (3)(b)(ii), the city recorder or town clerk of each municipality shall maintain office hours 8 a.m. to 5 p.m. on the dates described in Subsections 20A-9-203(2)(3)(a)(i) and (b)(i) unless the date occurs on a:

(A) Saturday or Sunday; or

(B) state holiday as listed in Section 63G-1-301.

(ii) If on a regular basis a city recorder or town clerk maintains an office schedule that is less than 40 hours per week, the city recorder or town clerk may comply with Subsection (2) (3)(b)(i) without maintaining office hours by:

(A) posting the recorder's or clerk's contact information, including a phone number and email address, on the recorder's or clerk's office door, the main door to the municipal offices, and, if available, on the municipal website; and

(B) being available at that contact information from 8 a.m. to 5 p.m. on the dates described in Subsection (2) (3)(b)(i).

(3) (4) Any person elected to municipal office shall be a registered voter in the municipality in which the person was elected.

(4) (5) (a) Each elected officer of a municipality shall maintain ~~residency within the boundaries of~~ a principal place of residence within the municipality during the officer's term of office.

~~(b) If an elected officer of a municipality]~~

~~(b) Except as provided in Subsection (6), an elected municipal office is automatically vacant if the officer elected to the municipal office, during the officer's term of office:~~

~~(i) establishes a principal place of residence [as provided in Section 20A-2-105] outside the municipality [during the officer's term of office, the office is automatically vacant];~~

~~(ii) resides at a secondary residence outside the municipality for a continuous period of more than 60 days while still maintaining a principal place of residence within the municipality;~~

~~(5) If an elected municipal officer]~~

(iii) is absent from the municipality [any time during the officer's term of office for a continuous period of more than 60 days without the consent of the municipal legislative body, the municipal office is automatically vacant.] for a continuous period of more than 60 days; or

(iv) fails to respond to a request, within 30 days after the day on which the elected officer receives the request, from the county clerk or the lieutenant governor seeking information to determine the officer's residency.

(6) (a) Notwithstanding Subsection (5), if an elected municipal officer obtains the consent of the municipal legislative body in accordance with Subsection (6)(b) before the expiration of the 60-day period described in Subsection (5)(b)(ii) or (iii), the officer may:

(i) reside at a secondary residence outside the municipality while still maintaining a principal place of residence within the municipality for a continuous period of up to one year during the officer's term of office; or

(ii) be absent from the municipality for a continuous period of up to one year during the officer's term of office.

(b) At a public meeting, the municipal legislative body may give the consent described in Subsection (6)(a) by majority vote after taking public comment regarding:

(i) whether the legislative body should give the consent; and

(ii) the length of time to which the legislative body should consent.

[(6)] (7) (a) [A] The mayor of a municipality may not also serve as the municipal recorder or treasurer.

(b) The recorder of a municipality may not also serve as the municipal treasurer.

CHAPTER 138**H. B. 328**

Passed March 8, 2017

Approved March 20, 2017

Effective May 9, 2017

**SERVICE AREA BOARD
OF TRUSTEES MODIFICATIONS**

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: Wayne A. Harper

LONG TITLE**General Description:**

This bill modifies the requirements for appointment of members to a service area board of trustees.

Highlighted Provisions:

This bill:

- ▶ clarifies which municipalities within a service area are required to appoint a member to the service area board of trustees.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

17B-2a-905, as last amended by Laws of Utah 2014, Chapter 189

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

Section 1. Section 17B-2a-905 is amended to read:**17B-2a-905. Service area board of trustees.**

(1) (a) Except as provided in Subsection (2) or (3):

(i) the initial board of trustees of a service area located entirely within the unincorporated area of a single county may, as stated in the petition or resolution that initiated the process of creating the service area:

(A) consist of the county legislative body;

(B) be appointed, as provided in Section 17B-1-304; or

(C) be elected, as provided in Section 17B-1-306;

(ii) if the board of trustees of a service area consists of the county legislative body, the board may adopt a resolution providing for future board members to be appointed, as provided in Section 17B-1-304, or elected, as provided in Section 17B-1-306; and

(iii) members of the board of trustees of a service area shall be elected, as provided in Section 17B-1-306, if:

(A) the service area is not entirely within the unincorporated area of a single county;

(B) a petition is filed with the board of trustees requesting that board members be elected, and the

petition is signed by registered voters within the service area equal in number to at least 10% of the number of registered voters within the service area who voted at the last gubernatorial election; or

(C) an election is held to authorize the service area's issuance of bonds.

(b) If members of the board of trustees of a service area are required to be elected under Subsection (1)(a)(iii)(C) because of a bond election:

(i) board members shall be elected in conjunction with the bond election;

(ii) the board of trustees shall:

(A) establish a process to enable potential candidates to file a declaration of candidacy sufficiently in advance of the election; and

(B) provide a ballot for the election of board members separate from the bond ballot; and

(iii) except as provided in this Subsection (1)(b), the election shall be held as provided in Section 17B-1-306.

(2) (a) This Subsection (2) applies to a service area created on or after May 5, 2003, if:

(i) the service area was created to provide:

(A) fire protection, paramedic, and emergency services; or

(B) law enforcement service;

(ii) in the creation of the service area, an election was not required under Subsection 17B-1-214(3)(d); and

(iii) the service area is not a service area described in Subsection (3).

(b) (i) Each county whose unincorporated area is included within a service area described in Subsection (2)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint three members to the board of trustees.

(ii) Each municipality whose area is included within a service area described in Subsection (2)(a), whether in conjunction with the creation of the service area or by later service area annexation or municipal incorporation or annexation, shall appoint one member to the board of trustees, unless the area of the municipality is withdrawn from the service area.

(iii) Each member appointed by a county or municipality under Subsection (2)(b)(i) or (ii) shall be an elected official of the appointing county or municipality, respectively.

(c) Notwithstanding Subsection 17B-1-302(2), the number of members of a board of trustees of a service area described in Subsection (2)(a) shall be the number resulting from application of Subsection (2)(b).

(3) (a) This Subsection (3) applies to a service area created on or after May 14, 2013, if:

(i) the service area was created to provide fire protection, paramedic, and emergency services;

(ii) in the creation of the service area, an election was not required under Subsection 17B-1-214(3)(d); and

(iii) each municipality whose area is included within the service area or county whose unincorporated area, whether in whole or in part, is included within a service area is a party to an agreement:

(A) entered into in accordance with Title 11, Chapter 13, Interlocal Cooperation Act with all the other municipalities or counties whose area is included in the service area;

(B) to provide the services described in Subsection (3)(a)(i); and

(C) at the time a resolution proposing the creation of the service area is adopted by each applicable municipal or county legislative body in accordance with Subsection 17B-1-203(1)(d).

(b) (i) Each county whose unincorporated area, whether in whole or in part, is included within a service area described in Subsection (3)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint one member to the board of trustees.

(ii) Each municipality whose area is included within a service area described in Subsection (3)(a), whether in conjunction with the creation of the service area or by later annexation, shall appoint one member to the board of trustees.

(iii) Each member appointed by a county or municipality under Subsection (3)(b)(i) or (ii) shall be an elected official of the appointing county or municipality, respectively.

(iv) A vote by a member of the board of trustees may be weighted or proportional.

(c) Notwithstanding Subsection 17B-1-302(2), the number of members of a board of trustees of a service area described in Subsection (3)(a) shall be the number resulting from the application of Subsection (3)(b).

CHAPTER 139**H. B. 389**

Passed March 8, 2017
 Approved March 20, 2017
 Effective May 9, 2017

**COMMERCE SERVICE
 ACCOUNT AMENDMENTS**

Chief Sponsor: Bradley G. Last
 Senate Sponsor: Kevin T. Van Tassell

LONG TITLE**General Description:**

This bill modifies provisions relating to the Commerce Service Account.

Highlighted Provisions:

This bill:

- ▶ amends the amount of undesignated funds that the Division of Finance shall transfer from the Commerce Service Account to the General Fund at the end of each fiscal year; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

13-1-2, as last amended by Laws of Utah 2010, Chapter 278

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

Section 1. Section 13-1-2 is amended to read:

13-1-2. Creation and functions of department -- Divisions created -- Fees -- Commerce Service Account.

(1) (a) There is created the Department of Commerce.

(b) The department shall execute and administer state laws regulating business activities and occupations affecting the public interest.

(2) Within the department the following divisions are created:

(a) the Division of Occupational and Professional Licensing;

(b) the Division of Real Estate;

(c) the Division of Securities;

(d) the Division of Public Utilities;

(e) the Division of Consumer Protection; and

(f) the Division of Corporations and Commercial Code.

(3) (a) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department by following the procedures and requirements of Section 63J-1-504.

(b) The department shall submit each fee established in this manner to the Legislature for its approval as part of the department's annual appropriations request.

(c) (i) There is created a restricted account within the General Fund known as the "Commerce Service Account."

(ii) The restricted account created in Subsection (3)(c)(i) consists of fees collected by each division and by the department.

(iii) The undesignated account balance may not exceed \$1,000,000 at the end of each fiscal year.

~~[(iii)]~~ (iv) At the end of each fiscal year, the director of the Division of Finance shall transfer into the General Fund any [fee collections that are greater than the legislative appropriations from the Commerce Service Account for that year] undesignated funds in the account that exceed the amount necessary to maintain the undesignated account balance at \$1,000,000.

(d) The department may not charge or collect a fee or expend money from the restricted account without approval by the Legislature.

CHAPTER 140**H. B. 392**

Passed March 8, 2017

Approved March 20, 2017

Effective May 9, 2017

AIR QUALITY POLICY ADVISORY BOARD

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Todd Weiler

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John R. Westwood

Logan Wilde

Mike Winder

LONG TITLE**General Description:**

This bill creates the Air Quality Policy Advisory Board.

Highlighted Provisions:

This bill:

- ▶ creates the Air Quality Policy Advisory Board;
- ▶ establishes board membership; and
- ▶ designates board responsibilities.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

19-2-128, Utah Code Annotated 1953

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

Section 1. Section 19-2-128 is enacted to read:**19-2-128. Air Quality Policy Advisory Board created -- Composition -- Responsibility -- Terms of office -- Compensation.**

(1) There is created the Air Quality Policy Advisory Board consisting of the following 10 voting members:

(a) two members of the Senate, appointed by the president of the Senate;

(b) three members of the House of Representatives, appointed by the speaker of the House of Representatives;

(c) the director;

(d) one representative of industry interests, appointed by the president of the Senate;

(e) one representative of business or economic development interests, appointed by the speaker of the House of Representatives, who has expertise in air quality matters;

(f) one representative of the academic community, appointed by the governor, who has expertise in air quality matters; and

(g) one representative of a nongovernmental organization, appointed by the governor, who:

(i) represents community interests;

(ii) does not represent industry or business interests; and

(iii) has expertise in air quality matters.

(2) The Air Quality Policy Advisory Board shall:

(a) seek the best available science to identify legislative actions to improve air quality;

(b) identify and prioritize potential legislation and funding that will improve air quality; and

(c) make recommendations to the Legislature on how to improve air quality in the state.

(3) (a) Except as required by Subsection (3)(b), members appointed under Subsections (1)(d), (e), (f), and (g) are appointed to serve four-year terms.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor, president of the Senate, and speaker of the House of Representatives shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately half of the advisory board is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The advisory board shall elect one member to serve as chair of the advisory board for a term of one year.

(5) Compensation for a member of the advisory board who is a legislator shall be paid in accordance

with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(6) A member of the advisory board who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The department shall provide staff support for the advisory board.

CHAPTER 141**S. B. 21**

Passed February 1, 2017
 Approved March 20, 2017
 Effective July 1, 2017

RETIREMENT SYSTEMS AMENDMENTS

Chief Sponsor: Daniel Hemmert
 House Sponsor: Jefferson Moss

LONG TITLE**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending retirement and insurance provisions.

Highlighted Provisions:

This bill:

- ▶ modifies the responsibility for certain functions within the Utah Retirement Systems;
- ▶ modifies an exception to the postretirement reemployment restrictions;
- ▶ modifies certain retiree notification and benefit conversion provisions relating to retirement options affected by death or divorce;
- ▶ specifies additional names for the Public Employees' Benefit and Insurance Program; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 49-11-602, as last amended by Laws of Utah 2013, Chapter 109
 49-11-603, as last amended by Laws of Utah 2015, Chapter 243
 49-11-1205, as enacted by Laws of Utah 2016, Chapter 310
 49-11-1207, as enacted by Laws of Utah 2016, Chapter 310
 49-12-402, as last amended by Laws of Utah 2014, Chapter 15
 49-13-402, as last amended by Laws of Utah 2014, Chapter 15
 49-20-103, as renumbered and amended by Laws of Utah 2002, Chapter 250
 49-22-305, as last amended by Laws of Utah 2011, Chapter 439
 49-23-304, as last amended by Laws of Utah 2011, Chapter 439

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

Section 1. Section 49-11-602 is amended to read:**49-11-602. Participating employer to maintain records -- Time limit -- Penalties for failure to comply.**

- (1) A participating employer shall:
- (a) maintain records necessary to calculate benefits under this title and other records

necessary for proper administration of this title as required by the office; and

(b) maintain records that indicate whether an employee is receiving:

(i) a benefit under state or federal law that, under Subsection 49-12-102(1)(b)(vi) or (vii), is excluded from the definition of benefits normally provided for purposes of Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory Retirement Act, or Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or

(ii) a benefit under a benefit package generally offered to similarly situated employees.

(2) A participating employer shall maintain the records required under Subsection (1) until the earliest of:

(a) three years after the date of retirement of the employee from a system or plan;

(b) three years after the date of death of the employee; or

(c) 65 years from the date of employment with the participating employer.

(3) A participating employer shall be liable to the office for:

(a) any liabilities and expenses, including administrative expenses and the cost of increased benefits to members, resulting from the participating employer's failure to maintain records under this section; and

(b) a penalty equal to 1% of the participating employer's last month's contributions.

(4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.

(5) The ~~[executive director]~~ office may estimate the length of service, compensation, or age of any member, if that information is not contained in the records.

(6) (a) A participating employer shall enroll an employee, make reports, submit contributions, and provide other requested information electronically in a manner approved by the office.

(b) A participating employer shall treat any information provided electronically or otherwise by the office as subject to the confidentiality provisions of this title.

Section 2. Section 49-11-603 is amended to read:**49-11-603. Participating employer to report and certify -- Time limit -- Penalties for failure to comply.**

- (1) As soon as administratively possible, but in no event later than 30 days after the end of each pay period, a participating employer shall report and certify to the office:

- (a) the eligibility for service credit accrual of:
- (i) each current employee;
 - (ii) each new employee as the new employee begins employment; and
 - (iii) any changes to eligibility for service credit accrual of each employee;
- (b) the compensation of each current employee eligible for service credit; and
- (c) other factors relating to the proper administration of this title as required by the executive director.

(2) Each participating employer shall submit the reports required under Subsection (1) in a format approved by the office.

(3) A participating employer shall be liable to the office for:

(a) any liabilities and expenses, including administrative expenses and the cost of increased benefits to employees, resulting from the participating employer's failure to correctly report and certify records under this section;

(b) a penalty equal to the greater of:

- (i) \$250; or
- (ii) 50% of the total contributions for the employees for the period of the reporting error; and
- (c) attorney fees.

(4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.

(5) The ~~executive director~~ office may estimate the length of service, compensation, or age of any employee, if that information is not contained in the records.

Section 3. Section 49-11-1205 is amended to read:

49-11-1205. Postretirement reemployment restriction exceptions.

(1) (a) The office may not cancel the retirement allowance of a retiree who is reemployed with a participating employer within one year of the retiree's retirement date if:

(i) the retiree is not reemployed by a participating employer for a period of at least 60 days from the retiree's retirement date;

(ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree does not receive any employer paid benefits, including:

(A) retirement service credit or retirement-related contributions;

(B) medical benefits;

(C) dental benefits;

(D) other insurance benefits except for workers' compensation as provided under Title 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease Act, and withholdings required by federal or state law for social security, Medicare, and unemployment insurance; or

(E) paid time off, including sick, annual, or other type of leave; and

(iii) (A) the retiree does not earn in any calendar year of reemployment an amount in excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the retiree's retirement allowance is based[-]; or

(B) the retiree is reemployed as a judge as defined under Section 78A-11-102.

(b) Beginning January 1, 2013, the board shall adjust the amounts under Subsection (1)(a)(iii) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(2) A retiree shall be considered as having completed the one-year separation from employment with a participating employer required under Section 49-11-1204, if the retiree:

(a) before retiring:

(i) was employed with a participating employer as a public safety service employee as defined in Section 49-14-102, 49-15-102, or 49-23-102;

(ii) and during the employment under Subsection (2)(a)(i), suffered a physical injury resulting from external force or violence while performing the duties of the employment, and for which injury the retiree would have been approved for total disability in accordance with the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of service are not considered;

(iii) had less than 30 years of service credit but had sufficient service credit to retire, with an unreduced allowance making the public safety service employee ineligible for long-term disability payments under Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program; and

(iv) does not receive any long-term disability benefits from any participating employer; and

(b) is reemployed by a different participating employer.

(3) (a) The office may not cancel the retirement allowance of a retiree who is employed as an affiliated emergency services worker within one year of the retiree's retirement date if the affiliated emergency services worker does not receive any compensation, except for:

(i) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money or cash equivalent payment not tied to productivity and paid periodically for services;

(ii) a length-of-service award;

(iii) insurance policy premiums paid by the participating employer in the event of death of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

(iv) reimbursement of expenses incurred in the performance of duties.

(b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax credits, vouchers, and payments to an affiliated emergency services worker may not exceed \$500 per month.

(c) Beginning January 1, 2016, the board shall adjust the amount under Subsection (3)(b) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) (a) If a retiree is reemployed under the provisions of Subsection (1) or (3), the termination date of the reemployment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Section 49-11-1204.

(b) The office shall cancel the retirement allowance of a retiree for the remainder of the calendar year if the reemployment with a participating employer exceeds the limitation under Subsection (1)(a)(iii) or (3)(b).

Section 4. Section 49-11-1207 is amended to read:

49-11-1207. Postretirement reemployment -- Violations -- Penalties.

(1) (a) If the office receives notice or learns of the reemployment of a retiree in violation of Section 49-11-1204 or 49-11-1205, the office shall:

(i) immediately cancel the retiree's retirement allowance;

(ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar year if the reemployment with a participating employer exceeded the limitation under Subsection 49-11-1205(1)(a)(iii)(A) or (3)(b); and

(iii) recover any overpayment resulting from the violation in accordance with the provisions of Section 49-11-607 before the allowance may be reinstated.

(b) Reinstatement of an allowance following cancellation for a violation under this section is subject to the procedures and provisions under Section 49-11-1204.

(2) If a retiree or participating employer failed to report reemployment in violation of Section 49-11-1206, the retiree, participating employer, or both, who are found to be responsible for the failure to report, are liable to the office for the amount of any overpayment resulting from the violation.

(3) A participating employer is liable to the office for a payment or failure to make a payment in violation of this part.

(4) If a participating employer fails to notify the office in accordance with Section 49-11-1206, the participating employer is immediately subject to a compliance audit by the office.

Section 5. Section 49-12-402 is amended to read:

49-12-402. Service retirement plans -- Calculation of retirement allowance -- Social security limitations.

(1) (a) Except as provided under Section 49-12-701, retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an annual allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 30 years of service credit, the allowance is:

(i) an amount equal to 1.25% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued prior to July 1, 1975; plus

(ii) an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued on and after July 1, 1975.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for each year of retirement from age 60 to age 65, unless the member has 30 or more years of accrued credit in which event no reduction is made to the allowance.

(c) (i) Years of service includes any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the

death of the retiree, an amount equal to 1/2 of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) spouse died, if the application is notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) application is notification and supporting documentation for the death are received by the office, if the application is notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) spouse died, if the application is notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) application is notification and supporting documentation for the death are received by the office, if the application is notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(4) (a) (i) The final average salary is limited in the computation of that part of an allowance based on service rendered prior to July 1, 1967, during a period when the retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with a public or private system, organization, or company designated by the State Board of Regents to \$4,800.

(ii) This limitation is not applicable to retirees who elected to continue in this system by July 1, 1967.

(b) Periods of employment which are exempt from this system under Subsection 49-12-203(1)(b), may be purchased by the member for the purpose of retirement only if all benefits from a public or private system, organization, or company designated by the State Board of Regents based on this period of employment are forfeited.

(5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(6) (a) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to a Option One benefit at the time of divorce, if there is no court order filed in the matter.

(b) A conversion to an Option One benefit under this Subsection (6) begins on the first day of the month following the month in which the notification and supporting documentation for the divorce are received by the office.

Section 6. Section 49-13-402 is amended to read:

49-13-402. Service retirement plans -- Calculation of retirement allowance -- Social security limitations.

(1) (a) Except as provided under Section 49-13-701, retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 30 years of service credit, the allowance is an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for each year of retirement from age 60 to age 65, plus a full actuarial reduction for each year of retirement prior to age 60, unless the member has 30 or more years of accrued credit, in which event no reduction is made to the allowance.

(c) (i) Years of service include any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and,

upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) spouse died, if [the application is] notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) [application is] notification and supporting documentation for the death are received by the office, if the [application is] notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) spouse died, if [the application is] notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) [application is] notification and supporting documentation for the death are received by the office, if the [application is] notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(4) (a) (i) The final average salary is limited in the computation of that part of an allowance based on service rendered prior to July 1, 1967, during a period when the retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with a public or private system, organization, or company designated by the State Board of Regents to \$4,800.

(ii) This limitation is not applicable to retirees who elected to continue in the Public Employees' Contributory Retirement System by July 1, 1967.

(b) Periods of employment which are exempt from this system as permitted under Subsection 49-13-203(1)(b) may be purchased by the member for the purpose of retirement only if all benefits from a public or private system, organization, or company designated by the State Board of Regents based on this period of employment are forfeited.

(5) (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(6) (a) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

(b) A conversion to an Option One benefit under this Subsection (6) begins on the first day of the month following the month in which the notification and supporting documentation for the divorce are received by the office.

Section 7. Section 49-20-103 is amended to read:

49-20-103. Creation of insurance program.

(1) There is created for the employees of the state, its educational institutions, and political subdivisions the "Public Employees' Benefit and Insurance Program" within the office.

(2) The program may also be known and function as the Public Employees' Health Program, PEHP, or PEHP Health and Benefits.

Section 8. Section 49-22-305 is amended to read:

49-22-305. Defined benefit service retirement plans -- Calculation of retirement allowance -- Social security limitations.

(1) (a) The retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an annual allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 35 years of service credit, the allowance is an amount equal to 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 35 or more years of accrued credit in which event no reduction is made to the allowance.

(c) (i) Years of service includes any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within one-tenth of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the

(i) ~~following the month in which the~~ spouse died, if ~~the application is~~ notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) ~~following the month in which the application is~~ notification and supporting documentation for the death are received by the office, if the ~~application is~~ notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the

(i) ~~following the month in which the~~ spouse died, if ~~the application is~~ notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) ~~following the month in which the application is~~ notification and supporting documentation for the death are received by the office, if the ~~application is~~ notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(4) (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(5) (a) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

(b) A conversion to an Option One benefit under this Subsection (5) begins on the first day of the month following the month in which the notification and supporting documentation for the divorce are received by the office.

Section 9. Section 49-23-304 is amended to read:

49-23-304. Defined benefit service retirement plans -- Calculation of retirement allowance -- Social security limitations.

(1) (a) The retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an annual allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 25 years of service credit, the allowance is an amount equal to 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 25 or more years of accrued credit in which event no reduction is made to the allowance.

(c) (i) Years of service includes any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and,

upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) ~~following the month in which the~~ spouse died, if ~~the application is~~ notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) ~~following the month in which the application is~~ notification and supporting documentation for the death are received by the office, if the ~~application is~~ notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

(i) ~~following the month in which the~~ spouse died, if ~~the application is~~ notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or

(ii) ~~following the month in which the application is~~ notification and supporting documentation for the death are received by the office, if the ~~application is~~ notification and supporting documentation are received by the office more than 90 days after the spouse's death.

(4) (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(5) (a) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

(b) A conversion to an Option One benefit under this Subsection (5) begins on the first day of the month following the month in which the notification and supporting documentation for the divorce are received by the office.

Section 10. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 142**S. B. 27**

Passed February 1, 2017
 Approved March 20, 2017
 Effective May 9, 2017

**MOTOR VEHICLE ACCIDENT
 COST RECOVERY**

Chief Sponsor: Wayne A. Harper
 House Sponsor: John R. Westwood

LONG TITLE**General Description:**

This bill modifies provisions related to the recovery of costs for repair of damages caused by motor vehicle accidents.

Highlighted Provisions:

This bill:

- ▶ provides for government entities to contract with third parties to recover costs for repair of damages caused by motor vehicle accidents;
- ▶ clarifies the fees that a third party may charge for services to recover costs for repair of damages caused by motor vehicle accidents; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-6a-409, as enacted by Laws of Utah 2012, Chapter 364

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

Section 1. Section 41-6a-409 is amended to read:

41-6a-409. Prohibition of flat response fee for motor vehicle accident.

~~[(1) The Department of Transportation or the Utah Highway Patrol Division, or a person who contracts with the Department of Transportation or the Utah Highway Patrol Division to provide emergency services;]~~

(1) As used in this section, "government entity" means the Department of Transportation, the Utah Highway Patrol Division, or a local government entity or agency.

(2) A government entity:

(a) may not impose a flat fee, or collect a flat fee, from an individual involved in a motor vehicle accident; and

(b) may only charge the individual for the actual cost or a reasonable estimate of the cost of services provided in responding to the motor vehicle accident, limited to:

(i) medical costs for ~~[-(A)]~~ transporting an individual from the scene of a motor vehicle accident ~~[- or (B) treatment of]~~ or treating a person injured in a motor vehicle accident;

(ii) the cost for repair to damaged public property, if the individual is legally liable for the damage;

(iii) the cost of materials used in cleaning up the motor vehicle accident, if the individual is legally liable for the motor vehicle accident; and

(iv) towing costs.

~~[(2) If the Department of Transportation or the Utah Highway Patrol Division, or a person who contracts with the Department of Transportation or the Utah Highway Patrol Division to provide emergency services;]~~

(3) If a government entity imposes a charge on more than one individual for the actual cost or a reasonable estimate of the cost of responding to a motor vehicle accident, the ~~[Department of Transportation or the Utah Highway Patrol Division or the person contracting with the Department of Transportation or the Utah Highway Patrol Division]~~ government entity shall apportion the charges so that ~~[if]~~ the government entity does not receive more for responding to the motor vehicle accident than the actual response cost or a reasonable estimate of the cost.

(4) Nothing in this section prohibits a government entity from contracting with an independent contractor to recover costs related to damage to public property.

(5) If a government entity enters into a contract with an independent contractor to recover costs related to damage to public property, the government entity may only pay the independent contractor out of any recovery received from the person who caused the damage or the responsible party.

CHAPTER 143**S. B. 35**

Passed February 22, 2017

Approved March 20, 2017

Effective May 9, 2017

VETERANS TUITION GAP PROGRAM ACT AMENDMENTS

Chief Sponsor: Luz Escamilla

House Sponsor: Paul Ray

LONG TITLE**General Description:**

This bill amends access to the Veterans Tuition Gap Program.

Highlighted Provisions:

This bill:

- ▶ amends the federal programs to which the Veterans Tuition Gap Program (the program) relates;
- ▶ amends the institutions of higher education in which a qualifying veteran using the program must be enrolled;
- ▶ removes the requirement that a qualifying veteran using the program qualify for a federal program; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53B-13b-102, as last amended by Laws of Utah 2015, Chapter 141

53B-13b-103, as enacted by Laws of Utah 2014, Chapter 87

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

Section 1. Section 53B-13b-102 is amended to read:**53B-13b-102. Definitions.**

As used in this chapter:

(1) "Federal program" means ~~[the Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252.]~~ a veterans educational assistance program established in:

(a) United States Code, Title 10, Chapter 1606, Educational Assistance for Members of the Selected Reserve;

(b) United States Code, Title 38, Chapter 30, All-Volunteer Force Educational Assistance Program;

(c) United States Code, Title 38, Chapter 31, Training and Rehabilitation for Veterans with Service-Connected Disabilities;

(d) United States Code, Title 38, Chapter 32, Post-Vietnam Era Veterans' Educational Assistance; or

(e) United States Code, Title 38, Chapter 33, Post-9/11 Educational Assistance.

(2) "Institution of higher education" or "institution" means [a]:

[~~(a) credit-granting higher education institution within the state system of higher education; or]~~

[~~(b) an institution of higher learning, as defined in the federal program, that is located in the state.]~~

(a) an institution of higher education listed in Subsection 53B-2-101(1); or

(b) a private, nonprofit, postsecondary institution located in Utah that is accredited by a recognized accrediting organization recognized by the United States Department of Education.

(3) "Program" means the Veterans Tuition Gap Program created in this chapter.

(4) (a) "Qualifying military veteran" means a veteran, as defined in Section 68-3-12.5, who:

(i) is a resident student under Section 53B-8-102 and rules of the board;

(ii) is accepted into an institution and enrolled in a program leading to a bachelor's degree;

[~~(iii) has qualified for the federal program;]~~

[~~(iv) (iii) (A) has [maximized] exhausted the federal benefit under [the] a federal program; or~~

(B) demonstrates that the veteran no longer qualifies to receive federal benefits under any federal program; and

[~~(v) (iv) has not completed a bachelor's degree.~~

(b) "Qualifying military veteran" does not include a family member.

Section 2. Section 53B-13b-103 is amended to read:**53B-13b-103. Establishment of the Veterans Tuition Gap Program.**

There is established a Veterans Tuition Gap Program to serve qualifying military veterans with tuition assistance at institutions of higher education when:

(1) federal benefits under the federal program [are no longer] have been exhausted or are not available; and

(2) a qualifying military veteran has not finished a bachelor's degree and is in the final year of a bachelor's degree program.

CHAPTER 144**S. B. 36**

Passed February 1, 2017
Approved March 20, 2017
Effective May 9, 2017

**DEPARTMENT OF
TRANSPORTATION AMENDMENTS**

Chief Sponsor: Wayne A. Harper
House Sponsor: Keven J. Stratton

LONG TITLE**General Description:**

This bill modifies the Transportation Code by amending provisions relating to transportation.

Highlighted Provisions:

This bill:

- ▶ provides that the Department of Transportation may employ auditing experts from outside the department rather than appoint at least two performance auditors for the department;
- ▶ repeals the class B and class C roads account;
- ▶ repeals the requirement that funds appropriated for class B and class C roads be deposited into the class B and class C roads account;
- ▶ requires the Department of Transportation, rather than the director of the Division of Finance, to transfer certain funds to the State Park Access Highways Improvement Program; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 72-1-206, as renumbered and amended by Laws of Utah 1998, Chapter 270
- 72-2-106, as last amended by Laws of Utah 2016, Chapter 291
- 72-2-107, as last amended by Laws of Utah 2016, Chapter 291
- 72-2-108, as last amended by Laws of Utah 2016, Fourth Special Session, Chapter 2
- 72-2-110, as last amended by Laws of Utah 2009, Chapter 71
- 72-3-301, as last amended by Laws of Utah 2001, Chapter 222
- 78A-5-110, as last amended by Laws of Utah 2008, Chapter 22 and renumbered and amended by Laws of Utah 2008, Chapter 3
- 78A-7-120, as last amended by Laws of Utah 2012, Chapter 205

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

Section 1. Section 72-1-206 is amended to read:**72-1-206. Performance auditing --
Appointment or employment -- Duties --
Reports.**

(1) (a) The executive director, with the approval of a majority vote of the commission for each appointment, shall, to conduct the audits required in this section:

(i) appoint not less than two performance auditors[-]; or

(ii) employ auditing experts from outside the department.

(b) A performance auditor appointed under Subsection (1)(a)(i) may only be removed by the executive director with the approval of a majority vote of the commission.

~~[(b)]~~ (c) Each auditor appointed under Subsection (1)(a)(i) shall have at least three years' experience in performance auditing prior to appointment.

(2) ~~[(a)]~~ The executive director shall ensure that the auditors under Subsection (1) receive:

~~[(i)]~~ (a) any staff support from the department that is necessary to fulfill their duties; and

~~[(ii)]~~ (b) access to all the department's records and information.

~~[(b)]~~ ~~The department may hire outside consultants to assist in the audits under Subsection (3).~~

(3) The ~~[performance]~~ auditors under Subsection (1) shall conduct ~~[and supervise]~~, as prioritized by the commission:

(a) performance audits to determine the efficiency and effectiveness of the department;

(b) financial audits to ensure the efficient and effective expenditure of department money;

(c) audits to ensure department compliance with state statutes, commission priorities, and legislative appropriation intent statements;

(d) audits to determine the impact of federal mandates, including air quality, wetlands, and other environmental standards on the cost and schedule of department projects;

(e) external audits on persons entering into contracts with the department, as necessary;

(f) studies to determine the time required to accomplish department and external contract work and their relative efficiencies;

(g) evaluations of the department's quality assurance and quality control programs; and

(h) any other executive director or commission requests.

(4) The ~~[performance]~~ auditors under Subsection (1) shall:

(a) conduct audits in accordance with applicable professional auditing standards[-]; and

~~[(5) The performance auditors shall]~~

(b) provide copies of all reports of audit findings to the commission, the executive director, and the Legislative Auditor General.

Section 2. Section 72-2-106 is amended to read:

72-2-106. Appropriation and transfer from Transportation Fund.

(1) On and after July 1, 1981, there is appropriated from the Transportation Fund to the use of the department an amount equal to two-elevenths of the taxes collected from the motor fuel tax and the special fuel tax, exclusive of the formula amount appropriated ~~(to the)~~ for class B and class C ~~road fund and the collector road fund~~ roads, to be used for highway rehabilitation.

(2) For a fiscal year beginning on or after July 1, 2016, the Division of Finance shall annually transfer an amount equal to the amount of revenue generated by a tax imposed on motor and special fuel that is sold, used, or received for sale or used in this state at a rate of 1.8 cents per gallon to the Transportation Investment Fund of 2005 created by Section 72-2-124.

Section 3. Section 72-2-107 is amended to read:

72-2-107. Appropriation from Transportation Fund -- Apportionment for class B and class C roads.

(1) There is appropriated to the department from the Transportation Fund annually an amount equal to 30% of an amount which the director of finance shall compute in the following manner: The total revenue deposited into the Transportation Fund during the fiscal year from state highway-user taxes and fees, minus those amounts appropriated or transferred from the Transportation Fund during the same fiscal year to:

- (a) the Department of Public Safety;
- (b) the State Tax Commission;
- (c) the Division of Finance;
- (d) the Utah Travel Council; and
- (e) any other amounts appropriated or transferred for any other state agencies not a part of the department.

(2) (a) Except as provided in Subsection (2)(b), all of ~~[this money]~~ the money appropriated in Subsection (1) shall be ~~[placed in an account to be known as the]~~ apportioned among counties and municipalities for class B and class C roads ~~[account to be used]~~ as provided in this title.

(b) The ~~[director of finance]~~ department shall annually transfer \$500,000 of the amount calculated under Subsection (1) to ~~[the department as dedicated credits for]~~ the State Park Access Highways Improvement Program created in Section 72-3-207.

(3) Each quarter of every year the ~~[director of finance]~~ department shall make the necessary accounting entries to transfer the money appropriated under this section ~~(to the)~~ for class B and class C roads ~~[account]~~.

(4) The funds ~~[in the]~~ appropriated for class B and class C roads ~~[account]~~ shall be expended under the direction of the department as the Legislature shall provide.

Section 4. Section 72-2-108 is amended to read:

72-2-108. Apportionment of funds available for use on class B and class C roads -- Bonds.

- (1) For purposes of this section:
- (a) "Graveled road" means a road:
 - (i) that is:
 - (A) graded; and
 - (B) drained by transverse drainage systems to prevent serious impairment of the road by surface water;
 - (ii) that has an improved surface; and
 - (iii) that has a wearing surface made of:
 - (A) gravel;
 - (B) broken stone;
 - (C) slag;
 - (D) iron ore;
 - (E) shale; or
 - (F) other material that is:
 - (I) similar to a material described in Subsection (1)(a)(iii)(A) through (E); and
 - (II) coarser than sand.
 - (b) "Paved road" includes a graveled road with a chip seal surface.
 - (c) "Road mile" means a one-mile length of road, regardless of:
 - (i) the width of the road; or
 - (ii) the number of lanes into which the road is divided.
 - (d) "Weighted mileage" means the sum of the following:
 - (i) paved road miles multiplied by five; and
 - (ii) all other road type road miles multiplied by two.
 - (2) Subject to the provisions of Subsections (3) through (8) and except as provided in Subsection (10), funds ~~[in the]~~ appropriated for class B and class C roads ~~[account]~~ shall be apportioned among counties and municipalities in the following manner:
 - (a) 50% in the ratio that the class B roads weighted mileage within each county and class C roads weighted mileage within each municipality bear to the total class B and class C roads weighted mileage within the state; and
 - (b) 50% in the ratio that the population of a county or municipality bears to the total population

of the state as of the last official federal census or the United States Bureau of Census estimate, whichever is most recent, except that if population estimates are not available from the United States Bureau of Census, population figures shall be derived from the estimate from the Utah Population Estimates Committee.

(3) For purposes of Subsection (2)(b), “the population of a county” means:

(a) the population of a county outside the corporate limits of municipalities in that county, if the population of the county outside the corporate limits of municipalities in that county is not less than 14% of the total population of that county, including municipalities; and

(b) if the population of a county outside the corporate limits of municipalities in the county is less than 14% of the total population:

(i) the aggregate percentage of the population apportioned to municipalities in that county shall be reduced by an amount equal to the difference between:

(A) 14%; and

(B) the actual percentage of population outside the corporate limits of municipalities in that county; and

(ii) the population apportioned to the county shall be 14% of the total population of that county, including incorporated municipalities.

(4) If an apportionment under Subsection (2) made in the current fiscal year to a county or municipality with a population of less than 14,000 is less than 120% of the amount apportioned to the county or municipality [~~from the~~] for class B and class C roads [~~account~~] in fiscal year 1996-97, the department shall reapportion the funds under Subsection (2) to ensure that the county or municipality receives:

(a) subject to the requirement in Subsection (5) and for fiscal year 2016 only, an amount equal to:

(i) the amount apportioned to the county or municipality for class B and class C roads in fiscal year 2015 multiplied by 120%; plus

(ii) an amount equal to the amount apportioned to the county or municipality in fiscal year 2015 multiplied by the percentage increase or decrease in the total funds available for class B and class C roads between fiscal year 2015 and fiscal year 2016;

(b) for fiscal year 2017 only, an amount equal to the greater of:

(i) the amount apportioned to the county or municipality for class B and class C roads in the current fiscal year under Subsection (2); or

(ii) (A) the amount apportioned to the county for class B and class C roads in fiscal year 2015 multiplied by 120%; plus

(B) the amount calculated as described in Subsection (7); or

(c) for a fiscal year beginning on or after July 1, 2017, an amount equal to the greater of:

(i) the amount apportioned to the county or municipality for class B and class C roads in the current fiscal year under Subsection (2); or

(ii) (A) the amount apportioned to the county or municipality for class B and class C roads through the apportionment formula under Subsection (2) or this Subsection (4), excluding any amounts appropriated as additional support for class B and class C roads under Subsection (10), in the prior fiscal year; plus

(B) the amount calculated as described in Subsection (7).

(5) For the purposes of calculating a final distribution of money collected in fiscal year 2016, the department shall subtract the payments previously made to a county or municipality for money collected in fiscal year 2016 for class B and class C roads from the fiscal year 2016 total calculated in Subsection (4)(a).

(6) (a) The department shall decrease proportionately as provided in Subsection (6)(b) the apportionments to counties and municipalities for which the reapportionment under Subsection (4)(a), (b)(ii), or (c)(ii) does not apply.

(b) The aggregate amount of the funds that the department shall decrease proportionately from the apportionments under Subsection (6)(a) is an amount equal to the aggregate amount reapportioned to counties and municipalities under Subsection (4)(a), (b)(ii), or (c)(ii).

(7) (a) In addition to the apportionment adjustments made under Subsection (4), a county or municipality that qualifies for reapportioned money under Subsection (4)(b)(ii) or (c)(ii) shall receive an amount equal to the amount apportioned to the county or municipality under Subsection (4)(b)(ii) or (c)(ii) for class B and class C roads in the prior fiscal year multiplied by the percentage increase or decrease in the total funds available for class B and class C roads between the prior fiscal year and the fiscal year that immediately preceded the prior fiscal year.

(b) The adjustment under Subsection (7)(a) shall be made in the same way as provided in Subsections (6)(a) and (b).

(8) (a) If a county or municipality does not qualify for a reapportionment under Subsection (4)(c) in the current fiscal year but previously qualified for a reapportionment under Subsection (4)(c) on or after July 1, 2017, the county or municipality shall receive an amount equal to the greater of:

(i) the amount apportioned to the county or municipality for class B and class C roads in the current fiscal year under Subsection (2); or

(ii) the amount apportioned to the county or municipality for class B and class C roads in the prior fiscal year.

(b) The adjustment under Subsection (8)(a) shall be made in the same way as provided in Subsections (6)(a) and (b).

(9) The governing body of any municipality or county may issue bonds redeemable up to a period of 10 years under Title 11, Chapter 14, Local Government Bonding Act, to pay the costs of constructing, repairing, and maintaining class B or class C roads and may pledge class B or class C road funds received pursuant to this section to pay principal, interest, premiums, and reserves for the bonds.

(10) (a) For fiscal year 2017 only, the department shall distribute \$5,000,000 of the funds appropriated for additional support for class B and class C roads among the counties and municipalities that qualified for reapportioned funds under Subsection (4) before May 1, 2016.

(b) The department shall distribute an amount to each county or municipality described in Subsection (10)(a) considering the projected amount of revenue that each county or municipality would have received under the reapportionment formula in effect before May 1, 2016.

(c) The department may consult with local government entities to determine the distribution amounts under Subsection (10)(b).

(d) Before making the distributions required under this section, the department shall report to the Executive Appropriations Committee of the Legislature by no later than December 31, 2016, the amount of funds the department will distribute to each county or municipality that qualifies for a distribution under this Subsection (10).

(e) The Executive Appropriations Committee of the Legislature shall review and comment on the amount of funds proposed to be distributed to each county or municipality that qualifies for a distribution under this Subsection (10).

Section 5. Section 72-2-110 is amended to read:

72-2-110. Funds allocated to class B and class C roads -- Matching federal funds -- R.S. 2477 rights.

A county or municipality may:

(1) use funds which are allocated to class B and class C roads for matching federal funds for the construction of secondary roads now available or which may later become available in accordance with the provisions of law; and

(2) use up to 30% of the class B and class C ~~roads account~~ road funds allocated to the county or municipality to pay the costs of asserting, defending, or litigating local government rights under R.S. 2477 on class B, class C, or class D roads.

Section 6. Section 72-3-301 is amended to read:

72-3-301. Statewide public safety interest highway defined -- Designations -- Control -- Maintenance -- Improvement restrictions -- Formula funding provisions.

(1) As used in this part, "statewide public safety interest highway" means a designated state highway that serves a compelling statewide public safety interest.

(2) Statewide public safety interest highways include:

(a) SR-900. From near the east bound on and off ramps of the I-80 Delle Interchange on the I-80 south frontage road, traversing northwesterly, westerly, and northeasterly, including on portions of a county road and a Bureau of Land Management road for a distance of 9.24 miles. Then beginning again at the I-80 south frontage road traversing southwesterly and northwesterly on a county road for a distance of 4.33 miles. Then beginning again at the I-80 south frontage road traversing southwesterly, northerly, northwesterly, westerly, and northeasterly on a county road and a Bureau of Land Management road to near the east bound on and off ramps of I-80 Low/Lakeside Interchange for a distance of 2.61 miles. The entire length of SR-900 is a total distance of 16.18 miles.

(b) SR-901. From SR-196 traversing westerly and northwesterly on a county road to a junction with a Bureau of Land Management road described as part of SR-901, then northwesterly to a junction with a county road for a distance of 8.70 miles. Then beginning again at a junction with SR-901 traversing northwesterly on a Bureau of Land Management road to a junction with a county road for a distance of 6.52 miles. Then beginning again at a junction with SR-901 traversing southwesterly on a Bureau of Land Management road to a junction with a county road for a distance of 5.44 miles. Then beginning again from a junction with SR-901 traversing southwesterly on a county road to a junction with a county road a distance of 11.52 miles. Then beginning again at a junction with SR-196 traversing westerly on a Bureau of Land Management road to a junction with a county road for a distance of 11.30 miles. The entire length of SR-901 is a total distance of 43.48 miles.

(3) The department has jurisdiction and control over all statewide public safety interest highways.

(4) (a) A county shall maintain the portions of a statewide public safety interest highway that was a class B county road under the county's jurisdiction prior to the designation under this section.

(b) Notwithstanding the provisions of Section 17-50-305, a county may not abandon any portion of a statewide public safety interest highway.

(c) Except under written authorization of the executive director of the department, a statewide public safety interest highway shall remain the same class of highway that it was prior to the designation under this section with respect to grade, drainage, surface, and improvements and it may not be upgraded or improved to a higher class of highway.

(5) (a) A class B county road that is designated a statewide public safety interest highway under this section is considered a class B county road for the purposes of the distribution formula and distributions of funds.

(b) The amount of funds received by any jurisdiction ~~[from the]~~ for class B and class C roads ~~[account]~~ under Section 72-2-107 may not be affected by the provisions of this section.

Section 7. Section 78A-5-110 is amended to read:

78A-5-110. Allocation of district court fees and forfeitures.

(1) Except as provided in this section, district court fines and forfeitures collected for violation of state statutes shall be paid to the state treasurer.

(2) Fines and forfeitures collected by the court for violation of a state statute or county or municipal ordinance constituting a misdemeanor or an infraction shall be remitted 1/2 to the state treasurer and 1/2 to the treasurer of the state or local governmental entity which prosecutes or which would prosecute the violation.

(3) Fines and forfeitures collected for violations of Title 23, Wildlife Resources Code of Utah, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act, shall be paid to the state treasurer.

(a) For violations of Title 23, Wildlife Resources Code of Utah, the state treasurer shall allocate 85% to the Division of Wildlife Resources and 15% to the General Fund.

(b) For violations of Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act, the state treasurer shall allocate 85% to the Division of Parks and Recreation and 15% to the General Fund.

(4) ~~[Fines]~~ (a) The state treasurer shall allocate fines and forfeitures collected for a violation of Section 72-7-404 or 72-7-406, less fees established by the Judicial Council, [shall be paid to the state treasurer for deposit in the B and C road account.] to the Department of Transportation for use on class B and class C roads.

(b) Fees established by the Judicial Council shall be deposited in the state General Fund.

(c) Money ~~[deposited in the]~~ allocated for class B and class C ~~[road account]~~ roads is supplemental to the money appropriated under Section 72-2-107 but shall be expended in the same manner as other class B and class C road funds.

(5) (a) Fines and forfeitures collected by the court for a second or subsequent violation under Section 41-6a-1713 or Subsection 72-7-409(8)(b) shall be remitted:

(i) 60% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 40% in accordance with Subsection (2).

(b) Fines and forfeitures collected by the court for a second or subsequent violation under Subsection 72-7-409(8)(c) shall be remitted:

(i) 50% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 50% in accordance with Subsection (2).

(6) Fines and forfeitures collected for any violations not specified in this chapter or otherwise provided for by law shall be paid to the state treasurer.

(7) Fees collected in connection with civil actions filed in the district court shall be paid to the state treasurer.

(8) The court shall remit money collected in accordance with Title 51, Chapter 7, State Money Management Act.

Section 8. Section 78A-7-120 is amended to read:

78A-7-120. Disposition of fines.

(1) Except as otherwise specified by this section, fines and forfeitures collected by a justice court shall be remitted, 1/2 to the treasurer of the local government responsible for the court and 1/2 to the treasurer of the local government which prosecutes or which would prosecute the violation. An interlocal agreement created pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, related to justice courts may alter the ratio provided in this section if the parties agree.

(2) (a) For violation of Title 23, Wildlife Resources Code of Utah, the court shall allocate 85% to the Division of Wildlife Resources and 15% to the general fund of the city or county government responsible for the justice court.

(b) For violation of Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act, the court shall allocate 85% to the Division of Parks and Recreation and 15% to the general fund of the city or county government responsible for the justice court.

(3) The surcharge established by Section 51-9-401 shall be paid to the state treasurer.

(4) Fines, fees, court costs, and forfeitures collected by a municipal or county justice court for a violation of Section 72-7-404 or 72-7-406 regarding maximum weight limitations and overweight permits, minus court costs not to exceed the schedule adopted by the Judicial Council, shall be paid to the state treasurer and ~~[distributed to the class B and C road account.]~~ allocated to the Department of Transportation for class B and class C roads.

(5) Revenue ~~[deposited in the]~~ allocated for class B and class C ~~[road account]~~ roads pursuant to Subsection (4) is supplemental to the money appropriated under Section 72-2-107 but shall be expended in the same manner as other class B and class C road funds.

(6) (a) Fines and forfeitures collected by the court for a second or subsequent violation under Section 41-6a-1713 or Subsection 72-7-409(8)(b) shall be remitted:

(i) 60% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 40% in accordance with Subsection (1).

(b) Fines and forfeitures collected by the court for a second or subsequent violation under Subsection 72-7-409(8)(c) shall be remitted:

(i) 50% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 50% in accordance with Subsection (1).

CHAPTER 145**S. B. 40**

Passed February 22, 2017

Approved March 20, 2017

Effective May 9, 2017

SCHOOL BUS INSPECTION REVISIONS

Chief Sponsor: Wayne A. Harper
House Sponsor: Eric K. Hutchings

LONG TITLE**General Description:**

This bill modifies the safety inspection requirements for school buses.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the frequency of required safety inspections for school buses;
- ▶ requires random inspections on a portion of school buses; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53-8-211, as last amended by Laws of Utah 2008, Chapter 382

53-8-211.5, as enacted by Laws of Utah 2001, Chapter 154

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

Section 1. Section 53-8-211 is amended to read:**53-8-211. Safety inspection of school buses and other vehicles.**

(1) For purposes of this section and Section 53-8-211.5, "education entity" means:

- (a) a school district;
- (b) a charter school;
- (c) a private school; and
- (d) the Utah Schools for the Deaf and the Blind.

~~[(4)]~~ (2) (a) ~~[The]~~ A school bus operated by an education entity in this state is required to pass a safety inspection annually and the Highway Patrol shall:

(i) perform safety inspections at least ~~[twice]~~ once each school year on all school buses operated by each ~~[school district and each private school]~~ education entity in the state for the transportation of students, except as otherwise provided in Subsection ~~[(4)]~~ (2)(b); ~~[and]~~

(ii) annually, at a time during the school year other than the time of the inspection described in Subsection (2)(a)(i), perform safety inspections on 20% of the school buses operated by an education

entity, selected randomly, except as otherwise provided in Subsection (2)(b); and

~~[(4)]~~ (iii) cause to be removed from the public highways any vehicle found to have mechanical or other defects under this Subsection ~~[(4)]~~ (2)(a) endangering the safety of passengers and the public until the defects have been corrected.

(b) (i) ~~[A school district or private school]~~ An education entity may perform the safety inspections of a school bus that it operates in accordance with rules made by the division under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and after consultation with the State Board of Education.

(ii) The rules under Subsection ~~[(4)]~~ (2)(b)(i) shall include provisions for:

(A) maintaining school bus drivers' hours of service records;

(B) requiring school bus drivers to maintain vehicle condition reports;

(C) maintaining school bus maintenance and repair records; and

(D) validating that defects discovered during the inspection process have been corrected prior to returning a school bus to service.

(iii) (A) The division shall audit school bus safety operations of each ~~[school district and private school]~~ education entity performing inspections under Subsection ~~[(4)]~~ (2)(b)(i) to ensure compliance with the rules made under ~~[that subsection]~~ Subsection (2)(b)(i).

(B) The audit may include both a formal examination of the ~~[district's or school's]~~ education entity's inspection records and a random physical inspection of buses that have been safety inspected by the ~~[district or the school]~~ education entity.

(iv) ~~[A school district or school]~~ An education entity must have a comprehensive school bus maintenance plan approved by the division in order to participate in the safety inspection program.

(v) ~~[A school district or private school]~~ An education entity may not operate any vehicle found to have mechanical or other defects that would endanger the safety of passengers and the public until the defects have been corrected.

~~[(2)]~~ (3) Motor vehicles operated by ~~[private schools or school districts]~~ an education entity, and not used for the transportation of students, are subject to Section 53-8-205.

Section 2. Section 53-8-211.5 is amended to read:**53-8-211.5. School bus safety standards -- Exceptions.**

(1) Beginning July 1, 2003, ~~[a school district or private school]~~ an education entity, as defined in Section 53-8-211, may not use a vehicle with a seating capacity of 11 or more, including the driver, for the transportation of its students unless the vehicle meets federal school bus safety standards under 49 U.S.C. Sec. 30101, et seq.

(2) Subsection (1) does not apply to a vehicle operated by a common carrier, as defined in Section 59-12-102, if the common carrier is not exclusively engaged in the transportation of students.

CHAPTER 146**S. B. 62**

Passed February 8, 2017
 Approved March 20, 2017
 Effective May 9, 2017

**WORKERS' COMPENSATION
 COVERAGE AMENDMENTS**

Chief Sponsor: Karen Mayne
 House Sponsor: James A. Dunnigan

LONG TITLE**General Description:**

This bill modifies the provisions related to workers' compensation coverage and waivers.

Highlighted Provisions:

This bill:

- ▶ modifies the information required to be filed to obtain a workers' compensation waiver;
- ▶ modifies the circumstances under which a motor carrier may elect not to include an officer or director as an employee for purposes of the Workers' Compensation Act and the Utah Occupational Disease Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 34A-2-104, as last amended by Laws of Utah 2014, Chapter 303
 34A-2-1003, as enacted by Laws of Utah 2011, Chapter 328
 34A-2-1004, as enacted by Laws of Utah 2011, Chapter 328

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

Section 1. Section 34A-2-104 is amended to read:**34A-2-104. "Employee," "worker," and "operative" defined -- Specific circumstances -- Exemptions.**

(1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:

- (a) (i) an elective or appointive officer and any other person:
- (A) in the service of:
 - (I) the state;
 - (II) a county, city, or town within the state; or
 - (III) a school district within the state;
 - (B) serving the state, or any county, city, town, or school district under:
 - (I) an election;
 - (II) appointment; or

(III) any contract of hire, express or implied, written or oral; and

(ii) including:

(A) an officer or employee of the state institutions of learning; and

(B) a member of the National Guard while on state active duty; and

(b) a person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:

(i) under any contract of hire:

(A) express or implied; and

(B) oral or written;

(ii) including aliens and minors, whether legally or illegally working for hire; and

(iii) not including any person whose employment:

(A) is casual; and

(B) not in the usual course of the trade, business, or occupation of the employee's employer.

(2) (a) Unless a lessee provides coverage as an employer under this chapter and Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be:

(i) covered for compensation by the lessor under this chapter and Chapter 3, Utah Occupational Disease Act;

(ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and

(iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees for substantially similar work.

(b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.

(3) (a) (i) [A] Except as provided in Subsection (3)(b), a partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act.

~~(b)~~ (ii) If a partnership or sole proprietorship makes an election under Subsection (3)(a), the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.

~~(c)~~ (iii) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (3)~~(b)~~(a)(ii) is given.

(d) (iv) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a)(i) to be 100% of the state's average weekly wage.

(b) A partner of a partnership or an owner of a sole proprietorship is an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act, if:

(i) the partnership or sole proprietorship:

(A) is a motor carrier; and

(B) employs at least one individual who is not a partner or an owner; and

(ii) the partner or owner personally operates a motor vehicle for the motor carrier.

(4) (a) ~~[A]~~ Except as provided in Subsection (4)(g), a corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) If a corporation makes an election under Subsection (4)(a), the corporation shall serve written notice naming the individuals who are directors or officers to be excluded from coverage:

(i) upon its insurance carrier, if any; or

(ii) upon the commission if the corporation is self-insured or has no employee other than the one or more directors or officers being excluded.

(c) A corporation may exclude no more than five individuals who are directors or officers under Subsection (4)(b)(ii).

(d) An exclusion under this Subsection (4) is subject to Subsection 34A-2-103(7)(d).

(e) A director or officer of a corporation is considered an employee under this chapter and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (4)(b) is given.

(f) The commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form of the notice described in Subsection (4)(b)(ii), including a requirement to provide documentation, if any.

(g) Subsection (4)(a) does not apply to a director or an officer of a motor carrier if the director or officer personally operates a motor vehicle for the motor carrier.

(5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" do not include:

(a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs services in that capacity for a principal broker if:

(i) substantially all of the sales agent's or associate broker's income for services is from real estate commissions; and

(ii) the sales agent's or associate broker's services are performed under a written contract that provides that:

(A) the real estate agent is an independent contractor; and

(B) the sales agent or associate broker is not to be treated as an employee for federal income tax purposes;

(b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation;

(c) an individual who for an insurance producer, as defined in Section 31A-1-301, solicits, negotiates, places, or procures insurance if:

(i) substantially all of the individual's income from those services is from insurance commissions; and

(ii) the services of the individual are performed under a written contract that states that the individual:

(A) is an independent contractor;

(B) is not to be treated as an employee for federal income tax purposes; and

(C) can derive income from more than one insurance company; or

(d) subject to Subsections (6), (7), and (8), an individual who:

(i) (A) owns a motor vehicle; or

(B) leases a motor vehicle to a motor carrier;

(ii) personally operates the motor vehicle described in Subsection (5)(d)(i);

(iii) operates the motor vehicle described in Subsection (5)(d)(i) under a written agreement with the motor carrier that states that the individual operates the motor vehicle as an independent contractor; and

(iv) (A) provides to the motor carrier at the time the written agreement described in Subsection (5)(d)(iii) is executed or as soon after the execution as provided by the commission, a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, to the individual; and

(B) provides to the motor carrier at the time the written agreement described in Subsection (5)(d)(iii) is executed or as soon after the execution as provided by an insurer, proof that the individual is covered by occupational accident related insurance with the coverage and benefit limits listed in Subsection (7)(c).

(6) An individual described in Subsection (5)(d) may become an employee under this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual complies with:

(a) this chapter and Chapter 3, Utah Occupational Disease Act; and

(b) commission rules.

(7) ~~[For purposes of Subsection (5)(d)]~~ As used in this section:

(a) “Motor carrier” means a person engaged in the business of transporting freight, merchandise, or other property by a commercial vehicle on a highway within this state.

(b) “Motor vehicle” means a self-propelled vehicle intended primarily for use and operation on the highways, including a trailer or semitrailer designed for use with another motorized vehicle.

(c) “Occupational accident related insurance” means insurance that provides the following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid, including medical expense benefits, for an injury sustained in the course of working under a written agreement described in Subsection (5)(d)(iii):

- (i) disability benefits;
- (ii) death benefits; and
- (iii) medical expense benefits, which include:
 - (A) hospital coverage;
 - (B) surgical coverage;
 - (C) prescription drug coverage; and
 - (D) dental coverage.

(8) For an individual described in Subsection (5)(d)[,];

(a) if the individual is not covered by a workers’ compensation policy, the individual shall obtain:

- (i) occupational accident related insurance; and
- (ii) a waiver in accordance with Part 10, Workers’ Compensation Coverage Waivers Act; and

(b) the commission shall verify the existence of occupational accident insurance coverage with the coverage and benefit limits listed in Subsection (7)(c) before the commission may issue a workers’ compensation coverage waiver to the individual pursuant to Part 10, Workers’ Compensation Coverage Waivers Act.

Section 2. Section 34A-2-1003 is amended to read:

34A-2-1003. Issuance of a waiver.

(1) The commission shall issue a workers’ compensation coverage waiver to a business entity that:

(a) elects not to include an owner, partner, or corporate officer or director as an employee under a workers’ compensation policy in accordance with Section 34A-2-103 and Subsection 34A-2-104(3) or (4);

(b) employs no other employee on the day on which the commission issues the waiver to the business entity;

(c) provides to the commission the information required by Section 34A-2-1004; and

(d) pays a fee established by the commission in accordance with Section 63J-1-504, except that the fee may not exceed \$50.

(2) (a) A waiver issued under this section expires one year from the day on which it is issued unless renewed by the holder of the waiver.

(b) To renew a waiver issued under this part, the holder of the waiver shall:

(i) employ no other employee on the day on which the commission renews the waiver;

(ii) provide to the commission the information required by Section 34A-2-1004; and

(iii) pay a fee established by the commission in accordance with Section 63J-1-504, except that the fee may not exceed \$50.

(3) As of the day on which a business entity described in Subsection (1) employs an employee other than an owner, partner, or corporate officer or director described in Subsection (1)(a):

(a) the business entity’s waiver is invalid; and

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

(4) The commission shall deposit a fee collected under this section in the Industrial Accident Restricted Account created in Section 34A-2-705.

(5) Unless invalidated under Section 34A-2-1005, notwithstanding the other provisions of this section, a waiver issued by an insurer that is valid on June 30, 2011, remains valid until its expiration date.

Section 3. Section 34A-2-1004 is amended to read:

34A-2-1004. Information required to obtain a waiver.

To obtain or renew a waiver, a business entity shall submit to the commission:

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

(a) the business entity’s federal or state income tax return that shows business income for the complete taxable year that immediately precedes the day on which the business entity submits the information;

(b) a valid business license;

(c) a license to engage in an occupation or profession, including a license under Title 58, Occupations and Professions; or

(d) documentation of an active liability insurance policy that covers the business entity’s activities; or

(2) a copy of one item listed in Subsection (1) and a copy of two or more of the following:

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

(b) proof that for the business entity there is:

(i) a telephone number; and

(ii) a physical location; or

(c) an advertisement of services showing the business entity's name and contact information:

- (i) in a newspaper of general circulation [or];
- (ii) in a telephone directory [showing the business entity's: (i) name; and (ii) contact information.];
- (iii) on a website or social media; or
- (iv) in a trade magazine.

CHAPTER 147**S. B. 69**

Passed February 16, 2017

Approved March 20, 2017

Effective May 9, 2017

**NOTIFICATION REQUIREMENTS
FOR BALLOT PROPOSALS**

Chief Sponsor: Jacob L. Anderegg

House Sponsor: A. Cory Maloy

LONG TITLE**General Description:**

This bill addresses notification requirements related to a ballot proposition.

Highlighted Provisions:

This bill:

- ▶ addresses notification requirements for the submission of arguments for or against a ballot proposition.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-7-402, as last amended by Laws of Utah 2016, Chapter 53

20A-7-704, as last amended by Laws of Utah 2012, Chapter 334

20A-7-705, as last amended by Laws of Utah 2008, Chapter 225

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

Section 1. Section 20A-7-402 is amended to read:**20A-7-402. Local voter information pamphlet -- Contents -- Limitations -- Preparation -- Statement on front cover.**

(1) The county or municipality that is subject to a ballot proposition shall prepare a local voter information pamphlet that meets the requirements of this part.

(2) ~~[(a)]~~ The arguments for or against a ballot proposition shall conform to the requirements of this section.

(3) (a) Within the time requirements described in Subsection (3)(c)(i), a municipality that is subject to a ballot proposition shall provide a notice that complies with the requirements of Subsection (3)(c)(ii) to the municipality's residents by:

(i) if the municipality regularly mails a newsletter, utility bill, or other material to the municipality's residents, including the notice with a newsletter, utility bill, or other material;

(ii) posting the notice, until after the deadline described in Subsection (3)(d) has passed, on:

(A) the Utah Public Notice Website created in Section 63F-1-701; and

(B) the home page of the municipality's website, if the municipality has a website; and

(iii) sending the notice electronically to each individual in the municipality for whom the municipality has an email address.

(b) A county that is subject to a ballot proposition shall:

(i) send an electronic notice that complies with the requirements of Subsection (3)(c)(ii) to each individual in the county for whom the county has an email address; or

(ii) until after the deadline described in Subsection (3)(d) has passed, post a notice that complies with the requirements of Subsection (3)(c)(ii) on:

(A) the Utah Public Notice Website created in Section 63F-1-701; and

(B) the home page of the county's website.

(c) A municipality or county that mails, sends, or posts a notice under Subsection (3)(a) or (b) shall:

(i) mail, send, or post the notice:

(A) not less than 90 days before the date of the election at which a ballot proposition will be voted upon; or

(B) if the requirements of Subsection (3)(c)(i)(A) cannot be met, as soon as practicable after the ballot proposition is approved to be voted upon in an election; and

(ii) ensure that the notice contains:

(A) the ballot title for the ballot proposition;

(B) instructions on how to file a request under Subsection (3)(d); and

(C) the deadline described in Subsection (3)(d).

~~[(b)]~~ (d) To prepare an argument for or against a ballot proposition, an eligible voter shall file a request with the election officer at least 65 days before the election at which the ballot proposition is to be voted on.

~~[(e)]~~ (e) If more than one eligible voter requests the opportunity to prepare an argument for or against a ballot proposition, the election officer shall make the final designation according to the following criteria:

(i) sponsors have priority in preparing an argument regarding a ballot proposition; and

(ii) members of the local legislative body have priority over others.

~~[(d)]~~ (f) (i) Except as provided in Subsection ~~[(2)(e)]~~ (3)(g), a sponsor of a ballot proposition may prepare an argument in favor of the ballot proposition.

(ii) Except as provided in Subsection ~~[(2)(e)]~~ (3)(g), and subject to Subsection ~~[(2)(e)]~~ (3)(e), an eligible voter opposed to the ballot proposition who submits a request under Subsection ~~[(2)(b)]~~ (3)(d)

may prepare an argument against the ballot proposition.

~~[(e)]~~ ~~(g)~~ (i) For a referendum, subject to Subsection ~~[(2)(e)]~~ ~~(3)(e)~~, an eligible voter who is in favor of a law that is referred to the voters and who submits a request under Subsection ~~[(2)(b)]~~ ~~(3)(d)~~ may prepare an argument for adoption of the law.

(ii) The sponsors of a referendum may prepare an argument against the adoption of a law that is referred to the voters.

~~[(f)]~~ (h) An eligible voter who submits an argument under this section shall:

(i) ensure that the argument does not exceed 500 words in length;

(ii) ensure that the argument does not list more than five names as sponsors;

(iii) submit the argument to the election officer no later than 60 days before the election day on which the ballot proposition will be submitted to the voters; and

(iv) include with the argument the eligible voter's name, residential address, postal address, email address if available, and phone number.

~~[(g)]~~ (i) An election officer shall refuse to accept and publish an argument that is submitted after the deadline described in Subsection ~~[(2)(f)]~~ ~~(3)(h)(iii)~~.

~~[(3)]~~ (4) (a) An election officer who timely receives the arguments in favor of and against a ballot proposition shall, within one business day after the day on which the election office receives both arguments, send, via mail or email:

(i) a copy of the argument in favor of the ballot proposition to the eligible voter who submitted the argument against the ballot proposition; and

(ii) a copy of the argument against the ballot proposition to the eligible voter who submitted the argument in favor of the ballot proposition.

(b) The eligible voter who submitted a timely argument in favor of the ballot proposition:

(i) may submit to the election officer a rebuttal argument of the argument against the ballot proposition;

(ii) shall ensure that the rebuttal argument does not exceed 250 words in length; and

(iii) shall submit the rebuttal argument no later than 45 days before the election day on which the ballot proposition will be submitted to the voters.

(c) The eligible voter who submitted a timely argument against the ballot proposition:

(i) may submit to the election officer a rebuttal argument of the argument in favor of the ballot proposition;

(ii) shall ensure that the rebuttal argument does not exceed 250 words in length; and

(iii) shall submit the rebuttal argument no later than 45 days before the election day on which the ballot proposition will be submitted to the voters.

(d) An election officer shall refuse to accept and publish a rebuttal argument that is submitted after the deadline described in Subsection ~~[(3)]~~ ~~(4)(b)(iii)~~ or ~~[(3)]~~ ~~(4)(c)(iii)~~.

~~[(4)]~~ ~~(5)~~ (a) Except as provided in Subsection ~~[(4)]~~ ~~(5)(b)~~:

(i) an eligible voter may not modify an argument or rebuttal argument after the eligible voter submits the argument or rebuttal argument to the election officer; and

(ii) a person other than the eligible voter described in Subsection ~~[(4)]~~ ~~(5)(a)(i)~~ may not modify an argument or rebuttal argument.

(b) The election officer, and the eligible voter who submits an argument or rebuttal argument, may jointly agree to modify an argument or rebuttal argument in order to:

(i) correct factual, grammatical, or spelling errors; and

(ii) reduce the number of words to come into compliance with the requirements of this section.

(c) An election officer shall refuse to accept and publish an argument or rebuttal argument if the eligible voter who submits the argument or rebuttal argument fails to negotiate, in good faith, to modify the argument or rebuttal argument in accordance with Subsection ~~[(4)]~~ ~~(5)(b)~~.

~~[(5)]~~ (6) An election officer may designate another eligible voter to take the place of an eligible voter described in this section if the original eligible voter is, due to injury, illness, death, or another circumstance, unable to continue to fulfill the duties of an eligible voter described in this section.

~~[(6)]~~ (7) The local voter information pamphlet shall include a copy of the initial fiscal impact estimate prepared for each initiative under Section 20A-7-502.5.

~~[(7)]~~ (8) (a) In preparing the local voter information pamphlet, the election officer shall:

(i) ensure that the arguments are printed on the same sheet of paper upon which the ballot proposition is also printed;

(ii) ensure that the following statement is printed on the front cover or the heading of the first page of the printed arguments:

"The arguments for or against a ballot proposition are the opinions of the authors.";

(iii) pay for the printing and binding of the local voter information pamphlet; and

(iv) distribute either the pamphlets or the notice described in Subsection ~~[(7)]~~ ~~(8)(c)~~ either by mail or carrier not less than 15 days before, but not more than 45 days before, the election at which the ballot propositions are to be voted upon.

(b) (i) If the proposed measure exceeds 500 words in length, the election officer may summarize the measure in 500 words or less.

(ii) The summary shall state where a complete copy of the ballot proposition is available for public review.

(c) (i) The election officer may distribute a notice printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail.

(ii) The notice described in Subsection [(7)] (8)(c)(i) shall include:

(A) the address of the Statewide Electronic Voter Information Website authorized by Section 20A-7-801; and

(B) the phone number a voter may call to request delivery of a voter information pamphlet by mail or carrier.

Section 2. Section 20A-7-704 is amended to read:

20A-7-704. Initiative measures -- Arguments for and against -- Voters' requests for argument -- Ballot arguments.

(1) (a) (i) (A) By July 10 of the regular general election year, the sponsors of any initiative petition that has been declared sufficient by the lieutenant governor may deliver to the lieutenant governor an argument for the adoption of the measure.

(B) If two or more sponsors wish to submit arguments for the measure, the lieutenant governor shall designate one of [them] the sponsors to submit the argument for [his] the sponsor's side of the measure.

(ii) (A) Any member of the Legislature may request permission to submit an argument against the adoption of the measure.

(B) If two or more legislators wish to submit an argument against the measure, the presiding officers of the Senate and House of Representatives shall jointly designate one of [them] the legislators to submit the argument to the lieutenant governor.

(b) The sponsors and the legislators submitting arguments shall ensure that each argument:

- (i) does not exceed 500 words in length; and
- (ii) is delivered by July 10.

(2) (a) [(4)] If an argument for or against a measure to be submitted to the voters by initiative petition has not been filed within the time required [by] under Subsection (1)[,];

(i) the Office of the Lieutenant Governor shall immediately:

(A) send an electronic notice that complies with the requirements of Subsection (2)(b) to each individual in the state for whom the Office of the Lieutenant Governor has an email address; or

(B) post a notice that complies with the requirements of Subsection (2)(b) on the home page of the lieutenant governor's website;

(ii) any voter may request the lieutenant governor for permission to prepare an argument for the side on which no argument has been [prepared-] filed; and

[(ii)—If] (iii) if two or more voters request permission to submit arguments on the same side of a measure, the lieutenant governor shall designate one of the voters to write the argument.

(b) A notice described in Subsection (2)(a)(i) shall contain:

(i) the ballot title for the measure;

(ii) instructions on how to submit a request under Subsection (2)(a)(ii); and

(iii) the deadline described in Subsection (2)(c).

[(b)] (c) Any argument prepared under this [subsection] Subsection (2) shall be submitted to the lieutenant governor by July 20.

(3) The lieutenant governor may not accept a ballot argument submitted under this section unless it is accompanied by:

(a) the name and address of the person submitting it, if it is submitted by an individual voter; or

(b) the name and address of the organization and the names and addresses of at least two of its principal officers, if it is submitted on behalf of an organization.

(4) (a) Except as provided in Subsection (4)(c), the authors may not amend or change the arguments after they are submitted to the lieutenant governor.

(b) Except as provided in Subsection (4)(c), the lieutenant governor may not alter the arguments in any way.

(c) The lieutenant governor and the authors of an argument may jointly modify an argument after it is submitted if:

(i) they jointly agree that changes to the argument must be made to correct spelling or grammatical errors; and

(ii) the argument has not yet been submitted for typesetting.

Section 3. Section 20A-7-705 is amended to read:

20A-7-705. Measures to be submitted to voters and referendum measures -- Preparation of argument of adoption.

(1) (a) Whenever the Legislature submits any measure to the voters or whenever an act of the Legislature is referred to the voters by referendum petition, the presiding officer of the house of origin of the measure shall appoint the sponsor of the measure or act and one member of either house who voted with the majority to pass the act or submit the measure to draft an argument for the adoption of the measure.

(b) (i) The argument may not exceed 500 words in length.

(ii) If the sponsor of the measure or act desires separate arguments to be written in favor by each person appointed, separate arguments may be written but the combined length of the two arguments may not exceed 500 words.

(2) (a) If a measure or act submitted to the voters by the Legislature or by referendum petition was not adopted unanimously by the Legislature, the presiding officer of each house shall, at the same time as appointments to an argument in its favor are made, appoint one member who voted against the measure or act from their house to write an argument against the measure or act.

(b) (i) The argument may not exceed 500 words.

(ii) If those members appointed to write an argument against the measure or act desire separate arguments to be written in opposition to the measure or act by each person appointed, separate arguments may be written, but the combined length of the two arguments may not exceed 500 words.

(3) (a) The legislators appointed by the presiding officer of the Senate or House of Representatives to submit arguments shall submit them to the lieutenant governor not later than the day that falls 150 days before the date of the election.

(b) Except as provided in Subsection (3)(d), the authors may not amend or change the arguments after they are submitted to the lieutenant governor.

(c) Except as provided in Subsection (3)(d), the lieutenant governor may not alter the arguments in any way.

(d) The lieutenant governor and the authors of an argument may jointly modify an argument after it is submitted if:

(i) they jointly agree that changes to the argument must be made to correct spelling or grammatical errors; and

(ii) the argument has not yet been submitted for typesetting.

(4) (a) If an argument for or an argument against a measure submitted to the voters by the Legislature or by referendum petition has not been filed by a member of the Legislature within the time required by this section[;]:

(i) the Office of the Lieutenant Governor shall immediately:

(A) send an electronic notice that complies with the requirements of Subsection (4)(b) to each individual in the state for whom the Office of the Lieutenant Governor has an email address; or

(B) post a notice that complies with the requirements of Subsection (4)(b) on the home page of the lieutenant governor's website; and

(ii) any voter may request the presiding officer of the house in which the measure originated for permission to prepare and file an argument for the

side on which no argument has been ~~prepared~~ filed by a member of the Legislature.

(b) A notice described in Subsection (4)(a)(i) shall contain:

(i) the ballot title for the measure;

(ii) instructions on how to submit a request under Subsection (4)(a)(ii); and

(iii) the deadline described in Subsection (4)(d).

~~(b)~~ (c) (i) The presiding officer of the house of origin shall grant permission unless two or more voters request permission to submit arguments on the same side of a measure.

(ii) If two or more voters request permission to submit arguments on the same side of a measure, the presiding officer shall designate one of the voters to write the argument.

~~(e)~~ (d) Any argument prepared under this ~~subsection~~ Subsection (4) shall be submitted to the lieutenant governor not later than ~~the day that falls~~ 135 days before the date of the election.

~~(d)~~ (e) The lieutenant governor may not accept a ballot argument submitted under this section unless it is accompanied by:

(i) the name and address of the person submitting it, if it is submitted by an individual voter; or

(ii) the name and address of the organization and the names and addresses of at least two of its principal officers, if it is submitted on behalf of an organization.

~~(e)~~ (f) Except as provided in Subsection (4)~~(g)~~~~(h)~~, the authors may not amend or change the arguments after they are submitted to the lieutenant governor.

~~(f)~~ (g) Except as provided in Subsection (4)~~(g)~~~~(h)~~, the lieutenant governor may not alter the arguments in any way.

~~(g)~~ (h) The lieutenant governor and the authors of an argument may jointly modify an argument after it is submitted if:

(i) they jointly agree that changes to the argument must be made to correct spelling or grammatical errors; and

(ii) the argument has not yet been submitted for typesetting.

CHAPTER 148**S. B. 89**

Passed March 7, 2017
 Approved March 20, 2017
 Effective May 9, 2017

ADOPTION AGENCY AMENDMENTS

Chief Sponsor: Luz Escamilla
 House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill enacts and amends provisions relating to child-placing agencies.

Highlighted Provisions:

This bill:

- ▶ establishes ethical standards for a child-placing agency;
- ▶ requires the Utah Department of Human Services, Office of Licensing, to establish certain rules creating minimum ethical responsibilities;
- ▶ defines “child-placing agency”; and
- ▶ makes conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-10-1005, as last amended by Laws of Utah 2016, Chapter 375
 62A-2-101, as last amended by Laws of Utah 2016, Chapters 122, 211, and 342
 62A-2-106, as last amended by Laws of Utah 2016, Chapters 211 and 342
 62A-2-108.5, as enacted by Laws of Utah 2008, Chapter 314
 62A-4a-205.6, as last amended by Laws of Utah 2015, Chapter 322
 62A-4a-601, as last amended by Laws of Utah 2006, Chapter 281
 62A-4a-602, as last amended by Laws of Utah 2008, Chapter 3
 62A-4a-605, as renumbered and amended by Laws of Utah 1994, Chapter 260
 62A-4a-606, as last amended by Laws of Utah 2007, Chapter 81
 62A-4a-607, as last amended by Laws of Utah 2015, Chapter 322
 78B-6-106, as renumbered and amended by Laws of Utah 2008, Chapter 3
 78B-6-110.1, as enacted by Laws of Utah 2012, Chapter 340
 78B-6-124, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and amended by Laws of Utah 2008, Chapter 3
 78B-6-134, as last amended by Laws of Utah 2013, Chapter 458

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

Section 1. Section 59-10-1005 is amended to read:**59-10-1005. Tax credit for at-home parent.**

(1) As used in this section:

(a) “At-home parent” means a parent:

(i) who provides full-time care at the parent’s residence for one or more of the parent’s own qualifying children;

(ii) who claims the qualifying child as a dependent on the parent’s individual income tax return for the taxable year for which the parent claims the credit; and

(iii) if the sum of the following amounts are \$3,000 or less for the taxable year for which the parent claims the credit:

(A) the total wages, tips, and other compensation listed on all of the parent’s federal Forms W-2; and

(B) the gross income listed on the parent’s federal Form 1040 Schedule C, Profit or Loss From Business.

(b) “Parent” means an individual who:

(i) is the biological mother or father of a qualifying child;

(ii) is the stepfather or stepmother of a qualifying child;

(iii) (A) legally adopts a qualifying child; or

(B) has a qualifying child placed in the individual’s home:

(I) by a [child-placing] child-placing agency, as defined in Section [62A-4a-601] 62A-2-101; and

(II) for the purpose of legally adopting the child;

(iv) is a foster parent of a qualifying child; or

(v) is a legal guardian of a qualifying child.

(c) “Qualifying child” means a child who is no more than 12 months of age on the last day of the taxable year for which the tax credit is claimed.

(2) For a taxable year beginning on or after January 1, 2000, a claimant may claim on the claimant’s individual income tax return a nonrefundable tax credit of \$100 for each qualifying child if:

(a) the claimant or another claimant filing a joint individual income tax return with the claimant is an at-home parent; and

(b) the adjusted gross income of all of the claimants filing the individual income tax return is less than or equal to \$50,000.

(3) A claimant may not carry forward or carry back a tax credit authorized by this section.

(4) (a) In accordance with any rules prescribed by the commission under Subsection (4)(b), the Division of Finance shall transfer at least annually

from the General Fund into the Education Fund the aggregate amount of all tax credits claimed under this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for making a transfer from the General Fund into the Education Fund as required by Subsection (4)(a).

Section 2. Section 62A-2-101 is amended to read:

62A-2-101. Definitions.

As used in this chapter:

(1) "Adult day care" means nonresidential care and supervision:

(a) for three or more adults for at least four but less than 24 hours a day; and

(b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(2) "Applicant" means a person who applies for an initial license or a license renewal under this chapter.

(3) (a) "Associated with the licensee" means that an individual is:

(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or

(ii) applying to become affiliated with a licensee in a capacity described in Subsection (3)(a)(i).

(b) "Associated with the licensee" does not include:

(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:

(A) a local mental health authority described in Section 17-43-301;

(B) a local substance abuse authority described in Section 17-43-201; or

(C) a board of an organization operating under a contract to provide mental health or substance abuse programs, or services for the local mental health authority or substance abuse authority; or

(ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised at all times.

(4) (a) "Boarding school" means a private school that:

(i) uses a regionally accredited education program;

(ii) provides a residence to the school's students:

(A) for the purpose of enabling the school's students to attend classes at the school; and

(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (4)(b)(i); and

(iv) (A) does not provide the treatment or services described in Subsection ~~[(28)]~~ (29)(a); or

(B) provides the treatment or services described in Subsection ~~[(28)]~~ (29)(a) on a limited basis, as described in Subsection (4)(b)(ii).

(b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or services described in Subsection ~~[(28)]~~ (29)(a) on a limited basis if:

(A) the treatment or services described in Subsection ~~[(28)]~~ (29)(a) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection ~~[(28)]~~ (29)(a); or

(II) have a primary purpose of providing the treatment or services described in Subsection ~~[(28)]~~ (29)(a).

(c) "Boarding school" does not include a therapeutic school.

(5) "Child" means a person under 18 years of age.

(6) "Child placing" means receiving, accepting, or providing custody or care for ~~[any]~~ a child, temporarily or permanently, for the purpose of:

(a) finding a person to adopt the child;

(b) placing the child in a home for adoption; or

(c) foster home placement.

(7) "Child-placing agency" means a person that engages in child placing.

~~[(7)]~~ (8) "Client" means an individual who receives or has received services from a licensee.

~~[(8)]~~ (9) "Day treatment" means specialized treatment that is provided to:

(a) a client less than 24 hours a day; and

(b) four or more persons who:

(i) are unrelated to the owner or provider; and

(ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.

~~[(9)]~~ (10) "Department" means the Department of Human Services.

~~[(10)]~~ (11) "Department contractor" means an individual who:

(a) provides services under a contract with the department; and

(b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.

[(41)] (12) “Direct access” means that an individual has, or likely will have:

(a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or

(b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child’s parents or legal guardians, or the vulnerable adult.

[(42)] (13) “Directly supervised” means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.

[(43)] (14) “Director” means the director of the Office of Licensing.

[(44)] (15) “Domestic violence” means the same as that term is defined in Section 77-36-1.

[(45)] (16) “Domestic violence treatment program” means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

[(46)] (17) “Elder adult” means a person 65 years of age or older.

[(47)] (18) “Executive director” means the executive director of the department.

[(48)] (19) “Foster home” means a temporary residential living environment for the care of:

(a) (i) fewer than five foster children in the home of a licensed foster parent; or

(ii) five or more foster children in the home of a licensed foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group; or

(b) (i) fewer than four foster children in the home of a certified foster parent; or

(ii) four or more foster children in the home of a certified foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group.

[(49)] (20) (a) “Human services program” means a:

(i) foster home;

(ii) therapeutic school;

(iii) youth program;

(iv) resource family home;

(v) recovery residence; or

(vi) facility or program that provides:

(A) secure treatment;

(B) inpatient treatment;

(C) residential treatment;

(D) residential support;

(E) adult day care;

(F) day treatment;

(G) outpatient treatment;

(H) domestic violence treatment;

(I) ~~child-placing~~ child-placing services;

(J) social detoxification; or

(K) any other human services that are required by contract with the department to be licensed with the department.

(b) “Human services program” does not include a boarding school.

[(20)] (21) “Licensee” means an individual or a human services program licensed by the office.

[(21)] (22) “Local government” means a city, town, metro township, or county.

[(22)] (23) “Minor” has the same meaning as “child.”

[(23)] (24) “Office” means the Office of Licensing within the Department of Human Services.

[(24)] (25) “Outpatient treatment” means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.

[(25)] (26) (a) “Recovery residence” means a home, residence, or facility that meets at least two of the following requirements:

(i) provides a supervised living environment for individuals recovering from a substance abuse disorder;

(ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance abuse disorder;

(iii) provides or arranges for residents to receive services related to their recovery from a substance abuse disorder, either on or off site;

(iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or

(v) (A) receives public funding; or

(B) is run as a business venture, either for-profit or not-for-profit.

(b) “Recovery residence” does not mean:

(i) a residential treatment program;

(ii) residential support; or

(iii) a home, residence, or facility, in which:

(A) residents, by their majority vote, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;

(B) residents equitably share rent and housing-related expenses; and

(C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.

~~[(26)]~~ (27) “Regular business hours” means:

(a) the hours during which services of any kind are provided to a client; or

(b) the hours during which a client is present at the facility of a licensee.

~~[(27)]~~ (28) (a) “Residential support” means arranging for or providing the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) “Residential support” includes providing a supervised living environment for persons with dysfunctions or impairments that are:

- (i) emotional;
- (ii) psychological;
- (iii) developmental; or
- (iv) behavioral.

(c) Treatment is not a necessary component of residential support.

(d) “Residential support” does not include:

- (i) a recovery residence; or
- (ii) residential services that are performed:

(A) exclusively under contract with the Division of Services for People with Disabilities; or

(B) in a facility that serves fewer than four individuals.

~~[(28)]~~ (29) (a) “Residential treatment” means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) “Residential treatment” does not include a:

- (i) boarding school;
- (ii) foster home; or

(iii) recovery residence.

~~[(29)]~~ (30) “Residential treatment program” means a human services program that provides:

- (a) residential treatment; or
- (b) secure treatment.

~~[(30)]~~ (31) (a) “Secure treatment” means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.

(b) “Secure treatment” differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures that are imposed on residents with neither their consent nor control.

~~[(31)]~~ (32) “Social detoxification” means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

(a) room and board for persons who are unrelated to the owner or manager of the facility;

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

~~[(32)]~~ (33) “Substance abuse treatment program” means a program:

(a) designed to provide:

- (i) specialized drug or alcohol treatment;
- (ii) rehabilitation; or
- (iii) habilitation services; and

(b) that provides the treatment or services described in Subsection ~~[(32)]~~ (33)(a) to persons with:

- (i) a diagnosed substance abuse disorder; or
- (ii) chemical dependency disorder.

~~[(33)]~~ (34) “Therapeutic school” means a residential group living facility:

(a) for four or more individuals that are not related to:

- (i) the owner of the facility; or
- (ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

- (i) at home;
- (ii) in a public school; or
- (iii) in a nonresidential private school; and

(c) that offers:

- (i) room and board; and

- (ii) an academic education integrated with:
 - (A) specialized structure and supervision; or
 - (B) services or treatment related to:
 - (I) a disability;
 - (II) emotional development;
 - (III) behavioral development;
 - (IV) familial development; or
 - (V) social development.

[~~34~~] (35) “Unrelated persons” means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

[~~35~~] (36) “Vulnerable adult” means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person’s ability to:

- (a) provide personal protection;
- (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- (c) obtain services necessary for health, safety, or welfare;
- (d) carry out the activities of daily living;
- (e) manage the adult’s own resources; or
- (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

[~~36~~] (37) (a) “Youth program” means a nonresidential program designed to provide behavioral, substance abuse, or mental health services to minors that:

- (i) serves adjudicated or nonadjudicated youth;
 - (ii) charges a fee for its services;
 - (iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;
 - (iv) may or may not provide all or part of its services in the outdoors;
 - (v) may or may not limit or censor access to parents or guardians; and
 - (vi) prohibits or restricts a minor’s ability to leave the program at any time of the minor’s own free will.
- (b) “Youth program” does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

Section 3. Section 62A-2-106 is amended to read:

62A-2-106. Office responsibilities.

- (1) Subject to the requirements of federal and state law, the office shall:
 - (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:

(i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, that shall be limited to:

- (A) fire safety;
- (B) food safety;
- (C) sanitation;
- (D) infectious disease control;
- (E) safety of the:
 - (I) physical facility and grounds; and
 - (II) area and community surrounding the physical facility;
- (F) transportation safety;
- (G) emergency preparedness and response;
- (H) the administration of medical standards and procedures, consistent with the related provisions of this title;
 - (I) staff and client safety and protection;
 - (J) the administration and maintenance of client and service records;
 - (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;
 - (L) staff to client ratios;
 - (M) access to firearms; and
 - (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
- (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
 - (A) fire safety, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
 - (B) food safety;
 - (C) sanitation;
 - (D) infectious disease control, except that the standards are limited to:
 - (I) those required by law or rule under Title 26, Utah Health Code, or Title 26A, Local Health Authorities; and
 - (II) requiring a separate room for clients who are sick;
 - (E) safety of the physical facility and grounds, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
 - (F) transportation safety;
 - (G) emergency preparedness and response;
 - (H) access to appropriate medical care, including:
 - (I) subject to the requirements of law, designation of a person who is authorized to dispense medication; and

- (II) storing, tracking, and securing medication;
- (I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;
- (J) the administration and maintenance of client and service records;
- (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;
- (L) staff to client ratios;
- (M) access to firearms; and
- (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
- (iii) procedures and standards for permitting a licensee to:
- (A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:
- (I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;
- (II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);
- (III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and
- (IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or
- (B) (I) provide residential treatment services to a child who is:
- (Aa) 12 years old or older; and
- (Bb) under the custody of the Department of Human Services, or one of its divisions; and
- (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:
- (Aa) at least 18 years old, but younger than 21 years old; and
- (Bb) under the custody of the Department of Human Services, or one of its divisions;
- (iv) minimum administration and financial requirements for licensees;
- (v) guidelines for variances from rules established under this Subsection (1);
- (vi) ~~minimum ethical responsibilities of an adoption~~ ethical standards, as described in Subsection 78B-6-106(3), and ~~minimum responsibilities of a child-placing agency that provides adoption services and that is licensed under this chapter, including prohibiting an adoption agency or its employee from misrepresenting facts or information~~;
- (vii) what constitutes an "outpatient treatment program" for purposes of this chapter;
- (viii) a procedure requiring a licensee to provide an insurer the licensee's records related to any services or supplies billed to the insurer, and a procedure allowing the licensee and the insurer to contact the Insurance Department to resolve any disputes;
- (ix) a protocol for the office to investigate and process complaints about licensees; and
- (x) a procedure for licensees to report incidents;
- (b) enforce rules relating to the office;
- (c) issue licenses in accordance with this chapter;
- (d) if the United States Department of State executes an agreement with the office that designates the office to act as an accrediting entity in accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to provide intercountry adoption services pursuant to:
- (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
- (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;
- (e) make rules to implement the provisions of Subsection (1)(d);
- (f) conduct surveys and inspections of licensees and facilities in accordance with Section 62A-2-118;
- (g) collect licensure fees;
- (h) notify licensees of the name of a person within the department to contact when filing a complaint;
- (i) investigate complaints regarding any licensee or human services program;
- (j) have access to all records, correspondence, and financial data required to be maintained by a licensee;
- (k) have authority to interview any client, family member of a client, employee, or officer of a licensee;
- (l) have authority to deny, condition, revoke, suspend, or extend any license issued by the department under this chapter by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act;
- (m) electronically post notices of agency action issued to a human services program, with the exception of a foster home, on the office's website, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and
- (n) upon receiving a local government's request under Section 62A-2-108.4, notify the local government of new human services program license applications, except for foster homes, for human services programs located within the local government's jurisdiction.

(2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a licensee to establish and comply with an emergency response plan that requires clients and staff to:

(a) immediately report to law enforcement any significant criminal activity, as defined by rule, committed:

(i) on the premises where the licensee operates its human services program;

(ii) by or against its clients; or

(iii) by or against a staff member while the staff member is on duty;

(b) immediately report to emergency medical services any medical emergency, as defined by rule:

(i) on the premises where the licensee operates its human services program;

(ii) involving its clients; or

(iii) involving a staff member while the staff member is on duty; and

(c) immediately report other emergencies that occur on the premises where the licensee operates its human services program to the appropriate emergency services agency.

Section 4. Section 62A-2-108.5 is amended to read:

62A-2-108.5. Notification requirement for child-placing agencies that provide foster home services -- Rulemaking authority.

(1) The office shall require a ~~[child-placing]~~ child-placing agency that provides foster home services to notify a foster parent that if the foster parent signs as the responsible adult for a foster child to receive a driver license under Section 53-3-211:

(a) the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon a highway as provided under Subsections 53-3-211(2) and (4); and

(b) the foster parent may file with the Driver License Division a verified written request that the learner permit or driver license be canceled in accordance with Section 53-3-211 if the foster child no longer resides with the foster parent.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules establishing the procedures for a ~~[child-placing]~~ child-placing agency to provide the notification required under this section.

Section 5. Section 62A-4a-205.6 is amended to read:

62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.

(1) With regard to a child who has a primary permanency plan of adoption or for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section

78A-6-314, the division shall make intensive efforts to place the child in an adoptive home within 30 days of the earlier of:

(a) approval of the final plan; or

(b) establishment of the primary permanency plan.

(2) If within the time periods described in Subsection (1) the division is unable to locate a suitable adoptive home, it shall contract with licensed ~~[child-placing]~~ child-placing agencies to search for an appropriate adoptive home for the child, and to place the child for adoption. The division shall comply with the requirements of Section 62A-4a-607 and contract with a variety of child placing agencies licensed under Title 62A, Chapter 4a, Part 6, Child Placing. In accordance with federal law, the division shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.

(3) The division shall ensure that children who are adopted and were previously in its custody, continue to receive the medical and mental health coverage that they are entitled to under state and federal law.

(4) The division may not consider a prospective adoptive parent's willingness or unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with the prospective adoptive parent.

Section 6. Section 62A-4a-601 is amended to read:

62A-4a-601. Definitions.

For purposes of this part:

~~(1) "Child-placing" means:~~

~~(a) receiving, accepting, or providing custody or care for a child, temporarily or permanently, for the purpose of finding a person to adopt the child; or~~

~~(b) placing a child, temporarily or permanently, in a home for adoption or substitute care.]~~

~~(2) "Child placing agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing.]~~

(1) "Child placing" means the same as that term is defined in Section 62A-2-101.

(2) "Child-placing agency" means the same as that term is defined in Section 62A-2-101.

Section 7. Section 62A-4a-602 is amended to read:

62A-4a-602. Licensure requirements -- Prohibited acts.

(1) No person~~[- agency, firm, corporation, association, or group children's home]~~ may engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the Office of Licensing, in accordance with Chapter 2, Licensure of Programs and Facilities. When a ~~[child-placing]~~ child-placing agency's license is

suspended or revoked in accordance with that chapter, the care, control, or custody of any child who has been in the care, control, or custody of that agency shall be transferred to the division.

(2) (a) An attorney, physician, or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for that assistance.

(b) An attorney, physician, or other person may not:

(i) issue or cause to be issued to any person a card, sign, or device indicating that he is available to provide that assistance;

(ii) cause, permit, or allow any sign or marking indicating that he is available to provide that assistance, on or in any building or structure;

(iii) announce or cause, permit, or allow an announcement indicating that he is available to provide that assistance, to appear in any newspaper, magazine, directory, or on radio or television; or

(iv) advertise by any other means that he is available to provide that assistance.

(3) Nothing in this part precludes payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings; and no provision of this part abrogates the right of procedures for independent adoption as provided by law.

(4) In accordance with federal law, only agents or employees of the division and of licensed child placing agencies may certify to the United States Immigration and Naturalization Service that a family meets the division's preadoption requirements.

(5) (a) Beginning May 1, 2000, neither a licensed ~~[child-placing]~~ child-placing agency nor any attorney practicing in this state may place a child for adoption, either temporarily or permanently, with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137.

(b) Beginning May 1, 2000, the division, as a licensed ~~[child-placing]~~ child-placing agency, may not place a child in foster care with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137. However, nothing in this Subsection (5)(b) limits the placement of a child in foster care with the child's biological or adoptive parent.

(c) Beginning May 1, 2000, with regard to children who are in the custody of the state, the division shall establish a policy providing that priority for foster care and adoptive placement shall

be provided to families in which both a man and a woman are legally married under the laws of this state. However, nothing in this Subsection (5)(c) limits the placement of a child with the child's biological or adoptive parent.

Section 8. Section 62A-4a-605 is amended to read:

62A-4a-605. Establishing proof of authority.

A ~~[child-placing]~~ child-placing agency is not required to present its license, issued under Chapter 2, Licensure of Programs and Facilities, or its certificate of incorporation, or proof of its authority to consent to adoption, as proof of its authority in any proceeding in which it is an interested party, unless the court or a party to the proceeding requests that the agency or its representative establish proof of authority.

Section 9. Section 62A-4a-606 is amended to read:

62A-4a-606. Child-placing agency responsibility for educational services -- Payment of costs.

(1) A ~~[child-placing]~~ child-placing agency shall ensure that the requirements of Subsections 53A-11-101.5(2) and 53A-11-101.7(1) are met through the provision of appropriate educational services for all children served in the state by the agency.

(2) If the educational services are to be provided through a public school, and:

(a) the custodial parent or legal guardian resides outside the state, then the child placing agency shall pay all educational costs required under Sections 53A-2-205 and 53A-12-102; or

(b) the custodial parent or legal guardian resides within the state, then the child placing agency shall pay all educational costs required under Section 53A-12-102.

(3) Children in the custody or under the care of a Utah state agency are exempt from the payment of fees required under Subsection (2).

(4) A public school shall admit any child living within its school boundaries who is under the supervision of a child placing agency upon payment by the agency of the tuition and fees required under Subsection (2).

Section 10. Section 62A-4a-607 is amended to read:

62A-4a-607. Promotion of adoption -- Agency notice to potential adoptive parents.

(1) (a) The division and all ~~[child-placing]~~ child-placing agencies licensed under this part shall promote adoption when that is a possible and appropriate alternative for a child. Specifically, in accordance with Section 62A-4a-205.6, the division shall actively promote the adoption of all children in its custody who have a final plan for termination of parental rights pursuant to Section

78A-6-314 or a primary permanency plan of adoption.

(b) Beginning May 1, 2000, the division may not place a child for adoption, either temporarily or permanently, with any individual or individuals who do not qualify for adoptive placement pursuant to the requirements of Sections 78B-6-117, 78B-6-102, and 78B-6-137.

(2) The division shall obtain or conduct research of prior adoptive families to determine what families may do to be successful with their adoptive children and shall make this research available to potential adoptive parents.

(3) (a) A ~~child-placing~~ child-placing agency licensed under this part shall inform each potential adoptive parent with whom it is working that:

(i) children in the custody of the state are available for adoption;

(ii) Medicaid coverage for medical, dental, and mental health services may be available for these children;

(iii) tax benefits, including the tax credit provided for in Section 59-10-1104, and financial assistance may be available to defray the costs of adopting these children;

(iv) training and ongoing support may be available to the adoptive parents of these children; and

(v) information about individual children may be obtained by contacting the division's offices or its Internet site as explained by the ~~child-placing~~ child-placing agency.

(b) A ~~child-placing~~ child-placing agency shall:

(i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity; and

(ii) simultaneously distribute a copy of the pamphlet prepared by the division in accordance with Subsection (3)(d).

(c) As a condition of licensure, the ~~child-placing~~ child-placing agency shall certify to the Office of Licensing at the time of license renewal that it has complied with the provisions of this section.

(d) Before July 1, 2000, the division shall:

(i) prepare a pamphlet that explains the information that is required by Subsection (3)(a); and

(ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to ~~child-placing~~ child-placing agencies.

(e) The division shall respond to any inquiry made as a result of the notice provided in Subsection (3)(a).

Section 11. Section 78B-6-106 is amended to read:

78B-6-106. Responsibility for own actions -- Fraud or misrepresentation.

(1) Each parent of a child conceived or born outside of marriage is responsible for his or her own actions and is not excused from strict compliance with the provisions of this chapter based upon any action, statement, or omission of the other parent or third parties.

(2) Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter[,] and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party. Custody determinations shall be based on the best ~~interest~~ interests of the child, in accordance with the provisions of Section 78B-6-133.

(3) A ~~child-placing agency and the employees of a child-placing agency may not:~~

(a) employ any device, scheme, or artifice to defraud;

(b) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(c) materially and intentionally misrepresent facts or information; or

(d) request or require a prospective adoptive parent to grant, as a condition of or in connection with entering into an agreement with a child-placing agency, a release of either the prospective adoptive parent's claims or the adoptive child's claims against the child-placing agency regarding any of the following:

(i) criminal misconduct;

(ii) ethical violations, as established by the Office of Licensing's administrative rules;

(iii) bad faith;

(iv) intentional torts;

(v) fraud;

(vi) gross negligence associated with care of the child, as described in Subsection 78B-6-134(3);

(vii) future misconduct that may arise before the adoption is finalized;

(viii) breach of contract; or

(ix) gross negligence.

(4) Subsection (3) does not prohibit a release of claims against a child-placing agency or a child-placing agency's employees for liability arising from the acts or the failure to act of a third party.

Section 12. Section 78B-6-110.1 is amended to read:

78B-6-110.1. Prebirth notice to presumed father of intent to place a child for adoption.

(1) As used in this section, "birth father" means:

- (a) a potential biological father; or
 - (b) an unmarried biological father.
- (2) Before the birth of a child, the following individuals may notify a birth father of the child that the mother of the child is considering an adoptive placement for the child:
- (a) the child's mother;
 - (b) a licensed [~~child-placing~~] child-placing agency;
 - (c) an attorney representing a prospective adoptive parent of the child; or
 - (d) an attorney representing the mother of the child.
- (3) Providing a birth father with notice under Subsection (2) does not obligate the mother of the child to proceed with an adoptive placement of the child.
- (4) The notice described in Subsection (2) shall include the name, address, and telephone number of the person providing the notice, and shall include the following information:
- (a) the mother's intent to place the child for adoption;
 - (b) that the mother has named the person receiving this notice as a potential birth father of her child;
 - (c) the requirements to contest the adoption, including taking the following steps within 30 days after the day on which the notice is served:
 - (i) initiating proceedings to establish or assert paternity in a district court of Utah within 30 days after the day on which notice is served, including filing an affidavit stating:
 - (A) that the birth father is fully able and willing to have full custody of the child;
 - (B) the birth father's plans to care for the child; and
 - (C) that the birth father agrees to pay for child support and expenses incurred in connection with the pregnancy and birth; and
 - (ii) filing a notice of commencement of paternity proceedings with the state registrar of vital statistics within the Utah Department of Health;
 - (d) the consequences for failure to comply with Subsection (4)(c), including that:
 - (i) the birth father's ability to assert the right, if any, to consent or refuse to consent to the adoption is irrevocably lost;
 - (ii) the birth father will lose the ability to assert the right to contest any future adoption of the child; and
 - (iii) the birth father will lose the right, if any, to notice of any adoption proceedings related to the child;

(e) that the birth father may consent to the adoption, if any, within 30 days after the day on which the notice is received, and that his consent is irrevocable; and

(f) that no communication between the mother of the child and the birth father changes the rights and responsibilities of the birth father described in the notice.

(5) If the recipient of the notice described in Subsection (2) does not fully and strictly comply with the requirements of Subsection (4)(c) within 30 days after the day on which he receives the notice, he will lose:

(a) the ability to assert the right to consent or refuse to consent to an adoption of the child described in the notice;

(b) the ability to assert the right to contest any future adoption of the child described in the notice; and

(c) the right to notice of any adoption proceedings relating to the child described in the notice.

(6) If an individual described in Subsection (2) chooses to notify a birth father under this section, the notice shall be served on a birth father in a manner consistent with the Utah Rules of Civil Procedure or by certified mail.

Section 13. Section 78B-6-124 is amended to read:

78B-6-124. Persons who may take consents and relinquishments.

(1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:

(a) a judge of any court that has jurisdiction over adoption proceedings;

(b) subject to Subsection (6), a person appointed by the judge described in Subsection (1)(a) to take consents or relinquishments; or

(c) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency.

(2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed before:

(a) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency;

(b) subject to Subsection (6), a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings;

(c) a court that has jurisdiction over adoption proceedings in the state where the consent or relinquishment is taken; or

(d) a person authorized, under the laws of the state where the consent or relinquishment is taken, to take consents or relinquishments of a birth mother or adoptee.

(3) The consent or relinquishment of any other person or agency as required by Section 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or relinquishment under Subsection (1) or (2).

(4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

(5) A person executing a consent or relinquishment is entitled to receive a copy of the consent or relinquishment.

(6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:

(a) notarized; or

(b) witnessed by two individuals who are not members of the birth mother's or the ~~signatory's~~ adoptee's immediate family.

(7) Except as provided in Subsection 62A-4a-602(1), a transfer of relinquishment from one child-placing agency to another child-placing agency shall be signed before a Notary Public.

Section 14. Section 78B-6-134 is amended to read:

78B-6-134. Custody pending final decree.

(1) (a) A licensed ~~child-placing adoption~~ child-placing agency, or a petitioner if the petition for adoption is filed before a child's birth, may seek an order establishing that the agency or petitioner shall have temporary custody of the child from the time of birth.

(b) The court shall grant an order for temporary custody under Subsection (1)(a) upon determining that:

(i) the birth mother or both birth parents consent to the order;

(ii) the agency or petitioner is willing and able to take custody of the child; and

(iii) an order will be in the best interest of the child.

(c) The court shall vacate an order if, prior to the child's birth, the birth mother or birth parents withdraw their consent.

(2) Except as otherwise provided by the court, once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the custody and control of the adoptee and is responsible for the care, maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court.

(3) Once a child has been placed with, relinquished to, or ordered into the custody of a child-placing agency for purposes of adoption, the agency shall have custody and control of the child and is responsible for his care, maintenance, and support. The agency may delegate the responsibility for care, maintenance, and support, including any necessary medical or surgical treatment, to the petitioner once the petitioner has received the child into his home. However, until the final decree of adoption is entered by the court, the agency has the right to the custody and control of the child.

CHAPTER 149**S. B. 90**

Passed February 22, 2017

Approved March 20, 2017

Effective May 9, 2017

**VEHICLE INSPECTION AND
REGISTRATION AMENDMENTS**

Chief Sponsor: Jacob L. Anderegg

House Sponsor: A. Cory Maloy

LONG TITLE**General Description:**

This bill provides exemptions for certain infractions related to vehicle registration, safety inspection, and emissions inspection requirements.

Highlighted Provisions:

This bill:

- ▶ provides exemptions from infractions related to vehicle registration, safety inspection, and emissions inspection requirements; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-1a-201, as last amended by Laws of Utah 2015, Chapter 412

41-1a-205, as last amended by Laws of Utah 2015, Chapter 412

41-6a-1601, as last amended by Laws of Utah 2015, Chapter 412

53-8-205, as last amended by Laws of Utah 2015, Chapter 412

53-8-209, as last amended by Laws of Utah 2016, Chapter 303

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

Section 1. Section 41-1a-201 is amended to read:**41-1a-201. Function of registration --
Registration required -- Penalty.**

(1) Unless exempted, a person may not operate and an owner may not give another person permission to operate a motor vehicle, combination of vehicles, trailer, semitrailer, vintage vehicle, off-highway vehicle, vessel, or park model recreational vehicle in this state unless it has been registered in accordance with this chapter, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act.

(2) [A] Subject to Subsection 53-8-209(3), a violation of this section is an infraction.

Section 2. Section 41-1a-205 is amended to read:**41-1a-205. Safety inspection certificate required for renewal or registration of motor vehicle -- Exemptions.**

(1) If required in the current year, a safety inspection certificate, as required by Section 53-8-205, or proof of exemption from safety inspection shall be presented at the time of, and as a condition of, registration or renewal of registration of a motor vehicle.

(2) (a) Except as provided in Subsections (2)(b), (c), and (d), the safety inspection required under this section may be made no more than two months prior to the renewal of registration.

(b) (i) If the title of a used motor vehicle is being transferred, a safety inspection certificate issued for the motor vehicle during the previous 11 months may be used to satisfy the requirement under Subsection (1).

(ii) If the transferor is a licensed and bonded used motor vehicle dealer, a safety inspection certificate issued for the motor vehicle in a licensed and bonded motor vehicle dealer's name during the previous 11 months may be used to satisfy the requirement under Subsection (1).

(c) If the title of a leased vehicle is being transferred to the lessee of the vehicle, a safety inspection certificate issued during the previous 11 months may be used to satisfy the requirement under Subsection (1).

(d) If the motor vehicle is part of a fleet of 101 or more vehicles, the safety inspection required under this section may be made no more than 11 months prior to the renewal of registration.

(e) If the application for renewal of registration is for a six-month registration period under Section 41-1a-215.5, a safety inspection certificate issued during the previous eight months may be used to satisfy the requirement under Subsection (1).

(3) (a) The following motor vehicles are exempt from this section:

(i) except as provided in Subsection (3)(b), a new motor vehicle when registered the first time, if:

(A) a new car predelivery inspection has been made by a dealer;

(B) the dealer provides a written disclosure statement listing any known deficiency, existing with the new motor vehicle at the time of delivery, that would cause the motor vehicle to fail a safety inspection given in accordance with Section 53-8-205; and

(C) the buyer signs the disclosure statement to acknowledge that the buyer has read and understands the listed deficiencies;

(ii) a motor vehicle required to be registered under this chapter that bears a dealer plate or other special plate under Title 41, Chapter 3, Part 5, Special Dealer License Plates, except that if the motor vehicle is propelled by its own power and is not being moved for repair or dismantling, the motor vehicle shall comply with Section 41-6a-1601 regarding safe mechanical condition; and

(iii) a vintage vehicle as defined in Section 41-21-1.

(b) A street-legal all-terrain vehicle registered in accordance with Section 41-6a-1509 is subject to a safety inspection:

(i) the first time that a person registers an off-highway vehicle as a street-legal all-terrain vehicle; and

(ii) subsequently, on the same frequency as described in Subsection 53-8-205(2) based on the age of the vehicle as determined by the model year identified by the manufacturer.

(4) (a) A safety inspection certificate shall be displayed on:

(i) all registered commercial motor vehicles with a gross vehicle weight rating of 26,000 pounds or more;

(ii) a motor vehicle with three or more axles, pulling a trailer, or pulling a trailer with multiple axles;

(iii) a combination unit; and

(iv) a bus or van for hire.

(b) A commercial vehicle under Subsection (4)(a) is exempt from the requirements of Subsection (1).

(5) A motor vehicle may be sold and the title assigned to the new owner without a valid safety inspection, but the motor vehicle may not be registered in the new owner's name until the motor vehicle complies with this section.

(6) [A] Subject to Subsection 53-8-209(3), a violation of this section is an infraction.

Section 3. Section 41-6a-1601 is amended to read:

41-6a-1601. Operation of unsafe or improperly equipped vehicles on public highways -- Exceptions.

(1) (a) A person may not operate or move and an owner may not cause or knowingly permit to be operated or moved on a highway a vehicle or combination of vehicles which:

(i) is in an unsafe condition that may endanger any person;

(ii) does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter;

(iii) is equipped in any manner in violation of this chapter; or

(iv) emits pollutants in excess of the limits allowed under the rules of the Air Quality Board created under Title 19, Chapter 2, Air Conservation Act, or under rules made by local health departments.

(b) A person may not do any act forbidden or fail to perform any act required under this chapter.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in

coordination with the rules made under Section 53-8-204, the department shall make rules setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway as required under this part.

(b) The rules under Subsection (2)(a):

(i) shall conform as nearly as practical to Federal Motor Vehicle Safety Standards and Regulations;

(ii) may incorporate by reference, in whole or in part, the federal standards under Subsection (2)(b)(i) and nationally recognized and readily available standards and codes on motor vehicle safety;

(iii) shall include provisions for the issuance of a permit under Section 41-6a-1602;

(iv) shall include standards for the emergency lights of authorized emergency vehicles;

(v) may provide standards and specifications applicable to lighting equipment on school buses consistent with:

(A) this part;

(B) federal motor vehicle safety standards; and

(C) current specifications of the Society of Automotive Engineers;

(vi) shall provide procedures for the submission, review, approval, disapproval, issuance of an approval certificate, and expiration or renewal of approval of any part as required under Section 41-6a-1620;

(vii) shall establish specifications for the display or etching of a vehicle identification number on a vehicle;

(viii) shall establish specifications in compliance with this part for a flare, fusee, electric lantern, warning flag, or portable reflector used in compliance with this part;

(ix) shall establish approved safety and law enforcement purposes when video display is visible to the motor vehicle operator; and

(x) shall include standards and specifications for both original equipment and parts included when a vehicle is manufactured and aftermarket equipment and parts included after the original manufacture of a vehicle.

(c) The following standards and specifications for vehicle equipment are adopted:

(i) 49 C.F.R. 571.209 related to safety belts;

(ii) 49 C.F.R. 571.213 related to child restraint devices;

(iii) 49 C.F.R. 393, 396, and 396 Appendix G related to commercial motor vehicles and trailers operated in interstate commerce;

(iv) 49 C.F.R. 571 Standard 108 related to lights and illuminating devices; and

(v) 40 C.F.R. 82.30 through 82.42 and Part 82, Subpart B, Appendix A and B related to air conditioning equipment.

(3) Nothing in this chapter or the rules made by the department prohibit:

(a) equipment required by the United States Department of Transportation; or

(b) the use of additional parts and accessories on a vehicle not inconsistent with the provisions of this chapter or the rules made by the department.

(4) Except as specifically made applicable, the provisions of this chapter and rules of the department with respect to equipment required on vehicles do not apply to:

(a) implements of husbandry;

(b) road machinery;

(c) road rollers;

(d) farm tractors;

(e) motorcycles;

(f) motor-driven cycles;

(g) vehicles moved solely by human power;

(h) off-highway vehicles registered under Section 41-22-3 either:

(i) on a highway designated as open for off-highway vehicle use; or

(ii) in the manner prescribed by Subsections 41-22-10.3(1) through (3); or

(i) off-highway implements of husbandry when operated in the manner prescribed by Subsections 41-22-5.5(3) through (5).

(5) The vehicles referred to in Subsections (4)(h) and (i) are subject to the equipment requirements of Title 41, Chapter 22, Off-Highway Vehicles, and the rules made under that chapter.

(6) (a) (i) Except as provided in Subsection (6)(a)(ii), a federal motor vehicle safety standard supersedes any conflicting provision of this chapter.

(ii) Federal motor vehicle safety standards do not supersede the provisions of Section 41-6a-1509 governing the requirements for and use of street-legal all-terrain vehicles on highways.

(b) The department:

(i) shall report any conflict found under Subsection (6)(a) to the appropriate committees or officials of the Legislature; and

(ii) may adopt a rule to replace the superseded provision.

(7) [A] Subject to Subsection 53-8-209(3), a violation of this section is an infraction.

Section 4. Section 53-8-205 is amended to read:

53-8-205. Safety inspection required -- Frequency of safety inspection -- Safety inspection certificate required -- Out-of-state permits.

(1) (a) Except as provided in Subsection (1)(b), a person may not operate on a highway a motor vehicle required to be registered in this state unless the motor vehicle has passed a safety inspection if required in the current year.

(b) Subsection (1)(a) does not apply to:

(i) a vehicle that is exempt from registration under Section 41-1a-205;

(ii) an off-highway vehicle, unless the off-highway vehicle is being registered as a street-legal all-terrain vehicle in accordance with Section 41-6a-1509;

(iii) a vintage vehicle as defined in Section 41-21-1;

(iv) a commercial vehicle with a gross vehicle weight rating over 26,000 pounds that:

(A) is operating with an apportioned registration under Section 41-1a-301; and

(B) has a valid annual federal inspection that complies with the requirements of 49 C.F.R. Sec. 396.17; and

(v) a trailer, semitrailer, or trailering equipment attached to a commercial motor vehicle described in Subsection (1)(b)(iv) that has a valid annual federal inspection that complies with the requirements of 49 C.F.R. Sec. 396.17.

(2) Except as provided in Subsection (3), the frequency of the safety inspection shall be determined based on the age of the vehicle determined by model year and shall:

(a) be required each year for a vehicle that is 10 or more years old on January 1; or

(b) for each vehicle that is less than 10 years old on January 1, be required in the fourth year and the eighth year;

(c) be made by a safety inspector certified by the division at a safety inspection station authorized by the division;

(d) cover an inspection of the motor vehicle mechanism, brakes, and equipment to ensure proper adjustment and condition as required by department rules; and

(e) include an inspection for the display of license plates in accordance with Section 41-1a-404.

(3) (a) (i) A salvage vehicle as defined in Section 41-1a-1001 is required to pass a safety inspection when an application is made for initial registration as a salvage vehicle.

(ii) After initial registration as a salvage vehicle, the frequency of the safety inspection shall correspond with the model year, as provided in Subsection (2).

(b) Beginning on the date that the Motor Vehicle Division has implemented the Motor Vehicle Division's GenTax system, a commercial vehicle as defined in Section 41-1a-102 with a gross vehicle weight rating of 10,001 pounds or more is required to pass a safety inspection annually or comply with Subsection (1)(b)(iv)(B).

(4) (a) A safety inspection station shall issue two safety inspection certificates to the owner of:

(i) each motor vehicle that passes a safety inspection under this section; and

(ii) a street-legal all-terrain vehicle that meets all the equipment requirements in Section 41-6a-1509.

(b) A safety inspection station shall use one safety inspection certificate issued under this Subsection (4) for processing the vehicle registration.

(c) A person operating a motor vehicle shall have in the person's immediate possession a safety inspection certificate or other evidence of compliance with the requirement to obtain a safety inspection under this section.

(5) The division may:

(a) authorize the acceptance in this state of a safety inspection certificate issued in another state having a safety inspection law similar to this state; and

(b) extend the time within which a safety inspection certificate must be obtained by the resident owner of a vehicle that was not in this state during the time a safety inspection was required.

(6) [A] Subject to Subsection 53-8-209(3), a violation of this section is an infraction.

Section 5. Section 53-8-209 is amended to read:

53-8-209. Inspection by officers -- Certificate of inspection.

(1) A peace officer may stop, inspect, and test a vehicle at any time upon reasonable cause to believe that:

(a) a vehicle is unsafe or not equipped as required by law; or

(b) [that its] the vehicle's equipment is not in proper adjustment or repair.

(2) (a) (i) If a vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, the officer [shall] may give a written notice to the driver and shall send a copy to the division.

(ii) The notice shall:

(A) require that the vehicle be placed in safe condition and [its] the vehicle's equipment in proper repair and adjustment;

(B) specify the repairs and adjustments needed; and

(C) require that a safety inspection certificate be obtained within five days.

(b) If a vehicle is, in the reasonable judgment of the peace officer, hazardous to operate, the peace officer may require that the vehicle:

(i) not be operated under its own power; or

(ii) be driven to the nearest garage or other place of safety.

(c) (i) If the owner or driver does not comply with the notice requirements and secure a safety inspection certificate within five days, the vehicle may not be operated on the highways of this state.

(ii) A violation of Subsection (2)(c)(i) is an infraction.

(3) An owner or driver of a vehicle is not guilty of an infraction and is not required to pay a fee or fine if the citation was issued for:

(a) expired registration in violation of Section 41-1a-201, and:

(i) the citation was issued within two months after the expiration of the vehicle's registration; and

(ii) the owner or driver registers the vehicle within 14 days after the citation was issued; or

(b) a violation of Section 41-1a-205, 41-6a-1601, or 53-8-205 or any other equipment related infraction under Title 41, Chapter 6a, Part 16, Vehicle Equipment, and the owner or driver obtains a safety inspection, emissions inspection, or proof of repair, as applicable, within 14 days after the citation was issued.

CHAPTER 150**S. B. 96**

Passed February 22, 2017

Approved March 20, 2017

Effective May 9, 2017

UNSECURED LOAD AMENDMENTS

Chief Sponsor: Wayne A. Harper
House Sponsor: Robert M. Spendlove

LONG TITLE**General Description:**

This bill defines an unsecured load on a highway and creates new penalties for operating a vehicle with an unsecured load on a highway.

Highlighted Provisions:

This bill:

- ▶ defines unsecured load;
- ▶ creates new penalties for certain violations;
- ▶ instructs the department, when possible, to educate the public regarding unsecured loads; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 72-7-409, as last amended by Laws of Utah 2016, Chapter 303
- 78A-5-110, as last amended by Laws of Utah 2008, Chapter 22 and renumbered and amended by Laws of Utah 2008, Chapter 3
- 78A-7-120, as last amended by Laws of Utah 2012, Chapter 205

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

Section 1. Section 72-7-409 is amended to read:**72-7-409. Loads on vehicles -- Limitations -- Confining, securing, and fastening load required -- Penalty.**

(1) As used in this section:

(a) "Agricultural product" means any raw product which is derived from agriculture, including silage, hay, straw, grain, manure, and other similar product.

(b) (i) "Unsecured load" means the contents of a vehicle, operated on a highway, not sufficiently covered, confined, fastened, or otherwise secured in a way to prevent the contents from escaping the vehicle.

(ii) "Unsecured load" includes materials such as dirt, sand, gravel, rock fragments, pebbles, crushed base, aggregate, any other similar material, or scrap metal or other loose material on any portion of the vehicle not designed to carry the material.

~~[(b)]~~ (c) "Vehicle" [has the same meaning set forth] means the same as that term is defined in Section 41-1a-102.

~~[(2) A vehicle may not be operated or moved on any highway unless the vehicle is constructed or loaded to prevent its contents from dropping, sifting, leaking, or otherwise escaping.]~~

(2) Except as provided in Subsections (3) through (5), a person may not:

(a) operate a vehicle with an unsecured load on any highway; or

(b) operate a vehicle carrying trash or garbage without a covering over the entire load.

(3) (a) ~~[In addition to the requirements under Subsection (2), a]~~ A vehicle carrying dirt, sand, gravel, rock fragments, pebbles, crushed base, aggregate, any other similar material, or scrap metal shall have a covering over the entire load unless:

(i) the highest point of the load does not extend above the top of any exterior wall or sideboard of the cargo compartment of the vehicle; and

(ii) the outer edges of the load are at least six inches below the top inside edges of the exterior walls or sideboards of the cargo compartment of the vehicle.

~~[(b) In addition to the requirements under Subsection (2), a vehicle carrying trash or garbage shall have a covering over the entire load.]~~

(e) (b) The following material is exempt from the provisions of Subsection (3)(a):

(i) hot mix asphalt;

(ii) construction debris or scrap metal if the debris or scrap metal is a size and in a form not susceptible to being blown out of the vehicle;

(iii) material being transported across a highway between two parcels of property that would be contiguous but for the highway that is being crossed; and

(iv) material listed under Subsection (3)(a) that is enclosed on all sides by containers, bags, or packaging.

~~[(d)]~~ (c) A chemical substance capable of coating or bonding a load so that the load is confined on a vehicle, may be considered a covering for purposes of Subsection (3)(a) so long as the chemical substance remains effective at confining the load.

(4) ~~[Subsections (2) and (3) do]~~ Subsection (2) does not apply to a vehicle or implement of husbandry carrying an agricultural product, if the agricultural product is:

(a) being transported in a manner which is not a hazard or a potential hazard to the safe operation of the vehicle or to other highway users; and

(b) loaded in a manner that only allows minimal spillage.

(5) (a) An authorized vehicle performing snow removal services on a highway is exempt from the requirements of this section.

(b) This section does not prohibit the necessary spreading of any substance connected with highway maintenance, construction, securing traction, or snow removal.

~~[(6) A person may not operate a vehicle with a load on any highway unless the load and any load covering is fastened, secured, and confined to prevent the covering or load from becoming loose, detached, or in any manner a hazard to the safe operation of the vehicle, or to other highway users.]~~

~~[(7) Before entering a highway, the operator of a vehicle carrying any material listed under Subsection (3), shall remove all loose material on any portion of the vehicle not designed to carry the material.]~~

(6) (a) Any person suspected of operating a vehicle with an unsecured load on a highway may be issued a warning.

[(8)-(a)] (b) Any person who violates this section is guilty of:

(i) an infraction[.], if the violation creates a hazard but does not lead to a motor vehicle accident;

(ii) a class B misdemeanor, if the violation creates a hazard that leads to a motor vehicle accident; or

(iii) a class A misdemeanor, if the violation creates a hazard that leads to a motor vehicle accident that results in the serious bodily injury or death of a person.

[(b)] (c) A person who violates a provision of this section shall be fined not less than:

(i) \$200 for a violation; or

(ii) \$500 for a second or subsequent violation within three years of a previous violation of this section.

[(e)] (d) A person who violates a provision of this section while operating a commercial vehicle as defined in Section 72-9-102 shall be fined:

(i) not less than \$500 for a violation; or

(ii) \$1,000 for a second or subsequent violation within three years of a previous violation of this section.

(7) As resources and opportunities allow, the department shall implement programs or activities that increase public awareness on the importance of properly securing loads.

Section 2. Section 78A-5-110 is amended to read:

78A-5-110. Allocation of district court fees and forfeitures.

(1) Except as provided in this section, district court fines and forfeitures collected for violation of state statutes shall be paid to the state treasurer.

(2) Fines and forfeitures collected by the court for violation of a state statute or county or municipal ordinance constituting a misdemeanor or an infraction shall be remitted 1/2 to the state treasurer and 1/2 to the treasurer of the state or

local governmental entity which prosecutes or which would prosecute the violation.

(3) Fines and forfeitures collected for violations of Title 23, Wildlife Resources Code of Utah, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act, shall be paid to the state treasurer.

(a) For violations of Title 23, Wildlife Resources Code of Utah, the state treasurer shall allocate 85% to the Division of Wildlife Resources and 15% to the General Fund.

(b) For violations of Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act, the state treasurer shall allocate 85% to the Division of Parks and Recreation and 15% to the General Fund.

(4) Fines and forfeitures collected for violation of Section 72-7-404 or 72-7-406, less fees established by the Judicial Council, shall be paid to the state treasurer for deposit in the B and C road account. Fees established by the Judicial Council shall be deposited in the state General Fund. Money deposited in the class B and C road account is supplemental to the money appropriated under Section 72-2-107 but shall be expended in the same manner as other class B and C road funds.

(5) (a) Fines and forfeitures collected by the court for a second or subsequent violation under Section 41-6a-1713 or Subsection [72-7-409(8)(b)] 72-7-409(6)(c) shall be remitted:

(i) 60% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 40% in accordance with Subsection (2).

(b) Fines and forfeitures collected by the court for a second or subsequent violation under Subsection [72-7-409(8)(e)] 72-7-409(6)(d) shall be remitted:

(i) 50% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 50% in accordance with Subsection (2).

(6) Fines and forfeitures collected for any violations not specified in this chapter or otherwise provided for by law shall be paid to the state treasurer.

(7) Fees collected in connection with civil actions filed in the district court shall be paid to the state treasurer.

(8) The court shall remit money collected in accordance with Title 51, Chapter 7, State Money Management Act.

Section 3. Section 78A-7-120 is amended to read:

78A-7-120. Disposition of fines.

(1) Except as otherwise specified by this section, fines and forfeitures collected by a justice court shall be remitted, 1/2 to the treasurer of the local government responsible for the court and 1/2 to the treasurer of the local government which prosecutes or which would prosecute the violation. An interlocal agreement created pursuant to Title 11,

Chapter 13, Interlocal Cooperation Act, related to justice courts may alter the ratio provided in this section if the parties agree.

(2) (a) For violation of Title 23, Wildlife Resources Code of Utah, the court shall allocate 85% to the Division of Wildlife Resources and 15% to the general fund of the city or county government responsible for the justice court.

(b) For violation of Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act, the court shall allocate 85% to the Division of Parks and Recreation and 15% to the general fund of the city or county government responsible for the justice court.

(3) The surcharge established by Section 51-9-401 shall be paid to the state treasurer.

(4) Fines, fees, court costs, and forfeitures collected by a municipal or county justice court for a violation of Section 72-7-404 or 72-7-406 regarding maximum weight limitations and overweight permits, minus court costs not to exceed the schedule adopted by the Judicial Council, shall be paid to the state treasurer and distributed to the class B and C road account.

(5) Revenue deposited in the class B and C road account pursuant to Subsection (4) is supplemental to the money appropriated under Section 72-2-107 but shall be expended in the same manner as other class B and C road funds.

(6) (a) Fines and forfeitures collected by the court for a second or subsequent violation under Section 41-6a-1713 or Subsection [~~72-7-409(8)(b)~~] 72-7-409(6)(c) shall be remitted:

(i) 60% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 40% in accordance with Subsection (1).

(b) Fines and forfeitures collected by the court for a second or subsequent violation under Subsection [~~72-7-409(8)(e)~~] 72-7-409(6)(d) shall be remitted:

(i) 50% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 50% in accordance with Subsection (1).

CHAPTER 151**S. B. 98**

Passed March 1, 2017
 Approved March 20, 2017
 Effective May 9, 2017

EXCESS DAMAGES CLAIMS

Chief Sponsor: Jani Iwamoto
 House Sponsor: V. Lowry Snow
 Cosponsors: Lyle W. Hillyard
 Howard A. Stephenson

LONG TITLE**General Description:**

This bill addresses claims for damages for personal injury that are subject to a statutory limit.

Highlighted Provisions:

This bill:

- ▶ modifies the inflationary adjustment formula for personal injury damages caps;
- ▶ modifies the board of examiner process for reporting claims; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-7-604, as renumbered and amended by Laws of Utah 2008, Chapter 382
 63G-9-304, as renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

63G-7-605, Utah Code Annotated 1953

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

Section 1. Section 63G-7-604 is amended to read:**63G-7-604. Limitation of judgments against governmental entity or employee -- Process for adjustment of limits.**

(1) (a) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for damages for personal injury against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$583,900 for one person in any one occurrence, the court shall reduce the judgment to that amount.

(b) A court may not award judgment of more than the amount in effect under Subsection (1)(a) for injury or death to one person regardless of whether or not the function giving rise to the injury is characterized as governmental.

(c) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment for property damage against a governmental entity, or an employee whom a governmental entity has a duty to indemnify, exceeds \$233,600 in any one occurrence, the court shall reduce the judgment to that amount,

regardless of whether or not the function giving rise to the damage is characterized as governmental.

(d) Subject to Subsection (3), there is a \$2,000,000 limit to the aggregate amount of individual awards that may be awarded in relation to a single occurrence.

(2) The damage limits established in this section do not apply to damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation.

(3) The limitations of judgments established in Subsection (1) shall be adjusted according to the methodology set forth in Section 63G-7-605.

~~[(4) (a) Each even-numbered year, the risk manager shall:]~~

~~[(i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code;]~~

~~[(ii) calculate the increase or decrease in the limitation of judgment amounts established in this section as a percentage equal to the percentage change in the Consumer Price Index since the previous adjustment made by the risk manager or the Legislature; and]~~

~~[(iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the limitation of judgment amounts established in Subsection (1) to the nearest \$100.]~~

~~[(b) Each even-numbered year, the risk manager shall make rules, which become effective no later than July 1, that establish the new limitation of judgment amounts calculated under Subsection (4)(a).]~~

~~[(c) Adjustments made by the risk manager to the limitation of judgment amounts established by this section have prospective effect only from the date the rules establishing the new limitation of judgment take effect and those adjusted limitations of judgment apply only to claims for injuries or losses that occur after the effective date of the rules that establish those new limitations of judgment.]~~

Section 2. Section 63G-7-605 is enacted to read:**63G-7-605. Adjustments to limitation of judgment amounts.**

(1) As used in this section:

(a) "Adjusted consumer price factor" means what the consumer price index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code, would be without the medical care component and the medical services component.

(b) "Aggregate limit" means the limit on the aggregate amount of personal injury damages claims from a single occurrence, as provided in Subsection 63G-7-604(1)(d).

(c) "Individual limit" means the limit on the amount of a judgment for damages for personal injury, as provided in Subsection 63G-7-604(1)(a).

(d) “Latest aggregate limit” means the aggregate limit, as last adjusted by the risk manager under this section.

(e) “Latest individual limit” means the individual limit, as last adjusted by the risk manager under this section.

(f) “Latest property damage limit” means the property damage limit, as last adjusted by the risk manager under this section.

(g) “Medical care component” means the medical care sub-index of the consumer price index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(h) “Medical services component” means the medical services sub-index of the consumer price index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(i) “Property damage limit” means the limit on the amount of a judgment for property damage, as provided in Subsection 63G-7-604(1)(c).

(2) (a) Each even-numbered year, the legislative fiscal analyst shall, subject to Subsection (3):

(i) adjust the individual limit by an amount equal to the sum of:

(A) 66.5% of the latest individual limit, multiplied by the adjusted consumer price factor;

(B) 16.75% of the latest individual limit, multiplied by the medical care component; and

(C) 16.75% of the latest individual limit, multiplied by the medical services component;

(ii) adjust the aggregate limit by an amount equal to the sum of:

(A) 66.5% of the latest aggregate limit, multiplied by the adjusted consumer price factor;

(B) 16.75% of the latest aggregate limit, multiplied by the medical care component; and

(C) 16.75% of the latest aggregate limit, multiplied by the medical services component;

(iii) adjust the property damage limit as a percentage equal to the percentage increase or decrease in the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code; and

(iv) no later than June 1, communicate the adjusted limits under Subsections (2)(a)(i), (ii), and (iii) to the risk manager.

(b) The legislative fiscal analyst shall round up to the nearest \$100 the individual limit, aggregate limit, and property damage limit adjusted under Subsection (2)(a).

(3) The legislative fiscal analyst may not adjust an individual limit or aggregate limit under Subsection (2) if the adjustment results in a decrease in the amount of the limit.

(4) (a) Each even-numbered year, the risk manager shall make rules, to become effective no

later than July 1 of that year, that establish a new individual limit, aggregate limit, and property damage limit, as adjusted under Subsection (2).

(b) An adjustment to the individual limit, aggregate limit, or property damage limit under this section has prospective effect only from the date the rules establishing the new limit take effect.

(c) An individual limit, aggregate limit, or property damage limit, as adjusted under this section, applies only to a claim for injury or loss that occurs after the effective date of the rules that establish the adjusted limit.

Section 3. Section 63G-9-304 is amended to read:

63G-9-304. Adjustment of claims -- Recommendations to Executive Appropriations Committee.

(1) The board [~~must~~] shall, at the time designated, proceed to examine and adjust all claims referred to in Section 63G-9-302, and may hear evidence in support of or against [~~them~~] the claims, and shall report to the [~~Legislature~~] Executive Appropriations Committee the facts and recommendations concerning [~~them as it may think~~] the claims as the board considers proper.

(2) In making its recommendations, the board may state and use any official or personal knowledge which any member of the board may have touching [~~such~~] the claims.

(3) The board [~~shall~~] may not pass upon or send to the [~~Legislature~~] Executive Appropriations Committee any claim for which the state or a political subdivision would not otherwise be liable were it not for its sovereign immunity.

(4) Notwithstanding Subsection (3), claims wherein the state or a political subdivision would be liable, were it not for its sovereign immunity, whether recommended by the board for approval or disapproval, shall be reported by the board to the Legislature with appropriate findings and recommendations as [~~above~~] provided in this section.

CHAPTER 152**S. B. 126**

Passed February 28, 2017

Approved March 20, 2017

Effective May 9, 2017

COLLECTION PROCESS AMENDMENTS

Chief Sponsor: Todd Weiler
House Sponsor: Brian S. King

LONG TITLE**General Description:**

This bill modifies provisions relating to collection processes.

Highlighted Provisions:

This bill:

- ▶ modifies a provision prohibiting execution, attachment, or garnishment to issue against a governmental entity; and
- ▶ provides an exception for a judgment creditor's garnishment of a state income tax refund owing to the judgment debtor.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-7-603, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 63G-7-603 is amended to read:**63G-7-603. Exemplary or punitive damages prohibited -- Governmental entity not subject to execution, attachment, or garnishment -- Exception.**

(1) (a) A judgment may not be rendered against a governmental entity for exemplary or punitive damages.

(b) If a governmental entity would be required to pay the judgment under Section 63G-7-902 or 63G-7-903, the governmental entity shall pay any judgment or portion of any judgment entered against its employee in the employee's personal capacity even if the judgment is for or includes exemplary or punitive damages.

(2) ~~[Execution]~~ (a) Except as provided in Subsection (2)(b), ~~execution, attachment, or garnishment~~ may not issue against a governmental entity.

(b) A judgment creditor may garnish a state income tax refund owing to the judgment debtor.

CHAPTER 153**S. B. 129**

Passed March 6, 2017

Approved March 20, 2017

Effective May 9, 2017

SALVAGE VEHICLE AMENDMENTS

Chief Sponsor: Curtis S. Bramble

House Sponsor: Daniel McCay

LONG TITLE**General Description:**

This bill amends provisions related to buying and selling a salvage vehicle at a motor vehicle auction.

Highlighted Provisions:

This bill:

- ▶ requires a motor vehicle auction operator to securely store a salvage vehicle sold at auction until the vehicle is possessed by the purchaser;
- ▶ requires a motor vehicle auction operator to maintain certain records;
- ▶ provides penalties for violations; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 41-3-201, as last amended by Laws of Utah 2013, Chapter 463
- 41-3-201.7, as last amended by Laws of Utah 2012, Chapter 390
- 41-3-702, as last amended by Laws of Utah 2012, Chapters 379 and 390

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

Section 1. Section 41-3-201 is amended to read:**41-3-201. Licenses required -- Restitution -- Education.**

(1) As used in this section, "new applicant" means a person who is applying for a license that the person has not been issued during the previous licensing year.

(2) A person may not act as any of the following without having procured a license issued by the administrator:

- (a) a dealer;
- (b) salvage vehicle buyer;
- (c) salesperson;
- (d) manufacturer;
- (e) transporter;
- (f) dismantler;
- (g) distributor;
- (h) factory branch and representative;
- (i) distributor branch and representative;

- (j) crusher;
- (k) remanufacturer; or
- (l) body shop.

(3) (a) Except as provided in Subsection (3)(c), a person may not bid on or purchase a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction unless the person is a licensed salvage vehicle buyer.

(b) Except as provided in Subsection (3)(c), a person may not offer for sale, sell, or exchange a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction except to a licensed salvage vehicle buyer.

(c) A person may offer for sale, sell, or exchange a vehicle with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction:

(i) to an out-of-state or out-of-country purchaser not licensed under this section, but that is authorized to do business in the domestic or foreign jurisdiction in which the person is domiciled or registered to do business;

(ii) subject to the restrictions in Subsection (3)(d), to an in-state purchaser not licensed under this section that:

(A) has a valid business license in Utah; and

(B) has a Utah sales tax license; and

(iii) to a crusher.

(d) (i) An operator of a motor vehicle auction shall verify that an in-state purchaser not licensed under this section has the licenses required in Subsection (3)(c)(ii).

(ii) An operator of a motor vehicle auction may only offer for sale, sell, or exchange five vehicles with a salvage certificate as defined in Section 41-1a-1001 at or through a motor vehicle auction in any 12 month period to an in-state purchaser that does not have a salvage vehicle buyer license issued in accordance with Subsection 41-3-202(15).

(iii) The five vehicle limitation under this Subsection (3)(d) applies to each Utah sales tax license and not to each person with the authority to use a sales tax license.

(iv) An operator of a motor vehicle auction may not sell a vehicle with a nonrepairable certificate as defined in Section 41-1a-1001 to a purchaser otherwise allowed to purchase a vehicle under Subsection (3)(c)(ii).

(e) For a vehicle with a salvage certificate purchased under Subsection (3)(c)(ii), an operator of a motor vehicle auction shall:

(i) (A) until Subsection (3)(e)(i)(B) applies, make application for a salvage certificate of title on behalf of the Utah purchaser within seven days of the purchase if the purchaser does not have a salvage vehicle buyer license, dealer license, body shop license, or dismantler license issued in accordance with Section 41-3-202; or

(B) beginning on or after the date that the Motor Vehicle Division has implemented the Motor Vehicle Division's GenTax system, make application electronically, in a form and time period approved by the Motor Vehicle Division, for a salvage certificate of title to be issued in the name of the purchaser;

(ii) give to the purchaser a disclosure printed on a separate piece of paper that states:

“THIS DISCLOSURE STATEMENT MUST BE GIVEN BY THE SELLER TO THE BUYER EVERY TIME THIS VEHICLE IS RESOLD WITH A SALVAGE CERTIFICATE

Vehicle Identification Number (VIN)

Year: Make: Model:

SALVAGE VEHICLE--NOT FOR RESALE WITHOUT DISCLOSURE

WARNING: THIS SALVAGE VEHICLE MAY NOT BE SAFE FOR OPERATION UNLESS PROPERLY REPAIRED. SOME STATES MAY REQUIRE AN INSPECTION BEFORE THIS VEHICLE MAY BE REGISTERED. THE STATE OF UTAH MAY REQUIRE THIS VEHICLE TO BE PERMANENTLY BRANDED AS A REBUILT SALVAGE VEHICLE. OTHER STATES MAY ALSO PERMANENTLY BRAND THE CERTIFICATE OF TITLE.

Signature of Purchaser Date”; and

(iii) if applicable, provide evidence to the Motor Vehicle Division of:

(A) payment of sales taxes on taxable sales in accordance with Section 41-1a-510;

(B) the identification number inspection required under Section 41-1a-511; and

(C) the odometer disclosure statement required under Section 41-1a-902.

(f) The Motor Vehicle Division shall include a link to the disclosure statement described in Subsection (3)(e)(ii) on its website.

(g) The commission may impose an administrative entrance fee established in accordance with the procedures and requirements of Section 63J-1-504 not to exceed \$10 on a person not holding a license described in Subsection (3)(e)(i) that enters the physical premises of a motor vehicle auction for the purpose of viewing available salvage vehicles prior to an auction.

(h) A vehicle sold at or through a motor vehicle auction to an out-of-state purchaser with a nonrepairable or salvage certificate may not be certificated in Utah until the vehicle has been certificated out-of-state.

(4) (a) An operator of a motor vehicle auction shall keep a record of the sale of each salvage vehicle.

(b) A record described under Subsection (4)(a) shall contain:

(i) the purchaser's name and address; and

(ii) the year, make, and vehicle identification number for each salvage vehicle sold.

(c) An operator of a motor vehicle auction shall:

(i) provide the record described in Subsection (4)(a) electronically in a method approved by the division to the division within two business days of the completion of the motor vehicle auction;

(ii) retain the record described in this Subsection (4) for five years from the date of sale; and

(iii) make a record described in this Subsection (4) available for inspection by the division at the location of the motor vehicle auction during normal business hours.

(5) (a) An operator of a motor vehicle auction shall store a salvage vehicle sold at auction in a secure facility until the salvage vehicle is claimed as provided in this section.

(b) Beginning at the time of purchase and until the salvage vehicle is claimed, the motor vehicle auction operator may collect a daily storage fee for the secure storage of each salvage vehicle sold at auction.

(c) Except as provided in Subsection (5)(d), before releasing possession of a salvage vehicle purchased at a motor vehicle auction to a person not licensed under this part or certified as a tow truck operator under Title 72, Chapter 9, Part 6, Tow Truck Provisions, and if the person claiming the vehicle is a person other than the purchaser of the vehicle, the motor vehicle auction operator shall create a record that shall contain:

(i) the name and address, as verified by government issued identification, of the person claiming the vehicle;

(ii) the year, make, and vehicle identification number of the claimed vehicle;

(iii) a written statement from the person claiming the vehicle indicating the location where the salvage vehicle will be delivered; and

(iv) verification that the claimant has authorization from the purchaser to claim the vehicle.

(d) If the salvage vehicle is claimed by a transporter or a tow truck operator, the transporter or the tow truck operator shall submit to the motor vehicle auction operator a written record on any release forms indicating the location where the salvage vehicle will be delivered if delivered within the state.

(e) An operator of a motor vehicle auction shall:

(i) retain the record described in Subsection (5)(c) for five years from the date of sale; and

(ii) make the record available for inspection by the division at the location of the motor vehicle auction during normal business hours.

[45] (6) (a) If applicable, an operator of a motor vehicle auction shall comply with the reporting requirements of the National Motor Vehicle Title Information System overseen by the United States Department of Justice if the person sells a vehicle with a salvage certificate to an in-state purchaser under Subsection (3)(c)(ii).

(b) The Motor Vehicle Division shall include a link to the National Motor Vehicle Title Information System on its website.

[46] (7) (a) An operator of a motor vehicle auction that sells a salvage vehicle to a person that is an out-of-country buyer shall:

(i) stamp on the face of the title so as not to obscure the name, date, or mileage statement the words "FOR EXPORT ONLY" in all capital, black letters; and

(ii) stamp in each unused reassignment space on the back of the title the words "FOR EXPORT ONLY."

(b) The words "FOR EXPORT ONLY" shall be:

(i) at least two inches wide; and

(ii) clearly legible.

[47] (8) A supplemental license shall be secured by a dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or body shop for each additional place of business maintained by the licensee.

[48] (9) (a) A person who has been convicted of any law relating to motor vehicle commerce or motor vehicle fraud may not be issued a license or purchase a vehicle with a salvage or nonrepairable certificate unless full restitution regarding those convictions has been made.

(b) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection [48] (9)(a) if the division has informed the operator of the motor vehicle auction, the dealer, or the consignor in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or salvage certificate under Subsection [48] (9)(a).

[49] (10) (a) The division may not issue a license to a new applicant for a new or used motor vehicle dealer license, a new or used motorcycle dealer license, or a small trailer dealer license unless the new applicant completes an eight-hour orientation class approved by the division that includes education on motor vehicle laws and rules.

(b) The approved costs of the orientation class shall be paid by the new applicant.

(c) The class shall be completed by the new applicant and the applicant's partners, corporate officers, bond indemnitors, and managers.

(d) (i) The division shall approve:

(A) providers of the orientation class; and

(B) costs of the orientation class.

(ii) A provider of an orientation class shall submit the orientation class curriculum to the division for approval prior to teaching the orientation class.

(iii) A provider of an orientation class shall include in the orientation materials:

(A) ethics training;

(B) motor vehicle title and registration processes;

(C) provisions of Title 13, Chapter 5, Unfair Practices Act, relating to motor vehicles;

(D) Department of Insurance requirements relating to motor vehicles;

(E) Department of Public Safety requirements relating to motor vehicles;

(F) federal requirements related to motor vehicles as determined by the division; and

(G) any required disclosure compliance forms as determined by the division.

[40] (11) A person or purchaser described in Subsection (3)(c)(ii):

(a) may not purchase more than five salvage vehicles with a nonrepairable or salvage certificate as defined in Section 41-1a-1001 in any 12-month period;

(b) may not, without first complying with Section 41-1a-705, offer for sale, sell, or exchange more than two vehicles with a salvage certificate as defined in Section 41-1a-1001 in any 12-month period to a person not licensed under this section; and

(c) may not, without first complying with Section 41-1a-705, offer for sale, sell, or exchange a vehicle with a nonrepairable certificate as defined in Section 41-1a-1001 to a person not licensed under this section.

[41] (12) An operator of a motor vehicle auction, a dealer, or a consignor may not sell a vehicle with a nonrepairable or salvage certificate to a buyer described in Subsection [40] (11)(a) if the division has informed the operator of the motor vehicle auction, the dealer, or the consignor in writing that the buyer is prohibited from purchasing a vehicle with a nonrepairable or salvage certificate under Subsection [40] (11)(a).

Section 2. Section 41-3-201.7 is amended to read:

41-3-201.7. Supplemental license for additional place of business restrictions -- Exception.

(1) (a) Subject to the requirements of Subsection (2), a supplemental license for an additional place of business issued pursuant to Subsection 41-3-201[(7)](8) may only be issued to a dealer if the dealer is:

(i) licensed in accordance with Section 41-3-202;

(ii) bonded in accordance with Section 41-3-205; and

(iii) in compliance with existing rules promulgated by the administrator of the division under Section 41-3-105.

(b) A supplemental license for a permanent additional place of business may only be issued to a used motor vehicle dealer if:

(i) the dealer independently satisfies the bond requirements under Section 41-3-205 for the permanent additional place of business;

(ii) the dealer is in compliance with existing rules promulgated by the administrator of the division under Section 41-3-105; and

(iii) the permanent additional place of business meets all the requirements for a principal place of business.

(2) (a) Except as provided in Subsections (2)(c) and (3), a supplemental license for an additional place of business issued pursuant to Subsection 41-3-201~~(7)~~(8) for a new motor vehicle dealer may not be issued for an additional place of business that is beyond the geographic specifications outlined as the area of responsibility in the dealer's franchise agreement.

(b) A new motor vehicle dealer shall provide the administrator with a copy of the portion of the new motor vehicle dealer's franchise agreement identifying the dealer's area of responsibility before being issued a supplemental license for an additional place of business.

(c) The restrictions under Subsections (2)(a) and (b) do not apply to a new motor vehicle dealer if the license for an additional place of business is being issued for the sale of used motor vehicles.

(3) The provisions of Subsection (2) do not apply if the additional place of business is a trade show or exhibition if:

(a) there are five or more dealers participating in the trade show or exhibition; and

(b) the trade show or exhibition takes place at a location other than the principal place of business of one of the dealers participating in the trade show or exhibition.

(4) A supplemental license for a temporary additional place of business issued to a used motor vehicle dealer may not be for longer than 10 consecutive days.

Section 3. Section 41-3-702 is amended to read:

41-3-702. Civil penalty for violation.

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:

(a) Level I:

(i) failing to display business license;

(ii) failing to surrender license of salesperson because of termination, suspension, or revocation;

(iii) failing to maintain a separation from nonrelated motor vehicle businesses at licensed locations;

(iv) issuing a temporary permit improperly;

(v) failing to maintain records;

(vi) selling a new motor vehicle to a nonfranchised dealer or leasing company without licensing the motor vehicle;

(vii) special plate violation; ~~and~~

(viii) failing to maintain a sign at a principal place of business~~[-]; and~~

(ix) failing to store a salvage vehicle purchased at a motor vehicle auction in a secure location until the purchaser or a transporter has provided the proper documentation to take possession of the salvage vehicle.

(b) Level II:

(i) failing to report sale;

(ii) dismantling without a permit;

(iii) manufacturing without meeting construction or vehicle identification number standards;

(iv) withholding customer license plates; ~~or~~

(v) selling a motor vehicle on consecutive days of Saturday and Sunday~~[-]; or~~

(vi) failing to record and report the sale of a salvage vehicle at a motor vehicle auction as described in Section 41-3-201.

(c) Level III:

(i) operating without a principal place of business;

(ii) selling a new motor vehicle without holding the franchise;

(iii) crushing a motor vehicle without proper evidence of ownership;

(iv) selling from an unlicensed location;

(v) altering a temporary permit;

(vi) refusal to furnish copies of records;

(vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles;

(viii) advertising violation;

(ix) failing to separately identify the fees required by Title 41, Chapter 1a, Motor Vehicle Act;

(x) encouraging or conspiring with unlicensed persons to solicit for prospective purchasers; and

(xi) selling, offering for sale, or displaying for sale or exchange a vehicle, vessel, or outboard motor in violation of Section 41-1a-705.

(2) (a) The schedule of civil penalties for violations of Subsection (1) is:

(i) Level I: \$25 for the first offense, \$100 for the second offense, and \$250 for the third and subsequent offenses;

(ii) Level II: \$100 for the first offense, \$250 for the second offense, and \$1,000 for the third and subsequent offenses; and

(iii) Level III: \$250 for the first offense, \$1,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(b) When determining under this section if an offense is a second or subsequent offense, only prior offenses committed within the 12 months prior to the commission of the current offense may be considered.

(3) The following are civil violations in addition to criminal violations under Section 41-1a-1008:

(a) knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without disclosing that the salvage vehicle has been repaired or rebuilt;

(b) knowingly making a false statement on a vehicle damage disclosure statement, as defined in Section 41-1a-1001; or

(c) fraudulently certifying that a damaged motor vehicle is entitled to an unbranded title, as defined in Section 41-1a-1001, when it is not.

(4) The civil penalty for a violation under Subsection (3) is:

(a) not less than \$1,000, or treble the actual damages caused by the person, whichever is greater; and

(b) reasonable attorney fees and costs of the action.

(5) A civil action may be maintained by a purchaser or by the administrator.

CHAPTER 154**S. B. 133**

Passed March 6, 2017

Approved March 20, 2017

Effective May 9, 2017

PROCUREMENT PROCESS AMENDMENTS

Chief Sponsor: Karen Mayne
House Sponsor: Michael E. Noel

LONG TITLE**General Description:**

This bill modifies provisions relating to the procurement process.

Highlighted Provisions:

This bill:

- ▶ requires a request for proposals for a construction project to require offerors to include in a proposal the offeror's safety plan for the company and for the specific site; and
- ▶ requires the evaluation criteria of a request for proposals for a construction project to include the existence and quality of an offeror's safety plan for the company and for the specific site.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-6a-703, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-707, as last amended by Laws of Utah 2016, Chapters 237 and 355

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

Section 1. Section 63G-6a-703 is amended to read:**63G-6a-703. Request for proposals -- Requirements -- Publication of request.**

(1) The request for proposals standard procurement process begins when the division or a procurement unit with independent procurement authority issues a request for proposals.

(2) A request for proposals shall:

(a) state the period of time during which a proposal will be accepted;

(b) describe the manner in which a proposal shall be submitted;

(c) state the place where a proposal shall be submitted;

(d) include, or incorporate by reference:

(i) a description of the procurement items sought;

(ii) a description of the subjective and objective criteria that will be used to evaluate the proposal; and

(iii) the standard contractual terms and conditions required by the authorized purchasing entity;

(e) if the request for proposals is for a construction project, require each offeror to include in a proposal a description of the offeror's company safety plan and the offeror's safety plan for the specific project that is the subject of the proposal;

(f) state the relative weight that will be given to each score for the criteria described in Subsection (2)(d)(ii), including cost;

(g) state the formula that will be used to determine the score awarded for the cost of each proposal;

(h) if the request for proposals will be conducted in multiple stages, as described in Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be used to screen offerors at each stage; and

(i) state that best and final offers may be allowed, as provided in Section 63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals.

(3) The division or a procurement unit with independent procurement authority shall publish a request for proposals in accordance with the requirements of Section 63G-6a-112.

Section 2. Section 63G-6a-707 is amended to read:**63G-6a-707. Evaluation of proposals -- Evaluation committee.**

(1) (a) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each ~~responsive and responsible~~ responsible offeror's responsive proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals~~, which~~.

(b) The criteria in a request for proposals may include:

(i) experience;

(ii) performance ratings;

(iii) inspection;

(iv) testing;

(v) quality;

(vi) workmanship;

(vii) time, manner, or schedule of delivery;

(viii) references;

(ix) financial solvency;

(x) suitability for a particular purpose;

(xi) management plans;

~~the presence and quality of a work site safety program, including any requirement that the~~

~~offeror imposes on subcontractors for a work site safety program;~~

~~(m)~~ (xii) cost; or

(n) (xiii) other subjective or objective criteria specified in the request for proposals.

(c) The criteria in a request for proposals for a construction project shall include the existence and quality of:

(i) an offeror's company safety plan; and

(ii) the offeror's safety plan for the specific project that is the subject of the proposal.

(2) Criteria not described in the request for proposals may not be used to evaluate a proposal.

(3) (a) For a procurement of administrative law judge service, an evaluation committee shall consist of:

(i) the head of the conducting procurement unit, or the head's designee;

(ii) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the executive director of the Department of Human Resource Management, or the head's designee; and

(iii) the executive director of the Department of Human Resource Management, or the executive director's designee.

(b) For every other procurement requiring an evaluation by an evaluation committee, the conducting procurement unit shall:

(i) appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or basic understanding of:

(A) the technical requirements relating to the type of procurement item that is the subject of the procurement; or

(B) the need that the procurement item is intended to address; and

(ii) ensure that the evaluation committee and each individual participating in the evaluation committee process:

(A) does not have a conflict of interest with any of the offerors;

(B) can fairly evaluate each proposal;

(C) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and

(D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(4) A conducting procurement unit may authorize an evaluation committee to receive assistance:

(a) from an expert or consultant who:

(i) is not a member of the evaluation committee; and

(ii) does not participate in the evaluation scoring; and

(b) to better understand a technical issue involved in the procurement.

(5) (a) An evaluation committee may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with, or attend presentations by, the offerors, for the purpose of clarifying information contained in proposals.

(b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:

(i) may only explain, illustrate, or interpret the contents of the offeror's original proposal; and

(ii) may not:

(A) address criteria or specifications not contained in the offeror's original proposal;

(B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error;

(C) correct an incomplete submission of documents that the solicitation required to be submitted with the proposal;

(D) correct a failure to submit a timely proposal;

(E) substitute or alter a required form or other document specified in the solicitation;

(F) remedy a cause for an offeror being considered to be not responsible or a proposal not responsive; or

(G) correct a defect or inadequacy resulting in a determination that an offeror does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.

(6) (a) Except as provided in Subsection (7)(b) relating to access to management fee information, and except as provided in Subsection (9), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

(b) The issuing procurement unit shall:

(i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;

(ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;

(iii) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each responsive and responsible proposal; and

(iv) provide to the evaluation committee the total combined score calculated for each responsive and

responsible proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.

(c) The evaluation committee may not:

(i) change its final recommended scores described in Subsection (6)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or

(ii) change cost scores calculated by the issuing procurement unit.

(7) (a) As used in this Subsection (7), “management fee” includes only the following fees of the construction manager/general contractor:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:

(i) may score a construction manager/general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;

(ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;

(iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and

(iv) except as provided in Subsection (9), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

(8) (a) The deliberations of an evaluation committee may be held in private.

(b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(9) An issuing procurement unit is not required to comply with Subsection (6) or (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:

(a) signs a written statement:

(i) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as the case may be; and

(ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (6) or (7)(b)(iv); and

(b) makes the written statement available to the public, upon request.

CHAPTER 155**S. B. 135**

Passed March 1, 2017
Approved March 20, 2017
Effective May 9, 2017

MATERNAL AND CHILD HEALTH

Chief Sponsor: Luz Escamilla
House Sponsor: Edward H. Redd

LONG TITLE**General Description:**

This bill amends the Utah Health Code.

Highlighted Provisions:

This bill:

- ▶ creates definitions;
- ▶ requires the Department of Health to study the use of evidence-based home visiting programs in the state and report its findings to the Legislature;
- ▶ specifies what the study shall include;
- ▶ creates the Home Visiting Restricted Account and specifies how money in the account may be used;
- ▶ includes a repealer provision; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-2-226, as last amended by Laws of Utah 2016, Chapter 345

ENACTS:

26-10-12, Utah Code Annotated 1953

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

Section 1. Section 26-10-12 is enacted to read:**26-10-12. Home visiting study -- Home Visiting Restricted Account -- Repealer.**

(1) As used in this section, "home visiting" means an evidence-based program designed to meet the needs of pregnant women and families with children under four years of age by improving maternal mental and physical health, supporting positive parenting, preventing child abuse and neglect, and promoting child health, development, and school readiness.

(2) (a) The department shall study the use of home visiting programs in the state and report the study findings to the Legislature.

(b) In the study, the department shall:

(i) identify home visiting programs operated by the state, local governments, public education institutions, or other entities operating programs eligible for funding through the federal

government's Maternal, Infant, and Early Childhood Home Visiting program;

(ii) for each identified home visiting program, compile available information on the number of individuals served, services offered, program outcomes, and coordination with other home visiting programs; and

(iii) identify options for:

(A) increasing the number of individuals served by home visiting;

(B) improving the effectiveness of home visiting funded by the state;

(C) leveraging private and government funding, including Medicaid funding, to increase the use and effectiveness of home visiting in the state;

(D) coordinating the identification of individuals who could benefit from home visiting;

(E) coordinating the delivery of services provided through multiple home visiting programs, where appropriate; and

(F) funding home visiting programs if funding through the federal government's Maternal, Infant, and Early Childhood Home Visiting program is eliminated or reduced.

(c) The department shall report the study findings to the Health and Human Services Interim Committee before October 1, 2017.

(3) (a) There is created a restricted account within the General Fund known as the "Home Visiting Restricted Account."

(b) The restricted account consists of:

(i) money appropriated to the restricted account by the Legislature;

(ii) private donations; and

(iii) all income and interest derived from the deposit and investment of money in the account.

(c) Money in the restricted account may be used only for appropriations by the Legislature to fund evidence-based home visiting programs in the state.

(4) Subsection (2) and this Subsection (4) are repealed in accordance with Section 63I-2-226.

Section 2. Section 63I-2-226 is amended to read:**63I-2-226. Repeal dates -- Title 26.**

(1) Title 26, Chapter 46, Utah Health Care Workforce Financial Assistance Program, is repealed July 1, 2017.

(2) Subsections 26-10-12(2) and (4) are repealed July 1, 2017.

[42] (3) Section 26-18-412 is repealed December 31, 2016.

CHAPTER 156**S. B. 147**

Passed March 9, 2017
 Approved March 20, 2017
 Effective May 9, 2017

**UNIFORM PARENTAGE
 ACT AMENDMENTS**

Chief Sponsor: Lyle W. Hillyard
 House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill allows the enforcement of child support obligations against all parents.

Highlighted Provisions:

This bill:

- ▶ allows the enforcement of child support obligations against all parents;
- ▶ states that a presumption of maternity shall be determined in the same manner as a presumption of paternity; and
- ▶ addresses the presumption of parentage.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-11-307.1, as last amended by Laws of Utah 1997, Chapters 174 and 232
 78B-6-120, as last amended by Laws of Utah 2013, Chapter 458
 78B-15-201, as renumbered and amended by Laws of Utah 2008, Chapter 3
 78B-15-607, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 62A-11-307.1 is amended to read:**62A-11-307.1. Collection directly from responsible parent.**

(1) The office may issue or modify an order under Section 62A-11-304.2 and collect under this part directly from a responsible parent if the procedural requirements of applicable law have been met and if public assistance is provided on behalf of that parent's dependent child. The direct right to issue an order under this Subsection (1) is independent of and in addition to the right derived from that assigned under Section 35A-3-108.

(2) An order issuing or modifying a support obligation under Subsection (1), issued while public assistance was being provided for a dependent child, remains in effect and may be enforced by the office under Section 62A-11-306.1 after provision of public assistance ceases.

(3) (a) The office may issue or modify an administrative order, subject to the procedural requirements of applicable law, that requires that obligee to pay to the office assigned support that an

obligee receives and retains in violation of Subsection 62A-11-307.2(4) and may reduce to judgment any unpaid balance due.

(b) The office may collect the judgment debt in the same manner as it collects any judgment for past-due support owed by an obligor.

(4) Notwithstanding any other provision of law, the Office of Recovery Services shall have full standing and authority to establish and enforce child support obligations against an alleged parent currently or formerly in a same-sex marriage on the same terms as the Office of Recovery Services' authority against other mothers and fathers.

Section 2. Section 78B-6-120 is amended to read:**78B-6-120. Necessary consent to adoption or relinquishment for adoption.**

(1) Except as provided in Subsection (2), consent to adoption of a child, or relinquishment of a child for adoption, is required from:

(a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not have the mental capacity to consent;

(b) a man or woman who:

(i) by operation of law under Section 78B-15-204, is recognized as the father or mother of the proposed adoptee, unless:

(A) the presumption is rebutted under Section 78B-15-607; or

(B) the man or woman was not married to the mother of the proposed adoptee until after the mother consented to adoption, or relinquishment for adoption, of the proposed adoptee; or

(ii) is the father of the adoptee by a previous legal adoption;

(c) the mother of the adoptee;

(d) a biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(e) consistent with Subsection (3), a biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;

(f) an unmarried biological father, of an adoptee, whose consent is not required under Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and

(g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) (a) The consent of a person described in Subsections (1)(b) through (g) is not required if the adoptee is 18 years of age or older.

(b) The consent of a person described in Subsections (1)(b) through (f) is not required if the person's parental rights relating to the adoptee have been terminated.

(3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered filed when it is entered into a database that:

(a) can be accessed by the Department of Health; and

(b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.

Section 3. Section 78B-15-201 is amended to read:

78B-15-201. Establishment of parent-child relationship.

(1) (a) The mother-child relationship is established between a woman and a child by:

~~[(a)]~~ (i) the woman's having given birth to the child, except as otherwise provided in Part 8, Gestational Agreement;

~~[(b)]~~ (ii) an adjudication of the woman's maternity;

~~[(c)]~~ (iii) adoption of the child by the woman; ~~[(e)]~~

~~[(d)]~~ (iv) an adjudication confirming the woman as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law~~[-]; or~~

~~[(e)]~~ (v) an un rebutted presumption of maternity of the child established in the same manner as under Section 78B-15-204.

(b) In this chapter, the presumption of maternity shall be treated the same as a presumption of paternity as established in Subsection 78B-15-201(2)(a).

(2) The father-child relationship is established between a man and a child by:

(a) an un rebutted presumption of the man's paternity of the child under Section 78B-15-204;

(b) an effective declaration of paternity by the man under Part 3, Voluntary Declaration of Paternity Act, unless the declaration has been rescinded or successfully challenged;

(c) an adjudication of the man's paternity;

(d) adoption of the child by the man;

(e) the man having consented to assisted reproduction by a woman under Part 7, Assisted Reproduction, which resulted in the birth of the child; or

(f) an adjudication confirming the man as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law.

Section 4. Section 78B-15-607 is amended to read:

78B-15-607. Limitation -- Child having presumed father.

(1) Paternity of a child conceived or born during a marriage with a presumed father, as described in Subsection 78B-15-204(1)(a), (b), or (c), may be raised by the presumed father ~~[(e)]~~, the mother, or a support enforcement agency at any time ~~[(prior to)]~~ before filing an action for divorce or in the pleadings at the time of the divorce of the parents.

(a) If the issue is raised prior to the adjudication, genetic testing may be ordered by the tribunal in accordance with Section 78B-15-608. Failure of the mother of the child to appear for testing may result in an order allowing a motherless calculation of paternity. Failure of the mother to make the child available may not result in a determination that the presumed father is not the father, but shall allow for appropriate proceedings to compel the cooperation of the mother. If the question of paternity has been raised in the pleadings in a divorce and the tribunal addresses the issue and enters an order, the parties are estopped from raising the issue again, and the order of the tribunal may not be challenged on the basis of material mistake of fact.

(b) If the presumed father seeks to rebut the presumption of paternity, then denial of a motion seeking an order for genetic testing or a decision to disregard genetic test results shall be based on a preponderance of the evidence.

(c) If the mother seeks to rebut the presumption of paternity, the mother has the burden to show by a preponderance of the evidence that it would be in the best interests of the child to disestablish the parent-child relationship.

(d) If a support enforcement agency seeks to rebut the presumption of parentage and the presumptive parent opposes the rebuttal, the agency's request shall be denied. Otherwise, the denial of the agency's motion seeking an order for genetic testing or a decision to disregard genetic test results shall be based on a preponderance of the evidence, taking into account the best interests of the child.

(2) For the presumption outside of marriage described in Subsection 78B-15-204(1)(d), the presumption may be rebutted at any time if the tribunal determines that the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception.

(3) The presumption may be rebutted by:

(a) genetic test results that exclude the presumed father;

(b) genetic test results that rebuttably identify another man as the father in accordance with Section 78B-15-505;

(c) evidence that the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; or

(d) an adjudication under this part.

(4) There is no presumption to rebut if the presumed father was properly served and there has been a final adjudication of the issue.

CHAPTER 157**S. B. 150**

Passed March 2, 2017

Approved March 20, 2017

Effective May 9, 2017

**LOCAL GOVERNMENT
BOND AMENDMENTS**

Chief Sponsor: Deidre M. Henderson

House Sponsor: Justin L. Fawson

LONG TITLE**General Description:**

This bill amends provisions regarding required information related to a proposed bond.

Highlighted Provisions:

This bill:

- ▶ addresses the order in which a governing body must state the property tax cost of a bond on a ballot proposition and a voter information pamphlet; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

11-14-202, as last amended by Laws of Utah 2014, Chapter 325

11-14-206, as last amended by Laws of Utah 2010, Chapter 388

Utah Code Sections Affected by Coordination Clause:

11-14-202, as last amended by Laws of Utah 2014, Chapter 325

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

Section 1. Section 11-14-202 is amended to read:**11-14-202. Notice of election -- Contents -- Publication -- Mailing.**

(1) The governing body shall ensure that notice of the election is provided:

(a) once per week during three consecutive weeks by publication in a newspaper having general circulation in the local political subdivision in accordance with Section 11-14-316, the first publication occurring not less than 21 nor more than 35 days before the election;

(b) on a website, if available, in accordance with Section 45-1-101 for the three weeks that immediately precede the election; and

(c) in a local political subdivision where there is no newspaper of general circulation, by posting notice of the bond election in at least five public places in the local political subdivision at least 21 days before the election.

(2) When the debt service on the bonds [~~to be issued~~] the governing body intends to issue will increase the property tax imposed upon the average value of a residence by an amount that is greater than or equal to \$15 per year, the governing body shall prepare and mail either a voter information pamphlet or a notification described in Subsection (6):

(a) at least 15 days but not more than 45 days before the bond election;

(b) to each household containing a registered voter who is eligible to vote on the bonds; and

(c) that includes the information required by Subsections (3) and (4).

(3) The governing body shall ensure that the notice and voter information pamphlet required by this section [~~shall~~] include in the following order:

(a) the date and place of the election;

(b) the hours during which the polls will be open; and

(c) the title and text of the ballot proposition, including the property tax cost of the bond described in Subsection 11-14-206(2)(a).

(4) The governing body shall ensure that the voter information pamphlet required by this section [~~shall include~~] includes:

(a) the information required by Subsection (3); and

(b) an explanation of the property tax impact, if any, of the issuance of the bonds, which may be based on information the governing body determines to be useful, including:

(i) expected debt service on the bonds to be issued;

(ii) a description of the purpose, remaining principal balance, and maturity date of any outstanding general obligation bonds of the issuer;

(iii) funds other than property taxes available to pay debt service on general obligation bonds;

(iv) timing of expenditures of bond proceeds;

(v) property values; and

(vi) any additional information that the governing body determines may be useful to explain the property tax impact of issuance of the bonds.

(5) The governing body shall pay the costs associated with the notice required by this section.

(6) (a) The governing body may mail a notice printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail.

(b) The governing body shall ensure that the notice described in Subsection (6)(a) [~~shall include~~] includes:

(i) the website upon which the voter information pamphlet is available; and

(ii) the phone number a voter may call to request delivery of a voter information pamphlet by mail.

(7) A local school board shall comply with the voter information pamphlet requirements described in Section 53A-18-102.

Section 2. Section 11-14-206 is amended to read:

11-14-206. Ballots -- Submission of ballot language -- Form and contents.

(1) At least 75 days before the election, the governing body shall prepare and submit to the election officer:

(a) a ballot title for the bond proposition that includes the name of the local political subdivision issuing the bonds and the word "bond"; and

(b) a ballot proposition that meets the requirements of Subsection (2).

(2) (a) The governing body shall ensure that the ballot proposition ~~shall include~~ includes:

(i) the maximum principal amount of the bonds;

(ii) the maximum number of years from the issuance of the bonds to final maturity;

(iii) the general purpose for which the bonds are to be issued; and

(iv) if issuance of the bonds will require the increase of the property tax imposed upon the average value of a residence by an amount that is greater than or equal to \$15 per year, the following information in substantially the following form and in the following order:

"PROPERTY TAX COST OF BONDS:

If the bonds are issued as planned, if applicable: without regard to the taxes currently levied for outstanding bonds that will reduce over time, an annual property tax to pay debt service on the bonds will be required over a period of ___ years in the estimated amount of \$ ___ ~~[on a]~~ (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) on a residence and in the estimated amount of \$ ___ on a business property having the same value.

[If applicable] If there are other outstanding bonds, an otherwise scheduled tax decrease may not occur if these bonds are issued.

The foregoing information is only an estimate and is not a limit on the amount of taxes that the governing body may be required to levy in order to pay debt service on the bonds. The governing body is obligated to levy taxes to the extent provided by law in order to pay the bonds."

(b) The governing body may state the purpose of the bonds ~~may be stated~~ in general terms and need not specify the particular projects for which the governing body intends to issue the bonds ~~are to be issued~~ or the specific amount of bond proceeds ~~to be expended~~ that the governing body intends to expend for each project.

(c) If the governing body intends that the bonds ~~are to~~ be payable in part from tax proceeds and in

part from the operating revenues of the local political subdivision, or from any combination of tax proceeds and operating revenues, the ~~bond proposition~~ governing body may indicate those payment sources on the bond proposition, but need not specify how the governing body intends to divide the bonds ~~are to be divided~~ between those sources of payment.

(d) (i) The governing body shall ensure that the bond proposition ~~shall be~~ is followed by the words, "For the issuance of bonds" and "Against the issuance of bonds," with appropriate boxes in which the voter may indicate ~~his~~ the voter's choice.

(ii) Nothing in Subsection (2)(d)(i) prohibits the addition of descriptive information about the bonds.

(3) If a bond proposition is submitted to a vote on the same day as any other election held in the local political subdivision calling the bond election, the governing body or an election officer may combine the bond proposition ~~may be combined~~ with the candidate ballot in a manner consistent with Section 20A-6-301, 20A-6-303, or 20A-6-402.

(4) The governing body shall ensure that the ballot form ~~shall comply~~ complies with the requirements of Title 20A, Chapter 6, Ballot Form.

Section 3. Coordinating S.B. 150 with H.B. 218 -- Technical amendment.

If this S.B. 150 and H.B. 218, Poll Location Amendments, both pass and become law, and S.B. 128, Election Day Notification Amendments, does not pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by amending Section 11-14-202 to read:

"11-14-202. Notice of election -- Contents -- Publication -- Mailing.

(1) The governing body shall ensure that notice of the election is provided:

(a) once per week during three consecutive weeks by publication in a newspaper having general circulation in the local political subdivision in accordance with Section 11-14-316, the first publication occurring not less than 21 nor more than 35 days before the election;

(b) on a website, if available, in accordance with Section 45-1-101 for the three weeks that immediately precede the election; and

(c) in a local political subdivision where there is no newspaper of general circulation, by posting notice of the bond election in at least five public places in the local political subdivision at least 21 days before the election.

(2) When the debt service on the bonds to be issued will increase the property tax imposed upon the average value of a residence by an amount that is greater than or equal to \$15 per year, the governing body shall prepare and mail either a voter information pamphlet or a notification described in Subsection (6):

(a) at least 15 days but not more than 45 days before the bond election;

(b) to each household containing a registered voter who is eligible to vote on the bonds; and

(c) that includes the information required by Subsections (3) and (4).

~~[(3) The notice and voter information pamphlet required by this section]~~

(3) (a) Except as provided in Subsection (3)(b), the notice described in Subsection (1) shall include, in the following order:

~~[(a)]~~ (i) the date ~~[and place]~~ of the election;

~~[(b)]~~ (ii) the hours during which the polls will be open; ~~[and]~~

(iii) the location of each polling place or the address of a website that lists the location of each polling place; and

~~[(e)]~~ (iv) the title and text of the ballot proposition, including the property tax cost of the bond described in Subsection 11-14-206(2)(a).

(b) The notice described in Subsection (3)(a) is not required to include information regarding an additional:

(i) early voting polling place designated, for which notice is provided in accordance with Subsection 20A-3-603(2); or

(ii) election day voting center designated for which notice is provided, in accordance with Subsection 20A-3-703(2).

(4) The voter information pamphlet required by this section shall include:

(a) the information required by Subsection (3); and

(b) an explanation of the property tax impact, if any, of the issuance of the bonds, which may be based on information the governing body determines to be useful, including:

(i) expected debt service on the bonds to be issued;

(ii) a description of the purpose, remaining principal balance, and maturity date of any outstanding general obligation bonds of the issuer;

(iii) funds other than property taxes available to pay debt service on general obligation bonds;

(iv) timing of expenditures of bond proceeds;

(v) property values; and

(vi) any additional information that the governing body determines may be useful to explain the property tax impact of issuance of the bonds.

(5) The governing body shall pay the costs associated with the notice required by this section.

(6) (a) The governing body may mail a notice printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail.

(b) The notice described in Subsection (6)(a) shall include:

(i) the website upon which the voter information pamphlet is available; and

(ii) the phone number a voter may call to request delivery of a voter information pamphlet by mail.

(7) A local school board shall comply with the voter information pamphlet requirements described in Section 53A-18-102.”.

CHAPTER 158**S. B. 152**

Passed February 22, 2017

Approved March 20, 2017

Effective May 9, 2017

**MUNICIPAL MAYORAL
TERM AMENDMENTS**Chief Sponsor: Jani Iwamoto
House Sponsor: Patrice M. Arent**LONG TITLE****General Description:**

This bill allows certain cities to set an alternative election schedule to fill the office of city mayor.

Highlighted Provisions:

This bill:

- ▶ allows certain cities to set an alternative election schedule to fill the office of city mayor; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-2a-410, as last amended by Laws of Utah 2016, Chapter 14 and further amended by Revisor Instructions, Laws of Utah 2016, Chapter 14
- 10-3-205, as last amended by Laws of Utah 2004, Chapter 202

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

Section 1. Section 10-2a-410 is amended to read:**10-2a-410. Determination of metro township districts -- Determination of metro township or city initial officer terms -- Adoption of proposed districts.**

(1) (a) If a metro township with a population of 10,000 or more is incorporated in accordance with an election held under Section 10-2a-404:

(i) each of the five metro township council members shall be elected by district; and

(ii) the boundaries of the five council districts for election and the terms of office shall be designated and determined in accordance with this section.

(b) If a metro township with a population of less than 10,000 or a town is incorporated at an election held in accordance with Section 10-2a-404, the five council members shall be elected at-large for terms as designated and determined in accordance with this section.

(c) If a city is incorporated at an election held in accordance with Section 10-2a-404:

(i) (A) the four members of the council district who are not the mayor shall be elected by district; and

(B) the boundaries of the four council districts for election and the term of office shall be designated and determined in accordance with this section; and

(ii) the mayor shall be elected at-large for a term designated and determined in accordance with this section.

(2) (a) No later than 90 days after the election day on which the metro township, city, or town is successfully incorporated under this part, the legislative body of the county in which the metro township, city, or town is located shall adopt by resolution:

(i) subject to Subsection (2)(b), for each incorporated metro township, city, or town, the council terms for a length of time in accordance with this section; and

(ii) (A) for a metro township with a population of 10,000 or more, the boundaries of the five council districts; and

(B) for a city, the boundaries of the four council districts.

(b) (i) For each metro township, city, or town, the county legislative body shall set the initial terms of the members of the metro township council, city council, or town council so that:

(A) except as provided in Subsection (2)(b)(ii), approximately half the members of the council, including the mayor in the case of a city, are elected to serve an initial term, of no less than one year, that allows their successors to serve a full four-year term that coincides with the schedule established in Subsection 10-3-205(1); and

(B) the remaining members of the council are elected to serve an initial term, of no less than one year, that allows their successors to serve a full four-year term that coincides with the schedule established in Subsection 10-3-205(2).

(ii) For a city that incorporated in a county of the first class in 2016, the term of office for the office of mayor is:

(A) three years for the initial term of office; and

(B) four years for each subsequent term of office.

~~(iii)~~ (iii) For a metro township with a population of 10,000 or more, the county legislative body shall divide the metro township into five council districts that comply with Section 10-3-205.5.

~~(iii)~~ (iv) For a city, the county legislative body shall divide the city into four council districts that comply with Section 10-3-205.5.

(3) (a) Within 20 days of the county legislative body's adoption of a resolution under Subsection (2), the county clerk shall publish, in accordance with Subsection (3)(b), notice containing:

(i) if applicable, a description of the boundaries, as designated in the resolution, of:

(A) for a metro township with a population of 10,000 or more, the metro township council districts; or

(B) the city council districts;

(ii) information about the deadline for filing a declaration of candidacy for those seeking to become candidates for metro township council, city council, town council, or city mayor, respectively; and

(iii) information about the length of the initial term of city mayor or each of the metro township, city, or town council offices, as described in the resolution.

(b) The notice under Subsection (3)(a) shall be published:

(i) in a newspaper of general circulation within the metro township, city, or town at least once a week for two successive weeks; and

(ii) in accordance with Section 45-1-101 for two weeks.

(c) (i) In accordance with Subsection (3)(b)(i), if there is no newspaper of general circulation within the future metro township, city, or town, the county clerk shall post at least one notice per 1,000 population in conspicuous places within the future metro township, city, or town that are most likely to give notice to the residents of the future metro township, city, or town.

(ii) The notice under Subsection (3)(c)(i) shall contain the information required under Subsection (4)(a).

(iii) The county clerk shall post the notices under Subsection (3)(c)(i) at least seven days before the deadline for filing a declaration of candidacy under Subsection (3)(d).

(d) A person seeking to become a candidate for metro township, city, or town council or city mayor shall, in accordance with Section 20A-9-202, file a declaration of candidacy with the clerk of the county in which the metro township, city, or town is located for an election described in Section 10-2a-411.

Section 2. Section 10-3-205 is amended to read:

10-3-205. Election of officers in municipalities operating under a city council form of government.

~~[In each]~~ Each municipality operating under a five-member or six-member city council form of government~~[, the election and terms of office shall be as follows]~~ shall hold municipal elections to fill, for a term of four years, the following offices in the following years:

~~[(1) The offices of mayor and]~~

(1) in the year following a year in which a presidential election is held, the offices of:

(a) approximately half the council members ~~[shall be filled in municipal elections held in 1977. The terms shall be for four years. These offices shall be filled every four years in municipal elections.];~~ and

(b) except as provided in Subsection (2)(b) or 10-2a-410(2)(a)(ii), mayor; and

(2) [The] in the year preceding a year in which a presidential election is held, the offices of:

(a) the remaining council members ~~[shall be filled in a municipal election held in 1979. The terms shall be for four years. These offices shall be filled every four years in municipal elections.];~~ and

(b) for a municipality that elected a mayor in 2015 for a term of four years, mayor.

CHAPTER 159**S. B. 155**

Passed March 8, 2017
 Approved March 20, 2017
 Effective July 1, 2017

**ALCOHOL BEVERAGE CONTROL
 BUDGET AMENDMENTS**

Chief Sponsor: Karen Mayne
 House Sponsor: Brad R. Wilson

LONG TITLE**General Description:**

This bill modifies provisions related to the budget of the Department of Alcoholic Beverage Control.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the department's base budget;
- ▶ provides for use of specific funds for specified purposes; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

32B-2-301, as last amended by Laws of Utah 2013, Chapter 349

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

Section 1. Section 32B-2-301 is amended to read:

32B-2-301. State property -- Liquor Control Fund -- Markup Holding Fund.

- (1) The following are property of the state:
- (a) the money received in the administration of this title, except as otherwise provided; and
 - (b) property acquired, administered, possessed, or received by the department.
- (2) (a) There is created an enterprise fund known as the "Liquor Control Fund."
- (b) Except as provided in Sections 32B-3-205 and 32B-2-304, money received in the administration of this title shall be transferred to the Liquor Control Fund.
- (3) (a) There is created an enterprise fund known as the "Markup Holding Fund."
- (b) In accordance with Section 32B-2-304, the State Tax Commission shall deposit revenue remitted to the State Tax Commission from the markup imposed under Section 32B-2-304 into the Markup Holding Fund.
- (c) Money deposited into the Markup Holding Fund may be expended:

(i) to the extent appropriated by the Legislature; and

(ii) to fund the deposits required by Subsection 32B-2-304(4) and Subsection 32B-2-305(4).

(4) The department may draw from the Liquor Control Fund only to the extent appropriated by the Legislature or provided for by statute, except that the department may draw by warrant without an appropriation from the Liquor Control Fund for an expenditure that is directly incurred by the department:

- (a) to purchase an alcoholic product;
- (b) to transport an alcoholic product from the supplier to a warehouse of the department; and
- (c) for variances related to an alcoholic product.

(5) (a) As used in this Subsection (5), "base budget" means the same as that term is defined in legislative rule.

(b) The department's base budget shall include as an appropriation from the Liquor Control Fund:

- (i) credit card related fees paid by the department;
- (ii) package agency compensation; and
- (iii) the department's costs of shipping and warehousing alcoholic products.

(6) Before the transfer required by Subsection (7), the department may retain each fiscal year from the Liquor Control Fund \$1,000,000 that the department may use for:

- (a) capital equipment purchases;
- (b) salary increases for department employees;
- (c) performance awards for department employees; or
- (d) information technology enhancements because of changes or trends in technology.

[~~(5)~~] (7) The department shall transfer annually from the Liquor Control Fund and the State Tax Commission shall transfer annually from the Markup Holding Fund to the General Fund a sum equal to the amount of net profit earned from the sale of liquor since the preceding transfer of money under this Subsection [~~(5)~~] (7). The transfers shall be calculated by no later than September 1 and made by no later than September 30 after a fiscal year. The Division of Finance may make year-end closing entries in the Liquor Control Fund and the Markup Holding Fund in order to comply with Subsection 51-5-6(2).

[~~(6)~~] (8) (a) By the end of each day, the department shall:

- (i) make a deposit to a qualified depository, as defined in Section 51-7-3; and
 - (ii) report the deposit to the state treasurer.
- (b) A commissioner or department employee is not personally liable for a loss caused by the default or failure of a qualified depository.

(c) Money deposited in a qualified depository is entitled to the same priority of payment as other public funds of the state.

[(7)] (9) If the cash balance of the Liquor Control Fund is not adequate to cover a warrant drawn against the Liquor Control Fund by the department, the cash resources of the General Fund may be used to the extent necessary. At no time may the fund equity of the Liquor Control Fund fall below zero.

Section 2. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 160**S. B. 182**

Passed March 6, 2017

Approved March 20, 2017

Effective May 9, 2017

**PUBLIC TRANSPORTATION
SAFETY OVERSIGHT AMENDMENTS**

Chief Sponsor: Karen Mayne

House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill modifies the Transportation Code by designating the Department of Transportation as the state safety oversight agency for rail fixed guideway public transportation safety.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides directions to the state treasurer to transfer funds in certain circumstances to a county served by rail fixed guideway to cover costs of safety oversight;
- ▶ designates the Department of Transportation as the state safety oversight agency for rail fixed guideway public transportation safety;
- ▶ specifies the powers and duties of the Department of Transportation as the state safety oversight agency;
- ▶ requires the Department of Transportation to annually provide a status report on the safety of certain rail fixed guideway public transportation systems;
- ▶ grants the Department of Transportation rulemaking authority to make rules necessary to administer and enforce the requirements of state and federal law as the designated state safety oversight agency; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-12-2206, as last amended by Laws of Utah 2016, Chapter 364

ENACTS:

72-1-214, Utah Code Annotated 1953

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

Section 1. Section 59-12-2206 is amended to read:

59-12-2206. Administration, collection, and enforcement of a sales and use tax under this part -- Transmission of revenue monthly by electronic funds transfer -- Transfer of revenue to a public transit district or eligible political subdivision.

(1) Except as provided in Subsection (2), the commission shall administer, collect, and enforce a sales and use tax imposed under this part.

(2) The commission shall administer, collect, and enforce a sales and use tax imposed under this part in accordance with:

(a) the same procedures used to administer, collect, and enforce a tax under:

- (i) Part 1, Tax Collection; or
- (ii) Part 2, Local Sales and Use Tax Act; and
- (b) Chapter 1, General Taxation Policies.

(3) A sales and use tax under this part is not subject to Subsections 59-12-205(2) through (7).

(4) Subject to Section 59-12-2207 and except as provided in Subsection (5) or another provision of this part, the state treasurer shall transmit revenue collected within a county, city, or town from a sales and use tax under this part to the county, city, or town legislative body monthly by electronic funds transfer.

(5) (a) Subject to Section 59-12-2207, and except as provided in Subsection (5)(b), the state treasurer shall transfer revenue collected within a county, city, or town from a sales and use tax under this part directly to a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act, or an eligible political subdivision as defined in Section 59-12-2219, if the county, city, or town legislative body:

~~(a)~~ (i) provides written notice to the commission and the state treasurer requesting the transfer; and

~~(b)~~ (ii) designates the public transit district or eligible political subdivision to which the county, city, or town legislative body requests the state treasurer to transfer the revenue.

(b) The commission shall transmit a portion of the revenue collected within a county, city, or town from a sales and use tax under this part that would be transferred to a public transit district or an eligible political subdivision under Subsection (5)(a) to the county, city, or town to fund public transit fixed guideway safety oversight under Section 72-1-214 if the county, city, or town legislative body:

(i) provides written notice to the commission and the state treasurer requesting the transfer; and

(ii) specifies the amount of revenue required to be transmitted to the county, city, or town.

Section 2. Section 72-1-214 is enacted to read:

72-1-214. Department designated as state safety oversight agency for rail fixed guideway public transportation safety -- Powers and duties -- Rulemaking.

(1) (a) Except as provided in Subsection (1)(b), as used in this section, "fixed guideway" means the same as that term is defined in Section 59-12-102.

(b) For purposes of this section, "fixed guideway" does not include a rail system subject to regulation by the Federal Railroad Administration.

(2) The department is designated as the state safety oversight agency for rail fixed guideway public transportation safety in accordance with 49 U.S.C. Sec. 5329(e)(4).

(3) As the state safety oversight agency, the department may, to the extent necessary to fulfill the department's obligations under federal law:

(a) enter into and inspect the property of a fixed guideway rail system receiving federal funds without prior notice to the operator;

(b) audit an operator of a fixed guideway rail system receiving federal funds for compliance with:

(i) federal and state laws regarding the safety of the fixed guideway rail system; and

(ii) a public transportation agency safety plan adopted by a specific operator in accordance with 49 U.S.C. Sec. 5329(d);

(c) direct the operator of a fixed guideway rail system to correct a safety hazard by a specified date and time;

(d) prevent the operation of all or part of a fixed guideway rail system that the department has determined to be unsafe;

(e) audit, review, approve, and oversee an operator of a fixed guideway rail system receiving federal funds for compliance with a plan adopted by the operator in compliance with 49 U.S.C. Sec. 5329(d); and

(f) enforce statutes, rules, regulations, and executive orders relating to the operation of a fixed guideway rail public transportation system in Utah.

(4) The department shall, at least annually, provide a status report on the safety of the rail fixed guideway public transportation systems the department oversees to:

(a) the Federal Transit Administration;

(b) the governor; and

(c) members of the board of any rail fixed guideway public transportation system that the department oversees in accordance with this section.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules necessary to administer and enforce this section.

(6) (a) Notwithstanding any other agreement, a county, city, or town with fixed guideway rail transit service provided by a public transit district that is subject to safety oversight as provided in this section may request local option transit sales tax in accordance with Section 59-12-2206 and spend local option transit sales tax in the amount requested by the department to meet nonfederal match requirements for costs of safety oversight described in this section.

(b) A county, city, or town that requests local option transit sales tax as described in Subsection

(6)(a) shall transmit to the department all of the funds requested under Subsection (6)(a) and transmitted to the county, city, or town under Subsection 59-12-2206(5)(b).

(c) A county, city, or town that requests local option transit sales tax as described in Subsection (6)(a) may not request more local option transit sales tax than is necessary to carry out the state safety oversight functions under this section and the amount shall only reflect a maximum of 20% nonfederal match requirement of eligible costs of state safety oversight.

CHAPTER 161**S. B. 188**

Passed February 27, 2017

Approved March 20, 2017

Effective May 9, 2017

**CHILD SUPPORT GUIDELINES
ADVISORY COMMITTEE AMENDMENTS**

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Val K. Potter

LONG TITLE**General Description:**

This bill modifies provisions related to a child support guidelines advisory committee.

Highlighted Provisions:

This bill:

- ▶ addresses the time when the governor shall appoint members to a child support guidelines advisory committee; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78B-12-401, as last amended by Laws of Utah 2015, Chapter 359

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

Section 1. Section 78B-12-401 is amended to read:**78B-12-401. Advisory committee --
Membership -- Expiration.**

(1) (a) On or before May 1, ~~[2012]~~ 2018, and then on or before May 1 of every fourth year subsequently, the governor shall appoint a child support guidelines advisory committee consisting of:

~~[(a)]~~ (i) one representative recommended by the Office of Recovery Services;

~~[(b)]~~ (ii) one representative recommended by the Judicial Council;

~~[(c)]~~ (iii) two representatives recommended by the Utah State Bar Association;

~~[(d)]~~ (iv) two representatives of noncustodial parents;

~~[(e)]~~ (v) two representatives of custodial parents;

~~[(f)]~~ (vi) one representative with expertise in economics; and

~~[(g)]~~ (vii) subject to Subsection (1)(b), two representatives from diverse interests related to child support issues, as the governor may consider appropriate. ~~[However, none]~~

(b) None of the individuals appointed under ~~[this subsection]~~ Subsection (1)(a)(vii) may be members of the Utah State Bar Association.

(2) The term of the committee members expires one month after the report of the committee is submitted to the Legislature under Section 78B-12-402.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The committee ceases to exist no later than November 1, 2017, and then on or before November 1 of every fourth year subsequently.

CHAPTER 162**S. B. 196**

Passed March 8, 2017

Approved March 20, 2017

Effective May 9, 2017

HEALTH EDUCATION AMENDMENTS

Chief Sponsor: J. Stuart Adams
House Sponsor: Keven J. Stratton

LONG TITLE**General Description:**

This bill amends provisions related to health instruction in public schools.

Highlighted Provisions:

This bill:

- ▶ repeals language prohibiting the advocacy of homosexuality in health instruction;
- ▶ prohibits instruction that advocates premarital or extramarital sexual activity; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-13-101, as last amended by Laws of Utah 2016, Chapter 144

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

Section 1. Section 53A-13-101 is amended to read:

53A-13-101. Instruction in health -- Parental consent requirements -- Conduct and speech of school employees and volunteers -- Political and religious doctrine prohibited.

(1) (a) The State Board of Education shall establish curriculum requirements under Section 53A-1-402, that include instruction in:

- (i) community and personal health;
- (ii) physiology;
- (iii) personal hygiene; and
- (iv) prevention of communicable disease.

(b) (i) That instruction shall stress:

(A) the importance of abstinence from all sexual activity before marriage and fidelity after marriage as methods for preventing certain communicable diseases; and

(B) personal skills that encourage individual choice of abstinence and fidelity.

(ii) (A) At no time may instruction be provided, including responses to spontaneous questions raised by students, regarding any means or methods that facilitate or encourage the violation of

any state or federal criminal law by a minor or an adult.

(B) Subsection (1)(b)(ii)(A) does not preclude an instructor from responding to a spontaneous question as long as the response is consistent with the provisions of this section.

(c) (i) The board shall recommend instructional materials for use in the curricula required under Subsection (1)(a) after considering evaluations of instructional materials by the State Instructional Materials Commission.

(ii) A local school board may choose to adopt:

(A) the instructional materials recommended under Subsection (1)(c)(i); or

(B) other instructional materials as provided in state board rule.

(iii) The state board rule made under Subsection (1)(c)(ii)(B) shall include, at a minimum:

(A) that the materials adopted by a local school board under Subsection (1)(c)(ii)(B) shall be based upon recommendations of the school district's Curriculum Materials Review Committee that comply with state law and state board rules emphasizing abstinence before marriage and fidelity after marriage, and prohibiting instruction in:

(I) the intricacies of intercourse, sexual stimulation, or erotic behavior;

(II) the advocacy of [~~homosexuality;~~] premarital or extramarital sexual activity; or

(III) the advocacy or encouragement of the use of contraceptive methods or devices; [~~or~~]

(IV) the advocacy of sexual activity outside of marriage;

(B) that the adoption of instructional materials shall take place in an open and regular meeting of the local school board for which prior notice is given to parents and guardians of students attending schools in the district and an opportunity for them to express their views and opinions on the materials at the meeting;

(C) provision for an appeal and review process of the local school board's decision; and

(D) provision for a report by the local school board to the State Board of Education of the action taken and the materials adopted by the local school board under Subsections (1)(c)(ii)(B) and (1)(c)(iii).

(2) (a) Instruction in the courses described in Subsection (1) shall be consistent and systematic in grades eight through 12.

(b) At the request of the board, the Department of Health shall cooperate with the board in developing programs to provide instruction in those areas.

(3) (a) The board shall adopt rules that:

(i) provide that the parental consent requirements of Sections 76-7-322 and 76-7-323 are complied with; and

(ii) require a student's parent or legal guardian to be notified in advance and have an opportunity to review the information for which parental consent is required under Sections 76-7-322 and 76-7-323.

(b) The board shall also provide procedures for disciplinary action for violation of Section 76-7-322 or 76-7-323.

(4) (a) In keeping with the requirements of Section 53A-13-109, and because school employees and volunteers serve as examples to their students, school employees or volunteers acting in their official capacities may not support or encourage criminal conduct by students, teachers, or volunteers.

(b) To ensure the effective performance of school personnel, the limitations described in Subsection (4)(a) also apply to school employees or volunteers acting outside of their official capacities if:

(i) they knew or should have known that their action could result in a material and substantial interference or disruption in the normal activities of the school; and

(ii) that action does result in a material and substantial interference or disruption in the normal activities of the school.

(c) Neither the State Board of Education nor local school districts may allow training of school employees or volunteers that supports or encourages criminal conduct.

(d) The State Board of Education shall adopt rules implementing this section.

(e) Nothing in this section limits the ability or authority of the State Board of Education and local school boards to enact and enforce rules or take actions that are otherwise lawful, regarding educators', employees', or volunteers' qualifications or behavior evidencing unfitness for duty.

(5) Except as provided in Section 53A-13-101.1, political, atheistic, sectarian, religious, or denominational doctrine may not be taught in the public schools.

(6) (a) Local school boards and their employees shall cooperate and share responsibility in carrying out the purposes of this chapter.

(b) Each school district shall provide appropriate inservice training for its teachers, counselors, and school administrators to enable them to understand, protect, and properly instruct students in the values and character traits referred to in this section and Sections 53A-13-101.1, 53A-13-101.2, 53A-13-101.3, 53A-13-109, 53A-13-301, and 53A-13-302 and distribute appropriate written materials on the values, character traits, and conduct to each individual receiving the inservice training.

(c) The written materials shall also be made available to classified employees, students, and parents and guardians of students.

(d) In order to assist school districts in providing the inservice training required under Subsection

(6)(b), the State Board of Education shall as appropriate, contract with a qualified individual or entity possessing expertise in the areas referred to in Subsection (6)(b) to develop and disseminate model teacher inservice programs which districts may use to train the individuals referred to in Subsection (6)(b) to effectively teach the values and qualities of character referenced in that subsection.

(e) In accordance with the provisions of Subsection (4)(c), inservice training may not support or encourage criminal conduct.

(7) If any one or more provision, subsection, sentence, clause, phrase, or word of this section, or the application thereof to any person or circumstance, is found to be unconstitutional, the balance of this section shall be given effect without the invalid provision, subsection, sentence, clause, phrase, or word.

CHAPTER 163**S. B. 213**

Passed March 2, 2017

Approved March 20, 2017

Effective May 9, 2017

**UTAH SUBSTANCE USE AND MENTAL
HEALTH ADVISORY COUNCIL**

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Stewart E. Barlow

LONG TITLE**General Description:**

This bill addresses the Utah Substance Use and Mental Health Advisory Council.

Highlighted Provisions:

This bill:

- ▶ corrects references to the council;
- ▶ adds a member to the council; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

32B-2-306, as enacted by Laws of Utah 2012, Chapter 388

32B-7-305, as enacted by Laws of Utah 2010, Chapter 276 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 276

62A-15-103, as last amended by Laws of Utah 2016, Chapters 113 and 211

63M-7-202, as last amended by Laws of Utah 2010, Chapter 39

63M-7-301, as last amended by Laws of Utah 2016, Chapter 158

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

Section 1. Section 32B-2-306 is amended to read:**32B-2-306. Underage drinking prevention media and education campaign.**

(1) As used in this section:

(a) "Advisory council" means the Utah Substance [Abuse] Use and Mental Health Advisory Council created in Section 63M-7-301.

(b) "Restricted account" means the Underage Drinking Prevention Media and Education Campaign Restricted Account created in this section.

(2) (a) There is created a restricted account within the General Fund known as the "Underage Drinking Prevention Media and Education Campaign Restricted Account."

(b) The restricted account consists of:

- (i) deposits made under Subsection (3); and
- (ii) interest earned on the restricted account.

(3) The department shall deposit 0.6% of the total gross revenue from sales of liquor with the state treasurer, as determined by the total gross revenue collected for the fiscal year two years preceding the fiscal year for which the deposit is made, to be credited to the restricted account and to be used by the department as provided in Subsection (5).

(4) The advisory council shall:

(a) provide ongoing oversight of a media and education campaign funded under this section;

(b) create an underage drinking prevention workgroup consistent with guidelines proposed by the advisory council related to the membership and duties of the underage drinking prevention workgroup;

(c) create guidelines for how money appropriated for a media and education campaign can be used;

(d) include in the guidelines established pursuant to this Subsection (4) that a media and education campaign funded under this section is carefully researched and developed, and appropriate for target groups; and

(e) approve plans submitted by the department in accordance with Subsection (5).

(5) (a) Subject to appropriation from the Legislature, the department shall expend money from the restricted account to direct and fund one or more media and education campaigns designed to reduce underage drinking in cooperation with the advisory council.

(b) The department shall:

(i) in cooperation with the underage drinking prevention workgroup created under Subsection (4), prepare and submit a plan to the advisory council detailing the intended use of the money appropriated under this section;

(ii) upon approval of the plan by the advisory council, conduct the media and education campaign in accordance with the guidelines made by the advisory council; and

(iii) submit to the advisory council annually by no later than October 1, a written report detailing the use of the money for the media and education campaigns conducted under this Subsection (5) and the impact and results of the use of the money during the prior fiscal year ending June 30.

Section 2. Section 32B-7-305 is amended to read:**32B-7-305. Tracking of enforcement actions -- Costs of enforcement actions.**

(1) A local authority that pursuant to this part adjudicates an administrative penalty for a violation of a law involving the sale of an alcoholic product to a minor, shall:

(a) maintain a record of an adjudicated violation until the record is expunged under Subsection (3);

(b) include in the record described in Subsection (1)(a):

(i) the name of the individual who commits the violation;

(ii) the name of the off-premise beer retailer for whom the individual is a staff member at the time of the violation; and

(iii) the date of the adjudication of the violation; and

(c) provide the information described in Subsection (1)(b) to the Highway Safety Office of the Department of Public Safety within 30 days of the date on which a violation is adjudicated.

(2) (a) The Highway Safety Office shall develop and operate a system to collect, analyze, maintain, track, and disseminate the violation history information received under Subsection (1).

(b) The Highway Safety Office shall make the system described in Subsection (2)(a) available to:

(i) assist a local authority in assessing administrative penalties under Section 32B-7-303; and

(ii) inform an off-premise beer retailer of an individual who has an administrative violation history under Section 32B-7-303.

(c) The Highway Safety Office shall maintain a record of violation history information received pursuant to Subsection (1) until the record is expunged under Subsection (3).

(3) (a) A local authority and the Highway Safety Office shall expunge from the records maintained an administrative penalty imposed under Section 32B-7-303 for purposes of determining future administrative penalties under Section 32B-7-303 if the individual has not been found in violation of any law involving the sale of an alcoholic product to a minor for a period of 36 consecutive months from the day on which the individual is last adjudicated as violating a law involving the sale of an alcoholic product to a minor.

(b) A local authority shall expunge from the records maintained by the local authority an administrative penalty imposed under Section 32B-7-303 against an off-premise beer retailer for purposes of determining future administrative penalties under Section 32B-7-303 if the off-premise beer retailer or any staff of that off-premise beer retailer has not been found in violation of any law involving the sale of an alcoholic product to a minor for a period of 36 consecutive months from the day on which the off-premise beer retailer or staff of the off-premise beer retailer is last adjudicated as violating a law involving the sale of an alcoholic product to a minor.

(4) The Highway Safety Office shall administer a program to reimburse a municipal or county law enforcement agency:

(a) for the actual costs of an alcohol-related compliance check investigation conducted pursuant to Section 77-39-101 on the premises of an off-premise beer retailer;

(b) for administrative costs associated with reporting the compliance check investigation described in Subsection (4)(a);

(c) if the municipal or county law enforcement agency completes and submits to the Highway Safety Office a report within 90 days of the compliance check investigation described in Subsection (4)(a) in a format required by the Highway Safety Office; and

(d) in the order that the municipal or county law enforcement agency submits the report required by Subsection (4)(c) until the amount allocated by the Highway Safety Office to reimburse a municipal or county law enforcement agency is spent.

(5) The Highway Safety Office shall report to the Utah Substance ~~Abuse~~ Use and Mental Health Advisory Council by no later than October 1 following a fiscal year on the following funded during the prior fiscal year:

(a) compliance check investigations reimbursed under Subsection (4); and

(b) the collection, analysis, maintenance, tracking, and dissemination of violation history information described in Subsection (2).

Section 3. Section 62A-15-103 is amended to read:

62A-15-103. Division -- Creation -- Responsibilities.

(1) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director. The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(iv) cooperate with and assist treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by identifying and disseminating information about effective practices and programs;

(v) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop, in collaboration with public and private programs, minimum standards for public and private providers of substance abuse and mental health programs licensed by the

Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(vi) promote integrated programs that address an individual's substance abuse, mental health, physical health, and criminal risk factors;

(vii) establish and promote an evidence-based continuum of screening, assessment, prevention, treatment, and recovery support services in the community for individuals with substance abuse and mental illness that addresses criminal risk factors;

(viii) evaluate the effectiveness of programs described in this Subsection (2);

(ix) consider the impact of the programs described in this Subsection (2) on:

- (A) emergency department utilization;
- (B) jail and prison populations;
- (C) the homeless population; and
- (D) the child welfare system; and

(x) promote or establish programs for education and certification of instructors to educate persons convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health;

(ii) provide direction over the state hospital including approval of its budget, administrative policy, and coordination of services with local service plans;

(iii) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that all individuals receiving services through local mental health authorities or the Utah State Hospital be informed about and, if desired, provided assistance in completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

(vii) examine expenditures of any local, state, and federal funds;

(viii) monitor the expenditure of public funds by:

- (A) local substance abuse authorities;
- (B) local mental health authorities; and
- (C) in counties where they exist, the private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authorities;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services that include community-based services for individuals involved in the criminal justice system, in accordance with division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services, or services for individuals involved in the criminal justice system, according to division rules;

(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:

- (A) a statewide comprehensive continuum of substance abuse services;
- (B) a statewide comprehensive continuum of mental health services;
- (C) services result in improved overall health and functioning;

(D) a statewide comprehensive continuum of community-based services designed to reduce criminal risk factors for individuals who are determined to have substance abuse or mental illness conditions or both, and who are involved in the criminal justice system;

(E) compliance, where appropriate, with the certification requirements in Subsection (2)(i); and

(F) appropriate expenditure of public funds;

(xii) review and make recommendations regarding each local substance abuse authority's contract with its provider of substance abuse programs and services and each local mental health authority's contract with its provider of mental health programs and services to ensure compliance with state and federal law and policy;

(xiii) monitor and ensure compliance with division rules and contract requirements; and

(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;

(d) assure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;

(e) require each local substance abuse authority and each local mental health authority to submit its plan to the division by May 1 of each year;

(f) conduct an annual program audit and review of each local substance abuse authority in the state and its contract provider and each local mental health authority in the state and its contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to local substance abuse authorities and local mental health authorities are consistent with services rendered and outcomes reported by them or their contract providers; and

(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance abuse and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate; and

(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;

(h) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and requirements for the provision of substance abuse and mental health treatment to individuals who are required to participate in treatment by the court or the Board of Pardons and Parole, or who are incarcerated, including:

(i) collaboration with the Department of Corrections^[7] and the Utah Substance ~~[Abuse]~~ Use and Mental Health Advisory Council to develop and coordinate the standards, including standards for county and state programs serving individuals convicted of class A and class B misdemeanors;

(ii) determining that the standards ensure available treatment includes the most current practices and procedures demonstrated by recognized scientific research to reduce recidivism, including focus on the individual's criminal risk factors; and

(iii) requiring that all public and private treatment programs meet the standards

established under this Subsection (2)(h) in order to receive public funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice for the costs of providing screening, assessment, prevention, treatment, and recovery support;

(i) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements and procedures for the certification of licensed public and private providers who provide, as part of their practice, substance abuse and mental health treatment to individuals involved in the criminal justice system, including:

(i) collaboration with the Department of Corrections, the Utah Substance ~~[Abuse]~~ Use and Mental Health Advisory Council, and the Utah Association of Counties to develop, coordinate, and implement the certification process;

(ii) basing the certification process on the standards developed under Subsection (2)(h) for the treatment of individuals involved in the criminal justice system; and

(iii) the requirement that all public and private providers of treatment to individuals involved in the criminal justice system shall obtain certification on or before July 1, 2016, and shall renew the certification every two years, in order to qualify for funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice on or after July 1, 2016;

(j) collaborate with the Commission on Criminal and Juvenile Justice to analyze and provide recommendations to the Legislature regarding:

(i) pretrial services and the resources needed for the reduced recidivism efforts;

(ii) county jail and county behavioral health early-assessment resources needed for offenders convicted of a class A or class B misdemeanor; and

(iii) the replacement of federal dollars associated with drug interdiction law enforcement task forces that are reduced;

(k) (i) establish performance goals and outcome measurements for all treatment programs for which minimum standards are established under Subsection (2)(h), including recidivism data and data regarding cost savings associated with recidivism reduction and the reduction in the number of inmates, that are obtained in collaboration with the Administrative Office of the Courts and the Department of Corrections; and

(ii) collect data to track and determine whether the goals and measurements are being attained and make this information available to the public;

(l) in its discretion, use the data to make decisions regarding the use of funds allocated to the division, the Administrative Office of the Courts, and the Department of Corrections to provide treatment for which standards are established under Subsection (2)(h); and

(m) annually, on or before August 31, submit the data collected under Subsection (2)(j) to the Commission on Criminal and Juvenile Justice, which shall compile a report of findings based on the data and provide the report to the legislative Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees.

(3) (a) The division may refuse to contract with and may pursue its legal remedies against any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract with its provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(4) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with its oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.

(5) In carrying out its duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

(6) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(7) The division shall annually review with each local substance abuse authority and each local mental health authority the authority's statutory and contract responsibilities regarding:

- (a) the use of public funds;
 - (b) oversight responsibilities regarding public funds; and
 - (c) governance of substance abuse and mental health programs and services.
- (8) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

(9) If a local substance abuse authority contacts the division under Subsection 17-43-201(10) for

assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:

- (a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or
- (b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.

Section 4. Section 63M-7-202 is amended to read:

63M-7-202. Composition -- Appointments -- Ex officio members -- Terms -- United States Attorney as nonvoting member.

(1) The commission on criminal and juvenile justice shall be composed of 21 voting members as follows:

- (a) the chief justice of the supreme court, as the presiding officer of the judicial council, or a judge designated by the chief justice;
- (b) the state court administrator;
- (c) the executive director of the Department of Corrections;
- (d) the director of the Division of Juvenile Justice Services;
- (e) the commissioner of the Department of Public Safety;
- (f) the attorney general;
- (g) the president of the chiefs of police association or a chief of police designated by the association's president;
- (h) the president of the sheriffs' association or a sheriff designated by the association's president;
- (i) the chair of the Board of Pardons and Parole or a member designated by the chair;
- (j) the chair of the Utah Sentencing Commission;
- (k) the chair of the Utah Substance ~~[Abuse]~~ Use and Mental Health Advisory Council;
- (l) the chair of the Utah Board of Juvenile Justice;
- (m) the chair of the Utah Council on Victims of Crime or the chair's designee;
- (n) the director of the Division of Substance Abuse and Mental Health; and
- (o) the following members designated to serve four-year terms:
 - (i) a juvenile court judge, appointed by the chief justice, as presiding officer of the Judicial Council;
 - (ii) a representative of the statewide association of public attorneys designated by the association's officers;
 - (iii) one member of the House of Representatives who is appointed by the speaker of the House of Representatives; and
 - (iv) one member of the Senate who is appointed by the president of the Senate.

(2) The governor shall appoint the remaining three members to four-year staggered terms as follows:

(a) one criminal defense attorney appointed from a list of three nominees submitted by the Utah State Bar Association;

(b) one representative of public education; and

(c) one citizen representative.

(3) In addition to the members designated under Subsections (1) and (2), the United States Attorney for the district of Utah may serve as a nonvoting member.

(4) In appointing the members under Subsection (2), the governor shall take into account the geographical make-up of the commission.

Section 5. Section 63M-7-301 is amended to read:

63M-7-301. Definitions -- Creation of council -- Membership -- Terms.

(1) (a) As used in this part, "council" means the Utah Substance Use and Mental Health Advisory Council created in this section.

(b) There is created within the governor's office the Utah Substance Use and Mental Health Advisory Council.

(2) The council shall be comprised of the following voting members:

(a) the attorney general or the attorney general's designee;

(b) an elected county official appointed by the Utah Association of Counties;

(c) the commissioner of public safety or the commissioner's designee;

(d) the director of the Division of Substance Abuse and Mental Health or the director's designee;

(e) the state superintendent of public instruction or the superintendent's designee;

(f) the executive director of the Department of Health or the executive director's designee;

(g) the executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee;

(h) the executive director of the Department of Corrections or the executive director's designee;

(i) the director of the Division of Juvenile Justice Services or the director's designee;

(j) the director of the Division of Child and Family Services or the director's designee;

(k) the chair of the Board of Pardons and Parole or the chair's designee;

(l) the director of the Office of Multicultural Affairs or the director's designee;

(m) the director of the Division of Indian Affairs or the director's designee;

(n) the state court administrator or the state court administrator's designee;

(o) a district court judge who presides over a drug court and who is appointed by the chief justice of the Utah Supreme Court;

(p) a district court judge who presides over a mental health court and who is appointed by the chief justice of the Utah Supreme Court;

(q) a juvenile court judge who presides over a drug court and who is appointed by the chief justice of the Utah Supreme Court;

(r) a prosecutor appointed by the Statewide Association of Prosecutors;

(s) the chair or co-chair of each committee established by the council;

(t) the following members appointed to serve four-year terms:

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

(ii) a member of the Senate appointed by the president of the Senate; and

(iii) a representative appointed by the Utah League of Cities and Towns;

(u) the following members appointed by the governor to serve four-year terms:

(i) one resident of the state who has been personally affected by a substance use or mental health disorder; and

(ii) one citizen representative; and

(v) in addition to the voting members described in Subsections (2)(a) through (u), the following voting members appointed by a majority of the members described in Subsections (2)(a) through (u) to serve four-year terms:

(i) one resident of the state who represents a statewide advocacy organization for recovery from substance use disorders;

(ii) one resident of the state who represents a statewide advocacy organization for recovery from mental illness;

(iii) one resident of the state who represents prevention professionals;

(iv) one resident of the state who represents treatment professionals;

(v) one resident of the state who represents the physical health care field;

(vi) one resident of the state who is a criminal defense attorney;

(vii) one resident of the state who is a military servicemember or military veteran under Section 53B-8-102; ~~and~~

(viii) one resident of the state who represents local law enforcement agencies[-]; and

(ix) one representative of private service providers that serve youth with substance use disorders or mental health disorders.

(3) A person other than a person described in Subsection (2) may not be appointed as a voting member of the council.

CHAPTER 164**S. B. 248**

Passed March 8, 2017
 Approved March 20, 2017
 Effective May 9, 2017

**PHYSICAL THERAPY
 LICENSURE COMPACT**

Chief Sponsor: Evan J. Vickers
 House Sponsor: Douglas V. Sagers

LONG TITLE**General Description:**

This bill enacts the Physical Therapy Licensure Compact.

Highlighted Provisions:

This bill:

- ▶ amends qualifications for licensure;
- ▶ enacts the Physical Therapy Licensure Compact; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-24b-302, as last amended by Laws of Utah 2016, Chapter 238

ENACTS:

58-24c-101, Utah Code Annotated 1953
 58-24c-102, Utah Code Annotated 1953
 58-24c-103, Utah Code Annotated 1953
 58-24c-104, Utah Code Annotated 1953

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

Section 1. Section 58-24b-302 is amended to read:

58-24b-302. Licensure.

(1) An applicant for a license as a physical therapist shall:

- (a) be of good moral character;
- (b) complete the application process, including payment of fees;
- (c) submit proof of graduation from a professional physical therapist education program that is accredited by a recognized accreditation agency;
- (d) after complying with Subsection (1)(c), pass a licensing examination;
- (e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and

(f) meet any other requirements established by ~~[the division, by rule]~~ division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) An applicant for a license as a physical therapist assistant shall:

- (a) be of good moral character;
- (b) complete the application process, including payment of fees set by the division, in accordance with Section 63J-1-504, to recover the costs of administering the licensing requirements relating to physical therapist assistants;
- (c) submit proof of graduation from a physical therapist assistant education program that is accredited by a recognized accreditation agency;
- (d) after complying with Subsection (2)(c), pass a licensing examination approved by division rule made in collaboration with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; ~~[and]~~

(f) submit to, and pass, a criminal background check, in accordance with standards established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

~~[(f)]~~ (g) meet any other requirements established by the division, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) An applicant for a license as a physical therapist who is educated outside of the United States shall:

- (a) be of good moral character;
- (b) complete the application process, including payment of fees;
- (c) (i) provide satisfactory evidence that the applicant graduated from a professional physical therapist education program that is accredited by a recognized accreditation agency; or
 - (ii) (A) provide satisfactory evidence that the applicant graduated from a physical therapist education program that prepares the applicant to engage in the practice of physical therapy, without restriction;
 - (B) provide satisfactory evidence that the education program described in Subsection (3)(c)(ii)(A) is recognized by the government entity responsible for recognizing a physical therapist education program in the country where the program is located; and

(C) pass a credential evaluation to ensure that the applicant has satisfied uniform educational requirements;

(d) after complying with Subsection (3)(c), pass a licensing examination;

(e) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and

(f) meet any other requirements established by the division, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) The division shall issue a license to a person who holds a current unrestricted license to practice physical therapy in a state, district, or territory of the United States of America, other than Utah, if the person:

(a) is of good moral character;

(b) completes the application process, including payment of fees; and

(c) is able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board.

(5) (a) Notwithstanding Subsection 58-1-307(1)(c), an individual may not engage in an internship in physical therapy, unless the person is:

(i) certified by the division; or

(ii) exempt from licensure under Section 58-24b-304.

(b) The provisions of Subsection (5)(a) apply, regardless of whether the individual is participating in the supervised clinical training program for the purpose of becoming a physical therapist or a physical therapist assistant.

Section 2. Section 58-24c-101 is enacted to read:

CHAPTER 24c. PHYSICAL THERAPY LICENSURE COMPACT

58-24c-101. Title.

This chapter is known as the "Physical Therapy Licensure Compact."

Section 3. Section 58-24c-102 is enacted to read:

58-24c-102. Physical Therapy Licensure Compact.

PHYSICAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

2. Enhance the states' ability to protect the public's health and safety;

3. Encourage the cooperation of member states in regulating multi-state physical therapy practice;

4. Support spouses of relocating military members;

5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

1. "Active Duty Military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.

2. "Adverse Action" means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

3. "Alternative Program" means a non-disciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

5. "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

6. "Data system" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

7. "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

8. "Executive Board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

9. "Home state" means the member state that is the licensee's primary state of residence.

10. "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

11. “Jurisprudence Requirement” means the assessment of an individual’s knowledge of the laws and rules governing the practice of physical therapy in a state.

12. “Licensee” means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

13. “Member state” means a state that has enacted the Compact.

14. “Party state” means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

15. “Physical therapist” means an individual who is licensed by a state to practice physical therapy.

16. “Physical therapist assistant” means an individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

17. “Physical therapy,” “physical therapy practice,” and “the practice of physical therapy” mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

18. “Physical Therapy Compact Commission” or “Commission” means the national administrative body whose membership consists of all states that have enacted the Compact.

19. “Physical therapy licensing board” or “licensing board” means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. “Remote State” means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. “Rule” means a regulation, principle, or directive promulgated by the Commission that has the force of administrative rule.

22. “State” means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To participate in the Compact, a state must:

1. Participate fully in the Commission’s data system, including using the Commission’s unique identifier as defined in rules;

2. Have a mechanism in place for receiving and investigating complaints about licensees;

3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

4. Fully implement a criminal background check requirement, within a time frame established by

rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with Section 3B;

5. Comply with the rules of the Commission;

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and

7. Have continuing competence requirements as a condition for license renewal.

B. Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. SEC. 534 and 42 U.S.C. SEC. 14616.

C. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

D. Member states may charge a fee for granting a compact privilege.

SECTION 4. COMPACT PRIVILEGE

A. To exercise the compact privilege under the terms and provisions of the Compact, the licensee shall:

1. Hold a license in the home state;

2. Have no encumbrance on any state license;

3. Be eligible for a compact privilege in any member state in accordance with Section 4D, G and H;

4. Have not had any adverse action against any license or compact privilege within the previous 2 years;

5. Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);

6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and

8. Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

B. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of Section 4A to maintain the compact privilege in the remote state.

C. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

D. A licensee providing physical therapy in a remote state is subject to that state’s regulatory

authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

E. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date of the adverse action.

F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of Section 4A to obtain a compact privilege in any remote state.

G. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;

2. All fines have been paid; and

3. Two years have elapsed from the date of the adverse action.

H. Once the requirements of Section 4G have been met, the license must meet the requirements in Section 4A to obtain a compact privilege in a remote state.

SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

A. Home of record;

B. Permanent Change of Station (PCS); or

C. State of current residence if it is different than the PCS state or home of record.

SECTION 6. ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

B. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

C. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to

agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

D. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

E. A remote state shall have the authority to:

1. Take adverse actions as set forth in Section 4D against a licensee's compact privilege in the state;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

F. Joint Investigations

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

A. The Compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each member state shall have and be limited to one (1) delegate selected by that member state's licensing board.

2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring in the Commission.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of administrative rule and shall be binding in all member states;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an Executive Board; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of physical therapy licensure and practice.

D. The Executive Board

The Executive Board shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Board shall be composed of nine members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. One ex-officio, nonvoting member from the recognized national physical therapy professional association; and

c. One ex-officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.

2. The ex-officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Board as provided in bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following Duties and responsibilities:

a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

E. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 9.

2. The Commission or the Executive Board or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Board or other committees of the Commission must discuss:

a. Non-compliance of a member state with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall

remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person

against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 8. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Adverse actions against a license or compact privilege;
4. Non-confidential information related to alternative program participation;
5. Any denial of application for licensure, and the reason(s) for such denial; and
6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

C. Investigative information pertaining to a licensee in any member state will only be available to other party states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

SECTION 9. RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within 4 years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty (30) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and
2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
2. The text of the proposed rule or amendment and the reason for the proposed rule;
3. A request for comments on the proposed rule from any interested person; and
4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons;
2. A state or federal governmental subdivision or agency; or
3. An association having at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the

place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

K. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be

subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's Legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities

incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

SECTION 11. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of administrative rule on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 12. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Section 4. Section 58-24c-103 is enacted to read:

58-24c-103. Rulemaking authority.

The division may adopt rules necessary to implement the provisions of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 5. Section 58-24c-104 is enacted to read:

58-24c-104. Physical therapy licensing board.

As used in the compact, with reference to this state, "physical therapy licensing board" or

“licensing board” means the physical therapy
licensing board created in Section 58-24b-201.

CHAPTER 165**S. B. 250**

Passed March 9, 2017

Approved March 20, 2017

Effective May 9, 2017

**FOOD TRUCK LICENSING
AND REGULATION**

Chief Sponsor: Deidre M. Henderson

House Sponsor: Kim F. Coleman

LONG TITLE**General Description:**

This bill enacts the Food Truck Licensing and Regulation Act to address local regulation of food trucks.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prevents a political subdivision from requiring multiple business licenses, permits, or fees for a food truck to operate in more than one location within the political subdivision;
- ▶ requires a political subdivision to grant a business license to a food truck operator who presents certain safety certificates and a business license from another political subdivision;
- ▶ requires that fees for a business license or a health department food truck permit not generate revenue but only reimburse the political subdivision or local health department for the cost of regulation;
- ▶ requires a political subdivision conducting a fire safety inspection of a food truck to ensure compliance with certain standards set by the Utah Fire Prevention Board;
- ▶ requires reciprocity between local health departments regarding health department food truck permits and political subdivisions regarding fire safety inspections;
- ▶ establishes when a business license or event permit is required for a food truck event;
- ▶ prevents a political subdivision from imposing certain requirements or prohibitions on the operation of a food truck;
- ▶ requires the Utah Fire Prevention Board to establish criteria for the fire safety inspection of a food truck; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

53-7-204, as last amended by Laws of Utah 2011, Chapter 14

ENACTS:

11-55-101, Utah Code Annotated 1953
 11-55-102, Utah Code Annotated 1953
 11-55-103, Utah Code Annotated 1953
 11-55-104, Utah Code Annotated 1953
 11-55-105, Utah Code Annotated 1953
 11-55-106, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

11-55-103, Utah Code Annotated 1953

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

Section 1. Section 11-55-101 is enacted to read:**CHAPTER 55. FOOD TRUCK LICENSING
AND REGULATION ACT****11-55-101. Title.**

This chapter is known as the "Food Truck Licensing and Regulation Act."

Section 2. Section 11-55-102 is enacted to read:**11-55-102. Definitions.**

As used in this chapter:

(1) "Event permit" means a permit that a political subdivision issues to the organizer of a public food truck event located on public property.

(2) "Food cart" means a cart:

(a) that is not motorized; and

(b) that a vendor, standing outside the frame of the cart, uses to prepare, sell, or serve food or beverages for immediate human consumption.

(3) (a) "Food truck" means a fully encased food service establishment:

(i) on a motor vehicle or on a trailer that a motor vehicle pulls to transport; and

(ii) from which a food truck vendor, standing within the frame of the vehicle, prepares, cooks, sells, or serves food or beverages for immediate human consumption.

(b) "Food truck" does not include a food cart or an ice cream truck.

(4) "Food truck event" means an event where an individual has ordered or commissioned the operation of a food truck at a private or public gathering.

(5) "Food truck operator" means a person who owns, manages, or controls, or who has the duty to manage or control, the operation of a food truck.

(6) "Food truck vendor" means a person who sells, cooks, or serves food or beverages from a food truck.

(7) "Health department food truck permit" means a document that a local health department issues to authorize a person to operate a food truck within the jurisdiction of the local health department.

(8) "Ice cream truck" means a fully encased food service establishment:

(a) on a motor vehicle or on a trailer that a motor vehicle pulls to transport;

(b) from which a vendor, from within the frame of the vehicle, serves ice cream;

(c) that attracts patrons by traveling through a residential area and signaling the truck's presence in the area, including by playing music; and

(d) that may stop to serve ice cream at the signal of a patron.

(9) "Local health department" means the same as that term is defined in Section 26A-1-102.

(10) "Political subdivision" means:

(a) a city, town, or metro township; or

(b) a county, as it relates to the licensing and regulation of businesses in the unincorporated area of the county.

(11) (a) "Temporary mass gathering" means:

(i) an actual or reasonably anticipated assembly of 500 or more people that continues, or reasonably can be expected to continue, for two or more hours per day; or

(ii) an event that requires a more extensive review to protect public health and safety because the event's nature or conditions have the potential of generating environmental or health risks.

(b) "Temporary mass gathering" does not include an assembly of people at a location with permanent facilities designed for that specific assembly, unless the assembly is a temporary mass gathering described in Subsection (8)(a)(ii).

Section 3. Section 11-55-103 is enacted to read:

11-55-103. Licensing -- Reciprocity -- Fees.

(1) A political subdivision may not:

(a) require a separate license or fee beyond the initial business license and fee for the operation of a food truck in more than one location or on more than one day within the political subdivision in the same calendar year; or

(b) as a business license qualification, require a food truck operator or food truck vendor to submit to or offer proof of a criminal background check.

(2) (a) A political subdivision shall grant a business license to operate a food truck within the political subdivision to a food truck operator who has obtained a business license to operate a food truck in another political subdivision within the state if the food truck operator presents to the political subdivision:

(i) a current business license from the other political subdivision within the state;

(ii) a current health department food truck permit from a local health department within the state; and

(iii) a current approval of a political subdivision within the state that shows that the food truck passed a fire safety inspection that the other political subdivision conducted in accordance with Subsection 11-55-104(4)(a).

(b) If a food truck operator presents the documents described in Subsection (2)(a), the political subdivision may not:

(i) impose additional license qualification requirements on the food truck operator before issuing a license to operate within the political subdivision, except for charging a fee in accordance with Subsection (3); or

(ii) issue a license that expires on a date earlier or later than the day on which the license described in Subsection (2)(a)(i) expires.

(c) Nothing in this Subsection (2) prevents a political subdivision from enforcing the political subdivision's land use regulations, zoning, and other ordinances in relation to the operation of a food truck.

(3) (a) Notwithstanding Subsections 10-1-203(2) and 17-53-216(2), a political subdivision may only charge a licensing fee to a food truck operator in an amount that reimburses the political subdivision for the cost of regulating the food truck.

(b) For a business license that a political subdivision issues in accordance with Subsection (2), the political subdivision shall reduce the amount of the business licensing fee to an amount that accounts for the lower administrative burden on the political subdivision.

(4) Nothing in this section prevents a political subdivision from:

(a) requiring a food truck operator to obtain an event permit, in accordance with Section 11-55-105; or

(b) revoking a license that the political subdivision has issued if the operation of the related food truck within the political subdivision violates the terms of the license.

Section 4. Section 11-55-104 is enacted to read:

11-55-104. Safety and health inspections and permits -- Reciprocity -- Fees.

(1) A food truck operator shall obtain an annual health department food truck permit from the local health department with jurisdiction over the area in which the majority of the food truck's operations takes place.

(2) (a) A local health department shall grant a health department food truck permit to operate a food truck within the jurisdiction of the local health department to a food truck operator who has obtained the health department food truck permit described in Subsection (1) from another local health department within the state if the food truck operator presents to the local health department the current health department food truck permit from the other local health department.

(b) If a food truck operator presents the health department food truck permit described in Subsection (1), the local health department may not:

(i) impose additional permit qualification requirements on the food truck operator before issuing a health department food truck permit to operate within the jurisdiction of the local health

department, except for charging a fee in accordance with Subsection (3); or

(ii) issue a health department food truck permit that expires on a date earlier or later than the day on which the permit described in Subsection (1) expires.

(3) (a) A local health department may only charge a health department food truck permit fee to a food truck operator in an amount that reimburses the local health department for the cost of regulating the food truck.

(b) For a health department food truck permit that a local health department issues in accordance with Subsection (2), the local health department shall reduce the amount of the food truck permit fee to an amount that accounts for the lower administrative burden on the local health department.

(4) (a) A political subdivision inspecting a food truck for fire safety shall conduct the inspection based on the criteria that the Utah Fire Prevention Board, created in Section 53-7-203, establishes in accordance with Section 53-7-204.

(b) (i) A political subdivision shall consider valid within the political subdivision's jurisdiction an approval from another political subdivision within the state that shows that the food truck passed a fire safety inspection that the other political subdivision conducted.

(ii) A political subdivision may not require that a food truck pass a fire safety inspection in a given calendar year if the food truck operator presents to the political subdivision an approval described in Subsection (4)(b)(i) issued during the same calendar year.

(5) (a) Nothing in this section prevents a local health department from:

(i) requiring a food truck operator to obtain an event permit, in accordance with Section 11-55-105; or

(ii) revoking a health department food truck permit that the local health department has issued if the operation of the related food truck within the jurisdiction of the local health department violates the terms of the permit.

(b) Nothing in this section prevents a political subdivision from revoking the political subdivision's approval described in Subsection (4)(b)(i) if the operation of the related food truck within the political subdivision fails to meet the criteria described in Subsection (4)(a).

Section 5. Section 11-55-105 is enacted to read:

11-55-105. Food truck events.

(1) Subject to Subsection (4), a political subdivision may not require a food truck operator to obtain from the political subdivision an event permit to operate a food truck at a food truck event that takes place on private property within the

political subdivision, regardless of whether the event is open or closed to the public.

(2) If the food truck operator has a business license from any political subdivision within the state, a political subdivision may not require a food truck operator to obtain from the political subdivision an additional business license to operate a food truck at a food truck event that:

(a) takes place on private property within the political subdivision; and

(b) is not open to the public.

(3) If a political subdivision requires an event permit for a food truck event, the organizer of the food truck event may obtain the event permit on behalf of the food trucks that service the event.

(4) Nothing in this section prohibits a county health department from requiring a permit for a temporary mass gathering.

Section 6. Section 11-55-106 is enacted to read:

11-55-106. Food truck operation.

A political subdivision may not prohibit the operation of a food truck within a given distance of a restaurant.

Section 7. Section 53-7-204 is amended to read:

53-7-204. Duties of Utah Fire Prevention Board -- Unified Code Analysis Council -- Local administrative duties.

(1) The board shall:

(a) administer the state fire code as the standard in the state;

(b) subject to the state fire code, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) establishing standards for the prevention of fire and for the protection of life and property against fire and panic in any:

(A) publicly owned building, including all public and private schools, colleges, and university buildings;

(B) building or structure used or intended for use as an asylum, a mental hospital, a hospital, a sanitarium, a home for the elderly, an assisted living facility, a children's home or day care center, or any building or structure used for a similar purpose; or

(C) place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education;

(ii) establishing safety and other requirements for placement and discharge of display fireworks on the basis of:

(A) the state fire code; and

(B) relevant publications of the National Fire Protection Association;

(iii) establishing safety standards for retail storage, handling, and sale of class C common state approved explosives;

(iv) defining methods to establish proof of competence to place and discharge display fireworks, special effects fireworks, and flame effects;

(v) deputizing qualified persons to act as deputy fire marshals, and to secure special services in emergencies;

(vi) implementing Section 15A-1-403;

(vii) setting guidelines for use of funding;

(viii) establishing criteria for training and safety equipment grants for fire departments enrolled in firefighter certification; ~~and~~

(ix) establishing ongoing training standards for hazardous materials emergency response agencies; and

(x) establishing criteria for the fire safety inspection of a food truck;

(c) recommend to the commissioner a state fire marshal;

(d) develop policies under which the state fire marshal and the state fire marshal's authorized representatives will perform;

(e) provide for the employment of field assistants and other salaried personnel as required;

(f) prescribe the duties of the state fire marshal and the state fire marshal's authorized representatives;

(g) establish a statewide fire prevention, fire education, and fire service training program in cooperation with the Board of Regents;

(h) establish a statewide fire statistics program for the purpose of gathering fire data from all political subdivisions of the state;

(i) establish a fire academy in accordance with Section 53-7-204.2;

(j) coordinate the efforts of all people engaged in fire suppression in the state;

(k) work aggressively with the local political subdivisions to reduce fire losses;

(l) regulate the sale and servicing of portable fire extinguishers and automatic fire suppression systems in the interest of safeguarding lives and property;

(m) establish a certification program for persons who inspect and test automatic fire sprinkler systems;

(n) establish a certification program for persons who inspect and test fire alarm systems;

(o) establish a certification for persons who provide response services regarding hazardous materials emergencies;

(p) in accordance with Section 15A-1-403, report to the Business and Labor Interim Committee; and

(q) jointly create the Unified Code Analysis Council with the Uniform Building Code Commission in accordance with Section 15A-1-203.

(2) The board may incorporate in its rules by reference, in whole or in part:

(a) the state fire code; or

(b) subject to the state fire code, a nationally recognized and readily available standard pertaining to the protection of life and property from fire, explosion, or panic.

(3) The following functions shall be administered locally by a city, county, or fire protection district:

(a) issuing permits, including open burning permits pursuant to Sections 11-7-1 and 19-2-114;

(b) creating a local board of appeals in accordance with the state fire code; and

(c) subject to the state fire code and the other provisions of this chapter, establishing, modifying, or deleting fire flow and water supply requirements.

Section 8. Coordinating S.B. 250 with S.B. 81 -- Technical and substantive amendments.

If this S.B. 250 and S.B. 81, Local Government Licensing Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by modifying Subsection 11-55-103(3) to read:

“(3) (a) A political subdivision may only charge a licensing fee to a food truck operator in an amount that reimburses the political subdivision for the cost of regulating the food truck.

(b) For a business license that a political subdivision issues in accordance with Subsection (2), the political subdivision shall reduce the amount of the business licensing fee to an amount that accounts for the lower administrative burden on the political subdivision.”.

CHAPTER 166
S. B. 264

Passed March 7, 2017
Approved March 20, 2017
Effective January 1, 2018

**OUTDOOR RECREATION
GRANT PROGRAM**

Chief Sponsor: Ralph Okerlund
House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill creates the State Transient Room Tax Act and modifies provisions related to the Utah Office of Outdoor Recreation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ imposes a state transient room tax on accommodations and related services;
- ▶ creates the Outdoor Recreation Infrastructure Account and the Hospitality and Tourism Management Education Account;
- ▶ distributes the revenues the state collects from the state transient room tax to:
 - the Outdoor Recreation Infrastructure Account to implement the Outdoor Recreational Infrastructure Grant Program; and
 - the Hospitality and Tourism Management Education Account to fund the Hospitality and Tourism Management Career and Technical Education Pilot Program; and
- ▶ establishes the Utah Outdoor Recreation Grant Advisory Committee.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 63I-1-253, as last amended by Laws of Utah 2016, Chapters 41, 63, and 169
63I-1-259, as last amended by Laws of Utah 2016, Chapters 350, 367, and 373
63I-1-263, as last amended by Laws of Utah 2016, Chapters 65, 136, 156, 322, and 408
63N-9-102, as last amended by Laws of Utah 2016, Chapter 88
63N-9-203, as enacted by Laws of Utah 2016, Chapter 88

ENACTS:

- 53A-15-206, Utah Code Annotated 1953
53A-15-207, Utah Code Annotated 1953
59-28-101, Utah Code Annotated 1953
59-28-102, Utah Code Annotated 1953
59-28-103, Utah Code Annotated 1953
59-28-104, Utah Code Annotated 1953
59-28-105, Utah Code Annotated 1953
59-28-106, Utah Code Annotated 1953
59-28-107, Utah Code Annotated 1953
63N-9-204, Utah Code Annotated 1953

63N-9-205, Utah Code Annotated 1953

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

Section 1. Section 53A-15-206 is enacted to read:

53A-15-206. Hospitality and Tourism Management Career and Technical Education Pilot Program.

(1) As used in this section:

- (a) "Board" means the State Board of Education.
(b) "Local education agency" means a school district or charter school.

(c) "Pilot program" means the Hospitality and Tourism Management Career and Technical Education Pilot Program created under Subsection (2).

(2) There is created a Hospitality and Tourism Management Career and Technical Education Pilot Program to provide instruction that a local education agency may offer to a student in any of grades 9 through 12 on:

(a) the information and skills required for operational level employee positions in hospitality and tourism management, including:

- (i) hospitality soft skills;
(ii) operational areas of the hospitality industry;
(iii) sales and marketing; and
(iv) safety and security; and

(b) the leadership and managerial responsibilities, knowledge, and skills required by an entry-level leader in hospitality and tourism management, including:

- (i) hospitality leadership skills;
(ii) operational leadership;
(iii) managing food and beverage operations; and
(iv) managing business operations.

(3) The instruction described in Subsection (2) may be delivered in a public school using live instruction, video, or online materials.

(4) (a) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the board shall select one or more providers to supply materials and curriculum for the pilot program.

(b) The board may seek recommendations from trade associations and other entities that have expertise in hospitality and tourism management regarding potential providers of materials and curriculum for the pilot program.

(5) (a) A local education agency may apply to the board to participate in the pilot program.

(b) The board shall select participants in the pilot program.

(c) A local education agency that participates in the pilot program shall use the materials and

curriculum supplied by a provider selected under Subsection (4).

(6) The board shall evaluate the pilot program and provide an annual written report to the Education Interim Committee and the Economic Development and Workforce Services Interim Committee on or before October 1 describing:

(a) how many local education agencies and how many students are participating in the pilot program; and

(b) any recommended changes to the pilot program.

Section 2. Section 53A-15-207 is enacted to read:

53A-15-207. Hospitality and Tourism Management Education Account -- Uses -- Costs.

(1) There is created an expendable special revenue fund known as the "Hospitality and Tourism Management Education Account," which the State Board of Education shall use to fund the Hospitality and Tourism Management Career and Technical Education Pilot Program created in Section 53A-15-206.

(2) The account consists of:

(a) distributions to the account under Section 59-28-103;

(b) interest earned on the account;

(c) appropriations made by the Legislature; and

(d) private donations, grants, gifts, bequests, or money made available from any other source to implement this part.

(3) The State Board of Education shall administer the account.

(4) The cost of administering the account shall be paid from money in the account.

(5) Interest accrued from investment of money in the account shall remain in the account.

Section 3. Section 59-28-101 is enacted to read:

CHAPTER 28. STATE TRANSIENT ROOM TAX ACT

59-28-101. Title.

This chapter is known as the "State Transient Room Tax Act."

Section 4. Section 59-28-102 is enacted to read:

59-28-102. Definitions.

As used in this chapter:

(1) "Agreement" means the same as that term is defined in Section 59-12-102.

(2) "Certified service provider" means the same as that term is defined in Section 59-12-102.

(3) "Model 2 seller" means the same as that term is defined in Section 59-12-102.

(4) "Purchaser" means the same as that term is defined in Section 59-12-102.

(5) "Sales price" means the same as that term is defined in Section 59-12-102.

(6) "Seller" means the same as that term is defined in Section 59-12-102.

Section 5. Section 59-28-103 is enacted to read:

59-28-103. Imposition -- Rate -- Revenue distribution.

(1) Subject to the other provisions of this chapter, the state shall impose a tax on the transactions described in Subsection 59-12-103(1)(i) at a rate of .32%.

(2) The tax imposed under this chapter is in addition to any other taxes imposed on the transactions described in Subsection 59-12-103(1)(i).

(3) (a) (i) Subject to Subsection (3)(a)(ii), the commission shall deposit 6% of the revenue the state collects from the tax under this chapter into the Hospitality and Tourism Management Education Account created in Section 53A-15-207 to fund the Hospitality and Tourism Management Career and Technical Education Pilot Program created in Section 53A-15-206.

(ii) The commission may not deposit more than \$300,000 into the Hospitality and Tourism Management Education Account under Subsection (3)(a)(i) in a fiscal year.

(b) Except for the amount deposited into the Hospitality and Tourism Management Education Account under Subsection (3)(a) and the administrative charge retained under Subsection 59-28-104(4), the commission shall deposit any revenue the state collects from the tax under this chapter into the Outdoor Recreation Infrastructure Account created in Section 63N-9-205 to fund the Outdoor Recreational Infrastructure Grant Program created in Section 63N-9-202.

Section 6. Section 59-28-104 is enacted to read:

59-28-104. Collection of tax.

(1) Except as provided in Subsection (2), the commission shall administer, collect, and enforce a tax under this chapter in accordance with:

(a) Chapter 1, General Taxation Policies; and

(b) the same procedures used to administer, collect, and enforce the tax under Chapter 12, Part 1, Tax Collection.

(2) A tax under this chapter is not subject to Section 59-12-107.1 or 59-12-123.

(3) A seller required to collect a tax under this chapter may retain 6% of any amounts the seller is required to remit to the commission under this chapter for the costs of collecting the tax.

(4) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the commission collects from a tax under this chapter.

Section 7. Section 59-28-105 is enacted to read:

59-28-105. Seller or certified service provider reliance on commission information.

A seller or certified service provider is not liable for failing to collect a tax at a tax rate imposed under this chapter if the seller's or certified service provider's failure to collect the tax is as a result of the seller's or certified service provider's reliance on incorrect data provided by the commission in a database created by the commission:

(1) containing tax rates or boundaries regarding a tax under this chapter; or

(2) indicating the taxability of transactions described in Subsection 59-12-103(1)(i).

Section 8. Section 59-28-106 is enacted to read:

59-28-106. Certified service provider or model 2 seller reliance on commission certified software.

(1) Except as provided in Subsection (2) and subject to Subsection (4), a certified service provider or model 2 seller is not liable for failing to collect a tax required under this chapter if:

(a) the certified service provider or model 2 seller relies on software the commission certifies; and

(b) the certified service provider's or model 2 seller's failure to collect a tax required under this chapter is as a result of the seller's or certified service provider's reliance on incorrect data:

(i) provided by the commission; or

(ii) in the software the commission certifies.

(2) The relief from liability described in Subsection (1) does not apply if a certified service provider or model 2 seller incorrectly classifies an item or transaction into a product category the commission certifies.

(3) If the taxability of a product category is incorrectly classified in software the commission certifies, the commission shall:

(a) notify a certified service provider or model 2 seller of the incorrect classification of the taxability of a product category in software the commission certifies; and

(b) state in the notice required by Subsection (3)(a) that, if the certified service provider or model 2 seller fails to correct the taxability of the item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice, the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this chapter on the incorrectly classified product category.

(4) If a certified service provider or model 2 seller fails to correct the taxability of an item or transaction within 10 days after the day on which the certified service provider or model 2 seller receives the notice described in Subsection (3), the certified service provider or model 2 seller is liable for failing to collect the correct amount of tax under this chapter on the item or transaction.

Section 9. Section 59-28-107 is enacted to read:

59-28-107. Purchaser relief from liability.

(1) (a) Except as provided in Subsection (1)(b), a purchaser is relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this chapter or an underpayment if:

(i) the purchaser's seller or certified service provider relies on incorrect data provided by the commission:

(A) on a tax rate;

(B) on a boundary;

(C) on a taxing jurisdiction; or

(D) in the taxability matrix the commission provides in accordance with the agreement; or

(ii) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on incorrect data provided by the commission:

(A) on a tax rate;

(B) on a boundary;

(C) on a taxing jurisdiction; or

(D) in the taxability matrix the commission provides in accordance with the agreement.

(b) For purposes of Subsection (1)(a), a purchaser is not relieved from a penalty under Section 59-1-401 for failure to pay a tax due under this chapter or an underpayment if the purchaser's, the purchaser's seller's, or the purchaser's certified service provider's reliance on incorrect data provided by the commission is as a result of conduct that is:

(i) fraudulent;

(ii) intentional; or

(iii) willful.

(2) In addition to the relief from a penalty described in Subsection (1), a purchaser is not liable for a tax or interest under Section 59-1-402 for failure to pay a tax due under this chapter or an underpayment if:

(a) the purchaser's seller or certified service provider relies on:

(i) incorrect data provided by the commission:

(A) on a tax rate;

(B) on a boundary; or

(C) on a taxing jurisdiction; or

(ii) an erroneous classification by the commission:

(A) in the taxability matrix the commission provides in accordance with the agreement; and

(B) with respect to a term in the library of definitions that is listed as taxable or exempt, included in or excluded from “sales price,” or included in or excluded from a definition; or

(b) the purchaser, regardless of whether the purchaser holds a direct payment permit in accordance with Section 59-12-107.1, relies on:

(i) incorrect data provided by the commission:

(A) on a tax rate;

(B) on a boundary; or

(C) on a taxing jurisdiction; or

(ii) an erroneous classification by the commission:

(A) in the taxability matrix the commission provides in accordance with the agreement; and

(B) with respect to a term in the library of definitions that is listed as taxable or exempt, included in or excluded from “sales price,” or included in or excluded from a definition.

Section 10. Section 63I-1-253 is amended to read:

63I-1-253. Repeal dates, Titles 53, 53A, and 53B.

The following provisions are repealed on the following dates:

(1) Subsection 53-10-202(18) is repealed July 1, 2018.

(2) Section 53-10-202.1 is repealed July 1, 2018.

(3) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program, is repealed July 1, 2020.

(4) Section 53A-13-106.5 is repealed July 1, 2019.

(5) Section 53A-15-106 is repealed July 1, 2019.

(6) Sections 53A-15-206 and 53A-15-207 are repealed January 1, 2023.

~~[(6)]~~ (7) Subsections 53A-16-113(3) and (4) are repealed December 31, 2016.

~~[(7)]~~ (8) Section 53A-16-114 is repealed December 31, 2016.

~~[(8)]~~ (9) Section 53A-17a-163, Performance-based Compensation Pilot Program, is repealed July 1, 2016.

~~[(9)]~~ (10) Title 53A, Chapter 31, Part 4, American Indian and Alaskan Native Education State Plan Pilot Program, is repealed July 1, 2022.

~~[(10)]~~ (11) Section 53B-24-402, Rural residency training program, is repealed July 1, 2020.

~~[(11)]~~ (12) Subsection 53C-3-203(4)(b)(vii), which provides for the distribution of money from the Land Exchange Distribution Account to the Geological Survey for test wells, other hydrologic studies, and air quality monitoring in the West Desert, is repealed July 1, 2020.

Section 11. Section 63I-1-259 is amended to read:

63I-1-259. Repeal dates, Title 59.

(1) Subsection 59-2-924(7) is repealed on December 31, 2016.

(2) Subsection 59-2-924.2(9) is repealed on December 31, 2017.

(3) Section 59-2-924.3 is repealed on December 31, 2016.

(4) Section 59-7-618 is repealed July 1, 2020.

(5) Section 59-9-102.5 is repealed December 31, 2020.

(6) Section 59-10-1033 is repealed July 1, 2020.

(7) Subsection 59-12-2219(13) is repealed on June 30, 2020.

(8) Title 59, Chapter 28, State Transient Room Tax Act, is repealed on January 1, 2023.

Section 12. Section 63I-1-263 is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63N.

(1) Subsection 63A-5-104(4)(h) is repealed on July 1, 2024.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2018.

(4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is repealed November 30, 2019.

(5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.

(6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(7) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

(8) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(9) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states “the Resource Development Coordinating Committee,” is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read “(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.”;

(c) in Subsection 23-14-21(3), the language that states “and the Resource Development Coordinating Committee” is repealed;

(d) in Subsection 23-21-2.3(1), the language that states “the Resource Development Coordinating Committee created in Section 63J-4-501 and” is repealed;

(e) in Subsection 23-21-2.3(2), the language that states “the Resource Development Coordinating Committee and” is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word “and” is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed; and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

(10) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

(11) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2017.

(12) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.

(13) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection (13)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections (13)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

(14) Section 63N-2-512 is repealed on July 1, 2021.

(15) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection (15)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

(16) Title 63N, Chapter 9, Part 2, Outdoor Recreational Infrastructure Grant Program, is repealed January 1, 2023.

~~[(16)]~~ (17) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed July 1, 2018.

Section 13. Section 63N-9-102 is amended to read:

63N-9-102. Definitions.

As used in this chapter:

(1) “Accessible to the general public,” in relation to the awarding of an infrastructure grant, means:

(a) the public may use the infrastructure in accordance with federal and state regulations; and

(b) no community or group retains exclusive rights to access the infrastructure.

(2) “Director” means the director of the outdoor recreation office.

(3) “Executive director” means the executive director of GOED.

(4) “Infrastructure grant” means an outdoor recreational infrastructure grant described in Section 63N-9-202.

(5) “Outdoor recreation office” means the Utah Office of Outdoor Recreation created in Section 63N-9-104.

(6) (a) “Recreational infrastructure project” means an undertaking to build or improve the approved facilities~~[- services,]~~ and installations needed for the public to access and enjoy the state’s outdoors.

(b) “Recreational infrastructure project” may include the:

(i) establishment, construction, or renovation of a trail, trail infrastructure, or trail facilities;

(ii) construction of a project for water-related outdoor recreational activities;

(iii) development of a project for wildlife watching opportunities, including bird watching;

(iv) development of a project that provides winter recreation amenities;

(v) construction or improvement of a community park that has amenities for outdoor recreation; and

(vi) construction or improvement of a naturalistic and accessible playground[; and].

~~[(vii) development, establishment, or expansion of a program for youth related to outdoor recreation.]~~

(7) "Underserved or underprivileged community" means a group of people, including a municipality, county, or American Indian tribe that:

(a) has limited access or has demonstrated a low level of use of recreational infrastructure; and

(b) is economically disadvantaged.

Section 14. Section 63N-9-203 is amended to read:

63N-9-203. Rulemaking and requirements for awarding an infrastructure grant.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the outdoor recreation office shall make rules establishing the eligibility and reporting criteria for an entity to receive an infrastructure grant, including:

(a) the form and process of submitting an application to the outdoor recreation office for an infrastructure grant;

(b) which entities are eligible to apply for an infrastructure grant;

(c) specific categories of recreational infrastructure projects that are eligible for an infrastructure grant;

(d) the method and formula for determining grant amounts; and

(e) the reporting requirements of grant recipients.

(2) In determining the award of an infrastructure grant, the outdoor recreation office may prioritize a recreational infrastructure project that will serve an underprivileged or underserved community.

(3) An infrastructure grant may only be awarded by the executive director after consultation with the director and the board.

(4) The following entities may not receive an infrastructure grant under this part:

(a) a federal government entity;

(b) a state agency; and

(c) a for-profit entity.

(5) An infrastructure grant may only be awarded under this part:

(a) for a recreational infrastructure project that is accessible to the general public; and

(b) subject to Subsections (6) and (7), if the grant recipient agrees to provide matching funds having a value equal to or greater than the amount of the infrastructure grant.

(6) Up to 50% of the grant recipient match described in Subsection (5)(b) may be provided through an in-kind contribution by the grant recipient, if:

(a) approved by the executive director after consultation with the director and the board; and

(b) the in-kind donation does not include real property.

(7) An infrastructure grant may not be awarded under this part if the grant, or the grant recipient match described in Subsection (5)(b), will be used for the purchase of real property or for the purchase or transfer of a conservation easement.

Section 15. Section 63N-9-204 is enacted to read:

63N-9-204. Utah Outdoor Recreation Grant Advisory Committee -- Membership -- Duties -- Expenses.

(1) As used in this section, "advisory committee" means the Utah Outdoor Recreation Grant Advisory Committee created in Subsection (2).

(2) There is created in the office the Utah Outdoor Recreation Grant Advisory Committee, composed of the following 14 members:

(a) five members representing state or federal government as follows:

(i) the director;

(ii) the director of the Division of Parks and Recreation created in Section 79-4-201 or the director's designee;

(iii) one member who is an employee of the office engaged in the duties described in Section 63N-7-201, appointed by the executive director;

(iv) one member representing the Bureau of Land Management, appointed by the executive director; and

(v) one member representing the National Park Service Rivers, Trails, and Conservation Assistance Program, appointed by the executive director;

(b) nine members representing local government, the private sector, or the public that are knowledgeable about outdoor recreation activities or tourism-based economic development, appointed by the executive director as follows:

(i) one member representing municipal government, recommended by the Utah League of Cities and Towns;

(ii) one member representing county government, recommended by the Utah Association of Counties;

(iii) two members representing the outdoor industry;

(iv) one member representing the Utah Tourism Industry Association;

(v) one member representing the Utah Hotel and Lodging Association;

(vi) one member representing the health care industry;

(vii) one member representing multi-ability groups or programs; and

(viii) one member representing a university outdoor recreation, parks, or tourism department; and

(c) one of the members appointed under Subsection (2)(b)(i) or (ii) shall represent rural interests.

(3) The advisory committee shall advise and make recommendations to the office regarding infrastructure grants.

(4) (a) Except as required by Subsection (4)(b), as terms of appointed advisory committee members expire, the executive director shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of appointed advisory committee members are staggered so that approximately half of the appointed advisory committee members are appointed every two years.

(5) The director shall serve as chair of the advisory committee.

(6) The advisory committee shall elect annually a vice chair from the advisory committee's members.

(7) When a vacancy occurs in the membership for any reason, the executive director shall appoint the replacement for the unexpired term.

(8) A majority of the advisory committee constitutes a quorum for the purpose of conducting advisory committee business and the action of a majority of a quorum constitutes the action of the advisory committee.

(9) The office shall provide administrative staff support for the advisory committee.

(10) A member may not receive compensation or benefits for the member's service, but a member appointed under Subsection (2)(b) may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(11) The advisory committee, as a governmental entity, has all the rights, privileges, and immunities of a governmental entity of the state and the

advisory committee meetings are subject to Title 52, Chapter 4, Open and Public Meetings Act.

Section 16. Section 63N-9-205 is enacted to read:

63N-9-205. Utah Outdoor Recreation Infrastructure Account -- Uses -- Costs.

(1) There is created an expendable special revenue fund known as the "Outdoor Recreation Infrastructure Account," which the office shall use to fund the Outdoor Recreational Infrastructure Grant Program created in Section 63N-9-202.

(2) The account consists of:

(a) distributions to the account under Section 59-28-103;

(b) interest earned on the account;

(c) appropriations made by the Legislature; and

(d) private donations, grants, gifts, bequests, or money made available from any other source to implement this part.

(3) The office shall, with the advice of the Utah Outdoor Recreation Grant Advisory Committee created in Section 63N-9-204, administer the account.

(4) The cost of administering the account shall be paid from money in the account.

(5) Interest accrued from investment of money in the account shall remain in the account.

Section 17. Effective date.

This bill takes effect on January 1, 2018.

CHAPTER 167**S. B. 272**

Passed March 9, 2017

Approved March 20, 2017

Effective May 9, 2017

**SEARCH AND RESCUE ASSISTANCE
CARD PROGRAM AMENDMENTS**

Chief Sponsor: David P. Hinkins

House Sponsor: Carl R. Albrecht

LONG TITLE**General Description:**

This bill makes changes to the Utah Search and Rescue Assistance Card Program.

Highlighted Provisions:

This bill:

- ▶ forbids a county from charging a participant in the program for rescue services unless the participant intentionally or recklessly created the situation requiring rescue services.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53-2a-1102, as last amended by Laws of Utah 2015, Chapter 408

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

Section 1. Section 53-2a-1102 is amended to read:**53-2a-1102. Search and Rescue Financial Assistance Program -- Uses -- Rulemaking -- Distribution.**

(1) (a) "Assistance card program" means the Utah Search and Rescue Assistance Card Program created within this section.

(b) "Card" means the Search and Rescue Assistance Card issued under this section to a participant.

(c) "Participant" means an individual, family, or group who is registered pursuant to this section as having a valid card at the time search, rescue, or both are provided.

(d) "Program" means the Search and Rescue Financial Assistance Program created within this section.

(e) (i) "Reimbursable expenses," as used in this section, means those reasonable expenses incidental to search and rescue activities.

(ii) "Reimbursable expenses" include:

(A) rental for fixed wing aircraft, helicopters, snowmobiles, boats, and generators;

(B) replacement and upgrade of search and rescue equipment;

(C) training of search and rescue volunteers;

(D) costs of providing workers' compensation benefits for volunteer search and rescue team members under Section 67-20-7.5; and

(E) any other equipment or expenses necessary or appropriate for conducting search and rescue activities.

(iii) "Reimbursable expenses" do not include any salary or overtime paid to any person on a regular or permanent payroll, including permanent part-time employees of any agency of the state.

(f) "Rescue" means search services, rescue services, or both search and rescue services.

(2) There is created the Search and Rescue Financial Assistance Program within the division.

(3) (a) The program shall be funded from the following revenue sources:

(i) any voluntary contributions to the state received for search and rescue operations;

(ii) money received by the state under Subsection (11) and under Sections 23-19-42, 41-22-34, and 73-18-24; and

(iii) appropriations made to the program by the Legislature.

(b) All money received from the revenue sources in Subsections (3)(a)(i) and (ii) shall be deposited into the General Fund as a dedicated credit to be used solely for the purposes under this section.

(c) All funding for the program is nonlapsing.

(4) The director shall use the money to reimburse counties for all or a portion of each county's reimbursable expenses for search and rescue operations, subject to:

(a) the approval of the Search and Rescue Advisory Board as provided in Section 53-2a-1104;

(b) money available in the program; and

(c) rules made under Subsection (7).

(5) Program money may not be used to reimburse for any paid personnel costs or paid man hours spent in emergency response and search and rescue related activities.

(6) The Legislature finds that these funds are for a general and statewide public purpose.

(7) The division, with the approval of the Search and Rescue Advisory Board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section:

(a) specifying the costs that qualify as reimbursable expenses;

(b) defining the procedures of counties to submit expenses and be reimbursed;

(c) defining a participant in the assistance card program, including:

(i) individuals; and

(ii) families and organized groups who qualify as participants;

(d) defining the procedure for issuing a card to a participant;

(e) defining excluded expenses that may not be reimbursed under the program, including medical expenses;

(f) establishing the card renewal cycle for the Utah Search and Rescue Assistance Card Program;

(g) establishing the frequency of review of the fee schedule;

(h) providing for the administration of the program; and

(i) providing a formula to govern the distribution of available money among the counties for uncompensated search and rescue expenses based on:

(i) the total qualifying expenses submitted;

(ii) the number of search and rescue incidents per county population;

(iii) the number of victims that reside outside the county; and

(iv) the number of volunteer hours spent in each county in emergency response and search and rescue related activities per county population.

(8) (a) The division shall, in consultation with the Outdoor Recreation Office, establish the fee schedule of the Utah Search and Rescue Assistance Card Program under Subsection 63J-1-504(6).

(b) The division shall provide a discount of not less than 10% of the card fee under Subsection (8)(a) to a person who has paid a fee under Section 23-19-42, 41-22-34, or 73-18-24 during the same calendar year in which the person applies to be a participant in the assistance card program.

(9) ~~[(a)]~~ Counties may not bill reimbursable expenses to an individual for costs incurred for the rescue of an individual, if the individual is ~~[not]~~ a current participant in the Utah Search and Rescue Assistance Card Program~~[-]~~ at the time of rescue, unless:

~~[(b) — Counties may bill a participant for reimbursable expenses for costs incurred for the rescue of the participant if the participant is found by the rescuing county to have acted recklessly or to have intentionally created a situation resulting in the need for a county to provide rescue service for the participant.]~~

(a) the rescuing county finds that the participant acted recklessly in creating a situation resulting in the need for the county to provide rescue services; or

(b) the rescuing county finds that the participant intentionally created a situation resulting in the need for the county to provide rescue services.

(10) (a) There is created the Utah Search and Rescue Assistance Card Program. The program is located within the division.

(b) The program may not be utilized to cover any expenses, such as medically related expenses, that

are not reimbursable expenses related to the rescue.

(11) (a) To participate in the program, a person shall purchase a search and rescue assistance card from the division by paying the fee as determined by the division in Subsection (8).

(b) The money generated by the fees shall be deposited into the General Fund as a dedicated credit for the Search and Rescue Financial Assistance Program created in this section.

(c) Participation and payment of fees by a person under Sections 23-19-42, 41-22-34, and 73-18-24 do not constitute purchase of a card under this section.

(12) The division shall consult with the Outdoor Recreation Office regarding:

(a) administration of the assistance card program; and

(b) outreach and marketing strategies.

(13) Pursuant to Subsection 31A-1-103(7), the Utah Search and Rescue Assistance Card Program under this section is exempt from being considered an insurance program under Subsection 31A-1-301(86).

CHAPTER 168**H. B. 42**

Passed March 6, 2017

Approved March 21, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

INSURANCE RELATED MODIFICATIONS

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies provisions related to insurance.

Highlighted Provisions:

This bill:

- ▶ modifies enforcement penalties and procedures;
- ▶ replaces the term “health benefit product” with “health benefit plan”;
- ▶ clarifies that rules are made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- ▶ addresses taxation;
- ▶ requires licensees who are foreign insurers to provide contact information and maintain certain records;
- ▶ modifies due date of insurer holding company filing;
- ▶ enacts the Risk Management and Own Risk and Solvency Assessment Act, including:
 - providing the scope of the chapter;
 - defining terms;
 - requiring a risk management framework;
 - requiring an own risk and solvency assessment;
 - providing for a summary report and its contents;
 - providing for exemptions;
 - addressing confidentiality;
 - establishing sanctions; and
 - providing a severability clause;
- ▶ addresses risk based capital provisions;
- ▶ addresses association groups;
- ▶ modifies accident and health insurance standards provisions;
- ▶ moves provision for when a child of a group member may be denied eligibility;
- ▶ clarifies preferred provider contract provisions;
- ▶ addresses when a person is required to provide information concerning an employer self-insured employee welfare benefit plan;
- ▶ moves provisions related to alcohol and drug dependency treatment;
- ▶ addresses groups eligible for group or blanket insurance;
- ▶ modifies provisions related to requirements for notice of termination;

- ▶ addresses scope of part of credit life and accident and health insurance;
- ▶ amends definitions under the Unclaimed Life Insurance and Annuity Benefits Act;
- ▶ provides for the assessment of forfeitures;
- ▶ provides for notice to a producer of the termination of appointment;
- ▶ addresses when an insurer has a contract with a licensee;
- ▶ imposes requirements related to flood insurance;
- ▶ addresses licensed compensation;
- ▶ provides for notice to a designee when an agency terminates the designation, including navigator agencies;
- ▶ addresses contracts with agencies;
- ▶ addresses contracts with individual title insurance producer or an agency title insurance producer;
- ▶ requires certain record keeping requirements;
- ▶ addresses reports from organizations licensed as adjusters;
- ▶ enacts provisions related to adjusters;
- ▶ modifies provisions related to captive insurers, including:
 - amending definitions;
 - addressing permissive areas of insurance;
 - addressing capital issues;
 - modifying provisions required for formation;
 - providing that captive insurance companies may cede risks to certain insurers;
 - addressing contributions to guaranty of insolvency funds; and
 - repealing provisions related to an association captive or industrial insured group;
- ▶ amends board of directors provisions under the Defined Contribution Risk Adjuster Act;
- ▶ imposes record retention requirements under the Continuing Care Provider Act;
- ▶ repeals the Voluntary Health Insurance Purchasing Alliance Act; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

- 16-6a-207, as last amended by Laws of Utah 2008, Chapter 363
- 16-6a-301, as enacted by Laws of Utah 2000, Chapter 300
- 31A-2-308, as last amended by Laws of Utah 2012, Chapter 253
- 31A-3-102, as last amended by Laws of Utah 2014, Chapter 435
- 31A-3-205, as enacted by Laws of Utah 2005, Chapter 123
- 31A-3-304, as last amended by Laws of Utah 2015, Chapter 244
- 31A-8-402.3, as last amended by Laws of Utah 2014, Chapters 290, 300, and 425
- 31A-8-402.5, as last amended by Laws of Utah 2003, Chapter 252

31A-16-105, as last amended by Laws of Utah 2015, Chapter 244

31A-17-404, as last amended by Laws of Utah 2016, Chapter 138

31A-17-603, as last amended by Laws of Utah 2013, Chapter 319

31A-22-505, as enacted by Laws of Utah 1985, Chapter 242

31A-22-605, as last amended by Laws of Utah 2005, Chapter 78

31A-22-610.5, as last amended by Laws of Utah 2011, Chapter 297

31A-22-614.5, as last amended by Laws of Utah 2011, Chapter 284

31A-22-617, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-22-701, as last amended by Laws of Utah 2011, Chapter 284

31A-22-716, as last amended by Laws of Utah 2011, Chapters 284 and 297

31A-22-721, as last amended by Laws of Utah 2014, Chapters 290, 300, and 425

31A-22-801, as last amended by Laws of Utah 2001, Chapter 116

31A-22-1902, as enacted by Laws of Utah 2015, Chapter 259

31A-23a-111, as last amended by Laws of Utah 2016, Chapter 138

31A-23a-115, as last amended by Laws of Utah 2009, Chapter 349

31A-23a-203, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-23a-302, as last amended by Laws of Utah 2012, Chapter 253

31A-23a-407, as last amended by Laws of Utah 2016, Chapter 314

31A-23a-412, as last amended by Laws of Utah 2012, Chapter 253

31A-23a-501, as last amended by Laws of Utah 2016, Chapter 138

31A-23b-102, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-23b-202.5, as enacted by Laws of Utah 2014, Chapter 425

31A-23b-209, as enacted by Laws of Utah 2013, Chapter 341

31A-23b-210, as enacted by Laws of Utah 2013, Chapter 341

31A-23b-401, as last amended by Laws of Utah 2016, Chapter 138

31A-26-209, as last amended by Laws of Utah 2004, Chapter 173

31A-26-210, as last amended by Laws of Utah 2009, Chapter 349

31A-26-213, as last amended by Laws of Utah 2016, Chapter 138

31A-30-106, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-30-106.1, as last amended by Laws of Utah 2012, Chapter 279

31A-30-107, as last amended by Laws of Utah 2014, Chapters 290, 300, and 425

31A-30-107.1, as last amended by Laws of Utah 2003, Chapter 252

31A-35-103, as last amended by Laws of Utah 2016, Chapter 234

31A-37-102, as last amended by Laws of Utah

2016, Chapter 138

31A-37-106, as last amended by Laws of Utah 2015, Chapter 244

31A-37-202, as last amended by Laws of Utah 2015, Chapter 244

31A-37-204, as last amended by Laws of Utah 2016, Chapter 138

31A-37-301, as last amended by Laws of Utah 2016, Chapter 348

31A-37-303, as last amended by Laws of Utah 2016, Chapter 138

31A-37-305, as enacted by Laws of Utah 2003, Chapter 251

31A-42-201, as last amended by Laws of Utah 2010, Chapters 10 and 68

31A-44-603, as enacted by Laws of Utah 2016, Chapter 270

53-2a-1102, as last amended by Laws of Utah 2015, Chapter 408

59-7-102, as last amended by Laws of Utah 2014, Chapters 376 and 435

59-9-101, as last amended by Laws of Utah 2016, Chapter 135

63G-2-302, as last amended by Laws of Utah 2016, Chapter 410

ENACTS:

31A-14-205.5, Utah Code Annotated 1953

31A-16a-101, Utah Code Annotated 1953

31A-16a-102, Utah Code Annotated 1953

31A-16a-103, Utah Code Annotated 1953

31A-16a-104, Utah Code Annotated 1953

31A-16a-105, Utah Code Annotated 1953

31A-16a-106, Utah Code Annotated 1953

31A-16a-107, Utah Code Annotated 1953

31A-16a-108, Utah Code Annotated 1953

31A-16a-109, Utah Code Annotated 1953

31A-16a-110, Utah Code Annotated 1953

31A-22-645, Utah Code Annotated 1953

31A-26-312, Utah Code Annotated 1953

31A-26-401, Utah Code Annotated 1953

31A-26-402, Utah Code Annotated 1953

31A-26-403, Utah Code Annotated 1953

REPEALS:

31A-22-715, as last amended by Laws of Utah 2016, Chapter 138

31A-22-718, as enacted by Laws of Utah 1995, Chapter 344

31A-34-101, as enacted by Laws of Utah 1996, Chapter 143

31A-34-102, as enacted by Laws of Utah 1996, Chapter 143

31A-34-103, as enacted by Laws of Utah 1996, Chapter 143

31A-34-104, as last amended by Laws of Utah 2011, Chapter 297

31A-34-105, as last amended by Laws of Utah 2000, Chapter 300

31A-34-106, as enacted by Laws of Utah 1996, Chapter 143

31A-34-107, as last amended by Laws of Utah 2011, Chapter 297

31A-34-108, as last amended by Laws of Utah 2000, Chapter 300

31A-34-109, as enacted by Laws of Utah 1996, Chapter 143

31A-34-110, as last amended by Laws of Utah 2001, Chapter 108

31A-34-111, as enacted by Laws of Utah 1996, Chapter 143

31A-37-306, as last amended by Laws of Utah 2015, Chapter 244

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

Section 1. Section 16-6a-207 is amended to read:

16-6a-207. Incorporation of cooperative association.

(1) (a) If a cooperative association meets the requirements of Subsection (1)(b), it may:

(i) be incorporated under this chapter; and

(ii) use the word “cooperative” as part of its corporate or business name.

(b) A cooperative association described in Subsection (1)(a):

(i) may not be ~~[-(A)]~~ an association subject to the insurance or credit union laws of this state; and

~~[(B) a health insurance purchasing association as defined in Section 31A-34-103; or]~~

~~[(C) a health insurance purchasing alliance licensed under Title 31A, Chapter 34, Voluntary Health Insurance Purchasing Alliance Act; and]~~

(ii) shall state in its articles of incorporation that:

(A) a member may not have more than one vote regardless of the number or amount of stock or membership capital owned by the member unless voting is based in whole or in part on the volume of patronage of the member with the cooperative association; and

(B) savings in excess of dividends and additions to reserves and surplus shall be distributed or allocated to members or patrons on the basis of patronage.

(2) (a) Any cooperative association incorporated in accordance with Subsection (1):

(i) has all the rights and is subject to the limitations provided in Section 3-1-11; and

(ii) may pay dividends on its stock, if it has stock, subject to the limitations of Section 3-1-11.

(b) The articles of incorporation or the bylaws of a cooperative association incorporated in accordance with Subsection (1) may provide for:

(i) the establishment and alteration of voting districts;

(ii) the election of delegates to represent:

(A) the districts described in Subsection (2)(b)(i); and

(B) the members of the districts described in Subsection (2)(b)(i);

(iii) the establishment and alteration of director districts; and

(iv) the election of directors to represent the districts described in Subsection (2)(b)(ii) by:

(A) the members of the districts; or

(B) delegates elected by the members.

(3) (a) A corporation organized under Title 3, Uniform Agricultural Cooperative Association Act, or Title 16, Chapter 16, Uniform Limited Cooperative Association Act, may convert itself into a cooperative association subject to this chapter by adopting appropriate amendments to its articles of incorporation by which:

(i) it elects to become subject to this chapter; and

(ii) makes changes in its articles of incorporation that are:

(A) required by this chapter; and

(B) any other changes permitted by this chapter.

(b) The amendments described in Subsection (3)(a) shall be adopted and filed in the manner provided by the law then applicable to the cooperative nonprofit corporation.

~~[(4) Notwithstanding Subsection (1), a health insurance purchasing association may not use the word “cooperative” or “alliance” but may use the word “association.”]~~

~~[(5)]~~ (4) Except as otherwise provided in this section, a cooperative nonprofit corporation is subject to this chapter.

~~[(6)]~~ (5) A corporation that is a cooperative under this chapter may convert to a limited cooperative association under Title 16, Chapter 16, Uniform Limited Cooperative Association Act, by complying with that chapter.

Section 2. Section 16-6a-301 is amended to read:

16-6a-301. Purposes.

(1) Every nonprofit corporation incorporated under this chapter that in its articles of incorporation has a statement meeting the requirements of Subsection 16-6a-202(3)(a) may engage in any lawful activity except for express limitations set forth in the articles of incorporation.

(2) (a) A nonprofit corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

(b) Without limiting Subsection (2)(a) and subject to Subsection (2)(c), an organization may not be organized under this chapter if the organization is subject to the:

(i) insurance laws of this state; or

(ii) laws governing depository institutions as defined in Section 7-1-103.

~~[(c) Notwithstanding Subsection (2)(b), the following may be organized under this chapter:]~~

~~[(i) a health insurance purchasing association as defined in Section 31A-34-103; and]~~

~~[(ii) a health insurance purchasing alliance licensed under Title 31A, Chapter 34, Voluntary Health Insurance Purchasing Alliance Act.]~~

Section 3. Section 31A-2-308 is amended to read:

31A-2-308. Enforcement penalties and procedures.

(1) (a) A person who violates any insurance statute or rule or any order issued under Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

(b) (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, third party administrator, navigator, or insurance consultant who violates an insurance statute or rule to forfeit to the state not more than \$2,500 for each violation.

(ii) The commissioner may order any other person who violates an insurance statute or rule to forfeit to the state not more than \$5,000 for each violation.

(c) (i) The commissioner may order an individual producer, surplus line producer, limited line producer, managing general agent, reinsurance intermediary, adjuster, third party administrator, navigator, or insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$2,500 for each violation. Each day the violation continues is a separate violation.

(ii) The commissioner may order any other person who violates an order issued under Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each day the violation continues is a separate violation.

(d) The commissioner may accept or compromise any forfeiture under this Subsection (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only the attorney general may compromise the forfeiture.

(2) When a person fails to comply with an order issued under Subsection 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of competent jurisdiction or obtain a court order or judgment:

(a) enforcing the commissioner's order;

(b) (i) directing compliance with the commissioner's order and restraining further violation of the order; and

(ii) subjecting the person ordered to the procedures and sanctions available to the court for punishing contempt if the failure to comply continues; or

(c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each day the failure to comply continues after the filing of the complaint until judgment is rendered.

(3) (a) The Utah Rules of Civil Procedure govern actions brought under Subsection (2), except that the commissioner may file a complaint seeking a court-ordered forfeiture under Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's intention to proceed under Subsection (2)(c).

(b) The commissioner's order issued under Subsection 31A-2-201(4) may contain a notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

(4) If, after a court order is issued under Subsection (2), the person fails to comply with the commissioner's order or judgment:

(a) the commissioner may certify the fact of the failure to the court by affidavit; and

(b) the court may, after a hearing following at least five days written notice to the parties subject to the order or judgment, amend the order or judgment to add the forfeiture or forfeitures, as prescribed in Subsection (2)(c), until the person complies.

(5) (a) The proceeds of the forfeitures under this section, including collection expenses, shall be paid into the General Fund.

(b) The expenses of collection shall be credited to the department's budget.

(c) The attorney general's budget shall be credited to the extent the department reimburses the attorney general's office for its collection expenses under this section.

(6) (a) Forfeitures and judgments under this section bear interest at the rate charged by the United States Internal Revenue Service for past due taxes on the:

(i) date of entry of the commissioner's order under Subsection (1); or

(ii) date of judgment under Subsection (2).

(b) Interest accrues from the later of the dates described in Subsection (6)(a) until the forfeiture and accrued interest are fully paid.

(7) A forfeiture may not be imposed under Subsection (2)(c) if:

(a) at the time the forfeiture action is commenced, the person was in compliance with the commissioner's order; or

(b) the violation of the order occurred during the order's suspension.

(8) The commissioner may seek an injunction as an alternative to issuing an order under Subsection 31A-2-201(4).

(9) (a) A person is guilty of a class B misdemeanor if that person:

(i) intentionally violates:

(A) an insurance statute of this state; or

(B) an order issued under Subsection 31A-2-201(4);

(ii) intentionally permits a person over whom that person has authority to violate:

(A) an insurance statute of this state; or

(B) an order issued under Subsection 31A-2-201(4); or

(iii) intentionally aids any person in violating:

(A) an insurance statute of this state; or

(B) an order issued under Subsection 31A-2-201(4).

(b) Unless a specific criminal penalty is provided elsewhere in this title, the person may be fined not more than:

(i) \$10,000 if a corporation; or

(ii) \$5,000 if a person other than a corporation.

(c) If the person is an individual, the person may, in addition, be imprisoned for up to one year.

(d) As used in this Subsection (9), "intentionally" has the same meaning as under Subsection 76-2-103(1).

(10) (a) A person who knowingly and intentionally violates Section 31A-4-102, 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this Subsection (10).

(b) When the value of the property, money, or other things obtained or sought to be obtained in violation of Subsection (10)(a):

(i) is less than \$5,000, a person is guilty of a third degree felony; or

(ii) is or exceeds \$5,000, a person is guilty of a second degree felony.

(11) (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend, place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

(i) when a licensee of the department, other than a domestic insurer:

(A) persistently or substantially violates the insurance law; or

(B) violates an order of the commissioner under Subsection 31A-2-201(4);

(ii) if there are grounds for delinquency proceedings against the licensee under Section 31A-27a-207; or

(iii) if the licensee's methods and practices in the conduct of the licensee's business endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate interests of the licensee's customers and the public.

(b) Additional license termination or probation provisions for licensees other than insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112, 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

(12) The enforcement penalties and procedures set forth in this section are not exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to applicable law.

Section 4. Section 31A-3-102 is amended to read:

31A-3-102. Exclusive fees and taxes.

(1) The following are in place of any other license fee or license assessment that might otherwise be levied against a licensee by the state or a political subdivision of the state:

(a) taxes and fees under this chapter^[7];

(b) the premium taxes under [~~Sections 59-9-101 through 59-9-104,~~] Title 59, Chapter 9, Taxation of Admitted Insurers;

(c) the fees under Section 31A-31-108^[7]; and

(d) the examination costs under Section 31A-2-205 [~~are in place of all other license fees or assessments that might otherwise be levied by the state or any other taxing body within the state.~~]

~~(2) An~~

(2) The following are not subject to Title 59, Chapter 7, Corporate Franchise and Income Taxes:

(a) an insurer that is subject to premium taxes under [~~Sections 59-9-101 through 59-9-104 is not subject to corporate franchise taxes.~~] Title 59, Chapter 9, Taxation of Admitted Insurers, regardless of whether the insurance company has a tax liability under that chapter;

(b) an insurance company that engages in a transaction that is subject to taxes under Section 31A-3-301 or 31A-3-302, regardless of whether the insurance company has a tax liability under that section; and

(c) a captive insurance company as provided in Section 31A-3-304 that pays a fee imposed under Section 31A-3-304.

(3) Unless otherwise exempt, a licensee under this title is subject to real and personal property taxes.

Section 5. Section 31A-3-205 is amended to read:

31A-3-205. Taxation of insurance companies.

(1) An admitted insurer shall pay to the State Tax Commission taxes imposed on the admitted insurer by Title 59, Revenue and Taxation.

(2) A surplus lines insurer shall pay the taxes due under Section 31A-3-301 or 31A-3-302 in accordance with Section 31A-3-303.

Section 6. Section 31A-3-304 is amended to read:

31A-3-304. Annual fees -- Other taxes or fees prohibited -- Captive Insurance Restricted Account.

(1) (a) A captive insurance company shall pay an annual fee imposed under this section to obtain or renew a certificate of authority.

(b) The commissioner shall:

(i) determine the annual fee pursuant to Section 31A-3-103; and

(ii) consider whether the annual fee is competitive with fees imposed by other states on captive insurance companies.

(2) A captive insurance company that fails to pay the fee required by this section is subject to the relevant sanctions of this title.

~~[(3) (a) Except as provided in Subsection (3)(d) and notwithstanding Title 59, Chapter 9, Taxation of Admitted Insurers, the following constitute the sole taxes, fees, or charges under the laws of this state that may be levied or assessed on a captive insurance company:]~~

(3) (a) A captive insurance company that pays one of the following fees is exempt from Title 59, Chapter 7, Corporate Franchise and Income Taxes, and Title 59, Chapter 9, Taxation of Admitted Insurers:

(i) a fee under this section;

(ii) a fee under Chapter 37, Captive Insurance Companies Act; ~~and~~ or

(iii) a fee under Chapter 37a, Special Purpose Financial Captive Insurance Company Act.

(b) The state or a county, city, or town within the state may not levy or collect an occupation tax or other ~~tax,~~ fee~~,~~ or charge not described in Subsections (3)(a)(i) through (iii) against a captive insurance company.

(c) The state may not levy, assess, or collect a withdrawal fee under Section 31A-4-115 against a captive insurance company.

~~[(d) A captive insurance company is subject to real and personal property taxes.]~~

(4) A captive insurance company shall pay the fee imposed by this section to the commissioner by June 1 of each year.

(5) (a) Money received pursuant to a fee described in Subsection (3)(a) shall be deposited into the Captive Insurance Restricted Account.

(b) There is created in the General Fund a restricted account known as the "Captive Insurance Restricted Account."

(c) The Captive Insurance Restricted Account shall consist of the fees described in Subsection (3)(a).

(d) The commissioner shall administer the Captive Insurance Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Captive Insurance Restricted Account to:

(i) administer and enforce:

(A) Chapter 37, Captive Insurance Companies Act; and

(B) Chapter 37a, Special Purpose Financial Captive Insurance Company Act; and

(ii) promote the captive insurance industry in Utah.

(e) An appropriation from the Captive Insurance Restricted Account is nonlapsing, except that at the end of each fiscal year, money received by the commissioner in excess of the following shall be treated as free revenue in the General Fund:

(i) for fiscal year 2015-2016, in excess of \$1,250,000;

(ii) for fiscal year 2016-2017, in excess of \$1,250,000; and

(iii) for fiscal year 2017-2018 and subsequent fiscal years, in excess of \$1,850,000.

Section 7. Section 31A-8-402.3 is amended to read:

31A-8-402.3. Discontinuance, nonrenewal, or changes to group health benefit plans.

(1) Except as otherwise provided in this section, a group health benefit plan for a plan sponsor is renewable and continues in force:

(a) with respect to all eligible employees and dependents; and

(b) at the option of the plan sponsor.

(2) A health benefit plan for a plan sponsor may be discontinued or nonrenewed for a network plan, if:

(a) there is no longer any enrollee under the group health plan who lives, resides, or works in:

(i) the service area of the insurer; or

(ii) the area for which the insurer is authorized to do business; or

(b) for coverage made available in the small or large employer market only through an association, if:

(i) the employer's membership in the association ceases; and

(ii) the coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(3) A health benefit plan for a plan sponsor may be discontinued if:

(a) a condition described in Subsection (2) exists;

(b) the plan sponsor fails to pay premiums or contributions in accordance with the terms of the contract;

(c) the plan sponsor:

(i) performs an act or practice that constitutes fraud; or

(ii) makes an intentional misrepresentation of material fact under the terms of the coverage;

(d) the insurer:

(i) elects to discontinue offering a particular health benefit ~~product~~ plan delivered or issued for delivery in this state; and

(ii) (A) provides notice of the discontinuation in writing:

(I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

(II) at least 90 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner; and

(II) at least three working days prior to the date the notice is sent to the affected plan sponsors, employees, and dependents of the plan sponsors or employees;

(C) offers to each plan sponsor, on a guaranteed issue basis, the option to purchase:

(I) all other health benefit [~~products~~] plans currently being offered by the insurer in the market; or

(II) in the case of a large employer, any other health benefit [~~product~~] plan currently being offered in that market; and

(D) in exercising the option to discontinue that [~~product~~] health benefit plan and in offering the option of coverage in this section, acts uniformly without regard to:

(I) the claims experience of a plan sponsor;

(II) any health status-related factor relating to any covered participant or beneficiary; or

(III) any health status-related factor relating to any new participant or beneficiary who may become eligible for the coverage; or

(e) the insurer:

(i) elects to discontinue all of the insurer's health benefit plans in:

(A) the small employer market;

(B) the large employer market; or

(C) both the small employer and large employer markets; and

(ii) (A) provides notice of the discontinuation in writing:

(I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

(II) at least 180 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner in each state in which an affected insured individual is known to reside; and

(II) at least 30 working days prior to the date the notice is sent to the affected plan sponsors, employees, and the dependents of the plan sponsors or employees;

(C) discontinues and nonrenews all plans issued or delivered for issuance in the market; and

(D) provides a plan of orderly withdrawal as required by Section 31A-4-115.

(4) A large employer health benefit plan may be discontinued or nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) for noncompliance with the insurer's:

(i) minimum participation requirements; or

(ii) employer contribution requirements.

(5) A small employer health benefit plan may be discontinued or nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) for noncompliance with the insurer's employer contribution requirements.

(6) A small employer health benefit plan may be nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) for noncompliance with the insurer's minimum participation requirements.

(7) (a) Except as provided in Subsection (7)(d), an eligible employee may be discontinued if after issuance of coverage the eligible employee:

(i) engages in an act or practice in connection with the coverage that constitutes fraud; or

(ii) makes an intentional misrepresentation of material fact in connection with the coverage.

(b) An eligible employee that is discontinued under Subsection (7)(a) may reenroll:

(i) 12 months after the date of discontinuance; and

(ii) if the plan sponsor's coverage is in effect at the time the eligible employee applies to reenroll.

(c) At the time the eligible employee's coverage is discontinued under Subsection (7)(a), the insurer shall notify the eligible employee of the right to reenroll when coverage is discontinued.

(d) An eligible employee may not be discontinued under this Subsection (7) because of a fraud or misrepresentation that relates to health status.

(8) For purposes of this section, a reference to "plan sponsor" includes a reference to the employer:

(a) with respect to coverage provided to an employer member of the association; and

(b) if the health benefit plan is made available by an insurer in the employer market only through:

(i) an association;

(ii) a trust; or

(iii) a discretionary group.

(9) An insurer may modify a health benefit plan for a plan sponsor only:

(a) at the time of coverage renewal; and

(b) if the modification is effective uniformly among all plans with that product.

Section 8. Section 31A-8-402.5 is amended to read:

31A-8-402.5. Individual discontinuance and nonrenewal.

(1) (a) Except as otherwise provided in this section, a health benefit plan offered on an individual basis is renewable and continues in force:

(i) with respect to all individuals or dependents; and

(ii) at the option of the individual.

(b) Subsection (1)(a) applies regardless of:

(i) whether the contract is issued through:

(A) a trust;

(B) an association;

(C) a discretionary group; or

(D) other similar grouping; or

(ii) the situs of delivery of the policy or contract.

(2) A health benefit plan may be discontinued or nonrenewed:

(a) for a network plan, if:

(i) the individual no longer lives, resides, or works in:

(A) the service area of the insurer; or

(B) the area for which the insurer is authorized to do business; and

(ii) coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual; or

(b) for coverage made available through an association, if:

(i) the individual's membership in the association ceases; and

(ii) the coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(3) A health benefit plan may be discontinued if:

(a) a condition described in Subsection (2) exists;

(b) the individual fails to pay premiums or contributions in accordance with the terms of the health benefit plan, including any timeliness requirements;

(c) the individual:

(i) performs an act or practice in connection with the coverage that constitutes fraud; or

(ii) makes an intentional misrepresentation of material fact under the terms of the coverage;

(d) the insurer:

(i) elects to discontinue offering a particular health benefit ~~[product]~~ plan delivered or issued for delivery in this state; and

(ii) (A) provides notice of the discontinuation in writing:

(I) to each individual provided coverage; and

(II) at least 90 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner; and

(II) at least three working days prior to the date the notice is sent to the affected individuals;

(C) offers to each covered individual on a guaranteed issue basis, the option to purchase all other individual health benefit ~~[products]~~ plans currently being offered by the insurer for individuals in that market; and

(D) acts uniformly without regard to any health status-related factor of covered individuals or dependents of covered individuals who may become eligible for coverage; or

(e) the insurer:

(i) elects to discontinue all of the insurer's health benefit plans in the individual market; and

(ii) (A) provides notice of the discontinuation in writing:

(I) to each individual provided coverage; and

(II) at least 180 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner in each state in which an affected insured individual is known to reside; and

(II) at least 30 working days prior to the date the notice is sent to the affected individuals;

(C) discontinues and nonrenews all health benefit plans the insurer issues or delivers for issuance in the individual market; and

(D) acts uniformly without regard to any health status-related factor of covered individuals or dependents of covered individuals who may become eligible for coverage.

Section 9. Section 31A-14-205.5 is enacted to read:

31A-14-205.5. Place of business address information -- Record retention.

(1) (a) A licensee under this chapter shall register and maintain with the commissioner:

(i) the address and the one or more telephone numbers of the licensee's principal place of business; and

(i) a valid business email address at which the commissioner may contact the licensee.

(b) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be registered with the commissioner under this section:

(i) an address;

(ii) a telephone number; or

(iii) a business email address.

(2) (a) Except as provided under Subsection (3), a licensee under this chapter shall keep at the address of the principal place of business registered under Subsection (1), separate and distinct books and records of the transactions consummated under the Utah license.

(b) The books and records described in Subsection (2)(a) shall:

(i) be in an organized form; and

(ii) be available to the commissioner for inspection upon reasonable notice.

(c) The books and records described in Subsection (2)(a) shall include the following:

(i) if the licensee is a foreign insurer, alien insurer, commercially domiciled insurer, foreign title insurer, or foreign fraternal:

(A) a record of each insurance contract procured by or issued through the licensee, with the names of the one or more insureds, the amount of premium and commissions or other compensation, and the subject of the insurance;

(B) the name of any other producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary from whom business is accepted, and of a person to whom commissions or allowances of any kind are promised or paid; and

(C) a record of the consumer complaints forwarded to the licensee by an insurance regulator; and

(ii) any additional information that:

(A) is customary for a similar business; or

(B) may reasonably be required by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by online computer terminals located at the registered address.

(4) A licensee who represents only a single insurer satisfies Subsection (2) if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1) and (5).

(5) (a) The books and records maintained under Subsection (2) shall be available for the inspection of the commissioner during the business hours for a period of time after the date of the transaction as specified by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, but in no case for less than three calendar years in addition to the current calendar year.

(b) Discarding a book or record after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

Section 10. Section 31A-16-105 is amended to read:

31A-16-105. Registration of insurers.

(1) (a) An insurer that is authorized to do business in this state and that is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile, if the requirements and standards are substantially similar to those contained in this section, Subsections 31A-16-106(1)(a) and (2) and either Subsection 31A-16-106(1)(b) or a statutory provision similar to the following: "Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in which it learns of each change or addition."

(b) An insurer that is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by ~~May 1~~ June 30 of each year for the previous calendar year, unless the commissioner for good cause extends the time for registration and then at the end of the extended time period. The commissioner may require any insurer authorized to do business in the state, which is a member of a holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Subsection (3), or any other information filed by the insurer with the insurance regulatory authority of domiciliary jurisdiction.

(2) An insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the National Association of Insurance Commissioners, which shall contain the following current information:

(a) the capital structure, general financial condition, and ownership and management of the insurer and any person controlling the insurer;

(b) the identity and relationship of every member of the insurance holding company system;

(c) any of the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(i) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of securities of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management agreements, service contracts, and all cost-sharing arrangements;

(vi) reinsurance agreements;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements;

(d) any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(e) if requested by the commissioner, financial statements of or within an insurance holding company system, including all affiliates:

(i) which may include annual audited financial statements filed with the United States Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended; and

(ii) which request is satisfied by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the United States Securities and Exchange Commission;

(f) any other matters concerning transactions between registered insurers and any affiliates as may be included in any subsequent registration forms adopted or approved by the commissioner;

(g) statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(h) any other information required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) No information need be disclosed on the registration statement filed pursuant to Subsection (2) if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit,

investments, or guarantees involving one-half of 1%, or less, of an insurer's admitted assets as of the next preceding December 31 may not be considered material for purposes of this section.

(5) Subject to Section 31A-16-106, each registered insurer shall report to the commissioner a dividend or other distribution to shareholders within 15 business days following the declaration of the dividend or distribution.

(6) Any person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

(7) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The commissioner may allow an insurer which is authorized to do business in this state, and which is part of an insurance holding company system, to register on behalf of any affiliated insurer which is required to register under Subsection (1) and to file all information and material required to be filed under this section.

(10) This section does not apply to any insurer, information, or transaction if, and to the extent that, the commissioner by rule or order exempts the insurer from this section.

(11) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer, or a disclaimer of affiliation may be filed by any insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation is considered to have been granted unless the commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. If disallowed, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer is granted by the commissioner, or if the disclaimer is considered to have been approved.

(12) The ultimate controlling person of an insurer subject to registration shall also file an annual enterprise risk report. The annual enterprise risk report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company that could pose enterprise risk to the insurer. The annual enterprise risk report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(13) The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

Section 11. Section 31A-16a-101 is enacted to read:

CHAPTER 16A. RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT

31A-16a-101. Title -- Scope.

(1) This chapter is known as the “Risk Management and Own Risk and Solvency Assessment Act.”

(2) This chapter applies to an insurer domiciled in this state unless exempt pursuant to Section 31A-16a-106.

Section 12. Section 31A-16a-102 is enacted to read:

31A-16a-102. Definitions.

As used in this chapter:

(1) “Insurance group,” for the purpose of conducting an own risk and solvency assessment, means those insurers and affiliates included within an insurance holding company system as defined in Section 31A-1-301.

(2) “Insurer” means the same as that term is defined in Section 31A-1-301, except that it does not include agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(3) “ORSA guidance manual” means the current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners and as amended from time to time.

(4) “ORSA summary report” means a confidential high-level summary of an insurer or insurance group’s own risk and solvency assessment.

(5) “Own risk and solvency assessment” means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the insurer or insurance group’s current business plan and the sufficiency of capital resources to support those risks.

Section 13. Section 31A-16a-103 is enacted to read:

31A-16a-103. Risk management framework.

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the

insurer is a member maintains a risk management framework applicable to the operations of the insurer.

Section 14. Section 31A-16a-104 is enacted to read:

31A-16a-104. Own risk and solvency assessment requirement.

Subject to Section 31A-16a-106, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the ORSA guidance manual. The insurer or insurance group shall conduct the own risk and solvency assessment no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

Section 15. Section 31A-16a-105 is enacted to read:

31A-16a-105. ORSA summary report.

(1) (a) Upon the commissioner’s request, and no more than once each year, an insurer shall submit to the commissioner an ORSA summary report or any combination of reports that together contain the information described in the ORSA guidance manual, applicable to the insurer, the insurance group of which it is a member, or both.

(b) Notwithstanding a request from the commissioner, if the insurer is a member of an insurance group, the insurer shall submit the one or more reports required by this Subsection (1) if the commissioner is the lead state commissioner of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(2) The one or more reports required under Subsection (1) shall include a signature of the insurer’s or insurance group’s chief risk officer or other executive having responsibility for the oversight of the insurer’s enterprise risk management process attesting to the best of the executive’s belief and knowledge that:

(a) the insurer applies the enterprise risk management process described in the ORSA summary report; and

(b) a copy of the report has been provided to the insurer’s board of directors or the appropriate committee of the board of directors.

(3) An insurer may comply with Subsection (1) by providing the most recent and substantially similar one or more reports provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA guidance manual. A report that is in a language other than English must be accompanied by a translation of that report into the English language.

Section 16. Section 31A-16a-106 is enacted to read:

31A-16a-106. Exemption.

(1) An insurer shall be exempt from the requirements of this chapter, if:

(a) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

(b) the insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

(2) If an insurer qualifies for exemption pursuant to Subsection (1)(a), but the insurance group of which the insurer is a member does not qualify for exemption pursuant to Subsection (1)(b), the ORSA summary report that is required pursuant to Section 31A-16a-105 shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA summary report for any combination of insurers provided any combination of reports includes every insurer within the insurance group.

(3) If an insurer does not qualify for exemption pursuant to Subsection (1)(a), but the insurance group of which it is a member qualifies for exemption pursuant to Subsection (1)(b), the only ORSA summary report that may be required pursuant Section 31A-16a-105 shall be the report applicable to that insurer.

(4) An insurer that does not qualify for exemption pursuant to Subsection (1) may apply to the commissioner for a waiver from the requirements of this chapter based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(5) Notwithstanding the exemptions stated in this section:

(a) the commissioner may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file an ORSA summary report based on unique circumstances, including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests; or

(b) the commissioner may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment and file an ORSA summary report if the insurer has risk-based capital for company action level event as set forth in Sections 31A-17-601 through 31A-17-613, meets one or more of the standards of an insurer considered to be in hazardous financial condition as defined in Section 31A-27a-101, or otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

(6) If an insurer that qualifies for an exemption pursuant to Subsection (1) subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer has one calendar year following the calendar year the threshold is exceeded to comply with the requirements of this chapter.

Section 17. Section 31A-16a-107 is enacted to read:

31A-16a-107. Contents of ORSA summary report.

(1) The ORSA summary report shall be prepared consistent with the ORSA guidance manual, subject to the requirements of Subsection (2). Documentation supporting information shall be maintained and made available upon examination or upon request of the commissioner.

(2) The review of the ORSA summary report, and any additional requests for information, shall be made using similar procedures as used in the analysis and examination of multi-state or global insurers and insurance groups.

Section 18. Section 31A-16a-108 is enacted to read:

31A-16a-108. Confidentiality.

(1) (a) A document, material, or other information, including the ORSA summary report, in the possession of or control of the department that is obtained by, created by, or disclosed to the commissioner or any other person under this chapter, is recognized by this state as being proprietary and to contain trade secrets. The document, material, or other information is confidential and may not be subject to Title 63G, Chapter 2, Government Records Access and Management Act, and may not be made public by the commissioner or any other person without the permission of the insurer.

(b) Notwithstanding Subsection (1)(a), the commissioner may use a document, material, or other information in furtherance of any regulatory or legal action brought as a part of the official duties. The commissioner may not otherwise make the document, material, or other information public without the prior written consent of the insurer.

(2) The commissioner and any person who receives a document, material, or other information related to an own risk and solvency assessment, through examination or otherwise, while acting

under the authority of the commissioner or with whom the document, material, or other information is shared pursuant to this chapter shall keep the document, material, or other information confidential.

(3) To assist in the performance of the commissioner's regulatory duties, the commissioner:

(a) may, upon request, share a document, material, or other information related to an own risk solvency assessment, including a confidential document, material, or information subject to Subsection (1), including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any supervisory college as described in the Section 31A-16-108.5, with the National Association of Insurance Commissioners and with any third-party consultants designated by the commissioner, provided that the recipient agrees in writing to maintain the confidentiality of documents, materials, or other information related to an own risk and solvency assessment and has verified in writing the legal authority to maintain confidentiality;

(b) may receive a document, material, or other information related to an own risk and solvency assessment, including an otherwise confidential document, material, or information, including proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as described in Section 31A-16-108.5 and from the National Association of Insurance Commissioners, and shall maintain as confidential a document, material, or information received with notice or the understanding that the document, material, or information is confidential under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided pursuant to this chapter, consistent with this Subsection (3) that shall:

(i) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers with the agreement providing that the recipient agrees in writing to maintain the confidentiality of a document, material, or other information related to an own risk and solvency assessment and verifies in writing the legal authority to maintain confidentiality;

(ii) specify that ownership of information shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter remains with the commissioner, and that the National Association of Insurance Commissioners' or a third-party consultant's use of the information is subject to the direction of the commissioner;

(iii) prohibit the National Association of Insurance Commissioners or third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;

(iv) require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners or a third-party consultant for disclosure or production;

(v) require the National Association of Insurance Commissioners or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter; and

(vi) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(4) The sharing of information or a document by the commissioner pursuant to this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

(5) A waiver of an applicable claim of confidentiality in a document, proprietary and trade-secret material, or other information related to an own risk and solvency assessment may not occur as a result of disclosure of the own risk and solvency assessment related information or a document to the commissioner under this section or as a result of sharing as authorized in this chapter.

(6) A document, material, or other information in the possession or control of the National Association of Insurance Commissioners or a third-party consultant pursuant to this chapter is:

(a) confidential, not a public record, and not open to public inspection; and

(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

Section 19. Section 31A-16a-109 is enacted to read:

31A-16a-109. Sanctions.

An insurer failing, without just cause, to timely file the ORSA summary report as required in this

chapter is required, after notice and hearing, is subject to a penalty under Section 31A-2-308 for each day's delay, to be recovered by the commissioner and the penalty so recovered shall be paid into the General Fund. The maximum penalty under this section is a penalty permitted under Section 31A-2-308. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Section 20. Section 31A-16a-110 is enacted to read:

31A-16a-110. Severability Clause.

If a provision of this chapter, or the application of this chapter to any person or circumstance, is held invalid, the invalidation does not affect the provisions or applications of this chapter that can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

Section 21. Section 31A-17-404 is amended to read:

31A-17-404. Credit allowed a domestic ceding insurer against reserves for reinsurance.

(1) A domestic ceding insurer is allowed credit for reinsurance as either an asset or a reduction from liability for reinsurance ceded only if the reinsurer meets the requirements of Subsection (3), (4), (5), (6), (7), or (8), subject to the following:

(a) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of a kind or class of business that the assuming insurer is licensed or otherwise permitted to write or assume:

(i) in its state of domicile; or

(ii) in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance.

(b) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of Subsection (9) are met.

(2) A domestic ceding insurer is allowed credit for reinsurance ceded:

(a) only if the reinsurance is payable in a manner consistent with Section 31A-22-1201;

(b) only to the extent that the accounting:

(i) is consistent with the terms of the reinsurance contract; and

(ii) clearly reflects:

(A) the amount and nature of risk transferred; and

(B) liability, including contingent liability, of the ceding insurer;

(c) only to the extent the reinsurance contract shifts insurance policy risk from the ceding insurer

to the assuming reinsurer in fact and not merely in form; and

(d) only if the reinsurance contract contains a provision placing on the reinsurer the credit risk of all dealings with intermediaries regarding the reinsurance contract.

(3) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(4) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state.

(b) An insurer is accredited as a reinsurer if the insurer:

(i) files with the commissioner evidence of the insurer's submission to this state's jurisdiction;

(ii) submits to the commissioner's authority to examine the insurer's books and records;

(iii) (A) is licensed to transact insurance or reinsurance in at least one state; or

(B) in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(iv) files annually with the commissioner a copy of the insurer's:

(A) annual statement filed with the insurance department of its state of domicile; and

(B) most recent audited financial statement; and

(v) (A) (I) has not had its accreditation denied by the commissioner within 90 days of the day on which the insurer submits the information required by this Subsection (4); and

(II) maintains a surplus with regard to policyholders in an amount not less than \$20,000,000; or

(B) (I) has its accreditation approved by the commissioner; and

(II) maintains a surplus with regard to policyholders in an amount less than \$20,000,000.

(c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation is revoked by the commissioner after a notice and hearing.

(5) (a) A domestic ceding insurer is allowed a credit if:

(i) the reinsurance is ceded to an assuming insurer that is:

(A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or

(B) in the case of a United States branch of an alien assuming insurer, is entered through a state meeting the requirements of Subsection (5)(a)(ii);

(ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for reinsurance substantially similar to those applicable under this section; and

(iii) the assuming insurer or United States branch of an alien assuming insurer:

(A) maintains a surplus with regard to policyholders in an amount not less than \$20,000,000; and

(B) submits to the authority of the commissioner to examine its books and records.

(b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded and assumed pursuant to a pooling arrangement among insurers in the same holding company system.

(6) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that maintains a trust fund:

(i) created in accordance with rules made by the commissioner pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) in a qualified United States financial institution for the payment of a valid claim of:

(A) a United States ceding insurer of the assuming insurer;

(B) an assign of the United States ceding insurer; and

(C) a successor in interest to the United States ceding insurer.

(b) To enable the commissioner to determine the sufficiency of the trust fund described in Subsection (6)(a), the assuming insurer shall:

(i) report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by a licensed insurer; and

(ii) (A) submit to examination of its books and records by the commissioner; and

(B) pay the cost of an examination.

(c) (i) Credit for reinsurance may not be granted under this Subsection (6) unless the form of the trust and any amendment to the trust is approved by:

(A) the commissioner of the state where the trust is domiciled; or

(B) the commissioner of another state who, pursuant to the terms of the trust instrument, accepts principal regulatory oversight of the trust.

(ii) The form of the trust and an amendment to the trust shall be filed with the commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.

(iii) The trust instrument shall provide that a contested claim is valid and enforceable upon the

final order of a court of competent jurisdiction in the United States.

(iv) The trust shall vest legal title to its assets in its one or more trustees for the benefit of:

(A) a United States ceding insurer of the assuming insurer;

(B) an assign of the United States ceding insurer; or

(C) a successor in interest to the United States ceding insurer.

(v) The trust and the assuming insurer are subject to examination as determined by the commissioner.

(vi) The trust shall remain in effect for as long as the assuming insurer has an outstanding obligation due under a reinsurance agreement subject to the trust.

(vii) No later than February 28 of each year, the trustee of the trust shall:

(A) report to the commissioner in writing the balance of the trust;

(B) list the trust's investments at the end of the preceding calendar year; and

(C) (I) certify the date of termination of the trust, if so planned; or

(II) certify that the trust will not expire prior to the following December 31.

(d) The following requirements apply to the following categories of assuming insurer:

(i) For a single assuming insurer:

(A) the trust fund shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and

(B) the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000, except as provided in Subsection (6)(d)(ii).

(ii) (A) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.

(B) The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.

(C) The minimum required trusteed surplus may not be reduced to an amount less than 30% of the

assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(iii) For a group acting as assuming insurer, including incorporated and individual unincorporated underwriters:

(A) for reinsurance ceded under a reinsurance agreement with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by the one or more United States domiciled ceding insurers to an underwriter of the group;

(B) for reinsurance ceded under a reinsurance agreement with an inception date on or before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the other provisions of this chapter, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States;

(C) in addition to a trust described in Subsection (6)(d)(iii)(A) or (B), the group shall maintain in trust a trusteed surplus of which \$100,000,000 is held jointly for the benefit of the one or more United States domiciled ceding insurers of a member of the group for all years of account;

(D) the incorporated members of the group:

(I) may not be engaged in a business other than underwriting as a member of the group; and

(II) are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and

(E) within 90 days after the day on which the group's financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner:

(I) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or

(II) if a certification is unavailable, a financial statement, prepared by an independent public accountant, of each underwriter member of the group.

(iv) For a group of incorporated underwriters under common administration, the group shall:

(A) have continuously transacted an insurance business outside the United States for at least three years immediately preceding the day on which the group makes application for accreditation;

(B) maintain aggregate policyholders' surplus of at least \$10,000,000,000;

(C) maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by the one or more United States domiciled ceding insurers to a member of the group

pursuant to a reinsurance contract issued in the name of the group;

(D) in addition to complying with the other provisions of this Subsection (6)(d)(iv), maintain a joint trusteed surplus of which \$100,000,000 is held jointly for the benefit of the one or more United States domiciled ceding insurers of a member of the group as additional security for these liabilities; and

(E) within 90 days after the day on which the group's financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner:

(I) an annual certification of each underwriter member's solvency by the member's domiciliary regulator; and

(II) a financial statement of each underwriter member of the group prepared by an independent public accountant.

(7) If reinsurance is ceded to an assuming insurer not meeting the requirements of Subsection (3), (4), (5), or (6), a domestic ceding insurer is allowed credit only as to the insurance of a risk located in a jurisdiction where the reinsurance is required by applicable law or regulation of that jurisdiction.

(8) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that secures its obligations in accordance with this Subsection (8):

(a) The insurer shall be certified by the commissioner as a reinsurer in this state.

(b) To be eligible for certification, the assuming insurer shall:

(i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to Subsection (8)(d);

(ii) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(iii) maintain financial strength ratings from two or more rating agencies considered acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iv) agree to:

(A) submit to the jurisdiction of this state;

(B) appoint the commissioner as its agent for service of process in this state;

(C) provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(D) agree to meet applicable information filing requirements as determined by the commissioner including an application for certification, a renewal and on an ongoing basis; and

(E) any other requirements for certification considered relevant by the commissioner.

(c) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. To be eligible for certification, in addition to satisfying requirements of Subsections (8)(a) and (b), the association:

(i) shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members in an amount determined by the commissioner to provide adequate protection;

(ii) may not have incorporated members of the association engaged in any business other than underwriting as a member of the association;

(iii) shall be subject to the same level of regulation and solvency control of the incorporated members of the association by the association's domiciliary regulator as are the unincorporated members; and

(iv) within 90 days after its financial statements are due to be filed with the association's domiciliary regulator provide:

(A) to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or

(B) if a certification is unavailable, financial statements prepared by independent public accountants, of each underwriter member of the association.

(d) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(i) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:

(A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis;

(B) shall consider the rights, the benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States;

(C) shall require the qualified jurisdiction to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and

(D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.

(ii) The commissioner may consider additional factors in determining a qualified jurisdiction.

(iii) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners' Committee Process and the commissioner shall:

(A) consider this list in determining qualified jurisdictions; and

(B) if the commissioner approves a jurisdiction as qualified that does not appear on the National Association of Insurance Commissioner's list of qualified jurisdictions, provide thoroughly documented justification in accordance with criteria to be developed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(iv) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.

(v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

(e) The commissioner shall:

(i) assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies considered acceptable to the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) publish a list of all certified reinsurers and their ratings.

(f) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this Subsection (8) at a level consistent with its rating, as specified in rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(i) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with Section 31A-17-404.1, or in a multibeneficiary trust in accordance with Subsections (5), (6), and (7), except as otherwise provided in this Subsection (8).

(ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to Subsections (5), (6), and (7), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this Subsection (8) or comparable laws of other United States jurisdictions and for its obligations subject to Subsections (5), (6), and (7).

(iii) It shall be a condition to the grant of certification under this Subsection (8) that the certified reinsurer shall have bound itself[;]:

(A) by the language of the trust and agreement with the commissioner with principal regulatory oversight of the trust account[;]; and

(B) upon termination of the trust account, to fund, ~~upon termination of the trust account,~~ out of the remaining surplus of the trust, any deficiency of any other ~~the~~ trust account.

(iv) The minimum trustee surplus requirements provided in Subsections (5), (6), and (7) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this Subsection (8), except that the trust shall maintain a minimum trustee surplus of \$10,000,000.

(v) With respect to obligations incurred by a certified reinsurer under this Subsection (8), if the security is insufficient, the commissioner:

(A) shall reduce the allowable credit by an amount proportionate to the deficiency; and

(B) may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(vi) For purposes of this Subsection (8), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.

(A) As used in this Subsection (8), the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

(B) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, the requirement under this Subsection (8)(f)(vi) does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(g) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners' accredited jurisdiction, the commissioner may:

(i) defer to that jurisdiction's certification;

(ii) defer to the rating assigned by that jurisdiction; and

(iii) consider such reinsurer to be a certified reinsurer in this state.

(h) (i) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business.

(ii) An inactive certified reinsurer shall continue to comply with all applicable requirements of this Subsection (8).

(iii) The commissioner shall assign a rating to a reinsurer that qualifies under this Subsection (8)(h), that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(9) Reinsurance credit may not be allowed a domestic ceding insurer unless the assuming insurer under the reinsurance contract submits to the jurisdiction of Utah courts by:

(a) (i) being an admitted insurer; and

(ii) submitting to jurisdiction under Section 31A-2-309;

(b) having irrevocably appointed the commissioner as the domestic ceding insurer's agent for service of process in an action arising out of or in connection with the reinsurance, which appointment is made under Section 31A-2-309; or

(c) agreeing in the reinsurance contract:

(i) that if the assuming insurer fails to perform its obligations under the terms of the reinsurance contract, the assuming insurer, at the request of the ceding insurer, shall:

(A) submit to the jurisdiction of a court of competent jurisdiction in a state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of an appellate court in the event of an appeal; and

(ii) to designate the commissioner or a specific attorney licensed to practice law in this state as its attorney upon whom may be served lawful process in an action, suit, or proceeding instituted by or on behalf of the ceding company.

(10) Submitting to the jurisdiction of Utah courts under Subsection (9) does not override a duty or right of a party under the reinsurance contract, including a requirement that the parties arbitrate their disputes.

(11) If an assuming insurer does not meet the requirements of Subsection (3), (4), or (5), the credit permitted by Subsection (6) or (8) may not be allowed unless the assuming insurer agrees in the trust instrument to the following conditions:

(a) (i) Notwithstanding any other provision in the trust instrument, if an event described in Subsection (11)(a)(ii) occurs the trustee shall comply with:

(A) an order of the commissioner with regulatory oversight over the trust; or

(B) an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(ii) This Subsection (11)(a) applies if:

(A) the trust fund is inadequate because the trust contains an amount less than the amount required by Subsection (6)(d); or

(B) the grantor of the trust is:

(I) declared insolvent; or

(II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the laws of its state or country of domicile.

(b) The assets of a trust fund described in Subsection (11)(a) shall be distributed by and a claim shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of a domestic insurance company.

(c) If the commissioner with regulatory oversight determines that the assets of the trust fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust instrument.

(d) A grantor shall waive any right otherwise available to it under United States law that is inconsistent with this Subsection (11).

(12) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

(a) The commissioner shall give the reinsurer notice and opportunity for hearing.

(b) The suspension or revocation may not take effect until after the commissioner's order after a hearing, unless:

- (i) the reinsurer waives its right to hearing;
- (ii) the commissioner's order is based on:

(A) regulatory action by the reinsurer's domiciliary jurisdiction; or

(B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state under Subsection (8)(g); or

(iii) the commissioner's finding that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(c) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 31A-17-404.1.

(d) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subsection (8)(f) or Section 31A-17-404.1.

(13) (a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business.

(b) (i) A domestic ceding insurer shall notify the commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers:

(A) exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or

(B) after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding insurer's last reported surplus to policyholders.

(ii) The notification required by Subsection (13)(b)(i) shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(c) A ceding insurer shall take steps to diversify its reinsurance program.

(d) (i) A domestic ceding insurer shall notify the commissioner within 30 days after ceding or being likely to cede more than 20% of the ceding insurer's gross written premium in the prior calendar year to any:

- (A) single assuming insurer; or
- (B) group of affiliated assuming insurers.

(ii) The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Section 22. Section 31A-17-603 is amended to read:

31A-17-603. Company action level event.

(1) "Company action level event" means any of the following events:

(a) the filing of an RBC report by an insurer or health organization that indicates that:

(i) the insurer's or health organization's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(ii) if a life ~~or~~ insurer, accident and health insurer, or health organization, the insurer ~~has~~ or health organization:

(A) ~~has~~ total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0; and

(B) triggers the trend test determined in accordance with the trend test calculation included in the life ~~or~~, fraternal, or health RBC instructions; or

(iii) if a property and casualty insurer, the insurer has:

(A) total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and 3.0; and

(B) triggers the trend test determined in accordance with the trend test calculation included in the property and casualty RBC instructions;

(b) the notification by the commissioner to the insurer or health organization of an adjusted RBC report that indicates an event in Subsection (1)(a), provided the insurer or health organization does not challenge the adjusted RBC report under Section 31A-17-607; or

(c) if, pursuant to Section 31A-17-607, an insurer or health organization challenges an adjusted RBC report that indicates the event in Subsection (1)(a), the notification by the commissioner to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge.

(2) (a) In the event of a company action level event, the insurer or health organization shall prepare and submit to the commissioner an RBC plan that shall:

(i) identify the conditions that contribute to the company action level event;

(ii) contain proposals of corrective actions that the insurer or health organization intends to take and that are expected to result in the elimination of the company action level event;

(iii) provide projections of the insurer's or health organization's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of:

(A) statutory operating income;

(B) net income;

(C) capital;

(D) surplus; and

(E) RBC levels;

(iv) identify the key assumptions impacting the insurer's or health organization's projections and the sensitivity of the projections to the assumptions; and

(v) identify the quality of, and problems associated with, the insurer's or health organization's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(b) For purposes of Subsection (2)(a)(iii), the projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.

(3) The RBC plan shall be submitted:

(a) within 45 days of the company action level event; or

(b) if the insurer or health organization challenges an adjusted RBC report pursuant to Section 31A-17-607, within 45 days after notification to the insurer or health organization

that after a hearing the commissioner rejects the insurer's or health organization's challenge.

(4) (a) Within 60 days after the submission by an insurer or health organization of an RBC plan to the commissioner, the commissioner shall notify the insurer or health organization whether the RBC plan:

(i) shall be implemented; or

(ii) is unsatisfactory.

(b) If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer or health organization shall set forth the reasons for the determination, and may propose revisions that will render the RBC plan satisfactory. Upon notification from the commissioner, the insurer or health organization shall:

(i) prepare a revised RBC plan that incorporates any revision proposed by the commissioner; and

(ii) submit the revised RBC plan to the commissioner:

(A) within 45 days after the notification from the commissioner; or

(B) if the insurer challenges the notification from the commissioner under Section 31A-17-607, within 45 days after a notification to the insurer or health organization that after a hearing the commissioner rejects the insurer's or health organization's challenge.

(5) In the event of a notification by the commissioner to an insurer or health organization that the insurer's or health organization's RBC plan or revised RBC plan is unsatisfactory, the commissioner may specify in the notification that the notification constitutes a regulatory action level event subject to the insurer's or health organization's right to a hearing under Section 31A-17-607.

(6) Every domestic insurer or health organization that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer or health organization is authorized to do business if:

(a) the state has an RBC provision substantially similar to Subsection 31A-17-608(1); and

(b) the insurance commissioner of that state notifies the insurer or health organization of its request for the filing in writing, in which case the insurer or health organization shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) 15 days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with that state; or

(ii) the date on which the RBC plan or revised RBC plan is filed under Subsections (3) and (4).

Section 23. Section 31A-22-505 is amended to read:

31A-22-505. Association groups.

(1) A policy is subject to the requirements of this section if the policy is issued as policyholder to an association or to the trustees of a fund established, created, or maintained for the benefit of members of one or more associations:

(a) with a minimum membership of 100 persons~~;~~];

(b) with a constitution and bylaws~~[- and which];~~

(c) having a shared or common purpose that is not primarily a business or customer relationship; and

(d) that has been in active existence for at least two years~~[- is subject to the following requirements:].~~

~~[(1)]~~ (2) The policy may insure members and employees of the association, employees of the members, one or more of the preceding entities, or all of any classes of these named entities for the benefit of persons other than the employees' employer, or any officials, representatives, trustees, or agents of the employer or association.

~~[(2)]~~ (3) The premiums shall be paid by the policyholder from funds contributed by the associations, by employer members, from funds contributed by the covered persons, or from any combination of these. Except as provided under Section 31A-22-512, a policy on which no part of the premium is contributed by the covered persons, specifically for their insurance, is required to insure all eligible persons.

Section 24. Section 31A-22-605 is amended to read:

31A-22-605. Accident and health insurance standards.

(1) The purposes of this section include:

(a) reasonable standardization and simplification of terms and coverages of individual and franchise accident and health insurance policies, including accident and health insurance contracts of insurers licensed under Chapter 7, Nonprofit Health Service Insurance Corporations, and Chapter 8, Health Maintenance Organizations and Limited Health Plans, to facilitate public understanding and comparison in purchasing;

(b) elimination of provisions contained in individual and franchise accident and health insurance contracts that may be misleading or confusing in connection with either the purchase of those types of coverages or the settlement of claims; and

(c) full disclosure in the sale of individual and franchise accident and health insurance contracts.

(2) As used in this section:

(a) "Direct response insurance policy" means an individual insurance policy solicited and sold without the policyholder having direct contact with a natural person intermediary.

(b) "Medicare" means the same as that term is defined in Subsection 31A-22-620(1)(e).

(c) "Medicare supplement policy" means the same as that term is defined in Subsection 31A-22-620(1)(f).

(3) This section applies to all individual and franchise accident and health policies.

(4) The commissioner shall adopt rules, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, relating to the following matters:

(a) standards for the manner and content of policy provisions, and disclosures to be made in connection with the sale of policies covered by this section, dealing with at least the following matters:

(i) terms of renewability;

(ii) initial and subsequent conditions of eligibility;

(iii) nonduplication of coverage provisions;

(iv) coverage of dependents;

(v) preexisting conditions;

(vi) termination of insurance;

(vii) probationary periods;

(viii) limitations;

(ix) exceptions;

(x) reductions;

(xi) elimination periods;

(xii) requirements for replacement;

(xiii) recurrent conditions;

(xiv) coverage of persons eligible for Medicare; and

(xv) definition of terms;

(b) minimum standards for benefits under each of the following categories of coverage in policies covered in this section:

(i) basic hospital expense coverage;

(ii) basic medical-surgical expense coverage;

(iii) hospital confinement indemnity coverage;

(iv) major medical expense coverage;

(v) income replacement coverage;

(vi) accident only coverage;

(vii) specified disease or specified accident coverage;

(viii) limited benefit health coverage; and

(ix) nursing home and long-term care coverage;

(c) the content and format of the outline of coverage, in addition to that required under Subsection (6);

(d) the method of identification of policies and contracts based upon coverages provided; and

(e) rating practices.

(5) Nothing in Subsection (4)(b) precludes the issuance of policies that combine categories of coverage in ~~[that subsection]~~ Subsection (4)(b) provided that any combination of categories meets the standards of a component category of coverage.

(6) The commissioner may adopt rules, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, relating to the following matters:

(a) establishing disclosure requirements for insurance policies covered in this section, designed to adequately inform the prospective insured of the need for and extent of the coverage offered, and requiring that this disclosure be furnished to the prospective insured with the application form, unless it is a direct response insurance policy;

(b) (i) prescribing caption or notice requirements designed to inform prospective insureds that particular insurance coverages are not Medicare Supplement coverages;

(ii) the requirements of Subsection (6)(b)(i) apply to all insurance policies and certificates sold to persons eligible for Medicare; and

(c) requiring the disclosures or information brochures to be furnished to the prospective insured on direct response insurance policies, upon his request or, in any event, no later than the time of the policy delivery.

(7) A policy covered by this section may be issued only if it meets the minimum standards established by the commissioner under Subsection (4), an outline of coverage accompanies the policy or is delivered to the applicant at the time of the application, and, except with respect to direct response insurance policies, an acknowledged receipt is provided to the insurer. The outline of coverage shall include:

(a) a statement identifying the applicable categories of coverage provided by the policy as prescribed under Subsection (4);

(b) a description of the principal benefits and coverage;

(c) a statement of the exceptions, reductions, and limitations contained in the policy;

(d) a statement of the renewal provisions, including any reservation by the insurer of a right to change premiums;

(e) a statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions; and

(f) any other contents the commissioner prescribes.

(8) If a policy is issued on a basis other than that applied for, the outline of coverage shall accompany the policy when it is delivered and it shall clearly state that it is not the policy for which application was made.

(9) (a) Notwithstanding Subsection 31A-22-~~606~~(1), limited accident and health policies or certificates issued to persons eligible for Medicare shall contain a notice prominently printed on or attached to the cover or front page which states that the policyholder or certificate holder has the right to return the policy for any reason within 30 days after its delivery and to have the premium refunded.

(b) This Subsection (9) does not apply to a policy issued to an employer group.

Section 25. Section 31A-22-610.5 is amended to read:

31A-22-610.5. Dependent coverage.

(1) As used in this section, "child" has the same meaning as defined in Section 78B-12-102.

(2) (a) Any individual or group accident and health insurance policy or health maintenance organization contract that provides coverage for a policyholder's or certificate holder's dependent may not terminate coverage of an unmarried dependent by reason of the dependent's age before the dependent's 26th birthday and shall, upon application, provide coverage for all unmarried dependents up to age 26.

(b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be included in the premium on the same basis as other dependent coverage.

(c) This section does not prohibit the employer from requiring the employee to pay all or part of the cost of coverage for unmarried dependents.

(d) An individual health insurance policy, group health insurance policy, or health maintenance organization shall continue in force coverage for a dependent through the last day of the month in which the dependent ceases to be a dependent:

(i) if premiums are paid; and

(ii) notwithstanding Section 31A-8-402.3, 31A-8-402.5, 31A-22-721, 31A-30-107.1, or 31A-30-107.3.

(3) An individual or group accident and health insurance policy or health maintenance organization contract shall reinstate dependent coverage, and for purposes of all exclusions and limitations, shall treat the dependent as if the coverage had been in force since it was terminated; if:

(a) the dependent has not reached the age of 26 by July 1, 1995;

(b) the dependent had coverage prior to July 1, 1994;

(c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age of the dependent; and

(d) the policy has not been terminated since the dependent's coverage was terminated.

(4) (a) When a parent is required by a court or administrative order to provide health insurance

coverage for a child, an accident and health insurer may not deny enrollment of a child under the accident and health insurance plan of the child's parent on the grounds the child:

(i) was born out of wedlock and is entitled to coverage under Subsection (5);

(ii) was born out of wedlock and the custodial parent seeks enrollment for the child under the custodial parent's policy;

(iii) is not claimed as a dependent on the parent's federal tax return; or

(iv) does not reside with the parent or in the insurer's service area.

(b) A child enrolled as required under Subsection (4)(a)(iv) is subject to the terms of the accident and health insurance plan contract pertaining to services received outside of an insurer's service area. A health maintenance organization shall comply with Section 31A-8-502.

(5) When a child has accident and health coverage through an insurer of a noncustodial parent, and when requested by the noncustodial or custodial parent, the insurer shall:

(a) provide information to the custodial parent as necessary for the child to obtain benefits through that coverage, but the insurer or employer, or the agents or employees of either of them, are not civilly or criminally liable for providing information in compliance with this Subsection (5)(a), whether the information is provided pursuant to a verbal or written request;

(b) permit the custodial parent or the service provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(c) make payments on claims submitted in accordance with Subsection (5)(b) directly to the custodial parent, the child who obtained benefits, the provider, or the state Medicaid agency.

(6) When a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

(a) permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to an enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application of the child's other parent, the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec. 651 through 669, the child support enforcement program; and

(c) (i) when the child is covered by an individual policy, not disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(A) the court or administrative order is no longer in effect; or

(B) the child is or will be enrolled in comparable accident and health coverage through another insurer which will take effect not later than the effective date of disenrollment; or

(ii) when the child is covered by a group policy, not disenroll or eliminate coverage of the child unless the employer is provided with satisfactory written evidence, which evidence is also provided to the insurer, that Subsection (9)(c)(i), (ii) or (iii) has happened.

(7) An insurer may not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for accident and health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

(8) Insurers may not reduce their coverage of pediatric vaccines below the benefit level in effect on May 1, 1993.

(9) When a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer shall:

(a) permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage of the child, enroll the child under family coverage upon application by the child's other parent, by the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec. 651 through 669, the child support enforcement program;

(c) not disenroll or eliminate coverage of the child unless the employer is provided satisfactory written evidence that:

(i) the court order is no longer in effect;

(ii) the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(iii) the employer has eliminated family health coverage for all of its employees; and

(d) withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer.

(10) An order issued under Section 62A-11-326.1 may be considered a "qualified medical support order" for the purpose of enrolling a dependent child in a group accident and health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

(11) This section does not affect any insurer's ability to require as a precondition of any child being covered under any policy of insurance that:

(a) the parent continues to be eligible for coverage;

(b) the child shall be identified to the insurer with adequate information to comply with this section; and

(c) the premium shall be paid when due.

(12) ~~[The provisions of this section apply]~~ This section applies to employee welfare benefit plans as defined in Section 26-19-2.

~~[(13) The commissioner shall adopt rules interpreting and implementing this section with regard to out-of-area court ordered dependent coverage.]~~

(13) (a) A policy that provides coverage to a child of a group member may not deny eligibility for coverage to a child solely because:

(i) the child does not reside with the insured; or

(ii) the child is solely dependent on a former spouse of the insured rather than on the insured.

(b) A child who does not reside with the insured may be excluded on the same basis as a child who resides with the insured.

Section 26. Section 31A-22-614.5 is amended to read:

31A-22-614.5. Uniform claims processing -- Electronic exchange of health information.

(1) (a) Except as provided in Subsection (1)(c), ~~[all insurers]~~ an insurer offering health insurance shall use a uniform claim form and uniform billing and claim codes.

(b) Beginning January 1, 2011, all health benefit plans, and dental and vision plans, shall provide for the electronic exchange of uniform:

(i) eligibility and coverage information; and

(ii) coordination of benefits information.

(c) For purposes of Subsection (1)(a), "health insurance" does not include a policy or certificate that provides benefits solely for:

(i) income replacement; or

(ii) long-term care.

(2) (a) The uniform electronic standards and information required in Subsection (1) shall be adopted and approved by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) When adopting rules under this section the commissioner:

(i) shall:

(A) consult with national and state organizations involved with the standardized exchange of health data, and the electronic exchange of health data, to develop the standards for the use and electronic exchange of uniform:

(I) claim forms;

(II) billing and claim codes;

(III) insurance eligibility and coverage information; and

(IV) coordination of benefits information; and

(B) meet federal mandatory minimum standards following the adoption of national requirements for transaction and data elements in the federal Health Insurance Portability and Accountability Act;

(ii) may not require an insurer or administrator to use a specific software product or vendor; and

(iii) may require an insurer who participates in the all payer database created under Section 26-33a-106.1 to allow data regarding demographic and insurance coverage information to be electronically shared with the state's designated secure health information master person index to be used:

(A) in compliance with data security standards established by:

(I) the federal Health Insurance Portability and Accountability Act; and

(II) the electronic commerce agreements established in a business associate agreement; and

(B) for the purpose of coordination of health benefit plans.

(3) (a) The commissioner shall coordinate the administrative rules adopted under the provisions of this section with the administrative rules adopted by the Department of Health for the implementation of the standards for the electronic exchange of clinical health information under Section 26-1-37. The department shall establish procedures for developing the rules adopted under this section, which ensure that the Department of Health is given the opportunity to comment on proposed rules.

(b) (i) The commissioner may provide information to health care providers regarding resources available to a health care provider to verify whether a health care provider's practice management software system meets the uniform electronic standards for data exchange required by this section.

(ii) The commissioner may provide the information described in Subsection (3)(b)(i) by partnering with:

(A) a not-for-profit, broad based coalition of state health care insurers and health care providers who are involved in the electronic exchange of the data required by this section; or

(B) some other person that the commissioner determines is appropriate to provide the information described in Subsection (3)(b)(i).

(c) The commissioner shall regulate any fees charged by insurers to the providers for:

(i) uniform claim forms;

(ii) electronic billing; or

(iii) the electronic exchange of clinical health information permitted by Section 26-1-37.

(4) This section does not require a person to provide information concerning an employer self-insured employee welfare benefit plan as defined in 29 U.S.C. Sec. 1002(1).

Section 27. Section 31A-22-617 is amended to read:

31A-22-617. Preferred provider contract provisions.

Health insurance policies may provide for insureds to receive services or reimbursement under the policies in accordance with preferred health care provider contracts as follows:

(1) Subject to restrictions under this section, an insurer or third party administrator may enter into contracts with health care providers as defined in Section 78B-3-403 under which the health care providers agree to supply services, at prices specified in the contracts, to persons insured by an insurer.

(a) (i) A health care provider contract may require the health care provider to accept the specified payment in this Subsection (1) as payment in full, relinquishing the right to collect additional amounts from the insured person.

(ii) In a dispute involving a provider's claim for reimbursement, the same shall be determined in accordance with applicable law, the provider contract, the subscriber contract, and the insurer's written payment policies in effect at the time services were rendered.

(iii) If the parties are unable to resolve their dispute, the matter shall be subject to binding arbitration by a jointly selected arbitrator. Each party is to bear its own expense except the cost of the jointly selected arbitrator shall be equally shared. This Subsection (1)(a)(iii) does not apply to the claim of a general acute hospital to the extent it is inconsistent with the hospital's provider agreement.

(iv) An organization may not penalize a provider solely for pursuing a claims dispute or otherwise demanding payment for a sum believed owing.

(v) If an insurer permits another entity with which it does not share common ownership or control to use or otherwise lease one or more of the organization's networks of participating providers, the organization shall ensure, at a minimum, that the entity pays participating providers in accordance with the same fee schedule and general payment policies as the organization would for that network.

(b) The insurance contract may reward the insured for selection of preferred health care providers by:

- (i) reducing premium rates;
- (ii) reducing deductibles;
- (iii) coinsurance;
- (iv) other copayments; or

(v) any other reasonable manner.

(c) If the insurer is a managed care organization, as defined in Subsection 31A-27a-403(1)(f):

(i) the insurance contract and the health care provider contract shall provide that in the event the managed care organization becomes insolvent, the rehabilitator or liquidator may:

(A) require the health care provider to continue to provide health care services under the contract until the earlier of:

(I) 90 days after the date of the filing of a petition for rehabilitation or the petition for liquidation; or

(II) the date the term of the contract ends; and

(B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to receive from the managed care organization during the time period described in Subsection (1)(c)(i)(A);

(ii) the provider is required to:

(A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and

(B) relinquish the right to collect additional amounts from the insolvent managed care organization's enrollee, as defined in Subsection 31A-27a-403(1)(b);

(iii) if the contract between the health care provider and the managed care organization has not been reduced to writing, or the contract fails to contain the requirements described in Subsection (1)(c)(i), the provider may not collect or attempt to collect from the enrollee:

(A) sums owed by the insolvent managed care organization; or

(B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);

(iv) the following may not bill or maintain an action at law against an enrollee to collect sums owed by the insolvent managed care organization or the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B):

(A) a provider;

(B) an agent;

(C) a trustee; or

(D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and

(v) notwithstanding Subsection (1)(c)(i):

(A) a rehabilitator or liquidator may not reduce a fee [by] to less than 75% of the provider's regular fee set forth in the contract; and

(B) the enrollee shall continue to pay the copayments, deductibles, and other payments for services received from the provider that the enrollee was required to pay before the filing of:

(I) a petition for rehabilitation; or

(II) a petition for liquidation.

(2) (a) Subject to Subsections (2)(b) through (2)(e), an insurer using preferred health care provider contracts is subject to the reimbursement requirements in Section 31A-8-501 on or after January 1, 2014.

(b) When reimbursing for services of health care providers not under contract, the insurer may make direct payment to the insured.

(c) An insurer using preferred health care provider contracts may impose a deductible on coverage of health care providers not under contract.

(d) When selecting health care providers with whom to contract under Subsection (1), an insurer may not unfairly discriminate between classes of health care providers, but may discriminate within a class of health care providers, subject to Subsection (7).

(e) For purposes of this section, unfair discrimination between classes of health care providers includes:

(i) refusal to contract with class members in reasonable proportion to the number of insureds covered by the insurer and the expected demand for services from class members; and

(ii) refusal to cover procedures for one class of providers that are:

(A) commonly used by members of the class of health care providers for the treatment of illnesses, injuries, or conditions;

(B) otherwise covered by the insurer; and

(C) within the scope of practice of the class of health care providers.

(3) Before the insured consents to the insurance contract, the insurer shall fully disclose to the insured that it has entered into preferred health care provider contracts. The insurer shall provide sufficient detail on the preferred health care provider contracts to permit the insured to agree to the terms of the insurance contract. The insurer shall provide at least the following information:

(a) a list of the health care providers under contract, and if requested their business locations and specialties;

(b) a description of the insured benefits, including deductibles, coinsurance, or other copayments;

(c) a description of the quality assurance program required under Subsection (4); and

(d) a description of the adverse benefit determination procedures required under Subsection (5).

(4) (a) An insurer using preferred health care provider contracts shall maintain a quality assurance program for assuring that the care provided by the health care providers under contract meets prevailing standards in the state.

(b) The commissioner in consultation with the executive director of the Department of Health may

designate qualified persons to perform an audit of the quality assurance program. The auditors shall have full access to all records of the organization and its health care providers, including medical records of individual patients.

(c) The information contained in the medical records of individual patients shall remain confidential. All information, interviews, reports, statements, memoranda, or other data furnished for purposes of the audit and any findings or conclusions of the auditors are privileged. The information is not subject to discovery, use, or receipt in evidence in any legal proceeding except hearings before the commissioner concerning alleged violations of this section.

(5) An insurer using preferred health care provider contracts shall provide a reasonable procedure for resolving complaints and adverse benefit determinations initiated by the insureds and health care providers.

(6) An insurer may not contract with a health care provider for treatment of illness or injury unless the health care provider is licensed to perform that treatment.

(7) (a) A health care provider or insurer may not discriminate against a preferred health care provider for agreeing to a contract under Subsection (1).

(b) A health care provider licensed to treat an illness or injury within the scope of the health care provider's practice, who is willing and able to meet the terms and conditions established by the insurer for designation as a preferred health care provider, shall be able to apply for and receive the designation as a preferred health care provider. Contract terms and conditions may include reasonable limitations on the number of designated preferred health care providers based upon substantial objective and economic grounds, or expected use of particular services based upon prior provider-patient profiles.

(8) Upon the written request of a provider excluded from a provider contract, the commissioner may hold a hearing to determine if the insurer's exclusion of the provider is based on the criteria set forth in Subsection (7)(b).

(9) Nothing in this section is to be construed as to require an insurer to offer a certain benefit or service as part of a health benefit plan.

(10) This section does not apply to catastrophic mental health coverage provided in accordance with Section 31A-22-625.

(11) Notwithstanding Subsection (1), Subsection (7)(b), and Section 31A-22-618, an insurer or third party administrator is not required to, but may, enter into a contract with a licensed athletic trainer, licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.

Section 28. Section 31A-22-645 is enacted to read:

31A-22-645. Alcohol and drug dependency treatment.

(1) An insurer offering a health benefit plan providing coverage for alcohol or drug dependency

treatment may require an inpatient facility to be licensed by:

(a) (i) the Department of Human Services, under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) the Department of Health; or

(b) for an inpatient facility located outside the state, a state agency similar to one described in Subsection (1)(a).

(2) For inpatient coverage provided pursuant to Subsection (1), an insurer may require an inpatient facility to be accredited by the following:

(a) the Joint Commission; and

(b) one other nationally recognized accrediting agency.

Section 29. Section 31A-22-701 is amended to read:

31A-22-701. Groups eligible for group or blanket insurance.

(1) As used in this section, "association group" means a lawfully formed association of individuals or business entities that:

(a) purchases insurance on a group basis on behalf of members; and

(b) is formed and maintained in good faith for purposes other than obtaining insurance.

(2) A group accident and health insurance policy may be issued to:

(a) a group:

(i) to which a group life insurance policy may be issued under Sections 31A-22-502, 31A-22-503, 31A-22-504, 31A-22-506, 31A-22-507, and 31A-22-509; and

(ii) that is formed and maintained in good faith for a purpose other than obtaining insurance;

(b) an association group that:

(i) has been actively in existence for at least five years;

(ii) has a constitution and bylaws;

(iii) has a shared or common purpose that is not primarily a business or customer relationship;

~~(iv)~~ (iv) is formed and maintained in good faith for purposes other than obtaining insurance;

~~(v)~~ (v) does not condition membership in the association group on any health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

~~(vi)~~ (vi) makes accident and health insurance coverage offered through the association group available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage through a member;

~~(vii)~~ (vii) does not make accident and health insurance coverage offered through the association group available other than in connection with a member of the association group; and

~~(viii)~~ (viii) is actuarially sound; or

(c) a group specifically authorized by the commissioner under Section 31A-22-509, upon a finding that:

(i) authorization is not contrary to the public interest;

(ii) the group is actuarially sound;

(iii) formation of the proposed group may result in economies of scale in acquisition, administrative, marketing, and brokerage costs;

(iv) the insurance policy, insurance certificate, or other indicia of coverage that will be offered to the proposed group is substantially equivalent to insurance policies that are otherwise available to similar groups;

(v) the group would not present hazards of adverse selection;

(vi) the premiums for the insurance policy and any contributions by or on behalf of the insured persons are reasonable in relation to the benefits provided; and

(vii) the group is formed and maintained in good faith for a purpose other than obtaining insurance.

(3) A blanket accident and health insurance policy:

(a) covers a defined class of persons;

(b) may not be offered or underwritten on an individual basis;

(c) shall cover only a group that is:

(i) actuarially sound; and

(ii) formed and maintained in good faith for a purpose other than obtaining insurance; and

(d) may be issued only to:

(i) a common carrier or an operator, owner, or lessee of a means of transportation, as policyholder, covering persons who may become passengers as defined by reference to the person's travel status;

(ii) an employer, as policyholder, covering any group of employees, dependents, or guests, as defined by reference to specified hazards incident to any activities of the policyholder;

(iii) an institution of learning, including a school district, a school jurisdictional unit, or the head, principal, or governing board of a school jurisdictional unit, as policyholder, covering students, teachers, or employees;

(iv) a religious, charitable, recreational, educational, or civic organization, or branch of one of those organizations, as policyholder, covering a group of members or participants as defined by reference to specified hazards incident to the

activities sponsored or supervised by the policyholder;

(v) a sports team, camp, or sponsor of a sports team or camp, as policyholder, covering members, campers, employees, officials, or supervisors;

(vi) a volunteer fire department, first aid, civil defense, or other similar volunteer organization, as policyholder, covering a group of members or participants as defined by reference to specified hazards incident to activities sponsored, supervised, or participated in by the policyholder;

(vii) a newspaper or other publisher, as policyholder, covering its carriers;

(viii) an association, including a labor union, that has a constitution and bylaws and that is organized in good faith for purposes other than that of obtaining insurance, as policyholder, covering a group of members or participants as defined by reference to specified hazards incident to the activities or operations sponsored or supervised by the policyholder; and

(ix) any other class of risks that, in the judgment of the commissioner, may be properly eligible for blanket accident and health insurance.

(4) The judgment of the commissioner may be exercised on the basis of:

- (a) individual risks;
- (b) a class of risks; or
- (c) both Subsections (4)(a) and (b).

Section 30. Section 31A-22-716 is amended to read:

31A-22-716. Required provision for notice of termination.

(1) ~~Every~~ A policy for group or blanket accident and health coverage issued or renewed after July 1, 1990, shall include a provision that obligates the policyholder to give 30 days prior written notice of termination to each employee or group member and to notify each employee or group member of the employee's or group member's rights to continue coverage upon termination.

(2) An insurer's monthly notice to the policyholder of premium payments due shall include a statement of the policyholder's obligations as set forth in Subsection (1). Insurers shall provide a sample notice to the policyholder at least once a year.

~~[(3) For the purpose of compliance with federal law and the Health Insurance Portability and Accountability Act, all health benefit plans, health insurers, and student health plans shall provide a certificate of creditable coverage to each covered person upon the person's termination from the plan as soon as reasonably possible.]~~

Section 31. Section 31A-22-721 is amended to read:

31A-22-721. A health benefit plan for a plan sponsor -- Discontinuance and nonrenewal.

(1) Except as otherwise provided in this section, a health benefit plan for a plan sponsor is renewable and continues in force:

(a) with respect to all eligible employees and dependents; and

(b) at the option of the plan sponsor.

(2) A health benefit plan for a plan sponsor may be discontinued or nonrenewed for a network plan, if:

(a) there is no longer any enrollee under the group health plan who lives, resides, or works in:

(i) the service area of the insurer; or

(ii) the area for which the insurer is authorized to do business; or

(b) for coverage made available in the small or large employer market only through an association, if:

(i) the employer's membership in the association ceases; and

(ii) the coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(3) A health benefit plan for a plan sponsor may be discontinued if:

(a) a condition described in Subsection (2) exists;

(b) the plan sponsor fails to pay premiums or contributions in accordance with the terms of the contract;

(c) the plan sponsor:

(i) performs an act or practice that constitutes fraud; or

(ii) makes an intentional misrepresentation of material fact under the terms of the coverage;

(d) the insurer:

(i) elects to discontinue offering a particular health benefit ~~product~~ plan delivered or issued for delivery in this state;

(ii) (A) provides notice of the discontinuation in writing:

(I) to each plan sponsor, employee, and dependent of a plan sponsor or employee; and

(II) at least 90 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner; and

(II) at least three working days prior to the date the notice is sent to the affected plan sponsors, employees, and dependents of plan sponsors or employees;

(C) offers to each plan sponsor, on a guaranteed issue basis, the option to purchase any other health benefit [~~products~~] plans currently being offered:

(I) by the insurer in the market; or

(II) in the case of a large employer, any other health benefit plan currently being offered in that market; and

(D) in exercising the option to discontinue that [~~product~~] health benefit plan and in offering the option of coverage in this section, the insurer acts uniformly without regard to:

(I) the claims experience of a plan sponsor;

(II) any health status-related factor relating to any covered participant or beneficiary; or

(III) any health status-related factor relating to a new participant or beneficiary who may become eligible for coverage; or

(e) the insurer:

(i) elects to discontinue all of the insurer's health benefit plans:

(A) in the small employer market; or

(B) the large employer market; or

(C) both the small and large employer markets; and

(ii) (A) provides notice of the discontinuance in writing:

(I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

(II) at least 180 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner in each state in which an affected insured individual is known to reside; and

(II) at least 30 business days prior to the date the notice is sent to the affected plan sponsors, employees, and dependents of a plan sponsor or employee;

(C) discontinues and nonrenews all plans issued or delivered for issuance in the market; and

(D) provides a plan of orderly withdrawal as required by Section 31A-4-115.

(4) A large employer health benefit plan may be discontinued or nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) for noncompliance with the insurer's:

(i) minimum participation requirements; or

(ii) employer contribution requirements.

(5) A small employer health benefit plan may be discontinued or nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) for noncompliance with the insurer's employer contribution requirements.

(6) A small employer health benefit plan may be nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) for noncompliance with the insurer's minimum participation requirements.

(7) (a) Except as provided in Subsection (7)(d), an eligible employee may be discontinued if after issuance of coverage the eligible employee:

(i) engages in an act or practice that constitutes fraud in connection with the coverage; or

(ii) makes an intentional misrepresentation of material fact in connection with the coverage.

(b) An eligible employee that is discontinued under Subsection (7)(a) may reenroll:

(i) 12 months after the date of discontinuance; and

(ii) if the plan sponsor's coverage is in effect at the time the eligible employee applies to reenroll.

(c) At the time the eligible employee's coverage is discontinued under Subsection (7)(a), the insurer shall notify the eligible employee of the right to reenroll when coverage is discontinued.

(d) An eligible employee may not be discontinued under this Subsection (7) because of a fraud or misrepresentation that relates to health status.

(8) (a) Except as provided in Subsection (8)(b), an insurer that elects to discontinue offering a health benefit plan under Subsection (3)(e) shall be prohibited from writing new business in such market in this state for a period of five years beginning on the date of discontinuation of the last coverage that is discontinued.

(b) The commissioner may waive the prohibition under Subsection (8)(a) when the commissioner finds that waiver is in the public interest:

(i) to promote competition; or

(ii) to resolve inequity in the marketplace.

(9) If an insurer is doing business in one established geographic service area of the state, this section applies only to the insurer's operations in that geographic service area.

(10) An insurer may modify a health benefit plan for a plan sponsor only:

(a) at the time of coverage renewal; and

(b) if the modification is effective uniformly among all plans with a particular product or service.

(11) For purposes of this section, a reference to "plan sponsor" includes a reference to the employer:

(a) with respect to coverage provided to an employer member of the association; and

(b) if the health benefit plan is made available by an insurer in the employer market only through:

- (i) an association;
- (ii) a trust; or
- (iii) a discretionary group.

(12) (a) A small employer that, after purchasing a health benefit plan in the small group market, employs on average more than 50 eligible employees on each business day in a calendar year may continue to renew the health benefit plan purchased in the small group market.

(b) A large employer that, after purchasing a health benefit plan in the large group market, employs on average less than 51 eligible employees on each business day in a calendar year may continue to renew the health benefit plan purchased in the large group market.

(13) An insurer offering employer sponsored health benefit plans shall comply with the Health Insurance Portability and Accountability Act, 42 U.S.C. Sec. 300gg and 300gg-1.

Section 32. Section 31A-22-801 is amended to read:

31A-22-801. Scope of part.

(1) Except as provided under Subsection (2), all life insurance and accident and health insurance in connection with loans or other credit transactions are subject to this part.

(2) (a) Insurance written in connection with a [~~loan or other~~] credit transaction [~~of more than 10 years duration~~] is not subject to this part, but is subject to other provisions of this title~~[-]~~, if the credit transaction is:

- (i) secured by a first mortgage or deed of trust; and
- (ii) made to finance the purchase of real property or the construction of a dwelling thereon, or to refinance a prior credit transaction made for such a purpose.

(b) Isolated transactions on the part of an insurer that are not related to an agreement or plan for insuring debtors of the creditor are not subject to this part.

Section 33. Section 31A-22-1902 is amended to read:

31A-22-1902. Definitions.

As used in this part:

(1) "Administrator" means the same as that term is defined in Section 67-4a-102.

(2) "Asymmetric conduct" means an insurer's use of the death master file or other similar database before July 1, 2015, in connection with searching for information regarding whether annuitants under the insurer's annuities might be deceased, but not in connection with whether the insureds under the insurer's policies might be deceased.

(3) (a) "Contract" means an annuity contract.

(b) "Contract" does not include an annuity used to fund an employment-based retirement plan or program when:

- (i) the insurer does not perform the record keeping services; or
- (ii) the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants.

(4) "Death master file" means the United States Social Security Administration's Death Master File or another database or service that is at least as comprehensive as the United States Social Security Administration's Death Master File for determining that a person has reportedly died.

(5) "Death master file match" means a search of a death master file that results in a match of the Social Security number, or the name and date of birth of an insured, annuity owner, or retained asset account holder.

~~[(6) "Knowledge of death" means:]~~

~~[(a) receipt of an original or valid copy of a certified death certificate; or]~~

~~[(b) a death master file match validated by the insurer in accordance with Subsection 31A-22-1903(1)(a).]~~

~~[(7)]~~ (6) (a) "Policy" means a policy or certificate of life insurance that provides a death benefit.

(b) "Policy" does not include:

(i) a policy or certificate of life insurance that provides a death benefit under an employee benefit plan:

(A) subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1002, as periodically amended; or

(B) under ~~[any]~~ a federal employee benefit program;

(ii) a policy or certificate of life insurance that is used to fund a preneed funeral contract or prearrangement;

(iii) a policy or certificate of credit life or accidental death insurance; or

(iv) a policy issued to a group master policyholder for which the insurer does not provide record keeping services.

~~[(8)]~~ (7) "Record keeping services" means those circumstances under which the insurer agrees with a group policy or contract customer to be responsible for obtaining, maintaining, and administering, in its own or its agents' systems, information about each individual insured under an insured's group insurance contract, or a line of coverage under the group insurance contract, at least the following information:

(a) social security number, or name and date of birth;

(b) beneficiary designation information;

- (c) coverage eligibility;
- (d) benefit amount; and
- (e) premium payment status.

[49] (8) "Retained asset account" means ~~any~~ a mechanism whereby the settlement of proceeds payable under a policy or contract is accomplished by the insurer or an entity acting on behalf of the insurer by depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer or its agent, pursuant to a supplementary contract not involving annuity benefits other than death benefits.

Section 34. Section 31A-23a-111 is amended to read:

31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.

(1) A license type issued under this chapter remains in force until:

- (a) revoked or suspended under Subsection (5);
- (b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;
- (c) the licensee dies or is adjudicated incompetent as defined under:
 - (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
 - (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;
- (d) lapsed under Section 31A-23a-113; or
- (e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

- (a) a lapsed license; or
- (b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.
- (3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:
 - (a) this title; or
 - (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (4) A line of authority issued under this chapter remains in force until:

(a) the qualifications pertaining to a line of authority are no longer met by the licensee; or

(b) the supporting license type:

(i) is revoked or suspended under Subsection (5);

(ii) is surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(iii) lapses under Section 31A-23a-113; or

(iv) is voluntarily surrendered; or

(c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors.

(5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

(i) revoke:

(A) a license; or

(B) a line of authority;

(ii) suspend for a specified period of 12 months or less:

(A) a license; or

(B) a line of authority;

(iii) limit in whole or in part:

(A) a license; or

(B) a line of authority; ~~or~~

(iv) deny a license application[-];

(v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or

(vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and Subsection (5)(a)(v).

(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license or line of authority under Section 31A-23a-104, 31A-23a-105, or 31A-23a-107;

(ii) violates:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance producer that transacts business in this state without a license;

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the insurance producer's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provides information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) violates an insurance law, valid rule, or valid order of another regulatory agency in any jurisdiction;

(xi) obtains or attempts to obtain a license through misrepresentation or fraud;

(xii) improperly withholds, misappropriates, or converts money or properties received in the course of doing insurance business;

(xiii) intentionally misrepresents the terms of an actual or proposed:

(A) insurance contract;

(B) application for insurance; or

(C) life settlement;

(xiv) is convicted of a felony;

(xv) admits or is found to have committed an insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere:

(A) uses fraudulent, coercive, or dishonest practices; or

(B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;

(xviii) forges another's name to:

(A) an application for insurance; or

(B) a document related to an insurance transaction;

(xix) improperly uses notes or another reference material to complete an examination for an insurance license;

(xx) knowingly accepts insurance business from an individual who is not licensed;

(xxi) fails to comply with an administrative or court order imposing a child support obligation;

(xxii) fails to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxiii) violates or permits others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or

(xxiv) engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

(6) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

(a) the licensee's license is:

(i) revoked;

(ii) suspended;

(iii) limited;

(iv) surrendered in lieu of administrative action;

(v) lapsed; or

(vi) voluntarily surrendered; and

(b) the licensee:

(i) continues to act as a licensee; or

(ii) violates the terms of the license limitation.

(7) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in another state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by another state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against that person on the basis of conduct involving:

(i) fraud;

(ii) deceit;

(iii) misrepresentation; or

(iv) a violation of an insurance law or rule.

(8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in an order or agreement described in Subsection (8)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval by the commissioner.

(9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

(10) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 35. Section 31A-23a-115 is amended to read:

31A-23a-115. Appointment of individual and agency insurance producer, limited line producer, or managing general agent -- Reports and lists.

(1) (a) An insurer shall appoint an individual or agency with whom it has a contract as an insurance producer, limited line producer, or managing general agent to act on the insurer's behalf in order for the licensee to do business for the insurer in this state.

(b) An insurer shall report to the commissioner, at intervals and in the form the commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) a new appointment; and

(ii) a termination of appointment.

(2) An insurer shall notify a producer that the producer's appointment is terminated by the insurer and of the reason for termination at an

interval and in the form the commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[~~(2)~~] (3) (a) (i) An insurer shall report to the commissioner the cause of termination of an appointment if:

(A) the reason for termination is a reason described in Subsection 31A-23a-111(5)(b); or

(B) the insurer has knowledge that the individual or agency licensee is found to have engaged in an activity described in Subsection 31A-23a-111(5)(b) by:

(I) a court;

(II) a government body; or

(III) a self-regulatory organization, which the commissioner may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(ii) The information provided to the commissioner under this Subsection [~~(2)~~] (3) is a private record under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) An insurer is immune from civil action, civil penalty, or damages if the insurer complies in good faith with this Subsection [~~(2)~~] (3) in reporting to the commissioner the cause of termination of an appointment.

(c) Notwithstanding any other provision in this section, an insurer is not immune from any action or resulting penalty imposed on the reporting insurer as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection [~~(2)~~] (3).

[~~(3)~~] (4) If an insurer appoints an agency, the insurer need not appoint, report, or pay appointment reporting fees for an individual designated on the agency's license under Section 31A-23a-302.

[~~(4)~~] (5) If an insurer has a contract with or lists a licensee in a report submitted under Subsection [~~(2)~~] (3), there is a rebuttable presumption that in placing a risk with the insurer the contracted or appointed licensee or any of the licensee's licensed employees act on behalf of the insurer.

Section 36. Section 31A-23a-203 is amended to read:

31A-23a-203. Training period requirements.

(1) A producer is eligible to become a surplus lines producer only if the producer:

(a) has passed the applicable surplus lines producer examination;

(b) has been a producer with property or casualty or both lines of authority for at least three years during the four years immediately preceding the date of application; and

(c) has paid the applicable fee under Section 31A-3-103.

(2) A person is eligible to become a consultant only if the person has acted in a capacity that would provide the person with preparation to act as an insurance consultant for a period aggregating not less than three years during the four years immediately preceding the date of application.

(3) (a) A resident producer with an accident and health line of authority may only sell long-term care insurance if the producer:

(i) initially completes a minimum of three hours of long-term care training before selling long-term care coverage; and

(ii) after completing the training required by Subsection (3)(a)(i), completes a minimum of three hours of long-term care training during each subsequent two-year licensing period.

(b) A course taken to satisfy a long-term care training requirement may be used toward satisfying a producer continuing education requirement.

(c) Long-term care training is not a continuing education requirement to renew a producer license.

(d) An insurer that issues long-term care insurance shall demonstrate to the commissioner, upon request, that a producer who is appointed by the insurer and who sells long-term care insurance coverage is in compliance with this Subsection (3).

(4) (a) A resident producer with a property line of authority may only sell flood insurance coverage under the National Flood Insurance Program if the producer completes a minimum of three hours of flood insurance training related to the National Flood Insurance Program before selling flood insurance coverage.

(b) A course taken to satisfy a flood insurance training requirement may be used toward satisfying a producer continuing education requirement.

(c) Flood insurance training is not a continuing education requirement to renew a producer license.

(d) An insurer that issues flood insurance shall demonstrate to the commissioner, upon request, that a producer who is appointed by the insurer and who sells flood insurance coverage is in compliance with this Subsection (4).

[(4)] (5) The training periods required under this section apply only to an individual applying for a license under this chapter.

Section 37. Section 31A-23a-302 is amended to read:

31A-23a-302. Agency designations.

(1) An agency shall designate an individual that has an individual producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary license

to act on the agency's behalf in order for the licensee to do business for the agency in this state.

(2) An agency shall report to the commissioner, at intervals and in the form the commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) a new designation; and

(b) a terminated designation.

(3) An agency shall notify an individual designee that the individual's designation is terminated by the agency and of the reason for termination at an interval and in the form the commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[(3)] (4) (a) An agency licensed under this chapter shall report to the commissioner the cause of termination of a designation if:

(i) the reason for termination is a reason described in Subsection 31A-23a-111(5)(b); or

(ii) the agency has knowledge that the individual licensee is found to have engaged in an activity described in Subsection 31A-23a-111(5)(b) by:

(A) a court;

(B) a government body; or

(C) a self-regulatory organization, which the commissioner may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The information provided the commissioner under Subsection [(3)] (4)(a) is a private record under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) An agency is immune from civil action, civil penalty, or damages if the agency complies in good faith with this Subsection [(3)] (4) in reporting to the commissioner the cause of termination of a designation.

(d) Notwithstanding any other provision in this section, an agency is not immune from an action or resulting penalty imposed on the reporting agency as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection [(3)] (4).

[(4)] (5) An agency licensed under this chapter may act in a capacity for which it is licensed only through an individual who is licensed under this chapter to act in the same capacity.

[(5)] (6) An agency licensed under this chapter shall designate and report to the commissioner in accordance with any rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the name of the designated responsible licensed individual who has authority to act on behalf of the agency in the matters pertaining to compliance with this title and orders of the commissioner.

[46] (7) If an agency has a contract with or designates a licensee in reports submitted under Subsection (2) or [45] (6), there is a rebuttable presumption that the contracted or designated licensee acts on behalf of the agency.

[47] (8) (a) When a license is held by an agency, both the agency itself and any individual contracted or designated under the agency license shall be considered to be the holder of the agency license for purposes of this section.

(b) If an individual contracted or designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the agency license, or assessing a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i), the commissioner may assess a forfeiture, suspend, revoke, or limit the license of, or take a combination of these actions against:

- (i) the individual;
- (ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for assessing a forfeiture, or suspending, revoking, or limiting the license; or

- (iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection [47] (8)(b)(ii).

Section 38. Section 31A-23a-407 is amended to read:

31A-23a-407. Liability for acts of title insurance producers.

(1) Subject to the other provisions in this section, a title insurer that has a contract with or appoints an individual title insurance producer or an agency title insurance producer is liable to a buyer, seller, borrower, lender, or third party that deposits money with the individual title insurance producer or agency title insurance producer for the receipt and disbursement of money deposited with the individual title insurance producer or agency title insurance producer for a transaction when a commitment for a policy of title insurance of that title insurer is ordered, issued, or distributed or a title insurance policy of that title insurer is issued, except that once a title insurer is named in an issued commitment only that title insurer is liable as a title insurer under this section.

(2) The liability of a title insurer under Subsection (1) and the liability of an individual title insurance producer or agency title insurance producer for the receipt and disbursement of money deposited with the individual title insurance producer or agency title insurance producer is limited to the amount of money received and disbursed, not to exceed the amount of proposed insurance set forth in the commitment or title insurance policy described in Subsection (1) plus 10% of the amount of the proposed insurance.

(3) The liability described in Subsection (1) does not modify, mitigate, impair, or affect the contractual obligations between an individual title insurance producer or agency title insurance producer and the title insurer.

(4) The liability of a title insurer with respect to the condition of title to the real property that is the subject of a title insurance policy or a title insurance commitment for a title insurance policy is limited to the terms, conditions, and stipulations contained in the title insurance policy or title commitment.

Section 39. Section 31A-23a-412 is amended to read:

31A-23a-412. Place of business and residence address -- Records.

(1) (a) A licensee under this chapter shall register and maintain with the commissioner:

(i) the address and the one or more telephone numbers of the licensee's principal place of business; and

(ii) a valid business email address at which the commissioner may contact the licensee.

(b) If a licensee is an individual, in addition to complying with Subsection (1)(a) the individual shall register and maintain with the commissioner the individual's residence address and telephone number.

(c) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be registered with the commissioner under this section:

- (i) an address;
- (ii) a telephone number; or
- (iii) a business email address.

(2) (a) Except as provided under Subsection (3), a licensee under this chapter or an insurer under Chapter 14, Foreign Insurers, shall keep at the principal place of business address registered under Subsection (1), separate and distinct books and records of the transactions consummated under the Utah license.

(b) The books and records described in Subsection (2)(a) shall:

- (i) be in an organized form;
- (ii) be available to the commissioner for inspection upon reasonable notice; and
- (iii) include all of the following:

(A) if the licensee is a producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary:

(I) a record of each insurance contract procured by or issued through the licensee, with the names of insurers and insureds, the amount of premium and commissions or other compensation, and the subject of the insurance;

(II) the names of any other producers, surplus lines producers, limited line producers,

consultants, managing general agents, or reinsurance intermediaries from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid; and

(III) a record of the consumer complaints forwarded to the licensee by an insurance regulator;

(B) if the licensee is a consultant, a record of each agreement outlining the work performed and the fee for the work; and

(C) any additional information which:

(I) is customary for a similar business; or

(II) may reasonably be required by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by on-line computer terminals located at the registered address.

(4) A licensee who represents only a single insurer satisfies Subsection (2) if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1) and (5).

(5) (a) The books and records maintained under Subsection (2) or Section 31A-23a-413 shall be available for the inspection of the commissioner during the business hours for a period of time after the date of the transaction as specified by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, but in no case for less than three calendar years in addition to the current calendar year [plus three years].

(b) Discarding [~~books and records~~] a book or record after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

Section 40. Section 31A-23a-501 is amended to read:

31A-23a-501. Licensee compensation.

(1) As used in this section:

(a) "Commission compensation" includes funds paid to or credited for the benefit of a licensee from:

(i) commission amounts deducted from insurance premiums on insurance sold by or placed through the licensee;

(ii) commission amounts received from an insurer or another licensee as a result of the sale or placement of insurance; or

(iii) overrides, bonuses, contingent bonuses, or contingent commissions received from an insurer or another licensee as a result of the sale or placement of insurance.

(b) (i) "Compensation from an insurer or third party administrator" means commissions, fees,

awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration:

(A) whether or not payable pursuant to a written agreement; and

(B) received from:

(I) an insurer; or

(II) a third party to the transaction for the sale or placement of insurance.

(ii) "Compensation from an insurer or third party administrator" does not mean compensation from a customer that is:

(A) a fee or pass-through costs as provided in Subsection (1)(e); or

(B) a fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner by administrative rule.

(c) (i) "Customer" means:

(A) the person signing the application or submission for insurance; or

(B) the authorized representative of the insured actually negotiating the placement of insurance with the producer.

(ii) "Customer" does not mean a person who is a participant or beneficiary of:

(A) an employee benefit plan; or

(B) a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the producer or affiliate.

(d) (i) "Noncommission compensation" includes all funds paid to or credited for the benefit of a licensee other than commission compensation.

(ii) "Noncommission compensation" does not include charges for pass-through costs incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

(e) "Pass-through costs" include:

(i) costs for copying documents to be submitted to the insurer; and

(ii) bank costs for processing cash or credit card payments.

(2) A licensee may receive from an insured or from a person purchasing an insurance policy, noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.

(a) The disclosure required by this Subsection (2) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify:

(A) the amount of any known noncommission compensation; and

(B) the type and amount, if known, of any potential and contingent noncommission compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(b) Noncommission compensation shall be:

(i) limited to actual or reasonable expenses incurred for services; and

(ii) uniformly applied to all insureds or prospective insureds in a class or classes of business or for a specific service or services.

(c) A copy of the signed disclosure required by this Subsection (2) shall be maintained by any licensee who collects or receives the noncommission compensation or any portion of the noncommission compensation.

(d) All accounting records relating to noncommission compensation shall be maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

(3) (a) A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if:

(i) the producer and the insured have agreed on the producer's noncommission compensation; and

(ii) the producer has disclosed to the insured the existence and source of any other compensation that accrues to the producer as a result of the transaction.

(b) The disclosure required by this Subsection (3) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify:

(A) the amount of any known noncommission compensation;

(B) the type and amount, if known, of any potential and contingent noncommission compensation; and

(C) the existence and source of any other compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(c) The following additional noncommission compensation is authorized:

(i) compensation received by a producer of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;

(ii) compensation received by an insurance producer who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim

adjustment, so long as the producer does not receive or is not promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;

(iii) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section 31A-23a-401; or

(iv) other compensation arrangements approved by the commissioner after a finding that they do not violate Section 31A-23a-401 and are not harmful to the public.

(d) Subject to Section 31A-23a-402.5, a producer for the insured may receive compensation from an insured through an insurer, for the negotiation and sale of a health benefit plan, if there is a separate written agreement between the insured and the licensee for the compensation. An insurer who passes through the compensation from the insured to the licensee under this Subsection (3)(d) is not providing direct or indirect compensation or commission compensation to the licensee.

(4) (a) For purposes of this Subsection (4):

(i) "Large customer" means an employer who, with respect to a calendar year and to a plan year:

(A) employed an average of at least 100 eligible employees on each business day during the preceding calendar year; and

(B) employs at least two employees on the first day of the plan year.

(ii) "Producer" includes:

(A) a producer;

(B) an affiliate of a producer; or

(C) a consultant.

(b) A producer may not accept or receive any compensation from an insurer or third party administrator for the initial placement of a health benefit plan, other than a hospital confinement indemnity policy, unless prior to a large customer's initial purchase of the health benefit plan the producer discloses in writing to the large customer that the producer will receive compensation from the insurer or third party administrator for the placement of insurance, including the amount or type of compensation known to the producer at the time of the disclosure.

(c) A producer shall:

(i) obtain the large customer's signed acknowledgment that the disclosure under Subsection (4)(b) was made to the large customer; or

(ii) (A) sign a statement that the disclosure required by Subsection (4)(b) was made to the large customer; and

(B) keep the signed statement on file in the producer's office while the health benefit plan placed with the large customer is in force.

(d) A licensee who collects or receives any part of the compensation from an insurer or third party administrator in a manner that facilitates an audit

shall, while the health benefit plan placed with the large customer is in force, maintain a copy of:

(i) the signed acknowledgment described in Subsection (4)(c)(i); or

(ii) the signed statement described in Subsection (4)(c)(ii).

(e) Subsection (4)(c) does not apply to:

(i) a person licensed as a producer who acts only as an intermediary between an insurer and the customer's producer, including a managing general agent; or

(ii) the placement of insurance in a secondary or residual market.

(f) (i) A producer shall provide to a large customer listed in this Subsection (4)(f) an annual accounting, as defined by rule made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of all amounts the producer receives in commission compensation from an insurer or third party administrator as a result of the sale or placement of a health benefit plan to a large customer that is:

(A) the state;

(B) a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including the State Board of Education and its instrumentalities, an institution of higher education and its branches, a school district and its instrumentalities, a vocational and technical school, and an entity arising out of a consolidation agreement between entities described under this Subsection (4)(f)(i)(B);

(C) a county, city, town, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, an entity created by an interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or any other governmental entity designated in statute as a political subdivision of the state; or

(D) a quasi-public corporation, that has the same meaning as defined in Section 63E-1-102.

(ii) The department shall pattern the annual accounting required by this Subsection (4)(f) on the insurance related information on Internal Revenue Service Form 5500 and its relevant attachments.

(g) At the request of the department, a producer shall provide the department a copy of:

(i) a disclosure required by this Subsection (4); or

(ii) an Internal Revenue Service Form 5500 and its relevant attachments.

(5) This section does not alter the right of any licensee to recover from an insured the amount of any premium due for insurance effected by or

through that licensee or to charge a reasonable rate of interest upon past-due accounts.

(6) This section does not apply to bail bond producers or bail enforcement agents as defined in Section 31A-35-102.

(7) A licensee may not receive noncommission compensation from an insurer, insured, or enrollee for providing a service or engaging in an act that is required to be provided or performed in order to receive commission compensation, except for the surplus lines transactions that do not receive commissions.

Section 41. Section 31A-23b-102 is amended to read:

31A-23b-102. Definitions.

As used in this chapter:

~~[(1) "Compensation" is as defined in:]~~

~~[(a) Subsections 31A-23a-501(1)(a), (b), and (d); and]~~

~~[(b) PPACA.]~~

~~[(2)] (1) "Enroll" and "enrollment" mean to:~~

(a) (i) obtain personally identifiable information about an individual; and

(ii) inform an individual about accident and health insurance plans or public programs offered on an exchange;

(b) solicit insurance; or

(c) submit to the exchange:

(i) personally identifiable information about an individual; and

(ii) an individual's selection of a particular accident and health insurance plan or public program offered on the exchange.

~~[(3)] (2) (a) "Exchange" means an online marketplace that is certified by the United States Department of Health and Human Services as either a state-based small employer exchange or a federally facilitated individual exchange under PPACA.~~

(b) "Exchange" does not include an online marketplace for the purchase of health insurance if the online marketplace is not a certified exchange in accordance with Subsection ~~[(3)] (2)(a)~~.

~~[(4)] (3) "Navigator":~~

(a) means a person who facilitates enrollment in an exchange by offering to assist, or who advertises any services to assist, with:

(i) the selection of and enrollment in a qualified health plan or a public program offered on an exchange; or

(ii) applying for premium subsidies through an exchange; and

(b) includes a person who is an in-person assister or a certified application counselor as described in federal regulations or guidance issued under PPACA.

[45] (4) "Personally identifiable information" is as defined in 45 C.F.R. Sec. 155.260.

[46] (5) "Public programs" means the state Medicaid program in Title 26, Chapter 18, Medical Assistance Act, and Chapter 40, Utah Children's Health Insurance Act.

[47] (6) "Resident" is as defined by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[48] (7) "Solicit" is as defined in Section 31A-23a-102.

Section 42. Section 31A-23b-202.5 is amended to read:

31A-23b-202.5. License types.

(1) A license issued under this chapter shall be issued under the license types described in Subsection (2).

(2) A license type under this chapter shall be a navigator line of authority or a certified application counselor line of authority. A license type is intended to describe the matters to be considered under any education, examination, and training required of an applicant under this chapter.

(3) (a) A navigator line of authority includes the enrollment process as described in Subsection 31A-23b-102[4](3)(a).

(b) (i) A certified application counselor line of authority is limited to providing information and assistance to individuals and employees about public programs and premium subsidies available through the exchange.

(ii) A certified application counselor line of authority does not allow the certified application counselor to assist a person with the selection of or enrollment in a qualified health plan offered on an exchange.

Section 43. Section 31A-23b-209 is amended to read:

31A-23b-209. Agency designations.

(1) An organization shall be licensed as a navigator agency if the organization acts as a navigator.

(2) A navigator agency that does business in the state shall designate an individual who is licensed under this chapter to act on the agency's behalf.

(3) A navigator agency shall report to the commissioner, at intervals and in the form the commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (a) a new designation under Subsection (2); and
- (b) a terminated designation under Subsection (2).

(4) A navigator agency shall notify an individual designee that the individual's designation is terminated by the agency and of the reason for termination at an interval and in the form the

commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[4] (5) (a) A navigator agency licensed under this chapter shall report to the commissioner the cause of termination of a designation if:

(i) the reason for termination is a reason described in Subsection 31A-23b-401(4)(b); or

(ii) the navigator agency has knowledge that the individual licensee engaged in an activity described in Subsection 31A-23b-401(4)(b) by:

- (A) a court;
- (B) a government body; or

(C) a self-regulatory organization, which the commissioner may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The information provided to the commissioner under Subsection [4] (5)(a) is a private record under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) A navigator agency is immune from civil action, civil penalty, or damages if the agency complies in good faith with this Subsection [4] (5) by reporting to the commissioner the cause of termination of a designation.

(d) A navigator agency is not immune from an action or resulting penalty imposed on the reporting agency as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection [4] (5).

[45] (6) A navigator agency licensed under this chapter may act in a capacity for which it is licensed only through an individual who is licensed under this chapter to act in the same capacity.

[46] (7) A navigator agency licensed under this chapter shall designate and report to the commissioner, in accordance with any rule made by the commissioner pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the name of the designated responsible licensed individual who has authority to act on behalf of the navigator agency in the matters pertaining to compliance with this title and orders of the commissioner.

[47] (8) If a navigator agency has a contract with or designates a licensee in reports submitted under Subsection (3) or [46] (7), there is a rebuttable presumption that the contracted or designated licensee acts on behalf of the navigator agency.

[48] (9) (a) When a license is held by a navigator agency, both the navigator agency itself and any individual contracted or designated under the navigator agency license are considered the holders of the navigator agency license for purposes of this section.

(b) If an individual contracted or designated under the navigator agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the navigator

agency license, or assessing a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i), the commissioner may assess a forfeiture, suspend, revoke, or limit the license of, or take a combination of these actions against:

- (i) the individual;
- (ii) the navigator agency, if the navigator agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license, or assessing a forfeiture; or

- (iii) (A) the individual; and

(B) the navigator agency, if the agency meets the requirements of Subsection [(8)] (9)(b)(ii).

Section 44. Section 31A-23b-210 is amended to read:

31A-23b-210. Place of business and residence address -- Records.

(1) (a) A licensee under this chapter shall register and maintain with the commissioner:

(i) the address and the one or more telephone numbers of the licensee's principal place of business; and

(ii) a valid business email address at which the commissioner may contact the licensee.

(b) If a licensee is an individual, in addition to complying with Subsection (1)(a), the individual shall register and maintain with the commissioner the individual's residence address and telephone number.

(c) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be registered with the commissioner under this section:

- (i) an address;
- (ii) a telephone number; or
- (iii) a business email address.

(2) Except as provided under Subsection (3), a licensee under this chapter shall keep at the principal place of business address registered under Subsection (1), separate and distinct books and records of the transactions consummated under the Utah license.

(3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by online computer terminals located at the registered address.

(4) (a) The books and records maintained under Subsection (2) shall be available for the inspection by the commissioner during the business hours for a period of time after the date of the transaction as specified by the commissioner by rule, but in no case for less than the current calendar year plus three years.

(b) Discarding books and records after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

Section 45. Section 31A-23b-401 is amended to read:

31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.

(1) A license as a navigator under this chapter remains in force until:

- (a) revoked or suspended under Subsection (4);
- (b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;
- (c) the licensee dies or is adjudicated incompetent as defined under:

(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;

(d) lapsed under this section; or

(e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

(a) a lapsed license; or

(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.

(3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

(a) this title; or

(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

- (i) revoke a license;
- (ii) suspend a license for a specified period of 12 months or less;
- (iii) limit a license in whole or in part; [or]
- (iv) deny a license application[-];

(v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or

(vi) take a combination of actions under Subsections (4)(a)(i) through (iv) and Subsection (4)(a)(v).

(b) The commissioner may take an action described in Subsection (4)(a) if the commissioner finds that the licensee:

(i) is unqualified for a license under Section 31A-23b-204, 31A-23b-205, or 31A-23b-206;

(ii) violated:

(A) an insurance statute;

(B) a rule that is valid under Subsection 31A-2-201(3); or

(C) an order that is valid under Subsection 31A-2-201(4);

(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;

(iv) failed to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) refused:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(vi) had an officer who refused to:

(A) give information with respect to the navigator's affairs; or

(B) perform any other legal obligation as to an examination;

(vii) provided information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(viii) violated an insurance law, valid rule, or valid order of another regulatory agency in any jurisdiction;

(ix) obtained or attempted to obtain a license through misrepresentation or fraud;

(x) improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;

(xi) intentionally misrepresented the terms of an actual or proposed:

(A) insurance contract;

(B) application for insurance; or

(C) application for public program;

(xii) is convicted of a felony;

(xiii) admitted or is found to have committed an insurance unfair trade practice or fraud;

(xiv) in the conduct of business in this state or elsewhere:

(A) used fraudulent, coercive, or dishonest practices; or

(B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

(xv) had an insurance license, navigator license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;

(xvi) forged another's name to:

(A) an application for insurance;

(B) a document related to an insurance transaction;

(C) a document related to an application for a public program; or

(D) a document related to an application for premium subsidies;

(xvii) improperly used notes or another reference material to complete an examination for a license;

(xviii) knowingly accepted insurance business from an individual who is not licensed;

(xix) failed to comply with an administrative or court order imposing a child support obligation;

(xx) failed to:

(A) pay state income tax; or

(B) comply with an administrative or court order directing payment of state income tax;

(xxi) violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or

(xxii) engaged in a method or practice in the conduct of business that endangered the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

(5) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

- (a) the licensee's license is:
 - (i) revoked;
 - (ii) suspended;
 - (iii) surrendered in lieu of administrative action;
 - (iv) lapsed; or
 - (v) voluntarily surrendered; and
- (b) the licensee:
 - (i) continues to act as a licensee; or
 - (ii) violates the terms of the license limitation.

(6) A licensee under this chapter shall immediately report to the commissioner:

- (a) a revocation, suspension, or limitation of the person's license in another state, the District of Columbia, or a territory of the United States;
- (b) the imposition of a disciplinary sanction imposed on that person by another state, the District of Columbia, or a territory of the United States; or
- (c) a judgment or injunction entered against that person on the basis of conduct involving:
 - (i) fraud;
 - (ii) deceit;
 - (iii) misrepresentation; or
 - (iv) a violation of an insurance law or rule.

(7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.

(b) If no time is specified in an order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval of the commissioner.

(8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court.

(9) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 46. Section 31A-26-209 is amended to read:

31A-26-209. Form and contents of license.

(1) Licenses issued under this chapter shall be in the form the commissioner prescribes and shall set forth:

- (a) the name, address, and the one or more telephone ~~[number]~~ numbers of the licensee;
- (b) the license classifications under Section 31A-26-204;
- (c) the date of license issuance; and

(d) any other information the commissioner considers advisable.

(2) An adjuster doing business under any other name than the adjuster's legal name shall notify the commissioner prior to using the assumed name in this state.

(3) (a) An organization shall be licensed as an agency if the organization acts as:

- (i) an independent adjuster; or
- (ii) a public adjuster.

(b) The agency license issued under Subsection (3)(a) shall set forth the names of all natural persons licensed under this chapter who are authorized to act in those capacities for the organization in this state.

Section 47. Section 31A-26-210 is amended to read:

31A-26-210. Reports from organizations licensed as adjusters.

(1) An organization licensed as an adjuster under Section 31A-26-203 shall designate an individual who has an individual adjuster license to act on the organization's behalf in order for the licensee to do business for the organization in this state.

(2) An organization licensed under this chapter shall report to the commissioner, at intervals and in the form the commissioner establishes by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (a) a new designation; and
- (b) a terminated designation.

(3) An organization licensed under this chapter shall notify an individual licensee that the individual's designation has been terminated by the organization and of the reason for the termination at an interval and in the form the commissioner establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(3)]~~ (4) (a) An organization licensed under this chapter shall report to the commissioner the cause of termination of a designation if:

- (i) the reason for termination is a reason described in Subsection 31A-26-213(5)(b); or
- (ii) the organization has knowledge that the individual licensee is found to have engaged in an activity described in Subsection 31A-26-213(5)(b) by:

- (A) a court;
- (B) a government body; or
- (C) a self-regulatory organization, which the commissioner may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The information provided the commissioner under Subsection ~~[(3)]~~ (4)(a) is a private record under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) An organization is immune from civil action, civil penalty, or damages if the organization complies in good faith with this Subsection [(3)] (4) in reporting to the commissioner the cause of termination of a designation.

(d) Notwithstanding any other provision in this section, an organization is not immune from an action or resulting penalty imposed on the reporting organization as a result of a proceeding brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection [(3)] (4).

[(4)] (5) An organization licensed under this chapter may act in a capacity for which it is licensed only through an individual who is licensed under this chapter to act in the same capacity.

[(5)] (6) An organization licensed under this chapter shall designate and report promptly to the commissioner the name of the designated responsible licensed individual who has authority to act on behalf of the organization in all matters pertaining to compliance with this title and orders of the commissioner.

[(6)] (7) If an agency has a contract with or designates a licensee in a report submitted under Subsection (2) or [(5)] (6), there is a rebuttable presumption that the contracted or designated licensee acts on behalf of the agency.

[(7)] (8) (a) When a license is held by an organization, both the organization itself and an individual contracted or designated under the license shall, for purposes of this section, be considered to be the holders of the organization license.

(b) If an individual designated under the organization license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the organization license, the commissioner may assess a forfeiture against, suspend, revoke, or limit the license of, or take a combination of these actions against:

- (i) that individual;
- (ii) the organization, if the organization:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for assessing a forfeiture or suspending, revoking, or limiting the license; or

- (iii) (A) the individual; and

(B) the organization, if the organization meets the requirements of Subsection [(7)] (8)(b)(ii).

Section 48. Section 31A-26-213 is amended to read:

31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise terminating a license -- Forfeiture -- Rulemaking for renewal or reinstatement.

(1) A license type issued under this chapter remains in force until:

- (a) revoked or suspended under Subsection (5);
- (b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;

(c) the licensee dies or is adjudicated incompetent as defined under:

- (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;
- (d) lapsed under Section 31A-26-214.5; or
- (e) voluntarily surrendered.

(2) The following may be reinstated within one year after the day on which the license is no longer in force:

- (a) a lapsed license; or
- (b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which it is voluntarily surrendered.

(3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

- (a) this title; or
- (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) A license classification issued under this chapter remains in force until:

- (a) the qualifications pertaining to a license classification are no longer met by the licensee; or
- (b) the supporting license type:

(i) is revoked or suspended under Subsection (5); or

(ii) is surrendered to the commissioner and accepted by the commissioner in lieu of administrative action.

(5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

- (i) revoke:
 - (A) a license; or
 - (B) a license classification;

(ii) suspend for a specified period of 12 months or less:

- (A) a license; or
- (B) a license classification;

- (iii) limit in whole or in part:
 - (A) a license; or
 - (B) a license classification; [øø]
- (iv) deny a license application[-];
- (v) assess a forfeiture under Subsection 31A-2-308(1)(b)(i) or (1)(c)(i); or
- (vi) take a combination of actions under Subsections (5)(a)(i) through (iv) and Subsection (5)(a)(v).
- (b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:
 - (i) is unqualified for a license or license classification under Section 31A-26-202, 31A-26-203, 31A-26-204, or 31A-26-205;
 - (ii) has violated:
 - (A) an insurance statute;
 - (B) a rule that is valid under Subsection 31A-2-201(3); or
 - (C) an order that is valid under Subsection 31A-2-201(4);
 - (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;
 - (iv) fails to pay a final judgment rendered against the person in this state within 60 days after the judgment became final;
 - (v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;
 - (vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance adjuster that transacts business in this state without a license;
 - (vii) refuses:
 - (A) to be examined; or
 - (B) to produce its accounts, records, and files for examination;
 - (viii) has an officer who refuses to:
 - (A) give information with respect to the insurance adjuster's affairs; or
 - (B) perform any other legal obligation as to an examination;
 - (ix) provides information in the license application that is:
 - (A) incorrect;
 - (B) misleading;
 - (C) incomplete; or
 - (D) materially untrue;

- (x) has violated an insurance law, valid rule, or valid order of another regulatory agency in any jurisdiction;
- (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- (xii) has improperly withheld, misappropriated, or converted money or properties received in the course of doing insurance business;
- (xiii) has intentionally misrepresented the terms of an actual or proposed:
 - (A) insurance contract; or
 - (B) application for insurance;
- (xiv) has been convicted of a felony;
- (xv) has admitted or been found to have committed an insurance unfair trade practice or fraud;
- (xvi) in the conduct of business in this state or elsewhere has:
 - (A) used fraudulent, coercive, or dishonest practices; or
 - (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
- (xviii) has forged another's name to:
 - (A) an application for insurance; or
 - (B) a document related to an insurance transaction;
- (xix) has improperly used notes or any other reference material to complete an examination for an insurance license;
- (xx) has knowingly accepted insurance business from an individual who is not licensed;
- (xxi) has failed to comply with an administrative or court order imposing a child support obligation;
- (xxii) has failed to:
 - (A) pay state income tax; or
 - (B) comply with an administrative or court order directing payment of state income tax;
- (xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or
- (xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.
- (c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.
- (d) If an individual designated under the agency license commits an act or fails to perform a duty that

is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

- (i) the individual;
- (ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participated in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

- (iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

(6) A licensee under this chapter is subject to the penalties for conducting an insurance business without a license if:

- (a) the licensee's license is:

- (i) revoked;
- (ii) suspended;
- (iii) limited;
- (iv) surrendered in lieu of administrative action;
- (v) lapsed; or
- (vi) voluntarily surrendered; and

- (b) the licensee:

- (i) continues to act as a licensee; or
- (ii) violates the terms of the license limitation.

(7) A licensee under this chapter shall immediately report to the commissioner:

(a) a revocation, suspension, or limitation of the person's license in any other state, the District of Columbia, or a territory of the United States;

(b) the imposition of a disciplinary sanction imposed on that person by any other state, the District of Columbia, or a territory of the United States; or

(c) a judgment or injunction entered against that person on the basis of conduct involving:

- (i) fraud;
- (ii) deceit;
- (iii) misrepresentation; or
- (iv) a violation of an insurance law or rule.

(8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a license in lieu of administrative action may specify a time not to exceed five years within which the former licensee may not apply for a new license.

(b) If no time is specified in the order or agreement described in Subsection (8)(a), the former licensee may not apply for a new license for five years without the express approval of the commissioner.

(9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

(10) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 49. Section 31A-26-312 is enacted to read:

31A-26-312. Prohibited conduct.

(1) An independent adjuster or public adjuster may not:

(a) participate directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the independent adjuster or public adjuster;

(b) engage in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting remuneration from, or having a financial interest in, or deriving any direct or indirect financial benefit from, a salvage firm, repair firm, construction firm, or other firm that obtains business in connection with a claim that the independent adjuster or public adjuster has a contract or agreement to adjust;

(c) subject to Subsection (2), directly or indirectly solicit employment for an attorney or enter into a contract with an insured for the primary purpose of referring an insured to an attorney and without actually performing the services customarily provided by an independent adjuster or public adjuster;

(d) act on behalf of an attorney in having an insured sign an attorney representation agreement; or

(e) accept a fee, commission, or other valuable consideration of any nature, regardless of form or amount, in exchange for the referral by an independent adjuster or public adjuster of an insured to a third-party person, including an attorney, appraiser, umpire, construction company, contractor, repair firm, or salvage company.

(2) Subsection (1)(c) may not be construed to prohibit an independent adjuster or public adjuster from recommending a specific attorney to an insured.

(3) An independent adjuster or public adjuster who violates this section is subject to Section 31A-2-308.

Section 50. Section 31A-26-401 is enacted to read:

Part 4. Public Adjusters

31A-26-401. Required contracts.

(1) A public adjuster may not, directly or indirectly, act within this state as a public adjuster without having first entered into a contract, in writing, on a form filed with the department in accordance with Section 31A-21-201, executed in duplicate by the public adjuster and the insured or

the insured's duly authorized representative. A public adjuster may not use a form of contract that is not filed with the department.

(2) A contract described in Subsection (1) is subject to recision in accordance with Section 31A-26-311.

(3) (a) A contract described in Subsection (1) shall include a prominently displayed notice in 12-point boldface type that states "WE REPRESENT THE INSURED ONLY."

(b) The commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may require additional prominently displayed notice requirements in the contract as the commissioner considers necessary.

(4) A public adjuster shall keep at the public adjuster's principal place of business a copy of each contract entered into in this state for the current year plus three years, and each contract shall be available at all times for inspection, without notice, by the commissioner or the commissioner's authorized representative.

(5) A public adjuster may not enter into a contract with an insured and collect compensation as provided in the contract without actually performing the services customarily provided by a licensed public adjuster for the insured.

Section 51. Section 31A-26-402 is enacted to read:

31A-26-402. Compensation.

(1) Except as provided by Subsection (2), a public adjuster may receive compensation for service provided under this chapter consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation.

(2) (a) A public adjuster may not receive a compensation consisting of a percentage of the total amount paid by an insurer to resolve a claim on a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy.

(b) A public adjuster is entitled to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim that is subject to this Subsection (2) and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(3) Except for the payment of compensation by the insured, a person paying proceeds of a policy of insurance or making a payment affecting an insured's rights under a policy of insurance shall:

(a) include the insured as a payee on the payment draft or check; and

(b) require the written signature and endorsement of the insured on the payment draft or check.

(4) A public adjuster may not accept any payment that violates this section notwithstanding whether the insured gives authorization to the public adjuster. A public adjuster may not sign and endorse any payment draft or check on behalf of an insured.

Section 52. Section 31A-26-403 is enacted to read:

31A-26-403. Rulemaking.

The commissioner may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(1) addressing the forms required by this part;

(2) providing for notice requirements in contracts; and

(3) establishing the scope of a contract a public adjuster enters into with an insured that the public adjuster represents.

Section 53. Section 31A-30-106 is amended to read:

31A-30-106. Individual premiums -- Rating restrictions -- Disclosure.

(1) Premium rates for health benefit plans for individuals under this chapter are subject to this section.

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) (i) For a class of business, the premium rates charged during a rating period to covered insureds with similar case characteristics for the same or similar coverage, or the rates that could be charged to the individual under the rating system for that class of business, may not vary from the index rate by more than 30% of the index rate except as provided under Subsection (1)(b)(ii).

(ii) A carrier that offers individual and small employer health benefit plans may use the small employer index rates to establish the rate limitations for individual policies, even if some individual policies are rated below the small employer base rate.

(c) The percentage increase in the premium rate charged to a covered insured for a new rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the covered individuals as determined from the rate manual for the class of business of the carrier offering an individual health benefit plan; and

(iii) any adjustment due to change in coverage or change in the case characteristics of the covered

insured as determined from the rate manual for the class of business of the carrier offering an individual health benefit plan.

(d) (i) A carrier offering an individual health benefit plan shall apply rating factors, including case characteristics, consistently with respect to all covered insureds in a class of business.

(ii) Rating factors shall produce premiums for identical individuals that:

(A) differ only by the amounts attributable to plan design; and

(B) do not reflect differences due to the nature of the individuals assumed to select particular health benefit ~~[products]~~ plans.

(iii) A carrier offering an individual health benefit plan shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(e) For the purposes of this Subsection (1), a health benefit plan that uses a restricted network provision may not be considered similar coverage to a health benefit plan that does not use a restricted network provision, provided that use of the restricted network provision results in substantial difference in claims costs.

(f) A carrier offering a health benefit plan to an individual may not, without prior approval of the commissioner, use case characteristics other than:

- (i) age;
- (ii) gender;
- (iii) geographic area; and
- (iv) family composition.

(g) (i) The commissioner shall establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(A) implement this chapter;

(B) assure that rating practices used by carriers who offer health benefit plans to individuals are consistent with the purposes of this chapter; and

(C) promote transparency of rating practices of health benefit plans, except that a carrier may not be required to disclose proprietary information.

(ii) The rules described in Subsection (1)(g)(i) may include rules that:

(A) assure that differences in rates charged for health benefit ~~[products]~~ plans by carriers who offer health benefit plans to individuals are reasonable and reflect objective differences in plan design, not including differences due to the nature of the individuals assumed to select particular health benefit ~~[products]~~ plans; and

(B) prescribe the manner in which case characteristics may be used by carriers who offer health benefit plans to individuals.

(h) The commissioner shall revise rules issued for Sections 31A-22-602 and 31A-22-605 regarding individual accident and health policy rates to allow rating in accordance with this section.

(2) For purposes of Subsection (1)(c)(i), if a health benefit ~~[product]~~ plan is a health benefit ~~[product]~~ plan into which the covered carrier is no longer enrolling new covered insureds, the covered carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit product into which the covered carrier is actively enrolling new covered insureds.

(3) (a) A covered carrier may not transfer a covered insured involuntarily into or out of a class of business.

(b) A covered carrier may not offer to transfer a covered insured into or out of a class of business unless the offer is made to transfer all covered insureds in the class of business without regard to:

- (i) case characteristics;
- (ii) claim experience;
- (iii) health status; or
- (iv) duration of coverage since issue.

(4) (a) A carrier who offers a health benefit plan to an individual shall maintain at the carrier's principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that the carrier's rating methods and practices are:

- (i) based upon commonly accepted actuarial assumptions; and
- (ii) in accordance with sound actuarial principles.

(b) (i) A carrier subject to this section shall file with the commissioner, on or before April 1 of each year, in a form, manner, and containing such information as prescribed by the commissioner, an actuarial certification certifying that:

(A) the carrier is in compliance with this chapter; and

(B) the rating methods of the carrier are actuarially sound.

(ii) A copy of the certification required by Subsection (4)(b)(i) shall be retained by the carrier at the carrier's principal place of business.

(c) A carrier shall make the information and documentation described in this Subsection (4) available to the commissioner upon request.

(d) Except as provided in Subsection (1)(g) or required by PPACA, a record submitted to the commissioner under this section shall be maintained by the commissioner as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 54. Section 31A-30-106.1 is amended to read:

31A-30-106.1. Small employer premiums -- Rating restrictions -- Disclosure.

(1) Premium rates for small employer health benefit plans under this chapter are subject to this section.

(2) (a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For a class of business, the premium rates charged during a rating period to covered insureds with similar case characteristics for the same or similar coverage, or the rates that could be charged to an employer group under the rating system for that class of business, may not vary from the index rate by more than 30% of the index rate, except when catastrophic mental health coverage is selected as provided in Subsection 31A-22-625(2)(d).

(3) The percentage increase in the premium rate charged to a covered insured for a new rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of the following:

(a) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period;

(b) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the covered individuals as determined from the small employer carrier's rate manual for the class of business, except when catastrophic mental health coverage is selected as provided in Subsection 31A-22-625(2)(d); and

(c) any adjustment due to change in coverage or change in the case characteristics of the covered insured as determined for the class of business from the small employer carrier's rate manual.

(4) (a) Adjustments in rates for claims experience, health status, and duration from issue may not be charged to individual employees or dependents.

(b) Rating adjustments and factors, including case characteristics, shall be applied uniformly and consistently to the rates charged for all employees and dependents of the small employer.

(c) Rating factors shall produce premiums for identical groups that:

(i) differ only by the amounts attributable to plan design; and

(ii) do not reflect differences due to the nature of the groups assumed to select particular health benefit ~~products~~ plans.

(d) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(5) A health benefit plan that uses a restricted network provision may not be considered similar coverage to a health benefit plan that does not use a restricted network provision, provided that use of the restricted network provision results in substantial difference in claims costs.

(6) The small employer carrier may not use case characteristics other than the following:

(a) age of the employee, in accordance with Subsection (7);

(b) geographic area;

(c) family composition in accordance with Subsection (9);

(d) for plans renewed or effective on or after July 1, 2011, gender of the employee and spouse;

(e) for an individual age 65 and older, whether the employer policy is primary or secondary to Medicare; and

(f) a wellness program, in accordance with Subsection (12).

(7) Age limited to:

(a) the following age bands:

(i) less than 20;

(ii) 20-24;

(iii) 25-29;

(iv) 30-34;

(v) 35-39;

(vi) 40-44;

(vii) 45-49;

(viii) 50-54;

(ix) 55-59;

(x) 60-64; and

(xi) 65 and above; and

(b) a standard slope ratio range for each age band, applied to each family composition tier rating structure under Subsection (9)(b):

(i) as developed by the commissioner by administrative rule; and

(ii) not to exceed an overall ratio as provided in Subsection (8).

(8) (a) The overall ratio permitted in Subsection (7)(b)(ii) may not exceed:

(i) 5:1 for plans renewed or effective before January 1, 2012; and

(ii) 6:1 for plans renewed or effective on or after January 1, 2012; and

(b) the age slope ratios for each age band may not overlap.

(9) Except as provided in Subsection 31A-30-207(2), family composition is limited to:

(a) an overall ratio of:

(i) 5:1 or less for plans renewed or effective before January 1, 2012; and

(ii) 6:1 or less for plans renewed or effective on or after January 1, 2012; and

(b) a tier rating structure that includes:

- (i) four tiers that include:
- (A) employee only;
 - (B) employee plus spouse;
 - (C) employee plus a child or children; and
 - (D) a family, consisting of an employee plus spouse, and a child or children;
- (ii) for plans renewed or effective on or after January 1, 2012, five tiers that include:
- (A) employee only;
 - (B) employee plus spouse;
 - (C) employee plus one child;
 - (D) employee plus two or more children; and
 - (E) employee plus spouse plus one or more children; or
- (iii) for plans renewed or effective on or after January 1, 2012, six tiers that include:
- (A) employee only;
 - (B) employee plus spouse;
 - (C) employee plus one child;
 - (D) employee plus two or more children;
 - (E) employee plus spouse plus one child; and
 - (F) employee plus spouse plus two or more children.
- (10) If a health benefit plan is a health benefit plan into which the small employer carrier is no longer enrolling new covered insureds, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit ~~[product]~~ plan into which the small employer carrier is actively enrolling new covered insureds.
- (11) (a) A covered carrier may not transfer a covered insured involuntarily into or out of a class of business.
- (b) A covered carrier may not offer to transfer a covered insured into or out of a class of business unless the offer is made to transfer all covered insureds in the class of business without regard to:
- (i) case characteristics;
 - (ii) claim experience;
 - (iii) health status; or
 - (iv) duration of coverage since issue.
- (12) Notwithstanding Subsection (4)(b), a small employer carrier may:
- (a) offer a wellness program to a small employer group if:
 - (i) the premium discount to the employer for the wellness program does not exceed 20% of the premium for the small employer group; and

- (ii) the carrier offers the wellness program discount uniformly across all small employer groups;
 - (b) offer a premium discount as part of a wellness program to individual employees in a small employer group:
 - (i) to the extent allowed by federal law; and
 - (ii) if the employee discount based on the wellness program is offered uniformly across all small employer groups; and
 - (c) offer a combination of premium discounts for the employer and the employee, based on a wellness program, if:
 - (i) the employer discount complies with Subsection (12)(a); and
 - (ii) the employee discount complies with Subsection (12)(b).
- (13) (a) ~~[Each]~~ A small employer carrier shall maintain at the small employer carrier's principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that the small employer carrier's rating methods and practices are:
- (i) based upon commonly accepted actuarial assumptions; and
 - (ii) in accordance with sound actuarial principles.
- (b) (i) ~~[Each]~~ A small employer carrier shall file with the commissioner on or before April 1 of each year, in a form and manner and containing information as prescribed by the commissioner, an actuarial certification certifying that:
- (A) the small employer carrier is in compliance with this chapter; and
 - (B) the rating methods of the small employer carrier are actuarially sound.
- (ii) A copy of the certification required by Subsection (13)(b)(i) shall be retained by the small employer carrier at the small employer carrier's principal place of business.
- (c) A small employer carrier shall make the information and documentation described in this Subsection (13) available to the commissioner upon request.
- (14) (a) The commissioner shall establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
- (i) implement this chapter; and
 - (ii) assure that rating practices used by small employer carriers under this section and carriers for individual plans under Section 31A-30-106 are consistent with the purposes of this chapter.
- (b) The rules may:
- (i) assure that differences in rates charged for health benefit plans by carriers are reasonable and reflect objective differences in plan design, not

including differences due to the nature of the groups or individuals assumed to select particular health benefit plans; and

(ii) prescribe the manner in which case characteristics may be used by small employer and individual carriers.

(15) Records submitted to the commissioner under this section shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 55. Section 31A-30-107 is amended to read:

31A-30-107. Renewal -- Limitations -- Exclusions -- Discontinuance and nonrenewal.

(1) Except as otherwise provided in this section, a small employer health benefit plan is renewable and continues in force:

(a) with respect to all eligible employees and dependents; and

(b) at the option of the plan sponsor.

(2) A small employer health benefit plan may be discontinued or nonrenewed:

(a) for a network plan, if there is no longer any enrollee under the group health plan who lives, resides, or works in:

(i) the service area of the covered carrier; or

(ii) the area for which the covered carrier is authorized to do business; or

(b) for coverage made available in the small or large employer market only through an association, if:

(i) the employer's membership in the association ceases; and

(ii) the coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual.

(3) A small employer health benefit plan may be discontinued if:

(a) a condition described in Subsection (2) exists;

(b) except as prohibited by Section 31A-30-206, the plan sponsor fails to pay premiums or contributions in accordance with the terms of the contract;

(c) the plan sponsor:

(i) performs an act or practice that constitutes fraud; or

(ii) makes an intentional misrepresentation of material fact under the terms of the coverage;

(d) the covered carrier:

(i) elects to discontinue offering a particular small employer health benefit [product] plan delivered or issued for delivery in this state; and

(ii) (A) provides notice of the discontinuation in writing:

(I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

(II) at least 90 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner; and

(II) at least three working days prior to the date the notice is sent to the affected plan sponsors, employees, and dependents of the plan sponsors or employees;

(C) offers to each plan sponsor, on a guaranteed issue basis, the option to purchase all other small employer health benefit [products] plans currently being offered by the small employer carrier in the market; and

(D) in exercising the option to discontinue that [product] health benefit plan and in offering the option of coverage in this section, acts uniformly without regard to:

(I) the claims experience of a plan sponsor;

(II) any health status-related factor relating to any covered participant or beneficiary; or

(III) any health status-related factor relating to any new participant or beneficiary who may become eligible for the coverage; or

(e) the covered carrier:

(i) elects to discontinue all of the covered carrier's small employer health benefit plans in:

(A) the small employer market;

(B) the large employer market; or

(C) both the small employer and large employer markets; and

(ii) (A) provides notice of the discontinuation in writing:

(I) to each plan sponsor, employee, or dependent of a plan sponsor or an employee; and

(II) at least 180 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner in each state in which an affected insured individual is known to reside; and

(II) at least 30 working days prior to the date the notice is sent to the affected plan sponsors, employees, and the dependents of the plan sponsors or employees;

(C) discontinues and nonrenews all plans issued or delivered for issuance in the market; and

(D) provides a plan of orderly withdrawal as required by Section 31A-4-115.

(4) A small employer health benefit plan may be discontinued or nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) except as prohibited by Section 31A-30-206, for noncompliance with the insurer's employer contribution requirements.

(5) A small employer health benefit plan may be nonrenewed:

(a) if a condition described in Subsection (2) exists; or

(b) except as prohibited by Section 31A-30-206, for noncompliance with the insurer's minimum participation requirements.

(6) (a) Except as provided in Subsection (6)(d), an eligible employee may be discontinued if after issuance of coverage the eligible employee:

(i) engages in an act or practice that constitutes fraud in connection with the coverage; or

(ii) makes an intentional misrepresentation of material fact in connection with the coverage.

(b) An eligible employee that is discontinued under Subsection (6)(a) may reenroll:

(i) 12 months after the date of discontinuance; and

(ii) if the plan sponsor's coverage is in effect at the time the eligible employee applies to reenroll.

(c) At the time the eligible employee's coverage is discontinued under Subsection (6)(a), the covered carrier shall notify the eligible employee of the right to reenroll when coverage is discontinued.

(d) An eligible employee may not be discontinued under this Subsection (6) because of a fraud or misrepresentation that relates to health status.

(7) For purposes of this section, a reference to "plan sponsor" includes a reference to the employer:

(a) with respect to coverage provided to an employer member of the association; and

(b) if the small employer health benefit plan is made available by a covered carrier in the employer market only through:

(i) an association;

(ii) a trust; or

(iii) a discretionary group.

(8) A covered carrier may modify a small employer health benefit plan only:

(a) at the time of coverage renewal; and

(b) if the modification is effective uniformly among all plans with that product.

Section 56. Section 31A-30-107.1 is amended to read:

31A-30-107.1. Individual discontinuance and nonrenewal.

(1) (a) Except as otherwise provided in this section, a health benefit plan offered on an

individual basis is renewable and continues in force:

(i) with respect to all individuals or dependents; and

(ii) at the option of the individual.

(b) Subsection (1)(a) applies regardless of:

(i) whether the contract is issued through:

(A) a trust;

(B) an association;

(C) a discretionary group; or

(D) other similar grouping; or

(ii) the situs of delivery of the policy or contract.

(2) A health benefit plan may be discontinued or nonrenewed:

(a) for a network plan, if:

(i) the individual no longer lives, resides, or works in:

(A) the service area of the covered carrier; or

(B) the area for which the covered carrier is authorized to do business; and

(ii) coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual; or

(b) for coverage made available through an association, if:

(i) the individual's membership in the association ceases; and

(ii) the coverage is terminated uniformly without regard to any health status-related factor of covered individuals.

(3) A health benefit plan may be discontinued if:

(a) a condition described in Subsection (2) exists;

(b) the individual fails to pay premiums or contributions in accordance with the terms of the health benefit plan, including any timeliness requirements;

(c) the individual:

(i) performs an act or practice that constitutes fraud in connection with the coverage; or

(ii) makes an intentional misrepresentation of material fact under the terms of the coverage;

(d) the covered carrier:

(i) elects to discontinue offering a particular health benefit [product] plan delivered or issued for delivery in this state; and

(ii) (A) provides notice of the discontinuance in writing:

(I) to each individual provided coverage; and

(II) at least 90 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

- (I) to the commissioner; and
- (II) at least three working days prior to the date the notice is sent to the affected individuals;
- (C) offers to each covered individual on a guaranteed issue basis the option to purchase all other individual health benefit ~~[products]~~ plans currently being offered by the covered carrier for individuals in that market; and
- (D) acts uniformly without regard to any health status-related factor of a covered individual or dependent of a covered individual who may become eligible for coverage; or

(e) the covered carrier:

- (i) elects to discontinue all of the covered carrier's health benefit plans in the individual market; and
- (ii) (A) provides notice of the discontinuation in writing:

(I) to each covered individual; and

(II) at least 180 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing:

(I) to the commissioner in each state in which an affected insured individual is known to reside; and

(II) at least 30 working days prior to the date the notice is sent to the affected individuals;

(C) discontinues and nonrenews all health benefit plans the covered carrier issues or delivers for issuance in the individual market; and

(D) acts uniformly without regard to any health status-related factor of a covered individual or a dependent of a covered individual who may become eligible for coverage.

Section 57. Section 31A-35-103 is amended to read:

31A-35-103. Exemption from other provisions of this title.

Bail bond agencies are exempted from:

- (1) Chapter 3, Department Funding, Fees, and Taxes, except Section 31A-3-103;
- (2) Chapter 4, Insurers in General, except Sections 31A-4-102, 31A-4-103, 31A-4-104, and 31A-4-107;
- (3) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except Section 31A-5-103;
- (4) Chapter 6a, Service Contracts;
- (5) Chapter 6b, Guaranteed Asset Protection Waiver Act;
- (6) Chapter 7, Nonprofit Health Service Insurance Corporations;
- (7) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

- (8) Chapter 8a, Health Discount Program Consumer Protection Act;
- (9) Chapter 9, Insurance Fraternal;s
- (10) Chapter 10, Annuities;
- (11) Chapter 11, Motor Clubs;
- (12) Chapter 12, State Risk Management Fund;
- (13) Chapter 13, Employee Welfare Funds and Plans;
- (14) Chapter 14, Foreign Insurers;
- (15) Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups;
- (16) Chapter 16, Insurance Holding Companies;
- (17) Chapter 17, Determination of Financial Condition;
- (18) Chapter 18, Investments;
- (19) Chapter 19a, Utah Rate Regulation Act;
- (20) Chapter 20, Underwriting Restrictions;
- (21) Chapter 23b, Navigator License Act;
- (22) Chapter 25, Third Party Administrators;
- (23) Chapter 26, Insurance Adjusters;
- (24) Chapter 27, Delinquency Administrative Action Provisions;
- (25) Chapter 27a, Insurer Receivership Act;
- (26) Chapter 28, Guaranty Associations;
- (27) Chapter 30, Individual, Small Employer, and Group Health Insurance Act;
- (28) Chapter 31, Insurance Fraud Act;
- (29) Chapter 32a, Medical Care Savings Account Act;
- (30) Chapter 33, Workers' Compensation Fund;
- ~~[(31) Chapter 34, Voluntary Health Insurance Purchasing Alliance Act;]~~
- ~~[(32)]~~ (31) Chapter 36, Life Settlements Act;
- ~~[(33)]~~ (32) Chapter 37, Captive Insurance Companies Act;
- ~~[(34)]~~ (33) Chapter 37a, Special Purpose Financial Captive Insurance Company Act;
- ~~[(35)]~~ (34) Chapter 38, Federal Health Care Tax Credit Program Act;
- ~~[(36)]~~ (35) Chapter 39, Interstate Insurance Product Regulation Compact;
- ~~[(37)]~~ (36) Chapter 40, Professional Employer Organization Licensing Act;
- ~~[(38)]~~ (37) Chapter 41, Title Insurance Recovery, Education, and Research Fund Act;
- ~~[(39)]~~ (38) Chapter 42, Defined Contribution Risk Adjuster Act; and
- ~~[(40)]~~ (39) Chapter 43, Small Employer Stop-Loss Insurance Act.

Section 58. Section 31A-37-102 is amended to read:

31A-37-102. Definitions.

As used in this chapter:

(1) (a) "Affiliated company" means a business entity that because of common ownership, control, operation, or management is in the same corporate or limited liability company system as:

~~[(a)]~~ (i) a parent;

~~[(b)]~~ (ii) an industrial insured; or

~~[(c)]~~ (iii) a member organization.

(b) Notwithstanding Subsection (1)(a), the commissioner may issue an order finding that a business entity is not an affiliated company.

(2) "Alien captive insurance company" means an insurer:

(a) formed to write insurance business for a parent or affiliate of the insurer; and

(b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes statutory or regulatory standards:

(i) on a business entity transacting the business of insurance in the alien or foreign jurisdiction; and

(ii) in a form acceptable to the commissioner.

(3) "Association" means a legal association of two or more persons that has been in continuous existence for at least one year if:

(a) the association or its member organizations:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(ii) have complete voting control over an association captive insurance company incorporated as a mutual insurer;

(b) the association's member organizations collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or

(c) the association or its member organizations have complete voting control over an association captive insurance company formed as a limited liability company.

(4) "Association captive insurance company" means a business entity that insures risks of:

(a) a member organization of the association;

(b) an affiliate of a member organization of the association; and

(c) the association.

(5) "Branch business" means an insurance business transacted by a branch captive insurance company in this state.

(6) "Branch captive insurance company" means an alien captive insurance company that has a certificate of authority from the commissioner to transact the business of insurance in this state through a captive insurance company that is domiciled outside of this state.

(7) "Branch operation" means a business operation of a branch captive insurance company in this state.

(8) "Captive insurance company" means any of the following formed or holding a certificate of authority under this chapter:

(a) a branch captive insurance company;

(b) a pure captive insurance company;

(c) an association captive insurance company;

(d) a sponsored captive insurance company;

(e) an industrial insured captive insurance company, including an industrial insured captive insurance company formed as a risk retention group captive in this state pursuant to the provisions of the Federal Liability Risk Retention Act of 1986;

(f) a special purpose captive insurance company; or

(g) a special purpose financial captive insurance company.

(9) "Commissioner" means Utah's Insurance Commissioner or the commissioner's designee.

(10) "Common ownership and control" means that two or more captive insurance companies are owned or controlled by the same person or group of persons as follows:

(a) in the case of a captive insurance company that is a stock corporation, the direct or indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;

(b) in the case of a captive insurance company that is a mutual corporation, the direct or indirect ownership of 80% or more of the surplus and the voting power of the mutual corporation;

(c) in the case of a captive insurance company that is a limited liability company, the direct or indirect ownership by the same member or members of 80% or more of the membership interests in the limited liability company; or

(d) in the case of a sponsored captive insurance company, a protected cell is a separate captive insurance company owned and controlled by the protected cell's participant, only if:

(i) the participant is the only participant with respect to the protected cell; and

(ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored captive insurance company through common ownership and control.

(11) "Consolidated debt to total capital ratio" means the ratio of Subsection (11)(a) to (b).

(a) This Subsection (11)(a) is an amount equal to the sum of all debts and hybrid capital instruments including:

- (i) all borrowings from depository institutions;
- (ii) all senior debt;
- (iii) all subordinated debts;
- (iv) all trust preferred shares; and

(v) all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding.

(b) This Subsection (11)(b) is an amount equal to the sum of:

(i) total capital consisting of all debts and hybrid capital instruments as described in Subsection (11)(a); and

(ii) shareholders' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

(12) "Consolidated GAAP net worth" means the consolidated shareholders' or members' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

(13) "Controlled unaffiliated business" means a business entity:

(a) (i) in the case of a pure captive insurance company, that is not in the corporate or limited liability company system of a parent or the parent's affiliate; or

(ii) in the case of an industrial insured captive insurance company, that is not in the corporate or limited liability company system of an industrial insured or an affiliated company of the industrial insured;

(b) (i) in the case of a pure captive insurance company, that has a contractual relationship with a parent or affiliate; or

(ii) in the case of an industrial insured captive insurance company, that has a contractual relationship with an industrial insured or an affiliated company of the industrial insured; and

(c) whose risks that are or will be insured by a pure captive insurance company, an industrial insured captive insurance company, or both are managed [~~by one of the following~~] in accordance with Subsection 31A-37-106(1)(j) by:

(i) (A) a pure captive insurance company; or

~~(ii)~~ (B) an industrial insured captive insurance company[;]; or

(ii) a parent or affiliate of:

(A) a pure captive insurance company; or

(B) an industrial insured captive insurance company.

(14) "Department" means the Insurance Department.

(15) "Industrial insured" means an insured:

(a) that produces insurance:

(i) by the services of a full-time employee acting as a risk manager or insurance manager; or

(ii) using the services of a regularly and continuously qualified insurance consultant;

(b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

(c) that has at least 25 full-time employees.

(16) "Industrial insured captive insurance company" means a business entity that:

(a) insures risks of the industrial insureds that comprise the industrial insured group; and

(b) may insure the risks of:

(i) an affiliated company of an industrial insured; or

(ii) a controlled unaffiliated business of:

(A) an industrial insured; or

(B) an affiliated company of an industrial insured.

(17) "Industrial insured group" means:

(a) a group of industrial insureds that collectively:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated or organized as a limited liability company as a stock insurer; or

(ii) have complete voting control over an industrial insured captive insurance company incorporated or organized as a limited liability company as a mutual insurer;

(b) a group that is:

(i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901 et seq., as amended, as a corporation or other limited liability association; and

(ii) taxable under this title as a:

(A) stock corporation; or

(B) mutual insurer; or

(c) a group that has complete voting control over an industrial captive insurance company formed as a limited liability company.

(18) "Member organization" means a person that belongs to an association.

(19) "Parent" means a person that directly or indirectly owns, controls, or holds with power to vote more than 50% of:

(a) the outstanding voting securities of a pure captive insurance company; or

(b) the pure captive insurance company, if the pure captive insurance company is formed as a limited liability company.

(20) "Participant" means an entity that is insured by a sponsored captive insurance company:

(a) if the losses of the participant are limited through a participant contract to the assets of a protected cell; and

(b)(i) the entity is permitted to be a participant under Section 31A-37-403; or

(ii) the entity is an affiliate of an entity permitted to be a participant under Section 31A-37-403.

(21) "Participant contract" means a contract by which a sponsored captive insurance company:

(a) insures the risks of a participant; and

(b) limits the losses of the participant to the assets of a protected cell.

(22) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant.

(23) "Pure captive insurance company" means a business entity that insures risks of a parent or affiliate of the business entity.

(24) "Special purpose financial captive insurance company" is as defined in Section 31A-37a-102.

(25) "Sponsor" means an entity that:

(a) meets the requirements of Section 31A-37-402; and

(b) is approved by the commissioner to:

(i) provide all or part of the capital and surplus required by applicable law in an amount of not less than \$350,000, which amount the commissioner may increase by order if the commissioner considers it necessary; and

(ii) organize and operate a sponsored captive insurance company.

(26) "Sponsored captive insurance company" means a captive insurance company:

(a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(b) that is formed or holding a certificate of authority under this chapter;

(c) that insures the risks of a separate participant through the contract; and

(d) that segregates each participant's liability through one or more protected cells.

(27) "Treasury rates" means the United States Treasury strip asked yield as published in the Wall Street Journal as of a balance sheet date.

Section 59. Section 31A-37-106 is amended to read:

31A-37-106. Authority to make rules -- Authority to issue orders.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules to:

(a) determine circumstances under which a branch captive insurance company is not required to be a pure captive insurance company;

(b) require a statement, document, or information that a captive insurance company shall provide to the commissioner to obtain a certificate of authority;

(c) determine a factor a captive insurance company shall provide evidence of under Subsection 31A-37-202(4)(~~e~~)(b);

(d) prescribe one or more capital requirements for a captive insurance company in addition to those required under Section 31A-37-204 based on the type, volume, and nature of insurance business transacted by the captive insurance company;

(e) waive or modify a requirement for public notice and hearing for the following by a captive insurance company:

(i) merger;

(ii) consolidation;

(iii) conversion;

(iv) mutualization;

(v) redomestication; or

(vi) acquisition;

(f) approve the use of one or more reliable methods of valuation and rating for:

(i) an association captive insurance company;

(ii) a sponsored captive insurance company; or

(iii) an industrial insured group;

(g) prohibit or limit an investment that threatens the solvency or liquidity of:

(i) a pure captive insurance company; or

(ii) an industrial insured captive insurance company;

(h) determine the financial reports a sponsored captive insurance company shall annually file with the commissioner;

(i) prescribe the required forms and reports under Section 31A-37-501; and

(j) establish one or more standards to ensure that:

(i) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by a pure captive insurance company:

(A) a parent; or

(B) an affiliated company of a parent; or

(ii) one of the following is able to exercise control of the risk management function of a controlled unaffiliated business to be insured by an industrial insured captive insurance company:

(A) an industrial insured; or

(B) an affiliated company of the industrial insured.

(2) Notwithstanding Subsection (1)(j), until the commissioner adopts the rules authorized under Subsection (1)(j), the commissioner may by temporary order grant authority to insure risks to:

(a) a pure captive insurance company; or

(b) an industrial insured captive insurance company.

(3) The commissioner may issue prohibitory, mandatory, and other orders relating to a captive insurance company as necessary to enable the commissioner to secure compliance with this chapter.

Section 60. Section 31A-37-202 is amended to read:

31A-37-202. Permissive areas of insurance.

(1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of incorporation, certificate of organization, or charter, a captive insurance company may apply to the commissioner for a certificate of authority to do all insurance authorized by this title except workers' compensation insurance.

(b) Notwithstanding Subsection (1)(a):

(i) a pure captive insurance company may not insure a risk other than a risk of:

(A) ~~its~~ the pure captive insurance company's parent or affiliate;

(B) a controlled unaffiliated business; or

(C) a combination of Subsections (1)(b)(i)(A) and (B);

(ii) an association captive insurance company may not insure a risk other than a risk of:

(A) an affiliate;

(B) a member organization of its association; and

(C) an affiliate of a member organization of its association;

(iii) an industrial insured captive insurance company may not insure a risk other than a risk of:

(A) an industrial insured that is part of the industrial insured group;

(B) an affiliate of an industrial insured that is part of the industrial insured group; and

(C) a controlled unaffiliated business of:

(I) an industrial insured that is part of the industrial insured group; or

(II) an affiliate of an industrial insured that is part of the industrial insured group;

(iv) a special purpose captive insurance company may only insure a risk of its parent;

(v) a captive insurance company may not provide:

(A) personal motor vehicle insurance coverage;

(B) homeowner's insurance coverage; or

(C) a component of a coverage described in this Subsection (1)(b)(v); and

(vi) a captive insurance company may not accept or cede reinsurance except as provided in Section 31A-37-303.

(c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a special purpose captive insurance company may provide:

(i) insurance;

(ii) reinsurance; or

(iii) both insurance and reinsurance.

(2) To conduct insurance business in this state a captive insurance company shall:

(a) obtain from the commissioner a certificate of authority authorizing it to conduct insurance business in this state;

(b) hold at least once each year in this state:

(i) a board of directors meeting; or

~~[(ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting; or]~~

~~[(iii)]~~ (ii) in the case of a limited liability company, a meeting of the managers;

(c) maintain in this state:

(i) the principal place of business of the captive insurance company; or

(ii) in the case of a branch captive insurance company, the principal place of business for the branch operations of the branch captive insurance company; and

(d) except as provided in Subsection (3), appoint a resident registered agent to accept service of process and to otherwise act on behalf of the captive insurance company in this state.

(3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company formed as a corporation ~~[or a reciprocal insurer]~~, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner is the agent of the captive insurance company upon whom process, notice, or demand may be served.

(4) (a) Before receiving a certificate of authority, a captive insurance company:

(i) formed as a corporation shall file with the commissioner:

(A) a certified copy of:

(I) articles of incorporation or the charter of the corporation; and

(II) bylaws of the corporation;

(B) a statement under oath of the president and secretary of the corporation showing the financial condition of the corporation; and

(C) any other statement or document required by the commissioner under Section 31A-37-106; and

~~[(ii) formed as a reciprocal shall;]~~

~~[(A) file with the commissioner;]~~

~~[(4) a certified copy of the power of attorney of the attorney in fact of the reciprocal;]~~

~~[(II) a certified copy of the subscribers' agreement of the reciprocal;]~~

~~[(III) a statement under oath of the attorney in fact of the reciprocal showing the financial condition of the reciprocal; and]~~

~~[(IV) any other statement or document required by the commissioner under Section 31A-37-106; and]~~

~~[(B) submit to the commissioner for approval a description of the:]~~

~~[(4) coverages;]~~

~~[(II) deductibles;]~~

~~[(III) coverage limits;]~~

~~[(IV) rates; and]~~

~~[(V) any other information the commissioner requires under Section 31A-37-106; and]~~

~~[(iii)] (ii) formed as a limited liability company shall file with the commissioner:~~

(A) a certified copy of the certificate of organization and the operating agreement of the organization;

(B) a statement under oath of the president and secretary of the organization showing the financial condition of the organization;

(C) evidence that the limited liability company is manager-managed; and

(D) any other statement or document required by the commissioner under Section 31A-37-106.

~~[(b) (i) If there is a subsequent material change in an item in the description required under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision to the description required under Subsection (4)(a)(ii)(B).]~~

~~[(ii) A reciprocal captive insurance company that is required to submit a revision under Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner approves a revision of the description.]~~

~~[(iii) A reciprocal captive insurance company shall inform the commissioner of a material change~~

~~in a rate within 30 days of the adoption of the change.]~~

~~[(e)] (b) In addition to the information required by Subsection (4)(a), an applicant captive insurance company shall file with the commissioner evidence of:~~

~~(i) the amount and liquidity of the assets of the applicant captive insurance company relative to the risks to be assumed by the applicant captive insurance company;~~

~~(ii) the adequacy of the expertise, experience, and character of the person who will manage the applicant captive insurance company;~~

~~(iii) the overall soundness of the plan of operation of the applicant captive insurance company;~~

~~(iv) the adequacy of the loss prevention programs for the following of the applicant captive insurance company:~~

~~(A) a parent;~~

~~(B) a member organization; or~~

~~(C) an industrial insured; and~~

~~(v) any other factor the commissioner:~~

~~(A) adopts by rule under Section 31A-37-106; and~~

~~(B) considers relevant in ascertaining whether the applicant captive insurance company will be able to meet the policy obligations of the applicant captive insurance company.~~

~~[(d)] (c) In addition to the information required by Subsections (4)(a)[,] and (b)[, and (e)], an applicant sponsored captive insurance company shall file with the commissioner:~~

~~(i) a business plan at the level of detail required by the commissioner under Section 31A-37-106 demonstrating:~~

~~(A) the manner in which the applicant sponsored captive insurance company will account for the losses and expenses of each protected cell; and~~

~~(B) the manner in which the applicant sponsored captive insurance company will report to the commissioner the financial history, including losses and expenses, of each protected cell;~~

~~(ii) a statement acknowledging that the applicant sponsored captive insurance company will make all financial records of the applicant sponsored captive insurance company, including records pertaining to a protected cell, available for inspection or examination by the commissioner;~~

~~(iii) a contract or sample contract between the applicant sponsored captive insurance company and a participant; and~~

~~(iv) evidence that expenses will be allocated to each protected cell in an equitable manner.~~

~~(5) (a) Information submitted pursuant to Subsection (4) is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.~~

(b) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the commissioner may disclose information submitted pursuant to Subsection (4) to a public official having jurisdiction over the regulation of insurance in another state if:

(i) the public official receiving the information agrees in writing to maintain the confidentiality of the information; and

(ii) the laws of the state in which the public official serves require the information to be confidential.

(c) This Subsection (5) does not apply to information provided by an industrial insured captive insurance company insuring the risks of an industrial insured group.

(6) (a) A captive insurance company shall pay to the department the following nonrefundable fees established by the department under Sections 31A-3-103, 31A-3-304, and 63J-1-504:

(i) a fee for examining, investigating, and processing, by a department employee, of an application for a certificate of authority made by a captive insurance company;

(ii) a fee for obtaining a certificate of authority for the year the captive insurance company is issued a certificate of authority by the department; and

(iii) a certificate of authority renewal fee.

(b) The commissioner may:

(i) assign a department employee or retain legal, financial, and examination services from outside the department to perform the services described in:

(A) Subsection (6)(a); and

(B) Section 31A-37-502; and

(ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the applicant captive insurance company.

(7) If the commissioner is satisfied that the documents and statements filed by the applicant captive insurance company comply with this chapter, the commissioner may grant a certificate of authority authorizing the company to do insurance business in this state.

(8) A certificate of authority granted under this section expires annually and shall be renewed by July 1 of each year.

Section 61. Section 31A-37-204 is amended to read:

31A-37-204. Paid-in capital -- Other capital.

(1) (a) The commissioner may not issue a certificate of authority to a company described in Subsection (1)(c) unless the company possesses and thereafter maintains unimpaired paid-in capital and unimpaired paid-in surplus of:

(i) in the case of a pure captive insurance company, not less than \$250,000;

(ii) in the case of an association captive insurance company [~~incorporated as a stock insurer~~], not less than \$750,000;

(iii) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than \$700,000;

(iv) in the case of a sponsored captive insurance company, not less than \$1,000,000, of which a minimum of \$350,000 is provided by the sponsor; or

(v) in the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured.

(b) The paid-in capital and surplus required under this Subsection (1) may be in the form of:

(i) (A) cash; or

(B) cash equivalent;

(ii) an irrevocable letter of credit:

(A) issued by:

(I) a bank chartered by this state; or

(II) a member bank of the Federal Reserve System; and

(B) approved by the commissioner; [~~or~~]

(iii) marketable securities as determined by [~~Subsections 31A-18-105(1) and (6).~~] Subsection (5); or

(iv) some other thing of value approved by the commissioner, for a period not to exceed 45 days, to facilitate the formation of a captive insurance company in this state pursuant to an approved plan of liquidation and reorganization of another captive insurance company or alien captive insurance company in another jurisdiction.

(c) This Subsection (1) applies to:

(i) a pure captive insurance company;

(ii) a sponsored captive insurance company;

(iii) a special purpose captive insurance company;

(iv) an association captive insurance company [~~incorporated as a stock insurer~~]; or

(v) an industrial insured captive insurance company [~~incorporated as a stock insurer~~].

(2) (a) The commissioner may, under Section 31A-37-106, prescribe additional capital based on the type, volume, and nature of insurance business transacted.

(b) The capital prescribed by the commissioner under this Subsection (2) may be in the form of:

(i) cash;

(ii) an irrevocable letter of credit issued by:

(A) a bank chartered by this state; or

(B) a member bank of the Federal Reserve System; or

(iii) marketable securities as determined by ~~Subsections 31A-18-105(1) and (6)~~ Subsection (5).

(3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, shall, through its branch operations, establish and maintain a trust fund:

(i) funded by an irrevocable letter of credit or other acceptable asset; and

(ii) in the United States for the benefit of:

(A) United States policyholders; and

(B) United States ceding insurers under:

(I) insurance policies issued; or

(II) reinsurance contracts issued or assumed.

(b) The amount of the security required under this Subsection (3) shall be no less than:

(i) the capital and surplus required by this chapter; and

(ii) the reserves on the insurance policies or reinsurance contracts, including:

(A) reserves for losses;

(B) allocated loss adjustment expenses;

(C) incurred but not reported losses; and

(D) unearned premiums with regard to business written through branch operations.

(c) Notwithstanding the other provisions of this Subsection (3)~~;~~:

(i) the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount as the security posted if the security remains posted with the reinsurer~~;~~; and

(ii) a branch captive insurance company that is the result of the licensure of an alien captive insurance company that is not formed in an alien jurisdiction is not subject to the requirements of this Subsection (3).

(4) (a) A captive insurance company may not pay the following without the prior approval of the commissioner:

(i) a dividend out of capital or surplus in excess of the limits under Section 16-10a-640; or

(ii) a distribution with respect to capital or surplus in excess of the limits under Section 16-10a-640.

(b) The commissioner shall condition approval of an ongoing plan for the payment of dividends or other distributions on the retention, at the time of each payment, of capital or surplus in excess of:

(i) amounts specified by the commissioner under Section 31A-37-106; or

(ii) determined in accordance with formulas approved by the commissioner under Section 31A-37-106.

~~[(5) Notwithstanding Subsection (1), a captive insurance company organized as a reciprocal insurer under this chapter may not be issued a certificate of authority unless the captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.]~~

~~[(6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based upon the type, volume, and nature of the insurance business transacted.]~~

~~[(b) The unimpaired paid-in surplus required under this Subsection (6) may be in the form of an irrevocable letter of credit issued by:]~~

~~[(i) a bank chartered by this state; or]~~

~~[(ii) a member bank of the Federal Reserve System.]~~

(5) For purposes of this section, marketable securities means:

(a) a bond or other evidence of indebtedness of a governmental unit in the United States or Canada or any instrumentality of the United States or Canada; or

(b) securities:

(i) traded on one or more of the following exchanges in the United States:

(A) New York;

(B) American; or

(C) NASDAQ;

(ii) when no particular security, or a substantially related security, applied toward the required minimum capital and surplus requirement of Subsection (1) represents more than 50% of the minimum capital and surplus requirement; and

(iii) when no group of up to four particular securities, consolidating substantially related securities, applied toward the required minimum capital and surplus requirement of Subsection (1) represents more than 90% of the minimum capital and surplus requirement.

(6) Notwithstanding Subsection (5), to protect the solvency and liquidity of a captive insurance company, the commissioner may reject the application of specific assets or amounts of specific assets to satisfying the requirement of Subsection (1).

Section 62. Section 31A-37-301 is amended to read:

31A-37-301. Formation.

(1) A pure captive insurance company or a sponsored captive insurance company formed as a stock insurer shall be incorporated as a stock insurer with the capital of the pure captive insurance company or sponsored captive insurance company:

- (a) divided into shares; and
- (b) held by the stockholders of the pure captive insurance company or sponsored captive insurance company.
- (2) A pure captive insurance company or a sponsored captive insurance company formed as a limited liability company shall be organized as a members' interest insurer with the capital of the pure captive insurance company or sponsored captive insurance company:
- (a) divided into interests; and
- (b) held by the members of the pure captive insurance company or sponsored captive insurance company.
- (3) An association captive insurance company or an industrial insured captive insurance company may be:
- (a) incorporated as a stock insurer with the capital of the association captive insurance company or industrial insured captive insurance company:
- (i) divided into shares; and
- (ii) held by the stockholders of the association captive insurance company or industrial insured captive insurance company;
- (b) incorporated as a mutual insurer without capital stock, with a governing body elected by the member organizations of the association captive insurance company or industrial insured captive insurance company; or
- ~~[(c) organized as a reciprocal.]~~
- (c) organized as a limited liability company with the capital of the association captive insurance company or industrial insured captive insurance company:
- (i) divided into interests; and
- (ii) held by the members of the association captive insurance company or industrial insured captive insurance company.
- (4) A captive insurance company formed as a corporation may not have fewer than three incorporators of whom one shall be a resident of this state.
- (5) A captive insurance company formed as a limited liability company may not have fewer than three organizers of whom one shall be a resident of this state.
- (6) (a) Before a captive insurance company formed as a corporation files the corporation's articles of incorporation with the Division of Corporations and Commercial Code, the incorporators shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed corporation will promote the general good of the state.
- (b) In considering a request for a certificate under Subsection (6)(a), the commissioner shall consider:

- (i) the character, reputation, financial standing, and purposes of the incorporators;
- (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;
- (iii) any information in:
- (A) the application for a certificate of authority; or
- (B) the department's files; and
- (iv) other aspects that the commissioner considers advisable.
- (7) (a) Before a captive insurance company formed as a limited liability company files the limited liability company's certificate of organization with the Division of Corporations and Commercial Code, the limited liability company shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed limited liability company will promote the general good of the state.
- (b) In considering a request for a certificate under Subsection (7)(a), the commissioner shall consider:
- (i) the character, reputation, financial standing, and purposes of the organizers;
- (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the managers;
- (iii) any information in:
- (A) the application for a certificate of authority; or
- (B) the department's files; and
- (iv) other aspects that the commissioner considers advisable.
- (8) (a) A captive insurance company formed as a corporation shall file with the Division of Corporations and Commercial Code:
- (i) the captive insurance company's articles of incorporation;
- (ii) the certificate issued pursuant to Subsection (6); and
- (iii) the fees required by the Division of Corporations and Commercial Code.
- (b) The Division of Corporations and Commercial Code shall file both the articles of incorporation and the certificate described in Subsection (6) for a captive insurance company that complies with this section.
- (9) (a) A captive insurance company formed as a limited liability company shall file with the Division of Corporations and Commercial Code:
- (i) the captive insurance company's certificate of organization;
- (ii) the certificate issued pursuant to Subsection (7); and
- (iii) the fees required by the Division of Corporations and Commercial Code.
- (b) The Division of Corporations and Commercial Code shall file both the certificate of organization

and the certificate described in Subsection (7) for a captive insurance company that complies with this section.

(10) (a) The organizers of a captive insurance company formed as a reciprocal insurer shall obtain from the commissioner a certificate finding that the establishment and maintenance of the proposed association will promote the general good of the state.

(b) In considering a request for a certificate under Subsection (10)(a), the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

(ii) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors;

(iii) any information in:

(A) the application for a certificate of authority; or

(B) the department's files; and

(iv) other aspects that the commissioner considers advisable.

(11) (a) An alien captive insurance company that has received a certificate of authority to act as a branch captive insurance company shall obtain from the commissioner a certificate finding that:

(i) the home [state] jurisdiction of the alien captive insurance company imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that state; and

(ii) after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, and other relevant information, the establishment and maintenance of the branch operations will promote the general good of the state.

(b) After the commissioner issues a certificate under Subsection (11)(a) to an alien captive insurance company, the alien captive insurance company may register to do business in this state.

(12) At least one of the members of the board of directors of a captive insurance company formed as a corporation shall be a resident of this state.

(13) At least one of the managers of a limited liability company shall be a resident of this state.

~~[(14) At least one of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer shall be a resident of this state.]~~

[15] (14) (a) A captive insurance company formed as a corporation under this chapter has the privileges and is subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter.

(b) If a conflict exists between a provision of the general corporation law and a provision of this chapter, this chapter shall control.

(c) Except as provided in Subsection [(45)] (14)(d), the provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.

(d) Notwithstanding Subsection [(45)] (14)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.

(e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.

~~[(16)]~~ (15) (a) A captive insurance company formed as a limited liability company under this chapter has the privileges and is subject to [Title 48, Chapter 2e, Utah Revised Limited Liability Company Act, or] Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act[, as appropriate pursuant to Section 48-3a-1405], as well as the applicable provisions in this chapter.

(b) If a conflict exists between a provision of the limited liability company law and a provision of this chapter, this chapter controls.

(c) The provisions of this title pertaining to a merger, consolidation, conversion, mutualization, and redomestication apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.

(d) Notwithstanding Subsection [(46)] (15)(c), the commissioner may waive or modify the requirements for public notice and hearing in accordance with rules adopted under Section 31A-37-106.

(e) If a notice of public hearing is required, but no one requests a hearing, the commissioner may cancel the public hearing.

~~[(17) (a) A captive insurance company formed as a reciprocal insurer under this chapter has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this chapter.]~~

~~[(b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions of this chapter with respect to a captive insurance company, this chapter shall control.]~~

~~[(c) To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer formed under this chapter unless the provisions are expressly made applicable to a captive insurance company under this chapter.]~~

~~[(d) In addition to the provisions of this Subsection (17), a captive insurance company organized as a reciprocal insurer that is an~~

~~industrial insured group has the privileges of Section 31A-4-114 in addition to applicable provisions of this title.]~~

[48] (16) (a) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may not authorize a quorum of a board of directors to consist of fewer than one-third of the fixed or prescribed number of directors as provided in Section 16-10a-824.

(b) The certificate of organization of a captive insurance company formed as a limited liability company may not authorize a quorum of a board of managers to consist of fewer than one-third of the fixed or prescribed number of directors required in Section 16-10a-824.

Section 63. Section 31A-37-303 is amended to read:

31A-37-303. Reinsurance.

(1) A captive insurance company may cede risks to any insurance company approved by the commissioner. A captive insurance company may provide reinsurance, as authorized in this title, on risks ceded for the benefit of a parent, affiliate, or controlled unaffiliated business.

(2) (a) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or if the captive insurance company complies with other requirements as the commissioner may establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) Unless the reinsurer is in compliance with Section 31A-17-404, 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or a rule adopted under Subsection (2)(a), a captive insurance company may not take credit for:

- (i) reserves on risks ceded to a reinsurer; or
- (ii) portions of risks ceded to a reinsurer.

Section 64. Section 31A-37-305 is amended to read:

31A-37-305. Contributions to guaranty or insolvency fund prohibited.

(1) ~~A captive insurance company [including a captive insurance company organized as a reciprocal insurer under this chapter,] may not join or contribute financially to any of the following in this state:~~

- (a) a plan;
- (b) a pool;
- (c) an association;
- (d) a guaranty fund; or
- (e) an insolvency fund.

(2) A captive insurance company, the insured of a captive insurance company, the parent of a captive insurance company, an affiliate of a captive

insurance company, or a member organization of an association captive insurance company[, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the captive insurance company,] may not receive a benefit from:

- (a) a plan;
- (b) a pool;
- (c) an association;
- (d) a guaranty fund for claims arising out of the operations of the captive insurance company; or
- (e) an insolvency fund for claims arising out of the operations of the captive insurance company.

Section 65. Section 31A-42-201 is amended to read:

31A-42-201. Creation of risk adjuster mechanism -- Board of directors -- Appointment -- Terms -- Quorum -- Plan preparation.

(1) There is created the "Utah Defined Contribution Risk Adjuster," a nonprofit entity within the department.

(2) (a) The risk adjuster is under the direction of a board of directors composed of up to nine members described in Subsection (2)(b).

(b) The board of directors shall consist of:

(i) the following directors appointed by the governor with the consent of the Senate:

(A) at least ~~three~~ one, but up to five, directors with actuarial experience who represent insurers[; ~~(B) that are participating or have committed to participate in the defined contribution arrangement market in the state; [and~~

~~[(C) including at least one and up to two directors who represent an insurer that has a small percentage of lives in the defined contribution market;]~~

(B) one director who represents either an individual employee or employer; and

(C) one director who represents the Office of Consumer Health Services within the Governor's Office of Economic Development;

(ii) one director representing the Public Employees' Benefit and Insurance Program with actuarial experience, appointed by the director of the Public Employees' Benefit and Insurance Program; and

(iii) the commissioner, or a representative of the commissioner who:

- (A) is appointed by the commissioner; and
- (B) has actuarial experience.

(c) The commissioner, or a representative appointed by the commissioner may vote only in the event of a tie vote.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members appointed by the governor expire, the governor shall appoint each

new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Notwithstanding the requirements of Subsection (3)(a), a board member shall continue to serve until the board member is reappointed or replaced by another individual in accordance with this section.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the original appointment was made.

(5) (a) A board member who is not a government employee may not receive compensation or benefits for the board member's services.

(b) A state government member who is a board member because of the board member's state government position may not receive per diem or expenses for the member's service.

(6) The board shall elect annually a chair and vice chair from its membership.

(7) A majority of the board members is a quorum for the transaction of business.

(8) The action of a majority of the members of the quorum is the action of the board.

Section 66. Section 31A-44-603 is amended to read:

31A-44-603. Examinations.

(1) The department may conduct periodic on-site examinations of a provider.

(2) In conducting an examination, the department or the department's staff:

(a) shall have full and free access to all the provider's records; and

(b) may summon and qualify as a witness, under oath, and examine, any director, officer, member, agent, or employee of the provider, and any other person, concerning the condition and affairs of the provider or a facility.

(3) Books and records shall be kept for not less than three calendar years in addition to the current calendar year.

[43] (4) The provider shall pay the reasonable costs of an examination under this section.

[44] (5) The department may conduct an on-site examination in conjunction with an examination performed by a representative of an agency of another state.

[45] (6) (a) The department, in lieu of an on-site examination, may accept the examination report of an agency of another state that has regulatory

oversight of the provider, or a report prepared by an independent accounting firm.

(b) A report accepted under Subsection [(5)] (6)(a) is considered for all purposes an official report of the department.

[(6)] (7) Upon reasonable cause, the department may conduct an on-site examination of an unlicensed person to determine whether a violation of this chapter has occurred.

Section 67. Section 53-2a-1102 is amended to read:

53-2a-1102. Search and Rescue Financial Assistance Program -- Uses -- Rulemaking -- Distribution.

(1) (a) "Assistance card program" means the Utah Search and Rescue Assistance Card Program created within this section.

(b) "Card" means the Search and Rescue Assistance Card issued under this section to a participant.

(c) "Participant" means an individual, family, or group who is registered pursuant to this section as having a valid card at the time search, rescue, or both are provided.

(d) "Program" means the Search and Rescue Financial Assistance Program created within this section.

(e) (i) "Reimbursable expenses," as used in this section, means those reasonable expenses incidental to search and rescue activities.

(ii) "Reimbursable expenses" include:

(A) rental for fixed wing aircraft, helicopters, snowmobiles, boats, and generators;

(B) replacement and upgrade of search and rescue equipment;

(C) training of search and rescue volunteers;

(D) costs of providing workers' compensation benefits for volunteer search and rescue team members under Section 67-20-7.5; and

(E) any other equipment or expenses necessary or appropriate for conducting search and rescue activities.

(iii) "Reimbursable expenses" do not include any salary or overtime paid to any person on a regular or permanent payroll, including permanent part-time employees of any agency of the state.

(f) "Rescue" means search services, rescue services, or both search and rescue services.

(2) There is created the Search and Rescue Financial Assistance Program within the division.

(3) (a) The program shall be funded from the following revenue sources:

(i) any voluntary contributions to the state received for search and rescue operations;

(ii) money received by the state under Subsection (11) and under Sections 23-19-42, 41-22-34, and 73-18-24; and

(iii) appropriations made to the program by the Legislature.

(b) All money received from the revenue sources in Subsections (3)(a)(i) and (ii) shall be deposited into the General Fund as a dedicated credit to be used solely for the purposes under this section.

(c) All funding for the program is nonlapsing.

(4) The director shall use the money to reimburse counties for all or a portion of each county's reimbursable expenses for search and rescue operations, subject to:

(a) the approval of the Search and Rescue Advisory Board as provided in Section 53-2a-1104;

(b) money available in the program; and

(c) rules made under Subsection (7).

(5) Program money may not be used to reimburse for any paid personnel costs or paid man hours spent in emergency response and search and rescue related activities.

(6) The Legislature finds that these funds are for a general and statewide public purpose.

(7) The division, with the approval of the Search and Rescue Advisory Board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section:

(a) specifying the costs that qualify as reimbursable expenses;

(b) defining the procedures of counties to submit expenses and be reimbursed;

(c) defining a participant in the assistance card program, including:

(i) individuals; and

(ii) families and organized groups who qualify as participants;

(d) defining the procedure for issuing a card to a participant;

(e) defining excluded expenses that may not be reimbursed under the program, including medical expenses;

(f) establishing the card renewal cycle for the Utah Search and Rescue Assistance Card Program;

(g) establishing the frequency of review of the fee schedule;

(h) providing for the administration of the program; and

(i) providing a formula to govern the distribution of available money among the counties for uncompensated search and rescue expenses based on:

(i) the total qualifying expenses submitted;

(ii) the number of search and rescue incidents per county population;

(iii) the number of victims that reside outside the county; and

(iv) the number of volunteer hours spent in each county in emergency response and search and rescue related activities per county population.

(8) (a) The division shall, in consultation with the Outdoor Recreation Office, establish the fee schedule of the Search and Rescue Assistance Card under Subsection 63J-1-504(6).

(b) The division shall provide a discount of not less than 10% of the card fee under Subsection (8)(a) to a person who has paid a fee under Section 23-19-42, 41-22-34, or 73-18-24 during the same calendar year in which the person applies to be a participant in the assistance card program.

(9) (a) Counties may bill reimbursable expenses to an individual for costs incurred for the rescue of an individual, if the individual is not a participant in the Utah Search and Rescue Assistance Card Program.

(b) Counties may bill a participant for reimbursable expenses for costs incurred for the rescue of the participant if the participant is found by the rescuing county to have acted recklessly or to have intentionally created a situation resulting in the need for a county to provide rescue service for the participant.

(10) (a) There is created the Utah Search and Rescue Assistance Card Program. The program is located within the division.

(b) The program may not be utilized to cover any expenses, such as medically related expenses, that are not reimbursable expenses related to the rescue.

(11) (a) To participate in the program, a person shall purchase a Search and Rescue Assistance Card from the division by paying the fee as determined by the division in Subsection (8).

(b) The money generated by the fees shall be deposited into the General Fund as a dedicated credit for the Search and Rescue Financial Assistance Program created in this section.

(c) Participation and payment of fees by a person under Sections 23-19-42, 41-22-34, and 73-18-24 do not constitute purchase of a card under this section.

(12) The division shall consult with the Outdoor Recreation Office regarding:

(a) administration of the assistance card program; and

(b) outreach and marketing strategies.

(13) Pursuant to Subsection 31A-1-103(7), the Utah Search and Rescue Assistance Card Program under this section is exempt from being considered [an] insurance [program under Subsection] as defined in Section 31A-1-301[(86)].

Section 68. Section 59-7-102 is amended to read:

59-7-102. Exemptions.

(1) Except as provided in this section, the following are exempt from a tax under this chapter:

(a) an organization exempt under Section 501, Internal Revenue Code;

(b) an organization exempt under Section 528, Internal Revenue Code;

(c) an insurance company that is subject to taxation on the insurance company's premiums under Chapter 9, Taxation of Admitted Insurers, regardless of whether the insurance company has a tax liability under that chapter;

(d) a local building authority as defined in Section 17D-2-102;

(e) a farmers' cooperative; ~~or~~

(f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an ownership interest in:

(i) a project, as defined in Section 11-13-103; or

(ii) facilities providing additional project capacity, as defined in Section 11-13-103[.];

(g) an insurance company that engages in a transaction that is subject to taxation under Section 31A-3-301 or 31A-3-302, regardless of whether the insurance company has a tax liability under that section; or

(h) a captive insurance company that pays a fee under Section 31A-3-304.

(2) A corporation is exempt from a tax under this chapter:

(a) if the corporation is an out-of-state business as defined in Section 53-2a-1202; and

(b) for income earned:

(i) during a disaster period as defined in Section 53-2a-1202; and

(ii) for the purpose of responding to a declared state disaster or emergency as defined in Section 53-2a-1202.

(3) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a person not otherwise subject to the tax imposed by this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, is not subject to a tax imposed by Section 59-7-104, 59-7-201, 59-7-701, or 59-8-104, because of:

(a) that person's ownership of tangible personal property located at the premises of a printer's facility in this state with which the person has contracted for printing; or

(b) the activities of the person's employees or agents who are:

(i) located solely at the premises of a printer's facility; and

(ii) performing services:

(A) related to:

(I) quality control;

(II) distribution; or

(III) printing services; and

(B) performed by the printer's facility in this state with which the person has contracted for printing.

(4) Notwithstanding Subsection (1), an organization, company, authority, farmers' cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part 8, Unrelated Business Income, to the extent provided in Part 8, Unrelated Business Income.

(5) Notwithstanding Subsection (1)(b), to the extent the income of an organization described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal Revenue Code, the organization's income is also taxable under this chapter.

Section 69. Section 59-9-101 is amended to read:

59-9-101. Tax basis -- Rates -- Exemptions -- Rate reductions.

(1) (a) Except as provided in Subsection (1)(b), (1)(d), or (5), an admitted insurer shall pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the total premiums received by it during the preceding calendar year from insurance covering property or risks located in this state.

(b) This Subsection (1) does not apply to:

(i) workers' compensation insurance, assessed under Subsection (2);

(ii) title insurance premiums taxed under Subsection (3);

(iii) annuity considerations;

(iv) insurance premiums paid by an institution within the state system of higher education as specified in Section 53B-1-102; and

(v) ocean marine insurance.

(c) The taxable premium under this Subsection (1) shall be reduced by:

(i) the premiums returned or credited to policyholders on direct business subject to tax in this state;

(ii) the premiums received for reinsurance of property or risks located in this state; and

(iii) the dividends, including premium reduction benefits maturing within the year:

(A) paid or credited to policyholders in this state; or

(B) applied in abatement or reduction of premiums due during the preceding calendar year.

(d) (i) For purposes of this Subsection (1)(d):

(A) "Utah variable life insurance premium" means an insurance premium paid:

(I) by:

(Aa) a corporation; or

(Bb) a trust established or funded by a corporation; and

(II) for variable life insurance covering risks located within the state.

(B) "Variable life insurance" means an insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of one or more separate accounts that are established and maintained by the insurer pursuant to Title 31A, Insurance Code.

(ii) Notwithstanding Subsection (1)(a), beginning on January 1, 2006, the tax on that portion of the total premiums subject to a tax under Subsection (1)(a) that is a Utah variable life insurance premium shall be calculated as follows:

(A) 2-1/4% of the first \$100,000 of Utah variable life insurance premiums:

(I) paid for each variable life insurance policy; and

(II) received by the admitted insurer in the preceding calendar year; and

(B) 0.08% of the Utah variable life insurance premiums that exceed \$100,000:

(I) paid for the policy described in Subsection (1)(d)(ii)(A); and

(II) received by the admitted insurer in the preceding calendar year.

(2) (a) An admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund, shall pay to the tax commission, on or before March 31 in each year, a premium assessment on the basis of the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year as follows:

(i) on or before December 31, 2010, an amount of equal to or greater than 1%, but equal to or less than 5.75% of the total workers' compensation premium income described in this Subsection (2);

(ii) on and after January 1, 2011, but on or before December 31, 2017, an amount of equal to or greater than 1%, but equal to or less than 4.25% of the total workers' compensation premium income described in this Subsection (2); and

(iii) on and after January 1, 2018, an amount equal to 1.25% of the total workers' compensation premium income described in this Subsection (2).

(b) Total workers' compensation premium income means the net written premium as calculated before any premium reduction for any insured employer's deductible, retention, or reimbursement

amounts and also those amounts equivalent to premiums as provided in Section 34A-2-202.

(c) The percentage of premium assessment applicable for a calendar year shall be determined by the Labor Commission under Subsection (2)(d). The total premium income shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not as provided in Subsection (1)(c)(iii). The commission shall promptly remit from the premium assessment collected under this Subsection (2):

(i) income to the state treasurer for credit to the Employers' Reinsurance Fund created under Subsection 34A-2-702(1) as follows:

(A) on or before December 31, 2009, an amount of up to 5% of the total workers' compensation premium income;

(B) on and after January 1, 2010, but on or before December 31, 2010, an amount of up to 4.5% of the total workers' compensation premium income;

(C) on and after January 1, 2011, but on or before December 31, 2017, an amount of up to 3% of the total workers' compensation premium income; and

(D) on and after January 1, 2018, 0% of the total workers' compensation premium income;

(ii) an amount equal to 0.25% of the total workers' compensation premium income to the state treasurer for credit to the Workplace Safety Account created by Section 34A-2-701;

(iii) an amount of up to 0.5% and any remaining assessed percentage of the total workers' compensation premium income to the state treasurer for credit to the Uninsured Employers' Fund created under Section 34A-2-704; and

(iv) beginning on January 1, 2010, 0.5% of the total workers' compensation premium income to the state treasurer for credit to the Industrial Accident Restricted Account created in Section 34A-2-705.

(d) (i) The Labor Commission shall determine the amount of the premium assessment for each year on or before each October 15 of the preceding year. The Labor Commission shall make this determination following a public hearing. The determination shall be based upon the recommendations of a qualified actuary.

(ii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Employers' Reinsurance Fund and to project a funded condition with assets greater than liabilities by no later than June 30, 2025.

(iii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a funded condition with assets equal to or greater than liabilities.

(iv) At the end of each fiscal year the minimum approximate assets in the Employers' Reinsurance Fund shall be \$5,000,000 which amount shall be

adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(v) The requirements of Subsection (2)(d)(iv) cease when the future annual disbursements from the Employers' Reinsurance Fund are projected to be less than the calculations of the corresponding future minimum required assets. The Labor Commission shall, after a public hearing, determine if the future annual disbursements are less than the corresponding future minimum required assets from projections provided by the actuary.

(vi) At the end of each fiscal year the minimum approximate assets in the Uninsured Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(e) A premium assessment that is to be transferred into the General Fund may be collected on premiums received from Utah public agencies.

(3) An admitted insurer writing title insurance in this state shall pay to the commission, on or before March 31 in each year, a tax of .45% of the total premium received by either the insurer or by its agents during the preceding calendar year from title insurance concerning property located in this state. In calculating this tax, "premium" includes the charges made to an insured under or to an applicant for a policy or contract of title insurance for:

(a) the assumption by the title insurer of the risks assumed by the issuance of the policy or contract of title insurance; and

(b) abstracting title, title searching, examining title, or determining the insurability of title, and every other activity, exclusive of escrow, settlement, or closing charges, whether denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title insurance producer, or any of them.

(4) Beginning July 1, 1986, a former county mutual and a former mutual benefit association shall pay the premium tax or assessment due under this chapter. Premiums received after July 1, 1986, shall be considered in determining the tax or assessment.

(5) The following insurers are not subject to the premium tax on health care insurance that would otherwise be applicable under Subsection (1):

(a) an insurer licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(b) an insurer licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance Corporations;

(c) an insurer licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(d) an insurer licensed under Title 31A, Chapter 9, Insurance Fraternal;

(e) an insurer licensed under Title 31A, Chapter 11, Motor Clubs;

(f) an insurer licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans; and

(g) an insurer licensed under Title 31A, Chapter 14, Foreign Insurers.

(6) A captive insurer, as provided in Section 31A-3-304, that pays a fee imposed under Section 31A-3-304 is not subject to the premium tax under this section.

~~[(6)] (7) An insurer issuing multiple policies to an insured may not artificially allocate the premiums among the policies for purposes of reducing the aggregate premium tax or assessment applicable to the policies.~~

~~[(7)] (8) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and Taxes, apply to the tax or assessment imposed under this chapter.~~

Section 70. Section 63G-2-302 is amended to read:

63G-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;

(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if, prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

(h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(j) that part of a voter registration record identifying a voter's:

(i) driver license or identification card number;

(ii) Social Security number, or last four digits of the Social Security number;

(iii) email address; or

(iv) date of birth;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);

(l) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(m) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115~~(2)~~(3)(a);

(ii) Subsection 31A-23a-302~~(3)~~(4); or

(iii) Subsection 31A-26-210~~(3)~~(4);

(n) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(o) information provided by an offender that is:

(i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry; and

(ii) not required to be made available to the public under Subsection 77-41-110(4);

(p) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(q) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;

(r) an email address provided by a military or overseas voter under Section 20A-16-501;

(s) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;

(t) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, except for:

(i) the commission's summary data report that is required in Section 11-49-202; and

(ii) any other document that is classified as public in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission;

(u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was notified of an incident or threat; and

(v) a criminal background check or credit history report conducted in accordance with Section 63A-3-201.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:

(i) depict the commission of an alleged crime;

(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d); or

(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 71. Repealer.

This bill repeals:

Section 31A-22-715, Alcohol and drug dependency treatment.

Section 31A-22-718, Dependent coverage.

Section 31A-34-101, Title.

Section 31A-34-102, Purpose and intent -- Legislative findings.

Section 31A-34-103, Definitions.

Section 31A-34-104, Alliance -- Required license.

Section 31A-34-105, Association requirements.

Section 31A-34-106, Jurisdiction of the commissioner.

Section 31A-34-107, Directors, trustees, and officers.

Section 31A-34-108, Powers of and restrictions on alliances.

Section 31A-34-109, Operation of alliances.

Section 31A-34-110, Contracts with member employers and contracted insurers.

Section 31A-34-111, Alliance evaluation.

Section 31A-37-306, Conversion or merger.

Section 72. Retrospective operation.

(1) The amendments in this bill to Section 31A-3-102 and Section 59-7-102 have retrospective operation for a taxable year beginning on or after January 1, 2017.

(2) The amendments in this bill to Section 59-9-101 have retrospective operation to January 1, 2017.

CHAPTER 169**H. B. 44**

Passed February 6, 2017

Approved March 21, 2017

Effective May 9, 2017

DEPARTMENT OF FINANCIAL INSTITUTIONS RELATED AMENDMENTSChief Sponsor: Val L. Peterson
Senate Sponsor: Curtis S. Bramble**LONG TITLE****General Description:**

This bill amends provisions related to financial institutions under the jurisdiction of the department.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ permits the delegation of powers and duties under certain circumstances;
- ▶ changes the supervisor of trust to the supervisor of holding companies;
- ▶ modifies restrictions on acquisition of institutions and holding companies; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 7-1-103, as last amended by Laws of Utah 2016, Chapter 288
- 7-1-201, as last amended by Laws of Utah 2013, Chapter 73
- 7-1-208.1, as enacted by Laws of Utah 1989, Chapter 267
- 7-1-209, as last amended by Laws of Utah 1994, Chapter 200
- 7-1-703, as last amended by Laws of Utah 2014, Chapter 189

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

Section 1. Section 7-1-103 is amended to read:**7-1-103. Definitions.**

As used in this title:

(1) (a) "Bank" means a person authorized under the laws of this state, another state, or the United States to accept deposits from the public.

(b) "Bank" does not include:

(i) a federal savings and loan association or federal savings bank;

(ii) an industrial bank subject to Chapter 8, Industrial Banks;

(iii) a federally chartered credit union; or

(iv) a credit union subject to Chapter 9, Utah Credit Union Act.

(2) "Banking business" means the offering of deposit accounts to the public and the conduct of such other business activities as may be authorized by this title.

(3) (a) "Branch" means a place of business of a financial institution, other than its main office, at which deposits are received and paid.

(b) "Branch" does not include:

(i) an automated teller machine, as defined in Section 7-16a-102;

(ii) a point-of-sale terminal, as defined in Section 7-16a-102; or

(iii) a loan production office under Section 7-1-715.

(4) "Commissioner" means the Commissioner of Financial Institutions.

(5) "Control" means the power, directly or indirectly, or through or in concert with one or more persons, to:

(a) direct or exercise a controlling influence over:

(i) the management or policies of a financial institution; or

(ii) the election of a majority of the directors or trustees of an institution;

(b) vote 20% or more of any class of voting securities of a financial institution by an individual; or

(c) vote more than 10% of any class of voting securities of a financial institution by a person other than an individual.

(6) "Credit union" means a cooperative, nonprofit association incorporated under:

(a) Chapter 9, Utah Credit Union Act; or

(b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.

(7) "Department" means the Department of Financial Institutions.

(8) "Depository institution" means a bank, savings and loan association, savings bank, industrial bank, credit union, or other institution that:

(a) holds or receives deposits, savings, or share accounts;

(b) issues certificates of deposit; or

(c) provides to its customers other depository accounts that are subject to withdrawal by checks, drafts, or other instruments or by electronic means to effect third party payments.

(9) (a) "Depository institution holding company" means:

(i) a person other than an individual that:

(A) has control over ~~any~~ a depository institution; or

(B) becomes a holding company of a depository institution under Section 7-1-703; or

(ii) a person other than an individual that the commissioner finds, after considering the specific circumstances, is exercising or is capable of exercising a controlling influence over a depository institution by means other than those specifically described in this section.

(b) Except as provided in Section 7-1-703, a person is not a depository institution holding company solely because it owns or controls shares acquired in securing or collecting a debt previously contracted in good faith.

(10) "Financial institution" means ~~any~~ an institution subject to the jurisdiction of the department because of this title.

(11) (a) "Financial institution holding company" means a person, other than an individual that has control over ~~any~~ a financial institution or ~~any~~ a person that becomes a financial institution holding company under this chapter, including an out-of-state or foreign depository institution holding company.

(b) Ownership of a service corporation or service organization by a depository institution does not make that institution a financial institution holding company.

(c) A person holding 10% or less of the voting securities of a financial institution is rebuttably presumed not to have control of the institution.

(d) A trust company is not a holding company solely because it owns or holds 20% or more of the voting securities of a financial institution in a fiduciary capacity, unless the trust company exercises a controlling influence over the management or policies of the financial institution.

(12) "Foreign depository institution" means a depository institution chartered or authorized to transact business by a foreign government.

(13) "Foreign depository institution holding company" means the holding company of a foreign depository institution.

(14) "Home state" means:

(a) for a state chartered depository institution, the state that charters the institution;

(b) for a federally chartered depository institution, the state where the institution's main office is located; and

(c) for a depository institution holding company, the state in which the total deposits of all depository institution subsidiaries are the largest.

(15) "Host state" means:

(a) for a depository institution, a state, other than the institution's home state, where the institution maintains or seeks to establish a branch; and

(b) for a depository institution holding company, a state, other than the depository institution holding company's home state, where the depository institution holding company controls or seeks to control a depository institution subsidiary.

(16) "Industrial bank" means a corporation or limited liability company conducting the business of an industrial bank under Chapter 8, Industrial Banks.

(17) "Industrial loan company" means the same as that term is defined in Section 7-8-21.

(18) "Insolvent" means the status of a financial institution that is unable to meet its obligations as they mature.

(19) "Institution" means:

(a) a corporation;

(b) a limited liability company;

(c) a partnership;

(d) a trust;

(e) an association;

(f) a joint venture;

(g) a pool;

(h) a syndicate;

(i) an unincorporated organization; or

(j) any form of business entity.

(20) "Institution subject to the jurisdiction of the department" means an institution or other person described in Section 7-1-501.

(21) "Liquidation" means the act or process of winding up the affairs of an institution subject to the jurisdiction of the department by realizing upon assets, paying liabilities, and appropriating profit or loss, as provided in Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.

(22) "Liquidator" means a person, agency, or instrumentality of this state or the United States appointed to conduct a liquidation.

(23) (a) "Money services business" includes:

(i) a check casher;

(ii) a deferred deposit lender;

(iii) an issuer or seller of traveler's checks or money orders; and

(iv) a money transmitter.

(b) "Money services business" does not include:

(i) a bank;

(ii) a person registered with, and functionally regulated or examined by the Securities Exchange Commission or the Commodity Futures Trading Commission, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the Securities Exchange Commission or the Commodity Futures Trading Commission; or

(iii) an individual who engages in an activity described in Subsection (23)(a) on an infrequent basis and not for gain or profit.

(24) “Negotiable order of withdrawal” means a draft drawn on a NOW account.

(25) (a) “NOW account” means a savings account from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

(b) A “NOW account” is not a demand deposit.

(c) ~~Neither the~~ The owner of a NOW account ~~nor~~ or any third party holder of an instrument requesting withdrawal from the account ~~has~~ does not have a legal right to make withdrawal on demand.

(26) “Out-of-state” means, in reference to a depository institution or depository institution holding company, an institution or company whose home state is not Utah.

(27) “Person” means:

- (a) an individual;
- (b) a corporation;
- (c) a limited liability company;
- (d) a partnership;
- (e) a trust;
- (f) an association;
- (g) a joint venture;
- (h) a pool;
- (i) a syndicate;
- (j) a sole proprietorship;
- (k) an unincorporated organization; or
- (l) any form of business entity.

(28) “Receiver” means a person, agency, or instrumentality of this state or the United States appointed to administer and manage an institution subject to the jurisdiction of the department in receivership, as provided in Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.

(29) “Receivership” means the administration and management of the affairs of an institution subject to the jurisdiction of the department to conserve, preserve, and properly dispose of the assets, liabilities, and revenues of an institution in possession, as provided in Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.

(30) “Savings account” means ~~any~~ a deposit or other account at a depository institution that is not a transaction account.

(31) “Savings and loan association” means:

- (a) a federal savings and loan association; and
- (b) an out-of-state savings and loan association.

(32) “Service corporation” or “service organization” means a corporation or other business entity owned or controlled by one or more financial institutions that is engaged or proposes to engage in business activities related to the business of financial institutions.

(33) “State” means, unless the context demands otherwise:

- (a) a state;
- (b) the District of Columbia; or
- (c) the territories of the United States.

(34) “Subsidiary” means a business entity under the control of an institution.

(35) “Technology service provider” means a person that provides a data processing service or activity that supports the financial services or Internet related services of a depository institution subject to the jurisdiction of the department, including supporting:

- (a) lending;
- (b) money transfers;
- (c) fiduciary activities;
- (d) trading activities;
- (e) deposit taking;
- (f) web services and electronic bill payments;
- (g) mobile applications;
- (h) system and software development and maintenance; and
- (i) security monitoring.

(36) (a) “Transaction account” means a deposit, account, or other contractual arrangement in which a depositor, account holder, or other customer is permitted, directly or indirectly, to make withdrawals by:

- (i) check or other negotiable or transferable instrument;
- (ii) payment order of withdrawal;
- (iii) telephone transfer;
- (iv) other electronic means; or
- (v) any other means or device for the purpose of making payments or transfers to third persons.

(b) “Transaction account” includes:

- (i) demand deposits;
- (ii) NOW accounts;
- (iii) savings deposits subject to automatic transfers; and
- (iv) share draft accounts.

(37) “Trust company” means a person authorized to conduct a trust business, as provided in Chapter 5, Trust Business.

(38) “Utah depository institution” means a depository institution whose home state is Utah.

(39) "Utah depository institution holding company" means a depository institution holding company whose home state is Utah.

Section 2. Section 7-1-201 is amended to read:

7-1-201. Creation of department -- Organization.

(1) There is created the Department of Financial Institutions that is responsible for the execution of the laws of this state relating to [all] a financial [institutions and] institution or other [persons] person subject to this title, and relating to the businesses [they conduct] that the financial institution or other person conducts.

(2) The department organization includes:

(a) the commissioner of financial institutions, who shall be the chief executive officer of the department;

(b) the Board of Financial Institutions;

(c) the chief examiner;

(d) the deputy commissioner;

(e) the supervisor of banks;

(f) the supervisor of industrial banks;

(g) the supervisor of credit unions;

(h) the supervisor of money services businesses; [and]

(i) the supervisor of holding companies; and

[(4)] (j) other supervisors, examiners, and personnel as may be required to carry out the duties, powers, and responsibilities of the department.

(3) A power or duty of the commissioner under this title may be exercised by the deputy commissioner or a supervisor described in Subsection (2) if the commissioner delegates in writing the authority to exercise the power or duty to the deputy commissioner or supervisor.

Section 3. Section 7-1-208.1 is amended to read:

7-1-208.1. Supervisor of holding companies -- Qualifications -- Responsibilities.

(1) The commissioner may designate an examiner as supervisor of [trusts] holding companies who shall be a citizen of the United States and shall have sufficient training and experience with regard to [trusts] holding companies to demonstrate [his] the examiner's qualifications and fitness to perform the duties of [his office] the supervisor of holding companies.

(2) The supervisor of [trusts] holding companies is responsible, subject to the direction and control of the commissioner, for the general supervision and examination of all [trusts] holding companies subject to the jurisdiction of the department under this title. [He] The supervisor of holding companies shall assist and advise the commissioner in the

execution of the laws of this state relating to [trusts] holding companies and shall perform other duties prescribed in this title or assigned to [him] the supervisor of holding companies by the commissioner.

Section 4. Section 7-1-209 is amended to read:

7-1-209. Additional supervisors, examiners, and other personnel -- Compensation -- Travel expenses.

(1) In addition to the supervisors under Sections 7-1-205 through 7-1-208.1 and 7-1-208.3, the commissioner may appoint additional supervisors as necessary. The commissioner may assign to any supervisor responsibility, subject to the direction and control of the commissioner, for the general supervision and examination of any class of financial institutions or other persons not specifically assigned to another supervisor.

(2) The commissioner may employ examiners required for the proper conduct of the department. These examiners may not be interested, directly or indirectly, in any institution under the jurisdiction and supervision of the department. They shall perform duties prescribed by this title or assigned to them by the commissioner.

(3) The commissioner may delegate to the chief examiner or any supervisor the duty of conducting hearings in carrying out the duties, powers, and functions of the department, or [he] the commissioner may employ, on a regular or part-time basis, similarly qualified persons to act as hearing officers for those purposes.

(4) The commissioner may appoint or employ, on a permanent or consulting basis, other persons qualified by education, training, and experience for the needs of the department as the commissioner considers necessary to carry out the duties, powers, and responsibilities of the department.

(5) The commissioner may employ clerical help to properly carry on the work of the department.

(6) The salaries of the employees of the department shall be fixed in accordance with salary and merit standards adopted by the Division of Finance and are payable in the same manner as the salaries of other state employees. All actual and necessary traveling expenses of the commissioner, supervisors, examiners, and other employees of the department incurred in the discharge of their duties shall be fully itemized upon proper vouchers and certified by the commissioner to the director of the Division of Finance.

Section 5. Section 7-1-703 is amended to read:

7-1-703. Restrictions on acquisition of institutions and holding companies -- Enforcement.

(1) Unless the commissioner gives prior written approval under Section 7-1-705, [æ] a person may not:

(a) acquire, directly or indirectly, control of a depository institution or depository institution

holding company subject to the jurisdiction of the department;

(b) vote the stock of [any] a depository institution or depository institution holding company subject to the jurisdiction of the department acquired in violation of Section 7-1-705;

(c) acquire all or [any] a material portion of the assets of a depository institution or a depository institution holding company subject to the jurisdiction of the department;

(d) assume all or [any] a material portion of the deposit liabilities of a depository institution subject to the jurisdiction of the department;

(e) take any action that causes a depository institution to become a subsidiary of a depository institution holding company subject to the jurisdiction of the department;

(f) take any action that causes a person other than an individual to become a depository institution holding company subject to the jurisdiction of the department;

(g) acquire, directly or indirectly, the voting or nonvoting securities of a depository institution or a depository institution holding company subject to the jurisdiction of the department if the acquisition would result in the person obtaining more than 20% of the authorized voting securities of the institution if the nonvoting securities were converted into voting securities; or

(h) merge or consolidate with a depository institution or depository institution holding company subject to the jurisdiction of the department.

(2) [Any] A person who willfully violates [any provision of] this section or [any] a rule or order issued by the department under this section is subject to a civil penalty of not more than \$1,000 per day during which the violation continues. The commissioner may assess the civil penalty after giving notice and opportunity for hearing. The commissioner shall collect the civil penalty by bringing an action in the district court of the county in which the office of the commissioner is located. [Any] An applicant for approval of an acquisition is considered to have consented to the jurisdiction and venue of the court by filing an application for approval.

(3) The commissioner may secure injunctive relief to prevent [any] a change in control or impending violation of this section.

(4) The commissioner may lengthen or shorten any time period specified in Section 7-1-705 if the commissioner finds it necessary to protect the public interest.

(5) The commissioner may exempt [any] a class of financial institutions from this section by rule if the commissioner finds the exception to be in the public interest.

(6) The prior approval of the commissioner under Section 7-1-705 is not required for the acquisition

by a person other than an individual of voting securities or assets of a depository institution or a depository institution holding company that are acquired by foreclosure or otherwise in the ordinary course of collecting a debt previously contracted in good faith if these voting securities or assets are divested within two years of acquisition. The commissioner may, upon application, extend the two-year period of divestiture for up to three additional one-year periods if, in the commissioner's judgment, the extension would not be detrimental to the public interest. The commissioner may adopt rules to implement the intent of this Subsection (6).

(7) (a) An out-of-state depository institution without a branch in Utah, or an out-of-state depository institution holding company without a depository institution in Utah, may acquire:

(i) a Utah depository institution only if it has been in existence for at least five years; or

(ii) a Utah branch of a depository institution only if the branch has been in existence for at least five years.

(b) For purposes of Subsection (7)(a), a depository institution chartered solely for the purpose of acquiring another depository institution is considered to have been in existence for the same period as the depository institution to be acquired, so long as it does not open for business at any time before the acquisition.

(c) The commissioner may waive the restriction in Subsection (7)(a) in the case of a depository institution that is subject to, or is in danger of becoming subject to, supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, or, if applicable, the equivalent provisions of federal law or the law of the institution's home state.

(d) The restriction in Subsection (7)(a) does not apply to an acquisition of, or merger transaction between, affiliate depository institutions.

CHAPTER 170**H. B. 62**

Passed February 23, 2017

Approved March 21, 2017

Effective May 9, 2017

EDUCATOR RIGHTS AMENDMENTS

Chief Sponsor: Keven J. Stratton
Senate Sponsor: Deidre M. Henderson

LONG TITLE**General Description:**

This bill amends provisions related to abusive conduct toward school employees.

Highlighted Provisions:

This bill:

- ▶ defines “abusive conduct”;
- ▶ requires a local school board or charter school governing board to:
 - update a policy related to bullying; and
 - implement a grievance process for a school employee who experiences abusive conduct;
- ▶ provides for training related to abusive conduct; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-11a-102, as last amended by Laws of Utah 2011, Chapter 235

53A-11a-203, as last amended by Laws of Utah 2016, Chapter 221

53A-11a-301, as last amended by Laws of Utah 2013, Chapter 335

53A-11a-302, as last amended by Laws of Utah 2013, Chapter 335

53A-11a-401, as last amended by Laws of Utah 2011, Chapter 235

53A-11a-402, as last amended by Laws of Utah 2011, Chapter 235

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

Section 1. Section 53A-11a-102 is amended to read:**53A-11a-102. Definitions.**

As used in this chapter:

(1) (a) “Abusive conduct” means verbal, nonverbal, or physical conduct of a parent or student directed toward a school employee that, based on its severity, nature, and frequency of occurrence, a reasonable person would determine is intended to cause intimidation, humiliation, or unwarranted distress.

(b) A single act does not constitute abusive conduct.

~~(4)~~ (2) (a) “Bullying” means intentionally or knowingly committing an act that:

(i) (A) endangers the physical health or safety of a school employee or student;

(B) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(C) involves consumption of any food, liquor, drug, or other substance;

(D) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(E) involves physically obstructing a school employee’s or student’s freedom to move; and

(ii) is done for the purpose of placing a school employee or student in fear of:

(A) physical harm to the school employee or student; or

(B) harm to property of the school employee or student.

(b) ~~The~~ ~~conduct~~ described in Subsection ~~[(4)]~~ (2)(a) constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

~~[(2)]~~ (3) “Communication” means the conveyance of a message, whether verbal, written, or electronic.

~~[(3)]~~ (4) “Cyber-bullying” means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

~~[(4)]~~ (5) “Harassment” means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual.

~~[(5)]~~ (6) (a) “Hazing” means intentionally or knowingly committing an act that:

(i) (A) endangers the physical health or safety of a school employee or student;

(B) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(C) involves consumption of any food, liquor, drug, or other substance;

(D) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(E) involves physically obstructing a school employee’s or student’s freedom to move; and

(ii) (A) is done for the purpose of initiation or admission into, affiliation with, holding office in, or

as a condition for, membership or acceptance, or continued membership or acceptance, in any school or school sponsored team, organization, program, or event; or

(B) if the person committing the act against a school employee or student knew that the school employee or student is a member of, or candidate for, membership with a school, or school sponsored team, organization, program, or event to which the person committing the act belongs to or participates in.

(b) The conduct described in Subsection [(5)] (6)(a) constitutes hazing, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

[(6)] (7) “Policy” means a ~~[bullying and hazing]~~ school board policy described in Section 53A-11a-301.

[(7)] (8) “Retaliate” means an act or communication intended:

(a) as retribution against a person for reporting bullying or hazing; or

(b) to improperly influence the investigation of, or the response to, a report of bullying or hazing.

[(8)] (9) “School” means ~~[any]~~ a public elementary or secondary school ~~[or]~~, including a charter school.

[(9)] (10) “School board” means:

(a) a local school board; or

(b) a ~~[local]~~ charter school governing board.

[(10)] (11) “School employee” means:

(a) a school ~~[teachers]~~ teacher;

(b) a school staff member;

(c) a school ~~[administrators; and]~~ administrator; or

(d) ~~[all others]~~ an individual employed, directly or indirectly, by ~~[the]~~ a school, school board, or school district.

Section 2. Section 53A-11a-203 is amended to read:

53A-11a-203. Parental notification of certain incidents and threats required.

(1) For purposes of this section, “parent” includes a student’s guardian.

(2) A school shall:

(a) notify a parent if the parent’s student threatens to commit suicide; or

(b) notify the parents of each student involved in an incident of bullying, cyber-bullying, harassment, hazing, abusive conduct, or retaliation, of the incident involving each parent’s student.

(3) (a) If a school notifies a parent of an incident or threat required to be reported under Subsection (2),

the school shall produce and maintain a record that verifies that the parent was notified of the incident or threat.

(b) A school shall maintain a record described in Subsection (3)(a) in accordance with the requirements of:

(i) Chapter 1, Part 14, Student Data Protection Act;

(ii) Sections 53A-13-301 and 53A-13-302;

(iii) Federal Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; and

(iv) 34 C.F.R. Part 99.

(4) A local school board or charter school governing board shall adopt a policy regarding the process for:

(a) notifying a parent as required in Subsection (2); and

(b) producing and retaining a record that verifies that a parent was notified of an incident or threat as required in Subsection (3).

(5) At the request of a parent, a school may provide information and make recommendations related to an incident or threat described in Subsection (2).

(6) A school shall:

(a) provide a student a copy of a record maintained in accordance with this section that relates to the student if the student requests a copy of the record; and

(b) expunge a record maintained in accordance with this section that relates to a student if the student:

(i) has graduated from high school; and

(ii) requests the record be expunged.

Section 3. Section 53A-11a-301 is amended to read:

53A-11a-301. Bullying, cyber-bullying, harassment, hazing, abusive conduct, and retaliation policy.

(1) On or before September 1, [2013] 2018, each school board shall update the school board’s bullying, cyber-bullying, harassment, hazing, and retaliation policy ~~[consistent with this chapter]~~ to include abusive conduct.

(2) The policy shall:

(a) be developed only with input from:

(i) students;

(ii) parents;

(iii) teachers;

(iv) school administrators;

(v) school staff; or

(vi) local law enforcement agencies; and

(b) provide protection to a student, regardless of the student's legal status.

(3) The policy shall include the following components:

(a) definitions of bullying, cyber-bullying, harassment, ~~and~~ hazing, and abusive conduct that are consistent with this chapter;

(b) language prohibiting bullying, cyber-bullying, harassment, ~~and~~ hazing, and abusive conduct;

(c) language prohibiting retaliation against an individual who reports conduct that is prohibited under this chapter;

(d) language prohibiting making a false report of bullying, cyber-bullying, harassment, hazing, abusive conduct, or retaliation; ~~and~~

(e) as required in Section 53A-11a-203, parental notification of:

(i) a student's threat to commit suicide; and

(ii) an incident of bullying, cyber-bullying, harassment, hazing, abusive conduct, or retaliation, involving the parent's student~~[-]; and~~

(f) a grievance process for a school employee who has experienced abusive conduct.

(4) A copy of the policy shall be:

(a) included in student conduct handbooks ~~and~~;

(b) included in employee handbooks~~[-]; and~~

(c) distributed to parents.

(5) A policy may not permit formal disciplinary action that is based solely on an anonymous report of bullying, cyber-bullying, harassment, hazing, abusive conduct, or retaliation.

(6) Nothing in this chapter is intended to infringe upon the right of a school employee, parent, or student to exercise ~~their~~ the right of free speech.

Section 4. Section 53A-11a-302 is amended to read:

53A-11a-302. Model policy and State Board of Education duties.

On or before September 1, ~~2013~~ 2018, the State Board of Education shall:

(1) update the State Board of Education's model policy on bullying, cyber-bullying, harassment, hazing, and retaliation to include abusive conduct; and

(2) post the model policy described in Subsection (1) on the State Board of Education's website.

Section 5. Section 53A-11a-401 is amended to read:

53A-11a-401. Training, education, and prevention.

(1) (a) A school board shall include in the training of a school employee~~[-]~~ training regarding bullying,

cyber-bullying, harassment, hazing, abusive conduct, and retaliation.

(b) A school board may offer voluntary training to parents and students regarding abusive conduct.

(2) To the extent that state or federal funding is available for this purpose, school boards are encouraged to implement programs or initiatives, in addition to the training described in Subsection (1), to provide for training and education regarding, and the prevention of, bullying, hazing, abusive conduct, and retaliation.

(3) The programs or initiatives described in Subsection (2) may involve:

(a) the establishment of a bullying task force; or

(b) the involvement of school employees, students, or law enforcement.

Section 6. Section 53A-11a-402 is amended to read:

53A-11a-402. Other forms of legal redress.

(1) Nothing in this chapter prohibits a victim of bullying, cyber-bullying, harassment, hazing, abusive conduct, or retaliation from seeking legal redress under any other provisions of civil or criminal law.

(2) This section does not create or alter tort liability.

CHAPTER 171**H. B. 100**

Passed March 6, 2017

Approved March 21, 2017

Effective May 9, 2017

**INSTITUTIONS OF HIGHER EDUCATION
DISCLOSURE REQUIREMENTS**

Chief Sponsor: Kim F. Coleman

Senate Sponsor: Howard A. Stephenson

LONG TITLE**General Description:**

This bill enacts disclosure requirements for institutions of higher education.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an institution of higher education to disclose information regarding program completion, job placement, and costs for each program; and
- ▶ directs the Board of Regents to collect and maintain information.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

53B-1-112, Utah Code Annotated 1953

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

Section 1. Section 53B-1-112 is enacted to read:**53B-1-112. Disclosure requirements for institution programs.**

(1) As used in this section:

(a) "Department" means the Department of Workforce Services.

(b) (i) "Institution" means:

(A) the University of Utah;

(B) Utah State University;

(C) Weber State University;

(D) Southern Utah University;

(E) Snow College;

(F) Dixie State University;

(G) Utah Valley University;

(H) Salt Lake Community College; and

(I) except as provided in Subsection (1)(b)(iii), any other university or college established and maintained by the state.

(ii) "Institution" includes a branch or affiliated institution and a campus or facility owned, operated, or controlled by the governing board of the university or college.

(iii) "Institution" does not include an applied technology college as that term is defined in Section 53B-2a-101.

(c) "Job placement data" means information collected by the board, and based on information from the department, that reflects the job placement rate and industry employment information for a student who graduates from a program.

(d) (i) "Program" means a program of organized instruction or study at an institution that leads to:

(A) an academic degree;

(B) a professional degree;

(C) a vocational degree;

(D) a certificate of one year or greater or the direct assessment equivalent; or

(E) another recognized educational credential.

(ii) "Program" includes instruction or study that, in lieu of time as a measurement for student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others, if the assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment.

(e) "Student loan information" means the percentage of students at an institution who:

(i) received a Title IV loan authorized under:

(A) the Federal Perkins Loan Program;

(B) the Federal Family Education Loan Program;

or

(C) the William D. Ford Direct Loan Program;

and

(ii) fail to pay a loan described in Subsection (1)(e)(i)(A), (B), or (C).

(f) "Total costs" means:

(i) the estimated costs a student would incur while completing a program, including:

(A) tuition and fees; and

(B) books, supplies, and equipment; and

(ii) calculated based on a student's degree, the institution's average costs that would be incurred while a student completes a program and are subsidized by taxpayer contribution, including:

(A) tuition and fees; and

(B) other applicable expenses subsidized by taxpayer contribution for program completion.

(g) "Wage data" means information collected by the board, and based on information from the department, that reflects a student's wage the first year and fifth year after a student has successfully completed a program.

(2) (a) Except as provided in Subsection (5), for each program listed in an institution's course catalog or each program otherwise offered by the

institution, the institution shall provide a conspicuous and direct link on the institution's website, subject to Subsection (2)(b), to the following information maintained by the board in accordance with Subsection (3):

(i) job placement data;

(ii) to the extent supporting data is available, student loan information;

(iii) total costs; and

(iv) wage data.

(b) An institution shall include the information described in Subsection (2)(a) on each institutional website that includes academic, cost, financial aid, or admissions information for a program.

(3) The board or the board's designee shall:

(a) collect the information described in Subsection (2)(a);

(b) develop through user testing a format for the display of information described in Subsection (2)(a) that is easily accessible and informative; and

(c) maintain the information described in Subsection (2)(a) so that it is current.

(4) No later than July 1, 2018:

(a) the board shall make the information described in Subsection (2)(a) available in a format described in Subsection (3)(b); and

(b) an institution shall include the information described in Subsection (2)(a) in accordance with Subsection (2)(b).

(5) An institution is not subject to Subsection (2) for a program that the institution is required to report on under 34 C.F.R. Sec. 668.412.

(6) The board shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for the implementation and administration of this section.

CHAPTER 172**H. B. 110**

Passed March 8, 2017
 Approved March 21, 2017
 Effective March 21, 2017

CONTROLLED SUBSTANCE AMENDMENTS

Chief Sponsor: Paul Ray
 Senate Sponsor: Allen M. Christensen
 Cosponsor: Carol Spackman Moss

LONG TITLE**General Description:**

This bill modifies the Utah Controlled Substances Act.

Highlighted Provisions:

This bill:

- ▶ adds the following to the list of controlled substances under Schedule I:
 - 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide, also known as U-47700 or “pink”;
 - Acetyl fentanyl: (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide);
 - Butyryl fentanyl: N-(1-(2-phenylethyl)-4-piperidinyl)-N-phenylbutyramide;
 - Furanyl fentanyl: and N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide; and
- ▶ adds the following to listed controlled substances:
 - ADB-CHMINACA:
N-[(2S)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-(cyclohexylmethyl)indazole-3-carboxamide;
 - ADB-FUBINACA:
(N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide); and
 - FUB-AMB;
methyl(1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)valinate.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

58-37-4, as last amended by Laws of Utah 2015, Chapter 258
 58-37-4.2, as last amended by Laws of Utah 2014, Chapter 23

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

Section 1. Section 58-37-4 is amended to read:

58-37-4. Schedules of controlled substances -- Schedules I through V -- Findings required -- Specific substances included in schedules.

(1) There are established five schedules of controlled substances known as Schedules I, II, III,

IV, and V which consist of substances listed in this section.

(2) Schedules I, II, III, IV, and V consist of the following drugs or other substances by the official name, common or usual name, chemical name, or brand name designated:

(a) Schedule I:

(i) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(B) Acetyl fentanyl: (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide);

~~(C)~~ (C) Acetylmethadol;

~~(D)~~ (D) Allylprodine;

~~(E)~~ (E) Alphacetylmethadol, except levo-alpha-cetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

~~(F)~~ (F) Alphameprodine;

~~(G)~~ (G) Alphamethadol;

~~(H)~~ (H) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

~~(I)~~ (I) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

~~(J)~~ (J) Benzylpiperazine;

~~(K)~~ (K) Benzethidine;

~~(L)~~ (L) Betacetylmethadol;

~~(M)~~ (M) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

~~(N)~~ (N) Beta-hydroxy-3-methylfentanyl, other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

~~(O)~~ (O) Betameprodine;

~~(P)~~ (P) Betamethadol;

~~(Q)~~ (Q) Betaprodine;

(R) Butyryl fentanyl: N-(1-(2-phenylethyl)-4-piperidinyl)-N-phenylbutyramide;

~~(S)~~ (S) Clonitazene;

~~(T)~~ (T) Dextromoramide;

~~(U)~~ (U) Diampromide;

~~(V)~~ (V) Diethylthiambutene;

~~(W)~~ (W) Difenoxin;

[(V)] (X) Dimenoxadol;

[(W)] (Y) Dimepheptanol;

[(X)] (Z) Dimethylthiambutene;

[(Y)] (AA) Dioxaphetyl butyrate;

[(Z)] (BB) Dipipanone;

[(AA)] (CC) Ethylmethylthiambutene;

[(BB)] (DD) Etonitazene;

[(CC)] (EE) Etoxeridine;

[(FF) Furanyl fentanyl: N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]furan-2-carboxamide];

[(DD)] (GG) Furethidine;

[(EE)] (HH) Hydroxypethidine;

[(FF)] (II) Ketobemidone;

[(GG)] (JJ) Levomoramide;

[(HH)] (KK) Levophenacymorphan;

[(II)] (LL) Morpheridine;

[(JJ)] (MM) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

[(KK)] (NN) Noracymethadol;

[(LL)] (OO) Norlevorphanol;

[(MM)] (PP) Normethadone;

[(NN)] (QQ) Norpipanone;

[(OO)] (RR) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

[(PP)] (SS) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

[(QQ)] (TT) Phenadoxone;

[(RR)] (UU) Phenampromide;

[(SS)] (VV) Phenomorphan;

[(TT)] (WW) Phenoperidine;

[(UU)] (XX) Piritramide;

[(VV)] (YY) Proheptazine;

[(WW)] (ZZ) Properidine;

[(XX)] (AAA) Propiram;

[(YY)] (BBB) Racemoramide;

[(ZZ)] (CCC) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

[(AAA)] (DDD) Tilidine;

[(BBB)] (EEE) Trimeperidine;

[(CCC)] (FFF) 3-methylfentanyl, including the optical and geometric isomers (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide); [and]

[(DDD)] (GGG) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide)[-]; and

[(EEE)] (HHH) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide also known as U-47700.

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Acetorphine;
- (B) Acetyldihydrocodeine;
- (C) Benzylmorphine;
- (D) Codeine methylbromide;
- (E) Codeine-N-Oxide;
- (F) Cyprenorphine;
- (G) Desomorphine;
- (H) Dihydromorphine;
- (I) Drotebanol;
- (J) Etorphine (except hydrochloride salt);
- (K) Heroin;
- (L) Hydromorphanol;
- (M) Methyldesorphine;
- (N) Methylhydromorphine;
- (O) Morphine methylbromide;
- (P) Morphine methylsulfonate;
- (Q) Morphine-N-Oxide;
- (R) Myrophine;
- (S) Nicocodeine;
- (T) Nicomorphine;
- (U) Normorphine;
- (V) Pholcodine; and
- (W) Thebacon.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation; as used in this Subsection (2)(a)(iii) only, "isomer" includes the optical, position, and geometric isomers:

- (A) Alpha-ethyltryptamine, some trade or other names: tryptamine; Monase; α -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; α -ET; and AET;
- (B) 4-bromo-2,5-dimethoxy-amphetamine, some trade or other names:

4-bromo-2,5-dimethoxy- α -methylphenethylamine; 4-bromo-2,5-DMA;

(C) 4-bromo-2,5-dimethoxyphenethylamine, some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

(D) 2,5-dimethoxyamphetamine, some trade or other names: 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA;

(E) 2,5-dimethoxy-4-ethylamphetamine, some trade or other names: DOET;

(F) 4-methoxyamphetamine, some trade or other names: 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine, PMA;

(G) 5-methoxy-3,4-methylenedioxyamphetamine;

(H) 4-methyl-2,5-dimethoxy-amphetamine, some trade and other names: 4-methyl-2,5-dimethoxy- α -methylphenethylamine; "DOM"; and "STP";

(I) 3,4-methylenedioxy amphetamine;

(J) 3,4-methylenedioxy-methamphetamine (MDMA);

(K) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

(L) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

(M) 3,4,5-trimethoxy amphetamine;

(N) Bufotenine, some trade and other names: 3-(2-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(O) Diethyltryptamine, some trade and other names: N,N-Diethyltryptamine; DET;

(P) Dimethyltryptamine, some trade or other names: DMT;

(Q) Ibogaine, some trade and other names: 7-Ethyl-6,6,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; Tabernanthe iboga;

(R) Lysergic acid diethylamide;

(S) Marijuana;

(T) Mescaline;

(U) Parahexyl, some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl;

(V) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such

plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12));

(W) N-ethyl-3-piperidyl benzilate;

(X) N-methyl-3-piperidyl benzilate;

(Y) Psilocybin;

(Z) Psilocyn;

(AA) Tetrahydrocannabinols, naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: 1 cis or trans tetrahydrocannabinol, and their optical isomers 6 cis or trans tetrahydrocannabinol, and their optical isomers 3,4 cis or trans tetrahydrocannabinol, and its optical isomers, and since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered;

(BB) Ethylamine analog of phencyclidine, some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(CC) Pyrrolidine analog of phencyclidine, some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(DD) Thiophene analog of phencyclidine, some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP; and

(EE) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, some other names: TCPy.

(iv) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Mecloqualone; and

(B) Methaqualone.

(v) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(A) Aminorex, some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(B) Cathinone, some trade or other names: 2-amino-1-phenyl-1-propanone,

alpha-aminopropiophenone,
2-aminopropiophenone, and norephedrone;

(C) Fenethylamine;

(D) Methcathinone, some other names:
2-(methylamino)-propiophenone;
alpha-(methylamino)propiophenone;
2-(methylamino)-1-phenylpropan-1-one;
alpha-N-methylaminopropiophenone;
monomethylpropion-ephedrone;
N-methylcathinone; methylcathinone; AL-464;
AL-422; AL-463 and UR1432, its salts, optical
isomers, and salts of optical isomers;

(E) (ñ)cis-4-methylaminorex ((ñ)cis-4,5-
dihydro-4-methyl-5-phenyl-2-oxazolamine);

(F) N-ethylamphetamine; and

(G) N,N-dimethylamphetamine, also known as
N,N-alpha-trimethyl-benzeneethanamine;
N,N-alpha-trimethylphenethylamine.

(vi) Any material, compound, mixture, or
preparation which contains any quantity of the
following substances, including their optical
isomers, salts, and salts of isomers, subject to
temporary emergency scheduling:

(A)

N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
(benzylfentanyl); and

(B)

N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropan
amide (thylfentanyl).

(vii) Unless specifically excepted or unless listed
in another schedule, any material, compound,
mixture, or preparation which contains any
quantity of gamma hydroxy butyrate (gamma
hydrobutyric acid), including its salts, isomers, and
salts of isomers.

(b) Schedule II:

(i) Unless specifically excepted or unless listed in
another schedule, any of the following substances
whether produced directly or indirectly by
extraction from substances of vegetable origin, or
independently by means of chemical synthesis, or
by a combination of extraction and chemical
synthesis:

(A) Opium and opiate, and any salt, compound,
derivative, or preparation of opium or opiate,
excluding apomorphine, dextroproprhan, nalbuphine,
nalmefene, naloxone, and naltrexone, and their
respective salts, but including:

(I) Raw opium;

(II) Opium extracts;

(III) Opium fluid;

(IV) Powdered opium;

(V) Granulated opium;

(VI) Tincture of opium;

(VII) Codeine;

(VIII) Ethylmorphine;

(IX) Etorphine hydrochloride;

(X) Hydrocodone;

(XI) Hydromorphone;

(XII) Metopon;

(XIII) Morphine;

(XIV) Oxycodone;

(XV) Oxymorphone; and

(XVI) Thebaine;

(B) Any salt, compound, derivative, or
preparation which is chemically equivalent or
identical with any of the substances referred to in
Subsection (2)(b)(i)(A), except that these
substances may not include the isoquinoline
alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves and any salt, compound,
derivative, or preparation of coca leaves, and any
salt, compound, derivative, or preparation which is
chemically equivalent or identical with any of these
substances, and includes cocaine and ecgonine,
their salts, isomers, derivatives, and salts of
isomers and derivatives, whether derived from the
coca plant or synthetically produced, except the
substances may not include decocainized coca
leaves or extraction of coca leaves, which
extractions do not contain cocaine or ecgonine; and

(E) Concentrate of poppy straw, which means the
crude extract of poppy straw in either liquid, solid,
or powder form which contains the phenanthrene
alkaloids of the opium poppy.

(ii) Unless specifically excepted or unless listed in
another schedule, any of the following opiates,
including their isomers, esters, ethers, salts, and
salts of isomers, esters, and ethers, when the
existence of the isomers, esters, ethers, and salts is
possible within the specific chemical designation,
except dextroproprhan and levopropoxyphene:

(A) Alfentanil;

(B) Alphaprodine;

(C) Anileridine;

(D) Bezitramide;

(E) Bulk dextropropoxyphene (nondosage forms);

(F) Carfentanil;

(G) Dihydrocodeine;

(H) Diphenoxylate;

(I) Fentanyl;

(J) Isomethadone;

(K) Levo-alpha-acetylmethadol, some other
names: levo-alpha-acetylmethadol, levomethadyl
acetate, or LAAM;

(L) Levomethorphan;

- (M) Levorphanol;
- (N) Metazocine;
- (O) Methadone;
- (P) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (Q) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (R) Pethidine (meperidine);
- (S) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (T) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (U) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (V) Phenazocine;
- (W) Piminodine;
- (X) Racemethorphan;
- (Y) Racemorphan;
- (Z) Remifentanil; and
- (AA) Sufentanil.
- (iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:
- (A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (B) Methamphetamine, its salts, isomers, and salts of its isomers;
- (C) Phenmetrazine and its salts; and
- (D) Methylphenidate.
- (iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:
- (A) Amobarbital;
- (B) Glutethimide;
- (C) Pentobarbital;
- (D) Phencyclidine;
- (E) Phencyclidine immediate precursors: 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC); and
- (F) Secobarbital.

(v) (A) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of Phenylacetone.

(B) Some of these substances may be known by trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone.

(vi) Nabilone, another name for nabilone: (ñ)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

(c) Schedule III:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II, which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the Code of Federal Regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Clortermine; and

(E) Phendimetrazine.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of them, and one or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any salt of any of these drugs which is approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid or any salt of any of them;

(D) Chlorhexadol;

(E) Buprenorphine;

(F) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is

approved under the federal Food, Drug, and Cosmetic Act, Section 505;

(G) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine: *n*-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(H) Lysergic acid;

(I) Lysergic acid amide;

(J) Methyprylon;

(K) Sulfondiethylmethane;

(L) Sulfonethylmethane;

(M) Sulfonmethane; and

(N) Tiletamine and zolazepam or any of their salts, some trade or other names for a tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpiazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, fluprazapon.

(iii) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product, some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

(iv) Nalorphine.

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts; and

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(vi) Unless specifically excepted or unless listed in another schedule, anabolic steroids including any of the following or any isomer, ester, salt, or derivative of the following that promotes muscle growth:

(A) Boldenone;

(B) Chlorotestosterone (4-chlortestosterone);

(C) Clostebol;

(D) Dehydrochlormethyltestosterone;

(E) Dihydrotestosterone (4-dihydrotestosterone);

(F) Drostanolone;

(G) Ethylestrenol;

(H) Fluoxymesterone;

(I) Formebolone (formebolone);

(J) Mesterolone;

(K) Methandienone;

(L) Methandranone;

(M) Methandriol;

(N) Methandrostenolone;

(O) Methenolone;

(P) Methyltestosterone;

(Q) Mibolerone;

(R) Nandrolone;

(S) Norethandrolone;

(T) Oxandrolone;

(U) Oxymesterone;

(V) Oxymetholone;

(W) Stanolone;

(X) Stanozolol;

(Y) Testolactone;

(Z) Testosterone; and

(AA) Trenbolone.

(vii) Anabolic steroids expressly intended for administration through implants to cattle or other nonhuman species, and approved by the Secretary

of Health and Human Services for use, may not be classified as a controlled substance.

(d) Schedule IV:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or any salts of any of them.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Alprazolam;
- (B) Barbitol;
- (C) Bromazepam;
- (D) Butorphanol;
- (E) Camazepam;
- (F) Carisoprodol;
- (G) Chloral betaine;
- (H) Chloral hydrate;
- (I) Chlordiazepoxide;
- (J) Clobazam;
- (K) Clonazepam;
- (L) Clorazepate;
- (M) Clotiazepam;
- (N) Cloxazolam;
- (O) Delorazepam;
- (P) Diazepam;
- (Q) Dichloralphenazone;
- (R) Estazolam;
- (S) Ethchlorvynol;
- (T) Ethinamate;
- (U) Ethyl loflazepate;
- (V) Fludiazepam;
- (W) Flunitrazepam;
- (X) Flurazepam;
- (Y) Halazepam;
- (Z) Haloxazolam;
- (AA) Ketazolam;
- (BB) Loprazolam;
- (CC) Lorazepam;
- (DD) Lormetazepam;
- (EE) Mebutamate;

- (FF) Medazepam;
- (GG) Meprobamate;
- (HH) Methohexital;
- (II) Methylphenobarbital (mephobarbital);
- (JJ) Midazolam;
- (KK) Nimetazepam;
- (LL) Nitrazepam;
- (MM) Nordiazepam;
- (NN) Oxazepam;
- (OO) Oxazolam;
- (PP) Paraldehyde;
- (QQ) Pentazocine;
- (RR) Petrichloral;
- (SS) Phenobarbital;
- (TT) Pinazepam;
- (UU) Prazepam;
- (VV) Quazepam;
- (WW) Temazepam;
- (XX) Tetrazepam;
- (YY) Triazolam;
- (ZZ) Zaleplon; and
- (AAA) Zolpidem.

(iii) Any material, compound, mixture, or preparation of fenfluramine which contains any quantity of the following substances, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric isomers, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Cathine ((+)-norpseudoephedrine);
- (B) Diethylpropion;
- (C) Fencamfamine;
- (D) Fenproporex;
- (E) Mazindol;
- (F) Mefenorex;
- (G) Modafinil;
- (H) Pemoline, including organometallic complexes and chelates thereof;
- (I) Phentermine;

(J) Pipradrol;

(K) Sibutramine; and

(L) SPA((-)-1-dimethylamino-1,2-diphenylethane).

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane), including its salts.

(e) Schedule V: Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, which includes one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(i) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(ii) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(iii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(iv) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(v) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(vi) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(vii) unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains Pyrovalerone having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers; and

(viii) all forms of Tramadol.

Section 2. Section 58-37-4.2 is amended to read:

58-37-4.2. Listed controlled substances.

The following substances, their analogs, homologs, and synthetic equivalents are listed controlled substances:

(1) AB-001;

(2) AB-PINACA; N-[1-(aminocarbonyl)-2-methylpropyl]-1-pentyl-1H-indazole-3-carboxamide;

(3) AB-FUBINACA; N-[1-(aminocarbonyl)-2-methylpropyl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide;

(4) ADB-CHMINACA; N-[(2S)-1-amino-3,3-dimethyl-1-oxobutan-2-yl]-1-(cyclohexylmethyl)indazole-3-carboxamide;

(5) ADB-FUBINACA; (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide);

[(4)] (6) AKB48;

[(5)] (7) alpha-Pyrrolidinovalerophenone (alpha-PVP);

[(6)] (8) AM-694; 1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone;

[(7)] (9) AM-1248;

[(8)] (10) AM-2201; 1-(5-fluoropentyl)-3-(1-naphthoyl)indole;

[(9)] (11) AM-2233;

[(10)] (12) AM-679;

[(11)] (13) A796,260;

[(12)] (14) Butylone;

[(13)] (15) CP 47,497 and its C6, C8, and C9 homologs; 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol;

[(14)] (16) Diisopropyltryptamine (DiPT);

[(15)] (17) Ethylone;

[(16)] (18) Ethylphenidate;

[(17)] (19) Fluoroisocathinone;

[(18)] (20) Fluoromethamphetamine;

[(19)] (21) Fluoromethcathinone;

(22) FUB-AMB; methyl (1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)valinate;

[(20)] (23) HU-210; (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

[(21)] (24) HU-211; Dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

[(22)] (25) JWH-015; (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone;

[(23)] (26) JWH-018; Naphthalen-1-yl-(pentylindol-3-yl)methanone {also known as 1-Pentyl-3-(1-naphthoyl)indole};

[(24)] (27) JWH-019; 1-hexyl-3-(1-naphthoyl)indole;

[(25)] (28) JWH-073; Naphthalen-1-yl (1-butylindol-3-yl)methanone {also known as 1-Butyl-3-(1-naphthoyl)indole};

[(26)] (29) JWH-081; 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone;

[(27)] (30) JWH-122; CAS#619294-47-2; (1-Pentyl-3-(4-methyl-1-naphthoyl)indole);

[~~(28)~~] (31) JWH-200; 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl)indole;

[~~(29)~~] (32) JWH-203; 1-pentyl-3-(2-chlorophenylacetyl)indole;

[~~(30)~~] (33) JWH-210; 4-ethyl-1-naphthalenyl (1-pentyl-1H-indol-3-yl)-methanone;

[~~(31)~~] (34) JWH-250; 1-pentyl-3-(2-methoxyphenylacetyl)indole;

[~~(32)~~] (35) JWH-251; 2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone;

[~~(33)~~] (36) JWH-398; 1-pentyl-3-(4-chloro-1-naphthoyl)indole;

[~~(34)~~] (37) MAM-2201;

[~~(35)~~] (38) MAM-2201; (1-(5-fluoropentyl)-1H-indol-3-yl)(4-ethyl-1-naphthalenyl)-methanone;

[~~(36)~~] (39) Methoxetamine;

[~~(37)~~] (40) Naphyrone;

[~~(38)~~] (41) PB-22; 1-pentyl-1H-indole-3-carboxylic acid 8-quinolinyl ester;

[~~(39)~~] (42) Pentdrone;

[~~(40)~~] (43) Pentylone;

[~~(41)~~] (44) RCS-4; 1-pentyl-3-(4-methoxybenzoyl)indole;

[~~(42)~~] (45) RCS-8; 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole {also known as BTW-8 and SR-18};

[~~(43)~~] (46) STS-135;

[~~(44)~~] (47) UR-144;

[~~(45)~~] (48) UR-144 N-(5-chloropentyl) analog;

[~~(46)~~] (49) XLR11;

[~~(47)~~] (50) 2C-C;

[~~(48)~~] (51) 2C-D;

[~~(49)~~] (52) 2C-E;

[~~(50)~~] (53) 2C-H;

[~~(51)~~] (54) 2C-I;

[~~(52)~~] (55) 2C-N;

[~~(53)~~] (56) 2C-P;

[~~(54)~~] (57) 2C-T-2;

[~~(55)~~] (58) 2C-T-4;

[~~(56)~~] (59) 2NE1;

[~~(57)~~] (60) 25I-NBOMe;

[~~(58)~~] (61) 2,5-Dimethoxy-4-chloroamphetamine (DOC);

[~~(59)~~] (62) 4-methylmethcathinone {also known as mephedrone};

[~~(60)~~] (63) 3,4-methylenedioxypropylvalerone {also known as MDPV};

[~~(61)~~] (64) 3,4-Methylenedioxypropylmethcathinone {also known as methylone};

[~~(62)~~] (65) 4-methoxymethcathinone;

[~~(63)~~] (66) 4-Methyl-alpha-pyrrolidinopropiophenone;

[~~(64)~~] (67) 4-Methylethcathinone;

[~~(65)~~] (68) 5F-AKB48; 1-(5-fluoropentyl)-N-tricyclo[3.3.1.1.3,7]dec-1-yl-1H-indazole-3-carboxamide;

[~~(66)~~] (69) 5-fluoro-PB-22; 1-(5-fluoropentyl)-1H-indole-3-carboxylic acid 8-quinolinyl ester;

[~~(67)~~] (70) 5-Iodo-2-aminoindane (5-IAI);

[~~(68)~~] (71) 5-MeO-DALT;

[~~(69)~~] (72) 25B-NBOMe; 2-(r-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine;

[~~(70)~~] (73) 25C-NBOMe; 2-(4-Chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine; and

[~~(71)~~] (74) 25H-NBOMe; 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine.

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 173**H. B. 114**

Passed February 16, 2017

Approved March 21, 2017

Effective May 9, 2017

LOCAL SCHOOL ENTITY AMENDMENTS

Chief Sponsor: Bruce R. Cutler
 Senate Sponsor: Jacob L. Anderegg

LONG TITLE**General Description:**

This bill modifies provisions relating to the Minimum School Program Act.

Highlighted Provisions:

This bill:

- ▶ amends certain references to education entities in Title 53A, Chapter 17a, Minimum School Program Act;
- ▶ repeals outdated language; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-1a-106, as last amended by Laws of Utah 2012, Chapter 315
 53A-2-214, as last amended by Laws of Utah 2011, Chapter 371
 53A-17a-103, as last amended by Laws of Utah 2016, Chapter 367
 53A-17a-105, as last amended by Laws of Utah 2016, Chapter 229
 53A-17a-105.5, as last amended by Laws of Utah 2016, Chapter 200
 53A-17a-106, as last amended by Laws of Utah 2001, Chapter 73
 53A-17a-107, as last amended by Laws of Utah 2008, Chapter 382
 53A-17a-108, as last amended by Laws of Utah 2010, Chapters 3 and 399
 53A-17a-109, as last amended by Laws of Utah 2013, Chapter 106
 53A-17a-111, as last amended by Laws of Utah 2011, Chapter 342
 53A-17a-111.5, as last amended by Laws of Utah 2003, Chapter 221
 53A-17a-112, as last amended by Laws of Utah 2011, Chapters 359 and 366
 53A-17a-113, as last amended by Laws of Utah 2010, Chapter 3
 53A-17a-116, as last amended by Laws of Utah 2010, Chapter 3
 53A-17a-119, as last amended by Laws of Utah 2010, Chapter 3
 53A-17a-124, as last amended by Laws of Utah 2014, Chapter 346
 53A-17a-124.5, as last amended by Laws of Utah 2016, Chapter 188
 53A-17a-125, as last amended by Laws of Utah 2010, Chapter 3
 53A-17a-126, as last amended by Laws of Utah

2016, Chapter 214
 53A-17a-127, as last amended by Laws of Utah 2011, Chapters 366 and 371
 53A-17a-133, as last amended by Laws of Utah 2016, Chapters 2, 350, and 367
 53A-17a-134, as last amended by Laws of Utah 2013, Chapter 178
 53A-17a-135, as last amended by Laws of Utah 2016, Chapter 2
 53A-17a-139, as enacted by Laws of Utah 1991, Chapter 72
 53A-17a-140, as enacted by Laws of Utah 1991, Chapter 72
 53A-17a-141, as enacted by Laws of Utah 1991, Chapter 72
 53A-17a-143, as last amended by Laws of Utah 2011, Chapter 371
 53A-17a-144, as last amended by Laws of Utah 2011, Chapter 342
 53A-17a-145, as last amended by Laws of Utah 2011, Chapter 371
 53A-17a-146, as last amended by Laws of Utah 2011, Chapters 371 and 381
 53A-17a-150, as last amended by Laws of Utah 2016, Chapter 188
 53A-17a-151, as last amended by Laws of Utah 2011, Chapter 371
 53A-17a-153, as last amended by Laws of Utah 2010, Chapter 3
 53A-17a-159, as enacted by Laws of Utah 2008, Chapter 397
 53A-17a-165, as last amended by Laws of Utah 2015, Chapter 258
 53A-17a-166, as enacted by Laws of Utah 2011, Chapter 359
 53A-17a-167, as last amended by Laws of Utah 2015, Chapter 372
 53A-17a-171, as last amended by Laws of Utah 2016, Chapter 188
 63J-1-220, as enacted by Laws of Utah 2015, Chapter 407

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

Section 1. Section 53A-1a-106 is amended to read:**53A-1a-106. School district and individual school powers -- Student education/occupation plan (SEOP) definition.**

(1) In order to acquire and develop the characteristics listed in Section 53A-1a-104, each school district and each public school within its respective district shall implement a comprehensive system of accountability in which students advance through public schools by demonstrating competency in required skills and mastery of required knowledge through the use of diverse assessment instruments such as authentic and criterion referenced tests, projects, and portfolios.

(2) (a) Each school district and public school shall:

(i) develop and implement programs integrating technology into the curriculum, instruction, and student assessment;

(ii) provide for teacher and parent involvement in policymaking at the school site;

(iii) implement a public school choice program to give parents, students, and teachers greater flexibility in designing and choosing among programs with different focuses through schools within the same district and other districts, subject to space availability, demographics, and legal and performance criteria;

(iv) establish strategic planning at both the district and school level and site-based decision making programs at the school level;

(v) provide opportunities for each student to acquire and develop academic and occupational knowledge, skills, and abilities;

(vi) participate in ongoing research and development projects primarily at the school level aimed at improving the quality of education within the system; and

(vii) involve business and industry in the education process through the establishment of partnerships with the business community at the district and school level.

(b) (i) As used in this title, “student education/occupation plan” or “SEOP” means a plan developed by a student and the student’s parent or guardian, in consultation with school counselors, teachers, and administrators that:

(A) is initiated at the beginning of grade 7;

(B) identifies a student’s skills and objectives;

(C) maps out a strategy to guide a student’s course selection; and

(D) links a student to post-secondary options, including higher education and careers.

(ii) Each local school board, in consultation with school personnel, parents, and school community councils or similar entities shall establish policies to provide for the effective implementation of a personalized student education plan (SEP) or student education/occupation plan (SEOP) for each student at the school site.

(iii) The policies shall include guidelines and expectations for:

(A) recognizing the student’s accomplishments, strengths, and progress towards meeting student achievement standards as defined in U-PASS;

(B) planning, monitoring, and managing education and career development; and

(C) involving students, parents, and school personnel in preparing and implementing SEPs and SEOPs.

(iv) A parent may request conferences with school personnel in addition to SEP or SEOP conferences established by local school board policy.

(v) Time spent during the school day to implement SEPs and SEOPs is considered part of

the school term referred to in Subsection 53A-17a-103~~(4)~~(7).

(3) A school district or public school may submit proposals to modify or waive rules or policies of a supervisory authority within the public education system in order to acquire or develop the characteristics listed in Section 53A-1a-104.

(4) (a) Each school district and public school shall make an annual report to its patrons on its activities under this section.

(b) The reporting process shall involve participation from teachers, parents, and the community at large in determining how well the district or school is performing.

Section 2. Section 53A-2-214 is amended to read:

53A-2-214. Online students’ participation in extracurricular activities.

(1) As used in this section:

(a) “Online education” means the use of information and communication technologies to deliver educational opportunities to a student in a location other than a school.

(b) “Online student” means a student who:

(i) participates in an online education program sponsored or supported by the State Board of Education, a school district, or charter school; and

(ii) generates funding for the school district or school pursuant to Subsection 53A-17a-103~~(4)~~(7) and rules of the State Board of Education.

(2) An online student is eligible to participate in extracurricular activities at:

(a) the school within whose attendance boundaries the student’s custodial parent or legal guardian resides; or

(b) the public school from which the student withdrew for the purpose of participating in an online education program.

(3) A school other than a school described in Subsection (2)(a) or (b) may allow an online student to participate in extracurricular activities other than:

(a) interschool competitions of athletic teams sponsored and supported by a public school; or

(b) interschool contests or competitions for music, drama, or forensic groups or teams sponsored and supported by a public school.

(4) An online student is eligible for extracurricular activities at a public school consistent with eligibility standards as applied to full-time students of the public school.

(5) A school district or public school may not impose additional requirements on an online school student to participate in extracurricular activities that are not imposed on full-time students of the public school.

(6) (a) The State Board of Education shall make rules establishing fees for an online school student’s

participation in extracurricular activities at school district schools.

(b) The rules shall provide that:

(i) online school students pay the same fees as other students to participate in extracurricular activities;

(ii) online school students are eligible for fee waivers pursuant to Section 53A-12-103;

(iii) for each online school student who participates in an extracurricular activity at a school district school, the online school shall pay a share of the school district's costs for the extracurricular activity; and

(iv) an online school's share of the costs of an extracurricular activity shall reflect state and local tax revenues expended, except capital facilities expenditures, for an extracurricular activity in a school district or school divided by total student enrollment of the school district or school.

(c) In determining an online school's share of the costs of an extracurricular activity under Subsections (6)(b)(iii) and (iv), the State Board of Education may establish uniform fees statewide based on average costs statewide or average costs within a sample of school districts.

(7) When selection to participate in an extracurricular activity at a public school is made on a competitive basis, an online student is eligible to try out for and participate in the activity as provided in this section.

Section 3. Section 53A-17a-103 is amended to read:

53A-17a-103. Definitions.

As used in this chapter:

(1) "Basic state-supported school program" or "basic program" means public education programs for kindergarten, elementary, and secondary school students that are operated and maintained for the amount derived by multiplying the number of weighted pupil units for each school district or charter school by the value established each year in statute, except as otherwise provided in this chapter.

(2) (a) "Certified revenue levy" means a property tax levy that provides an amount of ad valorem property tax revenue equal to the sum of:

(i) the amount of ad valorem property tax revenue to be generated statewide in the previous year from imposing a minimum basic tax rate, as specified in Section 53A-17a-135; and

(ii) the product of:

(A) eligible new growth, as defined in Section 59-2-924 and rules of the State Tax Commission; and

(B) the minimum basic tax rate certified by the State Tax Commission for the previous year.

(b) For purposes of this Subsection (2), "ad valorem property tax revenue" does not include property tax revenue received statewide from personal property that is:

(i) assessed by a county assessor in accordance with Title 59, Chapter 2, Part 3, County Assessment; and

(ii) semiconductor manufacturing equipment.

(c) For purposes of calculating the certified revenue levy described in this Subsection (2), the State Tax Commission shall use:

(i) the taxable value of real property assessed by a county assessor contained on the assessment roll;

(ii) the taxable value of real and personal property assessed by the State Tax Commission; and

(iii) the taxable year end value of personal property assessed by a county assessor contained on the prior year's assessment roll.

(3) "Charter school governing board" means the governing board, as defined in Section 53A-1a-501.3, that governs a charter school.

(4) "Local education board" means a local school board or charter school governing board.

(5) "Local school board" means a board elected under Title 20A, Chapter 14, Part 2, Election of Members of Local Boards of Education.

[43] (6) "Pupil in average daily membership (ADM)" means a full-day equivalent pupil.

[44] (7) (a) "State-supported minimum school program" or "Minimum School Program" means public school programs for kindergarten, elementary, and secondary schools as described in this Subsection [44] (7).

(b) The minimum school program established in school districts and charter schools shall include the equivalent of a school term of nine months as determined by the State Board of Education.

(c) (i) The board shall establish the number of days or equivalent instructional hours that school is held for an academic school year.

(ii) Education, enhanced by utilization of technologically enriched delivery systems, when approved by [~~local school boards or charter school governing boards~~] a local education board, shall receive full support by the State Board of Education as it pertains to fulfilling the attendance requirements, excluding time spent viewing commercial advertising.

(d) (i) A local [~~school board or charter school governing~~] education board may reallocate up to 32 instructional hours or four school days established under Subsection [44] (7)(c) for teacher preparation time or teacher professional development.

(ii) A reallocation of instructional hours or school days under Subsection [44] (7)(d)(i) is subject to the approval of two-thirds of the members of a local [~~school board or charter school governing~~]

education board voting in a regularly scheduled meeting:

(A) at which a quorum of the local ~~[school board or charter school governing]~~ education board is present; and

(B) held in compliance with Title 52, Chapter 4, Open and Public Meetings Act.

(iii) If a local ~~[school board or charter school governing]~~ education board reallocates instructional hours or school days as provided by this Subsection ~~[(4)]~~ (7)(d), the school district or charter school shall notify students' parents and guardians of the school calendar at least 90 days before the beginning of the school year.

(iv) Instructional hours or school days reallocated for teacher preparation time or teacher professional development pursuant to this Subsection ~~[(4)]~~ (7)(d) is considered part of a school term referred to in Subsection ~~[(4)]~~ (7)(b).

(e) The Minimum School Program includes a program or allocation funded by a line item appropriation or other appropriation designated as follows:

- (i) Basic School Program;
- (ii) Related to Basic Programs;
- (iii) Voted and Board Levy Programs; or
- (iv) Minimum School Program.

~~[(5)]~~ (8) "Weighted pupil unit or units or WPU or WPUs" means the unit of measure of factors that is computed in accordance with this chapter for the purpose of determining the costs of a program on a uniform basis for each school district or charter school.

Section 4. Section 53A-17a-105 is amended to read:

53A-17a-105. Powers and duties of State Board of Education to adjust Minimum School Program allocations -- Use of remaining funds at the end of a fiscal year.

- (1) For purposes of this section:
- (a) "Board" means the State Board of Education.

(b) "ESEA" means the Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301 et seq.

~~[(c) "LEA" means:]~~

~~[(i) a school district; or]~~

~~[(ii) a charter school.]~~

~~[(d)]~~ (c) "Program" means a program or allocation funded by a line item appropriation or other appropriation designated as:

- (i) Basic Program;
- (ii) Related to Basic Programs;
- (iii) Voted and Board Levy Programs; or
- (iv) Minimum School Program.

(2) Except as provided in Subsection (3) or (5), if the number of weighted pupil units in a program is underestimated, the board shall reduce the value of the weighted pupil unit in that program so that the total amount paid for the program does not exceed the amount appropriated for the program.

(3) If the number of weighted pupil units in a program is overestimated, the board shall spend excess money appropriated for the following purposes giving priority to the purpose described in Subsection (3)(a):

(a) to support the value of the weighted pupil unit in a program within the basic state-supported school program in which the number of weighted pupil units is underestimated;

(b) to support the state guarantee per weighted pupil unit provided under the voted local levy program established in Section 53A-17a-133 or the board local levy program established in Section 53A-17a-164, if:

(i) local contributions to the voted local levy program or board local levy program are overestimated; or

(ii) the number of weighted pupil units within school districts qualifying for a guarantee is underestimated;

(c) to support the state supplement to local property taxes allocated to charter schools, if the state supplement is less than the amount prescribed by Section 53A-1a-513; or

(d) to support a school district with a loss in student enrollment as provided in Section 53A-17a-139.

(4) If local contributions from the minimum basic tax rate imposed under Section 53A-17a-135 are overestimated, the board shall reduce the value of the weighted pupil unit for all programs within the basic state-supported school program so the total state contribution to the basic state-supported school program does not exceed the amount of state funds appropriated.

(5) If local contributions from the minimum basic tax rate imposed under Section 53A-17a-135 are underestimated, the board shall:

(a) spend the excess local contributions for the purposes specified in Subsection (3), giving priority to supporting the value of the weighted pupil unit in programs within the basic state-supported school program in which the number of weighted pupil units is underestimated; and

(b) reduce the state contribution to the basic state-supported school program so the total cost of the basic state-supported school program does not exceed the total state and local funds appropriated to the basic state-supported school program plus the local contributions necessary to support the value of the weighted pupil unit in programs within the basic state-supported school program in which the number of weighted pupil units is underestimated.

(6) Except as provided in Subsection (3) or (5), the board shall reduce the guarantee per weighted

pupil unit provided under the voted local levy program established in Section 53A-17a-133 or board local levy program established in Section 53A-17a-164, if:

(a) local contributions to the voted local levy program or board local levy program are overestimated; or

(b) the number of weighted pupil units within school districts qualifying for a guarantee is underestimated.

~~[(7) (a) The board may use program funds as described in Subsection (7)(b) if:]~~

~~[(i) the state loses flexibility due to the U.S. Department of Education's rejection of the state's renewal application for flexibility under the ESEA; and]~~

~~[(ii) the state is required to fully implement the requirements of Title I of the ESEA, as amended by the No Child Left Behind Act of 2001.]~~

~~[(b) Subject to the requirements of Subsections (7)(a) and (c), for fiscal year 2016, after any transfers or adjustments described in Subsections (2) through (6) are made, the board may use up to \$15,000,000 of excess money appropriated to a program, remaining at the end of fiscal year 2015, to mitigate a budgetary impact to an LEA due to the LEA's loss of flexibility related to implementing the requirements of Title I of the ESEA, as amended by the No Child Left Behind Act of 2001.]~~

~~[(c) In addition to the reporting requirement described in Subsection (9), the board shall report actions taken by the board under this Subsection (7) to the Executive Appropriations Committee.]~~

~~[(8) (7) Money appropriated to the board is nonlapsing.~~

~~[(9) (8) The board shall report actions taken by the board under this section to the Office of the Legislative Fiscal Analyst and the Governor's Office of Management and Budget.~~

Section 5. Section 53A-17a-105.5 is amended to read:

53A-17a-105.5. Flexibility in the use of program funds.

(1) As used in this section, "qualifying program" means:

(a) the Enhancement for At-Risk Students Program created in Section 53A-17a-166;

(b) the Enhancement for Accelerated Students Program created in Section 53A-17a-165; and

(c) the concurrent enrollment program established in Section 53A-15-1703.

(2) If a school district or charter school receives an allocation of state funds for a qualifying program that is less than \$10,000, the ~~[school district or charter school]~~ local education board of the receiving school district or charter school may:

(a) (i) combine the funds with one or more qualifying program fund allocations each of which is less than \$10,000; and

(ii) use the combined funds in accordance with the program requirements for any of the qualifying programs that are combined; or

(b) (i) transfer the funds to a qualifying program for which the school district or charter school received an allocation of funds that is greater than or equal to \$10,000; and

(ii) use the combined funds in accordance with the program requirements for the qualifying program to which the funds are transferred.

Section 6. Section 53A-17a-106 is amended to read:

53A-17a-106. Determination of weighted pupil units.

The number of weighted pupil units in the minimum school program for each year is the total of the units for each school district and, subject to Section 53A-1a-513, charter school, determined as follows:

(1) The number of units is computed by adding the average daily membership of all pupils of the school district or charter school attending schools, other than kindergarten and self-contained classes for children with a disability.

(2) The number of units is computed by adding the average daily membership of all pupils of the school district or charter school enrolled in kindergarten and multiplying the total by .55.

(a) In those school districts or charter schools that do not ~~[elect to]~~ hold kindergarten for a full nine-month term, the local school board or charter school governing board may approve a shorter term of nine weeks' duration.

(b) Upon local education board approval, the number of pupils in average daily membership at the short-term kindergarten shall be counted for the purpose of determining the number of units allowed in the same ratio as the number of days the short-term kindergarten is held, not exceeding nine weeks, compared to the total number of days schools are held in that school district or charter school in the regular school year.

(3) (a) The State Board of Education shall use prior year plus growth to determine average daily membership in distributing money under the minimum school program where the distribution is based on kindergarten through grade 12 ADMs or weighted pupil units.

(b) Under prior year plus growth, kindergarten through grade 12 average daily membership for the current year is based on the actual kindergarten through grade 12 average daily membership for the previous year plus an estimated percentage growth factor.

(c) The growth factor is the percentage increase in total average daily membership on the first school day of October in the current year as compared to

the total average daily membership on the first school day of October of the previous year.

Section 7. Section 53A-17a-107 is amended to read:

53A-17a-107. Professional staff weighted pupil units.

Years of Experience	Bachelor's Degree	Bachelor's +30. Qt. Hr	Master's Degree	Master's Degree +45 Qt. Hr	Doctorate
1	1.00	1.05	1.10	1.15	1.20
2	1.05	1.10	1.15	1.20	1.25
3	1.10	1.15	1.20	1.25	1.30
4	1.15	1.20	1.25	1.30	1.35
5	1.20	1.25	1.30	1.35	1.40
6	1.25	1.30	1.35	1.40	1.45
7	1.30	1.35	1.40	1.45	1.50
8	1.35	1.40	1.45	1.50	1.55
9			1.50	1.55	1.60
10				1.60	1.65
11					1.70

(1) Professional staff weighted pupil units are computed and distributed in accordance with the following schedule:

(a) Professional Staff Cost Formula

(b) Multiply the number of full-time or equivalent professional personnel in each applicable experience category in Subsection (1)(a) by the applicable weighting factor.

(c) Divide the total of Subsection (1)(b) by the number of professional personnel included in Subsection (1)(b) and reduce the quotient by 1.00.

(d) Multiply the result of Subsection (1)(c) by 1/4 of the weighted pupil units computed in accordance with Sections 53A-17a-106 and 53A-17a-109.

(2) The State Board of Education shall enact rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, [which] that require a certain percentage of a school district's or charter school's professional staff to be certified in the area in which [they teach] the staff teaches in order for the school district or charter school to receive full funding under the schedule.

(3) If an individual's teaching experience is a factor in negotiating a contract of employment to teach in the state's public schools, then the local [school] education board is encouraged to accept as credited experience all of the years the individual has taught in the state's public schools.

Section 8. Section 53A-17a-108 is amended to read:

53A-17a-108. Weighted pupil units for small school district administrative costs -- Appropriation for charter school administrative costs.

(1) Administrative costs weighted pupil units are computed [and distributed to small school districts] for a small school district and distributed to the small school district in accordance with the following schedule:

Administrative Costs Schedule

School District Enrollment as of October 1	Weighted Pupil Units
1 - 500 students	95
501 - 1,000 students	80
1,001 - 2,000 students	70
2,001 - 5,000 students	60

(2) (a) Except as provided in Subsection (2)(b), money appropriated to the State Board of Education for charter school administrative costs shall be distributed to charter schools in the amount of \$100 for each charter school student in enrollment.

(b) (i) If money appropriated for charter school administrative costs is insufficient to provide the amount per student prescribed in Subsection (2)(a), the appropriation shall be allocated among charter schools in proportion to each charter school's enrollment as a percentage of the total enrollment in charter schools.

(ii) If the State Board of Education makes adjustments to Minimum School Program allocations under Section 53A-17a-105, the allocation provided in Subsection (2)(b)(i) shall be determined after adjustments are made under Section 53A-17a-105.

(c) Charter [schools] school governing boards are encouraged to identify and use cost-effective methods of performing administrative functions, including contracting for administrative services with the State Charter School Board as provided in Section 53A-1a-501.6.

(3) Charter schools are not eligible for funds for administrative costs under Subsection (1).

Section 9. Section 53A-17a-109 is amended to read:

53A-17a-109. Necessarily existent small schools -- Computing additional weighted pupil units -- Consolidation of small schools.

(1) As used in this section:

(a) "Board" means the State Board of Education.

(b) "Necessarily existent small schools funding balance" means the difference between:

(i) the amount appropriated for the necessarily existent small schools program in a fiscal year; and

(ii) the amount distributed to school districts for the necessarily existent small schools program in the same fiscal year.

(2) (a) Upon application by a [school district] local school board, the board shall, in consultation with the local school board, classify schools in the school district as necessarily existent small schools, in accordance with this section and board rules adopted under [this section] Subsection (3).

(b) An application must be submitted to the board before April 2, and the board must report a decision to a [school district] local school board before June 2.

(3) The board shall adopt standards and make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) govern the approval of necessarily existent small schools consistent with principles of efficiency and economy [and which shall] that serve the purpose of eliminating schools where consolidation is feasible by participation in special school units; and

(b) ensure that school districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area.

(4) A one or two-year secondary school that has received necessarily existent small school money under this section prior to July 1, 2000, may continue to receive such money in subsequent years [under board rule].

(5) The board shall prepare and publish objective standards and guidelines for determining which small schools are necessarily existent after consultation with local school boards.

(6) (a) Additional weighted pupil units for schools classified as necessarily existent small schools shall be computed using regression formulas adopted by the board.

(b) The regression formulas establish the following maximum sizes for funding under the necessarily existent small school program:

- | | |
|---|-----|
| (i) an elementary school | 160 |
| (ii) a one or two-year secondary school | 300 |
| (iii) a three-year secondary school | 450 |

(iv) a four-year secondary school 500

(v) a six-year secondary school 600

(c) Schools with fewer than 10 students shall receive the same add-on weighted pupil units as schools with 10 students.

(d) The board shall prepare and distribute an allocation table based on the regression formula to each school district.

(7) (a) To avoid penalizing a school district financially for consolidating [its] the school district's small schools, additional weighted pupil units may be allowed a school district each year, not to exceed two years.

(b) The additional weighted pupil units may not exceed the difference between what the school district receives for a consolidated school and what [it] the school district would have received for the small schools had [they] the small schools not been consolidated.

(8) (a) Subject to Subsection (8)(b), the board may distribute a portion of necessarily existent small schools funding in accordance with a formula adopted by the board that considers the tax effort of a local school board.

(b) The amount distributed in accordance with Subsection (8)(a) may not exceed the necessarily existent small schools fund in balance of the prior fiscal year.

(9) A [district] local school board may use the money allocated under this section for maintenance and operation of school programs or for other school purposes as approved by the board.

Section 10. Section 53A-17a-111 is amended to read:

53A-17a-111. Weighted pupil units for programs for students with disabilities -- Local school board allocation.

(1) The number of weighted pupil units for students with disabilities shall reflect the direct cost of programs for those students conducted in accordance with rules established by the State Board of Education in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) Disability program money allocated to school districts or charter schools is restricted and shall be spent for the education of students with disabilities but may include expenditures for approved programs of services conducted for certified instructional personnel who have students with disabilities in their classes.

(3) The State Board of Education shall establish and strictly interpret definitions and provide standards for determining which students have disabilities and shall assist school districts and charter schools in determining the services that should be provided to students with disabilities.

(4) Each year the [board] State Board of Education shall evaluate the standards and guidelines that establish the identifying criteria for disability classifications to assure strict compliance

with those standards by the school districts and charter schools.

(5) (a) Money appropriated to the State Board of Education for add-on WPU's for students with disabilities enrolled in regular programs shall be allocated to school districts and charter schools as provided in this Subsection (5).

(b) [~~Beginning on July 1, 2003, the~~] The State Board of Education shall [~~(i)~~] use a school district's or charter school's average number of special education add-on weighted pupil units determined by the previous five year's average daily membership data as a foundation for the special education add-on appropriation [~~; and~~].

[~~(ii) implement a hold harmless provision for up to three years as needed to accomplish a phase-in period for school districts to accommodate the change in the special education add-on WPU's foundation formula.~~]

(c) A school district's or charter school's special education add-on WPU's for the current year may not be less than the foundation special education add-on WPU's.

(d) Growth WPU's shall be added to the prior year special education add-on WPU's, and growth WPU's shall be determined as follows:

(i) The special education student growth factor is calculated by comparing S-3 total special education ADM of two years previous to the current year to the S-3 total special education ADM three years previous to the current year, not to exceed the official October total school district growth factor from the prior year.

(ii) When calculating and applying the growth factor, a school district's S-3 total special education ADM for a given year is limited to 12.18% of the school district's S-3 total student ADM for the same year.

(iii) Growth ADMs are calculated by applying the growth factor to the S-3 total special education ADM of two years previous to the current year.

(iv) Growth ADMs for each school district or each charter school are multiplied by 1.53 weighted pupil units and added to the prior year special education add-on WPU to determine each school district's or each charter school's total allocation.

(6) If money appropriated under this chapter for programs for students with disabilities does not meet the costs of school districts and charter schools for those programs, each school district and each charter school shall first receive the amount generated for each student with a disability under the basic program.

Section 11. Section 53A-17a-111.5 is amended to read:

53A-17a-111.5. School districts to provide class space for deaf and blind programs.

(1) [~~School districts~~] A school district with students who reside within [~~their~~] the school

district's boundaries and are served by the Schools for the Deaf and the Blind shall:

(a) furnish the schools with space required for their programs; or

(b) help pay for the cost of leasing classroom space in other school districts.

(2) A [~~district's~~] school district's participation in the program under Subsection (1) is based upon the number of students who are served by the Schools for the Deaf and the Blind and who reside within the school district as compared to the state total of students who are served by the schools.

Section 12. Section 53A-17a-112 is amended to read:

53A-17a-112. Preschool special education appropriation -- Extended year program appropriation -- Appropriation for special education programs in state institutions -- Appropriations for stipends for special educators.

(1) (a) Money appropriated to the State Board of Education for the preschool special education program shall be allocated to school districts to provide a free, appropriate public education to preschool students with a disability, ages three through five.

(b) The money shall be distributed on the basis of the school district's count of preschool children with a disability for December 1 of the previous year, as mandated by federal law.

(2) Money appropriated for the extended school year program for children with a severe disability shall be limited to students with severe disabilities with education program goals identifying significant regression and recoupment disability as approved by the State Board of Education.

(3) (a) Money appropriated for self-contained regular special education programs may not be used to supplement other school programs.

(b) Money in any of the other restricted line item appropriations may not be reduced more than 2% to be used for purposes other than those specified by the appropriation, unless otherwise provided by law.

(4) (a) The State Board of Education shall compute preschool funding by a factor of 1.47 times the current December 1 child count of eligible preschool aged three, four, and five-year-olds times the WPU value, limited to 8% growth over the prior year December 1 count.

(b) The [~~board~~] State Board of Education shall develop guidelines to implement the funding formula for preschool special education, and establish prevalence limits for distribution of the money.

(5) Of the money appropriated for Special Education - State Programming, the State Board of Education shall distribute the revenue generated from 909 WPU's to school districts, charter schools, and the Utah Schools for the Deaf and the Blind for stipends to special educators for additional days of

work pursuant to the requirements of Section 53A-17a-158.

Section 13. Section 53A-17a-113 is amended to read:

53A-17a-113. Weighted pupil units for career and technical education programs -- Funding of approved programs -- Performance measures -- Qualifying criteria.

(1) (a) Money appropriated to the State Board of Education for approved career and technical education programs and the comprehensive guidance program:

(i) shall be allocated to eligible recipients as provided in Subsections (2), (3), (4), and (5); and

(ii) may not be used to fund programs below [~~the ninth grade level~~] grade 9.

(b) Subsection (1)(a)(ii) does not apply to the following programs:

- (i) comprehensive guidance;
- (ii) Technology-Life-Careers; and
- (iii) work-based learning programs.

(2) (a) Weighted pupil units are computed for pupils in approved programs.

(b) (i) The [~~board~~] State Board of Education shall fund approved programs based upon hours of membership of [~~9th~~] grades 9 through 12 through [~~12th grade~~] 12 students.

(ii) Subsection (2)(b)(i) does not apply to the following programs:

- (A) comprehensive guidance;
- (B) Technology-Life-Careers; and
- (C) work-based learning programs.

(c) The [~~board~~] State Board of Education shall use an amount not to exceed 20% of the total appropriation under this section to fund approved programs based on performance measures such as placement and competency attainment defined in standards set by the [~~board~~] State Board of Education.

(d) Leadership organization funds shall constitute an amount not to exceed 1% of the total appropriation under this section, and shall be distributed to each [~~local educational agency~~] school district or each charter school sponsoring career and technical education student leadership organizations based on the agency's share of the state's total membership in those organizations.

(e) The [~~board~~] State Board of Education shall make the necessary calculations for distribution of the appropriation to a school [~~districts~~] district and charter school and may revise and recommend changes necessary for achieving equity and ease of administration.

(3) (a) Twenty weighted pupil units shall be computed for career and technical education administrative costs for each school district, except 25 weighted pupil units may be computed for each school district that consolidates career and technical education administrative services with one or more other school districts.

(b) Between 10 and 25 weighted pupil units shall be computed for each high school conducting approved career and technical education programs in a school district according to standards established by the [~~board~~] State Board of Education.

(c) Forty weighted pupil units shall be computed for each school district that operates an approved career and technical education center.

(d) Between five and seven weighted pupil units shall be computed for each summer career and technical education agriculture program according to standards established by the [~~board~~] State Board of Education.

(e) The [~~board~~] State Board of Education shall, by rule, establish qualifying criteria for [~~districts~~] a school district or charter school to receive weighted pupil units under this Subsection (3).

(4) (a) Money remaining after the allocations made under Subsections (2) and (3) shall be allocated using average daily membership in approved programs for the previous year.

(b) A school district or charter school that has experienced student growth in grades 9 through 12 for the previous year shall have the growth factor applied to the previous year's weighted pupil units when calculating the allocation of money under this Subsection (4).

(5) Of the money allocated to comprehensive guidance programs pursuant to [~~board rules~~] State Board of Education rule, \$1,000,000 in grants shall be awarded to school districts or charter schools that:

(a) provide an equal amount of matching funds; and

(b) do not supplant other funds used for comprehensive guidance programs.

(6) (a) The [~~board~~] State Board of Education shall establish rules for [~~the~~] upgrading [~~of~~] high school career and technical education programs.

(b) The rules shall reflect career and technical training and actual marketable job skills in society.

(c) The rules shall include procedures to assist school districts and charter schools to convert existing programs [~~which~~] that are not preparing students for the job market into programs that will accomplish that purpose.

(7) Programs that do not meet [~~board~~] State Board of Education standards may not be funded under this section.

Section 14. Section 53A-17a-116 is amended to read:

53A-17a-116. Weighted pupil units for career and technical education set-aside programs.

(1) Each school district and charter school shall receive a guaranteed minimum allocation from the money appropriated to the State Board of Education for a career and technical education set-aside program.

(2) The set-aside funds remaining after the initial minimum payment allocation are distributed by ~~[an RFP]~~ a request for proposals process to help pay for equipment costs necessary to initiate new programs and for high priority programs as determined by labor market information.

Section 15. Section 53A-17a-119 is amended to read:

53A-17a-119. Appropriation for adult education programs.

(1) Money appropriated to the State Board of Education for adult education shall be allocated to ~~[local school boards]~~ school districts for adult high school completion and adult basic skills programs.

(2) Each school district shall receive ~~[its]~~ a pro rata share of the appropriation for adult high school completion programs based on the number of people in the school district listed in the latest official census who are over 18 years of age and who do not have a high school diploma and prior year participation or as approved by ~~[board]~~ State Board of Education rule.

(3) On February 1 of each school year, the State Board of Education shall recapture money not used for an adult high school completion program for reallocation to school districts that have implemented programs based on need and effort as determined by the ~~[board]~~ State Board of Education.

(4) To the extent of money available, school districts shall provide ~~[programs]~~ program services to adults who do not have a diploma and who intend to graduate from high school, with particular emphasis on homeless individuals who are seeking literacy and life skills.

(5) Overruns in adult education in any school district may not reduce the value of the weighted pupil unit for this program in another school district.

(6) School districts shall spend money on adult basic skills programs according to standards established by the ~~[board]~~ State Board of Education.

Section 16. Section 53A-17a-124 is amended to read:

53A-17a-124. Quality Teaching Block Grant Program -- State contributions.

(1) The State Board of Education shall distribute money appropriated for the Quality Teaching Block Grant Program to school districts and charter

schools according to a formula adopted by the ~~[board]~~ State Board of Education, after consultation with ~~[school districts and charter schools]~~ local education boards, that allocates the funding in a fair and equitable manner.

(2) ~~[School districts and charter schools]~~ Local education boards shall use Quality Teaching Block Grant money to implement professional learning that meets the standards specified in Section 53A-3-701.

Section 17. Section 53A-17a-124.5 is amended to read:

53A-17a-124.5. Appropriation for class size reduction.

(1) Money appropriated to the State Board of Education for class size reduction shall be used to reduce the average class size in kindergarten through the eighth grade in the state's public schools.

(2) Each school district or charter school shall receive ~~[its]~~ an allocation based upon the school district or charter school's prior year average daily membership in kindergarten through grade 8 plus growth as determined under Subsection 53A-17a-106(3) as compared to the total prior year average daily membership in kindergarten through grade 8 plus growth of school districts and charter schools that qualify for an allocation pursuant to Subsection (8).

(3) (a) A ~~[district]~~ local education board may use ~~[its]~~ an allocation to reduce class size in any one or all of the grades referred to under this section, except as otherwise provided in Subsection (3)(b).

(b) (i) Each ~~[district or charter school]~~ local education board shall use 50% of ~~[its]~~ an allocation to reduce class size in any one or all of grades kindergarten through grade 2, with an emphasis on improving student reading skills.

(ii) If a school district's or charter school's average class size is below 18 in grades kindergarten through grade 2, ~~[it]~~ a local education board may petition the ~~[state board]~~ State Board of Education for, and the ~~[state board]~~ State Board of Education may grant, a waiver to use ~~[its]~~ an allocation under Subsection (3)(b)(i) for class size reduction in the other grades.

(4) Schools may use nontraditional innovative and creative methods to reduce class sizes with this appropriation and may use part of ~~[their]~~ an allocation to focus on class size reduction for specific groups, such as at risk students, or for specific blocks of time during the school day.

(5) (a) A ~~[school district or charter school]~~ local education board may use up to 20% of ~~[its]~~ an allocation under Subsection (1) for capital facilities projects if such projects would help to reduce class size.

(b) If a school district's or charter school's student population increases by 5% or 700 students from the previous school year, the ~~[school district or charter school]~~ local education board may use up to 50% of any allocation ~~[it receives]~~ received by the

respective school district or charter school under this section for classroom construction.

(6) This appropriation is to supplement any other appropriation made for class size reduction.

(7) The Legislature shall provide for an annual adjustment in the appropriation authorized under this section in proportion to the increase in the number of students in the state in kindergarten through grade eight.

(8) (a) ~~[(To)]~~ For a school district or charter school to qualify for class size reduction money, a ~~[school district or charter school]~~ local education board shall submit:

(i) a plan for the use of the ~~[school district's or charter school's]~~ allocation of class size reduction money to the State Board of Education; and

(ii) beginning with the 2014-15 school year, a report on the ~~[school district's or charter school's]~~ local education board's use of class size reduction money in the prior school year.

(b) The plan and report required pursuant to Subsection (8)(a) shall include the following information:

(i) (A) the number of teachers employed using class size reduction money;

(B) the amount of class size reduction money expended for teachers; and

(C) if supplemental school district or charter school funds are expended to pay for teachers employed using class size reduction money, the amount of the supplemental money;

(ii) (A) the number of paraprofessionals employed using class size reduction money;

(B) the amount of class size reduction money expended for paraprofessionals; and

(C) if supplemental school district or charter school funds are expended to pay for paraprofessionals employed using class size reduction money, the amount of the supplemental money; and

(iii) the amount of class size reduction money expended for capital facilities.

(c) In addition to submitting a plan and report on the use of class size reduction money, a ~~[school district or charter school]~~ local education board shall annually submit a report to the State Board of Education that includes the following information:

(i) the number of teachers employed using K-3 Reading Improvement Program money received pursuant to Sections 53A-17a-150 and 53A-17a-151;

(ii) the amount of K-3 Reading Improvement Program money expended for teachers;

(iii) the number of teachers employed in kindergarten through grade 8 using Title I money;

(iv) the amount of Title I money expended for teachers in kindergarten through grade 8; and

(v) a comparison of actual average class size by grade in grades kindergarten through 8 in the school district or charter school with what the average class size would be without the expenditure of class size reduction, K-3 Reading Improvement Program, and Title I money.

(d) The information required to be reported in Subsections (8)(b)(i)(A) through (C), (8)(b)(ii)(A) through (C), and (8)(c) shall be categorized by a teacher's or paraprofessional's teaching assignment, such as the grade level, course, or subject taught.

(e) The State Board of Education may make rules specifying procedures and standards for the submission of:

(i) a plan and a report on the use of class size reduction money as required by this section; and

(ii) a report required under Subsection (8)(c).

(f) Based on the data contained in the class size reduction plans and reports submitted by ~~[school districts and charter schools]~~ local education boards, and data on average class size, the State Board of Education shall annually report to the Public Education Appropriations Subcommittee on the impact of class size reduction, K-3 Reading Improvement Program, and Title I money on class size.

Section 18. Section 53A-17a-125 is amended to read:

53A-17a-125. Appropriation for retirement and social security.

(1) The employee's retirement contribution shall be 1% for employees who are under the state's contributory retirement program.

(2) The employer's contribution under the state's contributory retirement program is determined under Section 49-12-301, subject to the 1% contribution under Subsection (1).

(3) (a) The employer-employee contribution rate for employees who are under the state's noncontributory retirement program is determined under Section 49-13-301.

(b) The same contribution rate used under Subsection (3)(a) shall be used to calculate the appropriation for charter schools described under Subsection (5).

(4) (a) Money appropriated to the State Board of Education for retirement and social security money shall be allocated to school districts and charter schools based on a ~~[district's]~~ school district's or charter school's total weighted pupil units compared to the total weighted pupil units for all school districts and charter schools in the state.

(b) Subject to budget constraints, money needed to support retirement and social security shall be determined by taking ~~[the]~~ a school district's or charter school's prior year allocation and adjusting it for:

- (i) student growth;
- (ii) the percentage increase in the value of the weighted pupil unit; and
- (iii) the effect of any change in the rates for retirement, social security, or both.

(5) A charter school governing board that ~~has made~~ makes an election of nonparticipation in the Utah State Retirement Systems in accordance with Section 53A-1a-512 and Title 49, Utah State Retirement and Insurance Benefit Act, shall use the funds described under this section for retirement to provide ~~its~~ the charter school's own compensation, benefit, and retirement programs.

Section 19. Section 53A-17a-126 is amended to read:

53A-17a-126. State support of pupil transportation.

(1) Money appropriated to the State Board of Education for state-supported transportation of public school students shall be apportioned and distributed in accordance with Section 53A-17a-127, except as otherwise provided in this section or Section 53A-17a-126.5.

(2) (a) The Utah Schools for the Deaf and the Blind shall use ~~its~~ an allocation of pupil transportation money to pay for transportation of ~~their~~ students based on current valid contractual arrangements and best transportation options and methods as determined by the schools.

(b) All student transportation costs of the schools shall be paid from the allocation of pupil transportation money specified in statute.

(3) (a) A ~~school district~~ local school board may only claim eligible transportation costs as legally reported on the prior year's annual financial report submitted under Section 53A-3-404.

(b) The state shall contribute 85% of approved transportation costs, subject to budget constraints.

(c) If in a fiscal year the total transportation allowance for all school districts exceeds the amount appropriated for that purpose, all allowances shall be reduced pro rata to equal not more than the amount appropriated.

Section 20. Section 53A-17a-127 is amended to read:

53A-17a-127. Eligibility for state-supported transportation -- Approved bus routes -- Additional local tax.

(1) A student eligible for state-supported transportation means:

(a) a student enrolled in kindergarten through grade six who lives at least 1-1/2 miles from school;

(b) a student enrolled in grades seven through 12 who lives at least two miles from school; and

(c) a student enrolled in a special program offered by a school district and approved by the State Board of Education for trainable, motor, multiple-disability, or other students with severe

disabilities who are incapable of walking to school or where it is unsafe for students to walk because of their disabling condition, without reference to distance from school.

(2) If a school district implements double sessions as an alternative to new building construction, with the approval of the State Board of Education, those affected elementary school students residing less than 1-1/2 miles from school may be transported one way to or from school because of safety factors relating to darkness or other hazardous conditions as determined by the local school board.

(3) (a) The State Board of Education shall distribute transportation money to school districts based on:

- (i) an allowance per mile for approved bus routes;
- (ii) an allowance per hour for approved bus routes; and
- (iii) a minimum allocation for each school district eligible for transportation funding.

(b) The State Board of Education shall distribute appropriated transportation funds based on the prior year's eligible transportation costs as legally reported under Subsection 53A-17a-126(3).

(c) The State Board of Education shall annually review the allowance per mile and the allowance per hour and adjust the allowances to reflect current economic conditions.

(4) (a) Approved bus routes for funding purposes shall be determined on fall data collected by October 1.

(b) Approved route funding shall be determined on the basis of the most efficient and economic routes.

(5) A Transportation Advisory Committee with representation from ~~local~~ school district superintendents, business officials, school district transportation supervisors, and ~~the state superintendent's staff~~ State Board of Education employees shall serve as a review committee for addressing school transportation needs, including recommended approved bus routes.

(6) (a) Except as provided in Subsection (6)(e), a local school board may provide for the transportation of students regardless of the distance from school, from:

- (i) general funds of the school district; and
- (ii) a tax rate not to exceed .0003 per dollar of taxable value ~~imposed on the district.~~ levied by the local school board.

(b) A local school board may use revenue from the tax described in Subsection (6)(a)(ii) to pay for transporting students and for the replacement of school buses.

(c) (i) If a local school board levies a tax under Subsection (6)(a)(ii) of at least .0002, the state may contribute an amount not to exceed 85% of the state average cost per mile, contingent upon the Legislature appropriating funds for a state contribution.

(ii) The ~~[state superintendent's staff]~~ State Board of Education's employees shall distribute the state contribution according to rules enacted by the State Board of Education.

(d) (i) The amount of state guarantee money ~~[which]~~ that a school district would otherwise be entitled to receive under Subsection (6)(c) may not be reduced for the sole reason that the school district's levy is reduced as a consequence of changes in the certified tax rate under Section 59-2-924 due to changes in property valuation.

(ii) Subsection (6)(d)(i) applies for a period of two years following the change in the certified tax rate.

(e) Beginning January 1, 2012, a local school board may not impose a tax in accordance with this Subsection (6).

(7) (a) (i) If a local school board expends an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's board local levy imposed under Section 53A-17a-164 for the uses described in Subsection (6)(b), the state may contribute an amount not to exceed 85% of the state average cost per mile, contingent upon the Legislature appropriating funds for a state contribution.

(ii) The ~~[state superintendent's staff]~~ State Board of Education's employees shall distribute the state contribution according to rules enacted by the State Board of Education.

(b) (i) The amount of state guarantee money that a school district would otherwise be entitled to receive under Subsection (7)(a) may not be reduced for the sole reason that the school district's levy is reduced as a consequence of changes in the certified tax rate under Section 59-2-924 due to changes in property valuation.

(ii) Subsection (7)(b)(i) applies for a period of two years following the change in the certified tax rate.

Section 21. Section 53A-17a-133 is amended to read:

53A-17a-133. State-supported voted local levy authorized -- Election requirements -- State guarantee -- Reconsideration of the program.

(1) As used in this section, "voted and board local levy funding balance" means the difference between:

(a) the amount appropriated for the voted and board local levy program in a fiscal year; and

(b) the amount necessary to provide the state guarantee per weighted pupil unit as determined under this section and Section 53A-17a-164 in the same fiscal year.

(2) An election to consider adoption or modification of a voted local levy is required if initiative petitions signed by 10% of the number of electors who voted at the last preceding general election are presented to the local school board or by action of the local school board.

(3) (a) (i) To impose a voted local levy, a majority of the electors of a school district voting at an election in the manner set forth in Subsections (9) and (10) must vote in favor of a special tax.

(ii) The tax rate may not exceed .002 per dollar of taxable value.

(b) Except as provided in Subsection (3)(c), in order to receive state support the first year, a school district ~~[must]~~ shall receive voter approval no later than December 1 of the year prior to implementation.

(c) Beginning on or after January 1, 2012, a school district may receive state support in accordance with Subsection (4) without complying with the requirements of Subsection (3)(b) if the local school board imposed a tax in accordance with this section during the taxable year beginning on January 1, 2011 and ending on December 31, 2011.

(4) (a) In addition to the revenue ~~[a school district collects]~~ collected from the imposition of a levy pursuant to this section, the state shall contribute an amount sufficient to guarantee \$35.55 per weighted pupil unit for each .0001 of the first .0016 per dollar of taxable value.

(b) The same dollar amount guarantee per weighted pupil unit for the .0016 per dollar of taxable value under Subsection (4)(a) shall apply to the portion of the board local levy authorized in Section 53A-17a-164, so that the guarantee shall apply up to a total of .002 per dollar of taxable value if a ~~[school district]~~ local school board levies a tax rate under both programs.

(c) (i) Beginning July 1, 2015, the \$35.55 guarantee under Subsections (4)(a) and (b) shall be indexed each year to the value of the weighted pupil unit for the grades 1 through 12 program by making the value of the guarantee equal to .011962 times the value of the prior year's weighted pupil unit for the grades 1 through 12 program.

(ii) The guarantee shall increase by .0005 times the value of the prior year's weighted pupil unit for the grades 1 through 12 program for each succeeding year subject to the Legislature appropriating funds for an increase in the guarantee.

(d) (i) The amount of state guarantee money to which a school district would otherwise be entitled to receive under this Subsection (4) may not be reduced for the sole reason that the school district's levy is reduced as a consequence of changes in the certified tax rate under Section 59-2-924 pursuant to changes in property valuation.

(ii) Subsection (4)(d)(i) applies for a period of five years following any such change in the certified tax rate.

(e) The guarantee provided under this section does not apply to the portion of a voted local levy rate that exceeds the voted local levy rate that was in effect for the previous fiscal year, unless an increase in the voted local levy rate was authorized in an election conducted on or after July 1 of the

previous fiscal year and before December 2 of the previous fiscal year.

(f) (i) If a voted and board local levy funding balance exists for the prior fiscal year, the State Board of Education shall:

(A) use the voted and board local levy funding balance to increase the value of the state guarantee per weighted pupil unit described in Subsection (4)(c) in the current fiscal year; and

(B) distribute the state contribution to the voted and board local levy programs to school districts based on the increased value of the state guarantee per weighted pupil unit described in Subsection (4)(f)(i)(A).

(ii) The State Board of Education shall report action taken under this Subsection (4)(f) to the Office of the Legislative Fiscal Analyst and the Governor's Office of Management and Budget.

(5) (a) An election to modify an existing voted local levy is not a reconsideration of the existing authority unless the proposition submitted to the electors expressly so states.

(b) A majority vote opposing a modification does not deprive the [district] local school board of authority to continue the levy.

(c) If adoption of a voted local levy is contingent upon an offset reducing other local school board levies, the local school board ~~must~~ shall allow the electors, in an election, to consider modifying or discontinuing the imposition of the levy prior to a subsequent increase in other levies that would increase the total local school board levy.

(d) Nothing contained in this section terminates, without an election, the authority of a [school district] local school board to continue imposing an existing voted local levy previously authorized by the voters as a voted leeway program.

(6) Notwithstanding Section 59-2-919, a [school district] local school board may budget an increased amount of ad valorem property tax revenue derived from a voted local levy imposed under this section in addition to revenue from eligible new growth as defined in Section 59-2-924, without having to comply with the notice requirements of Section 59-2-919, if:

(a) the voted local levy is approved:

(i) in accordance with Subsections (9) and (10) on or after January 1, 2003; and

(ii) within the four-year period immediately preceding the year in which the [school district] local school board seeks to budget an increased amount of ad valorem property tax revenue derived from the voted local levy; and

(b) for a voted local levy approved or modified in accordance with this section on or after January 1, 2009, the [school district] local school board complies with the requirements of Subsection (8).

(7) Notwithstanding Section 59-2-919, a [school district] local school board may levy a tax rate under

this section that exceeds the certified tax rate without having to comply with the notice requirements of Section 59-2-919 if:

(a) the levy exceeds the certified tax rate as the result of a [school district] local school board budgeting an increased amount of ad valorem property tax revenue derived from a voted local levy imposed under this section;

(b) the voted local levy was approved:

(i) in accordance with Subsections (9) and (10) on or after January 1, 2003; and

(ii) within the four-year period immediately preceding the year in which the [school district] local school board seeks to budget an increased amount of ad valorem property tax revenue derived from the voted local levy; and

(c) for a voted local levy approved or modified in accordance with this section on or after January 1, 2009, the [school district] local school board complies with requirements of Subsection (8).

(8) For purposes of Subsection (6)(b) or (7)(c), the proposition submitted to the electors regarding the adoption or modification of a voted local levy shall contain the following statement:

"A vote in favor of this tax means that ~~[(name of the school district)]~~ the local school board of ~~[name of the school district]~~ may increase revenue from this property tax without advertising the increase for the next five years."

(9) (a) Before ~~imposing~~ a local school board may impose a property tax levy pursuant to this section, a [school district] local school board shall submit an opinion question to the school district's registered voters voting on the imposition of the tax rate so that each registered voter has the opportunity to express the registered voter's opinion on whether the tax rate should be imposed.

(b) The election required by this Subsection (9) shall be held:

(i) at a regular general election conducted in accordance with the procedures and requirements of Title 20A, Election Code, governing regular elections;

(ii) at a municipal general election conducted in accordance with the procedures and requirements of Section 20A-1-202; or

(iii) at a local special election conducted in accordance with the procedures and requirements of Section 20A-1-203.

(c) Notwithstanding the requirements of Subsections (9)(a) and (b), beginning on or after January 1, 2012, a [school district] local school board may levy a tax rate in accordance with this section without complying with the requirements of Subsections (9)(a) and (b) if the [school district] local school board imposed a tax in accordance with this section at any time during the taxable year beginning on January 1, 2011, and ending on December 31, 2011.

(10) If a [school district] local school board determines that a majority of the school district's

registered voters voting on the imposition of the tax rate have voted in favor of the imposition of the tax rate in accordance with Subsection (9), the ~~[school district]~~ local school board may impose the tax rate.

Section 22. Section 53A-17a-134 is amended to read:

53A-17a-134. Board-approved leeway -- Purpose -- State support -- Disapproval.

(1) Except as provided in Subsection (9), a local school board may levy a tax rate of up to .0004 per dollar of taxable value to maintain a school program above the cost of the basic school program as follows:

(a) a local school board shall use the money generated by the tax for class size reduction within the school district;

(b) if a local school board determines that the average class size in the school district is not excessive, ~~[it]~~ the local school board may use the money for other school purposes but only if the local school board has declared the use for other school purposes in a public meeting prior to levying the tax rate; and

(c) a ~~[district]~~ local school board may not use the money for other school purposes under Subsection (1)(b) until ~~[it]~~ the local school board has certified in writing that ~~[its]~~ the local school board's class size needs are already being met and the local school board has identified the other school purposes for which the money will be used to the State Board of Education and the ~~[state board]~~ State Board of Education has approved ~~[their]~~ the local school board's use for other school purposes.

(2) (a) The state shall contribute an amount sufficient to guarantee \$27.36 per weighted pupil unit for each .0001 per dollar of taxable value.

(b) The guarantee shall increase in the same manner as provided for the voted local levy guarantee in Subsection 53A-17a-133(4)(c).

(c) (i) The amount of state guarantee money to which a school district would otherwise be entitled to under this Subsection (2) may not be reduced for the sole reason that the school district's levy is reduced as a consequence of changes in the certified tax rate under Section 59-2-924 pursuant to changes in property valuation.

(ii) Subsection (2)(c)(i) applies for a period of five years following any such change in the certified tax rate.

(d) The guarantee provided under this section does not apply to:

(i) a board-authorized leeway in the first fiscal year the ~~[leeway]~~ levy is in effect, unless the ~~[leeway]~~ levy was approved by voters pursuant to Subsections (4) through (6); or

(ii) the portion of a board-authorized ~~[leeway]~~ levy rate that is in excess of the board-authorized leeway rate that was in effect for the previous fiscal year.

(3) The levy authorized under this section is not in addition to the maximum rate of .002 authorized in Section 53A-17a-133, but is a board-authorized component of the total tax rate under that section.

(4) As an exception to Section 53A-17a-133, the board-authorized levy does not require voter approval, but the local school board may require voter approval if requested by a majority of the local school board.

(5) An election to consider disapproval of the board-authorized levy is required, if within 60 days after the levy is established by the local school board, referendum petitions signed by the number of legal voters required in Section 20A-7-301, who reside within the school district, are filed with the ~~[school district]~~ local school board.

(6) (a) A local school board shall establish its board-approved levy by April 1 to have the levy apply to the fiscal year beginning July 1 in that same calendar year except that if an election is required under this section, the levy applies to the fiscal year beginning July 1 of the next calendar year.

(b) (i) The approval and disapproval votes authorized in Subsections (4) and (5) shall occur at a general election in even-numbered years, except that a vote required under this section in odd-numbered years shall occur at a special election held on a day in odd-numbered years that corresponds to the general election date.

(ii) The school district shall pay for the cost of a special election.

(7) (a) Modification or termination of a voter-approved leeway rate authorized under this section is governed by Section 53A-17a-133.

(b) A board-authorized ~~[leeway]~~ levy rate may be modified or terminated by a majority vote of the local school board subject to disapproval procedures specified in this section.

(8) A board-authorized levy election does not require publication of a voter information pamphlet.

(9) Beginning January 1, 2012, a local school board may not levy a tax in accordance with this section.

Section 23. Section 53A-17a-135 is amended to read:

53A-17a-135. Minimum basic tax rate -- Certified revenue levy.

(1) As used in this section, "basic levy increment rate" means a tax rate that will generate an amount of revenue equal to \$75,000,000.

(2) (a) ~~[In order to]~~ To qualify for receipt of the state contribution toward the basic program and as ~~[its]~~ a school district's contribution toward ~~[its]~~ the school district's costs of the basic program, each ~~[school district]~~ local school board shall impose a minimum basic tax rate per dollar of taxable value that generates \$392,266,800 in revenues statewide.

(b) The preliminary estimate for the 2016-17 minimum basic tax rate is .001695.

(c) The State Tax Commission shall certify on or before June 22 the rate that generates \$392,266,800 in revenues statewide.

(d) If the minimum basic tax rate exceeds the certified revenue levy as defined in Section 53A-17a-103, the state is subject to the notice requirements of Section 59-2-926.

(3) ~~[(a)]~~ The state shall contribute to each school district toward the cost of the basic program in the school district that portion ~~[which] that~~ exceeds the proceeds of the difference between:

~~[(4)]~~ (a) the minimum basic tax rate to be imposed under Subsection (2); and

~~[(4)]~~ (b) the basic levy increment rate.

~~[(b) In accordance with the state strategic plan for public education and to fulfill its responsibility for the development and implementation of that plan, the Legislature instructs the State Board of Education, the governor, and the Office of Legislative Fiscal Analyst in each of the coming five years to develop budgets that will fully fund student enrollment growth.]~~

(4) (a) If the difference described in Subsection (3)~~[(a)]~~ equals or exceeds the cost of the basic program in a school district, no state contribution shall be made to the basic program.

(b) The proceeds of the difference described in Subsection (3)~~[(a)]~~ that exceed the cost of the basic program shall be paid into the Uniform School Fund as provided by law.

(5) The State Board of Education shall:

(a) deduct from state funds that a school district is authorized to receive under this chapter an amount equal to the proceeds generated within the school district by the basic levy increment rate; and

(b) deposit the money described in Subsection (5)(a) into the Minimum Basic Growth Account created in Section 53A-17a-135.1.

Section 24. Section 53A-17a-139 is amended to read:

53A-17a-139. Loss in student enrollment -- Board action.

To avoid penalizing a school district financially for an excessive loss in student enrollment due to factors beyond its control, the State Board of Education may allow a percentage increase in units otherwise allowable during any year when a school district's average daily membership drops more than 4% below the average for the highest two of the preceding three years in the school district.

Section 25. Section 53A-17a-140 is amended to read:

53A-17a-140. Contracts with teachers.

A school district may not enter into contracts with teachers that would prevent the school district from paying differential salaries or putting limitations

on an individual salary paid in order to fill a shortage in specific teaching areas.

Section 26. Section 53A-17a-141 is amended to read:

53A-17a-141. Alternative programs.

(1) Since the State Board of Education has adopted a policy that requires school districts and charter schools to grant credit for proficiency through alternative programs, school districts and charter schools are encouraged to continue and expand ~~[their] school district and charter school~~ cooperation with accredited institutions through performance contracts for educational services, particularly where it is beneficial to students whose progress could be better served through alternative programs.

(2) School districts and charter schools are encouraged to participate in programs that focus on increasing the number of ethnic minority and female students in the secondary schools who will go on to study mathematics, engineering, or related sciences at an institution of higher education.

Section 27. Section 53A-17a-143 is amended to read:

53A-17a-143. Federal Impact Aid Program -- Offset for underestimated allocations from the Federal Impact Aid Program.

(1) In addition to the revenues received from the levy imposed by ~~each school district~~ a local school board and authorized by the Legislature under Section 53A-17a-135, the Legislature shall provide an amount equal to the difference between the school district's anticipated receipts under the entitlement for the fiscal year from the Federal Impact Aid Program and the amount the school district actually received from this source for the next preceding fiscal year.

(2) If at the end of a fiscal year the sum of the receipts of a school district from a distribution from the Legislature pursuant to Subsection (1) plus the school district's allocations from the Federal Impact Aid Program for that fiscal year exceeds the amount allocated to the school district from the Federal Impact Aid Program for the next preceding fiscal year, the excess funds are carried into the next succeeding fiscal year and become in that year a part of the school district's contribution to ~~[its]~~ the school district's basic program for operation and maintenance under the state minimum school finance law.

(3) During ~~[that year]~~ the next succeeding fiscal year described in Subsection (2), the school district's required tax rate for the basic program shall be reduced so that the yield from the reduced tax rate plus the carryover funds equal the school district's required contribution to ~~[its]~~ the school district's basic program.

(4) ~~[A district that reduces its]~~ For the school district of a local school board that is required to reduce the school district's basic tax rate under this section, the school district shall receive state minimum school program funds as though the reduction in the tax rate had not been made.

Section 28. Section 53A-17a-144 is amended to read:

53A-17a-144. Contribution of state to cost of minimum school program -- Determination of amounts -- Levy on taxable property -- Disbursal -- Deficiency.

The state's contribution to the total cost of the minimum school program is determined and distributed as follows:

(1) The State Tax Commission shall levy an amount determined by the Legislature on all taxable property of the state.

(a) This amount, together with other funds provided by law, is the state's contribution to the minimum school program.

(b) The statewide levy is set at zero until changed by the Legislature.

(2) During the first week in November, the State Tax Commission shall certify to the State Board of Education the amounts designated as state aid for each school district under Section 59-2-902.

(3) (a) The actual amounts computed under Section 59-2-902 are the state's contribution to the minimum school program of each school district.

(b) The ~~[state board]~~ State Board of Education shall provide each ~~[district]~~ local education board with a statement of the amount of state aid.

(4) ~~[Prior to]~~ Before the first day of each month, the state treasurer and the Division of Finance, with the approval of the State Board of Education, shall disburse 1/12 of the state's contribution to the cost of the minimum school program to each school district and each charter school.

(a) ~~[A disbursement may not be made to a district]~~ The State Board of Education may not make a disbursement to a school district or charter school whose payments have been interrupted under Subsection (4)(d).

(b) Discrepancies between the monthly disbursements and the actual cost of the program shall be adjusted in the final settlement under Subsection (5).

(c) If the monthly distributions overdraw the money in the Uniform School Fund, the Division of Finance is authorized to run this fund in a deficit position.

(d) The ~~[state board]~~ State Board of Education may interrupt disbursements to a school district or charter school if, in the judgment of the ~~[board]~~ State Board of Education, the school district or charter school is failing to comply with the minimum school program, is operating programs that are not approved by the ~~[state board]~~ State Board of Education, or has not submitted reports required by law or the ~~[state board]~~ State Board of Education.

(i) Disbursements shall be resumed upon request of the ~~[state board]~~ State Board of Education.

(ii) Back disbursements shall be included in the next regular disbursement, and the amount disbursed certified to the State Division of Finance and state treasurer by the ~~[state board]~~ State Board of Education.

(e) The State Board of Education may authorize exceptions to the 1/12 per month disbursement formula for grant funds if the ~~[board]~~ State Board of Education determines that a different disbursement formula would better serve the purposes of the grant.

(5) (a) If money in the Uniform School Fund is insufficient to meet the state's contribution to the minimum school program as appropriated, the amount of the deficiency thus created shall be carried as a deficiency in the Uniform School Fund until the next session of the Legislature, at which time the Legislature shall appropriate funds to cover the deficiency.

(b) If there is an operating deficit in public education Uniform School Fund appropriations, the Legislature shall eliminate the deficit by:

(i) budget transfers or other legal means;

(ii) appropriating money from the Education Budget Reserve Account;

(iii) appropriating up to 25% of the balance in the General Fund Budget Reserve Account; or

(iv) some combination of Subsections (5)(b)(i), (ii), and (iii).

(c) Nothing in Subsection (5)(b) precludes the Legislature from appropriating more than 25% of the balance in the General Fund Budget Reserve Account to fund operating deficits in public education appropriations.

Section 29. Section 53A-17a-145 is amended to read:

53A-17a-145. Additional levy by local school board for debt service, school sites, buildings, buses, textbooks, and supplies.

(1) Except as provided in Subsection (5), a ~~[school district]~~ local school board may elect to increase ~~[its]~~ the school district's tax rate by up to 10% of the cost of the basic program.

(2) The proceeds from the increase may only be used for debt service, the construction or remodeling of school buildings, or the purchase of school sites, buses, equipment, textbooks, and supplies.

(3) This section does not prohibit a school district or local school board from exercising the authority granted by other laws relating to tax rates.

(4) This increase in the tax rate is not included in determining the apportionment of the State School Fund, and is in addition to other tax rates authorized by law.

(5) Beginning January 1, 2012, a local school district board may not:

(a) levy a tax rate in accordance with this section; or

- (b) increase its tax rate as described in Subsection (1).

Section 30. Section 53A-17a-146 is amended to read:

53A-17a-146. Reduction of local education board allocation based on insufficient revenues.

(1) As used in this section, "Minimum School Program funds" means the total of state and local funds appropriated for the minimum school program, excluding:

(a) the state-supported voted local levy program pursuant to Section 53A-17a-133;

(b) the state-supported board local levy program pursuant to Section 53A-17a-164; and

(c) the appropriation to charter schools to replace local property tax revenues pursuant to Section 53A-1a-513.

(2) If the Legislature reduces appropriations made to support public schools under this chapter because an Education Fund budget deficit, as defined in Section 63J-1-312, exists, the State Board of Education, after consultation with each ~~[school district and charter school]~~ local education board, shall allocate the reduction among school districts and charter schools in proportion to each school district's or charter school's percentage share of Minimum School Program funds.

(3) Except as provided in Subsection (5) and subject to the requirements of Subsection (7), a ~~[school district or charter school]~~ local education board shall determine which programs are affected by a reduction pursuant to Subsection (2) and the amount each program is reduced.

(4) Except as provided in Subsections (5) and (6), the requirement to spend a specified amount in any particular program is waived if reductions are made pursuant to Subsection (2).

(5) A ~~[school district or charter school]~~ local education board may not reduce or reallocate spending of funds distributed to the school district or charter school for the following programs:

(a) educator salary adjustments provided in Section 53A-17a-153;

(b) the Teacher Salary Supplement Program provided in Section 53A-17a-156;

(c) the extended year for special educators provided in Section 53A-17a-158;

(d) USTAR centers provided in Section 53A-17a-159;

(e) the School LAND Trust Program created in Section 53A-16-101.5; or

(f) a special education program within the Basic School Program.

(6) A ~~[school district or charter school]~~ local education board may not reallocate spending of

funds distributed to the school district or charter school to a reserve account.

(7) A ~~[school district or charter school]~~ local education board that reduces or reallocates funds in accordance with this section shall report all transfers into, or out of, Minimum School Program programs to the State Board of Education as part of the school district or charter school's Annual Financial and Program report.

Section 31. Section 53A-17a-150 is amended to read:

53A-17a-150. K-3 Reading Improvement Program.

(1) As used in this section:

(a) "Board" means the State Board of Education.

(b) "Five domains of reading" include phonological awareness, phonics, fluency, comprehension, and vocabulary.

(c) "Program" means the K-3 Reading Improvement Program.

(d) "Program money" means:

(i) school district revenue allocated to the program from other money available to the school district, except money provided by the state, for the purpose of receiving state funds under this section; and

(ii) money appropriated by the Legislature to the program.

(2) The K-3 Reading Improvement Program consists of program money and is created to supplement other school resources to achieve the state's goal of having third graders reading at or above grade level.

(3) Subject to future budget constraints, the Legislature may annually appropriate money to the K-3 Reading Improvement Program.

(4) (a) ~~[The]~~ For a school district or charter school to receive program money, a ~~[school district or charter school must]~~ local education board shall submit a plan to the board for reading proficiency improvement that incorporates the following components:

(i) assessment;

(ii) intervention strategies;

(iii) professional development for classroom teachers in kindergarten through grade three;

(iv) reading performance standards; and

(v) specific measurable goals that include the following:

(A) a growth goal for each school within a school district and each charter school based upon student learning gains as measured by benchmark assessments administered pursuant to Section 53A-1-606.6; and

(B) a growth goal for each school district and charter school to increase the percentage of third

grade students who read on grade level from year to year as measured by the third grade reading test administered pursuant to Section 53A-1-603.

(b) The board shall provide model plans ~~[which a school district or charter school]~~ that a local education board may use, or the ~~[school district or charter school]~~ local education board may develop ~~[its]~~ the local education board's own plan.

(c) Plans developed by a ~~[school district or charter school]~~ local education board shall be approved by the board.

(d) The board shall develop uniform standards for acceptable growth goals that a ~~[school district or charter school]~~ local education board adopts for a school district or charter school as described in this Subsection (4).

(5) (a) There is created within the K-3 Reading Achievement Program three funding programs:

- (i) the Base Level Program;
- (ii) the Guarantee Program; and
- (iii) the Low Income Students Program.

(b) The board may use no more than \$7,500,000 from an appropriation described in Subsection (3) for computer-assisted instructional learning and assessment programs.

(6) Money appropriated to the board for the K-3 Reading Improvement Program and not used by the board for computer-assisted instructional learning and assessments as described in Subsection (5)(b), shall be allocated to the three funding programs as follows:

- (a) 8% to the Base Level Program;
- (b) 46% to the Guarantee Program; and
- (c) 46% to the Low Income Students Program.

(7) (a) ~~[To]~~ For a school district or charter school to participate in the Base Level Program, ~~[a school district or charter school]~~ the local education board shall submit a reading proficiency improvement plan to the board as provided in Subsection (4) and must receive approval of the plan from the board.

(b) (i) ~~[Each]~~ The local school board of a school district qualifying for Base Level Program funds and the governing boards of qualifying elementary charter schools combined shall receive a base amount.

(ii) The base amount for the qualifying elementary charter schools combined shall be allocated among each charter school in an amount proportionate to:

(A) each existing charter school's prior year fall enrollment in grades kindergarten through grade three; and

(B) each new charter school's estimated fall enrollment in grades kindergarten through grade three.

(8) (a) A ~~[school district]~~ local school board that applies for program money in excess of the Base

Level Program funds shall choose to first participate in either the Guarantee Program or the Low Income Students Program.

(b) A school district must fully participate in either the Guarantee Program or the Low Income Students Program before ~~[it]~~ the local school board may elect for the school district to either fully or partially participate in the other program.

(c) ~~[To]~~ For a school district to fully participate in the Guarantee Program, ~~[a school district]~~ the local school board shall allocate to the program money available to the school district, except money provided by the state, equal to the amount of revenue that would be generated by a tax rate of .000056.

(d) ~~[To]~~ For a school district to fully participate in the Low Income Students Program, ~~[a school district]~~ the local school board shall allocate to the program money available to the school district, except money provided by the state, equal to the amount of revenue that would be generated by a tax rate of .000065.

(e) (i) The board shall verify that a ~~[school district]~~ local school board allocates the money required in accordance with Subsections (8)(c) and (d) before ~~[it]~~ the local school board distributes funds in accordance with this section.

(ii) The State Tax Commission shall provide the board the information the board needs in order to comply with Subsection (8)(e)(i).

(9) (a) Except as provided in Subsection (9)(c), the local school board of a school district that fully participates in the Guarantee Program shall receive state funds in an amount that is:

(i) equal to the difference between \$21 ~~[times the]~~ multiplied by the school district's total WPUs and the revenue the ~~[school district]~~ local school board is required to allocate under Subsection (8)(c) for the school district to fully participate in the Guarantee Program; and

(ii) not less than \$0.

(b) Except as provided in Subsection (9)(c), an elementary charter school shall receive under the Guarantee Program an amount equal to \$21 times the elementary charter school's total WPUs.

(c) The board may adjust the \$21 guarantee amount described in Subsections (9)(a) and (b) to account for actual appropriations and money used by the board for computer-assisted instructional learning and assessments.

(10) The board shall distribute Low Income Students Program funds in an amount proportionate to the number of students in each school district or charter school who qualify for free or reduced price school lunch multiplied by two.

(11) A school district that partially participates in the Guarantee Program or Low Income Students Program shall receive program funds based on the amount of school district revenue allocated to the program as a percentage of the amount of revenue that could have been allocated if the school district had fully participated in the program.

(12) (a) A ~~[school district or charter school]~~ local education board shall use program money for reading proficiency improvement interventions in grades kindergarten through grade 3 that have proven to significantly increase the percentage of students reading at grade level, including:

- (i) reading assessments; and
- (ii) focused reading remediations that may include:
 - (A) the use of reading specialists;
 - (B) tutoring;
 - (C) before or after school programs;
 - (D) summer school programs; or
 - (E) the use of reading software; or
 - (F) the use of interactive computer software programs for literacy instruction and assessments for students.

(b) A ~~[school district or charter school]~~ local education board may use program money for portable technology devices used to administer reading assessments.

(c) Program money may not be used to supplant funds for existing programs, but may be used to augment existing programs.

(13) (a) Each ~~[school district and charter school]~~ local education board shall annually submit a report to the board accounting for the expenditure of program money in accordance with its plan for reading proficiency improvement.

(b) If a ~~[school district or charter school]~~ local education board uses program money in a manner that is inconsistent with Subsection (12), the school district or charter school is liable for reimbursing the board for the amount of program money improperly used, up to the amount of program money received from the board.

(14) (a) The board shall make rules to implement the program.

(b) (i) The rules under Subsection (14)(a) shall require each ~~[school district or charter school]~~ local education board to annually report progress in meeting ~~[school and school district]~~ goals stated in the school district's or charter school's plan for student reading proficiency.

(ii) If a school does not meet or exceed the school's goals, the ~~[school district or charter school]~~ local education board shall prepare a new plan which corrects deficiencies.

(iii) The new plan ~~[must]~~ described in Subsection (14)(b)(ii) shall be approved by the board before the ~~[school district or charter school]~~ local education board receives an allocation for the next year.

(15) (a) If for two consecutive school years, a school district fails to meet ~~[its]~~ the school district's goal to increase the percentage of third grade students who read on grade level as measured by the third grade reading test administered pursuant

to Section 53A-1-603, the school district shall terminate any levy imposed under Section 53A-17a-151 and may not receive money appropriated by the Legislature for the K-3 Reading Improvement Program.

(b) If for two consecutive school years, a charter school fails to meet ~~[its]~~ the charter school's goal to increase the percentage of third grade students who read on grade level as measured by the third grade reading test administered pursuant to Section 53A-1-603, the charter school may not receive money appropriated by the Legislature for the K-3 Reading Improvement Program.

(16) The board shall make an annual report to the Public Education Appropriations Subcommittee that:

(a) includes information on:

(i) student learning gains in reading for the past school year and the five-year trend;

(ii) the percentage of third grade students reading on grade level in the past school year and the five-year trend;

(iii) the progress of schools and school districts in meeting goals stated in a school district's or charter school's plan for student reading proficiency; and

(iv) the correlation between third grade students reading on grade level and results of third grade language arts scores on a criterion-referenced test or computer adaptive test; and

(b) may include recommendations on how to increase the percentage of third grade students who read on grade level.

Section 32. Section 53A-17a-151 is amended to read:

53A-17a-151. Board leeway for reading improvement.

(1) Except as provided in Subsection (4), a local school board may levy a tax rate of up to .000121 per dollar of taxable value for funding the school district's K-3 Reading Improvement Program created under Section 53A-17a-150.

(2) The levy authorized under this section:

(a) is in addition to any other levy or maximum rate;

(b) does not require voter approval; and

(c) may be modified or terminated by a majority vote of the local school board.

(3) A local school board shall establish ~~[its]~~ a local school board-approved levy under this section by June 1 to have the levy apply to the fiscal year beginning July 1 in that same calendar year.

(4) Beginning January 1, 2012, a local school board may not levy a tax in accordance with this section.

Section 33. Section 53A-17a-153 is amended to read:

53A-17a-153. Educator salary adjustments.

(1) As used in this section, "educator" means a person employed by a school district, charter school, or the Utah Schools for the Deaf and the Blind who holds:

(a) a license issued under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act; and

(b) a position as a:

(i) classroom teacher;

(ii) speech pathologist;

(iii) librarian or media specialist;

(iv) preschool teacher;

(v) mentor teacher;

(vi) teacher specialist or teacher leader;

(vii) guidance counselor;

(viii) audiologist;

(ix) psychologist; or

(x) social worker.

(2) In recognition of the need to attract and retain highly skilled and dedicated educators, the Legislature shall annually appropriate money for educator salary adjustments, subject to future budget constraints.

(3) Money appropriated to the State Board of Education for educator salary adjustments shall be distributed to school districts, charter schools, and the Utah Schools for the Deaf and the Blind in proportion to the number of full-time-equivalent educator positions in a school district, a charter school, or the Utah Schools for the Deaf and the Blind as compared to the total number of full-time-equivalent educator positions in school districts, charter schools, and the Utah Schools for the Deaf and the Blind.

(4) School districts, charter schools, and the Utah Schools for the Deaf and the Blind shall award bonuses to educators as follows:

(a) the amount of the salary adjustment shall be the same for each full-time-equivalent educator position in the school district, charter school, or the Utah Schools for the Deaf and the Blind;

(b) a person who is not a full-time educator shall receive a partial salary adjustment based on the number of hours the person works as an educator; and

(c) salary adjustments may be awarded only to educators who have received a satisfactory rating or above on their most recent evaluation.

(5) (a) Each ~~[school district and charter school]~~ local education board and the Utah Schools for the Deaf and the Blind shall submit a report to the State Board of Education on how the money for salary adjustments was spent, including the amount of the salary adjustment and the number of full and partial salary adjustments awarded.

(b) The State Board of Education shall compile the information reported under Subsection (5) and submit it to the Public Education Appropriations Subcommittee by November 30 each year.

(6) The State Board of Education may make rules as necessary to administer this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(7) (a) Subject to future budget constraints, the Legislature shall appropriate sufficient money each year to:

(i) maintain educator salary adjustments provided in prior years; and

(ii) provide educator salary adjustments to new employees.

(b) Money appropriated for educator salary adjustments shall include money for the following employer-paid benefits:

(i) retirement;

(ii) worker's compensation;

(iii) Social Security; and

(iv) Medicare.

(8) (a) Subject to future budget constraints, the Legislature shall:

(i) maintain the salary adjustments provided to school administrators in the 2007-08 school year; and

(ii) provide salary adjustments for new school administrators in the same amount as provided for existing school administrators.

(b) The appropriation provided for educator salary adjustments shall include salary adjustments for school administrators as specified in Subsection (8)(a).

(c) In distributing and awarding salary adjustments for school administrators, the State Board of Education, school districts, charter schools, and the Utah Schools for the Deaf and the Blind shall comply with the requirements for the distribution and award of educator salary adjustments as provided in Subsections (3) and (4).

Section 34. Section 53A-17a-159 is amended to read:

53A-17a-159. Utah Science Technology and Research Initiative Centers Program.

(1) (a) The Utah Science Technology and Research Initiative (USTAR) Centers Program is created to provide a financial incentive for ~~[charter schools and school districts]~~ local education boards to adopt programs in respective charter schools and school districts that result in a more efficient use of human resources and capital facilities.

(b) The potential benefits of the program include:

(i) increased compensation for math and science teachers by providing opportunities for an expanded contract year which will enhance school districts' and charter schools' ability to attract and

retain talented and highly qualified math and science teachers;

(ii) increased capacity of school buildings by using buildings more hours of the day or more days of the year, resulting in reduced capital facilities costs;

(iii) decreased class sizes created by expanding the number of instructional opportunities in a year;

(iv) opportunities for earlier high school graduation;

(v) improved student college preparation;

(vi) increased opportunities to offer additional remedial and advanced courses in math and science;

(vii) opportunities to coordinate high school and post-secondary math and science education; and

(viii) the creation or improvement of science, technology, engineering, and math centers (STEM Centers).

(2) From money appropriated for the USTAR Centers Program, the State Board of Education shall award grants to charter schools and school districts to pay for costs related to the adoption and implementation of the program.

(3) The State Board of Education shall:

(a) solicit proposals from the State Charter School Board and ~~[school districts]~~ local school boards for the use of grant money to facilitate the adoption and implementation of the program; and

(b) award grants on a competitive basis.

(4) The State Charter School Board shall:

(a) solicit proposals from charter ~~[schools]~~ school governing boards that may be interested in participating in the USTAR Centers Program;

(b) ~~prioritize [the charter school proposals and consolidate them]~~ and consolidate the proposals into the equivalent of a single school district request; and

(c) submit the consolidated request to the State Board of Education.

(5) In selecting a grant recipient, the State Board of Education shall consider:

(a) the degree to which a charter school or school district's proposed adoption and implementation of an extended year for math and science teachers achieves the benefits described in Subsection (1);

(b) the unique circumstances of different urban, rural, large, small, growing, and declining charter schools and school districts; and

(c) providing pilot programs in as many different school districts and charter schools as possible.

(6) (a) Except as provided in Subsection (6)(b), a school district or charter school may only use grant money to provide full year teacher contracts, part-time teacher contract extensions, or

combinations of both, for math and science teachers.

(b) Up to 5% of the grant money may be used to fund math and science field trips, textbooks, and supplies.

(7) Participation in the USTAR Centers Program shall be:

(a) voluntary for an individual teacher; and

(b) voluntary for a charter school or school district.

~~[(8) The State Board of Education shall make an annual report during the 2009, 2010, and 2011 interims to the Public Education Appropriations Subcommittee describing the program's impact on students and its effectiveness at achieving the benefits described in Subsection (1).]~~

Section 35. Section 53A-17a-165 is amended to read:

53A-17a-165. Enhancement for Accelerated Students Program.

(1) As used in this section, "eligible low-income student" means a student who:

(a) takes an Advanced Placement test;

(b) has applied for an Advanced Placement test fee reduction; and

(c) qualifies for a free lunch or a lunch provided at reduced cost.

(2) The State Board of Education shall distribute money appropriated for the Enhancement for Accelerated Students Program to school districts and charter schools according to a formula adopted by the State Board of Education, after consultation with ~~[school districts and charter schools]~~ local education boards.

(3) A distribution formula adopted under Subsection (2) may include an allocation of money for:

(a) Advanced Placement courses;

(b) Advanced Placement test fees of eligible low-income students;

(c) gifted and talented programs, including professional development for teachers of high ability students; and

(d) International Baccalaureate programs.

(4) The greater of 1.5% or \$100,000 of the appropriation for the Enhancement for Accelerated Students Program may be allowed for International Baccalaureate programs.

(5) A school district or charter school shall use money distributed under this section to enhance the academic growth of students whose academic achievement is accelerated.

(6) (a) The State Board of Education shall develop performance criteria to measure the effectiveness of the Enhancement for Accelerated Students Program and make an annual report to the Public

Education Appropriations Subcommittee on the effectiveness of the program.

(b) In the report required by Subsection (6)(a), the State Board of Education shall include data showing the use and impact of money allocated for Advanced Placement test fees of eligible low-income students.

Section 36. Section 53A-17a-166 is amended to read:

53A-17a-166. Enhancement for At-Risk Students Program.

(1) (a) Subject to the requirements of Subsection (1)(b), the State Board of Education shall distribute money appropriated for the Enhancement for At-Risk Students Program to school districts and charter schools according to a formula adopted by the State Board of Education, after consultation with ~~[school districts and charter schools]~~ local education boards.

(b) (i) The State Board of Education shall appropriate \$1,200,000 from the appropriation for Enhancement for At-Risk Students for a gang prevention and intervention program designed to help students at-risk for gang involvement stay in school.

(ii) Money for the gang prevention and intervention program shall be distributed to school districts and charter schools through a request for proposals process.

(2) In establishing a distribution formula under Subsection (1)(a), the State Board of Education shall use the following criteria:

- (a) low performance on U-PASS tests;
- (b) poverty;
- (c) mobility; and
- (d) limited English proficiency.

(3) A ~~[school district or charter school]~~ local education board shall use money distributed under ~~this section to improve the academic achievement of students who are at risk of academic failure.~~

(4) The State Board of Education shall develop performance criteria to measure the effectiveness of the Enhancement for At-Risk Students Program and make an annual report to the Public Education Appropriations Subcommittee on the effectiveness of the program.

Section 37. Section 53A-17a-167 is amended to read:

53A-17a-167. Early intervention program -- Enhanced kindergarten program -- Educational technology.

(1) The State Board of Education shall, as described in Subsection (4), distribute funds appropriated under this section for an enhanced kindergarten program described in Subsection (2), to school districts and charter schools that apply for the funds.

(2) A ~~[school district or charter school]~~ local education board shall use funds appropriated in this section for a school district or charter school to offer an early intervention program, delivered through an enhanced kindergarten program that:

- (a) is an academic program focused on building age-appropriate literacy and numeracy skills;
- (b) uses an evidence-based early intervention model;
- (c) is targeted to at-risk students; and
- (d) is delivered through additional hours or other means.

(3) A ~~[school district or charter school]~~ local education board may not require a student to participate in an enhanced kindergarten program described in Subsection (2).

(4) The State Board of Education shall distribute funds appropriated under this section for an enhanced kindergarten program described in Subsection (2) as follows:

(a) (i) the total allocation for charter schools shall be calculated by:

(A) dividing the number of charter school students by the total number of students in the public education system in the prior school year; and

(B) multiplying the resulting percentage by the total amount of available funds; and

(ii) the amount calculated under Subsection (4)(a) shall be distributed to charter schools with the greatest need for an enhanced kindergarten program, as determined by the State Board of Education in consultation with the State Charter School Board;

(b) each school district shall receive the amount calculated by:

(i) multiplying the value of the weighted pupil unit by 0.45; and

(ii) multiplying the result by 20; and

(c) the remaining funds, after the allocations described in Subsections (4)(a) and (4)(b) are made, shall be distributed to applicant school districts by:

(i) determining the number of students eligible to receive free lunch in the prior school year for each school district; and

(ii) prorating the remaining funds based on the number of students eligible to receive free lunch in each school district.

(5) In addition to an enhanced kindergarten program described in Subsection (2), the early intervention program includes a component to address early reading through the use of early interactive reading software.

(6) (a) Subject to legislative appropriations, the State Board of Education shall select and contract with one or more technology providers, through a request for proposals process, to provide early

interactive reading software for literacy instruction and assessments for students in kindergarten through grade 3.

(b) By August 1 of each year, the State Board of Education shall distribute licenses for early interactive reading software described in Subsection (6)(a) to the school districts and charter schools of local education boards that apply for the licenses.

(c) Except as provided in Subsection (7)(c), a school district or charter school that received a license described in Subsection (6)(b) during the prior year shall be given first priority to receive an equivalent license during the current year.

(d) Licenses distributed to school districts and charter schools in addition to the licenses described in Subsection (6)(c) shall be distributed through a competitive process.

(7) (a) As used in this Subsection (7), “dosage” means amount of instructional time.

(b) A public school that receives a license described in Subsection (6)(b) shall use the license:

(i) for a student in kindergarten or grade 1:

(A) for intervention for the student if the student is reading below grade level; or

(B) for advancement beyond grade level for the student if the student is reading at or above grade level;

(ii) for a student in grade 2 or 3, for intervention for the student if the student is reading below grade level; and

(iii) in accordance with the technology provider’s dosage recommendations.

(c) A public school that does not use the early interactive reading software in accordance with the technology provider’s dosage recommendations for two consecutive years may not continue to receive a license.

(8) (a) On or before August 1 of each year, the State Board of Education shall select and contract with an independent evaluator, through a request for proposals process, to act as an independent contractor to evaluate early interactive reading software provided under this section.

(b) The State Board of Education shall ensure that a contract with an independent evaluator requires the independent evaluator to:

(i) evaluate a student’s learning gains as a result of using early interactive reading software provided under Subsection (6);

(ii) for the evaluation under Subsection (8)(b)(i), use an assessment that is not developed by a provider of early interactive reading software; and

(iii) determine the extent to which a public school uses the early interactive reading software in accordance with a technology provider’s dosage recommendations under Subsection (7).

(c) The State Board of Education and the independent evaluator selected under Subsection (8)(a) shall report annually on the results of the evaluation to the Education Interim Committee and the governor.

(d) The State Board of Education may use up to 4% of the appropriation provided under Subsection (6)(a) to contract with an independent evaluator selected under Subsection (8)(a).

Section 38. Section 53A-17a-171 is amended to read:

53A-17a-171. Intergenerational Poverty Interventions Grant Program -- Definitions -- Grant requirements -- Reporting requirements.

(1) As used in this section:

(a) “Board” means the State Board of Education.

(b) “Eligible student” means a student who is classified as a child affected by intergenerational poverty.

(c) “Intergenerational poverty” has the same meaning as in Section 35A-9-102.

(d) “Local Education Agency” or “LEA” means a school district or charter school.

(e) “Program” means the Intergenerational Poverty Interventions Grant Program created in Subsection (2).

(2) The Intergenerational Poverty Interventions Grant Program is created to provide grants to eligible LEAs to fund additional educational opportunities at eligible LEAs, for eligible students, outside of the regular school day offerings.

(3) Subject to future budget constraints, the board shall distribute to LEAs money appropriated for the program in accordance with this section.

(4) The board shall:

(a) solicit proposals from [LEAs] local education boards to receive money under the program; and

(b) award grants to [LEAs] a local education board on behalf of an LEA based on criteria described in Subsection (5).

(5) In awarding a grant under Subsection (4), the board shall consider:

(a) the percentage of an LEA’s students that are classified as children affected by intergenerational poverty;

(b) the level of administrative support and leadership at an eligible LEA to effectively implement, monitor, and evaluate the program; and

(c) an LEA’s commitment and ability to work with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts to provide services to the LEA’s eligible students.

(6) To receive a grant under the program[~~an~~ LEA] on behalf of an LEA, a local education board shall submit a proposal to the board detailing:

(a) the LEA's strategy to implement the program, including the LEA's strategy to improve the academic achievement of children affected by intergenerational poverty;

(b) the LEA's strategy for coordinating with and engaging the Department of Workforce Services to provide services for the LEA's eligible students;

(c) the number of students the LEA plans to serve, categorized by age and intergenerational poverty status;

(d) the number of students, eligible students, and schools the LEA plans to fund with the grant money; and

(e) the estimated cost per student.

(7) (a) The board shall annually report to the Utah Intergenerational Welfare Reform Commission, created in Section 35A-9-301, by November 30 of each year, on:

(i) the progress of LEA programs using grant money;

(ii) the progress of LEA programs in improving the academic achievement of children affected by intergenerational poverty; and

(iii) the LEA's coordination efforts with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts.

(b) The board shall provide the report described in Subsection (7)(a) to the Education Interim Committee upon request.

(c) ~~[LEAs that receive]~~ An LEA that receives grant money pursuant to this section shall provide to the board information that is necessary for the board's report described in Subsection (7)(a).

Section 39. Section 63J-1-220 is amended to read:

63J-1-220. Reporting related to pass through money distributed by state agencies.

(1) As used in this section:

(a) "Local government entity" means a county, municipality, school district, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, or any other political subdivision of the state.

(b) (i) "Pass through funding" means money appropriated by the Legislature to a state agency that is intended to be passed through the state agency to one or more:

(A) local government entities;

(B) private organizations, including not-for-profit organizations; or

(C) persons in the form of a loan or grant.

(ii) "Pass through funding" may be:

(A) general funds, dedicated credits, or any combination of state funding sources; and

(B) ongoing or one-time.

(c) "Recipient entity" means a local government entity or private entity, including a nonprofit entity, that receives money by way of pass through funding from a state agency.

(d) "State agency" means a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the executive branch of the state.

(e) (i) "State money" means money that is owned, held, or administered by a state agency and derived from state fees or tax revenues.

(ii) "State money" does not include contributions or donations received by a state agency.

(2) A state agency may not provide a recipient entity state money through pass through funding unless:

(a) the state agency enters into a written agreement with the recipient entity; and

(b) the written agreement described in Subsection (2)(a) requires the recipient entity to provide the state agency:

(i) a written description and an itemized report at least annually detailing the expenditure of the state money, or the intended expenditure of any state money that has not been spent; and

(ii) a final written itemized report when all the state money is spent.

(3) A state agency shall provide to the Governor's Office of Management and Budget a copy of a written description or itemized report received by the state agency under Subsection (2).

(4) Notwithstanding Subsection (2), a state agency is not required to comply with this section to the extent that the pass through funding is issued:

(a) under a competitive award process;

(b) in accordance with a formula enacted in statute;

(c) in accordance with a state program under parameters in statute or rule that guides the distribution of the pass through funding; or

(d) under the authority of the minimum school program, as defined in Subsection 53A-17a-103(4)(7)(e).

CHAPTER 174**H. B. 117**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

LEGAL NOTICE AMENDMENTS

Chief Sponsor: Scott H. Chew
 Senate Sponsor: Jacob L. Anderegg

LONG TITLE**General Description:**

This bill amends a provision related to legal notice by publication in a newspaper of general circulation.

Highlighted Provisions:

This bill:

- ▶ modifies the criteria for a publication to be considered a newspaper of general circulation for the purpose of legal notice.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

45-1-201, as renumbered and amended by Laws of Utah 2009, Chapter 388

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

Section 1. Section 45-1-201 is amended to read:**45-1-201. Newspapers “of general circulation” -- Requirements.**

~~[No newspaper shall be deemed a newspaper having general circulation for the purpose of publishing any notice, advertisement or publication of any kind required by law, unless it has]~~

For the purpose of publishing notice required by Utah law, a “newspaper of general circulation” means a newspaper that:

(1) has a bona fide subscription list of not less than 200 subscribers in this state[~~, and shall have~~];

(2) has been published for [not less than 18 months, and shall have been admitted in the United States mails as second-class matter for 12 months; provided, that nothing in this chapter shall invalidate the publication in a newspaper which has simply changed its name or ownership, or has simply moved its place of publication from one part of the state to another, or suspended publication on account of fire, flood or unavoidable accident not to exceed 10 weeks; provided further, that nothing in this chapter shall apply to any county wherein no newspaper has been published the requisite length of time.] 18 months or longer; and

(3) (a) has been eligible for mailing under a United States Postal Service periodicals permit for at least 12 months; or

(b) (i) publishes at least 12 issues in each year; and

(ii) is composed of, as a percentage of each issue’s total content not including inserts and special sections, at least 25% content that:

(A) the newspaper receives no compensation to publish; and

(B) is of local or general interest.

CHAPTER 175

H. B. 125

Passed February 23, 2017

Approved March 21, 2017

Effective May 9, 2017

STUDENT RESIDENCY AMENDMENTS

Chief Sponsor: Derrin R. Owens
Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This bill amends provisions governing a student's school district of residence.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts provisions governing the school district of residency for a child who is receiving services from a health care facility or human services program; and
- ▶ makes technical and conforming corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53A-2-201, as last amended by Laws of Utah 1995, Chapter 282

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

Section 1. Section 53A-2-201 is amended to read:

53A-2-201. Child's school district of residence -- Determination -- Responsibility for providing educational services.

(1) As used in this section:

(a) "Health care facility" means the same as that term is defined in Section 26-21-2.

(b) "Human services program" means the same as that term is defined in Section 62A-2-101.

~~(4)~~ (2) The school district of residence of a minor child whose custodial parent or legal guardian resides within Utah is:

(a) the school district in which the custodial parent or legal guardian resides; or

(b) the school district in which the child resides:

(i) while in the custody or under the supervision of a Utah state agency;

(ii) while under the supervision of a private or public agency which is in compliance with Section 62A-4a-606 and is authorized to provide child placement services by the state;

(iii) while living with a responsible adult resident of the district, if a determination has been made in accordance with rules ~~[of the district board of~~

~~education]~~ made by the State Board of Education in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(A) the child's physical, mental, moral, or emotional health ~~[would]~~ will best be served by considering the child to be a resident for school purposes;

(B) exigent circumstances exist ~~[which would]~~ that do not permit the case to be appropriately addressed under Section 53A-2-207; and

(C) considering the child to be a resident of the district under this ~~[subsection would]~~ Subsection (2)(b)(iii) does not violate any other law or rule of the State Board of Education; ~~[or]~~

(iv) while the child is receiving services from a health care facility or human services program, if a determination has been made in accordance with rules made by the State Board of Education in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(A) the child's physical, mental, moral, or emotional health will best be served by considering the child to be a resident for school purposes;

(B) exigent circumstances exist that do not permit the case to be appropriately addressed under Section 53A-2-207; and

(C) considering the child to be a resident of the district under this Subsection (2)(b)(iv) does not violate any other law or rule of the State Board of Education; or

~~(iv)~~ (v) if the child is married or has been determined to be an emancipated minor by a court of law or by a state administrative agency authorized to make that determination.

~~(2)~~ (3) A minor child whose custodial parent or legal guardian does not reside in the state is considered to be a resident of the district in which the child lives, unless that designation violates any other law or rule of the State Board of Education, if:

(a) the child is married or an emancipated minor under Subsection ~~[(1)(b)(iv); or]~~ (2)(b)(v);

(b) the child lives with a resident of the district who is a responsible adult and whom the district agrees to designate as the child's legal guardian under Section 53A-2-202; or

(c) if permissible under policies adopted by ~~[the]~~ a local school board, it is established to the satisfaction of the local school board that:

(i) the child lives with a responsible adult who is a resident of the district and is the child's noncustodial parent, grandparent, brother, sister, uncle, or aunt;

(ii) the child's presence in the district is not for the primary purpose of attending the public schools;

(iii) the child's physical, mental, moral, or emotional health ~~[would]~~ will best be served by considering the child to be a resident for school purposes; and

(iv) the child is prepared to abide by the rules and policies of the school and school district in which attendance is sought.

~~[(3)]~~ (4) (a) If admission is sought under Subsection ~~[(1)]~~ (2)(b)(iii), or ~~[(2)]~~ (3)(c), then the district may require the person with whom the child lives to be designated as the child's custodian in a durable power of attorney, issued by the party who has legal custody of the child, granting the custodian full authority to take any appropriate action, including authorization for educational or medical services, in the interests of the child.

(b) Both the party granting and the party empowered by the power of attorney shall agree to:

(i) assume responsibility for any fees or other charges relating to the child's education in the district; and

(ii) if eligibility for fee waivers is claimed under Section 53A-12-103, provide the school district with all financial information requested by the district for purposes of determining eligibility for fee waivers.

(c) Notwithstanding Section 75-5-103, a power of attorney meeting the requirements of this section and accepted by the school district shall remain in force until the earliest of the following occurs:

(i) the child reaches the age of 18, marries, or becomes emancipated;

(ii) the expiration date stated in the document; or

(iii) the power of attorney is revoked or rendered inoperative by the grantor or grantee, or by order of a court of competent jurisdiction.

~~[(4)]~~ (5) A power of attorney does not confer legal guardianship.

~~[(5)]~~ (6) Each school district is responsible for providing educational services for all children of school age who are residents of the district.

~~[(6) Students who were enrolled in a Utah public school by October 1, 1992, and would, but for this part, have been allowed to attend public schools without payment of tuition shall be permitted to continue their attendance until graduation or termination of enrollment on the same basis as Utah resident students.]~~

CHAPTER 176**H. B. 129**

Passed March 3, 2017
 Approved March 21, 2017
 Effective May 9, 2017

ADULT PROTECTIVE SERVICES AMENDMENTS

Chief Sponsor: Rebecca P. Edwards
 Senate Sponsor: Lyle W. Hillyard

LONG TITLE**General Description:**

This bill establishes the means and criteria for Adult Protective Services to obtain court authority to provide emergency protective services to a vulnerable adult in an emergency.

Highlighted Provisions:

This bill:

- ▶ defines “emergency protective services”;
- ▶ requires Adult Protective Services to provide emergency protective services, subject to court order;
- ▶ allows the Division of Occupational and Professional Licensing access to the Adult Protective Services database;
- ▶ clarifies that protective services are provided only on a voluntary basis and emergency protective services are provided under court order;
- ▶ clarifies the venue for court proceedings for protective services and emergency protective services;
- ▶ establishes requirements and the process for a court to order emergency protective services;
- ▶ sets time limits for emergency protective services;
- ▶ allows a court to authorize forcible entry by a peace officer into the premises where the vulnerable adult may be found;
- ▶ repeals authority and procedures for court-ordered involuntary protective services; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-3-301, as last amended by Laws of Utah 2012, Chapter 149
 62A-3-302, as last amended by Laws of Utah 2008, Chapter 91
 62A-3-303, as last amended by Laws of Utah 2014, Chapter 245
 62A-3-312, as last amended by Laws of Utah 2014, Chapter 245
 62A-3-315, as enacted by Laws of Utah 2002, Chapter 108
 62A-3-317, as enacted by Laws of Utah 2002, Chapter 108
 62A-3-320, as last amended by Laws of Utah 2008, Chapter 91

62A-3-321, as enacted by Laws of Utah 2002, Chapter 108

REPEALS:

62A-3-318, as last amended by Laws of Utah 2008, Chapter 91
 62A-3-319, as enacted by Laws of Utah 2002, Chapter 108

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

Section 1. Section 62A-3-301 is amended to read:**62A-3-301. Definitions.**

As used in this part:

(1) “Abandonment” means any knowing or intentional action or failure to act, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(2) “Abuse” means:

(a) knowingly or intentionally:

(i) attempting to cause harm;

(ii) causing harm; or

(iii) placing another in fear of harm;

(b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;

(c) emotional or psychological abuse;

(d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or

(e) deprivation of life sustaining treatment, or medical or mental health treatment, except:

(i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

(ii) when informed consent, as defined in Section 76-5-111, has been obtained.

(3) “Adult” means a person who is 18 years of age or older.

(4) “Adult protection case file” means a record, stored in any format, contained in a case file maintained by Adult Protective Services.

(5) “Adult Protective Services” means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.

(6) “Capacity to consent” means the ability of a person to understand and communicate regarding the nature and consequences of decisions relating to the person, and relating to the person’s property and lifestyle, including a decision to accept or refuse services.

(7) “Caretaker” means each person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or

other health care, resource management, or other necessities.

(8) “Counsel” means an attorney licensed to practice law in this state.

(9) “Database” means the statewide database maintained by the division under Section 62A-3-311.1.

(10) “Elder abuse” means abuse, neglect, or exploitation of an elder adult.

(11) “Elder adult” means a person 65 years of age or older.

(12) “Emergency” means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial harm.

(13) “Emergency protective services” means measures taken by Adult Protective Services under time-limited, court-ordered authority for the purpose of remediating an emergency.

~~(14)~~ (14) (a) “Emotional or psychological abuse” means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

(b) “Emotional or psychological abuse” includes intimidating, threatening, isolating, coercing, or harassing.

(c) “Emotional or psychological abuse” does not include verbal or non-verbal conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:

(i) engage in the conduct; or

(ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

~~(15)~~ (15) “Exploitation” means an offense described in Subsection 76-5-111(4) or Section 76-5b-202.

~~(16)~~ (16) “Harm” means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.

~~(17)~~ (17) “Inconclusive” means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

~~(18)~~ (18) “Intimidation” means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.

~~(19)~~ (19) (a) “Isolation” means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:

(i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;

(ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or

(iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

(b) The term “isolation” does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

~~(20)~~ (20) “Lacks capacity to consent” is as defined in Section 76-5-111.

~~(21)~~ (21) (a) “Neglect” means:

(i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or

(B) failure of a caretaker to provide protection from health and safety hazards or maltreatment;

(ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;

(iii) a pattern of conduct by a caretaker, without the vulnerable adult’s informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult’s well being;

(iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;

(v) self-neglect by the vulnerable adult; or

(vi) abandonment by a caretaker.

(b) “Neglect” does not include conduct, or failure to take action, that is permitted or excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

~~(22)~~ (22) “Physical injury” includes the damage and conditions described in Section 76-5-111.

~~(23)~~ (23) “Protected person” means a vulnerable adult for whom the court has ordered protective services.

~~(24)~~ (24) “Protective services” means services to protect a vulnerable adult from abuse, neglect, or exploitation.

[(24)] (25) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

[(25)] (26) "Serious physical injury" is as defined in Section 76-5-111.

[(26)] (27) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

[(27)] (28) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

[(28)] (29) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:

- (a) provide personal protection;
- (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- (c) obtain services necessary for health, safety, or welfare;
- (d) carry out the activities of daily living;
- (e) manage the adult's own financial resources; or
- (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

[(29)] (30) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

Section 2. Section 62A-3-302 is amended to read:

62A-3-302. Purpose of Adult Protective Services Program.

Subject to the rules made by the division under Section 62A-3-106.5, Adult Protective Services:

- (1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or exploitation of vulnerable adults;
- (2) shall, where appropriate, provide short-term, limited protective services with the permission of the affected vulnerable adult or the guardian or conservator of the vulnerable adult; ~~and~~
- (3) shall, subject to Section 62A-3-320, provide emergency protective services; and

[(3)] (4) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and develop procedures and policies relating to:

(a) reporting and investigating incidents of abuse, neglect, or exploitation; and

(b) providing protective services to the extent that funds are appropriated by the Legislature for this purpose.

Section 3. Section 62A-3-303 is amended to read:

62A-3-303. Powers and duties of Adult Protective Services.

In addition to all other powers and duties that Adult Protective Services is given under this part, Adult Protective Services:

- (1) shall maintain an intake system for receiving and screening reports;
- (2) shall investigate referrals that meet the intake criteria;
- (3) shall conduct assessments of vulnerability and functional capacity as it relates to an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;
- (4) shall perform assessments based on protective needs and risks for a vulnerable adult who is the subject of a report;
- (5) may address any protective needs by making recommendations to and coordinating with the vulnerable adult or by making referrals to community resources;
- (6) may provide short-term, limited services to a vulnerable adult when family or community resources are not available to provide for the protective needs of the vulnerable adult;
- (7) shall have access to facilities licensed by, or contracted with, the department or the Department of Health for the purpose of conducting investigations;
- (8) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including private, controlled, or protected medical or financial records of a vulnerable adult who is the subject of an investigation if:

(a) for a vulnerable adult who ~~does not lack~~ has the capacity to consent, the vulnerable adult signs a release of information; or

(b) for a vulnerable adult who lacks capacity to consent, an administrative subpoena is issued by Adult Protective Services;

(9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;

(10) shall, subject to Section 62A-3-320, provide emergency protective services;

[(40)] (11) may require all persons, including family members of a vulnerable adult and any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this chapter, including the provision of statements,

documents, exhibits, and other items that assist Adult Protective Services in conducting investigations and providing protective services;

~~[(11)]~~ (12) may require all officials, agencies, departments, and political subdivisions of the state to assist and cooperate within their jurisdictional power with the court, the division, and Adult Protective Services in furthering the purposes of this chapter;

~~[(12)]~~ (13) may conduct studies and compile data regarding abuse, neglect, and exploitation; and

~~[(13)]~~ (14) may issue reports and recommendations.

Section 4. Section 62A-3-312 is amended to read:

62A-3-312. Access to information in database.

The database and the adult protection case file:

(1) shall be made available to law enforcement agencies, the attorney general's office, city attorneys, the Division of Occupational and Professional Licensing, and county or district attorney's offices;

(2) shall be released as required under Subsection 63G-2-202(4)(c); and

(3) may be made available, at the discretion of the division, to:

(a) subjects of a report as follows:

(i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or that adult's attorney or legal guardian; and

(ii) a person identified in a report as having abused, neglected, or exploited a vulnerable adult, or that person's attorney; and

(b) persons involved in an evaluation or assessment of the vulnerable adult as follows:

(i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;

(ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;

(iii) an authorized person or agency providing services to, or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to, the victim;

(iv) a licensing authority for a facility, program, or person providing care to a victim named in a report; and

(v) legally authorized protection and advocacy agencies when they represent a victim or have been

requested by the division to assist on a case, including:

(A) the Office of Public Guardian, created in Section 62A-14-103; and

(B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.

Section 5. Section 62A-3-315 is amended to read:

62A-3-315. Protective services voluntary unless court ordered.

(1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.

(2) Protective services may be provided without a court order for a vulnerable adult who ~~[does not lack]~~ has the capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.

(3) ~~[The]~~ A court may order emergency protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to protective services in accordance with ~~[this part]~~ Section 62A-3-320.

Section 6. Section 62A-3-317 is amended to read:

62A-3-317. Venue for protective services proceedings.

Venue for all proceedings ~~[for]~~ related to protective services and emergency protective services under this chapter is in the county where the vulnerable adult resides or is present.

Section 7. Section 62A-3-320 is amended to read:

62A-3-320. Emergency protective services -- Forcible entry.

~~[(1) Upon the filing of a petition for an emergency order, the court may, without notice, order appropriate protective services, if the court finds that:]~~

(1) Adult Protective Services shall, immediately upon court order, provide emergency protective services to a court-designated vulnerable adult.

(2) A court may, without notice, order emergency protective services immediately upon receipt of a petition for emergency protective services when a court finds that:

(a) the subject of the petition is a vulnerable adult;

(b) (i) ~~the vulnerable adult [has no] does not have a court-appointed guardian or conservator; or~~

(ii) ~~the guardian or conservator is not effectively performing the guardian's or conservator's duties;~~

(c) ~~an emergency exists; and~~

(d) ~~the welfare, safety, or best interests of the vulnerable adult [require immediate action] requires emergency protective services.~~

~~[(2) The order described in Subsection (1)]~~

~~(3) An emergency protective services order shall specifically designate [the protective services which are approved, together with supporting facts] the services that are approved and the facts that support the provision of those services.~~

~~[(3) Protective services]~~

~~(4) Services authorized in an emergency protective services order may [not] include hospitalization, nursing [or], custodial care, or a change in residence[, unless the court specifically finds that the action is necessary and authorizes the specific protective services in the order].~~

~~[(4) (a) Protective services provided through an emergency order may not be provided longer than three business days, at which time the order shall expire unless a petition for guardianship, conservatorship, or other protective services is filed.]~~

~~(5) An emergency protective services order expires five business days after the day on which the court issues the order unless an appropriate party petitions for temporary guardianship pursuant to Section 75-5-310 or the division files a new petition for an emergency services order.~~

~~[(b)] (6) If a petition for guardianship[, conservatorship, or other] or an additional emergency protective services petition is filed within [the three-business-day period described in Subsection (4)(a), the emergency order may be continued for as long as 15 days from the day on which the last petition was filed, to allow time for a hearing to determine whether the emergency order shall remain in effect] five business days after the day on which the court issues the original emergency protective services order, a court may extend the duration of the original order an additional 15 business days after the day on which the subsequent petition is filed to allow for a court hearing on the petition.~~

~~[(5) In the emergency order, the court may appoint a temporary guardian, in accordance with Section 75-5-310.]~~

~~[(6)] (7) To implement an emergency protective services order, [the] a court may authorize forcible entry by a peace officer into the premises where the [protected person is residing, only upon a showing that voluntary access into the premises is not possible and that forcible entry is required] vulnerable adult may be found.~~

Section 8. Section 62A-3-321 is amended to read:

62A-3-321. Petition for injunctive relief when caretaker refuses to allow protective services.

(1) When a vulnerable adult is in need of protective services and the caretaker refuses to allow the provision of those services, the division may petition the court for injunctive relief prohibiting the caretaker from interfering with the provision of protective services.

(2) The division's petition under Subsection (1) shall allege facts sufficient to show that the vulnerable adult is in need of protective services, that the vulnerable adult either consents or lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of those services [or to order other appropriate relief].

(3) The court may, on appropriate findings and conclusions in accordance with Rule 65A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the provision of protective services.

(4) The petition under Subsection (1) may be joined with a petition under [Section 62A-3-318 or] Section 62A-3-320.

Section 9. Repealer.

This bill repeals:

Section 62A-3-318, Petition by division for protective services -- Notice -- Rights of adult.

Section 62A-3-319, Court order for protective services -- Review.

CHAPTER 177**H. B. 142**

Passed March 9, 2017
 Approved March 21, 2017
 Effective May 9, 2017

**ADMINISTRATION OF
 ANESTHESIA AMENDMENTS**

Chief Sponsor: Michael S. Kennedy
 Senate Sponsor: J. Stuart Adams

LONG TITLE**General Description:**

This bill amends professional licensing acts in the Division of Occupational and Professional Licensing Act to require informed consent and certain patient monitoring of patients who are sedated and establishes a database for adverse events.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to:
 - create a database of adverse events from the administration of sedation or anesthesia in outpatient settings; and
 - publish a report regarding the number of adverse events by types of provider and facility and submit a yearly report to the Health and Human Services Interim Committee;
- ▶ requires a health care provider who administers sedation intravenously to a patient in an outpatient setting that is not an emergency department:
 - to obtain informed consent from the patient; and
 - to report adverse events from the sedation or anesthesia to the Department of Health;
- ▶ makes it unprofessional conduct to fail to report an adverse event from outpatient sedation or anesthesia;
- ▶ provides whistle blower protections to a health care provider who reports an adverse event; and
- ▶ requires a health care provider who administers sedation or anesthesia intravenously to have access to a crash cart during the anesthesia procedure.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-226, as last amended by Laws of Utah 2016, Chapters 89, 170, 279, and 327
 63I-1-258, as last amended by Laws of Utah 2016, Chapters 89 and 294

ENACTS:

26-1-40, Utah Code Annotated 1953
 58-5a-502, Utah Code Annotated 1953
 58-31b-502.5, Utah Code Annotated 1953
 58-67-502.5, Utah Code Annotated 1953
 58-68-502.5, Utah Code Annotated 1953
 58-69-502.5, Utah Code Annotated 1953

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

Section 1. Section 26-1-40 is enacted to read:

26-1-40. Reports of anesthesia adverse events- whistle blower protections.

(1) (a) Beginning January 1, 2018, the department shall create a database of deaths and adverse events from the administration of sedation or anesthesia in outpatient settings that are not emergency departments in the state.

(b) The database required by Subsection (1)(a) shall include reports submitted by health care providers under Sections 58-5a-502, 58-31b-502.5, 58-67-502.5, 58-68-502.5, and 58-69-502.5.

(2) The department shall adopt administrative rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding:

(a) the format of the reports; and

(b) what constitutes a reportable adverse event, which shall include at least the administration of intravenous sedation or anesthesia when there is:

(i) an escalation of care required for the patient; or

(ii) a rescue of a patient from a deeper level of sedation than was intended.

(3) (a) Information the department receives under this section that identifies a particular individual is subject to Title 63G, Chapter 2, Government Records Access and Management Act, and the federal Health Insurance Portability and Accountability Act of 1996.

(b) Beginning July 1, 2018, and on or before July 1 of each year thereafter, the department shall:

(i) publicly report:

(A) the number of deaths and adverse events reported under Subsection (1);

(B) the type of health care providers, by license category and specialty, who submitted reports under Subsection (1) and who administered the sedation or anesthesia that resulted in an adverse event; and

(C) the type of facility in which the death or adverse event took place; and

(ii) submit a report to the Health and Human Services Interim Committee with the information required by this Subsection (3).

(4) An employer of a health care provider who submits a report under this section may not take an adverse employment action against the reporting health care provider if the employment action is based on the provider submitting a report under this section.

(5) (a) This section sunsets in accordance with Section 63I-1-226.

(b) The sunset review of this section shall include an analysis of:

(i) the number and types of adverse events reported under this section;

(ii) the types of health care providers and locations involved in the adverse events;

(iii) the adequacy of sedation and anesthesia requirements in Sections 58-5a-502, 58-31b-502.5, 58-67-502.5, 58-68-502.5, and 58-69-502.5 related to the adverse events reported under this section; and

(iv) the adequacy of the reporting requirements under this section and the need for additional protections for health care providers who report events under this section.

Section 2. Section 58-5a-502 is enacted to read:

Part 5. Unprofessional and Unlawful Conduct -- Penalties

58-5a-502. Unprofessional conduct.

In addition to unprofessional conduct as defined in Section 58-5a-102, it is unprofessional conduct for an individual licensed under this chapter to administer sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department without:

(1) first obtaining consent from the patient in writing, which shall include:

(a) the type of sedation or anesthesia being administered;

(b) the identity and type of license or permit under this title of the person who is performing the procedure for which the sedation or anesthesia will be administered;

(c) the identity and type of license or permit under this title of the person who will be administering the sedation or anesthesia; and

(d) monitoring that will occur during the sedation or anesthesia, including monitoring of the patient's oxygenation, ventilation, and circulation;

(2) reporting any adverse event under Section 26-1-40; and

(3) having access during the procedure to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association.

Section 3. Section 58-31b-502.5 is enacted to read:

58-31b-502.5. Anesthesia and sedation -- Unprofessional conduct.

In addition to unprofessional conduct as defined in Section 58-31b-502, it is unprofessional conduct for an individual licensed under this chapter to administer sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department without:

(1) first obtaining consent from the patient in writing, which shall include:

(a) the type of sedation or anesthesia being administered;

(b) the identity and type of license or permit under this title of the person who is performing the procedure for which the sedation or anesthesia will be administered;

(c) the identity and type of license or permit under this title of the person who will be administering the sedation or anesthesia; and

(d) monitoring that will occur during the sedation or anesthesia, including monitoring the patient's oxygenation, ventilation, and circulation;

(2) reporting any adverse event under Section 26-1-40; and

(3) having access during the procedure to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association.

Section 4. Section 58-67-502.5 is enacted to read:

58-67-502.5. Anesthesia and sedation -- Unprofessional conduct.

In addition to unprofessional conduct as defined in Section 58-67-502, it is unprofessional conduct for an individual licensed under this chapter to administer sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department without:

(1) first obtaining consent from the patient in writing, which shall include:

(a) the type of sedation or anesthesia being administered;

(b) the identity and type of license or permit under this title of the person who is performing the procedure for which the sedation or anesthesia will be administered;

(c) the identity and type of license or permit under this title of the person who will be administering the sedation or anesthesia; and

(d) monitoring that will occur during the sedation or anesthesia, including monitoring of the patient's oxygenation, ventilation, and circulation;

(2) reporting any adverse event under Section 26-1-40; and

(3) having access during the procedure to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association.

Section 5. Section 58-68-502.5 is enacted to read:

58-68-502.5. Anesthesia and sedation -- Unprofessional conduct.

In addition to unprofessional conduct as defined in Section 58-68-502, it is unprofessional conduct for an individual licensed under this chapter to administer sedation or anesthesia intravenously to

a patient in an outpatient setting that is not an emergency department without:

(1) first obtaining consent from the patient in writing, which shall include:

(a) the type of sedation or anesthesia being administered;

(b) the identity and type of license or permit under this title of the person who is performing the procedure for which the sedation or anesthesia will be administered;

(c) the identity and type of license or permit under this title of the person who will be administering the sedation or anesthesia; and

(d) monitoring that will occur during the sedation or anesthesia, including monitoring of the patient's oxygenation, ventilation, and circulation;

(2) reporting any adverse event under Section 26-1-40; and

(3) having access during the procedure to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association.

Section 6. Section 58-69-502.5 is enacted to read:

58-69-502.5. Anesthesia and sedation -- Unprofessional conduct.

In addition to unprofessional conduct as defined in Section 58-69-502, it is unprofessional conduct for an individual licensed under this chapter to administer sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department without:

(1) first obtaining consent from the patient in writing, which shall include:

(a) the type of sedation or anesthesia being administered;

(b) the identity and type of license or permit under this title of the person who is performing the procedure for which the sedation or anesthesia will be administered;

(c) the identity and type of license or permit under this title of the person who will be administering the sedation or anesthesia; and

(d) monitoring that will occur during the sedation or anesthesia, including monitoring of the patient's oxygenation, ventilation, and circulation;

(2) reporting any adverse event under Section 26-1-40; and

(3) having access during the procedure to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association.

Section 7. Section 63I-1-226 is amended to read:

63I-1-226. Repeal dates, Title 26.

(1) Section 26-1-40 is repealed July 1, 2019.

~~(4)~~ (2) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2025.

~~(2)~~ (3) Section 26-10-11 is repealed July 1, 2020.

~~(3)~~ (4) Section 26-21-23, Licensing of non-Medicare nursing care facility beds, is repealed July 1, 2018.

~~(4)~~ (5) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.

~~(5)~~ (6) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1, 2019.

~~(6)~~ (7) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1, 2021.

~~(7)~~ (8) Section 26-38-2.5 is repealed July 1, 2017.

~~(8)~~ (9) Section 26-38-2.6 is repealed July 1, 2017.

~~(9) Title 26, Chapter 52, Autism Treatment Account, is repealed July 1, 2016.]~~

(10) Title 26, Chapter 56, Hemp Extract Registration Act, is repealed July 1, 2021.

Section 8. Section 63I-1-258 is amended to read:

63I-1-258. Repeal dates, Title 58.

(1) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2026.

(2) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2025.

(3) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2018.

(4) Section 58-37-4.3 is repealed July 1, 2021.

(5) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2023.

(6) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act, is repealed July 1, 2019.

(7) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2025.

(8) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2023.

(9) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2024.

(10) Title 58, Chapter 61, Part 7, Behavior Analyst Licensing Act, is repealed July 1, 2026.

(11) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.

(12) Title 58, Chapter 86, State Certification of Commercial Interior Designers Act, is repealed July 1, 2021.

(13) The following sections are repealed on July 1, 2019:

- (a) Section 58-5a-502;
- (b) Section 58-31b-502.5;
- (c) Section 58-67-502.5;
- (d) Section 58-68-502.5; and
- (e) Section 58-69-502.5.

CHAPTER 178

H. B. 143

Passed February 16, 2017

Approved March 21, 2017

Effective May 9, 2017

TAX ADVISORY BOARD AMENDMENTS

Chief Sponsor: Adam Gardiner
Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill modifies the requirements for a tax advisory board for a county of the first class.

Highlighted Provisions:

This bill:

- ▶ modifies membership requirements for board members of a tax advisory board for a county of the first class.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

59-12-603, as last amended by Laws of Utah 2016, Chapters 350 and 364

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

Section 1. Section 59-12-603 is amended to read:

59-12-603. County tax -- Bases -- Rates -- Use of revenue -- Adoption of ordinance required -- Advisory board -- Administration -- Collection -- Administrative charge -- Distribution -- Enactment or repeal of tax or tax rate change -- Effective date -- Notice requirements.

(1) (a) In addition to any other taxes, a county legislative body may, as provided in this part, impose a tax as follows:

(i) (A) a county legislative body of any county may impose a tax of not to exceed 3% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement; and

(B) beginning on or after January 1, 1999, a county legislative body of any county imposing a tax under Subsection (1)(a)(i)(A) may, in addition to imposing the tax under Subsection (1)(a)(i)(A), impose a tax of not to exceed 4% on all short-term leases and rentals of motor vehicles not exceeding 30 days, except for leases and rentals of motor vehicles made for the purpose of temporarily replacing a person's motor vehicle that is being repaired pursuant to a repair or an insurance agreement;

(ii) a county legislative body of any county may impose a tax of not to exceed 1% of all sales of the following that are sold by a restaurant:

- (A) alcoholic beverages;
- (B) food and food ingredients; or
- (C) prepared food; and

(iii) a county legislative body of a county of the first class may impose a tax of not to exceed .5% on charges for the accommodations and services described in Subsection 59-12-103(1)(i).

(b) A tax imposed under Subsection (1)(a) is subject to the audit provisions of Section 17-31-5.5.

(2) (a) Subject to Subsection (2)(b), revenue from the imposition of the taxes provided for in Subsections (1)(a)(i) through (iii) may be used for:

- (i) financing tourism promotion; and
- (ii) the development, operation, and maintenance of:

- (A) an airport facility;
- (B) a convention facility;
- (C) a cultural facility;
- (D) a recreation facility; or
- (E) a tourist facility.

(b) A county of the first class shall expend at least \$450,000 each year of the revenue from the imposition of a tax authorized by Subsection (1)(a)(iii) within the county to fund a marketing and ticketing system designed to:

(i) promote tourism in ski areas within the county by persons that do not reside within the state; and

- (ii) combine the sale of:
 - (A) ski lift tickets; and

(B) accommodations and services described in Subsection 59-12-103(1)(i).

(3) A tax imposed under this part may be pledged as security for bonds, notes, or other evidences of indebtedness incurred by a county, city, or town under Title 11, Chapter 14, Local Government Bonding Act, or a community reinvestment agency under Title 17C, Chapter 1, Part 5, Agency Bonds, to finance:

- (a) an airport facility;
- (b) a convention facility;
- (c) a cultural facility;
- (d) a recreation facility; or
- (e) a tourist facility.

(4) (a) To impose the tax under Subsection (1), each county legislative body shall adopt an ordinance imposing the tax.

(b) The ordinance under Subsection (4)(a) shall include provisions substantially the same as those contained in Part 1, Tax Collection, except that the tax shall be imposed only on those items and sales described in Subsection (1).

(c) The name of the county as the taxing agency shall be substituted for that of the state where necessary, and an additional license is not required if one has been or is issued under Section 59-12-106.

(5) To maintain in effect its tax ordinance adopted under this part, each county legislative body shall, within 30 days of any amendment of any applicable provisions of Part 1, Tax Collection, adopt amendments to its tax ordinance to conform with the applicable amendments to Part 1, Tax Collection.

(6) (a) Regardless of whether a county of the first class creates a tourism tax advisory board in accordance with Section 17-31-8, the county legislative body of the county of the first class shall create a tax advisory board in accordance with this Subsection (6).

(b) The tax advisory board shall be composed of nine members appointed as follows:

(i) four members shall be residents of a county of the first class appointed by the county legislative body of the county of the first class ~~[as follows:]; and~~

~~[(A) one member shall be a resident of the unincorporated area of the county;]~~

~~[(B) two members shall be residents of the incorporated area of the county; and]~~

~~[(C) one member shall be a resident of the unincorporated or incorporated area of the county; and]~~

(ii) subject to Subsections (6)(c) and (d), five members shall be mayors of cities or towns within the county of the first class appointed by an organization representing all mayors of cities and towns within the county of the first class.

(c) Five members of the tax advisory board constitute a quorum.

(d) The county legislative body of the county of the first class shall determine:

(i) terms of the members of the tax advisory board;

(ii) procedures and requirements for removing a member of the tax advisory board;

(iii) voting requirements, except that action of the tax advisory board shall be by at least a majority vote of a quorum of the tax advisory board;

(iv) chairs or other officers of the tax advisory board;

(v) how meetings are to be called and the frequency of meetings; and

(vi) the compensation, if any, of members of the tax advisory board.

(e) The tax advisory board under this Subsection (6) shall advise the county legislative body of the county of the first class on the expenditure of

revenue collected within the county of the first class from the taxes described in Subsection (1)(a).

(7) (a) (i) Except as provided in Subsection (7)(a)(ii), a tax authorized under this part shall be administered, collected, and enforced in accordance with:

(A) the same procedures used to administer, collect, and enforce the tax under:

(I) Part 1, Tax Collection; or

(II) Part 2, Local Sales and Use Tax Act; and

(B) Chapter 1, General Taxation Policies.

(ii) A tax under this part is not subject to Section 59-12-107.1 or 59-12-123 or Subsections 59-12-205(2) through (7).

(b) Except as provided in Subsection (7)(c):

(i) for a tax under this part other than the tax under Subsection (1)(a)(i)(B), the commission shall distribute the revenue to the county imposing the tax; and

(ii) for a tax under Subsection (1)(a)(i)(B), the commission shall distribute the revenue according to the distribution formula provided in Subsection (8).

(c) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenue the commission collects from a tax under this part.

(8) The commission shall distribute the revenue generated by the tax under Subsection (1)(a)(i)(B) to each county collecting a tax under Subsection (1)(a)(i)(B) according to the following formula:

(a) the commission shall distribute 70% of the revenue based on the percentages generated by dividing the revenue collected by each county under Subsection (1)(a)(i)(B) by the total revenue collected by all counties under Subsection (1)(a)(i)(B); and

(b) the commission shall distribute 30% of the revenue based on the percentages generated by dividing the population of each county collecting a tax under Subsection (1)(a)(i)(B) by the total population of all counties collecting a tax under Subsection (1)(a)(i)(B).

(9) (a) For purposes of this Subsection (9):

(i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Part 2, County Annexation.

(ii) "Annexing area" means an area that is annexed into a county.

(b) (i) Except as provided in Subsection (9)(c), if, on or after July 1, 2004, a county enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(b)(ii) from the county.

(ii) The notice described in Subsection (9)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax or change the rate of a tax under this part;

(B) the statutory authority for the tax described in Subsection (9)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(b)(ii)(A); and

(D) if the county enacts the tax or changes the rate of the tax described in Subsection (9)(b)(ii)(A), the rate of the tax.

(c) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax or the tax rate increase imposed under Subsection (1), the enactment of the tax or the tax rate increase shall take effect on the first day of the first billing period that begins after the effective date of the enactment of the tax or the tax rate increase.

(ii) If the billing period for a transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under Subsection (1), the repeal of the tax or the tax rate decrease shall take effect on the first day of the last billing period that began before the effective date of the repeal of the tax or the tax rate decrease.

(d) (i) Except as provided in Subsection (9)(e), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment, repeal, or change in the rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(d)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (9)(d)(i)(B) shall state:

(A) that the annexation described in Subsection (9)(d)(i) will result in an enactment, repeal, or change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (9)(d)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(d)(ii)(A); and

(D) if the county enacts the tax or changes the rate of the tax described in Subsection (9)(d)(ii)(A), the rate of the tax.

(e) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax or the tax rate increase imposed under Subsection (1), the enactment of the tax or the tax rate increase shall take effect on the first day of the first billing period that begins after the effective date of the enactment of the tax or the tax rate increase.

(ii) If the billing period for a transaction begins before the effective date of the repeal of the tax or

the tax rate decrease imposed under Subsection (1), the repeal of the tax or the tax rate decrease shall take effect on the first day of the last billing period that began before the effective date of the repeal of the tax or the tax rate decrease.

CHAPTER 179**H. B. 166**

Passed February 17, 2017

Approved March 21, 2017

Effective May 9, 2017

**SCHOOL AND INSTITUTIONAL
TRUST FUND AMENDMENTS**Chief Sponsor: Jefferson Moss
Senate Sponsor: Daniel Hemmert**LONG TITLE****General Description:**

This bill modifies provisions of the School and Institutional Trust Fund Management Act.

Highlighted Provisions:

This bill:

- ▶ modifies the number of annual meetings of the School and Institutional Trust Fund Board of Trustees;
- ▶ modifies the membership of the School and Institutional Trust Fund Nominating Committee; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 53D-1-104, as enacted by Laws of Utah 2014, Chapter 426
 53D-1-304, as enacted by Laws of Utah 2014, Chapter 426
 53D-1-401, as enacted by Laws of Utah 2014, Chapter 426
 53D-1-403, as last amended by Laws of Utah 2015, Chapter 276
 53D-1-501, as enacted by Laws of Utah 2014, Chapter 426

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

Section 1. Section 53D-1-104 is amended to read:**53D-1-104. Attorney general representation.**

- (1) The attorney general shall:
- (a) represent the board, director, and office in any legal action relating to the trust fund;
 - (b) undertake suits for damages and any other necessary or appropriate relief in the name of the trust fund and the state; and
 - (c) ensure that legal counsel assigned to provide legal counsel to the board, director, and office is present at ~~[all]~~ board meetings as needed.
- (2) The attorney general may institute an action to enforce this chapter or to protect the interests of beneficiaries.

Section 2. Section 53D-1-304 is amended to read:**53D-1-304. Board meetings.**

- (1) The board shall hold at least ~~[nine]~~ six meetings per year to conduct business.
- (2) The board chair or two board members:
 - (a) may call a board meeting; and
 - (b) if calling a board meeting, shall provide as much advance notice as is reasonable under the circumstances to all board members, the director, and the director of the school children's trust section.
- (3) Any board member may place an item on a board meeting agenda.
- (4) The board shall annually adopt a set of parliamentary procedures to govern board meetings.
- (5) The board may establish an attendance policy to govern the attendance of board members at board meetings.

Section 3. Section 53D-1-401 is amended to read:**53D-1-401. Appointment of director -- Qualifications -- Nature of employment -- Removal by State Board of Education petition.**

- (1) The office shall be managed by a director.
- (2) ~~[On or before January 25, 2015]~~ If there is a vacancy in the director position, the board shall appoint an individual as director.
- (3) The board shall ensure that an individual appointed as director possesses:
 - (a) outstanding professional qualifications pertinent to the prudent investment of trust fund money; and
 - (b) expertise in institutional investment management.
- (4) The director is an at-will employee who may be removed by the board at any time with or without cause.
- (5) (a) The State Board of Education may submit a written petition to the board requesting the board to remove the director for cause, explained in the petition.
 - (b) The board shall hold a hearing on a petition under Subsection (5)(a) within 45 days after receiving the petition.
 - (c) If, after holding a hearing, the board finds by a preponderance of the evidence that there is cause for removing the director, the board shall remove the director.

Section 4. Section 53D-1-403 is amended to read:**53D-1-403. Reports.**

- (1) At least annually, the director shall report in person to the Legislative Management Committee,

the governor, and the State Board of Education, concerning the office's investments, performance, estimated distributions, and other activities.

(2) The director shall report to the board concerning the work of the director and the investment activities and other activities of the office:

(a) in a public meeting at least ~~nine~~ six times per year; and

(b) as otherwise requested by the board.

(3) (a) Before November 1 of each year, the director shall:

(i) submit a written report to school community councils, created under Section 53A-1a-108, and charter trust land councils, established under Section 53A-16-101.5 concerning the office's investments, performance, estimated distributions, and other activities; and

(ii) post the written report described in Subsection (3)(a)(i) on the office's website.

(b) A report under Subsection (3)(a) shall be prepared in simple language designed to be understood by the general public.

(4) The director shall provide to the board:

(a) monthly written reports on the activities of the office;

(b) quarterly financial reports; and

(c) any other report requested by the board.

(5) The director shall:

(a) invite the director of the school children's trust section to attend any meeting at which the director gives a report under this section; and

(b) provide the director of the school children's trust section:

(i) a copy of any written report prepared under this section; and

(ii) any other report requested by the director of the school children's trust section.

Section 5. Section 53D-1-501 is amended to read:

53D-1-501. Nominating committee -- Membership -- Terms -- Vacancies -- Compensation.

(1) There is established a School and Institutional Trust Fund Nominating Committee.

(2) The nominating committee consists of:

~~[(a) two members appointed by the State Board of Education;]~~

~~[(b) two]~~ (a) four members, appointed by the State Board of Education upon recommendation by the director of the school children's trust section, each of whom is a member of a respected professional organization;

~~[(e)]~~ (b) the chief investment officer of the University of Utah endowment;

~~[(d)]~~ (c) the chief investment officer of the Utah State University endowment; and

~~[(e)]~~ (d) the director of the school children's trust section.

(3) An individual appointed as a member of the nominating committee under Subsection (2)(a) ~~[(or (b))]~~ shall be appointed based on the individual's expertise in:

(a) investment finance;

(b) institutional asset management;

(c) trust administration; or

(d) the practice of law in the areas of capital markets, securities law, trusts, foundations, endowments, investment finance, institutional asset management, or trust administration.

(4) The term of a member appointed under Subsection (2)(a) ~~[(or (b))]~~ is four years~~, except that the initial term of members appointed under Subsection (2)(b) is two years].~~

(5) A nominating committee member shall serve until a successor is appointed and qualified.

(6) (a) If a member appointed under Subsection (2)(a) ~~[(or (b))]~~ leaves office, the vacancy shall be filled in the same manner as the initial appointment under Subsection (2)(a) ~~[(or (b))]~~.

(b) An individual appointed to fill a vacancy under Subsection (6)(a) serves the remainder of the unexpired term.

(7) A member of the nominating committee may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

CHAPTER 180**H. B. 175**

Passed March 7, 2017

Approved March 21, 2017

Effective May 9, 2017

**OPIOID ABUSE PREVENTION
AND TREATMENT AMENDMENTS**

Chief Sponsor: Steve Eliason
 Senate Sponsor: Brian E. Shiozawa
 Cosponsors: Rebecca Chavez-Houck
 Brad M. Daw
 Craig Hall
 Sandra Hollins
 Michael S. Kennedy
 Michael E. Noel

LONG TITLE**General Description:**

This bill requires controlled substance prescribers to receive training in a nationally recognized opioid abuse screening method and requires reimbursement for the screening services.

Highlighted Provisions:

This bill:

- ▶ requires controlled substance prescribers to receive training in a nationally recognized opioid abuse screening method;
- ▶ permits controlled substance prescribers to fulfill continuing education requirements through training in the screening method;
- ▶ permits controlled substance prescribers who receive a DATA 2000 waiver to use the waiver to fulfill certain continuing education requirements;
- ▶ requires Medicaid reimbursement to health care providers for screening services;
- ▶ requires the Public Employees' Benefit and Insurance Program to reimburse health care providers for screening services; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-37-6.5, as repealed and reenacted by Laws of Utah 2013, Chapter 450

ENACTS:

26-18-21, Utah Code Annotated 1953

49-20-414, Utah Code Annotated 1953

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

Section 1. Section 26-18-21 is enacted to read:**26-18-21. Screening, Brief Intervention, and Referral to Treatment Medicaid reimbursement.**

- (1) As used in this section:

(a) "Controlled substance prescriber" means a controlled substance prescriber, as that term is defined in Section 58-37-6.5, who:

(i) has a record of having completed SBIRT training, in accordance with Subsection 58-37-6.5(2), before providing the SBIRT services; and

(ii) is a Medicaid enrolled health care provider.

(b) "SBIRT" means the same as that term is defined in Section 58-37-6.5.

(2) The department shall reimburse a controlled substance prescriber who provides SBIRT services to a Medicaid enrollee who is 13 years of age or older for the SBIRT services.

Section 2. Section 49-20-414 is enacted to read:**49-20-414. Screening, Brief Intervention, and Referral to Treatment program reimbursement.**

- (1) As used in this section:

(a) "Controlled substance prescriber" means a controlled substance prescriber, as that term is defined in Section 58-37-6.5, who:

(i) has a record of having completed SBIRT training, in accordance with Subsection 58-37-6.5(2), before providing the SBIRT services; and

(ii) is a program enrolled controlled substance prescriber.

(b) "SBIRT" means the same as that term is defined in Section 58-37-6.5.

(2) The health program offered to the state employee risk pool under Section 49-20-202 shall reimburse a controlled substance prescriber who provides SBIRT services to a covered individual who is 13 years of age or older for the SBIRT services.

Section 3. Section 58-37-6.5 is amended to read:**58-37-6.5. Continuing education for controlled substance prescribers.**

- (1) For the purposes of this section:

(a) "Controlled substance prescriber" means an individual, other than a veterinarian, who:

(i) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act; and

(ii) possesses the authority, in accordance with the individual's scope of practice, to prescribe schedule II controlled substances and schedule III controlled substances that are applicable to opioid narcotics, hypnotic depressants, or psychostimulants.

(b) "D.O." means an osteopathic physician and surgeon licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(4b) (c) "FDA" means the United States Food and Drug Administration.

[e] (d) "M.D." means a physician and surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act.

[d] "D.O." means an osteopathic physician and surgeon licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.]

(e) "SBIRT" means the Screening, Brief Intervention, and Referral to Treatment approach used by the federal Substance Abuse and Mental Health Services Administration or defined by the division, in consultation with the Division of Substance Abuse and Mental Health, by administrative rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) Beginning with the licensing period that begins after January 1, 2014, as a condition precedent for license renewal, each controlled substance prescriber shall complete at least four continuing education hours per licensing period that satisfy the requirements of Subsections (3) and (4).

(b) (i) Beginning with the licensing period that begins after January 1, 2024, as a condition precedent for license renewal, each controlled substance prescriber shall complete at least 3.5 continuing education hours in an SBIRT-training class that satisfies the requirements of Subsection (5).

(ii) Completion of the SBIRT-training class, in compliance with Subsection (2)(b)(i), fulfills the continuing education hours requirement in Subsection (4) for the licensing period in which the class was completed.

(iii) A controlled substance prescriber:

(A) need only take the SBIRT-training class once during the controlled substance prescriber's licensure in the state; and

(B) shall provide a completion record of the SBIRT-training class in order to be reimbursed for SBIRT services to patients, in accordance with Section 26-18-21 and Section 49-20-414.

(3) As provided in Subsection 58-37f-402(8), the online tutorial and passing the online test described in Section 58-37f-402 shall count as 1/2 hour of continuing professional education under Subsection (2) per licensing period.

(4) A controlled substance prescriber shall complete at least 3.5 hours of continuing education [hours] in one or more controlled substance prescribing classes, except dentists who shall complete at least [2 such] two hours, that satisfy the requirements of Subsections (5) and (7).

(5) A controlled substance prescribing class shall:

(a) satisfy the division's requirements for the continuing education required for the renewal of the controlled substance prescriber's respective license type;

(b) be delivered by an accredited or approved continuing education provider recognized by the division as offering continuing education

appropriate for the controlled substance prescriber's respective license type; and

(c) include a postcourse knowledge assessment.

(6) An M.D. or D.O. completing continuing professional education hours under Subsection (4) shall complete those hours in classes that qualify for the American Medical Association Physician's Recognition Award Category 1 Credit.

(7) The 3.5 hours of the controlled substance prescribing classes under Subsection (4) shall include educational content covering the following:

(a) the scope of the controlled substance abuse problem in Utah and the nation;

(b) all elements of the FDA Blueprint for Prescriber Education under the FDA's Extended-Release and Long-Acting Opioid Analgesics Risk Evaluation and Mitigation Strategy, as published July 9, 2012, or as it may be subsequently revised;

(c) the national and Utah-specific resources available to prescribers to assist in appropriate controlled substance and opioid prescribing;

(d) patient record documentation for controlled substance and opioid prescribing; and

(e) office policies, procedures, and implementation.

(8) (a) The division, in consultation with the Utah Medical Association Foundation, shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections (5) and (7) for an M.D. or D.O.

(b) The division, in consultation with the applicable professional licensing boards, shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections (5) and (7) for a controlled substance prescriber other than an M.D. or D.O.

(c) The division may by rule establish a committee that may audit compliance with the Utah Risk Evaluation and Mitigation Strategy (REMS) Educational Programming Project grant, that satisfies the educational content requirements of Subsections (5) and (7) for a controlled substance prescriber.

(9) A controlled substance prescribing class required under this section:

(a) may be held:

(i) in conjunction with other continuing professional education programs; and

(ii) online; and

(b) does not increase the total number of state-required continuing professional education hours required for prescriber licensing.

(10) The division may establish rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

(11) A controlled substance prescriber who, on or after July 1, 2017, obtains a waiver to treat opioid dependency with narcotic medications, in accordance with the Drug Addiction Treatment Act of 2000, 21 U.S.C. Sec. 823 et seq., may use the waiver to satisfy the 3.5 hours of the continuing education requirement under Subsection (4) for two consecutive licensing periods.

CHAPTER 181**H. B. 193**

Passed February 16, 2017

Approved March 21, 2017

Effective May 9, 2017

**REVISOR'S TECHNICAL
CORRECTIONS TO UTAH CODE**Chief Sponsor: Brad R. Wilson
Senate Sponsor: Ralph Okerlund**LONG TITLE****General Description:**

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 4-39-104, as last amended by Laws of Utah 2016, Chapter 19
- 10-2a-302, as last amended by Laws of Utah 2015, Chapter 157 and renumbered and amended by Laws of Utah 2015, Chapter 352
- 17-23-14, as last amended by Laws of Utah 2016, Chapter 171
- 17B-2a-804, as last amended by Laws of Utah 2016, Chapter 387
- 17C-2-110, as last amended by Laws of Utah 2016, Chapter 350
- 17C-3-109, as last amended by Laws of Utah 2016, Chapter 350
- 20A-3-101, as last amended by Laws of Utah 2008, Chapter 276
- 26-47-103, as last amended by Laws of Utah 2013, Chapter 167
- 26-55-104, as last amended by Laws of Utah 2016, Chapters 202, 207, 208 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 202
- 31A-30-107.3, as last amended by Laws of Utah 2013, Chapter 341
- 35A-1-206, as last amended by Laws of Utah 2016, Chapters 236, 271, and 296
- 35A-8-308, as enacted by Laws of Utah 2016, Chapter 184
- 35A-8-309, as enacted by Laws of Utah 2016, Chapter 184
- 41-1a-418, as last amended by Laws of Utah 2016, Chapters 46, 52, 70, 71, and 102

- 41-6a-520, as last amended by Laws of Utah 2006, Chapter 341
- 41-6a-521, as last amended by Laws of Utah 2011, Chapter 312
- 41-6a-524, as enacted by Laws of Utah 2005, Chapter 2 and last amended by Laws of Utah 2005, Chapter 91
- 41-6a-527, as last amended by Laws of Utah 2013, Chapter 394
- 41-6a-606, as last amended by Laws of Utah 2006, Chapter 168
- 53-3-220, as last amended by Laws of Utah 2015, Chapter 165
- 53A-1-1110, as last amended by Laws of Utah 2016, Chapter 349
- 53A-1-1403, as enacted by Laws of Utah 2016, Chapter 221
- 53A-16-113, as last amended by Laws of Utah 2016, Chapters 350 and 367
- 58-17b-309.6, as last amended by Laws of Utah 2014, Chapter 72
- 58-37f-304, as enacted by Laws of Utah 2016, Chapter 275
- 59-1-403, as last amended by Laws of Utah 2015, Chapters 411 and 451
- 59-7-302, as last amended by Laws of Utah 2016, Chapters 311 and 368
- 59-12-102, as last amended by Laws of Utah 2016, Third Special Session, Chapter 6
- 59-12-703, as last amended by Laws of Utah 2016, Chapters 344 and 364
- 62A-2-120, as last amended by Laws of Utah 2016, Chapter 122
- 62A-4a-208, as last amended by Laws of Utah 2009, Chapter 75
- 62A-4a-209, as last amended by Laws of Utah 2016, Chapter 231
- 62A-5-103.5, as last amended by Laws of Utah 2015, Chapter 255
- 62A-15-703, as last amended by Laws of Utah 2008, Chapter 3
- 63A-5-602, as enacted by Laws of Utah 2008, Chapter 334
- 63E-1-102, as last amended by Laws of Utah 2015, Chapters 223, 226, 283, and 411
- 63G-3-201, as last amended by Laws of Utah 2016, Chapter 193
- 63G-3-601, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63G-6a-103, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 355
- 63G-6a-2402, as enacted by Laws of Utah 2014, Chapter 196
- 63H-6-104.5, as enacted by Laws of Utah 2016, Chapter 301
- 63I-1-220, as last amended by Laws of Utah 2016, Chapters 176 and 348
- 63I-1-231, as last amended by Laws of Utah 2015, Chapter 50
- 63I-1-253, as last amended by Laws of Utah 2016, Chapters 41, 63, and 169
- 63I-2-210, as last amended by Laws of Utah 2016, Chapter 14
- 63I-2-259, as last amended by Laws of Utah 2015, Chapter 139

63J-7-102, as last amended by Laws of Utah 2015, Chapters 223, 226, 283, and 411
 63J-8-102, as last amended by Laws of Utah 2015, Chapter 88
 67-1-8.1, as last amended by Laws of Utah 2011, Chapter 218
 67-1-15, as enacted by Laws of Utah 2006, Chapter 362
 75-5-424, as last amended by Laws of Utah 2014, Chapter 142
 76-5-303, as repealed and reenacted by Laws of Utah 2010, Chapter 374
 78A-6-105, as last amended by Laws of Utah 2016, Chapters 109 and 351

REPEALS:

59-2-1116 (Section not in effect), as enacted by Laws of Utah 2016, Chapter 332

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

Section 1. Section 4-39-104 is amended to read:**4-39-104. Domesticated Elk Act advisory council.**

(1) The department shall establish a Domesticated Elk Act advisory council to give advice and make recommendations on policies and rules adopted pursuant to this chapter.

(2) The advisory council shall consist of 10 members appointed by the commissioner of agriculture to four-year terms as follows:

(a) one member, recommended by the executive director of the Department of Natural Resources, shall represent the Department of Natural Resources;

(b) two members shall represent the Department of Agriculture, one of whom shall be the state veterinarian;

(c) one member shall represent the livestock industry;

(d) one member, recommended by the executive director of the Department of Natural Resources from a list of candidates submitted by the Division of Wildlife Resources, shall represent wildlife interests; and

(e) five members, recommended by the Department of Agriculture, shall represent the domesticated elk industry.

(3) Notwithstanding the requirements of Subsection (2), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) A majority of the advisory council constitutes a quorum.

(b) A quorum is necessary for the council to act.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 2. Section 10-2a-302 is amended to read:**10-2a-302. Incorporation of a town -- Petition.**

(1) As used in this section:

(a) "Assessed value," with respect to agricultural land, means the value at which the land would be assessed without regard to a valuation for agricultural use under Section 59-2-503.

(b) "Feasibility consultant" means a person or firm:

(i) with expertise in the processes and economics of local government; and

(ii) who is independent of and not affiliated with a county or sponsor of a petition to incorporate.

(c) "Financial feasibility study" means a study described in Subsection (7).

(d) "Municipal service" means a publicly provided service that is not provided on a countywide basis.

(e) "Nonurban" means having a residential density of less than one unit per acre.

(2) (a) (i) A contiguous area of a county not within a municipality, with a population of at least 100 but less than 1,000, may incorporate as a town as provided in this section.

(ii) An area within a county of the first class is not contiguous for purposes of Subsection (2)(a)(i) if:

(A) the area includes a strip of land that connects geographically separate areas; and

(B) the distance between the geographically separate areas is greater than the average width of the strip of land connecting the geographically separate areas.

(b) The population figure under Subsection (2)(a) shall be determined:

(i) as of the date the incorporation petition is filed; and

(ii) by the Utah Population Estimates Committee within 20 days after the county clerk's certification under Subsection (6) of a petition filed under Subsection (4).

(3) (a) The process to incorporate an area as a town is initiated by filing a petition to incorporate the area as a town with the Office of the Lieutenant Governor.

(b) A petition under Subsection (3)(a) shall:

(i) be signed by:

(A) the owners of private real property that:

(I) is located within the area proposed to be incorporated; and

(II) is equal in assessed value to more than 1/5 of the assessed value of all private real property within the area; and

(B) 1/5 of all registered voters within the area proposed to be incorporated as a town, according to the official voter registration list maintained by the county on the date the petition is filed;

(ii) designate as sponsors at least five of the property owners who have signed the petition, one of whom shall be designated as the contact sponsor, with the mailing address of each owner signing as a sponsor;

(iii) be accompanied by and circulated with an accurate map or plat, prepared by a licensed surveyor, showing a legal description of the boundary of the proposed town; and

(iv) substantially comply with and be circulated in the following form:

PETITION FOR INCORPORATION OF (insert the proposed name of the proposed town)

To the Honorable Lieutenant Governor:

We, the undersigned owners of real property and registered voters within the area described in this petition, respectfully petition the lieutenant governor to direct the county legislative body to submit to the registered voters residing within the area described in this petition, at the next regular general election, the question of whether the area should incorporate as a town. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property or a registered voter residing within the described area, and that the current residence address of each is correctly written after the signer's name. The area proposed to be incorporated as a town is described as follows: (insert an accurate description of the area proposed to be incorporated).

(c) A petition under this Subsection (3) may not describe an area that includes some or all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:

(i) was filed before the filing of the petition; and

(ii) is still pending on the date the petition is filed.

(d) A petition may not be filed under this section if the private real property owned by the petition sponsors, designated under Subsection (3)(b)(ii), cumulatively exceeds 40% of the total private land area within the area proposed to be incorporated as a town.

(e) A signer of a petition under this Subsection (3) may withdraw or, after withdrawn, reinstate the signer's signature on the petition:

(i) at any time until the lieutenant governor certifies the petition under Subsection (5); and

(ii) by filing a signed, written withdrawal or reinstatement with the lieutenant governor.

(4) (a) If a petition is filed under Subsection (3)(a) proposing to incorporate as a town an area located within a county of the first class, the lieutenant governor shall deliver written notice of the proposed incorporation:

(i) to each owner of private real property owning more than 1% of the assessed value of all private real property within the area proposed to be incorporated as a town; and

(ii) within seven calendar days after the date on which the petition is filed.

(b) A private real property owner described in Subsection (4)(a)(i) may exclude all or part of the owner's property from the area proposed to be incorporated as a town by filing a notice of exclusion:

(i) with the lieutenant governor; and

(ii) within 10 calendar days after receiving the clerk's notice under Subsection (4)(a).

(c) The lieutenant governor shall exclude from the area proposed to be incorporated as a town the property identified in the notice of exclusion under Subsection (4)(b) if:

(i) the property:

(A) is nonurban; and

(B) does not and will not require a municipal service; and

(ii) exclusion will not leave an unincorporated island within the proposed town.

(d) If the lieutenant governor excludes property from the area proposed to be incorporated as a town, the lieutenant governor shall send written notice of the exclusion to the contact sponsor within five days after the exclusion.

(5) No later than 20 days after the filing of a petition under Subsection (3), the lieutenant governor shall:

(a) with the assistance of other county officers of the county in which the incorporation is proposed from whom the lieutenant governor requests assistance, determine whether the petition complies with the requirements of Subsection (3); and

(b) (i) if the lieutenant governor determines that the petition complies with those requirements:

(A) certify the petition; and

(B) mail or deliver written notification of the certification to:

(I) the contact sponsor; and

(II) the Utah Population Estimates Committee; or

(ii) if the lieutenant governor determines that the petition fails to comply with any of those requirements, reject the petition and notify the

contact sponsor in writing of the rejection and the reasons for the rejection.

(6) (a) (i) A petition that is rejected under Subsection (5)(b)(ii) may be amended to correct a deficiency for which it was rejected and then refiled with the lieutenant governor.

(ii) A valid signature on a petition filed under Subsection (3)(a) may be used toward fulfilling the signature requirement of Subsection (3)(b) for the same petition that is amended under Subsection (6)(a)(i) and then refiled with the lieutenant governor.

(b) If a petition is amended and refiled under Subsection (6)(a)(i) after having been rejected by the lieutenant governor under Subsection (5)(b)(ii):

(i) the amended petition shall be considered as a newly filed petition; and

(ii) the amended petition's processing priority is determined by the date on which it is refiled.

(7) (a) (i) If a petition is filed under Subsection [(4)] (3) and certified under Subsection [(6)] (5), the lieutenant governor shall commission and pay for a financial feasibility study.

(ii) The feasibility consultant shall be chosen:

(A) (I) by the contact sponsor of the incorporation petition, as described in Subsection (3)(b)(ii), with the consent of the lieutenant governor; or

(II) by the lieutenant governor if the contact sponsor states, in writing, that the sponsor defers selection of the feasibility consultant to the lieutenant governor; and

(B) in accordance with applicable county procurement procedure.

(iii) The lieutenant governor shall require the feasibility consultant to complete the financial feasibility study and submit written results of the study to the lieutenant governor no later than 30 days after the feasibility consultant is engaged to conduct the financial feasibility study.

(b) The financial feasibility study shall consider the:

(i) population and population density within the area proposed for incorporation and the surrounding area;

(ii) current and five-year projections of demographics and economic base in the proposed town and surrounding area, including household size and income, commercial and industrial development, and public facilities;

(iii) projected growth in the proposed town and in adjacent areas during the next five years;

(iv) subject to Subsection (7)(c), the present and five-year projections of the cost, including overhead, of governmental services in the proposed town, including:

(A) culinary water;

(B) secondary water;

(C) sewer;

(D) law enforcement;

(E) fire protection;

(F) roads and public works;

(G) garbage;

(H) weeds; and

(I) government offices;

(v) assuming the same tax categories and tax rates as currently imposed by the county and all other current service providers, the present and five-year projected revenue for the proposed town; and

(vi) a projection of any new taxes per household that may be levied within the incorporated area within five years of incorporation.

(c) (i) For purposes of Subsection (7)(b)(iv), the feasibility consultant shall assume a level and quality of governmental services to be provided to the proposed town in the future that fairly and reasonably approximate the level and quality of governmental services being provided to the proposed town at the time of the feasibility study.

(ii) In determining the present cost of a governmental service, the feasibility consultant shall consider:

(A) the amount it would cost the proposed town to provide governmental service for the first five years after incorporation; and

(B) the county's present and five-year projected cost of providing governmental service.

(iii) The costs calculated under Subsection (7)(b)(iv), shall take into account inflation and anticipated growth.

(d) If the five year projected revenues under Subsection (7)(b)(v) exceed the five-year projected costs under Subsection (7)(b)(iv) by more than 10%, the feasibility consultant shall project and report the expected annual revenue surplus to the contact sponsor and the lieutenant governor.

(e) The lieutenant governor shall post a copy of the feasibility study on the lieutenant governor's website and make a copy available for public review at the Office of the Lieutenant Governor.

(f) The lieutenant governor shall approve a certified petition proposing the incorporation of a town and hold a public hearing as provided in Section 10-2a-303.

Section 3. Section 17-23-14 is amended to read:

17-23-14. Disturbed corners -- County surveyor to be notified -- Coordination with certain state agencies.

(1) As used in this section:

[~~(a) "Committee" means the Monument Replacement and Restoration Committee created in Section 63F-1-510.~~]

~~(b)~~ (a) "Corner" means the same as that term is defined in Section 17-23-17.5.

~~(e)~~ (b) "Monument" means the same as that term is defined in Section 17-23-17.5.

(2) A person who finds it necessary to disturb any established corner for any reason, including the improvement of a road, shall notify the county surveyor at least five business days before the day on which the person disturbs the corner.

(3) A person who finds a monument that needs rehabilitation shall notify the county surveyor within five business days after the day on which the person finds the monument.

(4) The county surveyor or the county surveyor's designee shall:

(a) consistent with federal law or rule, reconstruct or rehabilitate the monument for the corner by lowering and witnessing the corner or placing another monument and witness over the existing monument so that the monument:

(i) is left in a physical condition to remain as permanent a monument as is reasonably possible; and

(ii) may be reasonably located at all times in the future; and

(b) file the record of each reconstruction or rehabilitation under Subsection (4)(a).

Section 4. Section 17B-2a-804 is amended to read:

17B-2a-804. Additional public transit district powers.

(1) In addition to the powers conferred on a public transit district under Section 17B-1-103, a public transit district may:

(a) provide a public transit system for the transportation of passengers and their incidental baggage;

(b) notwithstanding Subsection 17B-1-103(2)(g) and subject to Section 17B-2a-817, levy and collect property taxes only for the purpose of paying:

(i) principal and interest of bonded indebtedness of the public transit district; or

(ii) a final judgment against the public transit district if:

(A) the amount of the judgment exceeds the amount of any collectable insurance or indemnity policy; and

(B) the district is required by a final court order to levy a tax to pay the judgment;

(c) insure against:

(i) loss of revenues from damage to or destruction of some or all of a public transit system from any cause;

(ii) public liability;

(iii) property damage; or

(iv) any other type of event, act, or omission;

(d) acquire, contract for, lease, construct, own, operate, control, or use:

(i) a right-of-way, rail line, monorail, bus line, station, platform, switchyard, terminal, parking lot, or any other facility necessary or convenient for public transit service; or

(ii) any structure necessary for access by persons and vehicles;

(e) (i) hire, lease, or contract for the supplying or management of a facility, operation, equipment, service, employee, or management staff of an operator; and

(ii) provide for a sublease or subcontract by the operator upon terms that are in the public interest;

(f) operate feeder bus lines and other feeder or ridesharing services as necessary;

(g) accept a grant, contribution, or loan, directly through the sale of securities or equipment trust certificates or otherwise, from the United States, or from a department, instrumentality, or agency of the United States;

(h) study and plan transit facilities in accordance with any legislation passed by Congress;

(i) cooperate with and enter into an agreement with the state or an agency of the state or otherwise contract to finance to establish transit facilities and equipment or to study or plan transit facilities;

(j) issue bonds as provided in and subject to Chapter 1, Part 11, Local District Bonds, to carry out the purposes of the district;

(k) from bond proceeds or any other available funds, reimburse the state or an agency of the state for an advance or contribution from the state or state agency;

(l) do anything necessary to avail itself of any aid, assistance, or cooperation available under federal law, including complying with labor standards and making arrangements for employees required by the United States or a department, instrumentality, or agency of the United States;

(m) sell or lease property;

(n) assist in or operate transit-oriented or transit-supportive developments;

(o) establish, finance, participate as a limited partner or member in a development with limited liabilities in accordance with Subsection (1)(p), construct, improve, maintain, or operate transit facilities, equipment, and transit-oriented developments or transit-supportive developments; and

(p) subject to the restriction in Subsection (2), assist in a transit-oriented development or a transit-supportive development in connection with [economic] project area development [or community development] as defined in Section 17C-1-102 by:

(i) investing in a project as a limited partner or a member, with limited liabilities; or

(ii) subordinating an ownership interest in real property owned by the public transit district.

(2) (a) A public transit district may only assist in the development of areas under Subsection (1)(p):

(i) in the manner described in Subsection (1)(p)(i) or (ii); and

(ii) on no more than eight transit-oriented developments or transit-supportive developments selected by the board of trustees.

(b) A public transit district may not invest in a transit-oriented development or transit-supportive development as a limited partner or other limited liability entity under the provisions of Subsection (1)(p)(i), unless the partners, developer, or other investor in the entity, makes an equity contribution equal to no less than 25% of the appraised value of the property to be contributed by the public transit district.

(c) (i) For transit-oriented development projects, a public transit district shall adopt transit-oriented development policies and guidelines that include provisions on affordable housing.

(ii) For transit-supportive development projects, a public transit district shall work with the metropolitan planning organization and city and county governments where the project is located to collaboratively seek to create joint plans for the areas within one-half mile of transit stations, including plans for affordable housing.

(d) A current board member of a public transit district to which the board member is appointed may not have any interest in the transactions engaged in by the public transit district pursuant to Subsection (1)(p)(i) or (ii), except as may be required by the board member's fiduciary duty as a board member.

(3) A public transit district may be funded from any combination of federal, state, local, or private funds.

(4) A public transit district may not acquire property by eminent domain.

Section 5. Section 17C-2-110 is amended to read:

17C-2-110. Amending an urban renewal project area plan.

(1) An urban renewal project area plan may be amended as provided in this section.

(2) If an agency proposes to amend an urban renewal project area plan to enlarge the project area:

(a) subject to Subsection (2)(e), the requirements under this part that apply to adopting a project area plan apply equally to the proposed amendment as if it were a proposed project area plan;

(b) for a pre-July 1, 1993 project area plan, the base year for the new area added to the project area shall be determined under Subsection 17C-1-102(9)(a)(~~ii~~) using the effective date of the amended project area plan;

(c) for a post-June 30, 1993 project area plan:

(i) the base year for the new area added to the project area shall be determined under Subsection 17C-1-102(9)(~~a~~)(~~ii~~)(b) using the date of the taxing entity committee's consent referred to in Subsection (2)(c)(ii); and

(ii) the agency shall obtain the consent of the taxing entity committee before the agency may collect tax increment from the area added to the project area by the amendment;

(d) the agency shall make a finding regarding the existence of blight in the area proposed to be added to the project area by following the procedure set forth in Subsections 17C-2-102(1)(a)(i) and (ii); and

(e) the agency need not make a finding regarding the existence of blight in the project area as described in the original project area plan, if the agency made a finding of the existence of blight regarding that project area in connection with adoption of the original project area plan.

(3) If a proposed amendment does not propose to enlarge an urban renewal project area, a board may adopt a resolution approving an amendment to a project area plan after:

(a) the agency gives notice, as provided in Section 17C-1-806, of the proposed amendment and of the public hearing required by Subsection (3)(b);

(b) the board holds a public hearing on the proposed amendment that meets the requirements of a plan hearing;

(c) the agency obtains the taxing entity committee's consent to the amendment, if the amendment proposes:

(i) to enlarge the area within the project area from which tax increment is collected;

(ii) to permit the agency to receive a greater percentage of tax increment or to extend the project area funds collection period, or both, than allowed under the adopted project area plan; or

(iii) for an amendment to a project area plan that was adopted before April 1, 1983, to expand the area from which tax increment is collected to exceed 100 acres of private property; and

(d) the agency obtains the consent of the legislative body or governing board of each taxing entity affected, if the amendment proposes to permit the agency to receive, from less than all taxing entities, a greater percentage of tax increment or to extend the project area funds collection period, or both, than allowed under the adopted project area plan.

(4) (a) An urban renewal project area plan may be amended without complying with the notice and public hearing requirements of Subsections (2)(a)

and (3)(a) and (b) and without obtaining taxing entity committee approval under Subsection (3)(c) if the amendment:

(i) makes a minor adjustment in the boundary description of a project area boundary requested by a county assessor or county auditor to avoid inconsistent property boundary lines; or

(ii) subject to Subsection (4)(b), removes a parcel from a project area because the agency determines that the parcel is:

(A) tax exempt;

(B) no longer blighted; or

(C) no longer necessary or desirable to the project area.

(b) An amendment removing a parcel from a project area under Subsection (4)(a)(ii) may be made without the consent of the record property owner of the parcel being removed.

(5) (a) An amendment approved by board resolution under this section may not take effect until adopted by ordinance of the legislative body of the community in which the project area that is the subject of the project area plan being amended is located.

(b) Upon a community legislative body passing an ordinance adopting an amendment to a project area plan, the agency whose project area plan was amended shall comply with the requirements of Sections 17C-2-108 and 17C-2-109 to the same extent as if the amendment were a project area plan.

(6) (a) Within 30 days after the day on which an amendment to a project area plan becomes effective, a person may contest the amendment to the project area plan or the procedure used to adopt the amendment to the project area plan if the amendment or procedure fails to comply with a provision of this title.

(b) After the 30-day period described in Subsection (6)(a) expires, a person may not contest the amendment to the project area plan or procedure used to adopt the amendment to the project area plan for any cause.

Section 6. Section 17C-3-109 is amended to read:

17C-3-109. Amending an economic development project area plan.

(1) An economic development project area plan may be amended as provided in this section.

(2) If an agency proposes to amend an economic development project area plan to enlarge the project area:

(a) the requirements under this part that apply to adopting a project area plan apply equally to the proposed amendment as if it were a proposed project area plan;

(b) the base year for the new area added to the project area shall be determined under Subsection

17C-1-102(9)[(a)(ii)] using the date of the taxing entity committee's consent referred to in Subsection (2)(c); and

(c) the agency shall obtain the consent of the taxing entity committee before the agency may collect tax increment from the area added to the project area by the amendment.

(3) If a proposed amendment does not propose to enlarge an economic development project area, a board may adopt a resolution approving an amendment to an economic development project area plan after:

(a) the agency gives notice, as provided in Chapter 1, Part 8, Hearing and Notice Requirements, of the proposed amendment and of the public hearing required by Subsection (3)(b);

(b) the board holds a public hearing on the proposed amendment that meets the requirements of a plan hearing;

(c) the agency obtains the taxing entity committee's consent to the amendment, if the amendment proposes:

(i) to enlarge the area within the project area from which tax increment is received; or

(ii) to permit the agency to receive a greater percentage of tax increment or to extend the project area funds collection period under the economic development project area plan; and

(d) the agency obtains the consent of the legislative body or governing board of each taxing entity affected, if the amendment proposes to permit the agency to receive, from less than all taxing entities, a greater percentage of tax increment or to extend the project area funds collection period, or both, than allowed under the economic development project area plan.

(4) (a) An economic development project area plan may be amended without complying with the notice and public hearing requirements of Subsections (2)(a) and (3)(a) and (b) and without obtaining taxing entity committee approval under Subsection (3)(c) if the amendment:

(i) makes a minor adjustment in the boundary description of a project area boundary requested by a county assessor or county auditor to avoid inconsistent property boundary lines; or

(ii) subject to Subsection (4)(b), removes a parcel from a project area because the agency determines that the parcel is:

(A) tax exempt; or

(B) no longer necessary or desirable to the project area.

(b) An amendment removing a parcel from a project area under Subsection (4)(a) may be made without the consent of the record property owner of the parcel being removed.

(5) (a) An amendment approved by board resolution under this section may not take effect until adopted by ordinance of the legislative body of

the community in which the project area that is the subject of the project area plan being amended is located.

(b) Upon a community legislative body passing an ordinance adopting an amendment to a project area plan, the agency whose project area plan was amended shall comply with the requirements of Sections 17C-3-107 and 17C-3-108 to the same extent as if the amendment were a project area plan.

(6) (a) Within 30 days after the day on which an amendment to a project area plan becomes effective, a person may contest the amendment to the project area plan or the procedure used to adopt the amendment to the project area plan if the amendment or procedure fails to comply with a provision of this title.

(b) After the 30-day period described in Subsection (6)(a) expires, a person may not contest the amendment to the project area plan or procedure used to adopt the amendment to the project area plan for any cause.

Section 7. Section 20A-3-101 is amended to read:

20A-3-101. Residency and age requirements of voters.

(1) A person may vote in any regular general election or statewide special election if that person has registered to vote in accordance with Title 20A, Chapter 2, Voter Registration.

(2) A person may vote in the Western States Presidential Primary election or a regular primary election if:

(a) that person has registered to vote in accordance with Title 20A, Chapter 2, Voter Registration; and

(b) that person's political party affiliation, or unaffiliated status, allows the person to vote in the election.

(3) A person may vote in a municipal general election, municipal primary election, ~~[in a]~~ local special election, ~~[in a]~~ local district election, and ~~[in a]~~ bond election if that person:

(a) has registered to vote in accordance with Title 20A, Chapter 2, Voter Registration; and

(b) is a resident of a voting district or precinct within the local entity that is holding the election.

Section 8. Section 26-47-103 is amended to read:

26-47-103. Department to award grants for assistance to persons with bleeding disorders.

(1) For purposes of this section:

(a) "Hemophilia services" means a program for medical care, including the costs of blood transfusions, and the use of blood derivatives and blood clotting factors.

(b) "Person with a bleeding disorder" means a person:

(i) who is medically diagnosed with hemophilia or a bleeding disorder;

(ii) who is not eligible for Medicaid or the Children's Health Insurance Program; and

(iii) ~~[who has either]~~ who meets one or more of the following:

(A) the person's insurance coverage ~~[that]~~ excludes coverage for hemophilia services;

(B) the person has exceeded the person's insurance plan's annual maximum benefits;

(C) the person has exceeded the person's annual or lifetime maximum benefits payable ~~[under Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act; or (D) insurance coverage available]~~ under ~~[either]~~ private health insurance, ~~[Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act, Utah mini COBRA coverage under Section 31A-22-722, or federal COBRA coverage, but]; or~~

(D) the premiums for ~~[that]~~ the person's private insurance coverage, or cost sharing under private coverage, are greater than a percentage of the person's annual adjusted gross income as established by the department by administrative rule.

(2) (a) Within appropriations specified by the Legislature for this purpose, the department shall make grants to public and nonprofit entities who assist persons with bleeding disorders with the cost of obtaining hemophilia services or the cost of insurance premiums for coverage of hemophilia services.

(b) Applicants for grants under this section:

(i) shall be submitted to the department in writing; and

(ii) shall comply with Subsection (3).

(3) Applications for grants under this section shall include:

(a) a statement of specific, measurable objectives, and the methods to be used to assess the achievement of those objectives;

(b) a description of the personnel responsible for carrying out the activities of the grant along with a statement justifying the use of any grant funds for the personnel;

(c) letters and other forms of evidence showing that efforts have been made to secure financial and professional assistance and support for the services to be provided under the grant;

(d) a list of services to be provided by the applicant;

(e) the schedule of fees to be charged by the applicant; and

(f) other provisions as determined by the department.

(4) The department may accept grants, gifts, and donations of money or property for use by the grant program.

(5) The department shall establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the application form, process, and criteria it will use in awarding grants under this section.

Section 9. Section 26-55-104 is amended to read:

26-55-104. Prescribing, dispensing, and administering an opiate antagonist -- Immunity from liability.

(1) (a) (i) For purposes of Subsection (1)(a)(ii), “a person other than a health care facility or health care provider” includes the following, regardless of whether the person has received funds from the department through the Opiate Overdose Outreach Pilot Program created in Section 26-55-107:

(A) a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F); or

(B) an organization defined by department rule made under Subsection 26-55-107(7)(e) that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event.

(ii) Except as provided in Subsection (1)(b), a person ~~[, including an overdose outreach provider, but not including] other than a health care facility or health care provider, that acts in good faith to administer an opiate antagonist to an individual whom the person believes to be experiencing an opiate-related drug overdose event is not liable for any civil damages for acts or omissions made as a result of administering the opiate antagonist.~~

(b) A health care provider:

(i) does not have immunity from liability under Subsection (1)(a) when the health care provider is acting within the scope of the health care provider’s responsibilities or duty of care; and

(ii) does have immunity from liability under Subsection (1)(a) if the health care provider is under no legal duty to respond and otherwise complies with Subsection (1)(a).

(2) Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502, a health care provider who is licensed to prescribe an opiate antagonist may prescribe, including by a standing prescription drug order issued in accordance with Subsection 26-55-105(2), or dispense an opiate antagonist:

(a) (i) to an individual who is at increased risk of experiencing an opiate-related drug overdose event;

(ii) to a family member of, friend of, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(iii) to an overdose outreach provider for:

(A) furnishing to an individual who is at increased risk of experiencing an opiate-related drug overdose event, or to a family member of, friend of, or other individual who is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event, as provided in Section 26-55-106; or

(B) administering to an individual experiencing an opiate-related drug overdose event;

(b) without a prescriber-patient relationship; and

(c) without liability for any civil damages for acts or omissions made as a result of prescribing or dispensing the opiate antagonist in good faith.

(3) A health care provider who dispenses an opiate antagonist to an individual or an overdose outreach provider under Subsection (2)(a) shall provide education to the individual or overdose provider that includes written instruction on how to:

(a) recognize an opiate-related drug overdose event; and

(b) respond appropriately to an opiate-related drug overdose event, including how to:

(i) administer an opiate antagonist; and

(ii) ensure that an individual to whom an opiate antagonist has been administered receives, as soon as possible, additional medical care and a medical evaluation.

Section 10. Section 31A-30-107.3 is amended to read:

31A-30-107.3. Discontinuance and nonrenewal limitations and conditions.

(1) A carrier that elects to discontinue offering all individual health benefit plans under Subsection 31A-30-107.1(3)(e) is prohibited from writing new business in the individual market in this state for a period of five years beginning on the date of discontinuation of the last individual health benefit plan coverage that is discontinued.

(2) A carrier that elects to discontinue offering all small employer health benefit plans under Subsection 31A-30-107(3)(e) is prohibited from writing new business in the small group market in this state for a period of five years beginning on the date of discontinuation of the last small employer coverage that is discontinued.

~~[(3) (a) If the Comprehensive Health Insurance Pool as set forth under Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act, is dissolved or discontinued, or if enrollment is capped or suspended, an individual carrier:]~~

~~[(i) may, except as prohibited by Section 31A-30-117, elect to discontinue offering new individual health benefit plans, except to HIPAA eligibles, but shall keep existing individual health benefit plans in effect, except those individual plans that are not renewed under the provisions of Subsection 31A-30-107(2) or 31A-30-107.1(2);]~~

~~[(ii) may elect to continue to offer new individual and small employer health benefit plans; or]~~

~~[(iii) may elect to discontinue all of the covered carrier's health benefit plans in the individual or small group market under the provisions of Subsection 31A-30-107(3)(e) or 31A-30-107.1(3)(e).]~~

~~[(b) A carrier that makes an election under Subsection (3)(a)(i):]~~

~~[(i) is prohibited from writing new business;]~~

~~[(A) in the individual market in this state; and]~~

~~[(B) for a period of five years beginning on the date of discontinuation;]~~

~~[(ii) may continue to write new business in the small employer market; and]~~

~~[(iii) shall provide written notice of the election under Subsection (3)(a)(i) within two calendar days of the election to the Utah Insurance Department.]~~

~~[(c) The prohibition described in Subsection (3)(b)(i) may be waived if the commissioner finds that waiver is in the public interest:]~~

~~[(i) to promote competition; or]~~

~~[(ii) to resolve inequity in the marketplace.]~~

~~[(d) A carrier that makes an election under Subsection (3)(a)(iii) is subject to the provisions of Subsection (1).]~~

~~[(4)] (3) If a carrier is doing business in one established geographic service area of the state, Sections 31A-30-107 and 31A-30-107.1 apply only to the carrier's operations in that geographic service area.~~

~~[(5)] (4) If a small employer employs less than two eligible employees, a carrier may not discontinue or not renew the health benefit plan until the first renewal date following the beginning of a new plan year, even if the carrier knows as of the beginning of the plan year that the employer no longer has at least two current employees.~~

Section 11. Section 35A-1-206 is amended to read:

35A-1-206. State Workforce Development Board -- Appointment -- Membership -- Terms of members -- Compensation.

(1) There is created within the department the State Workforce Development Board in accordance with the provisions of the Workforce Innovation and Opportunity Act, 29 U.S.C. Sec. 3101 et seq.

(2) The board shall consist of the following 39 members:

(a) the governor or the governor's designee;

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

(c) one representative of the House of Representatives, appointed by the speaker of the House of Representatives;

(d) the executive director or the executive director's designee;

(e) the executive director of the Department of Human Services or the executive director's designee;

(f) the [executive] director of the Utah State Office of Rehabilitation or the [executive] director's designee;

(g) the superintendent of the State Board of Education or the superintendent's designee;

(h) the commissioner of higher education or the commissioner's designee;

(i) the commissioner of technical education of the Utah College of Applied Technology or the commissioner of technical education's designee;

(j) the executive director of the Governor's Office of Economic Development or the executive director's designee;

(k) the executive director of the Department of Veterans' and Military Affairs or the executive director's designee; and

(l) the following members appointed by the governor:

(i) 20 representatives of business in the state, selected among the following:

(A) owners of businesses, chief executive or operating officers of businesses, or other business executives or employers with policymaking or hiring authority;

(B) representatives of businesses, including small businesses, that provide employment opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the state; and

(C) representatives of businesses appointed from among individuals nominated by state business organizations or business trade associations;

(ii) six representatives of the workforce within the state, which:

(A) shall include at least two representatives of labor organizations who have been nominated by state labor federations;

(B) shall include at least one representative from a registered apprentice program;

(C) may include one or more representatives from a community-based organization that has demonstrated experience and expertise in addressing the employment, training, or educational needs of individuals with barriers to employment; and

(D) may include one or more representatives from an organization that has demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including organizations that serve out of school youth; and

(iii) two elected officials that represent a city or a county.

(3) (a) The governor shall appoint one of the appointed business representatives as chair of the board.

(b) The chair shall serve at the pleasure of the governor.

(4) (a) The governor shall ensure that members appointed to the board represent diverse geographic areas of the state, including urban, suburban, and rural areas.

(b) A member appointed by the governor shall serve a term of four years and may be reappointed to one additional term.

(c) A member shall continue to serve until the member's successor has been appointed and qualified.

(d) Except as provided in Subsection (4) (e), as terms of board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(e) Notwithstanding the requirements of Subsection (4) (d), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately one half of the board is appointed every two years.

(f) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(g) The executive director shall terminate the term of any governor-appointed member of the board if the member leaves the position that qualified the member for the appointment.

(5) A majority of members constitutes a quorum for the transaction of business.

(6) (a) A member of the board who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(7) The department shall provide staff and administrative support to the board at the direction of the executive director.

(8) The board has the duties, responsibilities, and powers described in 29 U.S.C. Sec. 3111, including:

(a) identifying opportunities to align initiatives in education, training, workforce development, and economic development;

(b) developing and implementing the state workforce services plan described in Section 35A-1-207;

(c) utilizing strategic partners to ensure the needs of industry are met, including the development of expanded strategies for partnerships for in-demand occupations and understanding and adapting to economic changes;

(d) developing strategies for staff training;

(e) developing and improving employment centers; and

(f) performing other responsibilities within the scope of workforce services as requested by:

(i) the Legislature;

(ii) the governor; or

(iii) the executive director.

Section 12. Section 35A-8-308 is amended to read:

35A-8-308. Throughput Infrastructure Fund.

(1) There is created an enterprise fund known as the Throughput Infrastructure Fund.

(2) The fund consists of money generated from the following revenue sources:

(a) all amounts transferred to the fund under Subsection 59-12-103[(14)](12);

(b) any voluntary contributions received;

(c) appropriations made to the fund by the Legislature; and

(d) all amounts received from the repayment of loans made by the impact board under Section 35A-8-309.

(3) The state treasurer shall:

(a) invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(b) deposit all interest or other earnings derived from those investments into the fund.

Section 13. Section 35A-8-309 is amended to read:

35A-8-309. Throughput Infrastructure Fund administered by impact board -- Uses -- Review by board -- Annual report.

(1) The impact board shall:

(a) make grants and loans from the Throughput Infrastructure Fund created in Section 35A-8-308 for a throughput infrastructure project;

(b) use money transferred to the Throughput Infrastructure Fund in accordance with Subsection 59-12-103[(14)](12) to provide a loan or grant to finance the cost of acquisition or construction of a throughput infrastructure project to one or more local political subdivisions, including a Utah interlocal entity created under [~~the Interlocal Cooperation Act,~~] Title 11, Chapter 13, the Interlocal Cooperation Act;

(c) administer the Throughput Infrastructure Fund in a manner that will keep a portion of the fund revolving;

- (d) determine provisions for repayment of loans;
- (e) establish criteria for awarding loans and grants; and
- (f) establish criteria for determining eligibility for assistance under this section.

(2) The cost of acquisition or construction of a throughput infrastructure project includes amounts for working capital, reserves, transaction costs, and other amounts determined by the impact board to be allocable to a throughput infrastructure project.

(3) The impact board may restructure or forgive all or part of a local political subdivision's or interlocal entity's obligation to repay loans for extenuating circumstances.

(4) In order to receive assistance under this section, a local political subdivision or an interlocal entity shall submit a formal application containing the information that the impact board requires.

(5) (a) The impact board shall:

(i) review the proposed uses of the Throughput Infrastructure Fund for a loan or grant before approving the loan or grant and may condition its approval on whatever assurances the impact board considers necessary to ensure that proceeds of the loan or grant will be used in accordance with this section;

(ii) ensure that each loan specifies terms for interest deferments, accruals, and scheduled principal repayment; and

(iii) ensure that repayment terms are evidenced by bonds, notes, or other obligations of the appropriate local political subdivision or interlocal entity issued to the impact board and payable from the net revenues of a throughput infrastructure project.

(b) An instrument described in Subsection (5)(a)(iii) may be:

(i) non-recourse to the local political subdivision or interlocal entity; and

(ii) limited to a pledge of the net revenues from a throughput infrastructure project.

(6) (a) Subject to the restriction in Subsection (6)(b), the impact board shall allocate from the Throughput Infrastructure Fund to the board those amounts that are appropriated by the Legislature for the administration of the Throughput Infrastructure Fund.

(b) The amount described in Subsection (6)(a) may not exceed 2% of the annual receipts to the fund.

(7) The board shall include in the annual written report described in Section 35A-1-109:

(a) the number and type of loans and grants made under this section; and

(b) a list of local political subdivisions or interlocal entities that received assistance under this section.

Section 14. Section 41-1a-418 is amended to read:

41-1a-418. Authorized special group license plates.

(1) The division shall only issue special group license plates in accordance with this section through Section 41-1a-422 to a person who is specified under this section within the categories listed as follows:

(a) disability special group license plates issued in accordance with Section 41-1a-420;

(b) honor special group license plates, as in a war hero, which plates are issued for a:

(i) survivor of the Japanese attack on Pearl Harbor;

(ii) former prisoner of war;

(iii) recipient of a Purple Heart;

(iv) disabled veteran;

(v) recipient of a gold star award issued by the United States Secretary of Defense; or

(vi) recipient of a campaign or combat theater award determined by the Department of Veterans' and Military Affairs;

(c) unique vehicle type special group license plates, as for historical, collectors value, or other unique vehicle type, which plates are issued for:

(i) a special interest vehicle;

(ii) a vintage vehicle;

(iii) a farm truck; or

(iv) (A) until Subsection (1)(c)(iv)(B) or (4) applies, a vehicle powered by clean fuel as defined in Section 59-13-102; or

(B) beginning on the effective date of rules made by the Department of Transportation authorized under Subsection 41-6a-702(5)(b) and until Subsection (4) applies, a vehicle powered by clean fuel that meets the standards established by the Department of Transportation in rules authorized under Subsection 41-6a-702(5)(b);

(d) recognition special group license plates, which plates are issued for:

(i) a current member of the Legislature;

(ii) a current member of the United States Congress;

(iii) a current member of the National Guard;

(iv) a licensed amateur radio operator;

(v) a currently employed, volunteer, or retired firefighter until June 30, 2009;

(vi) an emergency medical technician;

(vii) a current member of a search and rescue team; or

(viii) a current honorary consulate designated by the United States Department of State; or

(e) support special group license plates, as for a contributor to an institution or cause, which plates are issued for a contributor to:

- (i) an institution's scholastic scholarship fund;
- (ii) the Division of Wildlife Resources;
- (iii) the Department of Veterans' and Military Affairs;
- (iv) the Division of Parks and Recreation;
- (v) the Department of Agriculture and Food;
- (vi) the Guardian Ad Litem Services Account and the Children's Museum of Utah;
- (vii) the Boy Scouts of America;
- (viii) spay and neuter programs through No More Homeless Pets in Utah;
- (ix) the Boys and Girls Clubs of America;
- (x) Utah public education;
- (xi) programs that provide support to organizations that create affordable housing for those in severe need through the Division of Real Estate;
- (xii) the Department of Public Safety;
- (xiii) programs that support Zion National Park;
- (xiv) beginning on July 1, 2009, programs that provide support to firefighter organizations;
- (xv) programs that promote bicycle operation and safety awareness;
- (xvi) programs that conduct or support cancer research;
- (xvii) programs that create or support autism awareness;
- (xviii) programs that create or support humanitarian service and educational and cultural exchanges;
- (xix) programs that conduct or support prostate cancer awareness, screening, detection, or prevention;
- (xx) programs that support and promote adoptions;
- (xxi) programs that create or support civil rights education and awareness;
- (xxii) programs that support issues affecting women and children through an organization affiliated with a national professional men's basketball organization;
- (xxiii) programs that strengthen youth soccer, build communities, and promote environmental sustainability through an organization affiliated with a professional men's soccer organization;
- (xxiv) programs that support children with heart disease;

(xxv) programs that support the operation and maintenance of the Utah Law Enforcement Memorial; or

(xxvi) programs that provide assistance to children with cancer.

(2) (a) The division may not issue a new type of special group license plate or decal unless the division receives:

(i) (A) a private donation for the start-up fee established under Section 63J-1-504 for the production and administrative costs of providing the new special group license plates or decals; or

(B) a legislative appropriation for the start-up fee provided under Subsection (2)(a)(i)(A); and

(ii) beginning on January 1, 2012, and for the issuance of a support special group license plate authorized in Section 41-1a-422, at least 500 completed applications for the new type of support special group license plate or decal to be issued with all fees required under this part for the support special group license plate or decal issuance paid by each applicant.

(b) (i) Beginning on January 1, 2012, each participating organization shall collect and hold applications for support special group license plates or decals authorized in Section 41-1a-422 on or after January 1, 2012, until it has received at least 500 applications.

(ii) Once a participating organization has received at least 500 applications, it shall submit the applications, along with the necessary fees, to the division for the division to begin working on the design and issuance of the new type of support special group license plate or decal to be issued.

(iii) Beginning on January 1, 2012, the division may not work on the issuance or design of a new support special group license plate or decal authorized in Section 41-1a-422 until the applications and fees required under this Subsection (2) have been received by the division.

(iv) The division shall begin issuance of a new support special group license plate or decal authorized in Section 41-1a-422 on or after January 1, 2012, no later than six months after receiving the applications and fees required under this Subsection (2).

(c) (i) Beginning on July 1, 2009, the division may not renew a motor vehicle registration of a motor vehicle that has been issued a firefighter recognition special group license plate unless the applicant is a contributor as defined in Subsection 41-1a-422(1)(a)(ii)(D) to the Firefighter Support Restricted Account.

(ii) A registered owner of a vehicle that has been issued a firefighter recognition special group license plate prior to July 1, 2009, upon renewal of the owner's motor vehicle registration shall:

(A) be a contributor to the Firefighter Support Restricted Account as required under Subsection (2)(c)(i); or

(B) replace the firefighter recognition special group license plate with a new license plate.

(3) Beginning on July 1, 2011, if a support special group license plate or decal type authorized in Section 41-1a-422 and issued on or after January 1, 2012, has fewer than 500 license plates issued each year for a three consecutive year time period that begins on July 1, the division may not issue that type of support special group license plate or decal to a new applicant beginning on January 1 of the following calendar year after the three consecutive year time period for which that type of support special group license plate or decal has fewer than 500 license plates issued each year.

(4) Beginning on July 1, 2011, the division may not issue to an applicant a unique vehicle type license plate for a vehicle powered by clean fuel under Subsection (1)(c)(iv).

Section 15. Section 41-6a-520 is amended to read:

41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of tests -- Refusal -- Warning, report.

(1) (a) A person operating a motor vehicle in this state is considered to have given the person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for the purpose of determining whether the person was operating or in actual physical control of a motor vehicle while:

(i) having a blood or breath alcohol content statutorily prohibited under Section 41-6a-502, 41-6a-530, or 53-3-231, ~~or 53-3-232~~;

(ii) under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6a-502; or

(iii) having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517.

(b) A test or tests authorized under this Subsection (1) must be administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while in violation of any provision under Subsections (1)(a)(i) through (iii).

(c) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) If a peace officer requests more than one test, refusal by a person to take one or more requested tests, even though the person does submit to any other requested test or tests, is a refusal under this section.

(d) (i) A person who has been requested under this section to submit to a chemical test or tests of the person's breath, blood, or urine, or oral fluids may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a

person's refusal to submit to the requested test or tests.

(2) (a) A peace officer requesting a test or tests shall warn a person that refusal to submit to the test or tests may result in revocation of the person's license to operate a motor vehicle, a five or 10 year prohibition of driving with any measurable or detectable amount of alcohol in the person's body depending on the person's prior driving history, and a three-year prohibition of driving without an ignition interlock device if the person:

(i) has been placed under arrest;

(ii) has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1); and

(iii) refuses to submit to any chemical test requested.

(b) (i) Following the warning under Subsection (2)(a), if the person does not immediately request that the chemical test or tests as offered by a peace officer be administered, a peace officer shall, on behalf of the Driver License Division and within 24 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's privilege or license to operate a motor vehicle.

(ii) When a peace officer gives the notice on behalf of the Driver License Division, the peace officer shall:

(A) take the Utah license certificate or permit, if any, of the operator;

(B) issue a temporary license certificate effective for only 29 days from the date of arrest; and

(C) supply to the operator, in a manner specified by the Driver License Division, basic information regarding how to obtain a hearing before the Driver License Division.

(c) A citation issued by a peace officer may, if provided in a manner specified by the Driver License Division, also serve as the temporary license certificate.

(d) As a matter of procedure, the peace officer shall submit a signed report, within 10 calendar days after the day on which notice is provided under Subsection (2)(b), that:

(i) the peace officer had grounds to believe the arrested person was in violation of any provision under Subsections (1)(a)(i) through (iii); and

(ii) the person had refused to submit to a chemical test or tests under Subsection (1).

(3) Upon the request of the person who was tested, the results of the test or tests shall be made available to the person.

(4) (a) The person to be tested may, at the person's own expense, have a physician of the person's own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the

test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(5) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

Section 16. Section 41-6a-521 is amended to read:

41-6a-521. Revocation hearing for refusal -- Appeal.

(1) (a) A person who has been notified of the Driver License Division's intention to revoke the person's license under Section 41-6a-520 is entitled to a hearing.

(b) A request for the hearing shall be made in writing within 10 calendar days after the day on which notice is provided.

(c) Upon request in a manner specified by the Driver License Division, the Driver License Division shall grant to the person an opportunity to be heard within 29 days after the date of arrest.

(d) If the person does not make a request for a hearing before the Driver License Division under this Subsection (1), the person's privilege to operate a motor vehicle in the state is revoked beginning on the 30th day after the date of arrest:

(i) for a person 21 years of age or older on the date of arrest, for a period of:

(A) 18 months, unless Subsection (1)(d)(i)(B) applies; or

(B) 36 months, if the arrest was made on or after July 1, 2009, and the person has had a previous:

(I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, or 53-3-231[~~or 53-3-232~~]; or

(II) conviction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502;

(ii) for a person under 21 years of age on the date of arrest:

(A) until the person is 21 years of age or for a period of two years, whichever is longer, if the arrest was made on or after July 1, 2011, unless Subsection (1)(d)(ii)(B) applies; or

(B) until the person is 21 years of age or for a period of 36 months, whichever is longer, if the arrest was made on or after July 1, 2009, and the person has had a previous:

(I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, or 53-3-231[~~or 53-3-232~~]; or

(II) conviction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502; or

(iii) for a person that was arrested prior to July 1, 2009, for the suspension periods in effect prior to July 1, 2009.

(2) (a) Except as provided in Subsection (2)(b), if a hearing is requested by the person, the hearing shall be conducted by the Driver License Division in:

(i) the county in which the offense occurred; or

(ii) a county which is adjacent to the county in which the offense occurred.

(b) The Driver License Division may hold a hearing in some other county if the Driver License Division and the person both agree.

(3) The hearing shall be documented and shall cover the issues of:

(a) whether a peace officer had reasonable grounds to believe that a person was operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, or 53-3-231[~~or 53-3-232~~]; and

(b) whether the person refused to submit to the test or tests under Section 41-6a-520.

(4) (a) In connection with the hearing, the division or its authorized agent:

(i) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; and

(ii) shall issue subpoenas for the attendance of necessary peace officers.

(b) The Driver License Division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 78B-1-119.

(5) (a) If after a hearing, the Driver License Division determines that the person was requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails to appear before the Driver License Division as required in the notice, the Driver License Division shall revoke the person's license or permit to operate a motor vehicle in Utah beginning on the date the hearing is held:

(i) for a person 21 years of age or older on the date of arrest, for a period of:

(A) 18 months unless Subsection (5)(a)(i)(B) applies; or

(B) 36 months, if the arrest was made on or after July 1, 2009, and the person has had a previous:

(I) license sanction for an offense that occurred within the previous 10 years from the date of arrest

under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, or 53-3-231 ~~or 53-3-232~~; or

(II) conviction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502;

(ii) for a person under 21 years of age on the date of arrest:

(A) until the person is 21 years of age or for a period of two years, whichever is longer, for an arrest that was made on or after July 1, 2011, and unless Subsection (5)(a)(ii)(B) applies; or

(B) until the person is 21 years of age or for a period of 36 months, whichever is longer, if the arrest was made on or after July 1, 2009, and the person has had a previous:

(I) license sanction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, or 53-3-231 ~~or 53-3-232~~; or

(II) conviction for an offense that occurred within the previous 10 years from the date of arrest under Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502; or

(iii) for a person that was arrested prior to July 1, 2009, for the revocation periods in effect prior to July 1, 2009.

(b) The Driver License Division shall also assess against the person, in addition to any fee imposed under Subsection 53-3-205(12), a fee under Section 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover administrative costs.

(c) The fee shall be cancelled if the person obtains an unappealed court decision following a proceeding allowed under Subsection (2) that the revocation was improper.

(6) (a) Any person whose license has been revoked by the Driver License Division under this section following an administrative hearing may seek judicial review.

(b) Judicial review of an informal adjudicative proceeding is a trial.

(c) Venue is in the district court in the county in which the offense occurred.

Section 17. Section 41-6a-524 is amended to read:

41-6a-524. Refusal as evidence.

If a person under arrest refuses to submit to a chemical test or tests or any additional test under Section 41-6a-520, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while:

(1) under the influence of:

(a) alcohol;

(b) any drug; or

(c) a combination of alcohol and any drug;

(2) having any measurable controlled substance or metabolite of a controlled substance in the person's body; or

(3) having any measurable or detectable amount of alcohol in the person's body if the person is an alcohol restricted driver as defined under Section 41-6a-529 ~~or~~.

~~[(4) having any measurable or detectable amount of alcohol in the person's body if the person has been issued a conditional license under Section 53-3-232.]~~

Section 18. Section 41-6a-527 is amended to read:

41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound requirements -- Removal of vehicle by owner.

(1) If a peace officer arrests, cites, or refers for administrative action the operator of a vehicle for violating Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530, 41-6a-606, 53-3-231, ~~53-3-232,~~ Subsections 53-3-227(3)(a)(i) through (vi), Subsection 53-3-227(3)(a)(ix), or a local ordinance similar to Section 41-6a-502 which complies with Subsection 41-6a-510(1), the peace officer shall seize and impound the vehicle in accordance with Section 41-6a-1406, except as provided under Subsection (2).

(2) If a registered owner of the vehicle, other than the operator, is present at the time of arrest, the peace officer may release the vehicle to that registered owner, but only if:

(a) the registered owner:

(i) requests to remove the vehicle from the scene; and

(ii) presents to the peace officer sufficient identification to prove ownership of the vehicle or motorboat;

(b) the registered owner identifies a driver with a valid operator's license who:

(i) complies with all restrictions of his operator's license; and

(ii) would not, in the judgment of the officer, be in violation of Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530, 53-3-231, ~~53-3-232,~~ or a local ordinance similar to Section 41-6a-502 which complies with Subsection 41-6a-510(1) if permitted to operate the vehicle; and

(c) the vehicle itself is legally operable.

(3) If necessary for transportation of a motorboat for impoundment under this section, the

motorboat's trailer may be used to transport the motorboat.

Section 19. Section 41-6a-606 is amended to read:

41-6a-606. Speed contest or exhibition on highway -- Barricade or obstruction.

(1) A person may not engage in any motor vehicle speed contest or exhibition of speed on a highway.

(2) A person may not, in any manner, obstruct or place any barricade or obstruction or assist or participate in placing any barricade or obstruction upon any highway for any purpose prohibited under Subsection (1).

(3) A person who violates Subsection (1) is guilty of a class B misdemeanor.

(4) (a) In addition to the penalty provided under this section or any other section, a person who violates Subsection (1) shall have the person's driver license suspended under Subsection 53-3-220(1)(a)~~[(xvi)]~~(xv) for a period of:

(i) 60 days for a first offense; and

(ii) 90 days for a second offense within three years of a prior offense.

(b) The court shall forward the report of the conviction to the Driver License Division in accordance with Section 53-3-218.

Section 20. Section 53-3-220 is amended to read:

53-3-220. Offenses requiring mandatory revocation, denial, suspension, or disqualification of license -- Offense requiring an extension of period -- Hearing -- Limited driving privileges.

(1) (a) The division shall immediately revoke or, when this chapter, Title 41, Chapter 6a, Traffic Code, or Section 76-5-303, specifically provides for denial, suspension, or disqualification, the division shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's conviction for:

(i) manslaughter or negligent homicide resulting from driving a motor vehicle, or automobile homicide under Section 76-5-207 or 76-5-207.5;

(ii) driving or being in actual physical control of a motor vehicle while under the influence of alcohol, any drug, or combination of them to a degree that renders the person incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

(iii) driving or being in actual physical control of a motor vehicle while having a blood or breath alcohol content as prohibited in Section 41-6a-502 or as prohibited in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

(iv) perjury or the making of a false affidavit to the division under this chapter, Title 41, Motor Vehicles, or any other law of this state requiring the

registration of motor vehicles or regulating driving on highways;

(v) any felony under the motor vehicle laws of this state;

(vi) any other felony in which a motor vehicle is used to facilitate the offense;

(vii) failure to stop and render aid as required under the laws of this state if a motor vehicle accident results in the death or personal injury of another;

(viii) two charges of reckless driving, impaired driving, or any combination of reckless driving and impaired driving committed within a period of 12 months; but if upon a first conviction of reckless driving or impaired driving the judge or justice recommends suspension of the convicted person's license, the division may after a hearing suspend the license for a period of three months;

(ix) failure to bring a motor vehicle to a stop at the command of a peace officer as required in Section 41-6a-210;

(x) any offense specified in Part 4, Uniform Commercial Driver License Act, that requires disqualification;

(xi) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or allowing the discharge of a firearm from a vehicle;

(xii) using, allowing the use of, or causing to be used any explosive, chemical, or incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);

(xiii) operating or being in actual physical control of a motor vehicle while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517;

~~[(xiv) until July 30, 2015, operating or being in actual physical control of a motor vehicle while having any alcohol in the person's body in violation of Section 53-3-232;]~~

~~[(xv)]~~ (xiv) operating or being in actual physical control of a motor vehicle while having any measurable or detectable amount of alcohol in the person's body in violation of Section 41-6a-530;

~~[(xvi)]~~ (xv) engaging in a motor vehicle speed contest or exhibition of speed on a highway in violation of Section 41-6a-606;

~~[(xvii)]~~ (xvi) operating or being in actual physical control of a motor vehicle in this state without an ignition interlock system in violation of Section 41-6a-518.2; or

~~[(xviii)]~~ (xvii) custodial interference, under:

(A) Subsection 76-5-303(3), which suspension shall be for a period of 30 days, unless the court provides the division with an order of suspension for a shorter period of time;

(B) Subsection 76-5-303(4), which suspension shall be for a period of 90 days, unless the court provides the division with an order of suspension for a shorter period of time; or

(C) Subsection 76-5-303(5), which suspension shall be for a period of 180 days, unless the court provides the division with an order of suspension for a shorter period of time.

(b) The division shall immediately revoke the license of a person upon receiving a record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act [of 1996], for:

(i) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or allowing the discharge of a firearm from a vehicle; or

(ii) using, allowing the use of, or causing to be used any explosive, chemical, or incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b).

(c) Except when action is taken under Section 53-3-219 for the same offense, the division shall immediately suspend for six months the license of a person upon receiving a record of conviction for:

(i) any violation of:

(A) Title 58, Chapter 37, Utah Controlled Substances Act;

(B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or

(ii) any criminal offense that prohibits:

(A) possession, distribution, manufacture, cultivation, sale, or transfer of any substance that is prohibited under the acts described in Subsection (1)(c)(i); or

(B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).

(d) (i) The division shall immediately suspend a person's driver license for conviction of the offense of theft of motor vehicle fuel under Section 76-6-404.7 if the division receives:

(A) an order from the sentencing court requiring that the person's driver license be suspended; and

(B) a record of the conviction.

(ii) An order of suspension under this section is at the discretion of the sentencing court, and may not be for more than 90 days for each offense.

(e) (i) The division shall immediately suspend for one year the license of a person upon receiving a record of:

(A) conviction for the first time for a violation under Section 32B-4-411; or

(B) an adjudication under Title 78A, Chapter 6, Juvenile Court Act [of 1996], for a violation under Section 32B-4-411.

(ii) The division shall immediately suspend for a period of two years the license of a person upon receiving a record of:

(A) (I) conviction for a second or subsequent violation under Section 32B-4-411; and

(II) the violation described in Subsection (1)(e)(ii)(A)(I) is within 10 years of a prior conviction for a violation under Section 32B-4-411; or

(B) (I) a second or subsequent adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation under Section 32B-4-411; and

(II) the adjudication described in Subsection (1)(e)(ii)(B)(I) is within 10 years of a prior adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation under Section 32B-4-411.

(iii) Upon receipt of a record under Subsection (1)(e)(i) or (ii), the division shall:

(A) for a conviction or adjudication described in Subsection (1)(e)(i):

(I) impose a suspension for one year beginning on the date of conviction; or

(II) if the person is under the age of eligibility for a driver license, impose a suspension that begins on the date of conviction and continues for one year beginning on the date of eligibility for a driver license; or

(B) for a conviction or adjudication described in Subsection (1)(e)(ii):

(I) impose a suspension for a period of two years; or

(II) if the person is under the age of eligibility for a driver license, impose a suspension that begins on the date of conviction and continues for two years beginning on the date of eligibility for a driver license.

(iv) Upon receipt of the first order suspending a person's driving privileges under Section 32B-4-411, the division shall reduce the suspension period under Subsection (1)(e)(i) if ordered by the court in accordance with Subsection 32B-4-411(3)(a).

(v) Upon receipt of the second or subsequent order suspending a person's driving privileges under Section 32B-4-411, the division shall reduce the suspension period under Subsection (1)(e)(ii) if ordered by the court in accordance with Subsection 32B-4-411(3)(b).

(2) The division shall extend the period of the first denial, suspension, revocation, or disqualification for an additional like period, to a maximum of one year for each subsequent occurrence, upon receiving:

(a) a record of the conviction of any person on a charge of driving a motor vehicle while the person's

license is denied, suspended, revoked, or disqualified;

(b) a record of a conviction of the person for any violation of the motor vehicle law in which the person was involved as a driver;

(c) a report of an arrest of the person for any violation of the motor vehicle law in which the person was involved as a driver; or

(d) a report of an accident in which the person was involved as a driver.

(3) When the division receives a report under Subsection (2)(c) or (d) that a person is driving while the person's license is denied, suspended, disqualified, or revoked, the person is entitled to a hearing regarding the extension of the time of denial, suspension, disqualification, or revocation originally imposed under Section 53-3-221.

(4) (a) The division may extend to a person the limited privilege of driving a motor vehicle to and from the person's place of employment or within other specified limits on recommendation of the judge in any case where a person is convicted of any of the offenses referred to in Subsections (1) and (2) except:

(i) automobile homicide under Subsection (1)(a)(i);

(ii) those offenses referred to in Subsections (1)(a)(ii), (iii), (xi), (xii), (xiii), (1)(b), and (1)(c); and

(iii) those offenses referred to in Subsection (2) when the original denial, suspension, revocation, or disqualification was imposed because of a violation of Section 41-6a-502, 41-6a-517, a local ordinance which complies with the requirements of Subsection 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of these sections or ordinances, unless:

(A) the person has had the period of the first denial, suspension, revocation, or disqualification extended for a period of at least three years;

(B) the division receives written verification from the person's primary care physician that:

(I) to the physician's knowledge the person has not used any narcotic drug or other controlled substance except as prescribed by a licensed medical practitioner within the last three years; and

(II) the physician is not aware of any physical, emotional, or mental impairment that would affect the person's ability to operate a motor vehicle safely; and

(C) for a period of one year prior to the date of the request for a limited driving privilege:

(I) the person has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle;

(II) the division has not received a report of an arrest for a violation of any motor vehicle law in which the person was involved as the operator of the vehicle; and

(III) the division has not received a report of an accident in which the person was involved as an operator of a vehicle.

(b) (i) Except as provided in Subsection (4)(b)(ii), the discretionary privilege authorized in this Subsection (4):

(A) is limited to when undue hardship would result from a failure to grant the privilege; and

(B) may be granted only once to any person during any single period of denial, suspension, revocation, or disqualification, or extension of that denial, suspension, revocation, or disqualification.

(ii) The discretionary privilege authorized in Subsection (4)(a)(iii):

(A) is limited to when the limited privilege is necessary for the person to commute to school or work; and

(B) may be granted only once to any person during any single period of denial, suspension, revocation, or disqualification, or extension of that denial, suspension, revocation, or disqualification.

(c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or denied under this chapter.

Section 21. Section 53A-1-1110 is amended to read:

53A-1-1110. Letter grade based on percentage of maximum points earned.

(1) A school shall receive a letter grade based on the percentage of the maximum number of points the school may earn as calculated under Section 53A-1-1109 as follows:

(a) for a school that is not a high school:

(i) A, 100%-64%;

(ii) B, 63%-51%;

(iii) C, 50%-39%;

(iv) D, 38%-30%; and

(v) F, 29% or less; and

(b) for a high school:

(i) A, 100%-64%;

(ii) B, 63%-51%;

(iii) C, 50%-43%;

(iv) D, 42%-40%; and

(v) F, 39% or less.

(2) Notwithstanding Subsection (1), and subject to Subsection (3), for a school year in which at least 65% of schools described in Subsection (1)(a) or (b) receive an A or a B, the board shall increase an

endpoint of a range described in Subsection (1)(a) or (b) by five percentage points over the previous school year.

(3) (a) Subsection (2) applies until the:

(i) lower endpoint of the:

(A) A range equals 90%;

(B) B range equals 80%;

(C) C range equals 70%; and

(D) D range equals 60%; and

(ii) upper endpoint of the F range equals 59%.

(b) The board may increase an endpoint of a range described in Subsection (1)(a) or (b) by less than five percentage points over the previous school year if increasing the endpoint by five percentage points would increase the endpoint above the applicable percentage described in Subsection (3)(a).

(c) If the board increases an endpoint of a range as described in this section, the board shall publish, on the board's website, each letter grade that is assigned to the percentage of points earned.

(4) Notwithstanding Subsection (1), the board shall lower a school's grade by one letter grade if:

(a) student participation in a statewide assessment is fewer than 95%; or

(b) the participation of nonproficient students as determined by prior year test scores is fewer than 95%.

Section 22. Section 53A-1-1403 is amended to read:

53A-1-1403. State student data protection governance.

(1) (a) An education entity or a third-party contractor who collects, uses, stores, shares, or deletes student data shall protect student data as described in this part.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall ~~makes~~ make rules to administer this part, including student data protection standards for public education employees, student aides, and volunteers.

(2) The board shall oversee the preparation and maintenance of:

(a) a statewide data governance plan; and

(b) a state-level metadata dictionary.

(3) As described in this Subsection (3), the board shall establish advisory groups to oversee student data protection in the state and make recommendations to the board regarding student data protection.

(a) The board shall establish a student data policy advisory group:

(i) composed of members from:

(A) the Legislature;

(B) the board and board employees; and

(C) one or more LEAs;

(ii) to discuss and make recommendations to the board regarding:

(A) enacted or proposed legislation; and

(B) state and local student data protection policies across the state;

(iii) that reviews and monitors the state student data governance plan; and

(iv) that performs other tasks related to student data protection as designated by the board.

(b) The board shall establish a student data governance advisory group:

(i) composed of the state student data officer and other board employees; and

(ii) that performs duties related to state and local student data protection, including:

(A) overseeing data collection and usage by board program offices; and

(B) preparing and maintaining the board's student data governance plan under the direction of the student data policy advisory group.

(c) The board shall establish a student data users advisory group:

(i) composed of members who use student data at the local level; and

(ii) that provides feedback and suggestions on the practicality of actions proposed by the student data policy advisory group and the student data governance advisory group.

(4) (a) The board shall designate a state student data officer.

(b) The state student data officer shall:

(i) act as the primary point of contact for state student data protection administration in assisting the board to administer this part;

(ii) ensure compliance with student privacy laws throughout the public education system, including:

(A) providing training and support to applicable board and LEA employees; and

(B) producing resource materials, model plans, and model forms for local student data protection governance, including a model student data disclosure statement;

(iii) investigate complaints of alleged violations of this part;

(iv) report violations of this part to:

(A) the board;

(B) an applicable education entity; and

(C) the student data policy advisory group; and

(v) act as a state level student data manager.

(5) The board shall designate:

(a) at least one support manager to assist the state student data officer; and

(b) a student data protection auditor to assist the state student data officer.

(6) The board shall establish an external research review process for a request for data for the purpose of external research or evaluation.

Section 23. Section 53A-16-113 is amended to read:

53A-16-113. Capital local levy -- First class county required levy -- Allowable uses of collected revenue.

(1) (a) Subject to the other requirements of this section, a local school board may levy a tax to fund the school district's capital projects.

(b) A tax rate imposed by a school district pursuant to this section may not exceed .0030 per dollar of taxable value in any calendar year.

(2) A school district that imposes a capital local levy in the calendar year beginning on January 1, 2012, is exempt from the public notice and hearing requirements of Section 59-2-919 if the school district budgets an amount of ad valorem property tax revenue equal to or less than the sum of the following amounts:

(a) the amount of revenue generated during the calendar year beginning on January 1, 2011, from the sum of the following levies of a school district:

(i) a capital outlay levy imposed under Section 53A-16-107; and

(ii) the portion of the 10% of basic levy described in Section 53A-17a-145 that is budgeted for debt service or capital outlay; and

(b) revenue from eligible new growth as defined in Section 59-2-924.

(3) (a) Subject to Subsections (3)(b), (c), and (d), for fiscal year 2013-14, a local school board may utilize the proceeds of a maximum of .0024 per dollar of taxable value of the local school board's annual capital local levy for general fund purposes if the proceeds are not committed or dedicated to pay debt service or bond payments.

(b) If a local school board uses the proceeds described in Subsection (3)(a) for general fund purposes, the local school board shall notify the public of the local school board's use of the capital local levy proceeds for general fund purposes:

(i) ~~prior to~~ before the local school board's budget hearing in accordance with the notification requirements described in Section 53A-19-102; and

(ii) at a budget hearing required in Section 53A-19-102.

(c) A local school board may not use the proceeds described in Subsection (3)(a) to fund the following accounting function classifications as provided in the Financial Accounting for Local and State School

Systems guidelines developed by the National Center for Education Statistics:

(i) 2300 Support Services - General District Administration; or

(ii) 2500 Support Services - Central Services.

~~[(d) A local school board may not use the proceeds from a distribution described in Subsection (4) for general fund purposes.]~~

Section 24. Section 58-17b-309.6 is amended to read:

58-17b-309.6. Exemptions from licensure for research using pharmaceuticals.

Research using pharmaceuticals, as defined in ~~Subsection~~ Section 58-17b-102~~(65)~~, is exempt from licensure under Sections 58-17b-301 and 58-17b-302.

Section 25. Section 58-37f-304 is amended to read:

58-37f-304. Database utilization.

(1) As used in this section:

(a) "Dispenser" means a licensed pharmacist, as described in Section 58-17b-303, or the pharmacist's licensed intern, as described in Section 58-17b-304, who is also licensed to dispense a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

(b) "Opioid" means those substances listed in Subsection 58-37-4(2)(b)(i) or (2)(b)(ii).

(c) "Outpatient" means a setting in which an individual visits a licensed healthcare facility or a healthcare provider's office for a diagnosis or treatment but is not admitted to a licensed healthcare facility for an overnight stay.

(d) "Prescriber" means an individual authorized to prescribe a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

(2) To address the serious public health concern of life-altering and life-threatening opioid abuse and overdose, and to achieve the purposes of this chapter and as described in Section 58-37f-201, which includes identifying and reducing the prescribing and dispensing of opioids in an unprofessional or unlawful manner or in quantities or frequencies inconsistent with generally recognized standards of dosage for an opioid, through utilization of the carefully developed and highly respected database:

(a) a prescriber or dispenser of an opioid for individual outpatient usage shall access and review the database as necessary in the prescriber's or dispenser's professional judgment and to achieve the purpose of this chapter as described in Section 58-37f-201; and

(b) a prescriber may assign the access and review required under Subsection (2)(a) to an employee, in accordance with Subsections 58-37f-301(2)(g) and (h).

(3) The division shall, in collaboration with the licensing boards for prescribers and dispensers:

(a) develop a system that gathers and reports to prescribers and dispensers the progress and results of the prescriber's and dispenser's individual access and review of the database, as provided in this section; and

(b) reduce or waive the division's continuing education requirements regarding opioid prescriptions, described in Section 58-37-6.5, including the online tutorial and test relating to the database, for prescribers and dispensers whose individual utilization of the database contribute to the life-saving and public safety purposes of this section and as described in Subsection (2).

(4) If the dispenser's access and review of the database suggest that the individual seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with generally recognized standards as provided in this section and Section 58-37f-201, the dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed, current, and professional decision regarding whether the prescribed opioid is medically justified, notwithstanding the results of the database search.

Section 26. Section 59-1-403 is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

- (i) a tax commissioner;
- (ii) an agent, clerk, or other officer or employee of the commission; or
- (iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

- (i) in accordance with judicial order;
- (ii) on behalf of the commission in any action or proceeding under:

- (A) this title; or
- (B) other law under which persons are required to file returns with the commission;

(iii) on behalf of the commission in any action or proceeding to which the commission is a party; or

(iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts

shown by the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review a tax based on the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

- (i) the United States Internal Revenue Service; or
- (ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the director of the Division of Environmental Response and Remediation, as defined in Section 19-6-402, as requested by the director of the Division of Environmental Response and Remediation, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide

that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

- (i) Chapter 13, Part 2, Motor Fuel; or
- (ii) Chapter 13, Part 4, Aviation Fuel.

(f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

(g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

(h) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request, provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, the Office of the Legislative Fiscal Analyst, or the Governor's Office of Management and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (1), the commission shall make the directory required by Section 59-14-603 available for public inspection.

(k) Notwithstanding Subsection (1), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).

(l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of Recovery Services within the Department of Human Services any relevant information obtained from a return

filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has become obligated to the Office of Recovery Services.

(ii) The information described in Subsection (3)(l)(i) may be provided by the Office of Recovery Services to any other state's child support collection agency involved in enforcing that support obligation.

(m) (i) Notwithstanding Subsection (1), upon request from the state court administrator, the commission shall provide to the state court administrator, the name, address, telephone number, county of residence, and social security number on resident returns filed under Chapter 10, Individual Income Tax Act.

(ii) The state court administrator may use the information described in Subsection (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

~~[(n) — Notwithstanding Subsection (1), the commission shall at the request of a committee, commission, or task force of the Legislature provide to the committee, commission, or task force of the Legislature any information relating to a tax imposed under Chapter 9, Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.]~~

~~[(o)] (n) (i) As used in this Subsection (3)[(o)](n), "office" means the:~~

(A) Office of the Legislative Fiscal Analyst; or

(B) Office of Legislative Research and General Counsel.

(ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)[(o)](n)(iii), the commission shall at the request of an office provide to the office all information:

(A) gained by the commission; and

(B) required to be attached to or included in returns filed with the commission.

(iii) (A) An office may not request and the commission may not provide to an office a person's:

(I) address;

(II) name;

(III) social security number; or

(IV) taxpayer identification number.

(B) The commission shall in all instances protect the privacy of a person as required by Subsection (3)[(o)](n)(iii)(A).

(iv) An office may provide information received from the commission in accordance with this Subsection (3)[(o)](n) only:

(A) as:

(I) a fiscal estimate;

(II) fiscal note information; or

(III) statistical information; and

(B) if the information is classified to prevent the identification of a particular return.

(v) (A) A person may not request information from an office under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, if that office received the information from the commission in accordance with this Subsection (3)(~~(e)~~)(n).

(B) An office may not provide to a person that requests information in accordance with Subsection (3)(~~(e)~~)(n)(v)(A) any information other than the information the office provides in accordance with Subsection (3)(~~(e)~~)(n)(iv).

(~~(p)~~) (o) Notwithstanding Subsection (1), the commission may provide to the governing board of the agreement or a taxing official of another state, the District of Columbia, the United States, or a territory of the United States:

(i) the following relating to an agreement sales and use tax:

(A) information contained in a return filed with the commission;

(B) information contained in a report filed with the commission;

(C) a schedule related to Subsection (3)(~~(p)~~)(o)(i)(A) or (B); or

(D) a document filed with the commission; or

(ii) a report of an audit or investigation made with respect to an agreement sales and use tax.

(~~(q)~~) (p) Notwithstanding Subsection (1), the commission may provide information concerning a taxpayer's state income tax return or state income tax withholding information to the Driver License Division if the Driver License Division:

(i) requests the information; and

(ii) provides the commission with a signed release form from the taxpayer allowing the Driver License Division access to the information.

(~~(r)~~) (q) Notwithstanding Subsection (1), the commission shall provide to the Utah Communications Authority, or a division of the Utah Communications Authority, the information requested by the authority under Sections 63H-7a-302, 63H-7a-402, and 63H-7a-502.

(~~(s)~~) (r) Notwithstanding Subsection (1), the commission shall provide to the Utah Educational Savings Plan information related to a resident or nonresident individual's contribution to a Utah Educational Savings Plan account as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1313.

(~~(t)~~) (s) Notwithstanding Subsection (1), for the purpose of verifying eligibility under Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the Department of Health or its designee with the adjusted gross income of an individual if:

(i) an eligibility worker with the Department of Health or its designee requests the information from the commission; and

(ii) the eligibility worker has complied with the identity verification and consent provisions of Sections 26-18-2.5 and 26-40-105.

(~~(u)~~) (t) Notwithstanding Subsection (1), the commission may provide to a county, as determined by the commission, information declared on an individual income tax return in accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103.

(4) (a) Each report and return shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in accordance with Subsection (3)(~~(e)~~)(n)(iii) or a person that requests information in accordance with Subsection (3)(~~(e)~~)(n)(v):

(i) is not guilty of a class A misdemeanor; and

(ii) is not subject to:

(A) dismissal from office in accordance with Subsection (5)(b); or

(B) disqualification from holding public office in accordance with Subsection (5)(b).

(6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 27. Section 59-7-302 is amended to read:

59-7-302. Definitions.

(1) As used in this part, unless the context otherwise requires:

(a) "Aircraft type" means a particular model of aircraft as designated by the manufacturer of the aircraft.

(b) "Airline" means the same as that term is defined in Section 59-2-102.

(c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during the airline's tax period.

(d) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the

property constitutes integral parts of the taxpayer's regular trade or business operations.

(e) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(f) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(g) (i) Except as provided in Subsection (1)(g)(ii), "mobile flight equipment" is as defined in Section 59-2-102.

(ii) "Mobile flight equipment" does not include:

(A) a spare engine; or

(B) tangible personal property described in Subsection 59-2-102(27) owned by an:

(I) air charter service; or

(II) air contract service.

(h) "Nonbusiness income" means all income other than business income.

(i) "Optional sales factor weighted taxpayer" means:

(i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code within NAICS Subsector 334, computer and electronic products manufacturing, of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; or

(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code within NAICS Subsector 334, computer and electronic products manufacturing, of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.

(j) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

(k) "Sales" means all gross receipts of the taxpayer not allocated under Sections 59-7-306 through 59-7-310.

(l) Subject to Subsection (2), "sales factor weighted taxpayer" means:

(i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American

Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for:

(A) a NAICS code within NAICS Sector 21, Mining;

(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;

(C) a NAICS code within NAICS Sector 31-33, Manufacturing;

(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;

(E) a NAICS code within NAICS Sector 51, Information, except for NAICS Subsector 519, Other Information Services; or

(F) a NAICS code within NAICS Sector 52, Finance and Insurance; or

(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for a NAICS code under Subsections (1)(l)(i)(A) through (F).

(m) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(n) "Transportation revenue" means revenue an airline earns from:

(i) transporting a passenger or cargo; or

(ii) from miscellaneous sales of merchandise as part of providing transportation services.

(o) "Utah revenue ton miles" means, for an airline, the total revenue ton miles within the borders of this state:

(i) during the airline's tax period; and

(ii) from flight stages that originate or terminate in this state.

(2) The following apply to Subsection (1)(l):

(a) (i) Subject to the other provisions of this Subsection (2), a taxpayer shall for each taxable year determine whether the taxpayer is a sales factor weighted taxpayer.

(ii) A taxpayer shall make the determination required by Subsection (2)(a)(i) before the due date for filing the taxpayer's return under this chapter for the taxable year, including extensions.

(iii) For purposes of making the determination required by Subsection (2)(a)(i), total sales everywhere include only the total sales everywhere:

(A) as determined in accordance with this part; and

(B) made during the taxable year for which a taxpayer makes the determination required by Subsection (2)(a)(i).

(b) A taxpayer that files a return as a unitary group for a taxable year is considered to be a unitary group for that taxable year.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may define the term "economic activity" consistent with the use of the term "activity" in the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.

Section 28. Section 59-12-102 is amended to read:

59-12-102. Definitions.

As used in this chapter:

(1) "800 service" means a telecommunications service that:

(a) allows a caller to dial a toll-free number without incurring a charge for the call; and

(b) is typically marketed:

(i) under the name 800 toll-free calling;

(ii) under the name 855 toll-free calling;

(iii) under the name 866 toll-free calling;

(iv) under the name 877 toll-free calling;

(v) under the name 888 toll-free calling; or

(vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the Federal Communications Commission.

(2) (a) "900 service" means an inbound toll telecommunications service that:

(i) a subscriber purchases;

(ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to the subscriber's:

(A) prerecorded announcement; or

(B) live service; and

(iii) is typically marketed:

(A) under the name 900 service; or

(B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal Communications Commission.

(b) "900 service" does not include a charge for:

(i) a collection service a seller of a telecommunications service provides to a subscriber; or

(ii) the following a subscriber sells to the subscriber's customer:

(A) a product; or

(B) a service.

(3) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on November 12, 2002, including amendments made to the Streamlined Sales and Use Tax Agreement after November 12, 2002.

(5) "Agreement combined tax rate" means the sum of the tax rates:

(a) listed under Subsection (6); and

(b) that are imposed within a local taxing jurisdiction.

(6) "Agreement sales and use tax" means a tax imposed under:

(a) Subsection 59-12-103(2)(a)(i)(A);

(b) Subsection 59-12-103(2)(b)(i);

(c) Subsection 59-12-103(2)(c)(i);

(d) Subsection 59-12-103(2)(d)(i)(A)(I);

(e) Section 59-12-204;

(f) Section 59-12-401;

(g) Section 59-12-402;

(h) Section 59-12-402.1;

(i) Section 59-12-703;

(j) Section 59-12-802;

(k) Section 59-12-804;

(l) Section 59-12-1102;

(m) Section 59-12-1302;

(n) Section 59-12-1402;

(o) Section 59-12-1802;

(p) Section 59-12-2003;

(q) Section 59-12-2103;

(r) Section 59-12-2213;

(s) Section 59-12-2214;

(t) Section 59-12-2215;

(u) Section 59-12-2216;

(v) Section 59-12-2217; or

(w) Section 59-12-2218.

(7) "Aircraft" [is as] means the same as that term is defined in Section 72-10-102.

(8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:

(a) except for:

(i) an airline as defined in Section 59-2-102; or

(ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group" includes a corporation that is qualified to do business but is not

otherwise doing business in the state, of an airline; and

(b) that has the workers, expertise, and facilities to perform the following, regardless of whether the business entity performs the following in this state:

(i) check, diagnose, overhaul, and repair:

(A) an onboard system of a fixed wing turbine powered aircraft; and

(B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;

(ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft engine;

(iii) perform at least the following maintenance on a fixed wing turbine powered aircraft:

(A) an inspection;

(B) a repair, including a structural repair or modification;

(C) changing landing gear; and

(D) addressing issues related to an aging fixed wing turbine powered aircraft;

(iv) completely remove the existing paint of a fixed wing turbine powered aircraft and completely apply new paint to the fixed wing turbine powered aircraft; and

(v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that results in a change in the fixed wing turbine powered aircraft's certification requirements by the authority that certifies the fixed wing turbine powered aircraft.

(9) "Alcoholic beverage" means a beverage that:

(a) is suitable for human consumption; and

(b) contains .5% or more alcohol by volume.

(10) "Alternative energy" means:

(a) biomass energy;

(b) geothermal energy;

(c) hydroelectric energy;

(d) solar energy;

(e) wind energy; or

(f) energy that is derived from:

(i) coal-to-liquids;

(ii) nuclear fuel;

(iii) oil-impregnated diatomaceous earth;

(iv) oil sands;

(v) oil shale;

(vi) petroleum coke; or

(vii) waste heat from:

(A) an industrial facility; or

(B) a power station in which an electric generator is driven through a process in which water is heated, turns into steam, and spins a steam turbine.

(11) (a) Subject to Subsection (11)(b), "alternative energy electricity production facility" means a facility that:

(i) uses alternative energy to produce electricity; and

(ii) has a production capacity of two megawatts or greater.

(b) A facility is an alternative energy electricity production facility regardless of whether the facility is:

(i) connected to an electric grid; or

(ii) located on the premises of an electricity consumer.

(12) (a) "Ancillary service" means a service associated with, or incidental to, the provision of telecommunications service.

(b) "Ancillary service" includes:

(i) a conference bridging service;

(ii) a detailed communications billing service;

(iii) directory assistance;

(iv) a vertical service; or

(v) a voice mail service.

(13) "Area agency on aging" [~~is~~-as] means the same as that term is defined in Section 62A-3-101.

(14) "Assisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by an individual:

(a) who is not the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device; and

(b) at the direction of the seller of the right to use the amusement device, skill device, or ride device.

(15) "Assisted cleaning or washing of tangible personal property" means cleaning or washing of tangible personal property if the cleaning or washing labor is primarily performed by an individual:

(a) who is not the purchaser of the cleaning or washing of the tangible personal property; and

(b) at the direction of the seller of the cleaning or washing of the tangible personal property.

(16) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan and the International Fuel Tax Agreement;

(b) in the case of aircraft, the holder of a Federal Aviation Administration operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, a

person who uses locomotives, freight cars, railroad work equipment, or other rolling stock in more than one state.

(17) (a) Except as provided in Subsection (17)(b), “biomass energy” means any of the following that is used as the primary source of energy to produce fuel or electricity:

- (i) material from a plant or tree; or
- (ii) other organic matter that is available on a renewable basis, including:

- (A) slash and brush from forests and woodlands;
- (B) animal waste;
- (C) waste vegetable oil;

(D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of wastewater residuals, or through the conversion of a waste material through a nonincineration, thermal conversion process;

- (E) aquatic plants; and
- (F) agricultural products.

(b) “Biomass energy” does not include:

- (i) black liquor; or
- (ii) treated woods.

(18) (a) “Bundled transaction” means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:

- (i) distinct and identifiable; and
- (ii) sold for one nonitemized price.

(b) “Bundled transaction” does not include:

(i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction;

- (ii) the sale of real property;
- (iii) the sale of services to real property;

(iv) the retail sale of tangible personal property and a service if:

- (A) the tangible personal property:
 - (I) is essential to the use of the service; and
 - (II) is provided exclusively in connection with the service; and

(B) the service is the true object of the transaction;

(v) the retail sale of two services if:

(A) one service is provided that is essential to the use or receipt of a second service;

(B) the first service is provided exclusively in connection with the second service; and

(C) the second service is the true object of the transaction;

(vi) a transaction that includes tangible personal property or a product subject to taxation under this chapter and tangible personal property or a product that is not subject to taxation under this chapter if the:

(A) seller’s purchase price of the tangible personal property or product subject to taxation under this chapter is de minimis; or

(B) seller’s sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(vii) the retail sale of tangible personal property that is not subject to taxation under this chapter and tangible personal property that is subject to taxation under this chapter if:

(A) that retail sale includes:

- (I) food and food ingredients;
- (II) a drug;
- (III) durable medical equipment;
- (IV) mobility enhancing equipment;
- (V) an over-the-counter drug;
- (VI) a prosthetic device; or
- (VII) a medical supply; and

(B) subject to Subsection (18)(f):

(I) the seller’s purchase price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller’s total purchase price of that retail sale; or

(II) the seller’s sales price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller’s total sales price of that retail sale.

(c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a service that is distinct and identifiable does not include:

(A) packaging that:

(I) accompanies the sale of the tangible personal property, product, or service; and

(II) is incidental or immaterial to the sale of the tangible personal property, product, or service;

(B) tangible personal property, a product, or a service provided free of charge with the purchase of another item of tangible personal property, a product, or a service; or

(C) an item of tangible personal property, a product, or a service included in the definition of “purchase price.”

(ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a product, or a service is provided free of charge with the purchase of another item of tangible personal property, a product, or a service if the sales price of the purchased item of tangible personal property,

product, or service does not vary depending on the inclusion of the tangible personal property, product, or service provided free of charge.

(d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price does not include a price that is separately identified by tangible personal property, product, or service on the following, regardless of whether the following is in paper format or electronic format:

(A) a binding sales document; or

(B) another supporting sales-related document that is available to a purchaser.

(ii) For purposes of Subsection (18)(d)(i), a binding sales document or another supporting sales-related document that is available to a purchaser includes:

(A) a bill of sale;

(B) a contract;

(C) an invoice;

(D) a lease agreement;

(E) a periodic notice of rates and services;

(F) a price list;

(G) a rate card;

(H) a receipt; or

(I) a service agreement.

(e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal property or a product subject to taxation under this chapter is de minimis if:

(A) the seller's purchase price of the tangible personal property or product is 10% or less of the seller's total purchase price of the bundled transaction; or

(B) the seller's sales price of the tangible personal property or product is 10% or less of the seller's total sales price of the bundled transaction.

(ii) For purposes of Subsection (18)(b)(vi), a seller:

(A) shall use the seller's purchase price or the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(B) may not use a combination of the seller's purchase price and the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis.

(iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service contract to determine if the sales price of tangible personal property or a product is de minimis.

(f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of the seller's purchase price and the seller's sales price to determine if tangible personal property subject to

taxation under this chapter is 50% or less of the seller's total purchase price or sales price of that retail sale.

(19) "Certified automated system" means software certified by the governing board of the agreement that:

(a) calculates the agreement sales and use tax imposed within a local taxing jurisdiction:

(i) on a transaction; and

(ii) in the states that are members of the agreement;

(b) determines the amount of agreement sales and use tax to remit to a state that is a member of the agreement; and

(c) maintains a record of the transaction described in Subsection (19)(a)(i).

(20) "Certified service provider" means an agent certified:

(a) by the governing board of the agreement; and

(b) to perform all of a seller's sales and use tax functions for an agreement sales and use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

(21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "clothing"; and

(ii) that are consistent with the list of items that constitute "clothing" under the agreement.

(22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

(23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (56) or residential use under Subsection (106).

(24) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(c) "Common carrier" does not include a person that provides transportation network services, as defined in Section 13-51-102.

(25) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(26) "Computer" means an electronic device that accepts information:

(a) (i) in digital form; or

(ii) in a form similar to digital form; and

(b) manipulates that information for a result based on a sequence of instructions.

(27) "Computer software" means a set of coded instructions designed to cause:

(a) a computer to perform a task; or

(b) automatic data processing equipment to perform a task.

(28) "Computer software maintenance contract" means a contract that obligates a seller of computer software to provide a customer with:

(a) future updates or upgrades to computer software;

(b) support services with respect to computer software; or

(c) a combination of Subsections (28)(a) and (b).

(29) (a) "Conference bridging service" means an ancillary service that links two or more participants of an audio conference call or video conference call.

(b) "Conference bridging service" may include providing a telephone number as part of the ancillary service described in Subsection (29)(a).

(c) "Conference bridging service" does not include a telecommunications service used to reach the ancillary service described in Subsection (29)(a).

(30) "Construction materials" means any tangible personal property that will be converted into real property.

(31) "Delivered electronically" means delivered to a purchaser by means other than tangible storage media.

(32) (a) "Delivery charge" means a charge:

(i) by a seller of:

(A) tangible personal property;

(B) a product transferred electronically; or

(C) services; and

(ii) for preparation and delivery of the tangible personal property, product transferred

electronically, or services described in Subsection (32)(a)(i) to a location designated by the purchaser.

(b) "Delivery charge" includes a charge for the following:

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

(33) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(34) "Dietary supplement" means a product, other than tobacco, that:

(a) is intended to supplement the diet;

(b) contains one or more of the following dietary ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in Subsections (34)(b)(i) through (v);

(c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:

(A) tablet form;

(B) capsule form;

(C) powder form;

(D) softgel form;

(E) gelcap form; or

(F) liquid form; or

(ii) if the product is not intended for ingestion in a form described in Subsections (34)(c)(i)(A) through (F), is not represented:

(A) as conventional food; and

(B) for use as a sole item of:

(I) a meal; or

(II) the diet; and

(d) is required to be labeled as a dietary supplement:

(i) identifiable by the "Supplemental Facts" box found on the label; and

(ii) as required by 21 C.F.R. Sec. 101.36.

(35) "Digital audio-visual work" means a series of related images which, when shown in succession, imparts an impression of motion, together with accompanying sounds, if any.

(36) (a) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds.

(b) "Digital audio work" includes a ringtone.

(37) "Digital book" means a work that is generally recognized in the ordinary and usual sense as a book.

(38) (a) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service:

(i) to:

(A) a mass audience; or

(B) addressees on a mailing list provided:

(I) by a purchaser of the mailing list; or

(II) at the discretion of the purchaser of the mailing list; and

(ii) if the cost of the printed material is not billed directly to the recipients.

(b) "Direct mail" includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material.

(c) "Direct mail" does not include multiple items of printed material delivered to a single address.

(39) "Directory assistance" means an ancillary service of providing:

(a) address information; or

(b) telephone number information.

(40) (a) "Disposable home medical equipment or supplies" means medical equipment or supplies that:

(i) cannot withstand repeated use; and

(ii) are purchased by, for, or on behalf of a person other than:

(A) a health care facility as defined in Section 26-21-2;

(B) a health care provider as defined in Section 78B-3-403;

(C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or

(D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).

(b) "Disposable home medical equipment or supplies" does not include:

(i) a drug;

(ii) durable medical equipment;

(iii) a hearing aid;

(iv) a hearing aid accessory;

(v) mobility enhancing equipment; or

(vi) tangible personal property used to correct impaired vision, including:

(A) eyeglasses; or

(B) contact lenses.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes medical equipment or supplies.

(41) "Drilling equipment manufacturer" means a facility:

(a) located in the state;

(b) with respect to which 51% or more of the manufacturing activities of the facility consist of manufacturing component parts of drilling equipment;

(c) that uses pressure of 800,000 or more pounds per square inch as part of the manufacturing process; and

(d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the manufacturing process.

(42) (a) "Drug" means a compound, substance, or preparation, or a component of a compound, substance, or preparation that is:

(i) recognized in:

(A) the official United States Pharmacopoeia;

(B) the official Homeopathic Pharmacopoeia of the United States;

(C) the official National Formulary; or

(D) a supplement to a publication listed in Subsections (42)(a)(i)(A) through (C);

(ii) intended for use in the:

(A) diagnosis of disease;

(B) cure of disease;

(C) mitigation of disease;

(D) treatment of disease; or

(E) prevention of disease; or

(iii) intended to affect:

(A) the structure of the body; or

(B) any function of the body.

(b) "Drug" does not include:

(i) food and food ingredients;

(ii) a dietary supplement;

(iii) an alcoholic beverage; or

(iv) a prosthetic device.

(43) (a) Except as provided in Subsection (43)(c), "durable medical equipment" means equipment that:

- (i) can withstand repeated use;
- (ii) is primarily and customarily used to serve a medical purpose;
- (iii) generally is not useful to a person in the absence of illness or injury; and
- (iv) is not worn in or on the body.
- (b) “Durable medical equipment” includes parts used in the repair or replacement of the equipment described in Subsection (43)(a).
- (c) “Durable medical equipment” does not include mobility enhancing equipment.
- (44) “Electronic” means:
- (a) relating to technology; and
- (b) having:
- (i) electrical capabilities;
- (ii) digital capabilities;
- (iii) magnetic capabilities;
- (iv) wireless capabilities;
- (v) optical capabilities;
- (vi) electromagnetic capabilities; or
- (vii) capabilities similar to Subsections (44)(b)(i) through (vi).
- (45) “Electronic financial payment service” means an establishment:
- (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and Clearinghouse Activities, of the 2012 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
- (b) that performs electronic financial payment services.
- (46) “Employee” [~~is as~~] means the same as that term is defined in Section 59-10-401.
- (47) “Fixed guideway” means a public transit facility that uses and occupies:
- (a) rail for the use of public transit; or
- (b) a separate right-of-way for the use of public transit.
- (48) “Fixed wing turbine powered aircraft” means an aircraft that:
- (a) is powered by turbine engines;
- (b) operates on jet fuel; and
- (c) has wings that are permanently attached to the fuselage of the aircraft.
- (49) “Fixed wireless service” means a telecommunications service that provides radio communication between fixed points.
- (50) (a) “Food and food ingredients” means substances:
- (i) regardless of whether the substances are in:
- (A) liquid form;
- (B) concentrated form;
- (C) solid form;
- (D) frozen form;
- (E) dried form; or
- (F) dehydrated form; and
- (ii) that are:
- (A) sold for:
- (I) ingestion by humans; or
- (II) chewing by humans; and
- (B) consumed for the substance’s:
- (I) taste; or
- (II) nutritional value.
- (b) “Food and food ingredients” includes an item described in Subsection (91)(b)(iii).
- (c) “Food and food ingredients” does not include:
- (i) an alcoholic beverage;
- (ii) tobacco; or
- (iii) prepared food.
- (51) (a) “Fundraising sales” means sales:
- (i) (A) made by a school; or
- (B) made by a school student;
- (ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and
- (iii) that are part of an officially sanctioned school activity.
- (b) For purposes of Subsection (51)(a)(iii), “officially sanctioned school activity” means a school activity:
- (i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;
- (ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and
- (iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.
- (52) “Geothermal energy” means energy contained in heat that continuously flows outward from the earth that is used as the sole source of energy to produce electricity.
- (53) “Governing board of the agreement” means the governing board of the agreement that is:
- (a) authorized to administer the agreement; and
- (b) established in accordance with the agreement.

(54) (a) For purposes of Subsection 59-12-104(41), “governmental entity” means:

(i) the executive branch of the state, including all departments, institutions, boards, divisions, bureaus, offices, commissions, and committees;

(ii) the judicial branch of the state, including the courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iii) the legislative branch of the state, including the House of Representatives, the Senate, the Legislative Printing Office, the Office of Legislative Research and General Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal Analyst;

(iv) the National Guard;

(v) an independent entity as defined in Section 63E-1-102; or

(vi) a political subdivision as defined in Section 17B-1-102.

(b) “Governmental entity” does not include the state systems of public and higher education, including:

(i) an applied technology college within the Utah College of Applied Technology;

(ii) a school;

(iii) the State Board of Education;

(iv) the State Board of Regents; or

(v) an institution of higher education.

(55) “Hydroelectric energy” means water used as the sole source of energy to produce electricity.

(56) “Industrial use” means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Section 41-1a-102 that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities;

(c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(d) by a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of

the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (56)(d)(i) would otherwise be made with nonrecycled materials; or

(e) in producing a form of energy or steam described in Subsection 54-2-1[(2)](3)(a) by a cogeneration facility as defined in Section 54-2-1.

(57) (a) Except as provided in Subsection (57)(b), “installation charge” means a charge for installing:

(i) tangible personal property; or

(ii) a product transferred electronically.

(b) “Installation charge” does not include a charge for:

(i) repairs or renovations of:

(A) tangible personal property; or

(B) a product transferred electronically; or

(ii) attaching tangible personal property or a product transferred electronically:

(A) to other tangible personal property; and

(B) as part of a manufacturing or fabrication process.

(58) “Institution of higher education” means an institution of higher education listed in Section 53B-2-101.

(59) (a) “Lease” or “rental” means a transfer of possession or control of tangible personal property or a product transferred electronically for:

(i) (A) a fixed term; or

(B) an indeterminate term; and

(ii) consideration.

(b) “Lease” or “rental” includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue Code.

(c) “Lease” or “rental” does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title:

(A) upon completion of required payments; and
 (B) if the payment of an option price does not exceed the greater of:

(I) \$100; or

(II) 1% of the total required payments; or

(iii) providing tangible personal property along with an operator for a fixed period of time or an indeterminate period of time if the operator is necessary for equipment to perform as designed.

(d) For purposes of Subsection (59)(c)(iii), an operator is necessary for equipment to perform as designed if the operator's duties exceed the:

(i) set-up of tangible personal property;

(ii) maintenance of tangible personal property; or

(iii) inspection of tangible personal property.

(60) "Life science establishment" means an establishment in this state that is classified under the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

(b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or

(c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

(61) "Life science research and development facility" means a facility owned, leased, or rented by a life science establishment if research and development is performed in 51% or more of the total area of the facility.

(62) "Load and leave" means delivery to a purchaser by use of a tangible storage media if the tangible storage media is not physically transferred to the purchaser.

(63) "Local taxing jurisdiction" means a:

(a) county that is authorized to impose an agreement sales and use tax;

(b) city that is authorized to impose an agreement sales and use tax; or

(c) town that is authorized to impose an agreement sales and use tax.

(64) "Manufactured home" [is-as] means the same as that term is defined in Section 15A-1-302.

(65) "Manufacturing facility" means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of

the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (65)(b)(i) would otherwise be made with nonrecycled materials; or

(c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is placed in service on or after May 1, 2006.

(66) "Member of the immediate family of the producer" means a person who is related to a producer described in Subsection 59-12-104(20)(a) as a:

(a) child or stepchild, regardless of whether the child or stepchild is:

(i) an adopted child or adopted stepchild; or

(ii) a foster child or foster stepchild;

(b) grandchild or stepgrandchild;

(c) grandparent or stepgrandparent;

(d) nephew or stepnephew;

(e) niece or stepniece;

(f) parent or stepparent;

(g) sibling or stepsibling;

(h) spouse;

(i) person who is the spouse of a person described in Subsections (66)(a) through (g); or

(j) person similar to a person described in Subsections (66)(a) through (i) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(67) "Mobile home" [is-as] means the same as that term is defined in Section 15A-1-302.

(68) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(69) (a) "Mobile wireless service" means a telecommunications service, regardless of the technology used, if:

(i) the origination point of the conveyance, routing, or transmission is not fixed;

(ii) the termination point of the conveyance, routing, or transmission is not fixed; or

(iii) the origination point described in Subsection (69)(a)(i) and the termination point described in Subsection (69)(a)(ii) are not fixed.

(b) “Mobile wireless service” includes a telecommunications service that is provided by a commercial mobile radio service provider.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define “commercial mobile radio service provider.”

(70) (a) Except as provided in Subsection (70)(c), “mobility enhancing equipment” means equipment that is:

(i) primarily and customarily used to provide or increase the ability to move from one place to another;

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle; and

(iii) not generally used by persons with normal mobility.

(b) “Mobility enhancing equipment” includes parts used in the repair or replacement of the equipment described in Subsection (70)(a).

(c) “Mobility enhancing equipment” does not include:

(i) a motor vehicle;

(ii) equipment on a motor vehicle if that equipment is normally provided by the motor vehicle manufacturer;

(iii) durable medical equipment; or

(iv) a prosthetic device.

(71) “Model 1 seller” means a seller registered under the agreement that has selected a certified service provider as the seller’s agent to perform all of the seller’s sales and use tax functions for agreement sales and use taxes other than the seller’s obligation under Section 59-12-124 to remit a tax on the seller’s own purchases.

(72) “Model 2 seller” means a seller registered under the agreement that:

(a) except as provided in Subsection (72)(b), has selected a certified automated system to perform the seller’s sales tax functions for agreement sales and use taxes; and

(b) retains responsibility for remitting all of the sales tax:

(i) collected by the seller; and

(ii) to the appropriate local taxing jurisdiction.

(73) (a) Subject to Subsection (73)(b), “model 3 seller” means a seller registered under the agreement that has:

(i) sales in at least five states that are members of the agreement;

(ii) total annual sales revenues of at least \$500,000,000;

(iii) a proprietary system that calculates the amount of tax:

(A) for an agreement sales and use tax; and

(B) due to each local taxing jurisdiction; and

(iv) entered into a performance agreement with the governing board of the agreement.

(b) For purposes of Subsection (73)(a), “model 3 seller” includes an affiliated group of sellers using the same proprietary system.

(74) “Model 4 seller” means a seller that is registered under the agreement and is not a model 1 seller, model 2 seller, or model 3 seller.

(75) “Modular home” means a modular unit as defined in Section 15A-1-302.

(76) “Motor vehicle” ~~is as~~ means the same as that term is defined in Section 41-1a-102.

(77) “Oil sands” means impregnated bituminous sands that:

(a) contain a heavy, thick form of petroleum that is released when heated, mixed with other hydrocarbons, or otherwise treated;

(b) yield mixtures of liquid hydrocarbon; and

(c) require further processing other than mechanical blending before becoming finished petroleum products.

(78) “Oil shale” means a group of fine black to dark brown shales containing kerogen material that yields petroleum upon heating and distillation.

(79) “Optional computer software maintenance contract” means a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

(80) (a) “Other fuels” means products that burn independently to produce heat or energy.

(b) “Other fuels” includes oxygen when it is used in the manufacturing of tangible personal property.

(81) (a) “Paging service” means a telecommunications service that provides transmission of a coded radio signal for the purpose of activating a specific pager.

(b) For purposes of Subsection (81)(a), the transmission of a coded radio signal includes a transmission by message or sound.

(82) “Pawnbroker” ~~is as~~ means the same as that term is defined in Section 13-32a-102.

(83) “Pawn transaction” ~~is as~~ means the same as that term is defined in Section 13-32a-102.

(84) (a) “Permanently attached to real property” means that for tangible personal property attached to real property:

(i) the attachment of the tangible personal property to the real property:

(A) is essential to the use of the tangible personal property; and

(B) suggests that the tangible personal property will remain attached to the real property in the same place over the useful life of the tangible personal property; or

(ii) if the tangible personal property is detached from the real property, the detachment would:

(A) cause substantial damage to the tangible personal property; or

(B) require substantial alteration or repair of the real property to which the tangible personal property is attached.

(b) "Permanently attached to real property" includes:

(i) the attachment of an accessory to the tangible personal property if the accessory is:

(A) essential to the operation of the tangible personal property; and

(B) attached only to facilitate the operation of the tangible personal property;

(ii) a temporary detachment of tangible personal property from real property for a repair or renovation if the repair or renovation is performed where the tangible personal property and real property are located; or

(iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection (84)(c)(iii) or (iv).

(c) "Permanently attached to real property" does not include:

(i) the attachment of portable or movable tangible personal property to real property if that portable or movable tangible personal property is attached to real property only for:

(A) convenience;

(B) stability; or

(C) for an obvious temporary purpose;

(ii) the detachment of tangible personal property from real property except for the detachment described in Subsection (84)(b)(ii);

(iii) an attachment of the following tangible personal property to real property if the attachment to real property is only through a line that supplies water, electricity, gas, telecommunications, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(A) a computer;

(B) a telephone;

(C) a television; or

(D) tangible personal property similar to Subsections (84)(c)(iii)(A) through (C) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(iv) an item listed in Subsection (125)(c).

(85) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(86) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

(i) the residential street address of the customer; or

(ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(87) (a) "Postpaid calling service" means a telecommunications service a person obtains by making a payment on a call-by-call basis:

(i) through the use of a:

(A) bank card;

(B) credit card;

(C) debit card; or

(D) travel card; or

(ii) by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

(b) "Postpaid calling service" includes a service, except for a prepaid wireless calling service, that would be a prepaid wireless calling service if the service were exclusively a telecommunications service.

(88) "Postproduction" means an activity related to the finishing or duplication of a medium described in Subsection 59-12-104(54)(a).

(89) "Prepaid calling service" means a telecommunications service:

(a) that allows a purchaser access to telecommunications service that is exclusively telecommunications service;

(b) that:

(i) is paid for in advance; and

(ii) enables the origination of a call using an:

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

(d) sold in predetermined units or dollars that decline:

<p>(i) by a known amount; and</p> <p>(ii) with use.</p> <p>(90) “Prepaid wireless calling service” means a telecommunications service:</p> <p>(a) that provides the right to utilize:</p> <p>(i) mobile wireless service; and</p> <p>(ii) other service that is not a telecommunications service, including:</p> <p>(A) the download of a product transferred electronically;</p> <p>(B) a content service; or</p> <p>(C) an ancillary service;</p> <p>(b) that:</p> <p>(i) is paid for in advance; and</p> <p>(ii) enables the origination of a call using an:</p> <p>(A) access number; or</p> <p>(B) authorization code;</p> <p>(c) that is dialed:</p> <p>(i) manually; or</p> <p>(ii) electronically; and</p> <p>(d) sold in predetermined units or dollars that decline:</p> <p>(i) by a known amount; and</p> <p>(ii) with use.</p> <p>(91) (a) “Prepared food” means:</p> <p>(i) food:</p> <p>(A) sold in a heated state; or</p> <p>(B) heated by a seller;</p> <p>(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or</p> <p>(iii) except as provided in Subsection (91)(c), food sold with an eating utensil provided by the seller, including a:</p> <p>(A) plate;</p> <p>(B) knife;</p> <p>(C) fork;</p> <p>(D) spoon;</p> <p>(E) glass;</p> <p>(F) cup;</p> <p>(G) napkin; or</p> <p>(H) straw.</p> <p>(b) “Prepared food” does not include:</p> <p>(i) food that a seller only:</p> <p>(A) cuts;</p> <p>(B) repackages; or</p>	<p>(C) pasteurizes; or</p> <p>(ii) (A) the following:</p> <p>(I) raw egg;</p> <p>(II) raw fish;</p> <p>(III) raw meat;</p> <p>(IV) raw poultry; or</p> <p>(V) a food containing an item described in Subsections (91)(b)(ii)(A)(I) through (IV); and</p> <p>(B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food and Drug Administration’s Food Code that a consumer cook the items described in Subsection (91)(b)(ii)(A) to prevent food borne illness; or</p> <p>(iii) the following if sold without eating utensils provided by the seller:</p> <p>(A) food and food ingredients sold by a seller if the seller’s proper primary classification under the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, is manufacturing in Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;</p> <p>(B) food and food ingredients sold in an unheated state:</p> <p>(I) by weight or volume; and</p> <p>(II) as a single item; or</p> <p>(C) a bakery item, including:</p> <p>(I) a bagel;</p> <p>(II) a bar;</p> <p>(III) a biscuit;</p> <p>(IV) bread;</p> <p>(V) a bun;</p> <p>(VI) a cake;</p> <p>(VII) a cookie;</p> <p>(VIII) a croissant;</p> <p>(IX) a danish;</p> <p>(X) a donut;</p> <p>(XI) a muffin;</p> <p>(XII) a pastry;</p> <p>(XIII) a pie;</p> <p>(XIV) a roll;</p> <p>(XV) a tart;</p> <p>(XVI) a torte; or</p> <p>(XVII) a tortilla.</p> <p>(c) An eating utensil provided by the seller does not include the following used to transport the food:</p> <p>(i) a container; or</p> <p>(ii) packaging.</p>
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(92) “Prescription” means an order, formula, or recipe that is issued:

- (a) (i) orally;
- (ii) in writing;
- (iii) electronically; or
- (iv) by any other manner of transmission; and

(b) by a licensed practitioner authorized by the laws of a state.

(93) (a) Except as provided in Subsection (93)(b)(ii) or (iii), “prewritten computer software” means computer software that is not designed and developed:

(i) by the author or other creator of the computer software; and

(ii) to the specifications of a specific purchaser.

(b) “Prewritten computer software” includes:

(i) a prewritten upgrade to computer software if the prewritten upgrade to the computer software is not designed and developed:

(A) by the author or other creator of the computer software; and

(B) to the specifications of a specific purchaser;

(ii) computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or

(iii) except as provided in Subsection (93)(c), prewritten computer software or a prewritten portion of prewritten computer software:

(A) that is modified or enhanced to any degree; and

(B) if the modification or enhancement described in Subsection (93)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.

(c) “Prewritten computer software” does not include a modification or enhancement described in Subsection (93)(b)(iii) if the charges for the modification or enhancement are:

(i) reasonable; and

(ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the invoice or other statement of price provided to the purchaser at the time of sale or later, as demonstrated by:

(A) the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes;

(B) a preponderance of the facts and circumstances at the time of the transaction; and

(C) the understanding of all of the parties to the transaction.

(94) (a) “Private communications service” means a telecommunications service:

(i) that entitles a customer to exclusive or priority use of one or more communications channels between or among termination points; and

(ii) regardless of the manner in which the one or more communications channels are connected.

(b) “Private communications service” includes the following provided in connection with the use of one or more communications channels:

(i) an extension line;

(ii) a station;

(iii) switching capacity; or

(iv) another associated service that is provided in connection with the use of one or more communications channels as defined in Section 59-12-215.

(95) (a) Except as provided in Subsection (95)(b), “product transferred electronically” means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.

(b) “Product transferred electronically” does not include:

(i) an ancillary service;

(ii) computer software; or

(iii) a telecommunications service.

(96) (a) “Prosthetic device” means a device that is worn on or in the body to:

(i) artificially replace a missing portion of the body;

(ii) prevent or correct a physical deformity or physical malfunction; or

(iii) support a weak or deformed portion of the body.

(b) “Prosthetic device” includes:

(i) parts used in the repairs or renovation of a prosthetic device;

(ii) replacement parts for a prosthetic device;

(iii) a dental prosthesis; or

(iv) a hearing aid.

(c) “Prosthetic device” does not include:

(i) corrective eyeglasses; or

(ii) contact lenses.

(97) (a) “Protective equipment” means an item:

(i) for human wear; and

(ii) that is:

(A) designed as protection:

(I) to the wearer against injury or disease; or

(II) against damage or injury of other persons or property; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute “protective equipment”; and

(ii) that are consistent with the list of items that constitute “protective equipment” under the agreement.

(98) (a) For purposes of Subsection 59-12-104(41), “publication” means any written or printed matter, other than a photocopy:

(i) regardless of:

(A) characteristics;

(B) copyright;

(C) form;

(D) format;

(E) method of reproduction; or

(F) source; and

(ii) made available in printed or electronic format.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term “photocopy.”

(99) (a) “Purchase price” and “sales price” mean the total amount of consideration:

(i) valued in money; and

(ii) for which tangible personal property, a product transferred electronically, or services are:

(A) sold;

(B) leased; or

(C) rented.

(b) “Purchase price” and “sales price” include:

(i) the seller’s cost of the tangible personal property, a product transferred electronically, or services sold;

(ii) expenses of the seller, including:

(A) the cost of materials used;

(B) a labor cost;

(C) a service cost;

(D) interest;

(E) a loss;

(F) the cost of transportation to the seller; or

(G) a tax imposed on the seller;

(iii) a charge by the seller for any service necessary to complete the sale; or

(iv) consideration a seller receives from a person other than the purchaser if:

(A) (I) the seller actually receives consideration from a person other than the purchaser; and

(II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and

(D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and

(Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

(II) the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, except that a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount; or

(III) the price reduction or discount is identified as a third party price reduction or discount on the:

(Aa) invoice the purchaser receives; or

(Bb) certificate, coupon, or other documentation the purchaser presents.

(c) “Purchase price” and “sales price” do not include:

(i) a discount:

(A) in a form including:

(I) cash;

(II) term; or

(III) coupon;

(B) that is allowed by a seller;

(C) taken by a purchaser on a sale; and

(D) that is not reimbursed by a third party; or

(ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of sale or later, as demonstrated by the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes, by a preponderance of the facts and circumstances at the time of the transaction, and by the understanding of all of the parties to the transaction:

(A) the following from credit extended on the sale of tangible personal property or services:

(I) a carrying charge;

- (II) a financing charge; or
- (III) an interest charge;
- (B) a delivery charge;
- (C) an installation charge;
- (D) a manufacturer rebate on a motor vehicle; or
- (E) a tax or fee legally imposed directly on the consumer.

(100) "Purchaser" means a person to whom:

- (a) a sale of tangible personal property is made;
- (b) a product is transferred electronically; or
- (c) a service is furnished.

(101) "Qualifying enterprise data center" means an establishment that will:

(a) own and operate a data center facility that will house a group of networked server computers in one physical location in order to centralize the dissemination, management, and storage of data and information;

(b) be located in the state;

(c) be a new operation constructed on or after July 1, 2016;

(d) consist of one or more buildings that total 150,000 or more square feet;

(e) be owned or leased by:

(i) the establishment; or

(ii) a person under common ownership, as defined in Section 59-7-101, of the establishment; and

(f) be located on one or more parcels of land that are owned or leased by:

(i) the establishment; or

(ii) a person under common ownership, as defined in Section 59-7-101, of the establishment.

(102) "Regularly rented" means:

(a) rented to a guest for value three or more times during a calendar year; or

(b) advertised or held out to the public as a place that is regularly rented to guests for value.

(103) "Rental" ~~is as~~ means the same as that term is defined in Subsection (59).

(104) (a) Except as provided in Subsection (104)(b), "repairs or renovations of tangible personal property" means:

(i) a repair or renovation of tangible personal property that is not permanently attached to real property; or

(ii) attaching tangible personal property or a product transferred electronically to other tangible personal property or detaching tangible personal property or a product transferred electronically from other tangible personal property if:

(A) the other tangible personal property to which the tangible personal property or product transferred electronically is attached or from which the tangible personal property or product transferred electronically is detached is not permanently attached to real property; and

(B) the attachment of tangible personal property or a product transferred electronically to other tangible personal property or detachment of tangible personal property or a product transferred electronically from other tangible personal property is made in conjunction with a repair or replacement of tangible personal property or a product transferred electronically.

(b) "Repairs or renovations of tangible personal property" does not include:

(i) attaching prewritten computer software to other tangible personal property if the other tangible personal property to which the prewritten computer software is attached is not permanently attached to real property; or

(ii) detaching prewritten computer software from other tangible personal property if the other tangible personal property from which the prewritten computer software is detached is not permanently attached to real property.

(105) "Research and development" means the process of inquiry or experimentation aimed at the discovery of facts, devices, technologies, or applications and the process of preparing those devices, technologies, or applications for marketing.

(106) (a) "Residential telecommunications services" means a telecommunications service or an ancillary service that is provided to an individual for personal use:

(i) at a residential address; or

(ii) at an institution, including a nursing home or a school, if the telecommunications service or ancillary service is provided to and paid for by the individual residing at the institution rather than the institution.

(b) For purposes of Subsection (106)(a)(i), a residential address includes an:

(i) apartment; or

(ii) other individual dwelling unit.

(107) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

~~(109)~~ (108) (a) "Retailer" means any person engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

~~(108)~~ (109) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

- (a) resale;
- (b) sublease; or
- (c) subrent.

(110) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) "Sale" includes:

- (i) installment and credit sales;
- (ii) any closed transaction constituting a sale;
- (iii) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;
- (iv) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(111) "Sale at retail" [~~is as~~] means the same as that term is defined in Subsection [~~(108)~~] (109).

(112) "Sale-leaseback transaction" means a transaction by which title to tangible personal property or a product transferred electronically that is subject to a tax under this chapter is transferred:

- (a) by a purchaser-lessee;
- (b) to a lessor;
- (c) for consideration; and
- (d) if:

(i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase of the tangible personal property or product transferred electronically;

(ii) the sale of the tangible personal property or product transferred electronically to the lessor is intended as a form of financing:

(A) for the tangible personal property or product transferred electronically; and

(B) to the purchaser-lessee; and

(iii) in accordance with generally accepted accounting principles, the purchaser-lessee is required to:

(A) capitalize the tangible personal property or product transferred electronically for financial reporting purposes; and

(B) account for the lease payments as payments made under a financing arrangement.

(113) "Sales price" [~~is as~~] means the same as that term is defined in Subsection (99).

(114) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

(i) sales that are directly related to the school's educational functions or activities including:

(A) the sale of:

- (I) textbooks;
- (II) textbook fees;
- (III) laboratory fees;
- (IV) laboratory supplies; or
- (V) safety equipment;

(B) the sale of a uniform, protective equipment, or sports or recreational equipment that:

(I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and

(II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(C) sales of the following if the net or gross revenues generated by the sales are deposited into a school district fund or school fund dedicated to school meals:

- (I) food and food ingredients; or
- (II) prepared food; or

(D) transportation charges for official school activities; or

(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

(b) "Sales relating to schools" does not include:

(i) bookstore sales of items that are not educational materials or supplies;

(ii) except as provided in Subsection (114)(a)(i)(B):

- (A) clothing;
- (B) clothing accessories or equipment;
- (C) protective equipment; or
- (D) sports or recreational equipment; or

(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:

- (A) other than a:
 - (I) school;

(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

(III) nonprofit association authorized by a school board or a governing body of a private school to

organize and direct a competitive secondary school activity; and

(B) that is required to collect sales and use taxes under this chapter.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term “passed through.”

(115) For purposes of this section and Section 59-12-104, “school”:

(a) means:

(i) an elementary school or a secondary school that:

(A) is a:

(I) public school; or

(II) private school; and

(B) provides instruction for one or more grades kindergarten through 12; or

(ii) a public school district; and

(b) includes the Electronic High School as defined in Section 53A-15-1002.

(116) “Seller” means a person that makes a sale, lease, or rental of:

(a) tangible personal property;

(b) a product transferred electronically; or

(c) a service.

(117) (a) “Semiconductor fabricating, processing, research, or development materials” means tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor.

(b) “Semiconductor fabricating, processing, research, or development materials” includes:

(i) parts used in the repairs or renovations of tangible personal property or a product transferred electronically described in Subsection (117)(a); or

(ii) a chemical, catalyst, or other material used to:

(A) produce or induce in a semiconductor a:

(I) chemical change; or

(II) physical change;

(B) remove impurities from a semiconductor; or

(C) improve the marketable condition of a semiconductor.

(118) “Senior citizen center” means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(119) (a) Subject to Subsections (119)(b) and (c), “short-term lodging consumable” means tangible personal property that:

(i) a business that provides accommodations and services described in Subsection 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services to a purchaser;

(ii) is intended to be consumed by the purchaser; and

(iii) is:

(A) included in the purchase price of the accommodations and services; and

(B) not separately stated on an invoice, bill of sale, or other similar document provided to the purchaser.

(b) “Short-term lodging consumable” includes:

(i) a beverage;

(ii) a brush or comb;

(iii) a cosmetic;

(iv) a hair care product;

(v) lotion;

(vi) a magazine;

(vii) makeup;

(viii) a meal;

(ix) mouthwash;

(x) nail polish remover;

(xi) a newspaper;

(xii) a notepad;

(xiii) a pen;

(xiv) a pencil;

(xv) a razor;

(xvi) saline solution;

(xvii) a sewing kit;

(xviii) shaving cream;

(xix) a shoe shine kit;

(xx) a shower cap;

(xxi) a snack item;

(xxii) soap;

(xxiii) toilet paper;

(xxiv) a toothbrush;

(xxv) toothpaste; or

(xxvi) an item similar to Subsections (119)(b)(i) through (xxv) as the commission may provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) "Short-term lodging consumable" does not include:

(i) tangible personal property that is cleaned or washed to allow the tangible personal property to be reused; or

(ii) a product transferred electronically.

(120) "Simplified electronic return" means the electronic return:

(a) described in Section 318(C) of the agreement; and

(b) approved by the governing board of the agreement.

(121) "Solar energy" means the sun used as the sole source of energy for producing electricity.

(122) (a) "Sports or recreational equipment" means an item:

(i) designed for human use; and

(ii) that is:

(A) worn in conjunction with:

(I) an athletic activity; or

(II) a recreational activity; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "sports or recreational equipment"; and

(ii) that are consistent with the list of items that constitute "sports or recreational equipment" under the agreement.

(123) "State" means the state of Utah, its departments, and agencies.

(124) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(125) (a) Except as provided in Subsection (125)(d) or (e), "tangible personal property" means personal property that:

(i) may be:

(A) seen;

(B) weighed;

(C) measured;

(D) felt; or

(E) touched; or

(ii) is in any manner perceptible to the senses.

(b) "Tangible personal property" includes:

(i) electricity;

(ii) water;

(iii) gas;

(iv) steam; or

(v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.

(c) "Tangible personal property" includes the following regardless of whether the item is attached to real property:

(i) a dishwasher;

(ii) a dryer;

(iii) a freezer;

(iv) a microwave;

(v) a refrigerator;

(vi) a stove;

(vii) a washer; or

(viii) an item similar to Subsections (125)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) "Tangible personal property" does not include a product that is transferred electronically.

(e) "Tangible personal property" does not include the following if attached to real property, regardless of whether the attachment to real property is only through a line that supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) a hot water heater;

(ii) a water filtration system; or

(iii) a water softener system.

(126) (a) "Telecommunications enabling or facilitating equipment, machinery, or software" means an item listed in Subsection (126)(b) if that item is purchased or leased primarily to enable or facilitate one or more of the following to function:

(i) telecommunications switching or routing equipment, machinery, or software; or

(ii) telecommunications transmission equipment, machinery, or software.

(b) The following apply to Subsection (126)(a):

- (i) a pole;
- (ii) software;
- (iii) a supplementary power supply;
- (iv) temperature or environmental equipment or machinery;
- (v) test equipment;
- (vi) a tower; or
- (vii) equipment, machinery, or software that functions similarly to an item listed in Subsections (126)(b)(i) through (vi) as determined by the commission by rule made in accordance with Subsection (126)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (126)(b)(i) through (vi).

(127) “Telecommunications equipment, machinery, or software required for 911 service” means equipment, machinery, or software that is required to comply with 47 C.F.R. Sec. 20.18.

(128) “Telecommunications maintenance or repair equipment, machinery, or software” means equipment, machinery, or software purchased or leased primarily to maintain or repair one or more of the following, regardless of whether the equipment, machinery, or software is purchased or leased as a spare part or as an upgrade or modification to one or more of the following:

- (a) telecommunications enabling or facilitating equipment, machinery, or software;
- (b) telecommunications switching or routing equipment, machinery, or software; or
- (c) telecommunications transmission equipment, machinery, or software.

(129) (a) “Telecommunications service” means the electronic conveyance, routing, or transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

- (b) “Telecommunications service” includes:
 - (i) an electronic conveyance, routing, or transmission with respect to which a computer processing application is used to act:
 - (A) on the code, form, or protocol of the content;
 - (B) for the purpose of electronic conveyance, routing, or transmission; and
 - (C) regardless of whether the service:
 - (I) is referred to as voice over Internet protocol service; or
 - (II) is classified by the Federal Communications Commission as enhanced or value added;
 - (ii) an 800 service;

- (iii) a 900 service;
- (iv) a fixed wireless service;
- (v) a mobile wireless service;
- (vi) a postpaid calling service;
- (vii) a prepaid calling service;
- (viii) a prepaid wireless calling service; or
- (ix) a private communications service.
- (c) “Telecommunications service” does not include:
 - (i) advertising, including directory advertising;
 - (ii) an ancillary service;
 - (iii) a billing and collection service provided to a third party;
 - (iv) a data processing and information service if:
 - (A) the data processing and information service allows data to be:
 - (I) (Aa) acquired;
 - (Bb) generated;
 - (Cc) processed;
 - (Dd) retrieved; or
 - (Ee) stored; and
 - (II) delivered by an electronic transmission to a purchaser; and
 - (B) the purchaser’s primary purpose for the underlying transaction is the processed data or information;
 - (v) installation or maintenance of the following on a customer’s premises:
 - (A) equipment; or
 - (B) wiring;
 - (vi) Internet access service;
 - (vii) a paging service;
 - (viii) a product transferred electronically, including:
 - (A) music;
 - (B) reading material;
 - (C) a ring tone;
 - (D) software; or
 - (E) video;
 - (ix) a radio and television audio and video programming service:
 - (A) regardless of the medium; and
 - (B) including:
 - (I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;

(II) cable service as defined in 47 U.S.C. Sec. 522(6); or

(III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;

(x) a value-added nonvoice data service; or

(xi) tangible personal property.

(130) (a) "Telecommunications service provider" means a person that:

(i) owns, controls, operates, or manages a telecommunications service; and

(ii) engages in an activity described in Subsection (130)(a)(i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (130)(a) is a telecommunications service provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

(ii) the telecommunications service that the person owns, controls, operates, or manages.

(131) (a) "Telecommunications switching or routing equipment, machinery, or software" means an item listed in Subsection (131)(b) if that item is purchased or leased primarily for switching or routing:

(i) an ancillary service;

(ii) data communications;

(iii) voice communications; or

(iv) telecommunications service.

(b) The following apply to Subsection (131)(a):

(i) a bridge;

(ii) a computer;

(iii) a cross connect;

(iv) a modem;

(v) a multiplexer;

(vi) plug in circuitry;

(vii) a router;

(viii) software;

(ix) a switch; or

(x) equipment, machinery, or software that functions similarly to an item listed in Subsections (131)(b)(i) through (ix) as determined by the commission by rule made in accordance with Subsection (131)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (131)(b)(i) through (ix).

(132) (a) "Telecommunications transmission equipment, machinery, or software" means an item listed in Subsection (132)(b) if that item is purchased or leased primarily for sending, receiving, or transporting:

(i) an ancillary service;

(ii) data communications;

(iii) voice communications; or

(iv) telecommunications service.

(b) The following apply to Subsection (132)(a):

(i) an amplifier;

(ii) a cable;

(iii) a closure;

(iv) a conduit;

(v) a controller;

(vi) a duplexer;

(vii) a filter;

(viii) an input device;

(ix) an input/output device;

(x) an insulator;

(xi) microwave machinery or equipment;

(xii) an oscillator;

(xiii) an output device;

(xiv) a pedestal;

(xv) a power converter;

(xvi) a power supply;

(xvii) a radio channel;

(xviii) a radio receiver;

(xix) a radio transmitter;

(xx) a repeater;

(xxi) software;

(xxii) a terminal;

(xxiii) a timing unit;

(xxiv) a transformer;

(xxv) a wire; or

(xxvi) equipment, machinery, or software that functions similarly to an item listed in Subsections (132)(b)(i) through (xxv) as determined by the commission by rule made in accordance with Subsection (132)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (132)(b)(i) through (xxv).

(133) (a) "Textbook for a higher education course" means a textbook or other printed material that is required for a course:

(i) offered by an institution of higher education; and

(ii) that the purchaser of the textbook or other printed material attends or will attend.

(b) "Textbook for a higher education course" includes a textbook in electronic format.

(134) "Tobacco" means:

(a) a cigarette;

(b) a cigar;

(c) chewing tobacco;

(d) pipe tobacco; or

(e) any other item that contains tobacco.

(135) "Unassisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device.

(136) (a) "Use" means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to the ownership or the leasing of that tangible personal property, product transferred electronically, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of tangible personal property, a product transferred electronically, or a service in the regular course of business and held for resale.

(137) "Value-added nonvoice data service" means a service:

(a) that otherwise meets the definition of a telecommunications service except that a computer processing application is used to act primarily for a purpose other than conveyance, routing, or transmission; and

(b) with respect to which a computer processing application is used to act on data or information:

(i) code;

(ii) content;

(iii) form; or

(iv) protocol.

(138) (a) Subject to Subsection (138)(b), "vehicle" means the following that are required to be titled, registered, or titled and registered:

(i) an aircraft as defined in Section 72-10-102;

(ii) a vehicle as defined in Section 41-1a-102;

(iii) an off-highway vehicle as defined in Section 41-22-2; or

(iv) a vessel as defined in Section 41-1a-102.

(b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

(i) a vehicle described in Subsection (138)(a); or

(ii) (A) a locomotive;

(B) a freight car;

(C) railroad work equipment; or

(D) other railroad rolling stock.

(139) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection (138).

(140) (a) "Vertical service" means an ancillary service that:

(i) is offered in connection with one or more telecommunications services; and

(ii) offers an advanced calling feature that allows a customer to:

(A) identify a caller; and

(B) manage multiple calls and call connections.

(b) "Vertical service" includes an ancillary service that allows a customer to manage a conference bridging service.

(141) (a) "Voice mail service" means an ancillary service that enables a customer to receive, send, or store a recorded message.

(b) "Voice mail service" does not include a vertical service that a customer is required to have in order to utilize a voice mail service.

(142) (a) Except as provided in Subsection (142)(b), "waste energy facility" means a facility that generates electricity:

(i) using as the primary source of energy waste materials that would be placed in a landfill or refuse pit if it were not used to generate electricity, including:

(A) tires;

(B) waste coal;

(C) oil shale; or

(D) municipal solid waste; and

(ii) in amounts greater than actually required for the operation of the facility.

(b) "Waste energy facility" does not include a facility that incinerates:

(i) hospital waste as defined in 40 C.F.R. 60.51c; or

(ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

(143) "Watercraft" means a vessel as defined in Section 73-18-2.

(144) "Wind energy" means wind used as the sole source of energy to produce electricity.

(145) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic location by the United States Postal Service.

Section 29. Section 59-12-703 is amended to read:

59-12-703. Opinion question election -- Base -- Rate -- Imposition of tax --

Expenditure of revenues -- Administration -- Enactment or repeal of tax -- Effective date -- Notice requirements.

(1) (a) Subject to the other provisions of this section, a county legislative body may submit an opinion question to the residents of that county, by majority vote of all members of the legislative body, so that each resident of the county, except residents in municipalities that have already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, has an opportunity to express the resident's opinion on the imposition of a local sales and use tax of .1% on the transactions described in Subsection 59-12-103(1) located within the county, to:

(i) fund cultural facilities, recreational facilities, and zoological facilities, botanical organizations, cultural organizations, and zoological organizations, and rural radio stations, in that county; or

(ii) provide funding for a botanical organization, cultural organization, or zoological organization to pay for use of a bus or facility rental if that use of the bus or facility rental is in furtherance of the botanical organization's, cultural organization's, or zoological organization's primary purpose.

(b) The opinion question required by this section shall state:

"Shall (insert the name of the county), Utah, be authorized to impose a .1% sales and use tax for (list the purposes for which the revenue collected from the sales and use tax shall be expended)?"

(c) A county legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104;

(ii) sales and uses within a municipality that has already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities; and

(iii) except as provided in Subsection (1)(e), amounts paid or charged for food and food ingredients.

(d) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(e) A county legislative body imposing a tax under this section shall impose the tax on amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(f) The election shall follow the procedures outlined in Title 11, Chapter 14, Local Government Bonding Act.

(2) (a) If the county legislative body determines that a majority of the county's registered voters voting on the imposition of the tax have voted in favor of the imposition of the tax as prescribed in Subsection (1), the county legislative body may impose the tax by a majority vote of all members of the legislative body on the transactions:

(i) described in Subsection (1); and

(ii) within the county, including the cities and towns located in the county, except those cities and towns that have already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities.

(b) A county legislative body may revise county ordinances to reflect statutory changes to the distribution formula or eligible recipients of revenue generated from a tax imposed under Subsection (2)(a) without submitting an opinion question to residents of the county.

(3) Subject to Section 59-12-704, revenue collected from a tax imposed under Subsection (2) shall be expended:

(a) to fund cultural facilities, recreational facilities, and zoological facilities located within the county or a city or town located in the county, except a city or town that has already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities;

(b) to fund ongoing operating expenses of:

(i) recreational facilities described in Subsection (3)(a);

(ii) botanical organizations, cultural organizations, and zoological organizations within the county; and

(iii) rural radio stations within the county; and

(c) as stated in the opinion question described in Subsection (1).

(4) (a) A tax authorized under this part shall be:

(i) except as provided in Subsection (4)(b), administered, collected, and enforced in accordance with:

(A) the same procedures used to administer, collect, and enforce the tax under:

(I) Part 1, Tax Collection; or

(II) Part 2, Local Sales and Use Tax Act; and

(B) Chapter 1, General Taxation Policies; and

(ii) levied for a period of 10 years and may be reauthorized at the end of the ten-year period in accordance with this section.

(b) A tax under this part is not subject to Subsections 59-12-205(2) through (7).

(5) (a) For purposes of this Subsection (5):

(i) “Annexation” means an annexation to a county under Title 17, Chapter 2, Part 2, County Annexation.

(ii) “Annexing area” means an area that is annexed into a county.

(b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a county enacts or repeals a tax under this part, the enactment or repeal shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(b)(ii) from the county.

(ii) The notice described in Subsection (5)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax under this part;

(B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

(D) if the county enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the tax.

(c) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.

(ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.

(d) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(b)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term “catalogue sale.”

(e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this part for an annexing area, the enactment or repeal shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(e)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (5)(e)(i)(B) shall state:

(A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or repeal of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and

(D) the rate of the tax described in Subsection (5)(e)(ii)(A).

(f) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.

(ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is [rendered] produced on or after the effective date of the repeal of the tax imposed under this section.

(g) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(e)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term “catalogue sale.”

Section 30. Section 62A-2-120 is amended to read:

62A-2-120. Background check -- Direct access to children or vulnerable adults.

(1) As used in this section:

(a) “Applicant” means:

(i) a person described in Section 62A-2-101;

(ii) an individual who:

(A) is associated with a licensee; and

(B) has or will likely have direct access to a child or a vulnerable adult;

(iii) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;

(iv) a department contractor; or

(v) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and:

(A) resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or

(B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).

(b) "Application" means a background screening application to the office.

(c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.

(d) "Personal identifying information" means:

(i) current name, former names, nicknames, and aliases;

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

(v) driver license number or other government-issued identification number;

(vi) social security number;

(vii) only for applicants who are 18 years of age or older, fingerprints, in a form specified by the office; and

(viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) Except as provided in Subsection [(14)] (13), an applicant shall submit the following to the office:

(i) personal identifying information;

(ii) a fee established by the office under Section 63J-1-504; and

(iii) a form, specified by the office, for consent for:

(A) an initial background check upon submission of the information described under Subsection (2)(a);

(B) a background check at the applicant's annual renewal;

(C) a background check when the office determines that reasonable cause exists; and

(D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).

(b) In addition to the requirements described in Subsection (2)(a), if an applicant spent time outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (2)(a) is submitted to the office, the office may require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant spent outside of the United States or its territories.

(3) The office:

(a) shall perform the following duties as part of a background check of an applicant:

(i) check state and regional criminal background databases for the applicant's criminal history by:

(A) submitting personal identifying information to the Bureau for a search; or

(B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;

(ii) submit the applicant's personal identifying information and fingerprints to the Bureau for a criminal history search of applicable national criminal background databases;

(iii) search the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006;

(iv) search the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(v) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 78A-6-323; and

(vi) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

(b) shall conduct a background check of an applicant for an initial background check upon submission of the information described under Subsection (2)(a);

(c) may conduct all or portions of a background check of an applicant, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) for an annual renewal; or

(ii) when the office determines that reasonable cause exists;

(d) may submit an applicant's personal identifying information, including fingerprints, to the Bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;

(e) shall track the status of an approved applicant under this section to ensure that an approved applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:

(i) more than one license;

(ii) direct access to a child or a vulnerable adult in more than one human services program; or

(iii) direct access to a child or a vulnerable adult under a contract with the department;

(f) shall track the status of each license and each individual with direct access to a child or a vulnerable adult and notify the Bureau when the license has expired or the individual's direct access to a child or a vulnerable adult has ceased;

(g) shall adopt measures to strictly limit access to personal identifying information solely to the office

employees responsible for processing the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3); and

(h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.

(4) (a) With the personal identifying information the office submits to the Bureau under Subsection (3), the Bureau shall check against state and regional criminal background databases for the applicant's criminal history.

(b) With the personal identifying information and fingerprints the office submits to the Bureau under Subsection (3), the Bureau shall check against national criminal background databases for the applicant's criminal history.

(c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the Bureau under Subsection (3)(d), the Bureau shall:

(i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and

(ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.

(d) The Bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

(i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and

(ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.

(e) The Bureau shall notify and release to the office all information of criminal activity associated with the applicant.

(f) Upon notice from the office that a license has expired or an individual's direct access to a child or a vulnerable adult has ceased, the Bureau shall:

(i) discard and destroy any retained fingerprints; and

(ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.

(5) (a) After conducting the background check described in Subsections (3) and (4), the office shall

deny an application to an applicant who, within 10 years before the day on which the applicant submits information to the office under Subsection (2) for a background check, has been convicted of any of the following, regardless of whether the offense is a felony, a misdemeanor, or an infraction:

(i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;

(ii) a violation of any pornography law, including sexual exploitation of a minor;

(iii) prostitution;

(iv) an offense included in:

(A) Title 76, Chapter 5, Offenses Against the Person;

(B) Section 76-5b-201, Sexual Exploitation of a Minor; or

(C) Title 76, Chapter 7, Offenses Against the Family;

(v) aggravated arson, as described in Section 76-6-103;

(vi) aggravated burglary, as described in Section 76-6-203;

(vii) aggravated robbery, as described in Section 76-6-302;

(viii) identity fraud crime, as described in Section 76-6-1102; or

(ix) a conviction for a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (5)(a)(i) through (viii).

(b) If the office denies an application to an applicant based on a conviction described in Subsection (5)(a), the applicant is not entitled to a comprehensive review described in Subsection (6).

(6) (a) The office shall conduct a comprehensive review of an applicant's background check if the applicant has:

(i) a conviction for any felony offense, not described in Subsection (5)(a), regardless of the date of the conviction;

(ii) a conviction for a misdemeanor offense, not described in Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the conviction is within five years before the day on which the applicant submits information to the office under Subsection (2) for a background check;

(iii) a conviction for any offense described in Subsection (5)(a) that occurred more than 10 years before the day on which the applicant submitted information under Subsection (2)(a);

(iv) pleaded no contest to or is currently subject to a plea in abeyance or diversion agreement for any offense described in Subsection (5)(a);

(v) a listing in the Department of Human Services, Division of Child and Family Services'

Licensing Information System described in Section 62A-4a-1006;

(vi) a listing in the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(vii) a record in the juvenile court of a substantiated finding of severe child abuse or neglect described in Section 78A-6-323;

(viii) a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:

(A) under 28 years of age; or

(B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a); or

(ix) a pending charge for an offense described in Subsection (5)(a).

(b) The comprehensive review described in Subsection (6)(a) shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(A) actual or threatened, nonaccidental physical or mental harm;

(B) sexual abuse;

(C) sexual exploitation; or

(D) negligent treatment;

(vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed; and

(viii) any other pertinent information.

(c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely create a risk of harm to a child or a vulnerable adult.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, to establish procedures for the comprehensive review described in this Subsection (6).

(7) Subject to Subsection (10), the office shall approve an application to an applicant who is not denied under Subsection (5), (6), or (13).

(8) (a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant under Subsection (12), without requiring that the applicant be directly supervised, if the office:

(i) is awaiting the results of the criminal history search of national criminal background databases; and

(ii) would otherwise approve an application of the applicant under Subsection (7).

(b) Upon receiving the results of the criminal history search of national criminal background databases, the office shall approve or deny the application of the applicant in accordance with Subsections (5) through (7).

(9) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult unless, subject to Subsection (10):

(a) the individual is associated with the licensee or department contractor and:

(i) the individual's application is approved by the office under this section;

(ii) the individual's application is conditionally approved by the office under Subsection (8); or

(iii) (A) the individual has submitted the background check information described in Subsection (2) to the office;

(B) the office has not determined whether to approve the applicant's application; and

(C) the individual is directly supervised by an individual who has a current background screening approval issued by the office under this section and is associated with the licensee or department contractor;

(b) (i) the individual is associated with the licensee or department contractor;

(ii) the individual has a current background screening approval issued by the office under this section;

(iii) one of the following circumstances, that the office has not yet reviewed under Subsection (6), applies to the individual:

(A) the individual was charged with an offense described in Subsection (5)(a);

(B) the individual is listed in the Licensing Information System, described in Section 62A-4a-1006;

(C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation database, described in Section 62A-3-311.1;

(D) the individual has a record in the juvenile court of a substantiated finding of severe child

abuse or neglect, described in Section 78A-6-323; or

(E) the individual has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or a misdemeanor; and

(iv) the individual is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this section; and

(B) is associated with the licensee or department contractor;

(c) the individual:

(i) is not associated with the licensee or department contractor; and

(ii) is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this section; and

(B) is associated with the licensee or department contractor;

(d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;

(e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult; or

(f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit.

(10) An individual may not have direct access to a child or a vulnerable adult if the individual is prohibited by court order from having that access.

(11) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have supervised or unsupervised direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.

(12) (a) Within 30 days after the day on which the office receives the background check information for an applicant, the office shall give written notice to:

(i) the applicant, and the licensee or department contractor, of the office's decision regarding the background check and findings; and

(ii) the applicant of any convictions and potentially disqualifying charges and adjudications found in the search.

(b) With the notice described in Subsection (12)(a), the office shall also give the applicant the details of any comprehensive review conducted under Subsection (6).

(c) If the notice under Subsection (12)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection 62A-2-111(2), request a hearing in the department's Office of

Administrative Hearings, to challenge the office's decision.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

(i) defining procedures for the challenge of its background check decision described in Subsection (12)(c); and

(ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

(13) This section does not apply to a department contractor, or an applicant for an initial license, or license renewal, regarding a substance abuse program that provides services to adults only.

(14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody, the office shall:

(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (14)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(b) The requirements described in Subsection (14)(a) do not apply to the extent that:

(i) federal law or rule permits otherwise; or

(ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:

(A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

(B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (5).

(c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a license renewal to a prospective foster parent or a prospective adoptive parent if the applicant has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Section 76-5-109;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-109.1;

(C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

(D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

(E) aggravated murder, as described in Section 76-5-202;

(F) murder, as described in Section 76-5-203;

(G) manslaughter, as described in Section 76-5-205;

(H) child abuse homicide, as described in Section 76-5-208;

(I) homicide by assault, as described in Section 76-5-209;

(J) kidnapping, as described in Section 76-5-301;

(K) child kidnapping, as described in Section 76-5-301.1;

(L) aggravated kidnapping, as described in Section 76-5-302;

(M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

(N) sexual exploitation of a minor, as described in Section 76-5b-201;

(O) aggravated arson, as described in Section 76-6-103;

(P) aggravated burglary, as described in Section 76-6-203;

(Q) aggravated robbery, as described in Section 76-6-302; or

(R) domestic violence, as described in Section 77-36-1; or

(ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).

(d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:

(i) aggravated assault, as described in Section 76-5-103;

(ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

(iii) mayhem, as described in Section 76-5-105;

(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

Section 31. Section 62A-4a-208 is amended to read:

62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.

(1) As used in this section:

(a) "Complainant" means a person who initiates a complaint with the ombudsman.

(b) "Ombudsman" means the child protection ombudsman appointed pursuant to this section.

(2) (a) There is created within the department the position of child protection ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive director.

(b) The ombudsman shall be:

(i) an individual of recognized executive and administrative capacity;

(ii) selected solely with regard to qualifications and fitness to discharge the duties of ombudsman; and

(iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.

(c) The ombudsman shall devote full time to the duties of office.

(3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a complaint from any person, investigate whether an act or omission of the division with respect to a particular child:

(i) is contrary to statute, rule, or policy;

(ii) places a child's health or safety at risk;

(iii) is made without an adequate statement of reason; or

(iv) is based on irrelevant, immaterial, or erroneous grounds.

(b) The ombudsman may decline to investigate any complaint. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the division of the decision and of the reasons for that decision.

(c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

(4) The ombudsman shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern the following:

- (i) receiving and processing complaints;
 - (ii) notifying complainants and the division regarding a decision to investigate or to decline to investigate a complaint;
 - (iii) prioritizing workload;
 - (iv) maximum time within which investigations shall be completed;
 - (v) conducting investigations;
 - (vi) notifying complainants and the division regarding the results of investigations; and
 - (vii) making recommendations based on the findings and results of recommendations;
- (b) report findings and recommendations in writing to the complainant and the division, in accordance with the provisions of this section;
- (c) within appropriations from the Legislature, employ staff as may be necessary to carry out the ombudsman's duties under this part;
- (d) provide information regarding the role, duties, and functions of the ombudsman to public agencies, private entities, and individuals;
- (e) annually report to the:
- (i) Child Welfare Legislative Oversight Panel;
 - (ii) governor;
 - (iii) Division of Child and Family Services;
 - (iv) executive director of the department; and
 - (v) director of the division; and
- (f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.

(5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.

(b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.

(c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.

(d) The ombudsman shall immediately notify the division if the ombudsman finds that a child needs protective custody, as that term is defined in Section ~~78A-6-105~~ 78A-6-301.

(e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.

(6) (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was designated by the department.

(7) (a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.

(b) The ombudsman shall make recommendations to the division if the ombudsman finds that:

- (i) a matter should be further considered by the division;
- (ii) an administrative act should be addressed, modified, or canceled;
- (iii) action should be taken by the division with regard to one of its employees; or
- (iv) any other action should be taken by the division.

Section 32. Section 62A-4a-209 is amended to read:

62A-4a-209. Emergency placement.

(1) As used in this section:

(a) "Friend" means the same as that term is defined in Subsection 78A-6-307(1)(a).

(b) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

(c) "Relative" means the same as that term is defined in Subsection 78A-6-307(1)(c).

(2) The division may use an emergency placement under Subsection 62A-4a-202.1(4)(b)(ii) when:

(a) the case worker has made the determination that:

- (i) the child's home is unsafe;
- (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

(iii) the child's custodial parent or guardian will agree to not remove the child from the home of the person that serves as the placement and not have any contact with the child until after the shelter hearing required by Section 78A-6-306;

(b) a person, with preference being given in accordance with Subsection (4), can be identified

who has the ability and is willing to provide care for the child who would otherwise be placed in shelter care, including:

(i) taking the child to medical, mental health, dental, and educational appointments at the request of the division; and

(ii) making the child available to division services and the guardian ad litem; and

(c) the person described in Subsection (2)(b) agrees to care for the child on an emergency basis under the following conditions:

(i) the person meets the criteria for an emergency placement under Subsection (3);

(ii) the person agrees to not allow the custodial parent or guardian to have any contact with the child until after the shelter hearing unless authorized by the division in writing;

(iii) the person agrees to contact law enforcement and the division if the custodial parent or guardian attempts to make unauthorized contact with the child;

(iv) the person agrees to allow the division and the child's guardian ad litem to have access to the child;

(v) the person has been informed and understands that the division may continue to search for other possible placements for long-term care, if needed;

(vi) the person is willing to assist the custodial parent or guardian in reunification efforts at the request of the division, and to follow all court orders; and

(vii) the child is comfortable with the person.

(3) Except as otherwise provided in Subsection (5), before the division places a child in an emergency placement, the division:

(a) may request the name of a reference and may contact the reference to determine the answer to the following questions:

(i) would the person identified as a reference place a child in the home of the emergency placement; and

(ii) are there any other relatives or friends to consider as a possible emergency or long-term placement for the child;

(b) shall have the custodial parent or guardian sign an emergency placement agreement form during the investigation;

(c) (i) if the emergency placement will be with a relative of the child, shall comply with the background check provisions described in Subsection (7); or

(ii) if the emergency placement will be with a person other than a noncustodial parent or a relative, shall comply with the background check provisions described in Subsection (8) for adults

living in the household where the child will be placed;

(d) shall complete a limited home inspection of the home where the emergency placement is made; and

(e) shall have the emergency placement approved by a family service specialist.

(4) (a) The following order of preference shall be applied when determining the person with whom a child will be placed in an emergency placement described in this section, provided that the person is willing, and has the ability, to care for the child:

(i) a noncustodial parent of the child in accordance with Section 78A-6-307;

(ii) a relative of the child;

(iii) subject to Subsection (4)(b), a friend designated by the custodial parent or guardian of the child; and

(iv) a shelter facility, former foster placement, or other foster placement designated by the division.

(b) Unless the division agrees otherwise, the custodial parent or guardian described in Subsection (4)(a)(iii) may designate up to two friends as a potential emergency placement.

(5) (a) The division may, pending the outcome of the investigation described in Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial parent if, based on a limited investigation, prior to making the emergency placement, the division:

(i) determines that the noncustodial parent has regular, unsupervised visitation with the child that is not prohibited by law or court order;

(ii) determines that there is not reason to believe that the child's health or safety will be endangered during the emergency placement; and

(iii) has the custodial parent or guardian sign an emergency placement agreement.

(b) Either before or after making an emergency placement with the noncustodial parent of the child, the division may conduct the investigation described in Subsection (3)(a) in relation to the noncustodial parent.

(c) Before, or within one day, excluding weekends and holidays, after a child is placed in an emergency placement with the noncustodial parent of the child, the division shall conduct a limited:

(i) background check of the noncustodial parent, pursuant to Subsection (7); and

(ii) inspection of the home where the emergency placement is made.

(6) After an emergency placement, the division caseworker must:

(a) respond to the emergency placement's calls within one hour if the custodial parents or guardians attempt to make unauthorized contact with the child or attempt to remove the child;

(b) complete all removal paperwork, including the notice provided to the custodial parents and guardians under Section 78A-6-306;

(c) contact the attorney general to schedule a shelter hearing;

(d) complete the placement procedures required in Section 78A-6-307; and

(e) continue to search for other relatives as a possible long-term placement, if needed.

(7) (a) The background check described in Subsection (3)(c)(i) shall include completion of:

(i) a name-based, Utah Bureau of Criminal Identification background check; and

(ii) a search of the Management Information System described in Section 62A-4a-1003.

(b) The division shall determine whether a person passes the background check described in this Subsection (7) pursuant to the provisions of Subsection 62A-2-120~~(13)~~(14).

(c) Notwithstanding Subsection (7)(b), the division may not place a child with an individual who is prohibited by court order from having access to that child.

(8) (a) The background check described in Subsection (3)(c)(ii) shall include completion of:

(i) a name-based, Utah Bureau of Criminal Identification background check;

(ii) a federal name-based criminal background check; and

(iii) a search of the Management Information System described in Section 62A-4a-1003.

(b) The division shall determine whether a person passes the background checks described in this Subsection (8) pursuant to the provisions of Subsection 62A-2-120.

(c) If the division denies placement of a child as a result of a name-based criminal background check described in Subsection (8)(a), and the person contests that denial, the person shall submit a complete set of fingerprints with written permission to the Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.

(d) (i) Within 15 calendar days of the name-based background checks, the division shall require a person to provide a complete set of fingerprints with written permission to the Utah Bureau of Criminal Identification for submission to the Federal Bureau of Investigation for a fingerprint-based criminal background check.

(ii) If a person fails to provide the fingerprints and written permission described in Subsection (8)(d)(i), the child shall immediately be removed from the home.

Section 33. Section 62A-5-103.5 is amended to read:

62A-5-103.5. Disbursal of public funds -- Background check of a direct service worker.

(1) For purposes of this section, "office" means the same as that term is defined in Section 62A-2-101.

(2) Public funds may not be disbursed to pay a direct service worker for personal services rendered to a person unless the office approves the direct service worker to have direct access and provide services to a child or a vulnerable adult pursuant to Section 62A-2-120.

(3) For purposes of Subsection (2), the office shall conduct a background check of a direct service worker:

(a) before public funds are disbursed to pay the direct service worker for the personal services described in Subsection (2); and

(b) using the same procedures established for a background check of an applicant for a license under Section 62A-2-120.

(4) A child who is in the legal custody of the department or any of the department's divisions may not be placed with a direct service worker unless, before the child is placed with the direct service worker, the direct service worker passes a background check, pursuant to the requirements of Subsection 62A-2-120~~(13)~~(14).

(5) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, contracts with the division to provide services:

(a) the provisions of this section are not applicable to a direct service worker employed by the public transit district; and

(b) the division may not reimburse the public transit district for services provided unless a direct service worker hired or transferred internally after July 1, 2013, by the public transit district to drive a paratransit route:

(i) is approved by the office to have direct access to children and vulnerable adults in accordance with Section 62A-2-120; and

(ii) is subject to a background check established in a statute or rule governing a public transit district or other public transit district policy.

Section 34. Section 62A-15-703 is amended to read:

62A-15-703. Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be

a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

(a) shall be a designated examiner, as defined in Subsection 62A-15-602(3); and

(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.

(4) Upon determination by the fact finder that the following circumstances clearly exist, he may order that the child be committed to the physical custody of a local mental health authority:

(a) the child has a mental illness, as defined in Subsection 62A-15-602(8)(11);

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from care and treatment by the local mental health authority; and

(e) there is no appropriate less-restrictive alternative.

(5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible, and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the person who submitted the petition for commitment, and a representative of the appropriate local mental health authority shall all receive informal notice of the date and time of the proceeding. Those parties shall also be afforded an opportunity to appear and to address the petition for commitment.

(c) The neutral and detached fact finder may, in his discretion, receive the testimony of any other person.

(d) The fact finder may allow the child to waive his right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

(i) the petition for commitment;

(ii) the admission notes;

(iii) the child's diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) When a decision for commitment is made, the neutral and detached fact finder shall inform the child and his parent or legal guardian of that decision, and of the reasons for ordering commitment at the conclusion of the hearing, and also in writing.

(iii) The neutral and detached fact finder shall state in writing the basis of his decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

(6) Absent the procedures and findings required by this section, a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection 62A-15-629(1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been satisfied.

(7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.

(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the

child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

(10) (a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition, or that of his parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).

(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:

- (i) the original petition for commitment;
- (ii) admission notes;
- (iii) diagnosis;
- (iv) physicians' orders;
- (v) progress notes;
- (vi) nursing notes; and
- (vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, his parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be

notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive his right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to his parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others.

(c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport him to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, his parent or legal guardian, the administrator of the more restrictive environment, or his designee, and the child's former treatment provider or facility.

(d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved

by the change to a more restrictive environment, the child or his representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:

(i) the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating his mental illness, or increasing the risk of harm to himself or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.

(e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.

(13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 78A-6-120. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.

(14) Even though a child has been committed to the physical custody of a local mental health authority pursuant to this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-15-704, before any treatment which may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

Section 35. Section 63A-5-602 is amended to read:

63A-5-602. Appropriation for energy efficiency measures.

(1) For purposes of this part:

(a) "Energy efficiency measures" [is-as] means the same as that term is defined in Section 63A-5-701.

(b) "Energy savings" means money not expended by a state agency as the result of energy efficiency measures.

(c) "State agency" [is-as] means the same as that term is defined in Section 63A-5-701.

(2) Except as provided under Subsection (4) and subject to future budget constraints, the Legislature may not remove energy savings from a state agency's appropriation.

(3) A state agency shall use energy savings to:

(a) fund the cost of the energy efficiency measures; and

(b) if funds are available after meeting the requirements of Subsection (3)(a), fund and implement new energy efficiency measures.

(4) The Legislature may remove energy savings if:

(a) a state agency has complied with Subsection (3)(a); and

(b) no cost effective new energy efficiency measure is available for implementation.

(5) A state agency may consult with the State Building Energy Efficiency Program manager in the Division of Facilities ~~and~~ Construction and Management regarding:

(a) the cost effectiveness of energy efficiency measures; and

(b) ways to measure energy savings that take into account fluctuations in energy costs and temperature.

Section 36. Section 63E-1-102 is amended to read:

63E-1-102. Definitions -- List of independent entities.

As used in this title:

(1) "Authorizing statute" means the statute creating an entity as an independent entity.

(2) "Committee" means the Retirement and Independent Entities Committee created by Section 63E-1-201.

(3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.

(4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

(i) independent state agency; or

(ii) independent corporation.

(b) "Independent entity" includes the:

(i) Utah Dairy Commission created by Section 4-22-2;

(ii) Heber Valley Historic Railroad Authority created by Section 63H-4-102;

(iii) Utah State Railroad Museum Authority created by Section 63H-5-102;

(iv) Utah Housing Corporation created by Section 63H-8-201;

(v) Utah State Fair Corporation created by Section 63H-6-103;

(vi) Workers' Compensation Fund created by Section 31A-33-102;

(vii) Utah State Retirement Office created by Section 49-11-201;

(viii) School and Institutional Trust Lands Administration created by Section 53C-1-201;

(ix) School and Institutional Trust Fund Office created by Section 53D-1-201;

(x) Utah Communications Authority created by Section ~~63N-6-201~~ 63H-7a-201;

(xi) Utah Energy Infrastructure Authority created by Section 63H-2-201;

(xii) Utah Capital Investment Corporation created by Section 63N-6-301; and

(xiii) Military Installation Development Authority created by Section 63H-1-201.

(c) Notwithstanding this Subsection (4), "independent entity" does not include:

(i) the Public Service Commission of Utah created by Section 54-1-1;

(ii) an institution within the state system of higher education;

(iii) a city, county, or town;

(iv) a local school district;

(v) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts; or

(vi) a special service district under Title 17D, Chapter 1, Special Service District Act.

(5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.

(6) "Money held in trust" means money maintained for the benefit of:

(a) one or more private individuals, including public employees;

(b) one or more public or private entities; or

(c) the owners of a quasi-public corporation.

(7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state, which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 37. Section 63G-3-201 is amended to read:

63G-3-201. When rulemaking is required.

(1) Each agency shall:

(a) maintain a current version of its rules; and

(b) make it available to the public for inspection during its regular business hours.

(2) In addition to other rulemaking required by law, each agency shall make rules when agency action:

(a) authorizes, requires, or prohibits an action;

(b) provides or prohibits a material benefit;

(c) applies to a class of persons or another agency; and

(d) is explicitly or implicitly authorized by statute.

(3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.

(4) Rulemaking is not required when:

(a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or students enrolled in a state education institution;

(b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;

(c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or

(d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the office.

(5) (a) A rule shall enumerate any penalty authorized by statute that may result from its violation, subject to Subsections (5)(b) and (c).

(b) A violation of a rule may not be subject to the criminal penalty of a class C misdemeanor or greater offense, except as provided under Subsection (5)(c).

(c) A violation of a rule may be subject to a class C misdemeanor or greater criminal penalty under Subsection (5)(a) when:

(i) authorized by a specific state statute;

(ii) a state law and programs under that law are established in order for the state to obtain or maintain primacy over a federal program; or

(iii) state civil or criminal penalties established by state statute regarding the program are equivalent to or less than corresponding federal civil or criminal penalties.

(6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.

(7) (a) Each agency may enact a rule that incorporates by reference:

(i) all or any part of another code, rule, or regulation that has been adopted by a federal

agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;

(ii) state agency implementation plans mandated by the federal government for participation in the federal program;

(iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or

(iv) lists, tables, illustrations, or similar materials that the executive director or the executive director's designee determines are too expensive to reproduce in the administrative code.

(b) Rules incorporating materials by reference shall:

(i) be enacted according to the procedures outlined in this chapter;

(ii) state that the referenced material is incorporated by reference;

(iii) state the date, issue, or version of the material being incorporated; and

(iv) define specifically what material is incorporated by reference and identify any agency deviations from it.

(c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.

(d) The agency shall maintain a complete and current copy of the referenced material available for public review at the agency and at the office.

(8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.

(b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Section 38. Section 63G-3-601 is amended to read:

63G-3-601. Interested parties -- Petition for agency action.

(1) As used in this section, "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection 63G-3-301(4), of an agency's proposed rule to implement a petition for the making, amendment, or repeal of a rule as provided in this section.

(2) An interested person may petition an agency to request the making, amendment, or repeal of a rule.

(3) The [division] department shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.

(4) A statement shall accompany the proposed rule, or proposed amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.

(5) Within 60 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings.

(6) (a) If the petition is submitted to a board that has been granted rulemaking authority by the Legislature, the board shall, within 45 days of the submission of the petition, place the petition on its agenda for review.

(b) Within 80 days of the submission of the petition, the board shall either:

(i) deny the petition in writing stating its reasons for denial; or

(ii) initiate rulemaking proceedings.

(7) If the agency or board has not provided the petitioner written notice that the agency has denied the petition or initiated rulemaking proceedings within the time limitations specified in Subsection (5) or (6) respectively, the petitioner may seek a writ of mandamus in state district court.

Section 39. Section 63G-6a-103 is amended to read:

63G-6a-103. Definitions.

As used in this chapter:

(1) "Administrative law judge" means the same as that term is defined in Section 67-19e-102.

(2) "Administrative law judge service" means service provided by an administrative law judge.

(3) "Applicable rulemaking authority" means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;

(B) for the Office of the Attorney General, the attorney general; and

(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education, the State Board of Regents;

(g) for a public transit district, the chief executive of the public transit district;

(h) for a local district other than a public transit district or for a special service district:

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules; or

(i) for any other procurement unit, the board.

(4) "Approved vendor" means a vendor who has been approved through the approved vendor list process.

(5) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

(6) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.

(7) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.

(8) "Bidding process" means the procurement process described in Part 6, Bidding.

(9) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(10) "Building board" means the State Building Board, created in Section 63A-5-101.

(11) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

(12) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(13) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).

(14) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

(iv) selecting and recommending the person to be awarded a contract;

(v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and

(vi) contract administration.

(15) "Conservation district" means the same as that term is defined in Section 17D-3-102.

(16) "Construction":

(a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

(17) "Construction manager/general contractor":

(a) means a contractor who enters into a contract:

(i) for the management of a construction project; and

(ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and

(b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

(18) "Contract" means an agreement for a procurement.

(19) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

(b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;

(c) executing change orders;

(d) processing contract amendments;

(e) resolving, to the extent practicable, contract disputes;

(f) curing contract errors and deficiencies;

(g) terminating a contract;

(h) measuring or evaluating completed work and contractor performance;

(i) computing payments under the contract; and

(j) closing out a contract.

(20) "Contractor" means a person who is awarded a contract with a procurement unit.

(21) "Cooperative procurement" means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

(b) a procurement unit and a cooperative purchasing organization.

(22) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

(23) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.

(24) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(25) "Days" means calendar days, unless expressly provided otherwise.

(26) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

(27) "Design-build" means the procurement of design professional services and construction by the use of a single contract.

(28) "Design professional" means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or

(b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(29) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

(30) "Design professional services" means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102; or

(c) master planning and programming services.

(31) "Director" means the director of the division.

(32) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.

(33) "Educational procurement unit" means:

(a) a school district;

(b) a public school, including a local school board and a charter school;

(c) the Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network; or

(e) an institution of higher education of the state.

(34) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(35) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.

(36) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

(37) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

(38) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

(39) "Head of a procurement unit" means:

(a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) for an executive branch procurement unit:

(i) the director of the division; or
(ii) any other person designated by the board, by rule;

(c) for a judicial procurement unit:

(i) the Judicial Council; or
(ii) any other person designated by the Judicial Council, by rule;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) any other person designated by the local government procurement unit;

(e) for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;

(f) for a special service district, the governing body of the special service district or a designee of the governing body;

(g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;

(j) for a school district or any school or entity within a school district, the board of the school district, or the board's designee;

(k) for a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;

(l) for an institution of higher education of the state, the president of the institution of higher education, or the president's designee; or

(m) for a public transit district, the board of trustees or a designee of the board of trustees.

(40) "Immaterial error":

(a) means an irregularity or abnormality that is:
or
(i) a matter of form that does not affect substance;

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the solicitation; and

(iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.

(41) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(42) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).

(43) "Invitation for bids":

(a) means a document used to solicit:

(i) bids to provide a procurement item to a procurement unit; or

(ii) quotes for a price of a procurement item to be provided to a procurement unit; and

(b) includes all documents attached to or incorporated by reference in a document described in Subsection (43)(a).

(44) "Issuing procurement unit" means a procurement unit that:

(a) reviews a solicitation to verify that it is in proper form;

(b) causes the notice of a solicitation to be published; and

(c) negotiates and approves the terms and conditions of a contract.

(45) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

(e) an office, committee, subcommittee, or other organization within the state judicial branch.

(46) "Labor hour contract" is a contract under which:

(a) the supplies and materials are not provided by, or through, the contractor; and

(b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.

(47) “Legislative procurement unit” means:

- (a) the Legislature;
- (b) the Senate;
- (c) the House of Representatives;
- (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- (e) an office, committee, subcommittee, commission, or other organization within the state legislative branch.

(48) “Local building authority” means the same as that term is defined in Section 17D-2-102.

(49) “Local district” means the same as that term is defined in Section 17B-1-102.

(50) “Local government procurement unit” means:

- (a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;
- (b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or
- (c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

(51) “Multiple award contracts” means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.

(52) “Multiyear contract” means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

(53) “Municipality” means a city, town, or metro township.

(54) “Nonadopting local government procurement unit” means:

(a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (54)(a).

(55) “Offeror” means a person who submits a proposal in response to a request for proposals.

(56) “Person” means the same as that term is defined in Section 68-3-12.5, excluding a political subdivision and a government office, department, division, bureau, or other body of government.

(57) “Preferred bidder” means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(58) “Procure” means to acquire a procurement item through a procurement.

(59) “Procurement”:

(a) means a procurement unit’s acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds;

(b) includes all functions that pertain to the acquisition of a procurement item, including:

- (i) preparing and issuing a solicitation; and
- (ii) (A) conducting a standard procurement process; or
- (B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and

(c) does not include a grant.

(60) “Procurement item” means a supply, a service, or construction.

(61) “Procurement officer” means:

(a) for a procurement unit with independent procurement authority:

- (i) the head of the procurement unit;
- (ii) a designee of the head of the procurement unit; or
- (iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(62) “Procurement unit”:

(a) means:

- (i) a legislative procurement unit;
- (ii) an executive branch procurement unit;
- (iii) a judicial procurement unit;
- (iv) an educational procurement unit;
- (v) a local government procurement unit;
- (vi) a local district;
- (vii) a special service district;
- (viii) a local building authority;
- (ix) a conservation district;
- (x) a public corporation; or
- (xi) a public transit district; and

(b) does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(63) “Professional service” means labor, effort, or work that requires an elevated degree of specialized

knowledge and discretion, including labor, effort, or work in the field of:

- (a) accounting;
- (b) administrative law judge service;
- ~~(b)~~ (c) architecture;
- ~~(c)~~ (d) construction design and management;
- ~~(d)~~ (e) engineering;
- ~~(e)~~ (f) financial services;
- ~~(f)~~ (g) information technology;
- ~~(g)~~ (h) the law;
- ~~(h)~~ (i) medicine;
- ~~(i)~~ (j) psychiatry; or
- ~~(j)~~ (k) underwriting.

(64) "Protest officer" means:

(a) for the division or a procurement unit with independent procurement authority:

- (i) the head of the procurement unit;
- (ii) a designee of the head of the procurement unit; or
- (iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee.

(65) "Public corporation" means the same as that term is defined in Section 63E-1-102.

(66) "Public entity" means any government entity of the state or political subdivision of the state, including:

- (a) a procurement unit;
- (b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and
- (c) any other government entity located in the state that expends public funds.

(67) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

(68) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

(69) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(70) "Qualified vendor" means a vendor who:

- (a) is responsible; and
- (b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score

thresholds set forth in the request for statement of qualifications.

(71) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

(72) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.

(73) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

(74) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.

(75) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

(76) "Requirements contract" means a contract:

(a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

- (i) does not require a minimum purchase amount; or
- (ii) provides a maximum purchase limit.

(77) "Responsible" means being capable, in all respects, of:

- (a) meeting all the requirements of a solicitation; and
- (b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(78) "Responsive" means conforming in all material respects to the requirements of a solicitation.

(79) "Sealed" means manually or electronically secured to prevent disclosure.

(80) "Service":

- (a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;
- (b) includes a professional service; and
- (c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

(81) "Small purchase process" means the procurement process described in Section 63G-6a-506.

(82) "Sole source contract" means a contract resulting from a sole source procurement.

(83) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.

(84) "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

(85) "Solicitation response" means:

(a) a bid submitted in response to an invitation for bids;

(b) a proposal submitted in response to a request for proposals; or

(c) a statement of qualifications submitted in response to a request for statement of qualifications.

(86) "Special service district" means the same as that term is defined in Section 17D-1-102.

(87) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

(a) a requirement for inspecting or testing a procurement item; or

(b) preparing a procurement item for delivery.

(88) "Standard procurement process" means:

(a) the bidding process;

(b) the request for proposals process;

(c) the approved vendor list process;

(d) the small purchase process; or

(e) the design professional procurement process.

(89) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

(90) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

(91) "Subcontractor":

(a) means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction;

(b) includes a trade contractor or specialty contractor; and

(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(92) "Supply" means a good, material, technology, piece of equipment, or any other item of personal property.

(93) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.

(94) "Time and materials contract" means a contract under which the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

(95) "Transitional costs":

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

(96) "Trial use contract" means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.

(97) "Vendor":

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor; and

(iv) a design professional.

Section 40. Section 63G-6a-2402 is amended to read:

63G-6a-2402. Definitions.

As used in this part:

(1) "Contract administration professional":

(a) means an individual who:

(i) is:

(A) directly under contract with a procurement unit; or

(B) employed by a person under contract with a procurement unit; and

(ii) has responsibility in:

(A) developing a solicitation or grant, or conducting the procurement process; or

(B) supervising or overseeing the administration or management of a contract or grant; and

(b) does not include an employee of the procurement unit.

(2) "Contribution":

(a) means a voluntary gift or donation of money, service, or anything else of value, to a public entity for the public entity's use and not for the primary use of an individual employed by the public entity; and

(b) includes:

(i) a philanthropic donation;

(ii) admission to a seminar, vendor fair, charitable event, fundraising event, or similar event that relates to the function of the public entity;

(iii) the purchase of a booth or other display space at an event sponsored by the public entity or a group of which the public entity is a member; and

(iv) the sponsorship of an event that is organized by the public entity.

(3) "Family member" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(4) "Governing body" means an administrative, advisory, executive, or legislative body of a public entity.

(5) "Gratuity":

(a) means anything of value given:

(i) without anything provided in exchange; or

(ii) in excess of the market value of that which is provided in exchange;

(b) includes:

(i) a gift or favor;

(ii) money;

(iii) a loan at an interest rate below the market rate or with terms that are more advantageous to the borrower than terms offered generally on the market;

(iv) anything of value provided with an award, other than a certificate, plaque, or trophy;

(v) employment;

(vi) admission to an event;

(vii) a meal, lodging, or travel;

(viii) entertainment for which a charge is normally made; and

(ix) a raffle, drawing for a prize, or lottery; and

(c) does not include:

(i) an item, including a meal in association with a training seminar, that is:

(A) included in a contract or grant; or

(B) provided in the proper performance of a requirement of a contract or grant;

(ii) an item requested to evaluate properly the award of a contract or grant;

(iii) a rebate, coupon, discount, airline travel award, dividend, or other offering included in the price of a procurement item;

(iv) a meal provided by an organization or association, including a professional or educational association, an association of vendors, or an association composed of public agencies or public entities, that does not, as an organization or association, respond to solicitations;

(v) a product sample submitted to a public entity to assist the public entity to evaluate a solicitation;

(vi) a political campaign contribution;

(vii) an item generally available to the public; or

(viii) anything of value that one public agency provides to another public agency.

(6) "Hospitality gift":

(a) means a token gift of minimal value, including a pen, pencil, stationery, toy, pin, trinket, snack, beverage, or appetizer, given for promotional or hospitality purposes; and

(b) does not include money, a meal, admission to an event for which a charge is normally made, entertainment for which a charge is normally made, travel, or lodging.

(7) "Kickback":

(a) means a negotiated bribe provided in connection with a procurement or the administration of a contract or grant; and

(b) does not include anything listed in Subsection (5)(c).

(8) "Procurement" has the same meaning as defined in Section 63G-6a-103, but also includes the awarding of a grant.

(9) "Procurement professional":

(a) means an individual who is an employee, and not an independent contractor, of a procurement unit, and who, by title or primary responsibility:

(i) has procurement decision making authority; and

(ii) is assigned to be engaged in, or is engaged in:

(A) the procurement process; or

(B) the process of administering a contract or grant, including enforcing contract or grant compliance, approving contract or grant payments, or approving contract or grant change orders or amendments; and

(b) excludes:

(i) any individual who, by title or primary responsibility, does not have procurement decision making authority;

(ii) an individual holding an elective office;

(iii) a member of a governing body;

(iv) a chief executive of a public entity or a chief assistant or deputy of the chief executive, if the chief executive, chief assistant, or deputy, respectively, has a variety of duties and responsibilities beyond the management of the procurement process or the contract or grant administration process;

(v) the superintendent, business administrator, principal, or vice principal of a school district or charter school, or the chief assistant or deputy of the superintendent, business administrator, principal, or vice principal;

(vi) a university or college president, vice president, business administrator, or dean;

(vii) a chief executive of a local district, as defined in Section 17B-1-102, a special service district, as defined in Section 17D-1-102, or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act;

(viii) an employee of a public entity with:

(A) an annual budget of \$1,000,000 or less; or

(B) no more than four full-time employees; and

(ix) an executive director or director of an executive branch procurement unit who:

(A) by title or primary responsibility, does not have procurement decision making authority; and

(B) is not assigned to engage in, and is not engaged in, the procurement process.

(10) "Public agency" has the same meaning as defined in Section 11-13-103, but also includes all officials, employees, and official representatives of a public agency, as defined in Section 11-13-103.

Section 41. Section 63H-6-104.5 is amended to read:

63H-6-104.5. State Fair Park Committee -- Creation -- Duties.

(1) To assist the board in the execution of the board's duties under this chapter, there is created the State Fair Park Committee consisting of the following six members:

(a) three members of the Senate appointed by the president of the Senate, no more than two of whom are from the same political party; and

(b) three members from the House of Representatives appointed by the speaker of the House, no more than two of whom are from the same political party.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a) as cochair of the committee.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(b) as cochair of the committee.

(3) (a) A majority of the members of the [advisory] committee constitutes a quorum.

(b) The action of a majority of a quorum constitutes the action of the committee.

(4) The committee shall meet as necessary, as determined by the cochairs of the committee.

(5) Salaries and expenses of the members of the committee shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(6) The Office of Legislative Research and General Counsel shall provide staff support to the committee.

(7) The committee may consult with and make recommendations to the board regarding the board's duties under this chapter.

(8) A recommendation of the committee is not binding upon the board.

Section 42. Section 63I-1-220 is amended to read:

63I-1-220. Repeal dates, Title 20A.

[On January 1, 2017:]

[~~(1) Subsection 20A-1-102(55) is repealed.~~]

[~~(2) Subsection 20A-2-102.5(1) the language that states "20A-4-108, or" is repealed.~~]

[~~(3) Subsection 20A-2-202(3)(a) the language that states "Except as provided in Subsection 20A-4-108(6)," is repealed.~~]

[~~(4) Subsection 20A-2-204(5)(a) the language that states "Except as provided in Subsection 20A-4-108(7)," is repealed.~~]

[~~(5) Subsection 20A-2-205(7)(a) the language that states "Except as provided in Subsection 20A-4-108(8)," is repealed.~~]

[~~(6) Subsection 20A-2-206(8)(c) the language that states "Except as provided in Subsection 20A-4-108(9)," is repealed.~~]

[~~(7) Subsection 20A-2-307(2)(a) is repealed.~~]

~~[(8) Subsection 20A-4-107(2)(b) the language that states "Except as provided in Subsection 20A-4-108(10)," is repealed.]~~

~~[(9) Subsection 20A-4-107(3) the language that states "or if the voter is, in accordance with the pilot project, registered to vote under Subsection 20A-4-108(10)," is repealed.]~~

~~[(10) Subsection 20A-4-107(4) the language that states "Except as provided in Subsection 20A-4-108(12)," is repealed.]~~

~~[(11) Section 20A-4-108 is repealed.]~~

Section 43. Section 63I-1-231 is amended to read:

63I-1-231. Repeal dates, Title 31A.

(1) Section 31A-2-217, Coordination with other states, is repealed July 1, 2023.

(2) Section 31A-22-619.6, Coordination of benefits with workers' compensation claim--Health insurer's duty to pay, is repealed on July 1, 2018.

~~[(3) Title 31A, Chapter 29, Comprehensive Health Insurance Pool Act, is repealed July 1, 2015.]~~

[(4)] (3) Section 31A-22-642, Insurance coverage for autism spectrum disorder, is repealed on January 1, 2019.

Section 44. Section 63I-1-253 is amended to read:

63I-1-253. Repeal dates, Titles 53, 53A, and 53B.

The following provisions are repealed on the following dates:

(1) Subsection 53-10-202(18) is repealed July 1, 2018.

(2) Section 53-10-202.1 is repealed July 1, 2018.

(3) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program, is repealed July 1, 2020.

(4) Section 53A-13-106.5 is repealed July 1, 2019.

(5) Section 53A-15-106 is repealed July 1, 2019.

~~[(6) Subsections 53A-16-113(3) and (4) are repealed December 31, 2016.]~~

~~[(7) Section 53A-16-114 is repealed December 31, 2016.]~~

~~[(8) Section 53A-17a-163, Performance-based Compensation Pilot Program, is repealed July 1, 2016.]~~

[(9)] (6) Title 53A, Chapter 31, Part 4, American Indian and Alaskan Native Education State Plan Pilot Program, is repealed July 1, 2022.

[(10)] (7) Section 53B-24-402, Rural residency training program, is repealed July 1, 2020.

~~[(11)] (8) Subsection 53C-3-203(4)(b)(vii), which provides for the distribution of money from the Land Exchange Distribution Account to the Geological Survey for test wells, other hydrologic studies, and air quality monitoring in the West Desert, is repealed July 1, 2020.~~

Section 45. Section 63I-2-210 is amended to read:

63I-2-210. Repeal dates -- Title 10.

~~[(1) Subsection 10-2a-106(2), the language that states "including a township incorporation procedure as defined in Section 10-2a-105," is repealed July 1, 2016.]~~

~~[(2) Subsection 10-2a-410(3)(d)(ii) is repealed January 1, 2017.]~~

~~[(3) Section 10-2a-105 is repealed July 1, 2016.]~~

~~[(4) Subsection 10-9a-304(2) is repealed June 1, 2016.]~~

Section 46. Section 63I-2-259 is amended to read:

63I-2-259. Repeal dates -- Title 59.

~~[(1) Subsection 59-2-919(10) is repealed December 31, 2015.]~~

~~[(2) Subsection 59-2-919.1(4) is repealed December 31, 2015.]~~

~~[(3) Subsection 59-2-1007(14) is repealed on December 31, 2018.~~

Section 47. Section 63J-7-102 is amended to read:

63J-7-102. Scope and applicability of chapter.

(1) Except as provided in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to each agency and govern each grant received on or after May 5, 2008.

(2) This chapter does not govern:

(a) a grant deposited into a General Fund restricted account;

(b) a grant deposited into a Trust and Agency Fund as defined in Section 51-5-4;

(c) a grant deposited into an Enterprise Fund as defined in Section 51-5-4;

(d) a grant made to the state without a restriction or other designated purpose that is deposited into the General Fund as free revenue;

(e) a grant made to the state that is restricted only to "education" and that is deposited into the Education Fund or Uniform School Fund as free revenue;

(f) in-kind donations;

(g) a tax, fees, penalty, fine, surcharge, money judgment, or other money due the state when required by state law or application of state law;

(h) a contribution made under Title 59, Chapter 10, Part 13, Individual Income Tax Contribution Act;

(i) a grant received by an agency from another agency or political subdivision;

(j) a grant to the Utah Dairy Commission created in Section 4-22-2;

(k) a grant to the Heber Valley Historic Railroad Authority created in Section 63H-4-102;

(l) a grant to the Utah State Railroad Museum Authority created in Section 63H-5-102;

(m) a grant to the Utah Housing Corporation created in Section 63H-8-201;

(n) a grant to the Utah State Fair Corporation created in Section 63H-6-103;

(o) a grant to the Workers' Compensation Fund created in Section 31A-33-102;

(p) a grant to the Utah State Retirement Office created in Section 49-11-201;

(q) a grant to the School and Institutional Trust Lands Administration created in Section 53C-1-201;

(r) a grant to the Utah Communications Authority created in Section 63H-7a-201;

(s) a grant to the Medical Education Program created in Section 53B-24-202;

(t) a grant to the Utah Capital Investment Corporation created in Section 63N-6-301;

(u) a grant to the Utah Charter School Finance Authority created in Section 53A-20b-103;

(v) a grant to the State Building Ownership Authority created in Section 63B-1-304; or

~~[(w) a grant to the Utah Comprehensive Health Insurance Pool created in Section 31A-29-104; or]~~

~~[(x)]~~ (w) a grant to the Military Installation Development Authority created in Section 63H-1-201.

(3) An agency need not seek legislative review or approval of grants under Part 2, Grant Approval Requirements, if:

(a) the governor has declared a state of emergency; and

(b) the grant is donated to the agency to assist victims of the state of emergency under Subsection 53-2a-204(1).

Section 48. Section 63J-8-102 is amended to read:

63J-8-102. Definitions.

As used in this chapter:

(1) "ACEC" means an area of critical environmental concern as defined in 43 U.S.C. Sec. 1702.

(2) "AUM" means animal unit months, a unit of grazing forage.

(3) "BLM" means the United States Bureau of Land Management.

(4) "BLM recommended wilderness" means a wilderness study area recommended for wilderness designation in the final report of the president of the United States to the United States Congress in 1993.

(5) "Federal land use designation" means one or a combination of the following congressional or federal actions included in proposed congressional land use legislation:

(a) designation of wilderness within the National Wilderness Preservation System;

(b) designation of a national conservation area;

(c) designation of a watercourse within the National Wild and Scenic River System;

(d) designation of an ACEC;

(e) designation of a national monument in accordance with the Antiquities Act [~~of 1906, 16 U.S.C. Sec. 431 et seq.~~] or by Congress;

(f) designation of a national park within the National Park System;

(g) designation of a national recreational area; or

(h) any other designation, classification, categorization, reservation, withdrawal, or similar action that has the purpose or effect of eliminating, restricting, or reducing energy and mineral development, motorized travel, grazing, active vegetation management, or any other traditional multiple use on public land.

(6) "FLPMA" means the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 et seq.

(7) "Forest Service" means the United States Forest Service within the United States Department of Agriculture.

(8) "Green River Energy Zone" means the lands described as follows in Subsections (8)(a) and (b), as more fully illustrated in the maps prepared by the Carbon County and Emery County GIS Departments in February 2013, each entitled "2013 Green River Energy Zone":

(a) BLM and Forest Service lands in Carbon County that are situated in the following townships: Township 12S Range 6E, Township 12S Range 7E, Township 12S Range 8E, Township 12S Range 9E, Township 12S Range 10E, Township 12S Range 11E, Township 12S Range 12E, Township 12S Range 13E, Township 12S Range 14E, Township 12S Range 15E, Township 12S Range 16E, Township 12S Range 17E, Township 12S Range 18E, Township 13S Range 6E, Township 13S Range 8E, Township 13S Range 9E, Township 13S Range 10E, Township 13S Range 11E, Township 13S Range 12E, Township 13S Range 13E, Township 13S Range 14E, Township 13S Range 15E, Township 13S Range 16E, Township 13S Range 17E, Township 14S Range 6E, Township 14S

Range 8E, Township 14S Range 9E, Township 14S Range 11E, Township 14S Range 12E, Township 14S Range 13E, Township 14S Range 14E, Township 14S Range 15E, Township 14S Range 16E, Township 14S Range 17E, Township 15S Range 7E, Township 15S Range 8E, Township 15S Range 9E, Township 15S Range 10E, Township 15S Range 11E, Township 15S Range 12E, Township 15S Range 13E, Township 15S Range 14E, Township 15S Range 15E, and Township 15S Range 16E; and

(b) BLM and Forest Service lands in Emery County, excluding any areas that are or may be designated as wilderness, national conservation areas, or wild or scenic rivers, that are situated in the following townships and represented in the Emery County Public Land Management Act DRAFT Map prepared by Emery County and available

at emerycounty.com/publiclands/LANDS-USE-15.pdf: Township 13S Range 6E, Township 14S Range 6E, Township 14S Range 7E, Township 15S Range 6E, Township 15S Range 7E, Township 16S Range 6E, Township 16S Range 7E, Township 16S Range 8E, Township 16S Range 9E, Township 16S Range 10E, Township 16S Range 11E, Township 16S Range 12E, Township 16S Range 13E, Township 16S Range 14E, Township 16S Range 15E, Township 17S Range 6E, Township 17S Range 7E, Township 17S Range 8E, Township 17S Range 9E, Township 17S Range 10E, Township 17S Range 11E, Township 17S Range 12E, Township 17S Range 13E, Township 17S Range 14E, Township 17S Range 15E, Township 18S Range 6E, Township 18S Range 7E, Township 18S Range 8E, Township 18S Range 9E, Township 18S Range 10E, Township 18S Range 11E, Township 18S Range 12E, Township 18S Range 13E, Township 18S Range 14E, Township 18S Range 15E, Township 19S Range 6E, Township 19S Range 7E, Township 19S Range 8E, Township 19S Range 9E, Township 19S Range 10E, Township 19S Range 11E, Township 19S Range 12E, Township 19S Range 13E, Township 19S Range 14E, Township 19S Range 15E, Township 20S Range 6E, Township 20S Range 7E, Township 20S Range 8E, Township 20S Range 9E, Township 20S Range 10E, Township 20S Range 11E, Township 20S Range 12E, Township 20S Range 13E, Township 20S Range 14E, Township 20S Range 15E, Township 21S Range 6E, Township 21S Range 7E, Township 21S Range 8E, Township 21S Range 9E, Township 21S Range 14E, Township 21S Range 15E, Township 21S Range 16E, Township 22S Range 6E, Township 22S Range 7E, Township 22S Range 8E, Township 22S Range 9E, Township 22S Range 14E, Township 22S Range 15E, Township 22S Range 16E, Township 23S Range 6E, Township 23S Range 7E, Township 23S Range 8E, Township 23S Range 9E, Township 23S Range 13E, Township 23S Range 14E, Township 23S Range 15E, Township 23S Range 16E, Township 24S Range 6E, Township 24S Range 7E, Township 24S Range 8E, Township 24S Range 12E, Township 24S Range 13E, Township 24S Range 14E, Township 24S Range 15E, Township 24S Range 16E, Township 24S Range 17E, Township 25S Range 6E, Township

25S Range 7E, Township 25S Range 8E, Township 25S Range 11E, Township 25S Range 12E, Township 25S Range 13E, Township 25S Range 14E, Township 25S Range 15E, Township 25S Range 16E, Township 25S Range 17E, Township 26S Range 6E, Township 26S Range 7E, Township 26S Range 8E, Township 26S Range 9E, Township 26S Range 10E, Township 26S Range 11E, Township 26S Range 12E, Township 26S Range 13E, Township 26S Range 14E, Township 26S Range 15E, Township 26S Range 16E, and Township 26S Range 17E.

(9) “Multiple use” means proper stewardship of the subject lands pursuant to Section 103(c) of FLPMA, 43 U.S.C. Sec. 1702(c).

(10) “National conservation area” means an area designated by Congress and managed by the BLM.

(11) “National wild and scenic river” means a watercourse:

(a) identified in a BLM or Forest Service planning process; or

(b) designated as part of the National Wild and Scenic River System.

(12) “National Wild and Scenic River System” means the National Wild and Scenic River System established in 16 U.S.C. Sec. 1271 et seq.

(13) “Office” means the Public Lands Policy Coordinating Office created in Section 63J-4-602.

(14) “OHV” means off-highway vehicle as defined in Section 41-22-2.

(15) “Proposed congressional land use legislation” means a draft or a working document of congressional legislation prepared by a person that includes a federal land use designation.

(16) “RARE II” means the second United States Forest Service Roadless Area Review and Evaluation report of 1984.

(17) “R.S. 2477 right-of-way” means a right-of-way established in accordance with 43 U.S.C. Sec. 932 repealed by FLPMA 1976.

(18) “San Juan County Energy Zone” means BLM and Forest Service lands situated in the following townships in San Juan County, as more fully illustrated in the map prepared by the San Juan County GIS department in December 2014 entitled “San Juan County Energy Zone”: Township 26S Range 21E, Township 26S Range 22E, Township 26S Range 23E, Township 26S Range 24E, Township 26S Range 25E, Township 26S Range 26E, Township 27S Range 21E, Township 27S Range 22E, Township 27S Range 23E, Township 27S Range 24E, Township 27S Range 25E, Township 27S Range 26E, Township 28S Range 21E, Township 28S Range 22E, Township 28S Range 23E, Township 28S Range 24E, Township 28S Range 25E, Township 28S Range 26E, Township 29S Range 21E, Township 29S Range 22E, Township 29S Range 23E, Township 29S Range 24E, Township 29S Range 25E, Township 29S Range 26E, Township 30S Range 21E, Township 30S Range 22E, Township 30S Range

23E, Township 30S Range 24E, Township 30S Range 25E, Township 30S Range 26E, Township 31S Range 22E, Township 31S Range 23E, Township 31S Range 24E, Township 31S Range 25E, Township 31S Range 26E, Township 32S Range 20E, Township 32S Range 21E, Township 32S Range 22E, Township 32S Range 23E, Township 32S Range 24E, Township 32S Range 25E, Township 32S Range 26E, Township 33S Range 19E, Township 33S Range 20E, Township 33S Range 21E, Township 33S Range 22E, Township 33S Range 23E, Township 33S Range 24E, Township 33S Range 25E, Township 33S Range 26E, Township 34S Range 19E, Township 34S Range 20E, Township 34S Range 21E, Township 34S Range 22E, Township 34S Range 23E, Township 34S Range 24E, Township 34S Range 25E, Township 34S Range 26E, Township 35S Range 14E, Township 35S Range 15E, Township 35S Range 16E, Township 35S Range 17E, Township 35S Range 18E, Township 35S Range 19E, Township 35S Range 20E, Township 35S Range 21E, Township 35S Range 22E, Township 35S Range 23E, Township 35S Range 24E, Township 35S Range 25E, Township 35S Range 26E, Township 36S Range 14E, Township 36S Range 15E, Township 36S Range 16E, Township 36S Range 17E, Township 36S Range 18E, Township 36S Range 19E, Township 36S Range 20E, Township 36S Range 21E, Township 36S Range 22E, Township 36S Range 23E, Township 36S Range 24E, Township 36S Range 25E, Township 36S Range 26E, Township 37S Range 14E, Township 37S Range 15E, Township 37S Range 16E, Township 37S Range 17E, Township 37S Range 18E, Township 37S Range 19E, Township 37S Range 20E, Township 37S Range 21E, Township 37S Range 22E, Township 37S Range 23E, Township 37S Range 24E, Township 37S Range 25E, Township 37S Range 26E, Township 38S Range 12E, Township 38S Range 13E, Township 38S Range 14E, Township 38S Range 15E, Township 38S Range 16E, Township 38S Range 17E, Township 38S Range 18E, Township 38S Range 19E, Township 38S Range 20E, Township 38S Range 21E, Township 38S Range 22E, Township 38S Range 23E, Township 38S Range 24E, Township 38S Range 25E, Township 38S Range 26E, Township 39S Range 12E, Township 39S Range 13E, Township 39S Range 14E, Township 39S Range 15E, Township 39S Range 16E, Township 39S Range 17E, Township 39S Range 18E, Township 39S Range 19E, Township 39S Range 20E, Township 39S Range 21E, Township 39S Range 22E, Township 39S Range 23E, Township 39S Range 24E, Township 39S Range 25E, Township 39S Range 26E, Township 40S Range 14E, Township 40S Range 15E, Township 40S Range 16E, Township 40S Range 17E, Township 40S Range 18E, Township 40S Range 19E, Township 40S Range 20E, Township 40S Range 21E, Township 40S Range 22E, Township 40S Range 23E, Township 40S Range 24E, Township 40S Range 25E, Township 40S Range 26E, Township 41S Range 16E, Township 41S Range 17E, Township 41S Range 18E, Township 41S Range 19E, Township 41S Range 20E, Township 41S Range 21E, Township 41S Range 22E, Township 41S Range 23E, Township 41S Range 24E, Township 41S Range 25E, Township 41S Range 26E, Township 42S Range 14E, Township 42S Range 15E, Township 42S Range 16E, Township 42S Range 17E, Township 42S Range 18E, Township 42S Range 19E, Township 42S Range 20E, Township 42S Range 21E, Township 42S Range 22E, Township 42S Range 23E, Township 42S Range 24E, Township 42S Range 25E, Township 42S Range 26E, Township 43S Range 14E, Township 43S Range

15E, Township 43S Range 16E, Township 43S Range 17E, Township 43S Range 18E, Township 43S Range 19E, Township 43S Range 20E, Township 43S Range 21E, Township 43S Range 22E, Township 43S Range 23E, Township 43S Range 24E, Township 43S Range 25E, and Township 43S Range 26E.

(19) “Settlement Agreement” means the written agreement between the state and the Department of the Interior in 2003 (revised in 2005) that resolved the case of State of Utah v. Gale Norton, Secretary of Interior (United States District Court, D. Utah, Case No. 2:96cv0870).

(20) “SITLA” means the School and Institutional Trust Lands Administration as created in Section 53C-1-201.

(21) (a) “Subject lands” means the following non-WSA BLM lands:

(i) in Beaver County:

(A) Mountain Home Range South, Jackson Wash, The Toad, North Wah Wah Mountains, Central Wah Wah Mountains, and San Francisco Mountains according to the region map entitled “Great Basin Central” linked in the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011; and

(B) White Rock Range, South Wah Wah Mountains, and Granite Peak according to the region map entitled “Great Basin South” linked in the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(ii) in Box Elder County: Little Goose Creek, Grouse Creek Mountains North, Grouse Creek Mountains South, Bald Eagle Mountain, Central Pilot Range, Pilot Peak, Crater Island West, Crater Island East, Newfoundland Mountains, and Grassy Mountains North according to the region map entitled “Great Basin North” linked in the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(iii) in Carbon County: Desbrough Canyon and Turtle Canyon according to the region map entitled “Book Cliffs” linked in the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(iv) in Daggett County: Goslin Mountain, Home Mountain, Red Creek Badlands, O-wi-yu-kuts, Lower Flaming Gorge, Crouse Canyon, and Diamond Breaks according to the region map entitled “Dinosaur” linked in the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(v) in Duchesne County: Desbrough Canyon according to the region map entitled “Book Cliffs” linked in the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at

<http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(vi) in Emery County:

(A) San Rafael River and Sweetwater Reef, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(B) Flat Tops according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011; and

(C) Price River, Lost Spring Wash, Eagle Canyon, Upper Muddy Creek, Molen Reef, Rock Canyon, Mussentuchit Badland, and Muddy Creek, according to the region map entitled "San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(vii) in Garfield County:

(A) Pole Canyon, according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(B) Dirty Devil, Fiddler Butte, Little Rockies, Cane Spring Desert, and Cane Spring Desert Adjacent, according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(C) Lampstand, Wide Hollow, Steep Creek, Brinkerhof Flats, Little Valley Canyon, Death Hollow, Studhorse Peaks, Box Canyon, Heaps Canyon, North Escalante Canyon, Colt Mesa, East of Bryce, Slopes of Canaan Peak, Horse Spring Canyon, Muley Twist Flank, Pioneer Mesa, Slopes of Bryce, Blue Hills, Mud Springs Canyon, Carcass Canyon, Willis Creek North, Kodachrome Basin, and Kodachrome Headlands, according to the region map entitled "Grand Staircase Escalante" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011; and

(D) Notom Bench, Mount Ellen, Bull Mountain, Dogwater Creek, Ragged Mountain, Mount Pennell, Mount Hillers, Bullfrog Creek, and Long Canyon, according to the region map entitled "Henry Mountains" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(viii) in Iron County: Needle Mountains, Steamboat Mountain, Broken Ridge, Paradise

Mountains, Crook Canyon, Hamlin, North Peaks, Mount Escalante, and Antelope Ridge, according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(ix) in Juab County: Deep Creek Mountains, Essex Canyon, Kern Mountains, Wild Horse Pass, Disappointment Hills, Granite Mountain, Middle Mountains, Tule Valley, Fish Springs Ridge, Thomas Range, Drum Mountains, Dugway Mountains, Keg Mountains West, Keg Mountains East, Lion Peak, and Rockwell Little Sahara, according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(x) in Kane County:

(A) Willis Creek North, Willis Creek, Kodachrome Badlands, Mud Springs Canyon, Carcass Canyon, Scorpion, Bryce Boot, Paria-Hackberry Canyons, Fiftymile Canyon, Hurricane Wash, Upper Kanab Creek, Timber Mountain, Nephi Point, Paradise Canyon, Wahweap Burning Hills, Fiftymile Bench, Forty Mile Gulch, Sooner Bench 1, 2, & 3, Rock Cove, Warm Bench, Andalex Not, Vermillion Cliffs, Ladder Canyon, The Cockscomb, Nipple Bench, Moquith Mountain, Bunting Point, Glass Eye Canyon, and Pine Hollow, according to the region map entitled "Grand Staircase Escalante" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011; and

(B) Orderville Canyon, Jolley Gulch, and Parunuweap Canyon, according to the region map entitled "Zion/Mohave" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(xi) in Millard County: Kern Mountains, Wild Horse Pass, Disappointment Hills, Granite Mountain, Middle Mountains, Tule Valley, Swasey Mountain, Little Drum Mountains North, Little Drum Mountains South, Drum Mountains, Snake Valley, Coyote Knoll, Howell Peak, Tule Valley South, Ledger Canyon, Chalk Knolls, Orr Ridge, Notch View, Bullgrass Knoll, Notch Peak, Barn Hills, Cricket Mountains, Burbank Pass, Middle Burbank Hills, King Top, Barn Hills, Red Tops, Middle Burbank Hills, Juniper, Painted Rock Mountain, Black Hills, Tunnel Springs, Red Canyon, Sand Ridge, Little Sage Valley, Cat Canyon, Headlight Mountain, Black Hills, Mountain Range Home North, Tweedy Wash, North Wah Wah Mountains, Jackson Wash, and San Francisco Mountains, according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(xii) in Piute County: Kingston Ridge, Rocky Ford, and Phonolite Hill, according to the region map entitled "Great Basin South" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(xiii) in San Juan County:

(A) Horseshoe Point, Deadhorse Cliffs, Gooseneck, Demon's Playground, Hatch Canyon, Lockhart Basin, Indian Creek, Hart's Point, Butler Wash, Bridger Jack Mesa, and Shay Mountain, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(B) Dark Canyon, Copper Point, Fortknocker Canyon, White Canyon, The Needle, Red Rock Plateau, Upper Red Canyon, and Tuwa Canyon, according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(C) Hunters Canyon, Behind the Rocks, Mill Creek, and Coyote Wash, according to the region map entitled "Moab/La Sal" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011; and

(D) Hammond Canyon, Allen Canyon, Mancos Jim Butte, Arch Canyon, Monument Canyon, Tin Cup Mesa, Cross Canyon, Nokai Dome, Grand Gulch, Fish and Owl Creek Canyons, Comb Ridge, Road Canyon, The Tabernacle, Lime Creek, San Juan River, and Valley of the Gods, according to the region map entitled "San Juan" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(xiv) in Sevier County: Rock Canyon, Mussentuchit Badland, Limestone Cliffs, and Jones' Bench, according to the region map entitled "San Rafael Swell" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(xv) in Tooele County:

(A) Silver Island Mountains, Crater Island East, Grassy Mountains North, Grassy Mountains South, Stansbury Island, Cedar Mountains North, Cedar Mountains Central, Cedar Mountains South, North Stansbury Mountains, Oquirrh Mountains, and Big Hollow, according to the region map entitled "Great Basin North" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011, excluding the areas that Congress designated as

wilderness under the National Defense Authorization Act for Fiscal Year 2006; and

(B) Ochre Mountain, Deep Creek Mountains, Dugway Mountains, Indian Peaks, and Lion Peak, according to the region map entitled "Great Basin Central" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(xvi) in Uintah County:

(A) White River, Lower Bitter Creek, Sunday School Canyon, Dragon Canyon, Wolf Point, Winter Ridge, Seep Canyon, Bitter Creek, Hideout Canyon, Sweetwater Canyon, and Hell's Hole, according to the region map entitled "Book Cliffs" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011; and

(B) Lower Flaming Gorge, Crouse Canyon Stone Bridge Draw, Diamond Mountain, Wild Mountain, Split Mountain Benches, Vivas Cake Hill, Split Mountain Benches South, Beach Draw, Stuntz Draw, Moonshine Draw, Bourdette Draw, and Bull Canyon, according to the region map entitled "Dinosaur" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(xvii) in Washington County: Cougar Canyon, Docs Pass, Slaughter Creek, Butcher Knife Canyon, Square Top, Scarecrow Creek, Beaver Dam Wash, Beaver Dam Mountains North, Beaver Dam Mountains South, Joshua Tree, Beaver Dam Wilderness Expansion, Red Mountain, Cottonwood Canyon, Taylor Canyon, LaVerkin Creek, Beartrap Canyon, Deep Creek, Black Ridge, Red Butte, Kolob Creek, Goose Creek, Dry Creek, Zion National Park Adjacent, Crater Hill, The Watchman, and Canaan Mountain, according to the region map entitled "Zion/Mohave" linked at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011, excluding the areas that Congress designated as wilderness and conservation areas under the Omnibus Public Lands Management Act of 2009; and

(xviii) in Wayne County:

(A) Sweetwater Reef, Upper Horseshoe Canyon, and Labyrinth Canyon, according to the region map entitled "Canyonlands Basin" linked in the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(B) Flat Tops and Dirty Devil, according to the region map entitled "Glen Canyon," which is available by clicking the link entitled "Dirty Devil" at the webpage entitled "Citizen's Proposal for Wilderness in Utah" at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(C) Fremont Gorge, Pleasant Creek Bench, Notom Bench, Mount Ellen, and Bull Mountain, according to the region map entitled “Henry Mountains” linked at the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011; and

(D) Capital Reef Adjacents, Muddy Creek, Wild Horse Mesa, North Blue Flats, Red Desert, and Factory Butte, according to the region map entitled “San Rafael Swell” linked at the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://www.protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011.

(b) “Subject lands” also includes all BLM and Forest Service lands in the state that are not Wilderness Area or Wilderness Study Areas;

(c) “Subject lands” does not include the following lands that are the subject of consideration for a possible federal lands bill and should be managed according to the 2008 Price BLM Field Office Resource Management Plan until a federal lands bill provides otherwise:

(i) Turtle Canyon and Desolation Canyon according to the region map entitled “Book Cliffs” linked in the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011;

(ii) Labyrinth Canyon, Duma Point, and Horseshoe Point, according to the region map entitled “Canyonlands Basin” linked in the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011; and

(iii) Devil’s Canyon, Sid’s Mountain, Mexican Mountain, San Rafael Reef, Hondu Country, Cedar Mountain, and Wild Horse, according to the region map entitled “San Rafael Swell” linked at the webpage entitled “Citizen’s Proposal for Wilderness in Utah” at <http://protectwildutah.org/proposal/index.html> as the webpage existed on February 17, 2011.

(22) “Uintah Basin Energy Zone” means BLM and Forest Service lands situated in the following townships in Daggett, Duchesne, and Uintah counties, as more fully illustrated in the map prepared by the Uintah County GIS Department in February 2012 entitled “Uintah Basin Utah Energy Zone”:

(a) in Daggett County, Township 3N Range 17 E, Township 3N Range 18E, Township 3N Range 19E, Township 3N Range 20E, Township 3N Range 22E, Township 3N Range 23E, Township 3N Range 24E, Township 3N Range 25E, Township 2N Range 17E, Township 2N Range 18E, Township 2N Range 19E, Township 2N Range 20E, Township 2N Range 21E, and Township 2S Range 25E;

(b) in Duchesne County, Township 3N Range 4W, Township 3N Range 3W, Township 3N Range 2W, Township 3N Range 1W, Township 2N Range 6W,

Township 2N Range 5W, Township 2N Range 4W, Township 2N Range 3W, Township 2N Range 1W, Township 1N Range 9W, Township 1N Range 8W, Township 1N Range 7W, Township 1N Range 6W, Township 1S Range 9W, Township 1S Range 8W, Township 4S Range 9W, Township 4S Range 3W, Township 4S Range 2W, Township 4S Range 1W, Township 8S Range 15E, Township 8S Range 16E, Township 8S Range 17E, Township 5S Range 9W, Township 5S Range 3W, Township 9S Range 15E, Township 9S Range 16E, Township 9S Range 17E, Township 6S Range 9W, Township 6S Range 8W, Township 6S Range 7W, Township 6S Range 6W, Township 6S Range 5W, Township 6S Range 3W, Township 10S Range 15E, Township 10S Range 16E, Township 10S Range 17E, Township 7S Range 9W, Township 7S Range 8W, Township 7S Range 7W, Township 7S Range 6W, Township 7S Range 5W, Township 10S Range 11E, Township 10S Range 12E, Township 10S Range 13E, Township 10S Range 14E, Township 10S Range 15E, Township 10S Range 16E, Township 10S Range 17E, Township 11S Range 10E, Township 11S Range 11E, Township 11S Range 12E, Township 11S Range 13E, Township 11S Range 14E, Township 11S Range 15E, Township 11S Range 16E, and Township 11S Range 17E; and

(c) in Uintah County: Township 2S Range 18E, Township 2S Range 19E, Township 2S Range 20E, Township 2S Range 21E, Township 2S Range 22E, Township 2S Range 23E, Township 2S Range 24E, Township 2N Range 1W, Township 2N Range 1E, Township 2N Range 2E, Township 3S Range 18E, Township 3S Range 19E, Township 3S Range 20E, Township 3S Range 21E, Township 3S Range 22E, Township 3S Range 23E, Township 3S Range 24E, Township 4S Range 19E, Township 4S Range 20E, Township 4S Range 21E, Township 4S Range 22E, Township 4S Range 23E, Township 4S Range 24E, Township 4S Range 25E, Township 5S Range 19E, Township 5S Range 20E, Township 5S Range 21E, Township 5S Range 22E, Township 5S Range 23E, Township 5S Range 24E, Township 5S Range 25E, Township 6S Range 19E, Township 6S Range 20E, Township 6S Range 21E, Township 6S Range 22E, Township 6S Range 23E, Township 6S Range 24E, Township 6S Range 25E, Township 7S Range 19E, Township 7S Range 20E, Township 7S Range 21E, Township 7S Range 22E, Township 7S Range 23E, Township 7S Range 24E, Township 7S Range 25E, Township 8S Range 17E, Township 8S Range 18E, Township 8S Range 19E, Township 8S Range 20E, Township 8S Range 21E, Township 8S Range 22E, Township 8S Range 23E, Township 8S Range 24E, Township 8S Range 25E, Township 9S Range 17E, Township 9S Range 18E, Township 9S Range 19E, Township 9S Range 20E, Township 9S Range 21E, Township 9S Range 22E, Township 9S Range 23E, Township 9S Range 24E, Township 9S Range 25E, Township 10S Range 17E, Township 10S Range 18E, Township 10S Range 19E, Township 10S Range 20E, Township 10S Range 21E, Township 10S Range 22E, Township 10S Range 23E, Township 10S Range 24E, Township 10S Range 25E, Township 11S Range 17E, Township 11S Range 18E, Township 11S Range 19E, Township

11S Range 20E, Township 11S Range 21E, Township 11S Range 22E, Township 11S Range 23E, Township 11S Range 24E, Township 11S Range 25E, Township 12S Range 20E, Township 12S Range 21E, Township 12S Range 22E, Township 12S Range 23E, Township 12S Range 24E, Township 12S Range 25E, Township 13S Range 20E, Township 13S Range 21E, Township 13S Range 22E, Township 13S Range 23E, Township 13S Range 24E, Township 13S Range 25E, Township 13S Range 26 E, Township 14S Range 21E, Township 14S Range 22E, Township 14S Range 23E, Township 14S Range 24E, Township 14S Range 25E, and Township 14S Range 26E.

(23) "Wilderness" means the same as that term is defined in 16 U.S.C. Sec. 1131.

(24) "Wilderness area" means those BLM and Forest Service lands added to the National Wilderness Preservation System by an act of Congress.

(25) "Wilderness Preservation System" means the Wilderness Preservation System established in 16 U.S.C. Sec. 1131 et seq.

(26) "WSA" and "Wilderness Study Area" mean the BLM lands in Utah that were identified as having the necessary wilderness character and were classified as wilderness study areas during the BLM wilderness review conducted between 1976 and 1993 by authority of 43 U.S.C. Sec. 1782 and labeled as Wilderness Study Areas within the final report of the President of the United States to the United States Congress in 1993.

Section 49. Section 67-1-8.1 is amended to read:

67-1-8.1. Executive Residence Commission -- Recommendations as to use, maintenance, and operation of executive residence.

(1) The Legislature finds and declares that:

(a) the state property known as the Thomas Kearns Mansion is a recognized state landmark possessing historical and architectural qualities that should be preserved; and

(b) the Thomas Kearns Mansion was the first building listed on the National Register of Historic Places in the state.

(2) As used in this section:

(a) "Executive residence" includes the:

(i) Thomas Kearns Mansion;

(ii) Carriage House building; and

(iii) grounds and landscaping surrounding the Thomas Kearns Mansion and the Carriage House building.

(b) "Commission" means the Executive Residence Commission established in this section.

(3) (a) An Executive Residence Commission is established to make recommendations to the State

Building Board for the use, operation, maintenance, repair, rehabilitation, alteration, restoration, placement of art and monuments, or adoptive use of the executive residence.

(b) The commission shall meet at least once a year and make any recommendations to the State Building Board prior to August 1 of each year.

(4) The commission shall consist of nine voting members and one ex officio, nonvoting member representing the Governor's Mansion Foundation. The membership shall consist of:

(a) three private citizens appointed by the governor, who have demonstrated an interest in historical preservation;

(b) three additional private citizens appointed by the governor with the following background:

(i) an interior design professional with a background in historic spaces;

(ii) an architect with a background in historic preservation and restoration recommended by the Utah chapter of the American Institute of Architects; and

(iii) a landscape architect with a background and knowledge of historic properties recommended by the Utah chapter of the American Society of Landscape Architects;

(c) the director, or director's designee, of the Division of Art and Museums;

(d) the director, or director's designee, of the Division of State History; and

(e) the executive director, or executive director's designee, of the Department of Administrative Services.

(5) (a) Except as required by Subsection (5)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term ending on March 1.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(6) (a) The governor shall appoint a chair from among the membership of the commission.

(b) Six members of the commission shall constitute a quorum, and either the chair or two other members of the commission may call meetings of the commission.

(7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(9) The Division of Facilities ~~and~~ Construction and Management shall provide the administrative support to the commission.

Section 50. Section 67-1-15 is amended to read:

67-1-15. Approval of international trade agreement -- Consultation with Utah International Relations and Trade Commission.

Before binding the state or giving the federal government consent to bind the state to an international trade agreement the Governor shall consult with the Utah International Relations and Trade Commission.

Section 51. Section 75-5-424 is amended to read:

75-5-424. Powers of conservator in administration.

(1) A conservator has all of the powers conferred in this chapter and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 75-5-209 until the minor attains majority or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Part 2, Guardians of Minors.

(2) A conservator has the power to compel the production of the protected person's estate documents, including the protected person's will, trust, power of attorney, and any advance health care directives.

(3) A conservator has power without court authorization or confirmation to invest and reinvest funds of the estate as would a trustee.

(4) A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, may act without court authorization or confirmation, to:

(a) collect, hold, and retain assets of the estate, including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(e) invest and reinvest estate assets in accordance with Subsection ~~(2)~~ (3);

(f) deposit estate funds in a bank including a bank operated by the conservator;

(g) acquire or dispose of an estate asset, including land in another state, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset or take an option for the acquisition of any asset;

(m) vote a security, in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise; and advance money for the protection of the estate or the protected person, and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;

(s) pay or contest any claim; settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the distributee's guardian, or if none, to a relative or other person with custody of the person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties; act upon their recommendation without independent investigation; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of the conservator's duties;

(y) act as a qualified beneficiary of any trust in which the protected person is a qualified beneficiary; and

(z) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

Section 52. Section 76-5-303 is amended to read:

76-5-303. Custodial interference.

(1) As used in this section:

(a) "Child" means a person under the age of 18.

(b) "Custody" means court-ordered physical custody entered by a court of competent jurisdiction.

(c) "Visitation" means court-ordered parent-time or visitation entered by a court of competent jurisdiction.

(2) (a) A person who is entitled to custody of a child is guilty of custodial interference if, during a period of time when another person is entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from the person entitled to visitation of the child, with the intent to interfere with the visitation of the child.

(b) A person who is entitled to visitation of a child is guilty of custodial interference if, during a period of time when the person is not entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from a person who is

entitled to custody of the child, with the intent to interfere with the custody of the child.

(3) Except as provided in Subsection (4) or (5), custodial interference is a class B misdemeanor.

(4) Except as provided in Subsection (5), the actor described in Subsection (2) is guilty of a class A misdemeanor if the actor:

(a) commits custodial interference; and

(b) has been convicted of custodial interference at least twice in the two-year period immediately preceding the day on which the commission of custodial interference described in Subsection (4)(a) occurs.

(5) Custodial interference is a felony of the third degree if, during the course of the custodial interference, the actor described in Subsection (2) removes, causes the removal, or directs the removal of the child from the state.

(6) In addition to the affirmative defenses described in Section 76-5-305, it is an affirmative defense to the crime of custodial interference that:

(a) the action is consented to by the person whose custody or visitation of the child was interfered with; or

(b) (i) the action is based on a reasonable belief that the action is necessary to protect a child from abuse, including sexual abuse; and

(ii) before engaging in the action, the person reports the person's intention to engage in the action, and the basis for the belief described in Subsection (6)(b)(i), to the Division of Child and Family Services or law enforcement.

(7) In addition to the other penalties described in this section, a person who is convicted of custodial interference is subject to the driver license suspension provisions of Subsection 53-3-220(1)(a)(~~xviii~~)(xvii).

Section 53. Section 78A-6-105 is amended to read:

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:

(i) nonaccidental harm of a child;

(ii) threatened harm of a child;

(iii) sexual exploitation;

(iv) sexual abuse; or

(v) human trafficking of a child in violation of Section 76-5-308.5.

(b) that a child's natural parent:

(i) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(ii) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(iii) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(c) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means a person under 18 years of age.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(13) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(14) "Division" means the Division of Child and Family Services.

(15) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(16) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(17) "Guardianship of the person" includes the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

(d) legal custody, if legal custody is not vested in another person, agency, or institution.

(18) "Habitual truant" means the same as that term is defined in Section 53A-11-101.

(19) "Harm" means:

(a) physical or developmental injury or damage;

(b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(c) sexual abuse; or

(d) sexual exploitation.

(20) (a) "Incest" means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection (20)(a) include:

(i) blood relationships of the whole or half blood, without regard to legitimacy;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(21) "Intellectual disability" means:

(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;

(b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

(c) the onset is before the person reaches the age of 18 years.

(22) "Legal custody" means a relationship embodying the following rights and duties:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(23) "Mental disorder" means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

(24) "Minor" means:

(a) a child; or

(b) a person who is:

(i) at least 18 years of age and younger than 21 years of age; and

(ii) under the jurisdiction of the juvenile court.

(25) "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

(26) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(27) (a) "Neglect" means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any

other care necessary for the child's health, safety, morals, or well-being; or

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion and from pursuing care and treatment pursuant to the second health care opinion, as described in Section 78A-6-301.5.

(28) "Neglected child" means a child who has been subjected to neglect.

(29) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor's parent, legal guardian, or custodian.

(30) "Not competent to proceed" means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

(31) "Physical abuse" means abuse that results in physical injury or damage to a child.

(32) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions and under supervision by the probation department or

other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(33) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(34) "Related condition" means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

(35) (a) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

- (i) the responsibility for support;
- (ii) the right to consent to adoption;
- (iii) the right to determine the child's religious affiliation; and
- (iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to:

- (i) marriage;
- (ii) enlistment; and
- (iii) major medical, surgical, or psychiatric treatment.

(36) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(37) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

(38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

(39) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

- (i) there is an indication of force or coercion;
- (ii) the children are related, as ~~defined in Subsections (20)(a) and (20)(b)]~~ described in Subsection (20);

(iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years of age or older; or

(iv) there is a disparity in chronological age of four or more years between the two children; or

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7.

(40) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

(41) "Shelter" means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(42) "State supervision" means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(43) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(44) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

(45) "Supported" means the same as that term is defined in Section 62A-4a-101.

(46) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(47) "Therapist" means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(48) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

(49) "Without merit" means the same as that term is defined in Section 62A-4a-101.

Section 54. Repealer.

This bill repeals:

**Section 59-2-1116 (Section not in effect),
Definitions -- Exemption for property
leased to government entities --
Application process -- Rulemaking
authority.**

CHAPTER 182**H. B. 196**

Passed February 17, 2017

Approved March 21, 2017

Effective May 9, 2017

**DIVISION OF REAL
ESTATE AMENDMENTS**

Chief Sponsor: Gage Froerer

Senate Sponsor: Daniel Hemmert

LONG TITLE**General Description:**

This bill amends provisions related to reporting and licensing requirements under the jurisdiction of the Division of Real Estate.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the citation period following the occurrence of a violation;
- ▶ exempts a loan processor or loan underwriter who is not a mortgage loan originator when employed by, and acting on behalf of, a person or entity licensed under this chapter;
- ▶ modifies quarterly reporting requirements;
- ▶ permits the commission of powers and duties under certain circumstances;
- ▶ provides licensing standards and practice requirements for a branch broker, property management sales agent, and dual broker; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

61-2-203, as last amended by Laws of Utah 2016, Chapter 384
 61-2c-102, as last amended by Laws of Utah 2016, Chapter 384
 61-2c-105, as last amended by Laws of Utah 2015, Chapters 226 and 262
 61-2c-204.1, as last amended by Laws of Utah 2015, Chapter 262
 61-2c-206, as last amended by Laws of Utah 2015, Chapter 262
 61-2c-301, as last amended by Laws of Utah 2016, Chapter 384
 61-2c-302, as last amended by Laws of Utah 2012, Chapter 166
 61-2c-401, as last amended by Laws of Utah 2016, Chapter 384
 61-2e-201, as last amended by Laws of Utah 2012, Chapter 166
 61-2e-307, as last amended by Laws of Utah 2016, Chapter 384
 61-2e-401, as last amended by Laws of Utah 2016, Chapter 384
 61-2f-102, as last amended by Laws of Utah 2016, Chapters 381 and 384
 61-2f-202, as last amended by Laws of Utah 2016, Chapter 384

61-2f-206, as last amended by Laws of Utah 2016, Chapter 25

61-2f-304, as renumbered and amended by Laws of Utah 2010, Chapter 379

61-2f-401, as last amended by Laws of Utah 2016, Chapter 384

61-2f-402, as last amended by Laws of Utah 2016, Chapter 384

61-2f-403, as renumbered and amended by Laws of Utah 2010, Chapter 379

61-2g-305, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-501, as last amended by Laws of Utah 2016, Chapter 384

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

Section 1. Section 61-2-203 is amended to read:**61-2-203. Adjudicative proceedings --
Citation authority.**

(1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding under a chapter the division administers.

(2) The division may initiate an adjudicative proceeding through:

(a) a citation, pursuant to Subsection (3);

(b) a notice of agency action; or

(c) a notice of formal or informal proceeding.

(3) In addition to any other statutory penalty for a violation related to an occupation or profession regulated under this title, the division may issue a citation to a person who, upon inspection or investigation, the division concludes to have violated:

(a) Subsection 61-2c-201(1), which requires licensure;

(b) Subsection 61-2c-201(4), which requires entity licensure;

(c) Subsection 61-2c-205(3), which requires notification of a change in specified information regarding a licensee;

(d) Subsection 61-2c-205(4), which requires notification of specified legal actions;

(e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division within the required time period;

(f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the division;

(g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;

(h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading advertising;

(i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed work if unlicensed;

(j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a quarterly report of condition;

~~[(j)]~~ (k) Subsection 61-2e-201(1), which requires registration;

~~[(k)]~~ (l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;

~~[(l)]~~ (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;

~~[(m)]~~ (n) Subsection 61-2e-401(1)(b), which prohibits failure to respond to a request by the division;

~~[(n)]~~ (o) Subsection 61-2f-201(1), which requires licensure;

~~[(o)]~~ (p) Subsection 61-2f-206(1), which requires entity registration;

~~[(p)]~~ (q) Subsection 61-2f-301(1), which requires notification of a specified legal action;

~~[(q)]~~ (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;

~~[(r)]~~ (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated with a principal broker;

~~[(s)]~~ (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records for inspection by the division;

~~[(t)]~~ (u) Subsection 61-2f-401(13), which prohibits false, misleading, or deceptive advertising;

~~[(u)]~~ (v) Subsection 61-2f-401(20), which prohibits failing to respond to a division request;

~~[(v)]~~ (w) Subsection 61-2g-301(1), which requires licensure;

~~[(w)]~~ (x) Subsection 61-2g-405(3), which requires making records required to be maintained available to the division;

~~[(x)]~~ (y) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;

~~[(y)]~~ (z) a rule made pursuant to any Subsection listed in this Subsection (3);

~~[(z)]~~ (aa) an order of the division; or

~~[(aa)]~~ (bb) an order of the commission or board that oversees the person's profession.

(4) (a) In accordance with Subsection (9), the division may assess a fine against a person for a violation of a provision listed in Subsection (3), as evidenced by:

(i) an uncontested citation;

(ii) a stipulated settlement; or

(iii) a finding of a violation in an adjudicative proceeding.

(b) The division may, in addition to or in lieu of a fine under Subsection (4)(a), order the person to cease and desist from an activity that violates a provision listed in Subsection (3).

(5) Except as provided in Subsection (7)(d), the division may not use a citation to effect a license:

(a) denial;

(b) probation;

(c) suspension; or

(d) revocation.

(6) (a) A citation issued by the division shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the statute, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time period specified in the citation.

(b) The division may issue a notice in lieu of a citation.

(7) (a) A citation becomes final:

(i) if within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation; or

(ii) if the director or the director's designee conducts a hearing pursuant to a timely request for a hearing and issues an order finding that a violation has occurred.

(b) The 20-day period to contest a citation may be extended by the division for cause.

(c) A citation that becomes the final order of the division due to a person's failure to timely request a hearing is not subject to further agency review.

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

(ii) The failure of a license applicant to comply with a citation after the citation becomes final is a ground for denial of the license application.

(8) (a) The division may not issue a citation under this section after the expiration of ~~[six months]~~ one year following the occurrence of a violation.

(b) The division may issue a notice to address a violation that is outside of the ~~[six-month]~~ one-year citation period.

(9) The director or the director's designee shall assess a fine with a citation in an amount that is no more than:

(a) for a first offense, \$1,000;

(b) for a second offense, \$2,000; and

(c) for each offense subsequent to a second offense, \$2,000 for each day of continued offense.

(10) (a) An action for a first or second offense for which the division has not issued final order does not preclude the division from initiating a subsequent action for a second or subsequent offense while the preceding action is pending.

(b) The final order on a subsequent action is considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

(11) (a) If a person does not pay a penalty, the director may collect the unpaid penalty by:

(i) referring the matter to a collection agency; or
(ii) bringing an action in the district court of the county:

(A) where the person resides; or

(B) where the office of the director is located.

(b) A county attorney or the attorney general of the state shall provide legal services to the director in an action to collect the penalty.

(c) A court may award reasonable attorney fees and costs to the division in an action brought by the division to enforce the provisions of this section.

Section 2. Section 61-2c-102 is amended to read:

61-2c-102. Definitions.

(1) As used in this chapter:

(a) "Affiliation" means that a mortgage loan originator is associated with a principal lending manager in accordance with Section 61-2c-209.

(b) "Applicant" means a person applying for a license under this chapter.

(c) "Approved examination provider" means a person approved by the nationwide database or by the division as an approved test provider.

(d) "Associate lending manager" means an individual who:

(i) qualifies under this chapter as a principal lending manager; and

(ii) works by or on behalf of another principal lending manager in transacting the business of residential mortgage loans.

(e) "Branch lending manager" means an individual who is:

(i) licensed as a lending manager; and

(ii) designated in the nationwide database by the individual's sponsoring entity as being responsible to work from a branch office and to supervise the business of residential mortgage loans that is conducted at the branch office.

(f) "Branch office" means a licensed entity's office:

(i) for the transaction of the business of residential mortgage loans regulated under this chapter;

(ii) other than the main office of the licensed entity; and

(iii) that operates under:

(A) the same business name as the licensed entity; or

(B) another trade name that is registered with the division under the entity license.

(g) "Business day" means a day other than:

(i) a Saturday;

(ii) a Sunday; or

(iii) a federal or state holiday.

(h) (i) "Business of residential mortgage loans" means for compensation or in the expectation of compensation to:

(A) engage in an act that makes an individual a mortgage loan originator;

(B) make or originate a residential mortgage loan;

(C) directly or indirectly solicit a residential mortgage loan for another;

(D) unless exempt under Section 61-2c-105 or excluded under Subsection (1)(h)(ii), render services related to the origination of a residential mortgage loan including:

(I) preparing a loan package;

(II) communicating with the borrower or lender;

(III) advising on a loan term;

~~[(IV) acting as a loan processor or loan underwriter without being employed by a licensed entity; or]~~

~~[(V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter; or]~~

~~[(IV) receiving, collecting, or distributing information common for the processing or underwriting of a loan in the mortgage industry; or]~~

~~[(V) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan; or]~~

(E) engage in loan modification assistance.

(ii) "Business of residential mortgage loans" does not include:

~~[(A) if working as an employee under the direction of and subject to the supervision and instruction of a person licensed under this chapter, the performance of a clerical or support duty, including;]~~

~~[(4) the receipt, collection, or distribution of information common for the processing or underwriting of a loan in the mortgage industry other than taking an application;]~~

~~[(II) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan;]~~

~~[(III) word processing;]~~

~~[(IV) sending correspondence;]~~

~~[(V) assembling files; or]~~

~~[(VI) acting as a loan processor or loan underwriter;]~~

~~[(B) acting as a loan underwriter under the direction and control of an employer licensed under this chapter;]~~

~~[(C) acting as a loan underwriter, as an employee of a depository institution, exclusively in the capacity of the depository institution's employee;]~~

~~[(D)]~~ (A) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection (1)(h)(i);

~~[(E) except if an individual will engage in an activity as a mortgage loan originator;]~~

(B) acting in one or more of the following capacities:

(I) a loan wholesaler;

(II) an account executive for a loan wholesaler;

~~[(III) a loan underwriter;]~~

~~[(IV)]~~ (III) a loan closer; or

~~[(V)]~~ (IV) funding a loan; or

~~[(F)]~~ (C) if employed by a person who owns or services an existing residential mortgage loan, the direct negotiation with the borrower for the purpose of loan modification.

(i) "Certified education provider" means a person who is certified under Section 61-2c-204.1 to provide one or more of the following:

(i) Utah-specific prelicensing education; or

(ii) Utah-specific continuing education.

(j) "Closed-end" means a loan:

(i) with a fixed amount borrowed; and

(ii) that does not permit additional borrowing secured by the same collateral.

(k) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.

(l) "Community development financial institution" means the same as that term is defined in 12 U.S.C. Sec. 4702.

(m) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to an individual or entity for or in consideration of:

(i) services;

(ii) personal or real property; or

(iii) another thing of value.

(n) "Concurrence" means that entities given a concurring role must jointly agree for the action to be taken.

(o) "Continuing education" means education taken by an individual licensed under this chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and 61-2c-205 to renew a license under this chapter.

(p) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly or indirectly:

(i) direct or exercise a controlling interest over:

(A) the management or policies of an entity; or

(B) the election of a majority of the directors, officers, managers, or managing partners of an entity;

(ii) vote 20% or more of a class of voting securities of an entity by an individual; or

(iii) vote more than 5% of a class of voting securities of an entity by another entity.

(q) (i) "Control person" means an individual identified by an entity registered with the nationwide database as being an individual directing the management or policies of the entity.

(ii) "Control person" may include one of the following who is identified as provided in Subsection (1)(q)(i):

(A) a manager;

(B) a managing partner;

(C) a director;

(D) an executive officer; or

(E) an individual who performs a function similar to an individual listed in this Subsection (1)(q)(ii).

(r) "Depository institution" means the same as that term is defined in Section 7-1-103.

(s) "Director" means the director of the division.

(t) "Division" means the Division of Real Estate.

(u) "Dwelling" means a residential structure attached to real property that contains one to four family units including any of the following if used as a residence:

(i) a condominium unit;

(ii) a cooperative unit;

(iii) a manufactured home; or

(iv) a house.

(v) "Employee":

(i) means an individual:

(A) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and

(B) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person; and

(ii) does not include an independent contractor who performs duties other than at the direction of, and subject to the supervision and instruction of, another person.

(w) "Entity" means:

- (i) a corporation;
- (ii) a limited liability company;
- (iii) a partnership;
- (iv) a company;
- (v) an association;
- (vi) a joint venture;
- (vii) a business trust;
- (viii) a trust; or
- (ix) another organization.

(x) "Executive director" means the executive director of the Department of Commerce.

(y) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.

(z) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:

(i) engage, or offer to engage, in an act that:

(A) the person represents will assist a borrower in preventing a foreclosure; and

(B) relates to a transaction involving the transfer of title to residential real property; or

(ii) as an employee or agent of another person:

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)(z)(i); or

(B) negotiate terms in relationship to an act described in Subsection (1)(z)(i).

(aa) "Inactive status" means a dormant status into which an unexpired license is placed when the holder of the license is not currently engaging in the business of residential mortgage loans.

(bb) "Lending manager" means an individual licensed as a lending manager under Section 61-2c-206 to transact the business of residential mortgage loans.

(cc) "Licensee" means a person licensed with the division under this chapter.

(dd) "Licensing examination" means the examination required by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

(ee) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:

(i) act, or offer to act, on behalf of a person to:

(A) obtain a loan term of a residential mortgage loan that is different from an existing loan term including:

(I) an increase or decrease in an interest rate;

(II) a change to the type of interest rate;

(III) an increase or decrease in the principal amount of the residential mortgage loan;

(IV) a change in the number of required period payments;

(V) an addition of collateral;

(VI) a change to, or addition of, a prepayment penalty;

(VII) an addition of a cosigner; or

(VIII) a change in persons obligated under the existing residential mortgage loan; or

(B) substitute a new residential mortgage loan for an existing residential mortgage loan; or

(ii) as an employee or agent of another person:

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)(ee)(i); or

(B) negotiate terms in relationship to an act described in Subsection (1)(ee)(i).

(ff) (i) "Mortgage loan originator" means an individual who, for compensation or in expectation of compensation:

(A) (I) takes a residential mortgage loan application;

(II) offers or negotiates terms of a residential mortgage loan for the purpose of:

(Aa) a purchase;

(Bb) a refinance;

(Cc) a loan modification assistance; or

(Dd) a foreclosure rescue; or

(III) directly or indirectly solicits a residential mortgage loan for another person; and

(B) is licensed as a mortgage loan originator in accordance with this chapter.

(ii) "Mortgage loan originator" does not include a person who:

(A) is described in Subsection (1)(ff)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(h)(ii)(A);

(B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

(II) performs only real estate brokerage activities; and

(III) receives no compensation from:

(Aa) a lender;

(Bb) a lending manager; or

(Cc) an agent of a lender or lending manager; or

(C) is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D).

(gg) “Nationwide database” means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements.

(hh) “Nontraditional mortgage product” means a mortgage product other than a 30-year fixed rate mortgage.

(ii) “Person” means an individual or entity.

(jj) “Prelicensing education” means education taken by an individual seeking to be licensed under this chapter in order to meet the education requirements imposed by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

(kk) “Principal lending manager” means an individual:

(i) licensed as a lending manager under Section 61-2c-206; and

(ii) identified in the nationwide database by the individual’s sponsoring entity as the entity’s principal lending manager.

(ll) “Prospective borrower” means a person applying for a mortgage from a person who is required to be licensed under this chapter.

(mm) “Record” means information that is:

(i) prepared, owned, received, or retained by a person; and

(ii) (A) inscribed on a tangible medium; or

(B) (I) stored in an electronic or other medium; and

(II) in a perceivable and reproducible form.

(nn) “Referral fee”:

(i) means any fee, kickback, other compensation, or thing of value tendered for a referral of business or a service incident to or part of a residential mortgage loan transaction; and

(ii) does not include:

(A) a payment made by a licensed entity to an individual employed by the entity under a contractual incentive program according to rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(B) a payment made for reasonable promotional and educational activities that is not conditioned on the referral of business and is not used to pay expenses that a person in a position to refer settlement services or business related to the settlement services would otherwise incur.

(oo) “Residential mortgage loan” means an extension of credit, if:

(i) the loan or extension of credit is secured by a:

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest; and

(ii) the mortgage, deed of trust, or consensual security interest described in Subsection (1)(oo)(i):

(A) is on a dwelling located in the state; and

(B) is created with the consent of the owner of the residential real property.

(pp) “Settlement” means the time at which each of the following is complete:

(i) the borrower and, if applicable, the seller sign and deliver to each other or to the escrow or closing office each document required by:

(A) the real estate purchase contract;

(B) the lender;

(C) the title insurance company;

(D) the escrow or closing office;

(E) the written escrow instructions; or

(F) applicable law;

(ii) the borrower delivers to the seller, if applicable, or to the escrow or closing office any money, except for the proceeds of any new loan, that the borrower is required to pay; and

(iii) if applicable, the seller delivers to the buyer or to the escrow or closing office any money that the seller is required to pay.

(qq) “Settlement services” means a service provided in connection with a real estate settlement, including a title search, a title examination, the provision of a title certificate, services related to title insurance, services rendered by an attorney, preparing documents, a property survey, rendering a credit report or appraisal, a pest or fungus inspection, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan, and the processing of a federally related mortgage.

(rr) “Sponsorship” means an association in accordance with Section 61-2c-209 between an individual licensed under this chapter and an entity licensed under this chapter.

(ss) “State” means:

(i) a state, territory, or possession of the United States;

(ii) the District of Columbia; or

(iii) the Commonwealth of Puerto Rico.

(tt) “Uniform state test” means the uniform state content section of the qualified written test developed by the nationwide database.

[~~(tt)~~] (uu) “Unique identifier” means the same as that term is defined in 12 U.S.C. Sec. 5102.

[~~(uu)~~] (vv) “Utah-specific” means an educational [~~or examination~~] requirement under this chapter that relates specifically to Utah.

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

Section 3. Section 61-2c-105 is amended to read:

61-2c-105. Scope of chapter -- Exemptions.

(1) (a) Except as to an individual who will engage in an activity as a mortgage loan originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien or equivalent security interest on a dwelling.

(b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer Credit Code.

(2) The following are exempt from this chapter:

(a) the federal government;

(b) a state;

(c) a political subdivision of a state;

(d) an agency of or entity created by a governmental entity described in Subsections (2)(a) through (c) including:

(i) the Utah Housing Corporation created in Section 63H-8-201;

(ii) the Federal National Mortgage Corporation;

(iii) the Federal Home Loan Mortgage Corporation;

(iv) the Federal Deposit Insurance Corporation;

(v) the Resolution Trust Corporation;

(vi) the Government National Mortgage Association;

(vii) the Federal Housing Administration;

(viii) the National Credit Union Administration;

(ix) the Farmers Home Administration; and

(x) the United States Department of Veterans Affairs;

(e) a depository institution;

(f) an entity that controls, is controlled by, or is under common control with a depository institution;

(g) an employee or agent of an entity described in Subsections (2)(a) through (f):

(i) when that person acts on behalf of the entity described in Subsections (2)(a) through (f); and

(ii) including an employee of:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(I) owned and controlled by the depository institution; and

(II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or

(C) an institution regulated by the Farm Credit Administration;

(h) except as provided in Subsection (3), a person who:

(i) makes a loan:

(A) secured by an interest in real property;

(B) with the person's own money; and

(C) for the person's own investment; and

(ii) that does not engage in the business of making loans secured by an interest in real property;

(i) except as provided in Subsection (3), a person who receives a mortgage, deed of trust, or consensual security interest on real property if the individual or entity:

(i) is the seller of real property; and

(ii) receives the mortgage, deed of trust, or consensual security interest on real property as security for a separate money obligation;

(j) a person who receives a mortgage, deed of trust, or consensual security interest on real property if:

(i) the person receives the mortgage, deed of trust, or consensual security interest as security for an obligation payable on an installment or deferred payment basis;

(ii) the obligation described in Subsection (2)(j)(i) arises from a person providing materials or services used in the improvement of the real property that is the subject of the mortgage, deed of trust, or consensual security interest; and

(iii) the mortgage, deed of trust, or consensual security interest is created without the consent of the owner of the real property that is the subject of the mortgage, deed of trust, or consensual security interest;

(k) a nonprofit corporation that:

(i) (A) is exempt from paying federal income taxes;

(B) is certified by the United States Small Business Administration as a small business investment company;

(C) is organized to promote economic development in this state; and

(D) has as its primary activity providing financing for business expansion; or

(ii) is a community development financial institution;

(l) except as provided in Subsection (3), a court appointed fiduciary; or

(m) an attorney admitted to practice law in this state:

(i) if the attorney is not principally engaged in the business of negotiating residential mortgage loans when considering the attorney's ordinary practice as a whole for all the attorney's clients; and

(ii) when the attorney engages in loan modification assistance in the course of the attorney's practice as an attorney.

(3) An individual who will engage in an activity as a mortgage loan originator is exempt from this chapter only if the individual is an employee or agent exempt under Subsection (2)(g).

(4) (a) A loan processor or loan underwriter who is not a mortgage loan originator is not required to obtain a license under this chapter when the loan processor or loan underwriter is:

(i) employed by, and acting on behalf of, a person or entity licensed under this chapter; and

(ii) under the direction of and subject to the supervision of a person licensed under this chapter.

(b) A loan processor or loan underwriter who is an independent contractor is not exempt under Subsection (4)(a).

[4] (5) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may not engage in conduct described in Section 61-2c-301 when transacting business of residential mortgage loans.

(b) If an attorney exempt from this chapter violates Subsection [4] (5)(a), the attorney:

(i) is not subject to enforcement by the division under Part 4, Enforcement; and

(ii) may be subject to disciplinary action generally applicable to an attorney admitted to practice law in this state.

(c) If the division receives a complaint alleging an attorney exempt from this chapter is in violation of Subsection [4] (5)(a) or that an attorney subject to this chapter has violated this chapter, the division shall forward the complaint to the Utah State Bar for disciplinary action.

[5] (6) (a) An individual who is exempt under Subsection (2) [e], (3), or (4) may voluntarily obtain a license under this chapter by complying with Part 2, Licensure.

(b) An individual who voluntarily obtains a license under this Subsection [5] (6) shall comply with all the provisions of this chapter.

Section 4. Section 61-2c-204.1 is amended to read:

61-2c-204.1. Education providers -- Education requirements -- Examination requirements.

(1) As used in this section:

(a) "Approved continuing education course" means a course of continuing education that is approved by the nationwide database or by the division.

(b) "Approved preclicensing education course" means a course of preclicensing education that is approved by the nationwide database or by the division.

(2) (a) A person may not provide Utah-specific preclicensing education or Utah-specific continuing education if that person is not certified by the division under this chapter.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing:

(i) certification criteria and procedures to become a certified education provider; and

(ii) standards of conduct for a certified education provider.

(c) In accordance with the rules described in Subsection (2)(b), the division shall certify a person to provide the education described in Subsection (2)(a).

(d) (i) Upon request, the division shall make available to the public a list of the names and addresses of certified education providers either directly or through a third party.

(ii) A person who requests a list under this Subsection (2)(d) shall pay the costs incurred by the division to make the list available.

(e) In certifying a person as a certified education provider, the division by rule may:

(i) distinguish between an individual instructor and an entity that provides education; or

(ii) approve:

(A) Utah-specific preclicensing education; or

(B) Utah-specific continuing education courses.

(3) (a) The division may not:

(i) license an individual under this chapter as a mortgage loan originator who has not completed the preclicensing education required by this section:

(A) before taking the ~~one or more~~ licensing examinations required by Subsection (4);

(B) in the number of hours, not to exceed 90 hours, required by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(C) that includes the preclicensing education required by federal licensing regulations;

(ii) subject to Subsection (6), renew a license of an individual who has not completed the continuing education required by this section and Section 61-2c-205:

(A) in the number of hours required by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(B) that includes the continuing education required by federal licensing regulations; or

(iii) license an individual under this chapter as a lending manager who has not completed the

prelicensing education required by Section 61-2c-206 before taking the licensing examination required by Section 61-2c-206.

(b) Subject to Subsection (3)(a) and with the concurrence of the division, the commission shall determine:

(i) except as provided in Subsection 61-2c-206(1)(b), the appropriate number of hours of prelicensing education required to obtain a license;

(ii) the subject matters of the prelicensing education required under this section and Section 61-2c-206, including online education or distance learning options;

(iii) the appropriate number of hours of continuing education required to renew a license, including additional continuing education required for a new loan originator; and

(iv) the subject matter of courses the division may accept for continuing education purposes.

(c) The commission may appoint a committee to make recommendations to the commission concerning approval of prelicensing education and continuing education courses, except that the commission shall appoint at least one member to the committee to represent each association that represents a significant number of individuals licensed under this chapter.

(d) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the calculation of continuing education credits, except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

(4) (a) The division may not license an individual under this chapter unless that individual first passes the [one or more licensing examinations] qualified written national test developed by the nationwide database that includes the uniform state test content that:

~~[(i) are adopted by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;]~~

~~[(ii) meet]~~ (i) meets the minimum federal licensing requirements; and

~~[(iii) are]~~ (ii) is administered by an approved examination provider.

(b) The commission, with the concurrence of the division, shall determine the requirements for:

~~[(i) a licensing examination that at least:]~~

~~[(A) meets the minimum federal licensing requirements; and]~~

~~[(B) tests knowledge of the:]~~

~~[(I) fundamentals of the English language;]~~

~~[(II) arithmetic;]~~

~~[(III) provisions of this chapter;]~~

~~[(IV) rules adopted under this chapter;]~~

~~[(V) basic residential mortgage principles and practices; and]~~

~~[(VI) any other aspect of Utah law the commission determines is appropriate; and]~~

~~[(ii) a]~~ (i) the lending manager licensing examination required under Section 61-2c-206 that tests the applicant's knowledge of:

~~[(A) meets the requirements of Subsection 4(b)(i); and]~~

~~[(B) tests knowledge of the:]~~

(A) fundamentals of the English language;

(B) arithmetic;

(C) provisions of this chapter;

~~[(I)]~~ (D) advanced residential mortgage principles and practices; and

~~[(II)]~~ (E) other aspects of Utah law the commission, with the concurrence of the division, determines appropriate.

(c) An individual who will engage in an activity as a mortgage loan originator, is not considered to have passed a licensing examination if that individual has not met the minimum competence requirements of 12 U.S.C. Sec. 5104(d)(3).

(5) When reasonably practicable, the commission and the division shall make the Utah-specific education requirements described in this section available electronically through one or more distance education methods approved by the commission and division.

(6) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission, with the concurrence of the division, shall make rules establishing procedures under which a licensee may be exempted from a Utah-specific continuing education requirement:

(i) for a period not to exceed four years; and

(ii) upon a finding of reasonable cause.

(b) An individual who engages in an activity as a mortgage loan originator may not under this Subsection (6) be exempted from the minimum continuing education required under federal licensing regulations for an individual who engages in an activity as a mortgage loan originator.

Section 5. Section 61-2c-206 is amended to read:

61-2c-206. Lending manager licenses.

(1) To qualify for licensure as a lending manager under this chapter, an individual shall:

(a) meet the standards in Section 61-2c-203;

(b) successfully complete the following education:

(i) mortgage loan originator prelicensing education as required by federal licensing regulations; and

(ii) 40 hours of Utah-specific prelicensing education for a lending manager that is approved by the division under Section 61-2c-204.1;

(c) successfully complete the following examinations:

(i) the mortgage loan originator licensing examination, including the national and [state components] uniform state test content, as approved by the nationwide database; and

(ii) the lending manager licensing examination approved by the commission under Section 61-2c-204.1;

(d) submit proof, on a form approved by the division, of three years of full-time active experience as a mortgage loan originator licensed in any state in the five years preceding the day on which the application is submitted, or equivalent experience as approved by the commission pursuant to rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) submit an application in a manner established by the division by rule;

(f) establish sponsorship with an entity licensed under this chapter;

(g) submit to the criminal background check required by Subsection 61-2c-202(1)(b); and

(h) pay a fee determined by the division under Section 63J-1-504.

(2) A lending manager may not:

(a) engage in the business of residential mortgage loans on behalf of more than one entity at the same time;

(b) be sponsored by more than one entity at the same time; or

(c) act simultaneously as the principal lending manager and branch lending manager for the individual's sponsoring entity, unless:

(i) the sponsoring entity does not originate Utah residential mortgage loans from the sponsoring entity's location; and

(ii) the sponsoring entity originates Utah residential mortgage loans from no more than one branch location.

(3) An individual who is a lending manager may:

(a) transact the business of residential mortgage loans as a mortgage loan originator; and

(b) be designated within the nationwide database to act for the individual's sponsoring entity as the principal lending manager, an associate lending manager, or a branch lending manager.

Section 6. Section 61-2c-301 is amended to read:

61-2c-301. Prohibited conduct -- Violations of the chapter.

(1) A person transacting the business of residential mortgage loans in this state may not:

(a) give or receive a referral fee;

(b) charge a fee in connection with a residential mortgage loan transaction:

(i) that is excessive; or

(ii) without providing to the loan applicant a written statement signed by the loan applicant:

(A) stating whether or not the fee or deposit is refundable; and

(B) describing the conditions, if any, under which all or a portion of the fee or deposit will be refunded to the loan applicant;

(c) act incompetently in the transaction of the business of residential mortgage loans such that the person fails to:

(i) safeguard the interests of the public; or

(ii) conform to acceptable standards of the residential mortgage loan industry;

(d) do any of the following as part of a residential mortgage loan transaction, regardless of whether the residential mortgage loan closes:

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

(iii) knowingly permit false information to be submitted by any party;

(e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;

(f) violate or not comply with:

(i) this chapter;

(ii) an order of the commission or division; or

(iii) a rule made by the division;

(g) fail to respond within the required time period to:

(i) a notice or complaint of the division; or

(ii) a request for information from the division;

(h) make false representations to the division, including in a licensure statement;

(i) for a residential mortgage loan transaction beginning on or after January 1, 2004, engage in the business of residential mortgage loans with respect to the transaction if the person also acts in any of the following capacities with respect to the same residential mortgage loan transaction:

(i) appraiser;

- (ii) escrow agent;
- (iii) real estate agent;
- (iv) general contractor; or
- (v) title insurance producer;
- (j) engage in unprofessional conduct as defined by rule;
- (k) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;
 - (l) engage in false or misleading advertising;
 - (m) (i) fail to account for money received in connection with a residential mortgage loan;
 - (ii) use money for a different purpose from the purpose for which the money is received; or
 - (iii) except as provided in Subsection (4), retain money paid for services if the services are not performed;
 - (n) fail to provide a prospective borrower a copy of each appraisal and any other written valuation developed in connection with an application for credit that is to be secured by a first lien on a dwelling in accordance with Subsection (5);
 - (o) engage in an act that is performed to:
 - (i) evade this chapter; or
 - (ii) assist another person to evade this chapter;
 - (p) recommend or encourage default, delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness before the closing of a residential mortgage loan that will refinance all or part of the indebtedness;
 - (q) in the case of the lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of:
 - (i) unlicensed staff; or
 - (ii) a mortgage loan originator who is affiliated with the lending manager;
 - (r) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter;
 - (s) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
 - (i) provide a title insurance product or service without the approval required by Section 31A-2-405; or
 - (ii) knowingly provide false or misleading information in the statement required by Subsection 31A-2-405(2);
 - (t) represent to the public that the person can or will perform any act of a mortgage loan originator if that person is not licensed under this chapter

because the person is exempt under Subsection ~~[61-2c-102(1)(h)(ii)(A)]~~ 61-2c-105(4), including through:

- (i) advertising;
- (ii) a business card;
- (iii) stationery;
- (iv) a brochure;
- (v) a sign;
- (vi) a rate list; or
- (vii) other promotional item;
- (u) (i) engage in an act of loan modification assistance without being licensed under this chapter;
- (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent or real estate broker under Chapter 2, Division of Real Estate, without being licensed under that chapter;
- (iii) engage in an act of loan modification assistance without entering into a written agreement specifying which one or more acts of loan modification assistance will be completed;
- (iv) request or require a person to pay a fee before obtaining:
 - (A) a written offer for a loan modification from the person's lender or servicer; and
 - (B) the person's written acceptance of the offer from the lender or servicer;
 - (v) induce a person seeking a loan modification to hire the licensee to engage in an act of loan modification assistance by:
 - (A) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or
 - (B) falsely representing or advertising that the licensee is acting on behalf of:
 - (I) a government agency;
 - (II) the person's lender or loan servicer; or
 - (III) a nonprofit or charitable institution;
 - (vi) recommend or participate in a loan modification that requires a person to:
 - (A) transfer title to real property to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;
 - (B) make a mortgage payment to a person other than the person's loan servicer; or
 - (C) refrain from contacting the person's:
 - (I) lender;
 - (II) loan servicer;
 - (III) attorney;
 - (IV) credit counselor; or
 - (V) housing counselor; or

(vii) for an agreement for loan modification assistance entered into on or after May 11, 2010, engage in an act of loan modification assistance without offering in writing to the person entering into the agreement for loan modification assistance a right to cancel the agreement within three business days after the day on which the person enters the agreement;

(v) sign or initial a document on behalf of another person, except for in a circumstance allowed by the division by rule, with the concurrence of the commission, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; ~~or~~

(w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse Mortgage Act~~[-];~~ or

(x) engage in any act or practice that violates appraisal independence as defined in 15 U.S.C. Sec. 1639e or in the policies and procedures of:

(i) the Federal Home Loan Mortgage Corporation; or

(ii) the Federal National Mortgage Association.

(2) Whether or not the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee or a person who is a certified education provider to do any of the following with respect to a criminal offense that involves moral turpitude:

- (a) be convicted;
- (b) plead guilty or nolo contendere;
- (c) enter a plea in abeyance; or

(d) be subjected to a criminal disposition similar to the ones described in Subsections (2)(a) through (c).

(3) A lending manager does not violate Subsection (1)(q) if:

(a) in contravention of the lending manager's written policies and instructions, an affiliated licensee of the lending manager violates:

- (i) this chapter; or
- (ii) rules made by the division under this chapter;

(b) the lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;

(c) upon learning of a violation by an affiliated licensee, the lending manager attempted to prevent or mitigate the damage;

(d) the lending manager did not participate in or ratify the violation by an affiliated licensee; and

(e) the lending manager did not attempt to avoid learning of the violation.

(4) Notwithstanding Subsection (1)(m)(iii), a licensee may, upon compliance with Section 70D-2-305, charge a reasonable cancellation fee for

work done originating a mortgage if the mortgage is not closed.

(5) (a) Except as provided in Subsection (5)(b), a person transacting the business of residential mortgage loans in this state shall provide a prospective borrower a copy of each appraisal and any other written valuation developed in connection with an application for credit that is to be secured by a first lien on a dwelling on or before the earlier of:

(i) as soon as reasonably possible after the appraisal or other valuation is complete; or

(ii) three business days before the day of the settlement.

(b) Subject to Subsection (5)(c), unless otherwise prohibited by law, a prospective borrower may waive the timing requirement described in Subsection (5)(a) and agree to receive each appraisal and any other written valuation:

(i) less than three business days before the day of the settlement; or

(ii) at the settlement.

(c) (i) Except as provided in Subsection (5)(c)(ii), a prospective borrower shall submit a waiver described in Subsection (5)(b) at least three business days before the day of the settlement.

(ii) Subsection (5)(b) does not apply if the waiver only pertains to a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation and the prospective borrower received a copy of the original appraisal or other written valuation at least three business days before the day of the settlement.

(d) If a prospective borrower submits a waiver described in Subsection (5)(b) and the transaction never completes, the person transacting the business of residential mortgage loans shall provide a copy of each appraisal or any other written valuation to the applicant no later than 30 days after the day on which the person knows the transaction will not complete.

Section 7. Section 61-2c-302 is amended to read:

61-2c-302. Record requirements.

(1) For the time period specified in Subsection (2), a licensee shall make or possess any record required for that licensee by a rule made by the division.

(2) A licensee shall maintain and safeguard in its possession a record described in Subsection (1) for four years from the last to occur of the following:

(a) the final entry on a residential mortgage loan is made by that licensee;

(b) if the residential mortgage loan is serviced by the licensee:

(i) the residential mortgage loan is paid in full; or

(ii) the licensee ceases to service the residential mortgage loan; or

(c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.

(3) A licensee shall, upon the division's request:

(a) make available to the division for inspection and copying during normal business hours all records required to be maintained under this chapter; and

(b) produce all records described in Subsection (3)(a) that are related to an investigation being conducted by the division at the division office for inspection and copying by the division.

(4) A licensee who is an entity shall maintain and produce for inspection by the division a current list of all individuals whose licenses are sponsored by the entity.

(5) (a) A licensed entity shall:

(i) create, for each quarter of the fiscal year, a report of condition identifying all lending activities, including all loans closed by the entity's sponsored mortgage loan originators during the quarter;

(ii) provide each quarterly report of condition to the nationwide database no later than 75 days after the last day of the reporting quarter; and

(iii) maintain each report of condition submitted to the nationwide database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the licensee submits the report of condition to the nationwide database.

(b) Upon request by the division, a mortgage loan originator shall produce a report of condition for inspection by the division.

Section 8. Section 61-2c-401 is amended to read:

61-2c-401. Investigations.

(1) The division may, either publicly or privately, investigate or cause to be investigated the actions of:

(a) (i) a licensee;

(ii) a person required to be licensed under this chapter; or

(iii) the following with respect to an entity that is a licensee or an entity required to be licensed under this chapter:

(A) a manager;

(B) a managing partner;

(C) a director;

(D) an executive officer; or

(E) an individual who performs a function similar to an individual listed in this Subsection (1)(a)(iii);

(b) (i) an applicant for licensure or renewal of licensure under this chapter; or

(ii) the following with respect to an entity that has applied for a license or renewal of licensure under this chapter:

(A) a manager;

(B) a managing partner;

(C) a director;

(D) an executive officer; or

(E) an individual who performs a function similar to an individual listed in this Subsection (1)(b)(ii); or

(c) a person who transacts the business of residential mortgage loans within this state.

(2) In conducting investigations, records inspections, and adjudicative proceedings, the division may:

(a) administer an oath or affirmation;

(b) issue a subpoena that requires:

(i) the attendance and testimony of a witness; or

(ii) the production of evidence;

(c) take evidence;

(d) require the production of a record or information relevant to an investigation; and

(e) serve a subpoena by certified mail.

(3) (a) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.

(b) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.

(4) A failure to respond to a request by the division in an investigation authorized under this chapter is considered as a separate violation of this chapter, including:

(a) failing to respond to a subpoena;

(b) withholding evidence; or

(c) failing to produce a record.

(5) The division may inspect and copy a record related to the business of residential mortgage loans by a licensee under this chapter, regardless of whether the record is maintained at a business location in Utah, in conducting:

(a) investigations of complaints; or

(b) inspections of the record required to be maintained under:

(i) this chapter; or

(ii) rules adopted by the division under this chapter.

(6) (a) If a licensee maintains a record required by this chapter and the rules adopted by the division under this chapter outside Utah, the licensee is responsible for all reasonable costs, including reasonable travel costs, incurred by the division in inspecting the record.

(b) Upon receipt of notification from the division that a record maintained outside Utah is to be examined in connection with an investigation or an examination, the licensee shall deposit with the division a deposit of \$500 to cover the division's expenses in connection with the examination of the record.

(c) If the deposit described in Subsection (6)(b) is insufficient to meet the estimated costs and expenses of examination of the record, the licensee shall make an additional deposit to cover the estimated costs and expenses of the division.

(d) (i) A deposit under this Subsection (6) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection (6)(a).

(ii) The division, with the concurrence of the executive director, may use a deposit as a dedicated credit for the records inspection costs under Subsection (6)(a).

(iii) A deposit under this Subsection (6) shall be refunded to the licensee to the extent it is not used, together with an itemized statement from the division of all amounts it has used.

(7) Failure to deposit with the division a deposit required to cover the costs of examination of a record that is maintained outside Utah shall result in automatic suspension of a license until the deposit is made.

(8) (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a record required under this chapter, including the costs incurred to copy an electronic record in a universally readable format.

(b) If a person fails to pay the costs described in Subsection (8)(a) when due, the person's license or certification is automatically suspended:

(i) beginning the day on which the payment of costs is due; and

(ii) ending the day on which the costs are paid.

Section 9. Section 61-2e-201 is amended to read:

61-2e-201. Registration required -- Qualification for registration.

(1) Unless exempted under Section 61-2e-104, an appraisal management company is required to register under this chapter if the company:

(a) contracts with one or more appraisers for the performance of 10 or more appraisals in the state in a calendar year; or

(b) oversees a network or panel of more than 15 appraisers certified or licensed in the state.

(2) Unless registered under this chapter or exempt under Section 61-2e-104, an entity may not with regard to a real estate appraisal activity for real estate located in this state:

(a) directly or indirectly engage or attempt to engage in business as an appraisal management company;

(b) directly or indirectly engage or attempt to perform an appraisal management service; or

(c) advertise or hold itself out as engaging in or conducting business as an appraisal management company.

(3) To qualify to be registered as an appraisal management company under this chapter:

(a) the appraisal management company may not have had a license or registration revoked by a government regulatory body at any time, unless the revocation is subsequently vacated or converted;

~~(a)~~ (b) each individual who owns, directly or indirectly, more than 10% of the appraisal management company shall:

(i) be of good moral character, as determined by the board; and

(ii) not have had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

~~(b)~~ (c) the appraisal management company shall designate a main contact for communication between the appraisal management company and either the board or division who:

(i) is a controlling person;

(ii) is of good moral character, as determined by the board; and

(iii) has not had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state.

(4) This section applies without regard to whether the entity uses the term:

(a) "appraisal management company";

(b) "mortgage technology company"; or

(c) another name.

Section 10. Section 61-2e-307 is amended to read:

61-2e-307. Prohibited acts -- Exclusions.

(1) An appraisal management company required to be registered under this chapter and a controlling person, employee, or agent of the appraisal management company may not:

(a) engage in an act of coercion, extortion, intimidation, or bribery for any purpose related to an appraisal;

(b) compensate an appraiser in a manner that the person should reasonably know would result in the appraiser not conducting a real estate appraisal activity in a manner consistent with applicable appraisal standards;

(c) engage in the business of an appraisal management company under an assumed or fictitious name not properly registered in the state;

(d) accept a contingent fee for performing an appraisal management service if the fee is contingent on:

(i) the appraisal report having a predetermined analysis, opinion, or conclusion;

(ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or

(iii) the consequences resulting from the appraisal assignment;

(e) require an appraiser to indemnify the appraisal management company against liability except liability for errors and omissions by the appraiser; [øF]

(f) alter, modify, or otherwise change a completed appraisal report submitted by an appraiser[.]; or

(g) engage in any act or practice that violates appraisal independence as defined in 15 U.S.C. Sec. 1639e or in the policies and procedures of:

(i) the Federal Home Loan Mortgage Corporation; or

(ii) the Federal National Mortgage Association.

(2) An appraisal management company required to be registered under this chapter, or a controlling person, employee, or agent of the appraisal management company may not influence or attempt to influence the development, reporting, or review of an appraisal through:

(a) coercion;

(b) extortion;

(c) collusion;

(d) compensation;

(e) instruction;

(f) inducement;

(g) intimidation;

(h) bribery; or

(i) any other manner that would constitute undue influence.

(3) A violation of Subsection (2) includes doing one or more of the following for a purpose listed in Subsection (2):

(a) withholding or threatening to withhold timely payment for an appraisal;

(b) withholding or threatening to withhold future business for an appraiser;

(c) taking adverse action or threatening to take adverse action against an appraiser regarding use of the appraiser for a real estate appraisal activity;

(d) expressly or by implication promising future business or increased compensation for an appraiser;

(e) conditioning one or more of the following on the opinion, conclusion, or valuation to be reached,

or on a preliminary estimate or opinion requested from an appraiser:

(i) a request for a real estate appraisal activity; or

(ii) the payment of consideration;

(f) requesting that an appraiser provide at any time before the appraiser's completion of a real estate appraisal activity:

(i) an estimated, predetermined, or desired valuation in an appraisal report; or

(ii) an estimated value or comparable sale;

(g) except for a copy of a sales contract for a purchase transaction, providing to an appraiser:

(i) an anticipated, estimated, encouraged, or desired value for a subject property; or

(ii) a proposed or target amount to be loaned to the borrower;

(h) providing to an appraiser, or an individual related to the appraiser, stock or other financial or non-financial benefits;

(i) allowing the removal of an appraiser from an appraiser panel, without prior written notice to the appraiser as required by Section 61-2e-306;

(j) obtaining, using, or paying for a subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless:

(i) (A) there is a reasonable basis to believe that the initial appraisal does not meet applicable appraisal standards; and

(B) the reasonable basis is noted in the loan file; or

(ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or post-funding appraisal review or quality control process in accordance with applicable appraisal standards;

(k) removing or threatening to remove an appraiser from the appraiser panel if an appraiser requires a reasonable extension of the completion date for an appraisal assignment in order to complete a credible appraisal report; or

(l) engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(4) This section may not be construed to prohibit an appraisal management company from requesting that an appraiser:

(a) provide additional information about the basis for a valuation; or

(b) correct an objective factual error in an appraisal report.

Section 11. Section 61-2e-401 is amended to read:

61-2e-401. Division authority -- Immunity.

(1) (a) In addition to a power or duty expressly provided in this chapter, the division may:

(i) receive and act on a complaint including:

(A) taking action designed to obtain voluntary compliance with this chapter, including the issuance of a cease and desist order if the person against whom the order is issued is given the right to petition the board for review of the order; or

(B) commencing an administrative or judicial proceeding on the division's own initiative;

(ii) ~~investigate~~ conduct a public or private investigation of an entity required to be registered under this chapter, regardless of whether the entity is located in Utah;

(iii) employ one or more investigators, clerks, or other employees or agents if:

(A) approved by the executive director; and

(B) within the budget of the division; and

(iv) issue a subpoena that requires:

(A) the attendance and testimony of a witness; or

(B) the production of evidence.

(b) (i) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.

(ii) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.

(c) A failure to respond to a request by the division in an investigation under this chapter is considered to be a separate violation of this chapter, including:

(i) failing to respond to a subpoena;

(ii) withholding evidence; or

(iii) failing to produce a document or record.

(2) (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, or record in a universally readable format.

(b) If a person fails to pay the costs described in Subsection (2)(a) when due, the person's registration is automatically suspended:

(i) beginning the day on which the payment of costs is due; and

(ii) ending the day on which the costs are paid.

(3) The division is immune from a civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act or participating in a disciplinary proceeding under this chapter if the division takes the action:

(a) without malicious intent; and

(b) in the reasonable belief that the action is taken pursuant to the powers and duties vested in the division under this chapter.

Section 12. Section 61-2f-102 is amended to read:

61-2f-102. Definitions.

As used in this chapter:

(1) "Associate broker" means an individual who is:

(a) employed or engaged as an independent contractor by or on behalf of a principal broker to perform an act ~~set out~~ described in Subsection ~~(18)~~ (20) for valuable consideration; and

(b) licensed under this chapter as an associate broker.

(2) "Branch broker" means an associate broker who manages a principal broker's branch office under the supervision of the principal broker.

~~(2)~~ (3) "Branch office" means a principal broker's real estate brokerage office that is not the principal broker's main office.

~~(3)~~ (4) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

~~(4)~~ (5) "Business opportunity" means the sale, lease, or exchange of any business that includes an interest in real estate.

~~(5)~~ (6) "Commission" means the Real Estate Commission established under this chapter.

~~(6)~~ (7) "Concurrence" means the entities given a concurring role must jointly agree for action to be taken.

~~(7)~~ (8) "Condominium homeowners' association" means the condominium unit owners acting as a group in accordance with declarations and bylaws.

~~(8)~~ (9) (a) "Condominium hotel" means one or more condominium units that are operated as a hotel.

(b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of which are owned by a single entity.

~~(9)~~ (10) "Condominium unit" means the same as that term is defined in Section 57-8-3.

~~(10)~~ (11) "Director" means the director of the Division of Real Estate.

~~(11)~~ (12) "Division" means the Division of Real Estate.

(13) "Dual broker" means a principal broker of a real estate sales brokerage who obtains from the division a dual broker license in order to function as the principal broker of a property management company that is a separate entity from the real estate sales brokerage.

~~(12)~~ (14) "Entity" means:

- (a) a corporation;
 - (b) a partnership;
 - (c) a limited liability company;
 - (d) a company;
 - (e) an association;
 - (f) a joint venture;
 - (g) a business trust;
 - (h) a trust; or
- (i) any organization similar to an entity described in Subsections ~~[(12)]~~ (14)(a) through (h).

~~[(13)]~~ (15) “Executive director” means the director of the Department of Commerce.

~~[(14)]~~ (16) “Foreclosure rescue” means, for compensation or with the expectation of receiving valuable consideration, to:

- (a) engage, or offer to engage, in an act that:
 - (i) the person represents will assist a borrower in preventing a foreclosure; and
 - (ii) relates to a transaction involving the transfer of title to residential real property; or
 - (b) as an employee or agent of another person:
 - (i) solicit, or offer that the other person will engage in an act described in Subsection ~~[(14)]~~ (16)(a); or
 - (ii) negotiate terms in relationship to an act described in Subsection ~~[(14)]~~ (16)(a).
- ~~[(15)]~~ (17) “Loan modification assistance” means, for compensation or with the expectation of receiving valuable consideration, to:
- (a) act, or offer to act, on behalf of a person to:
 - (i) obtain a loan term of a residential mortgage loan that is different from an existing loan term including:
 - (A) an increase or decrease in an interest rate;
 - (B) a change to the type of interest rate;
 - (C) an increase or decrease in the principal amount of the residential mortgage loan;
 - (D) a change in the number of required period payments;
 - (E) an addition of collateral;
 - (F) a change to, or addition of, a prepayment penalty;
 - (G) an addition of a cosigner; or
 - (H) a change in persons obligated under the existing residential mortgage loan; or
 - (ii) substitute a new residential mortgage loan for an existing residential mortgage loan; or
 - (b) as an employee or agent of another person:

(i) solicit, or offer that the other person will engage in an act described in Subsection ~~[(15)]~~ (17)(a); or

(ii) negotiate terms in relationship to an act described in Subsection ~~[(15)]~~ (17)(a).

~~[(16)]~~ (18) “Main office” means the address which a principal broker designates with the division as the principal broker’s primary brokerage office.

~~[(17)]~~ (19) “Person” means an individual or entity.

~~[(18)]~~ (20) “Principal broker” means an individual who is licensed or required to be licensed as a principal broker under this chapter who:

- (a) sells or lists for sale real estate, including real estate being sold as part of a foreclosure rescue, or a business opportunity with the expectation of receiving valuable consideration;
 - (b) buys, exchanges, or auctions real estate, an option on real estate, a business opportunity, or an improvement on real estate with the expectation of receiving valuable consideration;
 - (c) advertises, offers, attempts, or otherwise holds the individual out to be engaged in the business described in Subsection ~~[(18)]~~ (20)(a) or (b);
 - (d) is employed by or on behalf of the owner of real estate or by a prospective purchaser of real estate and performs an act described in Subsection ~~[(18)]~~ (20)(a), whether the individual’s compensation is at a stated salary, a commission basis, upon a salary and commission basis, or otherwise;
 - (e) with the expectation of receiving valuable consideration, manages property owned by another person;
 - (f) advertises or otherwise holds the individual out to be engaged in property management;
 - (g) with the expectation of receiving valuable consideration, assists or directs in the procurement of prospects for or the negotiation of a transaction listed in Subsections ~~[(18)]~~ (20)(a) and (e);
 - (h) except for a mortgage lender, title insurance producer, or an employee of a mortgage lender or title insurance producer, assists or directs in the closing of a real estate transaction with the expectation of receiving valuable consideration;
 - (i) engages in foreclosure rescue; or
 - (j) advertises, offers, attempts, or otherwise holds the person out as being engaged in foreclosure rescue.
- ~~[(19)]~~ (21) (a) “Property management” means engaging in, with the expectation of receiving valuable consideration, the management of real estate owned by another person or advertising or otherwise claiming to be engaged in property management by:
- (i) advertising for, arranging, negotiating, offering, or otherwise attempting or participating in a transaction calculated to secure the rental or leasing of real estate;
 - (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real estate and

accounting for and disbursing the money collected; or

(iii) authorizing expenditures for repairs to the real estate.

(b) "Property management" does not include:

(i) hotel or motel management;

(ii) rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds, or similar public accommodations for a period of less than 30 consecutive days, and the management activities associated with these rentals; or

(iii) the leasing or management of surface or subsurface minerals or oil and gas interests, if the leasing or management is separate from a sale or lease of the surface estate.

(22) "Property management sales agent" means a sales agent who:

(a) is affiliated with a dual broker through the dual broker's property management company; and

(b) is designated by the dual broker as a property management sales agent.

[(20)] (23) "Real estate" includes leaseholds and business opportunities involving real property.

[(21)] (24) (a) "Regular salaried employee" means an individual who performs a service for wages or other remuneration, whose employer withholds federal employment taxes under a contract of hire, written or oral, express or implied.

(b) "Regular salaried employee" does not include an individual who performs services on a project-by-project basis or on a commission basis.

[(22)] (25) "Reinstatement" means restoring a license that has expired or has been suspended.

[(23)] (26) "Reissuance" means the process by which a licensee may obtain a license following revocation of the license.

[(24)] (27) "Renewal" means extending a license for an additional licensing period on or before the date the license expires.

[(25)] (28) "Sales agent" means an individual who is:

(a) affiliated with a principal broker, either as an independent contractor or an employee as provided in Section 61-2f-303, to perform for valuable consideration an act described in Subsection [(18)] (20); and

(b) licensed under this chapter as a sales agent.

Section 13. Section 61-2f-202 is amended to read:

61-2f-202. Exempt persons and transactions.

(1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not required for:

(i) [(an individual)] a person who as owner or lessor performs an act described in Subsection 61-2f-102(18) with reference to real estate owned or leased by that [(individual)] person;

(ii) a regular salaried employee of the owner or lessor of real estate who, with reference to nonresidential real estate owned or leased by the employer, performs an act described in Subsection 61-2f-102(18)(b) or (c);

(iii) a regular salaried employee of the owner of real estate who performs property management services with reference to real estate owned by the employer, except that the employee may only manage real estate for one employer;

(iv) an individual who performs property management services for the apartments at which that individual resides in exchange for free or reduced rent on that individual's apartment;

(v) a regular salaried employee of a condominium homeowners' association who manages real estate subject to the declaration of condominium that established the condominium homeowners' association, except that the employee may only manage real estate for one condominium homeowners' association; and

(vi) a regular salaried employee of a licensed property management company or real estate brokerage who performs support services, as prescribed by rule, for the property management company or real estate brokerage.

(b) Subsection (1)(a) does not exempt from licensing:

(i) an employee engaged in the sale of real estate regulated under:

(A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or

(B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

(ii) an employee engaged in the sale of cooperative interests regulated under Title 57, Chapter 23, Real Estate Cooperative Marketing Act; or

(iii) an individual whose interest as an owner or lessor is obtained by that individual or transferred to that individual for the purpose of evading the application of this chapter, and not for another legitimate business reason.

(2) A license under this chapter is not required for:

(a) an isolated transaction or service by an individual holding an unsolicited, duly executed power of attorney from a property owner;

(b) services rendered by an attorney admitted to practice law in this state in performing the attorney's duties as an attorney;

(c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting under order of a court;

(d) a trustee or employee of a trustee under a deed of trust or a will;

(e) a public utility, officer of a public utility, or regular salaried employee of a public utility, unless performance of an act described in Subsection 61-2f-102(18) is in connection with the sale, purchase, lease, or other disposition of real estate or investment in real estate unrelated to the principal business activity of that public utility;

(f) a regular salaried employee or authorized agent working under the oversight of the Department of Transportation when performing an act on behalf of the Department of Transportation in connection with one or more of the following:

(i) the acquisition of real estate pursuant to Section 72-5-103;

(ii) the disposal of real estate pursuant to Section 72-5-111;

(iii) services that constitute property management; or

(iv) the leasing of real estate; and

(g) a regular salaried employee of a county, city, or town when performing an act on behalf of the county, city, or town:

(i) in accordance with:

(A) if a regular salaried employee of a city or town:

(I) Title 10, Utah Municipal Code; or

(II) Title 11, Cities, Counties, and Local Taxing Units; and

(B) if a regular salaried employee of a county:

(I) Title 11, Cities, Counties, and Local Taxing Units; and

(II) Title 17, Counties; and

(ii) in connection with one or more of the following:

(A) the acquisition of real estate, including by eminent domain;

(B) the disposal of real estate;

(C) services that constitute property management; or

(D) the leasing of real estate.

(3) A license under this chapter is not required for an individual registered to act as a broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the sale or the offer for sale of real estate if:

(a) (i) the real estate is a necessary element of a "security" as that term is defined by the Securities Act of 1933 and the Securities Exchange Act of 1934; and

(ii) the security is registered for sale in accordance with:

(A) the Securities Act of 1933; or

(B) Title 61, Chapter 1, Utah Uniform Securities Act; or

(b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec. 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation D, Rule 506, 17 C.F.R. Sec. 230.506; and

(ii) the selling agent and the purchaser are not residents of this state.

(4) As used in this section, "owner" does not include:

(a) a person who holds an option to purchase real property;

(b) a mortgagee;

(c) a beneficiary under a deed of trust;

(d) a trustee under a deed of trust; or

(e) a person who owns or holds a claim that encumbers any real property or an improvement to the real property.

(5) The commission, with the concurrence of the division, may provide, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the circumstances under which a person or transaction qualifies for an exemption that is described in this section.

Section 14. Section 61-2f-206 is amended to read:

61-2f-206. Registration of entity or branch office -- Certification of education providers and courses -- Specialized licenses.

(1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it is registered with the division.

(b) To register with the division under this Subsection (1), an entity shall submit to the division:

(i) an application in a form required by the division;

(ii) evidence of an affiliation with a principal broker;

(iii) evidence that the entity is registered and in good standing with the Division of Corporations and Commercial Code; and

(iv) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.

(c) The division may terminate an entity's registration if:

(i) the entity's registration with the Division of Corporations and Commercial Code has been expired for at least three years; and

(ii) the entity's license with the division has been inactive for at least three years.

(2) (a) A principal broker shall register with the division each of the principal broker's branch offices.

(b) To register a branch office with the division under this Subsection (2), a principal broker shall submit to the division:

(i) an application in a form required by the division; and

(ii) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.

(3) (a) In accordance with rules made by the commission with the concurrence of the division, the division shall certify:

- (i) a real estate school;
- (ii) a course provider; or
- (iii) an instructor.

(b) In accordance with rules made by the commission, subject to concurrence by the division, the division shall certify a continuing education course that is required under this chapter.

(4) ~~[(a)]~~ Except as provided by rule, a principal broker may not be responsible for more than one registered entity at the same time.

(5) A principal broker may simultaneously supervise one main office and up to two additional branch offices.

(6) A branch broker may simultaneously supervise up to three branch offices.

~~[(b)-(i)]~~ (7) (a) In addition to issuing a principal broker license, associate broker license, or sales agent license authorizing the performance of an act set forth in Section 61-2f-201, the division may issue a specialized sales license or specialized property management license with the scope of practice limited to the specialty.

~~[(iii)]~~ (b) An individual may hold a specialized license in addition to a license as a principal broker, associate broker, or a sales agent.

(c) A sales agent who is affiliated with a dual broker may act as a property management sales agent if:

(i) the dual broker designates the sales agent as a property management sales agent; and

(ii) the sales agent pays to the division a property management sales agent designation fee in an amount determined by the division in accordance with Section 63J-1-504.

(d) A property management sales agent may simultaneously provide both property management services and real estate sales services under the supervision of a dual broker as provided by the commission with the concurrence of the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(iii)]~~ (8) The commission may ~~adopt rules pursuant to~~ determine, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, ~~[for the administration of this Subsection (4)]~~ licensing requirements related to this section for a principal broker, associate broker, sales agent, dual broker, property management sales agent, or

for a specialized license described in Subsection (7), including:

~~[(A)]~~ (a) prelicensing and postlicensing education requirements;

~~[(B)]~~ (b) examination requirements;

~~[(C)]~~ (c) affiliation with real estate brokerages or property management companies; ~~and~~

(d) property management sales agent:

(i) designation procedures;

(ii) allowable scope of practice; and

(iii) division fees;

(e) what constitutes reasonable supervision for:

(i) a principal broker when supervising a branch broker or sales agent; and

(ii) a branch broker when supervising a sales agent; and

~~[(D)]~~ (f) other licensing procedures.

Section 15. Section 61-2f-304 is amended to read:

61-2f-304. Termination of associate broker or sales agent by principal broker -- Notice.

(1) If a principal broker terminates an associate broker or sales agent, the principal broker shall ~~[by no later than three days from the day on which the principal broker terminates the associate broker or sales agent.]~~ notify the division and the associate broker or sales agent of the termination in a manner prescribed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the commission with the concurrence of the division.

~~[(a) provide the division a signed statement notifying the division of the termination; and]~~

~~[(b) send to the last known residence address of that associate broker or sales agent notice that the principal broker has notified the division of the termination of the associate broker or sales agent.]~~

(2) An associate broker or sales agent may not perform any act under this chapter, directly or indirectly, from and after the effective date ~~[of receipt]~~ of the termination notice ~~[by the division]~~ until the day on which the associate broker or sales agent is affiliated with a principal broker.

Section 16. Section 61-2f-401 is amended to read:

61-2f-401. Grounds for disciplinary action.

The following acts are unlawful for a person licensed or required to be licensed under this chapter:

(1) (a) making a substantial misrepresentation, including in a licensure statement;

(b) making an intentional misrepresentation;

(c) pursuing a continued and flagrant course of misrepresentation;

(d) making a false representation or promise through an agent, sales agent, advertising, or otherwise; or

(e) making a false representation or promise of a character likely to influence, persuade, or induce;

(2) acting for more than one party in a transaction without the informed consent of the parties;

(3) (a) acting as an associate broker or sales agent while not affiliated with a principal broker;

(b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or

(c) representing as sales agent or having a contractual relationship similar to that of sales agent with a person other than a principal broker;

(4) (a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;

(b) commingling money described in Subsection (4)(a) with the person's own money; or

(c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;

(5) paying or offering to pay valuable consideration, as defined by the commission, to a person not licensed under this chapter, except that valuable consideration may be shared:

(a) with a principal broker of another jurisdiction; or

(b) as provided under:

(i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

(ii) Title 16, Chapter 11, Professional Corporation Act; or

(iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405;

(6) for a principal broker, paying or offering to pay a sales agent or associate broker who is not affiliated with the principal broker at the time the sales agent or associate broker earned the compensation;

(7) being incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;

(8) failing to voluntarily furnish a copy of a document to the parties before and after the execution of a document;

(9) failing to keep and make available for inspection by the division a record of each transaction, including:

(a) the names of buyers and sellers or lessees and lessors;

(b) the identification of real estate;

(c) the sale or rental price;

(d) money received in trust;

(e) agreements or instructions from buyers and sellers or lessees and lessors; and

(f) any other information required by rule;

(10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;

(11) being convicted, within five years of the most recent application for licensure, of a criminal offense involving moral turpitude regardless of whether:

(a) the criminal offense is related to real estate; or

(b) the conviction is based upon a plea of nolo contendere;

(12) having, within five years of the most recent application for a license under this chapter, entered any of the following related to a criminal offense involving moral turpitude:

(a) a plea in abeyance agreement;

(b) a diversion agreement;

(c) a withheld judgment; or

(d) an agreement in which a charge was held in suspense during a period of time when the licensee was on probation or was obligated to comply with conditions outlined by a court;

(13) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

(14) in the case of a principal broker [~~or a licensee who is a branch manager~~] or a branch broker, failing to exercise reasonable supervision over the activities of the principal broker's or branch [~~manager's~~] broker's licensed or unlicensed staff;

(15) violating or disregarding:

(a) this chapter;

(b) an order of the commission; or

(c) the rules adopted by the commission and the division;

(16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;

(17) any other conduct which constitutes dishonest dealing;

(18) unprofessional conduct as defined by statute or rule;

(19) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:

(a) a real estate license, registration, or certificate issued by another jurisdiction; or

(b) another license, registration, or certificate to engage in an occupation or profession issued by this state or another jurisdiction;

(20) failing to respond to a request by the division in an investigation authorized under this chapter, including:

- (a) failing to respond to a subpoena;
- (b) withholding evidence; or
- (c) failing to produce documents or records;

(21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

(a) providing a title insurance product or service without the approval required by Section 31A-2-405; or

(b) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2);

(22) violating an independent contractor agreement between a principal broker and a sales agent or associate broker as evidenced by a final judgment of a court;

(23) (a) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;

(b) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;

(c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:

(i) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or

(ii) falsely representing or advertising that the licensee is acting on behalf of:

- (A) a government agency;
- (B) the person's lender or loan servicer; or
- (C) a nonprofit or charitable institution; or

(d) recommending or participating in a foreclosure rescue that requires a person to:

(i) transfer title to real estate to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;

(ii) make a mortgage payment to a person other than the person's loan servicer; or

(iii) refrain from contacting the person's:

- (A) lender;
- (B) loan servicer;
- (C) attorney;
- (D) credit counselor; or
- (E) housing counselor;

(24) as a principal broker, placing a lien on real property, unless authorized by law; or

(25) as a sales agent or associate broker, placing a lien on real property for an unpaid commission or other compensation related to real estate brokerage services.

Section 17. Section 61-2f-402 is amended to read:

61-2f-402. Investigations.

(1) The division may ~~make an~~ conduct a public or private investigation within or outside of this state as the division considers necessary to determine whether a person has violated, is violating, or is about to violate this chapter or any rule or order under this chapter.

(2) To aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter, the division may require or permit a person to file a statement in writing, under oath or otherwise as to the facts and circumstances concerning the matter to be investigated.

(3) For the purpose of the investigation described in Subsection (1), the division or an employee designated by the division may:

- (a) administer an oath or affirmation;
- (b) issue a subpoena that requires:
 - (i) the attendance and testimony of a witness; or
 - (ii) the production of evidence;
- (c) take evidence;
- (d) require the production of a book, paper, contract, record, other document, or information relevant to the investigation; and
- (e) serve a subpoena by certified mail.

(4) (a) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.

(b) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.

(5) (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, or record in a universally readable format.

(b) If a person fails to pay the costs described in Subsection (5)(a) when due, the person's license, certification, or registration is automatically suspended:

- (i) beginning the day on which the payment of costs is due; and
- (ii) ending the day on which the costs are paid.

(6) (a) Except as provided in Subsection (6)(b), the division shall commence a disciplinary action under

this chapter no later than the earlier of the following:

(i) four years after the day on which the violation is reported to the division; or

(ii) 10 years after the day on which the violation occurred.

(b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:

(i) (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and

(B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or

(ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).

Section 18. Section 61-2f-403 is amended to read:

61-2f-403. Mishandling of trust money.

(1) The division may audit principal brokers' trust accounts or other accounts in which a licensee maintains trust money under this chapter. If the division's audit shows, in the opinion of the division, gross mismanagement, commingling, or misuse of money, the division, with the concurrence of the commission, may order at the division's expense a complete audit of the account by a certified public accountant [~~at the licensee's expense~~], or take other action in accordance with Section 61-2f-404.

(2) If the commission finds under Subsection (1) that gross mismanagement, comingling, or misuse of money occurred, the commission, with concurrence of the division, may then order the licensee to reimburse the division for the cost of the audit described in Subsection (1).

~~(2)~~ (3) The licensee may obtain agency review by the executive director or judicial review of any division order.

~~(3)~~ (4) (a) If it appears that a person has grossly mismanaged, commingled, or otherwise misused trust money, the division, with or without prior administrative proceedings, may bring an action:

(i) in the district court of the district where:

(A) the person resides;

(B) the person maintains a place of business; or

(C) the act or practice occurred or is about to occur; and

(ii) to enjoin the act or practice and to enforce compliance with this chapter or any rule or order under this chapter.

(b) Upon a proper showing, a court shall grant injunctive relief or a temporary restraining order, and may appoint a receiver or conservator. The

division is not required to post a bond in any court proceeding.

Section 19. Section 61-2g-305 is amended to read:

61-2g-305. Expiration of license, certification, or registration.

(1) An initial license, certification, or registration issued under this chapter expires on the expiration date indicated on the license, certificate, or registration.

(2) A renewal license, certification, or registration issued under this chapter expires two years from the date of issuance.

(3) (a) The scheduled expiration date of a license, certification, or registration shall appear on the license, certification, or registration document.

(b) (i) The division shall, at the division's discretion, mail or email a holder of a license, certification, or registration notice of its expiration to the last mailing or email address stated on the division's records as the holder's current mailing or email address.

(ii) To be mailed or emailed a notice under this Subsection (3)(b), a holder of a license, certification, or registration shall provide to the division in writing the holder's current mailing or email address.

(iii) A holder's license, certification, or registration expires if not renewed by the holder notwithstanding whether the holder receives a notice of its expiration by the division under this Subsection (3)(b).

Section 20. Section 61-2g-501 is amended to read:

61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.

(1) (a) The division may [~~investigate~~] conduct a public or private investigation of the actions of:

(i) a person registered, licensed, or certified under this chapter;

(ii) an applicant for registration, licensure, or certification;

(iii) an applicant for renewal of registration, licensure, or certification; or

(iv) a person required to be registered, licensed, or certified under this chapter.

(b) The division may initiate an agency action against a person described in Subsection (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

(i) impose disciplinary action;

(ii) deny issuance to an applicant of:

(A) an original registration, license, or certification; or

(B) a renewal of a registration, license, or certification; or

(iii) issue a cease and desist order as provided in Subsection (3).

(2) (a) The division may:

(i) administer an oath or affirmation;

(ii) issue a subpoena that requires:

(A) the attendance and testimony of a witness; or

(B) the production of evidence;

(iii) take evidence; and

(iv) require the production of a book, paper, contract, record, document, information, or evidence relevant to the investigation described in Subsection (1).

(b) The division may serve a subpoena by certified mail.

(c) A failure to respond to a request by the division in an investigation authorized under this chapter is considered to be a separate violation of this chapter, including:

(i) failing to respond to a subpoena as a witness;

(ii) withholding evidence; or

(iii) failing to produce a book, paper, contract, document, information, or record.

(d) (i) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.

(ii) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.

(e) (i) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, information, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, information, or record in a universally readable format.

(ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the person's license, certification, or registration is automatically suspended:

(A) beginning the day on which the payment of costs is due; and

(B) ending the day on which the costs are paid.

(3) (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:

(i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and

(ii) it appears to the director that it would be in the public interest to stop the act.

(b) Within 10 days after receiving the order, the person upon whom the order is served may request a hearing.

(c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall remain in effect.

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) After a hearing requested under Subsection (3), if the board and division concur that an act of the person violates this chapter, the board, with the concurrence of the division:

(i) shall issue an order making the cease and desist order permanent; and

(ii) may impose another disciplinary action under Section 61-2g-502.

(b) The director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which an act described in Subsection (3) occurs or where the individual resides or carries on business, to enjoin and restrain the individual from violating this chapter if:

(i) (A) a hearing is not requested under Subsection (3); and

(B) the individual fails to cease the act described in Subsection (3); or

(ii) after discontinuing the act described in Subsection (3), the individual again commences the act.

(5) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

(6) (a) Except as provided in Subsection (6)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:

(i) four years after the day on which the violation is reported to the division; or

(ii) 10 years after the day on which the violation occurred.

(b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:

(i) (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and

(B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or

(ii) the division and the individual subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).

CHAPTER 183**H. B. 209**

Passed February 22, 2017

Approved March 21, 2017

Effective May 9, 2017

**ADMINISTRATION OF MEDICATION
TO STUDENTS AMENDMENT**

Chief Sponsor: Mike K. McKell

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill makes an amendment regarding the administration of medication to students.

Highlighted Provisions:

This bill:

- ▶ allows for the administration of an opiate antagonist to a student in accordance with the Opiate Overdose Response Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-11-601, as last amended by Laws of Utah 2008, Chapter 173

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

Section 1. Section 53A-11-601 is amended to read:**53A-11-601. Administration of medication to students -- Prerequisites -- Immunity from liability -- Applicability.**

(1) A public or private school that holds any classes in grades kindergarten through 12 may provide for the administration of medication to any student during periods when the student is under the control of the school, subject to the following conditions:

(a) the local school board, charter school governing board, or the private equivalent, after consultation with the Department of Health and school nurses shall adopt policies that provide for:

(i) the designation of volunteer employees who may administer medication;

(ii) proper identification and safekeeping of medication;

(iii) the training of designated volunteer employees by the school nurse;

(iv) maintenance of records of administration; and

(v) notification to the school nurse of medication that will be administered to students; and

(b) medication may only be administered to a student if:

(i) the student's parent or legal guardian has provided a current written and signed request that medication be administered during regular school hours to the student; and

(ii) the student's licensed health care provider has prescribed the medication and provides documentation as to the method, amount, and time schedule for administration, and a statement that administration of medication by school employees during periods when the student is under the control of the school is medically necessary.

(2) Authorization for administration of medication by school personnel may be withdrawn by the school at any time following actual notice to the student's parent or guardian.

(3) School personnel who provide assistance under Subsection (1) in substantial compliance with the licensed health care provider's written prescription and the employers of these school personnel are not liable, civilly or criminally, for:

(a) any adverse reaction suffered by the student as a result of taking the medication; and

(b) discontinuing the administration of the medication under Subsection (2).

(4) Subsections (1) through (3) do not apply to:

(a) the administration of glucagon in accordance with Section 53A-11-603;

(b) the administration of a seizure rescue medication in accordance with Section 53A-11-603.5; or

(c) the administration of an opiate antagonist in accordance with Title 26, Chapter 55, Opiate Overdose Response Act.

CHAPTER 184**H. B. 217**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

LIVESTOCK HARASSMENT

Chief Sponsor: Scott H. Chew

Senate Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill prohibits the harassment of livestock.

Highlighted Provisions:

This bill:

- ▶ prohibits a person from intentionally, knowingly, or recklessly chasing, actively disturbing, or harming livestock through the use of:
 - a motorized vehicle or all-terrain vehicle;
 - a dog; or
 - an unmanned aircraft system; and
- ▶ describes the penalties for violating the prohibition on harassment of livestock.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

76-9-308, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 76-9-308 is enacted to read:****76-9-308. Harassment of livestock.**(1) As used in this section:(a) “Livestock” has the same meaning as that term is defined in Subsection 76-9-301(1).(b) “Unmanned aircraft system” has the same meaning as that term is defined in Subsection 63G-18-102(5)(a).(2) Except as provided in Subsection (3), a person is guilty of harassment of livestock if the person intentionally, knowingly, or recklessly chases, with the intent of causing distress, or harms livestock through the use of:(a) a motorized vehicle or all-terrain vehicle;(b) a dog; or(c) an unmanned aircraft system.(3) A person is not guilty of harassment of livestock if:(a) the person is:(i) the owner of the livestock;(ii) an employee or agent of the owner, or otherwise acting under the owner’s general direction or with the owner’s permission;(iii) acting in an emergency situation to prevent damage to the livestock or property; or(iv) an employee or agent of the state or a political subdivision and acting in the employee or agent’s official capacity; or(b) the action is in line with generally accepted animal husbandry practices.(4) A person who violates this section is guilty of:(a) a class B misdemeanor if the violation is a first offense and:(i) no livestock is seriously injured or killed as a result of the person’s actions; or(ii) the person’s actions cause the livestock to be displaced onto property where the livestock is not legally entitled to be; and(b) a class A misdemeanor if:(i) the person has previously been convicted of harassment of livestock under this section;(ii) livestock is seriously injured or killed as a result of the person’s actions; or(iii) livestock or property suffered damage in excess of \$1,000, including money spent in recovering the livestock, as a result of the person’s actions.

CHAPTER 185

H. B. 234

Passed March 7, 2017

Approved March 21, 2017

Effective May 9, 2017

POST-EXPOSURE BLOOD
TESTING AMENDMENTSChief Sponsor: Edward H. Redd
Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

This bill modifies provisions regarding disease testing after a significant exposure to blood or contaminated body fluids.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows a health care provider to request a blood sample if significantly exposed to a person's bodily fluids in the course of performing the provider's duties;
- ▶ allows a health care provider to request a court order authorizing a blood sample from an individual if, during the course of performing the provider's duties, the provider is significantly exposed to the individual's bodily fluids;
- ▶ clarifies rulemaking authority; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-8-401, as last amended by Laws of Utah 2013, Chapter 114

78B-8-402, as last amended by Laws of Utah 2016, Chapter 92

78B-8-403, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-8-404, as last amended by Laws of Utah 2013, Chapter 114

78B-8-405, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 78B-8-401 is amended to read:

Part 4. Disease Testing for Peace Officers, Health Care Providers, and Volunteers

78B-8-401. Definitions.

For purposes of this ~~chapter~~ part:

(1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions, and any body fluid visibly contaminated with blood.

(2) "Disease" means Human Immunodeficiency Virus infection, acute or chronic Hepatitis B infection, Hepatitis C infection, and any other

infectious disease specifically designated by the Labor Commission, in consultation with the Department of Health, for the purposes of this ~~chapter~~ part.

(3) "Emergency services provider" means:

(a) an individual certified under Section 26-8a-302, a ~~public safety~~ peace officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency care for an emergency services provider either as an employee or as a volunteer; or

(b) an individual who provides for the care, control, support, or transport of a prisoner.

(4) "First aid volunteer" means a person who provides voluntary emergency assistance or first aid medical care to an injured person prior to the arrival of an emergency medical services provider or ~~public safety~~ peace officer.

(5) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(6) "Peace officer" means the same as that term is defined in ~~[Title 53, Chapter 13, Peace Officer Classifications]~~ Section 53-1-102.

~~[(5)]~~ (7) "Prisoner" means the same as that term is ~~as~~ defined in Section 76-5-101.

~~[(6)]~~ "Public safety officer" means a peace officer ~~as~~

~~[(7)]~~ (8) "Significant exposure" and "significantly exposed" mean:

(a) exposure of the body of one person to the blood or body fluids of another person by:

(i) percutaneous injury, including a needle stick, cut with a sharp object or instrument, or a wound resulting from a human bite, scratch, or similar force; or

(ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut, abrasion, dermatitis, or other damage; or

(b) exposure that occurs by any other method of transmission defined by the Labor Commission, in consultation with the Department of Health, as a significant exposure.

Section 2. Section 78B-8-402 is amended to read:

78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.

(1) An emergency services provider or first aid volunteer who is significantly exposed during the course of performing the emergency services provider's duties or during the course of performing emergency assistance or first aid, or a health care provider acting in the course and scope of the health care provider's duties as a health care provider may:

(a) request that the person to whom the emergency services provider ~~or~~, first aid volunteer, or health care provider was significantly exposed voluntarily submit to testing; or

(b) petition the district court or a magistrate for an order requiring that the person to whom the emergency services provider [ø], first aid volunteer, or health care provider was significantly exposed submit to testing to determine the presence of a disease, as defined in Section 78B-8-401, and that the results of that test be disclosed to the petitioner by the Department of Health.

(2) (a) A law enforcement agency may submit on behalf of the petitioner by electronic or other means an ex parte request for a warrant ordering a blood draw from the respondent.

(b) The court or magistrate shall issue a warrant ordering the respondent to provide a specimen of the respondent's blood within 24 hours, and that reasonable force may be used, if necessary, if the court or magistrate finds that:

(i) the petitioner was significantly exposed during the course of performing the petitioner's duties as an emergency services [ø] provider, first aid [pø] volunteer, or health care provider;

(ii) the respondent has refused consent to the blood draw or is unable to give consent;

(iii) there may not be an opportunity to obtain a sample at a later date; and

(iv) a delay in administering available FDA-approved post-exposure treatment or prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

(c) The petitioner shall request a person authorized under Section 41-6a-523 perform the blood draw.

(d) A sample drawn in accordance with a warrant following an ex parte request shall be sent to the Department of Health for testing.

(3) If a petitioner does not seek or obtain a warrant pursuant to Subsection (2), the petitioner may file a petition with the district court seeking an order to submit to testing and to disclose the results in accordance with [the provisions of] this section.

(4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in which the petitioner certifies that the petitioner has been significantly exposed to the individual who is the subject of the petition and describes that exposure.

(b) The petitioner shall submit to testing to determine the presence of a disease, when the petition is filed or within three days after the petition is filed.

(5) The petitioner shall cause the petition required under this section to be served on the person who the petitioner is requesting to be tested in a manner that will best preserve the confidentiality of that person.

(6) (a) The court shall set a time for a hearing on the matter within 10 days after the petition is filed and shall give the petitioner and the individual who is the subject of the petition notice of the hearing at least 72 hours prior to the hearing.

(b) The individual who is the subject of the petition shall also be notified that the individual may have an attorney present at the hearing and that the individual's attorney may examine and cross-examine witnesses.

(c) The hearing shall be conducted in camera.

(7) The district court may enter an order requiring that an individual submit to testing, including blood testing, for a disease if the court finds probable cause to believe:

(a) the petitioner was significantly exposed; and

(b) the exposure occurred during the course of the emergency services provider's duties, [ø] the provision of emergency assistance or first aid by a first aid volunteer, or the health care provider acting in the course and scope of the provider's duties as a health care provider.

(8) The court may order that the blood specimen be obtained by the use of reasonable force if the individual who is the subject of the petition is a prisoner.

(9) The court may order that additional, follow-up testing be conducted and that the individual submit to that testing, as it determines to be necessary and appropriate.

(10) The court is not required to order an individual to submit to a test under this section if it finds that there is a substantial reason, relating to the life or health of the individual, not to enter the order.

(11) (a) Upon order of the district court that a person submit to testing for a disease, that person shall report to the designated local health department to have the person's blood drawn within 10 days from the issuance of the order, and thereafter as designated by the court, or be held in contempt of court.

(b) The court shall send the order to the Department of Health and to the local health department ordered to draw the blood.

(c) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a local health department may disclose the test results pursuant to a court order as provided in this section.

(d) Under this section, anonymous testing as provided under Section 26-6-3.5 may not satisfy the requirements of the court order.

(12) The local health department or the Department of Health shall inform the subject of the petition and the petitioner of the results of the test and advise both parties that the test results are confidential. That information shall be maintained as confidential by all parties to the action.

(13) The court, its personnel, the process server, the Department of Health, local health department, and petitioner shall maintain confidentiality of the name and any other identifying information regarding the individual tested and the results of the test as they relate to that individual, except as specifically authorized by this chapter.

(14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment for the drawing of the blood specimen and the analysis of the specimen for the mandatory disease testing to the entity that draws the blood.

(b) If the petitioner is an emergency services provider, the agency that employs the emergency services provider shall remit payment for the drawing of the blood specimen and the analysis of the specimen for the mandatory disease testing to the entity that draws the blood.

(15) The entity that draws the blood shall cause the blood and the payment for the analysis of the specimen to be delivered to the Department of Health for analysis.

(16) If the individual is incarcerated, the incarcerating authority shall either draw the blood specimen or shall pay the expenses of having the individual's blood drawn.

(17) The ex parte request or petition shall be sealed upon filing and made accessible only to the petitioner, the subject of the petition, and their attorneys, upon court order.

Section 3. Section 78B-8-403 is amended to read:

78B-8-403. Confidentiality -- Disclosure -- Penalty.

~~Any~~ A person or entity entitled to receive confidential information under this ~~chapter~~ part, other than the individual tested and identified in the information, who violates ~~the provisions of~~ this ~~chapter~~ part by releasing or making public that confidential information, or by otherwise breaching the confidentiality requirements of this ~~chapter~~ part, is guilty of a class B misdemeanor.

Section 4. Section 78B-8-404 is amended to read:

78B-8-404. Department authority -- Rules.

The Labor Commission, in consultation with the Department of Health, has authority to establish rules necessary for the purposes of Subsections 78B-8-401(2) and ~~(7)~~ (8).

Section 5. Section 78B-8-405 is amended to read:

78B-8-405. Construction.

Nothing in this part may be construed as prohibiting~~[(1)]~~ a person from voluntarily consenting to the request of a health care provider~~], as defined in Section 78B-3-403,~~ to submit to testing following a significant exposure~~]; or~~.

~~[(2) a court from considering the petition of a health care provider for an order requiring that a person submit to testing to determine the presence of a disease if a significant exposure has occurred in connection with the health care provider's treatment of that person.]~~

CHAPTER 186**H. B. 235**

Passed March 8, 2017

Approved March 21, 2017

Effective May 9, 2017

**AUTOMATED TRAFFIC
ENFORCEMENT SAFETY DEVICES**Chief Sponsor: Mike K. McKell
Senate Sponsor: Curtis S. Bramble**LONG TITLE****General Description:**

This bill enacts provisions authorizing the use of an automated traffic enforcement safety device on a school bus.

Highlighted Provisions:

This bill:

- ▶ authorizes the use of an automated traffic enforcement safety device on a school bus to capture a photograph or video image of a possible violation of certain traffic laws;
- ▶ authorizes the use of a photograph or video image obtained by an automated traffic enforcement safety device as evidence of certain traffic violations;
- ▶ provides for a portion of fines collected for certain traffic violations related to school buses to be allocated to offset costs of an automated traffic enforcement safety device if the device was used to provide evidence of a violation;
- ▶ provides rulemaking authority; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-6a-1302, as last amended by Laws of Utah 2015, Chapter 412

41-6a-1303, as renumbered and amended by Laws of Utah 2005, Chapter 2

78A-5-110, as last amended by Laws of Utah 2008, Chapter 22 and renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-210, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-7-120, as last amended by Laws of Utah 2012, Chapter 205

ENACTS:

41-6a-1310, Utah Code Annotated 1953

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

Section 1. Section 41-6a-1302 is amended to read:

41-6a-1302. School bus -- Signs and light signals -- Flashing amber lights -- Flashing red lights -- Passing school bus -- Duty to stop -- Travel in opposite direction -- Penalties.

(1) A school bus, when operated for the transportation of school children, shall:

(a) bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters not less than eight inches in height, which shall be removed or covered when the vehicle is not in use for the transportation of school children; and

(b) be equipped with alternating flashing amber and red light signals visible from the front and rear, of a type approved and mounted as required under Section 41-6a-1301 and prescribed by the department under Section 41-6a-1601.

(2) The operator of a vehicle on a highway, upon meeting or overtaking a school bus equipped with signals required under this section which is displaying alternating flashing:

(a) amber warning light signals, shall slow the vehicle, but may proceed past the school bus using due care and caution at a speed not greater than specified in Subsection 41-6a-601(2) for school zones for the safety of the school children that may be in the vicinity; or

(b) red light signals visible from the front or rear, shall stop immediately before reaching the bus and may not proceed until the flashing red light signals cease operation.

(3) The operator of a vehicle need not stop upon meeting or passing a school bus displaying alternating flashing red light signals if the school bus is traveling in the opposite direction when:

(a) traveling on a divided highway;

(b) the bus is stopped at an intersection or other place controlled by a traffic-control signal or by a peace officer; or

(c) on a highway of five or more lanes, which may include a left-turn lane or two-way left turn lane.

(4) (a) The operator of a school bus shall operate alternating flashing red light signals at all times when:

(i) children are unloading from a school bus to cross a highway;

(ii) a school bus is stopped for the purpose of loading children who must cross a highway to board the bus; or

(iii) it would be hazardous for vehicles to proceed past the stopped school bus.

(b) The alternating flashing red light signals may not be operated except:

(i) when the school bus is stopped for loading or unloading school children; or

(ii) for an emergency purpose.

(5) The operator of a school bus being operated on a highway shall have the headlights of the school bus lighted.

(6) (a) A violation of Subsection (2) or (3) is a class C misdemeanor and the minimum fine is:

(i) \$100 for a first offense;

(ii) \$200 for a second offense within three years of a previous conviction or bail forfeiture; and

(iii) \$500 for a third or subsequent offense within three years of a previous conviction or bail forfeiture.

(b) A violation of Subsection (5) is an infraction and the fine is \$50.

(c) The court may order the person to perform compensatory service in lieu of the fine or any portion of the fine if the court makes the reasons for the waiver part of the record.

(d) In accordance with Section 78A-5-110, 78A-6-210, or 78A-7-120, as applicable, if a photograph or video image obtained from an automated traffic enforcement safety device described in Section 41-6a-1310 was used as evidence of a violation of Subsection (2) or (3), 20% of the fine collected under Subsection (6)(a) shall be deposited with the school district or private school that owns or contracts for the operation of the bus to offset the costs of the automated traffic enforcement safety device.

(7) A violation of Subsection (1) or (4) is an infraction.

(8) The Driver License Division shall develop and implement a record system to distinguish:

(a) a conviction or bail forfeiture under this section from other convictions; and

(b) between a first and subsequent conviction or bail forfeiture under this section.

Section 2. Section 41-6a-1303 is amended to read:

41-6a-1303. Passing a school bus complaint procedure.

(1) (a) An operator of a school bus who observes a violation of Subsection 41-6a-1302(2) or (3) may prepare a report, in a manner specified by the school district, to the school district transportation coordinator no more than two working days after the alleged violation occurred.

(b) (i) The report under Subsection (1)(a) shall contain:

(i) (A) the date, time, and location of the violation;

(ii) (B) the license plate number and state and description of the offending vehicle;

(iii) (C) as much as practical, a description of the operator of the offending vehicle;

(iv) (D) a description of the incident involving the violation;

(v) (E) information on how to contact the school bus operator who witnessed the offense; and

(vi) (F) the signature of the operator of the school bus who witnessed the offense attesting to the accuracy of the report.

(ii) The report under Subsection (1)(a) may contain photographs or video images produced by an automated traffic enforcement safety device described in Section 41-6a-1310.

(2) (a) Upon receipt of a report in accordance with Subsection (1), the school district transportation coordinator shall promptly send a notification letter to the last-known registered owner of the vehicle.

(b) The notification letter shall include:

(i) the applicable information on the school bus operator's report stating that the vehicle was observed passing a school bus displaying alternating flashing red lights in violation of state law;

(ii) a complete explanation of the applicable provisions of Section 41-6a-1302; and

(iii) an explanation that the notification letter is not a peace officer citation but is an effort to call attention to the seriousness of the incident.

(c) The school district transportation coordinator may file the report with the local law enforcement agency that has jurisdiction for the alleged violation.

(3) A law enforcement agency that receives a report in accordance with Subsection (2) may have a peace officer initiate an investigation of the reported violation.

Section 3. Section 41-6a-1310 is enacted to read:

41-6a-1310. School bus traffic safety devices.

(1) For purposes of this section, "automated traffic enforcement safety device" means a device that:

(a) is affixed to a school bus;

(b) is capable of detecting a vehicle unlawfully overtaking or passing a school bus;

(c) is capable of producing a photograph or video image of the rear of a vehicle, including an image of the vehicle's license plate; and

(d) produces a time stamp on the photograph or video image described in Subsection (1)(c).

(2) A school district or private school may install an automated traffic enforcement safety device on a school bus.

(3) A photograph, video image, or other record produced by an automated traffic enforcement safety device may not be used for any purpose other than evidence for a violation of Section 41-6a-1302.

(4) A photograph, video image, or other record produced by an automated traffic enforcement safety device is subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education may make rules to address student privacy concerns that may arise from the use of an

automated traffic enforcement safety device authorized in this section.

Section 4. Section 78A-5-110 is amended to read:

78A-5-110. Allocation of district court fees and forfeitures.

(1) Except as provided in this section, district court fines and forfeitures collected for violation of state statutes shall be paid to the state treasurer.

(2) Fines and forfeitures collected by the court for violation of a state statute or county or municipal ordinance constituting a misdemeanor or an infraction shall be remitted 1/2 to the state treasurer and 1/2 to the treasurer of the state or local governmental entity which prosecutes or which would prosecute the violation.

(3) (a) Fines and forfeitures collected for violations of Title 23, Wildlife Resources Code of Utah, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act, shall be paid to the state treasurer.

~~[(a)]~~ (b) For violations of Title 23, Wildlife Resources Code of Utah, the state treasurer shall allocate 85% to the Division of Wildlife Resources and 15% to the General Fund.

~~[(b)]~~ (c) For violations of Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act, the state treasurer shall allocate 85% to the Division of Parks and Recreation and 15% to the General Fund.

(4) Fines and forfeitures collected for violation of Section 72-7-404 or 72-7-406, less fees established by the Judicial Council, shall be paid to the state treasurer for deposit in the B and C road account. Fees established by the Judicial Council shall be deposited in the state General Fund. Money deposited in the class B and C road account is supplemental to the money appropriated under Section 72-2-107 but shall be expended in the same manner as other class B and C road funds.

(5) (a) Fines and forfeitures collected by the court for a second or subsequent violation under Section 41-6a-1713 or Subsection 72-7-409(8)(b) shall be remitted:

(i) 60% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 40% in accordance with Subsection (2).

(b) Fines and forfeitures collected by the court for a second or subsequent violation under Subsection 72-7-409(8)(c) shall be remitted:

(i) 50% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 50% in accordance with Subsection (2).

(6) For fines and forfeitures collected by the court for a violation of Section 41-6a-1302 in instances where evidence of the violation was obtained by an automated traffic enforcement safety device as described in Section 41-6a-1310, the court shall allocate 20% to the school district or private school

that owns or contracts for the use of the bus, and the state treasurer shall allocate 40% to the treasurer of the state or local governmental entity that prosecutes or that would prosecute the violation, and 40% to the General Fund.

~~[(6)]~~ (7) Fines and forfeitures collected for any violations not specified in this chapter or otherwise provided for by law shall be paid to the state treasurer.

~~[(7)]~~ (8) Fees collected in connection with civil actions filed in the district court shall be paid to the state treasurer.

~~[(8)]~~ (9) The court shall remit money collected in accordance with Title 51, Chapter 7, State Money Management Act.

Section 5. Section 78A-6-210 is amended to read:

78A-6-210. Fines -- Fees -- Deposit with state treasurer -- Restricted account.

(1) There is created within the General Fund a restricted account known as the "Nonjudicial Adjustment Account."

(2) (a) The account shall be funded from the financial penalty established under Subsection 78A-6-602(2)(d)(i).

(b) The court shall deposit all money collected as a result of penalties assessed as part of the nonjudicial adjustment of a case in the account.

(c) The account shall be used to pay the expenses of juvenile compensatory service, victim restitution, and diversion programs.

(3) (a) Except under ~~[Subsection]~~ Subsections (3)(b), (4), and as otherwise provided by law, all fines, fees, penalties, and forfeitures imposed and collected by the juvenile court shall be paid to the state treasurer for deposit in the General Fund.

(b) Not more than 50% of any fine or forfeiture collected may be paid to a state rehabilitative employment program for delinquent minors that provides for employment of the minor in the county of the minor's residence if:

(i) reimbursement for the minor's labor is paid to the victim of the minor's delinquent behavior;

(ii) the amount earned and paid is set by court order;

(iii) the minor is not paid more than the hourly minimum wage; and

(iv) no payments to victims are made without the minor's involvement in a rehabilitative work program.

(c) Fines withheld under Subsection (3)(b) and any private contributions to the rehabilitative employment program are accounted for separately and are subject to audit at any time by the state auditor.

(d) Funds withheld under Subsection (3)(b) and private contributions are nonlapsing. The Board of Juvenile Court Judges shall establish policies for the use of the funds described in this subsection.

(4) For fines and forfeitures collected by the court for a violation of Section 41-6a-1302 in instances where evidence of the violation was obtained by an automated traffic enforcement safety device as described in Section 41-6a-1310, the court shall allocate 20% to the school district or private school that owns or contracts for the use of the bus, and the state treasurer shall allocate 80% to the General Fund.

[44] (5) No fee may be charged by any state or local public officer for the service of process in any proceedings initiated by a public agency.

Section 6. Section 78A-7-120 is amended to read:

78A-7-120. Disposition of fines.

(1) Except as otherwise specified by this section, fines and forfeitures collected by a justice court shall be remitted, 1/2 to the treasurer of the local government responsible for the court and 1/2 to the treasurer of the local government which prosecutes or which would prosecute the violation. An interlocal agreement created pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, related to justice courts may alter the ratio provided in this section if the parties agree.

(2) (a) For violation of Title 23, Wildlife Resources Code of Utah, the court shall allocate 85% to the Division of Wildlife Resources and 15% to the general fund of the city or county government responsible for the justice court.

(b) For violation of Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act, the court shall allocate 85% to the Division of Parks and Recreation and 15% to the general fund of the city or county government responsible for the justice court.

(c) Fines and forfeitures collected by the court for a violation of Section 41-6a-1302 in instances where evidence of the violation was obtained by an automated traffic enforcement safety device as described in Section 41-6a-1310 shall be remitted:

(i) 20% to the school district or private school that owns or contracts for the use of the school bus; and

(ii) 80% in accordance with Subsection (1).

(3) The surcharge established by Section 51-9-401 shall be paid to the state treasurer.

(4) Fines, fees, court costs, and forfeitures collected by a municipal or county justice court for a violation of Section 72-7-404 or 72-7-406 regarding maximum weight limitations and overweight permits, minus court costs not to exceed the schedule adopted by the Judicial Council, shall be paid to the state treasurer and distributed to the class B and C road account.

(5) Revenue deposited in the class B and C road account pursuant to Subsection (4) is supplemental to the money appropriated under Section 72-2-107 but shall be expended in the same manner as other class B and C road funds.

(6) (a) Fines and forfeitures collected by the court for a second or subsequent violation under Section 41-6a-1713 or Subsection 72-7-409(8)(b) shall be remitted:

(i) 60% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 40% in accordance with Subsection (1).

(b) Fines and forfeitures collected by the court for a second or subsequent violation under Subsection 72-7-409(8)(c) shall be remitted:

(i) 50% to the state treasurer to be deposited in the Transportation Fund; and

(ii) 50% in accordance with Subsection (1).

CHAPTER 187**H. B. 245**

Passed March 9, 2017
Approved March 21, 2017
Effective May 9, 2017

**SCHOOL DISTRICT
PROCUREMENT PROCESS**

Chief Sponsor: Craig Hall
Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies advertising requirements for a school construction project.

Highlighted Provisions:

This bill:

- ▶ modifies local school board advertising requirements related to a school construction project; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-20-101, as last amended by Laws of Utah 2012, Chapters 86 and 347

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

Section 1. Section 53A-20-101 is amended to read:**53A-20-101. Construction and alteration of schools and plants -- Advertising for bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local school boards -- Interest of local school board members.**

(1) As used in this section, the word "sealed" does not preclude acceptance of electronically sealed and submitted bids or proposals in addition to bids or proposals manually sealed and submitted.

(2) (a) Prior to the construction of any school or the alteration of any existing school plant, if the total estimated accumulative building project cost exceeds \$80,000, a local school board shall advertise for bids on the project at least 10 days before the bid due date.

~~[(b) The board shall have the advertisement published in a newspaper having general circulation throughout the state and in appropriate construction trade publications that offer free listings.]~~

~~[(c) A similar advertisement is required in a newspaper published or having general circulation in any city or county that would be affected by the proposed project.]~~

~~[(d) (b) The advertisement shall state:~~

~~(i) [require sealed proposals for the building project] that proposals for the building project are required to be sealed in accordance with plans and specifications [furnished] provided by the local school board;~~

~~(ii) [state] where and when the proposals will be opened [and shall reserve the right of the board];~~

~~(iii) that the local school board reserves the right to reject any and all proposals; and~~

~~[(iii)] (iv) [require a] that a person that submits a proposal is required to submit a certified check or bid bond, of not less than 5% of the bid in the proposal, to accompany the [bid] proposal.~~

~~(c) The local school board shall publish the advertisement, at a minimum:~~

~~(i) on the local school board's website; or~~

~~(ii) on a state website that is:~~

~~(A) owned or managed by, or provided under contract with, the Division of Purchasing and General Services; and~~

~~(B) available for the posting of public procurement notices.~~

(3) (a) The board shall meet at the time and place specified in the advertisement and publicly open and read all received proposals.

(b) If satisfactory bids are received, the board shall award the contract to the lowest responsible bidder.

(c) If none of the proposals are satisfactory, all shall be rejected.

(d) The board shall again advertise in the manner provided in this section.

(e) If, after advertising a second time no satisfactory bid is received, the board may proceed under its own direction with the required project.

(4) (a) The check or bond required under Subsection (2)~~[(d)]~~(b) shall be drawn in favor of the local school board.

(b) If the successful bidder fails or refuses to enter into the contract and furnish the additional bonds required under this section, then the bidder's check or bond is forfeited to the district.

(5) A local school board shall require payment and performance bonds of the successful bidder as required in Section 63G-6a-1103.

(6) (a) A local school board may require in the proposed contract that up to 5% of the contract price be withheld until the project is completed and accepted by the board.

(b) If money is withheld, the board shall place it in an interest bearing account, and the interest accrues for the benefit of the contractor and subcontractors.

(c) This money shall be paid upon completion of the project and acceptance by the board.

(7) (a) A local school board may not bid on projects within the district if the total accumulative estimated cost exceeds \$80,000.

(b) The board may use its resources if no satisfactory bids are received under this section.

(8) If the local school board determines in accordance with Section 63G-6a-1302 to use a construction manager/general contractor as its method of construction contracting management on projects where the total estimated accumulative cost exceeds \$80,000, it shall select the construction manager/general contractor in accordance with the requirements of Title 63G, Chapter 6a, Utah Procurement Code.

(9) A local school board member may not have a direct or indirect financial interest in the construction project contract.

CHAPTER 188**H. B. 251**

Passed March 8, 2017

Approved March 21, 2017

Effective May 9, 2017

**CAMPUS ADVOCATE
CONFIDENTIALITY AMENDMENTS**

Chief Sponsor: Angela Romero

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill enacts provisions related to confidential communications for advocacy services at an institution of higher education.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ prohibits the disclosure of confidential communications related to advocacy services at an institution of higher education, except under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

77-38-204, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

53B-27-101, Utah Code Annotated 1953

53B-27-102, Utah Code Annotated 1953

53B-27-201, Utah Code Annotated 1953

53B-27-202, Utah Code Annotated 1953

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

Section 1. Section 53B-27-101 is enacted to read:**CHAPTER 27. STUDENT RIGHTS AND
RESPONSIBILITIES****Part 1. General Provisions****53B-27-101. Title.**

This chapter is known as "Student Rights and Responsibilities."

Section 2. Section 53B-27-102 is enacted to read:**53B-27-102. Definitions.**

As used in this chapter, "institution" means a public or private postsecondary institution that is located in Utah, including an institution of higher education listed in Section 53B-1-102.

Section 3. Section 53B-27-201 is enacted to read:**Part 2. Confidential Communications for
Institutional Advocacy Services Act****53B-27-201. Definitions.**

As used in this part:

(1) "Certified advocate" means an individual who:

(a) is employed by or volunteers at a qualified institutional victim services provider;

(b) has completed at least 40 hours of training in counseling and assisting victims of sexual harassment, sexual assault, rape, dating violence, domestic violence, or stalking; and

(c) acts under the supervision of the director or director's designee of a qualified institutional victim services provider.

(2) (a) "Confidential communication" means information that is communicated by a victim, in the course of the victim seeking an institutional advocacy service, to:

(i) a certified advocate;

(ii) a qualified institutional victim services provider;

(iii) a person reasonably necessary for the transmission of the information;

(iv) an individual who is present at the time the information is transmitted for the purpose of furthering the victim's interests; or

(v) another individual, in the context of group counseling at a qualified institutional victim services provider.

(b) "Confidential communication" includes a record that is created or maintained as a result of the communication described in Subsection (2)(a).

(3) "Institutional advocacy service" means a safety planning, counseling, psychological, support, advocacy, medical, or legal service that:

(a) addresses issues involving:

(i) sexual harassment;

(ii) sexual assault;

(iii) rape;

(iv) domestic violence;

(v) dating violence; or

(vi) stalking; and

(b) is provided by a qualified institutional victim services provider.

(4) (a) "Qualified institutional victim services provider" means an organization that:

(i) is affiliated with an institution;

(ii) employs or provides volunteer opportunities for certified advocates;

(iii) provides an institutional advocacy service to victims or families of victims; and

(iv) is designated by the affiliated institution as a qualified institutional victim services provider.

(b) "Qualified institutional victim services provider" may include an institution's:

- (i) sexual assault center;
- (ii) victim advocacy center;
- (iii) women's center;
- (iv) health center; or
- (v) counseling service center.

(5) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics.

(6) "Victim" means an individual who seeks an institutional advocacy service.

Section 4. Section 53B-27-202 is enacted to read:

53B-27-202. Confidentiality of information -- Disclosure of confidential communication.

(1) Except as provided in Subsection (2), and notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, a person may not disclose a confidential communication.

(2) A person may disclose a confidential communication if:

(a) the victim gives written and informed consent to the disclosure;

(b) the person has an obligation to disclose the confidential communication under Section 62A-3-305, 62A-4a-403, or 78B-3-502;

(c) the disclosure is required by federal law; or

(d) a court of competent jurisdiction orders the disclosure.

Section 5. Section 77-38-204 is amended to read:

77-38-204. Disclosure of confidential communications.

[The] Notwithstanding Title 53B, Chapter 27, Part 2, Confidential Communications for Institutional Advocacy Services Act, the confidential communication between a victim and a sexual assault counselor is available to a third person only when:

(1) the victim is a minor and the counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;

(2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;

(3) the victim is not a minor, has given consent, and the counselor believes the disclosure is

necessary to accomplish the desired result of counseling; or

(4) the counselor has an obligation under Title 62A, Chapter 4a, Child and Family Services, to report information transmitted in the confidential communication.

CHAPTER 189**H. B. 258**

Passed February 28, 2017

Approved March 21, 2017

Effective January 1, 2019

VETERANS TAX AMENDMENTS

Chief Sponsor: Val L. Peterson
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends a property tax exemption for certain members of the military.

Highlighted Provisions:

This bill:

- ▶ amends the definition of qualifying active duty military service to modify the time period during which a military member shall complete active duty military service to be eligible for a property tax exemption;
- ▶ modifies the application requirements for claiming the qualifying active duty military service property tax exemption; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

59-2-1104, as last amended by Laws of Utah 2015, Chapter 261

59-2-1105, as last amended by Laws of Utah 2015, Chapter 261

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

Section 1. Section 59-2-1104 is amended to read:**59-2-1104. Definitions -- Armed forces exemption -- Amount of armed forces exemption.**

(1) As used in this section and Section 59-2-1105:

(a) "Active component of the United States Armed Forces" ~~is as~~ means the same as that term is defined in Section 59-10-1027.

(b) "Adjusted taxable value limit" means:

(i) for the calendar year that begins on January 1, 2015, \$252,126; and

(ii) for each calendar year after the calendar year described in Subsection (1)(b)(i), the amount of the adjusted taxable value limit for the previous year, plus an amount calculated by multiplying the amount of the adjusted taxable value limit for the previous year by the actual percent change in the consumer price index during the previous calendar year.

(c) "Claimant" means:

(i) a veteran with a disability who files an application under Section 59-2-1105 for an exemption under this section;

(ii) the unmarried surviving spouse:

(A) of a:

(I) deceased veteran with a disability; or

(II) veteran who was killed in action or died in the line of duty; and

(B) who files an application under Section 59-2-1105 for an exemption under this section;

(iii) a minor orphan:

(A) of a:

(I) deceased veteran with a disability; or

(II) veteran who was killed in action or died in the line of duty; and

(B) who files an application under Section 59-2-1105 for an exemption under this section; or

(iv) a member of an active component of the United States Armed Forces or a reserve component of the United States Armed Forces who performed qualifying active duty military service.

(d) "Consumer price index" is as described in Section 1(f)(4), Internal Revenue Code, and defined in Section 1(f)(5), Internal Revenue Code.

(e) "Deceased veteran with a disability" means a deceased ~~person~~ individual who was a veteran with a disability at the time the ~~person~~ individual died.

(f) "Military entity" means:

(i) the federal Department of Veterans Affairs;

(ii) an active component of the United States Armed Forces; or

(iii) a reserve component of the United States Armed Forces.

(g) "Property taxes due" means the taxes due on a claimant's property:

(i) with respect to which a county grants an exemption under this section; and

(ii) for the calendar year for which the county grants an exemption under this section.

(h) "Property taxes paid" is an amount equal to the sum of:

(i) the amount of the property taxes the claimant paid for the calendar year for which the claimant is applying for an exemption under this section; and

(ii) the exemption the county grants for the calendar year described in Subsection (1)(h)(i).

(i) "Qualifying active duty military service" means ~~[-(i)]~~ at least 200 days ~~[in a calendar year]~~, regardless of whether consecutive, in any continuous 365-day period of active duty military service outside the state in an active component of the United States Armed Forces or a reserve component of the United States Armed Forces ~~[-or]~~ if the days of active duty military service:

(i) were completed in the year before an individual applies for exemption under this section in accordance with Section 59-2-1105; and

(ii) have not previously been counted as qualifying active duty military service for purposes of qualifying for an exemption under this section or applying for the exemption under Section 59-2-1105.

~~[(ii) the completion of at least 200 consecutive days of active duty military service outside the state;]~~

~~[(A) in an active component of the United States Armed Forces or a reserve component of the United States Armed Forces; and]~~

~~[(B) that began in the prior year, if those days of active duty military service outside the state in the prior year were not counted as qualifying active duty military service for purposes of this section or Section 59-2-1105 in the prior year.]~~

(j) “Reserve component of the United States Armed Forces” [is-as] means the same as that term is defined in Section 59-10-1027.

(k) “Residence” [is-as] means the same as that term is defined in Section 59-2-1202, except that a rented dwelling is not considered to be a residence.

(l) “Veteran who was killed in action or died in the line of duty” means [a-person] an individual who was killed in action or died in the line of duty in an active component of the United States Armed Forces or a reserve component of the United States Armed Forces, regardless of whether that [person] individual had a disability at the time that [person] individual was killed in action or died in the line of duty.

(m) “Veteran with a disability” means [a-person] an individual with a disability who, during military training or a military conflict, acquired a disability in the line of duty in an active component of the United States Armed Forces or a reserve component of the United States Armed Forces, as determined by a military entity.

(2) (a) Subject to Subsection (2)(c), the amount of taxable value of the property described in Subsection (2)(b) is exempt from taxation as calculated under Subsections (3) through (6) if the property described in Subsection (2)(b) is owned by:

- (i) a veteran with a disability;
- (ii) the unmarried surviving spouse or a minor orphan of a:
 - (A) deceased veteran with a disability; or
 - (B) veteran who was killed in action or died in the line of duty; or
 - (iii) a member of an active component of the United States Armed Forces or a reserve component of the United States Armed Forces who performed qualifying active duty military service.

(b) Subsection (2)(a) applies to the following property:

- (i) the claimant’s primary residence;
- (ii) for a claimant described in Subsection (2)(a)(i) or (ii), tangible personal property that:

- (A) is held exclusively for personal use; and
- (B) is not used in a trade or business; or

(iii) for a claimant described in Subsection (2)(a)(i) or (ii), a combination of Subsections (2)(b)(i) and (ii).

(c) For purposes of this section, property is considered to be the primary residence of [a-person] an individual described in Subsection (2)(a)(i) or (iii) who does not reside in the residence if the [person] individual:

(i) does not reside in the residence because the [person] individual is admitted as an inpatient at a health care facility as defined in Section 26-55-102; and

(ii) otherwise meets the requirements of this section and Section 59-2-1105 to receive an exemption under this section.

(3) Except as provided in Subsection (4) or (5), the amount of taxable value of property described in Subsection (2)(b) that is exempt under Subsection (2)(a) is:

(a) as described in Subsection (6), if the property is owned by:

- (i) a veteran with a disability;
- (ii) the unmarried surviving spouse of a deceased veteran with a disability; or
- (iii) a minor orphan of a deceased veteran with a disability; or

(b) equal to the total taxable value of the claimant’s property described in Subsection (2)(b) if the property is owned by:

- (i) the unmarried surviving spouse of a veteran who was killed in action or died in the line of duty;
- (ii) a minor orphan of a veteran who was killed in action or died in the line of duty; or

(iii) a member of an active component of the United States Armed Forces or a reserve component of the United States Armed Forces who performed qualifying active duty military service.

(4) (a) Subject to Subsections (4)(b) and (c), an exemption may not be allowed under this section if the percentage of disability listed on the statement described in Subsection 59-2-1105(3)(a) is less than 10%.

(b) Subsection (4)(a) does not apply to a claimant described in Subsection (2)(a)(iii).

(c) A veteran with a disability is considered to have a 100% disability, regardless of the percentage of disability listed on a statement described in Subsection 59-2-1105(3)(a), if the United States Department of Veterans Affairs certifies the veteran in the classification of individual unemployability.

(5) A claimant who is the unmarried surviving spouse or minor orphan of a deceased veteran with a

disability may claim an exemption for the total value of the property described in Subsection (2)(b) if:

(a) the deceased veteran with a disability served in the military service of the United States or the state prior to January 1, 1921; and

(b) the percentage of disability listed on the statement described in Subsection 59-2-1105(3)(a) for the deceased veteran with a disability is 10% or more.

(6) (a) Except as provided in Subsection (6)(b), the amount of the taxable value of the property described in Subsection (2)(b) that is exempt under Subsection (3)(a) is equal to the percentage of disability listed on the statement described in Subsection 59-2-1105(3)(a) multiplied by the adjusted taxable value limit.

(b) The amount of the taxable value of the property described in Subsection (2)(b) that is exempt under Subsection (3)(a) may not be greater than the taxable value of the property described in Subsection (2)(b).

(7) For purposes of this section and Section 59-2-1105, ~~[a person]~~ an individual who received an honorable or general discharge from military service of an active component of the United States Armed Forces or a reserve component of the United States Armed Forces:

(a) is presumed to be a citizen of the United States; and

(b) may not be required to provide additional proof of citizenship to establish that the ~~[person]~~ individual is a citizen of the United States.

(8) The Department of Veterans' and Military Affairs created in Section 71-8-2 shall, through an informal hearing held in accordance with Title 63G, Chapter 4, Administrative Procedures Act, resolve each dispute arising under this section concerning a veteran's status as a veteran with a disability.

Section 2. Section 59-2-1105 is amended to read:

59-2-1105. Application for United States armed forces exemption -- Rulemaking authority -- Statement -- County authority to make refunds.

(1) (a) Except as provided in Subsections (1)(b) through (d), a county may allow an exemption under Section 59-2-1104 ~~[may be allowed]~~ only if the interest of the claimant is on record on January 1 of the year the exemption is claimed.

(b) A claimant may claim an exemption under Section 59-2-1104 regardless of whether the interest of the claimant is on record on January 1 of the year the exemption is claimed if the claimant is:

(i) the unmarried surviving spouse of:

(A) a deceased veteran with a disability as defined in Section 59-2-1104; or

(B) a veteran who was killed in action or died in the line of duty as defined in Section 59-2-1104; or

(ii) a minor orphan of:

(A) a deceased veteran with a disability as defined in Section 59-2-1104; or

(B) a veteran who was killed in action or died in the line of duty as defined in Section 59-2-1104.

(c) If the claimant has an interest in real property under a contract, the county may allow an exemption under Section 59-2-1104 ~~[may be allowed if it is proved]~~ if the claimant proves, to the satisfaction of the county, that the claimant is:

(i) the purchaser under the contract; and

(ii) obligated to pay the taxes on the property beginning January 1 of the year the exemption is claimed.

(d) If the claimant is the grantor of a trust holding title to real or tangible personal property on which an exemption under Section 59-2-1104 is claimed, the claimant may claim the portion of the exemption under Section 59-2-1104 and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the county that:

(i) title to the portion of the trust will revert in the claimant upon the exercise of a power:

(A) by:

(I) the claimant as grantor of the trust;

(II) a nonadverse party; or

(III) both the claimant and a nonadverse party; and

(B) regardless of whether the power is a power:

(I) to revoke;

(II) to terminate;

(III) to alter;

(IV) to amend; or

(V) to appoint;

(ii) the claimant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the exemption; and

(iii) the claimant meets the requirements under this part for the exemption.

(2) (a) (i) A claimant applying for an exemption under Section 59-2-1104 shall file an application:

(A) with the county in which that claimant resides; and

(B) except as provided in Subsection (2)(b) or (e), on or before September 1 of the year in which that claimant is applying for the exemption in accordance with this section.

(ii) A county shall provide a claimant who files an application for an exemption in accordance with this section with a receipt:

(A) stating that the county received the claimant's application; and

(B) no later than 30 days after the day on which the claimant filed the application in accordance with this section.

(b) Notwithstanding Subsection ~~[(2)(a)(i)(B) or]~~ (2)(e):

(i) subject to Subsection (2)(b)(iv), for a claimant who applies for an exemption under Section 59-2-1104 on or after January 1, 2004, a county shall extend the deadline for filing the application required by Subsection (2)(a) to September 1 of the year after the year the claimant would otherwise be required to file the application under Subsection (2)(a)(i)(B) if:

(A) on or after January 1, 2004, a military entity issues a written decision that the:

(I) veteran has a disability; or

(II) deceased veteran with a disability with respect to whom the claimant applies for an exemption under this section had a disability at the time the deceased veteran with a disability died; and

(B) the date the written decision described in Subsection (2)(b)(i)(A) takes effect is in any year prior to the current calendar year;

(ii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for an exemption under Section 59-2-1104 on or after January 1, 2004, a county shall allow the claimant to amend the application required by Subsection (2)(a) on or before September 1 of the year after the year the claimant filed the application under Subsection (2)(a)(i)(B) if:

(A) on or after January 1, 2004, a military entity issues a written decision that the percentage of disability has changed for the:

(I) veteran with a disability; or

(II) deceased veteran with a disability with respect to whom the claimant applies for the exemption; and

(B) the date the written decision described in Subsection (2)(b)(ii)(A) takes effect is in any year prior to the current calendar year;

(iii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for an exemption under Section 59-2-1104 on or after January 1, 2004, a county shall extend the deadline for filing the application required by Subsection (2)(a) to September 1 of the year after the year the claimant would otherwise be required to file the application under Subsection (2)(a)(i)(B) if the county legislative body determines that:

(A) the claimant or a member of the claimant's immediate family had an illness or injury that prevented the claimant from filing the application on or before the deadline for filing the application established in Subsection (2)(a)(i)(B);

(B) a member of the claimant's immediate family died during the calendar year the claimant was

required to file the application under Subsection (2)(a)(i)(B);

(C) the claimant was not physically present in the state for a time period of at least six consecutive months during the calendar year the claimant was required to file the application under Subsection (2)(a)(i)(B); or

(D) the failure of the claimant to file the application on or before the deadline for filing the application established in Subsection (2)(a)(i)(B):

(I) would be against equity or good conscience; and

(II) was beyond the reasonable control of the claimant; and

(iv) a county may extend the deadline for filing an application or amending an application under this Subsection (2) until December 31 if the county finds that good cause exists to extend the deadline.

(c) The following shall accompany the initial application for an exemption under Section 59-2-1104:

(i) a copy of the veteran's certificate of discharge from military service; or

(ii) other satisfactory evidence of eligible military service, including orders for qualifying active duty military service, if applicable.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:

(i) establish procedures and requirements for amending an application under Subsection (2)(b)(ii);

(ii) for purposes of Subsection (2)(b)(iii), define the terms:

(A) "immediate family"; or

(B) "physically present"; or

(iii) for purposes of Subsection (2)(b)(iii), prescribe the circumstances under which the failure of a claimant to file an application on or before the deadline for filing the application established in Subsection (2)(a)(i)(B):

(A) would be against equity or good conscience; and

(B) is beyond the reasonable control of a claimant.

(e) Except as provided in Subsection (2)(g), if a claimant has on file with the county the application described in Subsection (2)(a), the county may not require the claimant to file another application described in Subsection (2)(a) unless:

(i) the claimant applies all or a portion of an exemption under Section 59-2-1104 to any tangible personal property;

(ii) the percentage of disability has changed for the:

(A) veteran with a disability; or

(B) deceased veteran with a disability with respect to whom a claimant applies for an exemption under this section;

(iii) the veteran with a disability dies;

(iv) the claimant's ownership interest in the claimant's primary residence changes;

(v) the claimant's occupancy of the primary residence for which the claimant claims an exemption under Section 59-2-1104 changes; or

(vi) the claimant who files an application for an exemption under Section 59-2-1104 with respect to a deceased veteran with a disability or veteran who was killed in action or died in the line of duty is a person other than the claimant who filed the application described in Subsection (2)(a) for the exemption:

(A) for the calendar year immediately preceding the current calendar year; and

(B) with respect to that deceased veteran with a disability or veteran who was killed in action or died in the line of duty.

(f) The county may verify that the real property that is residential property for which the claimant claims an exemption under Section 59-2-1104 is the claimant's primary residence.

(g) (i) A member of an active component of the United States Armed Forces or reserve component of the United States Armed Forces who performed qualifying active duty military service shall ~~file~~ file the application described in Subsection (2)(a) in the year after the year during which the member completes the qualifying active duty military service ~~and~~.

(ii) ~~if the member~~ If a claimant described in Subsection (2)(g)(i) meets the requirements of Section 59-2-1104 and this section to receive an exemption under Section 59-2-1104, the claimant may claim one exemption only in the year the member files the application described in Subsection (2)(g)(i).

(3) (a) (i) Subject to Subsection (3)(a)(ii), a claimant except for a claimant described in Subsection (2)(g) who files an application for an exemption under Section 59-2-1104 shall have on file with the county a statement:

(A) issued by a military entity; and

(B) listing the percentage of disability for the veteran with a disability or deceased veteran with a disability with respect to whom a claimant applies for the exemption.

(ii) If a claimant except for a claimant described in Subsection (2)(g) has on file with the county the statement described in Subsection (3)(a)(i), the county may not require the claimant to file another statement described in Subsection (3)(a)(i) unless:

(A) the claimant who files an application under this section for an exemption under Section 59-2-1104 with respect to a deceased veteran with a disability or veteran who was killed in action or

died in the line of duty is a person other than the claimant who filed the statement described in Subsection (3)(a)(i) for the exemption:

(I) for the calendar year immediately preceding the current calendar year; and

(II) with respect to that deceased veteran with a disability or veteran who was killed in action or died in the line of duty; or

(B) the percentage of disability has changed for a:

(I) veteran with a disability; or

(II) deceased veteran with a disability with respect to whom the claimant applies for an exemption under Section 59-2-1104.

(b) For a claimant filing an application in accordance with Subsection (2)(b)(i), the claimant shall include with the application required by Subsection (2) a statement issued by a military entity listing the date the written decision described in Subsection (2)(b)(i)(A) takes effect.

(c) For a claimant amending an application in accordance with Subsection (2)(b)(ii), the claimant shall provide to the county a statement issued by a military entity listing the date the written decision described in Subsection (2)(b)(ii)(A) takes effect.

(d) For a claimant filing an application in accordance with Subsection (2)(g), the claimant shall include with the application described in Subsection (2)(a) a statement listing the dates on which the 200 days of qualifying active duty military service began and ended.

(4) A county that grants an exemption under Section 59-2-1104 to a claimant shall refund to that claimant an amount equal to the amount by which the claimant's property taxes paid exceed the claimant's property taxes due, if that amount is \$1 or more.

Section 3. Contingent effective date.

This bill takes effect on January 1, 2019, if the amendment to the Utah Constitution proposed by H.J.R. 7, Proposal to Amend Utah Constitution - Active Military Property Tax Exemption, 2017 General Session, passes the Legislature and is approved by a majority of those voting on it at the next regular general election.

CHAPTER 190**H. B. 279**

Passed March 8, 2017

Approved March 21, 2017

Effective May 9, 2017

IMPACT FEE AMENDMENTS

Chief Sponsor: Walt Brooks
Senate Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill modifies provisions relating to impact fees.

Highlighted Provisions:

This bill:

- ▶ modifies a provision relating to spending or encumbering impact fees; and
- ▶ provides a process for a refund of unspent and unencumbered impact fees.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

11-36a-602, as enacted by Laws of Utah 2011, Chapter 47

11-36a-603, as enacted by Laws of Utah 2011, Chapter 47

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

Section 1. Section 11-36a-602 is amended to read:**11-36a-602. Expenditure of impact fees.**

(1) A local political subdivision may expend impact fees only for a system improvement:

- (a) identified in the impact fee facilities plan; and
- (b) for the specific public facility type for which the fee was collected.

(2) (a) Except as provided in Subsection (2)(b), a local political subdivision shall expend or encumber the an impact [fees] fee collected with respect to a lot:

- (i) for a permissible use; and
 - (ii) within six years [of their receipt.] after the impact fee with respect to that lot is collected.
- (b) A local political subdivision may hold the fees for longer than six years if it identifies, in writing:
- (i) an extraordinary and compelling reason why the fees should be held longer than six years; and
 - (ii) an absolute date by which the fees will be expended.

Section 2. Section 11-36a-603 is amended to read:**11-36a-603. Refunds.**

(1) A local political subdivision shall refund any impact fee paid by a developer, plus interest earned, when:

[(4)] (a) the developer does not proceed with the development activity and has filed a written request for a refund;

[(2)] (b) the fee has not been spent or encumbered; and

[(3)] (c) no impact has resulted.

(2) (a) As used in this Subsection (2):

(i) "Affected lot" means the lot or parcel with respect to which a local political subdivision collected an impact fee that is subject to a refund under this Subsection (2).

(ii) "Claimant" means:

(A) the original owner; or

(B) another person who, under Subsection (2)(d), submits a timely notice of the person's valid legal claim to an impact fee refund.

(iii) "Original owner" means the record owner of an affected lot at the time the local political subdivision collected the impact fee.

(iv) "Unclaimed refund" means an impact fee that:

(A) is subject to refund under this Subsection (2); and

(B) the local political subdivision has not refunded after application of Subsections (2)(b) and (c).

(b) If an impact fee is not spent or encumbered within the time specified in Subsection 11-36a-602(2), the local political subdivision shall, subject to Subsection (2)(c):

(i) refund the impact fee to:

(A) the original owner, if the original owner is the sole claimant; or

(B) to the claimants, as the claimants agree, if there are multiple claimants; or

(ii) interplead the impact fee refund to a court of competent jurisdiction for a determination of the entitlement to the refund, if there are multiple claimants who fail to agree on how the refund should be paid to the claimants.

(c) If the original owner's last known address is no longer valid at the time a local political subdivision attempts under Subsection (2)(b) to refund an impact fee to the original owner, the local political subdivision shall:

(i) post a notice on the local political subdivision's website, stating the local political subdivision's intent to refund the impact fee and identifying the original owner;

(ii) maintain the notice on the website for a period of one year; and

(iii) disqualify the original owner as a claimant unless the original owner submits a written request

for the refund within one year after the first posting of the notice under Subsection (2)(c)(i).

(d) (i) In order to be considered as a claimant for an impact fee refund under this Subsection (2), a person, other than the original owner, shall submit a written notice of the person's valid legal claim to the impact fee refund.

(ii) A notice under Subsection (2)(d)(i) shall:

(A) explain the person's valid legal claim to the refund; and

(B) be submitted to the local political subdivision no later than 30 days after expiration of the time specified in Subsection 11-36a-602(2) for the impact fee that is the subject of the refund.

(e) A local political subdivision:

(i) may retain an unclaimed refund; and

(ii) shall expend any unclaimed refund on capital facilities identified in the current capital facilities plan for the type of public facility for which the impact fee was collected.

CHAPTER 191**H. B. 288**

Passed February 24, 2017

Approved March 21, 2017

Effective May 9, 2017

SCHOOL SUNSCREEN PROVISION

Chief Sponsor: Craig Hall

Senate Sponsor: Jacob L. Anderegg

LONG TITLE**General Description:**

This bill permits a student to carry and use sunscreen at a public school.

Highlighted Provisions:

This bill:

- ▶ defines sunscreen;
- ▶ requires a public school to permit a student to possess and use sunscreen at school;
- ▶ permits a school employee to apply sunscreen on a student under certain conditions; and
- ▶ provides immunity for an employee who applies sunscreen on a student and provides immunity for the employee's employer.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

53A-11-606, Utah Code Annotated 1953

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

Section 1. Section 53A-11-606 is enacted to read:**53A-11-606. Sunscreen -- Possession -- Administration -- Immunity.**

(1) As used in this section, "sunscreen" means a compound topically applied to prevent sunburn.

(2) A public school shall permit a student, without a parent or physician's authorization, to possess or self-apply sunscreen that is regulated by the Food and Drug Administration.

(3) If a student is unable to self-apply sunscreen, a volunteer school employee may apply the sunscreen on the student if the student's parent or legal guardian provides written consent for the assistance.

(4) A volunteer school employee who applies sunscreen on a student in compliance with Subsection (3) and the volunteer school employee's employer are not liable for:

(a) an adverse reaction suffered by the student as a result of having the sunscreen applied; or

(b) discontinuing the application of the sunscreen at any time.

CHAPTER 192**H. B. 311**

Passed March 1, 2017

Approved March 21, 2017

Effective May 9, 2017

**INTERNATIONAL RELATIONS
AND TRADE COMMISSION SUNSET**

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies the Legislative Oversight and Sunset Act.

Highlighted Provisions:

This bill:

- ▶ modifies the repeal date of statutory provisions related to the Utah International Relations and Trade Commission.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-236, as last amended by Laws of Utah 2013, Chapter 288

63I-1-267, as last amended by Laws of Utah 2010, Chapter 319

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

Section 1. Section 63I-1-236 is amended to read:**63I-1-236. Repeal dates, Title 36.**

- (1) Section 36-12-20 is repealed June 30, 2018.
- (2) Sections 36-26-101 through 36-26-104 are repealed December 31, [~~2017~~] 2027.

Section 2. Section 63I-1-267 is amended to read:**63I-1-267. Repeal dates, Title 67.**

- (1) Section 67-1-15 is repealed December 31, [~~2017~~] 2027.
- (2) Sections 67-1a-10 and 67-1a-11 creating the Commission on Civic and Character Education and establishing its duties are repealed on July 1, 2021.

CHAPTER 193**H. B. 324**

Passed March 8, 2017

Approved March 21, 2017

Effective May 9, 2017

**LOCAL BUDGET HEARING
NOTICE AMENDMENTS**Chief Sponsor: Bruce R. Cutler
Senate Sponsor: Jacob L. Anderegg**LONG TITLE****General Description:**

This bill requires a local government to post a required notice of a local budget hearing on the local government's website where applicable.

Highlighted Provisions:

This bill:

- ▶ requires a local government to post a required notice of a local budget hearing on the local government's website where applicable; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-5-107, as last amended by Laws of Utah 2016, Chapter 353
- 10-5-108, as last amended by Laws of Utah 2010, Chapters 90 and 116
- 10-6-113, as last amended by Laws of Utah 2010, Chapters 90 and 116
- 17-36-12, as last amended by Laws of Utah 2010, Chapter 90
- 17-36-26, as last amended by Laws of Utah 2014, Chapter 176

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

Section 1. Section 10-5-107 is amended to read:**10-5-107. Tentative budgets required for public inspection -- Contents -- Adoption of tentative budget.**

(1) (a) On or before the first regularly scheduled town council meeting of May, the mayor shall:

(i) in accordance with Subsection (1)(b), prepare for the ensuing year a tentative budget for each fund for which a budget is required;

(ii) make the tentative budget available for public inspection; and

(iii) submit the tentative budget to the town council.

(b) The tentative budget for each fund shall set forth in tabular form:

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

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

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

(2) (a) The mayor shall:

(i) estimate the amount of revenue available to serve the needs of each fund;

(ii) estimate the portion to be derived from all sources other than general property taxes; and

(iii) estimate the portion that shall be derived from general property taxes.

(b) From the estimates required by Subsection (2)(a), the mayor shall compute and disclose in the budget the lowest rate of property tax levy that will raise the required amount of revenue, calculating the levy on the latest taxable value.

(3) A governing body may spend or transfer money deposited in an enterprise fund for a good, service, project, venture, or other purpose that is not directly related to the goods or services provided by the enterprise for which the enterprise fund was created, if the governing body:

(a) transfers the money from the enterprise fund to another fund; and

(b) complies with the hearing and notice requirements of Subsections (5)(a), (b), and (c).

(4) (a) Before the public hearing required under Section 10-5-108, the town council:

(i) shall review, consider, and tentatively adopt the tentative budget in any regular meeting or special meeting called for that purpose; and

(ii) may amend or revise the tentative budget.

(b) At the meeting at which the town council adopts the tentative budget, the council shall establish the time and place of the public hearing required under Section 10-5-108.

(5) (a) Except as provided in Subsection (5)(d), if a town council includes in a tentative budget, or an amendment to a budget, allocations or transfers from an enterprise fund to another fund for a good, service, project, venture, or purpose other than reasonable allocations of costs between the enterprise fund and the other fund, the governing body shall:

(i) hold a public hearing;

(ii) prepare a written notice of the date, time, place, and purpose of the hearing as described in Subsection (5)(b); ~~and~~

(iii) subject to Subsection (5)(c), mail the notice to each enterprise fund customer at least seven days before the day of the hearing[-]; and

(iv) publish the notice or a link to the notice on the home page of the website of the town or metro township, if the town or metro township has a publicly viewable website, beginning at least seven days before the hearing and until the hearing takes place.

(b) The purpose portion of the written notice shall identify:

(i) the enterprise fund from which money is being allocated or transferred;

(ii) the amount being allocated or transferred; and

(iii) the fund to which the money is being allocated or transferred.

(c) The town council:

(i) may print the written notice required under Subsection (5)(a)(i) on the enterprise fund customer's bill; and

(ii) shall include the written notice required under Subsection (5)(a)(ii) as separate notification mailed or transmitted with the enterprise fund customer's bill.

(d) A governing body is not required to repeat the notice and hearing requirements in this Subsection (5) if the funds to be allocated or transferred for the current year were previously approved by the governing body during the current year and at a public hearing that complies with the notice and hearing requirements of this Subsection (5).

Section 2. Section 10-5-108 is amended to read:

10-5-108. Budget hearing -- Notice -- Adjustments.

(1) Prior to the adoption of the final budget or an amendment to a budget, a town council shall hold a public hearing to receive public comment.

(2) The town council shall provide notice of the place, purpose, and time of the public hearing by publishing notice at least seven days before the hearing:

(a) (i) at least once in a newspaper of general circulation in the town; or

(ii) if there is no newspaper of general circulation, then by posting the notice in three public places at least 48 hours ~~prior to~~ before the hearing; ~~and~~

(b) on the Utah Public Notice Website created in Section 63F-1-701~~[-]~~; and

(c) on the home page of the website, either in full or as a link, of the town or metro township, if the town or metro township has a publicly viewable website, until the hearing takes place.

(3) After the hearing, the town council, subject to Section 10-5-110, may adjust expenditures and revenues in conformity with this chapter.

Section 3. Section 10-6-113 is amended to read:

10-6-113. Budget -- Notice of hearing to consider adoption.

At the meeting at which each tentative budget is adopted, the governing body shall establish the time and place of a public hearing to consider its adoption and shall order that notice of the public

hearing be published at least seven days prior to the hearing:

(1) (a) in at least one issue of a newspaper of general circulation published in the county in which the city is located; or

(b) if there is not a newspaper as described in Subsection (1)(a), ~~then the notice required by this section may be posted~~ in three public places within the city; ~~and~~

(2) on the Utah Public Notice Website created in Section 63F-1-701~~[-]~~; and

(3) on the home page of the website, either in full or as a link, of the city or metro township, if the city or metro township has a publicly viewable website, until the hearing takes place.

Section 4. Section 17-36-12 is amended to read:

17-36-12. Notice of budget hearing.

(1) The governing body shall determine the time and place for the public hearing on the adoption of the budget.

(2) Notice of such hearing shall be published:

(a) (i) at least seven days before the hearing in at least one newspaper of general circulation within the county, if there is such a paper; or

(ii) if there is no newspaper as described in Subsection (2)(a)(i), by posting notice in three conspicuous places within the county seven days before the hearing; ~~and~~

(b) on the Utah Public Notice Website created in Section 63F-1-701, for seven days before the hearing~~[-]~~; and

(c) on the home page of the county's website, either in full or as a link, if the county has a publicly viewable website, beginning at least seven days before the hearing and until the hearing takes place.

Section 5. Section 17-36-26 is amended to read:

17-36-26. Increase in budgetary fund or county general fund -- Public hearing.

(1) Before the governing body may, by resolution, increase a budget appropriation of any budgetary fund, increase the budget of the county general fund, or make an amendment to a budgetary fund or the county general fund, the governing body shall hold a public hearing giving all interested parties an opportunity to be heard.

(2) Notice of the public hearing described in Subsection (1) shall be published at least five days before the day of the hearing:

(a) (i) in at least one issue of a newspaper generally circulated in the county; or

(ii) if there is not a newspaper generally circulated in the county, the hearing may be published by posting notice in three conspicuous places within the county; ~~and~~

(b) on the Utah Public Notice Website created under Section 63F-1-701[.]; and

(c) on the home page of the county's website, either in full or as a link, if the county has a publicly viewable website, until the hearing takes place.

CHAPTER 194**H. B. 343**

Passed March 3, 2017
 Approved March 21, 2017
 Effective October 1, 2017

**AGRICULTURAL AND LEADERSHIP
 EDUCATION SUPPORT SPECIAL
 GROUP LICENSE PLATE**

Chief Sponsor: Scott H. Chew
 Senate Sponsor: Ralph Okerlund

LONG TITLE**General Description:**

This bill authorizes a Utah Intracurricular Student Organization Support for Agricultural Education and Leadership support special group license plate.

Highlighted Provisions:

This bill:

- ▶ creates a Utah Intracurricular Student Organization Support for Agricultural Education and Leadership support special group license plate to help support Utah-based chapters of certain student organizations that promote leadership and career development through agricultural education;
- ▶ requires applicants for the plate to make a \$25 annual donation to the Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account;
- ▶ creates the Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account;
- ▶ requires the Department of Agriculture and Food to distribute funds in the Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account to certain statewide student organizations that promote leadership and career development through agricultural education; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 41-1a-418, as last amended by Laws of Utah 2016, Chapters 46, 52, 70, 71, and 102
 41-1a-422, as last amended by Laws of Utah 2016, Chapters 46, 52, 70, and 71
 63J-1-602.1, as last amended by Laws of Utah 2016, Chapters 46, 70, 71, and 202

ENACTS:

- 4-42-101, Utah Code Annotated 1953
 4-42-102, Utah Code Annotated 1953

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

Section 1. Section 4-42-101 is enacted to read:

**CHAPTER 42. UTAH INTRACURRICULAR
 STUDENT ORGANIZATION SUPPORT FOR
 AGRICULTURAL EDUCATION AND
 LEADERSHIP RESTRICTED ACCOUNT
 ACT**

4-42-101. Title.

This chapter is known as the "Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account Act."

Section 2. Section 4-42-102 is enacted to read:

**4-42-102. Utah Intracurricular Student
 Organization Support for Agricultural
 Education and Leadership Restricted
 Account.**

(1) There is created in the General Fund a restricted account known as the "Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account."

(2) The account shall be funded by:

(a) contributions deposited into the account in accordance with Section 41-1a-422;

(b) private contributions; and

(c) donations or grants from public or private entities.

(3) Upon appropriation by the Legislature, the department shall distribute funds in the account to one or more organizations that:

(a) are statewide agricultural education and leadership organizations; and

(b) promote leadership and career development through agricultural education.

(4) (a) An organization described in Subsection (3) may apply to the department to receive a distribution in accordance with Subsection (3).

(b) An organization that receives a distribution from the department in accordance with Subsection (3) shall expend the distribution only to:

(i) create or support programs that focus on issues described in Subsection (3);

(ii) create or sponsor programs that will benefit residents within the state; and

(iii) pay the costs of issuing or reordering Utah Intracurricular Student Organization Support for Agricultural Education and Leadership special group license plate decals.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules providing procedures for an

organization to apply to the department to receive a distribution under this Subsection (4).

(5) In accordance with Section 63J-1-602.1, appropriations from the account are nonlapsing.

Section 3. Section 41-1a-418 is amended to read:

41-1a-418. Authorized special group license plates.

(1) The division shall only issue special group license plates in accordance with this section through Section 41-1a-422 to a person who is specified under this section within the categories listed as follows:

(a) disability special group license plates issued in accordance with Section 41-1a-420;

(b) honor special group license plates, as in a war hero, which plates are issued for a:

(i) survivor of the Japanese attack on Pearl Harbor;

(ii) former prisoner of war;

(iii) recipient of a Purple Heart;

(iv) disabled veteran;

(v) recipient of a gold star award issued by the United States Secretary of Defense; or

(vi) recipient of a campaign or combat theater award determined by the Department of Veterans' and Military Affairs;

(c) unique vehicle type special group license plates, as for historical, collectors value, or other unique vehicle type, which plates are issued for:

(i) a special interest vehicle;

(ii) a vintage vehicle;

(iii) a farm truck; or

(iv) (A) until Subsection (1)(c)(iv)(B) or (4) applies, a vehicle powered by clean fuel as defined in Section 59-13-102; or

(B) beginning on the effective date of rules made by the Department of Transportation authorized under Subsection 41-6a-702(5)(b) and until Subsection (4) applies, a vehicle powered by clean fuel that meets the standards established by the Department of Transportation in rules authorized under Subsection 41-6a-702(5)(b);

(d) recognition special group license plates, which plates are issued for:

(i) a current member of the Legislature;

(ii) a current member of the United States Congress;

(iii) a current member of the National Guard;

(iv) a licensed amateur radio operator;

(v) a currently employed, volunteer, or retired firefighter until June 30, 2009;

(vi) an emergency medical technician;

(vii) a current member of a search and rescue team; or

(viii) a current honorary consulate designated by the United States Department of State;

(e) support special group license plates, as for a contributor to an institution or cause, which plates are issued for a contributor to:

(i) an institution's scholastic scholarship fund;

(ii) the Division of Wildlife Resources;

(iii) the Department of Veterans' and Military Affairs;

(iv) the Division of Parks and Recreation;

(v) the Department of Agriculture and Food;

(vi) the Guardian Ad Litem Services Account and the Children's Museum of Utah;

(vii) the Boy Scouts of America;

(viii) spay and neuter programs through No More Homeless Pets in Utah;

(ix) the Boys and Girls Clubs of America;

(x) Utah public education;

(xi) programs that provide support to organizations that create affordable housing for those in severe need through the Division of Real Estate;

(xii) the Department of Public Safety;

(xiii) programs that support Zion National Park;

(xiv) beginning on July 1, 2009, programs that provide support to firefighter organizations;

(xv) programs that promote bicycle operation and safety awareness;

(xvi) programs that conduct or support cancer research;

(xvii) programs that create or support autism awareness;

(xviii) programs that create or support humanitarian service and educational and cultural exchanges;

(xix) programs that conduct or support prostate cancer awareness, screening, detection, or prevention;

(xx) programs that support and promote adoptions;

(xxi) programs that create or support civil rights education and awareness;

(xxii) programs that support issues affecting women and children through an organization affiliated with a national professional men's basketball organization;

(xxiii) programs that strengthen youth soccer, build communities, and promote environmental sustainability through an organization affiliated with a professional men's soccer organization;

(xxiv) programs that support children with heart disease;

(xxv) programs that support the operation and maintenance of the Utah Law Enforcement Memorial; ~~or~~

(xxvi) programs that provide assistance to children with cancer~~[-]; or~~

(xxvii) programs that promote leadership and career development through agricultural education.

(2) (a) The division may not issue a new type of special group license plate or decal unless the division receives:

(i) (A) a private donation for the start-up fee established under Section 63J-1-504 for the production and administrative costs of providing the new special group license plates or decals; or

(B) a legislative appropriation for the start-up fee provided under Subsection (2)(a)(i)(A); and

(ii) beginning on January 1, 2012, and for the issuance of a support special group license plate authorized in Section 41-1a-422, at least 500 completed applications for the new type of support special group license plate or decal to be issued with all fees required under this part for the support special group license plate or decal issuance paid by each applicant.

(b) (i) Beginning on January 1, 2012, each participating organization shall collect and hold applications for support special group license plates or decals authorized in Section 41-1a-422 on or after January 1, 2012, until it has received at least 500 applications.

(ii) Once a participating organization has received at least 500 applications, it shall submit the applications, along with the necessary fees, to the division for the division to begin working on the design and issuance of the new type of support special group license plate or decal to be issued.

(iii) Beginning on January 1, 2012, the division may not work on the issuance or design of a new support special group license plate or decal authorized in Section 41-1a-422 until the applications and fees required under this Subsection (2) have been received by the division.

(iv) The division shall begin issuance of a new support special group license plate or decal authorized in Section 41-1a-422 on or after January 1, 2012, no later than six months after receiving the applications and fees required under this Subsection (2).

(c) (i) Beginning on July 1, 2009, the division may not renew a motor vehicle registration of a motor vehicle that has been issued a firefighter recognition special group license plate unless the applicant is a contributor as defined in Subsection 41-1a-422(1)(a)(ii)(D) to the Firefighter Support Restricted Account.

(ii) A registered owner of a vehicle that has been issued a firefighter recognition special group

license plate prior to July 1, 2009, upon renewal of the owner's motor vehicle registration shall:

(A) be a contributor to the Firefighter Support Restricted Account as required under Subsection (2)(c)(i); or

(B) replace the firefighter recognition special group license plate with a new license plate.

(3) Beginning on July 1, 2011, if a support special group license plate or decal type authorized in Section 41-1a-422 and issued on or after January 1, 2012, has fewer than 500 license plates issued each year for a three consecutive year time period that begins on July 1, the division may not issue that type of support special group license plate or decal to a new applicant beginning on January 1 of the following calendar year after the three consecutive year time period for which that type of support special group license plate or decal has fewer than 500 license plates issued each year.

(4) Beginning on July 1, 2011, the division may not issue to an applicant a unique vehicle type license plate for a vehicle powered by clean fuel under Subsection (1)(c)(iv).

Section 4. Section 41-1a-422 is amended to read:

41-1a-422. Support special group license plates -- Contributor -- Voluntary contribution collection procedures.

(1) As used in this section:

(a) (i) Except as provided in Subsection (1)(a)(ii), "contributor" means a person who has donated or in whose name at least \$25 has been donated to:

(A) a scholastic scholarship fund of a single named institution;

(B) the Department of Veterans' and Military Affairs for veterans' programs;

(C) the Division of Wildlife Resources for the Wildlife Resources Account created in Section 23-14-13, for conservation of wildlife and the enhancement, preservation, protection, access, and management of wildlife habitat;

(D) the Department of Agriculture and Food for the benefit of conservation districts;

(E) the Division of Parks and Recreation for the benefit of snowmobile programs;

(F) the Guardian Ad Litem Services Account and the Children's Museum of Utah, with the donation evenly divided between the two;

(G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America council as specified by the contributor;

(H) No More Homeless Pets in Utah for distribution to organizations or individuals that provide spay and neuter programs that subsidize the sterilization of domestic animals;

(I) the Utah Alliance of Boys and Girls Clubs, Inc. to provide and enhance youth development programs;

(J) the Utah Association of Public School Foundations to support public education;

(K) the Utah Housing Opportunity Restricted Account created in Section 61-2-204 to assist people who have severe housing needs;

(L) the Public Safety Honoring Heroes Restricted Account created in Section 53-1-118 to support the families of fallen Utah Highway Patrol troopers and other Department of Public Safety employees;

(M) the Division of Parks and Recreation for distribution to organizations that provide support for Zion National Park;

(N) the Firefighter Support Restricted Account created in Section 53-7-109 to support firefighter organizations;

(O) the Share the Road Bicycle Support Restricted Account created in Section 72-2-127 to support bicycle operation and safety awareness programs;

(P) the Cancer Research Restricted Account created in Section 26-21a-302 to support cancer research programs;

(Q) Autism Awareness Restricted Account created in Section 53A-1-304 to support autism awareness programs;

(R) Humanitarian Service and Educational and Cultural Exchange Restricted Account created in Section 9-17-102 to support humanitarian service and educational and cultural programs;

(S) Prostate Cancer Support Restricted Account created in Section 26-21a-303 for programs that conduct or support prostate cancer awareness, screening, detection, or prevention;

(T) the Choose Life Adoption Support Restricted Account created in Section 62A-4a-608 to support programs that promote adoption;

(U) the Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102;

(V) the National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 62A-1-202;

(W) the Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120;

(X) the Children with Cancer Support Restricted Account created in Section 26-21a-304 for programs that provide assistance to children with cancer;

(Y) the National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102; ~~or~~

(Z) the Children with Heart Disease Support Restricted Account created in Section 26-58-102[~~];~~
or

(AA) the Utah Intracurricular Student Organization Support for Agricultural Education

and Leadership Restricted Account created in Section 4-42-102.

(ii) (A) For a veterans' special group license plate, "contributor" means a person who has donated or in whose name at least a \$25 donation at the time of application and \$10 annual donation thereafter has been made.

(B) For a Utah Housing Opportunity special group license plate, "contributor" means a person who:

(I) has donated or in whose name at least \$30 has been donated at the time of application and annually after the time of application; and

(II) is a member of a trade organization for real estate licensees that has more than 15,000 Utah members.

(C) For an Honoring Heroes special group license plate, "contributor" means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually thereafter.

(D) For a firefighter support special group license plate, "contributor" means a person who:

(I) has donated or in whose name at least \$15 has been donated at the time of application and annually after the time of application; and

(II) is a currently employed, volunteer, or retired firefighter.

(E) For a cancer research special group license plate, "contributor" means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually after the time of application.

(F) For a Martin Luther King, Jr. Civil Rights Support special group license plate, "contributor" means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually thereafter.

(G) For a Utah Law Enforcement Memorial Support special group license plate, "contributor" means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually thereafter.

(b) "Institution" means a state institution of higher education as defined under Section 53B-3-102 or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(2) (a) An applicant for original or renewal collegiate special group license plates under Subsection (1)(a)(i) must be a contributor to the institution named in the application and present the original contribution verification form under Subsection (2)(b) or make a contribution to the division at the time of application under Subsection (3).

(b) An institution with a support special group license plate shall issue to a contributor a verification form designed by the commission containing:

- (i) the name of the contributor;
- (ii) the institution to which a donation was made;
- (iii) the date of the donation; and
- (iv) an attestation that the donation was for a scholastic scholarship.

(c) The state auditor may audit each institution to verify that the money collected by the institutions from contributors is used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63J-1-504 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

(e) If the contribution is made at the time of application, the contribution shall be collected, treated, and deposited as provided under Subsection (3).

(3) (a) An applicant for original or renewal support special group license plates under this section must be a contributor to the sponsoring organization associated with the license plate.

(b) This contribution shall be:

(i) unless collected by the named institution under Subsection (2), collected by the division;

(ii) considered a voluntary contribution for the funding of the activities specified under this section and not a motor vehicle registration fee;

(iii) deposited into the appropriate account less actual administrative costs associated with issuing the license plates; and

(iv) for a firefighter special group license plate, deposited into the appropriate account less:

(A) the costs of reordering firefighter special group license plate decals; and

(B) the costs of replacing recognition special group license plates with new license plates under Subsection 41-1a-1211(13).

(c) The donation described in Subsection (1)(a) must be made in the 12 months prior to registration or renewal of registration.

(d) The donation described in Subsection (1)(a) shall be a one-time donation made to the division when issuing original:

- (i) snowmobile license plates; or
- (ii) conservation license plates.

(4) Veterans' license plates shall display one of the symbols representing the Army, Navy, Air Force, Marines, Coast Guard, or American Legion.

Section 5. Section 63J-1-602.1 is amended to read:

63J-1-602.1. List of nonlapsing accounts and funds -- General authority and Title 1 through Title 30.

(1) Appropriations made to the Legislature and its committees.

(2) The Utah Intracurricular Student Organization Support for Agricultural Education and Leadership Restricted Account created in Section 4-42-102.

~~(2)~~ (3) The Percent-for-Art Program created in Section 9-6-404.

~~(3)~~ (4) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102.

~~(4)~~ (5) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.

~~(5)~~ (6) The LeRay McAllister Critical Land Conservation Program created in Section 11-38-301.

~~(6)~~ (7) An appropriation made to the Division of Wildlife Resources for the appraisal and purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.

~~(7)~~ (8) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.

~~(8)~~ (9) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.

~~(9)~~ (10) Funds collected from the emergency medical services grant program, as provided in Section 26-8a-207.

~~(10)~~ (11) The primary care grant program created in Section 26-10b-102.

~~(11)~~ (12) The Prostate Cancer Support Restricted Account created in Section 26-21a-303.

~~(12)~~ (13) The Children with Cancer Support Restricted Account created in Section 26-21a-304.

~~(13)~~ (14) State funds appropriated for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.

~~(14)~~ (15) The Utah Health Care Workforce Financial Assistance Program created in Section 26-46-102.

~~(15)~~ (16) The Rural Physician Loan Repayment Program created in Section 26-46a-103.

~~(16)~~ (17) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.

~~(17)~~ (18) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.

Section 6. Effective date.

This bill takes effect on October 1, 2017.

CHAPTER 195**H. B. 358**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

**LICENSING INFORMATION
SYSTEM AMENDMENTS**Chief Sponsor: Carl R. Albrecht
Senate Sponsor: Ralph Okerlund**LONG TITLE****General Description:**

This bill provides provisions under which the Department of Human Services databases may be accessed.

Highlighted Provisions:

This bill:

- ▶ authorizes the Department of Health to access the Department of Human Services' Licensing Information System and the Division of Aging and Adult Services database when conducting a background investigation for an individual seeking an emergency medical services license.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-3-311.1, as last amended by Laws of Utah 2008, Chapters 91 and 382

62A-4a-1006, as last amended by Laws of Utah 2009, Chapter 32

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

Section 1. Section 62A-3-311.1 is amended to read:**62A-3-311.1. Statewide database --
Restricted use and access.**

(1) The division shall maintain a database for reports of vulnerable adult abuse, neglect, or exploitation made pursuant to this part.

(2) The database shall include:

(a) the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator;

(b) information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be:

(i) supported;

(ii) inconclusive;

(iii) without merit; or

(iv) for reports for which the finding is made before May 5, 2008:

(A) substantiated; or

(B) unsubstantiated; and

(c) any other information that may be helpful in furthering the purposes of this part, as determined by the division.

(3) Information obtained from the database may be used only:

(a) for statistical summaries compiled by the department that do not include names or other identifying data;

(b) where identification of ~~[a person]~~ an individual as a perpetrator may be relevant in a determination regarding whether to grant or deny a license, privilege, or approval made by:

(i) the department;

(ii) the Division of Occupational and Professional Licensing;

(iii) the Bureau of Licensing, within the Department of Health;

(iv) the Bureau of Emergency Medical Services and Preparedness, within the Department of Health, or a designee of the Bureau of Emergency Medical Services and Preparedness;

~~[(iv)]~~ (v) any government agency specifically authorized by statute to access or use the information in the database; or

~~[(v)]~~ (vi) an agency of another state that performs a similar function to an agency described in Subsections (3)(b)(i) through (iv); or

(c) as otherwise specifically provided by law.

Section 2. Section 62A-4a-1006 is amended to read:**62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding -- Protected record -- Access -- Criminal penalty.**

(1) (a) The division shall maintain a sub-part of the Management Information System established pursuant to Section 62A-4a-1003, to be known as the Licensing Information System, to be used:

(i) for licensing purposes; or

(ii) as otherwise specifically provided for by law.

(b) The Licensing Information System shall include only the following information:

(i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);

(ii) consented-to supported findings by alleged perpetrators under Subsection 62A-4a-1005(3)(a)(iii); and

(iii) the information in the licensing part of the division's Management Information System as of May 6, 2002.

(2) Notwithstanding Subsection (1), the department's access to information in the Management Information System for the licensure and monitoring of foster parents is governed by Sections 62A-4a-1003 and 62A-2-121.

(3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the juvenile court under Section 78A-6-323, the division shall:

(a) promptly amend the Licensing Information System; and

(b) enter the information in the Management Information System.

(4) (a) Information contained in the Licensing Information System is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding the disclosure provisions of Title 63G, Chapter 2, Government Records Access and Management Act, the information contained in the Licensing Information System may only be used or disclosed as specifically provided in this chapter and Section 62A-2-121.

(c) The information described in Subsection (4)(b) is accessible only to:

(i) the Office of Licensing within the department:

(A) for licensing purposes; or

(B) as otherwise specifically provided for by law;

(ii) the division to:

(A) screen a person at the request of the Office of Guardian Ad Litem:

(I) at the time that person seeks a paid or voluntary position with the Office of Guardian Ad Litem; and

(II) on an annual basis, throughout the time that the person remains with the Office of Guardian Ad Litem; and

(B) respond to a request for information from a person whose name is listed in the Licensing Information System;

(iii) persons designated by the Department of Health and approved by the Department of Human Services, only for the following purposes:

(A) licensing a child care program or provider; ~~or~~

(B) determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child, has a supported finding of a severe type of child abuse or neglect; or

(C) determining whether an individual who is seeking an emergency medical services license has a supported finding of a severe type of child abuse or neglect.

(iv) persons designated by the Department of Workforce Services and approved by the Department of Human Services for the purpose of qualifying child care providers under Section 35A-3-310.5; and

(v) the department, as specifically provided in this chapter.

(5) The persons designated by the Department of Health under Subsection (4)(c)(iii) and the persons designated by the Department of Workforce Services under Subsection (4)(c)(iv) shall adopt measures to:

(a) protect the security of the Licensing Information System; and

(b) strictly limit access to the Licensing Information System to those persons designated by statute.

(6) All persons designated by statute as having access to information contained in the Licensing Information System shall be approved by the Department of Human Services and receive training from the department with respect to:

(a) accessing the Licensing Information System;

(b) maintaining strict security; and

(c) the criminal provisions of Sections 62A-4a-412 and 63G-2-801 pertaining to the improper release of information.

(7) (a) A person, except those authorized by this chapter, may not request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of abuse or neglect.

(b) A person who requests information knowing that it is a violation of this Subsection (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63G-2-801.

CHAPTER 196**H. B. 413**

Passed March 9, 2017
 Approved March 21, 2017
 Effective May 9, 2017

**PUBLIC SCHOOL
 MEMBERSHIP IN ASSOCIATIONS**

Chief Sponsor: Francis D. Gibson
 Senate Sponsor: Daniel Hemmert

LONG TITLE**General Description:**

This bill enacts language governing a public school's membership in certain associations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a public school from membership in certain associations after July 1, 2017;
- ▶ establishes requirements for the membership of an association governing body;
- ▶ requires an association to provide certain reports to the State Board of Education;
- ▶ requires an association to follow certain budgetary procedures;
- ▶ establishes an appeals panel to hear an appeal of certain decisions by an association;
- ▶ requires an association to comply with:
 - Title 52, Chapter 4, Open and Public Meetings Act;
 - Title 63G, Chapter 2, Government Records Access and Management Act; and
 - Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to the State Board of Education -- State Administrative Office, an ongoing appropriation:
 - from the General Fund, \$15,000.

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

52-4-103, as last amended by Laws of Utah 2016, Chapter 77
 63A-3-106, as last amended by Laws of Utah 2016, Chapter 298
 63G-2-103, as last amended by Laws of Utah 2015, Chapter 265
 67-16-3, as last amended by Laws of Utah 2012, Chapter 202

ENACTS:

53A-1-1601, Utah Code Annotated 1953
 53A-1-1602, Utah Code Annotated 1953
 53A-1-1603, Utah Code Annotated 1953
 53A-1-1604, Utah Code Annotated 1953
 53A-1-1605, Utah Code Annotated 1953
 53A-1-1606, Utah Code Annotated 1953

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

Section 1. Section 52-4-103 is amended to read:**52-4-103. Definitions.**

As used in this chapter:

(1) "Anchor location" means the physical location from which:

- (a) an electronic meeting originates; or
- (b) the participants are connected.

(2) "Capitol hill complex" means the grounds and buildings within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.

(3) "Convening" means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

(4) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

(5) "Electronic message" means a communication transmitted electronically, including:

- (a) electronic mail;
- (b) instant messaging;
- (c) electronic chat;
- (d) text messaging as defined in Section 76-4-401; or

(e) any other method that conveys a message or facilitates communication electronically.

(6) (a) "Meeting" means the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body or specific body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

- (i) a chance gathering or social gathering; or
- (ii) a convening of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405.

(c) "Meeting" does not mean the convening of a public body that has both legislative and executive responsibilities if:

- (i) no public funds are appropriated for expenditure during the time the public body is convened; and
- (ii) the public body is convened solely for the discussion or implementation of administrative or operational matters:

(A) for which no formal action by the public body is required; or

(B) that would not come before the public body for discussion or action.

(7) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(8) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(9) (a) "Public body" means:

(i) any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

~~(iv)~~ (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

~~(iii)~~ (B) consists of two or more persons;

~~(iii)~~ (C) expends, disburses, or is supported in whole or in part by tax revenue; and

~~(iv)~~ (D) is vested with the authority to make decisions regarding the public's business[-]; or

(ii) any administrative, advisory, executive, or policymaking body of an association, as defined in Section 53A-1-1601, that:

(A) consists of two or more persons;

(B) expends, disburses, or is supported in whole or in part by dues paid by a public school or whose employees participate in a benefit or program described in Title 49, Utah State Retirement and Insurance Benefit Act; and

(C) is vested with authority to make decisions regarding the participation of a public school or student in an interscholastic activity as defined in Section 53A-1-1601.

(b) "Public body" includes, as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking.

(c) "Public body" does not include a:

(i) political party, political group, or political caucus;

(ii) conference committee, rules committee, or sifting committee of the Legislature; or

(iii) school community council or charter trust land council as defined in Section 53A-1a-108.1.

(10) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(11) (a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) "Quorum" does not include a meeting of two elected officials by themselves when no action,

either formal or informal, is taken on a subject over which these elected officials have advisory power.

(12) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

(13) "Specified body":

(a) means an administrative, advisory, executive, or legislative body that:

(i) is not a public body;

(ii) consists of three or more members; and

(iii) includes at least one member who is:

(A) a legislator; and

(B) officially appointed to the body by the president of the Senate, speaker of the House of Representatives, or governor; and

(b) does not include a body listed in Subsection 9)(c)(ii).

(14) "Transmit" means to send, convey, or communicate an electronic message by electronic means.

Section 2. Section 53A-1-1601 is enacted to read:

Part 16. Public School Membership in Associations 53A-1-1601. Definitions.

As used in this part:

(1) "Alignment" or "realignment" means the initial or subsequent act, respectively, of assigning a public school a classification or region.

(2) "Appeals panel" means the appeals panel created in Section 53A-1-1606.

(3) (a) "Association" means an organization that governs or regulates a student's participation in an athletic interscholastic activity.

(b) "Association" does not include an institution of higher education described in Section 53B-1-102.

(4) "Classification" means the designation of a school based on the size of the school's student enrollment population for purposes of interscholastic activities.

(5) "Eligibility" means eligibility to participate in an interscholastic activity regulated or governed by an association.

(6) "Governing body" means a body within an association that:

(a) is responsible for:

(i) adopting rules or policies that govern interscholastic activities or the administration of the association;

(ii) adopting or amending the association's governing document or bylaws;

(iii) enforcing the rules and policies of the association; and

(iv) adopting the association's budget; and

(b) has oversight of other boards, committees, councils, or bodies within the association.

(7) "Interscholastic activity" means an activity within the state in which:

(a) a student that participates represents the student's school in the activity; and

(b) the participating student is enrolled in grade 9, 10, 11, or 12.

(8) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(9) "Region" means a grouping of schools of the same classification for purposes of interscholastic activities.

Section 3. Section 53A-1-1602 is enacted to read:

53A-1-1602. Public schools prohibited from membership.

(1) A public school may not be a member of or pay dues to an association that is not in compliance on or after July 1, 2017, with:

(a) this part;

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

(c) Title 63G, Chapter 2, Government Records Access and Management Act; and

(d) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

(2) Unless otherwise specified, an association's compliance with or an association employee or officer's compliance with the provisions described in Subsection (1) does not alter:

(a) the association's public or private status; or

(b) the public or private employment status of the employee or officer.

Section 4. Section 53A-1-1603 is enacted to read:

53A-1-1603. Governing body membership.

(1) (a) A governing body shall have 15 members as follows:

(i) six members who:

(A) are each an elected member of a local school board; and

(B) each represent a different classification;

(ii) (A) one school superintendent representing the two largest classifications;

(B) one school superintendent representing the two classifications that are next in diminishing size to the smaller of the two classifications described in Subsection (1)(a)(ii)(A); and

(C) one school superintendent representing the two classifications that are next in diminishing size to the smaller of the two classifications described in Subsection (1)(a)(ii)(B);

(iii) (A) one school principal representing the two largest classifications;

(B) one school principal representing the two classifications that are next in diminishing size to the smaller of the two classifications described in Subsection (1)(a)(iii)(A); and

(C) one school principal representing the two classifications that are next in diminishing size to the smaller of the two classifications described in Subsection (1)(a)(iii)(B);

(iv) one representative of charter schools;

(v) one representative of private schools, if private schools are members of or regulated by the association; and

(vi) one member representing the State Board of Education.

(b) Only a member respectively described in Subsection (1)(a)(iv) or (v) may be elected or appointed by or represent charter or private schools on the governing body.

(2) (a) A member described in Subsection (1)(a)(i), (ii), (iii), or (v) may be elected, appointed, or otherwise selected in accordance with association rule or policy to the extent the selection reflects the membership requirements in Subsection (1)(a)(i), (ii), (iii), or (v).

(b) A governing body member described in Subsection (1)(a)(vi) shall be the chair of the State Board of Education or the chair's designee if the designee is an elected member of the State Board of Education.

Section 5. Section 53A-1-1604 is enacted to read:

53A-1-1604. Reporting requirements.

An association shall provide a verbal report, accompanied by a written report, annually to the State Board of Education, including:

(1) the association's annual budget in accordance with Section 53A-1-1605;

(2) a schedule of events scheduled or facilitated by the association;

(3) procedures for alignment or realignment;

(4) any amendments or changes to the association's governing document or bylaws; and

(5) any other information requested by the State Board of Education.

Section 6. Section 53A-1-1605 is enacted to read:

53A-1-1605. Association budgets.

(1) An association shall:

(a) adopt a budget in accordance with this section; and

(b) use uniform budgeting, accounting, and auditing procedures and forms, which shall be in accordance with generally accepted accounting principles or auditing standards.

(2) An association budget officer or executive director shall annually prepare a tentative budget, with supporting documentation, to be submitted to the governing body.

(3) The tentative budget and supporting documents shall include the following items:

(a) the revenues and expenditures of the preceding fiscal year;

(b) the estimated revenues and expenditures of the current fiscal year;

(c) a detailed estimate of the essential expenditures for all purposes for the next succeeding fiscal year; and

(d) the estimated financial condition of the association by funds at the close of the current fiscal year.

(4) The tentative budget shall be filed with the governing body 15 days, or earlier, before the date of the tentative budget's proposed adoption by the governing body.

(5) The governing body shall adopt a budget.

(6) Before the adoption or amendment of a budget, the governing body shall hold a public hearing on the proposed budget or budget amendment.

(7) (a) In addition to complying with Title 52, Chapter 4, Open and Public Meetings Act, in regards to the public hearing described in Subsection (6), at least 10 days before the public hearing, a governing body shall:

(i) publish a notice of the public hearing electronically in accordance with Section 63F-1-701; and

(ii) post the proposed budget on the association's Internet website.

(b) A notice of a public hearing on an association's proposed budget shall include information on how the public may access the proposed budget as provided in Subsection (7)(a).

(8) No later than September 30 of each year, the governing body shall file a copy of the adopted budget with the state auditor and the State Board of Education.

Section 7. Section 53A-1-1606 is enacted to read:

53A-1-1606. Procedures for disputes -- Appeals -- Appeals panel -- Compensation.

(1) (a) An association shall establish a uniform procedure for hearing and deciding:

(i) disputes;

(ii) allegations of violations of the association's rules or policies;

(iii) requests to establish eligibility after a student transfers schools; and

(iv) disputes related to alignment or realignment.

(b) An individual may appeal to an appeals panel established in this section an association decision regarding a request to establish eligibility after a student transfers schools.

(2) (a) There is established an appeals panel for an association decision described in Subsection (1)(b).

(b) The appeals panel shall consist of the following three members:

(i) a judge or attorney who is not employed by, or contracts with, a school;

(ii) a retired educator, principal, or superintendent; and

(iii) a retired athletic director or coach.

(c) A review and decision by the appeals panel is limited to whether the association properly followed the association's rules and procedures in regard to a decision described in Subsection (1)(b).

(d) (i) An association shall adopt policies for filing an appeal with the appeals panel.

(ii) The appeals panel shall review an appeal and issue a written decision explaining the appeals panel's decision no later than 10 business days after an appeal is filed.

(e) The appeals panel's decision is final.

(3) (a) The State Board of Education shall appoint the members of the appeals panel described in Subsection (2):

(i) from the association's nominations described in Subsection (3)(b); and

(ii) in accordance with the State Board of Education's appointment process.

(b) (i) The association shall nominate up to three individuals for each position described in Subsection (2) for the State Board of Education's consideration.

(ii) If the State Board of Education refuses to appoint members to the panel who were nominated by the association as described in Subsection (3)(b)(i), the State Board of Education shall request additional nominations from the association.

(iii) No later than 45 days after the association provides the nominations, the State Board of Education shall appoint to the appeals panel an individual from the names provided by the association.

(c) For the initial membership, the State Board of Education shall appoint two of the positions having an initial term of three years and one position having an initial term of two years.

(d) Except as required by Subsection (3)(e), as terms of appeals panel members expire, the State

Board of Education shall appoint each new member or reappointed member to a two-year term.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) The State Board of Education shall reimburse an association for per diem and travel expenses of members of the appeals panel.

Section 8. Section 63A-3-106 is amended to read:

63A-3-106. Per diem rates for board members.

(1) As used in this section and Section 63A-3-107:

(a) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(b) "Board member" means a person appointed or designated by statute to serve on a board.

(c) "Executive branch" means an agency within the executive branch of state government.

(d) (i) "Governmental entity" has the same meaning, except as provided in Subsection (1)(d)(ii), as provided under Section 63G-2-103.

(ii) "Governmental entity" does not include an association as defined in Section 53A-16-101.

(e) "Higher education" means a state institution of higher education, as defined under Section 53B-1-102.

(f) "Officer" means a person who is elected or appointed to an office or position within a governmental entity.

(g) "Official meeting" means a meeting of a board that is called in accordance with statute.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to approval by the executive director, the director of the Division of Finance shall make rules establishing per diem rates to defray subsistence costs for a board member's attendance at an official meeting.

(3) Unless otherwise provided by statute, a per diem rate established under Subsection (2) is applicable to a board member who serves:

(a) within the executive branch, except as provided under Subsection (3)(b);

(b) within higher education, unless higher education pays the costs of the per diem;

(c) on a board that is:

(i) not included under Subsection (3)(a) or (b); and

(ii) created by a statute that adopts the per diem rates by reference to:

(A) this section; and

(B) the rule authorized by this section; and

(d) within a government entity that is not included under Subsection (3)(a), if the government entity adopts the per diem rates by reference to:

(i) this section; or

(ii) the rule establishing the per diem rates.

(4) (a) Unless otherwise provided by statute, a board member who is not a legislator may receive per diem under this section and travel expenses under Section 63A-3-107 if the per diem and travel expenses are incurred by the board member for attendance at an official meeting.

(b) Notwithstanding Subsection (4)(a), a board member may not receive per diem or travel expenses under this Subsection (4) if the board member is being paid by a governmental entity while performing the board member's service on the board.

(5) A board member may decline to receive per diem for the board member's service.

(6) Compensation and expenses of a board member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section 9. Section 63G-2-103 is amended to read:

63G-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:

(a) the time and general nature of police, fire, and paramedic calls made to the agency; and

(b) any arrests or jail bookings made by the agency.

(3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(4) (a) "Computer program" means:

(i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and

(ii) any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.

(7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.

(9) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(10) "Government audit agency" means any governmental entity that conducts an audit.

(11) (a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business; ~~and~~

(ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking~~[-];~~ and

(iii) an association as defined in Section 53A-1-1601.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.

(12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(13) "Individual" means a human being.

(14) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

- (ii) names of victims;
- (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
- (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or
- (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.
- (b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).
- (15) "Legislative body" means the Legislature.
- (16) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.
- (17) "Person" means:
- (a) an individual;
- (b) a nonprofit or profit corporation;
- (c) a partnership;
- (d) a sole proprietorship;
- (e) other type of business organization; or
- (f) any combination acting in concert with one another.
- (18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.
- (19) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.
- (20) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.
- (21) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).
- (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:
- (i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and
- (ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.
- (b) "Record" does not mean:
- (i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:
- (A) in a capacity other than the employee's or officer's governmental capacity; or
- (B) that is unrelated to the conduct of the public's business;
- (ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;
- (iii) material that is legally owned by an individual in the individual's private capacity;
- (iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;
- (v) proprietary software;
- (vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;
- (vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;
- (viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;
- (ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;
- (x) a computer program that is developed or purchased by or for any governmental entity for its own use;
- (xi) a note or internal memorandum prepared as part of the deliberative process by:
- (A) a member of the judiciary;
- (B) an administrative law judge;
- (C) a member of the Board of Pardons and Parole; or
- (D) a member of any other body, other than an association or appeals panel as defined in Section 53A-1-1601, charged by law with performing a quasi-judicial function;
- (xii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;
- (xiii) information provided by the Public Employees' Benefit and Insurance Program,

created in Section 49-20-103, to a county to enable the county to calculate the amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

(xiv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205; or

(xv) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102.

(23) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

(24) "Records committee" means the State Records Committee created in Section 63G-2-501.

(25) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

(26) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(27) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

(i) by an institution within the state system of higher education defined in Section 53B-1-102; and

(ii) through an office responsible for sponsored projects or programs; and

(b) funded or otherwise supported by an external:

(i) person that is not created or controlled by the institution within the state system of higher education; or

(ii) federal, state, or local governmental entity.

(28) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

(29) "State archivist" means the director of the state archives.

(30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Section 10. Section 67-16-3 is amended to read:

67-16-3. Definitions.

As used in this chapter:

(1) "Agency" means:

(a) any department, division, agency, commission, board, council, committee, authority, or any other institution of the state or any of its political subdivisions[-]; or

(b) an association as defined in Section 53A-16-101.

(2) "Agency head" means the chief executive or administrative officer of any agency.

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

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

(5) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.

(6) "Controlled, private, or protected information" means information classified as controlled, private, or protected in Title 63G, Chapter 2, Government Records Access and Management Act, or other applicable provision of law.

(7) "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including:

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

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

(8) "Improper disclosure" means disclosure of controlled, private, or protected information to any person who does not have the right to receive the information.

(9) "Legislative employee" means any officer or employee of the Legislature, or any committee of the Legislature, who is appointed or employed to serve, either with or without compensation, for an aggregate of less than 800 hours during any period of 365 days. "Legislative employee" does not include legislators.

(10) "Legislator" means a member or member-elect of either house of the Legislature of the state of Utah.

(11) "Political subdivision" means a district, school district, or any other political subdivision of

the state that is not an agency, but does not include a municipality or a county.

(12) (a) “Public employee” means a person who is not a public officer who is employed on a full-time, part-time, or contract basis by:

- (i) ~~the state [or any of its political subdivisions];~~
- (ii) a political subdivision of the state; or
- (iii) an association as defined in Section 53A-1-1601.

(b) “Public employee” does not include legislators or legislative employees.

(13) (a) “Public officer” means ~~[all] an elected or appointed [officers of the state or any of its political subdivisions who occupy policymaking posts.]~~ officer:

- (i) (A) of the state;
- (B) of a political subdivision of the state; or
- (C) an association as defined in Section 53A-1-1601; and
- (ii) who occupies a policymaking post.

(b) “Public officer” does not include legislators or legislative employees.

(14) “State” means the state of Utah.

(15) “Substantial interest” means the ownership, either legally or equitably, by an individual, the individual’s spouse, or the individual’s minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity.

Section 11. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

To State Board of Education —
State Administrative Office

From General Fund, Ongoing \$15,000

Schedule of Programs:

Board and Administration \$15,000

The Legislature intends that the State Board of Education use the appropriation to the State Board of Education under this section to reimburse an association for per diem and travel expenses incurred by a member of an appeals panel described in Section 53A-1-1606.

CHAPTER 197**H. B. 425**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

SECURITY PERSONNEL AMENDMENTS

Chief Sponsor: Lee B. Perry
Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill modifies the Security Personnel Licensing Act.

Highlighted Provisions:

This bill:

- ▶ defines terms, including “security service provider,” “agreement for services,” and “financial responsibility”;
- ▶ modifies the requirements for being the qualifying agent of a licensed contract security company or licensed armored car company; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-63-102, as last amended by Laws of Utah 2012, Chapter 41

58-63-302, as last amended by Laws of Utah 2016, Chapter 238

58-63-304, as last amended by Laws of Utah 2013, Chapter 436

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

Section 1. Section 58-63-102 is amended to read:**58-63-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) “Agreement for services” means a written and signed agreement between a security service provider and a client that:

(a) contains clear language that addresses and assigns financial responsibility;

(b) describes the length, duties, and scope of the security services that will be provided; and

(c) describes the compensation that will be paid by the client for the security services, including the compensation for each security officer.

(1) (2) “Armed courier service” means a person engaged in business as a contract security company who transports or offers to transport tangible personal property from one place or point to another under the control of an armed security officer employed by that service.

(2) (3) “Armed private security officer” means an individual:

(a) employed by a contract security company;

(b) whose primary duty is:

(i) guarding personal or real property; or

(ii) providing protection or security to the life and well being of humans or animals; and

(c) who wears, carries, possesses, or has immediate access to a firearm in the performance of the individual’s duties.

(3) (4) “Armored car company” means a person engaged in business under contract to others who transports or offers to transport tangible personal property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or any other high value items, that require secured delivery from one place to another under the control of an armored car security officer employed by the company using a specially equipped motor vehicle offering a high degree of security.

(4) (5) “Armored car security officer” means an individual:

(a) employed by an armored car company;

(b) whose primary duty is to guard the tangible property, currency, valuables, jewelry, SNAP benefits as defined in Section 35A-1-102, or other high value items that require secured delivery from one place to another; and

(c) who wears, carries, possesses, or has immediate access to a firearm in the performance of the individual’s duties.

(5) (6) “Board” means the Security Services Licensing Board created in Section 58-63-201.

(7) “Client” means a person, company, or entity that contracts for and receives security services from a contract security company or an armored car company.

(6) (8) “Contract security company” means a ~~person engaged in business to provide security or guard services to another person on a contractual basis by assignment of an armed or unarmed private security officer~~ company that is registered with the Division of Corporations and Commercial Code and is engaged in business to provide security services to another person, business, or entity on a contractual basis by assignment of an armed or unarmed private security officer.

(9) “Corporate officer” means an individual who is on file with the Division of Corporations and Commercial Code as:

(a) a corporate officer of a contract security company or an armored car company that is a corporation; or

(b) a sole proprietor of a contract security company or an armored car company that is not a corporation.

(10) “Financial responsibility,” when referring to a contract security company, means that a contract

security company may only provide security services to a client if the contract security company:

(a) enters into an agreement for services with the client;

(b) maintains a current general liability insurance policy with:

(i) at least an annual \$1,000,000 per occurrence limit;

(ii) at least an annual \$2,000,000 aggregate limit; and

(iii) the following riders:

(A) general liability;

(B) assault and battery;

(C) personal injury;

(D) false arrest;

(E) libel and slander;

(F) invasion of privacy;

(G) broad form property damage;

(H) damage to property in the care, custody, or control of the security service provider; and

(I) errors and omissions;

(c) maintains a workers' compensation insurance policy with at least a \$1,000,000 per occurrence limit and that covers each security officer employed by the contract security company; and

(d) maintains a federal employer identification number and an unemployment insurance employer account as required under state and federal law.

[(7)] (11) "Identification card" means a personal pocket or wallet size card issued by the division to each armored car and armed or unarmed private security officer licensed under this chapter.

(12) "Law enforcement agency" means the same as that term is defined in Section 53-1-102.

[(8) "Officer" means a president, vice president, secretary, treasurer, or other officer of a corporation or limited liability company listed as an officer in the files with the Division of Corporations and Commercial Code.]

[(9) "Owner" means a proprietor or general partner of a proprietorship or partnership, a lessee or assignee of the owner, the manager of the facility, or the event operator.]

(13) "Owner" means an individual who is listed with the Division of Corporations and Commercial Code as a majority stockholder of a company, a general partner of a partnership, or the proprietor of a sole proprietorship.

[(10)] (14) "Peace officer" means a person who:

(a) is a certified peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications; and

(b) derives total or special law enforcement powers from, and is an employee of, the federal government, the state, or a political subdivision, agency, department, branch, or service of either, of a municipality, or a unit of local government.

[(11)] (15) "Regular basis" means at least 20 hours per month.

[(12)] (16) (a) "Security officer" means an individual who is licensed as an armed or unarmed private security officer under this chapter and who:

(i) is employed by a contract security company securing, guarding, or otherwise protecting tangible personal property, real property, or the life and well being of human or animal life against:

(A) trespass or other unlawful intrusion or entry;

(B) larceny;

(C) vandalism or other abuse;

(D) arson or other criminal activity; or

(E) personal injury caused by another person or as a result of an act or omission by another person;

(ii) is controlling, regulating, or directing the flow of movements of an individual or vehicle; or

(iii) providing street patrol service.

[(b) "Security officer" does not include an individual whose duties are limited to custodial or other services even though the presence of that individual may act to provide a service set forth under Subsection (12)(a).]

[(e)-(i)] (b) "Security officer" does not include an individual whose duties include taking admission tickets, checking credentials, ushering, or checking bags, purses, backpacks, or other materials [going into a facility as described in Subsection (12)(e)(ii)] of individuals who are entering a sports venue, concert venue, theatrical venue, convention center, fairgrounds, public assembly facility, or mass gathering location if:

(A) the individual carries out these duties without the use of specialized equipment;

(B) the authority of the individual is limited to denying entry or passage of [a person] another individual into or within the facility; and

(C) the individual is not authorized to use physical force in the performance of the individual's duties under this Subsection [(12)(e)] (16)(b).

[(ii) As used in this Subsection (12)(e), "facility" means a sports, concert, or theatrical venue, or a convention center, fairgrounds, public assembly facility, or mass gathering location.]

(17) "Security service provider" means a contract security company or an armored car company licensed under this chapter.

[(13)] (18) "Security system" means equipment, a device, or an instrument installed for:

(a) detecting and signaling entry or intrusion by an individual into or onto, or exit from the premises protected by the system; or

(b) signaling the commission of criminal activity at the election of an individual having control of the features of the security system.

[44] (19) “Specialized resource, motor vehicle, or equipment” means an item of tangible personal property specifically designed for use in law enforcement or in providing security or guard services, or that is specially equipped with a device or feature designed for use in providing law enforcement, security, or guard services, but does not include:

(a) standardized clothing, whether or not bearing a company name or logo, if the clothing does not bear the words “security” or “guard”; or

(b) an item of tangible personal property, other than a firearm or nonlethal weapon, that may be used without modification in providing security or guard services.

[45] (20) “Street patrol service” means a contract security company that provides patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the company’s duties and responsibilities.

[46] (21) “Unarmed private security officer” means an individual:

(a) employed by a contract security company;

(b) whose primary duty is guarding personal or real property or providing protection or security to the life and well being of humans or animals;

(c) who does not wear, carry, possess, or have immediate access to a firearm in the performance of the individual’s duties; and

(d) who wears clothing of distinctive design or fashion bearing a symbol, badge, emblem, insignia, or other device that identifies the individual as a security officer.

[47] (22) “Unlawful conduct” [is as] means the same as that term is defined in Sections 58-1-501 and 58-63-501.

[48] (23) “Unprofessional conduct” [is as] means the same as that term is defined in Sections 58-1-501 and 58-63-502 and as may be further defined by rule.

Section 2. Section 58-63-302 is amended to read:

58-63-302. Qualifications for licensure.

(1) Each applicant for licensure as an armored car company or a contract security company shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) have a qualifying agent who:

(i) shall meet with the division and the board and demonstrate that the applicant and the qualifying agent meet the requirements of this section;

~~[(4)] (ii) is a resident of the state and [an officer, director, partner, proprietor, or manager of the applicant] is a corporate officer or owner of the applicant;~~

(iii) exercises material day-to-day authority in the conduct of the applicant’s business by making substantive technical and administrative decisions and whose primary employment is with the applicant;

(iv) is not concurrently acting as a qualifying agent or employee of another armored car company or contract security company and is not engaged in any other employment on a regular basis;

(v) is not involved in any activity that would conflict with the qualifying agent’s duties and responsibilities under this chapter to ensure that the qualifying agent’s and the applicant’s performance under this chapter does not jeopardize the health or safety of the general public;

(vi) is not an employee of a government agency;

~~[(4)] (vii) passes an examination component established by rule by the division in collaboration with the board; and~~

~~[(4)] (viii) (A) demonstrates 6,000 hours of compensated experience as a manager, supervisor, or administrator of an armored car company or a contract security company; or~~

~~(B) demonstrates 6,000 hours of supervisory experience acceptable to the division in collaboration with the board with a federal, United States military, state, county, or municipal law enforcement agency;~~

~~(d) if a corporation, provide:~~

~~(i) the names, addresses, dates of birth, and social security numbers of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and~~

~~(ii) the names, addresses, dates of birth, and social security numbers, of all shareholders owning 5% or more of the outstanding shares of the corporation, unless waived by the division if the stock is publicly listed and traded;~~

~~(e) if a limited liability company, provide:~~

~~(i) the names, addresses, dates of birth, and social security numbers of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and~~

~~(ii) the names, addresses, dates of birth, and social security numbers of all individuals owning 5% or more of the equity of the company;~~

~~(f) if a partnership, provide the names, addresses, dates of birth, and social security numbers of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;~~

(g) if a proprietorship, provide the names, addresses, dates of birth, and social security numbers of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(h) have good moral character in that officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel have not been convicted of:

(i) a felony;

(ii) a misdemeanor involving moral turpitude; or

(iii) a crime that when considered with the duties and responsibilities of a contract security company or an armored car company by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;

(i) document that none of the applicant's officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel:

(i) have been declared by a court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored; and

(ii) currently suffer from habitual drunkenness or from drug addiction or dependence;

(j) file and maintain with the division evidence of:

(i) comprehensive general liability insurance in a form and in amounts established by rule by the division in collaboration with the board;

(ii) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law;

(iii) registration with the Division of Corporations and Commercial Code; and

(iv) registration as required by applicable law with the:

(A) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(B) State Tax Commission; and

(C) Internal Revenue Service; and

(k) meet with the division and board if requested by the division or board.

(2) Each applicant for licensure as an armed private security officer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) have good moral character in that the applicant has not been convicted of:

(i) a felony;

(ii) a misdemeanor involving moral turpitude; or

(iii) a crime that when considered with the duties and responsibilities of an armed private security officer by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;

(d) not be prohibited from possession of a firearm or ammunition under 18 U.S.C. Sec. 922(g);

(e) not have been declared incompetent by a court of competent jurisdiction by reason of mental defect or disease and not been restored;

(f) not be currently suffering from habitual drunkenness or from drug addiction or dependence;

(g) successfully complete basic education and training requirements established by rule by the division in collaboration with the board[;], which shall include 24 hours of classroom or online curriculum;

(h) successfully complete firearms training requirements established by rule by the division in collaboration with the board;

(i) pass the examination requirement established by rule by the division in collaboration with the board; and

(j) meet with the division and board if requested by the division or the board.

(3) Each applicant for licensure as an unarmed private security officer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) have good moral character in that the applicant has not been convicted of:

(i) a felony;

(ii) a misdemeanor involving moral turpitude; or

(iii) a crime that when considered with the duties and responsibilities of an unarmed private security officer by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;

(d) not have been declared incompetent by a court of competent jurisdiction by reason of mental defect or disease and not been restored;

(e) not be currently suffering from habitual drunkenness or from drug addiction or dependence;

(f) successfully complete basic education and training requirements established by rule by the division in collaboration with the board[;], which shall include 24 hours of classroom or online curriculum;

(g) pass the examination requirement established by rule by the division in collaboration with the board; and

(h) meet with the division and board if requested by the division or board.

(4) Each applicant for licensure as an armored car security officer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) have good moral character in that the applicant has not been convicted of:

(i) a felony;

(ii) a misdemeanor involving moral turpitude; or

(iii) a crime that when considered with the duties and responsibilities of an armored car security officer by the division and the board indicates that the best interests of the public are not served by granting the applicant a license;

(d) not be prohibited from possession of a firearm or ammunition under 18 U.S.C. Sec. 922(g);

(e) not have been declared incompetent by a court of competent jurisdiction by reason of mental defect or disease and not been restored;

(f) not be currently suffering from habitual drunkenness or from drug addiction or dependence;

(g) successfully complete basic education and training requirements established by rule by the division in collaboration with the board;

(h) successfully complete firearms training requirements established by rule by the division in collaboration with the board;

(i) pass the examination requirements established by rule by the division in collaboration with the board; and

(j) meet with the division and board if requested by the division or the board.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make a rule establishing when the division shall request a Federal Bureau of Investigation records' review for an applicant.

(6) To determine if an applicant meets the qualifications of Subsections (1)(h), (2)(c), (3)(c), and (4)(c), the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure under this chapter and each applicant's officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel; and

(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the FBI for criminal history information under this section.

(7) The Department of Public Safety shall send the division:

(a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and

(b) the results of the FBI review concerning an applicant in a timely manner after receipt of information from the FBI.

(8) (a) The division shall charge each applicant a fee, in accordance with Section 63J-1-504, equal to the cost of performing the records reviews under this section.

(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the FBI the costs of records reviews under this chapter.

(9) The division shall use or disseminate the information it obtains from the reviews of criminal history records of the Department of Public Safety and the FBI only to determine if an applicant for licensure under this chapter is qualified for licensure.

Section 3. Section 58-63-304 is amended to read:

58-63-304. Exemptions from licensure.

(1) In addition to the exemptions from licensure in Section 58-1-307, an individual may engage in acts regulated under this chapter without being licensed under this chapter if the individual is:

(a) a peace officer employed by ~~[-or licensed as-]~~ a contract security company~~[-]~~ as provided in Subsection (2); or

(b) employed by a contract security company for the sole purpose of operating or staffing security apparatus, including a magnetometer, magnetometer wand, x-ray viewing device, or other device approved by rule of the division.

(2) A peace officer may only engage in off-duty employment as a security officer if:

(a) the law enforcement agency employing the peace officer has a written policy regarding peace officer employees working while off duty as a security officer and the written policy addresses the issue of financial responsibility;

(b) the agency's chief administrative officer, or that officer's designee, provides written authorization for an off-duty peace officer to work as a security officer; and

(c) the business or entity employing the off-duty peace officer to work as a security officer complies with state and federal income reporting and withholding requirements regarding the off-duty officer's wages.

(3) In addition to the exemptions from licensure in Section 58-1-307, an individual holding a valid license as an armed private security officer under this chapter may also function as an unarmed private security officer without the additional license.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules approving security apparatus under Subsection (1)(b).

CHAPTER 198**H. B. 430**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

**DISHONORED
INSTRUMENTS AMENDMENTS**

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies provisions related to dishonored instruments.

Highlighted Provisions:

This bill:

- ▶ clarifies the action that initiates a civil action against an issuer of a dishonored check.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

7-15-1, as last amended by Laws of Utah 2008, Chapter 96

7-15-2, as last amended by Laws of Utah 2010, Chapter 324

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

Section 1. Section 7-15-1 is amended to read:**7-15-1. Definitions -- Civil liability of issuer -- Notice of action -- Collection costs -- Exemptions.**

(1) As used in this chapter:

(a) "Check" means a payment instrument on a depository institution including a:

- (i) check;
- (ii) draft;
- (iii) order; or
- (iv) other instrument.

(b) "Issuer" means a person who makes, draws, signs, or issues a check, whether as corporate agent or otherwise, for the purpose of:

(i) obtaining from any person any money, merchandise, property, or other thing of value; or

(ii) paying for any service, wages, salary, or rent.

(c) "Mailed" means the day that a notice is properly deposited in the United States mail.

(2) (a) An issuer of a check is liable to the holder of the check if:

(i) the check:

(A) is not honored upon presentment; and

(B) is marked "refer to maker";

(ii) the account upon which the check is made or drawn:

(A) does not exist;

(B) has been closed; or

(C) does not have sufficient funds or sufficient credit for payment in full of the check; or

(iii) (A) the check is issued in partial or complete fulfillment of a valid and legally binding obligation; and

(B) the issuer stops payment on the check with the intent to:

(I) fraudulently defeat a possessory lien; or

(II) otherwise defraud the holder of the check.

(b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:

(i) the check amount; and

(ii) a service charge of \$20.

(3) (a) The holder of a check that has been dishonored may:

(i) give written or oral notice of dishonor to the issuer of the check; and

(ii) waive all or part of the service charge imposed under Subsection (2)(b).

(b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:

(i) the holder redeposits the check; and

(ii) that check is honored.

(4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable for:

(a) the amount owed under Subsection (2)(b); and

(b) collection costs not to exceed \$20.

(5) (a) A holder shall provide written notice to an issuer before:

(i) charging collection costs under Subsection (4) in addition to the amount owed under Subsection (2)(b); or

(ii) ~~filing~~ commencing an action based upon this section.

(b) The written notice required under Subsection (5)(a) shall notify the issuer of the dishonored check that:

(i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days from the day on which the notice is mailed, the issuer is liable for:

(A) the amount owed under Subsection (2)(b); and

(B) collection costs under Subsection (4); and

(ii) the holder may ~~file~~ commence a civil action if the issuer does not pay to the holder the amount

owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.

(6) (a) Except as provided in Section 7-23-401, if the issuer has not paid the holder the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder may offer to not ~~file~~ commence a civil action under this section if the issuer pays the holder:

- (i) the amount owed under Subsection (2)(b);
- (ii) the collection costs under Subsection (4);
- (iii) an amount that:

(A) is equal to the greater of:

- (I) \$50; or
- (II) triple the check amount; and

(B) does not exceed the check amount plus \$250; and

(iv) if the holder retains an attorney to recover on the dishonored check, reasonable attorney's fees not to exceed \$50.

(b) (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (6)(a)(iii).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (6)(a)(iii).

(7) (a) A ~~civil action may not be filed~~ holder may not commence a civil action under this section unless the issuer fails to pay the amounts owed:

- (i) under Subsection (4); and
- (ii) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed.

(b) Subject to Subsections (7)(c) and (d) and except as provided in Section 7-23-401, in a civil action the issuer of the check is liable to the holder for:

- (i) the amount owed under Subsection (2)(b);
- (ii) the collection costs under Subsection (4);
- (iii) interest;

(iv) court costs;

(v) reasonable attorney fees; and

(vi) damages:

(A) equal to the greater of:

- (I) \$100; or
- (II) triple the check amount; and

(B) not to exceed the check amount plus \$500.

(c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b), a court may waive any amount owed under Subsections (7)(b)(iii) through (vi) upon a finding of good cause.

(d) If a holder of a check violates this section by ~~fil[ing]~~ commencing a civil action under this section before 31 calendar days from the day on which the notice required by Subsection (5) is mailed, an issuer may not be held liable for an amount in excess of the check amount.

(e) (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under Subsection (7)(b)(vi) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (7)(b)(vi).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (7)(b)(vi).

(8) This section may not be construed to prohibit the holder of the check from seeking relief under any other applicable statute or cause of action.

(9) (a) Notwithstanding the other provisions of this section, a holder of a check is exempt from this section if the holder is:

(i) a depository institution; or

(ii) a person that receives a payment on behalf of a depository institution.

(b) A holder exempt under Subsection (9)(a) may contract with an issuer for the collection of fees or charges for the dishonor of a check.

Section 2. Section 7-15-2 is amended to read:

7-15-2. Notice -- Form.

(1) (a) "Notice" means notice given to the issuer of a check either orally or in writing.

(b) Written notice may be given by United States mail that is:

(i) first class; and

(ii) postage prepaid.

(c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to have been given when the notice is:

(i) properly deposited in the United States mail;

(ii) postage prepaid;

(iii) certified or registered mail;

(iv) return receipt requested; and

(v) addressed to the signer at the signer's:

(A) address as it appears on the check; or

(B) last-known address.

(2) Written notice under Subsection 7-15-1(5) shall take substantially the following form:

"Date: ____

To: _____

You are hereby notified that the check(s) described below issued by you has (have) been returned to us unpaid:

Check date: _____

Check number: _____

Originating institution: _____

Amount: _____

Reason for dishonor (marked on check): _____

In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check together with a service charge of \$20, which must be paid to the undersigned.

If you do not pay the check amount and the \$20 service charge within 15 calendar days from the day on which this notice was mailed, you are required to pay within 30 calendar days from the day on which this notice is mailed:

- (1) the check amount;
- (2) the \$20 service charge; and
- (3) collection costs not to exceed \$20.

If you do not pay the check amount, the \$20 service charge, and the collection costs within 30 calendar days from the day on which this notice is mailed, in accordance with Section 7-15-1, Utah Code Annotated, an appropriate civil legal action may be filed commenced against you for:

- (1) the check amount;
- (2) interest;
- (3) court costs;
- (4) attorneys' fees;
- (5) actual costs of collection as provided by law; and
- (6) damages in an amount equal to the greater of \$100 or triple the check amount, except:
 - (a) that damages recovered under this Subsection (6) may not exceed the check amount by more than \$500; and
 - (b) you are not liable for these damages for a check used to obtain a deferred deposit loan.

In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that any person who issues or passes a check for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check.

The civil action referred to in this notice does not preclude the right to prosecute under the criminal code of the state.

(Signed) _____

Name of Holder: _____

Address of Holder: _____

Telephone Number: _____”

(3) Notwithstanding the other provisions of this section, a holder exempt under Subsection 7-15-1(9) is exempt from this section.

CHAPTER 199**H. B. 459**

Passed March 8, 2017

Approved March 21, 2017

Effective May 9, 2017

**RURAL HEALTH SERVICES
ACCOUNT AMENDMENTS**Chief Sponsor: R. Curt Webb
Senate Sponsor: Brian E. Shiozawa**LONG TITLE****General Description:**

This bill amends the Rural Health Care Facilities Account.

Highlighted Provisions:

This bill:

- ▶ amends the calculation made by the State Tax Commission for distributions from the Rural Health Care Facilities Account.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-9-4, as last amended by Laws of Utah 2014, Chapter 50

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

Section 1. Section 26-9-4 is amended to read:**26-9-4. Rural Health Care Facilities Account -- Source of revenues -- Interest -- Distribution of revenues -- Expenditure of revenues -- Unexpended revenues lapse into the General Fund.**

(1) As used in this section:

(a) "Emergency medical services" is as defined in Section 26-8a-102.

(b) "Federally qualified health center" is as defined in 42 U.S.C. Sec. 1395x.

(c) "Fiscal year" means a one-year period beginning on July 1 of each year.

(d) "Freestanding urgent care center" is as defined in Section 59-12-801.

(e) "Nursing care facility" is as defined in Section 26-21-2.

(f) "Rural city hospital" is as defined in Section 59-12-801.

(g) "Rural county health care facility" is as defined in Section 59-12-801.

(h) "Rural county hospital" is as defined in Section 59-12-801.

(i) "Rural county nursing care facility" is as defined in Section 59-12-801.

(j) "Rural emergency medical services" is as defined in Section 59-12-801.

(k) "Rural health clinic" is as defined in 42 U.S.C. Sec. 1395x.

(2) There is created a restricted account within the General Fund known as the "Rural Health Care Facilities Account."

(3) (a) The restricted account shall be funded by amounts appropriated by the Legislature.

(b) Any interest earned on the restricted account shall be deposited into the General Fund.

(4) Subject to Subsections (5) and (6), the State Tax Commission shall for a fiscal year distribute money deposited into the restricted account to each:

(a) county legislative body of a county that, on January 1, 2007, imposes a tax in accordance with Section 59-12-802 and has not repealed the tax; or

(b) city legislative body of a city that, on January 1, 2007, imposes a tax in accordance with Section 59-12-804 and has not repealed the tax.

(5) (a) Subject to Subsection (6), for purposes of the distribution required by Subsection (4), the State Tax Commission shall:

(i) estimate for each county and city described in Subsection (4) the amount by which the revenues collected from the taxes imposed under Sections 59-12-802 and 59-12-804 for fiscal year 2005-06 would have been reduced had:

(A) the amendments made by Laws of Utah 2007, Chapter 288, Sections 25 and 26, to Sections 59-12-802 and 59-12-804 been in effect for fiscal year 2005-06; and

(B) each county and city described in Subsection (4) imposed the tax under Sections 59-12-802 and 59-12-804 for the entire fiscal year 2005-06;

(ii) (A) for fiscal years ending before fiscal year 2018, calculate a percentage for each county and city described in Subsection (4) by dividing the amount estimated for each county and city in accordance with Subsection (5)(a)(i) by \$555,000; and

(B) beginning in fiscal year 2018, calculate a percentage for each county and city described in Subsection (4) by dividing the amount estimated for each county and city in accordance with Subsection (5)(a)(i) by \$218,809.33;

(iii) distribute to each county and city described in Subsection (4) an amount equal to the product of:

(A) the percentage calculated in accordance with Subsection (5)(a)(ii); and

(B) the amount appropriated by the Legislature to the restricted account for the fiscal year.

(b) The State Tax Commission shall make the estimations, calculations, and distributions required by Subsection (5)(a) on the basis of data collected by the State Tax Commission.

(6) If a county legislative body repeals a tax imposed under Section 59-12-802 or a city

legislative body repeals a tax imposed under Section 59-12-804:

(a) the commission shall determine in accordance with Subsection (5) the distribution that, but for this Subsection (6), the county legislative body or city legislative body would receive; and

(b) after making the determination required by Subsection (6)(a), the commission shall:

(i) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is October 1:

(A) (I) distribute to the county legislative body or city legislative body 25% of the distribution determined in accordance with Subsection (6)(a); and

(II) deposit 75% of the distribution determined in accordance with Subsection (6)(a) into the General Fund; and

(B) beginning with the first fiscal year after the effective date of the repeal and for each subsequent fiscal year, deposit the entire amount of the distribution determined in accordance with Subsection (6)(a) into the General Fund;

(ii) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is January 1:

(A) (I) distribute to the county legislative body or city legislative body 50% of the distribution determined in accordance with Subsection (6)(a); and

(II) deposit 50% of the distribution determined in accordance with Subsection (6)(a) into the General Fund; and

(B) beginning with the first fiscal year after the effective date of the repeal and for each subsequent fiscal year, deposit the entire amount of the distribution determined in accordance with Subsection (6)(a) into the General Fund;

(iii) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is April 1:

(A) (I) distribute to the county legislative body or city legislative body 75% of the distribution determined in accordance with Subsection (6)(a); and

(II) deposit 25% of the distribution determined in accordance with Subsection (6)(a) into the General Fund; and

(B) beginning with the first fiscal year after the effective date of the repeal and for each subsequent fiscal year, deposit the entire amount of the distribution determined in accordance with Subsection (6)(a) into the General Fund; or

(iv) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is July 1, beginning on that effective date and for each subsequent fiscal year, deposit the entire amount of

the distribution determined in accordance with Subsection (6)(a) into the General Fund.

(7) (a) Subject to Subsection (7)(b) and Section 59-12-802, a county legislative body shall distribute the money the county legislative body receives in accordance with Subsection (5) or (6):

(i) for a county of the third or fourth class, to fund rural county health care facilities in that county; and

(ii) for a county of the fifth or sixth class, to fund:

(A) rural emergency medical services in that county;

(B) federally qualified health centers in that county;

(C) freestanding urgent care centers in that county;

(D) rural county health care facilities in that county;

(E) rural health clinics in that county; or

(F) a combination of Subsections (7)(a)(ii)(A) through (E).

(b) A county legislative body shall distribute the money the county legislative body receives in accordance with Subsection (5) or (6) to a center, clinic, facility, or service described in Subsection (7)(a) as determined by the county legislative body.

(c) A center, clinic, facility, or service that receives a distribution in accordance with this Subsection (7) shall expend that distribution for the same purposes for which money collected from a tax under Section 59-12-802 may be expended.

(8) (a) Subject to Subsection (8)(b), a city legislative body shall distribute the money the city legislative body receives in accordance with Subsection (5) or (6) to fund rural city hospitals in that city.

(b) A city legislative body shall distribute a percentage of the money the city legislative body receives in accordance with Subsection (5) or (6) to each rural city hospital described in Subsection (8)(a) equal to the same percentage that the city legislative body distributes to that rural city hospital in accordance with Section 59-12-805 for the calendar year ending on the December 31 immediately preceding the first day of the fiscal year for which the city legislative body receives the distribution in accordance with Subsection (5) or (6).

(c) A rural city hospital that receives a distribution in accordance with this Subsection (8) shall expend that distribution for the same purposes for which money collected from a tax under Section 59-12-804 may be expended.

(9) Any money remaining in the Rural Health Care Facilities Account at the end of a fiscal year after the State Tax Commission makes the distributions required by this section shall lapse into the General Fund.

CHAPTER 200**S. B. 14**

Passed February 21, 2017

Approved March 21, 2017

Effective May 9, 2017

**EMERGENCY TELEPHONE
SERVICE AMENDMENTS**

Chief Sponsor: Wayne A. Harper

House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill amends and enacts provisions related to 911 services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides an applicability date;
- ▶ requires certain multi-line telephone systems to provide certain information to a public safety answering point; and
- ▶ requires a multi-line telephone system to be capable of accessing 911 services directly.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

69-5-101, Utah Code Annotated 1953

69-5-102, Utah Code Annotated 1953

69-5-201, Utah Code Annotated 1953

69-5-202, Utah Code Annotated 1953

69-5-203, Utah Code Annotated 1953

69-5-204, Utah Code Annotated 1953

69-5-205, Utah Code Annotated 1953

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

Section 1. Section 69-5-101 is enacted to read:**CHAPTER 5. ENHANCED 911 FOR
MULTI-LINE TELEPHONES****69-5-101. Title.**

This chapter is known as “Enhanced 911 for Multi-Line Telephones.”

Section 2. Section 69-5-102 is enacted to read:**69-5-102. Definitions.**

As used in this chapter:

(1) “Lodging establishment” means the same as that term is defined in Section 29-2-102.

(2) “Multi-line telephone system” means a network- or premises-based telephone system installed at an end-use location that uses common control units, common telephones, and common control hardware and software to provide a

connection to the public switched network to multiple end-users at the end-use location.

Section 3. Section 69-5-201 is enacted to read:**69-5-201. Applicability.**

An owner or operator of a multi-line telephone system is required to comply with this chapter if, after July 1, 2017, the owner:

- (1) upgrades an existing multi-line telephone system; or
- (2) installs a new multi-line telephone system.

Section 4. Section 69-5-202 is enacted to read:**69-5-202. Location identification
information shared with public safety
answering point.**

An owner or operator of a multi-line telephone system shall configure the multi-line telephone system in such a manner that, when an individual makes a 911 call using the multi-line telephone system, the multi-line telephone system automatically provides the public safety answering point that receives the call verified automated number information and automated location information that includes:

- (1) the street address, and, if applicable, the business name, of the location of the communications device from which the call is made;
- (2) the direct call-back telephone number for the location from which the call is made;
- (3) any applicable office, unit, or building number of the location from which the call is made;
- (4) the room number, or other equivalent designation, of the location from which the call is made; and

(5) (a) if the multi-line telephone system operates for a multi-story building, the building floor from which the call is made; and

(b) if the multi-line telephone system operates for two or more buildings:

(i) the building number, or other equivalent designation, of the location from which the call is made; and

(ii) the building floor from which the call is made.

Section 5. Section 69-5-203 is enacted to read:**69-5-203. Emergency location information
for a lodging establishment.**

A lodging establishment that owns or operates a multi-line telephone system shall configure the multi-line telephone system in such a manner that, when an individual makes a 911 call through the multi-line telephone system, the multi-line telephone system will automatically:

- (1) send the public safety answering point that receives the call:

(a) if the lodging establishment contains more than one occupied building, the building number, or other equivalent designation, of the location from which the call is made; and

(b) the room number, or other equivalent designation, from which the call is made; or

(2) connect the individual, the public safety answering point, and an individual that is designated by the lodging establishment to provide the public safety answering point:

(a) if the lodging establishment contains more than one occupied building, the building number, or other equivalent designation, of the location from which the call is made; and

(b) the room number, or other equivalent designation, of the location from which the call is made.

Section 6. Section 69-5-204 is enacted to read:

69-5-204. Location database -- Updates.

(1) An owner or operator of a multi-line telephone system shall ensure that the multi-line telephone system has a location database that stores the information a multi-line telephone system is required to provide to a public safety answering point under this chapter that is accurately updated:

(a) as soon as practicable after the multi-line telephone system is installed; or

(b) within one business day of the completion of any changes to the physical characteristics of the facility where the multi-line telephone system is used or changes to the multi-line telephone system, not including changes incurred during an installation described in Subsection (1)(a).

(2) The information in a location database described in Subsection (1):

(a) is owned by the multi-line telephone system owner or operator that supplied the information; and

(b) except as required by state law, is not required to be shared with another person.

(3) A public safety answering point may not use the information supplied from a database described in Subsection (1) for a purpose other than to facilitate an emergency response to a 911 call.

Section 7. Section 69-5-205 is enacted to read:

69-5-205. Direct 911 dial for multi-line telephone systems -- Notice.

(1) An owner or operator of a multi-line telephone system shall configure a multi-line telephone system in a manner that allows an individual to place a 911 call by dialing the digits 9-1-1 without an additional code, digit, prefix, postfix, or trunk-access code.

(2) A person that is exempt from this chapter under Section 69-5-201 that has not complied with

Subsection (1) shall post, in a visible place within five feet of each telephone that is connected to the multi-line telephone system, a notice that:

(a) states that the phone may not be used to directly access 911 services by dialing 9-1-1;

(b) indicates how an individual may access 911 services through the telephone;

(c) is printed in contrasting colors in at least 16-point boldface type; and

(d) includes the following information for the location of the telephone:

(i) the street address, and, if applicable, the business name, of the location of the telephone;

(ii) any applicable office, unit, or building number of the location of the telephone; and

(iii) an applicable room number, or other equivalent designation, of the location of the telephone.

CHAPTER 201**S. B. 17**

Passed March 1, 2017
 Approved March 21, 2017
 Effective May 9, 2017

TAX COMMISSION AMENDMENTS

Chief Sponsor: Daniel Hemmert
 House Sponsor: Jon E. Starnard

LONG TITLE**General Description:**

This bill amends provisions relating to closed meetings held by the State Tax Commission.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides the circumstances under which the State Tax Commission must hold a public meeting to revise an official numbered commission publication;
- ▶ authorizes the State Tax Commission to hold a meeting that is not open to the public to provide guidance to the commission's employees on the interpretation and application of a law administered by the commission;
- ▶ requires the State Tax Commission to provide two years of reports to the Revenue and Taxation Interim Committee containing information on all State Tax Commission meetings that were held to provide guidance to commission employees that were not open to the public; and
- ▶ repeals the provisions created by this bill on a date certain.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-1-405, as enacted by Laws of Utah 2011, Chapter 215
 63I-1-259, as last amended by Laws of Utah 2016, Chapters 350, 367, and 373

ENACTS:

59-1-213.1, Utah Code Annotated 1953
 59-1-213.2, Utah Code Annotated 1953

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

Section 1. Section 59-1-213.1 is enacted to read:**59-1-213.1. Public meeting on revision of commission publication.**

(1) As used in this section, "nonsubstantive change" means a change that does not alter the meaning of a publication.

(2) Except as provided in Subsection (3), if the commission revises an official numbered commission publication providing instruction to taxpayers, the commission, in accordance with Title 52, Chapter 4, Open and Public Meetings Act, shall place the publication revision on a commission

meeting agenda and allow public comment on the revision.

(3) The commission is not required to hold a public meeting on a nonsubstantive change to an official numbered commission publication.

Section 2. Section 59-1-213.2 is enacted to read:**59-1-213.2. Annual report on provision of guidance by the commission.**

(1) (a) Subject to Subsection (2), the commission shall provide an electronic report to the Revenue and Taxation Interim Committee on or before September 30, 2017, and on or before September 30, 2018.

(b) The electronic report described in Subsection (1)(a) shall contain the following:

(i) the number of meetings that the commission held under Subsection 59-1-405(1)(g) during the 12-month period preceding the report;

(ii) the dates of any meetings described in Subsection (1)(b)(i);

(iii) a listing of the tax types discussed during the meetings described in Subsection (1)(b)(i); and

(iv) a summary of the outcome of the meetings described in Subsection (1)(b)(i).

(2) In making the report required by Subsection (1), the commission shall protect the name, address, social security number, or taxpayer identification number of a taxpayer.

Section 3. Section 59-1-405 is amended to read:**59-1-405. Commission consideration of confidential tax matters.**

(1) As used in this section, "confidential tax matter" means:

(a) an offer in compromise;

(b) a private letter ruling;

(c) an appeal before the members of the commission;

(d) a tax matter if the disclosure of the tax matter is prohibited under:

(i) federal law;

(ii) Section 59-1-403; or

(iii) Section 59-1-404;

(e) a voluntary disclosure agreement; [or]

(f) a waiver request[.]; or

(g) provision of guidance by the commission to an employee of the commission on the interpretation and application of a law administered by the commission.

(2) (a) Notwithstanding Title 52, Chapter 4, Open and Public Meetings Act, the commission may hold a meeting that is not open to the public to conduct a hearing on, discuss, or take action on a confidential

tax matter in accordance with the rules established as provided under this section.

(b) When the commission holds a meeting described in Subsection (2)(a) on a confidential tax matter described in Subsection (1)(g), the meeting:

(i) shall include:

(A) the commission's executive director; or

(B) the executive director's designee;

(ii) may include any other commission employee as determined by the commission; and

(iii) may not include guidance that constitutes an ex parte communication on a taxpayer specific matter.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(a) to establish procedures for holding a meeting that is not open to the public to conduct a hearing on, discuss, or take action on a confidential tax matter; and

(b) except as provided in Subsection (4), to establish procedures and requirements for keeping confidential minutes and a confidential recording of a meeting that is not open to the public.

(4) For purposes of Subsection (3)(b), the commission is not required to make rules to establish procedures and requirements for keeping confidential minutes and a confidential recording of:

(a) an initial hearing to the extent provided in Section 59-1-502.5; or

(b) private analysis, contemplation, and discussion by members of the commission:

(i) in performing the judicial aspects of their duties; and

(ii) consistent with state case law.

Section 4. Section 63I-1-259 is amended to read:

63I-1-259. Repeal dates, Title 59.

~~[(1) Subsection 59-2-924(7) is repealed on December 31, 2016.]~~

(1) Section 59-1-213.1 is repealed on May 9, 2019.

(2) Section 59-1-213.2 is repealed on May 9, 2019.

(3) Subsection 59-1-405(1)(g) is repealed on May 9, 2019.

(4) Subsection 59-1-405(2)(b) is repealed on May 9, 2019.

~~[(2) (5) Subsection 59-2-924.2(9) is repealed on December 31, 2017.~~

~~[(3) Section 59-2-924.3 is repealed on December 31, 2016.]~~

~~[(4) (6) Section 59-7-618 is repealed July 1, 2020.~~

~~[(5) (7) Section 59-9-102.5 is repealed December 31, 2020.~~

~~[(6) (8) Section 59-10-1033 is repealed July 1, 2020.~~

~~[(7) (9) Subsection 59-12-2219(13) is repealed on June 30, 2020.~~

CHAPTER 202**S. B. 34**

Passed March 8, 2017
 Approved March 21, 2017
 Effective July 1, 2017

**COMPETENCY-BASED
EDUCATION FUNDING**

Chief Sponsor: Ann Millner
 House Sponsor: Bradley G. Last

LONG TITLE**General Description:**

This bill authorizes the State Board of Education to reimburse an eligible local education agency for a student who graduates early.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes the Reimbursement Program for Early Graduation From Competency-Based Education; and
- ▶ authorizes the State Board of Education to reimburse a local education agency that offers a competency-based education for a student who graduates early from the local education agency.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**ENACTS:**

53A-17a-173, Utah Code Annotated 1953

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

Section 1. Section 53A-17a-173 is enacted to read:**53A-17a-173. Reimbursement Program for Early Graduation From Competency-Based Education.**

(1) As used in this section:

- (a) "Board" means the State Board of Education.
- (b) "Cohort" means a group of students, defined by the year in which the group enters grade 9.
- (c) "Eligible LEA" means an LEA that has demonstrated to the board that the LEA or, for a school district, a school within the LEA, provides and facilitates competency-based education that:
 - (i) is based on the core principles described in Section 53A-15-1803; and
 - (ii) meets other criteria established by the board in rule.
- (d) "Eligible student" means an individual who:

(i) attended an eligible LEA and graduated by completing graduation requirements, as described in Section 53A-13-108, earlier than that individual's cohort completed graduation requirements because of the individual's

participation in the eligible LEA's competency-based education;

(ii) no longer attends the eligible LEA; and

(iii) is not included in the LEA's average daily membership under this chapter.

(e) "Local education agency" or "LEA" means:

(i) a school district;

(ii) a charter school; or

(iii) the Utah Schools for the Deaf and the Blind.

(f) "Partial pupil" means if an eligible student attends less than a full year of membership, the number of days the student was in membership compared to a full membership year.

(g) "Program" means the Reimbursement Program for Early Graduation From Competency-Based Education established in this section.

(2) (a) There is established the Reimbursement Program for Early Graduation From Competency-Based Education.

(b) Subject to future budget constraints, the Legislature may annually appropriate money to the Reimbursement Program for Early Graduation From Competency-Based Education.

(3) An LEA may apply to the board to receive a reimbursement, as described in Subsection (5), for an eligible student.

(4) The board shall approve a reimbursement to an LEA after the LEA demonstrates:

(a) that the LEA is an eligible LEA; and

(b) that the individual for whom the eligible LEA requests reimbursement is an eligible student.

(5) (a) For each eligible student, the board shall only reimburse an eligible LEA:

(i) if the eligible student attended the eligible LEA for less than a full school year before the eligible student's cohort graduated, up to the value of one weighted pupil unit pro rated based on the difference between:

(A) the number of days of partial pupil in average daily membership earned by the eligible LEA while the eligible student was still in attendance; and

(B) a full pupil in average daily membership; and

(ii) the value of one weighted pupil unit for each full school year the eligible student graduated ahead of the eligible student's cohort.

(b) The board shall:

(i) use data from the prior year average daily membership to determine the number of eligible students; and

(ii) reimburse the eligible LEA in the current school year.

(6) The board shall in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

adopt rules to administer the provisions of this section.

Section 2. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 203**S. B. 52**

Passed March 8, 2017

Approved March 21, 2017

Effective May 9, 2017

RENTAL AMENDMENTS

Chief Sponsor: Lincoln Fillmore

House Sponsor: Mike K. McKell

LONG TITLE**General Description:**

This bill modifies provisions related to rental properties.

Highlighted Provisions:

This bill:

- ▶ provides that a court shall award costs and reasonable attorney fees to the prevailing party in an action:
 - under the Utah Fit Premises Act; and
 - for unlawful detainer.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

57-22-6, as repealed and reenacted by Laws of Utah 2010, Chapter 352

78B-6-811, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 57-22-6 is amended to read:**57-22-6. Renter remedies for deficient condition of residential rental unit.**

(1) As used in this section:

(a) "Corrective period" means:

(i) for a standard of habitability, three calendar days; and

(ii) for a requirement imposed by a rental agreement, 10 calendar days.

(b) "Deficient condition" means a condition of a residential rental unit that:

(i) violates a standard of habitability or a requirement of the rental agreement; and

(ii) is not caused by:

(A) the renter, the renter's family, or the renter's guest or invitee; and

(B) a use that would violate:

(I) the rental agreement; or

(II) a law applicable to the renter's use of the residential rental unit.

(c) "Notice of deficient condition" means the notice described in Subsection (2).

(d) "Rent abatement remedy" means the remedy described in Subsection (4)(a)(i).

(e) "Renter remedy" means:

(i) a rent abatement remedy; or

(ii) a repair and deduct remedy.

(f) "Repair and deduct remedy" means the remedy described in Subsection (4)(a)(ii).

(g) "Standard of habitability" means a standard:

(i) relating to the condition of a residential rental unit; and

(ii) that an owner is required to ensure that the residential rental unit meets as required under Subsection 57-22-3(1) or Subsection 57-22-4(1)(a) or (b)(i), (ii), or (iii).

(2) (a) If a renter believes that the renter's residential rental unit has a deficient condition, the renter may give the owner written notice as provided in Subsection (2)(b).

(b) A notice under Subsection (2)(a) shall:

(i) describe each deficient condition;

(ii) state that the owner has the corrective period, stated in terms of the applicable number of days, to correct each deficient condition;

(iii) state the renter remedy that the renter has chosen if the owner does not, within the corrective period, take substantial action toward correcting each deficient condition;

(iv) provide the owner permission to enter the residential rental unit to make corrective action; and

(v) be served on the owner as provided in:

(A) Section 78B-6-805; or

(B) the rental agreement.

(3) (a) As used in this Subsection (3), "dangerous condition" means a deficient condition that poses a substantial risk of:

(i) imminent loss of life; or

(ii) significant physical harm.

(b) If a renter believes that the renter's residential rental unit has a dangerous condition, the renter may notify the owner of the dangerous condition by any means that is reasonable under the circumstances.

(c) An owner shall:

(i) within 24 hours after receiving notice under Subsection (3)(b) of a dangerous condition, commence remedial action to correct the dangerous condition; and

(ii) diligently pursue remedial action to completion.

(d) Notice under Subsection (3)(b) of a dangerous condition does not constitute a notice of deficient condition, unless the notice also meets the requirements of Subsection (2).

(4) (a) Subject to Subsection (4)(b), if an owner fails to take substantial action, before the end of the corrective period, toward correcting a deficient condition described in a notice of deficient condition:

(i) if the renter chose the rent abatement remedy in the notice of deficient condition:

(A) the renter's rent is abated as of the date of the notice of deficient condition to the owner;

(B) the rental agreement is terminated;

(C) the owner shall immediately pay to the renter:

(I) the entire security deposit that the renter paid under the rental agreement; and

(II) a prorated refund for any prepaid rent, including any rent the renter paid for the period after the date on which the renter gave the owner the notice of deficient condition; and

(D) the renter shall vacate the residential rental unit within 10 calendar days after the expiration of the corrective period; or

(ii) if the renter chose the repair and deduct remedy in the notice of deficient condition, and subject to Subsection (4)(c), the renter:

(A) may:

(I) correct the deficient condition described in the notice of deficient condition; and

(II) deduct from future rent the amount the renter paid to correct the deficient condition, not to exceed an amount equal to two months' rent; and

(B) shall:

(I) maintain all receipts documenting the amount the renter paid to correct the deficient condition; and

(II) provide a copy of those receipts to the owner within five calendar days after the beginning of the next rental period.

(b) A renter is not entitled to a renter remedy if the renter is not in compliance with all requirements under Section 57-22-5.

(c) (i) If a residential rental unit is not fit for occupancy, an owner may:

(A) determine not to correct a deficient condition described in a notice of deficient condition; and

(B) terminate the rental agreement.

(ii) If an owner determines not to correct a deficient condition and terminates the rental agreement under Subsection (4)(c)(i):

(A) the owner shall:

(I) notify the renter in writing no later than the end of the corrective period; and

(II) within 10 calendar days after the owner terminates the rental agreement, pay to the renter:

(Aa) any prepaid rent, prorated as provided in Subsection (4)(c)(ii)(B); and

(Bb) any deposit due the renter;

(B) the rent shall be prorated to the date the owner terminates the rental agreement under Subsection (4)(c)(i); and

(C) the renter may not be required to vacate the residential rental unit sooner than 10 calendar days after the owner notifies the renter under Subsection (4)(c)(ii)(A)(I).

(5) (a) After the corrective period expires, a renter may bring an action in district court to enforce the renter remedy that the renter chose in the notice of deficient condition.

(b) In an action under Subsection (5)(a), the court shall endorse on the summons that the owner is required to appear and defend the action within three business days.

(c) If, in an action under Subsection (5)(a), the court finds that the owner unjustifiably refused to correct a deficient condition or failed to use due diligence to correct a deficient condition, the renter is entitled to any damages, in addition to the applicable renter remedy~~[, to:]~~.

~~(i) any damages; and~~

~~(ii) court costs and a reasonable attorney fee.]~~

(d) An owner who disputes that a condition of the residential rental unit violates a requirement of the rental agreement may file a counterclaim in an action brought against the owner under Subsection (5)(a).

(6) An owner may not be held liable under this chapter for a claim for mental suffering or anguish.

(7) In an action under this chapter, the court may award costs and reasonable attorney fees to the prevailing party.

Section 2. Section 78B-6-811 is amended to read:

78B-6-811. Judgment for restitution, damages, and rent -- Immediate enforcement -- Remedies.

(1) (a) A judgment may be entered upon the merits or upon default.

(b) A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises as provided in Section 78B-6-812.

(c) If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any obligation for payments on a lease for the remainder of the lease's term.

(ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate damages.

(2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

- (a) forcible entry;
- (b) forcible or unlawful detainer;
- (c) waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial;
- (d) the amounts due under the contract, if the alleged unlawful detainer is after default in the payment of amounts due under the contract; and
- (e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107 through 78B-6-1114.

(3) The judgment shall be entered against the defendant for the rent, for three times the amount of the damages assessed under Subsections (2)(a) through (2)(e) [~~and for reasonable attorney fees~~].

(4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be issued immediately after the entry of the judgment.

(b) In all cases, the judgment may be issued and enforced immediately.

(5) In an action under this chapter, the court may award costs and reasonable attorney fees to the prevailing party.

CHAPTER 204**S. B. 58**

Passed March 7, 2017
Approved March 21, 2017
Effective May 9, 2017

**UNIFORM VOIDABLE
TRANSACTIONS ACT**

Chief Sponsor: Lyle W. Hillyard
House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill renames, recodifies, and amends the Uniform Fraudulent Transfer Act and related provisions.

Highlighted Provisions:

This bill:

- ▶ changes the name of the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act;
- ▶ makes changes consistent with the 2014 version of the Uniform Fraudulent Transfer Act;
- ▶ modifies and defines terms;
- ▶ modifies provisions relating to the determination of insolvency;
- ▶ enacts provisions relating to the burden of proof;
- ▶ modifies provisions relating to the transfer and recovery of assets;
- ▶ enacts a governing law provision;
- ▶ addresses the bill's applicability to a series organization;
- ▶ enacts transitional language;
- ▶ addresses the applicability of the Relation to Electronic Signatures in Global and National Commerce Act; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 7-2-12, as last amended by Laws of Utah 2014, Chapter 189
31A-27a-507, as enacted by Laws of Utah 2007, Chapter 309
70A-2-402, as enacted by Laws of Utah 1965, Chapter 154
70A-2a-308, as enacted by Laws of Utah 1990, Chapter 197
75-2-205, as last amended by Laws of Utah 2003, Second Special Session, Chapter 3
75-7-105, as enacted by Laws of Utah 2004, Chapter 89
75-7-107, as renumbered and amended by Laws of Utah 2004, Chapter 89
75-7-301, as repealed and reenacted by Laws of Utah 2004, Chapter 89
75-7-501, as repealed and reenacted by Laws of Utah 2004, Chapter 89
75-7-505, as enacted by Laws of Utah 2004, Chapter 89
75-7-816, as enacted by Laws of Utah 2004,

Chapter 89

78B-2-302, as last amended by Laws of Utah 2016, Chapter 388

78B-2-307, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

- 25-6-201, Utah Code Annotated 1953
25-6-301, Utah Code Annotated 1953
25-6-401, Utah Code Annotated 1953
25-6-402, Utah Code Annotated 1953
25-6-403, Utah Code Annotated 1953
25-6-407, Utah Code Annotated 1953
25-6-501, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

- 25-6-101, (Renumbered from 25-6-1, as enacted by Laws of Utah 1988, Chapter 59)
25-6-102, (Renumbered from 25-6-2, as last amended by Laws of Utah 1992, Chapter 168)
25-6-103, (Renumbered from 25-6-3, as enacted by Laws of Utah 1988, Chapter 59)
25-6-104, (Renumbered from 25-6-4, as enacted by Laws of Utah 1988, Chapter 59)
25-6-202, (Renumbered from 25-6-5, as enacted by Laws of Utah 1988, Chapter 59)
25-6-203, (Renumbered from 25-6-6, as last amended by Laws of Utah 1989, Chapter 61)
25-6-302, (Renumbered from 25-6-7, as enacted by Laws of Utah 1988, Chapter 59)
25-6-303, (Renumbered from 25-6-8, as enacted by Laws of Utah 1988, Chapter 59)
25-6-304, (Renumbered from 25-6-9, as last amended by Laws of Utah 2015, Chapter 459)
25-6-305, (Renumbered from 25-6-10, as enacted by Laws of Utah 1988, Chapter 59)
25-6-404, (Renumbered from 25-6-11, as enacted by Laws of Utah 1988, Chapter 59)
25-6-405, (Renumbered from 25-6-12, as enacted by Laws of Utah 1988, Chapter 59)
25-6-406, (Renumbered from 25-6-13, as enacted by Laws of Utah 1988, Chapter 59)
25-6-502, (Renumbered from 25-6-14, as repealed and reenacted by Laws of Utah 2013, Chapter 284)

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

Section 1. Section 7-2-12 is amended to read:

7-2-12. Powers of commissioner in possession -- Sale of assets -- Postpossession financing -- New deposit instruments -- Executory contracts -- Transfer of property -- Avoidance of transfers -- Avoidable preferences -- Setoff.

(1) Upon taking possession of the institution, the commissioner may do all things necessary to preserve its assets and business, and shall rehabilitate, reorganize, or liquidate the affairs of the institution in a manner he determines to be in the best interests of the institution's depositors and creditors. Any such determination by the commissioner may not be overruled by a reviewing court unless it is found to be arbitrary, capricious,

fraudulent, or contrary to law. In the event of a liquidation, he shall collect all debts due and claims belonging to it, and may compromise all bad or doubtful debts. He may sell, upon terms he may determine, any or all of the property of the institution for cash or other consideration. The commissioner shall give such notice as the court may direct to the institution of the time and place of hearing upon an application to the court for approval of the sale. The commissioner shall execute and deliver to the purchaser of any property of the institution sold by him those deeds or instruments necessary to evidence the passing of title.

(2) With approval of the court and upon terms and with priority determined by the court, the commissioner may borrow money and issue evidence of indebtedness. To secure repayment of the indebtedness, he may mortgage, pledge, transfer in trust, or hypothecate any or all of the property of the institution superior to any charge on the property for expenses of the proceeding as provided in Section 7-2-14. These loans may be obtained for the purpose of facilitating liquidation, protecting or preserving the assets in the charge of the commissioner, expediting the making of distributions to depositors and other claimants, aiding in the reopening or reorganization of the institution or its merger or consolidation with another institution, or the sale of all of its assets. Neither the commissioner nor any special deputy or other person lawfully in charge of the affairs of the institution is under any personal obligation to repay those loans. The commissioner may take any action necessary or proper to consummate the loan and to provide for its repayment and to give bond when required for the faithful performance of all undertakings in connection with it. The commissioner or special deputy shall make application to the court for approval of any loan proposed under this section. Notice of hearing upon the application shall be given as the court directs. At the hearing upon the application any stockholder or shareholder of the institution or any depositor or other creditor of the institution may appear and be heard on the application. Prior to the obtaining of a court order, the commissioner or special deputy in charge of the affairs of the institution may make application or negotiate for the loan or loans subject to the obtaining of the court order.

(3) With the approval of the court pursuant to a plan of reorganization or liquidation under Section 7-2-18, the commissioner may provide for depositors to receive new deposit instruments from a depository institution that purchases or receives some or all of the assets of the institution in the possession of the commissioner. All new deposit instruments issued by the acquiring depository institution may, in accordance with the terms of the plan of reorganization or liquidation, be subject to different amounts, terms, and interest rates than the original deposit instruments of the institution in the possession of the commissioner. All deposit instruments issued by the acquiring institution shall be considered new deposit obligations of the

acquiring institution. The original deposit instruments issued by the institution in the possession of the commissioner are not liabilities of the acquiring institution, unless assumed by the acquiring institution. Unpaid claims of depositors against the institution in the possession of the commissioner continue, and may be provided for in the plan of reorganization or liquidation.

(4) The commissioner, after taking possession of any institution or other person subject to the jurisdiction of the department, may terminate any executory contract, including standby letters of credit, unexpired leases and unexpired employment contracts, to which the institution or other person is a party. If the termination of an executory contract or unexpired lease constitutes a breach of the contract or lease, the date of the breach is the date on which the commissioner took possession of the institution. Claims for damages for breach of an executory contract shall be filed within 30 days of receipt of notice of the termination, and if allowed, shall be paid in the same manner as all other allowable claims of the same priority out of the assets of the institution available to pay claims.

(5) With approval of the court and upon a showing by the commissioner that it is in the best interests of the depositors and creditors, the commissioner may transfer property on account of an indebtedness incurred by the institution prior to the date of the taking.

(6) (a) The commissioner may avoid any transfer of any interest of the institution in property or any obligation incurred by the institution that is void or voidable by a creditor under Title 25, Chapter 6, Uniform ~~[Fraudulent—Transfer]~~ Voidable Transactions Act.

(b) The commissioner may avoid any transfer of any interest in real property of the institution that is void as against or voidable by a subsequent purchaser in good faith and for a valuable consideration of the same real property or any portion thereof who has duly recorded his conveyance at the time possession of the institution is taken, whether or not such a purchaser exists.

(c) The commissioner may avoid any transfer of any interest in property of the institution or any obligation incurred by the institution that is invalid or void as against, or is voidable by a creditor that extends credit to the institution at the time possession of the institution is taken by the commissioner, and that obtains, at such time and with respect to such credit, a judgment lien or a lien by attachment, levy, execution, garnishment, or other judicial lien on the property involved, whether or not such a creditor exists.

(d) The right of the commissioner under Subsections (6)(b) and (c) to avoid any transfer of any interest in property of the institution shall be unaffected by and without regard to any knowledge of the commissioner or of any creditor of the institution.

(e) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or

involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.

(f) The commissioner may avoid and recover any payment or other transfer of any interest in property of the institution to or for the benefit of a creditor, for or on account of an antecedent debt owed by the institution before the transfer was made if the creditor at the time of such transfer had reasonable cause to believe that the institution was insolvent, and if the payment or other transfer will allow the creditor to obtain a greater percentage of his debt than he would be entitled to under the provisions of Section 7-2-15. For the purposes of this subsection:

(i) antecedent debt does not include earned wages and salaries and other operating expenses incurred and paid in the normal course of business;

(ii) a transfer of any interest in real property is deemed to have been made or suffered when it became so far perfected that a subsequent good faith purchaser of the property from the institution for a valuable consideration could not acquire an interest superior to the transferee; and

(iii) a transfer of property other than real property is deemed to have been made or suffered when it became so far perfected that a creditor on a simple contract could not acquire a lien by attachment, levy, execution, garnishment, or other judicial lien superior to the interest of the transferee.

(g) For purposes of this section, "date of possession" means the earlier of the date the commissioner takes possession of a financial institution under Title 7, Chapter 2, Possession of Depository Institution by Commissioner, or the date when the commissioner enters an order suspending payments to depositors and other creditors under Section 7-2-19.

(7) (a) With or without the prior approval of the court, the commissioner or any federal deposit insurance agency appointed by him as receiver or liquidator of a depository institution closed by the commissioner under the provisions of this chapter may setoff against the deposits or other liabilities of the institution any debts or other obligations of the depositor or claimant due and owing to the institution. The amount of any setoff against the liabilities of the institution shall be no greater than the amount the depositor or claimant would receive pursuant to Section 7-2-15 after final liquidation of the institution. When the liquidation value of a depositor's or claimant's claim against the institution will or may be less than the full amount of the claim, setoff may be made prior to final liquidation if the commissioner or any receiver or liquidator appointed by him can reasonably estimate the liquidation value of the claim, and the court, after notice and opportunity for hearing, approves the estimate for purposes of making the setoff. If the right of setoff is exercised, the commissioner or any receiver or liquidator

appointed by him shall give written notice to the depositor or claimant of the amount setoff.

(b) The existence and amount of a debtor or creditor relationship or both, between the institution and its depositor or claimant and the right to the proceeds in a deposit account shall be determined solely by the books and records of the institution.

(c) Any contract purporting to affect the right of setoff shall be in writing and signed by the depositor-debtor and an authorized officer of the institution and be maintained as a part of the records of the institution.

(d) Any claim that a deposit account is a special account not subject to setoff because it was maintained for a specific purpose or to satisfy a particular obligation other than satisfaction of or as security for an indebtedness to the institution or that the right to the deposit actually belongs to a third party does not affect the right to setoff of the commissioner or any receiver or liquidator appointed by him unless the special nature of the account is clearly shown in the books and records of the institution.

(e) In the absence of any other instrument in writing, the terms and provisions of the signature card applicable to a particular account in effect at the time the commissioner takes possession of the institution shall be determinative of the right of setoff by the commissioner or any receiver or liquidator appointed by him.

(f) Knowledge of the institution or of any director, officer, or employee of the institution that the nature of the account is other than as shown in the books and records of the institution does not affect the right of setoff by the commissioner or any receiver or liquidator appointed by him.

(g) The liability of the commissioner or any receiver or liquidator appointed by him for exercising a right of setoff other than as authorized by this section shall be only to a person who establishes by the procedure set forth in Section 7-2-6 that his interest in the account is superior to that of the person whose debt to the institution was setoff against the account. The amount of any such liability shall be no greater than the amount of the setoff and neither the commissioner or any receiver or liquidator appointed by him shall be liable for any action taken under this section unless the action taken is determined by the court to be arbitrary or capricious.

Section 2. Section 25-6-101, which is renumbered from Section 25-6-1 is renumbered and amended to read:

CHAPTER 6. UNIFORM VOIDABLE TRANSACTIONS ACT

Part 1. General Provisions

[25-6-1]. 25-6-101. Title.

(1) This chapter is known as the "Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act."

(2) This part is known as "General Provisions."

Section 3. Section 25-6-102, which is renumbered from Section 25-6-2 is renumbered and amended to read:

[25-6-2]. 25-6-102. Definitions.

[En] As used in this chapter:

(1) "Affiliate" means:

(a) a person [whø] that directly or indirectly owns, controls, or holds with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person [whø] that holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person [whø] that directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person [whø] that holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(c) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) a person [whø] that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but does not include:

(a) property to the extent it is encumbered by a valid lien;

(b) property to the extent it is generally exempt under nonbankruptcy law; or

(c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person [whø] that has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person [whø] that is liable on a claim.

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

[~~(7)~~] (8) "Insider" includes:

(a) if the debtor is an individual:

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership described in Subsection [~~(7)~~] (8)(a)(ii);

(iv) a corporation of which the debtor is a director, officer, or person in control; or

(v) a limited liability company of which the debtor is a member or manager;

(b) if the debtor is a corporation:

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in Subsection [~~(7)~~] (8)(b)(iv);

(vi) a limited liability company of which the debtor is a member or manager; or

(vii) a relative of a general partner, director, officer, or person in control of the debtor;

(c) if the debtor is a partnership:

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in Subsection [~~(7)~~] (8)(c)(iii);

(v) a limited liability company of which the debtor is a member or manager; or

(vi) a person in control of the debtor;

(d) if the debtor is a limited liability company:

(i) a member or manager of the debtor;

(ii) another limited liability company in which the debtor is a member or manager;

(iii) a partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in Subsection [~~(7)~~] (8)(d)(iii);

(v) a person in control of the debtor; or

(vi) a relative of a general partner, member, manager, or person in control of the debtor;

(e) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(f) a managing agent of the debtor.

[~~(8)~~] (9) "Lien" means a charge against an interest in property to secure payment of a debt or

performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(10) “Organization” means a person other than an individual.

~~[(9)]~~ (11) “Person” means an individual, estate, partnership, limited liability company, [corporation,] association, [organization,] trust, business or nonprofit entity, public corporation, government or governmental subdivision [or], agency, [business trust, estate, trust, or any] instrumentality, or other legal or commercial entity.

~~[(10)]~~ (12) “Property” means anything that may be the subject of ownership.

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium that is retrievable in perceivable form.

~~[(14)]~~ (14) “Relative” means an individual [or an individual related to a spouse,] related by consanguinity within the third degree as determined by the common law, [or] a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(15) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

~~[(12)]~~ (16) “Transfer” means every mode, direct or indirect, absolute or conditional, or voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

~~[(13)]~~ (17) “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Section 4. Section 25-6-103, which is renumbered from Section 25-6-3 is renumbered and amended to read:

[25-6-3]. 25-6-103. Insolvency.

(1) A debtor is insolvent if, at fair valuation, the sum of the debtor’s debts is greater than all of the debtor’s assets ~~[at a fair valuation].~~

(2) (a) A debtor ~~[who] that~~ is generally not paying ~~[his] the~~ debtor’s debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent.

(b) The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

~~[(3)]~~ A partnership is insolvent under Subsection (1) if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, of all of the partnership’s assets and the sum of the excess of the value of each general partner’s nonpartnership assets over the partner’s nonpartnership debts.]

~~[(4)]~~ (3) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

~~[(5)]~~ (4) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Section 5. Section 25-6-104, which is renumbered from Section 25-6-4 is renumbered and amended to read:

[25-6-4]. 25-6-104. Value -- Transfer.

(1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. However, value does not include an unperformed promise made other than in the ordinary course of the promisor’s business to furnish support to the debtor or another person.

(2) Under Subsection ~~[25-6-5]~~ 25-6-202(1)(b) and Section ~~[25-6-6]~~ 25-6-203, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is ~~[in fact]~~ substantially contemporaneous.

Section 6. Section 25-6-201 is enacted to read:

Part 2. Voidable Transfer or Obligation

25-6-201. Title.

This part is known as “Voidable Transfer or Obligation.”

Section 7. Section 25-6-202, which is renumbered from Section 25-6-5 is renumbered and amended to read:

[25-6-5]. 25-6-202. Voidable transfer or obligation -- Present or future creditor -- Determination of intent -- Burden of proof.

(1) A transfer made or obligation incurred by a debtor is ~~[fraudulent]~~ voidable as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) without receiving a reasonably equivalent value in exchange for the transfer or obligation^[-], and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that ~~he~~ the debtor would incur, debts beyond ~~his~~ the debtor's ability to pay as they became due.

(2) To determine "actual intent" under Subsection (1)(a), consideration may be given, among other factors, to whether:

(a) the transfer or obligation was to an insider;

(b) the debtor retained possession or control of the property transferred after the transfer;

(c) the transfer or obligation was disclosed or concealed;

(d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(e) the transfer was of substantially all the debtor's assets;

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(k) the debtor transferred the essential assets of the business to a lienor ~~who~~ that transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under Subsection (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Section 8. Section 25-6-203, which is renumbered from Section 25-6-6 is renumbered and amended to read:

[25-6-6]. 25-6-203. Transfer or obligation voidable -- Present creditor -- Burden of proof.

(1) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

(a) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(b) the debtor was insolvent at the time or became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is ~~fraudulent~~ voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to Subsection 25-6-103(2), a creditor making a claim for relief under Subsection (1) or (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Section 9. Section 25-6-301 is enacted to read:

Part 3. Transfers and Remedies

25-6-301. Title.

This part is known as "Transfers and Remedies."

Section 10. Section 25-6-302, which is renumbered from Section 25-6-7 is renumbered and amended to read:

[25-6-7]. 25-6-302. Transfer -- When made.

In this chapter:

(1) [A] a transfer is made:

(a) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against ~~whom~~ which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien other than under this chapter that is superior to the interest of the transferee^[-];

(2) [If] if applicable law permits the transfer to be perfected as provided in Subsection (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action^[-];

(3) [If] if applicable law does not permit the transfer to be perfected as provided in Subsection (1), the transfer is made when it becomes effective between the debtor and the transferee^[-];

(4) [A] a transfer is not made until the debtor has acquired rights in the asset transferred^[-]; and

(5) [An] an obligation is incurred:

(a) if oral, when it becomes effective between the parties; or

(b) if evidenced by a ~~writing~~ record, when the ~~writing executed~~ record signed by the obligor is delivered to or for the benefit of the obligee.

Section 11. Section 25-6-303, which is renumbered from Section 25-6-8 is renumbered and amended to read:

[25-6-8]. 25-6-303. Remedies of creditors.

(1) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section ~~[25-6-9]~~ 25-6-304, may obtain:

(a) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) an attachment or other provisional remedy against the asset transferred or other property of the transferee ~~[in accordance with the procedure prescribed by the Utah Rules of Civil Procedure]~~ if available under applicable law;

(c) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court orders, may levy execution on the asset transferred or its proceeds.

Section 12. Section 25-6-304, which is renumbered from Section 25-6-9 is renumbered and amended to read:

[25-6-9]. 25-6-304. Good faith transfer.

(1) Except as otherwise provided in this section, a transfer or obligation is not voidable under Subsection ~~[25-6-5]~~ 25-6-202(1)(a) against a person ~~[who]~~ that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is ~~[voidable]~~ avoidable in an action by a creditor under Subsection ~~[25-6-8]~~ 25-6-303(1)(a), the following rules apply:

(a) the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less~~[-];~~ and

(b) the judgment may be entered against:

~~[(a)]~~ (i) the first transferee of the asset or the person for whose benefit the transfer was made; or

~~[(b) any subsequent transferee other than]~~

(ii) an immediate or mediate transferee of the first transferee, other than:

(A) a good faith transferee ~~[who]~~ that took for value; or ~~[from any subsequent transferee.]~~

(B) an immediate or mediate good faith transferee of a person described in Subsection (2)(a)(ii)(A); and

(c) recovery under Subsection 25-6-303(1)(a) or (2) of or from the asset transferred or its proceeds,

by levy or otherwise, is available only against a person described in Subsection (2)(b)(i) or (ii).

(3) If the judgment under Subsection (2) is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to an adjustment as equities may require.

(4) Except as otherwise provided in this section, notwithstanding the voidability of a transfer or an obligation under this chapter, a ~~[good-faith]~~ good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) a lien on or a right to retain ~~[any]~~ an interest in the asset transferred;

(b) enforcement of ~~[any]~~ an obligation incurred; or

(c) a reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under Subsection ~~[25-6-5]~~ 25-6-202(1)(b) or Section ~~[25-6-6]~~ 25-6-203 if the transfer results from:

(a) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) enforcement of a security interest in compliance with Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) Except as otherwise provided in this section, a transfer is not voidable under Subsection ~~[25-6-6]~~ 25-6-203(2):

(a) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made ~~[unless],~~ except to the extent the new value was secured by a valid lien;

(b) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(7) ~~[Notwithstanding the foregoing, a]~~ A transfer is not voidable under Section ~~[25-6-5]~~ 25-6-202 or Subsection ~~[25-6-6]~~ 25-6-203(1) if:

(a) the transfer was made by the debtor:

(i) in payment of or in exchange for goods, services, or other consideration obtained by the debtor or a third party from a merchant in the ordinary course of the merchant's business; or

(ii) in payment of amounts loaned or advanced by a merchant or a credit or financing company to pay for the goods, services, or other consideration obtained by the debtor or a third party from a merchant in the ordinary course of the merchant's business;

(b) the goods, services, or other consideration obtained from the merchant or the amounts loaned

or advanced by the merchant or the credit or financing company in payment of the goods, services, or other consideration obtained from the merchant in the ordinary course of the merchant's business was of a reasonably equivalent value to the transfer, as provided in Subsection (8); and

(c) the transferee received the transfer in good faith, in the ordinary course of the transferee's business, and without actual knowledge that:

(i) the transfer was made by the debtor with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(ii) that the debtor was insolvent at the time the transfer was made.

(8) For purposes of Subsection (7):

(a) the term "merchant" means the same as that term is defined in Section 70A-2-104;

(b) where the value of the goods, services, or other consideration obtained from the merchant, or where the value of the amounts loaned or advanced by a merchant or a credit or financing company in payment of the goods, services, or other consideration obtained from the merchant, was reasonably equivalent to the value of the transfer, the "reasonably equivalent value" requirement in Subsection (7)(b) will be satisfied regardless of whether the debtor or a third party received the reasonably equivalent value for the transfer; and

(c) a transferee's receipt of payment from a debtor is not, and may not be used as, evidence that:

(i) the transferee did not act in good faith;

(ii) the goods, services, or other consideration were not provided by the merchant in the ordinary course of the merchant's business;

(iii) the transferee had actual knowledge that the transfer was made by the debtor with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(iv) the debtor was insolvent at the time the transfer was made.

(9) The following rules determine the burden of proving matters referred to in this section:

(a) a party that seeks to invoke Subsection (1), (4), (5), or (6) has the burden of proving the applicability of that subsection;

(b) except as otherwise provided in Subsections (9)(c) and (d), the creditor has the burden of proving each applicable element of Subsection (2) or (3);

(c) the transferee has the burden of proving the applicability to the transferee of Subsection (2)(a)(ii)(A) or (B); and

(d) a party that seeks adjustment under Subsection (3) has the burden of proving the adjustment.

(10) The standard of proof required to establish matters referred to in this section is a preponderance of the evidence.

Section 13. Section 25-6-305, which is renumbered from Section 25-6-10 is renumbered and amended to read:

[25-6-10]. 25-6-305. Claim for relief -- Time limits.

A claim for relief [~~or cause of action~~] regarding a [~~fraudulent~~] transfer or obligation under this chapter is extinguished unless action is brought:

(1) under Subsection [~~25-6-5~~] 25-6-202(1)(a), [~~within~~] no later than four years after the transfer was made or the obligation was incurred or, if later, [~~within~~] no later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under Subsection [~~25-6-5~~] 25-6-202(1)(b) or [~~25-6-6~~] 25-6-203(1), [~~within~~] no later than four years after the transfer was made or the obligation was incurred; or

(3) under Subsection [~~25-6-6~~] 25-6-203(2), [~~within~~] no later than one year after the transfer was made [~~or the obligation was incurred~~].

Section 14. Section 25-6-401 is enacted to read:

Part 4. Applicability and Construction

25-6-401. Title.

This part is known as "Applicability and Construction."

Section 15. Section 25-6-402 is enacted to read:

25-6-402. Governing law.

(1) In this section, the following rules determine the debtor's location:

(a) a debtor who is an individual is located at the individual's principal residence;

(b) a debtor that is an organization and has only one place of business is located at its place of business; and

(c) a debtor that is an organization and has more than one place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this chapter is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

Section 16. Section 25-6-403 is enacted to read:

25-6-403. Application to series organization.

(1) As used in this section:

(a) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics described in Subsection (1)(b).

(b) “Series organization” means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) the organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series;

(ii) debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization; and

(iii) debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(2) A series organization and each protected series of the organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

Section 17. Section 25-6-404, which is renumbered from Section 25-6-11 is renumbered and amended to read:

[25-6-11]. 25-6-404. Legal principles applicable to chapter.

Unless displaced by this chapter, the principles of law and equity, including merchant law and the law relating to principal and agent, equitable subordination, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement this chapter’s provisions.

Section 18. Section 25-6-405, which is renumbered from Section 25-6-12 is renumbered and amended to read:

[25-6-12]. 25-6-405. Construction of chapter.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Section 19. Section 25-6-406, which is renumbered from Section 25-6-13 is renumbered and amended to read:

[25-6-13]. 25-6-406. Applicability of chapter.

(1) This [aet] chapter applies when any transfer occurs after the effective date of this act.

(2) The amendments to this chapter that take effect on May 9, 2017:

(a) apply to a transfer made or obligation incurred on or after May 9, 2017;

(b) do not apply to a transfer made or obligation incurred before May 9, 2017; and

(c) do not apply to a right of action that has accrued before May 9, 2017.

(3) For purposes of Subsection (2), a transfer is made and an obligation is incurred at the time provided in Section 25-6-302.

Section 20. Section 25-6-407 is enacted to read:

25-6-407. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Section 21. Section 25-6-501 is enacted to read:

Part 5. Asset Protection Trust

25-6-501. Title.

This part is known as “Asset Protection Trust.”

Section 22. Section 25-6-502, which is renumbered from Section 25-6-14 is renumbered and amended to read:

[25-6-14]. 25-6-502. Asset protection trust.

(1) As used in this section:

(a) “Creditor” means:

(i) a creditor or other claimant of the settlor existing when the trust is created; or

(ii) a person who subsequently becomes a creditor, including, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured:

(A) one holding or seeking to enforce a judgment entered by a court or other body having adjudicative authority; or

(B) one with a right to payment.

(b) “Property” means real property, personal property, and interests in real or personal property.

(c) “Settlor” means a person who transfers property in trust.

(d) “Transfer” means any form of transfer of property, including gratuitous transfers, whether by deed, conveyance, or assignment.

(e) “Trust” has the same meaning as in Section 75-1-201.

(2) “Paid and delivered” to the settlor, as beneficiary, does not include the settlor’s use or occupancy of real property or tangible personal property owned by the trust if the use or occupancy

is in accordance with the trustee's discretionary authority under the trust instrument.

(3) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the requirements of Subsection (5) are satisfied, a creditor of the settlor may not:

(a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust;

(b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

(c) require the trustee to pay any distribution directly to the creditor, or otherwise attach the distribution before it has been paid or delivered by the trustee to the settlor, as beneficiary.

(4) Notwithstanding Subsection (3), nothing in this section prohibits a creditor from satisfying a claim or liability from the distribution once it has been paid or delivered by the trustee to the settlor, as beneficiary.

(5) In order for Subsection (3) to apply, the conditions in this Subsection (5) shall be satisfied. Where this Subsection (5) requires that a provision be included in the trust instrument, no particular language need be used in the trust instrument if the meaning of the trust provision otherwise complies with this Subsection (5).

(a) The trust instrument shall provide that the trust is governed by Utah law and is established pursuant to this section.

(b) The trust instrument shall require that at all times at least one trustee shall be a Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.

(c) The trust instrument shall provide that neither the interest of the settlor, as beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily transferred by the settlor, as beneficiary. The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code.

(d) The settlor may not have the ability under the trust instrument to revoke, amend, or terminate all or any part of the trust, or to withdraw property from the trust, without the consent of a person who has a substantial beneficial interest in the trust, which interest would be adversely affected by the exercise of the power held by the settlor.

(e) The trust instrument may not provide for any mandatory distributions of either income or principal to the settlor, as beneficiary, except as provided in Subsection (7)(f).

(f) The settlor may not benefit from, direct a distribution of, or use trust property except as stated in the trust instrument. An agreement or

understanding, express or implied, between the settlor and the trustee that attempts to grant or permit the retention of greater rights or authority than is stated in the trust instrument is void.

(g) The trust instrument shall require that, at least 30 days before making any distribution to the settlor, as beneficiary, the trustee notify in writing every person who has a child support judgment or order against the settlor. The trust instrument shall require that the notice state the date the distribution will be made and the amount of the distribution.

(h) At the time that the settlor transfers any assets to the trust, the settlor may not be in default of making a payment due under any child support judgment or order.

(i) A transfer of assets to the trust may not render the settlor insolvent.

(j) At the time the settlor transfers any assets to the trust, the settlor may not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's expressed intention to protect trust assets from the settlor's potential future creditors is not evidence of an intent to hinder, delay, or defraud a known creditor.

(k) At the time that the settlor transfers any assets to the trust, the settlor may not be contemplating filing for relief under the provisions of the Bankruptcy Code.

(l) Assets transferred to the trust may not be derived from unlawful activities.

(m) At the time the settlor transfers any assets to the trust, the settlor shall sign a sworn affidavit stating that:

(i) the settlor has full right, title, and authority to transfer the assets to the trust;

(ii) the transfer of the assets to the trust will not render the settlor insolvent;

(iii) the settlor does not intend to hinder, delay, or defraud a known creditor by transferring the assets to the trust;

(iv) there are no pending or threatened court actions against the settlor, except for those court actions identified by the settlor on an attachment to the affidavit;

(v) the settlor is not involved in any administrative proceedings, except those administrative proceedings identified on an attachment to the affidavit;

(vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a child support obligation;

(vii) the settlor does not contemplate filing for relief under the provisions of the Bankruptcy Code; and

(viii) the assets being transferred to the trust were not derived from unlawful activities.

(6) Failure to satisfy the requirements of Subsection (5) shall result in the consequences described in this Subsection (6).

(a) If any requirement of Subsections (5)(a) through (g) is not satisfied, none of the property held in the trust will at any time have the benefit of the protections described in Subsection (3).

(b) If the trustee does not send the notice required under Subsection (5)(g), the court may authorize any person with a child support judgment or order against the settlor to whom notice was not sent to attach the distribution or future distributions, but the person may not:

(i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the trust or the settlor's beneficial interest in the trust; or

(ii) force or require the trustee to make a distribution to the settlor, as beneficiary.

(c) If any requirement set forth in Subsections (5)(h) through (m) is not satisfied, the property transferred to the trust that does not satisfy the requirement may not have the benefit of the protections described in Subsection (3).

(7) The provisions of Subsection (3) may apply to a trust even if:

(a) the settlor serves as a cotrustee or as an advisor to the trustee, provided that the settlor may not participate in the determination as to whether a discretionary distribution will be made;

(b) the settlor has the authority under the terms of the trust instrument to appoint nonsubordinate advisors or trust protectors who can remove and appoint trustees and who can direct, consent to, or disapprove distributions;

(c) the settlor has the power under the terms of the trust instrument to serve as an investment director or to appoint an investment director under Section 75-7-906;

(d) the trust instrument gives the settlor the power to veto a distribution from the trust;

(e) the trust instrument gives the settlor a testamentary nongeneral power of appointment or similar power;

(f) the trust instrument gives the settlor the right to receive the following types of distributions:

(i) income, principal, or both in the discretion of a person, including a trustee, other than the settlor;

(ii) principal, subject to an ascertainable standard set forth in the trust;

(iii) income or principal from a charitable remainder annuity trust or charitable remainder unitrust, as defined in 26 U.S.C. 664;

(iv) a percentage of the value of the trust each year as determined under the trust instrument, but not exceeding the amount that may be defined as income under 26 U.S.C. 643(b);

(v) the transferor's potential or actual use of real property held under a qualified personal residence trust, or potential or actual possession of a qualified

annuity interest, within the meaning of 26 U.S.C. 2702 and the accompanying regulations; and

(vi) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702; or

(g) the trust instrument authorizes the settlor to use real or personal property owned by the trust.

(8) If a trust instrument contains the provisions described in Subsections (5)(a) through (g), the transfer restrictions prevent a creditor or other person from asserting any cause of action or claim for relief against a trustee of the trust or against others involved in the counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit fraudulent conveyance, aiding and abetting a fraudulent conveyance, participation in the trust transaction, or similar cause of action or claim for relief. For purposes of this subsection, counseling, drafting, preparation, execution, or funding of the trust includes the preparation and funding of a limited partnership, a limited liability company, or other entity if interests in the entity are subsequently transferred to the trust. The creditor and other person prevented from asserting a cause of action or claim for relief may assert a cause of action against, and are limited to recourse against, only:

(a) the trust and the trust assets; and

(b) the settlor, to the extent otherwise allowed in this section.

(9) A cause of action or claim for relief regarding a fraudulent transfer of a settlor's assets under Subsection (5)(j) is extinguished unless the action under Subsection (5)(j) is brought by a creditor of the settlor who was a creditor of the settlor before the assets referred to in Subsection (5)(j) were transferred to the trust and the action under Subsection (5)(j) is brought within the earlier of:

(a) the later of:

(i) two years after the transfer is made; or

(ii) one year after the transfer is or reasonably could have been discovered by the creditor if the creditor:

(A) can demonstrate, by a preponderance of the evidence, that the creditor asserted a specific claim against the settlor before the transfer; or

(B) files another action, other than an action under Subsection (5)(j), against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this Subsection (9) is filed within two years after the transfer.

(b) (i) with respect to a creditor known to the settlor, 120 days after the date on which notice of the transfer is mailed to the creditor, which notice shall state the name and address of the settlor, the name and address of the trustee, and also describe the assets that were transferred, but does not need to state the value of those assets if the assets are other than cash, and which shall inform the creditor

that he is required to present his claim to both the settlor and the trustee within 120 days from the mailing of the notice or be forever barred; or

(ii) with respect to a creditor not known to the settlor, 120 days after the date on which notice of the transfer is first published in a newspaper of general circulation in the county in which the settlor then resides, which notice shall state the name and address of the settlor, the name and address of the trustee, and also describe the assets that were transferred, but does not need to state the value of those assets if the assets are other than cash.

(10) The notice required in Subsection (9)(b) shall be published in accordance with the provisions of Section 45-1-101 for three consecutive weeks and inform creditors that they are required to present claims within 120 days from the first publication of the notice or be forever barred.

(11) (a) A trust is subject to this section if it is governed by Utah law, as provided in Section 75-7-107, and if it otherwise meets the requirements of this section.

(b) A court of this state has exclusive jurisdiction over an action or claim for relief that is based on a transfer of property to a trust that is the subject of this section.

Section 23. Section 31A-27a-507 is amended to read:

31A-27a-507. Receiver as lien creditor.

(1) The receiver may avoid a transfer of or lien on the property of, or obligation incurred by, an insurer that the insurer or a policyholder, creditor, member, or stockholder of the insurer:

(a) may have avoided without regard to any knowledge of:

- (i) the receiver;
- (ii) the commissioner;
- (iii) the insurer; or

(iv) a policyholder, creditor, member, or stockholder of the insurer; and

(b) whether or not a policyholder, creditor, member, or stockholder described in this Subsection (1) exists.

(2) The receiver is considered a creditor without knowledge for purposes of pursuing claims under:

(a) Title 25, Chapter 6, Uniform ~~[Fraudulent Transfer]~~ Voidable Transactions Act; or

- (b) similar provisions of state or federal law.

Section 24. Section 70A-2-402 is amended to read:

70A-2-402. Rights of seller's creditors against sold goods.

(1) Except as provided in Subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a

contract for sale are subject to the buyer's rights to recover the goods under this chapter (Sections 70A-2-502 and 70A-2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller:

(a) under the provisions of the chapter on Secured Transactions (Chapter 9a, Uniform Commercial Code - Secured Transactions); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a ~~[fraudulent transfer]~~ voidable transaction or voidable preference.

Section 25. Section 70A-2a-308 is amended to read:

70A-2a-308. Special rights of creditors.

(1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent or voids the lease contract under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent and does not void the lease contract.

(2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract is made under circumstances which under any statute or rule of law apart from the chapter would constitute the transaction a ~~[fraudulent transfer]~~ voidable transaction or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

Section 26. Section 75-2-205 is amended to read:

75-2-205. Decedent's nonprobate transfers to others.

Unless excluded under Section 75-2-208, the value of the augmented estate includes the value of

the decedent's nonprobate transfers to others, not included under Section 75-2-204, of any of the types described in this section, in the amount provided respectively for each type of transfer:

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of the property described in this Subsection (1).

(a) (i) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment.

(ii) The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b) (i) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship.

(ii) The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.

(c) (i) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship.

(ii) The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(d) (i) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds.

(ii) The amount included:

(A) is the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; and

(B) may not exceed the greater of the cash surrender value of the policy immediately prior to the death of the decedent or the amount of premiums paid on the policy during the decedent's life.

(2) Property transferred in any of the forms described in this Subsection (2) by the decedent during marriage:

(a) (i) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if

and to the extent the decedent's right terminated at or continued beyond the decedent's death.

(ii) An irrevocable transfer in trust which includes a restriction on transfer of the decedent's interest as settlor and beneficiary as described in Section ~~25-6-14~~ 25-6-502.

(iii) The amount included is the value of the fraction of the property to which the right or restriction related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b) (i) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate.

(ii) The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(iii) If the power is a power over both income and property and Subsection (2)(b)(ii) produces different amounts, the amount included is the greater amount.

(3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the types described in this Subsection (3).

(a) (i) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under Subsection (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated until the decedent's death.

(ii) The amount included is the value of the property that would have been included under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse.

(iii) (A) As used in this Subsection (3)(a), "termination," with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power

terminated by exercise, release, lapse, default, or otherwise.

(B) With respect to a power described in Subsection (1)(a), “termination” occurs when the power terminated by exercise or release, but not otherwise.

(b) (i) Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under Subsection (1)(d) had the transfer not occurred.

(ii) The amount included:

(A) is the value of the insurance proceeds to the extent the proceeds were payable at the decedent’s death to or for the benefit of any person other than the decedent’s estate or surviving spouse; and

(B) may not exceed the greater of the cash surrender value of the policy immediately prior to the death of the decedent or the amount of premiums paid on the policy during the decedent’s life.

(c) (i) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent’s surviving spouse.

(ii) The amount included is the value of the transferred property to the extent the aggregate transfers to any one donee in either of the two years exceeded \$10,000.

Section 27. Section 75-7-105 is amended to read:

75-7-105. Default and mandatory rules.

(1) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(2) Except as specifically provided in this chapter, the terms of a trust prevail over any provision of this chapter except:

(a) the requirements for creating a trust;

(b) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(c) the requirement that a trust and its terms be for the benefit of its beneficiaries;

(d) the power of the court to modify or terminate a trust under Sections 75-7-410 through 75-7-416;

(e) the effect of a spendthrift provision, Section [25-6-14] 25-6-502, and the rights of certain creditors and assignees to reach a trust as provided in Part 5, Creditor’s Claims - Spendthrift and Discretionary Trusts;

(f) the power of the court under Section 75-7-702 to require, dispense with, or modify or terminate a bond;

(g) the effect of an exculpatory term under Section 75-7-1008;

(h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a trustee or beneficiary;

(i) periods of limitation for commencing a judicial proceeding; and

(j) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 75-7-203 and 75-7-205.

Section 28. Section 75-7-107 is amended to read:

75-7-107. Governing law.

(1) For purposes of this section:

(a) “Foreign trust” means a trust that is created in another state or country and valid in the state or country in which the trust is created.

(b) “State law provision” means a provision that the laws of a named state govern the validity, construction, and administration of a trust.

(2) If a trust has a state law provision specifying this state, the validity, construction, and administration of the trust are to be governed by the laws of this state if any administration of the trust is done in this state.

(3) For all trusts created on or after December 31, 2003, if a trust does not have a state law provision, the validity, construction, and administration of the trust are to be governed by the laws of this state if the trust is administered in this state.

(4) A trust shall be considered to be administered in this state if:

(a) the trust states that this state is the place of administration, and any administration of the trust is done in this state; or

(b) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state.

(5) If a foreign trust is administered in this state as provided in this section, the following provisions are effective and enforceable under the laws of this state:

(a) a provision in the trust that restricts the transfer of trust assets in a manner similar to Section [25-6-14] 25-6-502;

(b) a provision that allows the trust to be perpetual; or

(c) a provision that is not expressly prohibited by the law of this state.

(6) A foreign trust that moves its administration to this state is valid whether or not the trust complied with the laws of this state at the time of the trust’s creation or after the trust’s creation.

(7) Unless otherwise designated in the trust instrument, a trust is administered in this state if it meets the requirements of Subsection (4).

Section 29. Section 75-7-301 is amended to read:

75-7-301. Basic effect.

(1) Notice to a person who may represent and bind another person under this part has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this part is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(3) Except as otherwise provided in Sections 75-7-411 and [25-6-14] 25-6-502, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

Section 30. Section 75-7-501 is amended to read:

75-7-501. Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not protected by a spendthrift provision or Section [25-6-14] 25-6-502, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to relief as is appropriate under the circumstances.

Section 31. Section 75-7-505 is amended to read:

75-7-505. Creditor's claim against settlor.

(1) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(b) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of Section [25-6-14] 25-6-502, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If the trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but not property received by the trust as a result of the death of the settlor which is otherwise exempt from the claims of the settlor's creditors, is subject to

claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(2) For purposes of this section:

(a) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1, 2004.

Section 32. Section 75-7-816 is amended to read:

75-7-816. Recitals when title to real property is in trust -- Failure.

(1) When title to real property is granted to a person as trustee, the terms of the trust may be given either:

(a) in the deed of transfer; or

(b) in an instrument signed by the grantor and recorded in the same office as the grant to the trustee.

(2) If the terms of the trust are not made public as required in Subsection (1), a conveyance from the trustee is absolute in favor of purchasers for value who take the property without notice of the terms of the trust.

(3) The terms of the trust recited in the deed of transfer or the instrument recorded under Subsection (1)(b) shall include:

(a) the name of the trustee;

(b) the address of the trustee; and

(c) the name and date of the trust.

(4) Any real property titled in a trust which has a restriction on transfer described in Section [25-6-14] 25-6-502 shall include in the title the words "asset protection trust."

Section 33. Section 78B-2-302 is amended to read:

78B-2-302. Within one year.

An action may be brought within one year:

(1) for liability created by the statutes of a foreign state;

(2) upon a statute for a penalty or forfeiture where the action is given to an individual, or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(3) except as provided in Section 78B-2-307.5, upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the state;

(4) for libel, slander, false imprisonment, or seduction;

(5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned upon either civil or criminal process;

(6) against a municipal corporation for damages or injuries to property caused by a mob or riot;

(7) except as otherwise expressly provided by statute, against a county legislative body or a county executive to challenge a decision of the county legislative body or county executive, respectively; ~~or~~

(8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious Land Use Act~~[-]~~; or

(9) for a claim for relief or a cause of action under Subsection 25-6-203(2).

Section 34. Section 78B-2-307 is amended to read:

78B-2-307. Within four years.

An action may be brought within four years:

(1) after the last charge is made or the last payment is received:

(a) upon a contract, obligation, or liability not founded upon an instrument in writing;

(b) on an open store account for any goods, wares, or merchandise; or

(c) on an open account for work, labor or services rendered, or materials furnished;

(2) for a claim for relief or a cause of action under the following sections of Title 25, Chapter 6, Uniform ~~[Fraudulent—Transfer]~~ Voidable Transactions Act:

(a) Subsection ~~[25-6-5]~~ 25-6-202(1)(a), ~~[which]~~ except in specific situations ~~[limits]~~ where the time for action is limited to one year~~;~~ under Section ~~[25-6-10]~~ 25-6-305;

(b) Subsection ~~[25-6-5]~~ 25-6-202(1)(b); or

(c) Subsection ~~[25-6-6]~~ 25-6-203(1); and

(3) for relief not otherwise provided for by law.

CHAPTER 205**S. B. 65**

Passed March 7, 2017

Approved March 21, 2017

Effective May 9, 2017

**POSTAL FACILITIES AND
GOVERNMENT SERVICES**

Chief Sponsor: Karen Mayne

House Sponsor: Mike K. McKell

LONG TITLE**General Description:**

This bill enacts provisions related to providing state services at post office locations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ if allowed by federal law, authorizes certain state agencies to negotiate and enter into an agreement with the United States Postal Service to provide state services at one or more post office locations;
- ▶ provides a sunset review and repeal date; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-263, as last amended by Laws of Utah 2016, Chapters 65, 136, 156, 322, and 408

ENACTS:

63G-21-101, Utah Code Annotated 1953

63G-21-102, Utah Code Annotated 1953

63G-21-201, Utah Code Annotated 1953

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

Section 1. Section 63G-21-101 is enacted to read:**CHAPTER 21. AGREEMENTS TO PROVIDE
STATE SERVICES****Part 1. General Provisions****63G-21-101. Title.**

This chapter is known as "Agreements to Provide State Services."

Section 2. Section 63G-21-102 is enacted to read:**63G-21-102. Definitions.**

As used in this chapter:

(1) "Designated agency" means:

(a) the Governor's Office of Economic Development;

(b) the Division of Wildlife Resources;

(c) the Department of Public Safety;

(d) the Department of Technology Services; or

(e) the Department of Workforce Services.

(2) (a) "State service" means a service or benefit regularly provided to the public by a designated agency.

(b) "State service" includes:

(i) for the Governor's Office of Economic Development or the Department of Technology Services, public high-speed Internet access;

(ii) for the Division of Wildlife Resources, fishing, hunting, and trapping licenses;

(iii) for the Department of Public Safety, fingerprinting, online driver license renewal, online appointment scheduling, online motor vehicle record request, and an online change of address with the Driver License Division; and

(iv) for the Department of Workforce Services, online job searches, verification of submission for benefits administered by the Department of Workforce Services, online unemployment applications, online food stamp applications, and online appointment scheduling.

(3) "USPS" means the United States Postal Service.

Section 3. Section 63G-21-201 is enacted to read:**Part 2. Agreements with United States
Postal Service****63G-21-201. Limited authorization to
provide state services at post office
locations.**

(1) If allowed by federal law, a designated agency may negotiate and enter into an agreement with USPS that allows USPS to provide one or more state services at one or more post office locations within the state.

(2) The designated agency shall ensure that the agreement described in Subsection (1) includes:

(a) the term of the agreement, which may not extend beyond July 1, 2023;

(b) provisions to ensure the security of state data and resources;

(c) provisions to provide training to USPS employees on how to provide each state service in the agreement;

(d) except as provided in Subsection (2)(e), provisions authorizing compensation to USPS for at least 100% of attributable costs of all property and services that USPS provides under the agreement; and

(e) if the agreement is between USPS and the Division of Wildlife Resources to sell fishing, hunting, or trapping licenses, provisions requiring compliance with Section 23-19-15 regarding wildlife license agents, including remuneration for services rendered.

(3) After one or more designated agencies enter into an agreement described in Subsection (1), the Governor's Office of Economic Development shall

create a marketing campaign to advertise and promote the availability of state services at each selected USPS location.

Section 4. Section 63I-1-263 is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63M.

(1) Subsection 63A-5-104(4)(h) is repealed on July 1, 2024.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2018.

(4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is repealed November 30, 2019.

(5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.

(6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(7) Title 63G, Chapter 21, Agreements to Provide State Services, is repealed July 1, 2023.

~~[(7)]~~ (8) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

~~[(8)]~~ (9) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

~~[(9)]~~ (10) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states “the Resource Development Coordinating Committee,” is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read “(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.”;

(c) in Subsection 23-14-21(3), the language that states “and the Resource Development Coordinating Committee” is repealed;

(d) in Subsection 23-21-2.3(1), the language that states “the Resource Development Coordinating Committee created in Section 63J-4-501 and” is repealed;

(e) in Subsection 23-21-2.3(2), the language that states “the Resource Development Coordinating Committee and” is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word “and” is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed; and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

~~[(40)]~~ (11) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

~~[(41)]~~ (12) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2017.

~~[(42)]~~ (13) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.

~~[(43)]~~ (14) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection (13)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections (13)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

~~[(44)]~~ (15) Section 63N-2-512 is repealed on July 1, 2021.

~~[(45)]~~ (16) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection (15)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

~~[(16)]~~ (17) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed July 1, 2018.

CHAPTER 206**S. B. 66**

Passed March 6, 2017
 Approved March 21, 2017
 Effective May 9, 2017

**ADMINISTRATIVE LAW
 JUDGE AMENDMENTS**

Chief Sponsor: Margaret Dayton
 House Sponsor: Keith Grover

LONG TITLE**General Description:**

This bill modifies the procedure for certain adjudicative hearings.

Highlighted Provisions:

This bill:

- ▶ states that an administrative law judge or the executive director of the Department of Environmental Quality may not participate in an ex parte communication;
- ▶ states that if an administrative law judge or the executive director of the Department of Environmental Quality receives an ex parte communication, the judge or director shall place the communication in the record so other parties may comment on the communication;
- ▶ modifies the process for a special adjudicative proceeding over a permit; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

19-1-301, as last amended by Laws of Utah 2015, Chapter 441
 19-1-301.5, as last amended by Laws of Utah 2016, Chapter 348

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

Section 1. Section 19-1-301 is amended to read:**19-1-301. Adjudicative proceedings.**

(1) As used in this section, "dispositive action" means a final agency action that:

(a) the executive director takes following an adjudicative proceeding on a request for agency action; and

(b) is subject to judicial review under Section 63G-4-403.

(2) This section governs adjudicative proceedings that are not special adjudicative proceedings as defined in Section 19-1-301.5.

(3) (a) The department and its boards shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(b) The procedures for an adjudicative proceeding conducted by an administrative law judge are governed by:

(i) Title 63G, Chapter 4, Administrative Procedures Act;

(ii) this title;

(iii) rules adopted by the department under:

(A) Subsection 63G-4-102(6); or

(B) this title; and

(iv) the Utah Rules of Civil Procedure, in the absence of a procedure established under Subsection (3)(b)(i), (ii), or (iii).

(4) Except as provided in Section 19-2-113, an administrative law judge shall hear a party's request for agency action.

(5) The executive director shall appoint an administrative law judge who:

(a) is a member in good standing of the Utah State Bar;

(b) has a minimum of:

(i) 10 years of experience practicing law; and

(ii) five years of experience practicing in the field of:

(A) environmental compliance;

(B) natural resources;

(C) regulation by an administrative agency; or

(D) a field related to a field listed in Subsections (5)(b)(ii)(A) through (C); and

(c) has a working knowledge of the federal laws and regulations and state statutes and rules applicable to a request for agency action.

(6) In appointing an administrative law judge who meets the qualifications described in Subsection (5), the executive director may:

(a) compile a list of persons who may be engaged as an administrative law judge pro tempore by mutual consent of the parties to an adjudicative proceeding;

(b) appoint an assistant attorney general as an administrative law judge pro tempore; or

(c) (i) appoint an administrative law judge as an employee of the department; and

(ii) assign the administrative law judge responsibilities in addition to conducting an adjudicative proceeding.

(7) (a) An administrative law judge:

(i) shall conduct an adjudicative proceeding;

(ii) may take any action that is not a dispositive action; and

(iii) shall submit to the executive director a proposed dispositive action, including:

(A) written findings of fact;

- (B) written conclusions of law; and
- (C) a recommended order.
- (b) The executive director may:
- (i) approve, approve with modifications, or disapprove a proposed dispositive action submitted to the executive director under Subsection (7)(a); or
 - (ii) return the proposed dispositive action to the administrative law judge for further action as directed.
- (c) In making a decision regarding a dispositive action, the executive director may seek the advice of, and consult with:
- (i) the assistant attorney general assigned to the department; or
 - (ii) a special master who:
 - (A) is appointed by the executive director; and
 - (B) is an expert in the subject matter of the proposed dispositive action.
 - (d) The executive director shall base a final dispositive action on the record of the proceeding before the administrative law judge.
- (8) To conduct an adjudicative proceeding, an administrative law judge may:
- (a) compel:
 - (i) the attendance of a witness; and
 - (ii) the production of a document or other evidence;
 - (b) administer an oath;
 - (c) take testimony; and
 - (d) receive evidence as necessary.
- (9) A party may appear before an administrative law judge in person, through an agent or employee, or as provided by department rule.
- (10) (a) Except as provided in Subsection (10)(b), an administrative law judge or the executive director may not participate in an ex parte communication with a party to an adjudicative proceeding regarding the merits of the adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties.
- (b) The executive director may discuss ongoing operational matters that require the involvement of a division director without violating Subsection (10)(a).
- (c) Upon receiving an ex parte communication with a party to a proceeding, an administrative law judge or the executive director shall place the communication in the public record of the proceeding and afford all parties to the proceeding with an opportunity to comment on the communication.
- (d) If an administrative law judge or the executive director receives an ex parte communication, the person who receives the ex

parte communication shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information.

(11) Nothing in this section limits a party's right to an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

Section 2. Section 19-1-301.5 is amended to read:

19-1-301.5. Permit review adjudicative proceedings.

- (1) As used in this section:
- (a) "Dispositive action" means a final agency action that:
 - (i) the executive director takes as part of a special adjudicative proceeding; and
 - (ii) is subject to judicial review, in accordance with Subsection ~~[(45)]~~ (16).
 - (b) "Dispositive motion" means a motion that is equivalent to:
 - (i) a motion to dismiss under Utah Rules of Civil Procedure, Rule 12(b)(6);
 - (ii) a motion for judgment on the pleadings under Utah Rules of Civil Procedure, Rule 12(c); or
 - (iii) a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.
 - (c) "Financial assurance determination" means a decision on whether a facility, site, plan, party, broker, owner, operator, generator, or permittee has met financial assurance or financial responsibility requirements as determined by the director of the Division of Waste Management and Radiation Control.
 - (d) "Party" means:
 - (i) the director who issued the permit order or financial assurance determination that is being challenged in the special adjudicative proceeding under this section;
 - (ii) the permittee;
 - (iii) the person who applied for the permit, if the permit was denied;
 - (iv) the person who is subject to a financial assurance determination; or
 - (v) a person granted intervention by the administrative law judge.
 - (e) "Permit" means any of the following issued under this title:
 - (i) a permit;
 - (ii) a plan;
 - (iii) a license;
 - (iv) an approval order; or
 - (v) another administrative authorization made by a director.
 - (f) (i) "Permit order" means an order issued by a director that:

- (A) approves a permit;
- (B) renews a permit;
- (C) denies a permit;
- (D) modifies or amends a permit; or
- (E) revokes and reissues a permit.
- (ii) "Permit order" does not include an order terminating a permit.
- (g) "Special adjudicative proceeding" means a proceeding under this section to resolve a challenge to a:
- (i) permit order; or
- (ii) financial assurance determination.
- (2) This section governs special adjudicative proceedings.
- (3) Except as expressly provided in this section, the provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not apply to a special adjudicative proceeding under this section.
- (4) If a public comment period was provided during the permit application process or the financial assurance determination process, a person who challenges an order~~[,] application,~~ or determination may only raise an issue or argument during the special adjudicative proceeding that:
- (a) the person raised during the public comment period; and
- (b) was supported with information or documentation that is cited with reasonable specificity and sufficiently enables the director to fully consider the substance and significance of the issue.
- (5) (a) Upon request by a party, the executive director shall issue a notice of appointment appointing an administrative law judge, in accordance with Subsections 19-1-301(5) and (6), to conduct a special adjudicative proceeding under this section.
- (b) The executive director shall issue a notice of appointment within 30 days after the day on which a party files a request.
- (c) A notice of appointment shall include:
- (i) the agency's file number or other reference number assigned to the special adjudicative proceeding;
- (ii) the name of the special adjudicative proceeding; and
- (iii) the administrative law judge's name, title, mailing address, email address, and telephone number.
- (6) (a) Only the following may file a petition for review of a permit order or financial assurance determination:
- (i) a party; or
- (ii) a person who is seeking to intervene under Subsection (7).
- (b) A person who files a petition for review of a permit order or a financial assurance determination shall file the petition for review within 30 days after the day on which the permit order or the financial assurance determination is issued.
- (c) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules allowing the extension of the filing deadline described in Subsection (6)(b).
- (d) A petition for review shall:
- (i) be served in accordance with department rule;
- (ii) include the name and address of each person to whom a copy of the petition for review is sent;
- (iii) if known, include the agency's file number or other reference number assigned to the special adjudicative proceeding;
- (iv) state the date on which the petition for review is served;
- (v) include a statement of the petitioner's position, including, as applicable:
- (A) the legal authority under which the petition for review is requested;
- (B) the legal authority under which the agency has jurisdiction to review the petition for review;
- (C) each of the petitioner's arguments in support of the petitioner's requested relief;
- (D) an explanation of how each argument described in Subsection (6)(d)(v)(C) was preserved;
- (E) a detailed description of any permit condition to which the petitioner is objecting;
- (F) any modification or addition to a permit that the petitioner is requesting;
- (G) a demonstration that the agency's permit decision is based on a finding of fact or conclusion of law that is clearly erroneous;
- (H) if the agency director addressed a finding of fact or conclusion of law described in Subsection (6)(d)(v)(G) in a response to public comment, a citation to the comment and response that relates to the finding of fact or conclusion of law and an explanation of why the director's response was clearly erroneous or otherwise warrants review; and
- (I) a claim for relief.
- (e) A person may not raise an issue or argument in a petition for review unless the issue or argument:
- (i) was preserved in accordance with Subsection (4); or
- (ii) was not reasonably ascertainable before or during the public comment period.
- (f) To demonstrate that an issue or argument was preserved in accordance with Subsection (4), a

petitioner shall include the following in the petitioner's petition for review:

(i) a citation to where the petitioner raised the issue or argument during the public comment period; and

(ii) for each document upon which the petitioner relies in support of an issue or argument, a description that:

(A) states why the document is part of the administrative record; and

(B) demonstrates that the petitioner cited the document with reasonable specificity in accordance with Subsection (4)(b).

(7) (a) A person who is not a party may not participate in a special adjudicative proceeding under this section unless the person is granted the right to intervene under this Subsection (7).

(b) A person who seeks to intervene in a special adjudicative proceeding under this section shall, within 30 days after the day on which the permit order or the financial assurance determination being challenged was issued, file:

(i) a petition to intervene that:

(A) meets the requirements of Subsection 63G-4-207(1); and

(B) demonstrates that the person is entitled to intervention under Subsection (7)(d)(ii); and

(ii) a timely petition for review.

(c) In a special adjudicative proceeding to review a permit order, the permittee is a party to the special adjudicative proceeding regardless of who files the petition for review and does not need to file a petition to intervene under Subsection (7)(b).

(d) An administrative law judge shall grant a petition to intervene in a special adjudicative proceeding, if:

(i) the petition to intervene is timely filed; and

(ii) the petitioner:

(A) demonstrates that the petitioner's legal interests may be substantially affected by the special adjudicative proceeding;

(B) demonstrates that the interests of justice and the orderly and prompt conduct of the special adjudicative proceeding will not be materially impaired by allowing the intervention; and

(C) in the petitioner's petition for review, raises issues or arguments that are preserved in accordance with Subsection (4).

(e) An administrative law judge:

(i) shall issue an order granting or denying a petition to intervene in accordance with Subsection 63G-4-207(3)(a); and

(ii) may impose conditions on intervenors as described in Subsections 63G-4-207(3)(b) and (c).

(f) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules allowing the extension of the filing deadline described in Subsection (7)(b).

(8) (a) Unless the parties otherwise agree, ~~the schedule for~~ or the administrative law judge otherwise orders, a special adjudicative proceeding ~~is~~ shall be conducted as follows:

(i) the director shall file and serve the administrative record within 40 days after the day on which the executive director issues a notice of appointment, unless otherwise ordered by the administrative law judge;

(ii) any dispositive motion shall be filed and served within 15 days after the day on which the administrative record is filed and served;

(iii) the petitioner shall file and serve an opening brief of no more than 30 pages:

(A) within 30 days after the day on which the director files and serves the administrative record; or

(B) if a party files and serves a dispositive motion, within 30 days after the day on which the administrative law judge issues a decision on the dispositive motion, including a decision to defer the motion;

(iv) each responding party shall file and serve a response brief of no more than ~~15~~ 30 pages within 15 days after the day on which the petitioner files and serves the opening brief;

(v) the petitioner may file and serve a reply brief of not more than 15 pages within 15 days after the day on which the response brief is filed and served; and

(vi) if the petitioner files and serves a reply brief, each responding party may file and serve a surreply brief of no more than ~~five~~ 15 pages within five business days after the day on which the petitioner files and serves the reply brief.

(b) (i) A reply brief may not raise an issue that was not raised in the response brief.

(ii) A surreply brief may not raise an issue that was not raised in the reply brief.

(9) (a) An administrative law judge shall conduct a special adjudicative proceeding based only on the administrative record and not as a trial de novo.

(b) To the extent relative to the issues and arguments raised in the petition for review, the administrative record consists of the following items, if they exist:

(i) (A) for review of a permit order, the permit application, draft permit, and final permit; or

(B) for review of a financial assurance determination, the proposed financial assurance determination from the owner or operator of the facility, the draft financial assurance determination, and the final financial assurance determination;

(ii) each statement of basis, fact sheet, engineering review, or other substantive explanation designated by the director as part of the basis for the decision relating to the permit order or the financial assurance determination;

(iii) the notice and record of each public comment period;

(iv) the notice and record of each public hearing, including oral comments made during the public hearing;

(v) written comments submitted during the public comment period;

(vi) responses to comments that are designated by the director as part of the basis for the decision relating to the permit order or the financial assurance determination;

(vii) any information that is:

(A) requested by and submitted to the director; and

(B) designated by the director as part of the basis for the decision relating to the permit order or the financial assurance determination;

(viii) any additional information specified by rule;

(ix) any additional documents agreed to by the parties; and

(x) information supplementing the record under Subsection (9)(c).

(c) (i) There is a rebuttable presumption against supplementing the record.

(ii) A party may move to supplement the record described in Subsection (9)(b) with technical or factual information.

(iii) The administrative law judge may grant a motion to supplement the record described in Subsection (9)(b) with technical or factual information if the moving party proves that:

(A) good cause exists for supplementing the record;

(B) supplementing the record is in the interest of justice; and

(C) supplementing the record is necessary for resolution of the issues.

(iv) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules permitting further supplementation of the record.

(10) (a) Except as otherwise provided by this section, the administrative law judge shall review and respond to a petition for review in accordance with Subsections 63G-4-201(3)(d) and (e), following the relevant procedures for formal adjudicative proceedings.

(b) The administrative law judge shall require the parties to file responsive briefs in accordance with Subsection (8).

(c) If an administrative law judge enters an order of default against a party, the administrative law judge shall enter the order of default in accordance with Section 63G-4-209.

(d) The administrative law judge, in conducting a special adjudicative proceeding:

(i) may not participate in an ex parte communication with a party to the special adjudicative proceeding regarding the merits of the special adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties; and

(ii) shall, upon receiving an ex parte communication, place the communication in the public record of the proceeding and afford all parties an opportunity to comment on the information.

(e) In conducting a special adjudicative proceeding, the administrative law judge may take judicial notice of matters not in the administrative record, in accordance with Utah Rules of Evidence, Rule 201.

(f) An administrative law judge may take any action in a special adjudicative proceeding that is not a dispositive action.

(11) (a) A person who files a petition for review has the burden of demonstrating that an issue or argument raised in the petition for review has been preserved in accordance with Subsection (4).

(b) The administrative law judge shall dismiss, with prejudice, any issue or argument raised in a petition for review that has not been preserved in accordance with Subsection (4).

(12) In response to a dispositive motion, within 45 days after the day on which oral argument takes place, or, if there is no oral argument, within 45 days after the day on which the reply brief on the dispositive motion is due, the administrative law judge shall:

(a) submit a proposed dispositive action to the executive director recommending full or partial resolution of the special adjudicative proceeding, that includes:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order; or

(b) if the administrative law judge determines that a full or partial resolution of the special adjudicative proceeding is not appropriate, issue an order that explains the basis for the administrative law judge's determination.

(13) For each issue or argument that is not dismissed or otherwise resolved under Subsection (11)(b) or (12), the administrative law judge shall:

(a) provide the parties an opportunity for briefing and oral argument in accordance with this section;

(b) conduct a review of the director's order or determination, based on the record described in Subsections (9)(b), (9)(c), and (10)(e); and

(c) within 60 days after the day on which the reply brief on the dispositive motion is due, submit to the executive director a proposed dispositive action, that includes:

- (i) written findings of fact;
- (ii) written conclusions of law; and
- (iii) a recommended order.

(14) (a) When the administrative law judge submits a proposed dispositive action to the executive director, the executive director may:

(i) adopt, adopt with modifications, or reject the proposed dispositive action; or

(ii) return the proposed dispositive action to the administrative law judge for further action as directed.

(b) On review of a proposed dispositive action, the executive director shall uphold all factual, technical, and scientific agency determinations that are not clearly erroneous based on the petitioner's marshaling of the evidence.

(c) In reviewing a proposed dispositive action during a special adjudicative proceeding, the executive director may take judicial notice of matters not in the record, in accordance with Utah Rules of Evidence, Rule 201.

(d) The executive director may use the executive director's technical expertise in making a determination.

(15) (a) Except as provided in Subsection (15)(b), the executive director may not participate in an ex parte communication with a party to a special adjudicative proceeding regarding the merits of the special adjudicative proceeding, unless notice and opportunity to be heard are afforded to all parties involved in the proceeding.

(b) The executive director may discuss ongoing operational matters that require the involvement of a division director without violating Subsection (15)(a).

(c) Upon receiving an ex parte communication with a party to a proceeding, the executive director shall place the communication in the public record of the proceeding and afford all parties to the proceeding with an opportunity to comment on the communication.

[45] (16) (a) A party may seek judicial review in the Utah Court of Appeals of a dispositive action in a special adjudicative proceeding, in accordance with Sections 63G-4-401, 63G-4-403, and 63G-4-405.

(b) An appellate court shall limit its review of a dispositive action of a special adjudicative proceeding under this section to:

(i) the record described in Subsections (9)(b), (9)(c), (10)(e), and (14)(c); and

(ii) the record made by the administrative law judge and the executive director during the special adjudicative proceeding.

(c) During judicial review of a dispositive action, the appellate court shall:

(i) review all agency determinations in accordance with Subsection 63G-4-403(4), recognizing that the agency has been granted substantial discretion to interpret its governing statutes and rules; and

(ii) uphold all factual, technical, and scientific agency determinations that are not clearly erroneous based upon the petitioner's marshaling of the evidence.

[46] (17) (a) The filing of a petition for review does not:

(i) stay a permit order or a financial assurance determination; or

(ii) delay the effective date of a permit order or a portion of a financial assurance determination.

(b) A permit order or a financial assurance determination may not be stayed or delayed unless a stay is granted under this Subsection [46] (17).

(c) The administrative law judge shall:

(i) consider a party's motion to stay a permit order or a financial assurance determination during a special adjudicative proceeding; and

(ii) within 45 days after the day on which the reply brief on the motion to stay is due, submit a proposed determination on the stay to the executive director.

(d) The administrative law judge may not recommend to the executive director a stay of a permit order or a financial assurance determination, or a portion of a permit order or a portion of a financial assurance determination, unless:

(i) all parties agree to the stay; or

(ii) the party seeking the stay demonstrates that:

(A) the party seeking the stay will suffer irreparable harm unless the stay is issued;

(B) the threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(C) the stay, if issued, would not be adverse to the public interest; and

(D) there is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits, which should be the subject of further adjudication.

(e) A party may appeal the executive director's decision regarding a stay of a permit order or a financial assurance determination to the Utah Court of Appeals, in accordance with Section 78A-4-103.

[47] (18) (a) Subject to Subsection [47] (18)(c), the administrative law judge shall issue a written response to a non-dispositive motion within 45 days after the day on which the reply brief on the

non-dispositive motion is due or, if the administrative law judge grants oral argument on the non-dispositive motion, within 45 days after the day on which oral argument takes place.

(b) If the administrative law judge determines that the administrative law judge needs more time to issue a response to a non-dispositive motion, the administrative law judge may issue a response after the deadline described in Subsection [(17)] (18)(a) if, before the deadline expires, the administrative law judge gives notice to the parties that includes:

(i) the amount of additional time that the administrative law judge requires; and

(ii) the reason the administrative law judge needs the additional time.

(c) If the administrative law judge grants oral argument on a non-dispositive motion, the administrative law judge shall hold the oral argument within 30 days after the day on which the reply brief on the non-dispositive motion is due.

CHAPTER 207**S. B. 73**

Passed February 21, 2017

Approved March 21, 2017

Effective May 9, 2017

**ACUPUNCTURE LICENSING
ACT AMENDMENTS**

Chief Sponsor: David P. Hinkins

House Sponsor: Karen Kwan

LONG TITLE**General Description:**

This bill modifies provisions related to the Acupuncture Licensing Act.

Highlighted Provisions:

This bill:

- ▶ modifies the sunset date of the Acupuncture Licensing Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-1-258, as last amended by Laws of Utah 2016, Chapters 89 and 294

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

Section 1. Section 63I-1-258 is amended to read:**63I-1-258. Repeal dates, Title 58.**

(1) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2026.

(2) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2025.

(3) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2018.

(4) Section 58-37-4.3 is repealed July 1, 2021.

(5) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2023.

(6) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act, is repealed July 1, 2019.

(7) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2025.

(8) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2023.

(9) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2024.

(10) Title 58, Chapter 61, Part 7, Behavior Analyst Licensing Act, is repealed July 1, 2026.

(11) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, [2017] 2027.

(12) Title 58, Chapter 86, State Certification of Commercial Interior Designers Act, is repealed July 1, 2021.

CHAPTER 208**S. B. 82**

Passed March 1, 2017
 Approved March 21, 2017
 Effective May 9, 2017

**LIBRARY TECHNOLOGY
 USE AMENDMENTS**

Chief Sponsor: Todd Weiler
 House Sponsor: Susan Pulsipher

LONG TITLE**General Description:**

This bill modifies the policy requirements of public libraries.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to a public library's required Internet safety policy to include wireless networks.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

9-7-215, as last amended by Laws of Utah 2011,
 Chapter 320

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

Section 1. Section 9-7-215 is amended to read:**9-7-215. Internet and online access policy required.**

- (1) As used in this section:
- (a) "Child pornography" is as defined in Section 76-5b-103.
- (b) "Harmful to minors" is as defined in Section 76-10-1201.
- (c) "Obscene" is as defined in 20 U.S.C. Sec. 9101.
- (d) "Technology protection measure" means a technology that blocks or filters Internet access to visual depictions.

(2) State funds may not be provided to any public library that ~~offers use of~~ provides public access to the Internet ~~or an online service to the public~~ unless the library:

(a) (i) has in place a policy of Internet safety for minors, including the operation of a technology protection measure:

(A) with respect to any ~~publicly accessible~~ computer ~~with Internet access, and~~ or other device while connected to the Internet through a network provided by the library, including a wireless network; and

(B) that protects against access to visual depictions that are:

- (I) child pornography;
- (II) harmful to minors; or
- (III) obscene; and

(ii) is enforcing the operation of the technology protection measure described in Subsection (2)(a)(i) during any use by a minor of a computer ~~by a minor~~ or other device that is connected to the Internet through a network provided by the library, including a wireless network; and

(b) (i) has in place a policy of Internet safety, including the operation of a technology protection measure:

(A) with respect to any ~~publicly accessible~~ computer ~~with Internet access, and~~ or other device while connected to the Internet through a network provided by the library, including a wireless network; and

(B) that protects against access to visual depictions that are:

- (I) child pornography; or
- (II) obscene; and

(ii) is enforcing the operation of the technology protection measure described in Subsection (2)(b)(i) during any use of a computer or other device that is connected to the Internet through a network provided by the library, including a wireless network.

(3) This section does not prohibit a public library from limiting Internet access or otherwise protecting against materials other than the materials specified in this section.

(4) An administrator, supervisor, or other representative of a public library may disable a technology protection measure described in Subsection (2):

- (a) at the request of a library patron who is not a minor; and
- (b) to enable access for research or other lawful purposes.

CHAPTER 209**S. B. 91**

Passed February 23, 2017

Approved March 21, 2017

Effective May 9, 2017

**NATIVE AMERICAN CHILD
WELFARE AMENDMENTS**

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: John R. Westwood

LONG TITLE**General Description:**

This bill amends provisions of law regarding the licensure of tribal foster homes and the sharing of information with an Indian tribe.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies that full faith and credit of an Indian tribe's licensure of a foster home extends to homes located on both state lands and Indian country;
- ▶ requires the division to cooperate and share relevant information with an Indian tribe;
- ▶ authorizes the division to provide an Indian tribe access to the Management Information System; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-2-101, as last amended by Laws of Utah 2016, Chapters 122, 211, and 342

62A-2-117, as last amended by Laws of Utah 2005, Chapter 188

62A-4a-101, as last amended by Laws of Utah 2009, Chapter 75

62A-4a-105, as last amended by Laws of Utah 2016, Chapter 296

62A-4a-412, as last amended by Laws of Utah 2016, Chapter 144

62A-4a-1003, as last amended by Laws of Utah 2009, Chapter 32

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

Section 1. Section 62A-2-101 is amended to read:**62A-2-101. Definitions.**

As used in this chapter:

(1) "Adult day care" means nonresidential care and supervision:

(a) for three or more adults for at least four but less than 24 hours a day; and

(b) that meets the needs of functionally impaired adults through a comprehensive program that

provides a variety of health, social, recreational, and related support services in a protective setting.

(2) "Applicant" means a person who applies for an initial license or a license renewal under this chapter.

(3) (a) "Associated with the licensee" means that an individual is:

(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or

(ii) applying to become affiliated with a licensee in a capacity described in Subsection (3)(a)(i).

(b) "Associated with the licensee" does not include:

(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:

(A) a local mental health authority described in Section 17-43-301;

(B) a local substance abuse authority described in Section 17-43-201; or

(C) a board of an organization operating under a contract to provide mental health or substance abuse programs, or services for the local mental health authority or substance abuse authority; or

(ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised at all times.

(4) (a) "Boarding school" means a private school that:

(i) uses a regionally accredited education program;

(ii) provides a residence to the school's students:

(A) for the purpose of enabling the school's students to attend classes at the school; and

(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (4)(b)(i); and

(iv) (A) does not provide the treatment or services described in Subsection (28)(a); or

(B) provides the treatment or services described in Subsection (28)(a) on a limited basis, as described in Subsection (4)(b)(ii).

(b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or services described in Subsection (28)(a) on a limited basis if:

(A) the treatment or services described in Subsection (28)(a) are provided only as an incidental service to a student; and

- (B) the school does not:
- (I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (28)(a); or
- (II) have a primary purpose of providing the treatment or services described in Subsection (28)(a).
- (c) “Boarding school” does not include a therapeutic school.
- (5) “Child” means a person under 18 years of age.
- (6) “Child placing” means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:
- finding a person to adopt the child;
 - placing the child in a home for adoption; or
 - foster home placement.
- (7) “Client” means an individual who receives or has received services from a licensee.
- (8) “Day treatment” means specialized treatment that is provided to:
- a client less than 24 hours a day; and
 - four or more persons who:
 - are unrelated to the owner or provider; and
 - have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.
- (9) “Department” means the Department of Human Services.
- (10) “Department contractor” means an individual who:
- provides services under a contract with the department; and
 - due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.
- (11) “Direct access” means that an individual has, or likely will have:
- contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or
 - an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child’s parents or legal guardians, or the vulnerable adult.
- (12) “Directly supervised” means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.
- (13) “Director” means the director of the Office of Licensing.
- (14) “Domestic violence” means the same as that term is defined in Section 77-36-1.
- (15) “Domestic violence treatment program” means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.
- (16) “Elder adult” means a person 65 years of age or older.
- (17) “Executive director” means the executive director of the department.
- (18) “Foster home” means a temporary residential living environment for the care of:
- (i) fewer than five foster children in the home of a licensed foster parent; or
 - (ii) five or more foster children in the home of a licensed foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group; or
 - (b) (i) fewer than four foster children in the home of a certified foster parent; or
 - (ii) four or more foster children in the home of a certified foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group.
- (19) (a) “Human services program” means a:
- foster home;
 - therapeutic school;
 - youth program;
 - resource family home;
 - recovery residence; or
 - facility or program that provides:
 - secure treatment;
 - inpatient treatment;
 - residential treatment;
 - residential support;
 - adult day care;
 - day treatment;
 - outpatient treatment;
 - domestic violence treatment;
 - child placing services;
 - social detoxification; or
 - any other human services that are required by contract with the department to be licensed with the department.
- (b) “Human services program” does not include a boarding school.
- (20) “Indian child” means the same as that term is defined in 25 U.S.C. Sec. 1903.
- (21) “Indian country” means the same as that term is defined in 18 U.S.C. Sec. 1151.

(22) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

[~~(20)~~] (23) "Licensee" means an individual or a human services program licensed by the office.

[~~(21)~~] (24) "Local government" means a city, town, metro township, or county.

[~~(22)~~] (25) "Minor" has the same meaning as "child."

[~~(23)~~] (26) "Office" means the Office of Licensing within the Department of Human Services.

[~~(24)~~] (27) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.

[~~(25)~~] (28) (a) "Recovery residence" means a home, residence, or facility that meets at least two of the following requirements:

(i) provides a supervised living environment for individuals recovering from a substance abuse disorder;

(ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance abuse disorder;

(iii) provides or arranges for residents to receive services related to their recovery from a substance abuse disorder, either on or off site;

(iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or

(v) (A) receives public funding; or

(B) is run as a business venture, either for-profit or not-for-profit.

(b) "Recovery residence" does not mean:

(i) a residential treatment program;

(ii) residential support; or

(iii) a home, residence, or facility, in which:

(A) residents, by their majority vote, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;

(B) residents equitably share rent and housing-related expenses; and

(C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.

[~~(26)~~] (29) "Regular business hours" means:

(a) the hours during which services of any kind are provided to a client; or

(b) the hours during which a client is present at the facility of a licensee.

[~~(27)~~] (30) (a) "Residential support" means arranging for or providing the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) "Residential support" includes providing a supervised living environment for persons with dysfunctions or impairments that are:

(i) emotional;

(ii) psychological;

(iii) developmental; or

(iv) behavioral.

(c) Treatment is not a necessary component of residential support.

(d) "Residential support" does not include:

(i) a recovery residence; or

(ii) residential services that are performed:

(A) exclusively under contract with the Division of Services for People with Disabilities; or

(B) in a facility that serves fewer than four individuals.

[~~(28)~~] (31) (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) "Residential treatment" does not include a:

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

[~~(29)~~] (32) "Residential treatment program" means a human services program that provides:

(a) residential treatment; or

(b) secure treatment.

[~~(30)~~] (33) (a) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.

(b) "Secure treatment" differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures that are imposed on residents with neither their consent nor control.

[~~(31)~~] (34) "Social detoxification" means short-term residential services for persons who are

experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

(a) room and board for persons who are unrelated to the owner or manager of the facility;

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

[~~(32)~~] (35) "Substance abuse treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

(iii) habilitation services; and

(b) that provides the treatment or services described in Subsection (32)(a) to persons with:

(i) a diagnosed substance abuse disorder; or

(ii) chemical dependency disorder.

[~~(33)~~] (36) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals that are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to:

(I) a disability;

(II) emotional development;

(III) behavioral development;

(IV) familial development; or

(V) social development.

[~~(34)~~] (37) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

[~~(35)~~] (38) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:

(a) provide personal protection;

(b) provide necessities such as food, shelter, clothing, or mental or other health care;

(c) obtain services necessary for health, safety, or welfare;

(d) carry out the activities of daily living;

(e) manage the adult's own resources; or

(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

[~~(36)~~] (39) (a) "Youth program" means a nonresidential program designed to provide behavioral, substance abuse, or mental health services to minors that:

(i) serves adjudicated or nonadjudicated youth;

(ii) charges a fee for its services;

(iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;

(iv) may or may not provide all or part of its services in the outdoors;

(v) may or may not limit or censor access to parents or guardians; and

(vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.

(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

Section 2. Section 62A-2-117 is amended to read:

62A-2-117. Licensure of tribal foster homes.

(1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian tribes may develop and implement tribal foster home standards.

(2) The office shall give full faith and credit to an Indian tribe's certification or licensure of a tribal foster ~~homes~~ home for an Indian child and siblings of that Indian child, both on and off Indian country, according to standards developed and approved by the Indian tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.

(3) If the Indian tribe has not developed standards, the office shall license tribal foster homes pursuant to this chapter.

Section 3. Section 62A-4a-101 is amended to read:

62A-4a-101. Definitions.

As used in this chapter:

(1) "Abuse" is as defined in Section 78A-6-105.

(2) "Adoption services" means:

(a) placing children for adoption;

(b) subsidizing adoptions under Section 62A-4a-105;

(c) supervising adoption placements until the adoption is finalized by the court;

(d) conducting adoption studies;

(e) preparing adoption reports upon request of the court; and

(f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

(3) “Child” means, except as provided in Part 7, Interstate Compact on Placement of Children, a person under 18 years of age.

~~[(5)]~~ (4) “Chronic abuse” means repeated or patterned abuse.

~~[(6)]~~ (5) “Chronic neglect” means repeated or patterned neglect.

~~[(4)]~~ (6) “Consumer” means a person who receives services offered by the division in accordance with this chapter.

(7) “Custody,” with regard to the division, means the custody of a minor in the division as of the date of disposition.

(8) “Day-care services” means care of a child for a portion of the day which is less than 24 hours:

(a) in the child’s own home by a responsible person; or

(b) outside of the child’s home in a:

(i) day-care center;

(ii) family group home; or

(iii) family child care home.

(9) “Dependent child” or “dependency” means a child, or the condition of a child, who is homeless or without proper care through no fault of the child’s parent, guardian, or custodian.

(10) “Director” means the director of the Division of Child and Family Services.

(11) “Division” means the Division of Child and Family Services.

(12) “Domestic violence services” means:

(a) temporary shelter, treatment, and related services to:

(i) a person who is a victim of abuse, as defined in Section 78B-7-102; and

(ii) the dependent children of a person described in Subsection (12)(a)(i); and

(b) treatment services for a person who is alleged to have committed, has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

(13) “Harm” is as defined in Section 78A-6-105.

(14) “Homemaking service” means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved

household and family management through the services of a trained homemaker.

(15) “Incest” is as defined in Section 78A-6-105.

(16) “Indian child” means the same as that term is defined in 25 U.S.C. Sec. 1903.

(17) “Indian tribe” means the same as that term is defined in 25 U.S.C. Sec. 1903.

~~[(16)]~~ (18) “Minor” means, except as provided in Part 7, Interstate Compact on Placement of Children:

(a) a child; or

(b) a person:

(i) who is at least 18 years of age and younger than 21 years of age; and

(ii) for whom the division has been specifically ordered by the juvenile court to provide services.

~~[(17)]~~ (19) “Molestation” is as defined in Section 78A-6-105.

~~[(18)]~~ (20) “Natural parent” means a minor’s biological or adoptive parent, and includes a minor’s noncustodial parent.

~~[(19)]~~ (21) “Neglect” is as defined in Section 78A-6-105.

~~[(20)]~~ (22) “Protective custody,” with regard to the division, means the shelter of a child by the division from the time the child is removed from the child’s home until the earlier of:

(a) the shelter hearing; or

(b) the child’s return home.

~~[(21)]~~ (23) “Protective services” means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or dependency of a child;

(b) to a cohabitant who is neglecting or abusing a child, in order to:

(i) help the cohabitant develop recognition of the cohabitant’s duty of care and of the causes of neglect or abuse; and

(ii) strengthen the cohabitant’s ability to provide safe and acceptable care; and

(c) in cases where the child’s welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;

(ii) to cause a protective order to be issued for the protection of the child, when appropriate; and

(iii) to protect the child from the circumstances that endanger the child’s welfare including, when appropriate:

(A) removal from the child’s home;

(B) placement in substitute care; and

(C) petitioning the court for termination of parental rights.

~~[(22)]~~ (24) "Severe abuse" is as defined in Section 78A-6-105.

~~[(23)]~~ (25) "Severe neglect" is as defined in Section 78A-6-105.

~~[(24)]~~ (26) "Sexual abuse" is as defined in Section 78A-6-105.

~~[(25)]~~ (27) "Sexual exploitation" is as defined in Section 78A-6-105.

~~[(26)]~~ (28) "Shelter care" means the temporary care of a minor in a nonsecure facility.

~~[(27)]~~ (29) "State" means:

- (a) a state of the United States;
- (b) the District of Columbia;
- (c) the Commonwealth of Puerto Rico;
- (d) the Virgin Islands;
- (e) Guam;
- (f) the Commonwealth of the Northern Mariana Islands; or
- (g) a territory or possession administered by the United States.

~~[(28)]~~ (30) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

~~[(29)]~~ (31) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

~~[(30)]~~ (32) "Substance abuse" is as defined in Section 78A-6-105.

~~[(31)]~~ (33) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

~~[(32)]~~ (34) "Substitute care" means:

- (a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;
- (b) services provided for a minor awaiting placement; and
- (c) the licensing and supervision of a substitute care facility.

~~[(33)]~~ (35) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or

dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

~~[(34)]~~ (36) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

~~[(35)]~~ (37) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

~~[(36)]~~ (38) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

~~[(37)]~~ (39) "Unsupported" means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

~~[(38)]~~ (40) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

Section 4. Section 62A-4a-105 is amended to read:

62A-4a-105. Division responsibilities.

(1) The division shall:

(a) administer services to minors and families, including:

(i) child welfare services;

(ii) domestic violence services; and

(iii) all other responsibilities that the Legislature or the executive director may assign to the division;

(b) provide the following services:

(i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state;

(ii) non-custodial and in-home services, including:

(A) services designed to prevent family break-up; and

(B) family preservation services;

(iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

(iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;

(v) shelter care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

(vi) domestic violence services, in accordance with the requirements of federal law;

(vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;

(viii) substitute care for dependent, abused, neglected, and delinquent children;

(ix) programs and services for minors who have been placed in the custody of the division for reasons other than abuse or neglect, under Section 62A-4a-250;

(x) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302; and

(xi) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;

(c) establish standards for all:

(i) contract providers of out-of-home care for minors and families;

(ii) facilities that provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division; and

(iii) direct or contract providers of domestic violence services described in Subsection (1)(b)(vi);

(d) have authority to:

(i) contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

(ii) approve facilities that meet the standards established under Subsection (1)(c) to provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division;

(e) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;

(f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of division records to the same extent that the division is required to protect division records, cooperate with and share all appropriate information in the division's possession regarding an Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child with the Indian tribe that is affiliated with the Indian child;

~~(4f)~~ (g) in accordance with Subsection (2)(a), promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent,

delinquent, ungovernable, and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state;

~~(4g)~~ (h) cooperate with the Workforce Development Division in the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance;

~~(4h)~~ (i) compile relevant information, statistics, and reports on child and family service matters in the state;

~~(4i)~~ (j) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;

~~(4j)~~ (k) provide social studies and reports for the juvenile court in accordance with Section 78A-6-605;

~~(4k)~~ (l) within appropriations from the Legislature, provide or contract for a variety of domestic violence services and treatment methods;

~~(4l)~~ (m) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who:

(i) have a permanency goal of adoption; or

(ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314, and promote adoption of those children;

~~(4m)~~ (n) subject to Subsection (2)(b), refer an individual receiving services from the division to the local substance abuse authority or other private or public resource for a court-ordered drug screening test; and

~~(4n)~~ (o) perform other duties and functions required by law.

(2) (a) In carrying out the requirements of Subsection (1)(f), the division shall:

(i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions[,] to develop and administer a broad range of services and support;

(ii) take the initiative in all matters involving the protection of abused or neglected children, if adequate provisions have not been made or are not likely to be made; and

(iii) make expenditures necessary for the care and protection of the children described in this Subsection (2)(a), within the division's budget.

(b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (1)(n), the court shall order the individual to pay all costs of the tests unless:

(i) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(ii) the individual is a participant in a drug court; or

(iii) the court finds that the individual is impecunious.

(3) Except to the extent provided by rule, the division is not responsible for investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

(4) The division may not require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo.

Section 5. Section 62A-4a-412 is amended to read:

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made ~~pursuant to~~ under this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63G, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a minor who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a minor who is the subject of a report;

(e) except as provided in Subsection 63G-2-202(10), a subject of the report, the natural parents of the child, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Board of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

(k) any person identified in the report as a perpetrator or possible perpetrator of abuse or neglect, after being advised of the screening prohibition in Subsection (2);

(l) except as provided in Subsection 63G-2-202(10), a person filing a petition for a child protective order on behalf of a child who is the subject of the report; ~~and~~

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Sections 78B-6-128 and 78B-6-130~~[-]~~; or

(n) an Indian tribe to:

(i) certify or license a foster home;

(ii) render services to a subject of a report; or

(iii) investigate an allegation of abuse, neglect, or dependency.

(2) (a) A person, unless listed in Subsection (1), may not request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) (a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(b) Notwithstanding any other provision of law, excluding Section 78A-6-317, but including this chapter and Title 63G, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in its possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:

- (i) identify the referent;
- (ii) impede a criminal investigation; or
- (iii) endanger a person's safety.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

(6) A child-placing agency or person who receives a report in connection with a preplacement adoptive evaluation pursuant to Sections 78B-6-128 and 78B-6-130:

(a) may provide this report to the person who is the subject of the report; and

(b) may provide this report to a person who is performing a preplacement adoptive evaluation in accordance with the requirement of Sections 78B-6-128 and 78B-6-130, or to a licensed child-placing agency or to an attorney seeking to facilitate an adoption.

Section 6. Section 62A-4a-1003 is amended to read:

62A-4a-1003. Management Information System -- Requirements -- Contents -- Purpose -- Access.

(1) (a) The division shall develop and implement a Management Information System that meets the requirements of this section and the requirements of federal law and regulation.

(b) The information and records contained in the Management Information System:

(i) are protected records under Title 63G, Chapter 2, Government Records Access and Management Act; and

(ii) except as provided in Subsections (1)(c) and (d), are available only to a person with statutory authorization under Title 63G, Chapter 2, Government Records Access and Management Act, to review the information and records described in this Subsection (1)(b).

(c) Notwithstanding Subsection (1)(b)(ii), the information and records described in Subsection (1)(b) are available to a person:

(i) as provided under Subsection (6) or Section 62A-4a-1006; or

(ii) who has specific statutory authorization to access the information or records for the purpose of assisting the state with state and federal requirements to maintain information solely for the

purpose of protecting minors and providing services to families in need.

(d) Notwithstanding Subsection (1)(b)(ii), the information and records described in Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act, be provided by the division:

(i) to comply with abuse and neglect registry checks requested by other states; and

(ii) to the United States Department of Health and Human Services for purposes of maintaining an electronic national registry of substantiated cases of abuse and neglect.

(2) With regard to all child welfare cases, the Management Information System shall provide each caseworker and the department's office of licensing, exclusively for the purposes of foster parent licensure and monitoring, with a complete history of each child in that worker's caseload, including:

(a) a record of all past action taken by the division with regard to that child and the child's siblings;

(b) the complete case history and all reports and information in the control or keeping of the division regarding that child and the child's siblings;

(c) the number of times the child has been in the custody of the division;

(d) the cumulative period of time the child has been in the custody of the division;

(e) a record of all reports of abuse or neglect received by the division with regard to that child's parent, parents, or guardian including:

(i) for each report, documentation of the:

(A) latest status; or

(B) final outcome or determination; and

(ii) information that indicates whether each report was found to be:

(A) supported;

(B) unsupported;

(C) substantiated by a juvenile court;

(D) unsubstantiated by a juvenile court; or

(E) without merit;

(f) the number of times the child's parent or parents failed any child and family plan; and

(g) the number of different caseworkers who have been assigned to that child in the past.

(3) The division's Management Information System shall:

(a) contain all key elements of each family's current child and family plan, including:

(i) the dates and number of times the plan has been administratively or judicially reviewed;

(ii) the number of times the parent or parents have failed that child and family plan; and

(iii) the exact length of time the child and family plan has been in effect; and

(b) alert caseworkers regarding deadlines for completion of and compliance with policy, including child and family plans.

(4) With regard to all child protective services cases, the Management Information System shall:

(a) monitor the compliance of each case with:

(i) division rule and policy;

(ii) state law; and

(iii) federal law and regulation; and

(b) include the age and date of birth of the alleged perpetrator at the time the abuse or neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of the alleged perpetrator.

(5) Except as provided in Subsection (6) regarding contract providers and Section 62A-4a-1006 regarding limited access to the Licensing Information System, all information contained in the division's Management Information System is available to the department, upon the approval of the executive director, on a need-to-know basis.

(6) (a) Subject to this Subsection (6), the division may allow ~~its~~ the division's contract providers, court clerks designated by the Administrative Office of the Courts, [and] the Office of Guardian Ad Litem, or an Indian tribe to have limited access to the Management Information System.

(b) A division contract provider or Indian tribe has access only to information about a person who is currently receiving services from that specific contract provider or Indian tribe.

(c) (i) Designated court clerks may only have access to information necessary to comply with Subsection 78B-7-202(2).

(ii) The Office of Guardian Ad Litem may access only the information that:

(A) relates to children and families where the Office of Guardian Ad Litem is appointed by a court to represent the interests of the children; and

(B) except as provided in Subsection (6)(d), is entered into the Management Information System on or after July 1, 2004.

(d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of Guardian Ad Litem shall have access to all abuse and neglect referrals about children and families where the office has been appointed by a court to represent the interests of the children, regardless of the date that the information is entered into the Management Information System.

(e) Each contract provider ~~and~~, designated representative of the Office of Guardian Ad Litem, and Indian tribe who requests access to information contained in the Management Information System shall:

(i) take all necessary precautions to safeguard the security of the information contained in the Management Information System;

(ii) train its employees regarding:

(A) requirements for protecting the information contained in the Management Information System as required by this chapter and under Title 63G, Chapter 2, Government Records Access and Management Act; and

(B) the criminal penalties under Sections 62A-4a-412 and 63G-2-801 for improper release of information; and

(iii) monitor its employees to ensure that they protect the information contained in the Management Information System as required by law.

(f) The division shall take reasonable precautions to ensure that its contract providers comply with the requirements of this Subsection (6).

(7) The division shall take all necessary precautions, including password protection and other appropriate and available technological techniques, to prevent unauthorized access to or release of information contained in the Management Information System.

CHAPTER 210**S. B. 122**

Passed March 7, 2017
 Approved March 21, 2017
 Effective May 9, 2017

**WILDLAND FIRE SUPPRESSION
 FUND AMENDMENTS**

Chief Sponsor: Evan J. Vickers
 House Sponsor: Joel K. Briscoe

LONG TITLE**General Description:**

This bill modifies provisions relating to the Wildland Fire Suppression Fund.

Highlighted Provisions:

This bill:

- ▶ clarifies the amount of General Fund revenue surplus that is transferred to the Wildland Fire Suppression Fund; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63J-1-314, as last amended by Laws of Utah 2016, Chapters 134 and 183

65A-8-204, as last amended by Laws of Utah 2016, Chapters 174 and 183

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

Section 1. Section 63J-1-314 is amended to read:

63J-1-314. Deposits related to the Wildland Fire Suppression Fund and the Disaster Recovery Funding Act.

(1) As used in this section, "operating deficit" means that, at the end of the fiscal year, the unassigned fund balance in the General Fund is less than zero.

(2) Except as provided under Subsections (3) and (4), at the end of each fiscal year, the Division of Finance shall, after the transfer of General Fund revenue surplus has been made to the Medicaid Growth Reduction and Budget Stabilization Account, as provided in Section 63J-1-315, and the General Fund Budget Reserve Account, as provided in Section 63J-1-312, transfer:

(a) [~~\$4,000,000~~] to the Wildland Fire Suppression Fund created in Section 65A-8-204, ~~not to exceed the cap described in Subsection 65A-8-204(5)~~ an amount equal to the lesser of:

(i) \$4,000,000; or

(ii) an amount necessary to make the balance in the Wildland Fire Suppression Fund equal to \$12,000,000; and

(b) an amount into the State Disaster Recovery Restricted Account, created in Section 53-2a-603,

from the General Fund revenue surplus as defined in Section 63J-1-312, calculated by:

(i) determining the amount of General Fund revenue surplus after the transfer to the Medicaid Growth Reduction and Budget Stabilization Account under Section 63J-1-315, the General Fund Budget Reserve Account under Section 63J-1-312, and the transfer to the Wildland Fire Suppression Fund as described in Subsection (2)(a);

(ii) calculating an amount equal to the lesser of:

(A) 25% of the amount determined under Subsection [~~(2)(b)(ii)~~] (2)(b)(i); or

(B) 6% of the total of the General Fund appropriation amount for the fiscal year in which the surplus occurs; and

(iii) adding to the amount calculated under Subsection (2)(b)(ii) an amount equal to the lesser of:

(A) 25% more of the amount described in Subsection (2)(b)(i); or

(B) the amount necessary to replace, in accordance with this Subsection (2)(b)(iii), any amount appropriated from the State Disaster Recovery Restricted Account within 10 fiscal years before the fiscal year in which the surplus occurs if:

(I) a surplus exists; and

(II) the Legislature appropriates money from the State Disaster Recovery Restricted Account that is not replaced by appropriation or as provided in this Subsection (2)(b)(iii).

(3) (a) Notwithstanding Subsection (2), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists, the division shall reduce the transfer to the State Disaster Recovery Restricted Account by ~~the~~ an amount necessary to eliminate the operating deficit, up to the full amount of the transfer.

(b) If, after reducing the transfer to the State Disaster Recovery Account to zero under Subsection (3)(a), the Division of Finance determines that an operating deficit still exists, the division shall reduce the transfer to the Wildland Fire Suppression Fund by an amount necessary to eliminate the operating deficit, up to the full amount of the transfer.

(4) Notwithstanding Subsection (2):

(a) for the period beginning July 1, 2015, and ending June 30, 2020, the Division of Finance shall transfer to the Local Government Emergency Response Loan Fund 25% of the amount to be transferred into the State Disaster Recovery Restricted Account as provided in Subsection (2)(b)(ii); and

(b) on and after July 1, 2020, the Division of Finance shall transfer to the Local Government Emergency Response Loan Fund 10% of the amount to be transferred into the State Disaster Recovery Restricted Account as provided in Subsection (2)(b).

Section 2. Section 65A-8-204 is amended to read:

65A-8-204. Wildland Fire Suppression Fund created.

(1) There is created an expendable special revenue fund known as the "Wildland Fire Suppression Fund."

(2) The fund shall be administered by the division to pay wildfire suppression costs on eligible lands, including for an eligible entity that has entered into a cooperative agreement, as described in Section 65A-8-203.

(3) The contents of the fund shall include:

(a) interest and earnings from the investment of fund money;

(b) money appropriated by the Legislature;

(c) costs recovered from successful investigations;

(d) federal funds received by the division for wildfire management costs;

(e) suppression costs billed to an eligible entity that does not participate in a cooperative agreement;

(f) suppression costs paid to the division by another state agency;

(g) costs recovered from settlements and civil actions related to wildfire suppression;

(h) restitution payments ordered by a court following a criminal adjudication;

(i) the balance of the fund as of July 1, 2016;

(j) money deposited by the Division of Finance, pursuant to Section 59-21-2; and

(k) money transferred by the Division of Finance, pursuant to Section ~~[63J-1-312]~~ 63J-1-314.

(4) Fund money shall be invested by the state treasurer with the earnings and interest accruing to the fund.

~~[(5) A maximum level of \$12,000,000 is established for the fund.]~~

CHAPTER 211**S. B. 123**

Passed March 8, 2017

Approved March 21, 2017

Effective May 9, 2017

**STATE DEVELOPMENTAL
CENTER DENTAL CLINIC**Chief Sponsor: Margaret Dayton
House Sponsor: Michael S. Kennedy**LONG TITLE****General Description:**

This bill addresses dental care services provided to individuals with intellectual disabilities.

Highlighted Provisions:

This bill:

- ▶ requires the superintendent of the developmental center to report to the Health and Human Services Interim Committee on:
 - the availability of dental services for individuals with intellectual disabilities;
 - the use of funds appropriated for the dental care of individuals with intellectual disabilities; and
 - the progress toward the establishment of a financially independent dental clinic for individuals with intellectual disabilities; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2017:

- ▶ to the Department of Human Services -- Services for People with Disabilities -- Utah State Developmental Center as an ongoing appropriation:
 - from the General Fund, \$500,000.

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-5-201, as last amended by Laws of Utah 2011, Chapter 366

ENACTS:

62A-5-211, Utah Code Annotated 1953

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

Section 1. Section 62A-5-201 is amended to read:**62A-5-201. Utah State Developmental Center.**

(1) The intermediate care facility for people with an intellectual disability located in American Fork City, Utah County, shall be known as the "Utah State Developmental Center."

(2) Within appropriations authorized by the Legislature, the role and function of the developmental center is to:

(a) provide care, services, and treatment to persons described in Subsection (3); and

(b) provide the following services and support to persons with disabilities who do not reside at the developmental center:

(i) psychiatric testing;

(ii) specialized medical [~~and dental~~] treatment and evaluation;

(iii) specialized dental treatment and evaluation;

~~(iii)~~ (iv) family and client special intervention;

~~(iv)~~ (v) crisis management;

~~(v)~~ (vi) occupational, physical, speech, and audiology services; and

~~(vi)~~ (vii) professional services, such as education, evaluation, and consultation, for families, public organizations, providers of community and family support services, and courts.

(3) Except as provided in Subsection (6), within appropriations authorized by the Legislature, and notwithstanding the provisions of Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, only the following persons may be residents of, be admitted to, or receive care, services, or treatment at the developmental center:

(a) persons with an intellectual disability;

(b) persons who receive services and supports under Subsection (2)(b); and

(c) persons who require at least one of the following services from the developmental center:

(i) continuous medical care;

(ii) intervention for conduct that is dangerous to self or others; or

(iii) temporary residential assessment and evaluation.

(4) (a) Except as provided in Subsection (6), the division shall, in the division's discretion:

(i) place residents from the developmental center into appropriate less restrictive placements; and

(ii) determine each year the number to be placed based upon the individual assessed needs of the residents.

(b) The division shall confer with parents and guardians to ensure the most appropriate placement for each resident.

(5) Except as provided in Subsection (7), within appropriations authorized by the Legislature, and notwithstanding the provisions of Subsection (3) and Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, a person who is under 18 years of age may be a resident of, admitted to, or receive care, services, or treatment at the developmental center only if the director certifies in writing that the developmental center is the most appropriate placement for that person.

(6) (a) If the division determines, pursuant to Utah's Community Supports Waiver [~~CSW~~] for

Individuals with Intellectual Disabilities and Other Related Conditions, that a person who otherwise qualifies for placement in an intermediate care facility for people with an intellectual disability should receive services in a home or community-based setting, the division shall:

(i) if the person does not have a legal representative or legal guardian:

(A) inform the person of any feasible alternatives under the waiver; and

(B) give the person the choice of being placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting; or

(ii) if the person has a legal representative or legal guardian:

(A) inform the legal representative or legal guardian of any feasible alternatives under the waiver; and

(B) give the legal representative or legal guardian the choice of having the person placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting.

(b) If a person chooses, under Subsection (6)(a)(i), to be placed in an intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:

(i) ask the person whether the person prefers to be placed in the developmental center rather than a private intermediate care facility for people with an intellectual disability; and

(ii) if the person expresses a preference to be placed in the developmental center:

(A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private intermediate care facility for people with an intellectual disability; or

(B) (I) strongly consider the person's preference to be placed in the developmental center if the cost of placing the person in the developmental center exceeds the cost of placing the person in a private intermediate care facility for people with an intellectual disability; and

(II) place the person in the developmental center or a private intermediate care facility for people with an intellectual disability.

(c) If a legal representative or legal guardian chooses, under Subsection (6)(a)(ii), to have the person placed in an intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:

(i) ask the legal representative or legal guardian whether the legal representative or legal guardian prefers to have the person placed in the

developmental center rather than a private intermediate care facility for people with an intellectual disability; and

(ii) if the legal representative or legal guardian expresses a preference to have the person placed in the developmental center:

(A) place the person in the developmental center if the cost of placing the person in the developmental center is equal to, or less than, the cost of placing the person in a private intermediate care facility for people with an intellectual disability; or

(B) (I) strongly consider the legal representative's or legal guardian's preference for the person's placement if the cost of placing the person in the developmental center exceeds the cost of placing the person in a private intermediate care facility for people with an intellectual disability; and

(II) place the person in the developmental center or a private intermediate care facility for people with an intellectual disability.

(7) The certification described in Subsection (5) is not required for a person who receives services and support under Subsection (2)(b).

Section 2. Section 62A-5-211 is enacted to read:

62A-5-211. Dental services reporting.

The superintendent of the developmental center shall provide to the Health and Human Services Interim Committee an annual report that contains:

(1) a statewide assessment of resources that provide dental services for individuals with intellectual disabilities;

(2) an accounting of the funds appropriated to provide specialized dental treatment and evaluation under Subsection 62A-5-201(2)(b)(iii), including the number of individuals served and the services provided; and

(3) the progress toward the establishment of a financially independent dental clinic that:

(a) has a full-time dentist who has specialized training to treat an individual with an intellectual disability; and

(b) has the facility, equipment, and staff necessary to legally and safely perform dental procedures and examinations and to administer general anesthesia.

Section 3. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To the Department of Human Services -- Services for People with Disabilities

From General Fund \$500,000

Schedule of Programs:

Utah State Developmental Center \$500,000

The Legislature intends that:

(1) this appropriation be used to provide specialized dental treatment and evaluation under Subsection 62A-5-201(2)(b)(iii);

(2) this appropriation be ongoing until the Health and Human Services Interim Committee certifies that a financially independent dental clinic described in Subsection 62A-5-211(3) is established;

(3) under Section 63J-1-603, appropriations provided under this section not lapse; and (4) the use of any nonlapsing funds be limited to the purpose described in Subsection (1).

CHAPTER 212**S. B. 125**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

AUTHORIZATION TO MODIFY CHARTER SCHOOL CHARTER AGREEMENTS

Chief Sponsor: Howard A. Stephenson

House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill amends provisions related to charter school enrollment preferences.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to charter school enrollment preferences;
- ▶ amends provisions related to the modification of a charter agreement; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-1a-506, as last amended by Laws of Utah 2014, Chapters 291, 363, and 406

53A-1a-508, as last amended by Laws of Utah 2015, Chapter 258

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

Section 1. Section 53A-1a-506 is amended to read:**53A-1a-506. Eligible students.**

(1) As used in this section:

(a) “At capacity” means operating above the school’s open enrollment threshold.

(~~(a)~~) (b) “District school” means a public school under the control of a local school board elected pursuant to Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(c) “Open enrollment threshold” means the same as that term is defined in Section 53A-2-206.5.

(~~(b)~~) (d) “Refugee” means a person who is eligible to receive benefits and services from the federal Office of Refugee Resettlement.

(e) “School of residence” means the same as that term is defined in Section 53A-2-206.5.

(2) All resident students of the state qualify for admission to a charter school, subject to the limitations set forth in this section and Section 53A-1a-506.5.

(3) (a) A charter school shall enroll an eligible student who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or the charter school.

(b) If the number of applications exceeds the capacity of a program, class, grade level, or the charter school, the charter school shall select students ~~[shall be selected]~~ on a random basis, except as provided in Subsections (4) through (8).

(4) A charter school may give an enrollment preference to:

(a) a child or grandchild of an individual who has actively participated in the development of the charter school;

(b) a child or grandchild of a member of the charter school governing board;

(c) a sibling of a student presently enrolled in the charter school;

(d) a child of an employee of the charter school;

(e) ~~[students]~~ a student articulating between charter schools offering similar programs that are governed by the same charter school governing board;

(f) ~~[students]~~ a student articulating from one charter school to another pursuant to an articulation agreement between the charter schools that is approved by the State Charter School Board; or

~~[(g) students who reside within:]~~

~~[(i) the school district in which the charter school is located;]~~

~~[(ii) the municipality in which the charter school is located; or]~~

~~[(iii) a two-mile radius of the charter school.]~~

(g) a student who resides within a two-mile radius of the charter school and whose school of residence is at capacity.

(5) (a) Except as provided in Subsection (5)(b), and notwithstanding Subsection (4)(g), a charter school that is approved by the State Board of Education after May 13, 2014, and is located in a high growth area as defined in Section 53A-1a-502.5 shall give an enrollment preference to ~~[students]~~ a student who ~~[reside]~~ resides within a two-mile radius of the charter school.

(b) The requirement to give an enrollment preference under Subsection (5)(a) does not apply to a charter school that was approved without a high priority status pursuant to Subsection 53A-1a-502.5(~~(6)~~)(7)(b).

(6) If a district school converts to charter status, the charter school shall give an enrollment preference to students who would have otherwise attended it as a district school.

(7) (a) A charter school whose mission is to enhance learning opportunities for refugees or children of refugee families may give an enrollment preference to refugees or children of refugee families.

(b) A charter school whose mission is to enhance learning opportunities for English language learners may give an enrollment preference to English language learners.

(8) A charter school may weight [its] the charter school's lottery to give a slightly better chance of admission to educationally disadvantaged students, including:

- (a) low-income students;
- (b) students with disabilities;
- (c) English language learners;
- (d) migrant students;
- (e) neglected or delinquent students; and
- (f) homeless students.

(9) A charter school may not discriminate in [its] the charter school's admission policies or practices on the same basis as other public schools may not discriminate in [their] admission policies and practices.

Section 2. Section 53A-1a-508 is amended to read:

53A-1a-508. Charter agreement -- Content -- Modification.

(1) A charter agreement:

(a) is a contract between the charter school applicant and the charter school authorizer;

(b) shall describe the rights and responsibilities of each party; and

(c) shall allow for the operation of the applicant's proposed charter school.

(2) A charter agreement shall include:

(a) the name of:

(i) the charter school; and

(ii) the charter school applicant;

(b) the mission statement and purpose of the charter school;

(c) the charter school's opening date;

(d) the grade levels and number of students the charter school will serve;

(e) a description of the structure of the charter [school's] school governing board, including:

(i) the number of board members;

(ii) how members of the board are appointed; and

(iii) board members' terms of office;

(f) assurances that:

(i) the charter school governing board [shall] will comply with:

(A) the charter school's bylaws;

(B) the charter school's articles of incorporation; and

(C) applicable federal law, state law, and State Board of Education rules;

(ii) the charter school governing board will meet all reporting requirements described in Section 53A-1a-507; and

(iii) except as provided in Title 53A, Chapter 20b, Part 2, Charter School Credit Enhancement Program, neither the authorizer nor the state, including an agency of the state, is liable for the debts or financial obligations of the charter school or a person who operates the charter school;

(g) which administrative rules the State Board of Education will waive for the charter school;

(h) minimum financial standards for operating the charter school;

(i) minimum standards for student achievement; and

(j) signatures of the charter school authorizer and the charter [school's] school governing board members.

(3) [A] (a) Except as provided in Subsection (3)(b), a charter agreement may not be modified except by mutual agreement between the charter school authorizer and the charter school governing board [of the charter school].

(b) A charter school governing board may modify the charter school's charter agreement without the mutual agreement described in Subsection (3)(a) to include an enrollment preference described in Subsection 53A-1a-506(4)(g).

CHAPTER 213**S. B. 161**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

BULLYING AND HAZING AMENDMENTS

Chief Sponsor: Luz Escamilla

House Sponsor: Steve Eliason

LONG TITLE**General Description:**

This bill modifies provisions related to bullying and hazing of school employees and students.

Highlighted Provisions:

This bill:

- ▶ amends definitions related to bullying and hazing;
- ▶ requires a school board to update the school board's policy regarding bullying, cyber-bullying, hazing, and retaliation by September 1, 2018;
- ▶ requires employees, students, and parents to sign a statement annually acknowledging receipt of the school board's policy;
- ▶ requires the State Board of Education to require a school board to report on provisions related to bullying, cyber-bullying, hazing, and retaliation;
- ▶ requires the State Board of Education to make rules describing standards for training regarding bullying, cyber-bullying, hazing, and retaliation;
- ▶ requires that the training of school employees related to bullying, cyber-bullying, hazing, and retaliation meets standards described in State Board of Education rule; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

- 53A-11a-102, as last amended by Laws of Utah 2011, Chapter 235
- 53A-11a-201, as last amended by Laws of Utah 2011, Chapter 235
- 53A-11a-202, as last amended by Laws of Utah 2011, Chapter 235
- 53A-11a-203, as last amended by Laws of Utah 2016, Chapter 221
- 53A-11a-301, as last amended by Laws of Utah 2013, Chapter 335
- 53A-11a-302, as last amended by Laws of Utah 2013, Chapter 335
- 53A-11a-401, as last amended by Laws of Utah 2011, Chapter 235
- 53A-11a-402, as last amended by Laws of Utah 2011, Chapter 235

Utah Code Sections Affected by Coordination Clause:

- 53A-11a-401, as last amended by Laws of Utah 2011, Chapter 235

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

Section 1. Section 53A-11a-102 is amended to read:**53A-11a-102. Definitions.**

As used in this chapter:

~~[(1) (a) "Bullying" means intentionally or knowingly committing an act that:]~~

~~[(i) (A) endangers the physical health or safety of a school employee or student;]~~

~~[(B) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;]~~

~~[(C) involves consumption of any food, liquor, drug, or other substance;]~~

~~[(D) involves other physical activity that endangers the physical health and safety of a school employee or student; or]~~

~~[(E) involves physically obstructing a school employee's or student's freedom to move; and]~~

~~[(ii) is done for the purpose of placing a school employee or student in fear of;]~~

~~[(A) physical harm to the school employee or student; or]~~

~~[(B) harm to property of the school employee or student.]~~

~~[(b) The conduct described in Subsection (1)(a) constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.]~~

(1) "Bullying" means a school employee or student intentionally committing a written, verbal, or physical act against a school employee or student that a reasonable person under the circumstances should know or reasonably foresee will have the effect of:

(a) causing physical or emotional harm to the school employee or student;

(b) causing damage to the school employee's or student's property;

(c) placing the school employee or student in reasonable fear of:

(i) harm to the school employee's or student's physical or emotional well-being; or

(ii) damage to the school employee's or student's property;

(d) creating a hostile, threatening, humiliating, or abusive educational environment due to:

(i) the pervasiveness, persistence, or severity of the actions; or

(ii) a power differential between the bully and the target; or

(e) substantially interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities, or benefits.

(2) “Communication” means the conveyance of a message, whether verbal, written, or electronic.

(3) “Cyber-bullying” means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

~~[(4)]~~ “Harassment” means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual.

~~[(5)]~~ (4) (a) “Hazing” means a school employee or student intentionally ~~or~~, knowingly, or recklessly committing an act or causing another individual to commit an act toward a school employee or student that:

(i) (A) endangers the mental or physical health or safety of a school employee or student;

(B) involves any brutality of a physical nature ~~such as~~, including whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(C) involves consumption of any food, ~~liquor~~ alcoholic product, drug, or other substance; ~~(D) involves~~ or other physical activity that endangers the mental or physical health and safety of a school employee or student; or

~~[(E)]~~ (D) involves ~~physically obstructing a school employee’s or student’s freedom to move~~ any activity that would subject a school employee or student to extreme mental stress, such as sleep deprivation, extended isolation from social contact, or conduct that subjects a school employee or student to extreme embarrassment, shame, or humiliation; and

(ii) (A) is ~~done~~ committed for the purpose of initiation ~~or~~ into, admission into, affiliation with, holding office in, or as a condition for, membership ~~or acceptance, or continued membership or acceptance,~~ in ~~any~~ a school or school sponsored team, organization, program, club, or event; or

~~[(B)]~~ if the person committing the act against a school employee or student knew that the school employee or student is a member of, or candidate for, membership with a school, or school sponsored team, organization, program, or event to which the person committing the act belongs to or participates in.

(B) is directed toward a school employee or student whom the individual who commits the act

knows, at the time the act is committed, is a member of, or candidate for membership in, a school or school sponsored team, organization, program, club, or event in which the individual who commits the act also participates.

(b) The conduct described in Subsection ~~[(5)]~~ (4)(a) constitutes hazing, regardless of whether the ~~person~~ school employee or student against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

~~[(6)]~~ (5) “Policy” means a bullying, cyber-bullying, retaliation, and hazing policy described in Section 53A-11a-301.

~~[(7)]~~ (6) “Retaliate” means an act or communication intended:

(a) as retribution against a person for reporting bullying or hazing; or

(b) to improperly influence the investigation of, or the response to, a report of bullying or hazing.

~~[(8)]~~ (7) “School” means ~~any~~ a public elementary or secondary school ~~or~~, including a charter school.

~~[(9)]~~ (8) “School board” means:

(a) a local school board; or

(b) a ~~local~~ charter school governing board.

~~[(10)]~~ (9) “School employee” means an individual working in the individual’s official capacity as:

(a) a school ~~teachers~~ teacher;

(b) a school staff member;

(c) a school ~~administrators; and~~ administrator; or

(d) ~~all others~~ an individual:

(i) who is employed, directly or indirectly, by ~~the~~ a school, school board, or school district; and

(ii) who works on a school campus.

Section 2. Section 53A-11a-201 is amended to read:

53A-11a-201. Bullying, hazing, and cyber-bullying prohibited.

(1) ~~[(No)]~~ A school employee or student may not engage in bullying ~~or harassing~~ a school employee or student:

(a) on school property;

(b) at a school related or sponsored event;

(c) on a school bus;

(d) at a school bus stop; or

(e) while the school employee or student is traveling to or from a location or event described in Subsections (1)(a) through (d).

(2) ~~[(No)]~~ A school employee or student may not engage in hazing or cyber-bullying a school employee or student at any time or in any location.

Section 3. Section 53A-11a-202 is amended to read:

53A-11a-202. Retaliation and making a false allegation prohibited.

(1) ~~[No]~~ A school employee or student may not engage in retaliation against:

- (a) a school employee;
- (b) a student; or

(c) an investigator for, or a witness of, an alleged incident of bullying, cyber-bullying, ~~[harassment,]~~ hazing, or retaliation.

(2) ~~[No]~~ A school employee or student may not make a false allegation of bullying, cyber-bullying, ~~[harassment,]~~ hazing, or retaliation against a school employee or student.

Section 4. Section 53A-11a-203 is amended to read:

53A-11a-203. Parental notification of certain incidents and threats required.

(1) For purposes of this section, "parent" includes a student's guardian.

(2) A school shall:

(a) notify a parent if the parent's student threatens to commit suicide; or

(b) notify the parents of each student involved in an incident of bullying, cyber-bullying, ~~[harassment,]~~ hazing, or retaliation~~;~~ of the incident involving each parent's student.

(3) (a) If a school notifies a parent of an incident or threat required to be reported under Subsection (2), the school shall produce and maintain a record that verifies that the parent was notified of the incident or threat.

(b) A school shall maintain a record described in Subsection (3)(a) in accordance with the requirements of:

(i) Chapter 1, Part 14, Student Data Protection Act;

(ii) Sections 53A-13-301 and 53A-13-302;

(iii) ~~[Federal]~~ the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g; and

(iv) 34 C.F.R. Part 99.

(4) A local school board or charter school governing board shall adopt a policy regarding the process for:

(a) notifying a parent as required in Subsection (2); and

(b) producing and retaining a record that verifies that a parent was notified of an incident or threat as required in Subsection (3).

(5) At the request of a parent, a school may provide information and make recommendations related to an incident or threat described in Subsection (2).

(6) A school shall:

(a) provide a student a copy of a record maintained in accordance with this section that

relates to the student if the student requests a copy of the record; and

(b) expunge a record maintained in accordance with this section that relates to a student if the student:

- (i) has graduated from high school; and
- (ii) requests the record be expunged.

Section 5. Section 53A-11a-301 is amended to read:

53A-11a-301. Bullying, cyber-bullying, hazing, and retaliation policy.

(1) On or before September 1, ~~[2013, each]~~ 2018, a school board shall update the school ~~board's~~ bullying, cyber-bullying, ~~[harassment,]~~ hazing, and retaliation policy consistent with this chapter.

(2) ~~[The]~~ A policy shall:

(a) be developed only with input from:

- (i) students;
- (ii) parents;
- (iii) teachers;
- (iv) school administrators;
- (v) school staff; or
- (vi) local law enforcement agencies; and

(b) provide protection to a student, regardless of the student's legal status.

(3) ~~[The]~~ A policy shall include the following components:

(a) definitions of bullying, cyber-bullying, ~~[harassment,]~~ and hazing that are consistent with this chapter;

(b) language prohibiting bullying, cyber-bullying, ~~[harassment,]~~ and hazing;

(c) language prohibiting retaliation against an individual who reports conduct that is prohibited under this chapter;

(d) language prohibiting making a false report of bullying, cyber-bullying, ~~[harassment,]~~ hazing, or retaliation; ~~[and]~~

(e) as required in Section 53A-11a-203, parental notification of:

(i) a student's threat to commit suicide; and

(ii) an incident of bullying, cyber-bullying, ~~[harassment,]~~ hazing, or retaliation involving the parent's student~~[-]~~;

(f) an action plan to address a reported incident of bullying, cyber-bullying, hazing, or retaliation; and

(g) a requirement for a signed statement annually, indicating that the individual signing the statement has received the school board's policy, from each:

(i) school employee;

(ii) student who is at least eight years old; and

(iii) parent or guardian of a student enrolled in the charter school or school district.

(4) A copy of [the] a policy shall be:

(a) included in student conduct handbooks and employee handbooks[-]; and

(b) provided to a parent or a guardian of a student enrolled in the charter school or school district.

(5) A policy may not permit formal disciplinary action that is based solely on an anonymous report of bullying, cyber-bullying, [harassment,] hazing, or retaliation.

(6) Nothing in this chapter is intended to infringe upon the right of a school employee or student to exercise their right of free speech.

Section 6. Section 53A-11a-302 is amended to read:

53A-11a-302. Model policy and State Board of Education duties.

(1) On or before September 1, ~~2013~~ 2018, the State Board of Education shall:

~~[(1)]~~ (a) update the State Board of Education's model policy on bullying, cyber-bullying, [harassment,] hazing, and retaliation; and

~~[(2)]~~ (b) post the model policy described in Subsection (1)(a) on the State Board of Education's website.

(2) The State Board of Education shall require a school board to report annually to the State Board of Education on:

(a) the school board's policy, including implementation of the signed statement requirement described in Subsection 53A-11a-301(3)(g);

(b) the school board's training of school employees relating to bullying, cyber-bullying, hazing, and retaliation described in Section 53A-11a-401; and

(c) other information related to this chapter, as determined by the State Board of Education.

Section 7. Section 53A-11a-401 is amended to read:

53A-11a-401. Training, education, and prevention -- Standards.

(1) A school board shall include in the training of a school employee[;] training regarding bullying, cyber-bullying, [harassment,] hazing, and retaliation that meets the standards described in Subsection (4).

(2) To the extent that state or federal funding is available for this purpose, school boards are encouraged to implement programs or initiatives, in addition to the training described in Subsection (1), to provide for training and education regarding, and the prevention of, bullying, hazing, and retaliation.

(3) The programs or initiatives described in Subsection (2) may involve:

(a) the establishment of a bullying task force; or

(b) the involvement of school employees, students, or law enforcement.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall makes rules that establish standards for high quality training related to bullying, cyber-bullying, hazing, and retaliation.

Section 8. Section 53A-11a-402 is amended to read:

53A-11a-402. Other forms of legal redress.

(1) Nothing in this chapter prohibits a victim of bullying, cyber-bullying, [harassment,] hazing, or retaliation from seeking legal redress under any other provisions of civil or criminal law.

(2) This section does not create or alter tort liability.

Section 9. Coordinating S.B. 161 with H.B. 62 -- Substantive and technical amendments.

If this S.B. 161 and H.B. 62, Educator Rights Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by modifying Subsection 53A-11a-401(4) to read:

“(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall makes rules that establish standards for high quality training related to bullying, cyber-bullying, hazing, abusive conduct, and retaliation.”.

CHAPTER 214**S. B. 168**

Passed March 6, 2017

Approved March 21, 2017

Effective May 9, 2017

**CAREER AND COLLEGE READINESS
MATHEMATICS COMPETENCY REVISIONS**

Chief Sponsor: Howard A. Stephenson

House Sponsor: Bradley G. Last

LONG TITLE**General Description:**

This bill amends student requirements to demonstrate mathematics competency.

Highlighted Provisions:

This bill:

- ▶ requires the State Board of Regents to select at least two tests for college-level math placement.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-1-1302, as enacted by Laws of Utah 2015, Chapter 443

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

Section 1. Section 53A-1-1302 is amended to read:**53A-1-1302. Career and college readiness mathematics competency standards.**

(1) As used in this section, “qualifying score” means a score established as described in Subsection (4), that, if met by a student, qualifies the student to receive college credit for a mathematics course that satisfies the state system of higher education quantitative literacy requirement.

(2) The State Board of Education shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that:

(a) (i) establish the mathematics competency standards described in Subsection (3) as a graduation requirement beginning with the 2016-17 school year; and

(ii) include the qualifying scores described in Subsection (4); and

(b) establish systematic reporting of college and career ready mathematics achievement.

(3) In addition to other graduation requirements established by the State Board of Education, a student shall fulfill one of the following requirements to demonstrate mathematics competency that supports the student’s future college and career goals as outlined in the student’s college and career plan:

(a) for a student pursuing a college degree after graduation:

(i) receive a score that at least meets the qualifying score for:

(A) an Advanced Placement calculus or statistics exam;

(B) an International Baccalaureate higher level mathematics exam;

(C) ~~the ACCUPLACER College-Level Math test or an equivalent~~ a college-level math placement test described in Subsection (5);

(D) a College Level Examination Program precalculus or calculus exam; or

(E) the ACT Mathematics Test; or

(ii) receive at least a “C” grade in a concurrent enrollment mathematics course that satisfies the state system of higher education quantitative literacy requirement;

(b) for a non college degree-seeking student, the student shall complete appropriate math competencies for the student’s career goals as described in the student’s college and career plan;

(c) for a student with an individualized education program prepared in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., the student shall meet the mathematics standards described in the student’s individualized education program; or

(d) for a senior student with special circumstances as described in State Board of Education rule, the student shall fulfill a requirement associated with the student’s special circumstances, as established in State Board of Education rule.

(4) The State Board of Regents shall, in consultation with the State Board of Education, determine qualifying scores for the tests and exams described in Subsection (3)(a)(i).

(5) The State Board of Regents, established in Section 53B-1-103, ~~may~~ shall make a policy to select at least ~~one test the State Board of Regents finds is equivalent to the ACCUPLACER College-Level Math test~~ two tests for college-level math placement.

(6) The State Board of Regents shall, in consultation with the State Board of Education, make policies to:

(a) develop mechanisms for a student who completes a math competency requirement described in Subsection (3)(a) to:

(i) receive college credit; and

(ii) satisfy the state system of higher education quantitative literacy requirement;

(b) allow a student, upon completion of required high school mathematics courses with at least a “C” grade, entry into a mathematics concurrent enrollment course;

(c) increase access to a range of mathematics concurrent enrollment courses;

(d) establish a consistent concurrent enrollment course approval process; and

(e) establish a consistent process to qualify high school teachers with an upper level mathematics endorsement to teach entry level mathematics concurrent enrollment courses.

CHAPTER 215**S. B. 172**

Passed March 6, 2017
 Approved March 21, 2017
 Effective May 9, 2017

**BARBER LICENSING
 RESTRICTION CHANGES**

Chief Sponsor: Todd Weiler
 House Sponsor: Marc K. Roberts

LONG TITLE**General Description:**

This bill modifies the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act.

Highlighted Provisions:

This bill:

- ▶ modifies the definitions of the “practice of barbering” and the “practice of cosmetology/barbering” to include a gentle massage of the head, back of the neck, and shoulders when providing barbering services.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-11a-102, as last amended by Laws of Utah 2016, Chapters 75 and 274

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

Section 1. Section 58-11a-102 is amended to read:**58-11a-102. Definitions.**

As used in this chapter:

(1) “Approved barber or cosmetologist/barber apprenticeship” means an apprenticeship that meets the requirements of Subsection 58-11a-306(1) for barbers or Subsection 58-11a-306(2) for cosmetologist/barbers and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) “Approved esthetician apprenticeship” means an apprenticeship that meets the requirements of Subsection 58-11a-306(3) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) “Approved master esthetician apprenticeship” means an apprenticeship that meets the requirements of Subsection 58-11a-306(4) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) “Approved nail technician apprenticeship” means an apprenticeship that meets the

requirements of Subsection 58-11a-306(5) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) “Barber” means a person who is licensed under this chapter to engage in the practice of barbering.

(6) “Barber instructor” means a barber who is licensed under this chapter to engage in the practice of barbering instruction.

(7) “Board” means the Barber, Cosmetology/Barbering, Esthetics, Electrology, and Nail Technology Licensing Board created in Section 58-11a-201.

(8) “Cosmetic laser procedure” includes a nonablative procedure as defined in Section 58-67-102.

(9) “Cosmetic supervisor” means a supervisor as defined in Section 58-1-505.

(10) “Cosmetologist/barber” means a person who is licensed under this chapter to engage in the practice of cosmetology/barbering.

(11) “Cosmetologist/barber instructor” means a cosmetologist/barber who is licensed under this chapter to engage in the practice of cosmetology/barbering instruction.

(12) “Direct supervision” means that the supervisor of an apprentice or the instructor of a student is immediately available for consultation, advice, instruction, and evaluation.

(13) “Electrologist” means a person who is licensed under this chapter to engage in the practice of electrology.

(14) “Electrologist instructor” means an electrologist who is licensed under this chapter to engage in the practice of electrology instruction.

(15) “Esthetician” means a person who is licensed under this chapter to engage in the practice of esthetics.

(16) “Esthetician instructor” means a master esthetician who is licensed under this chapter to engage in the practice of esthetics instruction.

(17) “Fund” means the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Education and Enforcement Fund created in Section 58-11a-103.

(18) (a) “Hair braiding” means the twisting, weaving, or interweaving of a person’s natural human hair.

(b) “Hair braiding” includes the following methods or styles:

- (i) African-style braiding;
- (ii) box braids;
- (iii) cornrows;
- (iv) dreadlocks;
- (v) french braids;

- (vi) invisible braids;
- (vii) micro braids;
- (viii) single braids;
- (ix) single plaits;
- (x) twists;
- (xi) visible braids;
- (xii) the use of lock braids; and
- (xiii) the use of decorative beads, accessories, and nonhair extensions.

(c) "Hair braiding" does not include:

- (i) the use of:
 - (A) wefts;
 - (B) synthetic tape;
 - (C) synthetic glue;
 - (D) keratin bonds;
 - (E) fusion bonds; or
 - (F) heat tools;
- (ii) the cutting of human hair; or
- (iii) the application of heat, dye, a reactive chemical, or other preparation to:
 - (A) alter the color of the hair; or
 - (B) straighten, curl, or alter the structure of the hair.

(19) "Licensed barber or cosmetology/barber school" means a barber or cosmetology/barber school licensed under this chapter.

(20) "Licensed electrology school" means an electrology school licensed under this chapter.

(21) "Licensed esthetics school" means an esthetics school licensed under this chapter.

(22) "Licensed nail technology school" means a nail technology school licensed under this chapter.

(23) "Master esthetician" means an individual who is licensed under this chapter to engage in the practice of master-level esthetics.

(24) "Nail technician" means an individual who is licensed under this chapter to engage in the practice of nail technology.

(25) "Nail technician instructor" means a nail technician licensed under this chapter to engage in the practice of nail technology instruction.

(26) "Practice of barbering" means:

- (a) cutting, clipping, or trimming the hair of the head of any person by the use of scissors, shears, clippers, or other appliances;
- (b) draping, shampooing, scalp treatments, basic wet styling, and blow drying; ~~and~~
- (c) removing hair from the face or neck of a person by the use of shaving equipment~~[-]; and~~

(d) when providing other services described in this Subsection (26), gently massaging the head, back of the neck, and shoulders by manual or mechanical means.

(27) "Practice of barbering instruction" means teaching the practice of barbering at a licensed barber school, at a licensed cosmetology/barber school, or for an approved barber apprenticeship.

(28) "Practice of basic esthetics" means any one of the following skin care procedures done on the body for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

(a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or masks, manual extraction, including a comedone extractor, depilatories, waxes, tweezing, the application of eyelash or eyebrow extensions, natural nail manicures or pedicures, or callous removal by buffing or filing;

(b) limited chemical exfoliation as defined by rule;

(c) removing superfluous hair by means other than electrolysis, except that an individual is not required to be licensed as an esthetician to engage in the practice of threading;

(d) other esthetic preparations or procedures with the use of the hands, a high-frequency or galvanic electrical apparatus, or a heat lamp for cosmetic purposes and not for the treatment of medical, physical, or mental ailments;

(e) arching eyebrows, tinting eyebrows or eyelashes, perming eyelashes, or applying eyelash or eyebrow extensions; or

(f) except as provided in Subsection (28)(f)(i), cosmetic laser procedures under the direct cosmetic medical procedure supervision of a cosmetic supervisor limited to the following:

(i) superfluous hair removal which shall be under indirect supervision;

(ii) anti-aging resurfacing enhancements;

(iii) photo rejuvenation; or

(iv) tattoo removal.

(29) (a) "Practice of cosmetology/barbering" means:

(i) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;

(ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or other appliances;

(iii) arching eyebrows, tinting eyebrows or eyelashes, perming eyelashes, applying eyelash or eyebrow extensions;

(iv) removing hair from the body of a person by the use of depilatories, waxing, or shaving equipment;

(v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces or both on the human head; or

(vi) practicing hair weaving or hair fusing or servicing previously medically implanted hair.

(b) The term “practice of cosmetology/barbering” includes:

(i) the practice of barbering;

(ii) the practice of basic esthetics; and

(iii) the practice of nail technology.

(c) An individual is not required to be licensed as a cosmetologist/barber to engage in the practice of threading.

(30) “Practice of cosmetology/barbering instruction” means teaching the practice of cosmetology/barbering:

(a) at a licensed cosmetology/barber school, a licensed barber school, or a licensed nail technology school; or

(b) for an approved cosmetologist/barber apprenticeship.

(31) “Practice of electrology” means:

(a) the removal of superfluous hair from the body of a person by the use of electricity, waxing, shaving, or tweezing; or

(b) cosmetic laser procedures under the supervision of a cosmetic supervisor limited to superfluous hair removal.

(32) “Practice of electrology instruction” means teaching the practice of electrology at a licensed electrology school.

(33) “Practice of esthetics instruction” means teaching the practice of basic esthetics or the practice of master-level esthetics:

(a) at a licensed esthetics school or a licensed cosmetology/barber school; or

(b) for an approved esthetician apprenticeship or an approved master esthetician apprenticeship.

(34) (a) “Practice of master-level esthetics” means:

(i) any of the following when done for cosmetic purposes on the body and not for the treatment of medical, physical, or mental ailments:

(A) body wraps as defined by rule;

(B) hydrotherapy as defined by rule;

(C) chemical exfoliation as defined by rule;

(D) advanced pedicures as defined by rule;

(E) sanding, including microdermabrasion;

(F) advanced extraction;

(G) other esthetic preparations or procedures with the use of:

(I) the hands; or

(II) a mechanical or electrical apparatus which is approved for use by division rule for beautifying or

similar work performed on the body for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; or

(H) cosmetic laser procedures under the supervision of a cosmetic supervisor with a physician’s evaluation before the procedure, as needed, unless specifically required under Section 58-1-506, and limited to the following:

(I) superfluous hair removal;

(II) anti-aging resurfacing enhancements;

(III) photo rejuvenation; or

(IV) tattoo removal with a physician’s, advanced practice nurse’s, or physician assistant’s evaluation before the tattoo removal procedure, as required by Subsection 58-1-506(3)(a); and

(ii) lymphatic massage by manual or other means as defined by rule.

(b) Notwithstanding the provisions of Subsection (34)(a), a master-level esthetician may perform procedures listed in Subsection (34)(a)(i)(H) if done under the supervision of a cosmetic supervisor acting within the scope of the cosmetic supervisor license.

(c) The term “practice of master-level esthetics” includes the practice of esthetics, but an individual is not required to be licensed as an esthetician or master-level esthetician to engage in the practice of threading.

(35) “Practice of nail technology” means to trim, cut, clean, manicure, shape, massage, or enhance the appearance of the hands, feet, and nails of an individual by the use of hands, mechanical, or electrical preparation, antiseptic, lotions, or creams, including the application and removal of sculptured or artificial nails.

(36) “Practice of nail technology instruction” means teaching the practice of nail technology at a licensed nail technician school, at a licensed cosmetology/barber school, or for an approved nail technician apprenticeship.

(37) “Recognized barber school” means a barber school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

(38) “Recognized cosmetology/barber school” means a cosmetology/barber school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

(39) “Recognized electrology school” means an electrology school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

(40) “Recognized esthetics school” means an esthetics school located in a state other than Utah, whose students, upon graduation, are recognized as

having completed the educational requirements for licensure in that state.

(41) "Recognized nail technology school" means a nail technology school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

(42) "Salon" means a place, shop, or establishment in which cosmetology/barbering, esthetics, electrology, or nail technology is practiced.

(43) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.

(44) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-11a-501 and as may be further defined by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

CHAPTER 216**S. B. 178**

Passed February 27, 2017

Approved March 21, 2017

Effective May 9, 2017

**MILITARY INSTALLATION DEVELOPMENT
AUTHORITY AMENDMENTS**

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Brad R. Wilson

LONG TITLE**General Description:**

This bill amends provisions related to the military installation development authority.

Highlighted Provisions:

This bill:

- ▶ provides that the military installation development authority may provide for the development of land associated with a military installation development authority project area; and
- ▶ defines the military installation development authority as a public agency for the purposes of the Transportation Infrastructure Loan Fund.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63H-1-102, as last amended by Laws of Utah 2015, Chapter 377

63H-1-201, as last amended by Laws of Utah 2016, Chapter 371

72-2-201, as last amended by Laws of Utah 2008, Chapter 396

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

Section 1. Section 63H-1-102 is amended to read:**63H-1-102. Definitions.**

As used in this chapter:

(1) "Authority" means the Military Installation Development Authority, created under Section 63H-1-201.

(2) "Base taxable value" means:

(a) for military land or other land that was exempt from a property tax at the time that a project area was created that included the military land or other land, a taxable value of zero; or

(b) for private property that is included in a project area, the taxable value of the property within any portion of the project area, as designated by board resolution, from which the property tax allocation will be collected, as shown upon the assessment roll last equalized before the year in which the authority issues a building permit for a building within that portion of the project area.

(3) "Board" means the governing body of the authority created under Section 63H-1-301.

(4) (a) "Dedicated tax collections" means the property tax that remains after the authority is paid the property tax allocation it is entitled to receive under Subsection 63H-1-501(1), for a property tax levied by:

(i) a county, including a district the county has established under Subsection 17-34-3(2) to levy a property tax under Title 17, Chapter 34, Municipal-Type Services to Unincorporated Areas; or

(ii) an included municipality.

(b) "Dedicated tax collections" does not include a county additional property tax or multicounty assessing and collecting levy imposed in accordance with Section 59-2-1602.

(5) (a) "Development" means an activity occurring on land within a project area that is owned or operated by the military, the authority, another public entity, or a private entity or an activity occurring on military land associated with a project area.

(b) "Development" includes the demolition, construction, reconstruction, modification, expansion, or improvement of a building, facility, utility, landscape, parking lot, park, trail, or recreational amenity.

(6) "Development project" means a project to develop land within a project area.

(7) "Elected member" means a member of the authority board who:

(a) is a mayor or member of a legislative body appointed under Subsection 63H-1-302(2)(b); or

(b) (i) is appointed to the authority board under Subsection 63H-1-302(2)(a) or (3); and

(ii) concurrently serves in an elected state, county, or municipal office.

(8) "Included municipality" means a municipality, some or all of which is included within a project area.

(9) (a) "Military" means a branch of the armed forces of the United States, including the Utah National Guard.

(b) "Military" includes, in relation to property, property that is occupied by the military and is owned by the government of the United States or the state.

(10) "Military Installation Development Authority energy tax" or "MIDA energy tax" means the tax levied under Section 63H-1-204.

(11) "Military land" means land or a facility, including leased land or a leased facility, that is part of or affiliated with a base, camp, post, station, yard, center, or installation under the jurisdiction of the United States Department of Defense or the Utah National Guard.

(12) "Municipal energy tax" means a municipal energy sales and use tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act.

(13) “Municipal services revenue” means revenue that the authority:

- (a) collects from the authority’s:
 - (i) levy of a municipal energy tax;
 - (ii) levy of a MIDA energy tax;
 - (iii) levy of a telecommunications tax;
 - (iv) imposition of a transient room tax; and
 - (v) imposition of a resort communities tax;
- (b) receives under Subsection 59-12-205(2)(b)(ii); and
- (c) receives as dedicated tax collections.

(14) “Municipal tax” means a municipal energy tax, MIDA energy tax, telecommunications tax, transient room tax, or resort communities tax.

(15) “Project area” means the land, including military land, whether consisting of a single contiguous area or multiple noncontiguous areas, described in a project area plan or draft project area plan, where the development project set forth in the project area plan or draft project area plan takes place or is proposed to take place.

(16) “Project area budget” means a multiyear projection of annual or cumulative revenues and expenses and other fiscal matters pertaining to a project area that includes:

- (a) the base taxable value of property in the project area;
- (b) the projected property tax allocation expected to be generated within the project area;
- (c) the amount of the property tax allocation expected to be shared with other taxing entities;
- (d) the amount of the property tax allocation expected to be used to implement the project area plan, including the estimated amount of the property tax allocation to be used for land acquisition, public improvements, infrastructure improvements, and loans, grants, or other incentives to private and public entities;
- (e) the property tax allocation expected to be used to cover the cost of administering the project area plan;
- (f) if the property tax allocation is to be collected at different times or from different portions of the project area, or both:
 - (i) (A) the tax identification numbers of the parcels from which the property tax allocation will be collected; or
 - (B) a legal description of the portion of the project area from which the property tax allocation will be collected; and
 - (ii) an estimate of when other portions of the project area will become subject to collection of the property tax allocation; and

(g) for property that the authority owns or leases and expects to sell or sublease, the expected total cost of the property to the authority and the expected selling price or lease payments.

(17) “Project area plan” means a written plan that, after its effective date, guides and controls the development within a project area.

(18) (a) “Property tax” includes a privilege tax, except as described in Subsection (18)(b), and each levy on an ad valorem basis on tangible or intangible personal or real property.

(b) “Property tax” does not include a privilege tax on the taxable value attributable to a portion of a facility leased to the military for a calendar year when:

- (i) a lessee of military land has constructed a facility on the military land that is part of a project area;
- (ii) the lessee leases space in the facility to the military for the entire calendar year; and
- (iii) the lease rate paid by the military for the space is \$1 or less for the entire calendar year, not including any common charges that are reimbursements for actual expenses.

(19) “Property tax allocation” means the difference between:

- (a) the amount of property tax revenues generated each tax year by all taxing entities from the area within a project area designated in the project area plan as the area from which the property tax allocation is to be collected, using the current assessed value of the property; and
- (b) the amount of property tax revenues that would be generated from that same area using the base taxable value of the property.

(20) “Public entity” means:

- (a) the state, including each department or agency of the state; or
- (b) a political subdivision of the state, including a county, city, town, school district, local district, special service district, or interlocal cooperation entity.

(21) (a) “Publicly owned infrastructure and improvements” means infrastructure, improvements, facilities, or buildings that benefit the public and are:

- (i) publicly owned by the military, the authority, or another public entity;
 - (ii) owned by a utility; or
 - (iii) publicly maintained or operated by the military, the authority, or another public entity.
- (b) “Publicly owned infrastructure and improvements” includes:
- (i) facilities, lines, or systems that provide water, chilled water, steam, sewer, storm drainage, natural gas, electricity, or telecommunications; and

(ii) streets, roads, curb, gutter, sidewalk, walkways, solid waste facilities, parking facilities, and public transportation facilities.

(22) "Remaining municipal services revenue" means municipal services revenue that the authority has not spent during its fiscal year for municipal services as provided in Subsection 63H-1-503(1).

(23) "Resort communities tax" means a sales and use tax imposed under Section 59-12-401.

(24) "Taxable value" means the value of property as shown on the last equalized assessment roll as certified by the county assessor.

(25) "Taxing entity" means a public entity that levies a tax on property within a project area.

(26) "Telecommunications tax" means a telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

(27) "Transient room tax" means a tax under Section 59-12-352.

Section 2. Section 63H-1-201 is amended to read:

63H-1-201. Creation of military installation development authority -- Status and powers of authority -- Limitation.

(1) There is created a military installation development authority.

(2) The authority is:

(a) an independent, nonprofit, separate body corporate and politic, with perpetual succession and statewide jurisdiction, whose purpose is to facilitate the development of [military-land-in] land within a project area or on military land associated with a project area;

(b) a political subdivision of the state; and

(c) a public corporation, as defined in Section 63E-1-102.

(3) The authority may:

(a) as provided in this chapter, facilitate the development of land within one or more project areas, including the ongoing operation of facilities within a project area, or development of military land associated with a project area;

(b) sue and be sued;

(c) enter into contracts generally;

(d) buy, obtain an option upon, or otherwise acquire any interest in real or personal property:

(i) in a project area; or

(ii) outside a project area for publicly owned infrastructure and improvements, if the board considers the purchase, option, or other interest acquisition to be necessary for fulfilling the authority's development objectives;

(e) sell, convey, grant, dispose of by gift, or otherwise dispose of any interest in real or personal property;

(f) enter into a lease agreement on real or personal property, either as lessee or lessor:

(i) in a project area; or

(ii) outside a project area, if the board considers the lease to be necessary for fulfilling the authority's development objectives;

(g) provide for the development of land within a project area or military land associated with the project area under one or more contracts;

(h) exercise powers and perform functions under a contract, as authorized in the contract;

(i) exercise exclusive police power within a project area to the same extent as though the authority were a municipality, including the collection of regulatory fees;

(j) receive the property tax allocation and other taxes and fees as provided in this chapter;

(k) accept financial or other assistance from any public or private source for the authority's activities, powers, and duties, and expend any funds so received for any of the purposes of this chapter;

(l) borrow money, contract with, or accept financial or other assistance from the federal government, a public entity, or any other source for any of the purposes of this chapter and comply with any conditions of the loan, contract, or assistance;

(m) issue bonds to finance the undertaking of any development objectives of the authority, including bonds under Title 11, Chapter 17, Utah Industrial Facilities and Development Act, and bonds under Title 11, Chapter 42, Assessment Area Act;

(n) hire employees, including contract employees;

(o) transact other business and exercise all other powers provided for in this chapter;

(p) enter into a development agreement with a developer of land within a project area;

(q) enter into an agreement with a political subdivision of the state under which the political subdivision provides one or more municipal services within a project area;

(r) enter into an agreement with a private contractor to provide one or more municipal services within a project area;

(s) provide for or finance an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure as defined in Section 11-42-102, in accordance with Title 11, Chapter 42, Assessment Area Act;

(t) exercise powers and perform functions that the authority is authorized by statute to exercise or perform; and

(u) enter into an agreement with the federal government or an agency of the federal government under which the federal government or agency:

(i) provides law enforcement services only to military land within a project area; and

(ii) may enter into a mutual aid or other cooperative agreement with a law enforcement agency of the state or a political subdivision of the state.

(4) The authority may not itself provide law enforcement service or fire protection service within a project area but may enter into an agreement for one or both of those services, as provided in Subsection (3)(q).

Section 3. Section 72-2-201 is amended to read:

72-2-201. Definitions.

As used in this part:

(1) "Fund" means the Transportation Infrastructure Loan Fund created under Section 72-2-202.

(2) "Infrastructure assistance" means any use of fund money, except an infrastructure loan, to provide financial assistance for transportation projects, including:

(a) capital reserves and other security for bond or debt instrument financing; or

(b) any letters of credit, lines of credit, bond insurance, or loan guarantees obtained by a public entity to finance transportation projects.

(3) "Infrastructure loan" means a loan of fund money to finance a transportation project.

(4) "Public entity" means a state agency, county, municipality, local district, special service district, ~~[or]~~ an intergovernmental entity organized under state law~~[-]~~, or the military installation development authority created in Section 63H-1-201.

(5) "Transportation project":

(a) means a project to improve a state or local highway; and

(b) includes the costs of acquisition, construction, reconstruction, rehabilitation, equipping, and fixturing.

CHAPTER 217**S. B. 180**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

CHARTER SCHOOL START-UP GRANTS

Chief Sponsor: Howard A. Stephenson

House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill removes the repeal date for charter school start-up grants.

Highlighted Provisions:

This bill:

- ▶ removes the repeal date for charter school start-up grants.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63I-2-253, as last amended by Laws of Utah 2016, Chapters 128, 229, 236, 271, and 318

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

Section 1. Section 63I-2-253 is amended to read:**63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.**

- (1) Section 53A-1-403.5 is repealed July 1, 2017.
- (2) Section 53A-1-411 is repealed July 1, 2017.
- (3) Section 53A-1-709 is repealed July 1, 2020.
- (4) Subsection 53A-1a-513(4) is repealed July 1, 2017.

~~[(5) Section 53A-1a-513.5 is repealed July 1, 2017.]~~

[(6)] (5) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2019.

[(7)] (6) Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is repealed July 1, 2017.

[(8)] (7) Sections 53A-24-601 and 53A-24-602 are repealed January 1, 2018.

[(9)] (8) (a) Subsections 53B-2a-103(2) and (4) are repealed July 1, 2019.

(b) When repealing Subsections 53B-2a-103(2) and (4), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

[(40)] (9) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project, is repealed July 1, 2023.

CHAPTER 218**S. B. 184**

Passed February 27, 2017

Approved March 21, 2017

Effective May 9, 2017

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING

Chief Sponsor: Don L. Ipson

House Sponsor: Kay J. Christofferson

LONG TITLE**General Description:**

This bill modifies provisions of the Professional Engineers and Professional Land Surveyors Licensing Act (the act).

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides rulemaking authority to the Division of Occupational and Professional Licensing (DOPL) related to defining unprofessional conduct under the act;
- ▶ modifies DOPL's citation authority to include unprofessional conduct under the act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-22-102, as last amended by Laws of Utah 2013, Chapter 278

58-22-503, as last amended by Laws of Utah 2013, Chapter 278

ENACTS:

58-22-502.5, Utah Code Annotated 1953

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

Section 1. Section 58-22-102 is amended to read:**58-22-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Professional Engineers and Professional Land Surveyors Licensing Board created in Section 58-22-201.

(2) "Building" means a structure which has human occupancy or habitation as its principal purpose, and includes the structural, mechanical, and electrical systems, utility services, and other facilities required for the building, and is otherwise governed by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(3) "Complete construction plans" means a final set of plans, specifications, and reports for a building or structure that normally includes:

- (a) floor plans;

- (b) elevations;
- (c) site plans;
- (d) foundation, structural, and framing detail;
- (e) electrical, mechanical, and plumbing design;
- (f) information required by the energy code;
- (g) specifications and related calculations as appropriate; and
- (h) all other documents required to obtain a building permit.

(4) "EAC/ABET" means the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology.

(5) "Fund" means the Professional Engineer, Professional Structural Engineer, and Professional Land Surveyor Education and Enforcement Fund created in Section 58-22-103.

(6) "NCEES" means the National Council of Examiners for Engineering and Surveying.

(7) "Principal" means a licensed professional engineer, professional structural engineer, or professional land surveyor having responsible charge of an organization's professional engineering, professional structural engineering, or professional land surveying practice.

(8) "Professional engineer" means a person licensed under this chapter as a professional engineer.

(9) (a) "Professional engineering," [ø] "the practice of engineering," or "the practice of professional engineering" means a service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the service or creative work as consultation, investigation, evaluation, planning, design, and design coordination of engineering works and systems, planning the use of land and water, facility programming, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications; any of which embraces these services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, and including other professional services as may be necessary to the planning, progress, and completion of any engineering services.

(b) The practice of professional engineering does not include the practice of architecture as defined in Section 58-3a-102, but a licensed professional engineer may perform architecture work as is incidental to the practice of engineering.

(10) "Professional engineering intern" means a person who:

- (a) has completed the education requirements to become a professional engineer;

(b) has passed the fundamentals of engineering examination; and

(c) is engaged in obtaining the four years of qualifying experience for licensure under the direct supervision of a licensed professional engineer.

(11) “Professional land surveying” or “the practice of land surveying” means a service or work, the adequate performance of which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting or locating of property boundaries or points controlling boundaries, and for the platting and layout of lands and subdivisions of lands, including the topography, alignment and grades of streets, and for the preparation and perpetuation of maps, record plats, field notes records, and property descriptions that represent these surveys and other duties as sound surveying practices could direct.

(12) “Professional land surveyor” means an individual licensed under this chapter as a professional land surveyor.

(13) “Professional structural engineer” means a person licensed under this chapter as a professional structural engineer.

(14) (a) “Professional structural engineering” or “the practice of structural engineering” means a service or creative work ~~[in the following areas, and may be further defined by rule by the division in collaboration with the board: (a)]~~ providing structural engineering services for significant structures, including:

(i) buildings and other structures representing a substantial hazard to human life, which include:

(A) buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300;

(B) buildings and other structures with elementary school, secondary school, or day care facilities with an occupant load greater than 250;

(C) buildings and other structures with an occupant load greater than 500 for colleges or adult education facilities;

(D) health care facilities with an occupant load of 50 or more resident patients, but not having surgery or emergency treatment facilities;

(E) jails and detention facilities with a gross area greater than 3,000 square feet; ~~or~~ and

(F) ~~[an occupancy]~~ buildings and other structures with an occupant load greater than 5,000;

(ii) buildings and other structures designated as essential facilities, including:

(A) hospitals and other health care facilities having surgery or emergency treatment facilities with a gross area greater than 3,000 square feet;

(B) fire, rescue, and police stations and emergency vehicle garages with a mean height greater than 24 feet or a gross area greater than 5,000 square feet;

(C) designated earthquake, hurricane, or other emergency shelters with a gross area greater than 3,000 square feet;

(D) designated emergency preparedness, communication, and operation centers and other buildings required for emergency response with a mean height more than 24 feet or a gross area greater than 5,000 square feet;

(E) power-generating stations and other public utility facilities required as emergency backup facilities with a gross area greater than 3,000 square feet;

(F) structures with a mean height more than 24 feet or a gross area greater than 5,000 square feet containing highly toxic materials as defined by the division by rule, where the quantity of the material exceeds the maximum allowable quantities set by the division by rule; and

(G) aviation control towers, air traffic control centers, and emergency aircraft hangars at commercial service and cargo air services airports as defined by the Federal Aviation Administration with a mean height greater than 35 feet or a gross area greater than 20,000 square feet; and

(iii) buildings and other structures requiring special consideration, including:

(A) structures or buildings that are ~~normally~~ normally occupied by human beings and are five stories or more in height;

~~[(I) normally occupied by human beings; and]~~

~~[(II) five stories or more in height; or]~~

~~[(III) that have an average roof height more than 60 feet above the average ground level measured at the perimeter of the structure; or]~~

(B) structures or buildings that are normally occupied by human beings and have an average roof height more than 60 feet above the average ground level measured at the perimeter of the structure; and

~~[(B)] (C) [all] buildings that are over 200,000 aggregate gross square feet in area; and]~~

(b) “Professional structural engineering” or “the practice of structural engineering”:

~~[(b)] (i) includes the definition of professional engineering or the practice of professional engineering as provided in Subsection (9)[-]; and~~

(ii) may be further defined by rules made by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(15) “Structure” means that which is built or constructed, an edifice or building of any kind, or a

piece of work artificially built up or composed of parts joined together in a definite manner, and as otherwise governed by the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act.

(16) "Supervision of an employee, subordinate, associate, or drafter of a licensee" means that a licensed professional engineer, professional structural engineer, or professional land surveyor is responsible for and personally reviews, corrects when necessary, and approves work performed by an employee, subordinate, associate, or drafter under the direction of the licensee, and may be further defined by rule by the division in collaboration with the board.

(17) "TAC/ABET" means the Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(18) "Unlawful conduct" [is] means the same as that term is defined in Sections 58-1-501 and 58-22-501.

(19) "Unprofessional conduct" [~~as defined in Section 58-1-501 may be further defined by rule by the division in collaboration with the board~~] means the same as that term is defined in Sections 58-1-501 and 58-22-502.5.

Section 2. Section 58-22-502.5 is enacted to read:

58-22-502.5. Unprofessional conduct.

Unprofessional conduct includes unprofessional conduct that is defined by rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 3. Section 58-22-503 is amended to read:

58-22-503. Penalties and administrative actions for unlawful or unprofessional conduct.

(1) (a) If upon inspection or investigation, the division concludes that a person has violated [~~Subsections 58-1-501(1)(a) through (d) or Section 58-1-501, 58-22-501, or 58-22-502.5, or any rule or order issued with respect to Section 58-22-501 or 58-22-502.5,~~ and that disciplinary action is appropriate, the director or the director's designee from within the division for each alternative respectively, shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who violates [~~Subsections 58-1-501(1)(a) through (d) or Section 58-1-501, 58-22-501, or 58-22-502.5, or any rule or order issued with respect to Section 58-22-501 or 58-22-502.5,~~ as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be

assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be ordered to cease and desist from violating [~~Subsections 58-1-501(1)(a) through (d) or Section 58-1-501, 58-22-501, or 58-22-502.5,~~ or any rule or order issued with respect to this section.

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-22-401 may not be assessed through a citation.

(b) A citation shall:

(i) be in writing;

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated;

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

(iv) clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) The division may issue a notice in lieu of a citation.

(d) Each citation issued under this section, or a copy of each citation, may be served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the person's agent by a division investigator or by any person specially designated by the director or by mail.

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

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

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

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

(i) The director or the director's designee shall assess fines according to the following:

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

(ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000; and

(iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000 for each day of continued offense.

(2) An action initiated for a first or second offense which has not yet resulted in a final order of the division shall not preclude initiation of any subsequent action for a second or subsequent offense during the pendency of any preceding action. The final order on a subsequent action shall be considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.

(3) Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state shall provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded to the division.

CHAPTER 219
S. B. 190

Passed March 7, 2017
Approved March 21, 2017
Effective May 9, 2017

EDUCATION COMPUTING PARTNERSHIPS

Chief Sponsor: Ralph Okerlund
House Sponsor: Bradley G. Last
Cosponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill creates the Computing Partnerships Grants program.

Highlighted Provisions:

This bill:

- ▶ creates the Computing Partnerships Grants program, administered by the STEM Action Center;
- ▶ authorizes the STEM Action Center to work with the State Board of Education to:
 - adopt rules for the administration of the grant program;
 - establish a grant application process; and
 - establish a review committee; and
- ▶ requires the STEM Action Center to annually report on the grant program to the Education Interim Committee.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63N-12-202, as renumbered and amended by Laws of Utah 2015, Chapter 283

ENACTS:

63N-12-214, Utah Code Annotated 1953

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

Section 1. Section 63N-12-202 is amended to read:

63N-12-202. Definitions.

As used in this part:

(1) "Board" means the STEM Action Center Board created in Section 63N-12-203.

(2) "Computing partnerships" means a set of skills, knowledge, and aptitudes used in computer science, information technology, or computer engineering courses and career options.

~~(2)~~ (3) "Educator" ~~[has the same meaning as]~~ means the same as that term is defined in Section 53A-6-103.

(4) "Grant program" means the Computing Partnerships Grants program created in this part.

~~(3)~~ (5) "High quality professional development" means professional development that meets high

quality standards developed by the State Board of Education.

(6) "Institution of higher education" means an institution listed in Section 53B-1-102.

(7) "K-16" means kindergarten through grade 12 and post-secondary education programs.

~~(4)~~ (8) "Office" means the Governor's Office of Economic Development.

~~(5)~~ (9) "Provider" means a provider, selected by staff of the board and staff of the Utah State Board of Education, on behalf of the board:

(a) through a request for proposals process; or

(b) through a direct award or sole source procurement process for a pilot described in Section 63N-12-206.

(10) "Review committee" means the committee established under Section 63N-12-214.

(11) "Stacked credentials" means credentials that:

(a) an individual can build upon to access an advanced job or higher wage;

(b) are part of a career pathway system;

(c) provide a pathway culminating in the equivalent of an associate's or bachelor's degree;

(d) facilitate multiple exit and entry points; and

(e) recognize sub-goals or momentum points.

~~(6)~~ (12) "STEM" means science, technology, engineering, and mathematics.

~~(7)~~ (13) "STEM Action Center" means the center described in Section 63N-12-205.

(14) "Talent Ready Utah" means a partnership between the Governor's Office of Economic Development, the Governor's Education Advisor, the Department of Workforce Services, the Utah State Board of Education, the Utah System of Higher Education, representatives of post-secondary technical education, industry partners, and the Utah STEM Action Center.

Section 2. Section 63N-12-214 is enacted to read:

63N-12-214. Computing Partnerships Grants program.

(1) There is created the Computing Partnerships Grants program consisting of the grants created in this part to provide for the design and implementation of a comprehensive K-16 computing partnerships program, based upon the following common elements:

(a) outreach and student engagement;

(b) courses and content;

(c) instruction and instructional support;

(d) work-based learning opportunities;

(e) student retention;

(f) industry engagement;

(g) stacked credentials that allow for multiple exit and entry points;

(h) competency-based learning strategies; and

(i) secondary and post-secondary collaborations.

(2) The grant program shall incentivize public schools and school districts to work with the STEM Action Center, staff of the State Board of Education, Talent Ready Utah, industry representatives, and secondary partners on the design and implementation of comprehensive K-16 computing partnerships through:

(a) leveraging existing resources for content, professional learning, and instruction, including existing career and technical education funds, programs, and initiatives;

(b) allowing for the support of professional learning for pre- and in-service educators;

(c) supporting activities that promote and enhance access, diversity, and equity;

(d) supporting collaborations and partnerships between K-12, institutions of higher education, cultural and community partners, and industry representatives;

(e) identifying the appropriate credentials that align with industry needs and providing the credentials in a stacked credentials pathway;

(f) implementing a collaborative network that enables sharing and identification of best practices; and

(g) providing infrastructure assistance that allows for the support of new courses and the expansion of capacity for existing courses.

(3) The grant program shall include the following:

(a) rigorous and relevant metrics that are shared by all grant participants; and

(b) an evaluation by the STEM Action Center of the grant program that identifies best practices.

(4) The STEM Action Center, in consultation with the State Board of Education, shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules:

(i) for the administration of the grant program and awarding of grants; and

(ii) that define outcome-based measures appropriate to the type of grant awarded under this part;

(b) establish a grant application process;

(c) in accordance with Subsection (5), establish a review committee to make recommendations for:

(i) metrics to analyze the quality of a grant application;

(ii) approval of a grant application; and

(iii) criteria to establish a requirement for an applicant to demonstrate financial need; and

(d) with input from the review committee, adopt metrics to analyze the quality of a grant application.

(5) (a) The review committee shall consist of K-16 educators, staff of the State Board of Education, representatives of Talent Ready Utah, post-secondary partners, and industry representatives.

(b) The review committee shall:

(i) review a grant application submitted;

(ii) make recommendations to a grant applicant to modify the grant application, if necessary; and

(iii) make recommendations regarding the final disposition of an application.

(6) The STEM Action Center shall report annually on the grant program to the State Board of Education and any findings and recommendations on the grant program shall be included in the STEM Action Center annual report to the Education Interim Committee.

CHAPTER 220**S. B. 191**

Passed March 7, 2017
 Approved March 21, 2017
 Effective May 9, 2017

OIL AND GAS AMENDMENTS

Chief Sponsor: Ralph Okerlund
 House Sponsor: Stephen G. Handy

LONG TITLE**General Description:**

This bill modifies the duties of the Board of Oil, Gas, and Mining.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ states that the Board of Oil, Gas, and Mining may make an order establishing a drilling unit or a pooling order retroactive under certain circumstances; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 40-6-2, as last amended by Laws of Utah 2012, Chapter 342
- 40-6-6, as last amended by Laws of Utah 2015, Chapter 44
- 40-6-6.5, as last amended by Laws of Utah 2014, Chapter 404

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

Section 1. Section 40-6-2 is amended to read:**40-6-2. Definitions.**

For the purpose of this chapter:

- (1) "Board" means the Board of Oil, Gas, and Mining.
- (2) "Correlative rights" means the opportunity of each owner in a pool to produce his just and equitable share of the oil and gas in the pool without waste.
- (3) "Condensate" means hydrocarbons, regardless of gravity, that:
 - (a) occur naturally in the gaseous phase in the reservoir; and
 - (b) are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the wellbore, or at the surface in field separators.
- (4) "Consenting owner" means an owner who, in the manner and within the time frame established by the board in rule, consents ~~[in advance]~~ to the drilling and operation of a well and agrees to bear

~~[his]~~ the owner's proportionate share of the costs of the drilling and operation of the well.

(5) "Crude oil" means hydrocarbons, regardless of gravity, that:

- (a) occur naturally in the liquid phase in the reservoir; and
- (b) are produced and recovered at the wellhead in liquid form.

(6) (a) "Gas" means natural gas, as defined in Subsection (9), natural gas liquids, as defined in Subsection (10), other gas, as defined in Subsection (16), or any mixture of them.

(b) "Gas" does not include any gaseous or liquid substance processed from coal, oil shale, or tar sands.

(7) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well within the state in violation of this chapter or any rule or order of the board.

(8) "Illegal product" means any product derived in whole or in part from illegal oil or illegal gas.

(9) (a) "Natural gas" means hydrocarbons that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form, except natural gas liquids as defined in Subsection (10) and condensate as defined in Subsection (3).

(b) "Natural gas" includes coalbed methane gas.

(10) "Natural gas liquids" means hydrocarbons, regardless of gravity, that are separated from natural gas as liquids in gas processing plants through the process of condensation, absorption, adsorption, or other methods.

(11) "Nonconsenting owner" means an owner who ~~[after written notice does not consent in advance]~~ does not, after written notice and in the manner and within the time frame established by the board in rule, consent to the drilling and operation of a well or agree to bear ~~[his]~~ the owner's proportionate share of the costs.

(12) (a) "Oil" means crude oil, as defined in Subsection (5), condensate, as defined in Subsection (3), or any mixture of them.

(b) "Oil" does not include any gaseous or liquid substance processed from coal, oil shale, or tar sands.

(13) "Oil and gas operations" means to explore for, develop, or produce oil and gas.

(14) (a) "Oil and gas proceeds" means any payment that:

- (i) derives from oil and gas production from any well located in the state;
- (ii) is expressed as a right to a specified interest in the:

(A) cash proceeds received from the sale of the oil and gas; or

(B) the cash value of the oil and gas; and

(iii) is subject to any tax withheld from the payment pursuant to law.

(b) "Oil and gas proceeds" includes a royalty interest, overriding royalty interest, production payment interest, or working interest.

(c) "Oil and gas proceeds" does not include a net profits interest or other interest the extent of which cannot be determined with reference to a specified share of:

(i) the cash proceeds received from the sale of the oil and gas; or

(ii) the cash value of the oil and gas.

(15) "Operator" means a person who has been designated by the owners or the board to operate a well or unit.

(16) (a) "Other gas" means nonhydrocarbon gases that:

(i) occur naturally in the gaseous phase in the reservoir; or

(ii) are injected into the reservoir in connection with pressure maintenance, gas cycling, or other secondary or enhanced recovery projects.

(b) "Other gas" includes hydrogen sulfide, carbon dioxide, helium, and nitrogen.

(17) "Owner" means a person who has the right:

(a) to drill into and produce from a reservoir; and

(b) appropriate the oil and gas produced for himself or for himself and others.

(18) "Payor" means the person who undertakes to distribute oil and gas proceeds to the persons entitled to them, whether as the first purchaser of that production, as operator of the well from which the production was obtained, or as lessee under the lease on which royalty is due.

(19) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure that is completely separated from any other zone in the structure is a separate pool. "Common source of supply" and "reservoir" are synonymous with "pool."

(20) "Pooling" means the bringing together of separately owned interests for the common development and operation of a drilling unit.

(21) "Producer" means the owner or operator of a well capable of producing oil and gas.

(22) "Product" means any commodity made from oil and gas.

(23) "Surface land" means privately owned land:

(a) overlying privately owned oil and gas resources;

(b) upon which oil and gas operations are conducted; and

(c) owned by a surface land owner.

(24) (a) "Surface land owner" means a person who owns, in fee simple absolute, all or part of the surface land as shown by the records of the county where the surface land is located.

(b) "Surface land owner" does not include the surface land owner's lessee, renter, tenant, or other contractually related person.

(25) "Surface land owner's property" means a surface land owner's:

(a) surface land;

(b) crops on the surface land; and

(c) existing improvements on the surface land.

(26) "Surface use agreement" means an agreement between an owner or operator and a surface land owner addressing:

(a) the use and reclamation of surface land owned by the surface land owner; and

(b) compensation for damage to the surface land caused by oil and gas operations that result in:

(i) loss of the surface land owner's crops on the surface land;

(ii) loss of value of existing improvements owned by the surface land owner on the surface land; and

(iii) permanent damage to the surface land.

(27) "Waste" means:

(a) the inefficient, excessive, or improper use or the unnecessary dissipation of oil or gas or reservoir energy;

(b) the inefficient storing of oil or gas;

(c) the locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes:

(i) a reduction in the quantity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations;

(ii) unnecessary wells to be drilled; or

(iii) the loss or destruction of oil or gas either at the surface or subsurface; or

(d) the production of oil or gas in excess of:

(i) transportation or storage facilities; or

(ii) the amount reasonably required to be produced as a result of the proper drilling, completing, testing, or operating of a well or otherwise utilized on the lease from which it is produced.

Section 2. Section 40-6-6 is amended to read:

40-6-6. Drilling units -- Establishment by board -- Modifications -- Prohibitions.

(1) The board may order the establishment of drilling units for a pool.

(2) Within each drilling unit, only one well may be drilled for production from the common source of

supply, except as provided in Subsections (6) and (7).

(3) A drilling unit may not be smaller than the maximum area that can be efficiently and economically drained by one well.

(4) (a) Each drilling unit within a pool shall be of uniform size and shape, unless the board finds that it must make an exception due to geologic, geographic, or other factors.

(b) If the board finds it necessary to divide a pool into zones and establish drilling units for each zone, drilling units may differ in size and shape for each zone.

(5) An order of the board that establishes drilling units for a pool shall:

(a) be made upon terms and conditions that are just and reasonable;

(b) include all lands determined by the board to overlay the pool;

(c) specify the acreage and shape of each drilling unit as determined by the board; and

(d) specify the location of the well in terms of distance from drilling unit boundaries and other wells.

(6) The board may establish a drilling unit and concurrently authorize the drilling of more than one well in a drilling unit if the board finds that:

(a) engineering or geologic characteristics justify the drilling of more than one well in that drilling unit; and

(b) the drilling of more than one well in the drilling unit will not result in waste.

(7) The board may modify an order that establishes drilling units for a pool to provide for:

(a) an exception to the authorized location of a well;

(b) the inclusion of additional areas which the board determines overlays the pool;

(c) the increase or decrease of the size of drilling units; or

(d) the drilling of additional wells within drilling units.

(8) (a) An order of the board that establishes a drilling unit may be made effective retroactively to the date of first production of an existing well located within the drilling unit if no party to the board's proceeding objects to the retroactive application.

(b) An order made retroactive under this section is binding upon a party owning an interest in the drilling unit who receives proper notice of the board's proceeding.

(9) (a) After an order establishing drilling units has been entered by the board, the drilling of a well into the pool at a location other than that authorized by the order is prohibited.

(b) The operation of a well drilled in violation of an order fixing drilling units is prohibited.

Section 3. Section 40-6-6.5 is amended to read:

40-6-6.5. Pooling of interests for the development and operation of a drilling unit -- Board may order pooling of interests -- Payment of costs and royalty interests -- Monthly accounting.

(1) Two or more owners within a drilling unit may bring together their interests for the development and operation of the drilling unit.

(2) (a) In the absence of a written agreement for pooling, the board may enter an order pooling all interests in the drilling unit for the development and operation of the drilling unit.

(b) The order shall be made upon terms and conditions that are just and reasonable.

(c) The board may adopt terms appearing in an operating agreement:

(i) for the drilling unit that is in effect between the consenting owners;

(ii) submitted by any party to the proceeding; or

(iii) submitted by its own motion.

(3) (a) Operations incident to the drilling of a well upon any portion of a drilling unit covered by a pooling order shall be deemed for all purposes to be the conduct of the operations upon each separately owned tract in the drilling unit by the several owners.

(b) The portion of the production allocated or applicable to a separately owned tract included in a drilling unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on it.

(4) (a) (i) Each pooling order shall provide for the payment of just and reasonable costs incurred in the drilling and operating of the drilling unit, including:

(A) the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities;

(B) reasonable charges for the administration and supervision of operations; and

(C) other costs customarily incurred in the industry.

(ii) An owner is not liable under a pooling order for costs or losses resulting from the gross negligence or willful misconduct of the operator.

(b) Each pooling order shall provide for reimbursement to the consenting owners for any nonconsenting owner's share of the costs out of production from the drilling unit attributable to the nonconsenting owner's tract.

(c) Each pooling order shall provide that each consenting owner shall own and be entitled to receive, subject to royalty or similar obligations:

(i) the share of the production of the well applicable to the consenting owner's interest in the drilling unit; and

(ii) unless the consenting owner has agreed otherwise, the consenting owner's proportionate part of the nonconsenting owner's share of the production until costs are recovered as provided in Subsection (4)(d).

(d) (i) Each pooling order shall provide that each nonconsenting owner shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the nonconsenting owner's interest in the drilling unit after the consenting owners have recovered from the nonconsenting owner's share of production the following amounts less any cash contributions made by the nonconsenting owner:

(A) 100% of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping;

(B) 100% of the nonconsenting owner's share of the estimated cost to plug and abandon the well as determined by the board;

(C) 100% of the nonconsenting owner's share of the cost of operation of the well commencing with first production and continuing until the consenting owners have recovered all costs; and

(D) an amount to be determined by the board but not less than 150% nor greater than 400% of the nonconsenting owner's share of the costs of staking the location, wellsite preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or plugging back, testing, and completing, and the cost of equipment in the well to and including the wellhead connections.

(ii) The nonconsenting owner's share of the costs specified in Subsection (4)(d)(i) is that interest which would have been chargeable to the nonconsenting owner had the nonconsenting owner initially agreed to pay the nonconsenting owner's share of the costs of the well from commencement of the operation.

(iii) A reasonable interest charge may be included if the board finds it appropriate.

(e) If there is any dispute about costs, the board shall determine the proper costs.

(5) If a nonconsenting owner's tract in the drilling unit is subject to a lease or other contract for the development of oil and gas, the pooling order shall provide that the consenting owners shall pay any royalty interest or other interest in the tract not subject to the deduction of the costs of production from the production attributable to that tract.

(6) (a) If a nonconsenting owner's tract in the drilling unit is not subject to a lease or other contract for the development of oil and gas, the pooling order shall provide that the nonconsenting owner shall receive as a royalty:

(i) the acreage weighted average landowner's royalty based on each leased fee and privately owned tract within the drilling unit, proportionately reduced by the percentage of the

nonconsenting owner's interest in the drilling unit; or

(ii) if there is no leased fee or privately owned tract within the drilling unit other than the one owned by the nonconsenting owner, 16-2/3% proportionately reduced by the percentage of the nonconsenting owner's interest in the drilling unit.

(b) The royalty shall be:

(i) determined prior to the commencement of drilling; and

(ii) paid from production attributable to each tract until the consenting owners have recovered the costs specified in Subsection (4)(d).

(7) Once the consenting owners have recovered the costs, as described in Subsection (6)(b)(ii), the royalty shall be merged back into the nonconsenting owner's working interest and shall be terminated.

(8) The operator of a well under a pooling order in which there is a nonconsenting owner shall furnish the nonconsenting owner with monthly statements specifying:

(a) costs incurred;

(b) the quantity of oil or gas produced; and

(c) the amount of oil and gas proceeds realized from the sale of the production during the preceding month.

(9) Each pooling order shall provide that when the consenting owners recover from a nonconsenting owner's relinquished interest the amounts provided for in Subsection (4)(d):

(a) the relinquished interest of the nonconsenting owner shall automatically revert to him;

(b) the nonconsenting owner shall from that time:

(i) own the same interest in the well and the production from it; and

(ii) be liable for the further costs of the operation as if he had participated in the initial drilling and operation; and

(c) costs are payable out of production unless otherwise agreed between the nonconsenting owner and the operator.

(10) Each pooling order shall provide that in any circumstance where the nonconsenting owner has relinquished his share of production to consenting owners or at any time fails to take his share of production in-kind when he is entitled to do so, the nonconsenting owner is entitled to:

(a) an accounting of the oil and gas proceeds applicable to his relinquished share of production; and

(b) payment of the oil and gas proceeds applicable to that share of production not taken in-kind, net of costs.

(11) (a) A pooling order may be made effective retroactively to the date of first production of a well to which it applies, even if the retroactive date

predates the board's order establishing the drilling unit, if no party to the board's proceeding objects to the retroactive application.

(b) A pooling order made retroactive under this section is binding upon a party owning an interest in the drilling unit who receives proper notice of the board's proceeding.

CHAPTER 221**S. B. 195**

Passed March 1, 2017
 Approved March 21, 2017
 Effective May 9, 2017

**GOVERNMENT
 TRANSPARENCY REVISIONS**

Chief Sponsor: Deidre M. Henderson
 House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill modifies provisions related to the Utah Public Finance Website.

Highlighted Provisions:

This bill:

- ▶ provides that certain independent entities, housing authorities, and entities entering into interlocal agreements are subject to the reporting requirements of the Utah Public Finance Website; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

4-22-4.5, as last amended by Laws of Utah 2008, Chapter 382
 53D-1-103, as enacted by Laws of Utah 2014, Chapter 426
 63A-3-401, as last amended by Laws of Utah 2016, Chapters 233 and 382
 63E-2-109, as last amended by Laws of Utah 2012, Chapter 347
 63H-4-108, as last amended by Laws of Utah 2013, Chapter 220
 63H-5-108, as last amended by Laws of Utah 2012, Chapter 347
 63H-6-103, as last amended by Laws of Utah 2016, Chapter 301
 63H-7a-803, as last amended by Laws of Utah 2016, Chapter 123
 63H-8-204, as renumbered and amended by Laws of Utah 2015, Chapter 226

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

Section 1. Section 4-22-4.5 is amended to read:

4-22-4.5. Exemption from certain operational requirements.

(1) The commission is exempt from:

~~[(4)]~~ (a) Title 51, Chapter 5, Funds Consolidation Act;

~~[(2)]~~ (b) Title 51, Chapter 7, State Money Management Act;

~~[(3)]~~ (c) except as provided in Subsection (2), Title 63A, Utah Administrative Services Code;

~~[(4)]~~ (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

~~[(5)]~~ (e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The commission is subject to Title 63A, Chapter 3, Part 4, Utah Public Finance Website.

Section 2. Section 53D-1-103 is amended to read:

53D-1-103. Application of other law.

(1) The office, board, and nominating committee are subject to:

(a) Title 52, Chapter 4, Open and Public Meetings Act[-]; and

(b) Title 63A, Chapter 3, Part 4, Utah Public Finance Website.

(2) Subject to Subsection 63E-1-304(2), the office may participate in coverage under the Risk Management Fund, created in Section 63A-4-201.

(3) The office and board are subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(4) (a) In making rules under this chapter, the director is subject to and shall comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as provided in Subsection (4)(b).

(b) Subsections 63G-3-301(6) and (7) and Section 63G-3-601 do not apply to the director's making of rules under this chapter.

(5) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to a board member to the same extent as it applies to an employee, as defined in Section 63G-7-102.

(6) (a) A board member, the director, and an office employee or agent are subject to:

(i) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and

(ii) other requirements that the board establishes.

(b) In addition to any restrictions or requirements imposed under Subsection (6)(a), a board member, the director, and an office employee or agent may not directly or indirectly acquire an interest in the trust fund or receive any direct benefit from any transaction dealing with trust fund money.

(7) (a) Except as provided in Subsection (7)(b), the office shall comply with Title 67, Chapter 19, Utah State Personnel Management Act.

(b) (i) Upon a recommendation from the director after the director's consultation with the executive director of the Department of Human Resource Management, the board may provide that specified positions in the office are exempt from Section 67-19-12 and the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided in Subsection 67-19-15(1), if the board determines that exemption is required for the office to fulfill efficiently its responsibilities under this chapter.

(ii) The director position is exempt from Section 67-19-12 and the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, as provided in Subsection 67-19-15(1).

(iii) (A) After consultation with the executive director of the Department of Human Resource Management, the director shall set salaries for positions that are exempted under Subsection (7)(b)(i), within ranges that the board approves.

(B) In approving salary ranges for positions that are exempted under Subsection (7)(b)(i), the board shall consider salaries for similar positions in private enterprise and other public employment.

(8) The office is subject to legislative appropriation, to executive branch budgetary review and recommendation, and to legislative and executive branch review.

Section 3. Section 63A-3-401 is amended to read:

63A-3-401. Definitions.

As used in this part:

(1) "Board" means the Utah Transparency Advisory Board created under Section 63A-3-403.

(2) "Division" means the Division of Finance of the Department of Administrative Services.

(3) (a) "Independent entity," except as provided in Subsection (3)(c), means the same as that term is defined in Section 63E-1-102.

(b) "Independent entity" includes an entity that is part of an independent entity described in this Subsection (3), if the entity is considered a component unit of the independent entity under the governmental accounting standards issued by the Governmental Accounting Standards Board.

(c) "Independent entity" does not include:

(i) the Workers' Compensation Fund created in Section 31A-33-102; or

(ii) the Utah State Retirement Office created in Section 49-11-201.

(4) "Participating local entity" means each of the following local entities:

(a) a county;

(b) a municipality;

(c) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts;

(d) a special service district under Title 17D, Chapter 1, Special Service District Act;

(e) a housing authority under Title 35A, Chapter 8, Part 4, Housing Authorities;

~~(e)~~ (f) a school district;

~~(f)~~ (g) a charter school;

~~(g)~~ (h) except for a taxed interlocal entity as defined in Section 11-13-602~~[7]~~;

(i) an interlocal entity as defined in Section 11-13-103; ~~and~~

(ii) a joint or cooperative undertaking as defined in Section 11-13-103; and

(iii) any project, program, or undertaking entered into by interlocal agreement in accordance with Title 11, Chapter 13, Interlocal Cooperation Act; and

~~(h)~~ (i) except for a taxed interlocal entity as defined in Section 11-13-602, an entity that is part of an entity described in Subsections (4)(a) through ~~(g)~~ (h), if the entity is considered a component unit of the entity described in Subsections (4)(a) through ~~(g)~~ (h) under the governmental accounting standards issued by the Governmental Accounting Standards Board.

(5) (a) "Participating state entity" means the state of Utah, including its executive, legislative, and judicial branches, its departments, divisions, agencies, boards, commissions, councils, committees, and institutions.

(b) "Participating state entity" includes an entity that is part of an entity described in Subsection (5)(a), if the entity is considered a component unit of the entity described in Subsection (5)(a) under the governmental accounting standards issued by the Governmental Accounting Standards Board.

(6) "Public financial information" means records that are required to be made available on the Utah Public Finance Website, a participating local entity's website, or an independent entity's website as required by this part, and as the term "public financial information" is defined by rule under Section 63A-3-404.

Section 4. Section 63E-2-109 is amended to read:

63E-2-109. State statutes.

(1) Except as specifically modified in its authorizing statute, each independent corporation shall be exempt from the statutes governing state agencies, including:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 51, Chapter 7, State Money Management Act;

(c) except as provided in Subsection (2), Title 63A, Utah Administrative Services Code;

(d) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) Title 63G, Chapter 4, Administrative Procedures Act;

(f) Title 63G, Chapter 6a, Utah Procurement Code;

(g) Title 63J, Chapter 1, Budgetary Procedures Act;

(h) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

(i) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) Except as specifically modified in its authorizing statute, each independent corporation shall be subject to:

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

(b) Title 63A, Chapter 3, Part 4, Utah Public Finance Website; and

~~[(b)]~~ (c) Title 63G, Chapter 2, Government Records Access and Management Act.

(3) Each independent corporation board may adopt its own policies and procedures governing its:

- (a) funds management;
- (b) audits; and
- (c) personnel.

Section 5. Section 63H-4-108 is amended to read:

63H-4-108. Relation to certain acts -- Participation in Risk Management Fund.

(1) The authority is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) except as provided in Subsection (2), Title 63A, Utah Administrative Services Code;

(c) Title 63G, Chapter 6a, Utah Procurement Code;

(d) Title 63J, Chapter 1, Budgetary Procedures Act; and

(e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority is subject to Title 63A, Chapter 3, Part 4, Utah Public Finance Website.

~~[(2)]~~ (3) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3, Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

~~[(3)]~~ (4) Subject to the requirements of Subsection 63E-1-304(2), the authority may participate in coverage under the Risk Management Fund created by Section 63A-4-201.

Section 6. Section 63H-5-108 is amended to read:

63H-5-108. Relation to certain acts.

(1) The authority is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) except as provided in Subsection (2), Title 63A, ~~[Chapter 1, Department of]~~ Utah Administrative Services Code;

(c) Title 63G, Chapter 6a, Utah Procurement Code;

(d) Title 63J, Chapter 1, Budgetary Procedures Act; and

(e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority is subject to:

(a) Title 63A, Chapter 3, Part 4, Utah Public Finance Website; and

(b) audit by the state auditor pursuant to Title 67, Chapter 3, Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

Section 7. Section 63H-6-103 is amended to read:

63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.

(1) There is created an independent public nonprofit corporation known as the "Utah State Fair Corporation."

(2) The board shall file articles of incorporation for the corporation with the Division of Corporations and Commercial Code.

(3) The corporation, subject to this chapter, has all powers and authority permitted nonprofit corporations by law.

(4) The corporation shall:

(a) manage, supervise, and control:

(i) all activities relating to the annual exhibition described in Subsection (4)(j); and

(ii) except as otherwise provided by statute, all state expositions, including setting the time, place, and purpose of any state exposition;

(b) for public entertainment, displays, and exhibits or similar events:

(i) provide, sponsor, or arrange the events;

(ii) publicize and promote the events; and

(iii) secure funds to cover the cost of the exhibits from:

(A) private contributions;

(B) public appropriations;

(C) admission charges; and

(D) other lawful means;

(c) acquire and designate exposition sites;

(d) use generally accepted accounting principles in accounting for the corporation's assets, liabilities, and operations;

(e) seek corporate sponsorships for the state fair park or for individual buildings or facilities within the fair park;

(f) work with county and municipal governments, the Salt Lake Convention and Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote expositions and the use of the state fair park;

(g) develop and maintain a marketing program to promote expositions and the use of the state fair park;

(h) in accordance with provisions of this part, operate and maintain the state fair park, including

the physical appearance and structural integrity of the state fair park and the buildings located at the state fair park;

(i) prepare an economic development plan for the state fair park;

(j) hold an annual exhibition that:

(i) is called the state fair or a similar name;

(ii) promotes and highlights agriculture throughout the state;

(iii) includes expositions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that, in the corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah;

(iv) includes the award of premiums for the best specimens of the exhibited articles and animals;

(v) permits competition by livestock exhibited by citizens of other states and territories of the United States; and

(vi) is arranged according to plans approved by the board;

(k) fix the conditions of entry to the annual exhibition described in Subsection (4)(j); and

(l) publish a list of premiums that will be awarded at the annual exhibition described in Subsection (4)(j) for the best specimens of exhibited articles and animals.

(5) In addition to the annual exhibition described in Subsection (4)(j), the corporation may hold other exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that, in the corporation's opinion, will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah.

(6) The corporation may:

(a) employ advisers, consultants, and agents, including financial experts and independent legal counsel, and fix their compensation;

(b) (i) participate in the state's Risk Management Fund created under Section 63A-4-201; or

(ii) procure insurance against any loss in connection with the corporation's property and other assets, including mortgage loans;

(c) receive and accept aid or contributions of money, property, labor, or other things of value from any source, including any grants or appropriations from any department, agency, or instrumentality of the United States or Utah;

(d) hold, use, loan, grant, and apply that aid and those contributions to carry out the purposes of the

corporation, subject to the conditions, if any, upon which the aid and contributions were made;

(e) enter into management agreements with any person or entity for the performance of the corporation's functions or powers;

(f) establish whatever accounts and procedures as necessary to budget, receive, and disburse, account for, and audit all funds received, appropriated, or generated;

(g) subject to Subsection (8), lease any of the facilities at the state fair park;

(h) sponsor events as approved by the board; and

(i) enter into one or more agreements to develop the state fair park.

(7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the corporation is exempt from:

(i) Title 51, Chapter 5, Funds Consolidation Act;

(ii) Title 51, Chapter 7, State Money Management Act;

(iii) Title 63A, Utah Administrative Services Code;

(iv) Title 63G, Chapter 6a, Utah Procurement Code;

(v) Title 63J, Chapter 1, Budgetary Procedures Act; and

(vi) Title 67, Chapter 19, Utah State Personnel Management Act.

(b) The board shall adopt policies parallel to and consistent with:

(i) Title 51, Chapter 5, Funds Consolidation Act;

(ii) Title 51, Chapter 7, State Money Management Act;

(iii) Title 63A, Utah Administrative Services Code;

(iv) Title 63G, Chapter 6a, Utah Procurement Code; and

(v) Title 63J, Chapter 1, Budgetary Procedures Act.

(c) The corporation shall comply with:

(i) the provisions of Title 63A, Chapter 3, Part 4, Utah Public Finance Website; and

(ii) the legislative approval requirements for new facilities established in Subsection 63A-5-104(3).

(8) (a) Before the corporation executes a lease described in Subsection (6)(g) with a term of 10 or more years, the corporation shall:

(i) submit the proposed lease to the State Building Board for the State Building Board's approval or rejection; and

(ii) if the State Building Board approves the proposed lease, submit the proposed lease to the Executive Appropriations Committee for the Executive Appropriation Committee's review and

recommendation in accordance with Subsection (8)(b).

(b) The Executive Appropriations Committee shall review a proposed lease submitted in accordance with Subsection (8)(a) and recommend to the corporation that the corporation:

- (i) execute the proposed sublease; or
- (ii) reject the proposed sublease.

Section 8. Section 63H-7a-803 is amended to read:

63H-7a-803. Relation to certain acts -- Participation in Risk Management Fund.

(1) The Utah Communications Authority is exempt from:

(a) except as provided in Subsection (3), Title 63A, Utah Administrative Services Code~~[, except as provided in Section 63A-4-205.5];~~

(b) Title 63G, Chapter 4, Administrative Procedures Act;

(c) Title 63J, Chapter 1, Budgetary Procedures Act; and

(d) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) (a) The board shall adopt budgetary procedures, accounting, and personnel and human resource policies substantially similar to those from which they have been exempted in Subsection (1).

(b) The authority, the board, and the committee members are subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

(c) The authority is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) (a) Subject to the requirements of Subsection 63E-1-304(2), the administration may participate in coverage under the Risk Management Fund created by Section 63A-4-201.

(b) The authority is subject to Title 63A, Chapter 3, Part 4, Utah Public Finance Website.

Section 9. Section 63H-8-204 is amended to read:

63H-8-204. Relation to certain acts.

(1) The corporation is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 51, Chapter 7, State Money Management Act;

(c) except as provided in Subsection (2), Title 63A, Utah Administrative Services Code;

(d) Title 63G, Chapter 6a, Utah Procurement Code;

(e) Title 63J, Chapter 1, Budgetary Procedures Act;

(f) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

(g) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The corporation shall comply with:

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

(b) Title 63A, Chapter 3, Part 4, Utah Public Finance Website; and

~~[(b)]~~ (c) Title 63G, Chapter 2, Government Records Access and Management Act.

CHAPTER 222**S. B. 199**

Passed March 7, 2017
 Approved March 21, 2017
 Effective May 9, 2017

ABLE ACT REVISIONS

Chief Sponsor: Todd Weiler
 House Sponsor: Rebecca P. Edwards

LONG TITLE**General Description:**

This bill modifies provisions of the Achieving a Better Life Experience Program Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ directs the Department of Workforce Services to either:
 - administer the state Achieving a Better Life Experience Program (ABLE);
 - enter into a contract with a state that maintains a qualified ABLE program to provide Utah residents access to that state's qualified ABLE program; or
 - inform eligible individuals and parents or legal guardians of eligible individuals about qualified ABLE programs offered by other states to which Utah residents may apply; and
- ▶ allows persons that contribute to an account in any qualified ABLE program to claim a nonrefundable state tax credit.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 35A-12-102, as enacted by Laws of Utah 2015, Chapter 460
 35A-12-201, as enacted by Laws of Utah 2015, Chapter 460
 59-7-620, as enacted by Laws of Utah 2015, Chapter 460
 59-10-1035, as enacted by Laws of Utah 2015, Chapter 460

REPEALS:

- 35A-12-202, as enacted by Laws of Utah 2015, Chapter 460
 35A-12-301, as enacted by Laws of Utah 2015, Chapter 460
 35A-12-302, as enacted by Laws of Utah 2015, Chapter 460
 35A-12-303, as enacted by Laws of Utah 2015, Chapter 460
 35A-12-304, as enacted by Laws of Utah 2015, Chapter 460
 35A-12-305, as enacted by Laws of Utah 2015, Chapter 460
 35A-12-401, as enacted by Laws of Utah 2015, Chapter 460

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

Section 1. Section 35A-12-102 is amended to read:**35A-12-102. Definitions.**

As used in this chapter:

(1) "Account" means [a state Achieving a Better Life Experience Program account established under this chapter] an account in a qualified ABLE program.

~~[(2) "Account administrator" means a person who administers accounts in accordance with this chapter.]~~

~~[(3) "Account agreement" means an agreement between an account administrator and an account owner to establish an account.]~~

~~[(4) "Account owner" means the following who enter into an agreement with an account administrator to establish an account under this chapter:]~~

~~[(a) an eligible individual; or]~~

~~[(b) if the eligible individual is under 18 years of age or is incapacitated, a parent or legal guardian of the eligible individual.]~~

~~[(5) "Beneficiary" means an individual who is:]~~

~~[(a) an eligible individual;]~~

~~[(b) a resident of:]~~

~~[(i) this state; or]~~

~~[(ii) a contracting state; and]~~

~~[(c) designated as the beneficiary of an account under an account agreement.]~~

~~[(6) "Contracting state" means a state that:]~~

~~[(a) does not have an Achieving a Better Life Experience program that meets the requirements to be a qualified Achieving a Better Life Experience program under the federal Achieving a Better Life Experience Act; and]~~

~~[(b) has entered into a contract with this state to provide residents of the other state access to the state Achieving a Better Life Experience Program.]~~

~~[(7) "Eligible individual" means an individual who, before the individual turns 26 years of age:]~~

~~[(a) as determined by the department, has a medically determinable physical or mental impairment that:]~~

~~[(i) results in marked and severe functional limitations that can be expected to result in death; or]~~

~~[(ii) has lasted or can be expected to last for a continuous period of 12 months or more; or]~~

~~[(b) is eligible for benefits under title II or title XVI of the Social Security Act on the basis of blindness.]~~

~~[(8) "Federal Achieving a Better Life Experience Act" means the Stephen Beck, Jr., Achieving a~~

~~Better Life Experience Act of 2014, Pub. L. No. 113-295, 128 Stat. 4010.]~~

~~[(9) “Qualified disability expenses” means the same as that term is defined in the federal Achieving a Better Life Experience Act.]~~

~~(2) “Qualified ABLE program” means the same as that term is defined in 26 U.S.C. Sec. 529A.~~

~~[(40)] (3) “State Achieving a Better Life Experience Program” means the program created by this chapter.~~

Section 2. Section 35A-12-201 is amended to read:

35A-12-201. Creation of program.

(1) There is created the state Achieving a Better Life Experience Program.

(2) The department shall do one of the following:

~~(a) administer the [program] state Achieving a Better Life Experience Program in compliance with:~~

~~[(a) this chapter;]~~

~~[(b) the federal Achieving a Better Life Experience Act; and]~~

~~(i) 26 U.S.C. Sec. 529A; and~~

~~[(e)] (ii) regulations, if any, issued by the United States Department of the Treasury[-];~~

~~[(3) The program shall authorize the creation of an account for the purpose of allowing contributions on behalf of a beneficiary for the payment of qualified disability expenses.]~~

~~[(4) Subject to Subsection 35A-12-301(3), the department shall ensure that contributions to an account:]~~

~~[(a) are held in trust for a beneficiary; and]~~

~~[(b) may not be used for a purpose other than the payment of qualified disability expenses.]~~

~~(b) enter into a contract with a state that maintains a qualified ABLE program to provide Utah residents access to that state’s qualified ABLE program; or~~

~~(c) inform eligible individuals and parents or legal guardians of eligible individuals about qualified ABLE programs offered by other states to which Utah residents may apply.~~

~~(3) This chapter may not be interpreted to:~~

~~(a) authorize or provide a disability-related service to an eligible individual;~~

~~(b) be a factor in establishing residency; or~~

~~(c) provide that contributions made into an account are sufficient to cover the qualified disability expenses of an eligible individual.~~

~~(4) An account is not insured or guaranteed by the state.~~

(5) The state does not guarantee the rate or payment of interest or other return on an account.

Section 3. Section 59-7-620 is amended to read:

59-7-620. Nonrefundable tax credit for contribution to state Achieving a Better Life Experience Program account.

(1) As used in this section:

~~[(a) “Account” means the same as that term is defined in Section 35A-12-102.]~~

~~[(b) “Account administrator” means the same as that term is defined in Section 35A-12-102.]~~

~~(a) “Account” means an account in a qualified ABLE program where the designated beneficiary of the account is a resident of this state.~~

~~[(e)] (b) “Contributor” means a corporation that:~~

~~(i) makes a contribution to an account; and~~

~~(ii) receives a statement from the [account administrator in accordance with Section 35A-12-304] qualified ABLE program itemizing the contribution.~~

~~[(d) “State Achieving a Better Life Experience Program” means the same as that term is defined in Section 35A-12-102.]~~

~~(c) “Designated beneficiary” means the same as that term is defined in 26 U.S.C. Sec. 529A.~~

~~(d) “Qualified ABLE program” means the same as that term is defined in Section 35A-12-102.~~

(2) A contributor to an account ~~[created under the state Achieving a Better Life Experience Program]~~ may claim a nonrefundable tax credit as provided in this section.

(3) Subject to the other provisions of this section, the tax credit is equal to the product of:

(a) 5%; and

(b) the total amount of contributions:

(i) the contributor makes for the taxable year; and

(ii) for which the contributor receives a statement from the ~~[account administrator in accordance with Section 35A-12-304]~~ qualified ABLE program itemizing the contributions.

(4) A contributor may not claim a tax credit under this section:

(a) for an amount of excess contribution to an account that is returned to the contributor ~~[in accordance with Section 35A-12-302]; or~~

(b) with respect to an amount the contributor deducts on a federal income tax return.

(5) A tax credit under this section may not be carried forward or carried back.

Section 4. Section 59-10-1035 is amended to read:

59-10-1035. Nonrefundable tax credit for contribution to state Achieving a Better Life Experience Program account.

(1) As used in this section:

~~[(a) "Account" means the same as that term is defined in Section 35A-12-102.]~~

~~[(b) "Account administrator" means the same as that term is defined in Section 35A-12-102.]~~

(a) "Account" means an account in a qualified ABLE program where the designated beneficiary of the account is a resident of this state.

~~[(e)]~~ (b) "Contributor" means a claimant, estate, or trust that:

(i) makes a contribution to an account; and

(ii) receives a statement from the ~~[account administrator in accordance with Section 35A-12-304]~~ qualified ABLE program itemizing the contribution.

~~[(d) "State Achieving a Better Life Experience Program" means the same as that term is defined in Section 35A-12-102.]~~

(c) "Designated beneficiary" means the same as that term is defined in 26 U.S.C. Sec. 529A.

(d) "Qualified ABLE program" means the same as that term is defined in Section 35A-12-102.

(2) A contributor to an account ~~[created under the state Achieving a Better Life Experience Program]~~ may claim a nonrefundable tax credit as provided in this section.

(3) Subject to the other provisions of this section, the tax credit is equal to the product of:

(a) 5%; and

(b) the total amount of contributions:

(i) the contributor makes for the taxable year; and

(ii) for which the contributor receives a statement from the ~~[account administrator in accordance with Section 35A-12-304]~~ qualified ABLE program itemizing the contributions.

(4) A contributor may not claim a tax credit under this section:

(a) for an amount of excess contribution to an account that is returned to the contributor ~~[in accordance with Section 35A-12-302];~~ or

(b) with respect to an amount the contributor deducts on a federal income tax return.

(5) A tax credit under this section may not be carried forward or carried back.

Section 5. Repealer.

This bill repeals:

Section 35A-12-202, Application.

Section 35A-12-301, Account administrator -- Fees or service charges.

Section 35A-12-302, Contributions.

Section 35A-12-303, Account agreements -- Beneficiaries.

Section 35A-12-304, Duties of account administrator.

Section 35A-12-305, Reports.

Section 35A-12-401, Scope of chapter -- No state guarantee.

CHAPTER 223**S. B. 224**

Passed March 7, 2017

Approved March 21, 2017

Effective May 9, 2017

DEPARTMENT OF WORKFORCE SERVICES AMENDMENTS

Chief Sponsor: Lincoln Fillmore

House Sponsor: John R. Westwood

LONG TITLE**General Description:**

This bill modifies provisions related to the Department of Workforce Services.

Highlighted Provisions:

This bill:

- ▶ grants rulemaking authority;
- ▶ adds four members to the Governor's Committee on Employment of People with Disabilities;
- ▶ modifies how the Qualified Emergency Food Agencies Fund is distributed;
- ▶ modifies requirements for fees for service for persons representing an individual in child support proceedings;
- ▶ extends the sunset on the Office of Rehabilitation Transition Restricted Account; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

35A-1-206, as last amended by Laws of Utah 2016, Chapters 236, 271, and 296

35A-4-103, as last amended by Laws of Utah 2012, Chapter 41

35A-8-1009, as last amended by Laws of Utah 2013, Chapter 400

35A-13-103, as renumbered and amended by Laws of Utah 2016, Chapter 271

35A-13-302, as renumbered and amended by Laws of Utah 2016, Chapter 271

63I-2-253, as last amended by Laws of Utah 2016, Chapters 128, 229, 236, 271, and 318

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

Section 1. Section 35A-1-206 is amended to read:**35A-1-206. State Workforce Development Board -- Appointment -- Membership -- Terms of members -- Compensation.**

(1) There is created within the department the State Workforce Development Board in accordance with the provisions of the Workforce Innovation and Opportunity Act, 29 U.S.C. Sec. 3101 et seq.

(2) The board shall consist of the following 39 members:

- (a) the governor or the governor's designee;

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

(c) one representative of the House of Representatives, appointed by the speaker of the House of Representatives;

(d) the executive director or the executive director's designee;

(e) the executive director of the Department of Human Services or the executive director's designee;

(f) the [executive] director of the Utah State Office of Rehabilitation or the [executive] director's designee;

(g) the superintendent of the State Board of Education or the superintendent's designee;

(h) the commissioner of higher education or the commissioner's designee;

(i) the commissioner of technical education of the Utah College of Applied Technology or the commissioner of technical education's designee;

(j) the executive director of the Governor's Office of Economic Development or the executive director's designee;

(k) the executive director of the Department of Veterans' and Military Affairs or the executive director's designee; and

(l) the following members appointed by the governor:

(i) 20 representatives of business in the state, selected among the following:

(A) owners of businesses, chief executive or operating officers of businesses, or other business executives or employers with policymaking or hiring authority;

(B) representatives of businesses, including small businesses, that provide employment opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the state; and

(C) representatives of businesses appointed from among individuals nominated by state business organizations or business trade associations;

(ii) six representatives of the workforce within the state, which:

(A) shall include at least two representatives of labor organizations who have been nominated by state labor federations;

(B) shall include at least one representative from a registered apprentice program;

(C) may include one or more representatives from a community-based organization that has demonstrated experience and expertise in addressing the employment, training, or educational needs of individuals with barriers to employment; and

(D) may include one or more representatives from an organization that has demonstrated experience

and expertise in addressing the employment, training, or education needs of eligible youth, including organizations that serve out of school youth; and

(iii) two elected officials that represent a city or a county.

(3) (a) The governor shall appoint one of the appointed business representatives as chair of the board.

(b) The chair shall serve at the pleasure of the governor.

(4) (a) The governor shall ensure that members appointed to the board represent diverse geographic areas of the state, including urban, suburban, and rural areas.

(b) A member appointed by the governor shall serve a term of four years and may be reappointed to one additional term.

(c) A member shall continue to serve until the member's successor has been appointed and qualified.

(d) Except as provided in Subsection (4) (e), as terms of board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(e) Notwithstanding the requirements of Subsection (4)(d), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately one half of the board is appointed every two years.

(f) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(g) The executive director shall terminate the term of any governor-appointed member of the board if the member leaves the position that qualified the member for the appointment.

(5) A majority of members constitutes a quorum for the transaction of business.

(6) (a) A member of the board who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(7) The department shall provide staff and administrative support to the board at the direction of the executive director.

(8) The board has the duties, responsibilities, and powers described in 29 U.S.C. Sec. 3111, including:

(a) identifying opportunities to align initiatives in education, training, workforce development, and economic development;

(b) developing and implementing the state workforce services plan described in Section 35A-1-207;

(c) utilizing strategic partners to ensure the needs of industry are met, including the development of expanded strategies for partnerships for in-demand occupations and understanding and adapting to economic changes;

(d) developing strategies for staff training;

(e) developing and improving employment centers; and

(f) performing other responsibilities within the scope of workforce services as requested by:

(i) the Legislature;

(ii) the governor; or

(iii) the executive director.

Section 2. Section 35A-4-103 is amended to read:

35A-4-103. Void agreements -- Child support obligations -- Penalties.

(1) (a) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter is void.

(b) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from the employer, is void.

(c) An employer may not directly or indirectly:

(i) make, require, or accept any deduction from wages to finance the employer's contributions required from the employer;

(ii) require or accept any waiver of any right under this chapter by any individual in the employer's employ;

(iii) discriminate in regard to the hiring or tenure of work on any term or condition of work of any individual on account of the individual claiming benefits under this chapter; or

(iv) in any manner obstruct or impede the filing of claims for benefits.

(d) (i) Any employer or officer or agent of an employer who violates Subsection (1)(c) is, for each offense, guilty of a class B misdemeanor.

(ii) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under this Subsection (1) shall be not less than \$100, and a penalty of imprisonment shall be not more than six months.

(2) An individual claiming benefits may not be charged fees or costs of any kind in any proceeding under this chapter by the department or its representatives, or by any court or any officer of the court.

(3) (a) Any individual claiming benefits in any proceeding before the department or its

representatives or a court may be represented by counsel or any other authorized agent.

(b) ~~[A counsel or agent]~~ An authorized agent, who is not an attorney, may not ~~[either]~~ charge or receive for the ~~[counsel's or]~~ authorized agent's services more than an amount approved by the division or administrative law judge in accordance with rules made by the department.

(4) Except as provided for in Subsection (5):

(a) any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void;

(b) rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt;

(c) benefits received by any individual, so long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except debts incurred for necessities furnished to the individual or the individual's spouse or dependents during the time when the individual was unemployed; and

(d) any waiver of any exemption provided for in Subsection (4) is void.

(5) (a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not the individual owes:

(i) child support obligations; or

(ii) an uncollected overissuance of SNAP benefits.

(b) If the individual owes child support obligations, and is determined to be eligible for unemployment compensation, the division shall notify the state or local child support agency charged with enforcing that obligation that the individual is eligible for unemployment compensation.

(c) The division shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

(i) any amount required to be deducted and withheld from unemployment compensation under legal process, as defined in the Social Security Act, 42 U.S.C. Sec. 659(i), properly served upon the department;

(ii) the amount determined under an agreement submitted to the division under Subsection 454 (19)(B)(i) of the Social Security Act, 42 U.S.C. Sec. 654, by the state or local child support enforcement agency, except if Subsection (5)(c)(i) is applicable; or

(iii) the amount specified by the claimant to the division if neither Subsection (5)(c)(i) nor (ii) is applicable.

(d) The division shall notify the state SNAP agency that an individual is eligible for unemployment compensation if the individual:

(i) owes an uncollected overissuance of SNAP benefits; and

(ii) is determined to be eligible for unemployment compensation.

(e) The division shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance of SNAP benefits:

(i) the amount specified by the individual to the division to be deducted and withheld under this Subsection (5)(e);

(ii) the amount, if any, determined pursuant to an agreement submitted to the state SNAP agency under Section 13(c)(3)(B) of the Food and Nutrition Act of 2008; or

(iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to Section 13(c)(3)(B) of the Food and Nutrition Act of 2008.

(f) Any amount deducted and withheld under Subsection (5)(c) or (e) shall:

(i) be paid by the department to the appropriate:

(A) state or local child support enforcement agency; or

(B) state SNAP agency; and

(ii) for all purposes, be treated as if it was paid to the individual as unemployment compensation and then paid by the individual to the appropriate:

(A) state or local child support enforcement agency in satisfaction of the individual's child support obligation; or

(B) state SNAP agency in satisfaction of the individual's uncollected overissuance.

(g) For purposes of this Subsection (5):

(i) "Child support obligation" means obligations that are enforced under a plan described in Section 454 of the Social Security Act, 42 U.S.C. Sec. 654, that has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.

(ii) "State SNAP agency" means the Department of Workforce Services or its designee responsible for the collection of uncollected overissuances.

(iii) "State or local child support enforcement agency" means any agency or political subdivision of the state operating under a plan described in this Subsection (5).

(iv) "Uncollected overissuance" is as defined in Section 13(c)(1) of the Food and Nutrition Act of 2008.

(v) "Unemployment compensation" means any compensation payable under this chapter, including amounts payable under an agreement directed by federal law that provides compensation assistance or allowances for unemployment.

(h) This Subsection (5) is applicable only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency or state SNAP agency for the

administrative costs of the department under this Subsection (5) that are directly related to the enforcement of child support obligations or the repayment of uncollected overissuance of SNAP benefits.

Section 3. Section 35A-8-1009 is amended to read:

35A-8-1009. Qualified Emergency Food Agencies Fund -- Expenditure of revenues.

(1) As used in this section:

(a) "Association of governments" means the following created under the authority of Title 11, Chapter 13, Interlocal Cooperation Act:

- (i) an association of governments; or
- (ii) a regional council that acts as an association of governments.

(b) "Food and food ingredients" [is as] means the same as that term is defined in Section 59-12-102.

~~[(c) "Pounds of food donated" means the aggregate number of pounds of food and food ingredients that are donated:]~~

~~[(i) to a qualified emergency food agency; and]~~

~~[(ii) by a person, other than an organization that as part of its activities operates a program that has as the program's primary purpose to:]~~

~~[(A) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or]~~

~~[(B) provide food and food ingredients directly to low-income persons.]~~

~~[(d)] (c) "Qualified emergency food agency" means an organization that:~~

(i) is:

(A) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;

(B) an association of governments; or

(C) a food pantry operated by a municipality located within the state;

(ii) as part of its activities operates a program that has as the program's primary purpose to:

(A) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or

(B) provide food and food ingredients directly to low-income persons; and

(iii) the office determines to be a qualified emergency food agency.

(2) There is created an expendable special revenue fund known as the Qualified Emergency Food Agencies Fund.

(3) (a) The Qualified Emergency Food Agencies Fund shall be funded by the sales and use tax revenues described in:

(i) Section 59-12-103;

(ii) Section 59-12-204; and

(iii) Section 59-12-1102.

(b) Any interest earned on the Qualified Emergency Food Agencies Fund shall be deposited into the General Fund.

(4) The office shall for a fiscal year distribute money deposited into the Qualified Emergency Food Agencies Fund to qualified emergency food agencies within the state as provided in this section.

(5) A qualified emergency food agency shall file an application with the office before the qualified emergency food agency may receive a distribution under this section.

~~[(6) Except as provided in Subsection (7), the office shall for a fiscal year distribute to a qualified emergency food agency an amount equal to the product of:]~~

~~[(a) the pounds of food donated to the qualified emergency food agency during that fiscal year; and]~~

~~[(b) 12 cents.]~~

~~[(7) If the money deposited into the Qualified Emergency Food Agencies Fund is insufficient to make the distributions required by Subsection (6), the office shall make distributions to qualified emergency food agencies in the order that the office receives applications from the qualified emergency food agencies until all of the money deposited into the Qualified Emergency Food Agencies Fund for the fiscal year is expended.]~~

~~[(8)] (6) A qualified emergency food agency may expend a distribution received in accordance with this section only for a purpose related to:~~

(a) warehousing and distributing food and food ingredients to other agencies and organizations providing food and food ingredients to low-income persons; or

(b) providing food and food ingredients directly to low-income persons.

~~[(9)] (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Housing and Community Development Division may make rules providing procedures for implementing the distributions required by this section, including:~~

(a) standards for determining and verifying the amount of a distribution that a qualified emergency food agency may receive;

(b) procedures for a qualified emergency food agency to apply for a distribution, including the frequency with which a qualified emergency food agency may apply for a distribution; and

(c) consistent with Subsection (1)~~[(d)](c)~~, determining whether an entity is a qualified emergency food agency.

Section 4. Section 35A-13-103 is amended to read:

35A-13-103. Office authority.

(1) The Utah State Office of Rehabilitation created in Section 35A-1-202 is under the direction of the department and under the direction and general supervision of the executive director.

(2) The department is the sole state agency designated to administer the state plans for vocational rehabilitation and independent living rehabilitation programs.

(3) The office is the sole state unit designated to carry out the state plans and other duties assigned by law or the department, including the following:

(a) determining eligibility for vocational rehabilitation services;

(b) providing vocational rehabilitation services to eligible individuals;

(c) determining the types and scope of vocational rehabilitation services provided by the office;

(d) determining employment outcomes related to vocational rehabilitation services if required; and

(e) determining the appropriate uses of federal rehabilitation funding.

(4) The office may not delegate the duties described in Subsection (3) to any other state government entity.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in accordance with the provisions of this chapter, the department in collaboration with the office may make rules related to administering the state plan for vocational rehabilitation, including determining eligibility for vocational rehabilitation services and establishing priorities in providing vocational rehabilitation services.

Section 5. Section 35A-13-302 is amended to read:

35A-13-302. Governor's Committee on Employment of People with Disabilities.

(1) There is created the Governor's Committee on Employment of People with Disabilities, composed of the following ~~[15]~~ 19 members:

(a) the director of the office;

(b) the state superintendent of public instruction or the superintendent's designee;

(c) the commissioner of higher education or the commissioner's designee;

(d) the executive director of the Department of Human Resource Management or the executive director's designee;

(e) the executive director of the Department of Human Services or the executive director's designee;

(f) the executive director of the Department of Health or the executive director's designee; and

(g) the following ~~[nine]~~ 13 members appointed by the governor:

(i) a representative of individuals who are blind or visually impaired;

(ii) a representative of individuals who are deaf or hard of hearing;

(iii) a representative of individuals who have disabilities;

(iv) ~~three~~ seven representatives of business or industry;

(v) a representative experienced in job training and placement;

(vi) a representative of veterans; and

(vii) a representative experienced in medical, health, or insurance professions.

(2) (a) (i) Except as provided in Subsection (2)(a)(ii), the governor shall appoint the committee members described in Subsection (1)(g) to serve four-year terms.

(ii) In making the initial appointments to the committee, the governor shall appoint approximately one-half of the members to two-year terms and one-half of the members to four-year terms.

(b) Committee members shall serve until their successors are appointed and qualified.

(c) The governor shall fill any vacancy that occurs on the committee for any reason by appointing a person according to the procedures of this section for the unexpired term of the vacated member.

(d) The director of the office shall select a chair of the committee from the membership.

(e) ~~[Eight]~~ Ten members of the committee are a quorum for the transaction of business.

(3) (a) The committee shall:

(i) promote employment opportunities for individuals with disabilities;

(ii) serve as the designated state liaison to the President's Committee on Employment of People with Disabilities;

(iii) provide training and technical assistance to employers in implementing the Americans with Disabilities Act;

(iv) develop and disseminate appropriate information through workshops, meetings, and other requests in response to needs to employers and others regarding employment of individuals with disabilities;

(v) establish contacts with various community representatives to identify and resolve barriers to full participation in employment and community life;

(vi) formally recognize exemplary contributions in the areas of employment, job placement, training, rehabilitation, support services, medicine, media or public relations, and personal achievements made by individuals with disabilities;

(vii) advise, encourage, and motivate individuals with disabilities who are preparing for or seeking

employment to reach their full potential as qualified employees;

(viii) advocate for policies and practices that promote full and equal rights for individuals with disabilities;

(ix) advise the office, the department, and the governor on issues that affect employment and other requests for information on disability issues; and

(x) prepare an annual report on the progress, accomplishments, and future goals of the committee and present the report to the department for inclusion in the department's annual report described in Section 35A-1-109.

(b) The committee may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, receive and accept federal funds, and may receive and accept state funds, private gifts, donations, and funds from any source to carry out its purposes.

(4) The office shall staff the committee.

Section 6. Section 63I-2-253 is amended to read:

63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.

(1) Section 53A-1-403.5 is repealed July 1, 2017.

(2) Section 53A-1-411 is repealed July 1, 2017.

(3) Section 53A-1-709 is repealed July 1, 2020.

(4) Subsection 53A-1a-513(4) is repealed July 1, 2017.

(5) Section 53A-1a-513.5 is repealed July 1, 2017.

(6) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2019.

(7) Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is repealed July 1, 2017.

(8) [Sections] Section 53A-24-601 [and 53A-24-602 are] is repealed January 1, 2018.

(9) Section 53A-24-602 is repealed July 1, 2018.

[49] (10) (a) Subsections 53B-2a-103(2) and (4) are repealed July 1, 2019.

(b) When repealing Subsections 53B-2a-103(2) and (4), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

[49] (11) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project, is repealed July 1, 2023.

CHAPTER 224**S. B. 237**

Passed March 9, 2017

Approved March 21, 2017

Effective July 1, 2017

SERVICEMEMBERS CUSTODY AND VISITATION AMENDMENTS

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill modifies provisions related to custody, visitation, and servicemembers.

Highlighted Provisions:

This bill:

- ▶ addresses custody of children in case of separation or divorce;
- ▶ amends definition provisions;
- ▶ provides the modification or termination of a custody order;
- ▶ amends advisory guidelines;
- ▶ addresses parenting plans;
- ▶ addresses temporary agreements granting custodial responsibility during deployment;
- ▶ amends requirement to file agreement or power of attorney;
- ▶ modifies provisions related to terminating a temporary grant of custodial responsibility; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 30-3-10, as last amended by Laws of Utah 2014, Chapter 409
- 30-3-10.1, as last amended by Laws of Utah 2003, Chapter 269
- 30-3-10.4, as last amended by Laws of Utah 2012, Chapter 271
- 30-3-10.8, as enacted by Laws of Utah 2001, Chapter 126
- 30-3-10.9, as last amended by Laws of Utah 2003, Chapter 288
- 30-3-33, as last amended by Laws of Utah 2011, Chapter 297
- 78B-20-102 (Effective 07/01/17), as enacted by Laws of Utah 2016, Chapter 292
- 78B-20-201 (Effective 07/01/17), as enacted by Laws of Utah 2016, Chapter 292
- 78B-20-205 (Effective 07/01/17), as enacted by Laws of Utah 2016, Chapter 292
- 78B-20-401 (Effective 07/01/17), as enacted by Laws of Utah 2016, Chapter 292
- 78B-20-403 (Effective 07/01/17), as enacted by Laws of Utah 2016, Chapter 292
- 78B-20-404 (Effective 07/01/17), as enacted by Laws of Utah 2016, Chapter 292

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

Section 1. Section 30-3-10 is amended to read:**30-3-10. Custody of children in case of separation or divorce -- Custody consideration.**

(1) If a ~~husband and wife~~ married couple having one or more minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate.

(a) In determining any form of custody, including a change in custody, the court shall consider the best interests of the child without preference for either ~~the mother or father~~ parent solely because of the biological sex of the parent and, among other factors the court finds relevant, the following:

(i) the past conduct and demonstrated moral standards of each of the parties;

(ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent;

(iii) the extent of bonding between the parent and child, meaning the depth, quality, and nature of the relationship between a parent and child;

(iv) whether the parent has intentionally exposed the child to pornography or material harmful to a minor, as defined in Section 76-10-1201; and

(v) those factors outlined in Section 30-3-10.2.

(b) There shall be a rebuttable presumption that joint legal custody, as defined in Section 30-3-10.1, is in the best interest of the child, except in cases where there is:

(i) domestic violence in the home or in the presence of the child;

(ii) special physical or mental needs of a parent or child, making joint legal custody unreasonable;

(iii) physical distance between the residences of the parents, making joint decision making impractical in certain circumstances; or

(iv) any other factor the court considers relevant including those listed in this section and Section 30-3-10.2.

(c) The person who desires joint legal custody shall file a proposed parenting plan in accordance with Sections 30-3-10.8 and 30-3-10.9. A presumption for joint legal custody may be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of the child.

(d) The children may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the children be heard and there is no other reasonable method to present their testimony.

(e) The court may inquire of the children and take into consideration the children's desires regarding future custody or parent-time schedules, but the

expressed desires are not controlling and the court may determine the children's custody or parent-time otherwise. The desires of a child 14 years of age or older shall be given added weight, but is not the single controlling factor.

(f) If interviews with the children are conducted by the court pursuant to Subsection (1)(e), they shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with the children is the only method to ascertain the child's desires regarding custody.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, the court shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) Except as provided in Subsection (4)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising from the disability by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

(5) This section establishes neither a preference nor a presumption for or against joint physical custody or sole physical custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

(6) When an issue before the court involves custodial responsibility in the event of a deployment of one or both parents who are servicemembers, and the servicemember has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.

Section 2. Section 30-3-10.1 is amended to read:

30-3-10.1. Definitions -- Joint legal custody -- Joint physical custody.

As used in this chapter:

(1) (a) "Custodial responsibility" includes all powers and duties relating to caretaking authority and decision-making authority for a child.

(b) "Custodial responsibility" includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.

~~[(1)]~~ (2) "Joint legal custody":

(a) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;

(b) may include an award of exclusive authority by the court to one parent to make specific decisions;

(c) does not affect the physical custody of the child except as specified in the order of joint legal custody;

(d) is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and

(e) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

~~[(2)]~~ (3) "Joint physical custody":

(a) means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support;

(b) can mean equal or nearly equal periods of physical custody of and access to the child by each of the parents, as required to meet the best interest of the child;

(c) may require that a primary physical residence for the child be designated; and

(d) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

(4) "Servicemember" means a member of a uniformed service.

(5) "Uniformed service" means:

(a) active and reserve components of the United States Armed Forces;

(b) the United States Merchant Marine;

(c) the commissioned corps of the United States Public Health Service;

(d) the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(e) the national guard of a state.

Section 3. Section 30-3-10.4 is amended to read:

30-3-10.4. Modification or termination of order.

(1) On the petition of one or both of the parents, or the joint legal or physical custodians if they are not the parents, the court may, after a hearing, modify or terminate an order that established joint legal or physical custody if:

(a) the verified petition or accompanying affidavit initially alleges that admissible evidence will show that the circumstances of the child or one or both parents or joint legal or physical custodians have materially and substantially changed since the entry of the order to be modified;

(b) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child; and

(c) (i) both parents have complied in good faith with the dispute resolution procedure in accordance with Subsection 30-3-10.3(7); or

(ii) if no dispute resolution procedure is contained in the order that established joint legal or physical custody, the court orders the parents to participate in a dispute resolution procedure in accordance with Subsection 30-3-10.2(5) unless the parents certify that, in good faith, they have ~~utilized~~ used a dispute resolution procedure to resolve their dispute.

(2) (a) In determining whether the best interest of a child will be served by either modifying or terminating the joint legal or physical custody order, the court shall, in addition to other factors the court considers relevant, consider the factors outlined in Section 30-3-10 and Subsection 30-3-10.2(2).

(b) A court order modifying or terminating an existing joint legal or physical custody order shall contain written findings that:

(i) a material and substantial change of circumstance has occurred; and

(ii) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child.

(c) The court shall give substantial weight to the existing joint legal or physical custody order when the child is thriving, happy, and well-adjusted.

(3) The court shall, in every case regarding a petition for termination of a joint legal or physical custody order, consider reasonable alternatives to preserve the existing order in accordance with Subsection 30-3-10(1)(b). The court may modify the terms and conditions of the existing order in accordance with Subsection 30-3-10(5) and may order the parents to file a parenting plan in accordance with this chapter.

(4) A parent requesting a modification from sole custody to joint legal custody or joint physical

custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section 30-3-10.8.

(5) If the court finds that an action under this section is filed or answered frivolously and in a manner designed to harass the other party, the court shall assess attorney fees as costs against the offending party.

(6) When an issue before the court involves custodial responsibility in the event of deployment of one or both parents who are servicemembers, and the servicemember has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.

Section 4. Section 30-3-10.8 is amended to read:

30-3-10.8. Parenting plan -- Filing -- Modifications.

(1) In any proceeding under this chapter, including actions for paternity, ~~[any]~~ a party requesting joint custody, joint legal or physical custody, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan at the time of the filing of their original petition or at the time of filing their answer or counterclaim.

(2) In proceedings for a modification of custody provisions or modification of a parenting plan, a proposed parenting plan shall be filed and served with the petition to modify, or the answer or counterclaim to the petition to modify.

(3) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default to adopt the plan if the other party fails to file a proposed parenting plan as required by this section.

(4) Either party may file and serve an amended proposed parenting plan according to the rules for amending pleadings.

(5) The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

(6) Both parents may submit a parenting plan which has been agreed upon. A verified statement, signed by both parents, shall be attached.

(7) If the parents file inconsistent parenting plans, the court may appoint a guardian ad litem to represent the best interests of the child, who may, if necessary, file a separate parenting plan reflecting the best interests of the child.

(8) When one or both parents are a servicemember, the parenting plan shall be consistent with Subsection 30-3-10.9(10). If after a parenting plan is adopted, one or both parents become servicemembers, as soon as practical, the parents shall amend the existing parenting plan to comply with Subsection 30-3-10.9(10).

Section 5. Section 30-3-10.9 is amended to read:

30-3-10.9. Parenting plan -- Objectives -- Required provisions -- Dispute resolution.

- (1) The objectives of a parenting plan are to:
- (a) provide for the child's physical care;
 - (b) maintain the child's emotional stability;
 - (c) provide for the child's changing needs as the child grows and matures in a way that minimizes the need for future modifications to the parenting plan;
 - (d) set forth the authority and responsibilities of each parent with respect to the child consistent with the definitions outlined in this chapter;
 - (e) minimize the child's exposure to harmful parental conflict;
 - (f) encourage the parents, where appropriate, to meet the responsibilities to their minor children through agreements in the parenting plan rather than relying on judicial intervention; and
 - (g) protect the best interests of the child.
- (2) The parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child, and provisions addressing notice and parent-time responsibilities in the event of the relocation of either party. It may contain other provisions comparable to those in Sections 30-3-5 and 30-3-10.3 regarding the welfare of the child.
- (3) A process for resolving disputes shall be provided unless precluded or limited by statute. A dispute resolution process may include:
- (a) counseling;
 - (b) mediation or arbitration by a specified individual or agency; or
 - (c) court action.
- (4) In the dispute resolution process:
- (a) preference shall be given to the provisions in the parenting plan;
 - (b) parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;
 - (c) a written record shall be prepared of any agreement reached in counseling or mediation and provided to each party;
 - (d) if arbitration becomes necessary, a written record shall be prepared and a copy of the arbitration award shall be provided to each party;
 - (e) if the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court may award attorney's fees and financial sanctions to the prevailing parent;

(f) the district court shall have the right of review from the dispute resolution process; and

(g) the provisions of this Subsection (4) shall be set forth in any final decree or order.

(5) The parenting plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the children in these specified areas or in other areas into their plan, consistent with the criteria outlined in Subsection 30-3-10.7(2) and Subsection (1). Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(6) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

(7) When mutual decision-making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

(8) The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions.

(9) If a parent fails to comply with a provision of the parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision of the parenting plan or a child support order may result in a finding of contempt of court.

(10) (a) When one or both parents are servicemembers, the parenting plan shall contain provisions that address the foreseeable parenting and custodial issues likely to arise in the event of notification of deployment or other contingency, including long-term deployments, short-term deployments, death, incapacity, and noncombatant evacuation operations.

(b) The provisions in the parenting plan described in Subsection (10)(a) shall comport substantially with the requirements of an agreement made pursuant to Section 78B-20-201.

Section 6. Section 30-3-33 is amended to read:

30-3-33. Advisory guidelines.

In addition to the parent-time schedules provided in Sections 30-3-35 and 30-3-35.5, the following advisory guidelines are suggested to govern all parent-time arrangements between parents.

(1) Parent-time schedules mutually agreed upon by both parents are preferable to a court-imposed solution.

(2) The parent-time schedule shall be [utilized] used to maximize the continuity and stability of the child's life.

(3) Special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the parent-time schedule.

(4) The responsibility for the pick up, delivery, and return of the child shall be determined by the court when the parent-time order is entered, and may be changed at any time a subsequent modification is made to the parent-time order.

(5) If the noncustodial parent will be providing transportation, the custodial parent shall have the child ready for parent-time at the time the child is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time the child is returned.

(6) If the custodial parent will be transporting the child, the noncustodial parent shall be at the appointed place at the time the noncustodial parent is to receive the child, and have the child ready to be picked up at the appointed time and place, or have made reasonable alternate arrangements for the custodial parent to pick up the child.

(7) Regular school hours may not be interrupted for a school-age child for the exercise of parent-time by either parent.

(8) The court may make alterations in the parent-time schedule to reasonably accommodate the work schedule of both parents and may increase the parent-time allowed to the noncustodial parent but may not diminish the standardized parent-time provided in Sections 30-3-35 and 30-3-35.5.

(9) The court may make alterations in the parent-time schedule to reasonably accommodate the distance between the parties and the expense of exercising parent-time.

(10) Neither parent-time nor child support is to be withheld due to either parent's failure to comply with a court-ordered parent-time schedule.

(11) The custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully.

(12) The noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency.

(13) Each parent shall provide the other with the parent's current address and telephone number, email address, and other virtual parent-time access information within 24 hours of any change.

(14) Each parent shall permit and encourage, during reasonable hours, reasonable and uncensored communications with the child, in the form of mail privileges and virtual parent-time if the equipment is reasonably available, provided that if the parties cannot agree on whether the equipment is reasonably available, the court shall decide whether the equipment for virtual parent-time is reasonably available, taking into consideration:

(a) the best interests of the child;

(b) each parent's ability to handle any additional expenses for virtual parent-time; and

(c) any other factors the court considers material.

(15) Parental care shall be presumed to be better care for the child than surrogate care and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if willing and able to transport the children, to provide the child care. Child care arrangements existing during the marriage are preferred as are child care arrangements with nominal or no charge.

(16) Each parent shall provide all surrogate care providers with the name, current address, and telephone number of the other parent and shall provide the noncustodial parent with the name, current address, and telephone number of all surrogate care providers unless the court for good cause orders otherwise.

(17) Each parent shall be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

(18) If the child is on a different parent-time schedule than a sibling, based on Sections 30-3-35 and 30-3-35.5, the parents should consider if an upward deviation for parent-time with all the minor children so that parent-time is uniform between school aged and nonschool aged children, is appropriate.

(19) When one or both parents are servicemembers or contemplating joining a uniformed service, the parents should resolve issues of custodial responsibility in the event of deployment as soon as practicable through reaching a voluntary agreement pursuant to Section 78B-20-201 or through court order obtained pursuant to Section 30-3-10. Servicemembers shall ensure their family care plan reflects orders and agreements entered and filed pursuant to Title 78B, Chapter 20, Uniform Deployed Parents Custody, Parent-Time, and Visitation Act.

Section 7. Section 78B-20-102 (Effective 07/01/17) is amended to read:

78B-20-102 (Effective 07/01/17). Definitions.

As used in this chapter:

(1) "Adult" means an individual who has attained 18 years of age or is an emancipated minor.

(2) (a) “Caretaking authority” means the right to live with and care for a child on a day-to-day basis. ~~[The term]~~

(b) “Caretaking authority” includes physical custody, parent-time, right to access, and visitation.

(3) “Child” means:

(a) an unemancipated individual who has not attained 18 years of age; or

(b) an adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility.

(4) “Court” means a tribunal, including an administrative agency, authorized under the law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility.

(5) “Custodial responsibility” includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parent-time, right to access, visitation, and authority to grant limited contact with a child.

(6) “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

(7) “Deploying parent” means a servicemember who is deployed or has been notified of impending deployment and is:

(a) a parent of a child under the law of this state other than this chapter; or

(b) an individual who has custodial responsibility for a child under the law of this state other than this chapter.

(8) “Deployment” means the movement or mobilization of a servicemember for more than 90 days but less than 18 months pursuant to uniformed service orders that:

(a) are designated as unaccompanied;

(b) do not authorize dependent travel; or

(c) otherwise do not permit the movement of family members to the location to which the servicemember is deployed.

(9) “Family care plan” means a formal written contingency plan mandated by regulation of the various departments and components of the uniformed service that requires certain servicemember parents of minor children to plan in advance for the smooth, rapid transfer of parental responsibilities to designees during the absence of the servicemember due to death, incapacity, short-term absences, long-term absences,

including deployments, or noncombatant evacuation operations.

~~[(9)]~~ (10) “Family member” means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child, or an individual recognized to be in a familial relationship with a child under the law of this state other than this chapter.

~~[(10)]~~ (11) (a) “Limited contact” means the authority of a nonparent to visit a child for a limited time. ~~[The term]~~

(b) “Limited contact” includes authority to take the child to a place other than the residence of the child.

~~[(11)]~~ (12) “Nonparent” means an individual other than a deploying parent or other parent.

~~[(12)]~~ (13) “Other parent” means an individual who, in common with a deploying parent, is:

(a) a parent of a child under the law of this state other than this chapter; or

(b) an individual who has custodial responsibility for a child under the law of this state other than this chapter.

~~[(13)]~~ (14) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~[(14)]~~ (15) “Return from deployment” means the conclusion of a servicemember’s deployment as specified in uniformed service orders.

~~[(15)]~~ (16) “Servicemember” means a member of a uniformed service.

~~[(16)]~~ (17) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

~~[(17)]~~ (18) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~[(18)]~~ (19) “Uniformed service” means:

(a) active and reserve components of the United States armed forces;

(b) the United States Merchant Marine;

(c) the commissioned corps of the United States Public Health Service;

(d) the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(e) the national guard of a state.

Section 8. Section 78B-20-201 (Effective 07/01/17) is amended to read:

78B-20-201 (Effective 07/01/17). Form of agreement.

(1) The parents of a child may enter into a temporary agreement under this part granting custodial responsibility during deployment. When the parents of a child include one or more servicemembers, the parents should enter into an agreement granting custodial responsibility before notice of deployment, but may also enter into an agreement granting custodial responsibility following notice of deployment.

(2) An agreement under Subsection (1) shall be:

(a) in writing; and

(b) signed by both parents and any nonparent to whom custodial responsibility is granted.

(3) Subject to Subsection (4), an agreement under Subsection (1), if feasible, shall:

(a) identify the destination, duration, and conditions of the deployment that is the basis for the agreement if the deployment has been noticed;

(b) specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;

(c) specify any decision-making authority that accompanies a grant of caretaking authority;

(d) specify any grant of limited contact to a nonparent;

(e) if under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(f) specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;

(g) specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(h) acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(i) provide that the agreement will terminate according to the procedures under Part 4, Return from Deployment, after the deploying parent returns from deployment; and

(j) if the agreement is required to be filed pursuant to Section 78B-20-205, specify which parent is required to file the agreement.

(4) The omission of any of the items specified in Subsection (3) does not invalidate an agreement under this section.

(5) A servicemember shall ensure that the servicemember's family care plan reflects orders and agreements entered and filed pursuant to this chapter.

Section 9. Section 78B-20-205 (Effective 07/01/17) is amended to read:

78B-20-205 (Effective 07/01/17). Filing agreement or power of attorney with court.

(1) An agreement or power of attorney under this part shall be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support shall be provided to the court with the agreement or power.

(2) Notwithstanding Subsection (1), failure to file an agreement or power of attorney does not invalidate an otherwise valid agreement or power of attorney.

Section 10. Section 78B-20-401 (Effective 07/01/17) is amended to read:

78B-20-401 (Effective 07/01/17). Procedure for terminating temporary grant of custodial responsibility established by agreement.

(1) At any time after return from deployment, a temporary agreement granting custodial responsibility under Part 2, Agreement Addressing Custodial Responsibility During Deployment, may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(2) A temporary agreement under Part 2, Agreement Addressing Custodial Responsibility During Deployment, granting custodial responsibility terminates:

(a) if an agreement to terminate under Subsection (1) specifies a date for termination, on that date; or

(b) if the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(3) In the absence of an agreement under Subsection (1) to terminate, a temporary agreement granting custodial responsibility terminates under Part 2, Agreement Addressing Custodial Responsibility During Deployment, ~~60~~ 30 days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(4) If a temporary agreement granting custodial responsibility was filed with a court pursuant to Section 78B-20-205, an agreement to terminate the temporary agreement shall also be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support shall be provided to the court with the agreement to terminate.

Section 11. Section 78B-20-403 (Effective 07/01/17) is amended to read:

78B-20-403 (Effective 07/01/17). Visitation before termination of temporary grant of custodial responsibility.

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under Part 2, Agreement Addressing Custodial Responsibility During Deployment, or a provision of a court order specifying temporary custodial responsibility during deployment issued under Part 3, Judicial Procedure for Granting Custodial Responsibility During Deployment, or Section 30-3-10, is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

Section 12. Section 78B-20-404 (Effective 07/01/17) is amended to read:

78B-20-404 (Effective 07/01/17).

Termination by operation of law of temporary grant of custodial responsibility established by court order.

(1) If an agreement between the parties to terminate a [~~temporary~~] court order for temporary custodial responsibility during deployment under Part 3, Judicial Procedure for Granting Custodial Responsibility During Deployment, or to terminate a provision of an order for temporary custodial responsibility during deployment entered under Section 30-3-10 has not been filed, the temporary order terminates [60] 30 days after the day on which the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(2) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by the law of this state other than this chapter.

Section 13. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 225**S. B. 243**

Passed March 8, 2017
Approved March 21, 2017
Effective May 9, 2017

**REVISED UNIFORM
ATHLETE AGENTS ACT**

Chief Sponsor: Lyle W. Hillyard
House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill modifies the Uniform Athlete Agents Act (the act).

Highlighted Provisions:

This bill:

- ▶ changes the name of the act to the Revised Uniform Athlete Agents Act;
- ▶ renumbers and amends the act;
- ▶ defines terms, including expanding the definitions of athlete agent and student athlete;
- ▶ modifies the requirements for being registered as an athlete agent;
- ▶ provides for the reciprocal registration of athlete agents between states;
- ▶ modifies requirements for the signing of an agency contract;
- ▶ expands notification requirements; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**RENUMBERS AND AMENDS:**

- 58-87-101, (Renumbered from 15-9-101, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-102, (Renumbered from 15-9-102, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-103, (Renumbered from 15-9-103, as last amended by Laws of Utah 2014, Chapter 189)
- 58-87-201, (Renumbered from 15-9-104, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-202, (Renumbered from 15-9-105, as last amended by Laws of Utah 2010, Chapter 378)
- 58-87-203, (Renumbered from 15-9-106, as last amended by Laws of Utah 2010, Chapter 378)
- 58-87-204, (Renumbered from 15-9-107, as last amended by Laws of Utah 2010, Chapter 74)
- 58-87-205, (Renumbered from 15-9-108, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-206, (Renumbered from 15-9-109, as last amended by Laws of Utah 2010, Chapter 378)

- 58-87-301, (Renumbered from 15-9-110, as last amended by Laws of Utah 2010, Chapter 378)
- 58-87-302, (Renumbered from 15-9-111, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-303, (Renumbered from 15-9-112, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-304, (Renumbered from 15-9-113, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-401, (Renumbered from 15-9-114, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-402, (Renumbered from 15-9-115, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-403, (Renumbered from 15-9-116, as enacted by Laws of Utah 2001, Chapter 237)
- 58-87-404, (Renumbered from 15-9-117, as last amended by Laws of Utah 2010, Chapter 278)
- 58-87-501, (Renumbered from 15-9-118, as last amended by Laws of Utah 2010, Chapter 378)
- 58-87-502, (Renumbered from 15-9-119, as enacted by Laws of Utah 2001, Chapter 237)

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

Section 1. Section 58-87-101, which is renumbered from Section 15-9-101 is renumbered and amended to read:

**CHAPTER 87. REVISED UNIFORM
ATHLETE AGENTS ACT****Part 1. General Provisions**

[15-9-101]. 58-87-101. Title.

This chapter is known as the "Revised Uniform Athlete Agents Act."

Section 2. Section 58-87-102, which is renumbered from Section 15-9-102 is renumbered and amended to read:

[15-9-102]. 58-87-102. Definitions.

As used in this chapter:

(1) "Agency contract" means an agreement in which a ~~[student-athlete]~~ student athlete authorizes a person to negotiate or solicit on behalf of the ~~[student-athlete]~~ athlete a professional-sports-services contract or an endorsement contract.

(2) (a) "Athlete agent" means an individual ~~[who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, or grandparent of the student-athlete or an individual acting solely on behalf of a professional sports team or professional~~

sports organization], whether or not registered under this chapter, who:

(i) directly or indirectly recruits or solicits a student athlete to enter into an agency contract or, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for a student athlete as a professional athlete or member of a professional sports team or organization;

(ii) for compensation or in anticipation of compensation related to a student athlete's participation in athletics:

(A) serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, unless the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution; or

(B) manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes; or

(iii) in anticipation of representing a student athlete for a purpose related to the athlete's participation in athletics:

(A) gives consideration to the student athlete or another person;

(B) serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or

(C) manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes.

(b) "Athlete agent" does not include an individual who:

(i) acts solely on behalf of a professional sports team or organization; or

(ii) is a licensed, registered, or certified professional and offers or provides services to a student athlete customarily provided by members of the profession, unless the individual:

(A) also recruits or solicits the athlete to enter into an agency contract;

(B) also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or

(C) receives consideration for providing the services calculated using a different method than for an individual who is not a student athlete.

(3) "Athletic director" means [aa] the individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

~~[(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.]~~

~~[(5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.]~~

(4) "Educational institution" includes a public or private elementary school, secondary school, technical or vocational school, community college, college, and university.

~~[(6)] (5) "Endorsement contract" means an agreement under which a [student-athlete] student athlete is employed or receives consideration to use on behalf of the other party any value that the [student-athlete] student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.~~

(6) "Enrolled" means registered for courses and attending athletic practice or class. "Enrolls" has a corresponding meaning.

(7) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a [student-athlete] student athlete are established by a national association [for the promotion or regulation of] that promotes or regulates collegiate athletics.

(8) "Interscholastic sport" means a sport played between educational institutions that are not community colleges, colleges, or universities.

(9) "Licensed, registered, or certified professional" means an individual licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession, other than that of athlete agent, who is licensed, registered, or certified by the state or a nationally recognized organization that licenses, registers, or certifies members of the profession on the basis of experience, education, or testing.

~~[(8)] (10) "Person" means an individual, [corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity] estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.~~

~~[(9)] (11) "Professional-sports-services contract" means an agreement under which an individual is employed [or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete] as a professional athlete or agrees to render services as a player on a professional sports team or with a professional sports organization.~~

~~[(10)] (12) "Record" means information that is inscribed on a tangible medium or that is stored in~~

an electronic or other medium and is retrievable in perceivable form.

(13) (a) “Recruit or solicit” means attempting to influence the choice of an athlete agent by a student athlete or, if the athlete is a minor, a parent or guardian of the athlete.

(b) “Recruit or solicit” does not include giving advice on the selection of a particular agent in a family, coaching, or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the agent.

(14) (14) “Registration” means registration as an athlete agent ~~pursuant to~~ under this chapter.

(15) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(16) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(17) (a) ~~“Student athlete”~~ “Student athlete” means an individual who ~~engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport~~ is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport.

(b) “Student athlete” does not include an individual permanently ineligible to participate in a particular interscholastic or intercollegiate sport for that sport.

Section 3. Section 58-87-103, which is renumbered from Section 15-9-103 is renumbered and amended to read:

[15-9-103]. 58-87-103. Administration -- Rulemaking -- Service of process.

(1) (a) This chapter shall be administered by the division and is subject to the requirements of ~~[Title 58,]~~ Chapter 1, Division of Occupational and Professional Licensing Act, so long as the requirements of ~~[Title 58,]~~ Chapter 1, Division of Occupational and Professional Licensing Act, are not inconsistent with the requirements of this chapter.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules necessary to implement this chapter.

(2) By acting as an athlete agent in this state, a nonresident individual appoints the director of the division as the individual’s agent for service of process in any civil action in this state related to the

~~[individual’s]~~ individual acting as an athlete agent in this state.

Section 4. Section 58-87-201, which is renumbered from Section 15-9-104 is renumbered and amended to read:

Part 2. Registration of athlete agents

[15-9-104]. 58-87-201. Athlete agents -- Registration required -- Void contracts.

(1) Except as otherwise provided in Subsection (2), an individual may not act as an athlete agent in this state without holding a certificate of registration under ~~[Section 15-9-106 or 15-9-108]~~ this chapter.

(2) Before being issued a certificate of registration~~;~~ under this chapter an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(a) a ~~[student athlete]~~ student athlete or another person acting on behalf of the ~~[student athlete]~~ student athlete initiates communication with the individual; and

(b) ~~[within]~~ no later than seven days after an initial act that requires the individual to register as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

Section 5. Section 58-87-202, which is renumbered from Section 15-9-105 is renumbered and amended to read:

[15-9-105]. 58-87-202. Registration as an athlete agent -- Form -- Requirements.

(1) An applicant for registration shall submit an application for registration as an athlete agent to the division in a form prescribed by the division. An application filed under this section is a public record under Title 63G, Chapter 2, Government Records Access and Management Act. ~~[The application shall be in the name of an individual and, except as otherwise provided in Subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain]~~ The applicant must be an individual, and the application must be signed by the applicant under penalty of perjury. Except as otherwise provided in Subsections (2) and (3), the application must contain at least the following:

~~(a) the name of the applicant and the address of the applicant’s principal place of business;~~

~~(b) the name of the applicant’s business or employer, if applicable;~~

~~(c) any business or occupation engaged in by the applicant for the five years immediately preceding the date of submission of the application;~~

~~(d) a description of the applicant’s;~~

~~(i) formal training as an athlete agent;~~

~~[(ii) practical experience as an athlete agent; and]~~

~~[(iii) educational background relating to the applicant's activities as an athlete agent;]~~

~~[(e) the names and addresses of three individuals not related to the applicant who are willing to serve as references;]~~

~~[(f) the name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;]~~

~~[(g) the names and addresses of all persons who are;]~~

~~[(i) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and]~~

~~[(ii) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5% or greater;]~~

~~[(h) whether the applicant or any person named pursuant to Subsection (1)(g) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;]~~

~~[(i) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to Subsection (1)(g) has made a false, misleading, deceptive, or fraudulent representation;]~~

~~[(j) any instance in which the conduct of the applicant or any person named pursuant to Subsection (1)(g) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;]~~

~~[(k) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to Subsection (1)(g) arising out of occupational or professional conduct; and]~~

~~[(l) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to Subsection (1)(g) as an athlete agent in any state.]~~

~~[(2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to Subsection (1). The division shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:]~~

~~[(a) was submitted in the other state within six months immediately preceding the submission of the application in this state and the applicant~~

~~certifies that the information contained in the application is current;]~~

~~[(b) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and]~~

~~[(c) was signed by the applicant under penalty of perjury.]~~

~~(a) the name and date and place of birth of the applicant and the following contact information for the applicant:~~

~~(i) the address of the applicant's principal place of business;~~

~~(ii) work and mobile telephone numbers; and~~

~~(iii) any means of communicating electronically, including a facsimile number, email address, and personal and business or employer websites;~~

~~(b) the name of the applicant's business or employer, if applicable, including for each business or employer, its mailing address, telephone number, organization form, and the nature of the business;~~

~~(c) each social-media account with which the applicant or the applicant's business or employer is affiliated;~~

~~(d) each business or occupation in which the applicant engaged within five years before the date of the application, including self-employment and employment by others, and any professional or occupational license, registration, or certification held by the applicant during that time;~~

~~(e) a description of the applicant's:~~

~~(i) formal training as an athlete agent;~~

~~(ii) practical experience as an athlete agent; and~~

~~(iii) educational background relating to the applicant's activities as an athlete agent;~~

~~(f) the name of each student athlete for whom the applicant acted as an athlete agent within five years before the date of the application or, if the student athlete is a minor, the name of the parent or guardian of the minor, together with the athlete's sport and last-known team;~~

~~(g) the name and address of each person that:~~

~~(i) is a partner, member, officer, manager, associate, or profit sharer or directly or indirectly holds an equity interest of 5% or greater of the athlete agent's business if it is not a corporation; and~~

~~(ii) is an officer or director of a corporation employing the athlete agent or a shareholder having an interest of 5% or greater in the corporation;~~

~~(h) a description of the status of any application by the applicant, or any person named under Subsection (1)(g), for a state or federal business, professional, or occupational license, other than as an athlete agent, from a state or federal agency, including any denial, refusal to renew, suspension, withdrawal, or termination of the license and any reprimand or censure related to the license;~~

(i) whether the applicant, or any person named under Subsection (1)(g), has pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this state and, if so, identification of:

(i) the crime;

(ii) the law-enforcement agency involved; and

(iii) if applicable, the date of the conviction and the fine or penalty imposed;

(j) whether, within 15 years before the date of application, the applicant, or any person named under Subsection (1)(g), has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of incompetence and, if so, the date and a full explanation of each proceeding;

(k) whether the applicant, or any person named under Subsection (1)(g), has an unsatisfied judgment or a judgment of continuing effect, including alimony or a domestic order in the nature of child support, which is not current at the date of the application;

(l) whether, within 10 years before the date of application, the applicant, or any person named under Subsection (1)(g), was adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt;

(m) whether there has been any administrative or judicial determination that the applicant, or any person named under Subsection (1)(g), made a false, misleading, deceptive, or fraudulent representation;

(n) each instance in which conduct of the applicant, or any person named under Subsection (1)(g), resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student athlete or a sanction on an educational institution;

(o) each sanction, suspension, or disciplinary action taken against the applicant, or any person named under Subsection (1)(g), arising out of occupational or professional conduct;

(p) whether there has been a denial of an application for, suspension or revocation of, refusal to renew, or abandonment of, the registration of the applicant, or any person named under Subsection (1)(g), as an athlete agent in any state;

(q) each state in which the applicant currently is registered as an athlete agent or has applied to be registered as an athlete agent;

(r) if the applicant is certified or registered by a professional league or players association:

(i) the name of the league or association;

(ii) the date of certification or registration, and the date of expiration of the certification or registration, if any; and

(iii) if applicable, the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of, the certification or registration or any reprimand or censure related to the certification or registration; and

(s) any additional information required by the division.

(2) Instead of proceeding under Subsection (1), an individual registered as an athlete agent in another state may apply for registration as an athlete agent in this state by submitting to the division:

(a) a copy of the application for registration in the other state;

(b) a statement that identifies any material change in the information on the application or verifies there is no material change in the information, signed under penalty of perjury; and

(c) a copy of the certificate of registration from the other state.

(3) The division shall issue a certificate of registration to an individual who applies for registration under Subsection (2) if the division determines:

(a) the application and registration requirements of the other state are substantially similar to or more restrictive than this chapter; and

(b) the registration has not been revoked or suspended and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.

(4) For purposes of implementing Subsection (3), the division shall:

(a) cooperate with national organizations concerned with athlete agent issues and agencies in other states that register athlete agents to develop a common registration form and determine which states have laws that are substantially similar to or more restrictive than this chapter; and

(b) exchange information, including information related to actions taken against registered athlete agents or their registrations, with those organizations and agencies.

Section 6. Section 58-87-203, which is renumbered from Section 15-9-106 is renumbered and amended to read:

[15-9-106]. 58-87-203. Certificate of registration -- Issuance or denial -- Renewal.

(1) Except as otherwise provided in Subsection (2), the division shall issue a certificate of registration to an [individual] applicant for registration who complies with [~~Subsection 15-9-105(1) or whose application has been accepted under Subsection 15-9-105(2)~~] Subsection 58-87-202(1).

[~~(2) The division may refuse to issue a certificate of registration if the division determines that the~~

applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the division may consider whether the applicant has:

~~[(a) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;]~~

~~[(b) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;]~~

~~[(c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;]~~

~~[(d) engaged in conduct prohibited by Section 15-9-114;]~~

~~[(e) had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;]~~

~~[(f) engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or]~~

~~[(g) engaged in conduct that significantly, adversely reflects on the applicant's credibility, honesty, or integrity.]~~

~~[(3) In making a determination under Subsection (2), the division shall consider:]~~

~~[(a) how recently the conduct occurred;]~~

~~[(b) the nature of the conduct and the context in which it occurred; and]~~

~~[(c) any other relevant conduct of the applicant.]~~

~~[(4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the division. An application filed under this section is a public record under Title 63G, Chapter 2, Government Records Access and Management Act. The application for renewal shall be signed by the applicant under penalty of perjury and shall contain current information on all matters required in an original registration.]~~

~~[(5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to Subsection (4), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The division shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:]~~

~~[(a) was submitted in the other state within six months immediately preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;]~~

[(b) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and]

[(c) was signed by the applicant under penalty of perjury.]

(2) The division may refuse to issue a certificate of registration to an applicant for registration under Subsection 58-87-202(1) if the division determines that the applicant has engaged in conduct that significantly adversely reflects on the applicant's fitness to act as an athlete agent. In making the determination, the division may consider whether the applicant has:

(a) pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this state;

(b) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) engaged in conduct prohibited by Section 58-87-401;

(e) had a registration as an athlete agent suspended, revoked, or denied in any state;

(f) been refused renewal of registration as an athlete agent in any state;

(g) engaged in conduct resulting in imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a student athlete or a sanction on an educational institution; or

(h) engaged in conduct that adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under Subsection (2), the division shall consider:

(a) how recently the conduct occurred;

(b) the nature of the conduct and the context in which it occurred; and

(c) other relevant conduct of the applicant.

(4) An athlete agent registered under Subsection (1) may apply to renew the registration by submitting an application for renewal in a form prescribed by the division. The applicant shall sign the application for renewal under penalty of perjury and include current information on all matters required in an original application for registration.

(5) An athlete agent registered under Subsection 58-87-202(2) may renew the registration by proceeding under Subsection (4) or, if the registration in the other state has been renewed, by submitting to the division copies of the application for renewal in the other state and the renewed registration from the other state. The division shall renew the registration if the division determines:

(a) the registration requirements of the other state are substantially similar to or more restrictive than this chapter; and

(b) the renewed registration has not been suspended or revoked and no action involving the individual's conduct as an athlete agent is pending against the individual or the individual's registration in any state.

(6) A certificate of registration or a renewal of a registration is valid for two years.

Section 7. Section 58-87-204, which is renumbered from Section 15-9-107 is renumbered and amended to read:

[15-9-107]. 58-87-204. Suspension, revocation, or refusal to renew registration.

(1) The division may limit, suspend, revoke, or refuse to renew a registration of an individual registered under Subsection 58-87-203(1) for conduct that would have justified ~~[denial of registration]~~ refusal to issue a certificate of registration under Subsection ~~[15-9-106(2)]~~ 58-87-203(2).

~~[(2) The division may suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing. Title 63G, Chapter 4, Administrative Procedures Act, applies to this chapter.]~~

(2) The division may suspend or revoke the registration of an individual registered under Subsection 58-87-202(2) or renewed under Subsection 58-87-203(5) for any reason for which the division could have refused to grant or renew registration or for conduct that would justify refusal to issue a certificate of registration under Subsection 58-87-203(2).

Section 8. Section 58-87-205, which is renumbered from Section 15-9-108 is renumbered and amended to read:

[15-9-108]. 58-87-205. Temporary registration.

The division may issue a temporary certificate of registration as an athlete agent while an application for registration or renewal of registration is pending.

Section 9. Section 58-87-206, which is renumbered from Section 15-9-109 is renumbered and amended to read:

[15-9-109]. 58-87-206. Registration and renewal fees.

(1) An application for registration or renewal of registration shall be accompanied by a fee in an amount determined by the division in accordance with Section 63J-1-504.

(2) The division shall establish fees for:

(a) an initial application for registration;

(b) an application for registration based upon a certificate of registration or licensure issued by another state;

(c) an application for renewal of registration; and

(d) an application for renewal of registration based upon an application for renewal of registration ~~[or licensure]~~ submitted in another state.

Section 10. Section 58-87-301, which is renumbered from Section 15-9-110 is renumbered and amended to read:

Part 3. Agency Contract Requirements

[15-9-110]. 58-87-301. Required form of contract.

(1) An agency contract ~~[shall]~~ must be in a record~~[,]~~ signed ~~[or otherwise authenticated]~~ by the parties.

(2) An agency contract ~~[shall state or]~~ must contain:

~~[(a) the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;]~~

~~[(b) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;]~~

~~[(c) a description of any expenses that the student-athlete agrees to reimburse;]~~

~~[(d) a description of the services to be provided to the student-athlete;]~~

~~[(e) the duration of the contract; and]~~

~~[(f) the date of execution.]~~

~~[(3) An agency contract shall contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:]~~

~~[WARNING TO STUDENT-ATHLETE]~~

~~[IF YOU SIGN THIS CONTRACT:]~~

~~[(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;]~~

~~[(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT SHALL NOTIFY YOUR ATHLETIC DIRECTOR; AND]~~

~~[(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.]~~

~~[(4) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.]~~

[(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.]

(a) a statement that the athlete agent is registered as an athlete agent in this state and a list of any other states in which the agent is registered as an athlete agent;

(b) the amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the agent under the contract and any other consideration the agent has received or will receive from any other source for entering into the contract or providing the services;

(c) the name of any person not listed in the agent's application for registration or renewal of registration which will be compensated because the athlete signed the contract;

(d) a description of any expenses the athlete agrees to reimburse;

(e) a description of the services to be provided to the athlete;

(f) the duration of the contract; and

(g) the date of execution.

(3) Subject to Subsection (7), an agency contract must contain a conspicuous notice in boldface type and in substantially the following form:

WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER SIGNING THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR THAT YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A STUDENT ATHLETE IN YOUR SPORT.

(4) An agency contract must be accompanied by a separate record signed by the student athlete or, if the athlete is a minor, the parent or guardian of the athlete acknowledging that signing the contract may result in the loss of the athlete's eligibility to participate in the athlete's sport.

(5) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may void an agency contract that does not conform to this section. If the contract is voided, any consideration received from the athlete agent under the contract

to induce entering into the contract is not required to be returned.

(6) At the time an agency contract is executed, the athlete agent shall give the student athlete or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract and the separate acknowledgment required by Subsection (4).

(7) If a student athlete is a minor, an agency contract must be signed by the parent or guardian of the minor and the notice required by Subsection (3) must be revised accordingly.

Section 11. Section 58-87-302, which is renumbered from Section 15-9-111 is renumbered and amended to read:

[15-9-111]. 58-87-302. Notice to educational institution.

[(1) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.]

[(2) Within 72 hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.]

(1) As used in this section, "communicating or attempting to communicate" means contacting or attempting to contact by an in-person meeting, a record, or any other method that conveys or attempts to convey a message.

(2) Not later than 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the athlete is enrolled or at which the agent has reasonable grounds to believe the athlete intends to enroll.

(3) Not later than 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete shall inform the athletic director of the educational institution at which the athlete is enrolled that the athlete has entered into an agency contract and the name and contact information of the athlete agent.

(4) If an athlete agent enters into an agency contract with a student athlete and the athlete subsequently enrolls at an educational institution, the agent shall notify the athletic director of the institution of the existence of the contract not later than 72 hours after the agent knew or should have known the athlete enrolled.

(5) If an athlete agent has a relationship with a student athlete before the athlete enrolls in an educational institution and receives an athletic scholarship from the institution, the agent shall notify the institution of the relationship not later than ten days after the enrollment if the agent knows or should have known of the enrollment and:

(a) the relationship was motivated in whole or part by the intention of the agent to recruit or solicit the athlete to enter an agency contract in the future; or

(b) the agent directly or indirectly recruited or solicited the athlete to enter an agency contract before the enrollment.

(6) An athlete agent shall give notice in a record to the athletic director of any educational institution at which a student athlete is enrolled before the agent communicates or attempts to communicate with:

(a) the athlete or, if the athlete is a minor, a parent or guardian of the athlete, to influence the athlete or parent or guardian to enter into an agency contract; or

(b) another individual to have that individual influence the athlete or, if the athlete is a minor, the parent or guardian of the athlete to enter into an agency contract.

(7) If a communication or attempt to communicate with an athlete agent is initiated by a student athlete or another individual on behalf of the athlete, the agent shall notify in a record the athletic director of any educational institution at which the athlete is enrolled. The notification must be made not later than 10 days after the communication or attempt.

(8) An educational institution that becomes aware of a violation of this chapter by an athlete agent shall notify the division and any professional league or players association with which the institution is aware the agent is licensed or registered of the violation.

Section 12. Section 58-87-303, which is renumbered from Section 15-9-112 is renumbered and amended to read:

[15-9-112]. 58-87-303. Student athlete's right to cancel.

(1) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.]

(2) A student-athlete may not waive the right to cancel an agency contract.}]

(3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.}]

(1) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may cancel an

agency contract by giving notice in a record of cancellation to the athlete agent not later than 14 days after the contract is signed.

(2) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may not waive the right to cancel an agency contract.

(3) If a student athlete, parent, or guardian cancels an agency contract, the athlete, parent, or guardian is not required to pay any consideration under the contract or return any consideration received from the athlete agent to influence the athlete to enter into the contract.

Section 13. Section 58-87-304, which is renumbered from Section 15-9-113 is renumbered and amended to read:

[15-9-113]. 58-87-304. Required records.

(1) An athlete agent shall create and retain [the following records for a period of five years] for five years records of the following:

(a) the name and address of each individual represented by the [athlete] agent;

(b) [any] each agency contract entered into by the [athlete] agent; and

(c) [any] the direct costs incurred by the [athlete] agent in the recruitment or solicitation of [a student-athlete] each student athlete to enter into an agency contract.

(2) Records [required by Subsection (1) to be retained] described in Subsection (1) are open to inspection by the division during normal business hours.

Section 14. Section 58-87-401, which is renumbered from Section 15-9-114 is renumbered and amended to read:

Part 4. Prohibited Conduct and Penalties

[15-9-114]. 58-87-401. Prohibited conduct.

[1] An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:]

[a] give any materially false or misleading information or make a materially false promise or representation;]

[b] furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or]

[c] furnish anything of value to any individual other than the student-athlete or another registered athlete agent.}]

[2] An athlete agent may not intentionally:]

[a] initiate contact with a student-athlete unless registered under this chapter;]

[b] refuse or fail to retain or permit inspection of the records required to be retained by Section 15-9-113;]

[c] fail to register when required by Section 15-9-104;]

[d] provide materially false or misleading information in an application for registration or renewal of registration;]

~~[(e) predate or postdate an agency contract; or]~~

~~[(f) fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.]~~

~~(1) An athlete agent, with the intent to influence a student athlete or, if the athlete is a minor, a parent or guardian of the athlete to enter into an agency contract, may not take any of the following actions or encourage any other individual to take or assist any other individual in taking any of the following actions on behalf of the agent:~~

~~(a) give materially false or misleading information or make a materially false promise or representation;~~

~~(b) furnish anything of value to the athlete before the athlete enters into the contract; or~~

~~(c) furnish anything of value to an individual other than the athlete or another registered athlete agent.~~

~~(2) An athlete agent may not intentionally do any of the following or encourage any other individual to do any of the following on behalf of the agent:~~

~~(a) initiate contact, directly or indirectly, with a student athlete or, if the athlete is a minor, a parent or guardian of the athlete, to recruit or solicit the athlete, parent, or guardian to enter into an agency contract unless registered under this chapter;~~

~~(b) fail to create or retain or to permit inspection of the records required by Section 58-87-305;~~

~~(c) fail to register when required by Section 58-87-201;~~

~~(d) provide materially false or misleading information in an application for registration or renewal of registration;~~

~~(e) predate or postdate an agency contract; or~~

~~(f) fail to notify a student athlete or, if the athlete is a minor, a parent or guardian of the athlete, before the athlete, parent, or guardian signs an agency contract for a particular sport that the signing may make the athlete ineligible to participate as a student athlete in that sport.~~

Section 15. Section 58-87-402, which is renumbered from Section 15-9-115 is renumbered and amended to read:

[15-9-115]. 58-87-402. Criminal penalties.

An athlete agent who violates Section [15-9-114] 58-87-401 is guilty of a class A misdemeanor.

Section 16. Section 58-87-403, which is renumbered from Section 15-9-116 is renumbered and amended to read:

[15-9-116]. 58-87-403. Civil remedies.

~~(1) An educational institution [has a right of action against an athlete agent or a former~~

~~student athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.] or student athlete may bring an action for damages against an athlete agent if the institution or athlete is adversely affected by an act or omission of the agent in violation of this chapter. An educational institution or student athlete is adversely affected by an act or omission of the agent only if, because of the act or omission, the institution or an individual who was a student athlete at the time of the act or omission and enrolled in the institution:~~

~~(a) is suspended or disqualified from participation in an interscholastic or intercollegiate sports event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or~~

~~(b) suffers financial damage.~~

~~[(2) Damages of an educational institution under Subsection (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student athlete, the educational institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.]~~

~~[(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student athlete.]~~

~~[(4) Any liability of the athlete agent or the former student athlete under this section is several and not joint.]~~

~~[(5) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.]~~

~~(2) A plaintiff that prevails in an action under this section may recover damages, costs, and reasonable attorney fees. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the student athlete and shall refund any consideration paid to the agent by or on behalf of the athlete.~~

~~(3) This chapter does not restrict rights, remedies, or defenses of any person under law or equity.~~

Section 17. Section 58-87-404, which is renumbered from Section 15-9-117 is renumbered and amended to read:

[15-9-117]. 58-87-404. Civil and administrative penalty.

(1) The division may assess a civil penalty against an athlete agent not to exceed \$25,000 for a violation of this chapter.

(2) An administrative penalty collected under Subsection (1) shall be deposited into the Commerce Service Account created in Section 13-1-2.

Section 18. Section 58-87-501, which is renumbered from Section 15-9-118 is renumbered and amended to read:
Part 5. Application and Construction

[15-9-118]. 58-87-501. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 19. Section 58-87-502, which is renumbered from Section 15-9-119 is renumbered and amended to read:

[15-9-119]. 58-87-502. Electronic Signatures in Global and National Commerce Act.

The provisions of this chapter [~~governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.~~] modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but do not modify, limit, or supersede 15 U.S.C. Sec. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. Sec. 7003(b).

CHAPTER 226**S. B. 249**

Passed March 9, 2017
 Approved March 21, 2017
 Effective January 1, 2018

TAX E-FILING AMENDMENTS

Chief Sponsor: Curtis S. Bramble
 House Sponsor: Daniel McCay

LONG TITLE**General Description:**

This bill modifies the format that is required for filing certain income tax withholding statements.

Highlighted Provisions:

This bill:

- ▶ requires a producer to file a quarterly mineral production withholding return in an electronic format; and
- ▶ requires an employer to file a quarterly withholding return in an electronic format.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

59-6-103, as last amended by Laws of Utah 2008, Chapter 255
 59-10-406, as last amended by Laws of Utah 2015, Chapter 369

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

Section 1. Section 59-6-103 is amended to read:**59-6-103. Returns and payments required of producers.**

(1) (a) Subject to Subsection (1)(b), a producer required to deduct and withhold an amount under this chapter shall file a withholding return with the commission:

(i) for the amounts required to be deducted and withheld under this chapter during the preceding calendar quarter; and

(ii) ~~on a form~~ in an electronic format prescribed by the commission.

(b) A withholding return described in Subsection (1)(a) is due on or before the last day of April, July, October, and January.

(c) A withholding return described in Subsection (1)(a) shall contain:

(i) the name and address of each person receiving a payment subject to the deduction and withholding requirements of this chapter for the calendar quarter for which the withholding return is filed;

(ii) for each person described in Subsection (1)(c)(i), the amount of payment the person would have received from the production of minerals~~[-(A)]~~ by the producer had the deduction and withholding

required by this chapter not been made~~[- and (B)]~~ for the calendar quarter for which the withholding return is filed;

(iii) for each person described in Subsection (1)(c)(i), the amount of deduction and withholding under this chapter for the calendar quarter for which the withholding return is filed;

(iv) the name or description of the property from which the production of minerals occurs that results in a payment subject to deduction and withholding under this chapter; and

(v) for each person described in Subsection (1)(c)(i), the interest of the person in the production of minerals that results in a payment subject to deduction and withholding under this chapter.

(2) (a) If a producer receives an exemption certificate filed in accordance with Section 59-6-102.1 from a business entity, the producer shall file a withholding return with the commission:

(i) on a form prescribed by the commission; and

(ii) on or before the January 31 following the last day of the taxable year for which the producer receives the exemption certificate from the business entity.

(b) The withholding return required by Subsection (2)(a) shall contain:

(i) the name and address of the business entity that files the exemption certificate in accordance with Section 59-6-102.1;

(ii) the amount of the payment made by the producer to the business entity that would have been subject to deduction and withholding under this chapter had the business entity not filed the exemption certificate in accordance with Section 59-6-102.1;

(iii) the name or description of the property from which the production of minerals occurs that would have resulted in a payment subject to deduction and withholding under this chapter had the business entity not filed the exemption certificate in accordance with Section 59-6-102.1; and

(iv) the interest of the business entity in the production of minerals that would have resulted in a payment subject to deduction and withholding under this chapter had the business entity not filed the exemption certificate in accordance with Section 59-6-102.1.

Section 2. Section 59-10-406 is amended to read:**59-10-406. Collection and payment of tax -- Forms filed electronically.**

(1) (a) Each employer shall, on or before the last day of April, July, October, and January, pay to the commission the amount required to be deducted and withheld from wages paid to any employee during the preceding calendar quarter under this part.

(b) The commission may change the time or period for making reports and payments if:

(i) in its opinion, the tax is in jeopardy; or

(ii) a different time or period will facilitate the collection and payment of the tax by the employer.

(2) (a) Each employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part showing:

~~[(a)]~~ (i) the total amount of wages paid to his employees;

~~[(b)]~~ (ii) the amount of federal income tax deducted and withheld;

~~[(c)]~~ (iii) the amount of tax under this part deducted and withheld; and

~~[(d)]~~ (iv) any other information the commission may require.

(b) The employer shall file the return described in Subsection (2)(a) in an electronic format approved by the commission.

(3) (a) Each employer shall file an annual return, in a form the commission prescribes, summarizing:

(i) the total compensation paid;

(ii) the federal income tax deducted and withheld; and

(iii) the state tax deducted and withheld for each employee during the calendar year.

(b) The return required by Subsection (3)(a) shall be filed with the commission:

(i) in an electronic format approved by the commission; and

(ii) on or before January 31 of the year following that for which the report is made.

(4) (a) Each employer shall also, in accordance with rules prescribed by the commission, provide each employee from whom state income tax has been withheld with a statement of the amounts of total compensation paid and the amounts deducted and withheld for that employee during the preceding calendar year in accordance with this part.

(b) The statement shall be made available to each employee described in Subsection (4)(a) on or before January 31 of the year following that for which the report is made.

(5) (a) The employer is liable to the commission for the payment of the tax required to be deducted and withheld under this part.

(b) If an employer pays the tax required to be deducted and withheld under this part:

(i) an employee of the employer is not liable for the amount of any payment described in Subsection (5)(a); and

(ii) the employer is not liable to any person or to any employee for the amount of any such payment described in Subsection (5)(a).

(c) For the purpose of making penal provisions of this title applicable, any amount deducted or required to be deducted and remitted to the commission under this part is considered to be the tax of the employer and with respect to such amounts the employer is considered to be the taxpayer.

(6) (a) Each employer that deducts and withholds any amount under this part shall hold the amount in trust for the state for the payment of the amount to the commission in the manner and at the time provided for in this part.

(b) So long as any delinquency continues, the state shall have a lien to secure the payment of any amounts withheld, and not remitted as provided under this section, upon all of the assets of the employer and all property owned or used by the employer in the conduct of the employer's business, including stock-in-trade, business fixtures, and equipment.

(c) The lien described in Subsection (6)(b) shall be prior to any lien of any kind, including existing liens for taxes.

(7) To the extent consistent with this section, the commission may use all the provisions of this chapter relating to records, penalties, interest, deficiencies, redetermination of deficiencies, overpayments, refunds, assessments, and venue to enforce this section.

(8) (a) Subject to Subsections (8)(b) and (c), the commission shall require an employer that issues the following forms for a taxable year to file the forms with the commission in an electronic format approved by the commission:

(i) a federal Form W-2;

(ii) a federal Form 1099 filed for purposes of withholding under Section 59-10-404; or

(iii) a federal form substantially similar to a form described in Subsection (8)(a)(i) or (ii) if designated by the commission in accordance with Subsection (8)(d).

(b) An employer that is required to file a form with the commission in accordance with Subsection (8)(a) shall file the form on or before January 31.

(c) An employer that is required to file a form with the commission in accordance with Subsection (8)(a) shall provide:

(i) accurate information on the form; and

(ii) all of the information required by the Internal Revenue Service to be contained on the form.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (8)(a), the commission may designate a federal form as being substantially similar to a form described in Subsection (8)(a)(i) or (ii) if:

(i) for purposes of federal individual income taxes a different federal form contains substantially similar information to a form described in Subsection (8)(a)(i) or (ii); or

(ii) the Internal Revenue Service replaces a form described in Subsection (8)(a)(i) or (ii) with a different federal form.

Section 3. Effective date.

This bill takes effect on January 1, 2018.

CHAPTER 227**S. B. 253**

Passed March 7, 2017

Approved March 21, 2017

Effective May 9, 2017

ENERGY AMENDMENTS

Chief Sponsor: David P. Hinkins

House Sponsor: Ken Ivory

LONG TITLE**General Description:**

This bill amends a provision related to the governor's Office of Energy Development.

Highlighted Provisions:

This bill:

- ▶ gives the governor's Office of Energy Development the authority to charge application, filing, and processing fees under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63M-4-401, as last amended by Laws of Utah 2015, Chapters 356 and 378

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

Section 1. Section 63M-4-401 is amended to read:

**63M-4-401. Office of Energy Development
-- Creation -- Director -- Purpose --
Rulemaking regarding confidential
information -- Fees.**

(1) There is created an Office of Energy Development.

(2) (a) The governor's energy advisor shall serve as the director of the office or appoint a director of the office.

(b) The director:

(i) shall, if the governor's energy advisor appoints a director under Subsection (2)(a), report to the governor's energy advisor; and

(ii) may appoint staff as funding within existing budgets allows.

(c) The office may consolidate energy staff and functions existing in the state energy program.

(3) The purposes of the office are to:

(a) serve as the primary resource for advancing energy and mineral development in the state;

(b) implement:

(i) the state energy policy under Section 63M-4-301; and

(ii) the governor's energy and mineral development goals and objectives;

(c) advance energy education, outreach, and research, including the creation of elementary, higher education, and technical college energy education programs;

(d) promote energy and mineral development workforce initiatives; and

(e) support collaborative research initiatives targeted at Utah-specific energy and mineral development.

(4) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:

(a) seek federal grants or loans;

(b) seek to participate in federal programs; and

(c) in accordance with applicable federal program guidelines, administer federally funded state energy programs.

(5) The office shall perform the duties required by Sections 59-7-614.7, 59-10-1029, Part 5, Alternative Energy Development Tax Credit Act, and Part 6, High Cost Infrastructure Development Tax Credit Act.

(6) (a) For purposes of administering this section, the office may make rules, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to maintain as confidential, and not as a public record, information that the office receives from any source.

(b) The office shall maintain information the office receives from any source at the level of confidentiality assigned by the source.

(7) The office may charge application, filing, and processing fees in amounts determined by the office in accordance with Section 63J-1-504 as dedicated credits for performing office duties described in this part.

CHAPTER 228**S. B. 258**

Passed March 7, 2017

Approved March 21, 2017

Effective May 9, 2017

ADDICTION RECOVERY AMENDMENTS

Chief Sponsor: Karen Mayne

House Sponsor: Mike K. McKell

LONG TITLE**General Description:**

This bill amends the Opiate Overdose Response Act.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ requires the Department of Health to:
 - establish guidelines for the issuance of a prescription for an opiate antagonist along with a prescription for an opiate; and
 - report on the guidelines to the Health and Human Services Interim Committee.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

26-55-108, Utah Code Annotated 1953

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

Section 1. Section 26-55-108 is enacted to read:**26-55-108. Coprescription guidelines -- Reporting.**

(1) As used in this section:

(a) “Controlled substance prescriber” means the same as that term is defined in Section 58-37-6.5.

(b) “Coprescribe” means to issue a prescription for an opiate antagonist with a prescription for an opiate.

(2) The department shall, in consultation with the Physicians Licensing Board created in Section 58-67-201, the Osteopathic Physician and Surgeon’s Licensing Board created in Section 58-68-201, and the Department of Occupational and Professional Licensing created in Section 58-1-103, establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, scientifically based guidelines for controlled substance prescribers to coprescribe an opiate antagonist to a patient.

(3) The department shall report to the Health and Human Services Interim Committee before October 30, 2017, regarding the guidelines established under Subsection (2).

(4) The report described in Subsection (3) shall include:

(a) established rules regarding the coprescription of an opiate antagonist to a patient; and

(b) an analysis of:

(i) the application of the rules; and

(ii) the impact of the rules.

CHAPTER 229**S. B. 259**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

**CERTIFIED PUBLIC ACCOUNTANT
LICENSING ACT AMENDMENTS**

Chief Sponsor: Curtis S. Bramble

House Sponsor: Steve Eliason

LONG TITLE**General Description:**

This bill modifies provisions related to the Certified Public Accounting Licensing Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides continuing education requirements for a person licensed by endorsement; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-26a-102, as last amended by Laws of Utah 2013, Chapter 278

58-26a-302, as last amended by Laws of Utah 2009, Chapter 183

58-26a-304, as last amended by Laws of Utah 2008, Chapter 265

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

Section 1. Section 58-26a-102 is amended to read:**58-26a-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Accounting experience" means applying accounting and auditing skills and principles that are taught as a part of the professional education qualifying a person for licensure under this chapter and generally accepted by the profession, under the supervision of a licensed certified public accountant.

(2) "AICPA" means the American Institute of Certified Public Accountants.

(3) (a) "Attest and attestation engagement" means providing any or all of the following financial statement services:

(i) an audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(ii) a review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);

(iii) an examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); ~~or~~

(iv) an examination, review, or agreed upon procedures engagement to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE), other than an examination described in Subsection (3)(a)(iii); or

~~(iv)]~~ (v) an engagement to be performed in accordance with the standards of the PCAOB.

(b) The standards specified in this definition shall be adopted by reference by the division under its rulemaking authority in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and shall be those developed for general application by recognized national accountancy organizations such as the AICPA and the PCAOB.

(4) "Board" means the Utah Board of Accountancy created in Section 58-26a-201.

(5) "Certified Public Accountant" or "CPA" means an individual currently licensed by this state or any other state, district, or territory of the United States of America to practice public accountancy or who has been granted a license as a certified public accountant under prior law or this chapter.

(6) "Certified Public Accountant firm" or "CPA firm" means a qualified business entity holding a valid registration as a Certified Public Accountant firm under this chapter.

(7) "Client" means the person who retains a licensee for the performance of one or more of the services included in the definition of the practice of public accountancy. "Client" does not include a CPA's employer when the licensee works in a salaried or hourly rate position.

(8) "Compilation" means providing a service to be performed in accordance with Statements on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management or owners, without undertaking to express any assurance on the statements.

(9) "Experience" means:

(a) accounting experience; or

(b) professional experience.

(10) "Licensee" means the holder of a current valid license issued under this chapter.

(11) "NASBA" means the National Association of State Boards of Accountancy.

(12) "PCAOB" means the Public Company Accounting Oversight Board.

(13) "Practice of public accounting" means ~~the offer to perform or the performance by a person holding himself out as a certified public accountant or], while holding oneself out as a certified public accountant, offering to perform or performing one or more kinds of services involving the use of auditing or accounting skills, including [the~~

issuance of issuing reports or opinions on financial statements, performing attestation engagements, [the performance of] performing one or more kinds of advisory or consulting services, [or the preparation of] preparing tax returns, or [the furnishing of] furnishing advice on tax matters for a client.

(14) “Peer review” means a ~~[study, appraisal, or review of one or more aspects of the professional work of a person or qualified business entity in the practice of public accountancy, by a licensee or any other qualified person in accordance with rules adopted pursuant to this chapter and who is not affiliated with the person or qualified business entity being reviewed]~~ board approved study, appraisal, or review of one or more aspects of the attest and compilation services rendered by a licensee in the practice of public accounting, performed by a licensee holding an active license in this or another state who is not affiliated with the licensee being reviewed.

(15) “Principal place of business” means the office location designated by the licensee for purposes of substantial equivalency and licensure by endorsement.

(16) “Professional experience” means experience lawfully obtained while licensed as a certified public accountant in another ~~[jurisdiction]~~ state, recognized by rule, in the practice of public accountancy performed for a client, which includes expression of assurance or opinion.

(17) “Qualified business entity” means a sole proprietorship, corporation, limited liability company, or partnership engaged in the practice of public accountancy.

(18) “Qualified continuing professional education” means a formal program of education that contributes directly to the professional competence of a certified public accountant.

(19) “Qualifying examinations” means:

- (a) the AICPA Uniform CPA Examination;
- (b) the AICPA Examination of Professional Ethics for CPAs;
- (c) the Utah Laws and Rules Examination; and
- (d) any other examination approved by the board and adopted by the division by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(20) (a) “Report,” when used with reference to financial statements, means:

(i) ~~[when used with reference to financial statements,]~~ an opinion, report, or other form of language that:

(A) states or implies assurance as to the reliability of [any financial statements] the attested information or compiled financial statements; or

(B) implies that the person or firm issuing [it] the report has special knowledge or competence in accounting or auditing and specifically includes

compilations and reviews; such an implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is a public accountant or auditor, or from the language of the report itself; or

(ii) any disclaimer of opinion when it is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to or language suggesting special competence on the part of the person or firm issuing such language; and [it] the report includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

(b) “Report” does not include a financial statement prepared by an unlicensed person if:

(i) that financial statement has a cover page which includes essentially the following language: “I (we) have prepared the accompanying financial statements of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing, in the form of financial statements, information that is the representation of management (owners). I (we) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.”; and

(ii) the cover page and any related footnotes do not use the terms “compilation,” “review,” “audit,” “generally accepted auditing standards,” “generally accepted accounting principles,” or other similar terms.

(21) “Review of financial statements” means ~~[performing inquiry and analytical procedures which provide a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting; and, the issuance of a report on the financial statements stating that a review was performed in accordance with the standards established by the American Institute of Certified Public Accountants]~~ providing a service in accordance with the Statements on Standards for Accounting and Review Services (SSARS) in which the accountant obtains limited assurance as a basis for reporting whether the accountant is aware of any material modifications that should be made to the financial statements for them to be in accordance with the applicable financial reporting framework, primarily through the performance of inquiry and analytical procedures.

(22) (a) “Substantial equivalency” means a determination by the division in collaboration with the board or ~~[its]~~ the board’s designee that:

(i) the education, examination, and experience requirements set forth in the statutes and administrative rules of another [jurisdiction] state are comparable to or exceed the education, examination, and experience requirements set forth in the Uniform Accountancy Act; or

(ii) an individual CPA's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements set forth in the Uniform Accountancy Act.

(b) In ascertaining whether an individual's qualifications are substantially equivalent as used in this chapter, the division in collaboration with the board shall take into account the qualifications without regard to the sequence in which the education, examination, and experience requirements were attained.

(23) "Uniform Accountancy Act" means the model public accountancy legislation developed and promulgated by national accounting and regulatory associations that contains standardized definitions and regulations for the practice of public accounting as recognized by the division in collaboration with the board.

(24) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-26a-501.

(25) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-26a-502 and as may be further defined by rule.

(26) "Year of experience" means 2,000 hours of [cumulative] experience[-]:

(a) generally accepted by the profession; and

(b) under the supervision of a licensed certified public accountant.

Section 2. Section 58-26a-302 is amended to read:

58-26a-302. Qualifications for licensure and registration -- Licensure by endorsement.

(1) Each applicant for licensure under this chapter as a certified public accountant shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) show evidence of good moral character;

(d) submit a certified transcript of credits from an accredited institution acceptable to the board showing:

(i) successful completion of a total of 150 semester hours or 225 quarter hours of collegiate level education with a concentration in accounting, auditing, and business;

(ii) a baccalaureate degree or its equivalent at a college or university approved by the board; and

(iii) compliance with any other education requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) submit evidence of one year of accounting experience in a form prescribed by the division;

(f) submit evidence of having successfully completed the qualifying examinations in accordance with Section 58-26a-306; and

(g) submit to an interview by the board, if requested, for the purpose of examining the applicant's competence and qualifications for licensure.

(2) (a) The division may issue a license under this chapter to a person who holds a license as a certified public accountant issued by any other [jurisdiction] state of the United States of America if the applicant for licensure by endorsement:

(i) submits an application in a form prescribed by the division;

(ii) pays a fee determined by the department under Section 63J-1-504;

(iii) shows evidence of good moral character;

(iv) submits to an interview by the board, if requested, for the purpose of examining the applicant's competence and qualifications for licensure; and

(v) (A) (I) shows evidence of having passed the qualifying examinations; and

(II) (Aa) meets the requirements for licensure which were applicable in this state at the time of the issuance of the applicant's license by the [jurisdiction] state from which the original licensure by satisfactorily passing the AICPA Uniform CPA Examination was issued; or

(Bb) had four years of professional experience after passing the AICPA Uniform CPA Examination upon which the original license was based, within the 10 years immediately preceding the application for licensure by endorsement; or

(B) shows evidence that the applicant's education, examination record, and experience are substantially equivalent to the requirements of Subsection (1), as provided by rule.

(b) This Subsection (2) applies only to a person seeking to obtain a license issued by this state and does not apply to a person practicing as a certified public accountant in the state under Subsection 58-26a-305(1).

(3) (a) Each applicant for registration as a Certified Public Accountant firm shall:

(i) submit an application in a form prescribed by the division;

(ii) pay a fee determined by the department under Section 63J-1-504;

(iii) have, notwithstanding any other provision of law, a simple majority of the ownership of the Certified Public Accountant firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers, held by individuals who are certified public accountants, licensed under this chapter or another [jurisdiction] state of the United States of America, and the partners, officers, shareholders, members, or managers, whose principal place of business is in

this state, and who perform professional services in this state hold a valid license issued under Subsection 58-26a-301(2) or the corresponding provisions of prior law; and

(iv) meet any other requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) Each separate location of a qualified business entity within the state seeking registration as a Certified Public Accountant firm shall register separately.

(c) A Certified Public Accountant firm may include owners who are not licensed under this chapter as outlined in Subsection (3)(a)(iii), provided that:

(i) the firm designates a licensee of this state who is responsible for the proper registration of the Certified Public Accountant firm and identifies that individual to the division; and

(ii) all nonlicensed owners are active individual participants in the CPA firm.

Section 3. Section 58-26a-304 is amended to read:

58-26a-304. Continuing education.

(1) [As] Except as provided in Subsections (2) through (4), as a condition precedent for a license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by rule, complete 80 hours of qualified continuing professional education in accordance with standards defined by rule.

(2) A person practicing as a certified public accountant in the state under Subsection 58-26a-302(2) and who is seeking a license renewal in this state shall be determined to have met the continuing professional education requirement of this section by:

(a) meeting the continuing professional education requirements for license renewal in the state in which the licensee's principal place of business is located;

(b) demonstrating compliance with the requirements of Subsection (2)(a) by signing a statement to that effect on the renewal application of this state;

(c) complying with all continuing professional education requirements described in Subsection (1) if the state where the person's principal place of business is located has no continuing professional education requirements for license renewal;

(d) completing at least one hour of continuing professional education that covers:

(i) this chapter; and

(ii) Utah Administrative Code, R156-26a, Utah Certified Public Accountant Licensing Act Rule; and

(e) completing at least three hours of ethics education that cover one or more of the following areas:

(i) the AICPA Code of Professional Conduct;

(ii) case-based instruction focusing on real-life situational learning;

(iii) ethical dilemmas faced by accounting professionals; or

(iv) business ethics.

~~(2)~~ (3) If a renewal cycle is extended or shortened under Section 58-26a-303, the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.

~~(3)~~ (4) (a) A licensee may request a waiver of the requirements of Subsection (1) for a period not exceeding three years by:

(i) submitting an application for waiver in a form approved by the division; and

(ii) demonstrating that the licensee will be engaged in activities or be subject to circumstances which prevent the licensee from meeting the requirements of Subsection (1) during the period of the waiver.

(b) An application for waiver shall be granted upon a showing of good cause.

(c) A licensee who is granted a waiver under this section shall complete 30 hours of continuing professional education within the six months immediately following the expiration of the waiver that includes at least 16 hours of continuing professional education focusing on auditing and accounting.

CHAPTER 230**S. B. 265**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

**DISTRIBUTION OF REVENUES
COLLECTED UNDER THE LOCAL
SALES AND USE TAX ACT**Chief Sponsor: David P. Hinkins
House Sponsor: Christine F. Watkins**LONG TITLE****General Description:**

This bill modifies a distribution of local sales and use tax revenue.

Highlighted Provisions:

This bill:

- ▶ reinstates for five years the additional distribution of local sales and use tax revenue to certain counties, cities, or towns that have a coal mining establishment located within their boundaries.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-12-205, as last amended by Laws of Utah 2016, Chapter 364

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

Section 1. Section 59-12-205 is amended to read:**59-12-205. Ordinances to conform with statutory amendments -- Distribution of tax revenue -- Determination of population.**

(1) ~~[A county, city, or town, in order to maintain in effect sales and use tax ordinances adopted pursuant to Section 59-12-204, shall, within 30 days of an amendment to an applicable provision of Part 1, Tax Collection,] To maintain in effect sales and use tax ordinances adopted pursuant to Section 59-12-204, a county, city, or town shall adopt amendments to the county's, city's, or town's sales and use tax ordinances:~~

(a) within 30 days of the day on which the state makes an amendment to an applicable provision of Part 1, Tax Collection; and

(b) as required to conform to the amendments to Part 1, Tax Collection.

(2) Except as provided in Subsections (3) through (6) and subject to Subsection (7):

(a) 50% of each dollar collected from the sales and use tax authorized by this part shall be distributed to each county, city, and town on the basis of the percentage that the population of the county, city, or town bears to the total population of all counties, cities, and towns in the state; and

(b) (i) except as provided in Subsection (2)(b)(ii), 50% of each dollar collected from the sales and use tax authorized by this part shall be distributed to each county, city, and town on the basis of the location of the transaction as determined under Sections 59-12-211 through 59-12-215; and

(ii) 50% of each dollar collected from the sales and use tax authorized by this part within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act, shall be distributed to the military installation development authority created in Section 63H-1-201.

(3) (a) Beginning on July 1, ~~[2011]~~ 2017, and ending on June 30, ~~[2016]~~ 2022, the commission shall ~~[each year]~~ distribute annually to a county, city, or town the distribution required by this Subsection (3) if:

(i) the county, city, or town is a:

(A) county of the third, fourth, fifth, or sixth class;

(B) city of the fifth class; or

(C) town;

(ii) the county, city, or town received a distribution under this section for the calendar year beginning on January 1, 2008, that was less than the distribution under this section that the county, city, or town received for the calendar year beginning on January 1, 2007;

(iii) (A) for a county described in Subsection (3)(a)(i)(A), the county had located within the unincorporated area of the county for one or more days during the calendar year beginning on January 1, 2008, an establishment described in NAICS Industry Group 2121, Coal Mining, or NAICS Code 213113, Support Activities for Coal Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; or

(B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection (3)(a)(i)(C), the city or town had located within the city or town for one or more days during the calendar year beginning on January 1, 2008, an establishment described in NAICS Industry Group 2121, Coal Mining, or NAICS Code 213113, Support Activities for Coal Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(iv) (A) for a county described in Subsection (3)(a)(i)(A), at least one establishment described in Subsection (3)(a)(iii)(A) located within the unincorporated area of the county for one or more days during the calendar year beginning on January 1, 2008, was not the holder of a direct payment permit under Section 59-12-107.1; or

(B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection (3)(a)(i)(C), at least one establishment described in Subsection (3)(a)(iii)(B) located within a city or town for one or

more days during the calendar year beginning on January 1, 2008, was not the holder of a direct payment permit under Section 59-12-107.1.

(b) The commission shall make the distribution required by this Subsection (3) to a county, city, or town described in Subsection (3)(a):

(i) from the distribution required by Subsection (2)(a); and

(ii) before making any other distribution required by this section.

(c) (i) For purposes of this Subsection (3), the distribution is the amount calculated by multiplying the fraction calculated under Subsection (3)(c)(ii) by \$333,583.

(ii) For purposes of Subsection (3)(c)(i):

(A) the numerator of the fraction is the difference calculated by subtracting the distribution a county, city, or town described in Subsection (3)(a) received under this section for the calendar year beginning on January 1, 2008, from the distribution under this section that the county, city, or town received for the calendar year beginning on January 1, 2007; and

(B) the denominator of the fraction is \$333,583.

(d) A distribution required by this Subsection (3) is in addition to any other distribution required by this section.

(4) (a) For fiscal years beginning with fiscal year 1983-84 and ending with fiscal year 2005-06, a county, city, or town may not receive a tax revenue distribution less than .75% of the taxable sales within the boundaries of the county, city, or town.

(b) The commission shall proportionally reduce monthly distributions to any county, city, or town that, but for the reduction, would receive a distribution in excess of 1% of the sales and use tax revenue collected within the boundaries of the county, city, or town.

(5) (a) As used in this Subsection (5):

(i) "Eligible county, city, or town" means a county, city, or town that receives \$2,000 or more in tax revenue distributions in accordance with Subsection (4) for each of the following fiscal years:

(A) fiscal year 2002-03;

(B) fiscal year 2003-04; and

(C) fiscal year 2004-05.

(ii) "Minimum tax revenue distribution" means the greater of:

(A) the total amount of tax revenue distributions an eligible county, city, or town receives from a tax imposed in accordance with this part for fiscal year 2000-01; or

(B) the total amount of tax revenue distributions an eligible county, city, or town receives from a tax imposed in accordance with this part for fiscal year 2004-05.

(b) (i) Except as provided in Subsection (5)(b)(ii), beginning with fiscal year 2006-07 and ending with fiscal year 2012-13, an eligible county, city, or town shall receive a tax revenue distribution for a tax imposed in accordance with this part equal to the greater of:

(A) the payment required by Subsection (2); or

(B) the minimum tax revenue distribution.

(ii) If the tax revenue distribution required by Subsection (5)(b)(i) for an eligible county, city, or town is equal to the amount described in Subsection (5)(b)(i)(A) for three consecutive fiscal years, for fiscal years beginning with the fiscal year immediately following that three consecutive fiscal year period, the eligible county, city, or town shall receive the tax revenue distribution equal to the payment required by Subsection (2).

(c) For a fiscal year beginning with fiscal year 2013-14 and ending with fiscal year 2015-16, an eligible county, city, or town shall receive the minimum tax revenue distribution for that fiscal year if for fiscal year 2012-13 the payment required by Subsection (2) to that eligible county, city, or town is less than or equal to the product of:

(i) the minimum tax revenue distribution; and

(ii) .90.

(6) (a) As used in this Subsection (6):

(i) "Eligible county, city, or town" means a county, city, or town that:

(A) receives, in accordance with Subsection (4), \$2,000 or more in tax revenue distributions for fiscal year 2002-03;

(B) receives, in accordance with Subsection (4), \$2,000 or more in tax revenue distributions for fiscal year 2003-04;

(C) receives, in accordance with Subsection (4), \$2,000 or more in tax revenue distributions for fiscal year 2004-05;

(D) for a fiscal year beginning with fiscal year 2012-13 and ending with fiscal year 2015-16, does not receive a tax revenue distribution described in Subsection (5) equal to the amount described in Subsection (5)(b)(i)(A) for three consecutive fiscal years; and

(E) does not impose a sales and use tax under Section 59-12-2103 on or before July 1, 2016.

(ii) "Minimum tax revenue distribution" means the total amount of tax revenue distributions an eligible county, city, or town receives from a tax imposed in accordance with this part for fiscal year 2004-05.

(b) Beginning with fiscal year 2016-17 and ending with fiscal year 2020-21, an eligible county, city, or town shall receive a tax revenue distribution for a tax imposed in accordance with this part equal to the greater of:

(i) the payment required by Subsection (2); or

(ii) the minimum tax revenue distribution.

(7) (a) Population figures for purposes of this section shall be based on the most recent official census or census estimate of the United States Census Bureau.

(b) If a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates Committee created by executive order of the governor.

(c) The population of a county for purposes of this section shall be determined only from the unincorporated area of the county.

CHAPTER 231
S. B. 266

Passed March 7, 2017
Approved March 21, 2017
Effective May 9, 2017

**DIVISION OF CHILD AND
FAMILY SERVICES APPEALS**

Chief Sponsor: Deidre M. Henderson
House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends provisions relating to the maintenance of division reports.

Highlighted Provisions:

This bill:

- ▶ establishes time frames for the expungement of a division report;
- ▶ requires the division to make rules regarding expungement of a division report; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-1008, as renumbered and amended by Laws of Utah 2006, Chapter 77

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

Section 1. Section 62A-4a-1008 is amended to read:

62A-4a-1008. Time frames for deletion or expungement of specified information or reports.

(1) ~~Unless the executive director determines that there is good cause for keeping a report of abuse or neglect in the Management Information System, based on standards established by rule, the~~ The division shall delete any reference in the Management Information System or Licensing Information System to:

(a) a report that is determined by the division to be without merit, if no subsequent report involving the same alleged perpetrator has occurred within one year; or

(b) a report that is determined by a court of competent jurisdiction to be unsubstantiated or without merit, if no subsequent report involving the same alleged perpetrator has occurred within five years.

(2) ~~(a)~~ The division shall maintain a separation of reports as follows:

~~(i)~~ (a) those that are supported;

~~(ii)~~ (b) those that are unsubstantiated;

~~(iii)~~ (c) those that are without merit;

~~(iv)~~ (d) those that are unsubstantiated under the law in effect ~~prior to~~ before May 6, 2002;

~~(v)~~ (e) those that are substantiated under the law in effect ~~prior to~~ before May 6, 2002; and

~~(vi)~~ (f) those that are consented-to supported findings under Subsection 62A-4a-1005(3)(a)(iii).

(3) On or before May 1, 2018, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the expungement of supported reports or unsupported reports in the Management Information System and the Licensing Information System.

(4) On or before November 1, 2017, the division director shall report to the Health and Human Services Interim Committee on the progress that the division is making toward the development and adoption of the administrative rules required under this section.

(5) The rules described in Subsection (3) shall:

(a) in relation to an unsupported report or a supported report, identify the types of child abuse or neglect reports that:

(i) the division shall expunge within five years after the last date on which the individual's name was placed in the information system, without requiring the subject of the report to request expungement;

(ii) the division shall expunge within 10 years after the last date on which the individual's name was placed in the information system, without requiring the subject of the report to request expungement;

(iii) the division may expunge following an individual's request for expungement; and

(iv) the division may not expunge due to the serious nature of the specified types of child abuse or neglect;

(b) establish an administrative process and a standard of review for the subject of a report to make an expungement request; and

(c) define the term "expunge" or "expungement" to clarify the administrative process for removing a record from the information system.

(6) If an individual's name is in the information system for a type of child abuse or neglect report identified under Subsection (5)(a)(iii), the individual may request to have the report expunged 10 years after the last date on which the individual's name was placed in the information system for a supported or unsupported report.

(7) If an individual's expungement request is denied, the individual shall wait at least one year after the issuance of the denial before the individual may again request to have the individual's report expunged.

~~(b)~~ (8) Only persons with statutory authority ~~have~~ may access ~~the~~ the information contained in any of the reports identified in Subsection (2)~~(a)~~.

CHAPTER 232**S. B. 268**

Passed March 9, 2017

Approved March 21, 2017

Effective May 9, 2017

WASTE AMENDMENTS

Chief Sponsor: Peter C. Knudson

House Sponsor: Lee B. Perry

LONG TITLE**General Description:**

This bill amends provisions relating to the treatment of certain waste.

Highlighted Provisions:

This bill:

- ▶ provides that certain waste entering Utah from other states for disposal or treatment be treated according to standards provided in Utah law.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

19-6-108.5, as last amended by Laws of Utah 2010, Chapter 324

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

Section 1. Section 19-6-108.5 is amended to read:**19-6-108.5. Management of hazardous waste generated outside Utah.**

~~[(1)] On and after July 1, [1992, any] 2017, waste entering Utah for disposal or treatment, excluding incineration, that is classified by Utah as nonhazardous solid waste [and by the state of origin as hazardous waste, and that exceeds the base volume provided in Subsection (2) for each receiving facility or site, shall be treated according to the same treatment standards to which it would have been subject had it remained in the state where it originated. However, if those standards are less protective of human health or the environment than the treatment standards applicable under Utah law, the waste shall be treated in compliance with the Utah standards] shall be treated or disposed as nonhazardous solid waste regardless of how it is classified by the state of origin.~~

~~[(2) The base volume provided in Subsection (1) for each receiving facility or site is the average of the annual quantities of nonhazardous solid waste that originated outside Utah and were received by the facility or site in calendar years 1990 and 1991.]~~

~~[(3) (a) The base volume for each receiving facility or site that has an operating plan approved prior to July 1, 1992, but did not receive nonhazardous solid waste originating outside Utah during calendar years 1990 and 1991, shall be the average of annual quantities of out-of-state nonhazardous waste the~~

~~facility or site received during the 24 months following the date of initial receipt of nonhazardous waste originating outside Utah.]~~

~~[(b) The base determined under Subsection (3)(a) applies to the facility or site on and after July 1, 1995, regardless of the amount of nonhazardous waste originating outside Utah received by the facility or site prior to this date.]~~

CHAPTER 233**S. B. 274**

Passed March 9, 2017
 Approved March 21, 2017
 Effective March 21, 2017

**MEDICAID DENTAL
 WAIVER AMENDMENTS**

Chief Sponsor: Allen M. Christensen
 House Sponsor: Steve Eliason

LONG TITLE**General Description:**

This bill amends the Medicaid waiver for the delivery of adult dental services.

Highlighted Provisions:

This bill:

- ▶ amends the date on which the Medicaid program will start delivering adult dental services under a federal waiver from May 1, 2017, to July 1, 2017; and
- ▶ amends the reimbursement method for dental services not provided by the University of Utah School of Dentistry.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

26-18-413, as enacted by Laws of Utah 2016,
 Chapter 284

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

Section 1. Section 26-18-413 is amended to read:**26-18-413. Medicaid waiver for delivery of adult dental services.**

(1) No later than June 30, 2016, the department shall ask the United States Secretary of Health and Human Services to grant waivers from federal statutory and regulatory law necessary for the Medicaid program to provide dental services in the manner described in Subsection (2).

(2) (a) To the extent funded, services shall be provided to only blind or disabled individuals, as defined in 42 U.S.C. Sec. 1382c(a)(1), who are 18 years of age or older and eligible for the program.

(b) To the extent possible, services within Salt Lake County shall be provided through the University of Utah School of Dentistry.

(c) Each fiscal year, the University of Utah School of Dentistry shall transfer money to the program in an amount equal to the program's non-federal share of the cost of providing services under this section through the school during the fiscal year.

(d) During each general session of the Legislature, the department shall report to the Social Services Appropriations Subcommittee whether the University of Utah School of Dentistry

will have sufficient funds to make the transfer required by Subsection (2)(c) for the current fiscal year.

(e) Where possible, services not provided by the University of Utah School of Dentistry shall be provided [~~through managed care or other risk sharing arrangements.~~];

(i) through fee for service reimbursement until July 1, 2018; and

(ii) after July 1, 2018, through the method of reimbursement used by the division for Medicaid dental benefits.

(f) Subject to appropriations by the Legislature, and as determined by the department, the scope, amount, duration, and frequency of services may be limited.

(3) The reporting requirements of Section 26-18-3 apply to the waivers requested under Subsection (1).

(4) If the waivers requested under Subsection (1) are granted, the Medicaid program shall begin providing dental services in the manner described in Subsection (2) no later than ~~May~~ July 1, 2017.

(5) If the federal share of the cost of providing dental services under this section will be less than 65% during any portion of the next fiscal year, the Medicaid program shall cease providing dental services under this section indefinitely no later than the end of the current fiscal year.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 234**S. B. 276**

Passed March 8, 2017

Approved March 21, 2017

Effective July 1, 2017

**TRANSPORTATION
FUNDING MODIFICATIONS**

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill modifies the Motor and Special Fuel Tax Act by amending motor and special fuel tax provisions.

Highlighted Provisions:

This bill:

- ▶ requires the State Tax Commission to annually reduce the amount of a deposit of sales and use tax revenue to the Transportation Investment Fund of 2005 in certain circumstances;
- ▶ amends provisions governing the calculation of the statewide average rack price of a gallon of motor fuel for purposes of determining the motor and special fuel tax rate;
- ▶ requires the Division of Finance to annually transfer a certain amount of revenue from the Transportation Fund to the Transportation Investment Fund of 2005; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

59-12-103, as last amended by Laws of Utah 2016, Chapters 184, 291, 348 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 291

59-13-201, as last amended by Laws of Utah 2015, Chapter 275

59-13-301, as last amended by Laws of Utah 2015, Chapters 275, 467 and last amended by Coordination Clause, Laws of Utah 2015, Chapter 275

72-2-106, as last amended by Laws of Utah 2016, Chapter 291

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

Section 1. Section 59-12-103 is amended to read:**59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.**

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), regardless of whether:

(A) any parts are actually used in the repairs or renovations of that tangible personal property; or

(B) the particular parts used in the repairs or renovations of that tangible personal property are exempt from a tax under this chapter;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for assisted cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

- (i) stored;
- (ii) used; or
- (iii) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

- (i) stored;
- (ii) used; or
- (iii) consumed; and

(m) amounts paid or charged for a sale:

(i) (A) of a product transferred electronically; or
(B) of a repair or renovation of a product transferred electronically; and

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or
(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and
(II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; and

(B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through

59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) If an optional computer software maintenance contract is a bundled transaction that consists of taxable and nontaxable products that are not separately itemized on an invoice or similar billing document, the purchase of the optional computer software maintenance contract is 40% taxable under this chapter and 60% nontaxable under this chapter.

(iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i) or (ii):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii) and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental of tangible personal property, other property, a product, or a service that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:

(A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(ii) A purchaser and a seller may correct the taxability of a transaction if:

(A) after the transaction occurs, the purchaser and the seller discover that the portion of the transaction that is not subject to taxation under this chapter was not separately stated on an invoice, bill of sale, or similar document provided to the purchaser because of an error or ignorance of the law; and

(B) the seller is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(f) (i) If the sales price of a transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate unless the seller, at the time of the transaction:

(A) separately states the items subject to taxation under this chapter at each of the different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business.

(ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i)(A);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i); or

(iv) Subsection (2)(d)(i)(A)(I).

(h) (i) A tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing statement for

the billing period is rendered on or after the effective date of the repeal of the tax or the tax rate decrease imposed under:

- (A) Subsection (2)(a)(i)(A);
- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

(i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

- (A) on the first day of a calendar quarter; and
- (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2)(i)(i) applies to the tax rates described in the following:

- (A) Subsection (2)(a)(i)(A);
- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) The following state taxes shall be deposited into the General Fund:

- (i) the tax imposed by Subsection (2)(a)(i)(A);
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); or
- (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

- (i) the tax imposed by Subsection (2)(a)(ii);
- (ii) the tax imposed by Subsection (2)(b)(ii);
- (iii) the tax imposed by Subsection (2)(c)(ii); and
- (iv) the tax imposed by Subsection (2)(d)(i)(B).

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b) through (g):

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

- (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
- (B) for the fiscal year; or
- (ii) \$17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection

(4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund created in Section 4-18-106.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources

Conservation and Development Fund may also be used to:

(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(B) fund state required dam safety improvements; and

(C) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited into the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited into the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2006, the difference between the following amounts shall be expended as provided in this Subsection (5), if that difference is greater than \$1:

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

(ii) \$17,500,000.

(b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Department of Natural Resources as dedicated credits; and

(B) expended by the Department of Natural Resources for watershed rehabilitation or restoration.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the remaining difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Division of Water Resources as dedicated credits; and

(B) expended by the Division of Water Resources for cloud-seeding projects authorized by Title 73, Chapter 15, Modification of Weather.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(d) After making the transfers required by Subsections (5)(b) and (c), 94% of the remaining difference described in Subsection (5)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources for:

(i) preconstruction costs:

(A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter 26, Bear River Development Act; and

(B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

(ii) the cost of employing a civil engineer to oversee any project authorized by Title 73, Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

(e) After making the transfers required by Subsections (5)(b) and (c) and subject to Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred for employing additional technical staff for the administration of water rights.

(f) At the end of each fiscal year, any unexpended dedicated credits described in Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(6) Notwithstanding Subsection (3)(a) and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited as follows:

(a) for fiscal year 2016-17 only, 100% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124;

(b) for fiscal year 2017-18 only:

(i) 80% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 20% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(c) for fiscal year 2018-19 only:

(i) 60% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 40% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(d) for fiscal year 2019-20 only:

(i) 40% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 60% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(e) for fiscal year 2020-21 only:

(i) 20% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 80% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103; and

(f) for a fiscal year beginning on or after July 1, 2021, 100% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103.

(7) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(A) the tax imposed by Subsection (2)(a)(i)(A);

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

(b) (i) Subject to Subsections (7)(b)(ii) and (iii), in any fiscal year that the portion of the sales and use taxes deposited under Subsection (7)(a) represents an amount that is a total lower percentage of the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) generated in the current fiscal year than the total percentage of sales and use taxes deposited in the previous fiscal year, the Division of Finance shall deposit an amount under Subsection (7)(a) equal to the product of:

(A) the total percentage of sales and use taxes deposited under Subsection (7)(a) in the previous fiscal year; and

(B) the total sales and use tax revenue generated by the taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year.

(ii) In any fiscal year in which the portion of the sales and use taxes deposited under Subsection (7)(a) would exceed 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year, the Division of Finance shall deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) for the current fiscal year under Subsection (7)(a).

(iii) In all subsequent fiscal years after a year in which 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) was deposited under Subsection (7)(a), the Division of Finance shall annually deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year under Subsection (7)(a).

(8) (a) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$64,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(b) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$63,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(c) (i) Notwithstanding Subsection (3)(a), [and] in addition to the amounts deposited under Subsections (6) and (7), and subject to Subsection

(8)(c)(ii), for a fiscal year beginning on or after July 1, 2018, the ~~Division of Finance~~ commission shall annually deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to 3.68% of the revenues collected from the following taxes:

- (~~iv~~) (A) the tax imposed by Subsection (2)(a)(i)(A);
- (~~iii~~) (B) the tax imposed by Subsection (2)(b)(i);
- (~~iii~~) (C) the tax imposed by Subsection (2)(c)(i); and
- (~~iv~~) (D) the tax imposed by Subsection (2)(d)(i)(A)(I).

(ii) For a fiscal year beginning on or after July 1, 2019, the commission shall annually reduce the deposit into the Transportation Investment Fund of 2005 under Subsection (8)(c)(i) by an amount that is equal to 35% of the amount of revenue generated in the current fiscal year by the portion of the tax imposed on motor and special fuel that is sold, used, or received for sale or use in this state that exceeds 29.4 cents per gallon.

(9) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

(10) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), in addition to any amounts deposited under Subsections (6), (7), and (8), and for the 2016-17 fiscal year only, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(b) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), and in addition to any amounts deposited under Subsections (6), (7), and (8), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of revenue described as follows:

(i) for fiscal year 2017-18 only, 83.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(ii) for fiscal year 2018-19 only, 66.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iii) for fiscal year 2019-20 only, 50% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iv) for fiscal year 2020-21 only, 33.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1); and

(v) for fiscal year 2021-22 only, 16.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(c) For purposes of Subsections (10)(a) and (b), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(d).

(11) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the fiscal year during which the Division of Finance receives notice under Section 63N-2-510 that construction on a qualified hotel, as defined in Section 63N-2-502, has begun, the Division of Finance shall, for two consecutive fiscal years, annually deposit \$1,900,000 of the revenue generated by the taxes listed under Subsection (3)(a) into the Hotel Impact Mitigation Fund, created in Section 63N-2-512.

(12) (a) Notwithstanding Subsection (3)(a), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$26,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

(b) Notwithstanding Subsection (3)(a), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$27,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

(13) Notwithstanding Subsections (4) through (12), an amount required to be expended or deposited in accordance with Subsections (4) through (12) may not include an amount the Division of Finance deposits in accordance with Section 59-12-103.2.

Section 2. Section 59-13-201 is amended to read:

59-13-201. Rate -- Tax basis -- Exemptions -- Revenue deposited into the Transportation Fund -- Restricted account for boating uses -- Refunds -- Reduction of tax in limited circumstances.

~~(1) (a) Subject to the provisions of this section and through December 31, 2015, a tax is imposed at the rate of 24-1/2 cents per gallon upon all motor fuel that is sold, used, or received for sale or used in this state.~~

~~(b) (i)~~ (1) (a) Subject to the provisions of this section and ~~beginning on January 1, 2016~~ except as provided in Subsection (1)(e), a tax is imposed at the rate of ~~[12%]~~ 16.5% of the statewide average rack price of a gallon of motor fuel per gallon upon all motor fuel that is sold, used, or received for sale or used in this state.

~~(ii) (A)~~ (b) (i) Until December 31, 2018, and subject to the requirements under Subsection ~~(1)(b)(iii)~~ (1)(c), the statewide average rack price of a gallon of motor fuel under Subsection ~~(1)(b)(i)~~ (1)(a) shall be determined by calculating the previous fiscal year statewide average rack price of

a gallon of regular unleaded motor fuel, excluding federal and state excise taxes, for the 12 months ending on the previous June 30 as published by an oil pricing service.

~~(B)~~ (ii) Beginning on January 1, 2019, and subject to the requirements under Subsection ~~(1)(b)(iii)~~ (1)(c), the statewide average rack price of a gallon of motor fuel under Subsection ~~(1)(b)(i)~~ (1)(a) shall be determined by calculating the previous three fiscal years statewide average rack price of a gallon of regular unleaded motor fuel, excluding federal and state excise taxes, for the 36 months ending on the previous June 30 as published by an oil pricing service.

~~(iii)~~ (A) (c) (i) Subject to the requirement in Subsection ~~(1)(b)(iii)(B)~~ (1)(c)(ii), the statewide average rack price of a gallon of motor fuel determined under Subsection (1)(b)~~(iii)~~ may not be less than ~~[\$2.45]~~ \$1.78 per gallon.

~~(B)~~ (ii) Beginning on ~~a calendar year following the year that the actual statewide average rack price of a gallon of motor fuel reaches \$2.45 before applying the minimum under Subsection (1)(b)(iii)(A)~~ January 1, 2019, the commission shall, on January 1, annually adjust the minimum statewide average rack price of a gallon of motor fuel described in Subsection ~~(1)(b)(iii)(A)~~ (1)(c)(i) by taking the minimum statewide average rack price of a gallon of motor fuel for the previous calendar year and adding an amount equal to the greater of:

~~(4)~~ (A) an amount calculated by multiplying the minimum statewide average rack price of a gallon of motor fuel for the previous calendar year by the actual percent change during the previous fiscal year in the Consumer Price Index; and

~~(H)~~ (B) 0.

~~(C)~~ (iii) The statewide average rack price of a gallon of motor fuel determined by the commission under Subsection (1)(b)~~(iii)~~ may not exceed ~~[\$3.33]~~ \$2.43 per gallon.

(iv) The minimum statewide average rack price of a gallon of motor fuel described and adjusted under Subsections (1)(c)(i) and (ii) may not exceed the maximum statewide average rack price of a gallon of motor fuel under Subsection (1)(c)(iii).

~~(iv)~~ (d) (i) The commission shall annually:

(A) determine the statewide average rack price of a gallon of motor fuel in accordance with ~~Subsection (1)(b)(iii)~~ Subsections (1)(b) and (c);

(B) adjust the fuel tax rate imposed under Subsection ~~(1)(b)(i)~~ (1)(a), rounded to the nearest one-tenth of a cent, based on the determination under Subsection (1)(b)~~(iii)~~;

(C) publish the adjusted fuel tax as a cents per gallon rate; and

(D) post or otherwise make public the adjusted fuel tax rate as determined in Subsection ~~(1)(b)(iv)(B)~~ (1)(d)(i)(B) no later than 60 days prior

to the annual effective date under Subsection ~~(1)(b)(v)~~ (1)(d)(ii).

~~(v)~~ (ii) The tax rate imposed under this Subsection (1)~~(b)~~ and adjusted as required under Subsection ~~(1)(b)(iv)~~ (1)(d)(i) shall take effect on January 1 of each year.

~~(e)~~ (e) In lieu of the tax imposed under Subsection (1)(a) ~~[or (b)]~~ and subject to the provisions of this section, a tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a) ~~[or (b)]~~, rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in Section 59-13-102 and are sold, used, or received for sale or use in this state.

(2) Any increase or decrease in tax rate applies to motor fuel that is imported to the state or sold at refineries in the state on or after the effective date of the rate change.

(3) (a) No motor fuel tax is imposed upon:

(i) motor fuel that is brought into and sold in this state in original packages as purely interstate commerce sales;

(ii) motor fuel that is exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

(iii) motor fuel or components of motor fuel that is sold and used in this state and distilled from coal, oil shale, rock asphalt, bituminous sand, or solid hydrocarbons located in this state; or

(iv) motor fuel that is sold to the United States government, this state, or the political subdivisions of this state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the tax exemption provided under Subsection (3)(a)(iv).

(4) The commission may either collect no tax on motor fuel exported from the state or, upon application, refund the tax paid.

(5) (a) All revenue received by the commission under this part shall be deposited daily with the state treasurer and credited to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the motor fuel tax.

(6) (a) The commission shall determine what amount of motor fuel tax revenue is received from the sale or use of motor fuel used in motorboats registered under the provisions of the State Boating Act, and this amount shall be deposited in a restricted revenue account in the General Fund of the state.

(b) The funds from this account shall be used for the construction, improvement, operation, and maintenance of state-owned boating facilities and

for the payment of the costs and expenses of the Division of Parks and Recreation in administering and enforcing the State Boating Act.

(7) (a) The United States government or any of its instrumentalities, this state, or a political subdivision of this state that has purchased motor fuel from a licensed distributor or from a retail dealer of motor fuel and has paid the tax on the motor fuel as provided in this section is entitled to a refund of the tax and may file with the commission for a quarterly refund.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund provided for in Subsection (7)(a).

(8) (a) The commission shall refund annually into the Off-Highway Vehicle Account in the General Fund an amount equal to .5% of the motor fuel tax revenues collected under this section.

(b) This amount shall be used as provided in Section 41-22-19.

(9) (a) Beginning on April 1, 2001, a tax imposed under this section on motor fuel that is sold, used, or received for sale or use in this state is reduced to the extent provided in Subsection (9)(b) if:

(i) a tax imposed on the basis of the sale, use, or receipt for sale or use of the motor fuel is paid to the Navajo Nation;

(ii) the tax described in Subsection (9)(a)(i) is imposed without regard to whether or not the person required to pay the tax is an enrolled member of the Navajo Nation; and

(iii) the commission and the Navajo Nation execute and maintain an agreement as provided in this Subsection (9) for the administration of the reduction of tax.

(b) (i) If but for Subsection (9)(a) the motor fuel is subject to a tax imposed by this section:

(A) the state shall be paid the difference described in Subsection (9)(b)(ii) if that difference is greater than \$0; and

(B) a person may not require the state to provide a refund, a credit, or similar tax relief if the difference described in Subsection (9)(b)(ii) is less than or equal to \$0.

(ii) The difference described in Subsection (9)(b)(i) is equal to the difference between:

(A) the amount of tax imposed on the motor fuel by this section; less

(B) the tax imposed and collected by the Navajo Nation on the motor fuel.

(c) For purposes of Subsections (9)(a) and (b), the tax paid to the Navajo Nation under a tax imposed by the Navajo Nation on the basis of the sale, use, or receipt for sale or use of motor fuel does not include any interest or penalties a taxpayer may be required to pay to the Navajo Nation.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (9).

(e) The agreement required under Subsection (9)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a reduction of taxes greater than or different from the reduction described in this Subsection (9); or

(C) affect the power of the state to establish rates of taxation;

(ii) shall:

(A) be in writing;

(B) be signed by:

(I) the chair of the commission or the chair's designee; and

(II) a person designated by the Navajo Nation that may bind the Navajo Nation;

(C) be conditioned on obtaining any approval required by federal law;

(D) state the effective date of the agreement; and

(E) state any accommodation the Navajo Nation makes related to the construction and maintenance of state highways and other infrastructure within the Utah portion of the Navajo Nation; and

(iii) may:

(A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo Nation information that is:

(I) contained in a document filed with the commission; and

(II) related to the tax imposed under this section;

(B) provide for maintaining records by the commission or the Navajo Nation; or

(C) provide for inspections or audits of distributors, carriers, or retailers located or doing business within the Utah portion of the Navajo Nation.

(f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on motor fuel, any change in the reduction of taxes under this Subsection (9) as a result of the change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period beginning on the date the commission receives notice:

(A) from the Navajo Nation; and

(B) meeting the requirements of Subsection (9)(f)(ii).

(ii) The notice described in Subsection (9)(f)(i) shall state:

(A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on motor fuel;

(B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A); and

(C) the new rate of the tax described in Subsection (9)(f)(ii)(A).

(g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not permitted under this Subsection (9) beginning on the first day of the calendar quarter after a 30-day period beginning on the day the agreement terminates.

(h) If there is a conflict between this Subsection (9) and the agreement required by Subsection (9)(a), this Subsection (9) governs.

Section 3. Section 59-13-301 is amended to read:

59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer and credited to Transportation Fund -- Reduction of tax in limited circumstances.

(1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section 59-13-304, a tax is imposed at the same rates imposed under [Subsections] Subsection 59-13-201(1)(a) [~~and (b)~~] on the:

(i) removal of undyed diesel fuel from any refinery;

(ii) removal of undyed diesel fuel from any terminal;

(iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or warehousing;

(iv) sale of undyed diesel fuel to any person who is not registered as a supplier under this part unless the tax has been collected under this section;

(v) any untaxed special fuel blended with undyed diesel fuel; or

(vi) use of untaxed special fuel other than propane or electricity.

(b) The tax imposed under this section shall only be imposed once upon any special fuel.

(2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:

(i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the public highways of the state, but this exemption applies only in those cases where the purchasers or the users of special fuel establish to the satisfaction of the commission that the special fuel was used for purposes other than to operate a motor vehicle upon the public highways of the state; or

(ii) is sold to this state or any of its political subdivisions.

(b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that is:

(i) sold to the United States government or any of its instrumentalities or to this state or any of its political subdivisions;

(ii) exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

(iii) used in a vehicle off-highway;

(iv) used to operate a power take-off unit of a vehicle;

(v) used for off-highway agricultural uses;

(vi) used in a separately fueled engine on a vehicle that does not propel the vehicle upon the highways of the state; or

(vii) used in machinery and equipment not registered and not required to be registered for highway use.

(3) No tax is imposed or collected on special fuel if it is:

(a) (i) purchased for business use in machinery and equipment not registered and not required to be registered for highway use; and

(ii) used pursuant to the conditions of a state implementation plan approved under Title 19, Chapter 2, Air Conservation Act; or

(b) propane or electricity.

(4) Upon request of a buyer meeting the requirements under Subsection (3), the Division of Air Quality shall issue an exemption certificate that may be shown to a seller.

(5) The special fuel tax shall be paid by the supplier.

(6) (a) The special fuel tax shall be paid by every user who is required by Sections 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.

(b) The user shall receive a refundable credit for special fuel taxes paid on purchases which are delivered into vehicles and for which special fuel tax liability is reported.

(7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the commission from taxes and license fees under this part shall be deposited daily with the state treasurer and credited to the Transportation Fund.

(b) An appropriation from the Transportation Fund shall be made to the commission to cover expenses incurred in the administration and enforcement of this part and the collection of the special fuel tax.

(c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303 may be used by the commission as a dedicated credit to cover the costs of electronic credentialing as provided in Section 41-1a-303.

(8) The commission may either collect no tax on special fuel exported from the state or, upon application, refund the tax paid.

(9) (a) The United States government or any of its instrumentalities, this state, or a political subdivision of this state that has purchased special fuel from a supplier or from a retail dealer of special fuel and has paid the tax on the special fuel as provided in this section is entitled to a refund of the tax and may file with the commission for a quarterly refund in a manner prescribed by the commission.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund provided for in Subsection (9)(a).

(10) (a) The purchaser shall pay the tax on diesel fuel or clean fuel purchased for uses under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid as provided in Subsection (9) and this Subsection (10).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the application and refund for off-highway and nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

(c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural uses shall be made in accordance with the tax return procedures under Section 59-13-202.

(11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is reduced to the extent provided in Subsection (11)(b) if:

(i) the Navajo Nation imposes a tax on the special fuel;

(ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the person required to pay the tax is an enrolled member of the Navajo Nation; and

(iii) the commission and the Navajo Nation execute and maintain an agreement as provided in this Subsection (11) for the administration of the reduction of tax.

(b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this section:

(A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that difference is greater than \$0; and

(B) a person may not require the state to provide a refund, a credit, or similar tax relief if the difference described in Subsection (11)(b)(ii) is less than or equal to \$0.

(ii) The difference described in Subsection (11)(b)(i) is equal to the difference between:

(A) the amount of tax imposed on the special fuel by this section; less

(B) the tax imposed and collected by the Navajo Nation on the special fuel.

(c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on the special fuel does not include any interest or penalties a

taxpayer may be required to pay to the Navajo Nation.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules governing the procedures for administering the reduction of tax provided under this Subsection (11).

(e) The agreement required under Subsection (11)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a reduction of taxes greater than or different from the reduction described in this Subsection (11); or

(C) affect the power of the state to establish rates of taxation;

(ii) shall:

(A) be in writing;

(B) be signed by:

(I) the chair of the commission or the chair's designee; and

(II) a person designated by the Navajo Nation that may bind the Navajo Nation;

(C) be conditioned on obtaining any approval required by federal law;

(D) state the effective date of the agreement; and

(E) state any accommodation the Navajo Nation makes related to the construction and maintenance of state highways and other infrastructure within the Utah portion of the Navajo Nation; and

(iii) may:

(A) notwithstanding Section 59-1-403, authorize the commission to disclose to the Navajo Nation information that is:

(I) contained in a document filed with the commission; and

(II) related to the tax imposed under this section;

(B) provide for maintaining records by the commission or the Navajo Nation; or

(C) provide for inspections or audits of suppliers, distributors, carriers, or retailers located or doing business within the Utah portion of the Navajo Nation.

(f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax imposed on special fuel, any change in the amount of the reduction of taxes under this Subsection (11) as a result of the change in the tax rate is not effective until the first day of the calendar quarter after a 60-day period beginning on the date the commission receives notice:

(A) from the Navajo Nation; and

(B) meeting the requirements of Subsection (11)(f)(ii).

(i) The notice described in Subsection (11)(f)(i) shall state:

(A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on special fuel;

(B) the effective date of the rate change of the tax described in Subsection (11)(f)(ii)(A); and

(C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

(g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not permitted under this Subsection (11) beginning on the first day of the calendar quarter after a 30-day period beginning on the day the agreement terminates.

(h) If there is a conflict between this Subsection (11) and the agreement required by Subsection (11)(a), this Subsection (11) governs.

(12) (a) A tax imposed under this section on compressed natural gas is imposed at a rate of:

(i) until June 30, 2016, 10-1/2 cents per gasoline gallon equivalent;

(ii) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per gasoline gallon equivalent;

(iii) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per gasoline gallon equivalent; and

(iv) beginning on or after July 1, 2018, 16-1/2 cents per gasoline gallon equivalent.

(b) A tax imposed under this section on liquified natural gas is imposed at a rate of:

(i) until June 30, 2016, 10-1/2 cents per diesel gallon equivalent;

(ii) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per diesel gallon equivalent;

(iii) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per diesel gallon equivalent; and

(iv) beginning on or after July 1, 2018, 16-1/2 cents per diesel gallon equivalent.

(c) A tax imposed under this section on hydrogen used to operate or propel a motor vehicle upon the public highways of the state is imposed at a rate of:

(i) until June 30, 2016, 10-1/2 cents per gasoline gallon equivalent;

(ii) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per gasoline gallon equivalent;

(iii) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per gasoline gallon equivalent; and

(iv) beginning on or after July 1, 2018, 16-1/2 cents per gasoline gallon equivalent.

Section 4. Section 72-2-106 is amended to read:

72-2-106. Appropriation and transfers from Transportation Fund.

(1) On and after July 1, 1981, there is appropriated from the Transportation Fund to the use of the department an amount equal to two-elevenths of the taxes collected from the motor fuel tax and the special fuel tax, exclusive of the formula amount appropriated to the B and C road fund and the collector road fund, to be used for highway rehabilitation.

(2) For a fiscal year beginning on or after July 1, 2016, the Division of Finance shall annually transfer an amount equal to the amount of revenue generated by a tax imposed on motor and special fuel that is sold, used, or received for sale or used in this state at a rate of 1.8 cents per gallon to the Transportation Investment Fund of 2005 created by Section 72-2-124.

(3) For a fiscal year beginning on or after July 1, 2019, the Division of Finance shall annually transfer to the Transportation Investment Fund of 2005 created by Section 72-2-124 an amount that is equal to 35% of the amount of revenue generated in the current fiscal year by the portion of the tax imposed on motor and special fuel that is sold, used, or received for sale or use in this state that exceeds 29.4 cents per gallon.

Section 5. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 235**H. B. 12**

Passed February 6, 2017

Approved March 22, 2017

Effective May 9, 2017

DISPOSITION OF BALLOTS AMENDMENTS

Chief Sponsor: Steve Eliason
Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill amends provisions of the Election Code relating to a rejected absentee ballot.

Highlighted Provisions:

This bill:

- ▶ amends provisions relating to absentee ballot envelopes; and
- ▶ modifies the duties of an election officer in relation to notification of, and an opportunity to correct, a rejected absentee ballot.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-3-302, as last amended by Laws of Utah 2015, Chapter 173

20A-3-305, as last amended by Laws of Utah 2016, Chapter 24

20A-3-308, as last amended by Laws of Utah 2012, Chapter 309

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

Section 1. Section 20A-3-302 is amended to read:**20A-3-302. Conducting entire election by absentee ballot.**

(1) Notwithstanding Section 17B-1-306, an election officer may administer an election entirely by absentee ballot.

(2) If the election officer decides to administer an election entirely by absentee ballot, the election officer shall mail to each registered voter within that voting precinct:

- (a) an absentee ballot;
- (b) for an election administered by a county clerk, information regarding the location and hours of operation of any election day voting center at which the voter may vote;
- (c) a courtesy reply mail envelope;
- (d) instructions for returning the ballot that include an express notice about any relevant deadlines that the voter must meet in order for the voter's vote to be counted; and
- (e) for an election administered by an election officer other than a county clerk, if the election officer does not operate a polling location or an

election day voting center, a warning, on a separate page of colored paper in bold face print, indicating that if the voter fails to follow the instructions included with the absentee ballot, the voter will be unable to vote in that election because there will be no polling place in the voting precinct on the day of the election.

(3) A voter who votes by absentee ballot under this section is not required to apply for an absentee ballot as required by this part.

(4) An election officer who administers an election entirely by absentee ballot shall:

(a) (i) obtain, in person, the signatures of each voter within that voting precinct before the election; or

(ii) obtain the signature of each voter within the voting precinct from the county clerk; and

(b) maintain the signatures on file in the election officer's office.

(5) (a) Upon receiving the returned absentee ballots, the election officer shall compare the signature on each absentee ballot with the voter's signature that is maintained on file and verify that the signatures are the same.

(b) If the election officer questions the authenticity of the signature on the absentee ballot, the election officer shall immediately contact the voter to verify the signature.

(c) If the election ~~official~~ officer determines that the signature on the absentee ballot does not match the voter's signature that is maintained on file, the election officer shall:

(i) unless the absentee ballot application deadline described in Section 20A-3-304 has passed, immediately send another absentee ballot and other voting materials as required by this section to the voter; and

(ii) ~~disqualify~~ reject the initial absentee ballot.

(6) An election officer shall:

(a) notify a voter if the election officer rejects the voter's absentee ballot and specify the reason for the rejection; and

(b) give the notice described in Subsection (6)(a) to a voter no later than:

(i) if the election officer rejects the absentee ballot before election day:

(A) one business day after the day on which the election officer rejects the ballot, if the election officer gives the notice by email or text message; or

(B) two business days after the day on which the election officer rejects the ballot, if the election officer gives the notice by postal mail or phone;

(ii) seven days after election day if the election officer rejects the absentee ballot on election day; or

(iii) seven days after the canvass if the election officer rejects the absentee ballot after election day and before the end of the canvass.

[~~(6)~~] (7) A county that administers an election entirely by absentee ballot:

(a) shall provide at least one election day voting center in accordance with Title 20A, Chapter 3, Part 7, Election Day Voting Center;

(b) shall ensure that an election day voting center operated by the county has at least one voting device that is accessible, in accordance with the Help America Vote Act of 2002, Pub. L. No. 107-252, for individuals with disabilities; and

(c) is not required to pay return postage for an absentee ballot.

Section 2. Section 20A-3-305 is amended to read:

20A-3-305. Mailing of ballot to voter -- Enclose self-addressed envelope -- Affidavit.

(1) (a) Upon timely receipt of an absentee voter application properly filled out and signed less than 30 days before the election, the election officer shall either:

(i) give the applicant an official absentee ballot and envelope to vote in the office; or

(ii) mail an official absentee ballot, postage paid, to the absentee voter and enclose an envelope printed as required in Subsection (2).

(b) No later than 21 days before election day, the election officer shall mail an official absentee ballot, postage paid, to all absentee voters, other than to a uniformed-service voter or an overseas voter, who have submitted a properly filled out and signed absentee voter application before the day on which the ballots are mailed and enclose an envelope printed as required by Subsection (2).

(2) The election officer shall ensure that:

(a) the name, official title, and post office address of the election officer is printed on the front of the envelope; ~~and~~

(b) the return envelope includes a space where a voter may write an email address and phone number by which the election officer may contact the voter if the voter's ballot is rejected; and

[~~(b)~~] (c) a printed affidavit in substantially the following form is printed on the back of the envelope: "County of ____

State of ____

I, ____, solemnly swear that: I am a qualified resident voter of the ____ voting precinct in ____ County, Utah and that I am entitled to vote in that voting precinct at the next election. I am not a convicted felon currently incarcerated for commission of a felony. _____

Signature of Absentee Voter"

(3) If the election officer determines that the absentee voter is required to show valid voter identification, the election officer shall:

(a) issue the voter a provisional ballot in accordance with Section 20A-3-105.5;

(b) instruct the voter to include a copy of the voter's valid voter identification with the return ballot;

(c) provide the voter clear instructions on how to vote a provisional ballot; and

(d) comply with the requirements of Subsection (2).

Section 3. Section 20A-3-308 is amended to read:

20A-3-308. Absentee ballots in the custody of poll workers -- Disposition -- Notice.

(1) (a) Voting precinct poll workers shall open envelopes containing absentee ballots that are in their custody on election day at the polling places during the time the polls are open as provided in this Subsection (1).

(b) The poll workers shall:

(i) first, open the outer envelope only; and

(ii) compare the signature of the voter on the application with the signature on the affidavit.

(2) (a) The poll workers shall carefully open and remove the absentee voter envelope so as not to destroy the affidavit on the envelope if they find that:

(i) the affidavit is sufficient;

(ii) the signatures correspond; and

(iii) the applicant is registered to vote in that voting precinct and has not voted in that election.

(b) If, after opening the absentee voter envelope, the poll worker finds that a provisional ballot envelope is enclosed, the poll worker shall:

(i) record, in the official register, whether:

(A) the voter included valid voter identification; or

(B) a covered voter, as defined in Section 20A-16-102, did not provide valid voter identification as permitted by Public Law 107-252, the Help America Vote Act of 2002;

(ii) if any type of identification was included, record the type of identification provided by the voter in the appropriate space in the official register;

(iii) record the provisional ballot number on the official register; and

(iv) place the provisional ballot envelope with the other provisional ballot envelopes to be transmitted to the county clerk.

(c) If the absentee ballot is not a provisional ballot, the poll workers shall:

(i) remove the absentee ballot from the envelope without unfolding it or permitting it to be opened or examined;

(ii) initial the stub in the same manner as for other ballots;

(iii) remove the stub from the ballot;

(iv) deposit the ballot in the ballot box; and

(v) mark the official register and pollbook to show that the voter has voted.

(3) If the poll workers determine that the affidavit is insufficient, or that the signatures do not correspond, or that the applicant is not a registered voter in the voting precinct, they shall:

(a) disallow the vote; and

(b) without opening the absentee voter envelope, mark across the face of the envelope:

(i) "Rejected as defective"; or

(ii) "Rejected as not a registered voter."

(4) The poll workers shall deposit the absentee voter envelope, when the absentee ballot is voted, and the absentee voter envelope with its contents unopened when the absent vote is rejected, in the ballot box containing the ballots.

(5) ~~(a)~~ An election officer shall:

(a) notify a voter if a poll worker rejects the voter's absentee ballot and specify the reason for the rejection[-]; and

(b) ~~[An election officer shall]~~ give the notice described in Subsection (5)(a) to a voter no later than ~~[seven days after]~~:

(i) if the poll worker rejects the absentee ballot before election day:

(A) one business day after the day on which the poll worker rejects the ballot, if the election officer gives the notice by email or text message; or

(B) two business days after the day on which the poll worker rejects the ballot, if the election officer gives the notice by postal mail or phone;

~~[(4)]~~ (ii) seven days after election day if the ~~[election officer receives the]~~ poll worker rejects the absentee ballot ~~[before or]~~ on election day; ~~[and] or~~

~~[(ii)]~~ (iii) seven days after the canvass if the ~~[election officer receives the]~~ poll worker rejects the absentee ballot after election day and before the end of the canvass.

(6) The election officer shall retain and preserve the absentee voter envelopes in the manner provided by law for the retention and preservation of official ballots voted at that election.

CHAPTER 236**H. B. 37**

Passed February 16, 2017

Approved March 22, 2017

Effective May 9, 2017

**STATE CONSTRUCTION
CODE AMENDMENTS**

Chief Sponsor: Mike Schultz

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends provisions related to the state construction code.

Highlighted Provisions:

This bill:

- ▶ amends a provision related to residential installation of electrical outlets;
- ▶ amends a provision related to drainage systems;
- ▶ amends a provision related to the installation of passive radon controls; and
- ▶ amends a provision related to natural gas-fired water heater emissions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

15A-3-202, as last amended by Laws of Utah 2016, Chapter 249

15A-3-206, as last amended by Laws of Utah 2016, Chapter 249

15A-6-102, as enacted by Laws of Utah 2016, Chapter 249

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

Section 1. Section 15A-3-202 is amended to read:**15A-3-202. Amendments to Chapters 1 through 5 of IRC.**

(1) In IRC, Section R102, a new Section R102.7.2 is added as follows: “R102.7.2 Physical change for bedroom window egress. A structure whose egress window in an existing bedroom is smaller than required by this code, and that complied with the construction code in effect at the time that the bedroom was finished, is not required to undergo a physical change to conform to this code if the change would compromise the structural integrity of the structure or could not be completed in accordance with other applicable requirements of this code, including setback and window well requirements.”

(2) In IRC, Section 109:

(a) A new IRC, Section 109.1.5, is added as follows: “R109.1.5 Weather-resistant exterior wall envelope inspections. An inspection shall be made of the weather-resistant exterior wall envelope as required by Section R703.1 and flashings as required by Section R703.8 to prevent water from entering the weather-resistive barrier.”

(b) The remaining sections are renumbered as follows: R109.1.6 Other inspections; R109.1.6.1 Fire- and smoke-resistance-rated construction inspection; R109.1.6.2 Reinforced masonry, insulating concrete form (ICF) and conventionally formed concrete wall inspection; and R109.1.7 Final inspection.

(3) IRC, Section R114.1, is deleted and replaced with the following: “R114.1 Notice to owner. Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or other pertinent laws or ordinances or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner’s agent or to the person doing the work; and shall state the conditions under which work will be permitted to resume.”

(4) In IRC, Section R202, the following definition is added: “CERTIFIED BACKFLOW PREVENTER ASSEMBLY TESTER: A person who has shown competence to test Backflow prevention assemblies to the satisfaction of the authority having jurisdiction under Utah Code, Subsection 19-4-104(4).”

(5) In IRC, Section R202, the definition for “CONDITIONED SPACE” is modified by deleting the words at the end of the sentence “being heated or cooled by any equipment or appliance” and replacing them with the following: “enclosed within the building thermal envelope that is directly heated or cooled, or indirectly heated or cooled by any of the following means:1. Openings directly into an adjacent conditioned space.2. An un-insulated floor, ceiling or wall adjacent to a conditioned space.3. Un-insulated duct, piping or other heat or cooling source within the space.”

(6) In IRC, Section R202, the definition of “Cross Connection” is deleted and replaced with the following: “CROSS CONNECTION. Any physical connection or potential connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical, whereby there exists the possibility for flow from one system to the other, with the direction of flow depending on the pressure differential between the two systems (see “Backflow, Water Distribution”).”

(7) In IRC, Section 202, in the definition for gray water a comma is inserted after the word “washers”; the word “and” is deleted; and the following is added to the end: “and clear water wastes which have a pH of 6.0 to 9.0; are non-flammable; non-combustible; without objectionable odors; non-highly pigmented; and will not interfere with the operation of the sewer treatment facility.”

(8) In IRC, Section R202, the definition of “Potable Water” is deleted and replaced with the following: “POTABLE WATER. Water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming to the Utah Code, Title 19, Chapter 4, Safe Drinking Water Act, and Title 19, Chapter 5,

Water Quality Act, and the regulations of the public health authority having jurisdiction.”

(9) IRC, Figure R301.2(5), is deleted and replaced with Table R301.2(5a) and Table R301.2(5b) as follows:

“TABLE NO. R301.2(5a)

STATE OF UTAH - REGIONAL SNOW LOAD
FACTORS

COUNTY	P _o	S	A _o
Beaver	43	63	6.2
Box Elder	43	63	5.2
Cache	50	63	4.5
Carbon	43	63	5.2
Daggett	43	63	6.5
Davis	43	63	4.5
Duchesne	43	63	6.5
Emery	43	63	6.0
Garfield	43	63	6.0
Grand	36	63	6.5
Iron	43	63	5.8
Juab	43	63	5.2
Kane	36	63	5.7
Millard	43	63	5.3
Morgan	57	63	4.5
Piute	43	63	6.2
Rich	57	63	4.1
Salt Lake	43	63	4.5
San Juan	43	63	6.5
Sanpete	43	63	5.2
Sevier	43	63	6.0
Summit	86	63	5.0
Tooele	43	63	4.5
Uintah	43	63	7.0
Utah	43	63	4.5
Wasatch	86	63	5.0
Washington	29	63	6.0
Wayne	36	63	6.5
Weber	43	63	4.5

“TABLE NO. R301.2(5b)
 REQUIRED SNOW LOADS FOR SELECTED UTAH CITIES AND TOWNS^{1,2}

The following jurisdictions require design snow load values that differ from the Equation in the Utah Snow Load Study.

County	City	Elevation	Ground Snow Load (psf)	Roof Snow Load (psf) ⁶
Carbon	Price ³	5550	43	30
	All other county locations ⁵	--	--	—
Davis	Fruit Heights ³	4500 - 4850	57	40
Emery	Green River ³	4070	36	25
Garfield	Panguitch ³	6600	43	30
Rich	Woodruff ³	6315	57	40
	Laketown ⁴	6000	57	40
	Garden City ⁵	—	—	--
	Randolph ⁴	6300	57	40
San Juan	Monticello ³	6820	50	35
Summit	Coalville ³	5600	86	60
	Kamas ⁴	6500	114	80
Tooele	Tooele ³	5100	43	30
Utah	Orem ³	4650	43	30
	Pleasant Grove ⁴	5000	43	30
	Provo ⁵	--	--	—
Wasatch	Heber ⁵	—	—	—
Washington	Leeds ³	3460	29	20
	Santa Clara ³	2850	21	15
	St. George ³	2750	21	15
	All other county locations ⁵	--	--	—
Wayne	Loa ³	7080	43	30

¹The IRC requires a minimum live load - See R301.6.

²This table is informational only in that actual site elevations may vary. Table is only valid if site elevation is within 100 feet of the listed elevation. Otherwise, contact the local Building Official.

³Values adopted from Table VII of the Utah Snow Load Study.

⁴Values based on site-specific study. Contact local Building Official for additional information.

⁵Contact local Building Official.

⁶Based on $C_e = 1.0$, $C_t = 1.0$ and $I_s = 1.0$

(10) IRC, Section R301.6, is deleted and replaced with the following: “R301.6 Utah Snow Loads. The snow loads specified in Table R301.2(5b) shall be used for the jurisdictions identified in that table. Otherwise, the ground snow load, P_g , to be used in the determination of design snow loads for buildings and other structures shall be determined by using the following formula: $P_g = (P_o2 + S2(A-A_o)2)0.5$ for A greater than A_o , and $P_g = P_o$ for A less than or equal to A_o .”

WHERE:

P_g = Ground snow load at a given elevation (psf);

P_o = Base ground snow load (psf) from Table No. R301.2(5a);

S = Change in ground snow load with elevation (psf/100 ft.) From Table No. R301.2(5a);

A = Elevation above sea level at the site (ft./1,000);

A_o = Base ground snow elevation from Table R301.2(5a) (ft./1,000).

The building official may round the roof snow load to the nearest 5 psf. The ground snow load, P_g , may be adjusted by the building official when a licensed engineer or architect submits data substantiating the adjustments.

Where the minimum roof live load in accordance with Table R301.6 is greater than the design roof snow load, such roof live load shall be used for design, however, it shall not be reduced to a load lower than the design roof snow load. Drifting need not be considered for roof snow loads less than 20 psf.”

(11) In IRC, Section R302.5.1, the words “self-closing device” are deleted and replaced with “self-latching hardware”.

(12) IRC, Section R302.13, is deleted.

(13) In IRC, Section R303.4, the number “5” is changed to “3” in the first sentence.

(14) IRC, Sections R311.7.4 through R311.7.5.3, are deleted and replaced with the following: “R311.7.4 Stair treads and risers. R311.7.5.1 Riser height. The maximum riser height shall be 8 inches (203 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). R311.7.5.2 Tread depth. The minimum tread depth shall be 9 inches (228 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread’s leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 10 inches (254 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12-inch (305 mm) walk line shall not exceed the smallest by more than 3/8

inch (9.5 mm). R311.7.5.3 Profile. The radius of curvature at the leading edge of the tread shall be no greater than 9/16 inch (14.3 mm). A nosing not less than 3/4 inch (19 mm) but not more than 1 1/4 inches (32 mm) shall be provided on stairways with solid risers. The greatest nosing projection shall not exceed the smallest nosing projection by more than 3/8 inch (9.5 mm) between two stories, including the nosing at the level of floors and landings. Beveling of nosing shall not exceed 1/2 inch (12.7 mm). Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted, provided that the opening between treads does not permit the passage of a 4-inch diameter (102 mm) sphere. Exceptions. 1. A nosing is not required where the tread depth is a minimum of 10 inches (254 mm). 2. The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.”

(15) IRC, Section R312.2, is deleted.

(16) IRC, Sections R313.1 through R313.2.1, are deleted and replaced with the following: “R313.1 Design and installation. When installed, automatic residential fire sprinkler systems for townhouses or one- and two-family dwellings shall be designed and installed in accordance with Section P2904 or NFPA 13D.”

(17) In IRC, Section 315.3, the following words are added to the first sentence after the word “installed”: “on each level of the dwelling unit and”.

(18) In IRC, Section R315.5, a new exception, 3, is added as follows: “3. Hard wiring of carbon monoxide alarms in existing areas shall not be required where the alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for hard wiring, without the removal of interior finishes.”

(19) A new IRC, Section R315.7, is added as follows: “ R315.7 Interconnection. Where more than one carbon monoxide alarm is required to be installed within an individual dwelling unit in accordance with Section R315.1, the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm. Exception: Interconnection of carbon monoxide alarms in existing areas shall not be required where alterations or repairs do not result in removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.”

(20) In IRC, Section R403.1.6, a new Exception 3 is added as follows: “ 3. When anchor bolt spacing does not exceed 32 inches (813 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior

bearing walls, interior braced wall lines, and at all exterior walls.”

(21) In IRC, Section R403.1.6.1, a new exception is added at the end of Item 2 and Item 3 as follows: “Exception: When anchor bolt spacing does not exceed 32 inches (816 mm) apart, anchor bolts may be placed with a minimum of two bolts per plate section located not less than 4 inches (102 mm) from each end of each plate section at interior bearing walls, interior braced wall lines, and at all exterior walls.”

(22) In IRC, Section R404.1, a new exception is added as follows: “Exception: As an alternative to complying with Sections R404.1 through R404.1.5.3, concrete and masonry foundation walls may be designed in accordance with IBC Sections 1807.1.5 and 1807.1.6 as amended in Section 1807.1.6.4 and Table 1807.1.6.4 under these rules.”

(23) In IRC, Section R405.1, a new exception is added as follows: “Exception: When a geotechnical report has been provided for the property, a drainage system is not required unless the drainage system is required as a condition of the geotechnical report.”

Section 2. Section 15A-3-206 is amended to read:

15A-3-206. Amendments to Chapters 39, 44, and Appendix F of IRC.

(1) In IRC, Section E3901.9, the following exception is added: “Exception: Receptacles or other outlets adjacent to the exterior walls of the garage, outlets adjacent to an exterior wall of the garage, or outlets in a storage room with entry from the garage may be connected to the garage branch circuit.”

(2) ~~In IRC, Section E3902.16, the following words in the first sentence are deleted: “family rooms, dining rooms, living rooms, parlors, libraries, dens,” and “sunrooms, recreation rooms, closets, hallways, and similar rooms or areas.” is deleted.~~

(3) In Section E3902.17:

(a) following the word “Exception” the number “1.” is added; and

(b) at the end of the section, the following sentences are added: “2. This section does not apply for a simple move or an extension of a branch circuit or an outlet which does not significantly increase the existing electrical load. This exception does not include changes involving remodeling or additions to a residence.”

(4) IRC, Chapter 44, is amended by adding the following reference standard:

“Standard reference number	Title	Referenced in code section number
USC-FCCCHR 10th Edition Manual of Cross Connection Control	Foundation for Cross-Connection Control and Hydraulic Research University of Southern California Kaprielian Hall 300 Los Angeles CA 90089-2531	Table P2902.3”

(5) (a) When passive radon controls or portions thereof are voluntarily installed, the voluntary installation shall comply with Appendix F of the IRC.

(b) An additional inspection of a voluntary installation described in Subsection (5)(a) is not required.

Section 3. Section 15A-6-102 is amended to read:

15A-6-102. Nitrogen Oxide emission limits for natural gas-fired water heaters.

(1) As used in this section:

(a) “BTU” means British Thermal Unit.

(b) (i) “Heat input” means the heat of combustion released by fuel burned in a water heater based on the heating value of the fuel.

(ii) “Heat input” does not include the enthalpy of a water heater’s incoming combustion air.

(c) “Heat output” means the enthalpy of a water heater’s working fluid output.

(d) “Natural gas-fired water heater” means a device that heats water:

(i) using natural gas combustion;

(ii) for use external to the device at a pressure that is less than or equal to 160 pounds per square inch gage; and

(iii) to a thermostatically controlled temperature less than or equal to:

(A) 210 degrees Fahrenheit; or

(B) 99 degrees Celsius.

(e) “ppm” means parts of Nitrogen Oxide per million parts of water heater air output.

(f) “Recreational vehicle” means the same as that term is defined in Section 13-14-102.

(2) ~~[Subject to Subsection (6)]~~ On and after July 1, 2018, a person may not sell or install a natural gas-fired water heater with an emission rate greater than the following limits:

(a) for a water heater that has a heat input of less than or equal to 75,000 BTU per hour that is not installed in a mobile home, a limit of:

- (i) 10 nanograms per Joule of heat output; or
 - (ii) 15 ppm, corrected to 3% oxygen;
- (b) for a water heater that has a heat input of greater than 75,000 BTU per hour and less than 2,000,000 BTU per hour that is not installed in a mobile home, a limit of:
- (i) ~~[10]~~ 14 nanograms per Joule of heat output; or
 - (ii) 20 ppm, corrected to 3% oxygen;
- (c) for a water heater installed in a mobile home, a limit of:
- (i) 40 nanograms per Joule of heat output; or
 - (ii) ~~[20]~~ 55 ppm, corrected to 3% oxygen;
- (d) for a pool or spa water heater with a heat input that is less than or equal to 400,000 BTU per hour, a limit of:
- (i) 40 nanograms per Joule of heat output; or
 - (ii) 55 ppm, corrected to 3% oxygen; and
- (e) for a pool or spa water heater with a heat input of greater than 400,000 BTU per hour and less than 2,000,000 BTU per hour, a limit of:
- (i) 14 nanograms per Joule of heat output; or
 - (ii) ~~[55]~~ 20 ppm, corrected to 3% oxygen.
- (3) A water heater manufacturer shall use California South Coast Air Quality Management District Method 100.1 to calculate the emissions rate of a water heater subject to this section.
- (4) A water heater manufacturer shall display on a water heater subject to this section, as a permanent label, the model number and the Nitrogen Oxide emission rate of the water heater.
- (5) The requirements of this section do not apply to:
- (a) a water heater using a fuel other than natural gas;
 - (b) a water heater used in a recreational vehicle;
 - (c) a water heater manufactured in the state for sale and shipment outside of the state; or
 - (d) a water heater manufactured before July 1, 2018.
- ~~[(6) Subsection (2) applies to the sale or installation of a water heater on or after July 1, 2018.]~~

CHAPTER 237**H. B. 50**

Passed March 9, 2017

Approved March 22, 2017

Effective May 9, 2017

OPIOID PRESCRIBING REGULATIONS

Chief Sponsor: Raymond P. Ward

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill amends the Division of Occupational and Professional Licensing Act related to the prescribing of certain controlled substances.

Highlighted Provisions:

This bill:

- ▶ limits the number of days for which an opiate may be prescribed for certain individuals;
- ▶ removes an outdated provision from the Utah Controlled Substances Act related to opiate prescribing; and
- ▶ amends provisions of the Controlled Substance Database Act related to provider use of the database.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-37-6, as last amended by Laws of Utah 2014, Chapter 78

58-37f-301, as last amended by Laws of Utah 2016, Third Special Session, Chapter 5

58-37f-304, as enacted by Laws of Utah 2016, Chapter 275

63I-1-258, as last amended by Laws of Utah 2016, Chapters 89 and 294

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

Section 1. Section 58-37-6 is amended to read:

58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records required -- Prescriptions.

(1) (a) The division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.

(b) The division may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section 63J-1-504.

(2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled substance

in Schedules I through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules I through V within this state shall obtain a license issued by the division.

(ii) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon controlled substances in Schedules I through V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.

(c) The following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II through V under this section:

(i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of the person's business or employment; however, nothing in this subsection shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain an inventory of controlled substances separate from the location of the person's employer's registered and licensed place of business;

(ii) a motor carrier or warehouseman, or an employee of a motor carrier or warehouseman, who possesses any controlled substance in the usual course of the person's business or employment; and

(iii) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(d) The division may enact rules waiving the license requirement for certain manufacturers, producers, distributors, prescribers, dispensers, administrators, research practitioners, or laboratories performing analysis if consistent with the public health and safety.

(e) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

(f) The division may enact rules providing for the inspection of a licensee or applicant's establishment, and may inspect the establishment according to those rules.

(3) (a) (i) Upon proper application, the division shall license a qualified applicant to manufacture,

produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest.

(ii) The division may not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance except under Subsection (3)(a)(i).

(iii) In determining public interest under this Subsection (3)(a), the division shall consider whether or not the applicant has:

(A) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;

(B) complied with applicable state and local law;

(C) been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of substances;

(D) past experience in the manufacture of controlled dangerous substances;

(E) established effective controls against diversion; and

(F) complied with any other factors that the division establishes that promote the public health and safety.

(b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances in Schedule I other than those specified in the license.

(c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with substances in Schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state.

(ii) The division need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this chapter in another capacity.

(iii) With respect to research involving narcotic substances in Schedules II through V, or where the division by rule requires a separate license for research of nonnarcotic substances in Schedules II through V, a practitioner shall apply to the division prior to conducting research.

(iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately the practitioner's supply of substances against diversion from medical or scientific use.

(v) Practitioners registered under federal law to conduct research in Schedule I substances may

conduct research in Schedule I substances within this state upon furnishing the division evidence of federal registration.

(d) Compliance by manufacturers, producers, and distributors with the provisions of federal law respecting registration, excluding fees, entitles them to be licensed under this chapter.

(e) The division shall initially license those persons who own or operate an establishment engaged in the manufacture, production, distribution, dispensation, or administration of controlled substances prior to April 3, 1980, and who are licensed by the state.

(4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed on probation, or revoked by the division upon finding that the applicant or licensee has:

(i) materially falsified any application filed or required pursuant to this chapter;

(ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;

(iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;

(iv) had a federal registration or license denied, suspended, or revoked by competent federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense controlled substances;

(v) had the licensee's license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;

(vi) violated any division rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances;

(vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or

(viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:

(A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of the practitioner's professional practice; or

(B) improve performance in any form of human exercise, sport, or game.

(b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of Occupational and

Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.

(ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the division is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.

(d) (i) The division may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.

(ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the division or dissolved by a court of competent jurisdiction.

(e) (i) If a license is suspended or revoked under this Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the division.

(ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application, orders the sale of perishable substances and the proceeds deposited with the court.

(iii) If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The division shall notify promptly the Drug Enforcement Administration of all orders suspending or revoking a license and all forfeitures of controlled substances.

(g) If an individual's Drug Enforcement Administration registration is denied, revoked, surrendered, or suspended, the division shall immediately suspend the individual's controlled substance license, which shall only be reinstated by the division upon reinstatement of the federal registration, unless the division has taken further administrative action under Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled substance license.

(5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the division.

(b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription.

(ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with this Subsection (5)(b) if the person keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.

(6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with division rules or a lawful order under the rules and regulations of the United States.

(7) (a) A person may not write or authorize a prescription for a controlled substance unless the person is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under the laws of another state having similar standards; and

(ii) licensed under this chapter or under the laws of another state having similar standards.

(b) A person other than a pharmacist licensed under the laws of this state, or the pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.

(c) (i) A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.

(ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d).

(iii) In emergency situations, as defined by division rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the division and filed by the pharmacy.

(iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d).

(d) Except for emergency situations designated by the division, a person may not issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule, and contains the following information:

(i) the name, address, and registry number of the prescriber;

(ii) the name, address, and age of the person to whom or for whom the prescription is issued;

(iii) the date of issuance of the prescription; and

(iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(i) the person who writes the prescription is licensed under Subsection (2); and

(ii) the prescribed controlled substance is to be used in research.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the [following] restrictions[-] of this Subsection (7)(f).

(i) [(A)] A prescription for a Schedule II substance may not be refilled.

[(B)] (ii) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions.

(iii) (A) Except as provided in Subsection (7)(f)(iii)(B), a prescription for a Schedule II or Schedule III controlled substance that is an opiate and that is issued for an acute condition shall be completely or partially filled in a quantity not to exceed a seven-day supply as directed on the daily dosage rate of the prescription.

(B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when the practitioner determined that a quantity exceeding seven days is needed, in which case the practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the practitioner.

(C) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or chronic conditions which are documented as being complex or chronic in the medical record.

(D) A pharmacist is not required to verify that a prescription is in compliance with Subsection (7)(f)(iii).

[(iii)] (iv) A Schedule III or IV controlled substance may be filled only within six months of issuance, and may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

[(iii)] (v) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.

[(iv)] (vi) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is specified separately from the date of issue.

[(v)] (vii) A practitioner may issue more than one prescription at the same time for the same Schedule II controlled substance, but only under the following conditions:

(A) no more than three prescriptions for the same Schedule II controlled substance may be issued at the same time;

(B) no one prescription may exceed a 30-day supply; and

(C) a second or third prescription shall include the date of issuance and the date for dispensing[; and].

[(D) unless the practitioner determines there is a valid medical reason to the contrary, the date for dispensing a second or third prescription may not be fewer than 30 days from the dispensing date of the previous prescription.]

(g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this Subsection (7) if the order is:

(i) issued or made by a prescribing practitioner who holds an unrestricted registration with the federal Drug Enforcement Administration, and an active Utah controlled substance license in good standing issued by the division under this section, or a medical resident who is exempted from licensure under Subsection 58-1-307(1)(c);

(ii) authorized by the prescribing practitioner treating the patient and the prescribing practitioner designates the quantity ordered;

(iii) entered upon the record of the patient, the record is signed by the prescriber affirming the prescriber's authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and

(iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

(h) A practitioner licensed under this chapter may not prescribe, administer, or dispense a controlled substance to a child, without first obtaining the consent required in Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same meaning as defined in Section 78A-6-105, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

(i) A practitioner licensed under this chapter may not prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.

(j) A practitioner licensed under this chapter may not prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the controlled substance.

(k) A person who is licensed under this chapter to manufacture, distribute, or dispense a controlled

substance may not manufacture, distribute, or dispense a controlled substance to another licensee or any other authorized person not authorized by this license.

(l) A person licensed under this chapter may not omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter.

(m) A person licensed under this chapter may not refuse or fail to make, keep, or furnish any record notification, order form, statement, invoice, or information required under this chapter.

(n) A person licensed under this chapter may not refuse entry into any premises for inspection as authorized by this chapter.

(o) A person licensed under this chapter may not furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or willfully make any false statement in any prescription, order, report, or record required by this chapter.

(8) (a) (i) Any person licensed under this chapter who is found by the division to have violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.

(ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

(b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j) or Subsection (10) is:

(i) upon first conviction, guilty of a class B misdemeanor;

(ii) upon second conviction, guilty of a class A misdemeanor; and

(iii) on third or subsequent conviction, guilty of a third degree felony.

(c) Any person who knowingly and intentionally violates Subsections (7)(k) through (o) shall upon conviction be guilty of a third degree felony.

(9) Any information communicated to any licensed practitioner in an attempt to unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.

(10) A person holding a valid license under this chapter who is engaged in medical research may produce, possess, administer, prescribe, or dispense a controlled substance for research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense a controlled substance listed in Section 58-37-4.2.

Section 2. Section 58-37f-301 is amended to read:

58-37f-301. Access to database.

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) effectively enforce the limitations on access to the database as described in this part; and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

(2) The division shall make information in the database and information obtained from other state or federal prescription monitoring programs by means of the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:

(a) (i) personnel of the division specifically assigned to conduct investigations related to controlled substance laws under the jurisdiction of the division; and

(ii) the following law enforcement officers, but the division may only provide nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding individuals for whom a controlled substance has been prescribed or to whom a controlled substance has been dispensed:

(A) a law enforcement agency officer who is engaged in a joint investigation with the division; and

(B) a law enforcement agency officer to whom the division has referred a suspected criminal violation of controlled substance laws;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) a board member if:

(i) the board member is assigned to monitor a licensee on probation; and

(ii) the board member is limited to obtaining information from the database regarding the specific licensee on probation;

(d) a member of a diversion committee established in accordance with Subsection 58-1-404(2) if:

(i) the diversion committee member is limited to obtaining information from the database regarding the person whose conduct is the subject of the committee's consideration; and

(ii) the conduct that is the subject of the committee's consideration includes a violation or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant violation or potential violation under this title;

(e) in accordance with a written agreement entered into with the department, employees of the Department of Health;

(i) whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances, if the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies;

(ii) when the information is requested by the Department of Health in relation to a person or provider whom the Department of Health suspects may be improperly obtaining or providing a controlled substance; or

(iii) in the medical examiner's office;

(f) in accordance with a written agreement entered into with the department, a designee of the director of the Department of Health, who is not an employee of the Department of Health, whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances pursuant to an application process established in rule by the Department of Health, if:

(i) the designee provides explicit information to the Department of Health regarding the purpose of the scientific studies;

(ii) the scientific studies to be conducted by the designee:

(A) fit within the responsibilities of the Department of Health for health and welfare;

(B) are reviewed and approved by an Institutional Review Board that is approved for human subject research by the United States Department of Health and Human Services; and

(C) are not conducted for profit or commercial gain; and

(D) are conducted in a research facility, as defined by division rule, that is associated with a university or college accredited by one or more regional or national accrediting agencies recognized by the United States Department of Education;

(iii) the designee protects the information as a business associate of the Department of Health; and

(iv) the identity of the prescribers, patients, and pharmacies in the database are de-identified, confidential, not disclosed in any manner to the designee or to any individual who is not directly involved in the scientific studies;

(g) in accordance with the written agreement entered into with the department and the Department of Health, authorized employees of a managed care organization, as defined in 42 C.F.R. Sec. 438, if:

(i) the managed care organization contracts with the Department of Health under the provisions of Section 26-18-405 and the contract includes provisions that:

(A) require a managed care organization employee who will have access to information from

the database to submit to a criminal background check; and

(B) limit the authorized employee of the managed care organization to requesting either the division or the Department of Health to conduct a search of the database regarding a specific Medicaid enrollee and to report the results of the search to the authorized employee; and

(ii) the information is requested by an authorized employee of the managed care organization in relation to a person who is enrolled in the Medicaid program with the managed care organization, and the managed care organization suspects the person may be improperly obtaining or providing a controlled substance;

(h) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i) (A) relates specifically to a current or prospective patient of the practitioner; and

(B) is provided to or sought by the practitioner for the purpose of:

(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner; or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii) (A) relates specifically to a former patient of the practitioner; and

(B) is provided to or sought by the practitioner for the purpose of determining whether the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(i); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification

number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;

(i) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee;

(j) an employee of the same business that employs a licensed practitioner under Subsection (2)(h) if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner and the employing business provide written notice to the division of the identity of the designated employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee;

(k) a licensed pharmacist having authority to dispense a controlled substance to the extent the information is provided or sought for the purpose of:

(i) dispensing or considering dispensing any controlled substance; or

(ii) determining whether a person:

(A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacist;

(l) in accordance with Subsection (3)(a), a licensed pharmacy technician and pharmacy intern who is an employee of a pharmacy as defined in Section 58-17b-102, for the purposes described in Subsection (2)(j)(i) or (ii), if:

(i) the employee is designated by the pharmacist-in-charge as an individual authorized to access the information on behalf of a licensed pharmacist employed by the pharmacy;

(ii) the pharmacist-in-charge provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee;

(m) pursuant to a valid search warrant, federal, state, and local law enforcement officers and state and local prosecutors who are engaged in an investigation related to:

(i) one or more controlled substances; and

(ii) a specific person who is a subject of the investigation;

(n) subject to Subsection (7), a probation or parole officer, employed by the Department of Corrections or by a political subdivision, to gain access to database information necessary for the officer's supervision of a specific probationer or parolee who is under the officer's direct supervision;

(o) employees of the Office of Internal Audit and Program Integrity within the Department of Health who are engaged in their specified duty of ensuring Medicaid program integrity under Section 26-18-2.3;

(p) a mental health therapist, if:

(i) the information relates to a patient who is:

(A) enrolled in a licensed substance abuse treatment program; and

(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (2)(p)(i)(A);

(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse treatment program described in Subsection (2)(p)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (2)(p)(i)(A) is associated with a practitioner who:

(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)(p), from the database;

(q) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the

information is in fact the individual about whom the data entry was made;

(r) an individual under Subsection (2)(q) for the purpose of obtaining a list of the persons and entities that have requested or received any information from the database regarding the individual, except if the individual's record is subject to a pending or current investigation as authorized under this Subsection (2);

(s) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title 63A, Chapter 13, Part 2, Office and Powers; and

(t) the following licensed physicians for the purpose of reviewing and offering an opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

(i) a member of the medical panel described in Section 34A-2-601;

(ii) a physician employed as medical director for a licensed workers' compensation insurer or an approved self-insured employer; or

(iii) a physician offering a second opinion regarding treatment.

(3) (a) (i) A practitioner described in Subsection (2)(h) may designate ~~up to three~~ one or more employees to access information from the database under Subsection (2)(i), (2)(j), or (4)(c).

(ii) A pharmacist described in Subsection (2)(k) who is a pharmacist-in-charge may designate up to five employees to access information from the database under Subsection (2)(l).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(i) establish background check procedures to determine whether an employee designated under Subsection (2)(i), (2)(j), or (4)(c) should be granted access to the database; and

(ii) establish the information to be provided by an emergency ~~room~~ department employee under Subsection (4); and

(iii) facilitate providing controlled substance prescription information to a third party under Subsection (5).

(c) The division shall grant an employee designated under Subsection (2)(i), (2)(j), or (4)(c) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(4) (a) An individual who is employed in the emergency ~~room~~ department of a hospital may exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if

the individual is designated under Subsection (4)(c) and the licensed practitioner:

(i) is employed in the emergency ~~room~~ department;

(ii) is treating an emergency ~~room~~ department patient for an emergency medical condition; and

(iii) requests that an individual employed in the emergency ~~room~~ department and designated under Subsection (4)(c) obtain information regarding the patient from the database as needed in the course of treatment.

(b) The emergency ~~room~~ department employee obtaining information from the database shall, when gaining access to the database, provide to the database the name and any additional identifiers regarding the requesting practitioner as required by division administrative rule established under Subsection (3)(b).

(c) An individual employed in the emergency ~~room~~ department under this Subsection (4) may obtain information from the database as provided in Subsection (4)(a) if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner and the hospital operating the emergency ~~room~~ department provide written notice to the division of the identity of the designated employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(5) with respect to the employee.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(i), (2)(j), or (4)(c) to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(5) (a) (i) An individual may request that the division provide the information under Subsection (5)(b) to a third party who is designated by the individual each time a controlled substance prescription for the individual is dispensed.

(ii) The division shall upon receipt of the request under this Subsection (5)(a) advise the individual in writing that the individual may direct the division to discontinue providing the information to a third party and that notice of the individual's direction to discontinue will be provided to the third party.

(b) The information the division shall provide under Subsection (5)(a) is:

(i) the fact a controlled substance has been dispensed to the individual, but without identifying the controlled substance; and

(ii) the date the controlled substance was dispensed.

(c) (i) An individual who has made a request under Subsection (5)(a) may direct that the division discontinue providing information to the third party.

(ii) The division shall:

(A) notify the third party that the individual has directed the division to no longer provide information to the third party; and

(B) discontinue providing information to the third party.

(6) (a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

(7) A probation or parole officer is not required to obtain a search warrant to access the database in accordance with Subsection (2)(n).

(8) The division shall review and adjust the database programming which automatically logs off an individual who is granted access to the database under Subsections (2)(h), (2)(i), (2)(j), and (4)(c) to maximize the following objectives:

(a) to protect patient privacy;

(b) to reduce inappropriate access; and

(c) to make the database more useful and helpful to a person accessing the database under Subsections (2)(h), (2)(i), (2)(j), and (4)(c), especially in high usage locations such as an emergency department.

Section 3. Section 58-37f-304 is amended to read:

58-37f-304. Database utilization.

(1) As used in this section:

(a) "Dispenser" means a licensed pharmacist, as described in Section 58-17b-303, or the pharmacist's licensed intern, as described in Section 58-17b-304, who is also licensed to dispense a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

~~(b) "Opioid" means those substances listed in Subsection 58-37-4(2)(b)(i) or (2)(b)(ii).]~~

~~(c) (b) "Outpatient" means a setting in which an individual visits a licensed healthcare facility or a healthcare provider's office for a diagnosis or treatment but is not admitted to a licensed healthcare facility for an overnight stay.~~

~~(d) (c) "Prescriber" means an individual authorized to prescribe a controlled substance~~

under Title 58, Chapter 37, Utah Controlled Substances Act.

~~[(2) To address the serious public health concern of life-altering and life-threatening opioid abuse and overdose, and to achieve the purposes of this chapter and as described in Section 58-37f-201, which includes identifying and reducing the prescribing and dispensing of opioids in an unprofessional or unlawful manner or in quantities or frequencies inconsistent with generally recognized standards of dosage for an opioid, through utilization of the carefully developed and highly respected database:]~~

~~[(a) a prescriber or dispenser of an opioid for individual outpatient usage shall access and review the database as necessary in the prescriber's or dispenser's professional judgment and to achieve the purpose of this chapter as described in Section 58-37f-201; (b) a]~~

~~(d) "Schedule II opioid" means those substances listed in Subsection 58-37-4(2)(b)(i) or (2)(b)(ii).~~

~~(e) "Schedule III opioid" means those substances listed in Subsection 58-37-4(2)(c) that are opioids.~~

~~(2) (a) A prescriber shall substantially comply with this Subsection (2).~~

~~(b) Except as provided in Subsection (2)(b), a prescriber shall check the database for information about a patient before the first time the prescriber gives a prescription to a patient for a Schedule II opioid or a Schedule III opioid.~~

~~(c) A prescriber is not required to check the database under Subsection (2)(b) if:~~

~~(i) the prescription for a Schedule II opioid or a Schedule III opioid is for three days or fewer on the daily dosage instructions on the prescription;~~

~~(ii) the prescriber has prior knowledge of the patient's prescription history based on the prescriber's review of the patient's health record; or~~

~~(iii) the prescription for a Schedule II opioid or a Schedule III opioid is a post surgical prescription and the total duration of opioid written after the surgery has been for 30 days or fewer.~~

~~(d) If a prescriber is repeatedly prescribing a Schedule II opioid or Schedule III opioid to a patient, the prescriber shall periodically review information about the patient in:~~

~~(i) the database; or~~

~~(ii) other similar records of controlled substances the patient has filled.~~

~~(e) A prescriber may assign the access and review required under [Subsection (2)(a) to an employee, in accordance with Subsections 58-37f-301(2)(g) and (h)] Subsections (2)(b) and (2)(c) to one or more employees in accordance with Subsections 58-37f-301(2)(i) and (j).~~

~~(f) The division shall not take action against the license of a prescriber for failure to follow this Subsection (2) if the prescriber demonstrates~~

substantial compliance with the requirements of this Subsection (2).

(3) The division shall, in collaboration with the licensing boards for prescribers and dispensers:

(a) develop a system that gathers and reports to prescribers and dispensers the progress and results of the prescriber's and dispenser's individual access and review of the database, as provided in this section; and

(b) reduce or waive the division's continuing education requirements regarding opioid prescriptions, described in Section 58-37-6.5, including the online tutorial and test relating to the database, for prescribers and dispensers whose individual utilization of the database ~~contribute to the life-saving and public safety purposes of this section and as described in Subsection (2).~~, as determined by the division, demonstrates substantial compliance with this section.

(4) If the dispenser's access and review of the database suggest that the individual seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with generally recognized standards as provided in this section and Section 58-37f-201, the dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed, current, and professional decision regarding whether the prescribed opioid is medically justified, notwithstanding the results of the database search.

Section 4. Section 63I-1-258 is amended to read:

63I-1-258. Repeal dates, Title 58.

(1) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2026.

(2) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2025.

(3) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2018.

(4) Section 58-37-4.3 is repealed July 1, 2021.

(5) Subsection 58-37-6(7)(f)(iii) is repealed July 1, 2022, and the Office of Legislative Research and General Counsel is authorized to renumber the remaining subsections accordingly.

~~[(5)]~~ (6) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2023.

~~[(6)]~~ (7) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act, is repealed July 1, 2019.

~~[(7)]~~ (8) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2025.

~~[(8)]~~ (9) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2023.

~~[(9)]~~ (10) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2024.

~~[(10)]~~ (11) Title 58, Chapter 61, Part 7, Behavior Analyst Licensing Act, is repealed July 1, 2026.

~~[(11)]~~ (12) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.

~~[(12)]~~ (13) Title 58, Chapter 86, State Certification of Commercial Interior Designers Act, is repealed July 1, 2021.

CHAPTER 238**H. B. 80**

Passed February 22, 2017

Approved March 22, 2017

Effective May 9, 2017

**STATE TECHNOLOGY
GOVERNANCE AMENDMENTS**Chief Sponsor: Bruce R. Cutler
Senate Sponsor: David P. Hinkins**LONG TITLE****General Description:**

This bill amends provisions related to state technology governance.

Highlighted Provisions:

This bill:

- ▶ eliminates divisions within the Department of Technology Services;
- ▶ assigns duties formerly assigned to divisions within the Department of Technology Services to the Department of Technology Services and the chief information officer within the Department of Technology Services;
- ▶ directs the chief information officer within the Department of Technology Services to appoint a chief information security officer; and
- ▶ defines terms.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 63F-1-102, as last amended by Laws of Utah 2015, Chapter 114
- 63F-1-104, as last amended by Laws of Utah 2016, Chapter 13
- 63F-1-106, as enacted by Laws of Utah 2005, Chapter 169
- 63F-1-202, as last amended by Laws of Utah 2014, Chapter 387
- 63F-1-203, as last amended by Laws of Utah 2016, Chapter 13
- 63F-1-204, as last amended by Laws of Utah 2013, Chapter 53
- 63F-1-205, as last amended by Laws of Utah 2016, Chapter 355
- 63F-1-206, as last amended by Laws of Utah 2015, Chapter 114
- 63F-1-207, as last amended by Laws of Utah 2008, Chapter 382
- 63F-1-208, as enacted by Laws of Utah 2005, Chapter 169
- 63F-1-209, as last amended by Laws of Utah 2008, Chapter 382
- 63F-1-210, as enacted by Laws of Utah 2015, Chapter 114
- 63F-1-404, as last amended by Laws of Utah 2016, Chapter 13
- 63F-1-502, as enacted by Laws of Utah 2005, Chapter 169
- 63F-1-504, as last amended by Laws of Utah 2016, Chapter 13

63F-1-604, as last amended by Laws of Utah 2016, Chapter 13

ENACTS:

63F-1-211, Utah Code Annotated 1953

63F-1-212, Utah Code Annotated 1953

REPEALS AND REENACTS:

63F-1-401, as enacted by Laws of Utah 2005, Chapter 169

63F-1-403, as enacted by Laws of Utah 2005, Chapter 169

63F-1-501, as enacted by Laws of Utah 2005, Chapter 169

63F-1-503, as enacted by Laws of Utah 2005, Chapter 169

63F-1-601, as enacted by Laws of Utah 2005, Chapter 169

63F-1-603, as enacted by Laws of Utah 2005, Chapter 169

REPEALS:

63F-1-602, as enacted by Laws of Utah 2005, Chapter 169

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

Section 1. Section 63F-1-102 is amended to read:**63F-1-102. Definitions.**

As used in this title:

(1) "Board" means the Technology Advisory Board created in Section 63F-1-202.

(2) "Chief information officer" means the chief information officer appointed under Section 63F-1-201.

~~[(3) "Computer center" means the location at which a central data processing platform is managed to serve multiple executive branch agencies.]~~

[(4)] (3) "Data center" means a centralized repository for the storage, management, and dissemination of data.

[(5)] (4) "Department" means the Department of Technology Services.

(5) "Enterprise architecture" means:

(a) information technology that can be applied across state government; and

(b) support for information technology that can be applied across state government, including:

(i) technical support;

(ii) master software licenses; and

(iii) hardware and software standards.

(6) (a) Except as provided in Subsection (6)(b), "executive branch agency" means an agency or administrative subunit of state government.

(b) "Executive branch agency" does not include:

(i) the legislative branch;

(ii) the judicial branch;

(iii) the State Board of Education;

- (iv) the Board of Regents;
- (v) institutions of higher education;
- (vi) independent entities as defined in Section 63E-1-102; and
- (vii) elective constitutional offices of the executive department which includes:
 - (A) the state auditor;
 - (B) the state treasurer; and
 - (C) the attorney general.

(7) "Executive branch strategic plan" means the executive branch strategic plan created under Section 63F-1-203.

(8) "Individual with a disability" means an individual with a condition that meets the definition of "disability" in 42 U.S.C. Sec. 12102.

(9) "Information technology" means all computerized and auxiliary automated information handling, including:

- (a) systems design and analysis;
- (b) acquisition, storage, and conversion of data;
- (c) computer programming;
- (d) information storage and retrieval;
- (e) voice, [~~radio,~~] video, and data communications;
- (f) requisite systems controls;
- (g) simulation; and
- (h) all related interactions between people and machines.

(10) "State information architecture" means a logically consistent set of principles, policies, and standards that guide the engineering of state government's information technology and infrastructure in a way that ensures alignment with state government's business and service needs.

~~[(11) "Telecommunications" means the transmission or reception of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, light waves, or other electromagnetic means.]~~

Section 2. Section 63F-1-104 is amended to read:

63F-1-104. Purposes.

The department shall:

(1) lead state executive branch agency efforts to establish and reengineer the state's information technology architecture with the goal of coordinating central and individual agency information technology in a manner that:

- (a) ensures compliance with the executive branch agency strategic plan; and

(b) ensures that cost-effective, efficient information and communication systems and resources are being used by agencies to:

- (i) reduce data, hardware, and software redundancy;
- (ii) improve system interoperability and data accessibility between agencies; and
- (iii) meet the agency's and user's business and service needs;

(2) coordinate an executive branch strategic plan for all agencies;

~~[(3) each year, in coordination with the governor's office, convene a group of public and private sector information technology and data security experts to identify best practices from agencies and other public and private sector entities, including best practices for data and information technology system security standards;]~~

~~[(4)]~~ (3) develop and implement processes to replicate information technology best practices and standards [~~identified in Subsection (3),~~] throughout the executive branch;

~~[(5) by July 1, 2015, and]~~ (4) at least once every [~~two years thereafter]~~ odd-numbered year:

(a) evaluate the adequacy of the department's and the executive branch agencies' data and information technology system security standards through an independent third party assessment; and

(b) communicate the results of the independent third party assessment to the appropriate executive branch agencies and to the president of the Senate and the speaker of the House of Representatives;

~~[(6)]~~ (5) oversee the expanded use and implementation of project and contract management principles as they relate to information technology projects within the executive branch;

~~[(7)]~~ (6) serve as general contractor between the state's information technology users and private sector providers of information technology products and services;

~~[(8)]~~ (7) work toward building stronger partnering relationships with providers;

~~[(9)]~~ (8) develop service level agreements with executive branch departments and agencies to ensure quality products and services are delivered on schedule and within budget;

~~[(10)]~~ (9) develop standards for application development including a standard methodology and cost-benefit analysis that all agencies shall utilize for application development activities;

~~[(11)]~~ (10) determine and implement statewide efforts to standardize data elements [~~and determine data ownership assignments among executive branch agencies;~~]

~~[(12)]~~ (11) develop systems and methodologies to review, evaluate, and prioritize existing information technology projects within the

executive branch and report to the governor and the Public Utilities, Energy, and Technology Interim Committee on a semiannual basis regarding the status of information technology projects; and

[413] (12) assist the Governor's Office of Management and Budget with the development of information technology budgets for agencies.

Section 3. Section 63F-1-106 is amended to read:

63F-1-106. Executive director -- Jurisdiction over office directors -- Authority.

(1) The executive director of the department:

(a) has administrative jurisdiction over each ~~division and~~ office in the department and the ~~division and office directors. The executive director~~ director of each office;

(b) may make changes in department personnel and each office's service functions in the divisions under the director's administrative jurisdiction[;]; and

(c) may authorize ~~designees~~ a designee to perform appropriate responsibilities~~[, to effectuate greater efficiency and economy in the operations of the department as permitted by this section.]~~.

(2) The executive director may, to facilitate department management, establish offices and bureaus to perform functions such as budgeting, planning, and personnel administration ~~to facilitate management of the department.]~~.

(3) (a) The executive director may hire employees in the department, divisions, and offices as permitted by department resources.

(b) Except as provided in Subsection (4), ~~any employees~~ each employee of the department ~~are~~ is exempt from career service or classified service status as provided in Section 67-19-15.

(4) (a) An employee of an executive branch agency who was a career service employee as of July 1, 2005 who is transferred to the Department of Technology Services continues in the employee's career service status during the employee's service to the Department of Technology Services if the duties of the position in the new department are substantially similar to those in the employee's previous position.

(b) A career service employee transferred to the new department under the provisions of Subsection (4)(a), whose duties or responsibilities subsequently change, may not be converted to exempt status without the review process required by Subsection 67-19-15(3).

~~[(c) The executive director shall work with executive branch agency directors, during the period of transition to the new department, in good faith, to:]~~

~~[(i) preserve relevant career service positions;]~~

~~[(ii) retain qualified employees in non-relevant positions through transfers to other positions in state government, with retraining as necessary; and]~~

~~[(iii) promote greater economy and efficiencies for the department.]~~

~~[(d) The Department of Technology Services together with the Department of Human Resource Management may develop financial and other incentives to encourage a career service employee who transfers to the department under the provisions of Subsection (4)(a) to voluntarily convert to an exempt position under Section 67-19-15.]~~

~~[(e) If a career service employee transfers to the department under the provisions of Subsection (4)(a) and terminates his employment with the department for any reason, the employment position shall be exempt from career service status under the provisions of Subsection (3).]~~

Section 4. Section 63F-1-202 is amended to read:

63F-1-202. Technology Advisory Board -- Membership -- Duties.

(1) There is created the Technology Advisory Board to the chief information officer. The board shall have seven members as follows:

(a) three members appointed by the governor who are individuals actively involved in business planning for state agencies;

(b) one member appointed by the governor who is actively involved in business planning for higher education or public education;

(c) one member appointed by the speaker of the House of Representatives and president of the Senate ~~[from the Legislative Automation Committee of the Legislature to represent the legislative branch];~~

(d) one member appointed by the Judicial Council ~~[to represent the judicial branch];~~ and

(e) one member appointed by the governor who represents private sector business needs in the state, but who is not an information technology vendor for the state.

(2) (a) The members of the advisory board shall elect a chair from the board by majority vote.

(b) The department shall provide staff to the board.

(c) (i) A majority of the members of the board constitutes a quorum.

(ii) Action by a majority of a quorum of the board constitutes an action of the board.

(3) The board shall meet as necessary to advise the chief information officer and assist the chief information officer and executive branch agencies in coming to consensus on:

(a) the development and implementation of the state's information technology strategic plan;

(b) critical information technology initiatives for the state;

(c) the development of standards for state information architecture;

(d) identification of the business and technical needs of state agencies;

(e) the department's performance measures for service agreements with executive branch agencies and subscribers of services, including a process in which an executive branch agency may review the department's implementation of and compliance with an executive branch agency's data security requirements; and

(f) the efficient and effective operation of the department.

(4) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance [~~according to~~] in accordance with Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section 5. Section 63F-1-203 is amended to read:

63F-1-203. Executive branch information technology strategic plan.

(1) In accordance with this section, the chief information officer shall prepare an executive branch information technology strategic plan:

(a) that complies with this chapter; and

(b) [~~which shall include~~] that includes:

(i) a strategic plan for the:

(A) interchange of information related to information technology between executive branch agencies;

(B) coordination between executive branch agencies in the development and maintenance of information technology and information systems, including the coordination of agency information technology plans described in Section 63F-1-204; and

(C) protection of the privacy of individuals who use state information technology or information systems, including the implementation of industry best practices for data and system security [~~that are identified in Subsection 63F-1-104(3)~~];

(ii) priorities for the development and implementation of information technology or information systems including priorities determined on the basis of:

(A) the importance of the information technology or information system; and

(B) the time sequencing of the information technology or information system; and

(iii) maximizing the use of existing state information technology resources.

(2) In the development of the executive branch strategic plan, the chief information officer shall consult with:

(a) all cabinet level officials; and

(b) the advisory board created in Section 63F-1-202[; ~~and (c) the group convened in accordance with Subsection 63F-1-104(3)~~].

(3) (a) Unless withdrawn by the chief information officer or the governor in accordance with Subsection (3)(b), the executive branch strategic plan takes effect 30 days after the day on which the executive branch strategic plan is submitted to:

(i) the governor; and

(ii) the Public Utilities, Energy, and Technology Interim Committee.

(b) The chief information officer or the governor may withdraw the executive branch strategic plan submitted under Subsection (3)(a) if the governor or chief information officer determines that the executive branch strategic plan:

(i) should be modified; or

(ii) for any other reason should not take effect.

(c) The Public Utilities, Energy, and Technology Interim Committee may make recommendations to the governor and to the chief information officer if the commission determines that the executive branch strategic plan should be modified or for any other reason should not take effect.

(d) Modifications adopted by the chief information officer shall be resubmitted to the governor and the Public Utilities, Energy, and Technology Interim Committee for their review or approval as provided in Subsections (3)(a) and (b).

(4) (a) The chief information officer shall, on or before January 1, 2014, and each year thereafter, modify the executive branch information technology strategic plan to incorporate security standards that:

(i) are identified as industry best practices in accordance with Subsections 63F-1-104(3) and (4); and

(ii) can be implemented within the budget of the department or the executive branch agencies.

(b) The chief information officer shall inform the speaker of the House of Representatives and the president of the Senate on or before January 1 of each year if best practices identified in Subsection (4)(a)(i) are not adopted due to budget issues considered under Subsection (4)(a)(ii).

(5) [~~The~~] Each executive branch agency shall implement the executive branch strategic plan [is

to be implemented by executive branch agencies through each executive branch agency] by adopting an agency information technology plan in accordance with Section 63F-1-204.

Section 6. Section 63F-1-204 is amended to read:

63F-1-204. Agency information technology plans.

(1) (a) By July 1 of each year, each executive branch agency shall submit an agency information technology plan to the chief information officer at the department level, unless the governor or the chief information officer request an information technology plan be submitted by a subunit of a department, or by an executive branch agency other than a department.

(b) The information technology plans required by this section shall be in the form and level of detail required by the chief information officer, by administrative rule adopted in accordance with Section 63F-1-206, and shall include, at least:

(i) the information technology objectives of the agency;

(ii) any performance measures used by the agency for implementing the agency's information technology objectives;

(iii) any planned expenditures related to information technology;

(iv) the agency's need for appropriations for information technology;

(v) how the agency's development of information technology coordinates with other state and local governmental entities;

(vi) any efforts the agency has taken to develop public and private partnerships to accomplish the information technology objectives of the agency;

(vii) the efforts the executive branch agency has taken to conduct transactions electronically in compliance with Section 46-4-503; and

(viii) the executive branch agency's plan for the timing and method of verifying the department's security standards, if an agency intends to verify the department's security standards for the data that the agency maintains or transmits through the department's servers.

(2) (a) Except as provided in Subsection (2)(b), an agency information technology plan described in Subsection (1) shall comply with the executive branch strategic plan established in accordance with Section 63F-1-203.

(b) If the executive branch agency submitting the agency information technology plan justifies the need to depart from the executive branch strategic plan, an agency information technology plan may depart from the executive branch strategic plan to the extent approved by the chief information officer.

~~[(3) (a) On receipt of a state agency information technology plan, the chief information officer shall forward a complete copy of the agency information~~

~~technology plan to the Division of Enterprise Technology created in Section 63F-1-401 and the Division of Integrated Technology created in Section 63F-1-501.]~~

~~[(b) The divisions shall provide the chief information officer a written analysis of each agency plan submitted in accordance with Subsections 63F-1-404(14) and 63F-1-504(3).]~~

~~[(4) (a)] (3) The chief information officer shall review each agency plan to determine:~~

~~[(4) (A)] (a) (i) whether the agency plan complies with the executive branch strategic plan and state information architecture; or~~

~~[(4) (B)] (ii) to the extent that the agency plan does not comply with the executive branch strategic plan or state information architecture, whether the executive branch entity is justified in departing from the executive branch strategic plan, or state information architecture; and~~

~~[(4) (i)] (b) whether the agency plan meets the information technology and other needs of:~~

~~[(4) (A)] (i) the executive branch agency submitting the plan; and~~

~~[(4) (B)] (ii) the state.~~

~~[(b) In conducting the review required by Subsection (4)(a), the chief information officer shall consider the analysis submitted by the divisions under Subsection (3).]~~

~~[(5) (4) After the chief information officer conducts the review described in Subsection [(4)] (3) of an agency information technology plan, the chief information officer may:~~

~~(a) approve the agency information technology plan;~~

~~(b) disapprove the agency information technology plan; or~~

~~(c) recommend modifications to the agency information technology plan.~~

~~[(6) (5) An executive branch agency or the department may not submit a request for appropriation related to information technology or an information technology system to the governor in accordance with Section 63J-1-201 until after the executive branch agency's information technology plan is approved by the chief information officer.~~

Section 7. Section 63F-1-205 is amended to read:

63F-1-205. Approval of acquisitions of information technology.

(1) (a) Except as provided in Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program, in accordance with Subsection (2), the chief information officer shall approve the acquisition by an executive branch agency of:

(i) information technology equipment;

(ii) telecommunications equipment;

(iii) software;

(iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and

(v) data acquisition.

(b) The chief information officer may negotiate the purchase, lease, or rental of private or public information technology or telecommunication services or facilities in accordance with this section.

(c) Where practical, efficient, and economically beneficial, the chief information officer shall use existing private and public information technology or telecommunication resources.

(d) Notwithstanding another provision of this section, an acquisition authorized by this section shall comply with rules made by the applicable rulemaking authority under Title 63G, Chapter 6a, Utah Procurement Code.

(2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount that exceeds the value established by the chief information officer by rule in accordance with Section 63F-1-206, the chief information officer shall:

(a) conduct an analysis of the needs of executive branch agencies and subscribers of services and the ability of the proposed information technology or telecommunications services or supplies to meet those needs; and

(b) for purchases, leases, or rentals not covered by an existing statewide contract, certify in writing to the chief procurement officer in the Division of Purchasing and General Services that:

(i) the analysis required in Subsection (2)(a) was completed; and

(ii) based on the analysis, the proposed purchase, lease, rental, or master contract of services, products, or supplies is practical, efficient, and economically beneficial to the state and the executive branch agency or subscriber of services.

(3) In approving an acquisition described in Subsections (1) and (2), the chief information officer shall:

(a) establish by administrative rule, in accordance with Section 63F-1-206, standards under which an agency must obtain approval from the chief information officer before acquiring the items listed in Subsections (1) and (2);

(b) for those acquisitions requiring approval, determine whether the acquisition is in compliance with:

(i) the executive branch strategic plan;

(ii) the applicable agency information technology plan;

(iii) the budget for the executive branch agency or department as adopted by the Legislature;

(iv) Title 63G, Chapter 6a, Utah Procurement Code; and

(v) the information technology accessibility standards described in Section 63F-1-210; and

(c) in accordance with Section 63F-1-207, require coordination of acquisitions between two or more executive branch agencies if it is in the best interests of the state.

(4) ~~[(a)]~~ Each executive branch agency shall provide the chief information officer with complete access to all information technology records, documents, and reports:

~~[(4)]~~ (a) at the request of the chief information officer; and

~~[(4)]~~ (b) related to the executive branch agency's acquisition of any item listed in Subsection (1).

~~[(b) Beginning July 1, 2006 and in]~~

(5) (a) In accordance with administrative rules established by the department under Section 63F-1-206, [no new technology projects may be initiated by an executive branch agency or the department] an executive branch agency and the department may not initiate a new technology project unless the technology project is described in a formal project plan and [the] a business case analysis [has been] is approved by the chief information officer and [agency head] the highest ranking executive branch agency official.

(b) The project plan and business case analysis required by this Subsection [(4)] (5) shall [be in the form required by the chief information officer, and shall] include:

(i) a statement of work to be done and existing work to be modified or displaced;

(ii) total cost of system development and conversion effort, including system analysis and programming costs, establishment of master files, testing, documentation, special equipment cost and all other costs, including overhead;

(iii) savings or added operating costs that will result after conversion;

(iv) other advantages or reasons that justify the work;

(v) source of funding of the work, including ongoing costs;

(vi) consistency with budget submissions and planning components of budgets; and

(vii) whether the work is within the scope of projects or initiatives envisioned when the current fiscal year budget was approved.

(c) The chief information officer shall determine the required form of the project plan and business case analysis described in this Subsection (5).

~~[(5)]~~ (6) The chief information officer and the Division of Purchasing and General Services within the Department of Administrative Services shall work cooperatively to establish procedures under which the chief information officer shall monitor and approve acquisitions as provided in this section.

Section 8. Section 63F-1-206 is amended to read:

63F-1-206. Rulemaking -- Policies.

(1) (a) Except as provided in Subsection (2), the chief information officer shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, ~~the chief information officer shall make rules that~~:

(i) provide standards that impose requirements on executive branch agencies that:

(A) are related to the security of the statewide area network; and

(B) establish standards for when an agency must obtain approval before obtaining items listed in Subsection 63F-1-205(1);

(ii) specify the detail and format required in an agency information technology plan submitted in accordance with Section 63F-1-204;

(iii) provide for standards related to the privacy policies of websites operated by or on behalf of an executive branch agency;

(iv) provide for the acquisition, licensing, and sale of computer software;

(v) specify the requirements for the project plan and business case analysis required by Section 63F-1-205;

(vi) provide for project oversight of agency technology projects when required by Section 63F-1-205;

(vii) establish, in accordance with Subsection 63F-1-205(2), the implementation of the needs assessment for information technology purchases;

(viii) establish telecommunications standards and specifications in accordance with Section 63F-1-404; and

(ix) establish standards for accessibility of information technology by individuals with disabilities in accordance with Section 63F-1-210.

(b) The rulemaking authority ~~is~~ granted by this Subsection (1) is in addition to any other rulemaking authority granted by this title.

(2) (a) Notwithstanding Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and subject to Subsection (2)(b), the chief information officer may adopt a policy that outlines procedures to be followed by the chief information officer in facilitating the implementation of this title by executive branch agencies if the policy:

(i) is consistent with the executive branch strategic plan; and

(ii) is not required to be made by rule under Subsection (1) or Section 63G-3-201.

(b) (i) A policy adopted by the chief information officer under Subsection (2)(a) may not take effect until 30 days after the day on which the chief information officer submits the policy to:

(A) the governor; and

(B) all cabinet level officials.

(ii) During the 30-day period described in Subsection (2)(b)(i), cabinet level officials may review and comment on a policy submitted under Subsection (2)(b)(i).

(3) (a) Notwithstanding Subsection (1) or (2) or Title 63G, Chapter 3, Utah Administrative Rulemaking Act, without following the procedures of Subsection (1) or (2), the chief information officer may adopt a security procedure to be followed by executive branch agencies to protect the statewide area network if:

(i) broad communication of the security procedure would create a significant potential for increasing the vulnerability of the statewide area network to breach or attack; and

(ii) after consultation with the chief information officer, the governor agrees that broad communication of the security procedure would create a significant potential increase in the vulnerability of the statewide area network to breach or attack.

(b) A security procedure described in Subsection (3)(a) is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) The chief information officer shall provide a copy of the security procedure as a protected record to:

(i) the chief justice of the Utah Supreme Court for the judicial branch;

(ii) the speaker of the House of Representatives and the president of the Senate for the legislative branch;

(iii) the chair of the Board of Regents; and

(iv) the chair of the State Board of Education.

Section 9. Section 63F-1-207 is amended to read:

63F-1-207. Coordination within the executive branch -- Cooperation with other branches.

(1) In accordance with the executive branch strategic plan and the requirements of this title, the chief information officer shall coordinate the development of information technology systems between two or more executive branch agencies subject to:

(a) the budget approved by the Legislature; and

(b) Title 63J, Chapter 1, Budgetary Procedures Act.

(2) In addition to the coordination described in Subsection (1), the chief information officer shall promote cooperation regarding information technology ~~in a manner consistent with the interbranch coordination plan created in accordance with Section 63F-1-201.~~ between branches of state government.

Section 10. Section 63F-1-208 is amended to read:

63F-1-208. Delegation of department functions.

(1) (a) If the conditions of Subsections (1)(b) and (2) are met and subject to the other provisions of this section, the chief information officer may delegate a function of the department to another executive branch agency or an institution of higher education by contract or other means authorized by law.

(b) The chief information officer may delegate a function of the department as provided in Subsection (1)(a) if in the judgment of the director of the executive branch agency~~[- the director of the division]~~ and the chief information officer:

(i) the executive branch agency or institution of higher education has requested that the function be delegated;

(ii) the executive branch agency or institution of higher education has the necessary resources and skills to perform or control the function to be delegated; and

(iii) the function to be delegated is a unique or ~~[mission-critical]~~ mission-critical function of the agency or institution of higher education ~~[which is not appropriate to: (A) govern or manage under the Division of Enterprise Technology; or (B) govern or manage under the Division of Integrated Technology].~~

(2) The chief information officer may delegate a function of the department only when the delegation results in net cost savings or improved service delivery to the state as a whole or to the unique mission critical function of the executive branch agency.

(3) The delegation of a function under this section shall:

(a) be in writing;

(b) contain all of the following:

(i) a precise definition of each function to be delegated;

(ii) a clear description of the standards to be met in performing each function delegated;

(iii) a provision for periodic administrative audits by the ~~[Division of Agency Services in accordance with Section 63F-1-604]~~ department;

(iv) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed; and

(v) any delegation of department staff to the agency to support the function in-house with the agency and rates to be charged for the delegated staff; and

(c) include a cost-benefit analysis justifying the delegation ~~[in accordance with Section 63F-1-604].~~

(4) An agreement to delegate functions to an executive branch agency or an institution of higher education may be terminated by the department if

the results of an administrative audit conducted by the ~~[division]~~ department reveals a lack of compliance with the terms of the agreement by the executive branch agency or institution of higher education.

Section 11. Section 63F-1-209 is amended to read:

63F-1-209. Delegation of department staff to executive branch agencies -- Prohibition against executive branch agency information technology staff.

(1) (a) The chief information officer shall assign department staff to serve an agency in-house if the chief information officer and the executive branch agency director jointly determine it is appropriate to provide information technology services to:

(i) the agency's unique ~~[mission-critical]~~ mission-critical functions and applications;

(ii) the agency's participation in and use of statewide enterprise architecture ~~[under the Division of Enterprise Technology]~~; and

(iii) the agency's use of coordinated technology services with other agencies that share similar characteristics with the agency ~~[under the Division of Integrated Technology].~~

(b) (i) An agency may request the chief information officer to assign in-house staff support from the department.

(ii) The chief information officer shall respond to the agency's request for in-house staff support in accordance with Subsection (1)(a).

(c) The department shall enter into service agreements with an agency when department staff is assigned in-house to the agency under the provisions of this section.

(d) An agency that receives in-house staff support assigned from the department under the provision of this section is responsible for paying the rates charged by the department for that staff as established under Section 63F-1-301.

(2) (a) ~~[After July 1, 2006, an]~~ An executive branch agency may not create a full-time equivalent position or part-time position, or request an appropriation to fund a full-time equivalent position or part-time position under the provisions of Section 63J-1-201 for the purpose of providing information technology services to the agency unless:

(i) the chief information officer has approved a delegation under Section 63F-1-208; and

(ii) the ~~[Division of Agency Services]~~ department conducts an audit under Section 63F-1-604 and finds that the delegation of information technology services to the agency meets the requirements of Section 63F-1-208.

(b) The prohibition against a request for appropriation under Subsection (2)(a) does not apply to a request for appropriation needed to pay rates imposed under Subsection (1)(d).

Section 12. Section 63F-1-210 is amended to read:

63F-1-210. Accessibility standards for executive branch agency information technology.

(1) The chief information officer shall establish, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) minimum standards for accessibility of executive branch agency information technology by an individual with a disability that:

(i) include accessibility criteria for:

(A) agency websites;

(B) hardware and software procured by an executive branch agency; and

(C) information systems used by executive branch agency employees; ~~and~~

(ii) include a protocol to evaluate the standards via testing by individuals with a variety of access limitations; and

(iii) are, at minimum, consistent with the most recent Web Content Accessibility guidelines published by the World Wide Web Consortium; and

(b) grievance procedures for an individual with a disability who is unable to access executive branch agency information technology, including:

(i) a process for an individual with a disability to report the access issue to the chief information officer; and

(ii) a mechanism through which the chief information officer can respond to the report~~;~~ ~~and~~ ~~(e) are, at minimum, consistent with the Web Content Accessibility 2.0 guidelines published by the World Wide Web Consortium.].~~

(2) The chief information officer shall update the standards described in Subsection (1)(a) at least every three years to reflect advances in technology.

Section 13. Section 63F-1-211 is enacted to read:

63F-1-211. Chief information security officer.

(1) The chief information officer shall appoint a chief information security officer.

(2) The chief information security officer described in Subsection (1) shall:

(a) assess cybersecurity risks;

(b) coordinate with executive branch agencies to assess the sensitivity of information; and

(c) manage cybersecurity support for the department and executive branch agencies.

Section 14. Section 63F-1-212 is enacted to read:

63F-1-212. Report to the Legislature.

The department shall, before November 1 of each year, report to the Public Utilities, Energy, and Technology Interim Committee on:

(1) performance measures that the department uses to assess the department's effectiveness in performing the department's duties under this chapter; and

(2) the department's performance, evaluated in accordance with the performance measures described in Subsection (1).

Section 15. Section 63F-1-401 is repealed and reenacted to read:

Part 4. Enterprise Technology

63F-1-401. Title.

This part is known as "Enterprise Technology."

Section 16. Section 63F-1-403 is repealed and reenacted to read:

63F-1-403. Enterprise technology -- Chief information officer manages.

The chief information officer shall manage the department's duties related to enterprise technology.

Section 17. Section 63F-1-404 is amended to read:

63F-1-404. Duties of the department -- Enterprise technology.

The ~~division~~ department shall:

(1) develop and implement an effective enterprise architecture governance model for the executive branch;

(2) provide oversight of information technology projects that impact statewide information technology services, assets, or functions of state government to:

(a) control costs;

(b) ensure business value to a project;

(c) maximize resources;

(d) ensure the uniform application of best practices; and

(e) avoid duplication of resources;

(3) develop a method of accountability to agencies for services provided by the ~~division~~ department through service agreements with the agencies;

~~[(4) beginning September 1, 2006, and each September 1 thereafter, provide the chief information officer and the Public Utilities, Energy, and Technology Interim Committee with performance measures used by the division to measure the quality of service delivered by the division and the results of the performance measures;]~~

~~[(5)]~~ (4) serve as a project manager for enterprise architecture which includes the management of applications, standards, and procurement of enterprise architecture;

[46] (5) coordinate the development and implementation of advanced state telecommunication systems;

[47] (6) provide services including technical assistance:

(a) to executive branch agencies and subscribers to the services; and

(b) related to information technology or telecommunications;

[48] (7) establish telecommunication system specifications and standards for use by:

(a) one or more executive branch agencies; or

(b) one or more entities that subscribe to the telecommunication systems in accordance with Section 63F-1-303;

[49] (8) coordinate state telecommunication planning in cooperation with:

(a) state telecommunication users;

(b) executive branch agencies; and

(c) other subscribers to the state's telecommunication systems;

[10] (9) cooperate with the federal government, other state entities, counties, and municipalities in the development, implementation, and maintenance of:

(a) (i) governmental information technology; or

(ii) governmental telecommunication systems; and

(b) (i) as part of a cooperative organization; or

(ii) through means other than a cooperative organization;

[11] (10) establish, operate, manage, and maintain:

(a) one or more state data centers; and

(b) one or more regional computer centers;

[12] (11) design, implement, and manage all state-owned, leased, or rented land, mobile, or radio telecommunication systems that are used in the delivery of services for state government or its political subdivisions; and

[13] (12) in accordance with the executive branch strategic plan, implement minimum standards to be used by the ~~[division]~~ department for purposes of compatibility of procedures, programming languages, codes, and media that facilitate the exchange of information within and among telecommunication systems~~;~~ and~~].~~

[14] ~~provide the chief information officer with an analysis of an executive branch agency information technology plan that includes:~~

~~(a) an assessment of how the implementation of the agency information technology plan will affect the costs, operations, and services of;~~

~~(i) the department; and]~~

~~[(ii) other executive branch agencies; and]~~

~~[(b) any recommended changes to the plan.]~~

Section 18. Section 63F-1-501 is repealed and reenacted to read:

Part 5. Integrated Technology

63F-1-501. Title.

This part is known as "Integrated Technology."

Section 19. Section 63F-1-502 is amended to read:

63F-1-502. Definitions.

As used in this part:

(1) "Center" means the Automated Geographic Reference Center created in Section 63F-1-506.

(2) "Database" means the State Geographic Information Database created in Section 63F-1-507.

~~[(3) "Director" means the director appointed in accordance with Section 63F-1-503.]~~

~~[(4) "Division" means the Division of Integrated Technology created in this part.]~~

[5] (3) "Geographic Information System" or "GIS" means a computer driven data integration and map production system that interrelates disparate layers of data to specific geographic locations.

[6] (4) "State Geographic Information Database" means the database created in Section 63F-1-507.

[7] (5) "Statewide Global Positioning Reference Network" or "network" means the network created in Section 63F-1-509.

Section 20. Section 63F-1-503 is repealed and reenacted to read:

63F-1-503. Integrated technology -- Chief information officer manages.

The chief information officer shall manage the department's duties related to integrated technology.

Section 21. Section 63F-1-504 is amended to read:

63F-1-504. Duties of the department -- Integrated technology.

The ~~[division]~~ department shall:

(1) establish standards for the information technology needs of a collection of executive branch agencies or programs that share common characteristics relative to the types of stakeholders they serve, including:

(a) project management;

(b) application development; and

(c) procurement;

(2) provide oversight of information technology standards that impact multiple executive branch agency information technology services, assets, or functions to:

- (a) control costs;
- (b) ensure business value to a project;
- (c) maximize resources;
- (d) ensure the uniform application of best practices; and

(e) avoid duplication of resources; and

~~[(3) in accordance with Section 63F-1-204, provide the chief information officer a written analysis of any agency information technology plan provided to the division, which shall include:]~~

~~[(a) a review of whether the agency's technology projects impact multiple agencies and if so, whether the information technology projects are appropriately designed and developed;]~~

~~[(b) an assessment of whether the agency plan complies with the state information architecture; and]~~

~~[(c) an assessment of whether the information technology projects included in the agency plan comply with policies, procedures, and rules adopted by the department to ensure that:]~~

~~[(i) information technology projects are phased in;]~~

~~[(ii) funding is released in phases;]~~

~~[(iii) an agency's authority to proceed to the next phase of an information technology project is contingent upon the successful completion of the prior phase; and]~~

~~[(iv) one or more specific deliverables is identified for each phase of a technology project;]~~

~~[(4)] (3) establish a system of accountability to user agencies through the use of service agreements[;]~~

~~[(5) each year, provide the chief information officer and the Public Utilities, Energy, and Technology Interim Committee with performance measures used by the division to measure the quality of services delivered by the division and results of those measures; and]~~

~~[(6) establish administrative rules in accordance with Section 63F-1-206 and as required by Section 63F-1-506.]~~

Section 22. Section 63F-1-601 is repealed and reenacted to read:

Part 6. Agency Services

63F-1-601. Title.

This part is known as "Agency Services."

Section 23. Section 63F-1-603 is repealed and reenacted to read:

63F-1-603. Agency services -- Chief information officer manages.

The chief information officer shall manage the department's duties related to agency services.

Section 24. Section 63F-1-604 is amended to read:

63F-1-604. Duties of the department -- Agency services.

The ~~[division]~~ department shall:

(1) be responsible for providing support to executive branch agencies for an agency's information technology assets and functions that are unique to the executive branch agency and are mission critical functions of the agency;

~~[(2) conduct audits of an executive branch agency when requested under the provisions of Section 63F-1-208;]~~

~~[(3) conduct cost-benefit analysis of delegating a department function to an agency in accordance with Section 63F-1-208;]~~

~~[(4)] (2) provide in-house information technology staff support to executive branch agencies;~~

~~[(5) establish accountability and performance measures for the division to assure that the division is:]~~

~~[(a) meeting the business and service needs of the state and individual executive branch agencies; and]~~

~~[(b) implementing security standards in accordance with Subsection 63F-1-203(4);]~~

~~[(6)] (3) establish a committee composed of agency user groups for the purpose of coordinating department services with agency needs; and~~

~~[(7)] (4) assist executive branch agencies in complying with the requirements of any rule adopted by the chief information officer[; and (8) by July 1, 2013, and each July 1 thereafter, report to the Public Utilities, Energy, and Technology Interim Committee on the performance measures used by the division under Subsection (5) and the results.]~~

Section 25. Repealer.

This bill repeals:

Section 63F-1-602, Definitions.

CHAPTER 239**H. B. 121**

Passed March 7, 2017

Approved March 22, 2017

Effective May 9, 2017

(Exception clause in Section 5)

LOCAL FOOD ADVISORY COUNCIL

Chief Sponsor: Stephen G. Handy

Senate Sponsor: Gene Davis

LONG TITLE**General Description:**

This bill creates the Local Food Advisory Council.

Highlighted Provisions:

This bill:

- ▶ creates the Local Food Advisory Council;
- ▶ designates the duties of the council; and
- ▶ requires the council to periodically report to the Natural Resources, Agriculture, and Environment Interim Committee and the Department of Agriculture and Food.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to the Senate, as an ongoing appropriation:
 - from the General Fund, \$2,000 to pay for the council; and
- ▶ to the House of Representatives, as an ongoing appropriation:
 - from the General Fund, \$4,000 to pay for the council.

Other Special Clauses:

This bill provides a repeal date.

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

*Be it enacted by the Legislature of the state of Utah:***Section 1. Local Food Advisory Council Created.**

(1) There is created the Local Food Advisory Council consisting of up to the following 13 members:

(a) one member of the Senate appointed by the president of the Senate;

(b) two members of the House of Representatives appointed by the speaker of the House of Representatives, each from a different political party;

(c) the commissioner of the Department of Agriculture and Food, or the commissioner's designee;

(d) the executive director of the Department of Health, or the executive director's designee;

(e) two crop direct-to-consumer food producers, appointed by the governor;

(f) two animal direct-to-consumer food producers, appointed by the governor; and

(g) the following potential members, appointed by the governor as needed:

(i) a direct-to-consumer food producer;

(ii) a member of a local agriculture organization;

(iii) a food retailer;

(iv) a licensed dietician;

(v) a county health department representative;

(vi) an urban farming representative;

(vii) a representative of a business engaged in the processing, packaging, or distribution of food;

(viii) an anti-hunger advocate; and

(ix) an academic with expertise in agriculture.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a) as a cochair of the commission.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(b) as a cochair of the commission.

(3) In appointing members to the council under Subsections (1)(e) through (g), the governor shall strive to take into account the geographical makeup of the council.

(4) A vacancy on the council resulting from the council shall be filled in the same manner in which the original appointment was made.

(5) Compensation for a member of the council who is a legislator shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(6) Council members who are employees of the state shall receive no additional compensation.

(7) The Department of Agriculture and Food shall provide staff support for the council.

Section 2. Duties.

(1) The council shall study and make recommendations on:

(a) how to best promote vibrant, locally owned farms;

(b) how to best promote resilient ecosystems;

(c) how to best promote strong communities and healthy eating;

(d) how to best enhance thriving local food economies;

(e) how best to assess impacts of population growth and urbanization and the decline in productive ranch and farmland;

(f) assessment of laws and regulations that deter or hinder the direct sales of locally grown and produced food; and

(g) necessary steps to develop and implement a robust, integrated local food system.

(2) It is the purpose of the Local Food Advisory Council to contribute to:

(a) building a local food economy;

- (b) benefitting the state by creating jobs;
- (c) stimulating statewide economic development;
- (d) circulating money from local food sales within local communities;
- (e) preserving open space;
- (f) fostering the viability of family-owned farms;
- (g) preserving and protecting the natural environment;
- (h) increasing consumer access to fresh and nutritious food; and
- (i) providing greater food security for state residents.

Section 3. Duties -- Interim report.

- (1) The council shall:
 - (a) convene at least four times each year; and
 - (b) review and make recommendations regarding the policy issues listed in Section 2.
- (2) The council shall prepare an annual report and present the report before November 30, 2017, and every November thereafter to:
 - (a) the Natural Resources, Agriculture, and Environment Interim Committee;
 - (b) the Department of Agriculture and Food; and
 - (c) the Food Advisory Board.

Section 4. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Legislature - Senate

From General Fund, ongoing \$2,000

Schedule of Programs:

Administration \$2,000

ITEM 2

To Legislature - House of Representatives

From General Fund, ongoing \$4,000

Schedule of Programs:

Administration \$4,000

Section 5. Repeal date.

Uncodified Sections 1, 2, and 3, which create the Local Food Advisory Council, are repealed on November 30, 2022.

CHAPTER 240**H. B. 152**

Passed March 2, 2017

Approved March 22, 2017

Effective May 9, 2017

TRANSPORTATION FUNDING REVISIONS

Chief Sponsor: Scott D. Sandall
Senate Sponsor: Kevin T. Van Tassell

LONG TITLE**General Description:**

This bill modifies the Transportation Code by amending provisions relating to the Local Highway and Transportation Corridor Preservation Fund.

Highlighted Provisions:

This bill:

- ▶ authorizes money in the Local Highway and Transportation Corridor Preservation Fund to be used for construction, maintenance, and operation of class B and class C roads or survey monument restoration or repair with limitations in a county of the third, fourth, fifth, or sixth class; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 41-1a-1222, as last amended by Laws of Utah 2015, Chapter 421
59-12-2217, as last amended by Laws of Utah 2015, Chapter 421
59-12-2218, as last amended by Laws of Utah 2016, Chapter 348
72-2-117.5, as last amended by Laws of Utah 2015, Chapters 395 and 410

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

Section 1. Section 41-1a-1222 is amended to read:

41-1a-1222. Local option highway construction and transportation corridor preservation fee -- Exemptions -- Deposit -- Transfer -- County ordinance -- Notice.

(1) (a) (i) Except as provided in Subsection (1)(a)(ii), a county legislative body may impose a local option highway construction and transportation corridor preservation fee of up to \$10 on each motor vehicle registration within the county.

(ii) A county legislative body may impose a local option highway construction and transportation corridor preservation fee of up to \$7.75 on each motor vehicle registration for a six-month registration period under Section 41-1a-215.5 within the county.

(iii) A fee imposed under Subsection (1)(a)(i) or (ii) shall be set in whole dollar increments.

(b) If imposed under Subsection (1)(a), at the time application is made for registration or renewal of registration of a motor vehicle under this chapter, the applicant shall pay the local option highway construction and transportation corridor preservation fee established by the county legislative body.

(c) The following are exempt from the fee required under Subsection (1)(a):

(i) a motor vehicle that is exempt from the registration fee under Section 41-1a-1209 or Subsection 41-1a-419(3);

(ii) a commercial vehicle with an apportioned registration under Section 41-1a-301; and

(iii) a motor vehicle with a Purple Heart special group license plate issued in accordance with Section 41-1a-421.

(2) (a) Except as provided in Subsection (2)(b), the revenue generated under this section shall be:

(i) deposited in the Local Highway and Transportation Corridor Preservation Fund created in Section 72-2-117.5;

(ii) credited to the county from which it is generated; and

(iii) used and distributed in accordance with Section 72-2-117.5.

(b) The revenue generated by a fee imposed under this section in a county of the first class shall be deposited or transferred as follows:

(i) 50% of the revenue shall be:

(A) deposited in the County of the First Class Highway Projects Fund created in Section 72-2-121; and

(B) used in accordance with Section 72-2-121;

(ii) 20% of the revenue shall be:

(A) transferred to the legislative body of a city of the first class:

(I) located in a county of the first class; and

(II) that has:

(Aa) an international airport within its boundaries; and

(Bb) a United States customs office on the premises of the international airport described in Subsection (2)(b)(ii)(A)(II)(Aa); and

(B) used by the city described in Subsection (2)(b)(ii)(A) for highway construction, reconstruction, or maintenance projects; and

(iii) 30% of the revenue shall be deposited, credited, and used as provided in Subsection (2)(a).

(3) To impose or change the amount of a fee under this section, the county legislative body shall pass an ordinance:

(a) approving the fee;

(b) setting the amount of the fee; and

(c) providing an effective date for the fee as provided in Subsection (4).

(4) (a) If a county legislative body enacts, changes, or repeals a fee under this section, the enactment, change, or repeal shall take effect on July 1 if the commission receives notice meeting the requirements of Subsection (4)(b) from the county prior to April 1.

(b) The notice described in Subsection (4)(a) shall:

(i) state that the county will enact, change, or repeal a fee under this part;

(ii) include a copy of the ordinance imposing the fee; and

(iii) if the county enacts or changes the fee under this section, state the amount of the fee.

Section 2. Section 59-12-2217 is amended to read:

59-12-2217. County option sales and use tax for transportation -- Base -- Rate -- Written prioritization process -- Approval by county legislative body.

(1) Subject to the other provisions of this part, a county legislative body may impose a sales and use tax of up to .25% on the transactions described in Subsection 59-12-103(1) within the county, including the cities and towns within the county.

(2) Subject to Subsections (3) through (8) and Section 59-12-2207, the revenues collected from a sales and use tax under this section may only be expended for:

(a) a project or service:

(i) relating to a regionally significant transportation facility for the portion of the project or service that is performed within the county;

(ii) for new capacity or congestion mitigation if the project or service is performed within a county:

(A) of the first or second class; or

(B) if that county is part of an area metropolitan planning organization; and

(iii) that is on a priority list:

(A) created by the county's council of governments in accordance with Subsection (7); and

(B) approved by the county legislative body in accordance with Subsection (7);

(b) corridor preservation for a project or service described in Subsection (2)(a) as provided in Subsection (8); or

(c) debt service or bond issuance costs related to a project or service described in Subsection (2)(a)(i) or (ii).

(3) If a project or service described in Subsection (2) is for:

(a) a principal arterial highway or a minor arterial highway in a county of the first or second class or a collector road in a county of the second class, that project or service shall be part of the:

(i) county and municipal master plan; and

(ii) (A) statewide long-range plan; or

(B) regional transportation plan of the area metropolitan planning organization if a metropolitan planning organization exists for the area; or

(b) a fixed guideway or an airport, that project or service shall be part of the regional transportation plan of the area metropolitan planning organization if a metropolitan planning organization exists for the area.

(4) In a county of the first or second class, a regionally significant transportation facility project or service described in Subsection (2)(a)(i) shall have a funded year priority designation on a Statewide Transportation Improvement Program and Transportation Improvement Program if the project or service described in Subsection (2)(a)(i) is:

(a) a principal arterial highway;

(b) a minor arterial highway;

(c) a collector road in a county of the second class; or

(d) a major collector highway in a rural area.

(5) Of the revenues collected from a sales and use tax imposed under this section within a county of the first or second class, 25% or more shall be expended for the purpose described in Subsection (2)(b).

(6) (a) As provided in this Subsection (6), a council of governments shall:

(i) develop a written prioritization process for the prioritization of projects to be funded by revenues collected from a sales and use tax under this section;

(ii) create a priority list of regionally significant transportation facility projects or services described in Subsection (2)(a)(i) in accordance with Subsection (7); and

(iii) present the priority list to the county legislative body for approval in accordance with Subsection (7).

(b) The written prioritization process described in Subsection (6)(a)(i) shall include:

(i) a definition of the type of projects to which the written prioritization process applies;

(ii) subject to Subsection (6)(c), the specification of a weighted criteria system that the council of governments will use to rank proposed projects and how that weighted criteria system will be used to determine which proposed projects will be prioritized;

(iii) the specification of data that is necessary to apply the weighted criteria system;

(iv) application procedures for a project to be considered for prioritization by the council of governments; and

(v) any other provision the council of governments considers appropriate.

(c) The weighted criteria system described in Subsection (6)(b)(ii) shall include the following:

(i) the cost effectiveness of a project;

(ii) the degree to which a project will mitigate regional congestion;

(iii) the compliance requirements of applicable federal laws or regulations;

(iv) the economic impact of a project;

(v) the degree to which a project will require tax revenues to fund maintenance and operation expenses; and

(vi) any other provision the council of governments considers appropriate.

(d) A council of governments of a county of the first or second class shall submit the written prioritization process described in Subsection (6)(a)(i) to the Executive Appropriations Committee for approval prior to taking final action on:

(i) the written prioritization process; or

(ii) any proposed amendment to the written prioritization process.

(7) (a) A council of governments shall use the weighted criteria system adopted in the written prioritization process developed in accordance with Subsection (6) to create a priority list of regionally significant transportation facility projects or services for which revenues collected from a sales and use tax under this section may be expended.

(b) Before a council of governments may finalize a priority list or the funding level of a project, the council of governments shall conduct a public meeting on:

(i) the written prioritization process; and

(ii) the merits of the projects that are prioritized as part of the written prioritization process.

(c) A council of governments shall make the weighted criteria system ranking for each project prioritized as part of the written prioritization process publicly available before the public meeting required by Subsection (7)(b) is held.

(d) If a council of governments prioritizes a project over another project with a higher rank under the weighted criteria system, the council of governments shall:

(i) identify the reasons for prioritizing the project over another project with a higher rank under the weighted criteria system at the public meeting required by Subsection (7)(b); and

(ii) make the reasons described in Subsection (7)(d)(i) publicly available.

(e) Subject to Subsections (7)(f) and (g), after a council of governments finalizes a priority list in accordance with this Subsection (7), the council of governments shall:

(i) submit the priority list to the county legislative body for approval; and

(ii) obtain approval of the priority list from a majority of the members of the county legislative body.

(f) A council of governments may only submit one priority list per calendar year to the county legislative body.

(g) A county legislative body may only consider and approve one priority list submitted under Subsection (7)(e) per calendar year.

(8) (a) Except as provided in Subsection (8)(b), revenues collected from a sales and use tax under this section that a county allocates for a purpose described in Subsection (2)(b) shall be:

(i) deposited in or transferred to the Local Highway and Transportation Corridor Preservation Fund created by Section 72-2-117.5; and

(ii) expended as provided in Section 72-2-117.5.

(b) In a county of the first class, revenues collected from a sales and use tax under this section that a county allocates for a purpose described in Subsection (2)(b) shall be:

(i) deposited in or transferred to the County of the First Class Highway Projects Fund created by Section 72-2-121; and

(ii) expended as provided in Section 72-2-121.

Section 3. Section 59-12-2218 is amended to read:

59-12-2218. County, city, or town option sales and use tax for airports, highways, and systems for public transit -- Base -- Rate -- Administration of sales and use tax -- Voter approval exception.

(1) Subject to the other provisions of this part, the following may impose a sales and use tax under this section:

(a) if, on April 1, 2009, a county legislative body of a county of the second class imposes a sales and use tax under this section, the county legislative body of the county of the second class may impose the sales and use tax on the transactions:

(i) described in Subsection 59-12-103(1); and

(ii) within the county, including the cities and towns within the county; or

(b) if, on April 1, 2009, a county legislative body of a county of the second class does not impose a sales and use tax under this section:

(i) a city legislative body of a city within the county of the second class may impose a sales and use tax under this section on the transactions described in Subsection 59-12-103(1) within that city;

(ii) a town legislative body of a town within the county of the second class may impose a sales and use tax under this section on the transactions described in Subsection 59-12-103(1) within that town; and

(iii) the county legislative body of the county of the second class may impose a sales and use tax on the transactions described in Subsection 59-12-103(1):

(A) within the county, including the cities and towns within the county, if on the date the county legislative body provides the notice described in Section 59-12-2209 to the commission stating that the county will enact a sales and use tax under this section, no city or town within that county imposes a sales and use tax under this section or has provided the notice described in Section 59-12-2209 to the commission stating that the city or town will enact a sales and use tax under this section; or

(B) within the county, except for within a city or town within that county, if, on the date the county legislative body provides the notice described in Section 59-12-2209 to the commission stating that the county will enact a sales and use tax under this section, that city or town imposes a sales and use tax under this section or has provided the notice described in Section 59-12-2209 to the commission stating that the city or town will enact a sales and use tax under this section.

(2) For purposes of Subsection (1) and subject to the other provisions of this section, a county, city, or town legislative body that imposes a sales and use tax under this section may impose the tax at a rate of:

- (a) .10%; or
- (b) .25%.

(3) A sales and use tax imposed at a rate described in Subsection (2)(a) shall be expended as determined by the county, city, or town legislative body as follows:

(a) deposited as provided in Subsection (9)(b) into the County of the Second Class State Highway Projects Fund created by Section 72-2-121.2 and expended as provided in Section 72-2-121.2;

(b) expended for a project or service relating to an airport facility for the portion of the project or service that is performed within the county, city, or town within which the tax is imposed:

(i) for a county legislative body that imposes the sales and use tax, if that airport facility is part of the regional transportation plan of the area metropolitan planning organization if a metropolitan planning organization exists for the area; or

(ii) for a city or town legislative body that imposes the sales and use tax, if:

(A) that city or town owns or operates the airport facility; and

(B) an airline is headquartered in that city or town; or

(c) deposited or expended for a combination of Subsections (3)(a) and (b).

(4) Subject to Subsections (5) through (7), a sales and use tax imposed at a rate described in Subsection (2)(b) shall be expended as determined by the county, city, or town legislative body as follows:

(a) deposited as provided in Subsection (9)(b) into the County of the Second Class State Highway Projects Fund created by Section 72-2-121.2 and expended as provided in Section 72-2-121.2;

(b) expended for:

(i) a state highway designated under Title 72, Chapter 4, Part 1, State Highways;

(ii) a local highway that is a principal arterial highway, minor arterial highway, major collector highway, or minor collector road; or

(iii) a combination of Subsections (4)(b)(i) and (ii);

(c) expended for a project or service relating to a system for public transit for the portion of the project or service that is performed within the county, city, or town within which the sales and use tax is imposed;

(d) expended for a project or service relating to an airport facility for the portion of the project or service that is performed within the county, city, or town within which the sales and use tax is imposed:

(i) for a county legislative body that imposes the sales and use tax, if that airport facility is part of the regional transportation plan of the area metropolitan planning organization if a metropolitan planning organization exists for the area; or

(ii) for a city or town legislative body that imposes the sales and use tax, if:

(A) that city or town owns or operates the airport facility; and

(B) an airline is headquartered in that city or town;

(e) expended for:

(i) a class B road, as defined in Section 72-3-103;

(ii) a class C road, as defined in Section 72-3-104; or

(iii) a combination of Subsections (4)(e)(i) and (ii);

(f) expended for traffic and pedestrian safety, including:

(i) for a class B road, as defined in Section 72-3-103, or class C road, as defined in Section 72-3-104, for:

(A) a sidewalk;

(B) curb and gutter;

(C) a safety feature;

(D) a traffic sign;

(E) a traffic signal;

(F) street lighting; or

(G) a combination of Subsections (4)(f)(i)(A) through (F);

(ii) the construction of an active transportation facility that:

(A) is for nonmotorized vehicles and multimodal transportation; and

(B) connects an origin with a destination; or

(iii) a combination of Subsections (4)(f)(i) and (ii); or

(g) deposited or expended for a combination of Subsections (4)(a) through (f).

(5) A county, city, or town legislative body may not expend revenue collected within a county, city, or town from a tax under this section for a purpose described in Subsections (4)(b) through (f) unless the purpose is recommended by:

(a) for a county that is part of a metropolitan planning organization, the metropolitan planning organization of which the county is a part; or

(b) for a county that is not part of a metropolitan planning organization, the council of governments of which the county is a part.

(6) (a) (i) Except as provided in Subsection (6)(b), a county, city, or town that imposes a tax described in Subsection (2)(b) shall deposit the revenue collected from a tax rate of .05% as provided in Subsection (9)(b)(i) into the Local Highway and Transportation Corridor Preservation Fund created by Section 72-2-117.5.

(ii) Revenue deposited in accordance with Subsection (6)(a)(i) shall be expended and distributed in accordance with Section 72-2-117.5.

(b) A county, city, or town is not required to make the deposit required by Subsection (6)(a)(i) if the county, city, or town:

(i) imposed a tax described in Subsection (2)(b) on July 1, 2010; or

(ii) has continuously imposed a tax described in Subsection (2)(b):

(A) beginning after July 1, 2010; and

(B) for a five-year period.

(7) (a) Subject to the other provisions of this Subsection (7), a city or town within which a sales and use tax is imposed at the tax rate described in Subsection (2)(b) may:

(i) expend the revenues in accordance with Subsection (4); or

(ii) expend the revenues in accordance with Subsections (7)(b) through (d) if:

(A) that city or town owns or operates an airport facility; and

(B) an airline is headquartered in that city or town.

(b) (i) A city or town legislative body of a city or town within which a sales and use tax is imposed at the tax rate described in Subsection (2)(b) may expend the revenues collected from a tax rate of greater than .10% but not to exceed the revenues collected from a tax rate of .25% for a purpose described in Subsection (7)(b)(ii) if:

(A) that city or town owns or operates an airport facility; and

(B) an airline is headquartered in that city or town.

(ii) A city or town described in Subsection (7)(b)(i) may expend the revenues collected from a tax rate of greater than .10% but not to exceed the revenues collected from a tax rate of .25% for:

(A) a project or service relating to the airport facility; and

(B) the portion of the project or service that is performed within the city or town imposing the sales and use tax.

(c) If a city or town legislative body described in Subsection (7)(b)(i) determines to expend the revenues collected from a tax rate of greater than .10% but not to exceed the revenues collected from a tax rate of .25% for a project or service relating to an airport facility as allowed by Subsection (7)(b), any remaining revenue that is collected from the sales and use tax imposed at the tax rate described in Subsection (2)(b) that is not expended for the project or service relating to an airport facility as allowed by Subsection (7)(b) shall be expended as follows:

(i) 75% of the remaining revenues shall be deposited as provided in Subsection (9)(c) into the County of the Second Class State Highway Projects Fund created by Section 72-2-121.2 and expended as provided in Section 72-2-121.2; and

(ii) 25% of the remaining revenues shall be deposited as provided in Subsection (9)(c) into the Local Highway and Transportation Corridor Preservation Fund created by Section 72-2-117.5 and expended and distributed in accordance with Section 72-2-117.5.

(d) A city or town legislative body that expends the revenues collected from a sales and use tax imposed at the tax rate described in Subsection (2)(b) in accordance with Subsections (7)(b) and (c):

(i) shall, on or before the date the city or town legislative body provides the notice described in Section 59-12-2209 to the commission stating that the city or town will enact a sales and use tax under this section:

(A) determine the tax rate, the percentage of which is greater than .10% but does not exceed .25%, the collections from which the city or town legislative body will expend for a project or service relating to an airport facility as allowed by Subsection (7)(b); and

(B) notify the commission in writing of the tax rate the city or town legislative body determines in accordance with Subsection (7)(d)(i)(A);

(ii) shall, on or before the April 1 immediately following the date the city or town legislative body

provides the notice described in Subsection (7)(d)(i) to the commission:

(A) determine the tax rate, the percentage of which is greater than .10% but does not exceed .25%, the collections from which the city or town legislative body will expend for a project or service relating to an airport facility as allowed by Subsection (7)(b); and

(B) notify the commission in writing of the tax rate the city or town legislative body determines in accordance with Subsection (7)(d)(ii)(A);

(iii) shall, on or before April 1 of each year after the April 1 described in Subsection (7)(d)(ii):

(A) determine the tax rate, the percentage of which is greater than .10% but does not exceed .25%, the collections from which the city or town legislative body will expend for a project or service relating to an airport facility as allowed by Subsection (7)(b); and

(B) notify the commission in writing of the tax rate the city or town legislative body determines in accordance with Subsection (7)(d)(iii)(A); and

(iv) may not change the tax rate the city or town legislative body determines in accordance with Subsections (7)(d)(i) through (iii) more frequently than as prescribed by Subsections (7)(d)(i) through (iii).

(8) Before a city or town legislative body may impose a sales and use tax under this section, the city or town legislative body shall provide a copy of the notice described in Section 59-12-2209 that the city or town legislative body provides to the commission:

(a) to the county legislative body within which the city or town is located; and

(b) at the same time as the city or town legislative body provides the notice to the commission.

(9) (a) Subject to Subsections (9)(b) through (e) and Section 59-12-2207, the commission shall transmit revenues collected within a county, city, or town from a tax under this part that will be expended for a purpose described in Subsection (3)(b) or Subsections (4)(b) through (f) to the county, city, or town legislative body in accordance with Section 59-12-2206.

(b) Except as provided in Subsection (9)(c) and subject to Section 59-12-2207, the commission shall deposit revenues collected within a county, city, or town from a sales and use tax under this section that:

(i) are required to be expended for a purpose described in Subsection (6)(a) into the Local Transportation Corridor Preservation Fund created by Section 72-2-117.5; or

(ii) a county, city, or town legislative body determines to expend for a purpose described in Subsection (3)(a) or (4)(a) into the County of the Second Class State Highway Projects Fund created by Section 72-2-121.2 if the county, city, or town

legislative body provides written notice to the commission requesting the deposit.

(c) Subject to Subsection (9)(d) or (e), if a city or town legislative body provides notice to the commission in accordance with Subsection (7)(d), the commission shall:

(i) transmit the revenues collected from the tax rate stated on the notice to the city or town legislative body monthly by electronic funds transfer; and

(ii) deposit any remaining revenues described in Subsection (7)(c) in accordance with Subsection (7)(c).

(d) (i) If a city or town legislative body provides the notice described in Subsection (7)(d)(i) to the commission, the commission shall transmit or deposit the revenues collected from the sales and use tax:

(A) in accordance with Subsection (9)(c);

(B) beginning on the date the city or town legislative body enacts the sales and use tax; and

(C) ending on the earlier of the June 30 immediately following the date the city or town legislative body provides the notice described in Subsection (7)(d)(ii) to the commission or the date the city or town legislative body repeals the sales and use tax.

(ii) If a city or town legislative body provides the notice described in Subsection (7)(d)(ii) or (iii) to the commission, the commission shall transmit or deposit the revenues collected from the sales and use tax:

(A) in accordance with Subsection (9)(c);

(B) beginning on the July 1 immediately following the date the city or town legislative body provides the notice described in Subsection (7)(d)(ii) or (iii) to the commission; and

(C) ending on the earlier of the June 30 of the year after the date the city or town legislative body provides the notice described in Subsection (7)(d)(ii) or (iii) to the commission or the date the city or town legislative body repeals the sales and use tax.

(e) (i) If a city or town legislative body that is required to provide the notice described in Subsection (7)(d)(i) does not provide the notice described in Subsection (7)(d)(i) to the commission on or before the date required by Subsection (7)(d) for providing the notice, the commission shall transmit, transfer, or deposit the revenues collected from the sales and use tax within the city or town in accordance with Subsections (9)(a) and (b).

(ii) If a city or town legislative body that is required to provide the notice described in Subsection (7)(d)(ii) or (iii) does not provide the notice described in Subsection (7)(d)(ii) or (iii) to the commission on or before the date required by Subsection (7)(d) for providing the notice, the commission shall transmit or deposit the revenues collected from the sales and use tax within the city or town in accordance with:

(A) Subsection (9)(c); and

(B) the most recent notice the commission received from the city or town legislative body under Subsection (7)(d).

Section 4. Section 72-2-117.5 is amended to read:

72-2-117.5. Definitions -- Local Highway and Transportation Corridor Preservation Fund -- Disposition of fund money.

(1) As used in this section:

(a) "Council of governments" means a decision-making body in each county composed of the county governing body and the mayors of each municipality in the county.

(b) "Metropolitan planning organization" has the same meaning as defined in Section 72-1-208.5.

(2) There is created the Local Highway and Transportation Corridor Preservation Fund within the Transportation Fund.

(3) The fund shall be funded from the following sources:

(a) a local option highway construction and transportation corridor preservation fee imposed under Section 41-1a-1222;

(b) appropriations made to the fund by the Legislature;

(c) contributions from other public and private sources for deposit into the fund;

(d) all money collected from rents and sales of real property acquired with fund money;

(e) proceeds from general obligation bonds, revenue bonds, or other obligations issued as authorized by Title 63B, Bonds;

(f) the portion of the sales and use tax described in Subsection 59-12-2217(2)(b) and required by Subsection 59-12-2217(8)(a) to be deposited into the fund; and

(g) sales and use tax revenues deposited into the fund in accordance with Section 59-12-2218.

(4) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(c) The State Tax Commission shall allocate the revenues:

(i) provided under Subsection (3)(a) to each county imposing a local option highway construction and transportation corridor preservation fee under Section 41-1a-1222;

(ii) provided under Subsection 59-12-2217(2)(b) to each county imposing a county option sales and use tax for transportation; and

(iii) provided under Subsection (3)(g) to each county of the second class or city or town within a county of the second class that imposes the sales and use tax authorized by Section 59-12-2218.

(d) The department shall distribute the funds allocated to each county, city, or town under Subsection (4)(c) to each county, city, or town.

(e) The money allocated and distributed under this Subsection (4):

(i) shall be used for the purposes provided in this section for each county, city, or town;

(ii) is allocated to each county, city, or town as provided in this section with the condition that the state will not be charged for any asset purchased with the money allocated and distributed under this Subsection (4), unless there is a written agreement in place with the department prior to the purchase of the asset stipulating a reimbursement by the state to the county, city, or town of no more than the original purchase price paid by the county, city, or town; and

(iii) is considered a local matching contribution for the purposes described under Section 72-2-123 if used on a state highway.

(f) Administrative costs of the department to implement this section shall be paid from the fund.

(5) (a) A highway authority may acquire real property or any interests in real property for state, county, and municipal highway corridors subject to:

(i) money available in the fund to each county under Subsection (4); and

(ii) the provisions of this section.

(b) Fund money may be used to pay interest on debts incurred in accordance with this section.

(c) (i) (A) Fund money may be used to pay maintenance costs of properties acquired under this section but limited to a total of 5% of the purchase price of the property.

(B) Any additional maintenance cost shall be paid from funds other than under this section.

(C) Revenue generated by any property acquired under this section is excluded from the limitations under this Subsection (5)(c)(i).

(ii) Fund money may be used to pay direct costs of acquisition of properties acquired under this section.

(d) Fund money allocated and distributed under Subsection (4) may be used by a county highway authority for countywide transportation planning if:

(i) the county's planning focus area is outside the boundaries of a metropolitan planning organization;

(ii) the transportation planning is part of the county's continuing, cooperative, and comprehensive process for transportation planning, corridor preservation, right-of-way acquisition, and project programming;

(iii) no more than four years allocation every 20 years to each county is used for transportation planning under this Subsection (5)(d); and

(iv) the county otherwise qualifies to use the fund money as provided under this section.

(e) (i) Subject to Subsection (11), fund money allocated and distributed under Subsection (4) may be used by a county highway authority for transportation corridor planning that is part of the corridor elements of an ongoing work program of transportation projects.

(ii) The transportation corridor planning under Subsection (5)(e)(i) shall be under the direction of:

(A) the metropolitan planning organization if the county is within the boundaries of a metropolitan planning organization; or

(B) the department if the county is not within the boundaries of a metropolitan planning organization.

(f) (i) A county, city, or town that imposes a local option highway construction and transportation corridor preservation fee under Section 41-1a-1222 may elect to administer the funds allocated and distributed to that county, city, or town under Subsection (4) as a revolving loan fund.

(ii) If a county, city, or town elects to administer the funds allocated and distributed to that county, city, or town under Subsection (4) as a revolving loan fund, a local highway authority shall repay the fund money authorized for the project to the fund.

(iii) A county, city, or town that elects to administer the funds allocated and distributed to that county, city, or town under Subsection (4) as a revolving loan fund shall establish repayment conditions of the money to the fund from the specified project funds.

(g) (i) Subject to the restrictions in Subsections (5)(g)(ii) and (iii), fund money may be used by a county of the third, fourth, fifth, or sixth class or by a city or town within a county of the third, fourth, fifth, or sixth class for:

(A) the construction, operation, or maintenance of a class B road or class C road; or

(B) the restoration or repair of survey monuments associated with transportation infrastructure.

(ii) A county, city, or town may not use more than 50% of the current balance of fund money allocated to the county, city, or town for the purposes described in Subsection (5)(g)(i).

(iii) A county, city, or town may not use more than 50% of the fund revenue collections allocated to a county, city, or town in the current fiscal year for the purposes described in Subsection (5)(g)(i).

(6) (a) (i) The Local Highway and Transportation Corridor Preservation Fund shall be used to preserve highway corridors, promote long-term statewide transportation planning, save on acquisition costs, and promote the best interests of the state in a manner which minimizes impact on prime agricultural land.

(ii) The Local Highway and Transportation Corridor Preservation Fund shall only be used to preserve a highway corridor that is right-of-way:

(A) in a county of the first or second class for:

(I) a state highway;

(II) a principal arterial highway as defined in Section 72-4-102.5;

(III) a minor arterial highway as defined in Section 72-4-102.5; or

(IV) a collector highway in an urban area as defined in Section 72-4-102.5; or

(B) in a county of the third, fourth, fifth, or sixth class for:

(I) a state highway;

(II) a principal arterial highway as defined in Section 72-4-102.5;

(III) a minor arterial highway as defined in Section 72-4-102.5;

(IV) a major collector highway as defined in Section 72-4-102.5; or

(V) a minor collector road as defined in Section 72-4-102.5.

(iii) The Local Highway and Transportation Corridor Preservation Fund may not be used for a highway corridor that is primarily a recreational trail as defined under Section 79-5-102.

(b) A highway authority shall authorize the expenditure of fund money after determining that the expenditure is being made in accordance with this section from applications that are:

(i) endorsed by the council of governments; and

(ii) for a right-of-way purchase for a highway authorized under Subsection (6)(a)(ii).

(7) (a) (i) A council of governments shall establish a council of governments endorsement process which includes prioritization and application procedures for use of the money allocated to each county under this section.

(ii) The endorsement process under Subsection (7)(a)(i) may include review or endorsement of the preservation project by:

(A) the metropolitan planning organization if the county is within the boundaries of a metropolitan planning organization; or

(B) the department if the county is not within the boundaries of a metropolitan planning organization.

(b) All fund money shall be prioritized by each highway authority and council of governments based on considerations, including:

(i) areas with rapidly expanding population;

(ii) the willingness of local governments to complete studies and impact statements that meet department standards;

(iii) the preservation of corridors by the use of local planning and zoning processes;

(iv) the availability of other public and private matching funds for a project;

(v) the cost-effectiveness of the preservation projects;

(vi) long and short-term maintenance costs for property acquired; and

(vii) whether the transportation corridor is included as part of:

(A) the county and municipal master plan; and

(B) (I) the statewide long range plan; or

(II) the regional transportation plan of the area metropolitan planning organization if one exists for the area.

(c) The council of governments shall:

(i) establish a priority list of highway corridor preservation projects within the county;

(ii) submit the list described in Subsection (7)(c)(i) to the county's legislative body for approval; and

(iii) obtain approval of the list described in Subsection (7)(c)(i) from a majority of the members of the county legislative body.

(d) A county's council of governments may only submit one priority list described in Subsection (7)(c)(i) per calendar year.

(e) A county legislative body may only consider and approve one priority list described in Subsection (7)(c)(i) per calendar year.

(8) (a) Unless otherwise provided by written agreement with another highway authority, the highway authority that holds the deed to the property is responsible for maintenance of the property.

(b) The transfer of ownership for property acquired under this section from one highway authority to another shall include a recorded deed for the property and a written agreement between the highway authorities.

(9) (a) The proceeds from any bonds or other obligations secured by revenues of the Local Highway and Transportation Corridor Preservation Fund shall be used for the purposes authorized for funds under this section.

(b) The highway authority shall pledge the necessary part of the revenues of the Local Highway and Transportation Corridor Preservation Fund to the payment of principal and interest on the bonds or other obligations.

(10) (a) A highway authority may not expend money under this section to purchase a right-of-way for a state highway unless the highway authority has:

(i) a transportation corridor property acquisition policy or ordinance in effect that meets department requirements for the acquisition of real property or any interests in real property under this section; and

(ii) an access management policy or ordinance in effect that meets the requirements under Subsection 72-2-117(8).

(b) The provisions of Subsection (10)(a)(i) do not apply if the highway authority has a written agreement with the department for the department to acquire real property or any interests in real property on behalf of the local highway authority under this section.

(11) The county shall ensure, to the extent possible, that the fund money allocated and distributed to a city or town in accordance with Subsection (4) is expended:

(a) to fund a project or service as allowed by this section within the city or town to which the fund money is allocated;

(b) to pay debt service, principal, or interest on a bond or other obligation as allowed by this section if that bond or other obligation is:

(i) secured by money allocated to the city or town; and

(ii) issued to finance a project or service as allowed by this section within the city or town to which the fund money is allocated;

(c) to fund transportation planning as allowed by this section within the city or town to which the fund money is allocated; or

(d) for another purpose allowed by this section within the city or town to which the fund money is allocated.

CHAPTER 241**H. B. 154**

Passed February 24, 2017

Approved March 22, 2017

Effective May 9, 2017

TELEHEALTH AMENDMENTS

Chief Sponsor: Ken Ivory
Senate Sponsor: Allen M. Christensen

LONG TITLE**General Description:**

This bill amends the Medical Assistance Act, the Public Employees' Benefit and Insurance Program Act, and the Insurance Code to provide coverage, and coverage transparency, for certain telehealth services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the Medical Assistance Act regarding reimbursement for telemedicine services;
- ▶ amends the Insurance Code to require insurer transparency regarding telehealth reimbursement;
- ▶ amends the Public Employees' Benefit and Insurance Program Act (PEHP) regarding reimbursement for telemedicine services;
- ▶ requires the Department of Health and PEHP to report to a legislative interim committee and a task force regarding telehealth services;
- ▶ requires a legislative study; and
- ▶ describes responsibilities of a provider offering telehealth services.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-18-13, as enacted by Laws of Utah 2008, Chapter 41

31A-22-613.5, as last amended by Laws of Utah 2015, Chapters 257 and 283

ENACTS:

26-18-13.5, Utah Code Annotated 1953

26-59-101, Utah Code Annotated 1953

26-59-102, Utah Code Annotated 1953

26-59-103, Utah Code Annotated 1953

26-59-104, Utah Code Annotated 1953

26-59-105, Utah Code Annotated 1953

49-20-414, Utah Code Annotated 1953

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

Section 1. Section 26-18-13 is amended to read:**26-18-13. Telemedicine -- Reimbursement -- Rulemaking.**

(1) (a) [~~On or after July 1, 2008,~~] As used in this section, communication by telemedicine is considered [~~face-to-face~~] face-to-face contact between a health care provider and a patient under the state's medical assistance program if:

(i) the communication by telemedicine meets the requirements of administrative rules adopted in accordance with Subsection (3); and

(ii) the health care services are eligible for reimbursement under the state's medical assistance program.

(b) This Subsection (1) applies to any managed care organization that contracts with the state's medical assistance program.

(2) The reimbursement rate for telemedicine services approved under this section:

(a) shall be subject to reimbursement policies set by the state plan; and

(b) may be based on:

(i) a monthly reimbursement rate;

(ii) a daily reimbursement rate; or

(iii) an encounter rate.

(3) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish:

(a) the particular telemedicine services that are considered [~~face-to-face~~] face-to-face encounters for reimbursement purposes under the state's medical assistance program; and

(b) the reimbursement methodology for the telemedicine services designated under Subsection (3)(a).

Section 2. Section 26-18-13.5 is enacted to read:**26-18-13.5. Mental health telemedicine services -- Reimbursement -- Reporting.**

(1) As used in this section:

(a) "Mental health therapy" means the same as the term "practice of mental health therapy" is defined in Section 58-60-102.

(b) "Mental illness" means a mental or emotional condition defined in an approved diagnostic and statistical manual for mental disorders generally recognized in the professions of mental health therapy listed in Section 58-60-102.

(c) "Telehealth services" means the same as that term is defined in Section 26-59-102.

(d) "Telemedicine services" means the same as that term is defined in Section 26-59-102.

(2) This section applies to:

(a) a managed care organization that contracts with the Medicaid program; and

(b) a provider who is reimbursed for health care services under the Medicaid program.

(3) The Medicaid program shall reimburse for personal mental health therapy office visits provided through telemedicine services at a rate set by the Medicaid program.

(4) Before December 1, 2017, the department shall report to the Legislature's Public Utilities,

Energy, and Technology Interim Committee and Health Reform Task Force on:

(a) the result of the reimbursement requirement described in Subsection (3);

(b) existing and potential uses of telehealth and telemedicine services;

(c) issues of reimbursement to a provider offering telehealth and telemedicine services;

(d) potential rules or legislation related to:

(i) providers offering and insurers reimbursing for telehealth and telemedicine services; and

(ii) increasing access to health care, increasing the efficiency of health care, and decreasing the costs of health care; and

(e) the department's efforts to obtain a waiver from the federal requirement that telemedicine communication be face-to-face communication.

Section 3. Section 26-59-101 is enacted to read:

CHAPTER 59. TELEHEALTH ACT

26-59-101. Title.

This chapter is known as the "Telehealth Act."

Section 4. Section 26-59-102 is enacted to read:

26-59-102. Definitions.

As used in this chapter:

(1) "Asynchronous store and forward transfer" means the transmission of a patient's health care information from an originating site to a provider at a distant site.

(2) "Distant site" means the physical location of a provider delivering telemedicine services.

(3) "Originating site" means the physical location of a patient receiving telemedicine services.

(4) "Patient" means an individual seeking telemedicine services.

(5) "Provider" means an individual who is:

(a) licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;

(b) licensed under Title 58, Occupations and Professions, to provide health care; or

(c) licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities.

(6) "Synchronous interaction" means real-time communication through interactive technology that enables a provider at a distant site and a patient at an originating site to interact simultaneously through two-way audio and video transmission.

(7) "Telehealth services" means the transmission of health-related services or information through

the use of electronic communication or information technology.

(8) "Telemedicine services" means telehealth services:

(a) including:

(i) clinical care;

(ii) health education;

(iii) health administration;

(iv) home health; or

(v) facilitation of self-managed care and caregiver support; and

(b) provided by a provider to a patient through a method of communication that:

(i) (A) uses asynchronous store and forward transfer; or

(B) uses synchronous interaction; and

(ii) meets industry security and privacy standards, including compliance with:

(A) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended; and

(B) the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.

Section 5. Section 26-59-103 is enacted to read:

26-59-103. Scope of telehealth practice.

(1) A provider offering telehealth services shall:

(a) at all times:

(i) act within the scope of the provider's license under Title 58, Occupations and Professions, in accordance with the provisions of this chapter and all other applicable laws and rules; and

(ii) be held to the same standards of practice as those applicable in traditional health care settings;

(b) in accordance with Title 58, Chapter 82, Electronic Prescribing Act, before providing treatment or prescribing a prescription drug, establish a diagnosis and identify underlying conditions and contraindications to a recommended treatment after:

(i) obtaining from the patient or another provider the patient's relevant clinical history; and

(ii) documenting the patient's relevant clinical history and current symptoms;

(c) be available to a patient who receives telehealth services from the provider for subsequent care related to the initial telemedicine services, in accordance with community standards of practice;

(d) be familiar with available medical resources, including emergency resources near the originating site, in order to make appropriate patient referrals when medically indicated; and

(e) in accordance with any applicable state and federal laws, rules, and regulations, generate, maintain, and make available to each patient receiving telehealth services the patient's medical records.

(2) A provider may not offer telehealth services if:

(a) the provider is not in compliance with applicable laws, rules, and regulations regarding the provider's licensed practice; or

(b) the provider's license under Title 58, Occupations and Professions, is not active and in good standing.

Section 6. Section 26-59-104 is enacted to read:

26-59-104. Enforcement.

(1) The Division of Occupational and Professional Licensing created in Section 58-1-103 is authorized to enforce the provisions of Section 26-59-103 as it relates to providers licensed under Title 58, Occupations and Professions.

(2) The department is authorized to enforce the provisions of Section 26-59-103 as it relates to providers licensed under this title.

(3) The Department of Human Services created in Section 62A-1-102 is authorized to enforce the provisions of Section 26-59-103 as it relates to providers licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities.

Section 7. Section 26-59-105 is enacted to read:

26-59-105. Study by Public Utilities, Energy, and Technology Interim Committee and Health Reform Task Force.

The Legislature's Public Utilities, Energy, and Technology Interim Committee and Health Reform Task Force shall receive the reports required in Sections 26-18-13.5 and 49-20-414 and study:

(1) the result of the reimbursement requirement described in Sections 26-18-13.5 and 49-20-414;

(2) practices and efforts of private health care facilities, health care providers, self-funded employers, third-party payors, and health maintenance organizations to reimburse for telehealth services;

(3) existing and potential uses of telehealth and telemedicine services;

(4) issues of reimbursement to a provider offering telehealth and telemedicine services; and

(5) potential rules or legislation related to:

(a) providers offering and insurers reimbursing for telehealth and telemedicine services; and

(b) increasing access to health care, increasing the efficiency of health care, and decreasing the costs of health care.

Section 8. Section 31A-22-613.5 is amended to read:

31A-22-613.5. Price and value comparisons of health insurance.

(1) (a) This section applies to all health benefit plans.

(b) Subsection (2) applies to:

(i) all health benefit plans; and

(ii) coverage offered to state employees under Subsection 49-20-202(1)(a).

(2) (a) The commissioner shall promote informed consumer behavior and responsible health benefit plans by requiring an insurer issuing a health benefit plan to:

(i) provide to all enrollees, prior to enrollment in the health benefit plan, written disclosure of:

(A) restrictions or limitations on prescription drugs and biologics including:

(I) the use of a formulary;

(II) co-payments and deductibles for prescription drugs; and

(III) requirements for generic substitution;

(B) coverage limits under the plan;

(C) any limitation or exclusion of coverage including:

(I) a limitation or exclusion for a secondary medical condition related to a limitation or exclusion from coverage; and

(II) easily understood examples of a limitation or exclusion of coverage for a secondary medical condition; ~~and~~

(D) whether the insurer permits an exchange of the adoption indemnity benefit in Section 31A-22-610.1 for infertility treatments, in accordance with Subsection 31A-22-610.1(1)(c)(ii) and the terms associated with the exchange of benefits; and

(E) whether the insurer provides coverage for telehealth services in accordance with Section 26-18-13.5 and terms associated with that coverage; and

(ii) provide the commissioner with:

(A) the information described in Subsections 31A-22-635(5) through (7) in the standardized electronic format required by Subsection 63N-11-107(1); and

(B) information regarding insurer transparency in accordance with Subsection (4).

(b) An insurer shall provide the disclosure required by Subsection (2)(a)(i) in writing to the commissioner:

(i) upon commencement of operations in the state; and

(ii) anytime the insurer amends any of the following described in Subsection (2)(a)(i):

- (A) treatment policies;
 - (B) practice standards;
 - (C) restrictions;
 - (D) coverage limits of the insurer's health benefit plan or health insurance policy; or
 - (E) limitations or exclusions of coverage including a limitation or exclusion for a secondary medical condition related to a limitation or exclusion of the insurer's health insurance plan.
- (c) An insurer shall provide the enrollee with notice of an increase in costs for prescription drug coverage due to a change in benefit design under Subsection (2)(a)(i)(A):
- (i) either:
 - (A) in writing; or
 - (B) on the insurer's website; and
 - (ii) at least 30 days prior to the date of the implementation of the increase in cost, or as soon as reasonably possible.
- (d) If under Subsection (2)(a)(i)(A) a formulary is used, the insurer shall make available to prospective enrollees and maintain evidence of the fact of the disclosure of:
- (i) the drugs included;
 - (ii) the patented drugs not included;
 - (iii) any conditions that exist as a precedent to coverage; and
 - (iv) any exclusion from coverage for secondary medical conditions that may result from the use of an excluded drug.
- (e) (i) The commissioner shall develop examples of limitations or exclusions of a secondary medical condition that an insurer may use under Subsection (2)(a)(i)(C).
- (ii) Examples of a limitation or exclusion of coverage provided under Subsection (2)(a)(i)(C) or otherwise are for illustrative purposes only, and the failure of a particular fact situation to fall within the description of an example does not, by itself, support a finding of coverage.
- (3) The commissioner:
- (a) shall forward the information submitted by an insurer under Subsection (2)(a)(ii) to the Health Insurance Exchange created under Section 63N-11-104; and
 - (b) may request information from an insurer to verify the information submitted by the insurer under this section.
- (4) The commissioner shall:
- (a) convene a group of insurers, a member representing the Public Employees' Benefit and Insurance Program, consumers, and an organization that provides multipayer and multiprovider quality assurance and data

collection, to develop information for consumers to compare health insurers and health benefit plans on the Health Insurance Exchange, which shall include consideration of:

- (i) the number and cost of an insurer's denied health claims;
 - (ii) the cost of denied claims that is transferred to providers;
 - (iii) the average out-of-pocket expenses incurred by participants in each health benefit plan that is offered by an insurer in the Health Insurance Exchange;
 - (iv) the relative efficiency and quality of claims administration and other administrative processes for each insurer offering plans in the Health Insurance Exchange; and
 - (v) consumer assessment of each insurer or health benefit plan;
- (b) adopt an administrative rule that establishes:
- (i) definition of terms;
 - (ii) the methodology for determining and comparing the insurer transparency information;
 - (iii) the data, and format of the data, that an insurer shall submit to the commissioner in order to facilitate the consumer comparison on the Health Insurance Exchange in accordance with Section 63N-11-107; and
 - (iv) the dates on which the insurer shall submit the data to the commissioner in order for the commissioner to transmit the data to the Health Insurance Exchange in accordance with Section 63N-11-107; and
- (c) implement the rules adopted under Subsection (4)(b) in a manner that protects the business confidentiality of the insurer.

Section 9. Section 49-20-414 is enacted to read:

49-20-414. Mental health telemedicine services -- Reimbursement -- Reporting.

(1) As used in this section:

(a) "Mental health therapy" means the same as the term "practice of mental health therapy" is defined in Section 58-60-102.

(b) "Mental illness" means the same as that term is defined in Section 26-18-13.5.

(c) "Network provider" means a health care provider who has an agreement with the program to provide health care services to a patient with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly from the managed care organization.

(d) "Telehealth services" means the same as that term is defined in Section 26-59-102.

(e) "Telemedicine services" means the same as that term is defined in Section 26-59-102.

(2) This section applies to the risk pool established for the state under Subsection 49-20-201(1)(a).

(3) The program shall reimburse a network provider for personal mental health therapy office visits provided through telemedicine services at a rate set by the program.

(4) Before December 1, 2017, the program shall report to the Legislature's Public Utilities, Energy, and Technology Interim Committee and Health Reform Task Force on:

(a) the result of the reimbursement requirement described in Subsection (3);

(b) existing and potential uses of telehealth and telemedicine services;

(c) issues of reimbursement to a provider offering telehealth and telemedicine services; and

(d) potential rules or legislation related to:

(i) providers offering and insurers reimbursing for telehealth and telemedicine services; and

(ii) increasing access to health care, increasing the efficiency of health care, and decreasing the costs of health care.

CHAPTER 242**H. B. 156**

Passed March 9, 2017

Approved March 22, 2017

Effective May 9, 2017

STATE JOB APPLICATION PROCESS

Chief Sponsor: Sandra Hollins

Senate Sponsor: Jani Iwamoto

Cosponsors: Patrice M. Arent

Joel K. Briscoe

Rebecca Chavez-Houck

Susan Duckworth

Lynn N. Hemingway

Brian S. King

Karen Kwan

Carol Spackman Moss

Marie H. Poulson

Edward H. Redd

Angela Romero

Raymond P. Ward

Elizabeth Weight

Mark A. Wheatley

Mike Winder

LONG TITLE**General Description:**

This bill modifies general labor provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a public employer may not require an applicant to disclose a past criminal conviction before an initial interview for employment; and
- ▶ provides exemptions for certain public employers.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

34-52-101, Utah Code Annotated 1953

34-52-102, Utah Code Annotated 1953

34-52-201, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 34-52-101 is enacted to read:****CHAPTER 52. REDUCING BARRIERS TO EMPLOYMENT FOR INDIVIDUALS WITH CRIMINAL RECORDS****34-52-101. Title.**

This chapter is known as "Reducing Barriers to Employment for Individuals with Criminal Records."

Section 2. Section 34-52-102 is enacted to read:**34-52-102. Definitions.**As used in this chapter:

(1) "Applicant" means an individual who provides information to a public employer for the purpose of obtaining employment.

(2) "Criminal conviction" means a verdict or finding of guilt after a criminal trial or a plea of guilty or nolo contendere to a criminal charge.

(3) "Public employer" means an employer that is:

(a) the state or any administrative subunit of the state, including a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of state government;

(b) a state institution of higher education; or

(c) a municipal corporation, county, municipality, school district, local district, special service district, or other political subdivision of the state.

Section 3. Section 34-52-201 is enacted to read:**34-52-201. Employer requirements.**

(1) A public employer may not exclude an applicant from an initial interview because of a past criminal conviction.

(2) A public employer excludes an applicant from an initial interview if the public employer:

(a) requires an applicant to disclose, on an employment application, a criminal conviction;

(b) requires an applicant to disclose, before an initial interview, a criminal conviction; or

(c) if no interview is conducted, requires an applicant to disclose, before making a conditional offer of employment, a criminal conviction.

(3) Subject to Subsections (1) and (2), nothing in this section prevents an employer from:

(a) asking an applicant for information about an applicant's criminal conviction history during an initial interview or after an initial interview; or

(b) considering an applicant's conviction history when making a hiring decision.

(4) Subsections (1) and (2) do not apply:

(a) if federal, state, or local law, including corresponding administrative rules, requires the consideration of an applicant's criminal conviction history;

(b) to a public employer that is a law enforcement agency;

(c) to a public employer that is part of the criminal or juvenile justice system;

(d) to a public employer seeking a nonemployee volunteer;

(e) to a public employer that works with children or vulnerable adults;

(f) to the Department of Alcoholic Beverage Control created in Section 32B-2-203;

(g) to the State Tax Commission; and

(h) to a public employer whose primary purpose is performing financial or fiduciary functions.

CHAPTER 243**H. B. 158**

Passed February 24, 2017

Approved March 22, 2017

Effective May 9, 2017

STATE HOUSE BOUNDARY AMENDMENTS

Chief Sponsor: Jeremy A. Peterson

Senate Sponsor: Peter C. Knudson

LONG TITLE**General Description:**

This bill makes a minor adjustment to a single state House district boundary to reconcile United States Census data with the state map.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ makes changes to a state House district boundary to follow a change in the county boundary between Cache and Box Elder counties.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

36-1-201.1, as last amended by Laws of Utah 2013, Chapter 382

36-1-201.5, as last amended by Laws of Utah 2013, Chapter 382

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

Section 1. Section 36-1-201.1 is amended to read:**36-1-201.1. Definitions.**

As used in this part:

(1) "Census block" means any one of the 115, 406 individual geographic areas into which the Bureau of the Census of the United States Department of Commerce has divided the state of Utah, to each of which the Bureau of the Census has attached a discrete population tabulation from the 2010 decennial census.

(2) "House block assignment file" means the electronic file that assigns each of Utah's 115, 406 census blocks to a particular Utah House district.

(3) "House shapefile" means the electronic shapefile that stores the boundary of each of the 75 Utah House districts.

(4) "Shapefile" means the digital vector storage format for storing geometric location and associated attribute information and includes the boundary change in Subsection 36-1-201.5(4)(b).

Section 2. Section 36-1-201.5 is amended to read:**36-1-201.5. Utah House of Representatives -- House district boundaries.**

(1) As used in this section:

(a) "County boundary" means the county boundary's location in the database as of January 1, ~~2010~~ 2017.

(b) "Database" means the State Geographic Information Database created in Section 63F-1-507.

(c) "Local school district boundary" means the local school district boundary's location in the database as of January 1, 2010.

(d) "Municipal boundary" means the municipal boundary's location in the database as of January 1, 2010.

(2) The Utah House of Representatives shall consist of 75 members, with one member to be elected from each Utah House of Representative district.

(3) The Legislature adopts the official census population figures and maps of the Bureau of the Census of the United States Department of Commerce developed in connection with the taking of the 2010 national decennial census as the official data for establishing House district boundaries.

(4) (a) Notwithstanding Subsection (3), and except as modified by Subsection (4)(b), the Legislature enacts the district numbers and boundaries of the House districts designated by the House shapefile that is the electronic component of ~~[the bill that enacts this section]~~ 2013 General Session H.B. 366, State House Boundary Amendments.

(b) The boundary between House District 1 and House District 5 in the shapefile described in Subsection (4)(a) is changed to follow the county boundary of Box Elder County and Cache County from the intersection of Cache, Box Elder, and Weber counties, north to the intersection of House District 1, House District 3, and House District 5.

~~(b)~~ (c) That House shapefile, and the legislative boundaries generated from that shapefile, may be accessed via the Utah Legislature's website.

CHAPTER 244**H. B. 167**

Passed February 14, 2017

Approved March 22, 2017

Effective May 9, 2017

**PODIATRIC PHYSICIAN
LICENSING ACT AMENDMENTS**

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: David P. Hinkins

LONG TITLE**General Description:**

This bill modifies provisions of the Podiatric Physician Licensing Act.

Highlighted Provisions:

This bill:

- ▶ modifies the qualifications for an individual to obtain a license to practice podiatry.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-5a-302, as last amended by Laws of Utah 2015, Chapter 230

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

Section 1. Section 58-5a-302 is amended to read:**58-5a-302. Qualifications to practice podiatry.**

An applicant for licensure to practice podiatry shall:

(1) submit an application in a form as prescribed by the division;

(2) pay a fee as determined by the department under Section 63J-1-504;

(3) be of good moral character;

~~[(4) be a graduate of a college of podiatric medicine accredited by the Council of Podiatric Education;]~~

(4) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a podiatric physician, as evidenced by having received an earned degree of doctor of podiatric medicine from a podiatry school or college accredited by the Council on Podiatric Medical Education;

(5) if licensed on or after July 1, 2015, [have completed two years of postgraduate training in a residency program recognized by the board; and] satisfy the division and board that the applicant:

(a) has successfully completed 24 months of resident training in a program approved by the Council on Podiatric Medical Education; or

(b) (i) has successfully completed 12 months of resident training in a program approved by the Council on Podiatric Medical Education after receiving a degree of doctor of podiatric medicine as required under Subsection (4);

(ii) has been accepted in, and is successfully participating in, progressive resident training in a Council on Podiatric Medical Education approved program within Utah, in the applicant's second or third year of postgraduate training; and

(iii) has agreed to surrender to the division the applicant's license as a podiatric physician without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as a podiatric physician will be automatically revoked by the division if the applicant fails to continue in good standing in a Council on Podiatric Medical Education approved progressive resident training program within the state; and

(6) pass examinations required by rule.

CHAPTER 245**H. B. 174**

Passed February 24, 2017

Approved March 22, 2017

Effective May 9, 2017

**FIREARM RECORDS
PROTECTION AMENDMENTS**Chief Sponsor: Val K. Potter
Senate Sponsor: Peter C. Knudson**LONG TITLE****General Description:**

This bill modifies provisions related to firearm transfer certifications and notifications.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the retention of certain federally required firearm transfer certifications and notifications;
- ▶ classifies as a private record:
 - any firearm transfer certification or notification; and
 - any record or portion of a record that contains information from a firearm transfer certification or notification; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53-5a-104, as last amended by Laws of Utah 2015, Chapters 258 and 406

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

Section 1. Section 53-5a-104 is amended to read:**53-5a-104. Firearm transfer certification or notification.**

(1) As used in this section:

(a) "Certification" means the participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm.

(b) "Chief law enforcement officer" means any official that the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any successor agency, identifies by regulation or otherwise as eligible to provide any required certification for the making or transfer of a firearm.

(c) "Firearm" means the same as that term is defined in the National Firearms Act, 26 U.S.C. Sec. 5845(a).

(d) "Local law enforcement agency" means the same as that term is described in 18 U.S.C. Sec. 923.

(e) "Notification" means any form or record that is subject to 18 U.S.C. Sec. 923(g)(3)(B).

(2) A chief law enforcement officer may not make a certification under this section that the chief law enforcement officer knows to be untrue. The chief law enforcement officer may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm, the possession of which is not prohibited by law.

(3) Upon receiving a federal firearm transfer form a chief law enforcement officer or the chief law enforcement officer's designee shall provide certification if the applicant:

(a) is not prohibited by law from receiving or possessing the firearm; or

(b) is not the subject of a proceeding that could result in the applicant being prohibited by law from receiving or possessing the firearm.

(4) The chief law enforcement officer, the chief law enforcement officer's designee, or official signing the federal transfer form shall:

(a) return the federal transfer form to the applicant within 15 calendar days; or

(b) if the applicant is denied, provide to the applicant the reasons for denial in writing within 15 calendar days.

(5) Chief law enforcement officers and their employees who act in good faith when acting within the scope of their duties are immune from liability arising from any act or omission in making a certification as required by this section. Any action taken against a chief law enforcement officer or an employee shall be in accordance with Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(6) A chief law enforcement officer or local law enforcement agency that receives a certification or notification shall destroy and delete the certification or notification and any other record that contains information obtained from the certification or notification within 15 days after the day on which the chief law enforcement officer or local law enforcement agency receives the certification or notification.

(7) A certification or notification and any other record or portion of a record that contains information gathered from the certification or notification is classified as a private record in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

CHAPTER 246**H. B. 183**

Passed March 7, 2017

Approved March 22, 2017

Effective May 9, 2017

EMISSIONS SETTLEMENT AMENDMENTS

Chief Sponsor: Timothy D. Hawkes
 Senate Sponsor: Brian E. Shiozawa

LONG TITLE**General Description:**

This bill enacts the Environmental Mitigation and Response Act and modifies vehicle registration requirements.

Highlighted Provisions:

This bill:

- ▶ establishes the Environmental Mitigation and Response Act, including establishing an expendable special revenue fund;
- ▶ states that the director of the Department of Environmental Quality may administer the expendable special revenue fund;
- ▶ states that, in certain circumstances, vehicle registration may not be denied on the basis of:
 - a defeat device; or
 - an Environmental Protection Agency-approved modification; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

19-1-202, as last amended by Laws of Utah 2009, Chapter 377

41-6a-1642, as last amended by Laws of Utah 2015, Chapter 258

ENACTS:

19-1-601, Utah Code Annotated 1953

19-1-602, Utah Code Annotated 1953

19-1-603, Utah Code Annotated 1953

19-1-604, Utah Code Annotated 1953

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

Section 1. Section 19-1-202 is amended to read:**19-1-202. Duties and powers of the executive director.**

- (1) The executive director shall:
 - (a) administer and supervise the department;
 - (b) coordinate policies and program activities conducted through boards, divisions, and offices of the department;
 - (c) approve the proposed budget of each board, division, and office within the department;
 - (d) approve all applications for federal grants or assistance in support of any department program;

(e) with the governor's specific, prior approval, expend funds appropriated by the Legislature necessary for participation by the state in any fund, property, or service provided by the federal government; and

(f) in accordance with Section 19-1-301, appoint one or more administrative law judges to hear an adjudicative proceeding within the department.

(2) The executive director may:

(a) issue orders to enforce state laws and rules established by the department except where the enforcement power is given to a board created under Section 19-1-106, unless the executive director finds that a condition exists that creates a clear and present hazard to the public health or the environment and requires immediate action, and if the enforcement power is vested with a board created under Section 19-1-106, the executive director may with the concurrence of the governor order any person causing or contributing to the condition to reduce, mitigate, or eliminate the condition;

(b) with the approval of the governor, participate in the distribution, disbursement, or administration of any fund or service, advanced, offered, or contributed by the federal government for purposes consistent with the powers and duties of the department;

(c) accept and receive funds and gifts available from private and public groups for the purposes of promoting and protecting the public health and the environment and expend the funds as appropriated by the Legislature;

(d) make policies not inconsistent with law for the internal administration and government of the department, the conduct of its employees, and the custody, use, and preservation of the records, papers, books, documents, and property of the department;

(e) create advisory committees as necessary to assist in carrying out the provisions of this title;

(f) appoint division directors who may be removed at the will of the executive director and who shall be compensated in an amount fixed by the executive director;

(g) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, affected groups, political subdivisions, and industries in carrying out the purposes of this title;

(h) consistent with Title 67, Chapter 19, Utah State Personnel Management Act, employ employees necessary to meet the requirements of this title;

(i) authorize any employee or representative of the division to conduct inspections as permitted in this title;

(j) encourage, participate in, or conduct any studies, investigations, research, and demonstrations relating to hazardous materials or substances releases necessary to meet the requirements of this title;

(k) collect and disseminate information about hazardous materials or substances releases;

(l) review plans, specifications, or other data relating to hazardous substances releases as provided in this title; ~~and~~

(m) maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions for the protection of the public health and environment under Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, or under Title 19, Chapter 8, Voluntary Cleanup Program, have been completed in the previous calendar year, and those that the department plans to address in the upcoming year pursuant to this title, including if upon completion of the response action the site:

(i) will be suitable for unrestricted use; or

(ii) will be suitable only for restricted use, stating the institutional controls identified in the remedy to which use of the site is subject[.]; and

(n) for purposes of implementing environmental mitigation and response actions:

(i) accept and receive environmental mitigation and response funds from private and public groups, including as a condition of a consent decree, settlement agreement, stipulated agreement, or court order; and

(ii) administer the implementation of environmental mitigation and response actions in accordance with the terms and conditions in which funds were received, including:

(A) disbursing funds to private or public entities, governmental units, state agencies, or Native American tribes;

(B) expending funds to implement environmental mitigation and response actions; and

(C) returning unused funds to the original source of the funds as a condition of receipt of the funds, if applicable.

Section 2. Section 19-1-601 is enacted to read:

CHAPTER 1. ENVIRONMENTAL MITIGATION AND RESPONSE ACT

19-1-601. Title.

This chapter is known as the "Environmental Mitigation and Response Act."

Section 3. Section 19-1-602 is enacted to read:

19-1-602. Definitions.

As used in this chapter:

(1) "Environmental mitigation" means an action or activity intended to remedy, reduce, or offset known negative impacts to the environment.

(2) "Environmental response action" means action taken to prevent, eliminate, minimize,

investigate, monitor, clean up, or remove contaminants in the environment.

(3) "Financial assurance" means a mechanism or instrument intended to provide funds if necessary to the department to conduct closure, monitoring, or cleanup of a specific facility or site in accordance with the applicable environmental requirements provided in this title.

(4) "Funding source" means an individual or entity that provides a monetary contribution to the Environmental Mitigation and Response Fund.

(5) "Natural resource damage" means damages to land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other resources that are held in trust for the public or otherwise controlled by the United States, the state, or local government.

(6) "Unused funds" means the remaining funds from a specific funding source following the complete implementation of the environmental mitigation or response actions pursuant to the terms and conditions of the contribution.

Section 4. Section 19-1-603 is enacted to read:

19-1-603. Environmental Mitigation and Response Fund.

(1) There is created an expendable special revenue fund known as the Environmental Mitigation and Response Fund.

(2) The fund consists of:

(a) public and private funding sources made under Subsections (3) and (4);

(b) legally binding bankruptcy, financial assurance, or natural resource damage claim settlements; and

(c) interest earnings on cash balances.

(3) The department may accept contributions for deposit into the fund from public and private sources, including from a source as a condition of a consent decree, settlement agreement, stipulated agreement, or court order.

(4) If funds are deposited as part of a consent decree, settlement agreement, stipulated agreement, or court order, the source of the funding may specify terms and conditions in which the funds may be used, in accordance with the consent decree, settlement agreement, stipulated agreement, or court order.

(5) Unless mandated by court order, the department may refuse funds if the department determines it is incapable of meeting the terms and conditions of the agreement to obtain the funds, including covering the costs to administer the fund and oversee the implementation of the specific mitigation or response action.

(6) The fund may account for assets held by the state for:

(a) an individual;

(b) a private or public entity;

(c) another governmental unit, including a local or federal agency;

(d) a state agency; or

(e) a Native American tribe.

Section 5. Section 19-1-604 is enacted to read:

19-1-604. Environmental mitigation.

(1) The director shall administer the fund created in Section 19-1-603.

(2) The director may:

(a) disburse funds to an authorized individual or public, private, or governmental entity, or Native American tribe to implement a specified environmental mitigation action in accordance with any terms and conditions associated with the funding source, as provided in Subsection 19-1-603(4);

(b) expend funds to implement certain environmental mitigation actions in accordance with any terms and conditions associated with the funding source, as provided in Subsection 19-1-603(4);

(c) expend funds to implement an environmental response action or site closure, in accordance with any terms and conditions associated with the funding source, as provided in Subsection 19-1-603(4);

(d) expend funds to cover actual administrative expenditures in accordance with any terms and conditions associated with the funds as provided in Subsection 19-1-603(4); and

(e) return unused funds to the funding source, if required under the terms and conditions as provided in Subsection 19-1-603(4).

(3) For an environmental response action conducted pursuant to Subsection 19-1-604(2)(c), the director shall comply with applicable environmental cleanup standards described in this title.

(4) If the director disburses funds to another state agency in accordance with Subsection (2)(a), that agency may expend the funds in accordance with any terms and conditions associated with the fund contributions as provided in Subsection 19-1-603(4), including returning any unused funds to the department.

(5) Following the completion of an environmental mitigation and response action, any excess funds not returned to the funding source as provided in Subsection 19-1-603(4) shall be transferred to the Hazardous Substances Mitigation Fund, in accordance with Section 19-6-307.

Section 6. Section 41-6a-1642 is amended to read:

41-6a-1642. Emissions inspection -- County program.

(1) The legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard shall require:

(a) a certificate of emissions inspection, a waiver, or other evidence the motor vehicle is exempt from emissions inspection and maintenance program requirements be presented:

(i) as a condition of registration or renewal of registration; and

(ii) at other times as the county legislative body may require to enforce inspection requirements for individual motor vehicles, except that the county legislative body may not routinely require a certificate of emission inspection, or waiver of the certificate, more often than required under Subsection [(6)] (7); and

(b) compliance with this section for a motor vehicle registered or principally operated in the county and owned by or being used by a department, division, instrumentality, agency, or employee of:

(i) the federal government;

(ii) the state and any of its agencies; or

(iii) a political subdivision of the state, including school districts.

(2) A vehicle owner subject to Subsection (1) shall obtain a motor vehicle emissions inspection and maintenance program certificate of emissions inspection as described in Subsection (1), but the program may not deny vehicle registration based solely on the presence of a defeat device covered in the Volkswagen partial consent decrees or a United States Environmental Protection Agency-approved vehicle modification in the following vehicles:

(a) a 2.0-liter diesel engine motor vehicle in which its lifetime nitrogen oxide emissions are mitigated in the state pursuant to a partial consent decree, including:

(i) Volkswagen Jetta, model years 2009, 2010, 2011, 2012, 2013, 2014, and 2015;

(ii) Volkswagen Jetta Sportwagen, model years 2009, 2010, 2011, 2012, 2013, and 2014;

(iii) Volkswagen Golf, model years 2010, 2011, 2012, 2013, 2014, and 2015;

(iv) Volkswagen Golf Sportwagen, model year 2015;

(v) Volkswagen Passat, model years 2012, 2013, 2014, and 2015;

(vi) Volkswagen Beetle, model years 2013, 2014, and 2015;

(vii) Volkswagen Beetle Convertible, model years 2013, 2014, and 2015; and

(viii) Audi A3, model years 2010, 2011, 2012, 2013, and 2015; and

(b) a 3.0-liter diesel engine motor vehicle in which its lifetime nitrogen oxide emissions are mitigated in the state to a settlement, including:

(i) Volkswagen Touareg, model years 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016;

(ii) Audi Q7, model years 2009, 2010, 2011, 2012, 2013, 2014, 2015, and 2016;

(iii) Audi A6 Quattro, model years 2014, 2015, and 2016;

(iv) Audi A7 Quattro, model years 2014, 2015, and 2016;

(v) Audi A8, model years 2014, 2015, and 2016;

(vi) Audi A8L, model years 2014, 2015, and 2016;

(vii) Audi Q5, model years 2014, 2015, and 2016; and

(viii) Porsche Cayenne Diesel, model years 2013, 2014, 2015, and 2016.

~~[(2)]~~ (3) (a) The legislative body of a county identified in Subsection (1), in consultation with the Air Quality Board created under Section 19-1-106, shall make regulations or ordinances regarding:

(i) emissions standards;

(ii) test procedures;

(iii) inspections stations;

(iv) repair requirements and dollar limits for correction of deficiencies; and

(v) certificates of emissions inspections.

(b) The regulations or ordinances shall:

(i) be made to attain or maintain ambient air quality standards in the county, consistent with the state implementation plan and federal requirements;

(ii) may allow for a phase-in of the program by geographical area; and

(iii) be compliant with the analyzer design and certification requirements contained in the state implementation plan prepared under Title 19, Chapter 2, Air Conservation Act.

(c) The county legislative body and the Air Quality Board shall give preference to an inspection and maintenance program that is:

(i) decentralized, to the extent the decentralized program will attain and maintain ambient air quality standards and meet federal requirements;

(ii) the most cost effective means to achieve and maintain the maximum benefit with regard to ambient air quality standards and to meet federal air quality requirements as related to vehicle emissions; and

(iii) providing a reasonable phase-out period for replacement of air pollution emission testing equipment made obsolete by the program.

(d) The provisions of Subsection ~~[(2)]~~ (3)(c)(iii) apply only to the extent the phase-out:

(i) may be accomplished in accordance with applicable federal requirements; and

(ii) does not otherwise interfere with the attainment and maintenance of ambient air quality standards.

~~[(3)]~~ (4) The following vehicles are exempt from the provisions of this section:

(a) an implement of husbandry;

(b) a motor vehicle that:

(i) meets the definition of a farm truck under Section 41-1a-102; and

(ii) has a gross vehicle weight rating of 12,001 pounds or more;

(c) a vintage vehicle as defined in Section 41-21-1;

(d) a custom vehicle as defined in Section 41-6a-1507; and

(e) to the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401, et seq., a motor vehicle that is less than two years old on January 1 based on the age of the vehicle as determined by the model year identified by the manufacturer.

~~[(4)]~~ (5) (a) The legislative body of a county identified in Subsection (1) shall exempt a pickup truck, as defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or less from the emission inspection requirements of this section, if the registered owner of the pickup truck provides a signed statement to the legislative body stating the truck is used:

(i) by the owner or operator of a farm located on property that qualifies as land in agricultural use under Sections 59-2-502 and 59-2-503; and

(ii) exclusively for the following purposes in operating the farm:

(A) for the transportation of farm products, including livestock and its products, poultry and its products, floricultural and horticultural products; and

(B) in the transportation of farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production and maintenance.

(b) The county shall provide to the registered owner who signs and submits a signed statement under this section a certificate of exemption from emission inspection requirements for purposes of registering the exempt vehicle.

~~[(5)]~~ (6) (a) Subject to Subsection ~~[(5)]~~ (6)(c), the legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard may require each college or university located in a county subject to

this section to require its students and employees who park a motor vehicle not registered in a county subject to this section to provide proof of compliance with an emissions inspection accepted by the county legislative body if the motor vehicle is parked on the college or university campus or property.

(b) College or university parking areas that are metered or for which payment is required per use are not subject to the requirements of this Subsection [(5)] (6).

(c) The legislative body of a county shall make the reasons for implementing the provisions of this Subsection [(5)] (6) part of the record at the time that the county legislative body takes its official action to implement the provisions of this Subsection [(5)] (6).

[(6)] (7) (a) An emissions inspection station shall issue a certificate of emissions inspection for each motor vehicle that meets the inspection and maintenance program requirements established in rules made under Subsection [(2)] (3).

(b) The frequency of the emissions inspection shall be determined based on the age of the vehicle as determined by model year and shall be required annually subject to the provisions of Subsection [(6)] (7)(c).

(c) (i) To the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401 et seq., the legislative body of a county identified in Subsection (1) shall only require the emissions inspection every two years for each vehicle.

(ii) The provisions of Subsection [(6)] (7)(c)(i) apply only to a vehicle that is less than six years old on January 1.

(iii) For a county required to implement a new vehicle emissions inspection and maintenance program on or after December 1, 2012, under Subsection (1), but for which no current federally approved state implementation plan exists, a vehicle shall be tested at a frequency determined by the county legislative body, in consultation with the Air Quality Board created under Section 19-1-106, that is necessary to comply with federal law or attain or maintain any national ambient air quality standard.

(iv) If a county legislative body establishes or changes the frequency of a vehicle emissions inspection and maintenance program under Subsection [(6)] (7)(c)(iii), the establishment or change shall take effect on January 1 if the State Tax Commission receives notice meeting the requirements of Subsection [(6)] (7)(c)(v) from the county prior to October 1.

(v) The notice described in Subsection [(6)] (7)(c)(iv) shall:

(A) state that the county will establish or change the frequency of the vehicle emissions inspection and maintenance program under this section;

(B) include a copy of the ordinance establishing or changing the frequency; and

(C) if the county establishes or changes the frequency under this section, state how frequently the emissions testing will be required.

(d) If an emissions inspection is only required every two years for a vehicle under Subsection [(6)] (7)(c), the inspection shall be required for the vehicle in:

(i) odd-numbered years for vehicles with odd-numbered model years; or

(ii) in even-numbered years for vehicles with even-numbered model years.

[(7)] (8) The emissions inspection shall be required within the same time limit applicable to a safety inspection under Section 41-1a-205.

[(8)] (9) (a) A county identified in Subsection (1) shall collect information about and monitor the program.

(b) A county identified in Subsection (1) shall supply this information to an appropriate legislative committee, as designated by the Legislative Management Committee, at times determined by the designated committee to identify program needs, including funding needs.

[(9)] (10) If approved by the county legislative body, a county that had an established emissions inspection fee as of January 1, 2002, may increase the established fee that an emissions inspection station may charge by \$2.50 for each year that is exempted from emissions inspections under Subsection [(6)] (7)(c) up to a \$7.50 increase.

[(10)] (11) (a) A county identified in Subsection (1) may impose a local emissions compliance fee on each motor vehicle registration within the county in accordance with the procedures and requirements of Section 41-1a-1223.

(b) A county that imposes a local emissions compliance fee shall use revenues generated from the fee for the establishment and enforcement of an emissions inspection and maintenance program in accordance with the requirements of this section.

CHAPTER 247**H. B. 194**

Passed March 8, 2017

Approved March 22, 2017

Effective May 9, 2017

**FEDERAL GRANTS
MANAGEMENT AMENDMENTS**

Chief Sponsor: Justin L. Fawson

Senate Sponsor: Ann Millner

LONG TITLE**General Description:**

This bill modifies provisions relating to the review and approval procedures for certain federal funds requests under the Federal Funds Procedures Act and requires the review of certain intergovernmental transfers under the Federal Funds Procedures Act.

Highlighted Provisions:

This bill:

- ▶ increases oversight of intergovernmental transfers by prohibiting a city owned hospital or city owned nursing care facility that will participate in an intergovernmental transfer program from operating in another city or county without entering into an interlocal agreement;
- ▶ amends definitions;
- ▶ modifies the federal funds requests that are subject to the review and approval procedures under the Federal Funds Procedures Act;
- ▶ makes intergovernmental transfer programs between the Department of Health and a local government entity for Medicaid federal funding subject to the Federal Funds Procedures Act;
- ▶ prohibits the creation of new Medicaid intergovernmental transfer programs after July 1, 2017, unless the Department of Health submits the intergovernmental transfer program for review as a new grant under the Federal Funds Procedures Act;
- ▶ establishes a requirement for the Department of Health to submit an annual report to the Executive Appropriations Committee regarding Medicaid intergovernmental transfer programs; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-8-90, as last amended by Laws of Utah 2003, Chapter 292

26-18-18, as last amended by Laws of Utah 2016, Chapter 279

63J-5-102, as last amended by Laws of Utah 2016, Chapter 272

63J-5-103, as last amended by Laws of Utah 2015, Chapter 190

ENACTS:

26-18-21, Utah Code Annotated 1953

63J-5-206, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 10-8-90 is amended to read:****10-8-90. Ownership and operation of hospitals.**

(1) Each city of the third, fourth, or fifth class and each town of the state is authorized to construct, own, and operate hospitals and to join with other cities, towns, and counties in the construction, ownership, and operation of hospitals.

(2) Beginning July 1, 2017, a hospital under Subsection (1) that owns a nursing care facility regulated under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and uses an intergovernmental transfer as that term is defined in Section 26-18-21 may not enter into a new agreement or arrangement to operate a nursing care facility in another city, town, or county without first entering into an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or other contract with the other city, town, or county to operate the nursing care facility.

Section 2. Section 26-18-18 is amended to read:**26-18-18. Optional Medicaid expansion.**

(1) For purposes of this section, "PPACA" means the same as that term is defined in Section 31A-1-301.

(2) The department and the governor shall not expand the state's Medicaid program to the optional population under PPACA unless:

(a) the governor or the governor's designee has reported the intention to expand the state Medicaid program under PPACA to the Legislature in compliance with the legislative review process in Sections 63N-11-106 and 26-18-3; and

(b) ~~[notwithstanding Subsection 63J-5-103(2),]~~ the governor submits the request for expansion of the Medicaid program for optional populations to the Legislature under the high impact federal funds request process required by Section 63J-5-204, Legislative review and approval of certain federal funds request.

(3) The department shall request approval from the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services for waivers from federal statutory and regulatory law necessary to implement the health coverage improvement program under Section 26-18-411. The health coverage improvement program under Section 26-18-411 is not Medicaid expansion for purposes of this section.

Section 3. Section 26-18-21 is enacted to read:**26-18-21. Medicaid intergovernmental transfer report.**

(1) As used in this section:

(a) (i) "Intergovernmental transfer" means the transfer of public funds from:

(A) a local government entity to another nonfederal governmental entity; or

(B) from a nonfederal, government owned health care facility regulated under Chapter 21, Health Care Facility Licensing and Inspection Act, to another nonfederal governmental entity.

(ii) “Intergovernmental transfer” does not include the transfer of public funds from one state agency to another state agency.

(b) “Intergovernmental transfer program” means a reimbursement category authorized by the Medicaid state plan or waiver authority for intergovernmental transfers.

(c) “Local government entity” means a county, city, town, special service district, or local education agency as that term is defined in Section 63J-5-102.

(2) (a) An entity that receives federal Medicaid dollars from the department as a result of an intergovernmental transfer shall, on or before August 1, 2017, and on or before August 1 each year thereafter, provide the department with:

(i) information regarding the payments funded with the intergovernmental transfer as authorized by and consistent with state and federal law;

(ii) the entity’s analysis of the entity’s ability to repay federal funds, to the extent required by the department in the contract for the intergovernmental transfer, if there is a federal disallowance of the intergovernmental transfer; and

(iii) other information required by the department in the contract for the intergovernmental transfer.

(b) On or before October 15, 2017, and on or before October 15 each year thereafter, the department shall prepare a report for the Executive Appropriations Committee that includes:

(i) the amount of each intergovernmental transfer under Subsection (2)(a);

(ii) the department’s analysis of the risk of a federal disallowance for the state; and

(iii) other information the department gathers about the intergovernmental transfer under Subsection (2)(a).

(3) The department shall not create a new intergovernmental transfer program after July 1, 2017, unless the department reports to the Executive Appropriations Committee, in accordance with Section 63J-5-206, before submitting the new intergovernmental transfer program for federal approval. The report shall include information required by Subsection 63J-5-102(1)(d) and the analysis required in Subsections (2)(a) and (b).

Section 4. Section 63J-5-102 is amended to read:

63J-5-102. Definitions.

(1) As used in this chapter:

(a) (i) “Agency” means a department, division, committee, commission, council, court, or other administrative subunit of the state.

(ii) “Agency” includes:

(A) executive branch entities;

(B) judicial branch entities; and

(C) the State Board of Education.

(iii) “Agency” does not mean higher education institutions or political subdivisions.

(b) (i) “Federal funds” means cash or other money received from the United States government or from other individuals or entities for or on behalf of the United States and deposited with the state treasurer or any agency of the state.

(ii) “Federal funds” includes federal assistance and federal assistance programs, however described.

(iii) “Federal funds” does not include money received from the United States government to reimburse the state for money expended by the state.

(c) “Federal funds reauthorization” means:

(i) the formal submission from an agency to the federal government applying for or seeking reauthorization of federal funds which the state is currently receiving;

(ii) the formal submission from an agency to the federal government applying for or seeking reauthorization to participate in a federal program in which the state is currently participating that will result in federal funds being transferred to an agency; or

(iii) that period after the first year of a previously authorized and awarded grant or funding award, during which federal funds are disbursed or are scheduled to be disbursed after the first year because the term of the grant or financial award extends for more than one year.

(d) (i) “Federal funds request summary” means a document detailing:

(A) the amount of money that is being requested or is available to be received by the state from the federal government for each federal funds reauthorization or new federal funds request;

(B) those federal funds reauthorizations and new federal funds requests that are included as part of the agency’s proposed budget for the fiscal year, and the amount of those requests;

(C) the amount of new state money, if any, that will be required to receive the federal funds or participate in the federal program;

(D) the number of additional permanent full-time employees, additional permanent part-time employees, or combination of additional permanent full-time employees and additional permanent part-time employees, if any, that the state estimates are needed in order to receive the

federal funds or participate in the federal program; and

(E) any requirements that the state must meet as a condition for receiving the federal funds or participating in the federal program.

(ii) "Federal funds request summary" includes, if available:

(A) the letter awarding an agency a grant of federal funds~~;~~ or ~~(B)~~ other official documentation awarding an agency a grant of federal funds~~;~~; and

(B) a document detailing federal maintenance of effort requirements.

(e) "Federal maintenance of effort requirements" means any matching, level of effort, or earmarking requirements, as defined in Office of Management and Budget requirements, that are imposed on an agency as a condition of receiving federal funds.

(f) "Local education agency" or "LEA" means:

(i) a school district;

(ii) a charter school; or

(iii) the Utah Schools for the Deaf and the Blind.

(g) "New federal funds" means:

(i) federal assistance or other federal funds that are available from the federal government that:

(A) the state is not currently receiving; or

(B) exceed the federal funds amount most recently approved by the Legislature by more than 25% for a federal grant or program in which the state is currently participating;

(ii) a federal assistance program or other federal program in which the state is not currently participating; or

(iii) a one-time TANF request.

(h) "New federal funds request" means:

(i) the formal submission from an agency to the federal government:

(A) applying for or otherwise seeking to obtain new federal funds; or

(B) applying for or seeking to participate in a new federal program that will result in federal funds being transferred to an agency; or

(ii) a one-time TANF request.

(i) (i) "New state money" means money, whether specifically appropriated by the Legislature or not, that the federal government requires Utah to expend as a condition for receiving the federal funds or participating in the federal program.

(ii) "New state money" includes money expended to meet federal maintenance of effort requirements.

(j) "One-time TANF request" means a proposed expenditure by the Department of Workforce Services from its reserves of federal Temporary Assistance for Needy Families funds:

(i) for a project or program that will last for a fixed amount of time and is not an ongoing project or program of the Department of Workforce Services; and

(ii) that is greater than \$1,000,000 over the amount most recently approved by the Legislature.

(k) (i) "Pass-through federal funds" means federal funds provided to an agency that are distributed to local governments or private entities without being used by the agency.

(ii) "Pass-through federal funds" does not include federal funds provided to the State Board of Education that are distributed to a local education agency or other subrecipient without being used by the State Board of Education.

(l) "State" means the state of Utah and all of its agencies, and any administrative subunits of those agencies.

(2) When this chapter describes an employee as a "permanent full-time employee" or a "permanent part-time employee," it is not intended to, and may not be construed to, affect the employee's status as an at-will employee.

Section 5. Section 63J-5-103 is amended to read:

63J-5-103. Scope and applicability of chapter.

(1) Except as provided in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to each agency and govern each federal funds request.

(2) (a) This chapter does not govern federal funds requests for:

~~(a)~~ (i) except as provided in Section 63J-5-206, the Medical Assistance Program, commonly known as Medicaid; and

~~(b)~~ (ii) except as provided in Section 63J-5-206, the Children's Health Insurance Program~~;~~.

(b) Until Subsections (2)(c) and (d) apply, this chapter does not govern federal funds requests for:

~~(e)~~ (i) the Women, Infant, and Children program;

~~(f)~~ (ii) the Temporary Assistance for Needy Families program, except for a one-time TANF request as defined in Section 63J-5-102;

~~(g)~~ (iii) Social Security Act money;

~~(h)~~ (iv) the Substance Abuse Prevention and Treatment program;

~~(i)~~ (v) Child Care and Development Block Grant;

~~(j)~~ (vi) SNAP Administration and Training money;

~~(k)~~ (vii) Unemployment Insurance Operations money;

~~(l)~~ (viii) Federal Highway Administration money;

~~[(4)]~~ (ix) the Utah National Guard; or

~~[(4)]~~ (x) pass-through federal funds.

(c) Federal funds requests described in Subsection (2)(b) are subject to the provisions of this chapter:

(i) beginning on January 1, 2018, for each agency that receives more than \$200,000,000 annually in federal funds; or

(ii) beginning on July 1, 2018, for each agency that receives \$200,000,000 or less annually in federal funds.

(d) Maintenance of effort reporting requirements described in Subsection 63J-5-102(1)(d)(ii)(B) may not be required until:

(i) January 1, 2018, for each agency that receives more than \$200,000,000 annually in federal funds; or

(ii) July 1, 2018, for each agency that receives \$200,000,000 or less annually in federal funds.

(3) The governor need not seek legislative review or approval of federal funds received by the state if:

(a) the governor has declared a state of emergency; and

(b) the federal funds are received to assist victims of the state of emergency under Section 53-2a-204.

Section 6. Section 63J-5-206 is enacted to read:

63J-5-206. Intergovernmental transfers for Medicaid.

(1) Subject to Subsections (2) and (3), an intergovernmental transfer program under Section 26-18-21 is subject to the same review provisions as a federal funds request under this chapter.

(2) Notwithstanding Subsection (1), if an intergovernmental transfer program created under Subsection 26-18-21(3) will result in the state receiving total payments of \$1,000,000 or more per year from the federal government, the intergovernmental transfer program is subject to the same review provisions as a high impact federal funds request in Subsections 63J-5-204(3), (4), and (5).

(3) Beginning on July 1, 2017, an intergovernmental transfer program created before July 1, 2017, is subject to the federal funds review process of Section 63J-5-201 for periods after July 1, 2017.

CHAPTER 248**H. B. 195**

Passed March 7, 2017

Approved March 22, 2017

Effective July 1, 2017

DISSOLUTION OF LOCAL DISTRICTS

Chief Sponsor: Justin L. Fawson
 Senate Sponsor: Jerry W. Stevenson

LONG TITLE**General Description:**

This bill modifies the procedure to dissolve a local district.

Highlighted Provisions:

This bill:

- ▶ reduces the threshold petitioners must reach to initiate a dissolution;
- ▶ modifies provisions regarding:
 - procedural and public hearing requirements for an administrative body;
 - required notice to the lieutenant governor regarding a dissolution;
 - recording a certification from the lieutenant governor;
 - payment of the costs of dissolution and the dissolved local district's debts and liabilities; and
 - distribution of remaining assets of a dissolved local district; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

17B-1-1303, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-1-1306, as renumbered and amended by Laws of Utah 2007, Chapter 329

17B-1-1308, as last amended by Laws of Utah 2016, Chapter 176

ENACTS:

17B-1-1309, Utah Code Annotated 1953

17B-1-1310, Utah Code Annotated 1953

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

Section 1. Section 17B-1-1303 is amended to read:**17B-1-1303. Initiation of dissolution process.**

The process to dissolve a local district may be initiated by:

(1) for an inactive local district:

(a) (i) for a local district whose board of trustees is elected by electors based on the acre-feet of water allotted to the land owned by the elector, a petition

signed by the owners of 25% of the acre-feet of water allotted to the land within the local district; or

(ii) for all other districts:

(A) a petition signed by the owners of private real property that:

(I) is located within the local district proposed to be dissolved;

(II) covers at least 25% of the private land area within the local district; and

(III) is equal in assessed value to at least 25% of the assessed value of all private real property within the local district; or

(B) a petition signed by registered voters residing within the local district proposed to be dissolved equal in number to at least 25% of the number of votes cast in the district for the office of governor at the last regular general election before the filing of the petition; or

(b) a resolution adopted by the administrative body; and

(2) for an active local district, a petition signed by:

(a) for a local district whose board of trustees is elected by electors based on the acre-feet of water allotted to the land owned by the elector, ~~a petition signed by~~ the owners of ~~[100%]~~ 33% of the acre-feet of water allotted to the land within the local district; ~~[or]~~

(b) for a local district created to acquire or assess a groundwater right for the development and execution of a groundwater management plan in coordination with the state engineer in accordance with Section 73-5-15, the owners of groundwater rights that:

(i) are diverted within the district; and

(ii) cover at least 33% of the total amount of groundwater diverted in accordance with the groundwater rights within the district as a whole; or

~~[(b)] (c)~~ for all other districts~~;~~:

(i) the owners of [100% of the] private real property that:

(A) is located within the local district proposed to be dissolved;

(B) covers at least 33% of the private land area within the local district; and

(C) is equal in assessed value to at least 25% of the assessed value of all private real property within the local district; or

(ii) [100%] 33% of registered voters residing within the local district proposed to be dissolved.

Section 2. Section 17B-1-1306 is amended to read:**17B-1-1306. Public hearing.**

(1) For each petition certified under Section 17B-1-1305 and each resolution ~~[adopted]~~ that an

administrative body adopts under Subsection 17B-1-1303(1)(b), the administrative body shall hold a public hearing on the proposed dissolution.

(2) ~~[Each]~~ The administrative body shall hold a public hearing under Subsection (1) ~~[shall be held]~~:

(a) no later than 45 days after certification of the petition under Section 17B-1-1305 or adoption of a resolution under Subsection 17B-1-1303(1)(b), as the case may be;

(b) within the local district proposed to be dissolved;

(c) on a weekday evening other than a holiday beginning no earlier than 6 p.m.; and

(d) for the purpose of allowing:

(i) the administrative body to explain the process the administrative body will follow to study and prepare the proposed dissolution;

(ii) the public to ask questions and obtain further information about the proposed dissolution and issues raised by it; and

(iii) any interested person to address the administrative body concerning the proposed dissolution.

(3) A quorum of the administrative body shall be present throughout each public hearing under this section.

Section 3. Section 17B-1-1308 is amended to read:

17B-1-1308. Second Public Hearing -- Dissolution resolution -- Limitations on dissolution.

~~[(1) After the public hearing required under Section 17B-1-1306 and subject to Subsection (2), the administrative body may adopt a resolution approving dissolution of the local district.]~~

(1) (a) Within 180 days after the day on which the administrative body holds the public hearing described in Section 17B-1-1306, the administrative body shall hold a second public hearing to:

(i) publicly explain the result of the study and preparation described in Subsection 17B-1-1306(2)(d)(i);

(ii) describe whether the proposed dissolution meets each criterion described in Subsection (2); and

(iii) adopt a resolution in accordance with Subsection (1)(b) or (c).

(b) Subject to Subsection (2), after a proposed dissolution petition has been certified under Section 17B-1-1305, the administrative body shall adopt a resolution:

(i) certifying that the proposed dissolution satisfies the criteria described in Subsection (2); and

(ii) (A) for an inactive local district, approving the dissolution of the local district; or

(B) for an active local district, initiating the dissolution election described in Section 17B-1-1309.

(c) Subject to Subsection (2), for a proposed dissolution of an inactive district that an administrative body initiates by adopting a resolution under Subsection 17B-1-1303(1)(b), the administrative body may adopt a resolution:

(i) certifying that the proposed dissolution satisfies the criteria described in Subsection (2); and

(ii) approving the dissolution of the inactive local district.

(2) [A] The administrative body may not adopt a resolution under Subsection (1) [may not be adopted] unless:

(a) any outstanding debt of the local district is:

(i) satisfied and discharged in connection with the dissolution; or

(ii) assumed by another governmental entity with the consent of all the holders of that debt and all the holders of other debts of the local district;

(b) for a local district that has provided service during the preceding three years or undertaken planning or other activity preparatory to providing service:

(i) another entity has committed to:

(A) provide the same service to the area being served or proposed to be served by the local district; and

(B) purchase, at fair market value, the assets of the local district that are required to provide the service; and

(ii) all who are to receive the service have consented to the service being provided by the other entity; and

(c) all outstanding contracts to which the local district is a party are resolved through mutual termination or the assignment of the local district's rights, duties, privileges, and responsibilities to another entity with the consent of the other parties to the contract.

~~[(3) (a) (i) Any assets of the local district remaining after paying all debts and other obligations of the local district shall be used to pay costs associated with the dissolution process under this part.]~~

~~[(ii) Any costs of the dissolution process remaining after exhausting the remaining assets of the local district under Subsection (3)(a)(i) shall be paid by the administrative body.]~~

~~[(b) Any assets of the local district remaining after application of Subsection (3)(a) shall be distributed.]~~

~~[(4) proportionately to the owners of real property within the dissolved local district if there is a~~

~~readily identifiable connection between a financial burden borne by the real property owners in the district and the remaining assets; or]~~

~~[(ii) except as provided in Subsection (3)(b)(i), to each county, city, town, or metro township in which the dissolved local district was located before dissolution in the same proportion that the land area of the local district located within the unincorporated area of the county or within the city, town, or metro township bears to the total local district land area.]~~

~~[(4) (a) The administrative body shall:]~~

~~[(i) within 30 days after adopting a resolution approving dissolution, file with the lieutenant governor a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and]~~

~~[(ii) upon the lieutenant governor's issuance of a certificate of dissolution under Section 67-1a-6.5:]~~

~~[(A) if the local district was located within the boundary of a single county, submit to the recorder of that county:]~~

~~[(I) the original:]~~

~~[(Aa) notice of an impending boundary action; and]~~

~~[(Bb) certificate of dissolution; and]~~

~~[(II) a certified copy of the resolution adopted under Subsection (1); or]~~

~~[(B) if the local district was located within the boundaries of more than a single county:]~~

~~[(I) submit to the recorder of one of those counties:]~~

~~[(Aa) the original of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa) and (Bb); and]~~

~~[(Bb) a certified copy of the resolution adopted under Subsection (1); and]~~

~~[(II) submit to the recorder of each other county:]~~

~~[(Aa) a certified copy of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa) and (Bb); and]~~

~~[(Bb) a certified copy of the resolution adopted under Subsection (1).]~~

~~[(b) Upon the lieutenant governor's issuance of the certificate of dissolution under Section 67-1a-6.5, the local district is dissolved.]~~

Section 4. Section 17B-1-1309 is enacted to read:

17B-1-1309. Election to dissolve an active local district.

(1) When an administrative body adopts a resolution to initiate a dissolution election under Subsection 17B-1-1308(1)(b)(ii), an election shall be held on the question of whether the local district should be dissolved by:

(a) if the local district proposed to be dissolved is located entirely within a single county, the local district clerk, in cooperation with the county clerk; or

(b) if the local district proposed to be dissolved is located within more than one county, in cooperation with the local district clerk:

(i) the clerk of each county where part of the local district is located in more than one municipality or in an unincorporated area within the same county;

(ii) the clerk or recorder of each municipality where part of the local district is not located in another municipality or in an unincorporated area within the same county; and

(iii) the clerk of each county where part of the local district is located only in an unincorporated area within the county.

(2) Each election under Subsection (1) shall be held at the next special or regular general election that is more than 60 days after the day on which the administrative body adopts a resolution in accordance with Section 17B-1-1308.

(3) (a) If the local district proposed to be dissolved is located in more than one county, the local district clerk shall coordinate with the officials described in Subsection (1)(b) to ensure that the election is held on the same date and in a consistent manner in each jurisdiction.

(b) The clerk of each county and the clerk or recorder of each municipality involved in an election under Subsection (1) shall cooperate with the local district clerk in holding the election.

(4) If the local district proposed to be dissolved is an irrigation district under Title 17B, Chapter 2a, Part 5, Irrigation District Act:

(a) the electors shall consist of the landowners whose land has allotments of water through the district; and

(b) each elector may cast one vote for each acre-foot or fraction of an acre-foot of water allotted to the land the elector owns within the district.

(5) If the local district proposed to be dissolved is a district created to acquire or assess a groundwater right for the development and execution of a groundwater management plan in accordance with Section 73-5-15:

(a) the electors shall consist of the owners of groundwater rights within the district; and

(b) each elector may cast one vote for each acre-foot or fraction of an acre-foot of groundwater that is within the district and reflected in the elector's water right.

(6) If the local district proposed to be dissolved is a basic local district, except for a district described in Subsection (5), and if the area of the basic local district contains less than one residential unit per 50 acres of land at the time of the filing of a petition described in Subsection 17B-1-1303(2):

(a) the electors shall consist of the owners of privately owned real property within a basic local district under Title 17B, Chapter 1, Part 14, Basic Local District; and

(b) each elector may cast one vote for each acre or fraction of an acre of land that the elector owns within the district.

(7) Except as otherwise provided in this part, Title 20A, Election Code, governs each election under Subsection (1).

Section 5. Section 17B-1-1310 is enacted to read:

17B-1-1310. Notice to lieutenant governor -- Recording requirements -- Distribution of remaining assets.

(1) The administrative body, shall file with the lieutenant governor a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3):

(a) within 30 days after the day on which the administrative body adopts a resolution approving the dissolution of an inactive local district; or

(b) within 30 days after the day on which a majority of the voters within an active local district approve the dissolution of the local district in an election described in Subsection 17B-1-1309(2).

(2) Upon the lieutenant governor's issuance of a certificate of dissolution under Section 67-1a-6.5, the administrative body shall:

(a) if the local district was located within the boundary of a single county, submit to the recorder of that county:

(i) the original:

(A) notice of an impending boundary action; and

(B) certificate of dissolution; and

(ii) a certified copy of the resolution that the administrative body adopts under Subsection 17B-1-1308(1); or

(b) if the local district was located within the boundaries of more than a single county:

(i) submit to the recorder of one of those counties:

(A) the original notice of an impending boundary action and certificate of dissolution; and

(B) if applicable, a certified copy of the resolution that the administrative body adopts under Subsection 17B-1-1308(1); and

(ii) submit to the recorder of each other county:

(A) a certified copy of the notice of an impending boundary action and certificate of dissolution; and

(B) if applicable, a certified copy of the resolution that the administrative body adopts under Subsection 17B-1-1308(1).

(3) Upon the lieutenant governor's issuance of the certificate of dissolution under Section 67-1a-6.5, the local district is dissolved.

(4) (a) After the dissolution of a local district under this part, the administrative body shall use any assets of the local district remaining after paying all debts and other obligations of the local district to pay costs associated with the dissolution process.

(b) If the administrative body is not the board of trustees of the dissolved local district, the administrative body shall pay any costs of the dissolution process remaining after exhausting the remaining assets of the local district as described in Subsection (4)(a).

(c) If the administrative body is the board of trustees of the dissolved local district, each entity that has committed to provide a service that the dissolved local district previously provided, as described in Subsection 17B-1-1308(2)(b), shall pay, in the same proportion that the services the entity commits to provide bear to all of the services the local district provided, any costs of the dissolution process remaining after exhausting the remaining assets of the dissolved local district described in Subsection (4)(a).

(5) (a) The administrative body shall distribute any assets of the local district that remain after the payment of debts, obligations, and costs under Subsection (4) in the following order of priority:

(i) if there is a readily identifiable connection between the remaining assets and a financial burden borne by the real property owners in the dissolved local district, proportionately to those real property owners;

(ii) if there is a readily identifiable connection between the remaining assets and a financial burden borne by the recipients of a service that the dissolved local district provided, proportionately to those recipients; and

(iii) subject to Subsection (6), to each entity that has committed to provide a service that the dissolved local district previously provided, as described in Subsection 17B-1-1309(1)(b)(ii), in the same proportion that the services the entity commits to provide bear to all of the services the local district provided.

(6) An entity that receives cash reserves of the dissolved local district under Subsection (5)(a)(iii) may not use the cash reserves:

(a) in any way other than for the purpose the local district originally intended; or

(b) in any area other than within the area that the dissolved local district previously served.

Section 6. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 249**H. B. 200**

Passed March 7, 2017
 Approved March 22, 2017
 Effective May 9, 2017

**SEXUAL ASSAULT KIT
 PROCESSING AMENDMENTS**

Chief Sponsor: Angela Romero
 Senate Sponsor: Todd Weiler
 Cosponsors: Patrice M. Arent
 Joel K. Briscoe
 Rebecca Chavez-Houck
 Steve Eliason
 Craig Hall
 Lynn N. Hemingway
 Sandra Hollins
 Brian S. King
 Karen Kwan
 Carol Spackman Moss
 Michael E. Noel
 Derrin R. Owens
 Lee B. Perry
 Val K. Potter
 Marie H. Poulson
 Edward H. Redd
 V. Lowry Snow
 Elizabeth Weight
 Mark A. Wheatley
 Mike Winder

LONG TITLE**General Description:**

This bill modifies provisions of the criminal code regarding the testing of sexual assault kits.

Highlighted Provisions:

This bill:

- ▶ requires that all sexual assault kits, except for those classified as restricted kits, be tested to obtain DNA profiles;
- ▶ provides that testing of a sexual assault kit be completed within a specified amount of time;
- ▶ provides the process by which sexual assault kits shall be stored and transmitted for testing;
- ▶ provides that a sexual assault kit shall be classified as a restricted kit if the victim chooses not to interview with law enforcement about the sexual assault or sexual abuse;
- ▶ provides the guidelines and process for the retention and disposal of sexual assault kits;
- ▶ requires medical personnel who conduct sexual assault examinations to inform each victim of specified rights, available treatments, and services;
- ▶ authorizes the Department of Public Safety to develop and implement a statewide sexual assault kit tracking system;
- ▶ requires the Department of Public Safety and the Utah Prosecution Council to develop and offer training to law enforcement officers on responding to cases of sexual assault or sexual abuse;
- ▶ requires the Peace Officers Standards and Training division to provide training to persons seeking certification as a peace officer on sexual assault and sexual abuse;

- ▶ provides rulemaking authority for the Department of Public Safety to implement the tracking system, establish the timelines for processing sexual assault kits, and the submission of information for each sexual assault kit; and
- ▶ requires the Department of Public Safety to report to the Law Enforcement and Criminal Justice Interim Committee each year regarding the processing of sexual assault kits.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

76-5-601, Utah Code Annotated 1953
 76-5-602, Utah Code Annotated 1953
 76-5-603, Utah Code Annotated 1953
 76-5-604, Utah Code Annotated 1953
 76-5-605, Utah Code Annotated 1953
 76-5-606, Utah Code Annotated 1953
 76-5-607, Utah Code Annotated 1953
 76-5-608, Utah Code Annotated 1953
 76-5-609, Utah Code Annotated 1953
 76-5-610, Utah Code Annotated 1953

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

Section 1. Section 76-5-601 is enacted to read:**Part 6. Sexual Assault Kit Processing Act****76-5-601. Title.**

This part is known as the "Sexual Assault Kit Processing Act".

Section 2. Section 76-5-602 is enacted to read:**76-5-602. Definitions.**

For purposes of this part:

(1) "Collecting facility" means a hospital, health care facility, or other facility that performs sexual assault examinations.

(2) "Department" means the Department of Public Safety.

(3) "Evidence-based, trauma-informed, victim-centered" means policies, procedures, programs, and practices that:

(a) have demonstrated an ability to minimize retraumatization associated with the criminal justice process by recognizing the presence of trauma symptoms and acknowledging the role that trauma has played in the life of a victim of sexual assault or sexual abuse; and

(b) encourage law enforcement officers to interact with victims of sexual assault or sexual abuse with compassion and sensitivity in a nonjudgmental manner.

(4) "Restricted kit" means a sexual assault kit:

(a) that is collected by a collecting facility; and

(b) for which a victim who is 18 years of age or older chooses not to provide a personal statement

about the sexual assault to law enforcement, as provided in Subsection 76-5-606(1)(d).

(5) "Sexual assault kit" means a package of items that is used by medical personnel to gather and preserve biological and physical evidence following an allegation of sexual assault.

Section 3. Section 76-5-603 is enacted to read:

76-5-603. All sexual assault kits to be submitted.

(1) Except as provided in Subsection 76-5-604(4), beginning July 1, 2018, all sexual assault kits received by law enforcement agencies shall be submitted to the Utah Bureau of Forensic Services in accordance with the provisions of this part.

(2) The Utah Bureau of Forensic Services shall test all sexual assault kits that the bureau receives with the goal of developing autosomal DNA profiles that are eligible for entry into the Combined DNA Index System.

(3) (a) The testing of all sexual assault kits shall be completed within a specified amount of time, as determined by administrative rule consistent with the provisions of this part.

(b) The ability of the Utah Bureau of Forensic Services to meet the established time frames may be dependent upon the following factors:

(i) the number of sexual assault kits that the Utah Bureau of Forensic Services receives;

(ii) the technology available and improved testing methods;

(iii) fully trained and dedicated staff to meet the full workload needs of the Utah Bureau of Forensic Services; and

(iv) the number of lab requests received relating to other crime categories.

Section 4. Section 76-5-604 is enacted to read:

76-5-604. Sexual assault kit processing -- Restricted kits.

(1) The collecting facility shall enter the required victim information into the statewide sexual assault kit tracking system, defined in Section 76-5-607, within 24 hours of performing a sexual assault examination.

(2) Each sexual assault kit collected by medical personnel shall be taken into custody by a law enforcement agency as soon as possible and within one business day of notice from the collecting facility.

(3) The law enforcement agency that receives a sexual assault kit shall enter the required information into the statewide sexual assault kit tracking system, provided in Section 76-5-607, within five business days of receiving a sexual assault kit from a collecting facility.

(4) Each sexual assault kit received by a law enforcement agency from a collecting facility that relates to an incident that occurred outside of the jurisdiction of the law enforcement agency shall be transferred to the law enforcement agency with jurisdiction over the incident within 10 days of learning that another law enforcement agency has jurisdiction.

(5) (a) Except for restricted kits, each sexual assault kit shall be submitted to the Utah Bureau of Forensic Services as soon as possible, but no later than 30 days after receipt by a law enforcement agency.

(b) Restricted kits may not be submitted to the Utah Bureau of Forensic Services.

(c) Restricted kits shall be maintained by the law enforcement agency with jurisdiction, in accordance with the provisions of this part.

(d) If a victim chooses to provide a personal statement about the sexual assault or sexual abuse to law enforcement at any time after declining to provide a statement:

(i) the restricted kit shall no longer be classified as restricted; and

(ii) the sexual assault kit shall be transmitted to the Utah Bureau of Forensic Services as soon as possible, but no later than 30 days after the victim chooses to provide a statement to law enforcement.

(6) If available, a suspect standard or a consensual partner elimination standard shall be submitted to the Utah Bureau of Forensic Services:

(a) with the sexual assault kit, if available, at the time the sexual assault kit is submitted; or

(b) as soon as possible, but no later than 30 days from the date the kit was obtained by the law enforcement agency, if not obtained until after the sexual assault kit is submitted.

(7) Failure to meet a deadline established in this part or as part of any rules established by the department is not a basis for dismissal of a criminal action or a bar to the admissibility of the evidence in a criminal action.

Section 5. Section 76-5-605 is enacted to read:

76-5-605. Sexual assault kit retention and disposal.

Any item of evidence gathered by collecting facility personnel, law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant may not be disposed of before trial of a criminal defendant unless:

(1) 50 years have passed from the date of evidence collection for sexual assault kits relating to an uncharged or unresolved crime; or

(2) 20 years have passed from the date of evidence collection for restricted kits, and:

(a) the prosecution has determined that the defendant will not be tried for the criminal offense;

(b) the prosecution has filed a motion with the court to destroy the evidence; and

(c) an attempt has been made to notify the victim as required in Subsections 77-37-3(3)(b)(i) and (ii).

Section 6. Section 76-5-606 is enacted to read:

76-5-606. Victim notification of rights -- Notification of law enforcement.

(1) Collecting facility personnel who conduct sexual assault examinations shall inform each victim of a sexual assault of:

(a) available services for treatment of sexually transmitted infections, pregnancy, and other medical and psychiatric conditions;

(b) available crisis intervention or other mental health services provided;

(c) the option to receive prophylactic medication to prevent sexually transmitted infections and pregnancy;

(d) the right to determine:

(i) whether to provide a personal statement about the sexual assault to law enforcement; and

(ii) if law enforcement should have access to any paperwork from the forensic examination; and

(e) the victim's rights as provided in Section 77-37-3.

(2) The collecting facility shall notify law enforcement as soon as practicable if the victim of a sexual assault decides to interview and discuss the assault with law enforcement.

(3) If a victim of a sexual assault declines to provide a personal statement about the sexual assault to law enforcement, the collecting facility shall provide a written notice to the victim that contains the following information:

(a) where the sexual assault kit will be stored;

(b) notice that the victim may choose to contact law enforcement any time after declining to provide a personal statement;

(c) the name, phone number, and email address of the law enforcement agency having jurisdiction; and

(d) the name and phone number of a local rape crisis center.

Section 7. Section 76-5-607 is enacted to read:

76-5-607. Statewide sexual assault kit tracking system.

(1) The department shall develop and implement a statewide tracking system by July 1, 2018, that contains the following information for all sexual assault kits collected by law enforcement:

(a) the submission status of sexual assault kits by law enforcement to the Utah Bureau of Forensic Services;

(b) notification by the Utah Bureau of Forensic Services to law enforcement of DNA analysis findings; and

(c) the storage location of sexual assault kits.

(2) The tracking system shall include a secure electronic access that allows the submitting agency, collecting facility, department, and a victim, or his or her designee, to access or receive information, provided that the disclosure does not impede or compromise an active investigation, about the:

(a) lab submission status;

(b) DNA analysis findings provided to law enforcement; and

(c) storage location of a sexual assault kit that was gathered from that victim.

Section 8. Section 76-5-608 is enacted to read:

76-5-608. Law enforcement -- Training -- Sexual assault and sexual abuse.

(1) The department and the Utah Prosecution Council shall develop training in trauma-informed responses and investigations of sexual assault and sexual abuse, which include, but are not limited to, the following:

(a) recognizing the symptoms of trauma;

(b) understanding the impact of trauma on a victim;

(c) responding to the needs and concerns of a victim of sexual assault or sexual abuse;

(d) delivering services to victims of sexual assault or sexual abuse in a compassionate, sensitive, and nonjudgmental manner;

(e) understanding cultural perceptions and common myths of sexual assault and sexual abuse; and

(f) techniques of writing reports in accordance with Subsection (5).

(2) (a) The department and the Utah Prosecution Council shall offer the training in Subsection (1) to all certified law enforcement officers in the state of Utah by July 1, 2018.

(b) The training for all law enforcement officers may be offered through an online course, developed by the department and the Utah Prosecution Council.

(3) The training listed in Subsection (1) shall be offered by the Peace Officer Standards and Training division to all persons seeking certification as a peace officer, beginning July 1, 2018.

(4) (a) The department and the Utah Prosecution Council shall develop and offer an advanced training course by July 1, 2018, for officers who investigate cases of sexual assault or sexual abuse.

(b) The advanced training course shall include:

- (i) all criteria listed in Subsection (1); and
- (ii) interviewing techniques in accordance with the curriculum standards in Subsection (5).

(5) The department shall consult with the Utah Prosecution Council to develop the specific training requirements of this section, including evidence-based curriculum standards for report writing and response to sexual assault and sexual abuse, including trauma-informed and victim-centered interview techniques, which have been demonstrated to minimize retraumatizing victims.

Section 9. Section 76-5-609 is enacted to read:

76-5-609. Rulemaking authority.

After consultation with the Utah Bureau of Forensic Services and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules, consistent with this part, regarding:

- (1) the procedures for the submission and testing of all sexual assault kits collected by law enforcement and prosecutorial agencies in the state;
- (2) the information and evidence that is required to be submitted as part of each sexual assault kit submission; and
- (3) goals for the completion of analysis and classification of all sexual assault kit submissions.

Section 10. Section 76-5-610 is enacted to read:

76-5-610. Reporting requirement.

The Department of Public Safety and the Utah Bureau of Forensic Services shall report by July 31 of each year to the Law Enforcement and Criminal Justice Interim Committee and the Executive Offices and Criminal Justice Appropriations Subcommittee regarding:

- (1) the timelines set for testing all sexual assault kits submitted to the Utah Bureau of Forensic Services as provided in Subsection 76-5-603(2);
- (2) the goals established in Section 76-5-609;
- (3) the status of meeting those goals;
- (4) the number of sexual assault kits that are sent to the Utah Bureau of Forensic Services for testing;
- (5) the number of restricted kits held by law enforcement;
- (6) the number of sexual assault kits that are not processed in accordance with the timelines established in this part; and
- (7) future appropriations requests that will ensure that all DNA cases can be processed according to the timelines established by this part.

CHAPTER 250**H. B. 204**

Passed March 9, 2017

Approved March 22, 2017

Effective May 9, 2017

PRESIDENTIAL PRIMARY AMENDMENTS

Chief Sponsor: Patrice M. Arent
Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill requires that the state hold a presidential primary election every four years.

Highlighted Provisions:

This bill:

- ▶ requires the Legislature to fund a presidential primary election; and
- ▶ permits a political party to participate in a presidential primary election.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to the Office of the Governor - Office of the Lieutenant Governor, as an ongoing, nonlapsing appropriation:
 - from the General Fund, \$100,000, subject to intent language stating that the appropriation be spent for a presidential primary election.

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

20A-9-810, Utah Code Annotated 1953

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

Section 1. Section 20A-9-810 is enacted to read:**20A-9-810. Presidential primary required.**

(1) A presidential primary election shall be held each year in which a presidential election will be held.

(2) A registered political party that wishes to nominate a presidential candidate for the general election may participate in a presidential primary election conducted under this section.

(3) The Legislature shall appropriate sufficient funds to administer each presidential primary election conducted under this section.

Section 2. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To the Office of the Governor

From General Fund \$100,000

Schedule of Programs:

Office of the Lieutenant Governor \$100,000

(1) The Legislature intends that the Office of the Lieutenant Governor:

(a) use the funds appropriated under this Item (1) for the administration of a presidential primary election conducted under Section 20A-9-810;

(b) prioritize the distribution of the funds appropriated under this Item (1) for use by counties in the administration of a presidential primary election; and

(c) expend funds not distributed to counties under Subsection (1)(b) for the administration of a presidential primary election, including for the training of election officials and voter outreach.

(2) Funds appropriated under this Item (1) are nonlapsing.

CHAPTER 251**H. B. 218**

Passed February 16, 2017

Approved March 22, 2017

Effective May 9, 2017

POLL LOCATION AMENDMENTS

Chief Sponsor: Craig Hall
Senate Sponsor: Wayne A. Harper

LONG TITLE**General Description:**

This bill allows an election officer to establish an early voting polling place or an election day voting center after certain statutory deadlines.

Highlighted Provisions:

This bill:

- ▶ allows an election officer to establish an early voting center or an election day voting center after certain statutory deadlines have passed if certain conditions are met;
- ▶ amends requirements for an election notice, and the voter information pamphlet, regarding certain polling location information; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 11-14-202, as last amended by Laws of Utah 2014, Chapter 325
20A-3-603, as last amended by Laws of Utah 2013, Chapter 182
20A-3-604, as last amended by Laws of Utah 2013, Chapter 182
20A-3-703, as enacted by Laws of Utah 2011, Chapter 291
20A-5-101, as last amended by Laws of Utah 2016, Chapter 23
20A-7-702, as last amended by Laws of Utah 2016, Chapter 348

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

Section 1. Section 11-14-202 is amended to read:**11-14-202. Notice of election -- Contents -- Publication -- Mailing.**

(1) The governing body shall ensure that notice of the election is provided:

(a) once per week during three consecutive weeks by publication in a newspaper having general circulation in the local political subdivision in accordance with Section 11-14-316, the first publication occurring not less than 21 nor more than 35 days before the election;

(b) on a website, if available, in accordance with Section 45-1-101 for the three weeks that immediately precede the election; and

(c) in a local political subdivision where there is no newspaper of general circulation, by posting notice of the bond election in at least five public places in the local political subdivision at least 21 days before the election.

(2) When the debt service on the bonds to be issued will increase the property tax imposed upon the average value of a residence by an amount that is greater than or equal to \$15 per year, the governing body shall prepare and mail either a voter information pamphlet or a notification described in Subsection (6):

(a) at least 15 days but not more than 45 days before the bond election;

(b) to each household containing a registered voter who is eligible to vote on the bonds; and

(c) that includes the information required by Subsections (3) and (4).

~~[(3) The notice and voter information pamphlet required by this section]~~

(3) (a) Except as provided in Subsection (3)(b), the notice described in Subsection (1) shall include:

~~[(a) (i) the date [and place] of the election;~~

~~[(b) (ii) the hours during which the polls will be open; [and]~~

(iii) the location of each polling place or the address of a website that lists the location of each polling place; and

~~[(c) (iv) the title and text of the ballot proposition.~~

(b) The notice described in Subsection (3)(a) is not required to include information regarding an additional:

(i) early voting polling place designated for which notice is provided, in accordance with Subsection 20A-3-603(2); or

(ii) election day voting center designated for which notice is provided, in accordance with Subsection 20A-3-703(2).

(4) The voter information pamphlet required by this section shall include:

(a) the information required by Subsection (3); and

(b) an explanation of the property tax impact, if any, of the issuance of the bonds, which may be based on information the governing body determines to be useful, including:

(i) expected debt service on the bonds to be issued;

(ii) a description of the purpose, remaining principal balance, and maturity date of any outstanding general obligation bonds of the issuer;

(iii) funds other than property taxes available to pay debt service on general obligation bonds;

(iv) timing of expenditures of bond proceeds;

(v) property values; and

(vi) any additional information that the governing body determines may be useful to explain the property tax impact of issuance of the bonds.

(5) The governing body shall pay the costs associated with the notice required by this section.

(6) (a) The governing body may mail a notice printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail.

(b) The notice described in Subsection (6)(a) shall include:

(i) the website upon which the voter information pamphlet is available; and

(ii) the phone number a voter may call to request delivery of a voter information pamphlet by mail.

(7) A local school board shall comply with the voter information pamphlet requirements described in Section 53A-18-102.

Section 2. Section 20A-3-603 is amended to read:

20A-3-603. Early voting polling places.

(1) Except as provided in Section 20A-1-308, the election officer shall designate one or more polling places for early voting, provided that:

(a) at least one polling place is open on each day that polls are open during the early voting period;

(b) each polling place meets the requirements for polling places under Chapter 5, Election Administration;

(c) for all elections other than local special elections, municipal primary elections, and municipal general elections, at least 10% of the voting devices at a polling place are accessible for individuals with disabilities in accordance with Public Law 107-252, the Help America Vote Act of 2002; and

(d) each polling place is located in a government building or office, unless the election officer determines that, in the area designated by the election officer, there is no government building or office available that:

(i) can be scheduled for use during early voting hours;

(ii) has the physical facilities necessary to accommodate early voting requirements;

(iii) has adequate space for voting equipment, poll workers, and voters; and

(iv) has adequate security, public accessibility, and parking.

(2) (a) Except as provided in Section 20A-1-308, ~~[in the event]~~ if the election officer determines, after the deadline described in Section 20A-3-604, that the number of early voting polling places is insufficient ~~[due to the number of registered voters who are voting]~~, the election officer may designate additional early voting polling places ~~[during the early voting period]~~.

(b) Except as provided in Section 20A-1-308, if an additional early voting polling place is designated under Subsection (2)(a), the election officer shall, as soon as is reasonably possible, give notice of the designation and the dates, times, and location of the ~~[additional]~~ polling place ~~[by]~~:

~~(i) publishing the notice;~~

~~[(A) in one issue of a newspaper of general circulation in the county; and]~~

~~[(B) as required in Section 45-1-101; and]~~

(i) to the lieutenant governor, for posting on the Statewide Electronic Voter Information Website;

(ii) on the election officer's website, if available; and

~~[(ii)]~~ (iii) by posting [the] a notice at the additional polling place.

(3) Except as provided in Section 20A-1-308, for each regular general election and regular primary election, counties of the first class shall ensure that the early voting polling places are approximately proportionately distributed based on population within the county.

Section 3. Section 20A-3-604 is amended to read:

20A-3-604. Notice of time and place of early voting.

Except as provided in Section 20A-1-308 or Subsection 20A-3-603(2), the election officer shall, at least five days before the day on which early voting begins, give notice of the dates, times, and locations of early voting by:

(1) publishing the notice:

(a) in one issue of a newspaper of general circulation in the county ~~[at least five calendar days before the date that early voting begins]; and~~

(b) in accordance with Section 45-1-101, ~~[at least five calendar days before the date that early voting begins]; and~~

(2) posting the notice at each early voting polling place ~~[at least five calendar days before the date early voting begins].~~

Section 4. Section 20A-3-703 is amended to read:

20A-3-703. Election day voting centers as polling places -- Location -- Notification.

(1) The election officer may designate ~~[one or more polling places]~~ a polling place as an election day voting center if:

~~[(1)]~~ (a) except as provided in Subsection (2), the election officer notifies the lieutenant governor of the designation and location of ~~[an election day voting center]~~ the polling place at least 15 days before the election;

~~[(2) — a]~~ (b) the polling place meets the requirements for a polling place under Chapter 5, Election Administration; and

~~[(3) — a]~~ (c) the polling place is located in a government building or office, unless the election

officer determines that there is no government building or office available, in the area designated by the election officer, that:

~~(a)~~ (i) can be scheduled for use during election day voting hours;

~~(b)~~ (ii) has the physical facilities necessary to accommodate election day voting requirements;

~~(c)~~ (iii) has adequate space for voting equipment, poll workers, and voters; and

~~(d)~~ (iv) has adequate security, public accessibility, and parking.

(2) (a) An election officer may designate a polling place as an election day voting center after the deadline described in Subsection (1)(a) if, after the deadline described in Subsection (1)(a), the election officer determines that there will be an insufficient number of election day voting centers.

(b) An election officer who designates a polling place as an election day voting center under Subsection (2)(a) shall provide notice of the designation and location of the polling place as soon as reasonably possible:

(i) to the lieutenant governor, for posting on the Statewide Electronic Voter Information Website;

(ii) on the election officer's website, if available; and

(iii) by posting a notice at the polling place.

Section 5. Section 20A-5-101 is amended to read:

20A-5-101. Notice of election.

(1) On or before November 15 in the year before each regular general election year, the lieutenant governor shall prepare and transmit a written notice to each county clerk that:

(a) designates the offices to be filled at the next year's regular general election;

(b) identifies the dates for filing a declaration of candidacy, and for submitting and certifying nomination petition signatures, as applicable, under Sections 20A-9-403, 20A-9-407, and 20A-9-408 for those offices;

(c) includes the master ballot position list for the next year and the year following as established under Section 20A-6-305; and

(d) contains a description of any ballot propositions to be decided by the voters that have qualified for the ballot as of that date.

(2) (a) No later than seven business days after the day on which the lieutenant governor transmits the written notice described in Subsection (1), each county clerk shall:

(i) publish a notice:

(A) once in a newspaper published in that county; and

(B) as required in Section 45-1-101; or

(ii) (A) cause a copy of the notice to be posted in a conspicuous place most likely to give notice of the election to the voters in each voting precinct within the county; and

(B) prepare an affidavit of that posting, showing a copy of the notice and the places where the notice was posted.

(b) The notice required by Subsection (2)(a) shall:

(i) designate the offices to be voted on in that election; and

(ii) identify the dates for filing a declaration of candidacy for those offices.

(3) Before each election, the election officer shall give printed notice of the following information, or printed notice of a website where the following information can be obtained:

(a) the date ~~and place~~ of election;

(b) the hours during which the polls will be open;

(c) the polling places for each voting precinct;

(d) (i) ~~an~~ the location of each early voting polling place designated under Subsection 20A-3-603(1) and each election day voting center designated under ~~Section~~ Subsection 20A-3-703(1); and

(ii) the address of a website where any additional polling places, designated under Subsection 20A-3-603(2) or 20A-3-703(2), will be posted; and

(e) the qualifications for persons to vote in the election.

(4) To provide the printed notice described in Subsection (3), the election officer shall:

(a) publish the notice at least two days before election day:

(i) in a newspaper of general circulation common to the area to which the election pertains; and

(ii) as required in Section 45-1-101; or

(b) mail the notice to each registered voter who resides in the area to which the election pertains at least five days before election day.

Section 6. Section 20A-7-702 is amended to read:

20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than 10 point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before the date of the election;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets;

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor and a copy of the fiscal impact estimate prepared according to Section 20A-7-202.5; and

(vii) for each referendum qualified for the ballot, a complete copy of the text of the law being submitted to the voters for their approval or rejection, with all new language underlined and all deleted language placed within brackets, as applicable;

(h) a description provided by the Judicial Performance Evaluation Commission of the selection and retention process for judges, including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria of the judicial performance evaluation and the minimum performance standards;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) a list of the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) a narrative concerning the judge's performance;

(D) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(E) a statement identifying whether or not the Judicial Performance Evaluation Commission recommends the judge be retained or declines to make a recommendation and the number of votes for and against the commission's recommendation;

(F) any statement provided by a judge who is not recommended for retention by the Judicial Performance Evaluation Commission under Section 78A-12-203;

(G) in a bar graph, the average of responses to each survey category, displayed with an identification of the minimum acceptable score as set by Section 78A-12-205 and the average score of all judges of the same court level; and

(H) a website address that contains the Judicial Performance Evaluation Commission's report on the judge's performance evaluation;

(i) for each judge, a statement provided by the Utah Supreme Court identifying the cumulative number of informal reprimands, when consented to by the judge in accordance with Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution, Article VIII, Section 13, during the judge's current term and the immediately preceding term, and a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received;

(j) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(k) voter registration information, including information on how to obtain an absentee ballot;

(l) a list of all county clerks' offices and phone numbers; ~~and~~

(m) a statement indicating that the location of any additional early voting polling place designated under Subsection 20A-3-603(2) or election day voting center designated under Subsection 20A-3-703(2) will be posted on the Statewide Electronic Voter Information Website; and

~~(n)~~ (n) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

“I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law.

SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)
(signed) _____

Lieutenant Governor”

(3) No earlier than 75 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall:

(a) (i) distribute one copy of the voter information pamphlet to each household within the state;

(ii) distribute to each household within the state a notice:

(A) printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail;

(B) that states the address of the Statewide Electronic Voter Information Website authorized by Section 20A-7-801; and

(C) that states the phone number a voter may call to request delivery of a voter information pamphlet by mail; or

(iii) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

(4) The lieutenant governor may distribute a voter information pamphlet at a location frequented by a person who cannot easily access the Statewide Electronic Voter Information Website authorized by Section 20A-7-801.

CHAPTER 252**H. B. 219**

Passed March 7, 2017

Approved March 22, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

RURAL TAX CREDIT AMENDMENTS

Chief Sponsor: Scott D. Sandall

Senate Sponsor: Ralph Okerlund

LONG TITLE**General Description:**

This bill modifies provisions related to state tax credits in an enterprise zone.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a state nonrefundable tax credit for certain contributions to a nonprofit corporation related to an approved project in an enterprise zone;
- ▶ provides the requirements for the Governor's Rural Partnership Board and the Governor's Office of Economic Development to approve a project in an enterprise zone; and
- ▶ provides the requirements for receiving a tax credit certificate from the Governor's Office of Economic Development related to a contribution to a nonprofit corporation in an enterprise zone for an approved project.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

63C-10-103, as last amended by Laws of Utah 2014, Chapter 259

63N-2-203, as last amended by Laws of Utah 2016, Chapter 11

ENACTS:

59-7-614.11, Utah Code Annotated 1953

59-10-1038, Utah Code Annotated 1953

63N-2-213.5, Utah Code Annotated 1953

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

Section 1. Section 59-7-614.11 is enacted to read:**59-7-614.11. Nonrefundable nonprofit contribution tax credit.**

(1) As used in this section, "office" means the Governor's Office of Economic Development created in Section 63N-1-201.

(2) Subject to the provisions of this section, a taxpayer that is a corporation may claim a nonrefundable nonprofit contribution tax credit if the taxpayer meets the requirements for the tax credit described in Section 63N-2-213.5.

(3) The nonprofit contribution tax credit under this section is the amount listed as the tax credit

amount on the tax credit certificate that the office issues to the taxpayer for the taxable year.

(4) A taxpayer may carry forward a tax credit under this section for a period that does not exceed the next three taxable years, if the amount of the tax credit exceeds the taxpayer's tax liability under this chapter for that taxable year.

(5) (a) On or before October 1, 2018, and every five years after October 1, 2018, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) The Revenue and Taxation Interim Committee shall ensure that recommendations under this Subsection (5) include an evaluation of:

(i) the cost of the tax credit to the state;

(ii) the purpose and effectiveness of the tax credit; and

(iii) the extent to which the state benefits from the tax credit.

Section 2. Section 59-10-1038 is enacted to read:**59-10-1038. Nonrefundable nonprofit contribution tax credit.**

(1) As used in this section, "office" means the Governor's Office of Economic Development created in Section 63N-1-201.

(2) Subject to the provisions of this section, a taxpayer may claim a nonrefundable nonprofit contribution tax credit if the taxpayer meets the requirements for the tax credit described in Section 63N-2-213.5.

(3) The nonprofit contribution tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to the taxpayer for the taxable year.

(4) A taxpayer may carry forward a tax credit under this section for a period that does not exceed the next three taxable years, if the amount of the tax credit exceeds the taxpayer's tax liability under this chapter for that taxable year.

(5) (a) On or before October 1, 2018, and every five years after October 1, 2018, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.

(b) The Revenue and Taxation Interim Committee shall ensure that recommendations under this Subsection (5) include an evaluation of:

(i) the cost of the tax credit to the state;

(ii) the purpose and effectiveness of the tax credit; and

(iii) the extent to which the state benefits from the tax credit.

Section 3. Section 63C-10-103 is amended to read:

63C-10-103. Duties.

- (1) The board shall:
- (a) serve as an advisory board to:
- (i) the governor on rural economic and planning issues; and
- (ii) the Governor's Office of Economic Development on rural economic development issues;
- (b) prepare an annual strategic plan that:
- (i) identifies rural economic development, planning, and leadership training challenges, opportunities, priorities, and objectives; and
- (ii) includes a work plan for accomplishing the objectives referred to in Subsection (1)(b)(i);
- (c) identify local, regional, and statewide rural economic development and planning priorities;
- (d) study and take input on issues relating to local, regional, and statewide rural economic development, including challenges, opportunities, best practices, policy, planning, and collaboration;
- (e) advocate for rural needs, programs, policies, opportunities, and other issues relating to rural economic development and planning; ~~and~~
- (f) review projects in enterprise zones proposed by nonprofit corporations headquartered in enterprise zones as described in Subsection 63N-2-213.5(6); and
- ~~(f)]~~ (g) no later than October 1 of each year, submit to the governor and to the Legislature an annual report, in accordance with Section 68-3-14, that provides:
- (i) an overview of the rural economy in the state;
- (ii) a summary of current issues and policy matters relating to rural economic development; and
- (iii) a statement of the board's initiatives, programs, and economic development priorities.
- (2) The board may engage in activities necessary to fulfill the board's duties, including:
- (a) propose or support rural economic development legislation; and
- (b) create one or more subcommittees.

Section 4. Section 63N-2-203 is amended to read:

63N-2-203. Powers of the office.

The office shall:

- (1) monitor the implementation and operation of this part and conduct a continuing evaluation of the progress made in the enterprise zones;
- (2) evaluate an application for designation as an enterprise zone from a county applicant or a

municipal applicant and determine if the applicant qualifies for that designation;

(3) provide technical assistance to county applicants and municipal applicants in developing applications for designation as enterprise zones;

(4) assist county applicants and municipal applicants designated as enterprise zones in obtaining assistance from the federal government and agencies of the state;

(5) assist a qualified business entity in obtaining the benefits of an incentive or inducement program authorized by this part; and

(6) as part of the annual written report described in Section 63N-1-301, prepare an annual evaluation that provides:

(a) based on data from the State Tax Commission, the total amount of tax credits claimed under this part;

(b) the total amount awarded in tax credits for each development zone;

(c) the number of new full-time employee positions reported to obtain tax credits in each development zone;

(d) the amount of tax credits awarded for rehabilitating a building in each development zone;

(e) the amount of tax credits awarded for investing in a plant, equipment, or other depreciable property in each development zone; ~~and~~

(f) the list of approved projects under Section 63N-2-213.5 and the aggregate value of the tax credit certificates issued related to contributions to those approved projects; and

~~(f)]~~ (g) recommendations regarding the effectiveness of the program and any suggestions for legislation.

Section 5. Section 63N-2-213.5 is enacted to read:

63N-2-213.5. State tax credits for contributions to a nonprofit corporation.

(1) As used in this section:

(a) (i) "Approved project" means a project:

(A) undertaken by a nonprofit corporation headquartered in an enterprise zone and where the primary purpose of the project is community and economic development;

(B) that is located or proposed to be located in an existing enterprise zone;

(C) that has been approved by the legislative body of the county or of the municipality where the project is located or is proposed to be located; and

(D) that has been reviewed and approved in accordance with this section by the office and by the Governor's Rural Partnership Board, created in Section 63C-10-102.

(ii) "Approved project" may include:

(A) a community event or project that will foster community and economic development;

(B) the building or renovating of, or the acquisition of property for, a museum;

(C) the building or renovating of, or the acquisition of property for, a tourist or visitor center;

(D) the building or renovating of, or the acquisition of property for, a theater; or

(E) the building or renovating of, or the acquisition of property for, a building where the use of the building will foster community and economic development.

(iii) "Approved project" may not include:

(A) the building or renovating of a state-owned building;

(B) providing or funding scholarships; or

(C) the building or renovating of a housing project.

(b) "Nonprofit contribution tax credit" means a nonrefundable tax credit related to contributions to a nonprofit corporation for an approved project in an enterprise zone.

(c) "Nonprofit corporation" means a private corporation that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code.

(2) In accordance with this section, a claimant who is issued a nonprofit contribution tax credit certificate by the office under this section may claim a nonprofit contribution tax credit in the amount specified on the nonprofit contribution tax credit certificate.

(3) The total amount of the nonprofit contribution tax credits issued by the office under this section for all claimants may not exceed \$75,000 in any calendar year.

(4) (a) A nonprofit corporation that is seeking the office's review and approval of a project for the purposes of this section shall submit an application to the office on or before July 1 of the calendar year in which the nonprofit corporation will undertake the project.

(b) The application shall include:

(i) documentation to demonstrate that the project has been approved by the legislative body of the county or of the municipality where the project is located or is proposed to be located;

(ii) documentation to demonstrate that the project meets the definition and requirements of an approved project described in this section;

(iii) a budget for the project, including how much money for the project is intended to be funded from contributions from potential claimants; and

(iv) an agreement to provide post-performance reporting related to the project as required by the office.

(5) The office shall review each application received in accordance with Subsection (4) and on or before August 1 submit to the Governor's Rural Partnership Board each application for a project that, except for the review and approval of the Governor's Rural Partnership Board, meets the requirements of Subsections (1)(a) and (4).

(6) (a) The Governor's Rural Partnership Board shall review each application for a project received from the office in accordance with Subsection (5) to determine whether the project is an approved project and determine the amount of nonprofit contribution tax credits available to potential claimants that make contributions toward the approved project.

(b) The Governor's Rural Partnership Board may not approve available nonprofit contribution tax credits in a calendar year:

(i) in an amount more than \$75,000 for all approved projects combined;

(ii) for any one project, in an amount more than 50% of the total amount the nonprofit corporation has provided in the nonprofit corporation's budget for the project; and

(iii) for any claimant, in an amount more than 50% of the claimant's contribution to the nonprofit corporation for the project.

(c) In reviewing each application for a project under this Subsection (6), the Governor's Rural Partnership Board may prioritize which projects to approve based upon:

(i) the limitations regarding the amount of available nonprofit contribution tax credits described in Subsection (6)(b); and

(ii) which projects the Governor's Rural Partnership Board determines will best contribute to rural community and economic development in the state.

(7) On or before September 1, the Governor's Rural Partnership Board shall provide a list to the office of approved projects and the amount of nonprofit contribution tax credits available to potential claimants that make contributions toward each approved project.

(8) (a) If a project is approved in accordance with Subsection (6), the office shall provide the nonprofit corporation with a document describing the approved amount of nonprofit contribution tax credits available to potential claimants who make contributions to the nonprofit corporation for an approved project and the nonprofit corporation's requirements for post-performance reporting to the office.

(b) Subject to Subsection (3), the office shall ensure that a document described in this Subsection (6) includes:

(i) the amount of total contributions to the nonprofit corporation that qualify for a nonprofit contribution tax credit, which may not exceed the amount the nonprofit corporation has provided in the nonprofit corporation's budget for the project as described in Subsection (4)(b)(iii); and

(ii) the percentage of the contribution that may be returned to potential claimants in the form of nonprofit contribution tax credits, which may not exceed 50% of the contributions to the nonprofit corporation for an approved project.

(9) The office shall certify a claimant's eligibility for a nonprofit contribution tax credit described in this section.

(10) Before a claimant may receive a nonprofit contribution tax credit certificate described in this section, a nonprofit corporation that receives a document, in accordance with Subsection (8), describing the approved amount of nonprofit contribution tax credits shall provide:

(a) a list of each potential claimant that has contributed to the approved project during the calendar year and the amount of money contributed by each potential claimant; and

(b) evidence that the money donated from each potential claimant was spent by the nonprofit corporation on an approved project.

(11) A claimant seeking to receive a nonprofit contribution tax credit as provided in this section shall provide the office with an application for the nonprofit contribution tax credit in a form approved by the office, including documentation that demonstrates the claimant and the nonprofit corporation have met the requirements for the claimant to receive the nonprofit contribution tax credit, including providing evidence of the amount of the contribution made to a nonprofit corporation for an approved project.

(12) If, after the review of an application and documentation provided by a claimant as described in Subsection (11), the office determines that the application and documentation are inadequate to provide a reasonable justification for authorizing the nonprofit contribution tax credit, the office shall:

(a) deny the nonprofit contribution tax credit; or

(b) inform the claimant that the application or documentation was inadequate and ask the claimant to submit additional documentation.

(13) If, after review of an application and documentation provided by a claimant as described in Subsection (11), the office determines that the application and documentation provide reasonable justification for authorizing a nonprofit contribution tax credit, the office shall:

(a) determine the amount of the nonprofit contribution tax credit to be granted to the claimant;

(b) issue a nonprofit contribution tax credit certificate to the claimant; and

(c) provide a duplicate copy of the nonprofit contribution tax credit certificate to the State Tax Commission.

(14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules describing:

(a) the form and content of an application for a nonprofit corporation to make a project an approved project;

(b) the documentation requirements for a claimant to receive a nonprofit contribution tax credit certificate under this section; and

(c) administration of the program, including rules that ensure the aggregate value of nonprofit contribution tax credit certificates issued by the office under this section does not exceed \$75,000 in any calendar year.

Section 6. Retrospective operation.

This bill has retrospective operation for a taxable year beginning on or after January 1, 2017.

CHAPTER 253**H. B. 240**

Passed March 9, 2017

Approved March 22, 2017

Effective May 9, 2017

EMPLOYABILITY TO CAREERS PROGRAM

Chief Sponsor: Mike Schultz
 Senate Sponsor: Allen M. Christensen
 Cosponsors: Carl R. Albrecht
 Bruce R. Cutler
 Brad M. Daw
 Steve Eliason
 Gage Froerer
 Adam Gardiner
 Francis D. Gibson
 Timothy D. Hawkes
 Lynn N. Hemingway
 Eric K. Hutchings
 John Knotwell
 A. Cory Maloy
 Kelly B. Miles
 Derrin R. Owens
 Lee B. Perry
 Jeremy A. Peterson
 Dixon M. Pitcher
 Tim Quinn
 Paul Ray
 Norman K Thurston
 Logan Wilde
 Brad R. Wilson
 Mike Winder

LONG TITLE**General Description:**

This bill creates the Employability to Careers Program within the Governor's Office of Management and Budget.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a restricted account called the Employability to Careers Program Restricted Account;
- ▶ creates the Employability to Careers Program Board within the Governor's Office of Management and Budget;
- ▶ authorizes the board to enter into a results-based contract with a fiscal intermediary;
- ▶ requires the Governor's Office of Management and Budget to staff the board;
- ▶ describes the components of an education, employability training, and workforce placement program that may be funded by money from the restricted account;
- ▶ authorizes the board to obtain the services of a programmatic intermediary to assist the board with validating the feasibility of entering into a results-based contract;
- ▶ requires an independent evaluation of the performance outcomes of the Employability to Careers Program; and
- ▶ authorizes payments from the restricted account to the fiscal intermediary if certain benchmarks are met by a service provider.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to the General Fund Restricted -- Employability to Careers Program Restricted Account, as a one-time appropriation:
 - from the General Fund, \$1,000,000; and
- ▶ to the Governor's Office of Management and Budget, as a one-time appropriation:
 - from the General Fund Restricted -- Employability to Careers Program Restricted Account, \$1,000,000.

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63J-1-602.4, as last amended by Laws of Utah 2016, Chapters 193 and 240

ENACTS:

63J-4-701, Utah Code Annotated 1953
 63J-4-702, Utah Code Annotated 1953
 63J-4-703, Utah Code Annotated 1953
 63J-4-704, Utah Code Annotated 1953
 63J-4-705, Utah Code Annotated 1953
 63J-4-706, Utah Code Annotated 1953
 63J-4-707, Utah Code Annotated 1953
 63J-4-708, Utah Code Annotated 1953

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

Section 1. Section 63J-1-602.4 is amended to read:**63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63N.**

(1) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

(2) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

(3) Certain funds donated to the Department of Human Services, as provided in Section 62A-1-111.

(4) Appropriations from the National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 62A-1-202.

(5) Certain funds donated to the Division of Child and Family Services, as provided in Section 62A-4a-110.

(6) Appropriations from the Choose Life Adoption Support Restricted Account created in Section 62A-4a-608.

(7) Appropriations to the Division of Services for People with Disabilities, as provided in Section 62A-5-102.

(8) Appropriations to the Division of Fleet Operations for the purpose of upgrading underground storage tanks under Section 63A-9-401.

(9) A portion of the funds appropriated to the Utah Seismic Safety Commission, as provided in Section 63C-6-104.

(10) Funds appropriated or collected for publishing the Office of Administrative Rules' publications, as provided in Section 63G-3-402.

(11) The Immigration Act Restricted Account created in Section 63G-12-103.

(12) Money received by the military installation development authority, as provided in Section 63H-1-504.

(13) The Employability to Careers Program Restricted Account created in Section 63J-4-703.

[43] (14) Appropriations to the Utah Science Technology and Research Initiative created in Section 63M-2-301.

[44] (15) Appropriations to fund the Governor's Office of Economic Development's Enterprise Zone Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.

[45] (16) The Motion Picture Incentive Account created in Section 63N-8-103.

[46] (17) Certain money payable for commission expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63N-10-301.

Section 2. Section 63J-4-701 is enacted to read:

Part 7. Employability to Careers Program

63J-4-701. Definitions.

As used in this part:

(1) "Board" means the Employability to Careers Program Board created in Section 63J-4-702.

(2) "Education, employability training, and workforce placement program" means a pay-for-success program that helps adults earn a high school diploma and obtain a full-time job with benefits in a career path through integrated employability skills development.

(3) "Eligible participant" means an individual who at the time of enrollment in an education, employability training, and workforce placement program:

- (a) is between 18 and 50 years of age;
- (b) does not have a high school diploma or the equivalent;
- (c) is enrolled in a public assistance program; and
- (d) is unemployed or underemployed.

(4) "Eligible program provider" means an organization or group of organizations with the demonstrated capability of operating an education, employability training, and workforce placement program.

(5) "Employability programs and services" means programs that assist adults in developing job skills,

attaining education, obtaining employment, increasing income, and realizing self-sufficiency.

(6) "Employability skills" means technical, professional, and life skills that are necessary for success in the labor market, which may include verbal and written communication, time management, problem solving, professionalism, and teamwork.

(7) "Fiscal intermediary" means a nonprofit community foundation located in the state that establishes and manages charitable funds and that has the necessary experience to coordinate the funding and management of a results-based contract and related program.

(8) "Multitiered system of supports" means a systemic, continuous improvement framework in which data-based problem solving and decision making is practiced for supporting participants.

(9) "Performance outcome measure" means an education or workforce placement outcome for an eligible participant, including earning an accredited high school diploma, employment placement, job retention, and wage advancement within a career path, which results in a demonstrated benefit to the state through increased tax revenue or lower state expenditures for public assistance programs.

(10) "Programmatic intermediary" means a nonprofit entity or academic institution that has the necessary experience in results-based financing and evidence-based policy to:

- (a) validate a feasibility analysis of an eligible program provider;
- (b) structure the terms and conditions of results-based contracts by developing cost-benefit financial models, performance outcome measures, payment schedules, and performance thresholds; and
- (c) raise the private investment capital necessary to fund program services related to a results-based contract.

(11) "Restricted account" means the Employability to Careers Program Restricted Account created in Section 63J-4-703.

(12) "Results-based contract" means a contract entered into between the board, a fiscal intermediary, and an eligible program provider that will result in repayment to the fiscal intermediary if certain performance outcome measures are achieved.

Section 3. Section 63J-4-702 is enacted to read:

63J-4-702. Employability to Careers Program Board.

(1) There is created within the office the Employability to Careers Program Board composed of the following members:

- (a) the executive director of the Department of Workforce Services or the executive director's designee;

(b) the executive director of the Department of Human Services or the executive director's designee; and

(c) three members appointed by the governor with the consent of the Senate as follows:

(i) one member from the private or nonprofit sector with expertise in finance;

(ii) one member from the private or nonprofit sector chosen from among two individuals recommended by the president of the Senate; and

(iii) one member from the private or nonprofit sector chosen from among two individuals recommended by the speaker of the House of Representatives.

(2) (a) An appointed member of the board shall serve for a term of three years, but may be reappointed for one additional term.

(b) If a vacancy occurs in the board for any reason, the governor with the consent of the Senate shall appoint a replacement to serve the remainder of the board member's term.

(3) The board shall elect a chair from among the board's membership.

(4) The board shall meet at least quarterly upon the call of the chair.

(5) Four members of the board constitute a quorum.

(6) Action by a majority present constitutes the action of the board.

(7) A board member may not receive compensation or benefits for the member's service, but a member may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) The office shall provide staff support to the board.

Section 4. Section 63J-4-703 is enacted to read:

63J-4-703. Employability to Careers Program Restricted Account.

(1) There is created in the General Fund a restricted account known as the "Employability to Careers Program Restricted Account."

(2) The restricted account consists of:

(a) money appropriated to the restricted account by the Legislature;

(b) income and interest derived from the deposit and investment of money in the account; and

(c) private donations.

(3) Subject to legislative appropriations, money in the restricted account may be used for the following purposes:

(a) to contract with a fiscal intermediary for the management of a results-based contract;

(b) to contract with a programmatic intermediary to validate a feasibility analysis and structure the terms and conditions of a results-based contract, including developing cost-benefit financial models, performance outcome measures, payment schedules, and success thresholds;

(c) to contract with an independent evaluator as described in Section 63J-4-704;

(d) to pay for office expenses related to administering the Employability to Careers Program and providing staff support to the board;

(e) to make payments to a fiscal intermediary that has entered into a results-based contract with the board as described in Section 63J-4-704, if the independent evaluator selected by the board determines that the performance-based results have been met; and

(f) to contract for other services as necessary to implement the Employability to Careers Program.

Section 5. Section 63J-4-704 is enacted to read:

63J-4-704. Results-based contracts -- Board duties.

(1) (a) The board may negotiate and enter into a results-based contract with a fiscal intermediary to provide payments to the fiscal intermediary upon the successful achievement of specific outcome measures in accordance with Subsection 63J-4-706(2)(i) and the other requirements of this part.

(b) The board may not issue a results-based contract that would cause the total outstanding obligations under this part to exceed \$15,000,000.

(2) A results-based contract shall include:

(a) a requirement that the repayment to the fiscal intermediary be conditioned on specific performance outcome measures described in the results-based contract and in accordance with this part;

(b) a requirement for an independent evaluator to determine whether the performance outcome measures have been achieved; and

(c) a provision that payment to the program intermediary is:

(i) based upon available money in the restricted account at the time of payment; and

(ii) subject to legislative appropriation.

(3) The board shall select an independent program evaluator that:

(a) is a research organization;

(b) has experience conducting research in labor economics;

(c) has experience in conducting experimental or quasi-experimental design or other research methodologies as described in Subsection 63J-4-706(2)(j) that allow for the strongest possible causal inferences to determine whether the initiative has met the initiative's proposed outcomes; and

(d) has access to state data required to implement the evaluation design.

(4) (a) In accordance with timelines established in a results-based contract, the independent evaluator shall implement an experimental or quasi-experimental evaluation design to determine whether the performance outcome measures set in the results-based contract have been met.

(b) If the independent evaluator determines under Subsection (4)(a) that the performance outcome measures have been met, the board shall pay the fiscal intermediary according to the terms of a results-based contract.

(5) (a) The eligible program provider described in Section 63J-4-705 shall ensure that each participant in a program funded in a results-based contract has given written permission and signed an acknowledgment that the participant's data may be shared with a fiscal intermediary, an independent evaluator, and the office for evaluation and reporting purposes.

(b) The board shall maintain a record of each written permission and signed acknowledgment described in Subsection (5)(a).

(6) As further described in Section 63J-4-705, for an education, employability training, and workforce placement program funded under this part, the board shall:

(a) select an eligible program provider;

(b) consider the recommendations of the programmatic intermediary in selecting an eligible program provider; and

(c) engage the services of the programmatic intermediary to complete a feasibility analysis in accordance with Section 63J-4-706 to assess the viability of the board entering into a results-based contract with the selected eligible program provider.

(7) The board, with the assistance of the office and other state agencies that provide services to eligible participants, may cooperate with an eligible program provider to identify and refer eligible participants for the program.

Section 6. Section 63J-4-705 is enacted to read:

63J-4-705. Employability to Careers Program.

(1) There is created the Employability to Careers Program to provide funding for the implementation of a results-based education, employability training, and workforce placement program for eligible participants.

(2) With the assistance of the programmatic intermediary, the board shall establish evaluation criteria for selecting an eligible program provider and shall consider recommendations from the programmatic intermediary in evaluating and selecting an eligible program provider.

(3) The board and the programmatic intermediary shall consider the following requirements and criteria for selecting an eligible program provider:

(a) the potential eligible program provider's capacity to effectively implement the components of an education, employability training, and workforce placement program as described in Section 63J-4-707;

(b) the potential eligible program provider's experience in enrolling and serving the eligible participants the program intends to serve, including participants who are economically disadvantaged;

(c) the potential eligible program provider's ability to access state collaborative partner networks and community resources;

(d) the potential eligible program provider's ability to address labor market needs and workforce demands;

(e) the potential eligible program provider's ability to demonstrate that performance outcome measures for the education, employability training, and workforce placement program can be measured through an experimental or quasi-experimental design;

(f) the potential eligible program provider's ability to attract private or philanthropic investors;

(g) the potential eligible program provider's strategy to implement the components of an education, employability skills, and workforce placement program; and

(h) the potential eligible program provider's ability to provide the necessary data to a programmatic intermediary for the feasibility analysis described in Section 63J-4-706.

(4) To be selected as an eligible program provider under this part, the eligible program provider shall agree to:

(a) allow the evaluator, chosen in accordance with Section 63J-4-704, to review data from the provider to ensure that the components described in Section 63J-4-707 are implemented; and

(b) assign a unique identifier to each eligible participant enrolled in an education, employability training, and workforce placement program with the eligible program provider and maintain records of the performance outcome measures achieved by each eligible participant.

Section 7. Section 63J-4-706 is enacted to read:

63J-4-706. Feasibility analysis.

(1) The board shall engage a programmatic intermediary to complete, within two months of

selecting an eligible program provider in accordance with Section 63J-4-705, a feasibility analysis that assesses the ability of the potential eligible program provider to provide a program that will successfully achieve performance outcome measures that are cost effective and will result in cost savings or increased tax revenue to the state.

(2) The feasibility analysis shall include:

(a) assessing the size and characteristics of the eligible population in the state that could benefit from the employment programs and services funded through the Employability to Careers Program;

(b) assessing the eligible program provider's capacity to make effective use of funding supplied through the Employability to Careers Program and with the likelihood to meet predefined and measurable outcomes based on the following factors:

(i) the economic feasibility of the programs and services provided;

(ii) the capacity of the program to serve an increased customer base; and

(iii) the degree to which the program and services will help individuals attain self-sufficiency;

(c) developing a viable expansion plan and determining how much the expansion plan will cost;

(d) projecting the impact of the expansion plan on outcomes to the community;

(e) projecting the financial value of the improvements that may result from the Employability to Careers Program investment, including projected public sector savings and projected returns to investors;

(f) developing a cost-benefit analysis of the program;

(g) determining feasible results-based contract terms and financing structures;

(h) determining the potential pool of investors likely to invest both in and outside the state;

(i) developing performance measures to project and measure financial and social outcomes;

(j) ensuring an experimental or quasi-experimental research design can be used to measure the attained performance measures attributable to the intervention;

(k) estimating how many eligible participants the potential eligible program provider plans to serve;

(l) preparing a financial model, including the proposed payment terms, the methodology used to calculate outcome payments, the payment schedule, and performance thresholds; and

(m) reviewing the project budget and timeline.

Section 8. Section 63J-4-707 is enacted to read:

63J-4-707. Components of an education, employability training, and workforce placement program.

(1) In addition to the other requirements of this part, an education, employability training, and workforce placement program approved under this part may include the following components:

(a) an employability skills certification program;

(b) resilience intervention for eligible participants;

(c) a multitiered system of supports for eligible participants; and

(d) a learning and employability plan for each eligible participant.

(2) Subject to legislative appropriations, and in accordance with the contract between the board and the fiscal intermediary, a separate payment shall be made by the board from the restricted account to the fiscal intermediary in a specific amount for each successful result in accordance with the terms and conditions of the results-based contract.

Section 9. Section 63J-4-708 is enacted to read:

63J-4-708. Reporting.

(1) On or before October 1, the board shall provide an annual written report to the Social Services Appropriations Subcommittee and the Economic Development and Workforce Services Interim Committee.

(2) The written report shall include:

(a) information regarding the fiscal intermediary, the programmatic intermediary, the eligible program provider, and the independent evaluator that have been selected;

(b) the results of the feasibility analysis conducted in accordance with Section 63J-4-706;

(c) information regarding how many eligible participants have been served by the education, employability training, and workforce placement program;

(d) a description of program expenses, including what payments have been made to the intermediary and the cost to the state for each successful eligible participant outcome; and

(e) recommendations to the Legislature on any potential improvements to the Employability to Careers Program, including whether the program should continue to receive funding from the state.

Section 10. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature

appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Restricted Fund and Account Transfers -- General Fund Restricted — Employability to Careers Program Restricted Account

<u>From General Fund, One-time</u>	<u>\$1,000,000</u>
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Schedule of Programs:

<u>General Fund Restricted — Employability to Careers Program Restricted Account</u>	<u>\$1,000,000</u>
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ITEM 2

To Governor’s Office of Management and Budget -- Operations and Policy

<u>From General Fund Restricted — Employability to Careers Program Restricted Account, One-time</u>	<u>\$1,000,000</u>
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Schedule of Programs:

<u>Employability to Careers Program</u>	<u>\$1,000,000</u>
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The Legislature intends that:

(1) under Subsection 63J-1-601(2), appropriations provided under this section not lapse; and

(2) the use of any nonlapsing funds be limited to the purposes described in Section 63J-4-703.

CHAPTER 254**H. B. 267**

Passed March 7, 2017

Approved March 22, 2017

Effective May 9, 2017

ORGAN DONATION AMENDMENTS

Chief Sponsor: Mark A. Wheatley

Senate Sponsor: Luz Escamilla

LONG TITLE**General Description:**

This bill amends the section regarding organ donor leave for state employees.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Human Resource Management to publicize the organ donor leave provision to employees during the month of April.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

67-19-14.5, as enacted by Laws of Utah 2002, Chapter 310

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

Section 1. Section 67-19-14.5 is amended to read:**67-19-14.5. Organ donor leave.**

(1) An employee who serves as a bone marrow donor shall be granted a paid leave of absence of up to seven days that are necessary for the donation and recovery from the donation.

(2) An employee who serves as a donor of a human organ shall be granted a paid leave of absence of up to 30 days that are necessary for the donation and recovery from the donation.

(3) In recognition of National Donate Life Month, 2015, created by Proclamation No. 9248, 80 F.R. 18511 (April 1, 2015), the department shall distribute an electronic message to each employee during the month of April publicizing the leave offered under this section.

CHAPTER 255**H. B. 272**

Passed March 8, 2017

Approved March 22, 2017

Effective May 9, 2017

REGULATORY IMPACT AMENDMENTS

Chief Sponsor: Brad R. Wilson
Senate Sponsor: Daniel Hemmert

LONG TITLE**General Description:**

This bill modifies the Administrative Rules Act and provisions governing the Office of the Legislative Fiscal Analyst.

Highlighted Provisions:

This bill:

- ▶ requires the legislative fiscal analyst, when evaluating proposed legislation, to indicate whether the legislation would make changes in the regulatory burden for state residents or businesses;
- ▶ requires agencies to conduct an analysis before submitting new administrative rules in order to show the regulatory impact the rule would have on state residents or businesses;
- ▶ provides requirements for the contents of the analysis; and
- ▶ requires agencies to submit a summary of efforts made to comply with obligations to assure that new administrative rules minimize negative fiscal impacts on small businesses.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

36-12-13, as last amended by Laws of Utah 2014, Chapters 344 and 430

63G-3-301, as last amended by Laws of Utah 2016, Chapter 193

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

Section 1. Section 36-12-13 is amended to read:**36-12-13. Office of the Legislative Fiscal Analyst established -- Powers, functions, and duties -- Qualifications.**

(1) There is established an Office of the Legislative Fiscal Analyst as a permanent staff office for the Legislature.

(2) The powers, functions, and duties of the Office of the Legislative Fiscal Analyst under the supervision of the fiscal analyst are:

(a) to analyze in detail the state budget before the convening of each legislative session and make recommendations to the Legislature on each item or program appearing in the budget, including:

(i) funding for and performance of programs, acquisitions, and services currently undertaken by

state government to determine whether each department, agency, institution, or program should:

- (A) continue at its current level of expenditure;
- (B) continue at a different level of expenditure; or
- (C) be terminated; and

(ii) increases or decreases to spending authority and other resource allocations for the current and future fiscal years;

(b) to prepare cost estimates on all proposed bills that anticipate state government expenditures;

(c) to prepare cost estimates on all proposed bills that anticipate expenditures by county, municipal, local district, or special service district governments;

(d) to prepare cost estimates on all proposed bills that anticipate direct expenditures by any Utah resident or business, and the cost to the overall impacted Utah resident or business population;

(e) to indicate whether each proposed bill will impact the regulatory burden for Utah residents or businesses, and if so:

(i) whether the impact increases or decreases the regulatory burden; and

(ii) whether the change in burden is high, medium, or low;

~~(e)~~ (f) to prepare a review and analysis of revenue estimates for existing and proposed revenue acts, which shall include a comparison of current estimates to 15-year trends by tax type;

~~(f)~~ (g) to report instances in which the administration may be failing to carry out the expressed intent of the Legislature;

~~(g)~~ (h) to propose and analyze statutory changes for more effective operational economies or more effective administration;

~~(h)~~ (i) to prepare, before each annual general session of the Legislature, a summary showing the current status of the following as compared to the past nine fiscal years:

- (i) debt;
- (ii) long-term liabilities;
- (iii) contingent liabilities;
- (iv) General Fund borrowing;
- (v) reserves;
- (vi) fund and nonlapsing balances; and
- (vii) cash funded capital investments;

~~(i)~~ (j) to make recommendations for addressing the items described in Subsection (2)(h) in the upcoming annual general session of the Legislature;

~~(j)~~ (k) to prepare, after each session of the Legislature, a summary showing the effect of the final legislative program on the financial condition of the state;

~~(k)~~ (l) to conduct organizational and management improvement studies;

~~(l)~~ (m) to prepare and deliver upon request of any interim committee or the Legislative Management Committee, reports on the finances of the state and on anticipated or proposed requests for appropriations;

~~(m)~~ (n) to recommend areas for research studies by the executive department or the interim committees;

~~(n)~~ (o) to appoint and develop a professional staff within budget limitations;

~~(o)~~ (p) to prepare and submit the annual budget request for the office;

~~(p)~~ (q) to develop a taxpayer receipt:

(i) available to taxpayers through a website; and

(ii) that allows a taxpayer to view on the website an estimate of how the taxpayer's tax dollars are expended for government purposes; and

~~(q)~~ (r) to publish or provide other information on taxation and government expenditures that may be accessed by the public.

(3) The Office of the Legislative Fiscal Analyst shall report the review and analysis required under Subsection (2)~~(e)~~(f) to the Executive Appropriations Committee of the Legislature before each upcoming annual general session of the Legislature.

(4) The legislative fiscal analyst shall have a master's degree in public administration, political science, economics, accounting, or the equivalent in academic or practical experience.

(5) In carrying out the duties provided for in this section, the legislative fiscal analyst may obtain access to all records, documents, and reports necessary to the scope of the legislative fiscal analyst's duties according to the procedures contained in Title 36, Chapter 14, Legislative Subpoena Powers.

Section 2. Section 63G-3-301 is amended to read:

63G-3-301. Rulemaking procedure.

(1) An agency authorized to make rules is also authorized to amend or repeal those rules.

(2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the department to implement this chapter.

(3) Subject to the requirements of this chapter, each agency shall develop and use flexible

approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

(4) (a) Each agency shall file its proposed rule and rule analysis with the office.

(b) Rule amendments shall be marked with new language underlined and deleted language struck out.

(c) (i) The office shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the executive director or the executive director's designee determines that the rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by reference to a copy on file with the office.

(5) ~~[Prior to] Before~~ filing a rule with the office, the ~~[department head shall consider and comment on]~~ agency shall conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Management and Budget, of the fiscal impact a rule may have on businesses[-], which criteria may include:

(a) the type of industries that will be impacted by the rule, and for each identified industry, an estimate of the total number of businesses within the industry, and an estimate of the number of those businesses that are small businesses;

(b) the individual fiscal impact that would incur to a typical business for a one-year period;

(c) the aggregated total fiscal impact that would incur to all businesses within the state for a one-year period;

(d) the total cost that would incur to all impacted entities over a five-year period; and

(e) the department head's comments on the analysis.

(6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:

(a) establishing less stringent compliance or reporting requirements for small businesses;

(b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) consolidating or simplifying compliance or reporting requirements for small businesses;

(d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and

(e) exempting small businesses from all or any part of the requirements contained in the proposed rule.

(7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).

(8) The rule analysis shall contain:

- (a) a summary of the rule or change;
- (b) the purpose of the rule or reason for the change;
- (c) the statutory authority or federal requirement for the rule;
- (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments;
 - (iii) small businesses; and
 - (iv) persons other than small businesses, businesses, or local governmental entities;
- (e) the compliance cost for affected persons;
- (f) how interested persons may review the full text of the rule;
- (g) how interested persons may present their views on the rule;
- (h) the time and place of any scheduled public hearing;
- (i) the name and telephone number of an agency employee who may be contacted about the rule;
- (j) the name of the agency head or designee who authorized the rule;
- (k) the date on which the rule may become effective following the public comment period; ~~and~~

(l) the agency's analysis on the fiscal impact of the rule as required under Subsection (5);

[4] (m) any additional comments [by] the department head [on] may choose to submit regarding the fiscal impact the rule may have on businesses[.]; and

(n) if applicable, a summary of the agency's efforts to comply with the requirements of Subsection (6).

(9) (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:

- (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
- (ii) a summary of new substantive provisions appearing only in the enacted rule.

(b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(11) (a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

(b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).

(12) (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period under Subsection (11), nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the office in the form required by the department.

(c) The notice of effective date may not provide for an effective date prior to the date it is received by the office.

(d) The office shall publish notice of the effective date of the rule in the next issue of the bulletin.

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the office within 120 days of publication.

(13) (a) As used in this Subsection (13), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.

(b) A state agency shall initiate rulemaking proceedings no later than 180 days after the effective date of the statutory provision that specifically requires the rulemaking, except under Subsection (13)(c).

(c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency shall submit the rules to the Administrative Rules Review Committee for review within 60 days after the statute requiring the rulemaking takes effect.

(d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (13)(b), the state agency shall appear before the legislative Administrative Rules Review Committee and provide the reasons for the delay.

CHAPTER 256**H. B. 282**

Passed March 7, 2017
 Approved March 22, 2017
 Effective May 9, 2017

STATE FAIR PARK BOARD AMENDMENTS

Chief Sponsor: Mike Schultz
 Senate Sponsor: Kevin T. Van Tassell

LONG TITLE**General Description:**

This bill modifies provisions related to the Utah State Fair Corporation Act.

Highlighted Provisions:

This bill:

- ▶ adds an additional member, recommended by the Utah Farm Bureau Federation, to the board of directors of the Utah State Fair Corporation; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63H-6-104, as last amended by Laws of Utah 2016, Chapter 301

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

Section 1. Section 63H-6-104 is amended to read:**63H-6-104. Board of directors -- Membership -- Term -- Quorum -- Vacancies -- Duties.**

(1) The corporation is governed by a board of directors.

(2) The board is composed of members as follows:

(a) the director of the Division of Facilities Construction and Management or the director's designee;

(b) the commissioner of agriculture and food or the commissioner's designee;

(c) two members, appointed by the president of the Senate, who have business related experience and are not legislators;

(d) two members, appointed by the speaker of the House, who have business related experience and are not legislators;

(e) ~~four~~ five members appointed by the governor with the consent of the Senate as follows:

(i) two members who represent agricultural interests; ~~and~~

(ii) two members who have business related experience; and

(iii) one member who is recommended by the Utah Farm Bureau Federation;

(f) one member, appointed by the mayor of Salt Lake City with the consent of the Senate, who is a resident of the neighborhood located adjacent to the state fair park;

(g) a representative of Salt Lake County, if Salt Lake County is party to an executed lease agreement with the corporation; and

(h) a representative of the Days of '47 Rodeo, if the Days of '47 Rodeo is party to an executed lease agreement with the corporation.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), a board member appointed under Subsection (2)(c), (d), (e), or (f) shall serve a term that expires on the December 1 four years after the year that the board member was appointed.

(ii) In making appointments to the board, the president of the Senate, the speaker of the House, the governor, and the mayor of Salt Lake City shall ensure that the terms of approximately 1/4 of the appointed board members expire each year.

(b) Except as provided in Subsection (3)(c), appointed board members serve until their successors are appointed and qualified.

(c) (i) If an appointed board member is absent from three consecutive board meetings without excuse, that member's appointment is terminated, the position is vacant, and the individual who appointed the board member shall appoint a replacement.

(ii) The president of the Senate, the speaker of the House, the governor, or the mayor of Salt Lake City, as applicable, may remove an appointed member of the board at will.

(d) The president of the Senate, the speaker of the House, the governor, or the mayor of Salt Lake City, as appropriate, shall fill any vacancy that occurs on the board for any reason by appointing an individual in accordance with the procedures described in this section for the unexpired term of the vacated member.

(4) The governor shall select the board's chair.

(5) A majority of the members of the board is a quorum for the transaction of business.

(6) The board may elect a vice chair and any other board offices.

(7) The board may create one or more subcommittees to advise the board on any issue related to the state fair park.

(8) In carrying out the board's duties under this chapter, the board shall cooperate with and, upon request, appear before the State Fair Park Committee.

(9) No later than November 30 of each year, the board shall provide the following to the State Fair Park Committee:

(a) a report on the general state of the financial and business affairs of the corporation;

(b) a report on that year's annual exhibition described in Subsection 63H-6-103(4)(j), including the exhibition's attendance, operations, and revenue;

(c) any appropriation request that the board plans to submit to the Legislature; and

(d) any other report that the State Fair Park Committee requests.

CHAPTER 257**H. B. 303**

Passed March 9, 2017

Approved March 22, 2017

Effective May 9, 2017

STATE BUILDING AMENDMENTS

Chief Sponsor: Lynn N. Hemingway

Senate Sponsor: Luz Escamilla

LONG TITLE**General Description:**

This bill amends a provision related to diaper changing facilities.

Highlighted Provisions:

This bill:

- ▶ provides that, under certain circumstances, a building owned by a state government entity or by a political subdivision shall provide diaper changing facilities if the building is newly constructed or a bathroom in the building is renovated that bathroom that is being renovated shall provide diaper changing facilities.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

15A-3-112, as last amended by Laws of Utah 2016, Chapter 249

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

Section 1. Section 15A-3-112 is amended to read:**15A-3-112. Amendments to Chapters 29 through 31 of IBC.**

(1) In IBC [P] Table 2902.1 the following changes are made:

(a) The title for [P] Table 2902.1 is deleted and replaced with the following: “[P] Table 2902.1, Minimum Number of Required Plumbing Facilities a, h”.

(b) In the row for “E” occupancy in the field for “OTHER” a new footnote i is added.

(c) In the row for “I-4” occupancy in the field for “OTHER” a new footnote i is added.

(d) A new footnote h is added as follows: “FOOTNOTE: h. When provided, subject to footnote j, in public toilet facilities there shall be an equal number of diaper changing facilities in male toilet rooms and female toilet rooms.”

(e) A new footnote i is added to the table as follows: “FOOTNOTE i: Non-residential child care facilities shall comply with additional sink requirements of Utah Administrative Code R430-100-4.”

(f) A new footnote j is added to the table as follows: “FOOTNOTE j: A building owned by a state government entity or by a political subdivision of

the state that allows access to the public shall provide diaper changing facilities in accordance with footnote h if:

1. the building is newly constructed; or
2. a bathroom in the building is renovated.”

(2) A new IBC, Section [P]2902.7, is added as follows: “[P]2902.7 Toilet Facilities for Workers.

Toilet facilities shall be provided for construction workers and such facilities shall be maintained in a sanitary condition. Construction worker toilet facilities of the nonsewer type shall conform to ANSI Z4.3.”

(3) In IBC, Section 3006.5, a new exception is added as follows: “Exception: Hydraulic elevators and roped hydraulic elevators with a rise of 50 feet or less.”

CHAPTER 258**H. B. 319**

Passed March 8, 2017
 Approved March 22, 2017
 Effective May 9, 2017

DATA SECURITY MANAGEMENT

Chief Sponsor: Robert M. Spendlove
 Senate Sponsor: D. Gregg Buxton

LONG TITLE**General Description:**

This bill amends provisions related to executive branch agency information security technology.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Technology Services to assess each executive branch agency's information security technology; and
- ▶ requires the Department of Technology Services to develop recommendations to address the results of the assessment and make recommendations to the Legislature.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

63F-1-901, Utah Code Annotated 1953

63F-1-902, Utah Code Annotated 1953

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

Section 1. Section 63F-1-901 is enacted to read:**Part 9. Executive Branch Agency Data Security****63F-1-901. Title.**

This part is known as "Executive Branch Agency Data Security."

Section 2. Section 63F-1-902 is enacted to read:**63F-1-902. Executive branch agencies -- Data security review -- Report to Legislature.**

(1) As used in this section:

(a) "Restricted data" means data that, if disclosed, altered, or destroyed, would cause a significant harm to the state or the state's data partners.

(b) "Restricted data" includes data protected by a state regulation or by a confidentiality agreement.

(2) On or before December 31, 2017, the department shall assess each executive branch agency with restricted data to determine if the executive branch agency's information security technology requires the use of digital rights management technology to continuously monitor documents stored by the department.

(3) Before April 18, 2018, the department shall:

(a) develop recommendations to address the findings of the assessment described in Subsection (2); and

(b) report the recommendations described in Subsection (3)(a) to the Public Utilities, Energy, and Technology Interim Committee.

CHAPTER 259**H. B. 320**

Passed March 9, 2017

Approved March 22, 2017

Effective May 9, 2017

NOTARIES PUBLIC AMENDMENTS

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: D. Gregg Buxton

LONG TITLE**General Description:**

This bill amends provisions of the Notaries Public Reform Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies provisions related to the notarization of documents;
- ▶ narrows provisions related to a jurat;
- ▶ includes signature witnessing as a notarial act;
- ▶ removes the authority of the Office of Risk Management to execute a bond for a notary;
- ▶ clarifies reapplication requirements for an individual whose notarial commission expires;
- ▶ provides standard language for a notarial certificate;
- ▶ allows a licensed escrow agent who is also a notary public to notarize certain documents the licensed escrow agent signs; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

46-1-2, as last amended by Laws of Utah 2009, Chapter 315

46-1-3, as last amended by Laws of Utah 2009, Chapter 183

46-1-4, as last amended by Laws of Utah 2003, Chapter 136

46-1-7, as last amended by Laws of Utah 2008, Chapter 102

46-1-15, as repealed and reenacted by Laws of Utah 1998, Chapter 287

46-1-16, as last amended by Laws of Utah 2008, Chapter 47

46-1-18, as last amended by Laws of Utah 2007, Chapter 95

46-1-20, as last amended by Laws of Utah 2008, Chapter 47

46-4-205, as last amended by Laws of Utah 2006, Chapter 21

ENACTS:

46-1-6.5, Utah Code Annotated 1953

REPEALS AND REENACTS:

46-1-6, as last amended by Laws of Utah 2006, Chapter 21

REPEALS:

46-1-5, as last amended by Laws of Utah 1998, Chapter 287

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

Section 1. Section 46-1-2 is amended to read:**46-1-2. Definitions.**

As used in this chapter:

(1) "Acknowledgment" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the presence of the notary, to voluntarily signing a document for the document's stated purpose.

(2) "Commission" means:

(a) to empower to perform notarial acts; ~~and~~ or

(b) the written document that gives authority to perform ~~those~~ notarial acts, including the Certificate of Authority of Notary Public that the lieutenant governor issues to a notary.

(3) "Copy certification" means a notarial act in which a notary certifies that a photocopy is an accurate copy of a document that is neither a public record nor publicly recorded.

(4) "Electronic signature" ~~has the same meaning as provided under~~ means the same as that term is defined in Section 46-4-102.

~~[(5) "Jurat" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has made, in the notary's presence, a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed document.]~~

(5) "Jurat" means a notarial act in which a notary certifies:

(a) the identity of a signer who:

(i) is personally known to the notary; or

(ii) provides the notary satisfactory evidence of the signer's identity;

(b) that the signer affirms or swears an oath attesting to the truthfulness of a document; and

(c) that the signer voluntarily signs the document in the presence of the notary.

(6) "Notarial act" ~~and~~ or "notarization" ~~mean any~~ means an act that a notary is [empowered] authorized to perform under [this section] Section 46-1-6.

(7) "Notarial certificate" means ~~the part of or attachment to a notarized document for completion by the notary and bearing the notary's signature and seal.~~ the affidavit described in Section 46-1-6.5 that is:

(a) a part of or attached to a notarized document; and

(b) completed by the notary and bears the notary's signature and seal.

(8) "Notary" means any person commissioned to perform notarial acts under this chapter.

(9) "Oath" or "affirmation" means a notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary on penalty of perjury.

(10) "Official misconduct" means a notary's performance of any act prohibited or failure to perform any act mandated by this chapter or by any other law in connection with a notarial act.

~~[(11) "Personal knowledge of identity"]~~

(11) "Personally known" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(12) (a) "Satisfactory evidence of identity" means identification of an individual based on:

(i) valid personal identification with the individual's photograph, signature, and physical description ~~[issued by]~~ that the United States government, any state within the United States, or a foreign government issues;

(ii) a valid passport ~~[issued by]~~ that any nation issues; or

(iii) the oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.

(b) "Satisfactory evidence of identity" does not include:

(i) a driving privilege card under Subsection 53-3-207(10); or

(ii) another document that is not considered valid for identification.

(13) "Signature witnessing" means a notarial act in which an individual:

(a) appears in person before a notary and presents a document;

(b) provides the notary satisfactory evidence of the individual's identity, or is personally known to the notary; and

(c) signs the document in the presence of the notary.

Section 2. Section 46-1-3 is amended to read:

46-1-3. Qualifications -- Application for notarial commission required -- Term.

(1) Except as provided in Subsection (3), the lieutenant governor shall commission as a notary any qualified person who submits an application in accordance with this chapter.

(2) ~~[A person qualified]~~ To qualify for a notarial commission an individual shall:

(a) be at least 18 years [of age or older] old;

(b) lawfully reside in [this state 30 days immediately preceding the filing] the state for at least 30 days immediately before the individual applies for a notarial commission [and maintain permanent residency thereafter];

(c) be able to read, write, and understand English;

(d) submit an application to the lieutenant governor containing no significant misstatement or omission of fact [and include at least], that includes:

~~[(i) a statement of the applicant's personal qualifications, the applicant's residence address, a business address in this state, and daytime telephone number;]~~

~~[(ii) the applicant's age and date of birth;]~~

~~[(iii) all criminal convictions of the applicant, including any pleas of admission and nolo contendere;]~~

(i) the individual's:

(A) name as it will appear on the commission;

(B) residential address;

(C) business address;

(D) daytime telephone number; and

(E) date of birth;

(ii) an affirmation that the individual meets the requirements of this section;

(iii) an indication of any criminal convictions the individual has received, including a plea of admission or no contest;

(iv) all issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission or other professional license involving the applicant in this or any other state;

~~[(v) the acknowledgment of a passing score by the applicant on a written examination administered under Subsection (5);]~~

~~[(vi) a declaration by the applicant; and]~~

~~[(vii) an application fee determined under Section 63J-1-504;]~~

(v) an indication that the individual has passed the examination described in Subsection (5); and

(vi) payment of an application fee that the lieutenant governor establishes in accordance with Section 63J-1-504; and

~~[(e) be a Utah resident or]~~

(e) (i) be a United States citizen; or

(ii) have permanent resident status under Section 245 of the Immigration and Nationality Act[; and].

~~[(4) be endorsed by two residents of the state who are over the age of 18.]~~

(3) The lieutenant governor may deny an application based on:

(a) the applicant's conviction for a crime involving dishonesty or moral turpitude;

(b) any revocation, suspension, or restriction of a notarial commission or professional license issued to the applicant by this or any other state;

(c) the applicant's official misconduct while acting in the capacity of a notary; or

(d) the applicant's failure to pass the [written] examination described in Subsection (5).

(4) (a) [A person commissioned] An individual whom the lieutenant governor commissions as a notary [by the lieutenant governor] may perform notarial acts in any part of [this] the state for a term of four years, unless the person [resigned] resigns or the commission is revoked or suspended under Section 46-1-19.

(b) (i) After an individual's commission expires, the individual may not perform a notarial act until the individual obtains a new commission.

(ii) An individual whose commission expires and who wishes to obtain a new commission shall submit a new application, showing compliance with the requirements of this section.

(5) (a) Each applicant for a notarial commission shall take [a written] an examination [approved by] that the lieutenant governor approves and submit the examination to a testing center [designated by] that the lieutenant governor designates for purposes of scoring the examination.

(b) The testing center [designated by] that the lieutenant governor designates shall issue a written acknowledgment to the applicant indicating whether the applicant passed or failed the examination.

(6) (a) A notary shall maintain permanent residency in the state during the term of the notary's notarial commission.

(b) A notary who does not maintain permanent residency under Subsection (6)(a) shall resign the notary's notarial commission in accordance with Section 46-1-21.

Section 3. Section 46-1-4 is amended to read:

46-1-4. Bond.

[4] A notarial commission [may not become] is not effective until:

(1) the notary named in the commission takes a constitutional oath of office and files a \$5,000 bond [has been filed with and approved by] with the lieutenant governor[-] that:

(a) [The bond shall be executed by] a licensed surety executes for a term of four years [commencing] beginning on the commission's effective date and [terminating on its] ending on the commission's expiration date[-, with]; and

(b) conditions payment of bond funds to any person [conditioned] upon the notary's misconduct while acting in the scope of [his] the notary's commission[-]; and

[(2) The bond required under Subsection (1) may be executed by the Office of Risk Management for notaries public employed by a state office or agency.]

(2) the oath and bond are approved by the lieutenant governor.

Section 4. Section 46-1-6 is repealed and reenacted to read:

46-1-6. Powers and limitations.

(1) A notary may perform the following acts:

(a) a jurat;

(b) an acknowledgment;

(c) a signature witnessing;

(d) a copy certification; and

(e) an oath or affirmation.

(2) A notary may not:

(a) perform an act as a notary that is not described in Subsection (1); or

(b) perform an act described in Subsection (1) if the person for whom the notary performs the notarial act is not in the physical presence of the notary at the time the notary performs the act.

Section 5. Section 46-1-6.5 is enacted to read:

46-1-6.5. Form of notarial certificate for document notarizations.

(1) A correctly completed affidavit in substantially the form described in this section, that is included in or attached to a document, is sufficient for the completion of a notarization under this Title 46, Chapter 1, Notaries Public Reform Act.

(2) (a) A notary shall ensure that a signer takes the following oath or makes the following affirmation before the notary witnesses the signature for a jurat:

"Do you swear or affirm under penalty of perjury that the statements in your document are true?"

(b) An affidavit for a jurat that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

§

County of _____

Subscribed and sworn to before me (notary public name), on this (date) day of (month), in the year (year), by (name of document signer).

(Notary Seal) _____

Notary Signature".

(3) An affidavit for an acknowledgment that is in substantially the following form is sufficient under Subsection (1):

"State of Utah

§

County of _____

On this (date) day of (month), in the year (year), before me (name of notary public), a notary public, personally appeared (name of document signer), proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to in this document, and acknowledged (he/she/they) executed the same.

(Notary Seal) _____

Notary Signature”.

(4) An affidavit for a copy certification that is in substantially the following form is sufficient under Subsection (1):

“State of Utah

§

County of _____

On this (date) day of (month), in the year (year), I certify that the preceding or attached document is a true, exact, and unaltered photocopy of (description of document), and that, to the best of my knowledge, the photocopied document is neither a public record nor a publicly recorded document.

(Notary Seal) _____

Notary Signature”.

(5) An affidavit for a signature witnessing that is in substantially the following form is sufficient under Subsection (1):

“State of Utah

§

County of _____

On this (date) day of (month), in the year (year), before me, (name of notary public), personally appeared (name of document signer), proved to me through satisfactory evidence of identification, which was (form of identification), to be the person whose name is signed on the preceding or attached document in my presence.

(Notary Seal) _____

Notary Signature”.

Section 6. Section 46-1-7 is amended to read:

46-1-7. Disqualifications.

A notary may not perform a notarial act if the notary:

- (1) is a signer of the document that is to be notarized except in case of a self-proved will as provided in Section 75-2-504; [œ]
- (2) is named in the document that is to be notarized except in the case of a:
 - (a) [in the case of a] self-proved will as provided in Section 75-2-504; [œ]

(b) [in the case of a] licensed attorney that is listed in the document only as representing a signer or another person named in the document; or

(c) licensed escrow agent, as defined in Section 31A-1-301, that:

- (i) acts as the title insurance producer in signing closing documents; and
- (ii) is not named individually in the closing documents as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, vendor, vendee, lessor, lessee, buyer, or seller;

(3) will receive [directly] direct compensation from a transaction connected with a financial transaction in which the notary is named individually as a principal; or

(4) will receive [directly] direct compensation from a real property transaction in which the notary is named individually as a grantor, grantee, mortgagor, mortgagee, trustor, trustee, beneficiary, vendor, vendee, lessor, [œ] lessee, buyer, or seller.

Section 7. Section 46-1-15 is amended to read:

46-1-15. Inspection of journal -- Safekeeping and custody of journal.

(1) If a notary maintains a journal, the notary shall:

~~[(1) safeguard the journal and all other notarial records as valuable public documents and may not destroy the documents; and]~~

~~[(2) keep the journal in the exclusive custody of the notary, not to be used by any other notary or surrendered to an employer upon termination of employment.]~~

(a) keep the journal in the notary’s exclusive custody; and

(b) ensure that the journal is not used by any other person for any purpose.

(2) The notary’s employer may not require the notary to surrender the journal upon termination of the notary’s employment.

Section 8. Section 46-1-16 is amended to read:

46-1-16. Official signature -- Official seal -- Seal impression.

(1) In completing a notarial act, a notary shall sign on the notarial certificate exactly and only the name indicated on the notary’s commission.

(2) (a) A notary shall keep an official notarial seal that is the exclusive property of the notary and that may not be used by any other person.

(b) Upon the resignation, revocation, or expiration of a notarial commission, [the seal shall be destroyed] the notary shall destroy the notary’s seal.

(c) Each notarial seal obtained by a notary [œœ after July 1, 2003] shall use purple ink.

(3) (a) ~~[A new seal shall be obtained for any]~~ A notary shall obtain a new seal:

(i) ~~when the notary receives a new commission [or recommission.];~~ or

~~[(b) A new seal shall be obtained]~~

(ii) if the notary changes the notary's name of record at any time during the notary's commission.

~~[(e) The]~~ (b) A notary shall affix the seal impression ~~[shall be affixed]~~ near the notary's official signature on a notarial certificate and shall include a sharp, legible, and photographically reproducible ink impression of the notarial seal that consists of:

(i) the notary public's name exactly as indicated on the notary's commission;

(ii) the words "notary public," "state of Utah," and "my commission expires on (commission expiration date)";

(iii) ~~[for a notary seal issued on or after July 1, 2008,]~~ the notary's commission number, exactly as indicated on the notary's commission;

(iv) a facsimile of the great seal of the state; and

(v) a rectangular border no larger than one inch by two and one-half inches surrounding the required words and seal.

(4) ~~[An]~~ A notary may use an embossed seal impression that is not photographically reproducible ~~[may be used]~~ in addition to, but not in place of, the photographically reproducible seal required in this section.

(5) ~~[The]~~ A notary shall affix the notarial seal ~~[shall be affixed]~~ in a manner that does not obscure or render illegible any information or signatures contained in the document or in the notarial certificate.

(6) A notary may not use a notarial seal independent of a notarial certificate.

~~[(6)]~~ (7) ~~[A notary acknowledgment]~~ A notarial certificate on an annexation, subdivision, or other map or plat is considered complete without the imprint of the notary's official seal if:

(a) the notary signs the ~~[acknowledgment]~~ notarial certificate in permanent ink; and

(b) the following appear below or immediately adjacent to the notary's signature:

(i) the notary's ~~[full]~~ name and commission number appears exactly as indicated on the notary's commission;

(ii) the words "A notary public commissioned in Utah"; and

(iii) the expiration date of the notary's commission.

~~[(7)]~~ (8) ~~[A notary acknowledgment]~~ A notarial certificate on an electronic message or document is considered complete without the imprint of the

notary's seal if the following information appears electronically within the message:

(a) the notary's ~~[full]~~ name and commission number appearing exactly as indicated on the notary's commission; and

(b) the words "notary public," "state of Utah," and "my commission expires on _____ (date)".

Section 9. Section 46-1-18 is amended to read:

46-1-18. Liability.

(1) A notary may be liable to any person for any damage to that person proximately caused by the notary's misconduct in performing a notarization.

(2) (a) A surety for a notary's bond may be liable to any person for damages proximately caused to that person by the notary's misconduct in performing a notarization, but the surety's liability may not exceed the penalty of the bond or of any remaining bond funds that have not been expended to other claimants.

(b) Regardless of the number of claimants under Subsection (2)(a), a surety's total liability may not exceed the penalty of the bond.

(3) It is a class B misdemeanor, if not otherwise a criminal offense under this code, for:

(a) a notary to ~~[perform an act in violation of Section 46-1-9 or Section 46-1-11]~~ violate a provision of this chapter; or

(b) the employer of a notary to solicit the notary to ~~[perform a notarial act in violation]~~ violate a provision of this chapter.

Section 10. Section 46-1-20 is amended to read:

46-1-20. Change of name or address -- Bond policy rider.

(1) Within 30 days ~~[of a change in]~~ after the day on which a notary changes the notary's name, the notary shall provide to the lieutenant governor:

(a) the notary's new name, including official documentation of the name change; and

(b) a bond policy rider that a notary obtains in accordance with Subsection (2).

(2) To obtain a bond policy rider, the notary shall:

(a) notify the surety for the notary's bond;

(b) obtain a bond policy rider reflecting both the old and new name of the notary;

(c) return ~~[a]~~ the bond policy rider~~[,];~~

(d) destroy the original~~["Certificate of Authority of Notary Public";]~~ commission; and

~~[(d) pay a \$5 fee; and]~~

(e) destroy the old official seal.

(3) A notary is not required to change the notary's name by adopting the surname of the notary's spouse.

~~[(3)]~~ (4) Within 30 days of ~~[a change in the notary's address]~~ the day on which a notary's residential or business address changes, the notary shall provide the notary's new residential or business address to the lieutenant governor.

Section 11. Section 46-4-205 is amended to read:

46-4-205. Notarization and acknowledgment.

(1) If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied by following the procedures and requirements of Subsection 46-1-16~~[(7)]~~(8).

(2) The electronic signature of the person authorized to perform the acts under Subsection (1), and all other information required to be included by other applicable law, shall be attached to or logically associated with the signature or record.

Section 12. Repealer.

This bill repeals:

Section 46-1-5, Recommissioning.

CHAPTER 260**H. B. 355**

Passed March 9, 2017

Approved March 22, 2017

Effective May 9, 2017

**UNIFIED COMMERCIAL
DEVELOPMENT AMENDMENTS**Chief Sponsor: Francis D. Gibson
Senate Sponsor: Margaret Dayton**LONG TITLE****General Description:**

This bill amends provisions pertaining to unified commercial developments.

Highlighted Provisions:

This bill:

- ▶ amends provisions pertaining to signs in unified commercial developments;
- ▶ allows existing signs to be operated, maintained, rebuilt, or replaced; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

72-7-504, as last amended by Laws of Utah 2016, Chapter 299

72-7-504.6, as enacted by Laws of Utah 2016, Chapter 299

72-7-508, as last amended by Laws of Utah 2016, Chapter 299

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

Section 1. Section 72-7-504 is amended to read:**72-7-504. Advertising prohibited near interstate or primary system -- Exceptions -- Logo advertising -- Department rules.**

(1) As used in this section, "specific service trailblazer sign" means a guide sign that provides users with business identification or directional information for services and eligible activities that are advertised on a logo advertising sign authorized under Subsection (3)(a)(i).

(2) Outdoor advertising that is capable of being read or comprehended from any place on the main-traveled way of an interstate or primary system may not be erected or maintained, except:

(a) directional and other official signs and notices authorized or required by law, including signs and notices pertaining to natural wonders and scenic and historic attractions, informational or directional signs regarding utility service, emergency telephone signs, buried or underground utility markers, and above ground utility closure signs;

(b) on-premise signs advertising the sale or lease of property upon which the on-premise signs are located;

(c) on-premise signs advertising major activities conducted on the property where the on-premise signs are located;

(d) public assembly facility signs;

(e) ~~[on-premise signs within a unified commercial development]~~ unified commercial development signs that have received a waiver as described in Section 72-7-504.6;

(f) signs located in a commercial or industrial zone;

(g) signs located in unzoned industrial or commercial areas as determined from actual land uses; and

(h) logo advertising under Subsection (3).

(3) (a) The department may itself or by contract erect, administer, and maintain informational signs:

(i) on the main-traveled way of an interstate or primary system, as it existed on June 1, 1991, specific service signs for the display of logo advertising and information of interest, excluding specific service trailblazer signs as defined in rules adopted in accordance with Section 41-6a-301, to the traveling public if:

(A) the department complies with Title 63G, Chapter 6a, Utah Procurement Code, in the lease or other contract agreement with a private party for the sign or sign space; and

(B) the private party for the lease of the sign or sign space pays an amount set by the department to be paid to the department or the party under contract with the department under this Subsection (3); and

(ii) only on rural conventional roads as defined in rules adopted in accordance with Section 41-6a-301 in a county of the fourth, fifth, or sixth class for tourist-oriented directional signs that display logo advertising and information of interest to the traveling public if:

(A) the department complies with Title 63G, Chapter 6a, Utah Procurement Code, in the lease or other contract agreement with a private party for the tourist-oriented directional sign or sign space; and

(B) the private party for the lease of the sign or sign space pays an amount set by the department to be paid to the department or the party under contract with the department under this Subsection (3).

(b) The amount shall be sufficient to cover the costs of erecting, administering, and maintaining the signs or sign spaces.

(c) (i) Any sign erected pursuant to this Subsection (3) which was existing as of March 1, 2015, shall be permitted as if it were in compliance with this Subsection (3).

(ii) A noncompliant sign shall only be permitted for the contract period of the advertising contract.

(iii) A new advertising contract may not be issued for a noncompliant sign.

(d) The department may consult the Governor's Office of Economic Development in carrying out this Subsection (3).

(4) (a) Revenue generated under Subsection (3) shall be:

(i) applied first to cover department costs under Subsection (3); and

(ii) deposited in the Transportation Fund.

(b) Revenue in excess of costs under Subsection (3)(a) shall be deposited in the General Fund as a dedicated credit for use by the Governor's Office of Economic Development no later than the following fiscal year.

(5) Outdoor advertising under Subsections (2)(a), (f), (g), and (h) shall conform to the rules made by the department under Sections 72-7-506 and 72-7-507.

Section 2. Section 72-7-504.6 is amended to read:

72-7-504.6. Unified commercial development.

(1) As used in this section:

(a) "Common areas" means sidewalks, roadways, landscaping, parking, storage, and service areas that are identified on the approved map provided to the department describing the unified commercial development as required by this section.

~~(a)~~ (b) (i) "Contiguous" includes parcels that are otherwise contiguous, as defined in Section 72-7-502, that are considered to be contiguous notwithstanding a survey error or discrepancy in a legal boundary description or the presence of any of the following intervening features, including land reasonably related to those features:

(A) a road, other than a controlled route, that provides access to the development;

(B) a railway right-of-way ~~of a public transit district that provides, or may provide, access to the development;~~; or

~~(C) a utility line; or~~

~~(D)~~ (C) land that is undevelopable.

(ii) "Contiguous" does not include a parcel of land that is only physically connected to another parcel of land by a long, narrow strip.

(c) "Permit waiver" means written approval by the department, issued to the owner of a unified commercial development, to maintain a unified commercial development sign within the outdoor corridor that is within the boundaries of a unified commercial development per this section.

~~(b)~~ (d) (i) "Property," for purposes of the definition of "~~on-premise sign~~ unified commercial

development sign," includes all property within a unified commercial development upon which all owners in the development have irrevocable shared ownership and use rights and irrevocable shared obligations to the common areas, and specifically excludes any parcels of land within a unified commercial development that allow residential use.

(ii) "Property" does not include development that involves merely reciprocal easements or use agreements among individual properties.

(iii) If the owners in an approved unified commercial development subdivide the unified commercial development into individual parcels that do not meet the criteria in this Subsection (1)(d), then the approved unified commercial development sign permit waiver shall be denied or revoked.

~~(e)~~ (e) "Unified commercial development" means a development that:

(i) is used primarily for commercial or industrial activities;

(ii) is developed by a single developer, including successors, under a common development plan;

(iii) may include phased development;

(iv) consists solely of land that is contiguous;

(v) holds itself out to the public as a common development through signs ~~or~~ and other marketing efforts; and

~~(vi) includes one or more retail outlet stores;~~

~~(vii) includes a railway right-of-way of a public transit district that provides, or may provide, access to the development;~~

~~(viii) is located wholly or partially within a planned community or similar zone;~~

~~(ix) includes a hotel;~~

~~(x) is located in a county other than a county of the first class;~~

~~(xi) (vi) received planning approval from the local land use authority [for some or all of the development prior to December 31, 2012; and] and is recorded in the county in which the development was approved.~~

~~(xii) is located in a city that, at the time of approval under Subsection (1)(c)(xi), included a resort community zone.~~

(f) "Unified commercial development sign" means a sign:

(i) erected within an approved unified commercial development;

(ii) erected within the outdoor advertising corridor; and

(iii) that advertises only the brands, logos, or trade names of businesses, products, services, and events that are available to the public at facilities on parcels within the boundaries of the unified commercial development.

(2) (a) The department shall issue a revocable permit waiver to the owner of a unified commercial

development, approved by the local land use authority, for the erection and maintenance of a unified commercial development sign within the outdoor advertising corridor after receiving the development map that:

(i) is approved by the local land use authority and recorded by the county; and

(ii) shows:

(A) the unified commercial development sign location;

(B) the boundaries of the unified commercial development; and

(C) included parcels, owners, and businesses within the development that would qualify to advertise on the unified commercial development sign in compliance with this section.

(b) The entity holding a permit waiver under this section shall provide an updated list of all businesses located within the unified commercial development every 12 months from the date of issue of the unified commercial development permit waiver.

(c) In the event that a parcel within the boundaries of the approved unified commercial development allows a residential use, is removed from the development, or does not include irrevocable ownership and use rights and obligations, that parcel shall be excluded from the unified commercial development for purposes of determining a legal site for the sign, and any business, product, service, or event occurring on that parcel shall be excluded from display upon the unified commercial development sign.

~~(2)~~ (3) ~~[An on-premise]~~ A unified commercial development sign within a unified commercial development shall prominently display the name of the development and may also advertise:

(a) the sale or lease of land within the unified commercial development where the sign is located;

~~(b) activities conducted at venues or stores within the unified commercial development where the sign is located;~~

~~(e)~~ (b) the name of identifiable ~~[venues]~~ facilities or stores within the unified commercial development; and

~~(d)~~ (c) products for sale or services provided ~~[at venues or stores]~~ to the public at licensed businesses within the unified commercial development.

(4) (a) A unified commercial development sign may not:

(i) advertise brands, logos, or trade names of businesses, products, services, events, or activities that are not available to the public at facilities or stores within the unified commercial development or are only incidental to any business within the unified commercial development;

(ii) advertise products, services, brands, logos, or trade names of any business more than 90 days before the opening day of business to the public within the unified commercial development of the facilities or stores of the named advertiser; or

(iii) exceed the measurable limits described in Subsection (4)(b).

(b) A unified commercial development sign shall be:

(i) 750 feet, measured along the same side of an interstate right-of-way, from any other unified commercial development sign within the same unified commercial development; and

(ii) 475 feet, measured along the same side of the right-of-way of any noninterstate controlled route, from any other unified commercial development sign within the same unified commercial development.

(5) A unified commercial development sign that is not maintained in compliance with this section shall:

(a) have the sign owner's permit waiver revoked by the department;

(b) be considered as unlawful outdoor advertising; and

(c) be subject to penalties described in Section 72-7-508 and Subsection 72-7-510(3)(c).

(6) Notwithstanding any other provision in this part to the contrary, any sign or structure lawfully existing under Laws of Utah 2016, Chapter 299, on February 1, 2017, may continue to be operated, maintained, rebuilt, or replaced in a manner consistent with such chapter.

Section 3. Section 72-7-508 is amended to read:

72-7-508. Unlawful outdoor advertising -- Adjudicative proceedings -- Judicial review -- Costs of removal -- Civil and criminal liability for damaging regulated signs -- Immunity for Department of Transportation.

(1) Outdoor advertising is unlawful when:

(a) erected after May 9, 1967, contrary to the provisions of this chapter;

(b) a permit is not obtained as required by this part;

(c) a false or misleading statement has been made in the application for a permit that was material to obtaining the permit;

(d) the sign for which a permit was issued is not in a reasonable state of repair, is unsafe, or is otherwise in violation of this part; or

(e) a sign in the outdoor advertising corridor is permitted by the local zoning authority as an on-premise sign and the sign, from time to time or continuously, advertises an activity, service, event, person, or product located on property other than the property on which the sign is located.

(2) The establishment, operation, repair, maintenance, or alteration of any sign contrary to this chapter is also a public nuisance.

(3) Except as provided in Subsections (4) and (10), in its enforcement of this section, the department shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) The district courts shall have jurisdiction to review by trial de novo all final orders of the department under this part resulting from formal and informal adjudicative proceedings.

(b) Venue for judicial review of final orders of the department shall be in the county in which the sign is located.

(5) If the department is granted a judgment in an action brought under Subsection (4), the department is entitled to have any nuisance abated and recover from the responsible person, firm, or corporation, jointly and severally:

(a) the costs and expenses incurred in removing the sign; and

(b) (i) \$500 for each day the sign was maintained following the expiration of 10 days after notice of agency action was filed and served under Section 63G-4-201;

(ii) \$750 for each day the sign was maintained following the expiration of 40 days after notice of agency action was filed and served under Section 63G-4-201;

(iii) \$1,000 for each day the sign was maintained following the expiration of 70 days after notice of agency action was filed and served under Section 63G-4-201; and

(iv) \$1,500 for each day the sign was maintained following the expiration of 100 days after notice of agency action was filed and served under Section 63G-4-201.

(6) (a) Any person, partnership, firm, or corporation who vandalizes, damages, defaces, destroys, or uses any sign controlled under this chapter without the owner's permission is liable to the owner of the sign for treble the amount of damage sustained and all costs of court, including a reasonable attorney's fee, and is guilty of a class C misdemeanor.

(b) This Subsection (6) does not apply to the department, its agents, or employees if acting to enforce this part.

(7) The following criteria shall be used for determining whether an existing sign within an interstate outdoor advertising corridor has as its purpose unlawful off-premise outdoor advertising:

(a) whether the sign complies with this part;

(b) whether the premise includes an area:

(i) from which the general public is serviced according to normal industry practices for organizations of that type; or

(ii) that is directly connected to or is involved in carrying out the activities and normal industry practices of the advertised activities, services, events, persons, or products;

(c) whether the sign generates revenue:

(i) arising from the advertisement of activities, services, events, or products not available on the premise according to normal industry practices for organizations of that type;

(ii) arising from the advertisement of activities, services, events, persons, or products that are incidental to the principal activities, services, events, or products available on the premise; and

(iii) including the following:

(A) money;

(B) securities;

(C) real property interest;

(D) personal property interest;

(E) barter of goods or services;

(F) promise of future payment or compensation; or

(G) forbearance of debt;

(d) whether the purveyor of the activities, services, events, persons, or products being advertised:

(i) carries on hours of operation on the premise comparable to the normal industry practice for a business, service, or operation of that type, or posts the hours of operation on the premise in public view;

(ii) has available utilities comparable to the normal industry practice for an entity of that type; and

(iii) has a current valid business license or permit under applicable local ordinances, state law, and federal law to conduct business on the premise upon which the sign is located;

(e) whether the advertisement is located on the site of any auxiliary facility that is not essential to, or customarily used in, the ordinary course of business for the activities, services, events, persons, or products being advertised; or

(f) whether the sign or advertisement is located on property that is not contiguous to a property that is essential and customarily used for conducting the business of the activities, services, events, persons, or products being advertised.

(8) The following do not qualify as a business under Subsection (7):

(a) public or private utility corridors or easements;

(b) railroad tracks;

(c) outdoor advertising signs or structures;

(d) vacant lots;

(e) transient or temporary activities; or

(f) storage of accessory products.

(9) The sign owner has the burden of proving, by a preponderance of the evidence, that the advertised activity is conducted on the premise.

(10) (a) If the department has issued two or more notices of violation of Subsection (1)(e) for an existing sign within the last three years, the department may bring an action to enforce in any state court of competent jurisdiction against a person, firm, or corporation that satisfies one or more of the following prerequisites:

(i) has a present ownership interest in the sign;

(ii) had an ownership interest in the sign on one or more of the days the sign was in violation of Subsection (1)(e);

(iii) has a present ownership interest in the property upon which the sign is located, or in ~~[contiguous property]~~ a unified commercial development as defined in ~~[Subsection]~~ Section 72-7-504.6~~[(1)]~~;

(iv) had an ownership interest in the property upon which the sign is located, or in ~~[contiguous property]~~ a unified commercial development as defined in ~~[Subsection]~~ Section 72-7-504.6~~[(1)]~~, on one or more of the days the sign was in violation of Subsection (1)(e);

(v) received or became entitled to receive compensation in any form for the unlawful outdoor advertising; or

(vi) solicited the advertising.

(b) In an action under Subsection (10)(a):

(i) ~~[except as provided in Subsection (10)(e),]~~ the provisions of Subsections (7) and (8) apply; and

(ii) the defendants have the burden of proving, by a preponderance of the evidence, that the advertising in question is lawful under this part.

~~[(c) In an action under Subsection (10)(a), for an on-premise sign within a unified commercial development Section 72-7-504.6 applies.]~~

~~[(d)]~~ (c) If the department is granted judgment in an action under this Subsection (10), the department is entitled to recover from the defendants, jointly and severally, \$1,500 for each day on which the sign was used for unlawful off-premises outdoor advertising.

CHAPTER 261**H. B. 359**

Passed March 9, 2017

Approved March 22, 2017

Effective January 1, 2018

**SPINAL CORD AND BRAIN INJURY
REHABILITATION FUND AMENDMENTS**Chief Sponsor: Eric K. Hutchings
Senate Sponsor: Curtis S. Bramble**LONG TITLE****General Description:**

This bill amends the Utah Health Code related to the Spinal Cord and Brain Injury Rehabilitation Fund.

Highlighted Provisions:

This bill:

- ▶ changes the name of the Traumatic Spinal Cord and Brain Injury Rehabilitation Fund to the Spinal Cord and Brain Injury Rehabilitation Fund;
- ▶ directs the Motor Vehicle Division to collect an additional fee to register an off-highway vehicle and to deposit the collected fees into the Spinal Cord and Brain Injury Rehabilitation Fund;
- ▶ directs the Motor Vehicle Division to collect an additional fee to register a motorcycle and to deposit the collected fees into the Spinal Cord and Brain Injury Rehabilitation Fund;
- ▶ adds additional members to the Spinal Cord and Brain Injury Rehabilitation Fund Advisory Committee; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

- 26-54-101, as enacted by Laws of Utah 2012, Chapter 226
- 26-54-102, as last amended by Laws of Utah 2013, Chapter 400
- 26-54-103, as last amended by Laws of Utah 2014, Chapter 387
- 41-1a-1201, as last amended by Laws of Utah 2012, Chapters 207, 356, 397 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 397
- 41-1a-1206, as last amended by Laws of Utah 2016, Chapter 303
- 41-6a-1406, as last amended by Laws of Utah 2016, Chapters 100 and 148
- 41-22-8, as last amended by Laws of Utah 2012, Chapter 71

Utah Code Sections Affected by Coordination Clause:

- 41-1a-1206, as last amended by Laws of Utah 2016, Chapter 303

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

Section 1. Section 26-54-101 is amended to read:

**CHAPTER 54. SPINAL CORD AND BRAIN
INJURY REHABILITATION FUND****26-54-101. Title.**

This chapter is known as the “[~~Traumatic~~] Spinal Cord and Brain Injury Rehabilitation Fund.”

Section 2. Section 26-54-102 is amended to read:

**26-54-102. Creation -- Spinal Cord and
Brain Injury Rehabilitation Fund.**

~~[(1) Because the state finds that persons with traumatic spinal cord and brain injuries require intensive, focused, and specific rehabilitation there]~~

(1) There is created an expendable special revenue fund ~~[entitled the Traumatic]~~ known as the Spinal Cord and Brain Injury Rehabilitation Fund.

(2) The fund shall consist of:

(a) gifts, grants, donations, or any other conveyance of money that may be made to the fund from private sources;

(b) a portion of the impound fee as designated in Section 41-6a-1406; ~~[and]~~

~~(c) the fees collected by the Motor Vehicle Division under Subsection 41-22-8(3) and Subsection 41-1a-1201(8); and~~

~~[(e)]~~ (d) amounts as appropriated by the Legislature.

(3) The fund shall be administered by the executive director of the Department of Health in consultation with the advisory committee created in Section 26-54-103.

(4) A “qualified IRC 501(c)(3) charitable clinic” means a professional medical clinic that:

(a) provides ~~[services for people in this state with] rehabilitation services to individuals in the state:~~

(i) who have a traumatic spinal cord ~~[and]~~ or brain ~~[injuries who require]~~ injury that tends to be nonprogressive or nondeteriorating; and

(ii) who require post-acute care;

(b) employs licensed therapy clinicians; and

(c) has no less than five years experience operating a post-acute-care rehabilitation clinic in the state.

(5) Fund money shall be used to assist one or more qualified IRC 501(c)(3) charitable clinics to provide rehabilitation services to individuals who have a traumatic spinal cord or brain injury that tends to be nonprogressive or nondeteriorating, including:

(a) physical, occupational, and speech therapy; and

(b) equipment necessary for daily living ~~[activities for people with spinal cord and brain injuries].~~

(6) All actual and necessary operating expenses for the advisory committee and staff shall be paid by the fund.

Section 3. Section 26-54-103 is amended to read:

26-54-103. Spinal Cord and Brain Injury Rehabilitation Fund Advisory Committee -- Creation -- Membership -- Terms -- Duties.

(1) There is created a [~~Traumatic~~] Spinal Cord and Brain Injury Rehabilitation Fund Advisory Committee.

(2) The advisory committee shall be composed of [~~five~~] eight members as follows:

(a) the executive director of the [~~Utah~~] Department of Health, or the executive director's designee;

(b) [~~a survivor, or a family member~~] two survivors, or family members of a survivor of a traumatic brain injury, appointed by the governor;

(c) [~~a survivor, or a family member~~] two survivors, or family members of a survivor of a traumatic spinal cord injury, appointed by the governor;

(d) one traumatic brain injury or spinal cord injury professional appointed by the governor who, at the time of appointment and throughout the professional's term on the committee, does not receive a financial benefit from the fund;

(~~d~~) (e) a member of the House of Representatives appointed by the speaker of the House of Representatives; and

(~~e~~) (f) a member of the Senate appointed by the president of the Senate.

(3) (a) The term of advisory committee members shall be four years. If a vacancy occurs in the committee membership for any reason, a replacement shall be appointed for the unexpired term in the same manner as the original appointment.

(b) The committee shall elect a chairperson from the membership.

(c) A majority of the committee constitutes a quorum at any meeting, and, if a quorum is present at an open meeting, the action of the majority of members shall be the action of the advisory committee.

(d) The terms of the advisory committee shall be staggered so that members appointed under Subsections (2)(b) and (d) shall serve an initial two-year term and members appointed under Subsections (2)(c) and (e) shall serve four-year terms. Thereafter, members appointed to the advisory committee shall serve four-year terms.

(4) The advisory committee shall comply with the procedures and requirements of:

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

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

(c) Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules adopted by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(6) The advisory committee shall:

(a) adopt rules and procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish priorities and criteria for the advisory committee to follow in recommending distribution of money from the fund to assist qualified IRC 501(c)(3) charitable clinics;

(b) identify, evaluate, and review the quality of care available to people with [~~traumatic~~] spinal cord and brain injuries through qualified IRC 501(c)(3) charitable clinics;

(c) explore, evaluate, and review other possible funding sources and make a recommendation to the Legislature regarding sources that would provide adequate funding for the advisory committee to accomplish its responsibilities under this section; and

(d) submit an annual report, not later than November 30 of each year, summarizing the activities of the advisory committee and making recommendations regarding the ongoing needs of people with spinal cord or brain injuries to:

(i) the governor;

(ii) the Health and Human Services Interim Committee; and

(iii) the Health and Human Services Appropriations Subcommittee.

Section 4. Section 41-1a-1201 is amended to read:

41-1a-1201. Disposition of fees.

(1) All fees received and collected under this part shall be transmitted daily to the state treasurer.

(2) Except as provided in Subsections (3), (6), (7), and [~~(7)~~] (8) and Sections 41-1a-422, 41-1a-1220, 41-1a-~~1221~~, and 41-1a-1223 all fees collected under this part shall be deposited in the Transportation Fund.

(3) Funds generated under Subsections 41-1a-1211(1)(b)(ii), (6)(b)(ii), and (7) and Section 41-1a-1212 may be used by the commission to cover

the costs incurred in issuing license plates under Part 4, License Plates and Registration Indicia.

(4) In accordance with Section 63J-1-602.2, all funds available to the commission for the purchase and distribution of license plates and decals are nonlapsing.

(5) (a) Except as provided in Subsections (3) and (5)(b) and Section 41-1a-1205, the expenses of the commission in enforcing and administering this part shall be provided for by legislative appropriation from the revenues of the Transportation Fund.

(b) Three dollars of the registration fees imposed under Subsections 41-1a-1206(2)(a) and (b) for each vehicle registered for a six-month registration period under Section 41-1a-215.5 may be used by the commission to cover the costs incurred in enforcing and administering this part.

(6) (a) The following portions of the registration fees imposed under Section 41-1a-1206 for each vehicle shall be deposited in the Transportation Investment Fund of 2005 created under Section 72-2-124:

(i) \$30 of the registration fees imposed under Subsections 41-1a-1206(1)(a), (1)(b), (1)(f), (3), and (6);

(ii) \$21 of the registration fees imposed under Subsections 41-1a-1206(1)(c)(i) and (1)(c)(ii);

(iii) \$2.50 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(ii);

(iv) \$23 of the registration fee imposed under Subsection 41-1a-1206(1)(d)(i);

(v) \$24.50 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(i); and

(vi) \$1 of the registration fee imposed under Subsection 41-1a-1206(1)(d)(ii).

(b) The following portions of the registration fees collected for each vehicle registered for a six-month registration period under Section 41-1a-215.5 shall be deposited in the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) \$23.25 of each registration fee collected under Subsection 41-1a-1206(2)(a); and

(ii) \$23 of each registration fee collected under Subsection 41-1a-1206(2)(b).

(7) (a) Ninety-four cents of each registration fee imposed under Subsections 41-1a-1206(1)(a) and (b) for each vehicle shall be deposited in the Public Safety Restricted Account created in Section 53-3-106.

(b) Seventy-one cents of each registration fee imposed under Subsections 41-1a-1206(2)(a) and (b) for each vehicle registered for a six-month registration period under Section 41-1a-215.5 shall be deposited in the Public Safety Restricted Account created in Section 53-3-106.

(8) Fifty cents of each registration fee imposed under Subsection 41-1a-1206(1)(a) for each motorcycle shall be deposited in the Spinal Cord and Brain Injury Rehabilitation Fund created in Section 26-54-102.

Section 5. Section 41-1a-1206 is amended to read:

41-1a-1206. Registration fees -- Fees by gross laden weight.

(1) Except as provided in Subsections (2) and (3), at the time application is made for registration or renewal of registration of a vehicle or combination of vehicles under this chapter, a registration fee shall be paid to the division as follows:

(a) [~~\$44.50~~] \$45.00 for each motorcycle;

(b) \$43 for each motor vehicle of 12,000 pounds or less gross laden weight, excluding motorcycles;

(c) unless the semitrailer or trailer is exempt from registration under Section 41-1a-202 or is registered under Section 41-1a-301:

(i) \$31 for each trailer or semitrailer over 750 pounds gross unladen weight; or

(ii) \$28.50 for each commercial trailer or commercial semitrailer of 750 pounds or less gross unladen weight;

(d) (i) \$53 for each farm truck over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) \$9 for each 2,000 pounds over 14,000 pounds gross laden weight;

(e) (i) \$69.50 for each motor vehicle or combination of motor vehicles, excluding farm trucks, over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) \$19 for each 2,000 pounds over 14,000 pounds gross laden weight;

(f) (i) \$69.50 for each park model recreational vehicle over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) \$19 for each 2,000 pounds over 14,000 pounds gross laden weight; and

(g) \$45 for each vintage vehicle that is less than 40 years old.

(2) At the time application is made for registration or renewal of registration of a vehicle under this chapter for a six-month registration period under Section 41-1a-215.5, a registration fee shall be paid to the division as follows:

(a) \$33.50 for each motorcycle; and

(b) \$32.50 for each motor vehicle of 12,000 pounds or less gross laden weight, excluding motorcycles.

(3) (a) The initial registration fee for a vintage vehicle that is 40 years old or older is \$40.

(b) A vintage vehicle that is 40 years old or older is exempt from the renewal of registration fees under Subsection (1).

(c) A vehicle with a Purple Heart special group license plate issued in accordance with Section 41-1a-421 is exempt from the registration fees under Subsection (1).

(d) A camper is exempt from the registration fees under Subsection (1).

(4) If a motor vehicle is operated in combination with a semitrailer or trailer, each motor vehicle shall register for the total gross laden weight of all units of the combination if the total gross laden weight of the combination exceeds 12,000 pounds.

(5) (a) Registration fee categories under this section are based on the gross laden weight declared in the licensee's application for registration.

(b) Gross laden weight shall be computed in units of 2,000 pounds. A fractional part of 2,000 pounds is a full unit.

(6) The owner of a commercial trailer or commercial semitrailer may, as an alternative to registering under Subsection (1)(c), apply for and obtain a special registration and license plate for a fee of \$130.

(7) Except as provided in Section 41-6a-1642, a truck may not be registered as a farm truck unless:

(a) the truck meets the definition of a farm truck under Section 41-1a-102; and

(b) (i) the truck has a gross vehicle weight rating of more than 12,000 pounds; or

(ii) the truck has a gross vehicle weight rating of 12,000 pounds or less and the owner submits to the division a certificate of emissions inspection or a waiver in compliance with Section 41-6a-1642.

(8) A violation of Subsection (7) is an infraction that shall be punished by a fine of not less than \$200.

(9) Trucks used exclusively to pump cement, bore wells, or perform crane services with a crane lift capacity of five or more tons, are exempt from 50% of the amount of the fees required for those vehicles under this section.

Section 6. Section 41-6a-1406 is amended to read:

41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification requirements -- Administrative impound fee -- Refunds -- Possessory lien -- Rulemaking.

(1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 by an order of a peace officer or by an order of a person acting on behalf of a law enforcement agency or highway authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the expense of the owner.

(2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or impounded to:

(a) a state impound yard; or

(b) if none, a garage, docking area, or other place of safety.

(3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be removed by a tow truck motor carrier that meets standards established:

(a) under Title 72, Chapter 9, Motor Carrier Safety Act; and

(b) by the department under Subsection (10).

(4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report of the removal shall be sent to the Motor Vehicle Division by:

(i) the peace officer or agency by whom the peace officer is employed; and

(ii) the tow truck operator or the tow truck motor carrier by whom the tow truck operator is employed.

(b) The report shall be in a form specified by the Motor Vehicle Division and shall include:

(i) the operator's name, if known;

(ii) a description of the vehicle, vessel, or outboard motor;

(iii) the vehicle identification number or vessel or outboard motor identification number;

(iv) the license number, temporary permit number, or other identification number issued by a state agency;

(v) the date, time, and place of impoundment;

(vi) the reason for removal or impoundment;

(vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or outboard motor; and

(viii) the place where the vehicle, vessel, or outboard motor is stored.

(c) Until the tow truck operator or tow truck motor carrier reports the removal as required under this Subsection (4), a tow truck motor carrier or impound yard may not:

(i) collect any fee associated with the removal; and

(ii) begin charging storage fees.

(5) (a) Except as provided in Subsection (5)(e) and upon receipt of the report, the Motor Vehicle Division shall give notice, in the manner described in Section 41-1a-114, to the following parties with an interest in the vehicle, vessel, or outboard motor, as applicable:

(i) the registered owner;

(ii) any lien holder; or

(iii) a dealer, as defined in Section 41-1a-102, if the vehicle, vessel, or outboard motor is currently operating under a temporary permit issued by the dealer, as described in Section 41-3-302.

(b) The notice shall:

(i) state the date, time, and place of removal, the name, if applicable, of the person operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal, and the place where the vehicle, vessel, or outboard motor is stored;

(ii) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle, vessel, or outboard motor;

(iii) state the conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and

(iv) inform the parties described in Subsection (5)(a) of the division's intent to sell the vehicle, vessel, or outboard motor, if, within 30 days after the day of the removal or impoundment under this section, one of the parties fails to make a claim for release of the vehicle, vessel, or outboard motor.

(c) Except as provided in Subsection (5)(e) and if the vehicle, vessel, or outboard motor is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the parties described in Subsection (5)(a) of the removal and the place where the vehicle, vessel, or outboard motor is stored.

(d) The Motor Vehicle Division shall forward a copy of the notice to the place where the vehicle, vessel, or outboard motor is stored.

(e) The Motor Vehicle Division is not required to give notice under this Subsection (5) if a report was received by a tow truck operator or tow truck motor carrier reporting a tow truck service in accordance with Subsection 72-9-603(1)(a)(i).

(6) (a) The vehicle, vessel, or outboard motor shall be released after a party described in Subsection (5)(a):

(i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of the State Tax Commission;

(ii) presents identification sufficient to prove ownership of the impounded vehicle, vessel, or outboard motor;

(iii) completes the registration, if needed, and pays the appropriate fees;

(iv) if the impoundment was made under Section 41-6a-527, pays an administrative impound fee of \$400; and

(v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

(b) (i) Twenty-nine dollars of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;

(ii) \$147 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the Department of Public Safety Restricted Account created in Section 53-3-106;

(iii) \$20 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the [Traumatic] Spinal Cord and Brain Injury Rehabilitation Fund; and

(iv) the remainder of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the General Fund.

(c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refunded by the State Tax Commission if the registered owner, lien holder, or owner's agent presents written evidence to the State Tax Commission that:

(i) the Driver License Division determined that the arrested person's driver license should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter or other report from the Driver License Division presented within 30 days of the final notification from the Driver License Division; or

(ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the stolen vehicle report presented within 30 days of the impoundment.

(d) A tow truck operator, a tow truck motor carrier, and an impound yard shall accept payment by cash and debit or credit card for a removal or impoundment under Subsection (1) or any service rendered, performed, or supplied in connection with a removal or impoundment under Subsection (1).

(e) The owner of an impounded vehicle may not be charged a fee for the storage of the impounded vehicle, vessel, or outboard motor if:

(i) the vehicle, vessel, or outboard motor is being held as evidence; and

(ii) the vehicle, vessel, or outboard motor is not being released to a party described in Subsection 5(a), even if the party satisfies the requirements to release the vehicle, vessel, or outboard motor under this Subsection (6).

(7) (a) An impounded vehicle, vessel, or outboard motor not claimed by a party described in Subsection (5)(a) within the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the proceeds, if any, shall be disposed of as provided under Section 41-1a-1104.

(b) The date of impoundment is considered the date of seizure for computing the time period provided under Section 41-1a-1103.

(8) A party described in Subsection (5)(a) that pays all fees and charges incurred in the impoundment of the owner's vehicle, vessel, or outboard motor has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vehicle, vessel, or outboard motor whose actions caused the removal or impoundment.

(9) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel, or outboard motor.

(10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

department shall make rules setting the performance standards for towing companies to be used by the department.

(11) (a) The Motor Vehicle Division may specify that a report required under Subsection (4) be submitted in electronic form utilizing a database for submission, storage, and retrieval of the information.

(b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the administrator of the database may adopt a schedule of fees assessed for utilizing the database.

(ii) The fees under this Subsection (11)(b) shall:

(A) be reasonable and fair; and

(B) reflect the cost of administering the database.

Section 7. Section 41-22-8 is amended to read:

41-22-8. Registration fees.

(1) The board shall establish the fees which shall be paid in accordance with this chapter, subject to the following:

(a) (i) Except as provided in Subsection (1)(a)(ii), the fee for each off-highway vehicle registration may not exceed \$18.

(ii) The fee for each snowmobile registration may not exceed \$26.

(b) The fee for each duplicate registration card may not exceed \$3.

(c) The fee for each duplicate registration sticker may not exceed \$5.

(2) A fee may not be charged for an off-highway vehicle that is owned and operated by the United States Government, this state, or its political subdivisions.

(3) (a) In addition to the fees under this section, Section 41-22-33, and Section 41-22-34, the Motor Vehicle Division shall require a person to pay 50 cents to register an off-highway vehicle under Section 41-22-3.

(b) The Motor Vehicle Division shall deposit the fees the Motor Vehicle Division collects under Subsection (3)(a) into the Spinal Cord and Brain Injury Rehabilitation Fund described in Section 26-54-102.

Section 8. Effective date.

This bill takes effect on January 1, 2018.

Section 9. Coordinating H.B. 359 with H.B. 265 -- Substantive amendment.

If this H.B. 359 and H.B. 265, Safety Inspection Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, modify Subsection 41-1a-1206(1)(a) to read:

“(a) [~~\$44.50~~] \$46.00 for each motorcycle;”.

CHAPTER 262**H. B. 405**

Passed March 9, 2017
 Approved March 22, 2017
 Effective May 9, 2017

**HYDROGEN FUEL
 PRODUCTION INCENTIVES**

Chief Sponsor: Douglas V. Sagers
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill provides potential incentives for the production of hydrogen fuel.

Highlighted Provisions:

This bill:

- ▶ expands the uses for money in the Community Impact Fund to include a plant for the production of hydrogen fuel for zero emission motor vehicles or a plant for the manufacture of zero emission hydrogen fueled trucks; and
- ▶ provides for an oil and gas severance tax credit for a taxpayer that produces natural gas for use in the production of hydrogen fuel for zero emission motor vehicles.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

35A-8-302, as last amended by Laws of Utah 2016, Chapter 184
 59-5-102, as last amended by Laws of Utah 2016, Chapters 135 and 324

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

Section 1. Section 35A-8-302 is amended to read:

35A-8-302. Definitions.

As used in this part:

(1) "Bonus payments" means that portion of the bonus payments received by the United States government under the Leasing Act paid to the state under Section 35 of the Leasing Act, 30 U.S.C. Sec. 191, together with any interest that had accrued on those payments.

(2) "Impact board" means the Permanent Community Impact Fund Board created under Section 35A-8-304.

(3) "Impact fund" means the Permanent Community Impact Fund established by this chapter.

(4) "Interlocal Agency" means a legal or administrative entity created by a subdivision or combination of subdivisions under the authority of Title 11, Chapter 13, Interlocal Cooperation Act.

(5) "Leasing Act" means the Mineral Lands Leasing Act of 1920, 30 U.S.C. Sec. 181 et seq.

(6) "Qualifying sales and use tax distribution reduction" means that, for the calendar year beginning on January 1, 2008, the total sales and use tax distributions a city received under Section 59-12-205 were reduced by at least 15% from the total sales and use tax distributions the city received under Section 59-12-205 for the calendar year beginning on January 1, 2007.

(7) "Subdivision" means a county, city, town, county service area, special service district, special improvement district, water conservancy district, water improvement district, sewer improvement district, housing authority, building authority, school district, or public postsecondary institution organized under the laws of this state.

(8) (a) "Throughput infrastructure project" means the following facilities, whether located within, partially within, or outside of the state:

- (i) a bulk commodities ocean terminal;
- (ii) a pipeline for the transportation of liquid or gaseous hydrocarbons;
- (iii) electric transmission lines and ancillary facilities; [øø]
- (iv) a shortline freight railroad and ancillary facilities[-];
- (v) a plant for producing hydrogen, including the liquification of hydrogen, for use as a fuel in zero emission motor vehicles; or

(vi) a plant for the production of zero emission hydrogen fueled trucks.

(b) "Throughput infrastructure project" includes:

- (i) an ownership interest or a joint or undivided ownership interest in a facility;
- (ii) a membership interest in the owner of a facility; or
- (iii) a contractual right, whether secured or unsecured, to use all or a portion of the throughput, transportation, or transmission capacity of a facility.

Section 2. Section 59-5-102 is amended to read:

59-5-102. Definitions -- Severance tax -- Computation -- Rate -- Annual exemption -- Tax credit -- Tax rate reduction.

(1) As used in this section:

(a) "Royalty rate" means the percentage of the interests described in Subsection (2)(b)(i) as defined by a contract between the United States, the state, an Indian, or an Indian tribe and the oil or gas producer.

(b) "Taxable value" means the total value of the oil or gas minus:

- (i) any royalties paid to, or the value of oil or gas taken in kind by, the interest holders described in Subsection (2)(b)(i); and

(ii) the total value of oil or gas exempt from severance tax under Subsection (2)(b)(ii).

(c) "Taxable volume" means:

(i) for oil, the total volume of barrels minus:

(A) for an interest described in Subsection (2)(b)(i), the product of the royalty rate and the total volume of barrels; and

(B) the number of barrels that are exempt under Subsection (2)(b)(ii); and

(ii) for natural gas, the total volume of MCFs minus:

(A) for an interest described in Subsection (2)(b)(i), the product of the royalty rate and the total volume of MCFs; and

(B) the number of MCFs that are exempt under Subsection (2)(b)(ii).

(d) "Total value" means the value, as determined by Section 59-5-103.1, of all oil or gas that is:

(i) produced; and

(ii) (A) saved;

(B) sold; or

(C) transported from the field where the oil or gas was produced.

(e) "Total volume" means:

(i) for oil, the number of barrels:

(A) produced; and

(B) (I) saved;

(II) sold; or

(III) transported from the field where the oil was produced; and

(ii) for natural gas, the number of MCFs:

(A) produced; and

(B) (I) saved;

(II) sold; or

(III) transported from the field where the natural gas was produced.

(f) "Value of oil or gas taken in kind" means the volume of oil or gas taken in kind multiplied by the market price for oil or gas at the location where the oil or gas was produced on the date the oil or gas was taken in kind.

(2) (a) Except as provided in Subsection (2)(b), a person owning an interest in oil or gas produced from a well in the state, including a working interest, royalty interest, payment out of production, or any other interest, or in the proceeds of the production of oil or gas, shall pay to the state a severance tax on the owner's interest in the taxable value of the oil or gas:

(i) produced; and

(ii) (A) saved;

(B) sold; or

(C) transported from the field where the substance was produced.

(b) The severance tax imposed by Subsection (2)(a) does not apply to:

(i) an interest of:

(A) the United States in oil or gas or in the proceeds of the production of oil or gas;

(B) the state or a political subdivision of the state in oil or gas or in the proceeds of the production of oil or gas; and

(C) an Indian or Indian tribe as defined in Section 9-9-101 in oil or gas or in the proceeds of the production of oil or gas produced from land under the jurisdiction of the United States; and

(ii) the value of:

(A) oil or gas produced from stripper wells, unless the exemption prevents the severance tax from being treated as a deduction for federal tax purposes;

(B) oil or gas produced in the first 12 months of production for wildcat wells started after January 1, 1990; and

(C) oil or gas produced in the first six months of production for development wells started after January 1, 1990.

(3) (a) The severance tax on oil shall be calculated as follows:

(i) dividing the taxable value by the taxable volume;

(ii) (A) multiplying the rate described in Subsection (4)(a)(i) by the portion of the figure calculated in Subsection (3)(a)(i) that is subject to the rate described in Subsection (4)(a)(i); and

(B) multiplying the rate described in Subsection (4)(a)(ii) by the portion of the figure calculated in Subsection (3)(a)(i) that is subject to the rate described in Subsection (4)(a)(ii);

(iii) adding together the figures calculated in Subsections (3)(a)(ii)(A) and (B); and

(iv) multiplying the figure calculated in Subsection (3)(a)(iii) by the taxable volume.

(b) The severance tax on natural gas shall be calculated as follows:

(i) dividing the taxable value by the taxable volume;

(ii) (A) multiplying the rate described in Subsection (4)(b)(i) by the portion of the figure calculated in Subsection (3)(b)(i) that is subject to the rate described in Subsection (4)(b)(i); and

(B) multiplying the rate described in Subsection (4)(b)(ii) by the portion of the figure calculated in Subsection (3)(b)(i) that is subject to the rate described in Subsection (4)(b)(ii);

(iii) adding together the figures calculated in Subsections (3)(b)(ii)(A) and (B); and

(iv) multiplying the figure calculated in Subsection (3)(b)(iii) by the taxable volume.

(c) The severance tax on natural gas liquids shall be calculated by multiplying the taxable value of the natural gas liquids by the severance tax rate in Subsection (4)(c).

(4) Subject to Subsection ~~[(8)]~~ (9):

(a) the severance tax rate for oil is as follows:

(i) 3% of the taxable value of the oil up to and including the first \$13 per barrel for oil; and

(ii) 5% of the taxable value of the oil from \$13.01 and above per barrel for oil;

(b) the severance tax rate for natural gas is as follows:

(i) 3% of the taxable value of the natural gas up to and including the first \$1.50 per MCF for gas; and

(ii) 5% of the taxable value of the natural gas from \$1.51 and above per MCF for gas; and

(c) the severance tax rate for natural gas liquids is 4% of the taxable value of the natural gas liquids.

(5) If oil or gas is shipped outside the state:

(a) the shipment constitutes a sale; and

(b) the oil or gas is subject to the tax imposed by this section.

(6) (a) Except as provided in Subsection (6)(b), if the oil or gas is stockpiled, the tax is not imposed until the oil or gas is:

(i) sold;

(ii) transported; or

(iii) delivered.

(b) If oil or gas is stockpiled for more than two years, the oil or gas is subject to the tax imposed by this section.

(7) (a) Subject to Subsections (7)(b) and (c), a taxpayer who pays for all or part of the expenses of a recompletion or workover may claim a nonrefundable tax credit equal to 20% of the amount paid.

(b) The tax credit under Subsection (7)(a) for each recompletion or workover may not exceed \$30,000 per well during each calendar year.

(c) A taxpayer may carry forward a tax credit allowed under this Subsection (7) for the next three calendar years if the tax credit exceeds the taxpayer's tax liability under this part for the calendar year in which the taxpayer claims the tax credit.

(8) (a) A taxpayer may claim a tax credit against a severance tax owing on natural gas under this section if:

(i) the taxpayer is required to pay a severance tax on natural gas under this section;

(ii) the taxpayer owns or operates a plant in the state that converts natural gas to hydrogen fuel; and

(iii) all of the natural gas for which the taxpayer owes a severance tax under this section is used for the production in the state of hydrogen fuel for use in zero emission motor vehicles.

(b) The tax credit a taxpayer may claim under Subsection (8)(a) is equal to the amount of tax that the taxpayer owes under this section, subject to a maximum of \$5,000,000 per year.

~~[(8)]~~ (9) A 50% reduction in the tax rate is imposed upon the incremental production achieved from an enhanced recovery project.

~~[(9)]~~ (10) The taxes imposed by this section are:

(a) in addition to all other taxes provided by law; and

(b) delinquent, unless otherwise deferred, on June 1 following the calendar year when the oil or gas is:

(i) produced; and

(ii) (A) saved;

(B) sold; or

(C) transported from the field.

~~[(10)]~~ (11) With respect to the tax imposed by this section on each owner of an interest in the production of oil or gas or in the proceeds of the production of oil or gas in the state, each owner is liable for the tax in proportion to the owner's interest in the production or in the proceeds of the production.

~~[(11)]~~ (12) The tax imposed by this section shall be reported and paid by each producer that takes oil or gas in kind pursuant to an agreement on behalf of the producer and on behalf of each owner entitled to participate in the oil or gas sold by the producer or transported by the producer from the field where the oil or gas is produced.

~~[(12)]~~ (13) Each producer shall deduct the tax imposed by this section from the amounts due to other owners for the production or the proceeds of the production.

CHAPTER 263**H. B. 432**

Passed March 8, 2017
 Approved March 22, 2017
 Effective March 22, 2017

**LOCAL DISTRICT BOARD
 APPOINTMENT AMENDMENTS**

Chief Sponsor: R. Curt Webb
 Senate Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill addresses appointment of a member to a local district board by a county.

Highlighted Provisions:

This bill:

- ▶ allows a county legislative body to appoint a member of the county legislative body to fill a vacancy on a local district board under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

17B-1-302, as last amended by Laws of Utah 2016, Chapter 140

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

Section 1. Section 17B-1-302 is amended to read:

17B-1-302. Board member qualifications -- Number of board members.

(1) (a) Each member of a local district board of trustees shall be:

(i) a registered voter at the location of the member's residence; and

(ii) except as otherwise provided in this Subsection (1), a resident within:

(A) the boundaries of the local district; and

(B) if applicable, the boundaries of the division of the local district from which the member is elected.

(b) (i) As used in this Subsection (1)(b):

(A) "Proportional number" means the number of members of a board of trustees that bears, as close as mathematically possible, the same proportion to all members of the board that the number of seasonally occupied homes bears to all residences within the district that receive service from the district.

(B) "Seasonally occupied home" means a single-family residence:

(I) that is located within the local district;

(II) that receives service from the local district; and

(III) whose owner:

(Aa) does not reside permanently at the residence; and

(Bb) may occupy the residence on a temporary or seasonal basis.

(ii) If over 50% of the residences within a local district that receive service from the local district are seasonally occupied homes, the requirement under Subsection (1)(a)(ii) is replaced, for a proportional number of members of the board of trustees, with the requirement that the member be an owner of land, or an agent or officer of the owner of land, that:

(A) receives service from the district; and

(B) is located within:

(I) the local district; and

(II) if applicable, the division from which the member is elected.

(c) For a board of trustees member in a basic local district that has within its boundaries fewer than one residential dwelling unit per 10 acres of land, the requirement under Subsection (1)(a)(ii) is replaced with the requirement that the member be an owner of land within the local district that receives service from the district, or an agent or officer of the owner.

(d) A member of the board of trustees of a service area described in Subsection 17B-2a-905(2)(a) or (3)(a), who is an elected official of the county appointing the individual, is not subject to the requirements described in Subsection (1)(a)(ii) if the elected official was elected at large by the voters of the county.

(e) Notwithstanding Subsection (1)(a)(ii), the county legislative body may appoint to the local district board one of the county legislative body's own members, regardless of whether the member resides within the boundaries described in Subsection (1)(a)(ii), if:

(i) the county legislative body satisfies the procedures to fill a vacancy described in:

(A) for the appointment of a new board member, Subsections 17B-1-304(2) and (3); or

(B) for an appointment to fill a midterm vacancy, Subsections 20A-1-512(1)(a) and (b);

(ii) no qualified candidate timely files to be considered for appointment to the local district board; and

(iii) the county legislative body appoints a member of the body to the local district board, in accordance with Subsection 17B-1-304(6) or Subsection 20A-1-512(1)(c), who was:

(A) elected at large by the voters of the county;

(B) elected from a division of the county that includes more than 50% of the geographic area of the local district; or

(C) if the local district is divided into divisions under Section 17B-1-306.5, elected from a division

of the county that includes more than 50% of the geographic area of the division of the local district in which there is a board vacancy.

(2) Except as otherwise provided by statute, the number of members of each board of trustees of a local district shall be an odd number that is no less than three.

(3) For a newly created local district, the number of members of the initial board of trustees shall be the number specified:

(a) for a local district whose creation was initiated by a petition under Subsection 17B-1-203(1)(a), (b), or (c), in the petition; or

(b) for a local district whose creation was initiated by a resolution under Subsection 17B-1-203(1)(d) or (e), in the resolution.

(4) (a) For an existing local district, the number of members of the board of trustees may be changed by a two-thirds vote of the board of trustees.

(b) No change in the number of members of a board of trustees under Subsection (4)(a) may:

(i) violate Subsection (2); or

(ii) serve to shorten the term of any member of the board.

Section 2. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 264**S. B. 16**

Passed February 21, 2017

Approved March 22, 2017

Effective July 1, 2017

**SALES AND USE TAX
EXEMPTION CHANGES**

Chief Sponsor: Curtis S. Bramble

House Sponsor: Eric K. Hutchings

LONG TITLE**General Description:**

This bill creates a sales and use tax exemption for cleaning and washing of a vehicle.

Highlighted Provisions:

This bill:

- ▶ creates a sales and use tax exemption for cleaning and washing of a vehicle; and
- ▶ creates an exception to the sales and use tax exemption for cleaning and washing of a vehicle that includes cleaning and washing of the interior of the vehicle.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

59-12-104, as last amended by Laws of Utah 2016, Third Special Session, Chapter 6

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

Section 1. Section 59-12-104 is amended to read:**59-12-104. Exemptions.**

Exemptions from the taxes imposed by this chapter are as follows:

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Chapter 13, Motor and Special Fuel Tax Act;

(2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of:

(a) construction materials except:

(i) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution, Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and

(ii) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions; or

(b) tangible personal property in connection with the construction, operation, maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities providing additional project capacity, as defined in Section 11-13-103;

(3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

(i) the proceeds of each sale do not exceed \$1; and

(ii) the seller or operator of the vending machine reports an amount equal to 150% of the cost of the item described in Subsection (3)(b) as goods consumed; and

(b) Subsection (3)(a) applies to:

(i) food and food ingredients; or

(ii) prepared food;

(4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

(i) alcoholic beverages;

(ii) food and food ingredients; or

(iii) prepared food;

(b) sales of tangible personal property or a product transferred electronically:

(i) to a passenger;

(ii) by a commercial airline carrier; and

(iii) during a flight for in-flight consumption or in-flight use by the passenger; or

(c) services related to Subsection (4)(a) or (b);

(5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts and equipment:

(A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(II) for:

(Aa) installation in an aircraft, including services relating to the installation of parts or equipment in the aircraft;

(Bb) renovation of an aircraft; or

(Cc) repair of an aircraft; or

(B) for installation in an aircraft operated by a common carrier in interstate or foreign commerce; or

(ii) beginning on October 1, 2008, sales of parts and equipment for installation in an aircraft operated by a common carrier in interstate or foreign commerce; and

(b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

(ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before September 30, 2011;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) (a) except as provided in Subsection (86) and subject to Subsection (7)(b), sales of cleaning or washing of tangible personal property if the cleaning or washing of the tangible personal property is not assisted cleaning or washing of tangible personal property;

(b) if a seller that sells at the same business location assisted cleaning or washing of tangible personal property and cleaning or washing of tangible personal property that is not assisted cleaning or washing of tangible personal property, the exemption described in Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning or washing of the tangible personal property; and

(c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) governing the circumstances under which sales are at the same business location; and

(ii) establishing the procedures and requirements for a seller to separately account for sales of assisted cleaning or washing of tangible personal property;

(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(9) sales of a vehicle of a type required to be registered under the motor vehicle laws of this state if the vehicle is:

(a) not registered in this state; and

(b) (i) not used in this state; or

(ii) used in this state:

(A) if the vehicle is not used to conduct business, for a time period that does not exceed the longer of:

(I) 30 days in any calendar year; or

(II) the time period necessary to transport the vehicle to the borders of this state; or

(B) if the vehicle is used to conduct business, for the time period necessary to transport the vehicle to the borders of this state;

(10) (a) amounts paid for an item described in Subsection (10)(b) if:

(i) the item is intended for human use; and

(ii) (A) a prescription was issued for the item; or

(B) the item was purchased by a hospital or other medical facility; and

(b) (i) Subsection (10)(a) applies to:

(A) a drug;

(B) a syringe; or

(C) a stoma supply; and

(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the terms:

(A) "syringe"; or

(B) "stoma supply";

(11) purchases or leases exempt under Section 19-12-201;

(12) (a) sales of an item described in Subsection (12)(c) served by:

(i) the following if the item described in Subsection (12)(c) is not available to the general public:

(A) a church; or

(B) a charitable institution;

(ii) an institution of higher education if:

(A) the item described in Subsection (12)(c) is not available to the general public; or

(B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan offered by the institution of higher education; or

(b) sales of an item described in Subsection (12)(c) provided for a patient by:

(i) a medical facility; or

(ii) a nursing facility; and

(c) Subsections (12)(a) and (b) apply to:

(i) food and food ingredients;

(ii) prepared food; or

(iii) alcoholic beverages;

(13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property or a product transferred electronically by a person:

(i) regardless of the number of transactions involving the sale of that tangible personal property or product transferred electronically by that person; and

(ii) not regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

- (b) this Subsection (13) does not apply if:
- (i) the sale is one of a series of sales of a character to indicate that the person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;
- (ii) the person holds that person out as regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;
- (iii) the person sells an item of tangible personal property or product transferred electronically that the person purchased as a sale that is exempt under Subsection (25); or
- (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of this state in which case the tax is based upon:
- (A) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or
- (B) in the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel being sold at the time of the sale as determined by the commission; and
- (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules establishing the circumstances under which:
- (i) a person is regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;
- (ii) a sale of tangible personal property or a product transferred electronically is one of a series of sales of a character to indicate that a person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically; or
- (iii) a person holds that person out as regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;
- (14) (a) amounts paid or charged for a purchase or lease:
- (i) by a manufacturing facility located in the state; and
- (ii) of machinery, equipment, or normal operating repair or replacement parts if the machinery, equipment, or normal operating repair or replacement parts have an economic life of three or more years and are used:
- (A) in the manufacturing process to manufacture an item sold as tangible personal property; or
- (B) for a scrap recycler, to process an item sold as tangible personal property;
- (b) amounts paid or charged for a purchase or lease:
- (i) by an establishment:
- (A) described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
- (B) located in the state; and
- (ii) of machinery, equipment, or normal operating repair or replacement parts if the machinery, equipment, or normal operating repair or replacement parts have an economic life of three or more years and are used in:
- (A) the production process to produce an item sold as tangible personal property;
- (B) research and development;
- (C) transporting, storing, or managing tailings, overburden, or similar waste materials produced from mining;
- (D) developing or maintaining a road, tunnel, excavation, or similar feature used in mining; or
- (E) preventing, controlling, or reducing dust or other pollutants from mining;
- (c) amounts paid or charged for a purchase or lease:
- (i) by an establishment:
- (A) described in NAICS Code 518112, Web Search Portals, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
- (B) located in the state; and
- (ii) of machinery, equipment, or normal operating repair or replacement parts if the machinery, equipment, or normal operating repair or replacement parts:
- (A) are used in the operation of the web search portal; and
- (B) have an economic life of three or more years; and
- (d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission:
- (i) shall by rule define the term "establishment"; and
- (ii) may by rule define what constitutes:
- (A) processing an item sold as tangible personal property;
- (B) the production process, to produce an item sold as tangible personal property; or
- (C) research and development;
- (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
- (i) tooling;
- (ii) special tooling;

(iii) support equipment;

(iv) special test equipment; or

(v) parts used in the repairs or renovations of tooling or equipment described in Subsections (15)(a)(i) through (iv); and

(b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

(i) the tooling, equipment, or parts are used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract; and

(ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i), title to the tooling, equipment, or parts is vested in the United States government as evidenced by:

(A) a government identification tag placed on the tooling, equipment, or parts; or

(B) listing on a government-approved property record if placing a government identification tag on the tooling, equipment, or parts is impractical;

(16) sales of newspapers or newspaper subscriptions;

(17) (a) except as provided in Subsection (17)(b), tangible personal property or a product transferred electronically traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(i) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(ii) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission; and

(b) Subsection (17)(a) does not apply to the following items of tangible personal property or products transferred electronically traded in as full or part payment of the purchase price:

(i) money;

(ii) electricity;

(iii) water;

(iv) gas; or

(v) steam;

(18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property or a product transferred electronically used or consumed primarily and directly in farming operations, regardless of whether the tangible personal property or product transferred electronically:

- (A) becomes part of real estate; or
- (B) is installed by a:

(I) farmer;

(II) contractor; or

(III) subcontractor; or

(ii) sales of parts used in the repairs or renovations of tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is exempt under Subsection (18)(a)(i); and

(b) amounts paid or charged for the following are subject to the taxes imposed by this chapter:

(i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is incidental to farming:

(I) machinery;

(II) equipment;

(III) materials; or

(IV) supplies; and

(B) tangible personal property that is considered to be used in a manner that is incidental to farming includes:

(I) hand tools; or

(II) maintenance and janitorial equipment and supplies;

(ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is used in an activity other than farming; and

(B) tangible personal property or a product transferred electronically that is considered to be used in an activity other than farming includes:

(I) office equipment and supplies; or

(II) equipment and supplies used in:

(Aa) the sale or distribution of farm products;

(Bb) research; or

(Cc) transportation; or

(iii) a vehicle required to be registered by the laws of this state during the period ending two years after the date of the vehicle's purchase;

(19) sales of hay;

(20) exclusive sale during the harvest season of seasonal crops, seedling plants, or garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or garden, farm, or other agricultural produce is sold by:

(a) the producer of the seasonal crops, seedling plants, or garden, farm, or other agricultural produce;

(b) an employee of the producer described in Subsection (20)(a); or

(c) a member of the immediate family of the producer described in Subsection (20)(a);

(21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(23) a product stored in the state for resale;

(24) (a) purchases of a product if:

(i) the product is:

(A) purchased outside of this state;

(B) brought into this state:

(I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

(II) by a nonresident person who is not living or working in this state at the time of the purchase;

(C) used for the personal use or enjoyment of the nonresident person described in Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

(D) not used in conducting business in this state; and

(ii) for:

(A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of the product for a purpose for which the product is designed occurs outside of this state;

(B) a boat, the boat is registered outside of this state; or

(C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;

(b) the exemption provided for in Subsection (24)(a) does not apply to:

(i) a lease or rental of a product; or

(ii) a sale of a vehicle exempt under Subsection (33); and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (24)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (24) as in Subsection (63);

(ii) the first use of a product if that phrase has the same meaning in this Subsection (24) as in Subsection (63); or

(iii) a purpose for which a product is designed if that phrase has the same meaning in this Subsection (24) as in Subsection (63);

(25) a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(26) a product upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

(27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(28) purchases made in accordance with the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(29) sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

(a) not registered in this state; and

(b) (i) not used in this state; or

(ii) used in this state:

(A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a time period that does not exceed the longer of:

(I) 30 days in any calendar year; or

(II) the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state; or

(B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state;

(31) sales of aircraft manufactured in Utah;

(32) amounts paid for the purchase of telecommunications service for purposes of providing telecommunications service;

(33) sales, leases, or uses of the following:

(a) a vehicle by an authorized carrier; or

(b) tangible personal property that is installed on a vehicle:

(i) sold or leased to or used by an authorized carrier; and

(ii) before the vehicle is placed in service for the first time;

(34) (a) 45% of the sales price of any new manufactured home; and

(b) 100% of the sales price of any used manufactured home;

(35) sales relating to schools and fundraising sales;

(36) sales or rentals of durable medical equipment if:

(a) a person presents a prescription for the durable medical equipment; and

(b) the durable medical equipment is used for home use only;

(37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

(38) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment;

(c) passenger ropeways as defined in Section 72-11-102; or

(d) parts used in the repairs or renovations of equipment or passenger ropeways described in Subsections (38)(a) through (c);

(39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for amusement, entertainment, or recreation an unassisted amusement device as defined in Section 59-12-102;

(b) if a seller that sells or rents at the same business location the right to use or operate for amusement, entertainment, or recreation one or more unassisted amusement devices and one or more assisted amusement devices, the exemption described in Subsection (40)(a) applies if the seller separately accounts for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for the assisted amusement devices; and

(c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) governing the circumstances under which sales are at the same business location; and

(ii) establishing the procedures and requirements for a seller to separately account for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for assisted amusement devices;

(41) (a) sales of photocopies by:

(i) a governmental entity; or

(ii) an entity within the state system of public education, including:

(A) a school; or

(B) the State Board of Education; or

(b) sales of publications by a governmental entity;

(42) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(43) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging;

(44) sales or leases of semiconductor fabricating, processing, research, or development materials regardless of whether the semiconductor fabricating, processing, research, or development materials:

(a) actually come into contact with a semiconductor; or

(b) ultimately become incorporated into real property;

(45) an amount paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section 59-12-104.2;

(46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306 for the event period specified on the temporary sports event registration certificate;

(47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff adopted by the Public Service Commission only for purchase of electricity produced from a new alternative energy source built after January 1, 2016, as designated in the tariff by the Public Service Commission;

(b) for a residential use customer only, the exemption under Subsection (47)(a) applies only to the portion of the tariff rate a customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

(48) sales or rentals of mobility enhancing equipment if a person presents a prescription for the mobility enhancing equipment;

(49) sales of water in a:

(a) pipe;

(b) conduit;

(c) ditch; or

(d) reservoir;

(50) sales of currency or coins that constitute legal tender of a state, the United States, or a foreign nation;

(51) (a) sales of an item described in Subsection (51)(b) if the item:

(i) does not constitute legal tender of a state, the United States, or a foreign nation; and

(ii) has a gold, silver, or platinum content of 50% or more; and

(b) Subsection (51)(a) applies to a gold, silver, or platinum:

(i) ingot;

(ii) bar;

(iii) medallion; or

(iv) decorative coin;

(52) amounts paid on a sale-leaseback transaction;

(53) sales of a prosthetic device:

(a) for use on or in a human; and

(b) (i) for which a prescription is required; or

(ii) if the prosthetic device is purchased by a hospital or other medical facility;

(54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) if the machinery or equipment is primarily used in the production or postproduction of the following media for commercial distribution:

(i) a motion picture;

(ii) a television program;

(iii) a movie made for television;

(iv) a music video;

(v) a commercial;

(vi) a documentary; or

(vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the commission by administrative rule made in accordance with Subsection (54)(d); or

(b) purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) that is used for the production or postproduction of the following are subject to the taxes imposed by this chapter:

(i) a live musical performance;

(ii) a live news program; or

(iii) a live sporting event;

(c) the following establishments listed in the 1997 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, apply to Subsections (54)(a) and (b):

(i) NAICS Code 512110; or

(ii) NAICS Code 51219; and

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:

(i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi); or

(ii) define:

(A) “commercial distribution”;

(B) “live musical performance”;

(C) “live news program”; or

(D) “live sporting event”;

(55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2027, of tangible personal property that:

(i) is leased or purchased for or by a facility that:

(A) is an alternative energy electricity production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the tangible personal property;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (55)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

(A) a wind turbine;

(B) generating equipment;

(C) a control and monitoring system;

(D) a power line;

(E) substation equipment;

(F) lighting;

(G) fencing;

(H) pipes; or

(I) other equipment used for locating a power line or pole; and

(b) this Subsection (55) does not apply to:

(i) tangible personal property used in construction of:

(A) a new alternative energy electricity production facility; or

(B) the increase in the capacity of an alternative energy electricity production facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the tangible personal property is used or acquired for an increase in capacity of the facility

described in Subsection (55)(a)(i)(C)(II), tangible personal property used or acquired after:

(A) the alternative energy electricity production facility described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

(B) the increased capacity described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii);

(56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2027, of tangible personal property that:

(i) is leased or purchased for or by a facility that:

(A) is a waste energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the tangible personal property;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (56)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

(A) generating equipment;

(B) a control and monitoring system;

(C) a power line;

(D) substation equipment;

(E) lighting;

(F) fencing;

(G) pipes; or

(H) other equipment used for locating a power line or pole; and

(b) this Subsection (56) does not apply to:

(i) tangible personal property used in construction of:

(A) a new waste energy facility; or

(B) the increase in the capacity of a waste energy facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the tangible personal property is used or acquired for an increase in capacity described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:

(A) the waste energy facility described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii); or

(B) the increased capacity described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii);

(57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on or before June 30, 2027, of tangible personal property that:

(i) is leased or purchased for or by a facility that:

(A) is located in the state;

(B) produces fuel from alternative energy, including:

(I) methanol; or

(II) ethanol; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as a result of the installation of the tangible personal property;

(ii) has an economic life of five or more years; and

(iii) is installed on the facility described in Subsection (57)(a)(i);

(b) this Subsection (57) does not apply to:

(i) tangible personal property used in construction of:

(A) a new facility described in Subsection (57)(a)(i); or

(B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the tangible personal property is used or acquired for an increase in capacity described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:

(A) the facility described in Subsection (57)(a)(i) is operational; or

(B) the increased capacity described in Subsection (57)(a)(i) is operational;

(58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a product transferred electronically to a person within this state if that tangible personal property or product transferred electronically is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state;

(b) the exemption under Subsection (58)(a) is not allowed to the extent that the other state or political entity to which the tangible personal property is shipped imposes a sales, use, gross receipts, or other similar transaction excise tax on the transaction against which the other state or political entity allows a credit for sales and use taxes imposed by this chapter; and

(c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

(ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by this Subsection (58) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before June 30, 2011;

(59) purchases:

(a) of one or more of the following items in printed or electronic format:

(i) a list containing information that includes one or more:

(A) names; or

(B) addresses; or

(ii) a database containing information that includes one or more:

(A) names; or

(B) addresses; and

(b) used to send direct mail;

(60) redemptions or repurchases of a product by a person if that product was:

(a) delivered to a pawnbroker as part of a pawn transaction; and

(b) redeemed or repurchased within the time period established in a written agreement between the person and the pawnbroker for redeeming or repurchasing the product;

(61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

(i) is purchased or leased by, or on behalf of, a telecommunications service provider; and

(ii) has a useful economic life of one or more years; and

(b) the following apply to Subsection (61)(a):

(i) telecommunications enabling or facilitating equipment, machinery, or software;

(ii) telecommunications equipment, machinery, or software required for 911 service;

(iii) telecommunications maintenance or repair equipment, machinery, or software;

(iv) telecommunications switching or routing equipment, machinery, or software; or

(v) telecommunications transmission equipment, machinery, or software;

(62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible personal property or a product transferred electronically that are used in the research and development of alternative energy technology; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, for purposes of Subsection (62)(a), make rules defining what constitutes purchases of tangible personal property or a product transferred electronically that are used in the research and development of alternative energy technology;

(63) (a) purchases of tangible personal property or a product transferred electronically if:

(i) the tangible personal property or product transferred electronically is:

(A) purchased outside of this state;

(B) brought into this state at any time after the purchase described in Subsection (63)(a)(i)(A); and

(C) used in conducting business in this state; and

(ii) for:

(A) tangible personal property or a product transferred electronically other than the tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property for a purpose for which the property is designed occurs outside of this state; or

(B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;

(b) the exemption provided for in Subsection (63)(a) does not apply to:

(i) a lease or rental of tangible personal property or a product transferred electronically; or

(ii) a sale of a vehicle exempt under Subsection (33); and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (63)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(ii) the first use of tangible personal property or a product transferred electronically if that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

(iii) a purpose for which tangible personal property or a product transferred electronically is designed if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(64) sales of disposable home medical equipment or supplies if:

(a) a person presents a prescription for the disposable home medical equipment or supplies;

(b) the disposable home medical equipment or supplies are used exclusively by the person to whom

the prescription described in Subsection (64)(a) is issued; and

(c) the disposable home medical equipment and supplies are listed as eligible for payment under:

(i) Title XVIII, federal Social Security Act; or

(ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

(65) sales:

(a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act; or

(b) of tangible personal property to a subcontractor of a public transit district, if the tangible personal property is:

(i) clearly identified; and

(ii) installed or converted to real property owned by the public transit district;

(66) sales of construction materials:

(a) purchased on or after July 1, 2010;

(b) purchased by, on behalf of, or for the benefit of an international airport:

(i) located within a county of the first class; and

(ii) that has a United States customs office on its premises; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the international airport described in Subsection (66)(b); and

(B) located at the international airport described in Subsection (66)(b);

(67) sales of construction materials:

(a) purchased on or after July 1, 2008;

(b) purchased by, on behalf of, or for the benefit of a new airport:

(i) located within a county of the second class; and

(ii) that is owned or operated by a city in which an airline as defined in Section 59-2-102 is headquartered; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the new airport described in Subsection (67)(b);

(B) located at the new airport described in Subsection (67)(b); and

(C) as part of the construction of the new airport described in Subsection (67)(b);

(68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;

(69) purchases and sales described in Section 63H-4-111;

(70) (a) sales of tangible personal property to an aircraft maintenance, repair, and overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other than this state as the location of registry of the fixed wing turbine powered aircraft; or

(b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other than this state as the location of registry of the fixed wing turbine powered aircraft;

(71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:

(a) to a person admitted to an institution of higher education; and

(b) by a seller, other than a bookstore owned by an institution of higher education, if 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a textbook for a higher education course;

(72) a license fee or tax a municipality imposes in accordance with Subsection 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced level of municipal services;

(73) amounts paid or charged for construction materials used in the construction of a new or expanding life science research and development facility in the state, if the construction materials are:

(a) clearly identified;

(b) segregated; and

(c) installed or converted to real property;

(74) amounts paid or charged for:

(a) a purchase or lease of machinery and equipment that:

(i) are used in performing qualified research:

(A) as defined in Section 41(d), Internal Revenue Code; and

(B) in the state; and

(ii) have an economic life of three or more years; and

(b) normal operating repair or replacement parts:

(i) for the machinery and equipment described in Subsection (74)(a); and

(ii) that have an economic life of three or more years;

(75) a sale or lease of tangible personal property used in the preparation of prepared food if:

(a) for a sale:

(i) the ownership of the seller and the ownership of the purchaser are identical; and

(ii) the seller or the purchaser paid a tax under this chapter on the purchase of that tangible personal property prior to making the sale; or

(b) for a lease:

(i) the ownership of the lessor and the ownership of the lessee are identical; and

(ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible personal property prior to making the lease;

(76) (a) purchases of machinery or equipment if:

(i) the purchaser is an establishment described in NAICS Subsector 713, Amusement, Gambling, and Recreation Industries, of the 2012 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;

(ii) the machinery or equipment:

(A) has an economic life of three or more years; and

(B) is used by one or more persons who pay admission or user fees described in Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and

(iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:

(A) amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f); and

(B) subject to taxation under this chapter; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for verifying that 51% of a purchaser's sales revenue for the previous calendar quarter is:

(i) amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f); and

(ii) subject to taxation under this chapter;

(77) purchases of a short-term lodging consumable by a business that provides accommodations and services described in Subsection 59-12-103(1)(i);

(78) amounts paid or charged to access a database:

(a) if the primary purpose for accessing the database is to view or retrieve information from the database; and

(b) not including amounts paid or charged for a:

(i) digital audiowork;

(ii) digital audio-visual work; or

(iii) digital book;

(79) amounts paid or charged for a purchase or lease made by an electronic financial payment service, of:

(a) machinery and equipment that:

(i) are used in the operation of the electronic financial payment service; and

(ii) have an economic life of three or more years; and

(b) normal operating repair or replacement parts that:

(i) are used in the operation of the electronic financial payment service; and

(ii) have an economic life of three or more years;

(80) beginning on April 1, 2013, sales of a fuel cell as defined in Section 54-15-102;

(81) amounts paid or charged for a purchase or lease of tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically:

(a) is stored, used, or consumed in the state; and

(b) is temporarily brought into the state from another state:

(i) during a disaster period as defined in Section 53-2a-1202;

(ii) by an out-of-state business as defined in Section 53-2a-1202;

(iii) for a declared state disaster or emergency as defined in Section 53-2a-1202; and

(iv) for disaster- or emergency-related work as defined in Section 53-2a-1202;

(82) sales of goods and services at a morale, welfare, and recreation facility, as defined in Section 39-9-102, made pursuant to Title 39, Chapter 9, State Morale, Welfare, and Recreation Program;

(83) amounts paid or charged for a purchase or lease of molten magnesium;

(84) (a) except as provided in Subsection (84)(b), amounts paid or charged for a purchase or lease made by a drilling equipment manufacturer of machinery, equipment, materials, or normal operating repair or replacement parts:

(i) that are used or consumed exclusively in the drilling equipment manufacturer's manufacturing process; and

(ii) except for office:

(A) equipment; or

(B) supplies; and

(b) beginning on July 1, 2015, and ending on June 30, 2017, a person may claim an exemption

described in Subsection (84)(a) only by filing for a refund:

(i) of 50% of the tax paid on the amounts paid or charged; and

(ii) in accordance with Section 59-1-1410; ~~and~~

(85) amounts paid or charged for a purchase or lease made by a qualifying enterprise data center of machinery, equipment, or normal operating repair or replacement parts, if the machinery, equipment, or normal operating repair or replacement parts:

(a) are used in the operation of the establishment; and

(b) have an economic life of one or more years~~[-]~~; and

(86) sales of cleaning or washing of a vehicle, except for cleaning or washing of a vehicle that includes cleaning or washing of the interior of the vehicle.

Section 2. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 265**S. B. 24**

Passed March 1, 2017

Approved March 22, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

HEAVY DUTY TAX CREDIT AMENDMENTS

Chief Sponsor: Daniel Hemmert

House Sponsor: Jon E. Stanard

LONG TITLE**General Description:**

This bill amends the corporate and individual heavy duty vehicle tax credits.

Highlighted Provisions:

This bill:

- ▶ clarifies that the corporate tax credit is nonrefundable;
- ▶ amends definitions;
- ▶ removes references to qualified conversions;
- ▶ modifies the definition of a “qualified heavy duty vehicle” to include heavy duty vehicles that have hydrogen–electric and electric drivetrains for purposes of receiving a corporate or individual income tax credit; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

59-7-618, as last amended by Laws of Utah 2016, Chapter 375

59-10-1033, as last amended by Laws of Utah 2016, Chapter 375

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

Section 1. Section 59-7-618 is amended to read:**59-7-618. Tax credit related to alternative fuel heavy duty vehicles.**

(1) As used in this section:

(a) “Board” means the Air Quality Board created under Title 19, Chapter 2, Air Conservation Act.

(b) “Director” means the director of the Division of Air Quality appointed under Section 19-2-107.

~~(b)~~ (c) “Heavy duty vehicle” means a commercial category 7 or 8 vehicle, according to vehicle classifications established by the Federal Highway Administration.

~~(e)~~ (d) “Natural gas” includes compressed natural gas and liquified natural gas.

~~(d)~~ (e) “Qualified heavy duty vehicle” means a heavy duty vehicle that:

(i) has never been titled or registered and has been driven less than 7,500 miles; and

(ii) is fueled by natural gas, has a 100% electric drivetrain, or has a hydrogen–electric drivetrain.

~~(e)~~ (f) “Qualified purchase” means the purchase of a qualified heavy duty vehicle.

~~(f)~~ (g) “Qualified taxpayer” means a taxpayer ~~who~~ that:

(i) purchases a qualified heavy duty vehicle; and

(ii) receives a tax credit certificate from the ~~board~~ director.

~~(g)~~ (h) “Small fleet” means 40 or fewer heavy duty vehicles registered in the state and owned by a single taxpayer.

~~(h)~~ (i) “Tax credit certificate” means a certificate issued by the ~~board~~ director certifying that a taxpayer is entitled to a tax credit as provided in this section and stating the amount of the tax credit.

(2) ~~[For a taxable year beginning on or after January 1, 2015, a]~~ A qualified taxpayer may claim a nonrefundable tax credit against tax otherwise due under this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act:

(a) in an amount equal to:

~~(i) \$25,000, if the qualified purchase occurs during calendar year 2015, calendar year 2016, or calendar year 2017;~~

(i) \$25,000, if the qualified purchase of a natural gas heavy duty vehicle occurs during calendar year 2015 or calendar year 2016;

(ii) \$25,000, if the qualified purchase occurs during calendar year 2017;

~~(iii)~~ (iii) \$20,000, if the qualified purchase occurs during calendar year 2018;

~~(iii)~~ (iv) \$18,000, if the qualified purchase occurs during calendar year 2019; and

~~(iv)~~ (v) \$15,000, if the qualified purchase occurs during calendar year 2020; and

(b) if the qualified taxpayer certifies under oath that over 50% of the miles that the heavy duty vehicle that is the subject of the qualified purchase will travel annually will be within the state.

(3) (a) Except as provided in Subsection (3)(b), a taxpayer may not submit an application for, and the ~~board~~ director may not issue to the taxpayer, a tax credit certificate under this section in any taxable year for a ~~[qualifying]~~ qualified purchase if the ~~board~~ director has already issued tax credit certificates to the taxpayer for 10 ~~[qualifying]~~ qualified purchases in the same taxable year.

(b) If, by May 1 of any year, more than 30% of the aggregate annual total amount of tax credits under Subsection (5) has not been claimed, a taxpayer may submit an application for, and the ~~board~~ director may issue to the taxpayer, one or more tax credit certificates for up to eight additional ~~[qualifying]~~ qualified purchases, even if the ~~board~~ director has already issued to that taxpayer tax credit certificates for the maximum number of

[qualifying] qualified purchases allowed under Subsection (3)(a).

(4) (a) Subject to Subsection (4)(b), the [board] director shall reserve 25% of all tax credits available under this section for qualified taxpayers with a small fleet.

(b) Subsection (4)(a) does not prevent a taxpayer from submitting an application for, or the [board] director from issuing, a tax credit certificate if [the], before October 1, qualified taxpayers with a small fleet have not reserved under Subsection (5)(b) tax credits for the full amount reserved under Subsection (4)(a) [for taxpayers with a small fleet has not been claimed by a date that is 90 days before the end of the year].

(5) (a) The aggregate annual total amount of tax credits represented by tax credit certificates that the [board] director issues under this section, ~~when combined with the aggregate annual total amount of tax credits represented by tax credit certificates that the board issues under~~ and Section 59-10-1033[,] may not exceed \$500,000.

(b) The board shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to establish a process [whereby] under which a taxpayer may reserve a potential tax credit under this section for a limited time to allow the taxpayer to make a [qualifying] qualified purchase with the assurance that the aggregate limit under Subsection (5)(a) will not be met before the taxpayer is able to submit an application for a tax credit certificate.

(6) (a) (i) A taxpayer wishing to claim a tax credit under this section shall, using forms the board requires by rule:

(A) submit to the [board] director an application for a tax credit;

(B) provide the [board] director proof of a [qualifying] qualified purchase; and

(C) submit to the [board] director the certification under oath required under Subsection (2)(b).

(ii) Upon receiving the application, proof, and certification required under Subsection (6)(a)(i), the [board] director shall provide the taxpayer a written statement from the [board] director acknowledging receipt of the proof.

(b) If the [board] director determines that a taxpayer qualifies for a tax credit under this section, the [board] director shall:

(i) determine the amount of tax credit the taxpayer is allowed under this section; and

(ii) provide the [qualifying] taxpayer with a written tax credit certificate:

(A) stating that the taxpayer has qualified for a tax credit; and

(B) showing the amount of tax credit for which the taxpayer has qualified under this section.

(c) A qualified taxpayer shall retain the tax credit certificate.

(d) The [board] director shall at least annually submit to the commission a list of all qualified taxpayers to [whom the board] which the director has issued a tax credit certificate and the amount of each tax credit represented by the tax credit certificates.

(7) The tax credit under this section is allowed only:

(a) against a tax owed under this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, in the taxable year by the qualified taxpayer;

(b) for the taxable year in which the [qualifying] qualified purchase occurs; and

(c) once per vehicle.

(8) A [qualifying] qualified taxpayer may not assign a tax credit or a tax credit certificate under this section to another person.

(9) If the ~~[amount of]~~ qualified taxpayer receives a tax credit ~~[claimed by a qualifying taxpayer] certificate under this section that allows a tax credit in an amount that exceeds the [qualifying] qualified taxpayer's tax liability under this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, for a taxable year, the qualified taxpayer may carry forward the amount of the tax credit [exceeding] that exceeds the tax liability [may be carried forward] for a period that does not exceed the next five taxable years.~~

(10) (a) In accordance with any rules prescribed by the commission under Subsection (10)(b), the Division of Finance shall transfer at least annually from the General Fund into the Education Fund the aggregate amount of all tax credits claimed under this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for making a transfer from the General Fund into the Education Fund as required by Subsection (10)(a).

Section 2. Section 59-10-1033 is amended to read:

59-10-1033. Tax credit related to alternative fuel heavy duty vehicles.

(1) As used in this section:

(a) "Board" means the Air Quality Board created under Title 19, Chapter 2, Air Conservation Act.

(b) "Director" means the director of the Division of Air Quality appointed under Section 19-2-107.

~~[(b)]~~ (c) "Heavy duty vehicle" means a commercial category 7 or 8 vehicle, according to vehicle classifications established by the Federal Highway Administration.

~~[(e)]~~ (d) "Natural gas" includes compressed natural gas and liquified natural gas.

~~[(d)]~~ (e) “Qualified heavy duty vehicle” means a heavy duty vehicle that:

(i) has never been titled or registered and has been driven less than 7,500 miles; and

(ii) is fueled by natural gas~~[-and]~~, has a 100% electric drivetrain, or has a hydrogen-electric drivetrain.

~~[(iii)]~~ meets air quality standards.]

~~[(e)]~~ (f) “Qualified purchase” means the purchase of a qualified heavy duty vehicle.

~~[(f)]~~ (g) “Qualified taxpayer” means a claimant, estate, or trust that:

(i) purchases a qualified heavy duty vehicle; and

(ii) receives a tax credit certificate from the ~~[board]~~ director.

~~[(g)]~~ (h) “Small fleet” means 40 or fewer heavy duty vehicles registered in the state and owned by a single claimant, estate, or trust.

~~[(h)]~~ (i) “Tax credit certificate” means a certificate issued by the ~~[board]~~ director certifying that a claimant, estate, or trust is entitled to a tax credit as provided in this section and stating the amount of the tax credit.

(2) ~~[For a taxable year beginning on or after January 1, 2015, a]~~ qualified taxpayer may claim a nonrefundable tax credit against tax otherwise due under this chapter:

(a) in an amount equal to:

~~[(i)]~~ \$25,000, if the qualified purchase occurs during calendar year 2015, calendar year 2016, or calendar year 2017;]

(i) \$25,000, if the qualified purchase of a natural gas heavy duty vehicle occurs during calendar year 2015 or calendar year 2016;

(ii) \$25,000, if the qualified purchase occurs during calendar year 2017;

~~[(iii)]~~ (iii) \$20,000, if the qualified purchase occurs during calendar year 2018;

~~[(iii)]~~ (iv) \$18,000, if the qualified purchase occurs during calendar year 2019; and

~~[(iv)]~~ (v) \$15,000, if the qualified purchase occurs during calendar year 2020; and

(b) if the ~~[claimant, estate, or trust]~~ qualified taxpayer certifies under oath that over 50% of the miles that the heavy duty vehicle that is the subject of the qualified purchase ~~[or qualified conversion]~~ will travel annually will be within the state.

(3) (a) Except as provided in Subsection (3)(b), a claimant, estate, or trust may not submit an application for, and the ~~[board]~~ director may not issue to the claimant, estate, or trust, a tax credit certificate under this section in any taxable year for a ~~[qualifying]~~ qualified purchase if the ~~[board]~~ director has already issued tax credit certificates to the claimant, estate, or trust for 10 ~~[tax credits for~~

~~qualifying]~~ qualified purchases in the same taxable year.

(b) If, by May 1 of any year, more than 30% of the aggregate annual total amount of tax credits under Subsection (5) has not been claimed, a claimant, estate, or trust may submit an application for, and the ~~[board]~~ director may issue to the claimant, estate, or trust, one or more tax credit certificates for up to eight additional ~~[qualifying]~~ qualified purchases, even if the ~~[board]~~ director has already issued to that claimant, estate, or trust tax credit certificates for the maximum number of ~~[qualifying]~~ qualified purchases allowed under Subsection (3)(a).

(4) (a) Subject to Subsection (4)(b), the ~~[board]~~ director shall reserve 25% of all tax credits available under this section for ~~[claimants, estates, or trusts]~~ qualified taxpayers with a small fleet.

(b) Subsection (4)(a) does not prevent a claimant, estate, or trust from submitting an application for, or the ~~[board]~~ director from issuing, a tax credit certificate if ~~[the]~~, before October 1, qualified taxpayers with a small fleet have not reserved under Subsection (5)(b) tax credits for the full amount reserved under Subsection (4)(a) ~~[for claimants, estates, or trusts with a small fleet has not been claimed by a date that is 90 days before the end of the year]~~.

(5) (a) The aggregate annual total amount of tax credits represented by tax credit certificates that the ~~[board]~~ director issues under this section~~[-when combined with the aggregate annual total amount of tax credits represented by tax credit certificates that the board issues under]~~ and Section 59-7-618~~[-]~~ may not exceed \$500,000.

(b) The board shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to establish a process ~~[whereby a taxpayer]~~ under which a claimant, estate, or trust may reserve a potential tax credit under this section for a limited time to allow the ~~[taxpayer]~~ claimant, estate, or trust to make a ~~[qualifying]~~ qualified purchase with the assurance that the aggregate limit under Subsection (5)(a) will not be met before the ~~[taxpayer]~~ claimant, estate, or trust is able to submit an application for a tax credit certificate.

(6) (a) (i) A claimant, estate, or trust wishing to claim a tax credit under this section shall, using forms the board requires by rule:

(A) submit to the ~~[board]~~ director an application for a tax credit;

(B) provide the ~~[board]~~ director proof of a ~~[qualifying]~~ qualified purchase ~~[or qualifying conversion]~~; and

(C) submit to the ~~[board]~~ director the certification under oath required under Subsection (2)(b).

(ii) Upon receiving the application, proof, and certification required under Subsection (6)(a)(i), the ~~[board]~~ director shall provide the claimant, estate, or trust a written statement from the ~~[board]~~ director acknowledging receipt of the proof.

(b) If the ~~[board]~~ director determines that a claimant, estate, or trust qualifies for a tax credit under this section, the ~~[board]~~ director shall:

(i) determine the amount of tax credit the claimant, estate, or trust is allowed under this section; and

(ii) provide the ~~[qualifying taxpayer]~~ claimant, estate, or trust with a written tax credit certificate:

(A) stating that the claimant, estate, or trust has qualified for a tax credit; and

(B) showing the amount of tax credit for which the claimant, estate, or trust has qualified under this section.

(c) A ~~[claimant, estate, or trust]~~ qualified taxpayer shall retain the tax credit certificate.

(d) The ~~[board]~~ director shall at least annually submit to the commission a list of all ~~[claimants, estates, and trusts]~~ qualified taxpayers to which the ~~[board]~~ director has issued a tax credit certificate and the amount of each tax credit represented by the tax credit certificates.

(7) The tax credit under this section is allowed only:

(a) against a tax owed under this chapter in the taxable year by the qualified taxpayer;

(b) for the taxable year in which the ~~[qualifying]~~ qualified purchase occurs; and

(c) once per vehicle.

(8) A ~~[qualifying]~~ qualified taxpayer may not assign a tax credit or a tax credit certificate under this section to another person.

(9) If the ~~[amount of]~~ qualified taxpayer receives a tax credit ~~[claimed by a qualifying taxpayer]~~ certificate under this section that allows a tax credit in an amount that exceeds the ~~[qualifying]~~ qualified taxpayer's tax liability under this chapter for a taxable year, the qualified taxpayer may carry forward the amount of the tax credit ~~[exceeding]~~ that exceeds the tax liability ~~[may be carried forward]~~ for a period that does not exceed the next five taxable years.

(10) (a) In accordance with any rules prescribed by the commission under Subsection (10)(b), the Division of Finance shall transfer at least annually from the General Fund into the Education Fund the aggregate amount of all tax credits claimed under this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for making a transfer from the General Fund into the Education Fund as required by Subsection (10)(a).

Section 3. Retrospective operation.

This bill has retrospective operation for a taxable year beginning on or after January 1, 2017.

CHAPTER 266**S. B. 31**

Passed February 23, 2017

Approved March 22, 2017

Effective May 9, 2017

PROTECTION OF LAW ENFORCEMENT OFFICERS' PERSONAL INFORMATION

Chief Sponsor: Don L. Ipson

House Sponsor: Paul Ray

LONG TITLE**General Description:**

This bill amends the Public Safety Code regarding protection of personal information of law enforcement officers.

Highlighted Provisions:

This bill:

- ▶ provides criminal penalties for posting on the Internet a law enforcement officer's address and phone numbers, or posting the same information regarding an officer's immediate family member;
- ▶ prohibits the solicitation or sale of the officer's private information and provides for civil damages and the cost of attorney fees; and
- ▶ provides definitions, including a definition of "personal information."

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

53-18-101, Utah Code Annotated 1953

53-18-102, Utah Code Annotated 1953

53-18-103, Utah Code Annotated 1953

53-18-104, Utah Code Annotated 1953

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

Section 1. Section 53-18-101 is enacted to read:**CHAPTER 18. PROTECTION OF LAW PERSONAL INFORMATION OF LAW ENFORCEMENT OFFICERS****53-18-101. Title.**

This chapter is known as "Protection of Personal Information of Law Enforcement Officers."

Section 2. Section 53-18-102 is enacted to read:**53-18-102. Definitions.**

As used in this chapter:

(1) "Access software provider" means a provider of software, including client or server software, or enabling tools that do any one or more of the following:

- (a) filter, screen, allow, or disallow content;
- (b) pick, choose, analyze, or digest content; or

(c) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(2) "Immediate family member" means a law enforcement officer's spouse, child or spouse of a child, sibling or spouse of a sibling, or parent.

(3) "Interactive computer service" means the same as that term is defined in Subsection 47 U.S.C. 230(f).

(4) "Law enforcement officer" or "officer":

(a) means the same as that term is defined in Section 53-13-103;

(b) includes "correctional officers" as defined in Section 53-13-104; and

(c) refers only to officers who are currently employed by, retired from, or were killed in the line of duty while in the employ of a state or local governmental law enforcement agency.

(5) "Personal information" means a law enforcement officer's or law enforcement officer's immediate family member's address, telephone number, personal mobile telephone number, pager number, personal email address, personal photograph, directions to locate the law enforcement officer's home, or photographs of the law enforcement officer's or the officer's immediate family member's home or vehicle.

(6) "Publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

Section 3. Section 53-18-103 is enacted to read:**53-18-103. Internet posting of personal information of law enforcement officers -- Prohibitions.**

(1) A state or local governmental agency may not post the personal information of any law enforcement officer employed by the state or any political subdivision on the Internet unless the agency has obtained written permission from the officer and has the written permission in the agency's possession.

(2) An individual may not knowingly post on the Internet the personal information of any law enforcement officer or of the officer's immediate family members knowing the person is a law enforcement officer or that the person is the immediate family member of a law enforcement officer.

(a) A violation of this Subsection (2) is a class B misdemeanor.

(b) A violation of this Subsection (2) that results in bodily injury to the officer, or a member of the officer's immediate family, is a class A misdemeanor.

(c) Each act against a separate individual in violation of this Subsection (2) is a separate offense. The defendant may also be charged separately with the commission of any other criminal conduct

related to the commission of an offense under this Subsection (2).

(3) (a) A business or association may not publicly post or publicly display on the Internet the personal information of any law enforcement officer if that officer has, either directly or through an agent designated under Subsection (3)(c), provided to that business or association a written demand to not disclose the officer's personal information.

(b) A written demand made under this Subsection (3) by a law enforcement officer is effective for four years beginning on the day the demand is delivered, regardless of whether or not the law enforcement officer's employment as an officer has terminated during the four years.

(c) A law enforcement officer may designate in writing the officer's employer or a representative of any voluntary professional association of law enforcement officers to act on behalf of the officer and as the officer's agent to make a written demand pursuant to this chapter.

(d) (i) A business or association that receives a written demand from a law enforcement officer under Subsection (3)(a) shall remove the officer's personal information from public display on the Internet, including the removal of information provided to cellular telephone applications, within 24 hours of the delivery of the written demand, and shall ensure that the information is not posted again on the same Internet website or any other Internet website the recipient of the written demand maintains or exercises control over.

(ii) After receiving the law enforcement officer's written demand, the person, business, or association may not publicly post or publicly display on the Internet, the personal information of the law enforcement officer.

(iii) This Subsection (3)(d) does not prohibit a telephone corporation, as defined in Section 54-2-1, or its affiliate or other voice service provider, including providers of interconnected voice over Internet protocol service as defined in 47 C.F.R. 9.3, from transferring the law enforcement officer's personal information to any person, business, or association, if the transfer is authorized by federal or state law, regulation, order, terms of service, or tariff, or is necessary in the event of an emergency, or to collect a debt owed by the officer to the telephone corporation or its affiliate.

(iv) This Subsection (3)(d) does not apply to a telephone corporation or other voice service provider, including providers of interconnected voice over Internet protocol service, with respect to directories or directories listings to the extent the entity offers a nonpublished listing option.

(4) (a) A law enforcement officer whose personal information is made public as a result of a violation of Subsection (3) may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction.

(b) If a court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the law enforcement officer court costs and reasonable attorney fees.

(c) If the defendant fails to comply with an order of the court issued under this Subsection (4), the court may impose a civil penalty of not more than \$1,000 for the defendant's failure to comply with the court's order.

(5) (a) A person, business, or association may not solicit, sell, or trade on the Internet the personal information of a law enforcement officer, if the dissemination of the personal information poses an imminent and serious threat to the law enforcement officer's safety or the safety of the law enforcement officer's immediate family and the person making the information available on the Internet knows or reasonably should know of the imminent and serious threat.

(b) A law enforcement officer whose personal information is knowingly publicly posted or publicly displayed on the Internet may bring an action in any court of competent jurisdiction. If a jury or court finds that a defendant has committed a violation of Subsection (5)(a), the jury or court shall award damages to the officer in the amount of triple the cost of actual damages or \$4,000, whichever is greater.

(6) An interactive computer service or access software is not liable under Subsections (3)(d)(i) and (5) for information or content provided by another information content provider.

(7) Unless a law enforcement officer requests that certain information be removed or protected from disclosure in accordance with Section 63G-2-302, a county recorder who makes information available for public inspection in accordance with Section 17-21-19 is not in violation of this chapter.

Section 4. Section 53-18-104 is enacted to read:

53-18-104. Protection of constitutional rights.

This chapter does not affect, limit, or apply to, any conduct or activities that are protected by the constitution or laws of the state or by the constitution or laws of the United States.

CHAPTER 267**S. B. 128**

Passed March 3, 2017

Approved March 22, 2017

Effective May 9, 2017

**ELECTION DAY
NOTIFICATION AMENDMENTS**

Chief Sponsor: Jani Iwamoto

House Sponsor: Steve Eliason

LONG TITLE**General Description:**

This bill amends notification provisions in the Election Code.

Highlighted Provisions:

This bill:

- ▶ requires that a notice of bond election include the address of a website that lists the location of each polling place;
- ▶ permits an election officer to change or add polling locations after the time of the initial notification of polling places;
- ▶ provides for public notice of an additional polling place or a change in the location of a polling place;
- ▶ amends election notification and voter information pamphlet provisions to provide for notice of polling places that are changed or added under the provisions of this bill;
- ▶ requires publication of a phone number that a voter may call to obtain information regarding the location of a polling place; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

11-14-202, as last amended by Laws of Utah 2014, Chapter 325

20A-3-603, as last amended by Laws of Utah 2013, Chapter 182

20A-3-604, as last amended by Laws of Utah 2013, Chapter 182

20A-3-703, as enacted by Laws of Utah 2011, Chapter 291

20A-5-101, as last amended by Laws of Utah 2016, Chapter 23

20A-7-702, as last amended by Laws of Utah 2016, Chapter 348

Utah Code Sections Affected by Coordination Clause:

11-14-202, as last amended by Laws of Utah 2014, Chapter 325

20A-3-603, as last amended by Laws of Utah 2013, Chapter 182

20A-3-604, as last amended by Laws of Utah 2013, Chapter 182

20A-3-703, as enacted by Laws of Utah 2011, Chapter 291

20A-5-101, as last amended by Laws of Utah 2016, Chapter 23

20A-7-702, as last amended by Laws of Utah 2016, Chapter 348

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

Section 1. Section 11-14-202 is amended to read:**11-14-202. Notice of election -- Contents -- Publication -- Mailing.**

(1) The governing body shall ensure that notice of the election is provided:

(a) once per week during three consecutive weeks by publication in a newspaper having general circulation in the local political subdivision in accordance with Section 11-14-316, the first publication occurring not less than 21 nor more than 35 days before the election;

(b) on a website, if available, in accordance with Section 45-1-101 for the three weeks that immediately precede the election; and

(c) in a local political subdivision where there is no newspaper of general circulation, by posting notice of the bond election in at least five public places in the local political subdivision at least 21 days before the election.

(2) When the debt service on the bonds to be issued will increase the property tax imposed upon the average value of a residence by an amount that is greater than or equal to \$15 per year, the governing body shall prepare and mail either a voter information pamphlet or a notification described in Subsection (6):

(a) at least 15 days but not more than 45 days before the bond election;

(b) to each household containing a registered voter who is eligible to vote on the bonds; and

(c) that includes the information required by Subsections (3) and (4).

(3) The notice and voter information pamphlet required by this section shall include:

(a) the date [~~and place~~] of the election;

(b) the hours during which the polls will be open; and

(c) the title and text of the ballot proposition.

(4) The voter information pamphlet required by this section shall include:

(a) the information required by Subsection (3); [~~and~~]

(b) the address of a website that lists the location of each polling place for the bond election, including the location of the polling place for each voting precinct, each early voting location, and each election day voting center;

(c) a phone number that a voter may call to obtain information regarding the location of a polling place; and

[~~(b)~~] (d) an explanation of the property tax impact, if any, of the issuance of the bonds, which

may be based on information the governing body determines to be useful, including:

- (i) expected debt service on the bonds to be issued;
- (ii) a description of the purpose, remaining principal balance, and maturity date of any outstanding general obligation bonds of the issuer;
- (iii) funds other than property taxes available to pay debt service on general obligation bonds;
- (iv) timing of expenditures of bond proceeds;
- (v) property values; and
- (vi) any additional information that the governing body determines may be useful to explain the property tax impact of issuance of the bonds.

(5) The election officer may change the location of, or designate additional polling places for, a voting precinct, early voting, or an election day voting center at any time by, after obtaining approval from the lieutenant governor for the change or addition, updating the information on the website described in Subsection (4)(b).

[(4)] (6) The governing body shall pay the costs associated with the notice required by this section.

[(4)] (7) (a) The governing body may mail a notice printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail.

(b) The notice described in Subsection [(4)] (7)(a) shall include:

- (i) the website upon which the voter information pamphlet is available; and
- (ii) the phone number a voter may call to request delivery of a voter information pamphlet by mail.

[(7)] (8) A local school board shall comply with the voter information pamphlet requirements described in Section 53A-18-102.

Section 2. Section 20A-3-603 is amended to read:

20A-3-603. Early voting polling places.

(1) Except as provided in Section 20A-1-308, the election officer shall designate one or more polling places for early voting, provided that:

- (a) at least one polling place is open on each day that polls are open during the early voting period;
- (b) each polling place meets the requirements for polling places under Chapter 5, Election Administration;
- (c) for all elections other than local special elections, municipal primary elections, and municipal general elections, at least 10% of the voting devices at a polling place are accessible for individuals with disabilities in accordance with Public Law 107-252, the Help America Vote Act of 2002; and
- (d) each polling place is located in a government building or office, unless the election officer

determines that, in the area designated by the election officer, there is no government building or office available that:

- (i) can be scheduled for use during early voting hours;
- (ii) has the physical facilities necessary to accommodate early voting requirements;
- (iii) has adequate space for voting equipment, poll workers, and voters; and
- (iv) has adequate security, public accessibility, and parking.

(2) (a) Except as provided in Section 20A-1-308, in the event the election officer determines that the number of early voting polling places is insufficient due to the number of registered voters who are voting, the election officer may designate additional polling places during the early voting period.

(b) Except as provided in Section 20A-1-308, if an additional early voting polling place is designated, the election officer shall, as soon as is reasonably possible, give notice of the dates, times, and location of the additional polling place by [-] updating the information on the website described in Subsection 20A-3-604(2).

[(i) publishing the notice:]

[(A) in one issue of a newspaper of general circulation in the county; and]

[(B) as required in Section 45-1-101; and]

[(ii) posting the notice at the additional polling place.]

(3) Except as provided in Section 20A-1-308, for each regular general election and regular primary election, counties of the first class shall ensure that the early voting polling places are approximately proportionately distributed based on population within the county.

Section 3. Section 20A-3-604 is amended to read:

20A-3-604. Notice of time and place of early voting.

(1) Except as provided in Section 20A-1-308, the election officer shall give notice of the dates, times, and locations of early voting by:

[(4)] (a) publishing the notice:

[(a)] (i) in one issue of a newspaper of general circulation in the county at least five calendar days before the date that early voting begins; and

[(b)] (ii) in accordance with Section 45-1-101, at least five calendar days before the date that early voting begins[; and].

[(2) posting the notice at each early voting polling place at least five calendar days before the date early voting begins.]

(2) The election officer shall include in the notice described in Subsection (1)(a):

- (a) the address of a website that lists the location of each early voting polling place; and

(b) a phone number that a voter may call to obtain information regarding the location of an early voting polling place.

(3) Notwithstanding Subsection (1)(a), the election officer may change the location of, or designate additional polling places for, an early voting polling place by, after obtaining approval from the lieutenant governor for the change or addition, updating the information on the website described in Subsection (2)(a).

Section 4. Section 20A-3-703 is amended to read:

20A-3-703. Election day voting centers as polling places -- Location -- Notification.

(1) The election officer may designate one or more polling places as an election day voting center if:

~~[(1)]~~ (a) the election officer notifies the lieutenant governor of the designation and location of an election day voting center at least 15 days before the election;

~~[(2)]~~ (b) a polling place meets the requirements for a polling place under Chapter 5, Election Administration; and

~~[(3)]~~ (c) a polling place is located in a government building or office, unless the election officer determines that there is no government building or office available, in the area designated by the election officer, that:

~~[(a)]~~ (i) can be scheduled for use during election day voting hours;

~~[(b)]~~ (ii) has the physical facilities necessary to accommodate election day voting requirements;

~~[(c)]~~ (iii) has adequate space for voting equipment, poll workers, and voters; and

~~[(d)]~~ (iv) has adequate security, public accessibility, and parking.

(2) An election officer may change the location of an election day voting center, or designate additional election day voting centers, after the deadline described in Subsection (1)(a) by, after obtaining approval from the lieutenant governor for the change or addition, updating the information on the website described in Subsection 20A-5-101(3)(d).

Section 5. Section 20A-5-101 is amended to read:

20A-5-101. Notice of election.

(1) On or before November 15 in the year before each regular general election year, the lieutenant governor shall prepare and transmit a written notice to each county clerk that:

(a) designates the offices to be filled at the next year's regular general election;

(b) identifies the dates for filing a declaration of candidacy, and for submitting and certifying nomination petition signatures, as applicable,

under Sections 20A-9-403, 20A-9-407, and 20A-9-408 for those offices;

(c) includes the master ballot position list for the next year and the year following as established under Section 20A-6-305; and

(d) contains a description of any ballot propositions to be decided by the voters that have qualified for the ballot as of that date.

(2) (a) No later than seven business days after the day on which the lieutenant governor transmits the written notice described in Subsection (1), each county clerk shall:

(i) publish a notice:

(A) once in a newspaper published in that county; and

(B) as required in Section 45-1-101; or

(ii) (A) cause a copy of the notice to be posted in a conspicuous place most likely to give notice of the election to the voters in each voting precinct within the county; and

(B) prepare an affidavit of that posting, showing a copy of the notice and the places where the notice was posted.

(b) The notice required by Subsection (2)(a) shall:

(i) designate the offices to be voted on in that election; and

(ii) identify the dates for filing a declaration of candidacy for those offices.

(3) Before each election, the election officer shall give printed notice of the following information, or printed notice of a website where the following information can be obtained:

(a) the date ~~and place~~ of election;

(b) the hours during which the polls will be open;

(c) the polling places for each voting precinct, early voting polling place, and election day voting center;

(d) a statement indicating the address for a website where changes in the location of a polling place and additional polling places will be listed;

(e) a phone number that a voter may call to obtain information regarding the location of a polling place;

~~[(d)]~~ (f) an election day voting center designated under Section 20A-3-703; and

~~[(e)]~~ (g) the qualifications for persons to vote in the election.

(4) To provide the printed notice described in Subsection (3), the election officer shall:

(a) publish the notice at least two days before election day:

(i) in a newspaper of general circulation common to the area to which the election pertains; and

(ii) as required in Section 45-1-101; or

(b) mail the notice to each registered voter who resides in the area to which the election pertains at least five days before election day.

(5) The election officer may change the location of a polling place or designate additional polling places by, after obtaining approval from the lieutenant governor for the change or addition, updating the information on the website described in Subsection (3)(d).

Section 6. Section 20A-7-702 is amended to read:

20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, not less than 10 point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before the date of the election;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets;

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor and a copy of the fiscal impact estimate prepared according to Section 20A-7-202.5; and

(vii) for each referendum qualified for the ballot, a complete copy of the text of the law being submitted to the voters for their approval or rejection, with all new language underlined and all deleted language placed within brackets, as applicable;

(h) a description provided by the Judicial Performance Evaluation Commission of the selection and retention process for judges, including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria of the judicial performance evaluation and the minimum performance standards;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) a list of the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) a narrative concerning the judge's performance;

(D) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(E) a statement identifying whether or not the Judicial Performance Evaluation Commission recommends the judge be retained or declines to make a recommendation and the number of votes for and against the commission's recommendation;

(F) any statement provided by a judge who is not recommended for retention by the Judicial Performance Evaluation Commission under Section 78A-12-203;

(G) in a bar graph, the average of responses to each survey category, displayed with an identification of the minimum acceptable score as set by Section 78A-12-205 and the average score of all judges of the same court level; and

(H) a website address that contains the Judicial Performance Evaluation Commission's report on the judge's performance evaluation;

(i) for each judge, a statement provided by the Utah Supreme Court identifying the cumulative

number of informal reprimands, when consented to by the judge in accordance with Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution, Article VIII, Section 13, during the judge's current term and the immediately preceding term, and a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received;

(j) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(k) voter registration information, including information on how to obtain an absentee ballot;

(l) a list of all county clerks' offices and phone numbers; ~~and~~

(m) a statement indicating the address of a website where a change in the location of a polling place and the location of additional polling places will be listed;

(n) a phone number that a voter may call to obtain information regarding the location of a polling place; and

~~(m)~~ (o) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law.

SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)
(signed) _____
Lieutenant Governor"

(3) No earlier than 75 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall:

(a) (i) distribute one copy of the voter information pamphlet to each household within the state;

(ii) distribute to each household within the state a notice:

(A) printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail;

(B) that states the address of the Statewide Electronic Voter Information Website authorized by Section 20A-7-801; and

(C) that states the phone number a voter may call to request delivery of a voter information pamphlet by mail; or

(iii) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

(4) The lieutenant governor may distribute a voter information pamphlet at a location frequented by a person who cannot easily access the Statewide Electronic Voter Information Website authorized by Section 20A-7-801.

Section 7. Coordinating S.B. 128 with H.B. 218 and S.B. 150 -- Substantive and technical amendments.

If this S.B. 128, H.B. 218, Poll Location Amendments, and S.B. 150, Local Government Bond Amendments, all pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) by amending Section 11-14-202 to read:

"11-14-202. Notice of election -- Contents -- Publication -- Mailing.

(1) The governing body shall ensure that notice of the election is provided:

(a) once per week during three consecutive weeks by publication in a newspaper having general circulation in the local political subdivision in accordance with Section 11-14-316, the first publication occurring not less than 21 nor more than 35 days before the election;

(b) on a website, if available, in accordance with Section 45-1-101 for the three weeks that immediately precede the election; and

(c) in a local political subdivision where there is no newspaper of general circulation, by posting notice of the bond election in at least five public places in the local political subdivision at least 21 days before the election.

(2) When the debt service on the bonds to be issued will increase the property tax imposed upon the average value of a residence by an amount that is greater than or equal to \$15 per year, the governing body shall prepare and mail either a voter information pamphlet or a notification described in Subsection ~~[(6)]~~ (8):

(a) at least 15 days but not more than 45 days before the bond election;

(b) to each household containing a registered voter who is eligible to vote on the bonds; and

(c) that includes the information required by Subsections ~~[(3) and]~~ (4) and (5).

~~[(3) The notice and voter information pamphlet required by this section shall include:]~~

~~[(a) the date and place of the election;]~~

~~[(b) the hours during which the polls will be open; and]~~

~~[(c) the title and text of the ballot proposition.]~~

(3) The election officer may change the location of, or establish an additional:

(a) voting precinct polling place, in accordance with Subsection (6);

(b) early voting polling place, in accordance with Subsection 20A-3-603(2); or

(c) election day voting center, in accordance with Subsection 20A-3-703(2).

(4) The notice described in Subsection (1) and the voter information pamphlet described in Subsection (2):

(a) shall include, in the following order:

(i) the date of the election;

(ii) the hours during which the polls will be open;

(iii) the address of the Statewide Electronic Voter Information Website and, if available, the address of the election officer's website, with a statement indicating that the election officer will post on the website the location of each polling place for each voting precinct, each early voting polling place, and each election day voting center, including any changes to the location of a polling place and the location of an additional polling place;

(iv) a phone number that a voter may call to obtain information regarding the location of a polling place; and

(v) the title and text of the ballot proposition, including the property tax cost of the bond described in Subsection 11-14-206(2)(a); and

(b) may include the location of each polling place.

~~[(4)] (5)~~ The voter information pamphlet required by this section shall include:

(a) the information required ~~[by]~~ under Subsection ~~[(3)] (4)~~; and

(b) an explanation of the property tax impact, if any, of the issuance of the bonds, which may be based on information the governing body determines to be useful, including:

(i) expected debt service on the bonds to be issued;

(ii) a description of the purpose, remaining principal balance, and maturity date of any outstanding general obligation bonds of the issuer;

(iii) funds other than property taxes available to pay debt service on general obligation bonds;

(iv) timing of expenditures of bond proceeds;

(v) property values; and

(vi) any additional information that the governing body determines may be useful to explain the property tax impact of issuance of the bonds.

(6) (a) Except as provided in Section 20A-1-308, the election officer may, after the deadlines described in Subsections (1) and (2):

(i) if necessary, change the location of a voting precinct polling place; or

(ii) if the election officer determines that the number of voting precinct polling places is insufficient due to the number of registered voters who are voting, designate additional voting precinct polling places.

(b) Except as provided in Section 20A-1-308, if an election officer changes the location of a voting precinct polling place or designates an additional voting precinct polling place, the election officer shall, as soon as is reasonably possible, give notice of the dates, times, and location of a changed voting precinct polling place or an additional voting precinct polling place:

(i) to the lieutenant governor, for posting on the Statewide Electronic Voter Information Website;

(ii) by posting the information on the website of the election officer, if available; and

(iii) by posting notice:

(A) of a change in the location of a voting precinct polling place, at the new location and, if possible, the old location; and

(B) of an additional voting precinct polling place, at the additional voting precinct polling place.

~~[(5)] (7)~~ The governing body shall pay the costs associated with the notice required by this section.

~~[(6)] (8)~~ (a) The governing body may mail a notice printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail.

(b) The notice described in Subsection ~~[(6)] (8)~~(a) shall include:

(i) the website upon which the voter information pamphlet is available; and

(ii) the phone number a voter may call to request delivery of a voter information pamphlet by mail.

~~[(7)] (9)~~ A local school board shall comply with the voter information pamphlet requirements described in Section 53A-18-102.”;

(2) Subsection 20A-3-603(2) is amended to read:

“(2) (a) Except as provided in Section 20A-1-308, ~~[in the event]~~ the election officer may, after the deadline described in Section 20A-3-604:

(i) if necessary, change the location of an early voting place; or

(ii) if the election officer determines that the number of early voting polling places is insufficient due to the number of registered voters who are voting, ~~[the election officer may]~~ designate additional polling places during the early voting period.

(b) Except as provided in Section 20A-1-308, if an election officer changes the location of an early

voting polling place or designates an additional early voting polling place ~~[is designated]~~, the election officer shall, as soon as is reasonably possible, give notice of the dates, times, and location of the changed early voting polling place or the additional early voting polling place ~~[by]~~:

~~[(i) publishing the notice:]~~

~~[(A) in one issue of a newspaper of general circulation in the county; and]~~

~~[(B) as required in Section 45-1-101; and]~~

(i) to the lieutenant governor, for posting on the Statewide Voter Information Website;

(ii) by posting the information on the website of the election officer, if available; and

~~[(ii) (iii) by posting [the] notice [at]:~~

(A) for a change in the location of an early voting polling place, at the new location and, if possible, the old location; and

(B) for an additional early voting polling place, at the additional early voting polling place.”;

(3) Section 20A-3-604 is amended to read:

“20A-3-604. Notice of time and place of early voting.

(1) Except as provided in Section 20A-1-308 or Subsection 20A-3-603(2), the election officer shall, at least five days before the day on which early voting begins, give notice of the dates, times, and locations of early voting by:

[(1) (a) publishing the notice:

[(a) (i) in one issue of a newspaper of general circulation in the county [at least five calendar days before the date that early voting begins]; and

[(b) (ii) in accordance with Section 45-1-101 [at least five calendar days before the date that early voting begins]; and

[(2) (b) posting the notice at each early voting polling place [at least five calendar days before the date early voting begins].

(2) The election officer shall include in the notice described in Subsection (1)(a):

(a) the address of the Statewide Electronic Voter Information Website and, if available, the address of the election officer’s website, with a statement indicating that the election officer will post on the website the location of each early voting polling place, including any changes to the location of an early voting polling place and the location of additional early voting polling places; and

(b) a phone number that a voter may call to obtain information regarding the location of an early voting polling place.”;

(4) Section 20A-3-703 is amended to read:

“20A-3-703. Election day voting centers as polling places -- Location -- Notification.

(1) The election officer may designate one or more polling places as an election day voting center if:

[(1) (a) except as provided in Subsection (2), the election officer notifies the lieutenant governor of the designation and location of [an] the election day voting center at least 15 days before the election;

[(2) (b) a polling place meets the requirements for a polling place under Chapter 5, Election Administration; and

[(3) (c) a polling place is located in a government building or office, unless the election officer determines that there is no government building or office available, in the area designated by the election officer, that:

[(a) (i) can be scheduled for use during election day voting hours;

[(b) (ii) has the physical facilities necessary to accommodate election day voting requirements;

[(e) (iii) has adequate space for voting equipment, poll workers, and voters; and

[(d) (iv) has adequate security, public accessibility, and parking.

(2) (a) The election officer may, after the deadline described in Subsection (1)(a):

(i) if necessary, change the location of an election day voting center; or

(ii) if the election officer determines that the number of election day voting centers is insufficient due to the number of registered voters who are voting, designate additional election day voting centers.

(b) Except as provided in Section 20A-1-308, if an election officer changes the location of an election day voting center or designates an additional election day voting center, the election officer shall, as soon as is reasonably possible, give notice of the dates, times, and location of the changed election day voting center or the additional election day voting center:

(i) to the lieutenant governor, for posting on the Statewide Electronic Voter Information Website;

(ii) by posting the information on the website of the election officer, if available; and

(iii) by posting notice:

(A) of a change in the location of an election day voting center, at the new location and, if possible, the old location; and

(B) of an additional election day voting center, at the additional election day voting center.”;

(5) Section 20A-5-101 is amended to read:

“20A-5-101. Notice of election.

(1) On or before November 15 in the year before each regular general election year, the lieutenant governor shall prepare and transmit a written notice to each county clerk that:

(a) designates the offices to be filled at the next year’s regular general election;

(b) identifies the dates for filing a declaration of candidacy, and for submitting and certifying nomination petition signatures, as applicable, under Sections 20A-9-403, 20A-9-407, and 20A-9-408 for those offices;

(c) includes the master ballot position list for the next year and the year following as established under Section 20A-6-305; and

(d) contains a description of any ballot propositions to be decided by the voters that have qualified for the ballot as of that date.

(2) (a) No later than seven business days after the day on which the lieutenant governor transmits the written notice described in Subsection (1), each county clerk shall:

(i) publish a notice:

(A) once in a newspaper published in that county; and

(B) as required in Section 45-1-101; or

(ii) (A) cause a copy of the notice to be posted in a conspicuous place most likely to give notice of the election to the voters in each voting precinct within the county; and

(B) prepare an affidavit of that posting, showing a copy of the notice and the places where the notice was posted.

(b) The notice required by Subsection (2)(a) shall:

(i) designate the offices to be voted on in that election; and

(ii) identify the dates for filing a declaration of candidacy for those offices.

(3) Before each election, the election officer shall give printed notice of the following information, or printed notice of a website where the following information can be obtained:

(a) the date ~~[and place]~~ of election;

(b) the hours during which the polls will be open;

(c) the polling places for each voting precinct, early voting polling place, and election day voting center;

~~[(d) an election day voting center designated under Section 20A-3-703; and]~~

(d) the address of the Statewide Electronic Voter Information Website and, if available, the address of the election officer's website, with a statement indicating that the election officer will post on the website any changes to the location of a polling place and the location of any additional polling place;

(e) a phone number that a voter may call to obtain information regarding the location of a polling place; and

~~[(e)]~~ (f) the qualifications for persons to vote in the election.

(4) To provide the printed notice described in Subsection (3), the election officer shall:

(a) publish the notice at least two days before election day:

(i) in a newspaper of general circulation common to the area to which the election pertains; and

(ii) as required in Section 45-1-101; or

(b) mail the notice to each registered voter who resides in the area to which the election pertains at least five days before election day.; and

(6) Subsections 20A-7-702(1) through (o) are amended to read:

“(1) a list of all county clerks’ offices and phone numbers; [and]

(m) the address of the Statewide Electronic Voter Information Website, with a statement indicating that the election officer will post on the website any changes to the location of a polling place and the location of any additional polling place;

(n) a phone number that a voter may call to obtain information regarding the location of a polling place; and

~~[(m)]~~ (o) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

“I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law.

SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)

(signed) _____
Lieutenant Governor”

Section 8. Coordinating S.B. 128 with H.B. 218 -- Substantive and technical amendments.

If this S.B. 128 and H.B. 218, Poll Location Amendments, both pass and become law, and S.B. 150, Local Government Bond Amendments, does not pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as described in Section 7 of this bill, Coordinating S.B. 128 with H.B. 218 and S.B. 150 -- Substantive and technical amendments, except that Subsection 11-14-202(4)(a)(v) is amended to read:

“(v) the title and text of the ballot proposition; and”.

Section 9. Coordinating S.B. 128 with S.B. 150 -- Technical amendments.

If this S.B. 128 and S.B. 150, Local Government Bond Amendments, both pass and become law and

H.B. 218, Poll Location Amendments, does not pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by amending Subsection 11-14-202(3) to read:

“(3) The notice and voter information pamphlet required by this section shall include, in the following order:

- (a) the date [~~and place~~] of the election;
- (b) the hours during which the polls will be open;
and
- (c) the title and text of the ballot, including the property tax cost of the bond described in Subsection 11-14-206(2)(a).”

CHAPTER 268**S. B. 132**

Passed March 1, 2017

Approved March 22, 2017

Effective July 1, 2017

(Exception clause in Section 6)

TAX PROVISION AMENDMENTS

Chief Sponsor: Curtis S. Bramble

House Sponsor: Francis D. Gibson

LONG TITLE**General Description:**

This bill modifies provisions in the Revenue and Taxation code.

Highlighted Provisions:

This bill:

- ▶ adds automobile manufacturing to the NAICS codes that qualify a taxpayer to be a sales factor weighted taxpayer;
- ▶ addresses how a taxpayer determines if the taxpayer is an optional sales factor weighted taxpayer;
- ▶ exempts a purchase or lease of certain machinery, equipment, and parts from sales and use tax;
- ▶ requires the Revenue and Taxation Interim Committee to study annually the exemptions created by this bill for a purchase or lease of machinery, equipment, and parts;
- ▶ requires purchasers that receive the exemptions created by this bill to report information about the purchases to the Governor's Office of Economic Development;
- ▶ requires the Governor's Office of Economic Development to report the information regarding sales-tax exempt purchases to the Revenue and Taxation Interim Committee; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

59-7-302, as last amended by Laws of Utah 2016, Chapters 311 and 368

59-12-104, as last amended by Laws of Utah 2016, Third Special Session, Chapter 6

59-12-104.5, as last amended by Laws of Utah 2016, Chapter 135

ENACTS:

59-12-104.7, Utah Code Annotated 1953

63N-1-302, Utah Code Annotated 1953

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

Section 1. Section 59-7-302 is amended to read:**59-7-302. Definitions -- Determination of taxpayer status.**

(1) As used in this part, unless the context otherwise requires:

(a) "Aircraft type" means a particular model of aircraft as designated by the manufacturer of the aircraft.

(b) "Airline" means the same as that term is defined in Section 59-2-102.

(c) "Airline revenue ton miles" means, for an airline, the total revenue ton miles during the airline's tax period.

(d) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(e) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(f) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(g) (i) Except as provided in Subsection (1)(g)(ii), "mobile flight equipment" ~~is as~~ means the same as that term is defined in Section 59-2-102.

(ii) "Mobile flight equipment" does not include:

(A) a spare engine; or

(B) tangible personal property described in Subsection 59-2-102(27) owned by an ~~[-(F)]~~ air charter service~~;~~ or ~~[(H)]~~ an air contract service.

(h) "Nonbusiness income" means all income other than business income.

(i) ~~["Optional]~~ Subject to Subsection (2), "optional sales factor weighted taxpayer" means:

(i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code within NAICS Subsector 334, Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; or

(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer's total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code within NAICS Subsector 334, Computer and Electronic Product Manufacturing, of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.

(j) "Revenue ton miles" is determined in accordance with 14 C.F.R. Part 241.

(k) "Sales" means all gross receipts of the taxpayer not allocated under Sections 59-7-306 through 59-7-310.

(l) Subject to Subsection (2), “sales factor weighted taxpayer” means:

(i) for a taxpayer that is not a unitary group, regardless of the number of economic activities the taxpayer performs, a taxpayer having greater than 50% of the taxpayer’s total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for:

(A) a NAICS code within NAICS Sector 21, Mining;

(B) a NAICS code within NAICS Industry Group 2212, Natural Gas Distribution;

(C) a NAICS code within NAICS Sector 31-33, Manufacturing, other than NAICS Code 336111, Automobile Manufacturing;

(D) a NAICS code within NAICS Sector 48-49, Transportation and Warehousing;

(E) a NAICS code within NAICS Sector 51, Information, ~~except for~~ other than NAICS Subsector 519, Other Information Services; or

(F) a NAICS code within NAICS Sector 52, Finance and Insurance; or

(ii) for a taxpayer that is a unitary group, a taxpayer having greater than 50% of the taxpayer’s total sales everywhere generated by economic activities performed by the taxpayer if the economic activities are classified in a NAICS code of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, except for a NAICS code under Subsections (1)(i)(A) through (F).

(m) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(n) “Transportation revenue” means revenue an airline earns from:

(i) transporting a passenger or cargo; or

(ii) from miscellaneous sales of merchandise as part of providing transportation services.

(o) “Utah revenue ton miles” means, for an airline, the total revenue ton miles within the borders of this state:

(i) during the airline’s tax period; and

(ii) from flight stages that originate or terminate in this state.

(2) The following apply to ~~[Subsection]~~ Subsections (1)(i) and (l):

(a) (i) Subject to the other provisions of this Subsection (2), for each taxable year, a taxpayer

shall ~~for each taxable year~~ determine whether the taxpayer is a sales factor weighted taxpayer.

(ii) A taxpayer shall make the determination required by Subsection (2)(a)(i) before the due date for filing the taxpayer’s return under this chapter for the taxable year, including extensions.

(iii) For purposes of making the determination required by Subsection (2)(a)(i), total sales everywhere include only the total sales everywhere:

(A) as determined in accordance with this part; and

(B) made during the taxable year for which a taxpayer makes the determination required by Subsection (2)(a)(i).

(b) (i) (A) Subject to other provisions of this Subsection (2), for each taxable year, a taxpayer that is not a sales factor weighted taxpayer may determine whether the taxpayer is an optional sales factor weighted taxpayer.

(B) A taxpayer that is not a sales factor weighted taxpayer shall determine that the taxpayer is an optional sales factor weighted taxpayer before the taxpayer may use the apportionment options described in Subsection 59-7-311(4).

(ii) A taxpayer making the determination described in Subsection (2)(b)(i) shall make the determination before the due date for filing the taxpayer’s return under this chapter for the taxable year, including extensions.

(iii) For purposes of making the determination described in Subsection (2)(b)(i), total sales everywhere include only the total sales everywhere:

(A) as determined in accordance with this part; and

(B) made during the taxable year for which a taxpayer makes a determination described in Subsection (2)(b)(i).

~~(b)~~ (c) A taxpayer that files a return as a unitary group for a taxable year is considered to be a unitary group for that taxable year.

~~(e)~~ (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may define the term “economic activity” consistent with the use of the term “activity” in the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget.

Section 2. Section 59-12-104 is amended to read:

59-12-104. Exemptions.

Exemptions from the taxes imposed by this chapter are as follows:

(1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Chapter 13, Motor and Special Fuel Tax Act;

(2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of:

- (a) construction materials except:
 - (i) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution, Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and
 - (ii) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions; or
 - (b) tangible personal property in connection with the construction, operation, maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities providing additional project capacity, as defined in Section 11-13-103;
- (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:
 - (i) the proceeds of each sale do not exceed \$1; and
 - (ii) the seller or operator of the vending machine reports an amount equal to 150% of the cost of the item described in Subsection (3)(b) as goods consumed; and
 - (b) Subsection (3)(a) applies to:
 - (i) food and food ingredients; or
 - (ii) prepared food;
 - (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:
 - (i) alcoholic beverages;
 - (ii) food and food ingredients; or
 - (iii) prepared food;
 - (b) sales of tangible personal property or a product transferred electronically:
 - (i) to a passenger;
 - (ii) by a commercial airline carrier; and
 - (iii) during a flight for in-flight consumption or in-flight use by the passenger; or
 - (c) services related to Subsection (4)(a) or (b);
- (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts and equipment:
 - (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
 - (II) for:
 - (Aa) installation in an aircraft, including services relating to the installation of parts or equipment in the aircraft;
 - (Bb) renovation of an aircraft; or

- (Cc) repair of an aircraft; or
- (B) for installation in an aircraft operated by a common carrier in interstate or foreign commerce; or
- (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an aircraft operated by a common carrier in interstate or foreign commerce; and
- (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a refund:
 - (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;
 - (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;
 - (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for the sale prior to filing for the refund;
 - (iv) for sales and use taxes paid under this chapter on the sale;
 - (v) in accordance with Section 59-1-1410; and
 - (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before September 30, 2011;
- (6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;
- (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal property if the cleaning or washing of the tangible personal property is not assisted cleaning or washing of tangible personal property;
 - (b) if a seller that sells at the same business location assisted cleaning or washing of tangible personal property and cleaning or washing of tangible personal property that is not assisted cleaning or washing of tangible personal property, the exemption described in Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning or washing of the tangible personal property; and
 - (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:
 - (i) governing the circumstances under which sales are at the same business location; and
 - (ii) establishing the procedures and requirements for a seller to separately account for sales of assisted cleaning or washing of tangible personal property;
- (8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(9) sales of a vehicle of a type required to be registered under the motor vehicle laws of this state if the vehicle is:

- (a) not registered in this state; and
- (b) (i) not used in this state; or
- (ii) used in this state:

(A) if the vehicle is not used to conduct business, for a time period that does not exceed the longer of:

- (I) 30 days in any calendar year; or

(II) the time period necessary to transport the vehicle to the borders of this state; or

(B) if the vehicle is used to conduct business, for the time period necessary to transport the vehicle to the borders of this state;

(10) (a) amounts paid for an item described in Subsection (10)(b) if:

- (i) the item is intended for human use; and
- (ii) (A) a prescription was issued for the item; or

(B) the item was purchased by a hospital or other medical facility; and

- (b) (i) Subsection (10)(a) applies to:

- (A) a drug;
- (B) a syringe; or
- (C) a stoma supply; and

(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the terms:

- (A) "syringe"; or
- (B) "stoma supply";

(11) purchases or leases exempt under Section 19-12-201;

(12) (a) sales of an item described in Subsection (12)(c) served by:

(i) the following if the item described in Subsection (12)(c) is not available to the general public:

- (A) a church; or
- (B) a charitable institution;

- (ii) an institution of higher education if:

(A) the item described in Subsection (12)(c) is not available to the general public; or

(B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan offered by the institution of higher education; or

(b) sales of an item described in Subsection (12)(c) provided for a patient by:

- (i) a medical facility; or
- (ii) a nursing facility; and

- (c) Subsections (12)(a) and (b) apply to:

(i) food and food ingredients;

(ii) prepared food; or

(iii) alcoholic beverages;

(13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property or a product transferred electronically by a person:

(i) regardless of the number of transactions involving the sale of that tangible personal property or product transferred electronically by that person; and

(ii) not regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(b) this Subsection (13) does not apply if:

(i) the sale is one of a series of sales of a character to indicate that the person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(ii) the person holds that person out as regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(iii) the person sells an item of tangible personal property or product transferred electronically that the person purchased as a sale that is exempt under Subsection (25); or

(iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of this state in which case the tax is based upon:

(A) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or

(B) in the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel being sold at the time of the sale as determined by the commission; and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules establishing the circumstances under which:

(i) a person is regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;

(ii) a sale of tangible personal property or a product transferred electronically is one of a series of sales of a character to indicate that a person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically; or

(iii) a person holds that person out as regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;

(14) ~~(a)~~ amounts paid or charged for a purchase or lease: (i) by a manufacturing facility located in the state; and (ii) of machinery, equipment, or normal operating repair or replacement parts [if the machinery, equipment, or normal operating repair or replacement parts have] with an economic life of three or more years [and are used] by:

(a) a manufacturing facility, except as provided in Subsection (86), that:

(i) is located in the state; and

(ii) uses the machinery, equipment, or normal operating repair or replacement parts:

(A) in the manufacturing process to manufacture an item sold as tangible personal property, as the commission may define that phrase in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(B) for a scrap recycler, to process an item sold as tangible personal property, as the commission may define that phrase in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

[(b) amounts paid or charged for a purchase or lease:]

[(i) by] (b) an establishment, as the commission defines that term in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

[(A)] (i) is described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; [and]

[(B)] (ii) is located in the state; and

[(ii) of] (iii) uses the machinery, equipment, or normal operating repair or replacement parts [if the machinery, equipment, or normal operating repair or replacement parts have an economic life of three or more years and are used] in:

(A) the production process to produce an item sold as tangible personal property, as the commission may define that phrase in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(B) research and development, as the commission may define that phrase in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(C) transporting, storing, or managing tailings, overburden, or similar waste materials produced from mining;

(D) developing or maintaining a road, tunnel, excavation, or similar feature used in mining; or

(E) preventing, controlling, or reducing dust or other pollutants from mining; or

[(e) amounts paid or charged for a purchase or lease:]

[(i) by] (c) an establishment, as the commission defines that term in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

[(A)] (i) is described in NAICS Code 518112, Web Search Portals, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; [and]

[(B)] (ii) is located in the state; and

[(ii) of] (iii) uses the machinery, equipment, or normal operating repair or replacement parts [if the machinery, equipment, or normal operating repair or replacement parts (A) are used] in the operation of the web search portal; [and]

[(B) have an economic life of three or more years; and]

[(d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission:]

[(i) shall by rule define the term "establishment"; and]

[(ii) may by rule define what constitutes:]

[(A) processing an item sold as tangible personal property;]

[(B) the production process, to produce an item sold as tangible personal property; or]

[(C) research and development;]

(15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

(i) tooling;

(ii) special tooling;

(iii) support equipment;

(iv) special test equipment; or

(v) parts used in the repairs or renovations of tooling or equipment described in Subsections (15)(a)(i) through (iv); and

(b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

(i) the tooling, equipment, or parts are used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract; and

(ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i), title to the tooling, equipment, or parts is vested in the United States government as evidenced by:

(A) a government identification tag placed on the tooling, equipment, or parts; or

(B) listing on a government-approved property record if placing a government identification tag on the tooling, equipment, or parts is impractical;

(16) sales of newspapers or newspaper subscriptions;

(17) (a) except as provided in Subsection (17)(b), tangible personal property or a product transferred electronically traded in as full or part payment of the purchase price, except that for purposes of

calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(i) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(ii) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission; and

(b) Subsection (17)(a) does not apply to the following items of tangible personal property or products transferred electronically traded in as full or part payment of the purchase price:

(i) money;

(ii) electricity;

(iii) water;

(iv) gas; or

(v) steam;

(18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property or a product transferred electronically used or consumed primarily and directly in farming operations, regardless of whether the tangible personal property or product transferred electronically:

(A) becomes part of real estate; or

(B) is installed by a:

(I) farmer;

(II) contractor; or

(III) subcontractor; or

(ii) sales of parts used in the repairs or renovations of tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is exempt under Subsection (18)(a)(i); and

(b) amounts paid or charged for the following are subject to the taxes imposed by this chapter:

(i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is incidental to farming:

(I) machinery;

(II) equipment;

(III) materials; or

(IV) supplies; and

(B) tangible personal property that is considered to be used in a manner that is incidental to farming includes:

(I) hand tools; or

(II) maintenance and janitorial equipment and supplies;

(ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is used in an activity other than farming; and

(B) tangible personal property or a product transferred electronically that is considered to be used in an activity other than farming includes:

(I) office equipment and supplies; or

(II) equipment and supplies used in:

(Aa) the sale or distribution of farm products;

(Bb) research; or

(Cc) transportation; or

(iii) a vehicle required to be registered by the laws of this state during the period ending two years after the date of the vehicle's purchase;

(19) sales of hay;

(20) exclusive sale during the harvest season of seasonal crops, seedling plants, or garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or garden, farm, or other agricultural produce is sold by:

(a) the producer of the seasonal crops, seedling plants, or garden, farm, or other agricultural produce;

(b) an employee of the producer described in Subsection (20)(a); or

(c) a member of the immediate family of the producer described in Subsection (20)(a);

(21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(23) a product stored in the state for resale;

(24) (a) purchases of a product if:

(i) the product is:

(A) purchased outside of this state;

(B) brought into this state:

(I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

(II) by a nonresident person who is not living or working in this state at the time of the purchase;

(C) used for the personal use or enjoyment of the nonresident person described in Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

(D) not used in conducting business in this state; and

- (ii) for:
- (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of the product for a purpose for which the product is designed occurs outside of this state;
- (B) a boat, the boat is registered outside of this state; or
- (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;
- (b) the exemption provided for in Subsection (24)(a) does not apply to:
- (i) a lease or rental of a product; or
- (ii) a sale of a vehicle exempt under Subsection (33); and
- (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (24)(a), the commission may by rule define what constitutes the following:
- (i) conducting business in this state if that phrase has the same meaning in this Subsection (24) as in Subsection (63);
- (ii) the first use of a product if that phrase has the same meaning in this Subsection (24) as in Subsection (63); or
- (iii) a purpose for which a product is designed if that phrase has the same meaning in this Subsection (24) as in Subsection (63);
- (25) a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;
- (26) a product upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;
- (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;
- (28) purchases made in accordance with the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;
- (29) sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;
- (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State

Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

- (a) not registered in this state; and
- (b) (i) not used in this state; or
- (ii) used in this state:
- (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a time period that does not exceed the longer of:
- (I) 30 days in any calendar year; or
- (II) the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state; or
- (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state;
- (31) sales of aircraft manufactured in Utah;
- (32) amounts paid for the purchase of telecommunications service for purposes of providing telecommunications service;
- (33) sales, leases, or uses of the following:
- (a) a vehicle by an authorized carrier; or
- (b) tangible personal property that is installed on a vehicle:
- (i) sold or leased to or used by an authorized carrier; and
- (ii) before the vehicle is placed in service for the first time;
- (34) (a) 45% of the sales price of any new manufactured home; and
- (b) 100% of the sales price of any used manufactured home;
- (35) sales relating to schools and fundraising sales;
- (36) sales or rentals of durable medical equipment if:
- (a) a person presents a prescription for the durable medical equipment; and
- (b) the durable medical equipment is used for home use only;
- (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and
- (b) the commission shall by rule determine the method for calculating sales exempt under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- (38) sales to a ski resort of:
- (a) snowmaking equipment;
- (b) ski slope grooming equipment;
- (c) passenger ropeways as defined in Section 72-11-102; or

(d) parts used in the repairs or renovations of equipment or passenger ropeways described in Subsections (38)(a) through (c);

(39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for amusement, entertainment, or recreation an unassisted amusement device as defined in Section 59-12-102;

(b) if a seller that sells or rents at the same business location the right to use or operate for amusement, entertainment, or recreation one or more unassisted amusement devices and one or more assisted amusement devices, the exemption described in Subsection (40)(a) applies if the seller separately accounts for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for the assisted amusement devices; and

(c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) governing the circumstances under which sales are at the same business location; and

(ii) establishing the procedures and requirements for a seller to separately account for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for assisted amusement devices;

(41) (a) sales of photocopies by:

(i) a governmental entity; or

(ii) an entity within the state system of public education, including:

(A) a school; or

(B) the State Board of Education; or

(b) sales of publications by a governmental entity;

(42) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(43) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging;

(44) sales or leases of semiconductor fabricating, processing, research, or development materials regardless of whether the semiconductor fabricating, processing, research, or development materials:

(a) actually come into contact with a semiconductor; or

(b) ultimately become incorporated into real property;

(45) an amount paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section 59-12-104.2;

(46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306 for the event period specified on the temporary sports event registration certificate;

(47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff adopted by the Public Service Commission only for purchase of electricity produced from a new alternative energy source built after January 1, 2016, as designated in the tariff by the Public Service Commission;

(b) for a residential use customer only, the exemption under Subsection (47)(a) applies only to the portion of the tariff rate a customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

(48) sales or rentals of mobility enhancing equipment if a person presents a prescription for the mobility enhancing equipment;

(49) sales of water in a:

(a) pipe;

(b) conduit;

(c) ditch; or

(d) reservoir;

(50) sales of currency or coins that constitute legal tender of a state, the United States, or a foreign nation;

(51) (a) sales of an item described in Subsection (51)(b) if the item:

(i) does not constitute legal tender of a state, the United States, or a foreign nation; and

(ii) has a gold, silver, or platinum content of 50% or more; and

(b) Subsection (51)(a) applies to a gold, silver, or platinum:

(i) ingot;

(ii) bar;

(iii) medallion; or

(iv) decorative coin;

(52) amounts paid on a sale-leaseback transaction;

(53) sales of a prosthetic device:

(a) for use on or in a human; and

(b) (i) for which a prescription is required; or

(ii) if the prosthetic device is purchased by a hospital or other medical facility;

(54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) if the machinery or equipment is primarily used in the production or postproduction of the following media for commercial distribution:

- (i) a motion picture;
- (ii) a television program;
- (iii) a movie made for television;
- (iv) a music video;
- (v) a commercial;
- (vi) a documentary; or

(vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the commission by administrative rule made in accordance with Subsection (54)(d); or

(b) purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) that is used for the production or postproduction of the following are subject to the taxes imposed by this chapter:

- (i) a live musical performance;
- (ii) a live news program; or
- (iii) a live sporting event;

(c) the following establishments listed in the 1997 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, apply to Subsections (54)(a) and (b):

- (i) NAICS Code 512110; or
- (ii) NAICS Code 51219; and

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:

(i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi); or

(ii) define:

- (A) “commercial distribution”;
- (B) “live musical performance”;
- (C) “live news program”;
- (D) “live sporting event”;

(55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2027, of tangible personal property that:

(i) is leased or purchased for or by a facility that:

(A) is an alternative energy electricity production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the tangible personal property;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (55)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

- (A) a wind turbine;
- (B) generating equipment;
- (C) a control and monitoring system;
- (D) a power line;
- (E) substation equipment;
- (F) lighting;
- (G) fencing;
- (H) pipes; or

(I) other equipment used for locating a power line or pole; and

(b) this Subsection (55) does not apply to:

(i) tangible personal property used in construction of:

(A) a new alternative energy electricity production facility; or

(B) the increase in the capacity of an alternative energy electricity production facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the tangible personal property is used or acquired for an increase in capacity of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or acquired after:

(A) the alternative energy electricity production facility described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

(B) the increased capacity described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii);

(56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2027, of tangible personal property that:

(i) is leased or purchased for or by a facility that:

(A) is a waste energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the tangible personal property;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection

(56)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

- (A) generating equipment;
- (B) a control and monitoring system;
- (C) a power line;
- (D) substation equipment;
- (E) lighting;
- (F) fencing;
- (G) pipes; or

(H) other equipment used for locating a power line or pole; and

(b) this Subsection (56) does not apply to:

(i) tangible personal property used in construction of:

(A) a new waste energy facility; or

(B) the increase in the capacity of a waste energy facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the tangible personal property is used or acquired for an increase in capacity described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:

(A) the waste energy facility described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii); or

(B) the increased capacity described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii);

(57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on or before June 30, 2027, of tangible personal property that:

(i) is leased or purchased for or by a facility that:

(A) is located in the state;

(B) produces fuel from alternative energy, including:

(I) methanol; or

(II) ethanol; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as a result of the installation of the tangible personal property;

(ii) has an economic life of five or more years; and

(iii) is installed on the facility described in Subsection (57)(a)(i);

(b) this Subsection (57) does not apply to:

(i) tangible personal property used in construction of:

(A) a new facility described in Subsection (57)(a)(i); or

(B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the tangible personal property is used or acquired for an increase in capacity described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:

(A) the facility described in Subsection (57)(a)(i) is operational; or

(B) the increased capacity described in Subsection (57)(a)(i) is operational;

(58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a product transferred electronically to a person within this state if that tangible personal property or product transferred electronically is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state;

(b) the exemption under Subsection (58)(a) is not allowed to the extent that the other state or political entity to which the tangible personal property is shipped imposes a sales, use, gross receipts, or other similar transaction excise tax on the transaction against which the other state or political entity allows a credit for sales and use taxes imposed by this chapter; and

(c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

(ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by this Subsection (58) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before June 30, 2011;

(59) purchases:

(a) of one or more of the following items in printed or electronic format:

(i) a list containing information that includes one or more:

(A) names; or

(B) addresses; or

(ii) a database containing information that includes one or more:

(A) names; or

(B) addresses; and

(b) used to send direct mail;

(60) redemptions or repurchases of a product by a person if that product was:

(a) delivered to a pawnbroker as part of a pawn transaction; and

(b) redeemed or repurchased within the time period established in a written agreement between the person and the pawnbroker for redeeming or repurchasing the product;

(61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

(i) is purchased or leased by, or on behalf of, a telecommunications service provider; and

(ii) has a useful economic life of one or more years; and

(b) the following apply to Subsection (61)(a):

(i) telecommunications enabling or facilitating equipment, machinery, or software;

(ii) telecommunications equipment, machinery, or software required for 911 service;

(iii) telecommunications maintenance or repair equipment, machinery, or software;

(iv) telecommunications switching or routing equipment, machinery, or software; or

(v) telecommunications transmission equipment, machinery, or software;

(62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible personal property or a product transferred electronically that are used in the research and development of alternative energy technology; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, for purposes of Subsection (62)(a), make rules defining what constitutes purchases of tangible personal property or a product transferred electronically that are used in the research and development of alternative energy technology;

(63) (a) purchases of tangible personal property or a product transferred electronically if:

(i) the tangible personal property or product transferred electronically is:

(A) purchased outside of this state;

(B) brought into this state at any time after the purchase described in Subsection (63)(a)(i)(A); and

(C) used in conducting business in this state; and

(ii) for:

(A) tangible personal property or a product transferred electronically other than the tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property for a

purpose for which the property is designed occurs outside of this state; or

(B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;

(b) the exemption provided for in Subsection (63)(a) does not apply to:

(i) a lease or rental of tangible personal property or a product transferred electronically; or

(ii) a sale of a vehicle exempt under Subsection (33); and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (63)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(ii) the first use of tangible personal property or a product transferred electronically if that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

(iii) a purpose for which tangible personal property or a product transferred electronically is designed if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(64) sales of disposable home medical equipment or supplies if:

(a) a person presents a prescription for the disposable home medical equipment or supplies;

(b) the disposable home medical equipment or supplies are used exclusively by the person to whom the prescription described in Subsection (64)(a) is issued; and

(c) the disposable home medical equipment and supplies are listed as eligible for payment under:

(i) Title XVIII, federal Social Security Act; or

(ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

(65) sales:

(a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act; or

(b) of tangible personal property to a subcontractor of a public transit district, if the tangible personal property is:

(i) clearly identified; and

(ii) installed or converted to real property owned by the public transit district;

(66) sales of construction materials:

(a) purchased on or after July 1, 2010;

(b) purchased by, on behalf of, or for the benefit of an international airport:

(i) located within a county of the first class; and

(ii) that has a United States customs office on its premises; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the international airport described in Subsection (66)(b); and

(B) located at the international airport described in Subsection (66)(b);

(67) sales of construction materials:

(a) purchased on or after July 1, 2008;

(b) purchased by, on behalf of, or for the benefit of a new airport:

(i) located within a county of the second class; and

(ii) that is owned or operated by a city in which an airline as defined in Section 59-2-102 is headquartered; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the new airport described in Subsection (67)(b);

(B) located at the new airport described in Subsection (67)(b); and

(C) as part of the construction of the new airport described in Subsection (67)(b);

(68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;

(69) purchases and sales described in Section 63H-4-111;

(70) (a) sales of tangible personal property to an aircraft maintenance, repair, and overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other than this state as the location of registry of the fixed wing turbine powered aircraft; or

(b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other than this state as the location of registry of the fixed wing turbine powered aircraft;

(71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:

(a) to a person admitted to an institution of higher education; and

(b) by a seller, other than a bookstore owned by an institution of higher education, if 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a textbook for a higher education course;

(72) a license fee or tax a municipality imposes in accordance with Subsection 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced level of municipal services;

(73) amounts paid or charged for construction materials used in the construction of a new or expanding life science research and development facility in the state, if the construction materials are:

(a) clearly identified;

(b) segregated; and

(c) installed or converted to real property;

(74) amounts paid or charged for:

(a) a purchase or lease of machinery and equipment that:

(i) are used in performing qualified research:

(A) as defined in Section 41(d), Internal Revenue Code; and

(B) in the state; and

(ii) have an economic life of three or more years; and

(b) normal operating repair or replacement parts:

(i) for the machinery and equipment described in Subsection (74)(a); and

(ii) that have an economic life of three or more years;

(75) a sale or lease of tangible personal property used in the preparation of prepared food if:

(a) for a sale:

(i) the ownership of the seller and the ownership of the purchaser are identical; and

(ii) the seller or the purchaser paid a tax under this chapter on the purchase of that tangible personal property prior to making the sale; or

(b) for a lease:

(i) the ownership of the lessor and the ownership of the lessee are identical; and

(ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible personal property prior to making the lease;

(76) (a) purchases of machinery or equipment if:

(i) the purchaser is an establishment described in NAICS Subsector 713, Amusement, Gambling, and Recreation Industries, of the 2012 North American Industry Classification System of the federal

Executive Office of the President, Office of Management and Budget;

(ii) the machinery or equipment:

(A) has an economic life of three or more years; and

(B) is used by one or more persons who pay admission or user fees described in Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and

(iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:

(A) amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f); and

(B) subject to taxation under this chapter; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for verifying that 51% of a purchaser's sales revenue for the previous calendar quarter is:

(i) amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f); and

(ii) subject to taxation under this chapter;

(77) purchases of a short-term lodging consumable by a business that provides accommodations and services described in Subsection 59-12-103(1)(i);

(78) amounts paid or charged to access a database:

(a) if the primary purpose for accessing the database is to view or retrieve information from the database; and

(b) not including amounts paid or charged for a:

(i) digital audiowork;

(ii) digital audio-visual work; or

(iii) digital book;

(79) amounts paid or charged for a purchase or lease made by an electronic financial payment service, of:

(a) machinery and equipment that:

(i) are used in the operation of the electronic financial payment service; and

(ii) have an economic life of three or more years; and

(b) normal operating repair or replacement parts that:

(i) are used in the operation of the electronic financial payment service; and

(ii) have an economic life of three or more years;

(80) beginning on April 1, 2013, sales of a fuel cell as defined in Section 54-15-102;

(81) amounts paid or charged for a purchase or lease of tangible personal property or a product

transferred electronically if the tangible personal property or product transferred electronically:

(a) is stored, used, or consumed in the state; and

(b) is temporarily brought into the state from another state:

(i) during a disaster period as defined in Section 53-2a-1202;

(ii) by an out-of-state business as defined in Section 53-2a-1202;

(iii) for a declared state disaster or emergency as defined in Section 53-2a-1202; and

(iv) for disaster- or emergency-related work as defined in Section 53-2a-1202;

(82) sales of goods and services at a morale, welfare, and recreation facility, as defined in Section 39-9-102, made pursuant to Title 39, Chapter 9, State Morale, Welfare, and Recreation Program;

(83) amounts paid or charged for a purchase or lease of molten magnesium;

(84) (a) except as provided in Subsection (84)(b), amounts paid or charged for a purchase or lease made by a drilling equipment manufacturer of machinery, equipment, materials, or normal operating repair or replacement parts:

(i) that are used or consumed exclusively in the drilling equipment manufacturer's manufacturing process; and

(ii) except for office:

(A) equipment; or

(B) supplies; and

(b) beginning on July 1, 2015, and ending on June 30, 2017, a person may claim an exemption described in Subsection (84)(a) only by filing for a refund:

(i) of 50% of the tax paid on the amounts paid or charged; and

(ii) in accordance with Section 59-1-1410; ~~and~~

(85) amounts paid or charged for a purchase or lease made by a qualifying enterprise data center of machinery, equipment, or normal operating repair or replacement parts, if the machinery, equipment, or normal operating repair or replacement parts:

(a) are used in the operation of the establishment; and

(b) have an economic life of one or more years[-];

(86) amounts paid or charged for a purchase or lease of machinery, equipment, or normal operating repair or replacement parts by a manufacturing facility that:

(a) is an establishment, as the commission defines that term in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) is described in NAICS Code 336111, Automobile Manufacturing, of the 2002 North

American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;

(c) is located in the state; and

(d) uses the machinery, equipment, or normal operating repair or replacement parts in the manufacturing process to manufacture an item sold as tangible personal property, as the commission may define that phrase in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(87) amounts paid or charged for a purchase or lease of equipment or normal operating repair or replacement parts with an economic life of less than three years by a manufacturing facility that:

(a) is an establishment, as the commission defines that term in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) is described in NAICS Code 325120, Industrial Gas Manufacturing, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;

(c) is located in the state; and

(d) uses the equipment or normal operating repair or replacement parts to manufacture hydrogen.

Section 3. Section 59-12-104.5 is amended to read:

59-12-104.5. Revenue and Taxation Interim Committee review of sales and use taxes.

The Revenue and Taxation Interim Committee shall:

(1) review Subsection 59-12-104(28) before October 1 of the year after the year in which Congress permits a state to participate in the special supplemental nutrition program under 42 U.S.C. Sec. 1786 even if state or local sales taxes are collected within the state on purchases of food under that program; ~~and~~

(2) review Subsection 59-12-104(21) before October 1 of the year after the year in which Congress permits a state to participate in the SNAP as defined in Section 35A-1-102, even if state or local sales taxes are collected within the state on purchases of food under that program[-]; and

(3) on or before November 30:

(a) require the Governor's Office of Economic Development to provide the report described in Section 63N-1-302(2);

(b) review for each exemption described in Subsection 59-12-104(86) and (87):

(i) the cost of the exemption;

(ii) the purpose and effectiveness of the exemption; and

(iii) the extent to which the state benefits from the exemption; and

(c) make recommendations concerning whether the exemptions described in Subsections 59-12-104(86) and (87) should be continued, modified, or repealed.

Section 4. Section 59-12-104.7 is enacted to read:

59-12-104.7. Reporting by purchaser of certain sales and use tax exempt purchases.

A purchaser that receives a sales and use tax exemption under Subsection 59-12-104(86) or (87) shall make the report described in Section 63N-1-302.

Section 5. Section 63N-1-302 is enacted to read:

63N-1-302. Reporting of certain sales and use tax exempt purchases.

(1) (a) On or before October 1, a purchaser that receives a sales and use tax exemption under Subsection 59-12-104(86) for the previous calendar year shall report to the office:

(i) the total purchase or lease price for all machinery, equipment, or normal operating repair or replacement parts for which the purchaser received the sales and use tax exemption under Subsection 59-12-104(86); and

(ii) the total amount of sales and use tax that the purchaser would have owed on the purchase or lease price but for the exemption in Subsection 59-12-104(86).

(b) On or before October 1, a purchaser that receives a sales and use tax exemption under Subsection 59-12-104(87) for the previous calendar year shall report to the office:

(i) the total purchase or lease price for all equipment or normal operating repair or replacement parts for which the purchaser received the sales and use tax exemption under Subsection 59-12-104(87); and

(ii) the total amount of sales and use tax that the purchaser would have owed on the purchase or lease price but for the exemption in Subsection 59-12-104(87).

(2) On or before November 30, the office shall report the information received under Subsection (1) to the Revenue and Taxation Interim Committee:

(a) for each exemption; and

(b) in the aggregate for all purchasers that make a report in accordance with this section.

Section 6. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on July 1, 2017.

(2) The amendments to Section 59-7-302 take effect for a taxable year beginning on or after January 1, 2018.

CHAPTER 269**S. B. 156**

Passed March 9, 2017

Approved March 22, 2017

Effective July 1, 2018

**LOCAL PUBLIC SAFETY AND
FIREFIGHTER SURVIVING SPOUSE
TRUST FUND AMENDMENTS**

Chief Sponsor: Todd Weiler

House Sponsor: Timothy D. Hawkes

LONG TITLE**General Description:**

This bill modifies the Public Safety Code by amending provisions relating to line-of-duty death benefits.

Highlighted Provisions:

This bill:

- ▶ amends health coverage requirements for a surviving spouse and children of a member whose death is classified as a line-of-duty death;
- ▶ provides that a law enforcement agency or other state or local government agency that employs one or more public safety service employees or firefighter service employees who are eligible to earn service credit in a Utah Retirement System is required to participate in the Local Public Safety and Firefighter Surviving Spouse Trust Fund;
- ▶ amends procedures for participating in the Local Public Safety and Firefighter Surviving Spouse Trust Fund;
- ▶ authorizes the Commissioner of the Department of Public Safety to enter into a contract with a third-party administrator to administer the Local Public Safety and Firefighter Surviving Spouse Trust Fund; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

53-17-201, as last amended by Laws of Utah 2016, Chapter 261

53-17-301, as last amended by Laws of Utah 2016, Chapter 261

53-17-401, as enacted by Laws of Utah 2015, Chapter 166

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

Section 1. Section 53-17-201 is amended to read:**53-17-201. Surviving spouse and children health coverage for line-of-duty death.**

(1) (a) Subject to Subsection (1)(b), and in accordance with this section, an employer shall allow the surviving spouse and children of a member whose death is classified by the Utah State Retirement Office as a line-of-duty death under the provisions of Title 49, Utah State Retirement

and Insurance Benefit Act, to remain eligible for health coverage under the employer's group health plan as if the surviving spouse was an employee of the employer.

(b) [(i)] The employer shall pay 100% of the premium costs and, if the health coverage is a high-deductible plan, the employer share of any contribution into a health savings account for the surviving spouse and dependent children as described under Subsections (1)(a) and (2), and may not require payment from the surviving spouse for premium costs or health savings account contributions as a condition of qualifying to continue to receive the health coverage.

[(ii)] (c) For the first [24] 12 months after the line-of-duty death, the employer shall pay the amount specified under Subsection (1)(b)[(i)].

[(iii)] (d) Beginning [25] 13 months after the line-of-duty death, an employer may pay the amount specified under Subsection (1)(b)[(i)] through a cost-sharing agreement under Section 53-17-301 associated with the trust fund created under Section 53-17-401.

(2) An employer shall allow a surviving spouse and children to remain eligible to receive health coverage from the employer under this section at the option of the surviving spouse:

(a) for health coverage for the surviving spouse, until the surviving spouse becomes eligible for Medicare; and

(b) for health coverage of a child, until the child reaches the age of 26.

(3) This section does not apply to a member who:

(a) does not qualify for a line-of-duty death benefit under Title 49, Utah State Retirement and Insurance Benefit Act;

(b) at the time of death, did not receive or qualify to receive employer group health coverage; or

(c) is covered under Section 49-20-406.

Section 2. Section 53-17-301 is amended to read:**53-17-301. Cost-sharing agreements -- Deadlines -- Terms -- Reports -- Rulemaking.**

(1) An employer [~~may elect to~~] shall participate in the trust fund by:

(a) entering into a cost-sharing agreement with the commissioner under this section; and

(b) paying the cost-sharing rate determined by the board.

(2) (a) [~~An employer that does not participate in the trust fund by entering into a cost-sharing agreement in accordance with this section, shall pay the full amount required under Subsection 53-17-201(1)(b)(i). (b)] Subject to the terms of the cost-sharing agreement, an employer that [~~elects to participate~~] participates in accordance with this section, and stays current with its payments, shall~~

be considered to have paid the employer's full obligation under Subsection 53-17-201(1)(b)(~~4~~).

~~[(e)] (b) An employer that [elects to participate] participates in accordance with this section and that does not stay current with its payments may not be covered from the trust fund.~~

(3) An employer ~~[that elects to participate in the trust fund before July 1, 2017,]~~ shall be covered from the trust fund for a line-of-duty death that occurs on or after July 1, ~~[2015] 2005~~.

~~[(4) If an employer does not elect to participate in the trust fund before July 1, 2017:]~~

~~[(a) the employer may elect to participate during an annual open enrollment period as established by the board; and]~~

~~[(b) the employer may not be covered from the trust fund for a line-of-duty death that occurs during a period of time when the employer is not a participant in the trust fund.]~~

~~[(5)] (4) The commissioner shall:~~

(a) in consultation with the board, establish a form and language for a cost-sharing agreement required to use trust funds in accordance with this section;

(b) as directed by the board, assess the annual fee amount established by the board;

(c) as directed by the board, establish procedures for an employer participating in the trust fund to be reimbursed for the costs of providing the health coverage benefit under Subsection 53-17-201(1)(b);

~~[(e)] (d) prepare and submit to the governor and the Legislature, by October 1 of each year, an annual written report of the trust fund, including its balance, expenditures, and revenues, and the operations and activities of the board under this chapter; and~~

~~[(d)] (e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to implement this chapter.~~

Section 3. Section 53-17-401 is amended to read:

53-17-401. Local Public Safety and Firefighter Surviving Spouse Trust Fund.

(1) There is created a private purpose trust fund entitled the "Local Public Safety and Firefighter Surviving Spouse Trust Fund."

(2) The trust fund consists of:

(a) fees established in Subsection 53-17-402(2)(a);

(b) appropriations made to the fund by the Legislature, if any;

(c) private donations and grants; and

(d) other revenue received from other sources.

(3) The Department of Public Safety:

(a) shall account for the receipt and expenditures of trust fund money[-]; or

(b) may enter into contract with a third-party administrator to administer the fund and account for the receipt and expenditure of trust fund money.

(4) The trust fund shall earn interest.

(5) The revenue and interest in the account, less actual administrative costs to the department, shall be used to lower fees paid by an employer under Section 53-17-201.

(6) The board of trustees created in Section 53-17-402 may expend money from the trust fund:

(a) for health coverage for a surviving spouse and children under Subsection 53-17-201(1)(~~b~~)(~~iii~~)(d) by paying:

~~[(a)] (i) premium costs; or~~

(ii) if the health coverage is a high-deductible plan, premium costs and the employer contribution to a health savings account; and

(b) reasonable administrative costs that the department and the board of trustees incur in performing their duties for administering the trust fund.

(7) Money deposited into the trust fund is irrevocable and is expended only for the purposes described in this chapter.

(8) Assets of the trust fund are dedicated for the purposes established by statute and administrative rule.

(9) Creditors of the board of trustees and of employers liable for the benefits paid under this chapter may not seize, attach, or otherwise obtain assets of the trust fund.

Section 4. Effective date.

This bill takes effect on July 1, 2018.

CHAPTER 270**S. B. 158**

Passed March 1, 2017
 Approved March 22, 2017
 Effective May 9, 2017

**PASS-THROUGH ENTITY
 WITHHOLDING AMENDMENTS**

Chief Sponsor: Curtis S. Bramble
 House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill creates a process for a pass-through entity to obtain a refund of qualifying excess withholding.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a process for a pass-through entity to obtain a refund of qualifying excess withholding, if the qualifying excess withholding exceeds tax liability by a certain threshold; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-10-529, as last amended by Laws of Utah 2013, Chapter 74

59-10-1403, as last amended by Laws of Utah 2016, Chapter 87

ENACTS:

59-10-1403.3, Utah Code Annotated 1953

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

Section 1. Section 59-10-529 is amended to read:**59-10-529. Overpayment of tax -- Credits -- Refunds.**

(1) If there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:

- (a) against an income tax due from a taxpayer;
- (b) against:

(i) the amount of a judgment against a taxpayer, including a final judgment or order requiring payment of a fine or of restitution to a victim under Title 77, Chapter 38a, Crime Victims Restitution Act, obtained through due process of law by an entity of state or local government; or

(ii) subject to Subsection (4)(a)(i), a child support obligation that is due or past due, as determined by the Office of Recovery Services in the Department of Human Services and after notice and an opportunity for an adjudicative proceeding, as provided in Subsection ~~(2)~~ (4)(a)(iii); or

(c) subject to ~~[Subsection]~~ Subsections (3), (5), (6), ~~[or]~~ and (7), as bail~~,~~ to ensure the appearance of a taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer for which bail is due, if a court of competent jurisdiction has not approved an alternative form of payment.

(2) If a balance remains after an overpayment is credited in accordance with Subsection (1), the balance shall be refunded to the taxpayer.

(3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:

(a) that is due and related to a warrant that is outstanding on or after February 16, 1984; and

(b) in accordance with Subsections (5) and (6).

(4) (a) The amount of an overpayment may be credited against an obligation described in Subsection (1)(b)(ii) if the Office of Recovery Services has sent written notice to the taxpayer's last-known address or the address on file under Section 62A-11-304.4, stating:

(i) the amount of child support that is due or past due as of the date of the notice or other specified date;

(ii) that any overpayment shall be applied to reduce the amount of due or past-due child support specified in the notice; and

(iii) that the taxpayer may contest the amount of past-due child support specified in the notice by filing a written request for an adjudicative proceeding with the office within 15 days of the notice being sent.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Office of Recovery Services shall establish rules to implement this Subsection (4), including procedures, in accordance with the other provisions of this section, to ensure:

(i) prompt reimbursement to a taxpayer of any amount of an overpayment that was credited against a child support obligation in error; and

(ii) prompt distribution of properly credited funds to the obligee parent.

(5) The amount of an overpayment may be credited against bail described in Subsection (1)(c) if:

(a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail, appear, or otherwise satisfy the terms of a citation, summons, or court order; and

(b) a notice of intent to apply the overpayment as bail on the issued warrant has been sent to the taxpayer's current address on file with the commission.

(6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that issued the warrant of arrest.

(ii) The clerk of the court is authorized to endorse the check or commission warrant of payment on

behalf of the payees and deposit the money in the court treasury.

(b) (i) The court receiving an overpayment applied as bail shall order withdrawal of the warrant for arrest of the taxpayer if:

(A) the case is a case for which a personal appearance of the taxpayer is not required; and

(B) the dollar amount of the overpayment represents the full dollar amount of bail.

(ii) In a case except for a case described in Subsection (6)(b)(i):

(A) the court receiving the overpayment applied as bail is not required to order the withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

(B) the taxpayer may be arrested on the warrant.

(c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to resolve the warrant within 40 days after the notice is sent under Subsection (5)(b), the overpayment applied as bail is forfeited.

(ii) A court may issue another warrant or allow the original warrant to remain in force if:

(A) the taxpayer has not complied with an order of the court;

(B) the taxpayer has failed to appear and respond to a criminal charge for which a personal appearance is required; or

(C) the taxpayer has paid partial but not full bail in a case for which a personal appearance is not required.

(d) If the alleged violations named in a warrant are later resolved in favor of the taxpayer, the bail amount shall be remitted to the taxpayer.

(7) The fine and bail forfeiture provisions of this section apply to all warrants, fines, fees, and surcharges issued in cases charging a taxpayer with a felony, a misdemeanor, or an infraction described in this section, which are outstanding on or after February 16, 1984.

(8) If the amount [~~allowable~~] allowed as a credit for tax withheld from a taxpayer exceeds the tax to which the credit relates, the excess is considered an overpayment.

(9) (a) Subject to Subsection (9)(b), a taxpayer shall claim [~~for~~] a credit or refund of an overpayment that is attributable to a net operating loss carry back or carry forward [~~shall be filed~~] within three years [~~from the due date of~~] after the day on which the return for the taxable year of the net operating loss is due.

(b) The three-year period described in Subsection (9)(a) shall be extended by any extension of time provided in statute for filing the return described in Subsection (9)(a).

(10) If there is no tax liability for a period in which an amount is paid under this chapter, the amount is an overpayment.

(11) If a tax under this chapter is assessed or collected after the expiration of the applicable period of limitation, that amount is an overpayment.

(12) (a) A taxpayer may file a claim for a credit or refund of an overpayment within two years [~~from the date~~] after the day on which a notice of change, notice of correction, or amended return is required to be filed with the commission if the taxpayer is required to:

(i) report a change or correction in income reported on the taxpayer's federal income tax return;

(ii) report a change or correction that is treated in the same manner as if the change or correction were an overpayment for federal income tax purposes; or

(iii) file an amended return with the commission.

(b) If a report or amended return is not filed within 90 days after the day on which the report or amended return is due, interest on any resulting refund or credit ceases to accrue after the 90-day period.

(c) The amount of the credit or refund may not exceed the amount of the reduction in tax attributable to the federal change, correction, or items amended on the taxpayer's amended federal income tax return.

(d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the amount or the time within which a claim for credit or refund may be filed.

(13) A credit or refund may not be allowed or made if an overpayment is less than \$1.

(14) In the case of an overpayment of tax by an employer under Part 4, Withholding of Tax, an employer shall receive a refund or credit [~~shall be made to the employer~~] only to the extent that the amount of the overpayment is not deducted and withheld from wages under this chapter.

(15) (a) If a taxpayer that is allowed a refund under this chapter dies, the commission may make payment to the personal representative of the taxpayer's estate.

(b) If there is no personal representative of the taxpayer's estate, the commission may make payment [~~may be made~~] to those persons [~~who~~] that establish entitlement to inherit the property of the decedent in the proportions established in Title 75, Utah Uniform Probate Code.

(16) If an overpayment relates to a change in net income described in Subsection 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed.

(17) An overpayment of a tax imposed by this chapter shall accrue interest at the rate and in the manner prescribed in Section 59-1-402.

(18) A pass-through entity may claim a refund of qualifying excess withholding in accordance with Section 59-10-1403.3 in lieu of a pass-through entity taxpayer claiming a tax credit under Section 59-7-614.4 or Section 59-10-1103.

Section 2. Section 59-10-1403 is amended to read:

59-10-1403. Income tax treatment of a pass-through entity -- Returns -- Classification same as under Internal Revenue Code.

(1) Subject to Subsection (3), a pass-through entity is not subject to a tax imposed by this chapter.

(2) [The] Except as provided in Section 59-10-1403.3, the income, gain, loss, deduction, or credit of a pass-through entity shall be passed through to one or more pass-through entity taxpayers as provided in this part.

(3) A pass-through entity is subject to the return filing requirements of Sections 59-10-507 and 59-10-514.

(4) [A] For purposes of taxation under this title, a pass-through entity that transacts business in the state shall be classified [~~for purposes of taxation under this title~~] in the same manner as the pass-through entity is classified for federal income tax purposes.

Section 3. Section 59-10-1403.3 is enacted to read:

59-10-1403.3. Refund of amounts paid or withheld for a pass-through entity.

(1) As used in this section:

(a) "Committee" means the Revenue and Taxation Interim Committee.

(b) "Qualifying excess withholding" means an amount that:

(i) is paid or withheld:

(A) by a pass-through entity that has a different taxable year than the pass-through entity that requests a refund under this section; and

(B) on behalf of the pass-through entity that requests the refund, if the pass-through entity that requests the refund also is a pass-through entity taxpayer; and

(ii) is equal to the difference between:

(A) the amount paid or withheld for the taxable year on behalf of the pass-through entity that requests the refund; and

(B) the product of 5% and the income, described in Subsection 59-10-1403.2(1)(a)(i), of the pass-through entity that requests the refund.

(2) For a taxable year ending on or after July 1, 2017, a pass-through entity may claim a refund of qualifying excess withholding, if the amount of the qualifying excess withholding is equal to or greater than \$250,000.

(3) A pass-through entity that requests a refund of qualifying excess withholding under this section shall:

(a) apply to the commission for a refund on or, subject to Subsection (4), after the day on which the pass-through entity files the pass-through entity's income tax return; and

(b) provide any information that the commission may require to determine that the pass-through entity is eligible to receive the refund.

(4) A pass-through entity shall claim a refund of qualifying excess withholding under this section within 30 days after the earlier of the day on which:

(a) the pass-through entity files an income tax return; or

(b) the pass-through entity's income tax return is due, including any extension of due date authorized in statute.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules establishing the information that a pass-through entity shall provide to the commission to obtain a refund of qualifying excess withholding under this section.

(6) (a) On or before November 30, 2018, the committee shall review the \$250,000 threshold described in Subsection (2) for the purpose of assessing whether the threshold amount should be maintained, increased, or decreased.

(b) To assist the committee in conducting the review described in Subsection (6)(a), the commission shall provide the committee with:

(i) the total number of refund requests made under this section;

(ii) the total costs of any refunds issued under this section;

(iii) the costs of any audits conducted on refund requests made under this section; and

(iv) an estimation of:

(A) the number of refund requests the commission expects to receive if the Legislature increases the threshold;

(B) the number of refund requests the commission expects to receive if the Legislature decreases the threshold; and

(C) the costs of any audits the commission would conduct if the Legislature increases or decreases the threshold.

CHAPTER 271**S. B. 171**

Passed March 1, 2017
 Approved March 22, 2017
 Effective May 9, 2017

**UTAH'S STATE WORKS
OF ART DESIGNATION**

Chief Sponsor: David P. Hinkins
 House Sponsor: Christine F. Watkins

LONG TITLE**General Description:**

This bill modifies provisions relating to state symbols.

Highlighted Provisions:

This bill:

- ▶ designates Native American rock art as the state works of art.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-1-601, as last amended by Laws of Utah 2014, Chapter 46

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

Section 1. Section 63G-1-601 is amended to read:**63G-1-601. State symbols.**

- (1) Utah's state animal is the elk.
- (2) Utah's state bird is the sea gull.
- (3) Utah's state centennial astronomical symbol is the Beehive Cluster located in the constellation of Cancer the Crab.
- (4) Utah's state centennial star is Dubhe, one of the seven bright stars composing the Big Dipper in the constellation Ursa Major.
- (5) Utah's state centennial tartan, which honors the first Scots known to have been in Utah and those Utahns of Scottish heritage, shall have a pattern or repeating-half-sett of white-2, blue-6, red-6, blue-4, red-6, green-18, red-6, and white-4 to represent the tartan worn anciently by the Logan and Skene clans, with the addition of a white stripe.
- (6) Utah's state cooking pot is the dutch oven.
- (7) Utah's state emblem is the beehive.
- (8) Utah's state emblem of service and sacrifice of lives lost by members of the military in defense of our freedom is the "Honor and Remember" flag, which consists of:
 - (a) a red field covering the top two-thirds of the flag;
 - (b) a white field covering the bottom one-third of the flag, which contains the words "honor" and "remember";

(c) a blue star overlaid by a gold star with a thin white border in the center of the flag spanning the red field and the white field; and

(d) a representation of a folded United States flag beneath the blue and gold stars with three tongues of flame emanating from its top point into the center of the gold star.

(9) Utah's state firearm is the John M. Browning designed M1911 automatic pistol.

(10) Utah's state fish is the Bonneville cutthroat trout.

(11) Utah's state flower is the sego lily.

(12) Utah's state folk dance is the square dance, the folk dance that is called, cued, or prompted to the dancers and includes squares, rounds, clogging, contra, line, and heritage dances.

(13) Utah's state fossil is the Allosaurus.

(14) Utah's state fruit is the cherry.

(15) Utah's state vegetable is the Spanish sweet onion.

(16) Utah's historic state vegetable is the sugar beet.

(17) Utah's state gem is topaz, as is prominently found in the Thomas Mountain Range in Juab County, Utah.

(18) Utah's state grass is Indian rice grass.

(19) Utah's state hymn is "Utah We Love Thee" by Evan Stephens.

(20) Utah's state insect is the honeybee.

(21) Utah's state mineral is copper.

(22) Utah's state motto is "Industry."

(23) Utah's state railroad museum is Ogden Union Station.

(24) Utah's state rock is coal.

(25) Utah's state song is "Utah This is the Place" by Sam and Gary Francis.

(26) Utah's state tree is the quaking aspen.

(27) Utah's state winter sports are skiing and snowboarding.

(28) Utah's state works of art are Native American rock art.

CHAPTER 272**S. B. 212**

Passed March 8, 2017
 Approved March 22, 2017
 Effective May 9, 2017

**PROFESSIONAL
 LICENSING AMENDMENTS**

Chief Sponsor: Wayne A. Harper
 House Sponsor: Brian M. Greene

LONG TITLE**General Description:**

This bill modifies the Occupational and Professional Licensure Review Committee Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the responsibilities of the Occupational and Professional Licensure Review Committee; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

- 36-23-101.5, as last amended by Laws of Utah 2013, Chapter 323
 36-23-102, as last amended by Laws of Utah 2013, Chapter 323
 36-23-105, as last amended by Laws of Utah 2013, Chapter 323
 36-23-106, as last amended by Laws of Utah 2013, Chapter 323
 36-23-107, as last amended by Laws of Utah 2013, Chapter 323
 36-23-109, as last amended by Laws of Utah 2014, Chapter 189

Utah Code Sections Affected by Coordination Clause:

- 36-23-101.5, as last amended by Laws of Utah 2013, Chapter 323
 36-23-102, as last amended by Laws of Utah 2013, Chapter 323
 36-23-105, as last amended by Laws of Utah 2013, Chapter 323
 36-23-106, as last amended by Laws of Utah 2013, Chapter 323
 36-23-107, as last amended by Laws of Utah 2013, Chapter 323
 36-23-109, as last amended by Laws of Utah 2014, Chapter 189

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

Section 1. Section 36-23-101.5 is amended to read:**36-23-101.5. Definitions.**

As used in this chapter:

(1) "Committee" means the Occupational and Professional Licensure Review Committee created in Section 36-23-102.

(2) "Government requestor" means:

- (a) the governor;
- (b) an executive branch officer other than the governor;
- (c) an executive branch agency;
- (d) a legislator; or
- (e) a legislative committee.

(3) "Lawful occupation" means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not illegal to sell, irrespective of whether the individual selling the goods or services is subject to an occupational regulation.

(4) "License" or "licensing" means a state-granted authorization for a person to engage in a specified lawful occupation:

- (a) based on the person meeting personal qualifications established under state law; and
- (b) where state law requires the authorization before the person may lawfully engage in the occupation for compensation.

~~[(3)]~~ (5) "Newly regulate" means to ~~[regulate under Title 58, Occupations and Professions, an occupation or profession not regulated under Title 58, Occupations and Professions, before the enactment of the new regulation]~~ create by statute or administrative rule a new license, certification, registration, or exemption classification regarding a lawful occupation.

(6) "Personal qualifications" are criteria established in state law related to a person's background and may include:

- (a) completion of an approved education program;
- (b) satisfactory performance on an examination;
- (c) work experience; and
- (d) completion of continuing education.

~~[(4)]~~ (7) "Proposal" means:

- (a) an application submitted under Section 36-23-105, with or without specific proposed statutory language;
- (b) a request for review by a legislator of the possibility of newly regulating ~~[an occupation or profession]~~ a lawful occupation, with or without specific proposed statutory language; or
- (c) proposed legislation to newly regulate ~~[an occupation or profession]~~ a lawful occupation referred to the committee by another legislative committee.

(8) "State certification" means a state-granted authorization given to a person to use the term "state certified" as part of a designated title related to engaging in a specified lawful occupation:

(a) based on the person meeting personal qualifications established under state law; and

(b) where state law prohibits a noncertified person from using the term "state certified" as part of a designated title, but does not otherwise prohibit a noncertified person from engaging in the lawful occupation for compensation.

(9) "State registration" means a state-granted authorization given to a person to use the term "state registered" as part of a designated title related to engaging in a specified lawful occupation:

(a) based on the person meeting requirements established under state law, which may include the person's name and address, the person's agent for service of process, the location of the activity to be performed, and bond or insurance requirements;

(b) where state law does not require the person to meet any personal qualifications; and

(c) where state law prohibits a nonregistered person from using the term "state registered" as part of a designated title.

[~~5~~] (10) "Sunrise review" means a review under this chapter of a proposal to newly regulate [~~an occupation or profession~~] a lawful occupation.

[~~6~~] (11) "Sunset review" means a review under this chapter of a statute [~~:- (a) regarding a licensed profession under Title 58, Occupations and Professions; and (b) regarding a regulated lawful occupation that is scheduled for termination under [Section 63I-1-258] Title 63I, Chapter 1, Part 2, Repeal Dates by Title.~~

Section 2. Section 36-23-102 is amended to read:

36-23-102. Occupational and Professional Licensure Review Committee.

(1) There is created the Occupational and Professional Licensure Review Committee.

(2) The committee consists of nine members appointed as follows:

(a) three members of the House of Representatives, appointed by the speaker of the House of Representatives, with no more than two appointees from the same political party;

(b) three members of the Senate, appointed by the president of the Senate, with no more than two appointees from the same political party; and

(c) three public members appointed jointly by the speaker of the House of Representatives and the president of the Senate from the following two groups:

(i) at least one member who has previously served, but is no longer serving, on [~~any~~] an advisory board created under Title 58, Occupations and Professions; and

(ii) at least one member from the general public who does not hold [~~any type of~~] a license issued by the Division of Occupational and Professional Licensing.

(3) (a) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(a) as a cochair of the committee.

(b) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(b) as a cochair of the committee.

Section 3. Section 36-23-105 is amended to read:

36-23-105. Applications -- Fees.

(1) If a government requestor or a representative of [~~an occupation or profession~~] a lawful occupation that is not licensed by the state proposes that the state license or newly regulate [~~an occupation or profession~~] a lawful occupation, the requestor or representative shall, prior to the introduction of any proposed legislation, submit an application for sunrise review to the Office of Legislative Research and General Counsel in a form approved by the committee.

(2) Along with any other information requested by the committee, the application shall include a description of:

(a) why licensing or other regulation of the lawful occupation is required to protect against present, recognizable, and significant harm to the health or safety of the public; and

(b) what is the least restrictive regulation of the lawful occupation that would protect against recognizable and significant harm to the health or safety of the public.

[~~2~~] (3) If an application is submitted by a representative of [~~an occupation or profession~~] a lawful occupation, the application shall include a nonrefundable fee of \$500.

[~~3~~] (4) All application fees shall be deposited [~~in~~] into the General Fund.

Section 4. Section 36-23-106 is amended to read:

36-23-106. Duties -- Reporting.

(1) The committee shall:

(a) for each application submitted in accordance with Section 36-23-105, conduct a sunrise review in accordance with Section 36-23-107 before November 1:

(i) of the year in which the application is submitted, if the application is submitted on or before July 1; or

(ii) of the year following the year in which the application is submitted, if the application is submitted after July 1;

(b) (i) conduct a sunset review for [~~all statutes~~] each statute regarding a [~~licensed occupation or profession under Title 58, Occupations and Professions, that are~~] regulated lawful occupation that is scheduled for termination under [~~Section 63I-1-258~~] Title 63I, Chapter 1, Part 2, Repeal Dates by Title;

(ii) conduct a sunset review under this Subsection (1)(b) before November 1 of the year prior to the last

general session of the Legislature that is scheduled to meet before the scheduled termination date; and

(iii) conduct a review or study regarding any other occupational or professional licensure or other regulation matter referred to the committee by the Legislature, the Legislative Management Committee, or other legislative committee.

(2) (a) The committee may conduct a review or study regarding any occupational or professional regulation matter.

(b) In conducting a review or study under this Subsection (2), the committee shall consider if the committee's recommendations would negatively affect the interest of members of the regulated lawful occupation, including the effect on matters of reciprocity with other states.

~~(2)~~ (3) The committee shall submit an annual written report before November 1 to:

- (a) the Legislative Management Committee; and
- (b) the Business and Labor Interim Committee.

~~(3)~~ (4) The written report required by Subsection ~~(2)~~ (3) shall include:

(a) all findings and recommendations made by the committee in the calendar year; and

(b) a summary report of each review or study conducted by the committee stating:

(i) whether the review or study included a review of specific proposed or existing statutory language;

(ii) action taken by the committee as a result of the review or study; and

(iii) a record of the vote for each action taken by the committee.

Section 5. Section 36-23-107 is amended to read:

36-23-107. Sunrise or sunset review -- Criteria.

(1) In conducting a sunrise review or a sunset review under this chapter, the committee may:

(a) receive information from:

(i) representatives of the ~~[occupation or profession]~~ lawful occupation proposed to be newly regulated or that is subject to a sunset review;

(ii) the Division of Occupational and Professional Licensing; or

(iii) any other person; and

(b) review a proposal with or without considering proposed statutory language.

(2) When conducting a sunrise review or sunset review under this chapter, the committee shall:

(a) consider whether state regulation of the ~~[occupation or profession]~~ lawful occupation is necessary to address a compelling state interest in protecting against present, recognizable, and

significant harm to the health or safety of the public;

(b) consider if the committee's recommendations to the Legislature would negatively affect the interests of members of the regulated lawful occupation, including the effect on matters of reciprocity with other states;

~~(b)~~ (c) if the committee determines that state regulation of the ~~[occupation or profession]~~ lawful occupation is not necessary to protect against present, recognizable, and significant harm to the health or safety of the public, recommend to the Legislature that the state not regulate the profession;

~~(c)~~ (d) if the committee determines that state regulation of the ~~[occupation or profession]~~ lawful occupation is necessary in protecting against present, recognizable, and significant harm to the health or safety of the public, consider whether:

(i) the proposed or existing statute is narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public; and

(ii) a potentially less restrictive alternative to licensing, including state certification, state registration, or exemption, would avoid unnecessary regulation while still protecting the health and safety of the public; and

~~(d)~~ (e) recommend to the Legislature any necessary changes to the proposed or existing statute to ensure it is narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public.

(3) In its performance of each sunrise review or sunset review, the committee may apply the following criteria, to the extent that it is applicable:

(a) whether the unregulated practice of the occupation or profession has clearly harmed or may harm or endanger the health, safety, or welfare of the public;

(b) whether the potential for harm or endangerment described in Subsection (3)(a) is easily recognizable and not remote;

(c) whether regulation of the occupation or profession will significantly diminish an identified risk to the health, safety, or welfare of the public;

(d) whether regulation of the ~~[occupation or profession]~~ lawful occupation:

(i) imposes significant new economic hardship on the public;

(ii) significantly diminishes the supply of qualified practitioners; or

(iii) otherwise creates barriers to service that are not consistent with the public welfare or interest;

(e) whether the ~~[occupation or profession]~~ lawful occupation requires knowledge, skills, and abilities that are:

(i) teachable; and

(ii) testable;

(f) whether the ~~[occupation or profession]~~ lawful occupation is clearly distinguishable from other ~~[occupations or professions]~~ lawful occupations that are already regulated;

(g) whether the ~~[occupation or profession]~~ lawful occupation has:

(i) an established code of ethics;

(ii) a voluntary certification program; or

(iii) other measures to ensure a minimum quality of service;

(h) whether:

(i) the ~~[occupation or profession]~~ lawful occupation involves the treatment of an illness, injury, or health care condition; and

(ii) practitioners of the ~~[occupation or profession]~~ lawful occupation will request payment of benefits for the treatment under an insurance contract subject to Section 31A-22-618;

(i) whether the public can be adequately protected by means other than regulation; and

(j) other appropriate criteria as determined by the committee.

Section 6. Section 36-23-109 is amended to read:

36-23-109. Review of state regulation of occupations.

(1) ~~[Before the annual written report]~~ As part of the annual report described in Section 36-23-106 ~~[is submitted for 2013]~~, the committee shall study and make recommendations regarding potentially less restrictive alternatives to licensing for the regulation of ~~[occupations and professions]~~ lawful occupations, including registration ~~[and]~~, certification, or exemption, if appropriate, that would ~~[better]~~ avoid unnecessary regulation ~~[and intrusion upon individual liberties by the state,]~~ while still protecting the health and safety of the public.

(2) The committee shall study and make recommendations regarding lawful occupations that require a license in the state so that each licensed lawful occupation is reviewed every 10 years.

Section 7. Coordinating S.B. 212 with H.B. 94 -- Superceding amendments.

If this S.B. 212 and H.B. 94, Occupational and Professional Licensure Review Committee Amendments, both pass and become law, it is the intent of the Legislature that the amendments to Sections 36-23-101.5, 36-23-102, 36-23-105, 36-23-106, 36-23-107, and 36-23-109 in this bill supersede the amendments to the same sections in H.B. 94, Occupational and Professional Licensure Review Committee Amendments, when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.

CHAPTER 273**S. B. 260**

Passed March 8, 2017

Approved March 22, 2017

Effective May 9, 2017

ASSIGNABLE RIGHT OF FIRST REFUSAL

Chief Sponsor: D. Gregg Buxton

House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill modifies provisions related to a sale of state property that was acquired through an eminent domain proceeding.

Highlighted Provisions:

This bill:

- ▶ defines what constitutes a “highest offer” on the sale of certain property;
- ▶ provides that an original grantor of property acquired by the state through an eminent domain proceeding is permitted to transfer the grantor’s first right of refusal; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

72-5-111, as last amended by Laws of Utah 2015, Chapter 192

78B-6-521, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 72-5-111 is amended to read:**72-5-111. Disposal of real property.**

(1) (a) If the department determines that any real property or interest in real property, acquired for a highway purpose, is no longer necessary for the purpose, the department may lease, sell, exchange, or otherwise dispose of the real property or interest in the real property.

(b) (i) Real property may be sold at private or public sale.

(ii) Except as provided in Subsection (1)(c) related to exchanges and Subsection (1)(d) related to the proceeds of any sale of real property from a maintenance facility, proceeds of any sale shall be deposited with the state treasurer and credited to the Transportation Fund.

(c) If approved by the commission, real property or an interest in real property may be exchanged by the department for other real property or interest in real property, including improvements, for highway purposes.

(d) Proceeds from the sale of real property or an interest in real property from a maintenance facility may be used by the department for the

purchase or improvement of another maintenance facility, including real property.

(2) (a) In the disposition of real property at any private sale, first consideration shall be given to the original grantor.

(b) Notwithstanding the provisions of Section 78B-6-521, if no portion of a parcel of real property acquired by the department is used for transportation purposes, then the original grantor shall be given the opportunity to repurchase the parcel of real property at the department’s original purchase price from the grantor.

(c) In accordance with Section 72-5-404, this Subsection (2) does not apply to property rights acquired in proposed transportation corridors using funds from the Marda Dillree Corridor Preservation Fund created in Section 72-2-117.

~~[(d) Nothing in this Subsection (2) or Section 78B-6-521 creates an assignable right.]~~

(d) (i) The right of first consideration described in Subsection (2)(a) is subject to the same terms and may be assigned by the original grantor in the manner described in Subsection 78B-6-521(2).

(ii) The original grantor or the assignee shall notify the department of an assignment by certified mail to the current office address of the executive director of the department.

(iii) An exchange of real property as provided in Subsection (1)(c) or Section 72-5-113 does not entitle the original grantor to exercise the right of first consideration described in Subsection (2)(a).

(iv) The right of first consideration described in Subsection (2)(a) terminates upon an exchange of the acquired real property as provided in Subsection (1)(c) or Section 72-5-113.

(3) (a) Any sale, exchange, or disposal of real property or interest in real property made by the department under this section, is exempt from the mineral reservation provisions of Title 65A, Chapter 6, Mineral Leases.

(b) Any deed made and delivered by the department under this section without specific reservations in the deed is a conveyance of all the state’s right, title, and interest in the real property or interest in the real property.

Section 2. Section 78B-6-521 is amended to read:**78B-6-521. Sale of property acquired by eminent domain.**

(1) As used in this section~~[,]~~:

(a) ~~[-“condemnation”]~~ “Condemnation” or “threat of condemnation” means:

~~[(a)]~~ (i) acquisition through an eminent domain proceeding; or

~~[(b)]~~ (ii) an official body of the state or a subdivision of the state, having the power of eminent domain, has specifically authorized the use of eminent domain to acquire the real property.

(b) (i) “Highest offer” means all material terms of the best bona fide offer received by the state or one of the state’s subdivisions, including:

(A) purchase price;

(B) conditions; and

(C) terms of performance.

(ii) "Highest offer" does not mean the terms and conditions of an agreement to exchange real property or an interest in real property for other real property or an interest in real property.

(2) (a) If the state or one of [its] the state's subdivisions, at [its] the state's or the state's subdivision's sole discretion, declares real property that is acquired through condemnation or threat of condemnation to be surplus real property, it may not sell the real property on the open market unless:

[~~(a)~~] (i) the real property has been offered for sale to the original grantor, at the highest offer made to the state or one of its subdivisions with first right of refusal being given to the original grantor;

[~~(b)~~] (ii) the original grantor expressly waived in writing the first right of refusal on the offer or failed to accept the offer within 90 days after notification by registered mail to the last-known address; and

[~~(c)~~] (iii) neither the state nor the subdivision of the state selling the property is involved in the rezoning of the property or the acquisition of additional property to enhance the value of the real property to be sold.

(b) An original grantor may assign the first right of refusal within 90 days after an offer has been made under Subsection (2)(a)(i) if the right has not been waived pursuant to Subsection (2)(a)(ii).

(c) The assignment of a right of first refusal pursuant to Subsection (2)(b) does not extend the time for acceptance of an offer as described in Subsection (2)(a)(ii).

(3) (a) Real property acquired through condemnation or the threat of condemnation is not considered surplus if the real property is approved for use in an exchange for other real property.

(b) An exchange of real property for other real property is not a sale on the open market.

(c) The first right of refusal described in Subsection (2)(a)(i) shall terminate upon an exchange of the acquired real property.

[~~(3)~~] (4) This section shall only apply to property acquired after July 1, 1983.

CHAPTER 274**S. B. 267**

Passed March 8, 2017
Approved March 22, 2017
Effective May 9, 2017

UTAH RURAL JOBS ACT

Chief Sponsor: Ralph Okerlund
House Sponsor: Brad R. Wilson

LONG TITLE**General Description:**

This bill enacts the Utah Rural Jobs Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a state nonrefundable tax credit for investments in eligible small businesses primarily located in rural counties;
- ▶ authorizes the state to approve up to \$24,360,000 in tax credits if \$42,000,000 is invested in certain small businesses in the state;
- ▶ provides the requirements for the Governor's Office of Economic Development to approve a rural investment company, whose investors may qualify for a tax credit; and
- ▶ provides the requirements for receiving a tax credit certificate from the Governor's Office of Economic Development related to a contribution to a rural investment company.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

59-7-621, Utah Code Annotated 1953
59-10-1038, Utah Code Annotated 1953
63N-4-301, Utah Code Annotated 1953
63N-4-302, Utah Code Annotated 1953
63N-4-303, Utah Code Annotated 1953
63N-4-304, Utah Code Annotated 1953
63N-4-305, Utah Code Annotated 1953
63N-4-306, Utah Code Annotated 1953
63N-4-307, Utah Code Annotated 1953
63N-4-308, Utah Code Annotated 1953
63N-4-309, Utah Code Annotated 1953

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

Section 1. Section 59-7-621 is enacted to read:**59-7-621. Nonrefundable rural job creation tax credit.**

(1) As used in this section, "office" means the Governor's Office of Economic Development created in Section 63N-1-201.

(2) Subject to the other provisions of this section, a taxpayer may claim a nonrefundable tax credit for rural job creation as provided in this section.

(3) The tax credit under this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues under Title 63N,

Chapter 4, Part 3, Utah Rural Jobs Act, to the taxpayer for the taxable year.

(4) A taxpayer may carry forward a tax credit under this section for the next seven taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this chapter for the taxable year in which the taxpayer claims the tax credit.

Section 2. Section 59-10-1038 is enacted to read:**59-10-1038. Nonrefundable rural job creation tax credit.**

(1) As used in this section, "office" means the Governor's Office of Economic Development created in Section 63N-1-201.

(2) Subject to the other provisions of this section, a taxpayer may claim a nonrefundable tax credit for rural job creation as provided in this section.

(3) The tax credit under this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues under Title 63N, Chapter 4, Part 3, Utah Rural Jobs Act, to the taxpayer for the taxable year.

(4) A taxpayer may carry forward a tax credit under this section for the next seven taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this chapter for the taxable year in which the taxpayer claims the tax credit.

Section 3. Section 63N-4-301 is enacted to read:**Part 3. Utah Rural Jobs Act****63N-4-301. Title.**

This part is known as the "Utah Rural Jobs Act."

Section 4. Section 63N-4-302 is enacted to read:**63N-4-302. Definitions.**

As used in this part:

(1) (a) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(b) For the purposes of this part, a person controls another person if the person holds, directly or indirectly, the majority voting or ownership interest in the controlled person or has control over the day-to-day operations of the controlled person by contract or by law.

(2) "Claimant" means a resident or nonresident person that has state taxable income.

(3) "Closing date" means the date on which a rural investment company has collected all of the investments described in Subsection 63N-4-303(7).

(4) (a) "Credit-eligible contribution" means an investment of cash by a claimant in a rural investment company that is or will be eligible for a tax credit as evidenced by notification issued by the office under Subsection 63N-4-303(5)(c).

(b) The investment shall purchase an equity interest in the rural investment company or

purchase, at par value or premium, a debt instrument issued by the rural investment company that has a maturity date at least five years after the closing date.

(5) "Eligible small business" means a business that at the time of an initial growth investment in the business by a rural investment company:

(a) has fewer than 150 employees;

(b) has less than \$10,000,000 in net income for the preceding taxable year;

(c) maintains the business's principal business operations in the state; and

(d) is engaged in an industry related to:

(i) aerospace;

(ii) defense;

(iii) energy and natural resources;

(iv) financial services;

(v) life sciences;

(vi) outdoor products;

(vii) software development;

(viii) information technology;

(ix) manufacturing; or

(x) agribusiness.

(6) (a) "Excess return" means the difference between:

(i) the present value of all growth investments made by a rural investment company on the day the rural investment company applies to exit the program under Section 63N-4-309, including the present value of all distributions and gains from the growth investments; and

(ii) the sum of the amount of the original growth investment and an amount equal to any projected increase in the equity holder's federal or state tax liability, including penalties and interest, related to the equity holder's ownership, management, or operation of the rural investment company.

(b) If the amount calculated in Subsection (6)(a) is less than zero, the excess return is equal to zero.

(7) "Federally licensed rural business investment company" means a person licensed as a rural business investment company under 7 U.S.C. Sec. 2009cc.

(8) "Federally licensed small business investment company" means a person licensed as a small business investment company under 15 U.S.C. Sec. 681.

(9) (a) "Full-time employee" means an employee that throughout the year works at least 30 hours per week or meets the customary practices accepted by that industry as full time.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules that establish additional hour or other

criteria to determine what constitutes a full-time employee.

(10) "Growth investment" means any capital or equity investment in an eligible small business or any loan made from the investment authority to an eligible small business with a stated maturity at least one year after the date of issuance.

(11) (a) "High wage" means a wage that is at least 100% of the county average wage.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules that establish additional criteria to determine what constitutes a high wage.

(12) "Investment authority" means the minimum amount of investment a rural investment company must make in eligible small businesses in order for credit-eligible contributions to the rural investment company to qualify for a rural job creation tax credit under Section 59-7-621 or 59-10-1038.

(13) (a) "New annual jobs" means the difference between:

(i) (A) the monthly average of full-time employees that are paid a high wage at an eligible small business for the preceding calendar year; or

(B) if the preceding calendar year contains the initial growth investment, the monthly average of full-time employees that are paid a high wage at an eligible small business for the months including and after the initial growth investment and before the end of the preceding calendar year; and

(ii) the number of full-time employees at the eligible small business on the date of the initial growth investment.

(b) If the amount calculated in Subsection (2)(a) is less than zero, the new annual jobs amount is equal to zero.

(14) (a) "Principal business operations" means the location where at least 60% of a business's employees work or where employees that are paid at least 60% of a business's payroll work.

(b) For the purposes of this part, an out-of-state business that agrees to relocate employees to this state to establish the business's principal business operations in this state using the proceeds of a growth investment is considered to have the business's principal business operations in this state if the business satisfies the requirements of Subsection (14)(a) within 180 days after receiving the growth investment, unless the office agrees to a later date.

(15) "Program" means the provisions of this part applicable to a rural investment company.

(16) "Rural county" means any county in this state except Salt Lake, Utah, Davis, Weber, Washington, Cache, Tooele, and Summit counties.

(17) "Rural investment company" means a person approved by the office under Section 63N-4-303.

(18) (a) "State reimbursement amount" means the difference between:

(i) 50% of the rural investment company's credit-eligible capital contributions; and

(ii) the product of:

(A) the total sum of new annual jobs reported to the state in the rural investment company's exit report described in Section 63N-4-309; and

(B) \$20,000.

(b) If the amount calculated in Subsection (18)(a) is less than zero, the state reimbursement amount is equal to zero.

(19) "Tax credit" means a rural job creation tax credit created by Section 59-7-621 or 59-10-1038.

(20) "Tax credit certificate" means a certificate issued by the office that:

(a) lists the name of the person to which the office authorizes a tax credit;

(b) lists the person's taxpayer identification number;

(c) lists the amount of tax credit that the office authorizes the person to claim for the taxable year; and

(d) may include other information as determined by the office.

Section 5. Section 63N-4-303 is enacted to read:

63N-4-303. Application, approval, and allocations.

(1) (a) A person seeking approval as a rural investment company shall submit an application to the office.

(b) The office shall begin accepting applications on November 1, 2017.

(2) An application submitted under Subsection (1) shall be in a form and in accordance with procedures prescribed by the office, and shall include the following:

(a) the total investment authority sought by the applicant, which may not exceed \$42,000,000;

(b) a copy of the applicant's or an affiliate of the applicant's license as a federally licensed rural business investment company or as a federally licensed small business investment company;

(c) evidence that before the date the application is submitted, the applicant or affiliates of the applicant have invested at least \$50,000,000 in nonpublic companies located in counties in the United States with fewer than 50,000 inhabitants;

(d) a signed affidavit from each claimant that commits to make a credit-eligible capital contribution to the applicant, stating the amount of that commitment; and

(e) the sum of all credit-eligible capital contribution commitments described in Subsection (2)(d), which must equal 58% of the total investment authority sought by the applicant.

(3) The office shall:

(a) review and evaluate the applications submitted under this section within 30 days of receipt in the order in which the applications are received; and

(b) consider applications received on the same day to have been received simultaneously.

(4) (a) If, after review and evaluation of an application, the office determines that the application does not meet the requirements of Subsection (2), the office shall:

(i) deny the application; or

(ii) (A) notify the applicant that the application was inadequate and allow the applicant to provide additional information to the office to complete, clarify, or cure defects identified by the office in the application; and

(B) inform the applicant that the additional information described in Subsection (4)(a)(ii)(A) must be received by the office within five days of the notice in order to be considered.

(b) If an applicant submits additional information to the office in accordance with Subsection (4)(a)(ii), the office shall:

(i) consider the application to have been received on the date it was originally received by the office; and

(ii) review and evaluate the additional information within 10 days of receiving the additional information.

(5) If, after review and evaluation of an application submitted under this section and any additional information submitted in accordance with Subsection (4)(a)(ii), the office determines that the application meets the requirements of Subsection (2), the office shall:

(a) determine the amount of investment authority to award the applicant in accordance with Subsection (6);

(b) provide to the applicant a written notice of approval as a rural investment company specifying the amount of the applicant's investment authority; and

(c) notify each claimant whose affidavit was included in the application under Subsection (2) that the claimant qualifies for a tax credit that will be issued in accordance with Section 63N-4-304.

(6) (a) The office may not approve more than \$42,000,000 in total investment authority and not more than \$24,360,000 in total credit-eligible contributions under this part.

(b) Subject to Subsection (6)(d), if an application is approved under Subsection (5), the office shall approve the amount of investment authority requested on the application.

(c) The office may continue to accept applications under this section until the amount of approved investment authority reaches \$42,000,000.

(d) If the office approves multiple applications received simultaneously under Subsection (3) and the total amount of investment authority requested on those applications exceeds the amount of investment authority remaining, the office shall proportionally reduce the investment authority and credit-eligible capital contributions for each of these applications as necessary to avoid exceeding the amount of investment authority and credit-eligible capital contributions remaining.

(7) Within 65 days after the day on which a rural investment company receives approval under Subsection (5)(b), the rural investment company shall:

(a) collect the total amount of committed credit-eligible capital contributions from each claimant whose affidavit was included in the application under Subsection (2);

(b) collect one or more cash equity investments contributed by affiliates of the rural investment company, including employees, officers, and directors of such affiliates, that equal at least 10% of the rural investment company's investment authority;

(c) collect one or more cash investments that, when added to the amounts collected under Subsections (7)(a) and (b), equal the rural investment company's investment authority; and

(d) send sufficient documentation to the office to prove that the amounts described in this Subsection (7) have been collected.

(8) If the rural investment company fails to fully comply with Subsection (7):

(a) the rural investment company's approval shall lapse and the corresponding investment authority and credit-eligible capital contributions shall not count toward the limits on the program size described in Subsection (6);

(b) if the office awards lapsed investment authority to a rural investment company, the office shall first award lapsed investment authority pro rata to each rural investment company that was awarded less than the requested investment authority under Subsection (6)(d), which a rural investment company may allocate to the rural investment company's investors at the company's discretion; and

(c) the office may award any remaining investment authority to new applicants.

Section 6. Section 63N-4-304 is enacted to read:

63N-4-304. Tax credit.

(1) On the closing date, a claimant whose affidavit was included in an approved application submitted under Section 63N-4-303 shall earn a vested tax credit equal to the amount of the claimant's credit-eligible capital contribution to the rural investment company.

(2) In each of the taxable years that includes the fourth through seventh anniversaries of the closing date, the office shall:

(a) issue a tax credit certificate to each approved claimant, specifying a tax credit amount for the taxable year equal to 25% of the claimant's total credit-eligible capital contribution; and

(b) provide a report to the State Tax Commission listing each claimant that received a tax credit certificate under Subsection (2)(a) and the tax credit amount listed on the certificate.

(3) (a) A claimant may not claim a tax credit under this section unless the claimant has a tax credit certificate issued by the office.

(b) A claimant claiming a credit under this section shall retain a tax credit certificate the claimant receives from the office for the same time period a person is required to keep books and records under Section 59-1-1406.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules describing:

(a) the documentation requirements for a business entity to receive a tax credit certificate under this section; and

(b) administration of the program, including relevant timelines and deadlines.

Section 7. Section 63N-4-305 is enacted to read:

63N-4-305. Revocation of tax credit certificates and exit.

(1) Except as provided in Subsection (2), the office shall revoke a tax credit certificate issued under Section 63N-4-304 if the rural investment company in which the credit-eligible capital contribution was made does any of the following before the rural investment company exits the program in accordance with Section 63N-4-309:

(a) fails to invest 100% of the rural investment company's investment authority in growth investments in this state within three years of the closing date;

(b) fails to maintain growth investments in this state equal to 100% of the rural investment company's investment authority until the seventh anniversary of the closing date in accordance with this section;

(c) makes a distribution or payment that results in the rural investment company having less than 100% of the rural investment company's investment authority invested in growth investments in this state or available for investment in growth investments and held in cash and other marketable securities;

(d) fails to maintain growth investments equal to 70% of the rural investment company's investment authority in eligible small businesses that maintain their principal business operations in a rural county;

(e) invests more than \$5,000,000 from the investment authority in the same eligible small

business, including amounts invested in affiliates of the eligible small business, exclusive of growth investments made with repaid or redeemed growth investments or interest or profits realized on the repaid or redeemed growth investments; or

(f) makes a growth investment in an eligible small business that directly, or indirectly through an affiliate:

(i) owns or has the right to acquire an ownership interest in the rural investment company, an affiliate of the rural investment company, or an investor in the rural investment company; or

(ii) makes a loan to or an investment in the rural investment company, an affiliate of the rural investment company, or an investor in the rural investment company.

(2) (a) (i) For the purposes of Subsection (1), an investment is maintained even if the investment is sold or repaid if the rural investment company reinvests an amount equal to the capital returned or recovered by the fund from the original investment, exclusive of any profits realized, in other growth investments in this state within 12 months of the receipt of such capital.

(ii) Amounts received periodically by a rural investment company are treated as continually invested in growth investments if the amounts are reinvested in one or more growth investments by the end of the following calendar year.

(iii) A rural investment company is not required to reinvest capital returned from growth investments after the sixth anniversary of the closing date and such growth investments are considered as being held continuously by the rural investment company through the seventh anniversary of the closing date.

(b) (i) Subsection (1)(f) does not apply to investments in publicly traded securities by an eligible small business or an owner or affiliate of an eligible small business.

(ii) Under Subsection (1)(f), a rural investment company is not considered an affiliate of a business concern solely as a result of the rural investment company's growth investment.

(c) A growth investment in an eligible small business that is not located in a rural county may count toward the requirements of Subsection (1)(d) if the office determines that the eligible small business is located in an economically disadvantaged rural area as defined by rules made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) Before revoking one or more tax credit certificates under this section, the office shall notify the rural investment company of the reasons for the pending revocation.

(b) If the rural investment company corrects any violation outlined in the notice to the satisfaction of the office within 90 days after the day on which the notice was sent, the office may not revoke the tax credit certificate.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules that establish criteria to determine what constitutes a correction under Subsection (3)(b).

(4) If tax credit certificates are revoked under this section:

(a) (i) the rural investment company shall make a cash distribution to the office in an amount equal to the sum of all tax credits awarded to persons that have made credit-eligible contributions to the rural investment company; and

(ii) if the rural investment company is able to provide documentation to the office that proves that a tax credit described in Subsection (4)(a)(i) has not been claimed, the amount owed under Subsection (4)(a)(i) shall be reduced by the amount of the unclaimed tax credit;

(b) the rural investment company's investment authority and credit-eligible capital contributions will not count toward the limits on the program size described in Subsection 63N-4-303(6);

(c) if the office awards lapsed investment authority to a rural investment company, the office shall first award lapsed investment authority pro rata to each rural investment company that was awarded less than the requested investment authority under Subsection 63N-4-303(6)(d), which a rural investment company may allocate to the rural investment company's investors at the rural investment company's discretion; and

(d) the office may award any remaining investment authority to new applicants.

(5) The office may not revoke a tax credit certificate after a rural investment company has exited the program in accordance with Section 63N-4-309.

Section 8. Section 63N-4-306 is enacted to read:

63N-4-306. Request for determination.

(1) A rural investment company, before making a growth investment, may request from the office a written opinion as to whether the business in which a rural investment company proposes to invest is an eligible small business.

(2) The office shall notify the rural investment company of the office's determination within 30 days after receipt of the request.

(3) If the office fails to notify the rural investment company of the office's determination in accordance with this section, the business in which the rural investment company proposes to invest shall be considered an eligible small business.

Section 9. Section 63N-4-307 is enacted to read:

63N-4-307. Reporting obligations.

(1) A rural investment company shall submit an annual report to the office on or before the last day of February for each previous calendar year until the rural investment company has exited the

program in accordance with Section 63N-4-309. The annual report shall provide documentation as to the rural investment company's growth investments and include:

(a) a bank statement evidencing each growth investment;

(b) the name, location, and industry of each business concern receiving a growth investment, including either the determination letter set forth in Section 63N-4-306 or evidence that the business qualified as an eligible small business at the time the investment was made;

(c) the number of new annual jobs at each eligible small business for the preceding year, accompanied by a report from a third-party accounting firm attesting that the number of new annual jobs was calculated in accordance with procedures approved by the office; and

(d) any other information required by the office.

(2) Within 60 days of receipt of an annual report, the office shall provide written confirmation to the rural investment company of the number of new annual jobs the rural investment company has been credited with for the previous calendar year.

(3) By the fifth business day after the third anniversary of the closing date, a rural investment company shall submit a report to the office providing evidence that the rural investment company is in compliance with the investment requirements of Section 63N-4-305.

Section 10. Section 63N-4-308 is enacted to read:

63N-4-308. Annual fee.

(1) The office shall calculate an annual fee to be paid by each rural investment company by dividing \$50,000 by the number of rural investment companies approved under this part and notify each rural investment company of the amount of the annual fee.

(2) (a) The initial annual fee shall be due and payable to the office along with the evidence of receipt of the cash investment in the rural investment company as described in Subsection 63N-4-303(7)(d).

(b) After the initial annual fee, an annual fee shall be due and payable to the office on or before the last day of February of each year.

(c) An annual fee shall not be required once a rural investment company has exited the program under Section 63N-4-309.

(3) To maintain an aggregate annual fee of \$50,000, the office shall recalculate the annual fee as needed upon the lapse of any approval under Subsection 63N-4-303(8), the revocation of tax credit certificates under Section 63N-4-305, or a rural investment company's exit from the program under Section 63N-4-309.

(4) The annual fee collected under this section shall be deposited into the General Fund as a dedicated credit for use by the office to implement this part.

Section 11. Section 63N-4-309 is enacted to read:

63N-4-309. Exit.

(1) On or after the seventh anniversary of the closing date, a rural investment company may apply to the office to exit the program and no longer be subject to this part.

(2) An application submitted under Subsection (1) shall be in a form and in accordance with procedures prescribed by the office and shall include a calculation of the state reimbursement amount.

(3) In evaluating the exit application, if no tax credit certificates have been revoked and the rural investment company has not received a notice of revocation that has remained uncorrected under Subsection 63N-4-305(3)(b), the rural investment company is eligible for exit.

(4) (a) The office shall respond to the application within 30 days of receipt and include confirmation of the state reimbursement amount.

(b) The office shall not unreasonably deny an application submitted under this section.

(c) If the office denies the application, the office shall provide the reasons for the determination to the rural investment company.

(5) Within 60 days after the day on which the confirmation of the state reimbursement amount is received by the rural investment company, the rural investment company shall make a cash distribution to the state in an amount equal to the lesser of:

(a) the state reimbursement amount; and

(b) the excess return.

(6) The office shall notify the rural investment company once payments equal to the amount described in Subsection (4) have been received.

(7) Any amounts collected under this section shall be deposited into the General Fund.

CHAPTER 275**S. B. 269**

Passed March 9, 2017

Approved March 22, 2017

Effective May 9, 2017

ELECTIONS MODIFICATIONS

Chief Sponsor: Howard A. Stephenson

House Sponsor: Jeremy A. Peterson

LONG TITLE**General Description:**

This bill makes changes to the Elections Code regarding the master ballot position list.

Highlighted Provisions:

This bill:

- ▶ changes the date for publication of the master ballot position list to after the candidate filing deadline.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-6-305, as last amended by Laws of Utah 2016, Chapter 66

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

Section 1. Section 20A-6-305 is amended to read:

20A-6-305. Master ballot position list -- Random selection -- Procedures -- Publication -- Surname -- Exemptions -- Ballot order.

(1) As used in this section, "master ballot position list" means an official list of the 26 characters in the alphabet listed in random order and numbered from one to 26 as provided under Subsection (2).

(2) The lieutenant governor shall:

(a) ~~[by November 15 in the year before each regular general election]~~ within 30 days after the candidate filing deadline in each even-numbered year, conduct a random selection to ~~[establish the]~~ create a master ballot position list for ~~[the next year and the year following]~~ all elections in accordance with procedures established under Subsection (2)(c);

(b) publish the master ballot position ~~[lists]~~ list on the lieutenant governor's election website ~~[on or before November 15 in the year before each regular general election]~~ no later than 15 days after creating the list; and

(c) establish written procedures for:

(i) the election official to use the master ballot position list; and

(ii) the lieutenant governor in:

(A) conducting the random selection in a fair manner; and

(B) providing a record of the random selection process used.

(3) In accordance with the written procedures established under Subsection (2)(c)(i), an election officer shall use the master ballot position list for the current year to determine the order in which to list candidates on the ballot for an election held during the year.

(4) To determine the order in which to list candidates on the ballot required under Subsection (3), the election officer shall apply the randomized alphabet using:

(a) the candidate's surname;

(b) for candidates with a surname that has the same spelling, the candidate's given name;

(c) the surname of the president and the surname of the governor for an election for the offices of president and vice president and governor and lieutenant governor; and

(d) if the ballot provides for a ticket or a straight party ticket, the registered political party name.

(5) Subsections (1) through (4) do not apply to:

(a) an election for an office for which only one candidate is listed on the ballot; or

(b) a judicial retention election under Section 20A-12-201.

(6) Subject to Subsection (7), each ticket that appears on a ballot for an election shall appear separately, in the following order:

(a) a straight party ticket, where the voter may, with one mark, vote for all candidates of one political party;

(b) for federal office:

(i) president and vice president of the United States;

(ii) United States Senate office; and

(iii) United States House of Representatives office;

(c) for state office:

(i) governor and lieutenant governor;

(ii) attorney general;

(iii) state auditor;

(iv) state treasurer;

(v) state Senate office;

(vi) state House of Representatives office; and

(vii) State Board of Education member;

(d) for county office:

(i) county executive office;

(ii) county legislative body member;

(iii) county assessor;

(iv) county or district attorney;

- (v) county auditor;
 - (vi) county clerk;
 - (vii) county recorder;
 - (viii) county sheriff;
 - (ix) county surveyor;
 - (x) county treasurer; and
 - (xi) local school board member;
- (e) for municipal office:
- (i) mayor; and
 - (ii) city or town council member;
- (f) elected planning and service district council member;
- (g) judicial retention questions; and
- (h) ballot propositions not described in Subsection (6)(g).
- (7) (a) A ticket for a race for a combined office shall appear on the ballot in the place of the earliest ballot ticket position that is reserved for an office that is subsumed in the combined office.
- (b) Each ticket, other than a ticket described in Subsection (6)(g), shall list:
- (i) each candidate in accordance with Subsections (1) through (4); and
 - (ii) except as otherwise provided in this title, the party name, initials, or title following each candidate's name.

CHAPTER 276**S. B. 275**

Passed March 9, 2017
 Approved March 22, 2017
 Effective May 9, 2017

**CAMPAIGN FINANCE
 REPORTING AMENDMENTS**

Chief Sponsor: Lyle W. Hillyard
 House Sponsor: Brad M. Daw

LONG TITLE**General Description:**

This bill modifies provisions in Title 20A, Chapter 11, Campaign and Financial Reporting Requirements, governing campaign finance reporting by corporations.

Highlighted Provisions:

This bill:

- ▶ repeals provisions that required a corporation that made expenditures to influence the outcome of an election to report on a financial statement money received from a donor in certain circumstances; and
- ▶ repeals a provision that required a corporation in certain circumstances to notify a donor that the corporation may:
 - use the money to influence the outcome of an election; and
 - disclose the identity of the donor.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-11-701, as last amended by Laws of Utah 2015, Chapters 204 and 296

20A-11-702, as last amended by Laws of Utah 2015, Chapter 204

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

Section 1. Section 20A-11-701 is amended to read:**20A-11-701. Campaign financial reporting by corporations -- Filing requirements -- Statement contents.**

(1) (a) Each corporation that has made expenditures for political purposes that total at least \$750 during a calendar year shall file a verified financial statement with the lieutenant governor's office:

(i) on January 10, reporting expenditures as of December 31 of the previous year;

(ii) seven days before the state political convention for each major political party;

(iii) seven days before the regular primary election date;

(iv) on September 30; and

(v) seven days before the regular general election date.

(b) The corporation shall report:

(i) a detailed listing of all expenditures made since the last financial statement;

(ii) for a financial statement described in Subsections (1)(a)(ii) through (v), all expenditures as of five days before the required filing date of the financial statement; and

(iii) whether the corporation, including an officer of the corporation, director of the corporation, or person with at least 10% ownership in the corporation:

(A) has bid since the last financial statement on a contract, as defined in Section 63G-6a-103, in excess of \$100,000;

(B) is currently bidding on a contract, as defined in Section 63G-6a-103, in excess of \$100,000; or

(C) is a party to a contract, as defined in Section 63G-6a-103, in excess of \$100,000.

(c) The corporation need not file a financial statement under this section if the corporation made no expenditures during the reporting period.

(d) The corporation is not required to report an expenditure made to, or on behalf of, a reporting entity that the reporting entity is required to include in a financial statement described in this chapter or Chapter 12, Part 2, Judicial Retention Elections.

(2) The financial statement shall include:

(a) the name and address of each reporting entity that received an expenditure from the corporation, and the amount of each expenditure;

(b) the total amount of expenditures disbursed by the corporation~~];~~ and

~~[(i) since the last financial statement; and]~~

~~[(ii) during the calendar year;]~~

~~[(c) (i) a statement that the corporation did not receive any money from any donor during the calendar year or the previous calendar year that the corporation has not reported in a previous financial statement; or]~~

~~[(ii) a report, described in Subsection (3), of the money received from donors during the calendar year or the previous calendar year that the corporation has not reported in a previous financial statement; and]~~

~~[(d)] (c) a statement by the corporation's treasurer or chief financial officer certifying the accuracy of the financial statement.~~

~~[(3) (a) The report required by Subsection (2)(c)(ii) shall include:]~~

~~[(i) the name and address of each donor;]~~

~~[(ii) the amount of the money received by the corporation from each donor; and]~~

~~[(iii) the date on which the corporation received the money.]~~

~~[(b) A corporation shall report money received from donors in the following order:]~~

~~[(i) first, beginning with the least recent date on which the corporation received money that the corporation has not reported in a previous financial statement, the money received from a donor that:]~~

~~[(A) requests that the corporation use the money to make an expenditure;]~~

~~[(B) gives the money to the corporation in response to a solicitation indicating the corporation's intent to make an expenditure; or]~~

~~[(C) knows that the corporation may use the money to make an expenditure; and]~~

~~[(ii) second, divide the difference between the total amount of expenditures made since the last financial statement and the total amount of money reported under Subsection (3)(b)(i) on a proration basis between all donors that:]~~

~~[(A) are not described in Subsection (3)(b)(i);]~~

~~[(B) gave at least \$50 during the calendar year or previous calendar year; and]~~

~~[(C) have not been reported in a previous financial statement.]~~

~~[(e) If the amount reported under Subsection (3)(b) is less than the total amount of expenditures made since the last financial statement, the financial statement shall contain a statement that the corporation has reported all donors that gave money, and all money received by donors, during the calendar year or previous calendar year that the corporation has not reported in a previous financial statement.]~~

~~[(d) The corporation shall indicate on the financial statement that the amount attributed to each donor under Subsection (3)(b)(ii) is only an estimate.]~~

~~[(e) (i) For all individual donations of \$50 or less, the corporation may report a single aggregate figure without separate detailed listings.]~~

~~[(ii) The corporation:]~~

~~[(A) may not report in the aggregate two or more donations from the same source that have an aggregate total of more than \$50; and]~~

~~[(B) shall separately report donations described in Subsection (3)(e)(ii)(A).]~~

~~[(4) If a corporation makes expenditures that total at least \$750 during a calendar year, the corporation shall notify a person giving money to the corporation that:]~~

~~[(a) the corporation may use the money to make an expenditure; and]~~

~~[(b) the person's name and address may be disclosed on the corporation's financial statement.]~~

Section 2. Section 20A-11-702 is amended to read:

20A-11-702. Campaign financial reporting of political issues expenditures by corporations -- Financial reporting.

(1) (a) Each corporation that has made political issues expenditures on current or proposed ballot issues that total at least \$750 during a calendar year shall file a verified financial statement with the lieutenant governor's office:

(i) on January 10, reporting expenditures as of December 31 of the previous year;

(ii) seven days before the state political convention of each major political party;

(iii) seven days before the regular primary election date;

(iv) on September 30; and

(v) seven days before the regular general election date.

(b) The corporation shall report:

(i) a detailed listing of all expenditures made since the last financial statement; and

(ii) for a financial statement described in Subsections (1)(a)(ii) through (v), expenditures as of five days before the required filing date of the financial statement.

(c) The corporation need not file a statement under this section if it made no expenditures during the reporting period.

(2) That statement shall include:

(a) the name and address of each individual, entity, or group of individuals or entities that received a political issues expenditure of more than \$50 from the corporation, and the amount of each political issues expenditure;

(b) the total amount of political issues expenditures disbursed by the corporation[; and]

~~[(i) since the last financial statement; and]~~

~~[(ii) during the calendar year;]~~

~~[(e) (i) a statement that the corporation did not receive any money from any donor during the calendar year or the previous calendar year that the corporation has not reported in a previous financial statement; or]~~

~~[(ii) a report, described in Subsection (3), of the money received from donors during the calendar year or the previous calendar year that the corporation has not reported in a previous financial statement; and]~~

~~[(d) (c) a statement by the corporation's treasurer or chief financial officer certifying the accuracy of the verified financial statement.~~

~~[(3) (a) The report required by Subsection (2)(c)(ii) shall include:]~~

~~[(i) the name and address of each donor;]~~

~~[(ii) the amount of the money received by the corporation from each donor; and]~~

~~[(iii) the date on which the corporation received the money.]~~

~~[(b) A corporation shall report money received from donors in the following order:]~~

~~[(i) first, beginning with the least recent date on which the corporation received money that has not been reported in a previous financial statement, the money received from a donor that:]~~

~~[(A) requests that the corporation use the money to make a political issues expenditure;]~~

~~[(B) gives the money to the corporation in response to a solicitation indicating the corporation's intent to make a political issues expenditure; or]~~

~~[(C) knows that the corporation may use the money to make a political issues expenditure; and]~~

~~[(ii) second, divide the difference between the total amount of political issues expenditures made since the last financial statement and the total amount of money reported under Subsection (3)(b)(i) on a proration basis between all donors that:]~~

~~[(A) are not described in Subsection (3)(b)(i);]~~

~~[(B) gave at least \$50 during the calendar year or previous calendar year; and]~~

~~[(C) have not been reported in a previous financial statement.]~~

~~[(c) If the amount reported under Subsection (3)(b) is less than the total amount of political issues expenditures made since the last financial statement, the financial statement shall contain a statement that the corporation has reported all donors that gave money, and all money received by donors, during the calendar year or previous calendar year that the corporation has not reported in a previous financial statement.]~~

~~[(d) The corporation shall indicate on the financial statement that the amount attributed to each donor under Subsection (3)(b)(ii) is only an estimate.]~~

~~[(e) (i) For all individual donations of \$50 or less, the corporation may report a single aggregate figure without separate detailed listings.]~~

~~[(ii) The corporation:]~~

~~[(A) may not report in the aggregate two or more donations from the same source that have an aggregate total of more than \$50; and]~~

~~[(B) shall separately report donations described in Subsection (3)(e)(ii)(A).]~~

~~[(4) If a corporation makes political issues expenditures that total at least \$750 during a calendar year, the corporation shall notify a person giving money to the corporation that:]~~

~~[(a) the corporation may use the money to make a political issues expenditure; and]~~

~~[(b) the person's name and address may be disclosed on the corporation's financial statement.]~~

CHAPTER 277**H. B. 25**

Passed March 3, 2017
 Approved March 23, 2017
 Effective March 23, 2017
 (Exception clause in Section 11)

TAX INCENTIVE REVIEW AMENDMENTS

Chief Sponsor: Daniel McCay
 Senate Sponsor: Deidre M. Henderson

LONG TITLE**General Description:**

This bill amends provisions related to legislative review and evaluation of tax incentives and economic development programs.

Highlighted Provisions:

This bill:

- ▶ creates the Economic Development Legislative Liaison Committee;
- ▶ provides for the membership, expenses, duties, and staff support of the committee;
- ▶ requires the Governor's Office of Economic Development to provide the committee with certain information;
- ▶ addresses the confidentiality of and access to information provided to the committee by the Governor's Office of Economic Development;
- ▶ provides that the committee is not a public body for purposes of the Open and Public Meetings Act;
- ▶ defines terms;
- ▶ addresses what tax information the State Tax Commission can provide to certain offices;
- ▶ requires the State Tax Commission and Office of the Legislative Fiscal Analyst to conduct a study and to report their findings; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a repeal date.

Utah Code Sections Affected:**AMENDS:**

52-4-103, as last amended by Laws of Utah 2016, Chapter 77
 59-1-403, as last amended by Laws of Utah 2015, Chapters 411 and 451
 63N-1-201, as renumbered and amended by Laws of Utah 2015, Chapter 283

ENACTS:

36-30-101, Utah Code Annotated 1953
 36-30-102, Utah Code Annotated 1953
 36-30-201, Utah Code Annotated 1953
 36-30-202, Utah Code Annotated 1953
 36-30-203, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 36-30-101 is enacted to read:**CHAPTER 30. ECONOMIC DEVELOPMENT
LEGISLATIVE LIAISON COMMITTEE****36-30-101. Title.**

This chapter is known as the "Economic Development Legislative Liaison Committee."

Section 2. Section 36-30-102 is enacted to read:**36-30-102. Definitions.**

As used in this chapter:

(1) "Classification" means the same as that term is defined in Section 63G-2-103.

(2) "Committee" means the Economic Development Legislative Liaison Committee created in this chapter.

(3) "Improperly use" means:

(a) to further substantially one's own or another's personal economic interest;

(b) to secure special privileges or exemptions for one's self or another; or

(c) to cause economic injury or damage to:

(i) an individual or business entity; or

(ii) an individual's or a business entity's property, reputation, or business interests.

(4) "Office" means the Governor's Office of Economic Development created in Section 63N-1-201.

(5) "Record" means the same as that term is defined in Section 63G-2-103.

Section 3. Section 36-30-201 is enacted to read:**36-30-201. Economic Development
Legislative Liaison Committee -- Creation
-- Membership -- Chairs -- Per diem and
expenses.**

(1) There is created the Economic Development Legislative Liaison Committee.

(2) The committee membership consists of the following eight members:

(a) four members from the House of Representatives, appointed by the speaker of the House of Representatives, with no more than three from the same political party; and

(b) four members from the Senate, appointed by the president of the Senate, with no more than three members from the same political party.

(3) Five members of the committee constitute a quorum.

(4) (a) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(a) as a cochair of the committee.

(b) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(b) as a cochair of the committee.

(5) A committee member shall receive compensation and expenses as provided by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section 4. Section 36-30-202 is enacted to read:

36-30-202. Duties -- Confidential Information -- Records.

(1) The committee shall receive reports from the office regarding:

(a) how the office is:

(i) promoting and encouraging economic development in the state; and

(ii) creating, developing, attracting, and retaining business, industry, and commerce in the state;

(b) an economic development incentive or program the office administers;

(c) a contract or agreement that the office has entered into with a public or private entity;

(d) a grant that the office has made to a public or private entity;

(e) any funds from a public or private source that the office has expended;

(f) any money, services, or facilities the office has solicited or accepted from a public or private donor;

(g) a policy, priority, or objective under which the office operates; or

(h) any other economic development related information that the office can provide.

(2) At the beginning of each meeting, the cochairs of the committee shall inform each individual in attendance that there may be:

(a) restrictions on disclosing or improperly using information the committee receives during the meeting; and

(b) penalties for not complying with the restrictions on disclosing or improperly using information the committee receives during the meeting.

(3) (a) Before adjourning a meeting of the committee, the office shall inform the committee whether the information the office provides under this section is subject to restrictions on disclosing or improperly using the information.

(b) The committee shall comply with any restrictions on the disclosure or improper use of information.

(c) An individual may not disclose or improperly use information that is:

(i) received by the individual at a committee meeting; and

(ii) determined to be confidential or subject to restrictions on disclosure under Subsection (3)(a).

(d) An individual who intentionally discloses or improperly uses information described under Subsection (3)(c) knowing that the disclosure or use is prohibited under this section is guilty of a class B misdemeanor.

(4) (a) The office's sharing of records with the committee is governed by this section rather than Section 63G-2-206.

(b) The office shall inform the committee of the office's classification of any record the office provides to the committee.

(c) (i) The committee is subject to the same restrictions on disclosure or use of a record the committee receives from the office as the office is subject to.

(ii) An individual that violates the restrictions on disclosure or use described under Subsection (4)(c)(i) is subject to:

(A) the applicable penalties provided under Title 63G, Chapter 2, Government Records Access and Management Act; and

(B) any other applicable penalties provided by law.

(d) A person may not make a request under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, for access to a record in possession of the committee if the committee received the record from the office in accordance with this section.

(5) The committee may not:

(a) request legislation;

(b) recommend legislation;

(c) take a position on a matter of public policy;

(d) except as necessary to obtain the information described in Subsection (1), direct the negotiations, activities, and work of the office; or

(e) require the office to request company-specific tax information from the State Tax Commission.

(6) The committee shall comply with the rules of legislative interim committees unless those rules conflict with this section.

(7) The committee may meet as needed.

Section 5. Section 36-30-203 is enacted to read:

36-30-203. Staff support.

The Office of Legislative Research and General Counsel and the Office of the Legislative Fiscal Analyst shall jointly provide staff services to the committee.

Section 6. Section 52-4-103 is amended to read:

52-4-103. Definitions.

As used in this chapter:

(1) “Anchor location” means the physical location from which:

- (a) an electronic meeting originates; or
- (b) the participants are connected.

(2) “Capitol hill complex” means the grounds and buildings within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.

(3) “Convening” means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

(4) “Electronic meeting” means a public meeting convened or conducted by means of a conference using electronic communications.

(5) “Electronic message” means a communication transmitted electronically, including:

- (a) electronic mail;
- (b) instant messaging;
- (c) electronic chat;
- (d) text messaging as defined in Section 76-4-401; or

(e) any other method that conveys a message or facilitates communication electronically.

(6) (a) “Meeting” means the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body or specific body has jurisdiction or advisory power.

(b) “Meeting” does not mean:

- (i) a chance gathering or social gathering; or
- (ii) a convening of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405.

(c) “Meeting” does not mean the convening of a public body that has both legislative and executive responsibilities if:

(i) no public funds are appropriated for expenditure during the time the public body is convened; and

(ii) the public body is convened solely for the discussion or implementation of administrative or operational matters:

(A) for which no formal action by the public body is required; or

(B) that would not come before the public body for discussion or action.

(7) “Monitor” means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(8) “Participate” means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(9) (a) “Public body” means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(ii) consists of two or more persons;

(iii) expends, disburses, or is supported in whole or in part by tax revenue; and

(iv) is vested with the authority to make decisions regarding the public’s business.

(b) “Public body” includes, as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking.

(c) “Public body” does not include [a]:

(i) a political party, a political group, or a political caucus;

(ii) a conference committee, a rules committee, or a sifting committee of the Legislature; [or]

(iii) a school community council or charter trust land council as defined in Section 53A-1a-108.1[-]; or

(iv) the Economic Development Legislative Liaison Committee created in Section 36-30-201.

(10) “Public statement” means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(11) (a) “Quorum” means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) “Quorum” does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

(12) “Recording” means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

(13) “Specified body”:

(a) means an administrative, advisory, executive, or legislative body that:

(i) is not a public body;

(ii) consists of three or more members; and

(iii) includes at least one member who is:

(A) a legislator; and

(B) officially appointed to the body by the president of the Senate, speaker of the House of Representatives, or governor; and

(b) does not include a body listed in Subsection (9)(c)(ii).

(14) "Transmit" means to send, convey, or communicate an electronic message by electronic means.

Section 7. Section 59-1-403 is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

- (i) a tax commissioner;
- (ii) an agent, clerk, or other officer or employee of the commission; or
- (iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

- (i) in accordance with judicial order;
- (ii) on behalf of the commission in any action or proceeding under:
 - (A) this title; or

(B) other law under which persons are required to file returns with the commission;

(iii) on behalf of the commission in any action or proceeding to which the commission is a party; or

(iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

- (i) who brings action to set aside or review a tax based on the report or return;
- (ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

- (i) the United States Internal Revenue Service; or
- (ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the director of the Division of Environmental Response and Remediation, as defined in Section 19-6-402, as requested by the director of the Division of Environmental Response and Remediation, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

- (i) Chapter 13, Part 2, Motor Fuel; or
- (ii) Chapter 13, Part 4, Aviation Fuel.

(f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

- (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and
- (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401

and reported to the commission under Subsection 59-14-401(1)(a)(v).

(g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

(h) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request, provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, the Office of the Legislative Fiscal Analyst, or the Governor's Office of Management and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (1), the commission shall make the directory required by Section 59-14-603 available for public inspection.

(k) Notwithstanding Subsection (1), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).

(l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of Recovery Services within the Department of Human Services any relevant information obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has become obligated to the Office of Recovery Services.

(ii) The information described in Subsection (3)(l)(i) may be provided by the Office of Recovery Services to any other state's child support collection agency involved in enforcing that support obligation.

(m) (i) Notwithstanding Subsection (1), upon request from the state court administrator, the commission shall provide to the state court administrator, the name, address, telephone number, county of residence, and Social Security number on resident returns filed under Chapter 10, Individual Income Tax Act.

(ii) The state court administrator may use the information described in Subsection (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

(n) Notwithstanding Subsection (1), the commission shall at the request of a committee, commission, or task force of the Legislature provide to the committee, commission, or task force of the Legislature any information relating to a tax imposed under Chapter 9, Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

(o) (i) As used in this Subsection (3)(o)[~~,"office"~~]:

(A) "Income tax information" means information gained by the commission that is required to be attached to or included in a return filed with the commission under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act.

(B) "Office" means the[~~(A)~~] Office of the Legislative Fiscal Analyst[~~; or (B)~~], established in Section 36-12-13, the Office of Legislative Research and General Counsel, established in Section 36-12-12, the Governor's Office of Economic Development, created in Section 63N-1-201, or the Governor's Office of Management and Budget, created in Section 63J-4-2011.

(C) "Other tax information" means information gained by the commission that is required to be attached to or included in a return filed with the commission except for a return filed under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act.

(D) "Tax information" means income tax information or other tax information.

(ii) (A) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(~~iii~~)(ii)(B) or (C), the commission shall at the request of an office provide to the office all income tax information[~~;~~].

[~~(A) gained by the commission; and~~]

[~~(B) required to be attached to or included in returns filed with the commission.~~]

[~~iii~~-(A) ~~An~~] (B) For purposes of a request for income tax information made under Subsection (3)(o)(ii)(A), an office may not request and the commission may not provide to an office a person's[~~;~~] address, name, social security number, or taxpayer identification number.

[~~(I) address;~~]

[~~(II) name;~~]

[~~(III) Social Security number; or~~]

[~~(IV) taxpayer identification number.~~]

[~~(B) The~~] (C) In providing income tax information to an office, the commission shall in all instances protect the privacy of a person as required by Subsection (3)(o)(~~iii~~)(A)(ii)(B).

(iii) (A) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii)(B), the commission shall at the request of an office provide to the office other tax information.

(B) Before providing other tax information to an office, the commission shall redact or remove any

name, address, social security number, or taxpayer identification number.

(iv) An office may provide tax information received from the commission in accordance with this Subsection (3)(o) only:

(A) as[:] a fiscal estimate, fiscal note information, or statistical information; and

~~[(I) a fiscal estimate;]~~

~~[(II) fiscal note information; or]~~

~~[(III) statistical information; and]~~

(B) if the tax information is classified to prevent the identification of a particular return.

(v) (A) A person may not request tax information from an office under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, if that office received the tax information from the commission in accordance with this Subsection (3)(o).

(B) An office may not provide to a person that requests tax information in accordance with Subsection (3)(o)(v)(A) any tax information other than the tax information the office provides in accordance with Subsection (3)(o)(iv).

(p) Notwithstanding Subsection (1), the commission may provide to the governing board of the agreement or a taxing official of another state, the District of Columbia, the United States, or a territory of the United States:

(i) the following relating to an agreement sales and use tax:

(A) information contained in a return filed with the commission;

(B) information contained in a report filed with the commission;

(C) a schedule related to Subsection (3)(p)(i)(A) or (B); or

(D) a document filed with the commission; or

(ii) a report of an audit or investigation made with respect to an agreement sales and use tax.

(q) Notwithstanding Subsection (1), the commission may provide information concerning a taxpayer's state income tax return or state income tax withholding information to the Driver License Division if the Driver License Division:

(i) requests the information; and

(ii) provides the commission with a signed release form from the taxpayer allowing the Driver License Division access to the information.

(r) Notwithstanding Subsection (1), the commission shall provide to the Utah Communications Authority, or a division of the Utah Communications Authority, the information requested by the authority under Sections 63H-7a-302, 63H-7a-402, and 63H-7a-502.

(s) Notwithstanding Subsection (1), the commission shall provide to the Utah Educational Savings Plan information related to a resident or nonresident individual's contribution to a Utah Educational Savings Plan account as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1313.

(t) Notwithstanding Subsection (1), for the purpose of verifying eligibility under Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the Department of Health or its designee with the adjusted gross income of an individual if:

(i) an eligibility worker with the Department of Health or its designee requests the information from the commission; and

(ii) the eligibility worker has complied with the identity verification and consent provisions of Sections 26-18-2.5 and 26-40-105.

(u) Notwithstanding Subsection (1), the commission may provide to a county, as determined by the commission, information declared on an individual income tax return in accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103.

(4) (a) Each report and return shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with Subsection (3)(o)(v):

(i) is not guilty of a class A misdemeanor; and

(ii) is not subject to:

(A) dismissal from office in accordance with Subsection (5)(b); or

(B) disqualification from holding public office in accordance with Subsection (5)(b).

(6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 8. Section 63N-1-201 is amended to read:

63N-1-201. Creation of office -- Responsibilities.

(1) There is created the Governor's Office of Economic Development.

(2) The office is:

(a) responsible for economic development and economic development planning in the state; and

(b) the industrial promotion authority of the state.

(3) The office shall:

(a) administer and coordinate state and federal economic development grant programs;

(b) promote and encourage the economic, commercial, financial, industrial, agricultural, and civic welfare of the state;

(c) act to create, develop, attract, and retain business, industry, and commerce in the state;

(d) act to enhance the state's economy;

(e) administer programs over which the office is given administrative supervision by the governor;

(f) submit an annual written report as described in Section 63N-1-301; ~~and~~

(g) comply with the requirements of Section 36-30-202; and

~~[(g)]~~ (h) perform other duties as provided by the Legislature.

(4) In order to perform its duties under this title, the office may:

(a) enter into a contract or agreement with, or make a grant to, a public or private entity, including a municipality, if the contract or agreement is not in violation of state statute or other applicable law;

(b) except as provided in Subsection (4)(c), receive and expend funds from a public or private source for any lawful purpose that is in the state's best interest; and

(c) solicit and accept a contribution of money, services, or facilities from a public or private donor, but may not use the contribution for publicizing the exclusive interest of the donor.

(5) Money received under Subsection (4)(c) shall be deposited in the General Fund as dedicated credits of the office.

(6) (a) The office shall obtain the advice of the board before implementing a change to a policy, priority, or objective under which the office operates.

(b) Subsection (6)(a) does not apply to the routine administration by the office of money or services related to the assistance, retention, or recruitment of business, industry, or commerce in the state.

Section 9. Sales tax exemption study.

(1) The Utah State Tax Commission, in consultation with the Office of the Legislative Fiscal Analyst, shall study and prepare a report on the state revenue impacts of the sales and use tax exemptions under Section 59-12-104.

(2) The Utah State Tax Commission and Office of the Legislative Fiscal Analyst shall present the

findings of the report to the Revenue and Taxation Interim Committee before November 30, 2017.

Section 10. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 11. Repeal date.

Uncodified Section 9, Sales tax exemption study, is repealed on November 30, 2017.

CHAPTER 278**H. B. 27**

Passed February 9, 2017
 Approved March 23, 2017
 Effective May 9, 2017

**INTERSTATE COMPACT ON
 MILITARY CHILDREN AMENDMENTS**

Chief Sponsor: Mike Winder
 Senate Sponsor: Peter C. Knudson

LONG TITLE**General Description:**

This bill extends the compact coverage to all full-time uniformed services members.

Highlighted Provisions:

This bill:

- ▶ eliminates the requirement that National Guard and Reserve members be on orders pursuant to United States Code Title 10, Armed Forces, in order to qualify for coverage under the compact; and
- ▶ restructures and makes technical amendments for readability.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 53A-3-402, as last amended by Laws of Utah 2016, Chapter 144
 53A-11-302, as last amended by Laws of Utah 2010, Chapter 395
 53A-11-504, as last amended by Laws of Utah 2010, Chapter 395

ENACTS:

- 53A-1-1000, Utah Code Annotated 1953
 53A-1-1004, Utah Code Annotated 1953
 53A-1-1005, Utah Code Annotated 1953
 53A-1-1006, Utah Code Annotated 1953
 53A-1-1007, Utah Code Annotated 1953
 53A-1-1008, Utah Code Annotated 1953
 53A-1-1009, Utah Code Annotated 1953
 53A-1-1010, Utah Code Annotated 1953
 53A-1-1011, Utah Code Annotated 1953
 53A-1-1012, Utah Code Annotated 1953
 53A-1-1013, Utah Code Annotated 1953
 53A-1-1014, Utah Code Annotated 1953
 53A-1-1015, Utah Code Annotated 1953
 53A-1-1016, Utah Code Annotated 1953
 53A-1-1017, Utah Code Annotated 1953
 53A-1-1018, Utah Code Annotated 1953
 53A-1-1019, Utah Code Annotated 1953
 53A-1-1020, Utah Code Annotated 1953

REPEALS AND REENACTS:

- 53A-1-1001, as enacted by Laws of Utah 2010, Chapter 395
 53A-1-1002, as last amended by Laws of Utah 2014, Chapter 387
 53A-1-1003, as enacted by Laws of Utah 2010, Chapter 395

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

Section 1. Section 53A-1-1000 is enacted to read:

Part 10. Interstate Compact on Educational Opportunity for Military Children

53A-1-1000. Title -- Interstate Compact on Educational Opportunity for Military Children.

This part is known as the "Interstate Compact on Educational Opportunity for Military Children."

Section 2. Section 53A-1-1001 is repealed and reenacted to read:

53A-1-1001. Article I -- Purpose.

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(1) facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance or age requirements;

(2) facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;

(3) facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;

(4) facilitating the on-time graduation of children of military families;

(5) providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

(6) providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;

(7) promoting coordination between this compact and other compacts affecting military children; and

(8) promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

Section 3. Section 53A-1-1002 is repealed and reenacted to read:

53A-1-1002. Article II -- Definitions.

As used in this compact, unless the context clearly requires a different construction:

(1) "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve.

(2) "Children of military families" means a school-aged child, enrolled in Kindergarten

through Twelfth grade, in the household of an active duty member.

(3) “Compact commissioner” means the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

(4) “Deployment” means the period one month prior to the service member’s departure from their home station on military orders through six months after return to their home station.

(5) “Education” or “educational records” means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student’s cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

(6) “Extracurricular activities” means a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

(7) “Interstate Commission on Educational Opportunity for Military Children” means the commission that is created in Section 53A-1-1009 and generally referred to as Interstate Commission.

(8) “Local education agency” means a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through Twelfth grade public educational institutions.

(9) “Member state” means a state that has enacted this compact.

(10) “Military installation” means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other U.S. Territory. The term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(11) “Non-member state” means a state that has not enacted this compact.

(12) “Receiving state” means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

(13) “Rule” means a written statement by the Interstate Commission promulgated pursuant to Section 53A-1-1012 that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational,

procedural, or practice requirement of the Interstate Commission, and has the force and effect of a rule promulgated under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and includes the amendment, repeal, or suspension of an existing rule.

(14) “Sending state” means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

(13) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other U.S. Territory.

(14) “Student” means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in Kindergarten through Twelfth grade.

(15) “Transition” means:

(a) the formal and physical process of transferring from school to school; or

(b) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

(16) “Uniformed services” means the same as that term is defined in Section 68-3-12.5.

(17) “Veteran” means a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

Section 4. Section 53A-1-1003 is repealed and reenacted to read:

53A-1-1003. Article III -- Applicability.

(1) Except as otherwise provided in Subsection (3), this compact shall apply to the children of:

(a) active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve;

(b) members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

(c) members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

(2) The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

(3) The provisions of this compact do not apply to the children of:

(a) inactive members of the National Guard and military reserves;

(b) members of the uniformed services now retired, except as provided in Subsection (1); and

(c) veterans of the uniformed services, except as provided in Subsection (1), and other U.S. Department of Defense personnel and other federal

agency civilian and contract employees not defined as active duty members of the uniformed services.

Section 5. Section 53A-1-1004 is enacted to read:

53A-1-1004. Article IV -- Educational records and enrollment -- Immunizations -- Grade level entrance.

(1) Unofficial or "hand-carried" education records. In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

(2) Official education records or transcripts. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within 10 days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

(3) Immunizations. Compacting states shall give 30 days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunization required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within 30 days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

(4) Kindergarten and First grade entrance age. Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including Kindergarten, from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. Students transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

Section 6. Section 53A-1-1005 is enacted to read:

53A-1-1005. Article V -- Course placement -- Attendance -- Special education

services -- Flexibility -- Absences related to deployment.

(1) When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course.

(2) The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to gifted and talented programs and English as a Second Language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(3) (a) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current Individualized Education Program (IEP).

(b) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C. Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(4) Local education agency administrative officials shall have flexibility in waiving course or program prerequisites, or other preconditions for placement, in courses or programs offered under the jurisdiction of the local education agency.

(5) A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her

parent or legal guardian relative to such leave or deployment of the parent or guardian.

Section 7. Section 53A-1-1006 is enacted to read:

53A-1-1006. Article VI -- Eligibility -- Enrollment -- Extracurricular activities.

(1) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which the student was enrolled while residing with the custodial parent.

(4) State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

Section 8. Section 53A-1-1007 is enacted to read:

53A-1-1007. Article VII -- Graduation -- Waiver -- Exit exams -- Senior year transfers.

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

(1) Local education agency administrative officials shall waive specific courses required for graduation if similar coursework has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

(2) States shall accept:

(a) exit or end-of-course exams required for graduation from the sending state;

(b) national norm-referenced achievement tests; or

(c) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in the student's Senior year, then the provisions of Subsection (3) shall apply.

(3) Should a military student transferring at the beginning or during the student's Senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Subsections (1) and (2).

Section 9. Section 53A-1-1008 is enacted to read:

53A-1-1008. Article VIII -- State coordination -- Membership of State Council.

(1) Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership shall include at least:

(a) the state superintendent of education;

(b) a superintendent of a school district with a high concentration of military children;

(c) a representative from a military installation;

(d) one representative each from the legislative and executive branches of government; and

(e) other offices and stakeholder groups the State Council considers appropriate.

(2) A member state that does not have a school district that contains a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

(3) The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

(4) The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed in accordance with Section 53A-1-1020.

(5) The compact commissioner and the designated military family education liaison shall be ex-officio members of the State Council, unless either is already a full voting member of the State Council.

Section 10. Section 53A-1-1009 is enacted to read:

53A-1-1009. Article IX -- Creation of Interstate Commission.

(1) The member states hereby create the "Interstate Commission on Educational

Opportunity for Military Children.” The activities of the Interstate Commission are the formation of public policy and are a discretionary state function.

(2) The Interstate Commission shall:

(a) Be a body corporate and joint agency of the member states and have all the responsibilities, powers, and duties set forth in this compact, and any additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

(b) Consist of one Interstate Commission voting representative from each member state who shall be that state’s compact commissioner.

(i) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(ii) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(iii) A representative may not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from their state for a specified meeting.

(iv) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

(3) Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

(4) Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

(5) Establish an executive committee, whose members shall include the officers of the Interstate Commission and other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other duties considered necessary. The U.S.

Department of Defense shall serve as an ex-officio, nonvoting member of the executive committee.

(6) Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(7) Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion of the meeting, where it determines by two-thirds vote that an open meeting would be likely to:

(a) relate solely to the Interstate Commission’s internal personnel practices and procedures;

(b) disclose matters specifically exempted from disclosure by federal and state statute;

(c) disclose trade secrets or commercial or financial information which is privileged or confidential;

(d) involve accusing a person of a crime, or formally censuring a person;

(e) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) disclose investigative records compiled for law enforcement purposes; or

(g) specifically relate to the Interstate Commission’s participation in a civil action or other legal proceeding.

(8) Cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

(9) Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, as far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

(10) Create a process that permits military officials, education officials, and parents to inform

the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section may not be construed to create a private right of action against the Interstate Commission or any member state.

Section 11. Section 53A-1-1010 is enacted to read:

53A-1-1010. Article X -- Powers and duties of the Interstate Commission.

The Interstate Commission shall have the following powers:

(1) To provide for dispute resolution among member states.

(2) To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations enumerated in this compact. The rules shall have the force and effect of rules promulgated under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and shall be binding in the compact states to the extent and in the manner provided in this compact.

(3) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions.

(4) To monitor compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws. Any action to enforce compliance with the compact provision by the Interstate Commission shall be brought against a member state only.

(5) To establish and maintain offices which shall be located within one or more of the member states.

(6) To purchase and maintain insurance and bonds.

(7) To borrow, accept, hire, or contract for services of personnel.

(8) To establish and appoint committees including, but not limited to, an executive committee as required by Subsection 53A-1-1009(5), which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties.

(9) To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications, and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(11) To lease, purchase, accept contributions, or donations of, or otherwise to own, hold, improve, or use any property - real, personal, or mixed.

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property - real, personal, or mixed.

(13) To establish a budget and make expenditures.

(14) To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

(15) To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. The reports shall also include any recommendations that may have been adopted by the Interstate Commission.

(16) To coordinate education, training, and public awareness regarding the compact and its implementation and operation for officials and parents involved in such activity.

(17) To establish uniform standards for the reporting, collecting, and exchanging of data.

(18) To maintain corporate books and records in accordance with the bylaws.

(19) To perform any functions necessary or appropriate to achieve the purposes of this compact.

(20) To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

Section 12. Section 53A-1-1011 is enacted to read:

53A-1-1011. Article XI -- Organization and operation of the Interstate Commission -- Executive committee -- Officers -- Personnel.

(1) The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(a) establishing the fiscal year of the Interstate Commission;

(b) establishing an executive committee, and other committees as necessary;

(c) providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

(d) providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each meeting;

(e) establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

(f) providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the

termination of the compact after the payment and reserving of all of its debts and obligations; and

(g) providing start up rules for initial administration of the compact.

(2) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have the authority and duties specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(3) The executive committee shall have the authority and duties set forth in the bylaws, including, but not limited to:

(a) managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(b) overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(c) planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

(4) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may consider appropriate. The executive director shall serve as secretary to the Interstate Commission, but may not be a member of the Interstate Commission. The executive director shall hire and supervise other persons authorized by the Interstate Commission.

(5) The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that the person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided that, the person may not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the person.

(a) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of the person's employment or duties for acts, errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any action. Nothing in this Subsection (5)(a) shall be construed to protect a person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the person.

(b) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend the Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided that, the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the person.

(c) To the extent not covered by the state involved, the member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney fees and costs, obtained against a person arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided that, the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the person.

Section 13. Section 53A-1-1012 is enacted to read:

53A-1-1012. Article XII -- Rulemaking -- Authority -- Procedure -- Review -- Rejection by Legislature.

(1) The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted in accordance with this compact, then the action by the Interstate Commission shall be invalid and have no force or effect.

(2) Rules shall be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act, of 1981,

Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

(3) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided that, the filing of a petition may not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

(4) If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then the rule shall have no further force and effect in any compacting state.

Section 14. Section 53A-1-1013 is enacted to read:

53A-1-1013. Article XIII -- Oversight -- Enforcement -- Dispute resolution -- Default -- Technical assistance -- Suspension -- Termination.

(1) Each member state shall enforce this compact to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated in accordance with the compact shall have standing as a rule promulgated under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission.

(3) The Interstate Commission shall be entitled to receive all service of process in any proceeding, and have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

(4) If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(a) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state shall cure its default.

(b) Provide remedial training and specific technical assistance regarding the default.

(5) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the

compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(6) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(7) The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination, not to exceed \$5,000 per year, as provided in Subsection 53A-1-1014(5), for each year that the state is a member of the compact.

(8) The Interstate Commission may not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(9) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of the litigation including reasonable attorney fees.

(10) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

(11) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

Section 15. Section 53A-1-1014 is enacted to read:

53A-1-1014. Article XIV -- Financing of the Interstate Commission.

(1) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) In accordance with the funding limit established in Subsection (5), the Interstate Commission may levy and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which shall be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which

shall promulgate a rule binding upon all member states.

(3) The Interstate Commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

(4) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

(5) The Interstate Commission may not assess, levy, or collect more than \$5,000 per year from Utah legislative appropriations. Other funding sources may be accepted and used to offset expenses related to the state's participation in the compact.

Section 16. Section 53A-1-1015 is enacted to read:

53A-1-1015. Article XV -- Member states -- Effective date -- Amendments.

(1) Any state is eligible to become a member state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 10 of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a non-voting basis prior to adoption of the compact by all states.

(3) The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

Section 17. Section 53A-1-1016 is enacted to read:

53A-1-1016. Article XVI -- Withdrawal -- Dissolution.

(1) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that, a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) Withdrawal from this compact shall be by the enactment of a statute repealing the same.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of the notification.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, not to exceed \$5,000 per year, as provided in Subsection 53A-1-1014(5), for each year that the state is a member of the compact.

(5) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon a later date determined by the Interstate Commission.

(6) This compact shall dissolve effective upon the date of the withdrawal or default of a member state which reduces the membership in the compact to one member state.

(7) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect. The business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

Section 18. Section 53A-1-1017 is enacted to read:

53A-1-1017. Article XVII -- Severability -- Construction.

(1) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is considered unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

(3) Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

Section 19. Section 53A-1-1018 is enacted to read:

53A-1-1018. Article XVIII -- Binding effect of compact -- Other state laws.

(1) Nothing in this compact prevents the enforcement of any other law of a member state.

(2) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(3) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(4) In the event any provision of this compact exceeds the statutory or constitutional limits imposed on the legislature of any member state, that provision shall be ineffective to the extent of the conflict with the statutory or constitutional provision in question in that member state.

Section 20. Section 53A-1-1019 is enacted to read:

53A-1-1019. Creation of State Council on Military Children.

(1) There is established a State Council on Military Children, as required in Section 53A-1-1008.

(2) The members of the State Council on Military Children shall include:

(a) the state superintendent of public instruction;

(b) a superintendent of a school district with a high concentration of military children appointed by the governor;

(c) a representative from a military installation, appointed by the governor;

(d) one member of the House of Representatives, appointed by the speaker of the House;

(e) one member of the Senate, appointed by the president of the Senate;

(f) a representative from the Department of Veterans' and Military Affairs, appointed by the governor;

(g) a military family education liaison, appointed by the members listed in Subsections (2)(a) through (f);

(h) the compact commissioner, appointed in accordance with Section 53A-1-1020; and

(i) other members as determined by the governor.

(3) The State Council on Military Children shall carry out the duties established in Section 53A-1-1008.

(4) (a) A member who is not a legislator may not receive compensation or per diem.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section 21. Section 53A-1-1020 is enacted to read:

53A-1-1020. Appointment of compact commissioner.

The governor, with the consent of the Senate, shall appoint a compact commissioner to carry out the duties described in this part.

Section 22. Section 53A-3-402 is amended to read:

53A-3-402. Powers and duties generally.

(1) Each local school board shall:

(a) implement the core standards for Utah public schools utilizing instructional materials that best correlate to the core standards for Utah public schools and graduation requirements;

(b) administer tests, required by the State Board of Education, which measure the progress of each

student, and coordinate with the state superintendent and State Board of Education to assess results and create plans to improve the student's progress, which shall be submitted to the State Board of Education for approval;

(c) use progress-based assessments as part of a plan to identify schools, teachers, and students that need remediation and determine the type and amount of federal, state, and local resources to implement remediation;

(d) develop early warning systems for students or classes failing to make progress;

(e) work with the State Board of Education to establish a library of documented best practices, consistent with state and federal regulations, for use by the local districts; and

(f) implement training programs for school administrators, including basic management training, best practices in instructional methods, budget training, staff management, managing for learning results and continuous improvement, and how to help every child achieve optimal learning in basic academic subjects.

(2) Local school boards shall spend minimum school program funds for programs and activities for which the State Board of Education has established minimum standards or rules under Section 53A-1-402.

(3) (a) A board may purchase, sell, and make improvements on school sites, buildings, and equipment and construct, erect, and furnish school buildings.

(b) School sites or buildings may only be conveyed or sold on board resolution affirmed by at least two-thirds of the members.

(4) (a) A board may participate in the joint construction or operation of a school attended by children residing within the district and children residing in other districts either within or outside the state.

(b) Any agreement for the joint operation or construction of a school shall:

(i) be signed by the president of the board of each participating district;

(ii) include a mutually agreed upon pro rata cost; and

(iii) be filed with the State Board of Education.

(5) A board may establish, locate, and maintain elementary, secondary, and applied technology schools.

(6) Except as provided in Section [53A-1-1001] 53A-1-1004, a board may enroll children in school who are at least five years of age before September 2 of the year in which admission is sought.

(7) A board may establish and support school libraries.

(8) A board may collect damages for the loss, injury, or destruction of school property.

(9) A board may authorize guidance and counseling services for children and their parents or guardians prior to, during, or following enrollment of the children in schools.

(10) (a) A board shall administer and implement federal educational programs in accordance with Title 53A, Chapter 1, Part 9, Implementing Federal or National Education Programs Act.

(b) Federal funds are not considered funds within the school district budget under Title 53A, Chapter 19, Public School Budgets.

(11) (a) A board may organize school safety patrols and adopt rules under which the patrols promote student safety.

(b) A student appointed to a safety patrol shall be at least 10 years old and have written parental consent for the appointment.

(c) Safety patrol members may not direct vehicular traffic or be stationed in a portion of a highway intended for vehicular traffic use.

(d) Liability may not attach to a school district, its employees, officers, or agents or to a safety patrol member, a parent of a safety patrol member, or an authorized volunteer assisting the program by virtue of the organization, maintenance, or operation of a school safety patrol.

(12) (a) A board may on its own behalf, or on behalf of an educational institution for which the board is the direct governing body, accept private grants, loans, gifts, endowments, devises, or bequests that are made for educational purposes.

(b) These contributions are not subject to appropriation by the Legislature.

(13) (a) A board may appoint and fix the compensation of a compliance officer to issue citations for violations of Subsection 76-10-105(2).

(b) A person may not be appointed to serve as a compliance officer without the person's consent.

(c) A teacher or student may not be appointed as a compliance officer.

(14) A board shall adopt bylaws and rules for its own procedures.

(15) (a) A board shall make and enforce rules necessary for the control and management of the district schools.

(b) All board rules and policies shall be in writing, filed, and referenced for public access.

(16) A board may hold school on legal holidays other than Sundays.

(17) (a) Each board shall establish for each school year a school traffic safety committee to implement this Subsection (17).

(b) The committee shall be composed of one representative of:

(i) the schools within the district;

(ii) the Parent Teachers' Association of the schools within the district;

(iii) the municipality or county;

(iv) state or local law enforcement; and

(v) state or local traffic safety engineering.

(c) The committee shall:

(i) receive suggestions from school community councils, parents, teachers, and others and recommend school traffic safety improvements, boundary changes to enhance safety, and school traffic safety program measures;

(ii) review and submit annually to the Department of Transportation and affected municipalities and counties a child access routing plan for each elementary, middle, and junior high school within the district;

(iii) consult the Utah Safety Council and the Division of Family Health Services and provide training to all school children in kindergarten through grade six, within the district, on school crossing safety and use; and

(iv) help ensure the district's compliance with rules made by the Department of Transportation under Section 41-6a-303.

(d) The committee may establish subcommittees as needed to assist in accomplishing its duties under Subsection (17)(c).

(18) (a) Each school board shall adopt and implement a comprehensive emergency response plan to prevent and combat violence in its public schools, on school grounds, on its school vehicles, and in connection with school-related activities or events.

(b) The plan shall:

(i) include prevention, intervention, and response components;

(ii) be consistent with the student conduct and discipline policies required for school districts under Title 53A, Chapter 11, Part 9, School Discipline and Conduct Plans;

(iii) require inservice training for all district and school building staff on what their roles are in the emergency response plan;

(iv) provide for coordination with local law enforcement and other public safety representatives in preventing, intervening, and responding to violence in the areas and activities referred to in Subsection (18)(a); and

(v) include procedures to notify a student, to the extent practicable, who is off campus at the time of a school violence emergency because the student is:

(A) participating in a school-related activity; or

(B) excused from school for a period of time during the regular school day to participate in religious instruction at the request of the student's parent or guardian.

(c) The State Board of Education, through the state superintendent of public instruction, shall

develop comprehensive emergency response plan models that local school boards may use, where appropriate, to comply with Subsection (18)(a).

(d) Each local school board shall, by July 1 of each year, certify to the State Board of Education that its plan has been practiced at the school level and presented to and reviewed by its teachers, administrators, students, and their parents and local law enforcement and public safety representatives.

(19) (a) Each local school board may adopt an emergency response plan for the treatment of sports-related injuries that occur during school sports practices and events.

(b) The plan may be implemented by each secondary school in the district that has a sports program for students.

(c) The plan may:

(i) include emergency personnel, emergency communication, and emergency equipment components;

(ii) require inservice training on the emergency response plan for school personnel who are involved in sports programs in the district's secondary schools; and

(iii) provide for coordination with individuals and agency representatives who:

(A) are not employees of the school district; and

(B) would be involved in providing emergency services to students injured while participating in sports events.

(d) The board, in collaboration with the schools referred to in Subsection (19)(b), may review the plan each year and make revisions when required to improve or enhance the plan.

(e) The State Board of Education, through the state superintendent of public instruction, shall provide local school boards with an emergency plan response model that local boards may use to comply with the requirements of this Subsection (19).

(20) A board shall do all other things necessary for the maintenance, prosperity, and success of the schools and the promotion of education.

(21) (a) Before closing a school or changing the boundaries of a school, a board shall:

(i) hold a public hearing, as defined in Section 10-9a-103; and

(ii) provide public notice of the public hearing, as specified in Subsection (21)(b).

(b) The notice of a public hearing required under Subsection (21)(a) shall:

(i) indicate the:

(A) school or schools under consideration for closure or boundary change; and

(B) date, time, and location of the public hearing; and

(ii) at least 10 days prior to the public hearing, be:

(A) published:

(I) in a newspaper of general circulation in the area; and

(II) on the Utah Public Notice Website created in Section 63F-1-701; and

(B) posted in at least three public locations within the municipality or on the district's official website.

(22) A board may implement a facility energy efficiency program established under Title 11, Chapter 44, Performance Efficiency Act.

Section 23. Section 53A-11-302 is amended to read:

53A-11-302. Immunizations required -- Exceptions -- Grounds for exemption from required immunizations.

(1) A student may not enter school without a certificate of immunization, except as provided in this section.

(2) Except as provided in Section ~~[53A-1-1001]~~ 53A-1-1004, a student who at the time of school enrollment has not been completely immunized against each specified disease may attend school under a conditional enrollment if the student has received one dose of each specified vaccine prior to enrollment.

(3) A student is exempt from receiving the required immunizations if there is presented to the appropriate official of the school one or more of the following:

(a) a certificate from a licensed physician stating that due to the physical condition of the student one or more specified immunizations would endanger the student's life or health;

(b) A completed form obtained at the local health department where the student resides, providing:

(i) the information required under Subsection 53A-11-302.5(1); and

(ii) a statement that the person has a personal belief opposed to immunizations, which is signed by one of the individuals listed in Subsection 53A-11-302(3)(c) and witnessed by the local health officer or his designee; or

(c) a statement that the person is a bona fide member of a specified, recognized religious organization whose teachings are contrary to immunizations, signed by one of the following persons:

(i) one of the student's parents;

(ii) the student's guardian;

(iii) a legal age brother or sister of a student who has no parent or guardian; or

(iv) the student, if of legal age.

Section 24. Section 53A-11-504 is amended to read:

53A-11-504. Requirement of school record for transfer of student -- Procedures.

(1) Except as provided in Section [~~53A-1-1001~~] ~~53A-1-1004~~, a school shall request a certified copy of a transfer student's record, directly from the transfer student's previous school, within 14 days after enrolling the transfer student.

(2) (a) Except as provided in Subsection (2)(b) and Section [~~53A-1-1001~~] ~~53A-1-1004~~, a school requested to forward a certified copy of a transferring student's record to the new school shall comply within 30 school days of the request.

(b) If the record has been flagged pursuant to Section 53A-11-502, a school may not forward the record to the new school and the requested school shall notify the division of the request.

CHAPTER 279**H. B. 36**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

AFFORDABLE HOUSING AMENDMENTS

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies provisions related to housing and community development.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Economic Revitalization and Investment Fund;
- ▶ establishes requirements for the distribution of money from the fund;
- ▶ modifies state low-income housing tax credit provisions; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2018:

- ▶ to the Department of Workforce Services -- Economic Revitalization and Investment Fund, as a one-time appropriation:
 - from the General Fund, \$2,061,000; and
- ▶ to the Department of Workforce Services -- Olene Walker Housing Loan Fund, as a one-time appropriation:
 - from the General Fund, \$500,000.

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

- 35A-8-501, as renumbered and amended by Laws of Utah 2012, Chapter 212
- 35A-8-506, as renumbered and amended by Laws of Utah 2012, Chapter 212
- 59-7-607, as last amended by Laws of Utah 2016, Chapters 135 and 289
- 59-10-1010, as last amended by Laws of Utah 2016, Chapters 135 and 289

ENACTS:

- 35A-8-509, Utah Code Annotated 1953
- 35A-8-510, Utah Code Annotated 1953
- 35A-8-511, Utah Code Annotated 1953
- 35A-8-512, Utah Code Annotated 1953
- 35A-8-513, Utah Code Annotated 1953

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

Section 1. Section 35A-8-501 is amended to read:**35A-8-501. Definitions.**

As used in this part:

- (1) "Affordable housing" means housing occupied or reserved for occupancy by households whose

incomes are at or below certain income requirements at rental rates affordable to such households.

[4] (2) "Board" means the Housing Board created by this part.

[2] (3) "Fund" means the Olene Walker Housing Loan Fund created by this part.

(4) (a) "Housing sponsor" means a person who constructs, develops, rehabilitates, purchases, or owns a housing development that is or will be subject to legally enforceable restrictive covenants that require the housing development to provide, at least in part, affordable housing.

(b) "Housing sponsor" may include:

- (i) a local public body;
- (ii) a nonprofit, limited profit, or for profit corporation;
- (iii) a limited partnership;
- (iv) a limited liability company;
- (v) a joint venture;
- (vi) a subsidiary of the Utah Housing Corporation;
- (vii) a cooperative;
- (viii) a mutual housing organization;
- (ix) a local government;
- (x) a local housing authority;
- (xi) a regional or statewide nonprofit housing or assistance organization; or
- (xii) any other entity that helps provide affordable housing.

[3] (5) "Rural" means a county in the state other than Utah, Salt Lake, Davis, or Weber.

Section 2. Section 35A-8-506 is amended to read:**35A-8-506. Authority of the executive director.**

[4] The executive director, with the approval of the board, may grant or lend fund money to a housing [sponsors] sponsor.

[2] "Housing sponsor" includes a person who constructs, develops, rehabilitates, purchases, or owns a housing development that is or will be subject to legally enforceable restrictive covenants that require the housing development to provide, at least in part, residential housing to low and moderate income persons.]

[3] A housing sponsor includes:]

- [a] a local public body;
- [b] a nonprofit, limited profit, or for profit corporation;]
- [c] a limited partnership;]
- [d] a limited liability company;]
- [e] a joint venture;]

~~[(f) a subsidiary of the Utah Housing Corporation or any subsidiary of the subsidiary of the Utah Housing Corporation;]~~

~~[(g) a cooperative;]~~

~~[(h) a mutual housing organization;]~~

~~[(i) a local government;]~~

~~[(j) a local housing authority;]~~

~~[(k) a regional or statewide nonprofit housing or assistance organization; or]~~

~~[(l) any other type of entity or arrangement that helps provide affordable housing for low and moderate income persons.]~~

Section 3. Section 35A-8-509 is enacted to read:

35A-8-509. Economic Revitalization and Investment Fund.

(1) There is created an enterprise fund known as the "Economic Revitalization and Investment Fund."

(2) The Economic Revitalization and Investment Fund consists of money from the following:

(a) money appropriated to the account by the Legislature;

(b) private contributions;

(c) donations or grants from public or private entities; and

(d) money returned to the department under Section 35A-8-512.

(3) The Economic Revitalization and Investment Fund shall earn interest, which shall be deposited into the Economic Revitalization and Investment Fund.

(4) The executive director may distribute money from the Economic Revitalization and Investment Fund to one or more projects that:

(a) include affordable housing units for households:

(i) whose income is no more than 30% of the area median income for households of the same size in the county or municipality where the project is located; and

(ii) at rental rates no greater than the rates described in Subsection 35A-8-511(2)(b); and

(b) have been approved by the board in accordance with Section 35A-8-510.

(5) (a) A housing sponsor may apply to the department to receive a distribution in accordance with Subsection (4).

(b) The application shall include:

(i) the location of the project;

(ii) the number, size, and tenant income requirements of affordable housing units described

in Subsection (4)(a) that will be included in the project; and

(iii) a written commitment to enter into a deed restriction that reserves for a period of 30 years the affordable housing units described in Subsection (5)(b)(ii) or their equivalent for occupancy by households that meet the income requirements described in Subsection (5)(b)(ii).

(c) The commitment in Subsection (5)(b)(iii) shall be considered met if a housing unit is:

(i) (A) occupied or reserved for occupancy by a household whose income is no more than 30% of the area median income for households of the same size in the county or municipality where the project is located; or

(B) occupied by a household whose income is no more than 60% of the area median income for households of the same size in the county or municipality where the project is located if that household met the income requirement described in Subsection (4)(a) when the household originally entered into the lease agreement for the housing unit; and

(ii) rented at a rate no greater than the rate described in Subsection 35A-8-511(2)(b).

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make additional rules providing procedures for a person to apply to the department to receive a distribution described in Subsection (4).

Section 4. Section 35A-8-510 is enacted to read:

35A-8-510. Housing loan fund board approval.

(1) The board shall review the project applications described in Subsection 35A-8-509(5).

(2) The board may approve a project that meets the requirements of Subsections 35A-8-509(4) and (5) to receive funds from the Economic Revitalization and Investment Fund.

(3) The board shall give preference to projects:

(a) that include significant additional or matching funds from an individual, private organization, or local government entity;

(b) that include significant contributions by the applicant to total project costs, including contributions secured by the applicant from other sources such as professional, craft, and trade services and lender interest rate subsidies;

(c) with significant local government contributions in the form of infrastructure, improvements, or other assistance;

(d) where the applicant has demonstrated the ability, stability, and resources to complete the project;

(e) that will serve the greatest need;

(f) that promote economic development benefits;

(g) that allow integration into a local government housing plan;

(h) that would mitigate or correct existing health, safety, or welfare concerns; or

(i) that remedy a gap in the supply of and demand for affordable housing.

Section 5. Section 35A-8-511 is enacted to read:

35A-8-511. Activities authorized to receive account money.

(1) The executive director may distribute funds from the Economic Revitalization and Investment Fund for any of the following activities undertaken as part of an approved project:

(a) the acquisition, rehabilitation, or new construction of a building that includes affordable housing units;

(b) the purchase of land for the construction of a building that will include affordable housing units; or

(c) pre-development work, including planning, studies, design, and site work for a building that will include affordable housing units.

(2) The maximum amount of money that may be distributed from the Economic Revitalization and Investment Fund for each affordable housing unit that has been committed in accordance with Subsection 35A-8-509(5)(b)(iii) is the present value, based on the current market interest rate as determined by the board for a multi-family mortgage loan in the county or metropolitan area where the project is located, of 360 monthly payments equal to the difference between:

(a) the most recent United States Department of Housing and Urban Development fair market rent for a unit of the same size in the county or metropolitan area where the project is located; and

(b) an affordable rent equal to 30% of the income requirement described in Subsection 35A-8-509(5)(b)(ii) for a household of:

(i) one person if the unit is an efficiency unit;

(ii) two people if the unit is a one-bedroom unit;

(iii) four people if the unit is a two-bedroom unit;

(iv) five people if the unit is a three-bedroom unit;

(v) six people if the unit is a four-bedroom unit; or

(vi) eight people if the unit is a five-bedroom or larger unit.

Section 6. Section 35A-8-512 is enacted to read:

35A-8-512. Repayment of funds.

(1) Upon the earlier of 30 years from the date an approved project is placed in service or the sale or transfer of the affordable housing units acquired, constructed, or rehabilitated as part of an approved

project funded under Section 35A-8-511, the housing sponsor shall remit to the department:

(a) the total amount of money distributed by the department to the housing sponsor for the project; and

(b) an additional amount of money determined by contract with the department prior to the initial disbursement of money from the Economic Revitalization and Investment Fund.

(2) Any claim arising under Subsection (1) is a lien against the real property funded under this chapter.

(3) Any money returned to the department under Subsection (1) shall be deposited in the Economic Revitalization and Investment Fund.

Section 7. Section 35A-8-513 is enacted to read:

35A-8-513. Annual accounting.

(1) The executive director shall monitor the activities of recipients of funds from the Economic Revitalization and Investment Fund on a yearly basis to ensure compliance with the terms and conditions imposed on the recipient by the executive director with the approval of the board.

(2) A housing sponsor that receives funds from the Economic Revitalization and Investment Fund shall provide the executive director with an annual accounting of how the money the entity received from the Economic Revitalization and Investment Fund has been spent and evidence that the commitment described in Subsection 35A-8-509(5) has been met.

(3) The executive director shall make an annual report to the board accounting for the expenditures authorized by the board.

(4) The board shall submit a report to the department for inclusion in the annual written report described in Section 35A-1-109 that includes:

(a) an accounting for expenditures authorized by the board; and

(b) an evaluation of the effectiveness of the program.

Section 8. Section 59-7-607 is amended to read:

59-7-607. Utah low-income housing tax credit.

(1) As used in this section:

(a) "Allocation certificate" means a certificate in a form prescribed by the commission and issued by the Utah Housing Corporation to a housing sponsor that specifies the aggregate amount of the tax credit awarded under this section to a qualified development and includes:

(i) the certificate prescribed by the commission and issued by the Utah Housing Corporation to each taxpayer that specifies the percentage of the annual federal low-income housing tax credit that

each taxpayer may take as an annual credit against state income tax; or]

~~[(ii) a copy of the allocation certificate that the housing sponsor provides to the taxpayer.]~~

~~(i) the aggregate annual amount of the tax credit awarded that may be claimed by one or more qualified taxpayers that have been issued a special low-income housing tax credit certificate; and~~

~~(ii) the credit period over which the tax credit may be claimed by one or more qualified taxpayers that have been issued a special low-income housing tax credit certificate.~~

(b) "Building" means a qualified low-income building as defined in Section 42(c), Internal Revenue Code.

(c) "Credit period" means the "credit period" as defined in Section 42(f)(1), Internal Revenue Code.

~~(d) (i) "Designated reporter" means, as selected by a housing sponsor, the housing sponsor itself or one of the housing sponsor's direct or indirect partners, members, or shareholders that will provide information to the Utah Housing Corporation regarding the assignment of tax credits under this section.~~

~~(ii) Before the Utah Housing Corporation may issue an allocation certificate to a housing sponsor, a housing sponsor shall provide the identity of the housing sponsor's designated reporter to the Utah Housing Corporation.~~

~~(iii) Before the Utah Housing Corporation may issue a special low-income housing tax credit certificate to a qualified taxpayer, a designated reporter shall provide the information described in Subsection (6) to the Utah Housing Corporation.~~

~~[(e) (e) "Federal low-income housing tax credit" means the federal tax credit [under] described in Section 42, Internal Revenue Code.~~

~~[(d) (f) "Housing sponsor" means [a corporation in the case of a C corporation, a partnership in the case of a partnership, a corporation in the case of an S corporation, or a limited liability company in the case of a limited liability company] an entity that owns a qualified development.~~

~~[(e) (g) "Qualified allocation plan" means [the] a qualified allocation plan adopted by the Utah Housing Corporation [pursuant to] in accordance with Section 42(m), Internal Revenue Code.~~

~~(h) "Qualified development" means a "qualified low-income housing project":~~

~~(i) as defined in Section 42(g)(1), Internal Revenue Code; and~~

~~(ii) that is located in the state.~~

~~(i) (i) "Qualified taxpayer" means a person that:~~

~~(A) owns a direct or indirect interest in a qualified development; and~~

~~(B) meets the requirements to claim a tax credit under this section.~~

~~(ii) If a housing sponsor is a partnership, limited liability company, or S corporation, a "qualified taxpayer" may include any partner, member, or shareholder of the housing sponsor as determined by the governing documents of the housing sponsor.~~

~~[(4) (j) (i) "Special low-income housing tax credit certificate" means a certificate:~~

~~[(4) (A) in a form prescribed by the commission;~~

~~[(4) (B) that [a housing sponsor] the Utah Housing Corporation issues to a qualified taxpayer for a taxable year in accordance with this section; and~~

~~[(4) (C) that specifies the amount of the tax credit a qualified taxpayer may claim under this section [if the taxpayer meets the requirements of this section].~~

~~(ii) The Utah Housing Corporation may only issue one or more special low-income housing tax credit certificates if the aggregate specified amount on all special low-income housing tax credit certificates issued in relation to a qualified development does not exceed the aggregate amount of tax credit awarded to the qualified development and issued to a housing sponsor in an allocation certificate.~~

~~[(g) "Taxpayer" means a person that is allowed a tax credit in accordance with this section which is the corporation in the case of a C corporation, the partners in the case of a partnership, the shareholders in the case of an S corporation, and the members in the case of a limited liability company.]~~

~~(2) (a) For taxable years beginning on or after January 1, 1995, [there is allowed] a qualified taxpayer who has been issued a special low-income housing tax credit certificate by the Utah Housing Corporation may claim a nonrefundable tax credit against taxes otherwise due under this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax[, for taxpayers issued an allocation certificate] Act.~~

~~(b) The tax credit shall be in an amount equal to [the greater of the amount of:] the tax credit amount specified on the special low-income housing tax credit certificate that the Utah Housing Corporation issues to a qualified taxpayer under this section.~~

~~[(i) federal low-income housing tax credit to which the taxpayer is allowed during that year multiplied by the percentage specified in an allocation certificate issued by the Utah Housing Corporation; or]~~

~~[(ii) tax credit specified in the special low-income housing tax credit certificate that the housing sponsor issues to the taxpayer as provided in Subsection (2)(e).]~~

~~[(e) For purposes of Subsection (2)(b)(ii), the tax credit is equal to the product of:]~~

~~[(i) the total amount of low-income housing tax credit under this section that:]~~

~~[(A) a housing sponsor is allowed for a building; and]~~

~~[(B) all of the taxpayers may claim with respect to the building if the taxpayers meet the requirements of this section; and]~~

~~[(ii) the percentage of tax credit a taxpayer may claim;]~~

~~[(A) under this section if the taxpayer meets the requirements of this section; and]~~

~~[(B) as provided in the agreement between the taxpayer and the housing sponsor;]~~

~~[(4)(c)(i) For [the] a calendar year beginning [on January 1, 1995, through the calendar year beginning on January 1, 2025] on or before December 31, 2016, the aggregate annual tax credit that the Utah Housing Corporation may allocate for the credit period described in Section 42(f), Internal Revenue Code, pursuant to this section and Section 59-10-1010 is an amount equal to the product of:~~

~~(A) 12.5 cents; and~~

~~(B) the population of Utah.~~

~~(ii) For a calendar year beginning on or after January 1, 2017, the aggregate annual tax credit that the Utah Housing Corporation may allocate for the credit period described in Section 42(f), Internal Revenue Code, pursuant to this section and Section 59-10-1010 is an amount equal to the product of:~~

~~(A) 34.5 cents; and~~

~~(B) the population of Utah.~~

~~[(iii)] (iii) For purposes of this section, the population of Utah shall be determined in accordance with Section 146(j), Internal Revenue Code.~~

~~(3) (a) The Utah Housing Corporation shall determine criteria and procedures for allocating the tax credit under this section and Section 59-10-1010 and incorporate the criteria and procedures into the Utah Housing Corporation's qualified allocation plan.~~

~~(b) The Utah Housing Corporation shall create the criteria under Subsection (3)(a) based on:~~

~~(i) the number of affordable housing units to be created in Utah for low and moderate income persons in [the residential housing development of which the building is a part] a qualified development;~~

~~(ii) the level of area median income being served by [the] a qualified development;~~

~~(iii) the need for the tax credit for the economic feasibility of [the] a qualified development; and~~

~~(iv) the extended period for which [the] a qualified development commits to remain as affordable housing.~~

~~[(4) (a) The following may apply to the Utah Housing Corporation for a tax credit under this section:]~~

~~[(i) any housing sponsor that has received an allocation of the federal low-income housing tax credit; or]~~

~~[(ii) any applicant for an allocation of the federal low-income housing tax credit;]~~

~~[(b) The Utah Housing Corporation may not require fees for applications of the tax credit under this section in addition to those fees required for applications for the federal low-income housing tax credit;]~~

~~(4) Any housing sponsor may apply to the Utah Housing Corporation for a tax credit allocation under this section.~~

~~(5) (a) The Utah Housing Corporation shall determine the amount of the tax credit to allocate to a [qualifying housing sponsor] qualified development in accordance with the qualified allocation plan of the Utah Housing Corporation.~~

~~(b) (i) The Utah Housing Corporation [shall allocate the tax credit to housing sponsors in the same manner that it allocates federal low-income housing credits and] shall issue an allocation certificate to [qualifying housing sponsors] a housing sponsor as evidence of the allocation.~~

~~(ii) The allocation certificate under Subsection (5)(b)(i) shall specify [the allowed percentage of the federal low-income housing tax credit as determined by the Utah Housing Corporation] the amount of the tax credit allocated to a qualified development as determined by the Utah Housing Corporation.~~

~~(c) The [percentage] amount of the tax credit specified in an allocation certificate may not exceed 100% of the federal low-income housing tax credit awarded to a qualified development.~~

~~[(6) A housing sponsor shall provide a copy of the allocation certificate to each taxpayer that is issued a special low-income housing tax credit certificate;]~~

~~[(7) (a) A housing sponsor shall provide to the commission a list of:]~~

~~[(i) the taxpayers issued a special low-income housing tax credit certificate; and]~~

~~[(ii) for each taxpayer described in Subsection (7)(a)(i), the amount of tax credit listed on the special low-income housing tax credit certificate;]~~

~~[(b) A housing sponsor shall provide the list required by Subsection (7)(a):]~~

~~[(i) to the commission;]~~

~~[(ii) on a form provided by the commission; and]~~

~~[(iii) with the housing sponsor's tax return for each taxable year for which the housing sponsor issues a special low-income housing tax credit certificate described in this Subsection (7).]~~

~~(6) Before the Utah Housing Corporation may issue a special low-income housing tax credit certificate, a designated reporter shall provide to the Utah Housing Corporation in a form prescribed by the Utah Housing Corporation:~~

(a) a list of each qualified taxpayer that has been assigned a portion of the tax credit awarded in an allocation certificate;

(b) for each qualified taxpayer described in Subsection (6)(a), the amount of tax credit that has been assigned; and

(c) an aggregate list of the tax credit amount assigned related to a qualified development demonstrating that the aggregate annual amount of the tax credits assigned does not exceed the aggregate annual tax credit awarded in the allocation certificate.

(7) The Utah Housing Corporation shall provide a special low-income housing tax credit certificate to a qualified taxpayer if:

(a) a designated reporter has provided the information regarding the qualified taxpayer as described in Subsection (6); and

(b) the Utah Housing Corporation has verified that the aggregate tax credit amount assigned with respect to a qualified development does not exceed the total tax credit awarded in the allocation certificate.

(8) (a) All elections made by [the taxpayer] a housing sponsor pursuant to Section 42, Internal Revenue Code, shall apply to this section.

(b) (i) If a [taxpayer] qualified development is required to recapture a portion of any federal low-income housing tax credit, [the] then each qualified taxpayer shall also be required to recapture a portion of any state tax credits authorized by this section.

(ii) The state recapture amount shall be equal to the percentage of the state tax credit that equals the proportion the federal recapture amount bears to the original federal low-income housing tax credit amount subject to recapture.

(iii) The designated reporter shall identify each qualified taxpayer that is required to recapture a portion of any state tax credit as described in this Subsection (8)(b).

(9) (a) Any tax credits returned to the Utah Housing Corporation in any year may be reallocated within the same time period as provided in Section 42, Internal Revenue Code.

(b) Tax credits that are unallocated by the Utah Housing Corporation in any year may be carried over for allocation in subsequent years.

[(10) (a) Amounts otherwise qualifying for the tax credit, but not allowable because the tax credit exceeds the tax, may be carried back three years or may be carried forward five years as a credit against the tax.]

(10) (a) If a tax credit is not claimed by a qualified taxpayer in the year in which it is earned because the tax credit is more than the tax owed by the qualified taxpayer, the tax credit may be carried back three years or may be carried forward five years as a credit against the tax.

(b) Carryover tax credits under Subsection (10)(a) shall be applied against the tax:

(i) before the application of the tax credits earned in the current year; and

(ii) on a first-earned first-used basis.

(11) Any tax credit taken in this section may be subject to an annual audit by the commission.

(12) The Utah Housing Corporation shall annually provide an electronic report to the Revenue and Taxation Interim Committee which shall include at least:

(a) the purpose and effectiveness of the tax credits; and

(b) the benefits of the tax credits to the state.

(13) The commission may, in consultation with the Utah Housing Corporation, ~~promulgate rules~~ make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

Section 9. Section 59-10-1010 is amended to read:

59-10-1010. Utah low-income housing tax credit.

(1) As used in this section:

(a) "Allocation certificate" means a certificate in a form prescribed by the commission and issued by the Utah Housing Corporation to a housing sponsor that specifies the aggregate amount of the tax credit awarded under this section to a qualified development and includes:

~~(i) the certificate prescribed by the commission and issued by the Utah Housing Corporation to each claimant, estate, or trust that specifies the percentage of the annual federal low-income housing credit that each claimant, estate, or trust may take as an annual tax credit against a tax imposed by this chapter; or]~~

~~(ii) a copy of the allocation certificate that the housing sponsor provides to the claimant, estate, or trust.]~~

(i) the aggregate annual amount of the tax credit awarded that may be claimed by one or more qualified taxpayers that have been issued a special low-income housing tax credit certificate; and

(ii) the credit period over which the tax credit may be claimed by one or more qualified taxpayers that have been issued a special low-income housing tax credit certificate.

(b) "Building" means a qualified low-income building as defined in Section 42(c), Internal Revenue Code.

(c) "Credit period" means the "credit period" as defined in Section 42(f)(1), Internal Revenue Code.

(d) (i) "Designated reporter" means, as selected by a housing sponsor, the housing sponsor itself or one of the housing sponsor's direct or indirect partners, members, or shareholders that will provide information to the Utah Housing

Corporation regarding the assignment of tax credits under this section.

(ii) Before the Utah Housing Corporation may issue an allocation certificate to a housing sponsor, a housing sponsor shall provide the identity of the housing sponsor's designated reporter to the Utah Housing Corporation.

(iii) Before the Utah Housing Corporation may issue a special low-income housing tax credit certificate to a qualified taxpayer, a designated reporter shall provide the information described in Subsection (6) to the Utah Housing Corporation.

([e]) (e) "Federal low-income housing credit" means the federal low-income housing credit [under] described in Section 42, Internal Revenue Code.

([d]) (f) "Housing sponsor" means [a corporation in the case of a C corporation, a partnership in the case of a partnership, a corporation in the case of an S corporation, or a limited liability company in the case of a limited liability company] an entity that owns a qualified development.

([e]) (g) "Qualified allocation plan" means [the] a qualified allocation plan adopted by the Utah Housing Corporation [pursuant to] in accordance with Section 42(m), Internal Revenue Code.

(h) "Qualified development" means a "qualified low-income housing project":

(i) as defined in Section 42(g)(1), Internal Revenue Code; and

(ii) that is located in the state.

(i) (i) "Qualified taxpayer" means a claimant, estate, or trust that:

(A) owns a direct or indirect interest in a qualified development; and

(B) meets the requirements to claim a tax credit under this section.

(ii) If a housing sponsor is a partnership, limited liability company, or S corporation, a "qualified taxpayer" may include any partner, member, or shareholder of the housing sponsor as determined by the governing documents of the housing sponsor.

([f]) (j) (i) "Special low-income housing tax credit certificate" means a certificate:

([4]) (A) in a form prescribed by the commission;

([ii]) (B) that [a housing sponsor] the Utah Housing Corporation issues to a [claimant, estate, or trust] qualified taxpayer for a taxable year in accordance with this section; and

([iii]) (C) that specifies the amount of [a] the tax credit a [claimant, estate, or trust] qualified taxpayer may claim under this section [if the claimant, estate, or trust meets the requirements of this section].

(ii) The Utah Housing Corporation may only issue one or more special low-income housing tax credit certificates if the aggregate specified amount

on all special low-income housing tax credit certificates issued in relation to a qualified development does not exceed the aggregate amount of tax credit awarded to a qualified development and issued to a housing sponsor in an allocation certificate.

(2) (a) For taxable years beginning on or after January 1, 1995, [there is allowed] a qualified taxpayer who has been issued a special low-income housing tax credit certificate by the Utah Housing Corporation may claim a nonrefundable tax credit against taxes otherwise due under this chapter [for a claimant, estate, or trust issued an allocation certificate].

(b) The tax credit shall be in an amount equal to [the greater of the amount of:] the tax credit amount specified on the special low-income housing tax credit certificate that the Utah Housing Corporation issues to a qualified taxpayer under this section.

(i) federal low-income housing credit to which the claimant, estate, or trust is allowed during that year multiplied by the percentage specified in an allocation certificate issued by the Utah Housing Corporation; or]

(ii) tax credit specified in the special low-income housing tax credit certificate that the housing sponsor issues to the claimant, estate, or trust as provided in Subsection (2)(c).]

(c) For purposes of Subsection (2)(b)(ii), the tax credit is equal to the product of:]

(i) the total amount of low-income housing tax credit under this section that:]

(A) a housing sponsor is allowed for a building; and]

(B) all of the claimants, estates, and trusts may claim with respect to the building if the claimants, estates, and trusts meet the requirements of this section; and]

(ii) the percentage of tax credit a claimant, estate, or trust may claim:]

(A) under this section if the claimant, estate, or trust meets the requirements of this section; and]

(B) as provided in the agreement between the claimant, estate, or trust and the housing sponsor.]

([d]) (c) (i) For [the] a calendar year beginning on [January 1, 1995, through the calendar year beginning on January 1, 2025] or before December 31, 2016, the aggregate annual tax credit that the Utah Housing Corporation may allocate for the credit period described in Section 42(f), Internal Revenue Code, pursuant to this section and Section 59-7-607 is an amount equal to the product of:

(A) 12.5 cents; and

(B) the population of Utah.

(ii) For a calendar year beginning on or after January 1, 2017, the aggregate annual tax credit that the Utah Housing Corporation may allocate for the credit period described in Section 42(f), Internal

Revenue Code, pursuant to this section and Section 59-7-607 is an amount equal to the product of:

(A) 34.5 cents; and

(B) the population of Utah.

~~[(iii)]~~ (iii) For purposes of this section, the population of Utah shall be determined in accordance with Section 146(j), Internal Revenue Code.

(3) (a) The Utah Housing Corporation shall determine criteria and procedures for allocating the tax credit under this section and Section 59-7-607 and incorporate the criteria and procedures into the Utah Housing Corporation's qualified allocation plan.

(b) The Utah Housing Corporation shall create the criteria under Subsection (3)(a) based on:

(i) the number of affordable housing units to be created in Utah for low and moderate income persons in ~~[the residential housing development of which the building is a part]~~ a qualified development;

(ii) the level of area median income being served by ~~[the]~~ a qualified development;

(iii) the need for the tax credit for the economic feasibility of ~~[the]~~ a qualified development; and

(iv) the extended period for which ~~[the]~~ a qualified development commits to remain as affordable housing.

~~[(4) (a) The following may apply to the Utah Housing Corporation for a tax credit under this section:]~~

~~[(i) any housing sponsor that is a claimant, estate, or trust if that housing sponsor has received an allocation of the federal low-income housing credit; or]~~

~~[(ii) any applicant for an allocation of the federal low-income housing credit if that applicant is a claimant, estate, or trust.]~~

~~[(b) The Utah Housing Corporation may not require fees for applications of the tax credit under this section in addition to those fees required for applications for the federal low-income housing credit.]~~

(4) Any housing sponsor may apply to the Utah Housing Corporation for a tax credit allocation under this section.

(5) (a) The Utah Housing Corporation shall determine the amount of the tax credit to allocate to a ~~[qualifying housing sponsor]~~ qualified development in accordance with the qualified allocation plan of the Utah Housing Corporation.

(b) (i) The Utah Housing Corporation ~~[shall allocate the tax credit to housing sponsors in the same manner that it allocates federal low-income housing credits and]~~ shall issue an allocation certificate to ~~[qualifying housing sponsors]~~ a housing sponsor as evidence of the allocation.

(ii) The allocation certificate under Subsection (5)(b)(i) shall specify ~~[the allowed percentage of the federal low-income housing credit]~~ the amount of the tax credit allocated to a qualified development as determined by the Utah Housing Corporation.

(c) The ~~[percentage]~~ amount of the tax credit specified in an allocation certificate may not exceed 100% of the federal low-income housing credit awarded to a qualified development.

~~[(6) A housing sponsor shall provide a copy of the allocation certificate to each claimant, estate, or trust that is issued a special low-income housing tax credit certificate.]~~

~~[(7) (a) A housing sponsor shall provide to the commission a list of:]~~

~~[(i) the claimants, estates, and trusts issued a special low-income housing tax credit certificate; and]~~

~~[(ii) for each claimant, estate, or trust described in Subsection (7)(a)(i), the amount of tax credit listed on the special low-income housing tax credit certificate.]~~

~~[(b) A housing sponsor shall provide the list required by Subsection (7)(a):]~~

~~[(i) to the commission;]~~

~~[(ii) on a form provided by the commission; and]~~

~~[(iii) with the housing sponsor's tax return for each taxable year for which the housing sponsor issues a special low-income housing tax credit certificate described in this Subsection (7).]~~

(6) Before the Utah Housing Corporation may issue a special low-income housing tax credit certificate, a designated reporter shall provide to the Utah Housing Corporation in a form prescribed by the Utah Housing Corporation:

(a) a list of each qualified taxpayer that has been assigned a portion of the tax credit awarded in an allocation certificate;

(b) for each qualified taxpayer described in Subsection (6)(a), the amount of tax credit that has been assigned; and

(c) an aggregate list of the tax credit amount assigned related to a qualified development demonstrating that the aggregate annual amount of the tax credits assigned does not exceed the aggregate annual tax credit awarded in the allocation certificate.

(7) The Utah Housing Corporation shall provide a special low-income housing tax credit certificate to a qualified taxpayer if:

(a) a designated reporter has provided the information regarding the qualified taxpayer as described in Subsection (6); and

(b) the Utah Housing Corporation has verified that the aggregate tax credit amount assigned with respect to a qualified development does not exceed the total tax credit awarded in the allocation certificate.

(8) (a) All elections made by ~~[the claimant, estate, or trust]~~ a housing sponsor pursuant to Section 42, Internal Revenue Code, shall apply to this section.

(b) (i) If a ~~[claimant, estate, or trust]~~ qualified taxpayer is required to recapture a portion of any federal low-income housing credit, the ~~[claimant, estate, or trust]~~ qualified taxpayer shall also be required to recapture a portion of any state tax credits authorized by this section.

(ii) The state recapture amount shall be equal to the percentage of the state tax credit that equals the proportion the federal recapture amount bears to the original federal low-income housing credit amount subject to recapture.

(iii) The designated reporter shall identify each qualified taxpayer that is required to recapture a portion of any state tax credits as described in this Subsection (8)(b).

(9) (a) Any tax credits returned to the Utah Housing Corporation in any year may be reallocated within the same time period as provided in Section 42, Internal Revenue Code.

(b) Tax credits that are unallocated by the Utah Housing Corporation in any year may be carried over for allocation in subsequent years.

~~[(10) (a) Amounts otherwise qualifying for the tax credit, but not allowable because the tax credit exceeds the tax, may be carried back three years or may be carried forward five years as a tax credit.]~~

(10) (a) If a tax credit is not claimed by a qualified taxpayer in the year in which it is earned because the tax credit is more than the tax owed by the qualified taxpayer, the tax credit may be carried back three years or may be carried forward five years as a credit against the tax.

(b) Carryover tax credits under Subsection (10)(a) shall be applied against the tax:

(i) before the application of the tax credits earned in the current year; and

(ii) on a first-earned first-used basis.

(11) Any tax credit taken in this section may be subject to an annual audit by the commission.

(12) The Utah Housing Corporation shall annually provide an electronic report to the Revenue and Taxation Interim Committee which shall include at least:

(a) the purpose and effectiveness of the tax credits; and

(b) the benefits of the tax credits to the state.

(13) The commission may, in consultation with the Utah Housing Corporation, promulgate rules to implement this section.

Section 10. Appropriation for expendable funds and accounts.

The Legislature has reviewed the following expendable funds for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These amounts

are additions to amounts otherwise reviewed for fiscal year 2018. The Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds may be made without further legislative action according to a fund's applicable authorizing statute.

To Department of Workforce Services -- Economic Revitalization and Investment Fund

From General Fund, One-time \$2,061,000

Schedule of Programs:

Economic Revitalization and Investment Fund \$2,061,000

To Department of Workforce Services -- Olene Walker Housing Loan Fund

From General Fund, One-time \$500,000

Schedule of Programs:

Olene Walker Housing Loan Fund \$500,000

The Legislature intends that up to \$500,000 of the one-time appropriation to the Olene Walker Housing Loan Fund be used by the Housing and Community Development Division to develop a pilot program for reimbursing persons under certain limited circumstances who provide housing to tenants using Federal Housing Choice Vouchers.

Section 11. Retrospective operation.

The amendments to Sections 59-7-607 and 59-10-1010 have retrospective operation for a taxable year beginning on or after January 1, 2017.

CHAPTER 280**H. B. 101**

Passed February 24, 2017

Approved March 23, 2017

Effective May 9, 2017

**ADOPTIVE STUDIES AND
EVALUATIONS AMENDMENTS**Chief Sponsor: Edward H. Redd
Senate Sponsor: Wayne A. Harper**LONG TITLE****General Description:**

This bill amends provisions related to adoptive evaluations.

Highlighted Provisions:

This bill:

- ▶ addresses who may conduct a home study as part of a preplacement adoptive evaluation;
- ▶ requires a home study to contain certain information; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78B-6-103, as last amended by Laws of Utah 2015, Chapters 137 and 194

78B-6-113, as last amended by Laws of Utah 2012, Chapter 340

78B-6-128, as last amended by Laws of Utah 2013, Chapter 458

78B-6-130, as enacted by Laws of Utah 2008, Chapter 3

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

Section 1. Section 78B-6-103 is amended to read:**78B-6-103. Definitions.**

As used in this part:

- (1) "Adoptee" means a person who:
 - (a) is the subject of an adoption proceeding; or
 - (b) has been legally adopted.
- (2) "Adoption" means the judicial act that:
 - (a) creates the relationship of parent and child where it did not previously exist; and
 - (b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of any other person with respect to the child.
- (3) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.
- (4) "Adoption service provider" means [a]:

- (a) a child-placing agency; [œ]
- (b) a licensed counselor who has at least one year of experience providing professional social work services to:
 - (i) adoptive parents;
 - (ii) prospective adoptive parents; or
 - (iii) birth parents[-]; or
- (c) the Office of Licensing within the Department of Human Services.
- (5) "Adoptive parent" means a person who has legally adopted an adoptee.
- (6) "Adult" means a person who is 18 years of age or older.
- (7) "Adult adoptee" means an adoptee who is 18 years of age or older and was adopted as a minor.
- (8) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.
- (9) "Birth mother" means the biological mother of a child.
- (10) "Birth parent" means:
 - (a) a birth mother;
 - (b) a man whose paternity of a child is established;
 - (c) a man who:
 - (i) has been identified as the father of a child by the child's birth mother; and
 - (ii) has not denied paternity; or
 - (d) an unmarried biological father.
- (11) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.
- (12) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.
- (13) "Division" means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.
- (14) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.
- (15) "Genetic and social history" means a comprehensive report, when obtainable, on an adoptee's birth parents, aunts, uncles, and grandparents, which contains the following information:
 - (a) medical history;
 - (b) health status;
 - (c) cause of and age at death;
 - (d) height, weight, and eye and hair color;

(e) ethnic origins;

(f) where appropriate, levels of education and professional achievement; and

(g) religion, if any.

(16) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.

(17) "Identifying information" means information in the possession of the office, which contains the name and address of a pre-existing parent or adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify that person, including information on a birth certificate or in an adoption document.

(18) "Licensed counselor" means a person who is licensed by the state, or another state, district, or territory of the United States as a:

(a) certified social worker;

(b) clinical social worker;

(c) psychologist;

(d) marriage and family therapist;

(e) ~~[professional]~~ clinical mental health counselor; or

(f) an equivalent licensed professional of another state, district, or territory of the United States.

(19) "Man" means a male individual, regardless of age.

(20) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

(21) "Office" means the Office of Vital Records and Statistics within the Department of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

(22) "Parent," for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

(23) "Potential birth father" means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (23)(a) at the time of the child's conception or birth.

(24) "Pre-existing parent" means:

(a) a birth parent; or

(b) a person who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

(25) "Prospective adoptive parent" means a person who seeks to adopt an adoptee.

(26) "Relative" means:

(a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or first cousin of the child's parent; and

(b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, an "extended family member" as defined by that statute.

(27) "Unmarried biological father" means a person who:

(a) is the biological father of a child; and

(b) was not married to the biological mother of the child described in Subsection (27)(a) at the time of the child's conception or birth.

Section 2. Section 78B-6-113 is amended to read:

78B-6-113. Prospective adoptive parent not a resident -- Preplacement requirements.

(1) When an adoption petition is to be finalized in this state with regard to any prospective adoptive parent who is not a resident of this state at the time a child is placed in that person's home, the prospective adoptive parent shall~~[-(a)]~~ comply with the provisions of Sections 78B-6-128 and 78B-6-130~~[-and]~~.

~~[(b) (i) if the child is in state custody:]~~

~~[(A) submit fingerprints for a Federal Bureau of Investigation national criminal history record check through the Criminal and Technical Services Division of the Department of Public Safety in accordance with the provisions of Section 62A-2-120; or]~~

~~[(B) submit to a fingerprint based Federal Bureau of Investigation national criminal history record check through a law enforcement agency in another state, district, or territory of the United States; or]~~

~~[(ii) subject to Subsection (2), if the child is not in state custody:]~~

~~[(A) submit fingerprints for a Federal Bureau of Investigation national criminal history records check as a personal records check; or]~~

~~[(B) complete a criminal records check and child abuse database check for each state and, if available, country, where the prospective adoptive parent resided during the five years immediately preceding the day on which the adoption petition is to be finalized.]~~

~~[(2) For purposes of Subsection (1)(b)(ii):]~~

~~[(a) if the adoption is being handled by a human services program, as defined in Section 62A-2-101:]~~

~~[(i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted in accordance with procedures established by the~~

~~Criminal Investigations and Technical Services Division of the Department of Public Safety; and]~~

~~[(ii) subject to Subsection (3), the criminal history check described in Subsection (1)(b)(ii)(B) shall be submitted in a manner acceptable to the court that will:]~~

~~[(A) preserve the chain of custody of the results; and]~~

~~[(B) not permit tampering with the results by a prospective adoptive parent or other interested party; and]~~

~~[(b) if the adoption is being handled by a private attorney, and not a human services program, the criminal history checks described in Subsection (1)(b)(ii), shall be:]~~

~~[(i) submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; or]~~

~~[(ii) subject to Subsection (3), submitted in a manner acceptable to the court that will:]~~

~~[(A) preserve the chain of custody of the results; and]~~

~~[(B) not permit tampering with the results by a prospective adoptive parent or other interested party.]~~

~~[(3) In order to comply with Subsection (2)(a)(ii) or (b)(ii), the manner in which the criminal history check is submitted shall be approved by the court.]~~

~~[(4)] (2) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Human Services shall comply with Section 78B-6-131.~~

Section 3. Section 78B-6-128 is amended to read:

78B-6-128. Preplacement adoptive evaluations -- Exceptions.

(1) (a) Except as otherwise provided in this section, a child may not be placed in an adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.

(b) Except as provided in Section 78B-6-131, the court may, at any time, authorize temporary placement of a child in a [potential] prospective adoptive home pending completion of a preplacement adoptive evaluation described in this section.

(c) (i) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child or the pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the [evaluation is otherwise requested by

the] court otherwise requests the preplacement adoption.

(ii) The prospective adoptive parent described in this Subsection (1)(c) shall obtain the information described in Subsections (2)(a) and (b), and file that documentation with the court prior to finalization of the adoption.

(d) (i) The [required] preplacement adoptive evaluation [must] shall be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent.

(ii) If the prospective adoptive parent has previously received custody of a child for the purpose of adoption, the preplacement adoptive evaluation [must] shall be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent and after the placement of the previous child with the prospective adoptive parent.

(2) The preplacement adoptive evaluation shall include:

(a) a criminal history [record information] background check regarding each prospective adoptive parent and any other adult living in the prospective home, prepared no earlier than 18 months immediately preceding placement of the child in accordance with the following:

(i) if the child is in state custody, each prospective adoptive parent and any other adult living in the prospective home shall[:] submit fingerprints to the Department of Human Services, which shall perform a criminal history background check in accordance with Section 62A-2-120; or

~~[(A) submit fingerprints for a Federal Bureau of Investigation national criminal history record check through the Criminal and Technical Services Division of the Department of Public Safety in accordance with the provisions of Section 62A-2-120; or]~~

~~[(B) submit to a fingerprint based Federal Bureau of Investigation national criminal history record check through a law enforcement agency in another state, district, or territory of the United States; or]~~

(ii) subject to Subsection (3), if the child is not in state custody, [each prospective adoptive parent and any other adult living in the prospective home shall: (A) submit fingerprints for a Federal Bureau of Investigation national criminal history records check as a personal records check; or] an adoption service provider or an attorney representing a prospective adoptive parent shall submit fingerprints from the prospective adoptive parent and any other adult living in the prospective home to the Criminal and Technical Services Division of Public Safety for a regional and nationwide background check, or to the Office of Licensing within the Department of Human Services for a background check in accordance with 62A-2-120.

~~[(B) complete a criminal records check, if available, for each state and country where the~~

prospective adoptive parent and any adult living in the prospective adoptive home resided during the five years immediately preceding the day on which the adoption petition is to be finalized;]

(b) a report containing all information regarding reports and investigations of child abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other adult living in the prospective home, obtained no earlier than 18 months immediately preceding the day on which the child is placed in the prospective home, pursuant to waivers executed by each prospective adoptive parent and any other adult living in the prospective home, that:

(i) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is a resident of Utah, is prepared by the Department of Human Services from the records of the Department of Human Services; or

(ii) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is not a resident of Utah, prepared by the Department of Human Services, or a similar agency in another state, district, or territory of the United States, where each prospective adoptive parent and any other adult living in the prospective home resided in the five years immediately preceding the day on which the child is placed in the prospective adoptive home;

(c) in accordance with Subsection (6), ~~an evaluation~~ a home study conducted by an adoption service provider that is:

(i) an expert in family relations approved by the court;

(ii) a certified social worker;

(iii) a clinical social worker;

(iv) a marriage and family therapist;

(v) a psychologist;

(vi) a social service worker, if supervised by a certified or clinical social worker; ~~or~~

(vii) a ~~professional~~ clinical mental health counselor; ~~and~~ or

(viii) an Office of Licensing employee within the Department of Human Services who is trained to perform a home study; and

(d) in accordance with Subsection (7), if the child to be adopted is a child who is in the custody of any public child welfare agency, and is a child who has a special need as defined in Section 62A-4a-902, the preplacement adoptive evaluation shall be conducted by the Department of Human Services or a child-placing agency that has entered into a contract with the department to conduct the preplacement adoptive evaluations for children with special needs.

(3) For purposes of Subsection (2)(a)(ii): ~~(a) if the adoption is being handled by a human services program, as defined in Section 62A-2-101: (i) the criminal history check described in Subsection~~

~~(2)(a)(ii)(A) shall be submitted through the Criminal Investigations and Technical Services Division of the Department of Public Safety, in accordance with the provisions of Section 62A-2-120; and (ii)], subject to Subsection (4), the criminal history background check described in Subsection (2)(a)(ii)(B) shall be submitted in a manner acceptable to the court that will:~~

~~[(A) (a) preserve the chain of custody of the results; and~~

~~[(B) (b) not permit tampering with the results by a prospective adoptive parent or other interested party; and].~~

~~[(b) if the adoption is being handled by a private attorney, and not a human services program, the criminal history checks described in Subsection (2)(a)(ii) shall be:]~~

~~[(i) submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; or]~~

~~[(ii) subject to Subsection (4), submitted in a manner acceptable to the court that will:]~~

~~[(A) preserve the chain of custody of the results; and]~~

~~[(B) not permit tampering with the results by a prospective adoptive parent or other interested party.]~~

(4) In order to comply with Subsection (3)(a)(ii) or (b)(ii), the manner in which the criminal history background check is submitted shall be approved by the court.

(5) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Human Services shall comply with Section 78B-6-131.

(6) (a) ~~[A person]~~ An individual described in ~~Subsection (2)(c)~~ Subsections (2)(c)(i) through (vii) shall be licensed to practice under the laws of:

(i) this state; or

(ii) the state, district, or territory of the United States where the prospective adoptive parent or other person living in the prospective adoptive home resides.

~~[(b) The evaluation described in Subsection (2)(c) shall be in a form approved by the Department of Human Services.]~~

~~[(e) (b) Neither the Department of Human Services nor any of [its] the department's divisions may proscribe who qualifies as an expert in family relations or who may conduct [evaluations] a home study under Subsection (2)(c).~~

(c) The home study described in Subsection (2)(c) shall be a written document that contains the following:

(i) a recommendation to the court regarding the suitability of the prospective adoptive parent for placement of a child;

(ii) a description of in-person interviews with the prospective adoptive parent, the prospective adoptive parent's children, and other individuals living in the home;

(iii) a description of character and suitability references from at least two individuals who are not related to the prospective adoptive parent and with at least one individual who is related to the prospective adoptive parent;

(iv) a medical history and a doctor's report, based upon a doctor's physical examination of the prospective adoptive parent, made within two years before the date of the application; and

(v) a description of an inspection of the home to determine whether sufficient space and facilities exist to meet the needs of the child and whether basic health and safety standards are maintained.

(7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the responsibility of the adopting parent ~~or parents~~.

(8) The person ~~or agency~~ conducting the preplacement adoptive evaluation shall, in connection with the preplacement adoptive evaluation, provide the prospective adoptive parent ~~or parents~~ with literature approved by the Division of Child and Family Services relating to adoption, including information relating to:

(a) the adoption process;

(b) developmental issues that may require early intervention; and

(c) community resources that are available to the prospective adoptive parent ~~or parents~~.

(9) A copy of the preplacement adoptive evaluation shall be filed with the court.

Section 4. Section 78B-6-130 is amended to read:

78B-6-130. Preplacement and postplacement adoptive evaluations -- Review by court.

(1) (a) If the person ~~or agency~~ conducting the preplacement adoptive evaluation or postplacement adoptive evaluation disapproves the adoptive placement, ~~[either in the preplacement or postplacement adoptive evaluation,]~~ the court may dismiss the petition ~~[- However, upon]~~ for adoption.

(b) Upon request [of] by a prospective adoptive parent, the court shall order that an additional preplacement adoptive evaluation or postplacement adoptive evaluation be conducted, and shall hold a hearing on the suitability of the adoption, including testimony of interested parties.

(2) ~~[Prior to]~~ Before finalization of a petition for adoption the court shall review and consider the information and recommendations contained in the preplacement adoptive evaluation and postplacement adoptive ~~[studies required by]~~ evaluation described in Sections 78B-6-128 and 78B-6-129.

(3) With respect to the home study required as part of the preplacement adoptive evaluation described in Subsection 78B-6-128(2)(c), a court may review and consider information other than the information contained in the home study described in Subsection 78B-6-128(6)(c).

CHAPTER 281**H. B. 115**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

SOLID WASTE REVISIONS

Chief Sponsor: Mike K. McKell
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies regulations in regard to nonhazardous solid waste.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies definitions;
- ▶ states that no person may own, construct, modify, or operate any facility or site for the purpose of transferring, treating, or disposing of nonhazardous solid waste without first submitting and receiving the approval of the director for an operation plan for that facility or site;
- ▶ provides that certain waste entering Utah from other states for disposal or treatment be treated according to standards provided in Utah law;
- ▶ modifies fee structures for nonhazardous solid waste streams; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 19-6-102, as last amended by Laws of Utah 2016, Fourth Special Session, Chapter 1
- 19-6-105, as last amended by Laws of Utah 2012, Chapter 360
- 19-6-108, as last amended by Laws of Utah 2013, Chapter 378
- 19-6-108.5, as last amended by Laws of Utah 2010, Chapter 324
- 19-6-119, as last amended by Laws of Utah 2012, Chapter 360
- 19-6-502, as last amended by Laws of Utah 2016, Fourth Special Session, Chapter 1

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

Section 1. Section 19-6-102 is amended to read:**19-6-102. Definitions.**

As used in this part:

(1) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.

(2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or disposed of

hazardous waste including, if applicable, a plan to provide postclosure care at the facility or site.

(3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or disposal.

(b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility" does not include a facility that:

(i) receives waste for recycling;

(ii) receives waste to be used as fuel, in compliance with federal and state requirements; or

(iii) is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(4) "Construction waste or demolition waste":

(a) means waste from building materials, packaging, and rubble resulting from construction, demolition, remodeling, and repair of pavements, houses, commercial buildings, and other structures, and from road building and land clearing; and

(b) does not include: asbestos; contaminated soils or tanks resulting from remediation or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar hazardous or potentially hazardous materials.

(5) "Demolition waste" has the same meaning as the definition of construction waste in this section.

(6) "Director" means the director of the Division of Waste Management and Radiation Control.

(7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water so that the waste or any constituent of the waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

(8) "Division" means the Division of Waste Management and Radiation Control, created in Subsection 19-1-105(1)(d).

(9) "Generation" or "generated" means the act or process of producing nonhazardous solid or hazardous waste.

(10) "Hazardous waste" means a solid waste or combination of solid wastes other than household waste which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(11) "Health facility" means hospitals, psychiatric hospitals, home health agencies, hospices, skilled nursing facilities, intermediate

care facilities, intermediate care facilities for people with an intellectual disability, residential health care facilities, maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned or operated by health maintenance organizations, and state renal disease treatment centers including free standing hemodialysis units, the offices of private physicians and dentists whether for individual or private practice, veterinary clinics, and mortuaries.

(12) "Household waste" means any waste material, including garbage, trash, and sanitary wastes in septic tanks, derived from households, including single-family and multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(13) "Infectious waste" means a solid waste that contains or may reasonably be expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by a susceptible host could result in an infectious disease.

(14) "Manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(15) "Mixed waste" means any material that is a hazardous waste as defined in this chapter and is also radioactive as defined in Section 19-3-102.

(16) "Modification plan" means a plan under Section 19-6-108 to modify a facility or site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste.

(17) "Operation plan" or "nonhazardous solid or hazardous waste operation plan" means a plan or approval under Section 19-6-108, including:

(a) a plan to own, construct, or operate a facility or site for the purpose of transferring, treating, or disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste;

(b) a closure plan;

(c) a modification plan; or

(d) an approval that the director is authorized to issue.

(18) "Permittee" means a person who is obligated under an operation plan.

(19) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or in irrigation return flows or discharges for which a permit is required under Title 19,

Chapter 5, Water Quality Act, or under the Water Pollution Control Act, 33 U.S.C. Sec. 1251 et seq.

(b) "Solid waste" does not include any of the following wastes unless the waste causes a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

(i) certain large volume wastes, such as inert construction debris used as fill material;

(ii) drilling muds, produced waters, and other wastes associated with the exploration, development, or production of oil, gas, or geothermal energy;

(iii) solid wastes from the extraction, beneficiation, and processing of ores and minerals;

(iv) cement kiln dust; or

(v) metal that is:

(A) purchased as a valuable commercial commodity; and

(B) not otherwise hazardous waste or subject to conditions of the federal hazardous waste regulations, including the requirements for recyclable materials found at 40 C.F.R. 261.6.

(20) "Solid waste management facility" means the same as that term is defined in Section 19-6-502.

(21) "Storage" means the actual or intended containment of solid or hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of the waste.

(22) (a) "Transfer" means the collection of nonhazardous solid waste from a permanent, fixed, supplemental collection facility for movement to a vehicle for movement to an offsite nonhazardous solid waste storage or disposal facility.

(b) "Transfer" does not mean:

(i) the act of moving nonhazardous solid waste from one location to another location on the site where the nonhazardous solid waste is generated; or

(ii) placement of nonhazardous solid waste on the site where the nonhazardous solid waste is generated in preparation for movement off that site.

[(22)] (23) "Transportation" means the off-site movement of solid or hazardous waste to any intermediate point or to any point of storage, treatment, or disposal.

[(23)] (24) "Treatment" means a method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid or hazardous waste so as to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for recovery, amenable to storage, or reduced in volume.

[(24)] (25) "Underground storage tank" means a tank which is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991 et seq.

Section 2. Section 19-6-105 is amended to read:

19-6-105. Rules of board.

(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) establishing minimum standards for protection of human health and the environment, for the storage, collection, transport, transfer, recovery, treatment, and disposal of solid waste, including requirements for the approval by the director of plans for the construction, extension, operation, and closure of solid waste disposal sites;

(b) identifying wastes which are determined to be hazardous, including wastes designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C., Sec. 6921, et seq.;

(c) governing generators and transporters of hazardous wastes and owners and operators of hazardous waste treatment, storage, and disposal facilities, including requirements for keeping records, monitoring, submitting reports, and using a manifest, without treating high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling muds, and oil production brines in a manner more stringent than they are treated under federal standards;

(d) requiring an owner or operator of a treatment, storage, or disposal facility that is subject to a plan approval under Section 19-6-108 or which received waste after July 26, 1982, to take appropriate corrective action or other response measures for releases of hazardous waste or hazardous waste constituents from the facility, including releases beyond the boundaries of the facility;

(e) specifying the terms and conditions under which the director shall approve, disapprove, revoke, or review hazardous wastes operation plans;

(f) governing public hearings and participation under this part;

(g) establishing standards governing underground storage tanks, in accordance with Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

(h) relating to the collection, transportation, processing, treatment, storage, and disposal of infectious waste in health facilities in accordance with the requirements of Section 19-6-106;

(i) defining closure plans as major or minor;

(j) defining modification plans as major or minor; and

(k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch, canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or well.

(2) If any of the following are determined to be hazardous waste and are therefore subjected to the provisions of this part, the board shall, in the case of landfills or surface impoundments that receive the solid wastes, take into account the special characteristics of the wastes, the practical difficulties associated with applying requirements for other wastes to the wastes, and site specific characteristics, including the climate, geology, hydrology, and soil chemistry at the site, if the modified requirements assure protection of human health and the environment and are no more stringent than federal standards applicable to wastes:

(a) solid waste from the extraction, beneficiation, or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium;

(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; and

(c) cement kiln dust waste.

(3) The board shall establish criteria for siting commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators. Those criteria shall apply to any facility or incinerator for which plan approval is required under Section 19-6-108.

Section 3. Section 19-6-108 is amended to read:

19-6-108. New nonhazardous solid or hazardous waste operation plans for facility or site -- Administrative and legislative approval required -- Exemptions from legislative and gubernatorial approval -- Time periods for review -- Information required -- Other conditions -- Revocation of approval -- Periodic review.

(1) For purposes of this section, the following items shall be treated as submission of a new operation plan:

(a) the submission of a revised operation plan specifying a different geographic site than a previously submitted plan;

(b) an application for modification of a commercial hazardous waste incinerator if the construction or the modification would increase the hazardous waste incinerator capacity above the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in the operation plan application as of January 1, 1990, if no operation plan approval has been issued as of January 1, 1990;

(c) an application for modification of a commercial nonhazardous solid waste incinerator if the construction of the modification would cost 50% or more of the cost of construction of the original incinerator or the modification would result in an increase in the capacity or throughput of the incinerator of a cumulative total of 50% above the

total capacity or throughput that was approved in the operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990;

(d) an application for modification of a commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, other than an incinerator, if the modification would be outside the boundaries of the property owned or controlled by the applicant, as shown in the application or approved operation plan as of January 1, 1990, or the initial approved operation plan if the initial approval is subsequent to January 1, 1990; or

(e) a submission of an operation plan to construct a facility, if previous approvals of the operation plan to construct the facility have been revoked pursuant to Subsection (3)(c)(iii).

(2) Capacity under Subsection (1)(b) shall be calculated based on the throughput tonnage specified for the trial burn in the operation plan or the operation plan application if no operation plan approval has been issued as of January 1, 1990, and on annual operations of 7,000 hours.

(3) (a) (i) No person may own, construct, modify, or operate any facility or site for the purpose of transferring, treating, or disposing of nonhazardous solid waste or treating, storing, or disposing of hazardous waste without first submitting and receiving the approval of the director for an operation plan for that facility or site.

(ii) (A) A permittee who is the current owner of a facility or site that is subject to an operation plan may submit to the director information, a report, a plan, or other request for approval for a proposed activity under an operation plan:

(I) after obtaining the consent of any other permittee who is a current owner of the facility or site; and

(II) without obtaining the consent of any other permittee who is not a current owner of the facility or site.

(B) The director may not:

(I) withhold an approval of an operation plan requested by a permittee who is a current owner of the facility or site on the grounds that another permittee who is not a current owner of the facility or site has not consented to the request; or

(II) give an approval of an operation plan requested by a permittee who is not a current owner before receiving consent of the current owner of the facility or site.

(b) (i) Except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any commercial facility that accepts for treatment or disposal, with the intent to make a profit, any of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving the approval of the director for an operation plan for that facility site.

(ii) Wastes referred to in Subsection (3)(b)(i) are:

(A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

(C) cement kiln dust wastes.

(c) (i) No person may construct a facility listed under Subsection (3)(c)(ii) until the person receives:

(A) local government approval and the approval described in Subsection (3)(a);

(B) approval from the Legislature; and

(C) after receiving the approvals described in Subsections (3)(c)(i)(A) and (B), approval from the governor.

(ii) A facility referred to in Subsection (3)(c)(i) is:

(A) a commercial nonhazardous solid waste disposal facility;

(B) except for facilities that receive the following wastes solely for the purpose of recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal, with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln dust wastes; or

(C) a commercial hazardous waste treatment, storage, or disposal facility.

(iii) The required approvals described in Subsection (3)(c)(i) for a facility described in Subsection (3)(c)(ii)(A) or (B) are automatically revoked if:

(A) the governor's approval is received on or after May 10, 2011, and the facility is not operational within five years after the day on which the governor's approval is received; or

(B) the governor's approval is received before May 10, 2011, and the facility is not operational on or before May 10, 2016.

(iv) The required approvals described in Subsection (3)(c)(i) for a facility described in Subsection (3)(c)(ii)(A) or (B), including the approved operation plan, are not transferrable to another person for five years after the day on which the governor's approval is received.

(d) No person need obtain gubernatorial or legislative approval for the construction of a hazardous waste facility for which an operating plan has been approved by or submitted for approval to the executive secretary of the board under this section before April 24, 1989, and which has been determined, on or before December 31, 1990, by the executive secretary of the board to be complete, in accordance with state and federal requirements for operating plans for hazardous waste facilities even if a different geographic site is subsequently submitted.

(e) No person need obtain gubernatorial and legislative approval for the construction of a commercial nonhazardous solid waste disposal facility for which an operation plan has been approved by or submitted for approval to the executive secretary of the board under this section on or before January 1, 1990, and which, on or before December 31, 1990, the executive secretary of the board determines to be complete, in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(f) Any person owning or operating a facility or site on or before November 19, 1980, who has given timely notification as required by Section 3010 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed hazardous waste plan under this section for that facility or site, may continue to operate that facility or site without violating this section until the plan is approved or disapproved under this section.

(g) (i) The director shall suspend acceptance of further applications for a commercial nonhazardous solid or hazardous waste facility upon a finding that the director cannot adequately oversee existing and additional facilities for permit compliance, monitoring, and enforcement.

(ii) The director shall report any suspension to the Natural Resources, Agriculture, and Environment Interim Committee.

(4) The director shall review each proposed nonhazardous solid or hazardous waste operation plan to determine whether that plan complies with the provisions of this part and the applicable rules of the board.

(5) (a) If the facility is a class I or class II facility, the director shall approve or disapprove that plan within 270 days from the date it is submitted.

(b) Within 60 days after receipt of the plans, specifications, or other information required by this section for a class I or II facility, the director shall determine whether the plan is complete and contains all information necessary to process the plan for approval.

(c) (i) If the plan for a class I or II facility is determined to be complete, the director shall issue a notice of completeness.

(ii) If the plan is determined by the director to be incomplete, the director shall issue a notice of deficiency, listing the additional information to be provided by the owner or operator to complete the plan.

(d) The director shall review information submitted in response to a notice of deficiency within 30 days after receipt.

(e) The following time periods may not be included in the 270 day plan review period for a class I or II facility:

(i) time awaiting response from the owner or operator to requests for information issued by the director;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(6) (a) If the facility is a class III or class IV facility, the director shall approve or disapprove that plan within 365 days from the date it is submitted.

(b) The following time periods may not be included in the 365 day review period:

(i) time awaiting response from the owner or operator to requests for information issued by the director;

(ii) time required for public participation and hearings for issuance of plan approvals; and

(iii) time for review of the permit by other federal or state government agencies.

(7) If, within 365 days after receipt of a modification plan or closure plan for any facility, the director determines that the proposed plan, or any part of it, will not comply with applicable rules, the director shall issue an order prohibiting any action under the proposed plan for modification or closure in whole or in part.

(8) Any person who owns or operates a facility or site required to have an approved hazardous waste operation plan under this section and who has pending a permit application before the United States Environmental Protection Agency shall be treated as having an approved plan until final administrative disposition of the permit application is made under this section, unless the director determines that final administrative disposition of the application has not been made because of the failure of the owner or operator to furnish any information requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

(9) The director may not approve a proposed nonhazardous solid or hazardous waste operation plan unless the plan contains the information that the board requires, including:

(a) estimates of the composition, quantities, and concentrations of any hazardous waste identified under this part and the proposed treatment, storage, or disposal of it;

(b) evidence that the transfer, treatment, or disposal of nonhazardous solid waste or treatment, storage, or disposal of hazardous waste will not be done in a manner that may cause or significantly contribute to an increase in mortality, an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment;

(c) consistent with the degree and duration of risks associated with the transfer, treatment, or

disposal of nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste, evidence of financial responsibility in whatever form and amount that the director determines is necessary to insure continuity of operation and that upon abandonment, cessation, or interruption of the operation of the facility or site, all reasonable measures consistent with the available knowledge will be taken to insure that the waste subsequent to being treated, stored, or disposed of at the site or facility will not present a hazard to the public or the environment;

(d) evidence that the personnel employed at the facility or site have education and training for the safe and adequate handling of nonhazardous solid or hazardous waste;

(e) plans, specifications, and other information that the director considers relevant to determine whether the proposed nonhazardous solid or hazardous waste operation plan will comply with this part and the rules of the board;

(f) compliance schedules, where applicable, including schedules for corrective action or other response measures for releases from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit;

(g) for a proposed operation plan submitted on or after July 1, 2013, for a new solid or hazardous waste facility other than a water treatment facility that treats, stores, or disposes site-generated solid or hazardous waste onsite, a traffic impact study that:

(i) takes into consideration the safety, operation, and condition of roadways serving the proposed facility; and

(ii) is reviewed and approved by the Department of Transportation or a local highway authority, whichever has jurisdiction over each road serving the proposed facility, with the cost of the review paid by the person who submits the proposed operation plan; and

(h) for a proposed operation plan submitted on or after July 1, 2013, for a new nonhazardous solid waste facility owned or operated by a local government, financial information that discloses all costs of establishing and operating the facility, including:

- (i) land acquisition and leasing;
- (ii) construction;
- (iii) estimated annual operation;
- (iv) equipment;
- (v) ancillary structures;
- (vi) roads;
- (vii) transfer stations; and

(viii) using other operations that are not contiguous to the proposed facility but are necessary to support the facility's construction and operation.

(10) The director may not approve a commercial nonhazardous solid or hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains the information required by the board, including:

(a) evidence that the proposed commercial facility has a proven market of nonhazardous solid or hazardous waste, including:

(i) information on the source, quantity, and price charged for treating, storing, and disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

(ii) a market analysis of the need for a commercial facility given existing and potential generation of nonhazardous solid or hazardous waste in the state and regionally; and

(iii) a review of other existing and proposed commercial nonhazardous solid or hazardous waste facilities regionally and nationally that would compete for the treatment, storage, or disposal of the nonhazardous solid or hazardous waste;

(b) a description of the public benefits of the proposed facility, including:

(i) the need in the state for the additional capacity for the management of nonhazardous solid or hazardous waste;

(ii) the energy and resources recoverable by the proposed facility;

(iii) the reduction of nonhazardous solid or hazardous waste management methods, which are less suitable for the environment, that would be made possible by the proposed facility; and

(iv) whether any other available site or method for the management of hazardous waste would be less detrimental to the public health or safety or to the quality of the environment; and

(c) compliance history of an owner or operator of a proposed commercial nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be applied by the director in a nonhazardous solid or hazardous waste operation plan decision, including any plan conditions.

(11) The director may not approve a commercial nonhazardous solid or hazardous waste facility operation plan unless based on the application, and in addition to the determination required in Subsections (9) and (10), the director determines that:

(a) the probable beneficial environmental effect of the facility to the state outweighs the probable adverse environmental effect; and

(b) there is a need for the facility to serve industry within the state.

(12) Approval of a nonhazardous solid or hazardous waste operation plan may be revoked, in whole or in part, if the person to whom approval of the plan has been given fails to comply with that plan.

(13) The director shall review all approved nonhazardous solid and hazardous waste operation plans at least once every five years.

(14) The provisions of Subsections (10) and (11) do not apply to hazardous waste facilities in existence or to applications filed or pending in the department prior to April 24, 1989, that are determined by the executive secretary of the board on or before December 31, 1990, to be complete, in accordance with state and federal requirements applicable to operation plans for hazardous waste facilities.

(15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous solid waste facility in existence or to an application filed or pending in the department prior to January 1, 1990, that is determined by the director, on or before December 31, 1990, to be complete in accordance with state and federal requirements applicable to operation plans for nonhazardous solid waste facilities.

(16) Nonhazardous solid waste generated outside of this state that is defined as hazardous waste in the state where it is generated and which is received for disposal in this state may not be disposed of at a nonhazardous waste disposal facility owned and operated by local government or a facility under contract with a local government solely for disposal of nonhazardous solid waste generated within the boundaries of the local government, unless disposal is approved by the director.

(17) This section may not be construed to exempt any facility from applicable regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through 2114.

Section 4. Section 19-6-108.5 is amended to read:

19-6-108.5. Management of hazardous waste generated outside Utah.

~~[(4)] On and after July 1, [1992, any] 2017, waste entering Utah for disposal or treatment, excluding incineration, that is classified by Utah as nonhazardous solid waste [and by the state of origin as hazardous waste, and that exceeds the base volume provided in Subsection (2) for each receiving facility or site, shall be treated according to the same treatment standards to which it would have been subject had it remained in the state where it originated. However, if those standards are less protective of human health or the environment than the treatment standards applicable under Utah law, the waste shall be treated in compliance with the Utah standards] shall be treated or disposed of as nonhazardous solid waste, regardless of how it is classified by the state of origin.~~

~~[(2) The base volume provided in Subsection (1) for each receiving facility or site is the average of the annual quantities of nonhazardous solid waste that originated outside Utah and were received by the facility or site in calendar years 1990 and 1991.]~~

~~[(3) (a) The base volume for each receiving facility or site that has an operating plan approved prior to July 1, 1992, but did not receive nonhazardous solid waste originating outside Utah during calendar years 1990 and 1991, shall be the average of annual quantities of out-of-state nonhazardous waste the~~

~~facility or site received during the 24 months following the date of initial receipt of nonhazardous waste originating outside Utah.]~~

~~[(b) The base determined under Subsection (3)(a) applies to the facility or site on and after July 1, 1995, regardless of the amount of nonhazardous waste originating outside Utah received by the facility or site prior to this date.]~~

Section 5. Section 19-6-119 is amended to read:

19-6-119. Nonhazardous solid waste disposal fees.

(1) (a) ~~[Except]~~ Through December 31, 2018, and ~~except as provided in Subsection [(5)] (4),~~ the owner or operator of a commercial nonhazardous solid waste disposal facility or incinerator shall pay the following fees for waste received for treatment or disposal at the facility if the facility or incinerator is required to have operation plan approval under Section 19-6-108 and primarily receives waste generated by off-site sources not owned, controlled, or operated by the facility or site owner or operator:

(i) 13 cents per ton on all municipal waste and municipal incinerator ash;

(ii) 50 cents per ton on the following wastes if the facility disposes of one or more of the following wastes in a cell exclusively designated for the waste being disposed:

(A) construction waste or demolition waste;

(B) yard waste, including vegetative matter resulting from landscaping, land maintenance, and land clearing operations;

(C) dead animals;

(D) waste tires and materials derived from waste tires disposed of in accordance with Title 19, Chapter 6, Part 8, Waste Tire Recycling Act; and

(E) petroleum contaminated soils that are approved by the director; and

(iii) \$2.50 per ton on:

(A) all nonhazardous solid waste not described in Subsections (1)(a)(i) and (ii); and

(B) (I) fly ash waste;

(II) bottom ash waste;

(III) slag waste;

(IV) flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(V) waste from the extraction, beneficiation, and processing of ores and minerals; and

(VI) cement kiln dust wastes.

(b) A commercial nonhazardous solid waste disposal facility or incinerator subject to the fees under Subsection (1)(a)(i) or (ii) is not subject to the fee under Subsection (1)(a)(iii) for those wastes described in Subsections (1)(a)(i) and (ii).

(c) The owner or operator of a facility described in Subsection 19-6-102(3)(b)(iii) shall pay a fee of 13 cents per ton on all municipal waste received for disposal at the facility.

(2) (a) ~~[Except]~~ Through December 31, 2018, and except as provided in Subsections (2)(~~(b)~~)(c) and ~~[(5)]~~ (4), a waste facility that is owned by a political subdivision shall pay the following annual facility fee to the department by January 15 of each year:

(i) \$800 if the facility receives 5,000 or more but fewer than 10,000 tons of municipal waste each year;

(ii) \$1,450 if the facility receives 10,000 or more but fewer than 20,000 tons of municipal waste each year;

(iii) \$3,850 if the facility receives 20,000 or more but fewer than 50,000 tons of municipal waste each year;

(iv) \$12,250 if the facility receives 50,000 or more but fewer than 100,000 tons of municipal waste each year;

(v) \$14,700 if the facility receives 100,000 or more but fewer than 200,000 tons of municipal waste each year;

(vi) \$33,000 if the facility receives 200,000 or more but fewer than 500,000 tons of municipal waste each year; and

(vii) \$66,000 if the facility receives 500,000 or more tons of municipal waste each year.

(b) The fee identified in Subsection (2)(a) for 2018 shall be paid by January 15, 2019.

~~[(b)]~~ (c) ~~[Except]~~ Through December 31, 2018, and except as provided in Subsection ~~[(5)]~~ (4), a waste facility that is owned by a political subdivision shall pay \$2.50 per ton for:

(i) nonhazardous solid waste that is not a waste described in Subsection (1)(a)(i) or (ii) received for disposal if the waste is:

(A) generated outside the boundaries of the political subdivision; and

(B) received from a single generator and exceeds 500 tons in a calendar year; and

(ii) waste described in Subsection (1)(a)(iii)(B) received for disposal if the waste is:

(A) generated outside the boundaries of the political subdivision; and

(B) received from a single generator and exceeds 500 tons in a calendar year.

~~[(e)]~~ (d) Waste received at a facility owned by a political subdivision under Subsection (2)(~~(b)~~)(c) may not be counted as part of the total tonnage received by the facility under Subsection (2)(a).

(3) (a) As used in this Subsection (3):

(i) "Recycling center" means a facility that extracts valuable materials from a waste stream or transforms or remanufactures the material into a

usable form that has demonstrated or potential market value.

(ii) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is used to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(b) ~~[Except]~~ Through December 31, 2018, and except as provided in Subsection ~~[(5)]~~ (4), the owner or operator of a transfer station or recycling center shall pay to the department the following fees on waste sent for disposal to a nonhazardous solid waste disposal or treatment facility that is not subject to a fee under this section:

(i) \$1.25 per ton on:

(A) all nonhazardous solid waste; and

(B) waste described in Subsection (1)(a)(iii)(B);

(ii) 10 cents per ton on all construction and demolition waste; and

(iii) 5 cents per ton on all municipal waste or municipal incinerator ash.

(c) Wastes subject to fees under Subsection (3)(b)(ii) or (iii) are not subject to the fee required under Subsection (3)(b)(i).

~~[(4) If a facility required to pay fees under this section receives nonhazardous solid waste for treatment or disposal, and the fee required under this section is paid for that treatment or disposal, any subsequent treatment or disposal of the waste is not subject to additional fees under this section.]~~

~~[(5)]~~ (4) The owner or operator of a waste disposal facility that receives nonhazardous solid waste described in Subsection (1)(a)(iii)(B) is not required to pay any fee on those nonhazardous solid wastes if received solely for the purpose of recycling, reuse, or reprocessing.

~~[(6)]~~ (5) ~~[Except]~~ Through December 31, 2018, and except as provided in Subsection (2)(a), a facility required to pay fees under this section shall:

(a) calculate the fees by multiplying the total tonnage of nonhazardous solid waste received during the calendar month, computed to the first decimal place, by the required fee rate;

(b) pay the fees imposed by this section to the department by the 15th day of the month following the month in which the fees accrued; and

(c) with the fees required under Subsection (6)(b), submit to the department, on a form prescribed by the department, information that verifies the amount of nonhazardous solid waste received and the fees that the owner or operator is required to pay.

~~[(6)]~~ (a) In accordance with Section 63J-1-504, on or before July 1, 2018, the department shall establish a fee schedule for the treatment, transfer, and disposal of all nonhazardous solid waste.

(b) The department shall, before establishing the fee schedule described in Subsection (6)(a), consult with industry and local government and complete a

review of program costs and indirect costs of regulating nonhazardous solid waste in the state and use the findings of the review to create the fee schedule.

(c) The fee schedule described in Subsection (6)(a) shall:

(i) create an equitable and fair fee to be paid by all persons whose treatment, transfer, or disposal of nonhazardous solid waste creates a regulatory burden to the department, except as provided in Subsection (6)(d);

(ii) cover the fully burdened costs of the program and provide for reasonable and timely oversight by the department;

(iii) adequately meet the needs of industry, local government, and the department, including enabling the department to employ qualified personnel to appropriately oversee industry and local government regulation;

(iv) provide stable funding for the Environmental Quality Restricted Account created in Section 19-1-108; and

(v) give consideration to a fee differential regarding solid waste managed at a transfer facility, no greater than 50 percent of the fee set for the treatment or disposal of the same solid waste.

(d) Any person who treats, transfers, stores, or disposes of solid waste from the extraction, beneficiation, and processing of ores and minerals on a site owned, controlled, or operated by that person may not be charged a fee under this section for the treatment, transfer, storage, or disposal of solid waste from the extraction, beneficiation, and processing of ores and minerals that are generated:

(i) on-site by the person; or

(ii) by off-site sources owned, controlled, or operated by the person.

(e) The fees in the fee schedule established by Subsection (6)(a) shall take effect on January 1, 2019.

(7) On and after January 1, 2019, a facility required to pay fees under this section shall:

(a) pay the fees imposed by this section to the department by the 15th day of the month following the quarter in which the fees accrued; and

(b) with the fees required under Subsection (7)(a), submit to the department, on a form prescribed by the department, information that verifies the amount of nonhazardous solid waste received and the fees that the owner or operator is required to pay.

(8) In setting the fee schedule described in Subsection (6)(a), the department shall ensure that a party is not charged multiple fees for the same solid waste, except the department may charge a separate fee for a transfer station.

[~~(7)~~] (9) The department shall:

(a) deposit all fees received under this section into the Environmental Quality Restricted Account created in Section 19-1-108; and

(b) in preparing its budget for the governor and the Legislature, separately indicate the amount of the department's budget necessary to administer the solid and hazardous waste program established by this part.

[~~(8)~~] (10) The department may contract or agree with a county to assist in performing nonhazardous solid waste management activities, including agreements for:

(a) the development of a solid waste management plan required under Section 17-15-23; and

(b) pass-through of available funding.

[~~(9)~~] (11) This section does not exempt any facility from applicable regulation under the Atomic Energy Act, 42 U.S.C. Sec. 2014 and 2021 through 2114.

(12) The department shall report to the Natural Resources, Agriculture, and Environment Interim Committee by November 30, 2017, on the fee schedule described in Subsection (6)(a).

Section 6. Section 19-6-502 is amended to read:

19-6-502. Definitions.

As used in this part:

(1) "Governing body" means the governing board, commission, or council of a public entity.

(2) "Jurisdiction" means the area within the incorporated limits of:

(a) a municipality;

(b) a special service district;

(c) a municipal-type service district;

(d) a service area; or

(e) the territorial area of a county not lying within a municipality.

(3) "Long-term agreement" means an agreement or contract having a term of more than five years but less than 50 years.

(4) "Municipal residential waste" means solid waste that is:

(a) discarded or rejected at a residence within the public entity's jurisdiction; and

(b) collected at or near the residence by:

(i) a public entity; or

(ii) a person with whom the public entity has an agreement to provide solid waste management.

(5) "Public entity" means:

(a) a county;

(b) a municipality;

(c) a special service district under Title 17D, Chapter 1, Special Service District Act;

(d) a service area under Title 17B, Chapter 2a, Part 9, Service Area Act; or

(e) a municipal-type service district created under Title 17, Chapter 34, Municipal-Type Services to Unincorporated Areas.

(6) “Requirement” means an ordinance, policy, rule, mandate, or other directive that imposes a legal duty on a person.

(7) “Residence” means an improvement to real property used or occupied as a primary or secondary detached single-family dwelling.

(8) “Resource recovery” means the separation, extraction, recycling, or recovery of usable material, energy, fuel, or heat from solid waste and the disposition of it.

(9) “Short-term agreement” means a contract or agreement having a term of five years or less.

(10) (a) “Solid waste” means a putrescible or nonputrescible material or substance discarded or rejected as being spent, useless, worthless, or in excess of the owner’s needs at the time of discard or rejection, including:

- (i) garbage;
- (ii) refuse;
- (iii) industrial and commercial waste;
- (iv) sludge from an air or water control facility;
- (v) rubbish;
- (vi) ash;
- (vii) contained gaseous material;
- (viii) incinerator residue;
- (ix) demolition and construction debris;
- (x) a discarded automobile; and
- (xi) offal.

(b) “Solid waste” does not include sewage or another highly diluted water carried material or substance and those in gaseous form.

(11) “Solid waste management” means the purposeful and systematic collection, transportation, storage, processing, recovery, or disposal of solid waste.

(12) (a) “Solid waste management facility” means a facility employed for solid waste management, including:

- (i) a transfer station;
- (ii) a transport system;
- (iii) a baling facility;
- (iv) a landfill; and
- (v) a processing system, including:
 - (A) a resource recovery facility;
 - (B) a facility for reducing solid waste volume;

(C) a plant or facility for compacting, or composting, [~~or pyrolyzation~~] of solid waste;

(D) an incinerator;

(E) a solid waste disposal, reduction, pyrolyzation, or conversion facility;

(F) a facility for resource recovery of energy consisting of:

(I) a facility for the production, transmission, distribution, and sale of heat and steam;

(II) a facility for the generation and sale of electric energy to a public utility, municipality, or other public entity that owns and operates an electric power system on March 15, 1982; and

(III) a facility for the generation, sale, and transmission of electric energy on an emergency basis only to a military installation of the United States; and

(G) an auxiliary energy facility that is connected to a facility for resource recovery of energy as described in Subsection (12)(a)(v)(F), that:

(I) is fueled by natural gas, landfill gas, or both;

(II) consists of a facility for the production, transmission, distribution, and sale of supplemental heat and steam to meet all or a portion of the heat and steam requirements of a military installation of the United States; and

(III) consists of a facility for the generation, transmission, distribution, and sale of electric energy to a public utility, a municipality described in Subsection (12)(a)(v)(F)(II), or a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(b) “Solid waste management facility” does not mean a facility that:

(i) accepts and processes metal, as defined in Subsection 19-6-102(19)(b), by separating, shearing, sorting, shredding, compacting, baling, cutting, or sizing to produce a principle commodity grade product of prepared scrap metal for sale or use for remelting purposes provided that any byproduct or residual that would qualify as solid waste is managed at a solid waste management facility; or

(ii) accepts and processes paper, plastic, rubber, glass, or textiles that:

(A) have been source-separated or otherwise diverted from the solid waste stream before acceptance at the facility and that are not otherwise hazardous waste or subject to conditions of federal hazardous waste regulations; and

(B) are reused or recycled as a valuable commercial commodity by separating, shearing, sorting, shredding, compacting, baling, cutting, or sizing to produce a principle commodity grade product, provided that any byproduct or residual that would qualify as solid waste is managed at a solid waste management facility.

CHAPTER 282**H. B. 149**

Passed March 8, 2017

Approved March 23, 2017

Effective May 9, 2017

CHILD ABUSE OFFENDER REGISTRY

Chief Sponsor: Derrin R. Owens
Senate Sponsor: Ralph Okerlund

LONG TITLE**General Description:**

This bill creates the Child Abuse Offender Registry to be administered by the Department of Corrections.

Highlighted Provisions:

This bill:

- ▶ creates the Child Abuse Offender Registry;
- ▶ requires persons convicted of felony child abuse and human trafficking to register;
- ▶ specifies requirements for registration;
- ▶ sets penalties for failure to register; and
- ▶ places the registry within the Department of Corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53-3-806.5, as last amended by Laws of Utah 2012, Chapter 145

62A-7-104, as last amended by Laws of Utah 2015, Chapter 210

63G-2-302, as last amended by Laws of Utah 2016, Chapter 410

76-1-201, as last amended by Laws of Utah 2014, Chapter 105

76-1-202, as last amended by Laws of Utah 2014, Chapter 105

76-3-402, as last amended by Laws of Utah 2012, Chapter 145

77-40-105, as last amended by Laws of Utah 2016, Chapter 185

ENACTS:

77-43-101, Utah Code Annotated 1953

77-43-102, Utah Code Annotated 1953

77-43-103, Utah Code Annotated 1953

77-43-104, Utah Code Annotated 1953

77-43-105, Utah Code Annotated 1953

77-43-106, Utah Code Annotated 1953

77-43-107, Utah Code Annotated 1953

77-43-108, Utah Code Annotated 1953

77-43-109, Utah Code Annotated 1953

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

Section 1. Section 53-3-806.5 is amended to read:**53-3-806.5. Identification card required if offender does not have driver license.**

(1) (a) If a person is required to register as a sex offender in accordance with Title 77, Chapter 41,

Sex and Kidnap Offender Registry or as a child abuse offender in accordance with Title 77, Chapter 43, Child Abuse Registry, and the person does not hold a current driver license in compliance with Section 53-3-205, the person shall obtain an identification card.

(b) The person shall maintain a current identification card during any time the person is required to register as a sex or child abuse offender and the person does not hold a valid driver license.

(2) Failure to maintain a current identification card as required under Subsection (1) on and after April 30, 2007 is a class A misdemeanor for each month of violation of Subsection (1).

Section 2. Section 62A-7-104 is amended to read:**62A-7-104. Division responsibilities.**

(1) The division is responsible for all youth offenders committed to it by juvenile courts for secure confinement or supervision and treatment in the community.

(2) The division shall:

(a) establish and administer a continuum of community, secure, and nonsecure programs for all youth offenders committed to the division;

(b) establish and maintain all detention and secure facilities and set minimum standards for those facilities;

(c) establish and operate prevention and early intervention youth services programs for nonadjudicated youth placed with the division; and

(d) establish observation and assessment programs necessary to serve youth offenders committed by the juvenile court for short-term observation under Subsection 78A-6-117(2)(e), and whenever possible, conduct the programs in settings separate and distinct from secure facilities for youth offenders.

(3) The division shall place youth offenders committed to it in the most appropriate program for supervision and treatment.

(4) In any order committing a youth offender to the division, the juvenile court shall specify whether the youth offender is being committed for secure confinement or placement in a community-based program. The division shall place the youth offender in the most appropriate program within the category specified by the court.

(5) The division shall employ staff necessary to:

(a) supervise and control youth offenders in secure facilities or in the community;

(b) supervise and coordinate treatment of youth offenders committed to the division for placement in community-based programs; and

(c) control and supervise nonadjudicated youth placed with the division for temporary services in receiving centers, youth services, and other programs established by the division.

(6) Youth in the custody or temporary custody of the division are controlled or detained in a manner

consistent with public safety and rules promulgated by the division. In the event of an unauthorized leave from a secure facility, detention center, community-based program, receiving center, home, or any other designated placement, division employees have the authority and duty to locate and apprehend the youth, or to initiate action with local law enforcement agencies for assistance.

(7) The division shall establish and operate compensatory-service work programs for youth offenders committed to the division by the juvenile court. The compensatory-service work program shall:

(a) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

(b) provide educational and prevocational programs in cooperation with the State Board of Education for youth offenders placed in the program; and

(c) provide counseling to youth offenders.

(8) The division shall establish minimum standards for the operation of all private residential and nonresidential rehabilitation facilities which provide services to juveniles who have committed a delinquent act, in this state or in any other state.

(9) In accordance with policies established by the board, the division shall provide regular training for staff of secure facilities, detention staff, case management staff, and staff of the community-based programs.

(10) (a) The division is authorized to employ special function officers, as defined in Section 53-13-105, to locate and apprehend minors who have absconded from division custody, transport minors taken into custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the division.

(b) Special function officers may be employed through contract with the Department of Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

(11) The division shall designate employees to obtain the saliva DNA specimens required under Section 53-10-403. The division shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(12) The division shall register with the Department of Corrections any person who:

(a) has been adjudicated delinquent based on an offense listed in Subsection 77-41-102(17)(a) or 77-43-102(2);

(b) has been committed to the division for secure confinement; and

(c) remains in the division's custody 30 days prior to the person's 21st birthday.

Section 3. Section 63G-2-302 is amended to read:

63G-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;

(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if, prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

(h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(j) that part of a voter registration record identifying a voter's:

- (i) driver license or identification card number;
- (ii) Social Security number, or last four digits of the Social Security number;
- (iii) email address; or
- (iv) date of birth;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);

- (l) a record that:
 - (i) contains information about an individual;
 - (ii) is voluntarily provided by the individual; and
 - (iii) goes into an electronic database that:
 - (A) is designated by and administered under the authority of the Chief Information Officer; and
 - (B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(m) information provided to the Commissioner of Insurance under:

- (i) Subsection 31A-23a-115(2)(a);
- (ii) Subsection 31A-23a-302(3); or
- (iii) Subsection 31A-26-210(3);

(n) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

- (o) information provided by an offender that is:
 - (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry or Title 77, Chapter 43, Child Abuse Registry; and
 - (ii) not required to be made available to the public under Subsection 77-41-110(4) or 77-43-108(4);

(p) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(q) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;

(r) an email address provided by a military or overseas voter under Section 20A-16-501;

(s) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;

(t) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, except for:

- (i) the commission's summary data report that is required in Section 11-49-202; and
- (ii) any other document that is classified as public in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission;
- (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was notified of an incident or threat; and

(v) a criminal background check or credit history report conducted in accordance with Section 63A-3-201.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

- (i) records described in Subsection 63G-2-301(2);
- (ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
- (iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:

- (i) depict the commission of an alleged crime;
- (ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d); or

(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 4. Section 76-1-201 is amended to read:

76-1-201. Jurisdiction of offenses.

(1) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state;

(c) the conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or

(d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is any element of the offense, or the result which is an element, occurs within this state.

(3) In homicide offenses, the "result" is either the physical contact which causes death or the death itself.

(a) If the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state.

(b) If jurisdiction is based on this presumption, this state retains jurisdiction unless the defendant proves by clear and convincing evidence that:

(i) the result of the homicide did not occur in this state; and

(ii) the defendant did not engage in any conduct in this state which is any element of the offense.

(4) (a) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.

(b) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender registration or Subsection 77-43-105(3) for child abuse offender registration, the offense is considered to be committed:

(i) at the most recent registered primary residence of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(5) (a) If no jurisdictional issue is raised, the pleadings are sufficient to establish jurisdiction.

(b) The defendant may challenge jurisdiction by filing a motion before trial stating which facts exist that deprive the state of jurisdiction.

(c) The burden is upon the state to initially establish jurisdiction over the offense by a preponderance of the evidence by showing under the provisions of Subsections (1) through (4) that the offense was committed either wholly or partly within the borders of the state.

(d) If after the prosecution has met its burden of proof under Subsection (5)(c) the defendant claims that the state is deprived of jurisdiction or may not exercise jurisdiction, the burden is upon the defendant to prove by a preponderance of the evidence:

(i) any facts claimed; and

(ii) why those facts deprive the state of jurisdiction.

(6) Facts that deprive the state of jurisdiction or prohibit the state from exercising jurisdiction include the fact that the:

(a) defendant is serving in a position that is entitled to diplomatic immunity from prosecution and that the defendant's country has not waived that diplomatic immunity;

(b) defendant is a member of the armed forces of another country and that the crime that he is alleged to have committed is one that due to an international agreement, such as a status of forces agreement between his country and the United States, cedes the exercise of jurisdiction over him for that offense to his country;

(c) defendant is an enrolled member of an Indian tribe, as defined in Section 9-9-101, and that the Indian tribe has a legal status with the United States or the state that vests jurisdiction in either tribal or federal courts for certain offenses committed within the exterior boundaries of a tribal reservation, and that the facts establish that the crime is one that vests jurisdiction in tribal or federal court; or

(d) offense occurred on land that is exclusively within federal jurisdiction.

(7) (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud Act, involves the use of personal identifying information which is uniquely personal to the consumer or business victim of that identity fraud and which information is considered to be in lawful possession of the consumer or business victim wherever the consumer or business victim currently resides or is found.

(b) For purposes of Subsection (1)(a), an offense which is based on a violation of Chapter 6, Part 11, Identity Fraud Act, is committed partly within this state, regardless of the location of the offender at the time of the offense, if the victim of the identity fraud resides or is found in this state.

(8) The judge shall determine jurisdiction.

Section 5. Section 76-1-202 is amended to read:

76-1-202. Venue of actions.

(1) Criminal actions shall be tried in the county, district, or precinct where the offense is alleged to have been committed. In determining the proper place of trial, the following provisions shall apply:

(a) If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense is consummated.

(b) When conduct constituting elements of an offense or results that constitute elements, whether the conduct or result constituting elements is in itself unlawful, shall occur in two or more counties, trial of the offense may be held in any of the counties concerned.

(c) If a person committing an offense upon the person of another is located in one county and his victim is located in another county at the time of the commission of the offense, trial may be held in either county.

(d) If a cause of death is inflicted in one county and death ensues in another county, the offender may be tried in either county.

(e) A person who commits an inchoate offense may be tried in any county in which any act that is an element of the offense, including the agreement in conspiracy, is committed.

(f) Where a person in one county solicits, aids, abets, agrees, or attempts to aid another in the planning or commission of an offense in another

county, he may be tried for the offense in either county.

(g) When an offense is committed within this state and it cannot be readily determined in which county or district the offense occurred, the following provisions shall be applicable:

(i) When an offense is committed upon any railroad car, vehicle, watercraft, or aircraft passing within this state, the offender may be tried in any county through which such railroad car, vehicle, watercraft, or aircraft has passed.

(ii) When an offense is committed on any body of water bordering on or within this state, the offender may be tried in any county adjacent to such body of water. The words "body of water" shall include but not be limited to any stream, river, lake, or reservoir, whether natural or man-made.

(iii) A person who commits theft may be tried in any county in which he exerts control over the property affected.

(iv) If an offense is committed on or near the boundary of two or more counties, trial of the offense may be held in any of such counties.

(v) For any other offense, trial may be held in the county in which the defendant resides, or, if he has no fixed residence, in the county in which he is apprehended or to which he is extradited.

(h) A person who commits an offense based on Chapter 6, Part 11, Identity Fraud Act, may be tried in the county:

(i) where the victim's personal identifying information was obtained;

(ii) where the defendant used or attempted to use the personally identifying information;

(iii) where the victim of the identity fraud resides or is found; or

(iv) if multiple offenses of identity fraud occur in multiple jurisdictions, in any county where the victim's identity was used or obtained, or where the victim resides or is found.

(i) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender registration or Subsection 77-43-105(3) for child abuse offender registration, the offense is considered to be committed:

(i) at the most recent registered primary residence of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(2) All objections of improper place of trial are waived by a defendant unless made before trial.

Section 6. Section 76-3-402 is amended to read:

76-3-402. Conviction of lower degree of offense -- Procedure and limitations.

(1) If at the time of sentencing the court, having regard to the nature and circumstances of the

offense of which the defendant was found guilty and to the history and character of the defendant, and after having given any victims present at the sentencing and the prosecuting attorney an opportunity to be heard, concludes it would be unduly harsh to record the conviction as being for that degree of offense established by statute, the court may enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.

(2) If the court suspends the execution of the sentence and places the defendant on probation, whether or not the defendant is committed to jail as a condition of probation, the court may enter a judgment of conviction for the next lower degree of offense:

(a) after the defendant has been successfully discharged from probation;

(b) upon motion and notice to the prosecuting attorney;

(c) after reasonable effort has been made by the prosecuting attorney to provide notice to any victims;

(d) after a hearing if requested by either party under Subsection (2)(c); and

(e) if the court finds entering a judgment of conviction for the next lower degree of offense is in the interest of justice.

(3) (a) An offense may be reduced only one degree under this section, whether the reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in writing or on the court record that the offense may be reduced two degrees.

(b) In no case may an offense be reduced under this section by more than two degrees.

(4) This section does not preclude any person from obtaining or being granted an expungement of his record as provided by law.

(5) The court may not enter judgment for a conviction for a lower degree of offense if:

(a) the reduction is specifically precluded by law; or

(b) if any unpaid balance remains on court ordered restitution for the offense for which the reduction is sought.

(6) When the court enters judgment for a lower degree of offense under this section, the actual title of the offense for which the reduction is made may not be altered.

(7) (a) A person may not obtain a reduction under this section of a conviction that requires the person to register as a sex offender until the registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

(b) A person required to register as a sex offender for the person's lifetime under Subsection 77-41-105(3)(c) may not be granted a reduction of

the conviction for the offense or offenses that require the person to register as a sex offender.

(8) (a) A person may not obtain a reduction under this section of a conviction that requires the person to register as a child abuse offender until the registration requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.

(b) A person required to register as a child abuse offender for the person's lifetime under Subsection 77-43-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the person to register as a child abuse offender.

~~[(8)]~~ (9) As used in this section, "next lower degree of offense" includes an offense regarding which:

(a) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and

(b) the court removes the statutory enhancement pursuant to this section.

Section 7. Section 77-40-105 is amended to read:

77-40-105. Eligibility for expungement of conviction -- Requirements.

(1) A person convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

(a) the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) felony automobile homicide;

(v) a felony violation of Subsection 41-6a-501(2); ~~[or]~~

(vi) a registerable sex offense as defined in Subsection 77-41-102(17); or

(vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

(b) a criminal proceeding is pending against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) all fines and interest ordered by the court have been paid in full;

(b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons

and Parole pursuant to Section 77-27-6, has been paid in full; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, excluding infractions and any traffic offenses, each of which is contained in a separate criminal episode.

(5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

(6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection (4) if any non drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode.

(7) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

Section 8. Section 77-43-101 is enacted to read:

CHAPTER 43. CHILD ABUSE OFFENDER REGISTRY

77-43-101. Title.

(1) This chapter is known as the "Child Abuse Offender Registry."

(2) This chapter applies to all child abuse offenders in the custody of the Department of Corrections or on parole or probation on May 9, 2017, or who enter this state on or after May 9, 2017.

Section 9. Section 77-43-102 is enacted to read:

77-43-102. Definitions.

As used in this chapter:

(1) "Business day" means a day on which state offices are open for regular business.

(2) "Child abuse offender" means any person who:

(a) has been convicted in this state of a felony violation of:

(i) Subsection 76-5-109(2)(a) or (b), child abuse;

(ii) Section 76-5-308.5, human trafficking of a child; or

(iii) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (2)(a)(i) or (ii);

(b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court, that is substantially equivalent to the offenses listed in Subsection (2)(a) and who is:

(i) a Utah resident; or

(ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;

(c) (i) is required to register as a child abuse offender in any other jurisdiction of original conviction, who is required to register as a child abuse offender by any state, federal, or military court, or who would be required to register as a child abuse offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;

(d) is a nonresident regularly employed or working in this state, or who is a student in this state, and was convicted of one or more offenses listed in Subsection (2)(a), or any substantially equivalent offense in another jurisdiction, or who, as a result of the conviction, is required to register in the person's state of residence;

(e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (2)(a); or

(f) is adjudicated delinquent based on one or more offenses listed in Subsection (2)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days before the person's 21st birthday.

(3) "Correctional facility" means the same as that term is defined in Section 64-13-1.

(4) "Department" means the Department of Corrections.

(5) "Division" means the Division of Juvenile Justice Services.

(6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(7) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

(c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.

(8) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States Armed Forces, Canada, the United Kingdom, Australia, or New Zealand.

(9) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(10) "Offender" means a child abuse offender as defined in Subsection (2).

(11) "Online identifier" or "Internet identifier":

(a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and

(b) does not include date of birth, Social Security number, PIN number, or Internet passwords.

(12) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.

(13) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

(14) "Registration website" means the Child Abuse Offender Notification and Registration website described in Section 77-43-108 and the information on the website.

(15) "Secondary residence" means any real property that the offender owns or has a financial interest in, or any location where, in any 12-month period, the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.

(16) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(17) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.

Section 10. Section 77-43-103 is enacted to read:

77-43-103. Department duties.

(1) The department shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders;

(b) make information listed in Subsection 77-43-108(4) available to the public; and

(c) share information provided by an offender under this chapter that may not be made available to the public under Subsection 77-43-108(4), but only:

(i) for the purposes under this chapter; or

(ii) in accordance with Section 63G-2-206.

(2) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection 77-43-102(2)(a), within three business days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection 77-43-102(2)(a), within five business days.

(3) Upon convicting and sentencing a person of any of the offenses listed in Subsection 77-43-102(2)(a), the convicting court shall within three business days forward a signed copy of the judgment and sentence to the Child Abuse Offender Registry office within the department.

(4) The department shall:

(a) provide the following additional information when available:

(i) the crimes the offender has been convicted of or adjudicated delinquent for; and

(ii) any other relevant identifying information as determined by the department;

(b) maintain the Child Abuse Offender Notification and Registration website; and

(c) ensure that the registration information collected regarding an offender's employment at an educational institution is entered into the appropriate state records or data system.

Section 11. Section 77-43-104 is enacted to read:

77-43-104. Registration of offenders -- Department and agency requirements.

(1) An offender in the custody of the department shall be registered by agents of the department upon:

(a) placement on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(2) An offender who is not in the custody of the department and who is confined in a correctional facility not operated by or under contract to the department shall be registered with the department by the sheriff of the county in which the offender is confined, upon:

(a) commitment to the correctional facility; and

(b) release from confinement.

(3) An offender in the custody of the division shall be registered with the department by the division prior to release from custody.

(4) An offender committed to a state mental hospital shall be registered with the department by the hospital upon admission and upon discharge.

(5) (a) (i) A municipal or county law enforcement agency shall register an offender who resides within the agency's jurisdiction and is not under the supervision of the Division of Adult Probation and Parole.

(ii) In order to conduct offender registration under this chapter, the agency shall ensure the agency staff responsible for registration:

(A) has received initial training by the department and has been certified as qualified and authorized to conduct registrations and enter offender registration information into the registry database; and

(B) certify annually with the department.

(b) (i) When the department receives offender registration information regarding a change of an offender's primary residence location, the department shall within five days electronically notify the law enforcement agencies that have jurisdiction over the area where:

(A) the residence that the offender is leaving is located; and

(B) the residence to which the offender is moving is located.

(ii) The department shall provide notification under this Subsection (5)(b) if the offender's change of address is between law enforcement agency jurisdictions, or is within one jurisdiction.

(c) The department shall make available to offenders required to register under this chapter the name of the agency, whether it is a local law enforcement agency or the department, that the offender should contact to register, the location for registering, and the requirements of registration.

(6) An agency in the state that registers an offender on probation, an offender who has been released from confinement to parole status or termination, or an offender whose sentence has expired shall inform the offender of the duty to comply with:

(a) the continuing registration requirements of this chapter during the period of registration required in Subsection 77-43-105(3), including:

(i) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines;

(ii) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees; and

(iii) notification to the out-of-state agency where the offender is living, whether or not the offender is a resident of that state; and

(b) the identification card requirement under Section 53-3-806.5.

(7) The department may make administrative rules necessary to implement this chapter, including:

(a) training requirements for agency staff responsible for conducting offender registration;

(b) the method for dissemination of the information; and

(c) instructions to the public regarding the use of the information.

(8) Any information regarding the identity or location of a victim shall be redacted by the department from information provided under Subsections 77-43-103(4) and 77-43-105(8).

(9) This chapter does not create or impose any duty on any person to request or obtain information regarding any offender from the department.

Section 12. Section 77-43-105 is enacted to read:

77-43-105. Registration of offenders -- Offender responsibilities.

(1) An offender convicted by any other jurisdiction is required to register under Subsection (3) and Subsection 77-43-102(2). The offender shall register with the department within 10 days of entering the state, regardless of the offender's length of stay.

(2) (a) An offender required to register under this chapter who is under supervision by the department shall register in person with Division of Adult Probation and Parole.

(b) An offender required to register under this chapter who is no longer under supervision by the department shall register in person with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(3) (a) Except as provided in Subsections (3)(b), (c), and (4), an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register every year during the month of the offender's date of birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (6).

(b) Except as provided in Subsections (4) and (5), an offender who is convicted in another jurisdiction of an offense listed in Subsection 77-43-102(2)(a), a substantially similar offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted if that jurisdiction's registration period or registration frequency requirement for the offense that the offender was convicted of is greater than the 10 years from completion of the sentence registration period that is required under Subsection (2)(a), or is more frequent than every six months; or

(ii) register in accordance with the requirements of Subsection (2)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of is less than the registration period required under Subsection (2)(a), or is less frequent than every six months.

(c) (i) An offender convicted as an adult of any first degree felony offense listed in Subsection 77-43-102(2)(a) shall, for the offender's lifetime, register every year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (6).

(ii) This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime.

(d) For the purpose of establishing venue for a violation of this Subsection (3), the violation is considered to be committed:

(i) at the most recent registered primary residence of the offender or at the location of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(4) Notwithstanding Subsection (3), an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(5) In the case of an offender adjudicated in another jurisdiction as a juvenile and required to register under this chapter, the offender shall register in the time period and in the frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction of the offender's adjudication does not publish the offender's information on a public website, the department shall maintain, but not publish the offender's information on the Child Abuse Offender Registration website.

(6) An offender shall provide the department or the registering entity with the following information:

(a) all names and aliases by which the offender is or has been known;

(b) the addresses of the offender's primary and secondary residences;

(c) a physical description, including the offender's date of birth, height, weight, eye and hair color;

(d) the make, model, color, year, plate number, and vehicle identification number of any vehicle or vehicles the offender owns or regularly drives;

(e) a current photograph of the offender;

(f) a set of fingerprints, if one has not already been provided;

(g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;

(h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;

(i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;

(j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;

(k) a copy of the offender's passport, if a passport has been issued to the offender;

(l) if the offender is an alien, all documents establishing the offender's immigration status;

(m) all professional licenses that authorize the offender to engage in an occupation or carry out a

trade or business, including any identifiers, such as numbers;

(n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and any change of enrollment or employment status of the offender at any educational institution;

(o) the name, the telephone number, and the address of any place where the offender is employed or will be employed;

(p) the name, the telephone number, and the address of any place where the offender works as a volunteer or will work as a volunteer; and

(q) the offender's social security number.

(7) Notwithstanding Section 42-1-1, an offender:

(a) may not change the offender's name:

(i) while under the jurisdiction of the department; and

(ii) until the registration requirements of this statute have expired; and

(b) may not change the offender's name at any time, if registration is for life under Subsection (3)(c).

(8) Notwithstanding Subsections (6)(i) and (j) and 77-43-103(1)(c), an offender is not required to provide the department with:

(a) the offender's online identifier and password used exclusively for the offender's employment on equipment provided by an employer and used to access the employer's private network; or

(b) online identifiers for the offender's financial accounts, including any bank, retirement, or investment accounts.

Section 13. Section 77-43-106 is enacted to read:

77-43-106. Penalties.

(1) An offender who knowingly fails to register under this chapter or provides false or incomplete information is guilty of a third degree felony and shall be sentenced to serve a term of incarceration for not less than 90 days and also at least one year of probation.

(2) Neither the court nor the Board of Pardons and Parole may release a person who violates this chapter from serving the term required under Subsection (1). This Subsection (2) supersedes any other provision of the law contrary to this chapter.

(3) The offender shall register for an additional year for every year in which the offender does not comply with the registration requirements of this chapter.

Section 14. Section 77-43-107 is enacted to read:

77-43-107. Classification of information.

Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act,

information under Subsection 77-43-103(4) that is collected and released under Subsection 77-43-108(4) is public information, unless otherwise restricted under Subsection 77-43-103(1).

Section 15. Section 77-43-108 is enacted to read:

77-43-108. Child Abuse Offender Registry -- Department to maintain.

(1) The department shall maintain a Child Abuse Offender Notification and Registration website on the Internet, which shall contain a disclaimer informing the public:

(a) the information contained on the site is obtained from offenders and the department does not guarantee its accuracy or completeness;

(b) members of the public are not allowed to use the information to harass or threaten offenders or members of their families; and

(c) harassment, stalking, or threats against offenders or their families are prohibited and doing so may violate Utah criminal laws.

(2) The Child Abuse Offender Notification and Registration website shall be:

(a) indexed by both the surname of the offender and by postal codes; and

(b) linked with the Sex and Kidnap Offender Registry as created in Title 77, Chapter 41.

(3) The department shall construct the Child Abuse Notification and Registration website so that users, before accessing registry information, must indicate that they have read the disclaimer, understand it, and agree to comply with its terms.

(4) Except as provided in Subsection (6), the Child Abuse Offender Notification and Registration website shall include the following registry information:

(a) all names and aliases by which the offender is or has been known, but not including any online or Internet identifiers;

(b) the addresses of the offender's primary, secondary, and temporary residences;

(c) a physical description, including the offender's date of birth, height, weight, and eye and hair color;

(d) the make, model, color, year, and plate number of any vehicle or vehicles the offender owns or regularly drives;

(e) a current photograph of the offender;

(f) a list of all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business;

(g) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student;

(h) a list of places where the offender works as a volunteer; and

(i) the crimes listed in Subsection 77-43-102(2) that the offender has been convicted of or for which

the offender has been adjudicated delinquent in juvenile court.

(5) The department, its personnel, and any individual or entity acting at the request or upon the direction of the department are immune from civil liability for damages for good faith compliance with this chapter and will be presumed to have acted in good faith by reporting information.

(6) The department shall redact information that, if disclosed, could reasonably identify a victim.

Section 16. Section 77-43-109 is enacted to read:

77-43-109. Fees.

(1) Each offender required to register under Section 77-43-105 shall, in the month of the offender's birth:

(a) pay to the department an annual fee of \$100 each year the offender is subject to the registration requirements of this chapter; and

(b) pay to the registering agency, if it is an agency other than the Department of Corrections, an annual fee of not more than \$25, which may be assessed by that agency for providing registration.

(2) Notwithstanding Subsection (1), an offender who is confined in a secure facility or in a state mental hospital is not required to pay the annual fee.

(3) The department shall deposit fees collected in accordance with this chapter in the General Fund as a dedicated credit, to be used by the department for maintaining the offender registry under this chapter and monitoring offender registration compliance, including the costs of:

(a) data entry;

(b) processing registration packets;

(c) updating registry information; and

(d) ensuring offender compliance with registration requirements under this chapter.

CHAPTER 283**H. B. 155**

Passed March 8, 2017

Approved March 23, 2017

Effective December 30, 2018

**DRIVING UNDER THE INFLUENCE
AND PUBLIC SAFETY REVISIONS**

Chief Sponsor: Norman K Thurston

Senate Sponsor: J. Stuart Adams

LONG TITLE**General Description:**

This bill amends provisions related to driving under the influence.

Highlighted Provisions:

This bill:

- ▶ reduces the blood alcohol content limit for driving under the influence;
- ▶ reduces the blood alcohol content limit in relation to certain criminal offenses;
- ▶ defines “novice learner driver”;
- ▶ defines “novice licensed driver”;
- ▶ modifies the definition of “alcohol restricted driver” to include a novice learner driver and a novice licensed driver; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

34A-3-112, as renumbered and amended by Laws of Utah 1997, Chapter 375

41-6a-501, as last amended by Laws of Utah 2010, Chapter 283

41-6a-502, as last amended by Laws of Utah 2010, Chapter 109

41-6a-529, as last amended by Laws of Utah 2008, Chapter 226

76-5-207, as last amended by Laws of Utah 2009, Chapter 214

ENACTS:

41-6a-515.5, Utah Code Annotated 1953

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

Section 1. Section 34A-3-112 is amended to read:**34A-3-112. Employee’s willful misconduct.**

(1) Notwithstanding anything contained in this chapter, an employee or dependent of any employee is not entitled to receive compensation for disability or death from an occupational disease when the disability or death, wholly or in part, was caused by the purposeful self-exposure of the employee.

(2) Except in cases resulting in death:

(a) Compensation provided for in this chapter shall be reduced 15% when the occupational disease is caused by the willful failure of the employee:

(i) to use safety devices when provided by the employer; or

(ii) to obey any order or reasonable rule adopted by the employer for the safety of the employee.

(b) Except when the employer permitted, encouraged, or had actual knowledge of the conduct described in Subsections (2)(b)(i) through (iii), disability compensation may not be awarded under this chapter to an employee when the major contributing cause of the employee’s disease is the employee’s:

(i) use of illegal substances;

(ii) intentional abuse of drugs in excess of prescribed therapeutic amounts; or

(iii) intoxication from alcohol with a blood or breath alcohol concentration of [~~.08~~] .05 grams or greater as shown by a chemical test.

Section 2. Section 41-6a-501 is amended to read:**41-6a-501. Definitions.**

(1) As used in this part:

(a) “Assessment” means an in-depth clinical interview with a licensed mental health therapist:

(i) used to determine if a person is in need of:

(A) substance abuse treatment that is obtained at a substance abuse program;

(B) an educational series; or

(C) a combination of Subsections (1)(a)(i)(A) and (B); and

(ii) that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

(b) “Driving under the influence court” means a court that is approved as a driving under the influence court by the Utah Judicial Council according to standards established by the Judicial Council.

(c) “Drug” or “drugs” means:

(i) a controlled substance as defined in Section 58-37-2;

(ii) a drug as defined in Section 58-17b-102; or

(iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.

(d) “Educational series” means an educational series obtained at a substance abuse program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

(e) “Negligence” means simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

(f) “Novice learner driver” means an individual who:

- (i) has applied for a Utah driver license;
- (ii) has not previously held a driver license in this state or another state; and
- (iii) has not completed the requirements for issuance of a Utah driver license.
- (g) “Novice licensed driver” means an individual who:
- (i) has completed the requirements for issuance of a Utah driver license;
- (ii) was issued a Utah driver license within the last two years; and
- (iii) has not previously held a driver license in this state or another state.
- ~~(f)~~ (h) “Screening” means a preliminary appraisal of a person:
- (i) used to determine if the person is in need of:
- (A) an assessment; or
- (B) an educational series; and
- (ii) that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.
- ~~(g)~~ (i) “Serious bodily injury” means bodily injury that creates or causes:
- (i) serious permanent disfigurement;
- (ii) protracted loss or impairment of the function of any bodily member or organ; or
- (iii) a substantial risk of death.
- ~~(h)~~ (j) “Substance abuse treatment” means treatment obtained at a substance abuse program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.
- ~~(i)~~ (k) “Substance abuse treatment program” means a state licensed substance abuse program.
- ~~(j)~~ (l) (i) “Vehicle” or “motor vehicle” means a vehicle or motor vehicle as defined in Section 41-6a-102; and
- (ii) “Vehicle” or “motor vehicle” includes:
- (A) an off-highway vehicle as defined under Section 41-22-2; and
- (B) a motorboat as defined in Section 73-18-2.
- (2) As used in Section 41-6a-503:
- (a) “Conviction” means any conviction arising from a separate episode of driving for a violation of:
- (i) driving under the influence under Section 41-6a-502;
- (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a combination of both-related reckless driving under:
- (I) Section 41-6a-512; and

- (II) Section 41-6a-528; or
- (B) for an offense committed on or after July 1, 2008, impaired driving under Section 41-6a-502.5;
- (iii) driving with any measurable controlled substance that is taken illegally in the body under Section 41-6a-517;
- (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination of both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in compliance with Section 41-6a-510;
- (v) automobile homicide under Section 76-5-207;
- (vi) Subsection 58-37-8(2)(g);
- (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of conviction is reduced under Section 76-3-402; or
- (viii) statutes or ordinances previously in effect in this state or in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of both-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815.
- (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i) through (viii) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of:
- (i) enhancement of penalties under:
- (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and
- (B) automobile homicide under Section 76-5-207; and
- (ii) expungement under Title 77, Chapter 40, Utah Expungement Act.

Section 3. Section 41-6a-502 is amended to read:

41-6a-502. Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration -- Reporting of convictions.

- (1) A person may not operate or be in actual physical control of a vehicle within this state if the person:
- (a) has sufficient alcohol in the person’s body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of ~~[.08]~~ .05 grams or greater at the time of the test;
- (b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or
- (c) has a blood or breath alcohol concentration of ~~[.08]~~ .05 grams or greater at the time of operation or actual physical control.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) A violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6a-510.

(4) Beginning on July 1, 2012, a court shall, monthly, send to the Division of Occupational and Professional Licensing, created in Section 58-1-103, a report containing the name, case number, and, if known, the date of birth of each person convicted during the preceding month of a violation of this section for whom there is evidence that the person was driving under the influence, in whole or in part, of a prescribed controlled substance.

Section 4. Section 41-6a-515.5 is enacted to read:

41-6a-515.5. Field sobriety test training.

Each law enforcement agency shall ensure that each peace officer receives training on the current standard field sobriety testing guidelines established by the National Highway Traffic Safety Administration.

Section 5. Section 41-6a-529 is amended to read:

41-6a-529. Definitions -- Alcohol restricted drivers.

(1) As used in this section and Section 41-6a-530, "alcohol restricted driver" means a person who:

(a) within the last two years:

(i) has been convicted of:

(A) a misdemeanor violation of Section 41-6a-502;

(B) alcohol, any drug, or a combination of both-related reckless driving under Section 41-6a-512;

(C) impaired driving under Section 41-6a-502.5;

(D) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination of both-related reckless driving, or impaired driving adopted in compliance with Section 41-6a-510;

(E) a violation described in Subsections (1)(a)(i)(A) through (D), which judgment of conviction is reduced under Section 76-3-402; or

(F) statutes or ordinances previously in effect in this state or in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of Section 41-6a-502, alcohol, any drug, or a combination of both-related reckless driving, or impaired driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815; or

(ii) has had the person's driving privilege suspended under Section 53-3-223 for an

alcohol-related offense based on an arrest which occurred on or after July 1, 2005;

(b) within the last three years has been convicted of a violation of this section or Section 41-6a-518.2;

(c) within the last five years:

(i) has had the person's driving privilege revoked for refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred on or after July 1, 2005; or

(ii) has been convicted of a class A misdemeanor violation of Section 41-6a-502 committed on or after July 1, 2008;

(d) within the last 10 years:

(i) has been convicted of an offense described in Subsection (1)(a)(i) which offense was committed within 10 years of the commission of a prior offense described in Subsection (1)(a)(i) for which the person was convicted; or

(ii) has had the person's driving privilege revoked for refusal to submit to a chemical test and the refusal is within 10 years after:

(A) a prior refusal to submit to a chemical test under Section 41-6a-520; or

(B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not based on the same arrest as the refusal;

(e) at any time has been convicted of:

(i) automobile homicide under Section 76-5-207 for an offense that occurred on or after July 1, 2005; or

(ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July 1, 2005; [øø]

(f) at the time of operation of a vehicle is under 21 years of age[-]; or

(g) is a novice learner driver or a novice licensed driver.

(2) For purposes of this section and Section 41-6a-530, a plea of guilty or no contest to a violation described in Subsection (1)(a)(i) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Section 6. Section 76-5-207 is amended to read:

76-5-207. Automobile homicide.

(1) As used in this section:

(a) "Drug" or "drugs" means:

(i) a controlled substance as defined in Section 58-37-2;

(ii) a drug as defined in Section 58-17b-102; or

(iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.

(b) "Motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

(2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of ~~[-08]~~ .05 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of ~~[-08]~~ .05 grams or greater at the time of operation.

(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is subsequent to a conviction as defined in Subsection 41-6a-501(2).

(c) As used in this Subsection (2), "negligent" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

(3) (a) Criminal homicide is automobile homicide, a second degree felony, if the person operates a motor vehicle in a criminally negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of ~~[-08]~~ .05 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of ~~[-08]~~ .05 grams or greater at the time of operation.

(b) As used in this Subsection (3), "criminally negligent" means criminal negligence as defined by Subsection 76-2-103(4).

(4) The standards for chemical breath analysis as provided by Section 41-6a-515 and the provisions for the admissibility of chemical test results as provided by Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.

(5) Calculations of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(1).

(6) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

(7) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution.

(8) A person is guilty of a separate offense for each victim suffering bodily injury or serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a result of the person's violation of this section whether or not the injuries arise from the same episode of driving.

Section 7. Effective date.

This bill takes effect on December 30, 2018.

CHAPTER 284**H. B. 157**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

HOMEOWNERS ASSOCIATION REVISIONS

Chief Sponsor: John Knotwell
Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends provisions related to condominium and community associations.

Highlighted Provisions:

This bill:

- ▶ provides that a condominium or community association shall comply with certain requirements before bringing a legal action against a declarant, a management committee or board of directors, or an employee, an independent contractor, or an agent of the declarant or the management committee or board of directors, related to a period of declarant control or period of administrative control; and
- ▶ provides that certain provisions regarding open community association board meetings apply during the period of administrative control.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

57-8a-226, as enacted by Laws of Utah 2015, Chapter 387

ENACTS:

57-8-58, Utah Code Annotated 1953

57-8a-228, Utah Code Annotated 1953

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

Section 1. Section 57-8-58 is enacted to read:**57-8-58. Liability of declarant or management committee -- Period of declarant control.**

(1) An association may not, after the period of declarant control, bring a legal action against a declarant, a management committee, or an employee, an independent contractor, or an agent of the declarant or the management committee related to the period of declarant control unless:

(a) the legal action is approved in advance at a meeting where owners of at least 51% in aggregate in interest of the undivided ownership of the common areas and facilities are:

(i) present; or

(ii) represented by a proxy specifically assigned for the purpose of voting to approve or deny the legal action at the meeting;

(b) the legal action is approved by vote in person or by proxy of owners of the lesser of:

(i) more than 75% in aggregate in interest of the total aggregate interest of the undivided ownership of the common areas and facilities represented by those owners present at the meeting or represented by a proxy as described in Subsection (1)(a); or

(ii) more than 51% in aggregate in interest of the undivided ownership of the common areas and facilities;

(c) the association provides each unit owner with the items described in Subsection (2);

(d) the association establishes the trust described in Subsection (3); and

(e) the association first:

(i) notifies the person subject to the proposed action of the action and the basis of the association's claim; and

(ii) gives the person subject to the proposed action a reasonable opportunity to resolve the dispute that is the basis of the action.

(2) Before unit owners in an association may vote to approve an action described in Subsection (1), the association shall provide each unit owner:

(a) a written notice that the association is contemplating legal action; and

(b) after the association consults with an attorney licensed to practice in the state, a written assessment of:

(i) the likelihood that the legal action will succeed;

(ii) the likely amount in controversy in the legal action;

(iii) the likely cost of resolving the legal action to the association's satisfaction; and

(iv) the likely effect the legal action will have on a unit owner's or prospective unit buyer's ability to obtain financing for a unit while the legal action is pending.

(3) Before the association commences a legal action described in Subsection (1), the association shall:

(a) allocate an amount equal to 10% of the cost estimated to resolve the legal action, not including attorney fees; and

(b) place the amount described in Subsection (3)(a) in a trust that the association may only use to pay the costs to resolve the legal action.

(4) This section does not apply to an association that brings a legal action that has an amount in controversy of less than \$75,000.

Section 2. Section 57-8a-226 is amended to read:**57-8a-226. Board meetings -- Open meetings.**

(1) (a) At least 48 hours before a meeting, the association shall give written notice of the meeting

via email to each lot owner who requests notice of a meeting, unless:

(i) notice of the meeting is included in a meeting schedule that was previously provided to the lot owner; or

(ii) (A) the meeting is to address an emergency; and

(B) each board member receives notice of the meeting less than 48 hours before the meeting.

(b) A notice described in Subsection (1)(a) shall:

(i) be delivered to the lot owner by email, to the email address that the lot owner provides to the board or the association;

(ii) state the time and date of the meeting;

(iii) state the location of the meeting; and

(iv) if a board member may participate by means of electronic communication, provide the information necessary to allow the lot owner to participate by the available means of electronic communication.

(2) (a) Except as provided in Subsection (2)(b), a meeting shall be open to each lot owner or the lot owner's representative if the representative is designated in writing.

(b) A board may close a meeting to:

(i) consult with an attorney for the purpose of obtaining legal advice;

(ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings;

(iii) discuss a personnel matter;

(iv) discuss a matter relating to contract negotiations, including review of a bid or proposal;

(v) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or

(vi) discuss a delinquent assessment or fine.

(3) (a) At each meeting, the board shall provide each lot owner a reasonable opportunity to offer comments.

(b) The board may limit the comments described in Subsection (3)(a) to one specific time period during the meeting.

(4) A board member may not avoid or obstruct the requirements of this section.

(5) Nothing in this section shall affect the validity or enforceability of an action of a board.

(6) (a) ~~The~~ Except as provided in Subsection (6)(b), the provisions of this section do not apply during the period of administrative control.

(b) During the period of administrative control, the association shall hold a meeting that complies with Subsections (1) through (3):

(i) at least once each year; and

(ii) each time the association:

(A) increases a fee; or

(B) raises an assessment

(7) The provisions of this section apply regardless of when the association's first governing document was recorded.

(8) (a) Subject to Subsection (8)(d), if an association fails to comply with a provision of Subsections (1) through (4) and fails to remedy the noncompliance during the 90-day period described in Subsection (8)(d), a lot owner may file an action in court for:

(i) injunctive relief requiring the association to comply with the provisions of Subsections (1) through (4);

(ii) \$500 or actual damages, whichever is greater; or

(iii) any other relief provided by law

(b) In an action described in Subsection (8)(a), the court may award costs and reasonable attorney fees to the prevailing party.

(c) Upon motion from the lot owner, notice to the association, and a hearing in which the court finds a likelihood that the association has failed to comply with a provision of Subsections (1) through (4), the court may order the association to immediately comply with the provisions of Subsections (1) through (4).

(d) At least 90 days before the day on which a lot owner files an action described in Subsection (8)(a), the lot owner shall deliver a written notice to the association that states:

(i) the lot owner's name, address, telephone number, and email address; (ii) each requirement of Subsections (1) through (4) with which the association has failed to comply;

(iii) a demand that the association comply with each requirement with which the association has failed to comply; and

(iv) a date by which the association shall remedy the association's noncompliance that is at least 90 days after the day on which the lot owner delivers the notice to the association.

Section 3. Section 57-8a-228 is enacted to read:

57-8a-228. Liability of declarant or board of directors -- Period of administrative control.

(1) An association may not, after the period of administrative control, bring a legal action against a declarant, a board of directors, or an employee, an independent contractor, or the agent of the declarant or the previous board of directors related to the period of administrative control unless:

(a) the legal action is approved in advance at a meeting where owners of at least 51% of the allocated voting interests of the lot owners in the association are:

(i) present; or

(ii) represented by a proxy specifically assigned for the purpose of voting to approve or deny the legal action at the meeting;

(b) the legal action is approved by vote in person or by proxy of owners of the lesser of:

(i) more than 75% of the allocated voting interests of the lot owners present at the meeting or represented by a proxy as described in Subsection (1)(a); or

(ii) more than 51% of the allocated voting interests of the lot owners in the association;

(c) the association provides each lot owner with the items described in Subsection (2);

(d) the association establishes the trust described in Subsection (3); and

(e) the association first:

(i) notifies the person subject to the proposed legal action of the legal action and basis of the association's claim; and

(ii) gives the person subject to the claim a reasonable opportunity to resolve the dispute that is the basis of the proposed legal action.

(2) Before lot owners in an association may vote to approve an action described in Subsection (1), the association shall provide each lot owner:

(a) a written notice that the association is contemplating legal action; and

(b) after the association consults with an attorney licensed to practice in the state, a written assessment of:

(i) the likelihood that the legal action will succeed;

(ii) the likely amount in controversy in the legal action;

(iii) the likely cost of resolving the legal action to the association's satisfaction; and

(iv) the likely effect the legal action will have on a lot owner's or prospective lot buyer's ability to obtain financing for a lot while the legal action is pending.

(3) Before the association commences a legal action described in Subsection (1), the association shall:

(a) allocate an amount equal to 10% of the cost estimated to resolve the legal action, not including attorney fees; and

(b) place the amount described in Subsection (3)(a) in a trust that the association may only use to pay the costs to resolve the legal action.

(4) This section does not apply to an association that brings a legal action that has an amount in controversy of less than \$75,000.

CHAPTER 285**H. B. 184**

Passed February 24, 2017

Approved March 23, 2017

Effective May 9, 2017

CONTRABAND DEVICE DESTRUCTION

Chief Sponsor: Justin L. Fawson
Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill defines a computer and provides for a computer to be considered contraband under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ defines a computer containing child pornography or being used for fraud or identification theft as being contraband; and
- ▶ provides for the extraction of personal information for the owner before destruction of the computer.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

24-1-102, as last amended by Laws of Utah 2014, Chapter 112

24-3-103, as enacted by Laws of Utah 2013, Chapter 394

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

Section 1. Section 24-1-102 is amended to read:**24-1-102. Definitions.**

As used in this title:

(1) "Account" means the Criminal Forfeiture Restricted Account created in Section 24-4-116.

(2) (a) "Acquittal" means a finding by a jury or a judge at trial that a claimant is not guilty.

(b) An acquittal does not include:

- (i) a verdict of guilty on a lesser or reduced charge;
- (ii) a plea of guilty to a lesser or reduced charge; or
- (iii) dismissal of a charge as a result of a negotiated plea agreement.

(3) "Agency" means any agency of municipal, county, or state government, including law enforcement agencies, law enforcement personnel, and multijurisdictional task forces.

(4) "Claimant" means any:

- (a) owner of property as defined in this section;
- (b) interest holder as defined in this section; or

(c) person or entity who asserts a claim to any property seized for forfeiture under this title.

(5) "Commission" means the Utah Commission on Criminal and Juvenile Justice.

(6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or personal property under this title.

(7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, and storage functions, and includes any device that is used for the storage of digital or electronic files, flash memory, software, or other electronic information.

(b) "Computer" does not mean a computer server of an Internet or an electronic service provider, or the service provider's employee, if used for the purpose of compliance with obligations pursuant to 18 U.S.C. 2258A.

[~~7~~] (8) "Constructive seizure" means a seizure of property where the property is left in the control of the owner and the seizing agency posts the property with a notice of intent to seek forfeiture.

[~~8~~] (9) (a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.

(b) All controlled substances that are possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, are contraband.

(c) A computer is contraband if it:

(i) contains or houses child pornography, or is used to create, download, transfer, upload to a storage account, or store any electronic or digital files containing child pornography; or

(ii) contains the personal identifying information of another person, as defined in Subsection 76-6-1102(1), whether that person is alive or deceased, and the personal identifying information has been used to create false or fraudulent identification documents or financial transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

[~~9~~] (10) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time the conduct subjecting the property to forfeiture occurred, and:

(i) did not have actual knowledge of the conduct subjecting the property to forfeiture; or

(ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable steps to prohibit the illegal use of the property; or

(b) acquired an ownership interest in the property and who had no knowledge that the illegal conduct subjecting the property to forfeiture had occurred or that the property had been seized for forfeiture, and:

(i) acquired the property in a bona fide transaction for value;

(ii) was a person, including a minor child, who acquired an interest in the property through probate or inheritance; or

(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

[40] (11) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value.

[41] (12) "Known address" means any address provided by a claimant to the agency at the time the property was seized, or the claimant's most recent address on record with a governmental entity if no address was provided at the time of the seizure.

[42] (13) "Legal costs" means the costs and expenses incurred by a party in a forfeiture action.

[43] (14) "Legislative body" means:

(a) (i) the Legislature, county commission, county council, city commission, city council, or town council that has fiscal oversight and budgetary approval authority over an agency; or

(ii) the agency's governing political subdivision; or

(b) the lead governmental entity of a multijurisdictional task force, as designated in a memorandum of understanding executed by the agencies participating in the task force.

[44] (15) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of persons who are employed by or acting under the authority of different governmental entities, including federal, state, county or municipal governments, or any combination of these agencies.

[45] (16) "Owner" means any person or entity, other than an interest holder, that possesses a bona fide legal or equitable interest in real or personal property.

[46] (17) (a) "Proceeds" means:

(i) property of any kind that is obtained directly or indirectly as a result of the commission of an offense that gives rise to forfeiture; or

(ii) any property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission regarding property under Subsection [46] (17)(a)(i).

(b) "Proceeds" includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose regarding property under Subsection [46] (17)(a)(i).

(c) "Proceeds" is not limited to the net gain or profit realized from the offense that gives rise to forfeiture.

[47] (18) "Program" means the State Asset Forfeiture Grant Program established in Section 24-4-117.

[48] (19) "Property" means all property, whether real or personal, tangible or intangible, but does not include contraband.

[49] (20) "Prosecuting attorney" means:

(a) the attorney general and any assistant attorney general;

(b) any district attorney or deputy district attorney;

(c) any county attorney or assistant county attorney; and

(d) any other attorney authorized to commence an action on behalf of the state under this title.

[20] (21) "Public interest use" means a:

(a) use by a government agency as determined by the legislative body of the agency's jurisdiction; or

(b) donation of the property to a nonprofit charity registered with the state.

[21] (22) "Real property" means land and includes any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

Section 2. Section 24-3-103 is amended to read:

24-3-103. Property no longer needed as evidence -- Disposition of property.

(1) When the prosecuting attorney determines that property no longer needs to be held as evidence, the prosecuting attorney may:

(a) petition the court to apply any property that is money towards restitution, fines, fees, or monetary judgments owed by the owner of the property;

(b) petition the court for an order transferring ownership of any weapons to the seizing agency for its use and disposal as the seizing agency determines, if the owner:

(i) is the person who committed the crime for which the weapon was seized; or

(ii) may not lawfully possess the weapon; or

(c) notify the agency that has possession of the property that the property may be:

(i) returned to the rightful owner, if the rightful owner may lawfully possess it; or

(ii) disposed of or destroyed, if the property is contraband.

(2) The agency shall exercise due diligence in attempting to notify the rightful owner of the property to advise the owner that the property is to be returned.

(3) For a computer determined to be contraband, a court may order the reasonable extraction and return of specifically described personal digital data to the rightful owner. The law enforcement agency shall determine a reasonable cost to provide the data, which shall be paid by the owner at the time of the request to extract the data.

~~[(3)]~~ (4) (a) Before the agency may release property to a person claiming ownership of the property, the person shall establish to the agency pursuant to Subsection ~~[(3)]~~ (4)(b) that the person:

- (i) is the rightful owner; and
- (ii) may lawfully possess the property.

(b) The person shall establish ownership under Subsection ~~[(3)]~~ (4)(a) by providing to the agency:

- (i) identifying proof or documentation of ownership of the property; or
- (ii) a notarized statement, if proof or documentation is not available.

~~[(4)]~~ (5) (a) When property is returned to the owner, a receipt listing in detail the property returned shall be signed by the owner.

(b) The receipt shall be retained by the agency and a copy shall be provided to the owner.

~~[(5)]~~ (6) If the agency is unable to locate the rightful owner of the property or if the rightful owner is not entitled to lawfully possess the property, the agency may:

- (a) apply the property to a public interest use;
- (b) sell the property at public auction and apply the proceeds of the sale to a public interest use; or
- (c) destroy the property if it is unfit for a public interest use or for sale.

~~[(6)]~~ (7) Before applying the property or the proceeds from the sale of the property to a public interest use, the agency shall obtain from the legislative body of its jurisdiction:

- (a) permission to apply the property or the proceeds to public interest use; and
- (b) the designation and approval of the public interest use of the property or the proceeds.

CHAPTER 286**H. B. 198**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

CONCEALED CARRY AMENDMENTS

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill establishes a provisional permit to carry a concealed firearm for eligible individuals under 21 years of age.

Highlighted Provisions:

This bill:

- ▶ establishes a provisional permit to carry a concealed firearm;
- ▶ stipulates that individuals must be at least 18 years of age, but no more than 20 years of age, to obtain the permit;
- ▶ stipulates that the holder of a provisional permit issued by the state must meet eligibility requirements, including minimum age requirements, to carry a concealed firearm in another state; and
- ▶ prohibits a provisional permit holder from carrying a concealed firearm on or about an elementary or secondary school premises.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53-5-706, as last amended by Laws of Utah 2011, Chapter 368

53-5-707, as last amended by Laws of Utah 2014, Chapters 189 and 226

53-5-710, as last amended by Laws of Utah 1999, Chapter 366

53-10-202.5, as last amended by Laws of Utah 2010, Chapters 58, 283 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 58

ENACTS:

53-5-704.5, Utah Code Annotated 1953

53-5-707.5, Utah Code Annotated 1953

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

Section 1. Section 53-5-704.5 is enacted to read:**53-5-704.5. Provisional permit to carry concealed firearm.**

(1) (a) The bureau shall issue a provisional permit to carry a concealed firearm for lawful self-defense to an applicant who is 18 years of age, but is no older than 20 years of age, within 60 days after receiving an application, unless the bureau finds proof that the applicant does not meet the qualifications set forth in Subsection 53-5-704(2).

(b) The provisional permit is valid throughout the state until the applicant reaches the age of 21, without restriction, except as otherwise provided by Section 53-5-710.

(2) The bureau may deny, suspend, or revoke a provisional permit issued under this section as set forth in Subsections 53-5-704(2) and (3).

(3) (a) In addition to meeting the other qualifications for the issuance of a provisional permit under this section, a nonresident applicant who resides in a state that recognizes the validity of the Utah provisional permit or has reciprocity with Utah's provisional permit law shall:

(i) hold a current applicable concealed firearm or concealed weapon permit issued by the appropriate permitting authority of the nonresident applicant's state of residency; and

(ii) submit a photocopy or electronic copy of the nonresident applicant's current concealed firearm or concealed weapon permit referred to in Subsection (3)(a)(i).

(b) A nonresident applicant who knowingly and willfully provides false information to the bureau under Subsection (3)(a) is prohibited from holding a Utah concealed firearm permit of any kind for a period of 10 years.

(4) The bureau shall also require the applicant to provide:

(a) the address of the applicant's permanent residence;

(b) one recent dated photograph;

(c) one set of fingerprints; and

(d) evidence of general familiarity with the types of firearms to be concealed as defined in Subsection 53-5-704(8).

(5) In the event of a decision to deny, suspend, or revoke a permit, the applicant or permit holder under this section may appeal the decision through the same process set forth in Subsection 53-5-704(16).

(6) The applicant or permit holder of the provisional permit under this section must meet the eligibility requirements of another state, including age requirements, to carry a concealed firearm in that state.

Section 2. Section 53-5-706 is amended to read:**53-5-706. Permit -- Fingerprints transmitted to bureau -- Report from bureau.**

(1) (a) Except as provided in Subsection (2), the fingerprints of each applicant shall be taken on a form prescribed by the bureau.

(b) Upon receipt of the fingerprints and the fee prescribed in Section 53-5-707 or 53-5-707.5, the bureau shall conduct a search of its files for criminal history information pertaining to the applicant, and shall request the Federal Bureau of Investigation to conduct a similar search through its files.

(c) If the fingerprints are insufficient for the Federal Bureau of Investigation to conduct a search of its files for criminal history information, the application or concealed firearm permit may be denied, suspended, or revoked until sufficient fingerprints are submitted by the applicant.

(2) (a) If the permit applicant has previously applied to the bureau for a permit to carry concealed firearms, the bureau shall note the previous identification numbers and other data which would provide positive identification in the files of the bureau on the copy of any subsequent permit submitted to the bureau in accordance with this section.

(b) No additional application form, fingerprints, or fee are required under this Subsection (2).

Section 3. Section 53-5-707 is amended to read:

53-5-707. Concealed firearm permit -- Fees -- Concealed Weapons Account.

(1) (a) An applicant for a concealed firearm permit shall pay a fee of \$24.75 at the time of filing an application.

(b) A nonresident applicant shall pay an additional \$10 for the additional cost of processing a nonresident application.

(c) The bureau shall waive the initial fee for an applicant who is a law enforcement officer under Section 53-13-103.

(d) Concealed firearm permit renewal fees for active duty service members and the spouse of an active duty service member shall be waived.

(2) The renewal fee for the permit is \$15.

(3) The replacement fee for the permit is \$10.

(4) (a) The late fee for the renewal permit is \$7.50.

(b) As used in this section, "late fee" means the fee charged by the bureau for a renewal submitted on a permit that has been expired for more than 30 days but less than one year.

(5) (a) There is created a restricted account within the General Fund known as the "Concealed Weapons Account."

(b) The account shall be funded from fees collected under this section and Section 53-5-707.5.

(c) Funds in the account shall be used to cover costs relating to the issuance of concealed firearm permits under this part and may not be used for any other purpose.

(6) (a) The bureau may collect any fees charged by an outside agency for additional services required by statute as a prerequisite for issuance of a permit.

(b) The bureau may modify the fee under Subsection (1)(a) by adjusting that fee so that the total of the fee under Subsection (1)(a) and the fee

under Subsection (6)(a) is the nearest even dollar amount to that total.

(c) The bureau shall promptly forward any fees collected under Subsection (6)(a) to the appropriate agency.

(7) The bureau shall make an annual report in writing to the Legislature's Law Enforcement and Criminal Justice Interim Committee on the amount and use of the fees collected under this section and Section 53-5-707.5.

Section 4. Section 53-5-707.5 is enacted to read:

53-5-707.5. Provisional concealed firearm permit -- Fees -- Disposition of fees.

(1) (a) An applicant for a provisional concealed firearm permit, as described in Section 53-5-704.5, shall pay a fee of \$24.75 at the time of filing an application.

(b) A nonresident applicant shall pay an additional \$10 for the additional cost of processing a nonresident application.

(2) The replacement fee for the permit is \$10.

(3) Fees collected under this section shall be remitted to the Concealed Weapons Account, as described in Subsection 53-5-707(5).

(4) (a) The bureau may collect any fees charged by an outside agency for additional services required by statute as a prerequisite for issuance of a permit.

(b) The bureau may modify the fee under Subsection (1)(a) by adjusting that fee so that the total of the fee under Subsection (1)(a) and the fee under Subsection (4)(a) is the nearest even dollar amount to that total.

(c) The bureau shall promptly forward any fees collected under Subsection (4)(a) to the appropriate agency.

Section 5. Section 53-5-710 is amended to read:

53-5-710. Cross-references to concealed firearm permit restrictions.

(1) A person with a permit of any kind to carry a concealed firearm may not carry a concealed firearm in the following locations:

(1) (a) any secure area prescribed in Section 76-10-523.5 in which firearms are prohibited and notice of the prohibition posted;

(2) (b) ~~in~~ any airport secure area as provided in Section 76-10-529; or

(3) (c) ~~in~~ any house of worship or in any private residence where dangerous weapons are prohibited as provided in Section 76-10-530.

(2) Notwithstanding Subsection 76-10-505.5(2), a person under the age of 21 with a permit of any kind to carry a concealed firearm may not carry a concealed firearm on or about school premises, as defined in Subsection 76-10-505.5(1)(a).

Section 6. Section 53-10-202.5 is amended to read:

53-10-202.5. Bureau services -- Fees.

The bureau shall collect fees for the following services:

(1) applicant fingerprint card as determined by Section 53-10-108;

(2) bail enforcement licensing as determined by Section 53-11-115;

(3) concealed firearm permit as determined by Section 53-5-707;

(4) provisional concealed firearm permit as determined by Section 53-5-707.5;

~~[(4)]~~ (5) application for and issuance of a certificate of eligibility for expungement as determined by Section 77-40-106;

~~[(5)]~~ (6) firearm purchase background check as determined by Section 76-10-526;

~~[(6)]~~ (7) name check as determined by Section 53-10-108;

~~[(7)]~~ (8) private investigator licensing as determined by Section 53-9-111; and

~~[(8)]~~ (9) right of access as determined by Section 53-10-108.

CHAPTER 287**H. B. 202**

Passed March 8, 2017
 Approved March 23, 2017
 Effective May 9, 2017

TRESPASS AMENDMENTS

Chief Sponsor: Brian M. Greene
 Senate Sponsor: Jacob L. Anderegg

LONG TITLE**General Description:**

This bill modifies criminal trespass provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts provisions related to trespass by a long-term guest in a residence; and
- ▶ provides for a penalty.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

76-6-206.4, Utah Code Annotated 1953

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

Section 1. Section 76-6-206.4 is enacted to read:

76-6-206.4. Criminal trespass by long-term guest to a residence.

(1) As used in this section:

(a) "Long-term guest" means an individual who is not a tenant but who is given express or implied permission by the person who is the primary occupant of the residence or someone with apparent authority to act for the primary occupant to enter a portion of a residence or temporarily occupy a portion of a residence:

(i) for a period of time longer than 48 hours; and

(ii) without providing the owner or primary occupant of the residence compensation or entering into an agreement that the individual provide labor in lieu of providing the owner or primary occupant compensation for occupying the residence.

(b) "Residence" means an improvement to real property used or occupied as a primary or secondary dwelling.

(c) "Tenant" means a person who has the right to occupy a residence under a rental agreement or lease, or has a tenancy by operation of law.

(2) A long-term guest is guilty of criminal trespass of a residence if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204, the long-term guest remains in a residence after the long-term guest receives notice against remaining in the residence by personal communication to the

long-term guest by the person who is the primary occupant of the residence or someone with apparent authority to act for the primary occupant.

(3) A violation of Subsection (2) is a class B misdemeanor.

(4) Before a law enforcement officer escorts an individual from a residence for a violation of this section, the law enforcement officer shall provide the individual a reasonable time for the individual to collect the individual's personal belongings.

CHAPTER 288**H. B. 206**

Passed March 8, 2017

Approved March 23, 2017

Effective May 9, 2017

**DOMESTIC VIOLENCE —
WEAPONS RESTRICTIONS**

Chief Sponsor: Brian S. King
 Senate Sponsor: Deidre M. Henderson
 Cosponsors: Patrice M. Arent
 Carol Spackman Moss

LONG TITLE**General Description:**

This bill amends provisions relating to certain weapons restrictions relating to domestic violence.

Highlighted Provisions:

This bill:

- ▶ expands the scope of a Category II restricted person to include:
 - a person who is subject to a protective order or child protective order; and
 - a person who has been convicted of assault or aggravated assault against a cohabitant.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-10-503, as last amended by Laws of Utah 2015, First Special Session, Chapter 1

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

Section 1. Section 76-10-503 is amended to read:**76-10-503. Restrictions on possession, purchase, transfer, and ownership of dangerous weapons by certain persons -- Exceptions.**

- (1) For purposes of this section:
- (a) A Category I restricted person is a person who:
- (i) has been convicted of any violent felony as defined in Section 76-3-203.5;
- (ii) is on probation or parole for any felony;
- (iii) is on parole from a secure facility as defined in Section 62A-7-101;
- (iv) within the last 10 years has been adjudicated delinquent for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5;
- (v) is an alien who is illegally or unlawfully in the United States; or
- (vi) is on probation for a conviction of possessing:
- (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;

(B) a controlled substance analog; or

(C) a substance listed in Section 58-37-4.2.

(b) A Category II restricted person is a person who:

(i) has been convicted of any felony;

(ii) within the last seven years has been adjudicated delinquent for an offense which if committed by an adult would have been a felony;

(iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

(iv) is in possession of a dangerous weapon and is knowingly and intentionally in unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

(v) has been found not guilty by reason of insanity for a felony offense;

(vi) has been found mentally incompetent to stand trial for a felony offense;

(vii) has been adjudicated as mentally defective as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental institution;

(viii) has been dishonorably discharged from the armed forces; [øf]

(ix) has renounced [his] the individual's citizenship after having been a citizen of the United States[-];

(x) is a respondent or defendant subject to a protective order or child protective order that is issued after a hearing for which the respondent or defendant received actual notice and at which the respondent or defendant has an opportunity to participate, that restrains the respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate partner, and that:

(A) includes a finding that the respondent or defendant represents a credible threat to the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C. Sec. 921 or the child of the individual; or

(B) explicitly prohibits the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily harm against an intimate partner or the child of an intimate partner; or

(xi) has been convicted of the commission or attempted commission of assault under Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or former spouse, parent, guardian, individual with whom the restricted person shares a child in common, individual who is cohabitating or has cohabitated with the restricted person as a spouse, parent, or guardian, or against an individual similarly

situated to a spouse, parent, or guardian of the restricted person.

(c) As used in this section, a conviction of a felony or adjudication of delinquency for an offense which would be a felony if committed by an adult does not include:

(i) a conviction or adjudication of delinquency for an offense pertaining to antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to the regulation of business practices not involving theft or fraud; or

(ii) a conviction or adjudication of delinquency which, according to the law of the jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by court order, pardoned or regarding which the person's civil rights have been restored unless the pardon, reduction, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(d) It is the burden of the defendant in a criminal case to provide evidence that a conviction or adjudication of delinquency is subject to an exception provided in Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the conviction or adjudication of delinquency is not subject to that exception.

(2) A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a second degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a third degree felony.

(3) A Category II restricted person who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a third degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

(4) A person may be subject to the restrictions of both categories at the same time.

(5) If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control any dangerous weapon, the penalties of that section control.

(6) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of

a member of the person's household or for administration to an animal owned by the person or a member of the person's household; or

(b) otherwise authorized by law to possess the substance.

(7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

(i) was possessed by the person or was under the person's custody or control before the person became a restricted person;

(ii) was not used in or possessed during the commission of a crime or subject to disposition under Section 24-3-103;

(iii) is not being held as evidence by a court or law enforcement agency;

(iv) was transferred to a person not legally prohibited from possessing the weapon; and

(v) unless a different time is ordered by the court, was transferred within 10 days of the person becoming a restricted person.

(b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person of a firearm or other dangerous weapon by a restricted person.

(8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or dangerous weapon to any person, knowing that the recipient is a person described in Subsection (1)(a) or (b).

(b) A person who violates Subsection (8)(a) when the recipient is:

(i) a person described in Subsection (1)(a) and the transaction involves a firearm, is guilty of a second degree felony;

(ii) a person described in Subsection (1)(a) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a third degree felony;

(iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is guilty of a third degree felony; or

(iv) a person described in Subsection (1)(b) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

(9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under circumstances which the person knows would be a violation of the law.

(b) A person may not provide to a dealer or other person any information that the person knows to be materially false information with intent to deceive the dealer or other person about the legality of a sale, transfer or other disposition of a firearm or dangerous weapon.

(c) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

(d) A person who violates this Subsection (9) is guilty of:

(i) a third degree felony if the transaction involved a firearm; or

(ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a firearm.

CHAPTER 289**H. B. 208**

Passed March 8, 2017

Approved March 23, 2017

Effective May 9, 2017

JAIL RELEASE ORDERS AMENDMENTS

Chief Sponsor: Ken Ivory
Senate Sponsor: David P. Hinkins

LONG TITLE**General Description:**

This bill modifies provisions related to jail release agreements and jail release court orders.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the conditions under which an arresting law enforcement agency may release an individual arrested for certain offenses against a child or vulnerable adult or sexual assault; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 53-10-403, as last amended by Laws of Utah 2015, Chapter 386
- 77-20-1, as last amended by Laws of Utah 2016, Chapter 234
- 77-36-1, as last amended by Laws of Utah 2016, Chapter 422
- 77-36-2.1, as last amended by Laws of Utah 2011, Chapter 113
- 77-36-2.4, as last amended by Laws of Utah 2010, Chapter 384
- 77-36-2.7, as last amended by Laws of Utah 2010, Chapter 384
- 77-36-6, as last amended by Laws of Utah 2010, Chapter 384

RENUMBERS AND AMENDS:

- 77-20-3.5, (Renumbered from 77-36-2.5, as last amended by Laws of Utah 2016, Chapter 422)

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

Section 1. Section 53-10-403 is amended to read:**53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

(1) Sections 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person who:

(a) has pled guilty to or has been convicted of any of the offenses under Subsection (2)(a) or (b) on or after July 1, 2002;

(b) has pled guilty to or has been convicted by any other state or by the United States government of

an offense which if committed in this state would be punishable as one or more of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

(c) has been booked on or after January 1, 2011, through December 31, 2014, for any offense under Subsection (2)(c);

(d) has been booked:

(i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13, 2014, through December 31, 2014, under Subsection 53-10-404(4)(b) for any felony offense; or

(ii) on or after January 1, 2015, for any felony offense; or

(e) is a minor under Subsection (3).

(2) Offenses referred to in Subsection (1) are:

(a) any felony or class A misdemeanor under the Utah Code;

(b) any offense under Subsection (2)(a):

(i) for which the court enters a judgment for conviction to a lower degree of offense under Section 76-3-402; or

(ii) regarding which the court allows the defendant to enter a plea in abeyance as defined in Section 77-2a-1; or

(c) (i) any violent felony as defined in Section 53-10-403.5;

(ii) sale or use of body parts, Section 26-28-116;

(iii) failure to stop at an accident that resulted in death, Section 41-6a-401.5;

(iv) driving with any amount of a controlled substance in a person's body and causing serious bodily injury or death, Subsection 58-37-8(2)(g);

(v) a felony violation of enticing a minor over the Internet, Section 76-4-401;

(vi) a felony violation of propelling a substance or object at a correctional officer, a peace officer, or an employee or a volunteer, including health care providers, Section 76-5-102.6;

(vii) aggravated human trafficking and aggravated human smuggling, Section 76-5-310;

(viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;

(ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;

(x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;

(xi) sale of a child, Section 76-7-203;

(xii) aggravated escape, Subsection 76-8-309(2);

(xiii) a felony violation of assault on an elected official, Section 76-8-315;

(xiv) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, Section 76-8-316;

(xv) advocating criminal syndicalism or sabotage, Section 76-8-902;

(xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;

(xvii) a felony violation of sexual battery, Section 76-9-702.1;

(xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;

(xix) a felony violation of abuse or desecration of a dead human body, Section 76-9-704;

(xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section 76-10-402;

(xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction, Section 76-10-403;

(xxii) possession of a concealed firearm in the commission of a violent felony, Subsection 76-10-504(4);

(xxiii) assault with the intent to commit bus hijacking with a dangerous weapon, Subsection 76-10-1504(3);

(xxiv) commercial obstruction, Subsection 76-10-2402(2);

(xxv) a felony violation of failure to register as a sex or kidnap offender, Section 77-41-107;

(xxvi) repeat violation of a protective order, Subsection 77-36-1.1(2)(c); or

(xxvii) violation of condition for release after arrest [~~for domestic violence, Section 77-36-2.5~~] under Section 77-20-3.5.

(3) A minor under Subsection (1) is a minor 14 years of age or older whom a Utah court has adjudicated to be within the jurisdiction of the juvenile court due to the commission of any offense described in Subsection (2), and who is:

(a) within the jurisdiction of the juvenile court on or after July 1, 2002 for an offense under Subsection (2); or

(b) in the legal custody of the Division of Juvenile Justice Services on or after July 1, 2002 for an offense under Subsection (2).

Section 2. Section 77-20-1 is amended to read:

77-20-1. Right to bail -- Denial of bail -- Hearing.

(1) As used in this chapter:

(a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

(b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

(c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

(2) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

(a) capital felony, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

(d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(3) Any person who may be admitted to bail may be released either on the person's own recognizance or upon posting bail, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

(a) ensure the appearance of the accused;

(b) ensure the integrity of the court process;

(c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and

(d) ensure the safety of the public.

(4) (a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.

(b) A magistrate may set bail upon determining that there was probable cause for a warrantless arrest.

(c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.

(d) A person arrested for a violation of a jail release agreement or jail release order issued [~~pursuant to~~] in accordance with Section [~~77-36-2.5~~] 77-20-3.5:

(i) may not be released before the accused's first judicial appearance; and

(ii) may be denied bail by the court under Subsection [~~77-36-2.5(8)~~] 77-20-3.5(9) or (12).

(5) The magistrate or court may rely upon information contained in:

(a) the indictment or information;

(b) any sworn probable cause statement;

(c) information provided by any pretrial services agency; or

(d) any other reliable record or source.

(6) (a) A motion to modify the initial order may be made by a party at any time upon notice to the

opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.

(b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(c) The magistrate or court may rely on information as provided in Subsection (5) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(7) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

(8) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (2).

(9) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

(a) the prosecutor files a notice of intent to not seek the death penalty; or

(b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.

Section 3. Section 77-20-3.5, which is renumbered from Section 77-36-2.5 is renumbered and amended to read:

[77-36-2.5]. 77-20-3.5. Conditions for release after arrest for domestic violence and other offenses -- Jail release agreements -- Jail release court orders.

(1) As used in this section:

(a) “Domestic violence” means the same as that term is defined in Section 77-36-1.

(b) “Jail release agreement” means a written agreement described in Subsection 77-20-3.5(3) that:

(i) limits the contact an individual arrested for a qualifying offense may have with an alleged victim; and

(ii) specifies other conditions of release from jail.

(c) “Jail release court order” means a written court order issued in accordance with Subsection 77-20-3.5(3) that:

(i) limits the contact an individual arrested for a qualifying offense may have with an alleged victim; and

(ii) specifies other conditions of release from jail.

(d) “Minor” means an unemancipated individual who is younger than 18 years of age.

(e) “Offense against a child or vulnerable adult” means the commission or attempted commission of

an offense described in Section 76-5-109, 76-5-109.1, 76-5-110, or 76-5-111.

(f) “Qualifying offense” means:

(i) domestic violence;

(ii) an offense against a child or vulnerable adult; or

(iii) the commission or attempted commission of an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses.

~~[(4)]~~ (2) (a) Upon arrest for ~~[domestic violence]~~ a qualifying offense and before the person is released on bail, recognizance, or otherwise, the person may not personally contact the alleged victim ~~[of domestic violence]~~.

(b) A person who violates Subsection ~~[(4)]~~ (2)(a) is guilty of a class B misdemeanor.

~~[(2)]~~ (3) (a) After ~~[an arrest for domestic violence, the offender]~~ a person is arrested for a qualifying offense, the person may not be released before:

(i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or

(ii) the ~~[offender]~~ person signs a jail release agreement in accordance with Subsection ~~[(2)]~~ (3)(d)(i).

(b) The arresting officer shall ensure that the information presented to the magistrate includes whether the alleged victim has made a waiver described in Subsection ~~[(5)]~~ (6)(a).

(c) If the magistrate determines there is probable cause to support the charge or charges of ~~[domestic violence]~~ one or more qualifying offenses, the magistrate shall determine:

(i) whether grounds exist to hold the arrested person without bail, in accordance with Section 77-20-1;

(ii) if no grounds exist to hold the arrested person without bail, whether any release conditions, including electronic monitoring, are necessary to protect the alleged victim; or

(iii) any bail that is required to guarantee the ~~[defendant's]~~ arrested person's subsequent appearance in court.

(d) (i) The magistrate may not release a person arrested for ~~[domestic violence]~~ a qualifying offense before the person's initial court appearance~~]~~ before the court with jurisdiction over the offense for which the person was arrested, unless the arrested person agrees in writing or the magistrate orders, as a release condition, that, until the arrested person appears at the initial court appearance, the arrested person will not:

(A) have personal contact with the alleged victim;

(B) threaten or harass the alleged victim; or

(C) knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

(ii) The magistrate shall schedule the appearance described in Subsection [(2)] (3)(d)(i) to take place no more than 96 hours after the time of the arrest.

(iii) The arrested person may make the appearance described in Subsection [(2)] (3)(d)(i) by video if the arrested person is not released.

[(3)] (4) (a) If a person charged with domestic violence a qualifying offense fails to appear at the time scheduled by the magistrate ~~to appear, as described in~~ under Subsection [(2)] (3)(d), the person shall comply with the release conditions described in Subsection [(2)] (3)(d)(i) until the ~~arrested~~ person makes an initial appearance.

(b) If the prosecutor has not filed charges against a person who was arrested for a domestic violence qualifying offense and who appears in court at the time scheduled by the magistrate under Subsection [(2)] (3)(d), or by the court under Subsection [(3)] (4)(b)(ii), the court:

(i) may, upon the motion of the prosecutor and after allowing the ~~arrested~~ person an opportunity to be heard on the motion, extend the release conditions described in Subsection [(2)] (3)(d)(i) by no more than three court days; and

(ii) if the court grants the motion described in Subsection [(3)] (4)(b)(i), shall order the arrested person to appear at a time scheduled before the end of the granted extension.

[(4) Unless extended under]

(5) Except as provided in Subsection [(3), the] (4) or otherwise ordered by a court, a jail release agreement or ~~the magistrate order described in Subsection (2)(d)(i)]~~ jail release court order expires at midnight ~~on the day on which the person arrested is scheduled to appear, as~~ after the arrested person's initial scheduled court appearance described in Subsection [(2)] (3)(d)(i).

[(5) (a) Subsequent to]

(6) (a) After an arrest for domestic violence a qualifying offense, an alleged victim who is not a minor may waive in writing the release conditions described in Subsection [(2)] (3)(d)(i)(A) or (C). Upon waiver, those release conditions do not apply to the ~~alleged perpetrator~~ arrested person.

(b) A court or magistrate may modify the release conditions described in Subsection [(2)] (3)(d)(i), in writing or on the record, and only for good cause shown.

[(6)] (7) (a) When ~~a person~~ an arrested person is released ~~pursuant to Subsection (2)]~~ in accordance with Subsection (3), the releasing agency shall:

(i) notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the alleged victim~~]. The arresting law enforcement agency shall then];~~

(ii) make a reasonable effort to notify the alleged victim of ~~that~~ the release~~]; and~~

(iii) before releasing the arrested person, give the arrested person a copy of the jail release agreement or the jail release court order.

(b) (i) When a person arrested for domestic violence is released pursuant to Subsection [(2)] (3) based on a written jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.

(ii) When a person arrested for domestic violence is released pursuant to Subsections [(2)] (3) through [(4)] (5) based upon a jail release court order or if a written jail release agreement is modified pursuant to Subsection [(5)] (6)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.

[(iii) A copy of the jail release court order or written jail release agreement shall be given to the person by the releasing agency before the person is released.]

(c) This Subsection [(6)] (7) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

[(7)] (8) (a) If a law enforcement officer has probable cause to believe that a person has violated a jail release agreement or jail release court order ~~or jail release agreement executed pursuant to Subsection (2)],~~ the officer shall, without a warrant, arrest the ~~alleged violator~~ person.

(b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection [(2)] (3) is guilty as follows:

(i) if the original arrest was for a felony, an offense under this section is a third degree felony; or

(ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.

(c) City attorneys may prosecute class A misdemeanor violations under this section.

[(8) An individual who was originally]

(9) A person who is arrested for a qualifying offense that is a felony ~~under this chapter~~ and released ~~pursuant to~~ in accordance with this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against ~~him~~ the person.

[(9)] (10) At the time an arrest is made for domestic violence a qualifying offense, the arresting officer shall provide the alleged victim with written notice containing:

(a) the release conditions described in Subsections [(2)] (3) through [(4)] (5), and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:

(i) the alleged perpetrator enters into a written agreement to comply with the release conditions; or

- (ii) the magistrate orders the release conditions;
- (b) notification of the penalties for violation of any jail release agreement or jail release court order [~~or any jail release agreement executed under Subsection (2)~~];
- (c) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest;
- (d) the address of the appropriate court in the district or county in which the alleged victim resides;
- (e) the availability and effect of any waiver of the release conditions; and
- (f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

~~[(40)]~~ (11) At the time an arrest is made for ~~[domestic violence]~~ a qualifying offense, the arresting officer shall provide the alleged perpetrator with written notice containing:

- (a) notification that the alleged perpetrator may not contact the alleged victim before being released;
- (b) the release conditions described in Subsections ~~[(2)]~~ (3) through ~~[(4)]~~ (5) and notice that the alleged perpetrator will not be released, before appearing before the court with jurisdiction over the offense for which the alleged perpetrator was arrested, unless:
 - (i) the alleged perpetrator enters into a written agreement to comply with the release conditions; or
 - (ii) the magistrate orders the release conditions;
- (c) notification of the penalties for violation of any jail release agreement or jail release court order [~~or any written jail release agreement executed under Subsection (2)~~]; and
- (d) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest.

(12) (a) A pretrial or sentencing protective order supercedes a jail release agreement or jail release court order.

(b) If a court dismisses the charges for the qualifying offense that gave rise to a jail release agreement or jail release court order, the court shall dismiss the jail release agreement or jail release court order.

~~[(44)]~~ (13) In addition to the provisions of Subsections ~~[(2)]~~ (3) through ~~[(40)]~~ (12), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge,

and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail.

(14) The provisions of this section do not apply if the person arrested for the qualifying offense is a minor, unless the qualifying offense is domestic violence.

Section 4. Section 77-36-1 is amended to read:

77-36-1. Definitions.

As used in this chapter:

(1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

(2) "Department" means the Department of Public Safety.

(3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter 3, Divorce.

(4) "Domestic violence" or "domestic violence offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" or "domestic violence offense" also means commission or attempt to commit, any of the following offenses by one cohabitant against another:

(a) aggravated assault, as described in Section 76-5-103;

(b) assault, as described in Section 76-5-102;

(c) criminal homicide, as described in Section 76-5-201;

(d) harassment, as described in Section 76-5-106;

(e) electronic communication harassment, as described in Section 76-9-201;

(f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;

(g) mayhem, as described in Section 76-5-105;

(h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual exploitation of a minor -- Offenses;

(i) stalking, as described in Section 76-5-106.5;

(j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;

(k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;

(l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;

(m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;

(n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;

(o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with a domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or

(p) child abuse as described in Section 76-5-109.1.

(5) "Jail release agreement" means ~~[a written agreement:]~~ the same as that term is defined in Section 77-20-3.5.

~~[(a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and]~~

~~[(b) specifying other conditions of release from jail as required in Subsection 77-36-2.5(2).]~~

(6) "Jail release court order" means ~~[a written court order:]~~ the same as that term is defined in Section 77-20-3.5.

~~[(a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and]~~

~~[(b) specifying other conditions of release from jail as required in Subsection 77-36-2.5(2).]~~

(7) "Marital status" means married and living together, divorced, separated, or not married.

(8) "Married and living together" means a man and a woman whose marriage was solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.

(9) "Not married" means any living arrangement other than married and living together, divorced, or separated.

(10) "Pretrial protective order" means a written order:

(a) specifying and limiting the contact a person who has been charged with a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release pursuant to Subsection ~~[77-36-2.5(2)]~~ 77-20-3.5(3), Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

(11) "Sentencing protective order" means a written order of the court as part of sentencing in a domestic violence case that limits the contact a person who has been convicted of a domestic violence offense may have with a victim or other specified individuals pursuant to Sections 77-36-5 and 77-36-5.1.

(12) "Separated" means a man and a woman who have had their marriage solemnized under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

(13) "Victim" means a cohabitant who has been subjected to domestic violence.

Section 5. Section 77-36-2.1 is amended to read:

77-36-2.1. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:

(a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(b) confiscating the weapon or weapons involved in the alleged domestic violence;

(c) making arrangements for the victim and any child to obtain emergency housing or shelter;

(d) providing protection while the victim removes essential personal effects;

(e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and

(f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

(b) The written notice shall also include:

(i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and

(iii) the information required to be provided to both parties in accordance with ~~[Subsection 77-36-2.5(8)]~~ Subsections 77-20-3.5(10) and (11).

Section 6. Section 77-36-2.4 is amended to read:

77-36-2.4. Violation of protective orders -- Mandatory arrest -- Penalties.

(1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated any of the provisions of an ex parte protective order or protective order.

(2) (a) Intentional or knowing violation of any ex parte protective order or protective order is a class A misdemeanor, in accordance with Section 76-5-108, except where a greater penalty is provided in this chapter, and is a domestic violence offense, pursuant to Section 77-36-1.

(b) Second or subsequent violations of ex parte protective orders or protective orders carry increased penalties, in accordance with Section 77-36-1.1.

(3) As used in this section, "ex parte protective order" or "protective order" includes:

(a) any protective order or ex parte protective order issued under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

(b) any [jail release agreement, jail release court order,] pretrial protective order[, or] sentencing protective order issued under Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

(c) any child protective order or ex parte child protective order issued under Title 78B, Chapter 7, Part 2, Child Protective Orders; or

(d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Section 7. Section 77-36-2.7 is amended to read:

77-36-2.7. Dismissal -- Diversion prohibited -- Plea in abeyance -- Pretrial protective order pending trial.

(1) Because of the serious nature of domestic violence, the court, in domestic violence actions:

(a) may not dismiss any charge or delay disposition because of concurrent divorce or other civil proceedings;

(b) may not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;

(c) shall waive any requirement that the victim's location be disclosed other than to the defendant's attorney and order the defendant's attorney not to disclose the victim's location to the client;

(d) shall identify, on the docket sheets, the criminal actions arising from acts of domestic violence;

(e) may dismiss a charge on stipulation of the prosecutor and the victim; and

(f) may hold a plea in abeyance, in accordance with the provisions of Chapter 2a, Pleas in Abeyance, making treatment or any other requirement for the defendant a condition of that status.

(2) When the court holds a plea in abeyance in accordance with Subsection (1)(f), the case against a perpetrator of domestic violence may be dismissed only if the perpetrator successfully completes all conditions imposed by the court. If the defendant fails to complete any condition imposed by the court under Subsection (1)(f), the court may accept the defendant's plea.

(3) (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant is charged with a crime involving domestic violence, the court may, during any court hearing where the defendant is present, issue a pretrial protective order, pending trial:

(i) enjoining the defendant from threatening to commit or committing acts of domestic violence or abuse against the victim and any designated family or household member;

(ii) prohibiting the defendant from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(iii) removing and excluding the defendant from the victim's residence and the premises of the residence;

(iv) ordering the defendant to stay away from the residence, school, place of employment of the victim, and the premises of any of these, or any specified place frequented by the victim and any designated family member; and

(v) ordering any other relief that the court considers necessary to protect and provide for the safety of the victim and any designated family or household member.

(b) Violation of an order issued pursuant to this section is punishable as follows:

(i) if the original arrest or subsequent charge filed is a felony, an offense under this section is a third degree felony; and

(ii) if the original arrest or subsequent charge filed is a misdemeanor, an offense under this section is a class A misdemeanor.

(c) (i) The court shall provide the victim with a certified copy of any pretrial protective order that has been issued if the victim can be located with reasonable effort.

(ii) The court shall also transmit the pretrial protective order to the statewide domestic violence network.

(d) Issuance of a pretrial or sentencing protective order supercedes a [written] jail release agreement or [a written] jail release court order [issued by the court at the time of arrest].

(4) (a) When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a domestic violence offense, the specific reasons for dismissal shall be recorded in the court file and made a part of the statewide domestic violence network described in Section 78B-7-113.

(b) The court shall transmit the dismissal to the statewide domestic violence network.

(c) Any pretrial protective orders, including jail release court orders and jail release agreements, related to the dismissed domestic violence criminal charge shall also be dismissed.

(5) When the privilege of confidential communication between spouses, or the testimonial privilege of spouses is invoked in any criminal proceeding in which a spouse is the victim of an alleged domestic violence offense, the victim shall be considered to be an unavailable witness under the Utah Rules of Evidence.

(6) The court may not approve diversion for a perpetrator of domestic violence.

Section 8. Section 77-36-6 is amended to read:

77-36-6. Enforcement of orders.

(1) Each law enforcement agency in this state shall enforce all orders of the court issued pursuant to the requirements and procedures described in this chapter, and shall enforce:

(a) all protective orders and ex parte protective orders issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

(b) [~~jail release agreements, jail release court orders,~~] pretrial protective orders[,], and sentencing protective orders; and

(c) all foreign protection orders enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

(2) The requirements of this section apply statewide, regardless of the jurisdiction in which the order was issued or the location of the victim or the perpetrator.

CHAPTER 290**H. B. 222**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

CRIMINAL OFFENSES MODIFICATIONS

Chief Sponsor: Stephen G. Handy
Senate Sponsor: Jacob L. Anderegg

LONG TITLE**General Description:**

This bill modifies provisions related to criminal offenses including registration on the Sex and Kidnap Offender Registry.

Highlighted Provisions:

This bill:

- ▶ authorizes a court to impose a lesser term for certain offenses under certain circumstances;
- ▶ prohibits lifetime registration for persons who are under 21 years of age under certain circumstances; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 76-5-402.1, as last amended by Laws of Utah 2013, Chapter 81
- 76-5-402.3, as last amended by Laws of Utah 2013, Chapter 81
- 76-5-403.1, as last amended by Laws of Utah 2013, Chapter 81
- 77-41-105, as last amended by Laws of Utah 2016, Chapter 185

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

Section 1. Section 76-5-402.1 is amended to read:**76-5-402.1. Rape of a child.**

(1) A person commits rape of a child when the person has sexual intercourse with a child who is under the age of 14.

(2) Rape of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in [Subsection] Subsections (2)(b) and (4), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the rape of a child, the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape of a child the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) (a) When imposing a sentence under Subsection (2)(a) and (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:

(i) it is a first time offense for the defendant under this section;

(ii) the defendant was younger than 21 years of age at the time of the offense; and

(iii) the court finds that a lesser term than the term described in Subsection (2)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

(b) If the conditions of Subsection (4)(a) are met, the court may impose a term of imprisonment of not less than:

(i) 15 years and which may be for life;

(ii) 10 years and which may be for life; or

(iii) six years and which may be for life.

[4] (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 2. Section 76-5-402.3 is amended to read:**76-5-402.3. Object rape of a child -- Penalty.**

(1) A person commits object rape of a child when the person causes the penetration or touching, however slight, of the genital or anal opening of a child who is under the age of 14 by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse or gratify the sexual desire of any person.

(2) Object rape of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in [Subsection] Subsections (2)(b) and (4), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the object rape of a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the object rape of a child the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) (a) When imposing a sentence under Subsection (2)(a) and (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:

(i) it is a first time offense for the defendant under this section;

(ii) the defendant was younger than 21 years of age at the time of the offense; and

(iii) the court finds that a lesser term than the term described in Subsection (2)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

(b) If the conditions of Subsection (4)(a) are met, the court may impose a term of imprisonment of not less than:

(i) 15 years and which may be for life;

(ii) 10 years and which may be for life; or

(iii) six years and which may be for life.

[(4)] (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 3. Section 76-5-403.1 is amended to read:

76-5-403.1. Sodomy on a child.

(1) A person commits sodomy upon a child if the actor engages in any sexual act upon or with a child who is under the age of 14, involving the genitals or anus of the actor or the child and the mouth or anus of either person, regardless of the sex of either participant.

(2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in [Subsection] Subsections (2)(b) and (4), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the sodomy upon a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the sodomy upon a child, the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) (a) When imposing a sentence under Subsection (2)(a) and (4)(b), a court may impose a term of imprisonment under Subsection (4)(b) if:

(i) it is a first time offense for the defendant under this section;

(ii) the defendant was younger than 21 years of age at the time of the offense; and

(iii) the court finds that a lesser term than the term described in Subsection (2)(a) is in the interests of justice under the facts and circumstances of the case, including the age of the victim, and states the reasons for this finding on the record.

(b) If the conditions of Subsection (4)(a) are met, the court may impose a term of imprisonment of not less than:

(i) 15 years and which may be for life;

(ii) 10 years and which may be for life; or

(iii) six years and which may be for life.

[(4)] (5) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Section 4. Section 77-41-105 is amended to read:

77-41-105. Registration of offenders -- Offender responsibilities.

(1) An offender convicted by any other jurisdiction is required to register under Subsection (3) and Subsection 77-41-102(9) or (17). The offender shall register with the department within 10 days of entering the state, regardless of the offender's length of stay.

(2) (a) An offender required to register under Subsection 77-41-102(9) or (17) who is under supervision by the department shall register in person with Division of Adult Probation and Parole.

(b) An offender required to register under Subsection 77-41-102(9) or (17) who is no longer under supervision by the department shall register in person with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(3) (a) Except as provided in Subsections (3)(b), (c), and (4), and Section 77-41-106, an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register every year during the month of the offender's date of birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (8).

(b) Except as provided in Subsections (4) and (5), and Section 77-41-106, an offender who is convicted in another jurisdiction of an offense listed in Subsection 77-41-102(9)(a) or (17)(a), a substantially similar offense, or any other offense that requires registration in the jurisdiction of conviction, shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted if that jurisdiction's registration period or registration frequency requirement for the offense that the offender was convicted of is greater than the 10 years from completion of the sentence registration period that is required under Subsection (3)(a), or is more frequent than every six months; or

(ii) register in accordance with the requirements of Subsection (3)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of is less than the registration period required under Subsection (3)(a), or is less frequent than every six months.

(c) (i) An offender convicted as an adult of any of the offenses listed in Section 77-41-106 shall, for the offender's lifetime, register every year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month, and also within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (8).

(ii) This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime, unless a petition is granted under Section 77-41-112.

(iii) If the offense does not involve force or coercion, lifetime registration under this Subsection (3)(c) does not apply to an offender who commits the offense when the offender is under 21 years of age. For an offense listed in Section 77-41-106, an offender who commits the offense when the offender is under 21 years of age is required to register in accordance with this chapter for 10 years after termination of sentence or custody of the division, unless a petition is granted under Section 77-41-112.

(d) For the purpose of establishing venue for a violation of this Subsection (3), the violation is considered to be committed:

(i) at the most recent registered primary residence of the offender or at the location of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(4) Notwithstanding Subsection (3) and Section 77-41-106, an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(5) In the case of an offender adjudicated in another jurisdiction as a juvenile and required to register under this chapter, the offender shall register in the time period and in the frequency consistent with the requirements of this Subsection (5). However, if the jurisdiction of the offender's adjudication does not publish the offender's information on a public website, the department shall maintain, but not publish the offender's information on the Sex Offender and Kidnap Offender Registration website.

(6) An offender who is required to register under Subsection (3) shall surrender the offender's license, certificate, or identification card as required under Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as provided under Section 53-3-205 or 53-3-804.

(7) A sex offender who violates Section 77-27-21.8 regarding being in the presence of a child while required to register under this chapter shall register for an additional five years

subsequent to the registration period otherwise required under this chapter.

(8) An offender shall provide the department or the registering entity with the following information:

(a) all names and aliases by which the offender is or has been known;

(b) the addresses of the offender's primary and secondary residences;

(c) a physical description, including the offender's date of birth, height, weight, eye and hair color;

(d) the make, model, color, year, plate number, and vehicle identification number of any vehicle or vehicles the offender owns or regularly drives;

(e) a current photograph of the offender;

(f) a set of fingerprints, if one has not already been provided;

(g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;

(h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;

(i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;

(j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;

(k) a copy of the offender's passport, if a passport has been issued to the offender;

(l) if the offender is an alien, all documents establishing the offender's immigration status;

(m) all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business, including any identifiers, such as numbers;

(n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and any change of enrollment or employment status of the offender at any educational institution;

(o) the name, the telephone number, and the address of any place where the offender is employed or will be employed;

(p) the name, the telephone number, and the address of any place where the offender works as a volunteer or will work as a volunteer; and

(q) the offender's social security number.

(9) Notwithstanding Section 42-1-1, an offender:

(a) may not change the offender's name:

(i) while under the jurisdiction of the department; and

(ii) until the registration requirements of this statute have expired; and

(b) may not change the offender's name at any time, if registration is for life under Subsection [77-41-105] (3)(c).

(10) Notwithstanding Subsections (8)(i) and (j) and 77-41-103(1)(c), an offender is not required to provide the department with:

(a) the offender's online identifier and password used exclusively for the offender's employment on equipment provided by an employer and used to access the employer's private network; or

(b) online identifiers for the offender's financial accounts, including any bank, retirement, or investment accounts.

CHAPTER 291**H. B. 255**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

INITIATIVE AMENDMENTS

Chief Sponsor: Daniel McCay
Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends provisions of the Election Code relating to initiatives.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ when an initiative or a petition for an initiative proposes a tax increase, establishes requirements for providing certain information relating to the percentage of the proposed tax increase, including in the initiative petition, the notice of public hearing, the fiscal impact statement, the voter information pamphlet, and the ballot title;
- ▶ changes the format of an initiative petition; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

20A-7-101, as last amended by Laws of Utah 2016, Chapters 53, 176, and 365
20A-7-202, as last amended by Laws of Utah 2011, Chapters 17, 297, and 315
20A-7-202.5, as last amended by Laws of Utah 2013, Chapter 310
20A-7-203, as last amended by Laws of Utah 2014, Chapter 329
20A-7-204, as last amended by Laws of Utah 2011, Chapter 315
20A-7-204.1, as last amended by Laws of Utah 2013, Chapter 310
20A-7-209, as last amended by Laws of Utah 2012, Chapter 334
20A-7-402, as last amended by Laws of Utah 2016, Chapter 53
20A-7-502, as last amended by Laws of Utah 2011, Chapter 315
20A-7-502.5, as last amended by Laws of Utah 2014, Chapter 364
20A-7-503, as last amended by Laws of Utah 2014, Chapter 329
20A-7-508, as last amended by Laws of Utah 2008, Chapter 315
20A-7-513, as last amended by Laws of Utah 2014, Chapter 364
20A-7-702, as last amended by Laws of Utah 2016, Chapter 348

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

Section 1. Section 20A-7-101 is amended to read:**20A-7-101. Definitions.**

As used in this chapter:

(1) "Budget officer" means:

(a) for a county, the person designated as budget officer in Section 17-19a-203;

(b) for a city, the person designated as budget officer in Subsection 10-6-106(5);

(c) for a town, the town council; or

(d) for a metro township, the person described in Subsection (1)(a) for the county in which the metro township is located.

(2) "Certified" means that the county clerk has acknowledged a signature as being the signature of a registered voter.

(3) "Circulation" means the process of submitting an initiative or referendum petition to legal voters for their signature.

(4) "Eligible voter" means a legal voter who resides in the jurisdiction of the county, city, or town that is holding an election on a ballot proposition.

(5) "Final fiscal impact statement" means a financial statement prepared after voters approve an initiative that contains the information required by Subsection 20A-7-202.5(2) or 20A-7-502.5(2).

(6) "Initial fiscal impact estimate" means:

(a) a financial statement prepared under Section 20A-7-202.5 after the filing of an application for an initiative petition; or

(b) a financial and legal statement prepared under Section 20A-7-502.5 or 20A-7-602.5 for an initiative or referendum petition.

(7) "Initiative" means a new law proposed for adoption by the public as provided in this chapter.

(8) "Initiative packet" means a copy of the initiative petition, a copy of the proposed law, and the signature sheets, all of which have been bound together as a unit.

(9) "Legal signatures" means the number of signatures of legal voters that:

(a) meet the numerical requirements of this chapter; and

(b) have been certified and verified as provided in this chapter.

(10) "Legal voter" means a person who:

(a) is registered to vote; or

(b) becomes registered to vote before the county clerk certifies the signatures on an initiative or referendum petition.

(11) "Local attorney" means the county attorney, city attorney, or town attorney in whose jurisdiction

a local initiative or referendum petition is circulated.

(12) "Local clerk" means the county clerk, city recorder, or town clerk in whose jurisdiction a local initiative or referendum petition is circulated.

(13) (a) "Local law" includes:

- (i) an ordinance;
- (ii) a resolution;
- (iii) a master plan;
- (iv) a comprehensive zoning regulation adopted by ordinance or resolution; or
- (v) other legislative action of a local legislative body.

(b) "Local law" does not include an individual property zoning decision.

(14) "Local legislative body" means the legislative body of a county, city, town, or metro township.

(15) "Local obligation law" means a local law passed by the local legislative body regarding a bond that was approved by a majority of qualified voters in an election.

(16) "Local tax law" means a law, passed by a political subdivision with an annual or biannual calendar fiscal year, that increases a tax or imposes a new tax.

(17) "Measure" means a proposed constitutional amendment, an initiative, or referendum.

(18) "Referendum" means a process by which a law passed by the Legislature or by a local legislative body is submitted or referred to the voters for their approval or rejection.

(19) "Referendum packet" means a copy of the referendum petition, a copy of the law being submitted or referred to the voters for their approval or rejection, and the signature sheets, all of which have been bound together as a unit.

(20) (a) "Signature" means a holographic signature.

(b) "Signature" does not mean an electronic signature.

(21) "Signature sheets" means sheets in the form required by this chapter that are used to collect signatures in support of an initiative or referendum.

(22) "Sponsors" means the legal voters who support the initiative or referendum and who sign the application for petition copies.

(23) "Sufficient" means that the signatures submitted in support of an initiative or referendum petition have been certified and verified as required by this chapter.

(24) "Tax percentage difference" means the difference between the tax rate proposed by an initiative or an initiative petition and the current tax rate.

(25) "Tax percentage increase" means a number calculated by dividing the tax percentage difference by the current tax rate and rounding the result to the nearest thousandth.

~~(24)~~ (26) "Verified" means acknowledged by the person circulating the petition as required in Sections 20A-7-205 and 20A-7-305.

Section 2. Section 20A-7-202 is amended to read:

20A-7-202. Statewide initiative process -- Application procedures -- Time to gather signatures -- Grounds for rejection.

(1) Persons wishing to circulate an initiative petition shall file an application with the lieutenant governor.

(2) The application shall contain:

(a) the name and residence address of at least five sponsors of the initiative petition;

(b) a statement indicating that each of the sponsors:

(i) is a resident of Utah; and

(ii) has voted in a regular general election in Utah within the last three years;

(c) the signature of each of the sponsors, attested to by a notary public;

(d) a copy of the proposed law that includes:

(i) the title of the proposed law, which clearly expresses the subject of the law; and

(ii) the text of the proposed law; ~~and~~

(e) if the initiative petition proposes a tax increase, the following statement, "This initiative petition seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."; and

~~(e)~~ (f) a statement indicating whether ~~or not~~ persons gathering signatures for the petition may be paid for doing so.

(3) The application and its contents are public when filed with the lieutenant governor.

(4) If the petition fails to qualify for the ballot of the election described in Subsection 20A-7-201(2)(b), the sponsors shall:

(a) submit a new application;

(b) obtain new signature sheets; and

(c) collect signatures again.

(5) The lieutenant governor shall reject the application or application addendum filed under Subsection 20A-7-204.1~~(4)~~(5) and not issue circulation sheets if:

(a) the law proposed by the initiative is patently unconstitutional;

(b) the law proposed by the initiative is nonsensical;

(c) the proposed law could not become law if passed;

(d) the proposed law contains more than one subject as evaluated in accordance with Subsection (6);

(e) the subject of the proposed law is not clearly expressed in the law's title; or

(f) the law proposed by the initiative is identical or substantially similar to a law proposed by an initiative that was submitted to the county clerks and lieutenant governor for certification and evaluation within two years preceding the date on which the application for this initiative was filed.

(6) To evaluate whether the proposed law contains more than one subject under Subsection (5)(d), the lieutenant governor shall apply the same standard provided in Utah Constitution, Article VI, Section 22, which prohibits a bill from passing that contains more than one subject.

Section 3. Section 20A-7-202.5 is amended to read:

20A-7-202.5. Initial fiscal impact estimate -- Preparation of estimate -- Challenge to estimate.

(1) Within three working days of receipt of an application for an initiative petition, the lieutenant governor shall submit a copy of the application to the Governor's Office of Management and Budget.

(2) (a) The Governor's Office of Management and Budget shall prepare an unbiased, good faith estimate of the fiscal impact of the law proposed by the initiative that contains:

(i) a dollar amount representing the total estimated fiscal impact of the proposed law;

(ii) if the proposed law would increase or decrease taxes, a dollar amount representing the total estimated increase or decrease for each type of tax affected under the proposed law and a dollar amount representing the total estimated increase or decrease in taxes under the proposed law;

(iii) if the proposed law would increase taxes, the tax percentage difference and the tax percentage increase;

(iii) (iv) if the proposed law would result in the issuance or a change in the status of bonds, notes, or other debt instruments, a dollar amount representing the total estimated increase or decrease in public debt under the proposed law;

(iv) (v) a listing of all sources of funding for the estimated costs associated with the proposed law showing each source of funding and the percentage of total funding provided from each source;

(v) (vi) a dollar amount representing the estimated costs or savings, if any, to state and local government entities under the proposed law; and

(vi) (vii) a concise explanation, not exceeding 100 words, of the above information and of the estimated fiscal impact, if any, under the proposed law.

(b) (i) If the proposed law is estimated to have no fiscal impact, the Governor's Office of Management and Budget shall include a summary statement in the initial fiscal impact statement in substantially the following form:

"The Governor's Office of Management and Budget estimates that the law proposed by this initiative would have no significant fiscal impact and would not result in either an increase or decrease in taxes or debt."

(ii) If the proposed law is estimated to have a fiscal impact, the Governor's Office of Management and Budget shall include a summary statement in the initial fiscal impact estimate in substantially the following form:

"The Governor's Office of Management and Budget estimates that the law proposed by this initiative would result in a total fiscal expense/savings of \$ _____, which includes a (type of tax or taxes) tax increase/decrease of \$ _____ and a \$ _____ increase/decrease in state debt."

(iii) If the estimated fiscal impact of the proposed law is highly variable or is otherwise difficult to reasonably express in a summary statement, the Governor's Office of Management and Budget may include in the summary statement a brief explanation that identifies those factors affecting the variability or difficulty of the estimate.

(iv) If the proposed law imposes a tax increase, the Governor's Office of Management and Budget shall include a summary statement in the initial fiscal impact estimate in substantially the following form:

"This initiative petition seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."

(3) The Governor's Office of Management and Budget shall prepare an unbiased, good faith estimate of the cost of printing and distributing information related to the initiative petition in:

(a) the voter information pamphlet as required by Title 20A, Chapter 7, Part 7, Voter Information Pamphlet; or

(b) the newspaper, as required by Section 20A-7-702.

(4) Within 25 calendar days from the date that the lieutenant governor delivers a copy of the application, the Governor's Office of Management and Budget shall:

(a) deliver a copy of the initial fiscal impact estimate to the lieutenant governor's office; and

(b) mail a copy of the initial fiscal impact estimate to the first five sponsors named in the initiative application.

(5) (a) (i) Three or more of the sponsors of the petition may, within 20 calendar days of the date of delivery of the initial fiscal impact estimate to the lieutenant governor's office, file a petition with the

Supreme Court, alleging that the initial fiscal impact estimate, taken as a whole, is an inaccurate estimate of the fiscal impact of the initiative.

(ii) After receipt of the appeal, the Supreme Court shall direct the lieutenant governor to send notice of the petition to:

(A) any person or group that has filed an argument with the lieutenant governor's office for or against the measure that is the subject of the challenge; and

(B) any political issues committee established under Section 20A-11-801 that has filed written or electronic notice with the lieutenant governor that identifies the name, mailing or email address, and telephone number of the person designated to receive notice about any issues relating to the initiative.

(b) (i) There is a presumption that the initial fiscal impact estimate prepared by the Governor's Office of Management and Budget is based upon reasonable assumptions, uses reasonable data, and applies accepted analytical methods to present the estimated fiscal impact of the initiative.

(ii) The Supreme Court may not revise the contents of, or direct the revision of, the initial fiscal impact estimate unless the plaintiffs rebut the presumption by clear and convincing evidence that establishes that the initial fiscal estimate, taken as a whole, is an inaccurate statement of the estimated fiscal impact of the initiative.

(iii) The Supreme Court may refer an issue related to the initial fiscal impact estimate to a master to examine the issue and make a report in accordance with Utah Rules of Civil Procedure, Rule 53.

(c) The Supreme Court shall certify to the lieutenant governor a fiscal impact estimate for the measure that meets the requirements of this section.

Section 4. Section 20A-7-203 is amended to read:

20A-7-203. Form of initiative petition and signature sheets.

(1) (a) Each proposed initiative petition shall be printed in substantially the following form:

"INITIATIVE PETITION To the Honorable _____, Lieutenant Governor:

We, the undersigned citizens of Utah, respectfully demand that the following proposed law be submitted to the legal voters/Legislature of Utah for their/its approval or rejection at the regular general election/session to be held/beginning on _____ (month\day\year);

Each signer says:

I have personally signed this petition;

I am registered to vote in Utah or intend to become registered to vote in Utah before the certification of the petition names by the county clerk; and

My residence and post office address are written correctly after my name.

NOTICE TO SIGNERS:

Public hearings to discuss this petition were held at: (list dates and locations of public hearings.)"

(b) If the initiative petition proposes a tax increase, the following statement shall appear, in at least 14-point, bold type, immediately following the information described in Subsection (1)(a):

"This initiative petition seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."

(b) (c) The sponsors of an initiative shall attach a copy of the proposed law to each initiative petition.

(2) Each signature sheet shall:

(a) be printed on sheets of paper 8-1/2 inches long and 11 inches wide;

(b) be ruled with a horizontal line three-fourths inch from the top, with the space above that line blank for the purpose of binding;

(c) contain the title of the initiative printed below the horizontal line, in at least 14-point, bold type;

(d) contain the initial fiscal impact estimate's summary statement issued by the Governor's Office of Management and Budget according to Subsection 20A-7-202.5(2)(b), including any update according to Subsection 20A-7-204.1(4), and the cost estimate for printing and distributing information related to the initiative petition according to Subsection 20A-7-202.5(3), printed or typed in not less than 12-point, bold type, at the top of each signature sheet under the title of the initiative;]

(e) contain the word "Warning" printed or typed at the top of each signature sheet under the initial fiscal impact estimate's summary statement;]

(f) contain, to the right of the word "Warning," the following statement printed or typed in not less than eight-point, single-leaded type:]

"[It is a class A misdemeanor for anyone to sign any initiative petition with any other name than his own, or knowingly to sign his name more than once for the same measure, or to sign an initiative petition when he knows he is not a registered voter and knows that he does not intend to become registered to vote before the certification of the petition names by the county clerk.]; and]

(g) (d) be vertically divided into columns as follows:

(i) the first column shall appear at the extreme left of the sheet, be five-eighths inch wide, be headed with "For Office Use Only," and be subdivided with a light vertical line down the middle with the left subdivision entitled "Registered" and the right subdivision left untitled;

(ii) the next column shall be 2-1/2 inches wide, headed "Registered Voter's Printed Name (must be legible to be counted)";

(iii) the next column shall be 2-1/2 inches wide, headed "Signature of Registered Voter";

(iv) the next column shall be one inch wide, headed "Birth Date or Age (Optional)"; and

(v) the final column shall be 4-3/8 inches wide, headed "Street Address, City, Zip Code";

~~(4)~~ (e) spanning the sheet horizontally beneath each row on which a registered voter may submit the information described in Subsection (2)(~~(g)~~)(d), contain the following statement printed or typed in not less than eight-point~~, single-leaded~~ type:

"By signing this petition, you are stating that you have read and understand the law proposed by this petition."; and

~~(4)~~ (f) at the bottom of the sheet, contain in the following order:

(i) the title of the initiative, in at least 14-point, bold type;

(ii) the initial fiscal impact estimate's summary statement issued by the Governor's Office of Management and Budget in accordance with Subsection 20A-7-202.5(2)(b), including any update in accordance with Subsection 20A-7-204.1(4), and the cost estimate for printing and distributing information related to the initiative petition in accordance with Subsection 20A-7-202.5(3), in not less than 12-point, bold type;

(iii) the word "Warning," followed by the following statement in not less than eight-point type:

"It is a class A misdemeanor for an individual to sign an initiative petition with a name other than the individual's own name, or to knowingly sign the individual's name more than once for the same measure, or to sign an initiative petition when the individual knows that the individual is not a registered voter and knows that the individual does not intend to become registered to vote before the certification of the petition names by the county clerk.";

(iv) the following statement: "Birth date or age information is not required, but it may be used to verify your identity with voter registration records. If you choose not to provide it, your signature may not be verified as a valid signature if you change your address before petition signatures are verified or if the information you provide does not match your voter registration records."; and

(v) if the initiative petition proposes a tax increase, spanning the bottom of the sheet, horizontally, in not less than 14-point, bold type, the following statement:

"This initiative petition seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."

(3) The final page of each initiative packet shall contain the following printed or typed statement:

"Verification

State of Utah, County of _____

I, _____, of _____, hereby state that:

I am a resident of Utah and am at least 18 years old;

All the names that appear in this packet were signed by ~~persons~~ individuals who professed to be the ~~persons~~ individuals whose names appear in it, and each of ~~them~~ the individuals signed ~~his~~ the individual's name on it in my presence;

I believe that each individual has printed and signed ~~his~~ the individual's name and written ~~his~~ the individual's post office address and residence correctly, and that each signer is registered to vote in Utah or intends to become registered to vote before the certification of the petition names by the county clerk.

I have not paid or given anything of value to any person who signed this petition to encourage that person _____ to _____ sign it.

(Name) (Residence Address) (Date)"

(4) The forms prescribed in this section are not mandatory, and, if substantially followed, the initiative petitions are sufficient, notwithstanding clerical and merely technical errors.

Section 5. Section 20A-7-204 is amended to read:

20A-7-204. Circulation requirements -- Lieutenant governor to provide sponsors with materials.

(1) In order to obtain the necessary number of signatures required by this part, the sponsors shall circulate initiative packets that meet the form requirements of this part.

(2) The lieutenant governor shall furnish to the sponsors:

(a) a copy of the initiative petition, with any change submitted under Subsection 20A-7-204.1~~(4)~~(5); and

(b) one signature sheet.

(3) The sponsors of the petition shall:

(a) arrange and pay for the printing of all additional copies of the petition and signature sheets; and

(b) ensure that the copies of the petition and signature sheets meet the form requirements of this section.

(4) (a) The sponsors may prepare the initiative for circulation by creating multiple initiative packets.

(b) The sponsors shall create those packets by binding a copy of the initiative petition, a copy of the proposed law, and no more than 50 signature sheets together at the top in such a way that the packets may be conveniently opened for signing.

(c) The sponsors need not attach a uniform number of signature sheets to each initiative packet.

(5) (a) After the sponsors have prepared sufficient initiative packets, they shall return them to the lieutenant governor.

(b) The lieutenant governor shall:

(i) number each of the initiative packets and return them to the sponsors within five working days; and

(ii) keep a record of the numbers assigned to each packet.

Section 6. Section 20A-7-204.1 is amended to read:

20A-7-204.1. Public hearings to be held before initiative petitions are circulated -- Changes to an initiative and initial fiscal impact estimate.

(1) (a) After issuance of the initial fiscal impact estimate by the Governor's Office of Management and Budget and before circulating initiative petitions for signature statewide, sponsors of the initiative petition shall hold at least seven public hearings throughout Utah as follows:

(i) one in the Bear River region -- Box Elder, Cache, or Rich County;

(ii) one in the Southwest region -- Beaver, Garfield, Iron, Kane, or Washington County;

(iii) one in the Mountain region -- Summit, Utah, or Wasatch County;

(iv) one in the Central region -- Juab, Millard, Piute, Sanpete, Sevier, or Wayne County;

(v) one in the Southeast region -- Carbon, Emery, Grand, or San Juan County;

(vi) one in the Uintah Basin region -- Daggett, Duchesne, or Uintah County; and

(vii) one in the Wasatch Front region -- Davis, Morgan, Salt Lake, Tooele, or Weber County.

(b) Of the seven meetings, at least two of the meetings shall be held in a first or second class county, but not in the same county.

(2) At least three calendar days before the date of the public hearing, the sponsors shall:

(a) provide written notice of the public hearing to:

(i) the lieutenant governor for posting on the state's website; and

(ii) each state senator, state representative, and county commission or county council member who is elected in whole or in part from the region where the public hearing will be held; and

(b) publish written notice of the public hearing detailing its time, date, and location:

(i) in at least one newspaper of general circulation in each county in the region where the public hearing will be held; and

(ii) on the Utah Public Notice Website created in Section 63F-1-701.

(3) If the initiative petition proposes a tax increase, the written notice described in Subsection (2) shall include the following statement, in bold, in the same font and point size as the largest font and point size appearing in the notice:

"This initiative petition seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."

[~~(3)~~] (4) (a) During the public hearing, the sponsors shall either:

(i) video tape or audio tape the public hearing and, when the hearing is complete, deposit the complete audio or video tape of the meeting with the lieutenant governor; or

(ii) take comprehensive minutes of the public hearing, detailing the names and titles of each speaker and summarizing each speaker's comments.

(b) The lieutenant governor shall make copies of the tapes or minutes available to the public.

[~~(4)~~] (5) (a) Within 14 days after conducting the seventh public hearing required by Subsection (1)(a) and before circulating an initiative petition for signatures, the sponsors of the initiative petition may change the text of the proposed law if:

(i) a change to the text is:

(A) germane to the text of the proposed law filed with the lieutenant governor under Section 20A-7-202; and

(B) consistent with the requirements of Subsection 20A-7-202(5); and

(ii) each sponsor signs, attested to by a notary public, an application addendum to change the text of the proposed law.

(b) (i) Within three working days of receipt of an application addendum to change the text of the proposed law in an initiative petition, the lieutenant governor shall submit a copy of the application addendum to the Governor's Office of Management and Budget.

(ii) The Governor's Office of Management and Budget shall update the initial fiscal impact estimate by following the procedures and requirements of Section 20A-7-202.5 to reflect a change to the text of the proposed law.

Section 7. Section 20A-7-209 is amended to read:

20A-7-209. Ballot title -- Duties of lieutenant governor and Office of Legislative Research and General Counsel.

(1) By June 5 before the regular general election, the lieutenant governor shall deliver a copy of all of the proposed laws that have qualified for the ballot to the Office of Legislative Research and General Counsel.

(2) (a) The Office of Legislative Research and General Counsel shall:

(i) entitle each state initiative that has qualified for the ballot "Proposition Number ___" and give it a number as assigned under Section 20A-6-107;

(ii) prepare an impartial ballot title for each initiative summarizing the contents of the measure; and

(iii) return each petition and ballot title to the lieutenant governor by June 26.

(b) The ballot title may be distinct from the title of the proposed law attached to the initiative petition, and shall be not more than 100 words.

(c) If the initiative proposes a tax increase, the Office of Legislative Research and General Counsel shall include the following statement, in bold, in the ballot title:

"This initiative seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."

[e] (d) For each state initiative, the official ballot shall show:

(i) the number of the initiative as determined by the Office of Legislative Research and General Counsel;

(ii) the ballot title as determined by the Office of Legislative Research and General Counsel; and

(iii) the initial fiscal impact estimate prepared under Section 20A-7-202.5 or updated under Section 20A-7-204.1.

(3) By June 27, the lieutenant governor shall mail a copy of the ballot title to any sponsor of the petition.

(4) (a) (i) At least three of the sponsors of the petition may, by July 6, challenge the wording of the ballot title prepared by the Office of Legislative Research and General Counsel to the Supreme Court.

(ii) After receipt of the appeal, the Supreme Court shall direct the lieutenant governor to send notice of the appeal to:

(A) any person or group that has filed an argument for or against the measure that is the subject of the challenge; or

(B) any political issues committee established under Section 20A-11-801 that has filed written or electronic notice with the lieutenant governor that identifies the name, mailing or email address, and telephone number of the person designated to receive notice about any issues relating to the initiative.

(b) (i) There is a presumption that the ballot title prepared by the Office of Legislative Research and General Counsel is an impartial summary of the contents of the initiative.

(ii) The Supreme Court may not revise the wording of the ballot title unless the plaintiffs rebut

the presumption by clearly and convincingly establishing that the ballot title is patently false or biased.

(c) The Supreme Court shall:

(i) examine the ballot title;

(ii) hear arguments; and

(iii) certify to the lieutenant governor a ballot title for the measure that meets the requirements of this section.

(d) The lieutenant governor shall certify the title verified by the Supreme Court to the county clerks to be printed on the official ballot.

Section 8. Section 20A-7-402 is amended to read:

20A-7-402. Local voter information pamphlet -- Contents -- Limitations -- Preparation -- Statement on front cover.

(1) The county or municipality that is subject to a ballot proposition shall prepare a local voter information pamphlet that meets the requirements of this part.

(2) (a) The arguments for or against a ballot proposition shall conform to the requirements of this section.

(b) To prepare an argument for or against a ballot proposition, an eligible voter shall file a request with the election officer at least 65 days before the election at which the ballot proposition is to be voted on.

(c) If more than one eligible voter requests the opportunity to prepare an argument for or against a ballot proposition, the election officer shall make the final designation according to the following criteria:

(i) sponsors have priority in preparing an argument regarding a ballot proposition; and

(ii) members of the local legislative body have priority over others.

(d) (i) Except as provided in Subsection (2)(e), a sponsor of a ballot proposition may prepare an argument in favor of the ballot proposition.

(ii) Except as provided in Subsection (2)(e), and subject to Subsection (2)(c), an eligible voter opposed to the ballot proposition who submits a request under Subsection (2)(b) may prepare an argument against the ballot proposition.

(e) (i) For a referendum, subject to Subsection (2)(c), an eligible voter who is in favor of a law that is referred to the voters and who submits a request under Subsection (2)(b) may prepare an argument for adoption of the law.

(ii) The sponsors of a referendum may prepare an argument against the adoption of a law that is referred to the voters.

(f) An eligible voter who submits an argument under this section shall:

(i) ensure that the argument does not exceed 500 words in length;

(ii) ensure that the argument does not list more than five names as sponsors;

(iii) submit the argument to the election officer no later than 60 days before the election day on which the ballot proposition will be submitted to the voters; and

(iv) include with the argument the eligible voter's name, residential address, postal address, email address if available, and phone number.

(g) An election officer shall refuse to accept and publish an argument that is submitted after the deadline described in Subsection (2)(f)(iii).

(3) (a) An election officer who timely receives the arguments in favor of and against a ballot proposition shall, within one business day after the day on which the election office receives both arguments, send, via mail or email:

(i) a copy of the argument in favor of the ballot proposition to the eligible voter who submitted the argument against the ballot proposition; and

(ii) a copy of the argument against the ballot proposition to the eligible voter who submitted the argument in favor of the ballot proposition.

(b) The eligible voter who submitted a timely argument in favor of the ballot proposition:

(i) may submit to the election officer a rebuttal argument of the argument against the ballot proposition;

(ii) shall ensure that the rebuttal argument does not exceed 250 words in length; and

(iii) shall submit the rebuttal argument no later than 45 days before the election day on which the ballot proposition will be submitted to the voters.

(c) The eligible voter who submitted a timely argument against the ballot proposition:

(i) may submit to the election officer a rebuttal argument of the argument in favor of the ballot proposition;

(ii) shall ensure that the rebuttal argument does not exceed 250 words in length; and

(iii) shall submit the rebuttal argument no later than 45 days before the election day on which the ballot proposition will be submitted to the voters.

(d) An election officer shall refuse to accept and publish a rebuttal argument that is submitted after the deadline described in Subsection (3)(b)(iii) or (3)(c)(iii).

(4) (a) Except as provided in Subsection (4)(b):

(i) an eligible voter may not modify an argument or rebuttal argument after the eligible voter submits the argument or rebuttal argument to the election officer; and

(ii) a person other than the eligible voter described in Subsection (4)(a)(i) may not modify an argument or rebuttal argument.

(b) The election officer, and the eligible voter who submits an argument or rebuttal argument, may jointly agree to modify an argument or rebuttal argument in order to:

(i) correct factual, grammatical, or spelling errors; and

(ii) reduce the number of words to come into compliance with the requirements of this section.

(c) An election officer shall refuse to accept and publish an argument or rebuttal argument if the eligible voter who submits the argument or rebuttal argument fails to negotiate, in good faith, to modify the argument or rebuttal argument in accordance with Subsection (4)(b).

(5) An election officer may designate another eligible voter to take the place of an eligible voter described in this section if the original eligible voter is, due to injury, illness, death, or another circumstance, unable to continue to fulfill the duties of an eligible voter described in this section.

(6) (a) The local voter information pamphlet shall include a copy of the initial fiscal impact estimate prepared for each initiative under Section 20A-7-502.5.

(b) If the initiative proposes a tax increase, the local voter information pamphlet shall include the following statement in bold type:

"This initiative seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."

(7) (a) In preparing the local voter information pamphlet, the election officer shall:

(i) ensure that the arguments are printed on the same sheet of paper upon which the ballot proposition is also printed;

(ii) ensure that the following statement is printed on the front cover or the heading of the first page of the printed arguments:

"The arguments for or against a ballot proposition are the opinions of the authors.";

(iii) pay for the printing and binding of the local voter information pamphlet; and

(iv) distribute either the pamphlets or the notice described in Subsection (7)(c) either by mail or carrier not less than 15 days before, but not more than 45 days before, the election at which the ballot propositions are to be voted upon.

(b) (i) If the proposed measure exceeds 500 words in length, the election officer may summarize the measure in 500 words or less.

(ii) The summary shall state where a complete copy of the ballot proposition is available for public review.

(c) (i) The election officer may distribute a notice printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail.

(ii) The notice described in Subsection (7)(c)(i) shall include:

(A) the address of the Statewide Electronic Voter Information Website authorized by Section 20A-7-801; and

(B) the phone number a voter may call to request delivery of a voter information pamphlet by mail or carrier.

Section 9. Section 20A-7-502 is amended to read:

20A-7-502. Local initiative process -- Application procedures.

(1) Persons wishing to circulate an initiative petition shall file an application with the local clerk.

(2) The application shall contain:

(a) the name and residence address of at least five sponsors of the initiative petition;

(b) a statement indicating that each of the sponsors:

(i) is a registered voter; and

(ii) (A) if the initiative seeks to enact a county ordinance, has voted in a regular general election in Utah within the last three years; or

(B) if the initiative seeks to enact a municipal ordinance, has voted in a regular municipal election in Utah:

(I) except as provided in Subsection (2)(b)(ii)(B)(II), within the last three years; or

(II) within the last five years, if the sponsor's failure to vote within the last three years is due to the sponsor's residing in a municipal district that participates in a municipal election every four years;

(c) the signature of each of the sponsors, attested to by a notary public; ~~and~~

(d) a copy of the proposed law that includes:

(i) the title of the proposed law, which clearly expresses the subject of the law; and

(ii) the text of the proposed law~~[-]; and~~

(e) if the initiative petition proposes a tax increase, the following statement, "This initiative petition seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."

(3) A proposed law submitted under this section may not contain more than one subject to the same extent a bill may not pass containing more than one subject as provided in Utah Constitution, Article VI, Section 22.

Section 10. Section 20A-7-502.5 is amended to read:

20A-7-502.5. Initial fiscal and legal impact estimate -- Preparation of estimate -- Challenge to estimate.

(1) Within three working days of receipt of an application for an initiative petition, the local clerk shall submit a copy of the application to the county, city, or town's budget officer.

(2) (a) The budget officer, together with legal counsel, shall prepare an unbiased, good faith estimate of the fiscal and legal impact of the law proposed by the initiative that contains:

(i) a dollar amount representing the total estimated fiscal impact of the proposed law;

(ii) if the proposed law would increase or decrease taxes, a dollar amount representing the total estimated increase or decrease for each type of tax affected under the proposed law and a dollar amount representing the total estimated increase or decrease in taxes under the proposed law;

(iii) if the proposed law would increase taxes, the tax percentage difference and the tax percentage increase;

~~(iii)~~ (iv) if the proposed law would result in the issuance or a change in the status of bonds, notes, or other debt instruments, a dollar amount representing the total estimated increase or decrease in public debt under the proposed law;

~~(iv)~~ (v) a listing of all sources of funding for the estimated costs associated with the proposed law showing each source of funding and the percentage of total funding provided from each source;

~~(v)~~ (vi) a dollar amount representing the estimated costs or savings, if any, to state and local government entities under the proposed law;

~~(vi)~~ (vii) the proposed law's legal impact, including:

(A) any significant effects on a person's vested property rights;

(B) any significant effects on other laws or ordinances;

(C) any significant legal liability the city, county, or town may incur; and

(D) any other significant legal impact as determined by the budget officer and the legal counsel; and

~~(vii)~~ (viii) a concise explanation, not exceeding 100 words, of the above information and of the estimated fiscal impact, if any, under the proposed law.

(b) (i) If the proposed law is estimated to have no fiscal impact, the local budget officer shall include a summary statement in the initial fiscal impact statement in substantially the following form:

"The (title of the local budget officer) estimates that the law proposed by this initiative would have no significant fiscal impact and would not result in either an increase or decrease in taxes or debt."

(ii) If the proposed law is estimated to have a fiscal impact, the local budget officer shall include a summary statement in the initial fiscal impact estimate in substantially the following form:

“The (title of the local budget officer) estimates that the law proposed by this initiative would result in a total fiscal expense/savings of \$_____, which includes a (type of tax or taxes) tax increase/decrease of \$_____ and a \$_____ increase/decrease in public debt.”

(iii) If the estimated fiscal impact of the proposed law is highly variable or is otherwise difficult to reasonably express in a summary statement, the local budget officer may include in the summary statement a brief explanation that identifies those factors affecting the variability or difficulty of the estimate.

(iv) If the proposed law would increase taxes, the local budget officer shall include a summary statement in the initial fiscal impact statement in substantially the following form:

“This initiative petition seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate.”

(3) The budget officer shall prepare an unbiased, good faith estimate of the cost of printing and distributing information related to the initiative petition in the voter information pamphlet as required by Section 20A-7-402.

(4) Within 25 calendar days from the date that the local clerk delivers a copy of the application, the budget officer shall:

(a) deliver a copy of the initial fiscal impact estimate, including the legal impact estimate, to the local clerk’s office; and

(b) mail a copy of the initial fiscal impact estimate, including the legal impact estimate, to the first five sponsors named in the application.

(5) (a) Three or more of the sponsors of the petition may, within 20 calendar days of the date of delivery of the initial fiscal impact estimate to the local clerk’s office, file a petition with the Supreme Court, alleging that the initial fiscal impact estimate, including the legal impact estimate, taken as a whole, is an inaccurate estimate of the fiscal or legal impact of the initiative.

(b) (i) There is a presumption that the initial fiscal impact estimate, including the legal impact estimate, prepared by the budget officer and legal counsel is based upon reasonable assumptions, uses reasonable data, and applies accepted analytical methods to present the estimated fiscal and legal impact of the initiative.

(ii) The Supreme Court may not revise the contents of, or direct the revision of, the initial fiscal impact estimate, including the legal impact estimate, unless the plaintiffs rebut the presumption by clear and convincing evidence that establishes that the fiscal estimate, including the

legal impact estimate, taken as a whole, is an inaccurate statement of the estimated fiscal or legal impact of the initiative.

(iii) The Supreme Court may refer an issue related to the initial fiscal impact estimate, including the legal impact estimate, to a master to examine the issue and make a report in accordance with Utah Rules of Civil Procedure, Rule 53.

(c) The Supreme Court shall certify to the local clerk an initial fiscal impact estimate, including the legal impact estimate, for the measure that meets the requirements of this section.

Section 11. Section 20A-7-503 is amended to read:

20A-7-503. Form of initiative petitions and signature sheets.

(1) (a) Each proposed initiative petition shall be printed in substantially the following form:

“INITIATIVE PETITION To the Honorable ____, County Clerk/City Recorder/Town Clerk:

We, the undersigned citizens of Utah, respectfully demand that the following proposed law be submitted to: the legislative body for its approval or rejection at its next meeting; and the legal voters of the county/city/town, if the legislative body rejects the proposed law or takes no action on it.

Each signer says:

I have personally signed this petition;

I am registered to vote in Utah or intend to become registered to vote in Utah before the certification of the petition names by the county clerk; and

My residence and post office address are written correctly after my name.”

(b) If the initiative petition proposes a tax increase, the following statement shall appear, in at least 14-point, bold type, immediately following the information described in Subsection (1)(a):

“This initiative petition seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate.”

~~(b)~~ (c) The sponsors of an initiative shall attach a copy of the proposed law to each initiative petition.

(2) Each signature sheet shall:

(a) be printed on sheets of paper 8-1/2 inches long and 11 inches wide;

(b) be ruled with a horizontal line three-fourths inch from the top, with the space above that line blank for the purpose of binding;

(c) contain the title of the initiative printed below the horizontal line, in at least 14-point, bold type;

~~[(d) contain the initial fiscal impact estimate’s summary statement issued by the budget officer according to Subsection 20A-7-502.5(2)(b) and the~~

~~cost estimate for printing and distributing information related to the initiative petition according to Subsection 20A-7-502.5(3) printed or typed in not less than 12-point, bold type, at the top of each signature sheet under the title of the initiative;]~~

~~[(e) contain the word "Warning" printed or typed at the top of each signature sheet under the initial fiscal impact estimate's summary statement;]~~

~~[(f) contain, to the right of the word "Warning," the following statement printed or typed in not less than eight-point, single-leaded type:]~~

~~["It is a class A misdemeanor for anyone to sign any initiative petition with any other name than his own, or knowingly to sign his name more than once for the same measure, or to sign an initiative petition when he knows he is not a registered voter and knows that he does not intend to become registered to vote before the certification of the petition names by the county clerk.";]~~

~~[(g) contain horizontally ruled lines three eighths inch apart under the "Warning" statement required by this section;]~~

~~[(h) (d) be vertically divided into columns as follows:~~

~~(i) the first column shall appear at the extreme left of the sheet, be five-eighths inch wide, be headed with "For Office Use Only", and be subdivided with a light vertical line down the middle with the left subdivision entitled "Registered" and the right subdivision left untitled;~~

~~(ii) the next column shall be 2-1/2 inches wide, headed "Registered Voter's Printed Name (must be legible to be counted)";~~

~~(iii) the next column shall be 2-1/2 inches wide, headed "Signature of Registered Voter";~~

~~(iv) the next column shall be one inch wide, headed "Birth Date or Age (Optional)"; and~~

~~(v) the final column shall be 4-3/8 inches wide, headed "Street Address, City, Zip Code";~~

~~[(i)] (e) spanning the sheet horizontally beneath each row on which a registered voter may submit the information described in Subsection (2)[(h)](d), contain the following statement printed or typed in not less than eight-point[, single-leaded] type:~~

~~"By signing this petition, you are stating that you have read and understand the law proposed by this petition."; and~~

~~[(j)] (f) at the bottom of the sheet, contain in the following order:~~

~~(i) the title of the initiative, in at least 14-point, bold type;~~

~~(ii) the initial fiscal impact estimate's summary statement issued by the budget officer in accordance with Subsection 20A-7-502.5(2)(b) and the cost estimate for printing and distributing information related to the initiative petition in~~

~~accordance with Subsection 20A-7-502.5(3), in not less than 12-point, bold type;~~

~~(iii) the word "Warning," followed by the following statement in not less than eight-point type:~~

~~"It is a class A misdemeanor for an individual to sign an initiative petition with a name other than the individual's own name, or to knowingly sign the individual's name more than once for the same measure, or to sign an initiative petition when the individual knows that the individual is not a registered voter and knows that the individual does not intend to become registered to vote before the certification of the petition names by the county clerk.";~~

~~(iv) the following statement: "Birth date or age information is not required, but it may be used to verify your identity with voter registration records. If you choose not to provide it, your signature may not be verified as a valid signature if you change your address before petition signatures are verified or if the information you provide does not match your voter registration records."; and~~

~~(v) if the initiative petition proposes a tax increase, spanning the bottom of the sheet, horizontally, in not less than 14-point, bold type, the following statement:~~

~~"This initiative petition seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."~~

~~(3) The final page of each initiative packet shall contain the following printed or typed statement:~~

~~"Verification~~

~~State of Utah, County of _____~~

~~I, _____, of _____, hereby state that:~~

~~I am a resident of Utah and am at least 18 years old;~~

~~All the names that appear in this initiative packet were signed by [persons] the individuals who professed to be the [persons] individuals whose names appear in it, and each of [them] the individuals signed [his] the individual's name on it in my presence;~~

~~I believe that each individual has printed and signed [his] the individual's name and written [his] the individual's post office address and residence correctly, and that each signer is registered to vote in Utah or intends to become registered to vote before the certification of the petition names by the county clerk.~~

~~_____ "~~

~~(4) The forms prescribed in this section are not mandatory, and, if substantially followed, the initiative petitions are sufficient, notwithstanding clerical and merely technical errors.~~

Section 12. Section 20A-7-508 is amended to read:

20A-7-508. Ballot title -- Duties of local clerk and local attorney.

(1) Whenever an initiative petition is declared sufficient for submission to a vote of the people, the local clerk shall deliver a copy of the petition and the proposed law to the local attorney.

(2) The local attorney shall:

(a) entitle each county or municipal initiative that has qualified for the ballot "Proposition Number __" and give it a number as assigned under Section 20A-6-107;

(b) prepare a proposed ballot title for the initiative;

(c) file the proposed ballot title and the numbered initiative titles with the local clerk within 15 days after the date the initiative petition is declared sufficient for submission to a vote of the people; and

(d) promptly provide notice of the filing of the proposed ballot title to:

(i) the sponsors of the petition; and

(ii) the local legislative body for the jurisdiction where the initiative petition was circulated.

(3) (a) The ballot title may be distinct from the title of the proposed law attached to the initiative petition, and shall express, in not exceeding 100 words, the purpose of the measure.

(b) In preparing a ballot title, the local attorney shall, to the best of [his] the local attorney's ability, give a true and impartial statement of the purpose of the measure.

(c) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.

(d) If the initiative proposes a tax increase, the local attorney shall include the following statement, in bold, in the ballot title:

"This initiative seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."

(4) (a) Within five calendar days after the date the local attorney files a proposed ballot title under Subsection (2)(c), the local legislative body for the jurisdiction where the initiative petition was circulated and the sponsors of the petition may file written comments in response to the proposed ballot title with the local clerk.

(b) Within five calendar days after the last date to submit written comments under Subsection (4)(a), the local attorney shall:

(i) review any written comments filed in accordance with Subsection (4)(a);

(ii) prepare a final ballot title that meets the requirements of Subsection (3); and

(iii) return the petition and file the ballot title with the local clerk.

(c) Subject to Subsection (6), the ballot title, as determined by the local attorney, shall be printed on the official ballot.

(5) Immediately after the local attorney files a copy of the ballot title with the local clerk, the local clerk shall serve a copy of the ballot title by mail upon the sponsors of the petition and the local legislative body for the jurisdiction where the initiative petition was circulated.

(6) (a) If the ballot title furnished by the local attorney is unsatisfactory or does not comply with the requirements of this section, the decision of the local attorney may be appealed by a petition to the Supreme Court that is brought by:

(i) at least three sponsors of the initiative petition; or

(ii) a majority of the local legislative body for the jurisdiction where the initiative petition was circulated.

(b) The Supreme Court shall examine the measures and consider arguments, and, in its decision, may certify to the local clerk a ballot title for the measure that fulfills the intent of this section.

(c) The local clerk shall print the title certified by the Supreme Court on the official ballot.

Section 13. Section 20A-7-513 is amended to read:

20A-7-513. Fiscal review -- Repeal, amendment, or resubmission.

(1) No later than 60 days after the date of an election in which the voters approve an initiative petition, the budget officer shall:

(a) for each initiative approved by the voters, prepare a final fiscal impact statement, using current financial information and containing the information required by Subsection 20A-7-502.5(2), except for the information required by Subsection 20A-7-502.5(2)(a)(~~vii~~)(vii); and

(b) deliver a copy of the final fiscal impact statement to:

(i) the local legislative body of the jurisdiction where the initiative was circulated;

(ii) the local clerk; and

(iii) the first five sponsors listed on the initiative application.

(2) If the final fiscal impact statement exceeds the initial fiscal impact estimate by 25% or more, the local legislative body shall review the final fiscal impact statement and may, by a majority vote:

(a) repeal the law established by passage of the initiative;

(b) amend the law established by the passage of the initiative; or

(c) pass a resolution informing the voters that they may file an initiative petition to repeal the law enacted by the passage of the initiative.

Section 14. Section 20A-7-702 is amended to read:

20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

- (a) printed and bound in a single pamphlet;
- (b) printed in clear readable type, no less than 10 point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

- (a) a cover title page;
- (b) an introduction to the pamphlet by the lieutenant governor;
- (c) a table of contents;
- (d) a list of all candidates for constitutional offices;
- (e) a list of candidates for each legislative district;
- (f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before the date of the election;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

- (i) a copy of the number and ballot title of the measure;
- (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;
- (iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;
- (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets;

(vi) for each initiative qualified for the ballot[₇]:

(A) a copy of the measure as certified by the lieutenant governor and a copy of the fiscal impact estimate prepared according to Section 20A-7-202.5; and

(B) if the initiative proposes a tax increase, the following statement in bold type:

“This initiative seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate.”; and

(vii) for each referendum qualified for the ballot, a complete copy of the text of the law being submitted to the voters for their approval or rejection, with all new language underlined and all deleted language placed within brackets, as applicable;

(h) a description provided by the Judicial Performance Evaluation Commission of the selection and retention process for judges, including, in the following order:

- (i) a description of the judicial selection process;
- (ii) a description of the judicial performance evaluation process;
- (iii) a description of the judicial retention election process;
- (iv) a list of the criteria of the judicial performance evaluation and the minimum performance standards;
- (v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) a list of the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) a narrative concerning the judge's performance;

(D) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(E) a statement identifying whether or not the Judicial Performance Evaluation Commission recommends the judge be retained or declines to make a recommendation and the number of votes for and against the commission's recommendation;

(F) any statement provided by a judge who is not recommended for retention by the Judicial Performance Evaluation Commission under Section 78A-12-203;

(G) in a bar graph, the average of responses to each survey category, displayed with an identification of the minimum acceptable score as set by Section 78A-12-205 and the average score of all judges of the same court level; and

(H) a website address that contains the Judicial Performance Evaluation Commission's report on the judge's performance evaluation;

(i) for each judge, a statement provided by the Utah Supreme Court identifying the cumulative number of informal reprimands, when consented to

by the judge in accordance with Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution, Article VIII, Section 13, during the judge's current term and the immediately preceding term, and a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received;

(j) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(k) voter registration information, including information on how to obtain an absentee ballot;

(l) a list of all county clerks' offices and phone numbers; and

(m) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)
(signed) _____

Lieutenant Governor"

(3) No earlier than 75 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall:

(a) (i) distribute one copy of the voter information pamphlet to each household within the state;

(ii) distribute to each household within the state a notice:

(A) printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail;

(B) that states the address of the Statewide Electronic Voter Information Website authorized by Section 20A-7-801; and

(C) that states the phone number a voter may call to request delivery of a voter information pamphlet by mail; or

(iii) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

(4) The lieutenant governor may distribute a voter information pamphlet at a location frequented by a person who cannot easily access the Statewide Electronic Voter Information Website authorized by Section 20A-7-801.

CHAPTER 292**H. B. 336**

Passed March 7, 2017

Approved March 23, 2017

Effective May 9, 2017

(Exception clause in Section 47)

HEALTH REFORM AMENDMENTS

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends and enacts code sections related to health care insurance and the health care insurance market.

Highlighted Provisions:

This bill:

- ▶ amends definitions for the Insurance Code;
- ▶ effective January 1, 2018, merges the regulation of health insurance plans that are offered by managed care organizations into a managed care organization chapter of the Insurance Code;
- ▶ amends the duties of the Office of Consumer Health Services within the Governor's Office of Economic Development to require the office to wind down the small employer health insurance exchange known as Avenue H;
- ▶ removes health plan transparency reporting requirements for plans offered on the small employer health insurance exchange;
- ▶ repeals the defined contribution arrangements and the individual and small employer risk adjustment, which are part of the small employer health insurance exchange, effective July 1, 2019;
- ▶ reauthorizes the Health Reform Task Force for two years;
- ▶ establishes the duties of the task force; and
- ▶ makes technical amendments and conforming amendments.

Monies Appropriated in this Bill:

This bill appropriates for fiscal year 2017:

- ▶ to Legislature - Senate as a one-time appropriation:
 - from the General Fund, One-time, \$20,000;
- ▶ to Legislature - House of Representatives as a one-time appropriation:
 - from the General Fund, One-time, \$34,000.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 26-19-14, as last amended by Laws of Utah 1995, Chapter 102
- 31A-1-301, as last amended by Laws of Utah 2016, Chapter 138
- 31A-2-201.2, as last amended by Laws of Utah 2015, Chapter 283
- 31A-4-115, as last amended by Laws of Utah 2014, Chapters 290, 300, and 425
- 31A-8-101, as last amended by Laws of Utah 2002, Chapter 308

- 31A-8-103, as last amended by Laws of Utah 2010, Chapter 324
- 31A-21-106, as last amended by Laws of Utah 2003, Chapter 252
- 31A-22-610.1, as last amended by Laws of Utah 2014, Chapter 353
- 31A-22-610.5, as last amended by Laws of Utah 2011, Chapter 297
- 31A-22-613.5, as last amended by Laws of Utah 2015, Chapters 257 and 283
- 31A-22-618, as last amended by Laws of Utah 2015, Chapter 367
- 31A-22-618.5, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 31A-22-627, as last amended by Laws of Utah 2016, Chapter 295
- 31A-22-628, as enacted by Laws of Utah 2000, Chapter 37
- 31A-22-635, as last amended by Laws of Utah 2015, Chapter 283
- 31A-22-642, as enacted by Laws of Utah 2014, Chapter 379
- 31A-23a-402, as last amended by Laws of Utah 2015, Chapters 244 and 283
- 31A-30-102, as last amended by Laws of Utah 2015, Chapter 283
- 31A-30-104, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 31A-30-106.7, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 31A-30-204, as last amended by Laws of Utah 2015, Chapter 283
- 31A-34-110, as last amended by Laws of Utah 2001, Chapter 108
- 49-20-407, as last amended by Laws of Utah 2012, Chapter 127
- 53-2a-1102, as last amended by Laws of Utah 2015, Chapter 408
- 58-16a-601, as last amended by Laws of Utah 2014, Chapter 305
- 63I-2-231, as last amended by Laws of Utah 2016, Chapter 138
- 63N-11-104, as renumbered and amended by Laws of Utah 2015, Chapter 283

ENACTS:

- 31A-45-101, Utah Code Annotated 1953
- 31A-45-102, Utah Code Annotated 1953
- 31A-45-103, Utah Code Annotated 1953
- 31A-45-201, Utah Code Annotated 1953
- 31A-45-301, Utah Code Annotated 1953
- 31A-45-302, Utah Code Annotated 1953
- 31A-45-402, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

- 31A-22-618.6, (Renumbered from 31A-8-402.3, as last amended by Laws of Utah 2014, Chapters 290, 300, and 425)
- 31A-22-618.7, (Renumbered from 31A-8-402.5, as last amended by Laws of Utah 2003, Chapter 252)
- 31A-22-618.8, (Renumbered from 31A-8-402.7, as last amended by Laws of Utah 2005, Chapter 78)
- 31A-45-303, (Renumbered from 31A-22-617, as last amended by Laws of Utah 2014, Chapters 290 and 300)

- 31A-45-304, (Renumbered from 31A-22-617.1, as enacted by Laws of Utah 2005, First Special Session, Chapter 3)
- 31A-45-401, (Renumbered from 31A-8-502, as enacted by Laws of Utah 2004, Chapter 178)
- 31A-45-501, (Renumbered from 31A-8-501, as last amended by Laws of Utah 2012, Chapter 369)

REPEALS:

- 31A-22-721, as last amended by Laws of Utah 2014, Chapters 290, 300, and 425
- 31A-30-107, as last amended by Laws of Utah 2014, Chapters 290, 300, and 425
- 31A-30-107.1, as last amended by Laws of Utah 2003, Chapter 252
- 31A-30-107.3, as last amended by Laws of Utah 2013, Chapter 341
- 31A-30-116, as last amended by Laws of Utah 2016, Chapter 138
- 63N-11-107, as renumbered and amended by Laws of Utah 2015, Chapter 283

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 26-19-14 is amended to read:****26-19-14. Insurance policies not to deny or reduce benefits of persons eligible for state medical assistance -- Exemptions.**

(1) A policy of accident or sickness insurance [~~issued or renewed after May 12, 1981,~~] may not contain any provision denying or reducing benefits because services are rendered to an insured or dependent who is eligible for or receiving medical assistance from the state.

(2) [~~After May 12, 1981, no~~] An association, corporation, or organization may not deliver, issue for delivery, or renew any subscriber's contract which contains any provisions denying or reducing benefits because services are rendered to a subscriber or dependent who is eligible for or receiving medical assistance from the state.

(3) [~~After May 12, 1981, no~~] An association, corporation, business, or organization authorized to do business in this state and which provides or pays for any health care benefits may not deny or reduce benefits because services are rendered to a beneficiary who is eligible for or receiving medical assistance from the state.

(4) Notwithstanding Subsection (1), (2), or (3), the Utah State Public Employees Health Program, administered by the Utah State Retirement Board, is not required to reimburse any agency of state government for custodial care which the agency provides, through its staff or facilities, to members of the Utah State Public Employees Health Program.

[~~(5) This section is subject to the provisions of Subsection 31A-22-610.5(3).~~]

Section 2. Section 31A-1-301 is amended to read:**31A-1-301. Definitions.**

As used in this title, unless otherwise specified:

(1) (a) "Accident and health insurance" means insurance to provide protection against economic losses resulting from:

(i) a medical condition including:

- (A) a medical care expense; or
 - (B) the risk of disability;
- (ii) accident; or
- (iii) sickness.

(b) "Accident and health insurance":

(i) includes a contract with disability contingencies including:

- (A) an income replacement contract;
 - (B) a health care contract;
 - (C) an expense reimbursement contract;
 - (D) a credit accident and health contract;
 - (E) a continuing care contract; and
 - (F) a long-term care contract; and
- (ii) may provide:

- (A) hospital coverage;
- (B) surgical coverage;
- (C) medical coverage;
- (D) loss of income coverage;
- (E) prescription drug coverage;
- (F) dental coverage; or
- (G) vision coverage.

(c) "Accident and health insurance" does not include workers' compensation insurance.

(2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) "Administrator" means the same as that term is defined in Subsection [~~(166)~~] (170).

(4) "Adult" means an individual who has attained the age of at least 18 years.

(5) "Affiliate" means a person who controls, is controlled by, or is under common control with, another person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of individuals manage the corporations.

(6) "Agency" means:

(a) a person other than an individual, including a sole proprietorship by which an individual does business under an assumed name; and

(b) an insurance organization licensed or required to be licensed under Section 31A-23a-301, 31A-25-207, or 31A-26-209.

(7) "Alien insurer" means an insurer domiciled outside the United States.

(8) "Amendment" means an endorsement to an insurance policy or certificate.

(9) "Annuity" means an agreement to make periodical payments for a period certain or over the lifetime of one or more individuals if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent upon the continuance of human life.

(10) "Application" means a document:

(a) (i) completed by an applicant to provide information about the risk to be insured; and

(ii) that contains information that is used by the insurer to evaluate risk and decide whether to:

(A) insure the risk under:

(I) the coverage as originally offered; or

(II) a modification of the coverage as originally offered; or

(B) decline to insure the risk; or

(b) used by the insurer to gather information from the applicant before issuance of an annuity contract.

(11) "Articles" or "articles of incorporation" means:

(a) the original articles;

(b) a special law;

(c) a charter;

(d) an amendment;

(e) restated articles;

(f) articles of merger or consolidation;

(g) a trust instrument;

(h) another constitutive document for a trust or other entity that is not a corporation; and

(i) an amendment to an item listed in Subsections (11)(a) through (h).

(12) "Bail bond insurance" means a guarantee that a person will attend court when required, up to and including surrender of the person in execution of a sentence imposed under Subsection 77-20-7(1), as a condition to the release of that person from confinement.

(13) "Binder" means the same as that term is defined in Section 31A-21-102.

(14) "Blanket insurance policy" means a group policy covering a defined class of persons:

(a) without individual underwriting or application; and

(b) that is determined by definition without designating each person covered.

(15) "Board," "board of trustees," or "board of directors" means the group of persons with

responsibility over, or management of, a corporation, however designated.

(16) "Bona fide office" means a physical office in this state:

(a) that is open to the public;

(b) that is staffed during regular business hours on regular business days; and

(c) at which the public may appear in person to obtain services.

(17) "Business entity" means:

(a) a corporation;

(b) an association;

(c) a partnership;

(d) a limited liability company;

(e) a limited liability partnership; or

(f) another legal entity.

(18) "Business of insurance" means the same as that term is defined in Subsection ~~[(89)]~~ (91).

(19) "Business plan" means the information required to be supplied to the commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required when these subsections apply by reference under:

(a) Section 31A-7-201;

(b) Section 31A-8-205; or

(c) Subsection 31A-9-205(2).

(20) (a) "Bylaws" means the rules adopted for the regulation or management of a corporation's affairs, however designated.

(b) "Bylaws" includes comparable rules for a trust or other entity that is not a corporation.

(21) "Captive insurance company" means:

(a) an insurer:

(i) owned by another organization; and

(ii) whose exclusive purpose is to insure risks of the parent organization and an affiliated company; or

(b) in the case of a group or association, an insurer:

(i) owned by the insureds; and

(ii) whose exclusive purpose is to insure risks of:

(A) a member organization;

(B) a group member; or

(C) an affiliate of:

(I) a member organization; or

(II) a group member.

(22) "Casualty insurance" means liability insurance.

(23) "Certificate" means evidence of insurance given to:

- (a) an insured under a group insurance policy; or
- (b) a third party.
- (24) “Certificate of authority” is included within the term “license.”
- (25) “Claim,” unless the context otherwise requires, means a request or demand on an insurer for payment of a benefit according to the terms of an insurance policy.
- (26) “Claims-made coverage” means an insurance contract or provision limiting coverage under a policy insuring against legal liability to claims that are first made against the insured while the policy is in force.
- (27) (a) “Commissioner” or “commissioner of insurance” means Utah’s insurance commissioner.
- (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent supervisory official of another jurisdiction.
- (28) (a) “Continuing care insurance” means insurance that:
- (i) provides board and lodging;
 - (ii) provides one or more of the following:
 - (A) a personal service;
 - (B) a nursing service;
 - (C) a medical service; or
 - (D) any other health-related service; and
 - (iii) provides the coverage described in this Subsection (28)(a) under an agreement effective:
 - (A) for the life of the insured; or
 - (B) for a period in excess of one year.
- (b) Insurance is continuing care insurance regardless of whether or not the board and lodging are provided at the same location as a service described in Subsection (28)(a)(ii).
- (29) (a) “Control,” “controlling,” “controlled,” or “under common control” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person. This control may be:
- (i) by contract;
 - (ii) by common management;
 - (iii) through the ownership of voting securities; or
 - (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).
- (b) There is no presumption that an individual holding an official position with another person controls that person solely by reason of the position.
- (c) A person having a contract or arrangement giving control is considered to have control despite the illegality or invalidity of the contract or arrangement.
- (d) There is a rebuttable presumption of control in a person who directly or indirectly owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the voting securities of another person.
- (30) “Controlled insurer” means a licensed insurer that is either directly or indirectly controlled by a producer.
- (31) “Controlling person” means a person that directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of a reinsurance intermediary.
- (32) “Controlling producer” means a producer who directly or indirectly controls an insurer.
- (33) (a) “Corporation” means an insurance corporation, except when referring to:
- (i) a corporation doing business:
 - (A) as:
 - (I) an insurance producer;
 - (II) a surplus lines producer;
 - (III) a limited line producer;
 - (IV) a consultant;
 - (V) a managing general agent;
 - (VI) a reinsurance intermediary;
 - (VII) a third party administrator; or
 - (VIII) an adjuster; and
 - (B) under:
 - (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries;
 - (II) Chapter 25, Third Party Administrators; or
 - (III) Chapter 26, Insurance Adjusters; or
 - (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance Holding Companies.
- [~~(e)~~] (b) “Mutual” or “mutual corporation” means a mutual insurance corporation.
- [~~(b)~~] (c) “Stock corporation” means a stock insurance corporation.
- (34) (a) “Creditable coverage” has the same meaning as provided in federal regulations adopted pursuant to the Health Insurance Portability and Accountability Act.
- (b) “Creditable coverage” includes coverage that is offered through a public health plan such as:
- (i) the Primary Care Network Program under a Medicaid primary care network demonstration waiver obtained subject to Section 26-18-3;
 - (ii) the Children’s Health Insurance Program under Section 26-40-106; or
 - (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L. No.

101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No. 109-415.

(35) “Credit accident and health insurance” means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor has a disability.

(36) (a) “Credit insurance” means insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation.

(b) “Credit insurance” includes:

- (i) credit accident and health insurance;
- (ii) credit life insurance;
- (iii) credit property insurance;
- (iv) credit unemployment insurance;
- (v) guaranteed automobile protection insurance;
- (vi) involuntary unemployment insurance;
- (vii) mortgage accident and health insurance;
- (viii) mortgage guaranty insurance; and
- (ix) mortgage life insurance.

(37) “Credit life insurance” means insurance on the life of a debtor in connection with an extension of credit that pays a person if the debtor dies.

(38) “Creditor” means a person, including an insured, having a claim, whether:

- (a) matured;
- (b) unmatured;
- (c) liquidated;
- (d) unliquidated;
- (e) secured;
- (f) unsecured;
- (g) absolute;
- (h) fixed; or
- (i) contingent.

(39) “Credit property insurance” means insurance:

(a) offered in connection with an extension of credit; and

(b) that protects the property until the debt is paid.

(40) “Credit unemployment insurance” means insurance:

(a) offered in connection with an extension of credit; and

(b) that provides indemnity if the debtor is unemployed for payments coming due on a:

- (i) specific loan; or
- (ii) credit transaction.

(41) (a) “Crop insurance” means insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils that is:

- (i) provided by the private insurance market; or
- (ii) subsidized by the Federal Crop Insurance Corporation.

(b) “Crop insurance” includes multiperil crop insurance.

(42) (a) “Customer service representative” means a person that provides an insurance service and insurance product information:

- (i) for the customer service representative’s:
 - (A) producer;
 - (B) surplus lines producer; or
 - (C) consultant employer; and
- (ii) to the customer service representative’s employer’s:
 - (A) customer;
 - (B) client; or
 - (C) organization.

(b) A customer service representative may only operate within the scope of authority of the customer service representative’s producer, surplus lines producer, or consultant employer.

(43) “Deadline” means a final date or time:

- (a) imposed by:
 - (i) statute;
 - (ii) rule; or
 - (iii) order; and

(b) by which a required filing or payment must be received by the department.

(44) “Deemer clause” means a provision under this title under which upon the occurrence of a condition precedent, the commissioner is considered to have taken a specific action. If the statute so provides, a condition precedent may be the commissioner’s failure to take a specific action.

(45) “Degree of relationship” means the number of steps between two persons determined by counting the generations separating one person from a common ancestor and then counting the generations to the other person.

(46) “Department” means the Insurance Department.

(47) “Director” means a member of the board of directors of a corporation.

(48) “Disability” means a physiological or psychological condition that partially or totally limits an individual’s ability to:

- (a) perform the duties of:
 - (i) that individual’s occupation; or

(ii) an occupation for which the individual is reasonably suited by education, training, or experience; or

(b) perform two or more of the following basic activities of daily living:

- (i) eating;
- (ii) toileting;
- (iii) transferring;
- (iv) bathing; or
- (v) dressing.

(49) “Disability income insurance” means the same as that term is defined in Subsection [(80)] (82).

(50) “Domestic insurer” means an insurer organized under the laws of this state.

(51) “Domiciliary state” means the state in which an insurer:

- (a) is incorporated;
- (b) is organized; or

(c) in the case of an alien insurer, enters into the United States.

(52) (a) “Eligible employee” means:

(i) an employee who:

- (A) works on a full-time basis; and
- (B) has a normal work week of 30 or more hours;

or

(ii) a person described in Subsection (52)(b).

(b) “Eligible employee” includes:

(i) an owner who:

- (A) works on a full-time basis; and
- (B) has a normal work week of 30 or more hours; and

(ii) if the individual is included under a health benefit plan of a small employer:

- (A) a sole proprietor;
- (B) a partner in a partnership; or
- (C) an independent contractor.

(c) “Eligible employee” does not include, unless eligible under Subsection (52)(b):

(i) an individual who works on a temporary or substitute basis for a small employer;

(ii) an employer’s spouse who does not meet the requirements of Subsection (52)(a)(i); or

(iii) a dependent of an employer who does not meet the requirements of Subsection (52)(a)(i).

(53) “Employee” means:

- (a) an individual employed by an employer; and

(b) an owner who meets the requirements of Subsection (52)(b)(i).

(54) “Employee benefits” means one or more benefits or services provided to:

- (a) an employee; or
- (b) a dependent of an employee.

(55) (a) “Employee welfare fund” means a fund:

(i) established or maintained, whether directly or through a trustee, by:

- (A) one or more employers;
- (B) one or more labor organizations; or
- (C) a combination of employers and labor organizations; and

(ii) that provides employee benefits paid or contracted to be paid, other than income from investments of the fund:

(A) by or on behalf of an employer doing business in this state; or

(B) for the benefit of a person employed in this state.

(b) “Employee welfare fund” includes a plan funded or subsidized by a user fee or tax revenues.

(56) “Endorsement” means a written agreement attached to a policy or certificate to modify the policy or certificate coverage.

(57) (a) “Enrollee” means:

(i) a policyholder;

(ii) a certificate holder;

(iii) a subscriber; or

(iv) a covered individual:

(A) who has entered into a contract with an organization for health care; or

(B) on whose behalf an arrangement for health care has been made.

(b) “Enrollee” includes an insured.

[(57)] (58) “Enrollment date,” with respect to a health benefit plan, means:

(a) the first day of coverage; or

(b) if there is a waiting period, the first day of the waiting period.

[(58)] (59) “Enterprise risk” means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause:

(a) the insurer’s risk-based capital to fall into an action or control level as set forth in Sections 31A-17-601 through 31A-17-613; or

(b) the insurer to be in hazardous financial condition set forth in Section 31A-27a-101.

[~~59~~] (60) (a) “Escrow” means:

(i) a transaction that effects the sale, transfer, encumbering, or leasing of real property, when a person not a party to the transaction, and neither having nor acquiring an interest in the title, performs, in accordance with the written instructions or terms of the written agreement between the parties to the transaction, any of the following actions:

(A) the explanation, holding, or creation of a document; or

(B) the receipt, deposit, and disbursement of money;

(ii) a settlement or closing involving:

(A) a mobile home;

(B) a grazing right;

(C) a water right; or

(D) other personal property authorized by the commissioner.

(b) “Escrow” does not include:

(i) the following notarial acts performed by a notary within the state:

(A) an acknowledgment;

(B) a copy certification;

(C) jurat; and

(D) an oath or affirmation;

(ii) the receipt or delivery of a document; or

(iii) the receipt of money for delivery to the escrow agent.

[~~60~~] (61) “Escrow agent” means an agency title insurance producer meeting the requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an individual title insurance producer licensed with an escrow subline of authority.

[~~61~~] (62) (a) “Excludes” is not exhaustive and does not mean that another thing is not also excluded.

(b) The items listed in a list using the term “excludes” are representative examples for use in interpretation of this title.

[~~62~~] (63) “Exclusion” means for the purposes of accident and health insurance that an insurer does not provide insurance coverage, for whatever reason, for one of the following:

(a) a specific physical condition;

(b) a specific medical procedure;

(c) a specific disease or disorder; or

(d) a specific prescription drug or class of prescription drugs.

[~~63~~] (64) “Expense reimbursement insurance” means insurance:

(a) written to provide a payment for an expense relating to hospital confinement resulting from illness or injury; and

(b) written:

(i) as a daily limit for a specific number of days in a hospital; and

(ii) to have a one or two day waiting period following a hospitalization.

[~~64~~] (65) “Fidelity insurance” means insurance guaranteeing the fidelity of a person holding a position of public or private trust.

[~~65~~] (66) (a) “Filed” means that a filing is:

(i) submitted to the department as required by and in accordance with applicable statute, rule, or filing order;

(ii) received by the department within the time period provided in applicable statute, rule, or filing order; and

(iii) accompanied by the appropriate fee in accordance with:

(A) Section 31A-3-103; or

(B) rule.

(b) “Filed” does not include a filing that is rejected by the department because it is not submitted in accordance with Subsection [~~65~~] (66)(a).

[~~66~~] (67) “Filing,” when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a rate;

(c) a form;

(d) a document;

(e) a plan;

(f) a manual;

(g) an application;

(h) a report;

(i) a certificate;

(j) an endorsement;

(k) an actuarial certification;

(l) a licensee annual statement;

(m) a licensee renewal application;

(n) an advertisement;

(o) a binder; or

(p) an outline of coverage.

[~~67~~] (68) “First party insurance” means an insurance policy or contract in which the insurer agrees to pay a claim submitted to it by the insured for the insured’s losses.

[~~68~~] (69) “Foreign insurer” means an insurer domiciled outside of this state, including an alien insurer.

~~[(69)]~~ (70) (a) “Form” means one of the following prepared for general use:

- (i) a policy;
- (ii) a certificate;
- (iii) an application;
- (iv) an outline of coverage; or
- (v) an endorsement.

(b) “Form” does not include a document specially prepared for use in an individual case.

~~[(70)]~~ (71) “Franchise insurance” means an individual insurance policy provided through a mass marketing arrangement involving a defined class of persons related in some way other than through the purchase of insurance.

~~[(71)]~~ (72) “General lines of authority” include:

(a) the general lines of insurance in Subsection ~~[(72)]~~ (73);

(b) title insurance under one of the following sublines of authority:

(i) title examination, including authority to act as a title marketing representative;

(ii) escrow, including authority to act as a title marketing representative; and

(iii) title marketing representative only;

(c) surplus lines;

(d) workers’ compensation; and

(e) another line of insurance that the commissioner considers necessary to recognize in the public interest.

~~[(72)]~~ (73) “General lines of insurance” include:

(a) accident and health;

(b) casualty;

(c) life;

(d) personal lines;

(e) property; and

(f) variable contracts, including variable life and annuity.

~~[(73)]~~ (74) “Group health plan” means an employee welfare benefit plan to the extent that the plan provides medical care:

(a) (i) to an employee; or

(ii) to a dependent of an employee; and

(b) (i) directly;

(ii) through insurance reimbursement; or

(iii) through another method.

~~[(74)]~~ (75) (a) “Group insurance policy” means a policy covering a group of persons that is issued:

(i) to a policyholder on behalf of the group; and

(ii) for the benefit of a member of the group who is selected under a procedure defined in:

(A) the policy; or

(B) an agreement that is collateral to the policy.

(b) A group insurance policy may include a member of the policyholder’s family or a dependent.

~~[(75)]~~ (76) “Guaranteed automobile protection insurance” means insurance offered in connection with an extension of credit that pays the difference in amount between the insurance settlement and the balance of the loan if the insured automobile is a total loss.

~~[(76) (a) Except as provided in Subsection (76)(b), “health benefit plan” means a policy or certificate that:]~~

~~[(i) provides health care insurance;]~~

~~[(ii) provides major medical expense insurance; or]~~

~~[(iii) is offered as a substitute for hospital or medical expense insurance, such as:]~~

~~[(A) a hospital confinement indemnity; or]~~

~~[(B) a limited benefit plan.]~~

~~[(b) “Health benefit plan” does not include a policy or certificate that:]~~

~~[(i) provides benefits solely for:]~~

~~[(A) accident;]~~

~~[(B) dental;]~~

~~[(C) income replacement;]~~

~~[(D) long-term care;]~~

~~[(E) a Medicare supplement;]~~

~~[(F) a specified disease;]~~

~~[(G) vision; or]~~

~~[(H) a short-term limited duration; or]~~

~~[(ii) is offered and marketed as supplemental health insurance.]~~

(77) (a) “Health benefit plan” means, except as provided in Subsection (77)(b), a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care.

(b) “Health benefit plan” does not include:

(i) coverage only for accident or disability income insurance, or any combination thereof;

(ii) coverage issued as a supplement to liability insurance;

(iii) liability insurance, including general liability insurance and automobile liability insurance;

(iv) workers’ compensation or similar insurance;

(v) automobile medical payment insurance;

(vi) credit-only insurance;

(vii) coverage for on-site medical clinics;

(viii) other similar insurance coverage, specified in federal regulations issued pursuant to Pub. L. No. 104-191, under which benefits for health care services are secondary or incidental to other insurance benefits;

(ix) the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:

(A) limited scope dental or vision benefits;

(B) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

(C) other similar limited benefits, specified in federal regulations issued pursuant to Pub. L. No. 104-191;

(x) the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of benefits and any exclusion of benefits under any health plan, and the benefits are paid with respect to an event without regard to whether benefits are provided under any health plan:

(A) coverage only for specified disease or illness; or

(B) hospital indemnity or other fixed indemnity insurance; and

(xi) the following if offered as a separate policy, certificate, or contract of insurance:

(A) Medicare supplemental health insurance as defined under the Social Security Act, 42 U.S.C. Sec. 1395ss(g)(1);

(B) coverage supplemental to the coverage provided under United States Code, Title 10, Chapter 55, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); or

(C) similar supplemental coverage provided to coverage under a group health insurance plan.

[77] (78) "Health care" means any of the following intended for use in the diagnosis, treatment, mitigation, or prevention of a human ailment or impairment:

- (a) a professional service;
- (b) a personal service;
- (c) a facility;
- (d) equipment;
- (e) a device;
- (f) supplies; or
- (g) medicine.

[78] (79) (a) "Health care insurance" or "health insurance" means insurance providing:

- (i) a health care benefit; or
- (ii) payment of an incurred health care expense.

(b) "Health care insurance" or "health insurance" does not include accident and health insurance providing a benefit for:

- (i) replacement of income;
- (ii) short-term accident;
- (iii) fixed indemnity;
- (iv) credit accident and health;
- (v) supplements to liability;
- (vi) workers' compensation;
- (vii) automobile medical payment;
- (viii) no-fault automobile;
- (ix) equivalent self-insurance; or
- (x) a type of accident and health insurance coverage that is a part of or attached to another type of policy.

(80) "Health care provider" means the same as that term is defined in Section 78B-3-403.

[79] (81) "Health Insurance Portability and Accountability Act" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.

[80] (82) "Income replacement insurance" or "disability income insurance" means insurance written to provide payments to replace income lost from accident or sickness.

[81] (83) "Indemnity" means the payment of an amount to offset all or part of an insured loss.

[82] (84) "Independent adjuster" means an insurance adjuster required to be licensed under Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

[83] (85) "Independently procured insurance" means insurance procured under Section 31A-15-104.

[84] (86) "Individual" means a natural person.

[85] (87) "Inland marine insurance" includes insurance covering:

- (a) property in transit on or over land;
- (b) property in transit over water by means other than boat or ship;
- (c) bailee liability;
- (d) fixed transportation property such as bridges, electric transmission systems, radio and television transmission towers and tunnels; and
- (e) personal and commercial property floaters.

[86] (88) "Insolvency" means that:

- (a) an insurer is unable to pay its debts or meet its obligations as the debts and obligations mature;
- (b) an insurer's total adjusted capital is less than the insurer's mandatory control level RBC under Subsection 31A-17-601(8)(c); or
- (c) an insurer is determined to be hazardous under this title.

[(87)] (89) (a) "Insurance" means:

(i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more persons to one or more other persons; or

(ii) an arrangement, contract, or plan for the distribution of a risk or risks among a group of persons that includes the person seeking to distribute that person's risk.

(b) "Insurance" includes:

(i) a risk distributing arrangement providing for compensation or replacement for damages or loss through the provision of a service or a benefit in kind;

(ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction; and

(iii) a plan in which the risk does not rest upon the person who makes an arrangement, but with a class of persons who have agreed to share the risk.

[(88)] (90) "Insurance adjuster" means a person who directs or conducts the investigation, negotiation, or settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.

[(89)] (91) "Insurance business" or "business of insurance" includes:

(a) providing health care insurance by an organization that is or is required to be licensed under this title;

(b) providing a benefit to an employee in the event of a contingency not within the control of the employee, in which the employee is entitled to the benefit as a right, which benefit may be provided either:

(i) by a single employer or by multiple employer groups; or

(ii) through one or more trusts, associations, or other entities;

(c) providing an annuity:

(i) including an annuity issued in return for a gift; and

(ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2) and (3);

(d) providing the characteristic services of a motor club as outlined in Subsection [(417)] (120);

(e) providing another person with insurance;

(f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, a contract or policy of title insurance;

(g) transacting or proposing to transact any phase of title insurance, including:

(i) solicitation;

(ii) negotiation preliminary to execution;

(iii) execution of a contract of title insurance;

(iv) insuring; and

(v) transacting matters subsequent to the execution of the contract and arising out of the contract, including reinsurance;

(h) transacting or proposing a life settlement; and

(i) doing, or proposing to do, any business in substance equivalent to Subsections [(89)] (91)(a) through (h) in a manner designed to evade this title.

[(90)] (92) "Insurance consultant" or "consultant" means a person who:

(a) advises another person about insurance needs and coverages;

(b) is compensated by the person advised on a basis not directly related to the insurance placed; and

(c) except as provided in Section 31A-23a-501, is not compensated directly or indirectly by an insurer or producer for advice given.

[(91)] (93) "Insurance holding company system" means a group of two or more affiliated persons, at least one of whom is an insurer.

[(92)] (94) (a) "Insurance producer" or "producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

(b) (i) "Producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that insurer.

(ii) "Producer for the insurer" may be referred to as an "agent."

(c) (i) "Producer for the insured" means a producer who:

(A) is compensated directly and only by an insurance customer or an insured; and

(B) receives no compensation directly or indirectly from an insurer for selling, soliciting, or negotiating an insurance product of that insurer to an insurance customer or insured.

(ii) "Producer for the insured" may be referred to as a "broker."

[(93)] (95) (a) "Insured" means a person to whom or for whose benefit an insurer makes a promise in an insurance policy and includes:

(i) a policyholder;

(ii) a subscriber;

(iii) a member; and

(iv) a beneficiary.

(b) The definition in Subsection [(93)] (95)(a):

(i) applies only to this title; ~~and~~

(ii) does not define the meaning of ~~this word~~ "insured" as used in an insurance policy or certificate[-]; and

(iii) includes an enrollee.

[~~94~~] (96) (a) “Insurer” means a person doing an insurance business as a principal including:

- (i) a fraternal benefit society;
- (ii) an issuer of a gift annuity other than an annuity specified in Subsections 31A-22-1305(2) and (3);
- (iii) a motor club;
- (iv) an employee welfare plan; [~~and~~]
- (v) a person purporting or intending to do an insurance business as a principal on that person’s own account[.]; and

(vi) a health maintenance organization.

(b) “Insurer” does not include a governmental entity to the extent the governmental entity is engaged in an activity described in Section 31A-12-107.

[~~95~~] (97) “Interinsurance exchange” means the same as that term is defined in Subsection [~~148~~] (152).

[~~96~~] (98) “Involuntary unemployment insurance” means insurance:

- (a) offered in connection with an extension of credit; and
- (b) that provides indemnity if the debtor is involuntarily unemployed for payments coming due on a:
 - (i) specific loan; or
 - (ii) credit transaction.

[~~97~~] (99) (a) “Large employer,” in connection with a health benefit plan, means an employer who, with respect to a calendar year and to a plan year:

- (i) employed an average of at least 51 employees on business days during the preceding calendar year; and
- (ii) employs at least one employee on the first day of the plan year.

(b) The number of employees shall be determined using the method set forth in 26 U.S.C. Sec. 4980H(c)(2).

[~~98~~] (100) “Late enrollee,” with respect to an employer health benefit plan, means an individual whose enrollment is a late enrollment.

[~~99~~] (101) “Late enrollment,” with respect to an employer health benefit plan, means enrollment of an individual other than:

- (a) on the earliest date on which coverage can become effective for the individual under the terms of the plan; or
- (b) through special enrollment.

[~~100~~] (102) (a) Except for a retainer contract or legal assistance described in Section 31A-1-103,

“legal expense insurance” means insurance written to indemnify or pay for a specified legal expense.

(b) “Legal expense insurance” includes an arrangement that creates a reasonable expectation of an enforceable right.

(c) “Legal expense insurance” does not include the provision of, or reimbursement for, legal services incidental to other insurance coverage.

[~~101~~] (103) (a) “Liability insurance” means insurance against liability:

(i) for death, injury, or disability of a human being, or for damage to property, exclusive of the coverages under:

- (A) [~~Subsection (111) for~~] medical malpractice insurance;
- (B) [~~Subsection (139) for~~] professional liability insurance; and
- (C) [~~Subsection (175) for~~] workers’ compensation insurance;

(ii) for a medical, hospital, surgical, and funeral benefit to a person other than the insured who is injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury, or disability of a human being, exclusive of the coverages under:

- (A) [~~Subsection (111) for~~] medical malpractice insurance;
- (B) [~~Subsection (139) for~~] professional liability insurance; and
- (C) [~~Subsection (175) for~~] workers’ compensation insurance;

(iii) for loss or damage to property resulting from an accident to or explosion of a boiler, pipe, pressure container, machinery, or apparatus;

(iv) for loss or damage to property caused by:

- (A) the breakage or leakage of a sprinkler, water pipe, or water container; or
- (B) water entering through a leak or opening in a building; or

(v) for other loss or damage properly the subject of insurance not within another kind of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

(b) “Liability insurance” includes:

- (i) vehicle liability insurance;
- (ii) residential dwelling liability insurance; and

(iii) making inspection of, and issuing a certificate of inspection upon, an elevator, boiler, machinery, or apparatus of any kind when done in connection with insurance on the elevator, boiler, machinery, or apparatus.

[~~102~~] (104) (a) “License” means authorization issued by the commissioner to engage in an activity that is part of or related to the insurance business.

(b) "License" includes a certificate of authority issued to an insurer.

~~[(103)]~~ (105) (a) "Life insurance" means:

(i) insurance on a human life; and
 (ii) insurance pertaining to or connected with human life.

(b) The business of life insurance includes:

(i) granting a death benefit;
 (ii) granting an annuity benefit;
 (iii) granting an endowment benefit;
 (iv) granting an additional benefit in the event of death by accident;

(v) granting an additional benefit to safeguard the policy against lapse; and

(vi) providing an optional method of settlement of proceeds.

~~[(104)]~~ (106) "Limited license" means a license that:

(a) is issued for a specific product of insurance; and

(b) limits an individual or agency to transact only for that product or insurance.

~~[(105)]~~ (107) "Limited line credit insurance" includes the following forms of insurance:

(a) credit life;
 (b) credit accident and health;
 (c) credit property;
 (d) credit unemployment;
 (e) involuntary unemployment;
 (f) mortgage life;
 (g) mortgage guaranty;
 (h) mortgage accident and health;
 (i) guaranteed automobile protection; and
 (j) another form of insurance offered in connection with an extension of credit that:

(i) is limited to partially or wholly extinguishing the credit obligation; and

(ii) the commissioner determines by rule should be designated as a form of limited line credit insurance.

~~[(106)]~~ (108) "Limited line credit insurance producer" means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to an individual through a master, corporate, group, or individual policy.

~~[(107)]~~ (109) "Limited line insurance" includes:

(a) bail bond;
 (b) limited line credit insurance;
 (c) legal expense insurance;

(d) motor club insurance;

(e) car rental related insurance;

(f) travel insurance;

(g) crop insurance;

(h) self-service storage insurance;

(i) guaranteed asset protection waiver;

(j) portable electronics insurance; and

(k) another form of limited insurance that the commissioner determines by rule should be designated a form of limited line insurance.

~~[(108)]~~ (110) "Limited lines authority" includes the lines of insurance listed in Subsection ~~[(107)]~~ (109).

~~[(109)]~~ (111) "Limited lines producer" means a person who sells, solicits, or negotiates limited lines insurance.

~~[(110)]~~ (112) (a) "Long-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designated to provide coverage:

(i) in a setting other than an acute care unit of a hospital;

(ii) for not less than 12 consecutive months for a covered person on the basis of:

(A) expenses incurred;

(B) indemnity;

(C) prepayment; or

(D) another method;

(iii) for one or more necessary or medically necessary services that are:

(A) diagnostic;

(B) preventative;

(C) therapeutic;

(D) rehabilitative;

(E) maintenance; or

(F) personal care; and

(iv) that may be issued by:

(A) an insurer;

(B) a fraternal benefit society;

(C) (I) a nonprofit health hospital; and

(II) a medical service corporation;

(D) a prepaid health plan;

(E) a health maintenance organization; or

(F) an entity similar to the entities described in Subsections ~~[(110)]~~ (112)(a)(iv)(A) through (E) to the extent that the entity is otherwise authorized to issue life or health care insurance.

(b) "Long-term care insurance" includes:

(i) any of the following that provide directly or supplement long-term care insurance:

(A) a group or individual annuity or rider; or

(B) a life insurance policy or rider;

(ii) a policy or rider that provides for payment of benefits on the basis of:

(A) cognitive impairment; or

(B) functional capacity; or

(iii) a qualified long-term care insurance contract.

(c) “Long-term care insurance” does not include:

(i) a policy that is offered primarily to provide basic Medicare supplement coverage;

(ii) basic hospital expense coverage;

(iii) basic medical/surgical expense coverage;

(iv) hospital confinement indemnity coverage;

(v) major medical expense coverage;

(vi) income replacement or related asset-protection coverage;

(vii) accident only coverage;

(viii) coverage for a specified:

(A) disease; or

(B) accident;

(ix) limited benefit health coverage; or

(x) a life insurance policy that accelerates the death benefit to provide the option of a lump sum payment:

(A) if the following are not conditioned on the receipt of long-term care:

(I) benefits; or

(II) eligibility; and

(B) the coverage is for one or more the following qualifying events:

(I) terminal illness;

(II) medical conditions requiring extraordinary medical intervention; or

(III) permanent institutional confinement.

(113) “Managed care organization” means a person:

(a) licensed as a health maintenance organization under Chapter 8, Health Maintenance Organizations and Limited Health Plans; or

(b) (i) licensed under:

(A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(B) Chapter 7, Nonprofit Health Service Insurance Corporations; or

(C) Chapter 14, Foreign Insurers; and

(ii) that requires an enrollee to use, or offers incentives, including financial incentives, for an enrollee to use, network providers.

~~[(111)]~~ (114) “Medical malpractice insurance” means insurance against legal liability incident to the practice and provision of a medical service other than the practice and provision of a dental service.

~~[(112)]~~ (115) “Member” means a person having membership rights in an insurance corporation.

~~[(113)]~~ (116) “Minimum capital” or “minimum required capital” means the capital that must be constantly maintained by a stock insurance corporation as required by statute.

~~[(114)]~~ (117) “Mortgage accident and health insurance” means insurance offered in connection with an extension of credit that provides indemnity for payments coming due on a mortgage while the debtor has a disability.

~~[(115)]~~ (118) “Mortgage guaranty insurance” means surety insurance under which a mortgagee or other creditor is indemnified against losses caused by the default of a debtor.

~~[(116)]~~ (119) “Mortgage life insurance” means insurance on the life of a debtor in connection with an extension of credit that pays if the debtor dies.

~~[(117)]~~ (120) “Motor club” means a person:

(a) licensed under:

(i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(ii) Chapter 11, Motor Clubs; or

(iii) Chapter 14, Foreign Insurers; and

(b) that promises for an advance consideration to provide for a stated period of time one or more:

(i) legal services under Subsection 31A-11-102(1)(b);

(ii) bail services under Subsection 31A-11-102(1)(c); or

(iii) (A) trip reimbursement;

(B) towing services;

(C) emergency road services;

(D) stolen automobile services;

(E) a combination of the services listed in Subsections ~~[(117)]~~ (120)(b)(iii)(A) through (D); or

(F) other services given in Subsections 31A-11-102(1)(b) through (f).

~~[(118)]~~ (121) “Mutual” means a mutual insurance corporation.

~~[(119)]~~ (122) “Network plan” means health care insurance:

(a) that is issued by an insurer; and

(b) under which the financing and delivery of medical care is provided, in whole or in part, through a defined set of providers under contract with the insurer, including the financing and delivery of an item paid for as medical care.

(123) “Network provider” means a health care provider who has an agreement with a managed care organization to provide health care services to an enrollee with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly from the managed care organization.

~~[(120)]~~ (124) “Nonparticipating” means a plan of insurance under which the insured is not entitled to receive a dividend representing a share of the surplus of the insurer.

~~[(124)]~~ (125) “Ocean marine insurance” means insurance against loss of or damage to:

(a) ships or hulls of ships;

(b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money, securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

(c) earnings such as freight, passage money, commissions, or profits derived from transporting goods or people upon or across the oceans or inland waterways; or

(d) a vessel owner or operator as a result of liability to employees, passengers, bailors, owners of other vessels, owners of fixed objects, customs or other authorities, or other persons in connection with maritime activity.

~~[(122)]~~ (126) “Order” means an order of the commissioner.

~~[(123)]~~ (127) “Outline of coverage” means a summary that explains an accident and health insurance policy.

~~[(124)]~~ (128) “Participating” means a plan of insurance under which the insured is entitled to receive a dividend representing a share of the surplus of the insurer.

~~[(125)]~~ (129) “Participation,” as used in a health benefit plan, means a requirement relating to the minimum percentage of eligible employees that must be enrolled in relation to the total number of eligible employees of an employer reduced by each eligible employee who voluntarily declines coverage under the plan because the employee:

(a) has other group health care insurance coverage; or

(b) receives:

(i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965; or

(ii) another government health benefit.

~~[(126)]~~ (130) “Person” includes:

(a) an individual;

(b) a partnership;

(c) a corporation;

(d) an incorporated or unincorporated association;

(e) a joint stock company;

(f) a trust;

(g) a limited liability company;

(h) a reciprocal;

(i) a syndicate; or

(j) another similar entity or combination of entities acting in concert.

~~[(127)]~~ (131) “Personal lines insurance” means property and casualty insurance coverage sold for primarily noncommercial purposes to:

(a) an individual; or

(b) a family.

~~[(128)]~~ (132) “Plan sponsor” ~~[is as]~~ means the same as that term is defined in 29 U.S.C. Sec. 1002(16)(B).

~~[(129)]~~ (133) “Plan year” means:

(a) the year that is designated as the plan year in:

(i) the plan document of a group health plan; or

(ii) a summary plan description of a group health plan;

(b) if the plan document or summary plan description does not designate a plan year or there is no plan document or summary plan description:

(i) the year used to determine deductibles or limits;

(ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis; or

(iii) the employer’s taxable year if:

(A) the plan does not impose deductibles or limits on a yearly basis; and

(B) (I) the plan is not insured; or

(II) the insurance policy is not renewed on an annual basis; or

(c) in a case not described in Subsection ~~[(129)]~~ (133)(a) or (b), the calendar year.

~~[(130)]~~ (134) (a) “Policy” means a document, including an attached endorsement or application that:

(i) purports to be an enforceable contract; and

(ii) memorializes in writing some or all of the terms of an insurance contract.

(b) “Policy” includes a service contract issued by:

(i) a motor club under Chapter 11, Motor Clubs;

(ii) a service contract provided under Chapter 6a, Service Contracts; and

(iii) a corporation licensed under:

(A) Chapter 7, Nonprofit Health Service Insurance Corporations; or

(B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

(c) “Policy” does not include:

(i) a certificate under a group insurance contract; or

(ii) a document that does not purport to have legal effect.

~~[(131)]~~ (135) “Policyholder” means a person who controls a policy, binder, or oral contract by ownership, premium payment, or otherwise.

~~[(132)]~~ (136) “Policy illustration” means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years.

~~[(133)]~~ (137) “Policy summary” means a synopsis describing the elements of a life insurance policy.

~~[(134)]~~ (138) “PPACA” means the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations and guidance.

~~[(135)]~~ (139) “Preexisting condition,” with respect to a health benefit plan:

(a) means a condition that was present before the effective date of coverage, whether or not medical advice, diagnosis, care, or treatment was recommended or received before that day; and

(b) does not include a condition indicated by genetic information unless an actual diagnosis of the condition by a physician has been made.

~~[(136)]~~ (140) (a) “Premium” means the monetary consideration for an insurance policy.

(b) “Premium” includes, however designated:

(i) an assessment;

(ii) a membership fee;

(iii) a required contribution; or

(iv) monetary consideration.

(c) (i) “Premium” does not include consideration paid to a third party administrator for the third party administrator’s services.

(ii) “Premium” includes an amount paid by a third party administrator to an insurer for insurance on the risks administered by the third party administrator.

~~[(137)]~~ (141) “Principal officers” for a corporation means the officers designated under Subsection 31A-5-203(3).

~~[(138)]~~ (142) “Proceeding” includes an action or special statutory proceeding.

~~[(139)]~~ (143) “Professional liability insurance” means insurance against legal liability incident to the practice of a profession and provision of a professional service.

~~[(140)]~~ (144) (a) Except as provided in Subsection ~~[(140)]~~ ~~(144)~~(b), “property insurance” means insurance against loss or damage to real or personal property of every kind and any interest in that property:

(i) from all hazards or causes; and

(ii) against loss consequential upon the loss or damage including vehicle comprehensive and vehicle physical damage coverages.

(b) “Property insurance” does not include:

(i) inland marine insurance; and

(ii) ocean marine insurance.

~~[(141)]~~ (145) “Qualified long-term care insurance contract” or “federally tax qualified long-term care insurance contract” means:

(a) an individual or group insurance contract that meets the requirements of Section 7702B(b), Internal Revenue Code; or

(b) the portion of a life insurance contract that provides long-term care insurance:

(i) (A) by rider; or

(B) as a part of the contract; and

(ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue Code.

~~[(142)]~~ (146) “Qualified United States financial institution” means an institution that:

(a) is:

(i) organized under the laws of the United States or any state; or

(ii) in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state;

(b) is regulated, supervised, and examined by a United States federal or state authority having regulatory authority over a bank or trust company; and

(c) meets the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of a financial institution whose letters of credit will be acceptable to the commissioner as determined by:

(i) the commissioner by rule; or

(ii) the Securities Valuation Office of the National Association of Insurance Commissioners.

~~[(143)]~~ (147) (a) “Rate” means:

(i) the cost of a given unit of insurance; or

(ii) for property or casualty insurance, that cost of insurance per exposure unit either expressed as:

(A) a single number; or

(B) a pure premium rate, adjusted before the application of individual risk variations based on loss or expense considerations to account for the treatment of:

(I) expenses;

(II) profit; and

(III) individual insurer variation in loss experience.

(b) "Rate" does not include a minimum premium.

[~~(144)~~] (148) (a) Except as provided in Subsection [~~(144)~~] (~~148~~)(b), "rate service organization" means a person who assists an insurer in rate making or filing by:

(i) collecting, compiling, and furnishing loss or expense statistics;

(ii) recommending, making, or filing rates or supplementary rate information; or

(iii) advising about rate questions, except as an attorney giving legal advice.

(b) "Rate service organization" does not mean:

(i) an employee of an insurer;

(ii) a single insurer or group of insurers under common control;

(iii) a joint underwriting group; or

(iv) an individual serving as an actuarial or legal consultant.

[~~(145)~~] (149) "Rating manual" means any of the following used to determine initial and renewal policy premiums:

(a) a manual of rates;

(b) a classification;

(c) a rate-related underwriting rule; and

(d) a rating formula that describes steps, policies, and procedures for determining initial and renewal policy premiums.

[~~(146)~~] (150) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow, or give, directly or indirectly:

(i) a refund of premium or portion of premium;

(ii) a refund of commission or portion of commission;

(iii) a refund of all or a portion of a consultant fee; or

(iv) providing services or other benefits not specified in an insurance or annuity contract.

(b) "Rebate" does not include:

(i) a refund due to termination or changes in coverage;

(ii) a refund due to overcharges made in error by the licensee; or

(iii) savings or wellness benefits as provided in the contract by the licensee.

[~~(147)~~] (151) "Received by the department" means:

(a) the date delivered to and stamped received by the department, if delivered in person;

(b) the post mark date, if delivered by mail;

(c) the delivery service's post mark or pickup date, if delivered by a delivery service;

(d) the received date recorded on an item delivered, if delivered by:

(i) facsimile;

(ii) email; or

(iii) another electronic method; or

(e) a date specified in:

(i) a statute;

(ii) a rule; or

(iii) an order.

[~~(148)~~] (152) "Reciprocal" or "interinsurance exchange" means an unincorporated association of persons:

(a) operating through an attorney-in-fact common to all of the persons; and

(b) exchanging insurance contracts with one another that provide insurance coverage on each other.

[~~(149)~~] (153) "Reinsurance" means an insurance transaction where an insurer, for consideration, transfers any portion of the risk it has assumed to another insurer. In referring to reinsurance transactions, this title sometimes refers to:

(a) the insurer transferring the risk as the "ceding insurer"; and

(b) the insurer assuming the risk as the:

(i) "assuming insurer"; or

(ii) "assuming reinsurer."

[~~(150)~~] (154) "Reinsurer" means a person licensed in this state as an insurer with the authority to assume reinsurance.

[~~(151)~~] (155) "Residential dwelling liability insurance" means insurance against liability resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is a detached single family residence or multifamily residence up to four units.

[~~(152)~~] (156) (a) "Retrocession" means reinsurance with another insurer of a liability assumed under a reinsurance contract.

(b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a liability assumed under a reinsurance contract.

[~~(153)~~] (157) "Rider" means an endorsement to:

(a) an insurance policy; or

(b) an insurance certificate.

[~~(154)~~] (158) "Secondary medical condition" means a complication related to an exclusion from coverage in accident and health insurance.

[~~(155)~~] (159) (a) "Security" means a:

(i) note;

(ii) stock;

(iii) bond;

(iv) debenture;

(v) evidence of indebtedness;

(vi) certificate of interest or participation in a profit-sharing agreement;

(vii) collateral-trust certificate;

(viii) preorganization certificate or subscription;

(ix) transferable share;

(x) investment contract;

(xi) voting trust certificate;

(xii) certificate of deposit for a security;

(xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(xiv) commodity contract or commodity option;

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in Subsections ~~(455)~~ (159)(a)(i) through (xiv); or

(xvi) another interest or instrument commonly known as a security.

(b) "Security" does not include:

(i) any of the following under which an insurance company promises to pay money in a specific lump sum or periodically for life or some other specified period:

(A) insurance;

(B) an endowment policy; or

(C) an annuity contract; or

(ii) a burial certificate or burial contract.

~~(456)~~ (160) "Securityholder" means a specified person who owns a security of a person, including:

(a) common stock;

(b) preferred stock;

(c) debt obligations; and

(d) any other security convertible into or evidencing the right of any of the items listed in this Subsection ~~(456)~~ (160).

~~(457)~~ (161) (a) "Self-insurance" means an arrangement under which a person provides for spreading its own risks by a systematic plan.

(b) Except as provided in this Subsection ~~(457)~~ (161), "self-insurance" does not include an arrangement under which a number of persons spread their risks among themselves.

(c) "Self-insurance" includes:

(i) an arrangement by which a governmental entity undertakes to indemnify an employee for liability arising out of the employee's employment; and

(ii) an arrangement by which a person with a managed program of self-insurance and risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or employees for liability or risk that is related to the relationship or employment.

(d) "Self-insurance" does not include an arrangement with an independent contractor.

~~(458)~~ (162) "Sell" means to exchange a contract of insurance:

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

~~(459)~~ (163) "Short-term care insurance" means an insurance policy or rider advertised, marketed, offered, or designed to provide coverage that is similar to long-term care insurance, but that provides coverage for less than 12 consecutive months for each covered person.

~~(460)~~ (164) "Significant break in coverage" means a period of 63 consecutive days during each of which an individual does not have creditable coverage.

~~(461)~~ (165) (a) "Small employer" means, in connection with a health benefit plan and with respect to a calendar year and to a plan year, an employer who:

(i) employed at least one employee but not more than 50 employees on business days during the preceding calendar year; and

(ii) employs at least one employee on the first day of the plan year.

(b) The number of employees shall:

(i) be determined using the method set forth in 26 U.S.C. Sec. 4980H(c)(2); and

(ii) include an owner described in Subsection (52)(b)(i).

(c) "Small employer" does not include a sole proprietor that does not employ at least one employee.

~~(462)~~ (166) "Special enrollment period," in connection with a health benefit plan, has the same meaning as provided in federal regulations adopted pursuant to the Health Insurance Portability and Accountability Act.

~~(463)~~ (167) (a) "Subsidiary" of a person means an affiliate controlled by that person either directly or indirectly through one or more affiliates or intermediaries.

(b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting shares are owned by that person either alone or with its affiliates, except for the minimum number of shares

the law of the subsidiary's domicile requires to be owned by directors or others.

~~[(164)]~~ (168) Subject to Subsection ~~[(87)]~~ (89)(b), "surety insurance" includes:

(a) a guarantee against loss or damage resulting from the failure of a principal to pay or perform the principal's obligations to a creditor or other obligee;

(b) bail bond insurance; and

(c) fidelity insurance.

~~[(165)]~~ (169) (a) "Surplus" means the excess of assets over the sum of paid-in capital and liabilities.

(b) (i) "Permanent surplus" means the surplus of an insurer or organization that is designated by the insurer or organization as permanent.

(ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require that insurers or organizations doing business in this state maintain specified minimum levels of permanent surplus.

(iii) Except for assessable mutuals, the minimum permanent surplus requirement is the same as the minimum required capital requirement that applies to stock insurers.

(c) "Excess surplus" means:

(i) for a life insurer, accident and health insurer, health organization, or property and casualty insurer as defined in Section 31A-17-601, the lesser of:

(A) that amount of an insurer's or health organization's total adjusted capital that exceeds the product of:

(I) 2.5; and

(II) the sum of the insurer's or health organization's minimum capital or permanent surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

(B) that amount of an insurer's or health organization's total adjusted capital that exceeds the product of:

(I) 3.0; and

(II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

(ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

(A) 1.5; and

(B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

~~[(166)]~~ (170) "Third party administrator" or "administrator" means a person who collects charges or premiums from, or who, for consideration, adjusts or settles claims of residents

of the state in connection with insurance coverage, annuities, or service insurance coverage, except:

(a) a union on behalf of its members;

(b) a person administering a:

(i) pension plan subject to the federal Employee Retirement Income Security Act of 1974;

(ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

(iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

(c) an employer on behalf of the employer's employees or the employees of one or more of the subsidiary or affiliated corporations of the employer;

(d) an insurer licensed under the following, but only for a line of insurance for which the insurer holds a license in this state:

(i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(ii) Chapter 7, Nonprofit Health Service Insurance Corporations;

(iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(iv) Chapter 9, Insurance Fraternal; or

(v) Chapter 14, Foreign Insurers;

(e) a person:

(i) licensed or exempt from licensing under:

(A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries; or

(B) Chapter 26, Insurance Adjusters; and

(ii) whose activities are limited to those authorized under the license the person holds or for which the person is exempt; or

(f) an institution, bank, or financial institution:

(i) that is:

(A) an institution whose deposits and accounts are to any extent insured by a federal deposit insurance agency, including the Federal Deposit Insurance Corporation or National Credit Union Administration; or

(B) a bank or other financial institution that is subject to supervision or examination by a federal or state banking authority; and

(ii) that does not adjust claims without a third party administrator license.

~~[(167)]~~ (171) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner of real or personal property or the holder of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to the property, or invalidity or unenforceability of any liens or encumbrances on the property.

~~[(168)]~~ (172) “Total adjusted capital” means the sum of an insurer’s or health organization’s statutory capital and surplus as determined in accordance with:

(a) the statutory accounting applicable to the annual financial statements required to be filed under Section 31A-4-113; and

(b) another item provided by the RBC instructions, as RBC instructions is defined in Section 31A-17-601.

~~[(169)]~~ (173) (a) “Trustee” means “director” when referring to the board of directors of a corporation.

(b) “Trustee,” when used in reference to an employee welfare fund, means an individual, firm, association, organization, joint stock company, or corporation, whether acting individually or jointly and whether designated by that name or any other, that is charged with or has the overall management of an employee welfare fund.

~~[(170)]~~ (174) (a) “Unauthorized insurer,” “unadmitted insurer,” or “nonadmitted insurer” means an insurer:

(i) not holding a valid certificate of authority to do an insurance business in this state; or

(ii) transacting business not authorized by a valid certificate.

(b) “Admitted insurer” or “authorized insurer” means an insurer:

(i) holding a valid certificate of authority to do an insurance business in this state; and

(ii) transacting business as authorized by a valid certificate.

~~[(171)]~~ (175) “Underwrite” means the authority to accept or reject risk on behalf of the insurer.

~~[(172)]~~ (176) “Vehicle liability insurance” means insurance against liability resulting from or incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle comprehensive or vehicle physical damage coverage under Subsection ~~[(140)]~~ (144).

~~[(173)]~~ (177) “Voting security” means a security with voting rights, and includes a security convertible into a security with a voting right associated with the security.

~~[(174)]~~ (178) “Waiting period” for a health benefit plan means the period that must pass before coverage for an individual, who is otherwise eligible to enroll under the terms of the health benefit plan, can become effective.

~~[(175)]~~ (179) “Workers’ compensation insurance” means:

(a) insurance for indemnification of an employer against liability for compensation based on:

(i) a compensable accidental injury; and

(ii) occupational disease disability;

(b) employer’s liability insurance incidental to workers’ compensation insurance and written in connection with workers’ compensation insurance; and

(c) insurance assuring to a person entitled to workers’ compensation benefits the compensation provided by law.

Section 3. Section 31A-2-201.2 is amended to read:

31A-2-201.2. Evaluation of health insurance market.

(1) Each year the commissioner shall:

(a) conduct an evaluation of the state’s health insurance market;

(b) report the findings of the evaluation to the Health and Human Services Interim Committee before October 1 of each year; and

(c) publish the findings of the evaluation on the department website.

(2) The evaluation required by this section shall:

(a) analyze the effectiveness of the insurance regulations and statutes in promoting a healthy, competitive health insurance market that meets the needs of the state, and includes an analysis of:

(i) the availability and marketing of individual and group products;

(ii) rate changes;

(iii) coverage and demographic changes;

(iv) benefit trends;

(v) market share changes; and

(vi) accessibility;

(b) assess complaint ratios and trends within the health insurance market, which assessment shall include complaint data from the Office of Consumer Health Assistance within the department;

(c) contain recommendations for action to improve the overall effectiveness of the health insurance market, administrative rules, and statutes; and

(d) include claims loss ratio data for each health insurance company doing business in the state.

~~[(3) When preparing the evaluation required by this section, the commissioner shall include a report of:]~~

~~[(a) the types of health benefit plans sold in the Health Insurance Exchange created in Section 63N-11-104;]~~

~~[(b) the number of insurers participating in the defined contribution arrangement health benefit plans in the Health Insurance Exchange; and]~~

~~[(c) the number of employers and covered lives in the defined contribution arrangement market in the Health Insurance Exchange.]~~

~~[(4)]~~ (3) When preparing the evaluation and report required by this section, the commissioner

may seek the input of insurers, employers, insured persons, providers, and others with an interest in the health insurance market.

[~~(5)~~] (4) The commissioner may adopt administrative rules for the purpose of collecting the data required by this section, taking into account the business confidentiality of the insurers.

[~~(6)~~] (5) Records submitted to the commissioner under this section shall be maintained by the commissioner as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 4. Section 31A-4-115 is amended to read:

31A-4-115. Plan of orderly withdrawal.

(1) (a) When an insurer intends to withdraw from writing a line of insurance in this state or to reduce its total annual premium volume by 75% or more, the insurer shall file with the commissioner a plan of orderly withdrawal.

(b) For purposes of this section, a discontinuance of a health benefit plan [~~pursuant to one of the following provisions~~] is a withdrawal from a line of insurance[:~~—(i)~~] under [~~Subsection 31A-30-107(3)(e); or —(ii) — Subsection 31A-30-107.1(3)(e)~~] Subsections 31A-22-618.6(5) or 31A-22-618.7(3).

(2) An insurer's plan of orderly withdrawal shall:

(a) indicate the date the insurer intends to begin and complete its withdrawal plan; and

(b) include provisions for:

(i) meeting the insurer's contractual obligations;

(ii) providing services to its Utah policyholders and claimants;

(iii) meeting applicable statutory obligations; and

(iv) the payment of a withdrawal fee of \$50,000 to the department if the insurer's line of business is not assumed or placed with another insurer approved by the commissioner.

(3) The commissioner shall approve a plan of orderly withdrawal if the plan of orderly withdrawal adequately demonstrates that the insurer will:

(a) protect the interests of the people of the state;

(b) meet the insurer's contractual obligations;

(c) provide service to the insurer's Utah policyholders and claimants; and

(d) meet applicable statutory obligations.

(4) Section 31A-2-302 governs the commissioner's approval or disapproval of a plan for orderly withdrawal.

(5) The commissioner may require an insurer to increase the deposit maintained in accordance with Section 31A-4-105 or Section 31A-4-105.5 and place the deposit in trust in the name of the

commissioner upon finding, after an adjudicative proceeding that:

(a) there is reasonable cause to conclude that the interests of the people of the state are best served by such action; and

(b) the insurer:

(i) has filed a plan of orderly withdrawal; or

(ii) intends to:

(A) withdraw from writing a line of insurance in this state; or

(B) reduce the insurer's total annual premium volume by 75% or more.

(6) An insurer is subject to the civil penalties under Section 31A-2-308, if the insurer:

(a) withdraws from writing insurance in this state without receiving the commissioner's approval of a plan of orderly withdrawal; or

(b) reduces its total annual premium volume by 75% or more in any year without receiving the commissioner's approval of a plan of orderly withdrawal.

(7) An insurer that withdraws from writing all lines of insurance in this state may not resume writing insurance in this state for five years unless the commissioner finds that the prohibition should be waived because the waiver is:

(a) in the public interest to promote competition; or

(b) to resolve inequity in the marketplace.

(8) The commissioner shall adopt rules necessary to implement this section.

Section 5. Section 31A-8-101 is amended to read:

31A-8-101. Definitions.

For purposes of this chapter:

(1) "Basic health care services" means:

(a) emergency care;

(b) inpatient hospital and physician care;

(c) outpatient medical services; and

(d) out-of-area coverage.

[~~(2) "Director of health" means:~~]

[~~(a) the executive director of the Department of Health; or~~]

[~~(b) the authorized representative of the executive director of the Department of Health.~~]

[~~(3) "Enrollee" means an individual:~~]

[~~(a) who has entered into a contract with an organization for health care; or~~]

[~~(b) in whose behalf an arrangement for health care has been made.~~]

[~~(4) "Health care" is as defined in Section 31A-1-301.~~]

[45] (2) "Health maintenance organization" means any person:

(a) other than:

(i) an insurer licensed under Chapter 7, Nonprofit Health Service Insurance Corporations; or

(ii) an individual who contracts to render professional or personal services that the individual directly performs; and

(b) that:

(i) furnishes at a minimum, either directly or through arrangements with others, basic health care services to an enrollee in return for prepaid periodic payments agreed to in amount prior to the time during which the health care may be furnished; and

(ii) is obligated to the enrollee to arrange for or to directly provide available and accessible health care.

[46] (3) (a) "Limited health plan" means, except as limited under Subsection [46] (3)(b), [any] a person who furnishes dental or vision services, either directly or through arrangements with others[, services];

[4] of;

[A] dentists;

[B] optometrists;

[C] physical therapists;

[D] podiatrists;

[E] psychologists;

[F] physicians;

[G] chiropractic physicians;

[H] naturopathic physicians;

[I] osteopathic physicians;

[J] social workers;

[K] family counselors;

[L] other health care providers; or

[M] reasonable combinations of the services described in this Subsection (6)(a)(i);

[47] (i) to an enrollee;

[48] (ii) in return for prepaid periodic payments agreed to in amount prior to the time during which the services may be furnished; and

[49] (iii) for which the person is obligated to the enrollee to arrange for or directly provide the available and accessible services described in this Subsection [46] (3)(a).

(b) "Limited health plan" does not include:

(i) a health maintenance organization;

(ii) an insurer licensed under Chapter 7, Nonprofit Health Service Insurance Corporations; or

(iii) an individual who contracts to render professional or personal services that the individual performs.

[70] (4) (a) "Nonprofit organization" or "nonprofit corporation" means an organization no part of the income of which is distributable to its members, trustees, or officers, or a nonprofit cooperative association, except in a manner allowed under Section 31A-8-406.

(b) "Nonprofit health maintenance organization" and "nonprofit limited health plan" are used when referring specifically to one of the types of organizations with "nonprofit" status.

[81] (5) "Organization" means a health maintenance organization and limited health plan, unless used in the context of:

[82] (a) "organization expenses," which is described in Section 31A-8-208.

[83] (b) "organization permit," which is described in Sections 31A-8-204 and 31A-8-206; or

[9] "Participating provider" means a provider as defined in Subsection (10) who, under a contract with the health maintenance organization, agrees to provide health care services to enrollees with an expectation of receiving payment, directly or indirectly, from the health maintenance organization, other than copayment.

[10] "Provider" means any person who:

(a) furnishes health care directly to the enrollee; and

(b) is licensed or otherwise authorized to furnish the health care in this state.

[11] (6) "Uncovered expenditures" means the costs of health care services that are covered by an organization for which an enrollee is liable in the event of the organization's insolvency.

[12] (7) "Unusual or infrequently used health services" means those health services that are projected to involve fewer than 10% of the organization's enrollees' encounters with providers, measured on an annual basis over the organization's entire enrollment.

Section 6. Section 31A-8-103 is amended to read:

31A-8-103. Applicability to other provisions of law.

(1) (a) Except for exemptions specifically granted under this title, an organization is subject to regulation under all of the provisions of this title.

(b) Notwithstanding any provision of this title, an organization licensed under this chapter:

(i) is wholly exempt from:

(A) Chapter 7, Nonprofit Health Service Insurance Corporations;

(B) Chapter 9, Insurance Fraternal;

(C) Chapter 10, Annuities;

(D) Chapter 11, Motor Clubs;

(E) Chapter 12, State Risk Management Fund;
~~[(F) Chapter 13, Employee Welfare Funds and Plans;]~~

~~[(G) (F) Chapter 19a, Utah Rate Regulation Act;~~
 and

~~[(H) (G) Chapter 28, Part 1, Utah Life and Health Insurance Guaranty [Associations] Association Act;~~
 and

(ii) is not subject to:

(A) Chapter 3, Department Funding, Fees, and Taxes, except for Part 1, Funding the Insurance Department;

(B) Section 31A-4-107;

(C) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except for provisions specifically made applicable by this chapter;

(D) Chapter 14, Foreign Insurers, except for provisions specifically made applicable by this chapter;

(E) Chapter 17, Determination of Financial Condition, except:

(I) Part 2, Qualified Assets, and Part 6, Risk-Based Capital; or

(II) as made applicable by the commissioner by rule consistent with this chapter;

(F) Chapter 18, Investments, except as made applicable by the commissioner by rule consistent with this chapter; and

(G) Chapter 22, Contracts in Specific Lines, except for Part 6, Accident and Health Insurance, Part 7, Group Accident and Health Insurance, and Part 12, Reinsurance.

(2) The commissioner may by rule waive other specific provisions of this title that the commissioner considers inapplicable to ~~[health maintenance organizations or]~~ limited health plans, upon a finding that the waiver will not endanger the interests of:

- (a) enrollees;
- (b) investors; or
- (c) the public.

(3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply to an organization except as specifically made applicable by:

- (a) this chapter;
- (b) a provision referenced under this chapter; or
- (c) a rule adopted by the commissioner to deal with corporate law issues of health maintenance organizations that are not settled under this chapter.

(4) (a) Whenever in this chapter, Chapter 5, Domestic Stock and Mutual Insurance

Corporations, or Chapter 14, Foreign Insurers, is made applicable to an organization, the application is:

(i) of those provisions that apply to a mutual corporation if the organization is nonprofit; and

(ii) of those that apply to a stock corporation if the organization is for profit.

(b) When Chapter 5, Domestic Stock and Mutual Insurance Corporations, or Chapter 14, Foreign Insurers, is made applicable to an organization under this chapter, "mutual" means nonprofit organization.

(5) Solicitation of enrollees by an organization is not a violation of any provision of law relating to solicitation or advertising by health professionals if that solicitation is made in accordance with:

(a) this chapter; and

(b) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

(6) This title does not prohibit any health maintenance organization from meeting the requirements of any federal law that enables the health maintenance organization to:

(a) receive federal funds; or

(b) obtain or maintain federal qualification status.

(7) Except as provided in ~~[Section 31A-8-501]~~ Chapter 45, Managed Care Organizations, an organization is exempt from statutes in this title or department rules that restrict or limit the organization's freedom of choice in contracting with or selecting health care providers, including Section 31A-22-618.

(8) An organization is exempt from the assessment or payment of premium taxes imposed by Sections 59-9-101 through 59-9-104.

Section 7. Section 31A-21-106 is amended to read:

31A-21-106. Incorporation by reference.

(1) (a) Except as provided in Subsection (1)(b), an insurance policy may not contain any agreement or incorporate any provision not fully set forth in the policy or in an application or other document attached to and made a part of the policy at the time of its delivery, unless the policy, application, or agreement accurately reflects the terms of the incorporated agreement, provision, or attached document.

(b) (i) A policy may by reference incorporate rate schedules and classifications of risks and short-rate tables filed with the commissioner.

(ii) By rule or order, the commissioner may authorize incorporation by reference of provisions for:

(A) administrative arrangements;

(B) premium schedules; and

(C) payment procedures for complex contracts.

(c) (i) A policy of title insurance insuring the mortgage or deed of trust of an institutional lender may, if requested by an institutional lender, incorporate by reference generally applicable policy terms that are contained in a specifically identified policy that has been filed with the commissioner.

(ii) As used in Subsection (1)(c)(i), “institutional lender” means a person that regularly engages in the business of making loans secured by real estate.

(d) A policy may incorporate by reference the following by citing in the policy:

- (i) a federal law or regulation;
- (ii) a state law or rule; or
- (iii) a public directive of a federal or state agency.

(2) A purported modification of a contract during the term of the policy may not affect the obligations of a party to the contract:

(a) unless the modification is:

- (i) in writing; and
- (ii) agreed to by the party against whose interest the modification operates; and

(b) except:

(i) as provided in:

(A) Subsection (3) or (4);

(B) Subsection ~~[31A-8-402.3]~~ 31A-22-618.6(9); or

~~[(C) Subsection 31A-22-721(10); or]~~

~~[(D)]~~ (C) Subsection ~~[31A-30-107(8)]~~ 31A-22-618.7(4); or

(ii) as otherwise mandated by law.

(3) Subsection (2) does not prevent a change in coverage under group contracts resulting from:

- (a) provisions of an employer eligibility rule;
- (b) the terms of a collective bargaining agreement; or
- (c) provisions in federal Employee Retirement Income Security Act plan documents.

(4) Subsection (2) does not prevent a premium increase at any renewal date that is applicable uniformly to all comparable persons.

Section 8. Section 31A-22-610.1 is amended to read:

31A-22-610.1. Indemnity benefit for adoption or infertility treatments.

(1) (a) (i) If an insured has coverage for maternity benefits on the date of an adoptive placement, the insured’s policy shall provide an adoption indemnity benefit payable to the insured, if a child is placed for adoption with the insured within 90 days of the child’s birth. If more than one child from the same birth is placed for adoption with the

insured, only one adoption indemnity benefit is required.

(ii) This section does not prevent an accident and health insurer from:

(A) adjusting the benefit payable under this section for cost sharing measures imposed under the policy or contract for maternity benefit coverage; or

(B) providing additional adoption indemnity benefits including:

(I) extending the period of time after birth in which a child must be placed with an insured; or

(II) providing a benefit in excess of the amount specified in Subsection (1)(c).

(b) An insurer that has paid the adoption indemnity benefit under Subsection (1)(a) may seek reimbursement of the benefit if:

(i) the postplacement evaluation disapproves the adoption placement; and

(ii) a court rules the adoption may not be finalized because of an act or omission of an adoptive parent or parents that affects the child’s health or safety.

(c) (i) The amount of the adoption indemnity benefit provided under Subsection (1) is \$4,000 subject to the adjustments permitted by Subsection (1)(a)(ii).

(ii) An insurer may comply with the provisions of this section by providing the \$4,000 adoption indemnity benefit to an enrollee to be used for the purpose of the enrollee obtaining infertility treatments rather than seeking reimbursement for an adoption in accordance with terms designated by the insurer.

(d) Each insurer shall pay its pro rata share of the adoption indemnity benefit if each adoptive parent:

(i) has coverage for maternity benefits with a different insurer; and

(ii) makes a claim for the adoption indemnity benefit provided in Subsection (1)(a).

(2) If a policy offers optional maternity benefits, it shall also offer coverage for adoption indemnity benefits if:

(a) a child is placed for adoption with the insured within 90 days of the child’s birth; and

(b) the adoption is finalized within one year of the child’s birth.

(3) If an insured qualifies for the adoption indemnity benefit under this section and receives services from a ~~[health care provider under contract with his insurer, the contracting health care provider]~~ network provider, the network provider may only collect from the insured the amount that the contracting health care provider is entitled to receive for such services under the contract, including any applicable copayment.

~~[(4) For purposes of this section, “contracting health care provider” means:]~~

~~[(a) a “participating provider” as defined in Section 31A-8-101; or]~~

~~[(b) a “preferred health care provider” as described in Section 31A-22-617.]~~

Section 9. Section 31A-22-610.5 is amended to read:

31A-22-610.5. Dependent coverage.

(1) As used in this section, “child” has the same meaning as defined in Section 78B-12-102.

(2) (a) Any individual or group accident and health insurance policy or ~~[health maintenance] managed care~~ organization contract that provides coverage for a policyholder’s or certificate holder’s dependent may not terminate coverage of an unmarried dependent by reason of the dependent’s age before the dependent’s 26th birthday and shall, upon application, provide coverage for all unmarried dependents up to age 26.

(b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be included in the premium on the same basis as other dependent coverage.

(c) This section does not prohibit the employer from requiring the employee to pay all or part of the cost of coverage for unmarried dependents.

(d) An individual or group health insurance policy ~~[, group health insurance policy, or health maintenance] or managed care~~ organization shall continue in force coverage for a dependent through the last day of the month in which the dependent ceases to be a dependent:

(i) if premiums are paid; and

(ii) notwithstanding ~~[Section 31A-8-402.3, 31A-8-402.5, 31A-22-721, 31A-30-107.1, or 31A-30-107.3]~~ Sections 31A-22-618.6 and 31A-22-618.7.

~~[(3) An individual or group accident and health insurance policy or health maintenance organization contract shall reinstate dependent coverage, and for purposes of all exclusions and limitations, shall treat the dependent as if the coverage had been in force since it was terminated; if:]~~

~~[(a) the dependent has not reached the age of 26 by July 1, 1995;]~~

~~[(b) the dependent had coverage prior to July 1, 1994;]~~

~~[(c) prior to July 1, 1994, the dependent’s coverage was terminated solely due to the age of the dependent; and]~~

~~[(d) the policy has not been terminated since the dependent’s coverage was terminated.]~~

~~[(4)] (3) (a) When a parent is required by a court or administrative order to provide health insurance coverage for a child, an accident and health insurer may not deny enrollment of a child under the accident and health insurance plan of the child’s parent on the grounds the child:~~

(i) was born out of wedlock and is entitled to coverage under Subsection ~~[(5)] (4)~~;

(ii) was born out of wedlock and the custodial parent seeks enrollment for the child under the custodial parent’s policy;

(iii) is not claimed as a dependent on the parent’s federal tax return; or

(iv) does not reside with the parent or in the insurer’s service area.

(b) A child enrolled as required under Subsection ~~[(4)] (3)(a)(iv)~~ is subject to the terms of the accident and health insurance plan contract pertaining to services received outside of an insurer’s service area. ~~[A health maintenance organization shall comply with Section 31A-8-502.]~~

~~[(5)] (4) When a child has accident and health coverage through an insurer of a noncustodial parent, and when requested by the noncustodial or custodial parent, the insurer shall:~~

(a) provide information to the custodial parent as necessary for the child to obtain benefits through that coverage, but the insurer or employer, or the agents or employees of either of them, are not civilly or criminally liable for providing information in compliance with this Subsection ~~[(5)] (4)(a)~~, whether the information is provided pursuant to a verbal or written request;

(b) permit the custodial parent or the service provider, with the custodial parent’s approval, to submit claims for covered services without the approval of the noncustodial parent; and

(c) make payments on claims submitted in accordance with Subsection ~~[(5)] (4)(b)~~ directly to the custodial parent, the child who obtained benefits, the provider, or the state Medicaid agency.

~~[(6)] (5) When a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:~~

(a) permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to an enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application of the child’s other parent, the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec. 651 through 669, the child support enforcement program; and

(c) (i) when the child is covered by an individual policy, not disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(A) the court or administrative order is no longer in effect; or

(B) the child is or will be enrolled in comparable accident and health coverage through another insurer which will take effect not later than the effective date of disenrollment; or

(ii) when the child is covered by a group policy, not disenroll or eliminate coverage of the child unless the employer is provided with satisfactory written evidence, which evidence is also provided to the insurer, that Subsection ~~[(9)]~~ (8)(c)(i), (ii), or (iii) has happened.

~~[(7)]~~ (6) An insurer may not impose requirements on a state agency that has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for accident and health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

~~[(8)]~~ (7) Insurers may not reduce their coverage of pediatric vaccines below the benefit level in effect on May 1, 1993.

~~[(9)]~~ (8) When a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer shall:

(a) permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(b) if the parent is enrolled but fails to make application to obtain coverage of the child, enroll the child under family coverage upon application by the child's other parent, by the state agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec. 651 through 669, the child support enforcement program;

(c) not disenroll or eliminate coverage of the child unless the employer is provided satisfactory written evidence that:

(i) the court order is no longer in effect;

(ii) the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(iii) the employer has eliminated family health coverage for all of its employees; and

(d) withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer.

~~[(10)]~~ (9) An order issued under Section 62A-11-326.1 may be considered a "qualified medical support order" for the purpose of enrolling a dependent child in a group accident and health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

~~[(11)]~~ (10) This section does not affect any insurer's ability to require as a precondition of any child being covered under any policy of insurance that:

(a) the parent continues to be eligible for coverage;

(b) the child shall be identified to the insurer with adequate information to comply with this section; and

(c) the premium shall be paid when due.

~~[(12)]~~ (11) The provisions of this section apply to employee welfare benefit plans as defined in Section 26-19-2.

~~[(13)]~~ (12) The commissioner shall adopt rules interpreting and implementing this section with regard to out-of-area court ordered dependent coverage.

Section 10. Section 31A-22-613.5 is amended to read:

31A-22-613.5. Price and value comparisons of health insurance.

(1) (a) This section applies to all health benefit plans.

(b) Subsection (2) applies to:

(i) all health benefit plans; and

(ii) coverage offered to state employees under Subsection 49-20-202(1)(a).

(2) ~~[(a)]~~ The commissioner shall promote informed consumer behavior and responsible health benefit plans by requiring an insurer issuing a health benefit plan to ~~[(i)]~~ provide to all enrollees, ~~[prior to]~~ before enrollment in the health benefit plan, written disclosure of:

~~[(A)]~~ (a) restrictions or limitations on prescription drugs and biologics, including:

~~[(i)]~~ (i) the use of a formulary;

~~[(ii)]~~ (ii) co-payments and deductibles for prescription drugs; and

~~[(iii)]~~ (iii) requirements for generic substitution;

~~[(b)]~~ (b) coverage limits under the plan;

~~[(c)]~~ (c) any limitation or exclusion of coverage, including:

~~[(i)]~~ (i) a limitation or exclusion for a secondary medical condition related to a limitation or exclusion from coverage; and

~~[(ii)]~~ (ii) easily understood examples of a limitation or exclusion of coverage for a secondary medical condition; and

~~[(d)]~~ (d) whether the insurer permits an exchange of the adoption indemnity benefit in Section 31A-22-610.1 for infertility treatments, in accordance with Subsection 31A-22-610.1(1)(c)(ii) and the terms associated with the exchange of benefits ~~[-and]~~.

~~[(ii)]~~ ~~provide the commissioner with:~~

~~[(A)]~~ ~~the information described in Subsections 31A-22-635(5) through (7) in the standardized electronic format required by Subsection 63N-11-107(1); and~~

~~[(B)]~~ ~~information regarding insurer transparency in accordance with Subsection (4).]~~

~~[(b)]~~ (3) An insurer shall provide the disclosure required by Subsection (2)(a)(i) in writing to the commissioner:

~~[(4)]~~ (a) upon commencement of operations in the state; and

~~[(ii)]~~ (b) anytime the insurer amends any of the following described in Subsection (2)~~[(a)]~~~~[(4)]~~:

~~[(A)]~~ (i) treatment policies;

~~[(B)]~~ (ii) practice standards;

~~[(C)]~~ (iii) restrictions;

~~[(D)]~~ (iv) coverage limits of the insurer's health benefit plan or health insurance policy; or

~~[(E)]~~ (v) limitations or exclusions of coverage including a limitation or exclusion for a secondary medical condition related to a limitation or exclusion of the insurer's health insurance plan.

~~[(e)]~~ (4) (a) An insurer shall provide the enrollee with notice of an increase in costs for prescription drug coverage due to a change in benefit design under Subsection (2)(a)~~[(4)]~~~~[(A)]~~:

(i) either:

(A) in writing; or

(B) on the insurer's website; and

(ii) at least 30 days prior to the date of the implementation of the increase in cost, or as soon as reasonably possible.

~~[(d)]~~ (b) If under Subsection (2)(a)~~[(4)]~~~~[(A)]~~ a formulary is used, the insurer shall make available to prospective enrollees and maintain evidence of the fact of the disclosure of:

(i) the drugs included;

(ii) the patented drugs not included;

(iii) any conditions that exist as a precedent to coverage; and

(iv) any exclusion from coverage for secondary medical conditions that may result from the use of an excluded drug.

~~[(e)]~~ (c) (i) The commissioner shall develop examples of limitations or exclusions of a secondary medical condition that an insurer may use under Subsection (2)~~[(a)]~~~~[(4)]~~~~[(C)]~~~~[(c)]~~.

(ii) Examples of a limitation or exclusion of coverage provided under Subsection (2)~~[(a)]~~~~[(4)]~~~~[(C)]~~~~[(c)]~~ or otherwise are for illustrative purposes only, and the failure of a particular fact situation to fall within the description of an example does not, by itself, support a finding of coverage.

~~[(3)]~~ ~~The commissioner:~~

~~[(a)]~~ shall forward the information submitted by an insurer under Subsection (2)(a)(ii) to the Health Insurance Exchange created under Section 63N-11-104; and

~~[(b)]~~ may request information from an insurer to verify the information submitted by the insurer under this section.

~~[(4)]~~ ~~The commissioner shall:~~

~~[(a)]~~ convene a group of insurers, a member representing the Public Employees' Benefit and Insurance Program, consumers, and an organization that provides multipayer and multiprovider quality assurance and data collection, to develop information for consumers to compare health insurers and health benefit plans on the Health Insurance Exchange, which shall include consideration of:

~~[(i)]~~ the number and cost of an insurer's denied health claims;

~~[(ii)]~~ the cost of denied claims that is transferred to providers;

~~[(iii)]~~ the average out-of-pocket expenses incurred by participants in each health benefit plan that is offered by an insurer in the Health Insurance Exchange;

~~[(iv)]~~ the relative efficiency and quality of claims administration and other administrative processes for each insurer offering plans in the Health Insurance Exchange; and

~~[(v)]~~ consumer assessment of each insurer or health benefit plan;

~~[(b)]~~ adopt an administrative rule that establishes:

~~[(i)]~~ definition of terms;

~~[(ii)]~~ the methodology for determining and comparing the insurer transparency information;

~~[(iii)]~~ the data, and format of the data, that an insurer shall submit to the commissioner in order to facilitate the consumer comparison on the Health Insurance Exchange in accordance with Section 63N-11-107; and

~~[(iv)]~~ the dates on which the insurer shall submit the data to the commissioner in order for the commissioner to transmit the data to the Health Insurance Exchange in accordance with Section 63N-11-107; and

~~[(e)]~~ implement the rules adopted under Subsection (4)(b) in a manner that protects the business confidentiality of the insurer.

Section 11. Section 31A-22-618 is amended to read:

31A-22-618. Nondiscrimination among health care professionals.

~~[(1)]~~ Except as provided under Section ~~[31A-22-617]~~ 31A-45-303 and Subsection ~~[(3) of this section]~~ (2), and except as to insurers licensed under Chapter 8, Health Maintenance Organizations and Limited Health Plans, no insurer may unfairly discriminate against any licensed class of health care providers by structuring contract exclusions which exclude payment of benefits for the treatment of any illness, injury, or condition by any licensed class of health care providers when the treatment is within the scope of the licensee's practice and the illness, injury, or condition falls within the coverage of the contract. Upon the written request of an insured alleging an insurer has violated this section, the

commissioner shall hold a hearing to determine if the violation exists. The commissioner may consolidate two or more related alleged violations into a single hearing.

~~[(2) This section does not apply to catastrophic mental health coverage provided in accordance with Section 31A-22-625.]~~

~~[(3)] (2)~~ Coverage for licensed providers for behavioral analysis may be limited by an insurer in accordance with Section 58-61-714. Nothing in this section prohibits an insurer from electing to provide coverage for other licensed professionals whose scope of practice includes behavior analysis.

Section 12. Section 31A-22-618.5 is amended to read:

31A-22-618.5. Coverage of insurance mandates imposed after January 1, 2009.

(1) The purpose of this section is to increase the range of health benefit plans available in the small group, small employer group, large group, and individual insurance markets.

(2) A health maintenance organization that is subject to Chapter 8, Health Maintenance Organizations and Limited Health Plans:

(a) shall offer to potential purchasers at least one health benefit plan that is subject to the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans; and

(b) may offer to a potential purchaser one or more health benefit plans that:

(i) are not subject to one or more of the following:

(A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);

~~[(B) the limitation on point of service products in Subsections 31A-8-408(3) through (6);]~~

~~[(C)] (B)~~ except as provided in Subsection (2)(b)(ii), basic health care services as defined in Section 31A-8-101; or

~~[(D)] (C)~~ coverage mandates enacted after January 1, 2009 that are not required by federal law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate enacted after January 1, 2009; and

(ii) when offering a health plan under this section, provide coverage for an emergency medical condition as required by Section 31A-22-627 ~~[as follows:]~~.

~~[(A) within the organization's service area, covered services shall include health care services from nonaffiliated providers when medically necessary to stabilize an emergency medical condition; and]~~

~~[(B) outside the organization's service area, covered services shall include medically necessary health care services for the treatment of an emergency medical condition that are immediately required while the enrollee is outside the~~

~~geographic limits of the organization's service area.]~~

(3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health Maintenance Organizations and Limited Health Plans:

(a) may offer a health benefit plan that is not subject to Section 31A-22-618 and Subsection 31A-45-303(3)(b)(iii);

(b) when offering a health plan under this Subsection (3), shall provide coverage of emergency care services as required by Section 31A-22-627; and

(c) is not subject to coverage mandates enacted after January 1, 2009 that are not required by federal law, provided that an insurer offers one plan that covers a mandate enacted after January 1, 2009.

(4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under Subsection (2)(b).

(5) (a) Any difference in price between a health benefit plan offered under Subsections (2)(a) and (b) shall be based on actuarially sound data.

(b) Any difference in price between a health benefit plan offered under Subsection (3)(a) shall be based on actuarially sound data.

(6) Nothing in this section limits the number of health benefit plans that an insurer may offer.

Section 13. Section 31A-22-618.6, which is renumbered from Section 31A-8-402.3 is renumbered and amended to read:

~~31A-8-402.3.~~ 31A-22-618.6. Discontinuance, nonrenewal, or changes to group health benefit plans.

(1) Except as otherwise provided in this section, a group health benefit plan for a plan sponsor is renewable and continues in force:

(a) with respect to all eligible employees and dependents; and

(b) at the option of the plan sponsor.

(2) A health benefit plan for a plan sponsor may be discontinued or nonrenewed ~~[for a network plan, if:]~~:

(a) for noncompliance with the insurer's employer contribution requirements;

~~[(a)] (b)~~ if there is no longer any enrollee under the group health plan who lives, resides, or works in:

(i) the service area of the insurer; or

(ii) the area for which the insurer is authorized to do business; ~~[or]~~

~~[(b)] (c)~~ for coverage made available in the small or large employer market only through an association, if:

(i) the employer's membership in the association ceases; and

(ii) the coverage is terminated uniformly without regard to any health status-related factor relating to any covered individual~~[-];~~ or

(d) for noncompliance with the insurer's minimum employee participation requirements, except as provided in Subsection (3).

(3) If a small employer employs fewer than two eligible employees, a carrier may not discontinue or not renew the health benefit plan until the first renewal date following the beginning of a new plan year, even if the carrier knows at the beginning of the plan year that the employer no longer has at least two current employees.

(4) (a) A small employer that, after purchasing a health benefit plan in the small group market, employs on average more than 50 eligible employees on each business day in a calendar year may continue to renew the health benefit plan purchased in the small group market.

(b) A large employer that, after purchasing a health benefit plan in the large group market, employs on average fewer than 51 eligible employees on each business day in a calendar year may continue to renew the health benefit plan purchased in the large group market.

~~[(3)]~~ (5) A health benefit plan for a plan sponsor may be discontinued if:

(a) a condition described in Subsection (2) exists;

(b) the plan sponsor fails to pay premiums or contributions in accordance with the terms of the contract;

(c) the plan sponsor:

(i) performs an act or practice that constitutes fraud; or

(ii) makes an intentional misrepresentation of material fact under the terms of the coverage;

(d) the insurer:

(i) elects to discontinue offering a particular health benefit plan product delivered or issued for delivery in this state; and

(ii) (A) provides notice of the discontinuation in writing~~[- (D)]~~ to each plan sponsor, employee, or dependent of a plan sponsor or an employee~~[- and (H)]~~, at least 90 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing~~[- (F)]~~ to the commissioner~~[- and (H)]~~, and at least three working days ~~[prior to]~~ before the date the notice is sent to the affected plan sponsors, employees, and dependents of the plan sponsors or employees;

(C) offers to each plan sponsor, on a guaranteed issue basis, the option to purchase~~[- (F)]~~ all other health benefit plan products currently being offered by the insurer in the market~~[- or (H)]~~ or, in the case of a large employer, any other health benefit ~~[product]~~ plans currently being offered in that market; and

(D) in exercising the option to discontinue that product and in offering the option of coverage in this section, acts uniformly without regard to~~[- (F)]~~ the

claims experience of a plan sponsor~~[- (H)]~~, any health status-related factor relating to any covered participant or beneficiary~~[- or (H)]~~, or any health status-related factor relating to any new participant or beneficiary who may become eligible for the coverage; or

(e) the insurer:

(i) elects to discontinue all of the insurer's health benefit plans in:

(A) the small employer market;

(B) the large employer market; or

(C) both the small employer and large employer markets; and

(ii) (A) provides notice of the discontinuation in writing~~[- (D)]~~ to each plan sponsor, employee, or dependent of a plan sponsor or an employee~~[- and (H)]~~ at least 180 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing~~[- (F)]~~ to the commissioner in each state in which an affected insured individual is known to reside~~[- and (H)]~~ and, at least 30 working days ~~[prior to]~~ before the date the notice is sent to the affected plan sponsors, employees, and the dependents of the plan sponsors or employees;

(C) discontinues and nonrenews all plans issued or delivered for issuance in the market described in Subsection (5)(e)(i); and

(D) provides a plan of orderly withdrawal as required by Section 31A-4-115.

~~[(4) A large employer health benefit plan may be discontinued or nonrenewed:]~~

~~[(a) if a condition described in Subsection (2) exists; or]~~

~~[(b) for noncompliance with the insurer's:]~~

~~[(i) minimum participation requirements; or]~~

~~[(ii) employer contribution requirements.]~~

~~[(5) A small employer health benefit plan may be discontinued or nonrenewed:]~~

~~[(a) if a condition described in Subsection (2) exists; or]~~

~~[(b) for noncompliance with the insurer's employer contribution requirements.]~~

~~[(6) A small employer health benefit plan may be nonrenewed:]~~

~~[(a) if a condition described in Subsection (2) exists; or]~~

~~[(b) for noncompliance with the insurer's minimum participation requirements.]~~

~~[(7)]~~ (6) (a) Except as provided in Subsection ~~[(7)]~~ (6)(d), an eligible employee may be discontinued if after issuance of coverage the eligible employee:

(i) engages in an act or practice in connection with the coverage that constitutes fraud; or

(ii) makes an intentional misrepresentation of material fact in connection with the coverage.

(b) An eligible employee that is discontinued under Subsection [(7)] (6)(a) may reenroll:

(i) 12 months after the date of discontinuance; and

(ii) if the plan sponsor's coverage is in effect at the time the eligible employee applies to reenroll.

(c) At the time the eligible employee's coverage is discontinued under Subsection [(7)] (6)(a), the insurer shall notify the eligible employee of the right to reenroll when coverage is discontinued.

(d) An eligible employee may not be discontinued under this Subsection [(7)] (6) because of a fraud or misrepresentation that relates to health status.

[(8)] (7) For purposes of this section, a reference to "plan sponsor" includes a reference to the employer:

(a) with respect to coverage provided to an employer member of the association; and

(b) if the health benefit plan is made available by an insurer in the employer market only through:

(i) an association;

(ii) a trust; or

(iii) a discretionary group.

[(9)] (8) An insurer may modify a health benefit plan for a plan sponsor only:

(a) at the time of coverage renewal; and

(b) if the modification is effective uniformly among all plans with that product.

Section 14. Section 31A-22-618.7, which is renumbered from Section 31A-8-402.5 is renumbered and amended to read:

[31A-8-402.5]. 31A-22-618.7. Individual discontinuance and nonrenewal.

(1) (a) Except as otherwise provided in this section, a health benefit plan offered on an individual basis is renewable and continues in force:

(i) with respect to all [individuals] enrollees or dependents; and

(ii) at the option of the [individual] enrollee.

(b) Subsection (1)(a) applies regardless of:

(i) whether the contract is issued through:

(A) a trust;

(B) an association;

(C) a discretionary group; or

(D) other similar grouping; or

(ii) the situs of delivery of the policy or contract.

(2) [A] An individual health benefit plan may be discontinued or nonrenewed:

(a) [for a network plan,] if:

(i) ~~the individual no longer~~ there is no longer an enrollee under the individual health benefit plan who lives, resides, or works in:

(A) the service area of the insurer; or

(B) the area for which the insurer is authorized to do business; and

(ii) coverage is terminated uniformly without regard to any health status-related factor relating to any covered [individual] enrollee; or

(b) for coverage made available through an association, if:

(i) the [individual's] enrollee's membership in the association ceases; and

(ii) the coverage is terminated uniformly without regard to any health status-related factor relating to any covered [individual] enrollee.

(3) [A] An individual health benefit plan may be discontinued if:

(a) a condition described in Subsection (2) exists;

(b) the [individual] enrollee fails to pay premiums or contributions in accordance with the terms of the health benefit plan, including any timeliness requirements;

(c) the [individual] enrollee:

(i) performs an act or practice in connection with the coverage that constitutes fraud; or

(ii) makes an intentional misrepresentation of material fact under the terms of the coverage;

(d) the insurer:

(i) elects to discontinue offering a particular health benefit [product] plan product delivered or issued for delivery in this state; and

(ii) (A) provides notice of the discontinuation in writing[:-(I)] to each [individual] enrollee provided coverage[:-(II)] at least 90 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing[:-(I)] to the commissioner[:-(II)] and, at least three working days [prior to] before the date the notice is sent, to the affected [individuals] enrollees;

(C) offers to each covered [individual] enrollee on a guaranteed issue basis[:] the option to purchase all other individual health benefit [products] plans currently being offered by the insurer for individuals in that market; and

(D) acts uniformly without regard to any health status-related factor of covered [individuals] enrollees or dependents of covered [individuals] enrollees who may become eligible for coverage; or

(e) the insurer:

(i) elects to discontinue all of the insurer's health benefit plans in the individual market; and

(ii) (A) provides notice of the discontinuation in writing[:-(I)] to each [individual] enrollee provided coverage[:-(II)] at least 180 days before the date the coverage will be discontinued;

(B) provides notice of the discontinuation in writing ~~[(I)]~~ to the commissioner in each state in which an affected ~~[insured individual]~~ enrollee is known to reside; ~~and (II) and~~, at least 30 working days ~~[prior to]~~ before the date the notice is sent, to the affected ~~[individuals]~~ enrollees;

(C) discontinues and nonrenews all health benefit plans the insurer issues or delivers for issuance in the individual market; and

(D) acts uniformly without regard to any health status-related factor of covered ~~[individuals]~~ enrollees or dependents of covered ~~[individuals]~~ enrollees who may become eligible for coverage.

(4) An insurer may modify an individual health benefit plan only:

(a) at the time of coverage renewal; and

(b) if the modification is effective uniformly among all health benefit plans.

Section 15. Section 31A-22-618.8, which is renumbered from Section 31A-8-402.7 is renumbered and amended to read:

31A-8-402.7. 31A-22-618.8.

Discontinuation and nonrenewal limitations.

(1) Subject to Section 31A-4-115, an insurer that elects to discontinue offering a health benefit plan under Subsections ~~[31A-8-402.3]~~ 31A-22-618.6(3)(e) and ~~[31A-8-402.5]~~ 31A-22-618.7(3)(e) is prohibited from writing new business:

(a) in the market in this state for which the insurer discontinues or does not renew; and

(b) for a period of five years beginning on the date of discontinuation of the last coverage that is discontinued.

(2) If an insurer is doing business in one established geographic service area of the state, Sections ~~[31A-8-402.3 and 31A-8-402.5]~~ 31A-22-618.6 and 31A-22-618.7 apply only to the insurer's operations in that service area.

(3) The commissioner may, by rule or order, define the scope of service area.

Section 16. Section 31A-22-627 is amended to read:

31A-22-627. Coverage of emergency medical services.

(1) A health insurance policy or ~~[health maintenance]~~ managed care organization contract:

(a) shall provide, at a minimum, coverage of emergency services as required in 29 C.F.R. Sec. 2590.715-2719A; and

(b) may not:

(i) require any form of preauthorization for treatment of an emergency medical condition until after the insured's condition has been stabilized; or

(ii) deny a claim for any covered evaluation, covered diagnostic test, or other covered treatment considered medically necessary to stabilize the emergency medical condition of an insured.

(2) A health insurance policy or ~~[health maintenance]~~ managed care organization contract may require authorization for the continued treatment of an emergency medical condition after the insured's condition has been stabilized. If such authorization is required, an insurer who does not accept or reject a request for authorization may not deny a claim for any evaluation, diagnostic testing, or other treatment considered medically necessary that occurred between the time the request was received and the time the insurer rejected the request for authorization.

(3) For purposes of this section:

(a) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson, who possesses an average knowledge of medicine and health, would reasonably expect the absence of immediate medical attention at a hospital emergency department to result in:

(i) placing the insured's health, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy;

(ii) serious impairment to bodily functions; or

(iii) serious dysfunction of any bodily organ or part; ~~and~~.

(b) "Hospital emergency department" means that area of a hospital in which emergency services are provided on a 24-hour-a-day basis.

(c) "Stabilize" means the same as that term is defined in 42 U.S.C. Sec. 1395dd(e)(3).

(4) Nothing in this section may be construed as:

(a) altering the level or type of benefits that are provided under the terms of a contract or policy; or

(b) restricting a policy or contract from providing enhanced benefits for certain emergency medical conditions that are identified in the policy or contract.

(5) Notwithstanding Section 31A-2-308, if the commissioner finds an insurer has violated this section, the commissioner may:

(a) work with the insurer to improve the insurer's compliance with this section; or

(b) impose the following fines:

(i) not more than \$5,000; or

(ii) twice the amount of any profit gained from violations of this section.

Section 17. Section 31A-22-628 is amended to read:

31A-22-628. Standing referral to a specialist.

(1) With respect to a health insurance policy or ~~[health maintenance]~~ managed care organization

contract that does not allow an insured to have direct access to a health care specialist, the insurer shall establish and implement a procedure by which an insured may obtain a standing referral to a health care specialist.

(2) The procedure established under Subsection (1):

(a) shall provide for a standing referral to a specialist if the insured's primary care provider determines, in consultation with the specialist, that the insured needs continuing care from the specialist; and

(b) may require the insurer's approval of a treatment plan designed by the specialist, in consultation with the primary care provider and the insured, which may include:

- (i) a limit on the number of visits to the specialist;
- (ii) a time limit on the duration of the referral; and
- (iii) mandatory updates on the insured's condition.

Section 18. Section 31A-22-635 is amended to read:

31A-22-635. Uniform application -- Uniform waiver of coverage.

- (1) For purposes of this section, "insurer":
- (a) is defined in Subsection 31A-22-634(1); and
 - (b) includes the state employee's risk pool under Section 49-20-202.
- (2) (a) Insurers offering a health benefit plan to an individual or small employer shall use a uniform application form.
- (b) The uniform application form:
- (i) may not include questions about an applicant's health history; and
 - (ii) shall be shortened and simplified in accordance with rules adopted by the commissioner.
 - (c) Insurers offering a health benefit plan to a small employer shall use a uniform waiver of coverage form, which may not include health status related questions, and is limited to:
 - (i) information that identifies the employee;
 - (ii) proof of the employee's insurance coverage; and
 - (iii) a statement that the employee declines coverage with a particular employer group.

(3) Notwithstanding the requirements of Subsection (2)(a), the uniform application and uniform waiver of coverage forms may, if the combination or modification is approved by the commissioner, be combined or modified to facilitate a more efficient and consumer friendly experience for: ~~(a) enrollees using the Health Insurance~~

~~Exchange; or (b)] insurers using electronic applications.~~

(4) ~~(a)~~ The uniform application form, and uniform waiver form, shall be adopted and approved by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(5) (a) An insurer who offers a health benefit plan on the Health Insurance Exchange created in Section 63N-11-104, shall:]~~

~~[(i) accept and process an electronic submission of the uniform application or uniform waiver from the Health Insurance Exchange using the electronic standards adopted pursuant to Section 63N-11-107;]~~

~~[(ii) if requested, provide the applicant with a copy of the completed application either by mail or electronically;]~~

~~[(iii) post all health benefit plans offered by the insurer in the defined contribution arrangement market on the Health Insurance Exchange; and]~~

~~[(iv) post the information required by Subsection (6) on the Health Insurance Exchange for every health benefit plan the insurer offers on the Health Insurance Exchange.]~~

~~[(b) Except as provided in Subsection (5)(c), an insurer who posts health benefit plans on the Health Insurance Exchange may not directly or indirectly offer products on the Health Insurance Exchange that are not health benefit plans.]~~

~~[(c) Notwithstanding Subsection (5)(b):]~~

~~[(i) an insurer may offer a health savings account on the Health Insurance Exchange;]~~

~~[(ii) an insurer may offer dental plans on the Health Insurance Exchange; and]~~

~~[(iii) the department may make administrative rules to regulate the offer of dental plans on the Health Insurance Exchange.]~~

~~[(6) An insurer shall provide the commissioner and the Health Insurance Exchange with the following information for each health benefit plan submitted to the Health Insurance Exchange, in the electronic format required by Subsection 63N-11-107(1):]~~

~~[(a) plan design, benefits, and options offered by the health benefit plan including state mandates the plan does not cover;]~~

~~[(b) information and Internet address to online provider networks;]~~

~~[(c) wellness programs and incentives;]~~

~~[(d) descriptions of prescription drug benefits, exclusions, or limitations;]~~

~~[(e) the percentage of claims paid by the insurer within 30 days of the date a claim is submitted to the insurer for the prior year; and]~~

~~[(f) the claims denial and insurer transparency information developed in accordance with Subsection 31A-22-613.5(4).]~~

~~[(7) The department shall post on the Health Insurance Exchange the department's solvency rating for each insurer who posts a health benefit plan on the Health Insurance Exchange. The solvency rating for each insurer shall be based on methodology established by the department by administrative rule and shall be updated each calendar year.]~~

~~[(8) (a) The commissioner may request information from an insurer under Section 31A-22-613.5 to verify the data submitted to the department and to the Health Insurance Exchange.]~~

(b) The commissioner shall regulate the fees charged by insurers to an enrollee for a uniform application form or electronic submission of the application forms.

Section 19. Section 31A-22-642 is amended to read:

31A-22-642. Insurance coverage for autism spectrum disorder.

(1) As used in this section:

(a) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(b) "Autism spectrum disorder" means pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(c) "Behavioral health treatment" means counseling and treatment programs, including applied behavior analysis, that are:

(i) necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and

(ii) provided or supervised by a:

(A) board certified behavior analyst; or

(B) person licensed under Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, whose scope of practice includes mental health services.

(d) "Diagnosis of autism spectrum disorder" means medically necessary assessments, evaluations, or tests:

(i) performed by a licensed physician who is board certified in neurology, psychiatry, or pediatrics and has experience diagnosing autism spectrum disorder, or a licensed psychologist with experience diagnosing autism spectrum disorder; and

(ii) necessary to diagnose whether an individual has an autism spectrum disorder.

(e) "Pharmacy care" means medications prescribed by a licensed physician and any

health-related services considered medically necessary to determine the need or effectiveness of the medications.

(f) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

(g) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.

(h) "Therapeutic care" means services provided by licensed or certified speech therapists, occupational therapists, or physical therapists.

(i) "Treatment for autism spectrum disorder":

(i) means evidence-based care and related equipment prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a physician or a licensed psychologist described in Subsection (1)(d) who determines the care to be medically necessary; and

(ii) includes:

(A) behavioral health treatment, provided or supervised by a person described in Subsection (1)(c)(ii);

(B) pharmacy care;

(C) psychiatric care;

(D) psychological care; and

(E) therapeutic care.

(2) Notwithstanding the provisions of Section 31A-22-618.5, a health benefit plan offered in the individual market or the large group market and entered into or renewed on or after January 1, 2016, shall provide coverage for the diagnosis and treatment of autism spectrum disorder:

(a) for a child who is at least two years old, but younger than 10 years old; and

(b) in accordance with the requirements of this section and rules made by the commissioner.

(3) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to set the minimum standards of coverage for the treatment of autism spectrum disorder.

(4) Subject to Subsection (5), the rules described in Subsection (3) shall establish durational limits, amount limits, deductibles, copayments, and coinsurance for the treatment of autism spectrum disorder that are similar to, or identical to, the coverage provided for other illnesses or diseases.

(5) (a) Coverage for behavioral health treatment for a person with an autism spectrum disorder shall cover at least 600 hours a year. Other terms and conditions in the health benefit plan that apply to other benefits covered by the health benefit plan apply to coverage required by this section.

(b) Notwithstanding ~~[Subsection 31A-22-617(6)]~~ Section 31A-45-303, a health benefit plan

providing treatment under Subsection (5)(a) shall include in the plan's provider network both board certified behavior analysts and mental health providers qualified under Subsection (1)(c)(ii).

(6) A health care provider shall submit a treatment plan for autism spectrum disorder to the insurer within 14 business days of starting treatment for an individual. If an individual is receiving treatment for an autism spectrum disorder, an insurer shall have the right to request a review of that treatment not more than once every six months. A review of treatment under this Subsection (6) may include a review of treatment goals and progress toward the treatment goals. If an insurer makes a determination to stop treatment as a result of the review of the treatment plan under this subsection, the determination of the insurer may be reviewed under Section 31A-22-629.

(7) (a) In accordance with Subsection (7)(b), the commissioner shall waive the requirements of this section for all insurers in the individual market or the large group market, if an insurer demonstrates to the commissioner that the insurer's entire pool of business in the individual market or the large group market has incurred claims for the autism coverage required by this section in a 12 consecutive month period that will cause a premium increase for the insurer's entire pool of business in the individual market or the large group market in excess of 1% over the insurer's premiums in the previous 12 consecutive month period.

(b) The commissioner shall waive the requirements of this section if:

(i) after a public hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the commissioner finds that the insurer has demonstrated to the commissioner based on generally accepted actuarial principles and methodologies that the insurer's entire pool of business in the individual market or the large group market will experience a premium increase of 1% or greater as a result of the claims for autism services as described in this section; or

(ii) the attorney general issues a legal opinion that the limits under Subsection (5)(a) cannot be implemented by an insurer in a manner that complies with federal law.

(8) If a waiver is granted under Subsection (7), the insurer may:

(a) continue to offer autism coverage under the existing plan until the next renewal period for the plan, at which time the insurer:

(i) may delete the autism coverage from the plan without having to re-apply for the waiver under Subsection (7); and

(ii) file the plan with the commissioner in accordance with guidelines issued by the commissioner;

(b) discontinue offering plans subject to Subsection (2), no earlier than the next calendar

quarter following the date the waiver is granted, subject to filing guidelines issued by the commissioner; or

(c) nonrenew existing plans that are subject to Subsection (2), in compliance with Subsection ~~[31A-30-107(3)(d)]~~ 31A-22-618.6(5) or Subsection 31A-22-618.7(3).

(9) This section sunsets in accordance with Section 63I-1-231.

Section 20. Section 31A-23a-402 is amended to read:

31A-23a-402. Unfair marketing practices -- Communication -- Unfair discrimination -- Coercion or intimidation -- Restriction on choice.

(1) (a) (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance product or contract, any insurer, or any licensee under this title, including information that is false or misleading because it is incomplete:

(A) a person who is or should be licensed under this title;

(B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

(C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

(ii) As used in this Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and

(B) with intent to deceive a person examining it:

(I) filing a report;

(II) making a false entry in a record; or

(III) wilfully refraining from making a proper entry in a record.

(iii) A licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or

(B) use any name, advertisement, or other insurance promotional material that would cause a reasonable person to mistakenly believe that a state or federal government agency, including ~~[the Health Insurance Exchange, also called the "Utah Health Exchange" or] Utah's small employer health insurance exchange known as "Avenue H," [created in Section 63N-11-104, the Comprehensive Health Insurance Pool created in Chapter 29, Comprehensive Health Insurance Pool Act,] and the Children's Health Insurance Program created~~

in Title 26, Chapter 40, Utah Children's Health Insurance Act:

(I) is responsible for the insurance sales activities of the person;

(II) stands behind the credit of the person;

(III) guarantees any returns on insurance products of or sold by the person; or

(IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that person is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8, Health Maintenance Organizations and Limited Health Plans, may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) A licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer if:

(i) the licensee under this title distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer:

(A) that the licensee represents; or

(B) for whom the licensee processes claims; and

(ii) the cards, documents, signs, or advertisements are supplied or approved by that insurer.

(2) (a) A title insurer, individual title insurance producer, or agency title insurance producer or any officer or employee of the title insurer, individual title insurance producer, or agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

(i) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;

(ii) any special favor or advantage not generally available to others;

(iii) any money or other consideration, except if approved under Section 31A-2-405; or

(iv) material inducement.

(b) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.

(c) An insured or any other person connected, directly or indirectly, with the transaction may not knowingly receive or accept, directly or indirectly,

any benefit referred to in Subsection (2)(a), including:

(i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

(ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;

(iii) a builder;

(iv) an attorney; or

(v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.

(b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.

(4) (a) This Subsection (4) applies to:

(i) a person who is or should be licensed under this title;

(ii) an employee of that licensee or person who should be licensed;

(iii) a person whose primary interest is as a competitor of a person licensed under this title; and

(iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

(b) A person described in Subsection (4)(a) may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:

(i) tends to produce:

(A) an unreasonable restraint of the business of insurance; or

(B) a monopoly in that business; or

(ii) results in an applicant purchasing or replacing an insurance contract.

(5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

(ii) A person requiring coverage may reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional

grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.

(8) (a) A person may not engage in an unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the commissioner by rule, after a finding that the method of competition, the act, or the practice:

- (i) is misleading;
- (ii) is deceptive;
- (iii) is unfairly discriminatory;
- (iv) provides an unfair inducement; or
- (v) unreasonably restrains competition.

(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an unfair method of competition or unfair or deceptive act or practice after a finding that the method of competition, the act, or the practice:

- (i) is misleading;
- (ii) is deceptive;
- (iii) is unfairly discriminatory;
- (iv) provides an unfair inducement; or
- (v) unreasonably restrains competition.

Section 21. Section 31A-30-102 is amended to read:

31A-30-102. Purpose statement.

The purpose of this chapter is to:

- (1) prevent abusive rating practices;
- (2) require disclosure of rating practices to purchasers;
- (3) establish rules regarding:
 - (a) a universal individual and small group application; and
 - (b) renewability of coverage;

(4) improve the overall fairness and efficiency of the individual and small group insurance market; and

(5) provide increased access for individuals and small employers to health insurance~~;~~ and~~].~~

~~[(6) provide an employer with the opportunity to establish a defined contribution arrangement for an employee to purchase a health benefit plan through the Health Insurance Exchange created by Section 63N-11-104.]~~

Section 22. Section 31A-30-104 is amended to read:

31A-30-104. Applicability and scope.

(1) This chapter applies to any:

- (a) health benefit plan that provides coverage to:
 - (i) individuals;
 - (ii) small employers, except as provided in Subsection (3); or
 - (iii) both Subsections (1)(a)(i) and (ii); or

(b) individual conversion policy for purposes of Sections 31A-30-106.5 and 31A-30-107.5.

(2) This chapter applies to a health benefit plan that provides coverage to small employers or individuals regardless of:

- (a) whether the contract is issued to:
 - (i) an association, except as provided in Subsection (3);
 - (ii) a trust;
 - (iii) a discretionary group; or
 - (iv) other similar grouping; or
- (b) the situs of delivery of the policy or contract.

(3) This chapter does not apply to:

- (a) short-term limited duration health insurance;
- (b) federally funded or partially funded programs; or
- (c) a bona fide employer association.

(4) (a) Except as provided in Subsection (4)(b), for the purposes of this chapter:

- (i) carriers that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one carrier; and
- (ii) any restrictions or limitations imposed by this chapter shall apply as if all health benefit plans delivered or issued for delivery to covered insureds in this state by the affiliated carriers were issued by one carrier.

(b) Upon a finding of the commissioner, an affiliated carrier that is a health maintenance organization having a certificate of authority under this title may be considered to be a separate carrier for the purposes of this chapter.

(c) Unless otherwise authorized by the commissioner ~~[or by Chapter 42, Defined~~

~~Contribution Risk Adjuster Act~~], a covered carrier may not enter into one or more ceding arrangements with respect to health benefit plans delivered or issued for delivery to covered insureds in this state if the ceding arrangements would result in less than 50% of the insurance obligation or risk for the health benefit plans being retained by the ceding carrier.

(d) Section 31A-22-1201 applies if a covered carrier cedes or assumes all of the insurance obligation or risk with respect to one or more health benefit plans delivered or issued for delivery to covered insureds in this state.

(5) (a) A Taft Hartley trust created in accordance with Section 302(c)(5) of the Federal Labor Management Relations Act, or a carrier with the written authorization of such a trust, may make a written request to the commissioner for a waiver from the application of any of the provisions of Subsections 31A-30-106(1) and 31A-30-106.1(1) with respect to a health benefit plan provided to the trust.

(b) The commissioner may grant a trust or carrier described in Subsection (5)(a) a waiver if the commissioner finds that application with respect to the trust would:

(i) have a substantial adverse effect on the participants and beneficiaries of the trust; and

(ii) require significant modifications to one or more collective bargaining arrangements under which the trust is established or maintained.

(c) A waiver granted under this Subsection (5) may not apply to an individual if the person participates in a Taft Hartley trust as an associate member of any employee organization.

(6) Sections ~~31A-22-618.6,~~ 31A-30-106, 31A-30-106.1, 31A-30-106.5, 31A-30-106.7, ~~[31A-30-107,]~~ and 31A-30-108, apply to:

(a) any insurer engaging in the business of insurance related to the risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of the small employer's employees provided as an employee benefit; and

(b) any contract of an insurer, other than a workers' compensation policy, related to the risk of a small employer for medical, surgical, hospital, or ancillary health care expenses of the small employer's employees provided as an employee benefit.

(7) The commissioner may make rules requiring that the marketing practices be consistent with this chapter for:

- (a) a small employer carrier;
- (b) a small employer carrier's agent;
- (c) an insurance producer;
- (d) an insurance consultant; and
- (e) a navigator.

Section 23. Section 31A-30-106.7 is amended to read:

31A-30-106.7. Surcharge for groups changing carriers.

(1) (a) Except as provided in Subsection (1)(b), if prior notice is given, a covered carrier may impose upon a small group that changes coverage to that carrier from another carrier a one-time surcharge of up to 25% of the annualized premium that the carrier could otherwise charge under Section 31A-30-106.1.

(b) A covered carrier may not impose the surcharge described in Subsection (1)(a) if:

(i) the change in carriers occurs on the anniversary of the plan year, as defined in Section 31A-1-301;

(ii) the previous coverage was terminated under Subsection ~~[31A-30-107(3)(c)]~~ 31A-22-618.6(5);

(iii) employees from an existing group form a new business; and

(iv) the surcharge is not applied uniformly to all similarly situated small groups.

(2) A covered carrier may not impose the surcharge described in Subsection (1) if the offer to cover the group occurs at a time other than the anniversary of the plan year because:

(a) (i) the application for coverage is made prior to the anniversary date in accordance with the covered carrier's published policies; and

(ii) the offer to cover the group is not issued until after the anniversary date; or

(b) (i) the application for coverage is made prior to the anniversary date in accordance with the covered carrier's published policies; and

(ii) additional underwriting or rating information requested by the covered carrier is not received until after the anniversary date.

(3) If a covered carrier chooses to apply a surcharge under Subsection (1), the application of the surcharge and the criteria for incurring or avoiding the surcharge shall be clearly stated in the:

(a) written application materials provided to the applicant at the time of application; and

(b) written producer guidelines.

(4) The commissioner shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure compliance with this section.

Section 24. Section 31A-30-204 is amended to read:

31A-30-204. Employer election -- Defined benefit -- Defined contribution arrangements -- Responsibilities.

(1) (a) An employer participating in the defined contribution arrangement market on the Health Insurance Exchange shall make an initial election

to offer its employees either a defined benefit plan or a defined contribution arrangement health benefit plan.

(b) If an employer elects to offer a defined benefit plan:

(i) the employer or the employer's producer shall enroll the employer in the Health Insurance Exchange;

(ii) the employees shall submit the uniform application required for the Health Insurance Exchange; and

(iii) the employer shall select the defined benefit plan in accordance with Section 31A-30-208.

(c) When an employer makes an election under Subsections (1)(a) and (b):

(i) the employer may not offer its employees a defined contribution arrangement health benefit plan; and

(ii) the employees may not select a defined contribution arrangement health benefit plan in the Health Insurance Exchange.

(d) If an employer elects to offer its employees a defined contribution arrangement health benefit plan, the employer shall comply with the provisions of Subsections (2) through (5).

(2) (a) (i) An employer that chooses to participate in a defined contribution arrangement health benefit plan may not offer to an employee a health benefit plan that is not a defined contribution arrangement health benefit plan in the Health Insurance Exchange.

(ii) Subsection (2)(a)(i) does not prohibit the offer of supplemental or limited benefit policies such as dental or vision coverage, or other types of federally qualified savings accounts for health care expenses.

(b) (i) To the extent permitted by Sections 31A-1-301, 31A-30-112, and 31A-30-206, and the risk adjustment plan adopted under Section 31A-42-204, the employer reserves the right to determine:

(A) the criteria for employee eligibility, enrollment, and participation in the employer's health benefit plan; and

(B) the amount of the employer's contribution to that plan.

(ii) The determinations made under Subsection (2)(b) may only be changed during periods of open enrollment.

(3) An employer that chooses to establish a defined contribution arrangement health benefit plan to provide a health benefit plan for its employees shall:

(a) establish a mechanism for its employees to use pre-tax dollars to purchase a health benefit plan from the defined contribution arrangement market on the [~~Health Insurance Exchange created in Section 63N-11-104~~] small employer health

insurance exchange known as Avenue H, which may include:

(i) a health reimbursement arrangement;

(ii) a Section 125 Cafeteria plan; or

(iii) another plan or arrangement similar to Subsection (3)(a)(i) or (ii) which is excluded or deducted from gross income under the Internal Revenue Code;

(b) before the employee's health benefit plan selection period:

(i) inform each employee of the health benefit plan the employer has selected as the default health benefit plan for the employer group;

(ii) offer each employee a choice of any of the defined contribution arrangement health benefit plans available through the defined contribution arrangement market on the Health Insurance Exchange; and

(iii) notify the employee that the employee will be enrolled in the default health benefit plan selected by the employer and payroll deductions initiated for premium payments, unless the employee, before the employee's selection period ends:

(A) selects a different defined contribution arrangement health benefit plan available in the Health Insurance Exchange;

(B) provides proof of coverage from another health benefit plan; or

(C) specifically declines coverage in a health benefit plan.

(4) An employer shall enroll an employee in the default defined contribution arrangement health benefit plan selected by the employer if the employee does not make one of the choices described in Subsection (3)(b)(iii) before the end of the employee selection period, which may not be less than 14 calendar days.

(5) The employer's notice to the employee under Subsection (3)(b)(iii) shall inform the employee that the failure to act under Subsections (3)(b)(iii)(A) through (C) is considered an affirmative election under pre-tax payroll deductions for the employer to begin payroll deductions for health benefit plan premiums.

Section 25. Section 31A-34-110 is amended to read:

31A-34-110. Contracts with member employers and contracted insurers.

(1) Contracts between an alliance and members shall provide that the alliance is the contract holder of the health benefit plan policy on behalf of members and enrollees.

(2) Contracts between an alliance and a contracted insurer shall specify how premiums will be transferred, what penalties and grace periods will be, and how examination costs will be allocated to contracted insurers.

[~~(3) Subject only to Sections 31A-8-105.5 and 31A-8-501, and until July 1, 2004, health benefit~~

plans offered exclusively in an alliance under this chapter may limit reimbursement to providers on the panel of a contracted insurer if the commissioner finds that the aggregate of alliance contracts available to its members provide a broad and substantial choice of providers, encompassing the vast majority of doctors and hospitals in the state.]

Section 26. Section 31A-45-101 is enacted to read:

CHAPTER 45. MANAGED CARE ORGANIZATIONS

Part 1. General Provisions

31A-45-101. Title.

This chapter is known as “Managed Care Organizations.”

Section 27. Section 31A-45-102 is enacted to read:

31A-45-102. Definitions.

As used in this chapter:

(1) “Covered benefit” or “benefit” means the health care services to which a covered person is entitled under the terms of a health benefit plan.

(2) “Managed care organization” means:

(a) a managed care organization as that term is defined in Section 31A-1-103; and

(b) a third party administrator as that term is defined in Section 31A-1-103.

Section 28. Section 31A-45-103 is enacted to read:

31A-45-103. Managed care contract standards.

The commissioner shall adopt rules relating to standards for the manner and content of policy provisions, and disclosures to be made in connection with the sale of policies covered by this chapter, dealing with at least the following matters:

- (1) terms of renewability;
- (2) initial and subsequent conditions of eligibility;
- (3) nonduplication of coverage provisions;
- (4) coverage of dependents;
- (5) termination of insurance;
- (6) limitations;
- (7) exceptions;
- (8) reductions;
- (9) definition of terms; and
- (10) rating practices.

Section 29. Section 31A-45-201 is enacted to read:

Part 2. Applicability to Other Provisions of Law

31A-45-201. Applicability to other provisions of law -- Commissioner discretion.

(1) Except for exemptions specifically granted under this title, a managed care organization is subject to regulation under all of the provisions of this title.

(2) The commissioner may by rule waive other specific provisions of this title that the commissioner considers inapplicable to managed care organizations, upon a finding that the waiver will not endanger the interests of:

- (a) enrollees;
- (b) investors;
- (c) the public; or
- (d) health care providers.

Section 30. Section 31A-45-301 is enacted to read:

Part 3. Relationships with Providers

31A-45-301. Written contracts -- Limited liability of enrollee -- Provider claim disputes -- Leased networks.

(1) A managed care organization may not contract with a health care provider for treatment of illness or injury unless the health care provider is licensed to perform that treatment. Every contract between a managed care organization and a network provider shall be in writing and shall set forth that if the managed care organization:

(a) fails to pay for health care services as set forth in the contract, the enrollee is not liable to the health care provider for any sums owed by the managed care organization; and

(b) becomes insolvent, the rehabilitator or liquidator may require the network provider to:

(i) continue to provide health care services under the contract between the network provider and the managed care organization until the earlier of:

(A) 90 days after the date of the filing of a petition for rehabilitation or a petition for liquidation; or

(B) the date the term of the contract ends; and

(ii) subject to Subsection (3), reduce the fees the network provider is otherwise entitled to receive from the managed care organization under the contract between the network provider and the managed care organization during the time period described in Subsection (1)(b)(i).

(2) If the conditions of Subsection (3) are met, the network provider:

(a) shall accept the reduced payment as payment in full; and

(b) as provided in Subsection (1)(a), may not collect additional amounts from the insolvent

managed care organization's enrollee, except as may be owed under Subsection (3)(b).

(3) Notwithstanding Subsection (1)(b)(ii):

(a) the rehabilitator or liquidator may not reduce a fee to less than 75% of the regular fee set forth in the network provider contract; and

(b) the enrollee shall continue to pay the same copayments, deductibles, and other payments for services received from the network provider that the enrollee was required to pay before the filing of:

(i) the petition for rehabilitation; or

(ii) the petition for liquidation.

(4) A network provider may not collect or attempt to collect from the enrollee sums owed by the managed care organization or the amount of the regular fee reduction authorized under Subsection (1)(b)(ii) if the network provider contract:

(a) is not in writing as required in Subsection (1); or

(b) fails to contain the language required by Subsection (1).

(5) (a) A person listed in Subsection (5)(b) may not bill or maintain any action at law against an enrollee to collect:

(i) sums owed by the organization; or

(ii) the amount of the regular fee reduction authorized under Subsection (1)(b)(ii).

(b) Subsection (5)(a) applies to:

(i) a network provider;

(ii) an agent;

(iii) a trustee; or

(iv) an assignee of a person described in Subsections (5)(b)(i) through (iii).

(c) In any dispute involving a network provider's claim for reimbursement, the network provider's claim shall be determined in accordance with applicable law, the network provider contract, the enrollee contract, and the managed care organization's written payment policies in effect at the time services were rendered.

(d) If the parties are unable to resolve their dispute, the matter shall be subject to binding arbitration by a jointly selected arbitrator. Each party shall bear its own expense except that the cost of the jointly selected arbitrator shall be equally shared. This Subsection (5)(d) does not apply to the claim of a general acute hospital to the extent the claim is inconsistent with the hospital's provider agreement.

(e) A managed care organization may not penalize a network provider solely for pursuing a claims dispute or otherwise demanding payment for a sum believed owing.

(6) If a managed care organization permits another private entity with which the managed

care organization does not share common ownership or control to use or otherwise lease one or more of the organization's networks that include network providers, the managed care organization shall ensure, at a minimum, that the entity pays the network providers included in the managed care organization's network in accordance with the same fee schedule and general payment policies as the managed care organization would pay for those network providers, unless payment for services is governed by a public program's fee schedule.

Section 31. Section 31A-45-302 is enacted to read:

31A-45-302. Provider payment information -- Notice of admissions.

(1) (a) A managed care organization shall provide the managed care organization's network providers access to current information necessary for the network provider to determine:

(i) the effect of procedure codes on payment or compensation before a claim is submitted for a procedure;

(ii) the plans and carrier networks that the network provider is subject to as part of the contract with the managed care organization; and

(iii) in accordance with Subsection 31A-26-301.6(10)(f), the specific rate and terms under which the network provider will be paid for health care services.

(b) The information required by Subsection (1)(a) may be provided through a website, and if requested by the network provider, notice of the updated website shall be provided by the managed care organization.

(2) (a) A managed care organization may not require a health care provider by contract, reimbursement procedure, or otherwise to notify the managed care organization of a hospital inpatient emergency admission within a period of time that is less than one business day of the hospital inpatient admission, if compliance with the notification requirement would result in notification by the health care provider on a weekend or federal holiday.

(b) Subsection (2)(a) does not prohibit the applicability or administration of other contract provisions between a managed care organization and a network provider that require preauthorization for scheduled inpatient admissions.

Section 32. Section 31A-45-303, which is renumbered from Section 31A-22-617 is renumbered and amended to read:

[31A-22-617]. 31A-45-303. Network provider contract provisions.

[Health insurance policies]

(1) Managed care organizations may provide for [insureds] enrollees to receive services or reimbursement under the [policies] health benefit plans in accordance with [preferred health care provider contracts as follows:] this section.

~~[(4)] (2) (a) Subject to restrictions under this section, [an insurer or third party administrator] a managed care organization may enter into contracts with health care providers [as defined in Section 78B-3-403] under which the health care providers agree to be a network provider and supply services, at prices specified in the contracts, to [persons insured by an insurer] enrollees.~~

~~[(a) (i) A health care] (b) A network provider contract [may] shall require the [health care] network provider to accept the specified payment in this Subsection [(4)] (2) as payment in full, relinquishing the right to collect [additional] amounts other than copayments, coinsurance, and deductibles from the [insured person] enrollee.~~

~~[(ii) In a dispute involving a provider's claim for reimbursement, the same shall be determined in accordance with applicable law, the provider contract, the subscriber contract, and the insurer's written payment policies in effect at the time services were rendered.]~~

~~[(iii) If the parties are unable to resolve their dispute, the matter shall be subject to binding arbitration by a jointly selected arbitrator. Each party is to bear its own expense except the cost of the jointly selected arbitrator shall be equally shared. This Subsection (1)(a)(iii) does not apply to the claim of a general acute hospital to the extent it is inconsistent with the hospital's provider agreement.]~~

~~[(iv) An organization may not penalize a provider solely for pursuing a claims dispute or otherwise demanding payment for a sum believed owing.]~~

~~[(v) If an insurer permits another entity with which it does not share common ownership or control to use or otherwise lease one or more of the organization's networks of participating providers, the organization shall ensure, at a minimum, that the entity pays participating providers in accordance with the same fee schedule and general payment policies as the organization would for that network.]~~

~~[(b)] (c) The insurance contract may reward the [insured] enrollee for selection of [preferred health care] network providers by:~~

- ~~(i) reducing premium rates;~~
- ~~(ii) reducing deductibles;~~
- ~~(iii) coinsurance;~~
- ~~(iv) other copayments; or~~
- ~~(v) any other reasonable manner.~~

~~[(e) If the insurer is a managed care organization, as defined in Subsection 31A-27a-403(1)(f):]~~

~~[(i) the insurance contract and the health care provider contract shall provide that in the event the managed care organization becomes insolvent, the rehabilitator or liquidator may:]~~

~~[(A) require the health care provider to continue to provide health care services under the contract until the earlier of:]~~

~~[(I) 90 days after the date of the filing of a petition for rehabilitation or the petition for liquidation; or]~~

~~[(II) the date the term of the contract ends; and]~~

~~[(B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to receive from the managed care organization during the time period described in Subsection (1)(e)(i)(A);]~~

~~[(ii) the provider is required to:]~~

~~[(A) accept the reduced payment under Subsection (1)(e)(i)(B) as payment in full; and]~~

~~[(B) relinquish the right to collect additional amounts from the insolvent managed care organization's enrollee, as defined in Subsection 31A-27a-403(1)(b);]~~

~~[(iii) if the contract between the health care provider and the managed care organization has not been reduced to writing, or the contract fails to contain the requirements described in Subsection (1)(e)(i), the provider may not collect or attempt to collect from the enrollee:]~~

~~[(A) sums owed by the insolvent managed care organization; or]~~

~~[(B) the amount of the regular fee reduction authorized under Subsection (1)(e)(i)(B);]~~

~~[(iv) the following may not bill or maintain an action at law against an enrollee to collect sums owed by the insolvent managed care organization or the amount of the regular fee reduction authorized under Subsection (1)(e)(i)(B):]~~

~~[(A) a provider;]~~

~~[(B) an agent;]~~

~~[(C) a trustee; or]~~

~~[(D) an assignee of a person described in Subsections (1)(e)(iv)(A) through (C); and]~~

~~[(v) notwithstanding Subsection (1)(e)(i):]~~

~~[(A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's regular fee set forth in the contract; and]~~

~~[(B) the enrollee shall continue to pay the copayments, deductibles, and other payments for services received from the provider that the enrollee was required to pay before the filing of:]~~

~~[(I) a petition for rehabilitation; or]~~

~~[(II) a petition for liquidation.]~~

~~[(2) (a) Subject to Subsections (2)(b) through (2)(e), an insurer using preferred health care provider contracts is subject to the reimbursement requirements in Section 31A-8-501 on or after January 1, 2014.]~~

~~[(b)] (3) (a) When reimbursing for services of health care providers [not under contract, the insurer may] that are not network providers, the managed care organization may:~~

(i) make direct payment to the ~~[insured.]~~ enrollee; and

~~[(c) An insurer using preferred health care provider contracts may]~~

(ii) impose a deductible on coverage of health care providers not under contract.

(b) (i) Subsections (3)(b)(iii) and (c) apply to a managed care organization licensed under:

(A) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(B) Chapter 7, Nonprofit Health Service Insurance Corporations; or

(C) Chapter 14, Foreign Insurers; and

(ii) Subsections (3)(b)(iii) and (c) and Subsection (6)(b) do not apply to a managed care organization licensed under Chapter 8, Health Maintenance Organizations and Limited Health Plans.

~~[(d) (iii) When selecting health care providers with whom to contract under Subsection (1), an insurer] (2), a managed care organization described in Subsection (3)(b)(i) may not unfairly discriminate between classes of health care providers, but may discriminate within a class of health care providers, subject to Subsection (7) (6).~~

~~[(e) (c) For purposes of this section, unfair discrimination between classes of health care providers includes:~~

(i) refusal to contract with class members in reasonable proportion to the number of insureds covered by the insurer and the expected demand for services from class members; and

(ii) refusal to cover procedures for one class of providers that are:

(A) commonly used by members of the class of health care providers for the treatment of illnesses, injuries, or conditions;

(B) otherwise covered by the ~~[insurer]~~ managed care organization; and

(C) within the scope of practice of the class of health care providers.

~~[(3) (4) Before the [insured] enrollee consents to the insurance contract, the [insurer] managed care organization shall fully disclose to the [insured that it] enrollee that the managed care organization has entered into [preferred health care] network provider contracts. The [insurer] managed care organization shall provide sufficient detail on the [preferred health care] network provider contracts to permit the [insured] enrollee to agree to the terms of the insurance contract. The [insurer] managed care organization shall provide at least the following information:~~

(a) a list of the health care providers under contract, and if requested their business locations and specialties;

(b) a description of the insured benefits, including deductibles, coinsurance, or other copayments;

(c) a description of the quality assurance program required under Subsection ~~[(4)]~~ (5); and

(d) a description of the adverse benefit determination procedures required under ~~[Subsection (5)]~~ Section 31A-22-629.

~~[(4) (a) An insurer using preferred health care]~~

(5) (a) A managed care organization using network provider contracts shall maintain a quality assurance program for assuring that the care provided by the ~~[health care providers under contract]~~ network providers meets prevailing standards in the state.

(b) The commissioner in consultation with the executive director of the Department of Health may designate qualified persons to perform an audit of the quality assurance program. The auditors shall have full access to all records of the managed care organization and ~~[its]~~ the managed care organization's health care providers, including medical records of individual patients.

(c) The information contained in the medical records of individual patients shall remain confidential. All information, interviews, reports, statements, memoranda, or other data furnished for purposes of the audit and any findings or conclusions of the auditors are privileged. The information is not subject to discovery, use, or receipt in evidence in any legal proceeding except hearings before the commissioner concerning alleged violations of this section.

~~[(5) An insurer using preferred health care provider contracts shall provide a reasonable procedure for resolving complaints and adverse benefit determinations initiated by the insureds and health care providers.]~~

~~[(6) An insurer may not contract with a health care provider for treatment of illness or injury unless the health care provider is licensed to perform that treatment.]~~

~~[(7) (6) (a) A health care provider or [insurer] managed care organization may not discriminate against a [preferred health care] network provider for agreeing to a contract under Subsection (1) (2).~~

(b) (i) Subsections (6)(b) and (c) apply to a managed care organization that is described in Subsection (3)(b)(i) and do not apply to a managed care organization described in Subsection (3)(b)(ii).

(ii) A health care provider licensed to treat an illness or injury within the scope of the health care provider's practice, ~~[who]~~ that is willing and able to meet the terms and conditions established by the ~~[insurer] managed care organization~~ for designation as a ~~[preferred health care] network provider~~, shall be able to apply for and receive the designation as a ~~[preferred health care] network provider~~. Contract terms and conditions may include reasonable limitations on the number of designated ~~[preferred health care] network providers~~ based upon substantial objective and economic grounds, or expected use of particular services based upon prior provider-patient profiles.

~~[(8) (c) Upon the written request of a provider excluded from a network provider contract, the~~

commissioner may hold a hearing to determine if the ~~[insurer's]~~ managed care organization's exclusion of the provider is based on the criteria set forth in Subsection ~~[(7)]~~ (6)(b).

~~[(9)]~~ (7) Nothing in this section is to be construed as to require ~~[an insurer]~~ a managed care organization to offer a certain benefit or service as part of a health benefit plan.

~~[(10)]~~ This section does not apply to catastrophic mental health coverage provided in accordance with Section 31A-22-625.]

~~[(11)]~~ (8) Notwithstanding Subsection ~~[(4),]~~ (2) or Subsection ~~[(7)]~~ (6)(b), ~~[and Section 31A-22-618, an insurer]~~ a managed care organization described in Subsection (3)(b)(i) or third party administrator is not required to, but may, enter into a contract with a licensed athletic trainer, licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.

Section 33. Section 31A-45-304, which is renumbered from Section 31A-22-617.1 is renumbered and amended to read:

[31A-22-617.1]. 31A-45-304. Objective criteria for adding or terminating network providers -- Termination of contracts -- Review process.

(1) (a) ~~[Every insurer, including a health maintenance organization governed by Chapter 8, Health Maintenance Organizations and Limited Health Plans,]~~ A managed care organization shall establish criteria for adding health care providers to a new or existing network provider panel.

(b) Criteria under Subsection (1)(a) may include~~], but are not limited to:~~

(i) training, certification, and hospital privileges;

(ii) number of ~~[physicians]~~ health care providers needed to adequately serve the ~~[insurer's]~~ managed care organization's population; and

(iii) any other factor that is reasonably related to promote or protect good patient care, address costs, take into account on-call and cross-coverage relationships between providers, or serve the lawful interests of the ~~[insurer]~~ managed care organization.

(c) ~~[An insurer]~~ A managed care organization shall make such criteria available to any provider upon request and shall file the same with the department.

(d) Upon receipt of a provider application and upon receiving all necessary information, ~~[an insurer]~~ a managed care organization shall make a decision on a provider's application for participation within 120 days.

(e) If the provider applicant is rejected, the ~~[insurer]~~ managed care organization shall inform the provider of the reason for the rejection relative to the criteria established in accordance with Subsection (1)(b).

(f) ~~[An insurer]~~ A managed care organization may not reject a provider applicant based solely on:

(i) the provider's staff privileges at a general acute care hospital not under contract with the ~~[insurer]~~ managed care organization; or

(ii) the provider's referral patterns for patients who are not covered by the ~~[insurer]~~ managed care organization.

(g) Criteria set out in Subsection (1)(b) may be modified or changed from time to time to meet the business needs of the market in which the ~~[insurer]~~ managed care organization operates and, if modified, will be filed with the department as provided in Subsection (1)(c).

(h) With the exception of Subsection (1)(f), this section does not create any new or additional private right of action for redress.

(2) (a) For the first two years, ~~[an insurer]~~ a managed care organization may terminate its contract with a provider with or without cause upon giving the requisite amount of notice provided in the agreement, but in no case shall it be less than 60 days.

(b) An agreement may be terminated for cause as provided in the contract established between the ~~[insurer]~~ managed care organization and the provider. Such contract shall contain sufficiently certain criteria so that the provider can be reasonably informed of the grounds for termination for cause.

(c) ~~[Prior to]~~ Before termination for cause, the ~~[insurer shall]~~ managed care organization:

(i) shall inform the provider of the intent to terminate and the grounds for doing so;

(ii) shall at the request of the provider, meet with the provider to discuss the reasons for termination;

(iii) if the ~~[insurer]~~ managed care organization has a reasonable basis to believe that the provider may correct the conduct giving rise to the notice of termination, ~~[the insurer]~~ may, at its discretion, place the provider on probation with corrective action requirements, restrictions, or both, as necessary to protect patient care; and

(iv) if the ~~[insurer]~~ managed care organization has a reasonable basis to believe that the provider has engaged in fraudulent conduct or poses a significant risk to patient care or safety, ~~[the insurer]~~ may immediately suspend the provider from further performance under the contract, provided that the remaining provisions of this Subsection (2) are followed in a timely manner before termination may become final.

(d) Each ~~[insurer]~~ managed care organization shall establish an internal appeal process for actions that may result in terminated participation with cause and make known to the provider the procedure for appealing such termination.

(i) Providers dissatisfied with the results of the appeal process may, if both parties agree, submit the matters in dispute to mediation.

(ii) If the matters in dispute are not mediated, or should mediation be unsuccessful, the dispute shall

be subject to binding arbitration by an arbitrator jointly selected by the parties, the cost of which shall be jointly shared. Each party shall bear its own additional expenses.

(e) A termination under Subsection (2)(a) or (b) may not be based on:

(i) the provider's staff privileges at a general acute care hospital not under contract with the ~~[insurer]~~ managed care organization; or

(ii) the provider's referral patterns for patients who are not covered by the ~~[insurer]~~ managed care organization.

(3) Notwithstanding any other section of this title, ~~[an insurer]~~ a managed care organization may not take adverse action against or reduce reimbursement to a ~~[contracted]~~ network provider who is not under a capitated reimbursement arrangement because of the decision of an ~~[insured]~~ enrollee to access health care services from a ~~[noncontracted]~~ non-network provider in a manner permitted by the ~~[insured's]~~ enrollee's health insurance plan, regardless of how the plan is designated.

Section 34. Section 31A-45-401, which is renumbered from Section 31A-8-502 is renumbered and amended to read:

Part 4. Access To Services For Managed Care Enrollees

[31A-8-502]. 31A-45-401. Court ordered coverage for minor children who reside outside the service area.

(1) (a) The requirements of Subsection (2) apply to a ~~[health maintenance organization if the health maintenance organization plan]~~ managed care organization if the managed care organization health benefit plan:

(i) restricts coverage for nonemergency services to services provided by contracted providers within the organization's service area; and

(ii) does not offer a benefit that permits members the option of obtaining covered services from a ~~[non-contracted]~~ non-network provider.

(b) The requirements of Subsection (2) do not apply to a ~~[health maintenance]~~ managed care organization if:

(i) the child that is the subject of a court or administrative support order is over the age of 18 and is no longer enrolled in high school; or

(ii) a parent's employer offers the parent a choice to select health insurance coverage that is not a ~~[health maintenance]~~ managed care organization plan either at the time of the court or administrative support order, or at a subsequent open enrollment period. This exemption from Subsection (2) applies even if the parent ultimately chooses the ~~[health maintenance]~~ managed care organization plan.

(2) If a parent is required by a court or administrative support order to provide health insurance coverage for a child who resides outside of a ~~[health maintenance]~~ managed care organization's service area, the [health maintenance] managed care organization shall:

(a) comply with the provisions of Section 31A-22-610.5;

(b) allow the enrollee parent to enroll the child on the organization plan;

(c) pay for otherwise covered health care services rendered to the child outside of the service area by a ~~[noncontracted]~~ non-network provider:

(i) if the child, noncustodial parent, or custodial parent has complied with prior authorization or utilization review otherwise required by the organization; and

(ii) in an amount equal to the dollar amount the organization pays under a noncapitated arrangement for comparable services to a ~~[contracting]~~ network provider in the same class of health care providers as the provider who rendered the services; and

(d) make payments on claims submitted in accordance with Subsection (2)(c) directly to the provider, custodial parent, the child who obtained benefits, or state Medicaid agency.

(3) (a) The parents of the child who is the subject of the court or administrative support order are responsible for any charges billed by the provider in excess of those paid by the organization.

(b) This section does not affect any court or administrative order regarding the responsibilities between the parents to pay any medical expenses not covered by accident and health insurance or a ~~[health maintenance]~~ managed care organization plan.

(4) The commissioner shall adopt rules as necessary to administer this section and Section 31A-22-610.5.

Section 35. Section 31A-45-402 is enacted to read:

31A-45-402. Alcohol and drug dependency treatment.

(1) A managed care organization offering a health benefit plan providing coverage for alcohol or drug dependency treatment may require an inpatient facility to be licensed by:

(a) (i) the Department of Human Services, under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) the Department of Health; or

(b) for an inpatient facility located outside the state, a state agency similar to one described in Subsection (1)(a).

(2) For inpatient coverage provided pursuant to Subsection (1), a managed care organization may require an inpatient facility to be accredited by the following:

(a) the Joint Commission; and

(b) one other nationally recognized accrediting agency.

Section 36. Section 31A-45-501, which is renumbered from Section 31A-8-501 is renumbered and amended to read:

Part 5. Network Adequacy

[31A-8-501]. 31A-45-501. Access to health care providers.

(1) As used in this section:

(a) "Class of health care provider" means a health care provider or a health care facility regulated by the state within the same professional, trade, occupational, or certification category established under Title 58, Occupations and Professions, or within the same facility licensure category established under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(b) "Covered health care services" or "covered services" means health care services for which an enrollee is entitled to receive under the terms of a health maintenance organization contract.

(c) "Credentialed staff member" means a health care provider with active staff privileges at an independent hospital or federally qualified health center.

(d) "Federally qualified health center" means as defined in the Social Security Act, 42 U.S.C. Sec. 1395x.

(e) "Independent hospital" means a general acute hospital or a critical access hospital that:

(i) is either:

(A) located 20 miles or more from any other general acute hospital or critical access hospital; or

(B) licensed as of January 1, 2004;

(ii) is licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(iii) is controlled by a board of directors of which 51% or more reside in the county where the hospital is located and:

(A) the board of directors is ultimately responsible for the policy and financial decisions of the hospital; or

(B) the hospital is licensed for 60 or fewer beds and is not owned, in whole or in part, by an entity that owns or controls a health maintenance organization if the hospital is a contracting facility of the organization.

(f) "Noncontracting provider" means an independent hospital, federally qualified health center, or credentialed staff member ~~who~~ that has not contracted with a ~~health maintenance~~ managed care organization to provide health care services to enrollees of the managed care organization.

(2) Except for a ~~health maintenance~~ managed care organization ~~which~~ that is under the common ownership or control of an entity with a hospital located within 10 paved road miles of an independent hospital, a ~~health maintenance~~ managed care organization shall pay for covered health care services rendered to an enrollee by an independent hospital, a credentialed staff member at an independent hospital, or a credentialed staff member at his local practice location if:

(a) the enrollee:

(i) lives or resides within 30 paved road miles of the independent hospital; or

(ii) if Subsection (2)(a)(i) does not apply, lives or resides in closer proximity to the independent hospital than a contracting hospital;

(b) the independent hospital is located prior to December 31, 2000 in a county with a population density of less than 100 people per square mile, or the independent hospital is located in a county with a population density of less than 30 people per square mile; and

(c) the enrollee has complied with the prior authorization and utilization review requirements otherwise required by the ~~health maintenance~~ managed care organization contract.

(3) A ~~health maintenance~~ managed care organization shall pay for covered health care services rendered to an enrollee at a federally qualified health center if:

(a) the enrollee:

(i) lives or resides within 30 paved road miles of the federally qualified health center; or

(ii) if Subsection (3)(a)(i) does not apply, lives or resides in closer proximity to the federally qualified health center than a contracting provider;

(b) the federally qualified health center is located in a county with a population density of less than 30 people per square mile; and

(c) the enrollee has complied with the prior authorization and utilization review requirements otherwise required by the ~~health maintenance~~ managed care organization contract.

(4) (a) A ~~health maintenance~~ managed care organization shall reimburse a noncontracting provider or the enrollee for covered services rendered pursuant to Subsection (2) a like dollar amount as it pays to contracting providers under a noncapitated arrangement for comparable services.

(b) A ~~health maintenance~~ managed care organization shall reimburse a federally qualified health center or the enrollee for covered services rendered pursuant to Subsection (3) a like amount as paid by the ~~health maintenance~~ managed care organization under a noncapitated arrangement for comparable services to a contracting provider in the same class of health care providers as the provider who rendered the service.

(5) (a) A noncontracting independent hospital may not balance bill a patient when the health

maintenance organization reimburses a noncontracting independent hospital or an enrollee in accordance with Subsection (4)(a).

(b) A noncontracting federally qualified health center may not balance bill a patient when the federally qualified health center or the enrollee receives reimbursement in accordance with Subsection (4)(b).

(6) A noncontracting provider may only refer an enrollee to another noncontracting provider so as to obligate the enrollee's ~~health maintenance~~ managed care organization to pay for the resulting services if:

(a) the noncontracting provider making the referral or the enrollee has received prior authorization from the organization for the referral; or

(b) the practice location of the noncontracting provider to whom the referral is made:

(i) is located in a county with a population density of less than 25 people per square mile; and

(ii) is within 30 paved road miles of:

(A) the place where the enrollee lives or resides; or

(B) the independent hospital or federally qualified health center at which the enrollee may receive covered services pursuant to Subsection (2) or (3).

(7) Notwithstanding this section, a ~~health maintenance~~ managed care organization may contract directly with an independent hospital, federally qualified health center, or credentialed staff member.

(8) (a) A ~~health maintenance~~ managed care organization that violates any provision of this section is subject to sanctions as determined by the commissioner in accordance with Section 31A-2-308.

(b) Violations of this section include:

(i) failing to provide the notice required by Subsection (8)(d) by placing the notice in any ~~health maintenance~~ managed care organization's provider list that is supplied to enrollees, including any website maintained by the ~~health maintenance~~ managed care organization;

(ii) failing to provide notice of an enrollee's rights under this section when:

(A) an enrollee makes personal contact with the ~~health maintenance~~ managed care organization by telephone, electronic transaction, or in person; and

(B) the enrollee inquires about ~~his~~ the enrollee's rights to access an independent hospital or federally qualified health center; and

(iii) refusing to reprocess or reconsider a claim, initially denied by the ~~health maintenance~~ managed care organization

managed care organization, when the provisions of this section apply to the claim.

(c) The commissioner shall, pursuant to Chapter 2, Part 2, Duties and Powers of Commissioner:

(i) adopt rules as necessary to implement this section;

(ii) identify in rule:

(A) the counties with a population density of less than 100 people per square mile;

(B) independent hospitals as defined in Subsection (1)(e); and

(C) federally qualified health centers as defined in Subsection (1)(d).

(d) (i) A ~~health maintenance~~ managed care organization shall:

(A) use the information developed by the commissioner under Subsection (8)(c) to identify the rural counties, independent hospitals, and federally qualified health centers that are located in the ~~health maintenance~~ managed care organization's service area; and

(B) include the providers identified under Subsection (8)(d)(i)(A) in the notice required in Subsection (8)(d)(ii).

(ii) The ~~health maintenance~~ managed care organization shall provide the following notice, in bold type, to enrollees as specified under Subsection (8)(b)(i), and shall keep the notice current:

"You may be entitled to coverage for health care services from the following ~~non-HMO contracted~~ noncontracted providers if you live or reside within 30 paved road miles of the listed providers, or if you live or reside in closer proximity to the listed providers than to your ~~HMO~~ contracted providers:

This list may change periodically, please check on our website or call for verification. Please be advised that if you choose a noncontracted provider you will be responsible for any charges not covered by your health insurance plan.

If you have questions concerning your rights to see a provider on this list you may contact your ~~health maintenance~~ managed care organization at _____. If the ~~HMO~~ managed care organization does not resolve your problem, you may contact the Office of Consumer Health Assistance in the Insurance Department, toll free."

(e) A person whose interests are affected by an alleged violation of this section may contact the Office of Consumer Health Assistance and request assistance, or file a complaint as provided in Section 31A-2-216.

Section 37. Section 49-20-407 is amended to read:

49-20-407. Insurance mandates.

Notwithstanding the provisions of Subsection 31A-1-103(3)(f):

(1) health coverage offered to the state employee risk pool under Subsection 49-20-202(1)(a) shall

comply with the provisions of Sections [31A-8-501 and] 31A-22-605.5 and 31A-45-501; and

(2) a health plan offered to public school districts, charter schools, and institutions of higher education under Subsection 49-20-201(1)(b) shall comply with the provisions of Section 31A-22-605.5.

Section 38. Section 53-2a-1102 is amended to read:

53-2a-1102. Search and Rescue Financial Assistance Program -- Uses -- Rulemaking -- Distribution.

(1) (a) "Assistance card program" means the Utah Search and Rescue Assistance Card Program created within this section.

(b) "Card" means the Search and Rescue Assistance Card issued under this section to a participant.

(c) "Participant" means an individual, family, or group who is registered pursuant to this section as having a valid card at the time search, rescue, or both are provided.

(d) "Program" means the Search and Rescue Financial Assistance Program created within this section.

(e) (i) "Reimbursable expenses," as used in this section, means those reasonable expenses incidental to search and rescue activities.

(ii) "Reimbursable expenses" include:

(A) rental for fixed wing aircraft, helicopters, snowmobiles, boats, and generators;

(B) replacement and upgrade of search and rescue equipment;

(C) training of search and rescue volunteers;

(D) costs of providing workers' compensation benefits for volunteer search and rescue team members under Section 67-20-7.5; and

(E) any other equipment or expenses necessary or appropriate for conducting search and rescue activities.

(iii) "Reimbursable expenses" do not include any salary or overtime paid to any person on a regular or permanent payroll, including permanent part-time employees of any agency of the state.

(f) "Rescue" means search services, rescue services, or both search and rescue services.

(2) There is created the Search and Rescue Financial Assistance Program within the division.

(3) (a) The program shall be funded from the following revenue sources:

(i) any voluntary contributions to the state received for search and rescue operations;

(ii) money received by the state under Subsection (11) and under Sections 23-19-42, 41-22-34, and 73-18-24; and

(iii) appropriations made to the program by the Legislature.

(b) All money received from the revenue sources in Subsections (3)(a)(i) and (ii) shall be deposited into the General Fund as a dedicated credit to be used solely for the purposes under this section.

(c) All funding for the program is nonlapsing.

(4) The director shall use the money to reimburse counties for all or a portion of each county's reimbursable expenses for search and rescue operations, subject to:

(a) the approval of the Search and Rescue Advisory Board as provided in Section 53-2a-1104;

(b) money available in the program; and

(c) rules made under Subsection (7).

(5) Program money may not be used to reimburse for any paid personnel costs or paid man hours spent in emergency response and search and rescue related activities.

(6) The Legislature finds that these funds are for a general and statewide public purpose.

(7) The division, with the approval of the Search and Rescue Advisory Board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section:

(a) specifying the costs that qualify as reimbursable expenses;

(b) defining the procedures of counties to submit expenses and be reimbursed;

(c) defining a participant in the assistance card program, including:

(i) individuals; and

(ii) families and organized groups who qualify as participants;

(d) defining the procedure for issuing a card to a participant;

(e) defining excluded expenses that may not be reimbursed under the program, including medical expenses;

(f) establishing the card renewal cycle for the Utah Search and Rescue Assistance Card Program;

(g) establishing the frequency of review of the fee schedule;

(h) providing for the administration of the program; and

(i) providing a formula to govern the distribution of available money among the counties for uncompensated search and rescue expenses based on:

(i) the total qualifying expenses submitted;

(ii) the number of search and rescue incidents per county population;

(iii) the number of victims that reside outside the county; and

(iv) the number of volunteer hours spent in each county in emergency response and search and rescue related activities per county population.

(8) (a) The division shall, in consultation with the Outdoor Recreation Office, establish the fee schedule of the Search and Rescue Assistance Card under Subsection 63J-1-504(6).

(b) The division shall provide a discount of not less than 10% of the card fee under Subsection (8)(a) to a person who has paid a fee under Section 23-19-42, 41-22-34, or 73-18-24 during the same calendar year in which the person applies to be a participant in the assistance card program.

(9) (a) Counties may bill reimbursable expenses to an individual for costs incurred for the rescue of an individual, if the individual is not a participant in the Utah Search and Rescue Assistance Card Program.

(b) Counties may bill a participant for reimbursable expenses for costs incurred for the rescue of the participant if the participant is found by the rescuing county to have acted recklessly or to have intentionally created a situation resulting in the need for a county to provide rescue service for the participant.

(10) (a) There is created the Utah Search and Rescue Assistance Card Program. The program is located within the division.

(b) The program may not be utilized to cover any expenses, such as medically related expenses, that are not reimbursable expenses related to the rescue.

(11) (a) To participate in the program, a person shall purchase a Search and Rescue Assistance Card from the division by paying the fee as determined by the division in Subsection (8).

(b) The money generated by the fees shall be deposited into the General Fund as a dedicated credit for the Search and Rescue Financial Assistance Program created in this section.

(c) Participation and payment of fees by a person under Sections 23-19-42, 41-22-34, and 73-18-24 do not constitute purchase of a card under this section.

(12) The division shall consult with the Outdoor Recreation Office regarding:

(a) administration of the assistance card program; and

(b) outreach and marketing strategies.

(13) Pursuant to Subsection 31A-1-103(7), the Utah Search and Rescue Assistance Card Program under this section is exempt from being considered [an] insurance [program under Subsection 31A-1-301(86)] as that term is defined in Section 31A-1-301.

Section 39. Section 58-16a-601 is amended to read:

58-16a-601. Scope of practice.

(1) An optometrist may:

(a) provide optometric services not specifically prohibited under this chapter or division rules if the services are within the optometrist's training, skills, and scope of competence; and

(b) prescribe or administer pharmaceutical agents for the eye and its adnexa, including oral agents, subject to the following conditions:

(i) an optometrist may prescribe oral antibiotics for only eyelid related ocular conditions or diseases, and other ocular conditions or diseases specified by division rule; and

(ii) an optometrist may administer or prescribe a hydrocodone combination drug, or a Schedule III controlled substance, as defined in Section 58-37-4, only if:

(A) the substance is administered or prescribed for pain of the eye or adnexa;

(B) the substance is administered orally or topically or is prescribed for oral or topical use;

(C) the amount of the substance administered or prescribed does not exceed a 72-hour quantity; and

(D) if the substance is prescribed, the prescription does not include refills.

(2) An optometrist may not:

(a) perform surgery, including laser surgery; or

(b) prescribe or administer a Schedule II controlled substance, as defined in Section 58-37-4, except for a hydrocodone combination drug, if so scheduled and prescribed or administered in accordance with Subsection (1)(b).

(3) For purposes of Sections ~~[31A-22-617 and]~~ 31A-22-618 and 31A-45-303, an optometrist is a health care provider.

Section 40. Section 63I-2-231 is amended to read:

63I-2-231. Repeal dates, Title 31A.

(1) Section 31A-22-315.5 is repealed July 1, 2019.

(2) Title 31A, Chapter 30, Part 2, Defined Contribution Arrangements is repealed July 1, 2019.

(3) Title 31A, Chapter 30, Part 3, Individual and Small Employer Risk Adjustment Act is repealed July 1, 2019.

~~[(2)]~~ (4) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed December 31, 2018.

Section 41. Section 63N-11-104 is amended to read:

63N-11-104. Creation of Office of Consumer Health Services -- Duties.

(1) There is created within the Governor's Office of Economic Development the Office of Consumer Health Services.

(2) The ~~[consumer health office]~~ Office of Consumer Health Services shall:

~~(a) in cooperation with the Insurance Department, the Department of Health, and the Department of Workforce Services, and in accordance with the electronic standards developed under Sections 31A-22-635 and 63N-11-107, create a Health Insurance Exchange that;~~

~~(i) provides information to consumers about private and public health programs for which the consumer may qualify;~~

~~(ii) provides a consumer comparison of and enrollment in a health benefit plan posted on the Health Insurance Exchange; and~~

~~(iii) includes information and a link to enrollment in premium assistance programs and other government assistance programs;~~

~~(b) contract with one or more private vendors for;~~

~~(i) administration of the enrollment process on the Health Insurance Exchange, including establishing a mechanism for consumers to compare health benefit plan features on the exchange and filter the plans based on consumer preferences;~~

~~(ii) the collection of health insurance premium payments made for a single policy by multiple payers, including the policyholder, one or more employers of one or more individuals covered by the policy, government programs, and others; and~~

~~(iii) establishing a call center in accordance with Subsection (4);~~

~~(c) assist employers with a free or low cost method for establishing mechanisms for the purchase of health insurance by employees using pre-tax dollars;~~

~~(d) establish a list on the Health Insurance Exchange of insurance producers who, in accordance with Section 31A-30-209, are appointed producers for the Health Insurance Exchange;~~

~~(e) include in the annual written report described in Section 63N-1-301, a report on the operations of the Health Insurance Exchange required by this chapter; and~~

~~(f) in accordance with Subsection (3), provide a form to a small employer that certifies:~~

~~(i) that the small employer offered a qualified health plan to the small employer's employees; and~~

~~(ii) the period of time within the taxable year in which the small employer maintained the qualified health plan coverage.~~

~~(3) The form required by Subsection (2)(f) shall be provided to a small employer if:~~

~~(a) the small employer selected a qualified health plan on the small employer health exchange created by this section; or~~

~~(b) (i) the small employer selected a health plan in the small employer market that is not offered through the exchange created by this section; and~~

~~(ii) the issuer of the health plan selected by the small employer submits to the office, in a form and manner required by the office;~~

~~(A) an affidavit from a member of the American Academy of Actuaries stating that based on generally accepted actuarial principles and methodologies the issuer's health plan meets the benefit and actuarial requirements for a qualified health plan under PPACA as defined in Section 31A-1-301; and~~

~~(B) an affidavit from the issuer that includes the dates of coverage for the small employer during the taxable year.~~

~~(4) A call center established by the consumer health office:~~

~~(a) shall provide unbiased answers to questions concerning exchange operations, and plan information, to the extent the plan information is posted on the exchange by the insurer; and~~

~~(b) may not;~~

~~(i) sell, solicit, or negotiate a health benefit plan on the Health Insurance Exchange;~~

~~(ii) receive producer compensation through the Health Insurance Exchange; and~~

~~(iii) be designated as the default producer for an employer group that enters the Health Insurance Exchange without a producer.~~

~~(5) The consumer health office:~~

~~(a) may not;~~

~~(i) regulate health insurers, health insurance plans, health insurance producers, or health insurance premiums charged in the exchange;~~

~~(ii) adopt administrative rules, except as provided in Section 63N-11-107; or~~

~~(iii) act as an appeals entity for resolving disputes between a health insurer and an insured;~~

~~(b) may establish and collect a fee for the cost of the exchange transaction in accordance with Section 63J-1-504 for:~~

~~(i) processing an application for a health benefit plan;~~

~~(ii) accepting, processing, and submitting multiple premium payment sources;~~

~~(iii) providing a mechanism for consumers to filter and compare health benefit plans in the exchange based on consumer preferences; and~~

~~(iv) funding the call center; and~~

~~(c) shall separately itemize the fee established under Subsection (5)(b) as part of the cost displayed for the employer selecting coverage on the exchange.~~

~~(a) carry out the duties described in Section 63N-11-103;~~

~~(b) maintain the services provided by the office for the Avenue H small employer health insurance exchange until operations of Avenue H end under Subsection (2)(d);~~

(c) beginning July 1, 2017, enroll or renew a small employer group with a single insurer selected by the small employer, while allowing for employee choice among health benefit plans offered by the single insurer selected by the small employer; and

(d) take steps necessary to wind down the operations of the Avenue H small employer health insurance exchange effective July 1, 2018.

Section 42. Health Reform Task Force -- Creation -- Membership -- Interim rules followed -- Compensation -- Staff.

(1) There is created the Health Reform Task Force consisting of the following 11 members:

(a) four members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and

(b) seven members of the House of Representatives appointed by the speaker of the House of Representatives, no more than five of whom may be from the same political party.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

(3) In conducting the task force's business, the task force shall comply with the rules of legislative interim committees.

(4) Salaries and expenses of the members of the task force shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(5) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

Section 43. Duties -- Interim report.

(1) The task force shall review and make recommendations on the following issues:

(a) the need for state statutory and regulatory changes in response to federal actions affecting health care;

(b) Medicaid and reforms to the Medicaid program;

(c) options for increasing state flexibility, including the use of federal waivers;

(d) the state's health insurance marketplace;

(e) combining managed care organizations and health insurers into a guaranty association that includes only health insurers;

(f) health insurance code modifications;

(g) insurance network adequacy standards and balance billing;

(h) access to health care for medically underserved populations in the state; and

(i) the state's strategic plan for health system reform in Section 63N-11-105.

(2) A final report, including any proposed legislation, shall be presented to the Business and Labor Interim Committee and Health and the Human Services Interim Committee before November 30, 2017, and November 30, 2018.

Section 44. Repealer.

This bill repeals:

Section 31A-22-721, A health benefit plan for a plan sponsor -- Discontinuance and nonrenewal.

Section 31A-30-107, Renewal -- Limitations -- Exclusions -- Discontinuance and nonrenewal.

Section 31A-30-107.1, Individual discontinuance and nonrenewal.

Section 31A-30-107.3, Discontinuance and nonrenewal limitations and conditions.

Section 31A-30-116, Essential health benefits.

Section 63N-11-107, Health benefit plan information on Health Insurance Exchange -- Insurer transparency.

Section 45. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Legislature - Senate

From General Fund, One-time \$20,000

Schedule of Programs:

Administration \$20,000

ITEM 2

To Legislature - House of Representatives

From General Fund, One-time \$34,000

Schedule of Programs:

Administration \$34,000

Section 46. Repeal date.

The Health Reform Task Force created in Sections 42 and 43 is repealed January 1, 2019.

Section 47. Effective date.

(1) Except as provided in Subsections (2) and (3), this bill takes effect on May 9, 2017.

(2) The actions affecting the following sections take effect on January 1, 2018:

(a) Section 31A-22-610.1;

(b) Section 31A-22-618;

(c) Section 31A-22-618.5;

(d) Section 31A-22-627;

(e) Section 31A-22-635;

(f) Section 31A-22-642;

(g) Section 31A-45-101;

(h) Section 31A-45-102;

(i) Section 31A-45-103;

(j) Section 31A-45-201;

(k) Section 31A-45-301;

(l) Section 31A-45-302;

(m) Section 31A-45-303;

(n) Section 31A-45-304;

(o) Section 31A-45-401;

(p) Section 31A-45-402;

(q) Section 31A-45-501;

(r) Section 49-20-407; and

(s) Section 58-16a-601.

(3) The repeal of Section 63N-11-107 takes effect on July 1, 2018.

CHAPTER 293**H. B. 354**

Passed March 9, 2017
 Approved March 23, 2017
 Effective May 9, 2017

DIGITAL PIRACY AMENDMENTS

Chief Sponsor: Adam Gardiner
 Senate Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill amends a provision related to unauthorized recording practices.

Highlighted Provisions:

This bill:

- ▶ provides, for certain offenses regarding recordings, that an amount of recordings means the commercial equivalent of an amount of recordings.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

13-10-8, as enacted by Laws of Utah 1995, Chapter 325

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

Section 1. Section 13-10-8 is amended to read:**13-10-8. Failure to disclose the origin of a recording -- Penalty.**

(1) For purposes of this section "recording" means:

(a) a tangible medium on which sounds or images are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other similar medium; or

(b) a copy or reproduction that duplicates the original in whole or in part.

(2) A person is guilty of failure to disclose the origin of a recording if:

(a) the person commits any of the following acts for commercial advantage or private financial gain:

- (i) offers a recording for sale, resale, or rent;
- (ii) sells, resells, rents, leases, or lends a recording; or
- (iii) possesses a recording for any of the purposes described in Subsection (2)(a)(i) or (ii); and

(b) the person knows that the recording does not contain the true name and address of the manufacturer in a prominent place on its cover, jacket, or label.

(3) A person who fails to disclose the origin of a recording under Subsection (2) is guilty of:

(a) a felony of the third degree if the offense involves 100 or more recordings, or the commercial equivalent of 100 or more recordings, during a 180-day period or if the person has previously been convicted of a violation of this section;

(b) a class A misdemeanor if the offense involves at least 10 recordings [~~but less~~] and fewer than 100 recordings, or the commercial equivalent of at least 10 recordings and fewer than 100 recordings, during a 180-day period; or

(c) a class B misdemeanor if the offense involves [~~less~~] fewer than 10 recordings or fewer than the commercial equivalent of 10 recordings.

(4) In addition to the penalties provided in Subsection (3), a court may order a person who commits a violation of Subsection (2) to forfeit any recordings in the person's possession that served as the basis for the violation of Subsection (2).

CHAPTER 294**H. B. 381**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

**LAW ENFORCEMENT BODY
CAMERA FOOTAGE AMENDMENTS**

Chief Sponsor: Paul Ray

Senate Sponsor: Daniel W. Thatcher

LONG TITLE**General Description:**

This bill modifies provisions regarding the release of recordings made by body cameras worn by law enforcement officers.

Highlighted Provisions:

This bill:

- ▶ provides that any release of recordings made by a body camera that is worn by a law enforcement officer shall be subject to the Government Records Access and Management Act; and
- ▶ allows a requestor to immediately appeal to a district court any denial of access to a recording if that denial is based solely on the grounds of a pending criminal action.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

77-7a-107, as enacted by Laws of Utah 2016,
Chapter 410

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

Section 1. Section 77-7a-107 is amended to read:**77-7a-107. Retention and release of recordings.**

(1) Any recording made by an officer while on duty or acting in the officer's official capacity as a law enforcement officer shall be retained in accordance with applicable federal, state, and local laws.

(2) (a) Any release of recordings made by an officer while on duty or acting in the officer's official capacity as a law enforcement officer shall be subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding any other provision in state or local law, a person who requests access to the recordings may immediately appeal to a district court, as provided in Section 63G-2-404, any denial of access to a recording based solely on Subsection 63G-2-305(10)(b) or (c) due to a pending criminal action that has been filed in a court of competent jurisdiction.

CHAPTER 295**H. B. 386**

Passed March 8, 2017
 Approved March 23, 2017
 Effective May 9, 2017

ATTORNEY GENERAL AMENDMENTS

Chief Sponsor: Eric K. Hutchings
 Senate Sponsor: Daniel W. Thatcher

LONG TITLE**General Description:**

This bill modifies provisions related to the duties and powers of the attorney general.

Highlighted Provisions:

This bill:

- ▶ requires the attorney general to provide an annual performance report; and
- ▶ addresses the purposes for which the attorney general may authorize certain law enforcement officers to use a state issued vehicle.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 67-5-1, as last amended by Laws of Utah 2016, Chapter 120
 67-5-23, as last amended by Laws of Utah 2014, Chapter 26

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

Section 1. Section 67-5-1 is amended to read:**67-5-1. General duties.**

The attorney general shall:

(1) perform all duties in a manner consistent with the attorney-client relationship under Section 67-5-17;

(2) except as provided in Sections 10-3-928 and 17-18a-403, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board, or commission of the state in an official capacity is a party, and take charge, as attorney, of all civil legal matters in which the state is interested;

(3) after judgment on any cause referred to in Subsection (2), direct the issuance of process as necessary to execute the judgment;

(4) account for, and pay over to the proper officer, all money that comes into the attorney general's possession that belongs to the state;

(5) keep a file of all cases in which the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment and of any process issued if satisfied, and if not satisfied, documentation of the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, the reason for the delay or prevention; and

(c) deliver this information to the attorney general's successor in office;

(6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(7) give the attorney general's opinion in writing and without fee to the Legislature or either house and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;

(8) when required by the public service or directed by the governor, assist any county, district, or city attorney in the discharge of county, district, or city attorney's duties;

(9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in the attorney general's opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States to restrain and enjoin corporations organized under

the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107;

(16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a, Constitutional and Federalism Defense Act;

(17) pursue any appropriate legal action to implement the state's public lands policy established in Section 63C-4a-103;

(18) investigate and prosecute violations of all applicable state laws relating to fraud in connection with the state Medicaid program and any other medical assistance program administered by the state, including violations of Title 26, Chapter 20, Utah False Claims Act;

(19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at:

(a) health care facilities that receive payments under the state Medicaid program; and

(b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C. Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility;

(20) (a) report at least twice per year to the Legislative Management Committee on any pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

(i) cost the state more than \$500,000; or

(ii) require the state to take legally binding action that would cost more than \$500,000 to implement; and

(b) if the meeting is closed, include an estimate of the state's potential financial or other legal exposure in that report; ~~and~~

(21) if the attorney general operates the Office of the Attorney General or any portion of the Office of the Attorney General as an internal service fund agency in accordance with Section 67-5-4, submit to the rate committee established in Section 67-5-34:

(a) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and

(b) any other information or analysis requested by the rate committee~~;~~; and

(22) before the end of each calendar year, create an annual performance report for the Office of the Attorney General and post the report on the attorney general's website.

Section 2. Section 67-5-23 is amended to read:

67-5-23. Use of state vehicles for law enforcement officers.

~~[(1) The] Subject to rules adopted by the Division of Fleet Operations under Section 63A-9-401, the attorney general may authorize a law enforcement ~~[officers] officer, as defined [under] in~~ Section 53-13-103, who ~~[are employees in] is an employee~~ of the Office of the Attorney General to use a state issued vehicle for official and ~~[commuter] personal~~ use.~~

~~[(2) An employee shall use, and the attorney general shall authorize the use of, a vehicle under Subsection (1) subject to the rules adopted by the Division of Fleet Operations in accordance with Section 63A-9-401.]~~

CHAPTER 296**H. B. 390**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

SUICIDE PREVENTION MODIFICATIONS

Chief Sponsor: Steve Eliason

Senate Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill creates a Suicide Prevention Education Program to be administered by the Bureau of Criminal Identification.

Highlighted Provisions:

This bill:

- ▶ creates a Suicide Prevention Education Program to be created by the state suicide prevention coordinator and the Bureau of Criminal Identification;
- ▶ allows the program to provide grants to federal firearms licensees to educate their employees regarding suicide prevention; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to the Department of Public Safety – Bureau of Criminal Identification, as an ongoing appropriation:
 - from the General Fund, \$9,800, to the Firearm Safety Account; and
 - from the Firearm Safety Account, \$9,800, to the Bureau of Criminal Identification.

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53-10-202, as last amended by Laws of Utah 2016, Chapter 144

53-10-202.1, as enacted by Laws of Utah 2014, Chapter 226

62A-15-1101, as last amended by Laws of Utah 2016, Chapters 144, 164, and 168

ENACTS:

53-10-202.3, Utah Code Annotated 1953

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

Section 1. Section 53-10-202 is amended to read:**53-10-202. Criminal identification -- Duties of bureau.**

The bureau shall:

(1) procure and file information relating to identification and activities of persons who:

- (a) are fugitives from justice;
- (b) are wanted or missing;

(c) have been arrested for or convicted of a crime under the laws of any state or nation; and

(d) are believed to be involved in racketeering, organized crime, or a dangerous offense;

(2) establish a statewide uniform crime reporting system that shall include:

(a) statistics concerning general categories of criminal activities;

(b) statistics concerning crimes that exhibit evidence of prejudice based on race, religion, ancestry, national origin, ethnicity, or other categories that the division finds appropriate; and

(c) other statistics as required by the Federal Bureau of Investigation;

(3) make a complete and systematic record and index of the information obtained under this part;

(4) subject to the restrictions in this part, establish policy concerning the use and dissemination of data obtained under this part;

(5) publish an annual report concerning the extent, fluctuation, distribution, and nature of crime in Utah;

(6) establish a statewide central register for the identification and location of missing persons, which may include:

(a) identifying data including fingerprints of each missing person;

(b) identifying data of any missing person who is reported as missing to a law enforcement agency having jurisdiction;

(c) dates and circumstances of any persons requesting or receiving information from the register; and

(d) any other information, including blood types and photographs found necessary in furthering the purposes of this part;

(7) publish a quarterly directory of missing persons for distribution to persons or entities likely to be instrumental in the identification and location of missing persons;

(8) list the name of every missing person with the appropriate nationally maintained missing persons lists;

(9) establish and operate a 24-hour communication network for reports of missing persons and reports of sightings of missing persons;

(10) coordinate with the National Center for Missing and Exploited Children and other agencies to facilitate the identification and location of missing persons and the identification of unidentified persons and bodies;

(11) receive information regarding missing persons, as provided in Sections 26-2-27 and 53A-11-502, and stolen vehicles, vessels, and onboard motors, as provided in Section 41-1a-1401;

(12) adopt systems of identification, including the fingerprint system, to be used by the division to facilitate law enforcement;

(13) assign a distinguishing number or mark of identification to any pistol or revolver, as provided in Section 76-10-520;

(14) check certain criminal records databases for information regarding motor vehicle salesperson applicants, maintain a separate file of fingerprints for motor vehicle salespersons, and inform the Motor Vehicle Enforcement Division when new entries are made for certain criminal offenses for motor vehicle salespersons in accordance with the requirements of Section 41-3-205.5;

(15) check certain criminal records databases for information regarding driving privilege card applicants or cardholders and maintain a separate file of fingerprints for driving privilege applicants and cardholders and inform the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security when new entries are made in accordance with the requirements of Section 53-3-205.5.

(16) review and approve or disapprove applications for license renewal that meet the requirements for renewal;

(17) forward to the board those applications for renewal under Subsection (16) that do not meet the requirements for renewal; and

(18) within funds appropriated by the Legislature for the purpose, implement and manage the operation of [a] firearm safety [program] and suicide prevention education programs, in conjunction with the state suicide prevention coordinator, as described in this section and Section 62A-15-1101, including:

(a) coordinating with the Department of Health, local mental health and substance abuse authorities, ~~[the public education suicide prevention coordinator]~~ a nonprofit behavioral health advocacy group, and a representative from a Utah-based nonprofit organization with expertise in the field of firearm use and safety that represents firearm owners, to:

(i) produce a firearm safety brochure with information about the safe handling and use of firearms that includes:

(A) rules for safe handling, storage, and use of firearms in a home environment;

(B) information about at-risk individuals and individuals who are legally prohibited from possessing firearms;

(C) information about suicide prevention and awareness; and

(D) information about the availability of firearm safety packets;

(ii) procure cable-style gun locks for distribution pursuant to this section; ~~and~~

(iii) produce a firearm safety packet that includes both the firearm safety brochure described in Subsection (18)(a)(i) and the cable-style gun lock described in Subsection (18)(a)(ii); and

(iv) create a suicide prevention education course that:

(A) provides information that includes posters for display and pamphlets or brochures for distribution regarding firearm safety education;

(B) incorporates current information on how to recognize suicidal behaviors and identify persons who may be suicidal;

(C) provides information regarding crisis intervention resources; and

(D) provides continuing education in the area of suicide prevention;

(b) distributing, free of charge, the firearm safety packet to the following persons, who shall make the firearm safety packet available free of charge:

(i) health care providers, including emergency rooms;

(ii) mental health practitioners;

(iii) other public health suicide prevention organizations;

(iv) entities that teach firearm safety courses; and

(v) school districts for use in the seminar, described in Section 53A-15-1302, for parents of students in the school district;

(c) creating and administering a redeemable coupon program described in this section and Section 76-10-526, that may include:

(i) producing a redeemable coupon that offers between \$10 and \$200 off the purchase of a gun safe from a participating federally licensed firearms dealer, as defined in Section 76-10-501, by a Utah resident who has filed an application for a concealed firearm permit;

(ii) advertising the redeemable coupon program to all federally licensed firearms dealers and maintaining a list of dealers who wish to participate in the program;

(iii) printing or writing the name of a Utah resident who has filed an application for a concealed firearm permit on the redeemable coupon;

(iv) mailing the redeemable coupon and the firearm safety brochure to Utah residents who have filed an application for a concealed firearm permit; and

(v) collecting from the participating dealers receipts described in Section 76-10-526 and reimbursing the dealers;

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that establish procedures for:

(i) producing and distributing the firearm safety brochures and packets;

(ii) procuring the cable-style gun locks for distribution; and

(iii) administering the redeemable coupon program; and

(e) reporting to the Law Enforcement and Criminal Justice Interim Committee regarding implementation and success of the firearm safety program:

- (i) during the 2016 interim, before November 1; and
- (ii) during the 2018 interim, before June 1.

Section 2. Section 53-10-202.1 is amended to read:

53-10-202.1. Firearm Safety Account.

(1) There is created a restricted account within the General Fund known as the "Firearm Safety Account."

(2) The account shall be funded by appropriations from the Legislature.

(3) Funds in the account may only be used for the [Firearm Safety Program] programs established in Subsection 53-10-202(18).

Section 3. Section 53-10-202.3 is enacted to read:

53-10-202.3. Suicide Prevention Education Program -- Definitions -- Grant requirements.

(1) As used in this section:

(a) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.

(b) "Coordinator" means the state suicide prevention coordinator designated in Section 62A-15-1101.

(c) "Course" means the suicide prevention education course created in Subsection 53-10-202(18)(a)(iv).

(2) There is created a Suicide Prevention Education Program to fund suicide prevention education opportunities for federally licensed firearms dealers who operate a retail establishment open to the public and the dealers' employees.

(3) The bureau shall provide a grant to an employer in Subsection (2) following the criteria provided in accordance with Subsection 62A-15-1101(8)(b).

(4) An employer may apply for a grant of up to \$2,500 under the program.

Section 4. Section 62A-15-1101 is amended to read:

62A-15-1101. Suicide prevention -- Reporting requirements.

(1) As used in the section:

(a) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.

(b) "Division" means the Division of Substance Abuse and Mental Health.

(c) "Intervention" means an effort to prevent a person from attempting suicide.

(d) "Postvention" means mental health intervention after a suicide attempt or death to prevent or contain contagion.

(e) "State suicide prevention coordinator" means an individual designated by the division as described in Subsections (2) and (3).

(2) The division shall appoint a state suicide prevention coordinator to administer a state suicide prevention program composed of suicide prevention, intervention, and postvention programs, services, and efforts.

(3) The state suicide prevention program may include the following components:

(a) delivery of resources, tools, and training to community-based coalitions;

(b) evidence-based suicide risk assessment tools and training;

(c) town hall meetings for building community-based suicide prevention strategies;

(d) suicide prevention gatekeeper training;

(e) training to identify warning signs and to manage an at-risk individual's crisis;

(f) evidence-based intervention training;

(g) intervention skills training; and

(h) postvention training.

(4) The state suicide prevention coordinator shall coordinate with the following to gather statistics, among other duties:

(a) local mental health and substance abuse authorities;

(b) the State Board of Education, including the public education suicide prevention coordinator described in Section 53A-15-1301;

(c) the Department of Health;

(d) health care providers, including emergency rooms;

(e) federal agencies, including the Federal Bureau of Investigation;

(f) other unbiased sources; and

(g) other public health suicide prevention efforts.

(5) The state suicide prevention coordinator shall provide a written report to the Health and Human Services Interim Committee, by the October meeting every year, on:

(a) implementation of the state suicide prevention program, as described in Subsections (2) and (3);

(b) data measuring the effectiveness of each component of the state suicide prevention program;

(c) funds appropriated for each component of the state suicide prevention program; and

(d) five-year trends of suicides in Utah, including subgroups of youths and adults and other

subgroups identified by the state suicide prevention coordinator.

(6) The state suicide prevention coordinator shall report to the Legislature's:

(a) Education Interim Committee, by the October 2015 meeting, jointly with the State Board of Education, on the coordination of suicide prevention programs and efforts with the State Board of Education and the public education suicide prevention coordinator as described in Section 53A-15-1301; and

(b) Health and Human Services Interim Committee, by the October 2017 meeting, statistics on the number of annual suicides in Utah, including how many suicides were committed with a gun, and if so:

(i) where the victim procured the gun and if the gun was legally possessed by the victim;

(ii) if the victim purchased the gun legally and whether a background check was performed before the victim purchased the gun;

(iii) whether the victim had a history of mental illness or was under the treatment of a mental health professional;

(iv) whether any medication or illegal drugs or alcohol were also involved in the suicide; and

(v) if the suicide incident also involved the injury or death of another individual, whether the shooter had a history of domestic violence.

(7) The state suicide prevention coordinator shall consult with the bureau to implement and manage the operation of a firearm safety program, as described in Subsection 53-10-202(18) [and], Section 53-10-202.1, and the Suicide Prevention Education Program described in Section 53-10-202.3.

(8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:

(a) governing the implementation of the state suicide prevention program, consistent with this section[.]; and

(b) in conjunction with the bureau, defining the criteria for employers to apply for grants under the Suicide Prevention Education Program in Section 53-10-202.3, which shall include:

(i) attendance at a suicide prevention education course; and

(ii) display of posters and distribution of the firearm safety brochures or packets created in Subsection 53-10-202(18)(a)(iii), but does not require the distribution of a cable-style gun lock with a firearm if the firearm already has a trigger lock or comparable safety mechanism.

Section 5. Appropriation.

(1) Restricted Fund and Account Transfers. The Legislature authorizes the State Division of

Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere in an appropriations act.

ITEM 1

To General Fund Restricted - Firearm Safety Account

From General Fund	\$9,800
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Schedule of Programs:

General Fund Restricted - Firearm Safety Account	\$9,800
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(2) Operating and Capital Budgets. The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 2

To Bureau of Criminal Identification -
Department of Public Safety

From General Fund Restricted - Firearm Safety Account	\$9,800
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Schedule of Programs:

CITS Bureau of Criminal Identification	\$9,800
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CHAPTER 297**H. B. 391**

Passed March 8, 2017
 Approved March 23, 2017
 Effective May 9, 2017

DRIVER LICENSE REVISIONS

Chief Sponsor: Tim Quinn
 Senate Sponsor: Kevin T. Van Tassell

LONG TITLE**General Description:**

This bill modifies provisions of the Uniform Driver License Act.

Highlighted Provisions:

This bill:

- ▶ removes the requirement for a person to have a taxicab endorsement on the person's driver license to drive a taxicab in the state; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53-3-102, as last amended by Laws of Utah 2016, Chapters 40 and 321
 53-3-202, as last amended by Laws of Utah 2016, Chapters 40, 173, and 321

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

Section 1. Section 53-3-102 is amended to read:**53-3-102. Definitions.**

As used in this chapter:

- (1) "Autocycle" means a motor vehicle that:
 - (a) is designed to travel with three or fewer wheels in contact with the ground;
 - (b) is equipped with a steering wheel; and
 - (c) is equipped with seating that does not require the operator to straddle or sit astride the vehicle.
- (2) "Cancellation" means the termination by the division of a license issued through error or fraud or for which consent under Section 53-3-211 has been withdrawn.
- (3) "Class D license" means the class of license issued to drive motor vehicles not defined as commercial motor vehicles or motorcycles under this chapter.
- (4) "Commercial driver instruction permit" or "CDIP" means a commercial learner permit:
 - (a) issued under Section 53-3-408; or
 - (b) issued by a state or other jurisdiction of domicile in compliance with the standards contained in 49 C.F.R. Part 383.

(5) "Commercial driver license" or "CDL" means a license:

(a) issued substantially in accordance with the requirements of Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with Part 4, Uniform Commercial Driver License Act, which authorizes the holder to drive a class of commercial motor vehicle; and

(b) that was obtained by providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-410(1)(i).

(6) (a) "Commercial driver license motor vehicle record" or "CDL MVR" means a driving record that:

(i) applies to a person who holds or is required to hold a commercial driver instruction permit or a CDL license; and

(ii) contains the following:

(A) information contained in the driver history, including convictions, pleas held in abeyance, disqualifications, and other licensing actions for violations of any state or local law relating to motor vehicle traffic control, committed in any type of vehicle;

(B) driver self-certification status information under Section 53-3-410.1; and

(C) information from medical certification record keeping in accordance with 49 C.F.R. Sec. 383.73(o).

(b) "Commercial driver license motor vehicle record" or "CDL MVR" does not mean a motor vehicle record described in Subsection (30).

(7) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property if the motor vehicle:

(i) has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as determined by federal regulation;

(ii) is designed to transport 16 or more passengers, including the driver; or

(iii) is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

(b) The following vehicles are not considered a commercial motor vehicle for purposes of Part 4, Uniform Commercial Driver License Act:

(i) equipment owned and operated by the United States Department of Defense when driven by any active duty military personnel and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training, and national guard military technicians and civilians who are required to wear military uniforms and are subject to the code of military justice;

(ii) vehicles controlled and driven by a farmer to transport agricultural products, farm machinery, or farm supplies to or from a farm within 150 miles of his farm but not in operation as a motor carrier for hire;

- (iii) firefighting and emergency vehicles;
- (iv) recreational vehicles that are not used in commerce and are driven solely as family or personal conveyances for recreational purposes; and
- (v) vehicles used to provide transportation network services, as defined in Section 13-51-102.
- (8) "Conviction" means any of the following:
- (a) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an administrative proceeding;
- (b) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;
- (c) a plea of guilty or nolo contendere accepted by the court;
- (d) the payment of a fine or court costs; or
- (e) violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.
- (9) "Denial" or "denied" means the withdrawal of a driving privilege by the division to which the provisions of Title 41, Chapter 12a, Part 4, Proof of Owner's or Operator's Security, do not apply.
- (10) "Director" means the division director appointed under Section 53-3-103.
- (11) "Disqualification" means either:
- (a) the suspension, revocation, cancellation, denial, or any other withdrawal by a state of a person's privileges to drive a commercial motor vehicle;
- (b) a determination by the Federal Highway Administration, under 49 C.F.R. Part 386, that a person is no longer qualified to drive a commercial motor vehicle under 49 C.F.R. Part 391; or
- (c) the loss of qualification that automatically follows conviction of an offense listed in 49 C.F.R. Part 383.51.
- (12) "Division" means the Driver License Division of the department created in Section 53-3-103.
- (13) "Downgrade" means to obtain a lower license class than what was originally issued during an existing license cycle.
- (14) "Drive" means:
- (a) to operate or be in physical control of a motor vehicle upon a highway; and
- (b) in Subsections 53-3-414(1) through (3), Subsection 53-3-414(5), and Sections 53-3-417 and 53-3-418, the operation or physical control of a motor vehicle at any place within the state.
- (15) (a) "Driver" means any person who drives, or is in actual physical control of a motor vehicle in any location open to the general public for purposes of vehicular traffic.

(b) In Part 4, Uniform Commercial Driver License Act, "driver" includes any person who is required to hold a CDL under Part 4, Uniform Commercial Driver License Act, or federal law.

(16) "Driving privilege card" means the evidence of the privilege granted and issued under this chapter to drive a motor vehicle to a person whose privilege was obtained without providing evidence of lawful presence in the United States.

(17) "Extension" means a renewal completed in a manner specified by the division.

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

(19) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public, as a matter of right, for traffic.

(20) "Identification card" means a card issued under Part 8, Identification Card Act, to a person for identification purposes.

(21) "Indigent" means that a person's income falls below the federal poverty guideline issued annually by the U.S. Department of Health and Human Services in the Federal Register.

(22) "License" means the privilege to drive a motor vehicle.

(23) (a) "License certificate" means the evidence of the privilege issued under this chapter to drive a motor vehicle.

(b) "License certificate" evidence includes a:

- (i) regular license certificate;
- (ii) limited-term license certificate;
- (iii) driving privilege card;
- (iv) CDL license certificate;
- (v) limited-term CDL license certificate;
- (vi) temporary regular license certificate; and
- (vii) temporary limited-term license certificate.

(24) "Limited-term commercial driver license" or "limited-term CDL" means a license:

(a) issued substantially in accordance with the requirements of Title XII, Pub. L. No. 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with Part 4, Uniform Commercial Driver License Act, which authorizes the holder to drive a class of commercial motor vehicle; and

(b) that was obtained by providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-410(1)(i)(ii).

(25) "Limited-term identification card" means an identification card issued under this chapter to a person whose card was obtained by providing evidence of lawful presence in the United States

with one of the document requirements described in Subsection 53-3-804(2)(i)(ii).

(26) "Limited-term license certificate" means the evidence of the privilege granted and issued under this chapter to drive a motor vehicle to a person whose privilege was obtained providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-205(8)(a)(ii)(B).

(27) "Motorboat" means the same as that term is defined in Section 73-18-2.

(28) "Motorcycle" means every motor vehicle, other than a tractor, having a seat or saddle for the use of the rider and designed to travel with not more than three wheels in contact with the ground.

(29) "Motor vehicle" means the same as that term is defined in Section 41-1a-102.

(30) "Motor vehicle record" or "MVR" means a driving record under Subsection 53-3-109(6)(a).

(31) "Office of Recovery Services" means the Office of Recovery Services, created in Section 62A-11-102.

(32) (a) "Owner" means a person other than a lien holder having an interest in the property or title to a vehicle.

(b) "Owner" includes a person entitled to the use and possession of a vehicle subject to a security interest in another person but excludes a lessee under a lease not intended as security.

(33) (a) "Private passenger carrier" means any motor vehicle for hire that is:

(i) designed to transport 15 or fewer passengers, including the driver; and

(ii) operated to transport an employee of the person that hires the motor vehicle.

(b) "Private passenger carrier" does not include [a motor vehicle driven]:

(i) a taxicab;

[~~(i)~~] (ii) a motor vehicle driven by a transportation network driver as defined in Section 13-51-102;

[~~(ii)~~] (iii) a motor vehicle driven for transportation network services as defined in Section 13-51-102; and

[~~(iii)~~] (iv) a motor vehicle driven for a transportation network company as defined in Section 13-51-102 and registered with the Division of Consumer Protection as described in Section 13-51-104.

(34) "Regular identification card" means an identification card issued under this chapter to a person whose card was obtained by providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-804(2)(i)(i).

(35) "Regular license certificate" means the evidence of the privilege issued under this chapter to drive a motor vehicle whose privilege was

obtained by providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-205(8)(a)(ii)(A).

(36) "Renewal" means to validate a license certificate so that it expires at a later date.

(37) "Reportable violation" means an offense required to be reported to the division as determined by the division and includes those offenses against which points are assessed under Section 53-3-221.

(38) (a) "Resident" means an individual who:

(i) has established a domicile in this state, as defined in Section 41-1a-202, or regardless of domicile, remains in this state for an aggregate period of six months or more during any calendar year;

(ii) engages in a trade, profession, or occupation in this state, or who accepts employment in other than seasonal work in this state, and who does not commute into the state;

(iii) declares himself to be a resident of this state by obtaining a valid Utah driver license certificate or motor vehicle registration; or

(iv) declares himself a resident of this state to obtain privileges not ordinarily extended to nonresidents, including going to school, or placing children in school without paying nonresident tuition or fees.

(b) "Resident" does not include any of the following:

(i) a member of the military, temporarily stationed in this state;

(ii) an out-of-state student, as classified by an institution of higher education, regardless of whether the student engages in any type of employment in this state;

(iii) a person domiciled in another state or country, who is temporarily assigned in this state, assigned by or representing an employer, religious or private organization, or a governmental entity; or

(iv) an immediate family member who resides with or a household member of a person listed in Subsections (38)(b)(i) through (iii).

(39) "Revocation" means the termination by action of the division of a licensee's privilege to drive a motor vehicle.

(40) (a) "School bus" means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students to and from home and school, or to and from school sponsored events.

(b) "School bus" does not include a bus used as a common carrier as defined in Section 59-12-102.

(41) "Suspension" means the temporary withdrawal by action of the division of a licensee's privilege to drive a motor vehicle.

(42) "Taxicab" means any class D motor vehicle transporting any number of passengers for hire and

that is subject to state or federal regulation as a taxi.

Section 2. Section 53-3-202 is amended to read:

53-3-202. Drivers must be licensed -- Violation.

(1) A person may not drive a motor vehicle or an autocycle on a highway in this state unless the person is:

(a) granted the privilege to operate a motor vehicle by being licensed as a driver by the division under this chapter;

(b) driving an official United States Government class D motor vehicle with a valid United States Government driver permit or license for that type of vehicle;

(c) (i) driving a road roller, road machinery, or any farm tractor or implement of husbandry temporarily drawn, moved, or propelled on the highways; and

(ii) driving the vehicle described in Subsection (1)(c)(i) in conjunction with a construction or agricultural activity;

(d) a nonresident who is at least 16 years of age and younger than 18 years of age who has in the nonresident's immediate possession a valid license certificate issued to the nonresident in the nonresident's home state or country and is driving in the class or classes identified on the home state license certificate, except those persons referred to in Part 6, Drivers' License Compact, of this chapter;

(e) a nonresident who is at least 18 years of age and who has in the nonresident's immediate possession a valid license certificate issued to the nonresident in the nonresident's home state or country if driving in the class or classes identified on the home state license certificate, except those persons referred to in Part 6, Drivers' License Compact, of this chapter;

(f) driving under a learner permit in accordance with Section 53-3-210.5;

(g) driving with a temporary license certificate issued in accordance with Section 53-3-207; or

(h) exempt under Title 41, Chapter 22, Off-Highway Vehicles.

(2) A person may not drive or, while within the passenger compartment of a motor vehicle, exercise any degree or form of physical control of a motor vehicle being towed by a motor vehicle upon a highway unless the person:

(a) holds a valid license issued under this chapter for the type or class of motor vehicle being towed; or

(b) is exempted under either Subsection (1)(b) or (1)(c).

(3) (a) A person may not drive a motor vehicle as a taxicab on a highway of this state unless the person has a ~~taxicab endorsement issued by the division~~

~~on the person's license certificate~~ valid class D driver license issued by the division.

(b) A person may not drive a motor vehicle as a private passenger carrier on a highway of this state unless the person has:

(i) a taxicab endorsement issued by the division on the person's license certificate; or

(ii) a commercial driver license with:

(A) a taxicab endorsement;

(B) a passenger endorsement; or

(C) a school bus endorsement.

(c) Nothing in Subsection (3)(b) is intended to exempt a person driving a motor vehicle as a private passenger carrier from regulation under other statutory and regulatory schemes, including:

(i) 49 C.F.R. Parts 350-399, Federal Motor Carrier Safety Regulations;

(ii) Title 34, Chapter 36, Transportation of Workers, and rules adopted by the Labor Commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iii) Title 72, Chapter 9, Motor Carrier Safety Act, and rules adopted by the Motor Carrier Division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) (a) Except as provided in Subsections (4)(b), (c), (d), and (e) a person may not operate:

(i) a motorcycle unless the person has a valid class D driver license and a motorcycle endorsement issued under this chapter;

(ii) a street legal all-terrain vehicle unless the person has a valid class D driver license; or

(iii) a motor-driven cycle unless the person has a valid class D driver license and a motorcycle endorsement issued under this chapter.

(b) A person operating a moped, as defined in Section 41-6a-102, is not required to have a motorcycle endorsement issued under this chapter.

(c) A person operating an electric assisted bicycle, as defined in Section 41-6a-102, is not required to have a valid class D driver license or a motorcycle endorsement issued under this chapter.

(d) A person is not required to have a valid class D driver license if the person is:

(i) operating a motor assisted scooter, as defined in Section 41-6a-102, in accordance with Section 41-6a-1115; or

(ii) operating an electric personal assistive mobility device, as defined in Section 41-6a-102, in accordance with Section 41-6a-1116.

(e) A person operating an autocycle is not required to have a motorcycle endorsement issued under this chapter.

(5) A person who violates this section is guilty of an infraction.

CHAPTER 298**H. B. 393**

Passed March 9, 2017

Approved March 23, 2017

Effective July 1, 2017

VEHICLE TOWING AMENDMENTS

Chief Sponsor: A. Cory Maloy
Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends provisions related to tow truck operations.

Highlighted Provisions:

This bill:

- ▶ requires tow truck operators to have a criminal background check and valid medical examiner's certificate before performing tow truck operations;
- ▶ requires the Department of Transportation to make certain consumer protection information electronically available to the public;
- ▶ provides for circumstances where the Department of Transportation may suspend a tow truck motor carrier's and tow truck operator's authorized towing certificate;
- ▶ amends provisions related to certification of tow truck operators and tow truck carriers;
- ▶ creates the Towing Advisory Board to make recommendations regarding towing-related rules to:
 - the Department of Transportation;
 - the Department of Public Safety; and
 - the State Tax Commission;
- ▶ requires the Towing Advisory Board to report to the Transportation Interim Committee;
- ▶ prohibits a member of the Towing Advisory Board from receiving compensation or reimbursement for expenses related to the member's service on the board; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 41-6a-1407, as last amended by Laws of Utah 2015, Chapter 412
72-9-601, as last amended by Laws of Utah 2005, Chapter 2
72-9-602, as last amended by Laws of Utah 2009, Chapter 183
72-9-603, as last amended by Laws of Utah 2016, Chapters 103 and 148
72-9-604, as last amended by Laws of Utah 2014, Chapter 249

ENACTS:

72-9-606, Utah Code Annotated 1953

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

Section 1. Section 41-6a-1407 is amended to read:

41-6a-1407. Removal of unattended vehicles prohibited without authorization -- Penalties.

(1) In cases not amounting to burglary or theft of a vehicle, a person may not remove an unattended vehicle without prior authorization of:

- (a) a peace officer;
- (b) a law enforcement agency;
- (c) a highway authority having jurisdiction over the highway on which there is an unattended vehicle; or
- (d) the owner or person in lawful possession or control of the real property.

(2) (a) An authorization from a person specified under Subsection (1)(a), (b), or (c) shall be in a form specified by the Motor Vehicle Division.

(b) The removal of the unattended vehicle shall comply with requirements of Section 41-6a-1406.

(3) The removal of the unattended vehicle authorized under Subsection (1)(d) shall comply with the requirements of Section 72-9-603.

(4) A person who violates Subsection (1) or (3) is guilty of an infraction.

Section 2. Section 72-9-601 is amended to read:

72-9-601. Tow truck motor carrier requirements -- Authorized towing certificates.

(1) In addition to the requirements of this chapter, a tow truck motor carrier shall:

(a) ensure that all the tow truck motor carrier's tow truck ~~drivers~~ operators are properly:

- (i) trained to operate tow truck equipment;
- (ii) licensed, as required under Title 53, Chapter 3, Uniform Driver License Act; and
- (iii) complying with the requirements under Sections 41-6a-1406 and 72-9-603; ~~and~~

(b) ensure that all the tow truck motor carrier's tow truck operators:

- (i) have cleared the criminal background check required in Subsections 72-9-602(2) and (3); and
- (ii) obtain and maintain a valid medical examiner's certificate under 49 C.F.R. Sec. 391.45; and

~~(c)~~ (c) obtain and display a current authorized towing certificate for the tow truck motor carrier, and each tow truck and ~~driver~~ tow truck operator, as required under Section 72-9-602.

(2) A tow truck motor carrier may only perform a towing service described in Section 41-6a-1406, 41-6a-1407, or 72-9-603, with a tow truck and ~~driver~~ tow truck operator that has a current authorized towing certificate under this part.

Section 3. Section 72-9-602 is amended to read:

72-9-602. Towing inspections, investigations, and certification -- Equipment requirements -- Consumer information.

(1) (a) The department shall inspect, investigate, and certify tow truck motor carriers, tow trucks, and tow truck ~~drivers~~ operators to ensure compliance with this chapter and compliance with Sections 41-6a-1406 and 41-6a-1407.

(b) The inspection, investigation, and certification shall be conducted prior to any tow truck operation and at least every two years thereafter.

(c) (i) The department shall issue an authorized towing certificate for each tow truck motor carrier, tow truck, and ~~driver~~ tow truck operator that complies with this part and rules made by the department in accordance with Subsection (6).

(ii) The authorized towing certificate described in this section shall expire two years from the month of issuance.

(d) The department may charge a biennial fee established under Section 63J-1-504 to cover the cost of the inspection, investigation, and certification required under this part.

(2) (a) To qualify for an authorized towing certificate described in Subsection (1), a tow truck operator shall:

(i) submit to a fingerprint-based criminal background check, as described in Subsection (3); and

(ii) obtain and maintain a valid medical examiner's certificate under 49 C.F.R. Sec. 391.45.

(b) For each tow truck operator employed, a tow truck motor carrier shall:

(i) maintain records of the updated background checks and a valid medical examiner's certificate, as required under this section; and

(ii) biennially, make the records described in Subsection (2)(b)(i) available to the department.

(3) (a) Before a tow truck motor carrier may hire an individual as a tow truck operator and receive an authorized towing certificate from the department as required in Subsection (2), the tow truck motor carrier shall require the individual to submit to the Department of Public Safety:

(i) a fingerprint card in a form acceptable to the Department of Public Safety; and

(ii) consent to a state and regional fingerprint background check by the Bureau of Criminal Identification.

(b) The Bureau of Criminal Identification shall:

(i) check the fingerprints submitted under this section against the applicable state and regional criminal records databases;

(ii) report the results of the background check to the requesting tow truck motor carrier;

(iii) maintain a separate file of fingerprints submitted under this part for search by future submissions to the local and regional criminal records databases, including latent prints; and

(iv) establish a privacy risk mitigation strategy to ensure that the entity only receives notifications for the individuals with whom the entity maintains an authorizing relationship.

(c) (i) Except for an individual hired as a tow truck operator before July 1, 2017, the department shall deny an individual's authorized towing certification, and the individual may not operate a tow truck in this state, if the individual has been convicted of any felony offense within the previous two years.

(ii) The department may deny or revoke the authorized towing certification of a tow truck motor carrier that employs an individual who fails to comply with the background check required in this section.

~~(2)~~ (4) The department shall make ~~consumer protection information~~ available to the public ~~that may use a tow truck motor carrier~~ electronically accessible consumer protection information, including a list of all tow truck motor carriers that are currently certified by the department.

(5) The department may deny a tow truck motor carrier's certification if the department has evidence that a tow truck motor carrier's tow truck operator fails to provide copies of the Utah Consumer Bill of Rights Regarding Towing to vehicle owners, as required under Section 72-9-603.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the inspection, investigation, and certification procedures described in this section.

Section 4. Section 72-9-603 is amended to read:

72-9-603. Towing notice requirements -- Cost responsibilities -- Abandoned vehicle title restrictions -- Rules for maximum rates and certification.

(1) Except for a tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, after performing a tow truck service that is being done without the vehicle, vessel, or outboard motor owner's knowledge, the tow truck operator or the tow truck motor carrier shall:

(a) immediately upon arriving at the place of storage or impound of the vehicle, vessel, or outboard motor:

(i) send a report of the removal to the Motor Vehicle Division that complies with the requirements of Subsection 41-6a-1406(4)(b); and

(ii) contact the law enforcement agency having jurisdiction over the area where the vehicle, vessel,

or outboard motor was picked up and notify the agency of the:

(A) location of the vehicle, vessel, or outboard motor;

(B) date, time, and location from which the vehicle, vessel, or outboard motor was removed;

(C) reasons for the removal of the vehicle, vessel, or outboard motor;

(D) person who requested the removal of the vehicle, vessel, or outboard motor; and

(E) vehicle, vessel, or outboard motor's description, including its identification number and license number or other identification number issued by a state agency;

(b) within two business days of performing the tow truck service under Subsection (1)(a), send a certified letter to the last-known address of each party described in Subsection 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor obtained from the Motor Vehicle Division or, if the person has actual knowledge of the party's address, to the current address, notifying the party of the:

(i) location of the vehicle, vessel, or outboard motor;

(ii) date, time, and location from which the vehicle, vessel, or outboard motor was removed;

(iii) reasons for the removal of the vehicle, vessel, or outboard motor;

(iv) person who requested the removal of the vehicle, vessel, or outboard motor;

(v) a description, including its identification number and license number or other identification number issued by a state agency; and

(vi) costs and procedures to retrieve the vehicle, vessel, or outboard motor; and

(c) upon initial contact with the owner whose vehicle, vessel, or outboard motor was removed, provide the owner with a copy of the Utah Consumer Bill of Rights Regarding Towing established by the department in Subsection (7)(e).

(2) (a) Until the tow truck operator or tow truck motor carrier reports the removal as required under Subsection (1)(a), a tow truck operator, tow truck motor carrier, or impound yard may not:

(i) collect any fee associated with the removal; or

(ii) begin charging storage fees.

(b) (i) Except as provided in Subsection (2)(c), a tow truck operator or tow truck motor carrier may not perform a tow truck service without the vehicle, vessel, or outboard motor owner's or a lien holder's knowledge at either of the following locations without signage that meets the requirements of Subsection (2)(b)(ii):

(A) a mobile home park as defined in Section 57-16-3; or

(B) a multifamily dwelling of more than eight units.

(ii) Signage under Subsection (2)(b)(i) shall display:

(A) where parking is subject to towing; and

(B) (I) the Internet website address that provides access to towing database information in accordance with Section 41-6a-1406; or

(II) one of the following:

(Aa) the name and phone number of the tow truck operator or tow truck motor carrier that performs a tow truck service for the locations listed under Subsection (2)(b)(i); or

(Bb) the name of the mobile home park or multifamily dwelling and the phone number of the mobile home park or multifamily dwelling manager or management office that authorized the vehicle, vessel, or outboard motor to be towed.

(c) Signage is not required under Subsection (2)(b) for parking in a location:

(i) that is prohibited by law; or

(ii) if it is reasonably apparent that the location is not open to parking.

(d) Nothing in Subsection (2)(b) restricts the ability of a mobile home park as defined in Section 57-16-3 or a multifamily dwelling from instituting and enforcing regulations on parking.

(3) The party described in Subsection 41-6a-1406(5)(a) with an interest in a vehicle, vessel, or outboard motor lawfully removed is only responsible for paying:

(a) the tow truck service and storage fees set in accordance with Subsection (7); and

(b) the administrative impound fee set in Section 41-6a-1406, if applicable.

(4) (a) The fees under Subsection (3) are a possessory lien on the vehicle, vessel, or outboard motor and any nonlife essential items contained in the vehicle, vessel, or outboard motor that are owned by the owner of the vehicle [~~and securely stored by the tow truck operator~~], vessel, or outboard motor until paid.

(b) The tow truck operator or tow truck motor carrier shall securely store the vehicle, vessel, or outboard motor and items described in Subsection (4)(a) until a party described in Subsection 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor:

(i) pays the fees described in Subsection (3); and

(ii) removes the vehicle, vessel, or outboard motor from the secure storage facility.

(5) (a) A vehicle, vessel, or outboard motor shall be considered abandoned if a party described in Subsection 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor does not, within 30 days after notice has been sent under Subsection (1)(b):

(i) pay the fees described in Subsection (3); and

(ii) remove the vehicle, vessel, or outboard motor from the secure storage facility.

[45] (b) A person may not request a transfer of title to an abandoned vehicle, vessel, or outboard motor until at least 30 days after notice has been sent under Subsection (1)(b).

(6) (a) A tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current fees, rates, and acceptable forms of payment for tow truck service and storage of a vehicle in accordance with rules established under Subsection (7).

(b) A tow truck operator, a tow truck motor carrier, and an impound yard shall accept payment by cash and debit or credit card for a tow truck service under Subsection (1) or any service rendered, performed, or supplied in connection with a tow truck service under Subsection (1).

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Department of Transportation shall:

(a) subject to the restriction in Subsection (8), set maximum rates that:

(i) a tow truck motor carrier may charge for the tow truck service of a vehicle, vessel, or outboard motor that are transported in response to:

(A) a peace officer dispatch call;

(B) a motor vehicle division call; and

(C) any other call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal; and

(ii) an impound yard may charge for the storage of a vehicle, vessel, or outboard motor stored as a result of one of the conditions listed under Subsection (7)(a)(i);

(b) establish authorized towing certification requirements, not in conflict with federal law, related to incident safety, clean-up, and hazardous material handling;

(c) specify the form and content of the posting and disclosure of fees and rates charged and acceptable forms of payment by a tow truck motor carrier or impound yard;

(d) set a maximum rate for an administrative fee that a tow truck motor carrier may charge for reporting the removal as required under Subsection (1)(a)(i) and providing notice of the removal to each party described in Subsection 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor as required in Subsection (1)(b); and

(e) establish a Utah Consumer Bill of Rights Regarding Towing form that contains specific information regarding:

(i) a vehicle owner's rights and responsibilities if the owner's vehicle is towed;

(ii) identifies the maximum rates that a tow truck motor carrier may charge for the tow truck service of a vehicle, vessel, or outboard motor that is transported in response to a call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal; and

(iii) identifies the maximum rates that an impound yard may charge for the storage of vehicle, vessel, or outboard motor that is transported in response to a call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal.

(8) An impound yard may not charge a fee for the storage of an impounded vehicle, vessel, or outboard motor if:

(a) the vehicle, vessel, or outboard motor is being held as evidence; and

(b) the vehicle, vessel, or outboard motor is not being released to a party described in Subsection 41-6a-1406(5)(a), even if the party satisfies the requirements to release the vehicle, vessel, or outboard motor under Section 41-6a-1406.

(9) In addition to the maximum rates established under Subsection (7) and when receiving payment by credit card, a tow truck operator, a tow truck motor carrier, or an impound yard may charge a credit card processing fee [~~in an amount equal to the lesser of: (a) the actual cost of processing the credit card transaction; or (b)] of 3% of the transaction total.~~

(10) When a tow truck motor carrier or impound lot is in possession of a vehicle, vessel, or outboard motor as a result of a tow service that was performed without the consent of the owner, and that was not ordered by a peace officer or a person acting on behalf of a law enforcement agency, the tow truck motor carrier or impound yard shall make personnel available:

(a) by phone 24 hours a day, seven days a week; and

(b) to release the impounded vehicle, vessel, or outboard motor to the owner within one hour of when the owner calls the tow truck motor carrier or impound yard.

Section 5. Section 72-9-604 is amended to read:

72-9-604. Regulatory powers of local authorities -- Tow trucks.

~~[(1) (a) Except as provided in Subsection (1)(b), a county or municipal legislative or governing body may enact or enforce any ordinance, regulation, or rule pertaining to a tow truck or tow truck motor carrier that does not conflict with this part.]~~

(1) (a) Notwithstanding any other provision of law, a political subdivision of this state may neither enact nor enforce any ordinance, regulation, or rule pertaining to a tow truck motor carrier, tow truck operator, or tow truck that conflicts with:

(i) any provision of this part;

(ii) Section 41-6a-1401;

(iii) Section 41-6a-1407; or

(iv) rules made by the department under this part.

(b) A county or municipal legislative governing body may not charge a fee for the storage of an impounded vehicle, vessel, or outboard motor if the county or municipality:

(i) is holding the vehicle, vessel, or outboard motor as evidence; and

(ii) will not release the vehicle, vessel, or outboard motor to the registered owner, lien holder, or the owner's agent even if the registered owner, lien holder, or the owner's agent satisfies the requirements to release the vehicle, vessel, or outboard motor under Section 41-6a-1406.

(2) A tow truck motor carrier that has a county or municipal business license for a place of business located within that county or municipality may not be required to obtain another business license in order to perform a tow truck service in another county or municipality if there is not a business location in the other county or municipality.

(3) A county or municipal legislative or governing body may not require a tow truck motor carrier, tow truck, or tow truck operator that has been issued a current, authorized towing certificate by the department, as described in Section 72-9-602, to obtain an additional towing certificate.

[(3)] (4) A county or municipal legislative body may require an annual tow truck safety inspection in addition to the inspections required under Sections 53-8-205 and 72-9-602 if:

(a) no fee is charged for the inspection; and

(b) the inspection complies with federal motor carrier safety regulations.

[(4)] (5) A tow truck shall be subject to only one annual safety inspection under Subsection [(3)] (4)(b). A county or municipality that requires the additional annual safety inspection shall accept the same inspection performed by another county or municipality.

Section 6. Section 72-9-606 is enacted to read:

72-9-606. Towing Advisory Board created -- Appointment -- Terms -- Meetings -- Per diem and expenses -- Duties.

(1) There is created within the department the Towing Advisory Board consisting of the following 13 members:

(a) one member of the Senate appointed by the president of the Senate;

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

(c) the executive director of the department, or the executive director's designee;

(d) the chair of the State Tax Commission, or the chair's designee;

(e) the commissioner of the Department of Public Safety, or the commissioner's designee;

(f) two individuals appointed by the Utah Association of Counties;

(g) two individuals appointed by the Utah League of Cities and Towns;

(h) two individuals from the state's towing industry, appointed by the governor; and

(i) two individuals representing private property owners in the state, appointed by the governor.

(2) (a) A person appointed to the board as described in Subsections (1)(a), (b), and (f) through (i) shall:

(i) except as provided in Subsection (2)(b), be appointed to a four-year term; and

(ii) serve from the date of appointment until a replacement is appointed.

(b) Each person or organization appointing members as described in Subsections (1)(f) through (i) shall designate one of those members to serve an initial term of two years.

(3) When a vacancy occurs in the appointed membership for any reason, the replacement shall be appointed for the unexpired term beginning the day following the expiration of the preceding term.

(4) The board shall elect a chair and vice chair at the first regular meeting of each calendar year.

(5) The board shall meet at least twice each year and at the discretion of the chair.

(6) Any seven voting members constitute a quorum for the transaction of business that comes before the board.

(7) A member of the board may not receive compensation, benefits, per diem, or travel expenses for the member's service.

(8) The board shall advise the department, the Department of Public Safety, and the State Tax Commission on interpretation and adoption of rules, and implementation of this chapter and other issues related to tow truck motor carriers, tow trucks, tow truck operators, and impound yards, including advice on developing standards for:

(a) private property towing notice and signage requirements; and

(b) due process procedures for contested towing matters.

(9) The department, the Department of Public Safety, and the State Tax Commission shall provide staff support to the board.

(10) The board shall annually report the board's actions and recommendations to the Transportation Interim Committee before November 30.

Section 7. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 299**H. B. 396**

Passed March 9, 2017

Approved March 23, 2017

Effective July 1, 2018

**MEDICAL SCHOOL GRADUATES
ASSOCIATE PHYSICIAN LICENSURE**

Chief Sponsor: Stewart E. Barlow
 Senate Sponsor: Brian E. Shiozawa
 Cosponsors: Susan Duckworth
 Stephen G. Handy
 Sandra Hollins
 Michael S. Kennedy
 Paul Ray
 Edward H. Redd
 Douglas V. Sagers
 Scott D. Sandall
 Robert M. Spendlove

LONG TITLE**General Description:**

This bill creates a restricted license enabling a medical school graduate to practice medicine under certain conditions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the restricted associate physician license;
- ▶ describes licensure requirements;
- ▶ describes the scope of practice of a restricted associate physician license;
- ▶ permits a qualified physician to enter into a cooperative practice arrangement with a licensed associate physician;
- ▶ describes a cooperative practice arrangement;
- ▶ requires the Division of Occupational and Professional Licensing to make rules regarding:
 - the approval of cooperative practice arrangements; and
 - educational methods and programs for associate physicians; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

58-67-102, as last amended by Laws of Utah 2013, Chapter 262
 58-67-303, as last amended by Laws of Utah 2011, Chapter 206
 58-67-304, as last amended by Laws of Utah 2011, Chapters 161 and 214
 58-67-502, as last amended by Laws of Utah 2015, Chapters 110 and 206
 58-67-601, as last amended by Laws of Utah 2013, Chapter 364
 58-68-102, as last amended by Laws of Utah 2013, Chapter 262
 58-68-303, as last amended by Laws of Utah 2005, Chapter 94

58-68-304, as last amended by Laws of Utah 2011, Chapters 161 and 214

58-68-502, as last amended by Laws of Utah 2015, Chapters 110 and 206

58-68-601, as last amended by Laws of Utah 2013, Chapter 364

ENACTS:

58-67-302.8, Utah Code Annotated 1953

58-67-807, Utah Code Annotated 1953

58-68-302.5, Utah Code Annotated 1953

58-68-807, Utah Code Annotated 1953

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

Section 1. Section 58-67-102 is amended to read:**58-67-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Ablative procedure" means a procedure that is expected to excise, vaporize, disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium: YAG lasers, and excluding hair removal.

(2) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.

(3) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, in accordance with a fine schedule established by the division in collaboration with the board, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(4) "Associate physician" means an individual licensed under Section 58-67-302.8.

[4] (5) "Board" means the Physicians Licensing Board created in Section 58-67-201.

(6) "Collaborating physician" means an individual licensed under Section 58-67-302 who enters into a collaborative practice arrangement with an associate physician.

(7) "Collaborative practice arrangement" means the arrangement described in Section 58-67-807.

[4] (8) (a) "Cosmetic medical device" means tissue altering energy based devices that have the potential for altering living tissue and that are used to perform ablative or nonablative procedures, such as American National Standards Institute (ANSI) designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices, and excludes ANSI designated Class IIIa and lower powered devices.

(b) Notwithstanding Subsection [4] (8)(a), if an ANSI designated Class IIIa and lower powered device is being used to perform an ablative procedure, the device is included in the definition of cosmetic medical device under Subsection [4] (8)(a).

[~~6~~] (9) “Cosmetic medical procedure”:

(a) includes the use of cosmetic medical devices to perform ablative or nonablative procedures; and

(b) does not include a treatment of the ocular globe such as refractive surgery.

[~~7~~] (10) “Diagnose” means:

(a) to examine in any manner another person, parts of a person’s body, substances, fluids, or materials excreted, taken, or removed from a person’s body, or produced by a person’s body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection [~~7~~] (10)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection [~~7~~] (10)(a); or

(d) to make an examination or determination as described in Subsection [~~7~~] (10)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

[~~8~~] (11) “LCME” means the Liaison Committee on Medical Education of the American Medical Association.

[~~9~~] (12) “Medical assistant” means an unlicensed individual working under the indirect supervision of a licensed physician and surgeon and engaged in specific tasks assigned by the licensed physician and surgeon in accordance with the standards and ethics of the profession.

(13) “Medically underserved area” means a geographic area in which there is a shortage of primary care health services for residents, as determined by the Department of Health.

(14) “Medically underserved population” means a specified group of people living in a defined geographic area with a shortage of primary care health services, as determined by the Department of Health.

[~~10~~] (15) (a) (i) “Nonablative procedure” means a procedure that is expected or intended to alter living tissue, but is not intended or expected to excise, vaporize, disintegrate, or remove living tissue.

(ii) Notwithstanding Subsection [~~10~~] (15)(a)(i), nonablative procedure includes hair removal.

(b) “Nonablative procedure” does not include:

(i) a superficial procedure as defined in Section 58-1-102;

(ii) the application of permanent make-up; or

(iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title

who is acting within the individual’s scope of practice.

[~~11~~] (16) “Physician” means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

[~~12~~] (17) (a) “Practice of medicine” means:

(i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, including to perform cosmetic medical procedures, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state;

(ii) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered;

(iii) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection [~~12~~] (17)(a) whether or not for compensation; or

(iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation “doctor,” “doctor of medicine,” “physician,” “surgeon,” “physician and surgeon,” “Dr.,” “M.D.,” or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of medicine degree but is not a licensed physician and surgeon in Utah may use the designation “M.D.” if it is followed by “Not Licensed” or “Not Licensed in Utah” in the same size and style of lettering.

(b) The practice of medicine does not include:

(i) except for an ablative medical procedure as provided in Subsection [~~12~~] (17)(b)(ii), the conduct described in Subsection [~~12~~] (17)(a)(i) that is performed in accordance with a license issued under another chapter of this title;

(ii) an ablative cosmetic medical procedure if the scope of practice for the person performing the ablative cosmetic medical procedure includes the authority to operate or perform a surgical procedure; or

(iii) conduct under Subsection 58-67-501(2).

[~~13~~] (18) “Prescription device” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or

state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

[44] (19) "Prescription drug" means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

[45] (20) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

[46] (21) "Unlawful conduct" [is-as] means the same as that term is defined in Sections 58-1-501 and 58-67-501.

[47] (22) "Unprofessional conduct" [is-as] means the same as that term is defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Section 2. Section 58-67-302.8 is enacted to read:

58-67-302.8. Restricted licensing of an associate physician.

(1) An individual may apply for a restricted license as an associate physician if the individual:

(a) meets the requirements described in Subsections 58-67-302(1)(a) through (c), (1)(d)(i), and (1)(g) through (j);

(b) successfully completes Step 1 and Step 2 of the United States Medical Licensing Examination or the equivalent steps of another board-approved medical licensing examination:

(i) within three years after the day on which the applicant graduates from a program described in Subsection 58-67-302(1)(d)(i); and

(ii) within two years before applying for a restricted license as an associate physician; and

(c) is not currently enrolled in and has not completed a residency program.

(2) Before a licensed associate physician may engage in the practice of medicine as described in Subsection (3), the licensed associate physician shall:

(a) enter into a collaborative practice arrangement described in Section 58-67-807 within six months after the associate physician's initial licensure; and

(b) receive division approval of the collaborative practice arrangement.

(3) An associate physician's scope of practice is limited to primary care services to medically underserved populations or in medically underserved areas within the state.

Section 3. Section 58-67-303 is amended to read:

58-67-303. Term of license -- Expiration -- Renewal.

(1) (a) Except as provided in Section 58-67-302.7, the division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with:

(a) continuing education renewal requirements; and

(b) the requirement for designation of a contact person and alternate contact person for access to medical records and notice to patients as required by Subsections 58-67-304(1)(b) and (c).

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

(4) An individual may not be licensed as an associate physician for more than a total of four years.

Section 4. Section 58-67-304 is amended to read:

58-67-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)(i); [and]

(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee[-]; and

(d) if the licensee is an associate physician licensed under Section 58-67-302.8, successfully complete the educational methods and programs described in Subsection 58-67-807(4).

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following:

removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest.”

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician’s license under this chapter, inform the Department of Health in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

Section 5. Section 58-67-502 is amended to read:

58-67-502. Unprofessional conduct.

(1) “Unprofessional conduct” includes, in addition to the definition in Section 58-1-501:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule;

(b) making a material misrepresentation regarding the qualifications for licensure under Section 58-67-302.7 or Section 58-67-302.8; or

(c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable.

(2) “Unprofessional conduct” does not include, in compliance with Section 58-85-103:

(a) obtaining an investigational drug or investigational device;

(b) administering the investigational drug to an eligible patient; or

(c) treating an eligible patient with the investigational drug or investigational device.

Section 6. Section 58-67-601 is amended to read:

58-67-601. Mentally incompetent or incapacitated physician.

(1) As used in this section:

(a) “Incapacitated person” means a person who is incapacitated, as defined in Section 75-1-201.

(b) “Mental illness” [is-as] means the same as that term is defined in Section 62A-15-602.

(c) “Physician” means an individual licensed under this chapter.

(2) If a court of competent jurisdiction determines a physician is an incapacitated person or that the physician has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court’s ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the physician with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the physician’s own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician’s testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the physician has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the physician’s patients or the general public.

(c) (i) Failure of a physician to submit to the examination ordered under this section is a ground for the division’s immediate suspension of the physician’s license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the physician and was not related directly to the illness or incapacity of the physician.

(5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the physician's patients or the general public.

(6) A physician whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the physician, under procedures established by division rule, regarding any change in the physician's condition, to determine whether:

(a) the physician is or is not able to safely and competently engage in the practice of medicine; and

(b) the physician is qualified to have the physician's license to practice under this chapter restored completely or in part.

Section 7. Section 58-67-807 is enacted to read:

58-67-807. Collaborative practice arrangement.

(1) (a) The division, in consultation with the board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the approval of a collaborative practice arrangement.

(b) The division shall require a collaborative practice arrangement to:

(i) limit the associate physician to providing primary care services to medically underserved populations or in medically underserved areas within the state;

(ii) be consistent with the skill, training, and competence of the associate physician;

(iii) specify jointly agreed-upon protocols, or standing orders for the delivery of health care services by the associate physician;

(iv) provide complete names, home and business addresses, zip codes, and telephone numbers of the collaborating physician and the associate physician;

(v) list all other offices or locations besides those listed in Subsection (1)(b)(iv) where the collaborating physician authorizes the associate physician to prescribe;

(vi) require at every office where the associate physician is authorized to prescribe in collaboration with a physician a prominently displayed disclosure statement informing patients that patients may be seen by an associate physician and have the right to see the collaborating physician;

(vii) specify all specialty or board certifications of the collaborating physician and all certifications of the associate physician;

(viii) specify the manner of collaboration between the collaborating physician and the associate physician, including how the collaborating physician and the associate physician shall:

(A) engage in collaborative practice consistent with each professional's skill, training, education, and competence;

(B) maintain geographic proximity, except as provided in Subsection (1)(d); and

(C) provide oversight of the associate physician during the absence, incapacity, infirmity, or emergency of the collaborating physician;

(ix) describe the associate physician's controlled substance prescriptive authority in collaboration with the collaborating physician, including:

(A) a list of the controlled substances the collaborating physician authorizes the associate physician to prescribe; and

(B) documentation that the authorization to prescribe the controlled substances is consistent with the education, knowledge, skill, and competence of the associate physician and the collaborating physician;

(x) list all other written practice arrangements of the collaborating physician and the associate physician;

(xi) specify the duration of the written practice arrangement between the collaborating physician and the associate physician; and

(xii) describe the time and manner of the collaborating physician's review of the associate physician's delivery of health care services, including provisions that the collaborating physician, or another physician designated in the collaborative practice arrangement, shall review every 14 days:

(A) a minimum of 10% of the charts documenting the associate physician's delivery of health care services; and

(B) a minimum of 20% of the charts in which the associate physician prescribes a controlled substance, which may be counted in the number of charts to be reviewed under Subsection (1)(b)(xii)(A).

(c) An associate physician and the collaborating physician may modify a collaborative practice arrangement, but the changes to the collaborative practice arrangement are not binding unless:

(i) the associate physician notifies the division within 10 days after the day on which the changes are made; and

(ii) the division approves the changes.

(d) If the collaborative practice arrangement provides for an associate physician to practice in a medically underserved area:

(i) the collaborating physician shall document the completion of at least a two-month period of time during which the associate physician shall practice with the collaborating physician continuously

present before practicing in a setting where the collaborating physician is not continuously present; and

(ii) the collaborating physician shall document the completion of at least 120 hours in a four-month period by the associate physician during which the associate physician shall practice with the collaborating physician on-site before prescribing a controlled substance when the collaborating physician is not on-site.

(2) An associate physician:

(a) shall clearly identify himself or herself as an associate physician;

(b) is permitted to use the title “doctor” or “Dr.”; and

(c) if authorized under a collaborative practice arrangement to prescribe Schedule III through V controlled substances, shall register with the United States Drug Enforcement Administration as part of the drug enforcement administration’s mid-level practitioner registry.

(3) (a) A physician or surgeon licensed and in good standing under Section 58-67-302 may enter into a collaborative practice arrangement with an associate physician licensed under Section 58-67-302.8.

(b) A physician or surgeon may not enter into a collaborative practice arrangement with more than three full-time equivalent associate physicians.

(c) (i) No contract or other agreement shall:

(A) require a physician to act as a collaborating physician for an associate physician against the physician’s will;

(B) deny a collaborating physician the right to refuse to act as a collaborating physician, without penalty, for a particular associate physician; or

(C) limit the collaborating physician’s ultimate authority over any protocols or standing orders or in the delegation of the physician’s authority to any associate physician.

(ii) Subsection (3)(c)(i)(C) does not authorize a physician, in implementing protocols, standing orders, or delegation, to violate a hospital’s established applicable standards for safe medical practice.

(d) A collaborating physician is responsible at all times for the oversight of the activities of, and accepts responsibility for, the primary care services rendered by the associate physician.

(4) The division shall make rules, in consultation with the board, the deans of medical schools in the state, and primary care residency program directors in the state, and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing educational methods and programs that:

(a) an associate physician shall complete throughout the duration of the collaborative practice arrangement;

(b) shall facilitate the advancement of the associate physician’s medical knowledge and capabilities; and

(c) may lead to credit toward a future residency program.

Section 8. Section 58-68-102 is amended to read:

58-68-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) “Ablative procedure” means a procedure that is expected to excise, vaporize, disintegrate, or remove living tissue, including the use of carbon dioxide lasers and erbium: YAG lasers, and excluding hair removal.

(2) “ACGME” means the Accreditation Council for Graduate Medical Education of the American Medical Association.

(3) “Administrative penalty” means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(4) “AOA” means the American Osteopathic Association.

(5) “Associate physician” means an individual licensed under Section 58-68-302.5.

~~[(5)]~~ (6) “Board” means the Osteopathic Physician and Surgeon’s Licensing Board created in Section 58-68-201.

(7) “Collaborating physician” means an individual licensed under Section 58-68-302 who enters into a collaborative practice arrangement with an associate physician.

(8) “Collaborative practice arrangement” means the arrangement described in Section 58-68-807.

~~[(6)]~~ (9) (a) “Cosmetic medical device” means tissue altering energy based devices that have the potential for altering living tissue and that are used to perform ablative or nonablative procedures, such as American National Standards Institute (ANSI) designated Class IIIb and Class IV lasers, intense pulsed light, radio frequency devices, and lipolytic devices and excludes ANSI designated Class IIIa and lower powered devices.

(b) Notwithstanding Subsection ~~[(6)]~~ (9)(a), if an ANSI designated Class IIIa and lower powered device is being used to perform an ablative procedure, the device is included in the definition of cosmetic medical device under Subsection ~~[(6)]~~ (9)(a).

~~[(7)]~~ (10) “Cosmetic medical procedure”:

(a) includes the use of cosmetic medical devices to perform ablative or nonablative procedures; and

(b) does not include a treatment of the ocular globe such as refractive surgery.

~~[(8)]~~ (11) “Diagnose” means:

(a) to examine in any manner another person, parts of a person’s body, substances, fluids, or materials excreted, taken, or removed from a person’s body, or produced by a person’s body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;

(b) to attempt to conduct an examination or determination described under Subsection ~~[(8)]~~ (11)(a);

(c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection ~~[(8)]~~ (11)(a); or

(d) to make an examination or determination as described in Subsection ~~[(8)]~~ (11)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.

~~[(9)]~~ (12) “Medical assistant” means an unlicensed individual working under the indirect supervision of a licensed osteopathic physician and surgeon and engaged in specific tasks assigned by the licensed osteopathic physician and surgeon in accordance with the standards and ethics of the profession.

(13) “Medically underserved area” means a geographic area in which there is a shortage of primary care health services for residents, as determined by the Department of Health.

(14) “Medically underserved population” means a specified group of people living in a defined geographic area with a shortage of primary care health services, as determined by the Department of Health.

~~[(40)]~~ (15) (a) (i) “Nonablative procedure” means a procedure that is expected or intended to alter living tissue, but is not expected or intended to excise, vaporize, disintegrate, or remove living tissue.

(ii) Notwithstanding Subsection ~~[(40)]~~ (15)(a)(i), nonablative procedure includes hair removal.

(b) “Nonablative procedure” does not include:

(i) a superficial procedure as defined in Section 58-1-102;

(ii) the application of permanent make-up; or

(iii) the use of photo therapy lasers for neuromusculoskeletal treatments that are preformed by an individual licensed under this title who is acting within the individual’s scope of practice.

~~[(41)]~~ (16) “Physician” means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians

and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

~~[(42)]~~ (17) (a) “Practice of osteopathic medicine” means:

(i) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is based upon emphasis of the importance of the musculoskeletal system and manipulative therapy in the maintenance and restoration of health, by an individual in Utah or outside of the state upon or for any human within the state;

(ii) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered;

(iii) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection ~~[(42)]~~ (17)(a) whether or not for compensation; or

(iv) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions, in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation “doctor,” “doctor of osteopathic medicine,” “osteopathic physician,” “osteopathic surgeon,” “osteopathic physician and surgeon,” “Dr.,” “D.O.,” or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed osteopathic physician, and if the party using the designation is not a licensed osteopathic physician, the designation must additionally contain the description of the branch of the healing arts for which the person has a license, provided that an individual who has received an earned degree of doctor of osteopathic medicine but is not a licensed osteopathic physician and surgeon in Utah may use the designation “D.O.” if it is followed by “Not Licensed” or “Not Licensed in Utah” in the same size and style of lettering.

(b) The practice of osteopathic medicine does not include:

(i) except for an ablative medical procedure as provided in Subsection ~~[(42)]~~ (17)(b)(ii), the conduct described in Subsection ~~[(42)]~~ (17)(a)(i) that is performed in accordance with a license issued under another chapter of this title;

(ii) an ablative cosmetic medical procedure if the scope of practice for the person performing the ablative cosmetic medical procedure includes the authority to operate or perform a surgical procedure; or

(iii) conduct under Subsection 58-68-501(2).

~~[(43)]~~ (18) “Prescription device” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, and any component part or accessory, which is required under federal or

state law to be prescribed by a practitioner and dispensed by or through a person or entity licensed under this chapter or exempt from licensure under this chapter.

[44] (19) “Prescription drug” means a drug that is required by federal or state law or rule to be dispensed only by prescription or is restricted to administration only by practitioners.

[45] (20) “SPEX” means the Special Purpose Examination of the Federation of State Medical Boards.

[46] (21) “Unlawful conduct” [is-as] means the same as that term is defined in Sections 58-1-501 and 58-68-501.

[47] (22) “Unprofessional conduct” [is-as] means the same as that term is defined in Sections 58-1-501 and 58-68-502 and as may be further defined by division rule.

Section 9. Section 58-68-302.5 is enacted to read:

58-68-302.5. Restricted licensing of an associate physician.

(1) An individual may apply for a restricted license as an associate physician if the individual:

(a) meets the requirements described in Subsections 58-68-302(1)(a) through (c), (1)(d)(i), and (1)(g) through (j);

(b) successfully completes Step 1 and Step 2 of the United States Medical Licensing Examination or the equivalent steps of another board-approved medical licensing examination:

(i) within three years after the day on which the applicant graduates from a program described in Subsection 58-68-302(1)(d)(i); and

(ii) within two years before applying for a restricted license as an associate physician; and

(c) is not currently enrolled in and has not completed a residency program.

(2) Before a licensed associate physician may engage in the practice of medicine as described in Subsection (3), the licensed associate physician shall:

(a) enter into a collaborative practice arrangement described in Section 58-68-807 within six months after the associate physician’s initial licensure; and

(b) receive division approval of the collaborative practice arrangement.

(3) An associate physician’s scope of practice is limited to primary care services to medically underserved populations or in medically underserved areas within the state.

Section 10. Section 58-68-303 is amended to read:

58-68-303. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with:

(a) continuing education renewal requirements; and

(b) the requirement for designation of a contact person and alternate contact person for access to medical records and notice to patients as required by Subsections 58-68-304(1)(b) and (c).

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

(4) An individual may not be licensed as an associate physician for more than a total of four years.

Section 11. Section 58-68-304 is amended to read:

58-68-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-68-302(1)(i); [and]

(c) if the licensee practices osteopathic medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee’s patients of the identity and location of the contact person and alternate contact person for access to medical records for the licensee in accordance with Subsection 58-68-302(1)(j)[-]; and

(d) if the licensee is an associate physician licensed under Section 58-68-302.5, successfully complete the educational methods and programs described in Subsection 58-68-807(4).

(2) If a renewal period is extended or shortened under Section 58-68-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: “Do you perform elective abortions in Utah in a location other than a hospital?”; and

(b) immediately following the question, contain the following statement: “For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following:

removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest.”

(4) In order to assist the Department of Health in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician’s license under this chapter, inform the Department of Health in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

Section 12. Section 58-68-502 is amended to read:

58-68-502. Unprofessional conduct.

(1) “Unprofessional conduct” includes, in addition to the definition in Section 58-1-501:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule; [ø]; or

(b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable[.]; or

(c) making a material misrepresentation regarding the qualifications for licensure under Section 58-68-302.5.

(2) “Unprofessional conduct” does not include, in compliance with Section 58-85-103:

(a) obtaining an investigational drug or investigational device;

(b) administering the investigational drug to an eligible patient; or

(c) treating an eligible patient with the investigational drug or investigational device.

Section 13. Section 58-68-601 is amended to read:

58-68-601. Mentally incompetent or incapacitated osteopathic physician.

(1) As used in this section:

(a) “Incapacitated person” means a person who is incapacitated, as defined in Section 75-1-201.

(b) “Licensee” means an individual licensed under this chapter.

[~~(b)~~] (c) “Mental illness” [is as] means the same as that term is defined in Section 62A-15-602.

(2) If a court of competent jurisdiction determines [~~an osteopathic physician and surgeon~~] a licensee is an incapacitated person or that the [~~physician or surgeon~~] licensee has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the [~~osteopathic physician and surgeon~~] licensee upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court’s ruling is pending. The director shall promptly notify the [~~osteopathic physician and surgeon~~] licensee, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe [~~an osteopathic physician and surgeon~~] a licensee, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing osteopathic medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the [~~osteopathic physician and surgeon~~] licensee with a notice of hearing on the sole issue of the capacity of the [~~osteopathic physician and surgeon~~] licensee to competently and [~~safely~~] safely engage in the practice of medicine.

(b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

(4) (a) Every [~~osteopathic physician and surgeon~~] individual who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the [~~physician’s or surgeon’s~~] licensee’s own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and

(ii) the admissibility of the reports of the examining physician’s testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.

(b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:

(i) the [~~osteopathic physician and surgeon~~] licensee has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

(ii) immediate action by the division and the board is necessary to prevent harm to the [~~osteopathic physician and surgeon’s~~] licensee’s patients or the general public.

(c) (i) Failure of [~~an osteopathic physician and surgeon~~] a licensee to submit to the examination ordered under this section is a ground for the

division's immediate suspension of the ~~[osteopathic physician and surgeon's]~~ licensee's license by written order of the director.

(ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the ~~[osteopathic physician and surgeon]~~ licensee and was not related directly to the illness or incapacity of the ~~[osteopathic physician and surgeon]~~ licensee.

(5) (a) ~~[An osteopathic physician and surgeon]~~ A licensee whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

(b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the ~~[osteopathic physician and surgeon's]~~ licensee's patients or the general public.

(6) ~~[An osteopathic physician and surgeon]~~ A licensee whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the ~~[osteopathic physician and surgeon]~~ licensee, under procedures established by division rule, regarding any change in the ~~[osteopathic physician and surgeon's]~~ licensee's condition, to determine whether:

(a) the ~~[physician or surgeon]~~ licensee is or is not able to safely and competently engage in the practice of medicine; and

(b) the ~~[physician or surgeon]~~ licensee is qualified to have the ~~[physician's or surgeon's]~~ licensee's license to practice under this chapter restored completely or in part.

Section 14. Section 58-68-807 is enacted to read:

58-68-807. Collaborative practice arrangement.

(1) (a) The division, in consultation with the board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the approval of a collaborative practice arrangement.

(b) The division shall require a collaborative practice arrangement to:

(i) limit the associate physician to providing primary care services to medically underserved populations or in medically underserved areas within the state;

(ii) be consistent with the skill, training, and competence of the associate physician;

(iii) specify jointly agreed-upon protocols, or standing orders for the delivery of health care services by the associate physician;

(iv) provide complete names, home and business addresses, zip codes, and telephone numbers of the collaborating physician and the associate physician;

(v) list all other offices or locations besides those listed in Subsection (1)(b)(iv) where the collaborating physician authorizes the associate physician to prescribe;

(vi) require at every office where the associate physician is authorized to prescribe in collaboration with a physician a prominently displayed disclosure statement informing patients that patients may be seen by an associate physician and have the right to see the collaborating physician;

(vii) specify all specialty or board certifications of the collaborating physician and all certifications of the associate physician;

(viii) specify the manner of collaboration between the collaborating physician and the associate physician, including how the collaborating physician and the associate physician shall:

(A) engage in collaborative practice consistent with each professional's skill, training, education, and competence;

(B) maintain geographic proximity, except as provided in Subsection (1)(d); and

(C) provide oversight of the associate physician during the absence, incapacity, infirmity, or emergency of the collaborating physician;

(ix) describe the associate physician's controlled substance prescriptive authority in collaboration with the collaborating physician, including:

(A) a list of the controlled substances the collaborating physician authorizes the associate physician to prescribe; and

(B) documentation that the authorization to prescribe the controlled substances is consistent with the education, knowledge, skill, and competence of the associate physician and the collaborating physician;

(x) list all other written practice arrangements of the collaborating physician and the associate physician;

(xi) specify the duration of the written practice arrangement between the collaborating physician and the associate physician; and

(xii) describe the time and manner of the collaborating physician's review of the associate physician's delivery of health care services, including provisions that the collaborating physician, or another physician designated in the collaborative practice arrangement, shall review every 14 days:

(A) a minimum of 10% of the charts documenting the associate physician's delivery of health care services; and

(B) a minimum of 20% of the charts in which the associate physician prescribes a controlled substance, which may be counted in the number of

charts to be reviewed under Subsection (1)(b)(xi)(A).

(c) An associate physician and the collaborating physician may modify a collaborative practice arrangement, but the changes to the collaborative practice arrangement are not binding unless:

(i) the associate physician notifies the division within 10 days after the day on which the changes are made; and

(ii) the division approves the changes.

(d) If the collaborative practice arrangement provides for an associate physician to practice in a medically underserved area:

(i) the collaborating physician shall document the completion of at least a two-month period of time during which the associate physician shall practice with the collaborating physician continuously present before practicing in a setting where the collaborating physician is not continuously present; and

(ii) the collaborating physician shall document the completion of at least 120 hours in a four-month period by the associate physician during which the associate physician shall practice with the collaborating physician on-site before prescribing a controlled substance when the collaborating physician is not on-site.

(2) An associate physician:

(a) shall clearly identify himself or herself as an associate physician;

(b) is permitted to use the title "doctor" or "Dr."; and

(c) if authorized under a collaborative practice arrangement to prescribe Schedule III through V controlled substances, shall register with the United States Drug Enforcement Administration as part of the drug enforcement administration's mid-level practitioner registry.

(3) (a) A physician or surgeon licensed and in good standing under Section 58-68-302 may enter into a collaborative practice arrangement with an associate physician licensed under Section 58-68-302.5.

(b) A physician or surgeon may not enter into a collaborative practice arrangement with more than three full-time equivalent associate physicians.

(c) (i) No contract or other agreement shall:

(A) require a physician to act as a collaborating physician for an associate physician against the physician's will;

(B) deny a collaborating physician the right to refuse to act as a collaborating physician, without penalty, for a particular associate physician; or

(C) limit the collaborating physician's ultimate authority over any protocols or standing orders or in the delegation of the physician's authority to any associate physician.

(ii) Subsection (3)(c)(i)(C) does not authorize a physician, in implementing such protocols, standing orders, or delegation, to violate a hospital's established applicable standards for safe medical practice.

(d) A collaborating physician is responsible at all times for the oversight of the activities of, and accepts responsibility for, the primary care services rendered by the associate physician.

(4) The division shall make rules, in consultation with the board, the deans of medical schools in the state, and primary care residency program directors in the state, and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing educational methods and programs that:

(a) an associate physician shall complete throughout the duration of the collaborative practice arrangement;

(b) shall facilitate the advancement of the associate physician's medical knowledge and capabilities; and

(c) may lead to credit toward a future residency program.

Section 15. Effective date.

This bill takes effect on July 1, 2018.

CHAPTER 300**H. B. 399**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

**GOVERNMENTAL
IMMUNITY AMENDMENTS**Chief Sponsor: V. Lowry Snow
Senate Sponsor: Curtis S. Bramble**LONG TITLE****General Description:**

This bill modifies provisions relating to governmental immunity.

Highlighted Provisions:

This bill:

- ▶ provides that governmental immunity is preserved for an injury arising out of or in connection with, or resulting from, certain conduct or conditions even if immunity would otherwise be waived;
- ▶ enacts language specifying the relationship between an injury and certain conduct or conditions in determining whether immunity applies;
- ▶ allows a claimant to begin an action after the applicable time limit if a previous timely action failed or was dismissed, other than on the merits, and other conditions are met; and
- ▶ modifies language relating to a plaintiff's undertaking in an action against a governmental entity.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-7-101, as last amended by Laws of Utah 2015, Chapter 342

63G-7-102, as last amended by Laws of Utah 2016, Chapter 350

63G-7-301, as last amended by Laws of Utah 2015, Chapter 342

63G-7-403, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-7-601, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 63G-7-101 is amended to read:**63G-7-101. Title -- Scope of waivers and retentions of immunity.**

(1) This chapter is known as the "Governmental Immunity Act of Utah."

(2) The scope of the waivers and retentions of immunity found in this comprehensive chapter:

(a) applies to all functions of government, no matter how labeled; and

(b) governs all claims against governmental entities or against their employees or agents arising out of the performance of the employee's duties, within the scope of employment, or under color of authority.

(3) A governmental entity and an employee of a governmental entity retain immunity from suit unless that immunity has been expressly waived in this chapter.

(4) A governmental entity and an employee of a governmental entity retain immunity from suit if an injury arises out of or in connection with, or results from, conduct or a condition described in Subsection 63G-7-201(3) or (4), even if immunity from suit for the injury is waived under Section 63G-7-301.

Section 2. Section 63G-7-102 is amended to read:**63G-7-102. Definitions.**

As used in this chapter:

(1) "Arises out of or in connection with, or results from," when used to describe the relationship between conduct or a condition and an injury, means that:

(a) there is some causal relationship between the conduct or condition and the injury;

(b) the causal relationship is more than any causal connection but less than proximate cause; and

(c) the causal relationship is sufficient to conclude that the injury originates with, flows from, or is incident to the conduct or condition.

[4] (2) "Claim" means any asserted demand for or cause of action for money or damages, whether arising under the common law, under state constitutional provisions, or under state statutes, against a governmental entity or against an employee in the employee's personal capacity.

[2] (3) (a) "Employee" includes:

(i) a governmental entity's officers, employees, servants, trustees, or commissioners;

(ii) members of a governing body;

(iii) members of a government entity board;

(iv) members of a government entity commission;

(v) members of an advisory body, officers, and employees of a Children's Justice Center created in accordance with Section [67-5b-104] 67-5b-102;

(vi) student teachers holding a letter of authorization in accordance with Sections 53A-6-103 and 53A-6-104;

(vii) educational aides;

(viii) students engaged in providing services to members of the public in the course of an approved medical, nursing, or other professional health care clinical training program;

(ix) volunteers as defined by Subsection 67-20-2(3); and

(x) tutors.

(b) “Employee” includes all of the positions identified in Subsection ~~[(2)]~~ (3)(a), whether or not the individual holding that position receives compensation.

(c) “Employee” does not include an independent contractor.

~~[(3)]~~ (4) “Governmental entity” means the state and its political subdivisions as both are defined in this section.

~~[(4)]~~ (5) (a) “Governmental function” means each activity, undertaking, or operation of a governmental entity.

(b) “Governmental function” includes each activity, undertaking, or operation performed by a department, agency, employee, agent, or officer of a governmental entity.

(c) “Governmental function” includes a governmental entity’s failure to act.

~~[(5)]~~ (6) “Injury” means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to the person or estate, that would be actionable if inflicted by a private person or the private person’s agent.

~~[(6)]~~ (7) “Personal injury” means an injury of any kind other than property damage.

~~[(7)]~~ (8) “Political subdivision” means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, local district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.

~~[(8)]~~ (9) “Property damage” means injury to, or loss of, any right, title, estate, or interest in real or personal property.

~~[(9)]~~ (10) “State” means the state of Utah, and includes each office, department, division, agency, authority, commission, board, institution, hospital, college, university, Children’s Justice Center, or other instrumentality of the state.

~~[(10)]~~ (11) “Willful misconduct” means the intentional doing of a wrongful act, or the wrongful failure to act, without just cause or excuse, where the actor is aware that the actor’s conduct will probably result in injury.

Section 3. Section 63G-7-301 is amended to read:

63G-7-301. Waivers of immunity.

(1) (a) Immunity from suit of each governmental entity is waived as to any contractual obligation.

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

(2) Immunity from suit of each governmental entity is waived:

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

(b) as to any action brought to foreclose mortgages or other liens on real or personal property, to determine any adverse claim on real or personal property, or to obtain an adjudication about any mortgage or other lien that the governmental entity may have or claim on real or personal property;

(c) as to any action based on the negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee, if the property was seized for the purpose of forfeiture under any provision of state law;

(d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of Utah Constitution, Article I, Section 22, for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just compensation;

(e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney fees under Sections 63G-2-405 and 63G-2-802;

(f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees Act;

(g) as to any action brought to obtain relief from a land use regulation that imposes a substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious Land Use Act;

(h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

(i) a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

(ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or other public improvement; and

(i) subject to ~~[Subsection]~~ Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment.

Section 4. Section 63G-7-403 is amended to read:

63G-7-403. Notice of claim -- Approval or denial of claim -- Action in district court

**-- Time for commencing action --
Commencing action after time limit.**

(1) (a) Within 60 days of the filing of a notice of claim, the governmental entity or its insurance carrier shall inform the claimant in writing that the claim has either been approved or denied.

(b) A claim is considered to be denied if, at the end of the 60-day period, the governmental entity or its insurance carrier has failed to approve or deny the claim.

(2) (a) If the claim is denied, a claimant may ~~institute~~ pursue an action in the district court against the governmental entity or an employee of the entity.

(b) ~~The~~ Subject to Subsection (3), a claimant shall ~~begin~~ commence the action within one year after denial of the claim or within one year after the denial period specified in this chapter has expired, regardless of whether or not the function giving rise to the claim is characterized as governmental.

(3) (a) As used in this Subsection (3), "claimant" includes a representative of an individual:

(i) who dies before an action is begun under this section; and

(ii) whose cause of action survives the individual's death.

(b) A claimant may commence an action after the time limit described in Subsection (2)(b) if:

(i) the claimant had commenced a previous action within the time limit of Subsection (2)(b);

(ii) the previous action failed or was dismissed for a reason other than on the merits; and

(iii) the claimant commences the new action within one year after the previous action failed or was dismissed.

(c) A claimant may commence a new action under Subsection (3)(b) only once.

Section 5. Section 63G-7-601 is amended to read:

63G-7-601. Actions governed by Utah Rules of Civil Procedure -- Undertaking required.

(1) An action brought under this chapter shall be governed by the Utah Rules of Civil Procedure to the extent that they are consistent with this chapter.

(2) At the time the action is filed, the plaintiff shall file an undertaking ~~in a sum fixed by the court that is~~:

(a) ~~not less than \$300~~ in the amount of \$300, unless otherwise ordered by the court; and

(b) conditioned upon payment by the plaintiff of taxable costs incurred by the governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover judgment.

CHAPTER 301**H. B. 453**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

AIRPORT BOARD REVISIONS

Chief Sponsor: Kim F. Coleman
Senate Sponsor: Lincoln Fillmore

LONG TITLE**General Description:**

This bill requires certain municipalities, counties, or airport authorities that own airports in another municipality or county to maintain an advisory board.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires certain municipalities, counties, or airport authorities that own airports in another municipality or county to maintain an advisory board;
- ▶ provides for membership on the advisory board;
- ▶ provides for selection of a chair of the advisory board;
- ▶ provides for transition and terms of board members;
- ▶ allows municipalities or counties where an extraterritorial airport is located to create an extraterritorial airport advisory board;
- ▶ allows an advisory role for selection of a fixed base operator for each airport; and
- ▶ requires a report to the Transportation Interim Committee.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

72-10-203.5, Utah Code Annotated 1953

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

Section 1. Section 72-10-203.5 is enacted to read:

72-10-203.5. Advisory boards of airports and extraterritorial airports.

(1) For purposes of this section:

(a) "Airport owner" means the municipality, county, or airport authority that owns one or more airports.

(b) "Extraterritorial airport" means an airport, including the airport facilities, real estate, or other assets related to the operation of an airport, outside the municipality or county and within the boundary of a different municipality or county.

(2) (a) If an airport owner that owns an international airport also owns one or more extraterritorial airports, the airport owner shall

create and maintain an advisory board as described in this section.

(b) The advisory board shall advise and consult the airport owner according to the process set forth in ordinance, rule, or regulation of the airport owner.

(3) (a) An advisory board described in Subsection (2) shall consist of 11 members, appointed as follows:

(i) one individual from each municipality or county in which an extraterritorial airport is located, appointed:

(A) according to an ordinance or policy in place in each municipality or county for appointing individuals to a board, if any; or

(B) if no ordinance or policy described in Subsection (3)(a)(i)(A) exists, by the chief executive officer of the municipality or county, with advice and consent from the legislative body of the municipality or county in which the extraterritorial airport is located; and

(ii) as many individuals as necessary, appointed by the chief executive officer of the airport owner, with advice and consent from the legislative body of the airport owner, when added to the individuals appointed under Subsection (3)(a)(i), to equal 11 total members on the advisory board.

(b) The airport owner shall ensure that members of the advisory board have the following qualifications:

(i) at least one member with experience in commercial or industrial construction projects with a budget of at least \$10,000,000; and

(ii) at least one member with experience in management and oversight of an entity with an operating budget of at least \$10,000,000.

(4) (a) (i) Except as provided in Subsections (4)(b) and (6)(b), the term of office for members of the advisory board shall be four years or until a successor is appointed, qualified, seated, and has taken the oath of office.

(ii) A member of the advisory board may serve two terms.

(b) When a vacancy occurs on the board for any reason, the replacement shall be appointed according to the procedures set forth in Subsection (3) for the member who vacated the seat, and the replacement shall serve for the remainder of the unexpired term.

(5) The advisory board shall select a chair of the advisory board.

(6) (a) For an airport owner that owns and operates an extraterritorial airport as of March 9, 2017, that has an advisory board in place, the members of the advisory board may complete the member's respective current term on the advisory board.

(b) After March 9, 2017, and upon expiration of the current term of each member of the advisory

board serving as of March 9, 2017, the airport owner shall ensure that the membership of the advisory board transitions to reflect the requirements of this section.

(7) (a) The chief executive officer of each municipality or county in which an extraterritorial airport is located, with the advice and consent of the respective legislative body of the municipality or county, may create an extraterritorial airport advisory board to represent the interests of the extraterritorial airport.

(b) The extraterritorial airport advisory boards described in Subsection (7)(a) shall meet at least quarterly, and:

(i) shall provide advisory support to the member of the advisory board representing the municipality or county; and

(ii) may advise in the request for proposals process of a fixed base operator for the respective extraterritorial airport.

(8) The airport owner, in consultation with the airport advisory board, shall, consistent with the requirements of federal law, study, produce an analysis, and advise regarding the highest and best use and operational strategy for each airport, including all lands, facilities, and assets owned by the airport owner.

(9) An airport owner, in consultation with the county auditor and the county assessor of a county in which an extraterritorial airport is located, shall explore in good faith whether a municipality or county where an extraterritorial airport is located receives airport-related tax disbursements to which the municipality or county is entitled.

(10) An airport owner shall report annually to the Transportation Interim Committee regarding the requirements in this section.

CHAPTER 302**H. B. 461**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

JAIL CONTRACTING AMENDMENTS

Chief Sponsor: Michael E. Noel
Senate Sponsor: Daniel W. Thatcher

LONG TITLE**General Description:**

This bill changes the daily rate for treatment beds in county facilities.

Highlighted Provisions:

This bill:

- ▶ increases the daily rate from 86% to 89% for treatment beds for state inmates in county facilities.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

64-13e-103, as last amended by Laws of Utah 2016, Chapter 167

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

Section 1. Section 64-13e-103 is amended to read:**64-13e-103. Contracts for housing state inmates.**

(1) Subject to Subsection (6), the department may contract with a county to house state inmates in a county or other correctional facility.

(2) The department shall give preference for placement of state inmates, over private entities, to county correctional facility bed spaces for which the department has contracted under Subsection (1).

(3) (a) The compensation rate for housing state inmates pursuant to a contract described in Subsection (1) shall be:

(i) ~~86%~~ 89% of the final state daily incarceration rate for beds in a county that, pursuant to the contract, are dedicated to a treatment program to state inmates, if the treatment program is approved by the department under Subsection (3)(c); and

(ii) 73% of the final state daily incarceration rate for beds in a county other than the beds described in Subsection (3)(a)(i).

(b) The department shall:

(i) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish standards that a treatment program is required to meet before the treatment program is considered for approval for the purpose of a county receiving payment based on the rate described in Subsection (3)(a)(i); and

(ii) determine on an annual basis, based on appropriations made by the Legislature for the contracts described in this section, whether to approve a treatment program that meets the standards established under Subsection (3)(b)(i), for the purpose of a county receiving payment based on the rate described in Subsection (3)(a)(i).

(c) The department may not approve a treatment program for the purpose of a county receiving payment based on the rate described in Subsection (3)(a)(i), unless:

(i) the program meets the standards established under Subsection (3)(b)(i);

(ii) the department determines that the Legislature has appropriated sufficient funds to:

(A) pay the county that provides the treatment program at the rate described in Subsection (3)(a)(i); and

(B) pay each county that does not provide a treatment program an amount per state inmate that is not less than the amount per state inmate received for the preceding fiscal year by a county that did not provide a treatment program; and

(iii) the department determines that the treatment program is needed by the department at the location where the treatment program will be provided.

(4) Compensation to a county for state inmates incarcerated under this section shall be made by the department.

(5) Counties that contract with the department under Subsection (1) shall, on or before June 30 of each year, submit a report to the department that includes:

(a) the number of state inmates the county housed under this section; and

(b) the total number of state inmate days of incarceration that were provided by the county.

(6) Except as provided under Subsection (7), the department may not enter into a contract described under Subsection (1), unless the Legislature has previously passed a joint resolution that includes the following information regarding the proposed contract:

(a) the approximate number of beds to be contracted;

(b) the final state daily incarceration rate;

(c) the approximate amount of the county's long-term debt; and

(d) the repayment time of the debt for the facility where the inmates are to be housed.

(7) The department may enter into a contract with a county government to house inmates without complying with the approval process described in Subsection (6) only if the county facility was under construction, or already in existence, on March 16, 2001.

(8) Any resolution passed by the Legislature under Subsection (6) does not bind or obligate the

Legislature or the department regarding the proposed contract.

CHAPTER 303**S. B. 70**

Passed March 2, 2017

Approved March 23, 2017

Effective May 9, 2017

**ASSET FORFEITURE
TRANSPARENCY AMENDMENTS**

Chief Sponsor: Howard A. Stephenson

House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill modifies the Forfeiture and Disposition of Property Act regarding reporting requirements.

Highlighted Provisions:

This bill:

- ▶ in addition to current reporting requirements, requires that law enforcement agencies reporting on a forfeiture action shall include:
 - information on related criminal charges;
 - the value of seized property;
 - the agency's share of property received from a federal forfeiture case;
 - the agency's costs incurred in making the required reports;
 - the agency's costs incurred for storage of storing seized property; and
 - the legal costs incurred by the prosecuting attorney; and
- ▶ amends the list of information to be provided regarding a forfeiture, and requires that the information be reported by a law enforcement agency, when:
 - transferring disposition of property resulting from a forfeiture matter to the Commission on Criminal and Juvenile Justice; and
 - the law enforcement agency has been awarded any share of property forfeited by the federal government.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

24-4-115, as last amended by Laws of Utah 2014, Chapter 112

24-4-118, as enacted by Laws of Utah 2015, Chapter 134

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

Section 1. Section 24-4-115 is amended to read:**24-4-115. Disposition and allocation of forfeiture property.**

(1) Upon finding that property is subject to forfeiture under this chapter, the court shall order the property forfeited to the state.

(2) (a) If the property is not currency, the seizing agency shall authorize a public or otherwise

commercially reasonable sale of that property that is not required by law to be destroyed and that is not harmful to the public.

(b) If the property forfeited is an alcoholic product as defined in Section 32B-1-102, it shall be disposed of as follows:

(i) an alcoholic product shall be sold if the alcoholic product is:

(A) unadulterated, pure, and free from any crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid; and

(B) otherwise in saleable condition; or

(ii) an alcoholic product and its package shall be destroyed if the alcoholic product is impure, adulterated, or otherwise unfit for sale.

(c) If the property forfeited is a cigarette or other tobacco product as defined in Section 59-14-102, it shall be destroyed, except that prior to the destruction of any cigarette or other tobacco product seized pursuant to this part, the lawful holder of the trademark rights in the cigarette or tobacco product brand shall be permitted to inspect the cigarette.

(d) The proceeds of the sale of forfeited property shall remain segregated from other property, equipment, or assets of the seizing agency until transferred to the state in accordance with this chapter.

(3) From the forfeited property, both currency and the proceeds or revenue from the sale of the property, the seizing agency shall:

(a) deduct the seizing agency's direct costs, expense of reporting under Section 24-4-118, and expenses of obtaining and maintaining the property pending forfeiture; and

(b) pay the office of the prosecuting attorney the legal costs associated with the litigation of the forfeiture proceeding, and up to 20% of the value of the forfeited property in attorney fees.

(4) If the forfeiture arises from any violation relating to wildlife resources, the remaining currency and the proceeds or revenue from the sale of the property shall be deposited in the Wildlife Resources Account created in Section 23-14-13.

(5) The remaining currency and the proceeds or revenue from the sale of the property shall then be transferred to the commission and deposited into the account.

Section 2. Section 24-4-118 is amended to read:**24-4-118. Forfeiture reporting requirements.**

(1) On and after January 1, 2016, every state, county, municipal, or other law enforcement agency shall ~~when transferring the final disposition of any civil or criminal forfeiture matter to the Commission on Criminal and Juvenile Justice as required under this chapter,~~ provide all reasonably available data described in Subsection (5), along

with the transfer of any applicable forfeited property[.];

(a) when transferring the forfeited property resulting from the final disposition of any civil or criminal forfeiture matter to the Commission on Criminal and Juvenile Justice as required under Subsection 24-4-115(5); or

(b) when the agency has been awarded any equitable share of property forfeited by the federal government.

(2) The Commission on Criminal and Juvenile Justice shall develop a standardized report format that each agency shall use in reporting the data required under this section.

(3) The Commission on Criminal and Juvenile Justice shall annually, on or before April 30, prepare a summary report of the case data submitted by each agency under Subsection (1) during the prior calendar year.

(4) (a) If an agency does not comply with the reporting requirements under this section, the Commission on Criminal and Juvenile Justice shall contact the agency and request that the agency comply with the required reporting provisions.

(b) If an agency fails to comply with the reporting requirements under this section within 30 days after receiving the request to comply, the Commission on Criminal and Juvenile Justice shall report the noncompliance to the Utah attorney general, the speaker of the House of Representatives, and the president of the Senate.

(5) The data for any civil or criminal forfeiture matter for which final disposition has been made under Subsection (1) shall include:

(a) the agency that conducted the seizure;

(b) the case number or other identification;

(c) the date or dates on which the seizure was conducted;

(d) the number of individuals having a known property interest in each seizure of property;

(e) the type of property seized;

(f) the alleged offense that was the cause for seizure of the property;

(g) whether any criminal charges were filed regarding the alleged offense, and if so, the final disposition of each charge, including the conviction, acquittal, or dismissal, or whether action on a charge is pending;

[~~(g)~~] (h) the type of enforcement action that resulted in the seizure, including an enforcement stop, a search warrant, or an arrest warrant;

[~~(h)~~] (i) whether the forfeiture procedure was civil or criminal;

(j) the value of the property seized, including currency and the estimated market value of any tangible property;

[~~(i)~~] (k) the final disposition of the matter, including whether final disposition was entered by stipulation of the parties, including the amount of property returned to any claimant, by default, by summary judgment, by jury award, or by guilty plea or verdict in a criminal forfeiture; [~~and~~]

(l) if the property was forfeited by the federal government, the amount of forfeited money awarded to the agency;

(m) the agency's direct costs, expense of reporting under this section, and expenses for obtaining and maintaining the seized property, as described in Subsection 24-4-115(3)(a);

(n) the legal costs and attorney fees paid to the prosecuting attorney, as described in Subsection 24-4-115(3)(b); and

[~~(j)~~] (o) if the property was transferred to a federal agency or any governmental entity not created under and subject to state law:

(i) the date of the transfer;

(ii) the name of the federal agency or entity to which the property was transferred;

(iii) a reference to which reason under Subsection 24-4-114(1)(a) justified the transfer;

(iv) the court or agency where the forfeiture case was heard;

(v) the date of the order of transfer of the property; and

(vi) the value of the property transferred to the federal agency, including currency and the estimated market value of any tangible property.

(6) On and after January 1, 2016, every state, county, municipal, or other law enforcement agency shall annually on or before April 30 submit a report for the prior calendar year to the Commission on Criminal and Juvenile Justice which states:

(a) whether the agency received an award from the State Asset Forfeiture Grant Program under Section 24-4-117 and, if so, the following information for each award:

(i) the amount of the award;

(ii) the date of the award;

(iii) how the award was used or is planned to be used; and

(iv) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel, that:

(A) the agency has complied with all inventory, policy, and reporting requirements under Section 24-4-117; and

(B) all awards were used for crime reduction or law enforcement purposes as specified in the application and that the awards were used only upon approval by the agency's legislative body; and

(b) whether the agency received any property, money, or other things of value pursuant to federal law as described in Subsection 24-4-114(2) and, if

so, the following information for each piece of property, money, or other thing of value:

- (i) the case number or other case identification;
- (ii) the value of the award and the property, money, or other things of value received by the agency;
- (iii) the date of the award;
- (iv) the identity of any federal agency involved in the forfeiture;
- (v) how the awarded property has been used or is planned to be used; and
- (vi) a statement signed by both the agency's executive officer or designee and by the agency's legal counsel, that the agency has only used the award for crime reduction or law enforcement purposes authorized under Section 24-4-117, and that the award was used only upon approval by the agency's legislative body.

(7) (a) On or before July 1 of each year, the Commission on Criminal and Juvenile Justice shall submit notice of the annual reports in Subsection (3) and Subsection (6), in electronic format, to:

- (i) the Utah attorney general;
- (ii) the speaker of the House of Representatives, for referral to any House standing or interim committees with oversight over law enforcement and criminal justice;
- (iii) the president of the Senate, for referral to any Senate standing or interim committees with oversight over law enforcement and criminal justice; and
- (iv) each law enforcement agency.

(b) The reports described in Subsection (3) and Subsection (6), as well as the individual case data described in Subsection (1) for the previous calendar year, shall be published on the Utah Open Government website at open.utah.gov on or before July 15 of each year.

CHAPTER 304**S. B. 71**

Passed March 7, 2017
 Approved March 23, 2017
 Effective May 9, 2017

**CRIMINAL ACCOUNTS
 RECEIVABLE AMENDMENTS**

Chief Sponsor: Daniel W. Thatcher
 House Sponsor: Marc K. Roberts

LONG TITLE**General Description:**

This bill makes changes in the monitoring and collection of criminal judgment accounts receivable.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ specifies when criminal judgment accounts receivable may be assigned to the Office of State Debt Collection;
- ▶ allows the court to modify amounts and payment schedules in order to avoid a default;
- ▶ provides that the court may hold a delinquent or defaulting defendant in contempt;
- ▶ outlines possible consequences for a delinquent or defaulting defendant; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63A-3-502, as last amended by Laws of Utah 2016, Chapter 129
 76-3-201, as last amended by Laws of Utah 2015, Chapter 147
 77-18-1, as last amended by Laws of Utah 2016, Third Special Session, Chapter 4
 77-18-6, as last amended by Laws of Utah 2014, Chapter 170
 77-20-4, as last amended by Laws of Utah 2016, Chapter 234
 77-38a-102, as last amended by Laws of Utah 2016, Chapter 223
 77-38a-301, as enacted by Laws of Utah 2001, Chapter 137
 77-38a-302, as last amended by Laws of Utah 2016, Chapter 223
 77-38a-404, as last amended by Laws of Utah 2011, Chapters 131 and 208
 77-38a-501, as last amended by Laws of Utah 2003, Chapter 280
 78B-2-115, as last amended by Laws of Utah 2015, Chapter 434

ENACTS:

77-32a-101, Utah Code Annotated 1953
 77-32a-102, Utah Code Annotated 1953
 77-32a-103, Utah Code Annotated 1953
 77-32a-104, Utah Code Annotated 1953
 77-32a-105, Utah Code Annotated 1953
 77-32a-106, Utah Code Annotated 1953
 78B-6-317, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

77-32a-107, (Renumbered from 77-32a-2, as last amended by Laws of Utah 1999, Chapter 21)
 77-32a-108, (Renumbered from 77-32a-3, as enacted by Laws of Utah 1980, Chapter 15)
 77-32a-109, (Renumbered from 77-32a-4, as enacted by Laws of Utah 1980, Chapter 15)
 77-32a-110, (Renumbered from 77-32a-14, as enacted by Laws of Utah 1980, Chapter 15)

REPEALS:

76-3-201.1, as last amended by Laws of Utah 2015, Chapter 434
 77-32a-1, as last amended by Laws of Utah 2002, Chapter 35
 77-32a-5, as enacted by Laws of Utah 1980, Chapter 15
 77-32a-6, as enacted by Laws of Utah 1980, Chapter 15
 77-32a-7, as enacted by Laws of Utah 1980, Chapter 15
 77-32a-8, as enacted by Laws of Utah 1980, Chapter 15
 77-32a-9, as enacted by Laws of Utah 1980, Chapter 15
 77-32a-10, as enacted by Laws of Utah 1980, Chapter 15
 77-32a-11, as enacted by Laws of Utah 1980, Chapter 15
 77-32a-12, as enacted by Laws of Utah 1980, Chapter 15
 77-32a-13, as enacted by Laws of Utah 1980, Chapter 15

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

Section 1. Section 63A-3-502 is amended to read:**63A-3-502. Office of State Debt Collection created -- Duties.**

(1) The state and each state agency shall comply with the requirements of this chapter and any rules established by the Office of State Debt Collection.

(2) There is created the Office of State Debt Collection in the Division of Finance.

(3) The office shall:

(a) have overall responsibility for collecting and managing state receivables;

(b) assist the Division of Finance to develop consistent policies governing the collection and management of state receivables;

(c) oversee and monitor state receivables to ensure that state agencies are:

(i) implementing all appropriate collection methods;

(ii) following established receivables guidelines; and

(iii) accounting for and reporting receivables in the appropriate manner;

(d) assist the Division of Finance to develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;

(e) provide information, training, and technical assistance to each state agency on various collection-related topics;

(f) write an inclusive receivables management and collection manual for use by each state agency;

(g) prepare quarterly and annual reports of the state's receivables;

(h) create or coordinate a state accounts receivable database;

(i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program;

(j) identify any state agency that is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;

(k) coordinate information, systems, and procedures between each state agency to maximize the collection of past-due accounts receivable;

(l) establish an automated cash receipt process between each state agency;

(m) assist the Division of Finance to establish procedures for writing off accounts receivable for accounting and collection purposes;

(n) establish standard time limits after which an agency will delegate responsibility to collect state receivables to the office or its designee;

(o) be a real party in interest for an account receivable referred to the office by any state agency or for any restitution to victims referred to the office by a court; and

(p) allocate money collected for judgments registered under Section 77-18-6 in accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.

(4) The office may:

(a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;

(b) collect accounts receivables for higher education entities, if the higher education entity agrees;

(c) prepare a request for proposal for consulting services to:

(i) analyze the state's receivable management and collection efforts; and

(ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;

(d) contract with private or state agencies to collect past-due accounts;

(e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;

(f) obtain access to records and databases of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206, including the financial disclosure form described in Section 77-38a-204;

(g) collect interest and fees related to the collection of receivables under this chapter, and establish, by following the procedures and requirements of Section 63J-1-504:

(i) a fee to cover the administrative costs of collection, on accounts administered by the office;

(ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;

(iii) an interest charge that is:

(A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or

(B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and

(iv) fees to collect accounts receivable for higher education;

(h) collect reasonable attorney fees and reasonable costs of collection that are related to the collection of receivables under this chapter;

(i) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;

(j) file a satisfaction of judgment in the court by following the procedures and requirements of the Utah Rules of Civil Procedure;

(k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary;

(l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f) with private sector vendors under contract with the state to assist state agencies in collecting debts owed to the state agencies without changing the classification of any private, controlled, or protected record into a public record;

(m) enter into written agreements with other governmental agencies to obtain information for the purpose of collecting state accounts receivable and restitution for victims; and

(n) collect accounts receivable for a political subdivision of the state, if the political subdivision enters into an agreement or contract with the office under Title 11, Chapter 13, Interlocal Cooperation Act, for the office to collect the political subdivision's accounts receivable.

(5) The office shall ensure that:

(a) a record obtained by the office or a private sector vendor as referred to in Subsection (4)(l):

(i) is used only for the limited purpose of collecting accounts receivable; and

(ii) is subject to federal, state, and local agency records restrictions; and

(b) any person employed by, or formerly employed by, the office or a private sector vendor as referred to in Subsection (4)(l) is subject to:

(i) the same duty of confidentiality with respect to the record imposed by law on officers and employees of the state agency from which the record was obtained; and

(ii) any civil or criminal penalties imposed by law for violations of lawful access to a private, controlled, or protected record.

(6) (a) The office shall collect accounts receivable ordered by a court as a result of prosecution for a criminal offense that have been transferred to the office under [~~Subsection 76-3-201.1(5)(h) or (8)~~] Section 77-32a-102.

(b) The office may not assess the interest charge established by the office under Subsection (4) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.

(7) The office shall require a state agency to:

(a) transfer collection responsibilities to the office or its designee according to time limits established by the office;

(b) make annual progress towards implementing collection techniques and improved accounts receivable collections;

(c) use the state's accounts receivable system or develop systems that are adequate to properly account for and report their receivables;

(d) develop and implement internal policies and procedures that comply with the collections policies and guidelines established by the office;

(e) provide internal accounts receivable training to staff involved in the management and collection of receivables as a supplement to statewide training;

(f) bill for and make initial collection efforts of its receivables up to the time the accounts must be transferred; and

(g) submit quarterly receivable reports to the office that identify the age, collection status, and funding source of each receivable.

(8) The office shall use the information provided by the agencies and any additional information from the office's records to compile a one-page summary report of each agency.

(9) The summary shall include:

(a) the type of revenue that is owed to the agency;

(b) any attempted collection activity; and

(c) any costs incurred in the collection process.

(10) The office shall annually provide copies of each agency's summary to the governor and to the Legislature.

(11) All interest, fees, and other amounts authorized to be charged by the office under Subsection (4):

(a) are penalties that may be charged by the office; and

(b) are not compensation for actual pecuniary loss.

Section 2. Section 76-3-201 is amended to read:

76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil penalties.

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; ~~and~~

(ii) plea of guilty~~[-];~~ or

(iii) plea of no contest.

(b) "Criminal activities" means any misdemeanor or felony offense [ef] for which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

(e) (i) "Victim" means any person or entity, including the Utah Office for Victims of Crime, who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include a codefendant or accomplice.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment;

(e) on or after April 27, 1992, to life in prison without parole; or

(f) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law to:

- (i) forfeit property;
- (ii) dissolve a corporation;
- (iii) suspend or cancel a license;
- (iv) permit removal of a person from office;
- (v) cite for contempt; or
- (vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4) (a) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.

(b) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

(c) In addition to any other sentence the court may impose, the court, pursuant to the provisions of Sections 63M-7-503 and 77-38a-401, shall enter:

(i) a civil judgment for complete restitution for the full amount of expenses paid on behalf of the victim by the Utah Office for Victims of Crime; and

(ii) an order of restitution for restitution payable to the Utah Office for Victims of Crime in the same amount unless otherwise ordered by the court pursuant to Subsection (4)(d).

(d) In determining whether to order that the restitution required under Subsection (4)(c) be reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and provide findings of its decision on the record.

(5) (a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court, the defendant shall pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) \$100 for up to 100 miles a defendant is transported;

(B) \$200 for 100 up to 200 miles a defendant is transported; and

(C) \$350 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(6) (a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the county for the cost of incarceration and costs of medical care provided to the defendant while in the county correctional facility before and after sentencing if:

(i) the defendant is convicted of criminal activity that results in incarceration in the county correctional facility; and

(ii) (A) the defendant is not a state prisoner housed in a county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement provided under Section 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or a state parole inmate, as defined in Section 64-13e-102.

(b) (i) The costs of incarceration under Subsection (6)(a) are the amount determined by the county correctional facility, but may not exceed the daily inmate incarceration costs and medical and transportation costs for the county correctional facility.

(ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

(c) In determining whether to order that the restitution required under this Subsection (6) be

reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and shall enter the reason for its order on the record.

(d) If on appeal the defendant is found not guilty of the criminal activity under Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall reimburse the defendant for restitution the defendant paid for costs of incarceration under Subsection (6)(a).

(7) In addition to any other sentence the court may impose, the court shall determine whether costs are appropriate pursuant to Section 77-32a-107.

Section 3. Section 77-18-1 is amended to read:

77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation -- Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic monitoring.

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2) (a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation under the supervision of an agency of local government or with a private organization; or

(iii) on court probation under the jurisdiction of the sentencing court.

(b) (i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(iv) Court probation may include an administrative level of services, including notification to the court of scheduled periodic reviews of the probationer's compliance with conditions.

(c) Supervised probation services provided by the department, an agency of local government, or a private organization shall specifically address the offender's risk of reoffending as identified by a validated risk and needs screening or assessment.

(3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the results of a risk and needs assessment;

(iii) the demand for services;

(iv) the availability of agency resources;

(v) public safety; and

(vi) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5) (a) Before the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include:

(i) a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family;

(ii) a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution

with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

(iii) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1;

(iv) recommendations for treatment of the offender; and

(v) the number of days since the commission of the offense that the offender has spent in the custody of the jail and the number of days, if any, the offender was released to a supervised release or alternative incarceration program under Section 17-22-5.5.

(c) The contents of the presentence investigation report are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

~~[(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;]~~

~~[(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;]~~

~~[(iii)] (i) provide for the support of others for whose support the defendant is legally liable;~~

~~[(iv)] (ii) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;~~

~~[(v)] (iii) if on probation for a felony offense, serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;~~

~~[(vi)] (iv) serve a term of home confinement, which may include the use of electronic monitoring;~~

~~[(vii)] (v) participate in compensatory service restitution programs, including the compensatory service program provided in Section 76-6-107.1;~~

~~[(viii)] (vi) pay for the costs of investigation, probation, and treatment services;~~

~~[(ix)] (vii) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and~~

~~[(x)] (viii) comply with other terms and conditions the court considers appropriate to ensure public safety or increase a defendant's likelihood of success on probation; and~~

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the ~~[account]~~ accounts receivable as defined by Section ~~[76-3-201.1]~~ 77-32a-101, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to Section 64-13-21 regarding earned credits.

(ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the ~~[account]~~ accounts receivable as defined in Section ~~[76-3-201.1]~~ 77-32a-101, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable. If

the court retains jurisdiction for this limited purpose, the court may order the defendant to pay to the court the costs associated with continued probation under this Subsection (10).

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(b) (i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation is being requested by the department or will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(iii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation or a graduated sanction imposed under Section 63M-7-404.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12) (a) (i) Probation may be modified as is consistent with the graduated sanctions and incentives developed by the Utah Sentencing Commission under Section 63M-7-404, but the length of probation may not be extended, except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the

affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.

(c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed if the defendant is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.

(e) (i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or reinstated for all or a portion of the original term of probation.

(iii) If a period of incarceration is imposed for a violation, the defendant shall be sentenced within the guidelines established by the Utah Sentencing Commission pursuant to Subsection 63M-7-404(4), unless the judge determines that:

(A) the defendant needs substance abuse or mental health treatment, as determined by a validated risk and needs screening and assessment, that warrants treatment services that are immediately available in the community; or

(B) the sentence previously imposed shall be executed.

(iv) If the defendant had, prior to the imposition of a term of incarceration or the execution of the previously imposed sentence under this Subsection (12), served time in jail as a condition of probation or due to a violation of probation under Subsection [77-18-1](12)(e)(iii), the time the probationer served in jail constitutes service of time toward the sentence previously imposed.

(13) The court may order the defendant to commit himself or herself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63G-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(15) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

(16) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Section 4. Section 77-18-6 is amended to read:

77-18-6. Judgment to pay fine or restitution constitutes a lien.

(1) (a) In cases not supervised by the Department of Corrections, the clerk of the district court shall:

(i) transfer the responsibility to collect past due accounts receivable to the Office of State Debt Collection when the accounts receivable are 90 days or more past due;

(ii) before transferring the responsibility to collect the past due account receivable to the Office of State Debt Collection, record each judgment of conviction of a crime that orders the payment of a fine, forfeiture, surcharge, cost permitted by statute, or fee in the registry of civil judgments, listing the Office of State Debt Collection as the judgment creditor; and

(iii) receive notification from the Office of State Debt Collection when a civil judgment ordered for payment of accounts receivable [~~as defined~~] in Section [~~76-3-201.1,~~] 77-32a-102 or 77-32a-103 has been satisfied.

(b) (i) The clerk of court shall record each judgment of conviction that orders the payment of restitution to a victim in the registry of civil judgments, listing the victim, or the estate of the victim, as the judgment creditor.

(ii) The Department of Corrections shall collect the judgment on behalf of the victim as provided in Subsection 77-18-1(9).

(iii) The court shall collect the judgment on behalf of the victim as provided in Subsection 78A-2-214(2).

(iv) The victim may collect the judgment.

~~[(v) The victim is responsible for timely renewal of the judgment under Section 78B-5-202.]~~

(2) When a fine, forfeiture, surcharge, cost, fee, or restitution is recorded in the registry of civil judgments, the judgment:

(a) constitutes a lien;

(b) has the same effect and is subject to the same rules as a judgment for money in a civil action; and

(c) may be collected by any means authorized by law for the collection of a civil judgment.

Section 5. Section 77-20-4 is amended to read:

77-20-4. Bail to be posted in cash, by credit or debit card, or by written undertaking.

(1) Bail may be posted:

(a) in cash;

(b) by written undertaking with or without sureties at the discretion of the magistrate; or

(c) by credit or debit card, at the discretion of the judge or bail commissioner.

(2) Bail may not be accepted without receiving in writing at the time the bail is posted the current mailing address, telephone number, and email address of the surety.

(3) Bail posted by debit or credit card, less the fee charged by the financial institution, shall be tendered to the courts.

(4) Bail refunded by the court may be refunded by credit to the debit or credit card, or cash. The amount refunded shall be the full amount received by the court under Subsection (3), which may be less than the full amount of the bail set by the court.

(5) Before refunding bail that is posted by the defendant in cash, by credit card, or by debit card, the court may apply the amount posted toward accounts receivable, as defined in Section ~~[76-3-201.1]~~ 77-32a-101, that are owed by the defendant in the priority set forth in Section 77-38a-404.

Section 6. Section 77-32a-101 is enacted to read:

CHAPTER 32a. CRIMINAL ACCOUNTS RECEIVABLE AND DEFENSE COSTS

77-32a-101. Definitions.

As used in this chapter:

(1) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third party claims, claims, reimbursement of a reward, and damages.

(2) "Criminal judgment accounts receivable" means any amounts owed by a criminal defendant arising from a criminal judgment that has not been paid. This includes fines, surcharges, costs, interest, and restitution.

(3) "Default" means an account receivable that is overdue by at least 90 days.

(4) "Delinquent" means an account receivable or installment payment that is overdue by more than 28 but less than 90 days.

Section 7. Section 77-32a-102 is enacted to read:

77-32a-102. Creation of criminal judgment account receivable.

(1) At the time of sentencing or acceptance of a plea in abeyance, the court shall establish the criminal accounts receivable, as determined in this chapter including all amounts then owing, including, as applicable, fines, fees, surcharges, costs, restitution, and interest.

(2) After creating the account receivable, the court:

(a) shall, in the case of felonies where a prison sentence is imposed and not suspended, enter any unpaid criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection;

(b) may, in other cases, permit a defendant to pay the criminal judgment account receivable by a date certain or in installments; or

(c) may, in other cases where the court finds that collection of the account by the court would not be feasible, enter any unpaid criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgement to the Office of State Debt Collection.

(3) A court allowing installment payments does not limit the ability of a judgment creditor to pursue collection by any means allowable by law.

(4) If the court makes restitution or another financial decision at a time after sentencing that increases the total amount owed in a case, the criminal accounts receivable balance shall be adjusted to include the new amounts determined by the court.

(5) The court may modify the amount and number of any installment payments, as justice requires, at any time before the time for default as outlined in Subsection 77-32a-103(2).

(6) In the district court, delinquent accounts may incur post judgment interest.

Section 8. Section 77-32a-103 is enacted to read:

77-32a-103. Past due accounts or payments -- Authority to send to Office of State Debt Collection independent of probation status -- Expiration.

(1) If a criminal judgment account receivable retained by the court becomes more than 30 days

past due, the court may, without a motion or a hearing, record the unpaid balance of the account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(2) If a criminal judgment account receivable retained by the court is more than 90 days past due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the criminal judgment account receivable to the Office of State Debt Collection.

(3) (a) Criminal judgment accounts receivable are not subject to civil statutes of limitations and expire only upon payment in full.

(b) This Subsection (3) applies to all criminal judgment accounts receivable not paid in full on or before May 12, 2017.

Section 9. Section 77-32a-104 is enacted to read:

77-32a-104. Delinquency and default as contempt of court.

(1) If a criminal judgment accounts receivable, or any installment due, becomes delinquent, the court, upon motion of the prosecutor, a judgment creditor, or upon the court's own motion, may order the defendant to appear and show cause why the delinquency should not be treated as contempt of court as provided in Section 78B-6-317.

(2) After the hearing, if it appears to the satisfaction of the court that the delinquency is not contempt, the court may enter an order for any of the following or any combination of the following:

(a) require the defendant to pay the criminal judgment account receivable or a specified part of the criminal judgment account receivable by a date certain;

(b) restructure the payment schedule;

(c) restructure the installment amount;

(d) except as limited by Subsection (4), satisfy the criminal judgment account receivable or any part of the criminal judgment account receivable with proof of compensatory service at a rate of credit at not less than \$10 for each hour of compensatory service;

(e) except as limited by Subsection (4), reduce or revoke the unpaid amount of the criminal judgment account receivable; or

(f) record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(3) The court may add postjudgment interest to the total accounts receivable if not previously ordered or included.

(4) If the court determines that the delinquency does constitute contempt the court shall address the contempt as provided in Section 78B-6-310.

(5) In issuing an order under this section, the court may not modify the amount of the judgment of complete restitution.

(6) If the defendant is a corporation or unincorporated association, any contempt proceeding authorized by this section shall cite the person authorized to make disbursement from the assets of the corporation or association.

Section 10. Section 77-32a-105 is enacted to read:

77-32a-105. Accounts with balances at termination of probation.

(1) When a defendant successfully terminates probation and has a nondelinquent criminal judgment account receivable with an outstanding balance, the court shall retain the account and allow the defendant to continue paying off the account.

(2) Should any balance become delinquent or in default, the court shall take appropriate action pursuant to Section 77-32a-103 or 77-32a-104.

Section 11. Section 77-32a-106 is enacted to read:

77-32a-106. Transfer of collection responsibility does not affect probation.

If a court transfers a criminal account receivable to the Office of State Debt Collection that includes an amount of court-ordered restitution, the payment of which is a term of probation pursuant to Subsection 77-18-1(8), the transfer may not affect the court's ability to monitor the payment as a condition of probation.

Section 12. Section 77-32a-107, which is renumbered from Section 77-32a-2 is renumbered and amended to read:

[77-32a-2]. 77-32a-107. Costs -- What constitute.

Costs shall be limited to expenses specially incurred by the state or any political subdivision in investigating, searching for, apprehending, and prosecuting the defendant, including attorney fees of counsel assigned to represent the defendant, ~~interpreter fees,~~ and investigators' fees. Costs ~~cannot~~ may not include expenses inherent in providing a constitutionally guaranteed trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Costs ~~cannot~~ may not include ~~attorneys'~~ attorney fees for prosecuting attorneys.

Section 13. Section 77-32a-108, which is renumbered from Section 77-32a-3 is renumbered and amended to read:

[77-32a-3]. 77-32a-108. Ability to pay considered.

The court ~~shall~~ may not include in the judgment a sentence that a defendant pay costs unless the defendant is or will be able to pay them. In determining the amount ~~and method of payment~~ of costs, the court shall take into account ~~of~~ the

financial resources of the defendant [and], the nature of the burden that payment of costs will impose, and that restitution [be] is the first priority.

Section 14. Section 77-32a-109, which is renumbered from Section 77-32a-4 is renumbered and amended to read:

[77-32a-4]. 77-32a-109. Petition for remission of payment of costs.

A defendant who has been [sentenced] ordered to pay costs and who is not [~~in contempt or default~~] delinquent in the payment thereof may at any time petition the sentencing court [~~which sentenced him~~] for remission of the payment of costs or of to reduce any unpaid portion [~~thereof~~] of those costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or [his] the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under Section [~~77-32a-5~~] 77-32a-104.

Section 15. Section 77-32a-110, which is renumbered from Section 77-32a-14 is renumbered and amended to read:

[77-32a-14]. 77-32a-110. Verified statement of time and expenses of counsel for indigent defendants.

The court may require a verified statement of time and expenses from appointed counsel or the nonprofit legal aid or other association providing counsel to convicted indigent defendants in order to establish the costs, if any, which will be included in the judgment.

Section 16. Section 77-38a-102 is amended to read:

77-38a-102. Definitions.

As used in this chapter:

(1) "Conviction" includes a:

- (a) judgment of guilt;
- (b) a plea of guilty; or
- (c) a plea of no contest.

(2) "Criminal activities" means:

(a) any misdemeanor or felony offense of which the defendant is convicted; or

(b) any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(3) "Department" means the Department of Corrections.

(4) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.

(5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

(6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet incurred, including those which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses, including lost earnings, including those and other travel expenses reasonably incurred as a result of participation in criminal proceedings, and medical and other expenses, but excludes punitive or exemplary damages and pain and suffering.

(7) "Plea agreement" means an agreement entered between the prosecution and defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

(8) "Plea disposition" means an agreement entered into between the prosecution and defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

(9) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(10) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, reimbursement for payment of a reward, and payment for expenses to a governmental entity for extradition or transportation and as may be further defined by law.

(12) (a) "Reward" means a sum of money:

(i) offered to the public for information leading to the arrest and conviction of an offender; and

(ii) that has been paid to a person or persons who provide this information, except that the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

(b) "Reward" does not include any amount paid in excess of the sum offered to the public.

(13) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

(14) (a) "Victim" means any person or entity, including the Utah Office for Victims of Crime, who

the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(b) "Victim" may not include a codefendant or accomplice.

Section 17. Section 77-38a-301 is amended to read:

77-38a-301. Restitution -- Convicted defendant may be required to pay.

In a criminal action, the court may require a defendant who enters into a plea disposition or is convicted [defendant] to make restitution.

Section 18. Section 77-38a-302 is amended to read:

77-38a-302. Restitution criteria.

(1) When a defendant enters into a plea disposition or is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence or term of a plea in abeyance it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, [a victim has the meaning as] "victim" means the same as that term is defined in Subsection 77-38a-102(14) [and in]. In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.

(5) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal

conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense;

(v) the individual victim's reasonable determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and

(vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider:

(i) the factors listed in Subsections (5)(a) and (b);

(ii) the financial resources of the defendant, as disclosed in the financial declaration described in Section 77-38a-204;

(iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(iv) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(v) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(vi) other circumstances that the court determines may make restitution inappropriate.

(d) (i) The prosecuting agency shall submit all requests for complete restitution and court-ordered restitution to the court at the time of sentencing if feasible, otherwise within one year after sentencing.

(ii) If a defendant is placed on probation pursuant to Section 77-18-1:

(A) the court shall determine complete restitution and court-ordered restitution; and

(B) the time period for determination of complete restitution and court-ordered restitution may be extended by the court upon a finding of good cause,

but may not exceed the period of the probation term served by the defendant.

(iii) If the defendant is committed to prison:

(A) any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole; and

(B) the Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

Section 19. Section 77-38a-404 is amended to read:

77-38a-404. Priority.

(1) Restitution payments made pursuant to a court order shall be disbursed to victims within 60 days of receipt from the defendant by the court or department provided:

(a) the victim has complied with Subsection 77-38a-203(1)(b);

(b) if the defendant has tendered a negotiable instrument, funds from the financial institution are actually received; and

(c) the payment to the victim is at least \$5, unless the payment is the final payment.

(2) If restitution to more than one person, agency, or entity is required at the same time, the department shall establish the following priorities of payment, except as provided in Subsection (4):

(a) the crime victim;

(b) the Utah Office for Victims of Crime;

(c) any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct;

(d) the person, entity, or governmental agency that has offered and paid a reward under Section ~~[76-3-201.1]~~ 77-32a-101 or 78A-6-117;

(e) any insurance company which has provided reimbursement to the victim as a result of the offender's criminal conduct; and

(f) any county correctional facility to which the defendant is required to pay restitution under Subsection 76-3-201(6).

(3) Restitution ordered under Subsection (2)(f) is paid after criminal fines and surcharges are paid.

(4) If the offender is required under Section 53-10-404 to reimburse the department for the cost of obtaining the offender's DNA specimen, this reimbursement is the next priority after restitution to the crime victim under Subsection (2)(a).

(5) All money collected for court-ordered obligations from offenders by the department will be applied:

(a) first, to victim restitution, except the current and past due amount of \$30 per month required to be collected by the department under Section 64-13-21, if applicable; and

(b) second, if applicable, to the cost of obtaining a DNA specimen under Subsection (4).

(6) Restitution owed to more than one victim shall be disbursed to each victim according to the percentage of each victim's share of the total restitution order.

Section 20. Section 77-38a-501 is amended to read:

77-38a-501. Default and sanctions.

(1) When a defendant defaults in the payment of a judgment for restitution or any installment ordered, the court, on motion of the prosecutor, parole or probation agent, victim, or on its own motion may:

(a) impose sanctions against the defendant as provided in Section ~~[76-3-201.1]~~ 77-32a-104; or

(b) if the payment of restitution to a victim was a term of probation, begin probation violation proceedings as provided in Subsection 77-18-1(12).

(2) The court may not impose a sanction against the defendant under Subsection (1) if:

(a) the defendant's sole default in the payment of a judgement for restitution is the failure to pay restitution ordered under Subsection 76-3-201(6) regarding costs of incarceration in a county correctional facility; and

(b) the sanction would extend the defendant's term of probation or parole.

Section 21. Section 78B-2-115 is amended to read:

78B-2-115. Actions by state or other governmental entity.

Except for the provisions of Section 78B-2-116, and the collection of criminal fines, fees, and restitution by the Office of State Debt Collection in accordance with ~~[Sections]~~ Section 63A-3-502 and ~~[76-3-201.1]~~ Title 77, Chapter 32a, Criminal Accounts Receivable and Defense Costs, the limitations in this chapter apply to actions brought in the name of or for the benefit of the state or other governmental entity the same as to actions by private parties.

Section 22. Section 78B-6-317 is enacted to read:

78B-6-317. Willful failure to pay criminal judgment accounts receivable.

(1) If a criminal judgment accounts receivable has become delinquent as defined in Section 77-32a-101, the court, by motion of the prosecutor, a judgment creditor, the Office of State Debt Collection, or on the court's own motion, may order the defendant to appear and show cause why the delinquency should not be treated as contempt of court, as provided in this section.

(2) (a) The moving party or a court clerk shall provide a declaration outlining the nature of the debt and the delinquency.

(b) Upon receipt of that declaration, the court shall set the matter for a hearing and provide notice of the hearing to the defendant by mailing notice of the hearing to the defendant's last known address and by any other means the court finds likely to provide defendant notice of the hearing.

(i) If it appears to the court that the defendant is not likely to appear at the hearing, the court may issue an arrest warrant with a bail amount reasonably likely to guarantee the defendant's appearance.

(ii) If the defendant is a corporation or an unincorporated association, the court shall cite the person authorized to make disbursement from the assets of the corporation or association to appear to answer for the alleged contempt.

(3) At the hearing the defendant is entitled to be represented by counsel and, if the court is considering a period of incarceration as a potential sanction, appointed counsel if the defendant is indigent.

(4) To find the defendant in contempt, the court shall find beyond a reasonable doubt that the defendant:

(a) was aware of the obligation to pay the criminal judgment accounts receivable;

(b) had the capacity to pay the criminal judgment accounts receivable in the manner ordered by the court; and

(c) did not make a good faith effort to make the payments.

(5) If the court finds the defendant in contempt for nonpayment, the court may impose the sanctions for contempt as provided in Section 78B-6-310, subject to the limitations in Subsections (6) through (8).

(6) If the court imposes a jail sanction for the contempt, the number of jail days may not exceed one day for each \$100 of the amount the court finds was contemptuously unpaid, up to a maximum of five days for contempt arising from a class B misdemeanor or lesser offense, and 30 days for a class A misdemeanor or felony offense.

(7) Any jail sanction imposed for contempt under this section shall serve to satisfy the criminal judgment account receivable at \$100 for each day served. Amounts satisfied under this Subsection (7) may not include restitution amounts ordered by the court in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act.

(8) Any financial penalty authorized by Section 78B-6-310 and ordered by the court may only become due after the satisfaction of the original criminal account receivable.

(9) The order of the court finding the defendant in contempt and ordering sanctions is a final appealable order.

Section 23. Repealer.

This bill repeals:

Section 76-3-201.1, Collection of criminal judgment accounts receivable.

Section 77-32a-1, Convicted defendant may be required to pay costs.

Section 77-32a-5, Time and method of payment.

Section 77-32a-6, Payment as condition of probation or suspended sentence.

Section 77-32a-7, Default in payment as contempt -- Order to show cause -- Warrant of arrest.

Section 77-32a-8, Default in payment as contempt -- What constitutes contempt -- Imprisonment.

Section 77-32a-9, Costs imposed on corporation or association -- Duty to pay -- Contempt.

Section 77-32a-10, Imprisonment for contempt -- Limitations.

Section 77-32a-11, Default not constituting contempt -- Relief allowed.

Section 77-32a-12, Collection of payment in default -- Execution.

Section 77-32a-13, Docketing judgment for costs.

CHAPTER 305**S. B. 74**

Passed March 2, 2017
 Approved March 23, 2017
 Effective May 9, 2017

MEDICAL INTERPRETER AMENDMENTS

Chief Sponsor: Luz Escamilla
 House Sponsor: Rebecca Chavez-Houck
 Cosponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends the Medical Language Interpreter Act.

Highlighted Provisions:

This bill:

- ▶ expands the tests and languages that may be accepted by the Division of Occupational and Professional Licensing for licensing a certified medical language interpreter;
- ▶ divides certification as a medical language interpreter into two tiers;
- ▶ extends certification renewal to a three-year cycle; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-80a-102, as renumbered and amended by Laws of Utah 2010, Chapter 127
 58-80a-303, as renumbered and amended by Laws of Utah 2010, Chapter 127
 58-80a-304, as enacted by Laws of Utah 2010, Chapter 127

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

Section 1. Section 58-80a-102 is amended to read:**58-80a-102. Definitions.**

As used in this chapter:

(1) "Certified medical language interpreter" means a medical language interpreter who has received a certificate from the division under this chapter.

(2) "Health care provider" means a person licensed under:

(a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(b) Title 58, Chapter 16a, Utah Optometry Practice Act;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) Title 58, Chapter 24b, Physical Therapy Practice Act;

(e) Title 58, Chapter 31b, Nurse Practice Act;

(f) Title 58, Chapter 31c, Nurse Licensure Compact;

(g) Title 58, Chapter 31d, Advanced Practice Registered Nurse Compact;

(h) Title 58, Chapter 44a, Nurse Midwife Practice Act;

(i) Title 58, Chapter 57, Respiratory Care Practices Act;

(j) Title 58, Chapter 60, Mental Health Professional Practice Act;

(k) Title 58, Chapter 61, Psychologist Licensing Act;

(l) Title 58, Chapter 67, Utah Medical Practice Act;

(m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

(o) Title 58, Chapter 70a, Physician Assistant Act;

(p) Title 58, Chapter 71, Naturopathic Physician Practice Act;

(q) Title 58, Chapter 73, Chiropractic Physician Practice Act; or

(r) Title 58, Chapter 77, Direct-Entry Midwife Act.

(3) "Medical language interpreter" means a person who, for compensation, performs verbal language interpretation services between a health care provider who speaks English and another person for the purpose of assisting the person in seeking or obtaining medical advice, diagnoses, or treatment.

(4) "National certification organization" means one of the following national organizations that certifies medical interpreters:

(a) the National Board of Certification for Medical Interpreters; or

(b) the Certification Commission for Healthcare Interpreters.

[4] (5) "National standards of practice" means the National Standards of Practice, published by the National Council on Interpreting in Health Care.

Section 2. Section 58-80a-303 is amended to read:**58-80a-303. Qualifications for certification.**

(1) ~~[A person]~~ An individual qualifies as a tier 1 certified medical language interpreter if the ~~[person]~~ individual:

[4] (a) acts as a medical language interpreter between English and at least one ~~[of the following languages:]~~ other language;

~~[(a) Spanish;]~~

~~[(b) Russian;]~~

~~[(c) Bosnian;]~~

~~[(d) Somali;]~~

~~[(e) Mandarin Chinese;]~~

~~[(f) Cantonese; or]~~

~~[(g) Navajo;]~~

~~[(2) passes an examination administered by, or under contract with, the division, that tests:]~~

~~[(a) the following areas, with respect to the language for which the person applies for certification:]~~

(b) passes an oral and written examination:

(i) administered by:

(A) the division;

(B) a person under contract with the division;

(C) a national certification organization; or

(D) a person approved by the division by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) that tests:

[(i)] (A) basic language fluency with respect to the language for which the individual applies for certification;

[(ii)] (B) basic medical terminology with respect to the language for which the individual applies for certification, including the ability to~~[-(A)]~~ name human body parts~~[-(B)]~~, name internal human organs~~[-(C)]~~, describe basic medical symptoms~~[-(D)]~~, and ~~[(D)]~~ describe basic medical instructions, including dosage amounts and frequency; ~~[and]~~

[(iii)] (C) basic cultural competency relating to medical care beliefs and practices that are common to people who speak ~~[that language]~~ the language for which the individual applies for certification;

[(iv)] (D) knowledge and understanding of the national standards of practice; and

[(v)] (E) a basic understanding of medical confidentiality requirements, including the confidentiality requirements of the federal Health Insurance Portability and Accountability Act;

[(3)] (c) signs a statement agreeing to abide by the national standards of practice; and

[(4)] (d) pays the fee described in Section 58-80a-305.

(2) If an oral examination under Subsection (1)(b) is not available in the language for which an individual applies for certification, the individual may qualify as a tier 2 certified medical language interpreter if the individual passes the written portion of an examination under Subsection (1)(b) and completes all other requirements under Subsection (1).

Section 3. Section 58-80a-304 is amended to read:

58-80a-304. Term of certification -- Expiration -- Renewal.

(1) ~~[The]~~ Notwithstanding Section 58-1-308, the division shall issue each certification under this chapter in accordance with a ~~[two-year]~~ three-year renewal cycle established by rule. The division may by rule extend or shorten a renewal cycle by as much as ~~[one-year]~~ two years to stagger the renewal cycles that the division administers.

(2) Each certification automatically expires on the expiration date shown on the certification unless the certified medical language interpreter renews the certification in accordance with Section 58-1-308.

CHAPTER 306**S. B. 76**

Passed March 7, 2017

Approved March 23, 2017

Effective May 9, 2017

POST-CONVICTION DNA TESTING AMENDMENTS

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Steve Eliason

LONG TITLE**General Description:**

This bill modifies the Judicial Code regarding postconviction remedies.

Highlighted Provisions:

This bill:

- ▶ modifies the requirements to obtain postconviction DNA testing by providing that the new evidence shall establish by a reasonable probability that the petitioner would not have been convicted, or would have received a lesser sentence, rather than requiring that the evidence will establish factual innocence; and
- ▶ provides that after the Utah attorney general responds to a petition for postconviction DNA testing, the petitioner may reply to the attorney general's response before the court makes a determination regarding allowing the testing.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78B-9-301, as last amended by Laws of Utah 2010, Chapter 405

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

Section 1. Section 78B-9-301 is amended to read:**78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations -- Notification of victim.**

- (1) As used in this part:
 - (a) "DNA" means deoxyribonucleic acid.
 - (b) "Factually innocent" has the same definition as in Section 78B-9-402.
 - (2) A person convicted of a felony offense may at any time file a petition for postconviction DNA testing in the trial court that entered the judgment of conviction if the person asserts factual innocence under oath and the petition alleges:
 - (a) evidence has been obtained regarding the person's case which is still in existence and is in a condition that allows DNA testing to be conducted;
 - (b) the chain of custody is sufficient to establish that the evidence has not been altered in any material aspect;

(c) the person identifies the specific evidence to be tested and states a theory of defense, not inconsistent with theories previously asserted at trial, that the requested DNA testing would support;

(d) the evidence was not previously subjected to DNA testing, or if the evidence was tested previously, the evidence was not subjected to the testing that is now requested, and the new testing may resolve an issue not resolved by the prior testing;

(e) the proposed DNA testing is generally accepted as valid in the scientific field or is otherwise admissible under Utah law;

(f) the evidence that is the subject of the request for testing:

(i) has the potential to produce new, noncumulative evidence ~~[that will establish the person's factual innocence]~~; and

(ii) there is a reasonable probability that the defendant would not have been convicted or would have received a lesser sentence if the evidence had been presented at the original trial; and

(g) the person is aware of the consequences of filing the petition, including:

(i) those specified in Sections 78B-9-302 and 78B-9-304; and

(ii) that the person is waiving any statute of limitations in all jurisdictions as to any felony offense the person has committed which is identified through DNA database comparison.

(3) The petition under Subsection (2) shall comply with Rule 65C, Utah Rules of Civil Procedure, including providing the underlying criminal case number.

(4) The court may not order DNA testing in cases in which DNA testing was available at the time of trial and the person did not request DNA testing or present DNA evidence for tactical reasons.

(5) After a petition is filed under this section, prosecutors, law enforcement officers, and crime laboratory personnel have a duty to cooperate in preserving evidence and in determining the sufficiency of the chain of custody of the evidence which may be subject to DNA testing.

(6) (a) A person who files a petition under this section shall serve notice upon the office of the prosecutor who obtained the conviction, and upon the Utah attorney general. The attorney general shall, within 30 days after receipt of service of a copy of the petition, or within any additional period of time the court allows, answer or otherwise respond to all proceedings initiated under this part.

(b) After the attorney general [is given an opportunity to respond to a petition for postconviction DNA testing,] responds under Subsection (6)(a), the petitioner has the right to reply to the response of the attorney general.

(c) After the attorney general and the petitioner have filed a response and reply in compliance with

Subsection (6)(b), the court shall order DNA testing if it finds by a preponderance of the evidence that all criteria of Subsection (2) have been met.

(7) (a) If the court grants the petition for testing, the DNA test shall be performed by the Utah State Crime Laboratory within the Criminal Investigations and Technical Services Division created in Section 53-10-103, unless the person establishes that the state crime laboratory has a conflict of interest or does not have the capability to perform the necessary testing.

(b) If the court orders that the testing be conducted by any laboratory other than the state crime laboratory, the court shall require that the testing be performed:

(i) under reasonable conditions designed to protect the state's interests in the integrity of the evidence; and

(ii) according to accepted scientific standards and procedures.

(8) (a) DNA testing under this section shall be paid for from funds appropriated to the Department of Public Safety under Subsection 53-10-407(4)(d)(ii) from the DNA Specimen Restricted Account created in Section 53-10-407 if:

(i) the court ordered the DNA testing under this section;

(ii) the Utah State Crime Laboratory within the Criminal Investigations and Technical Services Division has a conflict of interest or does not have the capability to perform the necessary testing; and

(iii) the petitioner who has filed for postconviction DNA testing under Section 78B-9-201 is serving a sentence of imprisonment and is indigent.

(b) Under this Subsection (8), costs of DNA testing include those necessary to transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports of findings.

(9) If the person is serving a sentence of imprisonment and is indigent, the state shall pay for the costs of the testing under this part, but if the result is not favorable to the person the court may order the person to reimburse the state for the costs of the testing, pursuant to the provisions of Subsections 78B-9-302(4) and 78B-9-304(1)(b).

(10) Any victim of the crime regarding which the person petitions for DNA testing, who has elected to receive notice under Section 77-38-3 shall be notified by the state's attorney of any hearing regarding the petition and testing, even though the hearing is a civil proceeding.

CHAPTER 307

S. B. 88

Passed March 7, 2017
 Approved March 23, 2017
 Effective May 9, 2017

MEDICAID HOUSING COORDINATOR

Chief Sponsor: Jani Iwamoto
 House Sponsor: Stewart E. Barlow

LONG TITLE

General Description:

This bill amends the Medical Assistance Act.

Highlighted Provisions:

This bill:

- ▶ creates the position of Medicaid long-term support services housing coordinator within the Medicaid program; and
- ▶ specifies the duties of the coordinator.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2018:

- ▶ to the Department of Health - Medicaid and Health Financing - Medicaid Operations as an ongoing appropriation:
 - from the General Fund, \$57,200;
 - from Federal Funds, \$57,200.

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

26-18-414, Utah Code Annotated 1953

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

Section 1. Section 26-18-414 is enacted to read:

26-18-414. Medicaid long-term support services housing coordinator.

(1) There is created within the Medicaid program a full-time-equivalent position of Medicaid long-term support services housing coordinator.

(2) The coordinator shall help Medicaid recipients receive long-term support services in a home or other community-based setting rather than in a nursing home or other institutional setting by:

(a) working with municipalities, counties, the Housing and Community Development Division within the Department of Workforce Services, and others to identify community-based settings available to recipients;

(b) working with the same entities to promote the development, construction, and availability of additional community-based settings;

(c) training Medicaid case managers and support coordinators on how to help Medicaid recipients move from an institutional setting to a community-based setting; and

(d) performing other related duties.

Section 2. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

To Department of Health - Medicaid and Health Financing

<u>From General Fund</u>	<u>\$57,200</u>
<u>From Federal Funds</u>	<u>\$57,200</u>

Schedule of Programs:

<u>Medicaid Operations</u>	<u>\$114,400</u>
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CHAPTER 308**S. B. 99**

Passed February 24, 2017

Approved March 23, 2017

Effective May 9, 2017

**CONSUMER PROTECTION
ACTION AMENDMENTS**

Chief Sponsor: Daniel Hemmert

House Sponsor: Mike K. McKell

LONG TITLE**General Description:**

This bill amends provisions related to consumer protection actions.

Highlighted Provisions:

This bill:

- ▶ provides that the attorney general may, in an action to enforce the Protection of Personal Information Act or the Consumer Credit Protection Act, enter into a confidentiality agreement under certain circumstances;
- ▶ provides for the content of a confidentiality agreement entered into by the attorney general pursuant to the Protection of Personal Information Act or the Consumer Credit Protection Act;
- ▶ provides that, in an action to enforce the Protection of Personal Information Act or the Consumer Credit Protection Act, a court may issue a confidentiality order; and
- ▶ provides for the handling of confidential information obtained by the attorney general related to an enforcement action under the Protection of Personal Information Act or the Consumer Credit Protection Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

13-44-301, as last amended by Laws of Utah 2013, Chapter 187

13-45-401, as last amended by Laws of Utah 2015, Chapter 191

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

Section 1. Section 13-44-301 is amended to read:**13-44-301. Enforcement -- Confidentiality agreement -- Penalties.**

(1) The attorney general may enforce this chapter's provisions.

(2) (a) Nothing in this chapter creates a private right of action.

(b) Nothing in this chapter affects any private right of action existing under other law, including contract or tort.

(3) A person who violates this chapter's provisions is subject to a civil ~~fine~~ penalty of:

(a) no greater than \$2,500 for a violation or series of violations concerning a specific consumer; and

(b) no greater than \$100,000 in the aggregate for related violations concerning more than one consumer.

(4) (a) In addition to the penalties provided in Subsection (3), the attorney general may seek, in an action brought under this chapter:

(i) injunctive relief to prevent future violations of this chapter ~~in~~; and

(ii) attorney fees and costs.

(b) The attorney general shall bring an action under this chapter in:

~~[(a)]~~ (i) the district court located in Salt Lake City; or

~~[(b)]~~ (ii) the district court for the district in which resides a consumer who is affected by the violation.

(5) The attorney general shall deposit any amount received under Subsection (3), (4), or (10) into the Attorney General Litigation Fund created in Section 76-10-3114.

~~[(5)]~~ (6) In enforcing this chapter, the attorney general may:

(a) investigate the actions of any person alleged to violate Section 13-44-201 or 13-44-202;

(b) subpoena a witness;

(c) subpoena a document or other evidence;

(d) require the production of books, papers, contracts, records, or other information relevant to an investigation; ~~and~~

(e) conduct an adjudication in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to enforce a civil provision under this chapter~~[-]; and~~

(f) enter into a confidentiality agreement in accordance with Subsection (7).

(7) (a) If the attorney general has reasonable cause to believe that an individual is in possession, custody, or control of information that is relevant to enforcing this chapter, the attorney general may enter into a confidentiality agreement with the individual.

(b) In a civil action brought under this chapter, a court may issue a confidentiality order that incorporates the confidentiality agreement described in Subsection (7)(a).

(c) A confidentiality agreement entered into under Subsection (7)(a) or a confidentiality order issued under Subsection (7)(b) may:

(i) address a procedure;

(ii) address testimony taken, a document produced, or material produced under this section;

(iii) provide whom may access testimony taken, a document produced, or material produced under this section;

(iv) provide for safeguarding testimony taken, a document produced, or material produced under this section; or

(v) require that the attorney general:

(A) return a document or material to an individual; or

(B) notwithstanding Section 63A-12-105 or a retention schedule created in accordance with Section 63G-2-604, destroy the document or material at a designated time.

~~[(6)]~~ (8) A subpoena issued under Subsection ~~[(5)]~~ (6) may be served by certified mail.

~~[(7)]~~ (9) A person's failure to respond to a request or subpoena from the attorney general under Subsection ~~[(5)]~~ (6)(b), (c), or (d) is a violation of this chapter.

~~[(8)]~~ (10) (a) The attorney general may inspect and copy all records related to the business conducted by the person alleged to have violated this chapter, including records located outside the state.

(b) For records located outside of the state, the person who is found to have violated this chapter shall pay the attorney general's expenses to inspect the records, including travel costs.

(c) Upon notification from the attorney general of the attorney general's intent to inspect records located outside of the state, the person who is found to have violated this chapter shall pay the attorney general \$500, or a higher amount if \$500 is estimated to be insufficient, to cover the attorney general's expenses to inspect the records.

~~[(d)]~~ The attorney general shall deposit any amounts received under this Subsection ~~(8)~~ in the Attorney General Litigation Fund established in Section ~~76-10-3114~~.

~~[(e)]~~ (d) To the extent an amount paid to the attorney general by a person who is found to have violated this chapter is not expended by the attorney general, the amount shall be refunded to the person who is found to have violated this chapter.

~~[(f)]~~ (e) The Division of Corporations and Commercial Code or any other relevant entity shall revoke any authorization to do business in this state of a person who fails to pay any amount required under this Subsection ~~[(8)]~~ (10).

(11) (a) Subject to Subsection (11)(c), the attorney general shall keep confidential a procedure agreed to, testimony taken, a document produced, or material produced under this section pursuant to a subpoena, confidentiality agreement, or confidentiality order, unless the individual who agreed to the procedure, provided testimony, produced the document, or produced material waives confidentiality in writing.

(b) Subject to Subsections (11)(c) and (11)(d), the attorney general may use, in an enforcement action taken under this section, testimony taken, a

document produced, or material produced under this section to the extent the use is not restricted or prohibited by a confidentiality agreement or a confidentiality order.

(c) The attorney general may use, in an enforcement action taken under this section, testimony taken, a document produced, or material produced under this section that is restricted or prohibited from use by a confidentiality agreement or a confidentiality order if the individual who provided testimony or produced the document or material waives the restriction or prohibition in writing.

(d) The attorney general may disclose testimony taken, a document produced, or material produced under this section, without consent of the individual who provided the testimony or produced the document or material, or the consent of an individual being investigated, to:

(i) a grand jury; or

(ii) a federal or state law enforcement officer, if the person from whom the information was obtained is notified 20 days or greater before the day on which the information is disclosed, and the federal or state law enforcement officer certifies that the federal or state law enforcement officer will:

(A) maintain the confidentiality of the testimony, document, or material; and

(B) use the testimony, document, or material solely for an official law enforcement purpose.

Section 2. Section 13-45-401 is amended to read:

13-45-401. Enforcement -- Confidentiality agreement -- Penalties.

(1) The attorney general may enforce the provisions of this chapter.

(2) A person who violates a provision of ~~[Section 13-45-201, 13-45-202, 13-45-203, 13-45-204, 13-45-205, or 13-45-301]~~ this chapter is subject to a civil fine of:

(a) no greater than \$2,500 for a violation or series of violations concerning a specific consumer; and

(b) no greater than \$100,000 in the aggregate for related violations concerning more than one consumer.

(3) (a) In addition to the penalties provided in Subsection (2), the attorney general may seek, in an action brought under this chapter:

(i) injunctive relief to prevent future violations of this chapter ~~[(a)]~~; and

(ii) attorney fees and costs.

(b) The attorney general shall bring an action under this chapter in:

~~[(a)]~~ (i) the district court located in Salt Lake City; or

~~[(b)]~~ (ii) the district court for the district in which resides a consumer who is the subject of a credit report on which a violation occurs.

(4) The attorney general shall deposit any amount received under Subsection (2) or (3) into the Attorney General Litigation Fund created in Section 76-10-3114.

(5) (a) If the attorney general has reasonable cause to believe that an individual is in possession, custody, or control of information that is relevant to enforcing this chapter, the attorney general may enter into a confidentiality agreement with the individual.

(b) In a civil action brought under this chapter, a court may issue a confidentiality order that incorporates the confidentiality agreement described in Subsection (5)(a).

(c) A confidentiality agreement entered into under Subsection (5)(a) or a confidentiality order issued under Subsection (5)(b) may:

(i) address a procedure;

(ii) address testimony taken, a document produced, or material produced under this section;

(iii) provide whom may access testimony taken, a document produced, or material produced under this section;

(iv) provide for safeguarding testimony taken, a document produced, or material produced under this section; or

(v) require that the attorney general:

(A) return a document or material to an individual; or

(B) notwithstanding Section 63A-12-105 or a retention schedule created in accordance with Section 63G-2-604, destroy the document or material at a designated time.

(6) (a) Subject to Subsection (6)(c), the attorney general shall keep confidential a procedure agreed to, testimony taken, a document produced, or material produced under this section pursuant to a subpoena, confidentiality agreement, or confidentiality order, unless the individual who agreed to the procedure, provided testimony, or produced the document or material waives confidentiality in writing.

(b) Subject to Subsections (6)(c) and (6)(d), the attorney general may use, in an enforcement action taken under this section, testimony taken, a document produced, or material produced under this section to the extent the use is not restricted or prohibited by a confidentiality agreement or a confidentiality order.

(c) The attorney general may use, in an enforcement action taken under this section, testimony taken, a document produced, or material produced under this section that is restricted or prohibited from use by a confidentiality agreement or a confidentiality order if the individual who provided testimony, produced the document, or produced the material waives the restriction or prohibition in writing.

(d) The attorney general may disclose testimony taken, a document produced, or material produced under this section, without consent of the individual who provided the testimony, produced the document, or produced the material, or without the consent of an individual being investigated, to:

(i) a grand jury; or

(ii) a federal or state law enforcement officer, if the person from whom the information was obtained is notified 20 days or greater before the day on which the information is disclosed, and the federal or state law enforcement officer certifies that the federal or state law enforcement officer will:

(A) maintain the confidentiality of the testimony, document, or material; and

(B) use the testimony, document, or material solely for an official law enforcement purpose.

CHAPTER 309**S. B. 162**

Passed March 2, 2017
 Approved March 23, 2017
 Effective May 9, 2017

PHYSICIAN ASSISTANT AMENDMENTS

Chief Sponsor: Brian E. Shiozawa
 House Sponsor: Michael S. Kennedy

LONG TITLE**General Description:**

This bill amends the Physician Assistant Act.

Highlighted Provisions:

This bill:

- ▶ amends the requirements of a delegation of services agreement;
- ▶ removes the requirement that a physician assistant obtain a co-signature on a chart medical record of a prescription from the supervising physician to prescribe certain controlled substances;
- ▶ amends requirements for licensure; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 58-70a-102, as enacted by Laws of Utah 1997, Chapter 229
- 58-70a-301, as enacted by Laws of Utah 1997, Chapter 229
- 58-70a-302, as last amended by Laws of Utah 2010, Chapter 37
- 58-70a-501, as last amended by Laws of Utah 1998, Chapter 38
- 58-70a-503, as last amended by Laws of Utah 2014, Chapter 72

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

Section 1. Section 58-70a-102 is amended to read:**58-70a-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Board" means the Physician Assistant Licensing Board created in Section 58-70a-201.
- (2) (a) "Delegation of services agreement" means written criteria jointly developed by a physician assistant's supervising physician and [any] substitute supervising physicians and the physician assistant, that permits a physician assistant, working under the direction or review of the supervising physician, to assist in the management of common illnesses and injuries.
- (b) The agreement defines the working relationship and delegation of duties between the

supervising physician and the physician assistant as specified by division rule and shall include:

- (i) the prescribing of controlled substances;
- (ii) the degree and means of supervision;
- (iii) the frequency and mechanism of [chart review] quality review, including the mechanism for review of patient data and documentation of the review, as determined by the supervising physician and the physician assistant;
- (iv) procedures addressing situations outside the scope of practice of the physician assistant; and
- (v) procedures for providing backup for the physician assistant in emergency situations.
- (3) "Direct supervision" means the supervising physician is:
- (a) physically present at the point of patient treatment on site where the physician assistant he is supervising is practicing; and
- (b) immediately available for consultation with the physician assistant.
- (4) "Practice as a physician assistant" means:
- (a) the professional activities and conduct of a physician assistant, also known as a PA, in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition, dependent upon and under the supervision of a supervising physician or substitute supervising physician in accordance with a delegation of services agreement; and
- (b) the physician assistant acts as the agent of the supervising physician or substitute supervising physician when acting in accordance with a delegation of services agreement.
- (5) "Substitute supervising physician" means an individual who meets the requirements of a supervising physician under this chapter and acts as the supervising physician in the absence of the supervising physician.
- (6) "Supervising physician" means an individual who:
- (a) is currently licensed to practice under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- (b) acts as the primary supervisor of a physician assistant and takes responsibility for the professional practice and conduct of a physician assistant in accordance with this chapter; and
- (c) is not an employee of the physician assistant [he] whom the individual supervises.
- (7) "Supervision" means the supervising physician is available for consultation with the physician assistant, either personally or by other means permitting direct verbal communication between the physician and the physician assistant.
- (8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-70a-502.

(9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-70a-503 and as may be further defined by rule.

Section 2. Section 58-70a-301 is amended to read:

58-70a-301. Licensure required -- License classifications.

(1) A license is required to engage in practice as a physician assistant, except as specifically provided in Section 58-70a-305 or 58-1-307.

(2) The division shall issue to ~~[a person]~~ an individual who qualifies under this chapter a license in the classification of physician assistant.

Section 3. Section 58-70a-302 is amended to read:

58-70a-302. Qualifications for licensure.

Each applicant for licensure as a physician assistant shall:

(1) submit an application in a form prescribed by the division;

(2) pay a fee determined by the department under Section 63J-1-504;

(3) be of good moral character;

(4) have successfully completed a physician assistant program accredited by the:

(a) Accreditation Review Commission on Education for the Physician Assistant; or

(b) if prior to January 1, 2001, either the:

(i) Committee on Accreditation of Allied Health Education Programs; or

(ii) Committee on Allied Health Education and Accreditation;

(5) have passed the licensing examinations required by division rule made in collaboration with the board;

(6) meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure; and

(7) (a) if the applicant desires to practice in Utah, complete a form provided by the division indicating:

(i) the applicant has completed a delegation of services agreement signed by the physician assistant[,] and the supervising physician~~[,] and substitute supervising physicians~~; and

(ii) the agreement is on file at the Utah practice sites; or

(b) complete a form provided by the division indicating the applicant is not practicing in Utah and, prior to practicing in Utah, the applicant will meet the requirements of Subsection (7)(a).

Section 4. Section 58-70a-501 is amended to read:

58-70a-501. Scope of practice.

(1) A physician assistant may provide any medical services that are not specifically prohibited under this chapter or rules adopted under this chapter, and that are:

(a) within the physician assistant's skills and scope of competence;

(b) within the usual scope of practice of the physician assistant's supervising physician; and

(c) provided under the supervision of a supervising physician and in accordance with a delegation of services agreement.

(2) A physician assistant, in accordance with a delegation of services agreement, may prescribe or administer an appropriate controlled substance if:

(a) the physician assistant holds a Utah controlled substance license and a DEA registration; and

(b) the prescription or administration of the controlled substance is within the prescriptive practice of the supervising physician and also within the delegated prescribing stated in the delegation of services agreement~~[,] and~~.

~~[(c) the supervising physician cosigns any medical chart record of a prescription of a Schedule 2 or Schedule 3 controlled substance made by the physician assistant.]~~

(3) A physician assistant shall, while practicing as a physician assistant, wear an identification badge showing ~~[his]~~ the physician assistant's license classification as a ~~[practicing]~~ physician assistant.

(4) A physician assistant may not:

(a) independently charge or bill a patient, or others on behalf of the patient, for services rendered;

(b) identify himself or herself to any person in connection with activities allowed under this chapter other than as a physician assistant; or

(c) use the title "doctor" or "physician," or by any knowing act or omission lead or permit anyone to believe ~~[he]~~ the physician assistant is a physician.

Section 5. Section 58-70a-503 is amended to read:

58-70a-503. Unprofessional conduct.

"Unprofessional conduct" includes:

(1) violation of a patient confidence to any person who does not have a legal right and a professional need to know the information concerning the patient;

(2) knowingly prescribing, selling, giving away, or directly or indirectly administering, or offering to prescribe, sell, furnish, give away, or administer any prescription drug except for a legitimate

medical purpose upon a proper diagnosis indicating use of that drug in the amounts prescribed or provided;

(3) prescribing prescription drugs for [himself] oneself or administering prescription drugs to [himself] oneself, except those that have been legally prescribed for [him] the physician assistant by a licensed practitioner and that are used in accordance with the prescription order for the condition diagnosed;

(4) failure to maintain at the practice site a delegation of services agreement that accurately reflects current practices;

(5) failure to make the delegation of services agreement available to the division for review upon request;

(6) in a practice that has physician assistant ownership interests, failure to allow the supervising physician the independent final decision making authority on patient treatment decisions, as set forth in the delegation of services agreement or as defined by rule; and

(7) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable.

CHAPTER 310**S. B. 164**

Passed March 1, 2017
Approved March 23, 2017
Effective May 9, 2017

UTAH FIRST ECONOMIC DEVELOPMENT AMENDMENTS

Chief Sponsor: Karen Mayne
House Sponsor: John R. Westwood

LONG TITLE**General Description:**

This bill modifies provisions related to the Governor's Office of Economic Development.

Highlighted Provisions:

This bill:

- ▶ directs the Governor's Office of Economic Development to promote and encourage the employment of Utah workers, the purchase of Utah goods, and the growth of Utah businesses.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63N-1-201, as renumbered and amended by Laws of Utah 2015, Chapter 283
63N-2-104, as last amended by Laws of Utah 2016, Chapter 350

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

Section 1. Section 63N-1-201 is amended to read:**63N-1-201. Creation of office -- Responsibilities.**

(1) There is created the Governor's Office of Economic Development.

(2) The office is:

(a) responsible for economic development and economic development planning in the state; and

(b) the industrial promotion authority of the state.

(3) The office shall:

(a) administer and coordinate state and federal economic development grant programs;

(b) promote and encourage the economic, commercial, financial, industrial, agricultural, and civic welfare of the state;

(c) promote and encourage the employment of workers in the state and the purchase of goods and services produced in the state by local businesses;

~~(e)~~ (d) act to create, develop, attract, and retain business, industry, and commerce in the state;

~~(d)~~ (e) act to enhance the state's economy;

~~(e)~~ (f) administer programs over which the office is given administrative supervision by the governor;

~~(f)~~ (g) submit an annual written report as described in Section 63N-1-301; and

~~(g)~~ (h) perform other duties as provided by the Legislature.

(4) In order to perform its duties under this title, the office may:

(a) enter into a contract or agreement with, or make a grant to, a public or private entity, including a municipality, if the contract or agreement is not in violation of state statute or other applicable law;

(b) except as provided in Subsection (4)(c), receive and expend funds from a public or private source for any lawful purpose that is in the state's best interest; and

(c) solicit and accept a contribution of money, services, or facilities from a public or private donor, but may not use the contribution for publicizing the exclusive interest of the donor.

(5) Money received under Subsection (4)(c) shall be deposited in the General Fund as dedicated credits of the office.

(6) (a) The office shall obtain the advice of the board before implementing a change to a policy, priority, or objective under which the office operates.

(b) Subsection (6)(a) does not apply to the routine administration by the office of money or services related to the assistance, retention, or recruitment of business, industry, or commerce in the state.

Section 2. Section 63N-2-104 is amended to read:**63N-2-104. Creation of economic development zones -- Tax credits -- Assignment of tax credit.**

(1) The office, with advice from the board, may create an economic development zone in the state if the following requirements are satisfied:

(a) the area is zoned commercial, industrial, manufacturing, business park, research park, or other appropriate business related use in a community-approved master plan;

(b) the request to create a development zone has first been approved by an appropriate local government entity; and

(c) local incentives have been or will be committed to be provided within the area.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules establishing the requirements for a business entity or local government entity to qualify for a tax credit for a new commercial project in a development zone under this part.

(b) The office shall ensure that the requirements described in Subsection (2)(a) include the following:

(i) the new commercial project is within the development zone;

(ii) the new commercial project includes direct investment within the geographic boundaries of the development zone;

(iii) the new commercial project brings new incremental jobs to Utah;

(iv) the new commercial project includes the creation of high paying jobs in the state, significant capital investment in the state, or significant purchases from vendors [and], contractors, or service providers in the state, or a combination of these three economic factors;

(v) the new commercial project generates new state revenues; and

(vi) a business entity, a local government entity, or a community reinvestment agency to which a local government entity assigns a tax credit under this section meets the requirements of Section 63N-2-105.

(3) (a) The office, after consultation with the board, may enter into a written agreement with a business entity or local government entity authorizing a tax credit to the business entity or local government entity if the business entity or local government entity meets the requirements described in this section.

(b) (i) With respect to a new commercial project, the office may authorize a tax credit to a business entity or a local government entity, but not both.

(ii) In determining whether to authorize a tax credit with respect to a new commercial project to a business entity or a local government entity, the office shall authorize the tax credit in a manner that the office determines will result in providing the most effective incentive for the new commercial project.

(c) (i) Except as provided in Subsection (3)(c)(ii), the office may not authorize or commit to authorize a tax credit that exceeds:

(A) 50% of the new state revenues from the new commercial project in any given year; or

(B) 30% of the new state revenues from the new commercial project over the lesser of the life of a new commercial project or 20 years.

(ii) If the eligible business entity makes capital expenditures in the state of \$1,500,000,000 or more associated with a new commercial project, the office may:

(A) authorize or commit to authorize a tax credit not exceeding 60% of new state revenues over the lesser of the life of the project or 20 years, if the other requirements of this part are met;

(B) establish the year that state revenues and incremental jobs baseline data are measured for

purposes of an incentive under this Subsection (3)(c)(ii); and

(C) offer an incentive under this Subsection (3)(c)(ii) or modify an existing incentive previously granted under Subsection (3)(c)(i) that is based on the baseline measurements described in Subsection (3)(c)(ii)(B), except that the incentive may not authorize or commit to authorize a tax credit of more than 60% of new state revenues in any one year.

(d) (i) A local government entity may by resolution assign a tax credit authorized by the office to a community reinvestment agency.

(ii) The local government entity shall provide a copy of the resolution described in Subsection (3)(d)(i) to the office.

(iii) If a local government entity assigns a tax credit to a community reinvestment agency, the written agreement described in Subsection (3)(a) shall:

(A) be between the office, the local government entity, and the community reinvestment agency;

(B) establish the obligations of the local government entity and the community reinvestment agency; and

(C) establish the extent to which any of the local government entity's obligations are transferred to the community reinvestment agency.

(iv) If a local government entity assigns a tax credit to a community reinvestment agency:

(A) the community reinvestment agency shall retain records as described in Subsection (4)(d); and

(B) a tax credit certificate issued in accordance with Section 63N-2-106 shall list the community reinvestment agency as the named applicant.

(4) The office shall ensure that the written agreement described in Subsection (3):

(a) specifies the requirements that the business entity or local government entity shall meet to qualify for a tax credit under this part;

(b) specifies the maximum amount of tax credit that the business entity or local government entity may be authorized for a taxable year and over the life of the new commercial project;

(c) establishes the length of time the business entity or local government entity may claim a tax credit;

(d) requires the business entity or local government entity to retain records supporting a claim for a tax credit for at least four years after the business entity or local government entity claims a tax credit under this part; and

(e) requires the business entity or local government entity to submit to audits for verification of the tax credit claimed.

CHAPTER 311**S. B. 167**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

BAIL AMENDMENTS

Chief Sponsor: J. Stuart Adams

House Sponsor: Daniel McCay

LONG TITLE**General Description:**

This bill modifies the Code of Criminal Procedure regarding bail.

Highlighted Provisions:

This bill:

- ▶ modifies the provisions regarding the release on bail to allow release by written undertaking or an equal amount of cash bail.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

77-20-1, as last amended by Laws of Utah 2016, Chapter 234

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

Section 1. Section 77-20-1 is amended to read:**77-20-1. Right to bail -- Denial of bail -- Hearing.**

(1) As used in this chapter:

(a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

(b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

(c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

(2) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

(a) capital felony, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

(d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(3) Any person who may be admitted to bail may be released ~~[either]~~ by written undertaking or an equal amount of cash bail, or on the person's own recognizance ~~[or upon posting bail]~~, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

(a) ensure the appearance of the accused;

(b) ensure the integrity of the court process;

(c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and

(d) ensure the safety of the public.

(4) (a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.

(b) A magistrate may set bail upon determining that there was probable cause for a warrantless arrest.

(c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.

(d) A person arrested for a violation of a jail release agreement or jail release order issued pursuant to Section 77-36-2.5:

(i) may not be released before the accused's first judicial appearance; and

(ii) may be denied bail by the court under Subsection 77-36-2.5(8) or (12).

(5) The magistrate or court may rely upon information contained in:

(a) the indictment or information;

(b) any sworn probable cause statement;

(c) information provided by any pretrial services agency; or

(d) any other reliable record or source.

(6) (a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.

(b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(c) The magistrate or court may rely on information as provided in Subsection (5) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(7) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

(8) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (2).

(9) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

(a) the prosecutor files a notice of intent to not seek the death penalty; or

(b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.

CHAPTER 312**S. B. 239**

Passed March 7, 2017

Approved March 23, 2017

Effective May 9, 2017

INTERFERING WITH A PEACE OFFICER

Chief Sponsor: Todd Weiler
House Sponsor: Adam Gardiner

LONG TITLE**General Description:**

This bill makes clarifying changes to the interference with a peace officer statute.

Highlighted Provisions:

This bill:

- ▶ clarifies that interfering with a peace officer applies to any person who interferes, not just the person being detained.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-8-305, as last amended by Laws of Utah 1990, Chapter 274

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

Section 1. Section 76-8-305 is amended to read:**76-8-305. Interference with peace officer.**

(1) A person is guilty of a class B misdemeanor if ~~he has knowledge~~ the person knows, or by the exercise of reasonable care should have ~~knowledge~~ known, that a peace officer is seeking to effect a lawful arrest or detention of that person or another person and interferes with the arrest or detention by:

~~[(1)]~~ (a) use of force or any weapon;

~~[(2)]~~ (b) ~~the arrested person's refusal~~ refusing to perform any act required by lawful order:

~~[(a)]~~ (i) necessary to effect the arrest or detention; and

~~[(b)]~~ (ii) made by a peace officer involved in the arrest or detention; or

~~[(3)]~~ (c) ~~the arrested person's or another person's refusal~~ refusing to refrain from performing any act that would impede the arrest or detention.

(2) Recording the actions of a law enforcement officer with a camera, mobile phone, or other photographic device, while the officer is performing official duties in plain view, does not by itself constitute:

(a) interference with the officer;

(b) willful resistance;

(c) disorderly conduct; or

(d) obstruction of justice.

CHAPTER 313**S. B. 241**

Passed March 9, 2017
Approved March 23, 2017
Effective May 9, 2017

**LOCAL GOVERNMENT
PLAN REVIEW AMENDMENTS**

Chief Sponsor: Curtis S. Bramble
House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill addresses review of construction plans by local governments.

Highlighted Provisions:

This bill:

- ▶ establishes a time period within which a county, city, or town shall review certain construction plans;
- ▶ provides that if the county, city, or town does not act within the time period, under certain circumstances the authority to review does not apply;
- ▶ provides repeal dates; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-5-132, as enacted by Laws of Utah 2014, Chapter 197
10-6-160, as enacted by Laws of Utah 2014, Chapter 197
17-36-55, as enacted by Laws of Utah 2014, Chapter 197
63I-1-210, as last amended by Laws of Utah 2016, Chapter 131

ENACTS:

63I-1-217, Utah Code Annotated 1953

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

Section 1. Section 10-5-132 is amended to read:**10-5-132. Fees collected for construction approval -- Approval of plans.**

(1) As used in this section[⁵]:

(a) [~~“construction”~~] “Construction project” [~~is as~~] means the same as that term is defined in Section 38-1a-102.

(b) (i) “Initial plan review” means all of the reviews and approvals of a plan that are required by a town to obtain a building permit from the town.

(ii) “Initial plan review” does not mean a review of a document:

(A) required to be re-submitted for additional modifications or changes identified by the plan review;

(B) submitted as part of a deferred submittal when requested by the building official; or

(C) that, due to the document’s technical nature or on the request of the applicant, is reviewed by a third party.

(c) “Lodging establishment” means a place providing temporary sleeping accommodations to the public, including any of the following:

(i) a bed and breakfast establishment;

(ii) a boarding house;

(iii) a hotel;

(iv) an inn;

(v) a lodging house;

(vi) a motel;

(vii) a resort; or

(viii) a rooming house.

(2) (a) If a town collects a fee for the inspection of a construction project, the town shall ensure that the construction project receives a prompt inspection.

[~~(3)~~] (b) If a town cannot provide a building inspection within a reasonable time, the town shall promptly engage an independent inspector with fees collected from the applicant.

(3) (a) A town shall complete an initial plan review of a construction project for a one to two family dwelling or townhome by no later than 14 business days after the day on which the plan is submitted to the town.

(b) A town shall complete an initial plan review of a construction project for a residential structure built under the International Building Code, not including a lodging establishment, by no later than 21 business days after the day on which the plan is submitted to the town.

(c) A town may not enforce a requirement to have an initial plan reviewed by the town if:

(i) the town does not complete the initial plan review within the time period described in Subsection (3)(a) or (b); and

(ii) the plan is stamped by a licensed architect or structural engineer.

Section 2. Section 10-6-160 is amended to read:**10-6-160. Fees collected for construction approval -- Approval of plans.**

(1) As used in this section[⁵]:

(a) [~~“construction”~~] “Construction project” [~~is as~~] means the same as that term is defined in Section 38-1a-102.

(b) (i) “Initial plan review” means all of the reviews and approvals of a plan that are required by a city to obtain a building permit from the city.

(ii) “Initial plan review” does not mean a review of a document:

(A) required to be re-submitted for additional modifications or changes identified by the plan review;

(B) submitted as part of a deferred submittal when requested by the building official; or

(C) that, due to the document's technical nature or on the request of the applicant, is reviewed by a third party.

(c) "Lodging establishment" means a place providing temporary sleeping accommodations to the public, including any of the following:

(i) a bed and breakfast establishment;

(ii) a boarding house;

(iii) a hotel;

(iv) an inn;

(v) a lodging house;

(vi) a motel;

(vii) a resort; or

(viii) a rooming house.

(2) (a) If a city collects a fee for the inspection of a construction project, the city shall ensure that the construction project receives a prompt inspection.

[(3)] (b) If a city cannot provide a building inspection within three business days, the city shall promptly engage an independent inspector with fees collected from the applicant.

(3) (a) A city shall complete an initial plan review of a construction project for a one to two family dwelling or townhome by no later than 14 business days after the day on which the plan is submitted to the city.

(b) A city shall complete an initial plan review of a construction project for a residential structure built under the International Building Code, not including a lodging establishment, by no later than 21 business days after the day on which the plan is submitted to the city.

(c) A city may not enforce a requirement to have an initial plan reviewed by the city if:

(i) the city does not complete the initial plan review within the time period described in Subsection (3)(a) or (b); and

(ii) the plan is stamped by a licensed architect or structural engineer.

Section 3. Section 17-36-55 is amended to read:

17-36-55. Fees collected for construction approval -- Approval of plans.

(1) As used in this section[;]:

(a) [~~construction~~] "Construction project" [is-as] means the same as that term is defined in Section 38-1a-102.

(b) (i) "Initial plan review" means all of the reviews and approvals of a plan that are required by

a county to obtain a building permit from the county.

(ii) "Initial plan review" does not mean a review of a document:

(A) required to be re-submitted for additional modifications or changes identified by the plan review;

(B) submitted as part of a deferred submittal when requested by the building official; or

(C) that, due to the document's technical nature or on the request of the applicant, is reviewed by a third party.

(c) "Lodging establishment" means a place providing temporary sleeping accommodations to the public, including any of the following:

(i) a bed and breakfast establishment;

(ii) a boarding house;

(iii) a hotel;

(iv) an inn;

(v) a lodging house;

(vi) a motel;

(vii) a resort; or

(viii) a rooming house.

(2) (a) If a county collects a fee for the inspection of a construction project, the county shall ensure that the construction project receives a prompt inspection.

[(3)] (b) If a county cannot provide a building inspection within three business days, the county shall promptly engage an independent inspector with fees collected from the applicant.

(3) (a) A county shall complete an initial plan review of a construction project for a one to two family dwelling or townhome by no later than 14 business days after the day on which the plan is submitted to the county.

(b) A county shall complete an initial plan review of a construction project for a residential structure built under the International Building Code, not including a lodging establishment, by no later than 21 business days after the day on which the plan is submitted to the county.

(c) A county may not enforce a requirement to have an initial plan reviewed by the county if:

(i) the county does not complete the initial plan review within the time period described in Subsection (3)(a) or (b); and

(ii) the plan is stamped by a licensed architect or structural engineer.

Section 4. Section 63I-1-210 is amended to read:

63I-1-210. Repeal dates, Title 10.

(1) (a) Subsections 10-5-132(1)(b), (1)(c), and (3) are repealed July 1, 2018.

(b) When repealing the subsections listed in Subsection (1)(a), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make other modifications necessary to ensure that the remaining subsections are complete sentences, grammatically correct, and have correct numbering and cross references to accurately reflect the office's perception of the Legislature's intent.

(2) (a) Subsections 10-6-160(1)(b), (1)(c), and (3) are repealed July 1, 2018.

(b) When repealing the subsections listed in Subsection (2)(a), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make other modifications necessary to ensure that the remaining subsections are complete sentences, grammatically correct, and have correct numbering and cross references to accurately reflect the office's perception of the Legislature's intent.

(3) Section 10-9a-526 is repealed December 31, 2020.

Section 5. Section 63I-1-217 is enacted to read:

63I-1-217. Repeal dates, Title 17.

(1) Subsections 17-36-55(1)(b), (1)(c), and (3) are repealed July 1, 2018.

(2) When repealing the subsections listed in Subsection (1), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make other modifications necessary to ensure that the remaining subsections are complete sentences, grammatically correct, and have correct numbering and cross references to accurately reflect the office's perception of the Legislature's intent.

CHAPTER 314**S. B. 251**

Passed March 9, 2017

Approved March 23, 2017

Effective May 1, 2018

**LOCAL GOVERNMENT
CRIMINAL PENALTY AMENDMENTS**

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Daniel McCay

LONG TITLE**General Description:**

This bill makes changes to local ordinance enforcement practice.

Highlighted Provisions:

This bill:

- ▶ requires that only a law enforcement officer may enforce a local ordinance that is a misdemeanor.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

10-3-703, as last amended by Laws of Utah 2014, Chapter 149

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

Section 1. Section 10-3-703 is amended to read:**10-3-703. Criminal penalties for violation of ordinance -- Civil penalties prohibited -- Exceptions.**

(1) The governing body of each municipality may impose a criminal penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301 or by a term of imprisonment up to six months, or by both the fine and term of imprisonment.

(2) (a) Except as provided in Subsection (2)(b), the governing body may prescribe a civil penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301.

(b) A municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance.

(3) A municipal officer or official who is not a law enforcement officer in accordance with Section 53-13-103 may not issue a criminal citation for a violation that is punished as a misdemeanor.

Section 2. Effective date.

This bill takes effect on May 1, 2018.

CHAPTER 315**S. B. 261**

Passed March 9, 2017

Approved March 23, 2017

Effective May 9, 2017

SUBSTANCE USE DISORDER PROGRAMS

Chief Sponsor: Karen Mayne
House Sponsor: Robert M. Spendlove

LONG TITLE**General Description:**

This bill establishes and addresses substance use disorder programs.

Highlighted Provisions:

This bill:

- ▶ requires the Utah Substance Use and Mental Health Advisory Council to convene a workgroup to study recovery residence issues; and
- ▶ establishes a program to distribute new funds to reduce recidivism and the number of incarcerated individuals with a substance use disorder or a mental health disorder.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

62A-15-113, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 62A-15-113 is enacted to read:**62A-15-113. Local plan program funding.**

(1) To facilitate the distribution of newly appropriated funds beginning from fiscal year 2018 for prevention, treatment, and recovery support services that reduce recidivism or reduce the per capita number of incarcerated offenders with a substance use disorder or a mental health disorder, the division shall:

(a) form an application review and fund distribution committee that includes:

(i) one representative of the Utah Sheriffs' Association;

(ii) one representative of the Statewide Association of Prosecutors of Utah;

(iii) two representatives from the division; and

(iv) two representatives from the Utah Association of Counties; and

(b) require the application review and fund distribution committee to:

(i) establish a competitive application process for funding of a local plan, as described in Sections 17-43-201(5)(b) and 17-43-301(5)(a)(ii);

(ii) establish criteria in accordance with Subsection (1) for the evaluation of an application;

(iii) ensure that the committee members' affiliate groups approve of the application process and criteria;

(iv) evaluate applications; and

(v) distribute funds to programs implemented by counties, local mental health authorities, or local substance abuse authorities.

(2) Demonstration of matching county funds is not a requirement to receive funds, but the application review committee may take into consideration the existence of matching funds when determining which programs to fund.

Section 2. Recovery residence study.

(1) The Utah Substance Use and Mental Health Advisory Council shall convene a workgroup to study the licensing and management of recovery residences, as defined in Section 62A-2-101.

(2) The workgroup shall consist of individuals representing:

(a) the Division of Substance Abuse and Mental Health;

(b) owners and managers of recovery residences;

(c) the Utah League of Cities and Towns; and

(d) other stakeholders, as determined by the council.

(3) (a) The workgroup shall identify the negative impacts of unlicensed or poorly managed recovery residences on surrounding neighborhoods and clients recovering from substance use disorder.

(b) The workgroup shall identify steps that may be taken by each stakeholder to promote the licensure of and adoption of management best practices by recovery residences.

(4) The council shall report the workgroup's findings to the Health and Human Services Interim Committee before October 12, 2017.

CHAPTER 316**H. B. 35**

Passed February 23, 2017

Approved March 24, 2017

Effective May 9, 2017

MINIMUM SCHOOL PROGRAM AMENDMENTS

Chief Sponsor: Bruce R. Cutler

Senate Sponsor: Ann Millner

LONG TITLE**General Description:**

This bill amends provisions related to the Minimum School Program.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to a local school board paying for a student to attend a school district outside of the state;
- ▶ amends provisions related to necessarily existent small schools;
- ▶ amends funding requirements for comprehensive guidance programs; and
- ▶ repeals outdated references to the Teacher Salary Supplement Restricted Account to clarify that funds are directed to the Teacher Salary Supplement Program.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-2-204, as enacted by Laws of Utah 1988, Chapter 2

53A-17a-109, as last amended by Laws of Utah 2013, Chapter 106

53A-17a-113, as last amended by Laws of Utah 2010, Chapter 3

53A-17a-156, as last amended by Laws of Utah 2016, Chapter 217

REPEALS:

53A-17a-157, as last amended by Laws of Utah 2015, Chapter 122

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

Section 1. Section 53A-2-204 is amended to read:**53A-2-204. District paying tuition -- Effect on state aid.**

(1) A local school board may by written agreement pay the tuition of a child attending school in a district outside the state. Both districts shall approve the agreement and file it with the State Board of Education.

(2) The average daily membership of the child may be added to that of other eligible children attending schools within the district of residence for the purpose of apportionment of state funds.

(3) (a) The district of residence shall bear any excess tuition costs over the state's contribution for

attendance in the district of residence unless otherwise approved in advance by the State Board of Education.

(b) (i) If a child who resides in a Utah school district's boundaries attends school in a neighboring state under this section, the State Board of Education may make an out-of-state tuition payment to the Utah school district of residence.

(ii) If the State Board of Education approves the use of state funds for an out-of-state tuition payment described in Subsection (3)(b)(i), the State Board of Education shall use funds appropriated by the Legislature for necessarily existent small schools as described in Section 53A-17a-109.

Section 2. Section 53A-17a-109 is amended to read:**53A-17a-109. Necessarily existent small schools -- Computing additional weighted pupil units -- Consolidation of small schools.**

(1) As used in this section:

(a) "Board" means the State Board of Education.

(b) "Necessarily existent small schools funding balance" means the difference between:

(i) the amount appropriated for the necessarily existent small schools program in a fiscal year; and

(ii) the amount distributed to school districts for the necessarily existent small schools program in the same fiscal year.

(2) (a) Upon application by a school district, the board shall, in consultation with the local school board, classify schools in the district as necessarily existent small schools, in accordance with this section and board rules adopted under this section.

(b) An application must be submitted to the board before April 2, and the board must report a decision to a school district before June 2.

(3) The board shall adopt standards and make rules to:

(a) govern the approval of necessarily existent small schools consistent with principles of efficiency and economy and which shall serve the purpose of eliminating schools where consolidation is feasible by participation in special school units; and

(b) ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area.

(4) A one or two-year secondary school that has received necessarily existent small school money under this section prior to July 1, 2000, may continue to receive such money in subsequent years under board rule.

(5) The board shall prepare and publish objective standards and guidelines for determining which small schools are necessarily existent after consultation with local school boards.

(6) (a) Additional weighted pupil units for schools classified as necessarily existent small schools shall be computed using regression formulas adopted by the board.

(b) The regression formulas establish the following maximum sizes for funding under the necessarily existent small school program:

- (i) an elementary school 160
- (ii) a one or two-year secondary school 300
- (iii) a three-year secondary school 450
- (iv) a four-year secondary school 500
- (v) a six-year secondary school 600

(c) Schools with fewer than 10 students shall receive the same add-on weighted pupil units as schools with 10 students.

(d) The board shall prepare and distribute an allocation table based on the regression formula to each school district.

(7) (a) To avoid penalizing a district financially for consolidating its small schools, additional weighted pupil units may be allowed a district each year, not to exceed two years.

(b) The additional weighted pupil units may not exceed the difference between what the district receives for a consolidated school and what it would have received for the small schools had they not been consolidated.

(8) Subject to legislative appropriation, the board shall give first priority from an appropriation made under this section to funding an expense approved by the board as described in Subsection 53A-2-204(3)(a).

~~(8)~~ (9) (a) Subject to Subsection ~~(8)~~ (9)(b) and after a distribution made under Subsection (8), the board may distribute a portion of necessarily existent small schools funding in accordance with a formula adopted by the board that considers the tax effort of a local school board.

(b) The amount distributed in accordance with Subsection ~~(8)~~ (9)(a) may not exceed the necessarily existent small schools fund in balance of the prior fiscal year.

~~(9)~~ (10) A district may use the money allocated under this section for maintenance and operation of school programs or for other school purposes as approved by the board.

Section 3. Section 53A-17a-113 is amended to read:

53A-17a-113. Weighted pupil units for career and technical education programs -- Funding of approved programs -- Performance measures -- Qualifying criteria.

(1) (a) Money appropriated to the State Board of Education for approved career and technical education programs and the comprehensive guidance program:

(i) shall be allocated to eligible recipients as provided in Subsections (2), (3), and (4)~~, and (5)~~; and

(ii) may not be used to fund programs below the ninth grade level.

(b) Subsection (1)(a)(ii) does not apply to the following programs:

- (i) comprehensive guidance;
- (ii) Technology-Life-Careers; and
- (iii) work-based learning programs.

(2) (a) Weighted pupil units are computed for pupils in approved programs.

(b) (i) The board shall fund approved programs based upon hours of membership of 9th through 12th grade students.

(ii) Subsection (2)(b)(i) does not apply to the following programs:

- (A) comprehensive guidance;
- (B) Technology-Life-Careers; and
- (C) work-based learning programs.

(c) The board shall use an amount not to exceed 20% of the total appropriation under this section to fund approved programs based on performance measures such as placement and competency attainment defined in standards set by the board.

(d) Leadership organization funds shall constitute an amount not to exceed 1% of the total appropriation under this section, and shall be distributed to each local educational agency sponsoring career and technical education student leadership organizations based on the agency's share of the state's total membership in those organizations.

(e) The board shall make the necessary calculations for distribution of the appropriation to school districts and may revise and recommend changes necessary for achieving equity and ease of administration.

(3) (a) Twenty weighted pupil units shall be computed for career and technical education administrative costs for each district, except 25 weighted pupil units may be computed for each district that consolidates career and technical education administrative services with one or more other districts.

(b) Between 10 and 25 weighted pupil units shall be computed for each high school conducting approved career and technical education programs in a district according to standards established by the board.

(c) Forty weighted pupil units shall be computed for each district that operates an approved career and technical education center.

(d) Between five and seven weighted pupil units shall be computed for each summer career and technical education agriculture program according to standards established by the board.

(e) The board shall, by rule, establish qualifying criteria for districts to receive weighted pupil units under this Subsection (3).

(4) (a) Money remaining after the allocations made under Subsections (2) and (3) shall be allocated using average daily membership in approved programs for the previous year.

(b) A district that has experienced student growth in grades 9 through 12 for the previous year shall have the growth factor applied to the previous year's weighted pupil units when calculating the allocation of money under this Subsection (4).

~~[(5) Of the money allocated to comprehensive guidance programs pursuant to board rules, \$1,000,000 in grants shall be awarded to school districts or charter schools that:]~~

~~[(a) provide an equal amount of matching funds; and]~~

~~[(b) do not supplant other funds used for comprehensive guidance programs.]~~

~~[(6)]~~ (5) (a) The board shall establish rules for the upgrading of high school career and technical education programs.

(b) The rules shall reflect career and technical training and actual marketable job skills in society.

(c) The rules shall include procedures to assist school districts to convert existing programs which are not preparing students for the job market into programs that will accomplish that purpose.

~~[(7)]~~ (6) Programs that do not meet board standards may not be funded under this section.

Section 4. Section 53A-17a-156 is amended to read:

53A-17a-156. Teacher Salary Supplement Program -- Appeal process.

(1) As used in this section:

(a) "Board" means the State Board of Education.

(b) "Certificate teacher" means a teacher who holds a National Board certification.

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

(i) has an assignment to teach:

(A) a secondary school level mathematics course;

(B) integrated science in grade seven or eight;

(C) chemistry;

(D) physics; or

(E) computer science;

(ii) holds the appropriate endorsement for the assigned course;

(iii) has qualifying educational background; and

(iv) (A) is a new employee; or

(B) received a satisfactory rating or above on the teacher's most recent evaluation.

(d) "National Board certification" means the same as that term is defined in Section 53A-6-103.

(e) "Qualifying educational background" means:

(i) for a teacher who is assigned a secondary school level mathematics course:

(A) a bachelor's degree major, master's degree, or doctoral degree in mathematics; or

(B) a bachelor's degree major, master's degree, or doctoral degree that has course requirements that are substantially equivalent to the course requirements for a bachelor's degree major, master's degree, or doctoral degree in mathematics;

(ii) for a teacher who is assigned a grade seven or eight integrated science course, chemistry course, or physics course, a bachelor's degree major, master's degree, or doctoral degree in:

(A) integrated science;

(B) chemistry;

(C) physics;

(D) physical science;

(E) general science; or

(F) a bachelor's degree major, master's degree, or doctoral degree that has course requirements that are substantially equivalent to the course requirements of those required for a degree listed in Subsections (1)(e)(ii)(A) through (E);

(iii) for a teacher who is assigned a computer science course, a bachelor's degree major, master's degree, or doctoral degree in:

(A) computer science;

(B) computer information technology; or

(C) a bachelor's degree major, master's degree, or doctoral degree that has course requirements that are substantially equivalent to the course requirements of those required for a degree listed in Subsections (1)(e)(iii)(A) and (B).

(f) "Title I school" means a school that receives funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

(g) "Title I school certificate teacher" means a certificate teacher who is assigned to teach at a Title I school.

(2) (a) Subject to future budget constraints, the Legislature shall annually appropriate money to ~~[the Teacher Salary Supplement Restricted Account established in Section 53A-17a-157 to fund]~~ the Teacher Salary Supplement Program.

(b) Money appropriated for the Teacher Salary Supplement Program shall include money for the following employer-paid benefits:

(i) retirement;

(ii) workers' compensation;

(iii) Social Security; and

(iv) Medicare.

(3) (a) (i) The annual salary supplement for an eligible teacher who is assigned full time to teach one or more courses listed in Subsections (1)(c)(i)(A) through (E) is \$4,100.

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

(b) The annual salary supplement for a certificate teacher is \$750.

(c) (i) The annual salary supplement for a Title I school certificate teacher is \$1,500.

(ii) A certificate teacher who qualifies for a salary supplement under Subsections (3)(b) and (c) may only receive the salary supplement that is greater in value.

(4) The board shall:

(a) create an online application system for a teacher to apply to receive a salary supplement through the Teacher Salary Supplement Program;

(b) determine if a teacher:

(i) (A) is an eligible teacher; and

(B) has a course assignment as listed in Subsections (1)(c)(i)(A) through (E);

(ii) is a certificate teacher; or

(iii) is a Title I school certificate teacher;

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

(d) certify a list of eligible teachers, certificate teachers, and Title I school certificate teachers.

(5) (a) An eligible teacher, a certificate teacher, or a Title I school certificate teacher shall apply with the board before the conclusion of a school year to receive the salary supplement authorized in this section.

(b) An eligible teacher, a certificate teacher, or a Title I school certificate teacher may apply with the board, after verification that the requirements under this section have been satisfied, to receive a salary supplement after the completion of:

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

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

(6) (a) The board shall establish and administer an appeal process for a teacher to follow if the teacher applies for the salary supplement and is not certified under Subsection (4).

(b) (i) The appeal process established in Subsection (6)(a) shall allow a teacher to appeal eligibility as an eligible teacher on the basis that the teacher has a degree or degree major with course

requirements that are substantially equivalent to the course requirements for a degree listed in:

(A) Subsection (1)(e)(i)(A);

(B) Subsections (1)(e)(ii)(A) through (E); or

(C) Subsections (1)(e)(iii)(A) and (B).

(ii) A teacher shall provide transcripts and other documentation to the board in order for the board to determine if the teacher has a degree or degree major with course requirements that are substantially equivalent to the course requirements for a degree listed in:

(A) Subsection (1)(e)(i)(A);

(B) Subsections (1)(e)(ii)(A) through (E); or

(C) Subsections (1)(e)(iii)(A) and (B).

(c) (i) The appeal process established under Subsection (6)(a) shall allow a teacher to appeal eligibility as a certificate teacher on the basis that the teacher holds a current certificate.

(ii) A teacher shall provide to the board a certificate or other related documentation in order for the board to determine if the teacher holds a current certificate.

(d) (i) The appeal process established under Subsection (6)(a) shall allow a teacher to appeal eligibility as a Title I school certificate teacher on the basis that the teacher:

(A) holds a current certificate; and

(B) is assigned to teach at a Title I school.

(ii) A teacher shall provide to the board:

(A) information described in Subsection (6)(c)(ii); and

(B) verification that the teacher is assigned to teach at a Title I school.

(7) (a) The board shall distribute money ~~from~~ appropriated to the Teacher Salary Supplement ~~[Restricted Account]~~ Program to school districts and charter schools for the Teacher Salary Supplement Program in accordance with the provisions of this section.

(b) The board shall include the employer-paid benefits described under Subsection (2)(b) in the amount of each salary supplement.

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

(8) (a) Money received from the Teacher Salary Supplement ~~[Restricted Account]~~ Program shall be used by a school district or charter school to provide a salary supplement equal to the amount specified in Subsection (3) for each eligible teacher, certificate teacher, or Title I school certificate teacher.

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

(9) Notwithstanding the provisions of this section, if the appropriation for the program is insufficient to cover the costs associated with salary supplements, the board may limit or reduce the salary supplements.

Section 5. Repealer.

This bill repeals:

Section 53A-17a-157, Teacher Salary Supplement Restricted Account.

CHAPTER 317

H. B. 43

Passed March 9, 2017
 Approved March 24, 2017
 Effective March 24, 2017

**AMERICAN INDIAN AND ALASKAN
 NATIVE EDUCATION AMENDMENTS**

Chief Sponsor: Michael E. Noel
 Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill modifies provisions related to education and American Indians and Alaskan Natives.

Highlighted Provisions:

This bill:

- ▶ creates a pilot program related to teachers at American Indian and Alaskan Native concentrated schools; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

This bill appropriates for fiscal year 2018:

- ▶ to the State Board of Education - State Administrative Office, as an ongoing appropriation:
 - from the Education Fund, \$250,000

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 53A-31-403, as enacted by Laws of Utah 2016, Chapter 63
- 53A-31-405, as enacted by Laws of Utah 2016, Chapter 63

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

Section 1. Section 53A-31-403 is amended to read:

53A-31-403. Pilot programs created.

(1) (a) Beginning with fiscal year 2016-2017, there is created a five-year pilot program administered by the board to provide grants targeted to address the needs of American Indian and Alaskan Native students.

(2) (b) The pilot program shall consist of a grant program to school districts and charter schools to be used to fund stipends, recruitment, retention, and professional development of teachers who teach in American Indian and Alaskan Native concentrated schools.

(2) (a) Beginning with fiscal year 2017-2018, there is created a four-year pilot program administered by the board to provide grants targeted to address the needs of American Indian and Alaskan Native students.

(b) The pilot program shall consist of a grant program to school districts and charter schools to be

used to fund stipends, recruitment, retention, and professional development of teachers who teach in American Indian and Alaskan Native concentrated schools.

(c) In determining grant recipients under this Subsection (2), the board shall give priority to American Indian and Alaskan Native concentrated schools located in a county of the fourth, fifth, or sixth class with significant populations of American Indians and Alaskan Natives.

(3) Up to 3% of the money appropriated to [the] a grant program under this part may be used by the board for costs in implementing the pilot program.

Section 2. Section 53A-31-405 is amended to read:

53A-31-405. Reporting -- Meeting.

(1) The liaison shall annually report to the Native American Legislative Liaison Committee during the [five years of the] term of a pilot program under this part regarding:

- (a) what entities receive a grant under this part;
- (b) the effectiveness of the expenditures of grant money; and
- (c) recommendations, if any, for additional legislative action.

(2) The Native American Legislative Liaison Committee shall annually schedule at least one meeting at which education is discussed with selected stakeholders.

Section 3. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

To State Board of Education -
 State Administrative Office

From Education Fund	\$250,000
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Schedule of Programs:

Pilot Teacher Retention Grant Program	\$250,000
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Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 318**H. B. 46**

Passed February 16, 2017

Approved March 24, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

**PASS-THROUGH
ENTITY TAX AMENDMENTS**Chief Sponsor: Steve Eliason
Senate Sponsor: Curtis S. Bramble**LONG TITLE****General Description:**

This bill amends individual income tax provisions related to pass-through entities.

Highlighted Provisions:

This bill:

- ▶ addresses state taxable income for pass-through entities; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

59-10-117, as last amended by Laws of Utah 2011, Chapter 53

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

Section 1. Section 59-10-117 is amended to read:**59-10-117. State taxable income derived from Utah sources.**

(1) For purposes of Section 59-10-116, state taxable income derived from Utah sources includes ~~those items includable in~~ state taxable income attributable to or resulting from:

(a) the ownership in this state of any interest in real or tangible personal property, including real property or property rights from which gross income from mining as ~~defined~~ described by Section 613(c), Internal Revenue Code, is derived;

(b) the carrying on of a business, trade, profession, or occupation in this state;

(c) an addition to adjusted gross income required by Subsection 59-10-114(1)(c), (d), or (h) to the extent that the addition was previously subtracted from state taxable income;

(d) a subtraction from adjusted gross income required by Subsection 59-10-114(2)(c) for a refund described in Subsection 59-10-114(2)(c) to the extent that the refund subtracted is related to a tax imposed by this state; or

(e) an adjustment to adjusted gross income required by Section 59-10-115 to the extent the adjustment is related to an item described in Subsections (1)(a) through (d).

(2) For ~~the~~ purposes of Subsection (1):

(a) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from Utah sources only to the extent that the income is from property employed in a trade, business, profession, or occupation carried on in this state;

(b) a deduction with respect to a capital loss, net long-term capital gain, or net operating loss shall be:

(i) based solely on income, gain, loss, and deduction connected with Utah sources, under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~, but~~; and

(ii) otherwise ~~shall be~~ determined in the same manner as the corresponding federal deductions;

(c) a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources;

(d) a ~~nonresident shareholder's distributive~~ share of ~~ordinary~~ income, gain, loss, ~~and~~ deduction, or credit of a nonresident pass-through entity taxpayer, as defined in Section 59-10-1402, derived from or connected with Utah sources shall be determined ~~under~~ in accordance with Section 59-10-118;

(e) a nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer's trade or business, may not be considered to carry on a trade, business, profession, or occupation in this state solely by reason of the purchase or sale of property for the nonresident's own account;

(f) if a trade, business, profession, or occupation is carried on partly within and partly without this state, an item of income, gain, loss, or a deduction derived from or connected with Utah sources shall be determined in accordance with Section 59-10-118;

~~(g) a nonresident partner's distributive share of partnership income, gain, loss, deduction, or credit derived from or connected with Utah sources shall be determined under Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act;~~

~~(h)~~ (g) the share of a nonresident estate or trust or a nonresident beneficiary of any estate or trust in income, gain, loss, or deduction derived from or connected with Utah sources shall be determined under Section 59-10-207; and

~~(i)~~ (h) any dividend, interest, or distributive share of income, gain, or loss from a real estate investment trust, as defined in Section 59-7-101, distributed or allocated to a nonresident investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in the trust, shall:

(i) be income from intangible personal property under Subsection (2)(a)~~(i)~~; and ~~shall~~

(ii) constitute income derived from Utah sources only to the extent the nonresident investor is

employing its beneficial interest in the trust in a trade, business, profession, or occupation carried on by the investor in this state.

Section 2. Retrospective operation.

This bill has retrospective operation for a taxable year beginning on or after January 1, 2017.

CHAPTER 319**H. B. 47**

Passed March 7, 2017

Approved March 24, 2017

Effective May 9, 2017

**PROPERTY TAX ASSESSMENT
APPEAL AMENDMENTS**

Chief Sponsor: Joel K. Briscoe

Senate Sponsor: Daniel Hemmert

LONG TITLE**General Description:**

This bill modifies the Farmland Assessment Act and the Urban Farming Assessment Act.

Highlighted Provisions:

This bill:

- ▶ requires the county assessor to notify an owner of an incomplete application for assessment under the Farmland Assessment Act or the Urban Farming Assessment Act;
- ▶ describes the circumstances when an incomplete application is considered denied;
- ▶ establishes the time periods for filing an appeal under the Farmland Assessment Act and the Urban Farming Assessment Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-2-502, as last amended by Laws of Utah 2005, Chapter 254

59-2-506, as last amended by Laws of Utah 2014, Chapter 279

59-2-508, as last amended by Laws of Utah 2003, Chapter 208

59-2-1705, as last amended by Laws of Utah 2014, Chapters 279 and 413

59-2-1707, as enacted by Laws of Utah 2012, Chapter 197

ENACTS:

59-2-516, Utah Code Annotated 1953

59-2-1713, Utah Code Annotated 1953

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

Section 1. Section 59-2-502 is amended to read:**59-2-502. Definitions.**

As used in this part:

(1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:

- (a) as determined under Section 59-2-503; and
- (b) for:
 - (i) the given type of land; and
 - (ii) the given county or area.

(2) "Conservation easement rollback tax" means the tax imposed under Section 59-2-506.5.

(3) "Identical legal ownership" means legal ownership held by:

- (a) identical legal parties; or
- (b) identical legal entities.

(4) "Land in agricultural use" means:

(a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:

- (i) forages and sod crops;
- (ii) grains and feed crops;
- (iii) livestock as defined in Section 59-2-102;
- (iv) trees and fruits; or

(v) vegetables, nursery, floral, and ornamental stock; or

(b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

(5) "Other eligible acreage" means land that is:

- (a) five or more contiguous acres;
- (b) eligible for assessment under this part; and
- (c) (i) located in the same county as land described in Subsection 59-2-503(1)(a); or
- (ii) contiguous across county lines with land described in Subsection 59-2-503(1)(a) as provided in Section 59-2-512.

(6) "Platted" means land in which:

- (a) parcels of ground are laid out and mapped by their boundaries, course, and extent; and
- (b) the plat has been approved as provided in Section 10-9a-604 or 17-27a-604.

(7) "Rollback tax" means the tax imposed under Section 59-2-506.

(8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason including that:

- (a) an owner voluntarily requests that the land be withdrawn from this part;
- (b) the land is no longer actively devoted to agricultural use;
- (c) (i) the land has a change in ownership; and
- (ii) (A) the new owner fails to apply for assessment under this part as required by Section 59-2-509; or
- (B) (I) an owner applies for assessment under this part as required by Section 59-2-509; and
- (II) the land does not meet the requirements of this part to be assessed under this part;

(d) (i) the legal description of the land changes; and

(ii) (A) an owner fails to apply for assessment under this part as required by Section 59-2-509; or

(B) (I) an owner applies for assessment under this part as required by Section 59-2-509; and

(II) the land does not meet the requirements of this part to be assessed under this part;

(e) if required by the county assessor, the owner of the land:

(i) fails to file a new application as provided in Subsection 59-2-508~~(4)~~(5); or

(ii) fails to file a signed statement as provided in Subsection 59-2-508~~(4)~~(5); or

(f) except as provided in Section 59-2-503, the land fails to meet a requirement of Section 59-2-503.

Section 2. Section 59-2-506 is amended to read:

59-2-506. Rollback tax -- Penalty -- Computation of tax -- Procedure -- Lien -- Interest -- Notice -- Collection -- Distribution -- Appeal to county board of equalization.

(1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.

(2) (a) An owner shall notify the county assessor that land is withdrawn from this part within 120 days after the day on which the land is withdrawn from this part.

(b) An owner that fails to notify the county assessor under Subsection (2)(a) that land is withdrawn from this part is subject to a penalty equal to the greater of:

(i) \$10; or

(ii) 2% of the rollback tax due for the last year of the rollback period.

(3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:

(i) the tax paid while the land was assessed under this part; and

(ii) the tax that would have been paid had the property not been assessed under this part.

(b) For purposes of this section, the rollback period is a time period that:

(i) begins on the later of:

(A) the date the land is first assessed under this part; or

(B) five years preceding the day on which the county assessor mails the notice required by Subsection (5); and

(ii) ends the day on which the county assessor mails the notice required by Subsection (5).

(4) (a) The county treasurer shall:

(i) collect the rollback tax; and

(ii) after the rollback tax is paid, certify to the county recorder that the rollback tax lien on the property has been satisfied by:

(A) preparing a document that certifies that the rollback tax lien on the property has been satisfied; and

(B) providing the document described in Subsection (4)(a)(ii)(A) to the county recorder for recordation.

(b) The county treasurer shall pay the rollback tax collected under this section ~~shall~~:

(i) ~~be paid~~ into the county treasury; and

(ii) ~~be paid by the county treasurer~~ to the various taxing entities pro rata in accordance with the property tax levies for the current year.

(5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:

(i) the land is withdrawn from this part;

(ii) the land is subject to a rollback tax under this section; and

(iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice described in this Subsection (5)(a).

(b) (i) The rollback tax is due and payable on the day the county assessor mails the notice required by Subsection (5)(a).

(ii) Subject to Subsection (7), the rollback tax is delinquent if an owner of the land that is withdrawn from this part does not pay the rollback tax within 30 days after the day on which the county assessor mails the notice required by Subsection (5)(a).

(6) (a) Subject to Subsection (6)(b), the following are a lien on the land assessed under this part:

(i) the rollback tax; and

(ii) interest imposed in accordance with Subsection (7).

(b) The lien described in Subsection (6)(a) shall:

(i) arise upon the imposition of the rollback tax under this section;

(ii) end on the day on which the rollback tax and interest imposed in accordance with Subsection (7) are paid in full; and

(iii) relate back to the first day of the rollback period described in Subsection (3)(b).

(7) (a) A delinquent rollback tax under this section shall accrue interest:

(i) from the date of delinquency until paid; and

(ii) at the interest rate established under Section 59-2-1331 and in effect on January 1 of the year in which the delinquency occurs.

(b) [A] The county treasurer shall include in the notice required by Section 59-2-1317 a rollback tax that is delinquent on September 1 of any year [shall be included on the notice required by Section 59-2-1317, along with] and interest calculated on that delinquent amount through November 30 of the year in which the county treasurer provides the notice under Section 59-2-1317.

(8) (a) Land that becomes ineligible for assessment under this part only as a result of an amendment to this part is not subject to the rollback tax if the owner of the land notifies the county assessor, in accordance with Subsection (2), that the land is withdrawn from this part [in accordance with Subsection (2)].

(b) Land described in Subsection (8)(a) that is withdrawn from this part as a result of an event other than an amendment to this part, whether voluntary or involuntary, is subject to the rollback tax.

(9) Except as provided in Section 59-2-511, land that becomes exempt from taxation under Utah Constitution, Article XIII, Section 3, is not subject to the rollback tax if the land meets the requirements of Section 59-2-503 to be assessed under this part.

(10) Land that becomes ineligible for assessment under this part only as a result of a split estate mineral rights owner exercising the right to extract a mineral is not subject to the rollback tax:

(a) (i) for the portion of the land required by a split estate mineral rights owner to extract a mineral if, after the split estate mineral rights owner exercises the right to extract a mineral, the portion of the property that remains in agricultural production still meets the acreage requirements of Section 59-2-503 for assessment under this part; or

(ii) for the entire acreage that would otherwise qualify for assessment under this part if, after the split estate mineral rights owner exercises the right to extract a mineral, the entire acreage that would otherwise qualify for assessment under this part no longer meets the acreage requirements of Section 59-2-503 for assessment under this part only due to the extraction of the mineral by the split estate mineral rights owner; and

(b) for the period of time that the property described in Subsection (10)(a) is ineligible for assessment under this part due to the extraction of a mineral by the split estate mineral rights owner.

~~[(11) (a) Subject to Subsection (11)(b), an owner of land may appeal to the county board of equalization:]~~

~~[(i) a decision by a county assessor to withdraw land from assessment under this part; or]~~

~~[(ii) the imposition of a rollback tax under this section.]~~

~~[(b) An owner shall file an appeal under Subsection (11)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).]~~

Section 3. Section 59-2-508 is amended to read:

59-2-508. Application -- Signed statement -- Consent to creation of a lien -- Consent to audit and review -- Notice.

(1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.

(2) An application required by Subsection (1) shall:

(a) be on a form:

(i) approved by the commission; and

(ii) provided to an owner:

(A) by the county assessor; and

(B) at the request of an owner;

(b) provide for the reporting of information related to this part;

(c) be submitted by:

(i) May 1 of the tax year in which assessment under Subsection (1) is requested if the land was not assessed under this part in the year before the application is submitted; or

(ii) by the date otherwise required by this part for land that prior to the application being submitted has been assessed under this part;

(d) be signed by all of the owners of the land that under the application would be assessed under this part;

(e) be accompanied by the prescribed fees made payable to the county recorder;

(f) include a certification by an owner that the facts set forth in the application or signed statement are true;

(g) include a statement that the application constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part; and

(h) be recorded by the county recorder.

(3) The application [required by] described in Subsection (2) constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part.

(4) (a) If the county determines that an application that was timely filed is incomplete, the county shall:

(i) notify the owner of the incomplete application; and

(ii) allow the owner to complete the application within 30 days from the day on which the county provides notice to the owner.

(b) An application that has not been completed within 30 days of the day of the notice described in Subsection (4)(a) shall be considered denied.

[4] (5) (a) Once the application [for assessment] described in Subsection (1) has been approved, the county may:

(i) require, by written request of the county assessor, the owner to submit a new application or a signed statement [~~by written request of the county assessor; and (B)~~] that verifies that the land qualifies for assessment under this part; or

(ii) except as provided in Subsection [4] (5)(b), require no additional signed statement or application for assessment under this part.

(b) [~~Notwithstanding Subsection (4)(a), a~~] A county shall require that an owner provide notice if land is withdrawn from this part:

(i) as provided in Section 59-2-506; or

(ii) for land that is subject to a conservation easement created in accordance with Section 59-2-506.5, as provided in Section 59-2-506.5.

(c) An owner shall submit an application or signed statement required under Subsection [4] (5)(a) [~~shall be submitted~~] by the date specified in the written request of the county assessor for the application or signed statement.

[5] (6) A certification under Subsection (2)(f) is considered as if made under oath and subject to the same penalties as provided by law for perjury.

[6] (7) (a) All owners applying for participation under this part and all purchasers or lessees signing statements under Subsection [7] (8) are considered to have given their consent to field audit and review by:

(i) the commission;

(ii) the county assessor; or

(iii) the commission and the county assessor.

(b) The consent described in Subsection [6] (7)(a) is a condition to the acceptance of any application or signed statement.

[7] (8) Any owner of land eligible for assessment under this part, because a purchaser or lessee actively devotes the land to agricultural use as required by Section 59-2-503, may qualify the land for assessment under this part by submitting, with the application [~~required under~~] described in Subsection (2), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-503 for assessment under this part.

Section 4. Section 59-2-516 is enacted to read:

59-2-516. Appeal to the county board of equalization.

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

(1) the county assessor makes a determination under this part; or

(2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

Section 5. Section 59-2-1705 is amended to read:

59-2-1705. Rollback tax -- Penalty -- Computation of tax -- Procedure -- Lien -- Interest -- Notice -- Collection -- Distribution -- Appeal to county board of equalization.

(1) Except as provided in this section or Section 59-2-1710, land that is withdrawn from this part is subject to a rollback tax imposed as provided in this section.

(2) (a) An owner shall notify the county assessor that land is withdrawn from this part within 120 days after the day on which the land is withdrawn from this part.

(b) An owner who fails to notify the county assessor under Subsection (2)(a) that land is withdrawn from this part is subject to a penalty equal to the greater of:

(i) \$10; or

(ii) 2% of the rollback tax due for the last year of the rollback period.

(3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:

(i) the tax paid while the land was assessed under this part; and

(ii) the tax that would have been paid had the property not been assessed under this part.

(b) For purposes of this section, the rollback period is a time period that:

(i) begins on the later of:

(A) the date the land is first assessed under this part; or

(B) five years preceding the day on which the county assessor mails the notice required by Subsection (5); and

(ii) ends the day on which the county assessor mails the notice required by Subsection (5).

(4) (a) The county treasurer shall:

(i) collect the rollback tax; and

(ii) after the rollback tax is paid, certify to the county recorder that the rollback tax lien on the property has been satisfied by:

(A) preparing a document that certifies that the rollback tax lien on the property has been satisfied; and

(B) providing the document described in Subsection (4)(a)(ii)(A) to the county recorder for recording.

(b) The county treasurer shall pay the rollback tax collected under this section ~~[shall]:~~

(i) ~~[be paid]~~ into the county treasury; and

(ii) ~~[be paid by the county treasurer]~~ to the various taxing entities pro rata in accordance with the property tax levies for the current year.

(5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:

(i) the land is withdrawn from this part;

(ii) the land is subject to a rollback tax under this section; and

(iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice described in this Subsection (5)(a).

(b) (i) The rollback tax is due and payable on the day the county assessor mails the notice required by Subsection (5)(a).

(ii) Subject to Subsection (7), the rollback tax is delinquent if an owner of the land that is withdrawn from this part does not pay the rollback tax within 30 days after the day on which the county assessor mails the notice required by Subsection (5)(a).

(6) (a) Subject to Subsection (6)(b), the rollback tax and interest imposed under Subsection (7) are a lien on the land assessed under this part.

(b) The lien described in Subsection (6)(a) shall:

(i) arise upon the imposition of the rollback tax under this section;

(ii) end on the day on which the rollback tax and interest imposed under Subsection (7) are paid in full; and

(iii) relate back to the first day of the rollback period described in Subsection (3)(b).

(7) (a) A delinquent rollback tax under this section shall accrue interest:

(i) from the date of delinquency until paid; and

(ii) at the interest rate established under Section 59-2-1331 and in effect on January 1 of the year in which the delinquency occurs.

(b) ~~[A] The county treasurer shall include in the notice required by Section 59-2-1317 a rollback tax that is delinquent on September 1 of any year [shall be included on the notice required by Section 59-2-1317, along with] and interest calculated on that delinquent amount through November 30 of the year in which the county treasurer provides the notice under Section 59-2-1317.~~

(8) (a) Land that becomes ineligible for assessment under this part only as a result of an amendment to this part is not subject to the rollback tax if the owner of the land notifies the county

assessor, in accordance with Subsection (2), that the land is withdrawn from this part ~~[in accordance with Subsection (2)].~~

(b) Land described in Subsection (8)(a) that is withdrawn from this part as a result of an event other than an amendment to this part, whether voluntary or involuntary, is subject to the rollback tax.

(9) Except as provided in Section 59-2-1710, land that becomes exempt from taxation under Utah Constitution, Article XIII, Section 3, is not subject to the rollback tax if the land meets the requirements of Section 59-2-1703 to be assessed under this part.

~~[(10) (a) Subject to Subsection (10)(b), an owner of land may appeal to the county board of equalization:]~~

~~[(i) a decision by a county assessor to withdraw land from assessment under this part; or]~~

~~[(ii) the imposition of a rollback tax under this section.]~~

~~[(b) An owner shall file an appeal under Subsection (10)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).]~~

Section 6. Section 59-2-1707 is amended to read:

59-2-1707. Application -- Signed statement -- Consent to creation of a lien -- Consent to audit and review -- Notice.

(1) For land to be assessed under this part, an owner of land eligible for assessment under this part shall ~~[annually]~~ submit an application annually to the county assessor of the county in which the land is located.

(2) An application required by Subsection (1) shall:

(a) be on a form:

(i) approved by the commission; and

(ii) provided to an owner:

(A) by the county assessor; and

(B) at the request of an owner;

(b) provide for the reporting of information related to this part;

(c) be submitted by:

(i) May 1 of the tax year in which assessment under Subsection (1) is requested if the land was not assessed under this part in the year before the application is submitted; or

(ii) the date otherwise required by this part for land that before the application being submitted has been assessed under this part;

(d) be signed by all of the owners of the land that under the application would be assessed under this part;

(e) be accompanied by the prescribed fees made payable to the county recorder;

(f) include a certification by an owner that the facts set forth in the application or signed statement are true;

(g) include a statement that the application constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part; and

(h) be recorded by the county recorder.

(3) The application [~~required by~~] described in Subsection (2) constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part.

(4) (a) If the county determines that an application that was timely filed is incomplete, the county shall:

(i) notify the owner of the incomplete application; and

(ii) allow the owner to complete the application within 30 days from the day on which the county provides notice to the owner.

(b) An application that has not been completed within 30 days of the day of the notice described in Subsection (4)(a) shall be considered denied.

[(4)] (5) (a) Except as provided in Subsections (1) and (2), a county assessor may not require an additional signed statement or application for assessment under this part.

(b) Notwithstanding Subsection [(4)] (5)(a), a county shall require that an owner provide notice if land is withdrawn from this part as provided in Section 59-2-1705.

[(5)] (6) A certification under Subsection (2)(f) is considered as if made under oath and subject to the same penalties as provided by law for perjury.

[(6)] (7) (a) An owner applying for participation under this part or a purchaser or lessee [who] that signs a statement under Subsection [(7)] (8) is considered to have given consent to a field audit and review by:

(i) the commission;

(ii) the county assessor; or

(iii) the commission and the county assessor.

(b) The consent described in Subsection [(6)] (7)(a) is a condition to the acceptance of an application or signed statement.

[(7)] (8) An owner of land eligible for assessment under this part, because a purchaser or lessee actively devotes the land to agricultural use as required by Section 59-2-1703, may qualify the land for assessment under this part by submitting, with the application [~~required under~~] described in Subsection (2), a signed statement from that purchaser or lessee certifying those facts that would be necessary to meet the requirements of Section 59-2-1703 for assessment under this part.

Section 7. Section 59-2-1713 is enacted to read:

59-2-1713. Appeal to the county board of equalization.

Notwithstanding Section 59-2-1004 or 63G-4-301, the owner of land may appeal the determination or denial of a county assessor to the county board of equalization within 45 days after the day on which:

(1) the county assessor makes a determination under this part; or

(2) the county assessor's failure to make a determination results in the owner's request being considered denied under this part.

CHAPTER 320**H. B. 65**

Passed February 17, 2017

Approved March 24, 2017

Effective May 9, 2017

AIR CONSERVATION ACT AMENDMENTS

Chief Sponsor: Mike Schultz
Senate Sponsor: J. Stuart Adams

LONG TITLE**General Description:**

This bill modifies regulations regarding solid fuel burning.

Highlighted Provisions:

This bill:

- ▶ states that the Division of Air Quality shall allow burning of solid fuel if the primary purpose of the burning is to cook food; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

19-2-107.5, as last amended by Laws of Utah 2015, Chapter 416

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

Section 1. Section 19-2-107.5 is amended to read:**19-2-107.5. Solid fuel burning.**

(1) The division shall create a:

(a) public awareness campaign, in consultation with representatives of the solid fuel burning industry, the healthcare industry, and members of the clean air community, on best wood burning practices and the effects of wood burning on air quality, specifically targeting nonattainment areas; and

(b) program to assist an individual to convert a dwelling to a natural gas, propane, or wood pellet heating source or a wood burning stove certified by the United States Environmental Protection Agency, as funding allows, if the individual:

(i) lives in a dwelling where a wood burning stove is the sole source of heat; and

(ii) is on the list of registered sole heating source homes.

(2) (a) The division may not impose a burning ban prohibiting burning during a specified seasonal period of time.

(b) Notwithstanding Subsection (2)(a), the division shall:

(i) allow burning:

(A) during local emergencies and utility outages; ~~and~~ or

(B) if the primary purpose of the burning is to cook food; and

(ii) provide for exemptions, through registration with the division, for:

(A) devices that are sole sources of heat; or

(B) locations where natural gas service is limited or unavailable.

(3) The division may seek private donations and federal sources of funding to supplement any funds appropriated by the Legislature to fulfill Subsection (1)(b).

CHAPTER 321**H. B. 128**

Passed March 9, 2017
 Approved March 24, 2017
 Effective May 9, 2017

**HEALTH CARE DEBT
 COLLECTION AMENDMENTS**

Chief Sponsor: R. Curt Webb
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies and enacts provisions related to health care claims practices.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the circumstances under which a health care provider may make a report to a credit bureau or use the services of a collection agency against an insured;
- ▶ addresses administrative penalties for a health care provider who fails to comply with the provisions of this bill; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

31A-26-301.5, as last amended by Laws of Utah 2016, Chapter 124
 62A-2-112, as last amended by Laws of Utah 2016, Chapter 211

ENACTS:

26-21-11.1, Utah Code Annotated 1953
 58-1-508, Utah Code Annotated 1953

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

Section 1. Section 26-21-11.1 is enacted to read:**26-21-11.1. Failure to follow certain health care claims practices -- Penalties.**

(1) The department may assess a fine of up to \$500 per violation against a health care facility that violates Subsection 31A-26-301.5(4).

(2) The department shall waive the fine described in Subsection (1) if:

(a) the health care facility demonstrates to the department that the health care facility mitigated and reversed any damage to the insured caused by the health care facility's violation; or

(b) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care facility makes a report to a credit bureau or

uses the services of a collection agency in violation of Subsection 31A-26-301.5(4).

Section 2. Section 31A-26-301.5 is amended to read:**31A-26-301.5. Health care claims practices.**

(1) As used in this section:

(a) "Health care provider" means:

(i) a health care facility as defined in Section 26-21-2; or

(ii) a person licensed to provide health care services under:

(A) Title 58, Occupations and Professions; or

(B) Title 62A, Chapter 2, Licensure of Programs and Facilities.

(b) "Text message" means a real time or near real time message that consists of text and is transmitted to a device identified by a telephone number.

~~(1)~~ (2) Except as provided in Section 31A-8-407, an insured retains ultimate responsibility for paying for health care services the insured receives. If a service is covered by one or more individual or group health insurance policies, all insurers covering the insured have the responsibility to pay valid health care claims in a timely manner according to the terms and limits specified in the policies.

~~(2) (a)~~ (3) [Except as provided in Section 31A-22-610.1, a] A health care provider may:

(a) except as provided in Section 31A-22-610.1, bill and collect for any deductible, copayment, or uncovered service[-]; and

(b) [A health care provider may] bill an insured for services covered by health insurance policies or [may] otherwise notify the insured of the expenses covered by the policies. [However, a]

(4) (a) Except as provided in Subsection (4)(c), a health care provider may not make any report to a credit bureau[;] or use the services of a collection agency[; or use methods other than routine billing or notification until the later of] unless the health care provider:

(i) (A) after the expiration of the time afforded to an insurer under Section 31A-26-301.6 to determine [its] the insurer's obligation to pay or deny the claim without penalty[-or], sends a notice described in Subsection (4)(b) to the insured by certified mail with return receipt requested, priority mail, or text message; and

(B) makes the report to a credit bureau or uses the services of a collection agency after the date stated in the notice in accordance with Subsection (4)(b)(ii)(A); or

(ii) (A) in the case of a Medicare [beneficiaries or retirees] beneficiary or retiree 65 years of age or older, [60 days from] after the date Medicare determines [its] Medicare's liability for the claim[-],

sends a notice described in Subsection (4)(b) to the insured by certified mail with return receipt requested, priority mail, or text message; and

(B) makes the report to a credit bureau or uses the services of a collection agency after the date stated in the notice in accordance with Subsection (4)(b)(ii)(B).

(b) A notice described in Subsection (4)(a) shall state:

(i) the amount that the insured owes;

(ii) the date by which the insured must pay the amount owed that is:

(A) at least 45 days after the day on which the health care provider sends the notice; or

(B) if the insured is a Medicare beneficiary or retiree 65 years of age or older, at least 60 days after the day on which the health care provider sends the notice;

(iii) that if the insured fails to timely pay the amount owed, the health care provider may make a report to a credit bureau or use the services of a collection agency; and

(iv) that each action described in Subsection (4)(b)(iii) may negatively impact the insured's credit score.

(c) A health care provider satisfies the requirements described in Subsections (4)(a) and (b) if the health care provider complies with the provisions of 26 C.F.R. Sec. 1.501(r)-6.

[~~(e)~~] (5) Beginning October 31, 1992, all insurers covering the insured shall notify the insured of payment and the amount of payment made to the health care provider.

[~~(d)~~] (6) A health care provider shall return to an insured any amount the insured overpaid, including interest that begins accruing 90 days after the date of the overpayment, if:

[~~(4)~~] (a) the insured has multiple insurers with whom the health care provider has contracts that cover the insured; and

[~~(ii)~~] (b) the health care provider becomes aware that the health care provider has received, for any reason, payment for a claim in an amount greater than the health care provider's contracted rate allows.

[~~(3)~~] (7) The commissioner shall make rules consistent with this chapter governing disclosure to the insured of customary charges by health care providers on the explanation of benefits as part of the claims payment process. These rules shall be limited to the form and content of the disclosures on the explanation of benefits, and shall include:

(a) a requirement that the method of determination of any specifically referenced customary charges and the range of the customary charges be disclosed; and

(b) a prohibition against an implication that the health care provider is charging excessively if the health care provider is:

(i) a participating provider; and

(ii) prohibited from balance billing.

Section 3. Section 58-1-508 is enacted to read:

58-1-508. Failure to follow certain health care claims practices -- Penalties.

(1) As used in this section, "health care provider" means an individual who is licensed to provide health care services under this title.

(2) The division may assess a fine of up to \$500 per violation against a health care provider who violates Subsection 31A-26-301.5(4).

(3) The division shall waive the fine described in Subsection (2) if:

(a) the health care provider demonstrates to the division that the health care provider mitigated and reversed any damage to the insured caused by the health care provider's violation; or

(b) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care provider makes a report to a credit bureau or uses the services of a collection agency in violation of Subsection 31A-26-301.5(4).

Section 4. Section 62A-2-112 is amended to read:

62A-2-112. Violations -- Penalties.

(1) As used in this section, "health care provider" means a person licensed to provide health care services under this chapter.

[~~(1)~~] (2) The office may deny, place conditions on, suspend, or revoke a human services license, if it finds, related to the human services program:

(a) that there has been a failure to comply with the rules established under this chapter;

(b) evidence of aiding, abetting, or permitting the commission of any illegal act; or

(c) evidence of conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud.

[~~(2)~~] (3) The office may restrict or prohibit new admissions to a human services program, if it finds:

(a) that there has been a failure to comply with rules established under this chapter;

(b) evidence of aiding, abetting, or permitting the commission of any illegal act; or

(c) evidence of conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud.

(4) (a) The office may assess a fine of up to \$500 per violation against a health care provider who violates Subsection 31A-26-301.5(4).

(b) The office shall waive the fine described in Subsection (4)(a) if:

(i) the health care provider demonstrates to the office that the health care provider mitigated and reversed any damage to the insured caused by the health care provider's violation; or

(ii) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care provider makes a report to a credit bureau or uses the services of a collection agency in violation of Subsection 31A-26-301.5(4).

CHAPTER 322**H. B. 139**

Passed March 6, 2017

Approved March 24, 2017

Effective May 9, 2017

CRIMINAL INTENT AMENDMENTS

Chief Sponsor: Keven J. Stratton

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill eliminates the defense of voluntary intoxication in a criminal action.

Highlighted Provisions:

This bill:

- ▶ eliminates the defense of voluntary intoxication in a prosecution for rape.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-2-306, as enacted by Laws of Utah 1973,
Chapter 196

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

Section 1. Section 76-2-306 is amended to read:**76-2-306. Voluntary intoxication.**

(1) Voluntary intoxication [~~shall~~] is not [~~be~~] a defense to a criminal charge unless such intoxication negates the existence of the mental state which is an element of the offense[~~;~~ however, if]. If recklessness or criminal negligence establishes an element of an offense and the actor is unaware of the risk because of voluntary intoxication, his unawareness is immaterial in a prosecution for that offense.

(2) Voluntary intoxication is not a defense to sexual offenses, as defined in Title 76, Chapter 5, Part 4, Sexual Offenses.

CHAPTER 323**H. B. 145**

Passed March 8, 2017
 Approved March 24, 2017
 Effective May 9, 2017

**FOSTER CHILDREN
 VISITATION AMENDMENTS**

Chief Sponsor: Ken Ivory
 Senate Sponsor: Wayne A. Harper

LONG TITLE**General Description:**

This bill addresses sibling visitation for children in the custody of the Division of Child and Family Services.

Highlighted Provisions:

This bill:

- ▶ defines the term “sibling”;
- ▶ requires the division to make reasonable efforts for sibling visitation when siblings are separated due to foster care or adoptive placement;
- ▶ allows the court to order sibling visitation when the visitation is in the best interest of the child; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-4a-101, as last amended by Laws of Utah 2009, Chapter 75
 62A-4a-103, as last amended by Laws of Utah 2014, Chapter 265
 62A-4a-205, as last amended by Laws of Utah 2015, Chapter 322
 78A-6-301, as enacted by Laws of Utah 2008, Chapter 3
 78A-6-312, as last amended by Laws of Utah 2016, Chapter 231

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

Section 1. Section 62A-4a-101 is amended to read:

62A-4a-101. Definitions.

As used in this chapter:

- (1) “Abuse” [is-as] means the same as that term is defined in Section 78A-6-105.
- (2) “Adoption services” means:
- (a) placing children for adoption;
 - (b) subsidizing adoptions under Section 62A-4a-105;
 - (c) supervising adoption placements until the adoption is finalized by the court;
 - (d) conducting adoption studies;

(e) preparing adoption reports upon request of the court; and

(f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

(3) “Child” means, except as provided in Part 7, Interstate Compact on Placement of Children, a person under 18 years of age.

[~~5~~] (4) “Chronic abuse” means repeated or patterned abuse.

[~~6~~] (5) “Chronic neglect” means repeated or patterned neglect.

[4] (6) “Consumer” means a person who receives services offered by the division in accordance with this chapter.

(7) “Custody,” with regard to the division, means the custody of a minor in the division as of the date of disposition.

(8) “Day-care services” means care of a child for a portion of the day which is less than 24 hours:

(a) in the child’s own home by a responsible person; or

(b) outside of the child’s home in a:

(i) day-care center;

(ii) family group home; or

(iii) family child care home.

(9) “Dependent child” or “dependency” means a child, or the condition of a child, who is homeless or without proper care through no fault of the child’s parent, guardian, or custodian.

(10) “Director” means the director of the Division of Child and Family Services.

(11) “Division” means the Division of Child and Family Services.

(12) “Domestic violence services” means:

(a) temporary shelter, treatment, and related services to:

(i) a person who is a victim of abuse, as defined in Section 78B-7-102; and

(ii) the dependent children of a person described in Subsection (12)(a)(i); and

(b) treatment services for a person who is alleged to have committed, has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

(13) “Harm” [is-as] means the same as that term is defined in Section 78A-6-105.

(14) “Homemaking service” means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.

(15) “Incest” [is-as] means the same as that term is defined in Section 78A-6-105.

(16) “Minor” means, except as provided in Part 7, Interstate Compact on Placement of Children:

- (a) a child; or
- (b) a person:

(i) who is at least 18 years of age and younger than 21 years of age; and

(ii) for whom the division has been specifically ordered by the juvenile court to provide services.

(17) “Molestation” [is-as] means the same as that term is defined in Section 78A-6-105.

(18) “Natural parent” means a minor’s biological or adoptive parent, and includes a minor’s noncustodial parent.

(19) “Neglect” [is-as] means the same as that term is defined in Section 78A-6-105.

(20) “Protective custody,” with regard to the division, means the shelter of a child by the division from the time the child is removed from the child’s home until the earlier of:

- (a) the shelter hearing; or
- (b) the child’s return home.

(21) “Protective services” means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or dependency of a child;

(b) to a cohabitant who is neglecting or abusing a child, in order to:

(i) help the cohabitant develop recognition of the cohabitant’s duty of care and of the causes of neglect or abuse; and

(ii) strengthen the cohabitant’s ability to provide safe and acceptable care; and

(c) in cases where the child’s welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;

(ii) to cause a protective order to be issued for the protection of the child, when appropriate; and

(iii) to protect the child from the circumstances that endanger the child’s welfare including, when appropriate:

- (A) removal from the child’s home;
- (B) placement in substitute care; and
- (C) petitioning the court for termination of parental rights.

(22) “Severe abuse” [is-as] means the same as that term is defined in Section 78A-6-105.

(23) “Severe neglect” [is-as] means the same as that term is defined in Section 78A-6-105.

(24) “Sexual abuse” [is-as] means the same as that term is defined in Section 78A-6-105.

(25) “Sexual exploitation” [is-as] means the same as that term is defined in Section 78A-6-105.

(26) “Shelter care” means the temporary care of a minor in a nonsecure facility.

(27) “Sibling” means a child who shares or has shared at least one parent in common either by blood or adoption.

(28) “Sibling visitation” means services provided by the division to facilitate the interaction between a child in division custody with a sibling of that child.

~~[(27)]~~ (29) “State” means:

- (a) a state of the United States;
- (b) the District of Columbia;
- (c) the Commonwealth of Puerto Rico;
- (d) the Virgin Islands;
- (e) Guam;
- (f) the Commonwealth of the Northern Mariana Islands; or
- (g) a territory or possession administered by the United States.

~~[(28)]~~ (30) “State plan” means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

~~[(29)]~~ (31) “Status offense” means a violation of the law that would not be a violation but for the age of the offender.

~~[(30)]~~ (32) “Substance abuse” [is-as] means the same as that term is defined in Section 78A-6-105.

~~[(31)]~~ (33) “Substantiated” or “substantiation” means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

~~[(32)]~~ (34) “Substitute care” means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor’s own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor’s own home would be contrary to the minor’s welfare;

(b) services provided for a minor awaiting placement; and

(c) the licensing and supervision of a substitute care facility.

~~[(33)]~~ (35) “Supported” means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

[34] (36) “Temporary custody,” with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

[35] (37) “Transportation services” means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

[36] (38) “Unsubstantiated” means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

[37] (39) “Unsupported” means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

[38] (40) “Without merit” means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

Section 2. Section 62A-4a-103 is amended to read:

62A-4a-103. Division -- Creation -- Purpose.

(1) (a) There is created the Division of Child and Family Services within the department, under the administration and general supervision of the executive director.

(b) The division is the child, youth, and family services authority of the state and has all functions, powers, duties, rights, and responsibilities created in accordance with this chapter, except those assumed by the department.

(2) (a) The primary purpose of the division is to provide child welfare services.

(b) The division shall, when possible and appropriate, provide in-home services for the preservation of families in an effort to protect the child from the trauma of separation from his the child’s family, protect the integrity of the family, and the constitutional rights of parents. In keeping with its ultimate goal and purpose of protecting children, however, when a child’s welfare is endangered or reasonable efforts to maintain or reunify a child with his the child’s family have failed, the division shall act in a timely fashion in accordance with the requirements of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, to provide the child with a stable, permanent environment.

(3) The division shall also provide domestic violence services in accordance with federal law.

Section 3. Section 62A-4a-205 is amended to read:

62A-4a-205. Child and family plan -- Parent-time and relative visitation.

(1) No more than 45 days after a child enters the temporary custody of the division, the child’s child and family plan shall be finalized.

(2) (a) The division may use an interdisciplinary team approach in developing each child and family plan.

(b) The interdisciplinary team described in Subsection (2)(a) may include representatives from the following fields:

- (i) mental health;
- (ii) education; and
- (iii) if appropriate, law enforcement.

(3) (a) The division shall involve all of the following in the development of a child’s child and family plan:

- (i) both of the child’s natural parents, unless the whereabouts of a parent are unknown;
- (ii) the child;
- (iii) the child’s foster parents;
- (iv) if appropriate, the child’s stepparent; and
- (v) the child’s guardian ad litem, if one has been appointed by the court.

(b) In relation to all information considered by the division in developing a child and family plan, additional weight and attention shall be given to the input of the child’s natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(c) (i) The division shall make a substantial effort to develop a child and family plan with which the child’s parents agree.

(ii) If a parent does not agree with a child and family plan:

(A) the division shall strive to resolve the disagreement between the division and the parent; and

(B) if the disagreement is not resolved, the division shall inform the court of the disagreement.

(4) A copy of the child and family plan shall, immediately upon completion, or as soon as reasonably possible thereafter, be provided to the:

- (a) guardian ad litem;
- (b) child’s natural parents; and
- (c) child’s foster parents.

(5) Each child and family plan shall:

(a) specifically provide for the safety of the child, in accordance with federal law; and

(b) clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The child and family plan shall set forth, with specificity, at least the following:

(a) the reason the child entered into the custody of the division;

- (b) documentation of the:
- (i) reasonable efforts made to prevent placement of the child in the custody of the division; or
 - (ii) emergency situation that existed and that prevented the reasonable efforts described in Subsection (6)(b)(i), from being made;
- (c) the primary permanency plan for the child and the reason for selection of that plan;
- (d) the concurrent permanency plan for the child and the reason for the selection of that plan;
- (e) if the plan is for the child to return to the child's family:
- (i) specifically what the parents must do in order to enable the child to be returned home;
 - (ii) specifically how the requirements described in Subsection (6)(e)(i) may be accomplished; and
 - (iii) how the requirements described in Subsection (6)(e)(i) will be measured;
- (f) the specific services needed to reduce the problems that necessitated placing the child in the division's custody;
- (g) the name of the person who will provide for and be responsible for case management;
- (h) subject to Subsection (10), a parent-time schedule between the natural parent and the child;
- (i) subject to Subsection (7), the health and mental health care to be provided to address any known or diagnosed mental health needs of the child;
 - (j) if residential treatment rather than a foster home is the proposed placement, a requirement for a specialized assessment of the child's health needs including an assessment of mental illness and behavior and conduct disorders; ~~and~~
- (k) social summaries that include case history information pertinent to case planning~~[-]; and~~
- (l) subject to Subsection (12), a sibling visitation schedule.
- (7) (a) Subject to Subsection (7)(b), in addition to the information required under Subsection (6)(i), the plan shall include a specialized assessment of the medical and mental health needs of a child, if the child:
- (i) is placed in residential treatment; and
 - (ii) has medical or mental health issues that need to be addressed.
- (b) Notwithstanding Subsection (7)(a), a parent shall retain the right to seek a separate medical or mental health diagnosis of the parent's child from a licensed practitioner of the parent's choice.
- (8) (a) Each child and family plan shall be specific to each child and the child's family, rather than general.
- (b) The division shall train its workers to develop child and family plans that comply with:
- (i) federal mandates; and
 - (ii) the specific needs of the particular child and the child's family.
- (c) All child and family plans and expectations shall be individualized and contain specific time frames.
- (d) Subject to Subsection (8)(h), child and family plans shall address problems that:
- (i) keep a child in placement; and
 - (ii) keep a child from achieving permanence in the child's life.
- (e) Each child and family plan shall be designed to minimize disruption to the normal activities of the child's family, including employment and school.
- (f) In particular, the time, place, and amount of services, hearings, and other requirements ordered by the court in the child and family plan shall be designed, as much as practicable, to help the child's parents maintain or obtain employment.
- (g) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.
- (h) For purposes of Subsection (8)(d), a child and family plan may only include requirements that:
- (i) address findings made by the court; or
 - (ii) (A) are requested or consented to by a parent or guardian of the child; and
 - (B) are agreed to by the division and the guardian ad litem.
- (9) (a) Except as provided in Subsection (9)(b), with regard to a child who is three years of age or younger, if the plan is not to return the child home, the primary permanency plan for that child shall be adoption.
- (b) Notwithstanding Subsection (9)(a), if the division documents to the court that there is a compelling reason that adoption, reunification, guardianship, and a placement described in Subsection 78A-6-306(6)(e) are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with federal law.
- (10) (a) Except as provided in Subsection (10)(b), parent-time may only be denied by a court order issued pursuant to Subsections 78A-6-312(3), (6), and (7).
- (b) Notwithstanding Subsection (10)(a), the person designated by the division or a court to supervise a parent-time session may deny parent-time for that session if the supervising person determines that, based on the parent's condition, it is necessary to deny parent-time in order to:
- (i) protect the physical safety of the child;
 - (ii) protect the life of the child; or

(iii) consistent with Subsection (10)(c), prevent the child from being traumatized by contact with the parent.

(c) In determining whether the condition of the parent described in Subsection (10)(b) will traumatize a child, the person supervising the parent-time session shall consider the impact that the parent's condition will have on the child in light of:

- (i) the child's fear of the parent; and
- (ii) the nature of the alleged abuse or neglect.

(11) The division shall consider visitation with their grandparents for children in state custody if the division determines visitation to be in the best interest of the child and:

(a) there are no safety concerns regarding the behavior or criminal background of the grandparents;

(b) allowing visitation would not compete with or undermine the reunification plan;

(c) there is a substantial relationship between the grandparents and children; and

(d) the visitation will not unduly burden the foster parents.

(12) The child and family plan shall incorporate reasonable efforts to:

(a) provide sibling visitation when:

(i) siblings are separated due to foster care or adoptive placement;

(ii) visitation is in the best interest of the child for whom the plan is developed; and

(iii) the division has consent for sibling visitation from the legal guardian of the sibling; and

(b) obtain consent for sibling visitation from the sibling's legal guardian when the criteria of Subsections (12)(a)(i) and (ii) are met.

Section 4. Section 78A-6-301 is amended to read:

78A-6-301. Definitions.

As used in this part:

(1) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(2) "Protective custody" means the shelter of a child by the Division of Child and Family Services from the time the child is removed from home until the earlier of:

- (a) the shelter hearing; or
- (b) the child's return home.

(3) "Sibling" means the same as that term is defined in Section 62A-4a-101.

(4) "Sibling visitation" means the same as that term is defined in Section 62A-4a-101.

~~[(3)]~~ (5) "Temporary custody" means the custody of a child in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Section 5. Section 78A-6-312 is amended to read:

78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:

(a) make any of the dispositions described in Section 78A-6-117;

(b) place the minor in the custody or guardianship of any:

- (i) individual; or
- (ii) public or private entity or agency; or
- (c) order:

(i) protective supervision;

(ii) family preservation;

(iii) subject to Subsections (12)(b), 78A-6-105(27)(d), and 78A-6-117(2)(n) and Section 78A-6-301.5, medical or mental health treatment; ~~[or]~~

(iv) sibling visitation; or

~~[(iv)]~~ (v) other services.

(2) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:

(a) establish a primary permanency plan for the minor; and

(b) determine whether, in view of the primary permanency plan, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections ~~[(20)]~~ (21) through ~~[(22)]~~ (23).

(3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.

(4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.

(5) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

- (a) protect the physical safety of the minor;
- (b) protect the life of the minor; or
- (c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

(7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:

(a) prove that the parent has not used legal or illegal substances; or

(b) comply with an aspect of the child and family plan that is ordered by the court.

(8) (a) In addition to the primary permanency plan, the court shall establish a concurrent permanency plan that shall include:

(i) a representative list of the conditions under which the primary permanency plan will be abandoned in favor of the concurrent permanency plan; and

(ii) an explanation of the effect of abandoning or modifying the primary permanency plan.

(b) In determining the primary permanency plan and concurrent permanency plan, the court shall consider:

(i) the preference for kinship placement over nonkinship placement;

(ii) the potential for a guardianship placement if the parent-child relationship is legally terminated and no appropriate adoption placement is available; and

(iii) the use of an individualized permanency plan, only as a last resort.

(9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if something other than reunification is initially established as a minor's primary permanency plan.

(10) (a) The court may amend a minor's primary permanency plan before the establishment of a final permanency plan under Section 78A-6-314.

(b) The court is not limited to the terms of the concurrent permanency plan in the event that the primary permanency plan is abandoned.

(c) If, at any time, the court determines that reunification is no longer a minor's primary permanency plan, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

(i) 30 days after the day on which the court makes the determination described in this Subsection (10)(c); or

(ii) the day on which the provision of reunification services, described in Section 78A-6-314, ends.

(11) (a) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.

(b) In providing the services described in Subsection (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(12) (a) The court shall:

(i) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;

(ii) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and

(iii) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(b) If the parent is in a substance abuse treatment program, other than a certified drug court program:

(i) the court may order the parent to submit to supplementary drug or alcohol testing in addition to the testing recommended by the parent's substance abuse program based on a finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

(ii) the court may order the parent to provide the results of drug or alcohol testing recommended by the substance abuse program to the court or division.

(13) (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(7).

(b) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(14) (a) If reunification services are ordered, the court may terminate those services at any time.

(b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

(i) place the minor in accordance with the permanency plan; and

(ii) complete whatever steps are necessary to finalize the permanent placement of the minor.

(15) Any physical custody of the minor by the parent or a relative during the period described in

Subsections (11) through (14) does not interrupt the running of the period.

(16) (a) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.

(b) The permanency hearing shall be held no later than 12 months after the original removal of the minor.

(c) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

(17) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:

(a) the court shall terminate reunification services; and

(b) the division shall petition the court for termination of parental rights.

(18) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:

(a) practicable; and

(b) in accordance with the best interest of the minor.

(19) When a child is under the custody of the division and has been separated from a sibling due to foster care or adoptive placement, a court may order sibling visitation, subject to the division obtaining consent from the sibling's legal guardian, according to the court's determination of the best interests of the child for whom the hearing is held.

~~(19)~~ (20) (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.

(b) The court may determine that:

(i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and

(ii) reunification services should not be provided.

(c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.

~~(20)~~ (21) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

(a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(b) subject to Subsection ~~[(21)]~~ (22)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

(c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

(i) was removed from the custody of the minor's parent;

(ii) was subsequently returned to the custody of the parent; and

(iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

(d) the parent:

(i) caused the death of another minor through abuse or neglect;

(ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

(A) murder or manslaughter of a child; or

(B) child abuse homicide;

(iii) committed sexual abuse against the child;

(iv) is a registered sex offender or required to register as a sex offender; or

(v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;

(e) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

(f) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;

(g) the parent's rights are terminated with regard to any other minor;

(h) the minor was removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;

(i) the parent has abandoned the minor for a period of six months or longer;

(j) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located;

(k) except as provided in Subsection [(21)] (22)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance abuse treatment program approved by the department; or

(l) any other circumstance that the court determines should preclude reunification efforts or services.

[(21)] (22) (a) The finding under Subsection [(20)] (21)(b) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.

(b) A judge may disregard the provisions of Subsection [(20)] (21)(k) if the court finds, under the circumstances of the case, that the substance abuse treatment described in Subsection [(20)] (21)(k) is not warranted.

[(22)] (23) In determining whether reunification services are appropriate, the court shall take into consideration:

(a) failure of the parent to respond to previous services or comply with a previous child and family plan;

(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;

(c) any history of violent behavior directed at the child or an immediate family member;

(d) whether a parent continues to live with an individual who abused the minor;

(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and

(g) whether the parent has expressed an interest in reunification with the minor.

[(23)] (24) (a) If reunification services are not ordered pursuant to Subsections [(19)] (20) through [(21)] (22), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.

(b) The time limits described in Subsections (2) through (18) are not tolled by the parent's absence.

[(24)] (25) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection [(24)] (25)(a), the court shall consider:

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

(vi) the degree of detriment to the minor if services are not offered;

(vii) for a minor 10 years old or older, the minor's attitude toward the implementation of family reunification services; and

(viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (18).

(d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (18), unless the court determines that continued reunification services would be in the minor's best interest.

[(25)] (26) If, pursuant to Subsections [(20)] (21)(b) through (l), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

CHAPTER 324**H. B. 201**

Passed March 7, 2017

Approved March 24, 2017

Effective May 9, 2017

**CONDOMINIUM AND COMMUNITY
ASSOCIATION AMENDMENTS**

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill modifies provisions of the Condominium Ownership Act and the Community Association Act related to organization and governing documents.

Highlighted Provisions:

This bill:

- ▶ addresses the hierarchy of the governing documents of a condominium or community association;
- ▶ enacts provisions related to the organization and reorganization of a community association; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

57-8-39, as last amended by Laws of Utah 2015, Chapter 325

57-8-40, as last amended by Laws of Utah 2013, Chapter 152

ENACTS:

57-8a-228, Utah Code Annotated 1953

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

Section 1. Section 57-8-39 is amended to read:**57-8-39. Limitation on requirements for amending governing documents -- Limitation on contracts.**

(1) (a) (i) To amend the governing documents, the governing documents may not require:

(A) for an amendment adopted after the period of administrative control, the vote or approval of unit owners with more than 67% of the voting interests;

(B) the approval of any specific unit owner; or

(C) the vote or approval of lien holders holding more than 67% of the first position security interests secured by a mortgage or trust deed in the association of unit owners.

(ii) Any provision in the governing documents that prohibits a vote or approval to amend any part of the governing documents during a particular time period is invalid.

(b) Subsection (1)(a) does not apply to an amendment affecting only:

(i) the undivided interest of each unit owner in the common areas and facilities, as expressed in the declaration;

(ii) unit boundaries; or

(iii) unit owners' voting rights.

(2) (a) A contract for services such as garbage collection, maintenance, lawn care, or snow removal executed on behalf of the association of unit owners during a period of administrative control is binding beyond the period of administrative control unless terminated by the ~~[board of directors]~~ management committee after the period of administrative control ends.

(b) Subsection (2)(a) does not apply to golf course and amenity management, utilities, cable services, and other similar services that require an investment of infrastructure or capital.

(3) Voting interests under Subsection (1) are calculated in the manner required by the governing documents.

(4) Nothing in this section affects any other rights reserved by the declarant.

(5) This section applies to an association of unit owners regardless of when the association of unit owners is created.

Section 2. Section 57-8-40 is amended to read:**57-8-40. Organization of an association of unit owners under other law -- Governing document hierarchy -- Reorganization.**

(1) As used in this section, "organizational documents" means the documents related to the formation or operation of a nonprofit corporation or other legal entity formed by the management committee or the declarant.

(2) If permitted, required, or acknowledged by the declaration, the management committee may organize an association of unit owners as:

(a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act; or

(b) any other entity organized under other law.

(3) ~~[Organizational]~~ To the extent possible, organizational documents for a nonprofit corporation or other entity formed in accordance with Subsection (2) ~~[shall, to the extent possible,]~~ may not conflict with the rights and obligations found in the declaration ~~[and]~~ or any of the ~~[association's]~~ association of unit owners' bylaws recorded at the time of the formation of a nonprofit corporation or other entity.

(4) Notwithstanding any conflict with the declaration or any recorded bylaws, the organizational documents of a nonprofit corporation or other entity formed in accordance with Subsection (2) may include ~~[any]~~ an additional indemnification and liability limitation provision for:

(a) ~~[board members, directors, and]~~ management committee members or officers; or

(b) similar persons in a position of control.

(5) In the event of a conflict between this chapter's provisions, a statute under which the association of unit owners is organized, documents concerning the organization of the association of unit owners as a nonprofit corporation or other entity, the plat, the declaration, the bylaws, and ~~[association]~~ rules or policies of the association of unit owners, the following order prevails:

(a) this chapter controls over a conflicting provision found in any of the sources listed in Subsections (5)(b) through (f);

(b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized controls over a conflicting provision in any of the sources listed in Subsections (5)(c) through (f);

(c) the plat and the declaration control equally over a conflicting provision in any of the sources listed in Subsections (5)(d) through (f);

~~[(e)]~~ (d) an organizational document filed in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized, controls over a conflicting provision in any of the sources listed in Subsections (5)(d)(e) through (f);

~~[(d) the declaration controls over a conflicting provision in any of the sources listed in Subsections (5)(e) or (f);]~~

(e) the bylaws control over a conflicting provision in ~~[association rules]~~ a source described in Subsection (5)(f); and

(f) ~~[the association rules yield]~~ a rule or policy of the association of unit owners that is adopted by the management committee yields to a conflicting provision in any of the sources listed in [Subsection] Subsections (5)(a) through (e).

(6) Immediately upon the legal formation of an entity in compliance with this section, the association and unit owners are subject to any right, obligation, procedure, and remedy applicable to that entity.

(7) (a) ~~[A] The management committee may modify a form "articles of incorporation" or similar organizational document attached to a declaration [may be modified by the management committee] for filing or re-filing if the modified version is otherwise consistent with this section's provisions.~~

(b) An organizational document attached to a declaration that is filed and concerns the organization of an entity may be amended in accordance with ~~[its] the organizational document's own terms or any applicable law, [notwithstanding the fact that] regardless of whether the organizational document [might be] is recorded.~~

(c) Except for amended bylaws, an initial or amended organizational document properly filed with the state does not need to be recorded.

(8) This section applies to the reorganization of an association of unit owners previously organized if the entity's status is terminated or dissolved without the possibility of reinstatement.

(9) (a) This section applies to ~~[all] a condominium [projects, whether] project~~ regardless of when the condominium project is established [before or after May 5, 2008].

(b) This section does not validate or invalidate the organization of an association of unit owners that occurred before May 5, 2008, regardless of whether [or not] the association of unit owners was otherwise in compliance with this section.

Section 3. Section 57-8a-228 is enacted to read:

57-8a-228. Organization of an association -- Governing document hierarchy -- Reorganization.

(1) As used in this section, "organizational documents" means the documents related to the formation or operation of a nonprofit corporation or other legal entity formed by the board or the declarant.

(2) If permitted, required, or acknowledged by the declaration, the board may organize an association as:

(a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act; or

(b) any other entity organized under other law.

(3) To the extent possible, organizational documents for a nonprofit corporation or other entity formed in accordance with Subsection (2) may not conflict with the rights and obligations found in the declaration or any of the association's bylaws recorded at the time of the formation of a nonprofit corporation or other entity.

(4) Notwithstanding any conflict with the declaration or any recorded bylaws, the organizational documents of a nonprofit corporation or other entity formed in accordance with Subsection (2) may include an additional indemnification and liability limitation provision for:

(a) board members or officers; or

(b) similar persons in a position of control.

(5) In the event of a conflict between this chapter's provisions, a statute under which the association is organized, documents concerning the organization of the association as a nonprofit corporation or other entity, the plat, the declaration, the bylaws, and association rules or policies, the following order prevails:

(a) this chapter controls over a conflicting provision found in any of the sources listed in Subsections (5)(b) through (f);

(b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized controls over a conflicting

provision in any of the sources listed in Subsections (5)(c) through (f);

(c) the plat and the declaration control equally over a conflicting provision in any of the sources listed in Subsections (5)(d) through (f);

(d) an organizational document filed in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized controls over a conflicting provision in any of the sources listed in Subsections (5)(e) and (f);

(e) the bylaws control over a conflicting provision in a source described in Subsection (5)(f); and

(f) an association rule or policy that is adopted by the board yields to a conflicting provision in any of the sources listed in Subsections (5)(a) through (e).

(6) Immediately upon the legal formation of an entity in compliance with this section, the association and unit owners are subject to any right, obligation, procedure, and remedy applicable to that entity.

(7) (a) The board may modify a form “articles of incorporation” or similar organizational document attached to a declaration for filing or re-filing if the modified version is otherwise consistent with this section’s provisions.

(b) An organizational document attached to a declaration that is filed and concerns the organization of an entity may be amended in accordance with the organizational document’s own terms or any applicable law, regardless of whether the organizational document is recorded.

(c) Except for amended bylaws, an initial or amended organizational document properly filed with the state does not need to be recorded.

(8) This section applies to the reorganization of an association previously organized if the entity’s status is terminated or dissolved without the possibility of reinstatement.

(9) (a) This section applies regardless of when the association is created.

(b) This section does not validate or invalidate the organization of an association that occurred before May 9, 2017, regardless of whether the association was otherwise in compliance with this section.

CHAPTER 325**H. B. 212**

Passed March 8, 2017
 Approved March 24, 2017
 Effective May 9, 2017

**INCENTIVE FOR EFFECTIVE
 TEACHERS IN HIGH POVERTY SCHOOLS**

Chief Sponsor: Mike Winder
 Senate Sponsor: Lyle W. Hillyard
 Cosponsors: Stewart E. Barlow
 Walt Brooks
 LaVar Christensen
 Brad M. Daw
 James A. Dunnigan
 Rebecca P. Edwards
 Steve Eliason
 Stephen G. Handy
 Ken Ivory
 John Knotwell
 Michael E. Noel
 Jeremy A. Peterson
 Val K. Potter
 Susan Pulsipher
 V. Lowry Snow
 Raymond P. Ward
 Christine F. Watkins
 Brad R. Wilson

LONG TITLE**General Description:**

This bill creates the Effective Teachers in High Poverty Schools Incentive Program.

Highlighted Provisions:

This bill:

- ▶ creates the Effective Teachers in High Poverty Schools Incentive Program (program);
- ▶ defines terms;
- ▶ authorizes the State Board of Education to award a salary bonus to an eligible teacher;
- ▶ excludes a teacher salary bonus from compensation for purposes of a state retirement program;
- ▶ requires the State Board of Education to evaluate the effectiveness of the program and submit a report to the Education Interim Committee; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

This bill appropriates for fiscal year 2018:

- ▶ to the State Board of Education -- Minimum School Program -- Related to Basic School Program, as an ongoing appropriation:
 - from the Education Fund, \$250,000.

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

49-12-102, as last amended by Laws of Utah 2016, Chapters 227 and 304
 49-13-102, as last amended by Laws of Utah 2016, Chapters 227 and 304
 49-22-102, as last amended by Laws of Utah 2016, Chapters 227 and 304

ENACTS:

53A-17a-173, Utah Code Annotated 1953

**Utah Code Sections Affected by Coordination
 Clause:**

53A-17a-173, Utah Code Annotated 1953

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

Section 1. Section 49-12-102 is amended to read:

49-12-102. Definitions.

As used in this chapter:

(1) "Benefits normally provided":

(a) means a benefit offered by an employer, including:

(i) a leave benefit of any kind;

(ii) insurance coverage of any kind if the employer pays some or all of the premium for the coverage;

(iii) employer contributions to a health savings account, health reimbursement account, health reimbursement arrangement, or medical expense reimbursement plan; and

(iv) a retirement benefit of any kind if the employer pays some or all of the cost of the benefit; and

(b) does not include:

(i) a payment for social security;

(ii) workers' compensation insurance;

(iii) unemployment insurance;

(iv) a payment for Medicare;

(v) a payment or insurance required by federal or state law that is similar to a payment or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);

(vi) any other benefit that state or federal law requires an employer to provide an employee who would not otherwise be eligible to receive the benefit; or

(vii) any benefit that an employer provides an employee in order to avoid a penalty or tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

(2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

- (i) bonuses;
 - (ii) cost-of-living adjustments;
 - (iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law;
 - (iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and
 - (v) member contributions.
- (b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).
- (c) "Compensation" does not include:
- (i) the monetary value of remuneration paid in kind, including a residence or use of equipment;
 - (ii) the cost of any employment benefits paid for by the participating employer;
 - (iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;
 - (iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; ~~or~~
 - (v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs~~[-]; or~~
 - (vi) a teacher salary bonus described in Section 53A-17a-172.
- (d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.
- (3) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), (d), and (e).
- (a) Except as provided in Subsection (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(a) may be exceeded if:
- (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.

- (c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.
 - (d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
 - (e) The annual compensation used to calculate final average salary shall be based on:
 - (i) a calendar year for a member employed by a participating employer that is not an educational institution; or
 - (ii) a contract year for a member employed by an educational institution.
- (4) "Participating employer" means an employer which meets the participation requirements of Sections 49-12-201 and 49-12-202.
- (5) (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.
- (b) "Regular full-time employee" includes:
- (i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more;
 - (ii) a classified school employee:
 - (A) who is hired before July 1, 2013; and
 - (B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;
 - (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-12-407;
 - (iv) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and
 - (v) an individual who otherwise meets the definition of this Subsection (5) who performs services for a participating employer through a professional employer organization or similar arrangement.
- (c) "Regular full-time employee" does not include a classified school employee:
- (i) (A) who is hired on or after July 1, 2013; and
 - (B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20

hours per week or more for a participating employer;

(ii) (A) who is hired before July 1, 2013;

(B) who did not qualify as a regular full-time employee before July 1, 2013;

(C) who does not receive benefits normally provided by the participating employer; and

(D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer; or

(iii) who is a person working on a contract:

(A) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and

(B) that has been set aside from procurement requirements by the state pursuant to Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

(6) "System" means the Public Employees' Contributory Retirement System created under this chapter.

(7) "Years of service credit" means:

(a) a period consisting of 12 full months as determined by the board;

(b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or

(c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Section 2. Section 49-13-102 is amended to read:

49-13-102. Definitions.

As used in this chapter:

(1) "Benefits normally provided" has the same meaning as defined in Section 49-12-102.

(2) (a) Except as provided in Subsection (2)(c), "compensation" means the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

(iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law; and

(iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).

(c) "Compensation" does not include:

(i) the monetary value of remuneration paid in kind, including a residence or use of equipment;

(ii) the cost of any employment benefits paid for by the participating employer;

(iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;

(iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; [or]

(v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs[-]; or

(vi) a teacher salary bonus described in Section 53A-17a-172.

(d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.

(3) "Final average salary" means the amount calculated by averaging the highest three years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), and (d).

(a) Except as provided in Subsection (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(a) may be exceeded if:

(i) the member has transferred from another agency; or

(ii) the member has been promoted to a new position.

(c) If the member retires more than six months from the date of termination of employment and for purposes of computing the member's final average salary only, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement.

(d) The annual compensation used to calculate final average salary shall be based on:

(i) a calendar year for a member employed by a participating employer that is not an educational institution; or

(ii) a contract year for a member employed by an educational institution.

(4) "Participating employer" means an employer which meets the participation requirements of Sections 49-13-201 and 49-13-202.

(5) (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.

(b) "Regular full-time employee" includes:

(i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half time or more;

(ii) a classified school employee:

(A) who is hired before July 1, 2013; and

(B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;

(iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-13-407;

(iv) a faculty member or employee of an institution of higher education who is considered full time by that institution of higher education; and

(v) an individual who otherwise meets the definition of this Subsection (5) who performs services for a participating employer through a professional employer organization or similar arrangement.

(c) "Regular full-time employee" does not include a classified school employee:

(i) (A) who is hired on or after July 1, 2013; and

(B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20 hours per week or more for a participating employer;

(ii) (A) who is hired before July 1, 2013;

(B) who did not qualify as a regular full-time employee before July 1, 2013;

(C) who does not receive benefits normally provided by the participating employer; and

(D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer; or

(iii) who is a person working on a contract:

(A) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and

(B) that has been set aside from procurement requirements by the state pursuant to Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

(6) "System" means the Public Employees' Noncontributory Retirement System.

(7) "Years of service credit" means:

(a) a period consisting of 12 full months as determined by the board;

(b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or

(c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Section 3. Section 49-22-102 is amended to read:

49-22-102. Definitions.

As used in this chapter:

(1) "Benefits normally provided" has the same meaning as defined in Section 49-12-102.

(2) (a) "Compensation" means, except as provided in Subsection (2)(c), the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

(i) bonuses;

(ii) cost-of-living adjustments;

(iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law;

(iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and

(v) member contributions.

(b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).

(c) "Compensation" does not include:

(i) the monetary value of remuneration paid in kind, including a residence or use of equipment;

(ii) the cost of any employment benefits paid for by the participating employer;

(iii) compensation paid to a temporary employee or an employee otherwise ineligible for service credit;

(iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; ~~or~~

(v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs~~[-]; or~~

(vi) a teacher salary bonus described in Section 53A-17a-172.

(d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.

(3) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.

(4) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (4)(a), (b), (c), (d), and (e).

(a) Except as provided in Subsection (4)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (4)(a) may be exceeded if:

(i) the member has transferred from another agency; or

(ii) the member has been promoted to a new position.

(c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.

(d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.

(e) The annual compensation used to calculate final average salary shall be based on:

(i) a calendar year for a member employed by a participating employer that is not an educational institution; or

(ii) a contract year for a member employed by an educational institution.

(5) "Participating employer" means an employer which meets the participation requirements of:

(a) Sections 49-12-201 and 49-12-202;

(b) Sections 49-13-201 and 49-13-202;

(c) Section 49-19-201; or

(d) Section 49-22-201 or 49-22-202.

(6) (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.

(b) "Regular full-time employee" includes:

(i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half time or more;

(ii) a classified school employee:

(A) who is hired before July 1, 2013; and

(B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;

(iii) an appointive officer whose appointed position is full time as certified by the participating employer;

(iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the attorney general, and a state legislator;

(v) an elected official not included under Subsection (6)(b)(iv) whose elected position is full time as certified by the participating employer;

(vi) a faculty member or employee of an institution of higher education who is considered full time by that institution of higher education; and

(vii) an individual who otherwise meets the definition of this Subsection (6) who performs services for a participating employer through a professional employer organization or similar arrangement.

(c) "Regular full-time employee" does not include:

(i) a firefighter service employee as defined in Section 49-23-102;

(ii) a public safety service employee as defined in Section 49-23-102;

(iii) a classified school employee:

(A) who is hired on or after July 1, 2013; and

(B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20 hours per week or more for a participating employer;

- (iv) a classified school employee:
- (A) who is hired before July 1, 2013;
- (B) who did not qualify as a regular full-time employee before July 1, 2013;
- (C) who does not receive benefits normally provided by the participating employer; and
- (D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer; or
- (E) who is a person working on a contract:
- (I) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and
- (II) that has been set aside from procurement requirements by the state pursuant to Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.
- (7) "System" means the New Public Employees' Tier II Contributory Retirement System created under this chapter.

(8) "Years of service credit" means:

- (a) a period consisting of 12 full months as determined by the board;
- (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or
- (c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Section 4. Section 53A-17a-173 is enacted to read:

53A-17a-173. Effective Teachers in High Poverty Schools Incentive Program -- Salary bonus -- Evaluation.

(1) As used in this section:

- (a) "Board" means the State Board of Education.
- (b) "Cohort" means a group of students, defined by the year in which the group enters grade 1.
- (c) "Eligible teacher" means a teacher who:
- (i) is employed as a teacher in a high poverty school at the time the teacher is considered by the board for a salary bonus; and
- (ii) achieves a median growth percentile of 70 or higher:

(A) a full school year before the school year the eligible teacher is being considered by the board for a salary bonus under this section, regardless of whether the teacher was employed the previous school year by a high poverty school or a different public school; and

(B) while teaching at any public school in the state a course for which a statewide criterion-referenced test or online computer adaptive test is administered as described in Section 53A-1-603.

(d) "High poverty school" means a public school:

(i) in which:

(A) more than 20% of the enrolled students are classified as children affected by intergenerational poverty; or

(B) 70% or more of the enrolled students qualify for free or reduced lunch; or

(ii) (A) that has previously met the criteria described in Subsection (1)(d)(i)(A) and for each school year since meeting that criteria at least 15% of the enrolled students at the public school have been classified as children affected by intergenerational poverty; or

(B) that has previously met the criteria described in Subsection (1)(d)(i)(B) and for each school year since meeting that criteria at least 60% of the enrolled students at the public school have qualified for free or reduced lunch.

(e) "Intergenerational poverty" means the same as that term is defined in Section 35A-9-102.

(f) "Median growth percentile" means a number that describes the comparative effectiveness of a teacher in helping the teacher's students achieve growth in a year by identifying the median student growth percentile of all the students a teacher instructs.

(g) "Program" means the Effective Teachers in High Poverty Schools Incentive Program created in Subsection (2).

(h) "Student growth percentile" is a number that describes where a student ranks in comparison to the student's cohort.

(2) (a) The Effective Teachers in High Poverty Schools Incentive Program is created to provide an annual salary bonus for an eligible teacher.

(b) The board shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for:

- (i) the administration of the program;
- (ii) payment of a salary bonus; and
- (iii) application requirements.

(c) The board shall make an annual salary bonus payment in a fiscal year that begins on July 1, 2017, and each fiscal year thereafter in which money is appropriated for the program.

(3) (a) Subject to future budget constraints, the Legislature shall annually appropriate money to fund the program.

(b) Money appropriated for the program shall include money for the following employer-paid benefits:

- (i) social security; and

(ii) Medicare.

(4) (a) (i) A charter school or school district school shall annually apply to the board on behalf of an eligible teacher for an eligible teacher to receive an annual salary bonus each year that the teacher is an eligible teacher.

(ii) A teacher need not be an eligible teacher in consecutive years to receive the increased annual salary bonus described in Subsection (4)(b).

(b) The annual salary bonus for an eligible teacher is \$5,000.

(c) A public school that applies on behalf of an eligible teacher under Subsection (4)(a)(i) shall pay half of the salary bonus described in Subsection (4)(b) each year the eligible teacher is awarded the salary bonus.

(d) The board shall award a salary bonus to an eligible teacher based on the order that an application from a public school on behalf of the eligible teacher is received.

(5) The board shall:

(a) determine if a teacher is an eligible teacher; and

(b) verify, as needed, the determinations made under Subsection (5)(a) with the school district and school district administrators.

(6) The board shall:

(a) distribute money from the program to school districts and charter schools in accordance with this section and board rule; and

(b) include the employer-paid benefits described in Subsection (3)(b) in addition to the salary bonus amount described in Subsection (4)(b).

(7) Money received from the program shall be used by a school district or charter school to provide an annual salary bonus equal to the amount specified in Subsection (4)(b) for each eligible teacher and to pay affiliated employer-paid benefits described in Subsection (3)(b).

(8) (a) After the third year salary bonus payments are made, and each succeeding year, the board shall evaluate the extent to which a salary bonus described in this section improves recruitment and retention of effective teachers in high poverty schools by at least:

(i) surveying teachers who receive the salary bonus; and

(ii) examining turnover rates of teachers who receive the salary bonus compared to teachers who do not receive the salary bonus.

(b) Each year that the board conducts an evaluation described in Subsection (8)(a), the board shall, in accordance with Section 68-3-14, submit a report on the results of the evaluation to the Education Interim Committee on or before November 30.

(9) A public school shall annually notify a teacher:

(a) of the teacher's median growth percentile; and

(b) how the teacher's median growth percentile is calculated.

(10) Notwithstanding this section, if the appropriation for the program is insufficient to cover the costs associated with salary bonuses, the board may limit or reduce a salary bonus.

Section 5. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To State Board of Education -- Minimum School Program -- Related to Basic Program

<u>From Education Fund</u>	<u>\$250,000</u>
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Schedule of Programs:

<u>Effective Teachers in High Poverty Schools Incentive Program</u>	<u>\$250,000</u>
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The Legislature intends that the State Board of Education use the \$250,000 ongoing appropriation described in this section to award a salary bonus and pay an authorized employer-paid benefit to an eligible teacher as part of the program described in Section 53A-17a-172.

Section 6. Coordinating H.B. 212 with S.B. 220 -- Substantive and technical amendments.

If this H.B. 212 and S.B. 220, Student Assessment and School Accountability Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by modifying Subsection 53A-17a-173(1)(c)(ii)(B) to read:

“(B) while teaching at any public school in the state a course for which a standards assessment is administered as described in Section 53A-1-604.”.

CHAPTER 326**H. B. 227**

Passed February 17, 2017

Approved March 24, 2017

Effective May 9, 2017

**EMERGENCY MEDICAL
SERVICE SYSTEM AMENDMENTS**

Chief Sponsor: Adam Gardiner

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill amends provisions in the Utah Emergency Medical Services System Act.

Highlighted Provisions:

This bill:

- ▶ makes technical and conforming changes to align with the Emergency Medical Services Personnel Licensure Interstate Compact.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 26-8a-102, as last amended by Laws of Utah 2013, Chapter 246
- 26-8a-103, as last amended by Laws of Utah 2011, Chapters 51 and 297
- 26-8a-104, as last amended by Laws of Utah 2016, Chapter 74
- 26-8a-105, as last amended by Laws of Utah 2016, Chapter 168
- 26-8a-106, as last amended by Laws of Utah 2016, Chapter 74
- 26-8a-208, as last amended by Laws of Utah 2010, Chapter 391
- 26-8a-301, as last amended by Laws of Utah 2009, Chapter 22
- 26-8a-302, as last amended by Laws of Utah 2015, Chapter 307
- 26-8a-308, as last amended by Laws of Utah 2009, Chapter 22
- 26-8a-310, as repealed and reenacted by Laws of Utah 2015, Chapter 307
- 26-8a-408, as last amended by Laws of Utah 2015, Chapter 307
- 26-8a-409, as enacted by Laws of Utah 1999, Chapter 141
- 26-8a-501, as enacted by Laws of Utah 1999, Chapter 141
- 26-8a-502, as last amended by Laws of Utah 2009, Chapter 22
- 26-8a-503, as last amended by Laws of Utah 2015, Chapter 167
- 26-8a-506, as enacted by Laws of Utah 1999, Chapter 141
- 26-8a-601, as last amended by Laws of Utah 2009, Chapter 22
- 41-6a-523, as last amended by Laws of Utah 2012, Chapter 267
- 53-10-405, as last amended by Laws of Utah 2012, Chapter 267

58-1-307, as last amended by Laws of Utah 2016, Chapters 201 and 238

72-10-502, as last amended by Laws of Utah 2012, Chapter 267

76-5-102.7, as last amended by Laws of Utah 2016, Chapter 339

78A-6-209, as last amended by Laws of Utah 2016, Chapters 122 and 144

78B-8-401, as last amended by Laws of Utah 2013, Chapter 114

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

Section 1. Section 26-8a-102 is amended to read:**26-8a-102. Definitions.**

As used in this chapter:

(1) (a) "911 ambulance or paramedic services" means:

(i) either:

(A) 911 ambulance service;

(B) 911 paramedic service; or

(C) both 911 ambulance and paramedic service; and

(ii) a response to a 911 call received by a designated dispatch center that receives 911 or E911 calls.

(b) "911 ambulance or paramedic service" does not mean a seven or ten digit telephone call received directly by an ambulance provider licensed under this chapter.

(2) "Ambulance" means a ground, air, or water vehicle that:

(a) transports patients and is used to provide emergency medical services; and

(b) is required to obtain a permit under Section 26-8a-304 to operate in the state.

(3) "Ambulance provider" means an emergency medical service provider that:

(a) transports and provides emergency medical care to patients; and

(b) is required to obtain a license under Part 4, Ambulance and Paramedic Providers.

(4) "Committee" means the State Emergency Medical Services Committee created by Section 26-1-7.

(5) "Direct medical observation" means in-person observation of a patient by a physician, registered nurse, physician's assistant, or individual [certified] licensed under Section 26-8a-302.

(6) "Emergency medical condition" means:

(a) a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

(i) placing the individual's health in serious jeopardy;

(ii) serious impairment to bodily functions; or

(iii) serious dysfunction of any bodily organ or part; or

(b) a medical condition that in the opinion of a physician or his designee requires direct medical observation during transport or may require the intervention of an individual [eertified] licensed under Section 26-8a-302 during transport.

(7) "Emergency medical service personnel":

(a) means an individual who provides emergency medical services to a patient and is required to be [eertified] licensed under Section 26-8a-302; and

(b) includes a paramedic, medical director of a licensed emergency medical service provider, emergency medical service instructor, and other categories established by the committee.

(8) "Emergency medical service providers" means:

(a) licensed ambulance providers and paramedic providers;

(b) a facility or provider that is required to be designated under Section 26-8a-303; and

(c) emergency medical service personnel.

(9) "Emergency medical services" means medical services, transportation services, or both rendered to a patient.

(10) "Emergency medical service vehicle" means a land, air, or water vehicle that is:

(a) maintained and used for the transportation of emergency medical personnel, equipment, and supplies to the scene of a medical emergency; and

(b) required to be permitted under Section 26-8a-304.

(11) "Governing body":

(a) is as defined in Section 11-42-102; and

(b) for purposes of a "special service district" under Section 11-42-102, means a special service district that has been delegated the authority to select a provider under this chapter by the special service district's legislative body or administrative control board.

(12) "Interested party" means:

(a) a licensed or designated emergency medical services provider that provides emergency medical services within or in an area that abuts an exclusive geographic service area that is the subject of an application submitted pursuant to Part 4, Ambulance and Paramedic Providers;

(b) any municipality, county, or fire district that lies within or abuts a geographic service area that is the subject of an application submitted pursuant to Part 4, Ambulance and Paramedic Providers; or

(c) the department when acting in the interest of the public.

(13) "Medical control" means a person who provides medical supervision to an emergency medical service provider.

(14) "Non-911 service" means transport of a patient that is not 911 transport under Subsection (1).

(15) "Paramedic provider" means an entity that:

(a) employs emergency medical service personnel; and

(b) is required to obtain a license under Part 4, Ambulance and Paramedic Providers.

(16) "Patient" means an individual who, as the result of illness or injury, meets any of the criteria in Section 26-8a-305.

(17) "Political subdivision" means:

(a) a city or town located in a county of the first or second class as defined in Section 17-50-501;

(b) a county of the first or second class;

(c) the following districts located in a county of the first or second class:

(i) a special service district created under Title 17D, Chapter 1, Special Service District Act; or

(ii) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, for the purpose of providing fire protection, paramedic, and emergency services;

(d) areas coming together as described in Subsection 26-8a-405.2(2)(b)(ii);

(e) an interlocal entity under Title 11, Chapter 13, Interlocal Cooperation Act; or

(f) a special service district for fire protection service under Subsection 17D-1-201(9).

(18) "Trauma" means an injury requiring immediate medical or surgical intervention.

(19) "Trauma system" means a single, statewide system that:

(a) organizes and coordinates the delivery of trauma care within defined geographic areas from the time of injury through transport and rehabilitative care; and

(b) is inclusive of all prehospital providers, hospitals, and rehabilitative facilities in delivering care for trauma patients, regardless of severity.

(20) "Triage" means the sorting of patients in terms of disposition, destination, or priority. For prehospital trauma victims, triage requires a determination of injury severity to assess the appropriate level of care according to established patient care protocols.

(21) "Triage, treatment, transportation, and transfer guidelines" means written procedures that:

(a) direct the care of patients; and

(b) are adopted by the medical staff of an emergency patient receiving facility, trauma center, or an emergency medical service provider.

Section 2. Section 26-8a-103 is amended to read:

26-8a-103. State Emergency Medical Services Committee -- Membership -- Expenses.

(1) The State Emergency Medical Services Committee created by Section 26-1-7 shall be composed of the following 16 members appointed by the governor, at least five of whom shall reside in a county of the third, fourth, fifth, or sixth class:

(a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as follows:

(i) one surgeon who actively provides trauma care at a hospital;

(ii) one rural physician involved in emergency medical care;

(iii) two physicians who practice in the emergency department of a general acute hospital; and

(iv) one pediatrician who practices in the emergency department or critical care unit of a general acute hospital or a children's specialty hospital;

(b) one representative from a private ambulance provider;

(c) one representative from an ambulance provider that is neither privately owned nor operated by a fire department;

(d) two chief officers from fire agencies operated by the following classes of licensed or designated emergency medical services providers: municipality, county, and fire district, provided that no class of medical services providers may have more than one representative under this Subsection (1)(d);

(e) one director of a law enforcement agency that provides emergency medical services;

(f) one hospital administrator;

(g) one emergency care nurse;

(h) one paramedic in active field practice;

(i) one emergency medical technician in active field practice;

(j) one [certified] licensed emergency medical dispatcher affiliated with an emergency medical dispatch center; and

(k) one consumer.

(2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a four-year term beginning July 1.

(b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment or

reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term.

(3) (a) Each January, the committee shall organize and select one of its members as chair and one member as vice chair. The committee may organize standing or ad hoc subcommittees, which shall operate in accordance with guidelines established by the committee.

(b) The chair shall convene a minimum of four meetings per year. The chair may call special meetings. The chair shall call a meeting upon request of five or more members of the committee.

(c) Nine members of the committee constitute a quorum for the transaction of business and the action of a majority of the members present is the action of the committee.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) Administrative services for the committee shall be provided by the department.

Section 3. Section 26-8a-104 is amended to read:

26-8a-104. Committee advisory duties.

The committee shall adopt rules, with the concurrence of the department, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(1) establish [certification] licensure and reciprocity requirements under Section 26-8a-302;

(2) establish designation requirements under Section 26-8a-303;

(3) promote the development of a statewide emergency medical services system under Section 26-8a-203;

(4) establish insurance requirements for ambulance providers;

(5) provide guidelines for requiring patient data under Section 26-8a-203;

(6) establish criteria for awarding grants under Section 26-8a-207;

(7) establish requirements for the coordination of emergency medical services and the medical supervision of emergency medical service providers under Section 26-8a-306; and

(8) are necessary to carry out the responsibilities of the committee as specified in other sections of this chapter.

Section 4. Section 26-8a-105 is amended to read:

26-8a-105. Department powers.

The department shall:

(1) coordinate the emergency medical services within the state;

(2) administer this chapter and the rules established pursuant to it;

(3) establish a voluntary task force representing a diversity of emergency medical service providers to advise the department and the committee on rules;

(4) establish an emergency medical service personnel peer review board to advise the department concerning discipline of emergency medical service personnel under this chapter; and

(5) adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) license ambulance providers and paramedic providers;

(b) permit ambulances and emergency medical response vehicles, including approving an emergency vehicle operator's course in accordance with Section 26-8a-304;

(c) establish:

(i) the qualifications for membership of the peer review board created by this section;

(ii) a process for placing restrictions on a [~~certification~~] license while an investigation is pending;

(iii) the process for the investigation and recommendation by the peer review board; and

(iv) the process for determining the status of a license [~~or certification~~] while a peer review board investigation is pending;

(d) establish application, submission, and procedural requirements for licenses, designations, [~~certificates,~~] and permits; and

(e) establish and implement the programs, plans, and responsibilities as specified in other sections of this chapter.

Section 5. Section 26-8a-106 is amended to read:

26-8a-106. Waiver of rules and education and licensing requirements.

(1) Upon application, the department, or the committee with the concurrence of the department, may waive the requirements of a rule the department, or the committee with the concurrence of the department, has adopted if:

(a) the person applying for the waiver satisfactorily demonstrates that:

(i) the waiver is necessary for a pilot project to be undertaken by the applicant;

(ii) in the particular situation, the requirement serves no beneficial public purpose; or

(iii) circumstances warrant that waiver of the requirement outweighs the public benefit to be gained by adherence to the rule; and

(b) for a waiver granted under Subsection (1)(a)(ii) or (iii):

(i) the committee or department extends the waiver to similarly situated persons upon application; or

(ii) the department, or the committee with the concurrence of the department, amends the rule to be consistent with the waiver.

(2) A waiver of education[, ~~licensing, or certification~~] or licensing requirements may be granted to a veteran, as defined in Section 68-3-12.5, if the veteran:

(a) provides to the committee or department documentation showing military education and training in the field in which [~~certification or~~] licensure is sought; and

(b) successfully passes any examination required.

(3) No waiver may be granted under this section that is inconsistent with the provisions of this chapter.

Section 6. Section 26-8a-208 is amended to read:

26-8a-208. Fees for training equipment rental, testing, and quality assurance reviews.

(1) The department may charge fees, established pursuant to Section 26-1-6:

(a) for the use of department-owned training equipment;

(b) to administer tests and conduct quality assurance reviews; and

(c) to process an application for a [~~certificate,~~] designation, permit, or license.

(2) (a) Fees collected under Subsections (1)(a) and (b) shall be separate dedicated credits.

(b) Fees under Subsection (1)(a) may be used to purchase training equipment.

(c) Fees under Subsection (1)(b) may be used to administer tests and conduct quality assurance reviews.

Section 7. Section 26-8a-301 is amended to read:

26-8a-301. General requirement.

(1) Except as provided in Section 26-8a-308 or 26-8b-201:

(a) an individual may not provide emergency medical services without a [~~certificate~~] license issued under Section 26-8a-302;

(b) a facility or provider may not hold itself out as a designated emergency medical service provider

without a designation issued under Section 26-8a-303;

(c) a vehicle may not operate as an ambulance or emergency response vehicle without a permit issued under Section 26-8a-304; and

(d) an entity may not respond as an ambulance or paramedic provider without the appropriate license issued under Part 4, Ambulance and Paramedic Providers.

(2) Section 26-8a-502 applies to violations of this section.

Section 8. Section 26-8a-302 is amended to read:

26-8a-302. Licensure of emergency medical service personnel.

(1) To promote the availability of comprehensive emergency medical services throughout the state, the committee shall establish:

(a) initial and ongoing [~~certification~~] licensure and training requirements for emergency medical service personnel in the following categories:

- (i) paramedic;
- (ii) medical director;
- (iii) emergency medical service instructor; and
- (iv) other types of emergency medical personnel as the committee considers necessary; and

(b) guidelines for giving credit for out-of-state training and experience.

(2) The department shall, based on the requirements established in Subsection (1):

(a) develop, conduct, and authorize training and testing for emergency medical service personnel; and

(b) issue [~~certifications and certification~~] a license and license renewals to emergency medical service personnel.

(3) As provided in Section 26-8a-502, an individual issued a [~~certification~~] license under this section may only provide emergency medical services to the extent allowed by the [~~certification~~] license.

(4) An individual may not be issued or retain a [~~certification~~] license under this section unless the individual obtains and retains background clearance under Section 26-8a-310.

Section 9. Section 26-8a-308 is amended to read:

26-8a-308. Exemptions.

(1) The following persons may provide emergency medical services to a patient without being [~~certified or~~] licensed under this chapter:

(a) out-of-state emergency medical service personnel and providers in time of disaster;

(b) an individual who gratuitously acts as a Good Samaritan;

(c) a family member;

(d) a private business if emergency medical services are provided only to employees at the place of business and during transport;

(e) an agency of the United States government if compliance with this chapter would be inconsistent with federal law; and

(f) police, fire, and other public service personnel if:

(i) emergency medical services are rendered in the normal course of the person's duties; and

(ii) medical control, after being apprised of the circumstances, directs immediate transport.

(2) An ambulance or emergency response vehicle may operate without a permit issued under Section 26-8a-304 in time of disaster.

(3) Nothing in this chapter or Title 58, Occupations and Professions, may be construed as requiring a license [~~or certificate~~] for an individual to administer cardiopulmonary resuscitation or to use a fully automated external defibrillator under Section 26-8b-201.

(4) Nothing in this chapter may be construed as requiring a license, permit, or designation [~~or certificate~~] for an acute care hospital, medical clinic, physician's office, or other fixed medical facility that:

(a) is staffed by a physician, physician's assistant, nurse practitioner, or registered nurse; and

(b) treats an individual who has presented himself or was transported to the hospital, clinic, office, or facility.

Section 10. Section 26-8a-310 is amended to read:

26-8a-310. Background clearance for emergency medical service personnel.

(1) The department shall determine whether to grant background clearance for an individual seeking [~~certification~~] licensure under Section 26-8a-302 from whom it receives:

(a) the individual's social security number, fingerprints, and other personal identification information specified by the department under Subsection (4); and

(b) any fees established by the department under Subsection (10).

(2) The department shall determine whether to deny or revoke background clearance for individuals for whom it has previously granted background clearance.

(3) The department shall determine whether to grant, deny, or revoke background clearance for an individual based on an initial and ongoing evaluation of information the department obtains under Subsections (5) and (11), which, at a minimum, shall include an initial criminal background check of state, regional, and national databases using the individual's fingerprints.

(4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that specify:

(a) the criteria the department will use under Subsection (3) to determine whether to grant, deny, or revoke background clearance; and

(b) the other personal identification information an individual seeking [certification] licensure under Section 26-8a-302 must submit under Subsection (1).

(5) To determine whether to grant, deny, or revoke background clearance, the department may access and evaluate any of the following:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) adjudications by a juvenile court of committing an act that if committed by an adult would be a felony or misdemeanor, if:

(i) the applicant is under 28 years of age; or

(ii) the applicant:

(A) is over 28 years of age; and

(B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor;

(c) juvenile court arrest, adjudication, and disposition records, other than those under Subsection (5)(b), as allowed under Section 78A-6-209;

(d) child abuse or neglect findings described in Section 78A-6-323;

(e) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(f) the Department of Human Services' Division of Aging and Adult Services database of reports of vulnerable adult abuse, neglect, or exploitation, described in Section 62A-3-311.1;

(g) Division of Occupational and Professional Licensing records of licensing and certification under Title 58, Occupations and Professions;

(h) records in other federal criminal background databases available to the state; and

(i) any other records of arrests, warrants for arrest, convictions, pleas in abeyance, pending diversion agreements, or dispositions.

(6) Except for the Department of Public Safety, an agency may not charge the department for information accessed under Subsection (5).

(7) When evaluating information under Subsection (3), the department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.

(8) The department shall adopt measures to protect the security of information it accesses under Subsection (5), which shall include limiting access by department employees to those responsible for acquiring, evaluating, or otherwise processing the information.

(9) The department may disclose personal identification information it receives under Subsection (1) to the Department of Human Services to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (5)(d) through (f).

(10) The department may charge fees, in accordance with Section 63J-1-504, to pay for:

(a) the cost of obtaining, storing, and evaluating information needed under Subsection (3), both initially and on an ongoing basis, to determine whether to grant, deny, or revoke background clearance; and

(b) other department costs related to granting, denying, or revoking background clearance.

(11) The Criminal Investigations and Technical Services Division within the Department of Public Safety shall:

(a) retain, separate from other division records, personal information under Subsection (1), including any fingerprints sent to it by the Department of Health; and

(b) notify the Department of Health upon receiving notice that an individual for whom personal information has been retained is the subject of:

(i) a warrant for arrest;

(ii) an arrest;

(iii) a conviction, including a plea in abeyance; or

(iv) a pending diversion agreement.

(12) The department shall use the Direct Access Clearance System database created under Section 26-21-209 to manage information about the background clearance status of each individual for whom the department is required to make a determination under Subsection (1).

Section 11. Section 26-8a-408 is amended to read:

26-8a-408. Criteria for determining public convenience and necessity.

(1) The criteria for determining public convenience and necessity is set forth in Subsections (2) through (6).

(2) Access to emergency medical services shall be maintained or improved. The officer shall consider the impact on existing services, including the impact on response times, call volumes, populations and exclusive geographic service areas served, and the ability of surrounding licensed providers to service their exclusive geographic service areas. The issuance or amendment of a license may not create an orphaned area.

(3) The quality of service in the area shall be maintained or improved. The officer shall consider the:

(a) staffing and equipment standards of the current licensed provider and the applicant;

(b) training and ~~[certification]~~ licensure levels of the current licensed provider's staff and the applicant's staff;

(c) continuing medical education provided by the current licensed provider and the applicant;

(d) levels of care as defined by department rule;

(e) plan of medical control; and

(f) the negative or beneficial impact on the regional emergency medical service system to provide service to the public.

(4) The cost to the public shall be justified. The officer shall consider:

(a) the financial solvency of the applicant;

(b) the applicant's ability to provide services within the rates established under Section 26-8a-403;

(c) the applicant's ability to comply with cost reporting requirements;

(d) the cost efficiency of the applicant; and

(e) the cost effect of the application on the public, interested parties, and the emergency medical services system.

(5) Local desires concerning cost, quality, and access shall be considered. The officer shall assess and consider:

(a) the existing provider's record of providing services and the applicant's record and ability to provide similar or improved services;

(b) locally established emergency medical services goals, including those established in Subsection (7);

(c) comment by local governments on the applicant's business and operations plans;

(d) comment by interested parties that are providers on the impact of the application on the parties' ability to provide emergency medical services;

(e) comment by interested parties that are local governments on the impact of the application on the citizens it represents; and

(f) public comment on any aspect of the application or proposed license.

(6) Other related criteria:

(a) the officer considers necessary; or

(b) established by department rule.

(7) Local governments shall establish cost, quality, and access goals for the ground ambulance and paramedic services that serve their areas.

(8) In a formal adjudicative proceeding, the applicant bears the burden of establishing that public convenience and necessity require the approval of the application for all or part of the exclusive geographic service area requested.

Section 12. Section 26-8a-409 is amended to read:

26-8a-409. Ground ambulance and paramedic licenses -- Hearing and presiding officers.

(1) The department shall set ~~[certification and]~~ training standards for hearing officers and presiding officers.

(2) At a minimum, a presiding officer shall:

(a) be familiar with the theory and application of public convenience and necessity; and

(b) have a working knowledge of the emergency medical service system in the state.

(3) In addition to the requirements in Subsection (2), a hearing officer shall also be licensed to practice law in the state.

(4) The department shall provide training for hearing officer and presiding officer candidates in the theory and application of public convenience and necessity and on the emergency medical system in the state.

(5) The department shall maintain a roster of no less than five individuals who meet the minimum qualifications for both presiding and hearing officers and the standards set by the department.

(6) The parties may mutually select an officer from the roster if the officer is available.

(7) If the parties cannot agree upon an officer under Subsection (4), the department shall randomly select an officer from the roster or from a smaller group of the roster agreed upon by the applicant and the objecting interested parties.

Section 13. Section 26-8a-501 is amended to read:

26-8a-501. Discrimination prohibited.

(1) No person licensed~~[, certified,]~~ or designated pursuant to this chapter may discriminate in the provision of emergency medical services on the basis of race, sex, color, creed, or prior inquiry as to ability to pay.

(2) This chapter does not authorize or require medical assistance or transportation over the objection of an individual on religious grounds.

Section 14. Section 26-8a-502 is amended to read:

26-8a-502. Illegal activity.

(1) Except as provided in Section 26-8a-308 or 26-8b-201, a person may not:

(a) practice or engage in the practice, represent ~~himself to be~~ that the person is practicing or engaging in the practice, or attempt to practice or engage in the practice of any activity that requires a

license[, ~~certification,~~] or designation under this chapter unless that person [~~is so licensed, certified, or designated~~] is licensed or designated under this chapter; or

(b) offer an emergency medical service that requires a license[, ~~certificate,~~] or designation under this chapter unless the person is [~~so licensed, certified, or designated~~] licensed or designated under this chapter.

(2) A person may not advertise or [~~hold himself out as one holding~~] represent that the person holds a license[, ~~certification,~~] or designation required under this chapter, unless that person holds the license[, ~~certification,~~] or designation under this chapter.

(3) A person may not employ or permit any employee to perform any service for which a license [~~or certificate~~] is required by this chapter, unless the person performing the service possesses the required license [~~or certificate~~] under this chapter.

(4) A person may not wear, display, sell, reproduce, or otherwise use any Utah Emergency Medical Services insignia without authorization from the department.

(5) A person may not reproduce or otherwise use materials developed by the department for [~~certification or recertification~~] licensure testing or examination without authorization from the department.

(6) A person may not willfully summon an ambulance or emergency response vehicle or report that one is needed when [~~such~~] the person knows that the ambulance or emergency response vehicle is not needed.

(7) A person who violates this section is subject to Section 26-23-6.

Section 15. Section 26-8a-503 is amended to read:

26-8a-503. Discipline of emergency medical services personnel.

(1) The department may refuse to issue a [~~certificate~~] license or renewal, or revoke, suspend, restrict, or place on probation an individual's [~~certificate~~] license if:

(a) the individual does not meet the qualifications for [~~certification~~] licensure under Section 26-8a-302;

(b) the individual has engaged in conduct, as defined by committee rule, that:

(i) is unprofessional;

(ii) is adverse to the public health, safety, morals, or welfare; or

(iii) would adversely affect public trust in the emergency medical service system;

(c) the individual has violated Section 26-8a-502 or other provision of this chapter;

(d) a court of competent jurisdiction has determined the individual to be mentally incompetent for any reason; or

(e) the individual is unable to provide emergency medical services with reasonable skill and safety because of illness, drunkenness, use of drugs, narcotics, chemicals, or any other type of material, or as a result of any other mental or physical condition, when the individual's condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers, or the public health, safety, or welfare that cannot be reasonably mitigated.

(2) (a) An action to revoke, suspend, restrict, or place a [~~certificate~~] license on probation shall be done in:

(i) consultation with the peer review board created in Section 26-8a-105; and

(ii) accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(b) Notwithstanding Subsection (2)(a), the department may issue a cease and desist order under Section 26-8a-507 to immediately suspend an individual's [~~certificate~~] license pending an administrative proceeding to be held within 30 days if there is evidence to show that the individual poses a clear, immediate, and unjustifiable threat or potential threat to the public health, safety, or welfare.

(3) An individual whose [~~certificate~~] license has been suspended, revoked, or restricted may apply for reinstatement of the [~~certificate~~] license at reasonable intervals and upon compliance with any conditions imposed upon the [~~certificate~~] license by statute, committee rule, or the terms of the suspension, revocation, or restriction.

(4) In addition to taking disciplinary action under Subsection (1), the department may impose sanctions in accordance with Section 26-23-6.

Section 16. Section 26-8a-506 is amended to read:

26-8a-506. Investigations for enforcement of chapter.

(1) The department may, for the purpose of ascertaining compliance with the provisions of this chapter, enter and inspect on a routine basis the business premises and equipment of a person:

(a) with a [~~certificate,~~] designation, permit, or license; or

(b) who holds himself out to the general public as providing a service for which a [~~certificate,~~] designation, permit, or license is required under Section 26-8a-301.

(2) Before conducting an inspection under Subsection (1), the department shall, after identifying the person in charge:

(a) give proper identification;

(b) describe the nature and purpose of the inspection; and

(c) if necessary, explain the authority of the department to conduct the inspection.

(3) In conducting an inspection under Subsection (1), the department may, after meeting the requirements of Subsection (2):

- (a) inspect records, equipment, and vehicles; and
- (b) interview personnel.

(4) An inspection conducted under Subsection (1) shall be during regular operational hours.

Section 17. Section 26-8a-601 is amended to read:

26-8a-601. Persons and activities exempt from civil liability.

(1) (a) Except as provided in Subsection (1)(b), a licensed physician, physician's assistant, or licensed registered nurse who, gratuitously and in good faith, gives oral or written instructions to any of the following is not liable for any civil damages as a result of issuing the instructions:

(i) an individual [certified] licensed under Section 26-8a-302;

(ii) a person who uses a fully automated external defibrillator, as defined in Section 26-8b-102; or

(iii) a person who administers CPR, as defined in Section 26-8b-102.

(b) The liability protection described in Subsection (1)(a) does not apply if the instructions given were the result of gross negligence or willful misconduct.

(2) An individual [certified] licensed under Section 26-8a-302, during either training or after [certification] licensure, a licensed physician, a physician's assistant, or a registered nurse who, gratuitously and in good faith, provides emergency medical instructions or renders emergency medical care authorized by this chapter is not liable for any civil damages as a result of any act or omission in providing the emergency medical instructions or medical care, unless the act or omission is the result of gross negligence or willful misconduct.

(3) An individual [certified] licensed under Section 26-8a-302 is not subject to civil liability for failure to obtain consent in rendering emergency medical services authorized by this chapter to any individual who is unable to give his consent, regardless of the individual's age, where there is no other person present legally authorized to consent to emergency medical care, provided that the [certified] licensed individual acted in good faith.

(4) A principal, agent, contractor, employee, or representative of an agency, organization, institution, corporation, or entity of state or local government that sponsors, authorizes, supports, finances, or supervises any functions of an individual [certified] licensed under Section 26-8a-302 is not liable for any civil damages for any act or omission in connection with such sponsorship, authorization, support, finance, or supervision of the [certified] licensed individual

where the act or omission occurs in connection with the [certified] licensed individual's training or occurs outside a hospital where the life of a patient is in immediate danger, unless the act or omission is inconsistent with the training of the [certified] licensed individual, and unless the act or omission is the result of gross negligence or willful misconduct.

(5) A physician who gratuitously and in good faith arranges for, requests, recommends, or initiates the transfer of a patient from a hospital to a critical care unit in another hospital is not liable for any civil damages as a result of such transfer where:

(a) sound medical judgment indicates that the patient's medical condition is beyond the care capability of the transferring hospital or the medical community in which that hospital is located; and

(b) the physician has secured an agreement from the receiving facility to accept and render necessary treatment to the patient.

(6) A person who is a registered member of the National Ski Patrol System (NSPS) or a member of a ski patrol who has completed a course in winter emergency care offered by the NSPS combined with CPR for medical technicians offered by the American Red Cross or American Heart Association, or an equivalent course of instruction, and who in good faith renders emergency care in the course of ski patrol duties is not liable for civil damages as a result of any act or omission in rendering the emergency care, unless the act or omission is the result of gross negligence or willful misconduct.

(7) An emergency medical service provider who, in good faith, transports an individual against his will but at the direction of a law enforcement officer pursuant to Section 62A-15-629 is not liable for civil damages for transporting the individual.

Section 18. Section 41-6a-523 is amended to read:

41-6a-523. Persons authorized to draw blood -- Immunity from liability.

(1) (a) Only the following, acting at the request of a peace officer, may draw blood to determine its alcohol or drug content:

- (i) a physician;
- (ii) a registered nurse;
- (iii) a licensed practical nurse;
- (iv) a paramedic;

(v) as provided in Subsection (1)(b), emergency medical service personnel other than paramedics; or

(vi) a person with a valid permit issued by the Department of Health under Section 26-1-30.

(b) The Department of Health may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section

26-8a-102, are authorized to draw blood under Subsection (1)(a)(v), based on [their] the type of [certification] license under Section 26-8a-302.

(c) Subsection (1)(a) does not apply to taking a urine, breath, or oral fluid specimen.

(2) The following are immune from civil or criminal liability arising from drawing a blood sample from a person whom a peace officer has reason to believe is driving in violation of this chapter, if the sample is drawn in accordance with standard medical practice:

(a) a person authorized to draw blood under Subsection (1)(a); and

(b) if the blood is drawn at a hospital or other medical facility, the medical facility.

Section 19. Section 53-10-405 is amended to read:

53-10-405. DNA specimen analysis -- Saliva sample to be obtained by agency -- Blood sample to be drawn by professional.

(1) (a) A saliva sample shall be obtained by the responsible agency under Subsection 53-10-404(5).

(b) The sample shall be obtained in a professionally acceptable manner, using appropriate procedures to ensure the sample is adequate for DNA analysis.

(2) (a) A blood sample shall be drawn in a medically acceptable manner by any of the following:

- (i) a physician;
- (ii) a registered nurse;
- (iii) a licensed practical nurse;
- (iv) a paramedic;

(v) as provided in Subsection (2)(b), emergency medical service personnel other than paramedics; or

(vi) a person with a valid permit issued by the Department of Health under Section 26-1-30.

(b) The Department of Health may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section 26-8a-102, are authorized to draw blood under Subsection (2)(a)(v), based on [their] the type of [certification] license under Section 26-8a-302.

(c) A person authorized by this section to draw a blood sample may not be held civilly liable for drawing a sample in a medically acceptable manner.

(3) A test result or opinion based upon a test result regarding a DNA specimen may not be rendered inadmissible as evidence solely because of deviations from procedures adopted by the department that do not affect the reliability of the opinion or test result.

(4) A DNA specimen is not required to be obtained if:

(a) the court or the responsible agency confirms with the department that the department has previously received an adequate DNA specimen obtained from the person in accordance with this section; or

(b) the court determines that obtaining a DNA specimen would create a substantial and unreasonable risk to the health of the person.

Section 20. Section 58-1-307 is amended to read:

58-1-307. Exemptions from licensure.

(1) Except as otherwise provided by statute or rule, the following individuals may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(a) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the individual holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

(b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;

(c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified individuals;

(d) an individual residing in another state and licensed to practice a regulated occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;

(f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(g) an individual licensed in a health care profession in another state who performs that

profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;

(i) an individual licensed and in good standing in another state, who is in this state:

(i) temporarily, under the invitation and control of a sponsoring entity;

(ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and

(iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods; and

(j) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:

(i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and

(ii) the license is current and the spouse is in good standing in the state of licensure.

(2) (a) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the practitioner derives authority to practice.

(b) Violation of a limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the president of the United States or other federal official requesting public health-related activities, the division in collaboration with the board may:

(a) suspend the requirements for permanent or temporary licensure of individuals who are licensed in another state for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state;

(b) modify, under the circumstances described in this Subsection (4) and Subsection (5), the scope of practice restrictions under this title for individuals who are licensed under this title as:

(i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure Compact;

(iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;

(iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b, Pharmacy Practice Act;

(v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act;

(vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act; and

(vii) a physician assistant under Chapter 70a, Physician Assistant Act;

(c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in this Subsection (4) and Subsection (5) for medical services personnel or paramedics required to be ~~certified~~ licensed under Section 26-8a-302;

(d) suspend requirements in Subsections 58-17b-620(3) through (6) which require certain prescriptive procedures;

(e) exempt or modify the requirement for licensure of an individual who is activated as a member of a medical reserve corps during a time of emergency as provided in Section 26A-1-126; and

(f) exempt or modify the requirement for licensure of an individual who is registered as a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

(5) Individuals exempt under Subsection (4)(c) and individuals operating under modified scope of practice provisions under Subsection (4)(b):

(a) are exempt from licensure or subject to modified scope of practice for the duration of the emergency;

(b) must be engaged in the distribution of medicines or medical devices in response to the emergency or declaration; and

(c) must be employed by or volunteering for:

(i) a local or state department of health; or

(ii) a host entity as defined in Section 26-49-102.

(6) In accordance with the protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health or a local health department shall coordinate with public safety authorities as defined in Subsection 26-23b-110(1) and may:

(a) use a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled

substance to prevent or treat a disease or condition that gave rise to, or was a consequence of, the emergency; or

(b) distribute a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance:

(i) if necessary, to replenish a commercial pharmacy in the event that the commercial pharmacy's normal source of the vaccine, antiviral, antibiotic, or other prescription medication is exhausted; or

(ii) for dispensing or direct administration to treat the disease or condition that gave rise to, or was a consequence of, the emergency by:

(A) a pharmacy;

(B) a prescribing practitioner;

(C) a licensed health care facility;

(D) a federally qualified community health clinic; or

(E) a governmental entity for use by a community more than 50 miles from a person described in Subsections (6)(b)(ii)(A) through (D).

(7) In accordance with protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health shall coordinate the distribution of medications:

(a) received from the strategic national stockpile to local health departments; and

(b) from local health departments to emergency personnel within the local health departments' geographic region.

(8) The Department of Health shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for administering, dispensing, and distributing a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance in the event of a declaration of a national, state, or local emergency. The protocol shall establish procedures for the Department of Health or a local health department to:

(a) coordinate the distribution of:

(i) a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance received by the Department of Health from the strategic national stockpile to local health departments; and

(ii) a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication received by a local health department to emergency personnel within the local health department's geographic region;

(b) authorize the dispensing, administration, or distribution of a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance to the contact of a patient

without a patient-practitioner relationship, if the contact's condition is the same as that of the physician's patient; and

(c) authorize the administration, distribution, or dispensing of a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication to an individual who:

(i) is working in a triage situation;

(ii) is receiving preventative or medical treatment in a triage situation;

(iii) does not have coverage for the prescription in the individual's health insurance plan;

(iv) is involved in the delivery of medical or other emergency services in response to the declared national, state, or local emergency; or

(v) otherwise has a direct impact on public health.

(9) The Department of Health shall give notice to the division upon implementation of the protocol established under Subsection (8).

Section 21. Section 72-10-502 is amended to read:

72-10-502. Implied consent to chemical tests for alcohol or drugs -- Number of tests -- Refusal -- Person incapable of refusal -- Results of test available -- Who may give test -- Evidence -- Immunity from liability.

(1) (a) A person operating an aircraft in this state consents to a chemical test or tests of the person's breath, blood, urine, or oral fluids:

(i) for the purpose of determining whether the person was operating or in actual physical control of an aircraft while having a blood or breath alcohol content statutorily prohibited under Section 72-10-501, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 72-10-501, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of an aircraft in violation of Section 72-10-501; or

(ii) if the person operating the aircraft is involved in an accident that results in death, serious injury, or substantial aircraft damage.

(b) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) The peace officer may order any or all tests of the person's breath, blood, urine, or oral fluids.

(iii) If an officer requests more than one test, refusal by a person to take one or more requested tests, even though the person does submit to any other requested test or tests, is a refusal under this section.

(c) (i) A person who has been requested under this section to submit to a chemical test or tests of the person's breath, blood, urine, or oral fluids may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) If the person has been placed under arrest and has then been requested by a peace officer to submit to any one or more of the chemical tests provided in Subsection (1) and refuses to submit to any chemical test, the person shall be warned by the peace officer requesting the test that a refusal to submit to the test is admissible in civil or criminal proceedings as provided under Subsection (8).

(b) Following this warning, unless the person immediately requests that the chemical test offered by a peace officer be administered, a test may not be given.

(3) Any person who is dead, unconscious, or in any other condition rendering the person incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection (1), and the test or tests may be administered whether the person has been arrested or not.

(4) Upon the request of the person who was tested, the results of the test or tests shall be made available to that person.

(5) (a) Only the following, acting at the request of a peace officer, may draw blood to determine its alcohol or drug content:

- (i) a physician;
- (ii) a registered nurse;
- (iii) a licensed practical nurse;
- (iv) a paramedic;

(v) as provided in Subsection (5)(b), emergency medical service personnel other than paramedics; or

(vi) a person with a valid permit issued by the Department of Health under Section 26-1-30.

(b) The Department of Health may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section 26-8a-102, are authorized to draw blood under Subsection (5)(a)(v), based on ~~their~~ the type of ~~certification~~ license under Section 26-8a-302.

(c) Subsection (5)(a) does not apply to taking a urine, breath, or oral fluid specimen.

(d) The following are immune from civil or criminal liability arising from drawing a blood sample from a person who a peace officer has reason to believe is flying in violation of this chapter if the sample is drawn in accordance with standard medical practice:

(i) a person authorized to draw blood under Subsection (5)(a); and

(ii) if the blood is drawn at a hospital or other medical facility, the medical facility.

(6) (a) The person to be tested may, at the person's own expense, have a physician of the person's own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(7) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(8) If a person under arrest refuses to submit to a chemical test or tests or any additional test under this section, evidence of any refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating or in actual physical control of an aircraft while under the influence of alcohol, any drug, or combination of alcohol and any drug.

(9) The results of any test taken under this section or the refusal to be tested shall be reported to the Federal Aviation Administration by the peace officer requesting the test.

Section 22. Section 76-5-102.7 is amended to read:

76-5-102.7. Assault against health care provider and emergency medical service worker -- Penalty.

(1) A person who assaults a health care provider or emergency medical service worker is guilty of a class A misdemeanor if:

(a) the person is not a prisoner or a person detained under Section 77-7-15;

(b) the person knew that the victim was a health care provider or emergency medical service worker; and

(c) the health care provider or emergency medical service worker was performing emergency or life saving duties within the scope of his or her authority at the time of the assault.

(2) A person who violates Subsection (1) is guilty of a third degree felony if the person:

(a) causes substantial bodily injury, as defined in Section 76-1-601; and

(b) acts intentionally or knowingly.

(3) As used in this section:

(a) "Emergency medical service worker" means a person [certified] licensed under Section 26-8a-302.

(b) "Health care provider" means the same as that term is defined in Section 78B-3-403.

Section 23. Section 78A-6-209 is amended to read:

78A-6-209. Court records -- Inspection.

(1) The court and the probation department shall keep records as required by the board and the presiding judge.

(2) Court records shall be open to inspection by:

(a) the parents or guardian of a child, a minor who is at least 18 years of age, other parties in the case, the attorneys, and agencies to which custody of a minor has been transferred;

(b) for information relating to adult offenders alleged to have committed a sexual offense, a felony or class A misdemeanor drug offense, or an offense against the person under Title 76, Chapter 5, Offenses Against the Person, the State Board of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, with the understanding that the State Board of Education must provide the individual with an opportunity to respond to any information gathered from its inspection of the records before it makes a decision concerning licensure or employment;

(c) the Criminal Investigations and Technical Services Division, established in Section 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm and establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704;

(d) the Division of Child and Family Services for the purpose of Child Protective Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and administrative hearings in accordance with Section 62A-4a-1009;

(e) the Office of Licensing for the purpose of conducting a background check in accordance with Section 62A-2-120;

(f) for information related to a juvenile offender who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health for the purpose of evaluating under the provisions of Subsection 26-39-404(3) whether a licensee should be permitted to obtain or retain a license to provide child care, with the understanding that the department must provide the individual who committed the offense with an opportunity to respond to any information gathered from its inspection of records before it makes a decision concerning licensure;

(g) for information related to a juvenile offender who has committed a sexual offense, a felony, or an

offense that if committed by an adult would be a misdemeanor, the Department of Health to determine whether an individual meets the background screening requirements of Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access, with the understanding that the department must provide the individual who committed the offense an opportunity to respond to any information gathered from its inspection of records before it makes a decision under that part; and

(h) for information related to a juvenile offender who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health to determine whether to grant, deny, or revoke background clearance under Section 26-8a-310 for an individual who is seeking or who has obtained an emergency medical service personnel [certification] license under Section 26-8a-302, with the understanding that the department must provide the individual who committed the offense an opportunity to respond to any information gathered from the department's inspection of records before it makes a determination.

(3) With the consent of the judge, court records may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(4) If a petition is filed charging a minor 14 years of age or older with an offense that would be a felony if committed by an adult, the court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the court upon findings on the record for good cause.

(5) Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the court, given under rules adopted by the board.

(6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency history summary of any person charged as an adult with a felony offense shall be made available to any person upon request.

(b) This provision does not apply to records that have been destroyed or expunged in accordance with court rules.

(c) The court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Section 24. Section 78B-8-401 is amended to read:

78B-8-401. Definitions.

For purposes of this chapter:

(1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions, and any body fluid visibly contaminated with blood.

(2) "Disease" means Human Immunodeficiency Virus infection, acute or chronic Hepatitis B

infection, Hepatitis C infection, and any other infectious disease specifically designated by the Labor Commission in consultation with the Department of Health for the purposes of this chapter.

(3) "Emergency services provider" means:

(a) an individual [~~certified~~] licensed under Section 26-8a-302, a public safety officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency care for an emergency services provider either as an employee or as a volunteer; or

(b) an individual who provides for the care, control, support, or transport of a prisoner.

(4) "First aid volunteer" means a person who provides voluntary emergency assistance or first aid medical care to an injured person prior to the arrival of an emergency medical services provider or public safety officer.

(5) "Prisoner" is as defined in Section 76-5-101.

(6) "Public safety officer" means a peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications.

(7) "Significant exposure" and "significantly exposed" mean:

(a) exposure of the body of one person to the blood or body fluids of another person by:

(i) percutaneous injury, including a needle stick, cut with a sharp object or instrument, or a wound resulting from a human bite, scratch, or similar force; or

(ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut, abrasion, dermatitis, or other damage; or

(b) exposure that occurs by any other method of transmission defined by the Department of Health as a significant exposure.

CHAPTER 327**H. B. 230**

Passed March 9, 2017
Approved March 24, 2017
Effective May 9, 2017

ELECTIONS REVISIONS

Chief Sponsor: Brad M. Daw
Senate Sponsor: Deidre M. Henderson

LONG TITLE**General Description:**

This bill changes processes related to elections.

Highlighted Provisions:

This bill:

- ▶ creates requirements for an election officer who receives an invalid absentee ballot;
- ▶ changes the time by which a county clerk is required to remove a deceased individual's name from the official register;
- ▶ makes changes to the process by which a paper ballot is adjudicated when a question arises regarding a vote recorded on the paper ballot; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

- 20A-2-305, as last amended by Laws of Utah 2012, Chapters 33 and 52
20A-3-302, as last amended by Laws of Utah 2015, Chapter 173
20A-3-305, as last amended by Laws of Utah 2016, Chapter 24
20A-4-104, as last amended by Laws of Utah 2006, Chapter 326
20A-4-105, as last amended by Laws of Utah 2013, Chapter 390

Utah Code Sections Affected by Coordination Clause:

- 20A-3-302, as last amended by Laws of Utah 2015, Chapter 173
20A-3-308, as last amended by Laws of Utah 2012, Chapter 309

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

Section 1. Section 20A-2-305 is amended to read:**20A-2-305. Removing names from the official register -- General requirements.**

(1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.

(2) The county clerk shall remove a voter's name from the official register if:

(a) the voter dies and the requirements of Subsection (3) are met;

(b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;

(c) the county clerk has:

(i) obtained evidence that the voter's residence has changed;

(ii) mailed notice to the voter as required by Section 20A-2-306;

(iii) (A) received no response from the voter; or

(B) not received information that confirms the voter's residence; and

(iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice;

(d) the voter requests, in writing, that the voter's name be removed from the official register;

(e) the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter;

(f) the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section 20A-2-101.3 or 20A-2-101.5; or

(g) the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.

(3) The county clerk shall remove a voter's name from the registration list within 21 days of receipt of official register within five business days after the day on which the county clerk receives confirmation from the Department of Health's Bureau of Vital Records that [a] the voter is deceased.

Section 2. Section 20A-3-302 is amended to read:**20A-3-302. Conducting entire election by absentee ballot.**

(1) (a) Notwithstanding Section 17B-1-306, an election officer may administer an election entirely by absentee ballot.

(b) An election officer who administers an election entirely by absentee ballot, except for an election conducted under Section 20A-7-609.5, shall, before the following dates, notify the lieutenant governor that the election will be administered entirely by absentee ballot:

(i) February 1 of an even-numbered year if the election is a regular general election; or

(ii) May 1 of an odd-numbered year if the election is a municipal general election.

(2) If the election officer decides to administer an election entirely by absentee ballot, the election

officer shall mail to each registered voter within that voting precinct:

(a) an absentee ballot;

(b) for an election administered by a county clerk, information regarding the location and hours of operation of any election day voting center at which the voter may vote;

(c) a courtesy reply mail envelope;

(d) instructions for returning the ballot that include an express notice about any relevant deadlines that the voter must meet in order for the voter's vote to be counted; and

(e) for an election administered by an election officer other than a county clerk, if the election officer does not operate a polling location or an election day voting center, a warning, on a separate page of colored paper in bold face print, indicating that if the voter fails to follow the instructions included with the absentee ballot, the voter will be unable to vote in that election because there will be no polling place in the voting precinct on the day of the election.

(3) A voter who votes by absentee ballot under this section is not required to apply for an absentee ballot as required by this part.

(4) An election officer who administers an election entirely by absentee ballot shall:

(a) (i) obtain, in person, the signatures of each voter within that voting precinct before the election; or

(ii) obtain the signature of each voter within the voting precinct from the county clerk; and

(b) maintain the signatures on file in the election officer's office.

(5) (a) Upon receiving the returned absentee ballots, the election officer shall compare the signature on each absentee ballot with the voter's signature that is maintained on file and verify that the signatures are the same.

(b) If the election officer questions the authenticity of the signature on the absentee ballot, the election officer shall immediately contact the voter to verify the signature.

(c) If the election ~~official~~ officer determines that the signature on the absentee ballot does not match the voter's signature that is maintained on file, the election officer shall contact the voter by mail, email, or phone, and inform the voter:

(i) that the voter's signature is in question;

(ii) how the voter may resolve the issue;

(iii) that the voter shall sign and deliver an affidavit to the election officer attesting that the voter voted the absentee ballot;

(iv) that the voter shall provide the voter's:

(A) name and date of birth; and

(B) driver license number or the last four digits of the voter's social security number; and

(v) that by signing the absentee voter affidavit, the voter authorizes the lieutenant governor's and county clerk's use of the applicant's signature on the affidavit for voter identification purposes.

(d) A voter whom an election officer contacts under Subsection (5)(c) shall deliver the affidavit described in Subsection (5)(c)(iii) to the election officer.

(e) An election officer who receives a signed affidavit under Subsection (5)(d) shall immediately:

(i) scan the signature on the affidavit electronically and keep the signature on file in the statewide voter registration database developed under Section 20A-2-109; and

~~[(i) unless the absentee ballot application deadline described in Section 20A-3-304 has passed, immediately send another absentee ballot and other voting materials as required by this section to the voter; and]~~

~~[(ii) disqualify the initial absentee ballot.]~~

(ii) if the canvass has not concluded, count the voter's ballot.

(f) An election officer may not count the ballot of a voter to whom the election officer sends the notice described in Subsection (5)(c) if the election officer does not receive a signed affidavit from the voter under Subsection (5)(d) or is not otherwise able to establish contact with the voter to confirm the voter's identity.

(6) A county that administers an election entirely by absentee ballot:

(a) shall provide at least one election day voting center in accordance with Title 20A, Chapter 3, Part 7, Election Day Voting Center;

(b) shall ensure that an election day voting center operated by the county has at least one voting device that is accessible, in accordance with the Help America Vote Act of 2002, Pub. L. No. 107-252, for individuals with disabilities; ~~and]~~

(c) is not required to pay return postage for an absentee ballot[-]; and

(d) is subject to an audit conducted under Subsection (7).

(7) (a) The lieutenant governor shall:

(i) develop procedures for conducting an audit of affidavit signatures on ballots cast in an election conducted under this section; and

(ii) after each primary, general, or special election conducted under this section, select a number of ballots, in varying jurisdictions, to audit in accordance with the procedures developed under Subsection (7)(a)(i).

(b) The lieutenant governor shall post the results of an audit conducted under this Subsection (7) on the lieutenant governor's website.

Section 3. Section 20A-3-305 is amended to read:

20A-3-305. Mailing of ballot to voter -- Enclose self-addressed envelope -- Affidavit.

(1) (a) Upon timely receipt of an absentee voter application properly filled out and signed less than 30 days before the election, the election officer shall either:

(i) give the applicant an official absentee ballot and envelope to vote in the office; or

(ii) mail an official absentee ballot, postage paid, to the absentee voter and enclose an envelope printed as required in Subsection (2).

(b) No later than 21 days before election day, the election officer shall mail an official absentee ballot, postage paid, to all absentee voters, other than to a uniformed-service voter or an overseas voter, who have submitted a properly filled out and signed absentee voter application before the day on which the ballots are mailed and enclose an envelope printed as required by Subsection (2).

(2) The election officer shall ensure that:

(a) the name, official title, and post office address of the election officer is printed on the front of the envelope; and

(b) the following is printed on the back of the envelope:

~~[(b)]~~ (i) a printed affidavit in substantially the following form ~~[is printed on the back of the envelope]~~: "County of ____

State of ____

I, ____, solemnly swear that: I am a qualified resident voter of the ____ voting precinct in ____ County, Utah and that I am entitled to vote in that voting precinct at the next election. I am not a convicted felon currently incarcerated for commission of a felony.

Signature of Absentee Voter"; and

(ii) a warning that the affidavit must be signed by the individual to whom the ballot was sent and that the ballot will not be counted if the signature on the affidavit does not match the signature on file with the election officer of the individual to whom the ballot was sent.

(3) If the election officer determines that the absentee voter is required to show valid voter identification, the election officer shall:

(a) issue the voter a provisional ballot in accordance with Section 20A-3-105.5;

(b) instruct the voter to include a copy of the voter's valid voter identification with the return ballot;

(c) provide the voter clear instructions on how to vote a provisional ballot; and

(d) comply with the requirements of Subsection (2).

Section 4. Section 20A-4-104 is amended to read:

20A-4-104. Counting ballots electronically.

(1) (a) Before beginning to count ~~[ballot sheets]~~ ballots using automatic tabulating equipment, the election officer shall test the automatic tabulating equipment to ensure that it will accurately count the votes cast for all offices and all measures.

(b) The election officer shall publish public notice of the time and place of the test at least 48 hours before the test in one or more daily or weekly newspapers of general circulation published in the county, municipality, or jurisdiction where the equipment is used.

(c) The election officer shall conduct the test by processing a preaudited group of ~~[ballot sheets]~~ ballots.

(d) The election officer shall ensure that:

(i) a predetermined number of valid votes for each candidate and measure are recorded on the ~~[ballot sheets]~~ ballots;

(ii) for each office, one or more ballot sheets have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject those votes; and

(iii) a different number of valid votes are assigned to each candidate for an office, and for and against each measure.

(e) If any error is detected, the election officer shall determine the cause of the error and correct it.

(f) The election officer shall ensure that:

(i) the automatic tabulating equipment produces an errorless count before beginning the actual counting; and

(ii) the automatic tabulating equipment passes the same test at the end of the count before the election returns are approved as official.

(2) (a) The election officer or his designee shall supervise and direct all proceedings at the counting center.

(b) (i) Proceedings at the counting center are public and may be observed by interested persons.

(ii) Only those persons authorized to participate in the count may touch any ballot~~[- ballot sheet,]~~ or return.

(c) The election officer shall deputize and administer an oath or affirmation to all persons who are engaged in processing and counting the ballots that they will faithfully perform their assigned duties.

(d) (i) Counting poll watchers appointed as provided in Section 20A-3-201 may observe the testing of equipment and actual counting of the ~~[ballot sheets]~~ ballots.

(ii) Those counting poll watchers may make independent tests of the equipment before or after the vote count as long as the testing does not interfere in any way with the official tabulation of the ~~[ballot sheets]~~ ballots.

(3) If any ballot [~~sheet~~] is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, the election officer shall ensure that two counting judges jointly:

(a) [~~cause~~] create a true duplicate copy of the ballot [~~sheet to be made~~] with an identifying serial number;

(b) substitute the duplicate ballot for the damaged or defective ballot [~~sheet~~];

(c) label the duplicate ballot [~~card~~] "duplicate"; and

(d) record the duplicate [~~ballot sheet's~~] ballot's serial number on the damaged or defective ballot [~~sheet~~].

(4) The election officer may:

(a) conduct an unofficial count before conducting the official count in order to provide early unofficial returns to the public;

(b) release unofficial returns from time to time after the polls close; and

(c) report the progress of the count for each candidate during the actual counting of ballots.

(5) The election officer shall review and evaluate the provisional ballot envelopes and prepare any valid provisional ballots for counting as provided in Section 20A-4-107.

(6) (a) The election officer or his designee shall:

(i) separate, count, and tabulate any ballots containing valid write-in votes; and

(ii) complete the standard form provided by the clerk for recording valid write-in votes.

(b) In counting the write-in votes, if, by casting a valid write-in vote, a voter has cast more votes for an office than that voter is entitled to vote for that office, the poll workers shall count the valid write-in vote as being the obvious intent of the voter.

(7) (a) The election officer shall certify the return printed by the automatic tabulating equipment, to which have been added write-in and absentee votes, as the official return of each voting precinct.

(b) Upon completion of the count, the election officer shall make official returns open to the public.

(8) If for any reason it becomes impracticable to count all or a part of the [~~ballot sheets~~] ballots with tabulating equipment, the election officer may direct that they be counted manually according to the procedures and requirements of this part.

(9) After the count is completed, the election officer shall seal and retain the programs, test materials, and ballots as provided in Section 20A-4-202.

Section 5. Section 20A-4-105 is amended to read:

20A-4-105. Standards and requirements for evaluating voter's ballot choices.

~~(1) Each person counting ballots shall apply the standards and requirements of this section to resolve any questions that arise as ballots are counted.~~

(1) (a) An election officer shall ensure that when a question arises regarding a vote recorded on a paper ballot, two counting judges jointly adjudicate the ballot in accordance with the requirements of this section.

(b) If the counting judges disagree on the disposition of a vote recorded on a ballot that is adjudicated under this section, the counting judges may not count the vote.

(2) Except as provided in Subsection (1), if a voter marks more names than there are [~~persons~~] individuals to be elected to an office, or if [~~for any reason it is impossible to determine the choice of any voter for any office to be filled, the counter may not count that voter's ballot for that office.~~] the counting judges cannot determine a voter's choice for an office, the counting judges may not count the voter's vote for that office.

(3) The [~~counter~~] counting judges shall count a defective or incomplete mark on [~~any~~] a paper ballot if:

(a) [~~it~~] the defective or incomplete mark is in the proper place; and

(b) there is no other mark or cross on the [~~paper~~] ballot indicating the voter's intent to vote other than as indicated by the incomplete or defective mark.

(4) (a) When [~~the~~] a voter has marked [~~the~~] a ballot so that it appears that the voter has voted more than one straight ticket, the [~~election~~] counting judges may not count any votes on the ballot for party candidates.

(b) The [~~election~~] counting judges shall count the remainder of the ballot if [~~it~~] the remainder of the ballot is voted correctly.

(5) [~~A counter~~] The counting judges may not reject a ballot marked by the voter because of marks on the ballot other than those marks allowed by this section unless the extraneous marks on a ballot [~~or group of ballots~~] show an intent by [~~a person or group to mark their ballots so that their ballots~~] an individual to mark the individual's ballot so that the individual's ballot can be identified.

(6) (a) In counting the ballots, the [~~counters~~] counting judges shall give full consideration to the intent of the voter.

(b) The [~~counters~~] counting judges may not invalidate a ballot because of mechanical [~~and~~] or technical defects in voting or failure on the part of the voter to follow strictly the rules for balloting required by Chapter 3, Voting.

(7) The [~~counters~~] counting judges may not reject a ballot because of [~~any~~] an error in:

(a) stamping or writing [~~any~~] an official endorsement; or

(b) delivering the wrong ballots to [~~any~~] a polling place.

(8) The [counter] counting judges may not count [any] a paper ballot that does not have the official endorsement by an election officer.

(9) The [counter] counting judges may not count [any] a ballot proposition vote or candidate vote for which the voter is not [legally entitled to vote], as [used] defined in Section 20A-4-107.

(10) If the [counter discovers] counting judges discover that the name of a candidate [voted for] is misspelled on a ballot, or that the initial letters of a candidate's given name are transposed or omitted in [part or altogether, the counter] whole or in part on a ballot, the counting judges shall count [the] a voter's vote for [that] the candidate if it is apparent that the voter intended to vote for [that] the candidate.

(11) The [counter] counting judges shall count a vote for the president and the vice president of any political party as a vote for the presidential electors selected by the political party.

(12) In counting the valid write-in votes, if, by casting a valid write-in vote, a voter has cast more votes for an office than that voter is entitled to vote for that office, the counting judges shall count the valid write-in vote as being the obvious intent of the voter.

Section 6. Coordinating H.B. 230 with H.B. 12 -- Substantive and technical amendments.

If this H.B. 230 and H.B. 12, Disposition of Ballots Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) Section 20A-3-302 is amended to read:

"20A-3-302. Conducting entire election by absentee ballot.

(1) (a) Notwithstanding Section 17B-1-306, an election officer may administer an election entirely by absentee ballot.

(b) An election officer who administers an election entirely by absentee ballot, except for an election conducted under Section 20A-7-609.5, shall, before the following dates, notify the lieutenant governor that the election will be administered entirely by absentee ballot:

(i) February 1 of an even-numbered year if the election is a regular general election; or

(ii) May 1 of an odd-numbered year if the election is a municipal general election.

(2) If the election officer decides to administer an election entirely by absentee ballot, the election officer shall mail to each registered voter within that voting precinct:

(a) an absentee ballot;

(b) for an election administered by a county clerk, information regarding the location and hours of operation of any election day voting center at which the voter may vote;

(c) a courtesy reply mail envelope;

(d) instructions for returning the ballot that include an express notice about any relevant deadlines that the voter must meet in order for the voter's vote to be counted; and

(e) for an election administered by an election officer other than a county clerk, if the election officer does not operate a polling location or an election day voting center, a warning, on a separate page of colored paper in bold face print, indicating that if the voter fails to follow the instructions included with the absentee ballot, the voter will be unable to vote in that election because there will be no polling place in the voting precinct on the day of the election.

(3) A voter who votes by absentee ballot under this section is not required to apply for an absentee ballot as required by this part.

(4) An election officer who administers an election entirely by absentee ballot shall:

(a) (i) obtain, in person, the signatures of each voter within that voting precinct before the election; or

(ii) obtain the signature of each voter within the voting precinct from the county clerk; and

(b) maintain the signatures on file in the election officer's office.

(5) [(a)] Upon [receiving the returned absentee ballots] receipt of a returned absentee ballot, the election officer shall [compare the signature on each absentee ballot with the voter's signature that is maintained on file and verify that the signatures are the same] review and process the ballot under Section 20A-3-308.

[(b) If the election officer questions the authenticity of the signature on the absentee ballot, the election officer shall immediately contact the voter to verify the signature.]

[(c) If the election official determines that the signature on the absentee ballot does not match the voter's signature that is maintained on file, the election officer shall:]

[(i) unless the absentee ballot application deadline described in Section 20A-3-304 has passed, immediately send another absentee ballot and other voting materials as required by this section to the voter; and]

[(ii) disqualify the initial absentee ballot.]

(6) A county that administers an election entirely by absentee ballot:

(a) shall provide at least one election day voting center in accordance with Title 20A, Chapter 3, Part 7, Election Day Voting Center;

(b) shall ensure that an election day voting center operated by the county has at least one voting device that is accessible, in accordance with the Help America Vote Act of 2002, Pub. L. No. 107-252, for individuals with disabilities; [and]

(c) is not required to pay return postage for an absentee ballot[-]; and

(d) is subject to an audit conducted under Subsection (7).

(7) (a) The lieutenant governor shall:

(i) develop procedures for conducting an audit of affidavit signatures on ballots cast in an election conducted under this section; and

(ii) after each primary, general, or special election conducted under this section, select a number of ballots, in varying jurisdictions, to audit in accordance with the procedures developed under Subsection (7)(a)(i).

(b) The lieutenant governor shall post the results of an audit conducted under this Subsection (7) on the lieutenant governor's website.”; and

(2) Subsections 20A-3-308(5) through (9) are amended to read:

~~“(5) (a) An election officer shall notify a voter if a poll worker rejects the voter’s ballot and specify the reason for the rejection.”~~

~~“(b) An election officer shall give the notice described in Subsection (5)(a) to a voter no later than seven days after:”~~

~~“(i) election day if the election officer receives the ballot before or on election day; and”~~

~~“(ii) the canvass if the election officer receives the ballot after election day and before the end of the canvass.”~~

(5) (a) If the election officer rejects an individual's absentee ballot because the election officer determines that the signature on the ballot does not match the individual's signature that is maintained on file, the election officer shall contact the individual in accordance with Subsection (7) by mail, email, text message, or phone, and inform the individual:

(i) that the individual's signature is in question;

(ii) how the individual may resolve the issue;

(iii) that, in order for the ballot to be counted, the individual is required to deliver to the election officer a correctly completed affidavit, provided by the county clerk, that meets the requirements described in Subsection (5)(b).

(b) An affidavit described in Subsection (5)(a)(iii) shall include:

(i) an attestation that the individual voted the absentee ballot;

(ii) a space for the individual to enter the individual's name, date of birth, and driver license number or the last four digits of the individual's social security number;

(iii) a space for the individual to sign the affidavit; and

(iv) a statement that, by signing the affidavit, the individual authorizes the lieutenant governor's and county clerk's use of the individual's signature on the affidavit for voter identification purposes.

(c) In order for an individual described in Subsection (5)(a) to have the individual's ballot counted, the individual shall deliver the affidavit described in Subsection (5)(b) to the election officer.

(d) An election officer who receives a signed affidavit under Subsection (5)(c) shall immediately:

(i) scan the signature on the affidavit electronically and keep the signature on file in the statewide voter registration database developed under Section 20A-2-109; and

(ii) if the canvass has not concluded, count the individual's ballot.

(6) An election officer who rejects an individual's absentee ballot for any reason, other than the reason described in Subsection (5)(a), shall notify the individual of the rejection in accordance with Subsection (7) by mail, email, text message, or phone and specify the reason for the rejection.

(7) An election officer who is required to give notice under Subsection (5) or (6) shall give the notice no later than:

(a) if the election officer rejects the absentee ballot before election day:

(i) one business day after the day on which the election officer rejects the absentee ballot, if the election officer gives the notice by email or text message; or

(ii) two business days after the day on which the election officer rejects the absentee ballot, if the election officer gives the notice by postal mail or phone;

(b) seven days after election day if the election officer rejects the absentee ballot on election day; or

(c) seven days after the canvass if the election officer rejects the absentee ballot after election day and before the end of the canvass.

(8) An election officer may not count the absentee ballot of an individual whom the election officer contacts under Subsection (5) or (6) unless the election officer receives a signed affidavit from the individual under Subsection (5)(b) or is otherwise able to establish contact with the individual to confirm the individual's identity.

~~“(6) (9) The election officer shall retain and preserve the absentee voter envelopes in the manner provided by law for the retention and preservation of official ballots voted at that election.”~~

CHAPTER 328**H. B. 231**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

EDUCATOR EVALUATION AMENDMENTS

Chief Sponsor: Jefferson Moss

Senate Sponsor: Ann Millner

LONG TITLE**General Description:**

This bill amends provisions related to educator evaluations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions related to components of an educator evaluation program;
- ▶ amends provisions related to a mentor for a provisional educator;
- ▶ amends duties of the State Board of Education related to educator evaluations;
- ▶ amends provisions related to reporting regarding educator evaluations;
- ▶ repeals provisions related to educator and administrator evaluations; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-8a-102, as last amended by Laws of Utah 2015, Chapter 203

53A-8a-301, as enacted by Laws of Utah 2012, Chapter 425

53A-8a-302, as enacted by Laws of Utah 2012, Chapter 425

53A-8a-401, as renumbered and amended by Laws of Utah 2012, Chapter 425

53A-8a-402, as renumbered and amended by Laws of Utah 2012, Chapter 425

53A-8a-403, as renumbered and amended by Laws of Utah 2012, Chapter 425

53A-8a-405, as last amended by Laws of Utah 2016, Chapter 204

53A-8a-406, as renumbered and amended by Laws of Utah 2012, Chapter 425

53A-8a-409, as last amended by Laws of Utah 2016, Chapter 204

53A-8a-410, as enacted by Laws of Utah 2012, Chapter 425

REPEALS:

53A-8a-404, as renumbered and amended by Laws of Utah 2012, Chapter 425

53A-8a-407, as renumbered and amended by Laws of Utah 2012, Chapter 425

53A-8a-602, as enacted by Laws of Utah 2012, Chapter 425

53A-8a-701, as enacted by Laws of Utah 2012, Chapter 425

53A-8a-702, as last amended by Laws of Utah 2016, Chapter 204

53A-8a-703, as last amended by Laws of Utah 2014, Chapter 262

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

Section 1. Section 53A-8a-102 is amended to read:**53A-8a-102. Definitions.**

As used in this chapter:

(1) "Administrator" means an individual who:

(a) serves in a position that requires:

(i) an educator license with an administrative area of concentration; or

(ii) a letter of authorization described in Section 53A-3-301 or 53A-6-110; and

(b) supervises school administrators or teachers.

[~~1~~] (2) "Career employee" means an employee of a school district who has obtained a reasonable expectation of continued employment based upon Section 53A-8a-201 and an agreement with the employee or the employee's association, district practice, or policy.

[~~2~~] (3) "Contract term" or "term of employment" means the period of time during which an employee is engaged by the school district under a contract of employment, whether oral or written.

[~~3~~] (4) "Dismissal" or "termination" means:

(a) termination of the status of employment of an employee;

(b) failure to renew or continue the employment contract of a career employee beyond the then-current school year;

(c) reduction in salary of an employee not generally applied to all employees of the same category employed by the school district during the employee's contract term; or

(d) change of assignment of an employee with an accompanying reduction in pay, unless the assignment change and salary reduction are agreed to in writing.

[~~4~~] (5) (a) "Employee" means a career or provisional employee of a school district, except as provided in Subsection [~~4~~] (5)(b).

(b) For purposes of Part 2, Status of Employment, Part 4, Educator Evaluations, and Part 5, Orderly School Termination Procedures, "employee" does not include:

(i) [~~the~~] a district superintendent[,], or the equivalent at the Utah Schools for the Deaf and the Blind;

(ii) [~~the~~] a district business administrator or the equivalent at the Utah Schools for the Deaf and the Blind; or

(iii) a temporary employee.

[~~5~~] (6) "Last-hired, first-fired layoff policy" means a staff reduction policy that mandates the

termination of an employee who started to work for ~~the~~ a district most recently before terminating a more senior employee.

~~(6)~~ (7) “Provisional employee” means an individual, other than a career employee or a temporary employee, who is employed by a school district.

~~(7)~~ (8) “School board” or “board” means a district school board or ~~its equivalent at~~, for the Utah Schools for the Deaf and the Blind, the State Board of Education.

~~(8)~~ (9) “School district” or “district” means:

- (a) a public school district; or
- (b) the Utah Schools for the Deaf and the Blind.

~~(9)~~ (10) “Temporary employee” means an individual who is employed on a temporary basis as defined by policies adopted by the local board of education. If the class of employees in question is represented by an employee organization recognized by the local board, the board shall adopt ~~its~~ the board’s policies based upon an agreement with that organization. Temporary employees serve at will and have no expectation of continued employment.

~~(10)~~ (11) (a) “Unsatisfactory performance” means a deficiency in performing work tasks ~~which~~ that may be:

- (i) due to insufficient or undeveloped skills or a lack of knowledge or aptitude; and
- (ii) remediated through training, study, mentoring, or practice.

(b) “Unsatisfactory performance” does not include the following conduct that is designated as a cause for termination under Section 53A-8a-501 or a reason for license discipline by the State Board of Education or Utah Professional Practices Advisory Commission:

- (i) a violation of work rules;
- (ii) a violation of local school board policies, State Board of Education rules, or law;
- (iii) a violation of standards of ethical, moral, or professional conduct; or
- (iv) insubordination.

Section 2. Section 53A-8a-301 is amended to read:

53A-8a-301. Evaluation of employee performance.

(1) Except as provided in Subsection (2), a local school board shall require that the performance of each school district employee be evaluated annually in accordance with rules of the State Board of Education adopted in accordance with this chapter and Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) ~~(a)~~ Rules adopted by the State Board of Education under Subsection (1) may include an exemption from annual performance evaluations

for a temporary ~~or~~ employee or a part-time [employees] employee.

~~(b) As provided by Section 53A-8a-405, a provisional or probationary educator shall be evaluated at least twice each school year.]~~

Section 3. Section 53A-8a-302 is amended to read:

53A-8a-302. State Board of Education rules -- Reporting to Legislature.

(1) Subject to Part 4, Educator Evaluations, ~~and Part 7, Evaluation and Compensation of Administrators,~~ rules adopted by the State Board of Education under Section 53A-8a-301 shall:

- (a) provide general guidelines, requirements, and procedures for the development and implementation of employee evaluations;
- (b) establish required components and allow for optional components of employee evaluations;
- (c) require school districts to ~~choose~~ choose valid and reliable methods and tools to implement the evaluations; and
- (d) establish a timeline for school districts to implement employee evaluations.

(2) The State Board of Education shall report to the Education Interim Committee, as requested, on progress in implementing employee evaluations in accordance with this part~~,~~ and Part 4, Educator Evaluations~~,~~ ~~and Part 7, Evaluation and Compensation of Administrators.~~

Section 4. Section 53A-8a-401 is amended to read:

53A-8a-401. Legislative findings.

(1) The Legislature ~~recognizes~~ finds that the ~~quality~~ effectiveness of public ~~education~~ educators can be improved and enhanced by providing specific feedback and support for improvement through a systematic, fair, and competent annual evaluation [of public educators] and remediation of [these] public educators whose performance is inadequate.

(2) ~~(a)~~ The State Board of Education and each local school board shall implement this part, in accordance with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), ~~[the desired purposes of evaluation are]~~ to:

- (a) allow the educator and the school district to promote the professional growth of the educator; and
- (b) identify and encourage quality instruction in order to improve student ~~achievement~~ academic growth.

Section 5. Section 53A-8a-402 is amended to read:

53A-8a-402. Definitions.

As used in this chapter:

(1) “Career educator” means a licensed employee who has a reasonable expectation of continued

employment under the policies of a local school board.

(2) "Educator" means an individual employed by a school district who is required to hold a professional license issued by the State Board of Education, except:

(a) a superintendent; or

(b) an individual who ~~[-(i)]~~ works ~~[fewer]~~ less than three hours per day~~;~~ or ~~[(ii)]~~ is hired for less than half of a school year.

(3) "Probationary educator" means an educator employed by a school district who, under local school board policy, has been advised by the school district that the educator's performance is inadequate.

(4) "Provisional educator" means an educator employed by a school district who has not achieved status as a career educator within the school district.

(5) "Summative evaluation" means the annual evaluation that summarizes an educator's performance during a school year and that is used to make decisions related to the educator's employment.

Section 6. Section 53A-8a-403 is amended to read:

53A-8a-403. Establishment of educator evaluation program -- Joint committee.

(1) A local school board shall develop an educator evaluation program in consultation with its joint committee.

(2) The joint committee described in Subsection (1) shall consist of an equal number of classroom teachers, parents, and administrators appointed by the local school board.

(3) A local school board may appoint members of the joint committee from a list of nominees:

(a) voted on by classroom teachers in a nomination election;

(b) voted on by the administrators in a nomination election; and

(c) of parents submitted by school community councils within the district.

(4) Subject to Subsection (5), the joint committee may:

(a) adopt or adapt an evaluation program for ~~[teachers]~~ educators based on a model developed by the State Board of Education; or

(b) create ~~[its]~~ the local school board's own evaluation program for ~~[teachers]~~ educators.

(5) The evaluation program developed by the joint committee ~~[must]~~ shall comply with the requirements of this part and rules adopted by the State Board of Education under Section 53A-8a-409.

Section 7. Section 53A-8a-405 is amended to read:

53A-8a-405. Components of educator evaluation program.

(1) ~~[An educator evaluation program adopted by a]~~ A local school board in consultation with a joint committee established in Section 53A-8a-403~~[-(1)]~~ shall ~~[include the following components]~~ adopt a reliable and valid educator evaluation program that evaluates educators based on educator professional standards established by the State Board of Education and includes:

~~[(a) a reliable and valid evaluation program consistent with generally accepted professional standards for personnel evaluation systems;]~~

~~[(b) (i) the evaluation of provisional and probationary educators at least twice each school year; and]~~

~~[(ii) the]~~ (a) a systematic annual evaluation of all provisional, probationary, and career educators;

~~[(c) systematic evaluation procedures for both provisional and career educators;]~~

~~[(d) the]~~ (b) use of multiple lines of evidence, including:

(i) self-evaluation;

(ii) student and parent input;

~~[(iii) peer observation;]~~

(iii) for an administrator, employee input;

(iv) a reasonable number of supervisor observations to ensure adequate reliability;

(v) evidence of professional growth~~;~~ and other indicators of instructional improvement based on educator professional standards established by the State Board of Education; and

(vi) student ~~[achievement]~~ academic growth data; ~~[and]~~

~~[(vii) other indicators of instructional improvement;]~~

~~[(e) a reasonable number of observation periods for an evaluation to ensure adequate reliability;]~~

~~[(f) administration of an educator's evaluation by;]~~

~~[(i) the principal;]~~

~~[(ii) the principal's designee;]~~

~~[(iii) the educator's immediate supervisor; or]~~

~~[(iv) another person specified in the evaluation program;]~~

~~[(g) an orientation for educators on the educator evaluation program; and]~~

~~[(h)]~~ (c) a summative evaluation that differentiates among four levels of performance; and

(d) for an administrator, the effectiveness of evaluating employee performance in a school or

school district for which the administrator has responsibility.

(2) (a) An educator evaluation program described in Subsection (1) may include a reasonable number of peer observations.

[(2)] (b) An educator evaluation program described in Subsection (1) may not use end-of-level assessment scores in educator evaluation.

Section 8. Section 53A-8a-406 is amended to read:

53A-8a-406. Summative evaluation timelines -- Review of summative evaluations.

(1) The person responsible for administering an educator's summative evaluation shall:

(a) at least 15 days before an educator's first evaluation:

(i) notify the educator of the evaluation process; and

(ii) give the educator a copy of the evaluation instrument, if an instrument is used;

(b) [(i)] allow the educator to [make a written response] respond to any part of the evaluation; [and]

[(ii)] (c) attach the educator's response to the evaluation if the educator's response is provided in writing;

[(e)] (d) within 15 days after the evaluation process is completed, discuss the written evaluation with the educator; and

[(d) following any revision of the written evaluation made after the discussion:]

[(i) file the evaluation and any related reports or documents in the educator's personnel file; and]

[(ii) give a copy of the written evaluation and attachments to the educator.]

(e) based upon the educator's performance, assign to the educator one of the four levels of performance described in Section 53A-8a-405.

(2) An educator who is not satisfied with a summative evaluation may request a review of the evaluation within 15 days after receiving the written evaluation.

(3) (a) If a review is requested in accordance with Subsection (2), the school district superintendent or the superintendent's designee shall appoint a person not employed by the school district who has expertise in teacher or personnel evaluation to review the evaluation procedures and make recommendations to the superintendent regarding the educator's summative evaluation.

(b) [The] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules prescribing standards for an independent review of an educator's summative evaluation.

(c) A review of an educator's summative evaluation under Subsection (3)(a) shall be conducted in accordance with State Board of Education rules made under Subsection (3)(b).

Section 9. Section 53A-8a-409 is amended to read:

53A-8a-409. State Board of Education to describe a framework for the evaluation of educators.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules:

(a) [establishing] describing a framework for the evaluation of educators that is consistent with the requirements of Part 3, Employee Evaluations, and this part; and

(b) requiring [a teacher's] an educator's summative evaluation to be based on [standards of instructional quality; and];

(i) educator professional standards established by the State Board of Education; and

(ii) the requirements described in Subsection 53A-8a-405(1).

[(e) requiring each school district to fully implement an evaluation system for educators in accordance with the framework established by the State Board of Education no later than the 2015-16 school year.]

(2) The rules described in Subsection (1) shall prohibit the use of end-of-level assessment scores in educator evaluation.

Section 10. Section 53A-8a-410 is amended to read:

53A-8a-410. Report of performance levels.

(1) A school district shall report to the State Board of Education the number and percent of educators in each of the four [rating categories referred to in Section 53A-8a-405 based on an educator's annual evaluation] levels of performance assigned under Section 53A-8a-406.

(2) The data reported under Subsection (1) shall be separately reported for the following educator classifications:

(a) administrators;

(b) teachers, including separately reported data for provisional teachers and career teachers; and

[(e) educators other than administrators or teachers.]

(c) other classifications or demographics of educators as determined by the State Board of Education.

(3) The state superintendent shall include the data reported by school districts under this section [shall be included] in the state superintendent's annual report of the public school system required by Section 53A-1-301.

(4) [The] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State

Board of Education shall make rules to ensure the privacy and protection of individual evaluation data.

Section 11. Repealer.

This bill repeals:

Section 53A-8a-404, Evaluation orientation.

**Section 53A-8a-407, Deficiencies --
Improvement.**

**Section 53A-8a-602, Educator's eligibility
for a wage increase.**

Section 53A-8a-701, Definitions.

**Section 53A-8a-702, Evaluation of school
and district administrators.**

**Section 53A-8a-703, Compensation of school
and district administrators.**

CHAPTER 329**H. B. 236**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

MOBILE HOME PARK RESIDENTS' RIGHTS

Chief Sponsor: Bruce R. Cutler
Senate Sponsor: Karen Mayne

LONG TITLE**General Description:**

This bill amends provisions related to mobile homes.

Highlighted Provisions:

This bill:

- ▶ requires a mobile home park resident and a mobile home park to enter into a lease in writing and sign the lease;
- ▶ requires a mobile home park to make a mobile home park resident's lease available on request;
- ▶ provides that, under certain circumstances, a mobile home park may terminate the lease of a mobile home park resident that fails to register with the mobile home park or sign a written lease;
- ▶ provides that a summons in an action to evict a mobile home park resident shall provide the number of days after the day on which a defendant is served notice of the action before which the defendant is required to appear and defend the action;
- ▶ provides a cause of action for a mobile home park resident against a mobile home park that violates the Mobile Home Park Residency Act; and
- ▶ provides for the award of attorney fees and costs under certain circumstances.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 57-16-4, as last amended by Laws of Utah 2015, Chapter 233
57-16-5, as last amended by Laws of Utah 2002, Chapter 255
57-16-6, as last amended by Laws of Utah 2008, Chapters 3 and 55
57-16-7, as last amended by Laws of Utah 2002, Chapter 255

ENACTS:

57-16-19, Utah Code Annotated 1953

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

Section 1. Section 57-16-4 is amended to read:

57-16-4. Termination of lease or rental agreement -- Required contents of lease -- Increases in rents or fees -- Sale of homes -- Notice regarding planned reduction or restriction of amenities.

(1) A mobile home park or its agents may not terminate a lease or rental agreement upon any ground other than as specified in this chapter.

~~[(2) Each agreement for the lease of mobile home space shall be written and signed by the parties.]~~

(2) (a) A mobile home park and a mobile home park resident that enter into an agreement for the lease of a mobile home park space shall:

- (i) enter into the lease agreement in writing; and
- (ii) sign the lease agreement.

(b) A mobile home park shall, for each lease entered into by the mobile home park with a mobile home park resident:

- (i) maintain a written copy of the lease; and
- (ii) make a written copy of the lease available to the mobile home park resident that is a party to the lease:

(A) no more than seven calendar days after the day on which the mobile home park receives a written request from the mobile home park resident; and

(B) except for reasonable copying expenses, at no charge to the mobile home park resident.

(3) Each lease shall contain at least the following information:

(a) the name and address of the mobile home park owner and any persons authorized to act for the owner, upon whom notice and service of process may be served;

(b) the type of the leasehold, whether it be term or periodic, and, in leases entered into on or after May 6, 2002, a conspicuous disclosure describing the protection a resident has under Subsection (1) against unilateral termination of the lease by the mobile home park except for the causes described in Section 57-16-5;

(c) (i) a full disclosure of all rent, service charges, and other fees presently being charged on a periodic basis; and

(ii) a full disclosure of utility infrastructure owned by the mobile home park owner or its agent that is maintained through service charges and fees charged by the mobile home park owner or its agent;

(d) the date or dates on which the payment of rent, fees, and service charges are due; and

(e) all rules that pertain to the mobile home park that, if broken, may constitute grounds for eviction, including, in leases entered into on or after May 6, 2002, a conspicuous disclosure regarding:

(i) the causes for which the mobile home park may terminate the lease as described in Section 57-16-5; and

(ii) the resident's rights to:

(A) terminate the lease at any time without cause, upon giving the notice specified in the resident's lease; and

(B) advertise and sell the resident's mobile home.

(4) (a) Increases in rent or fees for periodic tenancies are unenforceable until 60 days after notice of the increase is mailed to the resident.

(b) If service charges are not included in the rent, the mobile home park may:

(i) increase service charges during the leasehold period after giving notice to the resident; and

(ii) pass through increases or decreases in electricity rates to the resident.

(c) Annual income to the park for service charges may not exceed the actual cost to the mobile home park of providing the services on an annual basis.

(d) In determining the costs of the services, the mobile home park may include maintenance costs related to those utilities that are part of the service charges.

(e) The mobile home park may not alter the date on which rent, fees, and service charges are due unless the mobile home park provides a 60-day written notice to the resident before the date is altered.

(5) (a) Except as provided in Subsection (3)(b), a rule or condition of a lease that purports to prevent or unreasonably limit the sale of a mobile home belonging to a resident is void and unenforceable.

(b) The mobile home park:

(i) may reserve the right to approve the prospective purchaser of a mobile home who intends to become a resident;

(ii) may not unreasonably withhold that approval;

(iii) may require proof of ownership as a condition of approval; or

(iv) may unconditionally refuse to approve any purchaser of a mobile home who does not register before purchasing the mobile home.

(6) If all of the conditions of Section 41-1a-116 are met, a mobile home park may request the names and addresses of the lienholder or owner of any mobile home located in the park from the Motor Vehicle Division.

(7) (a) A mobile home park may not restrict a resident's right to advertise for sale or to sell a mobile home.

(b) A mobile home park may limit the size of a "for sale" sign affixed to the mobile home to not more than 144 square inches.

(8) A mobile home park may not compel a resident who wishes to sell a mobile home to sell it, either directly or indirectly, through an agent designated by the mobile home park.

(9) A mobile home park may require that a mobile home be removed from the park upon sale if:

(a) the mobile home park wishes to upgrade the quality of the mobile home park; and

(b) the mobile home either does not meet minimum size specifications or is in a rundown condition or is in disrepair.

(10) Within 30 days after a mobile home park proposes reducing or restricting amenities, the mobile home park shall:

(a) schedule at least one meeting for the purpose of discussing the proposed restriction or reduction of amenities with residents; and

(b) provide at least 10 days advance written notice of the date, time, location, and purposes of the meeting to each resident.

(11) If a mobile home park uses a single-service meter, the mobile home park owner shall include a full disclosure on a resident's utility bill of the resident's utility charges.

(12) The mobile home park shall ensure that the following are posted at all times in a conspicuous place in a common area of the mobile home park:

(a) a copy of this chapter; and

(b) a notice that:

(i) summarizes the rights and responsibilities described in this chapter; and

~~(ii) includes information on how to use the helpline described in Title 57, Chapter 16a, Mobile Home Park Helpline; and~~

~~(iii)~~ (ii) is in a form approved by the Office of the Attorney General.

Section 2. Section 57-16-5 is amended to read:

57-16-5. Cause required for terminating lease -- Causes -- Cure periods -- Notice.

(1) An agreement for the lease of mobile home space in a mobile home park may be terminated by mutual agreement or for any one or more of the following causes:

(a) failure of a resident to comply with a mobile home park rule:

(i) relating to repair, maintenance, or construction of awnings, skirting, decks, or sheds for a period of 60 days after receipt by a resident of a written notice of noncompliance from the mobile home park under Subsection 57-16-4.1(1); or

(ii) relating to any other park rule for a period of seven days after the latter to occur of settlement discussion expiration or receipt by the resident of a written notice of noncompliance from the mobile home park, except relating to maintenance of a resident's yard and space, the mobile home park may elect not to proceed with the seven-day cure period and may provide the resident with written notice as provided in Subsection (2);

(b) repeated failure of a resident to abide by a mobile home park rule, if the original written notice of noncompliance states that another violation of the same or a different rule might result in forfeiture without any further period of cure;

(c) behavior by a resident or any other person who resides with a resident, or who is an invited guest or visitor of a resident, that threatens or substantially endangers the security, safety, well-being, or health of other persons in the park or threatens or damages property in the park including:

- (i) use or distribution of illegal drugs;
 - (ii) distribution of alcohol to minors; or
 - (iii) commission of a crime against property or a person in the park;
- (d) nonpayment of rent, fees, or service charges for a period of five days after the due date;
- (e) a change in the land use or condemnation of the mobile home park or any part of it; ~~or~~

(f) failure by a mobile home park resident to enter into a written lease with the mobile home park that is offered by the mobile home park; or

~~[(g)]~~ (g) a prospective resident provides materially false information on the application for residency regarding the prospective resident's criminal history.

(2) If the mobile home park elects not to proceed with the seven-day cure period in Subsection (1)(a)(ii), a 15-day written notice of noncompliance shall:

(a) state that if the resident does not perform the resident's duties or obligations under the lease agreement or rules of the mobile home park within 15 days after receipt by the resident of the written notice of noncompliance, the mobile home park may enter onto the resident's space and cure any default;

(b) state the expected reasonable cost of curing the default;

(c) require the resident to pay all costs incurred by the mobile home park to cure the default by the first day of the month following receipt of a billing statement from the mobile home park;

(d) state that the payment required under Subsection (2)(b) shall be considered additional rent; and

(e) state that the resident's failure to make the payment required by Subsection (2)(b) in a timely manner shall be a default of the resident's lease and shall subject the resident to all other remedies available to the mobile home park for a default, including remedies available for failure to pay rent.

(3) Notwithstanding Subsection (1), a mobile home park may evict under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, an individual who:

(a) has not entered into a written agreement with the mobile home park; and

(b) is residing in the mobile home park in violation of this chapter or a mobile home park rule.

Section 3. Section 57-16-6 is amended to read:

57-16-6. Action for lease termination -- Prerequisite procedure.

A legal action to terminate a lease based upon a cause set forth in Section 57-16-5 may not be commenced except in accordance with the following procedure:

(1) Before issuance of any summons and complaint, the mobile home park shall send or serve written notice to the resident or person:

- (a) by delivering a copy of the notice personally;
- (b) by sending a copy of the notice through registered or certified mail addressed to the resident or person at the person's place of residence;
- (c) if the resident or person is absent from the person's place of residence, by leaving a copy of the notice with some person of suitable age and discretion at the individual's residence and sending a copy through registered or certified mail addressed to the resident or person at the person's place of residence; or
- (d) if a person of suitable age or discretion cannot be found, by affixing a copy of the notice in a conspicuous place on the resident's or person's mobile home and also sending a copy through registered or certified mail addressed to the resident or person at the person's place of residence.

(2) (a) The notice required by Subsection (1) shall set forth:

~~[(a)]~~ (i) the cause for the notice and, if the cause is one which can be cured, the time within which the resident or person has to cure; and

~~[(a)]~~ (ii) the time after which the mobile home park may commence legal action against the resident or person if cure is not effected~~[-as follows-]~~.

~~[(b)]~~ (ii) the time after which the mobile home park may commence legal action against the resident or person if cure is not effected~~[-as follows-]~~.

(b) In addition to the requirements described in Subsection (2)(a), the notice shall conform to the following:

(i) ~~[(a)]~~ in the event of failure to abide by a mobile home park rule, the notice shall provide for a cure period as provided in Subsections 57-16-5(1)(a) and (2), except in the case of repeated violations and, shall state that if a cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately~~[-]~~;

(ii) ~~[(a)]~~ if a resident, a member, or invited guest or visitor of the resident's household commits repeated violations of a rule, a summons and complaint may be issued three days after a notice is served~~[-]~~;

(iii) ~~[(a)]~~ if a resident, a member, or invited guest or visitor of the resident's household behaves in a manner that threatens or substantially endangers the well-being, security, safety, or health of other persons in the park or threatens or damages

property in the park, eviction proceedings may commence immediately[-];

(iv) [If] if a resident does not pay rent, fees, or service charges, the notice shall provide a five-day cure period and, that if cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately[-]; and

(v) [If] if a lease is terminated because of a planned change in land use or condemnation of the park or a portion of the park, the notice required by Section 57-16-18 serves as notice of the termination of the lease.

(3) (a) Eviction proceedings commenced under this chapter and based on causes set forth in Subsections 57-16-5(1)(a), (b), and (e) shall be brought in accordance with the Utah Rules of Civil Procedure and may not be treated as unlawful detainer actions under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer.

(b) Eviction proceedings commenced under this chapter and based on causes of action set forth in [Subsections] Subsection 57-16-5(1)(c) [and], (d), or (f) may, at the election of the mobile home park, be treated as [actions] an action brought under this chapter [and] or under the unlawful detainer provisions of Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer.

(c) If unlawful detainer is charged, [the court shall endorse on] the summons shall include the number of days within which the defendant is required to appear and defend the action, which shall not be less than five days or more than [20] 21 days from the date of service.

Section 4. Section 57-16-7 is amended to read:

57-16-7. Rules of parks.

(1) (a) (i) [~~A~~] Subject to Subsection (1)(a)(ii), a mobile home park may [promulgate] make rules related to the health, safety, and appropriate conduct of residents and to the maintenance and upkeep of [such] the mobile home park. [No change in rule that is unconscionable is valid.]

(ii) A mobile home park may not make a rule that is unconscionable.

(b) (i) No new or amended rule shall take effect, nor provide the basis for an eviction notice, until the expiration of at least:

(A) 120 days after its promulgation if it is a rule that requires a resident to make exterior, physical improvements to the resident's mobile home or mobile home space and to incur expenses greater than \$2,000 in order to comply with the rule;

(B) 90 days after its promulgation if it is a rule that requires a resident to make exterior, physical improvements to the resident's mobile home or mobile home space and to incur expenses greater than \$250 up to \$2,000 in order to comply with the rule; or

(C) 60 days after its promulgation if it is a rule that requires a resident to make exterior, physical improvements to the resident's mobile home or mobile home space and to incur expenses of \$250 or less in order to comply with the rule.

(ii) Each resident, as a condition precedent to a rule under this Subsection (1)(b) becoming effective, shall be provided with a copy of each new or amended rule that does not appear in the resident's lease agreement promptly upon promulgation of the rule.

(iii) For purposes of determining which period of time applies under Subsection (1)(b)(i), the mobile home park may rely upon a good-faith estimate obtained by the mobile home park from a licensed contractor.

(c) Within 30 days after the mobile home park proposes amendments to the mobile home park rules, the mobile home park shall schedule at least one meeting for the purpose of discussing the proposed rule amendments with residents and shall provide at least 10 days advance written notice of the date, time, location, and purposes of the meeting to all residents.

(2) A mobile home park may specify the type of material used, and the methods used in the installation of, underskirting, awnings, porches, fences, or other additions or alterations to the exterior of a mobile home, and may also specify the tie-down equipment used in a mobile home space, in order to insure the safety and good appearance of the park; but under no circumstances may it require a resident to purchase such material or equipment from a supplier designated by the mobile home park.

(3) No mobile home park may charge an entrance fee, exit fee, nor installation fee, but reasonable landscaping and maintenance requirements may be included in the mobile home park rules. The resident is responsible for all costs incident to connection of the mobile home to existing mobile home park facilities and for the installation and maintenance of the mobile home on the mobile home space.

(4) Nothing in this section shall be construed to prohibit a mobile home park from requiring a reasonable initial security deposit.

Section 5. Section 57-16-19 is enacted to read:

57-16-19. Violation of chapter by a mobile home park -- Remedies for a resident -- Attorney fees and costs.

(1) A mobile home park resident may bring a cause of action against a mobile home park for damages or injunctive relief arising from a violation of this chapter.

(2) A court may award reasonable attorney fees and costs to the prevailing party in an action described in Subsection (1).

CHAPTER 330**H. B. 239**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

(Exception clause in Section 75)

JUVENILE JUSTICE AMENDMENTS

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies provisions related to juvenile justice.

Highlighted Provisions:

This bill:

- ▶ addresses duties of prosecutors;
- ▶ modifies adjudications of minors under the Alcoholic Beverage Control Act;
- ▶ amends provisions related to sanctions and driver licenses;
- ▶ addresses education of certain persons under 21 years of age;
- ▶ amends provisions related to powers and duties of local school boards, charter school governing boards, school districts, or public school administrators;
- ▶ addresses reporting of certain conduct;
- ▶ addresses public school discipline policies;
- ▶ modifies provisions related to rules addressing prohibited conduct;
- ▶ enacts an approach to disciplinary actions related to students;
- ▶ amends provisions related to disruptive student behavior;
- ▶ addresses contracts between LEAs and law enforcement for school resource officer services;
- ▶ modifies provisions related to controlled substances and prohibited acts;
- ▶ modifies sentencing requirements for minors and drug paraphernalia and controlled substances;
- ▶ repeals language regarding programs and procedures for minors committed to the custody of the Division of Child and Family Services;
- ▶ amends provisions related to in-home services;
- ▶ amends definition provisions;
- ▶ addresses expenditure of money by the Department of Human Services;
- ▶ modifies provisions related to the Division of Juvenile Justice Services;
- ▶ modifies provisions related to restitution by a youth offender;
- ▶ addresses location of detention facilities and services;
- ▶ addresses commitment;
- ▶ modifies provisions related to the Youth Parole Authority;
- ▶ addresses discharge of youth offender;
- ▶ addresses youth services for prevention and early intervention;
- ▶ addresses community-based programs;
- ▶ modifies provisions related to the Commission on Criminal and Juvenile Justice;

- ▶ amends provisions related to minors and intoxication;
- ▶ amends provisions related to the buying and possession of a cigar, cigarette, electronic cigarette, or tobacco;
- ▶ addresses the jurisdiction of the juvenile court;
- ▶ enacts language regarding warrants;
- ▶ addresses when a minor may be taken into custody;
- ▶ addresses summons;
- ▶ repeals language regarding bench warrants;
- ▶ modifies provisions related to minors being taken into custody or detention or alternatives;
- ▶ addresses when the attorney general represents the Division of Child and Family Services;
- ▶ modifies provisions related to the adjudication in juvenile courts;
- ▶ addresses a judgment, decree, or order and the rights and responsibilities of agency or individual granted custody, probation, or protective supervision;
- ▶ addresses fines, fees, and restitution;
- ▶ enacts provisions related to case planning and appropriate responses;
- ▶ enacts provisions related to detention risk assessment tool;
- ▶ amends provisions related to prosecutors and review of case;
- ▶ modifies the citation procedure;
- ▶ addresses a minor held in detention;
- ▶ modifies suspension of driver license;
- ▶ modifies jurisdiction of district court;
- ▶ modifies enforcement of contempt or a fine, fee, or restitution;
- ▶ addresses youth court;
- ▶ addresses jurisdiction of courts; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:**AMENDS:**

- 17-18a-404, as enacted by Laws of Utah 2013, Chapter 237
- 32B-4-409, as last amended by Laws of Utah 2015, Chapter 165
- 32B-4-410, as last amended by Laws of Utah 2015, Chapter 165
- 32B-4-411, as last amended by Laws of Utah 2015, Chapter 165
- 53A-1-403, as last amended by Laws of Utah 2011, Chapter 359
- 53A-3-402, as last amended by Laws of Utah 2016, Chapter 144
- 53A-11-101.7, as last amended by Laws of Utah 2014, Chapter 359
- 53A-11-103, as last amended by Laws of Utah 2012, Chapter 203
- 53A-11-105, as last amended by Laws of Utah 2008, Chapter 3
- 53A-11-403, as enacted by Laws of Utah 1988, Chapter 2
- 53A-11-901, as last amended by Laws of Utah 2015, Chapter 442

53A-11-908, as last amended by Laws of Utah 2010, Chapter 114

53A-11-910, as last amended by Laws of Utah 2008, Chapter 250

53A-11-1302, as renumbered and amended by Laws of Utah 2008, Chapter 3

53A-11-1604, as enacted by Laws of Utah 2016, Chapter 165

58-37-8, as last amended by Laws of Utah 2016, Chapters 99 and 348

58-37a-7, as enacted by Laws of Utah 2015, Chapter 165

58-37b-9, as enacted by Laws of Utah 2015, Chapter 165

62A-4a-105, as last amended by Laws of Utah 2016, Chapter 296

62A-4a-201, as last amended by Laws of Utah 2015, Chapter 274

62A-4a-202, as last amended by Laws of Utah 2014, Chapter 265

62A-4a-208, as last amended by Laws of Utah 2009, Chapter 75

62A-4a-250, as last amended by Laws of Utah 2008, Chapter 3

62A-7-101, as last amended by Laws of Utah 2008, Chapter 3

62A-7-104, as last amended by Laws of Utah 2015, Chapter 210

62A-7-107.5, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-109.5, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-201, as last amended by Laws of Utah 2015, Chapter 338

62A-7-202, as last amended by Laws of Utah 2008, Chapter 382

62A-7-404, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-501, as last amended by Laws of Utah 2010, Chapter 286

62A-7-504, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-506, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-601, as renumbered and amended by Laws of Utah 2005, Chapter 13

62A-7-701, as renumbered and amended by Laws of Utah 2005, Chapter 13

63I-2-262, as last amended by Laws of Utah 2015, Chapter 258

63M-7-204, as last amended by Laws of Utah 2015, Chapter 412

63M-7-404, as last amended by Laws of Utah 2015, Chapter 412

76-5-413, as last amended by Laws of Utah 2008, Chapter 3

76-9-701, as last amended by Laws of Utah 2015, Chapter 165

76-10-105, as last amended by Laws of Utah 2010, Chapter 114

78A-6-103, as last amended by Laws of Utah 2012, Chapter 316

78A-6-105, as last amended by Laws of Utah 2016, Chapters 109 and 351

78A-6-109, as last amended by Laws of Utah 2009, Chapter 388

78A-6-111, as renumbered and amended by Laws

of Utah 2008, Chapter 3

78A-6-112, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-113, as last amended by Laws of Utah 2010, Chapter 38

78A-6-115, as last amended by Laws of Utah 2010, Chapter 34

78A-6-117, as last amended by Laws of Utah 2016, Chapter 418

78A-6-118, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-119, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-120, as last amended by Laws of Utah 2014, Chapter 217

78A-6-121, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-302, as last amended by Laws of Utah 2016, Chapter 231

78A-6-306, as last amended by Laws of Utah 2015, Chapter 274

78A-6-312, as last amended by Laws of Utah 2016, Chapter 231

78A-6-401, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-602, as last amended by Laws of Utah 2013, Chapter 237

78A-6-603, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-604, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-606, as last amended by Laws of Utah 2015, Chapters 165 and 258

78A-6-701, as last amended by Laws of Utah 2015, Chapter 338

78A-6-1101, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-1202, as last amended by Laws of Utah 2010, Chapter 276

78A-6-1203, as last amended by Laws of Utah 2013, Chapter 27

78A-6-1302, as last amended by Laws of Utah 2013, Chapter 278

78A-7-106, as last amended by Laws of Utah 2016, Chapter 33

ENACTS:

53A-11-911, Utah Code Annotated 1953

62A-1-111.5, Utah Code Annotated 1953

63M-7-208, Utah Code Annotated 1953

78A-6-106.5, Utah Code Annotated 1953

78A-6-117.5, Utah Code Annotated 1953

78A-6-123, Utah Code Annotated 1953

78A-6-124, Utah Code Annotated 1953

Utah Code Sections Affected by Revisor Instructions:

62A-1-111.5, Utah Code Annotated 1953

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

Section 1. Section 17-18a-404 is amended to read:**17-18a-404. Juvenile proceedings.**

For a proceeding involving a charge of juvenile delinquency, ~~a public~~ infraction, or a status offense, a prosecutor shall:

(1) review cases pursuant to Section 78A-6-602; and

(2) appear and prosecute for the state in the juvenile court of the county.

Section 2. Section 32B-4-409 is amended to read:

32B-4-409. Unlawful purchase, possession, consumption by minor -- Measurable amounts in body.

(1) Unless specifically authorized by this title, it is unlawful for a minor to:

- (a) purchase an alcoholic product;
- (b) attempt to purchase an alcoholic product;
- (c) solicit another person to purchase an alcoholic product;
- (d) possess an alcoholic product;
- (e) consume an alcoholic product; or
- (f) have measurable blood, breath, or urine alcohol concentration in the minor's body.

(2) It is unlawful for the purpose of purchasing or otherwise obtaining an alcoholic product for a minor for:

- (a) a minor to misrepresent the minor's age; or
- (b) any other person to misrepresent the age of a minor.

(3) It is unlawful for a minor to possess or consume an alcoholic product while riding in a limousine or chartered bus.

(4) (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:

- (i) order the minor to complete a screening as defined in Section 41-6a-501;
- (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
- (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance [abuse] use disorder treatment as indicated by an assessment.

(b) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:

- (i) order the minor to complete a screening as defined in Section 41-6a-501;
- (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
- (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance [abuse] use disorder treatment as indicated by an assessment.

(5) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, except as provided in Section 32B-4-411, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.

(b) Notwithstanding the provision in Subsection (5)(a), the court may reduce the suspension period required under Section 53-3-219 if:

- (i) the violation is the minor's first violation of this section; and
- (ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or
- (B) the minor demonstrates substantial progress in substance [abuse] use disorder treatment.

(c) Notwithstanding the requirement in Subsection (5)(a) and in accordance with the requirements of Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:

- (i) the violation is the minor's second or subsequent violation of this section;
- (ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance [abuse] use disorder treatment; and

(iii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (5)(a); or

(B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (5)(a).

(6) When a minor who is ~~[at least 13 years old, but]~~ younger than 18 years old~~[,]~~ is found by the court to have violated this section, Section 78A-6-606 applies to the violation.

(7) Notwithstanding Subsections (5)(a) and (b), if a minor is adjudicated under Section 78A-6-117, the court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated assessment.

~~[(7)]~~ (8) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section 53-3-219.

~~[(8)]~~ (9) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

[49] (10) This section does not apply to a minor's consumption of an alcoholic product in accordance with this title:

- (a) for medicinal purposes if:
 - (i) the minor is at least 18 years old; or
 - (ii) the alcoholic product is furnished by:
 - (A) the parent or guardian of the minor; or

(B) the minor's health care practitioner, if the health care practitioner is authorized by law to write a prescription; or

(b) as part of a religious organization's religious services.

Section 3. Section 32B-4-410 is amended to read:

32B-4-410. Unlawful admittance or attempt to gain admittance by minor.

(1) It is unlawful for a minor to gain admittance or attempt to gain admittance to the premises of:

- (a) a tavern; or
- (b) a social club licensee, except to the extent authorized by Section 32B-6-406.1.

(2) A minor who violates this section is guilty of a class C misdemeanor.

(3) (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:

- (i) order the minor to complete a screening as defined in Section 41-6a-501;
- (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
- (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance [abuse] use disorder treatment as indicated by an assessment.

(b) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:

- (i) order the minor to complete a screening as defined in Section 41-6a-501;
- (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and
- (iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance [abuse] use disorder treatment as indicated by an assessment.

(4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, except as provided in Section 32B-4-411, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.

(b) Notwithstanding ~~[the provision in]~~ Subsection (4)(a), the court may reduce the suspension period required under Section 53-3-219 if:

- (i) the violation is the minor's first violation of this section; and
- (ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or
 - (B) the minor demonstrates substantial progress in substance [abuse] use disorder treatment.

(c) Notwithstanding ~~[the requirement in]~~ Subsection (4)(a) and in accordance with ~~[the requirements of]~~ Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:

- (i) the violation is the minor's second or subsequent violation of this section;
- (ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance [abuse] use disorder treatment; and

(iii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a); or

(B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a).

(5) When a minor who is ~~[at least 13 years old,~~ but] younger than 18 years old[,] is found by a court to have violated this section, Section 78A-6-606 applies to the violation.

(6) Notwithstanding Subsections (3)(a) and (b), if a minor is adjudicated under Section 78A-6-117, the court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated assessment.

[46] (7) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section 53-3-219.

[47] (8) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

Section 4. Section 32B-4-411 is amended to read:

32B-4-411. Minor's unlawful use of proof of age.

(1) As used in this section, "proof of age violation" means a violation by a minor of:

- (a) Chapter 1, Part 4, Proof of Age Act; or
- (b) if as part of the violation the minor uses a proof of age in violation of Chapter 1, Part 4, Proof of Age Act:
- (i) Section 32B-4-409; or
- (ii) Section 32B-4-410.
- (2) If a court finds a minor engaged in a proof of age violation, notwithstanding the penalties provided for in Subsection (1):
- (a) (i) for a first violation, the minor is guilty of a class B misdemeanor;
- (ii) for a second violation, the minor is guilty of a class A misdemeanor; and
- (iii) for a third or subsequent violation, the minor is guilty of a class A misdemeanor, except that the court may impose:
- (A) a fine of up to \$5,000;
- (B) screening, assessment, or substance [~~abuse~~] use disorder treatment, as defined in Section 41-6a-501;
- (C) an educational series, as defined in Section 41-6a-501;
- (D) alcoholic product related community service or compensatory service work program hours;
- (E) fees for restitution and treatment costs;
- (F) defensive driver education courses; or
- (G) a combination of these penalties; and
- (b) (i) for a minor who is [~~at least 13 years old, but~~] younger than 18 years old:
- (A) the court [~~shall~~] may forward to the Driver License Division a record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act [~~of 1996~~], for a violation under this section; and
- (B) the provisions regarding suspension of a driver license under Section 78A-6-606 apply; and
- (ii) for a minor who is at least 18 years old, but younger than 21 years old:
- (A) the court shall forward to the Driver License Division a record of conviction for a violation under this section; and
- (B) the Driver License Division shall suspend the person's license under Section 53-3-220.
- (c) Notwithstanding Subsection (2)(a), if a minor is adjudicated under Section 78A-6-117, the court may order:
- (i) substance use disorder treatment or an educational series only if the minor has an assessed need for the intervention based on the results of a validated assessment; and
- (ii) a fine, fee, service hours, or costs in accordance with Section 78A-6-117.
- (3) (a) Notwithstanding [~~the requirement in~~] Subsection (2)(b), the court may reduce the

suspension period under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d) if:

- (i) the violation is the minor's first violation of [~~Section 32B-4-411~~] this section; and
- (ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or
- (B) the minor demonstrates substantial progress in substance [~~abuse~~] use disorder treatment.
- (b) Notwithstanding the requirement in Subsection (2)(b), the court may reduce the suspension period under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d) if:
- (i) the violation is the minor's second or subsequent violation of [~~Section 32B-4-411~~] this section;
- (ii) the person has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance [~~abuse~~] use disorder treatment; and
- (iii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d); or
- (B) the minor is under 18 years of age and has the minor's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the minor has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection 53-3-220(1)(e) or 78A-6-606(3)(d).
- (4) When the Department of Public Safety receives the arrest or conviction record of an individual for a driving offense committed while the individual's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.
- (5) A court may not fail to enter a judgment of conviction under this section under a plea in abeyance agreement.

Section 5. Section 53A-1-403 is amended to read:

53A-1-403. Education of persons under 21 in custody of or receiving services from certain state agencies -- Establishment of coordinating council -- Advisory councils.

- (1) For purposes of this section, "board" means the State Board of Education.
- (2) (a) The board is directly responsible for the education of all persons under the age of 21 who are:
- (i) [~~in the custody of~~] receiving services from the Department of Human Services;
- (ii) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or

(iii) being held in a juvenile detention facility.

(b) The board shall adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to provide for the distribution of funds for the education of persons described in Subsection (2)(a).

(3) Subsection (2)(a)(ii) does not apply to persons taken into custody for the primary purpose of obtaining access to education programs provided for youth in custody.

(4) The board shall, where feasible, contract with school districts or other appropriate agencies to provide educational, administrative, and supportive services, but the board shall retain responsibility for the programs.

(5) The Legislature shall establish and maintain separate education budget categories for youth in custody or who are under the jurisdiction of the following state agencies:

(a) detention centers and the Divisions of Juvenile Justice Services and Child and Family Services;

(b) the Division of Substance Abuse and Mental Health; and

(c) the Division of Services for People with Disabilities.

(6) (a) The Department of Human Services and the State Board of Education shall appoint a coordinating council to plan, coordinate, and recommend budget, policy, and program guidelines for the education and treatment of persons in the custody of the Division of Juvenile Justice Services and the Division of Child and Family Services.

(b) The department and board may appoint similar councils for those in the custody of the Division of Substance Abuse and Mental Health or the Division of Services for People with Disabilities.

(7) A school district contracting to provide services under Subsection (4) shall establish an advisory council to plan, coordinate, and review education and treatment programs for persons held in custody in the district.

Section 6. Section 53A-3-402 is amended to read:

53A-3-402. Powers and duties generally.

(1) ~~Each~~ A local school board shall:

(a) implement the core standards for Utah public schools ~~[utilizing]~~ using instructional materials that best correlate to the core standards for Utah public schools and graduation requirements;

(b) administer tests, required by the State Board of Education, which measure the progress of each student, and coordinate with the state superintendent and State Board of Education to assess results and create plans to improve the student's progress, which shall be submitted to the State Board of Education for approval;

(c) use progress-based assessments as part of a plan to identify schools, teachers, and students that need remediation and determine the type and amount of federal, state, and local resources to implement remediation;

(d) develop early warning systems for students or classes failing to make progress;

(e) work with the State Board of Education to establish a library of documented best practices, consistent with state and federal regulations, for use by the local districts; and

(f) implement training programs for school administrators, including basic management training, best practices in instructional methods, budget training, staff management, managing for learning results and continuous improvement, and how to help every child achieve optimal learning in basic academic subjects.

(2) Local school boards shall spend minimum school program funds for programs and activities for which the State Board of Education has established minimum standards or rules under Section 53A-1-402.

(3) (a) A board may purchase, sell, and make improvements on school sites, buildings, and equipment and construct, erect, and furnish school buildings.

(b) School sites or buildings may only be conveyed or sold on board resolution affirmed by at least two-thirds of the members.

(4) (a) A board may participate in the joint construction or operation of a school attended by children residing within the district and children residing in other districts either within or outside the state.

(b) Any agreement for the joint operation or construction of a school shall:

(i) be signed by the president of the board of each participating district;

(ii) include a mutually agreed upon pro rata cost; and

(iii) be filed with the State Board of Education.

(5) A board may establish, locate, and maintain elementary, secondary, and applied technology schools.

(6) Except as provided in Section 53A-1-1001, a board may enroll children in school who are at least five years of age before September 2 of the year in which admission is sought.

(7) A board may establish and support school libraries.

(8) A board may collect damages for the loss, injury, or destruction of school property.

(9) A board may authorize guidance and counseling services for children and their parents or guardians ~~[prior to]~~ before, during, or following enrollment of the children in schools.

(10) (a) A board shall administer and implement federal educational programs in accordance with

Title 53A, Chapter 1, Part 9, Implementing Federal or National Education Programs Act.

(b) Federal funds are not considered funds within the school district budget under Title 53A, Chapter 19, Public School Budgets.

(11) (a) A board may organize school safety patrols and adopt rules under which the patrols promote student safety.

(b) A student appointed to a safety patrol shall be at least 10 years old and have written parental consent for the appointment.

(c) Safety patrol members may not direct vehicular traffic or be stationed in a portion of a highway intended for vehicular traffic use.

(d) Liability may not attach to a school district, its employees, officers, or agents or to a safety patrol member, a parent of a safety patrol member, or an authorized volunteer assisting the program by virtue of the organization, maintenance, or operation of a school safety patrol.

(12) (a) A board may on its own behalf, or on behalf of an educational institution for which the board is the direct governing body, accept private grants, loans, gifts, endowments, devises, or bequests that are made for educational purposes.

(b) These contributions are not subject to appropriation by the Legislature.

(13) (a) A board may appoint and fix the compensation of a compliance officer to issue citations for violations of Subsection 76-10-105(2).

(b) A person may not be appointed to serve as a compliance officer without the person's consent.

(c) A teacher or student may not be appointed as a compliance officer.

(14) A board shall adopt bylaws and rules for ~~its~~ the board's own procedures.

(15) (a) A board shall make and enforce rules necessary for the control and management of the district schools.

(b) ~~All board~~ Board rules and policies shall be in writing, filed, and referenced for public access.

(16) A board may hold school on legal holidays other than Sundays.

(17) (a) ~~Each~~ A board shall establish for each school year a school traffic safety committee to implement this Subsection (17).

(b) The committee shall be composed of one representative of:

- (i) the schools within the district;
- (ii) the Parent Teachers' Association of the schools within the district;
- (iii) the municipality or county;
- (iv) state or local law enforcement; and
- (v) state or local traffic safety engineering.

(c) The committee shall:

(i) receive suggestions from school community councils, parents, teachers, and others and recommend school traffic safety improvements, boundary changes to enhance safety, and school traffic safety program measures;

(ii) review and submit annually to the Department of Transportation and affected municipalities and counties a child access routing plan for each elementary, middle, and junior high school within the district;

(iii) consult the Utah Safety Council and the Division of Family Health Services and provide training to all school children in kindergarten through grade six, within the district, on school crossing safety and use; and

(iv) help ensure the district's compliance with rules made by the Department of Transportation under Section 41-6a-303.

(d) The committee may establish subcommittees as needed to assist in accomplishing its duties under Subsection (17)(c).

(18) (a) ~~Each~~ A school board shall adopt and implement a comprehensive emergency response plan to prevent and combat violence in ~~its~~ the school board's public schools, on school grounds, on its school vehicles, and in connection with school-related activities or events.

(b) The plan shall:

(i) include prevention, intervention, and response components;

(ii) be consistent with the student conduct and discipline policies required for school districts under Title 53A, Chapter 11, Part 9, School Discipline and Conduct Plans;

(iii) require inservice training for all district and school building staff on what their roles are in the emergency response plan;

(iv) provide for coordination with local law enforcement and other public safety representatives in preventing, intervening, and responding to violence in the areas and activities referred to in Subsection (18)(a); and

(v) include procedures to notify a student, to the extent practicable, who is off campus at the time of a school violence emergency because the student is:

(A) participating in a school-related activity; or

(B) excused from school for a period of time during the regular school day to participate in religious instruction at the request of the student's parent or guardian.

(c) The State Board of Education, through the state superintendent of public instruction, shall develop comprehensive emergency response plan models that local school boards may use, where appropriate, to comply with Subsection (18)(a).

(d) ~~Each~~ A local school board shall, by July 1 of each year, certify to the State Board of Education that its plan has been practiced at the school level

and presented to and reviewed by its teachers, administrators, students, and their parents and local law enforcement and public safety representatives.

(19) (a) ~~Each~~ A local school board may adopt an emergency response plan for the treatment of sports-related injuries that occur during school sports practices and events.

(b) The plan may be implemented by each secondary school in the district that has a sports program for students.

(c) The plan may:

(i) include emergency personnel, emergency communication, and emergency equipment components;

(ii) require inservice training on the emergency response plan for school personnel who are involved in sports programs in the district's secondary schools; and

(iii) provide for coordination with individuals and agency representatives who:

(A) are not employees of the school district; and

(B) would be involved in providing emergency services to students injured while participating in sports events.

(d) The board, in collaboration with the schools referred to in Subsection (19)(b), may review the plan each year and make revisions when required to improve or enhance the plan.

(e) The State Board of Education, through the state superintendent of public instruction, shall provide local school boards with an emergency plan response model that local boards may use to comply with the requirements of this Subsection (19).

(20) A board shall do all other things necessary for the maintenance, prosperity, and success of the schools and the promotion of education.

(21) (a) Before closing a school or changing the boundaries of a school, a board shall:

(i) hold a public hearing, as defined in Section 10-9a-103; and

(ii) provide public notice of the public hearing, as specified in Subsection (21)(b).

(b) The notice of a public hearing required under Subsection (21)(a) shall:

(i) indicate the:

(A) school or schools under consideration for closure or boundary change; and

(B) date, time, and location of the public hearing; and

(ii) at least 10 days ~~[prior to]~~ before the public hearing, be:

(A) published:

(I) in a newspaper of general circulation in the area; and

(II) on the Utah Public Notice Website created in Section 63F-1-701; and

(B) posted in at least three public locations within the municipality or on the district's official website.

(22) A board may implement a facility energy efficiency program established under Title 11, Chapter 44, Performance Efficiency Act.

(23) A board may establish or partner with a certified youth court program, in accordance with Section 78A-6-1203, or establish or partner with a comparable restorative justice program, in coordination with schools in that district. A school may refer a student to youth court or a comparable restorative justice program in accordance with Section 53A-11-911.

Section 7. Section 53A-11-101.7 is amended to read:

53A-11-101.7. Truancy -- Notice of truancy -- Failure to cooperate with school authorities.

(1) Except as provided in Section 53A-11-102 or 53A-11-102.5, a school-age minor who is enrolled in a public school shall attend the public school in which the school-age minor is enrolled.

(2) A local school board, charter school governing board, or school district may impose administrative penalties on a school-age minor in accordance with Section 53A-11-911 who is truant.

(3) A local school board or charter school governing board:

(a) may authorize a school administrator, a designee of a school administrator, a law enforcement officer acting as a school resource officer, or a truancy specialist to issue notices of truancy to school-age minors who are at least 12 years old; and

(b) shall establish a procedure for a school-age minor, or the school-age minor's parents, to contest a notice of truancy.

(4) The notice of truancy described in Subsection (3):

(a) may not be issued until the school-age minor has been truant at least five times during the school year;

(b) may not be issued to a school-age minor who is less than 12 years old;

(c) may not be issued to a minor exempt from school attendance as provided in Section 53A-11-102 or 53A-11-102.5;

(d) shall direct the school-age minor and the parent of the school-age minor to:

(i) meet with school authorities to discuss the school-age minor's truantries; and

(ii) cooperate with the school board, local charter board, or school district in securing regular attendance by the school-age minor; and

(e) shall be mailed to, or served on, the school-age minor's parent.

~~[(5) (a) Except as provided in Subsection (5)(b), a habitual truant citation may be issued to a habitual truant if:]~~

~~[(i) the local school board, charter school governing board, or school district has made reasonable efforts, under Section 53A-11-103, to resolve the school attendance problems of the habitual truant; and]~~

~~[(ii) the efforts to resolve the school attendance problems, described in Subsection (5)(a)(i), have not been successful.]~~

~~[(b) A habitual truant citation may not be issued to a habitual truant if the habitual truant:]~~

~~[(i) has at least a 3.5 cumulative grade point average; and]~~

~~[(ii) is at least 16 years old.]~~

~~[(6) A habitual truant to whom a habitual truant citation is issued under Subsection (5):]~~

~~[(a) shall be referred to the juvenile court for violation of Subsection (1); and]~~

~~[(b) is subject to the jurisdiction of the juvenile court.]~~

~~[(7) A notice of truancy or a habitual truant citation may only be issued by:]~~

~~[(a) a school administrator, or a truancy specialist, who is authorized by a local school board or charter school governing board;]~~

~~[(b) a designee of a school administrator described in Subsection (7)(a); or]~~

~~[(c) a law enforcement officer acting as a school resource officer.]~~

~~[(8) (5) Nothing in this part prohibits a local school board, charter school governing board, or school district from taking action to resolve a truancy problem with a school-age minor who has been truant less than five times, provided that the action does not conflict with the requirements of this part.~~

~~[(9) Nothing in this part allows a local school board or charter school governing board to issue a citation pursuant to this section if the minor is exempt from school attendance as provided in Section 53A-11-102 or 53A-11-102.5.]~~

Section 8. Section 53A-11-103 is amended to read:

53A-11-103. Duties of a school board, local charter board, or school district in resolving attendance problems -- Parental involvement -- Liability not imposed.

(1) (a) Except as provided in Subsection (1)(b), a local school board, local charter board, or school district shall make efforts to resolve the school attendance problems of each school-age minor who is, or should be, enrolled in the school district.

(b) A minor exempt from school attendance under Section 53A-11-102 or 53A-11-102.5 is not

considered to be a minor who is or should be enrolled in a school district or charter school under Subsection (1)(a).

(2) The efforts described in Subsection (1) shall include, as reasonably feasible:

(a) counseling of the minor by school authorities;

(b) issuing a notice of truancy to a school-age minor who is at least 12 years old, in accordance with Section 53A-11-101.7;

~~[(c) issuing a habitual truant citation, in accordance with Section 53A-11-101.7;]~~

~~[(d) (c) issuing a notice of compulsory education violation to a parent of a school-age child, in accordance with Section 53A-11-101.5;~~

~~[(e) (d) making any necessary adjustment to the curriculum and schedule to meet special needs of the minor;~~

~~[(f) (e) considering alternatives proposed by a parent;~~

~~[(g) (f) monitoring school attendance of the minor;~~

~~[(h) (g) voluntary participation in truancy mediation, if available; and]~~

~~[(i) (h) providing a school-age minor's parent, upon request, with a list of resources available to assist the parent in resolving the school-age minor's attendance problems.~~

(3) In addition to the efforts described in Subsection (2), the local school board, local charter board, or school district may enlist the assistance of community and law enforcement agencies as appropriate and reasonably feasible in accordance with Section 53A-11-911.

(4) This section ~~[shall]~~ does not impose ~~[any]~~ civil liability on boards of education, local school boards, local charter boards, school districts, or their employees.

(5) Proceedings initiated under this part do not obligate or preclude action by the Division of Child and Family Services under Section 78A-6-319.

Section 9. Section 53A-11-105 is amended to read:

53A-11-105. Taking custody of a person believed to be a truant minor -- Disposition -- Reports -- Immunity from liability.

(1) A peace officer or public school administrator may take a minor into temporary custody if there is reason to believe the minor is a truant minor.

(2) An individual taking a school-age minor into custody under Subsection (1) shall, without unnecessary delay, release the minor to:

(a) the principal of the minor's school;

(b) a person who has been designated by the local school board or local charter board to receive and return the minor to school; or

(c) a [receiving] truancy center established under Subsection (5).

(3) If the minor refuses to return to school or go to the [receiving] truancy center, the officer or administrator shall, without unnecessary delay, notify the minor's parents and release the minor to their custody.

(4) If the parents cannot be reached or are unable or unwilling to accept custody and none of the options in Subsection (2) are available, the minor shall be referred to the Division of Child and Family Services.

(5) (a) A local school board or local charter board, singly or jointly with another school board, may establish or designate [receiving] truancy centers within existing school buildings and staff the centers with existing teachers or staff to provide educational guidance and counseling for truant minors. Upon receipt of a truant minor, the center shall, without unnecessary delay, notify and direct the minor's parents to come to the center, pick up the minor, and return the minor to the school in which the minor is enrolled.

(b) If the parents cannot be reached or are unable or unwilling to comply with the request within a reasonable time, the center shall take such steps as are reasonably necessary to insure the safety and well being of the minor, including, when appropriate, returning the minor to school or referring the minor to the Division of Child and Family Services. A minor taken into custody under this section may not be placed in a detention center or other secure confinement facility.

(6) Action taken under this section shall be reported to the appropriate school district. The district shall promptly notify the minor's parents of the action taken.

(7) The Utah Governmental Immunity Act applies to all actions taken under this section.

(8) Nothing in this section may be construed to grant authority to a public school administrator to place a minor in the custody of the Division of Child and Family Services, without complying with [the provisions of] Title 62A, Chapter 4a, Part 2, Child Welfare Services, [and Part 2a, Minors in Custody on Grounds Other Than Abuse or Neglect,] and [of] Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings[, and Part 4, Minors in Custody on Grounds Other Than Abuse or Neglect].

Section 10. Section 53A-11-403 is amended to read:

53A-11-403. Reporting procedure.

(1) The principal of a public school affected by this chapter shall appoint one educator as the "designated educator" to make all reports required under Sections 53A-11-401 through 53A-11-404.

(2) The designated educator, upon receiving a report of a prohibited act from an educator under Section 53A-11-402, shall immediately report the violation to the student's parent or legal guardian, and may report the violation to an appropriate law

enforcement agency or official, in accordance with Section 53A-11-911.

(3) The designated educator may not disclose to the student or to the student's parent or legal guardian the identity of the educator who made the initial report.

Section 11. Section 53A-11-901 is amended to read:

53A-11-901. Public school discipline policies -- Basis of the policies -- Enforcement.

(1) The Legislature recognizes that every student in the public schools should have the opportunity to learn in an environment which is safe, conducive to the learning process, and free from unnecessary disruption.

(2) (a) To foster such an environment, each local school board or governing board of a charter school, with input from school employees, parents and guardians of students, students, and the community at large, shall adopt conduct and discipline policies for the public schools in accordance with Section 53A-11-911.

(b) [Each] A district or charter school shall base its policies on the principle that every student is expected:

(i) to follow accepted rules of conduct; and

(ii) to show respect for other people and to obey persons in authority at the school.

(c) (i) On or before September 1, 2015, the State Board of Education shall revise the conduct and discipline policy models for elementary and secondary public schools to include procedures for responding to reports received through the School Safety and Crisis Line under Subsection 53A-11-1503(3).

(ii) Each district or charter school shall use the models, where appropriate, in developing its conduct and discipline policies under this chapter.

(d) The policies shall emphasize that certain behavior, most particularly behavior which disrupts, is unacceptable and may result in disciplinary action.

(3) The local superintendent and designated employees of the district or charter school shall enforce the policies so that students demonstrating unacceptable behavior and their parents or guardians understand that such behavior will not be tolerated and will be dealt with in accordance with the district's conduct and discipline policies.

Section 12. Section 53A-11-908 is amended to read:

53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of violations -- Limitation of liability.

(1) The Legislature recognizes that:

(a) participation in student government and extracurricular activities may confer important educational and lifetime benefits upon students,

and encourages school districts and charter schools to provide a variety of opportunities for all students to participate in such activities in meaningful ways;

(b) there is no constitutional right to participate in these types of activities, and does not through this section or any other provision of law create such a right;

(c) students who participate in student government and extracurricular activities, particularly competitive athletics, and the adult coaches, advisors, and assistants who direct those activities, become role models for others in the school and community;

(d) these individuals often play major roles in establishing standards of acceptable behavior in the school and community, and establishing and maintaining the reputation of the school and the level of community confidence and support afforded the school; and

(e) it is of the utmost importance that those involved in student government, whether as officers or advisors, and those involved in competitive athletics and related activities, whether students or staff, comply with all applicable laws and rules of behavior and conduct themselves at all times in a manner befitting their positions and responsibilities.

(2) (a) The State Board of Education may, and local boards of education and governing boards of charter schools shall, adopt rules implementing this section that apply to both students and staff.

(b) ~~[Those]~~ The rules described in Subsection (2)(a) shall include prohibitions against the following types of conduct in accordance with Section 53A-11-911, while in the classroom, on school property, during school sponsored activities, or regardless of the location or circumstance, affecting a person or property described in Subsections 53A-11-902(5)(a) through (d):

(i) use of foul, abusive, or profane language while engaged in school related activities;

(ii) illicit use, possession, or distribution of controlled substances or drug paraphernalia, and the use, possession, or distribution of an electronic cigarette as defined in Section 76-10-101, tobacco, or alcoholic beverages contrary to law; and

(iii) hazing, demeaning, or assaultive behavior, whether consensual or not, including behavior involving physical violence, restraint, improper touching, or inappropriate exposure of body parts not normally exposed in public settings, forced ingestion of any substance, or any act which would constitute a crime against a person or public order under Utah law.

(3) (a) School employees who reasonably believe that a violation of this section may have occurred shall immediately report that belief to the school principal, district superintendent, or chief administrative officer of a charter school.

(b) Principals who receive a report under Subsection (3)(a) shall submit a report of the alleged

incident, and actions taken in response, to the district superintendent or the superintendent's designee within 10 working days after receipt of the report.

(c) Failure of a person holding a professional certificate to report as required under this Subsection (3) constitutes an unprofessional practice.

(4) Limitations of liability set forth under Section 53A-11-1004 apply to this section.

Section 13. Section 53A-11-910 is amended to read:

53A-11-910. Disruptive student behavior.

(1) As used in this section:

(a) "Disruptive student behavior" includes:

(i) the grounds for suspension or expulsion described in Section 53A-11-904; and

(ii) the conduct described in Subsection 53A-11-908(2)(b).

(b) "Parent" includes:

(i) a custodial parent of a school-age minor;

(ii) a legally appointed guardian of a school-age minor; or

(iii) any other person purporting to exercise any authority over the minor which could be exercised by a person described in Subsection (1)(b)(i) or (ii).

(c) "Qualifying minor" means a school-age minor who:

(i) is at least nine years old; or

(ii) turns nine years old at any time during the school year.

(d) "School year" means the period of time designated by a local school board or local charter board as the school year for the school where the school-age minor is enrolled.

(2) A local school board, school district, governing board of a charter school, or charter school may impose administrative penalties in accordance with Section 53A-11-911 on a school-age minor who violates this part.

~~[(3) (a) It is unlawful for a school-age minor to engage in disruptive student behavior.]~~

~~[(b) A qualifying minor is subject to the jurisdiction of the juvenile court if the qualifying minor:]~~

~~[(i) engages in disruptive student behavior, that does not result in suspension or expulsion, at least six times during the school year;]~~

~~[(ii) (A) engages in disruptive student behavior, that does not result in suspension or expulsion, at least three times during the school year; and]~~

~~[(B) engages in disruptive student behavior, that results in suspension or expulsion, at least once during the school year; or]~~

~~[(iii) engages in disruptive student behavior, that results in suspension or expulsion, at least twice during the school year.]~~

~~[(4)] (3) (a) A local school board or governing board of a charter school shall:~~

~~(i) authorize a school administrator or a designee of a school administrator to issue notices of disruptive student behavior to qualifying minors; and~~

~~(ii) establish a procedure for a qualifying minor, or a qualifying minor's parent, to contest a notice of disruptive student behavior.~~

~~(b) A school representative shall provide to a parent of a school-age minor, a list of resources available to assist the parent in resolving the school-age minor's disruptive student behavior problem.~~

~~(c) A local school board or governing board of a charter school shall establish procedures for a school counselor or other designated school representative to work with a qualifying minor who engages in disruptive student behavior in order to attempt to resolve the minor's disruptive student behavior problems [before the qualifying minor becomes subject to the jurisdiction of the juvenile court as provided for under this section].~~

~~[(5)] (4) The notice of disruptive student behavior described in Subsection [(4)] (3)(a):~~

~~(a) shall be issued to a qualifying minor who:~~

~~(i) engages in disruptive student behavior, that does not result in suspension or expulsion, three times during the school year; or~~

~~(ii) engages in disruptive student behavior, that results in suspension or expulsion, once during the school year;~~

~~(b) shall require that the qualifying minor and a parent of the qualifying minor:~~

~~(i) meet with school authorities to discuss the qualifying minor's disruptive student behavior; and~~

~~(ii) cooperate with the local school board or governing board of a charter school in correcting the school-age minor's disruptive student behavior; and~~

~~[(c) shall contain a statement indicating:]~~

~~[(i) the number of additional times that, if the qualifying minor engages in disruptive student behavior that does not result in suspension or expulsion, will result in the qualifying minor receiving a habitual disruptive student behavior citation; and]~~

~~[(ii) that the qualifying minor will receive a habitual disruptive student behavior citation if the qualifying minor engages in disruptive student behavior that results in suspension or expulsion; and]~~

~~[(d)] (c) shall be mailed by certified mail to, or served on, a parent of the qualifying minor.~~

~~[(6)] (5) A habitual disruptive student behavior [citation] notice:~~

~~(a) may only be issued to a qualifying minor who:~~

~~(i) engages in disruptive student behavior, that does not result in suspension or expulsion, at least six times during the school year;~~

~~(ii) (A) engages in disruptive student behavior, that does not result in suspension or expulsion, at least three times during the school year; and~~

~~(B) engages in disruptive student behavior, that results in suspension or expulsion, at least once during the school year; or~~

~~(iii) engages in disruptive student behavior, that results in suspension or expulsion, at least twice during the school year; and~~

~~(b) may only be issued by a school administrator, a designee of a school administrator, or a truancy specialist, who is authorized by a local school board or governing board of a local charter school to issue a habitual disruptive student behavior [citation] notice.~~

~~[(7)] (6) (a) A qualifying minor to whom a habitual disruptive student behavior [citation] notice is issued under Subsection [(6)] shall (5) may not be referred to the juvenile court [for violation of Subsection (3)].~~

~~(b) Within five days after the day on which a habitual disruptive student behavior [citation] notice is issued, a representative of the school district or charter school shall provide documentation, to a parent of the qualifying minor who receives the [citation] notice, of the efforts made by a school counselor or representative under Subsection [(4)] (3)(c).~~

~~[(8) Nothing in this part prohibits a local school board, school district, governing board of a charter school, or charter school from taking any lawful action not in conflict with the provisions of this section, including action described in this part and action relating to a habitually truant or ungovernable child, to address a disruptive student behavior problem of:]~~

~~[(a) a school-age minor who is not a qualifying minor; or]~~

~~[(b) a qualifying minor, regardless of the number of times that the qualifying minor has engaged in disruptive student behavior during the school year.]~~

Section 14. Section 53A-11-911 is enacted to read:

53A-11-911. Responses to school-based behavior.

(1) As used in this section:

(a) "Class A misdemeanor person offense" means a class A misdemeanor described in Title 76, Chapter 5, Offenses Against the Person, or Title 76, Chapter 5b, Sexual Exploitation Act.

(b) "Mobile crisis outreach team" means the same as that term is defined in Section 78A-6-105.

(c) "Nonperson class A misdemeanor" means a class A misdemeanor that is not a class A misdemeanor person offense.

(d) "Restorative justice program" means a school-based program that is designed to enhance

school safety, reduce school suspensions, and limit referrals to court, and is designed to help minors take responsibility for and repair the harm of behavior that occurs in school.

(2) This section applies to a minor enrolled in school who is alleged to have committed an offense:

- (a) on school property; or
- (b) that is truancy.

(3) If the alleged offense is a class C misdemeanor, an infraction, a status offense on school property, or truancy, the minor may not be referred to law enforcement or court but may be referred to alternative school-related interventions, including:

(a) a mobile crisis outreach team, as defined in Section 78A-6-105;

(b) a receiving center operated by the Division of Juvenile Justice Services in accordance with Section 62A-7-104; and

(c) a youth court or comparable restorative justice program.

(4) If the alleged offense is a class B misdemeanor or a nonperson class A misdemeanor, the minor may be referred directly to the juvenile court by the school administrator or the school administrator's designee, or the minor may be referred to the alternative interventions in Subsection (3).

Section 15. Section 53A-11-1302 is amended to read:

53A-11-1302. Reporting of prohibited acts affecting a school -- Confidentiality.

(1) A person who has reasonable cause to believe that an individual has committed a prohibited act shall, in accordance with Section 53A-11-911, immediately notify:

~~[(a) the nearest law enforcement agency;]~~

~~[(b)]~~ (a) the principal;

~~[(e)]~~ (b) an administrator of the affected school;

~~[(d)]~~ (c) the superintendent of the affected school district; or

~~[(e)]~~ (d) an administrator of the affected school district.

(2) If notice is given to a school official, the official may authorize an investigation into allegations involving school property, students, or school district employees.

(3) ~~[School officials]~~ A school official may only refer a complaint of an alleged prohibited act reported as occurring on school grounds or in connection with school-sponsored activities to an appropriate law enforcement agency. ~~Referrals shall be made by school officials if the complaint alleges the prohibited act occurred elsewhere]~~ in accordance with Section 53A-11-911.

(4) The identity of persons making reports pursuant to this section shall be kept confidential.

Section 16. Section 53A-11-1604 is amended to read:

53A-11-1604. Contracts between an LEA and law enforcement for school resource officer services -- Requirements.

(1) An LEA may contract with a law enforcement agency or an individual to provide school resource officer services at the LEA if the LEA's governing authority reviews and approves the contract.

(2) If an LEA contracts with a law enforcement agency or an individual to provide SRO services at the LEA, the LEA's governing authority shall require in the contract:

(a) an acknowledgment by the law enforcement agency or the individual that an SRO hired under the contract shall:

(i) provide for and maintain a safe, healthy, and productive learning environment in a school;

(ii) act as a positive role model to students;

(iii) work to create a cooperative, proactive, and problem-solving partnership between law enforcement and the LEA;

(iv) emphasize the use of restorative approaches to address negative behavior; and

(v) at the request of the LEA, teach a vocational law enforcement class;

(b) a description of the shared understanding of the LEA and the law enforcement agency or individual regarding the roles and responsibilities of law enforcement and the LEA to:

(i) maintain safe schools;

(ii) improve school climate; and

(iii) support educational opportunities for students;

(c) a designation of student offenses that the SRO shall confer with the LEA to resolve, including an offense that:

(i) is a minor violation of the law; and

(ii) would not violate the law if the offense was committed by an adult;

(d) a designation of student offenses that are administrative issues that an SRO shall refer to a school administrator for resolution in accordance with Section 53A-11-911;

(e) a detailed description of the rights of a student under state and federal law with regard to:

(i) searches;

(ii) questioning; and

(iii) information privacy;

(f) a detailed description of:

(i) job duties;

(ii) training requirements; and

(iii) other expectations of the SRO and school administration in relation to law enforcement at the LEA;

(g) that an SRO who is hired under the contract and the principal at the school where an SRO will be working, or the principal's designee, will jointly complete the SRO training described in Section 53A-11-1603; and

(h) if the contract is between an LEA and a law enforcement agency, that:

(i) both parties agree to jointly discuss SRO applicants; and

(ii) the law enforcement agency will accept feedback from an LEA about an SRO's performance.

Section 17. Section 58-37-8 is amended to read:

58-37-8. Prohibited acts -- Penalties.

(1) Prohibited acts A -- Penalties and reporting:

(a) Except as authorized by this chapter, it is unlawful for any person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

(iii) possess a controlled or counterfeit substance with intent to distribute; or

(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct that results in any violation of any provision of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) Any person convicted of violating Subsection (1)(a) with respect to:

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or

subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on [his] the person or in [his] the person's immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

(d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than seven years and which may be for life. Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(e) The Administrative Office of the Courts shall report to the Division of Occupational and Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(2) Prohibited acts B -- Penalties and reporting:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

(ii) for any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or

(iii) for any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony; or

(ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A misdemeanor on a first or second conviction, and on a third or subsequent conviction is guilty of a third degree felony.

(c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under

Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

(d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the person is guilty of a third degree felony.

(e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.

(f) Any person convicted of violating Subsection (2)(a)(ii) or (iii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

(ii) on a second conviction, guilty of a class A misdemeanor; and

(iii) on a third or subsequent conviction, guilty of a third degree felony.

(g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section 76-5-207:

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's body any measurable amount of a controlled substance; and

(ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another.

(h) A person who violates Subsection (2)(g) by having in the person's body:

(i) a controlled substance classified under Schedule I, other than those described in

Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;

(ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third degree felony; or

(iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.

(i) A person is guilty of a separate offense for each victim suffering serious bodily injury or death as a result of the person's negligent driving in violation of Subsection [58-37-8](2)(g) whether or not the injuries arise from the same episode of driving.

(j) The Administrative Office of the Courts shall report to the Division of Occupational and Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(3) Prohibited acts C -- Penalties:

(a) It is unlawful for any person knowingly and intentionally:

(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

(ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to acquire or obtain possession of, or to procure the administration of any controlled substance by misrepresentation or failure by the person to disclose receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

(iii) to make any false or forged prescription or written order for a controlled substance, or to utter the same, or to alter any prescription or written order issued or written under the terms of this chapter; or

(iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render any drug a counterfeit controlled substance.

(b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A misdemeanor.

(ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third degree felony.

(c) A violation of Subsection (3)(a)(iv) is a third degree felony.

(4) Prohibited acts D -- Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a), Section 58-37a-5, or Section 58-37b-4 is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools during the hours of 6 a.m. through 10 p.m.;

(ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

(iii) in or on the grounds of a preschool or child-care facility during the preschool's or facility's hours of operation;

(iv) in a public park, amusement park, arcade, or recreation center when the public or amusement park, arcade, or recreation center is open to the public;

(v) in or on the grounds of a house of worship as defined in Section 76-10-501;

(vi) in or on the grounds of a library when the library is open to the public;

(vii) within any area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

(viii) in the presence of a person younger than 18 years of age, regardless of where the act occurs; or

(ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of any correctional facility as defined in Section 76-8-311.3.

(b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

(d) (i) If the violation is of Subsection (4)(a)(ix):

(A) the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person

convicted for a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).

(e) It is not a defense to a prosecution under this Subsection (4) that the actor mistakenly believed the individual to be 18 years of age or older at the time of the offense or was unaware of the individual's true age; nor that the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) Any violation of this chapter for which no penalty is specified is a class B misdemeanor.

(6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:

(i) from a separate criminal episode than the current charge; and

(ii) from a conviction that is separate from any other conviction used to enhance the current charge.

(7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

(8) (a) Any penalty imposed for violation of this section is in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(b) Where violation of this chapter violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's

professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

(11) Civil or criminal liability may not be imposed under this section on:

(a) any person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) any law enforcement officer acting in the course and legitimate scope of the officer's employment.

(12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Subsection 58-37-2(1)(w).

(b) In a prosecution alleging violation of this section regarding peyote as defined in Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days ~~prior to~~ before trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(13) (a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person:

(i) was engaged in medical research; and

(ii) was a holder of a valid license to possess controlled substances under Section 58-37-6.

(b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.

(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:

(a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(b) the substance was administered to the person by the medical researcher.

(15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.

(16) (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person:

(i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;

(ii) reports in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);

(iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;

(iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;

(v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

(vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.

(b) The offenses referred to in Subsection (16)(a) are:

(i) the possession or use of less than 16 ounces of marijuana;

(ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and

(iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.

(c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking medical assistance under this section during the course of a law enforcement agency's execution of a

search warrant, execution of an arrest warrant, or other lawful search.

(17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

(18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.

(19) ~~[(a)]~~ If a minor who is under 18 years of age is found by a court to have violated this section ~~[and the violation is the minor's first violation of this section]~~, the court may order:

~~[(i) order]~~ (a) the minor to complete a screening as defined in Section 41-6a-501;

~~[(ii) order]~~ (b) the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

~~[(iii) order]~~ (c) the minor to complete an educational series as defined in Section 41-6a-501 or substance ~~[abuse]~~ use disorder treatment as indicated by an assessment.

~~[(b) If a minor who is under 18 years of age is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:]~~

~~[(i) order the minor to complete a screening as defined in Section 41-6a-501:]~~

~~[(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and]~~

~~[(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.]~~

Section 18. Section 58-37a-7 is amended to read:

58-37a-7. Sentencing requirements for minors.

~~[(1)]~~ If a minor who is under 18 years of age is found by a court to have violated this chapter ~~[and the violation is the minor's first violation of this chapter]~~, the court may order the minor to complete:

~~[(a) order the minor to complete]~~ (1) a screening as defined in Section 41-6a-501;

~~[(b) order the minor to complete]~~ (2) an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

~~[(c) order the minor to complete]~~ (3) an educational series as defined in Section 41-6a-501 or substance ~~[abuse]~~ use disorder treatment as indicated by an assessment.

~~[(2) If a minor who is under 18 years of age is found by a court to have violated this chapter and~~

~~the violation is the minor's second or subsequent violation of this chapter, the court shall:]~~

~~[(a) order the minor to complete a screening as defined in Section 41-6a-501:]~~

~~[(b) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and]~~

~~[(c) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.]~~

Section 19. Section 58-37b-9 is amended to read:

58-37b-9. Sentencing requirements for minors.

~~[(1)]~~ If a minor who is under 18 years of age is found by a court to have violated this chapter ~~[and the violation is the minor's first violation of this chapter]~~, the court may order the minor to complete:

~~[(a) order the minor to complete]~~ (1) a screening as defined in Section 41-6a-501;

~~[(b) order the minor to complete]~~ (2) an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

~~[(c) order the minor to complete]~~ (3) an educational series as defined in Section 41-6a-501 or substance ~~[abuse]~~ use disorder treatment as indicated by an assessment.

~~[(2) If a minor is found by a court to have violated this chapter and the violation is the minor's second or subsequent violation of this chapter, the court shall:]~~

~~[(a) order the minor to complete a screening as defined in Section 41-6a-501:]~~

~~[(b) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and]~~

~~[(c) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.]~~

Section 20. Section 62A-1-111.5 is enacted to read:

62A-1-111.5. Duties of the department for fiscal year 2018.

Notwithstanding Section 63J-1-206, for fiscal year 2018 only, the department may transfer money from savings related to implementation of this bill and nonlapsing balances from fiscal year 2017 between appropriation line items to allocate resources between the Division of Juvenile Justice Services, the Division of Child and Family Services, and the Division of Substance Abuse and Mental Health to facilitate the department's implementation of this bill.

Section 21. Section 62A-4a-105 is amended to read:

62A-4a-105. Division responsibilities.

- (1) The division shall:
- (a) administer services to minors and families, including:
- (i) child welfare services;
- (ii) domestic violence services; and
- (iii) all other responsibilities that the Legislature or the executive director may assign to the division;
- (b) provide the following services:
- (i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state;
- (ii) non-custodial and in-home services, including:
- (A) services designed to prevent family break-up; and
- (B) family preservation services;
- (iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;
- (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family;
- (v) shelter care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;
- (vi) domestic violence services, in accordance with the requirements of federal law;
- (vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;
- (viii) substitute care for dependent, abused, neglected, and delinquent children;
- ~~[(ix) programs and services for minors who have been placed in the custody of the division for reasons other than abuse or neglect, under Section 62A-4a-250;]~~
- ~~[(x)]~~ (ix) services for minors who are victims of human trafficking or human smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual solicitation as defined in Section 76-10-1302; and
- ~~[(xi)]~~ (x) training for staff and providers involved in the administration and delivery of services offered by the division in accordance with this chapter;
- (c) establish standards for all:
- (i) contract providers of out-of-home care for minors and families;
- (ii) facilities that provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division; and
- (iii) direct or contract providers of domestic violence services described in Subsection (1)(b)(vi);
- (d) have authority to:
- (i) contract with a private, nonprofit organization to recruit and train foster care families and child welfare volunteers in accordance with Section 62A-4a-107.5; and
- (ii) approve facilities that meet the standards established under Subsection (1)(c) to provide substitute care for dependent, abused, neglected, and delinquent children placed in the custody of the division;
- (e) cooperate with the federal government in the administration of child welfare and domestic violence programs and other human service activities assigned by the department;
- (f) in accordance with Subsection (2)(a), promote and enforce state and federal laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in accordance with the requirements of this chapter, unless administration is expressly vested in another division or department of the state;
- (g) cooperate with the Workforce Development Division in the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance;
- (h) compile relevant information, statistics, and reports on child and family service matters in the state;
- (i) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118;
- (j) provide social studies and reports for the juvenile court in accordance with Section 78A-6-605;
- (k) within appropriations from the Legislature, provide or contract for a variety of domestic violence services and treatment methods;
- (l) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who:
- (i) have a permanency goal of adoption; or
- (ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314, and promote adoption of those children;
- (m) subject to Subsection (2)(b), refer an individual receiving services from the division to the local substance abuse authority or other private or public resource for a court-ordered drug screening test; and
- (n) perform other duties and functions required by law.

(2) (a) In carrying out the requirements of Subsection (1)(f), the division shall:

(i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions, to develop and administer a broad range of services and support;

(ii) take the initiative in all matters involving the protection of abused or neglected children, if adequate provisions have not been made or are not likely to be made; and

(iii) make expenditures necessary for the care and protection of the children described in this Subsection (2)(a), within the division's budget.

(b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection (1)(n), the court shall order the individual to pay all costs of the tests unless:

(i) the cost of the drug screening is specifically funded or provided for by other federal or state programs;

(ii) the individual is a participant in a drug court; or

(iii) the court finds that the individual is impecunious.

(3) Except to the extent provided by rule, the division is not responsible for investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

(4) The division may not require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo.

Section 22. Section 62A-4a-201 is amended to read:

62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.

(1) (a) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests and, concomitantly, the right of the child to be reared by the child's natural parent.

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's

child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, and the child suffers, or is substantially likely to suffer, serious detriment as a result, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected. The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution and is a fundamental public policy of this state.

(d) The state recognizes that:

(i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide and care for, and reasonably discipline the parent's children; and

(ii) the state's role is secondary and supportive to the primary role of a parent.

(e) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

(f) Subsections (2) through (7) shall be interpreted and applied consistent with this Subsection (1).

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78A, Chapter 6, Juvenile Court Act [~~of 1996~~]. Therefore, the state, as *parens patriae*, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child, it shall take into account the child's need for protection from immediate harm and the extent to which the child's extended family may provide needed protection. Throughout its involvement, the division shall

utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may seek custody of the child for a planned, temporary period and place the child in a safe environment, subject to the requirements of this section and in accordance with the requirements of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and:

(a) when safe and appropriate, return the child to the child's parent; or

(b) as a last resort, pursue another permanency plan.

(5) In determining and making "reasonable efforts" with regard to a child, pursuant to the provisions of Section 62A-4a-203, both the division's and the court's paramount concern shall be the child's health, safety, and welfare. The desires of a parent for the parent's child, and the constitutionally protected rights of a parent, as described in this section, shall be given full and serious consideration by the division and the court.

(6) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are established, the state has no duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, provide reunification services, or to attempt to rehabilitate the offending parent or parents. This Subsection (6) does not exempt the division from providing court-ordered services.

(7) (a) In accordance with Subsection (1), the division shall strive to achieve appropriate permanency for children who are abused, neglected, or dependent. The division shall provide in-home services, where appropriate and safe, in an effort to help a parent to correct the behavior that resulted in abuse, neglect, or dependency of the parent's child. The division may pursue a foster placement only if in-home services fail or are otherwise insufficient or inappropriate, kinship placement is not safe or appropriate, or in-home services and kinship placement fail and cannot be corrected. The division shall also seek qualified extended family support or a kinship placement to maintain a sense of security and stability for the child.

(b) If the use or continuation of "reasonable efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the permanency plan for a child, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(c) Subject to the parental rights recognized and protected under this section, if, because of a parent's conduct or condition, the parent is

determined to be unfit or incompetent based on the grounds for termination of parental rights described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, the continuing welfare and best interest of the child is of paramount importance, and shall be protected in determining whether that parent's rights should be terminated.

(8) The state's right to direct or intervene in the provision of medical or mental health care for a child is subject to Subsections 78A-6-105[(27)](35)(d) and 78A-6-117(2)[(a)] and Section 78A-6-301.5.

Section 23. Section 62A-4a-202 is amended to read:

62A-4a-202. In-home services for the preservation of families.

(1) (a) Within appropriations from the Legislature and money obtained under Subsection (5), the division shall provide in-home services for the purpose of family preservation to any family with a child whose health and safety is not immediately endangered, when:

(i) (A) the child is at risk of being removed from the home; or

(B) the family is in crisis; and

(ii) the division determines that it is reasonable and appropriate.

(b) In determining whether in-home services are reasonable and appropriate, in keeping with ~~the provisions of~~ Subsection 62A-4a-201(1), the child's health, safety, and welfare shall be the paramount concern.

(c) The division shall consider whether the services described in Subsection (1)(b):

(i) will be effective within a six-month period; and

(ii) are likely to prevent continued abuse or neglect of the child.

(2) (a) The division shall maintain a statewide inventory of in-home services available through public and private agencies or individuals for use by caseworkers.

(b) The inventory described in Subsection (2)(a) shall include:

(i) the method of accessing each service;

(ii) eligibility requirements for each service;

(iii) the geographic areas and the number of families that can be served by each service; and

(iv) information regarding waiting lists for each service.

(3) (a) As part of its in-home services for the preservation of families, the division shall provide in-home services in varying degrees of intensity and contact that are specific to the needs of each individual family.

(b) As part of its in-home services, the division shall:

- (i) provide customized assistance;
- (ii) provide support or interventions that are tailored to the needs of the family;
- (iii) discuss the family's needs with the parent;
- (iv) discuss an assistance plan for the family with the parent; and
- (v) address:
 - (A) the safety of children;
 - (B) the needs of the family; and
 - (C) services necessary to aid in the preservation of the family and a child's ability to remain in the home.
- (c) In-home services shall be, as practicable, provided within the region that the family resides, using existing division staff.
- (4) (a) The division may use specially trained caseworkers, private providers, or other persons to provide the in-home services described in Subsection (3).
- (b) The division shall allow a caseworker to be flexible in responding to the needs of each individual family, including:
 - (i) limiting the number of families assigned; and
 - (ii) being available to respond to assigned families within 24 hours.
- (5) To provide, expand, and improve the delivery of in-home services to prevent the removal of children from their homes and promote the preservation of families, the division shall make substantial effort to obtain funding, including:
 - (a) federal grants;
 - (b) federal waivers; and
 - (c) private money.

(6) The division shall provide in-home family services pursuant to an order under Section 78A-6-117.5.

Section 24. Section 62A-4a-208 is amended to read:

62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.

- (1) As used in this section:
 - (a) "Complainant" means a person who initiates a complaint with the ombudsman.
 - (b) "Ombudsman" means the child protection ombudsman appointed pursuant to this section.
- (2) (a) There is created within the department the position of child protection ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive director.
- (b) The ombudsman shall be:
 - (i) an individual of recognized executive and administrative capacity;

- (ii) selected solely with regard to qualifications and fitness to discharge the duties of ombudsman; and
- (iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.
- (c) The ombudsman shall devote full time to the duties of office.
- (3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a complaint from any person, investigate whether an act or omission of the division with respect to a particular child:
 - (i) is contrary to statute, rule, or policy;
 - (ii) places a child's health or safety at risk;
 - (iii) is made without an adequate statement of reason; or
 - (iv) is based on irrelevant, immaterial, or erroneous grounds.
- (b) The ombudsman may decline to investigate any complaint. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the division of the decision and of the reasons for that decision.
- (c) The ombudsman may conduct an investigation on the ombudsman's own initiative.
- (4) The ombudsman shall:
 - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern the following:
 - (i) receiving and processing complaints;
 - (ii) notifying complainants and the division regarding a decision to investigate or to decline to investigate a complaint;
 - (iii) prioritizing workload;
 - (iv) maximum time within which investigations shall be completed;
 - (v) conducting investigations;
 - (vi) notifying complainants and the division regarding the results of investigations; and
 - (vii) making recommendations based on the findings and results of recommendations;
 - (b) report findings and recommendations in writing to the complainant and the division, in accordance with the provisions of this section;
 - (c) within appropriations from the Legislature, employ staff as may be necessary to carry out the ombudsman's duties under this part;
 - (d) provide information regarding the role, duties, and functions of the ombudsman to public agencies, private entities, and individuals;
 - (e) annually report to the:
 - (i) Child Welfare Legislative Oversight Panel;
 - (ii) governor;

- (iii) Division of Child and Family Services;
- (iv) executive director of the department; and
- (v) director of the division; and

(f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.

(5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.

(b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.

(c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.

(d) The ombudsman shall immediately notify the division if the ombudsman finds that a child needs protective custody~~, as that term is defined in Section 78A-6-105].~~

(e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.

(6) (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was designated by the department.

(7) (a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.

(b) The ombudsman shall make recommendations to the division if the ombudsman finds that:

(i) a matter should be further considered by the division;

(ii) an administrative act should be addressed, modified, or canceled;

(iii) action should be taken by the division with regard to one of its employees; or

(iv) any other action should be taken by the division.

Section 25. Section 62A-4a-250 is amended to read:

62A-4a-250. Attorney general responsibility.

~~[(1) On or before July 1, 1998, the division shall have established programs designed to meet the needs of minors who have not been adjudicated as abused or neglected, but who are otherwise committed to the custody of the division by the juvenile court pursuant to Section 78A-6-117, and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense.]~~

~~[(2) (a) The processes and procedures designed to meet the needs of children who are abused or neglected, described in Part 2, Child Welfare Services, and in Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, are not applicable to the minors described in Subsection (1).]~~

~~[(b) The procedures described in Subsection 78A-6-118(2)(a) are applicable to the minors described in Subsection (1).]~~

~~[(3) As of July 1, 1998, the]~~

The attorney general's office has the responsibility to represent the division with regard to actions involving minors ~~[described in Subsection (1)]~~ ordered to complete in-home family services under Section 78A-6-117.5. Nothing in this section may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with Section 78A-6-115.

Section 26. Section 62A-7-101 is amended to read:

62A-7-101. Definitions.

As used in this chapter:

(1) "Authority" means the Youth Parole Authority, established in accordance with Section 62A-7-501.

(2) "Board" means the Board of Juvenile Justice Services established in accordance with Section 62A-1-105.

(3) "Community-based program" means a nonsecure residential or nonresidential program designated to supervise and rehabilitate youth offenders in accordance with Subsection 78A-6-117(2) that prioritizes the least restrictive nonresidential setting, consistent with public safety, and designated or operated by or under contract with the division.

(4) "Control" means the authority to detain, restrict, and supervise a youth in a manner consistent with public safety and the well being of the youth and division employees.

(5) “Court” means the juvenile court.

(6) “Delinquent act” is an act which would constitute a felony or a misdemeanor if committed by an adult.

(7) “Detention” means secure detention or home detention.

(8) “Detention center” means a facility established in accordance with Title 62A, Chapter 7, Part 2, Detention Facilities.

(9) “Director” means the director of the Division of Juvenile Justice Services.

(10) “Discharge” means a written order of the Youth Parole Authority that removes a youth offender from its jurisdiction.

(11) “Division” means the Division of Juvenile Justice Services.

(12) “Home detention” means predispositional placement of a child in the child’s home or a surrogate home with the consent of the child’s parent, guardian, or custodian for conduct by a child who is alleged to have committed a delinquent act or postdispositional placement pursuant to Subsection 78A-6-117(2)(f) or 78A-6-1101(3).

(13) “Observation and assessment program” means a nonresidential service program operated or purchased by the division^[,] that is responsible for temporary custody of youth offenders for observation only for diagnostic assessment of minors, including for substance use disorder, mental health, psychological, and sexual behavior risk assessments.

(14) “Parole” means a conditional release of a youth offender from residency in a secure facility to live outside that facility under the supervision of the Division of Juvenile Justice Services or other person designated by the division.

(15) “Performance-based contracting” means a system of contracting with service providers for the provision of residential or nonresidential services that:

(a) provides incentives for the implementation of evidence-based juvenile justice programs or programs rated as effective for reducing recidivism by a standardized tool pursuant to Section 63M-7-208; and

(b) provides a premium rate allocation for a minor who receives the evidence-based dosage of treatment and successfully completes the program within three months.

[45] (16) “Receiving center” means a nonsecure, nonresidential program established by the division or under contract with the division that is responsible for juveniles taken into custody by a law enforcement officer for status offenses, infractions, or delinquent acts, but who do not meet the criteria for admission to secure detention or shelter.

[46] (17) “Rescission” means a written order of the Youth Parole Authority that rescinds a parole date.

[47] (18) “Revocation of parole” means a written order of the Youth Parole Authority that terminates parole supervision of a youth offender and directs return of the youth offender to the custody of a secure facility ~~[because of a violation of the conditions of parole]~~ after a hearing and a determination that there has been a violation of law or of a condition of parole that warrants a return to a secure facility in accordance with Section 62A-7-504.

[48] (19) “Runaway” means a youth who willfully leaves the residence of a parent or guardian without the permission of the parent or guardian.

[49] (20) “Secure detention” means predisposition placement in a facility operated by or under contract with the division, for conduct by a child who is alleged to have committed a delinquent act.

[20] (21) “Secure facility” means any facility operated by or under contract with the division, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

[21] (22) “Shelter” means the temporary care of children in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

[22] (23) (a) “Temporary custody” means control and responsibility of nonadjudicated youth until the youth can be released to the parent, guardian, a responsible adult, or to an appropriate agency.

(b) “Temporary custody” does not include a placement in a secure facility, including secure detention, or a residential community-based program operated or contracted by the division, except pursuant to Subsection 78A-6-117(2).

[23] (24) “Termination” means a written order of the Youth Parole Authority that terminates a youth offender from parole.

[24] (25) “Ungovernable” means a youth in conflict with a parent or guardian, and the conflict:

(a) results in behavior that is beyond the control or ability of the youth, or the parent or guardian, to manage effectively;

(b) poses a threat to the safety or well-being of the youth, the family, or others; or

(c) results in the situations in both Subsections [24] (25)(a) and (b).

[25] (26) “Work program” means a nonresidential public or private service work project established and administered by the division for youth offenders for the purpose of rehabilitation, education, and restitution to victims.

[26] (27) “Youth offender” means a person 12 years of age or older, and who has not reached 21 years of age, committed or admitted by the juvenile court to the custody, care, and jurisdiction of the division, for confinement in a secure facility or

supervision in the community, following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult in accordance with Section 78A-6-117.

~~[(27)]~~ (28) (a) "Youth services" means services provided in an effort to resolve family conflict:

(i) for families in crisis when a minor is ungovernable or runaway; or

(ii) involving a minor and the minor's parent or guardian.

(b) These services include efforts to:

(i) resolve family conflict;

(ii) maintain or reunite minors with their families; and

(iii) divert minors from entering or escalating in the juvenile justice system^[§].

(c) The services may provide:

(i) crisis intervention;

(ii) short-term shelter;

(iii) time out placement; and

(iv) family counseling.

Section 27. Section 62A-7-104 is amended to read:

62A-7-104. Division responsibilities.

(1) The division is responsible for all youth offenders committed to ~~the~~ the division by juvenile courts for secure confinement or supervision and treatment in the community in accordance with Section 78A-6-117.

(2) The division shall:

(a) establish and administer a continuum of community, secure, and nonsecure programs for all youth offenders committed to the division;

(b) establish and maintain all detention and secure facilities and set minimum standards for those facilities;

(c) establish and operate prevention and early intervention youth services programs for nonadjudicated youth placed with the division; and

(d) establish observation and assessment programs necessary to serve youth offenders ~~committed by the juvenile court for short-term observation under Subsection 78A-6-117(2)(e), and whenever possible, conduct the programs in settings separate and distinct from secure facilities for youth offenders~~ in a nonresidential setting under Subsection 78A-6-117(2)(e).

(3) The division shall place youth offenders committed to it in the most appropriate program for supervision and treatment.

(4) In any order committing a youth offender to the division, the juvenile court shall ~~specify~~ find whether the youth offender is being committed for secure confinement under Subsection

78A-6-117(2)(c), or placement in a community-based program^[,] under Subsection 78A-6-117(2)(c), and specify the criteria under Subsection 78A-6-117(2)(c) or (d) underlying the commitment. The division shall place the youth offender in the most appropriate program within the category specified by the court.

(5) The division shall employ staff necessary to:

(a) supervise and control youth offenders in secure facilities or in the community;

(b) supervise and coordinate treatment of youth offenders committed to the division for placement in community-based programs; and

(c) control and supervise adjudicated and nonadjudicated youth placed with the division for temporary services in receiving centers, youth services, and other programs established by the division.

(6) (a) Youth in the custody or temporary custody of the division are controlled or detained in a manner consistent with public safety and rules ~~promulgated~~ made by the division. In the event of an unauthorized leave from a secure facility, detention center, community-based program, receiving center, home, or any other designated placement, division employees have the authority and duty to locate and apprehend the youth, or to initiate action with local law enforcement agencies for assistance.

(b) A rule made by the division under this Subsection (6) may not permit secure detention based solely on the existence of multiple status offenses, misdemeanors, or infractions alleged in the same criminal episode.

(7) The division shall establish and operate compensatory-service work programs for youth offenders committed to the division by the juvenile court. The compensatory-service work program may not be residential and shall:

(a) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

(b) provide educational and prevocational programs in cooperation with the State Board of Education for youth offenders placed in the program; and

(c) provide counseling to youth offenders.

(8) The division shall establish minimum standards for the operation of all private residential and nonresidential rehabilitation facilities ~~which~~ that provide services to juveniles who have committed a delinquent act^[,] or infraction in this state or in any other state.

(9) In accordance with policies established by the board, the division shall provide regular training for staff of secure facilities, detention staff, case management staff, and staff of the community-based programs.

(10) (a) The division is authorized to employ special function officers, as defined in Section

53-13-105, to locate and apprehend minors who have absconded from division custody, transport minors taken into custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the division.

(b) Special function officers may be employed through contract with the Department of Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

(11) The division shall designate employees to obtain the saliva DNA specimens required under Section 53-10-403. The division shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(12) The division shall register with the Department of Corrections any person who:

(a) has been adjudicated delinquent based on an offense listed in Subsection 77-41-102(17)(a);

(b) has been committed to the division for secure confinement; and

(c) remains in the division's custody 30 days ~~prior to~~ before the person's 21st birthday.

(13) The division shall ensure that a program delivered to a youth offender under this section is evidence based in accordance with Section 63M-7-208.

Section 28. Section 62A-7-107.5 is amended to read:

62A-7-107.5. Contracts with private providers.

(1) This chapter does not prohibit the division from contracting with private providers or other agencies for the construction, operation, and maintenance of juvenile facilities or the provision of care, treatment, and supervision of youth offenders who have been committed to the care of the division.

(2) All programs for the care, treatment, and supervision of youth offenders committed to the division shall be licensed in compliance with division standards within six months after commencing operation.

(3) A contract for the care, treatment, and supervision of a youth offender committed to the division shall be executed in accordance with the performance-based contracting system developed under Section 63M-7-208.

Section 29. Section 62A-7-109.5 is amended to read:

62A-7-109.5. Restitution by youth offender.

(1) The division shall make reasonable efforts to ensure that restitution is made to the victim of a youth offender. Restitution shall be made through the employment of youth offenders in work programs. However, reimbursement to the victim of a youth offender is conditional upon that youth offender's involvement in the work program.

(2) Restitution ordered by the court may be made a condition of release, placement, or parole by the division. ~~[In the event of parole revocation or, where there is no court order requiring restitution to the victim and the loss to the victim has been determined, the division shall evaluate whether restitution is appropriate and, if so, the amount or type of restitution to which the victim is entitled.]~~

(3) The division shall notify the juvenile court of all restitution paid to victims through the employment of youth offenders in work programs.

Section 30. Section 62A-7-201 is amended to read:

62A-7-201. Confinement -- Facilities -- Restrictions.

(1) Children under 18 years of age, who are apprehended by any officer or brought before any court for examination under any provision of state law, may not be confined in jails, lockups, or cells used for persons 18 years of age or older who are charged with crime, or in secure postadjudication correctional facilities operated by the division, except as provided in Subsection (2), other specific statute, or in conformance with standards approved by the board.

(2) (a) Children charged with crimes under Section 78A-6-701, as a serious youth offender under Section 78A-6-702 and bound over to the jurisdiction of the district court, or certified to stand trial as an adult pursuant to Section 78A-6-703, if detained, shall be detained as provided in these sections.

(b) Children detained in adult facilities under Section 78A-6-702 or 78A-6-703 ~~prior to~~ before a hearing before a magistrate, or under Subsection 78A-6-113(3), may only be held in certified juvenile detention accommodations in accordance with rules ~~promulgated~~ made by the ~~division~~ Commission on Criminal and Juvenile Justice. Those rules shall include standards for acceptable sight and sound separation from adult inmates. The ~~division~~ Commission on Criminal and Juvenile Justice certifies facilities that are in compliance with the ~~division's~~ Commission on Criminal and Juvenile Justice's standards. ~~[The provisions of this]~~ This Subsection (2)(b) ~~do~~ does not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(3) In areas of low density population, the ~~division~~ Commission on Criminal and Juvenile Justice may, by rule, approve juvenile holding accommodations within adult facilities that have acceptable sight and sound separation. Those facilities shall be used only for short-term holding purposes, with a maximum confinement of six hours, for children alleged to have committed an act which would be a criminal offense if committed by an adult. Acceptable short-term holding purposes are: identification, notification of juvenile court officials, processing, and allowance of adequate time for evaluation of needs and circumstances regarding release or transfer to a shelter or detention facility. ~~[The provisions of this]~~ This

Subsection (3) ~~do~~ does not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(4) Children who are alleged to have committed an act ~~which~~ that would be a criminal offense if committed by an adult, may be detained in holding rooms in local law enforcement agency facilities for a maximum of two hours, for identification or interrogation, or while awaiting release to a parent or other responsible adult. Those rooms shall be certified by the ~~division~~ Commission on Criminal and Juvenile Justice, according to the ~~division's~~ Commission on Criminal and Juvenile Justice's rules. Those rules shall include provisions for constant supervision and for sight and sound separation from adult inmates.

(5) Willful failure to comply with ~~any of the provisions of~~ this section is a class B misdemeanor.

(6) (a) The division is responsible for the custody and detention of children under 18 years of age who require detention care ~~prior to~~ before trial or examination, or while awaiting assignment to a home or facility, as a dispositional placement under Subsection 78A-6-117(2)(f)(i) ~~or 78A-6-1101(3)(a)~~, and of youth offenders under Subsection 62A-7-504(8). ~~The provisions of this~~(9). This Subsection (6)(a) ~~do~~ does not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

(b) (i) The ~~division~~ Commission on Criminal and Juvenile Justice shall provide standards for custody or detention under Subsections (2)(b), (3), and (4), ~~and~~.

(ii) The division shall determine and set standards for conditions of care and confinement of children in detention facilities.

(c) All other custody or detention shall be provided by the division, or by contract with a public or private agency willing to undertake temporary custody or detention upon agreed terms, or in suitable premises distinct and separate from the general jails, lockups, or cells used in law enforcement and corrections systems. ~~The provisions of this~~ This Subsection (6)(c) ~~do~~ does not apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

Section 31. Section 62A-7-202 is amended to read:

62A-7-202. Location of detention facilities and services.

(1) The division shall provide detention facilities and services in each county, or group of counties, as the population demands, in accordance with ~~the provisions of~~ this chapter.

(2) The division ~~, through its detention centers,~~ is responsible for development, implementation, and administration of home detention services available in every judicial district, and shall establish criteria for placement on home detention.

(3) (a) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act, establishing standards for admission to secure detention and home detention programs.

(b) The rules made under this Subsection (3) shall prioritize use of home detention for a minor who might otherwise be held in secure detention.

(4) The division shall provide training regarding implementation of the rules to law enforcement agencies, division employees, juvenile court employees, and other affected agencies and individuals upon their request.

Section 32. Section 62A-7-404 is amended to read:

62A-7-404. Commitment -- Termination and review.

(1) A youth offender who has been committed to a secure facility shall remain until the offender reaches the age of 21, is paroled, or is discharged.

(2) A youth offender who has been committed to a secure facility shall appear before the authority within ~~90~~ 45 days after commitment~~,~~ for review of treatment plans and establishment of parole release guidelines.

(3) (a) For a youth offender committed to a secure facility, except a youth offender excluded under Subsection (5), the authority shall set a presumptive term of commitment that does not exceed three to six months.

(b) The authority shall release the minor onto parole at the end of the presumptive term of commitment unless at least one the following circumstances exists:

(i) termination would interrupt the completion of a necessary treatment program; or

(ii) the youth commits a new misdemeanor or felony offense.

(c) Completion of a program under Subsection (3)(b)(i) shall be determined by a minor's consistent attendance and completing the goals of the necessary treatment program as determined by the Youth Parole Authority after consideration of the recommendations of a licensed service provider.

(d) The authority may extend the length of commitment and delay parole release for the time needed to address the specific circumstance only if one of the circumstances under Subsection (3)(b) exists.

(e) The length of the extension and the grounds for the extension shall be recorded and reported annually to the Commission on Criminal and Juvenile Justice.

(4) (a) For a youth offender committed to a secure facility, except a youth offender excluded under Subsection (5), the authority shall set a presumptive term of parole supervision that does not exceed three to four months.

(b) A minor whom the authority determines is unable to return home immediately upon release may serve the term of parole in the home of a

qualifying relative or guardian, or at an independent living program contracted or operated by the division.

(c) The authority shall release the minor from parole and terminate jurisdiction at the end of the presumptive term of parole unless at least one the following circumstances exists:

(i) termination would interrupt the completion of a necessary treatment program;

(ii) the youth commits a new misdemeanor or felony offense; or

(iii) service hours have not been completed.

(d) Completion of a program under Subsection (4)(c) shall be determined by a minor's consistent attendance and completing the goals of the necessary treatment program as determined by the Youth Parole Authority after consideration of the recommendations of a licensed service provider.

(e) If one of the circumstances under Subsection (4)(c) exists, the authority may delay parole release only for the time needed to address the specific circumstance.

(f) Grounds for extension of the presumptive length of parole and the length of the extension shall be recorded and reported annually to the Commission on Criminal and Juvenile Justice.

(g) In the event of an unauthorized leave lasting more than 24 hours, the term of parole shall toll until the minor returns.

(5) Subsections (3) and (4) do not apply to a youth offender committed to a secure facility for:

(a) Section 76-5-202, attempted aggravated murder;

(b) Section 76-5-203, murder or attempted murder;

(c) Section 76-5-405, aggravated sexual assault;

(d) a felony violation of:

(i) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(ii) Section 76-5-302, aggravated kidnapping; or

(iii) Section 76-6-103, aggravated arson;

(e) Section 76-6-203, aggravated burglary;

(f) Section 76-6-302, aggravated robbery;

(g) Section 76-10-508.1, felony discharge of a firearm; or

(h) an offense other than those listed in Subsections (5)(a) through (g) involving the use of a dangerous weapon that would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that also would have been a felony if committed by an adult.

(6) (a) The division may continue to have responsibility for any minor discharged under this section from parole until 21 years of age for the

purposes of specific educational or rehabilitative programs, under conditions agreed upon by both the division and the minor and terminable by either.

(b) The division shall offer the educational or rehabilitative program before the minor's discharge date as provided in this section.

(c) Notwithstanding Subsection (6)(b), a minor may request and the division shall consider any such request for the services described in this section, for up to 90 days after the minor's effective date of discharge, even when the minor has previously declined services or services were terminated for noncompliance, and may reach an agreement with the minor, terminable by either, to provide the services described in this section until the minor attains the age of 21.

Section 33. Section 62A-7-501 is amended to read:

62A-7-501. Youth Parole Authority -- Expenses -- Responsibilities -- Procedures.

(1) There is created within the division a Youth Parole Authority.

(2) (a) The authority is composed of 10 part-time members and five pro tempore members who are residents of this state. No more than three pro tempore members may serve on the authority at any one time.

(b) Throughout this section, the term "member" refers to both part-time and pro tempore members of the Youth Parole Authority.

(3) (a) Except as required by Subsection (3)(b), members shall be appointed to four-year terms by the governor with the consent of the Senate.

(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of authority members are staggered so that approximately half of the authority is appointed every two years.

(4) Each member shall have training or experience in social work, law, juvenile or criminal justice, or related behavioral sciences.

(5) When a vacancy occurs in the membership for any reason, the replacement member shall be appointed for the unexpired term.

(6) During the tenure of [his] the member's appointment, a member may not:

(a) be an employee of the department, other than in [his] the member's capacity as a member of the authority;

(b) hold any public office;

(c) hold any position in the state's juvenile justice system; or

(d) be an employee, officer, advisor, policy board member, or subcontractor of any juvenile justice agency or its contractor.

(7) In extraordinary circumstances or when a regular member is absent or otherwise unavailable,

the chair may assign a pro tempore member to act in the absent member's place.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(9) The authority shall determine appropriate parole dates for youth offenders, based on guidelines established by the board and in accordance with Section 62A-7-404. The board shall review and update policy guidelines annually.

(10) Youth offenders may be paroled to their own homes, ~~[to a residential community-based program, to a nonresidential community-based treatment program]~~ to an independent living program contracted or operated by the division, to an approved independent living setting, or to other appropriate residences of qualifying relatives or guardians, but shall remain on parole until parole is terminated by the authority in accordance with Section 62A-7-404.

(11) The division's case management staff shall implement parole release plans and shall supervise youth offenders while on parole.

(12) The division shall permit the authority to have reasonable access to youth offenders in secure facilities and shall furnish all pertinent data requested by the authority in matters of parole, revocation, and termination.

Section 34. Section 62A-7-504 is amended to read:

62A-7-504. Parole revocation -- Hearing -- Procedures.

(1) The authority may revoke the parole of a youth offender only after a hearing and upon determination that there has been a violation of law or of a condition of parole by the youth offender ~~[which]~~ that warrants [his] the youth offender's return to a secure facility. The parole revocation hearing shall be held at a secure facility.

(2) Before returning a youth offender to a secure facility for a parole revocation or rescission hearing, the division shall provide a prerevocation or prerescission hearing within the vicinity of the alleged violation, to determine whether there is probable cause to believe that the youth offender violated the conditions of ~~[his]~~ the youth offender's parole. Upon a finding of probable cause, the youth offender may be remanded to a secure facility, pending a revocation hearing.

(3) The authority shall only proceed with the parole revocation or rescission process in accordance with the system of appropriate responses developed pursuant to Section 78A-6-123 on and after July 1, 2018.

~~[(3)]~~ (4) A paroled youth offender is entitled to legal representation at the parole revocation hearing, and if the youth offender or ~~[his]~~ the youth offender's family has requested but cannot afford legal representation, the authority shall appoint legal counsel.

~~[(4)]~~ (5) The authority and the administrative officer have power to issue subpoenas, compel attendance of witnesses, compel production of books, papers and other documents, administer oaths, and take testimony under oath for the purposes of conducting the hearings.

~~[(5)]~~ (6) (a) A youth offender shall receive timely advance notice of the date, time, place, and reason for the hearing, and has the right to appear at the hearing.

(b) The authority shall provide the youth offender an opportunity to be heard, to present witnesses and evidence, and to confront and cross-examine adverse witnesses, unless there is good cause for disallowing that confrontation.

~~[(6)]~~ (7) Decisions in parole revocation or rescission hearings shall be reached by a majority vote of the present members of the authority.

~~[(7)]~~ (8) The administrative officer shall maintain summary records of all hearings and provide written notice to the youth offender of the decision and reason for the decision.

~~[(8)]~~ (9) (a) The authority may issue a warrant to order any peace officer or division employee to take into custody a youth offender alleged to be in violation of parole conditions in accordance with Section 78A-6-123 on and after July 1, 2018.

(b) The division may issue a warrant to any peace officer or division employee to retake a youth offender who has escaped from a secure facility.

(c) Based upon the warrant issued under this Subsection ~~[(8)]~~ (9), a youth offender may be held in a local detention facility for no longer than 48 hours, excluding weekends and legal holidays, to allow time for a prerevocation or prerescission hearing of the alleged parole violation, or in the case of an escapee, arrangement for transportation to the secure facility.

Section 35. Section 62A-7-506 is amended to read:

62A-7-506. Discharge of youth offender.

(1) A youth offender may be discharged from the jurisdiction of the division at any time, by written order of the Youth Parole Authority, upon a finding that no further purpose would be served by secure confinement or supervision in a community setting.

(2) Discharge of a youth offender shall be in accordance with policies approved by the board and Section 62A-7-404.

(3) Discharge of a youth offender is a complete release of all penalties incurred by adjudication of the offense for which the youth offender was committed.

Section 36. Section 62A-7-601 is amended to read:

62A-7-601. Youth services for prevention and early intervention -- Program standards -- Program services.

(1) The division shall establish and operate prevention and early intervention youth services programs.

(2) The division shall adopt with the approval of the board statewide policies and procedures, including minimum standards for the organization and operation of youth services programs.

(3) The division shall establish housing, programs, and procedures to ensure that youth who are receiving services under this section and who are not in the custody of the division are served separately from youth who are in custody of the division.

(4) The division may enter into contracts with state and local governmental entities and private providers to provide the youth services.

(5) The division shall establish and administer juvenile receiving centers and other programs to provide temporary custody, care, risk-needs assessments, evaluations, and control for nonadjudicated and adjudicated youth placed with the division.

(6) The division shall prioritize use of evidence-based juvenile justice programs and practices.

Section 37. Section 62A-7-701 is amended to read:

62A-7-701. Community-based programs.

(1) (a) The division shall operate residential and nonresidential community-based programs to provide care, treatment, and supervision ~~for~~ paroled youth offenders and for youth offenders committed to the division by juvenile courts.

(b) The division shall operate or contract for nonresidential community-based programs and independent living programs to provide care, treatment, and supervision of paroled youth offenders.

(2) The division shall adopt, with the approval of the board, minimum standards for the organization and operation of community-based corrections programs for youth offenders.

(3) The division shall place youth offenders committed to it for community-based programs in the most appropriate program based upon the division's evaluation of the youth offender's needs and the division's available resources in accordance with Sections 62A-7-404 and 78A-6-117.

Section 38. Section 63I-2-262 is amended to read:

63I-2-262. Repeal dates, Title 62A.

Section 62A-1-111.5 is repealed July 1, 2018.

Section 39. Section 63M-7-204 is amended to read:

63M-7-204. Duties of commission.

(1) The State Commission on Criminal and Juvenile Justice administration shall:

~~[(1)]~~ (a) promote the commission's purposes as enumerated in Section 63M-7-201;

~~[(2)]~~ (b) promote the communication and coordination of all criminal and juvenile justice agencies;

~~[(3)]~~ (c) study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs that are directed toward the reduction of crime in the state;

~~[(4)]~~ (d) study, evaluate, and report on programs initiated by state and local agencies to address reducing recidivism, including changes in penalties and sentencing guidelines intended to reduce recidivism, costs savings associated with the reduction in the number of inmates, and evaluation of expenses and resources needed to meet goals regarding the use of treatment as an alternative to incarceration, as resources allow;

~~[(5)]~~ (e) study, evaluate, and report on policies, procedures, and programs of other jurisdictions which have effectively reduced crime;

~~[(6)]~~ (f) identify and promote the implementation of specific policies and programs the commission determines will significantly reduce crime in Utah;

~~[(7)]~~ (g) provide analysis and recommendations on all criminal and juvenile justice legislation, state budget, and facility requests, including program and fiscal impact on all components of the criminal and juvenile justice system;

~~[(8)]~~ (h) provide analysis, accountability, recommendations, and supervision for state and federal criminal justice grant money;

~~[(9)]~~ (i) provide public information on the criminal and juvenile justice system and give technical assistance to agencies or local units of government on methods to promote public awareness;

~~[(10)]~~ (j) promote research and program evaluation as an integral part of the criminal and juvenile justice system;

~~[(11)]~~ (k) provide a comprehensive criminal justice plan annually;

~~[(12)]~~ (l) review agency forecasts regarding future demands on the criminal and juvenile justice systems, including specific projections for secure bed space;

~~[(13)]~~ (m) promote the development of criminal and juvenile justice information systems that are consistent with common standards for data storage and are capable of appropriately sharing information with other criminal justice information systems by:

~~[(a)]~~ (i) developing and maintaining common data standards for use by all state criminal justice agencies;

[(b)] (ii) annually performing audits of criminal history record information maintained by state criminal justice agencies to assess their accuracy, completeness, and adherence to standards;

[(e)] (iii) defining and developing state and local programs and projects associated with the improvement of information management for law enforcement and the administration of justice; and

[(d)] (iv) establishing general policies concerning criminal and juvenile justice information systems and making rules as necessary to carry out the duties under [this] Subsection [(13)] (1)(k) and this Subsection [(14)] (1)(m);

[(14)] (n) allocate and administer grants, from money made available, for approved education programs to help prevent the sexual exploitation of children;

[(15)] (o) allocate and administer grants funded from money from the Law Enforcement Operations Account created in Section 51-9-411 for law enforcement operations and programs related to reducing illegal drug activity and related criminal activity;

[(16)] (p) request, receive, and evaluate data and recommendations collected and reported by agencies and contractors related to policies recommended by the commission regarding recidivism reduction; [and]

[(17)] (q) establish and administer a performance incentive grant program that allocates funds appropriated by the Legislature to programs and practices implemented by counties that reduce recidivism and reduce the number of offenders per capita who are incarcerated[.];

(r) oversee or designate an entity to oversee the implementation of juvenile justice reforms; and

(s) make rules and administer the juvenile holding room standards and juvenile jail standards to align with the Juvenile Justice and Delinquency Prevention Act requirements pursuant to 42 U.S.C. Sec. 5633.

(2) If the commission designates an entity under Subsection (1)(r), the commission shall ensure that the membership of the entity includes representation from the three branches of government and, as determined by the commission, representation from relevant stakeholder groups across all parts of the juvenile justice system, including county representation.

Section 40. Section 63M-7-208 is enacted to read:

63M-7-208. Juvenile justice oversight -- Delegation -- Effective dates.

(1) The Commission on Criminal and Juvenile Justice shall:

(a) support implementation and expansion of evidence-based juvenile justice programs and practices, including assistance regarding

implementation fidelity, quality assurance, and ongoing evaluation;

(b) examine and make recommendations on the use of third-party entities or an intermediary organization to assist with implementation and to support the performance-based contracting system authorized in Subsection (1)(m);

(c) oversee the development of performance measures to track juvenile justice reforms, and ensure early and ongoing stakeholder engagement in identifying the relevant performance measures;

(d) evaluate currently collected data elements throughout the juvenile justice system and contract reporting requirements to streamline reporting, reduce redundancies, eliminate inefficiencies, and ensure a focus on recidivism reduction;

(e) review averted costs from reductions in out-of-home placements for juvenile justice youth placed with the Division of Juvenile Justice Services and the Division of Child and Family Services, and make recommendations to prioritize the reinvestment and realignment of resources into community-based programs for youth living at home, including the following:

(i) statewide expansion of:

(A) receiving centers;

(B) mobile crisis outreach teams, as defined in Section 78A-6-105;

(C) youth courts; and

(D) victim-offender mediation;

(ii) statewide implementation of nonresidential diagnostic assessment;

(iii) statewide availability of evidence-based programs and practices including cognitive behavioral and family therapy programs for minors assessed by a validated risk and needs assessment as moderate or high risk;

(iv) implementation and infrastructure to support the sustainability and fidelity of evidence-based juvenile justice programs, including resources for staffing, transportation, and flexible funds; and

(v) early intervention programs such as family strengthening programs, family wraparound services, and proven truancy interventions;

(f) assist the Administrative Office of the Courts in the development of a statewide sliding scale for the assessment of fines, fees, and restitution, based on the ability of the minor's family to pay;

(g) analyze the alignment of resources and the roles and responsibilities of agencies, such as the operation of early intervention services, receiving centers, and diversion, and make recommendations to reallocate functions as appropriate, in accordance with Section 62A-7-601;

(h) ensure that data reporting is expanded and routinely review data in additional areas, including:

(i) referral and disposition data by judicial district;

(ii) data on the length of time minors spend in the juvenile justice system, including the total time spent under court jurisdiction, on community supervision, and in each out-of-home placement;

(iii) recidivism data for diversion types pursuant to Section 78A-6-602 and disposition types pursuant to Section 78A-6-117, including tracking minors into the adult corrections system;

(iv) change in aggregate risk levels from the time minors receive services, are under supervision, and are in out-of-home placement; and

(v) dosage of programming;

(i) develop a reasonable timeline within which all programming delivered to minors in the juvenile justice system must be evidence-based or consist of practices that are rated as effective for reducing recidivism by a standardized program evaluation tool;

(j) provide guidelines to be considered by the Administrative Office of the Courts and the Division of Juvenile Justice Services in developing tools considered by the Administrative Office of the Courts and the Division of Juvenile Justice Services in developing or selecting tools to be used for the evaluation of juvenile justice programs;

(k) develop a timeline to support improvements to juvenile justice programs to achieve reductions in recidivism and review reports from relevant state agencies on progress toward reaching that timeline;

(l) subject to Subsection (2), assist in the development of training for juvenile justice stakeholders, including educators, law enforcement officers, probation staff, judges, Division of Juvenile Justice Services staff, Division of Child and Family Services staff, and program providers;

(m) subject to Subsection (3), assist in the development of a performance-based contracting system, which shall be developed by the Administrative Office of the Courts and the Division of Juvenile Justice Services for contracted services in the community and contracted out-of-home placement providers;

(n) assist in the development of a validated detention risk assessment tool that shall be developed or adopted and validated by the Administrative Office of the Courts and the Division of Juvenile Justice Services as provided in Section 78A-6-124 on and after July 1, 2018; and

(o) annually issue and make public a report to the governor, president of the Senate, speaker of the House of Representatives, and chief justice of the Utah Supreme Court on the progress of the reforms and any additional areas in need of review.

(2) Training described in Subsection (1)(l) should include instruction on evidence-based programs and principles of juvenile justice, such as risk,

needs, responsivity, and fidelity, and shall be supplemented by the following topics:

(a) adolescent development;

(b) identifying and using local behavioral health resources;

(c) implicit bias;

(d) cultural competency;

(e) graduated responses;

(f) Utah juvenile justice system data and outcomes; and

(g) gangs.

(3) The system described in Subsection (1)(m) shall provide incentives for:

(a) the use of evidence-based juvenile justice programs and practices rated as effective by the tools selected in accordance with Subsection (1)(j);

(b) the use of three-month timelines for program completion; and

(c) evidence-based programs and practices for minors living at home in rural areas.

(4) The Commission on Criminal and Juvenile Justice may delegate the duties imposed under this section to a subcommittee or board established by the Commission on Criminal and Juvenile Justice in accordance with Subsection 63M-7-204(2).

(5) Subsections (1)(a) through (c) take effect August 1, 2017. The remainder of this section takes effect July 1, 2018.

Section 41. Section 63M-7-404 is amended to read:

63M-7-404. Purpose -- Duties.

(1) The purpose of the commission shall be to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council about the sentencing and release of juvenile and adult offenders in order to:

(a) respond to public comment;

(b) relate sentencing practices and correctional resources;

(c) increase equity in criminal sentencing;

(d) better define responsibility in criminal sentencing; and

(e) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority.

(2) (a) The commission shall modify the sentencing guidelines for adult offenders to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism.

(b) The modifications under Subsection (2)(a) shall be for the purposes of protecting the public and ensuring efficient use of state funds.

(3) (a) The commission shall modify the criminal history score in the sentencing guidelines for adult

offenders to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism.

(b) The modifications to the criminal history score under Subsection (3)(a) shall include factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again.

(4) (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on probation and:

(i) who have violated one or more conditions of probation; and

(ii) whose probation has been revoked by the court.

(b) The guidelines shall consider the seriousness of the violation of the conditions of probation, the probationer's conduct while on probation, and the probationer's criminal history.

(5) (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on parole and:

(i) who have violated a condition of parole; and

(ii) whose parole has been revoked by the Board of Pardons and Parole.

(b) The guidelines shall consider the seriousness of the violation of the conditions of parole, the individual's conduct while on parole, and the individual's criminal history.

(6) The commission shall establish graduated sanctions to facilitate the prompt and effective response to an individual's violation of the terms of probation or parole by the adult probation and parole section of the Department of Corrections in order to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism, including:

(a) sanctions to be used in response to a violation of the terms of probation or parole;

(b) when violations should be reported to the court or the Board of Pardons and Parole; and

(c) a range of sanctions that may not exceed a period of incarceration of more than:

(i) three consecutive days; and

(ii) a total of five days in a period of 30 days.

(7) The commission shall establish graduated incentives to facilitate a prompt and effective response by the adult probation and parole section of the Department of Corrections to an offender's:

(a) compliance with the terms of probation or parole; and

(b) positive conduct that exceeds those terms.

(8) (a) The commission shall establish guidelines, including sanctions and incentives, to

appropriately respond to negative and positive behavior of juveniles who are:

(i) nonjudicially adjusted;

(ii) placed on diversion;

(iii) placed on probation;

(iv) placed on community supervision;

(v) placed in an out-of-home placement; or

(vi) placed in a secure care facility.

(b) In establishing guidelines under this Subsection (8), the commission shall consider:

(i) the seriousness of the negative and positive behavior;

(ii) the juvenile's conduct post-adjudication; and

(iii) the delinquency history of the juvenile.

(c) The guidelines shall include:

(i) responses that are swift and certain;

(ii) a continuum of community-based options for juveniles living at home;

(iii) responses that target the individual's criminogenic risk and needs; and

(iv) incentives for compliance, including earned discharge credits.

Section 42. Section 76-5-413 is amended to read:

76-5-413. Custodial sexual relations or misconduct with youth receiving state services -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

(a) "Actor" means:

(i) a person employed by the Department of Human Services, as created in Section 62A-1-102, or an employee of a private provider or contractor; or

(ii) a person employed by the juvenile court of the state, or an employee of a private provider or contractor.

(b) "Department" means the Department of Human Services created in Section 62A-1-102.

(c) "Juvenile court" means the juvenile court of the state created in Section 78A-6-102.

(d) "Private provider or contractor" means any person or entity that contracts with the:

(i) department to provide services or functions that are part of the operation of the department; or

(ii) juvenile court to provide services or functions that are part of the operation of the juvenile court.

(e) "Youth receiving state services" means a person:

(i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

(A) in the custody of the department under Subsection 78A-6-117(2)(c)[(4)]; or

(B) receiving services from any division of the department if any portion of the costs of these services is covered by public money as defined in Section 76-8-401; or

(ii) younger than 21 years of age who is:

(A) in the custody of the Division of Juvenile Justice Services, or the Division of Child and Family Services; or

(B) under the jurisdiction of the juvenile court.

(2) (a) An actor commits custodial sexual relations with a youth receiving state services if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a youth receiving state services;

(b) engaging in any sexual act with a youth receiving state services involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a youth receiving state services by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct with a youth receiving state services if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a youth receiving state services;

(b) touching the breast of a female youth receiving state services;

(c) otherwise taking indecent liberties with a youth receiving state services; or

(d) causing a youth receiving state services to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

(i) mistakenly believed the youth receiving state services to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the youth receiving state services.

(b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 43. Section 76-9-701 is amended to read:

76-9-701. Intoxication -- Release of arrested person or placement in detoxification center.

(1) A person is guilty of intoxication if the person is under the influence of alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger the person or another, in a public place or in a private place where the person unreasonably disturbs other persons.

(2) (a) A peace officer or a magistrate may release from custody a person arrested under this section if the peace officer or magistrate believes imprisonment is unnecessary for the protection of the person or another.

(b) A peace officer may take the arrested person to a detoxification center or other special facility as an alternative to incarceration or release from custody.

(3) (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:

(i) order the minor to complete a screening as defined in Section 41-6a-501;

(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance [abuse] use disorder treatment as indicated by an assessment.

(b) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:

(i) order the minor to complete a screening as defined in Section 41-6a-501;

(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance [abuse] use disorder treatment as indicated by an assessment.

(4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.

(b) Notwithstanding the requirement in Subsection (4)(a), the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's first violation of this section; and

(ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

(B) the minor demonstrates substantial progress in substance [abuse] use disorder treatment.

(c) Notwithstanding the requirement in Subsection (4)(a) and in accordance with the requirements of Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's second or subsequent violation of this section;

(ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance [abuse] use disorder treatment; and

(iii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a); or

(B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a).

(5) When a person who is ~~[at least 13 years old,~~ but] younger than 18 years old[,] is found by a court to have violated this section, the provisions regarding suspension of the driver's license under Section 78A-6-606 apply to the violation.

(6) Notwithstanding Subsections (3)(a) and (b), if a minor is adjudicated under Section 78A-6-117, the court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention based on the results of a validated assessment.

~~[(6)] (7)~~ When the court issues an order suspending a person's driving privileges for a violation of this section, the person's driver license shall be suspended under Section 53-3-219.

~~[(7)] (8)~~ An offense under this section is a class C misdemeanor.

Section 44. Section 76-10-105 is amended to read:

76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.

(1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's possession any

cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of a class C misdemeanor and subject to:

(a) a minimum fine or penalty of \$60; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is subject to the jurisdiction of the juvenile court and subject to Section 78A-6-602, unless the violation is committed on school property. If a violation under this section is adjudicated under Section 78A-6-117, the minor may be subject to the following:

(a) a ~~minimum~~ fine or penalty ~~of \$60~~, in accordance with Section 78A-6-117; and

(b) participation in a court-approved tobacco education program, which may include a participation fee.

(3) A compliance officer appointed by a board of education under Section 53A-3-402 may not issue ~~citations~~ a citation for ~~violations~~ a violation of this section committed on school property. ~~Cited violations shall be reported to the appropriate juvenile court.~~ A cited violation committed on school property shall be addressed in accordance with Section 53A-11-911.

Section 45. Section 78A-6-103 is amended to read:

78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses:

(i) in Section 53A-11-911 until such time that the child is referred to the courts under Section 53A-11-911; and

(ii) in Subsection 78A-7-106(2);

~~(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed before the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;~~

~~(c)~~ (b) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

~~(d)~~ (c) a protective order for a child pursuant to ~~the provisions of~~ Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile

court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

~~(e)~~ (d) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

~~(f)~~ (e) the emancipation of a minor in accordance with Part 8, Emancipation;

~~(g)~~ (f) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;

~~(h)~~ (g) the treatment or commitment of a minor who has an intellectual disability;

~~(i) a minor who is a habitual truant from school;~~

~~(j)~~ (h) the judicial consent to the marriage of a child under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a child when consent is required by law;

~~(k)~~ (i) any parent or parents of a child committed to a secure youth ~~corrections~~ facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;

~~(l)~~ (j) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

~~(m)~~ (k) subject to Subsection (8), the treatment or commitment of a child with a mental illness. ~~The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital;~~

~~(n)~~ (l) the commitment of a child to a secure drug or alcohol facility in accordance with Section 62A-15-301;

~~(o)~~ (m) a minor found not competent to proceed pursuant to Section 78A-6-1301;

~~(p)~~ (n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63G-4-402; and

~~[(a)]~~ (o) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

(2) (a) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

~~[(a)]~~ (i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

~~[(b)]~~ (ii) Section 73-18-12, reckless operation; and

~~[(e)]~~ (iii) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(b) A juvenile court may only order substance use disorder treatment or an educational series if the minor has an assessed need for the intervention on the basis of the results of a validated assessment.

(3) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that child ~~[where]~~ when, despite earnest and persistent efforts by the ~~division~~ or agency, the child has demonstrated that the child:

(a) is beyond the control of the child's parent, guardian, or lawful custodian ~~[, or school authorities]~~ to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

(4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78A-6-702.

(6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

(7) The juvenile court has jurisdiction of matters transferred to it by another trial court pursuant to Subsection 78A-7-106~~[(7)]~~(5) and subject to Section 53A-11-911.

(8) The court may commit a child to the physical custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but not directly to the Utah State Hospital.

Section 46. Section 78A-6-105 is amended to read:

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:

(i) (A) nonaccidental harm of a child;

~~[(ii)]~~ (B) threatened harm of a child;

~~[(iii)]~~ (C) sexual exploitation;

~~[(iv)]~~ (D) sexual abuse; or

~~[(v)]~~ (E) human trafficking of a child in violation of Section 76-5-308.5~~[-];~~ or

~~[(b)]~~ (ii) that a child's natural parent:

~~[(i)]~~ (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

~~[(ii)]~~ (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

~~[(iii)]~~ (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

~~[(e)]~~ (b) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means a person under 18 years of age.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) “Clandestine laboratory operation” means the same as that term is defined in Section 58-37d-3.

(9) “Commit” means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) “Court” means the juvenile court.

(11) “Criminogenic risk factors” means evidence-based factors that are associated with a minor’s likelihood of reoffending.

(12) “Delinquent act” means an act that would constitute a felony or misdemeanor if committed by an adult.

(13) (11) “Dependent child” includes a child who is homeless or without proper care through no fault of the child’s parent, guardian, or custodian.

(14) (12) “Deprivation of custody” means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(15) (13) “Detention” means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(16) “Detention risk assessment tool” means an evidence-based tool established under Section 78A-6-124, on and after July 1, 2018, that assesses a minor’s risk of failing to appear in court or reoffending pre-adjudication and designed to assist in making detention determinations.

(17) (14) “Division” means the Division of Child and Family Services.

(18) “Evidence-based” means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.

(19) “Formal probation” means a minor is under field supervision by the probation department or other agency designated by the court and subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

(20) (15) “Formal referral” means a written report from a peace officer or other person informing the court that a minor is or appears to be

within the court’s jurisdiction and that a ~~petition may be filed~~ case must be reviewed.

~~(16)~~ (21) “Group rehabilitation therapy” means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

~~(17)~~ (22) “Guardianship of the person” includes the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

(d) legal custody, if legal custody is not vested in another person, agency, or institution.

~~(18)~~ (23) “Habitual truant” means the same as that term is defined in Section 53A-11-101.

~~(19)~~ (24) “Harm” means:

(a) physical or developmental injury or damage;

(b) emotional damage that results in a serious impairment in the child’s growth, development, behavior, or psychological functioning;

(c) sexual abuse; or

(d) sexual exploitation.

~~(20)~~ (25) (a) “Incest” means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator’s ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection ~~(20)~~ (25)(a) include:

(i) blood relationships of the whole or half blood, without regard to legitimacy;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(26) “Intake probation” means a period of court monitoring that does not include field supervision, but is overseen by a juvenile probation officer, during which a minor is subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

~~(21)~~ (27) “Intellectual disability” means:

(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;

(b) concurrent deficits or impairments in present adaptive functioning, the person’s effectiveness in meeting the standards expected for ~~his or her~~ the person’s age by the person’s cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills,

use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

(c) the onset is before the person reaches the age of 18 years.

~~[(22)]~~ (28) “Legal custody” means a relationship embodying the following rights and duties:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(29) “Material loss” means an uninsured:

(a) property loss;

(b) out-of-pocket monetary loss;

(c) lost wages; or

(d) medical expenses.

~~[(23)]~~ (30) “Mental disorder” means a serious emotional and mental disturbance that severely limits a minor’s development and welfare over a significant period of time.

~~[(24)]~~ (31) “Minor” means:

(a) a child; or

(b) a person who is:

(i) at least 18 years of age and younger than 21 years of age; and

(ii) under the jurisdiction of the juvenile court.

(32) “Mobile crisis outreach team” means a crisis intervention service for minors or families of minors experiencing behavioral health or psychiatric emergencies.

~~[(25)]~~ (33) “Molestation” means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

~~[(26)]~~ (34) “Natural parent” means a minor’s biological or adoptive parent, and includes the minor’s noncustodial parent.

~~[(27)]~~ (35) (a) “Neglect” means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child’s health, safety, morals, or well-being; or

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection ~~[(27)]~~ (35)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, ~~[or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a);]~~ the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) (i) Notwithstanding Subsection ~~[(27)]~~ (35)(a), a health care decision made for a child by the child’s parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection ~~[(27)]~~ (35)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion and from pursuing care and treatment pursuant to the second health care opinion, as described in Section 78A-6-301.5.

~~[(28)]~~ (36) “Neglected child” means a child who has been subjected to neglect.

~~[(29)]~~ (37) “Nonjudicial adjustment” means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor’s parent, legal guardian, or custodian.

~~[(30)]~~ (38) “Not competent to proceed” means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

[~~(31)~~] (39) “Physical abuse” means abuse that results in physical injury or damage to a child.

[~~(32)~~] (40) “Probation” means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor’s home under prescribed conditions ~~[and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed].~~

[~~(33)~~] (41) “Protective supervision” means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor’s home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

[~~(34)~~] (42) “Related condition” means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

[~~(35)~~] (43) (a) “Residual parental rights and duties” means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

- (i) the responsibility for support;
- (ii) the right to consent to adoption;
- (iii) the right to determine the child’s religious affiliation; and
- (iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, “residual parental rights and duties” also include the right to consent to:

- (i) marriage;
- (ii) enlistment; and
- (iii) major medical, surgical, or psychiatric treatment.

[~~(36)~~] (44) “Secure facility” means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation pursuant to Subsection 78A-6-117(2)(d).

[~~(37)~~] (45) “Severe abuse” means abuse that causes or threatens to cause serious harm to a child.

[~~(38)~~] (46) “Severe neglect” means neglect that causes or threatens to cause serious harm to a child.

[~~(39)~~] (47) “Sexual abuse” means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

- (i) there is an indication of force or coercion;
- (ii) the children are related, as defined in Subsections [~~(20)~~] (25)(a) and [~~(20)~~] (b);
- (iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years of age or older; or
- (iv) there is a disparity in chronological age of four or more years between the two children; or

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

- (i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;
- (ii) child bigamy, Section 76-7-101.5;
- (iii) incest, Section 76-7-102;
- (iv) lewdness, Section 76-9-702;
- (v) sexual battery, Section 76-9-702.1;
- (vi) lewdness involving a child, Section 76-9-702.5; or
- (vii) voyeurism, Section 76-9-702.7.

[~~(40)~~] (48) “Sexual exploitation” means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

- (i) pose in the nude for the purpose of sexual arousal of any person; or
- (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

- (i) in the nude, for the purpose of sexual arousal of any person; or
- (ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

[~~(41)~~] (49) “Shelter” means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

~~[(42) “State supervision” means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.]~~

(50) “Status offense” means a violation of the law that would not be a violation but for the age of the offender.

[(43)] (51) “Substance abuse” means the misuse or excessive use of alcohol or other drugs or substances.

[(44)] (52) “Substantiated” means the same as that term is defined in Section 62A-4a-101.

[(45)] (53) “Supported” means the same as that term is defined in Section 62A-4a-101.

[(46)] (54) “Termination of parental rights” means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

[(47)] (55) “Therapist” means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

[(48)] (56) “Unsubstantiated” means the same as that term is defined in Section 62A-4a-101.

(57) “Validated risk and needs assessment” means an evidence-based tool that assesses a minor’s risk of reoffending and a minor’s criminogenic needs.

[(49)] (58) “Without merit” means the same as that term is defined in Section 62A-4a-101.

Section 47. Section 78A-6-106.5 is enacted to read:

78A-6-106.5. Warrants related to minors.

(1) Except as otherwise provided in this section, a court may not issue a warrant of arrest for a minor for:

- (a) a status offense; or
- (b) an infraction.

(2) A court may issue a warrant that directs the minor to be returned home, to the court, or to a shelter or other nonsecure facility for a minor not eligible for a warrant under Subsection (1). A warrant under this Subsection (2) may not direct placement in a secure facility, including secure detention.

(3) Subsection (1) does not apply to a minor who is under Title 55, Chapter 12, Interstate Compact for Juveniles.

Section 48. Section 78A-6-109 is amended to read:

78A-6-109. Summons -- Service and process -- Issuance and contents -- Notice to absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory process for attendance of witnesses when authorized.

(1) After a petition is filed the court shall promptly issue a summons, unless the judge directs that a further investigation is needed. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the clerk of the court at or ~~prior to~~ before the hearing.

(2) The summons shall contain:

- (a) the name of the court;
- (b) the title of the proceedings; and
- (c) except for a published summons, a brief statement of the substance of the allegations in the petition.

(3) A published summons shall state:

- (a) that a proceeding concerning the minor is pending in the court; and
- (b) an adjudication will be made.

(4) The summons shall require the person or persons who have physical custody of the minor to appear personally and bring the minor before the court at a time and place stated. If the person or persons summoned are not the parent, parents, or guardian of the minor, the summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying them of the pendency of the case and of the time and place set for the hearing.

(5) Summons may be issued requiring the appearance of any other person whose presence the court finds necessary.

(6) If it appears to the court that the welfare of the minor or of the public requires that the minor be taken into custody, and it does not conflict with Section 78A-6-106.5, the court may by endorsement upon the summons direct that the person serving the summons take the minor into custody at once.

(7) Subject to Subsection 78A-6-117(2)~~[(a)(iii)]~~, upon the sworn testimony of one or more reputable physicians, the court may order emergency medical or surgical treatment that is immediately necessary for a minor concerning whom a petition has been filed pending the service of summons upon the minor’s parents, guardian, or custodian.

(8) A parent or guardian is entitled to the issuance of compulsory process for the attendance of witnesses on the parent’s or guardian’s own behalf or on behalf of the minor. A guardian ad litem or a probation officer is entitled to compulsory process for the attendance of witnesses on behalf of the minor.

(9) Service of summons and process and proof of service shall be made in the manner provided in the Utah Rules of Civil Procedure.

(10) (a) Service of summons or process shall be made by the sheriff of the county where the service is to be made, or by ~~his~~ the sheriff's deputy.

(b) Notwithstanding Subsection (10)(a), upon request of the court, service shall be made by any other peace officer, or by another suitable person selected by the court.

(11) Service of summons in the state shall be made personally, by delivering a copy to the person summoned; provided, however, that parents of a minor living together at their usual place of abode may both be served by personal delivery to either parent of copies of the summons, one copy for each parent.

(12) If the judge makes a written finding that ~~he~~ the judge has reason to believe that personal service of the summons will be unsuccessful, or will not accomplish notification within a reasonable time after issuance of the summons, ~~he~~ the judge may order service by registered mail, with a return receipt to be signed by the addressee only, to be addressed to the last-known address of the person to be served in the state. Service shall be complete upon return to the court of the signed receipt.

(13) If the parents, parent, or guardian required to be summoned under Subsection (4) cannot be found within the state, the fact of their minor's presence within the state shall confer jurisdiction on the court in proceedings in a minor's case under this chapter as to any absent parent or guardian, provided that due notice has been given in the following manner:

(a) If the address of the parent or guardian is known, due notice is given by sending ~~him~~ the parent or guardian a copy of the summons by registered mail with a return receipt to be signed by the addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil Procedure. Service by registered mail shall be complete upon return to the court of the signed receipt.

(b) (i) If the address or whereabouts of the parent or guardian outside the state cannot after diligent inquiry be ascertained, due notice is given by publishing a summons:

(A) in a newspaper having general circulation in the county in which the proceeding is pending once a week for four successive weeks; and

(B) in accordance with Section 45-1-101 for four weeks.

(ii) Service shall be complete on the day of the last publication.

(c) Service of summons as provided in this subsection shall vest the court with jurisdiction over the parent or guardian served in the same manner and to the same extent as if the person served was served personally within the state.

(14) In the case of service in the state, service completed not less than 48 hours before the time set in the summons for the appearance of the person served, shall be sufficient to confer jurisdiction. In

the case of service outside the state, service completed not less than five days before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction.

(15) Computation of periods of time under this chapter shall be made in accordance with the Utah Rules of Civil Procedure.

Section 49. Section 78A-6-111 is amended to read:

78A-6-111. Appearances -- Parents, guardian, or legal custodian to appear with minor or child -- Failure to appear -- Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off -- Appointment of guardian ad litem.

(1) Any person required to appear who, without reasonable cause, fails to appear may be proceeded against for contempt of court, and the court may cause a bench warrant to ~~issue~~ be issued to produce the person in court.

(2) In ~~all cases~~ a case when a minor is required to appear in court, ~~the~~ the parents, guardian, or other person with legal custody of the minor shall appear with the minor unless excused by the judge.

(a) An employee may request permission to leave the workplace for the purpose of attending court if the employee has been notified by the juvenile court that ~~his~~ the employee's minor is required to appear before the court.

(b) An employer must grant permission to leave the workplace with or without pay if the employee has requested permission at least seven days in advance or within 24 hours of the employee receiving notice of the hearing.

(3) If a parent or other person who signed a written promise to appear and bring the child to court under Section 78A-6-112 or 78A-6-113 fails to appear and bring the child to court on the date set in the promise, or, if the date was to be set, after notification by the court, a warrant may be issued for the apprehension of that person ~~or the child, or both~~.

(4) Willful failure to perform the promise is a misdemeanor if, at the time of the execution of the promise, the promisor is given a copy of the promise which clearly states that failure to appear and have the child appear as promised is a misdemeanor. The juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 10, Adult Offenses.

(5) The court shall endeavor, through use of the warrant of arrest if necessary, as provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or both parents or of the guardian of a child. If neither a parent nor guardian is present at the court proceedings, the court may appoint a guardian ad litem to protect the interest of a minor. A guardian ad litem may also be appointed whenever necessary for the welfare of a minor, whether or not a parent or guardian is present.

(6) A warrant may be issued for a parent, a guardian, a custodian, or a minor if:

- (a) a summons is issued but cannot be served;
- (b) it is made to appear to the court that the person to be served will not obey the summons; or
- (c) serving the summons will be ineffectual[; ~~or~~].

~~[(d) the welfare of the minor requires that he be brought immediately into the custody of the court.]~~

Section 50. Section 78A-6-112 is amended to read:

78A-6-112. Minor taken into custody by peace officer, private citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds for peace officer to take adult into custody.

(1) A minor may be taken into custody by a peace officer without order of the court if:

(a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance;

(b) there are reasonable grounds to believe the minor has committed an act which if committed by an adult would be a felony;

(c) the minor:

(i) (A) is seriously endangered in the minor's surroundings; or

(B) seriously endangers others; and

(ii) immediate removal appears to be necessary for the minor's protection or the protection of others;

(d) there are reasonable grounds to believe the minor has run away or escaped from the minor's parents, guardian, or custodian; or

(e) there is reason to believe that the minor is:

(i) subject to the state's compulsory education law; and

(ii) absent from school without legitimate or valid excuse, subject to Section 53A-11-105.

(2) (a) A private citizen or a probation officer may take a minor into custody if under the circumstances [he] the private citizen or probation officer could make a citizen's arrest if the minor was an adult.

(b) A probation officer may also take a minor into custody under Subsection (1) or if the minor has violated the conditions of probation, if the minor is under the continuing jurisdiction of the juvenile court or in emergency situations in which a peace officer is not immediately available.

(3) (a) (i) If an officer or other person takes a minor into temporary custody[; ~~he~~] under Subsection (1) or (2), the officer or person shall without unnecessary delay notify the parents, guardian, or custodian.

(ii) The minor shall then be released to the care of the minor's parent or other responsible adult, unless the minor's immediate welfare or the protection of the community requires the minor's detention.

(b) If the minor is taken into custody under Subsection (1) or (2) or placed in detention under Subsection (4) for a violent felony, as defined in Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the officer or other law enforcement agent taking the minor into custody shall, as soon as practicable or as established under Subsection 53A-11-1001(2), notify the school superintendent of the district in which the minor resides or attends school for the purposes of the minor's supervision and student safety.

(i) The notice shall disclose only:

(A) the name of the minor;

(B) the offense for which the minor was taken into custody or detention; and

(C) if available, the name of the victim, if the victim:

(I) resides in the same school district as the minor; or

(II) attends the same school as the minor.

(ii) The notice shall be classified as a protected record under Section 63G-2-305.

(iii) All other records disclosures are governed by Title 63G, Chapter 2, Government Records Access and Management Act, and the federal Family Educational Rights and Privacy Act.

(c) Employees of a governmental agency are immune from any criminal liability for providing or failing to provide the information required by this section unless the person acts or fails to act due to malice, gross negligence, or deliberate indifference to the consequences.

(d) Before the minor is released, the parent or other person to whom the minor is released shall be required to sign a written promise on forms supplied by the court to bring the minor to the court at a time set or to be set by the court.

(4) (a) A child may not be held in temporary custody by law enforcement any longer than is reasonably necessary to obtain the child's name, age, residence, and other necessary information and to contact the child's parents, guardian, or custodian.

(b) If the minor is not released under Subsection (3), the minor shall be taken to a place of detention or shelter without unnecessary delay.

(5) (a) The person who takes a minor to a detention or shelter facility shall promptly file with the detention or shelter facility a written report on a form provided by the division stating:

(i) the details of the presently alleged offense[;];

(ii) the facts [which] that bring the minor within the jurisdiction of the juvenile court[; ~~and~~];

(iii) the reason the minor was not released by law enforcement[.]; and

(iv) the eligibility of the minor under the division guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202 if the minor is under consideration for detention.

(b) (i) The designated [~~youth corrections~~] facility staff person shall immediately review the form and determine, based on the guidelines for detention admissions established by the Division of Juvenile Justice Services under Section 62A-7-202, the results of the detention risk assessment, and the criteria for detention eligibility under Section 78A-6-113, whether to:

(A) admit the minor to secure detention[~~;~~];

(B) admit the minor to home detention[~~;~~];

(C) place the minor in [~~a placement other than detention;~~] another alternative to detention; or

(D) return the minor home upon written promise to bring the minor to the court at a time set, or without restriction.

(ii) If the designated [~~youth corrections~~] facility staff person determines to admit the minor to home detention, that staff person shall notify the juvenile court of that determination. The court shall order that notice be provided to the designated persons in the local law enforcement agency and the school or transferee school, if applicable, which the minor attends of the home detention. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency and the school which the minor attends who discloses the notification of home detention is not:

(A) civilly liable except when disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63G-2-801.

(iv) The person who takes a minor to a detention facility or the designated facility staff person may release a minor to a less restrictive alternative even if the minor is eligible for secure detention under this Subsection (5).

(c) A minor may not be admitted to detention unless the minor is detainable based on the guidelines or the minor has been brought to detention pursuant to a judicial order or division warrant pursuant to Section 62A-7-504.

(d) If a minor taken to detention does not qualify for admission under the guidelines established by the division under Section 62A-7-104 or the eligibility criteria under Subsection (4) and this Subsection (5), detention staff shall arrange an appropriate [~~placement~~] alternative.

(e) If a minor is taken into custody and admitted to a secure detention or shelter facility, facility staff shall:

(i) immediately notify the minor's parents, guardian, or custodian; and

(ii) promptly notify the court of the placement.

(f) If the minor is admitted to a secure detention or shelter facility outside the county of the minor's residence and it is determined in the hearing held under Subsection 78A-6-113(3) that detention shall continue, the judge or commissioner shall direct the sheriff of the county of the minor's residence to transport the minor to a detention or shelter facility as provided in this section.

(6) A person may be taken into custody by a peace officer without a court order if the person is in apparent violation of a protective order or if there is reason to believe that a child is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

Section 51. Section 78A-6-113 is amended to read:

78A-6-113. Placement of minor in detention or shelter facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement for criminal proceedings -- Bail laws inapplicable -- Exception.

(1) (a) A minor may not be placed or kept in a secure detention facility pending court proceedings [~~unless it is unsafe for the public to leave the minor with the minor's parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services~~] except in accordance with Section 78A-6-112.

~~[(b) A child who must be taken from the child's home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.]~~

~~[(e)]~~ (b) A child may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe to leave the child with the child's parents, guardian, or custodian.

(2) After admission of a child to a detention facility pursuant to [~~the guidelines established by the Division of Juvenile Justice Services~~] Section 78A-6-112 and immediate investigation by an authorized officer of the court, the judge or the officer shall order the release of the child to the child's parents, guardian, or custodian if it is found the child can be safely returned to their care, either upon written promise to bring the child to the court at a time set or without restriction.

(a) If a child's parent, guardian, or custodian fails to retrieve the child from a facility within 24 hours after notification of release, the parent, guardian, or custodian is responsible for the cost of care for the time the child remains in the facility.

(b) The facility shall determine the cost of care.

(c) Any money collected under this Subsection (2) shall be retained by the Division of Juvenile Justice

Services to recover the cost of care for the time the child remains in the facility.

(3) (a) When a child is detained in a detention or shelter facility, the parents or guardian shall be informed by the person in charge of the facility that ~~[they have]~~ the parent's or guardian's child has the right to a prompt hearing in court to determine whether the child is to be further detained or released.

(b) When a minor is detained in a detention facility, the minor shall be informed by the person in charge of the facility that the minor has the right to a prompt hearing in court to determine whether the minor is to be further detained or released.

(c) Detention hearings shall be held by the judge or by a commissioner.

(d) The court may, at any time, order the release of the minor, whether a detention hearing is held or not.

(e) If a child is released, and the child remains in the facility, because the parents, guardian, or custodian fails to retrieve the child, the parents, guardian, or custodian shall be responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

(4) (a) A minor may not be held in a detention facility longer than 48 hours ~~[prior to]~~ before a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.

(b) A child may not be held in a shelter facility longer than 48 hours ~~[prior to]~~ before a shelter hearing, excluding weekends and holidays, unless a court order for extended shelter has been entered by the court after notice to all parties described in Section 78A-6-306.

(c) A hearing for detention or shelter may not be waived. Detention staff shall provide the court with all information received from the person who brought the minor to the detention facility.

(d) ~~[If the court finds at a detention hearing that it is not safe to release the minor, the]~~ The judge or commissioner may only order [the] a minor to be held in the facility or be placed in another appropriate facility, subject to further order of the court, if the court finds at a detention hearing that:

(i) releasing the minor to the minor's parent, guardian, or custodian presents an unreasonable risk to public safety;

(ii) less restrictive nonresidential alternatives to detention have been considered and, where appropriate, attempted; and

(iii) the minor is eligible for detention under the division guidelines for detention admissions established by the Division of Juvenile Justice Services, under Section 62A-7-202 and under Section 78A-6-112.

(e) (i) After a detention hearing has been held, only the court may release a minor from detention. If a minor remains in a detention facility, periodic

reviews shall be held pursuant to the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued detention is necessary.

(ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that notice of its decision, including any disposition, order, or no contact orders, be provided to designated persons in the appropriate local law enforcement agency and district superintendent or the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety.

(iii) Any employee of the local law enforcement agency, school district, and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when disclosure constitutes a knowing violation of Section 63G-2-801.

(5) A minor may not be held in a detention facility, following a dispositional order of the court for nonsecure substitute care as defined in Section 62A-4a-101, or for community-based placement under Section 62A-7-101.

(6) (a) Except as otherwise provided in this section, a minor may not be held in a detention facility following a disposition order of the court for longer than 72 hours, excluding weekends and holidays.

(b) The period of detention may be extended by the court for ~~[one period]~~ a cumulative total of seven calendar days if:

~~[(a)]~~ (i) the Division of Juvenile Justice Services or another agency responsible for placement files a written petition with the court requesting the extension and setting forth good cause; and

~~[(b)]~~ (ii) the court enters a written finding that it is in the best interests of both the minor and the community to extend the period of detention.

(c) The court may extend the period of detention beyond the seven calendar days if the court finds by clear and convincing evidence that:

(i) the Division of Juvenile Justice Services or another agency responsible for placement does not have space for the minor; and

(ii) the safety of the minor and community requires an extension of the period of detention.

(d) The Division of Juvenile Justice Services shall report to the court every 48 hours, excluding weekends and holidays, regarding the status of whether the Division of Juvenile Justice Services or another agency responsible for placement has space for the minor.

~~[(6)]~~ (7) The agency requesting an extension shall promptly notify the detention facility that a written petition has been filed.

~~[(7)]~~ (8) The court shall promptly notify the detention facility regarding its initial disposition and any ruling on a petition for an extension, whether granted or denied.

~~[(8)]~~ (9) (a) A child under 16 years of age may not be held in a jail, lockup, or other place for adult detention except as provided by Section 62A-7-201 or unless certified as an adult pursuant to Section 78A-6-703. ~~[The provisions of] Section 62A-7-201 regarding confinement facilities [apply] applies to this Subsection [(8)]~~ (9).

(b) A child 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the detention facility for children may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including a jail or other place of confinement for adults. However, a secure ~~[youth corrections]~~ facility is not an appropriate place of confinement for detention purposes under this section.

~~[(9)]~~ (10) A sheriff, warden, or other official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall immediately notify the juvenile court when a person who is or appears to be under 18 years of age is received at the facility and shall make arrangements for the transfer of the person to a detention facility, unless otherwise ordered by the juvenile court.

~~[(10)]~~ (11) This section does not apply to a minor who is brought to the adult facility under charges pursuant to Section 78A-6-701 or by order of the juvenile court to be held for criminal proceedings in the district court under Section 78A-6-702 or 78A-6-703.

~~[(11)]~~ (12) A minor held for criminal proceedings under Section 78A-6-701, 78A-6-702, or 78A-6-703 may be detained in a jail or other place of detention used for adults charged with crime.

~~[(12)]~~ (13) Provisions of law regarding bail are not applicable to minors detained or taken into custody under this chapter, except that bail may be allowed:

(a) if a minor who need not be detained lives outside this state; or

(b) when a minor who need not be detained comes within one of the classes in Subsection 78A-6-603(11).

~~[(13)]~~ (14) Section 76-8-418 is applicable to a child who willfully and intentionally commits an act against a jail or other place of confinement, including a Division of Juvenile Justice Services detention, shelter, or secure confinement facility which would be a third degree felony if committed by an adult.

Section 52. Section 78A-6-115 is amended to read:

78A-6-115. Hearings -- Record -- County attorney or district attorney responsibilities -- Attorney general

responsibilities -- Disclosure -- Admissibility of evidence.

(1) (a) A verbatim record of the proceedings shall be taken in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

(b) (i) Notwithstanding any other provision, including Title 63G, Chapter 2, Government Records Access and Management Act, a record of a proceeding made under Subsection (1)(a) shall be released by the court to any person upon a finding on the record for good cause.

(ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(iii) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months ~~[prior to]~~ before the request.

(iv) For purposes of this Subsection (1)(b):

(A) "record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a); and

(B) "subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

(2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and this chapter, relating to:

(i) protection or custody of an abused, neglected, or dependent child; and

(ii) petitions for termination of parental rights.

(c) The attorney general shall represent the Division of Child and Family Services in actions involving a minor who is not adjudicated as abused or neglected, but who is ~~[otherwise committed to the custody of that division by the juvenile court, and who is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense]~~ receiving in-home family services under Section 78A-6-117.5. Nothing in this Subsection (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those

matters, in accordance with ~~[the provisions of]~~ Subsection (2)(a).

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings involving offenses under Section 78A-6-606 are governed by that section regarding suspension of driving privileges.

(4) (a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division under Section 78A-6-315 may be received in evidence and may be considered by the court along with other evidence. The court may require any person who participated in preparing the dispositional report to appear as a witness, if the person is reasonably available.

(5) (a) In an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under Section 78A-6-306 or the filing of a petition under Section 78A-6-304, each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:

(i) plans to report to the court at the proceeding; or

(ii) could reasonably expect would be requested of the party by the court at the proceeding.

(b) The disclosure required under Subsection (5)(a) shall be made:

(i) for dispositional hearings under Sections 78A-6-311 and 78A-6-312, no less than five days before the proceeding;

(ii) for proceedings under ~~[Title 78A,]~~ Chapter 6, Part 5, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and

(iii) for all other proceedings, no less than five days before the proceeding.

(c) If a party to a proceeding obtains information after the deadline in Subsection (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the party certifies to the court that the information was obtained after the deadline.

(d) Subsection (5)(a) does not apply to:

(i) pretrial hearings; and

(ii) the frequent, periodic review hearings held in a dependency drug court case to assess and promote the parent's progress in substance ~~[abuse]~~ use disorder treatment.

(6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court may, in its discretion, consider evidence of statements made by a child under eight years of age to a person in a trust relationship.

Section 53. Section 78A-6-117 is amended to read:

78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.

(1) (a) When a minor is found to come within ~~[the provisions of]~~ Section 78A-6-103, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within ~~[the provisions of]~~ Subsection 78A-6-103(1), findings of fact are not necessary.

(b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include:

(i) the specific offenses for which the minor was adjudicated; and

(ii) if available, if the victim:

(A) resides in the same school district as the minor; or

(B) attends the same school as the minor.

(c) An adjudicated minor shall undergo a risk screening or, if indicated, a validated risk and needs assessment. Results of the screening or assessment shall be used to inform disposition decisions and case planning. Assessment results, if available, may not be shared with the court before adjudication.

(2) Upon adjudication the court may make the following dispositions by court order:

(a) (i) the court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including compensatory service ~~[as provided in Subsection (2)(m)(iii).];~~

~~[(ii) The court may place the minor in state supervision with the probation department of the court, under the legal custody of:]~~

~~[(A) the minor's parent or guardian;]~~

~~[(B) the Division of Juvenile Justice Services; or]~~

~~[(C) the Division of Child and Family Services.]~~

(ii) a condition ordered by the court under Subsection (2)(a)(i):

(A) shall be individualized and address a specific risk or need;

(B) shall be based on information provided to the court, including the results of a validated risk and needs assessment conducted under Subsection (1)(c); and

(C) if the court orders treatment, be based on a validated risk and needs assessment conducted under Subsection (1)(c);

(iii) a court may not issue a standard order that contains control-oriented conditions;

(iv) prohibitions on weapon possession, where appropriate, shall be specific to the minor and not the minor's family;

~~(iii)~~ (v) if the court orders probation [~~or state supervision~~], the court ~~shall~~ may direct that notice of ~~its~~ the court's order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety~~[-]~~; and

~~(iv)~~ ~~Any~~ (vi) an employee of the local law enforcement agency and the school that the minor attends who discloses the court's order of probation is not:

(A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and

(B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63G-2-801.

(b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision, but the juvenile court may not assume the function of developing foster home services.

(c) (i) The court ~~may: (A)~~ shall only vest legal custody of the minor in the ~~[Division of Child and Family Services,] Division of Juvenile Justice Services~~~~[-, or the Division of Substance Abuse and Mental Health; and (B) order the Department of Human Services]~~ and order the Division of Juvenile Justice Services to provide dispositional recommendations and services~~[-]~~ if:

~~(ii) For minors who may qualify for services from two or more divisions within the Department of Human Services, the court may vest legal custody with the department.]~~

~~(iii) (A) A minor who is committed to the custody of the Division of Child and Family Services on grounds other than abuse or neglect is subject to the provisions of Title 78A, Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A, Chapter 4a, Part 2a, Minors in Custody on Grounds other than Abuse or Neglect.]~~

~~(B) Before the court entering an order to place a minor in the custody of the Division of Child and Family Services on grounds other than abuse or neglect, the court shall provide the division with notice of the hearing no later than five days before the time specified for the hearing so the division may attend the hearing.]~~

~~(C) Before committing a child to the custody of the Division of Child and Family Services, the court shall make a finding as to what reasonable efforts have been attempted to prevent the child's removal from the child's home.]~~

(A) nonresidential treatment options have been exhausted or nonresidential treatment options are not appropriate; and

(B) the minor is adjudicated under this section for a felony offense, a misdemeanor when the minor has five prior misdemeanors or felony adjudications arising from separate criminal episodes, or a misdemeanor involving the use of a dangerous weapon as defined in Section 76-1-601.

(ii) The court may not vest legal custody of a minor in the Division of Juvenile Justice Services for:

(A) contempt of court except to the extent permitted under Section 78A-6-1101;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

~~(iv)~~ (iii) (A) A minor who is 18 years old or older, but younger than 21 years old, may petition the court to express the minor's desire to be removed from the jurisdiction of the juvenile court and from the custody of the Division of Child and Family Services if the minor is in the division's custody on grounds of abuse, neglect, or dependency.

(B) If the minor's parent's rights have not been terminated in accordance with Part 5, Termination of Parental Rights Act, the minor's petition shall contain a statement from the minor's parent or guardian agreeing that the minor should be removed from the custody of the Division of Child and Family Services.

(C) The minor and the minor's parent or guardian shall sign the petition.

(D) The court shall review the petition within 14 days.

(E) The court shall remove the minor from the custody of the Division of Child and Family Services if the minor and the minor's parent or guardian have met the requirements described in Subsections (2)(c)(iv)(B) and (C) and if the court finds, based on input from the Division of Child and Family Services, the minor's guardian ad litem, and the Office of the Attorney General, that the minor does not pose an imminent threat to self or others.

(F) A minor removed from custody under Subsection (2)(c)(iv)(E) may, within 90 days of the date of removal, petition the court to re-enter custody of the Division of Child and Family Services.

(G) Upon receiving a petition under Subsection (2)(c)(iv)(F), the court shall order the Division of Child and Family Services to take custody of the minor based on the findings the court entered when the court originally vested custody in the Division of Child and Family Services.

(d) (i) The court ~~may~~ shall only commit a minor to the Division of Juvenile Justice Services for secure confinement~~[-]~~ if the court finds that the minor poses a risk of harm to others and is adjudicated under this section for:

(A) a felony offense;

(B) a misdemeanor if the minor has five prior misdemeanor or felony adjudications arising from separate criminal episodes; or

(C) a misdemeanor involving use of a dangerous weapon as defined in Section 76-1-601.

(ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78A-6-103(1)(~~e~~)(b) may not be committed to the Division of Juvenile Justice Services.

(iii) The court may not commit a minor to the Division of Juvenile Justice Services for secure confinement for:

(A) contempt of court;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(e) The court may ~~commit a minor, subject to the court retaining continuing jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice Services for observation and evaluation for a period not to exceed 45 days, which period may be extended up to 15 days at the request of the director of the Division of Juvenile Justice Services]~~ order nonresidential, diagnostic assessment, including substance use disorder, mental health, psychological, or sexual behavior risk assessment.

(f) (i) The court may commit a minor to a place of detention or an alternative to detention for a period not to exceed 30 cumulative days per adjudication subject to the court retaining continuing jurisdiction over the minor. This commitment may not be ~~stayed or~~ suspended upon conditions ordered by the court.

(ii) This Subsection (2)(f) applies only to a minor adjudicated for:

(A) an act which if committed by an adult would be a criminal offense; or

(B) contempt of court under Section 78A-6-1101.

(iii) The court may not commit a minor to a place of detention for:

(A) contempt of court except to the extent allowed under Section 78A-6-1101;

(B) a violation of probation;

(C) failure to pay a fine, fee, restitution, or other financial obligation;

(D) unfinished compensatory or community service hours;

(E) an infraction; or

(F) a status offense.

(iv) (A) Time spent in detention pre-adjudication shall be credited toward the 30 cumulative days eligible as a disposition under Subsection (2)(f)(i). If the minor spent more than 30 days in a place of detention before disposition, the court may not commit a minor to detention under this section.

(B) Notwithstanding Subsection (2)(f)(iv)(A), the court may commit a minor for a maximum of seven days while a minor is awaiting placement under Subsection (2)(c)(i). Only the seven days under this Subsection (2)(f)(iv)(B) may be combined with a nonsecure placement.

(v) Notwithstanding Subsection (2)(t), no more than seven days of detention may be ordered in combination with an order under Subsection (2)(c)(i).

(g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

~~(h) The court may place a minor on a ranch or forestry camp, or similar facility for care and also for work, if possible, if the person, agency, or association operating the facility has been approved or has otherwise complied with all applicable state and local laws. A minor placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads, and on other works on or off the grounds of the facility and may be paid wages, subject to the approval of and under conditions set by the court.]~~

~~(i) (h) (i) The court may order a minor to repair, replace, or otherwise make restitution for [damage or] material loss caused by the minor's wrongful act[-], including costs of treatment as stated in Section 78A-6-321 and impose fines in limited amounts-] or for conduct for which the minor agrees to make restitution.~~

(ii) A victim has the meaning defined under Subsection 77-38a-102(14). A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person

directly harmed by the minor's delinquency conduct in the course of the scheme, conspiracy, or pattern.

(iii) If the victim and the minor agree to participate, the court may refer the case to a restorative justice program such as victim offender mediation to address how loss resulting from the adjudicated act may be addressed.

(iv) For the purpose of determining whether and how much restitution is appropriate, the court shall consider the following:

(A) restitution shall only be ordered for the victim's material loss;

(B) restitution may not be ordered if the court finds that the minor is unable to pay or acquire the means to pay; and

(C) any amount paid by the minor to the victim in civil penalty shall be credited against restitution owed.

(v) Any amount paid to the victim in restitution shall be credited against liability in a civil suit.

(vi) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.

(vii) If a minor is returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.

(viii) The prosecutor shall submit a request for restitution to the court at the time of disposition, if feasible, otherwise within three months after disposition.

(ix) A financial disposition ordered shall prioritize the payment of restitution.

(j) (i) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions, except for an order that changes the custody of the minor, including detention or other secure or nonsecure residential placements.

(j) (i) The court may through its probation department encourage the development of nonresidential employment or work programs to enable minors to fulfill their obligations under Subsection (2)(h) and for other purposes considered desirable by the court.

(ii) Consistent with the order of the court, the probation officer may permit a minor found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.

(iii) The court may order the minor to:

(A) pay a fine, fee, restitution, or other cost; or

(B) complete service hours.

(iv) If the court orders a minor to pay a fine, fee, restitution, or other cost, or to complete service hours, those dispositions shall be considered collectively to ensure that the order is reasonable and prioritizes restitution.

(v) If the court orders a minor to pay a fine, fee, or other cost, or complete service hours, the cumulative order shall be limited per criminal episode as follows:

(A) for children under age 16 at adjudication, the court may impose up to \$180 or up to 24 hours of service; and

(B) for minors 16 and older at adjudication, the court may impose up to \$270 or up to 36 hours of service.

(vi) The cumulative order under Subsection (2)(j)(v) does not include restitution.

(vii) If the court converts a fine, fee, or restitution amount to service hours, the rate of conversion shall be no less than the minimum wage.

(k) (i) In violations of traffic laws within the court's jurisdiction, when the court finds that as part of the commission of the violation the minor was in actual physical control of a motor vehicle, the court may, in addition to any other disposition authorized by this section:

(A) restrain the minor from driving for periods of time the court considers necessary; and

(B) take possession of the minor's driver license.

(ii) The court may enter any other eligible disposition under Subsection (2)(k)(i) except for a disposition under Subsection (2)(c), (d), or (f). However, the suspension of driving privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.

~~(m) (i) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no more than 100 hours, of compensatory service.]~~

(l) (i) The court may order a minor to complete community or compensatory service hours in accordance with Subsections (2)(j)(iv) and (v).

(ii) When community service is ordered, the presumptive service order shall include between five and 10 hours of service.

(iii) Satisfactory completion of an approved substance abuse use disorder prevention or treatment program or other court-ordered condition may be credited by the court as compensatory service hours.

~~(ii) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 32B-4-409 or~~

~~Subsection 76-9-701(1), the court may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance abuse prevention or treatment program may be credited by the court as compensatory service hours.]~~

~~[(iii)] (iv) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place within the jurisdiction of the court. Compensatory service [required] ordered under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. [The minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause.] The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to [Subsection 77-18-1(8)] Subsection (2)(h).~~

~~[(A) For a first adjudication, the court may require the minor to clean up graffiti for not less than eight hours.]~~

~~[(B) For a second adjudication, the court may require the minor to clean up graffiti for not less than 16 hours.]~~

~~[(C) For a third adjudication, the court may require the minor to clean up graffiti for not less than 24 hours.]~~

~~[(n)] (m) (i) Subject to Subsection (2)[(n)](m)(iii), the court may order that a minor:~~

~~(A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or~~

~~(B) receive other special care.~~

~~(ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)[(n)](m)(i), the court may place the minor in a hospital or other suitable facility that is not a secure facility or secure detention.~~

~~(iii) In determining whether to order the examination, treatment, or care described in Subsection (2)[(n)](m)(i), the court shall consider:~~

~~(A) the desires of the minor;~~

~~(B) if the minor is under the age of 18, the desires of the parents or guardian of the minor; and~~

~~(C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical~~

harm resulting from the compulsory nature of the examination, treatment, or care.

(iv) The Division of Child and Family Services shall take reasonable measures to notify a parent or guardian of any non-emergency health treatment or care scheduled for a child, shall include the parent or guardian as fully as possible in making health care decisions for the child, and shall defer to the parent's or guardian's reasonable and informed decisions regarding the child's health care to the extent that the child's health and well being are not unreasonably compromised by the parent's or guardian's decision.

(v) The Division of Child and Family Services shall notify the parent or guardian of a child within five business days after a child in the custody of the Division of Child and Family Services receives emergency health care or treatment.

(vi) The Division of Child and Family Services shall use the least restrictive means to accomplish a compelling interest in the care and treatment of a child described in this Subsection (2)[(n)](m).

~~[(n)] (n) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency, but not a nonsecure residential placement provider, in which legal custody of the minor is vested.~~

(ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of a child's parents.

~~[(p)] (o) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, [a minor], a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:~~

~~(A) parent-time by the parents or one parent;~~

~~(B) restrictions on the minor's associates;~~

~~(C) restrictions on the minor's occupation and other activities; and~~

~~(D) requirements to be observed by the parents or custodian.~~

~~(ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time.~~

~~[(q)] (p) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.~~

~~[(r)] (q) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the~~

minor has an intellectual disability in accordance with ~~[the provisions of]~~ Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

(ii) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)~~(f)~~(q)(i).

~~(s)~~ (r) The court may terminate all parental rights upon a finding of compliance with ~~[the provisions of]~~ Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

~~(t)~~ (s) The court may make ~~[any]~~ other reasonable orders for the best interest of the minor ~~[or]~~ and as required for the protection of the public, except that a child may not be committed to jail ~~[or]~~, prison, secure detention, or the custody of the Division of Juvenile Justice Services under Subsections (2)(c) and (d).

~~(u)~~ (t) The court may combine the dispositions listed in this section if it is permissible and they are compatible.

~~(v)~~ (u) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

~~(w)~~ (v) Except as provided in Subsection (2)~~(f)~~(x)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review and presumptive termination of the case by the court in accordance with Subsection (6) and Section 62A-7-404. A new date shall be set upon each review.

~~(x)~~ (w) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay.

~~(y)~~ (x) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.

(ii) Orders under Subsection (2)~~(f)~~(y)(x)(i):

(A) shall remain in effect until the child reaches majority;

(B) are not subject to review under Section 78A-6-118; and

(C) may be modified by petition or motion as provided in Section 78A-6-1103.

(iii) Orders permanently terminating the rights of a parent, guardian, or custodian and permanent orders of custody and guardianship do not expire

with a termination of jurisdiction of the juvenile court.

(3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:

(a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;

(b) the minor is not under the jurisdiction of the court for any act that:

(i) would be a felony if committed by an adult;

(ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(iii) was committed with a weapon; and

(c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

(4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).

(b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.

(d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78A-6-321.

(5) (a) A disposition made by the court pursuant to this section may not be suspended, except for the following:

(i) If a minor qualifies for commitment to the Division of Juvenile Justice Services under Subsection (2)(c) or (d), the court may suspend a custody order pursuant to Subsection (2)(c) or (d) in lieu of immediate commitment, upon the condition that the minor commit no new misdemeanor or felony offense during the three months following the day of disposition.

(ii) The duration of a suspended custody order made under Subsection (5)(a)(i) may not exceed three months post-disposition and may not be extended under any circumstance.

(iii) The court may only impose a custody order suspended under Subsection (5)(a)(i) following

adjudication of a new misdemeanor or felony offense committed by the minor during the period of suspension set out under Subsection (5)(a)(ii).

(b) The court pursuant to Subsection (5)(a) shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one the following circumstances exists:

(i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a program determined to be necessary by the results of a validated risk and needs assessment with completion found by the court after considering the recommendation of a licensed service provider on the basis of the minor completing the goals of the necessary treatment program;

(ii) the minor commits a new misdemeanor or felony offense;

(iii) service hours have not been completed; or

(iv) there is an outstanding fine.

(6) When the court places a minor on probation under Subsection (2)(a) or vests legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall do so for a defined period of time pursuant to this section.

(a) For the purposes of placing a minor on probation under Subsection (2)(a), the court shall establish a presumptive term of probation as specified in this Subsection (6):

(i) the presumptive maximum length of intake probation may not exceed three months; and

(ii) the presumptive maximum length of formal probation may not exceed four to six months.

(b) For the purposes of vesting legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall establish a maximum term of custody and a maximum term of aftercare as specified in this Subsection (6):

(i) the presumptive maximum length of out-of-home placement may not exceed three to six months; and

(ii) the presumptive maximum length of aftercare supervision, for those previously placed out-of-home, may not exceed three to four months, and minors may serve the term of aftercare in the home of a qualifying relative or guardian or at an independent living program contracted or operated by the Division of Juvenile Justice Services.

(c) The court pursuant to Subsections (6)(a) and (b), and the Youth Parole Authority pursuant to Subsection (6)(b), shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one of the following circumstances exists:

(i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a court ordered program determined to be necessary by the results of a validated assessment, with completion found by the court after considering the recommendations of

a licensed service provider on the basis of the minor completing the goals of the necessary treatment program;

(ii) termination pursuant to Subsection (6)(a)(i) or (6)(b) would interrupt the completion of a program determined to be necessary by the results of a validated assessment, with completion determined on the basis of whether the minor has regularly and consistently attended the treatment program and completed the goals of the necessary treatment program as determined by the Youth Parole Authority after considering the recommendation of a licensed service provider;

(iii) the minor commits a new misdemeanor or felony offense;

(iv) service hours have not been completed; or

(v) there is an outstanding fine.

(d) (i) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, the court may extend jurisdiction for the time needed to address the specific circumstance.

(ii) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, and the Youth Parole Authority has jurisdiction, the Youth Parole Authority may extend jurisdiction for the time needed to address the specific circumstance.

(e) If the circumstance under Subsection (6)(c)(iv) exists, the court, or the Youth Parole Authority if the Youth Parole Authority has jurisdiction, may extend jurisdiction one time for up to three months.

(f) Grounds for extension of the presumptive length of supervision or placement and the length of any extension shall be recorded in the court record or records of the Youth Parole Authority if the Youth Parole Authority has jurisdiction, and tracked in the data system used by the Administrative Office of the Courts and the Division of Juvenile Justice Services.

(g) (i) For a minor who is under the supervision of the juvenile court and whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued under the supervision of intake probation.

(ii) For a minor who is under the jurisdiction of the Youth Parole Authority whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued on parole and not in secure confinement.

(h) In the event of an unauthorized leave lasting more than 24 hours, the supervision period shall toll until the minor returns.

(7) Subsection (6) does not apply to any minor adjudicated under this section for:

(a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

(b) Section 76-5-202, attempted aggravated murder;

(c) Section 76-5-203, murder or attempted murder;

(d) Section 76-5-302, aggravated kidnapping;

(e) Section 76-5-405, aggravated sexual assault;

(f) a felony violation of Section 76-6-103, aggravated arson;

(g) Section 76-6-203, aggravated burglary;

(h) Section 76-6-302, aggravated robbery;

(i) Section 76-10-508.1, felony discharge of a firearm; or

(j) an offense other than those listed in Subsections (7)(a) through (i) involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon.

Section 54. Section 78A-6-117.5 is enacted to read:

78A-6-117.5. Custody in Division of Child and Family Services or in the Division of Juvenile Justice Services.

(1) Notwithstanding Subsection 78A-6-117(2)(c), the court may not vest custody in the Division of Child and Family Services except pursuant to Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

(2) If the court finds that a child is at risk of being removed from the home or that the family is in crisis, the court may order the Division of Child and Family Services to conduct an assessment to determine if provision of in-home family preservation services is appropriate. If considered appropriate by the Division of Child and Family Services, services shall be provided pursuant to Section 62A-4a-202.

(3) Notwithstanding Section 78A-6-117, a court may not place a minor on a ranch, forestry camp, or other residential work program for care or work.

(4) Notwithstanding Section 78A-6-117, a court may not commit a minor to the temporary custody of the Division of Juvenile Justice Services for residential observation and evaluation or residential observation and assessment.

Section 55. Section 78A-6-118 is amended to read:

78A-6-118. Period of operation of judgment, decree, or order.

[(1)] A judgment, order, or decree of the juvenile court does not operate after the minor becomes 21 years of age, except for:

[(a)] (1) orders of commitment to the Utah State Developmental Center or to the custody of the Division of Substance Abuse and Mental Health;

[(b)] (2) adoption orders under Subsection 78A-6-103(1); and

[(e)] (3) orders permanently terminating the rights of a parent, guardian, or custodian, and permanent orders of custody and guardianships; and.]

[(d) unless terminated by the court, orders to pay any fine or restitution.]

[(2) (a) Except as provided in Part 3, Abuse, Neglect, and Dependency Proceedings, an order vesting legal custody or guardianship of a minor in an individual, agency, or institution may be for an indeterminate period. A review hearing shall be held, however, upon the expiration of 12 months, and, with regard to petitions filed by the Division of Child and Family Services, no less than once every six months thereafter. The individual, agency, or institution involved shall file the petition for that review hearing. The court may terminate the order, or after notice and hearing, continue the order if it finds continuation of the order necessary to safeguard the welfare of the minor or the public interest. The findings of the court and its reasons shall be entered with the continuation order or with the order denying continuation.]

[(b) Subsection (2)(a) does not apply to minors who are in the custody of the Division of Child and Family Services, and who are placed in foster care, a secure youth corrections facility, the Division of Substance Abuse and Mental Health, the Utah State Developmental Center, or any agency licensed for child placements and adoptions, in cases where all parental rights of the natural parents have been terminated by the court under Part 5, Termination of Parental Rights Act, and custody of the minor has been granted to the agency for adoption or other permanent placement.]

[(3) (a) An agency granted legal custody may determine where and with whom the minor will live, provided that placement of the minor does not remove him from the state without court approval.]

[(b) An individual granted legal custody shall personally exercise the rights and responsibilities involved in legal custody, unless otherwise authorized by the court.]

Section 56. Section 78A-6-119 is amended to read:

78A-6-119. Modification of order or decree -- Requirements for changing or terminating custody, probation, or protective supervision.

(1) The court may modify or set aside any order or decree made by [it] the court, except on and after July 1, 2018, the order or decree must be in accordance with Sections 78A-6-117 and 78A-6-123, however a modification of an order placing a minor on probation may not [be made upon an alleged violation of the terms of probation unless there has been a hearing in accordance with the procedures in Section 78A-6-1103.] include on and after July 1, 2018, an order:

(a) under Subsection 78A-6-117(2)(c), (d), or (f); or

(b) extending supervision, except pursuant to Subsection 78A-6-117(7).

(2) Notice of the hearing shall be required in any case in which the effect of modifying or setting aside an order or decree may be to make any change in the minor's legal custody under Section 78A-6-1103 and pursuant to Section 78A-6-117.

(3) (a) Notice of an order terminating probation or protective supervision of a child shall be given to the child's:

- (i) parents;
- (ii) guardian;
- (iii) custodian; and
- (iv) where appropriate, to the child.

(b) Notice of an order terminating probation or protective supervision of a minor who is at least 18 years of age shall be given to the minor.

Section 57. Section 78A-6-120 is amended to read:

78A-6-120. Continuing jurisdiction of juvenile court -- Period of and termination of jurisdiction -- Notice of discharge from custody of local mental health authority or Utah State Developmental Center -- Transfer of continuing jurisdiction to other district.

(1) Jurisdiction of a minor obtained by the court through adjudication under Section 78A-6-117 continues for purposes of this chapter until ~~he~~ the minor becomes 21 years of age, unless terminated earlier~~].— However, the court, subject to Section 78A-6-121, retains jurisdiction beyond the age of 21 of a person who has refused or failed to pay any fine or victim restitution ordered by the court, but only for the purpose of causing compliance with existing orders~~ in accordance with Sections 62A-7-404 and 78A-6-117.

(2) (a) The continuing jurisdiction of the court terminates:

- (i) upon order of the court;
- (ii) upon commitment to a secure ~~]~~ youth ~~corrections~~ facility; ~~or~~
- (iii) upon commencement of proceedings in adult cases under Section 78A-6-1001~~];~~ or
- (iv) in accordance with Sections 62A-7-404 and 78A-6-117.

(b) The continuing jurisdiction of the court is not terminated by marriage.

(c) Notwithstanding Subsection (2)(a)(ii), the court retains jurisdiction to make and enforce orders related to restitution until the Youth Parole Authority discharges the youth offender.

(3) When a minor has been committed by the court to the physical custody of a local mental health authority or its designee or to the Utah State Developmental Center, the local mental health authority or its designee or the superintendent of the Utah State Developmental Center shall give the court written notice of its intention to discharge,

release, or parole the minor not fewer than five days ~~]~~ before the discharge, release, or parole.

(4) Jurisdiction over a minor on probation or under protective supervision, or of a minor who is otherwise under the continuing jurisdiction of the court, may be transferred by the court to the court of another district, if the receiving court consents, or upon direction of the chair of the Board of Juvenile Court Judges. The receiving court has the same powers with respect to the minor that it would have if the proceedings originated in that court.

(5) On and after July 1, 2018, a minor adjudicated under Section 78A-6-117 and who underwent a validated risk and needs assessment under Subsection 78A-6-117(1)(c) shall undergo a validated risk and needs assessment within seven days of the day on which an order terminating jurisdiction is issued.

Section 58. Section 78A-6-121 is amended to read:

78A-6-121. Entry of judgment for fine, fee, surcharge, or restitution.

(1) If, ~~]~~ before the entry of any order terminating jurisdiction of a juvenile, there remains any unpaid balance for any fine, fee, or restitution ordered by the court, the court shall record all pertinent information in the juvenile's file ~~]~~.

(2) The court may not transfer responsibility to collect ~~]~~ unpaid fines, fees, surcharges, and restitution to the Office of State Debt Collection.

~~(2) Before transferring the responsibility to collect any past due fines, the court shall reduce the order to a judgment listing the Office of State Debt Collection as the judgment creditor.]~~

~~(3) Before transferring the responsibility to collect any past due accounts receivable for restitution to a victim, the] The court shall reduce the restitution order to a judgment listing the victim, or the estate of the victim, as the judgment creditor.~~

Section 59. Section 78A-6-123 is enacted to read:

78A-6-123. Case planning and appropriate responses.

(1) For a minor adjudicated and placed on probation or into the custody of the Division of Juvenile Justice Services under Section 78A-6-117, a case plan shall be created and shall be:

- (a) developed in collaboration with the minor and the minor's family;
- (b) individualized to the minor;
- (c) informed by the results of a validated risk and needs assessment; and
- (d) tailored to the minor's offense and history.

(2) (a) The Administrative Office of the Courts and the Division of Juvenile Justice Services shall develop a statewide system of appropriate

responses to guide responses to the behaviors of minors:

- (i) undergoing nonjudicial adjustments;
 - (ii) under the jurisdiction of the juvenile court; and
 - (iii) in the custody of the Division of Juvenile Justice Services.
- (b) The system of responses shall include both sanctions and incentives that:
- (i) are swift and certain;
 - (ii) include a continuum of community based responses for minors living at home;
 - (iii) target a minor's criminogenic risks and needs, as determined by the results of a validated risk and needs assessment, and the severity of the violation; and
 - (iv) authorize earned discharge credits as one incentive for compliance.

(c) After considering the guidelines established by the Sentencing Commission, pursuant to Section 63M-7-404, the system of appropriate responses under Subsections (2)(a) and (b) shall be developed.

(3) A response to a compliant or noncompliant behavior under Subsection (2) shall be documented in the minor's case plan. Documentation shall include:

- (a) positive behaviors and incentives offered;
 - (b) violations and corresponding sanctions; and
 - (c) whether the minor has a subsequent violation after a sanction.
- (4) Before referring a minor to court for judicial review or to the Youth Parole Authority if the minor is under the jurisdiction of the Youth Parole Authority in response to a violation, either through a contempt filing under Section 78A-6-1101 or an order to show cause, pursuant to Subsections (2)(a) and (b), a pattern of appropriate responses shall be documented in the minor's case plan.
- (5) Notwithstanding Subsection (4), violations of protective orders or ex parte protection orders listed in Subsection 77-36-2.7(3) with victims and violations that constitute new delinquency offenses may be filed directly with the court.

Section 60. Section 78A-6-124 is enacted to read:

78A-6-124. Detention risk assessment tool.

(1) The Division of Juvenile Justice Services, in conjunction with the Administrative Office of the Courts, shall develop or adopt, and validate on the Utah juvenile population, a statewide detention risk assessment tool.

(2) The Division of Juvenile Justice Services shall administer the detention risk assessment tool for each youth under consideration for detention. The detention risk assessment tool shall be

administered by a designated individual who has completed training to conduct the detention risk assessment tool.

(3) The Division of Juvenile Justice Services and the Administrative Office of the Courts shall establish a scoring system to inform eligibility for placement in a juvenile detention facility or for referral to an alternative to detention.

Section 61. Section 78A-6-302 is amended to read:

78A-6-302. Court-ordered protective custody of a child following petition filing -- Grounds.

(1) After a petition has been filed under Section 78A-6-304, if the child who is the subject of the petition is not in the protective custody of the division, a court may order that the child be removed from the child's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

- (a) (i) there is an imminent danger to the physical health or safety of the child; and
- (ii) the child's physical health or safety may not be protected without removing the child from the custody of the child's parent or guardian;
- (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct that causes the child to suffer harm; and
- (ii) there are no less restrictive means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;
- (c) the child or another child residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian;
- (d) the parent or guardian is unwilling to have physical custody of the child;
- (e) the child is abandoned or left without any provision for the child's support;
- (f) a parent or guardian who has been incarcerated or institutionalized has not arranged or cannot arrange for safe and appropriate care for the child;
- (g) (i) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;
- (ii) the whereabouts of the parent or guardian are unknown; and
- (iii) reasonable efforts to locate the parent or guardian are unsuccessful;
- (h) subject to [the provisions of] Subsections 78A-6-105[(27)](35)(d) and 78A-6-117(2)[(A)] and

Section 78A-6-301.5, the child is in immediate need of medical care;

(i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a serious risk to the child's health or safety for which immediate remedial or preventive action is necessary; or

(ii) a parent's or guardian's action in leaving a child unattended would reasonably pose a threat to the child's health or safety;

(j) the child or another child residing in the same household has been neglected;

(k) the child's natural parent:

(i) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(ii) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(iii) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;

(l) an infant has been abandoned, as defined in Section 78A-6-316;

(m) (i) the parent or guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(n) the child's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency occurs involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the custody of the child's parent.

(b) For purposes of Subsection (1)(c):

(i) another child residing in the same household may not be removed from the home unless that child is considered to be at substantial risk of being physically abused, sexually abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically abused, sexually abused, or sexually exploited.

(3) (a) For purposes of Subsection (1), if the division files a petition under Section 78A-6-304, the court shall consider the division's safety and risk assessments described in Section 62A-4a-203.1 to determine whether a child should be removed from the custody of the child's parent or guardian or should otherwise be taken into protective custody.

(b) The division shall make a diligent effort to provide the safety and risk assessments described in Section 62A-4a-203.1 to the court, guardian ad litem, and counsel for the parent or guardian, as soon as practicable before the shelter hearing described in Section 78A-6-306.

(4) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect, truancy, or failure to comply with a court order to attend school;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

(5) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(6) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.

(7) (a) Except as provided in Subsection (7)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

(i) the administration of a psychotropic medication to a child;

(ii) a psychiatric, psychological, or behavioral treatment for a child; or

(iii) a psychiatric or behavioral health evaluation of a child.

(b) Notwithstanding Subsection (7)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (7)(a) if failure to take an action described under Subsection (7)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

Section 62. Section 78A-6-306 is amended to read:

78A-6-306. Shelter hearing.

(1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:

(a) removal of the child from the child's home by the division;

(b) placement of the child in the protective custody of the division;

(c) emergency placement under Subsection 62A-4a-202.1(4);

(d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or

(e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).

(2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:

(a) the name and address of the person to whom the notice is directed;

(b) the date, time, and place of the shelter hearing;

(c) the name of the child on whose behalf a petition is being brought;

(d) a concise statement regarding:

(i) the reasons for removal or other action of the division under Subsection (1); and

(ii) the allegations and code sections under which the proceeding has been instituted;

(e) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with the provisions of Section 78A-6-1111; and

(f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:

(a) the appropriate guardian ad litem; and

(b) both parents and any guardian of the child, unless the parents or guardians cannot be located.

(4) The following persons shall be present at the shelter hearing:

(a) the child, unless it would be detrimental for the child;

(b) the child's parents or guardian, unless the parents or guardian cannot be located, or fail to appear in response to the notice;

(c) counsel for the parents, if one is requested;

(d) the child's guardian ad litem;

(e) the caseworker from the division who is assigned to the case; and

(f) the attorney from the attorney general's office who is representing the division.

(5) (a) At the shelter hearing, the court shall:

(i) provide an opportunity to provide relevant testimony to:

(A) the child's parent or guardian, if present; and

(B) any other person having relevant knowledge; and

(ii) subject to Section 78A-6-305, provide an opportunity for the child to testify.

(b) The court:

(i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and

(iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reason why the child was removed from the parent's or guardian's custody;

(b) any services provided to the child and the child's family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and

(e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

(8) (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.

(b) A court shall honor, as nearly as practicable, the request by a parent or guardian for a continuance under Subsection (8)(a).

(c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice described in Subsection (2) within the time described in Subsection (3), the court may grant the request of a parent or guardian for a continuance, not to exceed five judicial days.

(9) (a) If the child is in the protective custody of the division, the court shall order that the child be

returned to the custody of the parent or guardian unless it finds, by a preponderance of the evidence, consistent with the protections and requirements provided in Subsection 62A-4a-201(1), that any one of the following exists:

(i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or safety of the child and the child's physical health or safety may not be protected without removing the child from the custody of the child's parent;

(ii) (A) the child is suffering emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(B) the parent or guardian is unwilling or unable to make reasonable changes that would sufficiently prevent future damage; and

(C) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parent or guardian;

(iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:

(A) parent or guardian;

(B) member of the parent's household or the guardian's household; or

(C) person known to the parent or guardian;

(v) the parent or guardian is unwilling to have physical custody of the child;

(vi) the child is without any provision for the child's support;

(vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

(viii) (A) a relative or other adult custodian with whom the child is left by the parent or guardian is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent or guardian are unknown; and

(C) reasonable efforts to locate the parent or guardian are unsuccessful;

(ix) subject to Subsections 78A-6-105~~(27)~~(35)(d) and 78A-6-117(2)~~(4)~~ and Section 78A-6-~~301~~5, the child is in immediate need of medical care;

(x) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;

(xi) (A) the child or a minor residing in the same household has been neglected; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;

(xii) the parent, guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;

(xiii) (A) the child's welfare is substantially endangered; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the danger; or

(xiv) the child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:

(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

(B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.

(10) (a) (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

(ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.

(b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of replacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78A-6-105[(27)](35)(b), truancy, or failure to comply with a court order to attend school.

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal regardless of:

- (a) any error in the initial removal of the child;
- (b) the failure of a party to comply with notice provisions; or
- (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 63. Section 78A-6-312 is amended to read:

78A-6-312. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:

(a) make any of the dispositions described in Section 78A-6-117;

(b) place the minor in the custody or guardianship of any:

- (i) individual; or
- (ii) public or private entity or agency; or
- (c) order:
 - (i) protective supervision;
 - (ii) family preservation;

(iii) subject to Subsections (12)(b), 78A-6-105[(27)](35)(d), and 78A-6-117(2)[(a)] and

Section 78A-6-301.5, medical or mental health treatment; or

(iv) other services.

(2) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division, the court shall first:

(a) establish a primary permanency plan for the minor; and

(b) determine whether, in view of the primary permanency plan, reunification services are appropriate for the minor and the minor's family, pursuant to Subsections (20) through (22).

(3) Subject to Subsections (6) and (7), if the court determines that reunification services are appropriate for the minor and the minor's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the minor was removed, unless parent-time is not in the best interest of the minor.

(4) In cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.

(5) In all cases, the minor's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(6) For purposes of Subsection (3), parent-time is in the best interests of a minor unless the court makes a finding that it is necessary to deny parent-time in order to:

- (a) protect the physical safety of the minor;
- (b) protect the life of the minor; or
- (c) prevent the minor from being traumatized by contact with the parent due to the minor's fear of the parent in light of the nature of the alleged abuse or neglect.

(7) Notwithstanding Subsection (3), a court may not deny parent-time based solely on a parent's failure to:

- (a) prove that the parent has not used legal or illegal substances; or
- (b) comply with an aspect of the child and family plan that is ordered by the court.

(8) (a) In addition to the primary permanency plan, the court shall establish a concurrent permanency plan that shall include:

- (i) a representative list of the conditions under which the primary permanency plan will be abandoned in favor of the concurrent permanency plan; and
- (ii) an explanation of the effect of abandoning or modifying the primary permanency plan.

(b) In determining the primary permanency plan and concurrent permanency plan, the court shall consider:

(i) the preference for kinship placement over nonkinship placement;

(ii) the potential for a guardianship placement if the parent-child relationship is legally terminated and no appropriate adoption placement is available; and

(iii) the use of an individualized permanency plan, only as a last resort.

(9) A permanency hearing shall be conducted in accordance with Subsection 78A-6-314(1)(b) within 30 days after the day on which the dispositional hearing ends if something other than reunification is initially established as a minor's primary permanency plan.

(10) (a) The court may amend a minor's primary permanency plan before the establishment of a final permanency plan under Section 78A-6-314.

(b) The court is not limited to the terms of the concurrent permanency plan in the event that the primary permanency plan is abandoned.

(c) If, at any time, the court determines that reunification is no longer a minor's primary permanency plan, the court shall conduct a permanency hearing in accordance with Section 78A-6-314 on or before the earlier of:

(i) 30 days after the day on which the court makes the determination described in this Subsection (10)(c); or

(ii) the day on which the provision of reunification services, described in Section 78A-6-314, ends.

(11) (a) If the court determines that reunification services are appropriate, [it] the court shall order that the division make reasonable efforts to provide services to the minor and the minor's parent for the purpose of facilitating reunification of the family, for a specified period of time.

(b) In providing the services described in Subsection (11)(a), the minor's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(12) (a) The court shall:

(i) determine whether the services offered or provided by the division under the child and family plan constitute "reasonable efforts" on the part of the division;

(ii) determine and define the responsibilities of the parent under the child and family plan in accordance with Subsection 62A-4a-205(6)(e); and

(iii) identify verbally on the record, or in a written document provided to the parties, the responsibilities described in Subsection (12)(a)(ii), for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(b) If the parent is in a substance [abuse] use disorder treatment program, other than a certified drug court program:

(i) the court may order the parent to submit to supplementary drug or alcohol testing in addition to the testing recommended by the parent's substance [abuse] use disorder program based on a finding of reasonable suspicion that the parent is abusing drugs or alcohol; and

(ii) the court may order the parent to provide the results of drug or alcohol testing recommended by the substance [abuse] use disorder program to the court or division.

(13) (a) The time period for reunification services may not exceed 12 months from the date that the minor was initially removed from the minor's home, unless the time period is extended under Subsection 78A-6-314(7).

(b) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(14) (a) If reunification services are ordered, the court may terminate those services at any time.

(b) If, at any time, continuation of reasonable efforts to reunify a minor is determined to be inconsistent with the final permanency plan for the minor established pursuant to Section 78A-6-314, then measures shall be taken, in a timely manner, to:

(i) place the minor in accordance with the permanency plan; and

(ii) complete whatever steps are necessary to finalize the permanent placement of the minor.

(15) Any physical custody of the minor by the parent or a relative during the period described in Subsections (11) through (14) does not interrupt the running of the period.

(16) (a) If reunification services are ordered, a permanency hearing shall be conducted by the court in accordance with Section 78A-6-314 at the expiration of the time period for reunification services.

(b) The permanency hearing shall be held no later than 12 months after the original removal of the minor.

(c) If reunification services are not ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

(17) With regard to a minor in the custody of the division whose parent or parents are ordered to receive reunification services but who have abandoned that minor for a period of six months from the date that reunification services were ordered:

(a) the court shall terminate reunification services; and

(b) the division shall petition the court for termination of parental rights.

(18) When a court conducts a permanency hearing for a minor under Section 78A-6-314, the

court shall attempt to keep the minor's sibling group together if keeping the sibling group together is:

- (a) practicable; and
- (b) in accordance with the best interest of the minor.

(19) (a) Because of the state's interest in and responsibility to protect and provide permanency for minors who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited.

- (b) The court may determine that:

- (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate, based on the individual circumstances; and

- (ii) reunification services should not be provided.

- (c) In determining "reasonable efforts" to be made with respect to a minor, and in making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount concern.

(20) There is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

- (a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

- (b) subject to Subsection (21)(a), the parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services;

- (c) the minor was previously adjudicated as an abused child due to physical abuse, sexual abuse, or sexual exploitation, and following the adjudication the minor:

- (i) was removed from the custody of the minor's parent;

- (ii) was subsequently returned to the custody of the parent; and

- (iii) is being removed due to additional physical abuse, sexual abuse, or sexual exploitation;

- (d) the parent:

- (i) caused the death of another minor through abuse or neglect;

- (ii) committed, aided, abetted, attempted, conspired, or solicited to commit:

- (A) murder or manslaughter of a child; or

- (B) child abuse homicide;

- (iii) committed sexual abuse against the child;

- (iv) is a registered sex offender or required to register as a sex offender; or

- (v) (A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

- (B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

- (C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child;

- (e) the minor suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

- (f) the minor is adjudicated an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the minor to pursue reunification services with the offending parent;

- (g) the parent's rights are terminated with regard to any other minor;

- (h) the minor was removed from the minor's home on at least two previous occasions and reunification services were offered or provided to the family at those times;

- (i) the parent has abandoned the minor for a period of six months or longer;

- (j) the parent permitted the child to reside, on a permanent or temporary basis, at a location where the parent knew or should have known that a clandestine laboratory operation was located;

- (k) except as provided in Subsection (21)(b), with respect to a parent who is the child's birth mother, the child has fetal alcohol syndrome, fetal alcohol spectrum disorder, or was exposed to an illegal or prescription drug that was abused by the child's mother while the child was in utero, if the child was taken into division custody for that reason, unless the mother agrees to enroll in, is currently enrolled in, or has recently and successfully completed a substance ~~[abuse]~~ use disorder treatment program approved by the department; or

- (l) any other circumstance that the court determines should preclude reunification efforts or services.

(21) (a) The finding under Subsection (20)(b) shall be based on competent evidence from at least two medical or mental health professionals, who are not associates, establishing that, even with the provision of services, the parent is not likely to be capable of adequately caring for the minor within 12 months after the day on which the court finding is made.

- (b) A judge may disregard the provisions of Subsection (20)(k) if the court finds, under the circumstances of the case, that the substance ~~[abuse]~~ use disorder treatment described in Subsection (20)(k) is not warranted.

(22) In determining whether reunification services are appropriate, the court shall take into consideration:

(a) failure of the parent to respond to previous services or comply with a previous child and family plan;

(b) the fact that the minor was abused while the parent was under the influence of drugs or alcohol;

(c) any history of violent behavior directed at the child or an immediate family member;

(d) whether a parent continues to live with an individual who abused the minor;

(e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

(f) testimony by a competent professional that the parent's behavior is unlikely to be successful; and

(g) whether the parent has expressed an interest in reunification with the minor.

(23) (a) If reunification services are not ordered pursuant to Subsections (19) through (21), and the whereabouts of a parent become known within six months after the day on which the out-of-home placement of the minor is made, the court may order the division to provide reunification services.

(b) The time limits described in Subsections (2) through (18) are not tolled by the parent's absence.

(24) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless [it] the court determines that those services would be detrimental to the minor.

(b) In making the determination described in Subsection (24)(a), the court shall consider:

(i) the age of the minor;

(ii) the degree of parent-child bonding;

(iii) the length of the sentence;

(iv) the nature of the treatment;

(v) the nature of the crime or illness;

(vi) the degree of detriment to the minor if services are not offered;

(vii) for a minor 10 years old or older, the minor's attitude toward the implementation of family reunification services; and

(viii) any other appropriate factors.

(c) Reunification services for an incarcerated parent are subject to the time limitations imposed in Subsections (2) through (18).

(d) Reunification services for an institutionalized parent are subject to the time limitations imposed in Subsections (2) through (18), unless the court determines that continued reunification services would be in the minor's best interest.

(25) If, pursuant to Subsections (20)(b) through (1), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78A-6-314.

Section 64. Section 78A-6-401 is amended to read:

78A-6-401. Attorney general responsibility.

~~[(1) The processes and procedures described in Part 3, Abuse, Neglect, and Dependency Proceedings, designed to meet the needs of minors who are abused or neglected, are not applicable to a minor who is committed to the custody of the Division of Child and Family Services on a basis other than abuse or neglect and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense.]~~

~~[(2) The procedures described in Subsection 78A-6-118(2)(a) are applicable to a minor described in Subsection (1).]~~

~~[(3) The court may appoint a guardian ad litem to represent the interests of a minor described in Subsection (1), upon request of the minor or the minor's parent or guardian.]~~

~~[(4) As of July 1, 1998, the]~~

The attorney general's office shall represent the Division of Child and Family Services with regard to actions involving a minor who has not been adjudicated as abused or neglected, but who is [otherwise committed to the custody of the division by the juvenile court, and who is classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in Subsection (3) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Section 78A-6-115] ordered to complete in-home family services under Section 78A-6-117.5.

Section 65. Section 78A-6-602 is amended to read:

78A-6-602. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal referral -- Citation -- Failure to appear.

(1) A proceeding in a minor's case is commenced by petition, except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703.

~~[(2) (a) A peace officer or any public official of the state, any county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the juvenile court within 10 days of a minor's arrest. If the arrested minor is taken to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours, excluding weekends and holidays. There shall be no requirement to file a formal referral with the juvenile court on an offense that would be a class B misdemeanor or less if committed by an adult.]~~

(2) (a) A peace officer or a public official of the state, a county, city, or town charged with the enforcement of the laws of the state or local jurisdiction shall file a formal referral with the juvenile court within 10 days of a minor's arrest. If the arrested minor is taken to a detention facility,

the formal referral shall be filed with the juvenile court within 72 hours, excluding weekends and holidays. A formal referral under Section 53A-11-911 may not be filed with the juvenile court on an offense unless the offense is subject to referral under Section 53A-11-911.

(b) When the court is informed by a peace officer or other person that a minor is or appears to be within the court's jurisdiction, the probation department shall make a preliminary inquiry to determine whether [the interests of the public or of the minor require that further action be taken. (c) (i) Based on the preliminary inquiry, the court may authorize the filing of or request that the county attorney or district attorney as provided under Section 17-18a-202 or 17-18a-203 file a petition. (ii) In its discretion, the court may, through its probation department,] the minor is eligible to enter into a written consent agreement with the [minor] probation department and, if the minor is a child, the minor's parent, guardian, or custodian for the nonjudicial adjustment of the case [if the facts are admitted and establish prima facie jurisdiction.] pursuant to this Subsection (2). The court's probation department shall offer a nonjudicial adjustment if the minor:

(i) is referred with a misdemeanor, infraction, or status offense;

(ii) has fewer than three prior adjudications; and

(iii) has no more than three prior unsuccessful nonjudicial adjustment attempts.

(c) (i) Notwithstanding Subsection (2)(b), the probation department may conduct a validated risk and needs assessment and may request that the prosecutor review the referral pursuant to Subsection (2)(g) to determine whether to dismiss the referral or file a petition instead of offering a nonjudicial adjustment if:

(A) the results of the assessment indicate the youth is high risk; or

(B) the results of the assessment indicate the youth is moderate risk and the referral is for a class A misdemeanor violation under Title 76, Chapter 5, or Title 76, Chapter 9, Part 7, Miscellaneous Provisions.

(ii) The court's probation department, may offer a nonjudicial adjustment to any other minor who does not meet the criteria provided in Subsection (2)(b).

(iii) Acceptance of an offer of nonjudicial adjustment may not be predicated on an admission of guilt.

(iv) A minor may not be denied an offer of nonjudicial adjustment due to an inability to pay a financial penalty under Subsection (2)(d).

~~(iii)~~ (v) Efforts to effect a nonjudicial adjustment may not extend for a period of more than 90 days without leave of a judge of the court, who may extend the period for an additional 90 days.

(d) The nonjudicial adjustment of a case may include conditions agreed upon as part of the nonjudicial closure:

(i) payment of a financial penalty of not more than \$250 to the juvenile court subject to the terms established under Subsection (2)(e);

(ii) payment of victim restitution;

(iii) satisfactory completion of compensatory service;

(iv) referral to an appropriate provider for counseling or treatment;

(v) attendance at substance ~~abuse~~ use disorder programs or counseling programs;

(vi) compliance with specified restrictions on activities and associations; and

(vii) other reasonable actions that are in the interest of the child or minor and the community.

~~[(e) Proceedings involving offenses under Section 78A-6-606 are governed by that section regarding suspension of driving privileges.]~~

(e) A fee, fine, or restitution included in a nonjudicial closure in accordance with Subsection (2)(d) shall be based upon the ability of the minor's family to pay as determined by a statewide sliding scale developed as provided in Section 63M-7-208 on and after July 1, 2018.

(f) If a minor fails to substantially comply with the conditions agreed upon as part of the nonjudicial closure, or if a minor is not offered or declines a nonjudicial adjustment pursuant to Subsection (2)(b) or (2)(c)(ii), the prosecutor shall review the case and take one of the following actions:

(i) dismiss the case;

(ii) refer the case back to the probation department for a new attempt at nonjudicial adjustment; or

(iii) in accordance with Subsections (2)(h), file a petition with the court.

(g) Notwithstanding Subsection (2)(f), a petition may only be filed upon reasonable belief that:

(i) the charges are supported by probable cause;

(ii) admissible evidence will be sufficient to support conviction beyond a reasonable doubt; and

(iii) the decision to charge is in the interests of justice.

(h) Failure to pay a fine or fee may not serve as a basis for filing of a petition under Subsection (2)(f)(iii) if the minor has substantially complied with the other conditions agreed upon in accordance with Subsection (2)(d) or those imposed through any other court diversion program.

~~[(f)]~~ (i) A violation of Section 76-10-105 that is subject to the jurisdiction of the juvenile court ~~[shall]~~ may include a ~~[minimum]~~ fine or penalty ~~[of \$60]~~ and participation in a court-approved tobacco education program, which may include a participation fee.

(j) If the prosecutor files a petition in court, the court may refer the case to the probation department for another offer of nonjudicial adjustment.

(3) Except as provided in Sections 78A-6-701 and 78A-6-702, in the case of a minor 14 years of age or older, the county attorney, district attorney, or attorney general may commence an action by filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction and certify the minor to the district court.

(4) (a) In cases of violations of wildlife laws, boating laws, class B and class C misdemeanors, other infractions or misdemeanors as designated by general order of the Board of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the juvenile court, a petition is not required and the issuance of a citation as provided in Section 78A-6-603 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is ~~[not]~~ required ~~[unless requested by the court]~~.

(b) Any failure to comply with the time deadline on a formal referral may not be the basis of dismissing the formal referral.

Section 66. Section 78A-6-603 is amended to read:

78A-6-603. Citation procedure -- Citation -- Offenses -- Time limits -- Failure to appear.

(1) As used in this section, "citation" means an abbreviated referral and is sufficient to invoke the jurisdiction of the court in lieu of a petition.

(2) A citation shall be submitted to the court within five days of [its] issuance.

(3) ~~[Each]~~ A copy of the citation shall contain:

(a) the name and address of the juvenile court before which the minor [is] may be required to appear;

(b) the name of the minor cited;

(c) the statute or local ordinance that is alleged to have been violated;

(d) a brief description of the offense charged;

(e) the date, time, and location at which the offense is alleged to have occurred;

(f) the date the citation was issued;

(g) the name and badge or identification number of the peace officer or public official who issued the citation;

(h) the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested minor into custody as provided in Section 78A-6-112;

(i) the date and time when the minor is to appear, or a statement that the minor and parent or legal guardian are to appear when notified by the juvenile court; and

(j) the signature of the minor and the parent or legal guardian, if present, agreeing to appear at the juvenile court as designated on the citation.

(4) ~~[Each]~~ A copy of the citation shall contain space for the following information to be entered if known:

(a) the minor's address;

(b) the minor's date of birth;

(c) the name and address of the child's custodial parent or legal guardian, if different from the child; and

(d) if there is a victim, the victim's name, address, and an estimate of loss, except that this information shall be removed from the documents the minor receives.

(5) A citation received by the court beyond the time designated in Subsection (2) shall include a written explanation for the delay.

(6) ~~[The]~~ In accordance with Section 53A-11-911, the following offenses may be sent to the juvenile court as a citation:

(a) violations of wildlife laws;

(b) violations of boating laws;

(c) violations of curfew laws;

(d) any class B misdemeanor or less traffic violations where the person is under the age of 16;

(e) any class B or class C misdemeanor or infraction;

(f) any other infraction or misdemeanor as designated by general order of the Board of Juvenile Court Judges; and

(g) violations of Section 76-10-105 subject to the jurisdiction of the juvenile court.

~~[(7) A preliminary inquiry is not required unless requested by the court.]~~

~~[(8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or habitually truant child.]~~

~~[(9) In the case of Section 76-10-105 violations committed on school property when a citation is issued under this section, the peace officer, public official, or compliance officer shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and file a duplicate with the juvenile court specified in the citation within five days.]~~

(7) A minor offense defined under Section 78A-6-1202, alleged to have been committed by an enrolled child on school property or related to school attendance, may only be sent to the prosecutor or the juvenile court in accordance with Section 53A-11-911.

(8) A preliminary inquiry by the prosecutor, and if appropriate, the court, under Section 78A-6-117 is required.

(9) Subsection (5) may not apply to a runaway child.

(10) (a) A minor receiving a citation described in this section shall appear at the juvenile court designated in the citation on the time and date specified in the citation or when notified by the juvenile court.

(b) A citation may not require a minor to appear sooner than five days following its issuance.

(11) A minor who receives a citation and willfully fails to appear before the juvenile court pursuant to a citation [~~is subject to arrest and~~] may be found in contempt of court. The court may proceed against the minor as provided in Section 78A-6-1101 [~~regardless of the disposition of the offense upon which the minor was originally cited~~].

(12) When a citation is issued under this section, bail may be posted and forfeited under [~~Subsection~~] Section 78A-6-113[~~(12)~~] with the consent of:

(a) the court; and

(b) if the minor is a child, the parent or legal guardian of the child cited.

Section 67. Section 78A-6-604 is amended to read:

78A-6-604. Minor held in detention -- Credit for good behavior.

(1) [~~The judge may order whether a~~] A minor held in detention under Subsection 78A-6-117(2)(f) [~~or 78A-6-1101(3)~~] is eligible to receive credit for good behavior against the period of detention. The rate of credit is one day for every three days served. The Division of Juvenile Justice Services shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish rules describing good behavior for which credit may be earned.

(2) Any disposition including detention under Subsection 78A-6-117(2)(f) [~~or 78A-6-1101(3)~~] shall be concurrent with any other order of detention.

Section 68. Section 78A-6-606 is amended to read:

78A-6-606. Suspension of license for certain offenses.

(1) This section applies to a minor who is at least [~~13 years of age~~] the age eligible for a driver license under Section 53-3-204 when found by the court to be within its jurisdiction by the commission of an offense under:

(a) Section 32B-4-409;

(b) Section 32B-4-410;

(c) Section 32B-4-411;

(d) Section 58-37-8;

(e) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(f) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(g) Subsection 76-9-701(1).

(2) This section only applies when the minor is found by the court to be in actual physical control of a motor vehicle during the commission of one of the offenses under Subsection (1).

[~~(2)~~] (3) If the court hearing the case determines that the minor committed an offense under Section 58-37-8 or Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act, the court [~~shall~~] may prepare and send to the Driver License Division of the Department of Public Safety an order to suspend that minor's driving privileges.

[~~(3)~~] (4) (a) The court hearing the case [~~shall~~] may suspend the minor's driving privileges if the minor violated Section 32B-4-409, Section 32B-4-410, or Subsection 76-9-701(1).

(b) [~~Notwithstanding the requirement in Subsection (2) or (3)(a), the~~] The court may reduce [~~the~~] a suspension period [~~required~~] imposed under Section 53-3-219 if:

(i) the violation is the minor's first violation of:

(A) Section 32B-4-409;

(B) Section 32B-4-410;

(C) Section 58-37-8;

(D) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(E) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(F) Subsection 76-9-701(1); and

(ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

(B) the minor demonstrates substantial progress in substance [~~abuse~~] use disorder treatment.

(c) [~~Notwithstanding the requirement in Subsection (2) or (3)(a) and in accordance with the requirements of Section 53-3-219, the~~] The court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's second or subsequent violation of:

(A) Section 32B-4-409;

(B) Section 32B-4-410;

(C) Section 58-37-8;

(D) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(E) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(F) Subsection 76-9-701(1);

(ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance [~~abuse~~] use disorder treatment; and

(iii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or

drugs for at least a one-year consecutive period during the suspension period imposed under Subsection ~~[(3)]~~ (4)(a); or

(B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection ~~[(3)]~~ (4)(a).

(d) If a minor commits a proof of age violation, as defined in Section 32B-4-411:

(i) the court ~~[shall]~~ may forward a record of adjudication to the Department of Public Safety for a first or subsequent violation; and

(ii) the minor's driving privileges will be suspended:

(A) for a period of at least one year under Section 53-3-220 for a first conviction for a violation of Section 32B-4-411; or

(B) for a period of two years for a second or subsequent conviction for a violation of Section 32B-4-411.

(e) ~~[Notwithstanding the requirement in Subsection (3)(d), the]~~ The court may reduce the suspension period imposed under Subsection ~~[(3)]~~ (4)(d)(ii)(A) if:

(i) the violation is the minor's first violation of Section 32B-4-411; and

(ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

(B) the minor demonstrates substantial progress in substance ~~[abuse]~~ use disorder treatment.

(f) ~~[Notwithstanding the requirement in Subsection (3)(d), the]~~ The court may reduce the suspension period imposed under Subsection ~~[(3)]~~ (4)(d)(ii)(B) if:

(i) the violation is the minor's second or subsequent violation of Section 32B-4-411;

(ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance ~~[abuse]~~ use disorder treatment; and

(iii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection ~~[(3)]~~ (4)(d)(ii)(B); or

(B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection ~~[(3)]~~ (4)(d)(ii)(B).

~~[(4)]~~ (5) A minor's license shall be suspended under Section 53-3-219 when a court issues an order suspending the minor's driving privileges in accordance with Subsection (2) for a violation of:

(a) Section 32B-4-409;

(b) Section 32B-4-410;

(c) Section 58-37-8;

(d) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, or Title 37b, Imitation Controlled Substances Act; or

(e) Subsection 76-9-701(1).

~~[(5)]~~ (6) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended under this section, the Department of Public Safety shall extend the suspension for a like period of time.

Section 69. Section 78A-6-701 is amended to read:

78A-6-701. Jurisdiction of district court.

(1) The district court has exclusive original jurisdiction over all persons 16 years of age or older charged with~~[(a)]~~ an offense ~~[which]~~ that would be murder or aggravated murder if committed by an adult~~[(i)]~~.

~~[(b) if the minor has been previously committed to a secure facility as defined in Section 62A-7-101, a felony violation of:]~~

~~[(i) Section 76-6-103, aggravated arson;]~~

~~[(ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;]~~

~~[(iii) Section 76-5-302, aggravated kidnapping;]~~

~~[(iv) Section 76-6-203, aggravated burglary;]~~

~~[(v) Section 76-6-302, aggravated robbery;]~~

~~[(vi) Section 76-5-405, aggravated sexual assault;]~~

~~[(vii) Section 76-10-508.1, felony discharge of a firearm;]~~

~~[(viii) Section 76-5-202, attempted aggravated murder; or]~~

~~[(ix) Section 76-5-203, attempted murder; or]~~

~~[(e) an offense other than those listed in Subsection (1)(b) involving the use of a dangerous weapon, which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.]~~

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is

allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3) (a) ~~[Any]~~ A felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority previously exercised over the minor.

(4) A minor arrested under this section shall be held in a juvenile detention facility until the district court determines where the minor shall be held until the time of trial, except for defendants who are otherwise subject to the authority of the Board of Pardons and Parole.

(5) The district court shall consider the following when determining where the minor will be held until the time of trial:

(a) the age of the minor;

(b) the nature, seriousness, and circumstances of the alleged offense;

(c) the minor's history of prior criminal acts;

(d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;

(e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;

(f) the relative ability of the facility to meet the needs of the minor and protect the public;

(g) whether the minor presents an imminent risk of harm to the minor or others within the facility;

(h) the physical maturity of the minor;

(i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and

(j) any other factors the court considers relevant.

(6) A minor ordered to a juvenile detention facility under Subsection (5) shall remain in the facility until released by a district court judge, or if convicted, until sentencing.

(7) A minor held in a juvenile detention facility under this section shall have the same right to bail as any other criminal defendant.

(8) If the minor ordered to a juvenile detention facility under Subsection (5) attains the age of 18

years, the minor shall be transferred within 30 days to an adult jail until released by the district court judge, or if convicted, until sentencing.

(9) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including jail or other place of pretrial confinement for adults.

Section 70. Section 78A-6-1101 is amended to read:

78A-6-1101. Violation of order of court -- Contempt -- Penalty -- Enforcement of fine, fee, or restitution.

(1) ~~[Any]~~ A person who willfully violates or refuses to obey any order of the court may be proceeded against for contempt of court.

(2) ~~[Any]~~ A person 18 years of age or older found in contempt of court may be punished in accordance with Section 78B-6-310.

(3) (a) ~~[Any]~~ A person younger than 18 years of age found in contempt of court may be punished by ~~[any]~~ disposition permitted under Section 78A-6-117, except ~~[for commitment to a secure facility]~~ the court may only order a disposition that changes the custody of the minor, including community placement or commitment to a secure facility, if the disposition is commitment to a secure detention pursuant to Subsection 78A-6-117(2)(f) for no longer than 72 hours, excluding weekends and legal holidays.

(b) ~~[The]~~ A court may ~~[stay or]~~ not suspend all or part of the punishment upon compliance with conditions imposed by the court.

(4) ~~[The]~~ In accordance with Section 78A-6-117, the court may enforce orders of fines, fees, or restitution through garnishments, wage withholdings, supplementary proceedings, or executions. An order described in this Subsection (4) may not be enforced through an order of detention, community placement, or commitment to a secure facility.

Section 71. Section 78A-6-1202 is amended to read:

78A-6-1202. Definitions.

(1) "Adult" means a person 18 years of age or older.

(2) (a) "Gang activity" means any criminal activity that is conducted as part of an organized youth gang. It includes any criminal activity that is done in concert with other gang members, or done alone if it is to fulfill gang purposes.

(b) "Gang activity" does not include graffiti.

(3) (a) "Minor offense" means any unlawful act that is a status offense or would be a ~~[class B or C]~~ misdemeanor, infraction, or violation of a municipal or county ordinance if the youth were an adult.

(b) "Minor offense" does not include:

~~[(a)] (i) a class A [misdemeanors] misdemeanor; or~~

~~[(b)] (ii) [felonies] a felony of any degree[;].~~

~~[(c) any offenses that are committed as part of gang activity;]~~

~~[(d) any of the following offenses which would carry mandatory dispositions if referred to the juvenile court under Section 78A-6-606;]~~

~~[(i) a second violation of Section 32B-4-409, Unlawful Purchase, Possession or Consumption by Minors -- Measurable Amounts in Body;]~~

~~[(ii) a violation of Section 41-6a-502, Driving Under the Influence;]~~

~~[(iii) a violation of Section 58-37-8, Controlled Substances Act;]~~

~~[(iv) a violation of Title 58, Chapter 37a, Utah Drug Paraphernalia Act;]~~

~~[(v) a violation of Title 58, Chapter 37b, Imitation Controlled Substances Act; or]~~

~~[(vi) a violation of Section 76-9-701, Intoxication; or]~~

~~[(c) any offense where a dangerous weapon, as defined in Subsection 76-1-601(5), is used in the commission of the offense.]~~

(4) "Sponsoring entity" means any political subdivision of the state, including a school or school district, juvenile court, law enforcement agency, prosecutor's office, county, city, or town.

(5) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(6) "Youth" means a person under the age of 18 years or who is 18 but still attending high school.

Section 72. Section 78A-6-1203 is amended to read:

78A-6-1203. Youth court -- Authorization -- Referral.

(1) Youth court is a diversion program [which] that provides an alternative disposition for cases involving juvenile offenders in which youth participants, under the supervision of an adult coordinator, may serve in various capacities within the courtroom, acting in the role of jurors, lawyers, bailiffs, clerks, and judges.

(a) Youth who appear before youth courts have been identified by law enforcement personnel, school officials, a prosecuting attorney, or the juvenile court as having committed acts which indicate a need for intervention to prevent further development toward juvenile delinquency, but which appear to be acts that can be appropriately addressed outside the juvenile court process.

(b) Youth courts may only hear cases as provided for in this part.

(c) Youth court is a diversion program and not a court established under the Utah Constitution, Article VIII.

(2) A youth court may not accept referrals from law enforcement, schools, prosecuting attorneys, or a juvenile court unless the youth court is certified by the Utah Youth Court Board.

(3) Any person may refer youth to a youth court for minor offenses or for any other eligible offense under Section 53A-11-911. Once a referral is made, the case shall be screened by an adult coordinator to determine whether it qualifies as a youth court case.

(4) Youth courts have authority over youth:

(a) referred for [a] one or more minor [offense or] offenses or who are referred for other eligible offenses under Section 53A-11-911, or who are granted permission for referral under this part;

(b) who, along with a parent, guardian, or legal custodian, voluntarily and in writing, request youth court involvement; and

~~[(c) who admit having committed the referred offense;]~~

~~[(d) who, along with a parent, guardian, or legal custodian, waive any privilege against self-incrimination and right to a speedy trial; and]~~

(e) (c) who, along with [their] a parent, guardian, or legal custodian, agree to follow the youth court disposition of the case.

(5) Except with permission granted under Subsection (6), or pursuant to Section 53A-11-911, youth courts may not exercise authority over youth who are under the continuing jurisdiction of the juvenile court for law violations, including any youth who may have a matter pending which has not yet been adjudicated. Youth courts may, however, exercise authority over youth who are under the continuing jurisdiction of the juvenile court as set forth in this Subsection (5) if the offense before the youth court is not a law violation, and the referring agency has notified the juvenile court of the referral.

(6) Youth courts may exercise authority over youth described in Subsection (5), and over any other offense with the permission of the juvenile court and the prosecuting attorney in the county or district that would have jurisdiction if the matter were referred to juvenile court.

(7) Permission of the juvenile court may be granted by a probation officer of the court in the district that would have jurisdiction over the offense being referred to youth court.

(8) Youth courts may decline to accept a youth for youth court disposition for any reason and may terminate a youth from youth court participation at any time.

(9) A youth or the youth's parent, guardian, or legal custodian may withdraw from the youth court process at any time. The youth court shall immediately notify the referring source of the withdrawal.

(10) The youth court may transfer a case back to the referring source for alternative handling at any time.

(11) Referral of a case to youth court may not, if otherwise eligible, prohibit the subsequent referral of the case to any court.

(12) Proceedings and dispositions of a youth court may only be shared with the referring agency, juvenile court, and victim.

(13) When a person does not complete the terms ordered by a youth court, and if the case is referred to a juvenile court, the youth court shall provide the case file to the juvenile court.

Section 73. Section 78A-6-1302 is amended to read:

78A-6-1302. Procedure -- Standard.

(1) When a motion is filed pursuant to Section 78A-6-1301 raising the issue of a minor's competency to proceed, or when the court raises the issue of a minor's competency to proceed, the juvenile court in which proceedings are pending shall stay all delinquency proceedings.

(2) If a motion for inquiry is opposed by either party, the court shall, prior to granting or denying the motion, hold a limited hearing solely for the purpose of determining the sufficiency of the motion. If the court finds that the allegations of incompetency raise a bona fide doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's competency.

(3) After the granting of a motion, and prior to a full competency hearing, the court may order the Department of Human Services to evaluate the minor and to report to the court concerning the minor's mental condition.

(4) The minor shall be evaluated by a mental health examiner with experience in juvenile forensic evaluations and juvenile brain development, who is not involved in the current treatment of the minor. If it becomes apparent that the minor may be not competent due to an intellectual disability or related condition, the examiner shall be experienced in intellectual disability or related condition evaluations of minors.

(5) The petitioner or other party, as directed by the court, shall provide all information and materials to the examiners relevant to a determination of the minor's competency including:

- (a) the motion;
- (b) the arrest or incident reports pertaining to the charged offense;
- (c) the minor's known delinquency history information;
- (d) known prior mental health evaluations and treatments; and

(e) consistent with 20 U.S.C. Sec. 1232g (b)(1)(E)(ii)(I), records pertaining to the minor's education.

(6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad litem, shall cooperate in providing the relevant information and materials to the examiners.

(7) In conducting the evaluation and in the report determining if a minor is competent to proceed as defined in Subsection 78A-6-105[(30)](38), the examiner shall consider the impact of a mental disorder, intellectual disability, or related condition on a minor's present capacity to:

- (a) comprehend and appreciate the charges or allegations;
 - (b) disclose to counsel pertinent facts, events, or states of mind;
 - (c) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the minor;
 - (d) engage in reasoned choice of legal strategies and options;
 - (e) understand the adversarial nature of the proceedings;
 - (f) manifest appropriate courtroom behavior; and
 - (g) testify relevantly, if applicable.
- (8) In addition to the requirements of Subsection (7), the examiner's written report shall:

- (a) identify the specific matters referred for evaluation;
- (b) describe the procedures, techniques, and tests used in the evaluation and the purpose or purposes for each;
- (c) state the examiner's clinical observations, findings, and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion;
- (d) state the likelihood that the minor will attain competency and the amount of time estimated to achieve it; and
- (e) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.

(9) The examiner shall provide an initial report to the court, the prosecuting and defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the court's order. If the examiner informs the court that additional time is needed, the court may grant, taking into consideration the custody status of the minor, up to an additional 30 days to provide the report to the court and counsel. The examiner must provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the evaluation and provide the report. The report shall inform the court of the examiner's opinion concerning the competency and the likelihood of the

minor to attain competency within a year. In the alternative, the examiner may inform the court in writing that additional time is needed to complete the report.

(10) Any statement made by the minor in the course of any competency evaluation, whether the evaluation is with or without the consent of the minor, any testimony by the examiner based upon any statement, and any other fruits of the statement may not be admitted in evidence against the minor in any delinquency or criminal proceeding except on an issue respecting the mental condition on which the minor has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the minor's competency.

(11) ~~[Prior to]~~ Before evaluating the minor, examiners shall specifically advise the minor and the parents or guardian of the limits of confidentiality as provided under Subsection (10).

(12) When the report is received the court shall set a date for a competency hearing ~~[which]~~ that shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.

(13) A minor shall be presumed competent unless the court, by a preponderance of the evidence, finds the minor not competent to proceed. The burden of proof is upon the proponent of incompetency to proceed.

(14) (a) Following the hearing, the court shall determine by a preponderance of evidence whether the minor is:

- (i) competent to proceed;
- (ii) not competent to proceed with a substantial probability that the minor may attain competency in the foreseeable future; or
- (iii) not competent to proceed without a substantial probability that the minor may attain competency in the foreseeable future.

(b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall proceed with the delinquency proceedings.

(c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall proceed consistent with Section 78A-6-1303.

(d) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall terminate the competency proceeding, dismiss the delinquency charges without prejudice, and release the minor from any custody order related to the pending delinquency proceeding, unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings shall be initiated within seven days after the court's order, unless the court enlarges the time for good cause shown. The minor may be ordered to remain in

custody until the commitment proceedings have been concluded.

(15) If the court finds the minor not competent to proceed, its order shall contain findings addressing each of the factors in Subsection (7).

Section 74. Section 78A-7-106 is amended to read:

78A-7-106. Jurisdiction.

(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction by a person 18 years of age or older.

(2) Except those offenses over which the juvenile court has exclusive jurisdiction, justice courts have jurisdiction over the following offenses committed within their territorial jurisdiction by a person who is 16 or 17 years of age:

(a) class C misdemeanor and infraction violations of Title 53, Chapter 3, Part 2, Driver Licensing Act; and

(b) class B and C misdemeanor and infraction violations of:

(i) Title 23, Wildlife Resources Code of Utah;

(ii) Title 41, Chapter 1a, Motor Vehicle Act;

(iii) Title 41, Chapter 6a, Traffic Code;

(iv) Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;

(v) Title 41, Chapter 22, Off-Highway Vehicles;

(vi) Title 73, Chapter 18, State Boating Act;

(vii) Title 73, Chapter 18a, Boating - Litter and Pollution Control;

(viii) Title 73, Chapter 18b, Water Safety; and

(ix) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators Act.

(3) As used in this section, "the court's jurisdiction" means the territorial jurisdiction of a justice court.

(4) An offense is committed within the territorial jurisdiction of a justice court if:

(a) conduct constituting an element of the offense or a result constituting an element of the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is itself unlawful;

(b) either a person committing an offense or a victim of an offense is located within the court's jurisdiction at the time the offense is committed;

(c) either a cause of injury occurs within the court's jurisdiction or the injury occurs within the court's jurisdiction;

(d) a person commits any act constituting an element of an inchoate offense within the court's jurisdiction, including an agreement in a conspiracy;

(e) a person solicits, aids, or abets, or attempts to solicit, aid, or abet another person in the planning or commission of an offense within the court's jurisdiction;

(f) the investigation of the offense does not readily indicate in which court's jurisdiction the offense occurred, and:

(i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft passing within the court's jurisdiction;

(ii) (A) the offense is committed on or in any body of water bordering on or within this state if the territorial limits of the justice court are adjacent to the body of water; and

(B) as used in Subsection (5)(f)(ii)(A), "body of water" includes any stream, river, lake, or reservoir, whether natural or man-made;

(iii) a person who commits theft exercises control over the affected property within the court's jurisdiction; or

(iv) the offense is committed on or near the boundary of the court's jurisdiction;

(g) the offense consists of an unlawful communication that was initiated or received within the court's jurisdiction; or

(h) jurisdiction is otherwise specifically provided by law.

(5) A justice court judge may transfer a criminal matter in which the defendant is a child to the juvenile court for further proceedings if the justice court judge determines and the juvenile court concurs that the best interests of the minor would be served by the continuing jurisdiction of the juvenile court, subject to Section 78A-6-602.

(6) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

Section 75. Effective date.

(1) Except as provided in Subsections (2) and (3), this bill takes effect on May 9, 2017.

(2) The actions affecting the following sections take effect on August 1, 2017:

- (a) Section 53A-1-403;
- (b) Section 53A-3-402;
- (c) Section 53A-11-101.7;
- (d) Section 53A-11-103;
- (e) Section 53A-11-105;
- (f) Section 53A-11-403;
- (g) Section 53A-11-901;
- (h) Section 53A-11-908;
- (i) Section 53A-11-910;
- (j) Section 53A-11-911;

(k) Section 53A-11-1302;

(l) Section 53A-11-1604;

(m) Section 58-37-8;

(n) Section 58-37a-7;

(o) Section 58-37b-9;

(p) Section 62A-4a-105;

(q) Section 62A-4a-201;

(r) Section 62A-4a-202;

(s) Section 62A-4a-208;

(t) Section 62A-4a-250;

(u) Section 62A-7-101;

(v) Section 62A-7-104;

(w) Section 62A-7-109.5;

(x) Section 62A-7-201;

(y) Section 62A-7-501;

(z) Section 62A-7-504;

(aa) Section 62A-7-506;

(bb) Section 62A-7-601;

(cc) Section 62A-7-701;

(dd) Section 63M-7-208;

(ee) Section 76-5-413;

(ff) Section 76-10-105;

(gg) Section 78A-6-105;

(hh) Section 78A-6-106.5;

(ii) Section 78A-6-109;

(ij) Section 78A-6-111;

(kk) Section 78A-6-115;

(ll) Section 78A-6-117.5;

(mm) Section 78A-6-118;

(nn) Section 78A-6-119;

(oo) Section 78A-6-302;

(pp) Section 78A-6-306;

(qq) Section 78A-6-312;

(rr) Section 78A-6-401;

(ss) Section 78A-6-602;

(tt) Section 78A-6-603;

(uu) Section 78A-6-604;

(vv) Section 78A-6-606;

(ww) Section 78A-6-701;

(xx) Section 78A-6-1202;

(yyy) Section 78A-6-1203;

(zzz) Section 78A-6-1302; and

(aaa) Section 78A-7-106.

(3) The actions affecting the following sections take effect on July 1, 2018:

- (a) Section 17-18a-404;
- (b) Section 32B-4-409;
- (c) Section 32B-4-410;
- (d) Section 32B-4-411;
- (e) Section 62A-7-107.5;
- (f) Section 62A-7-202;
- (g) Section 62A-7-404;
- (h) Section 63M-7-404;
- (i) Section 76-9-701;
- (j) Section 78A-6-103;
- (k) Section 78A-6-112;
- (l) Section 78A-6-113;
- (m) Section 78A-6-117;
- (n) Section 78A-6-120;
- (o) Section 78A-6-121;
- (p) Section 78A-6-123;
- (q) Section 78A-6-124; and
- (r) Section 78A-6-1101.

Section 76. Revisor instructions.

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the language "this bill" in Section 62A-1-111.5 with the bill's designated chapter number in the Laws of Utah.

CHAPTER 331**H. B. 246**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

SYSTEM OF CARE DEVELOPMENT

Chief Sponsor: Rebecca P. Edwards
Senate Sponsor: Allen M. Christensen

LONG TITLE**General Description:**

This bill amends provisions relating to a system of care within the Department of Human Services.

Highlighted Provisions:

This bill:

- ▶ amends the definition of “system of care”;
- ▶ enumerates department authority to develop a system of care; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-1-104, as last amended by Laws of Utah 2014, Chapter 213

62A-1-111, as last amended by Laws of Utah 2016, Chapter 296

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

Section 1. Section 62A-1-104 is amended to read:**62A-1-104. Definitions.**

(1) As used in this title:

(a) “Concurrence of the board” means agreement by a majority of the members of a board.

(b) “Department” means the Department of Human Services established in Section 62A-1-102.

(c) “Executive director” means the executive director of the department, appointed ~~pursuant to~~ under Section 62A-1-108.

(d) “System of care” means a broad, flexible array of services and supports ~~[for minors with or at risk for complex emotional and behavioral needs]~~ that:

~~[(i) is community based;]~~

~~[(ii) integrates service planning, service coordination, and management across state and local entities;]~~

~~[(iii) includes individualized, person-centered planning;]~~

~~[(iv) builds meaningful partnerships with families and children; and]~~

~~[(v) provides supportive management and policy infrastructure that is organized into a coordinated network.]~~

~~(i) serves a child with or who is at risk for complex emotional and behavioral needs;~~

~~(ii) is community based;~~

~~(iii) is informed about trauma;~~

~~(iv) builds meaningful partnerships with families and children;~~

~~(v) integrates service planning, service coordination, and management across state and local entities;~~

~~(vi) includes individualized case planning;~~

~~(vii) provides management and policy infrastructure that supports a coordinated network of interdepartmental service providers, contractors, and service providers who are outside of the department; and~~

~~(viii) is guided by the type and variety of services needed by a child with or who is at risk for complex emotional and behavioral needs and by the child’s family.~~

(2) The definitions provided in Subsection (1) are to be applied in addition to definitions contained throughout this title ~~[which]~~ that are applicable to ~~[specific]~~ specified chapters or parts.

Section 2. Section 62A-1-111 is amended to read:**62A-1-111. Department authority.**

The department may, in addition to all other authority and responsibility granted to ~~[it]~~ the department by law:

(1) adopt rules, not inconsistent with law, as the department may consider necessary or desirable for providing social services to the people of this state;

(2) establish and manage client trust accounts in the department’s institutions and community programs, at the request of the client or the client’s legal guardian or representative, or in accordance with federal law;

(3) purchase, as authorized or required by law, services that the department is responsible to provide for legally eligible persons;

(4) conduct adjudicative proceedings for clients and providers in accordance with the procedures of Title 63G, Chapter 4, Administrative Procedures Act;

(5) establish eligibility standards for its programs, not inconsistent with state or federal law or regulations;

(6) take necessary steps, including legal action, to recover money or the monetary value of services provided to a recipient who was not eligible;

(7) set and collect fees for its services;

(8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or limited by law;

(9) acquire, manage, and dispose of any real or personal property needed or owned by the department, not inconsistent with state law;

(10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the proceeds thereof, may be credited to the program designated by the donor, and may be used for the purposes requested by the donor, as long as the request conforms to state and federal policy; all donated funds shall be considered private, nonlapsing funds and may be invested under guidelines established by the state treasurer;

(11) accept and employ volunteer labor or services; the department is authorized to reimburse volunteers for necessary expenses, when the department considers that reimbursement to be appropriate;

(12) carry out the responsibility assigned in the workforce services plan by the State Workforce Development Board;

(13) carry out the responsibility assigned by Section 35A-8-602 with respect to coordination of services for the homeless;

(14) carry out the responsibility assigned by Section 62A-5a-105 with respect to coordination of services for students with a disability;

(15) provide training and educational opportunities for its staff;

(16) collect child support payments and any other money due to the department;

(17) apply the provisions of Title 78B, Chapter 12, Utah Child Support Act, to parents whose child lives out of the home in a department licensed or certified setting;

(18) establish policy and procedures, within appropriations authorized by the Legislature, in cases where the department is given custody of a minor by the juvenile court ~~[pursuant to]~~ under Section 78A-6-117 or ordered to prepare an attainment plan for a minor found not competent to proceed ~~[pursuant to]~~ under Section 78A-6-1301; any policy and procedures shall include:

(a) designation of interagency teams for each juvenile court district in the state;

(b) delineation of assessment criteria and procedures;

(c) minimum requirements, and timeframes, for the development and implementation of a collaborative service plan for each minor placed in department custody; and

(d) provisions for submittal of the plan and periodic progress reports to the court;

(19) carry out the responsibilities assigned to it by statute;

(20) examine and audit the expenditures of any public funds provided to local substance abuse authorities, local mental health authorities, local area agencies on aging, and any person, agency, or

organization that contracts with or receives funds from those authorities or agencies. Those local authorities, area agencies, and any person or entity that contracts with or receives funds from those authorities or area agencies, shall provide the department with any information the department considers necessary. The department is further authorized to issue directives resulting from any examination or audit to local authorities, area agencies, and persons or entities that contract with or receive funds from those authorities with regard to any public funds. If the department determines that it is necessary to withhold funds from a local mental health authority or local substance abuse authority based on failure to comply with state or federal law, policy, or contract provisions, it may take steps necessary to ensure continuity of services. For purposes of this Subsection (20) "public funds" means the same as that term is defined in Section 62A-15-102;

(21) pursuant to Subsection 62A-2-106(1)(d), accredit one or more agencies and persons to provide intercountry adoption services; and

(22) within appropriations authorized by the Legislature, promote and develop a system of care, as defined in Section 62A-1-104~~], within the department and with contractors that provide services to the department or any of the department's divisions.]:~~

(a) in compliance with Title 63G, Chapter 6a, Utah Procurement Code; and

(b) that encompasses the department, department contractors, and the divisions, offices, or institutions within the department, to:

(i) navigate services, funding resources, and relationships to the benefit of the children and families whom the department serves;

(ii) centralize department operations, including procurement and contracting;

(iii) develop policies that govern business operations and that facilitate a system of care approach to service delivery;

(iv) allocate resources that may be used for the children and families served by the department or the divisions, offices, or institutions within the department, subject to the restrictions in Section 63J-1-206;

(v) create performance-based measures for the provision of services; and

(vi) centralize other business operations, including data matching and sharing among the department's divisions, offices, and institutions.

CHAPTER 332**H. B. 248**

Passed March 8, 2017
 Approved March 24, 2017
 Effective May 9, 2017

**DOMESTIC VIOLENCE
 RELATED AMENDMENTS**

Chief Sponsor: LaVar Christensen
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies provisions related to domestic violence.

Highlighted Provisions:

This bill:

- ▶ amends definition provisions;
- ▶ addresses the designation of a person that communicates between a defendant and victim;
- ▶ addresses enforcement of restitution requirements;
- ▶ provides the process for the issuance of continuous protective orders;
- ▶ addresses form for protective orders;
- ▶ modifies conditions for dismissals of protective orders; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 77-20-1, as last amended by Laws of Utah 2016, Chapter 234
 77-36-1, as last amended by Laws of Utah 2016, Chapter 422
 77-36-2.1, as last amended by Laws of Utah 2011, Chapter 113
 77-36-2.4, as last amended by Laws of Utah 2010, Chapter 384
 77-36-2.6, as last amended by Laws of Utah 2010, Chapter 384
 77-36-5, as last amended by Laws of Utah 2016, Chapter 422
 77-36-5.1, as last amended by Laws of Utah 2010, Chapter 384
 78B-7-102, as last amended by Laws of Utah 2013, Chapter 348
 78B-7-105, as last amended by Laws of Utah 2009, Chapter 232
 78B-7-115, as last amended by Laws of Utah 2016, Chapter 196

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

Section 1. Section 77-20-1 is amended to read:**77-20-1. Right to bail -- Denial of bail -- Hearing.**

- (1) As used in this chapter:

(a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

(b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

(c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

(2) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

(a) capital felony, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

(d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(3) Any person who may be admitted to bail may be released either on the person's own recognizance or upon posting bail, on condition that the person appear in court for future court proceedings in the case, and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

(a) ensure the appearance of the accused;

(b) ensure the integrity of the court process;

(c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate; and

(d) ensure the safety of the public.

(4) (a) Except as otherwise provided, the initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest.

(b) A magistrate may set bail upon determining that there was probable cause for a warrantless arrest.

(c) A bail commissioner may set bail in a misdemeanor case in accordance with Sections 10-3-920 and 17-32-1.

(d) A person arrested for a violation of a jail release agreement or jail release order issued pursuant to Section 77-36-2.5:

(i) may not be released before the accused's first judicial appearance; and

(ii) may be denied bail by the court under Subsection 77-36-2.5(8) or [(12)] (11).

(5) The magistrate or court may rely upon information contained in:

- (a) the indictment or information;
- (b) any sworn probable cause statement;
- (c) information provided by any pretrial services agency; or
- (d) any other reliable record or source.

(6) (a) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present.

(b) Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(c) The magistrate or court may rely on information as provided in Subsection (5) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(7) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

(8) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (2).

(9) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

- (a) the prosecutor files a notice of intent to not seek the death penalty; or
- (b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.

Section 2. Section 77-36-1 is amended to read:

77-36-1. Definitions.

As used in this chapter:

(1) "Cohabitant" means the same as that term is defined in Section 78B-7-102.

(2) "Department" means the Department of Public Safety.

(3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter 3, Divorce.

(4) "Domestic violence" or "domestic violence offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. "Domestic violence" or "domestic violence offense" also means commission

or attempt to commit, any of the following offenses by one cohabitant against another:

- (a) aggravated assault, as described in Section 76-5-103;
- (b) assault, as described in Section 76-5-102;
- (c) criminal homicide, as described in Section 76-5-201;
- (d) harassment, as described in Section 76-5-106;
- (e) electronic communication harassment, as described in Section 76-9-201;
- (f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
- (g) mayhem, as described in Section 76-5-105;
- (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- (i) stalking, as described in Section 76-5-106.5;
- (j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;
- (k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
- (l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;
- (m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;
- (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;
- (o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with a domestic violence offense otherwise described in this Subsection (4). Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or
- (p) child abuse as described in Section 76-5-109.1.
- (5) "Jail release agreement" means a written agreement:
 - (a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and
 - (b) specifying other conditions of release from jail as required in Subsection 77-36-2.5(2).
- (6) "Jail release court order" means a written court order:

(a) specifying and limiting the contact a person arrested for a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release from jail as required in Subsection 77-36-2.5(2).

(7) "Marital status" means married and living together, divorced, separated, or not married.

(8) "Married and living together" means a man and a woman whose marriage was solemnized under Section 30-1-4 or 30-1-6 and who are living in the same residence.

(9) "Not married" means any living arrangement other than married and living together, divorced, or separated.

(10) "Protective order" includes an order issued under Subsection 77-36-5.1(6).

~~[(10)]~~ (11) "Pretrial protective order" means a written order:

(a) specifying and limiting the contact a person who has been charged with a domestic violence offense may have with an alleged victim or other specified individuals; and

(b) specifying other conditions of release pursuant to Subsection 77-36-2.5(2), Subsection 77-36-2.6(3), or Section 77-36-2.7, pending trial in the criminal case.

~~[(11)]~~ (12) "Sentencing protective order" means a written order of the court as part of sentencing in a domestic violence case that limits the contact a person who has been convicted of a domestic violence offense may have with a victim or other specified individuals pursuant to Sections 77-36-5 and 77-36-5.1.

~~[(12)]~~ (13) "Separated" means a man and a woman who have had their marriage solemnized under Section 30-1-4 or 30-1-6 and who are not living in the same residence.

~~[(13)]~~ (14) "Victim" means a cohabitant who has been subjected to domestic violence.

Section 3. Section 77-36-2.1 is amended to read:

77-36-2.1. Duties of law enforcement officers -- Notice to victims.

(1) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including:

(a) taking the action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(b) confiscating the weapon or weapons involved in the alleged domestic violence;

(c) making arrangements for the victim and any child to obtain emergency housing or shelter;

(d) providing protection while the victim removes essential personal effects;

(e) arrange, facilitate, or provide for the victim and any child to obtain medical treatment; and

(f) arrange, facilitate, or provide the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence, in accordance with Subsection (2).

(2) (a) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this chapter, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, and Title 78B, Chapter 7, Part 2, Child Protective Orders.

(b) The written notice shall also include:

(i) a statement that the forms needed in order to obtain an order for protection are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled;

(ii) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance; and

(iii) the information required to be provided to both parties in accordance with ~~[Subsection 77-36-2.5(8)]~~ Subsections 77-36-2.5(9) and (10).

Section 4. Section 77-36-2.4 is amended to read:

77-36-2.4. Violation of protective orders -- Mandatory arrest -- Penalties.

(1) A law enforcement officer shall, without a warrant, arrest an alleged perpetrator whenever there is probable cause to believe that the alleged perpetrator has violated any of the provisions of an ex parte protective order or protective order.

(2) (a) Intentional or knowing violation of any ex parte protective order or protective order is a class A misdemeanor, in accordance with Section 76-5-108, except where a greater penalty is provided in this chapter, and is a domestic violence offense, pursuant to Section 77-36-1.

(b) Second or subsequent violations of ex parte protective orders or protective orders carry increased penalties, in accordance with Section 77-36-1.1.

(3) As used in this section, "ex parte protective order" or "protective order" includes:

(a) ~~[any]~~ a protective order or ex parte protective order issued under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act;

(b) ~~[any]~~ a jail release agreement, jail release court order, pretrial protective order, ~~[or]~~ sentencing protective order, or continuous protective order issued under ~~[Title 77, Chapter 36, Cohabitant Abuse Procedures Act]~~ this chapter;

(c) any child protective order or ex parte child protective order issued under Title 78B, Chapter 7, Part 2, Child Protective Orders; or

(d) a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Section 5. Section 77-36-2.6 is amended to read:

77-36-2.6. Appearance of defendant required -- Determinations by court -- Pretrial protective order.

(1) A defendant who has been arrested for an offense involving domestic violence shall appear in person or by video before the court or a magistrate within one judicial day after the arrest.

(2) A defendant who has been charged by citation, indictment, or information with an offense involving domestic violence but has not been arrested, shall appear before the court in person for arraignment or initial appearance as soon as practicable, but no later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the indictment or information.

(3) At the time of an appearance under Subsection (1) or (2), the court shall:

(a) determine the necessity of imposing a pretrial protective order or other condition of pretrial release, including[, ~~but not limited to,~~] participating in an electronic or other type of monitoring program[, ~~and shall~~];

(b) identify the individual designated by the victim to communicate between the defendant and the victim if and to the extent necessary for family related matters; and

(c) state its findings and determination in writing.

(4) Appearances required by this section are mandatory and may not be waived.

Section 6. Section 77-36-5 is amended to read:

77-36-5. Sentencing -- Restricting contact with victim -- Electronic monitoring -- Counseling -- Cost assessed against defendant -- Sentencing protective order -- Continuous protective order.

(1) (a) When a defendant is found guilty of a crime involving domestic violence and a condition of the sentence restricts the defendant's contact with the victim, a sentencing protective order may be issued under Subsection 77-36-5.1(2) for the length of the defendant's probation or a continuous protective order may be issued under Subsection 77-36-5.1(6).

(b) (i) The sentencing protective order or continuous protective order shall be in writing, and the prosecutor shall provide a certified copy of that order to the victim.

(ii) The court shall transmit the sentencing protective order or continuous protective order to the statewide domestic violence network.

(c) Violation of a sentencing protective order or continuous protective order issued pursuant to this Subsection (1) is a class A misdemeanor.

(2) In determining its sentence the court, in addition to penalties otherwise provided by law, may require the defendant to participate in an electronic or other type of monitoring program.

(3) The court may also require the defendant to pay all or part of the costs of counseling incurred by the victim and any children affected by or exposed to the domestic violence offense, as well as the costs for the defendant's own counseling.

(4) The court shall:

(a) assess against the defendant, as restitution, any costs for services or treatment provided to the victim and affected children of the victim or the defendant by the Division of Child and Family Services under Section 62A-4a-106; and

(b) order those costs to be paid directly to the division or its contracted provider.

(5) The court may order the defendant to obtain and satisfactorily complete treatment or therapy in a domestic violence treatment program, as defined in Section 62A-2-101, that is licensed by the Department of Human Services.

Section 7. Section 77-36-5.1 is amended to read:

77-36-5.1. Conditions of probation for person convicted of domestic violence offense -- Continuous protective orders.

(1) Before any perpetrator who has been convicted of a domestic violence offense may be placed on probation, the court shall consider the safety and protection of the victim and any member of the victim's family or household.

(2) The court may condition probation or a plea in abeyance on the perpetrator's compliance with one or more orders of the court, which may include a sentencing protective order:

(a) enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

(b) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(c) requiring the perpetrator to stay away from the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or household member;

(d) prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;

(e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other specified weapon;

(f) directing the perpetrator to surrender any weapons the perpetrator owns or possesses;

(g) directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;

(h) directing the perpetrator to pay restitution to the victim, enforcement of which shall be in accordance with Chapter 38a, Crime Victims Restitution Act; and

(i) imposing any other condition necessary to protect the victim and any other designated family or household member or to rehabilitate the perpetrator.

(3) The perpetrator is responsible for the costs of any condition of probation, according to the perpetrator's ability to pay.

(4) (a) Adult Probation and Parole, or other provider, shall immediately report to the court and notify the victim of any offense involving domestic violence committed by the perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and any violation of any sentencing criminal protective order issued by the court.

(b) Notification of the victim under Subsection (4)(a) shall consist of a good faith reasonable effort to provide prompt notification, including mailing a copy of the notification to the last-known address of the victim.

(5) The court shall transmit all dismissals, terminations, and expirations of pretrial and sentencing criminal protective orders issued by the court to the statewide domestic violence network.

(6) (a) Because of the serious, unique, and highly traumatic nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of a perpetrator who is convicted of domestic violence, it is the finding of the Legislature that domestic violence crimes warrant the issuance of continuous protective orders under this Subsection (6) because of the need to provide ongoing protection for the victim and to be consistent with the purposes of protecting victims' rights under Chapter 37, Victims' Rights, and Chapter 38, Rights of Crime Victims Act, and Article I, Section 28 of the Utah Constitution.

(b) If a perpetrator is convicted of a domestic violence offense resulting in a sentence of imprisonment, including jail, that is to be served after conviction, the court shall issue a continuous protective order at the time of the conviction or sentencing limiting the contact between the perpetrator and the victim unless the court determines by clear and convincing evidence that the victim does not have a reasonable fear of future harm or abuse.

(c) (i) The court shall notify the perpetrator of the right to request a hearing.

(ii) If the perpetrator requests a hearing under this Subsection (6)(c), the court shall hold the hearing at the time determined by the court. The continuous protective order shall be in effect while the hearing is being scheduled and while the hearing is pending.

(d) A continuous protective order is permanent in accordance with this Subsection (6)(d) and may grant the following relief:

(i) enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;

(ii) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly;

(iii) prohibiting the perpetrator from going to the victim's residence, school, place of employment, and the premises of any of these, or a specified place frequented regularly by the victim or any designated family or other household member;

(iv) directing the perpetrator to pay restitution to the victim as may apply, and shall be enforced in accordance with Chapter 38a, Crime Victims Restitution Act; and

(v) any other order the court considers necessary to fully protect the victim and members of the victim's family or other household member.

(e) A continuous protective order may be modified or dismissed only if the court determines by clear and convincing evidence that all requirements of this Subsection (6) have been met and the victim does not have a reasonable fear of future harm or abuse.

(f) Notice of a continuous protective order issued pursuant to this section shall be sent by the court to the statewide domestic violence network.

(g) Violation of a continuous protective order issued pursuant to this Subsection (6) is a class A misdemeanor, is a domestic violence offense under Section 77-36-1, and is subject to increased penalties in accordance with Section 77-36-1.1.

(h) In addition to the process of issuing a continuous protective order described in Subsection (6)(a), a district court may issue a continuous protective order at any time if the victim files a petition with the district court, and after notice and hearing the district court finds that a continuous protective order is necessary to protect the victim.

(7) (a) Before release of a person who is subject to a continuous protective order issued under Subsection (6), the victim shall receive notice of the imminent release by the law enforcement agency that is releasing the person who is subject to the continuous protective order:

(i) if the victim has provided the law enforcement agency contact information; and

(ii) in accordance with Section 64-13-14.7, if applicable.

(b) Before release, the law enforcement agency shall notify in writing the person being released that a violation of the continuous protective order issued at the time of conviction or sentencing continues to apply, and that a violation of the continuous protective order is a class A misdemeanor, is a separate domestic violence offense under Section 77-36-1, and is subject to increased penalties in accordance with Section 77-36-1.1.

Section 8. Section 78B-7-102 is amended to read:

78B-7-102. Definitions.

As used in this chapter:

(1) "Abuse" means intentionally or knowingly causing or attempting to cause a cohabitant physical harm or intentionally or knowingly placing a cohabitant in reasonable fear of imminent physical harm.

(2) "Cohabitant" means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:

- (a) is or was a spouse of the other party;
- (b) is or was living as if a spouse of the other party;
- (c) is related by blood or marriage to the other party;
- (d) has or had one or more children in common with the other party;
- (e) is the biological parent of the other party's unborn child; or
- (f) resides or has resided in the same residence as the other party.

(3) Notwithstanding Subsection (2), "cohabitant" does not include:

- (a) the relationship of natural parent, adoptive parent, or step-parent to a minor; or
- (b) the relationship between natural, adoptive, step, or foster siblings who are under 18 years of age.

(4) "Court clerk" means a district court clerk.

(5) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(6) "Ex parte protective order" means an order issued without notice to the defendant in accordance with this chapter.

(7) "Foreign protection order" [is-as] means the same as that term is defined in Section 78B-7-302.

(8) "Law enforcement unit" or "law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.

(9) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classifications.

(10) "Protective order" means:

(a) an order issued pursuant to this chapter subsequent to a hearing on the petition, of which the petitioner and respondent have been given notice in accordance with this chapter[-]; or

(b) an order issued under Subsection 77-36-5.1(6).

Section 9. Section 78B-7-105 is amended to read:

78B-7-105. Forms for petitions and protective orders -- Assistance.

(1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to persons seeking to proceed under this chapter.

(b) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter. That office shall provide the forms to the clerk of each court authorized to issue protective orders. The forms shall include:

(i) a statement notifying the petitioner for an ex parte protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;

(ii) a separate portion of the form for those provisions, the violation of which is a criminal offense, and a separate portion for those provisions, the violation of which is a civil violation, as provided in Subsection 78B-7-106(5);

(iii) language in the criminal provision portion stating violation of any criminal provision is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply with a civil provision is subject to contempt proceedings;

(iv) a space for information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description;

(v) a space for the petitioner to request a specific period of time for the civil provisions to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for the requested extension of the length of time beyond 150 days;

(vi) a statement advising the petitioner that when a minor child is included in an ex parte protective order or a protective order, as part of either the criminal or the civil portion of the order, the petitioner may provide a copy of the order to the principal of the school where the child attends; and

(vii) a statement advising the petitioner that if the respondent fails to return custody of a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from the court a writ of assistance.

(2) If the person seeking to proceed under this chapter is not represented by an attorney, it is the responsibility of the court clerk's office to provide:

- (a) the forms adopted pursuant to Subsection (1);
- (b) all other forms required to petition for an order for protection including, but not limited to, forms for service;

(c) clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (1)(a)[~~—A~~], except that a court clerk's office may designate any other entity, agency, or person to provide that service, but the court clerk's office is responsible to see that the service is provided;

(d) information regarding the means available for the service of process;

(e) a list of legal service organizations that may represent the petitioner in an action brought under this chapter, together with the telephone numbers of those organizations; and

(f) written information regarding the procedure for transporting a jailed or imprisoned respondent to the protective order hearing, including an explanation of the use of transportation order forms when necessary.

(3) No charges may be imposed by a court clerk, constable, or law enforcement agency for:

- (a) filing a petition under this chapter;
- (b) obtaining an ex parte protective order;
- (c) obtaining copies, either certified or not certified, necessary for service or delivery to law enforcement officials; or

(d) fees for service of a petition, ex parte protective order, or protective order.

(4) A petition for an order of protection shall be in writing and verified.

(5) (a) [~~All orders~~] An order for protection shall be issued in the form adopted by the Administrative Office of the Courts pursuant to Subsection (1).

(b) [~~Each~~] A protective order issued, except orders issued ex parte, shall include the following language:

"Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States territories. This order complies with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

(c) [~~Each~~] A protective order issued in accordance with this part, including protective orders issued ex parte and except for a continuous protective order issued under Subsection 77-36-5.1(6), shall include the following language:

"NOTICE TO PETITIONER: The court may amend or dismiss a protective order after one year if

it finds that the basis for the issuance of the protective order no longer exists and the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order, demonstrating to the court that the petitioner no longer has a reasonable fear of the respondent."

Section 10. Section 78B-7-115 is amended to read:

78B-7-115. Dismissal of protective order.

(1) Except as provided in [~~Subsection (6),~~] Subsections (6) and (8), a protective order that has been in effect for at least two years may be dismissed if the court determines that the petitioner no longer has a reasonable fear of future harm or abuse. In determining whether the petitioner no longer has a reasonable fear of future harm or abuse, the court shall consider the following factors:

(a) whether the respondent has complied with treatment recommendations related to domestic violence, entered at the time the protective order was entered;

(b) whether the protective order was violated during the time it was in force;

(c) claims of harassment, abuse, or violence by either party during the time the protective order was in force;

(d) counseling or therapy undertaken by either party;

(e) impact on the well-being of any minor children of the parties, if relevant; and

(f) any other factors the court considers relevant to the case before it.

(2) Except as provided in [~~Subsection (6),~~] Subsections (6) and (8), the court may amend or dismiss a protective order issued in accordance with this part that has been in effect for at least one year if it finds that:

(a) the basis for the issuance of the protective order no longer exists;

(b) the petitioner has repeatedly acted in contravention of the protective order provisions to intentionally or knowingly induce the respondent to violate the protective order;

(c) the petitioner's actions demonstrate that the petitioner no longer has a reasonable fear of the respondent; and

(d) the respondent has not been convicted of a protective order violation or any crime of violence subsequent to the issuance of the protective order, and there are no unresolved charges involving violent conduct still on file with the court.

(3) The court shall enter sanctions against either party if the court determines that either party acted:

(a) in bad faith; or

(b) with intent to harass or intimidate either party.

(4) Notice of a motion to dismiss a protective order shall be made by personal service on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules of Civil Procedure.

(5) ~~[If]~~ Except as provided in Subsection (8), if a divorce proceeding is pending between parties to a protective order action, the protective order shall be dismissed when the court issues a decree of divorce for the parties if:

(a) the petitioner in the protective order action is present or has been given notice in both the divorce and protective order action of the hearing; and

(b) the court specifically finds that the order need not continue, and, as provided in Subsection (1), the petitioner no longer has a reasonable fear of future harm or abuse.

(6) (a) Notwithstanding Subsection (1) or (2) and subject to Subsection (8), a protective order that has been entered under this chapter concerning a petitioner and a respondent who are divorced shall automatically expire, subject to Subsections (6)(b) and (c), 10 years from the day on which one of the following occurs:

(i) the decree of divorce between the petitioner and respondent became absolute; or

(ii) the protective order was entered.

(b) The protective order shall automatically expire, as described in Subsection (6)(a), unless:

(i) the petitioner demonstrates that the petitioner has a reasonable fear of future harm or abuse, as described in Subsection (1); or

(ii) the respondent has been convicted of a protective order violation or any crime of violence subsequent to the issuance of the protective order.

(c) The 10 years described in Subsection (6)(a) is tolled for any period of time that the respondent is incarcerated.

(7) When the court dismisses a protective order, the court shall immediately:

(a) issue an order of dismissal to be filed in the protective order action; and

(b) transmit a copy of the order of dismissal to the statewide domestic violence network as described in Section 78B-7-113.

(8) Notwithstanding the other provisions of this section, a continuous protective order may not be modified or dismissed except as provided in Subsection 77-36-5.1(6).

CHAPTER 333**H. B. 249**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

**HIGHER EDUCATION
FINANCIAL LITERACY AMENDMENTS**

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: Ann Millner

LONG TITLE**General Description:**

This bill amends provisions related to education loan information.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ adds a representative of the State Board of Regents to a task force that makes recommendations related to financial literacy education;
- ▶ requires an eligible postsecondary institution to provide information regarding a borrower's education loans to the borrower;
- ▶ provides that an eligible postsecondary institution does not incur liability for information provided to a borrower regarding the borrower's education loans; and
- ▶ requires the State Board of Regents to report to the Education Interim Committee on the feasibility of providing certain information about an education loan to a borrower.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-13-110, as last amended by Laws of Utah 2015, Chapter 415

ENACTS:

53B-1-112, Utah Code Annotated 1953

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

Section 1. Section 53A-13-110 is amended to read:**53A-13-110. Financial and economic literacy education.**

(1) As used in this section:

(a) "Financial and economic activities" include activities related to the topics listed in Subsection (1)(b).

(b) "Financial and economic literacy concepts" include concepts related to the following topics:

- (i) basic budgeting;
- (ii) saving and financial investments;

(iii) banking and financial services, including balancing a checkbook or a bank account and online banking services;

(iv) career management, including earning an income;

(v) rights and responsibilities of renting or buying a home;

(vi) retirement planning;

(vii) loans and borrowing money, including interest, credit card debt, predatory lending, and payday loans;

(viii) insurance;

(ix) federal, state, and local taxes;

(x) charitable giving;

(xi) online commerce;

(xii) identity fraud and theft;

(xiii) negative financial consequences of gambling;

(xiv) bankruptcy;

(xv) free markets and prices;

(xvi) supply and demand;

(xvii) monetary and fiscal policy;

(xviii) effective business plan creation, including using economic analysis in creating a plan;

(xix) scarcity and choices;

(xx) opportunity cost and tradeoffs;

(xxi) productivity;

(xxii) entrepreneurship; and

(xxiii) economic reasoning.

(c) "Financial and economic literacy passport" means a document that tracks mastery of financial and economic literacy concepts and completion of financial and economic activities in kindergarten through grade 12.

(d) "General financial literacy course" means the course of instruction described in Section 53A-13-108.

(2) The State Board of Education shall:

(a) in cooperation with interested private and nonprofit entities:

(i) develop a financial and economic literacy passport that students may elect to complete;

(ii) develop methods of encouraging parent and educator involvement in completion of the financial and economic literacy passport; and

(iii) develop and implement appropriate recognition and incentives for students who complete the financial and economic literacy passport, including:

(A) a financial and economic literacy endorsement on the student's diploma of graduation;

(B) a specific designation on the student's official transcript; and

(C) any incentives offered by community partners;

(b) more fully integrate existing and new financial and economic literacy education into instruction in kindergarten through grade 12 by:

(i) coordinating financial and economic literacy instruction with existing instruction in other areas of the core standards for Utah public schools, such as mathematics and social studies;

(ii) using curriculum mapping;

(iii) creating training materials and staff development programs that:

(A) highlight areas of potential coordination between financial and economic literacy education and other core standards for Utah public schools concepts; and

(B) demonstrate specific examples of financial and economic literacy concepts as a way of teaching other core standards for Utah public schools concepts; and

(iv) using appropriate financial and economic literacy assessments to improve financial and economic literacy education and, if necessary, developing assessments;

(c) work with interested public, private, and nonprofit entities to:

(i) identify, and make available to teachers, online resources for financial and economic literacy education, including modules with interactive activities and turnkey instructor resources;

(ii) coordinate school use of existing financial and economic literacy education resources;

(iii) develop simple, clear, and consistent messaging to reinforce and link existing financial literacy resources;

(iv) coordinate the efforts of school, work, private, nonprofit, and other financial education providers in implementing methods of appropriately communicating to teachers, students, and parents key financial and economic literacy messages; and

(v) encourage parents and students to establish higher education savings, including a Utah Educational Savings Plan account;

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to develop guidelines and methods for school districts and charter schools to more fully integrate financial and economic literacy education into other core standards for Utah public schools courses;

(e) (i) contract with a provider, through a request for proposals process, to develop an online, end-of-course assessment for the general financial literacy course;

(ii) require a school district or charter school to administer an online, end-of-course assessment to

a student who takes the general financial literacy course; and

(iii) develop a plan, through the state superintendent of public instruction, to analyze the results of an online, end-of-course assessment in general financial literacy that includes:

(A) an analysis of assessment results by standard; and

(B) average scores statewide and by school district and school;

(f) in cooperation with school districts, charter schools, and interested private and nonprofit entities, provide opportunities for professional development in financial and economic literacy to teachers, including:

(i) a statewide learning community for financial and economic literacy;

(ii) summer workshops; and

(iii) online videos of experts in the field of financial and economic literacy education; and

(g) implement a teacher endorsement in general financial literacy that includes course work in financial planning, credit and investing, consumer economics, personal budgeting, and family economics.

(3) A public school shall provide the following to the parents or guardian of a kindergarten student during kindergarten enrollment:

(a) a financial and economic literacy passport; and

(b) information about higher education savings options, including information about opening a Utah Educational Savings Plan account.

(4) (a) The State Board of Education shall establish a task force to study and make recommendations to the board on how to improve financial and economic literacy education in the public school system.

(b) The task force membership shall include representatives of:

(i) the State Board of Education;

(ii) school districts and charter schools; ~~and~~

(iii) the State Board of Regents; and

~~(iii)~~ (iv) private or public entities that teach financial education and share a commitment to empower individuals and families to achieve economic stability, opportunity, and upward mobility.

(c) In 2013, the task force shall:

(i) review and recommend modifications to the course standards and objectives of the general financial literacy course described in Section 53A-13-108 to ensure the course standards and objectives reflect current and relevant content consistent with the financial and economic literacy concepts listed in Subsection (1)(b);

(ii) study the development of an online assessment of students' competency in financial and economic literacy that may be used to:

(A) measure student learning growth and proficiency in financial and economic literacy; and

(B) assess the effectiveness of instruction in financial and economic literacy;

(iii) consider the development of a rigorous, online only, course to fulfill the general financial literacy curriculum and graduation requirements specified in Section 53A-13-108;

(iv) identify opportunities for teaching financial and economic literacy through an integrated school curriculum and in the regular course of school work;

(v) study and make recommendations for educator license endorsements for teachers of financial and economic literacy;

(vi) identify efficient and cost-effective methods of delivering professional development in financial and economic literacy content and instructional methods; and

(vii) study how financial and economic literacy education may be enhanced through community partnerships.

(d) The task force shall reconvene every three years to review and recommend adjustments to the standards and objectives of the general financial literacy course.

(e) The State Board of Education shall make a report to the Education Interim Committee no later than the committee's November 2013 meeting summarizing the findings and recommendations of the task force and actions taken by the board in response to the task force's findings and recommendations.

Section 2. Section 53B-1-112 is enacted to read:

53B-1-112. Education loan notifications.

(1) As used in this section:

(a) "Borrower" means:

(i) an individual enrolled in an eligible postsecondary institution who receives an education loan; or

(ii) an individual, including a parent or legal guardian, who receives an education loan to fund education expenses of an individual enrolled in an eligible postsecondary institution.

(b) "Education loan" means a loan made to a borrower that is:

(i) made directly by a federal or state program; or

(ii) insured or guaranteed under a federal or state program.

(c) "Eligible postsecondary institution" means a public or private postsecondary institution that:

(i) is located in Utah; and

(ii) participates in federal student assistance programs under the Higher Education Act of 1965, Title IV, 20 U.S.C. Sec. 1070 et seq.

(2) Annually, on or before July 1, an eligible postsecondary institution that receives information about a borrower's education loan shall:

(a) notify the borrower that the borrower has an education loan;

(b) direct the borrower to the National Student Loan Data System described in 20 U.S.C. Sec. 1092b to receive information about the borrower's education loan; and

(c) provide the borrower information on how the borrower can access an online repayment calculator.

(3) An eligible postsecondary institution does not incur liability for information provided to a borrower in accordance with this section.

(4) On or before the October 2017 interim meeting, the State Board of Regents shall report to the Education Interim Committee on:

(a) the number of notifications issued under Subsection (2); and

(b) the feasibility of an eligible postsecondary institution providing annually to each borrower:

(i) an estimate of the total dollar amount of education loans taken out by the borrower; and

(ii) for the estimated dollar amount of education loans that the borrower has taken out, an estimate of:

(A) the potential total payoff amount, including principal and interest;

(B) the monthly repayment amounts, including principal and interest, that the borrower may incur;

(C) the number of years used in determining the potential payoff amount; and

(D) the percentage of the aggregate borrowing limit the borrower has reached.

CHAPTER 334**H. B. 252**

Passed March 9, 2017
 Approved March 24, 2017
 Effective January 1, 2018

DISPOSAL OF FIREARMS

Chief Sponsor: Brad M. Daw
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies and enacts provisions related to the disposal of firearms.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires that the Department of Public Safety contract with a federally licensed firearms dealer to act as the state-approved dealer for the state;
- ▶ provides that when a governmental agency disposes of a confiscated or unclaimed firearm, the governmental agency shall:
 - sell the firearm to a federally licensed firearms dealer;
 - give the firearm to the state-approved dealer to sell in accordance with the provisions of this bill; or
 - transfer the firearm to the Bureau of Forensic Services for testing;
- ▶ addresses the allocation of proceeds from the sale of a confiscated or unclaimed firearm; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 24-3-103, as enacted by Laws of Utah 2013, Chapter 394
 53-5c-201, as last amended by Laws of Utah 2015, Chapter 258
 53-5c-202, as enacted by Laws of Utah 2013, Chapter 188

ENACTS:

24-3-103.5, Utah Code Annotated 1953

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

Section 1. Section 24-3-103 is amended to read:**24-3-103. Property no longer needed as evidence -- Disposition of property.**

(1) When the prosecuting attorney determines that property no longer needs to be held as evidence, the prosecuting attorney may:

(a) petition the court to apply any property that is money towards restitution, fines, fees, or monetary judgments owed by the owner of the property;

(b) petition the court for an order transferring ownership of any weapons to the seizing agency for [its] the agency's use and disposal [as the seizing agency determines] in accordance with applicable law, if the owner:

(i) is the person who committed the crime for which the weapon was seized; or

(ii) may not lawfully possess the weapon; or

(c) notify the agency that has possession of the property that the property may be:

(i) returned to the rightful owner, if the rightful owner may lawfully possess it; or

(ii) disposed of, if the property is contraband.

(2) The agency shall exercise due diligence in attempting to notify the rightful owner of the property to advise the owner that the property is to be returned.

(3) (a) Before the agency may release property to a person claiming ownership of the property, the person shall establish [to the agency pursuant to] in accordance with Subsection (3)(b) that the person:

(i) is the rightful owner; and

(ii) may lawfully possess the property.

(b) The person shall establish ownership under Subsection (3)(a) by providing to the agency:

(i) identifying proof or documentation of ownership of the property; or

(ii) a notarized statement, if proof or documentation is not available.

(4) (a) When property is returned to the owner, a receipt listing in detail the property returned shall be signed by the owner.

(b) The receipt shall be retained by the agency and a copy shall be provided to the owner.

(5) [If] (a) Except as provided in Subsection (5)(b), if the agency is unable to locate the rightful owner of the property or if the rightful owner is not entitled to lawfully possess the property, the agency may:

[~~(a)~~] (i) apply the property to a public interest use;

[~~(b)~~] (ii) sell the property at public auction and apply the proceeds of the sale to a public interest use; or

[~~(c)~~] (iii) destroy the property if [~~it~~] the property is unfit for a public interest use or for sale.

(b) If the property described in Subsection (5)(a) is a firearm, the agency shall dispose of the firearm in accordance with Section 24-3-103.5.

(6) Before applying the property or the proceeds from the sale of the property to a public interest use, the agency shall obtain from the legislative body of its jurisdiction:

(a) permission to apply the property or the proceeds to public interest use; and

(b) the designation and approval of the public interest use of the property or the proceeds.

Section 2. Section 24-3-103.5 is enacted to read:

24-3-103.5. Disposition of firearms no longer needed as evidence.

(1) As used in this section:

(a) "Confiscated or unclaimed firearm" means a firearm that is subject to disposal by an agency under Section 24-3-103 or 53-5c-202.

(b) "Department" means the Department of Public Safety created in Section 53-1-103.

(c) "Federally licensed firearms dealer" means a person:

(i) licensed as a dealer under 18 U.S.C. Sec. 923; and

(ii) engaged in the business of selling firearms.

(d) "State-approved dealer" means the federally licensed firearms dealer that contracts with the department under Subsection (4).

(2) An agency shall dispose of a confiscated or unclaimed firearm by:

(a) selling or destroying the confiscated or unclaimed firearm in accordance with Subsection (3);

(b) giving the confiscated or unclaimed firearm to the state-approved dealer to sell or destroy in accordance with Subsection (4) and the agreement between the state-approved dealer and the department; or

(c) after the agency obtains approval from the legislative body of the agency's jurisdiction, transferring the confiscated or unclaimed firearm to the Bureau of Forensic Services, created in Section 53-10-401, for testing.

(3) (a) An agency that elects to dispose of a confiscated or unclaimed firearm under Subsection (2)(a) shall:

(i) sell the confiscated or unclaimed firearm to a federally licensed firearms dealer and apply the proceeds from the sale to a public interest use; or

(ii) destroy the firearm, if the agency determines that:

(A) the condition of a confiscated or unclaimed firearm makes the firearm unfit for sale; or

(B) the confiscated or unclaimed firearm is associated with a notorious crime.

(b) Before an agency applies the proceeds of a sale of a confiscated or unclaimed firearm to a public interest use, the agency shall obtain from the legislative body of the agency's jurisdiction:

(i) permission to apply the proceeds of the sale to a public interest use; and

(ii) the designation and approval of the public interest use to which the agency applies the proceeds.

(4) (a) (i) The department shall, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, contract with a federally licensed firearms dealer to sell or destroy all confiscated or unclaimed firearms in the state.

(ii) The term of an agreement executed in accordance with this Subsection (4) may not exceed five years.

(iii) Nothing in this Subsection (4) prevents the department from contracting with the same federally licensed firearms dealer more than once.

(b) An agreement executed in accordance with Subsection (4)(a) shall:

(i) address the amount of money that the federally licensed firearms dealer is entitled to retain from the sale of each confiscated or unclaimed firearm as compensation for the federally licensed firearms dealer's performance under the agreement;

(ii) require the federally licensed firearms dealer to donate, on behalf of the state, all proceeds from the sale of a confiscated or unclaimed firearm, except the amount described in Subsection (4)(b)(i), to an organization that:

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

(B) complies with any applicable licensing or registration requirements in the state;

(C) primarily helps the families of law enforcement officers in the state who die in the line of duty;

(D) gives financial assistance to the families of law enforcement officers in the state who die in the line of duty; and

(E) provides other assistance to children of active law enforcement officers, including scholarships;

(iii) state that if the federally licensed firearms dealer determines that the condition of a confiscated or unclaimed firearm makes the firearm unfit for sale, the federally licensed firearms dealer shall destroy the firearm; and

(iv) provide a procedure by which the department can ensure that the federally licensed firearms dealer complies with the provisions of the agreement and applicable law.

Section 3. Section 53-5c-201 is amended to read:

53-5c-201. Voluntary commitment of a firearm by owner cohabitant -- Law enforcement to hold firearm.

(1) (a) An owner cohabitant may voluntarily commit a firearm to a law enforcement agency for safekeeping if the owner cohabitant believes that another cohabitant is an immediate threat to:

(i) himself or herself;

(ii) the owner cohabitant; or

(iii) any other person.

(b) A law enforcement agency may not hold a firearm under this section if the law enforcement agency obtains the firearm in a manner other than the owner cohabitant voluntarily presenting, of ~~his or her~~ the owner cohabitant's own free will, the firearm to the law enforcement agency at the agency's office.

(2) Unless a firearm is an illegal firearm subject to Section 53-5c-202, a law enforcement agency that receives a firearm in accordance with this chapter shall:

(a) record:

(i) the owner cohabitant's name, address, and phone number;

(ii) the firearm serial number; and

(iii) the date that the firearm was voluntarily committed;

(b) require the owner cohabitant to sign a document attesting that the owner cohabitant has an ownership interest in the firearm;

(c) hold the firearm in safe custody for 60 days after the day on which ~~it~~ the firearm is voluntarily committed; and

(d) upon proof of identification, return the firearm to:

(i) the owner cohabitant after the expiration of the 60-day period or, if the owner cohabitant requests return of the firearm before the expiration of the 60-day period, at the time of the request; or

(ii) ~~to~~ an owner other than the owner cohabitant in accordance with Section 53-5c-202.

(3) The law enforcement agency shall hold the firearm for an additional 60 days:

(a) if the initial 60-day period expires; and

(b) the owner cohabitant requests that the law enforcement agency hold the firearm for an additional 60 days.

(4) A law enforcement agency may not request or require that the owner cohabitant provide the name or other information of the cohabitant who poses an immediate threat or any other cohabitant.

(5) Notwithstanding an ordinance or policy to the contrary adopted in accordance with Section 63G-2-701, a law enforcement agency shall destroy a record created under Subsection (2), Subsection 53-5c-202(4)(b)(iii), or any other record created in the application of this chapter no later than five days after:

(a) returning a firearm in accordance with Subsection (2)(d); or

(b) ~~[appropriating, selling, or destroying]~~ disposing of the firearm in accordance with Section 53-5c-202.

(6) Unless otherwise provided, the provisions of Title 77, Chapter 24a, Lost or Mislaid Personal Property, do not apply to a firearm received by a law

enforcement agency in accordance with this chapter.

(7) A law enforcement agency shall adopt a policy for the safekeeping of a firearm held in accordance with this chapter.

Section 4. Section 53-5c-202 is amended to read:

53-5c-202. Illegal firearms confiscated -- Disposition of unclaimed firearm.

(1) If a law enforcement agency receives a firearm in accordance with Section 53-5c-201, and the firearm is an illegal firearm, the law enforcement agency shall:

(a) notify the owner cohabitant attempting to voluntarily commit the firearm that the firearm is an illegal firearm; and

(b) confiscate the firearm and dispose of ~~[it as the head of the law enforcement agency determines]~~ the firearm in accordance with Section 24-3-103.5.

(2) (a) If a law enforcement agency cannot, after a reasonable attempt, locate an owner cohabitant to return a firearm in accordance with Section 53-5c-201, the law enforcement agency ~~[may]~~ shall dispose of the firearm in accordance with Section 24-3-103.5.

~~[(i) appropriate the firearm to public interest use as provided in Subsection (3);]~~

~~[(ii) sell the firearm at public auction as provided by law and appropriate the proceeds of the sale to public interest use; or]~~

~~[(iii) destroy the firearm if unfit for sale.]~~

(b) A law enforcement agency ~~[may take an action in accordance with]~~ may not dispose of a firearm under Subsection (2)(a) ~~[no earlier than]~~ before one year after the day on which the owner cohabitant initially voluntarily commits the firearm in accordance with Section 53-5c-201.

~~[(3) Before appropriating the firearm to public interest use, the law enforcement agency, having possession of the firearm, shall obtain from the legislative body of its jurisdiction:]~~

~~[(a) permission to appropriate the firearm to public interest use; and]~~

~~[(b) the designation and approval of the public interest use of the firearm.]~~

~~[(4)]~~ (3) (a) If a person other than an owner cohabitant who voluntarily commits a firearm in accordance with Section 53-5c-201 claims ownership of the firearm, the person may:

(i) request that the law enforcement agency return the firearm in accordance with Subsection ~~[(4)]~~ (3)(b); or

(ii) petition the court for the firearm's return in accordance with Subsection ~~[(4)]~~ (3)(c).

(b) Except as provided in Section 53-5c-201, the law enforcement agency shall return a firearm to a person other than an owner cohabitant who claims ownership of the firearm if:

(i) the 60-day period described in Section 53-5c-201 has expired;

(ii) the person provides identification; and

(iii) the person signs a document attesting that the person has an ownership interest in the firearm.

(c) After sufficient notice is given to the prosecutor, the court may order that the firearm be:

(i) returned to the rightful owner as determined by the court; or

~~[(ii) converted to public interest use; or]~~

~~[(iii) destroyed.]~~

(ii) disposed of in accordance with Section 24-3-103.5.

(d) A law enforcement agency shall return a firearm ordered returned to the rightful owner as expeditiously as possible after a court determination.

Section 5. Effective date.

This bill takes effect on January 1, 2018.

CHAPTER 335**H. B. 253**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

SHORT-TERM RENTAL AMENDMENTS

Chief Sponsor: John Knotwell
Senate Sponsor: J. Stuart Adams

LONG TITLE**General Description:**

This bill prevents a political subdivision from prohibiting the use of a short-term rental website.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ prevents a political subdivision from prohibiting an individual from listing or offering a short-term rental on a short-term rental website.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

10-8-85.4, Utah Code Annotated 1953

17-50-338, Utah Code Annotated 1953

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

Section 1. Section 10-8-85.4 is enacted to read:**10-8-85.4. Ordinances regarding short-term rentals -- Prohibition on ordinances restricting speech on short-term rental websites.****(1) As used in this section:**

(a) “Residential unit” means a residential structure or any portion of a residential structure that is occupied as a residence.

(b) “Short-term rental” means a residential unit or any portion of a residential unit that the owner of record or the lessee of the residential unit offers for occupancy for fewer than 30 consecutive days.

(c) “Short-term rental website” means a website that:

(i) allows a person to offer a short-term rental to one or more prospective renters; and

(ii) facilitates the renting of, and payment for, a short-term rental.

(2) Notwithstanding Section 10-9a-501 or Subsection 10-9a-503(1), a legislative body may not:

(a) enact or enforce an ordinance that prohibits an individual from listing or offering a short-term rental on a short-term rental website; or

(b) use an ordinance that prohibits the act of renting a short-term rental to fine, charge, prosecute, or otherwise punish an individual solely for the act of listing or offering a short-term rental on a short-term rental website.

Section 2. Section 17-50-338 is enacted to read:**17-50-338. Ordinances regarding short-term rentals -- Prohibition on ordinances restricting speech on short-term rental websites.****(1) As used in this section:**

(a) “Residential unit” means a residential structure or any portion of a residential structure that is occupied as a residence.

(b) “Short-term rental” means a residential unit or any portion of a residential unit that the owner of record or the lessee of the residential unit offers for occupancy for fewer than 30 consecutive days.

(c) “Short-term rental website” means a website that:

(i) allows a person to offer a short-term rental to one or more prospective renters; and

(ii) facilitates the renting of, and payment for, a short-term rental.

(2) Notwithstanding Section 17-27a-501 or Subsection 17-27a-503(1), a legislative body may not:

(a) enact or enforce an ordinance that prohibits an individual from listing or offering a short-term rental on a short-term rental website; or

(b) use an ordinance that prohibits the act of renting a short-term rental to fine, charge, prosecute, or otherwise punish an individual solely for the act of listing or offering a short-term rental on a short-term rental website.

CHAPTER 336**H. B. 261**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

**LOCAL EMERGENCY
RESPONSE AMENDMENTS**

Chief Sponsor: Douglas V. Sagers

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill amends the Emergency Medical Services Assistance Act.

Highlighted Provisions:

This bill:

- amends the membership of the Emergency Medical Services Committee.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-8a-103, as last amended by Laws of Utah 2011, Chapters 51 and 297

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

Section 1. Section 26-8a-103 is amended to read:**26-8a-103. State Emergency Medical Services Committee -- Membership -- Expenses.**

(1) The State Emergency Medical Services Committee created by Section 26-1-7 shall be composed of the following [16] 17 members appointed by the governor, at least [five] six of whom shall reside in a county of the third, fourth, fifth, or sixth class:

(a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as follows:

(i) one surgeon who actively provides trauma care at a hospital;

(ii) one rural physician involved in emergency medical care;

(iii) two physicians who practice in the emergency department of a general acute hospital; and

(iv) one pediatrician who practices in the emergency department or critical care unit of a general acute hospital or a children's specialty hospital;

(b) [one representative] two representatives from [a] private ambulance [provider] providers;

(c) one representative from an ambulance provider that is neither privately owned nor operated by a fire department;

(d) two chief officers from fire agencies operated by the following classes of licensed or designated emergency medical services providers: municipality, county, and fire district, provided that no class of medical services providers may have more than one representative under this Subsection (1)(d);

(e) one director of a law enforcement agency that provides emergency medical services;

(f) one hospital administrator;

(g) one emergency care nurse;

(h) one paramedic in active field practice;

(i) one emergency medical technician in active field practice;

(j) one certified emergency medical dispatcher affiliated with an emergency medical dispatch center; and

(k) one consumer.

(2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a four-year term beginning July 1.

(b) Notwithstanding Subsection (2)(a), the governor:

(i) shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years[-];

(ii) may not reappoint a member for more than two consecutive terms; and

(iii) shall:

(A) initially appoint the second member under Subsection (1)(b) from a different private provider than the private provider currently serving under Subsection (1)(b); and

(B) thereafter stagger each replacement of a member in Subsection (1)(b) so that the member positions under Subsection (1)(b) are not held by representatives of the same private provider.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term.

(3) (a) Each January, the committee shall organize and select one of its members as chair and one member as vice chair. The committee may organize standing or ad hoc subcommittees, which shall operate in accordance with guidelines established by the committee.

(b) The chair shall convene a minimum of four meetings per year. The chair may call special meetings. The chair shall call a meeting upon request of five or more members of the committee.

(c) Nine members of the committee constitute a quorum for the transaction of business and the action of a majority of the members present is the action of the committee.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

-
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (5) Administrative services for the committee shall be provided by the department.

CHAPTER 337**H. B. 262**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

DENTAL LICENSING AMENDMENTS

Chief Sponsor: Marie H. Poulson
 Senate Sponsor: Peter C. Knudson

LONG TITLE**General Description:**

This bill amends provisions related to dental licensing.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to dental licensing; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-69-302, as last amended by Laws of Utah 2015, Chapter 320

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

Section 1. Section 58-69-302 is amended to read:**58-69-302. Qualifications -- Licensure as a dentist -- Licensure as a dental hygienist.**

(1) An applicant for licensure as a dentist, except as provided in Subsection (2), shall:

(a) submit an application in a form as prescribed by the division;

(b) pay a fee as determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a dentist as evidenced by having received an earned doctor's degree in dentistry from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;

(e) pass the National Board Dental Examinations as administered by the Joint Commission on National Dental Examinations of the American Dental Association;

(f) pass any one of the regional dental clinical licensure examinations unless the division, in collaboration with the board, determines that:

(i) the examination is clearly inferior to the Western Regional Examination Board; and

(ii) reliance upon the examination poses an unjustifiable threat to public health and safety;

(g) pass any other examinations regarding applicable law, rules, or ethics as established by division rule made in collaboration with the board;

(h) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and

(i) meet with the board if requested by the board or division for the purpose of examining the applicant's qualifications for licensure.

(2) An applicant for licensure as a dentist qualifying under the endorsement provision of Section 58-1-302 shall:

(a) be currently licensed in good standing with an unrestricted license in another jurisdiction [set forth] described in Section 58-1-302;

(b) [~~(4)~~] document having met all requirements for licensure under Subsection (1) except [~~an applicant having received licensure in another state or jurisdiction prior to the year when the National Board Dental Examinations were first administered, shall document having passed a state administered examination acceptable to the division in collaboration with the board; or~~] Subsection (1)(d); and

[~~(ii) document having obtained licensure in another state or jurisdiction upon which licensure by endorsement is based by meeting requirements which were equal to licensure requirements in Utah at the time the applicant obtained licensure in the other state or jurisdiction; and~~]

(c) document having been successfully engaged in clinical practice as a dentist for not less than 6,000 hours in the five years immediately preceding the date of application for licensure.

(3) An applicant for licensure as a dental hygienist, except as set forth in Subsection (4), shall:

(a) submit an application in a form as prescribed by the division;

(b) pay a fee as determined by the department pursuant to Section 63J-1-504;

(c) be of good moral character;

(d) be a graduate holding a certificate or degree in dental hygiene from a school accredited by the Commission on Dental Accreditation of the American Dental Association;

(e) pass the National Board Dental Hygiene Examination as administered by the Joint Commission on National Dental Examinations of the American Dental Association;

(f) pass an examination consisting of practical demonstrations in the practice of dental hygiene and written or oral examination in the theory and practice of dental hygiene as established by division rule made in collaboration with the board;

(g) pass any other examinations regarding applicable law, rules, and ethics as established by rule by division rule made in collaboration with the board;

(h) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and

(i) meet with the board if requested by the board or division for the purpose of examining the applicant's qualifications for licensure.

(4) An applicant for licensure as a dental hygienist qualifying under the endorsement provision of Section 58-1-302 shall:

(a) be currently licensed in another jurisdiction set forth in Section 58-1-302;

(b) (i) document having met all requirements for licensure under Subsection (3) except, an applicant having received licensure in another state or jurisdiction prior to 1962, the year when the National Board Dental Hygiene Examinations were first administered, shall document having passed a state administered examination acceptable to the division in collaboration with the board; or

(ii) document having obtained licensure in another state or jurisdiction upon which licensure by endorsement is based by meeting requirements which were equal to licensure requirements in Utah at the time the applicant obtained licensure in the other state or jurisdiction; and

(c) document having been successfully engaged in practice as a dental hygienist for not less than 2,000 hours in the two years immediately preceding the date of application for licensure.

CHAPTER 338**H. B. 268**

Passed March 6, 2017

Approved March 24, 2017

Effective May 9, 2017

**MONEY MANAGEMENT
ACT AMENDMENTS**

Chief Sponsor: John Knotwell

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies the State Money Management Act by amending provisions relating to money management.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ specifies the term to final maturity for certain deposits or investments that are invested by a public agency insurance mutual;
- ▶ provides that a certified investment adviser may use the adviser's own approved list of brokers or dealers, subject to rules of the State Money Management Council;
- ▶ authorizes the state treasurer, county, city, and town treasurers, the clerk or treasurer of each school district, and other public treasurers to procure crime or theft insurance;
- ▶ provides that the State Money Management Council may authorize an exception to certain maturity dates in certain circumstances; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

51-7-3, as last amended by Laws of Utah 2013, Chapters 204 and 388

51-7-11, as last amended by Laws of Utah 2015, Chapter 171

51-7-11.5, as last amended by Laws of Utah 2007, Chapter 254

51-7-15, as last amended by Laws of Utah 2013, Chapters 278 and 388

51-7-23, as last amended by Laws of Utah 2015, Chapter 171

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

Section 1. Section 51-7-3 is amended to read:**51-7-3. Definitions.**

As used in this chapter:

(1) "Agent" means "agent" as defined in Section 61-1-13.

(2) "Certified dealer" means:

(a) a primary reporting dealer recognized by the Federal Reserve Bank of New York who is certified

by the director as having met the applicable criteria of council rule; or

(b) a broker dealer who:

(i) has and maintains an office and a resident registered principal in the state;

(ii) meets the capital requirements established by council rules;

(iii) meets the requirements for good standing established by council rule; and

(iv) is certified by the director as meeting quality criteria established by council rule.

(3) "Certified investment adviser" means a federal covered adviser, as defined in Section 61-1-13, or an investment adviser, as defined in Section 61-1-13, who is certified by the director as having met the applicable criteria of council rule.

(4) "Commissioner" means the commissioner of financial institutions.

(5) "Council" means the State Money Management Council created by Section 51-7-16.

(6) "Covered bond" means a publicly placed debt security issued by a bank, other regulated financial institution, or a subsidiary of either that is secured by a pool of loans that remain on the balance sheet of the issuer or its subsidiary.

(7) "Director" means the director of the Utah State Division of Securities of the Department of Commerce.

(8) (a) "Endowment funds" means gifts, devises, or bequests of property of any kind donated to a higher education institution from any source.

(b) "Endowment funds" does not mean money used for the general operation of a higher education institution that is received by the higher education institution from:

(i) state appropriations;

(ii) federal contracts;

(iii) federal grants;

(iv) private research grants; and

(v) tuition and fees collected from students.

(9) "First tier commercial paper" means commercial paper rated by at least two nationally recognized statistical rating organizations in the highest short-term rating category.

(10) "Funds functioning as endowments" means funds, regardless of source, whose corpus is intended to be held in perpetuity by formal institutional designation according to the institution's policy for designating those funds.

(11) "GASB" or "Governmental Accounting Standards Board" means the Governmental Accounting Standards Board that is responsible for accounting standards used by public entities.

(12) "Hard put" means an unconditional sell-back provision or a redemption provision applicable at issue to a note or bond, allowing

holders to sell their holdings back to the issuer or to an equal or higher-rated third party provider at specific intervals and specific prices determined at the time of issuance.

(13) “Higher education institution” means the institutions specified in Section 53B-1-102.

(14) “Investment adviser representative” is as defined in Section 61-1-13.

(15) (a) “Investment agreement” means any written agreement that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate.

(b) “Investment agreement” includes any agreement to supply investments on one or more future dates.

(16) “Local government” means a county, municipality, school district, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service district under Title 17D, Chapter 1, Special Service District Act, or any other political subdivision of the state.

(17) “Market value” means market value as defined in the Master Repurchase Agreement.

(18) “Master Repurchase Agreement” means the current standard Master Repurchase Agreement approved by the Public Securities Association or by any successor organization.

(19) “Maximum amount” means, with respect to qualified depositories, the total amount of:

(a) deposits in excess of the federal deposit insurance limit; and

(b) nonqualifying repurchase agreements.

(20) “Money market mutual fund” means an open-end managed investment fund:

(a) that complies with the diversification, quality, and maturity requirements of Rule 2a-7 or any successor rule of the Securities and Exchange Commission applicable to money market mutual funds; and

(b) that assesses no sales load on the purchase of shares and no contingent deferred sales charge or other similar charges, however designated.

(21) “Nationally recognized statistical rating organization” means an organization that has been designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission’s Division of Market Regulation.

(22) “Nonqualifying repurchase agreement” means a repurchase agreement evidencing indebtedness of a qualified depository arising from the transfer of obligations of the United States Treasury or other authorized investments to public treasurers that is:

(a) evidenced by a safekeeping receipt issued by the qualified depository;

(b) included in the depository’s maximum amount of public funds; and

(c) valued and maintained at market value plus an appropriate margin collateral requirement based upon the term of the agreement and the type of securities acquired.

(23) “Operating funds” means current balances and other funds that are to be disbursed for operation of the state government or any of its boards, commissions, institutions, departments, divisions, agencies, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body.

(24) “Permanent funds” means funds whose principal may not be expended, the earnings from which are to be used for purposes designated by law.

(25) “Permitted depository” means any out-of-state financial institution that meets quality criteria established by rule of the council.

(26) “Public funds” means money, funds, and accounts, regardless of the source from which the money, funds, and accounts are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body.

(27) (a) “Public money” means “public funds.”

(b) “Public money,” as used in Article VII, Sec. 15, Utah Constitution, means the same as “state funds.”

(28) “Public treasurer” includes the state treasurer and the official of any state board, commission, institution, department, division, agency, or other similar instrumentality, or of any county, city, school district, charter school, political subdivision, or other public body who has the responsibility for the safekeeping and investment of any public funds.

(29) “Qualified depository” means a Utah depository institution or an out-of-state depository institution, as those terms are defined in Section 7-1-103, that is authorized to conduct business in this state under Section 7-1-702 or Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, whose deposits are insured by an agency of the federal government and that has been certified by the commissioner of financial institutions as having met the requirements established under this chapter and the rules of the council to be eligible to receive deposits of public funds.

(30) “Qualifying repurchase agreement” means a repurchase agreement evidencing indebtedness of a financial institution or government securities dealer acting as principal arising from the transfer of obligations of the United States Treasury or other authorized investments to public treasurers only if purchased securities are:

(a) delivered to the public treasurer’s safekeeping agent or custodian as contemplated by Section 7 of the Master Repurchase Agreement; and

(b) valued and maintained at market value plus an appropriate margin collateral requirement

based upon the term of the agreement and the type of securities acquired.

(31) "Reciprocal deposits" means deposits that are initially deposited into a qualified depository and are then redeposited through a deposit account registry service:

(a) in one or more FDIC-insured depository institutions in amounts up to the relevant FDIC-insured deposit limit for a depositor in each depository institution; and

(b) in exchange for reciprocal FDIC-insured deposits made through the deposit account registry service to the qualified depository.

(32) "Securities division" means Utah's Division of Securities created within the Department of Commerce by Section 13-1-2.

(33) "State funds" means:

(a) public money raised by operation of law for the support and operation of the state government; and

(b) all other money, funds, and accounts, regardless of the source from which the money, funds, or accounts are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities.

Section 2. Section 51-7-11 is amended to read:

51-7-11. Authorized deposits or investments of public funds.

(1) (a) Except as provided in Subsections (1)(b) and (1)(c), a public treasurer shall conduct investment transactions through qualified depositories, certified dealers, or directly with issuers of the investment securities.

(b) A public treasurer may designate a certified investment adviser to make trades on behalf of the public treasurer.

(c) A public treasurer may make a deposit in accordance with Section 53B-7-601 in a foreign depository institution as defined in Section 7-1-103.

(2) The remaining term to maturity of the investment may not exceed the period of availability of the funds to be invested.

(3) Except as provided in Subsection (4), all public funds shall be deposited or invested in the following assets that meet the criteria of Section 51-7-17:

(a) negotiable or nonnegotiable deposits of qualified depositories;

(b) qualifying or nonqualifying repurchase agreements and reverse repurchase agreements with qualified depositories using collateral consisting of:

(i) Government National Mortgage Association mortgage pools;

(ii) Federal Home Loan Mortgage Corporation mortgage pools;

(iii) Federal National Mortgage Corporation mortgage pools;

(iv) Small Business Administration loan pools;

(v) Federal Agriculture Mortgage Corporation pools; or

(vi) other investments authorized by this section;

(c) qualifying repurchase agreements and reverse repurchase agreements with certified dealers, permitted depositories, or qualified depositories using collateral consisting of:

(i) Government National Mortgage Association mortgage pools;

(ii) Federal Home Loan Mortgage Corporation mortgage pools;

(iii) Federal National Mortgage Corporation mortgage pools;

(iv) Small Business Administration loan pools; or

(v) other investments authorized by this section;

(d) commercial paper that is classified as "first tier" by two nationally recognized statistical rating organizations, which has a remaining term to maturity of:

(i) 270 days or fewer for paper issued under 15 U.S.C. Sec. 77c(a)(3); or

(ii) 365 days or fewer for paper issued under 15 U.S.C. Sec. 77d(2);

(e) bankers' acceptances that:

(i) are eligible for discount at a Federal Reserve bank; and

(ii) have a remaining term to maturity of 270 days or fewer;

(f) fixed rate negotiable deposits issued by a permitted depository that have a remaining term to maturity of 365 days or fewer;

(g) obligations of the United States Treasury, including United States Treasury bills, United States Treasury notes, and United States Treasury bonds that, unless the funds invested are pledged or otherwise deposited in an irrevocable trust escrow account, have a remaining term to final maturity of:

(i) five years or less; ~~or~~

(ii) if the funds are invested by an institution of higher education as defined in Section 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

(iii) if the funds are invested by a public agency insurance mutual, as defined in Subsection 31A-1-103(7)(a), 20 years or less;

(h) obligations other than mortgage pools and other mortgage derivative products that:

(i) are issued by, or fully guaranteed as to principal and interest by, the following agencies or

instrumentalities of the United States in which a market is made by a primary reporting government securities dealer, unless the agency or instrumentality has become private and is no longer considered to be a government entity:

- (A) Federal Farm Credit banks;
- (B) Federal Home Loan banks;
- (C) Federal National Mortgage Association;
- (D) Federal Home Loan Mortgage Corporation;
- (E) Federal Agriculture Mortgage Corporation; and

(F) Tennessee Valley Authority; and

(ii) unless the funds invested are pledged or otherwise deposited in an irrevocable trust escrow account, have a remaining term to final maturity of:

(A) five years or less; [ø]

(B) if the funds are invested by an institution of higher education as defined in Section 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

(C) if the funds are invested by a public agency insurance mutual, as defined in Subsection 31A-1-103(7)(a), 20 years or less;

(i) fixed rate corporate obligations that:

(i) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations;

(ii) are senior unsecured or secured obligations of the issuer, excluding covered bonds;

(iii) are publicly traded; and

(iv) have a remaining term to final maturity of 15 months or less or are subject to a hard put at par value or better, within 365 days;

(j) tax anticipation notes and general obligation bonds of the state or a county, incorporated city or town, school district, or other political subdivision of the state, including bonds offered on a when-issued basis without regard to the limitations described in Subsection (7) that, unless the funds invested are pledged or otherwise deposited in an irrevocable trust escrow account, have a remaining term to final maturity of:

(i) five years or less; [ø]

(ii) if the funds are invested by an institution of higher education as defined in Section 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

(iii) if the funds are invested by a public agency insurance mutual, as defined in Subsection 31A-1-103(7)(a), 20 years or less;

(k) bonds, notes, or other evidence of indebtedness of a county, incorporated city or town, school district, or other political subdivision of the state that are payable from assessments or from revenues or earnings specifically pledged for

payment of the principal and interest on these obligations, including bonds offered on a when-issued basis without regard to the limitations described in Subsection (7) that, unless the funds invested are pledged or otherwise deposited in an irrevocable trust escrow account, have a remaining term to final maturity of:

(i) five years or less; [ø]

(ii) if the funds are invested by an institution of higher education as defined in Section 53B-3-102, a city of the first class, or a county of the first class, 10 years or less; or

(iii) if the funds are invested by a public agency insurance mutual, as defined in Subsection 31A-1-103(7)(a), 20 years or less;

(l) shares or certificates in a money market mutual fund;

(m) variable rate negotiable deposits that:

(i) are issued by a qualified depository or a permitted depository;

(ii) are repriced at least semiannually; and

(iii) have a remaining term to final maturity not to exceed three years;

(n) variable rate securities that:

(i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations;

(B) are senior unsecured or secured obligations of the issuer, excluding covered bonds;

(C) are publicly traded;

(D) are repriced at least semiannually; and

(E) have a remaining term to final maturity not to exceed three years or are subject to a hard put at par value or better, within 365 days;

(ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or a security making unscheduled periodic principal payments other than optional redemptions; and

(o) reciprocal deposits made in accordance with Subsection 51-7-17(4).

(4) The following public funds are exempt from the requirements of Subsection (3):

(a) the Employers' Reinsurance Fund created in Section 34A-2-702;

(b) the Uninsured Employers' Fund created in Section 34A-2-704;

(c) a local government other post-employment benefits trust fund under Section 51-7-12.2; and

(d) a nonnegotiable deposit made in accordance with Section 53B-7-601 in a foreign depository institution as defined in Section 7-1-103.

(5) If any of the deposits authorized by Subsection (3)(a) are negotiable or nonnegotiable large time deposits issued in amounts of \$100,000 or more, the

interest shall be calculated on the basis of the actual number of days divided by 360 days.

(6) A public treasurer may maintain fully insured deposits in demand accounts in a federally insured nonqualified depository only if a qualified depository is not reasonably convenient to the entity's geographic location.

(7) Except as provided under Subsections (3)(j) and (k), the public treasurer shall ensure that all purchases and sales of securities are settled within:

(a) 15 days of the trade date for outstanding issues; and

(b) 30 days for new issues.

Section 3. Section 51-7-11.5 is amended to read:

51-7-11.5. Certified investment advisers -- Scope of and limits to authority.

(1) ~~[Certified investment advisers]~~ A certified investment advisor may not make any investments that are inconsistent with this chapter or rules of the council.

(2) ~~[Certified investment advisers]~~ Except as provided in Subsection (3), a certified investment adviser acting on behalf of a public treasurer shall conduct investment transactions only through qualified depositories, certified dealers, or directly with issuers of the investment securities.

(3) Subject to rules of the council, a certified investment adviser may use the adviser's own approved list of brokers and dealers.

Section 4. Section 51-7-15 is amended to read:

51-7-15. Bonds of state treasurer and other public treasurers -- Reports to council.

(1) (a) The state treasurer, county, city, and town treasurers, the clerk or treasurer of each school district, and other public treasurers that the council designates by rule shall be bonded or may procure crime or theft insurance as allowed in Section 17-16-11 in an amount of not less than that established by the council.

(b) The council shall base the minimum bond amount or crime or theft insurance as allowed in Section 17-16-11 on the amount of public funds normally in the treasurer's possession or control.

(2) (a) When a public treasurer deposits or invests public funds as authorized by this chapter, the public treasurer and the public treasurer's bondsmen or insurers are not liable for any loss of public funds invested or deposited unless the loss is caused by the malfeasance of the public treasurer or a member of the public treasurer's staff.

(b) A public treasurer and the public treasurer's bondsmen or insurers are liable for a loss for any reason from deposits or investments not made in conformity with this chapter and the rules of the council.

(3) (a) A public treasurer shall file a written report with the council on or before January 31 and July 31 of each year.

(b) The report shall contain:

(i) the information about the deposits and investments of that public treasurer during the preceding six months ending December 31 and June 30, respectively, that the council requires by rule; and

(ii) information detailing the nature and extent of interest rate contracts permitted by Subsection 51-7-17(3).

(c) A public treasurer shall make copies of the report available to the public at the public treasurer's office during normal business hours.

Section 5. Section 51-7-23 is amended to read:

51-7-23. Transition of investments previously authorized.

(1) Any investment held by a public treasurer that as of June 30, 2015, is not in compliance with the provisions of this chapter is subject to review by the council.

(2) (a) No later than July 31, 2015, a public treasurer who holds an investment described in Subsection (1) shall provide the council a written report that outlines a reasonable plan to bring the investment into compliance.

(b) A plan described in Subsection (2)(a) is subject to annual review by the council.

(c) The council may authorize, with substantial justification, an exception to the five-year maturity requirements of Section 51-7-11.

CHAPTER 339**H. B. 273**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

**CONSTRUCTION TRADES LICENSING
PENALTY PERIODS AMENDMENTS**Chief Sponsor: Paul Ray
Senate Sponsor: D. Gregg Buxton**LONG TITLE****General Description:**

This bill amends a provision related to unlawful conduct for a person licensed in a construction trade.

Highlighted Provisions:

This bill:

- ▶ prohibits the division from treating unlawful conduct by a licensee as a subsequent violation of a previous unlawful conduct violation if a certain amount of time has passed since the previous violation; and
- ▶ allows the division to treat multiple of the same type of unlawful conduct violation as separate violations.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-55-503, as last amended by Laws of Utah 2014, Chapter 188

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

Section 1. Section 58-55-503 is amended to read:**58-55-503. Penalty for unlawful conduct -- Citations.**

(1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor.

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

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

(2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive

the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of a licensee's license by the division and the commission include:

(a) the issuance of a citation for violation of Subsection 58-55-308(2), Section 58-55-501, or Subsection 58-55-504(2); and

(b) the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including:

(i) applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure;

(ii) filing a current financial statement with the division; and

(iii) notifying the division concerning loss of insurance coverage or change in qualifier.

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(i) A person who is in violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2).

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

(b) (i) A citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.

(ii) A citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing

conducted under Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

(iii) by mail.

(d) (i) If within 20 calendar days after the day on which a citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

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

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

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

(g) A citation may not be issued under this section after the expiration of six months following the occurrence of a violation.

(h) ~~The~~ Except as provided in Subsection (5), the director or the director's designee shall assess a fine in accordance with the following:

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

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

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

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

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); or

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

(II) a final order has not been issued by the division in the action initiated under Subsection (4)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (24), (25), (26), (27), (28), or (29), or Subsection 58-55-504(2); and

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

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

(j) In addition to any other licensure sanction or fine imposed under this section, the division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25) two or more times within a 12-month period, unless, with respect to a violation of Subsection 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal legal working status of the individual who was the subject of the violation using a status verification system, as defined in Section 13-47-102.

(k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25) for each individual is considered a separate violation.

(5) If a person violates Section 58-55-501, the division may not treat the violation as a subsequent violation of a previous violation if the violation occurs five years or more after the day on which the person committed the previous violation.

(6) If, after an investigation, the division determines that a person has committed multiple of the same type of violation of Section 58-55-501, the division may treat each violation as a separate violation of Section 58-55-501 and apply a penalty under this section to each violation.

~~(4)(5)~~ (7) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Account created by Section 13-1-2.

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

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

(d) In an action brought to enforce the provisions of this section, the court shall award reasonable attorney fees and costs to the prevailing party.

CHAPTER 340**H. B. 278**

Passed March 9, 2017
 Approved March 24, 2017
 Effective July 1, 2018

EXPENSES OF MINOR CHILDREN AMENDMENTS

Chief Sponsor: Rebecca Chavez-Houck

Senate Sponsor: Todd Weiler

Cosponsors: Patrice M. Arent

Joel K. Briscoe

Bruce R. Cutler

Susan Duckworth

Rebecca P. Edwards

Lynn N. Hemingway

Sandra Hollins

Brian S. King

Carol Spackman Moss

Dixon M. Pitcher

Marie H. Poulson

Tim Quinn

Angela Romero

V. Lowry Snow

Elizabeth Weight

Mark A. Wheatley

LONG TITLE**General Description:**

This bill amends provisions related to joint obligations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ under certain circumstances, requires a provider to separately bill the parents of a minor child for the portion of the minor child's expenses for which each parent is responsible under court order;
- ▶ under certain circumstances, prohibits a provider from making a negative credit report against a parent who has paid in full the portion of a minor child's school fees for which the parent is responsible under court order;
- ▶ addresses the effect of a waiver for one parent on the other parent's obligation to pay the other parent's portion of the minor child's school fees; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

15-4-1, as last amended by Laws of Utah 1991, Chapter 257

15-4-6.7, as last amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 15-4-1 is amended to read:**15-4-1. Definitions.**

[En] As used in this chapter:

(1) "Obligation" includes a liability in tort and contractual obligations;

(2) "Obligee" includes a creditor and a person having a right based on a tort;

(3) "Obligor" includes a debtor and a person liable for a tort;

(4) (a) "School fee" means a charge, deposit, rent, or other mandatory payment imposed by:

(i) a public school as defined in Section 26-39-102; or

(ii) a private school that provides education to students in any grade from kindergarten through grade 12.

(b) "School fee" includes:

(i) an admission fee;

(ii) a transportation charge; or

(iii) a charge, deposit, rent, or other mandatory payment imposed by a third party in connection with an activity or function sponsored by a school described in Subsection (4)(a).

[4] (5) "Several obligors" means obligors severally bound for the same performance.

(6) "Waiver" means the act of not requiring an individual to pay an amount that the individual otherwise owes.

Section 2. Section 15-4-6.7 is amended to read:**15-4-6.7. Medical and miscellaneous expenses of minor children -- Collection and billing pursuant to court or administrative order of child support.**

(1) When a court enters an order ~~[has been entered providing]~~ that provides for the payment of medical and dental expenses of a minor child ~~[pursuant to]~~ under Section 30-3-5, 30-4-3, or ~~[78B-12-212]~~ 78B-12-111, or an administrative order under Section 62A-11-326, ~~[a creditor who has been provided a copy of the order]~~ a provider who receives a copy of the order:

(a) at or before the time the provider renders medical or dental services to the minor child shall, upon request from either parent, separately bill each parent for the share of the medical and dental expenses that the parent is required to pay under the order; or

(b) within 30 days after the day on which the provider renders the medical or dental service, may not:

(i) ~~[may not]~~ make a claim for unpaid medical and dental expenses against a parent who has paid in full ~~[that]~~ the share of the medical and dental expenses ~~[required to be paid by]~~ that the parent is required to pay under the order~~[.];~~ or

~~[(2) When a court order has been entered providing for the payment of medical and dental expenses of a minor child pursuant to Section~~

~~30-3-5, 30-4-3, or 78B-12-212, or an administrative order under Section 62A-11-326 and the creditor receives a copy of the order, the creditor]~~

(ii) ~~[may not]~~ make a negative credit report under Section 70C-7-107, or report of the debtor's repayment practices or credit history under Title 7, Chapter 14, Credit Information Exchange, regarding a parent who has paid in full ~~[that]~~ the share of the medical and dental expenses that the parent is required ~~[to be paid by that parent]~~ to pay under the order.

(2) (a) When a court enters an order that provides for the payment of school fees of a minor child under Section 30-3-5 or 30-4-3:

(i) a provider who receives a copy of the order before the day on which the provider first issues a bill for a school fee shall, upon request from either parent, separately bill each parent for the share of the school fee that the parent is required to pay under the order;

(ii) a provider who receives a copy of the order, regardless of whether the provider receives the copy before, on, or after the day on which the provider first issues a bill for the school fee may not make a negative credit report under Section 70C-7-107, or report of the debtor's repayment practices or credit history under Title 7, Chapter 14, Credit Information Exchange, regarding a parent who has paid in full the share of the school fee that the parent is required to pay under the order; and

(iii) each parent is liable only for the share of the school fee that the parent is required to pay under the order.

(b) A provider may bill a parent for the parent's share of a minor child's school fee under an order described in Subsection (2)(a) regardless of whether the provider grants the other parent a waiver for all or a portion of the other parent's share of the minor child's school fee.

Section 3. Effective date.

This bill takes effect on July 1, 2018.

CHAPTER 341**H. B. 281**

Passed March 9, 2017
 Approved March 24, 2017
 Effective May 9, 2017

**CONSTRUCTION AND
FIRE CODES AMENDMENTS**

Chief Sponsor: Paul Ray
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends and repeals provisions related to the state construction and fire codes.

Highlighted Provisions:

This bill:

- ▶ repeals, for certain municipalities in the state, provisions related to structural requirements for fire safety, fire notification systems, and fire suppression systems;
- ▶ provides that a political subdivision may not require a structure or subdivision of structures to have a given fire flow rate or a fire sprinkler system under certain circumstances;
- ▶ repeals a provision related to the applicability of state construction code local amendments; and
- ▶ repeals, for certain municipalities in the state, a provision related to structures intended to store farm animals.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 15A-1-403, as last amended by Laws of Utah 2016, Chapter 249
 15A-4-105, as enacted by Laws of Utah 2011, Chapter 14
 15A-4-107, as last amended by Laws of Utah 2016, Chapter 249
 15A-4-201, as last amended by Laws of Utah 2014, Chapter 189

REPEALS:

- 15A-4-102, as enacted by Laws of Utah 2011, Chapter 14
 15A-4-103, as last amended by Laws of Utah 2016, Chapter 249
 15A-4-104, as enacted by Laws of Utah 2011, Chapter 14
 15A-4-202, as enacted by Laws of Utah 2011, Chapter 14
 15A-4-203, as last amended by Laws of Utah 2016, Chapter 249
 15A-4-204, as enacted by Laws of Utah 2011, Chapter 14
 15A-4-205, as enacted by Laws of Utah 2011, Chapter 14
 15A-5-401, as last amended by Laws of Utah 2013, Chapter 199

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

Section 1. Section 15A-1-403 is amended to read:**15A-1-403. Adoption of State Fire Code.**

(1) (a) The State Fire Code is:

(i) a code promulgated by a nationally recognized code authority that is adopted by the Legislature under this section with any modifications; and

(ii) a code to which cities, counties, fire protection districts, and the state shall adhere in safeguarding life and property from the hazards of fire and explosion.

(b) On and after July 1, 2010, the State Fire Code is the State Fire Code in effect on July 1, 2010, until in accordance with this section:

(i) a new State Fire Code is adopted; or

(ii) one or more provisions of the State Fire Code are amended or repealed in accordance with this section.

(c) A provision of the State Fire Code may be applicable:

(i) to the entire state; or

(ii) within a city, county, or fire protection district.

(2) (a) The Legislature shall adopt a State Fire Code by enacting legislation that adopts a nationally recognized fire code with any modifications.

(b) Legislation described in Subsection (2)(a) shall state that the legislation takes effect on the July 1 after the day on which the legislation is enacted, unless otherwise stated in the legislation.

(c) Subject to Subsection (6), a State Fire Code adopted by the Legislature is the State Fire Code until in accordance with this section the Legislature adopts a new State Fire Code by:

(i) adopting a new State Fire Code in its entirety; or

(ii) amending or repealing one or more provisions of the State Fire Code.

(3) (a) Except as provided in Subsection (3)(b), for each update of a nationally recognized fire code, the board shall prepare a report described in Subsection (4).

(b) For the provisions of a nationally recognized fire code that apply only to detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with separate means of egress and their accessory structures, the board shall:

(i) prepare a report described in Subsection (4) in 2021 and, thereafter, for every second update of the nationally recognized fire code; and

(ii) not prepare a report described in Subsection (4) in 2018.

(4) (a) In accordance with Subsection (3), on or before September 1 of the same year as the year

designated in the title of an update of a nationally recognized fire code, the board shall prepare and submit a report to the Business and Labor Interim Committee that:

(i) states whether the board recommends the Legislature adopt the update with any modifications; and

(ii) describes the costs and benefits of each recommended change in the update or in any modification.

(b) After the Business and Labor Interim Committee receives the report described in Subsection (4)(a), the Business and Labor Interim Committee shall:

(i) study the recommendations during the remainder of the interim; and

(ii) if the Business and Labor Interim Committee decides to recommend legislative action to the Legislature, prepare legislation for consideration by the Legislature in the next general session.

(5) (a) (i) The board shall, by no later than November 30 of each year in which the board is not required to submit a report described in Subsection (4), recommend in a report to the Business and Labor Interim Committee whether the Legislature should amend or repeal one or more provisions of the State Fire Code.

(ii) As part of a recommendation described in Subsection (5)(a)(i), the board shall describe the costs and benefits of each proposed amendment or repeal.

(b) The board may recommend legislative action related to the State Fire Code:

(i) on its own initiative; or

(ii) upon the receipt of a request by a city, county, or fire protection district that the board recommend legislative action related to the State Fire Code.

(c) Within 45 days after the day on which the board receives a request under Subsection (5)(b), the board shall direct the division to convene an informal hearing concerning the request.

(d) The board shall conduct a hearing under this section in accordance with the rules of the board.

(e) The board shall decide whether to include the request in the report described in Subsection (5)(a).

(f) (i) Within 15 days after the day on which the board conducts a hearing, the board shall direct the division to notify the entity that made the request of the board's decision regarding the request.

(ii) The division shall provide the notice:

(A) in writing; and

(B) in a form prescribed by the board.

(g) If the Business and Labor Interim Committee decides to recommend legislative action to the Legislature, the Business and Labor Interim Committee shall prepare legislation for

consideration by the Legislature in the next general session that, if passed by the Legislature, would amend or repeal one or more provisions of the State Fire Code.

(6) (a) Notwithstanding the provisions of this section, the board may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, amend a State Fire Code if the board determines that waiting for legislative action in the next general legislative session would:

(i) cause an imminent peril to the public health, safety, or welfare; or

(ii) place a person in violation of federal or other state law.

(b) If the board amends a State Fire Code in accordance with this Subsection (6), the board shall:

(i) publish the State Fire Code with the amendment; and

(ii) notify the Business and Labor Interim Committee of the adoption, including a copy of an analysis by the board identifying specific reasons and justifications for its findings.

(c) If not formally adopted by the Legislature at the next annual general session, an amendment to a State Fire Code adopted under this Subsection (6) is repealed on the July 1 immediately following the next annual general session that follows the adoption of the amendment.

(7) (a) Except as provided in Subsection (7)(b), a legislative body of a political subdivision may enact an ordinance in the political subdivision's fire code that is more restrictive than the State Fire Code:

(i) in order to meet a public safety need of the political subdivision; and

(ii) subject to the requirements of Subsection (7)(c).

(b) Except as provided in Subsections (7)(c), (10), and (11), or as expressly provided in state law, a political subdivision may not, after December 1, 2016, enact or enforce a rule or ordinance that applies to a structure built in accordance with the International Residential Code, as adopted in the State Construction Code, that is more restrictive than the State Fire Code.

(c) [A] (i) Except as provided in Subsection (7)(c)(ii), a political subdivision may adopt:

[4] (A) the appendices of the International Fire Code, ~~2015 edition~~; and

[4ii] (B) a fire sprinkler ordinance in accordance with Section 15A-5-203.

(ii) If a political subdivision adopts International Fire Code Appendix B, the political subdivision may not require:

(A) a subdivision of structures built in accordance with the International Residential Code to have a fire flow rate that is greater than 2000 gallons per minute;

(B) an individual structure built in accordance with the International Residential Code to have a

fire flow rate greater than that required under Subsection 15A-5-203(1)(a); or

(C) a one- or two-family dwelling or a town home to have a fire sprinkler system, except in accordance with Section 15A-5-203.

(d) A legislative body of a political subdivision that enacts an ordinance under Subsection (7)(a) shall:

(i) notify the board in writing at least 30 days before the day on which the legislative body enacts the ordinance and include in the notice a statement as to the proposed subject matter of the ordinance; and

(ii) after the legislative body enacts the ordinance, report to the board before the board makes the report required under Subsection (7)(e), including providing the board:

(A) a copy of the ordinance enacted under this Subsection (7); and

(B) a description of the public safety need that is the basis of enacting the ordinance.

(e) The board shall submit to the Business and Labor Interim Committee each year with the recommendations submitted in accordance with Subsection (4):

(i) a list of the ordinances enacted under this Subsection (7) during the fiscal year immediately preceding the report; and

(ii) recommendations, if any, for legislative action related to an ordinance enacted under this Subsection (7).

(f) (i) The state fire marshal shall keep an indexed copy of an ordinance enacted under this Subsection (7).

(ii) The state fire marshal shall make a copy of an ordinance enacted under this Subsection (7) available on request.

(g) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures for a legislative body of a political subdivision to follow to provide the notice and report required under this Subsection (7).

(8) Except as provided in Subsections (9), (10), and (11), or as expressly provided in state law, a state executive branch entity may not, after December 1, 2016, adopt or enforce a rule or requirement that:

(a) is more restrictive than the State Fire Code; and

(b) applies to detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures.

(9) A state government entity may adopt a rule or requirement regarding a residential occupancy that is regulated by:

(a) the State Fire Prevention Board;

(b) the Department of Health; or

(c) the Department of Human Services.

(10) A state executive branch entity or political subdivision of the state may:

(a) enforce a federal law or regulation;

(b) adopt or enforce a rule, ordinance, or requirement if the rule, ordinance, or requirement applies only to a facility or construction owned or used by a state entity or a political subdivision of the state; or

(c) enforce a rule, ordinance, or requirement:

(i) that the state executive branch entity or political subdivision adopted or made effective before July 1, 2015; and

(ii) for which the state executive branch entity or political subdivision can demonstrate, with substantial evidence, that the rule, ordinance, or requirement is necessary to protect an individual from a condition likely to cause imminent injury or death.

(11) The Department of Health or the Department of Environmental Quality may enforce a rule or requirement adopted before January 1, 2015.

Section 2. Section 15A-4-105 is amended to read:

15A-4-105. Amendments to IBC applicable to Park City Corporation or Park City Fire District.

(1) The following amendment is adopted as an amendment to the IBC for the Park City Corporation, in IBC, Section 3409.2, exception 3, is modified to read as follows: "3. Designated as historic under a state or local historic preservation program."

(2) The following amendments are adopted as amendments to the IBC for the Park City Corporation and Park City Fire District:

(a) IBC, Section (F)903.2, is deleted and replaced with the following: "(F)903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the location described in this section.

1. All new construction having more than 6,000 square feet on any one floor, except R-3 occupancy.

2. All new construction having more than two (2) stories, except R-3 occupancy. ~~All new construction having three (3) or more dwelling units, including units rented or leased, and including condominiums or other separate ownership.]~~

3. All new construction in the Historic Commercial Business zone district, regardless of occupancy.

4. All new construction and buildings in the General Commercial zone district where there are side yard setbacks or where one or more side yard setbacks is less than two and one half (2.5) feet per story of height.

5. All existing building within the Historic District Commercial Business zone.”; and

(b) In IBC, Table 1505.1, new footnotes d and e are added as follows: “d. Wood roof covering assemblies are prohibited in R-3 occupancies in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors.

e. Wood roof covering assemblies shall have a Class A rating in occupancies other than R-3 in areas with a combined rating of more than 11 using Tables 1505.1.1 and 1505.1.2 with a score of 9 for weather factors. The owner of the building shall enter into a written and recorded agreement that the Class A rating of the roof covering assembly will not be altered through any type of maintenance process.

TABLE 1505.1.1		
WILDFIRE HAZARD SEVERITY SCALE		
RATING	SLOPE	VEGETATION
1	less than or equal to 10%	Pinion-juniper
2	10.1 - 20%	Grass-sagebrush
3	greater than 20%	Mountain brush or softwoods

TABLE 1505.1.2		
PROHIBITION/ALLOWANCE OF WOOD ROOFING		
Rating	R-3 Occupancy	All Other Occupancies
Less than or equal to 11	Wood roof covering assemblies per Table 1505.1 are allowed	Wood roof covering assemblies per Table 15.05.1 are allowed
Greater than or equal to 12	Wood roof covering is prohibited	Wood roof covering assemblies with a Class A rating are allowed”

~~[(c) IBC, Appendix C, is adopted.]~~

Section 3. Section 15A-4-107 is amended to read:

15A-4-107. Amendments to IBC applicable to Sandy City.

The following amendments are adopted as amendments to the IBC for Sandy City:

(1) A new IBC, Section (F)903.2.13, is added as follows: “(F)903.2.13 An automatic sprinkler system shall be installed in accordance with NFPA 13 throughout buildings containing all occupancies where fire flow exceeds 2,000 gallons per minute, based on Table B105.1 of the 2015 International Fire Code. ~~[Exempt locations as indicated in Section 903.3.1.1.1 are allowed]~~ A one- or two-family dwelling or a town home is not required to have a fire sprinkler system except in accordance with Section 15A-5-203.”~~[Exception: Automatic fire sprinklers are not required in buildings used solely for worship, Group R Division 3, Group U occupancies and buildings complying with the International Residential Code unless otherwise required by the International Fire Code.]~~

(2) A new IBC, Appendix L, is added and adopted as follows: “Appendix L BUILDINGS AND STRUCTURES CONSTRUCTED IN AREAS DESIGNATED AS WILDLAND-URBAN INTERFACE AREASAL 101.1 General. Buildings and structures constructed in areas designated as Wildland-Urban Interface Areas by Sandy City shall be constructed using ignition resistant construction as determined by the Fire Marshal. Section 502 of the 2006 International Wildland-Urban Interface Code (IWUIC), as promulgated by the International Code Council, shall be used to determine Fire Hazard Severity. The provisions listed in Chapter 5 of the 2006 International Wildland-Urban Interface Code, as modified herein, shall be used to determine the requirements for Ignition Resistant Construction.”

~~[(4)]~~ (3) In Section 504 of the IWUIC Class I IGNITION-RESISTANT CONSTRUCTION a new Section 504.1.1 is added as follows: “504.1.1 General. Subsections 504.5, 504.6, and 504.7 shall only be required on the exposure side of the structure, as determined by the ~~[Fire Marshal]~~ fire code official, where defensible space is less than 50 feet as defined in Section 603 of the 2006 International Wildland-Urban Interface Code.”

~~[(ii)]~~ (4) In Section 505 of the IWUIC Class 2 IGNITION-RESISTANT CONSTRUCTION Subsections 505.5 and 505.7 are deleted.^[2]

Section 4. Section 15A-4-201 is amended to read:

15A-4-201. General provision.

~~[(4)]~~ The amendments in this part are adopted as amendments to the IRC to be applicable to specified jurisdiction.

~~[(2) A local amendment to the following which may be applied to detached one and two family dwellings and multiple single family dwellings~~

shall be applicable to the corresponding provisions of the IRC for the local jurisdiction to which the local amendment has been made:]

~~[(a) IBC under Part 1, Local Amendments to International Building Code;]~~

~~[(b) IPC under Part 3, Local Amendments to International Plumbing Code;]~~

~~[(c) IMC under Part 4, Local Amendments to International Mechanical Code;]~~

~~[(d) IFGC under Part 5, Local Amendments to International Fuel Gas Code;]~~

~~[(e) NEC under Part 6, Local Amendments to National Electrical Code; and]~~

~~[(f) IECC under Part 7, Local Amendments to International Energy Conservation Code.]~~

Section 5. Repealer.

This bill repeals:

Section 15A-4-102, Amendments to IBC applicable to Brian Head Town.

Section 15A-4-103, Amendments to IBC applicable to City of Farmington.

Section 15A-4-104, Amendments to IBC applicable to City of North Salt Lake.

Section 15A-4-202, Amendments to IRC applicable to Brian Head Town.

Section 15A-4-203, Amendments to IRC applicable to City of Farmington.

Section 15A-4-204, Amendments to IRC applicable to Morgan City Corporation or Morgan County.

Section 15A-4-205, Amendments to IRC applicable to City of North Salt Lake.

Section 15A-5-401, Grandfathering of local ordinances related to automatic sprinkler systems.

CHAPTER 342**H. B. 287**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

**COSMETOLOGY LICENSING
ACT AMENDMENTS**

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act (the act).

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the name of the act and the related licensing board and education and enforcement fund;
- ▶ creates a license issued by the Division of Occupational and Professional Licensing for a hair designer, a hair designer instructor, and a hair design school;
- ▶ describes the requirements for obtaining a license as a hair designer, a hair designer instructor, and a hair design school;
- ▶ modifies the requirements for licensed instructors under the act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-11a-101, as last amended by Laws of Utah 2007, Chapter 209

58-11a-102, as last amended by Laws of Utah 2016, Chapters 75 and 274

58-11a-103, as last amended by Laws of Utah 2013, Chapter 400

58-11a-201, as last amended by Laws of Utah 2007, Chapter 209

58-11a-301, as last amended by Laws of Utah 2016, Chapter 274

58-11a-302, as last amended by Laws of Utah 2016, Chapter 274

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

Section 1. Section 58-11a-101 is amended to read:**CHAPTER 11a. COSMETOLOGY AND
ASSOCIATED PROFESSIONS LICENSING
ACT****58-11a-101. Title.**

This chapter is known as the [~~“Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician”~~] “Cosmetology and Associated Professions Licensing Act.”

Section 2. Section 58-11a-102 is amended to read:**58-11a-102. Definitions.**

As used in this chapter:

(1) “Approved barber or cosmetologist/barber apprenticeship” means an apprenticeship that meets the requirements of Subsection 58-11a-306(1) for barbers or Subsection 58-11a-306(2) for cosmetologist/barbers and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) “Approved esthetician apprenticeship” means an apprenticeship that meets the requirements of Subsection 58-11a-306(3) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) “Approved master esthetician apprenticeship” means an apprenticeship that meets the requirements of Subsection 58-11a-306(4) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) “Approved nail technician apprenticeship” means an apprenticeship that meets the requirements of Subsection 58-11a-306(5) and the requirements established by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) “Barber” means a person who is licensed under this chapter to engage in the practice of barbering.

(6) “Barber instructor” means a barber who is licensed under this chapter to engage in the practice of barbering instruction.

(7) “Board” means the [~~Barber, Cosmetology/Barbering, Esthetics, Electrology, and Nail Technology~~] Cosmetology and Associated Professions Licensing Board created in Section 58-11a-201.

(8) “Cosmetic laser procedure” includes a nonablative procedure as defined in Section 58-67-102.

(9) “Cosmetic supervisor” means a supervisor as defined in Section 58-1-505.

(10) “Cosmetologist/barber” means a person who is licensed under this chapter to engage in the practice of cosmetology/barbering.

(11) “Cosmetologist/barber instructor” means a cosmetologist/barber who is licensed under this chapter to engage in the practice of cosmetology/barbering instruction.

(12) “Direct supervision” means that the supervisor of an apprentice or the instructor of a student is immediately available for consultation, advice, instruction, and evaluation.

(13) “Electrologist” means a person who is licensed under this chapter to engage in the practice of electrology.

(14) “Electrologist instructor” means an electrologist who is licensed under this chapter to engage in the practice of electrology instruction.

(15) “Esthetician” means a person who is licensed under this chapter to engage in the practice of esthetics.

(16) “Esthetician instructor” means a master esthetician who is licensed under this chapter to engage in the practice of esthetics instruction.

(17) “Fund” means the ~~[Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician]~~ Cosmetology and Associated Professions Education and Enforcement Fund created in Section 58-11a-103.

(18) (a) “Hair braiding” means the twisting, weaving, or interweaving of a person’s natural human hair.

(b) “Hair braiding” includes the following methods or styles:

- (i) African-style braiding;
- (ii) box braids;
- (iii) cornrows;
- (iv) dreadlocks;
- (v) french braids;
- (vi) invisible braids;
- (vii) micro braids;
- (viii) single braids;
- (ix) single plaits;
- (x) twists;
- (xi) visible braids;
- (xii) the use of lock braids; and
- (xiii) the use of decorative beads, accessories, and nonhair extensions.

(c) “Hair braiding” does not include:

- (i) the use of:
 - (A) wefts;
 - (B) synthetic tape;
 - (C) synthetic glue;
 - (D) keratin bonds;
 - (E) fusion bonds; or
 - (F) heat tools;
- (ii) the cutting of human hair; or
- (iii) the application of heat, dye, a reactive chemical, or other preparation to:
 - (A) alter the color of the hair; or

(B) straighten, curl, or alter the structure of the hair.

(19) “Hair designer” means a person who is licensed under this chapter to engage in the practice of hair design.

(20) “Hair designer instructor” means a hair designer who is licensed under this chapter to engage in the practice of hair design instruction.

~~[(19)]~~ (21) “Licensed barber or cosmetology/barber school” means a barber or cosmetology/barber school licensed under this chapter.

~~[(20)]~~ (22) “Licensed electrology school” means an electrology school licensed under this chapter.

~~[(21)]~~ (23) “Licensed esthetics school” means an esthetics school licensed under this chapter.

(24) “Licensed hair design school” means a hair design school licensed under this chapter.

~~[(22)]~~ (25) “Licensed nail technology school” means a nail technology school licensed under this chapter.

~~[(23)]~~ (26) “Master esthetician” means an individual who is licensed under this chapter to engage in the practice of master-level esthetics.

~~[(24)]~~ (27) “Nail technician” means an individual who is licensed under this chapter to engage in the practice of nail technology.

~~[(25)]~~ (28) “Nail technician instructor” means a nail technician licensed under this chapter to engage in the practice of nail technology instruction.

~~[(26)]~~ (29) “Practice of barbering” means:

(a) cutting, clipping, or trimming the hair of the head of any person by the use of scissors, shears, clippers, or other appliances;

(b) draping, shampooing, scalp treatments, basic wet styling, and blow drying; and

(c) removing hair from the face or neck of a person by the use of shaving equipment.

~~[(27)]~~ (30) “Practice of barbering instruction” means teaching the practice of barbering at a licensed barber school, at a licensed cosmetology/barber school, or for an approved barber apprenticeship.

~~[(28)]~~ (31) “Practice of basic esthetics” means any one of the following skin care procedures done on the body for cosmetic purposes and not for the treatment of medical, physical, or mental ailments:

(a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or masks, manual extraction, including a ~~[comedone]~~ comedone extractor, depilatories, waxes, tweezing, the application of eyelash or eyebrow extensions, natural nail manicures or pedicures, or callous removal by buffing or filing;

(b) limited chemical exfoliation as defined by rule;

(c) removing superfluous hair by means other than electrolysis, except that an individual is not required to be licensed as an esthetician to engage in the practice of threading;

(d) other esthetic preparations or procedures with the use of the hands, a high-frequency or galvanic electrical apparatus, or a heat lamp for cosmetic purposes and not for the treatment of medical, physical, or mental ailments;

(e) arching eyebrows, tinting eyebrows or eyelashes, perming eyelashes, or applying eyelash or eyebrow extensions; or

(f) except as provided in Subsection [(28)] (31)(f)(i), cosmetic laser procedures under the direct cosmetic medical procedure supervision of a cosmetic supervisor limited to the following:

(i) superfluous hair removal which shall be under indirect supervision;

(ii) anti-aging resurfacing enhancements;

(iii) photo rejuvenation; or

(iv) tattoo removal.

[(29)] (32) (a) "Practice of cosmetology/barbering" means:

(i) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;

(ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or other appliances;

(iii) arching eyebrows, tinting eyebrows or eyelashes, perming eyelashes, applying eyelash or eyebrow extensions;

(iv) removing hair from the body of a person by the use of depilatories, waxing, or shaving equipment;

(v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces or both on the human head; or

(vi) practicing hair weaving or hair fusing or servicing previously medically implanted hair.

(b) The term "practice of cosmetology/barbering" includes:

(i) the practice of basic esthetics; and

(ii) the practice of nail technology.

(c) An individual is not required to be licensed as a cosmetologist/barber to engage in the practice of threading.

[(30)] (33) "Practice of cosmetology/barbering instruction" means teaching the practice of cosmetology/barbering:

(a) at a licensed cosmetology/barber school, a licensed barber school, or a licensed nail technology school; or

(b) for an approved cosmetologist/barber apprenticeship.

[(31)] (34) "Practice of electrology" means:

(a) the removal of superfluous hair from the body of a person by the use of electricity, waxing, shaving, or tweezing; or

(b) cosmetic laser procedures under the supervision of a cosmetic supervisor limited to superfluous hair removal.

[(32)] (35) "Practice of electrology instruction" means teaching the practice of electrology at a licensed electrology school.

[(33)] (36) "Practice of esthetics instruction" means teaching the practice of basic esthetics or the practice of master-level esthetics:

(a) at a licensed esthetics school or a licensed cosmetology/barber school; or

(b) for an approved esthetician apprenticeship or an approved master esthetician apprenticeship.

(37) "Practice of hair design" means:

(a) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;

(b) barbering, cutting, clipping, shaving, or trimming the hair by the use of scissors, shears, clippers, or other appliances;

(c) cutting, curling, styling, fitting, measuring, or forming caps for wigs, hairpieces, or both on the human head; or

(d) practicing hair weaving, hair fusing, or servicing previously medically implanted hair.

(38) "Practice of hair design instruction" means teaching the practice of hair design at a licensed cosmetology/barber school, a licensed hair design school, or a licensed barber school.

[(34)] (39) (a) "Practice of master-level esthetics" means:

(i) any of the following when done for cosmetic purposes on the body and not for the treatment of medical, physical, or mental ailments:

(A) body wraps as defined by rule;

(B) hydrotherapy as defined by rule;

(C) chemical exfoliation as defined by rule;

(D) advanced pedicures as defined by rule;

(E) sanding, including microdermabrasion;

(F) advanced extraction;

(G) other esthetic preparations or procedures with the use of:

(I) the hands; or

(II) a mechanical or electrical apparatus which is approved for use by division rule for beautifying or similar work performed on the body for cosmetic purposes and not for the treatment of a medical, physical, or mental ailment; or

(H) cosmetic laser procedures under the supervision of a cosmetic supervisor with a

physician's evaluation before the procedure, as needed, unless specifically required under Section 58-1-506, and limited to the following:

- (I) superfluous hair removal;
- (II) anti-aging resurfacing enhancements;
- (III) photo rejuvenation; or

(IV) tattoo removal with a physician's, advanced practice nurse's, or physician assistant's evaluation before the tattoo removal procedure, as required by Subsection 58-1-506(3)(a); and

(ii) lymphatic massage by manual or other means as defined by rule.

(b) Notwithstanding the provisions of Subsection [(34)] (39)(a), a master-level esthetician may perform procedures listed in Subsection [(34)] (39)(a)(i)(H) if done under the supervision of a cosmetic supervisor acting within the scope of the cosmetic supervisor license.

(c) The term "practice of master-level esthetics" includes the practice of esthetics, but an individual is not required to be licensed as an esthetician or master-level esthetician to engage in the practice of threading.

[(35)] (40) "Practice of nail technology" means to trim, cut, clean, manicure, shape, massage, or enhance the appearance of the hands, feet, and nails of an individual by the use of hands, mechanical, or electrical preparation, antiseptic, lotions, or creams, including the application and removal of sculptured or artificial nails.

[(36)] (41) "Practice of nail technology instruction" means teaching the practice of nail technology at a licensed nail technician school, at a licensed cosmetology/barber school, or for an approved nail technician apprenticeship.

[(37)] (42) "Recognized barber school" means a barber school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

[(38)] (43) "Recognized cosmetology/barber school" means a cosmetology/barber school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

[(39)] (44) "Recognized electrology school" means an electrology school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

[(40)] (45) "Recognized esthetics school" means an esthetics school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

(46) "Recognized hair design school" means a hair design school located in a state other than Utah,

whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

[(41)] (47) "Recognized nail technology school" means a nail technology school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that state.

[(42)] (48) "Salon" means a place, shop, or establishment in which cosmetology/barbering, esthetics, electrology, or nail technology is practiced.

[(43)] (49) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.

[(44)] (50) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-11a-501 and as may be further defined by rule by the division in collaboration with the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 3. Section 58-11a-103 is amended to read:

58-11a-103. Education and enforcement fund.

(1) There is created an expendable special revenue fund known as the ~~the~~ ~~["Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician"]~~ "Cosmetology and Associated Professions Education and Enforcement Fund."

(2) The fund consists of money from administrative penalties collected pursuant to this chapter.

(3) The fund shall earn interest and all interest earned on fund money shall be deposited into the fund.

(4) The director may, with concurrence of the board, make distributions from the fund for the following purposes:

(a) education and training of licensees under this chapter;

(b) education and training of the public or other interested persons in matters concerning the laws governing the practices licensed under this chapter; and

(c) enforcement of this chapter by:

(i) investigating unprofessional or unlawful conduct; and

(ii) providing legal representation to the division when the division takes legal action against a person engaging in unprofessional or unlawful conduct.

(5) The division shall report annually to the appropriate appropriations subcommittee of the Legislature concerning the fund.

Section 4. Section 58-11a-201 is amended to read:

58-11a-201. Board.

(1) There is created the ~~[Barbering, Cosmetology/Barbering, Esthetics, Electrology, and Nail Technology]~~ Cosmetology and Associated Professions Licensing Board consisting of the following nine members [as follows]:

- (a) one barber or cosmetologist/barber;
- (b) (i) one barber or cosmetologist/barber instructor; or
- (ii) one representative of a licensed barber or cosmetology/barber school;
- (c) one master esthetician;
- (d) (i) one esthetician instructor; or
- (ii) one representative of a licensed esthetics school;
- (e) one nail technician;
- (f) (i) one nail technician instructor; or
- (ii) one representative of a licensed nail technician school;
- (g) one electrologist; and
- (h) two members from the general public.

(2) (a) The board shall be appointed and serve in accordance with Section 58-1-201.

(b) (i) At least one of the members of the board appointed under Subsections (1)(b), (d), and (f) shall be an instructor at or a representative of a public school.

(ii) At least one of the members of the board appointed under Subsections (1)(b), (d), and (f) shall be an instructor at or a representative of a private school.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:

(a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(b) advise the division in its investigation of these complaints.

(4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Section 5. Section 58-11a-301 is amended to read:

58-11a-301. Licensure required -- License classifications.

(1) Except as specifically provided in Section 58-1-307 or 58-11a-304, a license is required to:

- (a) engage in the practice of:
 - (i) barbering;

- (ii) barbering instruction;
- (iii) cosmetology/barbering;
- (iv) cosmetology/barbering instruction;
- (v) electrology;
- (vi) electrology instruction;
- (vii) esthetics;
- (viii) master-level esthetics;
- (ix) esthetics instruction;
- (x) hair design;
- (xi) hair design instruction;
- ~~[(x)]~~ (xii) nail technology; or
- ~~[(xi)]~~ (xiii) nail technology instruction; or
- (b) operate:
 - (i) a barbering school;
 - (ii) a cosmetology/barbering school;
 - (iii) an electrology school;
 - (iv) an esthetics school; ~~or~~
 - (v) a hair design school; or
 - ~~[(v)]~~ (vi) a nail technology school.

(2) The division shall issue to a person who qualifies under this chapter a license in the following classifications:

- (a) barber;
- (b) barber instructor;
- (c) barber school;
- (d) cosmetologist/barber;
- (e) cosmetologist/barber instructor;
- (f) cosmetology/barber school;
- (g) electrologist;
- (h) electrologist instructor;
- (i) electrology school;
- (j) esthetician;
- (k) master esthetician;
- (l) esthetician instructor;
- (m) esthetics school;
- (n) hair designer;
- (o) hair designer instructor;
- (p) hair design school;
- ~~[(n)]~~ (q) nail technology;
- ~~[(o)]~~ (r) nail technology instructor; and
- ~~[(p)]~~ (s) nail technology school.

(3) A person who participates as an apprentice in an approved apprenticeship under this chapter shall register with the division as described in Section 58-11a-306.

Section 6. Section 58-11a-302 is amended to read:

58-11a-302. Qualifications for licensure.

(1) Each applicant for licensure as a barber shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized barber school, or a licensed or recognized cosmetology/barber school, whose curriculum consists of a minimum of 1,000 hours of instruction, or the equivalent number of credit hours, over a period of not less than 25 weeks;

(ii) (A) graduation from a recognized barber school located in a state other than Utah whose curriculum consists of less than 1,000 hours of instruction or the equivalent number of credit hours; and

(B) practice as a licensed barber in a state other than Utah for not less than the number of hours required to equal 1,000 total hours when added to the hours of instruction described in Subsection (1)(d)(ii)(A); or

(iii) completion of an approved barber apprenticeship; and

(e) meet the examination requirement established by rule.

(2) Each applicant for licensure as a barber instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a barber;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 250 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 250 hours or the equivalent number of credit hours; or

(iii) a minimum of 2,000 hours of experience as a barber; and

(f) meet the examination requirement established by rule.

(3) Each applicant for licensure as a barber school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for barber schools, including staff and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection [~~(49)~~] (22).

(4) Each applicant for licensure as a cosmetologist/barber shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized cosmetology/barber school whose curriculum consists of a minimum of 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours;

(ii) (A) graduation from a recognized cosmetology/barber school located in a state other than Utah whose curriculum consists of less than 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and

(B) practice as a licensed cosmetologist/barber in a state other than Utah for not less than the number of hours required to equal 1,600 total hours when added to the hours of instruction described in Subsection (4)(d)(ii)(A); or

(iii) completion of an approved cosmetology/barber apprenticeship; and

(e) meet the examination requirement established by rule.

(5) Each applicant for licensure as a cosmetologist/barber instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a cosmetologist/barber;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 400 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 400 hours or the equivalent number of credit hours; or

(iii) a minimum of 3,000 hours of experience as a cosmetologist/barber; and

(f) meet the examination requirement established by rule.

(6) Each applicant for licensure as a cosmetologist/barber school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for cosmetology schools, including staff and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection ~~[(19)]~~ (22).

(7) Each applicant for licensure as an electrologist shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of having graduated from a licensed or recognized electrology school after completing a curriculum of 600 hours of instruction or the equivalent number of credit hours; and

(e) meet the examination requirement established by rule.

(8) Each applicant for licensure as an electrologist instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as an electrologist;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 150 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 150 hours or the equivalent number of credit hours; or

(iii) a minimum of 1,000 hours of experience as an electrologist; and

(f) meet the examination requirement established by rule.

(9) Each applicant for licensure as an electrologist school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for electrologist schools, including staff, curriculum, and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection ~~[(19)]~~ (22).

(10) Each applicant for licensure as an esthetician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of one of the following:

(i) graduation from a licensed or recognized esthetic school or a licensed or recognized cosmetology/barber school whose curriculum consists of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the equivalent number of credit hours;

(ii) completion of an approved esthetician apprenticeship; or

(iii) (A) graduation from a recognized cosmetology/barber school located in a state other than Utah whose curriculum consists of less than 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and

(B) practice as a licensed cosmetologist/barber for not less than the number of hours required to equal 1,600 total hours when added to the hours of instruction described in Subsection (10)(d)(iii)(A); and

(e) meet the examination requirement established by division rule.

(11) Each applicant for licensure as a master esthetician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) completion of at least 1,200 hours of training, or the equivalent number of credit hours, at a licensed or recognized esthetics school, except that up to 600 hours toward the 1,200 hours may have been completed:

(A) at a licensed or recognized cosmetology/barbering school, if the applicant graduated from the school and its curriculum consisted of at least 1,600 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; or

(B) at a licensed or recognized cosmetology/barber school located in a state other than Utah, if the applicant graduated from the school and its curriculum contained full flexibility within its hours of instruction; or

(ii) completion of an approved master esthetician apprenticeship;

(e) if the applicant will practice lymphatic massage, provide satisfactory documentation to show completion of 200 hours of training, or the equivalent number of credit hours, in lymphatic massage as defined by division rule; and

(f) meet the examination requirement established by division rule.

(12) Each applicant for licensure as an esthetician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a master esthetician;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours; or

(iii) a minimum of 1,000 hours of experience in esthetics; and

(f) meet the examination requirement established by rule.

(13) Each applicant for licensure as an esthetics school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for esthetics schools, including staff, curriculum, and accreditation requirements, established by division rule made in collaboration with the board; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection [~~(49)~~] (22).

(14) Each applicant for licensure as a hair designer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized cosmetology/barber, hair design, or barbering school whose curriculum consists of a minimum of 1,200 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours;

(ii) (A) graduation from a recognized cosmetology/barber, hair design, or barbering school located in a state other than Utah whose curriculum consists of less than 1,200 hours of instruction, or the equivalent number of credit hours, with full flexibility within those hours; and

(B) practice as a licensed cosmetologist/barber or hair designer in a state other than Utah for not less than the number of hours required to equal 1,200 total hours when added to the hours of instruction described in Subsection (14)(d)(ii)(A); or

(iii) being a state licensed cosmetologist/barber; and

(e) meet the examination requirements established by rule.

(15) Each applicant for licensure as a hair designer instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a hair designer or as a cosmetologist/barber;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours;

(ii) on-the-job instructor training conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 300 hours or the equivalent number of credit hours; or

(iii) a minimum of 2,500 hours of experience as a hair designer or as a cosmetologist/barber; and

(f) meet the examination requirement established by rule.

(16) Each applicant for licensure as a hair design school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's physical facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for a hair design school, including staff and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection (22).

[(44)] (17) Each applicant for licensure as a nail technician shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) provide satisfactory documentation of:

(i) graduation from a licensed or recognized nail technology school, or a licensed or recognized cosmetology/barber school, whose curriculum consists of not less than 300 hours of instruction, or the equivalent number of credit hours;

(ii) (A) graduation from a recognized nail technology school located in a state other than Utah whose curriculum consists of less than 300 hours of instruction or the equivalent number of credit hours; and

(B) practice as a licensed nail technician in a state other than Utah for not less than the number of hours required to equal 300 total hours when added to the hours of instruction described in Subsection [(44)] (17)(d)(ii)(A); or

(iii) completion of an approved nail technician apprenticeship; and

(e) meet the examination requirement established by division rule.

[(45)] (18) Each applicant for licensure as a nail technician instructor shall:

(a) submit an application in a form prescribed by the division;

(b) subject to Subsection (24), pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory documentation that the applicant is currently licensed as a nail technician;

(d) be of good moral character;

(e) provide satisfactory documentation of completion of:

(i) an instructor training program conducted by a licensed or recognized school, as defined by rule,

consisting of a minimum of 75 hours or the equivalent number of credit hours;

(ii) an on-the-job instructor training program conducted by a licensed instructor at a licensed or recognized school, as defined by rule, consisting of a minimum of 75 hours or the equivalent number of credit hours; or

(iii) a minimum of 600 hours of experience in nail technology; and

(f) meet the examination requirement established by rule.

~~[(16)]~~ (19) Each applicant for licensure as a nail technology school shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504; and

(c) provide satisfactory documentation:

(i) of appropriate registration with the Division of Corporations and Commercial Code;

(ii) of business licensure from the city, town, or county in which the school is located;

(iii) that the applicant's facilities comply with the requirements established by rule; and

(iv) that the applicant meets:

(A) the standards for nail technology schools, including staff, curriculum, and accreditation requirements, established by rule; and

(B) the requirements for recognition as an institution of postsecondary study as described in Subsection ~~[(19)]~~ (22).

~~[(17)]~~ (20) Each applicant for licensure under this chapter whose education in the field for which a license is sought was completed at a foreign school may satisfy the educational requirement for licensure by demonstrating, to the satisfaction of the division, the educational equivalency of the foreign school education with a licensed school under this chapter.

~~[(18)]~~ (21) (a) A licensed or recognized school under this section ~~may~~ shall accept credit hours towards graduation ~~[for any profession listed in this section.]~~ for documented, relevant, and substantially equivalent coursework previously completed by:

(i) a student that did not complete the student's education while attending a different school; or

(ii) a licensee of any other profession listed in this section, based on the licensee's schooling, apprenticeship, or experience.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, the division may make rules governing the acceptance of credit hours under Subsection ~~[(18)]~~ (21)(a).

~~[(19)]~~ (22) A school licensed or applying for licensure under this chapter shall maintain recognition as an institution of postsecondary study by meeting the following conditions:

(a) the school shall admit as a regular student only an individual who has earned a recognized high school diploma or the equivalent of a recognized high school diploma, or who is beyond the age of compulsory high school attendance as prescribed by Title 53A, Chapter 11, Students in Public Schools; and

(b) the school shall be licensed by name, or in the case of an applicant, shall apply for licensure by name, under this chapter to offer one or more training programs beyond the secondary level.

~~[(20)]~~ (23) A person seeking to qualify for licensure under this chapter by apprenticing in an approved apprenticeship shall register with the division as described in Section 58-11a-306.

(24) The department may only charge a fee to a person applying for licensure as any type of instructor under this chapter if the person is not a licensed instructor in any other profession under this chapter.

CHAPTER 343**H. B. 296**

Passed March 8, 2017
 Approved March 24, 2017
 Effective May 9, 2017

RADIOACTIVE AND HAZARDOUS WASTE ACCOUNT AMENDMENTS

Chief Sponsor: Brad R. Wilson
 Senate Sponsor: Jacob L. Anderegg

LONG TITLE**General Description:**

This bill amends provisions relating to funding and reporting on perpetual care and maintenance of commercial radioactive waste disposal facilities and reporting on the maintenance of hazardous waste disposal facilities.

Highlighted Provisions:

This bill:

- ▶ exempts funds in the Radioactive Waste Perpetual Care and Maintenance Account from the State Money Management Act;
- ▶ requires the state treasurer to:
 - follow certain account management and investment guidelines; and
 - report to the Legislative Management Committee on account performance;
- ▶ repeals the requirement that an existing commercial radioactive waste treatment or disposal facility pay an annual fee;
- ▶ repeals the requirement that the Waste Management and Radiation Control Board report to the Legislative Management Committee on the adequacy of the funds to provide for the closure, postclosure, and perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities and hazardous waste treatment, storage, or disposal facilities;
- ▶ provides that the Waste Management and Radiation Control Board may report on account adequacy and impose fees if an existing facility increases its licensed disposal volume by 25% or more; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 19-1-307, as last amended by Laws of Utah 2015, Chapter 451
 19-3-106.2, as last amended by Laws of Utah 2010, Chapter 278
 51-7-2, as last amended by Laws of Utah 2015, Chapter 319

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

Section 1. Section 19-1-307 is amended to read:**19-1-307. Evaluation of closure, postclosure, and perpetual care and maintenance for hazardous waste and radioactive waste treatment and disposal facilities -- Report.**

(1) (a) ~~[Beginning in 2006, the]~~ The Waste Management and Radiation Control Board created in Section 19-1-106 ~~[shall]~~ may direct an evaluation ~~[every five years]~~ of a commercial hazardous waste treatment, storage, or disposal facility, if the facility is:

(i) licensed or permitted after July 1, 2017; or

(ii) (A) licensed or permitted before July 1, 2017; and

(B) has cumulatively increased the facility's licensed disposal volume by 25% or more.

(b) The evaluation shall determine:

(i) the adequacy of the amount of financial assurance required for closure and postclosure care under 40 C.F.R. subpart H, Sections 264.140 through 264.151 submitted pursuant to a hazardous waste operation plan for a commercial hazardous waste treatment, storage, or disposal facility under Section 19-6-108; ~~and~~

(ii) the adequacy of the amount of financial assurance or funds required for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c)[.];

~~[(b) The evaluation shall determine:]~~

~~[(4)]~~ (iii) whether the amount of financial assurance required is adequate for closure and postclosure care of hazardous waste treatment, storage, or disposal facilities;

~~[(4ii)]~~ (iv) whether the amount of financial assurance or funds required is adequate for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c); and

~~[(4iii)]~~ (v) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial hazardous waste treatment, storage, or disposal facilities including:

(A) groundwater corrective action;

(B) differential settlement failure; or

(C) major maintenance of a cell or cells.

(c) The Waste Management and Radiation Control Board shall evaluate in 2006 whether financial assurance or funds are necessary for perpetual care and maintenance following the

closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility to protect human health and the environment.

(2) (a) ~~[Beginning in 2006, the]~~ The Waste Management and Radiation Control Board created in Section 19-1-106 ~~[shall]~~ may direct an evaluation ~~[every five years]~~ of a commercial radioactive waste treatment or disposal facility if the facility is:

(i) licensed or permitted after July 1, 2017; or

(ii) (A) licensed or permitted before July 1, 2017; and

(B) has cumulatively increased the facility's licensed disposal volume by 25% or more.

(b) The evaluation shall determine:

(i) the adequacy of the Radioactive Waste Perpetual Care and Maintenance Account created by Section 19-3-106.2; [and]

(ii) the adequacy of the amount of financial assurance required for closure and postclosure care of commercial radioactive waste treatment or disposal facilities under Subsection 19-3-104(11)[.];

~~[(b) The evaluation shall determine:]~~

[4] (iii) whether the restricted account is adequate to provide for perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities;

~~[(ii) whether the amount of financial assurance required is adequate to provide for closure and postclosure care of commercial radioactive waste treatment or disposal facilities;]~~

~~[(iii)]~~ (iv) the costs under Subsection 19-3-106.2~~(5)~~(4)(b) of using the Radioactive Waste Perpetual Care and Maintenance Account during the period before the end of 100 years following final closure of the facility for maintenance, monitoring, or corrective action in the event that the owner or operator is unwilling or unable to carry out the duties of postclosure maintenance, monitoring, or corrective action; and

~~[(iv)]~~ (v) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities including:

(A) groundwater corrective action;

(B) differential settlement failure; or

(C) major maintenance of a cell or cells.

(3) (a) The board under Subsections (1) and (2) shall submit a report on the evaluations to the Legislative Management Committee [on or before October 1 of the year in which the report is due].

(b) For each report received under Subsection (3)(a), the Legislative Management Committee shall review and evaluate the report and determine whether to recommend further action.

Section 2. Section 19-3-106.2 is amended to read:

19-3-106.2. Perpetual care and maintenance of commercial radioactive waste disposal facilities -- Radioactive Waste Perpetual Care and Maintenance Account created -- Contents -- Use of restricted account money -- Evaluation.

(1) As used in this section, "perpetual care and maintenance" means perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, as required by applicable laws, rules, and license requirements beginning 100 years after the date of final closure of the facility.

~~[(2) (a) On and after July 1, 2002, the owner or operator of an active commercial radioactive waste treatment or disposal facility shall pay an annual fee of \$400,000 to provide for the perpetual care and maintenance of the facility.]~~

~~[(b) The owner or operator shall remit the fee to the department on or before July 1 of each year.]~~

~~[(3) The department shall deposit fees received under Subsection (2) into the Radioactive Waste Perpetual Care and Maintenance Account created in Subsection (4).]~~

[4] (2) (a) There is created a restricted account within the General Fund known as the "Radioactive Waste Perpetual Care and Maintenance Account" to finance perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities, excluding sites within those facilities used for the disposal of byproduct material.

(b) The sources of revenue for the restricted account are:

~~[(i) the fee imposed under this section; and]~~

(i) fees paid into the account by the owner or operator of a commercial radioactive waste treatment or disposal facility; and

(ii) investment income derived from money in the restricted account.

(c) (i) The revenues for the restricted account shall be segregated into subaccounts for each commercial radioactive waste treatment or disposal facility covered by the restricted account.

(ii) Each subaccount shall contain:

(A) the fees paid by each owner or operator of a commercial radioactive waste treatment or disposal facility; and

(B) the associated investment income.

(3) (a) The state treasurer shall invest money in the account with the primary goal of providing for the stability, income, and growth of the principal.

(b) The state treasurer shall seek account growth that is designed to achieve a minimum target account balance of \$414,838,740 in the year 2141.

(c) Nothing in this section requires a specific outcome in investing.

(d) The state treasurer may deduct administrative costs incurred in managing account assets from earnings before distributing them.

(e) (i) The state treasurer may employ professional asset managers to assist in the investment of assets of the account.

(ii) The state treasurer may only provide compensation to asset managers from earnings generated by the account's investments.

(f) The state treasurer shall invest and manage the account assets as a prudent investor would, by:

(i) considering the purposes, terms, distribution requirements, and other circumstances of the account; and

(ii) exercising reasonable care, skill, and caution in order to meet the standard of care of a prudent investor.

(g) In determining whether or not the state treasurer has met the standard of care of a prudent investor, the judge or finder of fact shall:

(i) consider the state treasurer's actions in light of the facts and circumstances existing at the time of the investment decision or action, and not by hindsight; and

(ii) evaluate the state treasurer's investment and management decisions respecting individual assets not in isolation, but in the context of an account portfolio as a whole and as a part of an overall investment strategy that has risk and return objectives reasonably suited to the account.

(h) (i) Beginning in 2021, the state treasurer shall report every five years to the Legislative Management Committee the following information about the account's investments at the sub-account level:

(A) market value of investments;

(B) asset allocation targets;

(C) investment performance measured against appropriate benchmarks, at the portfolio and individual investment level;

(D) projected investment returns;

(E) actual contributions;

(F) projected 10 and 20 year market values; and

(G) whether account growth is progressing adequately to reasonably achieve the minimum target account balance established in Subsection (3)(b).

(ii) The Legislative Management Committee shall:

(A) review and evaluate the report; and

(B) determine whether to recommend further action, including whether to impose a fee on an owner or operator of a commercial radioactive waste treatment or disposal facility for the perpetual care and maintenance of the facility.

[(5)] (4) The Legislature may appropriate money from the Radioactive Waste Perpetual Care and Maintenance Account for:

(a) perpetual care and maintenance of a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, beginning 100 years after the date of final closure of the facility; or

(b) maintenance or monitoring of, or implementing corrective action at, a commercial radioactive waste treatment or disposal facility, excluding sites within the facility used for the disposal of byproduct material, before the end of 100 years after the date of final closure of the facility, if:

(i) the owner or operator is unwilling or unable to carry out postclosure maintenance, monitoring, or corrective action; and

(ii) the financial surety arrangements made by the owner or operator, including any required under applicable law, are insufficient to cover the costs of postclosure maintenance, monitoring, or corrective action.

[(6)] (5) The money appropriated from the Radioactive Waste Perpetual Care and Maintenance Account for the purposes specified in Subsection [(5)] (4)(a) or (b) at a particular commercial radioactive waste treatment or disposal facility may be appropriated only from the subaccount established under Subsection [(4)] (2)(c) for the facility.

[(7)] (6) The attorney general shall bring legal action against the owner or operator or take other steps to secure the recovery or reimbursement of the costs of maintenance, monitoring, or corrective action, including legal costs, incurred pursuant to Subsection [(5)] (4)(b).

[(8) The board shall direct an evaluation of the adequacy of the restricted account as required under Section 19-1-307.]

[(9)] (7) This section does not apply to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

Section 3. Section 51-7-2 is amended to read:

51-7-2. Exemptions from chapter.

The following funds are exempt from this chapter:

(1) funds invested in accordance with the participating employees' designation or direction pursuant to a public employees' deferred compensation plan established and operated in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;

(2) funds of the Workers' Compensation Fund;

(3) funds of the Utah State Retirement Board;

- (4) funds of the Utah Housing Corporation;
- (5) endowment funds of higher education institutions;
- (6) permanent and other land grant trust funds established pursuant to the Utah Enabling Act and the Utah Constitution;
- (7) the State Post-Retirement Benefits Trust Fund;
- (8) the funds of the Utah Educational Savings Plan;
- (9) funds of the permanent state trust fund created by and operated under Utah Constitution, Article XXII, Section 4; ~~and~~
- (10) the funds in the Navajo Trust Fund~~[.]~~; and
- (11) the funds in the Radioactive Waste Perpetual Care and Maintenance Account.

CHAPTER 344**H. B. 308**

Passed March 8, 2017
 Approved March 24, 2017
 Effective July 1, 2018

PUBLIC HEALTH AND SCHOOLS

Chief Sponsor: Norman K Thurston
 Senate Sponsor: Margaret Dayton
 Cosponsors: Brad M. Daw
 Carol Spackman Moss

LONG TITLE**General Description:**

This bill requires the Department of Health to create an online education module regarding certain preventable diseases.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Health to:
 - create an online education module regarding certain preventable diseases; and
 - create a new vaccination exemption form;
- ▶ amends the Utah Health Code regarding student vaccinations and records of student vaccinations;
- ▶ subject to certain exceptions, continues the requirement that a student receive certain vaccinations in order to attend school;
- ▶ requires the renewal of a student's vaccination exemption under certain conditions;
- ▶ allows for the vaccination exemption form to be completed online in conjunction with the education module;
- ▶ continues the practice of preventing a local education agency from receiving weighted pupil unit money for a student who does not comply with vaccination requirements;
- ▶ addresses policies and procedures relating to vaccinations, recordkeeping, and disease outbreaks; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 26-1-17.5, as last amended by Laws of Utah 2008, Chapter 382
- 26-10-9, as enacted by Laws of Utah 2011, Chapter 147
- 26-39-402, as renumbered and amended by Laws of Utah 2008, Chapter 111

ENACTS:

- 26-7-9, Utah Code Annotated 1953
- 53A-11-300.5, Utah Code Annotated 1953
- 53A-11-307, Utah Code Annotated 1953

REPEALS AND REENACTS:

- 53A-11-301, as last amended by Laws of Utah 1992, Chapter 53
- 53A-11-302, as last amended by Laws of Utah 2010, Chapter 395

- 53A-11-302.5, as enacted by Laws of Utah 1992, Chapter 129
- 53A-11-303, as enacted by Laws of Utah 1988, Chapter 2
- 53A-11-304, as enacted by Laws of Utah 1988, Chapter 2
- 53A-11-306, as enacted by Laws of Utah 1988, Chapter 2

REPEALS:

- 53A-11-305, as last amended by Laws of Utah 1988, Chapter 202

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

Section 1. Section 26-1-17.5 is amended to read:**26-1-17.5. Confidential records.**

(1) A record classified as confidential under this title shall remain confidential, and be released according to the provisions of this title, notwithstanding Section 63G-2-310.

(2) In addition to those persons granted access to ~~records~~ a private record described in Subsection 63G-2-302(1)(b), ~~immunization records may be shared among~~ schools, school districts, and local and state health departments and the state Department of Human Services may share an immunization record as defined in Section 53A-11-300.5 or any other record relating to a vaccination or immunization as necessary to ~~assure~~ ensure compliance with ~~Section 53A-11-301~~ Title 53A, Chapter 11, Part 3, Immunization of Students, and to prevent, investigate, and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health.

Section 2. Section 26-7-9 is enacted to read:**26-7-9. Online public health education module.**

(1) As used in this section:

(a) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(b) "Nonimmune" means that a child or an individual:

(i) has not received each vaccine required in Section 53A-11-303 and has not developed a natural immunity through previous illness to a vaccine-preventable disease, as documented by a health care provider;

(ii) cannot receive each vaccine required in Section 53A-11-303; or

(iii) is otherwise known to not be immune to a vaccine-preventable disease.

(c) "Vaccine-preventable disease" means an infectious disease that can be prevented by a vaccination required in Section 53A-11-303.

(2) The department shall develop an online education module regarding vaccine-preventable diseases:

(a) to assist a parent of a nonimmune child to:

(i) recognize the symptoms of vaccine-preventable diseases;

(ii) respond in the case of an outbreak of a vaccine-preventable disease;

(iii) protect children who contract a vaccine-preventable disease; and

(iv) prevent the spread of vaccine-preventable diseases;

(b) that contains only the following:

(i) information about vaccine-preventable diseases necessary to achieve the goals stated in Subsection (2)(a), including the best practices to prevent the spread of vaccine-preventable diseases;

(ii) recommendations to reduce the likelihood of a nonimmune individual contracting or transmitting a vaccine-preventable disease; and

(iii) information about additional available resources related to vaccine-preventable diseases and the availability of low-cost vaccines;

(c) that includes interactive questions or activities; and

(d) that is expected to take an average user 20 minutes or less to complete, based on user testing.

(3) In developing the online education module described in Subsection (2), the department shall consult with individuals interested in vaccination or vaccine-preventable diseases, including:

(a) representatives from organizations of health care professionals; and

(b) parents of nonimmune children.

(4) The department shall make the online education module described in Subsection (2) publicly available to parents through:

(a) a link on the department's website;

(b) county health departments, as that term is defined in Section 26A-1-102;

(c) local health departments, as that term is defined in Section 26A-1-102;

(d) local education agencies, as that term is defined in Section 53A-1-401; and

(e) other public health programs or organizations.

(5) The department shall report to the Health and Human Services Interim Committee before November 30, 2018, regarding compliance with this section.

Section 3. Section 26-10-9 is amended to read:

26-10-9. Immunizations -- Consent of minor to treatment.

(1) This section:

(a) is not intended to interfere with the integrity of the family or to minimize the rights of parents or children; and

(b) applies to a minor, who at the time care is sought is:

(i) married or has been married;

(ii) emancipated as provided for in Section 78A-6-805;

(iii) a parent with custody of a minor child; or

(iv) pregnant.

(2) (a) A minor described in Subsections (1)(b)(i) and (ii) may consent to:

(i) ~~immunizations~~ vaccinations against epidemic infections and communicable diseases as defined in Section 26-6-2; and

(ii) examinations and ~~immunizations~~ vaccinations required to attend school as provided in Title 53A, Chapter 11, Students in Public Schools.

(b) A minor described in Subsections (1)(b)(iii) and (iv) may consent to the ~~immunizations~~ vaccinations described in Subsections (2)(a)(i) and (ii), and the vaccine for human papillomavirus only if:

(i) the minor represents to the health care provider that the minor is an abandoned minor as defined in Section 76-5-109; and

(ii) the health care provider makes a notation in the minor's chart that the minor represented to the health care provider that the minor is an abandoned minor under Section 76-5-109.

(c) Nothing in Subsection (2)(a) or (b) requires a health care provider to immunize a minor.

(3) The consent of the minor pursuant to this section:

(a) is not subject to later disaffirmance because of the minority of the person receiving the medical services;

(b) is not voidable because of minority at the time the medical services were provided;

(c) has the same legal effect upon the minor and the same legal obligations with regard to the giving of consent as consent given by a person of full age and capacity; and

(d) does not require the consent of any other person or persons to authorize the medical services described in Subsections (2)(a) and (b).

(4) A health care provider who provides medical services to a minor in accordance with the provisions of this section is not subject to civil or criminal liability for providing the services described in Subsections (2)(a) and (b) without obtaining the consent of another person prior to rendering the medical services.

(5) This section does not remove the requirement for parental consent or notice when required by Section 76-7-304 or 76-7-304.5.

(6) The parents, parent, or legal guardian of a minor who receives medical services pursuant to Subsections (2)(a) and (b) are not liable for the payment for those services unless the parents, parent, or legal guardian consented to the medical services.

Section 4. Section 26-39-402 is amended to read:

26-39-402. Residential child care certificate.

(1) ~~(A)~~ A residential child care provider of five to eight qualifying children shall obtain a Residential Child Care Certificate from the department, unless Section 26-39-403 applies.

~~(B)~~ (2) The minimum qualifications for a Residential Child Care Certificate are:

~~(i)~~ (a) the submission of:

~~(A)~~ (i) an application in the form prescribed by the department;

~~(B)~~ (ii) a certification and criminal background fee established in accordance with Section 26-1-6; and

~~(C)~~ (iii) in accordance with Section 26-39-404, identifying information for each adult person and each juvenile age 12 through 17 years of age who resides in the provider's home:

~~(D)~~ (A) for processing by the Department of Public Safety to determine whether any such person has been convicted of a crime;

~~(E)~~ (B) to screen for a substantiated finding of child abuse or neglect by a juvenile court; and

~~(F)~~ (C) to discover whether the person is listed in the Licensing Information System described in Section 62A-4a-1006;

~~(G)~~ (b) an initial and annual inspection of the provider's home within 90 days of sending an intent to inspect notice to:

~~(A)~~ (i) check the immunization record, as defined in Section 53A-11-300.5, of each qualifying child who receives child care in the provider's home;

~~(B)~~ (ii) identify serious sanitation, fire, and health hazards to qualifying children; and

~~(C)~~ (iii) make appropriate recommendations; and

~~(D)~~ (c) annual training consisting of 10 hours of department-approved training as specified by the department by administrative rule, including a current department-approved CPR and first aid course.

~~(E)~~ (3) If a serious sanitation, fire, or health hazard has been found during an inspection conducted pursuant to Subsection ~~(1)(b)(ii)~~ (2)(b), the department shall require corrective action for the serious hazards found and make an unannounced follow up inspection to determine compliance.

~~(4)~~ (4) In addition to an inspection conducted pursuant to Subsection ~~(1)(b)(ii)~~ (2)(b), the department may inspect the home of a residential care provider of five to eight qualifying children in response to a complaint of:

~~(i)~~ (a) child abuse or neglect;

~~(ii)~~ (b) serious health hazards in or around the provider's home; or

~~(iii)~~ (c) providing residential child care without the appropriate certificate or license.

~~(2)~~ (5) Notwithstanding this section:

(a) a license under Section 26-39-401 is required of a residential child care provider who cares for nine or more qualifying children;

(b) a certified residential child care provider may not provide care to more than two qualifying children under the age of two; and

(c) an inspection may be required of a residential child care provider in connection with a federal child care program.

~~(3)~~ (6) With respect to residential child care, the department may only make and enforce rules necessary to implement this section.

Section 5. Section 53A-11-300.5 is enacted to read:

53A-11-300.5. Definitions.

As used in this part:

(1) "Department" means the Department of Health, created in Section 26-1-4.

(2) "Health official" means an individual designated by a local health department from within the local health department to consult and counsel parents and licensed health care providers, in accordance with Subsection 53A-11-302.5(2)(a).

(3) "Health official designee" means a licensed health care provider designated by a local health department, in accordance with Subsection 53A-11-302.5(2)(b), to consult with parents, licensed health care professionals, and school officials.

(4) "Immunization" or "immunize" means a process through which an individual develops an immunity to a disease, through vaccination or natural exposure to the disease.

(5) "Immunization record" means a record relating to a student that includes:

(a) information regarding each required vaccination that the student has received, including the date each vaccine was administered, verified by:

(i) a licensed health care provider;

(ii) an authorized representative of a local health department;

(iii) an authorized representative of the department;

(iv) a registered nurse; or

(v) a pharmacist;

(b) information regarding each disease against which the student has been immunized by previously contracting the disease; and

(c) an exemption form identifying each required vaccination from which the student is exempt, including all required supporting documentation described in Section 53A-11-302.

(6) “Legally responsible individual” means:

(a) a student’s parent;

(b) the student’s legal guardian;

(c) an adult brother or sister of a student who has no legal guardian; or

(d) the student, if the student:

(i) is an adult; or

(ii) is a minor who may consent to treatment under Section 26-10-9.

(7) “Licensed health care provider” means a health care provider who is licensed under Title 58, Occupations and Professions, as:

(a) a medical doctor;

(b) an osteopathic doctor;

(c) a physician assistant; or

(d) an advanced practice registered nurse.

(8) “Local education agency” or “LEA” means:

(a) a school district;

(b) a charter school; or

(c) the Utah Schools for the Deaf and the Blind.

(9) “Local health department” means the same as that term is defined in Section 26A-1-102.

(10) “Required vaccines” means vaccines required by department rule described in Section 53A-11-303.

(11) “School” means any public or private:

(a) elementary or secondary school through grade 12;

(b) preschool;

(c) child care program, as that term is defined in Section 26-39-102;

(d) nursery school; or

(e) kindergarten.

(12) “Student” means an individual who attends a school.

(13) “Vaccinating” or “vaccination” means the administration of a vaccine.

(14) “Vaccination exemption form” means a form, described in Section 53A-11-302.5, that documents and verifies that a student is exempt from the requirement to receive one or more required vaccines.

(15) “Vaccine” means the substance licensed for use by the United States Food and Drug Administration that is injected into or otherwise administered to an individual to immunize the individual against a communicable disease.

Section 6. Section 53A-11-301 is repealed and reenacted to read:

53A-11-301. Immunization required -- Exception -- Weighted pupil unit funding.

(1) A student may not attend a school unless:

(a) the school receives an immunization record from the legally responsible individual of the student, the student’s former school, or a statewide registry that shows:

(i) that the student has received each vaccination required by the department under Section 53A-11-303; or

(ii) for any required vaccination that the student has not received, that the student:

(A) has immunity against the disease for which the vaccination is required, because the student previously contracted the disease as documented by a health care provider, as that term is defined in Section 78B-3-103; or

(B) is exempt from receiving the vaccination under Section 53A-11-302;

(b) the student qualifies for conditional enrollment under Section 53A-11-306; or

(c) the student:

(i) is a student, as defined in Section 53A-1-1001; and

(ii) complies with the immunization requirements for military children under Section 53A-1-1001.

(2) An LEA may not receive weighted pupil unit money for a student who is not permitted to attend school under Subsection (1).

Section 7. Section 53A-11-302 is repealed and reenacted to read:

53A-11-302. Grounds for exemption from required vaccines -- Renewal.

(1) A student is exempt from the requirement to receive a vaccine required under Section 53A-11-303 if the student qualifies for a medical or personal exemption from the vaccination under Subsection (2) or (3).

(2) A student qualifies for a medical exemption from a vaccination required under Section 53A-11-303 if the student’s legally responsible individual provides to the student’s school:

(a) a completed vaccination exemption form; and

(b) a written notice signed by a licensed health care provider stating that, due to the physical condition of the student, administration of the vaccine would endanger the student’s life or health.

(3) A student qualifies for a personal exemption from a vaccination required under Section

53A-11-303 if the student's legally responsible individual provides to the student's school a completed vaccination exemption form, stating that the student is exempt from the vaccination because of a personal or religious belief.

(4) (a) A vaccination exemption form submitted under this section is valid for as long as the student remains at the school to which the form first is presented.

(b) If the student changes schools before the student is old enough to enroll in kindergarten, the vaccination exemption form accepted as valid at the student's previous school is valid until the earlier of the day on which:

- (i) the student enrolls in kindergarten; or
- (ii) the student turns six years old.

(c) If the student changes schools after the student is old enough to enroll in kindergarten but before the student is eligible to enroll in grade 7, the vaccination exemption form accepted as valid at the student's previous school is valid until the earlier of the day on which:

- (i) the student enrolls in grade 7; or
- (ii) the student turns 12 years old.

(d) If the student changes schools after the student is old enough to enroll in grade 7, the vaccination exemption form accepted as valid at the student's previous school is valid until the student completes grade 12.

(e) Notwithstanding Subsections (4)(b) and (c), a vaccination exemption form obtained through completion of the online education module created in Section 26-7-9 is valid for at least two years.

Section 8. Section 53A-11-302.5 is repealed and reenacted to read:

53A-11-302.5. Vaccination exemption form.

(1) The department shall:

(a) develop a vaccination exemption form that includes only the following information:

(i) identifying information regarding:

(A) the student to whom an exemption applies; and

(B) the legally responsible individual who claims the exemption for the student and signs the vaccination exemption form;

(ii) an indication regarding the vaccines to which the exemption relates;

(iii) a statement that the claimed exemption is for:

- (A) a medical reason; or
- (B) a personal or religious belief; and

(iv) an explanation of the requirements, in the event of an outbreak of a disease for which a required vaccine exists, for a student who:

(A) has not received the required vaccine; and

(B) is not otherwise immune from the disease; and

(b) provide the vaccination exemption form created in this Subsection (1) to local health departments.

(2) (a) Each local health department shall designate one or more individuals from within the local health department as a health official to consult, regarding the requirements of this part, with:

- (i) parents, upon the request of parents;
- (ii) school principals and administrators; and
- (iii) licensed health care providers.

(b) A local health department may designate a licensed health care provider as a health official designee to provide the services described in Subsection (2)(a).

(3) (a) To receive a vaccination exemption form described in Subsection (1), a legally responsible individual shall complete the online education module described in Section 26-7-9, permitting an individual to:

(i) complete any requirements online; and

(ii) download and print the vaccine exemption form immediately upon completion of the requirements.

(b) A legally responsible individual may decline to take the online education module and obtain a vaccination exemption form from a local health department if the individual:

(i) requests and receives an in-person consultation at a local health department from a health official or a health official designee regarding the requirements of this part; and

(ii) pays any fees established under Subsection (4)(b).

(4) (a) Neither the department nor any other person may charge a fee for the exemption form offered through the online education module in Subsection (3)(a).

(b) A local health department may establish a fee of up to \$25 to cover the costs of providing an in-person consultation.

Section 9. Section 53A-11-303 is repealed and reenacted to read:

53A-11-303. Regulations of department.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules regarding:

(a) which vaccines are required as a condition of attending school;

(b) the manner and frequency of the vaccinations; and

(c) the vaccination exemption form described in Section 53A-11-302.5.

(2) The department shall ensure that the rules described in Subsection (1):

(a) conform to recognized standard medical practices; and

(b) require schools to report to the department statistical information and names of students who are not in compliance with Section 53A-11-301.

Section 10. Section 53A-11-304 is repealed and reenacted to read:

53A-11-304. Immunization record part of student's record -- School review process at enrollment -- Transfer.

(1) Each school:

(a) shall request an immunization record for each student at the time the student enrolls in the school;

(b) may not charge a fee related to receiving or reviewing an immunization record or a vaccination exemption form; and

(c) shall retain an immunization record for each enrolled student as part of the student's permanent school record.

(2) (a) Within five business days after the day on which a student enrolls in a school, an individual designated by the school principal or administrator shall:

(i) determine whether the school has received an immunization record for the student;

(ii) review the student's immunization record to determine whether the record complies with Subsection 53A-11-301(1); and

(iii) identify any deficiencies in the student's immunization record.

(b) If the school has not received a student's immunization record or there are deficiencies in the immunization record, the school shall:

(i) place the student on conditional enrollment, in accordance with Section 53A-11-306; and

(ii) within five days after the day on which the school places the student on conditional enrollment, provide the written notice described in Subsection 53A-11-306(2).

(3) A school from which a student transfers shall provide the student's immunization record to the student's new school upon request of the student's legally responsible individual.

Section 11. Section 53A-11-306 is repealed and reenacted to read:

53A-11-306. Conditional enrollment -- Suspension for noncompliance -- Procedure.

(1) A student for whom a school has not received a complete immunization record may attend the school on a conditional enrollment:

(a) during the period in which the student's immunization record is under review by the school; or

(b) for 21 calendar days after the day on which the school provides the notice described in Subsection (2).

(2) (a) Within five days after the day on which a school places a student on conditional enrollment, the school shall provide written notice to the student's legally responsible individual, in person or by mail, that:

(i) the school has placed the student on conditional enrollment for failure to

comply with the requirements of Subsection 53A-11-301(1);

(ii) describes the identified deficiencies in the student's immunization record or states that the school has not received an immunization record for the student;

(iii) gives notice that the student will not be allowed to attend school unless the legally responsible individual cures the deficiencies, or provides an immunization record that complies with Subsection 53A-11-301(1), within the conditional enrollment period described in Subsection (1)(b); and

(iv) describes the process for obtaining a required vaccination.

(b) A school shall remove the conditional enrollment status from a student after the school receives an immunization record for the student that complies with Subsection 53A-11-301(1).

(c) Except as provided in Subsection (2)(d), at the end of the conditional enrollment period, a school shall prohibit a student who does not comply with Subsection 53A-11-301(1) from attending the school until the student complies with Subsection 53A-11-301(1).

(d) A school principal or administrator:

(i) shall grant an additional extension of the conditional enrollment period, if the extension is necessary to complete all required vaccination dosages, for a time period medically recommended to complete all required vaccination dosages; and

(ii) may grant an additional extension of the conditional enrollment period in cases of extenuating circumstances, if the school principal or administrator and a school nurse, a health official, or a health official designee agree that an additional extension will likely lead to compliance with Subsection 53A-11-301(1) during the additional extension period.

Section 12. Section 53A-11-307 is enacted to read:

53A-11-307. School record of students' immunization status -- Confidentiality.

(1) Each school shall maintain a current list of all enrolled students, noting each student:

(a) for whom the school has received a valid and complete immunization record;

(b) who is exempt from receiving a required vaccine; and

(c) who is allowed to attend school under Section 53A-11-306.

(2) Each school shall ensure that the list described in Subsection (1) specifically identifies each disease against which a student is not immunized.

(3) Upon the request of an official from a local health department in the case of a disease outbreak, a school principal or administrator shall:

(a) notify the legally responsible individual of any student who is not immune to the outbreak disease, providing information regarding steps the legally responsible individual may take to protect students;

(b) identify each student who is not immune to the outbreak disease; and

(c) for a period determined by the local health department not to exceed the duration of the disease outbreak, do one of the following at the discretion of the school principal or administrator after obtaining approval from the local health department:

(i) provide a separate educational environment for the students described in Subsection (3)(b) that ensures the protection of the students described in Subsection (3)(b) as well as the protection of the remainder of the student body; or

(ii) prevent each student described in Subsection (3)(b) from attending school.

(4) A name appearing on the list described in Subsection (1) is subject to confidentiality requirements described in Section 26-1-17.5 and Section 53A-13-301.

Section 13. Repealer.

This bill repeals:

Section 53A-11-305, Immunization by local health departments -- Fees.

Section 14. Effective date.

This bill takes effect on July 1, 2018.

CHAPTER 345**H. B. 344**

Passed March 9, 2017
 Approved March 24, 2017
 Effective July 1, 2017

**UTAH AGRICULTURE
CODE AMENDMENTS**

Chief Sponsor: Lee B. Perry
 Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill recodifies and modifies Title 4, Utah Agricultural Code.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ states that the Department of Agriculture and Food may contract for services and accept and administer grants;
- ▶ modifies the duties of the state veterinarian;
- ▶ states that the Department of Agriculture and Food may require labels on certain products;
- ▶ states that the Department of Agriculture and Food may make rules in regard to "Utah's Own," a program dedicated to the promotion of locally produced products of agriculture;
- ▶ authorizes the Department of Agriculture and Food to deny, revoke, or suspend a pesticide applicator license;
- ▶ modifies the membership of the State Weed Committee;
- ▶ authorizes the Agricultural Advisory Board to create a subcommittee;
- ▶ states that the owner of a bull that has not been tested for trichomoniasis may be fined \$1,000 per bull;
- ▶ states that a person who owns or possesses an infected animal may be liable for damages inflicted by the animal;
- ▶ modifies the length of time a domesticated elk facility shall maintain its records;
- ▶ authorizes the Department of Agriculture and Food to set a fee for the application of an industrial hemp certificate;
- ▶ strikes outdated language; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides coordination clauses.

Utah Code Sections Affected:**AMENDS:**

- 4-2-401, as enacted by Laws of Utah 2014, Chapter 41
- 4-2-402, as last amended by Laws of Utah 2016, Chapter 18
- 4-2-502, as enacted by Laws of Utah 2015, Chapter 128
- 4-2-503, as enacted by Laws of Utah 2015, Chapter 128
- 4-2-504, as enacted by Laws of Utah 2015, Chapter 128

- 4-12-4, as last amended by Laws of Utah 1985, Chapter 130
- 4-18-102, as last amended by Laws of Utah 2014, Chapter 383
- 4-18-104, as renumbered and amended by Laws of Utah 2013, Chapter 227
- 4-18-105, as last amended by Laws of Utah 2016, Chapter 19
- 4-18-106, as last amended by Laws of Utah 2016, Chapter 19
- 4-18-107, as last amended by Laws of Utah 2014, Chapter 383
- 4-18-108, as renumbered and amended by Laws of Utah 2014, Chapters 189 and 383
- 4-26-101, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-26-102, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-26-104, as enacted by Laws of Utah 2016, Chapter 18
- 4-31-105, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-31-106, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-31-107, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-31-108, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-31-109.1, as enacted by Laws of Utah 2015, Chapter 414
- 4-31-113, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-31-114, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-31-115, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-31-116, as renumbered and amended by Laws of Utah 2012, Chapter 331
- 4-39-102, as enacted by Laws of Utah 1997, Chapter 302
- 4-39-104, as last amended by Laws of Utah 2016, Chapter 19
- 4-39-107, as enacted by Laws of Utah 1997, Chapter 302
- 4-39-108, as enacted by Laws of Utah 1997, Chapter 302
- 4-39-201, as last amended by Laws of Utah 2010, Chapter 378
- 4-39-202, as enacted by Laws of Utah 1997, Chapter 302
- 4-39-203, as last amended by Laws of Utah 2009, Chapter 183
- 4-39-205, as last amended by Laws of Utah 2010, Chapter 378
- 4-39-206, as last amended by Laws of Utah 2010, Chapter 378
- 4-39-207, as enacted by Laws of Utah 1997, Chapter 302
- 4-39-301, as enacted by Laws of Utah 1997, Chapter 302
- 4-39-304, as last amended by Laws of Utah 2010, Chapter 378
- 4-39-305, as last amended by Laws of Utah 2010, Chapter 378
- 4-39-306, as last amended by Laws of Utah 2010, Chapter 378

4-39-401, as last amended by Laws of Utah 2014, Chapter 189
 4-39-402, as enacted by Laws of Utah 1997, Chapter 302
 4-40-102, as renumbered and amended by Laws of Utah 2011, Chapter 124
 4-41-103, as enacted by Laws of Utah 2014, Chapter 25
 10-8-85.8, as enacted by Laws of Utah 2007, Chapter 146
 11-38-302, as last amended by Laws of Utah 2009, Chapters 344 and 368
 17-50-323, as enacted by Laws of Utah 2007, Chapter 146
 17D-3-102, as last amended by Laws of Utah 2013, Chapter 227
 23-13-19, as enacted by Laws of Utah 2009, Chapter 308
 23-24-1, as last amended by Laws of Utah 2011, Chapter 297
 26-15-1, as last amended by Laws of Utah 2007, Chapter 146
 58-37c-19.5, as last amended by Laws of Utah 2013, Chapters 262 and 413
 63A-3-205, as last amended by Laws of Utah 2014, Chapter 227
 63B-1b-102, as last amended by Laws of Utah 2014, Chapter 227
 63B-1b-202, as last amended by Laws of Utah 2014, Chapters 203 and 227
 63E-1-102, as last amended by Laws of Utah 2015, Chapters 223, 226, 283, and 411
 63I-4a-102, as last amended by Laws of Utah 2015, Chapters 223, 226, 283, and 411
 63J-7-102, as last amended by Laws of Utah 2015, Chapters 223, 226, 283, and 411
 63L-8-403, as enacted by Laws of Utah 2016, Chapter 317
 72-7-401, as last amended by Laws of Utah 2005, Chapter 2
 72-9-502, as last amended by Laws of Utah 2008, Chapter 382
 73-20-2, as last amended by Laws of Utah 1994, Chapter 12
 76-6-111, as last amended by Laws of Utah 2015, Chapters 172 and 258
 78B-4-202, as last amended by Laws of Utah 2015, Chapter 258

ENACTS:

4-2-101, Utah Code Annotated 1953
 4-3-101, Utah Code Annotated 1953
 4-9-101, Utah Code Annotated 1953
 4-18-201, Utah Code Annotated 1953
 4-19-101, Utah Code Annotated 1953
 4-20-102, Utah Code Annotated 1953
 4-22-101, Utah Code Annotated 1953
 4-25-101, Utah Code Annotated 1953
 4-30-101, Utah Code Annotated 1953
 4-34-101, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

4-1-101, (Renumbered from 4-1-1, as enacted by Laws of Utah 1979, Chapter 2)
 4-1-102, (Renumbered from 4-1-2, as enacted by Laws of Utah 1979, Chapter 2)
 4-1-103, (Renumbered from 4-1-3, as enacted by Laws of Utah 1979, Chapter 2)

4-1-104, (Renumbered from 4-1-3.5, as last amended by Laws of Utah 2008, Chapter 382)
 4-1-105, (Renumbered from 4-1-4, as last amended by Laws of Utah 2008, Chapter 156)
 4-1-106, (Renumbered from 4-1-5, as last amended by Laws of Utah 1987, Chapter 161)
 4-1-107, (Renumbered from 4-1-6, as last amended by Laws of Utah 1985, Chapter 130)
 4-1-108, (Renumbered from 4-1-7, as last amended by Laws of Utah 2010, Chapter 378)
 4-1-109, (Renumbered from 4-1-8, as last amended by Laws of Utah 2010, Chapter 324)
 4-1-110, (Renumbered from 4-1-9, as enacted by Laws of Utah 2012, Chapter 401)
 4-2-102, (Renumbered from 4-2-1, as last amended by Laws of Utah 1997, Chapter 82)
 4-2-103, (Renumbered from 4-2-2, as last amended by Laws of Utah 2011, Chapter 383)
 4-2-104, (Renumbered from 4-2-3, as last amended by Laws of Utah 2002, Chapter 176)
 4-2-105, (Renumbered from 4-2-4, as last amended by Laws of Utah 1987, Chapter 15)
 4-2-106, (Renumbered from 4-2-5, as enacted by Laws of Utah 1979, Chapter 2)
 4-2-107, (Renumbered from 4-2-6, as last amended by Laws of Utah 1984, Chapter 67)
 4-2-108, (Renumbered from 4-2-7, as last amended by Laws of Utah 2016, Chapter 19)
 4-2-109, (Renumbered from 4-2-8, as last amended by Laws of Utah 2011, Chapter 383)
 4-2-201, (Renumbered from 4-2-9, as last amended by Laws of Utah 1997, Chapters 10 and 81)
 4-2-202, (Renumbered from 4-2-10, as last amended by Laws of Utah 2007, Chapter 179)
 4-2-301, (Renumbered from 4-2-11, as last amended by Laws of Utah 2013, Chapter 237)
 4-2-302, (Renumbered from 4-2-12, as last amended by Laws of Utah 1996, Chapter 79)
 4-2-303, (Renumbered from 4-2-14, as enacted by Laws of Utah 1985, Chapter 104)
 4-2-304, (Renumbered from 4-2-15, as last amended by Laws of Utah 2010, Chapter 378)
 4-3-102, (Renumbered from 4-3-1, as last amended by Laws of Utah 2015, Chapter 112)
 4-3-201, (Renumbered from 4-3-2, as last amended by Laws of Utah 2008, Chapter 382)

4-3-202, (Renumbered from 4-3-3, as enacted by Laws of Utah 1979, Chapter 2)	4-5-201, (Renumbered from 4-5-8, as last amended by Laws of Utah 2010, Chapter 378)
4-3-203, (Renumbered from 4-3-4, as last amended by Laws of Utah 2007, Chapter 179)	4-5-202, (Renumbered from 4-5-5, as last amended by Laws of Utah 2010, Chapter 378)
4-3-204, (Renumbered from 4-3-5, as enacted by Laws of Utah 1979, Chapter 2)	4-5-203, (Renumbered from 4-5-10, as last amended by Laws of Utah 2007, Chapter 179)
4-3-205, (Renumbered from 4-3-6, as enacted by Laws of Utah 1979, Chapter 2)	4-5-204, (Renumbered from 4-5-11, as last amended by Laws of Utah 1990, Chapter 157)
4-3-206, (Renumbered from 4-3-7, as last amended by Laws of Utah 2007, Chapter 179)	4-5-205, (Renumbered from 4-5-15, as last amended by Laws of Utah 2010, Chapter 378)
4-3-301, (Renumbered from 4-3-8, as last amended by Laws of Utah 2007, Chapter 179)	4-5-206, (Renumbered from 4-5-16, as last amended by Laws of Utah 1990, Chapter 157)
4-3-302, (Renumbered from 4-3-9, as last amended by Laws of Utah 1987, Chapter 161)	4-5-207, (Renumbered from 4-5-6, as last amended by Laws of Utah 2007, Chapter 179)
4-3-401, (Renumbered from 4-3-10, as last amended by Laws of Utah 2015, Chapter 112)	4-5-301, (Renumbered from 4-5-9, as last amended by Laws of Utah 2010, Chapter 378)
4-3-402, (Renumbered from 4-3-11, as last amended by Laws of Utah 2001, Chapter 87)	4-5-401, (Renumbered from 4-5-3, as last amended by Laws of Utah 2004, Chapter 358)
4-3-403, (Renumbered from 4-3-12, as enacted by Laws of Utah 1979, Chapter 2)	4-5-402, (Renumbered from 4-5-4, as last amended by Laws of Utah 1985, Chapter 104)
4-3-501, (Renumbered from 4-3-1.3, as enacted by Laws of Utah 2015, Chapter 112)	4-5-501, (Renumbered from 4-5-9.5, as last amended by Laws of Utah 2008, Chapter 382)
4-3-502, (Renumbered from 4-3-13, as last amended by Laws of Utah 2015, Chapter 112)	4-5-502, (Renumbered from 4-5-20, as enacted by Laws of Utah 2011, Chapter 156)
4-3-503, (Renumbered from 4-3-14, as last amended by Laws of Utah 2016, Chapter 402)	4-7-101, (Renumbered from 4-7-1, as last amended by Laws of Utah 2011, Chapter 383)
4-4-101, (Renumbered from 4-4-1, as enacted by Laws of Utah 1979, Chapter 2)	4-7-102, (Renumbered from 4-7-2, as last amended by Laws of Utah 2011, Chapter 383)
4-4-102, (Renumbered from 4-4-2, as last amended by Laws of Utah 2008, Chapter 382)	4-7-103, (Renumbered from 4-7-3, as last amended by Laws of Utah 2016, Chapter 18)
4-4-103, (Renumbered from 4-4-3, as enacted by Laws of Utah 1979, Chapter 2)	4-7-104, (Renumbered from 4-7-4, as last amended by Laws of Utah 1990, Chapter 25)
4-4-104, (Renumbered from 4-4-4, as last amended by Laws of Utah 2007, Chapter 179)	4-7-105, (Renumbered from 4-7-5, as last amended by Laws of Utah 2011, Chapter 383)
4-4-105, (Renumbered from 4-4-5, as enacted by Laws of Utah 1979, Chapter 2)	4-7-106, (Renumbered from 4-7-6, as last amended by Laws of Utah 1995, Chapter 41)
4-4-106, (Renumbered from 4-4-6, as enacted by Laws of Utah 1979, Chapter 2)	4-7-107, (Renumbered from 4-7-7, as last amended by Laws of Utah 2011, Chapter 383)
4-5-101, (Renumbered from 4-5-1, as last amended by Laws of Utah 1990, Chapter 157)	4-7-108, (Renumbered from 4-7-8, as last amended by Laws of Utah 2011, Chapter 383)
4-5-102, (Renumbered from 4-5-2, as last amended by Laws of Utah 2007, Chapter 146)	4-7-109, (Renumbered from 4-7-9, as last amended by Laws of Utah 2011, Chapter 383)
4-5-103, (Renumbered from 4-5-7, as last amended by Laws of Utah 2010, Chapter 378)	4-7-110, (Renumbered from 4-7-10, as last amended by Laws of Utah 2011, Chapter 383)
4-5-104, (Renumbered from 4-5-17, as last amended by Laws of Utah 2007, Chapter 179)	
4-5-105, (Renumbered from 4-5-18, as last amended by Laws of Utah 2010, Chapter 378)	
4-5-106, (Renumbered from 4-5-19, as last amended by Laws of Utah 1990, Chapter 157)	

4-7-201, (Renumbered from 4-7-11, as last amended by Laws of Utah 2011, Chapter 383)	4-9-114, (Renumbered from 4-9-10, as enacted by Laws of Utah 1979, Chapter 2)
4-7-202, (Renumbered from 4-7-12, as last amended by Laws of Utah 2011, Chapter 383)	4-9-115, (Renumbered from 4-9-11, as last amended by Laws of Utah 1985, Chapter 19)
4-7-203, (Renumbered from 4-7-13, as last amended by Laws of Utah 2011, Chapter 383)	4-9-116, (Renumbered from 4-9-12, as last amended by Laws of Utah 2004, Chapter 358)
4-7-204, (Renumbered from 4-7-13.5, as enacted by Laws of Utah 1985, Chapter 24)	4-9-117, (Renumbered from 4-9-13, as enacted by Laws of Utah 1979, Chapter 2)
4-7-205, (Renumbered from 4-7-14, as last amended by Laws of Utah 2011, Chapter 383)	4-9-118, (Renumbered from 4-9-15, as last amended by Laws of Utah 2010, Chapter 378)
4-8-101, (Renumbered from 4-8-1, as enacted by Laws of Utah 1979, Chapter 2)	4-10-101, (Renumbered from 4-10-1, as enacted by Laws of Utah 1979, Chapter 2)
4-8-102, (Renumbered from 4-8-2, as enacted by Laws of Utah 1979, Chapter 2)	4-10-102, (Renumbered from 4-10-2, as last amended by Laws of Utah 2016, Chapter 21)
4-8-103, (Renumbered from 4-8-3, as enacted by Laws of Utah 1979, Chapter 2)	4-10-103, (Renumbered from 4-10-3, as last amended by Laws of Utah 2008, Chapter 382)
4-8-104, (Renumbered from 4-8-4, as last amended by Laws of Utah 2010, Chapter 324)	4-10-104, (Renumbered from 4-10-4, as enacted by Laws of Utah 1979, Chapter 2)
4-8-105, (Renumbered from 4-8-5, as enacted by Laws of Utah 1979, Chapter 2)	4-10-105, (Renumbered from 4-10-5, as last amended by Laws of Utah 2016, Chapter 21)
4-8-106, (Renumbered from 4-8-6, as last amended by Laws of Utah 1987, Chapter 161)	4-10-106, (Renumbered from 4-10-6, as last amended by Laws of Utah 2016, Chapter 21)
4-8-107, (Renumbered from 4-8-7, as last amended by Laws of Utah 2007, Chapter 179)	4-10-107, (Renumbered from 4-10-7, as last amended by Laws of Utah 2016, Chapter 21)
4-9-102, (Renumbered from 4-9-1, as last amended by Laws of Utah 2004, Chapter 358)	4-10-108, (Renumbered from 4-10-7.3, as enacted by Laws of Utah 2014, Chapter 411)
4-9-103, (Renumbered from 4-9-2, as last amended by Laws of Utah 2008, Chapter 382)	4-10-109, (Renumbered from 4-10-8, as enacted by Laws of Utah 1979, Chapter 2)
4-9-104, (Renumbered from 4-9-3, as last amended by Laws of Utah 2004, Chapter 358)	4-10-110, (Renumbered from 4-10-9, as enacted by Laws of Utah 1979, Chapter 2)
4-9-105, (Renumbered from 4-9-4, as last amended by Laws of Utah 2004, Chapter 358)	4-10-111, (Renumbered from 4-10-10, as last amended by Laws of Utah 2014, Chapter 411)
4-9-106, (Renumbered from 4-9-5, as last amended by Laws of Utah 2004, Chapter 358)	4-10-112, (Renumbered from 4-10-11, as enacted by Laws of Utah 1979, Chapter 2)
4-9-107, (Renumbered from 4-9-5.2, as last amended by Laws of Utah 2004, Chapter 358)	4-10-113, (Renumbered from 4-10-14, as enacted by Laws of Utah 2016, Chapter 21)
4-9-108, (Renumbered from 4-9-5.3, as last amended by Laws of Utah 2004, Chapter 358)	4-11-101, (Renumbered from 4-11-1, as enacted by Laws of Utah 1979, Chapter 2)
4-9-109, (Renumbered from 4-9-5.4, as last amended by Laws of Utah 2004, Chapter 358)	4-11-102, (Renumbered from 4-11-2, as last amended by Laws of Utah 2014, Chapter 411)
4-9-110, (Renumbered from 4-9-6, as last amended by Laws of Utah 2004, Chapter 358)	4-11-103, (Renumbered from 4-11-3, as last amended by Laws of Utah 2008, Chapter 382)
4-9-111, (Renumbered from 4-9-7, as last amended by Laws of Utah 1990, Chapter 157)	4-11-104, (Renumbered from 4-11-4, as last amended by Laws of Utah 2010, Chapter 73)
4-9-112, (Renumbered from 4-9-8, as enacted by Laws of Utah 1979, Chapter 2)	4-11-105, (Renumbered from 4-11-5, as last amended by Laws of Utah 2016, Chapter 348)
4-9-113, (Renumbered from 4-9-9, as last amended by Laws of Utah 1992, Chapter 30)	4-11-106, (Renumbered from 4-11-6, as last amended by Laws of Utah 2010, Chapter 73)
	4-11-107, (Renumbered from 4-11-7, as last amended by Laws of Utah 2015, Chapter 414)

4-11-108, (Renumbered from 4-11-8, as last amended by Laws of Utah 2010, Chapter 73)	4-14-109, (Renumbered from 4-14-9, as last amended by Laws of Utah 2007, Chapters 179 and 370)
4-11-109, (Renumbered from 4-11-9, as last amended by Laws of Utah 2010, Chapter 73)	4-14-110, (Renumbered from 4-14-12, as last amended by Laws of Utah 2007, Chapter 370)
4-11-110, (Renumbered from 4-11-10, as last amended by Laws of Utah 2010, Chapter 73)	4-14-111, (Renumbered from 4-14-13, as last amended by Laws of Utah 2014, Chapter 411)
4-11-111, (Renumbered from 4-11-11, as last amended by Laws of Utah 2010, Chapter 73)	4-15-101, (Renumbered from 4-15-1, as enacted by Laws of Utah 1981, Chapter 126)
4-11-112, (Renumbered from 4-11-12, as last amended by Laws of Utah 2010, Chapter 73)	4-15-102, (Renumbered from 4-15-1.5, as enacted by Laws of Utah 2014, Chapter 411)
4-11-113, (Renumbered from 4-11-13, as last amended by Laws of Utah 2010, Chapter 73)	4-15-103, (Renumbered from 4-15-2, as last amended by Laws of Utah 2014, Chapter 411)
4-11-114, (Renumbered from 4-11-14, as last amended by Laws of Utah 2010, Chapter 73)	4-15-104, (Renumbered from 4-15-3, as last amended by Laws of Utah 2008, Chapter 382)
4-11-115, (Renumbered from 4-11-17, as enacted by Laws of Utah 2010, Chapter 73)	4-15-105, (Renumbered from 4-15-4, as enacted by Laws of Utah 1981, Chapter 126)
4-13-101, (Renumbered from 4-13-1, as enacted by Laws of Utah 1979, Chapter 2)	4-15-106, (Renumbered from 4-15-5, as last amended by Laws of Utah 2007, Chapter 179)
4-13-102, (Renumbered from 4-13-2, as last amended by Laws of Utah 2007, Chapter 179)	4-15-107, (Renumbered from 4-15-6, as last amended by Laws of Utah 2007, Chapter 179)
4-13-103, (Renumbered from 4-13-3, as last amended by Laws of Utah 1997, Chapter 81)	4-15-108, (Renumbered from 4-15-7, as last amended by Laws of Utah 2014, Chapter 411)
4-13-104, (Renumbered from 4-13-4, as last amended by Laws of Utah 2007, Chapter 179)	4-15-109, (Renumbered from 4-15-8, as enacted by Laws of Utah 1981, Chapter 126)
4-13-105, (Renumbered from 4-13-5, as enacted by Laws of Utah 1979, Chapter 2)	4-15-110, (Renumbered from 4-15-9, as enacted by Laws of Utah 1981, Chapter 126)
4-13-106, (Renumbered from 4-13-6, as last amended by Laws of Utah 2007, Chapter 179)	4-15-111, (Renumbered from 4-15-10, as last amended by Laws of Utah 2010, Chapter 378)
4-13-107, (Renumbered from 4-13-7, as enacted by Laws of Utah 1979, Chapter 2)	4-15-112, (Renumbered from 4-15-11, as last amended by Laws of Utah 2014, Chapter 411)
4-13-108, (Renumbered from 4-13-8, as enacted by Laws of Utah 1979, Chapter 2)	4-15-113, (Renumbered from 4-15-12, as enacted by Laws of Utah 1981, Chapter 126)
4-13-109, (Renumbered from 4-13-9, as enacted by Laws of Utah 1979, Chapter 2)	4-15-114, (Renumbered from 4-15-14, as enacted by Laws of Utah 2014, Chapter 411)
4-14-101, (Renumbered from 4-14-1, as enacted by Laws of Utah 1979, Chapter 2)	4-16-101, (Renumbered from 4-16-1, as enacted by Laws of Utah 1981, Chapter 126)
4-14-102, (Renumbered from 4-14-2, as last amended by Laws of Utah 2007, Chapter 370)	4-16-102, (Renumbered from 4-16-2, as last amended by Laws of Utah 2010, Chapter 324)
4-14-103, (Renumbered from 4-14-3, as last amended by Laws of Utah 2014, Chapter 411)	4-16-103, (Renumbered from 4-16-3, as last amended by Laws of Utah 2008, Chapter 382)
4-14-104, (Renumbered from 4-14-4, as last amended by Laws of Utah 1981, Chapter 3)	4-16-201, (Renumbered from 4-16-4, as last amended by Laws of Utah 1999, Chapter 237)
4-14-105, (Renumbered from 4-14-5, as enacted by Laws of Utah 1979, Chapter 2)	4-16-202, (Renumbered from 4-16-5, as last amended by Laws of Utah 1997, Chapter 81)
4-14-106, (Renumbered from 4-14-6, as last amended by Laws of Utah 2008, Chapter 382)	4-16-203, (Renumbered from 4-16-7, as last amended by Laws of Utah 2010, Chapter 324)
4-14-107, (Renumbered from 4-14-7, as enacted by Laws of Utah 1979, Chapter 2)	4-16-301, (Renumbered from 4-16-8, as last amended by Laws of Utah 1997, Chapter 81)
4-14-108, (Renumbered from 4-14-8, as enacted by Laws of Utah 1979, Chapter 2)	

- 4-16-302, (Renumbered from 4-16-10, as last amended by Laws of Utah 1997, Chapter 81)
- 4-16-303, (Renumbered from 4-16-11, as last amended by Laws of Utah 1997, Chapter 81)
- 4-16-401, (Renumbered from 4-16-9, as enacted by Laws of Utah 1981, Chapter 126)
- 4-16-501, (Renumbered from 4-16-6, as last amended by Laws of Utah 1997, Chapter 81)
- 4-17-101, (Renumbered from 4-17-1, as enacted by Laws of Utah 1981, Chapter 126)
- 4-17-102, (Renumbered from 4-17-2, as last amended by Laws of Utah 1997, Chapter 82)
- 4-17-103, (Renumbered from 4-17-3, as last amended by Laws of Utah 1985, Chapter 18)
- 4-17-104, (Renumbered from 4-17-3.5, as last amended by Laws of Utah 2013, Chapter 461)
- 4-17-105, (Renumbered from 4-17-4, as last amended by Laws of Utah 1993, Chapter 227)
- 4-17-106, (Renumbered from 4-17-4.5, as enacted by Laws of Utah 1985, Chapter 18)
- 4-17-107, (Renumbered from 4-17-5, as last amended by Laws of Utah 1993, Chapter 227)
- 4-17-108, (Renumbered from 4-17-6, as last amended by Laws of Utah 2007, Chapter 179)
- 4-17-109, (Renumbered from 4-17-7, as last amended by Laws of Utah 2010, Chapter 378)
- 4-17-110, (Renumbered from 4-17-8, as last amended by Laws of Utah 1985, Chapter 18)
- 4-17-111, (Renumbered from 4-17-8.5, as last amended by Laws of Utah 1993, Chapter 227)
- 4-17-112, (Renumbered from 4-17-10, as enacted by Laws of Utah 1985, Chapter 18)
- 4-17-113, (Renumbered from 4-17-11, as enacted by Laws of Utah 1981, Chapter 126)
- 4-17-114, (Renumbered from 4-2-8.7, as last amended by Laws of Utah 2014, Chapter 411)
- 4-17-115, (Renumbered from 4-2-8.6, as last amended by Laws of Utah 2014, Chapter 411)
- 4-18-202, (Renumbered from 4-2-8.5, as last amended by Laws of Utah 2014, Chapter 411)
- 4-19-102, (Renumbered from 4-19-1, as last amended by Laws of Utah 2007, Chapter 179)
- 4-19-103, (Renumbered from 4-19-2, as last amended by Laws of Utah 2010, Chapter 324)
- 4-19-104, (Renumbered from 4-19-3, as last amended by Laws of Utah 2007, Chapter 179)
- 4-19-105, (Renumbered from 4-19-4, as last amended by Laws of Utah 2007, Chapter 179)
- 4-20-101, (Renumbered from 4-20-1, as last amended by Laws of Utah 2010, Chapter 278)
- 4-20-103, (Renumbered from 4-20-1.5, as last amended by Laws of Utah 2013, Chapter 227)
- 4-20-104, (Renumbered from 4-20-1.6, as last amended by Laws of Utah 2011, Chapter 336)
- 4-20-105, (Renumbered from 4-20-2, as last amended by Laws of Utah 2011, Chapter 303)
- 4-20-106, (Renumbered from 4-20-3, as last amended by Laws of Utah 2014, Chapter 189)
- 4-20-107, (Renumbered from 4-20-8, as enacted by Laws of Utah 1979, Chapter 2)
- 4-20-108, (Renumbered from 4-20-9, as enacted by Laws of Utah 1979, Chapter 2)
- 4-20-109, (Renumbered from 4-20-10, as enacted by Laws of Utah 2011, Chapter 383)
- 4-22-102, (Renumbered from 4-22-1, as enacted by Laws of Utah 1979, Chapter 2)
- 4-22-103, (Renumbered from 4-22-2, as last amended by Laws of Utah 1999, Chapter 301)
- 4-22-104, (Renumbered from 4-22-3, as last amended by Laws of Utah 2010, Chapters 286 and 378)
- 4-22-105, (Renumbered from 4-22-6, as last amended by Laws of Utah 2010, Chapters 73 and 378)
- 4-22-106, (Renumbered from 4-22-4, as last amended by Laws of Utah 1981, Chapter 4)
- 4-22-107, (Renumbered from 4-22-4.5, as last amended by Laws of Utah 2008, Chapter 382)
- 4-22-108, (Renumbered from 4-22-5, as enacted by Laws of Utah 1979, Chapter 2)
- 4-22-201, (Renumbered from 4-22-7, as last amended by Laws of Utah 2005, Chapter 173)
- 4-22-202, (Renumbered from 4-22-8, as last amended by Laws of Utah 2004, Chapter 128)
- 4-22-203, (Renumbered from 4-22-8.5, as last amended by Laws of Utah 1999, Chapter 301)
- 4-22-301, (Renumbered from 4-22-9, as enacted by Laws of Utah 1979, Chapter 2)
- 4-22-302, (Renumbered from 4-22-9.5, as last amended by Laws of Utah 1995, Chapter 20)
- 4-22-303, (Renumbered from 4-22-10, as enacted by Laws of Utah 1979, Chapter 2)
- 4-23-101, (Renumbered from 4-23-1, as enacted by Laws of Utah 1979, Chapter 2)
- 4-23-102, (Renumbered from 4-23-2, as enacted by Laws of Utah 1979, Chapter 2)
- 4-23-103, (Renumbered from 4-23-3, as last amended by Laws of Utah 1989, Chapter 109)
- 4-23-104, (Renumbered from 4-23-4, as last amended by Laws of Utah 2010, Chapters 286 and 324)

- 4-23-105, (Renumbered from 4-23-5, as last amended by Laws of Utah 2010, Chapter 378)
- 4-23-106, (Renumbered from 4-23-6, as last amended by Laws of Utah 2010, Chapter 378)
- 4-23-107, (Renumbered from 4-23-7, as last amended by Laws of Utah 2010, Chapter 73)
- 4-23-108, (Renumbered from 4-23-7.5, as last amended by Laws of Utah 2009, Chapter 17)
- 4-23-109, (Renumbered from 4-23-8, as last amended by Laws of Utah 2015, Chapter 414)
- 4-23-110, (Renumbered from 4-23-10, as enacted by Laws of Utah 1979, Chapter 2)
- 4-23-111, (Renumbered from 4-23-11, as last amended by Laws of Utah 1997, Chapter 82)
- 4-24-101, (Renumbered from 4-24-1, as enacted by Laws of Utah 1979, Chapter 2)
- 4-24-102, (Renumbered from 4-24-2, as last amended by Laws of Utah 2010, Chapter 378)
- 4-24-103, (Renumbered from 4-24-3, as last amended by Laws of Utah 2008, Chapter 382)
- 4-24-104, (Renumbered from 4-24-4, as last amended by Laws of Utah 2010, Chapters 286 and 324)
- 4-24-105, (Renumbered from 4-24-30, as last amended by Laws of Utah 1995, Chapter 20)
- 4-24-201, (Renumbered from 4-24-5, as enacted by Laws of Utah 1979, Chapter 2)
- 4-24-202, (Renumbered from 4-24-7, as enacted by Laws of Utah 1979, Chapter 2)
- 4-24-203, (Renumbered from 4-24-8, as last amended by Laws of Utah 1985, Chapter 130)
- 4-24-204, (Renumbered from 4-24-9, as last amended by Laws of Utah 1983, Chapter 4)
- 4-24-205, (Renumbered from 4-24-10, as last amended by Laws of Utah 2010, Chapter 324)
- 4-24-301, (Renumbered from 4-24-6, as last amended by Laws of Utah 1988, Chapter 42)
- 4-24-302, (Renumbered from 4-24-11, as last amended by Laws of Utah 1997, Chapter 302)
- 4-24-303, (Renumbered from 4-24-12, as last amended by Laws of Utah 2010, Chapter 378)
- 4-24-304, (Renumbered from 4-24-13, as last amended by Laws of Utah 1997, Chapter 302)
- 4-24-305, (Renumbered from 4-24-14, as last amended by Laws of Utah 1997, Chapter 302)
- 4-24-306, (Renumbered from 4-24-15, as last amended by Laws of Utah 1997, Chapter 302)
- 4-24-307, (Renumbered from 4-24-17, as last amended by Laws of Utah 1997, Chapter 302)
- 4-24-308, (Renumbered from 4-24-21, as last amended by Laws of Utah 1985, Chapter 130)
- 4-24-309, (Renumbered from 4-24-16.3, as enacted by Laws of Utah 2015, Chapter 161)
- 4-24-401, (Renumbered from 4-24-18, as enacted by Laws of Utah 1979, Chapter 2)
- 4-24-402, (Renumbered from 4-24-19, as enacted by Laws of Utah 1979, Chapter 2)
- 4-24-403, (Renumbered from 4-24-31, as enacted by Laws of Utah 2015, Chapter 161)
- 4-24-404, (Renumbered from 4-24-20, as last amended by Laws of Utah 2010, Chapter 378)
- 4-24-405, (Renumbered from 4-24-22, as last amended by Laws of Utah 1985, Chapter 130)
- 4-24-406, (Renumbered from 4-24-23, as last amended by Laws of Utah 1985, Chapter 130)
- 4-24-501, (Renumbered from 4-24-24, as last amended by Laws of Utah 1997, Chapter 302)
- 4-24-502, (Renumbered from 4-24-25, as enacted by Laws of Utah 1979, Chapter 2)
- 4-24-503, (Renumbered from 4-24-26, as enacted by Laws of Utah 1979, Chapter 2)
- 4-24-504, (Renumbered from 4-24-28, as last amended by Laws of Utah 1986, Second Special Session, Chapter 10)
- 4-24-505, (Renumbered from 4-24-29, as enacted by Laws of Utah 1979, Chapter 2)
- 4-24-506, (Renumbered from 4-24-32, as enacted by Laws of Utah 2015, Chapter 161)
- 4-25-102, (Renumbered from 4-25-1, as last amended by Laws of Utah 2015, Chapter 105)
- 4-25-103, (Renumbered from 4-25-2, as last amended by Laws of Utah 1983, Chapter 7)
- 4-25-104, (Renumbered from 4-25-3, as last amended by Laws of Utah 2008, Chapter 382)
- 4-25-201, (Renumbered from 4-25-4, as last amended by Laws of Utah 2009, Chapter 282)
- 4-25-202, (Renumbered from 4-25-5, as last amended by Laws of Utah 2009, Chapter 282)
- 4-25-203, (Renumbered from 4-25-6, as last amended by Laws of Utah 1983, Chapter 7)
- 4-25-204, (Renumbered from 4-25-7, as last amended by Laws of Utah 2009, Chapter 196)
- 4-25-205, (Renumbered from 4-25-8, as last amended by Laws of Utah 2005, Chapter 118)
- 4-25-206, (Renumbered from 4-25-9, as enacted by Laws of Utah 1979, Chapter 2)

- 4-25-301, (Renumbered from 4-25-12, as repealed and reenacted by Laws of Utah 2012, Chapter 331)
- 4-25-302, (Renumbered from 4-25-12.1, as last amended by Laws of Utah 2015, Chapter 105)
- 4-25-303, (Renumbered from 4-25-12.3, as enacted by Laws of Utah 2015, Chapter 105)
- 4-25-401, (Renumbered from 4-25-14, as last amended by Laws of Utah 2009, Chapter 282)
- 4-30-102, (Renumbered from 4-30-1, as last amended by Laws of Utah 1999, Chapter 298)
- 4-30-103, (Renumbered from 4-30-2, as last amended by Laws of Utah 2010, Chapter 286)
- 4-30-104, (Renumbered from 4-30-3, as last amended by Laws of Utah 2008, Chapter 382)
- 4-30-105, (Renumbered from 4-30-4, as last amended by Laws of Utah 1999, Chapter 298)
- 4-30-106, (Renumbered from 4-30-5, as last amended by Laws of Utah 2010, Chapter 90)
- 4-30-107, (Renumbered from 4-30-6, as last amended by Laws of Utah 2007, Chapter 179)
- 4-30-108, (Renumbered from 4-30-7, as last amended by Laws of Utah 1999, Chapter 298)
- 4-30-109, (Renumbered from 4-30-7.5, as enacted by Laws of Utah 1999, Chapter 298)
- 4-30-110, (Renumbered from 4-30-7.6, as last amended by Laws of Utah 2010, Chapter 378)
- 4-30-111, (Renumbered from 4-30-8, as last amended by Laws of Utah 1985, Chapter 130)
- 4-30-112, (Renumbered from 4-30-9, as last amended by Laws of Utah 1999, Chapter 298)
- 4-32-101, (Renumbered from 4-32-1, as enacted by Laws of Utah 1979, Chapter 2)
- 4-32-102, (Renumbered from 4-32-2, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-103, (Renumbered from 4-32-2.1, as enacted by Laws of Utah 2010, Chapter 242)
- 4-32-104, (Renumbered from 4-32-2.2, as enacted by Laws of Utah 2010, Chapter 242)
- 4-32-105, (Renumbered from 4-32-3, as last amended by Laws of Utah 2016, Chapter 18)
- 4-32-106, (Renumbered from 4-32-4, as last amended by Laws of Utah 2011, Chapter 383)
- 4-32-107, (Renumbered from 4-32-5, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-108, (Renumbered from 4-32-6, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-109, (Renumbered from 4-32-7, as last amended by Laws of Utah 2016, Chapter 18)
- 4-32-110, (Renumbered from 4-32-8, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-111, (Renumbered from 4-32-9, as last amended by Laws of Utah 1997, Chapter 296)
- 4-32-112, (Renumbered from 4-32-10, as last amended by Laws of Utah 1987, Chapter 161)
- 4-32-113, (Renumbered from 4-32-11, as last amended by Laws of Utah 2014, Chapter 189)
- 4-32-114, (Renumbered from 4-32-12, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-115, (Renumbered from 4-32-13, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-116, (Renumbered from 4-32-14, as last amended by Laws of Utah 1997, Chapter 289)
- 4-32-117, (Renumbered from 4-32-15, as enacted by Laws of Utah 1979, Chapter 2)
- 4-32-118, (Renumbered from 4-32-16, as last amended by Laws of Utah 2010, Chapters 242 and 378)
- 4-32-119, (Renumbered from 4-32-17, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-120, (Renumbered from 4-32-18, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-121, (Renumbered from 4-32-20, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-122, (Renumbered from 4-32-21, as last amended by Laws of Utah 2010, Chapter 242)
- 4-32-123, (Renumbered from 4-32-22, as last amended by Laws of Utah 2010, Chapters 242 and 378)
- 4-33-101, (Renumbered from 4-33-1, as enacted by Laws of Utah 1981, Chapter 8)
- 4-33-102, (Renumbered from 4-33-2, as enacted by Laws of Utah 1981, Chapter 8)
- 4-33-103, (Renumbered from 4-33-3, as enacted by Laws of Utah 1981, Chapter 8)
- 4-33-104, (Renumbered from 4-33-4, as last amended by Laws of Utah 2008, Chapter 382)
- 4-33-105, (Renumbered from 4-33-5, as enacted by Laws of Utah 1981, Chapter 8)
- 4-33-106, (Renumbered from 4-33-6, as enacted by Laws of Utah 1981, Chapter 8)
- 4-33-107, (Renumbered from 4-33-7, as enacted by Laws of Utah 1981, Chapter 8)
- 4-33-108, (Renumbered from 4-33-8, as last amended by Laws of Utah 2002, Chapter 9)
- 4-33-109, (Renumbered from 4-33-9, as enacted by Laws of Utah 1981, Chapter 8)

4-33-110, (Renumbered from 4-33-10, as enacted by Laws of Utah 1981, Chapter 8)

4-34-102, (Renumbered from 4-34-1, as enacted by Laws of Utah 1981, Chapter 70)

4-34-103, (Renumbered from 4-34-2, as enacted by Laws of Utah 1981, Chapter 70)

4-34-104, (Renumbered from 4-34-3, as enacted by Laws of Utah 1981, Chapter 70)

4-34-105, (Renumbered from 4-34-4, as enacted by Laws of Utah 1981, Chapter 70)

4-34-106, (Renumbered from 4-34-5, as enacted by Laws of Utah 1981, Chapter 70)

4-34-107, (Renumbered from 4-34-6, as last amended by Laws of Utah 1990, Chapter 157)

4-35-101, (Renumbered from 4-35-1, as enacted by Laws of Utah 1985, Chapter 133)

4-35-102, (Renumbered from 4-35-2, as last amended by Laws of Utah 1997, Chapter 82)

4-35-103, (Renumbered from 4-35-3, as last amended by Laws of Utah 2010, Chapter 286)

4-35-104, (Renumbered from 4-35-4, as last amended by Laws of Utah 2002, Chapter 132)

4-35-105, (Renumbered from 4-35-5, as enacted by Laws of Utah 1985, Chapter 133)

4-35-106, (Renumbered from 4-35-6, as last amended by Laws of Utah 2010, Chapter 391)

4-35-107, (Renumbered from 4-35-7, as last amended by Laws of Utah 2010, Chapter 378)

4-35-108, (Renumbered from 4-35-8, as enacted by Laws of Utah 1985, Chapter 133)

4-35-109, (Renumbered from 4-35-9, as enacted by Laws of Utah 1985, Chapter 133)

4-38-101, (Renumbered from 4-38-1, as enacted by Laws of Utah 1992, Chapter 296)

4-38-102, (Renumbered from 4-38-2, as last amended by Laws of Utah 1993, Chapter 64)

4-38-103, (Renumbered from 4-38-3, as last amended by Laws of Utah 2016, Chapter 19)

4-38-104, (Renumbered from 4-38-4, as last amended by Laws of Utah 2008, Chapter 382)

4-38-105, (Renumbered from 4-38-5, as enacted by Laws of Utah 1992, Chapter 296)

4-38-106, (Renumbered from 4-38-6, as last amended by Laws of Utah 2008, Chapter 382)

4-38-201, (Renumbered from 4-38-7, as last amended by Laws of Utah 2007, Chapter 322)

4-38-202, (Renumbered from 4-38-8, as last amended by Laws of Utah 2010, Chapter 324)

4-38-203, (Renumbered from 4-38-10, as last amended by Laws of Utah 1993, Chapter 64)

4-38-301, (Renumbered from 4-38-9, as last amended by Laws of Utah 1993, Chapters 4 and 64)

4-38-302, (Renumbered from 4-38-11, as enacted by Laws of Utah 1992, Chapter 296)

4-38-303, (Renumbered from 4-38-12, as enacted by Laws of Utah 1992, Chapter 296)

4-38-304, (Renumbered from 4-38-15, as enacted by Laws of Utah 1992, Chapter 296)

4-38-401, (Renumbered from 4-38-13, as enacted by Laws of Utah 1992, Chapter 296)

4-38-402, (Renumbered from 4-38-16, as enacted by Laws of Utah 1993, Chapter 64)

4-38-501, (Renumbered from 4-38-14, as last amended by Laws of Utah 2008, Chapter 382)

REPEALS:

4-11-15, as last amended by Laws of Utah 2010, Chapter 73

4-18-109, as enacted by Laws of Utah 2016, Chapter 166

4-25-10, as enacted by Laws of Utah 1979, Chapter 2

4-25-11, as repealed and reenacted by Laws of Utah 1988, Chapter 139

4-31-117, as renumbered and amended by Laws of Utah 2012, Chapter 331

4-36-1, as enacted by Laws of Utah 1985, Chapter 191

4-36-2, as enacted by Laws of Utah 1985, Chapter 191

4-36-3, as last amended by Laws of Utah 1997, Chapter 82

4-36-4, as last amended by Laws of Utah 1997, Chapter 82

4-36-5, as enacted by Laws of Utah 1985, Chapter 191

4-36-6, as enacted by Laws of Utah 1985, Chapter 191

4-36-7, as enacted by Laws of Utah 1985, Chapter 191

Utah Code Sections Affected by Coordination Clause:

4-2-16, Utah Code Annotated 1953

4-2-305, Utah Code Annotated 1953

4-5-9.5, as last amended by Laws of Utah 2008, Chapter 382

4-5-501, Utah Code Annotated 1953

4-10-9, as enacted by Laws of Utah 1979, Chapter 2

4-10-110, Utah Code Annotated 1953

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

Section 1. Section 4-1-101, which is renumbered from Section 4-1-1 is renumbered and amended to read:

TITLE 4. UTAH AGRICULTURAL CODE**[4-1-1]. 4-1-101. Title.**

This title [~~shall be~~] is known [~~and may be cited~~] as the "Utah Agricultural Code."

Section 2. Section 4-1-102, which is renumbered from Section 4-1-2 is renumbered and amended to read:

[4-1-2]. 4-1-102. Construction.

This [code] title shall be liberally construed and applied to promote and [effectuate] carry out its policies and purposes.

Section 3. Section 4-1-103, which is renumbered from Section 4-1-3 is renumbered and amended to read:

[4-1-3]. 4-1-103. Principles of law and equity applicable.

Unless displaced by the particular provisions of this code, the principles of law and equity supplement [its] the provisions of this title.

Section 4. Section 4-1-104, which is renumbered from Section 4-1-3.5 is renumbered and amended to read:

[4-1-3.5]. 4-1-104. Procedures -- Adjudicative proceedings.

The Department of Agriculture and Food and [its] the department's divisions shall comply with [the procedures and requirements of] Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Section 5. Section 4-1-105, which is renumbered from Section 4-1-4 is renumbered and amended to read:

[4-1-4]. 4-1-105. Code enforcement -- Inspection authorized -- Condemnation or seizure -- Injunctive relief -- Costs awarded -- County or district attorney to represent state -- Criminal actions -- Witness fee.

(1) To enforce a provision in this title, the department may:

(a) enter, at reasonable times, and inspect a public or private premises where an agricultural product is located; and

(b) obtain a sample of an agricultural product at no charge to the department, unless otherwise specified in this title.

(2) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry to the premises to inspect or obtain a sample.

(3) (a) The department is authorized in a court of competent jurisdiction to:

(i) seek an order of seizure or condemnation of an agricultural product that violates this title; or

(ii) upon proper grounds, obtain a temporary restraining order or temporary or permanent injunction to prevent violation of this title.

(b) The court may not require a bond of the department in an injunctive proceeding brought under this section.

(4) (a) If the court orders condemnation, the department shall dispose of the agricultural product as the court directs.

(b) The court may not order condemnation without giving the claimant of the agricultural product an opportunity to apply to the court for permission to:

(i) bring the agricultural product into conformance; or

(ii) remove the agricultural product from the state.

(5) If the department prevails in an action authorized by Subsection (3)(a), the court shall award court costs, fees, storage, and other costs to the department.

(6) (a) Unless otherwise specifically provided by this title, the county attorney of the county in which the product is located or the act is committed shall represent the department in an action commenced under authority of this section.

(b) The attorney general shall represent the department in an action to enforce:

(i) Chapter 3, Utah Dairy Act; or

(ii) Chapter 5, Utah Wholesome Food Act.

(7) (a) In a criminal action brought by the department for violation of this title, the county attorney or district attorney in the county in which the alleged criminal activity occurs shall represent the state.

(b) Before the department pursues a criminal action, the department shall first give to the person [it] the department intends to have charged:

(i) written notice of [its] the department's intent to file criminal charges; and

(ii) an opportunity to present, personally or through counsel, the person's views with respect to the contemplated action.

(8) A witness subpoenaed by the department for whatever purpose is entitled to:

(a) a witness fee for each day of required attendance at a proceeding initiated by the department; and

(b) mileage in accordance with the fees and mileage allowed a witness appearing in a district court of this state.

Section 6. Section 4-1-106, which is renumbered from Section 4-1-5 is renumbered and amended to read:

[4-1-5]. 4-1-106. Suspension or revocation of license or registration -- Judicial review -- Attorney general to represent department.

(1) If the department has reason to believe that a licensee or registrant is or has engaged in conduct that violates this title, [it] the department shall issue and serve a notice of agency action.

(2) The commissioner, or the hearing officer designated by the commissioner, may suspend or revoke a person's license or registration if the commissioner or hearing officer finds by a preponderance of the evidence that the person is

engaging, or has engaged, in conduct that violates this title.

(3) (a) Any person whose registration or license is suspended or revoked under this section may obtain judicial review.

(b) Venue for judicial review of informal adjudicative proceedings is in the district court in the county where the alleged acts giving rise to the suspension or revocation occurred.

(4) The attorney general shall represent the department in any original action or appeal commenced under this section.

Section 7. Section 4-1-107, which is renumbered from Section 4-1-6 is renumbered and amended to read:

[4-1-6]. 4-1-107. Fees and late charges.

(1) If an annual registration, license, or other fee is imposed under any chapter of this [eode] title, it shall be determined by the department pursuant to Subsection [4-2-2] 4-2-103(2).

(2) If the renewal of the registration or license is conditioned[~~, among other things,~~] upon the payment of a renewal fee on or before a specified date, the department shall charge and collect the renewal fee and a late fee on any license or registration [which] that is renewed after the date specified for renewal in the applicable chapter.

(3) The renewal fee and late fee shall be determined by the department pursuant to Subsection [4-2-2] 4-2-103(2).

Section 8. Section 4-1-108, which is renumbered from Section 4-1-7 is renumbered and amended to read:

[4-1-7]. 4-1-108. Severability clause.

If any provision of this [eode] title, or the application of any [such] provision to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this [eode] [which] title that can be given effect without the invalid provision or application, and to this end the provisions of this [eode] title are declared to be severable.

Section 9. Section 4-1-109, which is renumbered from Section 4-1-8 is renumbered and amended to read:

[4-1-8]. 4-1-109. General definitions.

[Subject to additional definitions contained in the chapters of this title which are applicable to specific chapters, as]

As used in this title:

(2) (1) “Agricultural product” or “product of agriculture” means any product [which] that is derived from agriculture, including any product derived from aquaculture as defined in Section 4-37-103.

(4) (2) “Agriculture” means the science and art of the production of plants and animals useful to man, including the preparation of plants and

animals for human use and disposal by marketing or otherwise.

(3) “Commissioner” means the commissioner of agriculture and food.

(4) “Department” means the Department of Agriculture and Food created in Chapter 2, Department - State Chemist - Enforcement.

(5) “Dietary supplement” [has the meaning] means the same as that term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(6) “Livestock” means cattle, sheep, goats, swine, horses, mules, poultry, domesticated elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.

(7) “Organization” means a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(8) “Person” means a natural person or individual, corporation, organization, or other legal entity.

Section 10. Section 4-1-110, which is renumbered from Section 4-1-9 is renumbered and amended to read:

[4-1-9]. 4-1-110. Growing or storing food for personal or family use.

(1) As used in this section, “family food” means food owned by an individual that is intended for the individual’s consumption, or for consumption by members of the individual’s immediate family, that:

- (a) is legal for human consumption;
- (b) is lawfully possessed; and
- (c) poses no risk:
 - (i) to health;
 - (ii) of spreading insect infestation; or
 - (iii) of spreading agricultural disease.

(2) Family food that is grown by an individual on the individual’s property is not subject to local or federal regulation if growth of the family food:

- (a) does not negatively impact the rights of adjoining property owners; and
- (b) complies with the food safety requirements of this title.

(3) A government entity may not confiscate family food described in Subsection (2) or family food that is stored by the owner in the owner’s home or dwelling.

(4) (a) If any provision of this section or the application of any provision of this section to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this section shall be given effect without the invalid provision or application.

- (b) The provisions of this section are severable.

Section 11. Section 4-2-101 is enacted to read:

CHAPTER 2. ADMINISTRATION

Part 1. Organization

4-2-101. Title.

This chapter is known as "Administration."

Section 12. Section 4-2-102, which is renumbered from Section 4-2-1 is renumbered and amended to read:

[4-2-1]. 4-2-102. Department created.

(1) There is ~~hereby~~ created within state government the Department of Agriculture and Food ~~which~~.

(2) The department created in Subsection (1) is responsible ~~in this state~~ for the administration and enforcement of all laws, services, functions, and consumer programs related to agriculture in this state as assigned to the department by the Legislature.

Section 13. Section 4-2-103, which is renumbered from Section 4-2-2 is renumbered and amended to read:

[4-2-2]. 4-2-103. Functions, powers, and duties of department -- Fees for services -- Marketing orders -- Procedure -- Purchasing and auditing.

(1) The department shall:

(a) inquire into and promote the interests and products of agriculture and ~~its~~ allied industries;

(b) promote methods for increasing the production and facilitating the distribution of the agricultural products of the state;

(c) (i) inquire into the cause of contagious, infectious, and communicable diseases among livestock and the means for their prevention and cure; and

(ii) initiate, implement, and administer plans and programs to prevent the spread of diseases among livestock;

(d) encourage experiments designed to determine the best means and methods for the control of diseases among domestic and wild animals;

(e) issue marketing orders for any designated agricultural product to:

(i) promote orderly market conditions for any product;

(ii) give the producer a fair return on the producer's investment at the marketplace; and

(iii) only promote and not restrict or restrain the marketing of Utah agricultural commodities;

(f) administer and enforce all laws assigned to the department by the Legislature;

(g) establish standards and grades for agricultural products and fix and collect reasonable

fees for services performed by the department in conjunction with the grading of agricultural products;

(h) establish operational standards for any establishment that manufactures, processes, produces, distributes, stores, sells, or offers for sale any agricultural product;

(i) adopt, according to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, rules necessary for the effective administration of the agricultural laws of the state;

(j) when necessary, make investigations, subpoena witnesses and records, conduct hearings, issue orders, and make recommendations concerning all matters related to agriculture;

(k) (i) inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any private or public place that may become infested or infested with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests;

(ii) establish and enforce quarantines;

(iii) issue and enforce orders and rules for the control and eradication of pests, wherever they may exist within the state; and

(iv) perform other duties relating to plants and plant products considered advisable and not contrary to law;

(l) inspect apiaries for diseases inimical to bees and beekeeping;

(m) take charge of any agricultural exhibit within the state, if considered necessary by the department, and award premiums at that exhibit;

(n) assist the Conservation Commission in the administration of Title 4, Chapter 18, Conservation Commission Act, and administer and disburse any funds available to assist conservation districts in the state in the conservation of the state's soil and water resources;

(o) participate in the United States Department of Agriculture certified agricultural mediation program, in accordance with 7 U.S.C. Sec. 5101 and 7 C.F.R. Part 785;

(p) promote and support the multiple use of public lands; and

(q) perform any additional functions, powers, and duties provided by law.

(2) The department, by following the procedures and requirements of Section 63J-1-504, may adopt a schedule of fees assessed for services provided by the department.

(3) (a) No marketing order issued under Subsection (1)(e) shall take effect until:

(i) the department gives notice of the proposed order to the producers and handlers of the affected product;

(ii) the commissioner conducts a hearing on the proposed order; and

(iii) at least 50% of the registered producers and handlers of the affected products vote in favor of the proposed order.

(b) (i) The department may establish boards of control to administer marketing orders and the proceeds derived from any order.

(ii) [The] A board of control shall:

(A) ensure that all proceeds are placed in an account in the board of control's name in a depository institution; and

(B) ensure that the account is annually audited by an accountant approved by the commissioner.

(4) Funds collected by grain grading, as provided by Subsection (1)(g), shall be deposited [~~in~~] into the General Fund as dedicated credits for the grain grading program.

(5) In fulfilling its duties in this chapter, the department may:

(a) purchase, as authorized or required by law, services that the department is responsible to provide for legally eligible persons;

(b) take necessary steps, including legal action, to recover money or the monetary value of services provided to a recipient who is not eligible;

(c) examine and audit the expenditures of any public funds provided to a local authority, agency, or organization that contracts with or receives funds from those authorities or agencies; and

(d) accept and administer grants from the federal government and from other sources, public or private.

Section 14. Section 4-2-104, which is renumbered from Section 4-2-3 is renumbered and amended to read:

[4-2-3]. 4-2-104. Administration by commissioner.

(1) Administration of the department is under the direction, control, and management of a commissioner appointed by the governor with the consent of the Senate.

(2) The commissioner shall serve at the pleasure of the governor.

(3) The governor shall establish the commissioner's compensation within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

Section 15. Section 4-2-105, which is renumbered from Section 4-2-4 is renumbered and amended to read:

[4-2-4]. 4-2-105. Organization of divisions within department.

The commissioner shall organize the department into divisions, as necessary, for the efficient administration of the department's business.

Section 16. Section 4-2-106, which is renumbered from Section 4-2-5 is renumbered and amended to read:

[4-2-5]. 4-2-106. Submission of department's budget.

(1) The commissioner, [~~on or before October 1 of each year~~] upon request of the governor, shall submit an itemized budget for the department to the governor.

(2) The proposed budget described in Subsection (1) shall:

(a) contain a complete plan of proposed expenditures and estimated revenues for the ensuing fiscal year; and [~~shall~~]

(b) be accompanied by a statement setting forth the revenues and expenditures for the fiscal year next preceding[,], and the current assets and liabilities of the department, including restricted revenue accounts and dedicated credits.

Section 17. Section 4-2-107, which is renumbered from Section 4-2-6 is renumbered and amended to read:

[4-2-6]. 4-2-107. Official seal -- Authentication of records.

(1) The department shall adopt and use an official seal, a description and impression of which shall be filed with the Division of Archives.

(2) Copies of official department records, documents, and proceedings may be authenticated with the seal attested by the commissioner.

Section 18. Section 4-2-108, which is renumbered from Section 4-2-7 is renumbered and amended to read:

[4-2-7]. 4-2-108. Agricultural Advisory Board created -- Composition -- Responsibility -- Terms of office -- Compensation.

(1) There is created the Agricultural Advisory Board composed of 21 members, with each member representing one of the following:

- (a) Utah Farm Bureau Federation;
- (b) Utah Farmers Union;
- (c) Utah Cattlemen's Association;
- (d) Utah Wool Growers[?] Association;
- (e) Utah Dairymen's Association;
- (f) Utah Pork [~~Producer's~~] Producers Association;
- (g) egg and poultry producers;
- (h) Utah Veterinary Medical Association;
- (i) Livestock Auction Marketing Association;
- (j) Utah Association of Conservation Districts;
- (k) the Utah horse industry;
- (l) the food processing industry;
- (m) the fruit and vegetable industry;
- (n) the turkey industry;

- (o) manufacturers of food supplements;
 - (p) a consumer affairs group;
 - (q) dean of the College of Agriculture and Applied Science and vice president of extension from Utah State University;
 - (r) urban and small farmers;
 - (s) Utah Elk Breeders Association;
 - (t) Utah Beekeepers Association; and
 - (u) Utah Fur Breeders Association.
- (2) (a) The Agricultural Advisory Board shall advise the commissioner regarding:
- (i) the planning, implementation, and administration of the department's programs; and
 - (ii) the establishment of standards governing the care of livestock and poultry, including consideration of:
 - (A) food safety;
 - (B) local availability and affordability of food; and
 - (C) acceptable practices for livestock and farm management.
- (b) The Agricultural Advisory Board shall fulfill the duties described in Title 4, Chapter 2, Part 5, Horse Tripping Awareness.
- (3) (a) Except as required by Subsection (3)(c), members are appointed by the commissioner to four-year terms of office.
- (b) The commissioner shall appoint representatives of the organizations cited in Subsections (1)(a) through (h) to the Agricultural Advisory Board from a list of nominees submitted by each organization.
- (c) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (d) Members may be removed at the discretion of the commissioner upon the request of the group they represent.
- (e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (4) The board shall elect one member to serve as chair of the Agricultural Advisory Board for a term of one year.
- (5) (a) The board shall meet four times annually, but may meet more often at the discretion of the chair.
- (b) Attendance of 11 members at a duly called meeting constitutes a quorum for the transaction of official business.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 19. Section 4-2-109, which is renumbered from Section 4-2-8 is renumbered and amended to read:

[4-2-8]. 4-2-109. Temporary advisory committees -- Appointment -- Compensation.

(1) The commissioner, with the permission of the governor, may appoint other advisory committees on a temporary basis to offer technical advice to the department.

(2) A member of a committee serves at the pleasure of the commissioner.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 20. Section 4-2-201, which is renumbered from Section 4-2-9 is renumbered and amended to read:

Part 2. State Chemist

[4-2-9]. 4-2-201. Appointment of the state chemist.

The commissioner shall appoint a state chemist [~~shall be appointed by the commissioner~~].

Section 21. Section 4-2-202, which is renumbered from Section 4-2-10 is renumbered and amended to read:

[4-2-10]. 4-2-202. State chemist responsibilities.

(1) The state chemist shall:

(a) serve as the chief administrative officer of the Division of Laboratories; and

(b) supervise and administer all analytical tests required to be performed under this title or under any rule [~~authorized by it~~] adopted under this title.

(2) The state chemist may perform analytical tests for other state agencies, federal agencies, units of local government, and private persons if:

(a) the tests and analytical work do not interfere with, or impede, the work required by the department; and

(b) a charge commensurate with the work involved is made and collected.

(3) The state chemist shall perform any other official duties assigned by the commissioner.

Section 22. Section 4-2-301, which is renumbered from Section 4-2-11 is renumbered and amended to read:

Part 3. Enforcement and Penalties

[4-2-11]. 4-2-301. Attorney general legal advisor for department -- County or district attorney may bring action upon request of department for violations of title.

(1) The attorney general is the legal advisor for the department and shall defend the department and ~~its~~ the department's representatives in all actions and proceedings brought against ~~it~~ the department.

(2) ~~(a)~~ The county attorney or the district attorney, as provided under Sections 17-18a-202 and 17-18a-203, of the county in which a cause of action arises or a public offense occurs may bring civil or criminal action, upon request of the department, to enforce the laws, standards, orders, and rules of the department or to prosecute violations of this title.

~~(b)~~ If the county attorney or district attorney fails to act, the department may request the attorney general to bring an action on behalf of the department.

Section 23. Section 4-2-302, which is renumbered from Section 4-2-12 is renumbered and amended to read:

[4-2-12]. 4-2-302. Notice of violation -- Order for corrective action.

(1) Whenever the department determines that any person, or any officer or employee of any person, is violating any requirement of this title or rules adopted under this title, the department shall serve written notice upon the alleged violator ~~which~~ that specifies the violation and alleges the facts constituting the violation.

(2) After serving notice as required in Subsection (1), the department may:

~~(a)~~ issue an order for necessary corrective action; and

~~(b)~~ request the attorney general ~~or the~~, county attorney, or ~~the~~ district attorney to seek injunctive relief and enforcement of the order as provided in Subsection ~~[4-2-11]~~ 4-2-301(2).

Section 24. Section 4-2-303, which is renumbered from Section 4-2-14 is renumbered and amended to read:

[4-2-14]. 4-2-303. Violations of title unlawful.

It is unlawful for any person, or the ~~officers or employees~~ officer or employee of any person, to willfully violate, disobey, or disregard this title or any notice or order issued under this title.

Section 25. Section 4-2-304, which is renumbered from Section 4-2-15 is renumbered and amended to read:

[4-2-15]. 4-2-304. Civil and criminal penalties -- Costs -- Civil liability.

(1) ~~(a)~~ Except as otherwise provided by this title, any person, or the ~~officers or employees~~ officer or employee of any person, who violates this title or any lawful notice or order issued pursuant to this title shall be assessed a penalty not to exceed \$5,000 per violation in a civil proceeding, and ~~is guilty of a class B misdemeanor in a criminal proceeding~~ [is guilty of a class B misdemeanor].

~~(b)~~ A subsequent criminal violation within two years is a class A misdemeanor.

(2) Any person, or the ~~officers or employees~~ officer or employee of any person, shall be liable for any expenses incurred by the department in abating any violation of this title.

(3) A penalty assessment or criminal conviction under this title does not relieve the person assessed or convicted from civil liability for claims arising out of any act ~~which~~ that was also a violation.

Section 26. Section 4-2-401 is amended to read:

Part 4. State Veterinarian

4-2-401. Appointment.

The commissioner shall appoint a state veterinarian ~~[shall be appointed by the commissioner]~~.

Section 27. Section 4-2-402 is amended to read:

4-2-402. State veterinarian responsibilities.

(1) The state veterinarian shall:

(a) coordinate the department's responsibilities for:

(i) the promotion of animal health; and

(ii) the diagnosis, surveillance, and prevention of animal disease~~[-and]~~.

~~[(iii) livestock brand registration and inspection;]~~

(b) aid the meat inspection manager, whose duties are specified by the commissioner, in the direction of the inspection of meat and poultry; and

(c) perform other official duties assigned by the commissioner.

(2) The state veterinarian may not receive compensation for services provided while engaging in the private practice of veterinary medicine.

(3) The state veterinarian shall be a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act.

Section 28. Section 4-2-502 is amended to read:

4-2-502. Definitions.

As used in this part:

(1) "Board" means the Agricultural Advisory Board created in Section ~~[4-2-7]~~ 4-2-108.

(2) "Horse event" means an event in which horses are roped or tripped for the purpose of a specific event or contest.

(3) (a) "Horse tripping" means the lassoing or roping of the legs of an equine, or otherwise tripping or causing an equine to fall by any means, for the purpose of entertainment, sport, or contest, or practice for entertainment, sport, or contest.

(b) "Horse tripping" does not include accepted animal husbandry practices, customary farming practices, or commonly accepted practices occurring in conjunction with a sanctioned rodeo, animal race, or pulling contest.

Section 29. Section 4-2-503 is amended to read:

4-2-503. Event reporting requirements.

(1) The owner of a venue holding a horse event shall:

(a) at least 30 days before the day on which the horse event is to be held, notify the board of the date, time, and name of the horse event; and

(b) no later than 30 days after the day on which the horse event is held, notify the board of:

(i) the number and type of competitions held at the horse event;

(ii) the number of horses used;

(iii) whether horse tripping occurred, and if so how many horses were used in horse tripping and how many times each horse was tripped; and

(iv) whether a veterinarian was called during the horse event, and if so:

(A) the name and contact information of the veterinarian;

(B) the outcome of the veterinarian's examination of a horse; and

(C) all veterinarian charges incurred.

(2) (a) The department shall compile all reports received pursuant to Subsection (1) and provide the information to the board.

(b) The board shall, at a meeting described in Subsection ~~[4-2-7]~~ 4-2-108(5)(a):

(i) review the information described in Subsection (2)(a); and

(ii) if necessary, make recommendations for rules or legislation designed to prohibit horse tripping.

(3) The department shall fine the owner of a venue that fails to fulfill the duties described in Subsection (1) \$500 per violation.

(4) The department, in consultation with the board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to enforce this part.

Section 30. Section 4-2-504 is amended to read:

4-2-504. Horse tripping education -- Reporting requirements.

~~[(1)]~~ The department, in conjunction with the board, shall:

~~[(a)]~~ (1) send a letter, annually, to venues that host horse events:

~~[(i)]~~ (a) outlining the reporting requirements of Section 4-2-503; and

~~[(ii)]~~ (b) providing educational information on the negative effects of horse tripping; and

~~[(b)]~~ (2) promote, as funding allows, policies regarding the safety and welfare of horses involved in horse events, such as horse roping and horse tripping.

~~[(2)]~~ The department and the board shall, by November 30, 2015, report to the Natural Resources, Agriculture, and Environment Interim Committee about:

~~[(a)]~~ reported incidents of horse tripping;

~~[(b)]~~ any recommendations made by the board pursuant to Subsection 4-2-503(2)(b); and

~~[(c)]~~ the progress made in educating the public under Subsection (1).

Section 31. Section 4-3-101 is enacted to read:

CHAPTER 3. UTAH DAIRY ACT

Part 1. Organization

4-3-101. Title.

This chapter is known as the "Utah Dairy Act."

Section 32. Section 4-3-102, which is renumbered from Section 4-3-1 is renumbered and amended to read:

~~[4-3-1].~~ 4-3-102. Definitions.

As used in this chapter:

(1) "Adulterated" means any dairy product that:

(a) contains any poisonous or deleterious substance that may render it injurious to health;

(b) has been produced, prepared, packaged, or held:

(i) under unsanitary conditions;

(ii) where it may have become contaminated; or

(iii) where it may have become diseased or injurious to health;

(c) contains any food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348;

(d) contains:

(i) any filthy, putrid, or decomposed substance;

(ii) fresh fluid milk with a lactic acid level at or above .0018; or

(iii) cream with a lactic acid level at or above .008 or that is otherwise unfit for human food;

- (e) is the product of:
- (i) a diseased animal;
 - (ii) an animal that died otherwise than by slaughter; or
 - (iii) an animal fed upon uncooked offal;
- (f) has intentionally been subjected to radiation, unless the use of the radiation is in conformity with a rule or exemption promulgated by the department; or
- (g) (i) has any valuable constituent omitted or abstracted;
- (ii) has any substance substituted in whole or in part;
 - (iii) has damage or inferiority concealed in any manner; or
 - (iv) has any substance added, mixed, or packed with the product to:
 - (A) increase its bulk or weight;
 - (B) reduce its quality or strength; or
 - (C) make it appear better or of greater value.
- (2) "Cow-share program" means a program in which a person acquires an undivided interest in a milk producing hooved mammal through an agreement with a producer that includes:
- (a) a bill of sale for an interest in the mammal;
 - (b) a boarding arrangement under which the person boards the mammal with the producer for the care and milking of the mammal and the boarding arrangement and bill of sale documents remain with the program operator;
 - (c) an arrangement under which the person receives raw milk for personal use not to be sold or distributed in a retail environment or for profit; and
 - (d) no more than two cows, 10 goats, and 10 sheep per farm in the program.
- (3) "Dairy product" means any product derived from raw or pasteurized milk.
- (4) "Distributor" means any person who distributes a dairy product.
- (5) (a) "Filled milk" means any milk, cream, or skimmed milk, whether condensed, evaporated, concentrated, powdered, dried, or desiccated, that has fat or oil other than milk fat added, blended, or compounded with it so that the resultant product is an imitation or semblance of milk, cream, or skimmed milk.
- (b) "Filled milk" does not include any distinctive proprietary food compound:
 - (i) that is prepared and designated for feeding infants and young children, which is customarily used upon the order of a licensed physician;
 - (ii) whose product name and label does not contain the word "milk"; and
 - (iii) whose label conforms with the food labeling requirements.
- (6) "Frozen dairy products" mean dairy products normally served to the consumer in a frozen or semifrozen state.
- (7) "Grade A milk," "grade A milk products," and "milk" have the same meaning that is accorded the terms in the federal standards for grade A milk and grade A milk products unless modified by rules of the department.
- (8) "License" means a document allowing a person or plant to process, manufacture, supply, test, haul, or pasteurize milk or milk products or conduct other activity specified by the license.
- (9) "Manufacturer" means any person who processes milk in a way that changes the milk's character.
- (10) "Manufacturing milk" means milk used in the production of non-grade A dairy products.
- (11) "Misbranded" means:
- (a) any dairy product whose label is false or misleading in any particular, or whose label or package fails to conform to any federal regulation adopted by the department that pertains to packaging and labeling;
 - (b) any dairy product in final packaged form manufactured in this state that does not bear:
 - (i) the manufacturer's, packer's, or distributor's name, address, and plant number, if applicable;
 - (ii) a clear statement of the product's common or usual name, quantity, and ingredients, if applicable; and
 - (iii) any other information required by rule of the department;
 - (c) any butter in consumer package form that is not at least B grade, or that does not meet the grade claimed on the package, measured by U.S.D.A. butter grade standards;
 - (d) any imitation butter made in whole or in part from material other than wholesome milk or cream, except clearly labeled "margarine";
 - (e) renovated butter unless the words "renovated butter," in letters not less than 1/2-inch in height appear on each package, roll, square, or container of such butter; or
 - (f) any dairy product in final packaged form that makes nutritional claims or adds or adjusts nutrients that are not so labeled.
- (12) "Pasteurization" means any process that renders dairy products practically free of disease organisms and is accepted by federal standards.
- (13) "Permit or certificate" means a document allowing a person to market milk.
- (14) "Plant" means any facility where milk is processed or manufactured.
- (15) "Processor" means any person who subjects milk to a process.

(16) "Producer" means a person who owns a cow or other milk producing hoofed mammal that produces milk for consumption by persons other than the producer's family, employees, or nonpaying guests.

(17) "Raw milk" means unpasteurized milk.

(18) "Renovated butter" means butter that is reduced to a liquid state by melting and drawing off such liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product of milk.

(19) "Retailer" means any person who sells or distributes dairy products directly to the consumer.

Section 33. Section 4-3-201, which is renumbered from Section 4-3-2 is renumbered and amended to read:

Part 2. Rules and Regulations

[4-3-2]. 4-3-201. Title -- Authority to make and enforce rules.

The department is authorized and directed, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce [such] rules [as may in its judgment and discretion be necessary] to carry out the purposes of this chapter.

Section 34. Section 4-3-202, which is renumbered from Section 4-3-3 is renumbered and amended to read:

[4-3-3]. 4-3-202. Authority in local jurisdictions to regulate dairy products -- Department standards to govern -- Department evaluation permitted -- Local notice to cease inspection.

(1) While nothing in this chapter shall impair the authority of any town, city, or county to regulate the production, handling, storage, distribution, or sale of dairy products, frozen dairy products, grade A milk, grade A milk products, or milk, within their respective jurisdictions, a common standard as prescribed by the department shall be followed in such jurisdictions.

(2) If a town, city, or county elects to enforce this chapter, the department shall accept its findings relative to inspections in lieu of making its own inspections, but the department may evaluate the effectiveness of any local inspection program.

(3) If a town, city, or county intends to cease making inspections under this chapter, it shall notify the department of its intent to cease inspection at least one year in advance of the actual cessation of inspection.

(4) Upon request, the commissioner shall cooperate with other state agencies, towns, cities, counties, and federal authorities in the administration and enforcement of this chapter.

Section 35. Section 4-3-203, which is renumbered from Section 4-3-4 is renumbered and amended to read:

[4-3-4]. 4-3-203. Authority to inspect premises.

(1) The department may inspect any premises where dairy products are produced, manufactured, processed, stored, or held for distribution, at reasonable times and places, to determine whether the premises are in compliance with this chapter and the rules adopted according to it.

(2) If the department is denied access, it may proceed immediately to the nearest court of competent jurisdiction to seek an ex parte warrant or its equivalent to permit inspection of the premises.

Section 36. Section 4-3-204, which is renumbered from Section 4-3-5 is renumbered and amended to read:

[4-3-5]. 4-3-204. Authority to collect samples -- Receipt -- Names of distributors.

(1) Samples of dairy products from each dairy farm or processing plant may be secured and examined as often as deemed necessary by the department.

(2) Samples of dairy products from stores, cafes, soda fountains, restaurants, and other places where dairy products are sold may be secured and examined as often as deemed necessary by the department.

(3) Samples of milk or dairy products may be taken by the department at any time before final delivery to the consumer.

(4) The department shall provide a signed receipt for all samples taken showing the date of sampling and the amount and kind of sample taken; provided, that the department is not liable to any person for the cost of any sample taken.

(5) All proprietors of stores, cafes, restaurants, soda fountains, and other similar places shall furnish the department, upon request, with the names of all distributors from whom dairy products are obtained.

Section 37. Section 4-3-205, which is renumbered from Section 4-3-6 is renumbered and amended to read:

[4-3-6]. 4-3-205. Condemnation, embargo, denaturation of unfit milk or dairy products -- Unfit equipment.

(1) The department may condemn or embargo any milk or dairy product which is adulterated, misbranded, or not produced or processed in accordance with this chapter.

(2) The department may condemn the use of any equipment, tank, or container used to produce, process, manufacture, or transport milk or dairy products that it finds, upon inspection, to be unclean or contaminated.

(3) The department may mark or tag any condemned equipment, tank, or container with the

words “this (equipment, tank, or container) is unfit to contain human food.”

(4) Condemned milk shall be decharacterized or denatured with harmless coloring or rennet by the department.

Section 38. Section 4-3-206, which is renumbered from Section 4-3-7 is renumbered and amended to read:

[4-3-7]. 4-3-206. Testing and measuring milk -- Standards prescribed -- Milk quality work in accordance with rules.

(1) Milk shall be tested and measured in accordance with:

(a) the latest edition of “Association of Official Analytical Chemists”;

(b) the latest edition of “Standard Methods for Examination of Dairy Products”;

(c) other publications accepted by the department; or

(d) methods prescribed by the department.

(2) A processor or manufacturer shall perform quality work in accordance with the rules adopted by the department.

Section 39. Section 4-3-301, which is renumbered from Section 4-3-8 is renumbered and amended to read:

Part 3. Licensing Permits

[4-3-8]. 4-3-301. Licenses and permits -- Application -- Fee -- Expiration -- Renewal.

(1) Application for a license to operate a plant, manufacture butter or cheese, pasteurize milk, test milk for payment, haul milk in bulk, or for the wholesale distribution of dairy products shall be made to the department upon forms prescribed and furnished by it.

(2) Upon receipt of a proper application, compliance with all applicable rules, and payment of a license fee determined by the department according to Subsection [4-2-2] 4-2-103(2), the commissioner, if satisfied that the public convenience and necessity and the industry will be served, shall issue an appropriate license to the applicant subject to suspension or revocation for cause.

(3) Each license issued under this section expires at midnight on December 31 of each year.

(4) A license to operate a plant, manufacture butter or cheese, pasteurize milk, test milk for payment, haul milk in bulk, or for the wholesale distribution of dairy products, is renewable for a period of one year upon the payment of an annual license renewal fee determined by the department according to Subsection [4-2-2] 4-2-103(2) on or before December 31 of each year.

(5) Application for a permit or certificate to produce milk shall be made to the department on forms prescribed and furnished by it.

(6) (a) Upon receipt of a proper application and compliance with all applicable rules, the commissioner shall issue a permit entitling the applicant to engage in the business of producer, subject to suspension or revocation for cause.

(b) No fee may be charged by the department for issuance of a permit or certificate.

Section 40. Section 4-3-302, which is renumbered from Section 4-3-9 is renumbered and amended to read:

[4-3-9]. 4-3-302. Licenses, permits, and certificates -- Suspension or revocation -- Grounds.

(1) The department may revoke or suspend the license, permit, or certification of any person who violates this chapter or any rule enacted under the authority of this chapter.

(2) All or part of any license, permit, or certification may be suspended immediately if an emergency exists that presents a clear and present danger to the public health, or if inspection or sampling is refused.

Section 41. Section 4-3-401, which is renumbered from Section 4-3-10 is renumbered and amended to read:

Part 4. Unlawful Acts

[4-3-10]. 4-3-401. Unlawful acts specified.

It is unlawful for any person in this state to:

(1) operate a plant without a license issued by the department;

(2) market milk without a permit or certificate issued by the department;

(3) manufacture butter or cheese, pasteurize milk, test milk for payment, or haul milk in bulk without a special license to perform the particular activity designated in this Subsection (3); unless if more than one person working in a plant is engaged in the performance of a single activity designated in this Subsection (3), the person who directs the activity is licensed;

(4) manufacture, distribute, sell, deliver, hold, store, or offer for sale any adulterated or misbranded dairy product;

(5) manufacture, distribute, sell, deliver, hold, store, or offer for sale any dairy product without a license, permit, or certificate required by this chapter;

(6) sell or offer for sale any milk not intended for human consumption unless it is denatured or decharacterized in accordance with the rules of the department;

(7) manufacture, distribute, sell, or offer for sale any filled milk labeled as milk or as a dairy product;

(8) keep any animals with brucellosis, tuberculosis, or other infectious or contagious

diseases communicable to humans in any place where they may come in contact with cows or other milking animals;

(9) draw milk for human food from cows or other milking animals that are infected with tuberculosis, running sores, communicable diseases, or from animals that are fed feed that will produce milk that is adulterated;

(10) accept or process milk from any producer without verification that the producer holds a valid permit or certification or, if milk is accepted from out of the state, without verification that the producer holds a permit or certification from the appropriate regulatory agency of that state;

(11) use any contaminated or unclean equipment or container to process, manufacture, distribute, deliver, or sell a dairy product;

(12) remove, change, conceal, erase, or obliterate any mark or tag placed upon any equipment, tank, or container by the department except to clean and sanitize it;

(13) use any tank or container used for the transportation of milk or other dairy products that is unclean or contaminated;

(14) refuse to allow the department to take samples for testing; or

(15) prohibit adding vitamin compounds in the processing of milk and dairy products in accordance with rules of the department.

Section 42. Section 4-3-402, which is renumbered from Section 4-3-11 is renumbered and amended to read:

[4-3-11]. 4-3-402. Processors, manufacturers, or distributors -- Unlawful to give money, equipment, or fixtures to retailer or consumer -- Exceptions -- Shelf space for dairy products.

(1) As used in this section:

(a) "liquid dairy product" means a milk container which contains a pint of milk or less; and

(b) "novelty ice cream" means a package or container of ice cream which contains eight fluid ounces or less.

(2) Except as provided in Subsections (3) and (4), no processor, manufacturer, distributor, or his affiliates, subsidiaries, associates, agents or stockholders shall furnish, service, repair, give, lease, sell, or loan to a retailer or consumer any:

(a) money;

(b) equipment;

(c) fixtures, including ice cream cabinets or bulk milk dispensers;

(d) supplies, excluding expendable supplies commonly provided in connection with the sale of dairy products to a consumer; or

(e) other things having a real or substantial value.

(3) (a) Ice cream cabinets may be loaned or sold to a retailer if the ice cream cabinet:

(i) is portable;

(ii) has a storage capacity not exceeding 12 cubic feet; and

(iii) is used solely for retail display sales of novelty ice cream.

(b) Milk coolers may be loaned or sold to a retailer if the milk cooler:

(i) is portable;

(ii) has a storage capacity not exceeding 12 cubic feet; and

(iii) is used solely for retail display sales of liquid dairy products.

(4) The leasing or renting of cabinets, dispensers, or coolers for dairy products for civic affairs, demonstrations, or exhibits is prohibited unless it is for a period of 10 days or less in any one period of three consecutive months.

(5) (a) Except as provided in Subsections (5)(b) and (5)(c), no retailer shall lease, sell, or loan shelf or refrigerator space for dairy products to a processor, manufacturer, or distributor or receive anything of value from a processor, manufacturer, or distributor in exchange for shelf or refrigerator space for dairy products.

(b) Subsection (5)(a) does not apply to a dairy by-product that is:

(i) a short-term special; or

(ii) a new product being introduced on a trial basis for a period not to exceed 45 days.

(c) A processor, manufacturer, or distributor may loan or sell an ice cream cabinet or milk cooler to a retailer for the display of the processor's, manufacturer's, or distributor's products, if the ice cream cabinet or milk cooler meets the requirements of Subsection (3).

Section 43. Section 4-3-403, which is renumbered from Section 4-3-12 is renumbered and amended to read:

[4-3-12]. 4-3-403. Injunctions -- Bond not required -- Standing to maintain private action -- Damages authorized.

(1) (a) The commissioner is authorized to apply to any court of competent jurisdiction for a temporary restraining order or injunction restraining any person from violating this chapter.

(b) No bond shall be required of the department in any proceeding brought under this subsection.

(2) (a) In addition to penalties provided in this chapter, any person who suffers or is threatened with injury from any existing or threatened violation of Section [4-3-11] 4-3-402 may commence an action in any court of competent jurisdiction for damages and, if proper, injunctive relief.

(b) Any organized and existing trade association, whether incorporated or not, is authorized to

institute and prosecute a suit for injunctive relief and damages, as the real party in interest, on behalf of one or more of its members if the violation of Section [4-3-11] 4-3-402 directly or indirectly affects a member.

Section 44. Section 4-3-501, which is renumbered from Section 4-3-1.3 is renumbered and amended to read:

Part 5. Special Programs

[4-3-1.3]. 4-3-501. Cow share program notification.

(1) A producer who is in a cow-share program, as defined in Section [4-3-1] 4-3-102, shall notify the department of the cow-share program and include in the notification:

- (a) the producer's name; and
- (b) a valid, current address of the farm on which the milk producing hoofed mammal in the cow-share program is located.

(2) Upon receipt, the department shall keep a notification of a cow-share program described in Subsection (1) on file.

Section 45. Section 4-3-502, which is renumbered from Section 4-3-13 is renumbered and amended to read:

[4-3-13]. 4-3-502. Exemption.

(1) This chapter does not apply to milk or milk products produced on the farm if such milk or milk products are used by:

- (a) the owner of the farm;
- (b) a member of the owner's immediate family;
- (c) a participant in a cow-share program; or
- (d) a member of a participant in a cow-share program's immediate family.

(2) The department may not adopt a rule that restricts, limits, or imposes additional requirements on an individual obtaining:

- (a) raw milk in accordance with the terms of a cow-share program agreement; or
- (b) an interest in a cow-share program in accordance with the terms of the cow-share program agreement.

Section 46. Section 4-3-503, which is renumbered from Section 4-3-14 is renumbered and amended to read:

[4-3-14]. 4-3-503. Sale of raw milk -- Suspension of producer's permit -- Severability not permitted.

- (1) As used in this section:
 - (a) "Batch" means all the milk emptied from one bulk tank and bottled in a single day.
 - (b) "Self-owned retail store" means a retail store:

- (i) of which the producer owns at least 51% of the value of the real property and tangible personal property used in the operations of the retail store; or

- (ii) for which the producer has the power to vote at least 51% of any class of voting shares or ownership interest in the business entity that operates the retail store.

(2) Raw milk may be manufactured, distributed, sold, delivered, held, stored, or offered for sale if:

- (a) the producer obtains a permit from the department to produce milk under Subsection [4-3-8] 4-3-301(5);

- (b) the sale and delivery of the milk is made upon the premises where the milk is produced, except as provided by Subsection (3);

- (c) the raw milk is sold to consumers for household use and not for resale;

- (d) the raw milk is bottled or packaged under sanitary conditions and in sanitary containers on the premises where the raw milk is produced;

- (e) the raw milk is labeled "raw milk" and meets the labeling requirements under 21 C.F.R. Parts 101 and 131 and rules established by the department;

- (f) the raw milk is:
 - (i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being drawn from the animal;
 - (ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the animal; and
 - (iii) maintained at 41 degrees Fahrenheit or a lower temperature until the raw milk is delivered to the consumer;

- (g) the bacterial count of the raw milk does not exceed 20,000 colony forming units per milliliter;

- (h) the coliform count of the raw milk does not exceed 10 colony forming units per milliliter;

- (i) the production of the raw milk conforms to departmental rules for the production of grade A milk;

- (j) all dairy animals on the premises are:
 - (i) permanently and individually identifiable; and
 - (ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and

- (k) any person on the premises performing any work in connection with the production, bottling, handling, or sale of the raw milk is free from communicable disease.

(3) A producer may distribute, sell, deliver, hold, store, or offer for sale raw milk at a self-owned retail store, which is properly staffed, if, in addition to the requirements of Subsection (2), the producer:

- (a) transports the raw milk from the premises where the raw milk is produced to the self-owned

retail store in a refrigerated truck where the raw milk is maintained at 41 degrees Fahrenheit or a lower temperature;

(b) retains ownership of the raw milk until it is sold to the final consumer, including transporting the raw milk from the premises where the raw milk is produced to the self-owned retail store without any:

- (i) intervening storage;
- (ii) change of ownership; or
- (iii) loss of physical control;

(c) stores the raw milk at 41 degrees Fahrenheit or a lower temperature in a display case equipped with a properly calibrated thermometer at the self-owned retail store;

(d) places a sign above each display case that contains raw milk at the self-owned retail store that:

- (i) is prominent;
- (ii) is easily readable by a consumer;
- (iii) reads in print that is no smaller than .5 inches in bold type, "This milk is raw and unpasteurized. Please keep refrigerated"; and
- (iv) meets any other requirement established by the department by rule;

(e) labels the raw milk with:

(i) a date, no more than nine days after the raw milk is produced, by which the raw milk should be sold;

(ii) the statement "Raw milk, no matter how carefully produced, may be unsafe.";

(iii) handling instructions to preserve quality and avoid contamination or spoilage;

(iv) by January 1, 2017, a specific colored label as determined by the department by rule; and

(v) any other information required by rule;

(f) refrains from offering the raw milk for sale until:

(i) the department or a third party certified by the department tests each batch of raw milk for standard plate count and coliform count; and

(ii) the test results meet the minimum standards established for those tests;

(g) (i) maintains a database of the raw milk sales; and

(ii) makes the database available to the Department of Health during the self-owned retail store's business hours for purposes of epidemiological investigation;

(h) ensures that the plant and retail store complies with [Title 4,] Chapter 5, Utah Wholesome Food Act, and the rules governing food establishments enacted under Section [4-5-9] 4-5-401; and

(i) complies with all applicable rules adopted as authorized by this chapter.

(4) A producer may distribute, sell, deliver, hold, store, or offer for sale raw milk and pasteurized milk at the same self-owned retail store if:

(a) the self-owned retail store is properly staffed; and

(b) the producer:

(i) meets the requirements of Subsections (2) and (3);

(ii) operates the self-owned retail store on the same property where the raw milk is produced; and

(iii) maintains separate, labeled, refrigerated display cases for raw milk and pasteurized milk.

(5) A person who conducts a test required by Subsection (3) shall send a copy of the test results to the department as soon as the test results are available.

(6) (a) The department shall adopt rules, as authorized by Section [4-3-2] 4-3-201, governing the sale of raw milk at a self-owned retail store.

(b) The rules adopted by the department shall include rules regarding:

(i) permits;

(ii) building and premises requirements;

(iii) sanitation and operating requirements, including bulk milk tanks requirements;

(iv) additional tests;

(v) frequency of inspections, including random cooler checks;

(vi) recordkeeping; and

(vii) packaging and labeling.

(c) (i) The department shall establish and collect a fee for the tests and inspections required by this section and by rule in accordance with Section 63J-1-504.

(ii) Notwithstanding Section 63J-1-504, the department shall retain the fees as dedicated credits and may only use the fees to administer and enforce this section.

(7) (a) The department shall suspend a permit issued under Section [4-3-8] 4-3-301 if:

(i) two out of four consecutive samples or two samples in a 30-day period violate sample limits established under this section; or

(ii) a producer violates a provision of this section or a rule adopted as authorized by this section.

(b) The department may reissue a permit that has been suspended under Subsection (7)(a) if the producer has complied with all of the requirements of this section and rules adopted as authorized by this section.

[~~(8) For 2014 and 2015, the Department of Health and the Department of Agriculture and Food shall~~

report on or before November 30th to the Natural Resources, Agriculture, and Environment Interim Committee on any health problems resulting from the sale of raw whole milk at self-owned retail stores.]

[~~(9)~~] (8) (a) If any subsection of this section or the application of any subsection to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of the section may not be given effect without the invalid subsection or application.

(b) The provisions of this section may not be severed.

Section 47. Section 4-4-101, which is renumbered from Section 4-4-1 is renumbered and amended to read:

CHAPTER 4. EGGS

[4-4-1]. 4-4-101. Title.

[~~The department shall establish grades and standards of quality, size, and weight governing the sale of eggs.~~] This chapter is known as "Eggs."

Section 48. Section 4-4-102, which is renumbered from Section 4-4-2 is renumbered and amended to read:

[4-4-2]. 4-4-102. Department to establish egg grades and standards -- Authority to make and enforce rules.

(1) The department shall establish grades and standards of quality, size, and weight governing the sale of eggs.

(2) The department [~~is authorized~~] shall, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, [~~to~~] make and enforce [~~such~~] rules [~~as in its judgment~~] that are necessary to administer and enforce this chapter.

Section 49. Section 4-4-103, which is renumbered from Section 4-4-3 is renumbered and amended to read:

[4-4-3]. 4-4-103. Definitions.

As used in this chapter:

- (1) "Addled" or "white rot" means putrid or rotten.
- (2) "Adherent yolk" means the yolk has settled to one side and become fastened to the shell.
- (3) "Albumen" means the white of an egg.

[~~(3)~~] (4) "Black rot" means the egg has deteriorated to such an extent that the whole interior presents a blackened appearance.

[~~(4)~~] (5) "Black spot" means [~~mould~~] mold or bacteria have developed in isolated areas inside the shell.

[~~(5)~~] (6) "Blood ring" means bacteria have developed to such an extent that blood is formed.

[~~(6)~~] (7) "Candling" means the act of determining the condition of an egg by holding it before a strong light in such a way that [~~it~~] the light shines through the egg and reveals [~~its~~] the egg's contents.

[~~(7)~~] "Mouldy" means mould]

(8) "Moldy" means mold spores have formed within the shell.

Section 50. Section 4-4-104, which is renumbered from Section 4-4-4 is renumbered and amended to read:

[4-4-4]. 4-4-104. Unlawful acts specified.

(1) It is unlawful for any person to sell, offer, or expose [~~any egg~~] for sale for human consumption any egg:

(a) that is addled or [~~mouldy~~] moldy or that contains black spot, black rot, white rot, blood ring, adherent yolk, or a bloody or green [~~white, also called~~] albumen; or

(b) without a sign or label that conforms to the standards for display and grade adopted by the department.

(2) Nothing in this section [~~shall prohibit~~] prohibits the sale of a denatured [~~eggs~~] egg.

Section 51. Section 4-4-105, which is renumbered from Section 4-4-5 is renumbered and amended to read:

[4-4-5]. 4-4-105. Maintenance of candling records -- Inspection of records.

[~~Every~~] (1) A person who sells, offers, or exposes eggs for sale or exchange shall maintain candling records as prescribed by the department.

(2) All candling records shall be open for examination by accredited inspectors or representatives of the department at reasonable times.

Section 52. Section 4-4-106, which is renumbered from Section 4-4-6 is renumbered and amended to read:

[4-4-6]. 4-4-106. Retailers exempt from prosecution -- Conditions for exemption.

[~~No~~] (1) Subject to Subsection (2), no retailer is subject to prosecution under this chapter if the retailer can establish that:

(a) at the time [~~the eggs were~~] an egg was purchased the seller guaranteed that the [~~eggs~~] egg conformed to the grade [~~and~~], quality [~~and~~], size, and weight stated in the purchase invoice; and [~~that~~]

(b) the [~~eggs were~~] egg was labeled for sale by the retailer in accordance with the purchase invoice[; ~~provided, that such guaranty~~].

(2) The guaranty by the seller described in Subsection (1)(a) does not exempt a retailer from prosecution if the [~~eggs~~] egg covered by the guaranty deteriorated to a lower grade or standard through some action or inaction of the retailer.

Section 53. Section 4-5-101, which is renumbered from Section 4-5-1 is renumbered and amended to read:

CHAPTER 5. UTAH WHOLESOME FOOD ACT

Part 1. Administration

[4-5-1]. 4-5-101. Title.

This chapter is known as the "Utah Wholesome Food Act."

Section 54. Section 4-5-102, which is renumbered from Section 4-5-2 is renumbered and amended to read:

[4-5-2]. 4-5-102. Definitions.

As used in this chapter:

(1) "Advertisement" means a representation, other than by labeling, made to induce the purchase of food.

(2) (a) "Color additive":

(i) means a dye, pigment, or other substance not exempted under the federal act that, when added or applied to a food, is capable of imparting color["Color"]; and

(ii) includes black, white, and intermediate grays.

(b) "Color additive" does not include a pesticide chemical, soil or plant nutrient, or other agricultural chemical which imparts color solely because of its effect, before or after harvest, in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of any plant life.

(3) (a) "Consumer commodity" means a food, as defined by this act, or by the federal act.

(b) "Consumer commodity" does not include:

(i) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 et seq.;

(ii) a commodity subject to Title 4, Chapter 16, Utah Seed Act;

(iii) a meat or meat product subject to the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;

(iv) a poultry or poultry product subject to the Poultry Inspection Act, 21 U.S.C. Sec. 451 et seq.;

(v) a tobacco or tobacco product; or

(vi) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.

(4) "Contaminated" means not securely protected from dust, dirt, or foreign or injurious agents.

(5) "Farmers market" means a market where producers of food products sell only fresh, raw, whole, unprocessed, and unprepared food items directly to the final consumer.

(6) "Federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(7) "Food" means:

(a) an article used for food or drink for human or animal consumption or the components of the article;

(b) chewing gum or its components; or

(c) a food supplement for special dietary use which is necessitated because of a physical, physiological, pathological, or other condition.

(8) (a) "Food additive" means a substance, the intended use of which results in the substance becoming a component, or otherwise affecting the characteristics, of a food.

(b) (i) "Food additive" includes a substance or source of radiation intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food.

~~(b)~~ (ii) "Food additive" does not include:

~~(i)~~ (A) a pesticide chemical in or on a raw agricultural commodity;

~~(ii)~~ (B) a pesticide chemical that is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity; or

~~(iii)~~ (C) a substance used in accordance with a sanction or approval granted pursuant to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq. or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.

(9) (a) "Food establishment" means a grocery store, bakery, candy factory, food processor, bottling plant, sugar factory, cannery, rabbit processor, meat processor, flour mill, cold or dry warehouse storage, or other facility where food products are manufactured, canned, processed, packaged, stored, transported, prepared, sold, or offered for sale.

(b) "Food establishment" does not include:

(i) a dairy farm, a dairy plant, or a meat establishment, which is subject to the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.; or

(ii) a farmers market.

(10) "Label" means a written, printed, or graphic display on the immediate container of an article of food. ~~[The department may require that a label contain specific written, printed, or graphic information which is:]~~

~~[(a) displayed on the outside container or wrapper of a retail package of an article; or]~~

~~[(b) easily legible through the outside container or wrapper.]~~

(11) "Labeling" means a label and other written, printed, or graphic display:

(a) on an article of food or its containers or wrappers; or

(b) accompanying the article of food.

(12) "Official compendium" means the official documents or supplements to the:

(a) United States Pharmacopoeia;

(b) National Formulary; or

(c) Homeopathic Pharmacopoeia of the United States.

(13) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of the consumer commodity to retail purchasers.

(b) "Package" does not include:

(i) package liners;

(ii) shipping containers or wrapping used solely for the transportation of consumer commodities in bulk or in quantity to manufacturers, packers, processors, or wholesale or retail distributors; or

(iii) shipping containers or outer wrappings used by retailers to ship or deliver a consumer commodity to retail customers, if the containers and wrappings bear no printed information relating to the consumer commodity.

(14) (a) "Pesticide" means a substance intended:

(i) to prevent, destroy, repel, or mitigate a pest, as defined under Subsection [4-14-2] 4-14-102(20); or

(ii) for use as a plant regulator, defoliant, or desiccant.

(b) "Pesticide" does not include:

(i) a new animal drug, as defined by 21 U.S.C. Sec. 321, that has been determined by the United States Secretary of Health and Human Services not to be a new animal drug by federal regulation establishing conditions of use of the drug; or

(ii) animal feed, as defined by 21 U.S.C. Sec. 321, bearing or containing a new animal drug.

(15) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(16) "Raw agricultural commodity" means a food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled, natural form prior to marketing.

(17) "Registration" means the issuance of a certificate by the commissioner to a qualified food establishment.

Section 55. Section 4-5-103, which is renumbered from Section 4-5-7 is renumbered and amended to read:

[4-5-7]. 4-5-103. Adulterated food specified.

A food is adulterated:

(1) (a) if it bears or contains any poisonous or deleterious substance that may render it injurious to health; but in case the substance is not an added substance the food may not be considered adulterated under this Subsection (1)(a) if the quantity of the substance in such food does not ordinarily render it injurious to health;

(b) (i) if it bears or contains any added poisonous or added deleterious substance other than one that is:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a food additive; or

(C) a color additive that is unsafe within the meaning of Subsection [4-5-11] 4-5-204(1); or

(ii) if it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec. 346a; or

(iii) if it is or it bears or contains any food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under 21 U.S.C. 346a and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section [4-5-11] 4-5-204 and this Subsection (1)(b)(iii), not be considered unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;

(c) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;

(d) if it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(e) if it is, in whole or in part, the product of a diseased animal or an animal that has died otherwise than by slaughter, or of an animal that has been fed upon the uncooked offal from a slaughterhouse;

(f) if its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;

(g) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a rule or exemption in effect pursuant to Section [4-5-11] 4-5-204, or 21 U.S.C. Sec. 348; or

(h) in meat or meat products are adulterated:

(i) if such products are in casings, packages, or wrappers through which any part of their contents

can be seen and which, or the markings of which, are colored red or any other color so as to be misleading or deceptive with respect to the color, quality, or kind of such products to which they are applied; or

(ii) if such products contain or bear any color additive;

(2) (a) if any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(b) if any substance has been substituted wholly or in part therefor;

(c) if damage or inferiority has been concealed in any manner; or

(d) if any substance has been added or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; or

(3) if it is confectionery, and:

(a) has partially or completely imbedded therein any nonnutritive object; provided that this Subsection (3)(a) does not apply in the case of any nonnutritive objective if, in the judgment of the department such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health;

(b) bears or contains any alcohol other than alcohol not in excess of .05% by volume derived solely from the use of flavoring extracts; or

(c) bears or contains any nonnutritive substance; provided, that this Subsection (3)(c) does not apply to a safe nonnutritive substance that is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter.

(4) The department may, for the purpose of avoiding or resolving uncertainty as to the application of Subsection (3)(c), issue rules allowing or prohibiting the use of particular nonnutritive substances.

Section 56. Section 4-5-104, which is renumbered from Section 4-5-17 is renumbered and amended to read:

[4-5-17]. 4-5-104. Authority to make and enforce rules.

(1) The department may adopt rules to efficiently enforce this chapter, and if practicable, adopt rules that conform to the regulations adopted under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(2) Hearings authorized or required by this chapter shall be conducted by the department or by an officer, agent, or employee designated by the department.

(3) (a) Except as provided by Subsection (3)(b), all pesticide chemical regulations and their amendments now or hereafter adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the pesticide chemical regulations in this state.

(b) The department may adopt a rule that prescribes tolerance for pesticides in finished foods in this state whether or not in accordance with regulations promulgated under the federal act.

(4) (a) Except as provided by Subsection (4)(b), all food additive regulations and their amendments now or hereafter adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the food additive regulations in this state.

(b) The department may adopt a rule that prescribes conditions under which a food additive may be used in this state whether or not in accordance with regulations promulgated under the federal act.

(5) All color additive regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the color additive rules in this state.

(6) (a) Except as provided by Subsection (6)(b), all special dietary use regulations adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the special dietary use rules in this state.

(b) The department may, if it finds it necessary to inform purchasers of the value of a food for special dietary use, prescribe special dietary use rules whether or not in accordance with regulations promulgated under the federal act.

(7) (a) Except as provided by Subsection (7)(b), all regulations adopted under the Fair Packaging and Labeling Act, 15 U.S.C. Sec. 1453 et seq., shall be the rules in this state.

(b) Except as provided by Subsection (7)(c), the department may, if it finds it necessary in the interest of consumers, prescribe package and labeling rules for consumer commodities, whether or not in accordance with regulations promulgated under the federal act.

(c) The department may not adopt rules that are contrary to the labeling requirements for the net quantity of contents required according to 15 U.S.C. Sec. 1453(a)(4).

(8) (a) A federal regulation automatically adopted according to this chapter takes effect in this state on the date it becomes effective as a federal regulation.

(b) The department shall publish all other proposed rules in publications prescribed by the department.

(c) (i) A person who may be adversely affected by a rule may, within 30 days after a federal regulation is automatically adopted, or within 30 days after publication of any other rule, file with the department, in writing, objections and a request for a hearing.

(ii) The timely filing of substantial objections to a federal regulation automatically adopted stays the effect of the rule.

(d) (i) If no substantial objections are received and no hearing is requested within 30 days after publication of a proposed rule, it shall take effect on a date set by the department.

(ii) The effective date shall be at least 60 days after the time for filing objections has expired.

(e) (i) If timely substantial objections are made to a federal regulation within 30 days after it is automatically adopted or to a proposed rule within 30 days after it is published, the department, after notice, shall conduct a public hearing to receive evidence on the issues raised by the objections.

(ii) Any interested person or [his] the person's representative may be heard.

(f) (i) The department shall act upon objections by order and shall mail the order to objectors by certified mail as soon after the hearing as practicable.

(ii) The order shall be based on substantial evidence in the record of the hearing.

(g) (i) If the order concerns a proposed rule, it may withdraw it or set an effective date for the rule as published or as modified by the order.

(ii) The effective date shall be at least 60 days after publication of the order.

(9) Whenever a regulation is promulgated under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., establishing standards for food, the tolerances established by the department under this chapter shall immediately conform to the standards established by the Federal Food and Drug Administration as herein provided and shall remain the same until the department determines that for reasons peculiar to Utah a different rule should apply.

Section 57. Section 4-5-105, which is renumbered from Section 4-5-18 is renumbered and amended to read:

[4-5-18]. 4-5-105. Inspection of premises and records -- Authority to take samples -- Inspection results reported.

(1) An authorized agent of the department upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(a) enter at reasonable times any factory, warehouse, or establishment in which food is manufactured, processed, packed, or held for introduction into commerce or after introduction into commerce;

(b) enter any vehicle being used to transport or hold food in commerce;

(c) inspect at reasonable times and within reasonable limits and in a reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished

materials, containers, and labeling located within it;

(d) obtain samples necessary for the enforcement of this chapter so long as the department pays the posted price for the sample if requested to do so and receives a signed receipt from the person from whom the sample is taken;

(e) have access to and copy all records of carriers in commerce showing:

(i) the movement in commerce of any food;

(ii) the holding of food during or after movement in commerce; and

(iii) the quantity, shipper, and consignee of food.

(2) Evidence obtained under this section may not be used in a criminal prosecution of the person from whom the evidence was obtained.

(3) Carriers may not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food in the usual course of business as carriers.

(4) Upon completion of the inspection of a factory, warehouse, consulting laboratory, or other establishment and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food in the establishment:

(a) consists in whole or in part of any filthy, putrid, or decomposed substance; or

(b) has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health.

(5) A copy of the report shall be sent promptly to the department.

(6) If the authorized agent making the inspection of a factory, warehouse, or other establishment has obtained any sample in the course of the inspection, the agent shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

(7) When in the course of the inspection the officer or employee making the inspection obtains a sample of any food and an analysis is made of the sample for the purpose of ascertaining whether the food consists in whole or in part of any filthy, putrid, or decomposed substance or is otherwise unfit for food, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

Section 58. Section 4-5-106, which is renumbered from Section 4-5-19 is renumbered and amended to read:

[4-5-19]. 4-5-106. Publication of reports and information.

(1) The department shall publish reports summarizing all judgments, decrees, and court orders which have been rendered under this

chapter, including the nature of the charge and its disposition.

(2) The department shall disseminate information regarding food which it considers necessary in the interest of public health and for the protection of consumers against fraud.

(3) Nothing in this section ~~shall be construed to prohibit~~ prohibits the department from collecting, reporting, and illustrating the results of investigations made by ~~it~~ the department.

Section 59. Section 4-5-201, which is renumbered from Section 4-5-8 is renumbered and amended to read:

Part 2. Labels and Regulations

[4-5-8]. 4-5-201. Labeling requirements -- Misbranded food specified.

(1) The department may require that a label contain specific written, printed, or graphic information which is:

(a) displayed on the outside container or wrapper of a retail package of an article; or

(b) easily legible through the outside container or wrapper.

~~[(4)]~~ (2) Food is misbranded if:

(a) its label is false or misleading in any way;

(b) its labeling or packaging fails to conform with the requirements of Section ~~[4-5-15]~~ 4-5-205;

(c) it is offered for sale under the name of another food;

(d) its container is so made, formed, or filled with packing material or air as to be misleading; or

(e) it fails to conform with any requirement specified in this section.

~~[(2)]~~ (3) A food that is an imitation of another food shall bear a label, in type of uniform size and prominence, stating the word "imitation," and, immediately thereafter, the name of the food imitated.

~~[(3)]~~ (4) (a) A food in package form shall bear a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

(b) The statement required by Subsection ~~[(3)]~~ (4)(a)(ii) shall be separately and accurately stated in a uniform location upon the principal display panel of the label unless reasonable variations and exemptions for small packages are established by a rule made by the department.

(c) A manufacturer or distributor of carbonated beverages who utilizes proprietary stock or a proprietary crown is exempt from Subsection ~~[(3)]~~ (4)(a)(i) if he files with the department:

(i) a sworn affidavit giving a full and complete description of each area within the state in which beverages of his manufacturing or distributing are to be distributed; and

(ii) the name and address of the person responsible for compliance with this chapter within each of those areas.

~~[(4)]~~ (5) Any word, statement, or other information required by this chapter to appear on the label or labeling shall be:

(a) prominently placed on the label;

(b) conspicuous in comparison with other words, statements, designs, or devices in the labeling; and

(c) in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

~~[(5)]~~ (6) If a food is represented as a food for which a definition and standard of identity has been prescribed by federal regulations or department rules as provided by Section ~~[4-5-6]~~ 4-5-207, it shall:

(a) conform to the definition and standard; and

(b) have a label bearing:

(i) the name of the food specified in the definition and standard; and

(ii) insofar as may be required by the rules, the common names of optional ingredients, other than spices, flavorings, and colorings, present in the food.

~~[(6)]~~ (7) If a food is represented as a food for which a standard of quality has been prescribed by federal regulations or department rules as provided by Section ~~[4-5-6]~~ 4-5-207, and its quality falls below the standard, its label shall bear, in the manner and form as the regulations or rules specify, a statement indicating that it falls below the standards.

~~[(7)]~~ (8) If a food is represented as a food for which a standard of fill of container has been prescribed by federal regulations or department rules as provided by Section ~~[4-5-6]~~ 4-5-207, and it falls below the applicable standard of fill, its label shall bear, in the manner and form as the regulations or rules specify, a statement indicating that it falls below the standard.

~~[(8)]~~ (9) (a) Any food for which neither a definition nor standard of identity has been prescribed by federal regulations or department rules as provided by Section ~~[4-5-6]~~ 4-5-207 shall bear labeling clearly giving:

(i) the common or usual name of the food, if any; and

(ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each.

(b) To the extent that compliance with the requirements of Subsection ~~[(8)]~~ (9)(a)(i) is impractical or results in deception or unfair

competition, exemptions shall be established by rules made by the department.

~~[(9)]~~ (10) If a food is represented as a food for special dietary uses, its label shall bear the information concerning its vitamin, mineral, and other dietary properties as the department by rule prescribes.

~~[(10)]~~ (11) (a) If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, its label shall state that fact.

(b) If compliance with the requirements of ~~[this subsection]~~ Subsection (11)(a) is impracticable, exemptions shall be established by rules made by the department.

~~[(11)]~~ (12) (a) The shipping container of any raw agricultural commodity bearing or containing a pesticide chemical applied after harvest shall bear labeling which declares the presence of the chemical in or on the commodity and the common or usual name and function of the chemical.

(b) The declaration is not required while the commodity, having been removed from the shipping container, is being held or displaced for sale at retail out of the container in accordance with the custom of the trade.

~~[(12)]~~ (13) A product intended as an ingredient of another food, when used according to the directions of the purveyor, may not result in the final food product being adulterated or misbranded.

~~[(13)]~~ (14) The packaging and labeling of a color additive shall be in conformity with the packaging and labeling requirements applicable to the color additive prescribed under the federal act.

~~[(14)]~~ (15) (a) Subsections ~~[(5), (8), and (10)]~~ (6), (9), and (11) with respect to artificial coloring do not apply to butter, cheese, or ice cream.

(b) Subsection ~~[(10)]~~ (11) with respect to chemical preservatives does not apply to a pesticide chemical when used in or on a raw agricultural commodity.

Section 60. Section 4-5-202, which is renumbered from Section 4-5-5 is renumbered and amended to read:

[4-5-5]. 4-5-202. Adulterated or misbranded articles -- Tagging -- Detention or embargo -- Court proceedings for condemnation -- Perishable food.

(1) (a) When an authorized agent of the department finds or has probable cause to believe that any food is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, ~~[he]~~ the agents shall affix to the food a tag or other appropriate marking, giving notice that:

(i) the food is, or is suspected of being, adulterated or misbranded;

(ii) the food has been detained or embargoed; and

(iii) removal of the food is prohibited as provided in Subsection (1)(b).

(b) No person may remove or dispose of detained or embargoed food by sale or otherwise until permission for removal or disposal is given by an agent of the department or the court.

(2) (a) When food detained or embargoed under Subsection (1) has been found by an agent to be adulterated or misbranded, the department shall petition the district court in whose jurisdiction the food is detained or embargoed for an order of condemnation of the food.

(b) When the agent has found that food so detained or embargoed is not adulterated or misbranded, the department shall remove the tag or other marking.

(3) (a) If the court finds that detained or embargoed food is adulterated or misbranded, the food shall, after entry of the decree, be destroyed under the supervision of the agent.

(b) If the adulteration or misbranding can be corrected by proper labeling or processing of the food, the court may by order direct that the food be delivered to the claimant for labeling or processing after:

(i) entry of the decree;

(ii) all costs, fees, and expenses have been paid; and

(iii) a sufficient bond, conditioned that the food shall be properly labeled and processed, has been executed.

(c) An agent of the department shall supervise, at the claimant's expense, the labeling or processing of the food.

(d) The bond shall be returned to the claimant of the food upon:

(i) representation to the court by the department that the food is no longer in violation of this chapter; and

(ii) the expenses of supervision have been paid.

(4) If an authorized agent of the department finds in any building or vehicle any perishable food which is unsound, contains any filthy, decomposed, or putrid substance, or may be poisonous, deleterious to health, or otherwise unsafe, the commissioner or his authorized agent shall condemn or destroy the food or render it unsalable as human food.

Section 61. Section 4-5-203, which is renumbered from Section 4-5-10 is renumbered and amended to read:

[4-5-10]. 4-5-203. Food processed, labeled, or repacked at another location -- Exemption from labeling requirements by rule.

(1) The department shall adopt rules exempting food from any labeling requirement of this chapter that is, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that the food is not adulterated or misbranded

under this chapter upon removal from such processing, labeling or repacking establishment.

(2) (a) Regulations now or hereafter adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., relating to the exemptions described in Subsection (1) are automatically effective in this state.

(b) The department may adopt additional rules or amendments to existing rules concerning exemptions.

Section 62. Section 4-5-204, which is renumbered from Section 4-5-11 is renumbered and amended to read:

[4-5-11]. 4-5-204. Substances considered unsafe -- Authority in department to regulate quantity and use.

(1) (a) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, with respect to any particular use or intended use, is considered to be unsafe for the purpose of application of Subsection [4-5-7] 4-5-103(1)(b) unless:

(i) there is in effect a rule adopted pursuant to this section or Section [4-5-17] 4-5-104 limiting the quantity of the substance; and

(ii) the use or intended use of the substance conforms to the terms prescribed by the rule.

(b) While the rules relating to the substance are in effect, a food may not, by reason of bearing or containing the substance in accordance with the rules, be considered adulterated within the meaning of Subsection [4-5-7] 4-5-103(1)(a).

(2) The department may make rules, which may or may not be in accordance with regulations made under the federal act, prescribing:

(a) tolerances, including zero tolerances, for:

(i) added poisonous or deleterious substances;

(ii) food additives;

(iii) pesticide chemicals in or on raw agricultural commodities; or

(iv) color additives;

(b) exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities; or

(c) conditions under which a food additive or a color additive may be safely used and exemptions when a food additive or color additive may be used solely for investigational or experimental purposes.

(3) (a) The department may make these rules upon its own initiative or upon the petition of any interested party.

(b) It is incumbent upon the petitioner to establish by data submitted to the department that the rule is necessary to protect the public health.

(c) If the data furnished by the petitioner is not sufficient to allow the department to determine whether the rule should be made, the department may require additional data to be submitted.

(d) Failure to comply with the request is sufficient grounds to deny the request.

(4) In making the rules, the department shall consider, among other relevant factors, the following which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning the substance including:

(i) where available;

(ii) its chemical identity and composition;

(iii) a statement of the conditions of the proposed use, including directions, recommendations, and suggestions;

(iv) specimens of proposed labeling; and

(v) all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(b) the probable composition of any substance formed in or on a food resulting from the use of the substance;

(c) the probable consumption of the substance in the diet of man and animals, taking into account any chemically or pharmacologically related substance in the diet;

(d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of the substances for the uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) the substance in or on food;

(ii) any substance formed in or on food because of the use of the substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of the substance will serve a useful purpose.

Section 63. Section 4-5-205, which is renumbered from Section 4-5-15 is renumbered and amended to read:

[4-5-15]. 4-5-205. Consumer commodities -- Labeling and packaging.

(1) All labels of consumer commodities, as defined by this chapter, shall conform with the requirements for the declaration of net quantity of contents of 15 U.S.C. Sec. 1453 and the regulations promulgated pursuant thereto: provided, that consumer commodities exempted from 15 U.S.C. Sec. 1453(a)(4) shall also be exempt from this Subsection (1).

(2) The label of any package of a consumer commodity that bears a representation as to the number of servings of the commodity contained in the package shall bear a statement of the net quantity in terms of weight, measure, or numerical count for each serving.

(3) (a) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Subsection (1), but nothing in this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents.

(b) Supplemental statements of net quantity of contents may not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(4) (a) Whenever the department determines that rules other than those prescribed by Subsection (1) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the department shall promulgate rules effective to:

(i) establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing the commodity, but this Subsection (4) does not authorize any limitation on the size, shape, weight, dimensions, or number of packages that may be used to enclose any commodity;

(ii) regulate the placement upon any package containing any commodity, or upon any label affixed to a commodity, of any printed matter stating or representing by implication that the commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers by reason of the size of that package or the quantity of its contents;

(iii) require that the label on each package of a consumer commodity bear:

(A) the common or usual name of such consumer commodity, if any; and

(B) if the consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this Subsection (4) shall be considered to require that any trade secret be divulged; or

(iv) prevent the nonfunctional slack-fill of packages containing consumer commodities.

(b) For the purposes of Subsection (4)(a)(iv), a package is nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than:

(i) protection of the contents of such package; or

(ii) the requirements of machines used for enclosing the contents in such package; provided, that the department may adopt any rules promulgated according to the Fair Packaging and Labeling Act, 15 U.S.C. Sec. 1453.

Section 64. Section 4-5-206, which is renumbered from Section 4-5-16 is renumbered and amended to read:

[4-5-16]. 4-5-206. Food advertisement false or misleading.

An advertisement of a food is considered to be false if it is false or misleading in any way.

Section 65. Section 4-5-207, which is renumbered from Section 4-5-6 is renumbered and amended to read:

[4-5-6]. 4-5-207. Definitions and standards of identity, quality, and fill of container -- Rules -- Temporary and special permits.

(1) (a) Definitions and standards of identity, quality and fill of container, now or hereafter adopted under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq., are the definitions and standards of identity, quality and fill of container in this state.

(b) The department may adopt rules establishing definitions and standards of identity, quality and fill of container for foods where no federal regulations exist and may promulgate amendments to any federal regulations or state rules that set definitions and standards of identity, quality and fill of container for foods.

(2) (a) Temporary permits [~~now or hereafter~~] granted for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this state under the conditions provided in the permits.

(b) The department may issue additional permits where they are necessary for the completion or conclusiveness of an otherwise adequate investigation and where the interests of consumers are safeguarded.

(c) Permits are subject to the terms and conditions the department may prescribe by rule.

Section 66. Section 4-5-301, which is renumbered from Section 4-5-9 is renumbered and amended to read:

Part 3. Registration and Inspection

[4-5-9]. 4-5-301. Registration of food establishments -- Fee -- Suspension and reinstatement of registration -- Inspection for compliance.

(1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish rules providing for the registration of food establishments to protect public health and ensure a safe food supply.

(b) The owner or operator of a food establishment shall register with the department before operating a food establishment.

(c) ~~Prior to~~ Before granting a registration to the owner or operator of a food establishment, the department shall inspect and assess the food establishment to determine whether it complies with the rules established under Subsection (1)(a).

(d) An applicant shall register with the department, in writing, using forms required by the department.

(e) The department shall issue a registration to an applicant, if the department determines that the applicant meets the qualifications of registration established under Subsection (1)(a).

(f) If the applicant does not meet the qualifications of registration, the department shall notify the applicant, in writing, that the applicant's registration is denied.

(g) (i) If an applicant submits an incomplete application, a written notice of conditional denial of registration shall be provided to an applicant.

(ii) The applicant shall correct the deficiencies within the time period specified in the notice to receive a registration.

(h) (i) The department may, as provided under Subsection ~~[4-2-2]~~ 4-2-103(2), charge the food establishment a registration fee.

(ii) The department shall retain the fees as dedicated credits and shall use the fees to administer the registration of food establishments.

(2) (a) A registration, issued under this section, shall be valid from the date the department issues the registration, to December 31 of the year the registration is issued.

(b) A registration may be renewed for the following year by applying for renewal by December 31 of the year the registration expires.

(3) A registration, issued under this section, shall specify:

(a) the name and address of the food establishment;

(b) the name of the owner or operator of the food establishment; and

(c) the registration issuance and expiration date.

(4) (a) The department may immediately suspend a registration, issued under this section, if any of the conditions of registration have been violated.

(b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the reinstatement of a registration.

(ii) If the department determines that all registration requirements have been met, the department shall reinstate the registration.

(5) (a) A food establishment, registered under this section, shall allow the department to have access to the food establishment to determine if the food establishment is complying with the registration requirements.

(b) If a food establishment denies access for an inspection required under Subsection (5)(a), the department may suspend the food establishment's registration until the department is allowed access to the food establishment's premises.

Section 67. Section 4-5-401, which is renumbered from Section 4-5-3 is renumbered and amended to read:

Part 4. Enforcement

[4-5-3]. 4-5-401. Unlawful acts specified.

(1) A person may not:

(a) manufacture, sell, deliver, hold, or offer for sale a food that is adulterated or misbranded;

(b) adulterate or misbrand food;

(c) except as provided in Subsection (2), distribute, in commerce, a consumer commodity inconsistent with the packaging and labeling requirements of this chapter, or the rules made under this chapter;

(d) sell, deliver for sale, hold for sale, or offer for sale an article in violation of Section ~~[4-5-9]~~ 4-5-301;

(e) disseminate false advertising;

(f) remove or dispose of detained or embargoed food in violation of Section ~~[4-5-5]~~ 4-5-202;

(g) adulterate, mutilate, destroy, obliterate, or remove the food label which results in the food being misbranded or adulterated while the food is for sale;

(h) forge, counterfeit, simulate, or misrepresent a label or information, by the unauthorized use of a mark, stamp, tag, label, or other identification device;

(i) use or reveal a method, process, or information which is protected as a trade secret;

(j) operate a food establishment without a valid registration issued by the department; and

(k) refuse entry to an authorized agent of the department in a food establishment as required under Section ~~[4-5-18]~~ 4-5-105.

(2) Subsection (1)(c) does not apply to a person engaged in the wholesale or retail distribution of consumer commodities unless that person:

(a) is engaged in the packaging or labeling of consumer commodities; or

(b) prescribes or specifies the manner in which consumer commodities are packaged or labeled.

Section 68. Section 4-5-402, which is renumbered from Section 4-5-4 is renumbered and amended to read:

[4-5-4]. 4-5-402. Defenses.

No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination of such false

advertisement, unless he has refused, on the request of the department to furnish it, the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of Utah who caused him to disseminate such advertisement.

Section 69. Section 4-5-501, which is renumbered from Section 4-5-9.5 is renumbered and amended to read:

Part 5. Special Programs

[4-5-9.5]. 4-5-501. Cottage food production operations.

(1) For purposes of this chapter:

(a) "Cottage food production operation" means a person, who in the person's home, produces a food product that is not a potentially hazardous food or a food that requires time/temperature controls for safety.

(b) "Home" means a primary residence:

(i) occupied by the individual who is operating a cottage food production operation; and

(ii) which contains:

(A) a kitchen designed for common residential usage; and

(B) appliances designed for common residential usage.

(c) "Potentially hazardous food" or "food that requires time/temperature controls for safety":

(i) means a food that requires time and or temperature control for safety to limit pathogenic microorganism growth or toxin formation and is in a form capable of supporting:

(A) the rapid and progressive growth of infections or toxigenic microorganisms;

(B) the growth and toxin production of *Clostridium botulinum*; or

(C) in shell eggs, the growth of *Salmonella enteritidis*;

(ii) includes:

(A) an animal food;

(B) a food of animal origin that is raw or heat treated;

(C) a food of plant origin that is heat treated or consists of raw seed sprouts;

(D) cut melons;

(E) cut tomatoes; and

(F) garlic and oil mixtures that are not acidified or otherwise modified at a food establishment in a way that results in mixtures that do not support growth as specified under Subsection (1)(c)(i); and

(iii) does not include:

(A) an air-cooled hard-boiled egg with shell intact;

(B) a food with an actual weight or water activity value of 0.85 or less;

(C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;

(D) a food, in an unopened hermetically sealed container, that is processed to achieve and maintain sterility under conditions of nonrefrigerated storage and distribution;

(E) a food for which laboratory evidence demonstrates that the rapid and progressive growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:

(I) has an actual weight and a pH level that are above the levels specified under Subsections (1)(c)(iii)(B) and (C); or

(II) contains a preservative or other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or

(F) a food that does not support the growth of microorganisms as specified under Subsection (1)(c)(i) even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.

(2) (a) The department shall adopt rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food supply.

(b) Rules adopted pursuant to this Subsection (2) shall provide for:

(i) the registration of cottage food production operations as food establishments under this chapter;

(ii) the labeling of products from a cottage food production operation as "Home Produced"; and

(iii) other exceptions to the chapter that the department determines are appropriate and that are consistent with this section.

(3) Rules adopted pursuant to Subsection (2):

(a) may not require:

(i) the use of commercial surfaces such as stainless steel counters or cabinets;

(ii) the use of a commercial grade:

(A) sink;

(B) dishwasher; or

(C) oven;

(iii) a separate kitchen for the cottage food production operation; or

(iv) the submission of plans and specifications before construction of, or remodel of, a cottage food production operation; and

(b) may require:

(i) an inspection of a cottage food production operation:

(A) prior to issuing a registration for the cottage food production operation; and

(B) at other times if the department has reason to believe the cottage food production operation is operating:

(I) in violation of this chapter or an administrative rule adopted pursuant to this section; or

(II) in an unsanitary manner; and

(ii) the use of finished and cleanable surfaces.

(4) (a) The operator of a cottage food production operation shall:

(i) register with the department as a cottage food production operation before operating as a cottage food production operation; and

(ii) hold a valid food handler's permit.

(b) Notwithstanding the provisions of Subsections ~~[4-5-9]~~ 4-5-301(1)(a) and (c), the department shall issue a registration to an applicant for a cottage food production operation if the applicant for the registration:

(i) passes the inspection required by Subsection (3)(b);

(ii) pays the fees required by the department; and

(iii) meets the requirements of this section.

(5) Notwithstanding the provisions of Section 26A-1-114, a local health department:

(a) does not have jurisdiction to regulate the production of food at a cottage food production operation operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and

(b) does have jurisdiction to investigate a cottage food production operation in any investigation into the cause of a food born illness outbreak.

(6) A food service establishment as defined in Section 26-15a-102 may not use a product produced in a cottage food production operation as an ingredient in any food that is prepared by the food establishment and offered by the food establishment to the public for consumption.

Section 70. Section 4-5-502, which is renumbered from Section 4-5-20 is renumbered and amended to read:

[4-5-20]. 4-5-502. Food designated as raw honey.

(1) As used in this section:

(a) "Honey" means the natural sweet substance produced by honeybees from nectar of plants or from secretions of living parts of plants that the bees collect, transform by combining with specific substances of their own, then deposit, dehydrate,

store, and leave in the honeycomb to ripen and mature.

(b) "Raw honey" means honey:

(i) as it exists in the beehive or as obtained by extraction, settling, or straining;

(ii) that is minimally processed; and

(iii) that is not pasteurized.

(2) Honey that is produced, packed, repacked, distributed, or sold in this state may only be labeled and designated as raw honey if it meets:

(a) the definition of raw honey in this section; and

(b) any additional requirements imposed by the department by rule.

(3) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish labeling requirements consistent with the provisions of this section.

Section 71. Section 4-7-101, which is renumbered from Section 4-7-1 is renumbered and amended to read:

CHAPTER 7. LIVESTOCK DEALERS' ACT

[4-7-1]. 4-7-101. Title.

This chapter is known as the "Livestock Dealers' Act."

Section 72. Section 4-7-102, which is renumbered from Section 4-7-2 is renumbered and amended to read:

[4-7-2]. 4-7-102. Purpose declaration.

The Legislature finds ~~[and declares]~~ that the public interest requires regulation of the sale of livestock between the producer and ~~[persons who purchase]~~ a person who purchases livestock for resale to protect ~~[producers]~~ the producer from unwarranted hazard and loss in the sale of ~~[their]~~ livestock.

Section 73. Section 4-7-103, which is renumbered from Section 4-7-3 is renumbered and amended to read:

[4-7-3]. 4-7-103. Definitions.

As used in this chapter:

(1) "Agent" ~~[or "broker"]~~ means a person who, on behalf of a dealer, purchaser, or livestock market, as defined in Section ~~[4-30-1]~~ 4-30-102, solicits or negotiates the consignment or purchase of livestock.

(2) "Consignor" means a person who ships or delivers livestock to a dealer for handling or sale.

(3) (a) "Dealer" means a person who:

(i) receives livestock from a person for sale on commission;

(ii) is entrusted with the possession, management, control, or disposal of livestock for the account of that person; ~~[and]~~ or

(iii) negotiates price, determines a delivery date, and receives money on behalf of a livestock producer.

(b) "Dealer" includes:

(i) a livestock dealer~~[-]; and~~

(ii) a person who owns or leases a feedlot.

~~[(c) "Dealer" includes a person who owns or leases a feedlot.].~~

(4) (a) "Immediate resale" means the resale of livestock within 60 days of purchase.

(b) "Immediate resale" does not include the resale of livestock culled within 60 days that were purchased for feeding or replacement.

(5) "Livestock" means cattle, swine, equines, sheep, camelidae, ratites, bison, goats, and domesticated elk as defined in Section 4-39-102.

(6) "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.

(7) "Producer" means a person who is primarily engaged in the business of raising livestock for profit.

Section 74. Section 4-7-104, which is renumbered from Section 4-7-4 is renumbered and amended to read:

[4-7-4]. 4-7-104. Unlawful to act as an agent or dealer without license -- Exception.

Except as exempted by Section ~~[4-7-5]~~ 4-7-105, no person may act as an agent~~[-broker,]~~ or dealer in this state without being licensed under this chapter.

Section 75. Section 4-7-105, which is renumbered from Section 4-7-5 is renumbered and amended to read:

[4-7-5]. 4-7-105. Exemptions.

The surety and licensing requirements of this chapter do not apply to:

(1) a livestock market that is bonded as required by laws of the United States and Title 4, Chapter 30, Livestock Markets; or

(2) a cooperative incorporated under the laws of this state or another state, except as to the receipt of livestock from a nonmember producer.

Section 76. Section 4-7-106, which is renumbered from Section 4-7-6 is renumbered and amended to read:

[4-7-6]. 4-7-106. Licenses -- Applications.

Application for an agent's~~[-broker's,]~~ or dealer's license shall be made to the department upon forms prescribed and furnished by the department~~[-The]~~, and the application shall state:

(1) the applicant's name, principal address in this state, and date of birth;

(2) the applicant's principal address in any location outside Utah;

(3) the name and principal address of the person authorized by the applicant to accept service of process in this state on behalf of the applicant during the licensure period;

(4) the name and principal address of the applicant's surety if the application is for a dealer's license;

(5) a schedule of the commissions, fees, and other charges the applicant intends to collect for services during the period of licensure;

(6) the name and address of each principal the applicant intends to represent during the period of licensure; and

(7) any other information that the department may require by rule.

Section 77. Section 4-7-107, which is renumbered from Section 4-7-7 is renumbered and amended to read:

[4-7-7]. 4-7-107. Issuance of dealer and agent licenses -- Fees -- Deposit of bond or trust agreement -- Renewal -- Refusal to issue or renew license.

(1) The commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license to a dealer within 30 days after:

(a) receipt of a proper application and financial statement;

(b) payment of a license fee determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2); and

(c) the posting of a corporate surety bond, an irrevocable letter of credit, a trust fund agreement, or other security required by Section ~~[4-7-8]~~ 4-7-108.

(2) Upon proper application and payment of the license fee determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2), the commissioner shall issue a license to conduct business as an agent ~~[or broker]~~.

(3) A license issued under this chapter:

(a) entitles the applicant to conduct the business described in the application through December 31 of the year in which the license is issued, subject to suspension or revocation for cause; and

(b) is renewable for a period of one year upon:

(i) receipt of a proper renewal application; and

(ii) payment of an annual license renewal fee determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2).

(4) A license issued under this chapter shall at all times remain the property of the state, and the licensee is entitled to ~~[its possession]~~ the license only for the duration of the license.

(5) The department shall refuse to issue or renew a license if the applicant:

(a) cannot produce a financial statement with sufficient assets to justify the amount of business the applicant contemplates, unless the application is for ~~an agent's or~~ an agent's license;

(b) is in violation of this chapter or rules adopted under this chapter;

(c) has made a false or misleading statement as to the health or physical condition of livestock in connection with the buying, receiving, selling, exchanging, soliciting or negotiating the sale of, or the weighing of livestock;

(d) has failed to keep records of purchases and sales or refused to grant inspection of those records by authorized agents of the department;

(e) has failed to comply with a lawful order of the department;

(f) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with the livestock transaction;

(g) has been suspended by order of the secretary of agriculture of the United States Department of Agriculture under provisions of the Packers and Stockyards Act, 1921, 7 U.S.C. Sec. 181 et seq.;

(h) employs a person required to be licensed whose license cannot be renewed or whose license is under suspension or revocation by the department or the United States Department of Agriculture; or

(i) has any unsatisfied civil judgments related to an activity for which licensing is required by this chapter.

(6) An applicant who has been refused a license or license renewal may not apply again for one year following refusal unless the department determines that the applicant is in compliance with this chapter.

Section 78. Section 4-7-108, which is renumbered from Section 4-7-8 is renumbered and amended to read:

[4-7-8]. 4-7-108. Applicant for dealer's license to post security -- Increase in amount of security posted -- Action on security authorized -- Duties of commissioner -- Option to require posting new security if action filed -- Effect of failure to post new security -- Commissioner's authority to call bond if not renewed.

(1) (a) Before a license is issued to a dealer, the applicant shall post a corporate surety bond, irrevocable letter of credit, trust fund agreement, or any other security agreement considered reasonable in an amount not less than \$10,000 ~~nor more than \$200,000~~, as determined by the commissioner or as required by the Packers and Stockyards Act, 1921, 7 U.S.C. ~~[Section]~~ Sec. 181 et seq.

(b) Any bond shall be written by a surety licensed under the laws of Utah and name the state, as obligee, for the use and benefit of producers.

(c) The bond or other security posted shall be conditioned upon:

(i) the faithful performance of contracts and the faithful accounting for and handling of livestock consigned to the dealer;

(ii) the performance of the obligations imposed under this chapter; and

(iii) the payment of court costs and ~~attorney's~~ attorney fees to the prevailing party incident to any suit upon the bond or other security posted.

(2) (a) The commissioner may require a dealer who is issued a license to increase the amount of the bond or other security posted under Subsection (1)(a) if the commissioner determines the bond or other security posted is inadequate to secure performance of the dealer's obligations.

(b) The commissioner shall notify the Packers and Stockyards Administration of an increase made under Subsection (2)(a).

(c) The commissioner may suspend a dealer's license for failure to comply with Subsection (2)(a) within 10 days after notice is given to the dealer.

(3) A consignor claiming damages, as a result of fraud, deceit, or willful negligence by a dealer or as a result of the dealer's failure to comply with this chapter, may bring an action upon the bond or other security posted for damages against both the principal and surety.

(4) (a) If it is reported to the department by a consignor that a dealer has failed to pay in a timely manner for livestock received for sale, the commissioner shall:

(i) ascertain the name and address of each consignor who is a creditor of the dealer; and

(ii) request a verified written statement setting forth the amount claimed due from the dealer.

(b) Upon receipt of the verified statements, the commissioner shall bring an action upon the bond or other security posted on behalf of the consignors who claim amounts due from the dealer.

(5) (a) If an action is filed upon the bond or other security posted, the commissioner may require the filing of new security.

(b) Immediately upon recovery in the action described in Subsection (5)(a), the commissioner shall require the dealer to file a new bond or other security.

(c) ~~[Failure, in either case,]~~ (i) The commissioner may suspend a license if a dealer fails to file the bond or other security within 10 days after the commissioner's demand ~~[is cause for suspension of the license until a new bond or other security is filed].~~

(ii) A suspension described in Subsection (5)(c)(i) shall remain in effect until the dealer files a new bond or other security.

(d) If the bond or other security posted under this section is not renewed within 10 days of its expiration date, unless the commissioner states in writing that this is unnecessary, the commissioner may obtain, after a hearing, the full amount of the bond or other security before it expires.

Section 79. Section 4-7-109, which is renumbered from Section 4-7-9 is renumbered and amended to read:

[4-7-9]. 4-7-109. Dealers -- Records mandated -- Records subject to inspection.

(1) A dealer who receives livestock for sale or consignment shall promptly record:

- (a) the name and address of the consignor;
- (b) the date received;
- (c) the condition and quantity upon arrival;
- (d) the date of sale for account of the producer-consignor;
- (e) the sale price;
- (f) an itemized statement of the charges to be paid by the producer-consignor;
- (g) the individual or group identification of the livestock;
- (h) the nature and amount of any claims the dealer has against third persons for overcharges or damages; and
- (i) if the dealer has a direct or indirect financial interest in the business of the purchaser, or, if the purchaser has a similar financial interest in the business of the dealer, the name and address of the purchaser.

(2) (a) The dealer shall provide a copy of the livestock receipt to the producer immediately upon delivery of the product.

(b) The records required by this section shall be retained for a period of one year following the date of consignment and shall be available during business hours for inspection by the department.

(c) A consignor involved in a consignment subject to inquiry may inspect relevant records.

(3) (a) A dealer shall file an annual report of the records required under Subsection (1) with the department on a form prescribed and furnished by the department.

(b) The dealer shall file the report by April 15 following the end of a calendar year, or if the records are kept on a fiscal year basis, by 90 days after the close of the fiscal year.

(c) The commissioner may, for good cause shown or by the commissioner's own motion, grant an extension to the filing deadline under Subsection (3)(b).

(d) For purposes of this Subsection (3), "dealer" does not include a packer buyer registered to purchase livestock for slaughter only.

(e) The department shall accept reports as required by the Packers and Stockyards Administration for livestock under the Packers and Stockyards Act, [9 C.F.R. Sec. 201.97] 1921, 7 U.S.C. Sec. 181, et seq.

(f) The reports required under this Subsection (3) may be subject to audit and establish the basis for bond adequacy.

Section 80. Section 4-7-110, which is renumbered from Section 4-7-10 is renumbered and amended to read:

[4-7-10]. 4-7-110. Livestock purchases.

Livestock purchases shall be paid for as provided in the Packers and Stockyards Act, 1921, 7 U.S.C. Sec. 181, et seq.

Section 81. Section 4-7-201, which is renumbered from Section 4-7-11 is renumbered and amended to read:

Part 2. Enforcement, Penalties, and Prohibitions

[4-7-11]. 4-7-201. Department authority -- Examination and investigation of transactions -- Notice of agency action upon probable cause -- Settlement of disputes -- Cease and desist order -- Enforcement -- Review.

(1) For the purpose of enforcing this chapter the department may, upon [its] the department's own motion, or shall, upon the verified complaint of an interested consignor, investigate, examine, or inspect any transaction involving:

- (a) the solicitation, receipt, sale, or attempted sale of livestock by a dealer or person assuming to act as a dealer;
- (b) the failure to make a correct account of sales;
- (c) the intentional making of a false statement about market conditions or the condition or quantity of livestock consigned;
- (d) the failure to remit payment in a timely manner to the consignor as required by contract or by this chapter;
- (e) any other consignment transaction alleged to have resulted in damage to the consignor; or
- (f) any dealer or agent with an unsatisfied judgment by a civil court related to an activity for which licensing is required by this chapter.

(2) (a) After investigation upon [its] the department's own motion, if the department determines that probable cause exists to believe that a dealer has engaged, or is engaging, in acts that violate this chapter, the department shall issue a notice of agency action.

(b) (i) Upon the receipt of a verified complaint, the department shall undertake to effect a settlement between the consignor and the dealer.

(ii) If a settlement cannot be effected, the department shall treat the verified complaint as a request for agency action.

(3) (a) In a hearing upon a verified complaint, if the commissioner, or hearing officer designated by the commissioner, determines by a preponderance of the evidence that the person complained of has violated this chapter and that the violation has resulted in damage to the complainant, the commissioner or officer shall:

(i) prepare written findings of fact detailing the findings and fixing the amount of damage suffered; and

(ii) order the defendant to pay damages.

(b) In a hearing initiated upon the department's own motion, if the commissioner or hearing officer determines by a preponderance of the evidence that the person complained of by the department has engaged ~~in~~, or is engaging, in~~;~~ acts that violate this chapter, the commissioner or officer shall prepare written findings of fact and an order requiring the person to cease and desist from the activity.

(4) The department may petition any court having jurisdiction in the county where the action complained of occurred to enforce the department's order.

(5) Any dealer aggrieved by an order issued under this section may obtain judicial review of the order.

(6) (a) The department may not act upon a verified complaint submitted to the department more than six months after the consignor allegedly suffered damage.

(b) A livestock claim shall be made in writing within 120 days from the date of the transaction.

Section 82. Section 4-7-202, which is renumbered from Section 4-7-12 is renumbered and amended to read:

[4-7-12]. 4-7-202. Sale of livestock -- Prima facie evidence of fraud.

The following constitutes prima facie evidence of fraud in the sale of livestock:

(1) any sale of livestock at less than market price by a dealer to a person with whom the dealer has a financial interest; or

(2) any sale out of which the dealer receives part of the sale price other than the agreed commission or other agreed charges.

Section 83. Section 4-7-203, which is renumbered from Section 4-7-13 is renumbered and amended to read:

[4-7-13]. 4-7-203. Suspension or revocation -- Grounds -- Notice to producers.

(1) The department may suspend or revoke the license of and suspend or refuse all department services to a person licensed under this chapter if the department finds that the licensee has:

(a) provided false information when making an application for a license;

(b) failed to comply with this chapter or rules adopted under this chapter; or

(c) engaged in any willful conduct that is detrimental to a producer.

(2) If a license is revoked pursuant to a hearing and the decision is final, or an injunction is imposed by a civil court, the department shall, by publication in a newspaper of [a] general circulation in the area, notify producers of livestock in the area in which the licensee operated that the license has been revoked or a department action has been taken.

Section 84. Section 4-7-204, which is renumbered from Section 4-7-13.5 is renumbered and amended to read:

[4-7-13.5]. 4-7-204. Suspension of license -- Opportunity for hearing.

(1) ~~[A license may be suspended]~~ The department may suspend a license immediately if:

(a) an emergency exists ~~[which]~~ that presents a clear and present danger to the public health;

(b) an inspection or sampling is refused; or

(c) the licensee's bond has been revoked or cancelled.

(2) The department shall immediately notify the person of the suspension in writing and provide an opportunity for hearing without delay.

Section 85. Section 4-7-205, which is renumbered from Section 4-7-14 is renumbered and amended to read:

[4-7-14]. 4-7-205. Prohibited acts.

(1) A person licensed under this chapter may not:

(a) make false charges incident to the sale of livestock;

(b) ~~[willfully]~~ willfully fail to comply with the requirements of Section ~~[4-7-9 or 4-7-10]~~ 4-7-109 or 4-7-110;

(c) fail to file a schedule of commissions and charges;

(d) reassign livestock without the consent of the producer-consignor for the purpose of charging more than one commission;

(e) make any false statement to the detriment of the producer regarding current market conditions for livestock or about the condition or quantity of the livestock consigned for the account of the producer;

(f) engage in fraud or misrepresentation in the procurement or attempted procurement of a license; or

(g) act as a dealer or agent and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money from any bank or other depository to the owner for the purchase price of livestock, when at the time of the making, drawing, uttering, or delivery the maker or

drawer does not have sufficient funds in or credit with the bank or other depository for the payment of the check, draft, or order in full upon its presentation.

(2) (a) The making, drawing, uttering, or delivery of a check, draft, or order in the circumstances specified in this section shall be evidence of an intent to defraud.

(b) As used in this section, "credit" means an arrangement or understanding with the bank or depository for the payment of the check, draft, or order.

Section 86. Section 4-8-101, which is renumbered from Section 4-8-1 is renumbered and amended to read:

CHAPTER 8. AGRICULTURAL FAIR TRADE ACT

[4-8-1]. 4-8-101. Title.

This chapter ~~[shall be known and may be cited]~~ is known as the "Agricultural Fair Trade Act."

Section 87. Section 4-8-102, which is renumbered from Section 4-8-2 is renumbered and amended to read:

[4-8-2]. 4-8-102. Purpose declaration.

(1) The Legislature finds and declares that in order to preserve the agricultural industry of this state it is necessary to protect and improve the economic status of persons engaged in the production of products of agriculture. ~~[To effectuate this policy]~~

(2) To carry out the policy described in Subsection (1), the Legislature determines it necessary to regulate the production and marketing of such products and to prohibit unfair and injurious trade practices. ~~[To that end this]~~

(3) This chapter shall be liberally construed.

Section 88. Section 4-8-103, which is renumbered from Section 4-8-3 is renumbered and amended to read:

[4-8-3]. 4-8-103. Definition.

As used in this chapter, "products of agriculture" ~~[mean]~~ means any product useful to the human species ~~[which]~~ that results from the application of the science and art of the production of plants, minerals, and animals.

Section 89. Section 4-8-104, which is renumbered from Section 4-8-4 is renumbered and amended to read:

[4-8-4]. 4-8-104. Department functions, powers, and duties.

The department ~~[has and]~~ shall exercise the following functions, powers, and duties, in addition to those specified in Chapter 1, Short Title and General Provisions:

(1) perform general supervision over the marketing, sale, trade, advertising, storage, and

transportation practices, used in buying and selling products of agriculture in Utah;

(2) conduct and publish surveys and statistical analyses with ~~[its]~~ the department's own resources or with the resources of others through contract, regarding:

(a) the cost of production for products of agriculture, including transportation, processing, storage, advertising, and marketing costs; ~~[regarding]~~

(b) market locations, demands, and prices for such products; and ~~[regarding]~~

(c) market forecasts;

(3) assist and encourage producers of products of agriculture in controlling current and prospective production and market deliveries in order to stabilize product prices at prices ~~[which]~~ that assure reasonable profits for producers and at the same time ensure adequate market supplies; ~~[and]~~

(4) actively solicit input from the public and from interested groups or associations, through public hearings or otherwise, to assist in making fair determinations with respect to the production, marketing, and consumption of products of agriculture~~[-]~~;

(5) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in regard to "Utah's Own," a program dedicated to the promotion of locally produced products of agriculture.

Section 90. Section 4-8-105, which is renumbered from Section 4-8-5 is renumbered and amended to read:

[4-8-5]. 4-8-105. Unlawful acts specified.

~~[It is unlawful for any]~~ A person engaged in the production, processing, handling, marketing, sale or distribution of products of agriculture ~~[to]~~ may not:

(1) discriminate in price between two or more producers with respect to products of agriculture of like grade and quality;

(2) use any brand, label, container, or designation on products of agriculture not authorized by the department;

(3) promote or advertise the price of any product of agriculture ~~[which]~~ that is required to be graded without displaying the grade of such product with prominence equal to that of the price; or

(4) make or permit the use of any false or misleading statement on any label or stencil affixed to a container or package containing products of agriculture or in any promotion or advertisement of such products.

Section 91. Section 4-8-106, which is renumbered from Section 4-8-6 is renumbered and amended to read:

[4-8-6]. 4-8-106. Procedure for enforcement -- Notice of agency action --

**Cease and desist order -- Enforcement --
Judicial review.**

(1) (a) Whenever the department has reason to believe that a person has, or is, engaged in^[,] the violation of this chapter, it shall issue a notice of agency action.

(b) If the commissioner, or a hearing officer designated by the commissioner, determines by a preponderance of the evidence that any person named in the complaint has engaged, or is engaging, in an act that violates this chapter, the officer shall:

- (i) prepare written findings of fact; and
- (ii) issue an order requiring the person to cease and desist from the illegal activity.

(2) The department may petition any court of competent jurisdiction for enforcement of its cease and desist order.

(3) Any person who is subject to a cease and desist order may obtain judicial review.

(4) The attorney general's office shall represent the department in any original action or appeal begun under this section.

**Section 92. Section 4-8-107, which is
renumbered from Section 4-8-7 is
renumbered and amended to read:**

**[4-8-7]. 4-8-107. Defense to claim of illegal
activity.**

No person who acts in compliance with any rule adopted under authority of this chapter shall be considered to be engaged in any illegal conspiracy or combination in restraint of trade or to be acting in furtherance of any illegal purpose.

**Section 93. Section 4-9-101 is enacted to
read:**

CHAPTER 9. WEIGHTS AND MEASURES

4-9-101. Title.

This chapter is known as "Weights and Measures."

**Section 94. Section 4-9-102, which is
renumbered from Section 4-9-1 is
renumbered and amended to read:**

[4-9-1]. 4-9-102. Definitions.

As used in this chapter:

(1) "Correct"^[, when used in connection with weights and measures,] means conformance to applicable requirements of this chapter.

(2) "Package" means a commodity put up or packaged before sale in either wholesale or retail sale units.

(3) "Primary standards" ~~mean~~ means the physical standards of the state, described in Section ~~[4-9-4]~~ 4-9-105, which are the legal reference from which all other standards and weights and measures are derived.

(4) "Sale from bulk" means the sale of commodities, when the quantity is determined at the time of sale.

(5) "Secondary standards" means a physical standard which is traceable to primary standards through comparisons, using acceptable laboratory procedures.

(6) "Weighing and measuring" means the use of weights and measures.

(7) "Weight" means net weight, unless the label declares that the product is sold by drained weight, in which case^[,] "weight" means net drained weight.

(8) "Weights and measures" means ~~[weights and measures, and]~~ the instruments or devices used for weighing or measuring, including an appliance or accessory associated with the instrument or device.

(9) "Weights and measures registration" means the issuance of a certificate by the commissioner to a weights and measures user.

(10) "Weights and measures user" means a person who uses weights and measures in trade or commerce.

**Section 95. Section 4-9-103, which is
renumbered from Section 4-9-2 is
renumbered and amended to read:**

[4-9-2]. 4-9-103. Authority to make rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce ~~[such]~~ rules ~~[as in its judgment are]~~ necessary to administer and enforce this chapter.

**Section 96. Section 4-9-104, which is
renumbered from Section 4-9-3 is
renumbered and amended to read:**

**[4-9-3]. 4-9-104. Weights and measures --
Systems used -- Basic units, tables, and
equivalents as published by National
Institute of Standards and Technology.**

(1) The department shall use:

(a) the same system of weights and measures that is customarily used in the United States^[,]; and

(b) the metric system of weights and measures.

(2) Either system under Subsection (1) may be used for commercial purposes in the state.

(3) The definitions of basic units of weight and measure, the tables of weight and measure, and the weights and measures equivalents published by the National Institute of Standards and Technology^[,] shall determine the weights and measures systems used within the state.

**Section 97. Section 4-9-105, which is
renumbered from Section 4-9-4 is
renumbered and amended to read:**

**[4-9-4]. 4-9-105. Weights and measures --
Primary state standards -- Secondary
state standards -- Verification.**

(1) Weights and measures that are traceable to the United States prototype standards supplied by

the federal government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the state primary standards, and shall be maintained in the calibration prescribed by the National Institute of Standards and Technology.

(2) Secondary standards may be prescribed by the department and shall be verified upon their initial receipt, and as often after initial receipt as is considered necessary by the department.

Section 98. Section 4-9-106, which is renumbered from Section 4-9-5 is renumbered and amended to read:

[4-9-5]. 4-9-106. Weights and measures -- Specifications, tolerances, and technical data published in National Institute of Standards and Technology Handbook govern.

Unless modified by the department, Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, National Institute of Standards and Technology, adopted by the National Conference on Weights and Measures, including supplements or revisions to Handbook 44, shall determine the specifications, tolerances, and other technical requirements for devices used for:

- (1) commercial weighing and measuring;
- (2) law enforcement;
- (3) data gathering; and
- (4) other weighing and measuring purposes.

Section 99. Section 4-9-107, which is renumbered from Section 4-9-5.2 is renumbered and amended to read:

[4-9-5.2]. 4-9-107. Adopting uniform packaging and labeling regulation.

Unless modified by the department, the Uniform Packaging and Labeling Regulation, adopted by the National Conference on Weights and Measures in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to packaging and labeling in the state.

Section 100. Section 4-9-108, which is renumbered from Section 4-9-5.3 is renumbered and amended to read:

[4-9-5.3]. 4-9-108. Adopting uniform regulation for the method of sale of commodities.

Unless modified by the department, the Uniform Regulation for the Method of Sale of Commodities, adopted by the National Conference on Weights and Measures, in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to the method of sale of commodities in the state.

Section 101. Section 4-9-109, which is renumbered from Section 4-9-5.4 is renumbered and amended to read:

[4-9-5.4]. 4-9-109. Adopting uniform regulation for the voluntary registration of servicepersons and service agencies for commercial weighing and measuring devices.

Unless modified by the department, the Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies for Commercial Weighing and Measuring Devices, adopted by the National Conference on Weights and Measures in Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, National Institute of Standards and Technology, shall apply to the registration of servicepersons and service agencies in the state.

Section 102. Section 4-9-110, which is renumbered from Section 4-9-6 is renumbered and amended to read:

[4-9-6]. 4-9-110. Department duties -- Seizure of incorrect weights and measures.

(1) The department may:

- (a) establish weights and measures standards, specifications, and tolerances for:
 - (i) all commodities;
 - (ii) the fill for any commodity contained in a package;
 - (iii) labels or labeling of a commodity; and
 - (iv) weights and measures used commercially;
- (b) inspect and test weights and measures kept, offered, or exposed for sale to determine if they are correct;
- (c) inspect and test weights and measures commercially used to determine if they are correct;
- (d) test all weights and measures used to check the receipt or disbursement of supplies used by a state agency or institution funded by the state;
- (e) in accordance with sampling procedures recognized and designated in Handbook 133, Checking the Net Contents of Packaged Goods, National Institute of Standards and Technology, inspect and test any packaged commodity kept, offered, or exposed for sale, sold, or in the process of delivery, to determine if the package contains the amount represented;
- (f) determine the appropriate term or unit of weight or measure to be used for container sizes, if the department determines that an existing practice of declaring the quantity by weight, measure, count, or any combination of these practices, hinders value comparisons by consumers;
- (g) approve correct weights and measures and reject and mark as "rejected," weights and measures that are incorrect;

(h) allow reasonable variations from a stated weight or measure caused by loss or gain due to:

(i) moisture during the course of acceptable distribution practices; or

(ii) unavoidable deviations in acceptable manufacturing practices;

(i) grant an exemption from the requirements of this chapter or from any rule promulgated under this chapter, when the department determines that the exemption is necessary for the maintenance of acceptable commercial practices;

(j) maintain on file, for public inspection, a copy of each handbook prepared by the National Institute of Standards and Technology [~~which~~] that is used to enforce this chapter; and

(k) establish and charge fees as authorized under Subsection [4-2-2] 4-2-103(2) for the inspection of weights and measures.

(2) The department may seize weights and measures that are:

(a) incorrect and are not corrected within a reasonable time specified by the department; or

(b) used or disposed of in a manner not authorized by the department.

Section 103. Section 4-9-111, which is renumbered from Section 4-9-7 is renumbered and amended to read:

[4-9-7]. 4-9-111. Enforcement powers of department.

(1) For the purpose of enforcing this chapter, the department may:

(a) enter any commercial premises [~~open to the public~~] during normal working hours after the presentation of credentials;

(b) issue in writing a “stop-use, hold, or removal order” with respect to any weights or measures commercially used or a “stop sale, use, or removal order” with respect to any packaged commodity or bulk commodity offered for sale;

(c) seize as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity offered for sale or sold in violation of this chapter;

(d) (i) seek an order of seizure or condemnation of any weight, measure, package, or sale from bulk that violates this chapter; or

(ii) upon proper grounds, obtain a temporary restraining order or permanent injunction to prevent a violation of this chapter; and

(e) stop any commercial vehicle and after presenting credentials:

(i) inspect its contents;

(ii) require the person in charge of the vehicle to produce any documents in his possession concerning the contents; or

(iii) require the person in charge of the vehicle to proceed with the vehicle ~~to some specified place~~ for inspection.

(2) If an order has been issued under Subsection (1)(b), the weights, measures, or commodities subject to the order may not be used, moved, or offered for sale until the department issues a written release.

(3) [~~No~~] A bond [~~shall~~] may not be required of the department in any injunctive proceeding brought under this section.

Section 104. Section 4-9-112, which is renumbered from Section 4-9-8 is renumbered and amended to read:

[4-9-8]. 4-9-112. Sale of commodities in liquid form -- Sale of commodities in nonliquid form -- Requirements.

(1) Commodities in liquid form shall be sold by liquid measure or by weight.

(2) Commodities not in liquid form shall be sold only by weight, measure, or by count, [~~se~~] as long as the method of sale provides accurate quantity information.

Section 105. Section 4-9-113, which is renumbered from Section 4-9-9 is renumbered and amended to read:

[4-9-9]. 4-9-113. Bulk sales -- Information furnished to purchaser.

Whenever the quantity is determined solely by the seller, in the absence of the buyer, all bulk sales of heating fuel and other bulk sales as determined by the department shall be accompanied by a delivery ticket containing the following information:

(1) the name and address of the vendor and purchaser;

(2) the date delivered;

(3) the quantity delivered and the quantity upon which the price is based, if different from the delivered quantity;

(4) a description of the bulk material sold, including any quality representation made in connection with the sale; and

(5) the number of individually wrapped packages.

Section 106. Section 4-9-114, which is renumbered from Section 4-9-10 is renumbered and amended to read:

[4-9-10]. 4-9-114. Packaged commodity sales -- Labeling information specified -- When price per single unit of weight to be displayed.

(1) Any packaged commodity offered for sale shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(a) the identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

(b) the quantity of contents in terms of weight, measure, or count; and

(c) the name and place of business of the manufacturer, packer, or distributor, if the packaged commodity is offered for sale, or sold other than on the premises where packaged.

(2) Any package ~~[which]~~ that is one of a lot containing random weights of the same commodity and bearing the total sales price of the package shall, in addition to compliance with Subsection (1) ~~[of this section]~~, bear on the outside of the package a definite, plain, and conspicuous declaration of the price per single unit of weight.

Section 107. Section 4-9-115, which is renumbered from Section 4-9-11 is renumbered and amended to read:

[4-9-11]. 4-9-115. Advertisement of packaged commodity sales -- Requirements.

(1) An advertisement ~~[which]~~ that promotes a packaged commodity with the retail price stated shall plainly and conspicuously advertise the quantity required to appear on the package.

(2) If a dual quantity declaration is required by law, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure ~~[need]~~ shall appear in the advertisement.

Section 108. Section 4-9-116, which is renumbered from Section 4-9-12 is renumbered and amended to read:

[4-9-12]. 4-9-116. Unlawful acts specified.

A person may not:

(1) sell, offer, or present for sale a commodity whose weight and measure is less than the weight and measure represented as being sold, offered, or exposed for sale;

(2) misrepresent the price of a commodity sold, advertised, exposed, or offered for sale by weight, measure, or count, or ~~[to]~~ represent the price in a manner that misleads or deceives a person;

(3) use or possess an incorrect weight or measure in commerce;

(4) remove a tag, seal, or mark from a weight or measure without specific written authorization from the department;

(5) hinder or obstruct an agent of the department dealing with weights and measures in the performance of the agent's duties; or

(6) operate weights and measures in trade or commerce for the purpose of determining the weight or measure of a commodity without a valid weights and measures registration issued by the department.

Section 109. Section 4-9-117, which is renumbered from Section 4-9-13 is renumbered and amended to read:

[4-9-13]. 4-9-117. Weighing and measuring devices -- Presumption.

If a weighing or measuring device is in a place where buying or selling is commonly carried on, there is a rebuttable presumption that the weighing or measuring device is regularly used for the business purposes of that place.

Section 110. Section 4-9-118, which is renumbered from Section 4-9-15 is renumbered and amended to read:

[4-9-15]. 4-9-118. Registration of commercial establishments using weights and measures -- Approved weights and measures inspectors -- Application -- Fee -- Expiration -- Renewal.

(1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish rules providing for the registration of weights and measures users and issuance of certification of weights and measures devices to ensure the use of correct weights and measures in commerce or trade.

(b) The division may:

(i) determine whether weights and measures are correct through:

(A) inspection and testing by a department ~~[employees]~~ employee; or

(B) acceptance of an inspection and testing report prepared by a registered weights and measures service person;

(ii) establish standards and qualifications for a registered weights and measures service ~~[persons]~~ person; and

(iii) determine the form and content of an inspection and testing report.

(c) A weights and measures user shall register with the department.

(d) ~~[Prior to]~~ Before granting a registration to a weights and measures user, the department shall determine whether the weights and measures user complies with the rules established under Subsection (1)(a).

(e) An applicant shall register with the department~~[,]~~ in writing, using forms required by the department.

(f) The department shall issue a registration to an applicant~~[,]~~ if the department determines that the applicant meets the qualifications of registration established under Subsection (1)(a).

(g) If the applicant does not meet the qualifications of registration, the department shall notify the applicant, in writing, that the applicant's registration is denied.

(h) (i) If an applicant submits an incomplete application, a written notice of conditional denial of registration shall be provided to ~~[an]~~ the applicant.

(ii) The applicant shall correct the deficiencies within the time period specified in the notice to receive a registration.

(i) (i) The department may, as provided under Subsection ~~[4-2-2]~~ 4-2-103(2), charge the weights and measures user a registration fee.

(ii) The department shall retain the fees as dedicated credits and shall use the fees to administer the registration of weights and measures users.

(2) (a) A registration^[7] issued under this section^[7] shall be valid from the date the department issues the registration^[7] to December 31 of the year the registration is issued.

(b) A registration may be renewed for the following year by applying for renewal by December 31 of the year the registration expires.

(3) A registration^[7] issued under this section^[7] shall specify:

(a) the name and address of the weights and measures user;

(b) the registration issuance and expiration date; and

(c) the number and type of weights and measures devices to be certified.

(4) (a) The department may immediately suspend a registration^[7] issued under this section^[7] if any of the requirements of Section [4-9-12] 4-9-116 are violated.

(b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the reinstatement of a registration.

(ii) If the department determines that all requirements under Section [4-9-12] 4-9-116 are being met, the department shall reinstate the registration.

(5) (a) A weights and measures user^[7] registered under this section^[7] shall allow the department access to the weights and measures user's place of business to determine if the weights and measures user is complying with the registration requirements.

(b) If a weights and measures user denies access for an inspection required under Subsection (5)(a), the department may suspend the weights and measures user's registration until the department is allowed access to the weights and measures user's place of business.

Section 111. Section 4-10-101, which is renumbered from Section 4-10-1 is renumbered and amended to read:

CHAPTER 10. BEDDING, UPHOLSTERED FURNITURE, AND QUILTED CLOTHING INSPECTION ACT

[4-10-1]. 4-10-101. Title.

This chapter [shall be] is known [and may be cited] as the "Bedding, Upholstered Furniture, and Quilted Clothing Inspection Act."

Section 112. Section 4-10-102, which is renumbered from Section 4-10-2 is renumbered and amended to read:

[4-10-2]. 4-10-102. Definitions.

As used in this chapter:

(1) "Article" means a bedding, upholstered furniture, quilted clothing, or filling material.

(2) "Bedding" means a:

(a) quilted, packing, mattress, or hammock pad; or

(b) mattress, boxspring, comforter, quilt, sleeping bag, studio couch, pillow, or cushion made with a filling material that can be used for sleeping or reclining.

(3) "Consumer" means a person who purchases, rents, or leases an article for the article's intended, everyday use.

(4) "Filling material" means cotton, wool, kapok, feathers, down, shoddy, hair, or other material, or a combination of materials, whether loose or in bags, bales, batting, pads, or other prefabricated form that is, or can be, used in bedding, upholstered furniture, or quilted clothing.

(5) "Label" means the display of written, printed, or graphic matter upon a tag or upon the immediate container of a bedding, upholstered furniture, quilted clothing, or filling material.

(6) (a) "Manufacture" means to make, process, or prepare from new or secondhand material, in whole or in part, a bedding, upholstered furniture, quilted clothing, or filling material for sale.

(b) "Manufacture" does not include making, processing, or preparing an article described in Subsection (6)(a) if:

(i) a person sells three or fewer of the articles per year; and

(ii) the articles are sold by persons who are not primarily engaged in the making, processing, or preparation of the articles.

(7) (a) "New material" means material that has not previously been used in the manufacture of another article used for any purpose.

(b) "New material" includes by-products from a textile mill using only new raw material synthesized from a product that has been melted, liquified, and re-extruded.

(8) "Owner's own material" means an article owned or in the possession of a person for the person's own or a tenant's use that is sent to another person for manufacture or repair.

(9) "Quilted clothing" means a filled garment or apparel, exclusive of trim used for aesthetic effect, or a stiffener, shoulder pad, interfacing, or other material that is made in whole or in part from filling material and sold or offered for sale.

(10) "Repair" means to restore, recover, alter, or renew bedding or upholstered furniture for a consideration.

(11) "Retailer" means a person who sells bedding, upholstered furniture, quilted clothing, or filling material to a consumer for use primarily for personal, family, household, or business purposes.

(12) (a) "Sale" or "sell" means to offer or expose for sale, barter, trade, deliver, consign, lease, or give away any bedding, upholstered furniture, quilted clothing, or filling material.

(b) "Sale" or "sell" does not include a judicial, executor's, administrator's, or guardian's sale of an item described in Subsection (12)(a).

(13) "Secondhand" means an article or filling material, or portion of an article or filling material, that has previously been used.

(14) "Sterilize" means to disinfect, decontaminate, sanitize, cleanse, or purify as required by Section [4-10-14] 4-10-113.

(15) "Tag" means a card, flap, or strip attached to an article for the purpose of displaying information required by this chapter or under rule made pursuant to it.

(16) (a) "Used" means an article that has been sold to a consumer and has left the store.

(b) "Used" does not include an article returned to the store:

- (i) with its original tags; and
- (ii) in its original packaging.

(17) "Upholstered furniture" means portable or fixed furniture, except fixed seats in motor vehicles, boats, or aircraft, that is made in whole or in part with filling material, exclusive of trim used for aesthetic effect.

(18) "Wholesaler" means a person who offers an article for resale to a retailer or institution rather than a final consumer.

Section 113. Section 4-10-103, which is renumbered from Section 4-10-3 is renumbered and amended to read:

[4-10-3]. 4-10-103. Authority to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce [such] rules [as in its judgment are necessary] to administer and enforce this chapter.

Section 114. Section 4-10-104, which is renumbered from Section 4-10-4 is renumbered and amended to read:

[4-10-4]. 4-10-104. Manufacture, repair, or wholesale sale of bedding, upholstered furniture, quilted clothing, or filling material -- License required.

It is unlawful for any person to engage in the manufacture, repair, or wholesale sale of any bedding, upholstered furniture, quilted clothing, or filling material without a license issued by the department.

Section 115. Section 4-10-105, which is renumbered from Section 4-10-5 is renumbered and amended to read:

[4-10-5]. 4-10-105. License -- Application -- Fees -- Expiration -- Renewal.

(1) (a) A person may apply to the department, on forms prescribed and furnished by the department, for a license to manufacture, repair, sterilize, or engage in the wholesale sale of bedding, upholstered furniture, quilted clothing, or filling material.

(b) Upon receipt of a proper application and payment of the appropriate license fee, the commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue to the applicant a license to engage in the particular activity through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(c) A person doing business under more than one name shall be licensed for each name under which business is conducted.

(2) The annual license fee for each license issued under this chapter shall be determined by the department pursuant to Subsection [4-2-2] 4-2-103(2).

(3) Each license issued under this chapter is renewable for a period of one year upon the payment of the applicable amount for the particular license sought to be renewed on or before December 31 of each year.

(4) A person who holds a valid manufacturer's license may, upon application, be licensed as a wholesale dealer without the payment of an additional license fee.

(5) A person who fails to renew a license and engages in conduct requiring a license under this chapter shall pay the applicable license fee for each year in which the person engages in conduct requiring a license for which a license is not renewed.

(6) The department may retroactively collect a fee owed under Subsection (5).

Section 116. Section 4-10-106, which is renumbered from Section 4-10-6 is renumbered and amended to read:

[4-10-6]. 4-10-106. Unlawful acts specified.

It is unlawful for any person to:

(1) sell bedding, upholstered furniture, quilted clothing, or filling material as new unless it is made from new material and properly tagged;

(2) sell bedding, upholstered furniture, quilted clothing or filling material made from secondhand material which is not properly tagged;

(3) label or sell a used or secondhand article as if it were a new article;

(4) use burlap or other material which has been used for packing or baling, or to use any unsanitary,

filthy, or vermin or insect infected filling material in the manufacture or repair of any article;

(5) sell bedding, upholstered furniture, quilted clothing or filling material which is not properly tagged regardless of point of origin;

(6) use any false or misleading statement, term, or designation on any tag;

(7) use any false or misleading label;

(8) sell new bedding, upholstered furniture, or quilted clothing with filling material made of down, feather, wool, or hair that has not been properly sterilized; or

(9) engage in the manufacture, repair, sterilization, or wholesale sale of bedding, upholstered furniture, quilted clothing, or filling material without a license as required by this chapter.

Section 117. Section 4-10-107, which is renumbered from Section 4-10-7 is renumbered and amended to read:

[4-10-7]. 4-10-107. Tagging requirements for bedding, upholstered furniture, and filling material.

(1) (a) All bedding, upholstered furniture, and filling material shall be securely tagged by the manufacturer, retailer, or repairer.

(b) Tags shall be at least six square inches and plainly and indelibly labeled with:

(i) information as the department requires by rule;

(ii) according to the filling material type, the words "All New Material," "Secondhand Material," or "Owner's Material," stamped or printed on the label; and

(iii) the word "USED" stamped or printed on the label of a used mattress.

(c) Each label shall be placed on the article in such a position as to facilitate ease of examination.

(2) (a) If more than one type of filling material is used in an item, the percentage, by weight, of each component part shall be listed in order of predominance.

(b) If descriptive statements are made about the frame, cover, or style of the article, such statements shall, in fact, be true.

(c) All quilted clothing shall be tagged and labeled in conformity with the Federal Textile Fiber Products Identification Act, 15 U.S.C. Secs. 70 through 70k.

(3) No person, except the purchaser, may remove, deface, or alter a tag attached according to this chapter.

(4) A used mattress shall be tagged with the word "USED," in accordance with rules established by the department.

(5) The retailer of a used mattress shall display the mattress so that the "USED" tag is clearly visible to a customer.

Section 118. Section 4-10-108, which is renumbered from Section 4-10-7.3 is renumbered and amended to read:

[4-10-7.3]. 4-10-108. Seller's representation of a used mattress -- Bedding records required.

(1) A seller shall represent a mattress tagged "USED" as previously used by a customer.

(2) The manufacturer, repairer, wholesale dealer, or retailer of a mattress shall keep an invoice, shipping information, bill of lading, or other record of the mattress at the manufacture, repair, wholesale, or retail location for a minimum of one year from the day on which the invoice, shipping information, bill of lading, or other record was created or received.

Section 119. Section 4-10-109, which is renumbered from Section 4-10-8 is renumbered and amended to read:

[4-10-8]. 4-10-109. Use of rubber stamp or stencil authorized -- Conditions for use.

A rubber stamp or stencil may be used instead of a tag on articles with slip covers if the article has a smooth backing, or on suitable surfaces of containers or bales of filling material; provided, the information required by Section [4-10-7] 4-10-107 is indelible and legible.

Section 120. Section 4-10-110, which is renumbered from Section 4-10-9 is renumbered and amended to read:

[4-10-9]. 4-10-110. Sale of bedding, upholstered furniture, quilted clothing, or filling material -- Tag, stamp, or stencil required -- Secondhand material to bear tag -- Presumption -- Owner's own material to be tagged.

(1) No wholesaler or retailer shall sell any bedding, upholstered furniture, quilted clothing, or prefabricated filling material, whether the point of origin of such article is inside or outside the state, unless it is appropriately tagged under Section [4-10-7] 4-10-107, or unless it is appropriately stamped or stenciled under Section [4-10-7 or 4-10-8] 4-10-107 or 4-10-109.

(2) (a) A retailer who sells used articles shall attach a secondhand material tag before sale.

(b) Possession of an article by a person who regularly engages in the manufacture, repair, wholesale, or supply of such articles is presumptive evidence of intent to sell.

(3) (a) A person who repairs "owner's own material" shall immediately upon its receipt attach an owner's material tag to the article.

(b) The tag shall remain attached to the article until it is actually in the process of repair and shall be reattached upon completion of repair.

Section 121. Section 4-10-111, which is renumbered from Section 4-10-10 is renumbered and amended to read:

[4-10-10]. 4-10-111. Enforcement -- Inspection authorized -- Samples -- Reimbursement for samples -- Warrants.

(1) (a) The department may access public and private premises where articles subject to this chapter are manufactured, repaired, stored, or sold for the purpose of determining compliance with this chapter.

(b) For purposes of determining compliance, the department may:

(i) open any upholstered furniture, bedding, or quilted clothing to obtain a sample for inspection and analysis of filling material; or

(ii) if considered appropriate by the department, take the entire article for inspection and analysis.

(c) Upon request, the department shall reimburse the owner or person from whom a sample or article is taken in accordance with this Subsection (1) for the actual cost of the sample or article.

(2) Upon request, the department may review and copy any of the records required under Subsection [4-10-7.3] 4-10-108(2).

(3) The department may proceed immediately, if admittance is refused or a record is denied, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and taking samples or articles.

Section 122. Section 4-10-112, which is renumbered from Section 4-10-11 is renumbered and amended to read:

[4-10-11]. 4-10-112. Stop sale, use, or removal order authorized -- Conditions for release specified -- Condemnation or seizure -- Procedure specified -- Award of costs authorized.

(1) (a) The department may issue a "stop sale, use, or removal order" to any manufacturer, repairer, wholesaler, or retailer of any designated article or articles which it finds or has reason to believe violates this chapter.

(b) The order shall be in writing and no article subject to it shall be removed, offered, or exposed for sale, except upon subsequent written release by the department.

(c) Before a release is issued, the department may require the manufacturer, repairer, wholesaler, or retailer of the "stopped" article to pay the expense incurred by the department in connection with the withdrawal of the article from the market.

(2) (a) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of any article which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent violation of this chapter.

(b) No bond shall be required of the department in an injunctive proceeding brought under this section.

(3) [If] (a) Except as provided in Subsection (3)(b), if condemnation is ordered, the article shall be disposed of as the court directs[; provided, that in no event shall it].

(b) The court may not order condemnation without giving the claimant of the article an opportunity to apply to the court for permission to bring the article into conformance, or for permission to remove it from the state.

(4) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the article.

Section 123. Section 4-10-113, which is renumbered from Section 4-10-14 is renumbered and amended to read:

[4-10-14]. 4-10-113. Sterilization of filling material.

(1) A person shall sterilize all wool, feathers, down, shoddy, hair, or other material before the material is used as filling material in new bedding, upholstered furniture, or quilted clothing.

(2) The department shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules governing the appropriate method by which a person may sterilize wool, feathers, down, shoddy, hair, or other material for use in filling material, as required by Subsection (1).

Section 124. Section 4-11-101, which is renumbered from Section 4-11-1 is renumbered and amended to read:

CHAPTER 11. UTAH BEE INSPECTION ACT

[4-11-1]. 4-11-101. Title.

This chapter [shall be] is known [and may be cited] as the "Utah Bee Inspection Act."

Section 125. Section 4-11-102, which is renumbered from Section 4-11-2 is renumbered and amended to read:

[4-11-2]. 4-11-102. Definitions.

As used in this chapter:

(1) "Abandoned apiary" means any apiary[; (a) to which the owner or operator fails to give reasonable and adequate attention during a given year[; with the result that the welfare of a neighboring colony is jeopardized; or (b) that is not properly identified in accordance with this chapter.] as determined by the department.

(2) "Apiary" means any place where one or more colonies of bees are located.

(3) "Apiary equipment" means hives, supers, frames, veils, gloves, or other equipment used to handle or manipulate bees, honey, wax, or hives.

(4) "Appliance" means any apparatus, tool, machine, or other device used to handle or manipulate bees, wax, honey, or hives.

(5) "Bee" means the common honey bee, *Apis mellifera*, at any stage of development.

(6) (a) "Beekeeper" means a person who keeps bees [in order to: (i) collect honey and beeswax; (ii) pollinate crops; or (iii) produce bees for sale to other beekeepers.].

(b) "Beekeeper" includes an [apiarists] apiarist.

(7) "Colony" means an aggregation of bees in any type of hive that includes queens, workers, drones, or brood.

(8) "Disease" means any infectious or contagious disease affecting bees, as specified by the department, including American foulbrood.

(9) "Hive" means a frame hive, box hive, box, barrel, log, gum skep, or other artificial or natural receptacle that may be used to house bees.

(10) "Package" means any number of bees in a bee-tight container, with or without a queen, and without comb.

(11) "Parasite" means an organism that parasitizes any developmental stage of a bee.

(12) "Pest" means an organism that:

(a) inflicts damage to a bee or bee colony directly or indirectly; or

(b) may damage apiary equipment in a manner that is likely to have an adverse affect on the health of the colony or an adjacent colony.

(13) "Raise" means:

(a) to hold a colony of bees in a hive for the purpose of pollination, honey production, or study, or a similar purpose; and

(b) when the person holding a colony[,] holds the colony or a package of bees in the state for a period of time exceeding 30 days.

(14) "Terminal disease" means a pest, parasite, or pathogen that will kill an occupant colony or subsequent colony on the same equipment.

Section 126. Section 4-11-103, which is renumbered from Section 4-11-3 is renumbered and amended to read:

[4-11-3]. 4-11-103. Department authorized to make and enforce rules.

(1) The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce [such] rules [as it considers] necessary for the administration and enforcement of this chapter. [Such rules]

(2) The rules described in Subsection (1) shall include provisions for the identification of each apiary within the state.

Section 127. Section 4-11-104, which is renumbered from Section 4-11-4 is renumbered and amended to read:

[4-11-4]. 4-11-104. Bee raising -- Registration required -- Application --

Fees -- Renewal -- License required -- Application -- Fees -- Renewal.

(1) ~~[(a)]~~ A person may not raise bees in this state without being registered with the department.

~~[(b)]~~ (2) Application for registration to raise bees shall be made to the department upon tangible or electronic forms prescribed and furnished by the department, within 30 days after the person:

~~[(i)]~~ (a) takes possession of the bees; or

~~[(ii)]~~ (b) moves the bees into the state.

~~[(e)]~~ (3) Nothing in Subsection ~~[(1)(b)]~~ (2) limits the requirements of Section ~~[4-11-11]~~ 4-11-111.

~~[(d)]~~ (4) An application in accordance with this chapter shall specify:

~~[(i)]~~ (a) the name and address of the applicant;

~~[(ii)]~~ (b) the number of bee colonies owned by the applicant at the time of the application that will be present in the state for a period exceeding 30 days; and

~~[(iii)]~~ (c) any other relevant information the department considers appropriate.

~~[(e)]~~ (5) Upon receipt of a proper application and payment of an annual registration fee determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2), the commissioner shall issue a registration to the applicant valid through December 31 of the year in which the registration is issued, subject to suspension or revocation for cause.

~~[(f)]~~ (6) A bee registration is renewable for a period of one year upon the payment of an annual registration renewal fee as determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2).

~~[(g)]~~ (7) Registration shall be renewed on or before December 31 of each year.

~~[(2) (a) A person may not operate a wax salvage plant without a license issued by the department.]~~

~~[(b) Application for a license to operate a wax salvage plant shall be made to the department upon tangible or electronic forms prescribed and furnished by the department.]~~

~~[(e) The application shall specify such information as the department considers appropriate.]~~

~~[(d) Upon receipt of a proper application and payment of a license fee as determined by the department pursuant to Subsection 4-2-2(2), the commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license entitling the applicant to operate a wax salvage plant through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.]~~

~~[(e) A wax salvage license is renewable for a period of one year, on or before December 31 of each year, upon the payment of an annual license~~

renewal fee as determined by the department pursuant to Subsection 4-2-2(2).]

Section 128. Section 4-11-105, which is renumbered from Section 4-11-5 is renumbered and amended to read:

[4-11-5]. 4-11-105. County bee inspector -- Appointment -- Termination -- Compensation.

(1) The county executive upon the petition of five or more persons who raise bees within the respective county shall, with the approval of the commissioner, appoint a qualified person to act as a bee inspector within the county.

(2) A county bee inspector shall be employed at the pleasure of the county executive and the commissioner[,] and is subject to termination of employment, with or without cause, at the instance of either.

(3) Compensation for the county bee inspector shall be fixed by the county legislative body.

(4) To be appointed a county bee inspector, a person shall demonstrate adequate training and knowledge related to this chapter, bee diseases, and pests.

(5) A record concerning bee inspection shall be kept by the county executive or commissioner.

(6) The county executive and the commissioner shall investigate a formal, written complaint against a county bee inspector.

~~[(7) The department may authorize an inspection if:]~~

~~[(a) a county bee inspector is not appointed; or]~~

~~[(b) a conflict of interest arises with a county bee inspector.]~~

Section 129. Section 4-11-106, which is renumbered from Section 4-11-6 is renumbered and amended to read:

[4-11-6]. 4-11-106. Hives to have removable frames -- Consent of county bee inspector to sell or transport diseased bees.

(1) A person may not house or keep bees in a hive unless ~~[it]~~ the hive is equipped with movable frames to all ~~[its]~~ the hive's parts so that access to the hive can be had without difficulty.

(2) No person who owns or has possession of bees (whether queens or workers) with knowledge that they are infected with terminal disease, parasites, or pests, or with knowledge that they have been exposed to terminal disease, parasites, or pests, shall sell, barter, give away, or move the bees, colonies, or apiary equipment without the consent of the county bee inspector or the department.

Section 130. Section 4-11-107, which is renumbered from Section 4-11-7 is renumbered and amended to read:

[4-11-7]. 4-11-107. Inspector -- Duties -- Diseased apiaries -- Examination of

diseased bees by department -- Election to transport bees to wax-salvage plant.

(1) The county bee inspector or the department may inspect:

(a) all apiaries within the county at least once each year; and~~[, also, inspect]~~

(b) immediately any apiary within the county that is alleged in a ~~[written]~~ complaint to be severely diseased, parasitized, or abandoned.

(2) If, upon inspection, the inspector determines that an apiary is diseased or parasitized, the inspector ~~[shall]~~ may take the following action based on the severity of the disease or parasite present:

(a) prescribe the course of treatment that the owner or caretaker of the bees shall follow to eliminate the disease or parasite;

(b) personally, for the purpose of treatment approved by the department, take control of the afflicted bees, hives, combs, broods, honey, and equipment; or

(c) destroy the afflicted bees and, if necessary, their hives, combs, broods, honey, and all appliances that may have become infected.

(3) If, upon reinspection, the inspector determines that the responsible party has not executed the course of treatment prescribed by Subsection (2), the inspector may take immediate possession of the afflicted colony for control or destruction in accordance with Subsection (2)(b) or (c).

(4) (a) The owner of an apiary who is dissatisfied with the diagnosis or course of action proposed by an inspector under this section may, at the owner's expense, have the department examine the alleged diseased bees.

(b) The decision of the commissioner with respect to the condition of bees at the time of the examination is final and conclusive upon the owner and the inspector involved.

~~[(5) The owner of a diseased apiary, notwithstanding the provisions of Subsections (2), (3), and (4), may elect under the direction of the county bee inspector to kill the diseased bees, seal their hives, and transport them to a licensed wax-salvage plant.]~~

Section 131. Section 4-11-108, which is renumbered from Section 4-11-8 is renumbered and amended to read:

[4-11-8]. 4-11-108. County bee inspector -- Disinfection required before leaving apiary with diseased bees.

(1) Before inspecting the premises of any apiary, an inspector and any assistant of an inspector shall disinfect any equipment that will be used in the inspection.

~~[(1)]~~ (2) Before leaving the premises of any apiary ~~[where disease exists]~~, the ~~[county]~~ bee inspector, or any assistant, shall thoroughly disinfect any part of the inspector's own person, clothing, or any

appliance that has come in contact with infected material.

[~~(2)~~] (3) The method of disinfection required by Subsection [~~(4)~~] (2):

- (a) may be determined by the department; and
- (b) shall be sufficient to destroy disease, parasites, and pathogens encountered.

[~~(3)~~] (4) A county bee inspector shall maintain a record of each inspection, including disinfection practices.

[~~(4)~~] (5) The county executive or the commissioner may review a county bee inspector's records kept in accordance with Subsection [~~(3)~~] (4).

Section 132. Section 4-11-109, which is renumbered from Section 4-11-9 is renumbered and amended to read:

[~~4-11-9~~]. 4-11-109. Inspection of apiaries where queen bees raised for sale -- Honey from apiaries where queen bees raised for sale not to be used for candy for mailing cages unless boiled.

(1) (a) At least twice each summer the county bee inspector [~~shall~~] may inspect each apiary in which queen bees are raised for sale.

(b) A person may not sell or transport any queen bee from an apiary that is found to be infected with disease[,] without the consent of the county bee inspector or the department.

(2) No person engaged in raising queen bees for sale shall use any honey for making candy for mailing cages that has not been boiled for at least 30 minutes.

(3) A person rearing queens shall follow standard methods for minimizing or eliminating unmanageably aggressive stock.

Section 133. Section 4-11-110, which is renumbered from Section 4-11-10 is renumbered and amended to read:

[~~4-11-10~~]. 4-11-110. Enforcement -- Inspections authorized -- Warrants.

(1) The department and all [~~county~~] bee inspectors shall have access to all apiaries or places where bees, hives, and appliances are kept for the purpose of enforcing this chapter.

(2) If admittance is refused, the department, or the [~~county~~] bee inspector involved, may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making an inspection.

Section 134. Section 4-11-111, which is renumbered from Section 4-11-11 is renumbered and amended to read:

[~~4-11-11~~]. 4-11-111. Importation of bees or appliances into state -- Certification required -- Inspection discretionary --

Authority to require destruction or removal of diseased bees and appliances.

(1) (a) A person may not bring or import any bees in packages or hives or bring or import any used beekeeping equipment or appliances into this state[, ~~except after~~] without obtaining a certificate from an inspector authorized in the state of origin certifying that:

(i) the bees, apiary equipment, or appliances have been inspected within the current production season[;] and [~~that~~]

(ii) all diseased colonies in the apiary at the time of the inspection were destroyed or [~~removed to a licensed wax salvage plant before the issuance of the certificate.~~] treated.

(b) A person bringing or importing bees into the state shall advise the department of the address of the [~~bees~~] bees' destination and furnish the department with a copy of the certificate of inspection [~~either: (i) within at least five working days before the bees enter the state; or (ii) upon entry into the state.~~].

(c) A person intending to hold bees in the state for a period of time exceeding 30 days shall comply with Section [~~4-11-4~~] 4-11-104.

(2) (a) A person may not bring or import any used apiary equipment, except after obtaining a certificate from an inspector authorized in the state of origin certifying that all potentially pathogen-conductive apiary equipment or appliances are appropriately sterilized immediately before importation.

(b) A person bringing or importing used apiary equipment shall advise the department of the address of the destination in the state and furnish the department with a copy of the certificate of inspection [~~either: (i) within at least five working days before the bees enter the state; or (ii) upon entry into the state.~~].

(3) Used apiary equipment or appliances that have been exposed to terminal disease may not be sold without the consent of the [~~county~~] bee inspector or the commissioner.

(4) In lieu of the certificate required by Subsection (1), the certificate may be a Utah certificate.

(5) (a) If the department determines it is necessary for any reason to inspect any bees, apiary equipment, or appliance upon arrival at a destination in this state, and upon this inspection finds terminal disease, the department shall cause all diseased colonies, appliances, and equipment to be either:

(i) destroyed immediately; or

(ii) removed from the state within 48 hours.

(b) The costs [~~under~~] of complying with Subsection (5)(a)(i) or (ii) shall be paid by the person bringing the diseased colonies, appliances, or equipment into the state.

Section 135. Section 4-11-112, which is renumbered from Section 4-11-12 is renumbered and amended to read:

[4-11-12]. 4-11-112. Quarantine authorized.

The commissioner, in order to protect the bee industry of the state against bee health or management issues, may quarantine the entire state, an entire county, or any apiary or specific hive within the state~~[, as the commissioner considers necessary].~~

Section 136. Section 4-11-113, which is renumbered from Section 4-11-13 is renumbered and amended to read:

[4-11-13]. 4-11-113. Unlawful acts specified.

It is unlawful for a person to:

(1) extract honey in any place where bees can gain access either during or after the extraction process;

~~[(2) remove honey or wax, or attempt to salvage, or salvage any hives, apiary equipment, or appliances from a diseased colony, except in a licensed wax salvage plant, unless specifically authorized by a county bee inspector or the commissioner;]~~

~~[(3)]~~ (2) maintain any neglected or abandoned hives, apiary equipment, or appliances other than in an enclosure that prohibits the entrance of bees;

(4) (3) raise bees without being registered with the department; or

~~[(5) operate a wax salvage plant without a license;]~~

~~[(6) store an empty hive body, apiary equipment, or appliances in a manner that may propagate pests, disease, or bee feeding frenzy; or]~~

(7) (4) knowingly sell a colony, apiary equipment, or ~~[appliances that are]~~ appliance that is inoculated with terminal disease pathogens.

Section 137. Section 4-11-114, which is renumbered from Section 4-11-14 is renumbered and amended to read:

[4-11-14]. 4-11-114. Maintenance of abandoned apiary, equipment, or appliance -- Nuisance.

(1) It is a public nuisance to keep ~~[or maintain]~~ an abandoned or diseased apiary, apiary equipment, or appliance anywhere other than in an enclosure that prohibits the entry of bees.

(2) Items listed in Subsection (1) are subject to seizure and destruction by the county bee inspector.

(3) Upon discovery of, or receipt of a written complaint concerning, an abandoned apiary site, apiary equipment, or appliance, the [county] bee inspector shall attempt to notify the registered owner, if any.

(4) (a) A registered owner notified under Subsection (3) shall remove the abandoned apiary,

apiary equipment, or appliance or provide a bee-proof enclosure within 15 days.

(b) The [county] bee inspector or the department shall verify the removal or protection in accordance with Subsection (4)(a) at the expiration of the 15-day period.

(c) If a registered owner does not comply with Subsection (4)(a), the [county] bee inspector or the department may seize and destroy the abandoned apiary, apiary equipment, and appliances.

(5) A [county] bee inspector or the department may seize and destroy an abandoned apiary, apiary equipment, or appliances if the abandoned apiary, apiary equipment, or appliances do not indicate a registered owner.

Section 138. Section 4-11-115, which is renumbered from Section 4-11-17 is renumbered and amended to read:

[4-11-17]. 4-11-115. Maintaining gentle stock.

A beekeeper may not intentionally maintain an aggressive or unmanageable stock, whether African or European in origin.

Section 139. Section 4-12-4 is amended to read:

4-12-4. Distribution of commercial and customer-formula feed -- Registration or permit required -- Application -- Fees -- Expiration -- Renewal.

(1) No person may distribute a commercial feed in this state which is not registered with the department. Application for registration shall be made to the department upon forms prescribed and furnished by it accompanied with an annual registration fee, determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2), for each brand name of commercial feed registered. Upon receipt of a proper application and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing the applicant to distribute the registered commercial feed in this state through December 31 of the year in which the registration is issued, subject to suspension or revocation for cause.

(2) A person who distributes customer-formula feed is not required to register such feed, but is required to obtain a permit from the department before distribution. Application for a customer-formula feed distribution permit shall be made to the department upon forms prescribed and furnished by it accompanied with an annual permit fee determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2). Upon receipt by the department of a proper application and payment of the appropriate fee as prescribed by the department, the commissioner shall issue a permit to the applicant allowing the applicant to distribute customer-formula feed in this state through December 31 of the year in which the permit is issued, subject to suspension or revocation for cause.

(3) Each registration is renewable for a period of one year upon the payment of an annual

registration renewal fee in an amount equal to the current applicable original registration fee. Each renewal fee shall be paid on or before December 31 of each year.

(4) A customer-formula feed permit is renewable for a period of one year upon the payment of an annual permit renewal fee in an amount equal to the current applicable original permit fee. Each permit renewal fee shall be paid on or before December 31 of each year.

Section 140. Section 4-13-101, which is renumbered from Section 4-13-1 is renumbered and amended to read:

CHAPTER 13. UTAH FERTILIZER ACT

[4-13-1]. 4-13-101. Title.

This chapter [~~shall be~~] is known [~~and may be cited~~] as the "Utah Fertilizer Act."

Section 141. Section 4-13-102, which is renumbered from Section 4-13-2 is renumbered and amended to read:

[4-13-2]. 4-13-102. Definitions.

As used in this chapter:

(1) "Adulterated fertilizer" means any commercial fertilizer that contains an ingredient that renders it injurious to beneficial plant life when applied in accordance with the directions on the label, or contains crop or weed seed, or is inadequately labeled to protect plant life.

(2) "Brand" means any term, design, or trade mark used in connection with one or several grades of commercial fertilizer or soil amendment.

(3) "Commercial fertilizer" means any substance that contains one or more recognized plant nutrients that is used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, exclusive of unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, gypsum, and other products exempted by rule of the department.

(4) "Distributor" means any person who:

(a) imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer;

(b) imports, consigns, manufactures, produces, compounds, sizes, or blends a soil amendment; or

(c) offers for sale, sells, barter, or otherwise supplies commercial fertilizer or a soil amendment in this state.

(5) "Fertilizer material" means a commercial fertilizer that contains either:

(a) quantities of no more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash);

(b) approximately 85% plant nutrients in the form of a single chemical compound; or

(c) plant or animal residues or by-products, or a natural material deposit that is processed so that its

primary plant nutrients have not been materially changed, except through purification and concentration.

(6) "Grade" means the percentage of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis; provided, that specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash and that fertilizer materials such as bone meal, manures, and similar raw materials may be guaranteed in fractional units.

(7) (a) "Guaranteed analysis" means the minimum percentage by weight of plant nutrients claimed in the following order and form:

Total nitrogen (N) ___ percent

Available phosphoric acid (P0) ___ percent

Soluble potash (K0) ___ percent

(b) For unacidulated mineral phosphatic materials and basic slag, bone, tankage, and other organic phosphate materials, it means the total phosphoric acid or degree of fineness.

(c) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton, when required by rule.

(d) (i) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rule of the department.

(ii) The guarantees for such other nutrients shall be expressed in the form of the element.

(iii) The sources of such other nutrients, such as oxides, salt, chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label.

(iv) Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department.

(v) Any plant nutrients or other substances or compounds guaranteed are subject to inspection and analysis in accord with the methods and rules prescribed by the department.

(8) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of commercial fertilizer or soil amendment.

(9) "Label" means the display of all written, printed, or graphic matter upon the immediate container or statement accompanying a commercial fertilizer or soil amendment.

(10) "Labeling" means all written, printed, or graphic matter upon or accompanying any commercial fertilizer or soil amendment, or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such commercial fertilizers or soil amendments.

(11) "Mixed fertilizer" means a commercial fertilizer containing any combination of fertilizer materials.

(12) "Official sample" means any sample of commercial fertilizer or soil amendment taken by the department and designated as "official."

(13) "Percent" or "percentage" means the percentage by weight.

(14) "Registrant" means any person who registers a commercial fertilizer or a soil amendment under the provisions of this chapter.

(15) (a) "Soil amendment" means any substance that is intended to improve the physical characteristics of soil.

(b) "Soil amendment" does not include any commercial fertilizer, agriculture liming materials, unmanipulated animal manure, unmanipulated vegetable manure, pesticides, or other material exempt by rule of the department.

(16) "Specialty fertilizer" means any commercial fertilizer distributed primarily for non-farm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

(17) "Ton" means a net weight of 2,000 pounds avoirdupois.

Section 142. Section 4-13-103, which is renumbered from Section 4-13-3 is renumbered and amended to read:

[4-13-3]. 4-13-103. Distribution of commercial fertilizer or soil amendment -- Registration required -- Application -- Fees -- Expiration -- Renewal -- Exemptions specified -- Blenders and mixers to register name under which business conducted -- Blenders and mixers fee.

(1) (a) Each brand and grade of commercial fertilizer or soil amendment shall be registered in the name of the person whose name appears upon the label before being distributed in this state.

(b) The application for registration shall be submitted to the department on a form prescribed and furnished by it, and shall be accompanied by a fee determined by the department pursuant to Subsection [4-2-2] 4-2-103(2) for each brand and grade.

(c) Upon approval by the department, a copy of the registration shall be furnished to the applicant.

(d) (i) Each registration expires at midnight on December 31 of the year in which issued.

(ii) Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee.

(iii) Each renewal fee shall be paid on or before December 31 of each year.

(2) The application for registration shall include the following information:

- (a) the net weight;
- (b) the brand and grade;
- (c) the guaranteed analysis;
- (d) the name and address of the registrant; and
- (e) any other information as the department may prescribe by rule.

(3) A distributor is not required to register any commercial fertilizer which has been registered by another person under this chapter if the label does not differ in any respect.

(4) (a) A distributor is not required to register each grade of commercial fertilizer formulated by a consumer before mixing, but is required to:

- (i) register the name under which the business of blending or mixing is conducted;
- (ii) pay an annual blenders license fee determined by the department pursuant to Subsection [4-2-2] 4-2-103(2); and
- (iii) label the mixed fertilizer or soil amendment as provided in Section [4-13-4] 4-13-104.

(b) (i) A blenders license shall expire at midnight on December 31 of the year in which it is issued.

(ii) A blenders license is renewable for a period of one year upon the payment of an annual license renewal fee in an amount equal to the current applicable original blenders license fee.

(iii) Each renewal fee shall be paid on or before December 31 of each year.

(5) (a) A fee shall be assessed on fertilizer and soil amendment products sold in the state.

(b) The fee shall be:

(i) determined by the department pursuant to Subsection [4-2-2] 4-2-103(2); and

(ii) paid by the manufacturer or distributor on a schedule specified by rule.

(c) Revenue generated by the fee shall be deposited in the General Fund as dedicated credits to be used by the department for education about and promotion of proper fertilizer distribution, handling, and use.

Section 143. Section 4-13-104, which is renumbered from Section 4-13-4 is renumbered and amended to read:

[4-13-4]. 4-13-104. Labeling requirements for specialty fertilizer, bulk commercial fertilizer, packaged mixed fertilizer, and soil amendments specified.

(1) Each container of specialty commercial fertilizer distributed in this state shall bear a label setting forth:

- (a) its net weight;
- (b) brand and grade;

- (c) guaranteed analysis;
- (d) the name and address of the registrant; and
- (e) the lot number.

(2) (a) Each bulk shipment of commercial fertilizer distributed in this state shall be accompanied by a printed or written statement setting forth the information specified in Subsections (1)(a) through (e).

(b) The statement shall be delivered to the purchaser at the time the bulk fertilizer is delivered.

(3) Each sale of packaged mixed fertilizer shall be labeled, or labeling furnished the consumer, to show its net weight, guaranteed analysis, lot number, and the name and address of the distributor.

(4) (a) Each container of soil amendment shall conform to the requirements of Subsection (1), and if distributed in bulk, with Subsection (2).

(b) The name or chemical designation and content of the soil amending ingredient or any other information prescribed by rule of the department shall appear whether distributed in a container or in bulk.

Section 144. Section 4-13-105, which is renumbered from Section 4-13-5 is renumbered and amended to read:

[4-13-5]. 4-13-105. Enforcement -- Inspection and samples authorized -- Methods for sampling and analysis prescribed -- Warrants.

(1) The department shall periodically sample, inspect, analyze, and test commercial fertilizers and soil amendments distributed within this state to determine if they comply with this chapter.

(2) Methods of analysis and sampling shall be in accordance with those adopted by the department from sources such as the Association of Official Analytical Chemists Journal.

(3) In determining whether a commercial fertilizer or soil amendment is deficient, the department shall be guided solely by the official sample.

(4) (a) The department is authorized to enter any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers or soil amendments subject to this chapter.

(b) If admittance is refused, the department may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and obtaining samples.

Section 145. Section 4-13-106, which is renumbered from Section 4-13-6 is renumbered and amended to read:

[4-13-6]. 4-13-106. Distribution of fertilizers not complying with labeling

requirements prohibited -- Guaranteed analysis deficient -- Penalty assessed -- Time for payment -- Court action to vacate or amend finding authorized.

(1) No person shall distribute in this state a commercial fertilizer, fertilizer material, soil amendment or specialty fertilizer if the official sample thereof establishes that the commercial fertilizer, fertilizer material, soil amendment or specialty fertilizer is deficient in the nutrients guaranteed on the label by an amount exceeding the values established by rule or if the overall index value of the official sample is below the level established by rule.

(2) If an official sample, after analysis, demonstrates the guaranteed analysis is deficient in one or more of its primary plant foods (NPK) beyond the investigational allowance prescribed by rule, or if the over-all index value of the official sample is below the level established by rule, a penalty of three times the commercial value of the deficiency or deficiencies of the lot represented by the official sample may be assessed against the registrant.

(3) All penalties assessed under this section shall be paid to the department within three months after notice from the department.

(4) Any registrant aggrieved by the finding of an official sample deficiency may file a complaint with a court of competent jurisdiction to vacate or amend the finding of the department.

Section 146. Section 4-13-107, which is renumbered from Section 4-13-7 is renumbered and amended to read:

[4-13-7]. 4-13-107. Department to publish commercial values applied to components of commercial fertilizer.

The department shall annually publish the values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizers in this state for the purpose of notifying registrants of the commercial value to be applied to commercial fertilizers under Section [4-13-6] 4-13-106.

Section 147. Section 4-13-108, which is renumbered from Section 4-13-8 is renumbered and amended to read:

[4-13-8]. 4-13-108. Suspension or revocation authorized -- Refusal to register authorized -- Grounds -- Stop sale, use, or removal order authorized -- Court action -- Procedure -- Costs.

(1) The department may revoke or suspend the registration of any brand of commercial fertilizer or soil amendment, or refuse to register any brand of commercial fertilizer or soil amendment upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in registration or distribution in this state.

(2) (a) The department may issue a "stop sale, use or removal order" to the owner or person in possession of any designated lot of commercial fertilizer or soil amendment which it finds or has

reason to believe is being offered or exposed for sale in violation of this chapter.

(b) The order shall be in writing and no commercial fertilizer or soil amendment subject to it shall be moved or offered or exposed for sale, except upon the subsequent written release of the department.

(c) Before a release is issued, the department may require the owner or person in possession of the "stopped" lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(3) (a) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of any fertilizer which violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction, to prevent violation of this chapter.

(b) No bond shall be required of the department in any injunctive proceeding under this section.

(4) If condemnation is ordered, the fertilizer or soil amendment shall be disposed of as the court directs; provided, that in no event shall it order condemnation without giving the claimant of the fertilizer or soil amendment an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the product into conformance, or to remove it from the state.

(5) If the court orders condemnation of the commercial fertilizer or soil amendment, court costs, fees, storage, and other expenses shall be awarded against the claimant of the fertilizer or soil amendment.

Section 148. Section 4-13-109, which is renumbered from Section 4-13-9 is renumbered and amended to read:

[4-13-9]. 4-13-109. Sales or exchanges of commercial fertilizers or soil amendments between manufacturers, importers, or manipulators permitted.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil amendments to each other by importers, manufacturers, or manipulators who mix fertilizer or soil amendment materials for sale or as preventing the free and unrestricted shipment of commercial fertilizer or soil amendments to manufacturers or manipulators who have registered their brands as required by this chapter.

Section 149. Section 4-14-101, which is renumbered from Section 4-14-1 is renumbered and amended to read:

CHAPTER 14. UTAH PESTICIDE CONTROL ACT

[4-14-1]. 4-14-101. Title.

This chapter [shall be] is known [and may be cited] as the "Utah Pesticide Control Act."

Section 150. Section 4-14-102, which is renumbered from Section 4-14-2 is renumbered and amended to read:

[4-14-2]. 4-14-102. Definitions.

As used in this chapter:

(1) "Active ingredient" means an ingredient that:

(a) prevents, destroys, repels, controls, or mitigates pests; or

(b) acts as a plant regulator, defoliant, or desiccant.

(2) "Adulterated pesticide" means a pesticide with a strength or purity that is below the standard of quality expressed on the label under which [it] the pesticide is offered for sale.

(3) "Animal" means all vertebrate or invertebrate species.

(4) "Beneficial insect" means an insect that is:

(a) an effective pollinator of plants;

(b) a parasite or predator of pests; or

(c) otherwise beneficial.

(5) "Defoliant" means a substance or mixture intended to cause leaves or foliage to drop from a plant, with or without causing abscission.

(6) "Desiccant" means a substance or mixture intended to artificially accelerate the drying of plant or animal tissue.

(7) "Distribute" means to offer for sale, sell, barter, ship, deliver for shipment, receive, deliver, or offer to deliver pesticides in this state.

(8) "Environment" means all living plants and animals, water, air, land, and the interrelationships that exist between them.

(9) (a) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power to apply a pesticide.

(b) "Equipment" does not mean any pressurized hand-sized household apparatus used to apply a pesticide or any equipment or contrivance used to apply a pesticide that is dependent solely upon energy expelled by the person making the pesticide application.

(10) "EPA" means the United States Environmental Protection Agency.

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(12) (a) "Fungus" means a nonchlorophyll-bearing thallophyte or a nonchlorophyll-bearing plant of an order lower than mosses and liverworts, including rust, smut, mildew, mold, yeast, and bacteria.

(b) "Fungus" does not include fungus existing on or in:

(i) a living person or other animal; or

(ii) processed food, beverages, or pharmaceuticals.

(13) "Insect" means an invertebrate animal generally having a more or less obviously segmented body:

(a) usually belonging to the Class Insecta, comprising six-legged, usually winged forms, including beetles, bugs, bees, and flies; and

(b) allied classes of arthropods that are wingless usually having more than six legs, including spiders, mites, ticks, centipedes, and wood lice.

(14) "Label" means any written, printed, or graphic matter on, or attached to, a pesticide or a container or wrapper of a pesticide.

(15) (a) "Labeling" means all labels and all other written, printed, or graphic matter:

(i) accompanying a pesticide or equipment; or

(ii) to which reference is made on the label or in literature accompanying a pesticide or equipment.

(b) "Labeling" does not include any written, printed, or graphic matter created by the EPA, the United States Departments of Agriculture or Interior, the United States Department of Health, Education, and Welfare, state experimental stations, state agricultural colleges, and other federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(16) "Land" means land, water, air, and plants, animals, structures, buildings, contrivances, and machinery appurtenant or situated thereon, whether fixed or mobile, including any used for transportation.

(17) "Misbranded" means any label or labeling that is false or misleading or that does not strictly comport with the label and labeling requirements set forth in Section [4-14-4] 4-14-104.

(18) "Misuse" means use of any pesticide in a manner inconsistent with its the pesticide's label or labeling.

(19) "Nematode" means invertebrate animals of the Phylum Nematelminthes and Class Nematoda, including unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, also known as nemas or eelworms.

(20) (a) "Pest" means:

(i) any insect, rodent, nematode, fungus, weed; or

(ii) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganism that is injurious to health or to the environment or that the department declares to be a pest.

(b) "Pest" does not include:

(i) viruses, bacteria, or other microorganisms on or in a living person or other living animal; or

(ii) protected wildlife species identified in Section 23-13-2 that are regulated by the Division of Wildlife Resources in accordance with Sections 23-14-1 through 23-14-3.

(21) "Pesticide" means any:

(a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other form of plant or animal life that is normally considered to be a pest or that the commissioner declares to be a pest;

(b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant;

(c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid its the pesticide's application or effect; and

(d) any other substance designated by the department by rule.

(22) "Pesticide applicator" is a person who:

(a) applies or supervises the application of a pesticide; and

(b) is required by this chapter to have a license.

(23) (a) "Pesticide applicator business" means an entity that:

(i) is authorized to do business in this state; and

(ii) offers pesticide application services.

(b) "Pesticide applicator business" does not include an individual licensed agricultural applicator who may work for hire.

(24) "Pesticide dealer" means any person who distributes restricted use pesticides.

(25) (a) "Plant regulator" means any substance or mixture intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or otherwise alter the behavior of ornamental or crop plants.

(b) "Plant regulator" does not include plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(26) "Restricted use pesticide" means:

(a) a pesticide, including a highly toxic pesticide, that is a serious hazard to beneficial insects, animals, or land; or

(b) any pesticide or pesticide use restricted by the administrator of EPA or by the commissioner.

(27) "Weed" means any plant that grows where not wanted.

(28) "Wildlife" means all living things that are neither human, domesticated, nor pests.

Section 151. Section 4-14-103, which is renumbered from Section 4-14-3 is renumbered and amended to read:

[4-14-3]. 4-14-103. Registration required for distribution -- Application -- Fees -- Renewal -- Local needs registration -- Distributor or applicator license -- Fees -- Renewal.

(1) (a) ~~[No]~~ A person ~~[may distribute a pesticide in this state]~~ that is not registered with the department may not distribute a pesticide in this state.

(b) Application for registration shall be made to the department upon forms prescribed and furnished by ~~[it]~~ the department accompanied with an annual registration fee determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2) for each pesticide registered.

(c) Upon receipt by the department of a proper application and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing distribution of the registered pesticide in this state through June 30 of each year, subject to suspension or revocation for cause.

(d) (i) Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee.

(ii) Each renewal fee shall be paid on or before June 30 of each year.

(2) The application shall include the following information:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;

(b) the name of the pesticide;

(c) a complete copy of the label ~~[which]~~ that will appear on the pesticide; and

(d) any information prescribed by rule of the department considered necessary for the safe and effective use of the pesticide.

(3) (a) Forms for the renewal of registration shall be mailed to registrants at least 30 days before their registration expires.

(b) A registration in effect on June 30 for which a renewal application has been filed and the registration fee tendered shall continue in effect until the applicant is notified either that the registration is renewed or that ~~[it]~~ the registration is suspended or revoked pursuant to Section ~~[4-14-8]~~ 4-14-108.

(4) The department may, before approval of any registration, require the applicant to submit the complete formula of any pesticide, including active and inert ingredients, and may also, for any pesticide not registered according to 7 U.S.C. Sec. 136a or for any pesticide on which restrictions are being considered, require a complete description of all tests and test results that support the claims made by the applicant or the manufacturer of the pesticide.

(5) A registrant who desires to register a pesticide to meet special local needs according to 7 U.S.C. Sec. 136v(c) shall, in addition to complying with Subsections (1) and (2), satisfy the department that:

(a) a special local need exists;

(b) the pesticide warrants the claims made for ~~[it]~~ the pesticide;

(c) the pesticide, if used in accordance with commonly accepted practices, will not cause unreasonable adverse effects on the environment; and

(d) the proposed classification for use conforms with 7 U.S.C. Sec. 136a(d).

(6) ~~[No]~~ A registration is not required for a pesticide distributed in this state pursuant to an experimental use permit issued by the EPA or under Section ~~[4-14-5]~~ 4-14-105.

(7) ~~[No]~~ A pesticide dealer may not distribute a restricted use pesticide in this state without a license.

(8) A person shall receive a license before applying:

(a) a restricted use pesticide; or

(b) a general use pesticide for hire or in exchange for compensation.

(9) (a) A license to engage in an activity listed in Subsection (7) or (8) may be obtained by:

(i) submitting an application on a form provided by the department;

(ii) showing evidence of competence in the pesticide profession, as established by rule, and complying with the rules adopted by the department under this chapter;

(iii) demonstrating good character;

(iv) having no outstanding infractions and owing no money to the department; and

(v) paying the license fee determined by the department according to Subsection ~~[4-2-2]~~ 4-2-103(2).

(b) A person may apply for a triennial license that expires on December 31 of the second calendar year after the calendar year in which the license is issued.

(c) Notwithstanding Section 63J-1-504, the department shall retain the fees as dedicated credits and may only use the fees to administer and enforce this title.

Section 152. Section 4-14-104, which is renumbered from Section 4-14-4 is renumbered and amended to read:

~~[4-14-4]. 4-14-104. Labeling requirement for pesticides specified.~~

(1) Each container of pesticide distributed in this state shall bear a label setting forth:

(a) the name, brand, or trademark under which ~~[it]~~ the pesticide is distributed;

(b) subject to Subsection (2), an accurate statement of the ingredients on ~~[that]~~ it;

(i) the part of the immediate container ~~[(and)]~~ that is presented or displayed under customary conditions of purchase; and

(ii) on the outside container and wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) ~~which is presented or displayed under customary conditions of purchase; provided, that the ingredient statement may appear prominently on another part of the container as permitted pursuant to Section 2(q)(2)(A) of FIFRA if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;];~~

(c) a warning or caution statement if necessary, which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect ~~the~~ health and the environment;

(d) the net weight or measure of the content;

(e) the name and address of the manufacturer, registrant, or person for whom manufactured;

(f) the EPA registration number assigned to each establishment in which ~~it~~ the pesticide was produced and the EPA registration number assigned to the pesticide, if required by regulations under FIFRA;

(g) the federal use classification under which the pesticide is registered or designated for "experimental use only"; and

(h) directions for use of the pesticide sufficient to ~~effectuate~~ carry out the purposes for which the product is intended and which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment.

(2) An ingredient statement may appear prominently on another part of a container, as permitted under Section 2(q)(2)(A) of FIFRA, if the size or form of the container makes it impractical to place the ingredient statement on the part of the retail package that is presented or displayed under customary conditions of purchase.

~~(2)~~ (3) If the pesticide is highly toxic the label shall, in addition to the other label requirements, display:

(a) the skull and crossbones;

(b) the word "POISON" in red prominently displayed on a background of distinctly contrasting color; and

(c) a statement of a practical treatment ~~[f, first aid or otherwise]~~, in case of poisoning by the pesticide.

Section 153. Section 4-14-105, which is renumbered from Section 4-14-5 is renumbered and amended to read:

[4-14-5]. 4-14-105. Issuance of experimental use permits -- Application -- Terms and conditions for issuance.

(1) The department upon application may:

(a) issue an experimental use permit to any person if ~~it~~ the department determines that the applicant needs such a permit in order to accumulate information necessary to register a pesticide under Section ~~[4-14-3]~~ 4-14-103; or

(b) refuse to issue an experimental permit if ~~it~~ the department determines that issuance is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.

(2) The department may also with respect to issuance of an experimental use permit:

(a) prescribe the terms and conditions for the conduct of the experimental use ~~which~~ that in all events shall be under the supervision of the department; and

(b) revoke or modify any experimental use permit if ~~it~~ the department determines that the terms or conditions of the experimental use are being violated, or that the terms and conditions prescribed are inadequate to avoid unreasonable adverse effects to the environment.

(3) Application for an experimental use permit may be made before, after, or simultaneously with an application for registration.

Section 154. Section 4-14-106, which is renumbered from Section 4-14-6 is renumbered and amended to read:

[4-14-6]. 4-14-106. Department authorized to make and enforce rules.

The department may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules to:

(1) declare as a pest any form of plant or animal life that is injurious to health or the environment, except:

(a) a human being; or

(b) a bacteria, virus, or other microorganism on or in a living person or animal;

(2) establish, in accordance with the regulations ~~promulgated~~ issued by the EPA under 7 U.S.C. Sec. 136w(c)(2), whether pesticides registered for special local needs under the authority of 7 U.S.C. Sec. 136v(c) are highly toxic to man;

(3) establish, consistent with EPA regulations, that certain pesticides or quantities of substances contained in these pesticides are injurious to the environment;

(4) adopt a list of "restricted use pesticides" for the state or designated areas within the state if ~~it~~ the department determines upon substantial evidence presented at a public hearing and upon recommendation of the pesticide committee that restricted use is necessary to prevent damage to property or to the environment;

(5) establish qualifications for a pesticide applicator business; and

(6) adopt any rule, not inconsistent with federal regulations [~~promulgated~~] issued under FIFRA, considered necessary to administer and enforce this chapter, including rules relating to the sale, distribution, use, and disposition of pesticides if necessary to prevent damage and to protect the public health.

Section 155. Section 4-14-107, which is renumbered from Section 4-14-7 is renumbered and amended to read:

[4-14-7]. 4-14-107. Enforcement -- Inspection and sampling authorized -- Notice of deficiency to be given registrant -- Objects of inspection delineated -- Warrants.

(1) The department, to determine compliance with this chapter, shall periodically:

(a) sample, inspect, and analyze pesticides distributed within this state;

(b) observe and investigate the use and application of pesticides within this state; and

(c) inspect equipment used to apply pesticides in this state to determine if [~~they comply~~] the equipment complies with this chapter.

(2) (a) If a pesticide sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to the registrant or owner of the pesticide.

(b) Nothing in this chapter, however, shall be construed as requiring the department to refer minor violations for criminal prosecution or for the institution of condemnation proceedings if [~~it~~] the department believes the public interest will best be served through informal action.

(3) The department, for the purpose of enforcing this section, is authorized at reasonable times[;] to enter any private or public premises for the purpose of:

(a) inspecting any equipment used in applying pesticides;

(b) inspecting or sampling lands actually or reported to be exposed to pesticides;

(c) inspecting storage or disposal areas;

(d) investigating complaints of injury to animals or lands;

(e) sampling pesticides wherever located, including in vehicles; or

(f) observing the use and application of a pesticide.

(4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for any purpose specified in Subsection (3) of this section.

Section 156. Section 4-14-108, which is renumbered from Section 4-14-8 is renumbered and amended to read:

[4-14-8]. 4-14-108. Suspension or revocation -- Grounds -- Stop sale, use, or removal order authorized -- Court action -- Procedure -- Award of costs authorized.

(1) The department may revoke or suspend the registration of any pesticide upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the registration of the pesticide or in [~~its~~] the pesticide's distribution in this state.

(2) (a) The department may issue a "stop sale, use, or removal order" to the owner or distributor of any designated pesticide or lot of pesticide [~~which it~~] that the department finds or has reason to believe is being offered or exposed for sale in violation of this chapter.

(b) The order described in Subsection (2)(a) shall be in writing and no pesticide subject to [~~it~~] the order shall be moved, offered, or exposed for sale, except upon the subsequent written release by the department.

(c) Before a release is issued, the department may require the owner or distributor of the "stopped" pesticide or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(3) (a) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of a pesticide [~~which~~] that violates this chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent the violation of this chapter.

(b) No bond shall be required of the department in an injunctive proceeding brought under this section.

(4) [~~If~~] (a) Subject to Subsection (4)(b), if condemnation is ordered, the pesticide or equipment shall be disposed of as the court directs[; provided, that in no event shall it].

(b) The department may not order condemnation without giving the registrant or other person an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the pesticide into conformance, or for permission to remove [~~it~~] the pesticide from the state.

(5) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the pesticide or equipment.

(6) The department may:

(a) deny an application for a pesticide applicator license;

(b) revoke a pesticide applicator license for cause; or

(c) suspend a pesticide applicator license for cause.

(7) (a) If a pesticide applicator license is revoked or suspended under Subsection (6), the license shall

be returned to the department within 14 days of the day on which the licensee received notice of the revocation or suspension.

(b) A licensee who fails to return a license, as described in Subsection (7)(a), may be subjected to an administrative fine of up to \$100 for each 14 days the license is not returned.

Section 157. Section 4-14-109, which is renumbered from Section 4-14-9 is renumbered and amended to read:

[4-14-9]. 4-14-109. Examination requirements for license to act as applicator may be waived through reciprocal agreement.

The department may waive any or all examination requirements specified in rule for a noncommercial, commercial, or private pesticide applicator through a reciprocal agreement with another state whose examination requirements and standards for licensure are substantially similar to those of Utah.

Section 158. Section 4-14-110, which is renumbered from Section 4-14-12 is renumbered and amended to read:

[4-14-12]. 4-14-110. Defenses.

(1) As an affirmative defense to any action brought as a result of the alleged misuse or misapplication of a pesticide, a person may present evidence that as of the time of the alleged violation, the person was in compliance with label directions, this chapter, and any rules issued in accordance with this chapter.

(2) A person is not liable for injuries resulting from the misuse or misapplication of a pesticide unless the person was negligent.

Section 159. Section 4-14-111, which is renumbered from Section 4-14-13 is renumbered and amended to read:

[4-14-13]. 4-14-111. Registration required for a pesticide business.

(1) A pesticide applicator business shall register with the department by:

(a) submitting an application on a form provided by the department;

(b) paying the registration fee; and

(c) certifying that the business is in compliance with this chapter and departmental rules authorized by this chapter.

(2) (a) By following the procedures and requirements of Section 63J-1-504, the department shall establish a registration fee based on the number of pesticide applicators employed by the pesticide applicator business.

(b) (i) Notwithstanding Section 63J-1-504, the department shall deposit the fees as dedicated credits and may only use the fees to administer and enforce this chapter.

(ii) The Legislature may annually designate the revenue generated from the fee as nonlapsing in an appropriations act.

(3) The department shall issue a business registration certificate to a pesticide applicator business if the individual or entity:

(a) has complied with the requirements of this section;

(b) has shown evidence of competence in the pesticide profession and meets the certification requirements established by rule;

(c) demonstrates good character;

(d) has no outstanding infractions and owes no money to the department; and

(e) pays the licensing fee established by the department.

(4) A registration certificate expires on December 31 of the second calendar year after the calendar year in which the registration certificate is issued.

(5) (a) The department may suspend a registration certificate if the pesticide applicator business violates this chapter or any rules authorized by it.

(b) A pesticide applicator business whose registration certificate has been suspended may apply to the department for reinstatement of the registration certificate by demonstrating compliance with this chapter and rules authorized by ~~it~~ this chapter.

(6) A pesticide applicator business shall:

(a) only employ a pesticide applicator who has received a license from the department, as required by Section ~~[4-14-3]~~ 4-14-103; and

(b) ensure that all employees comply with this chapter and the rules authorized by ~~it~~ this chapter.

Section 160. Section 4-15-101, which is renumbered from Section 4-15-1 is renumbered and amended to read:

CHAPTER 15. THE UTAH NURSERY ACT

[4-15-1]. 4-15-101. Title.

This chapter ~~[shall be known and may be cited]~~ is known as "The Utah Nursery Act."

Section 161. Section 4-15-102, which is renumbered from Section 4-15-1.5 is renumbered and amended to read:

[4-15-1.5]. 4-15-102. Background and purpose.

The Legislature finds that:

(1) nursery stock can harbor and vector plant pests and diseases;

(2) unregulated production and shipping of nursery stock presents an unacceptable risk to the state's agricultural, forestry, and horticultural interests, and to the state's general environmental quality; and

(3) it is necessary to ensure that nurseries produce healthy plants and that nursery stock shipped to other nurseries, brokers, and out-of-state customers meets national nursery stock cleanliness standards.

Section 162. Section 4-15-103, which is renumbered from Section 4-15-2 is renumbered and amended to read:

[4-15-2]. 4-15-103. Definitions.

As used in this part:

(1) “Balled and burlapped stock” means nursery stock ~~[which]~~ that is removed from the growing site with a ball of soil containing its root system intact and encased in burlap or other material to hold the soil in place.

(2) “Bare-root stock” means nursery stock ~~[which]~~ that is removed from the growing site with the root system free of soil.

(3) “Compliance agreement” means any written agreement between a person and a regulatory agency to achieve compliance with any set of requirements being enforced by the department.

(4) “Container stock” means nursery stock ~~[which]~~ that is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period sufficient to allow newly developed fibrous roots to form, so that if the plant is removed from the container ~~[its]~~ the plant’s root-media ball will remain intact.

(5) “Etiolated growth” means bleached and unnatural growth resulting from the exclusion of sunlight.

(6) “Minimum indices of vitality” mean standards adopted by the department to determine the health and vigor of nursery stock offered for sale in this state.

(7) “National nursery stock cleanliness standards” means nursery stock that:

(a) is free from quarantine pests and pests of concern;

(b) has all nonquarantine plant pests under effective control;

(c) meets the national nursery stock cleanliness standards; and

(d) is eligible for nursery stock certification and shipping permits.

(8) “Nonestablished container stock” means deciduous nursery stock ~~[which]~~ that is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period insufficient to allow the formation of fibrous roots sufficient to form a root-media ball.

(9) “Nursery” means any place where nursery stock is propagated and grown for sale or distribution.

(10) “Nursery agent” means a person who solicits or takes order for the sale of nursery stock, other than on the premises of a nursery or nursery outlet.

~~[(40)]~~ (11) “Nursery outlet” means any place or location where nursery stock is offered for wholesale or retail sale.

~~[(41)]~~ (12) (a) “Nursery stock” means:

(i) all plants, whether field grown, container grown, or collected native plants;

(ii) trees, shrubs, vines, grass sod;

(iii) seedlings, perennials, biennials; and

(iv) buds, cuttings, grafts, or scions grown or collected or kept for propagation, sale, or distribution~~[-; except that it does not include].~~

(b) “Nursery stock” does not mean:

(i) dormant bulbs, tubers, roots, corms, rhizomes, or pips;

(ii) field, vegetable, or flower seeds; or

(iii) bedding plants, annual plants, florists’ greenhouse or field-grown plants, or flowers or cuttings.

~~[(42)]~~ (13) “Packaged stock” means bare-root stock that is packed either in bundles or in single plants with the roots in some type of moisture-retaining material designed to retard evaporation and hold the moisture-retaining material in place.

~~[(43)]~~ (14) “Pests of concern” means a nonquarantine pest that:

(a) is not known to occur in the state, or ~~[which]~~ that has a limited distribution within the state~~[-;]~~; and

(b) has the potential to negatively impact nursery stock health or pose an unacceptable economic or environmental risk.

~~[(44)]~~ (15) “Place of business” means each separate nursery, or nursery outlet, where nursery stock is offered for sale, sold, or distributed.

~~[(45)]~~ (16) “Plant pests” means:

(a) the egg, pupal, and larval stage, as well as any other living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertebrate animal;

(b) bacteria;

(c) fungi;

(d) parasitic plant or a reproductive part of a parasitic plant;

(e) ~~[a]~~ virus or viroid;

(f) phytoplasma; or

(g) any infectious substance that can injure or cause disease or damage in any plant.

~~[(46)]~~ (17) “Quarantine pest” means a pest that poses potential negative economic or environmental impact to an area in which the pest currently:

(a) does not exist; or

(b) exists, but its presence is not widely distributed or is being officially controlled.

[4-17] (18) "Shipping permit or certificate of inspection" means a sticker, stamp, imprint, or other document that accompanies nursery stock shipped intrastate and documents that the originating nursery:

(a) is licensed; and

(b) (i) has stock that has passed [its] annual inspection; or

(ii) produces stock that meets the National Nursery Stock Compliance Standard.

Section 163. Section 4-15-104, which is renumbered from Section 4-15-3 is renumbered and amended to read:

[4-15-3]. 4-15-104. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce [such] rules [as in its judgment are] necessary to administer and enforce this chapter.

Section 164. Section 4-15-105, which is renumbered from Section 4-15-4 is renumbered and amended to read:

[4-15-4]. 4-15-105. Unlawful to offer nursery stock for sale or to solicit orders for nursery stock without license.

It is unlawful for any person in this state to offer nursery stock for sale at a nursery or nursery outlet, or to solicit or receive orders for nursery stock for a person who regularly engages in the business of operating a nursery or nursery outlet, without a license issued by the department.

Section 165. Section 4-15-106, which is renumbered from Section 4-15-5 is renumbered and amended to read:

[4-15-5]. 4-15-106. License -- Application -- Fees -- Expiration -- Renewal.

(1) (a) Application for a license to operate a nursery or nursery outlet or to solicit or receive orders of nursery stock for a person regularly engaged in the business of operating a nursery or nursery outlet shall be made to the department on forms prescribed and furnished by [it] the department.

(b) Upon receipt of a proper application and compliance with applicable rules, and payment of a license fee determined by the department according to Subsection [4-2-2] 4-2-103(2) for each place of business where the applicant intends to offer nursery stock for wholesale or retail sale, or the payment of a fee determined by the department pursuant to Subsection [4-2-2] 4-2-103(2) in the case of an agent, the commissioner, if satisfied the convenience and necessity of the industry and the

public will be served, shall issue a license to engage in the otherwise proscribed activity through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(2) A license to operate a nursery or nursery outlet or an agent's license is renewable on or before December 31 of each year for a period of one year upon the payment of an annual license renewal fee determined by the department according to Subsection [4-2-2] 4-2-103(2).

Section 166. Section 4-15-107, which is renumbered from Section 4-15-6 is renumbered and amended to read:

[4-15-6]. 4-15-107. Nursery stock for wholesale or retail sale -- Graded and sized -- Labels and tags -- Information to appear on label or tag.

(1) Each type of nursery stock delivered to a nursery or nursery outlet for subsequent wholesale or retail sale shall:

(a) be sized and graded in accordance with the applicable rules of the department; and

(b) bear a tag or label with the name, grade, size, and variety of the stock.

(2) Each bundle, single lot, or single nursery stock sold at retail shall bear a secure tag or label with the common or botanical name, grade, size, and variety of the stock legibly printed or written on [it] the bundle, single lot, or single nursery stock.

Section 167. Section 4-15-108, which is renumbered from Section 4-15-7 is renumbered and amended to read:

[4-15-7]. 4-15-108. Inspection -- Issuance of certificate -- Destruction of infested or diseased stock.

(1) (a) Each nursery may be inspected by the department at least once each year.

(b) If, upon the inspection described in Subsection (1)(a), it appears that the nursery and [its] the nursery's stock are free of insect pests and plant disease, the department shall issue [a] an inspection certificate [to that effect] to the nursery.

(2) (a) Each nursery outlet may be inspected by the department at least once each year during the period nursery stock is offered for retail sale. [An inspection certificate may be issued by the department]

(b) The department may issue an inspection certificate to a nursery outlet to permit the interstate shipment of nursery stock if the stock contemplated for shipment appears free of insect pests and plant disease.

(3) Nursery stock found to be infested with insect pests or infected with plant disease shall be destroyed or otherwise treated as determined by the department.

Section 168. Section 4-15-109, which is renumbered from Section 4-15-8 is renumbered and amended to read:

[4-15-8]. 4-15-109. Transport of out-of-state nursery stock to Utah -- Certificate of inspection to be filed with department by out-of-state nurseries -- Option in department to accept exchange list in lieu of certificate of inspection -- Imported stock to be tagged -- Treatment of stock not tagged.

~~[(1) Out-of-state]~~

(1) (a) Subject to Subsection (1)(b), out-of-state nurseries and nursery outlets transporting nursery stock to a nursery or nursery outlet in this state shall annually deliver to the department a certified duplicate copy of the "state of origin" certificate of inspection for each such out-of-state nursery or nursery outlet~~;~~ provided, that the.

(b) The department may accept and exchange a list of certified or licensed out-of-state nurseries or nursery outlets in lieu of a certificate of inspection for each such individual nursery or nursery outlet.

(2) Nursery stock originating outside and imported into this state for customer delivery or for resale shall bear a tag:

(a) stating that the nursery stock has been inspected and certified free from plant pests and disease~~. The tag shall also bear~~; and

(b) bearing the name and address of the shipper or consignor.

(3) A shipment of nursery stock destined for delivery in this state ~~[which]~~ that is not accompanied with ~~[such a tag]~~ the tag described in Subsection (2) may be:

(a) returned to the owner or consignor at ~~[such person's expense, or may be]~~ the owner or consignor's expense; or

(b) destroyed, or otherwise disposed of, by the department without compensation to the owner or consignor.

Section 169. Section 4-15-110, which is renumbered from Section 4-15-9 is renumbered and amended to read:

[4-15-9]. 4-15-110. Nursery stock offered or advertised for sale -- Unlawful to misrepresent name, origin, grade, variety, quality, or vitality -- Information required in advertisements.

~~[No]~~ (1) A person shall not misrepresent the name, origin, grade, variety, quality, or indice of vitality of any nursery stock advertised or offered for sale at a nursery or nursery outlet.

(2) All advertisements of nursery stock shall clearly state the name, size, and grade of the stock where applicable.

Section 170. Section 4-15-111, which is renumbered from Section 4-15-10 is renumbered and amended to read:

[4-15-10]. 4-15-111. Infested or diseased stock not to be offered for sale -- Identification of "nonestablished container stock" -- Requirements for container stock -- Inspected and certified stock only to be offered for sale -- Prohibition against coating aerial plant surfaces.

(1) Nursery stock ~~[which]~~ that is infested with plant pests, including noxious weeds, or infected with disease or ~~[which]~~ that does not meet minimum indices of vitality may not be offered for sale.

(2) All nonestablished container stock offered for sale shall be identified by the words "nonestablished container stock" legibly printed on a water resistant tag ~~[which]~~ that states the length of time ~~[it]~~ the stock has been planted or the date ~~[it]~~ the stock was planted and may not be offered for sale in any manner ~~[which]~~ that leads a purchaser to believe ~~[it]~~ the stock is container stock.

(3) All container stock offered for sale shall be established with a root-media mass that will retain its shape and hold together when removed from the container.

(4) No nursery stock other than officially inspected and certified stock shall be offered for wholesale or retail sale in this state.

(5) Colored waxes or other materials ~~[which]~~ that coat the aerial parts of a plant and change the appearance of the plant surface are prohibited.

Section 171. Section 4-15-112, which is renumbered from Section 4-15-11 is renumbered and amended to read:

[4-15-11]. 4-15-112. Enforcement -- Inspection -- Stop sale order -- Procedure -- Warrants.

(1) (a) The department may issue a "stop sale" order to any nursery or nursery outlet upon discovery or notification of a quarantine pest or pest of concern, or if the department has reason to believe the nursery is offering, advertising, or selling nursery stock in violation of Section ~~[4-15-10]~~ 4-15-111.

(b) The "stop sale" order described in Subsection (1)(a) shall be in writing and no nursery stock subject to ~~[it]~~ the order shall be advertised or sold, except upon subsequent written release by the department.

(2) (a) The department is authorized for the purpose of ascertaining compliance with this chapter to enter and inspect any nursery or nursery outlet where nursery stock is kept during ~~[their]~~ the nursery or nursery outlet's business hours.

(b) If access for the purpose of inspection is denied, the department may proceed immediately to the nearest court of competent jurisdiction and obtain an ex parte warrant or its equivalent to permit inspection of the nursery or nursery outlet.

Section 172. Section 4-15-113, which is renumbered from Section 4-15-12 is renumbered and amended to read:

[4-15-12]. 4-15-113. Suspension or revocation -- Grounds -- Notice and hearing.

~~[The] (1) Subject to Subsection (2), the department may suspend or revoke the license of any nursery, nursery outlet, or agent that violates Section [4-15-9 or 4-15-10; provided, that no] 4-15-110 or 4-15-111.~~

(2) A suspension or revocation shall not be effective until after the nursery, nursery outlet, or agent is afforded notice and a hearing.

Section 173. Section 4-15-114, which is renumbered from Section 4-15-14 is renumbered and amended to read:

[4-15-14]. 4-15-114. Compliance agreements.

The department may make compliance agreements with the responsible officials of other states and nursery establishments to achieve compliance with any set of requirements being enforced by the department.

Section 174. Section 4-16-101, which is renumbered from Section 4-16-1 is renumbered and amended to read:

Part 1. Organization

[4-16-1]. 4-16-101. Short title.

This chapter ~~[shall be]~~ is known ~~[and may be cited]~~ as the "Utah Seed Act."

Section 175. Section 4-16-102, which is renumbered from Section 4-16-2 is renumbered and amended to read:

[4-16-2]. 4-16-102. Definitions.

As used in this chapter:

(1) "Advertisement" means any representation made relative to seeds, plants, bulbs, or ground stock other than those on the label of a seed container, disseminated in any manner.

(2) "Agricultural seeds" mean seeds of grass, forage plants, cereal crops, fiber crops, sugar beets, seed potatoes, or any other kinds of seed or mixtures of seed commonly known within this state as agricultural or field seeds.

(3) "Flower seeds" mean seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental plants commonly known and sold under the name of flower seeds in this state.

(4) "Foundation seed," "registered seed," or "certified seed" means seed that is produced and labeled in accordance with procedures officially recognized by a seed certifying agency approved and accredited in this state.

(5) (a) "Hybrid" means the first generation seed of a cross produced by controlling pollination and by combining:

(i) two or more inbred lines;

(ii) one inbred or a single cross with an open-pollinated variety; or

(iii) two varieties or species, except open-pollinated varieties of corn, *Zea mays*.

(b) The second generation and subsequent generations from the crosses referred to in Subsection (5)(a) are not to be regarded as hybrids.

(c) Hybrid designations shall be treated as variety names.

(6) "Kind" means one or more related species or subspecies of seed which singly or collectively is known by one name, for example, corn, oats, alfalfa, and timothy.

(7) (a) "Label" means any written, printed, or graphic representation accompanying and pertaining to any seeds, plants, bulbs, or ground stock whether in bulk or in containers.

(b) "Label" includes representations on invoices, bills, and letterheads.

(8) "Lot" means a definite quantity of seed identified by a number or other mark, every part or bag of which is uniform within recognized tolerances.

(9) "Noxious-weed seeds" mean weed seeds declared noxious by the commissioner.

(10) "Pure seed," "germination," or other terms in common use for testing seeds for purposes of labeling shall have ascribed to them the meaning set forth for such terms in the most recent edition of "Rules for Seed Testing" published by the Association of Official Seed Analysts.

(11) "Seeds for sprouting" means seeds sold for sprouting for salad or culinary purposes.

(12) "Sowing" means the placement of agricultural seeds, vegetable seeds, flower seeds, tree and shrub seeds, or seeds for sprouting in a selected environment for the purpose of obtaining plant growth.

(13) "Treated" means seed that has received an application of a substance to reduce, control, or repel certain disease organisms, fungi, insects or other pests which may attack the seed or its seedlings, or has received some other treatment to improve its planting value.

(14) "Tree and shrub seeds" mean seeds of woody plants commonly known and sold under the name of tree and shrub seeds in this state.

(15) "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic, which differentiate it from other plants of the same kind.

(16) "Vegetable seeds" mean seeds of crops grown in gardens or on truck farms that are generally

known and sold under the name of vegetable seeds, plants, bulbs, and ground stocks in this state.

(17) "Weed seeds" mean seeds of any plant generally recognized as a weed within this state.

Section 176. Section 4-16-103, which is renumbered from Section 4-16-3 is renumbered and amended to read:

[4-16-3]. 4-16-103. Department authorized to make and enforce rules -- Cooperation with state and federal agencies authorized.

(1) The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce [such] rules [as in its judgment are deemed necessary to administer and enforce this chapter; and, in conjunction with its administration and enforcement, it is authorized to].

(2) The department may cooperate with other state agencies, other states, and with the United States Department of Agriculture or other departments or agencies of the federal government.

Section 177. Section 4-16-201, which is renumbered from Section 4-16-4 is renumbered and amended to read:

Part 2. Regulations

[4-16-4]. 4-16-201. Labeling requirements specified for containers of agricultural seed, mixtures of lawn and turf seed, vegetable seed, flower seed, tree and shrub seed, and seeds for sprouting.

(1) Each container of agricultural seed offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of the kind or kind and variety of each seed component in excess of 5% by weight of the whole and the percent by weight of each component in the order of its predominance, provided that:

(i) if any component is required by rule of the department to be labeled as a variety, the label, in addition to stating the common name of the seed, shall specify the name of the variety or, if allowed by rule of the department, state "Variety Not Stated";

(ii) if any component is a hybrid seed, that fact shall be stated on the label; and

(iii) if more than one component is required to be named, the word "mixture" shall appear;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the percentage by weight of all weed seeds;

(e) the percentage by weight of agricultural or crop seeds other than those named on the label;

(f) the percentage by weight of inert matter;

(g) the name and rate of occurrence per pound of each kind of restricted noxious-weed seed for which tolerance is permitted;

(h) the origin, if known, of alfalfa, red clover, or field corn and, if the origin is unknown, that fact shall be stated; and

(i) the month and year seed tests were conducted specifying:

(i) percent of germination, exclusive of hard seed;

(ii) percent of hard seed; and

(iii) total percent of germination and hard seed.

(2) Each container of seed mixtures for lawn or turf seed offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of the kind or kind and variety of each agricultural seed component in excess of 5% by weight of the whole, and the percentage by weight of pure seed in order of its predominance in columnar form;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the percentage by weight of all weed seeds;

(e) the percentage by weight of agricultural seeds or crop seeds other than those required to be named on the label;

(f) the percentage by weight of inert matter;

(g) the name and rate of occurrence per pound of each kind of restricted noxious-weed seed for which tolerance is permitted;

(h) the month and year seed tests were conducted specifying:

(i) percent of germination, exclusive of hard seed; and

(ii) percent of hard seed;

(i) the word "mixed" or "mixture"; and

(j) its net weight.

(3) Each container of vegetable seeds weighing one pound or less offered or exposed for sale or prepared for home gardens or household plantings or preplanted in containers, mats, tapes, or other devices shall be labeled with the following information:

(a) the common name of the kind and variety of seed;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the calendar month and year the seed was tested or the year for which the seed was packaged;

(d) if germination of the seed is less than the germination standard last established for the seed by the department, the label shall specify:

(i) percentage of germination, exclusive of hard seed;

(ii) percentage of hard seed, if present;

(iii) the calendar month and year the germination test was completed to determine the percentages; and

(iv) the words "Below Standard" in not less than eight-point type; and

(e) if the seeds are placed in a germination medium, mat, tape, or other device which makes it difficult to determine the quantity of the seed without removing the seeds, a statement to indicate the minimum number of seeds in the container.

(4) Each container of vegetable seeds weighing more than one pound offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of each kind and variety of seed component present in excess of 5% by weight of the whole and the percentage by weight of each in order of its predominance;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the month and year seed tests were conducted specifying:

(i) the percentage of germination, exclusive of hard seed; and

(ii) the percentage of hard seed, if present; and

(e) the name and rate of occurrence per pound of each kind of restricted noxious-weed seed for which tolerance is permitted.

(5) Each container of flower seeds prepared in packets for use in home flower gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices and offered or exposed for sale in this state shall be labeled with the following information:

(a) the common name of the kind and variety of the seeds or a statement of the type and performance characteristics of the seed;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the calendar month and year the seed was tested or the year for which the seed was packaged;

(d) if germination of the seed is less than the germination standard last established by the department, the label shall specify:

(i) percentage of germination, exclusive of hard seed;

(ii) percentage of hard seed, if present; and

(iii) the words "Below Standard" in not less than eight-point type; and

(e) if the seeds are placed in a germination medium, mat, tape, or other device which makes it difficult to determine the quantity of seed without removing the seeds, a statement to indicate the minimum number of seeds in the container.

(6) Each container of flower seeds in other than packets prepared for use in home flower gardens or household plantings and other than in preplanted containers, mats, tapes, and other devices offered or exposed for sale in this state shall be labeled with the following information:

(a) the common name of the kind and variety of the seed or a statement of the type and performance characteristics of the seed;

(b) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(c) the lot number or other lot identification;

(d) the month and year the seed was tested, or the year for which it was packaged; and

(e) for those kinds of seeds for which standard testing procedures are prescribed:

(i) the percentage of germination, exclusive of hard seed; and

(ii) the percentage of hard seed, if present.

(7) Each container of tree and shrub seeds offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the common name of the species of seed and subspecies, if appropriate;

(b) the scientific name of the genus and species and subspecies, if appropriate;

(c) the name and address of the person who labeled the seed or who offers or exposes it for sale in this state;

(d) the lot number or other lot identification;

(e) information as to origin as follows:

(i) for seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, or geographic description, or political subdivision such as state or county; and

(ii) for seed collected from other than a predominantly indigenous stand, identity of the area of collection and the origin of the stand or state "origin not indigenous";

(f) the elevation or the upper and lower limits of elevation within which said seed was collected;

(g) purity as a percentage of pure seed by weight;

(h) for those species for which standard germination testing procedures are prescribed by the commissioner, the following:

(i) percentage of germination, exclusive of hard seed;

(ii) percentage of hard seed, if present; and

(iii) the calendar month and year the test was completed to determine such percentages; and

(i) for those species for which standard germination testing procedures have not been prescribed by the commissioner, the calendar year in which the seed was collected.

(8) Each container of seeds for sprouting offered or exposed for sale or transported for sowing into this state shall be labeled with the following information:

(a) the name and address of the person who labeled the seed, or who offers or exposes it for sale in this state;

(b) the commonly accepted name of the kind or kinds in order of predominance;

(c) lot number;

(d) percentage by weight of each pure seed component in excess of 5% of the whole, other crop seeds, inert matter, and weed seeds, if any;

(e) percentage of germination of each pure seed component; and

(f) the calendar month and year the seed was tested or the year for which the seed was packaged.

(9) Any written or printed matter of any label shall appear in English.

Section 178. Section 4-16-202, which is renumbered from Section 4-16-5 is renumbered and amended to read:

[4-16-5]. 4-16-202. Distribution of seeds -- Germination tests required -- Date to appear on label -- Seed to be free of noxious weed seed -- Special requirements for treated seeds -- Prohibitions.

(1) No person in this state shall offer or expose any agricultural, vegetable, flower, or tree and shrub seed or seeds for sprouting for sale or sowing unless:

(a) (i) for agricultural seeds, including mixtures of agricultural seeds:

(A) a test to determine the percentage of germination has been performed within 18 months, exclusive of the month the seed is tested and the date the seed is offered for sale; and

(B) the date of the test appears on the label;

(ii) for vegetable, flower, or tree and shrub seed or seeds for sprouting:

(A) a test to determine the percentage of germination has been performed within nine months, exclusive of the month the seed is tested and the date the seed is offered for sale; and

(B) the date of the test appears on the label;

(iii) for hermetically sealed agricultural, vegetable, flower, or tree and shrub seed:

(A) a test to determine the percentage of germination has been performed within 36 months, exclusive of the month the seed is tested and the date the seed is offered for sale; provided, that hermetically sealed seeds may be offered or exposed for sale after 36 months if they have been retested for germination within nine months, exclusive of the month the seed is retested and the date the seeds are offered or exposed for sale; and

(B) the date of the test appears on the label;

(b) its package or other container is truthfully labeled and in accordance with Section [4-16-4] 4-16-201; and

(c) it is free of noxious weed seed, subject to any tolerance as may be prescribed by the department through rule.

(2) The label on any package or other container of an agricultural, vegetable, flower, or tree and shrub seed which has been treated and for which a claim is made on account of the treatment, in addition to the labeling requirements specified in Section [4-16-4] 4-16-201, shall:

(a) state that the seeds have been treated;

(b) state the commonly accepted name, generic chemical name, or abbreviated chemical name of the substance used for treatment;

(c) if the seed is treated with an inoculant, state the date beyond which the inoculant is not considered effective; and

(d) include a caution statement consistent with rules of the department if the treatment substance remains with the seed in an amount which is harmful to vertebrate animals; provided, that the caution statement for mercurials and similarly toxic substances, as defined by rule of the department, shall state the seed has been treated with poison with "POISON" printed in red letters on a background of distinctly contrasting color together with a representation of the skull and crossbones.

(3) A person may not:

(a) use the word "trace" as a substitute for a statement required under this chapter;

(b) disseminate any false or misleading advertisement about agricultural, vegetable, flower, or tree and shrub seed or seeds for sprouting; or

(c) detach, alter, or destroy any label or substitute any seed in a manner which defeats the purpose of this chapter.

Section 179. Section 4-16-203, which is renumbered from Section 4-16-7 is renumbered and amended to read:

[4-16-7]. 4-16-203. Inspection -- Samples -- Analysis -- Seed testing facilities to be maintained -- Rules to control offensive seeds -- Notice of offending seeds -- Warrants.

(1) (a) The department shall periodically enter public or private premises from which seeds are distributed, offered, or exposed for sale to sample, inspect, analyze, and test agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting distributed within this state to determine compliance with this chapter.

(b) To perform the duties specified in Subsection (1)(a), the department shall:

(i) establish and maintain facilities for testing the purity and germination of seeds;

(ii) prescribe by rule uniform methods for sampling and testing seeds; and

(iii) establish fees for rendering service.

(2) The department shall prescribe by rule weed seeds and noxious weed seeds and fix the tolerances permitted for those offensive seeds.

(3) (a) If a seed sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to any person who is distributing, offering, or exposing the seeds for sale. [Nothing]

(b) Notwithstanding Subsection (3)(a), nothing in this chapter, ~~however,~~ shall be construed as requiring the department to refer minor violations for criminal prosecution or for the institution of condemnation proceedings if it believes the public interest will best be served through informal action.

(4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and obtaining samples.

Section 180. Section 4-16-301, which is renumbered from Section 4-16-8 is renumbered and amended to read:

Part 3. Enforcement

[4-16-8]. 4-16-301. Enforcement -- Stop sale, use, or removal authorized -- Court action -- Procedures -- Costs.

(1) (a) The department may issue a “stop sale, use, or removal order” to the distributor, owner, or person in possession of any designated agricultural, vegetable, flower, or tree and shrub seed or seeds for sprouting or lot of seed which it finds or has reason to believe violates this chapter.

(b) The order shall be in writing and no seed subject to it shall be moved, offered, or exposed for sale, except upon subsequent written release by the department.

(c) Before a release is issued, the department may require the distributor or owner of the “stopped” seed or lot to pay the expense incurred by the department in connection with the withdrawal of the product from the market.

(2) (a) The department is authorized in a court of competent jurisdiction to seek an order of seizure or condemnation of any seed which violates this

chapter or, upon proper grounds, to obtain a temporary restraining order or permanent injunction to prevent violation of this chapter.

(b) No bond may be required of the department in an injunctive proceeding brought under this section.

(3) (a) If condemnation is ordered, the seed shall be disposed of as the court directs.

(b) The court may not order condemnation without giving the claimant of the seed an opportunity to apply to the court for permission to relabel, reprocess, or otherwise bring the seed into conformance, or for permission to remove it from the state.

(c) If the court orders condemnation, court costs, fees, storage, and other costs shall be awarded against the claimant of the seed.

Section 181. Section 4-16-302, which is renumbered from Section 4-16-10 is renumbered and amended to read:

[4-16-10]. 4-16-302. False or misleading advertising with respect to seed quality prohibited.

Unless agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting sold, advertised, or exposed or offered for sale in this state for propagation or planting have been registered or certified by an officially recognized seed certifying agency approved and accredited in this state, a person may not:

(1) use orally or in writing:

(a) the term “foundation,” “registered,” or “certified” seed along with other words; or

(b) any other term or form of words which suggests that the seed has been certified or registered by an inspection agency duly authorized by any state, or that there has been registration or certification, or either; or

(2) use any tags similar to registration or certification tags.

Section 182. Section 4-16-303, which is renumbered from Section 4-16-11 is renumbered and amended to read:

[4-16-11]. 4-16-303. Distributors of seed to keep record of each lot of seed distributed.

(1) Each person whose name appears on the label of agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting shall keep:

(a) a complete record of each lot of agricultural, vegetable, flower, tree and shrub seed or seeds for sprouting distributed in this state for a period of two years; and

(b) a file sample of each lot of seed for a period of one year after final disposition of the lot.

(2) The records and samples pertaining to the distribution of the seeds shall be available to the department for inspection during regular business hours.

Section 183. Section 4-16-401, which is renumbered from Section 4-16-9 is renumbered and amended to read:

Part 4. Testing

[4-16-9]. 4-16-401. Designation of official testing agency for certification of seed.

(1) The agricultural experiment station at Utah State University is designated as the official state agency responsible for the production, approval, and testing of foundation seeds in this state.

(2) This agency shall perform all functions necessary for seed certification including the determination of the adaptability of established and new crop varieties for planting in this state, whether produced in this state or elsewhere and the determination of eligibility of crop varieties for registration and certification in the state.

(3) In performing its responsibility, the experiment station may contract, subject to available funds, upon such terms and conditions as it ~~deems~~ considers appropriate with a private seed certifying agency.

Section 184. Section 4-16-501, which is renumbered from Section 4-16-6 is renumbered and amended to read:

Part 5. Exemption

[4-16-6]. 4-16-501. Chapter does not apply to seed not intended for sowing, to seed at seed processing plant, or to seed transported or delivered for transportation in the ordinary course of business.

(1) This chapter does not apply to:

[4-16-6] (a) seed or grain not intended for sowing;

[4-16-6] (b) subject to Subsection (2), seed at, or consigned to, a seed processing or cleaning plant; ~~provided, that any label or any other representation which is made with respect to the uncleaned or unprocessed seed is subject to this chapter;~~ or

[4-16-6] (c) to any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; ~~provided, the carrier is not engaged in producing, processing, or marketing agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting.~~

(2) Any label or other representation which is made with respect to seed described in Subsection (1)(b) is made with respect to the uncleaned or unprocessed seed is subject to this chapter.

(3) A carrier described in Subsection (1)(c) may not be engaged in producing, processing, or marketing agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting.

Section 185. Section 4-17-101, which is renumbered from Section 4-17-1 is renumbered and amended to read:

CHAPTER 17. UTAH NOXIOUS WEED ACT

[4-17-1]. 4-17-101. Title.

This chapter ~~shall be~~ is known ~~and may be cited~~ as the "Utah Noxious Weed Act."

Section 186. Section 4-17-102, which is renumbered from Section 4-17-2 is renumbered and amended to read:

[4-17-2]. 4-17-102. Definitions.

As used in this chapter:

(1) "Commission" means the county legislative body of ~~the counties~~ each county of this state.

(2) "Commissioner" means the commissioner of agriculture and food or the commissioner's representative.

(3) "County noxious weed" means any plant ~~which~~ that is:

(a) not on the state noxious weed list~~;~~;

(b) especially troublesome in a particular county~~;~~; and ~~is~~

(c) declared by the county legislative body to be a noxious weed within ~~its~~ the county.

(4) "Noxious weed" means any plant the commissioner determines to be especially injurious to public health, crops, livestock, land, or other property.

Section 187. Section 4-17-103, which is renumbered from Section 4-17-3 is renumbered and amended to read:

[4-17-3]. 4-17-103. Commissioner -- Functions, powers, and duties.

The commissioner ~~has the following powers and duties~~ or the commissioner's designee shall:

(1) ~~investigates and designates~~ investigate and designate noxious weeds on a statewide basis;

(2) ~~compiles and publishes~~ compile and publish annually a list of statewide noxious weeds;

(3) ~~coordinates and assists~~ coordinate and assist in inter-county noxious weed enforcement activities;

(4) ~~determines~~ determine whether each county complies with this chapter;

(5) ~~assists~~ assist a county ~~which~~ that fails to carry out the provisions of this chapter in ~~its~~ the county's implementation of a weed control program;

(6) ~~prescribes~~ prescribe the form and general substantive content of notices to the public and to individuals concerning the prevention and control of noxious weeds;

(7) ~~compiles and publishes~~ compile and publish a list of articles capable of disseminating noxious weeds or seeds and designate treatment to prevent dissemination; and

(8) ~~regulates~~ regulate the flow of contaminated articles into the state and between counties to prevent the dissemination of noxious weeds or seeds.

Section 188. Section 4-17-104, which is renumbered from Section 4-17-3.5 is renumbered and amended to read:

[4-17-3.5]. 4-17-104. Creation of State Weed Committee -- Membership -- Powers and duties -- Expenses.

(1) There is created a State Weed Committee composed of eight members, with each member representing one of the following:

- (a) the Department of Agriculture and Food;
- (b) the Department of Natural Resources;
- (c) the Utah State University Agricultural Experiment Station;
- (d) the Utah State University Extension Service;
- (e) the Utah Association of Counties;
- (f) private agricultural industry;
- (g) the Utah Weed Control Association; and
- (h) the Utah Weed Supervisors Association.

(2) The commissioner shall select the members of the committee from those nominated by each of the respective groups or agencies following approval by the Agricultural Advisory Board.

(3) (a) Except as required by Subsection (3)(b), as terms of current committee members expire, the commissioner shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(4) (a) Members may be removed by the commissioner for cause.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) The State Weed Committee shall:

(a) confer and advise on matters pertaining to the planning, implementation, and administration of the state noxious weed program;

(b) recommend names for membership on the committee; and

(c) serve as members of the executive committee of the Utah Weed Control Association.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 189. Section 4-17-105, which is renumbered from Section 4-17-4 is renumbered and amended to read:

[4-17-4]. 4-17-105. County weed control board -- Appointment -- Composition -- Terms -- Removal -- Compensation.

(1) ~~Each~~ A county executive of ~~the counties~~ a county may, with the advice and consent of the county legislative body, appoint a county weed control board comprised of not less than three nor more than five appointed members.

(2) (a) If the county legislative body is the county commission, the chair of the county legislative body shall appoint one member of the county legislative body who shall act as a coordinator between the county and the county weed control board.

(b) If the county legislative body is a county council, the county executive shall serve on the county weed control board and act as coordinator between the county and the county weed control board.

(3) Two members of the board shall be farmers or ranchers whose primary source of income is derived from production agriculture.

(4) Members are appointed to four year terms of office and serve with or without compensation as determined by each county legislative body.

(5) Members may be removed for cause and any vacancy ~~which~~ that occurs on a county weed control board shall be filled by appointment for the unexpired term of the vacated member.

Section 190. Section 4-17-106, which is renumbered from Section 4-17-4.5 is renumbered and amended to read:

[4-17-4.5]. 4-17-106. Commissioner may require county weed control board to justify failure to enforce provisions.

If the commissioner determines that the weed control board of any county has failed to perform ~~its~~ the board's duties under this chapter, the commissioner may require the board to justify, in writing, ~~its~~ the board's failure to enforce these provisions within ~~its~~ the board's county.

Section 191. Section 4-17-107, which is renumbered from Section 4-17-5 is renumbered and amended to read:

[4-17-5]. 4-17-107. County weed control board responsible for control of noxious weeds -- Cooperation with other county boards -- Authority to designate noxious weed -- Public hearing before removal of noxious weed from state list.

(1) A county weed control board is responsible, under the general direction of the county executive, for the formulation and implementation of a county-wide coordinated noxious weed control program designed to prevent and control noxious weeds within ~~its~~ the board's county.

(2) A county weed control board is required, under the general direction of [its] the board's commission, to cooperate with other county weed control boards to prevent and control the spread of noxious weeds.

(3) (a) A county legislative body may declare a particular weed or competitive plant, not appearing on the state noxious weed list, a county noxious weed within [its county, or the] the board's county.

(b) A county executive, with the approval of the county legislative body, may petition the commissioner for removal of a particular noxious weed from the state noxious weed list.

(c) The county legislative body may not approve a petition of the county executive to the commissioner to remove a noxious weed unless [it] the county legislative body has first conducted a public hearing after due notice.

Section 192. Section 4-17-108, which is renumbered from Section 4-17-6 is renumbered and amended to read:

[4-17-6]. 4-17-108. Weed control supervisor -- Qualification -- Appointment -- Duties.

(1) (a) Each commission may employ one or more weed control supervisors qualified to:

- (i) detect and treat noxious weeds; and
- (ii) direct the weed control program for the county weed control board.

(b) A person may be a weed control supervisor for more than one county weed control board.

(c) Terms and conditions of employment shall be prescribed by the commission.

(2) A supervisor, under the direction of the local county weed control board, shall:

(a) examine all land under the jurisdiction of the county weed control board to determine whether this chapter and the rules adopted by the department have been met;

(b) compile data on infested areas;

(c) consult and advise upon matters pertaining to the best and most practical method of noxious weed control and prevention;

(d) render assistance and direction for the most effective control and prevention;

(e) investigate violations of this chapter;

(f) enforce noxious weed controls within the county; and

(g) perform any other duties required by the county weed control board.

Section 193. Section 4-17-109, which is renumbered from Section 4-17-7 is renumbered and amended to read:

[4-17-7]. 4-17-109. Notice of noxious weeds to be published annually in county -- Notice to particular property owners to

control noxious weeds -- Methods of prevention or control specified -- Failure to control noxious weeds considered public nuisance.

(1) Each county weed control board before May 1 of each year shall post a general notice of the noxious weeds within the county in at least three public places within the county and publish the same notice on:

(a) at least three occasions in a newspaper or other publication of general circulation within the county; and

(b) as required in Section 45-1-101.

(2) (a) If the county weed control board determines that particular property within the county requires prompt and definite attention to prevent or control noxious weeds, [it] the county weed control board shall serve the owner or the person in possession of the property, personally or by certified mail, a notice specifying when and what action is required to be taken on the property.

(b) Methods of prevention or control may include definite systems of tillage, cropping, use of chemicals, and use of livestock.

(3) An owner or person in possession of property who fails to take action to control or prevent the spread of noxious weeds as specified in the notice is maintaining a public nuisance.

Section 194. Section 4-17-110, which is renumbered from Section 4-17-8 is renumbered and amended to read:

[4-17-8]. 4-17-110. Noxious weeds -- Failure to control after notice of nuisance -- Notice and hearing -- Control at county expense -- Owner liable for county costs -- Charges lien against property.

(1) If the owner or person in possession of the property fails to take action to control or prevent the spread of noxious weeds within five working days after the property is declared a public nuisance, the county may, after reasonable notification, enter the property, without the consent of the owner or the person in possession, and perform any work necessary, consistent with sound weed prevention and control practices, to control the weeds.

~~[(2) Any expense incurred by the county in controlling the noxious weeds is paid by the]~~

(2) (a) If the county controls weeds on a piece of property, as described in Subsection (1), and seeks reimbursement from the property owner of record or the person in possession of the property, the county shall send the property owner or person in possession of the property a documented description of the expense and a demand for payment within 30 days of the day on which the weed control took place.

(b) The property owner of record or the person in possession of the property, as the case may be, shall reimburse the county for the county's expense within 90 days after receipt of the [charges incurred by the county.] demand for payment, as described in Subsection (2)(a).

(c) If the demand for payment is not paid within 90 days after ~~[notice of the charges]~~ receipt, the charges become a lien against the property and are collectible by the county treasurer at the time general property taxes are collected.

Section 195. Section 4-17-111, which is renumbered from Section 4-17-8.5 is renumbered and amended to read:

[4-17-8.5]. 4-17-111. Hearing before county weed control board -- Appeal of decision to the county legislative body -- Judicial review.

(1) Any person served with notice to control noxious weeds may request a hearing to appeal the terms of the notice before the county weed control board within 10 days of receipt of such notice and may appeal the decision of the county weed control board to the county legislative body.

(2) Any person served with notice to control noxious weeds who has had a hearing before both the county weed control board and the county legislative body may further appeal the decision of the county legislative body by filing written notice of appeal with a court of competent jurisdiction.

Section 196. Section 4-17-112, which is renumbered from Section 4-17-10 is renumbered and amended to read:

[4-17-10]. 4-17-112. Jurisdiction of state and local agencies to control weeds.

The departments or agencies of state and local governments shall develop, implement, and pursue an effective program for the control and containment of noxious weeds on all lands under ~~[their]~~ the department's or agency's control or jurisdiction, including highways, roadways, rights-of-way, easements, game management areas, and state parks and recreation areas.

Section 197. Section 4-17-113, which is renumbered from Section 4-17-11 is renumbered and amended to read:

[4-17-11]. 4-17-113. County noxious weed control fund authorized.

~~[Authority is hereby granted commissions to]~~ A commission may establish and maintain a noxious weed control fund in each county for use in the administration of this chapter.

Section 198. Section 4-17-114, which is renumbered from Section 4-2-8.7 is renumbered and amended to read:

[4-2-8.7]. 4-17-114. Invasive Species Mitigation Account created.

(1) As used in this section, "project" means an undertaking that:

(a) rehabilitates or treats an area infested with, or threatened by, an invasive species; or

(b) conducts research related to invasive species.

(2) (a) There is created a restricted account within the General Fund known as the "Invasive Species Mitigation Account."

(b) The restricted account shall consist of:

(i) money appropriated by the Legislature;

(ii) grants from the federal government; and

(iii) grants or donations from a person.

(3) (a) After consulting with the Department of Natural Resources and the Conservation Commission, the department may expend money in the restricted account:

(i) on a project implemented by:

(A) the department; or

(B) the Conservation Commission; or

(ii) by giving a grant for a project to:

(A) a state agency;

(B) a federal agency;

(C) a federal, state, tribal, or private landowner;

(D) a political subdivision;

(E) a county weed board;

(F) a cooperative weed management area; or

(G) a university.

(b) The department may use up to 10% of restricted account funds appropriated under Subsection (2)(b)(i) on:

(i) department administration; or

(ii) project planning, monitoring, and implementation expenses.

(c) A project that receives funds from the Invasive Species Mitigation Account may not spend more than 10% of an award of funds on planning and administration costs.

(d) A federal landowner that receives restricted account funds for a project shall match the funds received from the restricted account with an amount that is equal to or greater than the amount received from the restricted account.

(4) In giving a grant, the department shall consider the effectiveness of a project in the rehabilitation or treatment of an area infested with, or threatened by, an invasive species.

Section 199. Section 4-17-115, which is renumbered from Section 4-2-8.6 is renumbered and amended to read:

[4-2-8.6]. 4-17-115. Cooperative agreements and grants to rehabilitate areas infested with or threatened by invasive species.

After consulting with the Department of Natural Resources and the Conservation Commission, the department may:

(1) enter into a cooperative agreement with a political subdivision, a state agency, a federal

agency, ~~or a federal, state, tribal~~ a tribe, a county weed board, a cooperative weed management area, a university, or a private landowner to:

(a) rehabilitate or treat an area infested with, or threatened by, an invasive species; or

(b) conduct research related to invasive species;

(2) expend money from the Invasive Species Mitigation Account created in Section ~~[4-2-8.7]~~ 4-17-114; and

(3) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to:

(a) administer this section; and

(b) give grants from the Invasive Species Mitigation Account.

Section 200. Section 4-18-102 is amended to read:

4-18-102. Purpose declaration.

(1) The Legislature finds and declares that:

(a) the soil and water resources of this state constitute one of ~~[its]~~ the state's basic assets; and

(b) the preservation of ~~[these]~~ soil and water resources requires planning and programs to ensure:

(i) the development and utilization of ~~[these]~~ soil and water resources; and

(ii) ~~[their]~~ soil and water resources' protection from the adverse effects of wind and water erosion, sediment, and sediment related pollutants.

(2) The Legislature finds that local production of food is essential for:

(a) the security of the state's food supply; and

(b) the self-sufficiency of the state's citizens.

(3) The Legislature finds that sustainable agriculture is critical to:

(a) the success of rural communities;

(b) the historical culture of the state;

(c) maintaining healthy farmland;

(d) maintaining high water quality;

(e) maintaining abundant wildlife;

(f) high-quality recreation for citizens of the state; and

(g) helping to stabilize the state economy.

(4) The Legislature finds that livestock grazing on public lands is important for the proper management, maintenance, and health of public lands in the state.

(5) The Legislature encourages each agricultural producer in the state to operate in a reasonable and responsible manner to maintain the integrity of land, soil, water, and air.

(6) ~~[To]~~ The department shall administer the Utah Agriculture Certificate of Environmental Stewardship Program, created in Section 4-18-107, to encourage each agricultural producer in this state to operate in a reasonable and responsible manner to maintain the integrity of the state's resources~~[-, the state shall administer the Utah Agriculture Certificate of Environmental Stewardship Program, created in Section 4-18-107].~~

Section 201. Section 4-18-104 is amended to read:

4-18-104. Conservation Commission created -- Composition -- Appointment -- Terms -- Compensation -- Attorney general to provide legal assistance.

(1) There is created within the department the Conservation Commission to perform the functions specified in this chapter.

(2) The Conservation Commission shall be ~~[comprised of 16]~~ composed of 15 members, including:

(a) the director of the Extension Service at Utah State University or the director's designee;

(b) the president of the Utah Association of Conservation Districts or the president's designee;

(c) the commissioner or the commissioner's designee;

(d) the executive director of the Department of Natural Resources or the executive director's designee;

(e) the executive director of the Department of Environmental Quality or the executive director's designee;

(f) the chair ~~[and the vice chair]~~, or the chair's designee, of the State Grazing Advisory Board, created in Section ~~[4-20-1.5]~~ 4-20-103;

(g) the president of the County Weed Supervisors Association;

(h) seven district supervisors who provide district representation on the commission on a multicounty basis; and

(i) the director of the School and Institutional Trust Lands Administration or the director's designee.

(3) If a district supervisor is unable to attend a meeting, an alternate may serve in the place of the district supervisor for that meeting.

(4) The members of the commission specified in Subsection (2)(h) shall:

(a) be recommended by the commission to the governor; and

(b) be appointed by the governor with the consent of the Senate.

(5) (a) Except as required by Subsection (5)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(7) The commissioner is chair of the commission.

(8) Attendance of a majority of the commission members at a meeting constitutes a quorum.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) The commission shall keep a record of ~~its~~ the commission's actions.

(11) The attorney general shall provide legal services to the commission upon request.

Section 202. Section 4-18-105 is amended to read:

4-18-105. Conservation Commission -- Functions and duties.

(1) The commission shall:

(a) facilitate the development and implementation of the strategies and programs necessary to:

(i) protect, conserve, utilize, and develop the soil, air, and water resources of the state; and

(ii) promote the protection, integrity, and restoration of land for agricultural and other beneficial purposes;

(b) disseminate information regarding districts' activities and programs;

(c) supervise the formation, reorganization, or dissolution of districts according to the requirements of Title 17D, Chapter 3, Conservation District Act;

(d) prescribe uniform accounting and recordkeeping procedures for districts and require each district to submit annually an audit of ~~its~~ the district's funds to the commission;

(e) approve and make loans for agricultural purposes, through the advisory board described in Section 4-18-106, from the Agriculture Resource Development Fund, for:

(i) rangeland improvement and management projects;

(ii) watershed protection and flood prevention projects;

(iii) agricultural cropland soil and water conservation projects;

(iv) programs designed to promote energy efficient farming practices; and

(v) programs or improvements for agriculture product storage or protections of a crop or animal resource;

(f) administer federal or state funds, including loan funds under this chapter, in accordance with applicable federal or state guidelines and make loans or grants from those funds to land occupiers for:

(i) conservation of soil or water resources;

(ii) maintenance of rangeland improvement projects;

(iii) development and implementation of coordinated resource management plans, as defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and

(iv) control or eradication of noxious weeds and invasive plant species:

(A) in cooperation and coordination with local weed boards; and

(B) in accordance with Section ~~[4-2-8.7]~~ 4-17-114;

(g) seek to coordinate soil and water protection, conservation, and development activities and programs of state agencies, local governmental units, other states, special interest groups, and federal agencies;

(h) plan watershed and flood control projects in cooperation with appropriate local, state, and federal authorities, and coordinate flood control projects in the state;

(i) assist other state agencies with conservation standards for agriculture when requested; and

(j) when assigned by the governor, when required by contract with the Department of Environmental Quality, or when required by contract with the United States Environmental Protection Agency:

(i) develop programs for the prevention, control, or abatement of new or existing pollution to the soil, water, or air of the state;

(ii) advise, consult, and cooperate with affected parties to further the purpose of this chapter;

(iii) conduct studies, investigations, research, and demonstrations relating to agricultural pollution issues;

(iv) give reasonable consideration in the exercise of its powers and duties to the economic impact on sustainable agriculture;

(v) meet the requirements of federal law related to water and air pollution in the exercise of ~~its~~ the commission's powers and duties; and

(vi) establish administrative penalties relating to agricultural discharges as defined in Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm.

(2) The commission may:

(a) employ, with the approval of the department, an administrator and necessary technical experts and employees;

(b) execute contracts or other instruments necessary to exercise its powers;

(c) take necessary action to promote and enforce the purpose and findings of Section 4-18-102;

(d) sue and be sued; and

(e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and Subsections (2)(b) and (c).

~~[(3) If, under Subsection (2)(a), the commission employs an individual who was formerly an employee of a conservation district or the Utah Association of Conservation Districts, the Department of Human Resource Management shall:]~~

~~[(a) recognize the employee's employment service credit from the conservation district or association in determining leave accrual in the employee's new position within the state; and]~~

~~[(b) set the initial wage rate for the employee at the level that the employee was receiving as an employee of the conservation district or association.]~~

~~[(4) An employee described in Subsection (3) is exempt from the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, and shall be designated under schedule codes and parameters established by the Department of Human Resource Management under Subsection 67-19-15(1)(p) until the commission, under parameters established by the Department of Human Resource Management, designates the employee under a different schedule recognized under Section 67-19-15.]~~

~~[(5) (a) For purposes of the report required by Subsection (5)(b), the commissioner shall study the organizational structure of the employees described in Subsection (3).]~~

~~[(b) The commissioner shall report to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee by no later than that subcommittee's November 2015 interim meeting regarding the study required by Subsection (5)(a).]~~

Section 203. Section 4-18-106 is amended to read:

4-18-106. Agriculture Resource Development Fund -- Contents -- Use of fund money -- Authority board.

(1) There is created a revolving loan fund known as the Agriculture Resource Development Fund.

(2) The Agriculture Resource Development Fund shall consist of:

(a) money appropriated to it by the Legislature;

(b) sales and use tax receipts transferred to the fund in accordance with Section 59-12-103;

(c) money received for the repayment of loans made from the fund;

(d) money made available to the state for agriculture resource development from any source; and

(e) interest earned on the fund.

(3) The commission shall make loans from the Agriculture Resource Development Fund as provided by Subsections 4-18-105(1)(e)(i) through (iv).

(4) The commission may appoint an advisory board that shall:

(a) oversee the award process for loans, as described in this section;

(b) make recommendations to the commission regarding loans; and

(c) recommend [the] policies and procedures for the Agriculture Resource Development Fund[,] that are consistent with statute.

Section 204. Section 4-18-107 is amended to read:

4-18-107. Utah Agriculture Certificate of Environmental Stewardship Program.

(1) There is created the Utah Agriculture Certificate of Environmental Stewardship Program.

(2) The commission, with the assistance of the department and with the advice of the Water Quality Board[,] created in Section 19-1-106, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act that establish:

(a) (i) best management practices;

(ii) state technical standards; and

(iii) guidelines for nutrient management plans;

(b) requirements for qualification under the Utah Agriculture Certificate of Environmental Stewardship Program that:

(i) are consistent with sustainable agriculture;

(ii) help prevent harm to the environment, including prevention of an agricultural discharge; and

(iii) encourage agricultural operations in the state to follow:

(A) best management practices; and

(B) nutrient management plans that meet the state technical standards appropriate for each type of agricultural operation;

(c) the procedure for qualification under the Utah Agriculture Certificate of Environmental Stewardship Program;

(d) the requirements and certification process for an individual to become a certified conservation planner; and

(e) standards and procedures for administering the Utah Agriculture Certificate of Environmental Stewardship Program, including:

(i) renewal of a certification under Subsection (4)(b);

(ii) investigation and revocation of a certification under Subsection (6); and

(iii) revocation of a certification under Subsection (7)(b).

(3) An owner or operator of an agricultural operation may apply to certify the agricultural operation under the Utah Agriculture Certificate of Environmental Stewardship Program in accordance with this section.

(4) (a) Except as provided in Subsection (6) or (7), a certified agricultural operation remains certified for a period of five years after the day on which the agricultural operation becomes certified.

(b) A certified agricultural operation may, in accordance with commission rule, renew the certification for an additional five years to keep the certification for a total period of 10 years after the day on which the agricultural operation becomes certified.

(5) Subject to review by the commissioner or the commissioner's designee, a certified conservation planner shall certify each qualifying agricultural operation that applies to the Utah Agriculture Certificate of Environmental Stewardship Program.

(6) (a) Upon request of the Department of Environmental Quality or upon receipt by the department of a citizen environmental complaint, the department shall, with the assistance of certified conservation planners as necessary, investigate a certified agricultural operation to determine whether the agricultural operation has committed a significant violation of the requirements of the Utah Agriculture Certificate of Environmental Stewardship Program.

(b) If, after completing an investigation described in Subsection (6)(a), the department determines that a certified agricultural operation has committed a significant violation of the requirements for the Utah Agriculture Certificate of Environmental Stewardship Program, the department shall report the violation to the commission.

(c) Upon receipt of a report described in Subsection (6)(b), the commission shall review the report and:

(i) revoke the agricultural operation's certification; or

(ii) set terms and conditions for the agricultural operation to maintain its certification.

(7) (a) If, for a certification renewal under Subsection (4)(b), or an investigation under Subsection (6)(a), the department requests access to a certified agricultural operation, the certified agricultural operation shall, at a reasonable time, allow access for the department to:

(i) inspect the agricultural operation; or

(ii) review the records of the agricultural operation.

(b) If a certified agricultural operation denies the department access as described in Subsection (7)(a), the commission may revoke the agricultural operation's certification.

(8) If the commission changes a requirement of the Utah Agriculture Certificate of Environmental Stewardship Program after an agricultural operation is certified in accordance with former requirements, during the certification and renewal periods described in Subsections (4)(a) and (b) the agricultural operation may choose whether to abide by a new requirement, but the agricultural operation is not subject to the new requirement until the agricultural operation reapplies for certification.

(9) Nothing in this section exempts an agricultural discharge made by a certified agricultural operation from the provisions of Subsection 19-5-105.5(3)(b).

(10) (a) Except as provided in Subsections 19-5-105.6(2) and (3), a certified agriculture operation may not be required to implement additional projects or best management practices to address nonpoint source discharges.

(b) The Division of Water Quality shall consider an agriculture operation's compliance with certification under an approved agriculture environmental stewardship program a mitigating factor for penalty purposes, as provided in Section 19-5-105.6.

Section 205. Section 4-18-108 is amended to read:

4-18-108. Grants for environmental improvement projects -- Criteria for award -- Duties of commission.

(1) (a) Subject to appropriation, the commission, as described in Subsection (4), may make a grant to an owner or operator of a farm or ranch to pay for the costs of plans or projects to improve manure management, control surface water runoff, or address other environmental issues on the farm or ranch operation, including the costs of preparing or implementing a nutrient management plan.

(b) The commission shall make a grant described in Subsection (1)(a) from funds appropriated by the Legislature for that purpose.

(2) (a) In awarding a grant, the commission shall consider the following criteria:

(i) the ability of the grantee to pay for the costs of plans or projects to improve manure management or control surface water runoff;

(ii) the availability of:

(A) matching funds provided by the grantee or another source; or

(B) material, labor, or other items of value provided in lieu of money by the grantee or another source; and

(iii) the benefits that accrue to the general public by the awarding of a grant.

(b) The commission may establish by rule additional criteria for the awarding of a grant.

(3) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

(4) The commission:

(a) shall be responsible for awarding a grant or loan for water quality or other environmental issues; and

(b) may appoint an advisory board to:

(i) assist with the award process; and

(ii) make recommendations to the commission regarding awards.

Section 206. Section 4-18-201 is enacted to read:

Part 2. Salinity Offset Fund

4-18-201. Title -- Definitions.

(1) This part is known as "Salinity Offset Fund."

(2) As used in this part, "Colorado River Salinity Offset Program" means a program, administered by the Division of Water Quality, allowing oil, gas, or mining companies and other entities to provide funds to finance salinity reduction projects in the Colorado River Basin by purchasing salinity credits as offsets against discharges made by the company under permits issued by the Division of Water Quality.

Section 207. Section 4-18-202, which is renumbered from Section 4-2-8.5 is renumbered and amended to read:

[4-2-8.5]. 4-18-202. Salinity Offset Fund.

~~[(1) As used in this section, "Colorado River Salinity Offset Program" means a program, administered by the Division of Water Quality, allowing oil, gas, or mining companies and other entities to provide funds to finance salinity reduction projects in the Colorado River Basin by purchasing salinity credits as offsets against discharges made by the company under permits issued by the Division of Water Quality.]~~

~~[(2)] (1) (a) There is created an expendable special revenue fund known as the "Salinity Offset Fund."~~

~~(b) The fund shall consist of:~~

~~(i) money received from the Division of Water Quality that has been collected as part of the Colorado River Salinity Offset Program;~~

~~(ii) grants from local governments, the state, or the federal government;~~

~~(iii) grants from private entities; and~~

~~(iv) interest on fund money.~~

~~[(3)] (2) (a) The department shall:~~

~~(i) subject to the rules established under Subsection [(3)] (2)(a)(ii), distribute fund money to farmers, ranchers, mutual irrigation companies, and other entities in the state to assist in financing irrigation, rangeland, and watershed improvement projects that will, in accordance with the Colorado River Salinity Offset Program, reduce salinity in the Colorado River; and~~

~~(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules establishing:~~

~~(A) a project funding application process;~~

~~(B) project funding requirements;~~

~~(C) project approval criteria; and~~

~~(D) standards for evaluating the effectiveness of funded projects in reducing salinity in the Colorado River.~~

~~(b) The department may require entities seeking fund money to provide matching funds.~~

~~(c) The department shall submit to the Division of Water Quality proposed funding projects for the division's review and approval.~~

~~(d) The Division of Water Quality and the department shall establish a committee to review and approve projects, as funding allows.~~

~~[(4)] (3) (a) Except as provided in Subsection [(4)] (3)(b), the department may use fund money for the administration of the fund, but this amount may not exceed 10% of the receipts to the fund.~~

~~(b) The department may not use earned interest for administration of the fund.~~

Section 208. Section 4-19-101 is enacted to read:

CHAPTER 19. RURAL REHABILITATION

4-19-101. Title.

This chapter is known as "Rural Rehabilitation."

Section 209. Section 4-19-102, which is renumbered from Section 4-19-1 is renumbered and amended to read:

[4-19-1]. 4-19-102. Department responsible for conduct and administration of rural rehabilitation program.

The department shall conduct and administer the rural rehabilitation program within the state in accordance with the agreement entered into in January 1975, between the United States of America through its Farm Home Administration and the state through its commissioner.

Section 210. Section 4-19-103, which is renumbered from Section 4-19-2 is renumbered and amended to read:

[4-19-2]. 4-19-103. Department authorized to approve and make grants and loans,

acquire property, and lease or operate property.

The department, in conjunction with the administration of the rural rehabilitation program, may:

(1) approve and make a loan to a farm or agricultural cooperative association regulated under Title 3, Uniform Agricultural Cooperative Association Act, subject to Section [4-19-3] 4-19-104, including:

(a) taking security for the loan through a mortgage, trust deed, pledge, or other security device;

(b) purchasing a promissory note, real estate contract, mortgage, trust deed, or other instrument or evidence of indebtedness; and

(c) collecting, compromising, canceling, or adjusting a claim or obligation arising out of the administration of the rural rehabilitation program;

(2) purchase or otherwise obtain property in which the department has acquired an interest on account of a mortgage, trust deed, lien, pledge, assignment, judgment, or other means at any execution or foreclosure sale;

(3) operate or lease, if necessary to protect its investment, property in which it has an interest, or sell or otherwise dispose of the property; and

(4) approve and make an education loan or an education grant to an individual for the purpose of attending a vocational school, college, or university to obtain additional education, qualifications, or skills.

Section 211. Section 4-19-104, which is renumbered from Section 4-19-3 is renumbered and amended to read:

[4-19-3]. 4-19-104. Loans -- Not to exceed period of 10 years -- Agricultural Advisory Board to approve loans and renewals, methods of payments, and interest rates -- Guidelines in fixing interest rates declared.

(1) The department may not make a loan authorized under this chapter for a period to exceed 10 years, but the loan is renewable.

(2) [The] Except as provided in Subsection (5), the Agricultural Advisory Board created in Section 4-2-108 shall approve:

(a) all loans and renewals;

(b) the methods of repayment; and

(c) the interest rates charged.

(3) In fixing interest rates, the Agricultural Advisory Board shall consider:

(a) the current applicable interest rate or rates being charged by the USDA Farm Service Agency on similar loans;

(b) the current prime rate charged by leading lending institutions; and

(c) any other pertinent economic data.

(4) The interest rates established shall be compatible with guidelines stated in this section.

(5) The Agricultural Advisory Board may create a subcommittee from the board's membership to approve a loan or renewal under this section.

Section 212. Section 4-19-105, which is renumbered from Section 4-19-4 is renumbered and amended to read:

[4-19-4]. 4-19-105. Utah Rural Rehabilitation Fund.

(1) The department shall deposit all income generated from the administration of the rural rehabilitation program in a separate fund known as the "Utah Rural Rehabilitation Fund."

(2) The state treasurer shall maintain the Utah Rural Rehabilitation Fund and record all debits and credits made to the fund by the department.

Section 213. Section 4-20-101, which is renumbered from Section 4-20-1 is renumbered and amended to read:

CHAPTER 20. RANGELAND IMPROVEMENT ACT

[4-20-1]. 4-20-101. Title.

[1] This chapter is known as the "Rangeland Improvement Act."

~~[(2) As used in this chapter:]~~

~~[(a) "Cooperative weed management association" means a multigovernmental association cooperating together to control noxious weeds in a geographic area that includes some portion of Utah.]~~

~~[(b) "Fees" mean the revenue collected by the United States Secretary of Interior from assessments on livestock using public lands.]~~

~~[(c) "Grazing district" means an administrative unit of land:]~~

~~[(i) designated by the commissioner as being valuable for grazing and for raising forage crops; and]~~

~~[(ii) which consists of any combination of the following:]~~

~~[(A) public land;]~~

~~[(B) private land;]~~

~~[(C) state land; and]~~

~~[(D) school and institutional trust land as defined in Section 53C-1-103.]~~

~~[(d) "Public lands" mean vacant, unappropriated, reserved, and unreserved federal lands.]~~

~~[(e) "Regional board" means a regional grazing advisory board whose members are appointed under Section 4-20-1.6.]~~

~~[(f) "Restricted account" means the Rangeland Improvement Account created in Section 4-20-2.]~~

~~[(g) "Sales" or "leases" mean the sale or lease, respectively, of isolated or disconnected tracts of public lands by the United States Secretary of Interior.]~~

~~[(h) "State board" means the State Grazing Advisory Board created under Section 4-20-1.5.]~~

Section 214. Section 4-20-102 is enacted to read:

4-20-102. Definitions.

As used in this chapter:

(1) "Cooperative weed management association" means a multigovernmental association cooperating to control noxious weeds in a geographic area that includes some portion of Utah.

(2) "Fees" means the revenue collected by the United States secretary of interior from assessments on livestock using public lands.

(3) "Grazing district" means an administrative unit of land:

(a) designated by the commissioner as valuable for grazing and for raising forage crops; and

(b) that consists of any combination of the following:

(i) public lands;

(ii) private land;

(iii) state land; and

(iv) school and institutional trust land as defined in Section 53C-1-103.

(4) "Public lands" mean vacant, unappropriated, reserved, and unreserved federal lands.

(5) "Regional board" means a regional grazing advisory board with members appointed under Section 4-20-104.

(6) "Restricted account" means the Rangeland Improvement Account created in Section 4-20-105.

(7) "Sales" or "leases" means the sale or lease, respectively, of isolated or disconnected tracts of public lands by the United States secretary of interior.

(8) "State board" means the State Grazing Advisory Board created under Section 4-20-103.

Section 215. Section 4-20-103, which is renumbered from Section 4-20-1.5 is renumbered and amended to read:

[4-20-1.5]. 4-20-103. State Grazing Advisory Board -- Duties.

(1) (a) There is created within the department the State Grazing Advisory Board.

(b) The commissioner shall appoint the following members:

(i) one member from each regional board;

(ii) one member from the Conservation Commission, created in Section 4-18-104;

(iii) one representative of the Department of Natural Resources;

(iv) two livestock producers at-large; and

(v) one representative of the oil, gas, or mining industry.

(2) The term of office for a state board member is four years.

(3) Members of the state board shall elect a chair, who shall serve for two years.

(4) A member may not receive compensation or benefits for the member's service but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(5) The state board shall:

(a) receive:

(i) advice and recommendations from a regional board concerning:

(A) management plans for public lands, state lands, and school and institutional trust lands as defined in Section 53C-1-103, within the regional board's region; and

(B) any issue that impacts grazing on private lands, public lands, state lands, or school and institutional trust lands as defined in Section 53C-1-103, in its region; and

(ii) requests for restricted account money from the entities described in Subsections (5)(c)(i) through (iv);

(b) recommend state policy positions and cooperative agency participation in federal and state land management plans to the department and to the Public Lands Policy Coordinating Office, created under Section 63J-4-602; and

(c) advise the department on the requests and recommendations of:

(i) regional boards;

(ii) county weed control boards, created in Section [4-17-4] 4-17-105;

(iii) cooperative weed management associations; and

(iv) conservation districts created under the authority of Title 17D, Chapter 3, Conservation District Act.

Section 216. Section 4-20-104, which is renumbered from Section 4-20-1.6 is renumbered and amended to read:

[4-20-1.6]. 4-20-104. Regional grazing advisory boards -- Duties.

(1) The commissioner shall appoint members to a regional board for each grazing district from nominations submitted by:

- (a) the Utah Cattlemen's Association;
 - (b) the Utah [~~Woolgrower's~~] Woolgrowers Association;
 - (c) the Utah Farm Bureau Federation; and
 - (d) a conservation district, if the conservation district's boundaries include some portion of the grazing district.
- (2) Regional boards:
- (a) shall provide advice and recommendations to the state board; and
 - (b) may receive money from the Rangeland Improvement Account created in Section ~~[4-20-2]~~ 4-20-105.
- (3) If a regional board receives money as authorized by Subsection (2)(b), the regional board shall elect a treasurer to expend the money:
- (a) as directed by the regional board; and
 - (b) in accordance with Section ~~[4-20-3]~~ 4-20-106.

Section 217. Section 4-20-105, which is renumbered from Section 4-20-2 is renumbered and amended to read:

~~[4-20-2]. 4-20-105. Rangeland~~

Improvement Account -- Administered by department.

- (1) (a) There is created a restricted account within the General Fund known as the "Rangeland Improvement Account."
- (b) The restricted account shall consist of:
- (i) money received by the state from the United States Secretary of Interior under the Taylor Grazing Act, 43 U.S.C. Section 315 et seq., for sales, leases, and fees;
 - (ii) grants or appropriations from the state or federal government; and
 - (iii) grants from private foundations.
- (c) Interest earned on the restricted account shall be deposited into the General Fund.
- (2) The department shall:
- (a) administer the restricted account;
 - (b) obtain from the United States Department of Interior the receipts collected from:
 - (i) fees in each grazing district; and
 - (ii) the receipts collected from the sale or lease of public lands; and
 - (c) distribute restricted account money in accordance with Section ~~[4-20-3]~~ 4-20-106.

Section 218. Section 4-20-106, which is renumbered from Section 4-20-3 is renumbered and amended to read:

~~[4-20-3]. 4-20-106. Rangeland~~

Improvement Account distribution.

(1) The department shall distribute restricted account money as provided in this section.

(a) The department shall:

(i) distribute pro rata to each school district the money received by the state under Subsection ~~[4-20-2]~~ 4-20-105(1)(b)(i) from the sale or lease of public lands based upon the amount of revenue generated from the sale or lease of public lands within the district; and

(ii) ensure that all money generated from the sale or lease of public lands within a school district is credited and deposited to the general school fund of that school district.

(b) (i) After the commissioner approves a request from a regional board, the department shall distribute pro rata to each regional board money received by the state under Subsection ~~[4-20-2]~~ 4-20-105(1)(b)(i) from fees based upon the amount of revenue generated from the imposition of fees within that grazing district.

(ii) The regional board shall expend money received in accordance with Subsection (2).

(c) (i) The department shall distribute or expend money received by the state under Subsections ~~[4-20-2]~~ 4-20-105(1)(b)(ii) and (iii) for the purposes outlined in Subsection (2).

(ii) The department may require entities seeking funding from sources outlined in Subsections ~~[4-20-2]~~ 4-20-105(1)(b)(ii) and (iii) to provide matching funds.

(2) The department shall ensure that restricted account distributions or expenditures under Subsections (1)(b) and (c) are used for:

(a) range improvement and maintenance;

(b) the control of predatory and depredate animals;

(c) the control, management, or extermination of invading species, range damaging organisms, and poisonous or noxious weeds;

(d) the purchase or lease of lands or a conservation easement for the benefit of a grazing district;

(e) watershed protection, development, distribution, and improvement;

(f) the general welfare of livestock grazing within a grazing district; and

(g) subject to Subsection (3), costs to monitor rangeland improvement projects.

(3) Annual account distributions or expenditures for the monitoring costs described in Subsection (2)(g) may not exceed 10% of the annual receipts of the fund.

Section 219. Section 4-20-107, which is renumbered from Section 4-20-8 is renumbered and amended to read:

~~[4-20-8]. 4-20-107. Audit of grazing~~

districts -- State auditor to coordinate

with Department of Interior in conduct of audit.

The state auditor is authorized to coordinate with the Department of Interior in auditing the books of the several advisory boards.

Section 220. Section 4-20-108, which is renumbered from Section 4-20-9 is renumbered and amended to read:

[4-20-9]. 4-20-108. Commissioner to supervise distribution of undistributed funds if United States alters or discontinues funding leaving funds or resources available.

If the United States alters or discontinues funding under the Taylor Grazing Act, 43 U.S.C. Sec. 315 et seq., or the operation of advisory boards, leaving funds or other resources undistributed or otherwise without means for continuation, the commissioner shall supervise and control the distribution of such undistributed funds or other resources.

Section 221. Section 4-20-109, which is renumbered from Section 4-20-10 is renumbered and amended to read:

[4-20-10]. 4-20-109. Promotion of multiple use of rangeland resources.

(1) The department shall work cooperatively to promote efficient multiple-use management of the rangeland resources of the public lands administered by the federal Bureau of Land Management within the state to benefit the overall public interest.

(2) The department may serve as an independent resource for mediating disputes concerning permit issues within the scope of Subsection (1).

Section 222. Section 4-22-101 is enacted to read:

CHAPTER 22. DAIRY PROMOTION

4-22-101. Title.

This chapter is known as "Dairy Promotion."

Section 223. Section 4-22-102, which is renumbered from Section 4-22-1 is renumbered and amended to read:

[4-22-1]. 4-22-102. Definitions.

As used in this chapter:

(1) "Commission" means the Utah Dairy Commission.

(2) "Dealer" means any person who buys and processes raw milk or milk fat, or who acts as agent in the sale or purchase of raw milk or milk fat, or who acts as a broker or factor with respect to raw milk or milk fat or any product derived from either.

(3) "Producer" means a person who produces milk or milk fat from cows and who sells it for human or animal consumption, or for medicinal or industrial uses.

(4) "Producer-handler" means any producer who processes raw milk or milk fat.

Section 224. Section 4-22-103, which is renumbered from Section 4-22-2 is renumbered and amended to read:

[4-22-2]. 4-22-103. Utah Dairy Commission created -- Composition -- Elected members -- Terms of elected members -- Qualifications for election.

(1) There is created an independent state agency known as the Utah Dairy Commission.

(2) The Utah Dairy Commission consists of 13 members as follows:

(a) the commissioner of agriculture and food, or the commissioner's representative;

(b) the dean of the College of Agriculture at Utah State University, or the dean's representative;

(c) the president of the Utah Dairy Women's Association or the president of the Utah Dairy Women's Association's representative;

(d) a member from District 1, northern Cache County, which member shall have a Cornish, Lewiston, Richmond/Cove, or Trenton mailing address;

(e) a member from District 2, central Cache County and Rich County, which member shall have a Newton, Clarkston, Amalga, Smithfield, Benson, Hyde Park, Mendon, or Petersboro mailing address;

(f) a member from District 3, southern Cache County, which member shall have a Logan, Providence, Nibley, Hyrum, Paradise, Wellsville, College Ward, Young Ward, or Millville mailing address;

(g) a member from District 4, Box Elder County;

(h) a member from District 5, Weber and Morgan Counties;

(i) a member from District 6, Salt Lake, Davis, Utah, and Tooele Counties;

(j) a member from District 7, Wasatch, Summit, Duchesne, Uintah, and Daggett Counties;

(k) a member from District 8, Millard, Beaver, Iron, and Washington Counties;

(l) a member from District 9, Sanpete, Carbon, Emery, Grand, Juab, and San Juan Counties; and

(m) a member from District 10, Piute, Wayne, Kane, Garfield, and Sevier Counties.

(3) The ex officio members listed in Subsections (2)(a) and (b) shall serve without a vote.

(4) The members listed in Subsections (2)(d) through (m) shall be elected to four-year terms of office as provided in Section ~~[4-22-6]~~ 4-22-105.

(5) Members shall enter office on July 1 of the year in which they are elected.

(6) The commission, by two-thirds vote, may alter the boundaries comprising the districts established in this section to maintain equitable

representation of active milk producers on the commission.

(7) Each member shall be:

- (a) a citizen of the United States;
- (b) 26 years of age or older;

(c) an active milk producer with five consecutive years experience in milk production within this state immediately preceding election; and

(d) a resident of Utah and the district represented.

Section 225. Section 4-22-104, which is renumbered from Section 4-22-3 is renumbered and amended to read:

[4-22-3]. 4-22-104. Commission -- Organization -- Quorum to transact business -- Vacancies -- Ineligibility to serve -- Compensation.

(1) The members of the commission shall elect a chair, vice chair, and secretary from ~~among their number~~ the commission.

(2) Attendance of a simple majority of the commission members at a called meeting shall constitute a quorum for the transaction of official business.

(3) The commission shall meet:

(a) at the time and place designated by the chair; and

(b) no less often than once every three months.

(4) Vacancies ~~which~~ that occur on the commission for any reason shall be filled for the unexpired term of the vacated member by appointment of a majority of the remaining members.

(5) If a member moves from the district that ~~he~~ the member represents or ceases to act as a producer during ~~his~~ the member's term of office, ~~he~~ the member shall resign from the commission within 30 days after moving from the district or ceasing production.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 226. Section 4-22-105, which is renumbered from Section 4-22-6 is renumbered and amended to read:

[4-22-6]. 4-22-105. Commission to conduct elections -- Nomination of candidates -- Expenses of election paid by commission.

(1) (a) The commissioner shall administer all commission elections.

(b) The commissioner shall mail a ballot to each producer within the district in which an election is to be held by May 15 of each election year.

(c) The candidate who receives the highest number of votes cast in the candidate's district shall be elected.

(d) The commissioner shall determine all questions of eligibility.

(e) A ballot shall be postmarked by May 31 of an election year.

(f) (i) All ballots received by the commissioner shall be counted and tallied by June 15.

(ii) A member of the commission whose name appears on a ballot may not participate in counting or tallying the ballots.

(2) Candidates for election to the commission shall be nominated, not later than April 15, by a petition signed by ~~five~~ two or more producers who are residents of the district in which the election is to be held.

(3) The names of all nominees shall be submitted to the commissioner on or before May 1 of each election year ~~in which an election is held~~.

(4) All election expenses incurred by the commissioner shall be paid by the commission.

Section 227. Section 4-22-106, which is renumbered from Section 4-22-4 is renumbered and amended to read:

[4-22-4]. 4-22-106. Commission powers, duties, and functions.

The commission has and shall exercise the following functions, powers, and duties:

(1) to employ and fix the salary of a full-time administrator, not a member of the commission, to administer the policies adopted, and perform the duties assigned, by the commission;

(2) to conduct a campaign of research, nutritional education, and publicity, showing the value of milk, cream, and dairy products;

(3) to encourage local, national, and international use of Utah dairy products and by-products, through advertising or otherwise;

(4) to investigate and participate in studies of problems peculiar to producers in Utah and to take all actions consistent with this chapter to promote, protect, and stabilize the state dairy industry;

(5) to sue and be sued, prosecute actions in the name of the state for the collection of the assessment imposed by Section ~~[4-22-7]~~ 4-22-201, enter into contracts, and incur indebtedness in furtherance of ~~its~~ the commission's business activities;

(6) to cooperate with any local, state, or national organization engaged in activities similar to those of the commission;

(7) to accept grants, donations, or gifts for use consistent with this chapter; and

(8) to do all other things necessary for the efficient and effective management and operation of [its] the commission's business.

Section 228. Section 4-22-107, which is renumbered from Section 4-22-4.5 is renumbered and amended to read:

[4-22-4.5]. 4-22-107. Exemption from certain operational requirements.

The commission is exempt from:

- (1) Title 51, Chapter 5, Funds Consolidation Act;
- (2) Title 51, Chapter 7, State Money Management Act;
- (3) Title 63A, Utah Administrative Services Code;
- (4) Title 63J, Chapter 1, Budgetary Procedures Act; and
- (5) Title 67, Chapter 19, Utah State Personnel Management Act.

Section 229. Section 4-22-108, which is renumbered from Section 4-22-5 is renumbered and amended to read:

[4-22-5]. 4-22-108. Commission may require surety bond -- Payment of premium.

The commission may require the administrator, or any [of its] commission employees, to post a surety bond conditioned for the faithful performance of [their] the commission's official duties. The amount, form, and kind of such a bond shall be fixed by the commission and each bond premium shall be paid by the commission.

Section 230. Section 4-22-201, which is renumbered from Section 4-22-7 is renumbered and amended to read:

Part 2. Assessment

[4-22-7]. 4-22-201. Assessment imposed on sale of milk or cream produced, sold, or contracted for sale in state -- Time of assessment -- Collection by dealer or producer-handler -- Penalty for delinquent payment or collection -- Statement to be given to producer.

- (1) An assessment of 10 cents is imposed upon each 100 pounds of milk or cream produced and sold, or contracted for sale, through commercial channels in this state.
 - (2) The assessment shall be:
 - (a) based upon daily or monthly settlements; and
 - (b) due at a time set by the commission, which may not be later than the last day of the month next succeeding the month of sale.
 - (3) (a) The assessment shall be:
 - (i) assessed against the producer at the time the milk or milk fat is delivered for sale;

- (ii) deducted from the sales price; and
- (iii) collected by the dealer or producer-handler.

(b) The proceeds of the assessment shall be paid directly to the commission who shall issue a receipt to the dealer or producer-handler.

(c) If a dealer or producer-handler fails to remit the proceeds of the assessment or deduct the assessment on time, a penalty equal to 10% of the amount due shall be added to the assessment.

(4) (a) At the time of payment of the assessment, the dealer or producer-handler shall deliver a statement to the producer calculating the assessment.

(b) The commission may require other relevant information to be included in the statement.

(5) If the mandatory assessment required by the Dairy and Tobacco Adjustment Act of 1983, Pub. L. No. 98-180, 97 Stat. 1128 (1150.152), is abolished, a producer who objects to payment of the assessment imposed under this section^[7] may, by January 31, submit a written request to the commission for a refund of the amount of the assessment the producer paid during the previous year.

Section 231. Section 4-22-202, which is renumbered from Section 4-22-8 is renumbered and amended to read:

[4-22-8]. 4-22-202. Revenue from assessment used to promote dairy industry -- Deposit of funds -- Annual audit of books, records, and accounts -- Annual financial report to producers.

(1) The revenue derived from the assessment imposed by Section ~~[4-22-7]~~ 4-22-201 shall be used exclusively for the:

- (a) administration of this chapter; and
- (b) promotion of the state's dairy industry.

(2) (a) A voucher, receipt, or other written record for each withdrawal from the Utah Dairy Commission Fund shall be kept by the commission.

(b) No funds shall be withdrawn from the fund except upon order of the commission.

(3) The commission may deposit the proceeds of the assessment in one or more accounts in one or more banks approved by the state as depositories.

(4) The books, records, and accounts of the commission's activities are public records.

(5) (a) The accounts of the commission shall be audited once annually by a licensed accountant selected by the commission and approved by the state auditor.

(b) The results of the audit shall be submitted to the:

- (i) commissioner;
- (ii) commission; and
- (iii) Division of Finance.

(c) It is the responsibility of the commission to send annually a financial report to each producer.

Section 232. Section 4-22-203, which is renumbered from Section 4-22-8.5 is renumbered and amended to read:

[4-22-8.5]. 4-22-203. Additional assessment for government liaison and industry relations programs -- Exemption from the assessment.

(1) In addition to the assessment provided in Section [4-22-7] 4-22-201, an assessment of three-fourths of one cent is imposed upon each 100 pounds of milk or cream produced and sold, or contracted for sale, through commercial channels in this state for the purposes specified in Subsection (3).

(2) The three-fourths of one cent assessment shall be paid in the same manner as the assessment required by Section [4-22-7] 4-22-201.

(3) The commission shall use the revenue derived from the three-fourths of one cent assessment imposed by this section to contract out for services and expenses of government liaison and industry relations programs created to stabilize and protect the state's dairy industry and the health and welfare of the public.

(4) A producer who objects to payment of the assessment imposed by this section may, by January 31, submit a written request to the commission to be exempted from payment of the assessment for that year. By January 1 each year, the commission shall send to each person subject to the assessment a postage-paid, self-addressed postcard [to each person subject to the assessment] which may be returned to request an exemption.

Section 233. Section 4-22-301, which is renumbered from Section 4-22-9 is renumbered and amended to read:

Part 3. Liability and Enforcement

[4-22-9]. 4-22-301. State disclaimer of liability.

The state is not liable for the acts or omissions of the commission, [its] commission officers, agents, or employees.

Section 234. Section 4-22-302, which is renumbered from Section 4-22-9.5 is renumbered and amended to read:

[4-22-9.5]. 4-22-302. Commission not eligible for coverage under Risk Management Fund.

The commission is not eligible to receive coverage under the Risk Management Fund created under Section 63A-4-201.

Section 235. Section 4-22-303, which is renumbered from Section 4-22-10 is renumbered and amended to read:

[4-22-10]. 4-22-303. Enforcement -- Inspection of books and records of dealer or producer-handler.

The commission at reasonable times may enter upon the premises and inspect the records of any dealer or producer-handler for the purpose of enforcing this chapter.

Section 236. Section 4-23-101, which is renumbered from Section 4-23-1 is renumbered and amended to read:

CHAPTER 23. AGRICULTURAL AND WILDLIFE DAMAGE PREVENTION ACT

[4-23-1]. 4-23-101. Title.

This chapter [shall be] is known [and may be cited] as the "Agricultural and Wildlife Damage Prevention Act."

Section 237. Section 4-23-102, which is renumbered from Section 4-23-2 is renumbered and amended to read:

[4-23-2]. 4-23-102. Purpose declaration.

The Legislature finds and declares that it is important to the economy of the state to maintain agricultural production at [its] the highest possible level and at the same time, to promote, to protect, and preserve the wildlife resources of the state.

Section 238. Section 4-23-103, which is renumbered from Section 4-23-3 is renumbered and amended to read:

[4-23-3]. 4-23-103. Definitions.

As used in this chapter:

(1) "Agricultural crops" means any product of cultivation;

(2) "Board" means the Agricultural and Wildlife Damage Prevention Board;

(3) "Bounty" means the monetary compensation paid to persons for the harvest of predatory or depredating animals;

(4) "Damage" means any injury or loss to livestock, poultry, agricultural crops, or wildlife inflicted by predatory or depredating animals or depredating birds;

(5) "Depredating animal" means a field mouse, gopher, ground squirrel, jack rabbit, raccoon, or prairie dog;

(6) "Depredating bird" means a Brewer's blackbird or starling;

(7) "Livestock" means cattle, horses, mules, sheep, goats, and swine;

(8) "Predatory animal" means any coyote; and

(9) "Wildlife" means any form of animal life generally living in a state of nature, except a predatory animal or a depredating animal or bird.

Section 239. Section 4-23-104, which is renumbered from Section 4-23-4 is renumbered and amended to read:

[4-23-4]. 4-23-104. Agricultural and Wildlife Damage Prevention Board created -- Composition -- Appointment -- Terms -- Vacancies -- Compensation.

(1) There is created an Agricultural and Wildlife Damage Prevention Board composed of the commissioner and the director of the Division of Wildlife Resources[;] who shall serve, respectively, as the board's chair and vice chair[;] together with seven other members appointed by the governor to four-year terms of office as follows:

(a) one sheep producer representing wool growers of the state;

(b) one cattle producer representing range cattle producers of the state;

(c) one person from the United States Department of Agriculture;

(d) one agricultural landowner representing agricultural landowners of the state;

(e) one person representing wildlife interests in the state;

(f) one person from the United States Forest Service; and

(g) one person from the United States Bureau of Land Management.

(2) Appointees' term of office shall commence June 1.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) Attendance of five members at a duly called meeting shall constitute a quorum for the transaction of official business.

(b) The board shall convene at the times and places prescribed by the chair or vice chair.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 240. Section 4-23-105, which is renumbered from Section 4-23-5 is renumbered and amended to read:

[4-23-5]. 4-23-105. Board responsibilities -- Damage prevention policy -- Rules -- Methods to control predators and depredating birds and animals.

(1) The board is responsible for the formulation of the agricultural and wildlife damage prevention policy of the state and [~~in conjunction with its responsibility~~] may, consistent with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules to implement [its] the agricultural and wildlife damage prevention policy which shall be administered by the department.

(2) In [its] the board's policy deliberations the board shall:

(a) specify programs designed to prevent damage to livestock, poultry, and agricultural crops; and

(b) specify methods for the prevention of damage and for the selective control of predators and depredating birds and animals including hunting, trapping, chemical toxicants, and the use of aircraft.

(3) The board may also:

(a) specify bounties on designated predatory animals and recommend procedures for the payment of bounty claims, recommend bounty districts, recommend persons not authorized to receive bounty, and recommend to the department other actions [it] the board's considers advisable for the enforcement of [its] the board's policies; and

(b) cooperate with federal, state, and local governments, educational institutions, and private persons or organizations, through agreement or otherwise, to effectuate [its] the board's policies.

Section 241. Section 4-23-106, which is renumbered from Section 4-23-6 is renumbered and amended to read:

[4-23-6]. 4-23-106. Department to issue licenses and permits -- Department to issue aircraft use permits -- Reports.

(1) The department is responsible for the issuance of permits and licenses for the purposes of the federal Fish and Wildlife Act of 1956. [~~No~~]

(2) (a) A state agency or private person [~~shall~~] may not use any aircraft for the prevention of damage without first obtaining a use permit from the department.

(b) A state agency [~~which~~] that contemplates the use of aircraft for the protection of agricultural crops, livestock, poultry, or wildlife shall file an application with the department for an aircraft use permit to enable the agency to issue licenses to personnel within the agency charged with the responsibility to protect such resources. [~~Persons~~]

(c) A person who [~~desire~~] desires to use privately owned aircraft for the protection of land, water, crops, wildlife, or livestock may not engage in any such protective activity without first obtaining an aircraft permit from the department.

(d) Agencies and private persons [~~which~~] that obtain aircraft use permits shall file such reports with the department as it deems necessary in the administration of its licensing authority.

Section 242. Section 4-23-107, which is renumbered from Section 4-23-7 is renumbered and amended to read:

[4-23-7]. 4-23-107. Annual fees on sheep, goats, cattle, and turkeys -- Determination by board -- Collection methods.

(1) To assist the department in meeting the annual expense of administering this chapter, the following annual predator control fees are imposed upon animals owned by persons whose interests this chapter is designed to protect:

Sheep and goats (except on farm dairy goats or feeder lambs).....at least \$.70
but not more than \$1 per head

Cattle (except on farm dairy cattle).....at least \$.15 but not more than \$.50 per head

Turkeys (breeding stock only).....at least \$.05
but not more than \$.10 per head

(2) The amount of the fees imposed upon each category of animals specified in this section shall be determined by the board annually on or before January 1 of each year.

(3) (a) Fee brand inspected cattle are subject to a predator control fee upon change of ownership or slaughter.

(b) The fee shall be collected by the local brand inspector at the time of the inspection of cattle, or withheld and paid by the market from proceeds derived from the sale of the cattle.

(c) Cattle that are fee brand inspected prior to confinement to a feedlot are not subject to any subsequent predator control fee.

(4) (a) Fleece of sheared sheep is subject to a predator control fee upon sale of the fleece.

(b) (i) The fee shall be withheld and paid by the marketing agency or purchaser of wool from proceeds derived from the sale of the fleece.

(ii) The department shall enter into cooperative agreements with in-state and out-of-state wool warehouses and wool processing facilities for the collection of predator control fees on the fleece of sheep that graze on private or public range in the state.

(c) The fee shall be based on the number of pounds of wool divided by 10 pounds for white face sheep and five pounds for black face sheep.

(5) Predator control fees on turkey breeding stock shall be paid by the turkey cooperative.

(6) (a) Livestock owners shall pay a predator control fee on any livestock that uses public or private range in the state which is not otherwise subject to the fee under Subsection (3) or (4).

(b) By January 1, the commissioner shall mail to each owner of livestock specified in Subsection (6)(a) a reporting form requiring sufficient information on the type and number of livestock

grazed in the state and indicating the fee imposed for each category of livestock.

(c) Each owner shall file the completed form and the appropriate fee with the commissioner before April 1.

(d) If any person who receives the reporting form fails to return the completed form and the imposed fee as required, the commissioner is authorized to commence suit through the office of the attorney general, in a court of competent jurisdiction, to collect the imposed fee, the amount of which shall be as determined by the commissioner.

(7) All fees collected under this section shall be remitted to the department and deposited in the Agricultural and Wildlife Damage Prevention Account.

Section 243. Section 4-23-108, which is renumbered from Section 4-23-7.5 is renumbered and amended to read:

[4-23-7.5]. 4-23-108. Agricultural and Wildlife Damage Prevention Account.

(1) There is created in the General Fund a restricted account known as the Agricultural and Wildlife Damage Prevention Account.

(2) Money received under Section ~~[4-23-7]~~ 4-23-107 shall be deposited by the commissioner ~~[of agriculture and food in]~~ into the Agricultural and Wildlife Damage Prevention Account to be appropriated for the purposes provided in this chapter.

(3) Any supplemental contributions received by the department from livestock owners for predator control programs shall be deposited into the Agricultural and Wildlife Damage Prevention Account.

Section 244. Section 4-23-109, which is renumbered from Section 4-23-8 is renumbered and amended to read:

[4-23-8]. 4-23-109. Proceeds of sheep fee -- Refund of sheep fees -- Annual audit of books, records, and accounts.

(1) (a) Subject to the other provisions of this Subsection (1), the commissioner may spend an amount each year from the proceeds collected from the fee imposed on sheep for the promotion, advancement, and protection of the sheep interests of the state.

(b) The amount described in Subsection (1)(a) shall be the equivalent to an amount that:

- (i) equals or exceeds 18 cents per head; and
- (ii) equals or is less than 25 cents per head.

(c) The commissioner shall set the amount described in Subsection (1)(a):

- (i) on or before January 1 of each year; and

(ii) in consultation with one or more statewide organizations that represent persons who grow wool.

(d) A sheep fee is refundable in an amount equal to that part of the fee used to promote, advance, or protect sheep interests.

(e) A refund claim shall be filed with the department on or before January 1 of the year immediately succeeding the year for which the fee was paid.

(f) A refund claim shall be certified by the department to the state treasurer for payment from the Agricultural and Wildlife Damage Prevention Account created in Section ~~[4-23-7.5]~~ 4-23-108.

(2) Any expense incurred by the department in administering refunds shall be paid from funds allocated for the promotion, advancement, and protection of the sheep interests of the state.

(3) (a) The books, records, and accounts of the Utah Woolgrowers Association, or any other organization which receives funds from the agricultural and wildlife damage prevention account, for the purpose of promoting, advancing, or protecting the sheep interests of the state, shall be audited at least once annually by a licensed accountant.

(b) The results of this audit shall be submitted to the commissioner.

Section 245. Section 4-23-110, which is renumbered from Section 4-23-10 is renumbered and amended to read:

[4-23-10]. 4-23-110. Applicability of chapter.

This chapter, unless contrary to a federal statute, shall apply to all federal, state, and private lands.

Section 246. Section 4-23-111, which is renumbered from Section 4-23-11 is renumbered and amended to read:

[4-23-11]. 4-23-111. Holding a raccoon or coyote in captivity prohibited -- Penalty.

(1) No person may hold in captivity a raccoon or coyote, except as provided by rules of the Agricultural and Wildlife Damage Prevention Board.

(2) The Division of Wildlife Resources, with the cooperation of the ~~[Department of Agriculture and Food]~~ department and the Department of Health, shall enforce this section.

(3) Any violation of this section is a class B misdemeanor.

~~[(4) This section does not prohibit a person from continuing to keep a raccoon or coyote that he owns as of the effective date of this act.]~~

Section 247. Section 4-24-101, which is renumbered from Section 4-24-1 is renumbered and amended to read:

CHAPTER 24. UTAH LIVESTOCK BRAND AND ANTI-THEFT ACT

Part 1. Administration and Board

[4-24-1]. 4-24-101. Title.

This chapter ~~[shall be known and may be cited]~~ is known as the "Utah Livestock Brand and Anti-Theft Act."

Section 248. Section 4-24-102, which is renumbered from Section 4-24-2 is renumbered and amended to read:

[4-24-2]. 4-24-102. Definitions.

As used in this chapter:

(1) "Brand" means any identifiable mark applied to livestock which is intended to show ownership.

(2) "Carcass" means any part of the body of an animal, including ~~[hides,]~~ entrails~~[,]~~ and edible meats.

(3) "Domesticated elk" ~~[shall have the meaning as]~~ means the same as that term is defined in Section 4-39-102.

(4) "Hide" means any skins or wool removed from livestock.

(5) "Livestock" means cattle, calves, horses, mules, sheep, goats, hogs, or domesticated elk.

(6) (a) "Livestock market" means a public market place consisting of pens or other enclosures where cattle, calves, horses, or mules are received on consignment and kept for subsequent sale, either through public auction or private sale.

(b) "Livestock market" does not mean:

(i) a place used solely for liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder who is going out of business; or

(ii) a place where an association of livestock breeders under ~~[its]~~ the association's own management, offers registered livestock or breeding sires for sale and assumes all responsibility for the sale, guarantees title to the livestock or sires sold, and arranges with the department for brand inspection of all animals sold.

(7) "Mark" means any ~~[eulap, waddle, or]~~ cutting and shaping of the ears or brisket area of livestock which is intended to show ownership.

(8) "Open range" means land upon which cattle, sheep, or other domestic animals are grazed or permitted to roam by custom, license, lease, or permit.

~~[(8)]~~ (9) "Slaughterhouse" means any building, plant, or establishment where animals are ~~[killed]~~ harvested, dressed, or processed and their meat or meat products ~~[offered for sale]~~ produced for human consumption.

Section 249. Section 4-24-103, which is renumbered from Section 4-24-3 is renumbered and amended to read:

[4-24-3]. 4-24-103. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce ~~[such]~~ rules as ~~[in its judgment are]~~ necessary to administer and enforce this chapter.

Section 250. Section 4-24-104, which is renumbered from Section 4-24-4 is renumbered and amended to read:

[4-24-4]. 4-24-104. Livestock Brand Board created -- Composition -- Terms -- Removal -- Quorum for transaction of business -- Compensation -- Duties.

(1) There is created the Livestock Brand Board consisting of seven members appointed by the governor as follows:

(a) four cattle ranchers recommended by the Utah Cattlemen's Association, one of whom shall be a feeder operator;

(b) one dairyman recommended by the Utah Dairywomen's Association;

(c) one livestock market operator recommended jointly by the Utah Cattlemen's Association and the Utah Dairywomen's Association and the Livestock Market Association; and

(d) one horse breeder recommended by the Utah Horse Council.

(2) If a nominee is rejected by the governor, the recommending association shall submit another nominee.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) (a) A member may, at the discretion of the governor, be removed at the request of the association that recommended the appointment.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) One member elected by the board shall serve as chair for a term of one year and be responsible for the call and conduct of meetings of the Livestock Brand Board. Attendance of a simple majority of the members at a duly called meeting shall constitute a quorum for the transaction of official business.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The Livestock Brand Board with the cooperation of the department shall direct the

procedures and policies to be followed in administering and enforcing this chapter.

Section 251. Section 4-24-105, which is renumbered from Section 4-24-30 is renumbered and amended to read:

[4-24-30]. 4-24-105. Commission to appoint supervisor for brand inspection -- Appointment subject to approval -- Salary.

(1) The commissioner shall appoint a state supervisor for livestock brand inspection, ~~[but such appointment is]~~ subject to the approval of the Livestock Brand Board.

(2) The salary or compensation of the supervisor shall be fixed in accordance with standards adopted by the Division of Finance.

Section 252. Section 4-24-201, which is renumbered from Section 4-24-5 is renumbered and amended to read:

Part 2. Brand and Marks

[4-24-5]. 4-24-201. Central Brand and Mark Registry -- Division of state into mark districts -- Identical or confusingly similar brands -- Publication of registered brands and marks.

(1) The department shall maintain a central Brand and Mark Registry which shall list each brand or mark recorded in this state. For each brand or mark registered the list shall specify:

(a) the name and address of the registrant;

(b) a facsimile of the brand recorded or a diagram showing the kind of mark recorded;

(c) the location of the brand or mark upon the animal; and

(d) the date the brand or mark is filed in the registry.

(2) The commissioner may divide the state into districts for the purpose of recording marks but no mark ~~[which in the opinion of the commissioner]~~ that is identical or confusingly similar to a mark previously recorded in a district shall be recorded.

(3) (a) No brand ~~[which in the opinion of the commissioner]~~ that is identical or confusingly similar to a brand previously filed in the central brand and mark registry shall be recorded.

(b) If ~~[it appears that two or more]~~ two or more brands or marks appear identical or confusingly similar ~~[brands or marks have been recorded,];~~

(i) the brand or mark first recorded shall prevail over a later conflicting brand or mark; ~~[in which event,]~~ and

(ii) the later brand or mark shall be cancelled and all recording fees refunded to the owner.

(4) (a) The commissioner shall publish from time to time a list of all brands and marks recorded in the central Brand and Mark Registry and may issue supplements to such publication containing additional brands and marks or changes in

ownership of brands and marks recorded after the last publication.

(b) The brand book shall contain a facsimile of all brands and marks recorded together with the owner's name and address.

(c) The commissioner shall send one copy of the brand book and each supplement to each brand inspector, county clerk, county sheriff, livestock organization, and any other person deemed appropriate.

(d) Brand books and supplements shall be available to the public at the cost of printing and distribution per book or supplement.

Section 253. Section 4-24-202, which is renumbered from Section 4-24-7 is renumbered and amended to read:

[4-24-7]. 4-24-202. Recordation of brand or mark.

(1) (a) Application for a recorded brand or mark shall be made to the department upon forms prescribed and furnished by ~~it~~ the department.

(b) The application shall contain such information as the commissioner prescribes.

(c) No application shall be approved without payment of the appropriate recording fee.

(d) Upon receipt of a proper application, payment of the recording fee, and recordation of the brand or mark in the central Brand or Mark Registry of the department, the commissioner shall issue the applicant a certified copy of recording ~~which~~ that entitles the applicant to the exclusive use of the brand or mark recorded.

(2) (a) Each recorded brand or mark filed with the central Brand and Mark Registry shall expire during the calendar year 1980, and during each fifth year thereafter.

(b) The department shall give notice in writing to all persons who are owners of recorded brands and marks within a reasonable time prior to the date of expiration of recordation.

(c) Brand or mark renewal is effected by filing an appropriate application with the department together with payment of the renewal fee.

(d) A recorded brand or mark, not timely renewed, shall lapse and be removed from the central Brand and Mark Registry.

Section 254. Section 4-24-203, which is renumbered from Section 4-24-8 is renumbered and amended to read:

[4-24-8]. 4-24-203. Fees for recordation, transfer, renewal, and certified copies of brands and marks.

(1) The department, with the approval of the Livestock Brand Board, shall charge and collect fees for the recordation, transfer, and renewal of any brand or mark in each position, and may charge a fee for a certified copy of the recordation.

(2) The fees shall be determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2).

Section 255. Section 4-24-204, which is renumbered from Section 4-24-9 is renumbered and amended to read:

[4-24-9]. 4-24-204. Effect of recorded brand or mark -- Transfer -- Reservation of certain brands.

[The] (1) Except as provided in Subsection (2), the owner of a recorded brand or mark has a vested property right in ~~it which~~ the brand or mark that is transferable by a duly acknowledged instrument~~;~~, provided~~;~~ that a transferee has no rights in the brand or mark until the instrument of transfer is recorded with the department. ~~[No]~~

(2) Notwithstanding any other provision of this chapter:

(a) no person ~~however;~~ other than a member of the Ute Indian Tribe has any vested property right in the brand "ID" which is reserved exclusively for use by members of the Ute Indian Tribe on the Uintah and Ouray Reservation; and

(b) no person other than a member of the Navajo Indian Tribe has any vested right in the brand "- N" (Bar N) which is reserved exclusively for use by members of the Navajo Indian Tribe on the Navajo Indian Reservation ~~[se]~~ as long as it appears on the left shoulder of the animal branded.

(3) The left jaw of cattle is reserved exclusively for use by the department to identify diseased cattle.

Section 256. Section 4-24-205, which is renumbered from Section 4-24-10 is renumbered and amended to read:

[4-24-10]. 4-24-205. Livestock on open range or outside enclosure to be marked or branded -- Cattle upon transfer of ownership to be marked or branded -- Exceptions.

(1) (a) Except as provided in Subsections (1)(b) and (c), no livestock shall forage upon an open range in this state or outside an enclosure unless they bear a brand or mark recorded in accordance with this chapter.

(b) Swine, goats, and unweaned calves or colts are not required to bear a brand or mark to forage upon open range or outside an enclosure.

(c) Domesticated elk may not forage upon open range or outside an enclosure under any circumstances as provided in Chapter 39, Domesticated Elk Act.

(2) (a) Except as provided in Subsection (2)(b), all cattle, upon sale or other transfer of ownership, shall be branded or marked with the recorded brand or mark of the new owner within 30 days after transfer of ownership.

(b) No branding or marking, upon change of ownership, is required within the 30-day period for:

(i) unweaned calves;

- (ii) registered or certified cattle;
- (iii) youth project calves, if the number transferred is less than five; or
- (iv) dairy cattle held on farms.

Section 257. Section 4-24-301, which is renumbered from Section 4-24-6 is renumbered and amended to read:

Part 3. Inspections

[4-24-6]. 4-24-301. State may be divided into brand inspection districts -- Description filed with county clerk and sheriff.

(1) The commissioner, to facilitate and improve brand inspection, may divide the state into brand inspection districts.

(2) A description covering each district shall be filed by the department with each county clerk and county sheriff in the state.

(3) District boundaries may be changed as considered necessary by the commissioner, with the approval of the Livestock Brand Board.

(4) Brand inspection stations within brand inspection districts may be located and established by the commissioner to assist in the enforcement of this chapter.

Section 258. Section 4-24-302, which is renumbered from Section 4-24-11 is renumbered and amended to read:

[4-24-11]. 4-24-302. Certificate of brand inspection necessary to carry out change of ownership -- Exception.

(1) Except as provided in Subsection (2), the ownership of cattle, horses, domesticated elk, or mules may not be transferred to any other person, through sale or otherwise, without a certificate of brand inspection issued by a department brand inspector.

(2) (a) A brand inspection is not required to transfer ownership of dairy calves from the farm of origin under 60 days of age.

(b) Any person who transports dairy calves that have not been brand inspected pursuant to Subsection (2)(a) shall be required to show a sales invoice upon request.

Section 259. Section 4-24-303, which is renumbered from Section 4-24-12 is renumbered and amended to read:

[4-24-12]. 4-24-303. Livestock -- Verification of ownership through brand inspection -- Issuance of certificate of brand inspection -- Brand inspector may demand evidence of ownership -- Brand inspection of livestock seized by the federal government prohibited -- Exception.

(1) A brand inspector, as an agent of the department, shall verify livestock ownership by conducting a brand inspection during daylight hours.

(2) After conducting the brand inspection, the brand inspector, if satisfied that the livestock subject to inspection bears registered brands or marks owned by the owner of the livestock, shall issue a brand inspection certificate to the owner or owner's agent.

(3) The brand inspector shall record the number, sex, breed, and brand or mark on each animal inspected together with the owner's name.

(4) If any livestock subject to inspection bears a brand or mark other than that of the owner, or[,] if no brand or mark appears on such livestock, the brand inspector may demand evidence of ownership [such as a bill of sale or other evidence of ownership] before issuing a brand inspection certificate.

(5) A brand inspector may not issue a brand inspection certificate for any privately owned livestock seized by the federal government unless:

(a) the brand inspector receives consent from the livestock's owner;

(b) the owner is unknown; or

(c) the brand inspector receives a copy of a court order authorizing the seizure.

Section 260. Section 4-24-304, which is renumbered from Section 4-24-13 is renumbered and amended to read:

[4-24-13]. 4-24-304. Brand inspection required before slaughter -- Exceptions.

(1) Except as provided in Subsection (2), a brand inspection is required before any cattle, calves, horses, domesticated elk, or mules are slaughtered.

(2) A person may slaughter cattle, calves, horses, or mules for that person's own use without a brand inspection if the requirements of [Subsection 4-32-4(2)] Section 4-32-106 are met.

Section 261. Section 4-24-305, which is renumbered from Section 4-24-14 is renumbered and amended to read:

[4-24-14]. 4-24-305. Transportation by air or rail -- Brand inspection required -- Application for brand inspection -- Time and place of inspection.

(1) Except as provided in Subsection (2), no person may offer, or railroad or airline company accept, any cattle, calves, horses, domesticated elk, or mules for transport until they have been brand inspected.

(2) Before cattle, calves, horses, domesticated elk, or mules are transported by rail or air, the shipper shall:

(a) request the department to inspect the brands and marks of the animals being transported; and

(b) specify the time and place where the animals may be inspected.

~~[(3) Cattle, calves, horses, domesticated elk, or mules transported by rail or air shall be brand inspected.]~~

~~[(a) at a stockyard or at the initial point of shipment; or]~~

~~[(b) if approved by the department, at a point or station along the transportation route.]~~

~~[(4) The department shall conduct the inspection at the time and place specified by the shipper or at any other time and place as determined by the department.]~~

Section 262. Section 4-24-306, which is renumbered from Section 4-24-15 is renumbered and amended to read:

[4-24-15]. 4-24-306. Movement across state line -- Brand inspection required -- Exception -- Request for brand inspection -- Time and place of inspection.

(1) Except as provided in Subsection (2), a person may not drive or transport any cattle, calves, horses, domesticated elk, or mules from any place within this state to a place outside this state until they have been brand inspected.

(2) Subsection (1) does not apply if the animals specified in Subsection (1) customarily forage on an open range which transgresses the Utah state line and that of an adjoining state.

(3) The owner or person responsible for driving or transporting the animals shall ~~[(a)]~~ request the department to inspect the brands and marks of the animals to be moved ~~[(and)]~~.

~~[(b) specify the time and place where the animals may be inspected.]~~

(4) The department shall conduct the inspection at the time and place ~~[specified by the owner or responsible person or at any other time and place as]~~ determined by the department.

Section 263. Section 4-24-307, which is renumbered from Section 4-24-17 is renumbered and amended to read:

[4-24-17]. 4-24-307. Transportation of sheep, cattle, domesticated elk, horses, or mules -- Brand certificate or other evidence of ownership required -- Transit permit -- Contents.

(1) No person may transport any sheep, cattle, horses, domesticated elk, or mules without having an official state brand certificate or other proof of ownership in his possession.

(2) Each person transporting livestock for another person shall have a transit permit signed by the owner or the owner's authorized agent specifying the:

- (a) name of the person driving the vehicle;
- (b) date of transportation;
- (c) place of origin or loading;

(d) destination;

(e) date of issuance; ~~[and]~~

(f) number of animals being transported ~~[-]; and~~

(g) full description of an animal being transported.

Section 264. Section 4-24-308, which is renumbered from Section 4-24-21 is renumbered and amended to read:

[4-24-21]. 4-24-308. Brand inspection fees.

(1) The department with the approval of the Livestock Brand Board may set and collect a fee for the issuance of any certificate of brand inspection.

(2) Brand inspection fees incurred for the inspection of such animals at a livestock market may be withheld by the market and paid from the proceeds derived from their sale.

(3) The fee shall be determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2).

Section 265. Section 4-24-309, which is renumbered from Section 4-24-16.3 is renumbered and amended to read:

[4-24-16.3]. 4-24-309. Livestock emergency.

(1) As used in this section, "livestock emergency" means:

(a) the presence of a contagious, infectious, or transmissible disease risk to livestock; or

(b) a natural disaster which may affect livestock.

(2) During a livestock emergency, the department may require a person transporting livestock to present the livestock for brand inspection.

Section 266. Section 4-24-401, which is renumbered from Section 4-24-18 is renumbered and amended to read:

Part 4. Sale, Transfer, and Travel

[4-24-18]. 4-24-401. Hides and pelts -- Bill of sale to accompany purchase -- Purchaser to maintain records -- Hides and records examination and inspection.

(1) (a) Any person who buys a hide or pelt shall secure a bill of sale from the seller.

(b) The bill of sale shall be executed in duplicate ~~[-]~~ with one copy being retained by the seller and the other by the buyer.

(c) The bill of sale shall specify the number of hides or pelts sold and the brand or mark borne by each hide ~~[and]~~ or pelt.

(2) (a) Each hide buyer within this state shall maintain a record specifying the name and address of the seller, date of purchase, and the brands or other identification found on the hides and pelts purchased.

(b) The hides and records of any hide buyer are subject to examination and inspection by the department at reasonable times and places.

Section 267. Section 4-24-402, which is renumbered from Section 4-24-19 is renumbered and amended to read:

[4-24-19]. 4-24-402. Livestock markets -- Records to be maintained -- Retention of records -- Schedule of fees and charges to be posted.

(1) Each owner or operator of a livestock market shall keep a record of:

(a) the date each consignment of livestock is received for sale together with the number of each type of livestock within such consignment;

(b) the name and address of each buyer;

(c) the date of sale and the number and species of livestock purchased by each buyer; and

(d) the description and brand or mark appearing on each animal at the time of sale to the buyer.

(2) The records mandated by this section shall be retained for a period of two years from the date on which the livestock market sold the livestock.

(3) A schedule of all fees and commission rates charged by the livestock market shall be posted in a conspicuous place on the premises of each market.

(4) A statement of the gross sales price, commission, and other fees charged for the sale of each consignment shall be available for inspection by the department, and a copy furnished the owner or consignor of the livestock.

Section 268. Section 4-24-403, which is renumbered from Section 4-24-31 is renumbered and amended to read:

[4-24-31]. 4-24-403. Websites promoting the sale of livestock.

(1) A website, created and maintained within the state, that markets the sale of livestock shall have the following statement clearly visible on each web page that displays advertised livestock: "Legality of Sales and Purchase, Health Laws. If you sell or purchase livestock on this site, you shall comply with all applicable legal requirements governing the transfer and shipment of livestock, including [Utah Code] Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, and Title 4, Chapter 31, Control of Animal Disease. Please contact the Utah Department of Agriculture and Food at 801-538-7137 with any questions."

(2) A person who violates this section shall be subject to the penalties described in Section [4-24-32] 4-24-506.

Section 269. Section 4-24-404, which is renumbered from Section 4-24-20 is renumbered and amended to read:

[4-24-20]. 4-24-404. Livestock sold at market to be brand inspected -- Proceeds of sale may be withheld -- Distribution of withheld proceeds -- Effect of receipt of proceeds by department -- Deposit of proceeds -- Use of proceeds if ownership not established.

(1) (a) Livestock may not be sold at any livestock market until after they have been brand inspected by the department. [Title]

(b) The livestock market shall furnish to the buyer title to purchased livestock [shall be furnished to the buyer by the livestock market].

(2) (a) Upon notice from the department that a question exists concerning the ownership of consigned livestock, the operator of the livestock market or meat packing plant shall withhold the proceeds from the sale of the livestock for 60 days to allow the consignor of the questioned livestock to establish ownership.

(b) If the owner or consignor fails within 60 days to establish ownership to the satisfaction of the department, the proceeds of the sale shall be transmitted to the department.

(c) Receipt of the proceeds by the department shall relieve the livestock market or meat packing plant from further responsibility for the proceeds.

(3) (a) Proceeds withheld under Subsection (2) shall be deposited [in] into the Utah Livestock Brand and Anti-Theft Account created in Section [4-24-24] 4-24-501.

(b) If ownership is not satisfactorily established within one year, the department shall use the proceeds for animal identification.

Section 270. Section 4-24-405, which is renumbered from Section 4-24-22 is renumbered and amended to read:

[4-24-22]. 4-24-405. Travel permit in lieu of brand inspection certificate -- Fees -- Permit to accompany animal.

(1) The department may issue a permit upon the payment of a fee determined by the department pursuant to Subsection [4-2-2] 4-2-103(2), in lieu of a certificate of brand inspection, for the transport of any show horse, show mule, or show cattle [within or] transported from any place within this state to a place outside the state.

(2) The words "travel permit" shall be stamped or printed on the permit.

(3) A permit:

(a) shall accompany each show animal while [it] the show animal is in transit and shall identify the animal to which [it] the permit applies by age, sex, color, brand, mark, and scars[-A travel permit]; and

(b) is valid for the calendar year of the date of issuance, which date shall appear on the permit.

Section 271. Section 4-24-406, which is renumbered from Section 4-24-23 is renumbered and amended to read:

[4-24-23]. 4-24-406. Lifetime permit in lieu of brand inspection certificate -- Fees -- Permit to accompany animal -- Transfer.

(1) The department may issue a "lifetime" permit upon the payment of a fee determined by the department pursuant to Subsection [4-2-2] 4-2-103(2), in lieu of a certificate of brand

inspection, for the transport of any horse or mule within or outside the state.

(2) The words "lifetime travel permit" shall be stamped or printed on the permit. The permit shall accompany each horse or mule while it is in transit and shall identify the animal to which it applies by age, sex, color, brand, and scars.

(3) A lifetime transportation permit is valid for as long as the horse or mule to which it applies continues to be owned by the person to whom the permit is issued.

(4) A lifetime permit is transferable to a person within this state upon the transfer of ownership of such an animal, upon application for transfer and the payment of a permit transfer fee to the department in an amount determined by the department pursuant to Subsection [4-2-2] 4-2-103(2).

Section 272. Section 4-24-501, which is renumbered from Section 4-24-24 is renumbered and amended to read:

Part 5. Unlawful Acts and Penalties

[4-24-24]. 4-24-501. Utah Livestock Brand and Anti-Theft Account created -- Deposit of fees -- Purpose of expenditures.

(1) There is created within the General Fund a restricted account known as the Utah Livestock Brand and Anti-Theft Account.

(2) The following money shall be deposited into the Utah Livestock Brand and Anti-Theft Account:

(a) money received by the department under any provision of this chapter; and

(b) money received by the department under any provision of Title 4, Chapter 39, Domesticated Elk Act.

(3) Money in the Utah Livestock Brand and Anti-Theft Account shall be used for the administration of this chapter and of Title 4, Chapter 39, Domesticated Elk Act.

Section 273. Section 4-24-502, which is renumbered from Section 4-24-25 is renumbered and amended to read:

[4-24-25]. 4-24-502. Unlawful acts specified -- Allegation concerning evidence of ownership relative to hides.

(1) It is unlawful for any person to:

(a) permit any cattle, calves, horses, mules, or sheep, except unweaned calves or colts, that are not branded or marked in accordance with this chapter, to forage upon an open range in this state or outside an enclosure;

(b) brand or mark any livestock with a brand or mark which is not a matter of record on the central brand and mark registry;

(c) obliterate, change, or remove a recorded brand or mark; or

(d) destroy, mutilate, or conceal any hide with intent to, or for the purpose of, removing evidence of ownership of the hide, or ownership of the animal from which the hide was removed.

(2) In any prosecution for violation of this section, the state need not allege the ownership of the hide, or the animal or carcass from which the hide was removed; the complaint or information being sufficient if it alleges that ownership is unknown and that the hide is not the property of the defendant.

Section 274. Section 4-24-503, which is renumbered from Section 4-24-26 is renumbered and amended to read:

[4-24-26]. 4-24-503. Use of vehicle to transport stolen livestock prohibited -- Vehicle subject to seizure and sale -- Procedure for sale -- Defense.

(1) (a) No person shall use any vehicle for the transportation of stolen livestock or carcasses. [Any]

(b) A vehicle used in transporting stolen livestock or carcasses is subject to seizure and public sale by the sheriff of the county where [it] the vehicle is found[. No sale shall be made, however, until], after written notice of the proposed sale is served upon the person in whose custody the vehicle is found. [Such]

(2) A person who receives the notice described in Subsection (1)(b) has 10 days after service of the notice of proposed sale to respond to the notice, in which event[,] no sale shall be conducted until after the issue of ownership or any other issues are litigated in a court of competent jurisdiction.

(3) A stolen vehicle used for unlawful transportation is not subject to seizure and sale if the owner of the vehicle is not acting in concert with the thief.

Section 275. Section 4-24-504, which is renumbered from Section 4-24-28 is renumbered and amended to read:

[4-24-28]. 4-24-504. Enforcement -- Brand inspector's powers delineated.

(1) A brand inspector is empowered with the authority of a special function officer for the purpose of enforcing this chapter and such an inspector may, if [deemed] proper, stop any vehicle carrying livestock or livestock carcasses for the purpose of examining brands, marks, certificates of brand inspection, and bills of lading or bills of sale relating to the livestock in transit.

(2) (a) Brand inspectors may enter any premises where livestock are kept or maintained for the purpose of examining brands or marks.

(b) If admittance is refused, the department may proceed immediately to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of examining brands or marks or other evidence of ownership.

Section 276. Section 4-24-505, which is renumbered from Section 4-24-29 is renumbered and amended to read:

[4-24-29]. 4-24-505. Commissioner authorized to cooperate with local governments, other states, or federal government in enforcement.

The commissioner is empowered with authority, if [deemed] necessary, to cooperate or enter into cooperative agreements with authorities in any city, town, or county within the state, or with federal authorities, or with authorities in another state for the purpose of securing assistance in the administration and enforcement of this chapter.

Section 277. Section 4-24-506, which is renumbered from Section 4-24-32 is renumbered and amended to read:

[4-24-32]. 4-24-506. Penalties.

A person who violates a provision of this chapter:

(1) is guilty of a class B misdemeanor; and

(2) may be subject to administrative fines, payable to the department, of up to \$1,000 per violation.

Section 278. Section 4-25-101 is enacted to read:

CHAPTER 25. ESTRAYS

Part 1. Organization

4-25-101. Title.

This chapter is known as "Estrays."

Section 279. Section 4-25-102, which is renumbered from Section 4-25-1 is renumbered and amended to read:

[4-25-1]. 4-25-102. Definitions.

For the purpose of this chapter:

(1) (a) "Estray" means:

(i) an unbranded sheep, cow, horse, mule, or ass[~~or domestic mink~~] found running at large;

(ii) a branded sheep, cow, horse, mule, or ass[~~or domestic mink~~] found running at large whose owner cannot be found after reasonable search; or

(iii) a swine found running at large whose owner cannot be found after reasonable search.

(b) "Estray" does not mean any unweaned animal specified in this section that is running with its mother.

(2) "Feral swine" means any species, or hybrid species:

(a) of the family Suidae, including the European boar, the Eurasian boar, the Russian boar, a feral hog, or a domestic pig;

(b) that is not conspicuously identified by an ear tag or other form of visual identification; and

(c) that is roaming freely upon public land or private land [~~without the permission of the landowner~~].

(3) "Swine" means any domesticated species of the family Suidae that is conspicuously identified by an ear tag or other form of visible identification.

Section 280. Section 4-25-103, which is renumbered from Section 4-25-2 is renumbered and amended to read:

[4-25-2]. 4-25-103. County responsibility for estrays -- Contracts with other local governments authorized.

(1) Each county is responsible for the disposition of all estrays found within [its] the county's boundaries.

(2) Each county in the discharge of [its] the county's responsibility, however, may contract upon mutually agreeable terms with any city, town, or other county with an animal control office to perform any or all of the functions imposed by this chapter.

Section 281. Section 4-25-104, which is renumbered from Section 4-25-3 is renumbered and amended to read:

[4-25-3]. 4-25-104. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as in [its] the department's judgment are necessary to administer and enforce this chapter.

Section 282. Section 4-25-201, which is renumbered from Section 4-25-4 is renumbered and amended to read:

Part 2. Management of Estrays

[4-25-4]. 4-25-201. Possession of estrays -- Determination and location of owner -- Sale -- Disposition of proceeds -- Notice -- Title of purchaser -- Immunity from liability.

(1) (a) Except as provided in Section [4-25-5] 4-25-202, a county shall:

(i) take physical possession of an estray [it] the county finds within [its] county boundaries; [~~and~~]

(ii) attempt to determine the name and location of the estray's owner[~~]; and~~

(iii) contact the local brand inspector.

(b) The department shall assist a county that requests its help in determining the name and location of the owner or other person responsible for the estray.

(c) (i) Notwithstanding the requirements of Title 67, Chapter 4a, Unclaimed Property Act, if the county cannot determine the estray's owner, or, if having determined ownership, neither the county nor the department is able to locate the owner within a reasonable period of time, the estray shall be sold at a livestock or other appropriate market.

(ii) The proceeds of a sale under Subsection (1)(c)(i), less the costs described in Subsection (1)(c)(iii), shall be paid to the county selling the estray.

(iii) The livestock or other market conducting the sale under Subsection (1)(c)(i) may deduct the cost of feed, transportation, and other market costs from the proceeds of the sale.

(2) A county shall publish notice of the sale of an estray:

(a) at least once 10 days before the date of the sale; and

(b) through electronic means or in a publication with general circulation within the county where the estray was taken into custody.

(3) A purchaser of an estray sold under this section shall receive title to the estray free and clear of all claims of the estray's owner and a person claiming title through the owner.

(4) A county that complies with the provisions of this section is immune from liability for the sale of an estray sold at a livestock or other appropriate market.

(5) Notwithstanding the requirements of Subsection (1)(c), a county may employ a licensed veterinarian to euthanize an estray if the licensed veterinarian determines that the estray's physical condition prevents the estray from being sold.

Section 283. Section 4-25-202, which is renumbered from Section 4-25-5 is renumbered and amended to read:

[4-25-5]. 4-25-202. Report of estrays -- Possession -- Relief from liability.

(1) As used in this section, "division" means the Division of Wildlife Resources.

(2) A person, other than an official of the county or of an animal control office under contract with the county, who finds an estray shall report [it] the estray to the county or animal control office immediately.

(3) Upon receipt of notification under Subsection (2), the county or the animal control office shall:

(a) take possession of the estray; or

(b) if appropriate, authorize the person in possession of the estray to maintain and care for [it] the estray pending determination and location of the estray's owner.

(4) A person who gives notice of an estray and delivers [it] the estray to the county or animal control office is not liable to third parties on account of the estray to the extent of the value of the animal.

(5) (a) If an employee of the department or the division, acting in the employee's official capacity, finds an estray, the employee shall:

(i) comply with the requirements of Subsection (2); and

(ii) make a reasonable attempt to contact the estray's owner.

(b) The county or animal control office receiving a report of an estray from an employee of the department or the division shall:

(i) take possession of the estray; or

(ii) authorize the department or the division in writing or through electronic means to take possession of the estray.

(c) If the county or animal control office does not comply with Subsection (5)(b) within 72 hours from the time the division reports an estray, the division may take possession of the estray.

(d) If the division takes possession of the estray, the division shall:

(i) make a reasonable attempt to return the estray to the estray's owner; or

(ii) if unable to return the estray to the estray's owner, deliver the estray to the county or animal control office.

(e) If the division is unable to take possession of the estray after a reasonable attempt, the division may cause the death of the estray if the division determines that the estray presents a material threat to wildlife by:

(i) predation;

(ii) pathogen transmission; or

(iii) genetic introgression.

(f) If the division causes the death of an estray under Subsection (5)(e), the division shall:

(i) compensate the owner of the estray at full market value of the estray; or

(ii) if the owner of the estray cannot be determined, deposit an amount equal to the full market value of the estray into the Agricultural and Wildlife Damage Prevention Account created in Section [4-23-7.5] 4-23-108.

(6) Notwithstanding the requirements of Subsection (5), the division may immediately take possession of an estray or cause an estray to move away from wildlife if the estray presents an imminent material threat to wildlife by:

(a) predation;

(b) pathogen transmission; or

(c) genetic introgression.

Section 284. Section 4-25-203, which is renumbered from Section 4-25-6 is renumbered and amended to read:

[4-25-6]. 4-25-203. Compensation for care of estrays -- Liability of county -- Notice required.

(1) A person who finds an estray and who, after giving notice is authorized by the county to maintain and care for [it] the estray, is entitled to compensation from the owner, or from the county, as the case may be, for the reasonable costs of

feeding and maintaining the [animal] estray; provided, that the county is liable for such cost only if the owner is not located after diligent search.

(2) No person who finds an estray however, is entitled to reimbursement for feed and maintenance or for any other cost incurred on behalf of the estray before such time as notice of the estray is given to the county or to the appropriate animal control office.

Section 285. Section 4-25-204, which is renumbered from Section 4-25-7 is renumbered and amended to read:

[4-25-7]. 4-25-204. County legislative body authorized to adopt fence ordinance -- Lawful fence to be specified by ordinance -- Dividing the county into divisions for different fencing regulations.

(1) A county legislative body may, by ordinance, declare and enforce a general policy within the county for the fencing of farms, subdivisions, or other private property[,] to allow domestic animals to graze without trespassing on farms, subdivisions, or other private property.

(2) If an ordinance is adopted under Subsection (1), the county legislative body:

(a) shall through ordinance declare and specify what constitutes a lawful fence; and

(b) may divide the county into divisions and prescribe different fencing regulations for each division.

Section 286. Section 4-25-205, which is renumbered from Section 4-25-8 is renumbered and amended to read:

[4-25-8]. 4-25-205. Owner liable for trespass of animals -- Exception -- Intervention by county representative.

(1) The owner of any [neat] cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not enclosed by a lawful fence in a county or municipality that has adopted a fence ordinance, is liable in a civil action to the owner or occupant of the premises for any damage inflicted by the trespass.

(2) A county representative may intervene to remove the animal and the county is entitled to fair compensation for costs incurred. If the animal is not claimed within 10 days after written notification is sent to [its] the animal's owner, a county representative may sell the animal to cover costs incurred.

(3) Notwithstanding Subsections (1) and (2), the owner of any [neat] cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person is not liable in a civil action to the owner or occupant of the premises for damage inflicted by the trespass if:

(a) the animal enters the premises from an historic livestock trail, as defined in Section 57-13b-102; and

(b) the premises that was trespassed is not enclosed by an adequate fence at the time the trespass occurs.

Section 287. Section 4-25-206, which is renumbered from Section 4-25-9 is renumbered and amended to read:

[4-25-9]. 4-25-206. Animals running at large -- Prohibition -- Limited exception.

[No] (1) Except as provided in Subsection (2), no person who owns or is in possession of a stallion, jack, or ridgeling over 18 months old, or a ram over three months old, shall permit [it] the animal to run at large within the limits of, or on the summer range of, any town or settlement[; provided, that two-thirds].

(2) Two-thirds of the voters of any county or isolated part of a county may elect through an election to make this section ineffective in all or part of the county during part of the year.

Section 288. Section 4-25-301, which is renumbered from Section 4-25-12 is renumbered and amended to read:

[4-25-12]. 4-25-301. Allowing swine to run at large -- Class B misdemeanor.

(1) A person is guilty of a class B misdemeanor if the person:

(a) is in control of a swine; and

(b) allows the swine to run at large.

(2) A person described in Subsection (1) is liable for damage caused by the swine running at large.

Section 289. Section 4-25-302, which is renumbered from Section 4-25-12.1 is renumbered and amended to read:

[4-25-12.1]. 4-25-302. Release of swine or feral swine for any purpose.

A person [may not release] is guilty of a third degree felony if the person releases a:

(1) swine on public or private property for hunting purposes; or

(2) feral swine on public or private property for any purpose.

Section 290. Section 4-25-303, which is renumbered from Section 4-25-12.3 is renumbered and amended to read:

[4-25-12.3]. 4-25-303. Feral swine detrimental to state's interests -- Seizure, capture, or destruction of feral swine.

(1) Feral swine are detrimental to the state's interests in agriculture and wildlife.

(2) Feral swine may be seized, captured, or destroyed at any time, in any place, and in any manner by:

(a) the department and [its] the department's authorized agents;

(b) the Division of Wildlife Resources and [its] the Division of Wildlife Resources' authorized agents; or

(c) a certified peace officer.

(3) (a) Notwithstanding Section 76-9-301, and subject to the requirements of this section, an individual may kill a feral swine roaming on private or public land.

(b) An individual shall obtain the consent of the landowner before killing a feral swine on private land.

(c) Feral swine may be killed:

(i) year-round;

(ii) in any number; and

(iii) with a firearm, bow and arrow, or crossbow.

(4) Feral swine may not be hunted or killed under Subsection (3)(c):

(a) with the use of artificial light or night vision equipment, except as authorized by county ordinance; or

(b) from or with any airborne vehicle or device, except as provided in Section [4-23-6] 4-23-106.

(5) An individual may not receive compensation, or attempt to receive compensation, from hunting feral swine.

(6) An authorized individual who kills a swine under this section is not liable to the owner for the loss of the swine, unless:

(a) the swine is conspicuously identified by an ear tag or other form of visual identification; and

(b) the individual who killed the swine knew the swine was identified by an ear tag or other form of usual identification.

Section 291. Section 4-25-401, which is renumbered from Section 4-25-14 is renumbered and amended to read:

Part 4. Impounded Livestock

[4-25-14]. 4-25-401. Impounded livestock -- Determination and location of owner -- Sale -- Disposition of proceeds -- Notice -- Title of purchaser -- Immunity from liability.

(1) As used in this section, "impounded livestock" means the following animals seized and retained in legal custody:

(a) cattle;

(b) calves;

(c) horses;

(d) mules;

(e) sheep;

(f) goats;

(g) hogs; or

(h) domesticated elk.

(2) (a) A county may:

(i) take physical possession of impounded livestock seized and retained within its boundaries; and

(ii) attempt to determine the name and location of the impounded livestock's owner.

(b) The department shall assist a county who requests help in locating the name and location of the owner or other person responsible for the impounded livestock.

(c) (i) Notwithstanding the requirements of Title 67, Chapter 4a, Unclaimed Property Act, if the county cannot determine ownership of the impounded livestock, or, if having determined ownership, neither the county nor the department is able to locate the owner within a reasonable period of time, the impounded livestock shall be sold at a livestock or other appropriate market.

(ii) The proceeds of a sale under Subsection (2)(c)(i), less the costs described in Subsection (2)(c)(iii), shall be paid to the State School Fund created by the Utah Constitution, Article X, Section 5, Subsection (1).

(iii) The livestock or other market conducting the sale under Subsection (2)(c)(i) may deduct the cost of feed, transportation, and other market costs from the proceeds of the sale.

(3) A county shall publish the intended sale of the impounded livestock:

(a) at least 10 days ~~prior to~~ before the date of sale; and

(b) through electronic means or in a publication with general circulation within the county where the impounded livestock was taken into custody.

(4) A purchaser of impounded livestock sold under this section shall receive title to the impounded livestock free and clear of all claims of the livestock's owner or a person claiming title through the owner.

(5) If a county complies with the provisions of this section, [it] the county is immune from liability for the sale of impounded livestock sold at a livestock or other appropriate market.

(6) Notwithstanding the requirements of Subsection (2)(c), a county may employ a licensed veterinarian to euthanize an impounded livestock if the licensed veterinarian determines that the impounded livestock's physical condition prevents the impounded livestock from being sold.

Section 292. Section 4-26-101 is amended to read:

CHAPTER 26. ENCLOSURES AND FENCES

4-26-101. Title -- Failure to close entrance to enclosure -- Class C misdemeanor -- Damages.

(1) This chapter is known as “Enclosures and Fences.”

(2) A person who willfully throws down a fence or opens bars or gates into any enclosure other than the person’s own enclosure or into any enclosure jointly owned or occupied by such person and others, and leaves ~~it~~ the enclosure open:

(a) is guilty of a class C misdemeanor^[7]; and

(b) is liable in damage for any injury sustained by any person as a result of such an act.

Section 293. Section 4-26-102 is amended to read:

4-26-102. Adjoining landowners -- Partition fences -- Contribution.

(1) If two or more persons agree to a fence enclosure or to the construction of a partition fence, the cost of construction and maintenance of the fence shall be apportioned between each party to the agreement based upon the amount of land enclosed.

(2) A person who is a party to an agreement described in Subsection (1) and who fails to maintain such person’s part of the fence is liable in a civil action for any damage sustained by another party to the agreement as a result of the failure to maintain the fence.

(3) (a) If a person has enclosed land with a fence and the owner of adjoining land desires to enclose land adjoining the fence so that the existing fence or any part of it will become a partition fence between such tracts of land, the owner of the adjoining land shall, before making the enclosure, pay to the owner of the existing fence one-half of the value of all that part of the fence that will become a partition fence~~;~~ and ~~when one party~~.

(b) If a person whose land is enclosed, in whole or in part, by a partition fence ceases to improve or cultivate ~~his~~ that person’s land or opens ~~his~~ the enclosure ~~he may not take away any part of the partition fence belonging to him, if the owner or occupant of the adjoining enclosure within 30 days after notice, pays for the value of such fence; nor shall the partition fence be removed if the crops enclosed by it will be exposed to injury.~~, the person:

(i) shall give notice to the other owner of the partition fence and an opportunity to pay for the person’s reasonable value of the fence;

(ii) may not remove any part of the partition fence until the earlier of:

(A) 30 days after the day on which the person gave notice to the other owner, as described in Subsection (3)(b)(i); or

(B) the day the other owner pays the person for the person’s reasonable value of the fence; and

(iii) notwithstanding Subsection (3)(b)(ii), may not remove the partition fence if the crops enclosed by the fence will be exposed to injury.

Section 294. Section 4-26-104 is amended to read:

4-26-104. Fencing for bison.

Perimeter fencing intended to hold bison shall meet the following minimum standards:

(1) fence sections and gates shall:

(a) reach a height of at least ~~six~~ eight feet above ground level; and

(b) be constructed in a mesh pattern consisting of:

(i) hi-tensile steel wire of at least 14-1/2 gauge;

(ii) a maximum mesh size of six inches by six inches; or

(iii) a material with the strength equivalent of the material described in Subsections (1)(b)(i) and (ii);

(2) fence posts shall:

(a) (i) be constructed of treated wood at least four inches in diameter; and

(ii) be constructed of a material with the strength equivalent of the material described in Subsection (2)(a)(i);

(b) reach a height of at least six feet, two inches above ground level;

(c) have at least two feet of length below ground level;

(d) be installed at intervals of no more than 20 feet; and

(e) if located on a corner or connected to a gate, be braced with wood or the strength equivalent of wood; and

(3) fence stays shall:

(a) be constructed of treated wood or steel;

(b) be installed at intervals of no more than 10 feet from any fence post; and

(c) reach a height of at least six feet, two inches above ground level.

Section 295. Section 4-30-101 is enacted to read:

CHAPTER 30. LIVESTOCK MARKETS

4-30-101. Title.

This chapter is known as “Livestock Markets.”

Section 296. Section 4-30-102, which is renumbered from Section 4-30-1 is renumbered and amended to read:

[4-30-1]. 4-30-102. Definitions.

For the purpose of this chapter:

(1) “Consignor” or “shipper” means any person who consigns, ships, or delivers livestock to a livestock market for storage, handling, or sale.

(2) (a) “Livestock market” means a public market place consisting of pens or other enclosures where all classes of livestock or poultry are received on

consignment and kept for subsequent sale, either through public auction or private sale.

(b) "Livestock market" does not include:

(i) a place used solely for liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder who is going out of such business; or

(ii) a place where an association of livestock breeders or an individual livestock breeder offers registered livestock or breeding sires for sale and assumes all responsibility for the sale, guarantees title to the livestock or sires sold, and arranges with the department for brand inspection of all animals sold.

(3) "Person" means an individual, partnership, corporation, or association.

Section 297. Section 4-30-103, which is renumbered from Section 4-30-2 is renumbered and amended to read:

[4-30-2]. 4-30-103. Livestock Market Committee created -- Composition -- Terms -- Removal -- Compensation -- Duties.

(1) There is created a Livestock Market Committee which consists of the following seven members appointed to a four-year term of office by the commissioner:

(a) one member recommended by the livestock market operators in the state;

(b) one member recommended by the Utah Cattlemen's Association;

(c) one member recommended by the Utah Dairywomen's Association;

(d) one member recommended by the Utah Woolgrowers' Association;

(e) one member recommended by the horse industry;

(f) one member recommended by the Utah Farm Bureau Federation; and

(g) one member recommended by the Utah Farmers Union.

(2) Notwithstanding the requirements of Subsection (1), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(3) No more than four members shall be members of the same political party.

(4) (a) The commissioner may remove a member of the committee at the request of the association or group which recommended the member's appointment.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) The Livestock Market Committee shall elect a chair from its membership, who shall serve for a term of office of two years, but may be reelected for subsequent terms.

(6) (a) The chair is responsible for the call and conduct of meetings.

(b) Four members constitute a quorum for the transaction of official business.

(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) The Livestock Market Committee acts as advisor to the department with respect to the administration and enforcement of this chapter and makes recommendations necessary to carry out the intent of this chapter to the commissioner.

Section 298. Section 4-30-104, which is renumbered from Section 4-30-3 is renumbered and amended to read:

[4-30-3]. 4-30-104. Department authorized to make and enforce rules.

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules [as in its judgment are] necessary to administer and enforce this chapter.

Section 299. Section 4-30-105, which is renumbered from Section 4-30-4 is renumbered and amended to read:

[4-30-4]. 4-30-105. License required -- Application -- Fee -- Expiration -- Renewal.

(1) (a) No person may operate a livestock market in this state without a license issued by the department.

(b) Application for a license shall be made to the department upon forms prescribed and furnished by [it. The] the department, and the application shall specify:

(i) if the applicant is an individual, the name, address, and date of birth of the applicant; or

(ii) if the applicant is a partnership, corporation, or association, the name, address, and date of birth of each person who has a financial interest in the applicant and the amount of each person's interest;

(iii) a certified statement of the financial assets and liabilities of the applicant detailing:

(A) current assets;

(B) current liabilities;

(C) long-term assets; and

(D) long-term liabilities;

(iv) a legal description of the property where the market is proposed to be located, ~~its~~ the property's street address, and a description of the facilities proposed to be used in connection with ~~it~~ the property;

(v) a schedule of the charges or fees the applicant proposes to charge for each service rendered; and

(vi) a detailed statement of the trade area proposed to be served by the applicant, the potential benefits which will be derived by the livestock industry, and the specific services the applicant intends to render at the livestock market.

(2) (a) Upon receipt of a proper application, payment of a license fee in an amount determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2), and a favorable recommendation by the Livestock Market Committee, the commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license allowing the applicant to operate the livestock market proposed in the application valid through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(b) A livestock market license is annually renewable on or before December 31 of each year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection ~~[4-2-2]~~ 4-2-103(2).

(3) No livestock market original or renewal license may be issued until the applicant has provided the department with a certified copy of a surety bond filed with the United States Department of Agriculture as required by the Packers and Stockyards Act, 1921, 7 U.S.C. Section 181 et seq.

Section 300. Section 4-30-106, which is renumbered from Section 4-30-5 is renumbered and amended to read:

~~[4-30-5]. 4-30-106. Hearing on license application -- Notice of hearing.~~

(1) Upon the filing of an application, the chairman of the Livestock Market Committee shall set a time for hearing on the application in the city or town nearest the proposed site of the livestock market and cause notice of the time and place of the hearing together with a copy of the application to be forwarded by mail, not less than 15 days before the hearing date, to the following:

(a) each licensed livestock market operator within the state; and

(b) each livestock or other interested association or group of persons in the state that has filed written notice with the committee requesting receipt of notice of such hearings.

(2) Notice of the hearing shall be published 14 days before the scheduled hearing date:

(a) in a daily or weekly newspaper of general circulation within the city or town where the hearing is scheduled; and

(b) on the Utah Public Notice Website created in Section 63F-1-701.

Section 301. Section 4-30-107, which is renumbered from Section 4-30-6 is renumbered and amended to read:

~~[4-30-6]. 4-30-107. Livestock Market Committee -- Guidelines delineated for decision on application.~~

(1) The Livestock Market Committee in determining whether to recommend approval or denial of the application shall consider:

(a) the applicant's proven or potential ability to comply with the Packers and Stockyards Act, 7 U.S.C. Sec. 221 through 229b;

(b) the financial stability, business integrity, and fiduciary responsibility of the applicant;

(c) the livestock marketing benefits which potentially will be derived from the establishment and operation of the public livestock market proposed;

(d) the need for livestock market services in the trade area proposed;

(e) the adequacy of the livestock market location and facilities proposed in the application, including facilities for health inspection and testing;

(f) whether the operation of the proposed livestock market is likely to be permanent; and

(g) the economic feasibility of the proposed livestock market based on competent evidence.

(2) Any interested person may appear at the hearing on the application and give an opinion or present evidence either for or against granting the application.

Section 302. Section 4-30-108, which is renumbered from Section 4-30-7 is renumbered and amended to read:

~~[4-30-7]. 4-30-108. Transfer of livestock market license permitted -- Conditions.~~

(1) No livestock market license is transferable to another person without the prior approval of the commissioner.

(2) A change in the membership of a partnership or association, or the sale or transfer of a 25% or greater interest in the stock ownership of a corporate livestock market shall be considered a transfer of the livestock market license and is subject to the requirements of this section.

(3) Application to allow transfer of a livestock market license shall be made to the department on a form prescribed and furnished by ~~it~~ the department.

(4) The commissioner may grant a transfer of the license:

(a) if the proposed transferee meets all the requirements specified for an original license in Section ~~[4-30-4]~~ 4-30-105; and

(b) based on the criteria specified in Section ~~[4-30-6]~~ 4-30-107.

Section 303. Section 4-30-109, which is renumbered from Section 4-30-7.5 is renumbered and amended to read:

[4-30-7.5]. 4-30-109. Financial responsibility.

Each livestock market shall maintain a financial condition of total assets in excess of total liabilities, including total current assets in excess of total current liabilities.

Section 304. Section 4-30-110, which is renumbered from Section 4-30-7.6 is renumbered and amended to read:

[4-30-7.6]. 4-30-110. Custodial accounts for trust funds.

(1) (a) Each payment that a livestock buyer makes to a livestock market selling on commission is a trust fund.

(b) Funds deposited ~~in~~ into custodial accounts are trust funds.

(2) Each livestock market engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "custodial account for shippers' proceeds," or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(3) (a) The livestock market shall deposit ~~in~~ into its custodial account before the close of the next business day after the livestock is sold:

(i) the proceeds that have been collected from the sale of the livestock ~~[that have been collected];~~ and

(ii) an amount equal to the proceeds receivable from the sale of livestock that are due from:

(A) the livestock market;

(B) any owner, officer, or employee of the livestock market; and

(C) any buyer to whom the livestock market has extended credit.

(b) The livestock market shall thereafter deposit ~~in~~ into the custodial account all proceeds collected until the account has been reimbursed in full~~[,]~~ and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable regardless of whether ~~or not~~ the proceeds have been collected by the livestock market.

(4) The custodial account shall be drawn on only ~~for payment of~~:

(a) for payment of the net proceeds to the consignor or shipper, or to any person that the livestock market knows is entitled to payment;

(b) to pay lawful charges against the consignment of livestock which the market agency shall, in its capacity as agent, be required to pay; and

(c) to obtain any sums due the livestock market as compensation for its services.

(5) (a) Each livestock market shall keep accounts and records that will disclose at all times the handling of funds in the custodial account.

(b) Accounts and records shall at all times disclose the name of the consignors and the amount due and payable to each from funds in the custodial account.

(6) The custodial account shall be established and maintained in a bank whose deposits are insured by the Federal Deposit Insurance Corporation.

Section 305. Section 4-30-111, which is renumbered from Section 4-30-8 is renumbered and amended to read:

[4-30-8]. 4-30-111. Weighman license required -- Application -- Fee -- Bond -- Expiration -- Renewal.

(1) (a) No person may act as a weighman at a livestock market without a license from the department.

(b) Application for a weighman's license shall be made to the department upon forms prescribed and furnished by ~~it~~ the department.

(c) Upon receipt of a proper application, payment of a license fee in an amount determined by the department pursuant to Subsection ~~[4-2-2] 4-2-103(2)~~, and deposit of either a corporate surety bond or trust fund agreement with the department in the principal amount of \$1,000, the commissioner shall issue a license allowing the applicant to act as a weighman through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(d) A weighman's license is annually renewable on or before December 31 of each year upon the payment of an annual license renewal fee in an amount determined by the department pursuant to Subsection ~~[4-2-2] 4-2-103(2)~~.

(2) (a) Each weighman's surety bond shall be written by a surety licensed under the laws of Utah and name the state, as obligee, for the use and benefit of persons who consign livestock to a livestock market.

(b) The bond shall further be conditioned for the faithful and accurate weighing of livestock consigned to a livestock market~~[,]~~ and for the payment of court costs and ~~[a] reasonable [attorney's fee]~~ attorney fees to the prevailing party incident to any suit brought upon the bond.

Section 306. Section 4-30-112, which is renumbered from Section 4-30-9 is renumbered and amended to read:

[4-30-9]. 4-30-112. Suspension or revocation of license -- Grounds.

The department is authorized to suspend or revoke the license of any livestock market or livestock market weighman who:

(1) violates any provision of this chapter or any rule ~~promulgated~~ made under this chapter; or

(2) engages in any fraudulent or deceitful activity.

Section 307. Section 4-31-105 is amended to read:

4-31-105. Outbreak of contagious or infectious disease -- Assistance of federal authorities.

If there is an outbreak of contagious or infectious disease among domestic animals in this state that imperils livestock ~~[in adjoining states]~~, the commissioner ~~[shall seek]~~ may request the assistance of the United States Department of Agriculture, Animal and Plant Health Inspection Service, in preventing the spread of the disease to other states.

Section 308. Section 4-31-106 is amended to read:

4-31-106. Epidemic of contagious or infectious disease -- Condemnation or destruction of infected or exposed livestock -- Destruction of other property.

(1) If there is an outbreak of contagious or infectious foreign animal disease of epidemic proportion among domestic animals in this state that imperils livestock, the commissioner, with approval of the governor, may condemn, destroy, or dispose of any infected livestock or any livestock exposed to ~~[, or deemed]~~ the disease or considered by the commissioner capable of ~~[,]~~ communicating the disease to other domestic animals.

(2) The commissioner may, with gubernatorial approval, condemn and destroy any barns, sheds, corrals, pens, or other property necessary to prevent the spread of contagion or infection.

Section 309. Section 4-31-107 is amended to read:

4-31-107. Appraisal of fair market value before destruction.

(1) Before any livestock or property is ~~[condemned and]~~ destroyed under Section 4-31-106, an appraisal of the fair market value of the livestock or other property shall be forwarded to the commissioner by a panel of three qualified appraisers appointed as follows:

- (a) one by the commissioner;
- (b) one by the owner of the livestock or other property subject to condemnation; and
- (c) one by the appraisers specified in Subsections (1)(a) and (b).

(2) After review, the commissioner shall forward the appraisal to the board of examiners described in Subsection 63G-9-201(2)~~[,]~~ together with the commissioner's recommendation concerning the amount, if any, that should be allowed.

(3) Any costs incurred in the appraisal shall be paid by the state.

Section 310. Section 4-31-108 is amended to read:

4-31-108. Euthanasia for postmortem examination.

The commissioner may order the ~~[slaughter and post-mortem]~~ euthanasia and postmortem examination of a diseased domestic animal if the exact nature of the animal's disease is not readily ~~[ascertained]~~ determined through other means.

Section 311. Section 4-31-109.1 is amended to read:

4-31-109.1. Trichomoniasis fines.

(1) A person who knowingly sells a bull infected with trichomoniasis, other than to slaughter, without declaring the disease status of the animal shall be subject to citation and fines as prescribed by the department or may be called to appear before an administrative proceeding by the department, as established by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and Section 4-31-109.

(2) After May 15 of each calendar year, an owner of a bull that has not been tested for trichomoniasis ~~[shall]~~ may be fined \$1,000 per ~~[violation]~~ bull.

(3) An owner of a bull that has not been tested for trichomoniasis and that has been exposed to female cattle ~~[shall]~~ may be fined \$1,000 per ~~[violation]~~ animal regardless of the time of year.

Section 312. Section 4-31-113 is amended to read:

4-31-113. Restrictions on movement of infected or exposed animals.

(1) A person who owns or has possession of an animal and knows that the animal is infected with, or has been exposed to, any contagious or infectious disease~~[,]~~ may not:

- (a) permit the animal to run at large~~[,]~~ or come in contact with~~[,]~~ an animal that can be infected; or
- (b) sell, ship, trade, or give away ~~[an]~~ the infected animal without disclosing that the animal is diseased or has been exposed to disease.

(2) A person who violates Subsection (1) is liable to the owner or occupant of the premises for any damage inflicted by an infected animal.

~~[(2)]~~ (3) The provisions of this section do not apply to protected wildlife that is:

- (a) living in nature; and
- (b) under the jurisdiction of the Division of Wildlife Resources.

Section 313. Section 4-31-114 is amended to read:

4-31-114. Report of vesicular disease.

(1) A person who identifies symptoms of vesicular disease in livestock shall immediately report it to the department.

(2) Failure of a veterinarian licensed in this state to report to the department a diagnosed case of vesicular disease ~~[to the department]~~ constitutes ground for the revocation of such veterinarian's license.

(3) Failure by an owner of livestock to report symptoms of vesicular disease among the owner's

livestock constitutes forfeiture of the right to claim an indemnity for an animal ~~[slaughtered]~~ euthanized on account of the disease.

Section 314. Section 4-31-115 is amended to read:

4-31-115. Contagious or infectious disease -- Duties of department.

(1) (a) The department shall investigate and may quarantine any reported case of contagious or infectious disease, or any epidemic[,], or poisoning, affecting a domestic animal or an animal that the department believes may jeopardize the health of animals within the state.

(b) The department shall make a prompt and thorough examination of all circumstances surrounding the disease, epidemic, or poisoning and may order quarantine, care, or any necessary remedies.

(c) The department may also order immunization or testing and sanitary measures to prevent the spread of disease.

(d) ~~[Investigations]~~ An investigation involving fish or wildlife shall be conducted under a cooperative agreement with the Division of Wildlife Resources.

(2) (a) If the owner or person in possession of such ~~[animals]~~ an animal, after written notice from the department, fails to take the action ordered, the commissioner is authorized to seize and hold the ~~[animals]~~ animal and take action necessary to prevent the spread of disease, including immunization, testing, dipping, or spraying.

(b) An animal seized for testing or treatment under this section ~~[shall]~~ may be sold by the commissioner at public sale to reimburse the department for all costs incurred in the seizure, testing, treatment, maintenance, and sale of the animal unless the owner, before the sale, tenders payment for the costs incurred by the department.

(c) (i) No seized animal shall be sold until the owner or person in possession of the animal is served with a notice specifying the itemized costs incurred by the department ~~[and]~~, the time, place, and purpose of sale, and the number of animals to be sold.

(ii) The notice shall be served at least three days in advance of sale in the manner:

(A) prescribed for personal service in Rule 4(d)(1), Utah Rules of Civil Procedure; or

(B) if the owner cannot be found after due diligence, ~~[in the manner]~~ prescribed for service by publication in Rule 4(d)(4), Utah Rules of Civil Procedure.

(3) (a) Any amount realized from the sale of the animal over the total charges shall be paid to the owner of the animal[,], if the owner is known or can by reasonable diligence be found~~[-, otherwise,]~~.

(b) If the owner is unknown and cannot be found by reasonable diligence, as described in Subsection ~~(3)(a)~~, the excess shall remain in the General Fund.

(c) If the total cost incurred is greater than the amount realized, the owner shall pay the difference.

Section 315. Section 4-31-116 is amended to read:

4-31-116. Quarantine -- Peace officers to assist in maintenance of quarantine.

(1) The commissioner may quarantine any infected domestic animal or area within the state to prevent the spread of infectious or contagious disease.

(2) A sheriff or other peace officer in the state shall, upon request of the commissioner, assist the department in maintaining a quarantine and arrest a person who violates ~~[it]~~ the quarantine.

(3) The department shall pay all costs and fees incurred by any law enforcement authority in assisting the department.

Section 316. Section 4-32-101, which is renumbered from Section 4-32-1 is renumbered and amended to read:

CHAPTER 32. UTAH MEAT AND POULTRY PRODUCTS INSPECTION AND LICENSING ACT

[4-32-1]. 4-32-101. Title.

This chapter ~~[shall be]~~ is known as ~~[and may be cited as]~~ the "Utah Meat and Poultry Products Inspection and Licensing Act."

Section 317. Section 4-32-102, which is renumbered from Section 4-32-2 is renumbered and amended to read:

[4-32-2]. 4-32-102. Purpose declaration.

(1) It is the purpose of this chapter to provide a meat and poultry inspection program in the state at least equal to the programs imposed under the:

(a) Federal Meat Inspection Act, ~~[the federal]~~ 21 U.S.C. Sec. 601 et seq;

(b) Poultry Products Inspection Act, ~~[and the]~~ 21 U.S.C. Sec. 451 et seq;

(c) Humane Slaughter Act~~[-]~~, 7 U.S.C. Sec. 1901 et seq; and

(d) the Egg Product Inspection Act, 21 U.S.C. 1031 et seq.

(2) The commissioner shall administer and enforce this chapter to accomplish ~~[this]~~ the purpose described in Subsection (1).

Section 318. Section 4-32-103, which is renumbered from Section 4-32-2.1 is renumbered and amended to read:

[4-32-2.1]. 4-32-103. Adoption of federal provisions.

(1) The following federal laws, regulations, and standards are adopted by reference:

(a) 9 C.F.R. Part 300 through Part 500 and Part 590;

(b) the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;

(c) the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq.; ~~and~~

(d) the Humane Slaughter Act, 7 U.S.C. Sec. 1901 et seq.~~;~~ and

(e) the Egg Product Inspection Act, 21 U.S.C. 1031 et seq.

(2) Changes to the federal laws, regulations, and standards referenced in Subsection (1) are considered incorporated as those changes are made.

Section 319. Section 4-32-104, which is renumbered from Section 4-32-2.2 is renumbered and amended to read:

[4-32-2.2]. 4-32-104. Emergency rules.

The department may make emergency rules concerning the meat and poultry inspection program only in accordance with Section 63G-3-304.

Section 320. Section 4-32-105, which is renumbered from Section 4-32-3 is renumbered and amended to read:

[4-32-3]. 4-32-105. Definitions.

As used in this chapter:

(1) “Adulterated” means any meat or poultry product that:

(a) bears or contains any poisonous or deleterious substance that may render it injurious to health, but, if the substance is not an added substance, the meat or poultry product is not considered adulterated under this subsection if the quantity of the substance in or on the meat or poultry product does not ordinarily render it injurious to health;

(b) bears or contains, by reason of the administration of any substance to the animal or otherwise, any added poisonous or added deleterious substance that in the judgment of the commissioner makes the meat or poultry product unfit for human food;

(c) contains, in whole or in part, a raw agricultural commodity and that commodity bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec. 346a;

(d) bears or contains any food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348;

(e) bears or contains any color additive that is unsafe within the meaning of 21 U.S.C. Sec. 379e~~[;]~~, provided~~[;]~~ that a meat or poultry product that is not otherwise considered adulterated under Subsection (1)(c) or (d) ~~[of this section]~~ is considered adulterated if use of the pesticide chemical, food additive, or color additive is prohibited in official establishments by federal law, regulation, or standard;

(f) consists, in whole or in part, of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) has been prepared, packaged, or held under unsanitary conditions if the meat or poultry product may have become contaminated with filth, or if it may have been rendered injurious to health;

(h) is in whole or in part the product of an animal that died other than by slaughter;

(i) is contained in a container that is composed, in whole or in part, of any poisonous or deleterious substance that may render the meat or poultry product injurious to health;

(j) has been intentionally subjected to radiation, unless the use of the radiation conforms with a regulation or exemption in effect pursuant to 21 U.S.C. Sec. 348;

(k) has a valuable constituent in whole or in part omitted, abstracted, or substituted; or if damage or inferiority is concealed in any manner; or if any substance has been added, mixed, or packed with the meat or poultry product to increase its bulk or weight, ~~[or]~~ reduce its quality or strength, or ~~[to]~~ make it appear better or of greater value; or

(1) is margarine containing animal fat and any of the raw material used in the margarine consists in whole or in part of any filthy, putrid, or decomposed substance.

(2) “Animal” means a domesticated or captive mammalian or avian species.

(3) “Animal food manufacturer” means any person engaged in the business of preparing animal food derived from animal carcasses or parts or products of the carcasses.

(4) “Ante mortem inspection” means an inspection of a live animal immediately before slaughter.

(5) “Broker” means any person engaged in the business of buying and selling meat or poultry products other than for the person’s own account.

(6) “Capable of use as human food” means any animal carcass, or part or product of a carcass, unless it is denatured or otherwise identified as required by rules of the department to deter ~~[its]~~ the carcass or product’s use as human food.

(7) “Commissioner” includes a person authorized by the commissioner to carry out ~~[this chapter’s provisions.]~~ the provisions of this chapter.

(8) “Container” or “package” means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

(9) “Custom exempt processing” means processing meat or wild game as a service for the person who owns the meat or wild game and uses the meat and meat food products for the person’s own consumption, including consumption by immediate family members and non-paying guests.

(10) “Custom exempt slaughter”:

(a) means slaughtering an animal as a service for the person who owns the animal and uses the meat and meat products for the person's own consumption, including consumption by immediate family members and non-paying guests; and

(b) includes farm custom slaughter.

(11) "Diseased animal":

(a) means an animal that:

(i) is diagnosed with a disease not known to be cured; or

(ii) has exhibited signs or symptoms of a disease that is not known to be cured; and

(b) does not include an otherwise healthy animal that suffers only from injuries such as fractures, cuts, or bruises.

(12) "Farm custom mobile unit" means a portable slaughter vehicle or trailer that is used by a farm custom slaughter licensee to slaughter animals.

(13) "Farm custom slaughter" means custom exempt slaughtering of an animal for an owner without official inspection.

(14) "Farm custom slaughter license" means a license issued by the department to allow farm custom slaughter.

(15) "Farm custom slaughter NOT FOR SALE tag" means a tag issued by the department to the owner of the facility before the animal is slaughtered that specifies the animal's identification and certifies its ownership, which is issued by the department through a brand inspector to the owner of the animal before it is slaughtered.

(16) "Federal acts" means:

(a) the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;

(b) the Federal Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq.; and

(c) the Humane Slaughter Act, 7 U.S.C. 1901 et seq.; and

(d) the Egg Product Inspection Act, 21 U.S.C. 1031 et seq.

(17) "Federal Food, Drug and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040) (21 U.S.C. 301 et seq.), and any amendments to the act.

(18) "Immediate container" means any consumer package, or any other container, in which meat or poultry products not consumer packaged are packed.

(19) "Inspector" means a licensed veterinarian or competent lay person working under the supervision of a licensed graduate veterinarian, department employee who is trained in:

(a) humane handling;

(b) ante-mortem and post-mortem inspection;

(c) processing inspection; and

(d) regulatory requirements.

(20) "Label" means a display of printed or graphic matter upon any meat or poultry product or the immediate container, not including package liners, of any such product.

(21) "Labeling" means all labels and other printed or graphic matter:

(a) upon any meat or poultry product or any of its containers or wrappers; or

(b) accompanying a meat or poultry product.

(22) "Licensee" means a person who holds a valid farm custom slaughter license.

(23) "Meat" means the edible muscle, and other edible parts, of an animal, including edible:

(a) skeletal muscle;

(b) organs;

(c) muscle found in the tongue, diaphragm, heart, or esophagus; and

(d) fat, bone, skin, sinew, nerve, or blood vessel that normally accompanies meat and is not ordinarily removed in processing.

(24) "Meat establishment" means a plant or fixed premises used to:

(a) slaughter animals for human consumption; or

(b) process meat or poultry products for human consumption.

(25) "Meat product" means any product capable of use as human food that is made wholly or in part from any meat or other part of the carcass of any non-avian animal.

(26) "Misbranded" means any meat or poultry product that:

(a) bears a label that is false or misleading in any particular;

(b) is offered for sale under the name of another food;

(c) is an imitation of another food, unless the label bears, in type of uniform size and prominence, the word "imitation" followed by the name of the food imitated;

(d) if it has a container, the container is made, formed, or filled as to be misleading;

(e) does not bear a label showing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count, provided that under this Subsection (26)(e), exemptions as to meat and poultry products not in containers may be established by rules of the department and that under this Subsection (26)(e)(ii), reasonable variations may be permitted, and exemptions for small packages may be

established for meat or poultry products by rule of the department;

(f) does not bear any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling that is not prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) is a food for which a definition and standard of identity or composition has been prescribed by rules of the department under Section [4-32-7] 4-32-109 if the food does not conform to the definition and standard and the label does not bear the name of the food and any other information that is required by the rule;

(h) is a food for which a standard of fill has been prescribed by rule of the department for the container and the actual fill of the container falls below that prescribed unless [its] the food's label bears, in a manner and form as the rule specifies, a statement that [it] the food falls below the standard;

(i) is a food for which no standard or definition of identity has been prescribed under Subsection (26)(g) unless [its] the label bears:

(i) the common or usual name of the food, if there be any; and

(ii) if [it] the food is fabricated from two or more ingredients, the common or usual name of each such ingredient[;], except that spices, flavorings, and colorings may, when authorized by the department, be designated as spices, flavorings, and colorings without naming each[;], provided[;], that to the extent that compliance with the requirements of this Subsection (26)(i)(ii) is impracticable, or results in deception or unfair competition, exemptions shall be established by rule;

(j) is a food that purports to be or is represented to be for special dietary uses, unless [its] the label bears information concerning [its] the food's vitamin, mineral, and other dietary properties as the department, after consultation with the Secretary of Agriculture of the United States, prescribes by rules as necessary to inform purchasers as to [its] the food's value for special dietary uses;

(k) bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless [it] the food bears labeling stating that fact[;], provided[;], that to the extent that compliance with the requirements of this subsection are impracticable, exemptions shall be prescribed by rules of the department; or

(l) does not bear directly thereon and on [its] the food's containers, as the department may prescribe by rule, the official inspection legend and establishment number of the official establishment where the product was prepared, and, unrestricted by any of the foregoing, other information as the department may require by rule to assure that the

meat or poultry product will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain [it] the meat or poultry product in a wholesome condition.

(27) "Official certificate" means any certificate prescribed by rules of the department for issuance by an inspector or other person performing official functions under this chapter.

(28) "Official device" means [any] a device prescribed or authorized by the commissioner for use in applying [any] an official mark.

(29) "Official establishment" means [any] an establishment at which inspection of the slaughter of animals or the preparation of meat or poultry products is maintained under the authority of this chapter.

(30) "Official inspection" means where domestic animals are slaughtered or preparations for slaughter are carried out under grant of inspection that is issued by the department.

[30] (31) "Official inspection legend" means [any] a symbol prescribed by rules of the department showing that a meat or poultry product was inspected and passed in accordance with this chapter.

[31] (32) "Official mark" means the official legend or [any] other symbol prescribed by rules of the department to identify the status of [any] an animal carcass or meat or poultry product under this chapter.

[32] (33) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity," have the same meanings for purposes of this chapter as ascribed to them in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

[33] (34) "[Post mortem] Postmortem inspection" means an inspection of a slaughtered food animal's carcass after slaughter.

[34] (35) "Poultry" means any domesticated bird, whether living or dead.

[35] (36) "Poultry product" means any product capable of use as human food that is made wholly or in part from any poultry carcass, excepting products that contain poultry ingredients in relatively small proportion or that historically have not been considered by consumers as products of the poultry food industry, and that are exempted from definition as a poultry product by the commissioner.

[36] (37) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

[37] (38) "Process" means to cut, grind, manufacture, compound, smoke, intermix, or prepare meat or poultry products.

[38] (39) "Renderer" means any person engaged in the business of rendering animal carcasses, or parts or products of animal carcasses, except rendering conducted under inspection or exemption under this chapter.

[439] (40) "Slaughter" means:

(a) the killing of an animal in a humane manner including skinning or dressing; or

(b) the process of performing any of the specified acts in preparing an animal for human consumption.

[440] (41) "Wild game" means an animal, the products of which are food that is not classified as a domesticated food animal, captive game animal, or captive game bird, including the following when not domesticated:

- (a) deer;
- (b) elk;
- (c) antelope;
- (d) moose;
- (e) bison;
- (f) bear;
- (g) rabbit;
- (h) squirrel;
- (i) raccoon; and
- (j) birds.

Section 321. Section 4-32-106, which is renumbered from Section 4-32-4 is renumbered and amended to read:

[4-32-4]. 4-32-106. Meat establishment license -- Slaughtering livestock except in licensed meat establishment prohibited -- Exceptions -- Violation a misdemeanor.

(1) A person may not, except in a licensed meat establishment, slaughter animals for human consumption or assist other persons in the slaughter or processing of animals except as otherwise provided in Subsection (2), (3), or (4).

(2) A person who raises an animal or an employee of that person may slaughter an animal without a farm custom slaughter license if:

(a) slaughtering or processing animals is not prohibited by local ordinance;

(b) any hide, viscera, blood, or other tissue is disposed of by removal to a rendering facility^[,] or landfill^[,] or by burial, as allowed by law;

(c) the meat or poultry product derived from the slaughtered animal is consumed exclusively by the person or the person's immediate family, regular employees of the person, or nonpaying guests; and

(d) the meat or poultry product is marked "Not For Sale."

(3) Farm custom slaughter may be performed by a person who holds a valid farm custom slaughter license.

(4) A retail establishment that processes meat or poultry products primarily for sale to individual consumers at the retail establishment is exempt

from provisions requiring licensing of a meat establishment if:

(a) the retail establishment is not engaged in slaughter operations;

(b) the retail establishment sells the processed meat and poultry products only to individual consumers at the retail establishment^[,] or to restaurants or institutions for use in meals served at those restaurants or institutions;

(c) the retail establishment's sales of processed meat and poultry products to restaurants or institutions do not exceed the federal adjusted dollar limitation, or 25% by dollar volume of all meat sales from the retail establishment, whichever is less;

(d) the retail establishment receives meat only from a meat establishment licensed under this chapter or inspected by the United States Department of Agriculture under 21 U.S.C. [Sections] Secs. 451 to 695;

(e) the operator of the retail establishment does not sell^[,] to any person other than an individual consumer^[,] any meat or poultry product that is cured, smoked, seasoned, canned, or cooked at the retail establishment;

(f) the retail establishment does not sell any meat or poultry product that is cured, smoked, seasoned, canned, or cooked at the retail establishment at a location other than the retail establishment; and

(g) the operator of the retail establishment does not sell^[,] to any person other than an individual consumer^[,] any meat product made by combining meat from different animal species at the retail establishment.

(5) Any person who violates this section, except as otherwise provided in Subsection (6), is guilty of a class C misdemeanor.

(6) Any person who offers for sale or sells any uninspected meat or poultry product is guilty of a class B misdemeanor.

Section 322. Section 4-32-107, which is renumbered from Section 4-32-5 is renumbered and amended to read:

[4-32-5]. 4-32-107. Meat establishment and farm custom slaughter licenses -- Application -- Fees -- Expiration -- Renewal.

(1) A person may not operate a meat establishment in the state without a meat establishment license issued by the department.

(2) (a) Application for a license to operate a meat establishment shall be made to the department upon a form prescribed and furnished by the department.

(b) Upon receipt of a proper application, compliance with all applicable rules, and the payment of an annual license fee determined by the department according to Subsection [4-2-2] 4-2-103(2), the commissioner, if satisfied that the public convenience and necessity will be served,

shall issue a license allowing the applicant to operate a meat establishment through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.

(c) A meat establishment license is annually renewable on or before December 31 of each year, upon the payment of an annual license renewal fee in an amount determined by the department according to Subsection ~~[4-2-2]~~ 4-2-103(2).

(3) (a) Application for a farm custom slaughter license to engage in the business of slaughtering livestock shall be made to the department on a form prescribed and furnished by the department.

(b) Upon receipt of a proper application, compliance with all applicable rules, and payment of a license fee in an amount determined by the department according to Subsection ~~[4-2-2]~~ 4-2-103(2), the commissioner shall issue a license allowing the applicant to engage in farm custom slaughtering.

(c) A farm custom slaughter license is annually renewable on or before December 31 of each year, upon the payment of an annual renewal license fee in an amount determined by the department according to Subsection ~~[4-2-2]~~ 4-2-103(2).

Section 323. Section 4-32-108, which is renumbered from Section 4-32-6 is renumbered and amended to read:

~~[4-32-6]. 4-32-108. Duties of person who holds a farm custom slaughter license.~~

Each person who holds a farm custom slaughter license shall:

(1) keep accurate records of each animal slaughtered, including:

(a) the name, address, and telephone number of each person for whom the animal is slaughtered~~;~~;

(b) a full description of each animal slaughtered including age, brands, marks, or other identifying marks, proof of ownership, and the destination of the carcass for processing~~;~~; and

(c) the date of slaughter;

(2) require that each animal presented for slaughter bear a farm custom slaughter NOT FOR SALE tag;

(3) render the animal to be slaughtered insensible to pain by captive bolt, gunshot, electric shock, or other humane means before it is shackled, hoisted, thrown, cast, or cut; and

(4) stamp and tag the carcass of any slaughtered animal "Not For Sale."

Section 324. Section 4-32-109, which is renumbered from Section 4-32-7 is renumbered and amended to read:

~~[4-32-7]. 4-32-109. Mandatory functions, powers, and duties of department prescribed.~~

(1) The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative

Rulemaking Act, concerning the following functions, powers, and duties, in addition to those specified in Chapter 1, Short Title and General Provisions, for the administration and enforcement of this chapter~~;~~.

~~[(4)]~~ (2) The department shall require antemortem and postmortem inspections, quarantine, segregation, and reinspections by inspectors appointed for those purposes with respect to the slaughter of animals and the preparation of meat and poultry products at official establishments, except as provided in Subsection ~~[4-32-8]~~ 4-32-110(13).

~~[(2)]~~ (3) The department shall require that:

(a) animals be identified for inspection purposes;

(b) meat or poultry products, or their containers be marked or labeled as:

(i) "Utah Inspected and Passed" if, upon inspection, the products are found to be unadulterated; and

(ii) "Utah Inspected and Condemned" if, upon inspection, the products are found to be adulterated; and

(c) condemned animal carcasses or products, which otherwise would be used for human consumption, be destroyed under the supervision of an inspector.

~~[(3)]~~ (4) The department shall prohibit or limit meat products, poultry products, or other materials not prepared under inspection procedures provided in this chapter, from being brought into official establishments.

~~[(4)]~~ (5) The department shall require that labels and containers for meat and poultry products:

(a) bear all information required by Section ~~[4-32-13]~~ 4-23-115 if the product leaves the official establishment; and

(b) be approved before sale or transportation.

~~[(5)]~~ (6) For official establishments required to be inspected under Subsection ~~[(4)]~~ (2), the department shall:

(a) prescribe sanitary standards;

(b) require sanitary inspections; and

(c) refuse to provide inspection service if the sanitary conditions allow adulteration of any meat or poultry product.

~~[(6)]~~ (7) (a) The department shall require that any person engaged in a business referred to in Subsection ~~[(6)]~~ (7)(b):

(i) keep accurate records disclosing all pertinent business transactions;

(ii) allow inspection of the business premises at reasonable times and examination of inventory, records, and facilities; and

(iii) allow samples to be taken.

(b) Subsection ~~[(6)]~~ (7)(a) applies to any person who:

- (i) slaughters animals;
- (ii) prepares, freezes, packages, labels, buys, sells, transports, or stores any meat or poultry products for human or animal consumption;
- (iii) renders animals; or
- (iv) buys, sells, or transports any dead, dying, disabled, or diseased animals, or parts of their carcasses that died by a method other than slaughter.

~~[(7)]~~ (8) (a) The department shall:

(i) adopt by reference rules ~~[and regulations]~~ under federal acts with changes that the commissioner considers appropriate to make the rules ~~[and regulations]~~ applicable to operations and transactions subject to this chapter; and

(ii) ~~[promulgate]~~ make any other rules considered necessary for the efficient execution of the provisions of this chapter, including rules of practice providing an opportunity for hearing in connection with the issuance of orders under Subsection ~~[(5)]~~ (6) or under Subsection ~~[4-32-8]~~ 4-32-110(1), (2), or (3) and prescribing procedures for proceedings in these cases.

(b) These procedures do not preclude requiring that a label or container be withheld from use, or inspection be refused under Subsections ~~[(4) and (5)]~~ (2) and (6), or Subsection ~~[4-32-8]~~ 4-32-110(3), pending issuance of a final order in the proceeding.

~~[(8)]~~ (9) (a) To prevent the inhumane slaughtering of animals, inspectors shall be appointed to examine and inspect methods of handling and slaughtering animals.

(b) Inspection of slaughtering establishments may be refused or temporarily suspended if animals have been slaughtered or handled by any method not in accordance with the Humane Methods of Slaughter Act of 1978, Pub. L. No. 95-445.

(c) Before slaughtering an animal in accordance with requirements of Kosher, Halal, or a religious faith's requirements that discourage stunning of the animal, the person slaughtering the animal shall file a written request with the commissioner.

~~[(9)]~~ (10) (a) The department shall require an animal showing symptoms of disease during antemortem inspection, performed by an inspector appointed for that purpose, to be set apart and slaughtered separately from other livestock and poultry.

(b) When slaughtered, the carcasses of livestock and poultry are subject to careful examination and inspection in accordance with rules prescribed by the commissioner.

Section 325. Section 4-32-110, which is renumbered from Section 4-32-8 is renumbered and amended to read:

[4-32-8]. 4-32-110. Discretionary functions, powers, and duties of commissioner prescribed.

The commissioner may:

(1) remove inspectors from any official establishment that fails to:

(a) destroy condemned products pursuant to Subsection ~~[4-32-7(2)]~~ 4-32-109(3); or

(b) comply with any other of this chapter's requirements;

(2) refuse to provide inspection for any official establishment for any cause specified in Section 401 of the Federal Meat Inspection Act or Section 181 of the federal Poultry Products Inspection Act;

(3) withhold the use of labels and containers if the labeling is false or misleading or the containers are misleading in size or form;

(4) prescribe the type size and style to be used for labeling:

(a) information;

(b) definitions; and

(c) standards of identity, composition, or container fill;

(5) prescribe conditions for the storage and handling of meat and poultry products by any person who sells, freezes, stores, or transports these products to prevent them from becoming adulterated or misbranded;

(6) require that equines be slaughtered and prepared in official establishments separate from those where other animals are slaughtered or their products are prepared;

(7) require that the following people register the name and address of each place of business and all trade names:

(a) broker;

(b) renderer;

(c) animal food manufacturer;

(d) wholesaler;

(e) public warehouseman of meat or poultry products; or

(f) anyone engaged in the business of buying, selling, or transporting any:

(i) dead, dying, disabled, or diseased animals; or

(ii) parts of animal carcasses that died other than by slaughter;

(8) make inspections of official establishments at night, as well as during the day, if animals or meat and poultry products are slaughtered and prepared for commercial purposes in those establishments at night;

(9) divide the state into inspection districts and designate killing days and partial killing days for each official establishment;

(10) cooperate with the Secretary of Agriculture of the United States in the administration of this chapter and accept federal assistance and use funds appropriated for the administration of this chapter to pay the state's proportionate share of the cooperative program;

(11) recommend the names of officials and employees of the department to the Secretary of Agriculture of the United States for appointment to the advisory committees provided for in the federal acts;

(12) serve as the representative of the governor for consultation with the Secretary of Agriculture under paragraph (c) of Section 301 of the Federal Meat Inspection Act and Section 5(c) of the federal Poultry Products Inspection Act, unless the governor selects another representative; and

(13) exempt from inspection:

(a) the slaughter and processing of an animal by any person who raises an animal for the person's own use, members of the person's household, employees, or nonpaying guests;

(b) custom exempt slaughter and processing operations;

(c) farm custom slaughter performed by a licensee; and

(d) any other operation, if the exemption:

(i) furthers the purposes of this chapter; and

(ii) conforms to federal acts.

Section 326. Section 4-32-111, which is renumbered from Section 4-32-9 is renumbered and amended to read:

4-32-9. 4-32-111. Additional powers of commissioner.

(1) The commissioner may:

(a) gather and compile information concerning, and~~[-te]~~ investigate the organization, business, conduct, practices, and management of, any person subject to this chapter;

(b) require any person subject to this chapter to file information regarding the person's business or operation as the commissioner requires;

(c) for the purpose of this chapter, at all reasonable times have access to, for the purpose of examination, and the right to copy, any documentary evidence~~[-]~~ of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation;

(d) require the attendance of witnesses and the production of documentary evidence at any place designated for hearing; ~~[in case of disobedience to a subpoena, the commissioner may]~~

(e) invoke the aid of any court of competent jurisdiction to compel the attendance of witnesses and the production of documentary evidence, in the case of disobedience to a subpoena; and

~~[-]~~ (f) order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of the proceeding or investigation~~[-; the depositions may be taken before~~

~~any person with power to administer oaths designated by the commissioner, and the testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent].~~

(2) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

(3) (a) (i) Any person who without just cause neglects or refuses to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in ~~[his]~~ the person's power to do so, in obedience to the subpoena or lawful requirement of the commissioner is guilty of a class A misdemeanor. ~~[Any]~~

(ii) A fine imposed for a violation of Subsection (3)(a)(i) may not be less than \$500.

~~[(b) Any person that]~~

(b) (i) A person is guilty of a class A misdemeanor if the person:

(A) willfully makes, or causes to be made, any false entry or statement of fact in any report required to be made under this chapter~~[- or that];~~

(B) willfully makes, or causes to be made, any false entry in any account, record, or memorandum kept by any person subject to this chapter~~[- or that];~~

(C) neglects or fails to make, or to cause to be made, full, true, and correct entries in those accounts, records, or memoranda, of all facts and transactions appertaining to the business of that person; or ~~[that]~~

(D) willfully removes out of the jurisdiction of this state, or willfully mutilates, alters, or by any other means falsifies any documentary evidence of any person subject to this chapter or that willfully refuses to submit to the commissioner or to any of the commissioner's authorized agents, for the purpose of inspection and making copies, any documentary evidence of any person subject to this chapter within the person's possession or control ~~[is guilty of a class A misdemeanor. Any].~~

(ii) A fine imposed for a violation of Subsection (3)(b)(i) may not be less than \$500.

(c) (i) If any person required by this chapter to file any annual or special report fails to do so within the time fixed by the commissioner, and the failure continues for 30 days after notice of default, the person shall forfeit to the state the sum of \$10 for each day of the continuance of the failure, which forfeiture is payable into the treasury of this state, and is recoverable in a civil suit in the name of the state brought in the district where the person has a principal office or in any district in which he does business.

(ii) The various county attorneys, under the direction of the attorney general of this state, shall prosecute for the recovery of the forfeitures.

(iii) The costs and expenses of prosecution shall be paid out of the appropriation for the expenses of the courts of this state.

Section 327. Section 4-32-112, which is renumbered from Section 4-32-10 is renumbered and amended to read:

[4-32-10]. 4-32-112. Judicial review of orders enforcing chapter.

(1) Any party aggrieved by an order issued under Subsection [4-32-7(3)] 4-32-109(4) or under Subsection [4-32-8] 4-32-110(1), (2), or (3) may obtain judicial review.

(2) The district courts have jurisdiction to enforce this chapter, and to prevent and restrain violations of this chapter, and have jurisdiction in all other kinds of cases arising under this chapter.

(3) All proceedings for the enforcement of this chapter, or to restrain violations of this chapter, shall be by and in the name of this state.

Section 328. Section 4-32-113, which is renumbered from Section 4-32-11 is renumbered and amended to read:

[4-32-11]. 4-32-113. Preparation and slaughter of livestock, poultry, or livestock and poultry products -- Adulterated or misbranded products -- Violation of rule or order.

(1) An animal or meat or poultry product that may be used for human consumption shall not be:

(a) slaughtered or prepared unless it is done in compliance with this chapter's requirements;

(b) sold, transported, offered for sale or transportation, or received for transportation, if it is adulterated or misbranded, unless it has been inspected and approved; or

(c) subjected to any act while being transported or held for sale after transportation resulting in one of the products becoming adulterated or being misbranded.

(2) A person may not violate any rule or order of the commissioner under Subsection [4-32-7(3) or (6)] 4-32-109(4) or (7), or Subsection [4-32-8] 4-32-110(3), (5), or (7).

Section 329. Section 4-32-114, which is renumbered from Section 4-32-12 is renumbered and amended to read:

[4-32-12]. 4-32-114. Unauthorized use or possession of official devices, labels, marks, or certificates -- False statements, misrepresentations, and trade secrets.

(1) A person may not cast, print, lithograph, or make any device or label containing or bearing any official mark or simulation of a mark, or any form or simulation of an official certificate, unless authorized by the commissioner.

(2) A person may not:

(a) forge any official device, mark, or certificate;

(b) use any official device, mark, or certificate without the authorization of the commissioner;

(c) alter, detach, deface, or destroy any official device, mark, or certificate;

(d) fail to use, detach, deface, or destroy any official device, mark, or certificate as required by this chapter;

(e) knowingly possess any of the following, if it bears any unauthorized, counterfeit, simulated, forged, or altered official mark:

(i) an official device;

(ii) a counterfeit, simulated, forged, or altered official certificate;

(iii) a device;

(iv) a label;

(v) a carcass of any animal, including poultry; or

(vi) a part or product of any animal, including poultry;

(f) knowingly make any false statement in any shipper's certificate, or nonofficial or official certificate;

(g) knowingly represent that any meat or poultry product has been inspected and approved, or exempted, under this chapter when, in fact, it has not; or

(h) use to the person's advantage or reveal any information acquired under the authority of this chapter relating to any matter entitled to protection as a trade secret unless the information is:

(i) revealed to an authorized government representative; or

(ii) ordered by a court in a judicial proceeding.

Section 330. Section 4-32-115, which is renumbered from Section 4-32-13 is renumbered and amended to read:

[4-32-13]. 4-32-115. Meat or poultry products to be marked or labeled -- Meat or poultry products not intended for human food -- Dead, dying, disabled, or diseased animals.

(1) A person may not sell, transport, offer for sale or transportation, or receive for transportation, any animal carcasses or parts of such carcasses, or the meat or meat products, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by rules adopted by the department to show the kinds of animals from which they were derived.

(2) A person may not buy, sell, transport, or offer for sale or transportation, or receive for transportation any meat or poultry products that are not intended for human food unless they are denatured or otherwise identified as required by the rules of the department or are naturally inedible by humans.

(3) A person engaged in the business of buying, selling, or transporting dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, may not buy, sell, transport, offer for sale or

transportation, or receive for transportation the animals or parts of carcasses unless the transaction or transportation is made in accordance with rules adopted by the department to assure that the animals or parts of carcasses will be prevented from being used for human food.

Section 331. Section 4-32-116, which is renumbered from Section 4-32-14 is renumbered and amended to read:

[4-32-14]. 4-32-116. Attempt to bribe state officer or employee -- Acceptance of bribe -- Interference with official duties -- Penalties.

(1) (a) ~~[Any]~~ A person who gives, pays, or offers, directly or indirectly, any money or other thing of value, to any officer or employee of this state who is authorized to perform any duties under this chapter, with the intent to influence the officer or employee in the discharge of ~~[his]~~ the officer's or employee's duty, is guilty of a felony of the third degree, and upon conviction, shall be punished by a fine of not more than \$5,000 or imprisonment of not more than five years, or both.

(b) An officer or employee of this state authorized to perform duties under this chapter who accepts money, a gift, or other thing of value from any person given with intent to influence ~~[his]~~ the officer's or employee's official action, is guilty of a felony of the third degree and shall, upon conviction, be discharged from office, and fined in an amount of not more than \$5,000, or imprisoned for not more than five years, or both.

(2) (a) ~~[Any]~~ A person who assaults, obstructs, impedes, intimidates, or interferes with any person engaged in the performance of official duties under this chapter, with or without a dangerous or deadly weapon, is guilty of a felony of the third degree and upon conviction shall be punished by a fine of not more than \$5,000, or by imprisonment of not more than five years, or both.

(b) ~~[Any]~~ A person who, in the commission of any violation of Subsection (2) of this section, uses a dangerous weapon as defined in Section 76-1-601, is guilty of a felony of the second degree and upon conviction shall be punished by a fine of not more than \$10,000, or by imprisonment for a period of not more than 10 years, or both.

(c) ~~[Any]~~ A person who kills another person engaged in the performance of official duties under this chapter shall be punished as provided in Section 76-5-202.

Section 332. Section 4-32-117, which is renumbered from Section 4-32-15 is renumbered and amended to read:

[4-32-15]. 4-32-117. Inspection of products placed in containers -- Supervision of inspector -- Access to establishment.

(1) ~~[No]~~ An inspection of products placed in any container at any official establishment ~~[shall be deemed]~~ may not be considered to be complete until

the products are sealed or enclosed under the supervision of an inspector.

(2) For purposes of any inspection of products required by this chapter, inspectors authorized by the department shall have access at all times to every part of every establishment required to have inspection whether the establishment is operated or not.

Section 333. Section 4-32-118, which is renumbered from Section 4-32-16 is renumbered and amended to read:

[4-32-16]. 4-32-118. Detention of animals or meat or poultry products -- Removal of official marks.

(1) Whenever any meat or poultry product or any product exempted from the definition of a meat or poultry product, or any dead, dying, disabled, or diseased animal, is found by any authorized representative of the commissioner, and there is reason to believe that it is adulterated or misbranded and is capable of use as human food, or that it has not been inspected and passed, or that it has been or is intended to be distributed in violation of this chapter, it may be detained by the representative pending action under Section ~~[4-32-17]~~ 4-32-119, and may not be moved by any person from the place at which it is located when so detained, until released by such representative.

(2) All official marks may be required by the representative described in Subsection (1) to be removed from a product or animal described in Subsection (1) before the product is released.

Section 334. Section 4-32-119, which is renumbered from Section 4-32-17 is renumbered and amended to read:

[4-32-17]. 4-32-119. Quarantine authorized -- Conditions giving rise to quarantine.

(1) ~~[Any]~~ A meat or poultry product, or ~~[any]~~ a dead, dying, disabled, or diseased animal that is being transported or is held for sale in this state, ~~[and that]~~ shall be seized and quarantined if it:

(a) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter;

(b) is capable of use as human food and is adulterated or misbranded; or

(c) in any other way violates this chapter~~[-, shall be seized and quarantined].~~

(2) Quarantined animals or products shall be condemned and destroyed, except that the owner of the quarantined animals or products may request a hearing within five days, and the commissioner shall, within five days after the request, conduct a hearing to decide whether the quarantined animals or products shall be condemned.

(3) The commissioner's decision under Subsection (2) is final, and all condemned animals or products shall ~~[forthwith]~~ immediately be destroyed or denatured in the presence of the commissioner or an inspector.

(4) This section does not limit the authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

Section 335. Section 4-32-120, which is renumbered from Section 4-32-18 is renumbered and amended to read:

[4-32-18]. 4-32-120. Rules for the construction and operation of meat establishments authorized.

(1) For the purposes of administering this chapter and qualifying meat establishments for licenses, the department may adopt sanitary inspection rules and regulations, [~~and all other necessary rules,~~] including those pertaining to the construction, equipment, and facilities of meat establishments.

(2) The rules shall conform with the regulations [~~promulgated~~] made under the federal acts.

Section 336. Section 4-32-121, which is renumbered from Section 4-32-20 is renumbered and amended to read:

[4-32-20]. 4-32-121. Suspension or revocation -- Grounds.

The department may upon its own motion, and shall upon the verified complaint in writing of any person, investigate or cause to be investigated the operation of any meat establishment, and may suspend or revoke the license of the meat establishment upon any of the following grounds:

(1) the license was obtained by any false or misleading statement;

(2) for slaughtering any animal without an antemortem and a postmortem inspection, or for processing any meat or poultry or products of [~~either~~] meat or poultry that have not been inspected and passed, [~~or exempted~~], and so identified;

(3) the advertising or publicizing of any false or misleading statements that pertain to the slaughtering, processing, or distribution of animals or meat or poultry products;

(4) the failure to maintain refrigeration[~~],~~ or sanitation, or dispose of waste as required by rules of the department; or

(5) the failure to comply with rules of the department pertaining to the disposal of carcasses or parts of carcasses that have been determined to be unfit for human consumption.

Section 337. Section 4-32-122, which is renumbered from Section 4-32-21 is renumbered and amended to read:

[4-32-21]. 4-32-122. Denial of application for farm custom slaughter license -- Venue for judicial review.

(1) [~~Any~~] An applicant whose application for a license to operate a meat establishment or to obtain a farm custom slaughter license is denied may file a

request for agency action with the department, requesting a hearing on the issue of denial.

(2) (a) [~~Any~~] A person who is aggrieved by an order issued under this section may obtain judicial review.

(b) Venue for judicial review of an informal adjudicative proceeding is in the district court in the county in which the alleged unlawful activity occurred or, in the case of an order denying a license application, in the county where the applicant resides.

(3) The attorney general's office shall represent the department in [~~any~~] an original action or [~~any~~] appeal under this section.

Section 338. Section 4-32-123, which is renumbered from Section 4-32-22 is renumbered and amended to read:

[4-32-22]. 4-32-123. Animals slaughtered or the meat and poultry products not intended for human use -- No inspection -- Products to be denatured or otherwise identified.

Inspection may not be provided under this chapter at any establishment for the slaughter of animals or the preparation of any meat or poultry products that are not intended for use as human food, but the products shall be denatured or otherwise identified as prescribed by rules of the department before [~~their offer~~] the meat and poultry products are offered for sale or transportation.

Section 339. Section 4-33-101, which is renumbered from Section 4-33-1 is renumbered and amended to read:

CHAPTER 33. MOTOR FUEL INSPECTION ACT

[4-33-1]. 4-33-101. Title.

This chapter shall be known as the "Motor Fuel Inspection Act."

Section 340. Section 4-33-102, which is renumbered from Section 4-33-2 is renumbered and amended to read:

[4-33-2]. 4-33-102. Purpose of chapter.

It is the purpose of this chapter to promote the safety and welfare of users of motor fuels in this state and also to promote the orderly marketing of motor fuels.

Section 341. Section 4-33-103, which is renumbered from Section 4-33-3 is renumbered and amended to read:

[4-33-3]. 4-33-103. Definition.

As used in this chapter, "motor fuel" means any combustible [~~gas, liquid, matter, or substance which is used in an internal combustion engine for the generation of power~~] liquid or vapor used to power a motor vehicle or a motor vehicle engine.

Section 342. Section 4-33-104, which is renumbered from Section 4-33-4 is renumbered and amended to read:

[4-33-4]. 4-33-104. Administrative and enforcement powers of department.

The department shall administer and enforce this chapter and may:

(1) make and enforce such rules, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, ~~[as it considers]~~ necessary for the effective administration and enforcement of this chapter;

(2) acquire and test motor fuel samples to determine compliance with this chapter;

(3) maintain and staff a laboratory to test motor fuel samples;

(4) enter public or private premises during normal working hours to enforce this chapter;

(5) stop and detain any commercial vehicle transporting motor fuel to inspect ~~[its]~~ the contents and applicable documents or to acquire motor fuel samples; and

(6) require that records applicable to this chapter be available for examination and review upon request by the department.

Section 343. Section 4-33-105, which is renumbered from Section 4-33-5 is renumbered and amended to read:

[4-33-5]. 4-33-105. Prohibitions.

It is unlawful for any person in this state to:

(1) ~~[to]~~ offer for sale, sell, or deliver any motor fuel which fails to meet the standards prescribed by the department;

(2) ~~[to]~~ advertise or display the price of motor fuel without advertising or displaying the grade of the motor fuel and the type of service ~~[when both self service and full service are offered];~~ or

(3) ~~[to]~~ haul or transport motor fuel for the purpose of sale or delivery in this state without an invoice or bill of lading stating the name and address of the owner or person consigning the fuel for transport, the Utah grade of the motor fuel, and the number of gallons consigned.

Section 344. Section 4-33-106, which is renumbered from Section 4-33-6 is renumbered and amended to read:

[4-33-6]. 4-33-106. Octane rating determination and posting.

The determination of octane ratings and the posting of the octane on dispensing devices shall be in accord with Federal Trade Commission requirements described in 16 C.F.R. Part 306, Automotive Fuel Ratings, Certification, and Posting.

Section 345. Section 4-33-107, which is renumbered from Section 4-33-7 is renumbered and amended to read:

[4-33-7]. 4-33-107. Inspection, sampling, testing, and analysis of fuels by department.

(1) The department shall periodically sample, inspect, analyze and test motor fuels dispensed in this state and may enter any public premises or vehicle for the purpose of determining compliance with this chapter.

(2) (a) Methods of sampling, testing, analyzing, and designating motor fuels shall ~~[accord with those]~~ conform with methods specified and published by the American Society for Testing and Materials.

(b) ~~[The department shall use]~~ Unless modified by the department by rule, the latest published standards of the American Society for Testing and Materials apply.

(3) Upon request, the department shall pay the posted price for samples and the person from whom the sample is taken shall give a signed receipt evidencing payment.

(4) Tests and analyses conducted by the department shall be prima facie evidence of the facts shown by such tests in any court proceeding.

Section 346. Section 4-33-108, which is renumbered from Section 4-33-8 is renumbered and amended to read:

[4-33-8]. 4-33-108. Locking and sealing of pumps in violation of chapter -- Posting notice -- Removal of sealed fuel -- Resealing.

(1) (a) The department may lock and seal any pump or other dispensing device ~~[which]~~ that is in violation of this chapter.

(b) If ~~[such action is taken]~~ the department locks and seals a pump or other dispensing device pursuant to Subsection (1)(a), the department shall post a notice in a conspicuous place on the pump or other dispensing device stating that the device has been sealed by the department and ~~[that it is unlawful]~~ to break or destroy the seal or to mutilate or alter the notice is unlawful.

(2) (a) Any person who is aggrieved by the action of the department may advise the department that such person intends to remove the balance of the motor fuel from the tank or other container which contains the sealed motor fuel.

(b) The department, within two working days after the receipt of such notice, shall break the seal or lock for the container to be emptied.

(3) (a) If the aggrieved party fails to remove the sealed motor fuel within 24 hours after the department breaks the seal, the department may reseal the dispensing device.

(b) The seal may not be broken nor the contents of any container removed, except after a subsequent written notice of intent to remove is filed with the

department and upon the payment of a service charge determined by the department pursuant to Subsection [4-2-2] 4-2-103(2).

(c) A notice of intent to remove may be filed on paper or electronically.

Section 347. Section 4-33-109, which is renumbered from Section 4-33-9 is renumbered and amended to read:

[4-33-9]. 4-33-109. Warrant to enter premises for inspection or sampling.

If admittance is refused to the department either for sampling or for inspection of transport invoices or bills of lading, the department may obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of inspection or taking samples or to examine transport documents.

Section 348. Section 4-33-110, which is renumbered from Section 4-33-10 is renumbered and amended to read:

[4-33-10]. 4-33-110. Interstate commerce -- Chapter inapplicable to fuel in transit through state.

[This] (1) Except as provided in Subsection (2), this chapter is inapplicable to motor fuel being transported through this state in interstate commerce[; provided, that none of the motor fuel is consigned or destined for delivery in the state].

(2) This chapter applies to motor fuel that is consigned or destined for delivery in the state.

Section 349. Section 4-34-101 is enacted to read:

CHAPTER 34. CHARITABLE DONATION

4-34-101. Title.

This chapter is known as "Charitable Donation."

Section 350. Section 4-34-102, which is renumbered from Section 4-34-1 is renumbered and amended to read:

[4-34-1]. 4-34-102. Definitions.

For purposes of this chapter:

(1) "Agricultural product" means any fowl, animal, fish, vegetable, or other product or article, fresh or processed, which is customary food, or which is proper food for human consumption.

[3] (2) "Gleaner" means a person who harvests, for free distribution, an agricultural crop that has been donated by the owner.

[2] (3) "Nonprofit charitable organization" means any organization which was organized and is operating for charitable purposes and which meets the requirements of the Internal Revenue Service of the U.S. Department of Treasury that exempt the organization from income taxation under the provisions of the Internal Revenue Code.

Section 351. Section 4-34-103, which is renumbered from Section 4-34-2 is renumbered and amended to read:

[4-34-2]. 4-34-103. Donation to charitable organization authorized.

Any person engaged in the business of producing, processing, selling, or distributing any agricultural product may donate, free of charge, any such product which is in a fit condition for use as food for human consumption to a nonprofit charitable organization within the state of Utah.

Section 352. Section 4-34-104, which is renumbered from Section 4-34-3 is renumbered and amended to read:

[4-34-3]. 4-34-104. County surplus food collection and distribution system.

(1) To accomplish the purposes of Section [4-34-2] 4-34-103, any county may establish and publicize the availability of a surplus food collection and distribution system and may provide information to donee organizations concerning the availability of agricultural products and to donors concerning organizations that desire or need donated agricultural products.

(2) Any nonprofit charitable organization needing agricultural products on a regular basis may be listed with the county for the purpose of receiving notice that the products are available.

Section 353. Section 4-34-105, which is renumbered from Section 4-34-4 is renumbered and amended to read:

[4-34-4]. 4-34-105. Inspection of donated food.

The county may provide for the inspection of donated agricultural products by the county health officer upon the request of the donee nonprofit charitable organization to determine whether the products are fit for human consumption.

Section 354. Section 4-34-106, which is renumbered from Section 4-34-5 is renumbered and amended to read:

[4-34-5]. 4-34-106. Limitation of liability of donor, charitable organization, and county.

Except in the event of an injury resulting from gross negligence, recklessness, or intentional conduct, neither a county nor an agency of a county nor a donor of an agricultural product participating in good faith in a food donation program, nor a nonprofit charitable organization receiving, accepting, gleaned, or distributing any agricultural product donated in good faith to it under this chapter shall be liable for damages in any civil action or subject to prosecution in any criminal proceeding for any injury that occurs as a result of any act or the omission of any act, including injury resulting from ingesting the donated agricultural product.

Section 355. Section 4-34-107, which is renumbered from Section 4-34-6 is renumbered and amended to read:

[4-34-6]. 4-34-107. Sale or use of donations by employee of public agency or charity prohibited.

An employee of a nonprofit charitable organization or of a public agency may not sell, offer for sale, use, or consume any agricultural product donated or distributed under this chapter.

Section 356. Section 4-35-101, which is renumbered from Section 4-35-1 is renumbered and amended to read:

CHAPTER 35. INSECT INFESTATION EMERGENCY CONTROL ACT

[4-35-1]. 4-35-101. Title.

This chapter is known as the "Insect Infestation Emergency Control Act."

Section 357. Section 4-35-102, which is renumbered from Section 4-35-2 is renumbered and amended to read:

[4-35-2]. 4-35-102. Definitions.

As used in this chapter:

(1) "Committee" means the Decision and Action Committee created by and established under this chapter.

(2) "Department" means the Department of Agriculture and Food.

(3) "Insect" means ~~[, but is not limited to, grasshopper, range caterpillar, mormon cricket, apple maggot, cherry fruit fly, plum curculio, and cereal leaf beetle]~~ any animal in the class insect that the commissioner determines to be a threat to agriculture in the state.

Section 358. Section 4-35-103, which is renumbered from Section 4-35-3 is renumbered and amended to read:

[4-35-3]. 4-35-103. Decision and Action Committee created -- Members -- How appointed -- Duties of committee -- Per diem and expenses allowed.

(1) (a) There is created the Decision and Action Committee ~~which~~ that consists of not fewer than six members.

(b) One member is the commissioner and one member is appointed to represent the department.

(c) The remaining members of the committee are appointed by the commissioner on an ad hoc basis as necessary from persons directly affected by and involved in the current insect infestation emergency.

(d) The commissioner, or the commissioner's designee, shall cast the deciding vote in the event of a tie.

~~(d)~~ (e) The committee is dissolved when the commissioner declares that the insect infestation emergency is over.

(2) The committee shall:

(a) establish a system of priorities for any insect infestation emergency; and

(b) certify to the commissioner any area which requires the establishment of an insect control district in areas of infestation and in which a simple majority of the landowners and lessees whose total production exceeds 50% of the production in that area has agreed to pay proportionate shares of the costs of controlling the insects infesting the area.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 359. Section 4-35-104, which is renumbered from Section 4-35-4 is renumbered and amended to read:

[4-35-4]. 4-35-104. Commissioner to declare emergency -- Powers of commissioner in emergency.

(1) (a) The commissioner, with the consent of the governor, may declare that an insect infestation emergency situation exists which jeopardizes property and resources, and designate the area or areas affected.

(b) The area referred to in Subsection (1)(a) may include federal lands, after notification of the appropriate federal land manager.

(2) The commissioner is authorized, subject to the requirements of Section ~~[4-35-5]~~ 4-35-105, to direct all emergency measures the commission considers necessary to alleviate the emergency condition.

(3) The commissioner shall:

(a) utilize equipment, supplies, facilities, personnel, and other available resources;

(b) enter into contracts for the acquisition, rental, or hire of equipment, services, materials, and supplies;

(c) accept assistance, services, and facilities offered by federal and local governmental units or private agencies; and

(d) accept on behalf of the state the provisions and benefits of acts of Congress designated to provide assistance.

Section 360. Section 4-35-105, which is renumbered from Section 4-35-5 is renumbered and amended to read:

[4-35-5]. 4-35-105. Commissioner to act upon certification by committee -- Deposit required.

(1) The commissioner initiates operations to control the insect infestation in the designated area or areas:

(a) upon ~~[certification by the committee under Subsection 4-35-4(2)]~~ declaration of an infestation emergency, as described in Section 4-35-104; and

(b) upon deposit of the owner's and lessee's projected proportionate share of the costs.

(2) The commissioner and the members of the committee may suspend or terminate control operations upon a determination that the operations will not significantly reduce the insect population in the designated emergency area.

Section 361. Section 4-35-106, which is renumbered from Section 4-35-6 is renumbered and amended to read:

[4-35-6]. 4-35-106.

4-35-6. Money deposited as dedicated credits -- Balance nonlapsing -- Matching funds allowed.

(1) All money received by the state under this chapter is deposited by the Department of Agriculture and Food as dedicated credits for the purpose of insect control with the state.

(2) The dedicated credits may be used as matching funds for:

(a) participation in programs of the United States Department of Agriculture; and

(b) in contracts with private property owners who own croplands contiguous to infested public rangelands.

Section 362. Section 4-35-107, which is renumbered from Section 4-35-7 is renumbered and amended to read:

[4-35-7]. 4-35-107. Notice to owner or occupant -- Corrective action required -- Directive issued by department -- Costs -- Owner or occupant may prohibit treatment.

(1) The department or an authorized agent of the department shall notify the owner or occupant of the problem and the available alternatives to remedy the problem. The owner or occupant shall take corrective action within 30 days.

(2) (a) If the owner or occupant fails to take corrective action under Subsection (1), the department may issue a directive for corrective action which shall be taken within 15 days.

(b) If the owner or occupant fails to act within the required time, the department shall take the necessary action.

(c) The department may recover costs incurred for controlling an insect infestation emergency from the owner or occupant of the property on whose property corrective action was taken.

(3) (a) Owners or occupants of property may prohibit ~~[spraying]~~ treatment by presenting an affidavit from ~~[their]~~ the owner's or occupant's

attending physician to the department which states that the ~~[spraying]~~ treatment as planned is a danger to ~~[their]~~ the owner's or occupant's health.

(b) The department shall provide the owner or occupant with alternatives to ~~[spraying]~~ treatment which will abate the infestation.

Section 363. Section 4-35-108, which is renumbered from Section 4-35-8 is renumbered and amended to read:

[4-35-8]. 4-35-108. Persons and activities exempt from civil liability.

No state agency or ~~[its]~~ state agency officers and employees nor the officers, agents, employees, or representatives of any governmental or private entity acting under the authority granted by this chapter is liable for claims arising out of the reasonable exercise or performance of duties and responsibilities under this chapter.

Section 364. Section 4-35-109, which is renumbered from Section 4-35-9 is renumbered and amended to read:

[4-35-9]. 4-35-109. Department to adopt rules.

The department is authorized to adopt and enforce rules to administer this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 365. Section 4-38-101, which is renumbered from Section 4-38-1 is renumbered and amended to read:

CHAPTER 38. UTAH HORSE REGULATION ACT

[4-38-1]. 4-38-101. Title.

This chapter ~~[shall be]~~ is known as the "Utah Horse Regulation Act."

Section 366. Section 4-38-102, which is renumbered from Section 4-38-2 is renumbered and amended to read:

[4-38-2]. 4-38-102. Definitions.

As used in this chapter:

(1) "Commission" means the Utah Horse Racing Commission created by this chapter.

(2) "Executive director" means the executive director of the commission.

(3) "Mixed meet" means a race meet that includes races by more than one breed of horse.

(4) "Race meet" means the entire period of time for which a licensee has been approved by the commission to hold horse races.

(5) "Racetrack facility" means a racetrack within Utah approved by the commission for the racing of horses, including the track surface, grandstands, clubhouse, all animal housing and handling areas, and other areas in which a person may enter only upon payment of an admission fee or upon presentation of authorized credentials.

(6) "Recognized race meet" means a race meet recognized by a national horse breed association.

(7) "Utah bred horse" means a horse that is sired by a stallion standing in Utah at the time the dam was bred.

Section 367. Section 4-38-103, which is renumbered from Section 4-38-3 is renumbered and amended to read:

[4-38-3]. 4-38-103. Utah Horse Racing Commission.

(1) (a) There is created within the department the Utah Horse Racing Commission.

(b) (i) The commission shall consist of seven members who shall be United States citizens, Utah residents, and qualified voters ~~[of]~~ in Utah.

(ii) Each member shall have an interest in horse racing.

(iii) Two members shall be chosen from horse racing organizations.

(c) (i) The governor shall appoint the members of the commission.

(ii) The governor shall appoint commission members from a list of nominees submitted by the commissioner of agriculture and food.

(d) (i) The members of the commission shall be appointed to four-year terms.

(ii) A commission member may not serve more than two consecutive terms.

(e) Each member shall hold office until ~~[his or her]~~ the member's successor is appointed and qualified.

(f) Vacancies on the commission shall be filled by appointment by the governor for the unexpired term.

(g) (i) A member may be removed from office by the governor for cause after a public hearing.

(ii) Notice of the hearing shall fix the time and place of the hearing and shall specify the charges.

(iii) Copies of the notice of the hearing shall be served on the member by mailing ~~[it]~~ the notice of hearing to the member at ~~[his]~~ the member's last known address at least 10 days before the date fixed for the hearing.

(iv) The governor may designate a hearing officer to preside over the hearing and report ~~[his]~~ the hearing findings to the governor.

(2) (a) The members of the commission shall annually elect a commission chair.

(b) Five members of the commission shall constitute a quorum for the transaction of any business of the commission.

(3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(4) All claims and expenditures made under this chapter shall be first audited and passed ~~[upon]~~ by the commission and when approved shall be paid in the manner provided by law for payment of claims against the state.

(5) Any member of the commission who has a personal or private interest in any matter proposed or pending before the commission shall publicly disclose this fact to the commission and may not vote on the matter.

(6) Any member of the commission who owns or who has any interest, or whose spouse or member of his immediate family has any interest, in a horse participating in a race shall disclose that interest and may not participate in any commission decision involving that race.

Section 368. Section 4-38-104, which is renumbered from Section 4-38-4 is renumbered and amended to read:

[4-38-4]. 4-38-104. Powers and duties of commission.

(1) The commission shall:

(a) license, regulate, and supervise all persons involved in the racing of horses as provided in this chapter;

(b) license, regulate, and supervise all recognized race meets held in this state under the terms of this chapter;

(c) cause the various places where recognized race meets are held to be visited and inspected at least once a year;

(d) assist in procuring public liability insurance coverage from a private insurance company for those licensees unable to otherwise obtain the insurance required under this chapter;

(e) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to govern race meets, including rules:

(i) to resolve scheduling conflicts and settle disputes among licensees;

(ii) to supervise, discipline, suspend, fine, and bar from events all persons required to be licensed by this chapter; and

(iii) to hold, conduct, and operate all recognized race meets conducted pursuant to this chapter;

(f) determine which persons participating, directly or indirectly, in recognized race meets require licenses;

(g) announce the time, place, and duration of recognized race meets for which licenses shall be required; and

(h) establish reasonable fees for all licenses provided for under this chapter.

(2) The commission may:

(a) grant, suspend, or revoke licenses issued under this chapter;

(b) impose fines as provided in this chapter;

(c) access criminal history record information for all licensees and commission employees; and

(d) exclude from any racetrack facility in this state any person who the commission considers detrimental to the best interests of racing or any person who violates any provisions of this chapter or any rule or order of the commission.

Section 369. Section 4-38-105, which is renumbered from Section 4-38-5 is renumbered and amended to read:

[4-38-5]. 4-38-105. Executive director.

(1) The commission shall be under the general administrative control of an executive director appointed by the commissioner with the concurrence of the commission.

(2) The executive director shall serve at the pleasure of the commissioner.

Section 370. Section 4-38-106, which is renumbered from Section 4-38-6 is renumbered and amended to read:

[4-38-6]. 4-38-106. Public records.

All records of the commission shall be subject to Title 63G, Chapter 2, Government Records Access and Management Act.

Section 371. Section 4-38-201, which is renumbered from Section 4-38-7 is renumbered and amended to read:

Part 2. Events

[4-38-7]. 4-38-201. Licenses -- Fees -- Duties of licensees.

(1) The commission may grant licenses for participation in racing and other activities associated with racetracks.

(2) The commission shall establish a schedule of fees for the application for and renewal and reinstatement of all licenses issued under this chapter.

(3) Each person holding a license under this chapter shall comply with this chapter and with all rules [promulgated] issued and all orders issued by the commission under this chapter.

(4) Any person who holds a recognized race meet or who participates directly or indirectly in a recognized race meet without being first licensed by the commission as required under this chapter and any person violating any provisions of this chapter is subject to penalties under Section [4-2-15] 4-2-305.

Section 372. Section 4-38-202, which is renumbered from Section 4-38-8 is renumbered and amended to read:

[4-38-8]. 4-38-202. Stewards.

(1) (a) The commission may delegate authority to enforce [its] commission rules and this chapter to three stewards employed by the commission at each

recognized race meet. At least one of [them] the stewards shall be selected by the commission.

(b) Stewards shall exercise reasonable and necessary authority as designated by rules of the commission including the following:

(i) enforce rules of the commission;

(ii) rule on the outcome of events;

(iii) evict from an event any person who has been convicted of bookmaking, bribery, or attempts to alter the outcome of any race through tampering with any animal that is not in accordance with this chapter or the rules of the commission;

(iv) levy fines not to exceed \$2,500 for violations of rules of the commission, which fines shall be reported daily and paid to the commission within 48 hours of imposition and notice;

(v) suspend licenses not to exceed one year for violations of rules of the commission, which suspension shall be reported to the commission daily; and

(vi) recommend that the commission impose fines or suspensions greater than permitted by Subsections (1)(b)(iv) and (v).

(2) If a majority of the stewards agree, they may impose fines or suspend licenses.

(3) (a) Any fine or license suspension imposed by a steward may be appealed in writing to the commission within five days after [its] the license suspension imposition. The commission may affirm or reverse the decision of a steward or may increase or decrease any fine or suspension.

(b) A fine imposed by the commission under this section or Section [4-38-9] 4-38-301 may not exceed \$10,000.

(c) Suspensions of a license may be for any period of time but shall be commensurate with the seriousness of the offense.

Section 373. Section 4-38-203, which is renumbered from Section 4-38-10 is renumbered and amended to read:

[4-38-10]. 4-38-203. Race meets -- Licenses -- Fairs.

(1) Each person making application for a license to hold a race meet under this chapter shall file an application with the commission which shall set forth the time, place, and number of days the race meet will continue, and other information the commission may require.

(2) A person who has been convicted of a crime involving moral turpitude may not be issued a license to hold a race meet.

(3) (a) The license issued shall specify the kind and character of the race meet to be held, the number of days the race meet shall continue, and the number of races per day.

(b) The licensee shall pay in advance of the scheduled race meet to the commission a fee of not less than \$25. If unforeseen obstacles arise which

prevent the holding or completion of any race meet, the license fee held may be refunded to the licensee if the commission considers the reason for failure to hold or complete the race meet sufficient.

(4) (a) Any unexpired license held by any person who violates any of the provisions of this chapter, or [who] fails to pay to the commission any fees required under this chapter, shall be subject to cancellation and revocation by the commission.

(b) This cancellation shall be made only after a summary hearing before the commission, of which seven days notice in writing shall be given the licensee, specifying the grounds for the proposed cancellation. At the hearing, the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

(5) (a) Fair boards or fair districts that conduct race meets in connection with regularly scheduled annual fairs shall be exempt from payment of the fees provided in this section, unless they sponsor a race in which the speed indexes are officially recognized under breed requirements.

(b) All fair boards and fair meets shall be limited to 14 race days, unless otherwise permitted by a unanimous vote of the commission.

(6) The exemption from the payment of fees under Subsection (5)(a) does not apply to those qualifying for official speed index races.

Section 374. Section 4-38-301, which is renumbered from Section 4-38-9 is renumbered and amended to read:

Part 3. Investigations and Prohibitions

[4-38-9]. 4-38-301. Investigation -- License denial and suspension -- Grounds for revocation -- Fines.

(1) The commission or [its] board of stewards of a recognized race meet, upon their own motion may, and upon verified complaint in writing of any person shall, investigate the activities of any licensee within the state or any licensed person upon the premises of a racetrack facility.

(2) The commission or board of stewards may fine, suspend a license, or deny an application for a license.

(3) The commission may revoke a license, if the licensee has committed any of the following violations:

(a) substantial or willful misrepresentation;

(b) disregard for or violation of any provisions of this chapter or of any rule [promulgated] issued by the commission;

(c) conviction of a felony under the laws of this or any other state or of the United States, a certified copy of the judgment of the court of conviction of which shall be presumptive evidence of the conviction in any hearing held under this section;

(d) fraud, willful misrepresentation, or deceit in racing;

(e) falsification, misrepresentation, or omission of required information in a license application to the commission;

(f) failure to disclose to the commission a complete ownership or beneficial interest in a horse entered to be raced;

(g) misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of racing animals;

(h) failure to comply with any order or rulings of the commission, the stewards, or a racing official pertaining to a racing matter;

(i) ownership of any interest in or participation by any manner in any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise;

(j) being unqualified by experience or competence to perform the activity permitted by the license possessed or being applied for;

(k) employment or harboring of any unlicensed person on the premises of a racetrack facility;

(l) discontinuance of or ineligibility for the activity for which the license was issued;

(m) being currently under suspension or revocation of a racing license in another racing jurisdiction;

(n) possession on the premises of a racetrack facility of:

(i) firearms; or

(ii) a battery, buzzer, electrical device, or other appliance other than a whip which could be used to alter the speed of a horse in a race or while working out or schooling;

(o) possession, on the premises of a racetrack facility, by a person other than a licensed veterinarian of a hypodermic needle, hypodermic syringe, or other similar device that may be used in administering medicine internally in a horse, or any substance, compound items, or combination of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a horse unless specifically authorized by a commission-approved veterinarian;

(p) cruelty to or neglect of a horse;

(q) offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of such act immediately to the stewards, the patrol judges, or the commission;

(r) causing, attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of such act immediately to the stewards, the patrol judges, or the commission;

(s) entering, or aiding and abetting the entry of, a horse ineligible or unqualified for the race entered;

(t) willfully or unjustifiably entering or racing any horse in any race under any name or designation other than the name or designation assigned to the animal by and registered with the official recognized registry for that breed of animal, or willfully setting on foot, instigating, engaging in, or in any way furthering any act by which any horse is entered or raced in any race under any name or designation other than the name or designation duly assigned by and registered with the official recognized registry for the breed of animal; or

(u) racing at a racetrack facility without having that horse registered to race at that racetrack facility.

(4) (a) Any person who fails to pay in a timely manner any fine imposed pursuant to this chapter shall pay, in addition to the fine due, a penalty amount equal to the fine.

(b) Any person who submits to the commission a check in payment of a fine or license fee requirement imposed pursuant to this chapter, which is not honored by the financial institution upon which it is drawn, shall pay, in addition to the fine or fee due, a penalty amount equal to the fine.

Section 375. Section 4-38-302, which is renumbered from Section 4-38-11 is renumbered and amended to read:

[4-38-11]. 4-38-302. Stimulation or retardation of animals prohibited -- Tests.

(1) Any person who uses or permits the use of any mechanical or electrical device, or drug of any kind, to stimulate or retard any animal in any race authorized by this chapter, except as prescribed by the commission, is guilty of a class A misdemeanor.

(2) A commission member or race steward may cause tests to be made that ~~[they consider]~~ the commission considers proper to determine whether any animal has been stimulated or retarded. Tests performed in furtherance of this section shall be conducted by or under the supervision of a licensed Utah veterinarian.

Section 376. Section 4-38-303, which is renumbered from Section 4-38-12 is renumbered and amended to read:

[4-38-12]. 4-38-303. Bribery and touting prohibited.

Any person who gives or promises or attempts to give, or any person who receives or agrees to receive or attempts to receive, any money, bribe, or thing of value with intent to influence any person to dishonestly umpire, manage, direct, judge, preside, officiate at, or participate in any race conducted under this chapter with the intent or purpose that the result of the race will be affected or influenced thereby, is guilty of a felony of the third degree and subject to a fine of not more than \$10,000.

Section 377. Section 4-38-304, which is renumbered from Section 4-38-15 is renumbered and amended to read:

[4-38-15]. 4-38-304. Gambling disclaimer.

Nothing in this chapter may be construed to legalize or permit any form of gambling.

Section 378. Section 4-38-401, which is renumbered from Section 4-38-13 is renumbered and amended to read:
Part 4. Finances

[4-38-13]. 4-38-401. Race meet escrow.

(1) Each race meet licensee shall deposit in escrow all added money and money from payment races in a FDIC bank that has received prior approval from the commission.

(2) All payment deposits shall be made in a timely manner determined by the commission, and each licensee shall provide proof of deposits as required by the commission.

Section 379. Section 4-38-402, which is renumbered from Section 4-38-16 is renumbered and amended to read:

[4-38-16]. 4-38-402. Horse Racing Account created -- Contents -- Use of account money.

(1) There is created within the General Fund a restricted account known as the Horse Racing Account.

(2) The Horse Racing Account consists of:

- (a) license fees collected under this chapter;
- (b) revenue from fines imposed under this chapter; and
- (c) interest on account money.

(3) Upon appropriation by the Legislature, money from the account shall be used for the administration of this chapter, including paying the costs of:

- (a) public liability insurance;
- (b) stewards;
- (c) veterinarians; and
- (d) drug testing.

Section 380. Section 4-38-501, which is renumbered from Section 4-38-14 is renumbered and amended to read:

Part 5. Hearings

[4-38-14]. 4-38-501. Hearings.

(1) Except as otherwise provided in this section, all proceedings before the commission or ~~[its]~~ the commission's hearing officer with respect to the ~~denial~~, suspension, or revocation of licenses or the imposition of fines shall be conducted pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

(2) (a) These proceedings shall be held in the county where the commission has ~~[its]~~ an office or in any other place the commission designates.

(b) The commission shall notify the applicant or licensee by mailing, by first class mail, a copy of the written notice required to the last address

furnished by the application or licensee to the commission at least seven days in advance of the hearing.

(3) The commission may delegate ~~its~~ the commission's authority to conduct hearings with respect to the denial or suspension of licenses or the imposition of a fine to a hearing officer.

(4) Proceedings before the board of stewards need not be governed by the procedural or other requirements of ~~the~~ Title 63G, Chapter 4, Administrative Procedures Act, but rather shall be conducted in accordance with rules adopted by the commission.

(5) The commission and the board of stewards may administer oaths and affirmations, sign and issue subpoenas, order the production of documents and other evidence, and regulate the course of the hearing pursuant to rules adopted by ~~it~~ the commission.

(6) (a) Any person aggrieved by a final order or ruling issued by a board of stewards may appeal the order or ruling to the commission pursuant to procedural rules adopted by the commission.

(b) The aggrieved party may petition the commission for a stay of execution pending appeal to the commission.

Section 381. Section 4-39-102 is amended to read:

4-39-102. Definitions.

As used in this chapter:

(1) "Domesticated elk" means elk of the genus and species *cervus elaphus*, held in captivity and domestically raised for commercial purposes.

(2) "Domesticated elk facility" means a facility where only domesticated elk are raised.

(3) "Domesticated elk product" means any carcass, part of a carcass, hide, meat, meat food product, antlers, or any part of a domesticated elk.

Section 382. Section 4-39-104 is amended to read:

4-39-104. Domesticated Elk Act advisory council.

(1) The department shall establish a Domesticated Elk Act advisory council to give advice and make recommendations on policies and rules adopted pursuant to this chapter.

(2) The advisory council shall consist of 10 members appointed by the commissioner of agriculture to four-year terms as follows:

(a) one member, recommended by the executive director of the Department of Natural Resources, shall represent the Department of Natural Resources;

(b) two members, one of whom shall be the state veterinarian, shall represent the Department of Agriculture~~;~~ one of whom shall be the state veterinarian];

(c) one member shall represent the livestock industry;

(d) one member, recommended by the executive director of the Department of Natural Resources from a list of candidates submitted by the Division of Wildlife Resources, shall represent wildlife interests; and

(e) five members, recommended by the Department of Agriculture, shall represent the domesticated elk industry.

(3) Notwithstanding the requirements of Subsection (2), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) A majority of the advisory council constitutes a quorum.

(b) A quorum is necessary for the council to act.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 383. Section 4-39-107 is amended to read:

4-39-107. Powers of state veterinarian.

The state veterinarian shall:

(1) set up periodic or ongoing surveillance programs considered necessary for:

(a) the recognition, control, monitoring, and elimination of infectious diseases and parasites; and

(b) monitoring genetic purity; and

(2) quarantine or make any disposition of diseased animals that ~~he or she~~ the state veterinarian considers necessary for the control or eradication of that disease.

Section 384. Section 4-39-108 is amended to read:

4-39-108. Deposit of fees.

The department shall deposit all fees collected under this chapter into the Utah Livestock Brand and Anti-Theft Account created in Section ~~[4-24-24]~~ 4-24-502.

Section 385. Section 4-39-201 is amended to read:

4-39-201. Fencing, posts, and gates.

(1) ~~[Each]~~ A domesticated elk facility shall, at a minimum, meet the requirements of this section

and shall be constructed to prevent the movement of ~~domesticated elk~~ domestic elk and wild cervids into or out of the facility.

(2) (a) All perimeter fences and gates shall be:

(i) a minimum of eight feet above ground level; and

(ii) constructed of hi-tensile steel.

(b) At least the bottom four feet shall be mesh with a maximum mesh size of 6" x 6".

(c) The remaining four feet shall be mesh with a maximum mesh size of 12" x 6".

(3) The minimum wire gauge shall be 14-1/2 gauge for a 2 woven hi-tensile fence.

(4) All perimeter gates at the entrances of a domesticated elk handling ~~facilities~~ facility shall be locked, with consecutive or self-closing gates when animals are present.

(5) Posts shall be:

(a) (i) constructed of treated wood ~~which~~ that is at least four inches in diameter; or

(ii) constructed of a material with the strength equivalent of Subsection (5)(a)(i);

(b) spaced no more than 30 feet apart if one stay is used, or 20 feet apart if no stays are used; and

(c) at least eight feet above ground level and two feet below ground level.

(6) Stays, between the posts, shall be:

(a) constructed of treated wood or steel;

(b) spaced no more than 15 feet from any post; and

(c) at least eight feet above ground level, and two feet below ground level.

(7) Corner posts and gate posts shall be braced wood or its strength equivalent.

Section 386. Section 4-39-202 is amended to read:

4-39-202. General facility requirements.

(1) (a) Internal handling facilities shall be capable of humanely restraining an individual animal and to facilitate:

(i) the application or reading of any animal identification;

(ii) the taking of blood or tissue samples; and

(iii) any other required or necessary testing procedure.

(b) A domesticated elk facility shall be properly constructed to protect inspection personnel while ~~they~~ inspection personnel are handling the domesticated elk.

(2) The domesticated elk facility owner shall provide ample signage around the facility indicating that it is a domesticated elk facility, so that the public is put on notice that the animals are not wild elk.

Section 387. Section 4-39-203 is amended to read:

4-39-203. License required to operate a domesticated elk facility.

(1) A person may not operate a domesticated elk facility without first obtaining a license from the department.

(2) (a) Each application for a license to operate a domesticated elk facility shall be accompanied by a fee.

(b) The fee shall be established by the department in accordance with Section 63J-1-504.

(3) Each applicant for a domesticated elk facility license shall submit an application providing all information in the form and manner as required by the department.

(4) (a) No license shall be issued until the department has inspected and approved the facility.

(b) The department shall:

(i) notify the Division of Wildlife Resources at least 48 hours prior to a scheduled inspection so that a Division of Wildlife Resources representative may be present at the inspection; and

(ii) provide the Division of Wildlife Resources with copies of all licensing and inspection reports.

(5) Each separate location of the domesticated elk operation shall be licensed separately.

(6) (a) If a domesticated elk facility is operated under more than one business name from a single location, the name of each operation shall be listed with the department in the form and manner required by the department.

(b) The department shall require that a separate fee be paid for each business name listed.

(c) If a domesticated elk facility operates under more than one business name from a single location, ~~the~~ each facility shall maintain separate records.

(7) Each person or business entity with an equity interest in the domesticated elk shall be listed on the application for license.

(8) Each domesticated elk facility license shall expire on July 1 in the year following the year of issuance.

(9) Each licensee shall report to the department, in the form and manner required by the department, any change in the information provided in the licensee's application or in the reports previously submitted, within 15 days of each change.

(10) Licenses issued pursuant to this section are not transferable.

Section 388. Section 4-39-205 is amended to read:

4-39-205. License renewal.

(1) To renew a license, the licensee shall submit to the department:

(a) an inspection certificate showing that:

(i) the domesticated elk, on the domesticated elk facility, have been inspected and certified by the department for health, proof of ownership, and genetic purity certification for all elk imported into the state; and

(ii) the facility has been properly maintained as provided in this chapter during the immediately preceding 60-day period; and

(b) a record of each purchase of domesticated elk and transfer of domesticated elk into the facility, which shall include the following information:

(i) name, address, and health approval number of the source;

(ii) date of transaction; and

(iii) number and sex.

(2) (a) If the application for renewal is not received on or before April 30, a late fee will be charged.

(b) A license may not be renewed until the fee is paid.

(3) If the application and fee for renewal are not received on or before July 1, the license may not be renewed, and a new license shall be required.

Section 389. Section 4-39-206 is amended to read:

4-39-206. Records to be maintained.

(1) The following records and information shall be maintained by a domesticated elk facility for ~~[a period of five years]~~ the life of the animal plus two years:

(a) records of purchase, acquisition, distribution, and production histories of domesticated elk;

(b) records documenting antler harvesting, production, and distribution; and

(c) health certificates ~~[and genetic purity records].~~

(2) For purposes of carrying out the provisions of this chapter and rules ~~[promulgated]~~ made under this chapter ~~[and]~~, at any reasonable time during regular business hours, the department shall have free and unimpeded access to inspect all records required to be kept.

(3) The department may make copies of the records referred to in this section.

Section 390. Section 4-39-207 is amended to read:

4-39-207. Inspection of facilities.

(1) The department may conduct pathological or physical investigations at any domesticated elk facility to ensure compliance with this chapter.

(2) For purposes of carrying out the provisions of this chapter and rules ~~[promulgated]~~ made under this chapter ~~[and]~~, at any reasonable time during

regular business hours, the department shall have free and unimpeded access to inspect all buildings, yards, pens, pastures, and other areas in which any domesticated elk are kept, handled, or transported.

(3) The department shall notify the Division of Wildlife Resources prior to an inspection so that a Division of Wildlife Resources representative may be present at the inspection.

Section 391. Section 4-39-301 is amended to read:

4-39-301. Health and genetic purity requirements -- Proof of source.

~~[As part of any inspection for licensing or renewing the license of a domesticated elk facility, or for the importation, transportation, or change of ownership of any domesticated elk, the]~~ The department shall require:

~~[(1) proof of genetic testing to ensure the purity of the domesticated elk herds and prevent the introduction of red deer or hybrid nonnative species into domesticated elk herds in Utah by showing evidence of the purity of live animals, gametes, eggs, sperm, or other genetic material; and]~~

(1) that each domesticated elk, including gametes, eggs, or sperm, imported into the state:

(a) test negative for the red deer genetic factor;

(b) be registered with gold or silver status with the North American Elk Breeders Association; or

(c) come from a state which has a red deer genetic factor prevention program approved by the department; and

(2) proof that the domesticated elk originates from a legal source as provided in Section 4-39-302.

Section 392. Section 4-39-304 is amended to read:

4-39-304. Marking domesticated elk.

(1) Each domesticated elk, not previously tattooed, shall be marked by either a tattoo, as provided in Subsection (2), or by ~~[a microchip]~~ an electronic identification tag, as provided in Subsection (3):

(a) within 30 days of a change of ownership; or

(b) in the case of newborn calves, within 15 days after being weaned, but in any case, no later than September 15.

(2) If a domesticated elk is identified with a tattoo, the tattoo shall:

(a) be placed peri-anally or inside the right ear; and

(b) consist of a four-digit herd number assigned by the department over a three-digit individual animal number assigned by the owner.

(3) If a domesticated elk is identified with ~~[a microchip]~~ an electronic identification tag, it shall be placed in the right ear.

Section 393. Section 4-39-305 is amended to read:

4-39-305. Transportation of domesticated elk to or from domesticated elk facilities.

Any domesticated elk transferred to or from a domesticated elk facility within the state shall be:

(1) accompanied by ~~a brand inspection certificate~~ an intrastate movement of domesticated elk form specifying the following:

(a) the name, address, and facility license number of the source;

(b) the number, sex, and individual identification number; and

(c) the name, address, and facility license number of the destination;

(2) accompanied by proof of genetic purity as provided in Section 4-39-301; and

(3) inspected by the department as provided in Section 4-39-306.

Section 394. Section 4-39-306 is amended to read:

4-39-306. Inspection before movement, sale, or slaughter.

(1) Each domesticated elk facility licensee shall have the domesticated elk inspected by the department ~~prior to~~ before any transportation, sale, ~~removal of antlers,~~ or slaughter.

(2) Any person transporting or possessing domesticated elk or domesticated elk products shall have the appropriate brand inspection certificate in ~~his or her~~ the person's possession.

Section 395. Section 4-39-401 is amended to read:

4-39-401. Escape of domesticated elk -- Liability.

(1) It is the owner's responsibility to try to capture any domesticated elk that may have escaped.

(2) The escape of a domesticated elk shall be reported immediately to the state veterinarian or a brand inspector ~~of the Department of Agriculture~~ who shall notify the Division of Wildlife Resources.

(3) If the domesticated elk is not recovered within 72 hours of the escape, the ~~Department of Agriculture~~ department, in conjunction with the Division of Wildlife Resources, shall take whatever action is necessary to resolve the problem.

(4) The owner shall reimburse the state or a state agency for any reasonable recapture costs that may be incurred in the recapture or destruction of the animal.

(5) Any escaped domesticated elk taken by a licensed hunter in a manner ~~which~~ that complies with the provisions of Title 23, Wildlife Resources Code of Utah, and the rules of the Wildlife Board shall be considered to be a legal taking and neither the licensed hunter, the state, nor a state agency shall be liable to the owner for the killing.

(6) The owner shall be responsible to contain the domesticated elk to ensure that there is no spread of disease from domesticated elk to wild elk and that the genetic purity of wild elk is protected.

Section 396. Section 4-39-402 is amended to read:

4-39-402. Removal of wild cervids -- Liability.

(1) Upon discovery of a wild ~~elk~~ cervid in a domesticated elk facility, the licensee shall immediately notify the Division of Wildlife Resources ~~who~~, which shall remove the wild ~~elk~~ cervid.

(2) The state or a state agency is not liable for disease or genetic purity problems of domesticated elk ~~which~~ that may be attributed to wild ~~elk~~ cervids.

Section 397. Section 4-40-102 is amended to read:

4-40-102. Cat and Dog Community Spay and Neuter Program Restricted Account -- Interest -- Use of contributions and interest.

(1) There is created within the General Fund the Cat and Dog Community Spay and Neuter Program Restricted Account.

(2) The account shall be funded by contributions deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account in accordance with Section 59-10-1310.

(3) (a) The Cat and Dog Community Spay and Neuter Program Restricted Account shall earn interest.

(b) Interest earned on the Cat and Dog Community Spay and Neuter Program Restricted Account shall be deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account.

(4) The department ~~of Agriculture~~ shall distribute contributions and interest deposited into the Cat and Dog Community Spay and Neuter Program Restricted Account to one or more organizations that:

(a) are exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or

(b) operate as a city or county animal shelter.

(5) (a) An organization described in Subsection (4) may apply to the department to receive a distribution in accordance with Subsection (4).

(b) An organization that receives a distribution from the department in accordance with Subsection (4):

(i) shall expend the distribution only to spay or neuter dogs and cats:

(A) owned by persons having low incomes; and

(B) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act; and

(ii) may not expend the distribution for any administrative cost relating to an expenditure authorized by Subsection (5)(b)(i).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules:

(i) providing procedures and requirements for an organization to apply to the department to receive a distribution in accordance with Subsection (4); and

(ii) to define what constitutes a person having a low income.

Section 398. Section 4-41-103 is amended to read:

4-41-103. Industrial hemp -- Agricultural and academic research.

(1) The department may grow or cultivate industrial hemp for the purpose of agricultural or academic research.

(2) The department shall certify a higher education institution to grow or cultivate industrial hemp for the purpose of agricultural or academic research if the higher education institution submits to the department:

(a) the location where the higher education institution intends to grow or cultivate industrial hemp;

(b) the higher education institution's research plan; and

(c) the name of an employee of the higher education institution who will supervise the industrial hemp growth, cultivation, and research.

(3) The department shall maintain a list of each industrial hemp certificate holder.

(4) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure any industrial hemp project meets the standards of an agricultural pilot project, as defined by Section 7606 of the [U.S.] United States Agricultural Act of 2014.

(5) The department may set a fee, pursuant to Subsection 4-2-103(2), for the application of an industrial hemp certificate.

Section 399. Section 10-8-85.8 is amended to read:

10-8-85.8. Indemnification of farmers markets.

A municipality may:

(1) operate a farmers market, as defined in Section [4-5-2] 4-5-102, on municipality-owned property in order to promote economic development;

(2) indemnify a food producer participating in the farmers market; and

(3) define the scope of the indemnification in an agreement with the food producer.

Section 400. Section 11-38-302 is amended to read:

11-38-302. Use of money in program -- Criteria -- Administration.

(1) Subject to Subsection (2), the commission may authorize the use of money in the program, by grant, to:

(a) a local entity;

(b) the Department of Natural Resources created under Section 79-2-201;

(c) the Department of Agriculture and Food created under Section [4-2-1] 4-2-102; or

(d) a charitable organization that qualifies as being tax exempt under Section 501(c)(3) [~~of the~~], Internal Revenue Code.

(2) (a) The money in the program shall be used for preserving or restoring open land and agricultural land.

(b) (i) Except as provided in Subsection (2)(b)(ii), money from the program may not be used to purchase a fee interest in real property in order to preserve open land or agricultural land, but may be used to establish a conservation easement under Title 57, Chapter 18, Land Conservation Easement Act, or to fund similar methods to preserve open land or agricultural land.

(ii) Notwithstanding Subsection (2)(b)(i), money from the fund may be used to purchase a fee interest in real property to preserve open land or agricultural land if:

(A) the parcel to be purchased is no more than 20 acres in size; and

(B) with respect to a parcel purchased in a county in which over 50% of the land area is publicly owned, real property roughly equivalent in size and located within that county is contemporaneously transferred to private ownership from the governmental entity that purchased the fee interest in real property.

(iii) Eminent domain may not be used or threatened in connection with any purchase using money from the program.

(iv) A parcel of land larger than 20 acres in size may not be divided into separate parcels smaller than 20 acres each to meet the requirement of Subsection (2)(b)(ii).

(c) A local entity, department, or organization under Subsection (1) may not receive money from the program unless it provides matching funds equal to or greater than the amount of money received from the program.

(d) In granting money from the program, the commission may impose conditions on the recipient as to how the money is to be spent.

(e) The commission shall give priority to requests from the Department of Natural Resources for up to 20% of each annual increase in the amount of money in the program if the money is used for the protection of wildlife or watershed.

(f) (i) The commission may not make a grant from the program that exceeds \$1,000,000 until after making a report to the Legislative Management Committee about the grant.

(ii) The Legislative Management Committee may make a recommendation to the commission concerning the intended grant, but the recommendation is not binding on the commission.

(3) In determining the amount and type of financial assistance to provide an entity, department, or organization under Subsection (1) and subject to Subsection (2)(f), the commission shall consider:

(a) the nature and amount of open land and agricultural land proposed to be preserved or restored;

(b) the qualities of the open land and agricultural land proposed to be preserved or restored;

(c) the cost effectiveness of the project to preserve or restore open land or agricultural land;

(d) the funds available;

(e) the number of actual and potential applications for financial assistance and the amount of money sought by those applications;

(f) the open land preservation plan of the local entity where the project is located and the priority placed on the project by that local entity;

(g) the effects on housing affordability and diversity; and

(h) whether the project protects against the loss of private property ownership.

(4) If a local entity, department, or organization under Subsection (1) seeks money from the program for a project whose purpose is to protect critical watershed, the commission shall require that the needs and quality of that project be verified by the state engineer.

(5) Each interest in real property purchased with money from the program shall be held and administered by the state or a local entity.

Section 401. Section 17-50-323 is amended to read:

17-50-323. Indemnification of farmers markets.

A county may:

(1) operate a farmers market, as defined in Section [4-5-2] 4-5-102, on county-owned property in order to promote economic development;

(2) indemnify a food producer participating in the farmers market; and

(3) define the scope of the indemnification in an agreement with the food producer.

Section 402. Section 17D-3-102 is amended to read:

17D-3-102. Definitions.

As used in this chapter:

(1) "Commission" means the Conservation Commission, created in Section 4-18-104.

(2) "Conservation district" means a limited purpose local government entity, as described in Section 17D-3-103, that operates under, is subject to, and has the powers set forth in this chapter.

(3) "Department" means the Department of Agriculture and Food, created in Section [4-2-1] 4-2-102.

Section 403. Section 23-13-19 is amended to read:

23-13-19. Administering substances to protected wildlife prohibited -- Exceptions.

(1) For purposes of this section:

(a) "Administer" means the application of a substance by any method, including:

(i) injection;

(ii) inhalation;

(iii) ingestion; or

(iv) absorption.

(b) "Agricultural producer" means a person who produces an agricultural product.

(c) "Agricultural product" [is as] means the same as that term is defined in Section [4-1-8] 4-1-109.

(d) "Substance" means a chemical or organic substance that:

(i) pacifies;

(ii) sedates;

(iii) immobilizes;

(iv) harms;

(v) kills;

(vi) controls fertility; or

(vii) has an effect that is similar to an effect listed in Subsections (1)(d)(i) through (vi).

(2) Except as authorized by Subsection (3) or a rule made by the Wildlife Board, a person may not administer or attempt to administer a substance to protected wildlife.

(3) (a) A division employee or a person with written permission from the division may administer a substance to protected wildlife if that employee or person administers the substance to promote wildlife management and conservation.

(b) One or more of the following may administer a substance to protected wildlife that the person is authorized by this title, the Wildlife Board, or the division to possess:

(i) a licensed veterinarian;

(ii) an unlicensed assistive personnel, as defined in Section 58-28-102; or

(iii) a person who is following written instructions for veterinary care from a licensed veterinarian.

(4) A person is not liable under this section for administering a substance, notwithstanding the substance has an effect described in Subsection (1)(d) on protected wildlife, if:

(a) an agricultural producer administers the substance:

(i) for the sole purpose of producing an agricultural product and not for the purpose of affecting protected wildlife in a manner described in Subsection (1)(d);

(ii) consistent with generally accepted agricultural practices; and

(iii) in compliance with applicable local, state, and federal law; or

(b) the protected wildlife presents an immediate threat of death or serious bodily injury to a person.

Section 404. Section 23-24-1 is amended to read:

23-24-1. Procedure to obtain compensation for livestock damage done by bear, mountain lion, wolf, or eagle.

(1) As used in this section:

(a) "Damage" means injury to or loss of livestock.

(b) "Division" means the Division of Wildlife Resources.

(c) "Livestock" means cattle, sheep, goats, or turkeys.

(d) (i) "Wolf" means the gray wolf *Canis lupus*.

(ii) "Wolf" does not mean a wolf hybrid with a domestic dog.

(2) (a) (i) Except as provided by Subsection (2)(a)(ii), if livestock are damaged by a bear, mountain lion, wolf, or an eagle, the owner may receive compensation for the fair market value of the damage.

(ii) The owner may not receive compensation if the livestock is damaged by a wolf within an area where a wolf is endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531, et seq.

(b) To obtain this compensation, the owner of the damaged livestock shall notify the division of the damage as soon as possible, but no later than four days after the damage is discovered.

(c) The owner shall notify the division each time any damage is discovered.

(3) The livestock owner shall file a proof of loss form, provided by the division, no later than 30 days after the original notification of damage was given to the division by the owner.

(4) (a) (i) The division, with the assistance of the Department of Agriculture and Food shall:

(A) within 30 days after the owner files the proof of loss form, either accept or deny the claim for damages; and

(B) subject to Subsections (4)(a)(ii) through (4)(a)(iv), pay all accepted claims to the extent money appropriated by the Legislature is available for this purpose.

(ii) Money appropriated from the Wildlife Resources Account may be used to provide compensation for only up to 50% of the fair market value of any damaged livestock.

(iii) Money appropriated from the Wildlife Resources Account may not be used to provide compensation for livestock damaged by an eagle or a wolf.

(iv) The division may not pay any eagle damage claim until the division has paid all accepted mountain lion and bear damage claims for the fiscal year.

(b) The division may not pay mountain lion, bear, wolf, or eagle damage claims to a livestock owner unless the owner has filed a completed livestock form and the appropriate fee as outlined in Section ~~[4-23-7]~~ 4-23-107 for the immediately preceding and current year.

(c) (i) Unless the division denies a claim for the reason identified in Subsection (4)(b), the owner may appeal the decision to a panel consisting of one person selected by the owner, one person selected by the division, and a third person selected by the first two panel members.

(ii) The panel shall decide whether the division should pay all of the claim, a portion of the claim, or none of the claim.

(5) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Wildlife Board may make and enforce rules to administer and enforce this section.

Section 405. Section 26-15-1 is amended to read:

26-15-1. Definitions.

As used in this chapter:

(1) (a) "Food handler" means any person working part-time or full-time in a food service establishment who moves food or food containers, prepares, stores, or serves food; comes in contact with any food, utensil, tableware or equipment; or washes the same. The term also includes owners, supervisors, and management persons, and any other person working in a food-service establishment. The term also includes any operator or person employed by one who handles food dispensed through vending machines; or who comes into contact with food contact surfaces or containers, equipment, utensils, or packaging materials used in connection with vending machine operations; or who otherwise services or maintains one or more vending machines.

(b) "Food handler" does not include a producer of food products selling food at a farmers market as defined in Subsection ~~[4-5-2]~~ 4-5-102(5).

(2) "Pest" means a noxious, destructive, or troublesome organism whether plant or animal, when found in and around places of human

occupancy, habitation, or use which threatens the public health or well being of the people within the state.

(3) "Vector" means any organism, such as insects or rodents, that transmits a pathogen that can affect public health.

Section 406. Section 58-37c-19.5 is amended to read:

58-37c-19.5. Iodine solution greater than 1.5% -- Prescription or permit required -- Penalties.

(1) As used in this section, "iodine matrix" means iodine at concentrations greater than 1.5% by weight in a matrix or solution.

(2) A person may offer to sell, sell, or distribute an iodine matrix only:

(a) as a prescription drug, pursuant to a prescription issued by a veterinarian or physician licensed within the state; or

(b) to a person who is actively engaged in the legal practice of animal husbandry of livestock, as defined in Section ~~[4-1-8]~~ 4-1-109.

(3) Prescriptions issued under this section:

(a) shall provide for a specified number of refills;

(b) may be issued by electronic means, in accordance with Title 58, Chapter 17b, Pharmacy Practice Act; and

(c) may be filled by a person other than the veterinarian or physician issuing the prescription.

(4) A retailer offering iodine matrix for sale:

(a) shall store the iodine matrix so that the public does not have access to the iodine matrix without the direct assistance or intervention of a retail employee;

(b) shall keep a record, which may consist of sales receipts, of each person purchasing iodine matrix; and

(c) may, if necessary to ascertain the identity of the purchaser, ask for proof of identification from the purchaser.

(5) A person engaging in a regulated transaction under Subsection (2) is guilty of a class B misdemeanor if the person, under circumstances not amounting to a violation of Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes an iodine matrix to a person who:

(a) does not present a prescription or is not engaged in animal husbandry, as required under Subsection (2); or

(b) is not excepted under Subsection (7).

(6) A person is guilty of a class A misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or 58-37d-4(1)(a):

(a) possesses an iodine matrix without proof of obtaining the solution in compliance with Subsection (2); or

(b) offers to sell, sells, or distributes an iodine matrix in violation of Subsection (2).

(7) Subsection (6)(a) does not apply to:

(a) a chemistry or chemistry-related laboratory maintained by:

(i) a public or private regularly established secondary school; or

(ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice Act;

(c) a general acute hospital; or

(d) a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses an iodine matrix in the regular course of lawful business activities.

Section 407. Section 63A-3-205 is amended to read:

63A-3-205. Revolving loan funds -- Standards and procedures -- Annual report.

(1) As used in this section, "revolving loan fund" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act;

(e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;

(f) the Agriculture Resource Development Fund, created in Section 4-18-106;

(g) the Utah Rural Rehabilitation Fund, created in Section ~~[4-19-4]~~ 4-19-105;

(h) the Permanent Community Impact Fund, created in Section 35A-8-603;

(i) the Petroleum Storage Tank Trust Fund, created in Section 19-6-409;

(j) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;

(k) the Navajo Revitalization Fund, created in Section 35A-8-1704; and

(l) the Energy Efficiency Fund, created in Section 11-45-201.

(2) The division shall for each revolving loan fund:

(a) make rules establishing standards and procedures governing:

- (i) payment schedules and due dates;
- (ii) interest rate effective dates;
- (iii) loan documentation requirements; and
- (iv) interest rate calculation requirements; and

(b) make an annual report to the Legislature containing:

(i) the total dollars loaned by that fund during the last fiscal year;

(ii) a listing of each loan currently more than 90 days delinquent, in default, or that was restructured during the last fiscal year;

(iii) a description of each project that received money from that revolving loan fund;

(iv) the amount of each loan made to that project;

(v) the specific purpose for which the proceeds of the loan were to be used, if any;

(vi) any restrictions on the use of the loan proceeds;

(vii) the present value of each loan at the end of the fiscal year calculated using the interest rate paid by the state on the bonds providing the revenue on which the loan is based or, if that is unknown, on the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold; and

(viii) the financial position of each revolving loan fund, including the fund's cash investments, cash forecasts, and equity position.

Section 408. Section 63B-1b-102 is amended to read:

63B-1b-102. Definitions.

As used in this chapter:

(1) "Agency bonds" means any bond, note, contract, or other evidence of indebtedness representing loans or grants made by an authorizing agency.

(2) "Authorized official" means the state treasurer or other person authorized by a bond document to perform the required action.

(3) "Authorizing agency" means the board, person, or unit with legal responsibility for administering and managing revolving loan funds.

(4) "Bond document" means:

- (a) a resolution of the commission; or
- (b) an indenture or other similar document authorized by the commission that authorizes and secures outstanding revenue bonds from time to time.

(5) "Commission" means the State Bonding Commission, created in Section 63B-1-201.

(6) "Revenue bonds" means any special fund revenue bonds issued under this chapter.

(7) "Revolving Loan Funds" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act;

(e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;

(f) the Agriculture Resource Development Fund, created in Section 4-18-106;

(g) the Utah Rural Rehabilitation Fund, created in Section [4-19-4] 4-19-105;

(h) the Permanent Community Impact Fund, created in Section 35A-8-303;

(i) the Petroleum Storage Tank Trust Fund, created in Section 19-6-409; and

(j) the Transportation Infrastructure Loan Fund, created in Section 72-2-202.

Section 409. Section 63B-1b-202 is amended to read:

63B-1b-202. Custodial officer -- Powers and duties.

(1) (a) There is created within the Division of Finance an officer responsible for the care, custody, safekeeping, collection, and accounting of all bonds, notes, contracts, trust documents, and other evidences of indebtedness:

(i) owned or administered by the state or any of its agencies; and

(ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

(b) Notwithstanding Subsection (1)(a), the officer described in Subsection (1)(a) is not responsible for the care, custody, safekeeping, collection, and accounting of a bond, note, contract, trust document, or other evidence of indebtedness relating to the:

(i) Agriculture Resource Development Fund, created in Section 4-18-106;

(ii) Utah Rural Rehabilitation Fund, created in Section [4-19-4] 4-19-105;

(iii) Petroleum Storage Tank Trust Fund, created in Section 19-6-409;

(iv) Olene Walker Housing Loan Fund, created in Section 35A-8-502; and

(v) Brownfields Fund, created in Section 19-8-120.

(2) (a) Each authorizing agency shall deliver to this officer for the officer's care, custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents, and other evidences of indebtedness:

(i) owned or administered by the state or any of its agencies; and

(ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

(b) This officer shall:

(i) establish systems, programs, and facilities for the care, custody, safekeeping, collection, and accounting for the bonds, notes, contracts, trust documents, and other evidences of indebtedness submitted to the officer under this Subsection (2); and

(ii) shall make available updated reports to each authorizing agency as to the status of loans under their authority.

(3) The officer described in Section 63B-1b-201 shall deliver to the officer described in Subsection (1)(a) for the care, custody, safekeeping, collection, and accounting by the officer described in Subsection (1)(a) of all bonds, notes, contracts, trust documents, and other evidences of indebtedness closed as provided in Subsection 63B-1b-201(2)(b).

Section 410. Section 63E-1-102 is amended to read:

63E-1-102. Definitions -- List of independent entities.

As used in this title:

(1) "Authorizing statute" means the statute creating an entity as an independent entity.

(2) "Committee" means the Retirement and Independent Entities Committee created by Section 63E-1-201.

(3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.

(4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

(i) independent state agency; or

(ii) independent corporation.

(b) "Independent entity" includes the:

(i) Utah Dairy Commission created by Section ~~[4-22-2]~~ 4-22-103;

(ii) Heber Valley Historic Railroad Authority created by Section 63H-4-102;

(iii) Utah State Railroad Museum Authority created by Section 63H-5-102;

(iv) Utah Housing Corporation created by Section 63H-8-201;

(v) Utah State Fair Corporation created by Section 63H-6-103;

(vi) Workers' Compensation Fund created by Section 31A-33-102;

(vii) Utah State Retirement Office created by Section 49-11-201;

(viii) School and Institutional Trust Lands Administration created by Section 53C-1-201;

(ix) School and Institutional Trust Fund Office created by Section 53D-1-201;

(x) Utah Communications Authority created by Section ~~[63N-6-201]~~ 63H-7a-201;

(xi) Utah Energy Infrastructure Authority created by Section 63H-2-201;

(xii) Utah Capital Investment Corporation created by Section 63N-6-301; and

(xiii) Military Installation Development Authority created by Section 63H-1-201.

(c) Notwithstanding this Subsection (4), "independent entity" does not include:

(i) the Public Service Commission of Utah created by Section 54-1-1;

(ii) an institution within the state system of higher education;

(iii) a city, county, or town;

(iv) a local school district;

(v) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts; or

(vi) a special service district under Title 17D, Chapter 1, Special Service District Act.

(5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.

(6) "Money held in trust" means money maintained for the benefit of:

(a) one or more private individuals, including public employees;

(b) one or more public or private entities; or

(c) the owners of a quasi-public corporation.

(7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state, which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 411. Section 63I-4a-102 is amended to read:

63I-4a-102. Definitions.

(1) (a) "Activity" means to provide a good or service.

(b) "Activity" includes to:

- (i) manufacture a good or service;
- (ii) process a good or service;
- (iii) sell a good or service;
- (iv) offer for sale a good or service;
- (v) rent a good or service;
- (vi) lease a good or service;
- (vii) deliver a good or service;
- (viii) distribute a good or service; or
- (ix) advertise a good or service.

(2) (a) Except as provided in Subsection (2)(b), "agency" means:

(i) the state; or

(ii) an entity of the state including a department, office, division, authority, commission, or board.

(b) "Agency" does not include:

- (i) the Legislature;
- (ii) an entity or agency of the Legislature;
- (iii) the state auditor;
- (iv) the state treasurer;
- (v) the Office of the Attorney General;

(vi) the Utah Dairy Commission created in Section ~~4-22-2~~ 4-22-103;

(vii) the Heber Valley Historic Railroad Authority created in Section 63H-4-102;

(viii) the Utah State Railroad Museum Authority created in Section 63H-5-102;

(ix) the Utah Housing Corporation created in Section 63H-8-201;

(x) the Utah State Fair Corporation created in Section 63H-6-103;

(xi) the Workers' Compensation Fund created in Section 31A-33-102;

(xii) the Utah State Retirement Office created in Section 49-11-201;

(xiii) a charter school chartered by the State Charter School Board or a board of trustees of a higher education institution under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act;

(xiv) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b, Utah Schools for the Deaf and the Blind;

(xv) an institution of higher education as defined in Section 53B-3-102;

(xvi) the School and Institutional Trust Lands Administration created in Section 53C-1-201;

(xvii) the Utah Communications Authority created in Section 63H-7a-201; or

(xviii) the Utah Capital Investment Corporation created in Section 63N-6-301.

(3) "Agency head" means the chief administrative officer of an agency.

(4) "Board" means the Free Market Protection and Privatization Board created in Section 63I-4a-202.

(5) "Commercial activity" means to engage in an activity that can be obtained in whole or in part from a private enterprise.

(6) "Local entity" means:

(a) a political subdivision of the state, including a:

- (i) county;
- (ii) city;
- (iii) town;

(iv) local school district;

(v) local district; or

(vi) special service district;

(b) an agency of an entity described in this Subsection (6), including a department, office, division, authority, commission, or board; or

(c) an entity created by an interlocal cooperative agreement under Title 11, Chapter 13, Interlocal Cooperation Act, between two or more entities described in this Subsection (6).

(7) "Private enterprise" means a person that engages in an activity for profit.

(8) "Privatize" means that an activity engaged in by an agency is transferred so that a private enterprise engages in the activity, including a transfer by:

- (a) contract;
- (b) transfer of property; or
- (c) another arrangement.

(9) "Special district" means:

(a) a local district, as defined in Section 17B-1-102;

(b) a special service district, as defined in Section 17D-1-102; or

(c) a conservation district, as defined in Section 17D-3-102.

Section 412. Section 63J-7-102 is amended to read:

63J-7-102. Scope and applicability of chapter.

(1) Except as provided in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit

reference to this chapter, the provisions of this chapter apply to each agency and govern each grant received on or after May 5, 2008.

(2) This chapter does not govern:

(a) a grant deposited into a General Fund restricted account;

(b) a grant deposited into a Trust and Agency Fund as defined in Section 51-5-4;

(c) a grant deposited into an Enterprise Fund as defined in Section 51-5-4;

(d) a grant made to the state without a restriction or other designated purpose that is deposited into the General Fund as free revenue;

(e) a grant made to the state that is restricted only to "education" and that is deposited into the Education Fund or Uniform School Fund as free revenue;

(f) in-kind donations;

(g) a tax, fees, penalty, fine, surcharge, money judgment, or other money due the state when required by state law or application of state law;

(h) a contribution made under Title 59, Chapter 10, Part 13, Individual Income Tax Contribution Act;

(i) a grant received by an agency from another agency or political subdivision;

(j) a grant to the Utah Dairy Commission created in Section [4-22-2] 4-22-103;

(k) a grant to the Heber Valley Historic Railroad Authority created in Section 63H-4-102;

(l) a grant to the Utah State Railroad Museum Authority created in Section 63H-5-102;

(m) a grant to the Utah Housing Corporation created in Section 63H-8-201;

(n) a grant to the Utah State Fair Corporation created in Section 63H-6-103;

(o) a grant to the Workers' Compensation Fund created in Section 31A-33-102;

(p) a grant to the Utah State Retirement Office created in Section 49-11-201;

(q) a grant to the School and Institutional Trust Lands Administration created in Section 53C-1-201;

(r) a grant to the Utah Communications Authority created in Section 63H-7a-201;

(s) a grant to the Medical Education Program created in Section 53B-24-202;

(t) a grant to the Utah Capital Investment Corporation created in Section 63N-6-301;

(u) a grant to the Utah Charter School Finance Authority created in Section 53A-20b-103;

(v) a grant to the State Building Ownership Authority created in Section 63B-1-304;

(w) a grant to the Utah Comprehensive Health Insurance Pool created in Section 31A-29-104; or

(x) a grant to the Military Installation Development Authority created in Section 63H-1-201.

(3) An agency need not seek legislative review or approval of grants under Part 2, Grant Approval Requirements, if:

(a) the governor has declared a state of emergency; and

(b) the grant is donated to the agency to assist victims of the state of emergency under Subsection 53-2a-204(1).

Section 413. Section 63L-8-403 is amended to read:

63L-8-403. Grazing permits and leases.

(1) (a) Except as provided in Subsection (2), permits and leases for domestic livestock grazing on public land issued by the director may not exceed a term of five years, subject to terms and conditions the director determines to be appropriate and consistent with this chapter.

(b) The director shall have authority to cancel, suspend, or modify a grazing permit or lease, in whole or in part:

(i) pursuant to the terms and conditions of the permit or lease;

(ii) for any violation of:

(A) this chapter or a grazing rule implemented under this chapter; or

(B) any term or condition of the grazing permit or lease; or

(iii) to protect rangeland health from overutilization pursuant to Subsection (7).

(2) The holder of an expiring permit or lease shall be given first priority for receipt of the new permit or lease, provided:

(a) the land for which the permit or lease is issued remains available for domestic livestock grazing in accordance with a land use plan prepared pursuant to Section 63L-8-202;

(b) the permittee or lessee is in compliance with:

(i) the provisions of this chapter and the grazing rules issued by the DLM, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(ii) the terms and conditions in the permit or lease specified by the director;

(c) the permittee or lessee accepts the terms and conditions included by the director in the new permit or lease; and

(d) range conditions on the tract of public land are sufficient to support continued livestock grazing, as determined by the director pursuant to Subsection (7).

(3) All permits and leases for domestic livestock grazing issued under this part may be incorporated

in an allotment management plan developed by the director.

(4) (a) If the director elects to develop an allotment management plan for a given area, the director shall do so in consultation, cooperation, and coordination with:

(i) the lessees, permittees, and landowners involved;

(ii) the commissioner;

(iii) the State Grazing Advisory Board established under Section ~~[4-20-1.5]~~ 4-20-103; and

(iv) the political subdivision having land within the area covered by the proposed allotment management plan.

(b) An allotment management plan shall be:

(i) tailored to the specific range condition of the area covered by the plan; and

(ii) reviewed on a periodic basis to determine:

(A) the efficacy of the plan in improving range conditions on the involved land; and

(B) whether the land can be better managed.

(5) The director may revise or terminate plans, or develop new plans, after review and consideration, consultation, cooperation, and coordination with the parties listed in Subsection (4)(a).

(6) (a) In all cases where the director has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations, the director shall incorporate in grazing permits and leases all necessary terms and conditions for the appropriate management of the permitted or leased land.

(b) The director, in consultation with the commissioner:

(i) shall specify the number of animals to be grazed and the seasons of use; and

(ii) may reexamine the condition of the range and forage utilization at any time.

(7) If the director finds that the condition of the range requires adjustment in the amount or other aspect of grazing use, the permittee or lessee shall adjust the permittee or lessee's use to the extent required by the director.

(8) An allotment management plan may not refer to livestock operations or range improvements on non-public land, except where the non-public land is intermingled with public land and the consent of the owner of the non-public land and the permittee or lessee involved with the plan is obtained.

(9) (a) Whenever a permit or lease for grazing domestic livestock on public land is canceled, in whole or in part, in order to devote the land covered by the permit or lease to another public purpose, the permittee or lessee shall receive from the state reasonable compensation for the adjusted value, to

be determined by the director, of the permittee's or lessee's interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease.

(b) The compensation described in Subsection (9)(a) may not exceed the fair market value of the terminated portion of the permittee's or lessee's interest.

(10) Except in cases of emergency, no permit or lease shall be canceled under this subsection without one year's notification.

Section 414. Section 72-7-401 is amended to read:

72-7-401. Application of size, weight, and load limitations for vehicles -- Exceptions.

(1) (a) Except as provided in Subsection (2), the maximum size, weight, and load limitations on vehicles under this part apply to all highways throughout the state.

(b) Local authorities may not alter the limitations except as expressly provided under Sections 41-6a-204 and 72-7-408.

(2) Except as specifically made applicable, the size, weight, and load limitations in this chapter do not apply to:

(a) fire-fighting apparatus;

(b) highway construction and maintenance equipment being operated at the site of maintenance or at a construction project as authorized by a highway authority;

(c) highway construction and maintenance equipment temporarily being operated between a material site and a highway maintenance site or a highway construction project if:

(i) the section of any highway being used is not located within a county of the first or second class;

(ii) authorized for a specific highway project by the highway authority having jurisdiction over each highway being used;

(iii) the distance between the material site and maintenance site or highway construction project does not exceed 10 miles; and

(iv) the operator carries in the vehicle written verification of the authorization from the highway authority having jurisdiction over each highway being used;

(d) implements of husbandry incidentally moved on a highway while engaged in an agricultural operation or incidentally moved for repair or servicing, subject to the provisions of Section 72-7-407;

(e) vehicles transporting logs or poles from forest to sawmill:

(i) when required to move upon a highway other than the national system of interstate and defense highways;

(ii) if the gross vehicle weight does not exceed 80,000 pounds; and

(iii) the vehicle or combination of vehicles are in compliance with Subsections 72-7-404(1) and (2)(a); and

(f) tow trucks or towing vehicles under emergency conditions when:

(i) it becomes necessary to move a vehicle, combination of vehicles, special mobile equipment, or objects to the nearest safe area for parking or temporary storage;

(ii) no other alternative is available; and

(iii) the movement is for the safety of the traveling public.

(3) (a) Except when operating on the national system of interstate and defense highways, a motor vehicle carrying livestock as defined in Section [4-1-8] 4-1-109, or a motor vehicle carrying raw grain if the grain is being transported by the farmer from his farm to market prior to bagging, weighing, or processing, may exceed by up to 2,000 pounds the tandem axle weight limitations specified under Section 72-7-404 without obtaining an overweight permit under Section 72-7-406.

(b) Subsection (3)(a) is an exception to Sections 72-7-404 and 72-7-406.

Section 415. Section 72-9-502 is amended to read:

72-9-502. Motor vehicles to stop at port-of-entry -- Signs -- Exceptions -- Rulemaking -- By-pass permits.

(1) Except under Subsection (3), a motor carrier operating a motor vehicle with a gross vehicle weight of 10,001 pounds or more or any motor vehicle carrying livestock as defined in Section [4-24-2] 4-24-102 shall stop at a port-of-entry as required under this section.

(2) The department may erect and maintain signs directing motor vehicles to a port-of-entry as provided in this section.

(3) A motor vehicle required to stop at a port-of-entry under Subsection (1) is exempt from this section if:

(a) the total one-way trip distance for the motor vehicle would be increased by more than 5% or three miles, whichever is greater if diverted to a port-of-entry; or

(b) the motor vehicle is operating under a temporary port-of-entry by-pass permit issued under Subsection (4).

(4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules for the issuance of a temporary port-of-entry by-pass permit exempting a motor vehicle from the provisions of Subsection (1) if the department determines that the permit is needed to accommodate highway transportation needs due to multiple daily or weekly trips in the proximity of a port-of-entry.

(b) The rules under Subsection (4)(a) shall provide that one permit may be issued to a motor carrier for multiple motor vehicles.

Section 416. Section 73-20-2 is amended to read:

73-20-2. Definitions.

As used in this ~~aet~~ chapter:

(1) "Advisory board" means the Agricultural Advisory Board created by Section [4-2-7] 4-2-108.

[~~4~~](2) "Basic livestock" means a herd of cattle, sheep, or swine kept and maintained primarily for breeding purposes.

[~~2~~](3) "Board" means the Board of Water Resources created by Section 73-10-1.5.

[~~3~~](4) "Commercial farm" means a tract or tracts of land with or without improvements recognized as a farm or ranch in this state which is owned and operated or leased and operated by the applicant, and used in the production and raising of basic livestock.

[~~4~~](5) "Farmer" means any person who owns and operates or leases and operates a commercial farm in this state, and includes individuals, partnerships and corporations.

Section 417. Section 76-6-111 is amended to read:

76-6-111. Wanton destruction of livestock -- Penalties -- Restitution criteria -- Seizure and disposition of property.

(1) As used in this section:

(a) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

(b) "Livestock" means a domestic animal or fur bearer raised or kept for profit, including:

- (i) cattle;
- (ii) sheep;
- (iii) goats;
- (iv) swine;
- (v) horses;
- (vi) mules;
- (vii) poultry; and

(viii) domesticated elk as defined in Section 4-39-102.

(2) Unless authorized by Section [4-25-4, 4-25-5, 4-25-14,] 4-25-201, 4-25-202, 4-25-402, 4-39-401, or 18-1-3, a person is guilty of wanton destruction of livestock if that person:

(a) injures, physically alters, releases, or causes the death of livestock; and

(b) does so:

(i) intentionally or knowingly; and

(ii) without the permission of the owner of the livestock.

(3) Wanton destruction of livestock is punishable as a:

(a) class B misdemeanor if the aggregate value of the livestock is \$500 or less;

(b) class A misdemeanor if the aggregate value of the livestock is more than \$500, but does not exceed \$1,500;

(c) third degree felony if the aggregate value of the livestock is more than \$1,500, but does not exceed \$5,000; and

(d) second degree felony if the aggregate value of the livestock is more than \$5,000.

(4) When a court orders a person who is convicted of wanton destruction of livestock to pay restitution under Title 77, Chapter 38a, Crime Victims Restitution Act, the court shall consider, in addition to the restitution criteria in Section 77-38a-302, the restitution guidelines in Subsection (5) when setting the amount.

(5) The minimum restitution value for cattle and sheep is the sum of the following, unless the court states on the record why it finds the sum to be inappropriate:

(a) the fair market value of the animal, using as a guide the market information obtained from the Department of Agriculture and Food created under Section [4-2-1] 4-2-102; and

(b) 10 years times the average annual value of offspring, for which average annual value is determined using data obtained from the National Agricultural Statistics Service within the United States Department of Agriculture, for the most recent 10-year period available.

(6) A material, device, or vehicle used in violation of Subsection (2) is subject to forfeiture under the procedures and substantive protections established in Title 24, Forfeiture and Disposition of Property Act.

(7) A peace officer may seize a material, device, or vehicle used in violation of Subsection (2):

(a) upon notice and service of process issued by a court having jurisdiction over the property; or

(b) without notice and service of process if:

(i) the seizure is incident to an arrest under:

(A) a search warrant; or

(B) an inspection under an administrative inspection warrant;

(ii) the material, device, or vehicle has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(iii) the peace officer has probable cause to believe that the property has been used in violation of Subsection (2).

(8) (a) A material, device, or vehicle seized under this section is not repleviable but is in custody of the

law enforcement agency making the seizure, subject only to the orders and decrees of a court or official having jurisdiction.

(b) A peace officer who seizes a material, device, or vehicle under this section may:

(i) place the property under seal;

(ii) remove the property to a place designated by the warrant under which it was seized; or

(iii) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Section 418. Section 78B-4-202 is amended to read:

78B-4-202. Equine and livestock activity liability limitations.

(1) It shall be presumed that participants in equine or livestock activities are aware of and understand that there are inherent risks associated with these activities.

(2) An equine activity sponsor, equine professional, livestock activity sponsor, or livestock professional is not liable for an injury to or the death of a participant due to the inherent risks associated with these activities, unless the sponsor or professional:

(a) (i) provided the equipment or tack;

(ii) the equipment or tack caused the injury; and

(iii) the equipment failure was due to the sponsor's or professional's negligence;

(b) failed to make reasonable efforts to determine whether the equine or livestock could behave in a manner consistent with the activity with the participant;

(c) owns, leases, rents, or is in legal possession and control of land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to or should have been known to the sponsor or professional and for which warning signs have not been conspicuously posted;

(d) (i) commits an act or omission that constitutes negligence, gross negligence, or willful or wanton disregard for the safety of the participant; and

(ii) that act or omission causes the injury; or

(e) intentionally injures or causes the injury to the participant.

(3) This chapter does not prevent or limit the liability of an equine activity sponsor, an equine professional, a livestock activity sponsor, or a livestock professional who is:

(a) a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act, in an action to recover for damages incurred in the course of providing professional treatment of an equine;

(b) liable under Title 4, Chapter 25, [~~Estraying and Trespassing Animals~~] Estrays; or

(c) liable under Title 78B, Chapter 6, Part 7, Utah Product Liability Act.

Section 419. Repealer.

This bill repeals:

Section 4-11-15, Wax-salvage operations -- County bee inspector to supervise compliance with rules -- Salvage procedures specified.

Section 4-18-109, Public lands wildfire study and analysis -- Report.

Section 4-25-10, Bulls -- Number required on range during breeding season.

Section 4-25-11, Determination and enforcement of bull running policy by range association.

Section 4-31-117, State chemist -- Assistance in diagnosis of disease.

Section 4-36-1, Compact enacted and entered into.

Section 4-36-2, Cooperation with Pest Control Insurance Fund.

Section 4-36-3, Filing of compact.

Section 4-36-4, Compact administrator.

Section 4-36-5, Applications for assistance.

Section 4-36-6, Disposition of money from compact insurance fund.

Section 4-36-7, Executive head defined.

Section 420. Effective date.

This bill takes effect on July 1, 2017.

Section 421. Coordinating H.B. 344 with H.B. 58 -- Substantive and technical amendments.

If this H.B. 344 and H.B. 58, Direct Food Sales Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication on July 1, 2017, by merging all of the changes from Section 4-5-9.5 in H.B. 58 into the newly renumbered Section 4-5-501 in H.B. 344.

Section 422. Coordinating H.B. 344 with H.B. 182 -- Substantive and technical amendments.

If this H.B. 344 and H.B. 182, Labeling Requirements for Types of Retail Goods, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication on July 1, 2017 by:

(1) merging all of the changes from Section 4-10-9 in H.B. 182 into the newly renumbered Section 4-10-110; and

(2) modifying the cross-reference in Subsection 4-10-9(2) from "4-10-7" to "4-10-107."

Section 423. Coordinating H.B. 344 with H.B. 280 -- Substantive and technical amendments.

If this H.B. 344 and H.B. 280, Agriculture Regulation Preemption Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication on July 1, 2017, renumber Section 4-2-16 in H.B. 280 to Section 4-2-305.

CHAPTER 346**H. B. 346**

Passed March 9, 2017
 Approved March 24, 2017
 Effective May 9, 2017

SUICIDE PREVENTION PROGRAMS

Chief Sponsor: Steve Eliason
 Senate Sponsor: Curtis S.B. Bramble
 Cosponsors: Carl R. Albrecht
 Patrice M. Arent
 Walt Brooks
 Rebecca Chavez-Houck
 Brad M. Daw
 Susan Duckworth
 Rebecca P. Edwards
 Justin L. Fawson
 Gage Froerer
 Adam Gardiner
 Stephen G. Handy
 Lynn N. Hemingway
 Eric K. Hutchings
 Karen Kwan
 Kelly B. Miles
 Carol Spackman Moss
 Lee B. Perry
 Marie H. Poulson
 Paul Ray
 Douglas V. Sagers
 V. Lowry Snow
 Christine F. Watkins
 R. Curt Webb
 Mark A. Wheatley
 Mike Winder

LONG TITLE**General Description:**

This bill amends and enacts provisions relating to suicide prevention programs.

Highlighted Provisions:

This bill:

- ▶ establishes reporting requirements;
- ▶ creates a position in the Department of Health; and
- ▶ provides for grant awards for suicide prevention programs.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2018:

- ▶ to Department of Health -- Disease Control and Prevention -- Office of the Medical Examiner, as an ongoing appropriation:
 - from General Fund, \$85,000;
- ▶ to Department of Human Services -- Division of Substance Abuse and Mental Health -- Community Mental Health Services, as an ongoing appropriation:
 - from General Fund, \$100,000;
- ▶ to State Board of Education -- State Administrative Office -- Teaching and Learning, as an ongoing appropriation:
 - from General Fund, (\$100,000);
 - from Education Fund, \$145,000; and
- ▶ to Department of Health -- Disease Control and Prevention -- Office of the Medical Examiner:

- from General Fund, as an ongoing appropriation, \$15,000; and
- from General Fund, as a one-time appropriation, \$95,000.

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-15-1101, as last amended by Laws of Utah 2016, Chapters 144, 164, and 168

ENACTS:

26-4-28.5, Utah Code Annotated 1953
 53A-15-1303, Utah Code Annotated 1953

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

Section 1. Section 26-4-28.5 is enacted to read:**26-4-28.5. Psychological autopsy examiner.**

(1) With funds appropriated by the Legislature for this purpose, the department shall provide compensation, at a standard rate determined by the department, to a psychological autopsy examiner.

(2) The psychological autopsy examiner shall:

(a) work with the medical examiner to compile data regarding suicide related deaths;

(b) as relatives of the deceased are willing, gather information from relatives of the deceased regarding the psychological reasons for the decedent's death;

(c) maintain a database of information described in Subsections (2)(a) and (b);

(d) in accordance with all applicable privacy laws subject to approval by the department, share the database described in Subsection (2)(c) with the University of Utah Department of Psychiatry or other university-based departments conducting research on suicide;

(e) coordinate no less than monthly with the suicide prevention coordinator described in Subsection 62A-15-1101(2); and

(f) coordinate no less than quarterly with the state suicide prevention coalition.

Section 2. Section 53A-15-1303 is enacted to read:**53A-15-1303. Grant awards for elementary programs.**

(1) To foster peer-to-peer suicide prevention, resiliency, and anti-bullying programs in elementary schools, the public education suicide prevention coordinator, described in Section 53A-15-301, shall, subject to legislative appropriations, award grants to elementary schools.

(2) A grant award may not exceed \$500 per school per year.

(3) The application for a grant shall contain:

(a) a requested award amount;

(b) a budget; and

(c) a narrative plan of the peer-to-peer suicide prevention, resiliency, or anti-bullying program.

(4) When awarding a grant under this section, the public education suicide prevention coordinator shall consider:

(a) the content of a grant application; and

(b) whether an application is submitted in the manner and form prescribed.

Section 3. Section 62A-15-1101 is amended to read:

62A-15-1101. Suicide prevention -- Reporting requirements.

(1) As used in the section:

(a) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.

(b) "Division" means the Division of Substance Abuse and Mental Health.

(c) "Intervention" means an effort to prevent a person from attempting suicide.

(d) "Postvention" means mental health intervention after a suicide attempt or death to prevent or contain contagion.

(e) "State suicide prevention coordinator" means an individual designated by the division as described in Subsections (2) and (3).

(2) The division shall appoint a state suicide prevention coordinator to administer a state suicide prevention program composed of suicide prevention, intervention, and postvention programs, services, and efforts.

(3) The state suicide prevention program may include the following components:

(a) delivery of resources, tools, and training to community-based coalitions;

(b) evidence-based suicide risk assessment tools and training;

(c) town hall meetings for building community-based suicide prevention strategies;

(d) suicide prevention gatekeeper training;

(e) training to identify warning signs and to manage an at-risk individual's crisis;

(f) evidence-based intervention training;

(g) intervention skills training; and

(h) postvention training.

(4) The state suicide prevention coordinator shall coordinate with the following to gather statistics, among other duties:

(a) local mental health and substance abuse authorities;

(b) the State Board of Education, including the public education suicide prevention coordinator described in Section 53A-15-1301;

(c) the Department of Health;

(d) health care providers, including emergency rooms;

(e) federal agencies, including the Federal Bureau of Investigation;

(f) other unbiased sources; and

(g) other public health suicide prevention efforts.

(5) The state suicide prevention coordinator shall provide a written report to the Health and Human Services Interim Committee, by the October meeting every year, on:

(a) implementation of the state suicide prevention program, as described in Subsections (2) and (3);

(b) data measuring the effectiveness of each component of the state suicide prevention program;

(c) funds appropriated for each component of the state suicide prevention program; and

(d) five-year trends of suicides in Utah, including subgroups of youths and adults and other subgroups identified by the state suicide prevention coordinator.

(6) The state suicide prevention coordinator shall report to the Legislature's:

(a) Education Interim Committee, by the October 2015 meeting, jointly with the State Board of Education, on the coordination of suicide prevention programs and efforts with the State Board of Education and the public education suicide prevention coordinator as described in Section 53A-15-1301; and

(b) Health and Human Services Interim Committee, by the October 2017 meeting, statistics on the number of annual suicides in Utah, including how many suicides were committed with a gun, and if so:

(i) where the victim procured the gun and if the gun was legally possessed by the victim;

(ii) if the victim purchased the gun legally and whether a background check was performed before the victim purchased the gun;

(iii) whether the victim had a history of mental illness or was under the treatment of a mental health professional;

(iv) whether any medication or illegal drugs or alcohol were also involved in the suicide; and

(v) if the suicide incident also involved the injury or death of another individual, whether the shooter had a history of domestic violence.

(7) The state suicide prevention coordinator shall consult with the bureau to implement and manage the operation of a firearm safety program, as described in Subsection 53-10-202(18) and Section 53-10-202.1.

(8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules governing the implementation of the state suicide prevention program, consistent with this section.

(9) The state suicide prevention coordinator shall present to the Health and Human Services Interim Committee, no later than November 2017, a 10-year statewide suicide prevention plan.

(10) As funding by the Legislature allows, the state suicide prevention coordinator shall award grants, not to exceed a total of \$100,000 per fiscal year, to suicide prevention programs that focus on the needs of children who have been served by the Division of Juvenile Justice Services.

Section 4. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Department of Health -- Disease Control and Prevention

From General Fund \$85,000

Schedule of Programs:

Office of the Medical Examiner \$85,000

The Legislature intends that the amount provided by this Item 1 be used to fund the appointment of a psychological autopsy examiner, as described in Section 26-4-28.5.

ITEM 2

To Department of Human Services -- Division of Substance Abuse and Mental Health

From General Fund \$100,000

Schedule of Programs:

Community Mental Health Services \$100,000

The Legislature intends that the amount provided by this item be used to fund the grant awards described in Subsection 62A-15-1101(10).

ITEM 3

To State Board of Education -- State Administrative Office

From General Fund (\$100,000)

From Education Fund \$145,000

Schedule of Programs:

Student Advocacy Services \$45,000

ITEM 4

To Department of Health -- Disease Control and Prevention

From General Fund \$15,000

From General Fund, One-Time \$95,000

Schedule of Programs:

Office of the Medical Examiner \$110,000

The Legislature intends that:

(1) General Fund money provided to the State Board of Education -- State Administrative Office in the 2013 General Session, H.B. 154, for a public education suicide prevention coordinator as designated in Subsection 53A-15-1301(3) be redirected to the Department of Human Services -- Division of Substance Abuse and Mental Health for the purpose described in Subsection 62A-15-1101(10);

(2) the public education suicide prevention specialist at the State Board of Education -- State Administrative Office be funded with money from the Education Fund; and

(3) \$45,000 provided by this Item 3 be used to fund the grant awards described in Section 53A-15-1303.

CHAPTER 347**H. B. 379**

Passed March 9, 2017
Approved March 24, 2017
Effective May 9, 2017

CLASSIFICATION OF THEFT AMENDMENTS

Chief Sponsor: Brian S. King
Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies the theft statute.

Highlighted Provisions:

This bill:

- ▶ removes the element of “armed with a dangerous weapon” from the second degree felony classification; and
- ▶ requires that the value of property taken in a third offense be valued at \$500 or more.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-6-412, as last amended by Laws of Utah 2014, Chapter 255

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

Section 1. Section 76-6-412 is amended to read:**76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

(1) Theft of property and services as provided in this chapter is punishable:

- (a) as a second degree felony if the:
 - (i) value of the property or services is or exceeds \$5,000;
 - (ii) property stolen is a firearm or an operable motor vehicle; or

~~[(iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the time of the theft; or]~~

~~[(iv)]~~ (iii) property is stolen from the person of another;

- (b) as a third degree felony if:
 - (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

(ii) the value of the property or services is or exceeds \$500 and the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based and at

least one of those convictions is for a class A misdemeanor:

(A) any theft, any robbery, or any burglary with intent to commit theft;

(B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

(iii) in a case not amounting to a second degree felony, the property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes; or

(iv) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;

(B) the theft occurs on a property where the offender has committed any theft within the past five years; and

(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108;

(v) the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based and the value of the property stolen is or exceeds \$500 but is less than \$1,500; or

(vi) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C);

(c) as a class A misdemeanor if:

(i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;

(ii) (A) the value of property or services is less than \$500;

(B) the theft occurs on a property where the offender has committed any theft within the past five years; and

(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based; or

(d) as a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (1)(c).

(2) Any individual who violates Subsection 76-6-408(1) or Section 76-6-413, or commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three times

the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees.

CHAPTER 348**H. B. 398**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

PROCUREMENT CODE AMENDMENTS

Chief Sponsor: Gage Froerer
Senate Sponsor: D. Gregg Buxton

LONG TITLE**General Description:**

This bill modifies provisions of the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ modifies the stated purposes of the Utah Procurement Code;
- ▶ enacts and modifies definitions applicable to the Utah Procurement Code;
- ▶ modifies a provision relating to public notice;
- ▶ provides that it is the responsibility of a person seeking information provided by a public notice to seek out, find, and respond to the public notice;
- ▶ modifies minimum experience requirements for the chief procurement officer;
- ▶ modifies language relating to the bidding process and request for proposals process;
- ▶ clarifies the use of multiple award contracts in the bidding process and request for proposals process;
- ▶ clarifies provisions involving the terms “responsible” and “responsive”;
- ▶ modifies language relating to the situations where the use of a request for proposals process is appropriate;
- ▶ repeals and reenacts a provision relating to best and final offers;
- ▶ modifies a provision relating to a determination concerning a contract extension;
- ▶ modifies a provision relating to a determination of nonresponsibility;
- ▶ eliminates an appeal to the procurement appeals panel for a debarment or suspension and modifies the process of obtaining judicial review of a suspension or debarment;
- ▶ modifies provisions relating to protests and appeals of protest decisions;
- ▶ makes it unlawful for a person to divide a single procurement in order to avoid the use of a standard procurement process and for a person to take certain action against a public officer or employee involved in the procurement process;
- ▶ exempts taxed interlocal entities and their directors, officers, and employees from provisions relating to unlawful conduct and penalties;
- ▶ modifies language relating to the consequence of failing to report unlawful conduct; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

- 63G-6a-102, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-103, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 355
- 63G-6a-112, as renumbered and amended by Laws of Utah 2016, Chapter 355
- 63G-6a-116, as enacted by Laws of Utah 2016, Chapter 355 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 355
- 63G-6a-302, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-410, as enacted by Laws of Utah 2016, Chapter 355
- 63G-6a-506, as last amended by Laws of Utah 2016, Chapters 237, 348 and renumbered and amended by Laws of Utah 2016, Chapter 355
- 63G-6a-507, as enacted by Laws of Utah 2016, Chapter 355
- 63G-6a-602, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-603, as last amended by Laws of Utah 2016, Chapter 355
- 63G-6a-606, as last amended by Laws of Utah 2016, Chapter 355
- 63G-6a-607, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-608, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-612, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-702, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-703, as last amended by Laws of Utah 2016, Chapter 355
- 63G-6a-707, as last amended by Laws of Utah 2016, Chapters 237 and 355
- 63G-6a-709, as last amended by Laws of Utah 2016, Chapter 355
- 63G-6a-802.7, as enacted by Laws of Utah 2016, Chapter 355
- 63G-6a-903, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-904, as last amended by Laws of Utah 2015, Chapter 258
- 63G-6a-1002, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-1003, as last amended by Laws of Utah 2013, Chapter 445
- 63G-6a-1204.5, as renumbered and amended by Laws of Utah 2013, Chapter 445
- 63G-6a-1402, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-1403, as renumbered and amended by Laws of Utah 2012, Chapter 347
- 63G-6a-1601.5, as enacted by Laws of Utah 2016, Chapter 355
- 63G-6a-1602, as last amended by Laws of Utah 2016, Chapter 355
- 63G-6a-1603, as last amended by Laws of Utah 2016, Chapter 355
- 63G-6a-1702, as last amended by Laws of Utah 2016, Chapter 355

63G-6a-1703, as last amended by Laws of Utah 2016, Chapter 355
 63G-6a-1802, as last amended by Laws of Utah 2015, Chapter 218
 63G-6a-2403, as enacted by Laws of Utah 2014, Chapter 196
 63G-6a-2407, as last amended by Laws of Utah 2016, Chapter 355
 63G-10-403, as last amended by Laws of Utah 2016, Chapter 355

ENACTS:

63G-6a-1701.5, Utah Code Annotated 1953
 63G-6a-2404.3, Utah Code Annotated 1953
 63G-6a-2404.7, Utah Code Annotated 1953

REPEALS AND REENACTS:

63G-6a-707.5, as last amended by Laws of Utah 2016, Chapter 355

REPEALS:

63G-6a-1604, as enacted by Laws of Utah 2012, Chapter 347 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347
 63G-6a-1706, as last amended by Laws of Utah 2014, Chapter 196

Utah Code Sections Affected by Coordination Clause:

63G-6a-702, as last amended by Laws of Utah 2014, Chapter 196

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

Section 1. Section 63G-6a-102 is amended to read:

63G-6a-102. Purpose of chapter.

The underlying purposes and policies of this chapter are:

~~[(1) to simplify, clarify, and modernize the law governing procurement in the state;]~~

(1) to ensure transparency in the public procurement process;

(2) to ensure the fair and equitable treatment of all persons who ~~deal with the~~ participate in the public procurement ~~[system]~~ process;

(3) to provide increased economy in state procurement activities; and

(4) to foster effective broad-based competition within the free enterprise system.

Section 2. Section 63G-6a-103 is amended to read:

63G-6a-103. Definitions.

As used in this chapter:

~~[(1) “Administrative law judge” means the same as that term is defined in Section 67-19e-102.]~~

~~[(2) “Administrative law judge service” means service provided by an administrative law judge.]~~

~~[(3)]~~ (1) “Applicable rulemaking authority” means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;

(B) for the Office of the Attorney General, the attorney general; and

(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district’s own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education, the State Board of Regents;

(g) for a public transit district, the chief executive of the public transit district;

(h) for a local district other than a public transit district or for a special service district:

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules; ~~[or]~~

(i) for an applied technology college within the Utah College of Applied Technology, the Utah College of Applied Technology board of trustees; or

~~[(4)]~~ (j) for any other procurement unit, the board.

~~[(4)]~~ (2) “Approved vendor” means a vendor who has been approved through the approved vendor list process.

~~[(5)]~~ (3) “Approved vendor list” means a list of approved vendors established under Section 63G-6a-507.

~~[(6)]~~ (4) “Approved vendor list process” means the procurement process described in Section 63G-6a-507.

[47] (5) “Bidder” means a person who submits a bid or price quote in response to an invitation for bids.

[48] (6) “Bidding process” means the procurement process described in Part 6, Bidding.

[49] (7) “Board” means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

[10] (8) “Building board” means the State Building Board, created in Section 63A-5-101.

[11] (9) “Change directive” means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

[12] (10) “Change order” means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

[13] (11) “Chief procurement officer” means the chief procurement officer appointed under Subsection 63G-6a-302(1).

[14] (12) “Conducting procurement unit” means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

(iv) selecting and recommending the person to be awarded a contract;

(v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit’s approval; and

(vi) contract administration.

[15] (13) “Conservation district” means the same as that term is defined in Section 17D-3-102.

[16] (14) “Construction”:

(a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

[17] (15) “Construction manager/general contractor”:

(a) means a contractor who enters into a contract:

(i) for the management of a construction project; and

(ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor’s cost proposal submitted at the time of the procurement of the contractor’s services; and

(b) does not include a contractor whose only subcontract work not included in the contractor’s cost proposal submitted as part of the procurement of the contractor’s services is to meet subcontracted portions of change orders approved within the scope of the project.

(16) “Construction subcontractor”:

(a) means a person under contract with a contractor or another subcontractor to provide services or labor for the design or construction of a construction project;

(b) includes a general contractor or specialty contractor licensed or exempt from licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor for a construction project.

[18] (17) “Contract” means an agreement for a procurement.

[19] (18) “Contract administration” means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

(b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;

(c) executing change orders;

(d) processing contract amendments;

(e) resolving, to the extent practicable, contract disputes;

(f) curing contract errors and deficiencies;

(g) terminating a contract;

(h) measuring or evaluating completed work and contractor performance;

(i) computing payments under the contract; and

(j) closing out a contract.

[20] (19) “Contractor” means a person who is awarded a contract with a procurement unit.

[21] (20) “Cooperative procurement” means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

(b) a procurement unit and a cooperative purchasing organization.

~~[(22)]~~ (21) “Cooperative purchasing organization” means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

~~[(23)]~~ (22) “Cost-plus-a-percentage-of-cost contract” means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor’s actual expenses or costs.

~~[(24)]~~ (23) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

~~[(25)]~~ (24) “Days” means calendar days, unless expressly provided otherwise.

~~[(26)]~~ (25) “Definite quantity contract” means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

~~[(27)]~~ (26) “Design-build” means the procurement of design professional services and construction by the use of a single contract.

~~[(28)]~~ (27) “Design professional” means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or

(b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

~~[(29)]~~ (28) “Design professional procurement process” means the procurement process described in Part 15, Design Professional Services.

~~[(30)]~~ (29) “Design professional services” means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102; or

(c) master planning and programming services.

~~[(31)]~~ (30) “Director” means the director of the division.

~~[(32)]~~ (31) “Division” means the Division of Purchasing and General Services, created in Section 63A-2-101.

~~[(33)]~~ (32) “Educational procurement unit” means:

(a) a school district;

(b) a public school, including a local school board and a charter school;

(c) the Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network; ~~[or]~~

(e) an institution of higher education of the state[-]; or

(f) an applied technology college within the Utah College of Applied Technology.

~~[(34)]~~ (33) “Established catalogue price” means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

~~[(35)]~~ (34) “Executive branch procurement unit” means a department, division, office, bureau, agency, or other organization within the state executive branch.

~~[(36)]~~ (35) “Fixed price contract” means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

~~[(37)]~~ (36) “Fixed price contract with price adjustment” means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

~~[(38)]~~ (37) “Grant” means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

~~[(39)]~~ (38) “Head of a procurement unit” means:

(a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) for an executive branch procurement unit:

(i) the director of the division; or

(ii) any other person designated by the board, by rule;

(c) for a judicial procurement unit:

(i) the Judicial Council; or

(ii) any other person designated by the Judicial Council, by rule;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) any other person designated by the local government procurement unit;

(e) for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;

(f) for a special service district, the governing body of the special service district or a designee of the governing body;

(g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;

(j) for a school district or any school or entity within a school district, the board of the school district, or the board's designee;

(k) for a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;

(l) for an institution of higher education of the state, the president of the institution of higher education, or the president's designee; [e]

(m) for an applied technology college within the Utah College of Applied Technology, the president of the applied technology college or the president's designee; or

~~(n)~~ (n) for a public transit district, the board of trustees or a designee of the board of trustees.

[40] (39) "Immaterial error":

(a) means an irregularity or abnormality that is:

(i) a matter of form that does not affect substance; or

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the solicitation; and

(iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.

[41] (40) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

[42] (41) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).

[43] (42) "Invitation for bids":

(a) means a document used to solicit:

(i) bids to provide a procurement item to a procurement unit; or

(ii) quotes for a price of a procurement item to be provided to a procurement unit; and

(b) includes all documents attached to or incorporated by reference in a document described in Subsection [43] (42)(a).

[44] (43) "Issuing procurement unit" means a procurement unit that:

(a) reviews a solicitation to verify that it is in proper form;

(b) causes the notice of a solicitation to be published; and

(c) negotiates and approves the terms and conditions of a contract.

[45] (44) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

(e) an office, committee, subcommittee, or other organization within the state judicial branch.

[46] (45) "Labor hour contract" is a contract under which:

(a) the supplies and materials are not provided by, or through, the contractor; and

(b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.

[47] (46) "Legislative procurement unit" means:

(a) the Legislature;

(b) the Senate;

(c) the House of Representatives;

(d) a staff office of the Legislature, the Senate, or the House of Representatives; or

(e) ~~[an office,]~~ a committee, subcommittee, commission, or other organization:

(i) within the state legislative branch[-]; or

(ii) (A) that is created by statute to advise or make recommendations to the Legislature;

(B) the membership of which includes legislators; and

(C) for which the Office of Legislative Research and General Counsel provides staff support.

[48] (47) "Local building authority" means the same as that term is defined in Section 17D-2-102.

[49] (48) "Local district" means the same as that term is defined in Section 17B-1-102.

[50] (49) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or

(c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

[51] (50) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one ~~[bidder or offeror]~~ person.

[52] (51) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

[53] (52) "Municipality" means a city, town, or metro township.

[54] (53) "Nonadopting local government procurement unit" means:

(a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (54)(a).

[55] (54) "Offeror" means a person who submits a proposal in response to a request for proposals.

[56] "Person" means the same as that term is defined in Section 68-3-12.5, excluding a political subdivision and a government office, department, division, bureau, or other body of government.]

[57] (55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

[58] (56) "Procure" means to acquire a procurement item through a procurement.

[59] (57) "Procurement":

(a) means a procurement unit's acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds;

(b) includes all functions that pertain to the acquisition of a procurement item, including:

(i) preparing and issuing a solicitation; and

(ii) (A) conducting a standard procurement process; or

(B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and

(c) does not include a grant.

[60] (58) "Procurement item" means a supply, a service, or construction.

[61] (59) "Procurement officer" means:

(a) for a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

[62] (60) "Procurement unit":

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) a local government procurement unit;

(vi) a local district;

(vii) a special service district;

(viii) a local building authority;

(ix) a conservation district;

(x) a public corporation; or

(xi) a public transit district; and

(b) does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

[63] (61) "Professional service" means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

(a) accounting;

- (b) architecture;
- (c) construction design and management;
- (d) engineering;
- (e) financial services;
- (f) information technology;
- (g) the law;
- (h) medicine;
- (i) psychiatry; or
- (j) underwriting.

[~~64~~] (62) "Protest officer" means:

(a) for the division or a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) [a designee of] the head of the procurement unit's designee who is an employee of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee who is an employee of the division.

[~~65~~] (63) "Public corporation" means the same as that term is defined in Section 63E-1-102.

[~~66~~] (64) "Public entity" means any government entity of the state or political subdivision of the state, including:

(a) a procurement unit;

(b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and

(c) any other government entity located in the state that expends public funds.

[~~67~~] (65) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

[~~68~~] (66) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

[~~69~~] (67) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

[~~70~~] (68) "Qualified vendor" means a vendor who:

(a) is responsible; and

(b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.

[~~71~~] (69) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

[~~72~~] (70) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.

[~~73~~] (71) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

[~~74~~] (72) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.

[~~75~~] (73) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

[~~76~~] (74) "Requirements contract" means a contract:

(a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

[~~77~~] (75) "Responsible" means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

[~~78~~] (76) "Responsive" means conforming in all material respects to the requirements of a solicitation.

[~~79~~] (77) "Sealed" means manually or electronically secured to prevent disclosure.

[~~80~~] (78) "Service":

(a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;

(b) includes a professional service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

[~~81~~] (79) "Small purchase process" means the procurement process described in Section 63G-6a-506.

~~[(82)]~~ (80) "Sole source contract" means a contract resulting from a sole source procurement.

~~[(83)]~~ (81) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.

~~[(84)]~~ (82) "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

~~[(85)]~~ (83) "Solicitation response" means:

(a) a bid submitted in response to an invitation for bids;

(b) a proposal submitted in response to a request for proposals; or

(c) a statement of qualifications submitted in response to a request for statement of qualifications.

~~[(86)]~~ (84) "Special service district" means the same as that term is defined in Section 17D-1-102.

~~[(87)]~~ (85) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

(a) a requirement for inspecting or testing a procurement item; or

(b) preparing a procurement item for delivery.

~~[(88)]~~ (86) "Standard procurement process" means:

(a) the bidding process;

(b) the request for proposals process;

(c) the approved vendor list process;

(d) the small purchase process; or

(e) the design professional procurement process.

~~[(89)]~~ (87) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

~~[(90)]~~ (88) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

~~[(91)]~~ (89) "Subcontractor":

~~[(a) means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction;]~~

~~[(b) includes a trade contractor or specialty contractor; and]~~

~~[(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.]~~

(a) means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and

(b) includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor.

~~[(92)]~~ (90) "Supply" means a good, material, technology, piece of equipment, or any other item of personal property.

~~[(93)]~~ (91) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.

~~[(94)]~~ (92) "Time and materials contract" means a contract under which the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

~~[(95)]~~ (93) "Transitional costs":

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

~~[(96)]~~ (94) "Trial use contract" means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.

~~[(97)]~~ (95) "Vendor":

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor; and

(iv) a design professional.

Section 3. Section 63G-6a-112 is amended to read:

63G-6a-112. Required public notice.

(1) The division or a procurement unit with independent procurement authority that issues a solicitation required to be published in accordance with this section, shall provide public notice that includes:

~~[(a) the name of the conducting procurement unit;]~~

~~[(b)]~~ (a) the name of the procurement unit acquiring the procurement item;

~~[(c)]~~ (b) information on how to contact the issuing procurement unit;

~~[(d)]~~ (c) the date of the opening and closing of the solicitation;

~~[(e)]~~ (d) information on how to obtain a copy of the procurement documents;

~~[(f)]~~ (e) a general description of the procurement items that will be obtained through the standard procurement process or procurement under Section 63G-6a-802; and

~~[(g)]~~ (f) for a notice of a procurement under Section 63G-6a-802:

(i) contact information and other information relating to contesting or obtaining additional information relating to the procurement; and

(ii) the earliest date that the procurement unit may make the procurement.

(2) Except as provided in Subsection (4), the issuing procurement unit shall publish the notice described in Subsection (1):

(a) at least seven days before the day of the deadline for submission of a bid or other response; and

(b) (i) in a newspaper of general circulation in the state;

(ii) in a newspaper of local circulation in the area:

(A) directly impacted by the procurement; or

(B) over which the procurement unit has jurisdiction;

(iii) on the main website for the issuing procurement unit or the procurement unit acquiring the procurement item; or

(iv) on a state website that is owned, managed by, or provided under contract with, the division for posting a public procurement notice.

(3) Except as provided in Subsection (4), for a procurement under Section 63G-6a-802 for which notice is required to be published in accordance with this section, the issuing procurement unit shall publish the notice described in Subsection (1):

(a) at least seven days before the acquisition of the procurement item; and

(b) (i) in a newspaper of general circulation in the state;

(ii) in a newspaper of local circulation in the area:

(A) directly impacted by the procurement; or

(B) over which the procurement unit has jurisdiction;

(iii) on the main website for the procurement unit acquiring the procurement item; or

(iv) on a state website that is owned by, managed by, or provided under contract with, the division for posting a procurement notice.

(4) An issuing procurement unit may reduce the seven-day period described in Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a written statement that:

(a) states that a shorter time is needed; and

(b) determines that competition from multiple sources may be obtained within the shorter period of time.

(5) (a) An issuing procurement unit shall make a copy of the solicitation documents available for public inspection at the main office of the issuing procurement unit or on the website described in Subsection (2)(b) until the award of the contract or the cancellation of the procurement.

(b) A procurement unit issuing a procurement under Section 63G-6a-802 shall make a copy of information related to the procurement available for public inspection at the main office of the procurement unit or on the website described in Subsection (3)(b) until the award of the contract or the cancellation of the procurement.

(c) A procurement unit shall maintain all records in accordance with Part 20, Records.

(6) A procurement unit that issues a request for statement of qualifications as part of an approved vendor list process that results in the establishment of an open-ended vendor list, as defined in Section 63G-6a-507, shall keep the request for statement of qualifications posted on a website described in Subsection (2)(b)(iii) or (iv) during the entire period of the open-ended vendor list.

(7) (a) It is the responsibility of a person seeking information provided by a public notice under this section to seek out, find, and respond to a public notice issued by a procurement unit.

(b) As a courtesy and in order to promote competition, a procurement unit may provide, but is not required to provide, individual notice.

Section 4. Section 63G-6a-116 is amended to read:

63G-6a-116. Procurement of administrative law judge service.

(1) As used in this section:

(a) "Administrative law judge" means the same as that term is defined in Section 67-19e-102.

(b) "Administrative law judge service" means service provided by an administrative law judge.

~~[(4)]~~ (2) A procurement unit shall use a standard procurement process under this chapter for the procurement of administrative law judge service.

(3) For a procurement of administrative law judge service, an evaluation committee shall consist of:

(a) the head of the conducting procurement unit, or the head's designee;

(b) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the executive director of the Department of Human Resource Management, or the head's designee; and

(c) the executive director of the Department of Human Resource Management, or the executive director's designee.

~~[(2)]~~ (4) Within 30 days after the day on which a conducting procurement unit awards a contract for administrative law judge service, the conducting procurement unit shall give written notice to the Department of Human Resource Management that states:

(a) that the conducting procurement unit awarded a contract for administrative law judge service;

(b) the name of the conducting procurement unit; and

(c) the expected term of the contract.

(5) A procurement of administrative law judge service using a small purchase process is subject to rules made pursuant to Subsection 63G-6a-506(2)(c).

Section 5. Section 63G-6a-302 is amended to read:

63G-6a-302. Chief procurement officer -- Appointment -- Qualifications -- Authority.

(1) The executive director of the Department of Administrative Services, with the consent of the governor, shall appoint the chief procurement officer after considering recommendations from the board.

(2) The chief procurement officer shall:

(a) have a minimum of eight years' experience;

(i) (A) in the large-scale procurement of supplies ~~and~~ services, or ~~services and~~ construction~~;~~ or

(B) negotiating contract terms and conditions; and

(ii) at least five years of which shall have been in public or comparable private procurement within 12 years preceding the date of appointment; and

(b) be a person with demonstrated executive and organizational ability.

(3) The chief procurement officer appointed under Subsection (1) is also the director of the Division of Purchasing and General Services.

(4) The chief procurement officer has authority over a procurement by a procurement unit, except:

(a) a procurement unit with independent procurement authority; or

(b) as otherwise expressly provided in this chapter.

Section 6. Section 63G-6a-410 is amended to read:

63G-6a-410. Request for statement of qualifications -- Process.

(1) (a) A procurement unit may use the process described in this section:

(i) as one of the stages of a multiple-stage:

(A) bidding process;

(B) request for proposals process; or

(C) design professional procurement process; and

(ii) to identify qualified vendors to participate in other stages of the multiple-stage procurement process.

(b) A procurement unit shall use the process described in this section as part of the approved vendor list process, if the procurement unit intends to establish an approved vendor list.

(2) A procurement unit may not:

(a) award a contract based solely on the process described in this section; or

(b) solicit costs, pricing, or rates or negotiate fees through the process described in this section.

(3) The process of identifying qualified vendors in a multiple-stage procurement process or of establishing an approved vendor list under Section 63G-6a-507 is initiated by a procurement unit issuing a request for statement of qualifications.

(4) A request for statement of qualifications in a multiple-stage procurement process shall include:

(a) a statement indicating that participation in other stages of the multiple-stage procurement process will be limited to qualified vendors;

(b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that will be used to identify qualified vendors, including, as applicable:

(i) experience and work history;

(ii) management and staff requirements or standards;

(iii) licenses, certifications, and other qualifications;

(iv) performance ratings or references;

(v) financial stability; and

(vi) other information pertaining to vendor qualifications that the chief procurement officer or the head of a procurement unit with independent procurement authority considers relevant or important; and

(c) the deadline by which a vendor is required to submit a statement of qualifications.

(5) A request for statement of qualifications in an approved vendor list process under Section 63G-6a-507 shall include:

(a) a general description of, as applicable:

(i) the procurement item that the procurement unit seeks to acquire;

(ii) the type of project or scope or category of work that will be the subject of a procurement by the procurement unit;

(iii) the procurement process the procurement unit will use to acquire the procurement item; and

(iv) the type of vendor the procurement unit seeks to provide the procurement item;

(b) the minimum mandatory requirements, evaluation criteria, and applicable score thresholds that vendors are required to meet to be included on the approved vendor list;

(c) a statement indicating that the approved vendor list will include only responsible vendors that:

(i) submit a responsive statement of qualifications; and

(ii) meet the minimum mandatory requirements, evaluation criteria, and applicable score thresholds described in the request for statement of qualifications;

(d) a statement indicating that only vendors on the approved vendor list will be able to participate in the procurements identified in the request for statement of qualifications;

(e) a statement indicating whether the procurement unit will use a performance rating system for evaluating the performance of vendors on the approved vendor list, including whether a vendor on the approved vendor list may be disqualified and removed from the list;

(f) (i) a statement indicating whether the procurement unit uses a closed-ended approved vendor list, as defined in Section 63G-6a-507, or an open-ended approved vendor list, as defined in Section 63G-6a-507; and

(ii) (A) if the procurement unit uses a closed-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications and a specified period of time after which the approved vendor list will expire; or

(B) if the procurement unit uses an open-ended approved vendor list, the deadline by which a vendor is required to submit a statement of qualifications to be considered for the initial approved vendor list, a schedule indicating when a vendor not on the initial approved vendor list may submit a statement of qualifications to be considered to be added to the approved vendor list, and the specified period of time after which a vendor is required to submit a new statement of qualifications for evaluation before the vendor's status as an approved vendor on the approved vendor list may be renewed; and

(g) a description of any other criteria or requirements specific to the procurement item or scope of work that is the subject of the procurement.

(6) A procurement unit issuing a request for statement of qualifications shall publish the request as provided in Section 63G-6a-112.

(7) After the deadline for submitting a statement of qualifications, the chief procurement officer or the head of a procurement unit with independent procurement authority may allow a vendor to correct an immaterial error in a statement of qualifications, as provided in Section 63G-6a-114.

(8) (a) A conducting procurement unit may reject a statement of qualifications if the conducting procurement unit determines that:

(i) the vendor who submitted the statement of qualifications:

(A) is not responsible;

(B) is in violation of a provision of this chapter;

(C) has engaged in unethical conduct; or

(D) receives a performance rating below the satisfactory performance threshold specified in the request for statement of qualifications;

(ii) there has been a change in the vendor's circumstances after the vendor submits a statement of qualifications that, if the change had been known at the time the statement of qualifications was evaluated, would have caused the statement of qualifications not to have received a qualifying score; or

(iii) the statement of qualifications:

(A) is not responsive; or

(B) does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the request for statement of qualifications.

(b) A procurement unit that rejects a statement of qualifications under Subsection (8)(a) shall:

(i) make a written finding, stating the reasons for the rejection; and

(ii) provide a copy of the written finding to the vendor that submitted the rejected statement of qualifications.

(9) (a) (i) After the issuance of a request for statement of qualifications, the conducting procurement unit shall appoint an evaluation committee consisting of [~~membership as provided in Subsection (9)(a)(ii) or (iii), as applicable. (ii) An evaluation committee for a procurement of administrative law judge service shall consist of: (A) the head of the conducting procurement unit, or the head's designee; (B) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the executive director of the Department of Human Resource Management, or the head's designee; and (C) the executive director of the Department of Human Resource Management, or the executive director's designee. (iii) An evaluation committee for each other procurement shall consist of]~~ at least three individuals with at least a general familiarity with or basic understanding of:

(A) the technical requirements relating to the type of procurement item that is the subject of the request for statement of qualifications; or

(B) the need that the procurement item is intended to address.

~~(iv)~~ (ii) The conducting procurement unit shall ensure that each member of [the] an evaluation committee [~~under Subsection (9)(a)(iii)]~~ and each individual participating in the evaluation committee process:

(A) does not have a conflict of interest with any vendor that submits a statement of qualifications;

(B) can fairly evaluate each statement of qualifications;

(C) does not contact or communicate with a vendor concerning the evaluation process or procurement outside the official evaluation committee process; and

(D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(b) A conducting procurement unit may authorize an evaluation committee to receive assistance:

(i) from an expert or consultant who:

(A) is not a member of the evaluation committee; and

(B) does not participate in the evaluation scoring; and

(ii) to better understand a technical issue involved in the procurement.

(c) An evaluation committee appointed under this Subsection (9):

(i) shall evaluate and score statements of qualifications submitted in response to a request for statement of qualifications using the minimum mandatory requirements, evaluation criteria, and

applicable score thresholds set forth in the request for statement of qualifications;

(ii) may not evaluate or score a statement of qualifications using criteria not included in the request for statement of qualifications; and

(iii) may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with or attend presentations by vendors, for the purpose of clarifying information contained in statements of qualifications.

(d) In a discussion, interview, or presentation under Subsection (9)(c)(iii), a vendor:

(i) may only explain, illustrate, or interpret the contents of the vendor's original statement of qualifications; and

(ii) may not:

(A) address criteria or specifications not contained in the vendor's original statement of qualifications;

(B) correct a deficiency, inaccuracy, or mistake in a statement of qualifications that is not an immaterial error;

(C) correct an incomplete submission of documents that the request for statement of qualifications required to be submitted with the statement of qualifications;

(D) correct a failure to submit a timely statement of qualifications;

(E) substitute or alter a required form or other document specified in the statement of qualifications;

(F) remedy a cause for a vendor being considered to be not responsible or a statement of qualifications not responsive; or

(G) correct a defect or inadequacy resulting in a determination that a vendor does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the statement of qualifications.

(e) After the evaluation committee completes its evaluation and scoring of the statements of qualifications, the evaluation committee shall submit the statements of qualifications and evaluation scores to the head of the procurement unit for review and final determination of:

(i) qualified vendors, if the request for statement of qualifications process is used as one of the stages of a multiple-stage process; or

(ii) vendors to be included on an approved vendor list, if the request for statement of qualifications process is used as part of the approved vendor list process.

(f) The issuing procurement unit shall review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter.

(g) (i) The deliberations of an evaluation committee under this Subsection (9) may be held in private.

(ii) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(10) A procurement unit may at any time request a vendor to clarify information contained in a statement of qualifications, as provided in Section 63G-6a-115.

(11) A vendor may voluntarily withdraw a statement of qualifications at any time before a contract is awarded with respect to which the statement of qualifications was submitted.

(12) If only one vendor meets the minimum qualifications, evaluation criteria, and applicable score thresholds set forth in the request for statement of qualifications that the procurement unit is using as part of an approved vendor list process, the conducting procurement unit:

(a) shall cancel the request for statement of qualifications; and

(b) may not establish an approved vendor list based on the canceled request for statement of qualifications or on statements of qualifications submitted in response to the request for statement of qualifications.

(13) If a conducting procurement unit cancels a request for statement of qualifications, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.

(14) After receiving and reviewing the statements of qualifications and evaluation scores submitted by the evaluation committee [~~under Subsection (9)(d)~~], the head of the procurement unit using the request for statement of qualifications process under this section as one of the stages of a multiple-stage procurement process shall identify those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as qualified vendors who are allowed to participate in the remaining stages of the multiple-stage procurement process.

(15) The applicable rulemaking authority may make rules pertaining to the request for statement of qualifications and the process described in this section.

Section 7. Section 63G-6a-506 is amended to read:

63G-6a-506. Small purchases.

(1) As used in this section:

(a) "Annual cumulative threshold" means the maximum total annual amount, established by the applicable rulemaking authority under Subsection (2), that a procurement unit may expend to obtain procurement items from the same source under this section.

(b) "Individual procurement threshold" means the maximum amount, established by the applicable rulemaking authority under Subsection

(2), for which a procurement unit may purchase a procurement item under this section.

(c) "Single procurement aggregate threshold" means the maximum total amount, established by the applicable rulemaking authority under Subsection (2), that a procurement unit may expend to obtain multiple procurement items from one source at one time under this section.

(2) (a) The applicable rulemaking authority may make rules governing small purchases of any procurement item, including construction, job order contracting, design professional services, other professional services, information technology, and goods.

(b) Rules under Subsection (2)(a) may include provisions:

(i) establishing expenditure thresholds, including:

(A) an annual cumulative threshold;

(B) an individual procurement threshold; and

(C) a single procurement aggregate threshold;

(ii) establishing procurement requirements relating to the thresholds described in Subsection (2)(b)(i); and

(iii) providing for the use of electronic, telephone, or written quotes.

(c) If a procurement unit obtains administrative law judge service through a small purchase standard procurement process, rules made under Subsection (2)(a) shall provide that the process for the procurement of administrative law judge service include an evaluation committee described in Subsection [~~63G-6a-707(3)(a)~~] 63G-6a-116(3).

(3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the applicable rulemaking authority, unless the chief procurement officer or the head of a procurement unit with independent procurement authority gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

(4) Except as provided in Subsection (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).

(5) Subsection (4) does not apply if:

(a) the procurement item is obtained for an unanticipated, urgent, or emergency condition, including:

(i) an item needed to avoid stopping a public construction project;

(ii) an immediate repair to a facility or equipment; or

(iii) another emergency condition; or

(b) the chief procurement officer or the head of a procurement unit that is an executive branch procurement unit with independent procurement authority;

(i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:

(A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;

(B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;

(C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;

(D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and

(E) the cost of the procurement item under the state contract with the cost of the procurement item if the procurement item is obtained outside of the state contract;

(ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and

(iii) grants an exception, in writing, to the requirement described in Subsection (4).

(6) Except as otherwise expressly provided in this section, a procurement unit:

(a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and

(b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.

(7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.

~~(8) (a) It is unlawful for a person to intentionally or knowingly divide a procurement into smaller procurements with the intent to make a procurement;~~

~~(i) qualify as a small purchase, if, before dividing the procurement, it would not have qualified as a small purchase; or~~

~~(ii) meet a threshold established by rule made by the applicable rulemaking authority, if, before dividing the procurement, it would not have met the threshold.~~

~~(b) A person who engages in the conduct made unlawful under Subsection (8)(a) is guilty of:~~

~~(i) a second degree felony, if the value of the procurement before being divided is \$1,000,000 or more;~~

~~(ii) a third degree felony, if the value of the procurement before being divided is \$250,000 or more but less than \$1,000,000;~~

~~(iii) a class A misdemeanor, if the value of the procurement before being divided is \$100,000 or more but less than \$250,000; or~~

~~(iv) a class B misdemeanor, if the value of the procurement before being divided is less than \$100,000.~~

~~(9) A division of a procurement that is prohibited under Subsection (8) includes doing any of the following with the intent or knowledge described in Subsection (8):~~

~~(a) making two or more separate purchases;~~

~~(b) dividing an invoice or purchase order into two or more invoices or purchase orders; or~~

~~(c) making smaller purchases over a period of time.~~

(8) (a) It is unlawful for a person knowingly to divide a single procurement into multiple smaller procurements, including by dividing an invoice or purchase order into multiple invoices or purchase orders, if:

(i) the single procurement would not have qualified as a small purchase under this section;

(ii) one or more of the multiple smaller procurements qualify as a small purchase under this section; and

(iii) the division is done with the intent to:

(A) avoid having to use a standard procurement process, other than the small purchase process, that the person would otherwise be required to use for the single procurement; or

(B) make one or more of the multiple smaller procurements fall below a small purchase expenditure threshold established by rule under Subsection (2)(b) that the single procurement would not have fallen below without the division.

(b) A violation of Subsection (8)(a) is subject to penalties as provided in Subsection 63G-6a-2404.3(2).

~~[(40)]~~ (9) The Division of Finance within the Department of Administrative Services may conduct an audit of an executive branch procurement unit to verify compliance with the requirements of this section.

~~[(41)]~~ (10) An executive branch procurement unit may not make a small purchase after January 1, 2014, unless the chief procurement officer certifies that the person responsible for procurements in the procurement unit has satisfactorily completed training on this section and the rules made under this section.

Section 8. Section 63G-6a-507 is amended to read:

63G-6a-507. Approved vendor list procurement process.

(1) As used in this section:

(a) "Closed-ended approved vendor list" means an approved vendor list that is subject to:

(i) a short period of time, specified by the procurement unit, during which vendors may be added to the list; and

(ii) a specified period of time after which the list will expire.

(b) "Open-ended approved vendor list" means an approved vendor list that is subject to:

(i) an indeterminate period of time during which vendors may be added to the list;

(ii) the addition of vendors to the list throughout the term of the list; and

(iii) a specified period of time after which a vendor on the list is required to submit the vendor's qualifications for evaluation before the vendor may be renewed as an approved vendor.

(2) A procurement unit may not establish an approved vendor list unless the procurement unit has first completed the statement of qualifications process described in Section 63G-6a-410.

(3) (a) A procurement unit may establish an approved vendor list for:

(i) a specific, fully defined procurement item; or

(ii) a future procurement item that is not specifically and fully defined, if the request for statement of qualifications contains a general description of:

(A) the procurement item; and

(B) the type of vendor that the procurement unit seeks to provide the procurement item.

(b) A procurement unit may not award a contract to a vendor on an approved vendor list for a procurement item that is outside the scope of the general description of the procurement item

contained in the request for statement of qualifications.

(4) After receiving the statements of qualifications and evaluation scores submitted by the evaluation committee under Subsection 63G-6a-410(9)(~~(d)~~)(e), the head of the conducting procurement unit using the request for statement of qualifications process under Section 63G-6a-410 as part of an approved vendor list process shall:

(a) include on an approved vendor list those vendors meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds; and

(b) reject any vendor not meeting the minimum mandatory requirements, evaluation criteria, and applicable score thresholds as ineligible for inclusion on the approved vendor list.

(5) (a) A procurement unit shall include approved vendors on a closed-ended approved vendor list or an open-ended approved vendor list.

(b) (i) A closed-ended approved vendor list shall expire no later than 18 months after the publication of the closed-ended approved vendor list.

(ii) A procurement unit shall require a vendor on an open-ended approved vendor list, in order to remain on the approved vendor list, to submit an updated statement of qualifications for evaluation no later than 18 months after the vendor was added to the list as an approved vendor.

(6) A procurement unit may:

(a) (i) using a bidding process, request for proposals process, small purchase process, or design professional procurement process, award a contract to a vendor on an approved vendor list for any procurement item or type of procurement item specified by the procurement unit in the request for statement of qualifications, including procurement items that the procurement unit intends to acquire in a series of future procurements described in the request for statement of qualifications; and

(ii) limit participation in a bidding process, request for proposals process, small purchase process, or design professional procurement process to vendors on an approved vendor list; or

(b) award a contract to a vendor on an approved vendor list at a price established as provided in Section 63G-6a-113.

(7) After establishing an approved vendor list as provided in this section, the conducting procurement unit shall, before using the approved vendor list, submit the approved vendor list to the issuing procurement unit for publication by the issuing procurement unit.

(8) A conducting procurement unit administering an open-ended approved vendor list shall:

(a) require a vendor seeking inclusion on the approved vendor list to submit a statement of qualifications that complies with all requirements applicable at the time of the initial request for statement of qualifications;

(b) if modifying the requirements for inclusion on the approved vendor list, apply any new or additional requirement to all vendors equally, whether a vendor is seeking inclusion on the approved vendor list for the first time or is already included on the approved vendor list; and

(c) keep the request for statement of qualifications posted on a website as required under Subsection 63G-6a-112(6).

(9) The applicable rulemaking authority shall make rules pertaining to an approved vendor list process, including:

(a) procedures to ensure that all vendors on an approved vendor list have a fair and equitable opportunity to compete for a contract for a procurement item; and

(b) requirements for using an approved vendor list with the small purchase process.

Section 9. Section 63G-6a-602 is amended to read:

63G-6a-602. Contracts awarded by bidding.

(1) ~~[Except as otherwise provided in this chapter, the]~~ The division or a procurement unit with independent procurement authority ~~[shall]~~ may award a contract for a procurement item by the bidding process, in accordance with the rules of the applicable rulemaking authority.

(2) The bidding standard procurement process is appropriate to use when cost is the major factor in determining the award of a procurement.

Section 10. Section 63G-6a-603 is amended to read:

63G-6a-603. Invitation for bids -- Requirements -- Publication.

(1) The bidding standard procurement process begins when the issuing procurement unit issues an invitation for bids.

(2) An invitation for bids shall:

(a) state the period of time during which bids will be accepted;

(b) describe the manner in which a bid shall be submitted;

(c) state the place where a bid shall be submitted; and

(d) include, or incorporate by reference:

(i) to the extent practicable, a full description of the procurement items sought and the full scope of work;

(ii) the objective criteria that will be used to evaluate the bids; and

(iii) the required contractual terms and conditions.

(3) An issuing procurement unit shall publish an invitation for bids in accordance with the requirements of Section 63G-6a-112.

Section 11. Section 63G-6a-606 is amended to read:

63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Rejecting a bid.

(1) A procurement unit that conducts a procurement using a bidding ~~[standard procurement]~~ process shall evaluate each bid using the objective criteria described in the invitation for bids, which may include:

(a) experience;

(b) performance ratings;

(c) inspection;

(d) testing;

(e) quality;

(f) workmanship;

(g) time and manner of delivery;

(h) references;

(i) financial stability;

(j) cost;

(k) suitability for a particular purpose;

(l) the contractor's work site safety program, including any requirement that the contractor imposes on subcontractors for a work site safety program; or

(m) other objective criteria specified in the invitation for bids.

(2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

(3) The conducting procurement unit shall:

(a) subject to the provisions of Section 63G-6a-1204.5 for multiple award contracts, award the contract as soon as practicable to:

(i) the responsible bidder who submits the lowest responsive bid that meets the objective criteria described in the invitation for bids; or

(ii) if, in accordance with Subsection (4), the procurement officer or the head of the conducting procurement unit rejects a bid described in Subsection (3)(a)(i), the responsible bidder who submits the next lowest responsive bid that meets the objective criteria described in the invitation for bids; or

(b) cancel the invitation for bids without awarding a contract.

(4) In accordance with Subsection (5), the procurement officer or the head of the conducting procurement unit may reject a bid for:

(a) a violation of this chapter by the bidder who submitted the bid;

(b) a violation of a requirement of the invitation for bids;

(c) unlawful or unethical conduct by the bidder who submitted the bid; or

(d) a change in a bidder's circumstance that, had the change been known at the time the bid was submitted, would have caused the bid to be rejected.

(5) A procurement officer or head of a conducting procurement unit who rejects a bid under Subsection (4) shall:

(a) make a written finding, stating the reasons for the rejection; and

(b) provide a copy of the written finding to the bidder who submitted the rejected bid.

(6) If a conducting procurement unit cancels an invitation for bids without awarding a contract, the conducting procurement unit shall make available for public inspection a written justification for the cancellation.

Section 12. Section 63G-6a-607 is amended to read:

63G-6a-607. Action if all bids exceed available funds -- Exemption.

(1) Except as provided in Subsection (2) or (3), if the fiscal officer for the conducting procurement unit certifies that all accepted bids exceed available funds and that the lowest responsive ~~and~~ bid from a responsible bidder does not exceed the available funds by more than 5%, the procurement officer may negotiate an adjustment of the bid price and bid requirements with the responsible bidder who submitted the lowest responsive ~~and responsible bidder~~ bid in order to bring the bid within the amount of available funds.

(2) A procurement officer may not adjust the bid requirements under Subsection (1) if there is a substantial likelihood that, had the adjustment been included in the invitation for bids, a person that did not submit a bid would have submitted a responsive~~, responsible,~~ and competitive bid.

(3) The Division of Facilities Construction and Management is exempt from the requirements of this section if:

(a) the building board adopts rules governing procedures when all accepted bids exceed available funds; and

(b) the Division of Facilities Construction and Management complies with the rules described in Subsection (3)(a).

Section 13. Section 63G-6a-608 is amended to read:

63G-6a-608. Tie bids -- Resolution -- Copies provided to attorney general.

(1) A procurement officer shall resolve a tie bid in accordance with a method established by rule made by the applicable rulemaking authority. The method may include awarding the tie bid:

(a) to the tie bidder who:

(i) is a provider of state products, if no other tie bidder is a ~~responsive~~ provider of state products;

(ii) is closest to the point of delivery;

(iii) received the previous award; or

(iv) will provide the earliest delivery date;

(b) by drawing lots; or

(c) by any other reasonable method of resolving a tie bid.

(2) The method chosen by the procurement officer to resolve a tie bid shall be at the sole discretion of the procurement officer, subject to the rules established under Subsection (1).

(3) A procurement unit in the state executive branch shall provide a copy of the procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000 in expenditures.

Section 14. Section 63G-6a-612 is amended to read:

63G-6a-612. Conduct of reverse auction.

(1) A procurement unit conducting a reverse auction:

(a) may conduct the reverse auction at a physical location or by electronic means;

(b) shall permit all prequalified bidders to participate in the reverse auction;

(c) may not permit a bidder to participate in the reverse auction if the bidder did not prequalify to participate in the reverse auction;

(d) may not accept a bid after the time for submission of a bid has expired;

(e) shall update the bids on a real time basis; and

(f) shall conduct the reverse auction in a manner that permits each bidder to:

(i) bid against each other; and

(ii) lower the bidder's price below the lowest bid before the reverse auction closes.

(2) At the end of the reverse auction, the conducting procurement unit shall:

(a) award the contract as soon as practicable to the ~~lowest responsive and~~ responsible bidder who:

(i) meets the objective criteria described in the invitation for bids; ~~or~~ and

(ii) submitted the lowest responsive bid; or

(b) cancel the reverse auction without awarding a contract.

(3) After the reverse auction is finished, the conducting procurement unit shall make publicly available:

(a) (i) the amount of the final bid submitted by each bidder during the reverse auction; and

(ii) the identity of the bidder that submitted each final bid; and

(b) if practicable:

(i) the amount of each bid submitted during the reverse auction; and

(ii) the identity of the bidder that submitted each bid.

Section 15. Section 63G-6a-702 is amended to read:

63G-6a-702. Contracts awarded by request for proposals.

~~(1) A request for proposals standard procurement process may be used instead of bidding if the procurement officer determines, in writing, that the request for proposals standard procurement process will provide the best value to the procurement unit.~~

(1) The division or a procurement unit with independent procurement authority may award a contract for a procurement item by the request for proposals process, in accordance with the rules of the applicable rulemaking authority.

(2) (a) The request for proposals [standard procurement] process is appropriate for a procurement unit to use [for] in selecting the proposal that provides the best value or is the most advantageous to the procurement unit, including when:

[(a) the procurement of professional services;]

[(b) a design-build procurement;]

(i) the procurement involves a contract whose terms and conditions are to be negotiated in order to achieve the result that is the most advantageous to the procurement unit;

[(e) when] (ii) cost is not the most important factor to be considered in making the selection that is most advantageous to the procurement unit; or

[(d) when] (iii) factors, apart from or in addition to cost, are highly significant in making the selection that is most advantageous to the procurement unit.

(b) The types of procurements for which it is appropriate to use the request for proposals process include:

(i) a procurement of professional services; and

(ii) a procurement of design-build or construction manager/general contractor services.

(3) The procurement of architect-engineer services is governed by Part 15, [Architect-Engineer Services] Design Professional Services.

Section 16. Section 63G-6a-703 is amended to read:

63G-6a-703. Request for proposals -- Requirements -- Publication of request.

(1) The request for proposals standard procurement process begins when the division or a procurement unit with independent procurement authority issues a request for proposals.

(2) A request for proposals shall:

(a) state the period of time during which a proposal will be accepted;

(b) describe the manner in which a proposal shall be submitted;

(c) state the place where a proposal shall be submitted;

(d) include, or incorporate by reference:

(i) to the extent practicable, a full description of the procurement items sought and the full scope of work;

(ii) a description of the subjective and objective criteria that will be used to evaluate the proposal; and

(iii) the standard contractual terms and conditions required by the authorized purchasing entity;

(e) state the relative weight that will be given to each score for the criteria described in Subsection (2)(d)(ii), including cost;

(f) state the formula that will be used to determine the score awarded for the cost of each proposal;

(g) if the request for proposals will be conducted in multiple stages, as described in Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be used to screen offerors at each stage; and

(h) state that best and final offers may be allowed, as provided in Section 63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals.

(3) The division or a procurement unit with independent procurement authority shall publish a request for proposals in accordance with the requirements of Section 63G-6a-112.

Section 17. Section 63G-6a-707 is amended to read:

63G-6a-707. Evaluation of proposals -- Evaluation committee.

(1) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsible offeror's responsive ~~and responsible~~ proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals, which may include:

(a) experience;

(b) performance ratings;

(c) inspection;

(d) testing;

(e) quality;

(f) workmanship;

(g) time, manner, or schedule of delivery;

(h) references;

(i) financial solvency;

(j) suitability for a particular purpose;

- (k) management plans;
- (l) the presence and quality of a work site safety program, including any requirement that the offeror imposes on subcontractors for a work site safety program;
- (m) cost; or
- (n) other subjective or objective criteria specified in the request for proposals.
- (2) Criteria not described in the request for proposals may not be used to evaluate a proposal.
- ~~[(3) (a) For a procurement of administrative law judge service, an evaluation committee shall consist of:]~~
- ~~[(i) the head of the conducting procurement unit, or the head's designee;]~~
- ~~[(ii) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the executive director of the Department of Human Resource Management, or the head's designee; and]~~
- ~~[(iii) the executive director of the Department of Human Resource Management, or the executive director's designee.]~~
- ~~[(b) For every other procurement requiring an evaluation by an evaluation committee, the]~~
- (3) The conducting procurement unit shall:
- ~~[(i)]~~ (a) appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or basic understanding of:
- ~~[(A)]~~ (i) the technical requirements relating to the type of procurement item that is the subject of the procurement; or
- ~~[(B)]~~ (ii) the need that the procurement item is intended to address; and
- ~~[(iii)]~~ (b) ensure that the evaluation committee and each individual participating in the evaluation committee process:
- ~~[(A)]~~ (i) does not have a conflict of interest with any of the offerors;
- ~~[(B)]~~ (ii) can fairly evaluate each proposal;
- ~~[(C)]~~ (iii) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and
- ~~[(D)]~~ (iv) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.
- (4) A conducting procurement unit may authorize an evaluation committee to receive assistance:
- (a) from an expert or consultant who:
- (i) is not a member of the evaluation committee; and
- (ii) does not participate in the evaluation scoring; and
- (b) to better understand a technical issue involved in the procurement.
- (5) (a) An evaluation committee may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with, or attend presentations by, the offerors, for the purpose of clarifying information contained in proposals.
- (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:
- (i) may only explain, illustrate, or interpret the contents of the offeror's original proposal; and
- (ii) may not:
- (A) address criteria or specifications not contained in the offeror's original proposal;
- (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error;
- (C) correct an incomplete submission of documents that the solicitation required to be submitted with the proposal;
- (D) correct a failure to submit a timely proposal;
- (E) substitute or alter a required form or other document specified in the solicitation;
- (F) remedy a cause for an offeror being considered to be not responsible or a proposal not responsive; or
- (G) correct a defect or inadequacy resulting in a determination that an offeror does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.
- (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee information, and except as provided in Subsection (9), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.
- (b) The issuing procurement unit shall:
- (i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;
- (ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;
- (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final recommended scores on criteria other than cost to derive the total combined score for each responsive ~~[and responsible]~~ proposal from a responsible offeror; and
- (iv) provide to the evaluation committee the total combined score calculated for each responsive ~~[and~~

responsible] proposal from a responsible offeror, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.

(c) The evaluation committee may not:

(i) change its final recommended scores described in Subsection (6)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or

(ii) change cost scores calculated by the issuing procurement unit.

(7) (a) As used in this Subsection (7), "management fee" includes only the following fees of the construction manager/general contractor:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:

(i) may score a construction manager/general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;

(ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;

(iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and

(iv) except as provided in Subsection (9), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

(8) (a) The deliberations of an evaluation committee may be held in private.

(b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(9) An issuing procurement unit is not required to comply with Subsection (6) or (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:

(a) signs a written statement:

(i) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the procurement unit to waive

compliance with Subsection (6) or (7)(b)(iv), as the case may be; and

(ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (6) or (7)(b)(iv); and

(b) makes the written statement available to the public, upon request.

Section 18. Section 63G-6a-707.5 is repealed and reenacted to read:

63G-6a-707.5. Best and final offers.

(1) The best and final offer process described in this section:

(a) may be used only in a request for proposals process, whether the request for proposals process is used independently or after the establishment of an approved vendor list through the approved vendor list process; and

(b) may not be used in any other standard procurement process, whether the other standard procurement process is used independently or after the establishment of an approved vendor list through the approved vendor list process.

(2) Subject to Subsection (3), a conducting procurement unit may request best and final offers from responsible offerors:

(a) only with the approval of the chief procurement officer or the head of the issuing procurement unit; and

(b) if:

(i) no single proposal adequately addresses all the specifications stated in the request for proposals;

(ii) all proposals are unclear or deficient in one or more respects;

(iii) all cost proposals exceed the identified budget or the procurement unit's available funding; or

(iv) two or more proposals receive an identical evaluation score that is the highest score.

(3) A conducting procurement unit may request a best and final offer from, and a best and final offer may be submitted to the conducting procurement unit by, only a responsible offeror that has submitted a responsive proposal that meets the minimum mandatory criteria stated in the request for proposals required to be considered in the stage of the procurement process at which best and final offers are being requested.

(4) The best and final offer process may not be used to change:

(a) a determination that an offeror is not responsible to a determination that the offeror is responsible; or

(b) a determination that a proposal is not responsive to a determination that the proposal is responsive.

(5) (a) This Subsection (5) applies if a request for best and final offers is issued because all cost

proposals exceed the identified budget or the procurement unit's available funding.

(b) (i) The conducting procurement unit may, in the request for best and final offers:

(A) specify the scope of work reductions the procurement unit is making in order to generate proposals that are within the identified budget or the procurement unit's available funding; or

(B) invite offerors submitting best and final offers to specify the scope of work reductions being made so that the reduced cost proposal is within the identified budget or the procurement unit's available funding.

(ii) The conducting procurement unit is not required to accept a scope of work reduction that an offeror has specified in the offeror's best and final offer.

(c) A best and final offer submitted with a reduced cost proposal shall include an itemized list identifying specific reductions in the offeror's proposed scope of work that correspond to the offeror's reduced cost proposal.

(d) A reduction in the scope of work may not:

(i) eliminate a component identified in the request for proposals as a minimum mandatory requirement; or

(ii) alter the nature of the original request for proposals to the extent that a request for proposals for the reduced scope of work would have likely attracted a significantly different set of offerors submitting proposals in response to the request for proposals.

(6) If a request for best and final offers is issued because two or more proposals received an identical evaluation score that is the highest score:

(a) the request may be issued only to offerors who submitted a proposal receiving the highest score; and

(b) an offeror submitting a best and final offer may revise:

(i) the technical aspects of the offeror's proposal;

(ii) the offeror's cost proposal, as provided in Subsection (5); or

(iii) both the technical aspects of the offeror's proposal and, as provided in Subsection (5), the offeror's cost proposal.

(7) In a request for best and final offers, the conducting procurement unit shall:

(a) clearly specify:

(i) the issues that the procurement unit requests the offerors to address in their best and final offers; and

(ii) how best and final offers will be evaluated and scored in accordance with Section 63G-6a-707;

(b) establish a deadline for an offeror to submit a best and final offer; and

(c) if applicable, establish a schedule and procedure for conducting discussions with offerors concerning the best and final offers.

(8) In conducting a best and final offer process under this section, a conducting procurement unit shall:

(a) maintain confidential the information the procurement unit receives from an offeror, including any cost information, until a contract has been awarded or the request for proposals canceled;

(b) ensure that each offeror receives fair and equal treatment; and

(c) safeguard the integrity of the scope of the original request for proposals, except as specifically provided otherwise in this section.

(9) In a best and final offer, an offeror:

(a) may address only the issues described in the request for best and final offers; and

(b) may not correct a material error or deficiency in the offeror's proposal or address any issue not described in the request for best and final offers.

(10) If an offeror fails to submit a best and final offer, the conducting procurement unit shall treat the offeror's original proposal as the offeror's best and final offer.

(11) After the deadline for submitting best and final offers has passed, the evaluation committee shall evaluate the best and final offers submitted using the criteria described in the request for proposals.

(12) An offeror may not make and a conducting procurement unit may not consider a best and final offer that the conducting procurement unit has not requested under this section.

(13) To implement the best and final offer process described in this section, an applicable rulemaking authority may make rules consistent with this section and the other provisions of this chapter.

Section 19. Section 63G-6a-709 is amended to read:

63G-6a-709. Award of contract --

Cancellation -- Rejection of proposal.

(1) After the completion of the evaluation and scoring of proposals and the justification statement, including any required cost-benefit analysis, the evaluation committee shall submit the proposals, evaluation scores, and justification statement to the head of the procurement unit or designee for review and final determination of a contract award or an award of multiple contracts as provided in Section 63G-6a-1204.5.

(2) After reviewing the proposals, evaluation scores, and justification statement, including any required cost-benefit analysis, the head of the issuing procurement unit shall:

(a) (i) award the contract as soon as practicable to the responsible offeror with the responsive proposal receiving the highest total score; or

(ii) (A) if the head of the issuing procurement unit [disqualifies an offeror] rejects a proposal under

Subsection (3) of an offeror who would otherwise have been awarded a contract, award the contract to the responsible offeror with the responsive proposal receiving the next highest total score; and

(B) if the head of the issuing procurement unit ~~[disqualifies an offeror]~~ rejects a proposal under Subsection (3) of an offeror who would otherwise have been awarded a contract under Subsection (2)(a)(ii)(A), repeat the process described in Subsection (2)(a)(ii)(A) as many times as necessary until a contract is awarded to a responsible offeror ~~[who is not disqualified]~~ whose proposal is not rejected; or

(b) cancel the request for proposals without awarding a contract.

(3) The head of an issuing procurement unit may reject a proposal if:

(a) the offeror who submitted the proposal:

- (i) is not responsive;
- (ii) is in violation of a provision of this chapter;
- (iii) has engaged in unethical conduct; or
- (iv) fails to sign a contract within:

(A) 90 days after the contract award, if no time is specified in the solicitation; or

(B) a time authorized in writing by the head of the issuing procurement unit;

(b) there is a change in the offeror's circumstances that, if the change had been known at the time the offeror's proposal was evaluated, would have caused the proposal not to have received the highest score; or

(c) the proposal:

- (i) is not responsive; or
- (ii) does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds stated in the solicitation.

(4) A head of an issuing procurement unit who rejects a proposal under Subsection (3) shall:

(a) make a written finding, stating the reasons for the rejection; and

(b) provide a copy of the written finding to the offeror whose proposal is rejected.

(5) If an issuing procurement unit cancels a request for proposals without awarding a contract, the issuing procurement unit shall make available for public inspection a written justification for the cancellation.

Section 20. Section 63G-6a-802.7 is amended to read:

63G-6a-802.7. Extension of a contract without engaging in a standard procurement process.

The chief procurement officer or the head of a procurement unit with independent procurement

authority may extend an existing contract without engaging in a standard procurement process:

(1) for a period of time not to exceed 120 days, if:

(a) an extension of the contract is necessary to:

(i) avoid a lapse in a critical government service; or

(ii) to mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; and

(b) (i) (A) the procurement unit is engaged in a standard procurement process for a procurement item that is the subject of the contract being extended; and

(B) the standard procurement process is delayed due to an unintentional error;

(ii) a change in an industry standard requires one or more significant changes to specifications for the procurement item; or

(iii) an extension is necessary:

(A) to prevent the loss of federal funds;

(B) to mitigate the effects of a delay of a state or federal appropriation;

(C) to enable the procurement unit to continue to receive a procurement item during a delay in the implementation of a contract awarded pursuant to a procurement that has already been conducted; or

(D) to enable the procurement unit to continue to receive a procurement item during a period of time during which negotiations with a vendor under a new contract for the procurement item are being conducted;

(2) for the period of a protest, appeal, or court action, if the protest, appeal, or court action is the reason for delaying the award of a new contract; or

(3) for a period of time exceeding 120 days, if, after consulting with the attorney general or the procurement unit's attorney, the chief procurement officer or head of a procurement unit with independent procurement authority determines in writing that the contract extension does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.

Section 21. Section 63G-6a-903 is amended to read:

63G-6a-903. Determination of nonresponsibility.

(1) A determination of nonresponsibility of a ~~[bidder or offeror]~~ person made by an issuing procurement unit shall be made in writing, in accordance with the rules of the applicable rulemaking authority.

(2) ~~[The]~~ A person's unreasonable failure ~~[of a bidder or offeror]~~ to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination

of nonresponsibility with respect to the [~~bidder or offeror~~] person.

(3) Subject to Title 63G, Chapter 2, Government Records Access and Management Act, information furnished by a [~~bidder or offeror~~] person pursuant to this section may not be disclosed outside of a procurement unit without the person's prior written consent [~~by the bidder or offeror~~].

Section 22. Section 63G-6a-904 is amended to read:

63G-6a-904. Debarment or suspension from consideration for award of contracts -- Process -- Causes for debarment -- Judicial review.

(1) (a) Subject to Subsection (1)(b), the chief procurement officer or the head of a procurement unit with independent procurement authority may:

(i) debar a person for cause from consideration for award of contracts for a period not to exceed three years; or

(ii) suspend a person from consideration for award of contracts if there is [~~probable~~] cause to believe that the person has engaged in any activity that might lead to debarment.

(b) Before debarring or suspending a person under Subsection (1)(a), the chief procurement officer or head of a procurement unit with independent procurement authority shall:

(i) consult with:

(A) the procurement unit involved in the matter for which debarment or suspension is sought; and

(B) the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch;

(ii) give the person at least 10 days' prior written notice of:

(A) the reasons for which debarment or suspension is being considered; and

(B) the hearing under Subsection (1)(b)(iii); and

(iii) hold [~~a~~] an informal hearing in accordance with Subsection (1)(c).

(c) (i) At [~~a~~] an informal hearing under Subsection (1)(b)(iii), the chief procurement officer or head of a procurement unit with independent procurement authority may:

(A) subpoena witnesses and compel their attendance at the hearing;

(B) subpoena documents for production at the hearing;

(C) obtain additional factual information; and

(D) obtain testimony from experts, the person who is the subject of the proposed debarment or suspension, representatives of the procurement unit, or others to assist the chief procurement

officer or head of a procurement unit with independent procurement authority to make a decision on the proposed debarment or suspension.

(ii) The Rules of Evidence do not apply to [~~a~~] an informal hearing under Subsection (1)(b)(iii).

(iii) The chief procurement officer or head of a procurement unit with independent procurement authority shall:

(A) record a hearing under Subsection (1)(b)(iii); and

(B) preserve all records and other evidence relied upon in reaching a decision until the decision becomes final[;].

~~[(C) for an appeal of a debarment or suspension by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, submit to the procurement policy board chair a copy of the written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1702 or after receiving a request from the procurement policy board chair; and]~~

~~[(D) for an appeal of a debarment or suspension by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district, submit to the Utah Court of Appeals a copy of the written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving a notice that an appeal of a debarment or suspension has been filed under Section 63G-6a-1802.]~~

(iv) The holding of [~~a~~] an informal hearing under Subsection (1)(b)(iii) or the issuing of a decision under Subsection (1)(c)(v) does not affect a person's right to later question or challenge the jurisdiction of the chief procurement officer or head of a procurement unit with independent procurement authority to hold a hearing or issue a decision.

(v) The chief procurement officer or head of a procurement unit with independent procurement authority shall:

(A) promptly issue a written decision regarding a proposed debarment or suspension, unless the matter is settled by mutual agreement; and

(B) mail, email, or otherwise immediately furnish a copy of the decision to the person who is the subject of the decision.

(vi) A written decision under Subsection (1)(c)(v) shall:

(A) state the reasons for the debarment or suspension, if debarment or suspension is ordered; and

(B) inform the person who is debarred or suspended of the right to judicial [~~or administrative~~] review as provided in this chapter[; and].

[~~(C)~~ indicate the amount of the security deposit or bond required under Section 63G-6a-1703 and how that amount was calculated.]

[~~(vii) (A)~~ A decision of debarment or suspension issued by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless the person who is debarred or suspended files an appeal of the decision under Section 63G-6a-1702.]

[~~(B)~~] (vii) A decision of debarment or suspension issued by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district is final and conclusive unless [the person who is debarred or suspended files an appeal of] the decision is overturned by a court under [Section 63G-6a-1802] Subsection (4).

(2) A suspension under this section may not be for a period exceeding three months, unless an indictment has been issued for an offense which would be a cause for debarment under Subsection (3), in which case the suspension shall, at the request of the attorney general, if the procurement unit is in the state executive branch, or the procurement unit's attorney, if the procurement unit is not in the state executive branch, remain in effect until after the trial of the suspended person.

(3) The causes for debarment include the following:

(a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor for the procurement unit;

(c) conviction under state or federal antitrust statutes;

(d) failure without good cause to perform in accordance with the terms of the contract;

(e) a violation of this chapter; or

(f) any other cause that the chief procurement officer or the head of a procurement unit with independent procurement authority determines to be so serious and compelling as to affect responsibility as a contractor for the procurement unit, including debarment by another governmental entity.

(4) (a) A person who is debarred or suspended under this section may [appeal] seek judicial review of the debarment or suspension[.] by filing a petition for judicial review in district court.

[~~(a)~~ as provided in Section 63G-6a-1702, if the debarment or suspension is by a procurement unit other than a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district; or ~~(b)~~ as provided in Section 63G-6a-1802, if the debarment or suspension is by a legislative procurement unit, a judicial procurement unit, a local government procurement unit, or a public transit district.]

(b) A petition under Subsection (4)(a):

(i) is a complaint governed by the Utah Rules of Civil Procedure;

(ii) shall name the procurement unit as respondent;

(iii) shall be accompanied by a copy of the written decision as to which judicial review is sought; and

(iv) is barred unless filed in district court within 30 days after the date of the issuance of the written decision of suspension or debarment under Subsection (1)(c)(v).

(c) A district court's review of a petition under Subsection (4)(a) shall be de novo.

(d) A district court shall, without a jury, determine all questions of fact and law, including any constitutional issue, presented in the pleadings.

(5) A procurement unit may consider a cause for debarment under Subsection (3) as the basis for determining that a person responding to a solicitation is not responsible:

(a) independent of any effort or proceeding under this section to debar or suspend the person; and

(b) even if the procurement unit does not choose to seek debarment or suspension.

(6) An applicable rulemaking authority may make rules pertaining to the suspension and debarment process under this section, including rules governing an informal hearing under Subsection (1)(b)(iii).

Section 23. Section 63G-6a-1002 is amended to read:

63G-6a-1002. Reciprocal preference for providers of state products.

(1) (a) An issuing procurement unit shall, for all procurements, give a reciprocal preference to those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in Utah over those bidders offering procurement items that are produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to procurement items that are produced, manufactured, mined, grown, or performed in that state.

(b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular procurement item.

(c) In order to receive a reciprocal preference under this section, the bidder shall certify on the bid

that the procurement items offered are produced, manufactured, mined, grown, or performed in Utah.

(d) The reciprocal preference is waived if the certification described in Subsection (1)(c) does not appear on the bid.

(2) (a) If the responsible bidder submitting the lowest responsive ~~[and responsible]~~ bid offers procurement items that are produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another responsible bidder has submitted a responsive ~~[and responsible]~~ bid offering procurement items that are produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, the bid of the other bidder is equal to or less than the original lowest bid, the issuing procurement unit shall:

(i) give notice to the bidder offering procurement items that are produced, manufactured, mined, grown, or performed in Utah that the bidder qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if the bidder agrees, in writing, to meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

(b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice the issuing procurement unit submits to the preferred bidder.

(c) The issuing procurement unit may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.

(3) (a) If there is more than one preferred bidder, the issuing procurement unit shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.

(b) If there were two or more equally low preferred bidders, the issuing procurement unit shall comply with the rules of the applicable rulemaking authority to determine which bidder should be awarded the contract.

(4) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Section 24. Section 63G-6a-1003 is amended to read:

63G-6a-1003. Preference for resident contractors.

(1) As used in this section, "resident contractor" means a person, partnership, corporation, or other business entity that:

(a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and

(b) was transacting business on the date when bids for the public contract were first solicited.

(2) (a) When awarding contracts for construction, an issuing procurement unit shall grant a resident contractor a reciprocal preference over a nonresident contractor from any state that gives or requires a preference to contractors from that state.

(b) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor.

(3) (a) In order to receive the reciprocal preference under this section, the bidder shall certify on the bid that the bidder qualifies as a resident contractor.

(b) The reciprocal preference is waived if the certification described in Subsection (2)(a) does not appear on the bid.

(4) (a) If the responsible contractor submitting the lowest responsive ~~[and responsible]~~ bid is not a resident contractor whose principal place of business is in a state that gives or requires a preference to contractors from that state, and if a resident responsible contractor has also submitted a responsive ~~[and responsible]~~ bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the issuing procurement unit shall:

(i) give notice to the resident contractor that the resident contractor qualifies as a preferred resident contractor; and

(ii) issue the contract to the resident contractor if the resident contractor agrees, in writing, to meet the low bid within 72 hours after notification that the resident contractor is a preferred resident contractor.

(b) The issuing procurement unit shall include the exact price submitted by the lowest bidder in the notice that the issuing procurement unit submits to the preferred resident contractor.

(c) The issuing procurement unit may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notification to the preferred resident contractor.

(5) (a) If there is more than one preferred resident contractor, the issuing procurement unit shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.

(b) If there were two or more equally low preferred resident contractors, the issuing procurement unit shall comply with the rules of the applicable rulemaking authority to determine which bidder should be awarded the contract.

(6) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

Section 25. Section 63G-6a-1204.5 is amended to read:

63G-6a-1204.5. Multiple award contracts.

(1) (a) ~~[The]~~ Through a standard procurement process, the division or a procurement unit with independent procurement authority may enter into

multiple award contracts with ~~[bidders or offerors]~~ multiple persons.

(b) The applicable rulemaking authority may make rules, consistent with this section, regulating the use of multiple award contracts.

(2) Multiple award contracts may be in a procurement unit's best interest if award to two or more bidders or offerors for similar procurement items is needed or desired for adequate delivery, service, availability, or product compatibility.

(3) A procurement unit that enters into multiple award contracts under this section shall:

(a) exercise care to protect and promote competition among bidders or offerors when seeking to enter into multiple award contracts;

(b) name all eligible users of the multiple award contracts in the invitation for bids or request for proposals; and

(c) if the procurement unit anticipates entering into multiple award contracts before issuing the invitation for bids or request for proposals, state in the invitation for bids or request for proposals that the procurement unit may enter into multiple award contracts at the end of the procurement process.

(4) A procurement unit that enters into multiple award contracts under this section shall:

(a) obtain, under the multiple award contracts, all of its normal, recurring requirements for the procurement items that are the subject of the contracts until the contracts terminate; and

(b) reserve the right to obtain the procurement items described in Subsection (4)(a) separately from the contracts if:

(i) there is a need to obtain a quantity of the procurement items that exceeds the amount specified in the contracts; or

(ii) the procurement officer makes a written finding that the procurement items available under the contract will not effectively or efficiently meet a nonrecurring special need of a procurement unit.

(5) An applicable rulemaking authority may make rules to further regulate a procurement under this section.

Section 26. Section 63G-6a-1402 is amended to read:

63G-6a-1402. Procurement of design-build transportation project contracts.

(1) As used in this section:

(a) "Design-build transportation project contract" means the procurement of both the design and construction of a transportation project in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.

(b) "Transportation agency" means:

(i) the Department of Transportation;

(ii) a county of the first or second class, as defined in Section 17-50-501;

(iii) a municipality of the first class, as defined in Section 10-2-301;

(iv) a public transit district that has more than 200,000 people residing within its boundaries; and

(v) a public airport authority.

(2) Except as provided in Subsection (3), a transportation agency may award a design-build transportation project contract for any transportation project that has an estimated cost of at least \$50,000,000 by following the requirements of this section.

(3) (a) The Department of Transportation:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

(b) A public transit district that has more than 200,000 people residing within its boundaries:

(i) may award a design-build transportation project contract for any transportation project by following the requirements of this section; and

(ii) shall pass ordinances or a resolution establishing requirements for the procurement of its design-build transportation project contracts in addition to those required by this section.

(c) A design-build transportation project contract authorized under this Subsection (3) is not subject to the estimated cost threshold described in Subsection (2).

(d) A design-build transportation project contract may include provision by the contractor of operations, maintenance, or financing.

(4) (a) Before entering into a design-build transportation project contract, a transportation agency may issue a request for qualifications to prequalify potential contractors.

(b) Public notice of the request for qualifications shall be given in accordance with board rules.

(c) A transportation agency shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least demonstrate their:

(i) construction experience;

(ii) design experience;

(iii) financial, manpower, and equipment resources available for the project; and

(iv) experience in other design-build transportation projects with attributes similar to the project being procured.

(d) The request for qualifications shall identify the number of eligible competing proposers that the

transportation agency will select to submit a proposal, which may not be less than two.

(5) The transportation agency shall:

(a) evaluate the responses received from the request for qualifications;

(b) select from their number those qualified to submit proposals; and

(c) invite those respondents to submit proposals based upon the transportation agency's request for proposals.

(6) If the transportation agency fails to receive at least two qualified eligible competing proposals, the transportation agency shall readvertise the project.

(7) The transportation agency shall issue a request for proposals to those qualified respondents that:

(a) includes a scope of work statement constituting an information for proposal that may include:

- (i) preliminary design concepts;
- (ii) design criteria, needs, and objectives;
- (iii) warranty and quality control requirements;
- (iv) applicable standards;
- (v) environmental documents;
- (vi) constraints;
- (vii) time expectations or limitations;
- (viii) incentives or disincentives; and

(ix) other special considerations;

(b) requires submitters to provide:

- (i) a sealed cost proposal;
- (ii) a critical path matrix schedule, including cash flow requirements;

(iii) proposal security; and

(iv) other items required by the department for the project; and

(c) may include award of a stipulated fee to be paid to offerors who submit unsuccessful proposals.

(8) The transportation agency shall:

(a) evaluate the submissions received in response to the request for proposals from the prequalified offerors;

(b) comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and

(c) after considering price and other identified factors, award the contract to the ~~responsive and~~ responsible offeror whose responsive proposal is most advantageous to the transportation agency or the state.

Section 27. Section 63G-6a-1403 is amended to read:

63G-6a-1403. Procurement of tollway development agreements.

(1) As used in this section, "tollway development agreement" is as defined in Section 72-6-202.

(2) The Department of Transportation and the Transportation Commission:

(a) may solicit a tollway development agreement proposal by following the requirements of this section;

(b) may award a solicited tollway development agreement contract for any tollway project by following the requirements of this section; and

(c) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for the procurement of tollway development agreement proposals in addition to those required by this section.

(3) (a) Before entering into a tollway development agreement, the Department of Transportation may issue a request for qualifications to prequalify potential contractors.

(b) Public notice of the request for qualifications shall be given in accordance with board rules.

(c) The Department of Transportation shall require, as part of the qualifications specified in the request for qualifications, that potential contractors at least provide:

(i) a demonstration of their experience with other transportation concession projects with attributes similar to the project being procured;

(ii) a financial statement of the firm or consortium of firms making the proposal;

(iii) a conceptual project development plan and financing plan;

(iv) the legal structure of the firm or consortium of firms making the proposal;

(v) the organizational structure for the project; and

(vi) a statement describing why the firm or consortium of firms is best qualified for the project.

(d) The request for qualifications shall identify the number of eligible competing offerors that the Department of Transportation will select to submit a proposal.

(4) The Department of Transportation shall:

(a) evaluate the responses received from the request for qualifications;

(b) select from their number those qualified to submit proposals; and

(c) invite those respondents to submit proposals based upon the Department of Transportation's request for proposals.

(5) The Department of Transportation shall issue a request for proposals to those qualified

respondents that may require, as appropriate for the procurement:

(a) a description of the proposed project or projects;

(b) a financial plan for the project, including:

(i) the anticipated financial commitment of all parties;

(ii) equity, debt, and other financing mechanisms;

(iii) an analysis of the projected return, rate of return, or both; and

(iv) the monetary benefit and other value to a government entity;

(c) assumptions about user fees or toll rates;

(d) a project development and management plan, including:

(i) the contracting structure;

(ii) the plan for quality management;

(iii) the proposed toll enforcement plan; and

(iv) the plan for safety management; and

(e) that the proposal to comply with the minimum guidelines for tollway development agreement proposals under Section 72-6-204.

(6) The Department of Transportation and the Transportation Commission:

(a) shall evaluate the submissions received in response to the request for proposals from the prequalified offerors;

(b) shall comply with rules relating to discussion of proposals, best and final offers, and evaluations of the proposals submitted; and

(c) may, after considering price and other identified factors and complying with the requirements of Section 72-6-206, award the contract to the ~~responsive and~~ responsible offeror whose responsive proposal is most advantageous to the state.

Section 28. Section 63G-6a-1601.5 is amended to read:

63G-6a-1601.5. Definitions.

As used in this part:

(1) "Constructive knowledge":

(a) means knowledge or information that a protestor would have if the protestor had exercised reasonable care or diligence, regardless of whether the protestor actually has the knowledge or information; and

(b) includes knowledge of:

(i) applicable provisions of this chapter and other law and administrative rule;

(ii) instructions, criteria, deadlines, and requirements contained in the solicitation or in

other documents made available to persons interested in the solicitation or provided in a mandatory pre-solicitation meeting;

(iii) relevant facts and evidence supporting the protest or leading the protestor to contend that the protestor has been aggrieved in connection with a procurement;

(iv) communications or actions, pertaining to the procurement, of all persons within the protestor's organization or under the supervision of the protestor; and

(v) any other applicable information discoverable by the exercise of reasonable care or diligence.

(2) "Hearing" means a proceeding in which evidence, which may include oral testimony, or argument relevant to a protest is presented to a protest officer in connection with the protest officer's determination of an issue of fact or law or both.

(3) "Protest appeal record" means:

(a) a copy of the protest officer's written decision;

(b) all documentation and other evidence the protest officer relied upon in reaching the protest officer's decision;

(c) the recording of the hearing, if the protest officer held a hearing;

(d) a copy of the protestor's written protest; and

(e) all documentation and other evidence submitted by the protestor supporting the protest or the protestor's claim of standing.

[~~2~~] (4) "Protestor" means a person who files a protest under this part.

[~~3~~] (5) "Standing" means to have suffered an injury or harm or to be about to suffer imminent injury or harm, if:

(a) the cause of the injury or harm is:

(i) an infringement of the protestor's own right and not the right of another person who is not a party to the procurement;

(ii) reasonably connected to the procurement unit's conduct; and

(iii) the sole reason the protestor is not considered, or is no longer considered, for an award of a contract under the procurement that is the subject of the protest;

(b) a decision on the protest in favor of the protestor:

(i) is likely to redress the injury or harm; and

(ii) would give the protestor a reasonable likelihood of being awarded a contract; and

(c) the protestor has the legal authority to file the protest on behalf of the actual or prospective bidder or offeror or prospective contractor involved in the procurement that is the subject of the protest.

Section 29. Section 63G-6a-1602 is amended to read:

63G-6a-1602. Protest -- Time for filing -- Basis of protest -- Authority to resolve protest.

(1) A protest may be filed with the protest officer by a person who:

(a) has standing; and

(b) is aggrieved in connection with a procurement or an award of a contract.

(2) A protest may not be filed after:

(a) (i) (A) the opening of bids, for a protest relating to a procurement under a bidding process; or

(B) the deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or

(ii) the closing of the procurement stage that is the subject of the protest:

(A) if the protest relates to a multiple-stage procurement; and

(B) notwithstanding Subsections (2)(a)(i)(A) and (B); or

(b) the day that is seven days after the day on which the person knows or first has constructive knowledge of the facts giving rise to the protest, if:

(i) the protestor did not know and did not have constructive knowledge of the facts giving rise to the protest before:

(A) the opening of bids, for a protest relating to a procurement under a bidding process;

(B) the deadline for submitting responses to the solicitation, for a protest relating to another standard procurement process; or

(C) the closing of the procurement stage that is the subject of the protest, if the protest relates to a multiple-stage procurement; or

(ii) the protest relates to a procurement process not described in Subsection (2)(a).

(3) A deadline under Subsection (2) for filing a protest may not be modified.

~~[(3)]~~ (4) (a) A protestor shall include in a protest:

(i) the protestor's mailing address and email address; and

(ii) a concise statement of the facts and evidence:

(A) leading the protestor to claim that the protestor has been aggrieved in connection with a procurement and providing the grounds for the protestor's protest; and

(B) supporting the protestor's claim of standing.

(b) A protest may not be considered unless it contains facts and evidence that, if true, would establish:

(i) a violation of this chapter or other applicable law or rule;

(ii) the procurement unit's failure to follow a provision of a solicitation;

(iii) an error made by an evaluation committee or conducting procurement unit;

(iv) a bias exercised by an evaluation committee or an individual committee member, excluding a bias that is a preference arising during the evaluation process because of how well a solicitation response meets criteria in the solicitation;

(v) a failure to correctly apply or calculate a scoring criterion; or

(vi) that specifications in a solicitation are unduly restrictive or unduly anticompetitive.

~~[(4)]~~ (5) A protest may not be based on:

(a) the rejection of a solicitation response due to a protestor's failure to attend or participate in a mandatory conference, meeting, or site visit held before the deadline for submitting a solicitation response; ~~[or]~~

(b) a vague or unsubstantiated allegation~~[-]~~; or

(c) a person's claim that:

(i) a procurement unit that complied with Section 63G-6a-112 did not provide individual notice of a solicitation to the person; or

(ii) the person received late notice of a solicitation for which notice was provided in accordance with Section 63G-6a-112.

~~[(5)]~~ (6) A protest may not include a request for:

(a) an explanation of the rationale or scoring of evaluation committee members;

(b) the disclosure of a protected record or protected information in addition to the information provided under the disclosure provisions of this chapter; or

(c) other information, documents, or explanations not explicitly provided for in this chapter.

~~[(6)]~~ (7) A person who fails to file a protest within the time prescribed in Subsection (2) may not:

(a) protest to the protest officer a solicitation or award of a contract; or

(b) file an action or appeal challenging a solicitation or award of a contract before an appeals panel, a court, or any other forum.

~~[(7)]~~ (8) Subject to the applicable requirements of Section 63G-10-403, a protest officer or the head of a procurement unit may enter into a settlement agreement to resolve a protest.

Section 30. Section 63G-6a-1603 is amended to read:

63G-6a-1603. Protest officer responsibilities and authority -- Proceedings on protest -- Effect of decision.

(1) After a protest is filed, the protest officer shall determine whether the protest is timely filed and complies fully with the requirements of Section 63G-6a-1602.

(2) If the protest officer determines that the protest is not timely filed or that the protest does

not fully comply with Section 63G-6a-1602, the protest officer shall dismiss the protest without holding a hearing.

(3) If the protest officer determines that the protest is timely filed and complies fully with Section 63G-6a-1602, the protest officer shall:

(a) dismiss the protest without holding a hearing if the protest officer determines that the protest alleges facts that, if true, do not provide an adequate basis for the protest;

(b) uphold the protest without holding a hearing if the protest officer determines that the undisputed facts of the protest indicate that the protest should be upheld; or

(c) hold a hearing on the protest if there is a genuine issue of material fact or law that needs to be resolved in order to determine whether the protest should be upheld.

(4) (a) If a hearing is held on a protest, the protest officer may:

(i) subpoena witnesses and compel their attendance at the protest hearing;

(ii) subpoena documents for production at the protest hearing;

(iii) obtain additional factual information; and

(iv) obtain testimony from experts, the person filing the protest, representatives of the procurement unit, or others to assist the protest officer to make a decision on the protest.

(b) The Rules of Evidence do not apply to a protest hearing.

(c) The applicable rulemaking authority shall make rules relating to intervention in a protest, including designating:

(i) who may intervene; and

(ii) the time and manner of intervention.

(d) A protest officer shall:

(i) record each hearing held on a protest under this section;

(ii) regardless of whether a hearing on a protest is held under this section, preserve all records and other evidence relied upon in reaching the protest officer's written decision until the decision, and any appeal of the decision, becomes final; and

~~[(iii) submit to the procurement policy board chair a copy of the protest officer's written decision and all records and other evidence relied upon in reaching the decision, within seven days after receiving;]~~

~~[(A) notice that an appeal of the protest officer's decision has been filed under Section 63G-6a-1702; or]~~

~~[(B) a request from the chair of the procurement policy board.]~~

(iii) if the protestor appeals the protest officer's decision, submit the protest appeal record to the procurement policy board chair within seven days after receiving:

(A) notice that an appeal of the protest officer's decision has been filed under Section 63G-6a-1702; or

(B) a request for the protest appeal record from the chair of the procurement policy board.

(e) A protest officer's holding a hearing, considering a protest, or issuing a written decision under this section does not affect a person's right to later question or challenge the protest officer's jurisdiction to hold the hearing, consider the protest, or issue the decision.

(5) (a) The deliberations of a protest officer may be held in private.

(b) If the protest officer is a public body, as defined in Section 52-4-103, the protest officer shall comply with Section 52-4-205 in closing a meeting for its deliberations.

(6) (a) A protest officer ~~[, or the protest officer's designee,]~~ shall promptly issue a written decision regarding any protest, unless the protest is settled by mutual agreement.

(b) The decision shall:

(i) state the reasons for the action taken;

(ii) inform the protestor of the right to judicial or administrative review as provided in this chapter; and

(iii) indicate the amount of the security deposit or bond required under Section 63G-6a-1703.

(c) A person who issues a decision under Subsection (6)(a) shall mail, email, or otherwise immediately furnish a copy of the decision to the protestor.

(7) A decision described in this section is effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6a-1903.

(8) (a) A decision described in Subsection (6)(a) that is issued in relation to a procurement unit other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1702.

(b) A decision described in Subsection (6)(a) that is issued in relation to a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district is final and conclusive unless the protestor files an appeal under Section 63G-6a-1802.

(9) If the protest officer does not issue the written decision regarding a protest within 30 calendar days after the day on which the protest was filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protestor may proceed as if an adverse decision had been received.

(10) A determination under this section by the protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.

(11) An individual is not precluded from acting, and may not be disqualified or required to be recused from acting, as a protest officer because the individual also acted in another capacity during the procurement process, as required or allowed in this chapter.

Section 31. Section 63G-6a-1701.5 is enacted to read:

63G-6a-1701.5. Definitions.

As used in this part:

(1) "Appointing officer" means:

(a) the chair of the board; or

(b) a designee of the chair who is not employed by the procurement unit responsible for the solicitation, contract award, or other action that is the subject of the protestor's protest.

(2) "Protest appeal record" means the same as that term is defined in Section 63G-6a-1601.5.

(3) "Protestor" means the same as that term is defined in Section 63G-6a-1601.5.

Section 32. Section 63G-6a-1702 is amended to read:

63G-6a-1702. Appeal to Utah State Procurement Policy Board -- Appointment of procurement appeals panel -- Proceedings.

(1) This part applies to all procurement units other than:

(a) a legislative procurement unit;

(b) a judicial procurement unit;

(c) a nonadopting local government procurement unit; or

(d) a public transit district.

(2) (a) Subject to Section 63G-6a-1703, a ~~[party to a protest involving a procurement unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d)]~~ protestor may appeal ~~[the protest decision]~~ to the board a protest decision of a procurement unit that is subject to this part by filing a written notice of appeal with the chair of the board within seven days after:

(i) the day on which the written decision described in Section 63G-6a-1603 is:

(A) personally served on the party or the party's representative; or

(B) emailed or mailed to the address or email address provided by the party under Subsection 63G-6a-1602~~(3)~~(4); or

(ii) the day on which the 30-day period described in Subsection 63G-6a-1603(9) ends, if a written

decision is not issued before the end of the 30-day period.

~~[(b) A person appealing a debarment or suspension of a procurement unit other than a procurement unit listed in Subsection (1)(a), (b), (c), or (d) shall file a written notice of appeal with the chair of the board no later than seven days after the debarment or suspension.]~~

~~[(e) (b) A notice of appeal under Subsection (2)(a) [or (b)] shall:~~

(i) include the address of record and email address of record of the party filing the notice of appeal; and

(ii) be accompanied by a copy of any written protest decision ~~[or debarment or suspension order].~~

~~(c) The deadline for appealing a protest decision may not be modified.~~

(3) A person may not base an appeal of a protest under this section on:

(a) a ground not specified in the person's protest under Section 63G-6a-1602~~[-];~~ or

(b) new or additional evidence not considered by the protest officer.

(4) (a) A person may not appeal from a protest described in Section 63G-6a-1602, unless:

~~[(a) (i) a decision on the protest has been issued; or~~

~~[(b) (ii) a decision is not issued and the 30-day period described in Subsection 63G-6a-1603(9), or a longer period agreed to by the parties, has passed.~~

~~[(5) The chair of the board or a designee of the chair who is not employed by the procurement unit responsible for the solicitation, contract award, or other action complained of:]~~

~~[(a) shall, within seven days after the day on which the chair receives a timely written notice of appeal under Subsection (2), and if all the requirements of Subsection (2) and Section 63G-6a-1703 have been met, appoint:]~~

~~[(i) a procurement appeals panel to hear and decide the appeal, consisting of at least three individuals, each of whom is:]~~

~~(b) A procurement unit may not appeal a protest decision or other determination made by the procurement unit's protest officer.~~

(5) (a) Within seven days after the chair of the board receives a written notice of an appeal under this section, the chair shall submit a written request to the protest officer for the protest appeal record.

(b) Within seven days after the chair receives the protest appeal record from the protest officer, the appointing officer shall, in consultation with the attorney general's office:

(i) review the appeal to determine whether the appeal complies with the requirements of

Subsections (2), (3), and (4) and Section 63G-6a-1703; and

(ii) (A) dismiss any claim asserted in the appeal, or dismiss the appeal, without holding a hearing if the appointing officer determines that the claim or appeal, respectively, fails to comply with any of the requirements listed in Subsection (5)(b)(i); or

(B) appoint a procurement appeals panel to conduct an administrative review of any claim in the appeal that has not been dismissed under Subsection (5)(b)(ii)(A), if the appointing officer determines that one or more claims asserted in the appeal comply with the requirements listed in Subsection (5)(b)(i).

(c) A procurement appeals panel appointed under Subsection (5)(a) shall consist of an odd number of at least three individuals, each of whom is:

~~(A)~~ (i) a member of the board; or

~~(B)~~ (ii) a designee of a member appointed under Subsection (5)~~(a)(i)(A)~~(c)(i), if the designee is approved by the chair~~;~~ and of the board.

~~(iii)~~ (d) The appointing officer shall appoint one of the members of the procurement appeals panel to ~~be the chair~~ serve as the coordinator of the panel~~;~~.

~~(b)~~ (e) The appointing officer may:

(i) appoint the same procurement appeals panel to hear more than one appeal; or

(ii) appoint a separate procurement appeals panel for each appeal~~;~~.

~~(c)~~ (f) The appointing officer may not appoint a person to a procurement appeals panel if the person is employed by the procurement unit responsible for the solicitation, contract award, or other action ~~complained of; and~~ that is the subject of the protestor's protest.

~~(d)~~ (g) The appointing officer shall, at the time the procurement appeals panel is appointed, provide appeals panel members with a copy of the ~~protest officer's written decision and all other records and other evidence that the protest officer relied on in reaching the decision~~ notice of appeal filed under Subsection (2) and the protest decision record.

(6) (a) A procurement appeals panel described in Subsection (5) ~~shall~~:

~~(a) consist of an odd number of members;~~

~~(b)~~ (i) shall conduct an ~~informal proceeding on~~ administrative review of the appeal within ~~(60)~~ 30 days after the day on which the procurement appeals panel is appointed~~;~~, or before a later date that all parties agree upon, unless the appeal is dismissed under Subsection (8)(a); and

~~(i) unless all parties stipulate to a later date; and~~

~~(ii) subject to Subsection (8);~~

(ii) (A) may, as part of the administrative review and at the sole discretion of the procurement

appeals panel, conduct an informal hearing, if the procurement appeals panel considers a hearing to be necessary; and

~~(e)~~ (B) if the procurement appeals panel conducts an informal hearing, shall, at least seven days before the ~~proceeding~~ hearing, mail, email, or hand-deliver a written notice of the ~~proceeding~~ hearing to the parties to the appeal~~;~~ and.

(b) A procurement appeals panel may, during an informal hearing, ask questions and receive responses regarding the appeal and the protest appeal record to assist the procurement appeals panel to understand the basis of the appeal and information contained in the protest appeal record, but may not otherwise take any additional evidence or consider any additional ground for the appeal.

(7) A procurement appeals panel shall consider and decide the appeal based solely on:

(a) the notice of appeal and the protest appeal record; and

(b) responses received during an informal hearing, if an informal hearing is held and to the extent allowed under Subsection (6)(b).

(8) A procurement appeals panel:

(a) may dismiss an appeal if the appeal does not comply with the requirements of this chapter; and

(b) shall uphold the protest decision unless the protest decision is arbitrary and capricious or clearly erroneous.

~~(d)~~ (9) The procurement appeals panel shall, within seven days after the day on which the ~~proceeding ends~~ procurement appeals panel concludes the administrative review:

~~(i)~~ (a) issue a written decision on the appeal; and

~~(ii)~~ (b) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal and to the protest officer.

~~(7)~~ (10) (a) The deliberations of a procurement appeals panel may be held in private.

(b) If the procurement appeals panel is a public body, as defined in Section 52-4-103, the procurement appeals panel shall comply with Section 52-4-205 in closing a meeting for its deliberations.

~~(8)~~ (11) A procurement appeals panel may continue ~~a procurement appeals proceeding~~ an administrative review under this section beyond the ~~(60-day)~~ 30-day period described in Subsection (6)~~(b)~~(a)(i) if the procurement appeals panel determines that the continuance is in the interests of justice.

~~(9) A procurement appeals panel:~~

~~(a) shall, subject to Subsection (9)(c), consider the appeal based solely on:~~

~~(i) the protest decision;~~

~~(ii) the record considered by the person who issued the protest decision; and~~

~~[(iii) if a protest hearing was held, the record of the protest hearing;]~~

~~[(b) may not take additional evidence;]~~

~~[(c) notwithstanding Subsection (9)(b), may, during an informal hearing, ask questions and receive responses regarding the appeal, the protest decision, or the record in order to assist the panel to understand the appeal, the protest decision, and the record; and]~~

~~[(d) shall uphold the decision of the protest officer, unless the decision is arbitrary and capricious or clearly erroneous.]~~

~~[(10) (12) If a procurement appeals panel determines that the decision of the protest officer is arbitrary and capricious or clearly erroneous, the procurement appeals panel:~~

~~(a) shall remand the matter to the protest officer, to cure the problem or render a new decision;~~

~~(b) may recommend action that the protest officer should take; and~~

~~(c) may not order that:~~

~~(i) a contract be awarded to a certain person;~~

~~(ii) a contract or solicitation be cancelled; or~~

~~(iii) any other action be taken other than the action described in Subsection ~~[(10)] (12)~~(a).~~

~~[(11) (13) The board shall make rules relating to the conduct of an appeals proceeding, including rules that provide for:~~

~~(a) expedited proceedings; and~~

~~(b) electronic participation in the proceedings by panel members and participants.~~

~~[(12) (14) The Rules of Evidence do not apply to [an appeals proceeding] a hearing held by a procurement appeals panel.~~

~~(15) Part 20, Records, applies to the records involved in the process described in this section, including the decision issued by a procurement appeals panel.~~

Section 33. Section 63G-6a-1703 is amended to read:

63G-6a-1703. Requirement to pay a security deposit or post a bond -- Exceptions -- Amount -- Forfeiture of security deposit or bond.

(1) A person who files a notice of appeal under Section 63G-6a-1702 shall, before the expiration of the time provided under Subsection 63G-6a-1702(2) for filing a notice of appeal, pay a security deposit or post a bond with the office of the protest officer.

(2) The amount of a security deposit or bond required under Subsection (1) is:

(a) for an appeal relating to an invitation for bids or request for proposals and except as provided in Subsection (2)(b)(ii):

(i) \$20,000, if the total contract value is under \$500,000;

(ii) \$25,000, if the total contract value is \$500,000 or more but less than \$1,000,000;

(iii) \$50,000, if the total contract value is \$1,000,000 or more but less than \$2,000,000;

(iv) \$95,000, if the total contract value is \$2,000,000 or more but less than \$4,000,000;

(v) \$180,000, if the total contract value is \$4,000,000 or more but less than \$8,000,000;

(vi) \$320,000, if the total contract value is \$8,000,000 or more but less than \$16,000,000;

(vii) \$600,000, if the total contract value is \$16,000,000 or more but less than \$32,000,000;

(viii) \$1,100,000, if the total contract value is \$32,000,000 or more but less than \$64,000,000;

(ix) \$1,900,000, if the total contract value is \$64,000,000 or more but less than \$128,000,000;

(x) \$3,500,000, if the total contract value is \$128,000,000 or more but less than \$256,000,000;

(xi) \$6,400,000, if the total contract value is \$256,000,000 or more but less than \$512,000,000; and

(xii) \$10,200,000, if the total contract value is \$512,000,000 or more; or

(b) \$20,000, for an appeal:

(i) relating to any type of procurement process other than an invitation for bids or request for proposals;

(ii) relating to an invitation for bids or request for proposals, if the estimated total contract value cannot be determined; or

(iii) of a debarment or suspension.

(3) (a) For an appeal relating to an invitation for bids, the estimated total contract value shall be based on:

(i) the lowest ~~[responsible and]~~ responsive bid amount for the entire term of the contract, excluding any renewal period, if the bid opening has occurred;

(ii) the total budget for the procurement item for the entire term of the contract, excluding any renewal period, if bids are based on unit or rate pricing; or

(iii) if the contract is being rebid, the historical usage and amount spent on the contract over the life of the contract.

(b) For an appeal relating to a request for proposals, the estimated total contract value shall be based on:

(i) the lowest cost proposed in a response to a request for proposals, considering the entire term of the contract, excluding any renewal period, if the opening of proposals has occurred;

(ii) the total budget for the procurement item over the entire term of the contract, excluding any

renewal period, if opened cost proposals are based on unit or rate pricing; or

(iii) if the contract is being reissued, the historical usage and amount spent on the contract over the life of the contract that is being reissued.

(4) The protest officer shall:

(a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;

(b) as it relates to a security deposit:

(i) deposit the security deposit into an interest-bearing account; and

(ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the general fund of the procurement unit under Subsection (5); and

(c) as it relates to a bond:

(i) retain the bond until the protest and any appeal of the protest decision becomes final; and

(ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the general fund of the procurement unit under Subsection (5).

(5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund of the procurement unit if:

(a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and

(b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Section 34. Section 63G-6a-1802 is amended to read:

63G-6a-1802. Appeal to Utah Court of Appeals.

(1) (a) As provided in this part:

(i) a person may appeal a dismissal of an appeal by the board chair under Subsection [~~63G-6a-1706(1)~~] 63G-6a-1702(5)(b)(ii)(A);

(ii) a person who receives an adverse decision by a procurement appeals panel may appeal that decision;

(iii) subject to Subsection (2), a procurement unit, other than a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district, may appeal an adverse decision by a procurement appeals panel; and

(iv) a person who receives an adverse decision in a protest relating to a legislative procurement unit, a judicial procurement unit, a nonadopting local

government procurement unit, or a public transit district may appeal that decision[~~;~~ and].

[~~(v) a person who is debarred or suspended under Section 63G-6a-904 by a legislative procurement unit, a judicial procurement unit, a nonadopting local government procurement unit, or a public transit district may appeal the debarment or suspension.~~]

(b) A person seeking to appeal a dismissal[~~;~~ or decision[~~;~~ or debarment or suspension]] under Subsection (1)(a) shall file a notice of appeal with the Utah Court of Appeals within seven days after the dismissal[~~;~~ or decision][~~;~~ or debarment or suspension].

(2) A procurement unit may not appeal the decision of a procurement appeals panel, unless the appeal is:

(a) recommended by the protest officer involved; and

(b) except for a procurement unit that is not represented by the attorney general's office, approved by the attorney general.

(3) A person appealing a dismissal, decision, or protest[~~;~~ debarment, or suspension] under this section may not base the appeal on a ground not specified in the proceeding from which the appeal is taken.

(4) The Utah Court of Appeals:

(a) shall consider the appeal as an appellate court;

(b) may not hear the matter as a trial de novo; and

(c) may not overturn a finding, dismissal, or decision[~~;~~ or debarment or suspension,] unless the finding, dismissal, or decision, [~~or debarment or suspension~~] is arbitrary and capricious or clearly erroneous.

(5) The Utah Court of Appeals is encouraged to:

(a) give an appeal made under this section priority; and

(b) consider the appeal and render a decision in an expeditious manner.

Section 35. Section 63G-6a-2403 is amended to read:

63G-6a-2403. Applicability.

(1) This part applies to each public entity.

(2) A procurement professional is subject to this part at all times during:

(a) the procurement process; and

(b) the administration of a contract or grant.

(3) A contract administration professional is subject to this part at all times during the period the contract administration professional is:

(a) under contract with a procurement unit; and

(b) involved in:

(i) the procurement process; or

(ii) the administration of a contract or grant.

(4) This part does not apply to:

(a) an individual described in Subsection 63G-6a-2402(9)(b); [ø]

(b) any individual other than a procurement professional or contract administration professional[;]; or

(c) a taxed interlocal entity, as defined in Section 11-13-602, or a director, officer, or employee of a taxed interlocal entity.

(5) The other subsections of this section do not affect the applicability or effect of any other ethics, bribery, or other law.

Section 36. Section 63G-6a-2404.3 is enacted to read:

63G-6a-2404.3. Dividing a procurement to avoid using a standard procurement process.

(1) It is unlawful for a person knowingly to divide a single procurement into multiple smaller procurements if dividing the single procurement:

(a) is done with the intent to avoid the use of a standard procurement process that would have otherwise been required if the procurement had not been divided;

(b) constitutes unlawful conduct under Subsection 63G-6a-506(8); or

(c) is otherwise prohibited by this chapter.

(2) A violation of Subsection (1) is:

(a) a second degree felony, if the value of the procurement before being divided is \$1,000,000 or more;

(b) a third degree felony, if the value of the procurement before being divided is \$250,000 or more but less than \$1,000,000;

(c) a class A misdemeanor, if the value of the procurement before being divided is \$100,000 or more but less than \$250,000; or

(d) a class B misdemeanor, if the value of the procurement before being divided is less than \$100,000.

Section 37. Section 63G-6a-2404.7 is enacted to read:

63G-6a-2404.7. Improper action against a public officer or employee involved in the procurement process.

(1) (a) It is unlawful for a person knowingly to threaten to make a false allegation against a public officer or employee, or knowingly to threaten to take a menacing or intimidating action against a public officer or employee, with the intent to:

(i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this chapter;

(ii) influence the officer or employee to award a contract under this chapter to the person or take other action under this chapter in favor of the person; or

(iii) retaliate against the officer or employee for:

(A) not awarding a contract under this chapter to the person;

(B) issuing a decision or taking an action under this chapter that is adverse to the person; or

(C) performing a duty or responsibility the officer or employee has under this chapter.

(b) A violation of Subsection (1)(a) is a class A misdemeanor.

(2) (a) It is unlawful for a person knowingly to make a false allegation against a public officer or employee, or knowingly to take a menacing or intimidating action against a public officer or employee, with the intent to:

(i) prevent the officer or employee from performing a duty or responsibility that the officer or employee has under this chapter;

(ii) influence the officer or employee to award a contract under this chapter to the person or take other action under this chapter in favor of the person; or

(iii) retaliate against the officer or employee for:

(A) not awarding a contract under this chapter to the person;

(B) issuing a decision or taking an action under this chapter that is adverse to the person; or

(C) performing a duty or responsibility the officer or employee has under this chapter.

(b) A violation of Subsection (2)(a) is a third degree felony.

Section 38. Section 63G-6a-2407 is amended to read:

63G-6a-2407. Duty to report unlawful conduct.

(1) As used in this section, "unlawful conduct" means:

(a) conduct made unlawful under this part; or

(b) conduct, including bid rigging, improperly steering a contract to a favored vendor, exercising undue influence on an individual involved in the procurement process, or participating in collusion or other anticompetitive practices, made unlawful under other applicable law.

(2) (a) A procurement professional with actual knowledge that a person has engaged in unlawful conduct shall report the person's unlawful conduct to:

(i) the state auditor; or

(ii) the attorney general or other appropriate prosecuting attorney.

(b) An individual not subject to the requirement of Subsection (2)(a) who has actual knowledge that

a person has engaged in unlawful conduct may report the person's unlawful conduct to:

- (i) the state auditor; or
 - (ii) the attorney general or other appropriate prosecuting attorney.
- (3) A procurement professional who fails to comply with the requirement of Subsection (2)(a) is subject to any applicable disciplinary action ~~or civil penalty identified in Subsection 63G-6a-2404(5)].~~

Section 39. Section 63G-10-403 is amended to read:

63G-10-403. Department of Transportation bid or request for proposals protest settlement agreement approval and review.

- (1) As used in this section:
- (a) "Department" means the Department of Transportation created in Section 72-1-201.
- (b) "Settlement agreement" includes stipulations, consent decrees, settlement agreements, or other legally binding documents or representations resolving a dispute between the department and another party when the department is required to pay money or required to take legally binding action.
- (2) The department shall obtain the approval of the Transportation Commission or the governor or review by the Legislative Management Committee of a settlement agreement that involves a bid or request for proposal protest in accordance with this section.

(3) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might cost government entities more than \$100,000 to implement shall be presented to the Transportation Commission for approval or rejection.

(4) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might cost government entities more than \$500,000 to implement shall be presented:

- (a) to the Transportation Commission for approval or rejection; and
 - (b) to the governor for approval or rejection.
- (5) (a) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might cost government entities more than \$1,000,000 to implement shall be presented:

- (i) to the Transportation Commission for approval or rejection;
- (ii) to the governor for approval or rejection; and

(iii) if the settlement agreement is approved by the Transportation Commission and the governor, to the Legislative Management Committee.

(b) The Legislative Management Committee may recommend approval or rejection of the settlement agreement.

(6) (a) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might cost government entities more than \$100,000 to implement until the Transportation Commission has approved the agreement.

(b) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might cost government entities more than \$500,000 to implement until the Transportation Commission and the governor have approved the agreement.

(c) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with Subsection 63G-6a-1602[(7)](8), that might cost government entities more than \$1,000,000 to implement until:

- (i) the Transportation Commission has approved the agreement;
- (ii) the governor has approved the agreement; and
- (iii) the Legislative Management Committee has reviewed the agreement.

Section 40. Repealer.

This bill repeals:

Section 63G-6a-1604, Dismissal of protest not filed in accordance with requirements.

Section 63G-6a-1706, Dismissal of an appeal not filed in compliance with requirements.

Section 41. Coordinating H.B. 398 with S.B. 204 -- Technical amendments.

If this H.B. 398 and S.B. 204, Public-Private Partnerships, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication, merge the amendments in Subsection 63G-6a-702(2) to read:

"(2) (a) The request for proposals [standard procurement] process is appropriate for a procurement unit to use [for] in selecting the proposal that provides the best value or is the most advantageous to the procurement unit, including when:

- [(a) the procurement of professional services;]
- [(b) a design-build procurement;]

(i) the procurement involves a contract whose terms and conditions are to be negotiated in order to achieve the result that is the most advantageous to the procurement unit;

~~[(c) when]~~ (ii) cost is not the most important factor to be considered in making the selection that is most advantageous to the procurement unit; ~~[(e)]~~

~~[(d) when]~~ (iii) factors, ~~apart from or in addition~~ to cost, are highly significant in making the selection that is most advantageous to the procurement unit~~[-]~~; or

(iv) the procurement unit anticipates entering into a public-private partnership.

(b) The types of procurements for which it is appropriate to use the request for proposals process include:

(i) a procurement of professional services; and

(ii) a procurement of design-build or construction manager/general contractor services.”

CHAPTER 349**H. B. 400**

Passed March 9, 2017
 Approved March 24, 2017
 Effective May 9, 2017

**PILOT PROGRAM TO STUDY
 COVERAGE PARITY FOR
 AMINO ACID-BASED FORMULA**

Chief Sponsor: Edward H. Redd
 Senate Sponsor: Brian E. Shiozawa

LONG TITLE**General Description:**

This bill amends the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ requires the Public Employees' Health Plan to create a 3-year pilot program in the state employees' risk pool to cover amino acid-based elemental formula for the diagnosis or treatment of an eosinophilic gastrointestinal disorder, food protein-induced enterocolitis syndrome, severe protein allergic condition, or short bowel syndrome;
- ▶ limits coverage to formula ordered by a physician and obtained from a pharmacy;
- ▶ prohibits cost sharing for elemental formula that is less favorable to the insured than cost sharing for prescription drugs; and
- ▶ requires a report on the pilot program to the Social Services Appropriations Subcommittee.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

49-20-414, Utah Code Annotated 1953

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

Section 1. Section 49-20-414 is enacted to read:

49-20-414. Insurance coverage for amino acid-based formula.

(1) As used in this section:

(a) "Amino acid-based elemental formula" means a nutrition formula:

(i) made from individual nonallergenic amino acids that are broken down to enhance absorption and digestion; and

(ii) designed for individuals who have a dysfunctional or shortened gastrointestinal tract and are unable to tolerate and absorb whole foods or formulas composed of whole proteins, fats, or carbohydrates.

(b) "Eosinophilic gastrointestinal disorder" means a disorder characterized by having above

normal amounts of eosinophils in one or more specific places anywhere in the digestive system.

(c) "Food protein-induced enterocolitis syndrome" means a disorder characterized by an abnormal immune response to an ingested food, resulting in gastrointestinal inflammation.

(d) "Health insurer" means an insurer, as defined in Subsection 31A-22-634(1).

(e) "Order" means to communicate orally, in writing, or by electronic means.

(f) "Pharmacy" means a pharmacy licensed under Title 58, Chapter 17b, Pharmacy Practice Act.

(g) "Physician" means an individual who is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(h) "Program" means the eosinophilic gastrointestinal disorder program created in Subsection (2).

(i) "Severe protein allergic conditions" includes:

(i) eosinophilic esophagitis;

(ii) eosinophilic gastritis;

(iii) eosinophilic gastroenteritis;

(iv) eosinophilic enteritis;

(v) eosinophilic colitis; or

(vi) food protein-induced enterocolitis syndrome.

(j) "Short bowel syndrome" means malabsorption of nutrients resulting from anatomical or functional loss of a significant length of the small intestine.

(2) Beginning plan year 2017-18 and ending plan year 2019-20, the Public Employees' Benefit and Insurance Program shall offer a 3-year pilot program within the state risk pool that provides coverage for the use of an amino acid-based elemental formula, regardless of the delivery method of the formula, for the diagnosis or treatment of an eosinophilic gastrointestinal disorder, food protein-induced enterocolitis syndrome, severe protein allergic condition, or short bowel syndrome in the traditional and Star plans.

(3) Coverage offered under Subsection (2) applies to an amino acid-based elemental formula if:

(a) the formula is ordered for the enrollee by a physician;

(b) the physician indicates in the order that the formula is medically necessary; and

(c) the insured obtains the formula from a pharmacy.

(4) Coverage offered under Subsection (2) may not include cost-sharing provisions, including deductibles, copayments, co-insurance, and out-of-pocket limits, or a durational limit, that are less favorable to the insured than the cost-sharing provisions and durational limits applied by the health benefit plan to prescription drugs.

(5) (a) The purpose of the program is to study the efficacy of providing coverage for the use of an amino acid-based elemental formula and is not a mandate for coverage of an amino acid-based elemental formula within the health plans offered by the Public Employees' Benefit and Insurance Program.

(b) The Public Employees' Benefit and Insurance Program shall, on or before November 30, 2019, report to the Social Services Appropriations Subcommittee regarding the costs and benefits of the program.

(6) Under Section 63J-1-603 of the Utah Code, the Legislature intends that the cost of the program shall be paid for from funds above the minimum recommended level in the public employees' state risk pool reserve.

CHAPTER 350**H. B. 404**

Passed March 9, 2017
Approved March 24, 2017
Effective May 9, 2017

EARLY WARNING PILOT PROGRAM

Chief Sponsor: Val L. Peterson
Senate Sponsor: Ann Millner

LONG TITLE**General Description:**

This bill provides for systems to identify students in need of early intervention.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ directs the State Board of Education (board) to enhance the online data reporting tool and contract with a provider for a two-year pilot digital program;
- ▶ provides certain standards and functionality that are to be included in the enhancements to the online data reporting tool and a digital program;
- ▶ directs the board to provide a digital program to a local education agency (LEA);
- ▶ requires an LEA to pay half the cost of a digital program;
- ▶ requires an LEA to report to the board on the effectiveness of a digital program and recommendations for enhancement of the online data reporting tool;
- ▶ provides a repeal date; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to the State Board of Education -- Initiative Programs, as a one-time appropriation:
 - from the Education Fund \$125,000; and
- ▶ to the State Board of Education -- Initiative Programs, as an ongoing appropriation:
 - from the Education Fund \$250,000.

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

63I-2-253, as last amended by Laws of Utah 2016, Chapters 128, 229, 236, 271, and 318

ENACTS:

53A-1-415, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

53A-1-415, Utah Code Annotated 1953

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

Section 1. Section 53A-1-415 is enacted to read:**53A-1-415. Student intervention early warning pilot program.**

(1) As used in this section:

(a) "Board" means the State Board of Education.

(b) "Digital program" means a program that provides information for student early intervention as described in this section.

(c) "Local education agency" or "LEA" means:

- (i) a district school;
- (ii) a charter school; or
- (iii) the Utah Schools for the Deaf and the Blind.

(d) "Online data reporting tool" means a system described in Section 53A-1-605.

(2) (a) The board shall, subject to legislative appropriations:

(i) enhance the online data reporting tool and provide additional formative actionable data on student outcomes subject to Subsection (2)(c); and

(ii) select through a competitive contract process a provider to provide to an LEA a digital program as described in this section.

(b) The contract described in Subsection (2)(a)(ii) shall be for a two-year pilot program.

(c) Information collected or used by the board for purposes of enhancing the online data reporting tool in accordance with this section may not identify a student individually.

(3) The enhancement to the online data reporting tool and the digital program shall:

(a) be designed with a user-appropriate interface for use by teachers, school administrators, and parents;

(b) provide reports on a student's results at the student level on:

- (i) a national assessment;
- (ii) a local assessment; and

(iii) a statewide criterion-referenced test or online computer adaptive test described in Section 53A-1-603;

(c) have the ability to provide data from aggregate student reports based on a student's:

- (i) teacher;
- (ii) school;
- (iii) school district, if applicable; or
- (iv) ethnicity;

(d) provide a viewer with the ability to view the data described in Subsection (2)(c) on a single computer screen;

(e) have the ability to compare the performance of students, for each teacher, based on a student's:

- (i) gender;
- (ii) special needs, including primary exceptionalities;
- (iii) English proficiency;
- (iv) economic status;

- (v) migrant status;
- (vi) ethnicity;
- (vii) response to tiered intervention;
- (viii) response to tiered-intervention enrollment date;
- (ix) absence rate;
- (x) feeder school;
- (xi) type of school, including primary or secondary, public or private, Title I, or other general school-type category;
- (xii) course failures; and
- (xiii) other criteria, as determined by the board; and

(f) have the ability to load data from a local, national, or other assessment in the data's original format within a reasonable time.

(4) Subject to legislative appropriations, the online data reporting tool and digital program shall:

(a) integrate criteria for early warning indicators, including the following criteria:

- (i) discipline;
- (ii) attendance;
- (iii) behavior;
- (iv) course failures; and

(v) other criteria as determined by a local school board or charter school governing board; and

(b) provide a teacher or administrator the ability to view the early warning indicators described in Subsection (4)(a) with a student's assessment results described in Subsection (3)(b).

(5) Subject to legislative appropriations, the online data reporting tool and the digital program shall:

(a) provide data on response to intervention using existing assessments or measures that are manually added, including assessment and nonacademic measures;

(b) provide a user the ability to share interventions within a reporting environment and add comments to inform other teachers, administrators, and parents or guardians;

(c) save and share reports among different teachers and school administrators, subject to the student population information a teacher or administrator has the rights to access;

(d) automatically flag a student profile when early warning thresholds are met so that a teacher can easily identify a student who may be in need of intervention;

(e) incorporate a variety of algorithms to support student learning outcomes and provide student growth reporting by teacher;

(f) integrate response to intervention tiers and activities as filters for the reporting of individual student data and aggregated data, including by ethnicity, school, or teacher;

(g) have the ability to generate student parent or guardian communication to alert the parent or guardian of academic plans or interventions; and

(h) configure alerts based upon student academic results, including a student's performance on the previous year statewide criterion-referenced test or online computer adaptive test described in Section 53A-1-603.

(6) (a) The board shall, subject to legislative appropriations, select an LEA to receive access to a digital program through a provider described in Subsection (2)(a)(ii).

(b) An LEA that receives access to a digital program shall pay for 50% of the cost of the digital program.

(c) An LEA that receives access to a digital program shall no later than one school year after accessing a digital program report to the board in a format required by the board on the effectiveness of the digital program, positive and negative attributes of the digital program, recommendations for improving the online data reporting tool, and any other information regarding a digital program requested by the board.

(d) The board shall consider recommendations from an LEA for changes to the online data reporting tool.

(7) Information described in this section shall be used in accordance with and provided subject to:

(a) Chapter 1, Part 14, Student Data Protection Act;

(b) Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(c) Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g.

Section 2. Section 63I-2-253 is amended to read:

63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.

(1) Section 53A-1-403.5 is repealed July 1, 2017.

(2) Section 53A-1-411 is repealed July 1, 2017.

(3) Section 53A-1-415 is repealed July 1, 2019.

~~(3)~~ (4) Section 53A-1-709 is repealed July 1, 2020.

~~(4)~~ (5) Subsection 53A-1a-513(4) is repealed July 1, 2017.

~~(5)~~ (6) Section 53A-1a-513.5 is repealed July 1, 2017.

~~(6)~~ (7) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2019.

~~(7)~~ (8) Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is repealed July 1, 2017.

[48] (9) Sections 53A-24-601 and 53A-24-602 are repealed January 1, 2018.

[49] (10) (a) Subsections 53B-2a-103(2) and (4) are repealed July 1, 2019.

(b) When repealing Subsections 53B-2a-103(2) and (4), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

[49] (11) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project, is repealed July 1, 2023.

Section 3. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To State Board of Education - Initiative Programs

From Education Fund, One-time \$125,000

Schedule of Programs:

Early Warning Pilot Program \$125,000

ITEM 2

To State Board of Education - Initiative Programs

From Education Fund, Ongoing \$250,000

Schedule of Programs:

Early Warning Pilot Program \$250,000

The Legislature intends that the State Board of Education:

(1) use \$125,000 of the appropriation under this section for enhancement of the online data reporting tool as described in Section 53A-1-415; and

(2) use \$250,000 of the appropriation under this section for paying 50% of the cost for an LEA to access a digital program as described in Section 53A-1-415.

Section 4. Coordinating H.B. 404 with S.B. 220 -- Substantive and technical amendment.

If this H.B. 404 and S.B. 220, Student Assessment and School Accountability Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by:

(1) modifying Subsection 53A-1-415(3)(b)(iii) to read:

“(iii) a standards assessment described in Section 53A-1-604;” and

(2) modifying Subsection 53A-1-415(5)(h) to read:

“(h) configure alerts based upon student academic results, including a student’s performance on the previous year standards assessment described in Section 53A-1-604.”

CHAPTER 351

H. B. 414

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

**UTAH SCHOOLS FOR THE DEAF AND
THE BLIND REFERRAL AMENDMENTS**Chief Sponsor: Derrin R. Owens
Senate Sponsor: Howard A. Stephenson**LONG TITLE****General Description:**

This bill amends provisions related to educational services for an individual with a hearing loss.

Highlighted Provisions:

This bill:

- ▶ requires reporting results of a test for hearing loss to the Utah Schools for the Deaf and the Blind and an early intervention program under certain circumstances;
- ▶ requires the Utah Schools for the Deaf and the Blind to provide educational services to certain individuals; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-10-6, as last amended by Laws of Utah 2013, Chapter 132

53A-25b-301, as enacted by Laws of Utah 2009, Chapter 294

ENACTS:

26-10-12, Utah Code Annotated 1953

53A-25b-308, Utah Code Annotated 1953

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

Section 1. Section 26-10-6 is amended to read:**26-10-6. Testing of newborn infants.**

(1) Except in the case where parents object on the grounds that they are members of a specified, well-recognized religious organization whose teachings are contrary to the tests required by this section, ~~each~~ a newborn infant shall be tested for:

- (a) phenylketonuria (PKU);
- (b) other heritable disorders which may result in an intellectual or physical disability or death and for which:
 - (i) a preventive measure or treatment is available; and
 - (ii) there exists a reliable laboratory diagnostic test method;
- (c) (i) an infant born in a hospital with 100 or more live births annually, hearing loss; and

(ii) an infant born in a setting other than a hospital with 100 or more live births annually, hearing loss; and

(d) ~~[beginning October 1, 2014,]~~ critical congenital heart defects using pulse oximetry.

(2) In accordance with Section 26-1-6, the department may charge fees for:

- (a) materials supplied by the department to conduct tests required under Subsection (1);
- (b) tests required under Subsection (1) conducted by the department;
- (c) laboratory analyses by the department of tests conducted under Subsection (1); and
- (d) the administrative cost of follow-up contacts with the parents or guardians of tested infants.

(3) Tests for hearing loss ~~under~~ described in Subsection (1) shall be based on one or more methods approved by the Newborn Hearing Screening Committee, including:

- (a) auditory brainstem response;
- (b) automated auditory brainstem response; and
- (c) evoked otoacoustic emissions.

(4) Results of tests for hearing loss ~~under~~ described in Subsection (1) shall be reported to:

~~[(a) parents when results of tests for hearing loss under Subsection (1) suggest that additional diagnostic procedures or medical interventions are necessary; and]~~

~~[(b) (a) the department[-]; and~~

~~(b) when results of tests for hearing loss under Subsection (1) suggest that additional diagnostic procedures or medical interventions are necessary:~~

~~(i) a parent or guardian of the infant;~~

~~(ii) an early intervention program administered by the department in accordance with Part C of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1431 et seq.; and~~

~~(iii) the Utah Schools for the Deaf and the Blind, created in Section 53A-25b-103.~~

(5) (a) There is established the Newborn Hearing Screening Committee.

(b) The committee shall advise the department on:

- (i) the validity and cost of newborn infant hearing loss testing procedures; and
- (ii) rules promulgated by the department to implement this section.
- (c) The committee shall be composed of at least 11 members appointed by the executive director, including:

- (i) one representative of the health insurance industry;
- (ii) one pediatrician;
- (iii) one family practitioner;

(iv) one ear, nose, and throat specialist nominated by the Utah Medical Association;

(v) two audiologists nominated by the Utah Speech-Language-Hearing Association;

(vi) one representative of hospital neonatal nurseries;

(vii) one representative of the Early Intervention Baby Watch Program administered by the department;

(viii) one public health nurse;

(ix) one consumer; and

(x) the executive director or [his] the executive director's designee.

(d) Of the initial members of the committee, the executive director shall appoint as nearly as possible half to two-year terms and half to four-year terms. Thereafter, appointments shall be for four-year terms except:

(i) for those members who have been appointed to complete an unexpired term; and

(ii) as necessary to ensure that as nearly as possible the terms of half the appointments expire every two years.

(e) A majority of the members constitute a quorum, and a vote of the majority of the members present constitutes an action of the committee.

(f) The committee shall appoint a chairman from [its] the committee's membership.

(g) The committee shall meet at least quarterly.

(h) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(i) The department shall provide staff for the committee.

(6) ~~[Prior to]~~ Before implementing the test required by Subsection (1)(d), the department shall conduct a pilot program for testing newborns for critical congenital heart defects using pulse oximetry. The pilot program shall include the development of:

(a) appropriate oxygen saturation levels that would indicate a need for further medical follow-up; and

(b) the best methods for implementing the pulse oximetry screening in newborn care units.

Section 2. Section 26-10-12 is enacted to read:

26-10-12. Reporting results of a test for hearing loss.

(1) As used in this section, "health care provider" means the same as that term is defined in Section 78B-3-403.

(2) Except as provided in Subsection (3), a health care provider shall report results of a test for hearing loss to the Utah Schools for the Deaf and the Blind if:

(a) the results suggest that additional diagnostic procedures or medical interventions are necessary; and

(b) the individual tested for hearing loss is under the age of 22.

(3) A health care provider may not make the report of an individual's results described in Subsection (2) if the health care provider receives a request to not make the report from:

(a) the individual, if the individual is not a minor; or

(b) the individual's parent or guardian, if the individual is a minor.

Section 3. Section 53A-25b-301 is amended to read:

53A-25b-301. Eligibility for services of the Utah Schools for the Deaf and the Blind.

(1) Except as provided in Subsections (3) ~~[and]~~, (4), and (5), a person is eligible to receive services of the Utah Schools for the Deaf and the Blind if the person is:

(a) a resident of Utah;

(b) younger than 22 years of age;

(c) referred to the Utah Schools for the Deaf and the Blind by the person's school district of residence or a local early intervention program; and

(d) identified as deaf, blind, or deafblind through:

(i) the special education eligibility determination process; or

(ii) the Section 504 eligibility determination process.

(2) (a) In diagnosing a person younger than age three who is deafblind, the following information may be used:

(i) ophthalmological and audiological documentation;

(ii) functional vision or hearing assessments and evaluations; or

(iii) informed clinical opinion conducted by a person with expertise in deafness, blindness, or deafblindness.

(b) Informed clinical opinion shall be:

(i) included in the determination of eligibility when documentation is incomplete or not conclusive; and

(ii) based on pertinent records related to the [person's] individual's current health status and medical history, an evaluation and observations of

the ~~[person's]~~ individual's level of sensory functioning, and the needs of the family.

(3) (a) A student who qualifies for special education shall have services and placement determinations made through the IEP process.

(b) A student who qualifies for accommodations under Section 504 shall have services and placement determinations made through the Section 504 team process.

(c) A parent or legal guardian of a child who is deaf, blind, or deafblind shall make the final decision regarding placement of the child in a Utah Schools for the Deaf and the Blind program or in a school district or charter school program subject to special education federal regulations regarding due process.

(4) (a) A nonresident may receive services of the Utah Schools for the Deaf and the Blind in accordance with rules of the board.

(b) The rules shall require the payment of tuition for services provided to a nonresident.

(5) An individual is eligible to receive services from the Utah Schools for the Deaf and the Blind under circumstances described in Section 53A-25b-308.

~~[(5) (a) The board shall make rules in accordance with this chapter and]~~

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and this chapter, the board:

(a) shall make rules that determine the eligibility of students to be served by the Utah Schools for the Deaf and the Blind[-]; and

(b) ~~[The board]~~ may make rules to allow a resident of Utah who is neither deaf, blind, nor deafblind to receive services of the Utah Schools for the Deaf and the Blind if the student~~[-]~~ is younger than 22 years of age.

~~[(i) is younger than 22 years of age and has an IEP; or]~~

~~[(ii) is younger than 19 years of age.]~~

Section 4. Section 53A-25b-308 is enacted to read:

53A-25b-308. Educational services for an individual with a hearing loss.

(1) Subject to Subsection (2), the Utah Schools for the Deaf and the Blind shall provide educational services to an individual:

(a) who seeks to receive the educational services; and

(b) (i) whose results of a test for hearing loss are reported to the Utah Schools for the Deaf and the Blind in accordance with Section 26-10-6 or 26-10-12; or

(ii) who has been diagnosed with a hearing loss by a physician or an audiologist.

(2) If the individual who will receive the services described in Subsection (1) is a minor, the Utah Schools for the Deaf and the Blind may not provide the services to the individual until after receiving permission from the individual's parent or guardian.

CHAPTER 352

H. B. 416

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

**TARGETED BUSINESS INCOME
TAX CREDIT REVISIONS**

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: Brian E. Shiozawa

LONG TITLE**General Description:**

This bill modifies tax credit provisions related to enterprise zones.

Highlighted Provisions:

This bill:

- ▶ modifies the targeted business income tax credit program;
- ▶ modifies the application requirements for businesses to apply for a targeted business income tax credit;
- ▶ modifies the Governor's Office of Economic Development (GOED) oversight and reporting responsibilities in administering the targeted business income tax credit program;
- ▶ limits the amount of tax credits that may be awarded each year;
- ▶ defines terms; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

63N-2-302, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-303, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-304, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-305, as last amended by Laws of Utah 2016, Third Special Session, Chapter 1

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

Section 1. Section 63N-2-302 is amended to read:**63N-2-302. Definitions.**

As used in this part:

~~[(1) "Allocated cap amount" means the total amount of the targeted business income tax credit that a business applicant is allowed to claim for a taxable year that represents a pro rata share of the total amount of \$300,000 for each fiscal year allowed under Subsection 63N-2-305(2).]~~

~~[(2) (1) "Business applicant" means a business that:~~

~~(a) is a [(-i)] claimant[(-ii)], estate[(-or-iii)], or trust; and~~

(b) meets the criteria established in Section 63N-2-304.

~~[(3) (2) (a) Except as provided in Subsection [(3) (2)(b), "claimant" means a resident person or a nonresident person.~~

(b) "Claimant" does not include an estate or trust.

~~[(4) (3) "Community investment project" means a project that includes one or more of the following criteria in addition to the normal operations of the business applicant:~~

(a) ~~[substantial] significant new employment; or~~

(b) ~~significant new capital development[(-or)].~~

~~[(c) a combination of both Subsections (4)(a) and (b).]~~

~~[(5) "Community investment project period" means the total number of years that the office determines a business applicant is eligible for a targeted business income tax credit for each community investment project.]~~

~~[(6) (4) "Enterprise zone" means an area within a county or municipality that has been designated as an enterprise zone by the office under Part 2, Enterprise Zone Act.~~

~~[(7) (5) "Estate" means a [nonresident estate or a resident estate.] resident estate or a nonresident estate.~~

~~[(8) "Local zone administrator" means a person:]~~

~~[(a) designated by the governing authority of the county or municipal applicant as the local zone administrator in an enterprise zone application; and]~~

~~[(b) approved by the office as the local zone administrator.]~~

~~[(9) (6) "Refundable tax credit" [or "tax credit"] means a tax credit that a claimant, estate, or trust may claim:~~

(a) as provided by statute; and

(b) regardless of whether, for the taxable year for which the claimant, estate, or trust claims the tax credit, the claimant, estate, or trust has a tax liability under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(ii) Title 59, Chapter 10, Individual Income Tax Act.

~~[(10) (7) "Targeted business income tax credit" means a refundable tax credit available under [Section 63N-2-305] this part.~~

~~[(11) (8) "Targeted business income tax credit eligibility [form] certificate" means a document [provided annually to the business applicant by the office that complies with the requirements of Subsection 63N-2-305(8).] provided by the office to a business applicant before the applicant may claim a targeted business income tax credit under this part.~~

~~[(12) (9) "Trust" means a [nonresident] resident trust or a [resident] nonresident trust.~~

Section 2. Section 63N-2-303 is amended to read:

63N-2-303. Powers of the office.

The office shall:

(1) monitor the implementation and operation of this part and conduct a continuing evaluation of the effectiveness of the targeted business income tax credit in bringing significant new employment and significant new capital development to rural communities;

(2) determine a business entity's eligibility for a targeted business income tax credit award;

(3) ensure that tax credits are only awarded under this part to a business applicant that has satisfied performance benchmarks as determined by the office;

(4) ensure that the amount of targeted business income tax credit awarded to a business applicant through a targeted business income tax credit eligibility certificate is no more than \$100,000 for the business applicant's taxable year;

(5) ensure that the aggregate amount of targeted business income tax credits awarded to business applicants through targeted business income tax credit eligibility certificates is no more than \$300,000 for each fiscal year;

(6) as part of the annual written report described in Section 63N-1-301, prepare an annual evaluation that provides:

(a) the identity of each business applicant that was provided a targeted business income tax credit eligibility certificate by the office during the year of the annual report; and

(b) the total amount awarded in targeted business income tax credit for each development zone; and

(7) ~~in~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and ~~for purposes of this part, the office shall~~ in accordance with the provisions of this part, make rules regarding:

~~(1) to determine~~ (a) the determination of what constitutes:

~~(a) substantial~~ (i) significant new employment;

~~(b)~~ (ii) significant new capital development; and

~~(c) a~~ (iii) a community investment project; ~~and (2) to establish a formula for determining the allocated cap amount for each business applicant.~~

(b) the form and content of an application for a targeted business income tax credit eligibility certificate under this part;

(c) documentation or other requirements for a business applicant to receive a targeted business income tax credit eligibility certificate under this part; and

(d) administration of targeted business income tax credit awards and the issuing of targeted

business income tax credit eligibility certificates, including relevant timelines and deadlines.

Section 3. Section 63N-2-304 is amended to read:

63N-2-304. Application for targeted business income tax credit.

(1) (a) For ~~taxable years~~ a taxable year beginning on or after January 1, ~~2002~~ 2017, a business applicant may ~~elect to claim a targeted business income tax credit available under Section 63N-2-305~~ apply to the office for a targeted business income tax credit eligibility certificate under this part if the business applicant:

(i) is located in:

(A) an enterprise zone; and

(B) a county with ~~(I)~~ a population of less than 25,000; ~~and (II) an unemployment rate that for six months or more of each calendar year is at least one percentage point higher than the state average;~~

(ii) meets the requirements of Section 63N-2-212;

(iii) provides ~~(A)~~ a community investment project within the enterprise zone; and

~~(B) a portion of the community investment project during each taxable year for which the business applicant claims the targeted business tax incentive; and~~

(iv) ~~in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~ is not engaged in the following ~~, as defined by the State Tax Commission by rule~~:

(A) construction;

(B) retail trade; or

(C) public utility activities.

(b) For a taxable year for which a business applicant claims a targeted business income tax credit available under this part, the business applicant may not claim or carry forward a tax credit available under Section 59-7-610, 59-10-1007, or 63N-2-213.

(2) (a) A business applicant seeking to claim a targeted business income tax credit under this part shall ~~file~~ submit an application ~~as provided in Subsection (2)(b) with the local zone administrator~~ to the office by no later than June 1 of the taxable year in which the business applicant is seeking to claim ~~a~~ the targeted business income tax credit.

(b) The application described in Subsection (2)(a) shall include:

(i) any documentation required by the ~~local zone administrator~~ office to demonstrate that the business applicant meets the requirements of Subsection (1);

(ii) a plan developed by the business applicant that ~~outlines~~ describes:

(A) if the community investment project includes ~~substantial~~ significant new employment, the

projected number and anticipated wage level of the jobs that the business applicant plans to create as the basis for qualifying for a targeted business income tax credit;

(B) if the community investment project includes significant new capital development, ~~[a description of]~~ the capital development the business applicant plans to make as the basis for qualifying for a targeted business income tax credit; ~~and~~

(C) ~~[a description of]~~ how the business applicant's plan coordinates with~~:(L)~~ the goals of the enterprise zone in which the business applicant is providing a community investment project; ~~and~~

~~[(L)]~~ (D) how the business applicant's plan coordinates with the overall economic development goals of the county or municipality in which the business applicant is providing a community investment project; ~~and~~

(E) any matching funds that will be used for the community investment project;

(F) how any targeted business income tax credit incentives that were awarded in a previous year have been used for the community investment project by the business applicant; and

(G) the requested amount of the targeted business income tax credit; and

(iii) any additional information required by the ~~[local zone administrator]~~ office.

(3) (a) The ~~[local zone administrator]~~ office shall:

(i) evaluate an application filed under Subsection (2); ~~and~~

(ii) determine whether the business applicant is potentially eligible for a targeted business income tax credit~~[-]~~; and

(iii) if the business applicant is potentially eligible for a targeted business income tax credit, determine performance benchmarks and the deadline for meeting those benchmarks that the business applicant must achieve before the office awards a targeted business income tax credit to the business applicant.

(b) If the ~~[local zone administrator]~~ office determines that the business applicant is potentially eligible for a targeted business income tax credit, the ~~[local zone administrator-]~~ office shall:

(i) ~~[certify that the]~~ notify the business applicant that the business applicant is eligible for ~~[the]~~ a targeted business income tax credit if the business applicant meets the performance benchmarks by the deadline as determined by the office as described in Subsection (3)(a)(iii);

~~[(ii)]~~ structure the targeted business income tax credit for the business applicant in accordance with Section 63N-2-305; and

(ii) notify the business applicant of the potential amount of the targeted business income tax credit that may be awarded to the business applicant,

which amount may be no more than \$100,000 for the business applicant in a taxable year; and

(iii) monitor a business applicant to ensure compliance with this section~~[-]~~ and to measure the business applicant's progress in meeting performance benchmarks.

(c) If the business applicant provides evidence to the office, in a form prescribed by the office, that the business applicant has achieved the performance benchmarks by the deadline as determined by the office as described in Subsection (3)(a)(iii), the office shall:

(i) certify that the business applicant is eligible for a targeted business income tax credit;

(ii) issue a targeted business income tax credit eligibility certificate to the business applicant in accordance with Section 63N-2-305; and

(iii) provide a duplicate copy of the targeted business income tax credit eligibility certificate to the State Tax Commission.

~~[(4) A local zone administrator shall report to the office by no later than June 30 of each year:]~~

~~[(a) (i) any application approved by the local zone administrator during the last fiscal year; and]~~

~~[(ii) the information established in Subsections 63N-2-305(4)(a) through (d) for each new business applicant; and]~~

~~[(b) (i) the status of any existing business applicants that the local zone administrator monitors; and]~~

~~[(ii) any information required by the office to determine the status of an existing business applicant.]~~

~~[(5) (a) By July 15 of each year, the department shall notify the local zone administrator of the allocated cap amount that each business applicant that the local zone administrator monitors is eligible to claim.]~~

~~[(b) By September 15 of each year, the local zone administrator shall notify, in writing, each business applicant that the local zone administrator monitors of the allocated cap amount determined by the office under Subsection (5)(a) that the business applicant is eligible to claim for a taxable year.]~~

Section 4. Section 63N-2-305 is amended to read:

63N-2-305. Targeted business income tax credit structure -- Revenue and Taxation Interim Committee study.

(1) A business applicant that is certified and issued a targeted business income tax credit eligibility certificate by the office under Subsection 63N-2-304(3) ~~[and issued a targeted business tax credit eligibility form by the office under Subsection (8)]~~ may claim a refundable tax credit in the amount specified on the targeted business income tax credit eligibility certificate:

(a) against the business applicant's tax liability under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(ii) Title 59, Chapter 10, Individual Income Tax Act; and

(b) subject to requirements and limitations provided by this part.

(2) The total amount of the targeted business income tax credits allowed under this part for all business applicants may not exceed \$300,000 in any fiscal year.

(3) ~~[(a)]~~ A targeted business income tax credit allowed under this part for each community investment project provided by a business applicant may not: ~~(i) be claimed by a business applicant for more than seven consecutive taxable years from the date the business applicant first qualifies for a targeted business income tax credit on the basis of a community investment project;~~ ~~(ii) be carried forward or carried back;~~

~~[(iii) exceed \$100,000 in total amount for the community investment project period during which the business applicant is eligible to claim a targeted business income tax credit; or]~~

~~[(iv) exceed in any year that the targeted business income tax credit is claimed the lesser of:]~~

~~[(A) 50% of the maximum amount allowed by the local zone administrator; or]~~

~~[(B) the allocated cap amount determined by the office under Subsection 63N-2-304(5).]~~

~~[(b) A business applicant may apply to the local zone administrator to claim a targeted business income tax credit allowed under this part for each community investment project provided by the business applicant as the basis for its eligibility for a targeted business income tax credit.]~~

~~[(4) Subject to other provisions of this section, the local zone administrator shall establish for each business applicant that qualifies for a targeted business income tax credit:]~~

~~[(a) criteria for maintaining eligibility for the targeted business income tax credit that are reasonably related to the community investment project that is the basis for the business applicant's targeted business income tax credit;]~~

~~[(b) the maximum amount of the targeted business income tax credit the business applicant is allowed for the community investment project period;]~~

~~[(c) the time period over which the total amount of the targeted business income tax credit may be claimed;]~~

~~[(d) the maximum amount of the targeted business income tax credit that the business applicant will be allowed to claim each year; and]~~

~~[(e) requirements for a business applicant to report to the local zone administrator specifying:]~~

~~[(i) the frequency of the business applicant's reports to the local zone administrator, which shall be made at least quarterly; and]~~

~~[(ii) the information needed by the local zone administrator to monitor the business applicant's compliance with this Subsection (4) or Section 63N-2-304 that shall be included in the report.]~~

~~[(5) In accordance with Subsection (4)(c), a business applicant allowed a targeted business income tax credit under this part shall report to the local zone administrator:]~~

~~[(6) The amount of a targeted business income tax credit that a business applicant is allowed to claim for a taxable year shall be reduced by 25% for each quarter in which the office or the local zone administrator determines that the business applicant has failed to comply with a requirement of Subsection (3) or Section 63N-2-304.]~~

~~[(7) (4) The office [or local zone administrator] may audit a business applicant to ensure:~~

~~(a) eligibility for a targeted business income tax credit; [or] and~~

~~(b) compliance with this part, including Subsection (3) or Section 63N-2-304.~~

~~[(8) The office shall issue a targeted business income tax credit eligibility form in a form jointly developed by the State Tax Commission and the office no later than 30 days after the last day of the business applicant's taxable year showing:]~~

~~[(a) the maximum amount of the targeted business income tax credit that the business applicant is eligible for that taxable year;]~~

~~[(b) any reductions in the maximum amount of the targeted business income tax credit because of failure to comply with a requirement of Subsection (3) or Section 63N-2-304;]~~

~~[(c) the allocated cap amount that the business applicant may claim for that taxable year; and]~~

~~[(d) the actual amount of the targeted business income tax credit that the business applicant may claim for that taxable year.]~~

~~[(9) (5) (a) A business applicant shall retain the targeted business income tax credit eligibility [form] certificate provided by the office under [this] Subsection [(9)] 63N-2-304(3).~~

~~(b) The State Tax Commission may audit a business applicant to ensure:~~

~~(i) eligibility for a targeted business income tax credit; [or] and~~

~~(ii) compliance with this part, including Subsection (3) [or] and Section 63N-2-304.~~

~~[(10) (6) (a) On or before November 30, 2018, and every three years after 2018, the Revenue and Taxation Interim Committee shall review the tax credit provided by this section and make recommendations concerning whether the tax credit should be continued, modified, or repealed.~~

~~(b) In conducting the review required by Subsection [(10)] (6)(a), the Revenue and Taxation Interim Committee shall:~~

(i) schedule time on at least one committee agenda to conduct the review;

(ii) invite state agencies, individuals, and organizations concerned with the credit under review to provide testimony;

(iii) ensure that the recommendations described in this section include an evaluation of:

(A) the cost of the tax credit to the state;

(B) the purpose and effectiveness of the tax credit; and

(C) the extent to which the state benefits from the tax credit; and

(iv) undertake other review efforts as determined by the chairs of the Revenue and Taxation Interim Committee.

Section 5. Retrospective operation.

This bill has retrospective operation for a taxable year beginning on or after January 1, 2017.

CHAPTER 353**H. B. 426**

Passed March 9, 2017
Approved March 24, 2017
Effective May 9, 2017

STEM AMENDMENTS

Chief Sponsor: Val L. Peterson
Senate Sponsor: Brian E. Shiozawa

LONG TITLE**General Description:**

This bill modifies provisions related to the STEM Action Center.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates an expendable special revenue fund called the "STEM Action Center Foundation Fund";
- ▶ provides for treating a portion of money in the fund as an endowment fund such that the principal of the fund is not expended;
- ▶ modifies provisions related to the STEM Action Center creating a foundation; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63N-12-202, as renumbered and amended by Laws of Utah 2015, Chapter 283
63N-12-204, as last amended by Laws of Utah 2016, Chapter 139
63N-12-210, as last amended by Laws of Utah 2016, Chapter 139

ENACTS:

63N-12-204.5, Utah Code Annotated 1953

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

Section 1. Section 63N-12-202 is amended to read:**63N-12-202. Definitions.**

As used in this part:

(1) "Board" means the STEM Action Center Board created in Section 63N-12-203.

(2) "Director" means the director appointed by the board to oversee the administration of the STEM Action Center.

(3) "Educator" ~~[has the same meaning as]~~ means the same as that term is defined in Section 53A-6-103.

(4) "Foundation" means a foundation established as described in Subsections 63N-12-204(3) and (4).

(5) "Fund" means the STEM Action Center Foundation Fund created in Section 63N-12-204.5.

(6) "High quality professional development" means professional development that meets high quality standards developed by the State Board of Education.

(7) "Office" means the Governor's Office of Economic Development.

(8) "Provider" means a provider^[,] selected ~~[by staff of the board and staff of the Utah State Board of Education, on behalf of the board]~~ on behalf of the board by the staff of the board and the staff of the State Board of Education:

(a) through a request for proposals process; or

(b) through a direct award or sole source procurement process for a pilot described in Section 63N-12-206.

(9) "STEM" means science, technology, engineering, and mathematics.

(10) "STEM Action Center" means the center described in Section 63N-12-205.

Section 2. Section 63N-12-204 is amended to read:**63N-12-204. STEM Action Center Board -- Duties.**

(1) The board shall:

(a) establish a STEM Action Center to:

(i) coordinate STEM activities in the state among the following stakeholders:

(A) the State Board of Education;

(B) school districts and charter schools;

(C) the State Board of Regents;

(D) institutions of higher education;

(E) parents of home-schooled students;

(F) other state agencies; and

(G) business and industry representatives;

(ii) align public education STEM activities with higher education STEM activities; and

(iii) create and coordinate best practices among public education and higher education;

(b) with the consent of the Senate, appoint a director to oversee the administration of the STEM Action Center;

(c) select a physical location for the STEM Action Center;

(d) strategically engage industry and business entities to cooperate with the board:

(i) to support high quality professional development and provide other assistance for educators and students; and

(ii) to provide private funding and support for the STEM Action Center;

(e) give direction to the STEM Action Center and the providers selected through a request for proposals process pursuant to this part; and

- (f) work to meet the following expectations:
- (i) that at least 50 educators are implementing best practice learning tools in classrooms;
 - (ii) performance change in student achievement in each classroom participating in a STEM Action Center project; and
 - (iii) that students from at least 50 schools in the state participate in the STEM competitions, fairs, and camps described in Subsection 63N-12-205(2)(d).
- (2) The board may:
- (a) enter into contracts for the purposes of this part;
 - (b) apply for, receive, and disburse funds, contributions, or grants from any source for the purposes set forth in this part;
 - (c) employ, compensate, and prescribe the duties and powers of individuals necessary to execute the duties and powers of the board;
 - (d) prescribe the duties and powers of the STEM Action Center providers; and
 - (e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to administer this part.
- (3) The board may establish a foundation to assist in:
- (a) the development and implementation of the programs authorized under this part to promote STEM education; and
 - (b) implementation of other STEM education objectives described in this part.
- (4) A foundation established by the board under Subsection (3):
- (a) may solicit and receive contributions from a private organization for STEM education objectives described in this part;
 - (b) shall comply with ~~[Title 51, Chapter 7, State Money Management Act]~~ the requirements described in Section 63N-12-204.5;
 - (c) does not have power or authority to incur contractual obligations or liabilities that constitute a claim against public funds;
 - (d) may not exercise executive or administrative authority over the programs or other activities described in this part, except to the extent specifically authorized by the board;
 - (e) shall provide the board with information detailing transactions and balances ~~[of funds managed for the board]~~ associated with the foundation; and
 - (f) may not:
 - (i) engage in lobbying activities;
 - (ii) attempt to influence legislation; or

(iii) participate in any campaign activity for or against:

(A) a political candidate; or

(B) an initiative, referendum, proposed constitutional amendment, bond, or any other ballot proposition submitted to the voters.

~~[(5) Money donated to a foundation established under Subsection (3) may be accounted for in an expendable special revenue fund.]~~

Section 3. Section 63N-12-204.5 is enacted to read:

63N-12-204.5. STEM Action Center Foundation Fund.

(1) There is created an expendable special revenue fund known as the "STEM Action Center Foundation Fund."

(2) The director shall administer the fund under the direction of the board.

(3) Money may be deposited into the fund from a variety of sources, including transfers, grants, private foundations, individual donors, gifts, bequests, legislative appropriations, and money made available from any other source.

(4) Money collected by a foundation described in Subsections 63N-12-204(3) and (4) shall be deposited into the fund.

(5) Any portion of the fund may be treated as an endowment fund such that the principal of that portion of the fund is held in perpetuity on behalf of the STEM Action Center.

(6) The state treasurer shall invest the money in the fund according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from those investments shall be deposited into the fund.

(7) The director, under the direction of the board, may expend money from the fund for the purposes described in this part.

Section 4. Section 63N-12-210 is amended to read:

63N-12-210. Acquisition of STEM education high quality professional development.

(1) The STEM Action Center ~~[shall]~~ may, through a request for proposals process, select technology providers for the purpose of providing a STEM education high quality professional development application.

(2) The high quality professional development application described in Subsection (1) shall:

(a) allow the State Board of Education, a school district, or a school to define the application's input and track results of the high quality professional development;

(b) allow educators to access automatic tools, resources, and strategies, including instructional materials with integrated STEM content;

(c) allow educators to work in online learning communities, including giving and receiving feedback via uploaded video;

(d) track and report data on the usage of the components of the application's system and the relationship to improvement in classroom instruction;

(e) include video examples of highly effective STEM education teaching that:

(i) cover a cross section of grade levels and subjects;

(ii) under the direction of the State Board of Education, include videos of highly effective Utah STEM educators; and

(iii) contain tools to help educators implement what they have learned; and

(f) allow for additional STEM education video content to be added.

(3) In addition to the high quality professional development application described in Subsections (1) and (2), the STEM Action Center may create STEM education hybrid or blended high quality professional development that allows for face-to-face applied learning.

CHAPTER 354**H. B. 431**

Passed March 9, 2017
 Approved March 24, 2017
 Effective May 9, 2017

**GOVERNMENT EMPLOYEES
 REIMBURSEMENT AMENDMENTS**

Chief Sponsor: Tim Quinn
 Senate Sponsor: Kevin T. Van Tassell

LONG TITLE**General Description:**

This bill prohibits government officers or employees from making personal purchases with public funds.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a government officer or employee from:
 - making a personal use expenditure with public funds; and
 - incurring indebtedness or liability on behalf of, or payable by, a governmental entity, institution of higher education, or political subdivision for a personal use expenditure;
- ▶ establishes administrative penalties for government officers or employees making personal use expenditures with public funds;
- ▶ prohibits a government officer or employee who has been convicted of misusing public money from disbursing public funds or accessing public accounts; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-8-402, as last amended by Laws of Utah 1999, Chapter 106

ENACTS:

11-55-101, Utah Code Annotated 1953
 11-55-102, Utah Code Annotated 1953
 11-55-103, Utah Code Annotated 1953
 11-55-104, Utah Code Annotated 1953
 53B-7-106, Utah Code Annotated 1953
 63A-3-110, Utah Code Annotated 1953

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

Section 1. Section 11-55-101 is enacted to read:**CHAPTER 55. PERSONAL USE
 EXPENDITURES FOR POLITICAL
 SUBDIVISION OFFICERS AND
 EMPLOYEES****11-55-101. Title.**

This chapter is known as "Personal Use Expenditures for Political Subdivision Officers and Employees."

Section 2. Section 11-55-102 is enacted to read:**11-55-102. Definitions.**

As used in this chapter:

(1) "Employee" means a person who is not an elected or appointed officer and who is employed on a full- or part-time basis by a political subdivision.

(2) "Officer" means a person who is elected or appointed to an office or position within a political subdivision.

(3) (a) "Personal use expenditure" means an expenditure made without the authority of law that:

(i) is not directly related to the performance of an activity as an officer or employee of a political subdivision;

(ii) primarily furthers a personal interest of an officer or employee of a political subdivision or the family, a friend, or an associate of an officer or employee of a political subdivision; and

(iii) would constitute taxable income under federal law.

(b) "Personal use expenditure" does not include:

(i) a de minimis or incidental expenditure;

(ii) a monthly vehicle allowance; or

(iii) a government vehicle that an officer or employee uses to travel to and from the officer or employee's official duties, including an allowance for personal use as provided by a written policy of the political subdivision.

(4) "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, local district, special service district, entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.

(5) "Public funds" means the same as that term is defined in Section 51-7-3.

Section 3. Section 11-55-103 is enacted to read:**11-55-103. Personal use expenditures prohibited.**

(1) An officer or employee of a political subdivision may not:

(a) use public funds for a personal use expenditure; or

(b) incur indebtedness or liability on behalf of, or payable by, a political subdivision for a personal use expenditure.

(2) If a political subdivision determines that a political subdivision officer or employee has intentionally made a personal use expenditure in violation of Subsection (1), the political subdivision shall:

(a) require the political subdivision officer or employee to deposit the amount of the personal use expenditure into the fund or account from which:

(i) the personal use expenditure was disbursed; or

(ii) payment for the indebtedness or liability for a personal use expenditure was disbursed;

(b) require the political subdivision officer or employee to remit an administrative penalty in an amount equal to 50% of the personal use expenditure to the political subdivision; and

(c) deposit the money received under Subsection (2)(b) into the operating fund of the political subdivision.

(3) (a) Any officer or employee of a political subdivision who has been found by the political subdivision to have made a personal use expenditure in violation of Subsection (1) may appeal the finding of the political subdivision.

(b) The political subdivision shall establish an appeal process for an appeal made under Subsection (3)(a).

(4) (a) Subject to Subsection (4)(b), a political subdivision may withhold all or a portion of the wages of an officer or employee of the political subdivision who has violated Subsection (1) until the requirements of Subsection (2) have been met.

(b) If the officer or employee has requested an appeal under Subsection (3), the political subdivision may only withhold the wages of the officer or employee after the appeal process has confirmed that the officer or employee violated Subsection (1).

Section 4. Section 11-55-104 is enacted to read:

11-55-104. Relation to other actions -- Prohibition on disbursing funds and accessing accounts.

(1) Nothing in this chapter:

(a) immunizes a political subdivision officer or employee from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure; or

(b) limits or supersedes the authority of a political subdivision to set compensation in accordance with Section 10-3-818.

(2) A political subdivision officer or employee who has been convicted of misusing public money under Section 76-8-402 may not disburse public funds or access public accounts.

Section 5. Section 53B-7-106 is enacted to read:

53B-7-106. Personal use expenditures for officers and employees of institutions of higher education.

(1) As used in this section:

(a) "Employee" means a person who is not an elected or appointed officer and who is employed on a full- or part-time basis by an institution of higher education.

(b) "Institution of higher education" means an institution that is part of the state system of higher education as described in Section 53B-1-102.

(c) "Officer" means a person who is elected or appointed to an office or position within an institution of higher education.

(d) (i) "Personal use expenditure" means an expenditure made without the authority of law that:

(A) is not directly related to the performance of an activity as an officer or employee of an institution of higher education;

(B) primarily furthers a personal interest of an officer or employee of an institution of higher education or the family, a friend, or an associate of an officer or employee of an institution of higher education; and

(C) would constitute taxable income under federal law.

(ii) "Personal use expenditure" does not include:

(A) a de minimis or incidental expenditure; or

(B) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer or employee's official duties, including a minimal allowance for a detour as provided by the institution of higher education.

(e) "Public funds" means the same as that term is defined in Section 51-7-3.

(2) An officer or employee of an institution of higher education may not:

(a) use public funds for a personal use expenditure; or

(b) incur indebtedness or liability on behalf of, or payable by, an institution of higher education for a personal use expenditure.

(3) If the institution of higher education determines that an officer or employee of an institution of higher education has intentionally made a personal use expenditure in violation of Subsection (2), the institution of higher education shall:

(a) require the officer or employee to deposit the amount of the personal use expenditure into the fund or account from which:

(i) the personal use expenditure was disbursed; or

(ii) payment for the indebtedness or liability for a personal use expenditure was disbursed;

(b) require the officer or employee to remit an administrative penalty in an amount equal to 50% of the personal use expenditure to the institution of higher education; and

(c) deposit the money received under Subsection (3)(b) into the operating fund of the institution of higher education.

(4) (a) Any officer or employee of an institution of higher education who has been found by the institution of higher education to have made a

personal use expenditure in violation of Subsection (2) may appeal the finding of the institution of higher education.

(b) The institution of higher education shall establish an appeal process for an appeal made under Subsection (4)(a).

(5) (a) Subject to Subsection (5)(b), an institution of higher education may withhold all or a portion of the wages of an officer or employee of the institution of higher education who has violated Subsection (2) until the requirements of Subsection (3) have been met.

(b) If the officer or employee has requested an appeal under Subsection (4), the institution of higher education may only withhold the wages of the officer or employee after the appeal process has confirmed that the officer or employee violated Subsection (2).

(6) Nothing in this chapter immunizes an officer or employee of an institution of higher education from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure.

(7) An officer or employee of an institution of higher education who has been convicted of misusing public money under Section 76-8-402 may not disburse public funds or access public accounts.

Section 6. Section 63A-3-110 is enacted to read:

63A-3-110. Personal use expenditures for state officers and employees.

(1) As used in this section:

(a) "Employee" means a person who is not an elected or appointed officer and who is employed on a full- or part-time basis by a governmental entity.

(b) "Governmental entity" means:

(i) an executive branch agency of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the State Board of Education, and the State Board of Regents;

(ii) the Office of the Legislative Auditor General, the Office of the Legislative Fiscal Analyst, the Office of Legislative Research and General Counsel, the Legislature, and legislative committees;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) independent state entities created under Title 63H, Independent State Entities; or

(v) the Utah Science Technology and Research Governing Authority created under Section 63M-2-301.

(c) "Officer" means a person who is elected or appointed to an office or position within a governmental entity.

(d) (i) "Personal use expenditure" means an expenditure made without the authority of law that:

(A) is not directly related to the performance of an activity as a state officer or employee;

(B) primarily furthers a personal interest of a state officer or employee or a state officer's or employee's family, friend, or associate; and

(C) would constitute taxable income under federal law.

(ii) "Personal use expenditure" does not include:

(A) a de minimis or incidental expenditure; or

(B) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer or employee's official duties, including a minimal allowance for a detour as provided by the state.

(e) "Public funds" means the same as that term is defined in Section 51-7-3.

(2) A state officer or employee may not:

(a) use public funds for a personal use expenditure; or

(b) incur indebtedness or liability on behalf of, or payable by, a governmental entity for a personal use expenditure.

(3) If the Division of Finance or the responsible governmental entity determines that a state officer or employee has intentionally made a personal use expenditure in violation of Subsection (2), the governmental entity shall:

(a) require the state officer or employee to deposit the amount of the personal use expenditure into the fund or account from which:

(i) the personal use expenditure was disbursed; or

(ii) payment for the indebtedness or liability for a personal use expenditure was disbursed;

(b) require the state officer or employee to remit an administrative penalty in an amount equal to 50% of the personal use expenditure to the Division of Finance; and

(c) deposit the money received under Subsection (3)(b) into the General Fund.

(4) (a) Any state officer or employee who has been found by a governmental entity to have made a personal use expenditure in violation of Subsection (2) may appeal the finding of the governmental entity.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Finance shall make rules regarding an appeal process for an appeal made under Subsection (4)(a), including the designation of an appeal authority.

(5) (a) Subject to Subsection (5)(b), the Division of Finance may withhold all or a portion of the wages of a state officer or employee who has violated Subsection (2) until the requirements of Subsection (3) have been met.

(b) If the state officer or employee has requested an appeal under Subsection (4), the Division of Finance may only withhold the wages of the officer or employee after the appeal authority described in Subsection (4)(b) has confirmed that the officer or employee violated Subsection (2).

(6) Nothing in this chapter immunizes a state officer or employee from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure.

(7) A state officer or employee who has been convicted of misusing public money under Section 76-8-402 may not disburse public funds or access public accounts.

Section 7. Section 76-8-402 is amended to read:

76-8-402. Misusing public money.

(1) Every public officer of this state or a political subdivision, or of any county, city, town, precinct, or district of this state, and every other person charged, either by law or under contract, with the receipt, safekeeping, transfer, disbursement, or use of public money commits an offense if the officer or other charged person:

(a) appropriates the money or any portion of it to his own use or benefit or to the use or benefit of another without authority of law;

(b) loans or transfers the money or any portion of it without authority of law;

(c) fails to keep the money in his possession until disbursed or paid out by authority of law;

(d) unlawfully deposits the money or any portion in any bank or with any other person;

(e) knowingly keeps any false account or makes any false entry or erasure in any account of or relating to the money;

(f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account;

(g) willfully refuses or omits to pay over, on demand, any public money in his hands, upon the presentation of a draft, order, or warrant drawn upon such money by competent authority;

(h) willfully omits to transfer the money when the transfer is required by law; or

(i) willfully omits or refuses to pay over, to any officer or person authorized by law to receive it, any money received by him under any duty imposed by law so to pay over the same.

(2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the second degree if:

(a) the value of the money exceeds \$5,000;

(b) the amount of the false account exceeds \$5,000;

(c) the amount falsely entered exceeds \$5,000;

(d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000; or

(e) the amount falsely erased, fraudulently concealed, destroyed, obliterated, or falsified in the account exceeds \$5,000.

(3) In addition to the penalty described in Subsection (2), a public officer who violates Subsection (1):

(a) is subject to the penalties described in Section 76-8-404[-]; and

(b) may not disburse public funds or access public accounts.

CHAPTER 355**S. B. 9**

Passed March 7, 2017
 Approved March 24, 2017
 Effective March 24, 2017
 (Exception clause in Section 9)

**REVENUE BOND AND CAPITAL
 FACILITIES AMENDMENTS**

Chief Sponsor: Wayne A. Harper
 House Sponsor: Gage Froerer

LONG TITLE**General Description:**

This bill authorizes certain state agencies and institutions to issue revenue bonds and amends provisions relating to capital facilities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides for the appointment of a director of the State Building Board;
- ▶ modifies the State Building Board's rulemaking authority;
- ▶ exempts facility programming from certain appropriations requirements;
- ▶ authorizes the State Building Ownership Authority to issue revenue bonds as follows:
 - up to \$5,451,800 for constructing a southwest Salt Lake County liquor store; and
 - up to \$5,451,800 for constructing a Farmington liquor store; and
- ▶ authorizes the Board of Regents to issue revenue bonds as follows:
 - up to \$8,250,000 for constructing an expansion of the University Guest House at the University of Utah;
 - up to \$4,700,000 for constructing an expansion of the Legend Solar Stadium at Dixie State University; and
 - up to \$190,000,000 for constructing the Medical Education and Discovery Complex and Rehabilitation Hospital at the University of Utah; and
 - up to \$16,000,000 for constructing the Human Performance Center at Dixie State University;
- ▶ authorizes the Dixie Applied Technology College to enter into a lease-purchase agreement to provide up to \$9,505,300 for the Industrial Building for the Dixie Applied Technology College; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

63A-5-101, as last amended by Laws of Utah 2013, Chapter 310
 63A-5-103, as last amended by Laws of Utah 2016, Chapter 298
 63A-5-104, as last amended by Laws of Utah 2016, Chapter 298

ENACTS:

63A-5-100, Utah Code Annotated 1953
 63A-5-101.5, Utah Code Annotated 1953
 63B-27-101, Utah Code Annotated 1953
 63B-27-102, Utah Code Annotated 1953
 63B-27-201, Utah Code Annotated 1953

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

Section 1. Section 63A-5-100 is enacted to read:**63A-5-100. Definitions.**

As used in this part, "board" means the State Building Board created under Section 63A-5-101.

Section 2. Section 63A-5-101 is amended to read:**63A-5-101. Creation -- Composition -- Appointment -- Per diem and expenses -- Administrative services.**

(1) ~~[(a)]~~ There is created [a] within the department the State Building Board ~~[composed of eight members, seven of whom shall be appointed by the governor for terms of four years].~~

~~[(b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.]~~

~~[(2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.]~~

~~[(3) The executive director of the Governor's Office of Management and Budget or the executive director's designee is a nonvoting member of the board.]~~

~~[(4) Each member shall hold office until a successor is appointed and qualified, but no member shall serve more than two consecutive terms.]~~

~~[(5) One member shall be designated by the governor as chair.]~~

~~[(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:]~~

~~[(a) Section 63A-3-106;]~~

~~[(b) Section 63A-3-107; and]~~

~~[(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.]~~

~~[(7) The members of the board are not required to give bond for the performance of their official duties.]~~

~~[(8) The department shall provide administrative and staff services to enable the board to exercise its powers and discharge its duties, and shall provide necessary space and equipment for the board.]~~

~~(2) (a) The executive director shall appoint a director of the board with the approval of the governor.~~

~~(b) The director appointed under Subsection (2)(a) is equivalent to a division director described in Section 63A-1-109.~~

Section 3. Section 63A-5-101.5 is enacted to read:

63A-5-101.5. State Building Board composition -- Appointment -- Per diem and expenses -- Administrative services.

~~(1) (a) The board is composed of eight members, seven of whom are voting members who the governor appoints for terms of four years.~~

~~(b) The executive director of the Governor's Office of Management and Budget or the executive director's designee is a nonvoting member of the board.~~

~~(2) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the time of a member's appointment or reappointment, adjust the length of the member's term to ensure that approximately half of the board is appointed every two years.~~

~~(3) When a vacancy occurs in the membership of the board for any reason, the governor shall appoint a replacement for the unexpired term of the member who created the vacancy.~~

~~(4) Each board member shall hold office until the governor appoints and qualifies a successor, but no member may serve more than two consecutive terms.~~

~~(5) The governor shall designate one member as the chair of the board.~~

~~(6) A member of the board may not receive compensation or benefits for the member's service on the board, but may receive per diem and travel expenses in accordance with:~~

~~(a) Section 63A-3-106;~~

~~(b) Section 63A-3-107; and~~

~~(c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.~~

~~(7) A member of the board is not required to post a bond for the performance of the member's official duties.~~

~~(8) The department shall provide the board administrative and staff services and necessary space and equipment.~~

Section 4. Section 63A-5-103 is amended to read:

63A-5-103. Board -- Powers.

(1) The State Building Board shall:

(a) in cooperation with agencies, prepare a master plan of structures built or contemplated;

(b) submit to the governor and the Legislature a comprehensive five-year building plan for the state containing the information required by Subsection ~~[(2)]~~ (6);

(c) amend and keep current the five-year building program that complies with the requirements described in Subsection (6), for submission to the governor and subsequent legislatures; and

(d) as a part of the long-range plan, recommend to the governor and Legislature any changes in the law that are necessary to ensure an effective, well-coordinated building program for all agencies[;].

~~[(e)]~~ (2) The board shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:

~~[(4)]~~ (a) that are necessary to discharge its duties and the duties of the Division of Facilities Construction and Management;

~~[(ii)—(t)]~~ (b) that establish standards and requirements for life cycle cost-effectiveness of state facility projects;

~~[(iii)—(t)]~~ (c) that govern the disposition of real property by the division and establish factors, including appraised value and historical significance, in evaluating the disposition;

~~[(iv)—(t)]~~ (d) that establish standards and requirements for a capital development project request and feasibility study described in Subsection 63A-5-104(2)(b), including ~~[a requirement for a feasibility study; and];~~

~~[(v) for operations and maintenance expenditures for state-owned facilities that require, and establish standards for:]~~

~~[(A) reporting;]~~

~~[(B) utility metering;]~~

~~[(C) —creating operations and maintenance programs within all agency institutional line items;]~~

~~[(D) —reviewing and adjusting for inflationary costs of goods and services on an annual basis; and]~~

~~(i) a deadline by which a state agency is required to submit a capital development project request; and~~

~~(ii) conditions and requirements by which a state agency may modify the state agency's capital development project request after the agency submits the request;~~

~~(e) for the monitoring of a state agency's operations and maintenance expenditures for a state-owned facility, that:~~

~~(i) establish standards and requirements for utility metering;~~

(ii) create an operations and maintenance program for a state agency's facilities;

(iii) establish a methodology for determining reasonably anticipated inflationary costs for each operation and maintenance program described in Subsection (2)(e)(ii); and

(iv) require an agency to report the amount the agency receives and expends on operations and maintenance; and

~~[(E)]~~ (f) determining the actual cost for operations and management requests for a new facility[;].

(3) The board shall:

~~[(F)]~~ (a) with support from the Division of Facilities Construction and Management, establish design criteria, standards, and procedures for planning, design, and construction of new state facilities and for improvements to existing state facilities, including life-cycle costing, cost-effectiveness studies, and other methods and procedures that address:

(i) the need for the building or facility;

(ii) the effectiveness of its design;

(iii) the efficiency of energy use; and

(iv) the usefulness of the building or facility over its lifetime;

~~[(G)]~~ (b) prepare and submit a yearly request to the governor and the Legislature for a designated amount of square footage by type of space to be leased by the Division of Facilities Construction and Management in that fiscal year;

~~[(H)]~~ (c) assure the efficient use of all building space; and

~~[(I)]~~ (d) conduct ongoing facilities maintenance audits for state-owned facilities.

~~[(2)]~~ (4) (a) An agency shall comply with ~~the rules described in~~ the rules made under Subsection ~~[(1)(e)(v)(E)]~~ ~~(2)(f)~~ for new facility requests submitted to the Legislature for the 2017 General Session or any session of the Legislature after the 2017 General Session.

(b) On or before September 1, 2016, each agency shall revise the agency's budget to comply with the rules ~~described in~~ made under Subsection ~~[(1)(e)(v)(C)]~~ ~~(2)(e)(ii).~~

(c) Beginning on December 1, 2016, the Office of the Legislative Fiscal Analyst and the Governor's Office of Management and Budget shall, for each agency with operating and maintenance expenses, ensure that each required budget for that agency is adjusted in accordance with the rules described in Subsection ~~[(1)(e)(v)(D)]~~ ~~(2)(e)(iii).~~

~~[(3)]~~ (5) In order to provide adequate information upon which the State Building Board may make a recommendation described in Subsection (1), any state agency requesting new full-time employees for the next fiscal year shall report those anticipated requests to the building board at least

90 days before the annual general session in which the request is made.

~~[(4)]~~ (6) (a) The State Building Board shall ensure that the five-year building plan required by Subsection (1)(c) includes:

(i) a list that prioritizes construction of new buildings for all structures built or contemplated based upon each agency's present and future needs;

(ii) information, and space use data for all state-owned and leased facilities;

(iii) substantiating data to support the adequacy of any projected plans;

(iv) a summary of all statewide contingency reserve and project reserve balances as of the end of the most recent fiscal year;

(v) a list of buildings that have completed a comprehensive facility evaluation by an architect/engineer or are scheduled to have an evaluation;

(vi) for those buildings that have completed the evaluation, the estimated costs of needed improvements; and

(vii) for projects recommended in the first two years of the five-year building plan:

(A) detailed estimates of the cost of each project;

(B) the estimated cost to operate and maintain the building or facility on an annual basis;

(C) the cost of capital improvements to the building or facility, estimated at 1.1% of the replacement cost of the building or facility, on an annual basis;

(D) the estimated number of new agency full-time employees expected to be housed in the building or facility;

(E) the estimated cost of new or expanded programs and personnel expected to be housed in the building or facility;

(F) the estimated lifespan of the building with associated costs for major component replacement over the life of the building; and

(G) the estimated cost of any required support facilities.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Building Board may make rules prescribing the format for submitting the information required by this Subsection ~~[(4)]~~ ~~(6).~~

~~[(5)]~~ (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Building Board may make rules establishing circumstances under which bids may be modified when all bids for a construction project exceed available funds as certified by the director.

(b) In making ~~these~~ the rules described in Subsection (7)(a), the State Building Board shall provide for the fair and equitable treatment of bidders.

~~[(6)]~~ (8) (A) A person who violates a rule ~~adopted by the board~~ that the board makes under Subsection ~~[(1)(e)]~~ (2) is subject to a civil penalty not to exceed \$2,500 for each violation plus the amount of any actual damages, expenses, and costs related to the violation of the rule that are incurred by the state.

(b) The board may take any other action allowed by law.

(c) If any violation of a rule ~~adopted by the board~~ that the board makes is also an offense under Title 76, Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs allowed under Subsection ~~[(1)(e)]~~ (2) in addition to any criminal prosecution.

Section 5. Section 63A-5-104 is amended to read:

63A-5-104. Definitions -- Capital development and capital improvement process -- Approval requirements -- Limitations on new projects -- Emergencies.

(1) As used in this section:

(a) (i) "Capital developments" means a:

(A) remodeling, site, or utility project with a total cost of \$3,500,000 or more;

(B) new facility with a construction cost of \$500,000 or more; or

(C) purchase of real property where an appropriation is requested to fund the purchase.

(ii) "Capital developments" does not include a project described in Subsection (1)(b)(iii).

(b) "Capital improvements" means:

(i) a remodeling, alteration, replacement, or repair project with a total cost of less than \$3,500,000;

(ii) a site or utility improvement with a total cost of less than \$3,500,000;

(iii) a utility infrastructure improvement project that:

(A) has a total cost of less than \$7,000,000;

(B) consists of two or more projects that, if done separately, would each cost less than \$3,500,000; and

(C) the State Building Board determines is more cost effective or feasible to be completed as a single project; or

(iv) a new facility with a total construction cost of less than \$500,000.

(c) (i) "New facility" means the construction of a new building on state property regardless of funding source.

(ii) "New facility" includes:

(A) an addition to an existing building; and

(B) the enclosure of space that was not previously fully enclosed.

(iii) "New facility" does not include:

(A) the replacement of state-owned space that is demolished or that is otherwise removed from state use, if the total construction cost of the replacement space is less than \$3,500,000; or

(B) the construction of facilities that do not fully enclose a space.

(d) "Replacement cost of existing state facilities and infrastructure" means the replacement cost, as determined by the Division of Risk Management, of state facilities, excluding auxiliary facilities as defined by the State Building Board and the replacement cost of infrastructure as defined by the State Building Board.

(e) "State funds" means public money appropriated by the Legislature.

(2) (a) The ~~[State Building Board]~~ board shall, on behalf of all state agencies, ~~[shall submit its]~~ and in accordance with Subsection (4), submit capital development recommendations and priorities to the Legislature for approval and prioritization.

(b) In developing the ~~[State Building Board's]~~ board's capital development recommendations and priorities, the ~~[State Building Board]~~ board shall: ~~(i)~~ require each state agency ~~[requesting]~~ that requests an appropriation for a capital development project to:

~~(i)~~ submit to the board a capital development project request; and

~~(ii)~~ complete and submit to the board a study that demonstrates the feasibility of the capital development project, including:

(A) the need for the capital development project;

(B) the appropriateness of the scope of the capital development project;

(C) any private funding for the capital development project; and

(D) the economic and community impacts of the capital development project~~;~~.

~~[(ii)]~~ (c) The board shall verify the completion and accuracy of ~~[the]~~ a feasibility study ~~[described in]~~ that a state agency submits to the board under Subsection (2)(b)~~[(i)]~~.

~~[(iii)]~~ (d) The board shall require that an institution of higher education described in Section 53B-1-102 that submits a request for a capital development project address whether and how, as a result of the project, the institution will:

~~[(A)]~~ (i) offer courses or other resources that will help meet demand for jobs, training, and employment in the current market and the projected market for the next five years;

~~[(B)]~~ (ii) respond to individual skilled and technical job demand over the next 3, 5, and 10 years;

~~[(C)]~~ (iii) respond to industry demands for trained workers;

~~[(D)]~~ (iv) help meet commitments made by the Governor's Office of Economic Development, including relating to training and incentives;

~~[(E)]~~ (v) respond to changing needs in the economy; and

~~[(F)]~~ (vi) based on demographics, respond to demands for on-line or in-class instruction~~[,] and~~.

~~[(iv)—only when determining the order of prioritization among requests submitted by the State Board of Regents,]~~

(e) The board shall give more weight~~[,] in the [State Building Board's] board's scoring process[,] to a request that is designated as a higher priority by the State Board of Regents than a request that is designated as a lower priority by the State Board of Regents only when determining the order of prioritization among requests submitted by the State Board of Regents.~~

~~[(c)—An agency may not modify a capital development project request after the deadline for submitting the request, except to the extent that a modification of the scope of the project, or the amount of funds requested, is necessary due to increased construction costs or other factors outside of the agency's control.]~~

(3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development project may not be constructed on state property without legislative approval.

(b) Legislative approval is not required for a capital development project that consists of the design or construction of a new facility if:

(i) the ~~[State Building Board]~~ board determines that the requesting state agency has provided adequate assurance that state funds will not be used for the design or construction of the facility;

(ii) the state agency provides to the ~~[State Building Board]~~ board a written document, signed by the head of the state agency:

(A) stating that funding or a revenue stream is in place, or will be in place before the project is completed, to ensure that increased state funding will not be required to cover the cost of operations and maintenance to the resulting facility for immediate or future capital improvements; and

(B) detailing the source of the funding that will be used for the cost of operations and maintenance for immediate and future capital improvements to the resulting facility; and

(iii) the ~~[State Building Board]~~ board determines that the use of the state property is:

(A) appropriate and consistent with the master plan for the property; and

(B) will not create an adverse impact on the state.

(c) (i) The Division of Facilities Construction and Management shall maintain a record of facilities constructed under the exemption provided in Subsection (3)(b).

(ii) For facilities constructed under the exemption provided in Subsection (3)(b), a state agency may not request:

(A) increased state funds for operations and maintenance; or

(B) state capital improvement funding.

(d) Legislative approval is not required for:

(i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds that has been approved by the ~~[State Building Board]~~ board;

(ii) a facility to be built with nonstate funds and owned by nonstate entities within research park areas at the University of Utah and Utah State University;

(iii) a facility to be built at This is the Place State Park by This is the Place Foundation with funds of the foundation, including grant money from the state, or with donated services or materials;

(iv) a capital project that:

(A) is funded by~~[(D)]~~ the Uintah Basin Revitalization Fund~~[,] or [(H)] the Navajo Revitalization Fund; and~~

(B) does not provide a new facility for a state agency or higher education institution; or

(v) a capital project on school and institutional trust lands that is funded by the School and Institutional Trust Lands Administration from the Land Grant Management Fund and that does not fund construction of a new facility for a state agency or higher education institution.

(e) (i) Legislative approval is not required for capital development projects to be built for the Department of Transportation:

(A) as a result of an exchange of real property under Section 72-5-111; or

(B) as a result of a sale or exchange of real property from a maintenance facility if the real property is exchanged for, or the proceeds from the sale of the real property are used for, another maintenance facility, including improvements for a maintenance facility and real property.

(ii) When the Department of Transportation approves a sale or exchange under Subsection (3)(e), it shall notify the president of the Senate, the speaker of the House, and the cochairs of the Infrastructure and General Government Appropriations Subcommittee of the Legislature's Joint Appropriation Committee about any new facilities to be built or improved under this exemption.

(4) (a) (i) ~~[The State Building Board]~~ On or before January 15 of each year, the board shall, on behalf of all state agencies, ~~[commissions, departments, and institutions shall by January 15 of each year,]~~ submit a list of anticipated capital improvement requirements to the Legislature for review and approval.

(ii) The ~~[list shall identify]~~ board shall ensure that the list identifies:

(A) a single project that costs more than \$1,000,000;

(B) multiple projects within a single building or facility that collectively cost more than \$1,000,000;

(C) a single project that will be constructed over multiple years with a yearly cost of \$1,000,000 or more and an aggregate cost of more than \$3,500,000;

(D) multiple projects within a single building or facility with a yearly cost of \$1,000,000 or more and an aggregate cost of more than \$3,500,000;

(E) a single project previously reported to the Legislature as a capital improvement project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost more than \$1,000,000;

(F) multiple projects within a single building or facility previously reported to the Legislature as a capital improvement project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost more than \$1,000,000; and

(G) projects approved under Subsection (1)(b)(iii).

(b) Unless otherwise directed by the Legislature, the ~~[State Building Board]~~ board shall prioritize capital improvements from the list submitted to the Legislature up to the level of appropriation made by the Legislature.

(c) In prioritizing capital improvements, the ~~[State Building Board]~~ board shall consider the results of facility evaluations completed by an architect/engineer as stipulated by the building board's facilities maintenance standards.

(d) ~~[Beginning on July 1, 2013, in]~~ In prioritizing capital improvements, the ~~[State Building Board]~~ board shall allocate at least 80% of the funds that the Legislature appropriates for capital improvements to:

(i) projects that address:

(A) a structural issue;

(B) fire safety;

(C) a code violation; or

(D) any issue that impacts health and safety;

(ii) projects that upgrade:

(A) an HVAC system;

(B) an electrical system;

(C) essential equipment;

(D) an essential building component; or

(E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof, parking lot, or road; or

(iii) projects that demolish and replace an existing building that is in extensive disrepair and cannot be fixed by repair or maintenance.

(e) ~~[Beginning on July 1, 2013, in]~~ In prioritizing capital improvements, the ~~[State Building Board]~~

board shall allocate no more than 20% of the funds that the Legislature appropriates for capital improvements to:

(i) remodeling and aesthetic upgrades to meet state programmatic needs; or

(ii) construct an addition to an existing building or facility.

(f) The ~~[State Building Board]~~ board may require an entity that benefits from a capital improvement project to repay the capital improvement funds from savings that result from the project.

(g) The ~~[State Building Board]~~ board may provide capital improvement funding to a single project, or to multiple projects within a single building or facility, even if the total cost of the project or multiple projects is \$3,500,000 or more, if:

(i) the capital improvement project is a project described in Subsection (1)(b)(iii); and

(ii) the Legislature has not refused to fund the project with capital improvement funds.

(h) In prioritizing and allocating capital improvement funding, the State Building Board shall comply with the requirement in Subsection 63B-23-101(2)(f).

(5) The Legislature may authorize:

(a) the total square feet to be occupied by each state agency; and

(b) the total square feet and total cost of lease space for each agency.

(6) If construction of a new building or facility will require an immediate or future increase in state funding for operations and maintenance or for capital improvements, the Legislature may not authorize the new building or facility until the Legislature appropriates funds for:

(a) the portion of operations and maintenance, if any, that will require an immediate or future increase in state funding; and

(b) the portion of capital improvements, if any, that will require an immediate or future increase in state funding.

(7) (a) Except as provided in Subsection (7)(b), the Legislature may not fund the design or construction of any new capital development projects, except to complete the funding of projects for which partial funding has been previously provided, until the Legislature has appropriated 1.1% of the replacement cost of existing state facilities and infrastructure to capital improvements.

~~[(b) (i) As used in this Subsection (7)(b):]~~

~~[(A) "Education Fund budget deficit" is as defined in Section 63J-1-312; and]~~

~~[(B) "General Fund budget deficit" is as defined in Section 63J-1-312.]~~

~~[(ii) (b) If the Legislature determines that there exists an Education Fund budget deficit or a General Fund budget deficit [exists] as those terms~~

are defined in Section 63J-1-312, the Legislature may, in eliminating the deficit, reduce the amount appropriated to capital improvements to 0.9% of the replacement cost of state buildings and infrastructure.

~~[(8) It is the policy of the Legislature that a new building or facility be approved and funded for construction in a single budget action, therefore the]~~

(8) (a) ~~The Legislature may not fund the [programming,] design[,] and construction of a new [building or] facility in phases over more than one year unless the Legislature [has approved each phase of the funding for the construction of the new building or facility by the affirmative]~~ approves the funding for both the design and construction by a vote of two-thirds of all the members elected to each house.

(b) ~~An agency is required to receive approval from the board before the agency begins programming for a new facility that requires legislative approval under Subsection (3).~~

(c) ~~The board or an agency may fund the programming of a new facility before the Legislature makes an appropriation for the new facility under Subsection (8)(a).~~

(9) (a) ~~[If, after approval of] Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, after the Legislature approves capital development and capital improvement priorities [by the Legislature] under this section, [emergencies arise that create unforeseen critical capital improvement projects, the State Building Board may, notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address those projects] if an emergency arises that creates an unforeseen and critical need for a capital improvement project, the board may reallocate capital improvement funds to address the project.~~

(b) ~~The [State Building Board] board shall report any changes [it] the board makes in capital improvement allocations approved by the Legislature to:~~

(i) ~~the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and~~

(ii) ~~the Legislature at its next annual general session.~~

(10) (a) ~~The [State Building Board] board may adopt a rule allocating to institutions and agencies their proportionate share of capital improvement funding.~~

(b) ~~The [State Building Board] board shall ensure that the rule:~~

(i) ~~reserves funds for the Division of Facilities Construction and Management for emergency projects; and~~

(ii) ~~allows the delegation of projects to some institutions and agencies with the requirement that~~

a report of expenditures will be filed annually with the Division of Facilities Construction and Management and appropriate governing bodies.

(11) It is the intent of the Legislature that in funding capital improvement requirements under this section the General Fund be considered as a funding source for at least half of those costs.

(12) (a) Subject to Subsection (12)(b), at least 80% of the state funds appropriated for capital improvements shall be used for maintenance or repair of the existing building or facility.

(b) ~~The [State Building Board] board may modify the requirement described in Subsection (12)(a) if the [State Building Board] board determines that a different allocation of capital improvements funds is in the best interest of the state.~~

Section 6. Section 63B-27-101 is enacted to read:

Part 1. 2017 Revenue Bond Authorizations

63B-27-101. Revenue bond authorizations -- State Building Ownership Authority.

(1) The Legislature intends that:

(a) the State Building Ownership Authority, under the authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or may enter into or arrange for a lease-purchase agreement in which participation interests may be created, to provide up to \$5,451,800 for a Farmington liquor store, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any existing debt service reserve requirements;

(b) the Department of Alcoholic Beverage Control use sales revenues as the primary revenue source for repayment of any obligation created under authority of this Subsection (1); and

(c) the Department of Alcoholic Beverage Control may request operation and maintenance funding from sales revenues.

(2) The Legislature intends that:

(a) the State Building Ownership Authority, under the authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or may enter into or arrange for a lease-purchase agreement in which participation interests may be created, to provide up to \$5,451,800 for a southwest Salt Lake County liquor store, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any existing debt service reserve requirements;

(b) the Department of Alcoholic Beverage Control use sales revenues as the primary revenue source for repayment of any obligation created under authority of this Subsection (2); and

(c) the Department of Alcoholic Beverage Control may request operation and maintenance funding from sales revenues.

Section 7. Section 63B-27-102 is enacted to read:

**63B-27-102. Revenue bond authorizations
-- Board of Regents.**

(1) The Legislature intends that:

(a) the Board of Regents, on behalf of the University of Utah, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing an expansion of the University Guest House;

(b) the University of Utah use room rental, meeting room rental, and the sale of ancillary services as the primary revenue sources for repayment of any obligation created under authority of this Subsection (1);

(c) the maximum amount of revenue bonds or evidences of indebtedness authorized by this Subsection (1) may not exceed \$8,250,000 for acquisition and construction proceeds, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university may plan, design, and construct the expansion of the University Guest House, subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management; and

(e) the university may not request state funds for operation and maintenance costs or capital improvements.

(2) The Legislature intends that:

(a) the Board of Regents, on behalf of Dixie State University, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of Dixie State University to borrow money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing an expansion of the Legend Solar Stadium;

(b) Dixie State University use donations and institutional funds as the primary revenue sources for repayment of any obligation created under authority of this Subsection (2);

(c) the maximum amount of revenue bonds or evidences of indebtedness authorized by this Subsection (2) may not exceed \$4,700,000 for acquisition and construction proceeds, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university may plan, design, and construct an expansion of the Legend Solar Stadium, subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management; and

(e) the university may not request state funds for operation and maintenance costs or capital improvements.

(3) The Legislature intends that:

(a) the Board of Regents, on behalf of the University of Utah, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing the Medical Education and Discovery Complex and Rehabilitation Hospital;

(b) the University of Utah use donations, clinical revenues, and other institutional funds as the primary revenue sources for repayment of any obligation created under authority of this Subsection (3);

(c) the maximum amount of revenue bonds or evidences of indebtedness authorized by this Subsection (3) may not exceed \$190,000,000 for acquisition and construction proceeds, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university may plan, design, and construct the Medical Education and Discovery Complex and Rehabilitation Hospital, subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management; and

(e) the university may request state funds for operation and maintenance costs and capital improvements.

(4) The Legislature intends that:

(a) the Board of Regents, on behalf of Dixie State University, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of Dixie State University to borrow money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing the Human Performance Center;

(b) Dixie State University use donations, student fees, and other institutional funds as the primary revenue sources for repayment of any obligation created under authority of this Subsection (4);

(c) the maximum amount of revenue bonds or evidences of indebtedness authorized by this Subsection (4) may not exceed \$16,000,000 for acquisition and construction proceeds, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university may plan, design, and construct the Human Performance Center, subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management; and

(e) the university may request state funds for operation and maintenance costs and capital improvements.

Section 8. Section 63B-27-201 is enacted to read:

Part 2. 2017 Lease-Purchase Authorizations

63B-27-201. Lease-purchase authorizations.

The Legislature intends that:

(1) the Dixie Applied Technology College, subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management, enter into or arrange for a lease-purchase agreement in which participation interests may be created, to provide up to \$9,505,300, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any existing debt service reserve requirements, for the planning, design, and construction of the Industrial Building for the Dixie Applied Technology College permanent main campus building with up to 64,000 square feet; and

(2) the college may request state funds for operation and maintenance costs, but not for capital improvements for the leased building during the term of the lease-purchase agreement.

Section 9. Effective date.

(1) Except as provided in Subsection (2), if approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) The actions affecting the following sections take effect on May 9, 2017:

- (a) Section 63A-5-100;
- (b) Section 63A-5-101;
- (c) Section 63A-5-101.5;
- (d) Section 63A-5-103; and
- (e) Section 63A-5-104.

CHAPTER 356**S. B. 12**

Passed March 8, 2017

Approved March 24, 2017

Effective May 9, 2017

EXPUNGEMENT AMENDMENTS

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Eric K. Hutchings

LONG TITLE**General Description:**

This bill makes changes to provisions regarding expungements and pardons.

Highlighted Provisions:

This bill:

- ▶ adds definitions;
- ▶ prevents the dissemination of information regarding pardons and expungements by certain persons;
- ▶ specifies that infractions, traffic offenses, and certain minor offenses will not count towards expungement eligibility;
- ▶ allows for an increase in the number of convictions counted to be eligible for expungement; and
- ▶ allows the court during sentencing in a criminal prosecution to take into account if the level of the offense has been reduced since the defendant's conviction.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 76-3-402, as last amended by Laws of Utah 2012, Chapter 145
- 77-27-5.1, as last amended by Laws of Utah 2014, Chapter 199
- 77-40-102, as last amended by Laws of Utah 2014, Chapter 199
- 77-40-105, as last amended by Laws of Utah 2016, Chapter 185
- 77-40-106, as last amended by Laws of Utah 2013, Chapter 41
- 77-40-107, as last amended by Laws of Utah 2014, Chapter 263
- 77-40-108, as last amended by Laws of Utah 2013, Chapters 20 and 41
- 77-40-109, as last amended by Laws of Utah 2016, Chapter 144
- 77-40-112, as renumbered and amended by Laws of Utah 2010, Chapter 283

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

Section 1. Section 76-3-402 is amended to read:**76-3-402. Conviction of lower degree of offense -- Procedure and limitations.**

(1) If at the time of sentencing the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and

to the history and character of the defendant, and after having given any victims present at the sentencing and the prosecuting attorney an opportunity to be heard, concludes it would be unduly harsh to record the conviction as being for that degree of offense established by statute, the court may enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.

(2) (a) If the court suspends the execution of the sentence and places the defendant on probation, whether or not the defendant is committed to jail as a condition of probation, the court may enter a judgment of conviction for the next lower degree of offense:

~~(a)~~ (i) after the defendant has been successfully discharged from probation;

~~(b)~~ (ii) upon motion and notice to the prosecuting attorney;

~~(c)~~ (iii) after reasonable effort has been made by the prosecuting attorney to provide notice to any victims;

~~(d)~~ (iv) after a hearing if requested by either party ~~under~~ described in Subsection (2)~~(c)~~(a)(iii); and

~~(e)~~ (v) if the court finds entering a judgment of conviction for the next lower degree of offense is in the interest of justice.

(b) In making the finding in Subsection (2)(a)(v), the court shall consider as a factor in favor of granting the reduction that, subsequent to the defendant's conviction, the level of the offense has been reduced by law.

(3) (a) An offense may be reduced only one degree under this section, whether the reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in writing or on the court record that the offense may be reduced two degrees.

(b) In no case may an offense be reduced under this section by more than two degrees.

(4) This section does not preclude any person from obtaining or being granted an expungement of his record as provided by law.

(5) The court may not enter judgment for a conviction for a lower degree of offense if:

(a) the reduction is specifically precluded by law; or

(b) if any unpaid balance remains on court ordered restitution for the offense for which the reduction is sought.

(6) When the court enters judgment for a lower degree of offense under this section, the actual title of the offense for which the reduction is made may not be altered.

(7) (a) A person may not obtain a reduction under this section of a conviction that requires the person to register as a sex offender until the registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

(b) A person required to register as a sex offender for the person's lifetime under Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the person to register as a sex offender.

(8) As used in this section, "next lower degree of offense" includes an offense regarding which:

(a) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and

(b) the court removes the statutory enhancement pursuant to this section.

Section 2. Section 77-27-5.1 is amended to read:

77-27-5.1. Board authority to order expungement.

(1) Upon granting a pardon, the board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.

(a) When a pardon has been granted, employees of the Board of Pardons and Parole may not divulge any identifying information regarding the pardoned person to any person or agency, except for the pardoned person.

(b) The Bureau of Criminal Identification may not count pardoned convictions against any future expungement eligibility.

(2) An expungement order, issued by the board, has at least the same legal effect and authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah Expungement Act.

(3) The board shall provide clear written directions to the recipient along with a list of agencies known to be affected by the expungement order.

Section 3. Section 77-40-102 is amended to read:

77-40-102. Definitions.

As used in this chapter:

(1) "Administrative finding" means a decision upon a question of fact reached by an administrative agency following an administrative hearing or other procedure satisfying the requirements of due process.

(2) "Agency" means a state, county, or local government entity that generates or maintains records relating to an investigation, arrest, detention, or conviction for an offense for which expungement may be ordered.

(3) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in Section 53-10-201.

(4) "Certificate of eligibility" means a document issued by the bureau stating that the criminal record and all records of arrest, investigation, and detention associated with a case that is the subject

of a petition for expungement is eligible for expungement.

(5) "Conviction" means judgment by a criminal court on a verdict or finding of guilty after trial, a plea of guilty, or a plea of nolo contendere.

(6) "Department" means the Department of Public Safety established in Section 53-1-103.

(7) "Drug possession offense" means an offense under:

(a) Subsection 58-37-8(2), except any offense under Subsection 58-37-8(2)(b)(i), possession of 100 pounds or more of marijuana, any offense enhanced under Subsection 58-37-8(2)(e), violation in a correctional facility or Subsection 58-37-8(2)(g), driving with a controlled substance illegally in the person's body and negligently causing serious bodily injury or death of another;

(b) Subsection 58-37a-5(1), use or possession of drug paraphernalia;

(c) Section 58-37b-6, possession or use of an imitation controlled substance; or

(d) any local ordinance which is substantially similar to any of the offenses described in this Subsection (7).

(8) "Expunge" means to seal or otherwise restrict access to the petitioner's record held by an agency when the record includes a criminal investigation, detention, arrest, or conviction.

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

(10) "Minor regulatory offense" means any class B or C misdemeanor offense, as well as any local ordinance, except:

(a) any drug possession offense;

(b) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(c) Sections 73-18-13 through 73-18-13.6;

(d) those defined in Title 76, Utah Criminal Code; or

(e) any local ordinance that is substantially similar to those offenses listed in Subsections (10)(a) through (d).

~~[(40)]~~ (11) "Petitioner" means a person seeking expungement under this chapter.

~~[(41)]~~ (12) (a) "Traffic offense" means:

(i) all [offenses in the following parts] infractions, class B misdemeanors, and class C misdemeanors in Title 41, Chapter 6a, Traffic Code;

(ii) Title 53, Chapter 3, Part 2, Driver Licensing Act;

(iii) Title 73, Chapter 18, State Boating Act; and

(iv) all local ordinances that are substantially similar to [the] those offenses[.];

~~[(a) Title 41, Chapter 6a, Part 3, Traffic Control Devices;]~~

~~[(b) Title 41, Chapter 6a, Part 6, Speed Restrictions;]~~

~~[(c) Title 41, Chapter 6a, Part 7, Driving on Right Side of Highway and Passing;]~~

~~[(d) Title 41, Chapter 6a, Part 8, Turning and Signaling for Turns;]~~

~~[(e) Title 41, Chapter 6a, Part 9, Right-of-Way;]~~

~~[(f) Title 41, Chapter 6a, Part 10, Pedestrians' Rights and Duties;]~~

~~[(g) Title 41, Chapter 6a, Part 11, Bicycles, Regulation of Operation;]~~

~~[(h) Title 41, Chapter 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and Safety Zones;]~~

~~[(i) Title 41, Chapter 6a, Part 13, School Buses and School Bus Parking Zones;]~~

~~[(j) Title 41, Chapter 6a, Part 14, Stopping, Standing, and Parking;]~~

~~[(k) Title 41, Chapter 6a, Part 15, Special Vehicles;]~~

~~[(l) Title 41, Chapter 6a, Part 16, Vehicle Equipment;]~~

~~[(m) Title 41, Chapter 6a, Part 17, Miscellaneous Rules; and]~~

~~[(n) Title 41, Chapter 6a, Part 18, Motor Vehicle Safety Belt Usage Act.]~~

(b) "Traffic offense" does not mean:

(i) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(ii) Sections 73-18-13 through 73-18-13.6; or

(iii) any local ordinance that is substantially similar to the offenses listed in Subsections (12)(b)(i) and (ii).

Section 4. Section 77-40-105 is amended to read:

77-40-105. Eligibility for expungement of conviction -- Requirements.

(1) A person convicted of an offense may apply to the bureau for a certificate of eligibility to expunge the record of conviction as provided in this section.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

(a) the conviction for which expungement is sought is:

(i) a capital felony;

(ii) a first degree felony;

(iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

(iv) felony automobile homicide;

(v) a felony violation of Subsection 41-6a-501(2); or

(vi) a registerable sex offense as defined in Subsection 77-41-102(17);

(b) a criminal proceeding is pending against the petitioner; or

(c) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility.

(3) A petitioner seeking to obtain expungement for a record of conviction is not eligible to receive a certificate of eligibility from the bureau until all of the following have occurred:

(a) all fines and interest ordered by the court have been paid in full;

(b) all restitution ordered by the court pursuant to Section 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6, has been paid in full; and

(c) the following time periods have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for each conviction the petitioner seeks to expunge:

(i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a felony conviction of Subsection 58-37-8(2)(g);

(ii) seven years in the case of a felony;

(iii) five years in the case of any class A misdemeanor or a felony drug possession offense;

(iv) four years in the case of a class B misdemeanor; or

(v) three years in the case of any other misdemeanor or infraction.

(4) The bureau may not count infractions, traffic offenses, or minor regulatory offenses when determining expungement eligibility.

[(4)] (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following, except as provided in Subsection (8):

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether

misdemeanor or felony, ~~[excluding infractions and any traffic offenses,]~~ each of which is contained in a separate criminal episode.

~~[(5)]~~ (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

~~[(6)]~~ (7) If the petitioner's criminal history contains convictions for both a drug possession offense and a non drug possession offense arising from the same criminal episode, that criminal episode shall be counted as provided in Subsection ~~[(4)]~~ (5) if any non drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (3) than any drug possession offense in that episode.

(8) If at least 10 years have elapsed from the date the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions, then each eligibility limit defined in Subsection (5) shall be increased by one.

~~[(7)]~~ (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes pursuant to Section 77-27-5.1.

Section 5. Section 77-40-106 is amended to read:

77-40-106. Application for certificate of eligibility -- Fees.

(1) (a) A petitioner seeking to obtain an expungement for a criminal record shall apply for a certificate of eligibility from the bureau.

(b) A petitioner who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.

(c) Regardless of whether the petitioner is prosecuted, the bureau may deny a certificate of eligibility to anyone ~~[providing]~~ who knowingly provides false information on an application.

(2) (a) The bureau shall perform a check of records of governmental agencies, including national criminal data bases, to determine whether a petitioner is eligible to receive a certificate of eligibility under this chapter.

(b) For purposes of determining eligibility under this chapter, the bureau may review records of arrest, investigation, detention and conviction that have been previously expunged, regardless of the jurisdiction in which the expungement occurred.

(c) If the petitioner meets all of the criteria under Section 77-40-104 or 77-40-105, the bureau shall issue a certificate of eligibility to the petitioner which shall be valid for a period of 90 days from the date the certificate is issued.

(d) If, after reasonable research, a disposition for an arrest on the criminal history file is unobtainable, the bureau may issue a special certificate giving determination of eligibility to the court.

(3) (a) The bureau shall charge application and issuance fees for a certificate of eligibility or special certificate in accordance with the process in Section 63J-1-504.

(b) The application fee shall be paid at the time the petitioner submits an application for a certificate of eligibility to the bureau.

(c) If the bureau determines that the issuance of a certificate of eligibility or special certificate is appropriate, the petitioner will be charged an additional fee for the issuance of a certificate of eligibility or special certificate unless Subsection (3)(d) applies.

(d) An issuance fee may not be assessed against a petitioner who qualifies for a certificate of eligibility under Section 77-40-104 unless the charges were dismissed pursuant to a plea in abeyance agreement under Title 77, Chapter 2a, Pleas in Abeyance, or a diversion agreement under Title 77, Chapter 2, Prosecution, Screening, and Diversion.

(e) Funds generated under this Subsection (3) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.

(4) The bureau shall provide clear written directions to the petitioner along with a list of agencies known to be affected by an order of expungement.

Section 6. Section 77-40-107 is amended to read:

77-40-107. Petition for expungement -- Prosecutorial responsibility -- Hearing -- Standard of proof -- Exception.

(1) The petitioner shall file a petition for expungement and the certificate of eligibility in the court specified in Section 77-40-103 and deliver a copy of the petition and certificate to the prosecuting agency. If the certificate is filed electronically, the petitioner or the petitioner's attorney shall keep the original certificate until the proceedings are concluded. If the original certificate is filed with the petition, the clerk of the court shall scan it and return it to the petitioner or the petitioner's attorney, who shall keep it until the proceedings are concluded.

(2) (a) Upon receipt of a petition for expungement of a conviction, the prosecuting attorney shall

provide notice of the expungement request by first-class mail to the victim at the most recent address of record on file.

(b) The notice shall include a copy of the petition, certificate of eligibility, statutes and rules applicable to the petition, state that the victim has a right to object to the expungement, and provide instructions for registering an objection with the court.

(3) The prosecuting attorney and the victim, if applicable, may respond to the petition by filing a recommendation or objection with the court within [30] 35 days after receipt of the petition.

(4) (a) The court may request a written response to the petition from the Division of Adult Probation and Parole within the Department of Corrections.

(b) If requested, the response prepared by Adult Probation and Parole shall include:

- (i) the reasons probation was terminated; and
- (ii) certification that the petitioner has completed all requirements of sentencing and probation or parole.

(c) A copy of the response shall be provided to the petitioner and the prosecuting attorney.

(5) The petitioner may respond in writing to any objections filed by the prosecutor or the victim and the response prepared by Adult Probation and Parole within [15] 14 days after receipt.

(6) (a) If the court receives an objection concerning the petition from any party, the court shall set a date for a hearing and notify the petitioner and the prosecuting attorney of the date set for the hearing. The prosecuting attorney shall notify the victim of the date set for the hearing.

(b) The petitioner, the prosecuting attorney, the victim, and any other person who has relevant information about the petitioner may testify at the hearing.

(c) The court shall review the petition, the certificate of eligibility, and any written responses submitted regarding the petition.

(7) If no objection is received within 60 days from the date the petition for expungement was filed with the court, the expungement may be granted without a hearing.

(8) The court shall issue an order of expungement if it finds by clear and convincing evidence that:

(a) the petition and certificate of eligibility are sufficient;

(b) the statutory requirements have been met;

(c) if the petitioner seeks expungement of drug possession offenses allowed under Subsection 77-40-105~~(5)~~(6), the petitioner is not illegally using controlled substances and is successfully managing any substance addiction; and

(d) it is not contrary to the interests of the public to grant the expungement.

(9) A court may not expunge a conviction of an offense for which a certificate of eligibility may not be or should not have been issued under Section 77-40-104 or 77-40-105.

Section 7. Section 77-40-108 is amended to read:

**77-40-108. Distribution of order --
Redaction -- Receipt of order --
Administrative proceedings -- Bureau
requirements.**

(1) (a) A person who receives an order of expungement under this chapter or Section 77-27-5.1 shall be responsible for delivering a copy of the order of expungement to all affected criminal justice agencies and officials including the court, arresting agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.

(b) A person who receives an order of expungement under Section 77-27-5.1, shall pay a processing fee to the bureau, established in accordance with the process in Section 63J-1-504, before the bureau's record may be expunged.

(2) Unless otherwise provided by law or ordered by a court of competent jurisdiction to respond differently, a person who has received an expungement of an arrest or conviction under this chapter or Section 77-27-5.1, may respond to any inquiry as though the arrest or conviction did not occur.

(3) The bureau shall forward a copy of the expungement order to the Federal Bureau of Investigation.

(4) An agency receiving an expungement order shall expunge the petitioner's identifying information contained in records in its possession relating to the incident for which expungement is ordered.

(5) Unless ordered by a court to do so, or in accordance with Subsection 77-40-109(2), a government agency or official may not divulge information or records which have been expunged regarding the petitioner contained in a record of arrest, investigation, detention, or conviction after receiving an expungement order.

(6) (a) An order of expungement may not restrict an agency's use or dissemination of records in its ordinary course of business until the agency has received a copy of the order.

(b) Any action taken by an agency after issuance of the order but prior to the agency's receipt of a copy of the order may not be invalidated by the order.

(7) An order of expungement may not:

(a) terminate or invalidate any pending administrative proceedings or actions of which the petitioner had notice according to the records of the administrative body prior to issuance of the expungement order;

(b) affect the enforcement of any order or findings issued by an administrative body pursuant to its lawful authority prior to issuance of the expungement order; [øø]

(c) remove any evidence relating to the petitioner including records of arrest, which the administrative body has used or may use in these proceedings[-]; or

(d) prevent an agency from maintaining, sharing, or distributing any record required by law.

Section 8. Section 77-40-109 is amended to read:

77-40-109. Retention and release of expunged records -- Agencies.

(1) The bureau shall keep, index, and maintain all expunged records of arrests and convictions.

(2) (a) Employees of the bureau may not divulge any information contained in its index to any person or agency without a court order unless specifically authorized by statute.

(b) The following organizations may receive information contained in expunged records upon specific request:

(i) the Board of Pardons and Parole;

(ii) Peace Officer Standards and Training;

(iii) federal authorities, [~~unless prohibited~~] only as required by federal law;

(iv) the Department of Commerce;

(v) the Department of Insurance;

(vi) the State Board of Education; and

(vii) the Commission on Criminal and Juvenile Justice, for purposes of investigating applicants for judicial office.

(c) A person or agency authorized by this Subsection (2) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court order or specific request, including distribution on a public website.

(3) The bureau may also use the information in its index as provided in Section 53-5-704.

(4) If, after obtaining an expungement, the petitioner is charged with a felony, the state may petition the court to open the expunged records upon a showing of good cause.

(5) (a) For judicial sentencing, a court may order any records expunged under this chapter or Section 77-27-5.1 to be opened and admitted into evidence.

(b) The records are confidential and are available for inspection only by the court, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

(c) At the end of the action or proceeding, the court shall order the records expunged again.

(d) Any person authorized by this Subsection (5) to view expunged records may not reveal or release any information obtained from the expunged records to anyone outside the court.

(6) Records released under this chapter are classified as protected under Section 63G-2-305 and are accessible only as provided under Title 63G, Chapter 2, Part 2, Access to Records.

Section 9. Section 77-40-112 is amended to read:

77-40-112. Penalty.

~~[Any person who willfully violates any prohibition in this chapter]~~ An employee or agent of an agency that is prohibited from disseminating information from expunged or pardoned records under Section 77-27-5.1 or 77-40-109 who knowingly or intentionally discloses identifying information from the expunged or pardoned record that has been pardoned or expunged, unless allowed by law, is guilty of a class A misdemeanor [~~unless the prohibition specifically indicates a different penalty~~].

CHAPTER 357**S. B. 61**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

**STUDENTS WITH DISABILITIES
ACCOMMODATIONS FUNDING**

Chief Sponsor: Gene Davis

House Sponsor: Eric K. Hutchings

LONG TITLE**General Description:**

This bill addresses the distribution of any appropriations to the State Board of Education for reimbursement for certain services rendered to a student with a Section 504 accommodation plan.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the State Board of Education (the board) to make rules regarding the disposition of any money appropriated to the board to reimburse local education agencies for certain services rendered to a student with a Section 504 accommodation plan; and
- ▶ requires the board to present draft rules to the Public Education Appropriations Subcommittee for review and recommendation.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

53A-17a-112.2, Utah Code Annotated 1953

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

Section 1. Section 53A-17a-112.2 is enacted to read:**53A-17a-112.2. Appropriation for accommodation plans for students with autism spectrum disorders.**(1) As used in this section:(a) “Board” means the State Board of Education.(b) “Local education agency” or “LEA” means:(i) a school district;(ii) a charter school; or(iii) the Utah Schools for the Deaf and the Blind.(c) “Section 504 accommodation plan” means an accommodation plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 701 et seq.(2) (a) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish a reimbursement program that:(i) distributes any money appropriated to the board for Special Education -- Section 504 Accommodations;(ii) allows an LEA to apply for reimbursement of the costs of services that:(A) an LEA renders to a student with a Section 504 accommodation plan; and(B) exceed 150% of the average cost of a general education student; and(iii) provides for a pro-rated reimbursement based on the amount of reimbursement applications received during a given fiscal year and the amount of money appropriated to the board that fiscal year.(b) Beginning with the 2018-19 school year, the board shall allocate money appropriated to the board for Special Education -- Section 504 Accommodations in accordance with the rules described in Subsection (2)(a).(3) On or before January 30, 2018, the board shall report to the Public Education Appropriations Subcommittee:(a) information collected regarding the number of students who qualify for a Section 504 accommodation plan; and(b) if available, the estimated financial impact of providing Section 504 accommodation services to the number of students described in Subsection (3)(a).

CHAPTER 358**S. B. 63**

Passed March 1, 2017

Approved March 24, 2017

Effective May 9, 2017

**NONPROFIT CORPORATION
AMENDMENTS - WATER COMPANIES**

Chief Sponsor: Margaret Dayton

House Sponsor: Michael E. Noel

LONG TITLE**General Description:**

This bill modifies the Utah Revised Nonprofit Corporation Act to permit the transfer of water shares, in certain circumstances, and clarifies the rights of a shareholder in a water company.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ states that ownership of shares in a water company is transferrable, unless otherwise provided in the articles of incorporation or bylaws;
- ▶ authorizes a water company to purchase the shares of a shareholder who is delinquent in payment of shareholder assessments;
- ▶ states that a shareholder in a water company has an equitable, beneficial interest in the use of the water supply of the water company, proportionate to the shareholder's shares, which is a real property interest;
- ▶ clarifies the process for distribution to a shareholder of a water company; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 16-6a-102, as last amended by Laws of Utah 2015, Chapter 240
- 16-6a-606, as enacted by Laws of Utah 2000, Chapter 300
- 16-6a-610, as last amended by Laws of Utah 2015, Chapter 240
- 16-6a-611, as last amended by Laws of Utah 2015, Chapter 240
- 16-6a-1302, as last amended by Laws of Utah 2015, Chapter 240

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

Section 1. Section 16-6a-102 is amended to read:**16-6a-102. Definitions.**

As used in this chapter:

- (1) (a) "Address" means a location where mail can be delivered by the United States Postal Service.
- (b) "Address" includes:
- (i) a post office box number;

(ii) a rural free delivery route number; and

(iii) a street name and number.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "Articles of incorporation" include:

- (a) amended articles of incorporation;
- (b) restated articles of incorporation;
- (c) articles of merger; and

(d) a document of a similar import to the documents described in Subsections (3)(a) through (c).

(4) "Assumed corporate name" means a name assumed for use in this state:

(a) by a:

(i) foreign corporation pursuant to Section 16-10a-1506; or

(ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and

(b) because the corporate name of the foreign corporation described in Subsection (4)(a) is not available for use in this state.

(5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body authorized to manage the affairs of a domestic or foreign nonprofit corporation.

(b) Notwithstanding Subsection (5)(a), a person may not be considered a member of the board of directors because of a power delegated to that person pursuant to Subsection 16-6a-801(2).

(6) (a) "Bylaws" means the one or more codes of rules, other than the articles of incorporation, adopted pursuant to this chapter for the regulation or management of the affairs of a domestic or foreign nonprofit corporation irrespective of the one or more names by which the codes of rules are designated.

(b) "Bylaws" includes:

- (i) amended bylaws; and
- (ii) restated bylaws.

(7) (a) "Cash" or "money" means:

- (i) legal tender;
- (ii) a negotiable instrument; or

(iii) other cash equivalent readily convertible into legal tender.

(b) "Cash" and "money" are used interchangeably in this chapter.

(8) (a) "Class" means a group of memberships that has the same right with respect to voting, dissolution, redemption, transfer, or other characteristics.

(b) For purposes of Subsection (8)(a), a right is considered the same if it is determined by a formula applied uniformly to a group of memberships.

(9) (a) “Conspicuous” means so written that a reasonable person against whom the writing is to operate should have noticed the writing.

(b) “Conspicuous” includes printing or typing in:

- (i) italics;
- (ii) boldface;
- (iii) contrasting color;
- (iv) capitals; or
- (v) underlining.

(10) “Control” or a “controlling interest” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity by:

- (a) the ownership of voting shares;
- (b) contract; or

(c) a means other than those specified in Subsection (10)(a) or (b).

(11) Subject to Section 16-6a-207, “cooperative nonprofit corporation” or “cooperative” means a nonprofit corporation organized or existing under this chapter.

(12) “Corporate name” means:

(a) the name of a domestic corporation as stated in the domestic corporation’s articles of incorporation;

(b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit corporation’s articles of incorporation;

(c) the name of a foreign corporation as stated in the foreign corporation’s:

- (i) articles of incorporation; or
- (ii) document of similar import to articles of incorporation; or

(d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit corporation’s:

- (i) articles of incorporation; or
- (ii) document of similar import to articles of incorporation.

(13) “Corporation” or “domestic corporation” means a corporation for profit that:

- (a) is not a foreign corporation; and
- (b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation Act.

(14) “Delegate” means a person elected or appointed to vote in a representative assembly:

- (a) for the election of a director; or
- (b) on matters other than the election of a director.

(15) “Deliver” includes delivery by mail or another means of transmission authorized by

Section 16-6a-103, except that delivery to the division means actual receipt by the division.

(16) “Director” means a member of the board of directors.

(17) (a) “Distribution” means the payment of a dividend or any part of the income or profit of a nonprofit corporation to the nonprofit corporation’s:

- (i) members;
- (ii) directors; or
- (iii) officers.

(b) “Distribution” does not include a fair-value payment for:

- (i) a good sold; or
- (ii) a service received.

(18) “Division” means the Division of Corporations and Commercial Code.

(19) “Effective date,” when referring to a document filed by the division, means the time and date determined in accordance with Section 16-6a-108.

(20) “Effective date of notice” means the date notice is effective as provided in Section 16-6a-103.

(21) “Electronic transmission” or “electronically transmitted” means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.

(22) (a) “Employee” includes an officer of a nonprofit corporation.

(b) (i) Except as provided in Subsection (22)(b)(ii), “employee” does not include a director of a nonprofit corporation.

(ii) Notwithstanding Subsection (22)(b)(i), a director may accept one or more duties that make that director an employee of a nonprofit corporation.

[(24)] (23) “Entity” includes:

- (a) a domestic or foreign corporation;
- (b) a domestic or foreign nonprofit corporation;
- (c) a limited liability company;
- (d) a profit or nonprofit unincorporated association;
- (e) a business trust;
- (f) an estate;
- (g) a partnership;
- (h) a trust;
- (i) two or more persons having a joint or common economic interest;
- (j) a state;
- (k) the United States; or
- (l) a foreign government.

~~[(23)]~~ (24) “Executive director” means the executive director of the Department of Commerce.

(25) “Foreign corporation” means a corporation for profit incorporated under a law other than the laws of this state.

(26) “Foreign nonprofit corporation” means an entity:

(a) incorporated under a law other than the laws of this state; and

(b) that would be a nonprofit corporation if formed under the laws of this state.

(27) “Governmental entity” means:

(a) (i) the executive branch of the state;

(ii) the judicial branch of the state;

(iii) the legislative branch of the state;

(iv) an independent entity, as defined in Section 63E-1-102;

(v) a political subdivision of the state;

(vi) a state institution of higher education, as defined in Section 53B-3-102;

(vii) an entity within the state system of public education; or

(viii) the National Guard; or

(b) any of the following that is established or controlled by a governmental entity listed in Subsection (27)(a) to carry out the public’s business:

(i) an office;

(ii) a division;

(iii) an agency;

(iv) a board;

(v) a bureau;

(vi) a committee;

(vii) a department;

(viii) an advisory board;

(ix) an administrative unit; or

(x) a commission.

(28) “Governmental subdivision” means:

(a) a county;

(b) a city;

(c) a town; or

(d) another type of governmental subdivision authorized by the laws of this state.

(29) “Individual” means:

(a) a natural person;

(b) the estate of an incompetent individual; or

(c) the estate of a deceased individual.

(30) “Internal Revenue Code” means the federal “Internal Revenue Code of 1986,” as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.

(31) (a) “Mail,” “mailed,” or “mailing” means deposit, deposited, or depositing in the United States mail, properly addressed, first-class postage prepaid.

(b) “Mail,” “mailed,” or “mailing” includes registered or certified mail for which the proper fee is paid.

(32) (a) “Member” means one or more persons identified or otherwise appointed as a member of a domestic or foreign nonprofit corporation as provided:

(i) in the articles of incorporation;

(ii) in the bylaws;

(iii) by a resolution of the board of directors; or

(iv) by a resolution of the members of the nonprofit corporation.

(b) “Member” includes:

(i) “voting member[-?]”; and

(ii) a shareholder in a water company.

(33) “Membership” refers to the rights and obligations of a member or members.

(34) “Mutual benefit corporation” means a nonprofit corporation:

(a) that issues shares of stock to its members evidencing a right to receive distribution of water or otherwise representing property rights; or

(b) all of whose assets are contributed or acquired by or for the members of the nonprofit corporation or their predecessors in interest to serve the mutual purposes of the members.

(35) “Nonprofit corporation” or “domestic nonprofit corporation” means an entity that:

(a) is not a foreign nonprofit corporation; and

(b) is incorporated under or subject to this chapter.

(36) “Notice” means the same as that term is defined in Section 16-6a-103.

(37) “Party related to a director” means:

(a) the spouse of the director;

(b) a child of the director;

(c) a grandchild of the director;

(d) a sibling of the director;

(e) a parent of the director;

(f) the spouse of an individual described in Subsections (37)(b) through (e);

(g) an individual having the same home as the director;

(h) a trust or estate of which the director or another individual specified in this Subsection (37) is a substantial beneficiary; or

(i) any of the following of which the director is a fiduciary:

- (i) a trust;
- (ii) an estate;
- (iii) an incompetent;
- (iv) a conservatee; or
- (v) a minor.

(38) "Person" means an:

- (a) individual; or
- (b) entity.

(39) "Principal office" means:

(a) the office, in or out of this state, designated by a domestic or foreign nonprofit corporation as its principal office in the most recent document on file with the division providing that information, including:

- (i) an annual report;
- (ii) an application for a certificate of authority; or
- (iii) a notice of change of principal office; or

(b) if no principal office can be determined, a domestic or foreign nonprofit corporation's registered office.

(40) "Proceeding" includes:

- (a) a civil suit;
- (b) arbitration;
- (c) mediation;
- (d) a criminal action;
- (e) an administrative action; or
- (f) an investigatory action.

(41) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means the writing or other document is actually received:

(a) by the domestic or foreign nonprofit corporation at:

- (i) its registered office in this state; or
- (ii) its principal office;

(b) by the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or

(c) by another person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

(42) (a) "Record date" means the date established under Part 6, Members, or Part 7, Member Meetings and Voting, on which a nonprofit

corporation determines the identity of the nonprofit corporation's members.

(b) The determination described in Subsection (42)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(43) "Registered agent" means the registered agent of:

- (a) a domestic nonprofit corporation; or
- (b) a foreign nonprofit corporation.

(44) "Registered office" means the office within this state designated by a domestic or foreign nonprofit corporation as its registered office in the most recent document on file with the division providing that information, including:

- (a) articles of incorporation;
- (b) an application for a certificate of authority; or
- (c) a notice of change of registered office.

(45) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-6a-818(3) for:

(a) the preparation and maintenance of:

- (i) minutes of the meetings of:
 - (A) the board of directors; or
 - (B) the members; and
- (ii) the other records and information required to be kept by the nonprofit corporation pursuant to Section 16-6a-1601; and

(b) authenticating records of the nonprofit corporation.

(46) "Share" means a unit of interest in a nonprofit corporation.

(47) "Shareholder" means a person in whose name a share is registered in the records of a nonprofit corporation.

(48) "State," when referring to a part of the United States, includes:

- (a) a state;
- (b) a commonwealth;
- (c) the District of Columbia;
- (d) an agency or governmental and political subdivision of a state, commonwealth, or District of Columbia;
- (e) territory or insular possession of the United States; or
- (f) an agency or governmental and political subdivision of a territory or insular possession of the United States.

(49) "Street address" means:

- (a) (i) street name and number;
- (ii) city or town; and

(iii) United States post office zip code designation; or

(b) if, by reason of rural location or otherwise, a street name, number, city, or town does not exist, an appropriate description other than that described in Subsection (49)(a) fixing as nearly as possible the actual physical location, but only if the information includes:

(i) the rural free delivery route;

(ii) the county; and

(iii) the United States post office zip code designation.

[~~51~~] (50) “Tribal nonprofit corporation” means a nonprofit corporation:

(a) incorporated under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe.

[~~50~~] (51) “Tribe” means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

(52) “United States” includes a district, authority, office, bureau, commission, department, and another agency of the United States of America.

(53) “Vote” includes authorization by:

(a) written ballot; and

(b) written consent.

(54) (a) “Voting group” means all the members of one or more classes of members or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote and be counted together collectively on a matter.

(b) All members or directors entitled by this chapter, the articles of incorporation, or the bylaws to vote generally on a matter are for that purpose a single voting group.

(55) (a) “Voting member” means a person entitled to vote for all matters required or permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.

(b) A person is not a voting member solely because of:

(i) a right the person has as a delegate;

(ii) a right the person has to designate a director; or

(iii) a right the person has as a director.

(c) Except as the bylaws may otherwise provide, “voting member” includes a “shareholder” if the nonprofit corporation has shareholders.

(56) “Water company” means:

(a) the same as that term is defined in Subsection 16-4-102(5); or

(b) a mutual benefit corporation, when the stock in the mutual benefit corporation represents a right to receive a distribution of water for beneficial use.

Section 2. Section 16-6a-606 is amended to read:

16-6a-606. Transfers.

(1) [~~Unless~~] Except as provided in Subsection (3), and unless otherwise provided [~~by~~] in the articles of incorporation or the bylaws, a member of a nonprofit corporation may not transfer:

(a) a membership; or

(b) any right arising from a membership.

(2) [~~Where~~] Except as provided in Subsection (3), where transfer rights have been provided in the articles of incorporation or the bylaws of a nonprofit corporation, a restriction on transfer rights may not be binding with respect to a member holding a membership issued [~~prior to~~] before the adoption of the restriction, unless the restriction is approved by the affected member.

(3) (a) For a water company, unless otherwise provided by the articles of incorporation or bylaws, ownership of shares is transferrable.

(b) Any restriction on the transfer of ownership under Subsection (3)(a):

(i) shall be reasonable;

(ii) shall be adopted in good faith and for a legitimate purpose;

(iii) shall be adopted in the best interest of the water company and its shareholders; and

(iv) may not discriminate against any individual shareholder or class of shareholders, but in a company where there are classes or divisions of stock, restrictions may differ between the classes or divisions.

(c) Nothing in this section is intended to alter any right or remedy a shareholder may have under Sections 16-6a-612, 16-6a-808, 16-6a-809, 16-6a-822, 16-6a-824, and 16-6a-825, or any other applicable law.

Section 3. Section 16-6a-610 is amended to read:

16-6a-610. Purchase of memberships.

(1) Unless otherwise provided [~~by~~] in the articles of incorporation or the bylaws, a nonprofit corporation may not purchase the membership of a member:

(a) who resigns; or

(b) whose membership is terminated.

(2) (a) If so authorized, a nonprofit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by:

- (i) its articles of incorporation or its bylaws; or
 - (ii) agreement with the affected member.
- (b) A payment permitted under Subsection (2)(a) may not violate:
- (i) Section 16-6a-1301; or
 - (ii) any other provision of this chapter.
- (3) A mutual benefit corporation may purchase a member's membership if, after the purchase is completed:

(a) the mutual benefit corporation would be able to pay its debts as they become due in the usual course of its activities; and

(b) the mutual benefit corporation's total assets would at least equal the sum of its total liabilities.

(4) A water company may purchase the shares of a shareholder who is delinquent in payment of shareholder assessments, in accordance with Chapter 4, Share Assessment Act.

Section 4. Section 16-6a-611 is amended to read:

16-6a-611. Property rights.

(1) A member ~~does not have any vested property right including any~~ has no right relating to management, control, purpose, or duration of the nonprofit corporation, except as provided by:

~~[(1)]~~ (a) the articles of incorporation or the bylaws of a mutual benefit corporation; or

~~[(2)]~~ (b) other applicable law.

(2) Unless otherwise provided by agreement, articles of incorporation, or the bylaws of a water company, and subject to the general liabilities and obligations of the water company, a shareholder in a water company has:

(a) an equitable, beneficial interest in the use of the water supply of the water company, proportionate to the shareholder's shares in the water company, which is an interest in real property; and

(b) the right to have the shareholder's proportionate share of the water delivered through a diversion structure, ditch, canal, storage and distribution facility, or other appurtenance of the water company, in accordance with:

(i) the distribution method of the water company;
or

(ii) an approved change application under Section 73-3-3.5.

Section 5. Section 16-6a-1302 is amended to read:

16-6a-1302. Authorized distributions.

(1) A nonprofit corporation may:

(a) make distributions or distribute the nonprofit corporation's assets to a ~~member~~:

(i) member that is a domestic or foreign nonprofit corporation;

(ii) member of a mutual benefit corporation, not inconsistent with its bylaws; ~~[or]~~

(iii) shareholder of a water company in a manner consistent with its articles of incorporation, bylaws, and the provisions of this chapter; or

~~[(iii) that is a]~~

(iv) governmental entity;

(b) pay compensation in a reasonable amount to its members, directors, or officers for services rendered;

(c) if a cooperative nonprofit corporation, make distributions consistent with its purposes; and

(d) confer benefits upon its members in conformity with its purposes.

(2) A nonprofit corporation may make distributions upon dissolution as follows:

(a) to a member that is a domestic or foreign nonprofit corporation;

(b) to its members if it is a mutual benefit corporation;

(c) to a shareholder of a water company in proportion to the shareholder's interest in the water company, consistent with the water company's articles of incorporation and bylaws;

~~[(e)]~~ (d) to another nonprofit corporation, including a nonprofit corporation organized to receive the assets of and function in place of the dissolved nonprofit corporation; and

~~[(d)]~~ (e) otherwise in conformity with Part 14, Dissolution.

(3) Authorized distributions by a dissolved nonprofit corporation may be made by authorized officers or directors, including those elected, hired, or otherwise selected after dissolution if the election, hiring, or other selection after dissolution is not inconsistent with the articles of incorporation and bylaws existing at the time of dissolution.

CHAPTER 359**S. B. 64**

Passed February 13, 2017

Approved March 24, 2017

Effective May 9, 2017

STUDENT SCHOLARSHIP AMENDMENTS

Chief Sponsor: Lincoln Fillmore

House Sponsor: Adam Gardiner

LONG TITLE**General Description:**

This bill amends provisions related to the centennial scholarship.

Highlighted Provisions:

This bill:

- ▶ changes the amount of the centennial scholarship;
- ▶ allows a student to defer consideration for a centennial scholarship for certain reasons; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-15-102, as last amended by Laws of Utah 2016, Chapters 236 and 415

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

Section 1. Section 53A-15-102 is amended to read:**53A-15-102. Early graduation incentives -- Incentive to school district -- Partial tuition scholarship for student -- Student deferral -- Payments.**

(1) ~~[Any]~~ A secondary public school student who has completed all required courses or demonstrated mastery of required skills and competencies may^[,] graduate at any time with the approval of:

- (a) the student^[,];
- (b) the student's parent or guardian^[,] ~~and an authorized~~; and
- (c) a local school official^[,] ~~graduate at any time~~ who is authorized by the school's principal or director to approve early graduation.

(2) ~~[Each]~~ The State Board of Education shall make a payment to a public high school ~~[shall receive]~~ in an amount equal to 1/2 of the scholarship awarded to each student under this section who graduates from the school at or ~~[prior to]~~ before the conclusion of ~~[the eleventh]~~ grade 11, or a proportionately lesser amount for ~~[any]~~ a student who graduates after the conclusion of ~~[the eleventh]~~ grade 11 but ~~[prior to]~~ before the conclusion of ~~[the twelfth]~~ grade 12.

(3) (a) ~~[A]~~ The State Board of Education shall award to each student who graduates from high school at or ~~[prior to]~~ before the conclusion of ~~[the~~

~~eleventh]~~ grade ~~[shall receive]~~ 11 a centennial scholarship in the ~~[lesser amount of full tuition for one year or \$1,000 to be used]~~ amount of the greater of 30% of the previous year's value of the weighted pupil unit, as defined in Section 53A-1a-703, or \$1,000, subject to this Subsection (3) through Subsection (6).

(b) A student who is awarded a centennial scholarship may use the scholarship for full time enrollment at:

(i) a Utah public college, university, or community college^[,];

(ii) an applied technology college within the Utah College of Applied Technology^[,]; or

(iii) any other institution in the state of Utah^[,] ~~accredited by the Northwest Association of Schools and Colleges~~ that:

(A) ~~is accredited by an accrediting organization recognized by the State Board of Regents;~~ and

(B) offers postsecondary courses of the student's choice ~~[upon verification]~~.

(c) Before making a payment of a centennial scholarship, the State Board of Education shall verify that the student has registered at ~~[the]~~ an institution described in Subsection (3)(b):

(i) during the fiscal year following the student's graduation from high school^[,]; or

(ii) at the end of the student's deferral period, in accordance with Subsection (4).

~~[(b) In the case of]~~

(d) If a student ~~[who]~~ graduates after the conclusion of ~~[the eleventh]~~ grade 11 but ~~[prior to]~~ before the conclusion of ~~[the twelfth]~~ grade 12, the State Board of Education shall award the student ~~[shall receive]~~ a centennial scholarship of a proportionately lesser amount than the scholarship amount described in Subsection (3)(a).

(4) (a) A student who is eligible for a centennial scholarship under Subsection (3) may make a request to the State Board of Education that the State Board of Education defer consideration of the student for the scholarship for a set period of time.

(b) A student who makes a request under Subsection (4)(a) shall state in the request the reason for which the student wishes not to be considered for the scholarship until the end of the deferral period, which may include:

(i) health reasons;

(ii) religious reasons;

(iii) military service; or

(iv) humanitarian service.

(c) If a student makes a request under Subsection (4)(a), the State Board of Education shall:

(i) (A) review the student's request; and

(B) approve or reject the student's request; and

(ii) if the State Board of Education approves the student's request, in consultation with the student,

set the length of the deferral period, ensuring that the deferral period is sufficient to meet the student's needs under Subsection (4)(b).

(d) At the end of the deferral period, and upon request of the student, the State Board of Education shall:

(i) determine a student to be eligible for the scholarship if the student was eligible at the time of the student's request for deferral; and

(ii) if found eligible, make a payment to the student in an amount equal to the amount described in Subsection (4)(e).

(e) The amount of a student's deferred scholarship payment shall be determined by the State Board of Education based on the amount of the scholarship the student would have been entitled to as described in Subsection (3) and based on the fiscal year prior to the student's request for deferral.

(5) Except as provided in Subsection (4)(b), the State Board of Education:

[4] (a) [The] shall make the payments authorized in Subsections (2) and (3)(a) [shall be made] during the fiscal year that follows the student's graduation[-]; and

(b) [The] may make the payments authorized in Subsection (3)(b) [may be made] during the fiscal year:

(i) in which the student graduates; or [the fiscal year]

(ii) following the student's graduation.

[5] (a) The State Board of Education shall administer the payment program authorized in Subsections (2), (3), and (4).]

[6] The Legislature shall make an annual appropriation from the Education Fund to the State Board of Education for the costs associated with the Centennial Scholarship Program based on the projected number of students who will graduate before the conclusion of the twelfth grade in any given year.]

(6) Subject to future budget constraints, the Legislature shall adjust the appropriation for the Centennial Scholarship Program based on:

(a) the anticipated increase of students awarded a centennial scholarship; and

(b) the percent increase of the prior year's weighted pupil unit value, as provided in Subsection (3).

CHAPTER 360**S. B. 79**

Passed March 7, 2017
 Approved March 24, 2017
 Effective May 9, 2017

WASTE MANAGEMENT AMENDMENTS

Chief Sponsor: J. Stuart Adams
 House Sponsor: Mike K. McKell

LONG TITLE**General Description:**

This bill modifies provisions of the Radiation Control Act.

Highlighted Provisions:

This bill:

- ▶ defines “unlicensed facility” and “radioactive waste facility”;
- ▶ modifies financial assurance requirements for a licensed and an unlicensed facility; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 19-3-102, as last amended by Laws of Utah 2015, Chapter 451
- 19-3-104, as last amended by Laws of Utah 2015, Chapters 441 and 451
- 19-3-105, as last amended by Laws of Utah 2015, Chapter 451

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

Section 1. Section 19-3-102 is amended to read:**19-3-102. Definitions.**

As used in this chapter:

(1) “Board” means the Waste Management and Radiation Control Board created under Section 19-1-106.

(2) (a) “Broker” means a person who performs one or more of the following functions for a generator:

(i) arranges for transportation of the radioactive waste;

(ii) collects or consolidates shipments of radioactive waste; or

(iii) processes radioactive waste in some manner.

(b) “Broker” does not include a carrier whose sole function is to transport the radioactive waste.

(3) “Byproduct material” [~~has the same meaning as~~] means the same as that term is defined in 42 U.S.C. Sec. 2014(c)(2).

(4) “Class B and class C low-level radioactive waste” [~~has the same meaning as~~] means the same as that term is defined in 10 [CFR] C.F.R. Sec. 61.55.

(5) “Director” means the director of the Division of Waste Management and Radiation Control.

(6) “Division” means the Division of Waste Management and Radiation Control, created in Subsection 19-1-105(1)(d).

(7) “Generator” means a person who:

(a) possesses any material or component:

(i) that contains radioactivity or is radioactively contaminated; and

(ii) for which the person foresees no further use; and

(b) transfers the material or component to:

(i) a commercial radioactive waste treatment or disposal facility; or

(ii) a broker.

(8) (a) “High-level nuclear waste” means spent reactor fuel assemblies, dismantled nuclear reactor components, and solid and liquid wastes from fuel reprocessing and defense-related wastes.

(b) “High-level nuclear waste” does not include medical or institutional wastes, naturally[-] occurring radioactive materials, or uranium mill tailings.

(9) (a) “Low-level radioactive waste” means waste material [~~which~~] that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities [~~which~~] that exceed applicable federal or state standards for unrestricted release.

(b) “Low-level radioactive waste” does not include waste containing more than 100 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(10) “Radiation” means ionizing and nonionizing radiation, including gamma rays, X-rays, alpha and beta particles, high speed electrons, and other nuclear particles.

(11) “Radioactive” means any solid, liquid, or gas which emits radiation spontaneously from decay of unstable nuclei.

(12) “Unlicensed facility” means a structure, road, or property:

(a) adjacent to, but outside of, a licensed or permitted area; and

(b) that is not used for waste disposal or waste management.

Section 2. Section 19-3-104 is amended to read:

19-3-104. Registration and licensing of radiation sources by department -- Assessment of fees -- Rulemaking authority and procedure -- Siting criteria -- Indirect and direct costs.

(1) As used in this section:

(a) "Decommissioning" includes financial assurance.

(b) "Source material" and "byproduct material" ~~[have the same definitions as]~~ mean the same as those terms are defined in the Atomic Energy Act of 1954, 42 U.S.C. Sec. 2014, as amended.

(2) The division may require the registration or licensing of radiation sources that constitute a significant health hazard.

(3) All sources of ionizing radiation, including ionizing radiation producing machines, shall be registered or licensed by the department.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules:

(a) necessary for controlling exposure to sources of radiation that constitute a significant health hazard;

(b) to meet the requirements of federal law relating to radiation control to ensure the radiation control program under this part is qualified to maintain primacy from the federal government;

(c) to establish certification procedure and qualifications for persons who survey mammography equipment and oversee quality assurance practices at mammography facilities; and

(d) as necessary regarding the possession, use, transfer, or delivery of source and byproduct material and the disposal of byproduct material to establish requirements for:

(i) the licensing, operation, decontamination, and decommissioning, including financial assurances; and

(ii) the reclamation of sites, structures, and equipment used in conjunction with the activities described in this Subsection (4).

(5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and byproduct material and the disposal of byproduct material at uranium mills or commercial waste facilities, as provided in this Subsection (5).

(b) On and after January 1, 2003, through March 30, 2003:

(i) \$6,667 per month for uranium mills or commercial sites disposing of or reprocessing byproduct material; and

(ii) \$4,167 per month for those uranium mills the director has determined are on standby status.

(c) On and after March 31, 2003, through June 30, 2003, the same fees as in Subsection (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation on or before March 30, 2003.

(d) If the Nuclear Regulatory Commission does not grant the amendment for state agreement

status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and are not required to be paid until on and after the later date of:

(i) October 1, 2003; or

(ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for agreement state status for uranium recovery regulation.

(e) For the payment periods beginning on and after July 1, 2003, the department shall establish the fees required under Subsection (5)(a) under Section 63J-1-504, subject to the restrictions under Subsection (5)(d).

(f) The division shall deposit fees it receives under this Subsection (5) into the Environmental Quality Restricted Account created in Section 19-1-108.

(6) (a) The division shall assess fees for registration, licensing, and inspection of radiation sources under this section.

(b) The division shall comply with the requirements of Section 63J-1-504 in assessing fees for licensure and registration.

(7) (a) Except as provided in Subsection (8), and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may not adopt rules, for the purpose of the state assuming responsibilities from the United States Nuclear Regulatory Commission with respect to regulation of sources of ionizing radiation, that are more stringent than the corresponding federal regulations which address the same circumstances.

(b) In adopting those rules, the board may incorporate corresponding federal regulations by reference.

(8) (a) The board may adopt rules more stringent than corresponding federal regulations for the purpose described in Subsection (7) only if it makes a written finding after public comment and hearing and based on evidence in the record that corresponding federal regulations are not adequate to protect public health and the environment of the state.

(b) Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

(9) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall by rule:

(i) authorize independent qualified experts to conduct inspections required under this chapter of x-ray facilities registered with the division; and

(ii) establish qualifications and certification procedures necessary for independent experts to conduct these inspections.

(b) Independent experts under this Subsection (9) are not considered employees or representatives of the division or the state when conducting the inspections.

(10) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may by rule establish criteria for siting commercial low-level radioactive waste treatment or disposal facilities, subject to the prohibition imposed by Section 19-3-103.7.

(b) Subject to Subsection 19-3-105(10), any facility under Subsection (10)(a) for which a radioactive material license is required by this section shall comply with those criteria.

(c) Subject to Subsection 19-3-105(10), a facility may not receive a radioactive material license until siting criteria have been established by the board. The criteria also apply to facilities that have applied for but not received a radioactive material license.

(11) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules that:

(a) establish financial assurance requirements for closure and postclosure care of radioactive waste land disposal facilities~~[-];~~ and

(b) establish financial assurance requirements for closure and postclosure care of an unlicensed facility.

(12) The rules described in Subsection (11) shall include the following provisions:

(a) the financial assurance shall be based on an annual ~~[calculation]~~ estimate and shall include ~~[the costs of]~~ closure and postclosure ~~[care of radioactive waste land disposal facilities]~~ costs in all areas subject to the licensed or permitted portions of the facility;

(b) financial assurance ~~[for closing the areas within the disposal embankments shall be limited to the cost of closing areas where waste has been disposed; and]~~ for an unlicensed facility that supports the operation of a licensed or permitted facility shall include the estimated cost of:

~~[(c) at the option of the licensee or permittee, the financial assurance requirements shall be based on:]~~

(i) the removal of structures;

(ii) the testing of structures, roads, and property to ensure no radiological contamination has occurred outside of the licensed area; and

(iii) stabilization and water infiltration control;

(c) financial assurance cost estimates for a single approved waste disposal unit for which the volume of waste already placed and proposed to be placed in the unit within the surety period is less than the full waste capacity of the unit shall reflect the closure and postclosure costs for a waste disposal unit smaller than the approved waste disposal unit, if the unit could be reduced in size, meet closure requirements, and reduce closure costs;

(d) financial assurance cost estimates for two approved adjacent waste disposal units that have

been approved to be combined into a single unit and for which the combined volume of waste already placed and proposed to be placed in the units within the surety period is less than the combined waste capacity for the two separate units shall reflect either two separate waste disposal units or a single combined unit, whichever has the lowest closure and postclosure costs;

(e) the licensee or permittee shall annually propose closure and postclosure costs upon which financial assurance amounts are based, including costs of potential remediation at the licensed or permitted facility and, notwithstanding the obligations described in Subsection (12)(b), any unlicensed facility;

(f) to provide the information in Subsection (12)(e), the licensee or permittee shall provide:

(i) ~~[an annual calculation]~~ a proposed annual cost estimate using the current edition of RS Means Facilities Construction Cost Data or using a process, including an indirect cost multiplier, previously agreed to between the licensee or permittee and the director; or

(ii) (A) for an initial financial assurance determination and for each financial assurance determination every five years thereafter, a proposed competitive site-specific ~~[bid]~~ estimate for closure and postclosure care of the facility at least once every five years; and

(B) for each year between a financial assurance determination ~~[as]~~ described in Subsection ~~[(12)(e)(ii)(A),]~~ (12)(f)(ii)(A), a proposed financial assurance estimate that accounts for current site conditions and that includes an annual inflation adjustment to the financial assurance determination using the Gross Domestic Product Implicit Price Deflator of the Bureau of Economic Analysis, United States Department of Commerce, calculated by dividing the latest annual deflator by the deflator for the previous year~~[-];~~ and

(g) the director shall:

(i) annually review the licensee's or permittee's proposed closure and postclosure estimate; and

(ii) approve the estimate if the director determines that the estimate would be sufficient to provide for closure and postclosure costs.

(13) Subject to the financial assurance requirements described in Subsections (11) and (12), if the director and the licensee or permittee do not agree on a final financial assurance determination made by the director, the licensee or permittee may appeal the determination in:

(a) an arbitration proceeding governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act, with the costs of the arbitration to be split equally between the licensee or permittee and the division, if both the licensee or permittee and the director agree in writing to arbitration; or

(b) a special adjudicative proceeding under Section 19-1-301.5.

Section 3. Section 19-3-105 is amended to read:

19-3-105. Definitions -- Legislative and gubernatorial approval required for radioactive waste license -- Exceptions -- Application for new, renewed, or amended license.

(1) As used in this section:

(a) "Alternate feed material" has the same definition as provided in Section 59-24-102.

(b) "Approval application" means an application by a radioactive waste facility regulated under this chapter or Title 19, Chapter 5, Water Quality Act, for a permit, license, registration, certification, or other authorization.

(c) (i) "Class A low-level radioactive waste" means:

(A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

(B) radium-226 up to a maximum radionuclide concentration level of 10,000 picocuries per gram.

(ii) "Class A low-level radioactive waste" does not include:

(A) uranium mill tailings;

(B) naturally occurring radioactive materials; or

(C) the following radionuclides if classified as "special nuclear material" under the Atomic Energy Act of 1954, 42 U.S.C. 2014:

(I) uranium-233; and

(II) uranium-235 with a radionuclide concentration level greater than the concentration limits for specific conditions and enrichments established by an order of the Nuclear Regulatory Commission:

(Aa) to ensure criticality safety for a radioactive waste facility in the state; and

(Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special nuclear material exemption order.

(d) (i) "Radioactive waste facility" or "facility" means a facility that [~~receives, transfers, stores,~~] decays radioactive waste in storage, treats radioactive waste, or disposes of radioactive waste:

(A) commercially for profit; or

(B) generated at locations other than the radioactive waste facility.

(ii) "Radioactive waste facility" does not include a facility that receives:

(A) alternate feed material for reprocessing; or

(B) radioactive waste from a location in the state designated as a processing site under 42 U.S.C. 7912(f).

(e) "Radioactive waste license" or "license" means a radioactive material license issued by the director under Subsection 19-3-108(2)(d), to own, construct, modify, or operate a radioactive waste facility.

(2) The provisions of this section are subject to the prohibition under Section 19-3-103.7.

(3) Subject to Subsection (8), a person may not own, construct, modify, or operate a radioactive waste facility without:

(a) having received a radioactive waste license for the facility;

(b) meeting the requirements established by rule under Section 19-3-104;

(c) the approval of the governing body of the municipality or county responsible for local planning and zoning where the radioactive waste is or will be located; and

(d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the approval of the governor and the Legislature.

(4) Subject to Subsection (8), a new radioactive waste license application, or an application to renew or amend an existing radioactive waste license, is subject to the requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:

(a) specifies a different geographic site than a previously submitted application;

(b) would cost 50% or more of the cost of construction of the original radioactive waste facility or the modification would result in an increase in capacity or throughput of a cumulative total of 50% of the total capacity or throughput which was approved in the facility license as of January 1, 1990, or the initial approval facility license if the initial license approval is subsequent to January 1, 1990; or

(c) requests approval to [~~receive, transfer, store,~~] decay radioactive waste in storage, treat radioactive waste, or dispose of radioactive waste having a higher radionuclide concentration limit than allowed, under an existing approved license held by the facility, for the specific type of waste to be [~~received, transferred, stored,~~] decayed in storage, treated, or disposed of.

(5) The requirements of Subsection (4)(c) do not apply to an application to renew or amend an existing radioactive waste license if:

(a) the radioactive waste facility requesting the renewal or amendment has received a license prior to January 1, 2004; and

(b) the application to renew or amend its license is limited to a request to approve the receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level radioactive waste.

(6) A radioactive waste facility [~~which~~] that receives a new radioactive waste license after May 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license

application, renewal, or amendment that requests approval to [~~receive, transfer, store,~~] decay radioactive waste in storage, treat radioactive waste, or dispose of radioactive waste not previously approved under an existing license held by the facility.

(7) If the board finds that approval of additional radioactive waste license applications, renewals, or amendments will result in inadequate oversight, monitoring, or licensure compliance and enforcement of existing and any additional radioactive waste facilities, the board shall suspend acceptance of further applications for radioactive waste licenses. The board shall report the suspension to the Legislative Management Committee.

(8) The requirements of Subsections (3)(c) and (d) and Subsection 19-3-104(10) do not apply to:

(a) a radioactive waste license that is in effect on December 31, 2006, including all amendments to the license that have taken effect as of December 31, 2006;

(b) a license application for a facility in existence as of December 31, 2006, unless the license application includes an area beyond the facility boundary approved in the license described in Subsection (8)(a); or

(c) an application to renew or amend a license described in Subsection (8)(a), unless the renewal or amendment includes an area beyond the facility boundary approved in the license described in Subsection (8)(a).

(9) (a) The director shall review an approval application to determine whether the application complies with the requirements of this chapter and the rules of the board.

(b) Within 60 days after the day on which the director receives an approval application described in Subsection (10)(a)(ii) or (iii), the director shall:

(i) determine whether the application is complete and contains all the information necessary to process the application for approval; and

(ii) (A) issue a notice of completeness to the applicant; or

(B) issue a notice of deficiency to the applicant and list the additional information necessary to complete the application.

(c) The director shall review information submitted in response to a notice of deficiency within 30 days after the day on which the director receives the information.

(10) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) categorize approval applications as follows:

(i) approval applications that:

(A) are administrative in nature;

(B) require limited scrutiny by the director; and

(C) do not require public input;

(ii) approval applications that:

(A) require substantial scrutiny by the director;

(B) require public input; and

(C) are not described in Subsection (10)(a)(iii); and

(iii) approval applications for:

(A) the granting or renewal of a radioactive waste license;

(B) the granting or renewal of a groundwater permit issued by the director for a radioactive waste facility;

(C) an amendment to a radioactive waste license, or a groundwater permit, that allows the design and approval of a new disposal cell;

(D) an amendment to a radioactive waste license or groundwater discharge permit for a radioactive waste facility to eliminate groundwater monitoring; and

(E) a radioactive waste facility closure plan;

(b) provide time periods for the director to review, and approve or deny, an application described in Subsection (10)(a) as follows:

(i) for applications categorized under Subsection (10)(a)(i), within 30 days after the day on which the director receives the application;

(ii) for applications categorized under Subsection (10)(a)(ii), within 180 days after the day on which the director receives the application;

(iii) for applications categorized under Subsection (10)(a)(iii), as follows:

(A) for a new radioactive waste license, within 540 days after the day on which the director receives the application;

(B) for a new groundwater permit issued by the director for a radioactive waste facility consistent with the provisions of Title 19, Chapter 5, Water Quality Act, within 540 days after the day on which the director receives the application;

(C) for a radioactive waste license renewal, within 365 days after the day on which the director receives the application;

(D) for a groundwater permit renewal issued by the director for a radioactive waste facility, within 365 days after the day on which the director receives the application;

(E) for an amendment to a radioactive waste license, or a groundwater permit, that allows the design and approval of a new disposal cell, within 365 days after the day on which the director receives the application;

(F) for an amendment to a radioactive waste license, or a groundwater discharge permit, for a radioactive waste facility to eliminate groundwater

monitoring, within 365 days after the day on which the director receives the application; and

(G) for a radioactive waste facility closure plan, within 365 days after the day on which the director receives the application;

(c) toll the time periods described in Subsection (10)(b):

(i) while an owner or operator of a facility responds to the director's request for information;

(ii) during a public comment period; or

(iii) while the federal government reviews the application; and

(d) require the director to prepare a detailed written explanation of the basis for the director's approval or denial of an approval application.

CHAPTER 361**S. B. 81**

Passed March 1, 2017

Approved March 24, 2017

Effective May 9, 2017

**LOCAL GOVERNMENT
LICENSING AMENDMENTS**

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Marc K. Roberts

LONG TITLE**General Description:**

This bill modifies provisions related to a municipality's or a county's authority to license a business.

Highlighted Provisions:

This bill:

- ▶ amends provisions authorizing a municipality or a county to license a business;
- ▶ prohibits a municipality or a county from requiring a license or charging a fee for certain home based businesses; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-1-203, as last amended by Laws of Utah 2016, Chapter 350

17-53-216, as last amended by Laws of Utah 2008, Chapter 250

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

Section 1. Section 10-1-203 is amended to read:**10-1-203. License fees and taxes --
Application information to be transmitted
to the county assessor.**

(1) As used in this section:

(a) "Business" means any enterprise carried on for the purpose of gain or economic profit, except that the acts of employees rendering services to employers are not included in this definition.

(b) "Telecommunications provider" means the same as that term is defined in Section 10-1-402.

(c) "Telecommunications tax or fee" means the same as that term is defined in Section 10-1-402.

(2) Except as provided in Subsections (3) through (5) and (7)(a), and subject to Subsection (7)(b), the legislative body of a municipality may license for the purpose of regulation [~~and revenue~~] any business within the limits of the municipality, [~~and~~] may regulate that business by ordinance, and may impose fees on businesses to recover the municipality's costs of regulation.

(3) (a) The legislative body of a municipality may raise revenue by levying and collecting a municipal energy sales or use tax as provided in Part 3, Municipal Energy Sales and Use Tax Act, except a municipality may not levy or collect a franchise tax or fee on an energy supplier other than the municipal energy sales and use tax provided in Part 3, Municipal Energy Sales and Use Tax Act.

(b) (i) Subsection (3)(a) does not affect the validity of a franchise agreement as defined in Subsection 10-1-303(6), that is in effect on July 1, 1997, or a future franchise.

(ii) A franchise agreement as defined in Subsection 10-1-303(6) in effect on January 1, 1997, or a future franchise shall remain in full force and effect.

(c) A municipality that collects a contractual franchise fee pursuant to a franchise agreement as defined in Subsection 10-1-303(6) with an energy supplier that is in effect on July 1, 1997, may continue to collect that fee as provided in Subsection 10-1-310(2).

(d) (i) Subject to the requirements of Subsection (3)(d)(ii), a franchise agreement as defined in Subsection 10-1-303(6) between a municipality and an energy supplier may contain a provision that:

(A) requires the energy supplier by agreement to pay a contractual franchise fee that is otherwise prohibited under Part 3, Municipal Energy Sales and Use Tax Act; and

(B) imposes the contractual franchise fee on or after the day on which Part 3, Municipal Energy Sales and Use Tax Act is:

(I) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-305 is reduced; and

(II) [~~is~~] not superseded by a law imposing a substantially equivalent tax.

(ii) A municipality may not charge a contractual franchise fee under the provisions permitted by Subsection (3)(b)(i) unless the municipality charges an equal contractual franchise fee or a tax on all energy suppliers.

(4) (a) Subject to Subsection (4)(b), beginning July 1, 2004, the legislative body of a municipality may raise revenue by levying and providing for the collection of a municipal telecommunications license tax as provided in Part 4, Municipal Telecommunications License Tax Act.

(b) A municipality may not levy or collect a telecommunications tax or fee on a telecommunications provider except as provided in Part 4, Municipal Telecommunications License Tax Act.

(5) (a) (i) The legislative body of a municipality may by ordinance raise revenue by levying and collecting a license fee or tax on:

(A) a parking service business in an amount that is less than or equal to:

(I) \$1 per vehicle that parks at the parking service business; or

(II) 2% of the gross receipts of the parking service business;

(B) a public assembly or other related facility in an amount that is less than or equal to \$5 per ticket purchased from the public assembly or other related facility; and

(C) subject to the limitations of Subsections (5)(c) and (d):

(I) a business that causes disproportionate costs of municipal services; or

(II) a purchaser from a business for which the municipality provides an enhanced level of municipal services.

(ii) Nothing in this Subsection (5)(a) may be construed to authorize a municipality to levy or collect a license fee or tax on a public assembly or other related facility owned and operated by another political subdivision other than a community reinvestment agency without the written consent of the other political subdivision.

(b) As used in this Subsection (5):

(i) "Municipal services" includes:

(A) public utilities; and

(B) services for:

(I) police;

(II) fire;

(III) storm water runoff;

(IV) traffic control;

(V) parking;

(VI) transportation;

(VII) beautification; or

(VIII) snow removal.

(ii) "Parking service business" means a business:

(A) that primarily provides off-street parking services for a public facility that is wholly or partially funded by public money;

(B) that provides parking for one or more vehicles; and

(C) that charges a fee for parking.

(iii) "Public assembly or other related facility" means an assembly facility that:

(A) is wholly or partially funded by public money;

(B) is operated by a business; and

(C) requires a person attending an event at the assembly facility to purchase a ticket.

(c) (i) Before the legislative body of a municipality imposes a license fee on a business that causes disproportionate costs of municipal services under Subsection (5)(a)(i)(C)(I), the legislative body of the

municipality shall adopt an ordinance defining for purposes of the tax under Subsection (5)(a)(i)(C)(I):

(A) the costs that constitute disproportionate costs; and

(B) the amounts that are reasonably related to the costs of the municipal services provided by the municipality.

(ii) The amount of a fee under Subsection (5)(a)(i)(C)(I) shall be reasonably related to the costs of the municipal services provided by the municipality.

(d) (i) Before the legislative body of a municipality imposes a license fee on a purchaser from a business for which it provides an enhanced level of municipal services under Subsection (5)(a)(i)(C)(II), the legislative body of the municipality shall adopt an ordinance defining for purposes of the fee under Subsection (5)(a)(i)(C)(II):

(A) the level of municipal services that constitutes the basic level of municipal services in the municipality; and

(B) the amounts that are reasonably related to the costs of providing an enhanced level of municipal services in the municipality.

(ii) The amount of a fee under Subsection (5)(a)(i)(C)(II) shall be reasonably related to the costs of providing an enhanced level of the municipal services.

(6) All license fees and taxes shall be uniform in respect to the class upon which they are imposed.

(7) A municipality may not:

(a) require a license or permit for a business that is operated:

(i) only occasionally; and

(ii) by an individual who is under 18 years of age;
or

(b) charge a license fee for a home based business, unless the combined offsite impact of the home based business and the primary residential use materially exceeds the offsite impact of the primary residential use alone.

~~[(7)]~~ (8) The municipality shall transmit the information from each approved business license application to the county assessor within 60 days following the approval of the application.

~~[(8)]~~ (9) If challenged in court, an ordinance enacted by a municipality before January 1, 1994, imposing a business license fee on rental dwellings under this section shall be upheld unless the business license fee is found to impose an unreasonable burden on the fee payer.

Section 2. Section 17-53-216 is amended to read:

17-53-216. Business license fees and taxes
-- Application information to be transmitted to the county assessor.

(1) ~~For the purpose of this section, "business" is~~ As used in this section, "business" means any

enterprise carried on for the purpose of gain or economic profit, except that the acts of employees rendering services to employers are not included in this definition.

(2) [The] Except as provided in Subsection (4)(a), and subject to Subsection (4)(b), the legislative body of a county may by ordinance provide for the licensing of businesses within the unincorporated areas of the county for the purpose of regulation [and revenue], and may impose fees on businesses to recover the county's costs of regulation.

(3) All license fees and taxes shall be uniform in respect to the class upon which they are imposed.

(4) A county may not:

(a) require a license or permit for a business that is operated:

(i) only occasionally; and

(ii) by an individual who is under 18 years of age; or

(b) charge a license fee for a home based business unless the combined offsite impact of the home based business and the primary residential use materially exceeds the offsite impact of the primary residential use alone.

[(4)] (5) The county business licensing agency shall transmit the information from each approved business license application to the county assessor within 60 days following the approval of the application.

[(5)] (6) This section may not be construed to enhance, diminish, or otherwise alter the taxing power of counties existing prior to the effective date of Laws of Utah 1988, Chapter 144.

CHAPTER 362**S. B. 87**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

CIVIL ASSET FORFEITURE REVISIONS

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Brian M. Greene

LONG TITLE**General Description:**

This bill modifies the Forfeiture and Disposition of Property Act regarding forfeiture and the claiming of property.

Highlighted Provisions:

This bill:

- ▶ amends specified definitions;
- ▶ amends provisions regarding the determination that property is subject to forfeiture;
- ▶ amends civil forfeiture procedures to provide for seized currency to be returned to the claimant in specified circumstances;
- ▶ provides that when property valued at less than \$10,000 is seized, the property shall be returned to the claimant;
- ▶ provides that when property is determined to be subject to forfeiture, and the claimant is then acquitted of the offense giving rise to the forfeiture, the property shall be returned; and
- ▶ facilitates the return of seized property to an innocent owner.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

24-1-102, as last amended by Laws of Utah 2014, Chapter 112

24-2-103, as enacted by Laws of Utah 2013, Chapter 394

24-4-102, as enacted by Laws of Utah 2013, Chapter 394

24-4-104, as last amended by Laws of Utah 2014, Chapter 112

24-4-107, as enacted by Laws of Utah 2013, Chapter 394

24-4-110, as last amended by Laws of Utah 2014, Chapter 112

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

Section 1. Section 24-1-102 is amended to read:**24-1-102. Definitions.**

As used in this title:

(1) "Account" means the Criminal Forfeiture Restricted Account created in Section 24-4-116.

(2) (a) [~~"Acquittal"~~] "Acquitted" means a finding by a jury or a judge at trial that a claimant is not guilty.

(b) [~~An acquittal~~] "Acquitted" does not include:

- (i) a verdict of guilty on a lesser or reduced charge;
- (ii) a plea of guilty to a lesser or reduced charge; or
- (iii) dismissal of a charge as a result of a negotiated plea agreement.

(3) "Agency" means any agency of municipal, county, or state government, including law enforcement agencies, law enforcement personnel, and multijurisdictional task forces.

(4) "Claimant" means any:

- (a) owner of property as defined in this section;
- (b) interest holder as defined in this section; or
- (c) person or entity who asserts a claim to any property seized for forfeiture under this title.

(5) "Commission" means the Utah Commission on Criminal and Juvenile Justice.

(6) "Complaint" means a civil in rem complaint seeking the forfeiture of any real or personal property under this title.

(7) "Constructive seizure" means a seizure of property where the property is left in the control of the owner and the seizing agency posts the property with a notice of intent to seek forfeiture.

(8) (a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.

(b) All controlled substances that are possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, are contraband.

(9) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time the conduct subjecting the property to forfeiture occurred, and:

- (i) did not have actual knowledge of the conduct subjecting the property to forfeiture; or
- (ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable steps to prohibit the illegal use of the property; or

(b) acquired an ownership interest in the property and [~~who~~] had no knowledge that the illegal conduct subjecting the property to forfeiture had occurred or that the property had been seized for forfeiture, and:

(i) acquired the property in a bona fide transaction for value;

(ii) was a person, including a minor child, who acquired an interest in the property through probate or inheritance; or

(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

(10) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a party with a right-of-offset, a mortgagee, lien creditor, or the

beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value.

(11) "Known address" means any address provided by a claimant to the agency at the time the property was seized, or the claimant's most recent address on record with a governmental entity if no address was provided at the time of the seizure.

(12) "Legal costs" means the costs and expenses incurred by a party in a forfeiture action.

(13) "Legislative body" means:

(a) (i) the Legislature, county commission, county council, city commission, city council, or town council that has fiscal oversight and budgetary approval authority over an agency; or

(ii) the agency's governing political subdivision; or

(b) the lead governmental entity of a multijurisdictional task force, as designated in a memorandum of understanding executed by the agencies participating in the task force.

(14) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of persons who are employed by or acting under the authority of different governmental entities, including federal, state, county or municipal governments, or any combination of these agencies.

(15) "Owner" means any person or entity, other than an interest holder, that possesses a bona fide legal or equitable interest in real or personal property.

(16) (a) "Proceeds" means:

(i) property of any kind that is obtained directly or indirectly as a result of the commission of an offense that gives rise to forfeiture; or

(ii) any property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission regarding property under Subsection (16)(a)(i).

(b) "Proceeds" includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose regarding property under Subsection (16)(a)(i).

(c) "Proceeds" is not limited to the net gain or profit realized from the offense that gives rise to forfeiture.

(17) "Program" means the State Asset Forfeiture Grant Program established in Section 24-4-117.

(18) "Property" means all property, whether real or personal, tangible or intangible, but does not include contraband.

(19) "Prosecuting attorney" means:

(a) the attorney general and any assistant attorney general;

(b) any district attorney or deputy district attorney;

(c) any county attorney or assistant county attorney; and

(d) any other attorney authorized to commence an action on behalf of the state under this title.

(20) "Public interest use" means a:

(a) use by a government agency as determined by the legislative body of the agency's jurisdiction; or

(b) donation of the property to a nonprofit charity registered with the state.

(21) "Real property" means land and includes any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

Section 2. Section 24-2-103 is amended to read:

24-2-103. Property seized by a peace officer -- Custody and control of property.

(1) (a) When property is seized by a peace officer, the peace officer or the officer's employing agency shall provide a receipt to the person from whom the property was seized.

(b) The receipt shall describe the:

(i) property seized;

(ii) date of seizure; and

(iii) name and contact information of the officer's employing agency.

(c) In addition to the receipt, the person from whom the property was seized shall be provided with information regarding the forfeiture process, including:

(i) important time periods in the forfeiture process;

(ii) what happens to the property upon conviction or acquittal; and

(iii) how to make a claim for the return of the property.

~~[(e)]~~ (d) A copy of the receipt shall be maintained by the agency.

~~[(d)]~~ (e) If custody of the property is transferred to another agency, a copy of the receipt under Subsection (1)(a) shall be provided with the property.

(2) The agency responsible for maintaining the property shall:

(a) hold all seized property in safe custody until it can be disposed of as provided in this title; and

(b) maintain a record of the property that includes:

- (i) a detailed inventory of all property seized;
- (ii) the name of the person from whom it was seized; and
- (iii) the agency's case number.

(3) Property seized under this title is not recoverable by replevin, but is considered in the agency's custody subject only to the orders of the court or the official having jurisdiction.

(4) All controlled substances or other contraband that is seized by a peace officer may be processed for evidentiary or investigative purposes, including sampling or other preservation procedure prior to disposal or destruction.

(5) (a) An agency shall deposit property in the form of cash or other readily negotiable instruments into a separate, restricted, interest-bearing account maintained by the agency solely for the purpose of managing and protecting the property from commingling, loss, or devaluation.

(b) Each agency shall have written policies for the identification, tracking, management, and safekeeping of seized property, which shall include a prohibition against the transfer, sale, or auction of seized property to any employee of the agency.

(6) If a peace officer or the officer's employing agency records an interview of a minor child during an investigation of a violation of Section 76-5-402.1, 76-5-402.3, 76-5-403.1, or 76-5-404.1, the agency shall retain a copy of the recording for 18 years following the date of the last recording unless the prosecuting attorney requests in writing that the recording be retained for an additional period of time.

(7) Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act, governs the disposition of property held by a pawn or secondhand business in the course of its business.

Section 3. Section 24-4-102 is amended to read:

24-4-102. Property subject to forfeiture.

(1) Except as provided in Subsection (3), [a]ll property that has been used to facilitate the commission of a federal or state criminal offense and any proceeds of criminal activity may be forfeited under this chapter, including:

(a) real property, including things growing on, affixed to, and found in land; and

(b) tangible and intangible personal property, including money, rights, privileges, interests, claims, and securities of any kind.

(2) If the property is used to facilitate a violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not constitute a prior

restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15, or would not otherwise unlawfully interfere with the exercise of those rights.

(3) A motor vehicle used in a violation of Section 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection 58-37-8(2)(g), or Section 76-5-207 may not be forfeited unless:

(a) the operator of the vehicle has previously been convicted of a violation, committed after May 12, 2009, of:

(i) a felony driving under the influence violation under Section 41-6a-502;

(ii) a felony violation under Subsection 58-37-8(2)(g); or

(iii) automobile homicide under Section 76-5-207; or

(b) the operator of the vehicle was driving on a denied, suspended, revoked, or disqualified license; and

(i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii) was imposed because of a violation under:

(A) Section 41-6a-502;

(B) Section 41-6a-517;

(C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);

(D) Section 41-6a-520;

(E) Subsection 58-37-8(2)(g);

(F) Section 76-5-207; or

(G) a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of the sections or ordinances described in Subsections (3)(b)(i)(A) through (F); or

(ii) the denial, suspension, revocation, or disqualification described in Subsections (3)(b)(i)(A) through (G):

(A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension, revocation, or disqualification; and

(B) the original denial, suspension, revocation, or disqualification was imposed because of a violation described in Subsections (3)(b)(i)(A) through (G).

Section 4. Section 24-4-104 is amended to read:

24-4-104. Civil forfeiture procedure.

(1) (a) The law enforcement agency shall promptly return seized property, and the prosecuting attorney may take no further action to effect the forfeiture of the property, unless within 75 days after the property is seized the prosecuting attorney:

(i) files a criminal [forfeiture] indictment or information under Subsection 24-4-105(2);

(ii) obtains a restraining order under Subsection 24-4-105(3);

(iii) files a petition under Subsection 24-4-114(1); or

(iv) files a civil forfeiture complaint.

(b) A complaint for civil forfeiture shall describe with reasonable particularity the:

(i) property that is the subject of the forfeiture proceeding;

(ii) date and place of seizure; and

(iii) factual allegations that constitute a basis for forfeiture.

(2) (a) After a complaint is filed, the prosecuting attorney shall serve a copy of the complaint and summons upon each claimant known to the prosecuting attorney within 30 days.

(b) The prosecuting attorney is not required to serve a copy of the complaint or the summons upon any claimant who has disclaimed, in writing, an ownership interest in the seized property.

(c) Service of the complaint and summons shall be by:

(i) personal service;

(ii) certified mail, return receipt requested, to the claimant's known address; or

(iii) service by publication, if the prosecuting attorney demonstrates to the court that service cannot reasonably be made by personal service or certified mail.

(d) Service by publication shall be by publication of two notices, in two successive weeks, of the forfeiture proceeding:

(i) in a newspaper of general circulation in the county in which the seizure occurred; and

(ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).

(e) Service is effective upon the earlier of:

(i) personal service;

(ii) mailing of a written notice; or

(iii) publication.

(f) Upon motion of the prosecuting attorney and a showing of good cause, the court may extend the period to complete service under this section for an additional 60 days.

(3) (a) In any case where the prosecuting attorney files a complaint for forfeiture, a claimant may file an answer to the complaint.

(b) The answer shall be filed within 30 days after the complaint is served upon the claimant as provided in Subsection (2)(b).

(c) When the property subject to forfeiture is valued at less than \$10,000, the agency that has

custody of the property shall return the property to the claimant if:

(i) (A) the prosecuting attorney has filed a forfeiture complaint, and the claimant has filed an answer through an attorney or pro se, in accordance with Subsections (3)(a) and (b); and

(B) the prosecuting attorney has not filed an information or indictment for criminal conduct giving rise to the forfeiture within 60 days after the date that service of the forfeiture complaint on the claimant was completed, or has not timely moved a court of competent jurisdiction and demonstrated reasonable cause for an extension of time to file such an information or indictment; or

(ii) the information or indictment for criminal conduct giving rise to the forfeiture was dismissed and the prosecuting attorney has not refiled the information or indictment within seven days of the dismissal.

(d) The return of property to the claimant under Subsection (3)(c) does not include any expenses, costs, or attorney fees.

(e) The time limitations in Subsection (3)(c)(i) may be extended for up to 15 days if a claimant timely seeks to recover possession of seized property pursuant to Subsection 24-4-107(8), but shall resume immediately upon the seizing agency's or prosecuting attorney's timely denial of the claim on the merits.

(4) Except as otherwise provided in this chapter, forfeiture proceedings are governed by the Utah Rules of Civil Procedure.

(5) The court shall take all reasonable steps to expedite civil forfeiture proceedings and shall give these proceedings the same priority as is given to criminal cases.

(6) In all suits or actions brought under this section for the civil forfeiture of any property, the burden of proof is on the prosecuting attorney to establish by clear and convincing evidence ~~the extent to which, if any, the property is subject to forfeiture~~ that the claimant engaged in conduct giving rise to the forfeiture.

(7) A claimant may file an answer to a complaint for civil forfeiture without posting bond with respect to the property subject to forfeiture.

(8) Property is subject to forfeiture under this chapter if the prosecuting attorney establishes that:

(a) the claimant has engaged in conduct giving rise to forfeiture;

(b) the property was acquired by the claimant during that portion of the conduct that gives rise to forfeiture, or within a reasonable time after that conduct is committed; and

(c) there is no likely source for the purchase or acquisition of the property other than the conduct that gives rise to forfeiture.

(9) A finding by the court that property is the proceeds of conduct giving rise to forfeiture does not

require proof that the property was the proceeds of any particular exchange or transaction.

(10) If the prosecutor establishes that the property is subject to forfeiture, but the claimant is subsequently criminally charged with the conduct giving rise to the forfeiture and is acquitted of that charge on the merits:

(a) the property subject to the forfeiture or the open market value of the property, if the property has been disposed of under Subsection 24-4-108(13), shall be returned to the claimant; and

(b) any payments required under this chapter regarding the costs of holding the property shall be paid to the claimant.

Section 5. Section 24-4-107 is amended to read:

24-4-107. Innocent owners.

(1) An innocent owner's interest in property may not be forfeited.

(2) In a forfeiture proceeding under this chapter, the prosecuting attorney has the burden of establishing evidence that a claimant:

(a) is responsible for the conduct giving rise to the forfeiture, subject to Subsection (4);

(b) knew of the conduct giving rise to the forfeiture, and allowed the property to be used in furtherance of the conduct;

(c) acquired the property with notice of its actual or constructive seizure for forfeiture under this chapter;

(d) acquired the property knowing the property was subject to forfeiture under this chapter; or

(e) acquired the property in an effort to conceal, prevent, hinder, or delay its lawful seizure or forfeiture under any provision of state law.

(3) (a) A claimant under this chapter is not required to take steps to prevent illegal use or criminal activity regarding the property that the claimant reasonably believes would be likely to result in physical harm or danger to any person.

(b) A claimant may demonstrate that the claimant took reasonable action to prohibit the illegal use of the property by:

(i) making a timely notification to a law enforcement agency of information that led the claimant to know that conduct subjecting the property to seizure would occur, was occurring, or has occurred;

(ii) timely revoking or attempting to revoke permission to use the property regarding those engaging in the illegal conduct; or

(iii) taking reasonable actions to discourage or prevent the illegal use of the property.

(4) If the state relies on Subsection (2)(a) to establish that a claimant is not an innocent owner, and if the claimant is criminally charged with the

conduct giving rise to the forfeiture and is acquitted of that charge on the merits:

(a) the property subject to the forfeiture or the open market value of the property, if the property has been disposed of under Subsection 24-4-108(13), shall be returned to the claimant; and

(b) any payments required under this chapter regarding holding the property shall be paid to the claimant.

(5) A person may not assert under this chapter an ownership interest in contraband.

(6) Property is presumed to be subject to forfeiture under this chapter if the prosecuting attorney establishes that:

(a) the claimant has engaged in conduct giving cause for forfeiture;

(b) the property was acquired by the claimant during that period of the conduct giving cause for forfeiture or within a reasonable time after that period; and

(c) there was no likely source for the purchase or acquisition of the property other than the conduct giving cause for forfeiture.

(7) A finding that property is the proceeds of conduct giving cause for forfeiture does not require proof that the property was the proceeds of any particular exchange or transaction.

(8) (a) A claimant may recover possession of seized property that is subject to forfeiture by contacting the seizing agency or prosecuting attorney prior to the commencement of a civil asset forfeiture proceeding, or within 30 days of the seizure, whichever is longer, and providing to the seizing agency or prosecuting attorney:

(i) evidence that establishes proof of ownership; and

(ii) a brief description of the date, time, and place that the claimant mislaid or relinquished possession of the seized property.

(b) A seizing agency or prosecuting attorney who receives a claim from a claimant utilizing the procedure in Subsection (8)(a) shall issue a written response to that claim within 30 days of receipt, indicating whether the claim has been granted, denied on the merits, or denied for failure to provide the information required by statute subject to the following:

(i) if the claim is denied for failure to provide the information required by statute, the claimant has 15 days from the date of denial to submit additional information before the prosecuting attorney may commence a civil action seeking to forfeit the property; and

(ii) if the seizing agency or prosecuting attorney fails to issue a written response within 30 days the property shall be returned.

(c) Any property returned under Subsection (8)(b), either because the claim was granted or

because the seizing agency or prosecuting attorney failed to respond within 30 days may not include any expenses, costs, or attorney fees.

(d) A claimant who utilizes the procedures in Subsection (8)(a) and whose claim is denied on the merits by the seizing agency or prosecuting attorney, but who is later determined by a court of competent jurisdiction in a civil forfeiture action to be an innocent owner within the meaning of Section 24-4-107, may collect reasonable attorney fees and court costs from the date on which the seizing agency or prosecuting attorney denied the claim. Legal costs and attorney fees collected pursuant to this Subsection are not subject to the 50% cap set forth in Subsection 24-4-110(2).

(e) All communications between or evidence provided to the parties in connection with a claim submitted pursuant to Subsection (8) are subject to the Utah Rules of Evidence, Rules 408 and 410.

Section 6. Section 24-4-110 is amended to read:

24-4-110. Attorney fees and costs.

(1) In any forfeiture proceeding under this chapter, the court shall award a prevailing ~~[property owner]~~ claimant reasonable:

- (a) legal costs; and
- (b) attorney fees.

(2) The legal costs and attorney fees awarded by the court to the prevailing party may not exceed ~~[20%]~~ 50% of the value of the seized property.

(3) A ~~[property owner that]~~ claimant who prevails only in part is entitled to recover reasonable legal costs and attorney fees only on those issues on which the party prevailed, as determined by the court.

CHAPTER 363**S. B. 92**

Passed February 24, 2017

Approved March 24, 2017

Effective May 9, 2017

(Exception clause in Section 37)

**WORKERS' COMPENSATION
FUND REVISIONS**

Chief Sponsor: Curtis S. Bramble

House Sponsor: Val L. Peterson

LONG TITLE**General Description:**

This bill repeals the statute creating the Workers' Compensation Fund and makes conforming amendments.

Highlighted Provisions:

This bill:

- ▶ repeals the statute creating the Workers' Compensation Fund;
- ▶ removes statutory references to the Workers' Compensation Fund;
- ▶ addresses the obligation to write workers' compensation insurance and residual market mechanisms;
- ▶ provides for the Workers' Compensation Fund's transition to a mutual corporation;
- ▶ modifies membership on the workers' compensation advisory council;
- ▶ addresses methods to obtain workers' compensation insurance;
- ▶ amends the provision addressing penalty for failure to obtain workers' compensation;
- ▶ modifies the provision addressing exemptions for employees temporarily in state;
- ▶ addresses continuing education requirements for contractor licensees; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:**AMENDS:**

- 11-8-3, as last amended by Laws of Utah 2000, Chapter 222
- 31A-1-105, as last amended by Laws of Utah 2000, Chapter 222
- 31A-15-103, as last amended by Laws of Utah 2015, Chapter 238
- 31A-19a-401, as last amended by Laws of Utah 2000, Chapter 222
- 31A-21-101, as last amended by Laws of Utah 2011, Chapter 297
- 31A-22-309, as last amended by Laws of Utah 2008, Chapter 162
- 31A-22-1001, as last amended by Laws of Utah 2000, Chapter 222
- 31A-26-103, as last amended by Laws of Utah 2000, Chapter 222
- 31A-35-103, as last amended by Laws of Utah 2016, Chapter 234

- 31A-40-209, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 34A-2-102, as last amended by Laws of Utah 2008, Chapter 90
- 34A-2-103, as last amended by Laws of Utah 2016, Chapter 370
- 34A-2-107, as last amended by Laws of Utah 2016, Chapter 242
- 34A-2-201, as last amended by Laws of Utah 2000, Chapter 222
- 34A-2-203, as last amended by Laws of Utah 2012, Chapter 347
- 34A-2-210, as enacted by Laws of Utah 1997, Chapter 375
- 34A-2-211, as last amended by Laws of Utah 2009, Chapter 288
- 34A-2-406, as last amended by Laws of Utah 2000, Chapter 222
- 49-12-203, as last amended by Laws of Utah 2015, Chapters 315 and 364
- 49-13-203, as last amended by Laws of Utah 2015, Chapters 315 and 364
- 49-22-203, as last amended by Laws of Utah 2015, Chapters 315 and 364
- 51-7-2, as last amended by Laws of Utah 2015, Chapter 319
- 51-7-4, as last amended by Laws of Utah 2013, Chapter 388
- 53-2a-802, as last amended by Laws of Utah 2015, Chapter 352
- 58-55-302.5, as last amended by Laws of Utah 2016, Chapter 260
- 59-9-101, as last amended by Laws of Utah 2016, Chapter 135
- 63A-3-401, as last amended by Laws of Utah 2016, Chapters 233 and 382
- 63E-1-102, as last amended by Laws of Utah 2015, Chapters 223, 226, 283, and 411
- 63E-1-203, as last amended by Laws of Utah 2016, Chapter 348
- 63I-4a-102, as last amended by Laws of Utah 2015, Chapters 223, 226, 283, and 411
- 63J-2-102, as last amended by Laws of Utah 2016, Chapter 120
- 63J-7-102, as last amended by Laws of Utah 2015, Chapters 223, 226, 283, and 411
- 67-4-2, as last amended by Laws of Utah 2000, Chapter 222

ENACTS:

- 31A-22-1014, Utah Code Annotated 1953
- 49-11-624, Utah Code Annotated 1953

REPEALS:

- 31A-33-101, as last amended by Laws of Utah 2015, Chapter 427
- 31A-33-102, as last amended by Laws of Utah 2000, Chapter 222
- 31A-33-103, as last amended by Laws of Utah 2000, Chapter 222
- 31A-33-103.5, as last amended by Laws of Utah 2015, Chapter 427
- 31A-33-104, as last amended by Laws of Utah 2012, Chapter 347
- 31A-33-105, as last amended by Laws of Utah 1998, Chapter 107
- 31A-33-106, as last amended by Laws of Utah 2016, Chapters 110 and 348

31A-33-107, as last amended by Laws of Utah 2016, Chapter 110
 31A-33-108, as last amended by Laws of Utah 2003, Chapter 252
 31A-33-109, as renumbered and amended by Laws of Utah 1996, Chapter 240
 31A-33-110, as last amended by Laws of Utah 1997, Chapter 204
 31A-33-111, as last amended by Laws of Utah 1999, Chapter 130
 31A-33-112, as renumbered and amended by Laws of Utah 1996, Chapter 240
 31A-33-113, as last amended by Laws of Utah 2001, Chapter 116
 31A-33-114, as renumbered and amended by Laws of Utah 1996, Chapter 240
 31A-33-115, as renumbered and amended by Laws of Utah 1996, Chapter 240
 31A-33-116, as renumbered and amended by Laws of Utah 1996, Chapter 240
 31A-33-117, as last amended by Laws of Utah 1997, Chapter 375
 31A-33-118, as last amended by Laws of Utah 1998, Chapter 107
 Utah Code Sections Affected by Revisor Instructions:
 31A-22-1001, as enacted by Laws of Utah 1985, Chapter 242
 31A-22-1014, Utah Code Annotated 1953
 49-11-624, Utah Code Annotated 1953

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

Section 1. Section 11-8-3 is amended to read:

11-8-3. Department of Environmental Quality to negotiate loans for sewage facilities.

(1) The Department of Environmental Quality may negotiate loans from the Retirement Systems Fund, State Land Principal Fund, [~~Workers' Compensation Fund,~~] or any state trust and agency fund which has sums available for loaning, as these funds are defined in Title 51, Chapter 5, Funds Consolidation Act, not to exceed \$1,000,000 in any fiscal year for the purposes of providing the funding for the loans provided for in Section 11-8-2.

(2) The terms of any borrowing and repayment shall be negotiated between the borrower and the lender consistent with the legal duties of the lender.

Section 2. Section 31A-1-105 is amended to read:

31A-1-105. Presumption of jurisdiction.

(1) Any insurer [~~, including the Workers' Compensation Fund created under Chapter 33, Workers' Compensation Fund,~~] that provides coverage of a resident of this state, property located in this state, or a business activity conducted in this state, or that engages in any activity described in Subsections 31A-15-102(2)(a) through (h), is:

- (a) doing an insurance business in this state; and
- (b) subject to the jurisdiction of the insurance commissioner and the courts of this state under

Sections 31A-2-309 and 31A-2-310 to the extent of that coverage or activity.

(2) Any person doing or purporting to do an insurance business in this state as defined in Section 31A-1-301 is subject to the jurisdiction of the insurance commissioner and this title, unless the insurer can establish that the exemptions of Section 31A-1-103 apply.

(3) This section does not limit the jurisdiction of the courts of this state under other applicable law.

Section 3. Section 31A-15-103 is amended to read:

31A-15-103. Surplus lines insurance -- Unauthorized insurers.

(1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a certificate of authority to do business in this state under Section 31A-14-202 may negotiate for and make an insurance contract with a person in this state and on a risk located in this state, subject to the limitations and requirements of this section.

(2) (a) For a contract made under this section, the insurer may, in this state:

- (i) inspect the risks to be insured;
- (ii) collect premiums;
- (iii) adjust losses; and

(iv) do another act reasonably incidental to the contract.

(b) An act described in Subsection (2)(a) may be done through:

- (i) an employee; or
- (ii) an independent contractor.

(3) (a) Subsections (1) and (2) do not permit a person to solicit business in this state on behalf of an insurer that has no certificate of authority.

(b) Insurance placed with a nonadmitted insurer shall be placed with a surplus lines producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

(c) The commissioner may by rule prescribe how a surplus lines producer may:

(i) pay or permit the payment, commission, or other remuneration on insurance placed by the surplus lines producer under authority of the surplus lines producer's license to one holding a license to act as an insurance producer; and

(ii) advertise the availability of the surplus lines producer's services in procuring, on behalf of a person seeking insurance, a contract with a nonadmitted insurer.

(4) For a contract made under this section, a nonadmitted insurer is subject to Sections 31A-23a-402, 31A-23a-402.5, and 31A-23a-403 and the rules adopted under those sections.

(5) A nonadmitted insurer may not issue workers' compensation insurance coverage to an employer

located in this state, except for stop loss coverage issued to an employer securing workers' compensation under Subsection 34A-2-201[(3)](2).

(6) (a) The commissioner may by rule prohibit making a contract under Subsection (1) for a specified class of insurance if authorized insurers provide an established market for the class in this state that is adequate and reasonably competitive.

(b) The commissioner may by rule place a restriction or a limitation on and create special procedures for making a contract under Subsection (1) for a specified class of insurance if:

(i) there have been abuses of placements in the class; or

(ii) the policyholders in the class, because of limited financial resources, business experience, or knowledge, cannot protect their own interests adequately.

(c) The commissioner may prohibit an individual insurer from making a contract under Subsection (1) and all insurance producers from dealing with the insurer if:

(i) the insurer willfully violates:

(A) this section;

(B) Section 31A-4-102, 31A-23a-402, 31A-23a-402.5, or 31A-26-303; or

(C) a rule adopted under a section listed in Subsection (6)(c)(i)(A) or (B);

(ii) the insurer fails to pay the fees and taxes specified under Section 31A-3-301; or

(iii) the commissioner has reason to believe that the insurer is:

(A) in an unsound condition;

(B) operated in a fraudulent, dishonest, or incompetent manner; or

(C) in violation of the law of its domicile.

(d) (i) The commissioner may issue one or more lists of unauthorized foreign insurers whose:

(A) solidity the commissioner doubts; or

(B) practices the commissioner considers objectionable.

(ii) The commissioner shall issue one or more lists of unauthorized foreign insurers the commissioner considers to be reliable and solid.

(iii) In addition to the lists described in Subsections (6)(d)(i) and (ii), the commissioner may issue other relevant evaluations of unauthorized insurers.

(iv) An action may not lie against the commissioner or an employee of the department for a written or oral communication made in, or in connection with the issuance of, a list or evaluation described in this Subsection (6)(d).

(e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list only if the unauthorized insurer:

(i) delivers a request to the commissioner to be on the list;

(ii) establishes satisfactory evidence of good reputation and financial integrity;

(iii) (A) delivers to the commissioner a copy of the unauthorized insurer's current annual statement certified by the insurer; and

(B) continues each subsequent year to file its annual statements with the commissioner within 60 days of the day on which it is filed with the insurance regulatory authority where the insurer is domiciled;

(iv) (A) (I) is in substantial compliance with the solvency standards in Chapter 17, Part 6, Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is greater; and

(II) maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit requirements for insurers in the state where it is made, which trust fund or deposit:

(Aa) shall be in an amount not less than \$2,500,000 for the protection of all of the insurer's policyholders in the United States;

(Bb) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and

(Cc) may include as part of the trust arrangement a letter of credit that qualifies as acceptable security under Section 31A-17-404.1; or

(B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of alien individual insurers, maintains a trust fund that:

(I) shall be in an amount not less than \$50,000,000 as security to its full amount for all policyholders and creditors in the United States of each member of the group;

(II) may consist of cash, securities, or investments of substantially the same character and quality as those which are "qualified assets" under Section 31A-17-201; and

(III) may include as part of this trust arrangement a letter of credit that qualifies as acceptable security under Section 31A-17-404.1; and

(v) for an alien insurer not domiciled in the United States or a territory of the United States, is listed on the Quarterly Listing of Alien Insurers maintained by the National Association of Insurance Commissioners International Insurers Department.

(7) (a) Subject to Subsection (7)(b), a surplus lines producer may not, either knowingly or without

reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with:

- (i) a financially unsound insurer;
- (ii) an insurer engaging in unfair practices; or
- (iii) an otherwise substandard insurer.

(b) A surplus line producer may place insurance under this section with an insurer described in Subsection (7)(a) if the surplus line producer:

(i) gives the applicant notice in writing of the known deficiencies of the insurer or the limitations on the surplus line producer's investigation; and

(ii) explains the need to place the business with that insurer.

(c) A copy of the notice described in Subsection (7)(b) shall be kept in the office of the surplus line producer for at least five years.

(d) To be financially sound, an insurer shall satisfy standards that are comparable to those applied under the laws of this state to an authorized insurer.

(e) An insurer on the "doubtful or objectionable" list under Subsection (6)(d) or an insurer not on the commissioner's "reliable" list under Subsection (6)(e) is presumed substandard.

(8) (a) A policy issued under this section shall:

(i) include a description of the subject of the insurance; and

(ii) indicate:

(A) the coverage, conditions, and term of the insurance;

(B) the premium charged the policyholder;

(C) the premium taxes to be collected from the policyholder; and

(D) the name and address of the policyholder and insurer.

(b) If the direct risk is assumed by more than one insurer, the policy shall state:

(i) the names and addresses of all insurers; and

(ii) the portion of the entire direct risk each assumes.

(c) A policy issued under this section shall have attached or affixed to the policy the following statement: "The insurer issuing this policy does not hold a certificate of authority to do business in this state and thus is not fully subject to regulation by the Utah insurance commissioner. This policy receives no protection from any of the guaranty associations created under Title 31A, Chapter 28, Guaranty Associations."

(9) Upon placing a new or renewal coverage under this section, a surplus lines producer shall promptly deliver to the policyholder or the policyholder's agent evidence of the insurance consisting either of:

(a) the policy as issued by the insurer; or

(b) if the policy is not available upon placing the coverage, a certificate, cover note, or other confirmation of insurance complying with Subsection (8).

(10) If the commissioner finds it necessary to protect the interests of insureds and the public in this state, the commissioner may by rule subject a policy issued under this section to as much of the regulation provided by this title as is required for a comparable policy written by an authorized foreign insurer.

(11) (a) A surplus lines transaction in this state shall be examined to determine whether it complies with:

(i) the surplus lines tax levied under Chapter 3, Department Funding, Fees, and Taxes;

(ii) the solicitation limitations of Subsection (3);

(iii) the requirement of Subsection (3) that placement be through a surplus lines producer;

(iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

(v) the policy form requirements of Subsections (8) and (10).

(b) The examination described in Subsection (11)(a) shall take place as soon as practicable after the transaction. The surplus lines producer shall submit to the examiner information necessary to conduct the examination within a period specified by rule.

(c) (i) The examination described in Subsection (11)(a) may be conducted by the commissioner or by an advisory organization created under Section 31A-15-111 and authorized by the commissioner to conduct these examinations. The commissioner is not required to authorize an additional advisory organization to conduct an examination under this Subsection (11)(c).

(ii) The commissioner's authorization of one or more advisory organizations to act as examiners under this Subsection (11)(c) shall be:

(A) by rule; and

(B) evidenced by a contract, on a form provided by the commissioner, between the authorized advisory organization and the department.

(d) (i) (A) A person conducting the examination described in Subsection (11)(a) shall collect a stamping fee of an amount not to exceed 1% of the policy premium payable in connection with the transaction.

(B) A stamping fee collected by the commissioner shall be deposited in the General Fund.

(C) The commissioner shall establish a stamping fee by rule.

(ii) A stamping fee collected by an advisory organization is the property of the advisory organization to be used in paying the expenses of the advisory organization.

(iii) Liability for paying a stamping fee is as required under Subsection 31A-3-303(1) for taxes imposed under Section 31A-3-301.

(iv) The commissioner shall adopt a rule dealing with the payment of stamping fees. If a stamping fee is not paid when due, the commissioner or advisory organization may impose a penalty of 25% of the stamping fee due, plus 1-1/2% per month from the time of default until full payment of the stamping fee.

(v) A stamping fee relative to a policy covering a risk located partially in this state shall be allocated in the same manner as under Subsection 31A-3-303(4).

(e) The commissioner, representatives of the department, advisory organizations, representatives and members of advisory organizations, authorized insurers, and surplus lines insurers are not liable for damages on account of statements, comments, or recommendations made in good faith in connection with their duties under this Subsection (11)(e) or under Section 31A-15-111.

(f) An examination conducted under this Subsection (11) and a document or materials related to the examination are confidential.

(12) (a) For a surplus lines insurance transaction in the state entered into on or after May 13, 2014, if an audit is required by the surplus lines insurance policy, a surplus lines insurer:

(i) shall exercise due diligence to initiate an audit of an insured, to determine whether additional premium is owed by the insured, by no later than six months after the expiration of the term for which premium is paid; and

(ii) may not audit an insured more than three years after the surplus lines insurance policy expires.

(b) A surplus lines insurer that does not comply with this Subsection (12) may not charge or collect additional premium in excess of the premium agreed to under the surplus lines insurance policy.

Section 4. Section 31A-19a-401 is amended to read:

31A-19a-401. Scope of part.

(1) This part applies to workers' compensation insurance and employers' liability insurance written in connection with ~~it~~ workers' compensation insurance.

(2) ~~[All insurers]~~ An insurer writing workers' compensation coverage ~~including the Workers' Compensation Fund created under Chapter 33, Workers' Compensation Fund, are~~ is subject to this part.

Section 5. Section 31A-21-101 is amended to read:

31A-21-101. Scope of Chapters 21 and 22.

(1) Except as provided in Subsections (2) through (6), this chapter and Chapter 22, Contracts in Specific Lines, apply to all insurance policies, applications, and certificates:

(a) delivered or issued for delivery in this state;

(b) on property ordinarily located in this state;

(c) on persons residing in this state when the policy is issued; or

(d) on business operations in this state.

(2) This chapter and Chapter 22, Contracts in Specific Lines, do not apply to:

(a) an exemption provided in Section 31A-1-103;

(b) an insurance policy procured under Sections 31A-15-103 and 31A-15-104;

(c) an insurance policy on business operations in this state:

(i) if:

(A) the contract is negotiated primarily outside this state; and

(B) the operations in this state are incidental or subordinate to operations outside this state; and

(ii) except that insurance required by a Utah statute shall conform to the statutory requirements; or

(d) other exemptions provided in this title.

(3) (a) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107(1) and (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean marine and inland marine insurance.

(b) Section 31A-21-201 applies to inland marine insurance that is written according to manual rules or rating plans.

(4) A group or blanket policy is subject to this chapter and Chapter 22, Contracts in Specific Lines, except:

(a) a group or blanket policy outside the scope of this title under Subsection 31A-1-103(3)(h); and

(b) other exemptions provided under Subsection (5).

(5) The commissioner may by rule exempt any class of insurance contract or class of insurer from any or all of the provisions of this chapter and Chapter 22, Contracts in Specific Lines, if the interests of the Utah insureds, creditors, or the public would not be harmed by the exemption.

(6) Workers' compensation insurance ~~including that written by the Workers' Compensation Fund created under Chapter 33, Workers' Compensation Fund,~~ is subject to this chapter and Chapter 22, Contracts in Specific Lines.

(7) Unless clearly inapplicable, any provision of this chapter or Chapter 22, Contracts in Specific Lines, applicable to either a policy or a contract is applicable to both.

Section 6. Section 31A-22-309 is amended to read:

31A-22-309. Limitations, exclusions, and conditions to personal injury protection.

(1) (a) A person who has or is required to have direct benefit coverage under a policy which includes personal injury protection may not maintain a cause of action for general damages arising out of personal injuries alleged to have been caused by an automobile accident, except where the person has sustained one or more of the following:

- (i) death;
- (ii) dismemberment;
- (iii) permanent disability or permanent impairment based upon objective findings;
- (iv) permanent disfigurement; or
- (v) medical expenses to a person in excess of \$3,000.

(b) Subsection (1)(a) does not apply to a person making an uninsured motorist claim.

(2) (a) Any insurer issuing personal injury protection coverage under this part may only exclude from this coverage benefits:

(i) for any injury sustained by the insured while occupying another motor vehicle owned by or furnished for the regular use of the insured or a resident family member of the insured and not insured under the policy;

(ii) for any injury sustained by any person while operating the insured motor vehicle without the express or implied consent of the insured or while not in lawful possession of the insured motor vehicle;

(iii) to any injured person, if the person's conduct contributed to ~~his~~ the person's injury:

(A) by intentionally causing injury to ~~himself~~ the person; or

(B) while committing a felony;

(iv) for any injury sustained by any person arising out of the use of any motor vehicle while located for use as a residence or premises;

(v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing; or

(vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous properties of nuclear materials.

(b) ~~[The provisions of this subsection do]~~ This Subsection (2) does not limit the exclusions ~~[which]~~ that may be contained in other types of coverage.

(3) The benefits payable to any injured person under Section 31A-22-307 are reduced by:

(a) any benefits which that person receives or is entitled to receive as a result of an accident covered

in this code under any workers' compensation or similar statutory plan; and

(b) any amounts which that person receives or is entitled to receive from the United States or any of its agencies because that person is on active duty in the military service.

(4) When a person injured is also an insured party under any other policy, including those policies complying with this part, primary coverage is given by the policy insuring the motor vehicle in use during the accident.

(5) (a) Payment of the benefits provided for in Section 31A-22-307 shall be made on a monthly basis as expenses are incurred.

(b) Benefits for any period are overdue if they are not paid within 30 days after the insurer receives reasonable proof of the fact and amount of expenses incurred during the period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after that proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is also overdue if not paid within 30 days after the proof is received by the insurer.

(c) If the insurer fails to pay the expenses when due, these expenses shall bear interest at the rate of 1-1/2% per month after the due date.

(d) The person entitled to the benefits may bring an action in contract to recover the expenses plus the applicable interest. If the insurer is required by the action to pay any overdue benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the claimant.

(6) (a) Except as provided in Subsection (6)(b), every policy providing personal injury protection coverage is subject to the following:

(i) that where the insured under the policy is or would be held legally liable for the personal injuries sustained by any person to whom benefits required under personal injury protection have been paid by another insurer, ~~[including the Workers' Compensation Fund created under Chapter 33, Workers' Compensation Fund,]~~ the insurer of the person who would be held legally liable shall reimburse the other insurer for the payment, but not in excess of the amount of damages recoverable; and

(ii) that the issue of liability for that reimbursement and its amount shall be decided by mandatory, binding arbitration between the insurers.

(b) There shall be no right of reimbursement between insurers under Subsection (6)(a) if the insurer of the person who would be held legally liable for the personal injuries sustained has tendered its policy limit.

(c) (i) If the insurer of the person who would be held legally liable for the personal injuries sustained reimburses a no-fault insurer prior to settling a third party liability claim with an injured person and subsequently determines that some or

all of the reimbursed amount is needed to settle a third party claim, the insurer of the person who would be held legally liable for the personal injuries sustained shall provide written notice to the no-fault insurer that some or all of the reimbursed amount is needed to settle a third party liability claim.

(ii) The written notice described under Subsection (6)(c)(i) shall:

(A) identify the amount of the reimbursement that is needed to settle a third party liability claim;

(B) provide notice to the no-fault insurer that the no-fault insurer has 15 days to return the amount described in Subsection (6)(c)(ii)(A); and

(C) identify the third party liability insurer that the returned amount shall be paid to.

(iii) A no-fault insurer that receives a notice under this Subsection (6)(c) shall return the portion of the reimbursement identified under Subsection (6)(c)(ii) to the third party liability insurer identified under Subsection (6)(c)(ii)(C) within 15 business days from receipt of a notice under this Subsection (6)(c).

Section 7. Section 31A-22-1001 is amended to read:

31A-22-1001. Obligation to write workers' compensation insurance.

(1) As used in this section, "Workers' Compensation Fund" means the mutual corporation that is the successor to the quasi-public corporation created under Chapter 33, Workers' Compensation Fund, which is the chapter repealed by this bill.

(2) ~~The Workers' Compensation Fund [created under Chapter 33, Workers' Compensation Fund,] shall write all workers' compensation insurance for which application is made to the Workers' Compensation Fund[. This requirement does not apply to any other insurer.] until the time designated by the commissioner, but no later than December 31, 2020. As a condition of the rights granted under this Subsection (2), the Workers' Compensation Fund agrees to provide notice by no later than July 1, 2018, if the Workers' Compensation Fund does not intend to seek a contract under Subsection (3).~~

(3) (a) Before entering the contract required under Subsection (3)(b), the commissioner shall work with the Workers' Compensation Fund and other workers' compensation insurance carriers to determine what constitutes the residual market within this state. After consulting with the Workers' Compensation Fund and other workers' compensation insurance carriers, the commissioner shall make the final decision of how to define the residual market. As part of the process of determining the residual market, the commissioner may make reasonable requests of data from the

Workers' Compensation Fund and other workers' compensation insurance carriers.

(b) Beginning no later than January 1, 2021, the commissioner shall enter into a contract with a workers' compensation insurance carrier to write all workers' compensation insurance for which application is made to the workers' compensation insurance carrier.

(c) The commissioner shall comply with Title 63G, Chapter 6a, Utah Procurement Code, in selecting the workers' compensation insurance carrier described in Subsection (3)(b). Criteria the commissioner may consider include:

(i) the rating of the workers' compensation insurance carrier by a nationally recognized statistical ratings organization;

(ii) the financial size category of the workers' compensation insurance carrier as determined by a nationally recognized statistical ratings organization;

(iii) the length of time the workers' compensation insurance carrier has held a certificate of authority and has been active in the Utah workers' compensation insurance market; and

(iv) the workers' compensation insurance carrier's demonstration of the intent to provide statewide:

(A) safety consultation, employer training ability, and accident prevention expertise;

(B) claims handling, medical case management, rehabilitation, cost containment, and employee return to work capabilities; and

(C) physical offices and electronic access for the convenience of Utah employers and employees.

(d) A contract entered into under this Subsection (3) shall:

(i) notwithstanding Section 63G-6a-1204, be for a term of at least 10 years;

(ii) provide for an option to renew the contract;

(iii) require a workers' compensation insurance carrier with whom the commissioner contracts to provide notice that the workers' compensation carrier will not seek to renew the contract at least three years before the end of the contract; and

(iv) contain other terms necessary to ensure that the workers' compensation insurance carrier awarded the contract will provide workers' compensation insurance to the residual market.

(4) The commissioner shall annually submit a written report in accordance with Section 68-3-14 to the Business and Labor Interim Committee by no later than October 1 that:

(a) describes the status of the commissioner's activities under Subsection (3); and

(b) the need, if any, for legislation to address the residual market.

Section 8. Section 31A-22-1014 is enacted to read:

31A-22-1014. Conversion of Workers' Compensation Fund to mutual insurance corporation.

(1) As used in this section, "Workers' Compensation Fund" means the mutual corporation that is the successor to the quasi-public corporation created under Chapter 33, Workers' Compensation Fund, which is the chapter repealed by this bill.

(2) As a consequence of the repeal of Chapter 33, Workers' Compensation Fund, effective January 1, 2018:

(a) The Workers' Compensation Fund shall convert from a quasi-public corporation to a mutual insurance corporation subject to Chapter 5, Domestic Stock and Mutual Insurance Corporations.

(b) On or before December 31, 2017, the Workers' Compensation Fund shall file amended and restated articles of incorporation with the Department of Insurance and the Division of Corporations and Commercial Code that comply with Chapter 5, Domestic Stock and Mutual Insurance Corporations.

(c) Following the filing of the Workers' Compensation Fund's amended and restated articles of incorporation, if the commissioner determines that the Workers' Compensation Fund complies with Chapter 5, Domestic Stock and Mutual Insurance Corporations, the commissioner shall:

(i) reissue a certificate of authority effective January 1, 2018, for the Workers' Compensation Fund to write workers' compensation insurance in Utah as a mutual insurance corporation; and

(ii) reauthorize the Workers' Compensation Fund's existing filings, rates, forms, or other administrative matters on file with the department as a result of, or related to, Workers' Compensation Fund's existing insurance business in the state, so that the filings, rates, forms, or other administrative matters on file shall be effective January 1, 2018, with respect to the Workers' Compensation Fund's insurance business activities as a mutual insurance corporation.

(d) The Workers' Compensation Fund may adopt and conduct business under any name that complies with state law.

(3) Subject to Subsection (2), the commissioner may, because of the Workers' Compensation Fund's developed status, waive or otherwise not impose requirements imposed on mutual insurance corporations by Chapter 5, Domestic Stock and Mutual Insurance Corporations, to facilitate the conversion of the Workers' Compensation Fund to a mutual insurance corporation effective January 1, 2018, so long as the commissioner finds those requirements unnecessary to protect policyholders and the public.

(4) (a) From and after the Workers' Compensation Fund's conversion to a mutual insurance corporation, the Workers' Compensation Fund shall retain title to all assets of, and remain responsible for all liabilities incurred by, the Workers' Compensation Fund as a quasi-public corporation before the Workers' Compensation Fund conversion described in this section.

(b) The state is not liable for the expenses, liabilities, or debts of:

(i) the mutual insurance company described in this section;

(ii) the nonprofit, quasi-public corporation that preceded the mutual insurance company; or

(iii) a subsidiary or joint enterprise involving the mutual insurance company or quasi-public corporation.

Section 9. Section 31A-26-103 is amended to read:

31A-26-103. Workers' compensation claims.

In addition to being subject to this and other chapters of this title, insurers writing workers' compensation insurance in this state, ~~including the Workers' Compensation Fund created under Chapter 33, Workers' Compensation Fund,~~ are subject to the Labor Commission with respect to claims for and payment of compensation and benefits.

Section 10. Section 31A-35-103 is amended to read:

31A-35-103. Exemption from other provisions of this title.

Bail bond agencies are exempted from:

(1) Chapter 3, Department Funding, Fees, and Taxes, except Section 31A-3-103;

(2) Chapter 4, Insurers in General, except Sections 31A-4-102, 31A-4-103, 31A-4-104, and 31A-4-107;

(3) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except Section 31A-5-103;

(4) Chapter 6a, Service Contracts;

(5) Chapter 6b, Guaranteed Asset Protection Waiver Act;

(6) Chapter 7, Nonprofit Health Service Insurance Corporations;

(7) Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(8) Chapter 8a, Health Discount Program Consumer Protection Act;

(9) Chapter 9, Insurance Fraternal;

(10) Chapter 10, Annuities;

(11) Chapter 11, Motor Clubs;

(12) Chapter 12, State Risk Management Fund;

~~[(13) Chapter 13, Employee Welfare Funds and Plans;]~~

- [~~(14)~~] (13) Chapter 14, Foreign Insurers;
- [~~(15)~~] (14) Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups;
- [~~(16)~~] (15) Chapter 16, Insurance Holding Companies;
- [~~(17)~~] (16) Chapter 17, Determination of Financial Condition;
- [~~(18)~~] (17) Chapter 18, Investments;
- [~~(19)~~] (18) Chapter 19a, Utah Rate Regulation Act;
- [~~(20)~~] (19) Chapter 20, Underwriting Restrictions;
- [~~(21)~~] (20) Chapter 23b, Navigator License Act;
- [~~(22)~~] (21) Chapter 25, Third Party Administrators;
- [~~(23)~~] (22) Chapter 26, Insurance Adjusters;
- [~~(24)~~] (23) Chapter 27, Delinquency Administrative Action Provisions;
- [~~(25)~~] (24) Chapter 27a, Insurer Receivership Act;
- [~~(26)~~] (25) Chapter 28, Guaranty Associations;
- [~~(27)~~] (26) Chapter 30, Individual, Small Employer, and Group Health Insurance Act;
- [~~(28)~~] (27) Chapter 31, Insurance Fraud Act;
- [~~(29)~~] (28) Chapter 32a, Medical Care Savings Account Act;
- [~~(30)~~] Chapter 33, Workers' Compensation Fund;
- [~~(31)~~] (29) Chapter 34, Voluntary Health Insurance Purchasing Alliance Act;
- [~~(32)~~] (30) Chapter 36, Life Settlements Act;
- [~~(33)~~] (31) Chapter 37, Captive Insurance Companies Act;
- [~~(34)~~] (32) Chapter 37a, Special Purpose Financial Captive Insurance Company Act;
- [~~(35)~~] (33) Chapter 38, Federal Health Care Tax Credit Program Act;
- [~~(36)~~] (34) Chapter 39, Interstate Insurance Product Regulation Compact;
- [~~(37)~~] (35) Chapter 40, Professional Employer Organization Licensing Act;
- [~~(38)~~] (36) Chapter 41, Title Insurance Recovery, Education, and Research Fund Act;
- [~~(39)~~] (37) Chapter 42, Defined Contribution Risk Adjuster Act; and
- [~~(40)~~] (38) Chapter 43, Small Employer Stop-Loss Insurance Act.

Section 11. Section 31A-40-209 is amended to read:

31A-40-209. Workers' compensation.

(1) In accordance with Section 34A-2-103, a client is responsible for securing workers' compensation coverage for a covered employee.

(2) Subject to the requirements of Section 34A-2-103, if a professional employer organization obtains or assists a client in obtaining workers' compensation insurance pursuant to a professional employer agreement:

(a) the professional employer organization shall ensure that the client maintains and provides workers' compensation coverage for a covered employee in accordance with Subsection 34A-2-201(1) [~~or (2)~~] and rules of the Labor Commission, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) the workers' compensation coverage may show the professional employer organization as the named insured through a master policy, if:

(i) the client is shown as an insured by means of an endorsement for each individual client;

(ii) the experience modification of a client is used; and

(iii) the insurer files the endorsement with the Division of Industrial Accidents as directed by a rule of the Labor Commission, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(c) at the termination of the professional employer agreement, if requested by the client, the insurer shall provide the client records regarding the loss experience related to workers' compensation insurance provided to a covered employee pursuant to the professional employer agreement; and

(d) the insurer shall notify a client if the workers' compensation coverage for the client is terminated.

(3) In accordance with Section 34A-2-105, the exclusive remedy provisions of Section 34A-2-105 apply to both the client and the professional employer organization under a professional employer agreement regulated under this chapter.

(4) Notwithstanding the other provisions in this section, an insurer may choose whether to issue:

(a) a policy for a client; or

(b) a master policy with the client shown as an additional insured by means of an individual endorsement.

Section 12. Section 34A-2-102 is amended to read:

34A-2-102. Definition of terms.

(1) As used in this chapter:

(a) "Average weekly wages" means the average weekly wages as determined under Section 34A-2-409.

(b) "Award" means a final order of the commission as to the amount of compensation due:

(i) an injured employee; or

(ii) a dependent of a deceased employee.

(c) "Compensation" means the payments and benefits provided for in this chapter or Chapter 3, Utah Occupational Disease Act.

(d) (i) "Decision" means a ruling of:

(A) an administrative law judge; or

(B) in accordance with Section 34A-2-801:

(I) the commissioner; or

(II) the Appeals Board.

(ii) "Decision" includes:

(A) an award or denial of a medical, disability, death, or other related benefit under this chapter or Chapter 3, Utah Occupational Disease Act; or

(B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah Occupational Disease Act.

(e) "Director" means the director of the division, unless the context requires otherwise.

(f) "Disability" means an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

(g) "Division" means the Division of Industrial Accidents.

(h) "Impairment" is a purely medical condition reflecting an anatomical or functional abnormality or loss. Impairment may be either temporary or permanent, industrial or nonindustrial.

(i) "Order" means an action of the commission that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(j) (i) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of the employee's employment.

(ii) "Personal injury by accident arising out of and in the course of employment" does not include a disease, except as the disease results from the injury.

(k) "Safe" and "safety," as applied to employment or a place of employment, means the freedom from danger to the life or health of employees reasonably permitted by the nature of the employment.

~~(l) "Workers' Compensation Fund" means the nonprofit, quasi-public corporation created in Title 31A, Chapter 33, Workers' Compensation Fund.~~

(2) As used in this chapter and Chapter 3, Utah Occupational Disease Act:

(a) "Brother or sister" includes a half brother or sister.

(b) "Child" includes:

(i) a posthumous child; or

(ii) a child legally adopted prior to an injury.

Section 13. Section 34A-2-103 is amended to read:

34A-2-103. Employers enumerated and defined -- Regularly employed -- Statutory employers -- Exceptions.

(1) (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act, prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

(2) (a) ~~[Except as provided in Subsection (4)]~~ Subject to the other provisions of this section, each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) As used in this Subsection (2):

(i) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:

(A) independent of the employer in all that pertains to the execution of the work;

(B) not subject to the routine rule or control of the employer;

(C) engaged only in the performance of a definite job or piece of work; and

(D) subordinate to the employer only in effecting a result in accordance with the employer's design.

(ii) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

(3) (a) The client under a professional employer organization agreement regulated under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:

(i) is considered the employer of a covered employee; and

(ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a covered employee by complying with Subsection 34A-2-201(1) ~~[or (2)]~~ and commission rules.

(b) The division shall promptly inform the Insurance Department if the division has reason to believe that a professional employer organization is not in compliance with Subsection 34A-2-201(1) ~~[or (2)]~~ and commission rules.

(4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(5) (a) As used in this Subsection (5):

(i) (A) "Agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3)~~;~~~~and~~.

(B) Notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity~~;~~.

(ii) "Employer's immediate family" means:

(A) an agricultural employer's:

(I) spouse;

(II) grandparent;

(III) parent;

(IV) sibling;

(V) child;

(VI) grandchild;

(VII) nephew; or

(VIII) niece;

(B) a spouse of any person provided in Subsections (5)(a)(ii)(A)(II) through (VIII); or

(C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as defined by rules of the commission~~;~~~~and~~.

(iii) "Nonimmediate family" means a person who is not a member of the employer's immediate family.

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.

(c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a nonimmediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was less than \$8,000; or

(ii) (A) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was equal to or greater than \$8,000 but less than \$50,000; and

(B) the agricultural employer maintains insurance that covers job-related injuries of the employer's nonimmediate family employees in at least the following amounts:

(I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

(II) \$5,000 for health care benefits similar to benefits under health care insurance as defined in Section 31A-1-301.

(d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a nonimmediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees is equal to or greater than \$50,000; or

(ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

(B) the agricultural employer fails to maintain the insurance required under Subsection (5)(c)(ii)(B).

(6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

(a) this chapter and Chapter 3, Utah Occupational Disease Act; and

(b) the rules of the commission.

(7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following persons that procures work to be done by a contractor notwithstanding whether or not the person directly employs a person:

(A) a sole proprietorship;

(B) a corporation;

(C) a partnership;

(D) a limited liability company; or

(E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

(ii) If an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

(b) Any person who is engaged in constructing, improving, repairing, or remodeling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).

(c) A partner in a partnership or an owner of a sole proprietorship is not considered an employee under

Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:

(i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or

(ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

(A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.

(d) A director or officer of a corporation is not considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

(f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

(A) is an employer; and

(B) procures work to be done wholly or in part for the employer by a contractor, including:

(I) all persons employed by the contractor;

(II) all subcontractors under the contractor; and

(III) all persons employed by any of these subcontractors.

(ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor or subcontractor described in Subsection (7)(f)(i)(B).

(iii) Subsection (7)(f)(ii) applies if the eligible employer:

(A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an original employer under Subsection (7)(a) because the contractor or subcontractor fails to comply with Section 34A-2-201;

(B) (I) secures the payment of workers' compensation benefits for the contractor or subcontractor pursuant to Section 34A-2-201;

(II) procures work to be done that is part or process of the trade or business of the eligible employer; and

(III) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

(Aa) adopts the workplace accident and injury reduction program;

(Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and

(Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program; or

(C) (I) obtains and relies on:

(Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

(Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or (7)(e)(ii); or

(Cc) proof that a director or officer is excluded from coverage under Subsection 34A-2-104(4);

(II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits if the contractor or subcontractor fails to comply with Section 34A-2-201;

(III) procures work to be done that is part or process in the trade or business of the eligible employer; and

(IV) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

(Aa) adopts the workplace accident and injury reduction program;

(Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and

(Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program.

(8) (a) For purposes of this Subsection (8), “unincorporated entity” means an entity organized or doing business in the state that is not:

- (i) an individual;
- (ii) a corporation; or
- (iii) publicly traded.

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who holds, directly or indirectly, an ownership interest in the unincorporated entity. Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity shall provide the individual who holds the ownership interest workers’ compensation coverage under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is rebutted under Subsection (8)(c).

(c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that the individual:

(i) is an active manager of the unincorporated entity;

(ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or

(iii) is not subject to supervision or control in the performance of work by:

(A) the unincorporated entity; or

(B) a person with whom the unincorporated entity contracts.

(d) As part of the rules made under Subsection (8)(c), the commission may define:

(i) “active manager”;

(ii) “directly or indirectly holds at least an 8% ownership interest”; and

(iii) “subject to supervision or control in the performance of work.”

(9) (a) As used in this Subsection (9), “home and community based services” means one or more of the following services provided to an individual with a disability or to the individual’s family that helps prevent the individual with a disability from being placed in a more restrictive setting:

- (i) respite care;

(ii) skilled nursing;

(iii) nursing assistant services;

(iv) home health aide services;

(v) personal care and attendant services;

(vi) other in-home care, such as support for the daily activities of the individual with a disability;

(vii) specialized in-home training for the individual with a disability or a family member of the individual with a disability;

(viii) specialized in-home support, coordination, and other supported living services; and

(ix) other home and community based services unique to the individual with a disability or the family of the individual with a disability that help prevent the individual with a disability from being placed in a more restrictive setting.

(b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with a disability or designated representative of the individual with a disability is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual who provides home and community based services if the individual with a disability or designated representative of the individual with a disability:

(i) employs the individual to provide home and community based services for seven hours per week or more; and

(ii) pays the individual providing the home and community based services from state or federal money received by the individual with a disability or designated representative of the individual with a disability to fund home and community based services, including through a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or disposal of, or pays the wages of, the individual providing the home and community based services.

(c) The state and federal money received by an individual with a disability or designated representative of an individual with a disability shall include the cost of the workers’ compensation coverage required by this Subsection (9) in addition to the money necessary to fund the home and community based services that the individual with a disability or family of the individual with a disability is eligible to receive so that the home and community based services are not reduced in order to pay for the workers’ compensation coverage required by this Subsection (9).

(10) (a) For purposes of this Subsection (10), “federal executive agency” means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

(b) For purposes of determining whether two or more persons are considered joint employers under this chapter or Chapter 3, Utah Occupational Disease Act, an administrative ruling of a federal

executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule.

(11) (a) As used in this Subsection (11):

(i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

(ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

(iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(i) a franchisee; or

(ii) a franchisee's employee.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Section 14. Section 34A-2-107 is amended to read:

34A-2-107. Appointment of workers' compensation advisory council -- Composition -- Terms of members -- Duties -- Compensation.

(1) The commissioner shall appoint a workers' compensation advisory council composed of:

(a) the following voting members:

(i) five employer representatives; and

(ii) five employee representatives; and

(b) the following nonvoting members:

(i) a representative of the [~~Workers' Compensation Fund~~] workers' compensation insurance carrier that provides workers' compensation insurance under Section 31A-22-1001;

(ii) a representative of a [~~private~~] workers' compensation insurance carrier different from the workers' compensation insurance carrier listed in Subsection (1)(b)(i);

(iii) a representative of health care providers;

(iv) the Utah insurance commissioner or the insurance commissioner's designee; and

(v) the commissioner or the commissioner's designee.

(2) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(3) (a) Except as required by Subsection (3)(b), as terms of current council members expire, the commissioner shall appoint each new member or reappointed member to a two-year term beginning July 1 and ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(4) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) The commissioner shall terminate the term of a council member who ceases to be representative as designated by the member's original appointment.

(5) The council shall confer at least quarterly for the purpose of advising the commission, the division, and the Legislature on:

(a) the Utah workers' compensation and occupational disease laws;

(b) the administration of the laws described in Subsection (5)(a); and

(c) rules related to the laws described in Subsection (5)(a).

(6) Regarding workers' compensation, rehabilitation, and reemployment of employees who acquire a disability because of an industrial injury or occupational disease the council shall:

(a) offer advice on issues requested by:

(i) the commission;

(ii) the division; and

(iii) the Legislature; and

(b) make recommendations to:

(i) the commission; and

(ii) the division.

(7) The council shall study how hospital costs may be reduced for purposes of medical benefits for workers' compensation. The council shall report to the Business and Labor Interim Committee the council's recommendations by no later than November 30, 2017.

(8) The commissioner or the commissioner's designee shall serve as the chair of the council and call the necessary meetings.

(9) The commission shall provide staff support to the council.

(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 15. Section 34A-2-201 is amended to read:

34A-2-201. Employers to secure workers' compensation benefits for employees -- Methods.

An employer shall secure the payment of workers' compensation benefits for its employees by:

~~[(1) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund;]~~

~~[(2) (1) insuring, and keeping insured, the payment of this compensation with [any stock corporation or mutual association] an insurer authorized under Title 31A, Insurance Code, to transact the business of workers' compensation insurance in this state; or~~

~~[(3) (2) obtaining approval from the division in accordance with Section 34A-2-201.5 to pay direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act.~~

Section 16. Section 34A-2-203 is amended to read:

34A-2-203. Payment of premiums for workers' compensation.

~~[(1) Until June 30, 2007, a department, commission, board, or other agency of the state shall pay the insurance premium on its employees direct to the Workers' Compensation Fund.]~~

~~[(2) Beginning July 1, 2007, the]~~

~~(1) The state shall secure the payment of workers' compensation benefits for its employees:~~

~~(a) by:~~

~~[(i) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund;]~~

~~[(ii) (i) insuring, and keeping insured, the payment of this compensation with [any stock corporation or mutual association] an insurer authorized under Title 31A, Insurance Code, to transact the business of workers' compensation insurance in this state; or~~

~~[(iii) (ii) paying direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act;~~

~~(b) in accordance with Title 63A, Chapter 4, Risk Management; and~~

~~(c) subject to Subsection ~~[(3)]~~ (2).~~

~~[(3) (2) (a) If the state determines to secure the payment of workers' compensation benefits for its employees by paying direct compensation as a self-insured employer in the amount, in the manner, and due as provided for in this chapter or~~

Chapter 3, Utah Occupational Disease Act, the state is:

(i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

(ii) required to pay a premium assessment as provided in Section 34A-2-202.

(b) If the state chooses to pay workers' compensation benefits for its employees through insuring under Subsection ~~[(2)]~~ (1)(a)(i) ~~[or (ii)]~~, the state shall obtain that insurance in accordance with Title 63G, Chapter 6a, Utah Procurement Code.

Section 17. Section 34A-2-210 is amended to read:

34A-2-210. Power to bring suit for noncompliance.

(1) (a) The commission or the division on behalf of the commission may maintain a suit in any court of the state to enjoin any employer, within this chapter or Chapter 3, Utah Occupational Disease Act, from further operation of the employer's business, when the employer fails to provide for the payment of benefits in one of the ~~[three]~~ ways provided in Section 34A-2-201.

(b) Upon a showing of failure to provide for the payment of benefits, the court shall enjoin the further operation of the employer's business until the payment of these benefits has been secured by the employer as required by Section 34A-2-201. The court may enjoin the employer without requiring bond from the commission or division.

(2) If the division has reason to believe that an employer is conducting a business without securing the payment of compensation in one of the ~~[three]~~ ways provided in Section 34A-2-201, the division may give the employer five days written notice by registered mail of the noncompliance and if the employer within the five days written notice does not remedy the default:

(a) the commission or the division on behalf of the commission may file suit under Subsection (1); and

(b) the court may, ex parte, issue without bond a temporary injunction restraining the further operation of the employer's business.

Section 18. Section 34A-2-211 is amended to read:

34A-2-211. Notice of noncompliance to employer -- Enforcement power of division -- Penalty.

(1) (a) In addition to the remedies specified in Section 34A-2-210, if the division has reason to believe that an employer is conducting business without securing the payment of benefits in a manner provided in Section 34A-2-201, the division may give that employer written notice of the noncompliance by certified mail to the last-known address of the employer.

(b) If the employer does not remedy the default within 15 days after the day on which the notice is delivered, the division may issue an order requiring

the employer to appear before the division and show cause why the employer should not be ordered to comply with Section 34A-2-201.

(c) If the division finds that an employer has failed to provide for the payment of benefits in a manner provided in Section 34A-2-201, the division may require the employer to comply with Section 34A-2-201.

(2) (a) Notwithstanding Subsection (1), the division may impose a penalty against the employer under this Subsection (2):

(i) subject to Title 63G, Chapter 4, Administrative Procedures Act; and

(ii) if the division believes that an employer of one or more employees is conducting business without securing the payment of benefits in a manner provided in Section 34A-2-201.

(b) The penalty imposed under Subsection (2)(a) shall be the greater of:

(i) \$1,000; or

(ii) three times the amount of the premium the employer would have paid for workers' compensation insurance based on the rate filing of the ~~[Workers' Compensation Fund]~~ workers' compensation insurance carrier that provides workers' compensation insurance under Section 31A-22-1001, during the period of noncompliance.

(c) For purposes of Subsection (2)(b)(ii):

(i) the premium is calculated by applying rates and rate multipliers to the payroll basis under Subsection (2)(c)(ii), using the highest rated employee class code applicable to the employer's operations; and

(ii) the payroll basis is 150% of the state's average weekly wage multiplied by the highest number of workers employed by the employer during the period of the employer's noncompliance multiplied by the number of weeks of the employer's noncompliance up to a maximum of 156 weeks.

(3) A penalty imposed under Subsection (2) shall be:

(a) deposited in the Uninsured Employers' Fund created by Section 34A-2-704;

(b) used for the purposes of the Uninsured Employers' Fund specified in Section 34A-2-704; and

(c) collected by the Uninsured Employers' Fund administrator in accordance with Section 34A-2-704.

(4) (a) An employer who disputes a determination, imposition, or amount of a penalty imposed under Subsection (2) shall request a hearing before an administrative law judge within 30 days of the date of issuance of the administrative action imposing the penalty or the administrative action becomes a final order of the commission.

(b) An employer's request for a hearing under Subsection (4)(a) shall specify the facts and grounds

that are the basis of the employer's objection to the determination, imposition, or amount of the penalty.

(c) An administrative law judge's decision under this Subsection (4) may be reviewed pursuant to Part 8, Adjudication.

(5) An administrative action issued by the division under this section shall:

(a) be in writing;

(b) be sent by certified mail to the last-known address of the employer;

(c) state the findings and administrative action of the division; and

(d) specify its effective date, which may be:

(i) immediate; or

(ii) at a later date.

(6) A final order of the commission under this section, upon application by the commission made on or after the effective date of the order to a court of general jurisdiction in any county in this state, may be enforced by an order to comply:

(a) entered ex parte; and

(b) without notice by the court.

Section 19. Section 34A-2-406 is amended to read:

34A-2-406. Exemptions from chapter for employees temporarily in state -- Conditions -- Evidence of insurance.

(1) Any employee who has been hired in another state and the employee's employer are exempt from this chapter and Chapter 3, Utah Occupational Disease Act, while the employee is temporarily within this state doing work for the employee's employer if:

(a) the employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of the other state;

(b) the coverage covers the employee's employment while in this state; and

(c) (i) the extraterritorial provisions of this chapter and Chapter 3, Utah Occupational Disease Act, are recognized in the other state and employers and employees who are covered in this state are likewise exempted from the application of the workers' compensation or similar laws of the other state; or

(ii) the ~~[Workers' Compensation Fund]~~ workers' compensation insurance carrier that provides workers' compensation insurance under Section 31A-22-1001:

(A) is an admitted insurance carrier in the other state; or

(B) has agreements with [a] an insurance carrier and is able to furnish workers' compensation insurance or similar coverage to Utah employers

and their subsidiaries or affiliates doing business in the other state.

(2) The benefits under the workers' compensation or similar laws of the other state are the exclusive remedy against an employer for any injury, whether resulting in death or not, received by an employee while working for the employer in this state.

(3) A certificate from an authorized officer of the industrial commission or similar department of the other state certifying that the employer is insured in the other state and has provided extraterritorial coverage insuring the employer's employees while working in this state is prima facie evidence that the employer carries compensation insurance.

Section 20. Section 49-11-624 is enacted to read:

49-11-624. Withdrawing entity -- Participation election date -- Withdrawal costs -- Rulemaking.

(1) As used in this section, "withdrawing entity" means the mutual corporation that is the successor to the quasi-public corporation created under Chapter 33, Workers' Compensation Fund, which is the chapter repealed by this bill.

(2) Notwithstanding any other provision of this title, a withdrawing entity may provide for the participation of its employees with that system or plan as follows:

(a) the withdrawing entity shall determine a date that is no later than January 1, 2018, on which the withdrawing entity shall make an election under Subsection (3); and

(b) subject to Subsection (6), the withdrawing entity shall pay to the office any reasonable actuarial and administrative costs determined by the office to have arisen out of an election made under this section.

(3) The withdrawing entity described under Subsection (2) may elect to:

(a) (i) continue its participation for all current employees of the withdrawing entity, who are covered by a system or plan as of the date set under Subsection (2)(a); and

(ii) withdraw from participation in all systems or plans for all persons initially entering employment with the withdrawing entity, beginning on the date set under Subsection (2)(a); or

(b) withdraw from participation in all systems or plans for all current and future employees of the withdrawing entity, beginning on the date set under Subsection (2)(a).

(4) (a) An election provided under Subsection (3):

(i) is a one-time election made no later than the date specified under Subsection (2)(a);

(ii) shall be documented by a resolution adopted by the governing body of the withdrawing entity;

(iii) is irrevocable; and

(iv) applies to the withdrawing entity as the employer and to all employees of the withdrawing entity.

(b) Notwithstanding an election made under Subsection (3), any eligibility for service credit earned by an employee under this title before the date specified under Subsection (2)(a) is not affected by this section.

(5) If a withdrawing entity elects to continue participation under Subsection (3), the withdrawing entity shall continue to be subject to the laws and the rules governing the system or plan in which an employee participates, including the accrual of service credit and payment of contributions.

(6) Before a withdrawing entity may withdraw under this section, the withdrawing entity and the office shall enter into an agreement on:

(a) the costs described under Subsection (2)(b); and

(b) arrangements for the payment of the costs described under Subsection (2)(b).

(7) The board shall make rules to implement this section.

Section 21. Section 49-12-203 is amended to read:

49-12-203. Exclusions from membership in system.

(1) The following employees are not eligible for service credit in this system:

(a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;

(b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;

(c) an employee serving as an exchange employee from outside the state;

(d) an executive department head of the state, a member of the State Tax Commission, the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;

(e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

(f) an employee who is employed on or after July 1, 2009, with an employer that has elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection 49-12-202(2)(c);

(g) an employee who is employed on or after July 1, 2014, with an employer that has elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection 49-12-202(2)(d); [øø]

(h) an employee who is employed with a withdrawing entity that has elected under Section 49-11-623, prior to January 1, 2017, to exclude:

(i) new employees from participation in this system under Subsection 49-11-623(3)(a); or

(ii) all employees from participation in this system under Subsection 49-11-623(3)(b)[.]; or

(i) an employee described in Subsection (1)(i)(i) or (ii) who is employed with a withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to exclude:

(i) new employees from participation in this system under Subsection 49-11-624(3)(a); or

(ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

(2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:

(a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or

(b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.

(3) (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.

(b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before July 1, 2009 is not affected under Subsection (1)(f).

(c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service credit earned by an employee under this chapter before July 1, 2014, is not affected under Subsection (1)(g).

(4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:

(a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

(b) an elected official;

(c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;

(d) an employee of the Governor's Office of Management and Budget;

(e) an employee of the Governor's Office of Economic Development;

(f) an employee of the Commission on Criminal and Juvenile Justice;

(g) an employee of the Governor's Office;

(h) an employee of the State Auditor's Office;

(i) an employee of the State Treasurer's Office;

(j) any other member who is permitted to make an election under Section 49-11-406;

(k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee; and

(l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members.

(5) (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (4).

(b) An employee may not be exempted unless the employee is employed in an exempted position designated by the participating employer.

(6) (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is less.

(b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

(7) Each participating employer shall:

(a) file employee exemptions annually with the office; and

(b) update the employee exemptions in the event of any change.

(8) The office may make rules to implement this section.

Section 22. Section 49-13-203 is amended to read:

49-13-203. Exclusions from membership in system.

(1) The following employees are not eligible for service credit in this system:

(a) subject to the requirements of Subsection (2), an employee whose employment status is

temporary in nature due to the nature or the type of work to be performed;

(b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;

(c) an employee serving as an exchange employee from outside the state;

(d) an executive department head of the state or a legislative director, senior executive employed by the governor's office, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;

(e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

(f) an employee who is employed with an employer that has elected to be excluded from participation in this system under Subsection 49-13-202(5), effective on or after the date of the employer's election under Subsection 49-13-202(5); ~~or~~

(g) an employee who is employed with a withdrawing entity that has elected under Section 49-11-623, prior to January 1, 2017, to exclude:

(i) new employees from participation in this system under Subsection 49-11-623(3)(a); or

(ii) all employees from participation in this system under Subsection 49-11-623(3)(b)~~[-];~~ or

(h) an employee described in Subsection (1)(h)(i) or (ii) who is employed with a withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to exclude:

(i) new employees from participation in this system under Subsection 49-11-624(3)(a); or

(ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

(2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:

(a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or

(b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member

is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.

(3) (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.

(b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before the date of the election under Subsection 49-13-202(5) is not affected under Subsection (1)(f).

(4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:

(a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

(b) an elected official;

(c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;

(d) an employee of the Governor's Office of Management and Budget;

(e) an employee of the Governor's Office of Economic Development;

(f) an employee of the Commission on Criminal and Juvenile Justice;

(g) an employee of the Governor's Office;

(h) an employee of the State Auditor's Office;

(i) an employee of the State Treasurer's Office;

(j) any other member who is permitted to make an election under Section 49-11-406;

(k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee;

(l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and

(m) an employee of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

(5) (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (4).

(b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer.

(6) (a) In accordance with this section, Section 49-12-203, and Section 49-22-205, a municipality,

county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is less.

(b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.

(7) Each participating employer shall:

(a) file employee exemptions annually with the office; and

(b) update the employee exemptions in the event of any change.

(8) The office may make rules to implement this section.

Section 23. Section 49-22-203 is amended to read:

49-22-203. Exclusions from membership in system.

(1) The following employees are not eligible for service credit in this system:

(a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;

(b) except as provided under Subsection (3), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;

(c) an employee serving as an exchange employee from outside the state;

(d) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

(e) an employee who is employed with a withdrawing entity that has elected under Section 49-11-623, prior to January 1, 2017, to exclude:

(i) new employees from participation in this system under Subsection 49-11-623(3)(a); or

(ii) all employees from participation in this system under Subsection 49-11-623(3)(b); ~~or~~

(f) a person who files a written request for exemption with the office under Section 49-22-205~~[-]~~; or

(g) an employee described in Subsection (1)(g)(i) or (ii) who is employed with a withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to exclude:

(i) new employees from participation in this system under Subsection 49-11-624(3)(a); or

(ii) all employees from participation in this system under Subsection 49-11-624(3)(b).

(2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:

(a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or

(b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.

(3) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.

Section 24. Section 51-7-2 is amended to read:

51-7-2. Exemptions from chapter.

The following funds are exempt from this chapter:

(1) funds invested in accordance with the participating employees' designation or direction pursuant to a public employees' deferred compensation plan established and operated in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;

~~[(2) funds of the Workers' Compensation Fund;]~~

~~[(3)]~~ (2) funds of the Utah State Retirement Board;

~~[(4)]~~ (3) funds of the Utah Housing Corporation;

~~[(5)]~~ (4) endowment funds of higher education institutions;

~~[(6)]~~ (5) permanent and other land grant trust funds established pursuant to the Utah Enabling Act and the Utah Constitution;

~~[(7)]~~ (6) the State Post-Retirement Benefits Trust Fund;

~~[(8)]~~ (7) the funds of the Utah Educational Savings Plan;

~~[(9)]~~ (8) funds of the permanent state trust fund created by and operated under Utah Constitution, Article XXII, Section 4; and

~~[(10)]~~ (9) the funds in the Navajo Trust Fund.

Section 25. Section 51-7-4 is amended to read:

51-7-4. Transfer of functions, powers, and duties relating to public funds to state treasurer -- Exceptions -- Deposit of income from investment of state money.

(1) Unless otherwise required by the Utah Constitution or applicable federal law, the functions, powers, and duties vested by law in each state officer, board, commission, institution, department, division, agency, or other similar instrumentality relating to the deposit, investment, or reinvestment of public funds, and the purchase, sale, or exchange of investments or securities of, or for, funds or accounts under the control and management of each of these instrumentalities, are transferred to and shall be exercised by the state treasurer, except:

(a) funds assigned to the Utah State Retirement Board for investment under Section 49-11-302;

(b) funds of member institutions of the state system of higher education:

(i) acquired by gift, devise, or bequest, or by federal or private contract or grant;

(ii) derived from student fees or from income from operations of auxiliary enterprises, which fees and income are pledged or otherwise dedicated to the payment of interest and principal of bonds issued by an institution of higher education;

(iii) subject to rules made by the council, under Section 51-7-18, deposited in a foreign depository institution as defined in Section 7-1-103; and

(iv) other funds that are not included in the institution's work program as approved by the State Board of Regents;

(c) inmate funds as provided in Section 64-13-23 or in Title 64, Chapter 9b, Work Programs for Prisoners;

(d) trust funds established by judicial order;

~~[(e) funds of the Workers' Compensation Fund;]~~

~~[(f)]~~ (e) funds of the Utah Housing Corporation;

~~[(g)]~~ (f) endowment funds of higher education institutions; and

~~[(h)]~~ (g) the funds of the Utah Educational Savings Plan.

(2) All public funds held or administered by the state or its boards, commissions, institutions, departments, divisions, agencies, or similar instrumentalities and not transferred to the state treasurer as provided by this section shall be:

(a) deposited and invested by the custodian in accordance with this chapter, unless otherwise required by statute or by applicable federal law; and

(b) reported to the state treasurer in a form prescribed by the state treasurer.

(3) Unless otherwise provided by the constitution or laws of this state or by contractual obligation, the income derived from the investment of state money by the state treasurer shall be deposited in and become part of the General Fund.

Section 26. Section 53-2a-802 is amended to read:

53-2a-802. Definitions.

(1) (a) "Absent" means:

(i) not physically present or not able to be communicated with for 48 hours; or

(ii) for local government officers, as defined by local ordinances.

(b) "Absent" does not include a person who can be communicated with via telephone, radio, or telecommunications.

(2) "Department" means the Department of Administrative Services, the Department of Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of Commerce, the Department of Heritage and Arts, the Department of Corrections, the Department of Environmental Quality, the Department of Financial Institutions, the Department of Health, the Department of Human Resource Management, the Department of Workforce Services, the Labor Commission, the National Guard, the Department of Insurance, the Department of Natural Resources, the Department of Public Safety, the Public Service Commission, the Department of Human Services, the State Tax Commission, the Department of Technology Services, the Department of Transportation, any other major administrative subdivisions of state government, the State Board of Education, the State Board of Regents, the Utah Housing Corporation, ~~[the Workers' Compensation Fund,]~~ the State Retirement Board, and each institution of higher education within the system of higher education.

(3) "Division" means the Division of Emergency Management established in Title 53, Chapter 2a, Part 1, Emergency Management Act.

(4) "Emergency interim successor" means a person designated by this part to exercise the powers and discharge the duties of an office when the person legally exercising the powers and duties of the office is unavailable.

(5) "Executive director" means the person with ultimate responsibility for managing and overseeing the operations of each department, however denominated.

(6) (a) "Office" includes all state and local offices, the powers and duties of which are defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

(b) "Office" does not include the office of governor or the legislative or judicial offices.

(7) "Place of governance" means the physical location where the powers of an office are being exercised.

(8) "Political subdivision" includes counties, cities, towns, metro townships, districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.

(9) "Political subdivision officer" means a person holding an office in a political subdivision.

(10) "State officer" means the attorney general, the state treasurer, the state auditor, and the executive director of each department.

(11) "Unavailable" means:

(a) absent from the place of governance during a disaster that seriously disrupts normal governmental operations, whether or not that absence or inability would give rise to a vacancy under existing constitutional or statutory provisions; or

(b) as otherwise defined by local ordinance.

Section 27. Section 58-55-302.5 is amended to read:

58-55-302.5. Continuing education requirements for contractor licenses -- Continuing education courses.

(1) Each contractor licensee under a license issued under this chapter shall complete six hours of approved continuing education during each two-year renewal cycle established by rule under Subsection 58-55-303(1).

(2) (a) The commission shall, with the concurrence of the division, establish by rule a program of approved continuing education for contractor licensees.

(b) Except as provided in Subsection (2)(e), beginning on or after June 1, 2015, only courses offered by any of the following may be included in the program of approved continuing education for contractor licensees:

- (i) the Associated General Contractors of Utah;
- (ii) Associated Builders and Contractors, Utah Chapter;
- (iii) the Home Builders Association of Utah;
- (iv) the National Electrical Contractors Association Intermountain Chapter;
- (v) the Utah Plumbing & Heating Contractors Association;
- (vi) the Independent Electrical Contractors of Utah;
- (vii) the Rocky Mountain Gas Association;
- (viii) the Utah Mechanical Contractors Association;
- (ix) the Sheet Metal Contractors Association;
- (x) the Intermountain Electrical Association;
- (xi) the Builders Bid Service of Utah; or
- (xii) Utah Roofing Contractors Association.

(c) An approved continuing education program for a contractor licensee may include a course approved by an entity described in Subsections (2)(b)(i) through (2)(b)(iii).

(d) (i) Except as provided in Subsections (2)(d)(ii) and (iii), an entity listed in Subsections (2)(b)(iv) through (2)(b)(xii) may only offer and market continuing education courses to a licensee who is a member of the entity.

(ii) An entity described in Subsection (2)(b)(iv), (vi), or (x) may offer and market a continuing education course that the entity offers to satisfy the continuing education requirement described in Subsection 58-55-302.7(2)(a) to a contractor in the electrical trade.

(iii) An entity described in Subsection (2)(b)(v) or (viii) may offer and market a continuing education course that the entity offers to satisfy the continuing education requirement described in Subsection 58-55-302.7(2)(b) to a contractor in the plumbing trade.

(e) On or after June 1, 2015, an approved continuing education program for a contractor licensee may include a course offered and taught by:

- (i) a state executive branch agency;
- (ii) the ~~Workers' Compensation Fund created in Section 31A-33-102~~ workers' compensation insurance carrier that provides workers' compensation insurance under Section 31A-22-1001; or
- (iii) a nationally or regionally accredited college or university that has a physical campus in the state.

(3) The division may contract with a person to establish and maintain a continuing education registry to include:

- (a) a list of courses that the division has approved for inclusion in the program of approved continuing education; and
- (b) a list of courses that:

- (i) a contractor licensee has completed under the program of approved continuing education; and
- (ii) the licensee may access to monitor the licensee's compliance with the continuing education requirement established under Subsection (1).

(4) The division may charge a fee, as established by the division under Section 63J-1-504, to administer the requirements of this section.

Section 28. Section 59-9-101 is amended to read:

59-9-101. Tax basis -- Rates -- Exemptions -- Rate reductions.

(1) (a) Except as provided in Subsection (1)(b), (1)(d), or (5), an admitted insurer shall pay to the commission on or before March 31 in each year, a tax of 2-1/4% of the total premiums received by it during the preceding calendar year from insurance covering property or risks located in this state.

(b) This Subsection (1) does not apply to:

- (i) workers' compensation insurance, assessed under Subsection (2);
- (ii) title insurance premiums taxed under Subsection (3);
- (iii) annuity considerations;

(iv) insurance premiums paid by an institution within the state system of higher education as specified in Section 53B-1-102; and

(v) ocean marine insurance.

(c) The taxable premium under this Subsection (1) shall be reduced by:

(i) the premiums returned or credited to policyholders on direct business subject to tax in this state;

(ii) the premiums received for reinsurance of property or risks located in this state; and

(iii) the dividends, including premium reduction benefits maturing within the year:

(A) paid or credited to policyholders in this state; or

(B) applied in abatement or reduction of premiums due during the preceding calendar year.

(d) (i) For purposes of this Subsection (1)(d):

(A) "Utah variable life insurance premium" means an insurance premium paid:

(I) by:

(Aa) a corporation; or

(Bb) a trust established or funded by a corporation; and

(II) for variable life insurance covering risks located within the state.

(B) "Variable life insurance" means an insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of one or more separate accounts that are established and maintained by the insurer pursuant to Title 31A, Insurance Code.

(ii) Notwithstanding Subsection (1)(a), beginning on January 1, 2006, the tax on that portion of the total premiums subject to a tax under Subsection (1)(a) that is a Utah variable life insurance premium shall be calculated as follows:

(A) 2-1/4% of the first \$100,000 of Utah variable life insurance premiums:

(I) paid for each variable life insurance policy; and

(II) received by the admitted insurer in the preceding calendar year; and

(B) 0.08% of the Utah variable life insurance premiums that exceed \$100,000:

(I) paid for the policy described in Subsection (1)(d)(ii)(A); and

(II) received by the admitted insurer in the preceding calendar year.

(2) (a) An admitted insurer writing workers' compensation insurance in this state, ~~including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund,~~ shall pay to the tax commission, on or before March 31 in each year, a premium assessment on

the basis of the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year as follows:

(i) on or before December 31, 2010, an amount of equal to or greater than 1%, but equal to or less than 5.75% of the total workers' compensation premium income described in this Subsection (2);

(ii) on and after January 1, 2011, but on or before December 31, 2017, an amount of equal to or greater than 1%, but equal to or less than 4.25% of the total workers' compensation premium income described in this Subsection (2); and

(iii) on and after January 1, 2018, an amount equal to 1.25% of the total workers' compensation premium income described in this Subsection (2).

(b) Total workers' compensation premium income means the net written premium as calculated before any premium reduction for any insured employer's deductible, retention, or reimbursement amounts and also those amounts equivalent to premiums as provided in Section 34A-2-202.

(c) The percentage of premium assessment applicable for a calendar year shall be determined by the Labor Commission under Subsection (2)(d). The total premium income shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not as provided in Subsection (1)(c)(iii). The commission shall promptly remit from the premium assessment collected under this Subsection (2):

(i) income to the state treasurer for credit to the Employers' Reinsurance Fund created under Subsection 34A-2-702(1) as follows:

(A) on or before December 31, 2009, an amount of up to 5% of the total workers' compensation premium income;

(B) on and after January 1, 2010, but on or before December 31, 2010, an amount of up to 4.5% of the total workers' compensation premium income;

(C) on and after January 1, 2011, but on or before December 31, 2017, an amount of up to 3% of the total workers' compensation premium income; and

(D) on and after January 1, 2018, 0% of the total workers' compensation premium income;

(ii) an amount equal to 0.25% of the total workers' compensation premium income to the state treasurer for credit to the Workplace Safety Account created by Section 34A-2-701;

(iii) an amount of up to 0.5% and any remaining assessed percentage of the total workers' compensation premium income to the state treasurer for credit to the Uninsured Employers' Fund created under Section 34A-2-704; and

(iv) beginning on January 1, 2010, 0.5% of the total workers' compensation premium income to the state treasurer for credit to the Industrial Accident Restricted Account created in Section 34A-2-705.

(d) (i) The Labor Commission shall determine the amount of the premium assessment for each year on

or before each October 15 of the preceding year. The Labor Commission shall make this determination following a public hearing. The determination shall be based upon the recommendations of a qualified actuary.

(ii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Employers' Reinsurance Fund and to project a funded condition with assets greater than liabilities by no later than June 30, 2025.

(iii) The actuary shall recommend a premium assessment rate sufficient to provide payments of benefits and expenses from the Uninsured Employers' Fund and to maintain it at a funded condition with assets equal to or greater than liabilities.

(iv) At the end of each fiscal year the minimum approximate assets in the Employers' Reinsurance Fund shall be \$5,000,000 which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(v) The requirements of Subsection (2)(d)(iv) cease when the future annual disbursements from the Employers' Reinsurance Fund are projected to be less than the calculations of the corresponding future minimum required assets. The Labor Commission shall, after a public hearing, determine if the future annual disbursements are less than the corresponding future minimum required assets from projections provided by the actuary.

(vi) At the end of each fiscal year the minimum approximate assets in the Uninsured Employers' Fund shall be \$2,000,000, which amount shall be adjusted each year beginning in 1990 by multiplying by the ratio that the total workers' compensation premium income for the preceding calendar year bears to the total workers' compensation premium income for the calendar year 1988.

(e) A premium assessment that is to be transferred into the General Fund may be collected on premiums received from Utah public agencies.

(3) An admitted insurer writing title insurance in this state shall pay to the commission, on or before March 31 in each year, a tax of .45% of the total premium received by either the insurer or by its agents during the preceding calendar year from title insurance concerning property located in this state. In calculating this tax, "premium" includes the charges made to an insured under or to an applicant for a policy or contract of title insurance for:

(a) the assumption by the title insurer of the risks assumed by the issuance of the policy or contract of title insurance; and

(b) abstracting title, title searching, examining title, or determining the insurability of title, and every other activity, exclusive of escrow, settlement, or closing charges, whether denominated premium or otherwise, made by a title insurer, an agent of a title insurer, a title insurance producer, or any of them.

(4) Beginning July 1, 1986, a former county mutual and a former mutual benefit association shall pay the premium tax or assessment due under this chapter. Premiums received after July 1, 1986, shall be considered in determining the tax or assessment.

(5) The following insurers are not subject to the premium tax on health care insurance that would otherwise be applicable under Subsection (1):

(a) an insurer licensed under Title 31A, Chapter 5, Domestic Stock and Mutual Insurance Corporations;

(b) an insurer licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance Corporations;

(c) an insurer licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(d) an insurer licensed under Title 31A, Chapter 9, Insurance Fraternal;

(e) an insurer licensed under Title 31A, Chapter 11, Motor Clubs; and

~~[(f) an insurer licensed under Title 31A, Chapter 13, Employee Welfare Funds and Plans; and]~~

~~[(g)]~~ (f) an insurer licensed under Title 31A, Chapter 14, Foreign Insurers.

(6) An insurer issuing multiple policies to an insured may not artificially allocate the premiums among the policies for purposes of reducing the aggregate premium tax or assessment applicable to the policies.

(7) The retaliatory provisions of Title 31A, Chapter 3, Department Funding, Fees, and Taxes, apply to the tax or assessment imposed under this chapter.

Section 29. Section 63A-3-401 is amended to read:

63A-3-401. Definitions.

As used in this part:

(1) "Board" means the Utah Transparency Advisory Board created under Section 63A-3-403.

(2) "Division" means the Division of Finance of the Department of Administrative Services.

(3) (a) "Independent entity," except as provided in Subsection (3)(c), means the same as that term is defined in Section 63E-1-102.

(b) "Independent entity" includes an entity that is part of an independent entity described in this Subsection (3), if the entity is considered a component unit of the independent entity under the

governmental accounting standards issued by the Governmental Accounting Standards Board.

(c) “Independent entity” does not include ~~:(i) the Workers’ Compensation Fund created in Section 31A-33-102; or (ii) the Utah State Retirement Office created in Section 49-11-201.~~

(4) “Participating local entity” means each of the following local entities:

- (a) a county;
- (b) a municipality;

(c) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts;

(d) a special service district under Title 17D, Chapter 1, Special Service District Act;

- (e) a school district;
- (f) a charter school;

(g) except for a taxed interlocal entity as defined in Section 11-13-602, an interlocal entity as defined in Section 11-13-103; and

(h) except for a taxed interlocal entity as defined in Section 11-13-602, an entity that is part of an entity described in Subsections (4)(a) through (g), if the entity is considered a component unit of the entity described in Subsections (4)(a) through (g) under the governmental accounting standards issued by the Governmental Accounting Standards Board.

(5) (a) “Participating state entity” means the state of Utah, including its executive, legislative, and judicial branches, its departments, divisions, agencies, boards, commissions, councils, committees, and institutions.

(b) “Participating state entity” includes an entity that is part of an entity described in Subsection (5)(a), if the entity is considered a component unit of the entity described in Subsection (5)(a) under the governmental accounting standards issued by the Governmental Accounting Standards Board.

(6) “Public financial information” means records that are required to be made available on the Utah Public Finance Website, a participating local entity’s website, or an independent entity’s website as required by this part, and as the term “public financial information” is defined by rule under Section 63A-3-404.

Section 30. Section 63E-1-102 is amended to read:

63E-1-102. Definitions -- List of independent entities.

As used in this title:

(1) “Authorizing statute” means the statute creating an entity as an independent entity.

(2) “Committee” means the Retirement and Independent Entities Committee created by Section 63E-1-201.

(3) “Independent corporation” means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.

(4) (a) “Independent entity” means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

- (i) independent state agency; or
- (ii) independent corporation.

(b) “Independent entity” includes the:

(i) Utah Dairy Commission created by Section 4-22-2;

(ii) Heber Valley Historic Railroad Authority created by Section 63H-4-102;

(iii) Utah State Railroad Museum Authority created by Section 63H-5-102;

(iv) Utah Housing Corporation created by Section 63H-8-201;

(v) Utah State Fair Corporation created by Section 63H-6-103;

~~[(vi) Workers’ Compensation Fund created by Section 31A-33-102;]~~

~~[(vii)]~~ (vi) Utah State Retirement Office created by Section 49-11-201;

~~[(viii)]~~ (vii) School and Institutional Trust Lands Administration created by Section 53C-1-201;

~~[(ix)]~~ (viii) School and Institutional Trust Fund Office created by Section 53D-1-201;

~~[(x)]~~ (ix) Utah Communications Authority created by Section ~~[63N-6-201]~~ 63H-7a-201;

~~[(xi)]~~ (x) Utah Energy Infrastructure Authority created by Section 63H-2-201;

~~[(xii)]~~ (xi) Utah Capital Investment Corporation created by Section 63N-6-301; and

~~[(xiii)]~~ (xii) Military Installation Development Authority created by Section 63H-1-201.

(c) Notwithstanding this Subsection (4), “independent entity” does not include:

(i) the Public Service Commission of Utah created by Section 54-1-1;

(ii) an institution within the state system of higher education;

(iii) a city, county, or town;

(iv) a local school district;

(v) a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts; or

(vi) a special service district under Title 17D, Chapter 1, Special Service District Act.

(5) “Independent state agency” means an entity that is created by the state, but is independent of the governor’s direct supervisory control.

(6) “Money held in trust” means money maintained for the benefit of:

- (a) one or more private individuals, including public employees;
- (b) one or more public or private entities; or
- (c) the owners of a quasi-public corporation.

(7) “Public corporation” means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) “Quasi-public corporation” means an artificial person, private in ownership, individually created as a corporation by the state, which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 31. Section 63E-1-203 is amended to read:

63E-1-203. Exemptions from committee activities.

Notwithstanding the other provisions of this Part 2, Retirement and Independent Entities Committee, and Subsection 63E-1-102(4), the ~~[following independent entities are]~~ Utah Housing Corporation created in Section 63H-8-201 is exempt from the study by the committee under Section 63E-1-202~~[.]~~.

~~[(1) the Workers’ Compensation Fund created in Title 31A, Chapter 33, Workers’ Compensation Fund; and]~~

~~[(2) the Utah Housing Corporation created in Section 63H-8-201.]~~

Section 32. Section 63I-4a-102 is amended to read:

63I-4a-102. Definitions.

(1) (a) “Activity” means to provide a good or service.

- (b) “Activity” includes to:
 - (i) manufacture a good or service;
 - (ii) process a good or service;
 - (iii) sell a good or service;
 - (iv) offer for sale a good or service;
 - (v) rent a good or service;
 - (vi) lease a good or service;
 - (vii) deliver a good or service;
 - (viii) distribute a good or service; or
 - (ix) advertise a good or service.

(2) (a) Except as provided in Subsection (2)(b), “agency” means:

- (i) the state; or

(ii) an entity of the state including a department, office, division, authority, commission, or board.

(b) “Agency” does not include:

- (i) the Legislature;
- (ii) an entity or agency of the Legislature;
- (iii) the state auditor;
- (iv) the state treasurer;
- (v) the Office of the Attorney General;
- (vi) the Utah Dairy Commission created in Section 4-22-2;
- (vii) the Heber Valley Historic Railroad Authority created in Section 63H-4-102;
- (viii) the Utah State Railroad Museum Authority created in Section 63H-5-102;

(ix) the Utah Housing Corporation created in Section 63H-8-201;

(x) the Utah State Fair Corporation created in Section 63H-6-103;

~~[(xi) the Workers’ Compensation Fund created in Section 31A-33-102;]~~

~~[(xii)]~~ (xi) the Utah State Retirement Office created in Section 49-11-201;

~~[(xiii)]~~ (xii) a charter school chartered by the State Charter School Board or a board of trustees of a higher education institution under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act;

~~[(xiv)]~~ (xiii) the Utah Schools for the Deaf and the Blind created in Title 53A, Chapter 25b, Utah Schools for the Deaf and the Blind;

~~[(xv)]~~ (xiv) an institution of higher education as defined in Section 53B-3-102;

~~[(xvi)]~~ (xv) the School and Institutional Trust Lands Administration created in Section 53C-1-201;

~~[(xvii)]~~ (xvi) the Utah Communications Authority created in Section 63H-7a-201; or

~~[(xviii)]~~ (xvii) the Utah Capital Investment Corporation created in Section 63N-6-301.

(3) “Agency head” means the chief administrative officer of an agency.

(4) “Board” means the Free Market Protection and Privatization Board created in Section 63I-4a-202.

(5) “Commercial activity” means to engage in an activity that can be obtained in whole or in part from a private enterprise.

(6) “Local entity” means:

- (a) a political subdivision of the state, including a:
 - (i) county;
 - (ii) city;
 - (iii) town;
 - (iv) local school district;

- (v) local district; or
- (vi) special service district;
- (b) an agency of an entity described in this Subsection (6), including a department, office, division, authority, commission, or board; or

(c) an entity created by an interlocal cooperative agreement under Title 11, Chapter 13, Interlocal Cooperation Act, between two or more entities described in this Subsection (6).

(7) "Private enterprise" means a person that engages in an activity for profit.

(8) "Privatize" means that an activity engaged in by an agency is transferred so that a private enterprise engages in the activity, including a transfer by:

- (a) contract;
- (b) transfer of property; or
- (c) another arrangement.
- (9) "Special district" means:

(a) a local district, as defined in Section 17B-1-102;

(b) a special service district, as defined in Section 17D-1-102; or

(c) a conservation district, as defined in Section 17D-3-102.

Section 33. Section 63J-2-102 is amended to read:

63J-2-102. Definitions.

As used in this chapter:

(1) (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "Agency" does not include the legislative branch, the board of regents, the Utah Higher Education Assistance Authority, the board of trustees of each higher education institution, each higher education institution and its associated branches, centers, divisions, institutes, foundations, hospitals, colleges, schools, or departments, a public education entity, or an independent agency.

(2) (a) "Dedicated credits revenues" means revenues from collections by an agency that are deposited directly into an account for expenditure on a separate line item and program.

(b) "Dedicated credits revenues" does not mean:

(i) federal revenues and the related pass through or the related state match paid by one agency to another;

(ii) revenues that are not deposited in governmental funds; or

(iii) revenues from any contracts.

(3) "Fees" means revenue collected by an agency for performing a service or providing a function that the agency deposits or accounts for as dedicated credits or fixed collections.

(4) (a) "Fixed collections revenues" means revenue from collections:

(i) fixed by law or by the appropriation act at a specific amount; and

(ii) required by law to be deposited into a separate line item and program.

(b) "Fixed collections revenues" does not mean:

(i) federal revenues and the related pass through or the related state match paid by one agency to another;

(ii) revenues that are not deposited in governmental funds;

(iii) revenues from any contracts; and

(iv) revenues received by the Attorney General's Office from billings for professional services.

(5) (a) "Governmental fund" means funds used to account for the acquisition, use, and balances of expendable financial resources and related liabilities using a measurement focus that emphasizes the flow of financial resources.

(b) "Governmental fund" does not include internal service funds, enterprise funds, capital projects funds, debt service funds, or trust and agency funds as established in Section 51-5-4.

(6) "Independent agency" means the Utah State Retirement Office^[,] and the Utah Housing Corporation^[,] ~~and the Workers' Compensation Fund~~.

(7) "Program" means the function or service provided by an agency for which the agency collects fees.

(8) "Revenue types" means the categories established by the Division of Finance under the authority of this chapter that classify revenue according to the purpose for which it is collected.

Section 34. Section 63J-7-102 is amended to read:

63J-7-102. Scope and applicability of chapter.

(1) Except as provided in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to each agency and govern each grant received on or after May 5, 2008.

(2) This chapter does not govern:

(a) a grant deposited into a General Fund restricted account;

(b) a grant deposited into a Trust and Agency Fund as defined in Section 51-5-4;

(c) a grant deposited into an Enterprise Fund as defined in Section 51-5-4;

(d) a grant made to the state without a restriction or other designated purpose that is deposited into the General Fund as free revenue;

(e) a grant made to the state that is restricted only to "education" and that is deposited into the Education Fund or Uniform School Fund as free revenue;

(f) in-kind donations;

(g) a tax, fees, penalty, fine, surcharge, money judgment, or other money due the state when required by state law or application of state law;

(h) a contribution made under Title 59, Chapter 10, Part 13, Individual Income Tax Contribution Act;

(i) a grant received by an agency from another agency or political subdivision;

(j) a grant to the Utah Dairy Commission created in Section 4-22-2;

(k) a grant to the Heber Valley Historic Railroad Authority created in Section 63H-4-102;

(l) a grant to the Utah State Railroad Museum Authority created in Section 63H-5-102;

(m) a grant to the Utah Housing Corporation created in Section 63H-8-201;

(n) a grant to the Utah State Fair Corporation created in Section 63H-6-103;

~~[(o) a grant to the Workers' Compensation Fund created in Section 31A-33-102;]~~

~~[(p)]~~ (o) a grant to the Utah State Retirement Office created in Section 49-11-201;

~~[(q)]~~ (p) a grant to the School and Institutional Trust Lands Administration created in Section 53C-1-201;

~~[(r)]~~ (q) a grant to the Utah Communications Authority created in Section 63H-7a-201;

~~[(s)]~~ (r) a grant to the Medical Education Program created in Section 53B-24-202;

~~[(t)]~~ (s) a grant to the Utah Capital Investment Corporation created in Section 63N-6-301;

~~[(u)]~~ (t) a grant to the Utah Charter School Finance Authority created in Section 53A-20b-103;

~~[(v)]~~ (u) a grant to the State Building Ownership Authority created in Section 63B-1-304;

~~[(w)]~~ (v) a grant to the Utah Comprehensive Health Insurance Pool created in Section 31A-29-104; or

~~[(x)]~~ (w) a grant to the Military Installation Development Authority created in Section 63H-1-201.

(3) An agency need not seek legislative review or approval of grants under Part 2, Grant Approval Requirements, if:

(a) the governor has declared a state of emergency; and

(b) the grant is donated to the agency to assist victims of the state of emergency under Subsection 53-2a-204(1).

Section 35. Section 67-4-2 is amended to read:

67-4-2. Definitions.

As used in this chapter:

(1) "Federal funds" means cash received from the United States government or from other individuals or entities for or on behalf of the United States and deposited with the state treasurer or any agency of the state.

(2) "General Fund" means money received into the treasury and not specially appropriated to any other fund.

(3) "Maintain custody" means to direct the safekeeping and investment of state funds.

(4) (a) "State entity" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "State entity" includes independent state agencies and public corporations.

(5) (a) "State funds" means funds that are owned, held, or administered by a state entity, regardless of the source of the funds.

(b) "State funds" includes funds of independent state agencies or public corporations, regardless of the source of funds.

(c) "State funds" does not include funds held by the Utah State Retirement Board ~~[or the Workers' Compensation Fund]~~.

(6) "Warrant" means an order in a specific amount drawn upon the treasurer by the Division of Finance or another state agency.

Section 36. Repealer.

This bill repeals:

Section 31A-33-101, Definitions.

Section 31A-33-102, Establishment of the Workers' Compensation Fund and the Injury Fund.

Section 31A-33-103, Legal nature of Workers' Compensation Fund.

Section 31A-33-103.5, Powers of fund -- Limitations.

Section 31A-33-104, Workers' Compensation Fund exempted.

Section 31A-33-105, Price of insurance -- Liability of state.

Section 31A-33-106, Board of directors -- Status of the fund in relationship to the state.

Section 31A-33-107, Duties of board -- Creation of subsidiaries -- Entering into joint enterprises.

Section 31A-33-108, Powers and duties of chief executive officer.

Section 31A-33-109, Liability limited.

Section 31A-33-110, Audits and examinations required.

Section 31A-33-111, Adoption of rates.

Section 31A-33-112, Withdrawal of policyholders.

Section 31A-33-113, Cancellation of policies.

Section 31A-33-114, Premium assessment.

Section 31A-33-115, Interest and costs of collecting delinquent premium.

Section 31A-33-116, Dividends.

Section 31A-33-117, Availability of employers' reports.

Section 31A-33-118, Scope of chapter.-

Section 37. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on December 31, 2017.

(2) Section 31A-22-1014 enacted in this bill takes effect on May 9, 2017.

Section 38. Revisor instructions.

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the phrase "this bill" in Subsections 31A-22-1001(1), 31A-22-1014(1), and 49-11-624(1) with the bill's designated chapter number in the Laws of Utah.

CHAPTER 364**S. B. 111**

Passed March 6, 2017
 Approved March 24, 2017
 Effective May 9, 2017

UNMANNED AIRCRAFT AMENDMENTS

Chief Sponsor: Wayne A. Harper
 House Sponsor: Kay J. Christofferson

LONG TITLE**General Description:**

This bill modifies and establishes provisions related to unmanned aircraft.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ reorganizes existing code related to unmanned aircraft;
- ▶ preempts local laws related to unmanned aircraft;
- ▶ exempts unmanned aircraft from registration with the state of Utah;
- ▶ enacts provisions related to operation of unmanned aircraft by law enforcement, including:
 - data collection, reporting, retention, and use;
 - use of an unmanned aircraft for law enforcement operations; and
 - use of data obtained by an unmanned aircraft operated by a civilian;
- ▶ establishes certain safety requirements and limitations for the operation of an unmanned aircraft;
- ▶ prohibits use of an unmanned aircraft equipped with a weapon;
- ▶ prohibits a person from:
 - committing trespass with an unmanned aircraft;
 - committing a privacy violation with an unmanned aircraft; or
 - committing voyeurism with an unmanned aircraft;
- ▶ establishes criminal penalties; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 72-10-109, as renumbered and amended by Laws of Utah 1998, Chapter 270
 76-6-206, as last amended by Laws of Utah 2015, Chapter 412
 76-9-402, as enacted by Laws of Utah 1973, Chapter 196
 76-9-702.7, as last amended by Laws of Utah 2004, Chapter 52

ENACTS:

- 72-14-103, Utah Code Annotated 1953
 72-14-104, Utah Code Annotated 1953
 72-14-201, Utah Code Annotated 1953

- 72-14-202, Utah Code Annotated 1953
 72-14-205, Utah Code Annotated 1953
 72-14-301, Utah Code Annotated 1953
 72-14-302, Utah Code Annotated 1953
 72-14-303, Utah Code Annotated 1953
 72-14-401, Utah Code Annotated 1953
 72-14-402, Utah Code Annotated 1953
 72-14-403, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

- 72-14-101, (Renumbered from 63G-18-101, as last amended by Laws of Utah 2016, Chapter 101)
 72-14-102, (Renumbered from 63G-18-102, as last amended by Laws of Utah 2015, Chapter 269)
 72-14-203, (Renumbered from 63G-18-103, as last amended by Laws of Utah 2015, Chapter 269)
 72-14-204, (Renumbered from 63G-18-104, as last amended by Laws of Utah 2015, Chapter 269)

REPEALS:

- 63G-18-105, as last amended by Laws of Utah 2015, Chapter 269

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

Section 1. Section 72-10-109 is amended to read:**72-10-109. Certificate of registration of aircraft required -- Exceptions.**

(1) (a) A person may not operate, pilot, or navigate, or cause or authorize to be operated, piloted, or navigated within this state any civil aircraft located in this state unless the aircraft has a current certificate of registration issued by this state through the county in which the aircraft is located.

(b) This restriction does not apply to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of the registered aircraft or to a non-passenger-carrying flight solely for inspection or test purposes authorized by the Federal Aviation Administration to be made without the certificate of registration.

(2) Aircraft assessed by the State Tax Commission are exempt from the state registration requirement under Subsection (1).

(3) Unmanned aircraft as defined in Section 72-14-102 are exempt from the state registration requirement under Subsection (1).

Section 2. Section 72-14-101, which is renumbered from Section 63G-18-101 is renumbered and amended to read:**CHAPTER 14. UNMANNED AIRCRAFT -- DRONES****Part 1. General Provisions****[63G-18-101]. 72-14-101. Title.**

This chapter is known as "Unmanned Aircraft -- Drones."

Section 3. Section 72-14-102, which is renumbered from Section 63G-18-102 is renumbered and amended to read:

[63G-18-102]. 72-14-102. Definitions.

As used in this chapter:

~~[(1) “Law enforcement agency” means an entity of the state or an entity of a political subdivision of the state, including an entity of a state institution of higher education, that exists primarily to prevent, detect, or prosecute crime and enforce criminal statutes or ordinances.]~~

~~[(2) “Nongovernment actor” means a person that is not:]~~

~~[(a) an agency, department, division, or other entity within state government;]~~

~~[(b) a person employed by or otherwise acting in an official capacity on behalf of the state;]~~

~~[(c) a political subdivision of the state; or]~~

~~[(d) a person employed by or otherwise acting in an official capacity on behalf of a political subdivision of the state.]~~

~~[(3) “Target” means a person upon whom, or a structure or area upon which, a person:]~~

~~[(a) has intentionally collected or attempted to collect information through the operation of an unmanned aircraft system; or]~~

~~[(b) plans to collect or attempt to collect information through the operation of an unmanned aircraft system.]~~

~~[(4) “Testing site” means an area that:]~~

~~[(a) has boundaries that are clearly identified using GPS coordinates;]~~

~~[(b) a law enforcement agency identifies in writing to the Department of Public Safety, including the boundaries identified under Subsection (4)(a);]~~

~~[(c) is not more than three square miles; and]~~

~~[(d) contains no occupied structures.]~~

(1) “Airport” means the same as that term is defined in Section 72-10-102.

(2) “Airport operator” means the same as that term is defined in Section 72-10-102.

[(5)(a)] (3) “Unmanned aircraft [system]” means an aircraft that is:

[(i)] (a) [is] capable of sustaining flight; and

[(ii)] (b) [operates] operated with no possible direct human intervention from on or within the aircraft.

[(b)] (4) “Unmanned aircraft system” [does not include an unmanned aircraft that is flown] means the entire system used to operate an unmanned aircraft, including:

[(i) within visual line of sight of the individual operating the aircraft; and]

~~[(ii) strictly for hobby or recreational purposes.]~~

(a) the unmanned aircraft, including payload;

(b) communications equipment;

(c) navigation equipment;

(d) controllers;

(e) support equipment; and

(f) autopilot functionality.

Section 4. Section 72-14-103 is enacted to read:

72-14-103. Preemption of local ordinance.

(1) A political subdivision of the state, or an entity within a political subdivision of the state, may not enact a law, ordinance, or rule governing the private use of an unmanned aircraft unless:

(a) authorized by this chapter; or

(b) the political subdivision or entity is an airport operator that enacts the law, rule, or ordinance to govern:

(i) the operation of an unmanned aircraft within the geographic boundaries of the airport over which the airport operator has authority; or

(ii) the takeoff or landing of an unmanned aircraft at the airport over which the airport operator has authority.

(2) This chapter supersedes any law, ordinance, or rule enacted by a political subdivision of the state before July 1, 2017.

Section 5. Section 72-14-104 is enacted to read:

72-14-104. Applicability.

This chapter does not apply to a person or business entity:

(1) using an unmanned aircraft for legitimate educational or business purposes; and

(2) operating the unmanned aircraft system in a manner consistent with applicable Federal Aviation Administration rules, exemptions, or other authorizations.

Section 6. Section 72-14-201 is enacted to read:

Part 2. Law Enforcement Use of Unmanned Aircraft

72-14-201. Title.

This part is known as “Law Enforcement Use of Unmanned Aircraft.”

Section 7. Section 72-14-202 is enacted to read:

72-14-202. Definitions.

As used in this part:

(1) “Civilian” means a person that is not a law enforcement officer.

(2) “Law enforcement agency” means the same as that term is defined in Section 53-3-102.

(3) “Law enforcement officer” means the same as that term is defined in Section 53-13-103.

(4) “Target” means a person upon whom, or an object, structure, or area upon which, another person:

(a) has intentionally collected or attempted to collect information through the operation of an unmanned aircraft system; or

(b) intends to collect or to attempt to collect information through the operation of an unmanned aircraft system.

Section 8. Section 72-14-203, which is renumbered from Section 63G-18-103 is renumbered and amended to read:

[63G-18-103]. 72-14-203. Unmanned aircraft system use requirements -- Exceptions.

(1) A law enforcement agency or officer may not obtain, receive, or use data acquired through an unmanned aircraft system unless the data is obtained:

(a) pursuant to a search warrant;

(b) in accordance with judicially recognized exceptions to warrant requirements;

(c) subject to Subsection (2), from a person who is a nongovernment actor;

~~[(d) at a testing site; or]~~

~~[(e) (d) to locate a lost or missing person in an area in which a person has no reasonable expectation of privacy[.]; or]~~

~~(e) for purposes unrelated to a criminal investigation.~~

~~[(2) A nongovernment actor may only disclose data acquired through an unmanned aircraft system to a law enforcement agency if:]~~

(2) A law enforcement officer or agency may only use for law enforcement purposes data obtained from a nongovernment actor if:

(a) the data appears to pertain to the commission of a crime; or

(b) the ~~[nongovernment actor]~~ law enforcement agency or officer believes, in good faith, that:

(i) the data pertains to an imminent or ongoing emergency involving danger of death or serious bodily injury to an individual; and

(ii) disclosing the data would assist in remedying the emergency.

(3) A law enforcement agency or officer that obtains, receives, or uses data acquired ~~[under Subsection (1)(d) or (e)]~~ through the use of an unmanned aircraft system or through Subsection (2) shall destroy the data as soon as reasonably possible after the law enforcement agency or officer obtains, receives, or uses the data subject to an applicable retention schedule under Title 63G,

Chapter 2, Government Records Access and Management Act, or a federal, state, or local law.

~~[(4) A law enforcement agency that operates an unmanned aircraft system under Subsection (1)(d) may not operate the unmanned aircraft system outside of the testing site.]~~

Section 9. Section 72-14-204, which is renumbered from Section 63G-18-104 is renumbered and amended to read:

[63G-18-104]. 72-14-204. Data retention.

(1) Except as provided in this section, a law enforcement agency:

(a) may not use, copy, or disclose data collected by an unmanned aircraft system on a person, structure, or area that is not a target; and

(b) in accordance with applicable federal, state, and local laws, shall ensure that data described in Subsection (1)(a) is destroyed as soon as reasonably possible after the law enforcement agency collects or receives the data.

(2) A law enforcement agency is not required to comply with Subsection (1) if:

(a) deleting the data would also require the deletion of data that:

(i) relates to the target of the operation; and

(ii) is requisite for the success of the operation;

(b) the law enforcement agency receives the data:

(i) through a court order that:

(A) requires a person to release the data to the law enforcement agency; or

(B) prohibits the destruction of the data; or

(ii) from a person who is a nongovernment actor;

(c) (i) the data was collected inadvertently; and

(ii) the data appears to pertain to the commission of a crime;

(d) (i) the law enforcement agency reasonably determines that the data pertains to an emergency situation; and

(ii) using or disclosing the data would assist in remedying the emergency; or

(e) the data was collected through the operation of an unmanned aircraft system over public lands outside of municipal boundaries.

Section 10. Section 72-14-205 is enacted to read:

72-14-205. Reporting.

(1) As used in this section, “law enforcement encounter” means the same as that term is defined in Section 77-7a-103.

(2) A law enforcement officer or agency that operates an unmanned aircraft system while on duty or acting in the law enforcement officer’s or agency’s official capacity, or obtains or receives data

in accordance with Section 72-14-203, shall document the following in any report or other official record of the law enforcement encounter:

(a) the presence and use of the unmanned aircraft;

(b) any data acquired; and

(c) if applicable, the person from whom data was received in accordance with Subsection 72-14-203(2).

Section 11. Section 72-14-301 is enacted to read:

Part 3. Unlawful Use of Unmanned Aircraft 72-14-301. Title.

This part is known as "Unlawful Use of Unmanned Aircraft."

Section 12. Section 72-14-302 is enacted to read:

72-14-302. Reserved.

Reserved.

Section 13. Section 72-14-303 is enacted to read:

72-14-303. Weapon attached to unmanned aircraft -- Penalties.

(1) As used in this section "weapon" means:

(a) a firearm as described in Section 76-10-501; or

(b) an object that in the manner of the object's use or intended use is capable of causing death, bodily injury, or damage to property, as determined according to the following factors:

(i) the location and circumstances in which the object is used or possessed;

(ii) the primary purpose for which the object is made;

(iii) the character of the damage, if any, the object is likely to cause;

(iv) the manner in which the object is used;

(v) whether the manner in which the object is used or possessed constitutes a potential imminent threat to public safety; and

(vi) the lawful purposes for which the object may be used.

(2) (a) Except as provided in Subsection (3), a person may not fly an unmanned aircraft that carries a weapon or to which a weapon is attached.

(b) A person that violates Subsection (2)(a) is guilty of a class B misdemeanor.

(3) A person may fly an unmanned aircraft that carries a weapon or to which a weapon is attached if the person:

(a) (i) obtains a certificate of authorization, or other written approval, from the Federal Aviation Administration authorizing the person to fly the

unmanned aircraft that carries the weapon or to which the weapon is attached; and

(ii) operates the unmanned aircraft in accordance with the certificate of authorization or other written approval;

(b) (i) obtains a contract with the state or the federal government permitting the person to fly the unmanned aircraft that carries the weapon or to which the weapon is attached; and

(ii) operates the unmanned aircraft in accordance with the contract; or

(c) operates the unmanned aircraft that carries the weapon or to which the weapon is attached in airspace controlled by the United States Department of Defense, with the permission of the United States Department of Defense.

Section 14. Section 72-14-401 is enacted to read:

Part 4. Safe Use of Unmanned Aircraft 72-14-401. Title.

This part is known as "Safe Use of Unmanned Aircraft."

Section 15. Section 72-14-402 is enacted to read:

72-14-402. Reserved.

Reserved.

Section 16. Section 72-14-403 is enacted to read:

72-14-403. Safe operation of unmanned aircraft.

(1) An individual who operates an unmanned aircraft system to fly an unmanned aircraft for recreational purposes shall comply with this section or 14 C.F.R. Sec. 101, Subpart E.

(2) An individual operating an unmanned aircraft shall:

(a) maintain visual line of sight of the unmanned aircraft in order to:

(i) know the location of the unmanned aircraft;

(ii) determine the attitude, altitude, and direction of flight;

(iii) observe the airspace for other air traffic or hazards; and

(iv) determine that the unmanned aircraft does not endanger the life or property of another person;

(b) ensure that the ability described in Subsection (2)(a)(i) is exercised by either:

(i) the operator of the unmanned aircraft; or

(ii) a visual observer.

(3) An individual may not operate an unmanned aircraft in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless

the operator of the unmanned aircraft has prior authorization from air traffic control.

(4) An individual may not operate an unmanned aircraft in a manner that interferes with operations and traffic patterns at any airport, heliport, or seaplane base.

(5) An individual may not operate an unmanned aircraft system:

(a) from a public transit rail platform or station; or

(b) (i) under a height of 50 feet within a public transit fixed guideway right-of-way; and

(ii) directly above any overhead electric lines used to power a public transit rail vehicle.

(6) An individual may not operate an unmanned aircraft in violation of a notice to airmen described in 14 C.F.R. Sec. 107.47.

(7) An individual may not operate an unmanned aircraft at an altitude that is higher than 400 feet above ground level unless the unmanned aircraft:

(a) is flown within a 400-foot radius of a structure; and

(b) does not fly higher than 400 feet above the structure's immediate uppermost limit.

(8) (a) An individual who violates this section is liable for any damages that may result from the violation.

(b) A law enforcement officer shall issue a written warning to an individual who violates this section who has not previously received a written warning for a violation of this section.

(c) Except as provided in Subsection (8)(d), an individual who violates this section after receiving a written warning for a previous violation of this section is guilty of an infraction.

(d) An individual who violates this section is guilty of a class B misdemeanor for each conviction of a violation of this section after the individual is convicted of an infraction or a misdemeanor for a previous violation of this section.

Section 17. Section 76-6-206 is amended to read:

76-6-206. Criminal trespass.

(1) As used in this section[, "enter"]:

(a) "Enter" means intrusion of the entire body[.] or the entire unmanned aircraft.

(b) "Remain unlawfully," as that term relates to an unmanned aircraft, means remaining on or over private property when:

(i) the private property or any portion of the private property is not open to the public; and

(ii) the person operating the unmanned aircraft is not otherwise authorized to fly the unmanned aircraft over the private property or any portion of the private property.

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section 76-10-2402 regarding commercial obstruction:

(a) the person enters or remains unlawfully on or causes an unmanned aircraft to enter and remain unlawfully over property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Section 76-6-107;

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether [his] the person's or unmanned aircraft's presence will cause fear for the safety of another;

(b) knowing the person's or unmanned aircraft's entry or presence is unlawful, the person enters or remains on [property as] or causes an unmanned aircraft to enter or remain unlawfully over property to which notice against entering is given by:

(i) personal communication to the [actor] person by the owner or someone with apparent authority to act for the owner;

(ii) fencing or other enclosure obviously designed to exclude intruders; or

(iii) posting of signs reasonably likely to come to the attention of intruders; or

(c) the person enters a condominium unit in violation of Subsection 57-8-7(8).

(3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless [it was] the violation is committed in a dwelling, in which event [it] the violation is a class A misdemeanor.

(b) A violation of Subsection (2)(c) is an infraction.

(4) It is a defense to prosecution under this section that:

(a) the property was at the time open to the public; and

(b) the actor complied with all lawful conditions imposed on access to or remaining on the property.

Section 18. Section 76-9-402 is amended to read:

76-9-402. Privacy violation.

(1) A person is guilty of privacy violation if, except as authorized by law, [he] the person:

(a) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place; [ø]

(b) [Installs in any] installs, or uses after unauthorized installation in a private place, without the consent of the person or persons entitled to privacy [there] in the private place, any device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events in the [place or uses any such unauthorized installation] private place; or

(c) installs or uses outside of a private place ~~any~~ a device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events originating in the private place which would not ordinarily be audible, visible, or comprehensible outside the private place, without the consent of the person or persons entitled to privacy ~~there~~ in the private place.

(2) A person is not guilty of a violation of this section if:

(a) the device used is an unmanned aircraft;

(b) the person is operating the unmanned aircraft for legitimate commercial or educational purposes in a manner consistent with applicable Federal Aviation Administration rules, exemptions, or other authorizations; and

(c) any conduct described in Subsection (1) that occurs via the unmanned aircraft is solely incidental to the lawful commercial or educational use of the unmanned aircraft.

~~[(2)]~~ (3) Privacy violation is a class B misdemeanor.

Section 19. Section 76-9-702.7 is amended to read:

76-9-702.7. Voyeurism offenses -- Penalties.

(1) A person is guilty of voyeurism who intentionally uses ~~[a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means an individual]~~ any type of technology to secretly or surreptitiously record video of a person:

(a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(2) A violation of Subsection (1) is a class A misdemeanor, except that a violation of Subsection (1) committed against a child under 14 years of age is a third degree felony.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who, under circumstances not amounting to a violation of Subsection (1), views or attempts to view an individual, with or without the use of any instrumentality:

(a) with the intent of viewing any portion of the individual's body regarding which the individual

has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(5) A violation of Subsection (4) is a class B misdemeanor, except that a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor.

Section 20. Repealer.

This bill repeals:

Section 63G-18-105, Reporting.

CHAPTER 365**S. B. 117**

Passed March 8, 2017
 Approved March 24, 2017
 Effective May 9, 2017

**HIGHER EDUCATION
 PERFORMANCE FUNDING**

Chief Sponsor: Ann Millner
 House Sponsor: Brad R. Wilson

LONG TITLE**General Description:**

This bill amends and enacts provisions related to performance funding for higher education institutions and applied technology colleges.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the powers and duties of the Utah College of Applied Technology Board of Trustees to include responsibilities related to a model to determine performance;
- ▶ creates a restricted account;
- ▶ requires that, up to a limit, certain individual income tax revenue be deposited in the restricted account;
- ▶ restricts the use of money in the restricted account to performance funding for higher education institutions and applied technology colleges;
- ▶ requires the Department of Workforce Services to estimate the amount of growth, over a baseline amount, in individual income tax revenue generated by targeted jobs;
- ▶ directs the Legislature to determine appropriations from the restricted account for higher education institutions and applied technology colleges based on performance;
- ▶ requires the State Board of Regents and the Utah College of Applied Technology Board of Trustees to:
 - develop models for measuring the performance of higher education institutions and applied technology colleges; and
 - report annually to the Higher Education Appropriations Subcommittee on the performance of higher education institutions and applied technology colleges;
- ▶ provides for the Office of the Legislative Auditor General to conduct an audit, subject to prioritization of the Audit Subcommittee; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 53B-2a-104, as last amended by Laws of Utah 2016, Chapter 236
- 53B-7-101, as last amended by Laws of Utah 2015, Chapter 361
- 63I-2-253, as last amended by Laws of Utah 2016, Chapters 128, 229, 236, 271, and 318

ENACTS:

- 53B-7-701, Utah Code Annotated 1953
- 53B-7-702, Utah Code Annotated 1953
- 53B-7-703, Utah Code Annotated 1953
- 53B-7-704, Utah Code Annotated 1953
- 53B-7-705, Utah Code Annotated 1953
- 53B-7-706, Utah Code Annotated 1953
- 53B-7-707, Utah Code Annotated 1953
- 53B-7-708, Utah Code Annotated 1953

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

Section 1. Section 53B-2a-104 is amended to read:

53B-2a-104. Utah College of Applied Technology Board of Trustees -- Powers and duties.

(1) The Utah College of Applied Technology Board of Trustees is vested with the control, management, and supervision of applied technology colleges within the Utah College of Applied Technology in a manner consistent with the policy and purpose of this title and the specific powers and responsibilities granted to the board of trustees.

(2) The board of trustees shall:

(a) ensure that an applied technology college complies with the requirements in Section 53B-2a-106;

(b) appoint the commissioner of technical education in accordance with Section 53B-2a-102;

(c) advise the commissioner of technical education and the State Board of Regents on issues related to career and technical education, including articulation with institutions of higher education and public education;

(d) ensure that a secondary student in the public education system has access to career and technical education through an applied technology college in the secondary student's service region;

(e) in consultation with the State Board of Education, the State Board of Regents, and applied technology college presidents, develop strategies for providing career and technical education in rural areas, considering distances between rural career and technical education providers;

(f) receive budget requests from each applied technology college, compile and prioritize the requests, and submit the request to:

(i) the Legislature; and

(ii) the Governor's Office of Management and Budget;

(g) receive funding requests pertaining to capital facilities and land purchases from each applied

technology college, ensure that the requests comply with Section 53B-2a-112, prioritize the requests, and submit the prioritized requests to the State Building Board;

(h) comply with Chapter 7, Part 7, Performance Funding;

~~[(h)]~~ (i) in conjunction with the commissioner of technical education, establish benchmarks, provide oversight, evaluate program performance, and obtain independent audits to ensure that an applied technology college follows the non-credit career and technical education mission described in this part;

~~[(h)]~~ (j) approve programs for the Utah College of Applied Technology;

~~[(j)]~~ (k) approve the tuition rates for applied technology colleges within the Utah College of Applied Technology;

~~[(k)]~~ (l) prepare and submit an annual report detailing the board of trustees' progress and recommendations on career and technical education issues to the governor and to the Legislature's Education Interim Committee by October 31 of each year, which shall include information detailing:

(i) how the career and technical education needs of secondary students are being met, including what access secondary students have to programs offered at applied technology colleges;

(ii) how the emphasis on high demand, high wage, and high skill jobs in business and industry described in Section 53B-2a-106 is being provided;

(iii) performance outcomes, including:

~~[(A) entered employment;]~~

~~[(B) job retention; and]~~

(A) performance on the metrics described in Section 53B-7-707; and

~~[(C)]~~ (B) earnings; and

(iv) student tuition and fees; and

~~[(4)]~~ (m) collaborate with the State Board of Regents, the State Board of Education, the state system of public education, the state system of higher education, the Department of Workforce Services, and the Governor's Office of Economic Development on the delivery of career and technical education.

(3) The board of trustees, the commissioner of technical education, or an applied technology college, president, or board of directors may not conduct a feasibility study or perform another act relating to offering a degree or awarding credit.

Section 2. Section 53B-7-101 is amended to read:

53B-7-101. Combined requests for appropriations -- Board review of operating budgets -- Submission of

budgets -- Recommendations -- Hearing request -- Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.

(1) As used in this section:

(a) (i) "Higher education institution" or "institution" means an institution of higher education listed in Section 53B-1-102.

(ii) "Higher education institution" or "institution" does not include the Utah College of Applied Technology.

(b) "Research university" means the University of Utah or Utah State University.

(2) (a) The board shall recommend a combined appropriation for the operating budgets of higher education institutions for inclusion in a state appropriations act.

(b) The board's combined budget recommendation shall include:

(i) employee compensation;

(ii) mandatory costs, including building operations and maintenance, fuel, and power;

~~[(iii) mission based funding described in Subsection (3);]~~

~~[(iv)]~~ (iii) performance funding described in:

(A) Subsection ~~[(4)]~~ (3); and

(B) Part 7, Performance Funding;

~~[(v)]~~ (iv) statewide and institutional priorities, including scholarships, financial aid, and technology infrastructure; and

~~[(vi) unfunded historic growth.]~~

(v) enrollment growth.

(c) The board's recommendations shall be available for presentation to the governor and to the Legislature at least 30 days prior to the convening of the Legislature, and shall include schedules showing the recommended amounts for each institution, including separately funded programs or divisions.

(d) The recommended appropriations shall be determined by the board only after it has reviewed the proposed institutional operating budgets, and has consulted with the various institutions and board staff in order to make appropriate adjustments.

~~[(3) (a) The board shall establish mission based funding.]~~

~~[(b) Mission based funding shall include:]~~

~~[(i) enrollment growth; and]~~

~~[(ii) up to three strategic priorities.]~~

~~[(c) The strategic priorities described in Subsection (3)(b)(ii) shall be:]~~

~~[(i) approved by the board; and]~~

~~[(ii) designed to improve the availability, effectiveness, or quality of higher education in the state.]~~

~~[(d) Concurrent with recommending mission based funding, the board shall also recommend to the Legislature ways to address funding any inequities for institutions as compared to institutions with similar missions.]~~

~~[(4)] (3) (a) The board shall establish performance funding.~~

(b) Performance funding shall include metrics approved by the board, including:

- (i) degrees and certificates granted;
- (ii) services provided to traditionally underserved populations;
- (iii) responsiveness to workforce needs;
- (iv) institutional efficiency; and
- (v) for a research university, graduate research metrics.

(c) The board shall:

(i) award performance funding appropriated by the Legislature to institutions based on the institution's success in meeting the metrics described in Subsection ~~[(4)] (3)(b)~~; and

(ii) reallocate funding that is not awarded to an institution under Subsection ~~[(4)] (3)(c)(i)~~ for distribution to other institutions that meet the metrics described in Subsection ~~[(4)] (3)(b)~~.

~~[(5)] (4) (a) Institutional operating budgets shall be submitted to the board at least 90 days prior to the convening of the Legislature in accordance with procedures established by the board.~~

(b) Funding requests pertaining to capital facilities and land purchases shall be submitted in accordance with procedures prescribed by the State Building Board.

~~[(6)] (5) (a) The budget recommendations of the board shall be accompanied by full explanations and supporting data.~~

(b) The appropriations recommended by the board shall be made with the dual objective of:

- (i) justifying for higher educational institutions appropriations consistent with their needs, and consistent with the financial ability of the state; and
- (ii) determining an equitable distribution of funds among the respective institutions in accordance with the aims and objectives of the statewide master plan for higher education.

~~[(7)] (6) (a) The board shall request a hearing with the governor on the recommended appropriations.~~

(b) After the governor delivers his budget message to the Legislature, the board shall request hearings on the recommended appropriations with the appropriate committees of the Legislature.

(c) If either the total amount of the state appropriations or its allocation among the institutions as proposed by the Legislature or its committees is substantially different from the recommendations of the board, the board may request further hearings with the Legislature or its appropriate committees to reconsider both the total amount and the allocation.

~~[(8)] (7) The board may devise, establish, periodically review, and revise formulas for its use and for the use of the governor and the committees of the Legislature in making appropriation recommendations.~~

~~[(9)] (8) (a) The board shall recommend to each session of the Legislature the minimum tuitions, resident and nonresident, for each institution which it considers necessary to implement the budget recommendations.~~

(b) The board may fix the tuition, fees, and charges for each institution at levels it finds necessary to meet budget requirements.

~~[(10)-(a)] (9) Money allocated to each institution by legislative appropriation may be budgeted in accordance with institutional work programs approved by the board, provided that the expenditures funded by appropriations for each institution are kept within the appropriations for the applicable period.~~

~~[(b) A president of an institution shall:]~~

~~[(i) establish initiatives for the president's institution each year that are:]~~

~~[(A) aligned with the strategic priorities described in Subsection (3); and]~~

~~[(B) consistent with the institution's mission and role; and]~~

~~[(ii) allocate the institution's mission based funding to the initiatives.]~~

~~[(11)] (10) The dedicated credits, including revenues derived from tuitions, fees, federal grants, and proceeds from sales received by the institutions are appropriated to the respective institutions and used in accordance with institutional work programs.~~

~~[(12)] (11) Each institution may do its own purchasing, issue its own payrolls, and handle its own financial affairs under the general supervision of the board.~~

~~[(13)-(a)] (12) If the Legislature appropriates money in accordance with this section, it shall be distributed to the board and higher education institutions to fund the items described in Subsection (2)(b).~~

~~[(b) During each general session of the Legislature following a fiscal year in which the Legislature provides an appropriation for mission based funding or performance funding, the board and institutions shall report to the Legislature's Higher Education Appropriations Subcommittee on the use of the previous year's mission based funding and performance funding, including~~

performance outcomes relating to the strategic initiatives approved by the board.]

Section 3. Section 53B-7-701 is enacted to read:

Part 7. Performance Funding

53B-7-701. Title.

This part is known as "Performance Funding."

Section 4. Section 53B-7-702 is enacted to read:

53B-7-702. Definitions.

As used in this part:

(1) "Account" means the Performance Funding Restricted Account created in Section 53B-7-703.

(2) "Applied technology college" means the same as that term is defined in Section 53B-2a-101.

(3) "Applied technology college graduate" means an individual who:

(a) has earned a certificate from an accredited program at an applied technology college; and

(b) is no longer enrolled in the applied technology college.

(4) "Estimated revenue growth from targeted jobs" means the estimated increase in individual income tax revenue generated by individuals employed in targeted jobs, determined by the Department of Workforce Services in accordance with Section 53B-7-704.

(5) "Full new performance funding amount" means the maximum amount of new performance funding that a higher education institution or applied technology college may qualify for in a fiscal year, determined by the Legislature in accordance with Section 53B-7-705.

(6) "Full-time" means the number of credit hours the board determines is full-time enrollment for a student.

(7) "GOED" means the Governor's Office of Economic Development created in Section 63N-1-201.

(8) "Higher education institution" means the same as that term is defined in Section 53B-7-101.

(9) "Job" means an occupation determined by the Department of Workforce Services.

(10) "Membership hour" means 60 minutes of scheduled instruction provided by an applied technology college to a student enrolled in the applied technology college.

(11) "New performance funding" means the difference between the total amount of money in the account and the amount of money appropriated from the account for performance funding in the current fiscal year.

(12) "Performance" means total performance across the metrics described in:

(a) Section 53B-7-706 for a higher education institution; or

(b) Section 53B-7-707 for an applied technology college.

(13) "Research university" means the University of Utah or Utah State University.

(14) "Targeted job" means a job designated by the Department of Workforce Services or GOED in accordance with Section 53B-7-704.

(15) "Utah College of Applied Technology" means the Utah College of Applied Technology described in Chapter 2a, Utah College of Applied Technology.

Section 5. Section 53B-7-703 is enacted to read:

53B-7-703. Performance Funding Restricted Account -- Creation -- Deposits into account -- Legislative review.

(1) There is created within the Education Fund a restricted account known as the "Performance Funding Restricted Account."

(2) Money in the account shall be:

(a) used for performance funding for:

(i) higher education institutions; and

(ii) applied technology colleges; and

(b) appropriated by the Legislature in accordance with Section 53B-7-705.

(3) (a) Money in the account shall earn interest.

(b) All interest earned on account money shall be deposited into the account.

(4) (a) Except as provided in Subsection (4)(b)(ii), the Division of Finance shall deposit into the account an amount equal to:

(i) 14% of the estimated revenue growth from targeted jobs upon appropriation by the Legislature for the fiscal year beginning on July 1, 2018; and

(ii) 20% of the estimated revenue growth from targeted jobs upon appropriation by the Legislature for a fiscal year beginning on or after July 1, 2019.

(b) (i) As used in this Subsection (4)(b), "total higher education appropriations" means, for the current fiscal year, the total state funded appropriations to:

(A) the State Board of Regents;

(B) higher education institutions;

(C) the Utah College of Applied Technology; and

(D) applied technology colleges.

(ii) If a deposit described in Subsection (4)(a) would exceed 10% of total higher education appropriations, upon appropriation by the Legislature, the Division of Finance shall deposit into the account an amount equal to 10% of total higher education appropriations.

(c) The Legislature may appropriate money to the account.

(5) During the interim following a legislative general session in which an amount described in Subsection (4)(b) is deposited into the account, the Higher Education Appropriations Subcommittee shall review performance funding described in this part and make recommendations to the Legislature about:

(a) the performance levels required for higher education institutions and applied technology colleges to receive performance funding as described in Section 53B-7-705;

(b) the performance metrics described in Sections 53B-7-706 and 53B-7-707; and

(c) the amount of individual income tax revenue dedicated to higher education performance funding.

Section 6. Section 53B-7-704 is enacted to read:

53B-7-704. Designation of targeted jobs -- Determination of estimated revenue growth from targeted jobs -- Reporting.

(1) As used in this section, "baseline amount" means the average annual wages for targeted jobs over calendar years 2014, 2015, and 2016, as determined by the Department of Workforce Services using the best available information.

(2) (a) The Department of Workforce Services shall designate, as a targeted job, a job that:

(i) has a base employment level of at least 100 individuals;

(ii) ranks in the top 20% of jobs for outlook based on:

(A) projected number of openings; and

(B) projected rate of growth;

(iii) ranks in the top 20% of jobs for median annual wage; and

(iv) requires postsecondary training.

(b) The Department of Workforce Services shall designate targeted jobs every other year.

(c) GOED may, after consulting with the Department of Workforce Services and industry representatives, designate a job that has significant industry importance as a targeted job.

(d) Annually, the Department of Workforce Services and GOED shall report to the Higher Education Appropriations Subcommittee on targeted jobs, including:

(i) the method used to determine which jobs are targeted jobs;

(ii) changes to which jobs are targeted jobs; and

(iii) the reasons for each change described in Subsection (2)(d)(ii).

(3) Based on the targeted jobs described in Subsection (2), the Department of Workforce Services shall annually determine the estimated revenue growth from targeted jobs by:

(a) determining the total estimated wages for targeted jobs for the year:

(i) based on the average wages for targeted jobs, calculated using the most recently available wage data and data from each of the two years before the most recently available data; and

(ii) using the best available information;

(b) determining the change in estimated wages for targeted jobs by subtracting the baseline amount from the total wages for targeted jobs described in Subsection (3)(a); and

(c) multiplying the change in estimated wages for targeted jobs described in Subsection (3)(b) by 3.6%.

(4) Annually, at least 30 days before the first day of the legislative general session, the Department of Workforce Services shall report the estimated revenue growth from targeted jobs to:

(a) the Office of the Legislative Fiscal Analyst; and

(b) the Division of Finance.

Section 7. Section 53B-7-705 is enacted to read:

53B-7-705. Determination of full new performance funding amount -- Role of appropriations subcommittee -- Program review.

(1) In accordance with this section, and based on money deposited into the account, the Legislature shall, as part of the higher education appropriations budget process, annually determine the full new performance funding amount for each:

(a) higher education institution; and

(b) applied technology college.

(2) The Legislature shall annually allocate:

(a) 90% of the money in the account to higher education institutions; and

(b) 10% of the money in the account to applied technology colleges.

(3) (a) The Legislature shall determine a higher education institution's full new performance funding amount based on the higher education institution's prior year share of:

(i) full-time equivalent enrollment in all higher education institutions; and

(ii) the total state-funded appropriated budget for all higher education institutions.

(b) In determining a higher education institution's full new performance funding amount, the Legislature shall give equal weight to the factors described in Subsections (3)(a)(i) and (ii).

(4) (a) The Legislature shall determine an applied technology college's full new performance funding amount based on the applied technology college's prior year share of:

(i) membership hours for all applied technology colleges; and

(ii) the total state-funded appropriated budget for all applied technology colleges.

(b) In determining an applied technology college's full new performance funding amount, the Legislature shall give equal weight to the factors described in Subsections (4)(a)(i) and (ii).

(5) Annually, at least 30 days before the first day of the legislative general session:

(a) the board shall submit a report to the Higher Education Appropriations Subcommittee on each higher education institution's performance; and

(b) the Utah College of Applied Technology Board of Trustees shall submit a report to the Higher Education Appropriations Subcommittee on each applied technology college's performance.

(6) (a) In accordance with this Subsection (6), and based on the reports described in Subsection (5), the Legislature shall determine for each higher education institution and each applied technology college:

(i) the portion of the full new performance funding amount earned; and

(ii) the amount of new performance funding to recommend that the Legislature appropriate, from the account, to the higher education institution or applied technology college.

(b) (i) A higher education institution earns the full new performance funding amount if the higher education institution has a positive change in performance of at least 1% compared to the higher education institution's average performance over the previous five years.

(ii) (A) Except as provided in Subsection (6)(b)(ii)(B), an applied technology college earns the full new performance funding amount if the applied technology college has a positive change in the applied technology college's performance of at least 5% compared to the applied technology college's average performance over the previous five years.

(B) An applied technology college's change in performance may be compared to the applied technology college's average performance over fewer than five years in accordance with Subsection 53B-7-707(4)(b).

(c) A higher education institution or applied technology college that has a positive change in performance that is less than a change described in Subsection (6)(b) is eligible to receive a prorated amount of the full new performance funding amount.

(d) A higher education institution or applied technology college that has a negative change, or no change, in performance over a time period described in Subsection (6)(b) is not eligible to receive new performance funding.

(7) An appropriation described in this section is ongoing.

(8) Notwithstanding Section 53B-7-703 and Subsections (6) and (7), the Legislature may, by majority vote, appropriate or refrain from appropriating money for performance funding as circumstances require in a particular year.

(9) On or before November 1, 2020, the Education Interim Committee, the Higher Education Appropriations Subcommittee, and the governor shall review the implementation of performance funding described in this part.

Section 8. Section 53B-7-706 is enacted to read:

53B-7-706. Performance metrics for higher education institutions -- Determination of performance.

(1) (a) The board shall establish a model for determining a higher education institution's performance.

(b) The board shall submit a draft of the model described in this section to the Higher Education Appropriations Subcommittee and the governor for comments and recommendations.

(2) (a) The model described in Subsection (1) shall include metrics, including:

(i) completion, measured by degrees and certificates awarded;

(ii) completion by underserved students, measured by degrees and certificates awarded to underserved students;

(iii) responsiveness to workforce needs, measured by degrees and certificates awarded in high market demand fields;

(iv) institutional efficiency, measured by degrees and certificates awarded per full-time equivalent student; and

(v) for a research university, research, measured by total research expenditures.

(b) Subject to Subsection (2)(c), the board shall determine the relative weights of the metrics described in Subsection (2)(a).

(c) The board shall assign the responsiveness to workforce needs metric described in Subsection (2)(a)(iii) a weight of at least 25% when determining an institution of higher education's performance.

(3) For each higher education institution, the board shall annually determine the higher education institution's:

(a) performance; and

(b) change in performance compared to the higher education institution's average performance over the previous five years.

(4) On or before September 1, 2017, the board shall report to the Higher Education Appropriations Subcommittee on the model described in this section.

(5) The board shall use the model described in this section to make the report described in Section

53B-7-705 for determining a higher education institution's performance funding for a fiscal year beginning on or after July 1, 2018.

Section 9. Section 53B-7-707 is enacted to read:

53B-7-707. Performance metrics for applied technology colleges -- Determination of performance.

(1) (a) The Utah College of Applied Technology Board of Trustees shall establish a model for determining an applied technology college's performance.

(b) The Utah College of Applied Technology Board of Trustees shall submit a draft of the model described in this section to the Higher Education Appropriations Subcommittee and the governor for comments and recommendations.

(2) (a) The model described in Subsection (1) shall include metrics, including:

(i) completions, measured by certificates awarded;

(ii) short-term occupational training, measured by completions of:

(A) short-term occupational training that takes less than 60 hours to complete; and

(B) short-term occupational training that takes at least 60 hours to complete;

(iii) secondary completions, measured by:

(A) completions of competencies sufficient to be recommended for high school credits;

(B) certificates awarded to secondary students; and

(C) retention of certificate-seeking high school graduates as certificate-seeking postsecondary students;

(iv) placements, measured by:

(A) total placements in related employment, military service, or continuing education;

(B) placements for underserved students; and

(C) placements from high impact programs; and

(v) institutional efficiency, measured by the number of applied technology college graduates per 900 membership hours.

(b) The Utah College of Applied Technology Board of Trustees shall determine the relative weights of the metrics described in Subsection (2)(a).

(3) On or before September 1, 2017, the Utah College of Applied Technology Board of Trustees shall report to the Higher Education Appropriations Subcommittee on the model described in this section.

(4) (a) For each applied technology college, the Utah College of Applied Technology Board of Trustees shall annually determine the applied technology college's:

(i) performance; and

(ii) except as provided in Subsection (4)(b), change in performance compared to the applied technology college's average performance over the previous five years.

(b) For performance during a fiscal year before fiscal year 2020, if comparable performance data is not available for the previous five years, the Utah College of Applied Technology Board of Trustees may determine an applied technology college's change in performance using the average performance over the previous three or four years.

Section 10. Section 53B-7-708 is enacted to read:

53B-7-708. Legislative audit.

(1) Subject to prioritization of the Audit Subcommittee, the Office of the Legislative Auditor General established under Section 36-12-15 shall in any fiscal year:

(a) conduct an audit of money appropriated for performance funding; and

(b) prepare and submit a written report for an audit described in this section in accordance with Subsection 36-12-15(4)(b)(ii).

(2) An audit described in this section shall include:

(a) an evaluation of the implementation of performance funding; and

(b) the use of performance funding.

Section 11. Section 63I-2-253 is amended to read:

63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.

(1) Section 53A-1-403.5 is repealed July 1, 2017.

(2) Section 53A-1-411 is repealed July 1, 2017.

(3) Section 53A-1-709 is repealed July 1, 2020.

(4) Subsection 53A-1a-513(4) is repealed July 1, 2017.

(5) Section 53A-1a-513.5 is repealed July 1, 2017.

(6) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2019.

(7) Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is repealed July 1, 2017.

(8) Sections 53A-24-601 and 53A-24-602 are repealed January 1, 2018.

(9) (a) Subsections 53B-2a-103(2) and (4) are repealed July 1, 2019.

(b) When repealing Subsections 53B-2a-103(2) and (4), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

(10) Subsections 53B-7-101(2)(b)(iii)(A) and (3) are repealed January 1, 2018.

(11) Subsection 53B-7-705(6)(b)(ii)(B) is repealed July 1, 2021.

(12) Subsection 53B-7-707(4)(b) is repealed July 1, 2021.

[(10)] (13) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project, is repealed July 1, 2023.

CHAPTER 366**S. B. 124**

Passed March 7, 2017

Approved March 24, 2017

Effective May 9, 2017

CHILD CARE LICENSING AMENDMENTS

Chief Sponsor: Lincoln Fillmore
House Sponsor: Susan Pulsipher

LONG TITLE**General Description:**

This bill amends provisions related to the Utah Child Care Licensing Act.

Highlighted Provisions:

This bill:

- ▶ exempts from the licensing and certification requirements of the Utah Child Care Licensing Act certain child care facilities currently exempted from licensure by rule;
- ▶ requires these facilities to meet existing criminal background check requirements for child care facilities exempted from the Utah Child Care Licensing Act;
- ▶ modifies the criminal background check requirements under the Utah Child Care Licensing Act related to nonviolent drug offenses that occurred 10 or more years before a criminal background check; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-39-403, as last amended by Laws of Utah 2015, Chapter 220

26-39-404, as last amended by Laws of Utah 2015, Chapter 220

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

Section 1. Section 26-39-403 is amended to read:**26-39-403. Exclusions from chapter -- Criminal background checks by an excluded person.**

(1) The provisions and requirements of this chapter do not apply to:

(a) a facility or program owned or operated by an agency of the United States government;

(b) group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;

(c) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;

(d) care provided to ~~[qualifying children]~~ a qualifying child by or in the ~~homes of parents, legal guardians, grandparents, brothers, sisters, uncles,~~

~~or aunts]~~ home of a parent, legal guardian, grandparent, brother, sister, uncle, or aunt;

(e) care provided to ~~[qualifying children]~~ a qualifying child, in the home of the provider, for less than four hours a day or on a sporadic basis, unless that child care directly affects or is related to a business licensed in this state; or

(f) care provided at a residential support program that is licensed by the Department of Human Services.

(2) The licensing and certification requirements of this chapter do not apply to:

(a) care provided to ~~[qualifying children]~~ a qualifying child as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution;

(b) care provided to ~~[qualifying children]~~ a qualifying child by a public or private institution of higher education, if the care is provided in connection with a course of study or program, relating to the education or study of children, that is provided to students of the institution of higher education;

(c) care provided to ~~[qualifying children]~~ a qualifying child at a public school by an organization other than the public school, if:

(i) the care is provided under contract with the public school or on school property; or

(ii) the public school accepts responsibility and oversight for the care provided by the organization;

(d) care provided to ~~[qualifying children]~~ a qualifying child as part of a summer camp that operates on federal land pursuant to a federal permit; ~~or~~

(e) care provided by an organization that:

(i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code;

(ii) ~~[is provided]~~ provides care pursuant to a written agreement with:

(A) a municipality, as defined in Section 10-1-104, that provides oversight for the program; or

(B) a county that provides oversight for the program; and

(iii) ~~[is provided to children who are]~~ provides care to a child who is over the age of four and under the age of 13[-]; or

(f) care provided to a qualifying child at a facility where:

(i) the parent or guardian of the qualifying child is at all times physically present in the building where the care is provided and the parent or guardian is near enough to reach the child within five minutes if needed;

(ii) the duration of the care is less than four hours for an individual qualifying child in any one day;

(iii) the care is provided on a sporadic basis;

(iv) the care does not include diapering a qualifying child; and

(v) the care does not include preparing or serving meals to a qualifying child.

(3) An exempt provider shall submit to the department:

(a) the information required under Subsections 26-39-404(1) and (2); and

(b) of the children receiving care from the exempt provider:

(i) the number of children who are less than two years old;

(ii) the number of children who are at least two years old and less than five years old; and

(iii) the number of children who are five years old or older.

(4) An exempt provider shall post, in a conspicuous location near the entrance of the exempt provider's facility, a notice prepared by the department that:

(a) states that the facility is exempt from licensure and certification; and

(b) provides the department's contact information for submitting a complaint.

(5) The department may not release the information it collects under Subsection (3) except in an aggregate count of children receiving care from exempt providers, without identifying a specific provider.

Section 2. Section 26-39-404 is amended to read:

26-39-404. Disqualified individuals -- Criminal history checks -- Payment of costs.

(1) (a) Each exempt provider and each person requesting a residential certificate or to be licensed or to renew a license under this chapter shall submit to the department the name and other identifying information, which shall include fingerprints, of existing, new, and proposed:

(i) owners;

(ii) directors;

(iii) members of the governing body;

(iv) employees;

(v) providers of care;

(vi) volunteers, except parents of children enrolled in the programs; and

(vii) all adults residing in a residence where child care is provided.

(b) A person seeking renewal of a residential certificate or license under this section is not required to submit fingerprints of an individual referred to in Subsections (1)(a)(i) through (vi), if:

(i) the individual has resided in Utah for the last five years and applied for a certificate or license before July 1, 2013;

(ii) the individual has:

(A) previously submitted fingerprints under this section for a national criminal history record check; and

(B) resided in Utah continuously since that time; or

(iii) as of May 3, 1999, the individual had one of the relationships under Subsection (1)(a) with a child care provider having a residential certificate or licensed under this section and the individual has resided in Utah continuously since that time.

(c) (i) The Utah Division of Criminal Investigation and Technical Services within the Department of Public Safety shall process the information required under Subsection (1)(a) to determine whether the individual has been convicted of any crime.

(ii) The Utah Division of Criminal Investigation and Technical Services shall submit fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record check.

(iii) A person required to submit information to the department under Subsection (1) shall pay the cost of conducting the record check described in this Subsection (1)(c).

(2) (a) Each person requesting a residential certificate or to be licensed or to renew a license under this chapter shall submit to the department the name and other identifying information of any person age 12 through 17 who resides in the residence where the child care is provided. The identifying information required for a person age 12 through 17 does not include fingerprints.

(b) The department shall access the juvenile court records to determine whether a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:

(i) the person described in Subsection (1) is under the age of 28; or

(ii) the person described in Subsection (1) is:

(A) over the age of 28; and

(B) has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(3) Except as provided in [Subsection] Subsections (4) and (5), a licensee under this chapter or an exempt provider may not permit a person who has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or

misdemeanor, or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor, to:

- (a) provide child care;
- (b) provide volunteer services for a child care program or an exempt provider;
- (c) reside at the premises where child care is provided; or
- (d) function as an owner, director, or member of the governing body of a child care program or an exempt provider.

(4) (a) The department may, by rule, exempt the following from the restrictions of Subsection (3):

- (i) specific misdemeanors; and
- (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be misdemeanors.

(b) In accordance with criteria established by rule, the executive director may consider and exempt individual cases involving misdemeanors, not otherwise exempt under Subsection (4)(a) from the restrictions of Subsection (3).

(5) The restrictions of Subsection (3) do not apply to the following:

(a) a conviction or plea of no contest to any nonviolent drug offense that occurred on a date 10 years or more before the date of the criminal history check described in this section; or

(b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense adjudicated in juvenile court on a date 10 years or more before the date of the criminal history check described in this section.

CHAPTER 367**S. B. 140**

Passed March 2, 2017

Approved March 24, 2017

Effective May 9, 2017

ANNEXATION OF ISLANDS WITHIN CITIES

Chief Sponsor: D. Gregg Buxton

House Sponsor: Gage Froerer

LONG TITLE**General Description:**

This bill addresses municipal annexation of unincorporated islands.

Highlighted Provisions:

This bill:

- ▶ clarifies provisions regarding municipal annexation of certain unincorporated islands;
- ▶ modifies annexation procedures to allow a municipality to annex certain unincorporated islands without allowing or considering protests under certain circumstances;
- ▶ provides for a recommendation of annexation from a county legislative body; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-2-402, as last amended by Laws of Utah 2015, Chapters 352 and 462

10-2-418, as last amended by Laws of Utah 2015, Chapter 352

10-2a-402, as enacted by Laws of Utah 2015, Chapter 352

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

Section 1. Section 10-2-402 is amended to read:**10-2-402. Annexation -- Limitations.**

(1) (a) A contiguous, unincorporated area that is contiguous to a municipality may be annexed to the municipality as provided in this part.

(b) An unincorporated area may not be annexed to a municipality unless:

- (i) it is a contiguous area;
- (ii) it is contiguous to the municipality;
- (iii) annexation will not leave or create an unincorporated island or unincorporated peninsula:

(A) except as provided in Subsection [10-2-418(2)(b);] 10-2-418(3); or

(B) unless the county and municipality have otherwise agreed; and

(iv) for an area located in a specified county with respect to an annexation that occurs after

December 31, 2002, the area is within the proposed annexing municipality's expansion area.

(2) Except as provided in Section 10-2-418, a municipality may not annex an unincorporated area unless a petition under Section 10-2-403 is filed requesting annexation.

(3) (a) An annexation under this part may not include part of a parcel of real property and exclude part of that same parcel unless the owner of that parcel has signed the annexation petition under Section 10-2-403.

(b) A piece of real property that has more than one parcel number is considered to be a single parcel for purposes of Subsection (3)(a) if owned by the same owner.

(4) A municipality may not annex an unincorporated area in a specified county for the sole purpose of acquiring municipal revenue or to retard the capacity of another municipality to annex the same or a related area unless the municipality has the ability and intent to benefit the annexed area by providing municipal services to the annexed area.

(5) The legislative body of a specified county may not approve urban development within a municipality's expansion area unless:

(a) the county notifies the municipality of the proposed development; and

(b) (i) the municipality consents in writing to the development; or

(ii) (A) within 90 days after the county's notification of the proposed development, the municipality submits to the county a written objection to the county's approval of the proposed development; and

(B) the county responds in writing to the municipality's objections.

(6) (a) An annexation petition may not be filed under this part proposing the annexation of an area located in a county that is not the county in which the proposed annexing municipality is located unless the legislative body of the county in which the area is located has adopted a resolution approving the proposed annexation.

(b) Each county legislative body that declines to adopt a resolution approving a proposed annexation described in Subsection (6)(a) shall provide a written explanation of its reasons for declining to approve the proposed annexation.

(7) (a) As used in this Subsection (7), "airport" means an area that the Federal Aviation Administration has, by a record of decision, approved for the construction or operation of a Class I, II, or III commercial service airport, as designated by the Federal Aviation Administration in 14 C.F.R. Part 139.

(b) A municipality may not annex an unincorporated area within 5,000 feet of the center line of any runway of an airport operated or to be constructed and operated by another municipality

unless the legislative body of the other municipality adopts a resolution consenting to the annexation.

(c) A municipality that operates or intends to construct and operate an airport and does not adopt a resolution consenting to the annexation of an area described in Subsection (7)(b) may not deny an annexation petition proposing the annexation of that same area to that municipality.

(8) (a) A municipality may not annex an unincorporated area located within a project area described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act, without the authority's approval.

(b) (i) Except as provided in Subsection (8)(b)(ii), the Military Installation Development Authority may petition for annexation of a project area and contiguous surrounding land to a municipality as if it was the sole private property owner of the project area and surrounding land, if the area to be annexed is entirely contained within the boundaries of a military installation.

(ii) Before petitioning for annexation under Subsection (8)(b)(i), the Military Installation Development Authority shall provide the military installation with a copy of the petition for annexation. The military installation may object to the petition for annexation within 14 days of receipt of the copy of the annexation petition. If the military installation objects under this Subsection (8)(b)(ii), the Military Installation Development Authority may not petition for the annexation as if it was the sole private property owner.

(iii) If any portion of an area annexed under a petition for annexation filed by a Military Installation Development Authority is located in a specified county:

(A) the annexation process shall follow the requirements for a specified county; and

(B) the provisions of Subsection 10-2-402(6) do not apply.

Section 2. Section 10-2-418 is amended to read:

10-2-418. Annexation of an island or peninsula without a petition -- Notice -- Hearing.

(1) ~~[Føø]~~ As used in Subsection (2)(b)(ii), for purposes of an annexation conducted in accordance with this section of an area located within a county of the first class, "municipal-type services" ~~[føø purposes of Subsection (2)(a)(ii)(B)]~~ does not include a service provided by a municipality pursuant to a contract that the municipality has with another political subdivision as "political subdivision" is defined in Section 17B-1-102.

(2) ~~[(a)]~~ Notwithstanding Subsection 10-2-402(2), a municipality may annex an unincorporated area under this section without an annexation petition if:

~~[(i)-(A)]~~ (a) (i) the area to be annexed consists of one or more unincorporated islands within or unincorporated peninsulas contiguous to the municipality;

~~[(B)]~~ (ii) the majority of each island or peninsula consists of residential or commercial development;

~~[(C)]~~ (iii) the area proposed for annexation requires the delivery of municipal-type services; and

~~[(D)]~~ (iv) the municipality has provided most or all of the municipal-type services to the area for more than one year;

~~[(ii)-(A)]~~ (b) (i) the area to be annexed consists of one or more unincorporated islands within or unincorporated peninsulas contiguous to the municipality, each of which has fewer than 800 residents; and

~~[(B)]~~ (ii) the municipality has provided one or more municipal-type services to the area for at least one year; ~~[øø]~~

~~[(iii)-(A)]~~ (c) (i) the area consists of:

~~[(F)]~~ (A) an unincorporated island within or an unincorporated peninsula contiguous to the municipality; and

~~[(H)]~~ (B) for an area outside of the county of the first class proposed for annexation, no more than 50 acres; and

~~[(B)]~~ (ii) the county in which the area is located, subject to Subsection ~~[(3)(b)]~~ (4)(b), and the municipality agree that the area should be included within the municipality~~[-]; or~~

(d) (i) the area to be annexed consists only of one or more unincorporated islands in a county of the second class;

(ii) the area to be annexed is located in the expansion area of a municipality; and

(iii) the county legislative body in which the municipality is located provides notice to each property owner within the area to be annexed that:

(A) the county legislative body will hold a public hearing, no less than 15 days after the day on which the county legislative body provides the notice; and

(B) after the public hearing the county legislative body may make a recommendation of annexation to the municipality whose expansion area includes the area to be annexed.

~~[(b)]~~ (3) Notwithstanding Subsection 10-2-402(1)(b)(iii), a municipality may annex a portion of an unincorporated island or unincorporated peninsula under this section, leaving unincorporated the remainder of the unincorporated island or unincorporated peninsula, if:

~~[(i)]~~ (a) in adopting the resolution under Subsection ~~[(4)(a)(i),]~~ (5)(a) the municipal legislative body determines that not annexing the entire unincorporated island or unincorporated peninsula is in the municipality's best interest; and

~~[(ii)]~~ (b) for an annexation of one or more unincorporated islands under Subsection ~~[(2)(a)(ii)]~~ (2)(b), the entire island of unincorporated area, of which a portion is being annexed, complies with the requirement of Subsection ~~[(2)(a)(ii)(A)]~~ (2)(b)(i) relating to the number of residents.

~~[(3)]~~ (4) (a) This Subsection ~~[(3)]~~ (4) applies only to an annexation within a county of the first class.

(b) A county of the first class shall agree to ~~[the]~~ an annexation if the majority of private property owners within the area to be annexed ~~has indicated in writing, subject to Subsection (3)(d), to the city or town recorder of the annexing city or town the private property owners' consent to be annexed into the municipality.]~~ give written consent to the annexation, in accordance with Subsection (4)(d), to the recorder of the annexing municipality.

(c) For purposes of Subsection ~~[(3)(b)]~~ (4)(b), the majority of private property owners is property owners who own:

(i) the majority of the total private land area within the area proposed for annexation; and

(ii) private real property equal to at least one half the value of private real property within the area proposed for annexation.

(d) ~~[(4)]~~ (4) A property owner consenting to annexation shall indicate the property owner's consent on a form which includes language in substantially the following form:

"Notice: If this written consent is used to proceed with an annexation of your property in accordance with Utah Code Section 10-2-418, no public election is required by law to approve the annexation. If you sign this consent and later decide you do not want to support the annexation of your property, you may withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk of [name of annexing municipality]. If you choose to withdraw your signature, you must do so no later than the close of the public hearing on the annexation conducted in accordance with Utah Code Subsection ~~[10-2-418(4)(a)(iv)]~~ 10-2-418(4)(d)."

(e) A private property owner may withdraw the property owner's signature indicating consent by submitting a signed, written withdrawal with the recorder or clerk no later than the close of the public hearing held in accordance with Subsection ~~[(4)(a)(iv)]~~ (5)(d).

~~[(4)(a)]~~ (5) The legislative body of each municipality intending to annex an area under this section shall:

[(4)] (a) adopt a resolution indicating the municipal legislative body's intent to annex the area, describing the area proposed to be annexed;

[(4)] (b) publish notice:

~~[(A)-(D)]~~ (i) (A) at least once a week for three successive weeks in a newspaper of general circulation within the municipality and the area proposed for annexation; or

~~[(4)]~~ (B) if there is no newspaper of general circulation in the areas described in Subsection ~~[(4)(a)(ii)(A)]~~ (5)(b)(i)(A), post at least one notice per 1,000 population in places within those areas that are most likely to give notice to the residents of those areas; and

~~[(B)]~~ (ii) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks;

[(4)] (c) send written notice to:

(i) the board of each local district and special service district whose boundaries contain some or all of the area proposed for annexation; and ~~[(t)]~~

(ii) the legislative body of the county in which the area proposed for annexation is located; and

~~[(iv)]~~ (d) hold a public hearing on the proposed annexation no earlier than 30 days after the adoption of the resolution under Subsection ~~[(4)(a)(i)]~~ (5)(a).

(6) The legislative body of the annexing municipality shall ensure that:

~~[(b) - Each]~~ (a) each notice under Subsections ~~[(4)(a)(ii) and (iii) shall]~~ (5)(b) and (c):

(i) ~~[(state)]~~ states that the municipal legislative body has adopted a resolution indicating its intent to annex the area proposed for annexation;

(ii) ~~[(state)]~~ states the date, time, and place of the public hearing under Subsection ~~[(4)(a)(iv)]~~ (5)(d);

(iii) ~~[(describe)]~~ describes the area proposed for annexation; and

(iv) except for an annexation that meets the property owner consent requirements of Subsection ~~[(5)(b), state]~~ (7)(b) or the recommendation of annexation requirements of Subsection (7)(c), states in conspicuous and plain terms that the municipal legislative body will annex the area unless, at or before the public hearing under Subsection ~~[(4)(a)(iv)]~~ (5)(d), written protests to the annexation are filed by the owners of private real property that:

(A) is located within the area proposed for annexation;

(B) covers a majority of the total private land area within the entire area proposed for annexation; and

(C) is equal in value to at least 1/2 the value of all private real property within the entire area proposed for annexation[-]; and

~~[(e) - The]~~ (b) the first publication of the notice required under Subsection ~~[(4)(a)(ii)(A) - shall be]~~ (5)(b)(i) occurs within 14 days of the municipal legislative body's adoption of a resolution under Subsection ~~[(4)(a)(i)]~~ (5)(a).

~~[(5) - (a) - Upon]~~ (7) (a) Except as provided in Subsections (7)(b)(i) and (7)(c)(i), upon conclusion of the public hearing under Subsection ~~[(4)(a)(iv)]~~ (5)(d), the municipal legislative body may adopt an ordinance approving the annexation of the area proposed for annexation under this section unless, at or before the hearing, written protests to the annexation have been filed with the ~~[city recorder]~~

or town clerk, as the case may be,] recorder or clerk of the municipality by the owners of private real property that:

(i) is located within the area proposed for annexation;

(ii) covers a majority of the total private land area within the entire area proposed for annexation; and

(iii) is equal in value to at least 1/2 the value of all private real property within the entire area proposed for annexation.

(b) (i) ~~Upon~~ Notwithstanding Subsection (7)(a), upon conclusion of the public hearing under Subsection [(4)(a)(iv),] (5)(d) a municipality may adopt an ordinance approving the annexation of the area proposed for annexation under this section without allowing or considering protests under Subsection [(5)(a)] (7)(a) if the owners of at least 75% of the total private land area within the entire area proposed for annexation, representing at least 75% of the value of the private real property within the entire area proposed for annexation, have consented in writing to the annexation.

(ii) Upon the effective date under Section 10-2-425 of an annexation approved by an ordinance adopted under Subsection [(5)(b)(i)] (7)(b)(i), the area annexed ~~shall be~~ is conclusively presumed to be validly annexed.

(c) (i) Notwithstanding Subsection (7)(a), upon conclusion of the public hearing under Subsection (5)(d), a municipality may adopt an ordinance approving the annexation of an area that the county legislative body proposes for annexation under this section without allowing or considering protests under Subsection (7)(a) if the county legislative body has formally recommended annexation to the annexing municipality and has made a formal finding that:

(A) the area to be annexed can be more efficiently served by the municipality than by the county;

(B) the area to be annexed is not likely to be naturally annexed by the municipality in the future as the result of urban development;

(C) annexation of the area is likely to facilitate the consolidation of overlapping functions of local government; and

(D) annexation of the area is likely to result in an equitable distribution of community resources and obligations.

(ii) The county legislative body may base the finding required in Subsection (7)(c)(i)(B) on:

(A) existing development in the area;

(B) natural or other conditions that may limit the future development of the area; or

(C) other factors that the county legislative body considers relevant.

(iii) A county legislative body may make the recommendation for annexation required in Subsection (7)(c)(i) for only a portion of an

unincorporated island if, as a result of information provided at the public hearing, the county legislative body makes a formal finding that it would be equitable to leave a portion of the island unincorporated.

(iv) If a county legislative body has made a recommendation of annexation under Subsection (7)(c)(i):

(A) the relevant municipality is not required to proceed with the recommended annexation; and

(B) if the relevant municipality proceeds with annexation, the municipality shall annex the entire area that the county legislative body recommended for annexation.

(v) Upon the effective date under Section 10-2-425 of an annexation approved by an ordinance adopted under Subsection (7)(c)(i), the area annexed is conclusively presumed to be validly annexed.

~~[(6) (a) — If] (8) (a) Except as provided in Subsections (7)(b)(i) and (7)(c)(i), if protests are timely filed that comply with Subsection [(5)] (7)(a), the municipal legislative body may not adopt an ordinance approving the annexation of the area proposed for annexation, and the annexation proceedings under this section shall be considered terminated.~~

(b) ~~Subsection [(6)(a) may not be construed to] (8)(a) does not prohibit the municipal legislative body from excluding from a proposed annexation under Subsection [(2)(a)(ii)] (2)(b) the property within an unincorporated island regarding which protests have been filed and proceeding under Subsection [(2)(b)] (3) to annex some or all of the remaining portion of the unincorporated island.~~

Section 3. Section 10-2a-402 is amended to read:

10-2a-402. Application.

(1) The provisions of this part:

~~[(a) apply to the following located in a county of the first class:]~~

~~[(4)] (a) apply to a planning township that is:~~

(i) located in a county of the first class; and

(ii) established before January 1, 2015; and

~~[(ii) subject to Subsection (2), an unincorporated island located in a county of the first class on or after May 12, 2015, and before November 4, 2015; and]~~

(b) do not apply to a planning advisory area, as defined in Section 17-27a-103, or any other unincorporated area located outside of a county of the first or second class.

(2) (a) The provisions of Part 2, Incorporation of a City, and Part 3, Incorporation of a Town, apply to an unincorporated area described in Subsection (1) for an incorporation as a city after November 3, 2015.

(b) The provisions of Chapter 2, Part 4, Annexation[:] apply to an unincorporated island

that is not annexed at an election under this part for purposes of annexation on or after November 4, 2015.

~~[(i) do not apply to an unincorporated island for purposes of annexation before November 4, 2015, unless:]~~

~~[(A) otherwise indicated; or]~~

~~[(B) before July 1, 2015, an annexation petition is filed in accordance with Section 10-2-403 or an intent to annex resolution is adopted in accordance with Subsection 10-2-418(2)(a)(i); and]~~

~~[(ii) apply to an unincorporated island that is not annexed at an election under this part for purposes of annexation on or after November 4, 2015.]~~

CHAPTER 368**S. B. 153**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

**CHILD SUPPORT INCOME
CALCULATION AMENDMENTS**

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Val K. Potter

LONG TITLE**General Description:**

This bill modifies provisions related to calculating child support.

Highlighted Provisions:

This bill:

- ▶ addresses the impact of incarceration;
- ▶ modifies how imputed income is calculated; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78B-12-203, as last amended by Laws of Utah 2012, Chapter 41

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

Section 1. Section 78B-12-203 is amended to read:**78B-12-203. Determination of gross income -- Imputed income.**

(1) As used in the guidelines, "gross income" includes prospective income from any source, including earned and nonearned income sources which may include salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time 40-hour job. If and only if during the time ~~prior to~~ before the original support order, the parent normally and consistently worked more than 40 hours at the parent's job, the court may consider this extra time as a pattern in calculating the parent's ability to provide child support.

(3) Notwithstanding Subsection (1), specifically excluded from gross income are:

(a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program;

(b) benefits received under a housing subsidy program, the Job Training Partnership Act,

Supplemental Security Income, Social Security Disability Insurance, Medicaid, SNAP benefits, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this ~~subsection~~ Subsection (4) may differ from the amount of business income determined for tax purposes.

(5) (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.

(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Incarceration of at least six months may not be treated as voluntary unemployment by the office in establishing or modifying a support order.

~~[(6)] (7)~~ Gross income includes income imputed to the parent under Subsection ~~[(7)] (8)~~.

~~[(7)] (8)~~ (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings ~~[as derived from]~~ considering, to the extent known:

(i) employment opportunities^[7];

(ii) work history^[7];

(iii) occupation qualifications^[7];

(iv) educational attainment;

(v) literacy;

(vi) age;

(vii) health;

(viii) criminal record;

(ix) other employment barriers and background factors; and

(x) prevailing earnings and job availability for persons of similar backgrounds in the community[, or the median earning for persons in the same occupation in the same geographical area as found in the statistics maintained by the Bureau of Labor Statistics].

(c) If a parent has no recent work history or a parent's occupation is unknown, [~~income shall be imputed at least~~] that parent may be imputed an income at the federal minimum wage for a 40-hour work week. To impute a greater or lesser income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist and the condition is not of a temporary nature:

(i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;

(ii) a parent is physically or mentally unable to earn minimum wage;

(iii) a parent is engaged in career or occupational training to establish basic job skills; or

(iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

[(8)] (9) (a) Gross income may not include the earnings of a minor child who is the subject of a child support award nor benefits to a minor child in the child's own right such as Supplemental Security Income.

(b) Social security benefits received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

CHAPTER 369**S. B. 159**

Passed March 8, 2017

Approved March 24, 2017

Effective May 9, 2017

HELMET REQUIREMENT AMENDMENTS

Chief Sponsor: Brian E. Shiozawa
House Sponsor: James A. Dunnigan

LONG TITLE**General Description:**

This bill raises the age at which an individual can legally operate certain vehicles on a highway without a helmet.

Highlighted Provisions:

This bill:

- ▶ increases the age, from 18 to 21, under which an individual must wear protective headgear to operate certain vehicles on a highway; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-6a-1505, as last amended by Laws of Utah 2016, Chapters 40, 173 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 173

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

Section 1. Section 41-6a-1505 is amended to read:

41-6a-1505. Motorcycle or motor-driven cycle -- Protective headgear -- Closed cab excepted -- Electric assisted bicycles, motor assisted scooters, electric personal assistive mobility devices.

(1) A person under the age of [18] 21 may not operate or ride any of the following on a highway unless the person is wearing protective headgear that complies with specifications adopted under Subsection (3):

- (a) a motorcycle;
- (b) a motor-driven cycle;
- (c) a class 3 electric assisted bicycle; or
- (d) an auticycle that is not fully enclosed.

(2) This section does not apply to persons riding within an enclosed cab.

(3) The following standards and specifications for protective headgear are adopted:

- (a) 49 C.F.R. 571.218 related to protective headgear for motorcycles; and
- (b) 16 C.F.R. Part 1203 related to protective headgear for bicycles, motor assisted scooters, and electric personal assistive mobility devices.

(4) A court shall waive \$8 of a fine charged to a person operating a [~~motorcycle or motor-driven cycle~~] vehicle described in Subsection (1) for a moving traffic violation if the person was:

(a) [18] 21 years of age or older at the time of operation; and

(b) wearing protective headgear that complies with the specifications adopted under Subsection (3) at the time of operation.

(5) The failure to wear protective headgear:

(a) does not constitute contributory or comparative negligence on the part of a person seeking recovery for injuries; and

(b) may not be introduced as evidence in any civil litigation on the issue of negligence, injuries, or the mitigation of damages.

(6) Notwithstanding Subsection (4), a court may not waive \$8 of a fine charged to a person operating a motorcycle or motor-driven cycle for a driving under the influence violation of Section 41-6a-502.

(7) A violation of this section is an infraction.

CHAPTER 370**S. B. 163**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

STUDENT INFORMATION AMENDMENTS

Chief Sponsor: Jacob L. Anderegg

House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill modifies provisions related to student data and information given to students.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ repeals an incorrect cross reference;
- ▶ permits a third-party contractor to identify for a student nonprofit institutions of higher education or scholarship providers that are seeking students who meet specific criteria;
- ▶ amends Utah Futures provisions, including:
 - defining terms;
 - allowing a student to access information about an education provider or scholarship provider;
 - allowing an education provider or Utah business to request that Utah Futures send certain information to a student user; and
 - authorizing the Utah Futures Steering Committee to charge a fee; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-1-1402, as enacted by Laws of Utah 2016, Chapter 221

53A-1-1406, as enacted by Laws of Utah 2016, Chapter 221

53A-1-1410, as enacted by Laws of Utah 2016, Chapter 221

53B-17-108, as last amended by Laws of Utah 2015, Chapters 222, 283 and renumbered and amended by Laws of Utah 2015, Chapter 366

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

Section 1. Section 53A-1-1402 is amended to read:**53A-1-1402. Definitions.**

As used in this part:

- (1) "Adult student" means a student who:
 - (a) is at least 18 years old;
 - (b) is an emancipated student; or

(c) qualifies under the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C. Sec. 11431 et seq.

(2) "Aggregate data" means data that:

(a) are totaled and reported at the group, cohort, school, school district, region, or state level with at least 10 individuals in the level;

(b) do not reveal personally identifiable student data; and

(c) are collected in accordance with board rule.

(3) (a) "Biometric identifier" means a:

(i) retina or iris scan;

(ii) fingerprint;

(iii) human biological sample used for valid scientific testing or screening; or

(iv) scan of hand or face geometry.

(b) "Biometric identifier" does not include:

(i) a writing sample;

(ii) a written signature;

(iii) a voiceprint;

(iv) a photograph;

(v) demographic data; or

(vi) a physical description, such as height, weight, hair color, or eye color.

(4) "Biometric information" means information, regardless of how the information is collected, converted, stored, or shared:

(a) based on an individual's biometric identifier; and

(b) used to identify the individual.

(5) "Board" means the State Board of Education.

(6) "Cumulative disciplinary record" means disciplinary student data that is part of a cumulative record.

(7) "Cumulative record" means physical or electronic information that the education entity intends:

(a) to store in a centralized location for 12 months or more; and

(b) for the information to follow the student through the public education system.

(8) "Data authorization" means written authorization to collect or share a student's student data, from:

(a) the student's parent, if the student is not an adult student; or

(b) the student, if the student is an adult student.

(9) "Data governance plan" means an education entity's comprehensive plan for managing education data that:

(a) incorporates reasonable data industry best practices to maintain and protect student data and other education-related data;

(b) provides for necessary technical assistance, training, support, and auditing;

(c) describes the process for sharing student data between an education entity and another person;

(d) describes the process for an adult student or parent to request that data be expunged; and

(e) is published annually and available on the education entity's website.

(10) "Education entity" means:

(a) the board;

(b) a local school board;

(c) a charter school governing board;

(d) a school district;

(e) a charter school;

(f) the Utah Schools for the Deaf and the Blind; or

(g) for purposes of implementing the School Readiness Initiative described in Chapter 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section 53A-1b-103.

(11) "Expunge" means to seal or permanently delete data, as described in board rule made under Section 53A-1-1407.

(12) "External application" means a general audience:

(a) application;

(b) piece of software;

(c) website; or

(d) service.

(13) "Individualized education program" or "IEP" means a written statement:

(a) for a student with a disability; and

(b) that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

(14) "Internal application" means an Internet website, online service, online application, mobile application, or software, if the Internet website, online service, online application, mobile application, or software is subject to a third-party contractor's contract with an education entity.

(15) "Local education agency" or "LEA" means:

(a) a school district;

(b) a charter school;

(c) the Utah Schools for the Deaf and the Blind; or

(d) for purposes of implementing the School Readiness Initiative described in Chapter 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section 53A-1b-103.

(16) "Metadata dictionary" means a complete list of an education entity's student data elements and other education-related data elements, that:

(a) defines and discloses all data collected, used, stored, and shared by the education entity, including:

(i) who uses a data element within an education entity and how a data element is used within an education entity;

(ii) if a data element is shared externally, who uses the data element externally and how a data element is shared externally;

(iii) restrictions on the use of a data element; and

(iv) parent and student rights to a data element;

(b) designates student data elements as:

(i) necessary student data; or

(ii) optional student data;

(c) designates student data elements as required by state or federal law; and

(d) without disclosing student data or security information, is displayed on the education entity's website.

(17) "Necessary student data" means data required by state statute or federal law to conduct the regular activities of an education entity, including:

(a) name;

(b) date of birth;

(c) sex;

(d) parent contact information;

(e) custodial parent information;

(f) contact information;

(g) a student identification number;

(h) local, state, and national assessment results or an exception from taking a local, state, or national assessment;

(i) courses taken and completed, credits earned, and other transcript information;

(j) course grades and grade point average;

(k) grade level and expected graduation date or graduation cohort;

(l) degree, diploma, credential attainment, and other school exit information;

(m) attendance and mobility;

(n) drop-out data;

(o) immunization record or an exception from an immunization record;

(p) race;

(q) ethnicity;

(r) tribal affiliation;

(s) remediation efforts;

(t) an exception from a vision screening required under Section 53A-11-203 or information collected from a vision screening required under Section 53A-11-203;

(u) information related to the Utah Registry of Autism and Developmental Disabilities, described in Section 26-7-4;

(v) student injury information;

(w) a cumulative disciplinary record created and maintained as described in Section 53A-1-1407;

(x) juvenile delinquency records;

(y) English language learner status; and

(z) child find and special education evaluation data related to initiation of an IEP.

(18) (a) "Optional student data" means student data that is not:

(i) necessary student data; or

(ii) student data that an education entity may not collect under Section 53A-1-1406.

(b) "Optional student data" includes:

(i) information that is:

(A) related to an IEP or needed to provide special needs services; and

(B) not necessary student data;

(ii) biometric information; and

(iii) information that is not necessary student data and that is required for a student to participate in a federal or other program.

(19) "Parent" means a student's parent or legal guardian.

(20) (a) "Personally identifiable student data" means student data that identifies or is used by the holder to identify a student.

(b) "Personally identifiable student data" includes:

(i) a student's first and last name;

(ii) the first and last name of a student's family member;

(iii) a student's or a student's family's home or physical address;

(iv) a student's email address or other online contact information;

(v) a student's telephone number;

(vi) a student's social security number;

(vii) a student's biometric identifier;

(viii) a student's health or disability data;

(ix) a student's education entity student identification number;

(x) a student's social media user name and password or alias;

(xi) if associated with personally identifiable student data, the student's persistent identifier, including:

(A) a customer number held in a cookie; or

(B) a processor serial number;

(xii) a combination of a student's last name or photograph with other information that together permits a person to contact the student online;

(xiii) information about a student or a student's family that a person collects online and combines with other personally identifiable student data to identify the student; and

(xiv) other information that is linked to a specific student that would allow a reasonable person in the school community, who does not have first-hand knowledge of the student, to identify the student with reasonable certainty.

(21) "School official" means an employee or agent of an education entity, if the education entity has authorized the employee or agent to request or receive student data on behalf of the education entity.

(22) (a) "Student data" means information about a student at the individual student level.

(b) "Student data" does not include aggregate or de-identified data.

(23) "Student data disclosure statement" means a student data disclosure statement described in Section 53A-1-1406.

(24) "Student data manager" means:

(a) the state student data officer; or

(b) an individual designated as a student data manager by an education entity under Section 53A-1-1404.

~~[(25) "Targeted advertising" means advertising to a student on an internal or external application, if the advertisement is based on information or student data the third-party contractor collected or received under the third-party contractor's contract with an education entity.]~~

(25) (a) "Targeted advertising" means presenting advertisements to a student where the advertisement is selected based on information obtained or inferred over time from that student's online behavior, usage of applications, or student data.

(b) "Targeted advertising" does not include advertising to a student:

(i) at an online location based upon that student's current visit to that location; or

(ii) in response to that student's request for information or feedback, without retention of that student's online activities or requests over time for the purpose of targeting subsequent ads.

(26) "Third-party contractor" means a person who:

(a) is not an education entity; and

(b) pursuant to a contract with an education entity, collects or receives student data in order to provide a product or service, as described in the contract, if the product or service is not related to school photography, yearbooks, graduation announcements, or a similar product or service.

Section 2. Section 53A-1-1406 is amended to read:

53A-1-1406. Collecting student data -- Prohibition -- Student data disclosure statement -- Authorization.

(1) An education entity shall comply with this section beginning with the 2017-18 school year.

(2) An education entity may not collect a student's:

(a) social security number; or

(b) except as required in Section 78A-6-112, criminal record.

(3) An education entity that collects student data into a cumulative record shall, in accordance with this section, prepare and distribute to parents and students a student data disclosure statement that:

(a) is a prominent, stand-alone document;

(b) is annually updated and published on the education entity's website;

(c) states the necessary and optional student data the education entity collects;

(d) states that the education entity will not collect the student data described in Subsection (2);

(e) states the student data described in Section 53A-1-1409 that the education entity may not share without a data authorization;

~~[(f) states that students and parents are responsible for the collection, use, or sharing of student data as described in Section 53A-1-1405;]~~

~~[(g)]~~ (f) describes how the education entity may collect, use, and share student data;

~~[(h)]~~ (g) includes the following statement:

"The collection, use, and sharing of student data has both benefits and risks. Parents and students should learn about these benefits and risks and make choices regarding student data accordingly.";

~~[(i)]~~ (h) describes in general terms how the education entity stores and protects student data; and

~~[(j)]~~ (i) states a student's rights under this part.

(4) An education entity may collect the necessary student data of a student into a cumulative record if the education entity provides a student data disclosure statement to:

(a) the student, if the student is an adult student; or

(b) the student's parent, if the student is not an adult student.

(5) An education entity may collect optional student data into a cumulative record if the education entity:

(a) provides, to an individual described in Subsection (4), a student data disclosure statement that includes a description of:

(i) the optional student data to be collected; and

(ii) how the education entity will use the optional student data; and

(b) obtains a data authorization to collect the optional student data from an individual described in Subsection (4).

(6) An education entity may collect a student's biometric identifier or biometric information into a cumulative record if the education entity:

(a) provides, to an individual described in Subsection (4), a biometric information disclosure statement that is separate from a student data disclosure statement, which states:

(i) the biometric identifier or biometric information to be collected;

(ii) the purpose of collecting the biometric identifier or biometric information; and

(iii) how the education entity will use and store the biometric identifier or biometric information; and

(b) obtains a data authorization to collect the biometric identifier or biometric information from an individual described in Subsection (4).

Section 3. Section 53A-1-1410 is amended to read:

53A-1-1410. Third-party contractors -- Use and protection of student data -- Contract requirements -- Completion of contract -- Required and allowed uses of student data -- Restrictions on the use of student data -- Exceptions.

(1) A third-party contractor shall use personally identifiable student data received under a contract with an education entity strictly for the purpose of providing the contracted product or service within the negotiated contract terms.

(2) When contracting with a third-party contractor, an education entity shall require the following provisions in the contract:

(a) requirements and restrictions related to the collection, use, storage, or sharing of student data by the third-party contractor that are necessary for the education entity to ensure compliance with the provisions of this part and board rule;

(b) a description of a person, or type of person, including an affiliate of the third-party contractor, with whom the third-party contractor may share student data;

(c) provisions that, at the request of the education entity, govern the deletion of the student data received by the third-party contractor;

(d) except as provided in Subsection (4) and if required by the education entity, provisions that

prohibit the secondary use of personally identifiable student data by the third-party contractor; and

(e) an agreement by the third-party contractor that, at the request of the education entity that is a party to the contract, the education entity or the education entity's designee may audit the third-party contractor to verify compliance with the contract.

(3) As authorized by law or court order, a third-party contractor shall share student data as requested by law enforcement.

(4) A third-party contractor may:

(a) use student data for adaptive learning or customized student learning purposes;

(b) market an educational application or product to a parent or legal guardian of a student if the third-party contractor did not use student data, shared by or collected on behalf of an education entity, to market the educational application or product;

(c) use a recommendation engine to recommend to a student:

(i) content that relates to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party; or

(ii) services that relate to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party;

(d) respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party; ~~or~~

(e) use student data to allow or improve operability and functionality of the third-party contractor's internal application~~[-];~~ or

(f) identify for a student nonprofit institutions of higher education or scholarship providers that are seeking students who meet specific criteria:

(i) regardless of whether the identified nonprofit institutions of higher education or scholarship providers provide payment or other consideration to the third-party contractor; and

(ii) except as provided in Subsection (5), only if the third-party contractor obtains written consent:

(A) of a student's parent or legal guardian through the student's school or LEA; or

(B) for a student who is age 18 or older or an emancipated minor, from the student.

(5) A third-party contractor is not required to obtain written consent under Subsection (4)(f)(ii) if the third-party contractor:

(a) is a national assessment provider; and

(b) (i) secures the express written consent of the student or the student's parent; and

(ii) the express written consent is given in response to clear and conspicuous notice that the national assessment provider requests consent solely to provide access to information on employment, educational scholarships, financial aid, or postsecondary educational opportunities.

~~[(5)]~~ (6) At the completion of a contract with an education entity, if the contract has not been renewed, a third-party contractor shall~~[(a)]~~ return [all personally identifiable student data to the education entity; or] or delete upon the education entity's request all personally identifiable student data under the control of the education entity unless a student or the student's parent consents to the maintenance of the personally identifiable student data.

~~[(b) as reasonable, delete all personally identifiable student data related to the third-party contractor's work.]~~

~~[(6)]~~ (7) (a) A third-party contractor may not:

(i) except as provided in [Subsection (6)(b)] Subsections (5) and (7)(b), sell student data;

(ii) collect, use, or share student data, if the collection, use, or sharing of the student data is inconsistent with the third-party contractor's contract with the education entity; or

(iii) use student data for targeted advertising.

(b) A person may obtain student data through the purchase of, merger with, or otherwise acquiring a third-party contractor if the third-party contractor remains in compliance with this section.

~~[(7)]~~ (8) A provider of an electronic store, gateway, marketplace, or other means of purchasing an external application is not required to ensure that the external application obtained through the provider complies with this section.

~~[(8)]~~ (9) The provisions of this section do not:

(a) apply to the use of an external application, including the access of an external application with login credentials created by a third-party contractor's internal application;

(b) apply to the providing of Internet service; or

(c) impose a duty on a provider of an interactive computer service, as defined in 47 U.S.C. Sec. 230, to review or enforce compliance with this section.

Section 4. Section 53B-17-108 is amended to read:

53B-17-108. Utah Futures.

(1) As used in this section:

(a) "Education provider" means:

(i) a Utah institution of higher education as defined in Section 53B-2-101; or

(ii) a nonprofit Utah provider of postsecondary education.

(b) "Student user" means:

(i) a Utah student in kindergarten through grade 12;

(ii) a Utah post secondary education student;

(iii) a parent or guardian of a Utah public education student; or

(iv) a Utah potential post secondary education student.

(c) "Utah Futures" means a career planning program developed and administered by the Utah Futures Steering Committee.

(d) "Utah Futures Steering Committee" means a committee of members designated by the governor to administer and manage Utah Futures.

(2) The Utah Futures Steering Committee shall ensure, as funding allows and is feasible, that Utah Futures will:

(a) allow a student user to:

~~(i) access the student user's full academic record;~~

~~(ii) electronically allow the student user to give access to the student user's academic record and related information to an education provider as allowed by law;~~

(i) access, subject to Subsection (3), information about an education provider or a scholarship provider;

~~(iii)~~ (ii) access information about different career opportunities and understand the related educational requirements to enter that career;

~~(iv)~~ (iii) access information about education providers;

~~(v)~~ (iv) access up to date information about entrance requirements to education providers;

~~(vi)~~ (v) apply for entrance to multiple schools without having to fully replicate the application process;

~~(vii)~~ (vi) apply for loans, scholarships, or grants from multiple education providers in one location without having to fully replicate the application process for multiple education providers; and

~~(viii)~~ (vii) research open jobs from different companies within the user's career interest and apply for those jobs without having to leave the website to do so;

(b) allow all users to:

(i) access information about different career opportunities and understand the related educational requirements to enter that career;

(ii) access information about education providers;

(iii) access up-to-date information about entrance requirements to education providers;

(iv) apply for entrance to multiple schools without having to fully replicate the application process;

(v) apply for loans, scholarships, or grants from multiple education providers in one location without having to fully replicate the application process for multiple education providers; and

(vi) research open jobs from different companies within the user's career interest and apply for those jobs without having to leave the website to do so;

(c) allow an education provider to:

(i) [research and find student users] request that Utah Futures send information to student users who are interested in various educational [outcomes] opportunities;

(ii) promote the education provider's programs and schools to student users; and

(iii) connect with student users within the Utah Futures website;

(d) allow a Utah business to:

(i) [research and find student users] request that Utah Futures send information to student users who are pursuing educational [outcomes] opportunities that are consistent with jobs the Utah business is trying to fill now or in the future; and

(ii) market jobs and communicate with student users through the Utah Futures website as allowed by law;

(e) provide analysis and reporting on student user interests and education paths within the education system; and

(f) allow all users of the Utah Futures' system to communicate and interact through social networking tools within the Utah Futures website as allowed by law.

(3) A student may access information described in Subsection (2)(a)(i) only if Utah Futures obtains written consent:

(a) of a student's parent or legal guardian through the student's school or LEA; or

(b) for a student who is age 18 or older or an emancipated minor, from the student.

(4) The Utah Futures Steering Committee:

(a) may charge a fee to a Utah business for services provided by Utah Futures under this section; and

(b) shall establish a fee described in Subsection (4)(a) in accordance with Section 63J-1-504.

CHAPTER 371**S. B. 175**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

UNIFORM UNCLAIMED PROPERTY ACT

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill modifies the Unclaimed Property Act.

Highlighted Provisions:

This bill:

- ▶ provides and amends definitions;
- ▶ repeals and reenacts the Revised Uniform Unclaimed Property Act;
- ▶ amends and enacts provisions addressing the standards for determining when property is abandoned or unclaimed;
- ▶ amends and enacts provisions addressing the procedures for reporting and submitting abandoned or unclaimed property;
- ▶ amends and enacts provisions addressing the disposition of abandoned or unclaimed property in the administrator's custody;
- ▶ amends and enacts provisions addressing procedures and requirements for claiming ownership of abandoned or unclaimed property;
- ▶ amends and enacts provisions addressing the duties of a holder of abandoned or unclaimed property;
- ▶ amends and enacts provisions addressing the enforcement of the responsibilities and requirements for abandoned or unclaimed property;
- ▶ enacts provisions addressing the confidentiality and security of abandoned or unclaimed property reports and information; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

31A-4-110, as last amended by Laws of Utah 1995, Chapter 198

31A-22-1903, as enacted by Laws of Utah 2015, Chapter 259

57-16-14, as enacted by Laws of Utah 2001, Chapter 256

78B-6-816, as last amended by Laws of Utah 2013, Chapter 206

ENACTS:

67-4a-104, Utah Code Annotated 1953

67-4a-304, Utah Code Annotated 1953

67-4a-305, Utah Code Annotated 1953

67-4a-306, Utah Code Annotated 1953

67-4a-307, Utah Code Annotated 1953

67-4a-503, Utah Code Annotated 1953

67-4a-504, Utah Code Annotated 1953

67-4a-603, Utah Code Annotated 1953

67-4a-604, Utah Code Annotated 1953

67-4a-605, Utah Code Annotated 1953

67-4a-606, Utah Code Annotated 1953

67-4a-607, Utah Code Annotated 1953

67-4a-608, Utah Code Annotated 1953

67-4a-609, Utah Code Annotated 1953

67-4a-610, Utah Code Annotated 1953

67-4a-803, Utah Code Annotated 1953

67-4a-804, Utah Code Annotated 1953

67-4a-903, Utah Code Annotated 1953

67-4a-904, Utah Code Annotated 1953

67-4a-905, Utah Code Annotated 1953

67-4a-906, Utah Code Annotated 1953

67-4a-1001, Utah Code Annotated 1953

67-4a-1002, Utah Code Annotated 1953

67-4a-1003, Utah Code Annotated 1953

67-4a-1004, Utah Code Annotated 1953

67-4a-1005, Utah Code Annotated 1953

67-4a-1006, Utah Code Annotated 1953

67-4a-1007, Utah Code Annotated 1953

67-4a-1008, Utah Code Annotated 1953

67-4a-1009, Utah Code Annotated 1953

67-4a-1010, Utah Code Annotated 1953

67-4a-1011, Utah Code Annotated 1953

67-4a-1101, Utah Code Annotated 1953

67-4a-1102, Utah Code Annotated 1953

67-4a-1103, Utah Code Annotated 1953

67-4a-1104, Utah Code Annotated 1953

67-4a-1201, Utah Code Annotated 1953

67-4a-1202, Utah Code Annotated 1953

67-4a-1203, Utah Code Annotated 1953

67-4a-1204, Utah Code Annotated 1953

67-4a-1205, Utah Code Annotated 1953

67-4a-1206, Utah Code Annotated 1953

67-4a-1301, Utah Code Annotated 1953

67-4a-1302, Utah Code Annotated 1953

67-4a-1303, Utah Code Annotated 1953

67-4a-1401, Utah Code Annotated 1953

67-4a-1402, Utah Code Annotated 1953

67-4a-1403, Utah Code Annotated 1953

67-4a-1404, Utah Code Annotated 1953

67-4a-1405, Utah Code Annotated 1953

67-4a-1406, Utah Code Annotated 1953

67-4a-1407, Utah Code Annotated 1953

67-4a-1408, Utah Code Annotated 1953

67-4a-1501, Utah Code Annotated 1953

67-4a-1502, Utah Code Annotated 1953

67-4a-1503, Utah Code Annotated 1953

67-4a-1504, Utah Code Annotated 1953

REPEALS AND REENACTS:

67-4a-101, as enacted by Laws of Utah 1995, Chapter 198

67-4a-102, as last amended by Laws of Utah 2010, Chapter 218

67-4a-103, as enacted by Laws of Utah 1995, Chapter 198

67-4a-201, as last amended by Laws of Utah 2007, Chapter 18

67-4a-202, as enacted by Laws of Utah 1995, Chapter 198

67-4a-203, as last amended by Laws of Utah 2007, Chapter 18

67-4a-204, as last amended by Laws of Utah 2007, Chapter 18

67-4a-205, as last amended by Laws of Utah 2007, Chapter 18

67-4a-206, as enacted by Laws of Utah 1995, Chapter 198

67-4a-207, as enacted by Laws of Utah 1995, Chapter 198

67-4a-208, as last amended by Laws of Utah 2007, Chapter 18

67-4a-209, as last amended by Laws of Utah 2007, Chapter 18

67-4a-301, as last amended by Laws of Utah 2007, Chapter 18

67-4a-302, as last amended by Laws of Utah 2007, Chapter 18

67-4a-303, as enacted by Laws of Utah 1995, Chapter 198

67-4a-401, as enacted by Laws of Utah 1995, Chapter 198

67-4a-402, as last amended by Laws of Utah 2009, Chapter 388

67-4a-403, as last amended by Laws of Utah 2009, Chapter 388

67-4a-404, as enacted by Laws of Utah 1995, Chapter 198

67-4a-405, as last amended by Laws of Utah 2008, Chapter 339

67-4a-501, as enacted by Laws of Utah 1995, Chapter 198

67-4a-502, as enacted by Laws of Utah 1995, Chapter 198

67-4a-601, as last amended by Laws of Utah 2007, Chapter 18

67-4a-602, as enacted by Laws of Utah 1995, Chapter 198

67-4a-701, as last amended by Laws of Utah 2007, Chapter 18

67-4a-702, as enacted by Laws of Utah 1995, Chapter 198

67-4a-703, as last amended by Laws of Utah 2008, Chapter 382

67-4a-704, as enacted by Laws of Utah 1995, Chapter 198

67-4a-705, as enacted by Laws of Utah 1995, Chapter 198

67-4a-801, as enacted by Laws of Utah 1995, Chapter 198

67-4a-802, as enacted by Laws of Utah 1995, Chapter 198

67-4a-901, as enacted by Laws of Utah 1995, Chapter 198

67-4a-902, as enacted by Laws of Utah 1995, Chapter 198

REPEALS:

67-4a-210, as last amended by Laws of Utah 2005, Chapter 156

67-4a-211, as last amended by Laws of Utah 2009, Chapter 343

67-4a-212, as enacted by Laws of Utah 1995, Chapter 198

67-4a-213, as enacted by Laws of Utah 1995, Chapter 198

67-4a-214, as last amended by Laws of Utah 2007, Chapter 18

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

Section 1. Section 31A-4-110 is amended to read:**31A-4-110. Duty of insurers to report abandoned property.**

All insurers doing business in Utah shall report under Section ~~[67-4a-301]~~ 67-4a-401 any property presumed abandoned under Title 67, Chapter 4a, Part 2, ~~[Standards for Determining When Property Is Abandoned or Unclaimed]~~ Presumption of Abandonment.

Section 2. Section 31A-22-1903 is amended to read:**31A-22-1903. Insurer conduct.**

(1) An insurer shall perform a comparison of its insureds' in-force policies, contracts, and retained asset accounts against a death master file, on at least a semi-annual basis, by using the full death master file once and thereafter using the death master file update files for future comparisons to identify potential matches of its insureds. For those potential matches identified as a result of a death master file match:

(a) The insurer shall within 90 days of a death master file match:

(i) complete a good faith effort, that the insurer documents, to confirm the death of the insured or retained asset account holder against other available records and information; and

(ii) determine whether benefits are due in accordance with the applicable policy or contract, and if benefits are due in accordance with the applicable policy or contract:

(A) use good faith efforts, that the insurer documents, to locate the beneficiary or beneficiaries; and

(B) provide the appropriate claims forms or instructions to the beneficiary or beneficiaries to make a claim including the need to provide an official death certificate, if applicable under the policy or contract.

(b) With respect to group life insurance, an insurer shall confirm the possible death of an insured when the insurer maintains at least the following information of those covered under a policy or certificate:

(i) social security number, or name and date of birth;

(ii) beneficiary designation information;

(iii) coverage eligibility;

(iv) benefit amount; and

(v) premium payment status.

(c) An insurer shall implement procedures to account for:

(i) initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

(ii) compound last names, hyphens, and blank spaces or apostrophes in last names; and

(iii) transposition of the "month" and "date" portions of the date of birth.

(d) To the extent permitted by law, the insurer may disclose minimum necessary personal information about the insured or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer locate the beneficiary or a person otherwise entitled to payment of the claims proceeds.

(2) (a) An insurer that has not engaged in asymmetric conduct before July 1, 2015, is not required to comply with the requirements of this section with respect to a policy, annuity, or retained asset account issued or delivered before July 1, 2015.

(b) Notwithstanding Subsection (2)(a), an insurer, regardless of whether it has engaged in asymmetric conduct, shall comply with the requirements of this section for a policy, annuity, or retained asset account issued on or after July 1, 2015.

(3) An insurer or the insurer's service provider may not charge a beneficiary or other authorized representative for fees or costs associated with a death master file search or verification of a death master file match conducted pursuant to this section.

(4) The benefits from a policy, contract, or retained asset account, plus any applicable accrued contractual interest shall first be payable to the designated beneficiaries or owners and in the event said beneficiaries or owners can not be found, shall be transferred to the state as unclaimed property pursuant to ~~[Section 67-4a-205]~~ Subsection 67-4a-201(7). Interest payable under Section 31A-22-428 may not be payable as unclaimed property under ~~[Section 67-4a-205]~~ Subsection 67-4a-201(7).

(5) An insurer shall notify the administrator upon the expiration of the statutory holding period under ~~[Section 67-4a-205]~~ Subsection 67-4a-201(7) that:

(a) a policy, contract beneficiary, or retained asset account holder has not submitted a claim with the insurer; and

(b) the insurer has complied with Subsection (1) and has been unable, after good faith efforts documented by the insurer, to contact the retained asset account holder, beneficiary, or beneficiaries.

(6) Upon such notice, an insurer shall immediately submit the unclaimed policy or contract benefits or unclaimed retained asset accounts, plus any applicable accrued interest, to the administrator.

Section 3. Section 57-16-14 is amended to read:

57-16-14. Abandoned premises -- Retaking by owner -- Liability of resident or occupant -- Personal property of resident or occupant left on mobile home space.

(1) In the event of abandonment under Section 57-16-13, the park may retake the mobile home space and attempt to relet the space at a fair rental

value. The resident or occupant who abandoned the premises is liable:

(a) for the entire rent, service charges, and fees that would otherwise be due until the premise is relet or for a period not to exceed 90 days, whichever comes first; and

(b) any costs incurred by the park necessary to relet the mobile home space at fair market value, including the costs of:

(i) moving the mobile home from the mobile home space;

(ii) storing the mobile home; and

(iii) restoring the mobile home space to a reasonable condition, including the cost of replacing or repairing landscaping that was damaged by the resident or occupant.

(2) (a) If the resident or occupant has abandoned the mobile home space, the mobile home, or both, and has left personal property, including the mobile home, on the mobile home space, the park is entitled to remove the property from the mobile home space, store it for the resident or occupant, and recover actual moving and storage costs from the resident, the occupant, or both. With respect to the mobile home, however, the park may elect to contact the lienholder under Section 57-16-9, or to store the mobile home on the mobile home space, while attempting to notify the resident or occupant under Subsection (2)(b)(i).

(b) (i) The park shall make reasonable efforts to notify the resident or occupant of the location of the personal property, and that the personal property will be sold at the expiration of 30 days if not redeemed and removed by the resident or occupant. Reasonable efforts require that the park send written notice by regular mail to the resident or occupant at the ~~last known~~ last known address within the park if the park is unaware of any subsequent address. To redeem the personal property, the resident or occupant is required to pay the reasonable storage and moving charges.

(ii) If the personal property has been in storage for over 30 days, notice has been given as required by Subsection (2)(b)(i), and the resident or occupant has made no reasonable effort to recover the personal property, the park may:

(A) sell the personal property and apply the proceeds toward any amount the resident or occupant owes; or

(B) donate the personal property to charity or dispose of the property.

(c) Any excess money from the sale of the personal property, including the mobile home, shall be handled as specified in Title 67, Chapter 4a, Part 2, ~~[Standards for Determining When Property Is Abandoned or Unclaimed]~~ Presumption of Abandonment.

(d) Nothing contained in this chapter shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens.

Section 4. Section 67-4a-101 is repealed and reenacted to read:

CHAPTER 4a. REVISED UNIFORM UNCLAIMED PROPERTY ACT

Part 1. General Provisions

67-4a-101. Title.

This chapter is known as the "Revised Uniform Unclaimed Property Act."

Section 5. Section 67-4a-102 is repealed and reenacted to read:

67-4a-102. Definitions.

As used in this chapter:

(1) "Administrator" means the deputy state treasurer assigned by the state treasurer.

(2) (a) "Administrator's agent" means a person with which the administrator contracts to conduct an examination under Part 10, Verified Report of Property and Examination of Records, on behalf of the administrator.

(b) "Administrator's agent" includes an independent contractor of the person and each individual participating in the examination on behalf of the person or contractor.

(3) "Apparent owner" means a person whose name appears on the records of a holder as the owner of property held, issued, or owing by the holder.

(4) (a) "Bank draft" means a check, draft, or similar instrument on which a banking or financial organization is directly liable.

(b) "Bank draft" includes:

(i) a cashier's check; and

(ii) a certified check.

(c) "Bank draft" does not include:

(i) a traveler's check; or

(ii) a money order.

(5) "Banking organization" means:

(a) a bank;

(b) an industrial bank;

(c) a trust company;

(d) a savings bank; or

(e) any organization defined by other law as a bank or banking organization.

(6) "Business association" means a corporation, joint stock company, investment company other than an investment company registered under the Investment Company Act of 1940, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, banking organization, insurance company, federally

chartered entity, utility, sole proprietorship, or other business entity, whether or not for profit.

(7) "Cashier's check" means a check that:

(a) is drawn by a banking organization on itself;

(b) is signed by an officer of the banking organization; and

(c) authorizes payment of the amount shown on the check's face to the payee.

(8) "Class action" means a legal action:

(a) certified by the court as a class action; or

(b) treated by the court as a class action without being formally certified as a class action.

(9) "Confidential information" means records, reports, and information that is confidential under Section 67-4a-1402.

(10) (a) "Deposit in a financial institution" means a demand, savings, or matured time deposit with a banking or financial organization.

(b) "Deposit in a financial institution" includes:

(i) any interest or dividends on a deposit; and

(ii) a deposit that is automatically renewable.

(11) "Domicile" means:

(a) for a corporation, the state of the corporation's incorporation;

(b) for a business association other than a corporation, whose formation requires a filing with a state, the state of the business association's filing;

(c) for a federally chartered entity or an investment company registered under the Investment Company Act of 1940, the state of the entity's or company's home office; and

(d) for any other holder, the state of the holder's principal place of business.

(12) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(13) "Electronic mail" means a communication by electronic means that is automatically retained and stored and may be readily accessed or retrieved.

(14) "Financial organization" means:

(a) a savings and loan association; or

(b) a credit union.

(15) (a) "Game-related digital content" means digital content that exists only in an electronic game or electronic-game platform.

(b) "Game-related digital content" includes:

(i) game-play currency, including a virtual wallet, even if denominated in United States currency; and

(ii) the following, if for use or redemption only within the game or platform or another electronic game or electronic-game platform:

(A) points sometimes referred to as gems, tokens, gold, and similar names; and

(B) digital codes.

(c) “Game-related digital content” does not include an item that the issuer:

(i) permits to be redeemed for use outside a game or platform for:

(A) money; or

(B) goods or services that have more than minimal value; or

(ii) otherwise monetizes for use outside a game or platform.

(16) “Gift card” means a payment device such as a plastic card that:

(a) is usable at:

(i) a single merchant;

(ii) an affiliated group of merchants; or

(iii) multiple, unaffiliated merchants;

(b) contains a means for the electronic storage of information including:

(i) a microprocessor chip;

(ii) a magnetic stripe; or

(iii) a bar code;

(c) is prefunded before it is used, whether or not money may be added to the payment device after it is used; and

(d) is redeemable for goods or services.

(17) “Holder” means a person obligated to hold for the account of, or to deliver or pay to, the owner property subject to this chapter.

(18) “Insurance company” means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including:

(a) accident insurance;

(b) burial insurance;

(c) casualty insurance;

(d) credit life insurance;

(e) contract performance insurance;

(f) dental insurance;

(g) disability insurance;

(h) fidelity insurance;

(i) fire insurance;

(j) health insurance;

(k) hospitalization insurance;

(l) illness insurance;

(m) life insurance, including endowments and annuities;

(n) malpractice insurance;

(o) marine insurance;

(p) mortgage insurance;

(q) surety insurance;

(r) wage protection insurance; and

(s) worker compensation insurance.

(19) “Last known address” means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(20) (a) “Loyalty card” means a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services.

(b) “Loyalty card” does not include a record that may be redeemed for money or otherwise monetized by the issuer.

(21) (a) “Mineral” means any substance that is ordinarily and naturally considered a mineral, regardless of the depth at which the substance is found.

(b) “Mineral” includes:

(i) building stone;

(ii) cement material;

(iii) chemical raw material;

(iv) coal;

(v) colloidal and other clay;

(vi) fissionable and nonfissionable ore;

(vii) gas;

(viii) gemstone;

(ix) gravel;

(x) lignite;

(xi) oil;

(xii) oil shale;

(xiii) other gaseous liquid or solid hydrocarbon;

(xiv) road material;

(xv) sand;

(xvi) steam and other geothermal resources;

(xvii) sulphur; and

(xviii) uranium.

(22) (a) “Mineral proceeds” means an amount payable:

(i) for extraction, production, or sale of minerals; or

(ii) for the abandonment of an interest in minerals.

(b) “Mineral proceeds” includes an amount payable:

(i) for the acquisition and retention of a mineral lease, including a bonus, royalty, compensatory royalty, shut-in royalty, minimum royalty, or delay rental;

(ii) for the extraction, production, or sale of minerals, including a net revenue interest, royalty, overriding royalty, extraction payment, or production payment; and

(iii) under an agreement or option, including a joint-operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(23) (a) “Money order” means a payment order for a specified amount of money.

(b) “Money order” includes an express money order and a personal money order on which the remitter is the purchaser.

(c) “Money order” does not include a cashier’s check.

(24) “Municipal bond” means a bond or evidence of indebtedness issued by a municipality or other political subdivision of a state.

(25) (a) “Nonfreely transferable security” means a security that cannot be delivered to the administrator by the Depository Trust Clearing Corporation or a similar custodian of securities providing post-trade clearing and settlement services to financial markets or cannot be delivered because there is no agent to effect transfer.

(b) “Nonfreely transferable security” includes a worthless security.

(26) (a) “Owner” means a person that has a legal, beneficial, or equitable interest in property subject to this chapter or the person’s legal representative when acting on behalf of the owner.

(b) “Owner” includes:

(i) a depositor, for a deposit;

(ii) a beneficiary, for a trust other than a deposit in trust;

(iii) a creditor, claimant, or payee, for other property; and

(iv) the lawful bearer of a record that may be used to obtain money, a reward, or a thing of value.

(27) “Person” means:

(a) an individual;

(b) an estate;

(c) a business association;

(d) a public corporation;

(e) a government entity;

(f) an agency;

(g) a trust;

(h) an instrumentality; or

(i) any other legal or commercial entity.

(28) (a) “Property” means tangible property described in Section 67-4a-205 or a fixed and certain interest in intangible property held, issued, or owed in the course of a holder’s business or by a government entity.

(b) “Property” includes:

(i) all income from or increments to the property;

(ii) property referred to as or evidenced by:

(A) money, virtual currency, interest, or a dividend, check, draft, or deposit;

(B) a credit balance, customer’s overpayment, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral proceeds, or unidentified remittance; and

(C) a security except for:

(I) a worthless security; or

(II) a security that is subject to a lien, legal hold, or restriction evidenced on the records of the holder or imposed by operation of law, if the lien, legal hold, or restriction restricts the holder’s or owner’s ability to receive, transfer, sell, or otherwise negotiate the security;

(iii) a bond, debenture, note, or other evidence of indebtedness;

(iv) money deposited to redeem a security, make a distribution, or pay a dividend;

(v) an amount due and payable under an annuity contract or insurance policy;

(vi) an amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit-sharing, employee-savings, supplemental-unemployment insurance, or a similar benefit; and

(vii) an amount held under a preneed funeral or burial contract, other than a contract for burial rights or opening and closing services, where the contract has not been serviced following the death or the presumed death of the beneficiary.

(c) “Property” does not include:

(i) property held in a plan described in Section 529A, Internal Revenue Code;

(ii) game-related digital content;

(iii) a loyalty card;

(iv) an in-store credit for returned merchandise; or

(v) a gift card.

(29) “Putative holder” means a person believed by the administrator to be a holder, until:

(a) the person pays or delivers to the administrator property subject to this chapter; or

(b) the administrator or a court makes a final determination that the person is or is not a holder.

(30) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(31) “Security” means:

(a) a security as defined in Revised Article 8 of the Uniform Commercial Code; or

(b) a security entitlement as defined in Revised Article 8 of the Uniform Commercial Code, including a customer security account held by a registered broker-dealer, to the extent the financial assets held in the security account are not:

(i) registered on the books of the issuer in the name of the person for which the broker-dealer holds the assets;

(ii) payable to the order of the person;

(iii) specifically endorsed to the person; or

(iv) an equity interest in a business association not included in this Subsection (31).

(32) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(33) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(34) “Utility” means a person that owns or operates for public use a plant, equipment, real property, franchise, or license for:

(a) the transmission of communications or information;

(b) the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas; or

(c) the provision of sewage or septic services, or trash, garbage, or recycling disposal.

(35) (a) “Virtual currency” means a digital representation of value used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States.

(b) “Virtual currency” does not include:

(i) the software or protocols governing the transfer of the digital representation of value;

(ii) game-related digital content;

(iii) a loyalty card;

(iv) membership rewards; or

(v) a gift card.

(36) “Worthless security” means a security whose cost of liquidation and delivery to the administrator

would exceed the value of the security on the date a report is due under this chapter.

Section 6. Section 67-4a-103 is repealed and reenacted to read:

67-4a-103. Inapplicability to foreign transaction.

This chapter does not apply to property held, due, and owing in a foreign country if the transaction out of which the property arose was a foreign transaction.

Section 7. Section 67-4a-104 is enacted to read:

67-4a-104. Rulemaking.

(1) The administrator may adopt rules to implement and administer this chapter.

(2) The administrator shall follow the notice, hearing, and publication requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 8. Section 67-4a-201 is repealed and reenacted to read:

Part 2. Presumption of Abandonment

67-4a-201. When property presumed abandoned.

Subject to Section 67-4a-208, the following property is presumed abandoned if the property is unclaimed by the apparent owner during the period specified below:

(1) a traveler’s check, 15 years after issuance;

(2) a money order, seven years after issuance;

(3) a state or municipal bond, bearer bond, or original-issue-discount bond, three years after the earliest of the date the bond matures or is called or the obligation to pay the principal of the bond arises;

(4) a debt of a business association, three years after the obligation to pay arises;

(5) a demand, savings, or time deposit, including a deposit that is automatically renewable, three years after the earlier of maturity or the date of the last indication of interest in the property by the apparent owner, except a deposit that is automatically renewable is considered matured on the deposit’s initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal;

(6) money or a credit owed to a customer as a result of a retail business transaction, other than in-store credit for returned merchandise, three years after the obligation arose;

(7) an amount owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated, three years after the obligation to pay arose under the terms of the policy or contract or, if a policy or contract for which an amount is owed on proof of death has not matured, by proof of the death of the insured or annuitant, as follows:

(a) with respect to an amount owed on a life or endowment insurance policy, the earlier of:

(i) three years after the policy insurer validates knowledge of the death of the insured; or

(ii) three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve for the policy is based; and

(b) with respect to an amount owed on an annuity contract, three years after the date the annuity contract insurer validates knowledge of the death of the annuitant;

(8) property distributable by a business association in the course of dissolution, one year after the property becomes distributable;

(9) property held by a court, including property received as proceeds of a class action, one year after the property becomes distributable;

(10) property held by a government or governmental subdivision, agency, or instrumentality, including municipal bond interest and unredeemed principal under the administration of a paying agent or indenture trustee, one year after the property becomes distributable;

(11) wages, commissions, bonuses, or reimbursements to which an employee is entitled, or other compensation for personal services, one year after the amount becomes payable;

(12) a deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable; and

(13) property not specified in this section or Sections 67-4a-202 through 67-4a-206, the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises.

Section 9. Section 67-4a-202 is repealed and reenacted to read:

67-4a-202. When tax-deferred retirement account presumed abandoned.

(1) Subject to Section 67-4a-208, property held in a pension account or retirement account that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned if the property is unclaimed by the apparent owner three years after:

(a) the later of the following dates:

(i) except as in Subsection (1)(a)(ii), the date a communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States Postal Service; or

(ii) if a communication under Subsection (1)(a)(i) is re-sent within 30 days after the date the first communication is returned undelivered, the date the second communication was returned undelivered by the United States Postal Service; or

(b) the earlier of the following dates:

(i) the date the apparent owner becomes 70.5 years of age, if determinable by the holder; or

(ii) if the Internal Revenue Code, Sec. 1 et seq., requires distribution to avoid a tax penalty, two years after the date the holder:

(A) receives confirmation of the death of the apparent owner in the ordinary course of the holder's business; or

(B) confirms the death of the apparent owner under Subsection (2).

(2) If a holder in the ordinary course of the holder's business receives notice or an indication of the death of an apparent owner and Subsection (1)(b) applies, the holder shall attempt not later than 90 days after receipt of the notice or indication to confirm whether the apparent owner is deceased.

(3) (a) Subject to Subsection (3)(b), if the holder does not send communications to the apparent owner of an account described in Subsection (1) by first-class United States mail on at least an annual basis, the holder shall attempt to confirm the apparent owner's interest in the property by sending the apparent owner an electronic mail communication not later than two years after the apparent owner's last indication of interest in the property.

(b) The holder shall promptly attempt to contact the apparent owner by first-class United States mail if:

(i) the holder does not have information needed to send the apparent owner an electronic mail communication or the holder believes that the apparent owner's electronic mail address in the holder's records is not valid;

(ii) the holder receives notification that the electronic mail communication was not received; or

(iii) the apparent owner does not respond to the electronic mail communication within 30 days after the communication was sent.

(4) If first-class United States mail sent under Subsection (3) is returned to the holder undelivered by the United States Postal Service, the property is presumed abandoned three years after the later of:

(a) except as in Subsection (4)(b), the date a communication to contact the apparent owner sent by first-class United States mail is returned to the holder undelivered;

(b) if the communication under Subsection (4)(a) is re-sent within 30 days after the date the first communication is returned undelivered, the date the second communication was returned undelivered; or

(c) the date established by Subsection (1)(b).

Section 10. Section 67-4a-203 is repealed and reenacted to read:

67-4a-203. When other tax-deferred account presumed abandoned.

Subject to Section 67-4a-208 and except for property described in Section 67-4a-202 and

property held in a plan described in Section 529A, Internal Revenue Code, property held in an account or plan, including a health savings account, that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned if the property is unclaimed by the apparent owner three years after the earlier of:

(1) the date, if determinable by the holder, specified in the income tax laws and regulations of the United States by which distribution of the property must begin to avoid a tax penalty, with no distribution having been made; or

(2) 30 years after the date the account was opened.

Section 11. Section 67-4a-204 is repealed and reenacted to read:

67-4a-204. When custodial account for minor presumed abandoned.

(1) Subject to Section 67-4a-208, property held in an account established under a state's Uniform Gifts to Minors Act or Uniform Transfers to Minors Act is presumed abandoned if the property is unclaimed by or on behalf of the minor on whose behalf the account was opened three years after the later of:

(a) except as in Subsection (1)(b), the date a communication sent by the holder by first-class United States mail to the custodian of the minor on whose behalf the account was opened is returned undelivered to the holder by the United States Postal Service;

(b) if communication is re-sent within 30 days after the date the first communication under Subsection (1)(a) is returned undelivered, the date the second communication was returned undelivered; or

(c) the date on which the custodian is required to transfer the property to the minor or the minor's estate in accordance with the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of the state in which the account was opened.

(2) (a) Subject to Subsection (2)(b), if the holder does not send communications to the custodian of the minor on whose behalf an account described in Subsection (1) was opened by first-class United States mail on at least an annual basis, the holder shall attempt to confirm the custodian's interest in the property by sending the custodian an electronic mail communication not later than two years after the custodian's last indication of interest in the property.

(b) The holder shall promptly attempt to contact the custodian by first-class United States mail if:

(i) the holder does not have information needed to send the custodian an electronic mail communication or the holder believes that the custodian's electronic mail address in the holder's records is not valid;

(ii) the holder receives notification that the electronic mail communication was not received; or

(iii) the custodian does not respond to the electronic mail communication within 30 days after the communication was sent.

(3) If first-class United States mail sent under Subsection (2) is returned undelivered to the holder by the United States Postal Service, the property is presumed abandoned three years after the later of:

(a) the date a second consecutive communication to contact the custodian by first-class United States mail is returned to the holder undelivered by the United States Postal Service; or

(b) the date established by Subsection (1)(c).

(4) When the property in the account described in Subsection (1) is transferred to the minor on whose behalf an account was opened or to the minor's estate, the property in the account is no longer subject to this section.

Section 12. Section 67-4a-205 is repealed and reenacted to read:

67-4a-205. When contents of safe-deposit box presumed abandoned.

Tangible property held in a safe-deposit box and proceeds from a sale of the property by the holder permitted by law of this state other than this chapter are presumed abandoned if the property remains unclaimed by the apparent owner five years after the earlier of the:

(1) expiration of the lease or rental period for the box; or

(2) earliest date when the lessor of the box is authorized by law of this state other than this chapter to enter the box and remove or dispose of the contents without consent or authorization of the lessee.

Section 13. Section 67-4a-206 is repealed and reenacted to read:

67-4a-206. When security presumed abandoned.

(1) Subject to Section 67-4a-208, a security is presumed abandoned three years after:

(a) the date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States Postal Service; or

(b) if the second communication is made later than 30 days after the first communication is returned, the date the first communication is returned undelivered to the holder by the United States Postal Service.

(2) (a) Except as provided in Subsection (2)(b), if the holder does not send communications to the apparent owner of a security by first-class United States mail, the holder shall attempt to confirm the apparent owner's interest in the security by sending the apparent owner an electronic-mail communication not later than two years after the apparent owner's last indication of interest in the security.

(b) The holder shall promptly attempt to contact the apparent owner by first-class United States mail if:

(i) the holder does not have information needed to send the apparent owner an electronic-mail communication or the holder believes that the apparent owner's electronic-mail address in the holder's records is not valid;

(ii) the holder receives notification that the electronic-mail communication was not received; or

(iii) the apparent owner does not respond to the electronic-mail communication not later than 30 days after the communication was sent.

(3) If first-class United States mail sent under Subsection (2) is returned to the holder undelivered by the United States Postal Service, the security is presumed abandoned three years after the date the mail is returned.

Section 14. Section 67-4a-207 is repealed and reenacted to read:

67-4a-207. When related property presumed abandoned.

At and after the time property is presumed abandoned under this chapter, any other property right or interest accrued or accruing from the property and not previously presumed abandoned is also presumed abandoned.

Section 15. Section 67-4a-208 is repealed and reenacted to read:

67-4a-208. Indication of apparent owner interest in property.

(1) The period after which property is presumed abandoned is measured from the later of:

(a) the date the property is presumed abandoned under this part; or

(b) the latest indication of interest by the apparent owner in the property.

(2) Under this chapter, an indication of an apparent owner's interest in property includes:

(a) a record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(b) an oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or the holder's agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

(c) presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security, or interest in a business association;

(d) activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to

increase, decrease, or otherwise change the amount or type of property held in the account;

(e) a deposit into or withdrawal from an account at a banking organization or financial organization, except for an automatic deposit or withdrawal previously authorized by the apparent owner or an automatic reinvestment of dividends or interest; and

(f) subject to Subsection (5), payment of a premium on an insurance policy.

(3) An action by an agent or other representative of an apparent owner, other than the holder acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner.

(4) A communication with an apparent owner by a person other than the holder or the holder's representative is not an indication of interest in the property by the apparent owner unless a record of the communication evidences the apparent owner's knowledge of a right to the property.

(5) If the insured dies or the insured or beneficiary of an insurance policy otherwise becomes entitled to the proceeds before depletion of the cash surrender value of the policy by operation of an automatic premium loan provision or other nonforfeiture provision contained in the policy, the operation does not prevent the policy from maturing or terminating.

Section 16. Section 67-4a-209 is repealed and reenacted to read:

67-4a-209. Deposit account for proceeds of insurance policy or annuity contract.

If proceeds payable under a life or endowment insurance policy or annuity contract are deposited into an account with check- or draft-writing privileges for the beneficiary of the policy or contract and, under a supplementary contract not involving annuity benefits other than death benefits, the proceeds are retained by the insurance company, the financial organization, or the banking organization where the account is held, the policy or contract includes the assets in the account.

Section 17. Section 67-4a-301 is repealed and reenacted to read:

Part 3. Rules for Taking Custody of Property Presumed Abandoned

67-4a-301. Address of apparent owner to establish priority.

In this part, the following rules apply:

(1) the last known address of an apparent owner is any description, code, or other indication of the location of the apparent owner that identifies the state, even if the description, code, or indication of location is not sufficient to direct the delivery of first-class United States mail to the apparent owner;

(2) if the United States postal zip code associated with the apparent owner is for a post office located in this state, this state is considered to be the state of the last known address of the apparent owner

unless other records associated with the apparent owner specifically identify the physical address of the apparent owner to be in another state;

(3) if the address under Subsection (2) is in another state, the other state is considered to be the state of the last-known address of the apparent owner; and

(4) the address of the apparent owner of a life or endowment insurance policy or annuity contract or the policy's or contract's proceeds is presumed to be the address of the insured or annuitant if a person other than the insured or annuitant is entitled to the amount owed under the policy or contract and the address of the other person is not known by the insurance company and cannot be determined under Section 67-4a-302.

Section 18. Section 67-4a-302 is repealed and reenacted to read:

67-4a-302. Address of apparent owner in this state.

The administrator may take custody of property that is presumed abandoned, whether located in this state, another state, or a foreign country if:

(1) the last known address of the apparent owner in the records of the holder is in this state; or

(2) the records of the holder do not reflect the identity or last known address of the apparent owner, but the administrator has determined that the last known address of the apparent owner is in this state.

Section 19. Section 67-4a-303 is repealed and reenacted to read:

67-4a-303. If records show multiple addresses of apparent owner.

(1) Except as in Subsection (2), if records of a holder reflect multiple addresses for an apparent owner and this state is the state of the most recently recorded address, this state may take custody of property presumed abandoned, whether located in this state or another state.

(2) If it appears from records of the holder that the most recently recorded address of the apparent owner under Subsection (1) is a temporary address and this state is the state of the next most recently recorded address that is not a temporary address, this state may take custody of the property presumed abandoned.

Section 20. Section 67-4a-304 is enacted to read:

67-4a-304. Holder domiciled in this state.

(1) Except as in Subsection (2) or Section 67-4a-302 or 67-4a-303, the administrator may take custody of property presumed abandoned, whether located in this state, another state, or a foreign country, if the holder is domiciled in this state or is this state or a governmental subdivision, agency, or instrumentality of this state, and:

(a) another state or foreign country is not entitled to the property because there is no last known address of the apparent owner or other person entitled to the property in the records of the holder; or

(b) the state or foreign country of the last known address of the apparent owner or other person entitled to the property does not provide for custodial taking of the property.

(2) Property is not subject to custody of the administrator under Subsection (1) if the property is specifically exempt from custodial taking under the law of this state or the state or foreign country of the last known address of the apparent owner.

(3) If a holder's state of domicile has changed since the time property was presumed abandoned, the holder's state of domicile in this section is considered to be the state where the holder was domiciled at the time the property was presumed abandoned.

Section 21. Section 67-4a-305 is enacted to read:

67-4a-305. Custody if transaction took place in this state.

Except as in Section 67-4a-302, 67-4a-303, or 67-4a-304, the administrator may take custody of property presumed abandoned whether located in this state or another state if:

(1) the transaction out of which the property arose took place in this state;

(2) the holder is domiciled in a state that does not provide for the custodial taking of the property, except that if the property is specifically exempt from custodial taking under the law of the state of the holder's domicile, the property is not subject to the custody of the administrator; and

(3) the last known address of the apparent owner or other person entitled to the property is unknown or in a state that does not provide for the custodial taking of the property, except that if the property is specifically exempt from custodial taking under the law of the state of the last known address, the property is not subject to the custody of the administrator.

Section 22. Section 67-4a-306 is enacted to read:

67-4a-306. Traveler's check, money order, or similar instrument.

The administrator may take custody of sums payable on a traveler's check, money order, or similar instrument presumed abandoned to the extent permissible under 12 U.S.C. Secs. 2501 through 2503.

Section 23. Section 67-4a-307 is enacted to read:

67-4a-307. Burden of proof to establish administrator's right to custody.

Subject to Part 4, Report by Holder, if the administrator asserts a right to custody of

unclaimed property and there is a dispute concerning such property, the administrator has the initial burden to prove:

- (1) the existence and amount of the property;
- (2) the property is presumed abandoned; and
- (3) the property is subject to the custody of the administrator.

Section 24. Section 67-4a-401 is repealed and reenacted to read:

Part 4. Report by Holder

67-4a-401. Report required by holder.

(1) (a) A holder of property presumed abandoned and subject to the custody of the administrator shall report in a record to the administrator concerning the property.

(b) A holder shall report via the Internet in a format approved by the administrator, unless the administrator gives a holder specific permission to file a paper report.

(2) A holder may contract with a third party to make the report required under Subsection (1).

(3) Whether or not a holder contracts with a third party under Subsection (2), the holder is responsible:

(a) to the administrator for the complete, accurate, and timely reporting of property presumed abandoned; and

(b) for paying or delivering to the administrator property described in the report.

Section 25. Section 67-4a-402 is repealed and reenacted to read:

67-4a-402. Content of report.

(1) The report required under Section 67-4a-401 shall:

(a) be signed by or on behalf of the holder and verified as to the report's completeness and accuracy;

(b) if filed electronically, be in a secure format approved by the administrator that protects confidential information of the apparent owner;

(c) describe the property;

(d) except for a traveler's check, money order, or similar instrument, contain the name, if known, last known address, if known, and social security number or taxpayer identification number, if known or readily ascertainable, of the apparent owner of property with a value of \$50 or more;

(e) for an amount held or owing under a life or endowment insurance policy or annuity contract, contain the name and last known address of the insured, annuitant, or other apparent owner of the policy or contract and of the beneficiary;

(f) for property held in or removed from a safe-deposit box, indicate the location of the

property, where the property may be inspected by the administrator, and any amounts owed to the holder under Section 67-4a-606;

(g) contain the commencement date for determining abandonment under Part 2, Presumption of Abandonment;

(h) state that the holder has complied with the notice requirements of Section 67-4a-501;

(i) identify property that is a nonfreely transferable security and explain why the property is a nonfreely transferable security; and

(j) contain other information the administrator prescribes by rules.

(2) (a) A report under Section 67-4a-401 may include in the aggregate items valued under \$50 each.

(b) If the report includes items in the aggregate valued under \$50 each, the administrator may not require the holder to provide the name and address of an apparent owner of an item unless the information is necessary to verify or process a claim in progress by the apparent owner.

(3) A report under Section 67-4a-401 may include personal information as defined in Subsection 67-4a-1401(1) about the apparent owner or the apparent owner's property.

(4) If a holder has changed the holder's name while holding property presumed abandoned or is a successor to another person that previously held the property for the apparent owner, the holder shall include in the report under Section 67-4a-401:

(a) the holder's former name or the name of the previous holder, if any; and

(b) the known name and address of each previous holder of the property.

Section 26. Section 67-4a-403 is repealed and reenacted to read:

67-4a-403. When report to be filed.

(1) Subject to Subsection (2), the report under Section 67-4a-401 shall be filed before November 1 of each year and cover the 12 months preceding July 1 of that year.

(2) (a) Before the date for filing the report under Section 67-4a-401, the holder of property presumed abandoned may request the administrator to extend the time for filing.

(b) The administrator may grant an extension.

(c) If the extension is granted, the holder may pay or make a partial payment of the amount the holder estimates ultimately will be due.

(d) The payment or partial payment terminates accrual of interest on the amount paid.

Section 27. Section 67-4a-404 is repealed and reenacted to read:

67-4a-404. Retention of records by holder.

(1) A holder required to file a report under Section 67-4a-401 shall retain records for five years after the later of the date the report was filed or the last date a timely report was due to be filed, unless a shorter period is provided by rule of the administrator.

(2) The holder may satisfy the requirement to retain records under this section through an agent.

(3) The records shall contain:

(a) the information required to be included in the report;

(b) the date, place, and nature of the circumstances that gave rise to the property right;

(c) the amount or value of the property;

(d) the last address of the apparent owner, if known to the holder; and

(e) if the holder sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable, a record of the instruments while they remain outstanding indicating the state and date of issue.

Section 28. Section 67-4a-405 is repealed and reenacted to read:

67-4a-405. Property reportable and payable or deliverable absent owner demand.

Property is reportable and payable or deliverable under this chapter even if the owner fails to make demand or present an instrument or document otherwise required to obtain payment.

Section 29. Section 67-4a-501 is repealed and reenacted to read:

Part 5. Notice to Apparent Owner of Property Presumed Abandoned

67-4a-501. Notice to apparent owner by holder.

(1) Subject to Subsections (2) and (3), the holder of property presumed abandoned shall send to the apparent owner notice by first-class United States mail that complies with Section 67-4a-502 in a format acceptable to the administrator not more than 180 days nor less than 60 days before filing the report under Section 67-4a-401 if:

(a) the holder has in the holder's records an address for the apparent owner that the holder's records do not disclose to be invalid and is sufficient to direct the delivery of first-class United States mail to the apparent owner; and

(b) the value of the property is \$50 or more.

(2) If an apparent owner has consented to receive electronic mail delivery from the holder, the holder shall send the notice described in Subsection (1) both by first-class United States mail to the apparent owner's last-known mailing address and by electronic mail, unless the holder believes that

the apparent owner's electronic mail address is invalid.

Section 30. Section 67-4a-502 is repealed and reenacted to read:

67-4a-502. Contents of notice by holder.

(1) Notice under Section 67-4a-501 shall contain a heading that reads substantially as follows:

"Notice. The State of Utah requires us to notify you that your property may be transferred to the custody of the state's unclaimed property administrator if you do not contact us before (insert date that is 30 days after the date of this notice)."

(2) The notice under Section 67-4a-501 shall:

(a) identify the nature and, except for property that does not have a fixed value, the value of the property that is the subject of the notice;

(b) state that the property will be turned over to the administrator;

(c) state that after the property is turned over to the administrator an apparent owner that seeks return of the property may file a claim with the administrator;

(d) state that property that is not legal tender of the United States may be sold by the administrator;

(e) provide instructions that the apparent owner shall follow to prevent the holder from reporting and paying or delivering the property to the administrator; and

(f) include the name, address, and electronic mail address or telephone number to contact the holder.

(3) The holder may supplement the required information by listing a website where apparent owners may obtain more information about how to prevent the holder from reporting and paying or delivering the property to the state treasurer.

Section 31. Section 67-4a-503 is enacted to read:

67-4a-503. Notice by administrator.

(1) The administrator shall give notice to an apparent owner that property presumed abandoned and that appears to be owned by the apparent owner is held by the administrator under this chapter.

(2) In providing notice under Subsection (1), the administrator shall:

(a) except as otherwise provided in Subsection (2)(b), send written notice by first-class United States mail to each apparent owner of property valued at \$50 or more held by the administrator, unless the administrator determines that a mailing by first-class United States mail would not be received by the apparent owner, and, in the case of a security held in an account for which the apparent owner had consented to receiving electronic mail from the holder, send notice by electronic mail if the electronic mail address of the apparent owner is known to the administrator instead of by first-class United States mail; or

(b) send the notice to the apparent owner's electronic mail address if the administrator does not have a valid United States mail address for an apparent owner, but has an electronic mail address that the administrator does not know to be invalid.

(3) In addition to the notice under Subsection (2), the administrator shall publish every 12 months in at least one English language newspaper of general circulation in this state notice of property held by the administrator, which shall include:

(a) the total value of property received by the administrator during the preceding 12-month period, taken from the reports under Section 67-4a-401;

(b) the total value of claims paid by the administrator during the preceding 12-month period;

(c) the Internet web address of the unclaimed property website maintained by the administrator;

(d) a telephone number and electronic mail address to contact the administrator to inquire about or claim property; and

(e) a statement that a person may access the Internet by a computer to search for unclaimed property, and a computer may be available as a service to the public at a local public library.

(4) (a) The administrator shall maintain a website accessible by the public and electronically searchable that contains the names reported to the administrator of apparent owners for whom property is being held by the administrator.

(b) The administrator is not required to list property on the website if:

(i) no owner name was reported;

(ii) a claim has been initiated or is pending for the property;

(iii) the Office of the State Treasurer has made direct contact with the apparent owner of the property; or

(iv) the administrator reasonably believes exclusion of the property is in the best interests of both the state and the owner of the property.

(5) The website or database maintained under Subsection (4) shall include instructions for filing with the administrator a claim to property and a printable claim form with instructions.

(6) (a) At least annually, the administrator shall notify the State Tax Commission of the names of all persons appearing to be owners of abandoned property under this chapter.

(b) The administrator shall also provide to the State Tax Commission the social security numbers of the persons, if available.

(c) The State Tax Commission shall:

(i) notify the administrator if any person under Subsection (6)(a) has filed a Utah income tax return in that year; and

(ii) provide the administrator with the person's address that appears on the tax return.

(d) In order to facilitate the return of property under this Subsection (6), the administrator and the State Tax Commission may enter into an interagency agreement concerning protection of confidential information, data match rules, and other issues.

(7) (a) If the value of the property that is owed the person is \$2,000 or less:

(i) the person is not required to file a claim under Section 67-4a-903; and

(ii) the administrator shall deliver the property or pay the amount owing to the person in the manner provided under Section 67-4a-905.

(b) If the value of the property that is owed the person is greater than \$2,000, the administrator shall send written notice to the person informing the person that the person:

(i) is the owner of abandoned property held by the state; and

(ii) may file a claim with the administrator for return of the property.

(8) The administrator may use publicly and commercially available databases to find and update or add information for apparent owners of property held by the administrator.

(9) In addition to giving notice under Subsection (2), publishing the information under Subsection (3), and maintaining the website or database under Subsection (4), the administrator may use other printed publication, telecommunication, the Internet, or other media to inform the public of the existence of unclaimed property held by the administrator.

Section 32. Section 67-4a-504 is enacted to read:

67-4a-504. Cooperation among state officers and agencies to locate apparent owner.

(1) Unless prohibited by law of this state other than this chapter, on request of the administrator, each officer, agency, board, commission, division, and department of this state, any body politic and corporate created by this state for a public purpose, and each political subdivision of this state shall:

(a) make books and records available to the administrator; and

(b) cooperate with the administrator to determine the current address of an apparent owner of property held by the administrator under this chapter.

(2) At the administrator's discretion, the administrator may also enter into data sharing agreements to enable other governmental agencies to provide an additional notice to apparent owners of property held by the administrator.

Section 33. Section 67-4a-601 is repealed and reenacted to read:

Part 6. Taking Custody of Property by Administrator

67-4a-601. Definition of good faith.

In this chapter, payment or delivery of property is made in good faith if a holder:

(1) had a reasonable basis for believing, based on the facts then known, that the property was required or permitted to be paid or delivered to the administrator under this chapter; or

(2) made payment or delivery:

(a) in response to a demand by the administrator or administrator's agent; or

(b) under a guidance or ruling issued by the administrator that the holder reasonably believed required or permitted the property to be paid or delivered.

Section 34. Section 67-4a-602 is repealed and reenacted to read:

67-4a-602. Dormancy charge.

(1) A holder may deduct a dormancy charge from property required to be paid or delivered to the administrator if:

(a) a valid contract between the holder and the apparent owner authorizes imposition of the charge for the apparent owner's failure to claim the property within a specified time; and

(b) the holder regularly imposes the charge and regularly does not reverse or otherwise cancel the charge.

(2) The amount of the deduction under Subsection (1) is limited to an amount that is not unconscionable considering all relevant factors, including:

(a) the marginal transactional costs incurred by the holder in maintaining the apparent owner's property; and

(b) any services received by the apparent owner.

Section 35. Section 67-4a-603 is enacted to read:

67-4a-603. Payment or delivery of property to administrator.

(1) (a) Except as otherwise provided in this section, on filing a report under Section 67-4a-401 the holder shall pay or deliver to the administrator the property described in the report.

(b) If property in a report under Section 67-4a-401 is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result from paying the deposit to the administrator at the time of the report, the date for payment of the property to the administrator is extended until a penalty or forfeiture no longer

would result from payment, if the holder informs the administrator of the extended date.

(2) Tangible property in a safe-deposit box may not be delivered to the administrator until 120 days after filing the report under Section 67-4a-401.

(3) If property reported to the administrator under Section 67-4a-401 is a security, the administrator may:

(a) make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer, the transfer agent, or the securities intermediary to transfer the security; or

(b) dispose of the security under Section 67-4a-702.

(4) (a) If the holder of property reported to the administrator under Section 67-4a-401 is the issuer of a certificated security, the administrator may obtain a replacement certificate in physical or book-entry form under Section 70A-8-405.

(b) An indemnity bond is not required under Subsection (4)(a).

(5) The administrator shall establish procedures for the registration, issuance, method of delivery, transfer, and maintenance of securities delivered to the administrator by a holder.

(6) An issuer, holder, and transfer agent or other person acting in good faith under this section under instructions of and on behalf of the issuer or holder is not liable to the apparent owner for, and shall be indemnified by the state against, a claim arising with respect to property after the property has been delivered to the administrator.

(7) (a) A holder is not required to deliver to the administrator a security identified by the holder as a nonfreely transferable security in a report filed under Section 67-4a-401.

(b) If the administrator or holder determines that a security is no longer a nonfreely transferable security, the holder shall deliver the security on the next regular date prescribed for delivery of securities under this chapter.

(c) The holder shall make a determination annually whether a security identified in a report filed under Section 67-4a-401 as a nonfreely transferable security is no longer a nonfreely transferable security.

Section 36. Section 67-4a-604 is enacted to read:

67-4a-604. Effect of payment or delivery of property to administrator.

(1) On payment or delivery of property to the administrator under this chapter, the administrator as agent for the state assumes custody and responsibility for safekeeping the property.

(2) A holder that pays or delivers property to the administrator in good faith and substantially complies with Sections 67-4a-501 and 67-4a-502

is relieved of all liability that thereafter may arise or be made in respect to the property to the extent of the value of the property so paid or delivered.

(3) (a) In the event legal proceedings are instituted by any other state or states in any state or federal court with respect to unclaimed funds or abandoned property previously paid or delivered to the administrator, the holder shall give written notification to the administrator and the attorney general of this state of the proceedings within 10 days after service of process, or in the alternative at least 10 days before the return date or date on which an answer or similar pleading is due or any extension thereof secured by the holder.

(b) The attorney general may take such action as considered necessary or expedient to protect the interests of the state of Utah.

(c) The attorney general, by written notice before the return date or date on which an answer or similar pleading is due or any extension thereof secured by the holder, but in any event in reasonably sufficient time for the holder to comply with the directions received, shall either direct the holder:

(i) to actively defend in the proceedings; or

(ii) that no defense need be entered in the proceedings.

(d) (i) If a direction is received from the attorney general that the holder need not make a defense under Subsection (3)(c)(ii), the holder is not precluded from entering a defense in the holder's own name.

(ii) If a defense is made by the holder on the holder's own initiative, the holder is not entitled to reimbursement for legal fees, costs, and other expenses as provided in this section for defenses made pursuant to the directions of the attorney general.

(e) If, after the holder has actively defended in the proceedings pursuant to a direction of the attorney general or has been notified in writing by the attorney general that no defense need be made with respect to the funds, a judgment is entered against the holder for any amount paid to the administrator under this chapter, the administrator shall, upon being furnished with proof of payment in satisfaction of the judgment, reimburse the holder the amount paid.

(f) The administrator shall also reimburse the holder for any legal fees, costs, and other directly related expenses incurred in legal proceedings undertaken pursuant to the direction of the attorney general.

Section 37. Section 67-4a-605 is enacted to read:

67-4a-605. Recovery of property by holder from administrator.

(1) A holder that under this chapter pays money to the administrator may file a claim for

reimbursement from the administrator of the amount paid if the holder:

(a) paid the money in error; or

(b) after paying the money to the administrator, paid money to a person the holder reasonably believed entitled to the money.

(2) (a) If a claim for reimbursement under Subsection (1) is made for a payment made on a negotiable instrument, including a traveler's check, money order, or similar instrument, the holder shall submit proof that the instrument was presented and payment was made to a person the holder reasonably believed entitled to payment.

(b) The holder may claim reimbursement even if the payment was made to a person whose claim was made after expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order.

(3) If a holder is reimbursed by the administrator under Subsection (1)(b), the holder may also recover from the administrator income or gain under Section 67-4a-607 that would have been paid to the owner if the money had been claimed from the administrator by the owner to the extent the income or gain was paid by the holder to the owner.

(4) (a) A holder that under this chapter delivers property other than money to the administrator may file a claim for return of the property from the administrator if:

(i) the holder delivered the property in error; or

(ii) the apparent owner has claimed the property from the holder.

(b) If a claim for return of property under Subsection (4)(a) is made, the holder shall include with the claim evidence sufficient to establish that the apparent owner has claimed the property from the holder or that the property was delivered by the holder to the administrator in error.

(5) The administrator may determine that an affidavit submitted by a holder is evidence sufficient to establish that the holder is entitled to reimbursement or to recover property under this section.

(6) A holder is not required to pay a fee or other charge for reimbursement or return of property under this section.

(7) (a) Not later than 90 days after a claim is filed under Subsection (1) or (4), the administrator shall allow or deny the claim and give the claimant notice of the decision in a record.

(b) If the administrator does not take action on a claim during the 90-day period, the claim is considered denied.

(8) The claimant may initiate a proceeding under Section 63G-4-301, for review of the administrator's decision or the considered denial under Subsection (7)(b) not later than:

(a) 30 days following receipt of the notice of the administrator's decision; or

(b) 120 days following the filing of a claim under Subsection (1) or (4) in the case of a considered denial under Subsection (7)(b).

(9) A final decision in an administrative proceeding initiated under Subsection (8) is subject to judicial review by the court as a matter of right in a de novo proceeding on the record in which either party is entitled to introduce evidence as a supplement to the record.

Section 38. Section 67-4a-606 is enacted to read:

67-4a-606. Property removed from safe-deposit box.

(1) Property removed from a safe-deposit box and delivered to the administrator under this chapter is subject to:

(a) the holder's right to reimbursement for the cost of opening the box; and

(b) a lien or contract providing reimbursement to the holder for unpaid rent charges for the box.

(2) The administrator shall reimburse the holder from the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

Section 39. Section 67-4a-607 is enacted to read:

67-4a-607. Crediting income or gain to owner's account.

(1) If property other than money is delivered to the administrator, the owner is entitled to receive from the administrator income or gain realized or accrued on the property before the property is sold.

(2) Interest on money, including interest on interest bearing property, is not payable to an owner for periods where the property is in the possession of the state.

Section 40. Section 67-4a-608 is enacted to read:

67-4a-608. Administrator's options as to custody.

(1) The administrator may decline to take custody of property reported under Section 67-4a-401 if the administrator determines that:

(a) the property has a value less than the estimated expenses of notice and sale of the property; or

(b) taking custody of the property would be unlawful.

(2) A holder may pay or deliver property to the administrator before the property is presumed abandoned under this chapter if the holder:

(a) sends the apparent owner of the property notice required by Section 67-4a-501 and provides the administrator evidence of the holder's compliance with this Subsection (2);

(b) includes with the payment or delivery a report regarding the property conforming to Section 67-4a-402; and

(c) first obtains the administrator's consent in a record to accept payment or delivery.

(3) (a) A holder's request for the administrator's consent under Subsection (2)(c) shall be in a record.

(b) If the administrator fails to respond to the request not later than 30 days after receipt of the request, the administrator is considered to consent to the payment or delivery of the property and the payment or delivery is considered to have been made in good faith.

(4) On payment or delivery of property under Subsection (2), the property is presumed abandoned.

Section 41. Section 67-4a-609 is enacted to read:

67-4a-609. Disposition of property having no substantial value -- Immunity from liability.

(1) If the administrator takes custody of property delivered under this chapter and later determines that the property has no substantial commercial value or that the cost of disposing of the property will exceed the value of the property, the administrator may return the property to the holder or destroy or otherwise dispose of the property.

(2) An action or proceeding may not be commenced against the state, an agency of the state, the administrator, another officer, employee, or agent of the state, or a holder for or because of an act of the administrator under this section, except for intentional misconduct or malfeasance.

Section 42. Section 67-4a-610 is enacted to read:

67-4a-610. Periods of limitation and repose.

(1) Expiration, before, on, or after the effective date of this chapter, of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute, or court order, does not prevent the property from being presumed abandoned or affect the duty of a holder under this chapter to file a report or pay or deliver property to the administrator.

(2) An action or proceeding may not be maintained by the administrator to enforce this chapter in regard to the reporting, delivery, or payment of property more than five years after the holder:

(a) (i) filed a nonfraudulent report under Section 67-4a-401 with the administrator; and

(ii) specifically identified the property in the report filed with the administrator under Subsection (2)(a); or

(b) gave express notice to the administrator of a dispute regarding the property.

(3) (a) In the absence of a report or other express notice under Subsection (2), the period of limitation is tolled.

(b) The period of limitation is also tolled by the filing of a report that is fraudulent.

(4) The administrator may not commence an action, proceeding, or examination regarding the duty of a holder under this chapter on a day that is more than 10 years after the day on which the duty arises.

Section 43. Section 67-4a-701 is repealed and reenacted to read:

Part 7. Sale of Property by Administrator

67-4a-701. Public sale of property.

(1) Subject to Section 67-4a-702, not earlier than three years after receipt of property presumed abandoned, the administrator may sell the property.

(2) Before selling property under Subsection (1), the administrator shall give notice to the public of:

(a) the date of the sale; and

(b) a reasonable description of the property.

(3) A sale under Subsection (1) shall be to the highest bidder:

(a) at a public sale at a location in this state that the administrator determines to be the most favorable market for the property;

(b) on the Internet; or

(c) on another forum the administrator determines likely to yield the highest net proceeds of sale.

(4) The administrator may decline the highest bid at a sale under this section and reoffer the property for sale if the administrator determines the highest bid is insufficient.

(5) If a sale held under this section is to be conducted other than on the Internet, the administrator shall cause to be published at least one notice of the sale, at least two weeks but not more than five weeks before the sale, in a newspaper of general circulation in the county in which the property is to be sold.

(6) (a) Property eligible for sale will not be sold if a claim has been filed with the administrator by an apparent owner, heir, or agent.

(b) Upon approval of a claim, the owner, heir, or agent may request the administrator to dispose of the property by sale and remit the net proceeds to the owner, heir, or agent.

(c) Upon disapproval of the claim, the administrator may dispose of the property by sale.

Section 44. Section 67-4a-702 is repealed and reenacted to read:

67-4a-702. Disposal of securities.

(1) The administrator may not sell or otherwise liquidate a security until three years after the

administrator receives the security and gives the apparent owner notice under Section 67-4a-503 that the administrator holds the security.

(2) The administrator may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale.

(3) The administrator may sell a security not listed on an established exchange by any commercially reasonable method.

Section 45. Section 67-4a-703 is repealed and reenacted to read:

67-4a-703. Recovery of securities or value by owner.

(1) The administrator may not be held liable for any loss or gain in the value that the financial instrument would have obtained had the financial instrument been held instead of being sold.

(2) Upon approval of a claim, the owner, heir, or agent may request the administrator to dispose of the securities by sale and remit the net proceeds to the owner, heir, or agent.

(3) Upon disapproval of the claim, the administrator may dispose of the securities by sale.

Section 46. Section 67-4a-704 is repealed and reenacted to read:

67-4a-704. Purchaser owns property after sale.

(1) A purchaser of property at a sale conducted by the administrator under this chapter takes the property free of all claims of the owner, a previous holder, or a person claiming through the owner or holder.

(2) The administrator shall execute documents necessary to complete the transfer of ownership to the purchaser.

Section 47. Section 67-4a-705 is repealed and reenacted to read:

67-4a-705. Military medal or decoration.

(1) The administrator may not sell a medal or decoration awarded for military service in the armed forces of the United States.

(2) The administrator, with the consent of the respective organization under Subsection (2)(a), agency under Subsection (2)(b), or entity under Subsection (2)(c), may deliver a medal or decoration described in Subsection (1), to be held in custody for the owner, to:

(a) a military veterans organization qualified under 26 U.S.C. Sec. 501(c)(19);

(b) the agency that awarded the medal or decoration; or

(c) a governmental entity.

(3) On delivery under Subsection (2), the administrator is not responsible for safekeeping the medal or decoration.

Section 48. Section 67-4a-801 is repealed and reenacted to read:

Part 8. Administration of Property

67-4a-801. Deposit of funds by administrator.

(1) (a) There is created a private-purpose trust fund entitled the "Unclaimed Property Trust Fund."

(b) Except as otherwise provided in this section, the administrator shall deposit all funds received under this chapter, including proceeds from the sale of property under Part 7, Sale of Property by Administrator, in the fund.

(c) The fund shall earn interest.

(2) The administrator shall:

(a) pay any legitimate claims or deductions authorized by this chapter from the fund;

(b) before the end of the fiscal year, estimate the amount of money from the fund that will ultimately be needed to be paid to claimants; and

(c) at the end of the fiscal year, transfer any amount in excess of that amount to the Uniform School Fund, except that unclaimed restitution for crime victims shall be transferred to the Crime Victim Reparations Fund.

(3) Before making any transfer to the Uniform School Fund, the administrator may deduct from the fund:

(a) amounts appropriated by the Legislature for administration of this chapter;

(b) any costs incurred in connection with the sale of abandoned property;

(c) costs of mailing and publication in connection with any abandoned property;

(d) reasonable service charges; and

(e) costs incurred in examining records of holders of property and in collecting the property from those holders.

Section 49. Section 67-4a-802 is repealed and reenacted to read:

67-4a-802. Administrator to retain records of property.

The administrator shall:

(1) record and retain the name and last known address of each person shown on a report filed under Section 67-4a-401 to be the apparent owner of property delivered to the administrator;

(2) record and retain the name and last known address of each insured or annuitant and beneficiary shown on the report;

(3) for each policy of insurance or annuity contract listed in the report of an insurance company, record and retain the policy or account number, the name of the company, and the amount due or paid; and

(4) for each apparent owner listed in the report, record and retain the name of the holder that filed the report and the amount due or paid.

Section 50. Section 67-4a-803 is enacted to read:

67-4a-803. Expenses and service charges of administrator.

Before making a deposit of funds received under this chapter to the Uniform School Fund or the Crime Victim Reparations Fund, the administrator may deduct:

(1) expenses of disposition of property delivered to the administrator under this chapter;

(2) costs of mailing and publication in connection with property delivered to the administrator under this chapter;

(3) reasonable service charges; and

(4) expenses incurred in examining records of or collecting property from a putative holder or holder.

Section 51. Section 67-4a-804 is enacted to read:

67-4a-804. Administrator holds property as custodian for owner.

Property received by the administrator under this chapter is held in custody for the benefit of the owner and is not owned by the state.

Section 52. Section 67-4a-901 is repealed and reenacted to read:

Part 9. Claim to Recover Property from Administrator

67-4a-901. Claim of another state to recover property.

(1) If the administrator knows that property held by the administrator under this chapter is subject to a superior claim of another state, the administrator shall:

(a) report and pay or deliver the property to the other state; or

(b) return the property to the holder so that the holder may pay or deliver the property to the other state.

(2) The administrator is not required to enter into an agreement to transfer property to the other state under Subsection (1).

Section 53. Section 67-4a-902 is repealed and reenacted to read:

67-4a-902. When property subject to recovery by another state.

(1) Property held under this chapter by the administrator is subject to the right of another state to take custody of the property if:

(a) (i) the property was paid or delivered to the administrator because the records of the holder did not reflect a last known address in the other state of the apparent owner; and

(ii) (A) the other state establishes that the last known address of the apparent owner or other

person entitled to the property was in the other state; or

(B) under the law of the other state, the property has become subject to a claim by the other state of abandonment;

(b) the records of the holder did not accurately identify the owner of the property, the last known address of the owner was in another state, and, under the law of the other state, the property has become subject to a claim by the other state of abandonment;

(c) the property was subject to the custody of the administrator of this state under Section 67-4a-305 and, under the law of the state of domicile of the holder, the property has become subject to a claim by the state of domicile of the holder of abandonment; or

(d) the property:

(i) is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered to the administrator under Section 67-4a-306; and

(ii) under the law of the other state, has become subject to a claim by the other state of abandonment.

(2) A claim by another state to recover property under this section shall be presented in a form prescribed by the administrator, unless the administrator waives presentation of the form.

(3) (a) The administrator shall decide a claim under this section not later than 90 days after it is presented.

(b) If the administrator determines that the other state is entitled under Subsection (1) to custody of the property, the administrator shall allow the claim and pay or deliver the property to the other state.

(4) The administrator may require another state, before recovering property under this section, to agree to indemnify this state and its agents, officers, and employees against any liability on a claim to the property.

Section 54. Section 67-4a-903 is enacted to read:

67-4a-903. Claim for property by person claiming to be owner.

(1) (a) A person claiming to be the owner of property held under this chapter by the administrator may file a claim for the property on a form prescribed by the administrator.

(b) The claimant shall verify the claim as to its completeness and accuracy.

(2) If the owner claiming the unclaimed property is a creditor the following apply:

(a) (i) the exclusive remedy for satisfying a creditor's judgement is payment of a claim under the act; and

(ii) a writ of attachment, garnishment, or execution is prohibited on unclaimed property;

(b) a creditor may only receive the value of the creditor's judgment or the amount held by the administrator, whichever is less; and

(c) the administrator may waive the requirement in Subsection (1) and may pay or deliver property directly to a person if:

(i) the person receiving the property or payment is shown to be the apparent owner included on a report filed under Section 67-4a-401;

(ii) the administrator reasonably believes the person is entitled to receive the property or payment; and

(iii) the property has a value of less than \$500.

Section 55. Section 67-4a-904 is enacted to read:

67-4a-904. When administrator shall honor claim for property.

(1) The administrator shall pay or deliver property to a claimant under Subsection 67-4a-903(1) if the administrator receives evidence sufficient to establish to the satisfaction of the administrator that the claimant is the owner of the property.

(2) Not later than 90 days after a claim is filed under Subsection 67-4a-903(1), the administrator shall allow or deny the claim and give the claimant notice in a record of the decision.

(3) If the claim is denied under Subsection (2):

(a) the administrator shall inform the claimant of the reason for the denial and specify what additional evidence, if any, is required for the claim to be allowed;

(b) the claimant may file an amended claim with the administrator or commence an action under Subsection 67-4a-906; and

(c) the administrator shall consider an amended claim filed under Subsection (3)(b) as an initial claim.

(4) If the administrator does not take action on a claim during the 90-day period following the filing of a claim under Subsection 67-4a-903(1), the claim is considered denied.

Section 56. Section 67-4a-905 is enacted to read:

67-4a-905. Allowance of claim for property.

(1) (a) The administrator shall pay or deliver to the owner the property or pay to the owner the net proceeds of a sale of the property together with income or gain to which the owner is entitled under Section 67-4a-607.

(b) On request of the owner, the administrator may sell or liquidate a security and pay the net proceeds to the owner.

(2) Property held under this chapter by the administrator is subject to a claim for the payment

of an enforceable debt the owner owes in this state for:

(a) child support arrearages, including child support collection costs and child support arrearages that are combined with maintenance;

(b) a civil or criminal fine or penalty, court costs, a surcharge, or restitution imposed by a final order of an administrative agency or a final court judgment; or

(c) state taxes, penalties, and interest that have been determined to be delinquent or as to which notice has been recorded with the State Tax Commission.

(3) (a) Before delivery or payment to an owner under Subsection (1) of property or payment to the owner of net proceeds of a sale of the property, the administrator first shall apply the property or net proceeds to a debt under Subsection (2) the administrator determines is owed by the owner.

(b) The administrator shall pay the amount to the appropriate state agency and notify the owner of the payment.

(4) (a) The administrator may make periodic inquiries of state agencies in the absence of a claim filed under Section 67-4a-903 to determine whether an apparent owner included in the unclaimed property records of this state has enforceable debts described in Subsection (2).

(b) The administrator first shall apply the property or net proceeds of a sale of property held by the administrator to a debt under Subsection (2) of an apparent owner that appears in the records of the administrator and deliver the amount to the appropriate state agency.

(c) The administrator shall notify the apparent owner of the payment.

Section 57. Section 67-4a-906 is enacted to read:

67-4a-906. Action by person whose claim is denied.

Not later than one year after filing a claim under Subsection 67-4a-903(1), the claimant may commence an action against the administrator in the district court to establish a claim that has been denied or considered denied under Subsection 67-4a-904(2).

Section 58. Section 67-4a-1001 is enacted to read:

Part 10. Verified Report of Property and Examination of Records

67-4a-1001. Verified report of property.

(1) If a person does not file a report required by Section 67-4a-401 or the administrator believes that a person may have filed an inaccurate, incomplete, or false report, the administrator may require the person to file a verified report in a form prescribed by the administrator.

(2) The verified report under Subsection (1) shall:

(a) state whether the person is holding property reportable under this chapter;

(b) describe property not previously reported or about which the administrator has inquired;

(c) specifically identify property described under Subsection (2)(b) about which there is a dispute whether it is reportable under this chapter; and

(d) state the amount or value of the property.

Section 59. Section 67-4a-1002 is enacted to read:

67-4a-1002. Examination of records to determine compliance.

The administrator, at reasonable times and on reasonable notice, may:

(1) examine the records of a person, including examination of appropriate records in the possession of an agent of the person under examination, if the records are reasonably necessary to determine whether the person has complied with this chapter;

(2) issue an administrative subpoena requiring the person or agent of the person to make records available for examination; and

(3) bring an action seeking judicial enforcement of the subpoena.

Section 60. Section 67-4a-1003 is enacted to read:

67-4a-1003. Rules for conducting examination.

(1) (a) The administrator may adopt rules governing procedures and standards for an examination under Section 67-4a-1002.

(b) The rules may reference any standards concerning unclaimed property examinations promulgated by the National Association of Unclaimed Property Administrators.

(2) An examination under Section 67-4a-1002 shall be performed under rules adopted under Subsection (1).

(3) If a person subject to examination under Section 67-4a-1002 has filed the reports required under Section 67-4a-401 and Section 67-4a-1001 and has retained the records required by Section 67-4a-404, the following rules apply:

(a) the examination shall include a review of the person's records;

(b) the examination may not be based on an estimate unless the person expressly consents in a record to the use of an estimate; and

(c) the person conducting the examination shall consider the evidence presented in good faith by the person in preparing the findings of the examination under Section 67-4a-1007.

Section 61. Section 67-4a-1004 is enacted to read:

67-4a-1004. Records obtained in examination.

Records obtained and records, including work papers, compiled by the administrator in the course of conducting an examination under Section 67-4a-1002:

(1) are subject to the confidentiality and security provisions of Part 14, Confidentiality and Security of Information, and are not public records;

(2) may be used by the administrator in an action to collect property or otherwise enforce this chapter;

(3) may be used in a joint examination conducted with another state, the United States, a foreign country or subordinate unit of a foreign country, or any other governmental entity if the governmental entity conducting the examination is legally bound to maintain the confidentiality and security of information obtained from a person subject to examination in a manner substantially equivalent to Part 14, Confidentiality and Security of Information;

(4) shall be disclosed, on request, to the person that administers the unclaimed property law of another state for that state's use in circumstances equivalent to circumstances described in this part, if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to Part 14, Confidentiality and Security of Information;

(5) shall be produced by the administrator under an administrative or judicial subpoena or administrative or court order; and

(6) shall be produced by the administrator on request of the person subject to the examination in an administrative or judicial proceeding relating to the property.

Section 62. Section 67-4a-1005 is enacted to read:

67-4a-1005. Evidence of unpaid debt or undischarged obligation.

(1) A record of a putative holder showing an unpaid debt or undischarged obligation is prima facie evidence of the debt or obligation.

(2) A putative holder may establish by a preponderance of the evidence that there is no unpaid debt or undischarged obligation for a debt or obligation described in Subsection (1) or that the debt or obligation was not, or no longer is, a fixed and certain obligation of the putative holder.

(3) A putative holder may overcome prima facie evidence under Subsection (1) by establishing by a preponderance of the evidence that a check, draft, or similar instrument was:

(a) issued as an unaccepted offer in settlement of an unliquidated amount;

(b) issued but later was replaced with another instrument because the earlier instrument was lost or contained an error that was corrected;

(c) issued to a party affiliated with the issuer;

(d) paid, satisfied, or discharged;

(e) issued in error;

(f) issued without consideration;

(g) issued but there was a failure of consideration;

(h) voided within a reasonable time after issuance for a valid business reason set forth in a contemporaneous record; or

(i) issued but not delivered to the third-party payee for a sufficient reason recorded within a reasonable time after issuance.

(4) In asserting a defense under this section, a putative holder may present evidence of a course of dealing between the putative holder and the apparent owner or of custom and practice.

Section 63. Section 67-4a-1006 is enacted to read:

67-4a-1006. Failure of person examined to retain records.

(1) If a person subject to examination under Section 67-4a-1002 does not retain the records required by Section 67-4a-404, the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards adopted under Subsection 67-4a-1003(1) and in accordance with Subsection 67-4a-1003(2).

(2) A payment made based on estimation under this section is a penalty for failure to maintain the records required by Section 67-4a-404 and does not relieve a person from an obligation to report and deliver property to a state in which the holder is domiciled.

Section 64. Section 67-4a-1007 is enacted to read:

67-4a-1007. Report to person whose records were examined.

At the conclusion of an examination under Section 67-4a-1002, unless waived in writing by the person being examined, the administrator shall provide to the person whose records were examined a report that specifies:

(1) the work performed;

(2) the property types reviewed;

(3) the methodology of any estimation technique, extrapolation, or statistical sampling used in conducting the examination;

(4) each calculation showing the value of property determined to be due; and

(5) the findings of the person conducting the examination.

Section 65. Section 67-4a-1008 is enacted to read:

67-4a-1008. Informal conference.

(1) If a person subject to examination under Section 67-4a-1002 believes the person conducting

the examination has made an unreasonable or unauthorized request or is not proceeding expeditiously to complete the examination, the person in a record may request an informal conference with the administrator.

(2) (a) If a person in a record requests an informal conference with the administrator, the administrator shall hold the informal conference not later than 30 days after receiving the request.

(b) For good cause, and after notice in a record to the person requesting an informal conference, the administrator may extend the time for the holding of an informal conference.

(c) The administrator may hold the informal conference in person, by telephone, or by electronic means.

(3) If an informal conference is held under Subsection (2), not later than 30 days after the conference ends, the administrator shall provide a response to the person that requested the conference.

(4) (a) The administrator may deny a request for an informal conference under this section if the administrator reasonably believes that the request was made in bad faith or primarily to delay the examination.

(b) If the administrator denies a request for an informal conference, the denial shall be in a record provided to the person requesting the informal conference.

Section 66. Section 67-4a-1009 is enacted to read:

67-4a-1009. Administrator's contract with another to conduct examination.

(1) The administrator may contract with a person to conduct an examination under this chapter.

(2) If the administrator contracts with a person under Subsection (1):

(a) the contract may provide for compensation of the person based on a fixed fee, hourly fee, or contingent fee; and

(b) a contingent fee arrangement may not provide for a payment that exceeds 15% of the amount or value of property paid or delivered as a result of the examination.

(3) A contract under Subsection (1) is a public record under Section 63G-2-301.

Section 67. Section 67-4a-1010 is enacted to read:

67-4a-1010. Report by administrator to state official.

(1) Not later than three months after the end of the fiscal year, the administrator shall compile and submit a report to the treasurer, president of the Senate, and speaker of the House.

(2) The report shall contain the following information about property presumed abandoned for the preceding fiscal year for the state:

(a) the total amount and value of all property paid or delivered under this chapter to the administrator, separated into:

(i) the part voluntarily paid or delivered; and

(ii) the part paid or delivered as a result of an examination under Section 67-4a-1002;

(b) the total amount and value of all property paid or delivered by the administrator to persons that made claims for property held by the administrator;

(c) the total amount expended to provide notice to apparent owners under Section 67-4a-503; and

(d) other information the administrator believes would be useful or informative.

Section 68. Section 67-4a-1011 is enacted to read:

67-4a-1011. Determination of liability for unreported reportable property.

If the administrator determines from an examination conducted under Section 67-4a-1002 that a putative holder failed or refused to pay or deliver to the administrator property that is reportable under this chapter, the administrator shall issue a determination of the putative holder's liability to pay or deliver and give notice in a record to the putative holder of the determination.

Section 69. Section 67-4a-1101 is enacted to read:

Part 11. Determination of Liability and Putative Holder Remedies

67-4a-1101. Informal conference.

(1) (a) Not later than 30 days after receipt of a notice under Section 67-4a-1011, the putative holder may request an informal conference with the administrator to review the determination.

(b) Except as otherwise provided in this section, the administrator may designate an employee to act on behalf of the administrator.

(2) If a putative holder makes a timely request under Subsection (1) for an informal conference:

(a) not later than 20 days after the date of the request, the administrator shall set the time and place of the conference;

(b) the administrator shall give the putative holder notice in a record of the time and place of the conference;

(c) the conference may be held in person, by telephone, or by electronic means, as determined by the administrator;

(d) the request tolls the 90-day period under Sections 67-4a-1103 and 67-4a-1104 until notice of a decision under Subsection (2)(g) has been given to the putative holder or the putative holder withdraws the request for the conference;

(e) the conference may be postponed, adjourned, and reconvened as the administrator determines appropriate;

(f) the administrator or the administrator's designee with the approval of the administrator may modify a determination made under Section 67-4a-1011 or withdraw it; and

(g) the administrator shall issue a decision in a record and provide a copy of the record to the putative holder and examiner not later than 20 days after the conference ends.

(3) (a) A conference under Subsection (2) is not an administrative remedy and is not a contested case subject to the state administrative procedure act.

(b) An oath is not required and rules of evidence do not apply in the conference.

(4) At a conference under Subsection (2), the putative holder shall be given an opportunity to confer informally with the administrator and the person that examined the records of the putative holder to:

(a) discuss the determination made under Section 67-4a-1011; and

(b) present any issue concerning the validity of the determination.

(5) If the administrator fails to act within the period prescribed in Subsection (2)(a) or (g), the failure does not affect a right of the administrator, except that interest does not accrue on the amount for which the putative holder was determined to be liable under Section 67-4a-1011 during the period in which the administrator failed to act until the earlier of:

(a) the date under Section 67-4a-1103 the putative holder initiates administrative review or files an action under Section 67-4a-1104; or

(b) 90 days after the putative holder received notice of the administrator's determination under Section 67-4a-1011 if no review was initiated under Section 67-4a-1103 and no action was filed under Section 67-4a-1104.

(6) The administrator may hold an informal conference with a putative holder about a determination under Section 67-4a-1011 without a request at any time before the putative holder initiates administrative review under Section 67-4a-1103 or files an action under Section 67-4a-1104.

(7) Interest and penalties under Section 67-4a-1204 continue to accrue on property not reported, paid, or delivered as required by this chapter after the initiation, and during the pendency, of an informal conference under this section.

Section 70. Section 67-4a-1102 is enacted to read:

67-4a-1102. Review of administrator's determination.

A putative holder may seek relief from a determination under Section 67-4a-1011 by:

(1) administrative review under Section 67-4a-1103; or

(2) judicial review under Section 67-4a-1104.

Section 71. Section 67-4a-1103 is enacted to read:

67-4a-1103. Administrative review.

(1) Not later than 30 days after receiving notice of the administrator's determination under Section 67-4a-1011, a putative holder may initiate a proceeding under Section 63G-4-301 for review of the administrator's determination.

(2) A final decision in an administrative proceeding initiated under Subsection (1) is subject to judicial review by the district court as a matter of right in a de novo proceeding on the record in which either party is entitled to introduce evidence as a supplement to the record.

Section 72. Section 67-4a-1104 is enacted to read:

67-4a-1104. Judicial remedy.

(1) Not later than 90 days after receiving notice of the administrator's determination under Section 67-4a-1011, the putative holder may:

(a) file an action against the administrator in the district court challenging the administrator's determination of liability and seeking a declaration that the determination is unenforceable, in whole or in part; or

(b) pay the amount or deliver the property determined by the administrator to be paid or delivered to the administrator and, not later than six months after payment or delivery, file an action against the administrator in the district court for a refund of all or part of the amount paid or return of all or part of the property delivered.

(2) If a putative holder pays or delivers property the administrator determined shall be paid or delivered to the administrator at any time after the putative holder files an action under Subsection (1)(a), the court shall continue the action as if the action had been filed originally as an action for a refund or return of property under Subsection (1)(b).

(3) On the final determination of an action filed under Subsection (1), the court may, on application, award to the prevailing party the prevailing party's reasonable attorney fees, costs, and expenses of litigation.

(4) A putative holder that is the prevailing party in an action under this section for refund of money paid to the administrator is entitled to interest on

the amount refunded, at the same rate a holder is required to pay to the administrator under Subsection 67-4a-1204(1), from the date paid to the administrator until the date of the refund.

Section 73. Section 67-4a-1201 is enacted to read:

Part 12. Enforcement by Administrator

67-4a-1201. Judicial action to enforce liability.

(1) (a) If a determination under Section 67-4a-1011 becomes final and is not subject to administrative or judicial review, the administrator may commence an action in the district court or in a district court of another state to enforce the determination and secure payment or delivery of past due, unpaid, or undelivered property.

(b) The action shall be brought not later than one year after the determination becomes final.

(2) In an action under Subsection (1), if no court in this state has jurisdiction over the defendant, the administrator may commence an action in any court having jurisdiction over the defendant.

Section 74. Section 67-4a-1202 is enacted to read:

67-4a-1202. Interstate and international agreement -- Cooperation.

(1) Subject to Subsection (2), the administrator may:

(a) exchange information with another state or foreign country relating to property presumed abandoned or relating to the possible existence of property presumed abandoned; and

(b) authorize in a record another state or foreign country or a person acting on behalf of the other state or foreign country to examine the other state or foreign country's records of a putative holder as provided in Part 10, Verified Report of Property and Examination of Records.

(2) An exchange or examination under Subsection (1) may be done only if the state or foreign country has confidentiality and security requirements substantially equivalent to those in Part 14, Confidentiality and Security of Information, or agrees in a record to be bound by this state's confidentiality and security requirements.

Section 75. Section 67-4a-1203 is enacted to read:

67-4a-1203. Action involving another state or foreign country.

(1) The administrator may join another state or foreign country to examine and seek enforcement of this chapter against a putative holder.

(2) On request of another state or foreign country, the attorney general may commence an action on behalf of the other state or foreign country to enforce, in this state, the law of the other state or foreign country against a putative holder subject to

a claim by the other state or foreign country, if the other state or foreign country agrees to pay costs incurred by the attorney general in the action.

(3) (a) The administrator may request the official authorized to enforce the unclaimed property law of another state or foreign country to commence an action to recover property in the other state or foreign country on behalf of the administrator.

(b) This state shall pay the costs, including reasonable attorney fees and expenses, incurred by the other state or foreign country in an action under this Subsection (3).

(4) The administrator may pursue an action on behalf of this state to recover property subject to this chapter but delivered to the custody of another state if the administrator believes the property is subject to the custody of the administrator.

(5) The attorney general may retain an attorney for the administrator in this state, another state, or a foreign country to commence an action to recover property on behalf of the administrator and may agree to pay attorney fees based in whole or in part on a fixed fee, an hourly fee, or a percentage of the amount or value of property recovered in the action.

(6) (a) Expenses incurred by this state in an action under this section may be paid from property received under this chapter or the net proceeds of the property.

(b) Expenses paid to recover property may not be deducted from the amount that is subject to a claim under this chapter by the owner.

Section 76. Section 67-4a-1204 is enacted to read:

67-4a-1204. Interest and penalty for failure to act in timely manner.

(1) A holder that fails to report, pay, or deliver property within the time prescribed by this chapter shall pay to the administrator interest at an annual rate calculated based on the federal short-term rate determined by the secretary of the treasury under Section 6621, Internal Revenue Code, in effect for the preceding fourth calendar quarter plus four percentage points on the property or value of the property from the date the property should have been reported, paid, or delivered to the administrator until the date reported, paid, or delivered.

(2) Except as otherwise provided in Section 67-4a-1205 or 67-4a-1206, the administrator may require a holder that fails to report, pay, or deliver property within the time prescribed by this chapter to pay to the administrator, in addition to interest included under Subsection (1), a civil penalty of \$200 for each day the duty is not performed, up to a cumulative maximum amount of \$5,000.

Section 77. Section 67-4a-1205 is enacted to read:

67-4a-1205. Other civil penalties.

(1) If a holder enters into a contract or other arrangement for the purpose of evading an obligation under this chapter or otherwise willfully

fails to perform a duty imposed on the holder under this chapter, the administrator may require the holder to pay the administrator, in addition to interest as provided in Subsection 67-4a-1204(1), a civil penalty of \$1,000 for each day the obligation is evaded or the duty is not performed, up to a cumulative maximum amount of \$25,000, plus 25% of the amount or value of property that should have been but was not reported, paid, or delivered as a result of the evasion or failure to perform.

(2) If a holder makes a fraudulent report under this chapter, the administrator may require the holder to pay to the administrator, in addition to interest under Subsection 67-4a-1204(1), a civil penalty of \$1,000 for each day from the date the report was made until corrected, up to a cumulative maximum of \$25,000, plus 25% of the amount or value of any property that should have been reported but was not included in the report or was under reported.

Section 78. Section 67-4a-1206 is enacted to read:

67-4a-1206. Waiver of interest and penalty.

The administrator:

(1) may waive, in whole or in part, interest under Subsection 67-4a-1204(1) and penalties under Subsection 67-4a-1204(2) or Section 67-4a-1205; and

(2) may waive a penalty under Subsection 67-4a-1204(2) if the administrator determines that the holder acted in good faith and without negligence.

Section 79. Section 67-4a-1301 is enacted to read:

Part 13. Agreement to Locate Property of Apparent Owner Held by Administrator

67-4a-1301. When agreement to locate property enforceable.

An agreement by an apparent owner and another person, the primary purpose of which is to locate, deliver, recover, or assist in the location, delivery, or recovery of property held by the administrator, is enforceable only if the agreement:

(1) is in a record that clearly states the nature of the property and the services to be provided;

(2) is signed by or on behalf of the apparent owner; and

(3) states the amount or value of the property reasonably expected to be recovered, computed before and after a fee or other compensation to be paid to the person has been deducted.

Section 80. Section 67-4a-1302 is enacted to read:

67-4a-1302. When agreement to locate property void.

(1) Subject to Subsection (2), an agreement under Section 67-4a-1301 is void if the agreement is

entered into during the period beginning on the date the property was paid or delivered by a holder to the administrator and ending 24 months after the payment or delivery.

(2) If a provision in an agreement described in Subsection (1) applies to mineral proceeds for which compensation is to be paid to the other person based in whole or in part on a part of the underlying minerals or mineral proceeds not then presumed abandoned, the provision is void regardless of when the agreement was entered into.

(3) (a) An agreement under Subsection (1) that provides for compensation in an amount that is unconscionable is unenforceable except by the apparent owner.

(b) An apparent owner that believes the compensation the apparent owner has agreed to pay is unconscionable or the administrator, acting on behalf of an apparent owner, or both, may file an action in the district court to reduce the compensation to the maximum amount that is not unconscionable.

(c) On the final determination of an action filed under this Subsection (3), the court may, on application, award the prevailing party the prevailing party's reasonable attorney fees, costs, and expenses of litigation.

(4) An apparent owner or the administrator may assert that an agreement described in this section is void on a ground other than it provides for payment of unconscionable compensation.

(5) This section does not apply to an apparent owner's agreement with an attorney to pursue a claim for recovery of specifically identified property held by the administrator or to contest the administrator's denial of a claim for recovery of the property.

Section 81. Section 67-4a-1303 is enacted to read:

67-4a-1303. Right of agent of apparent owner to recover property held by administrator.

(1) (a) An apparent owner that contracts with another person to locate, deliver, recover, or assist in the location, delivery, or recovery of property of the apparent owner that is held by the administrator may designate the person as the agent of the apparent owner.

(b) The designation under Subsection (1)(a) shall be in a record signed by the apparent owner.

(2) The administrator shall give the agent of the apparent owner all information concerning the property that the apparent owner is entitled to receive, including information that otherwise is confidential information under Section 67-4a-1402.

(3) If authorized by the apparent owner, the agent of the apparent owner may bring an action against the administrator on behalf of and in the name of the apparent owner.

Section 82. Section 67-4a-1401 is enacted to read:

Part 14. Confidentiality and Security of Information

67-4a-1401. Definitions -- Applicability.

(1) As used in this part, "personal information" means:

(a) information that identifies or reasonably can be used to identify an individual, such as first and last name in combination with the individual's:

(i) social security number or other government-issued number or identifier;

(ii) date of birth;

(iii) home or physical address;

(iv) electronic mail address or other online contact information or Internet provider address;

(v) financial account number or credit or debit card number;

(vi) biometric data, health or medical data, or insurance information; or

(vii) passwords or other credentials that permit access to an online or other account;

(b) personally identifiable financial or insurance information, including nonpublic personal information defined by applicable federal law; and

(c) any combination of data that, if accessed, disclosed, modified, or destroyed without authorization of the owner of the data, or if lost or misused, would require notice or reporting under Section 13-44-202 and federal privacy and data security law, regardless of whether the administrator or the administrator's agent is subject to the law.

(2) A provision of this part that applies to the administrator or the administrator's records applies to an administrator's agent.

Section 83. Section 67-4a-1402 is enacted to read:

67-4a-1402. Confidential information.

(1) Except as otherwise provided in this chapter, the following are confidential and exempt from public inspection or disclosure:

(a) records of the administrator and the administrator's agent related to the administration of this chapter;

(b) reports and records of a holder in the possession of the administrator or the administrator's agent; and

(c) personal information and other information derived or otherwise obtained by or communicated to the administrator or the administrator's agent from an examination under this chapter of the records of a person.

(2) A record or other information that is confidential under the law of this state other than in this chapter, another state, or the United States continues to be confidential when disclosed or delivered under this chapter to the administrator or the administrator's agent.

Section 84. Section 67-4a-1403 is enacted to read:

67-4a-1403. When confidential information may be disclosed.

(1) When reasonably necessary to enforce or implement this chapter, the administrator may disclose confidential information concerning property held by the administrator or the administrator's agent only to:

(a) an apparent owner or the apparent owner's personal representative, attorney, other legal representative, relative, or agent designated under Section 67-4a-1303 to have the information;

(b) the personal representative, other legal representative, relative of a deceased apparent owner, agent designated under Section 67-4a-1303 by the deceased apparent owner, or person entitled to inherit from the deceased apparent owner;

(c) another department or agency of this state or of the United States;

(d) the person that administers the unclaimed property law of another state, if the other state accords substantially reciprocal privileges to the administrator of this state if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to Part 14, Confidentiality and Security of Information; or

(e) a person subject to an examination as required by Subsection 67-4a-1004(6).

(2) (a) Except as otherwise provided in Subsection 67-4a-1402(1), the administrator shall include on the website or in the database required by Subsection 67-4a-503(4)(a) the name of each apparent owner of property held by the administrator.

(b) The administrator may include in published notices, printed publications, telecommunications, the Internet, other media, on the website, or in the database additional information concerning the apparent owner's property if the administrator believes the information will assist in identifying and returning property to the owner and does not disclose personal information except the home or physical address of an apparent owner.

(3) The administrator and the administrator's agent may not use confidential information provided to the administrator or the administrator's agent or in the administrator or the administrator's agent's possession except as expressly authorized by this chapter or required by law other than in this chapter.

Section 85. Section 67-4a-1404 is enacted to read:

67-4a-1404. Confidentiality agreement.

A person to be examined under Section 67-4a-1002 may require, as a condition of disclosure of the records of the person to be examined, that each person having access to the records disclosed in the examination execute and deliver to the person to be examined a confidentiality agreement that:

(1) is in a form that is reasonably satisfactory to the administrator; and

(2) requires the person having access to the records to comply with the provisions of this part applicable to the person.

Section 86. Section 67-4a-1405 is enacted to read:

67-4a-1405. No confidential information in notice.

Except as otherwise provided in Sections 67-4a-501 and 67-4a-502, a holder is not required under this chapter to include confidential information in a notice the holder is required to provide to an apparent owner under this chapter.

Section 87. Section 67-4a-1406 is enacted to read:

67-4a-1406. Security of information.

(1) If a holder is required to include confidential information in a report to the administrator, the information shall be provided by a secure means.

(2) If confidential information in a record is provided to and maintained by the administrator or the administrator's agent as required by this chapter, the administrator or the administrator's agent shall:

(a) implement administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the information required by Section 13-44-202 and federal privacy and data security law regardless of whether the administrator or the administrator's agent is subject to the law;

(b) protect against reasonably anticipated threats or hazards to the security, confidentiality, or integrity of the information; and

(c) protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to a holder or the holder's customers, including insureds, annuitants, and policy or contract owners and the insureds', annuitants', and policy or contract owners' beneficiaries.

(3) The administrator:

(a) after notice and comment, shall adopt and implement a security plan that identifies and assesses reasonably foreseeable internal and external risks to confidential information in the administrator's possession and seeks to mitigate the risks; and

(b) shall ensure that an administrator's agent adopts and implements a similar plan with respect

to confidential information in the administrator's agent's possession.

(4) The administrator and the administrator's agent shall educate and train the administrator's and the administrator's agent's employees regarding the plan adopted under Subsection (3).

(5) The administrator and the administrator's agent shall in a secure manner return or destroy all confidential information no longer reasonably needed under this chapter.

Section 88. Section 67-4a-1407 is enacted to read:

67-4a-1407. Security breach.

(1) Except to the extent prohibited by law other than in this chapter, the administrator or the administrator's agent shall notify a holder as soon as practicable of:

(a) a suspected loss, misuse, unauthorized access, disclosure, modification, or destruction of confidential information obtained from the holder in the possession of the administrator or the administrator's agent; and

(b) any interference with operations in any system hosting or housing confidential information that:

(i) compromises the security, confidentiality, or integrity of the information; or

(ii) creates a substantial risk of identity fraud or theft.

(2) Except as necessary to inform an insurer, attorney, investigator, or others as required by law, the administrator and the administrator's agent may not disclose, without the express consent in a record of the holder, an event described in Subsection (1) to a person whose confidential information was supplied by the holder.

(3) If an event described in Subsection (1) occurs, the administrator and the administrator's agent shall:

(a) take action necessary for the holder to understand and minimize the effect of the event and determine the event's scope; and

(b) cooperate with the holder with respect to:

(i) any notification required by law concerning a data or other security breach; and

(ii) a regulatory inquiry, litigation, or similar action.

Section 89. Section 67-4a-1408 is enacted to read:

67-4a-1408. Indemnification for breach.

(1) If a claim is made or action commenced arising out of an event described in Subsection 67-4a-1407(1) relating to confidential information possessed by the administrator, this state shall indemnify, defend, and hold harmless a holder and the holder's affiliates, officers, directors, employees, and agents as to:

(a) any claim or action; and

(b) a liability, obligation, loss, damage, cost, fee, penalty, fine, settlement, charge, or other expense, including reasonable attorney fees and costs, established by the claim or action.

(2) If a claim is made or action commenced arising out of an event described in Subsection 67-4a-1407(1) relating to confidential information possessed by an administrator's agent, the administrator's agent shall indemnify, defend, and hold harmless a holder and the holder's affiliates, officers, directors, employees, and agents as to:

(a) any claim or action; and

(b) a liability, obligation, loss, damage, cost, fee, penalty, fine, settlement, charge, or other expense, including reasonable attorney fees and costs, established by the claim or action.

(3) The administrator shall require the administrator's agent that will receive confidential information required under this chapter to maintain adequate insurance for indemnification obligations of the administrator's agent under Subsection (2).

(4) The agent required to maintain the insurance shall provide evidence of the insurance to:

(a) the administrator not less frequently than annually; and

(b) the holder on commencement of an examination and annually thereafter until all confidential information is returned or destroyed under Subsection 67-4a-1406(5).

Section 90. Section 67-4a-1501 is enacted to read:

Part 15. Miscellaneous Provisions

67-4a-1501. Uniformity of application and construction.

In applying and construing this uniform chapter, consideration shall be given to the need to promote uniformity of the law with respect to the chapter's subject matter among states that enact it.

Section 91. Section 67-4a-1502 is enacted to read:

67-4a-1502. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., except this chapter does not:

(1) modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c); or

(2) authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Section 92. Section 67-4a-1503 is enacted to read:

67-4a-1503. Transitional provision.

(1) An initial report filed under this chapter for property that was not required to be reported before May 9, 2017, but that is required to be reported under this chapter, shall include all items of property that would have been presumed abandoned during the 10-year period preceding May 9, 2017, as if this chapter had been in effect during that period.

(2) This chapter does not relieve a holder of a duty that arose before May 9, 2017, to report, pay, or deliver property.

(3) Subject to Subsections 67-4a-610(2) and (3), a holder that did not comply with the law governing unclaimed property before May 9, 2017, is subject to applicable provisions for enforcement and penalties in effect before May 9, 2017.

Section 93. Section 67-4a-1504 is enacted to read:

67-4a-1504. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 94. Section 78B-6-816 is amended to read:

78B-6-816. Abandoned premises -- Retaking and rerenting by owner -- Liability of tenant -- Personal property of tenant left on premises.

(1) In the event of abandonment, the owner may retake the premises and attempt to rent them at a fair rental value and the tenant who abandoned the premises shall be liable:

(a) for the entire rent due for the remainder of the term; or

(b) for rent accrued during the period necessary to rerent the premises at a fair rental value, plus the difference between the fair rental value and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises and the costs, if any, necessary to restore the rental unit to its condition when rented by the tenant less normal wear and tear. This Subsection (1) applies, if less than Subsection (1)(a), notwithstanding that the owner did not rerent the premises.

(2) (a) If the tenant has abandoned the premises and has left personal property on the premises, the owner is entitled to remove the property from the dwelling, store it for the tenant, and recover actual moving and storage costs from the tenant.

(b) (i) The owner shall post a copy of the notice in a conspicuous place and send by first class mail to the last known address for the tenant a notice that the property is considered abandoned.

(ii) The tenant may retrieve the property within 15 calendar days from the date of the notice if the tenant tenders payment of all costs of inventory, moving, and storage to the owner.

(iii) Except as provided in Subsection (5), if the property has been in storage for at least 15 calendar days and the tenant has made no reasonable effort to recover the property after notice was sent, pay reasonable costs associated with the inventory, removal, and storage, and no court hearing on the property is pending, the owner may:

(A) sell the property at a public sale and apply the proceeds toward any amount the tenant owes; or

(B) donate the property to charity if the donation is a commercially reasonable alternative.

(c) Any money left over from the public sale of the property shall be handled as specified in Title 67, Chapter 4a, Part 2, [~~Standards for Determining When Property Is Abandoned or Unclaimed~~] Presumption of Abandonment.

(d) Nothing contained in this act shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens, or any other contractual liens or rights.

(3) If abandoned property is determined to belong to a person who is the tenant or an occupant, the tenant or occupant may claim the property, upon payment of any costs, inventory, moving, and storage, by delivery of a written demand with evidence of ownership of the personal property within 15 calendar days after the notice described in Subsection (2)(b) is sent. The owner may not be liable for the loss of the abandoned personal property if the written demand is not received.

(4) As used in this section, "personal property" does not include a motor vehicle, as defined in Section 41-1a-102.

(5) A tenant has no recourse for damage or loss if the tenant fails to recover any abandoned property as required in this section.

(6) An owner is not required to store the following abandoned personal property:

(a) chemicals, pests, potentially dangerous or other hazardous materials;

(b) animals, including dogs, cats, fish, reptiles, rodents, birds, or other pets;

(c) gas, fireworks, combustibles, or any item considered to be hazardous or explosive;

(d) garbage;

(e) perishable items; or

(f) items that when placed in storage might create a hazardous condition or a pest control issue.

(7) An owner shall give an extension for up to 15 calendar days, beyond the 15 calendar day limit described in Subsection (2)(b)(ii), to recover the abandoned property, if a tenant provides:

(a) a copy of a police report or protection order for situations of domestic violence, as defined in Section 77-36-1;

(b) verification of an extended hospitalization from a verified medical provider; or

(c) a death certificate or obituary for a tenant's death, provided by an immediate family member.

(8) Items listed in Subsection (6) may be properly disposed of by the owner immediately upon determination of abandonment. A tenant may not recover for disposal of abandoned items listed in Subsection (6).

(9) Notice of any public sale shall be mailed to the last known address of the tenant at least five calendar days prior to the public sale.

(10) If the tenant is present at the public sale:

(a) the tenant may specify the order in which the personal property is sold;

(b) the owner may sell only as much personal property necessary to satisfy the amount due under the rental agreement and statutorily allowed damages, costs, and fees associated with the abandoned items; and

(c) any unsold personal property shall be released to the tenant.

(11) If the tenant is not present at the public sale:

(a) all items may be sold; and

(b) any surplus amount over the amount due to the owner shall be paid to the tenant, if the tenant's current location is known. If the tenant's location is not known, any surplus shall be disposed of in accordance with Title 67, Chapter 4a, [~~Unclaimed Property Act~~] Revised Uniform Unclaimed Property Act.

Section 95. Repealer.

This bill repeals:

Section 67-4a-210, Property held by courts and public agencies.

Section 67-4a-211, Gift certificates -- Credit memos -- Gift cards.

Section 67-4a-212, Wages.

Section 67-4a-213, Contents of safe deposit box or other safekeeping repository.

Section 67-4a-214, Mineral proceeds.

CHAPTER 372**S. B. 186**

Passed March 7, 2017

Approved March 24, 2017

Effective May 9, 2017

EDUCATION REPORTING AMENDMENTS

Chief Sponsor: Lincoln Fillmore
House Sponsor: Justin L. Fawson

LONG TITLE**General Description:**

This bill amends reporting requirements related to public education.

Highlighted Provisions:

This bill:

- ▶ repeals certain reporting requirements placed on a local education agency, the state superintendent of public instruction, and the State Board of Education;
- ▶ amends provisions related to public education reports and data; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 53A-1-301, as last amended by Laws of Utah 2016, Chapter 348
- 53A-3-403, as last amended by Laws of Utah 2004, Chapter 206
- 53A-6-105, as last amended by Laws of Utah 2016, Chapter 144
- 53A-17a-153, as last amended by Laws of Utah 2010, Chapter 3
- 53A-17a-165, as last amended by Laws of Utah 2015, Chapter 258
- 53A-17a-166, as enacted by Laws of Utah 2011, Chapter 359
- 53A-17a-168, as enacted by Laws of Utah 2012, Chapter 188

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

Section 1. Section 53A-1-301 is amended to read:**53A-1-301. Appointment -- Qualifications -- Duties.**

(1) (a) The State Board of Education shall appoint a superintendent of public instruction, hereinafter called the state superintendent, who is the executive officer of the [board] State Board of Education and serves at the pleasure of the [board] State Board of Education.

(b) The [board] State Board of Education shall appoint the state superintendent on the basis of outstanding professional qualifications.

(c) The state superintendent shall administer all programs assigned to the State Board of Education in accordance with the policies and the standards

established by the [board] State Board of Education.

(2) The State Board of Education shall, with the [appointed] state superintendent, develop a statewide education strategy focusing on core academics, including the development of:

(a) core standards for Utah public schools and graduation requirements;

(b) a process to select model instructional materials that best correlate [to] with the core standards for Utah public schools and graduation requirements that are supported by generally accepted scientific standards of evidence;

(c) professional development programs for teachers, superintendents, and principals;

(d) model remediation programs;

(e) a model method for creating individual student learning targets, and a method of measuring an individual student's performance toward those targets;

(f) progress-based assessments for ongoing performance evaluations of school districts and schools;

(g) incentives to achieve the desired outcome of individual student progress in core academics, and which that do not create disincentives for setting high goals for the students;

(h) an annual report card for school and school district performance, measuring learning and reporting progress-based assessments;

(i) a systematic method to encourage innovation in schools and school districts as [they strive] each strives to achieve improvement in [their] performance; and

(j) a method for identifying and sharing best demonstrated practices across school districts and schools.

(3) The state superintendent shall perform duties assigned by the [board] State Board of Education, including [the following]:

(a) investigating all matters pertaining to the public schools;

(b) adopting and keeping an official seal to authenticate the state superintendent's official acts;

(c) holding and conducting meetings, seminars, and conferences on educational topics;

(d) presenting to the governor and the Legislature each December a report of the public school system for the preceding year [to include] that includes:

(i) data on the general condition of the schools with recommendations considered desirable for specific programs;

(ii) a complete statement of fund balances;

(iii) a complete statement of revenues by fund and source;

(iv) a complete statement of adjusted expenditures by fund, the status of bonded indebtedness, the cost of new school plants, and school levies;

(v) a complete statement of state funds allocated to each school district and charter school by source, including supplemental appropriations, and a complete statement of expenditures by each school district and charter school, including supplemental appropriations, by function and object as outlined in the United States Department of Education publication "Financial Accounting for Local and State School Systems";

~~[(vi) a complete statement, by school district and charter school, of the amount of and percentage increase or decrease in expenditures from the previous year attributed to:]~~

~~[(A) wage increases, with expenditure data for base salary adjustments identified separately from step and lane expenditures;]~~

~~[(B) medical and dental premium cost adjustments; and]~~

~~[(C) adjustments in the number of teachers and other staff;]~~

~~[(vii)] (vi) a statement that includes data on:~~

(A) fall enrollments;

(B) average membership;

(C) high school graduates;

(D) licensed and classified employees, including data reported by school districts on educator ratings pursuant to Section 53A-8a-410;

(E) pupil-teacher ratios;

(F) average class sizes calculated in accordance with State Board of Education rules adopted under Subsection 53A-3-602.5(4);

(G) average salaries;

(H) applicable private school data; and

(I) data from standardized norm-referenced tests in grades 5, 8, and 11 on each school and school district;

~~[(viii)] (vii) statistical information regarding incidents of delinquent activity in the schools or at school-related activities with separate categories for:~~

(A) alcohol and drug abuse;

(B) weapon possession;

(C) assaults; and

(D) arson;

~~[(ix)] (viii) information about:~~

(A) the development and implementation of the strategy of focusing on core academics;

(B) the development and implementation of competency-based education and progress-based assessments; and

(C) the results being achieved under Subsections (3)(d)~~[(ix)]~~(viii)(A) and (B), as measured by individual progress-based assessments and a comparison of Utah students' progress with the progress of students in other states using standardized norm-referenced tests as benchmarks; and

~~[(x)] (ix) other statistical and financial information about the school system [which] that the state superintendent considers pertinent;~~

(e) collecting and organizing education data into an automated decision support system to facilitate school district and school improvement planning, accountability reporting, performance recognition, and the evaluation of educational policy and program effectiveness to include:

(i) data that are:

(A) comparable across schools and school districts;

(B) appropriate for use in longitudinal studies; and

(C) comprehensive with regard to the data elements required under applicable state or federal law or ~~[state board]~~ State Board of Education rule;

(ii) features that enable users, most particularly school administrators, teachers, and parents, to:

(A) retrieve school and school district level data electronically;

(B) interpret the data visually; and

(C) draw conclusions that are statistically valid; and

(iii) procedures for the collection and management of education data that:

(A) require the state superintendent ~~[of public instruction]~~ to:

(I) collaborate with school districts and charter schools in designing and implementing uniform data standards and definitions;

(II) undertake or sponsor research to implement improved methods for analyzing education data;

(III) provide for data security to prevent unauthorized access to or contamination of the data; and

(IV) protect the confidentiality of data under state and federal privacy laws; and

(B) require all school districts and schools to comply with the data collection and management procedures established under Subsection (3)(e);

(f) administering and implementing federal educational programs in accordance with Title 53A, Chapter 1, Part 9, Implementing Federal or National Education Programs Act; and

(g) with the approval of the ~~[board]~~ State Board of Education, preparing and submitting to the governor a budget for the ~~[board]~~ State Board of Education to be included in the budget that the governor submits to the Legislature.

(4) The state superintendent shall distribute funds deposited in the Autism Awareness Restricted Account created in Section 53A-1-304 in accordance with the requirements of Section 53A-1-304.

(5) Upon leaving office, the state superintendent shall deliver to the state superintendent's successor all books, records, documents, maps, reports, papers, and other articles pertaining to the state superintendent's office.

(6) (a) For the ~~[purpose]~~ purposes of Subsection (3)(d)~~(vii)~~(vi):

(i) the pupil-teacher ratio for a school shall be calculated by dividing the number of students enrolled in a school by the number of full-time equivalent teachers assigned to the school, including regular classroom teachers, school-based specialists, and special education teachers;

(ii) the pupil-teacher ratio for a school district shall be the median pupil-teacher ratio of the schools within a school district;

(iii) the pupil-teacher ratio for charter schools aggregated shall be the median pupil-teacher ratio of charter schools in the state; and

(iv) the pupil-teacher ratio for the state's public schools aggregated shall be the median pupil-teacher ratio of public schools in the state.

(b) The printed copy of the report required by Subsection (3)(d) shall:

(i) include the pupil-teacher ratio for:

(A) each school district;

(B) the charter schools aggregated; and

(C) the state's public schools aggregated; and

(ii) indicate ~~[the Internet]~~ a website where pupil-teacher ratios for each school in the state may be accessed.

Section 2. Section 53A-3-403 is amended to read:

53A-3-403. School district or charter school fiscal year -- Statistical reports.

(1) A school district's or charter school's fiscal year begins on July 1 and ends on June 30.

(2) (a) ~~[The]~~ A school district or charter school shall forward statistical reports for the preceding school year, containing items required by law or by the State Board of Education, to the state superintendent ~~[not later than]~~ on or before November 1 of each year.

(b) The reports shall include information to enable the state superintendent to complete the statement required under Subsection 53A-1-301(3)(d)(v).

(3) ~~[The]~~ A school district or charter school shall forward the accounting report required under Section 51-2a-201 to the state superintendent ~~[not later than]~~ on or before October 15 of each year.

~~[(4) The district shall include the following information in its report:]~~

~~[(a) a summary of the number of students in the district given fee waivers, the number of students who worked in lieu of a waiver, and the total dollar value of student fees waived by the district;]~~

~~[(b) a copy of the district's fee and fee waiver policy;]~~

~~[(c) a copy of the district's fee schedule for students; and]~~

~~[(d) notices of fee waivers provided to a parent or guardian of a student.]~~

Section 3. Section 53A-6-105 is amended to read:

53A-6-105. Licensing fees -- Credit to subfund -- Payment of expenses.

(1) The board shall levy a fee for each new, renewed, or reinstated license or endorsement in accordance with Section 63J-1-504.

(2) Fee payments are credited to the Professional Practices Restricted Subfund in the Uniform School Fund.

(3) The board shall pay the expenses of issuing licenses and of UPPAC operations, and the costs of collecting license fees from the restricted subfund.

~~[(4) The board shall submit an annual report to the Legislature's Public Education Appropriations Subcommittee informing the Legislature about the fund, fees assessed and collected, and expenditures from the fund.]~~

Section 4. Section 53A-17a-153 is amended to read:

53A-17a-153. Educator salary adjustments.

(1) As used in this section, "educator" means a person employed by a school district, charter school, or the Utah Schools for the Deaf and the Blind who holds:

(a) a license issued under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act; and

(b) a position as a:

(i) classroom teacher;

(ii) speech pathologist;

(iii) librarian or media specialist;

(iv) preschool teacher;

(v) mentor teacher;

(vi) teacher specialist or teacher leader;

(vii) guidance counselor;

(viii) audiologist;

(ix) psychologist; or

(x) social worker.

(2) In recognition of the need to attract and retain highly skilled and dedicated educators, the

Legislature shall annually appropriate money for educator salary adjustments, subject to future budget constraints.

(3) Money appropriated to the State Board of Education for educator salary adjustments shall be distributed to school districts, charter schools, and the Utah Schools for the Deaf and the Blind in proportion to the number of full-time-equivalent educator positions in a school district, a charter school, or the Utah Schools for the Deaf and the Blind as compared to the total number of full-time-equivalent educator positions in school districts, charter schools, and the Utah Schools for the Deaf and the Blind.

(4) ~~[School districts, charter schools, and]~~ A school district, a charter school, or the Utah Schools for the Deaf and the Blind shall award bonuses to educators as follows:

(a) the amount of the salary adjustment shall be the same for each full-time-equivalent educator position in the school district, charter school, or the Utah Schools for the Deaf and the Blind;

(b) ~~[a person]~~ an individual who is not a full-time educator shall receive a partial salary adjustment based on the number of hours the ~~[person]~~ individual works as an educator; and

(c) a salary ~~[adjustments]~~ adjustment may be awarded only to ~~[educators]~~ an educator who ~~[have]~~ has received a satisfactory rating or above on ~~[their]~~ the educator's most recent evaluation.

~~[(5) (a) Each school district and charter school and the Utah Schools for the Deaf and the Blind shall submit a report to the State Board of Education on how the money for salary adjustments was spent, including the amount of the salary adjustment and the number of full and partial salary adjustments awarded.]~~

~~[(b) The State Board of Education shall compile the information reported under Subsection (5) and submit it to the Public Education Appropriations Subcommittee by November 30 each year.]~~

~~[(6)] (5)~~ The State Board of Education may make rules as necessary to administer this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(7)] (6)~~ (a) Subject to future budget constraints, the Legislature shall appropriate sufficient money each year to:

(i) maintain educator salary adjustments provided in prior years; and

(ii) provide educator salary adjustments to new employees.

(b) Money appropriated for educator salary adjustments shall include money for the following employer-paid benefits:

(i) retirement;

(ii) worker's compensation;

(iii) social security; and

(iv) Medicare.

~~[(8)] (7)~~ (a) Subject to future budget constraints, the Legislature shall:

(i) maintain the salary adjustments provided to school administrators in the 2007-08 school year; and

(ii) provide salary adjustments for new school administrators in the same amount as provided for existing school administrators.

(b) The appropriation provided for educator salary adjustments shall include salary adjustments for school administrators as specified in Subsection ~~[(8)] (7)~~(a).

(c) In distributing and awarding salary adjustments for school administrators, the State Board of Education, ~~[school districts, charter schools, and]~~ a school district, a charter school, or the Utah Schools for the Deaf and the Blind shall comply with the requirements for the distribution and award of educator salary adjustments as provided in Subsections (3) and (4).

Section 5. Section 53A-17a-165 is amended to read:

53A-17a-165. Enhancement for Accelerated Students Program.

(1) As used in this section, "eligible low-income student" means a student who:

(a) takes an Advanced Placement test;

(b) has applied for an Advanced Placement test fee reduction; and

(c) qualifies for a free lunch or a lunch provided at reduced cost.

(2) The State Board of Education shall distribute money appropriated for the Enhancement for Accelerated Students Program to school districts and charter schools according to a formula adopted by the State Board of Education, after consultation with school districts and charter schools.

(3) A distribution formula adopted under Subsection (2) may include an allocation of money for:

(a) Advanced Placement courses;

(b) Advanced Placement test fees of eligible low-income students;

(c) gifted and talented programs, including professional development for teachers of high ability students; and

(d) International Baccalaureate programs.

(4) The greater of 1.5% or \$100,000 of the appropriation for the Enhancement for Accelerated Students Program may be allowed for International Baccalaureate programs.

(5) A school district or charter school shall use money distributed under this section to enhance the academic growth of students whose academic achievement is accelerated.

(6) ~~[(a)]~~ The State Board of Education shall develop performance criteria to measure the

effectiveness of the Enhancement for Accelerated Students Program ~~[and make an annual report to the Public Education Appropriations Subcommittee on the effectiveness of the program].~~

~~[(b) In the report required by Subsection (6)(a), the State Board of Education shall include data showing the use and impact of money allocated for Advanced Placement test fees of eligible low-income students.]~~

Section 6. Section 53A-17a-166 is amended to read:

53A-17a-166. Enhancement for At-Risk Students Program.

(1) (a) Subject to the requirements of Subsection (1)(b), the State Board of Education shall distribute money appropriated for the Enhancement for At-Risk Students Program to school districts and charter schools according to a formula adopted by the State Board of Education, after consultation with school districts and charter schools.

(b) (i) The State Board of Education shall appropriate \$1,200,000 from the appropriation for Enhancement for At-Risk Students for a gang prevention and intervention program designed to help students at-risk for gang involvement stay in school.

(ii) Money for the gang prevention and intervention program shall be distributed to school districts and charter schools through a request for proposals process.

(2) In establishing a distribution formula under Subsection (1)(a), the State Board of Education shall use the following criteria:

- (a) low performance on U-PASS tests;
- (b) poverty;
- (c) mobility; and
- (d) limited English proficiency.

(3) A school district or charter school shall use money distributed under this section to improve the academic achievement of students who are at risk of academic failure.

(4) The State Board of Education shall develop performance criteria to measure the effectiveness of the Enhancement for At-Risk Students Program ~~[and make an annual report to the Public Education Appropriations Subcommittee on the effectiveness of the program].~~

Section 7. Section 53A-17a-168 is amended to read:

53A-17a-168. Appropriation for Title 1 Schools in Improvement Paraeducators Program.

(1) As used in this section:

(a) "Eligible school" means a Title 1 school that has not achieved adequate yearly progress, as

defined in the No Child Left Behind Act of 2001, 20 U.S.C. Sec. 6301 et seq. in the same subject area for two consecutive years.

(b) "Paraeducator" means a school employee who:

(i) delivers instruction under the direct supervision of a teacher; and

(ii) meets the requirements under Subsection (3).

(c) "Program" means the Title 1 Schools in Improvement Paraeducators Program created in this section.

(2) The program is created to provide funding for eligible schools to hire paraeducators to provide additional instructional aid in the classroom to assist students in achieving academic success and assist the school in exiting Title 1 school improvement status.

(3) A paraeducator who is funded under this section shall have:

(a) earned a secondary school diploma or a recognized equivalent;

(b) (i) completed at least two years with a minimum of 48 semester hours at an accredited higher education institution;

(ii) obtained an associates or higher degree from an accredited higher education institution; or

(iii) satisfied a rigorous state or local assessment about the individual's knowledge of, and ability to assist in instructing students in, reading, writing, and mathematics; and

(c) received large group-, small group-, and individual-level professional development that is intensive and focused and covers curriculum, instruction, assessment, classroom and behavior management, and teaming.

(4) The State Board of Education shall distribute money appropriated for the program to eligible schools, in accordance with rules adopted by the board.

(5) Funds appropriated under the program may not be used to supplant other money used for paraeducators at eligible schools.

~~[(6) The State Board of Education shall submit an annual report to the Legislature's Public Education Appropriations Subcommittee that includes information on:]~~

~~[(a) the amount of money distributed to each eligible school under this section;]~~

~~[(b) how many paraeducators were hired at each eligible school with program money;]~~

~~[(c) additional funding eligible schools used to supplement program money in hiring paraeducators; and]~~

~~[(d) accountability measures, including test scores of students served by the program.]~~

CHAPTER 373**S. B. 187**

Passed March 7, 2017

Approved March 24, 2017

Effective May 9, 2017

CONSTRUCTION TRADE AMENDMENTS

Chief Sponsor: D. Gregg Buxton
House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill amends provisions related to the construction trade.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a maximum rate of interest for a lien filed against project property by a person without privity of contract with the owner-builder; and
- ▶ provides the director of the Division of Occupational and Professional Licensing discretion to determine if a claimant has met certain requirements to recover from the Residence Lien Recovery Fund.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

13-8-5, as last amended by Laws of Utah 2012, Chapters 86 and 278

38-1a-309, as enacted by Laws of Utah 2012, Chapter 330

38-11-204, as last amended by Laws of Utah 2016, Chapter 238

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

Section 1. Section 13-8-5 is amended to read:

13-8-5. Definitions -- Limitation on retention proceeds withheld -- Deposit in interest-bearing escrow account -- Release of proceeds -- Payment to subcontractors -- Penalty -- No waiver.

(1) As used in this section:

(a) (i) "Construction contract" means a written agreement between the parties relative to the design, construction, alteration, repair, or maintenance of a building, structure, highway, appurtenance, appliance, or other improvements to real property, including moving, demolition, and excavating for nonresidential commercial or industrial construction projects.

(ii) If the construction contract is for construction of a project that is part residential and part nonresidential, this section applies only to that portion of the construction project that is nonresidential as determined pro rata based on the

percentage of the total square footage of the project that is nonresidential.

(b) "Construction lender" means any person, including a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any other financial institution that advances money to a borrower for the purpose of making alterations or improvements to real property. A construction lender does not include a person or entity who is acting in the capacity of contractor, original contractor, or subcontractor.

(c) "Construction project" means an improvement to real property that is the subject of a construction contract.

(d) "Contractor" means a person who, for compensation other than wages as an employee, undertakes any work in a construction trade, as defined in Section 58-55-102 and includes:

(i) any person engaged as a maintenance person who regularly engages in activities set forth in Section 58-55-102 as a construction trade; or

(ii) a construction manager who performs management and counseling services on a construction project for a fee.

(e) "Original contractor" ~~has the same meaning as provided~~ means the same as that term is defined in Section 38-1a-102.

(f) "Owner" means the person who holds any legal or equitable title or interest in property. Owner does not include a construction lender unless the construction lender has an ownership interest in the property other than solely as a construction lender.

(g) "Public agency" means any state agency or a county, city, town, school district, local district, special service district, or other political subdivision of the state that enters into a construction contract for an improvement of public property.

(h) "Retention payment" means release of retention proceeds as defined in Subsection (1)(i).

(i) "Retention proceeds" means money earned by a contractor or subcontractor but retained by the owner or public agency pursuant to the terms of a construction contract to guarantee payment or performance by the contractor or subcontractor of the construction contract.

(j) "Subcontractor" ~~has the same meaning as~~ means the same as that term is defined in Section 38-1a-102.

(2) (a) This section is applicable to all construction contracts relating to construction work or improvements entered into on or after July 1, 1999, between:

(i) an owner or public agency and an original contractor;

(ii) an original contractor and a subcontractor; and

(iii) subcontractors under a contract described in Subsection (2)(a)(i) or (ii).

(b) This section does not apply to a construction lender.

(3) (a) Notwithstanding Section 58-55-603, the retention proceeds withheld and retained from any payment due under the terms of the construction contract may not exceed 5% of the payment:

(i) by the owner or public agency to the original contractor;

(ii) by the original contractor to any subcontractor; or

(iii) by a subcontractor.

(b) The total retention proceeds withheld may not exceed 5% of the total construction price.

(c) The percentage of the retention proceeds withheld and retained pursuant to a construction contract between the original contractor and a subcontractor or between subcontractors shall be the same retention percentage as between the owner and the original contractor if:

(i) the retention percentage in the original construction contract between an owner and the original contractor is less than 5%; or

(ii) after the original construction contract is executed but before completion of the construction contract the retention percentage is reduced to less than 5%.

(4) (a) If any payment on a contract with a private contractor, firm, or corporation to do work for an owner or public agency is retained or withheld by the owner or the public agency, as retention proceeds, it shall be placed in an interest-bearing account and accounted for separately from other amounts paid under the contract.

(b) The interest accrued under Subsection (4)(a) shall be:

(i) for the benefit of the contractor and subcontractors; and

(ii) paid after the project is completed and accepted by the owner or the public agency.

(c) The contractor shall ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

(d) Retention proceeds and accrued interest retained by an owner or public agency:

(i) are considered to be in a constructive trust for the benefit of the contractor and subcontractors who have earned the proceeds; and

(ii) are not subject to assignment, encumbrance, attachment, garnishment, or execution levy for the debt of any person holding the retention proceeds and accrued interest.

(5) Any retention proceeds retained or withheld pursuant to this section and any accrued interest shall be released pursuant to a billing statement from the contractor within 45 days from the later of:

(a) the date the owner or public agency receives the billing statement from the contractor;

(b) the date that a certificate of occupancy or final acceptance notice is issued to:

(i) the original contractor who obtained the building permit from the building inspector or public agency;

(ii) the owner or architect; or

(iii) the public agency;

(c) the date that a public agency or building inspector ~~having~~ that has the authority to issue ~~its own~~ a certificate of occupancy does not issue the certificate but permits partial or complete occupancy ~~of a newly constructed or remodeled building~~ or use of a construction project; or

(d) the date the contractor accepts the final pay quantities.

(6) If only partial occupancy of a ~~building~~ construction project is permitted, any retention proceeds withheld and retained pursuant to this section and any accrued interest shall be partially released within 45 days under the same conditions as provided in Subsection (5) in direct proportion to the value of the part of the ~~building~~ construction project occupied or used.

(7) The billing statement from the contractor as provided in Subsection (5)(a) shall include documentation of lien releases or waivers.

(8) (a) Notwithstanding Subsection (3):

(i) if a contractor or subcontractor is in default or breach of the terms and conditions of the construction contract documents, plans, or specifications governing construction of the project, the owner or public agency may withhold from payment for as long as reasonably necessary an amount necessary to cure the breach or default of the contractor or subcontractor; or

(ii) if a project or a portion of the project has been substantially completed, the owner or public agency may retain until completion up to twice the fair market value of the work of the original contractor or of any subcontractor that has not been completed:

(A) in accordance with the construction contract documents, plans, and specifications; or

(B) in the absence of plans and specifications, to generally accepted craft standards.

(b) An owner or public agency that refuses payment under Subsection (8)(a) shall describe in writing within 45 days of withholding such amounts what portion of the work was not completed according to the standards specified in Subsection (8)(a).

(9) (a) Except as provided in Subsection (9)(b), an original contractor or subcontractor who receives

retention proceeds shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received within 10 days from the day that all or any portion of the retention proceeds is received:

(i) by the original contractor from the owner or public agency; or

(ii) by the subcontractor from:

(A) the original contractor; or

(B) a subcontractor.

(b) Notwithstanding Subsection (9)(a), if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor.

(10) (a) In any action for the collection of the retained proceeds withheld and retained in violation of this section, the successful party is entitled to:

(i) attorney fees; and

(ii) other allowable costs.

(b) (i) Any owner, public agency, original contractor, or subcontractor who knowingly and wrongfully withholds a retention shall be subject to a charge of 2% per month on the improperly withheld amount, in addition to any interest otherwise due.

(ii) The charge described in Subsection (10)(b)(i) shall be paid to the contractor or subcontractor from whom the retention proceeds have been wrongfully withheld.

(11) A party to a construction contract may not require any other party to waive any provision of this section.

Section 2. Section 38-1a-309 is amended to read:

38-1a-309. Interest rate -- Preconstruction service or construction contract -- Lien.

~~[Unless otherwise specified in a lawful contract between the owner-builder and the person claiming a lien under this chapter, the interest rate applicable to the lien is the rate described in Subsection 15-1-1(2).]~~

(1) Subject to Subsection (2), the interest rate that applies to a lawful contract for preconstruction service or construction work on or for a project property, or to a lien claimed under this chapter against the project property, is, unless otherwise provided in the lawful contract, the rate described in Subsection 15-1-1(2).

(2) If a person that claims a lien against project property under this chapter is not in privity of contract with the owner or owner-builder, the interest rate that applies to the person's lien may not exceed the rate described in Subsection 15-1-1(2).

Section 3. Section 38-11-204 is amended to read:

38-11-204. Claims against the fund -- Requirements to make a claim -- Qualifications to receive compensation -- Qualifications to receive a certificate of compliance.

(1) To claim recovery from the fund a person shall:

(a) meet the requirements of Subsection (4) or (6);

(b) pay an application fee determined by the division under Section 63J-1-504; and

(c) file with the division a completed application on a form provided by the division accompanied by supporting documents establishing:

(i) that the person meets the requirements of Subsection (4) or (6);

(ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and

(iii) the basis for the claim.

(2) To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:

(a) from the date the judgment required by Subsection (4)(d) is entered;

(b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or

(c) from the date the laborer, trying to recover from the fund, completed the laborer's qualified services.

(3) The issuance of a certificate of compliance is governed by Section 38-11-110.

(4) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act:

(A) for the performance of qualified services;

(B) to obtain the performance of qualified services by others; or

(C) for the supervision of the performance by others of qualified services in construction on that residence;

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract

with a factory built housing retailer for the purchase of an owner-occupied residence;

(b) the owner has paid in full the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract;

(c) (i) the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment under an agreement with that original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services performed or materials supplied by the qualified beneficiary;

(ii) a subcontractor who contracts with the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or

(iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier;

(d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing within the applicable time, the qualified beneficiary filed an action against the nonpaying party to recover money owed to the qualified beneficiary within the earlier of:

(A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1a-502; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1a-502(1);

(ii) the qualified beneficiary has obtained a judgment against the nonpaying party who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;

(iii) the qualified beneficiary has:

(A) obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property;

(B) received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b);

(C) made reasonable efforts to obtain asset information from the supplemental proceedings; and

(D) if assets subject to execution are discovered as a result of the order required under this Subsection (4)(d)(iii) or for any other reason, obtained the issuance of a writ of execution from a court of competent jurisdiction; and

(iv) if the nonpaying party has filed bankruptcy, the qualified beneficiary timely filed a proof of claim where permitted in the bankruptcy action;

(e) the qualified beneficiary is not entitled to reimbursement from any other person; and

(f) the qualified beneficiary provided qualified services to a contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

(6) To recover from the fund a laborer shall:

(a) establish that the laborer has not been paid wages due for the work performed at the site of a construction on an owner-occupied residence; and

(b) provide any supporting documents or information required by rule by the division.

(7) A fee determined by the division under Section 63J-1-504 shall be deducted from any recovery from the fund received by a laborer.

(8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or agent of the owner establishes to the satisfaction of the director that the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor who:

(a) was a business entity that was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but was solely or partly owned by an individual who was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

(b) was a natural person who was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(9) The director shall have equitable power to determine if the requirements of Subsections (4)(a) [and], (b), and (f) have been met, but any decision by the director under this chapter shall not alter or have any effect on any other decision by the division under Title 58, Occupations and Professions.

CHAPTER 374**S. B. 193**

Passed March 7, 2017

Approved March 24, 2017

Effective May 9, 2017

**JUDICIAL PERFORMANCE EVALUATION
COMMISSION MODIFICATIONS**Chief Sponsor: Todd Weiler
House Sponsor: Mike K. McKell**LONG TITLE****General Description:**

This bill modifies provisions related to judicial performance.

Highlighted Provisions:

This bill:

- ▶ addresses appointments to the commission;
- ▶ requires a certain number of members to vote on recommendations to retain or not retain a judge;
- ▶ amends provisions related to judicial performance evaluations;
- ▶ addresses judicial performance surveys; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-2-305, as last amended by Laws of Utah 2015, Chapters 147, 283, and 411

78A-12-201, as enacted by Laws of Utah 2008, Chapter 248

78A-12-203, as last amended by Laws of Utah 2013, Chapter 209

78A-12-204, as last amended by Laws of Utah 2011, Chapter 80

78A-12-206, as last amended by Laws of Utah 2011, Chapter 80

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

Section 1. Section 63G-2-305 is amended to read:**63G-2-305. Protected records.**

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (a) an invitation for bids;
- (b) a request for proposals;
- (c) a request for quotes;
- (d) a grant; or
- (e) other similar document;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or

contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor

has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

- (i) unpublished lecture notes;
- (ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

- (a) a production facility; or
- (b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge including information disclosed under Subsection 78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the 911 Division under Section 63H-7a-302;

(59) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(61) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4);

(63) a record described in Section 63G-12-210;

(64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003; and

(65) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund.

Section 2. Section 78A-12-201 is amended to read:

78A-12-201. Judicial Performance Evaluation Commission -- Creation -- Membership.

(1) There is created an independent commission called the Judicial Performance Evaluation Commission consisting of 13 members, as follows:

(a) two members appointed by the president of the Senate, only one of whom may be a member of the Utah State Bar;

(b) two members appointed by the speaker of the House of Representatives, only one of whom may be a member of the Utah State Bar;

(c) four members appointed by the members of the Supreme Court, at least one of whom, but not

more than two of whom, may be a member of the Utah State Bar;

(d) four members appointed by the governor, at least one of whom, but not more than two of whom, may be a member of the Utah State Bar; and

(e) the executive director of the Commission on Criminal and Juvenile Justice.

(2) (a) The president of the Senate and the speaker of the House of Representatives shall confer when appointing members under Subsections (1)(a) and (b) to ensure that there is at least one member from among their four appointees who is a member of the Utah State Bar.

(b) Each of the appointing authorities may appoint no more than half of the appointing authority's members from the same political party.

(c) A sitting legislator or a sitting judge may not serve as a commission member.

(3) (a) A member appointed under Subsection (1) shall be appointed for a four-year term.

(b) A member may serve no more than three consecutive terms.

(4) At the time of appointment, the terms of commission members shall be staggered so that approximately half of commission members' terms expire every two years.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the same appointing authority that appointed the member creating the vacancy.

(6) (a) Eight members of the commission constitute a quorum.

(b) The action of a majority of the quorum constitutes the action of the commission, except that a decision of the commission to recommend that a judge be retained or not be retained may not be made except by a vote of at least six members. If because of absences the commission is unable to have at least six votes recommending that a judge be retained or not retained, the commission may meet a second time to consider whether to recommend that the judge be retained or not retained.

(c) If a vote on the question of whether to recommend a judge be retained or not be retained ends in a tie or if a decision does not have six votes required by Subsection (6)(b), the commission may make no recommendation concerning the judge's retention.

Section 3. Section 78A-12-203 is amended to read:

78A-12-203. Judicial performance evaluations.

(1) Beginning with the 2012 judicial retention elections, the commission shall prepare a performance evaluation for:

(a) each judge in the third and fifth year of the judge's term if the judge is not a justice of the Supreme Court; and

(b) each justice of the Supreme Court in the third, seventh, and ninth year of the justice's term.

(2) Except as provided in Subsection (3), the performance evaluation for a judge under Subsection (1) shall consider only the following information but shall give primary emphasis to the information that is gathered and relates to the performance of the judge during the period subsequent to the last judicial retention election of that judge or if the judge has not had a judicial retention election, during the period applicable to the first judicial retention election:

(a) the results of the judge's most recent judicial performance survey that is conducted by a third party in accordance with Section 78A-12-204;

(b) information concerning the judge's compliance with minimum performance standards established in accordance with Section 78A-12-205;

(c) courtroom observation;

(d) the judge's judicial disciplinary record, if any;

(e) public comment solicited by the commission;

(f) information from an earlier judicial performance evaluation concerning the judge except that the commission shall give primary emphasis to information gathered subsequent to the last judicial retention election; and

(g) any other factor that the commission:

(i) considers relevant to evaluating the judge's performance for the purpose of a retention election; and

(ii) establishes by rule.

(3) The commission shall make rules concerning the conduct of courtroom observation under Subsection (2), which shall include the following:

(a) an indication of who may perform the courtroom observation;

(b) a determination of whether the courtroom observation shall be made in person or may be made by electronic means; and

(c) a list of principles and standards used to evaluate the behavior observed.

(4) (a) As part of the evaluation conducted under this section, the commission shall determine whether to recommend that the voters retain the judge.

(b) (i) If a judge meets the minimum performance standards established in accordance with Section 78A-12-205, there is a rebuttable presumption that the commission will recommend the voters retain the judge.

(ii) If a judge fails to meet the minimum performance standards established in accordance with Section 78A-12-205, there is a rebuttable

presumption that the commission will recommend the voters not retain the judge.

(c) The commission may elect to make no recommendation on whether the voters should retain a judge if the commission determines that the information concerning the judge is insufficient to make a recommendation.

(d) (i) If the commission deviates from a presumption for or against recommending the voters retain a judge or elects to make no recommendation on whether the voters should retain a judge, the commission shall provide a detailed explanation of the reason for that deviation or election in the commission's report under Section 78A-12-206.

(ii) If the commission makes no recommendation because of a tie vote, the commission shall note that fact in the commission's report.

(5) (a) The commission shall allow a judge who is the subject of a judicial performance retention evaluation and who has not passed one or more of the minimum performance standards on the midterm evaluation or on the retention evaluation to appear and speak at any commission meeting, except a closed meeting, during which the judge's judicial performance evaluation is considered.

(b) The commission may invite any judge to appear before the commission to discuss concerns about the judge's judicial performance.

(c) (i) The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.

(ii) The commission may meet in an electronic meeting by complying with Title 52, Chapter 4, Open and Public Meetings Act.

(d) Any record of an individual commissioner's vote on whether or not to recommend that the voters retain a judge is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(e) (i) A member of the commission, including a member of the Utah State Bar, may not be disqualified from voting on whether to recommend that the voters retain a judge solely because the member appears before the judge as an attorney, a fact witness, or an expert, so long as the member is not a litigant in a case pending before the judge.

(ii) Notwithstanding Subsection (5)(e)(i), a member of the commission shall disclose any conflicts of interest with the judge being reviewed to the other members of the commission before the deliberation and vote of whether to recommend that a judge be retained or not be retained.

(iii) Information disclosed under this Subsection (5)(e) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(e) (f) The commission may only disclose the final commission vote on whether or not to recommend that the voters retain a judge.

(6) (a) The commission shall compile a midterm report of its judicial performance evaluation of a judge.

(b) The midterm report of a judicial performance evaluation shall include information that the commission considers appropriate for purposes of judicial self-improvement.

(c) The report shall be provided to the evaluated judge ~~and~~, the presiding judge of the district in which the evaluated judge serves, and the Judicial Council. If the evaluated judge is the presiding judge, the midterm report shall be provided to the chair of the board of judges for the court level on which the evaluated judge serves.

(d) (i) The commission may provide a partial midterm evaluation to a judge whose appointment date precludes the collection of complete midterm evaluation data.

(ii) For a newly appointed judge, a midterm evaluation is considered partial when the midterm evaluation is missing a respondent group, including attorneys, court staff, court room observers, or intercept survey respondents.

(iii) A judge who receives partial midterm evaluation data may receive a statement in acknowledgment of that fact on the judge's voter information pamphlet page.

(iv) On or before the beginning of the retention evaluation cycle, the commission shall inform the Judicial Council of the name of any judge who receives a partial midterm evaluation.

(7) The commission shall identify a judge whose midterm evaluation:

(a) fails to meet minimum performance standards in accordance with Section 78A-12-205 or as established by rule; or

(b) otherwise demonstrates to the commission that the judge's performance would be of such concern if the performance occurred in a retention evaluation that the judge would be invited to appear before the commission in accordance with Subsection (5)(b).

(7) (8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by this section.

Section 4. Section 78A-12-204 is amended to read:

78A-12-204. Judicial performance survey.

(1) The judicial performance survey required by Section 78A-12-203 concerning a judge who is subject to a retention election shall be conducted on an ongoing basis during the judge's term in office by a third party under contract to the commission.

(2) (a) The judicial performance survey shall include as respondents a sample of each of the following groups as applicable:

~~(a)~~ (i) attorneys who have appeared before the judge as counsel;

~~(b)~~ (ii) jurors who have served in a case before the judge; and

~~(c)~~ (iii) court staff who have worked with the judge.

(b) Only a respondent under Subsection (2)(a)(i) who is admitted to practice law in the state and in good standing with the Utah State Bar may evaluate a judge's legal ability under Subsection (7)(a).

(3) The commission may include an additional classification of respondents if the commission:

(a) considers a survey of that classification of respondents helpful to voters in determining whether to vote to retain a judge; and

(b) establishes the additional classification of respondents by rule.

(4) All survey responses are anonymous, including comments included with a survey response.

(5) If the commission provides any information to a judge or the Judicial Council, the information shall be provided in such a way as to protect the confidentiality of a survey respondent.

(6) A survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appears in the judge's court is closed, exclusive of any appeal, except for court staff and attorneys, who may be surveyed at any time during the survey period.

(7) Survey categories shall include questions concerning a judge's:

(a) legal ability, including the following:

(i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;

(ii) attentiveness to factual and legal issues before the court;

(iii) adherence to precedent and ability to clearly explain departures from precedent;

(iv) grasp of the practical impact on the parties of the judge's rulings, including the effect of delay and increased litigation expense;

(v) ability to write clear judicial opinions; and

(vi) ability to clearly explain the legal basis for judicial opinions;

(b) judicial temperament and integrity, including the following:

(i) demonstration of courtesy toward attorneys, court staff, and others in the judge's court;

(ii) maintenance of decorum in the courtroom;

(iii) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the judicial system;

(iv) preparedness for oral argument;

(v) avoidance of impropriety or the appearance of impropriety;

(vi) display of fairness and impartiality toward all parties; and

(vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions; and

(c) administrative performance, including the following:

(i) management of workload;

(ii) sharing proportionally the workload within the court or district; and

(iii) issuance of opinions and orders without unnecessary delay.

(8) If the commission determines that a certain survey question or category of questions is not appropriate for a respondent group, the commission may omit that question or category of questions from the survey provided to that respondent group.

(9) (a) The survey shall allow respondents to indicate responses in a manner determined by the commission, which shall be:

(i) on a numerical scale from one to five, with one representing inadequate performance and five representing outstanding performance; or

(ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.

(b) (i) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the commission may allow respondents to provide written comments.

(ii) The executive director may not provide the commission a comment that would be prohibited in relation to taking an employment action under federal or state law.

(10) The commission shall compile and make available to each judge that judge's survey results with each of the judge's judicial performance evaluations.

(11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

Section 5. Section 78A-12-206 is amended to read:

78A-12-206. Publication of the judicial performance evaluation -- Response by judge.

(1) (a) The commission shall compile a retention report of its judicial performance evaluation of a judge.

(b) The report of a judicial performance evaluation nearest the judge's next scheduled retention election shall be provided to the judge at least 45 days before the last day on which the judge

may file a declaration of the judge's candidacy in the retention election.

(c) A report prepared in accordance with Subsection (1)(b) and information obtained in connection with the evaluation becomes a public record under Title 63G, Chapter 2, Government Records Access and Management Act, on the day following the last day on which the judge who is the subject of the report may file a declaration of the judge's candidacy in the judge's scheduled retention election if the judge declares the judge's candidacy for the retention election.

(d) Information collected and a report that is not public under Subsection (1)(c) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Within 15 days of receiving a copy of the commission's report under Subsection (1)(b):

(a) a judge who is the subject of an unfavorable retention recommendation under this section may:

(i) provide a written response to the commission about the report; and

(ii) request an interview with the commission for the purpose of addressing the report; and

(b) a judge who is the subject of a favorable retention recommendation under this section may provide a written response to the commission about the commission's report.

(3) (a) After receiving a response from a judge in any form allowed by Subsection (2), the commission may meet and reconsider its decision to recommend the judge not be retained.

(b) If the commission does not change its decision to recommend the judge not be retained, the judge may provide a written statement, not to exceed 100 words, that shall be included in the commission's report.

(4) The retention report of a judicial performance evaluation shall include:

(a) the results of the judicial performance survey, in both raw and summary form;

(b) information concerning the judge's compliance with the minimum performance standards, including stating how many of the minimum performance standards the judge met;

(c) information concerning any public discipline that a judge has received that is not subject to restrictions on disclosure under Title 78A, Chapter 11, Judicial Conduct Commission;

(d) a narrative concerning the judge's performance;

(e) the commission's recommendation concerning whether the judge should be retained, or the statement required of the commission if it declines to make a recommendation;

(f) the number of votes for and against the commission's recommendation; and

(g) any other information the commission considers ~~[appropriate]~~ necessary to include in the report to explain the performance standards and the recommendation made.

(5) (a) The commission may not include in its retention report specific information concerning an earlier judicial performance evaluation.

(b) The commission may refer to information from an earlier judicial performance evaluation concerning the judge in the commission's report only if [the reference is in general terms] necessary to explain performance in the current reporting period and giving primary emphasis to the information gathered during the current reporting period.

(6) The retention report of the commission's judicial performance evaluation shall be made publicly available on an Internet website.

(7) The commission may make the report of the judicial performance evaluation immediately preceding the judge's retention election publicly available through other means within budgetary constraints.

(8) The commission shall provide a summary of the judicial performance evaluation for each judge to the lieutenant governor for publication in the voter information pamphlet in the manner required by Title 20A, Chapter 7, Issues Submitted to the Voters.

~~[(9) The commission may also provide any information collected during the course of a judge's judicial performance evaluation immediately preceding the judge's retention election to the public to the extent that information is not otherwise subject to restrictions on disclosure.]~~

~~[(10)]~~ (9) The commission shall provide the Judicial Council with:

(a) the judicial performance survey results for each judge; and

(b) a copy of the retention report of each judicial performance evaluation.

~~[(11)]~~ (10) The Judicial Council shall provide information obtained concerning a judge under Subsection ~~[(10)]~~ (9) to the subject judge's presiding judge, if any.

CHAPTER 375**S. B. 194**

Passed March 8, 2017
 Approved March 24, 2017
 Effective July 1, 2017

UTAH DATA RESEARCH CENTER ACT

Chief Sponsor: Jacob L. Anderegg
 House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill enacts provisions related to data research.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes the Utah Data Research Center as a program within the Workforce Research and Analysis Division within the Department of Workforce Services;
- ▶ requires the State Board of Education, the State Board of Regents, the Utah College of Applied Technology, the Department of Workforce Services, and the Department of Health to contribute data to a data research program used by the Utah Data Research Center;
- ▶ directs the director of the Workforce Research and Analysis Division to hire data scientists, data technology experts, and data security experts; and
- ▶ directs the Utah Data Research Center to:
 - establish or contract with a private entity or with another state government entity for the creation of a data research program that contains de-identified data from participating state entities;
 - accept requests from a state government official or a member of the public for a data research request using the data from the data research program;
 - create a prioritized list of data research requests for the state;
 - create an online data visualization portal;
 - use the fees the center collects for data research requests to cover the center's costs; and
 - report annually to the Education Interim Committee.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ to Utah Education and Telehealth Network - Statewide Data Alliance, as an ongoing appropriation:
 - from the Education Fund, (\$645,000)
- ▶ to University of Utah - Education in General, as an ongoing appropriation:
 - from the Education Fund, (\$310,000)
- ▶ to Department of Workforce Services - Workforce Research and Analysis Division - Utah Data Research Center, as an ongoing appropriation:
 - from General Fund, \$955,000.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**ENACTS:**

35A-14-101, Utah Code Annotated 1953
 35A-14-102, Utah Code Annotated 1953
 35A-14-201, Utah Code Annotated 1953
 35A-14-202, Utah Code Annotated 1953
 35A-14-203, Utah Code Annotated 1953
 35A-14-204, Utah Code Annotated 1953
 35A-14-301, Utah Code Annotated 1953
 35A-14-302, Utah Code Annotated 1953
 35A-14-303, Utah Code Annotated 1953
 35A-14-304, Utah Code Annotated 1953

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

Section 1. Section 35A-14-101 is enacted to read:**CHAPTER 14. UTAH DATA RESEARCH CENTER****Part 1. General Provisions****35A-14-101. Title.**

This chapter is known as "Utah Data Research Center."

Section 2. Section 35A-14-102 is enacted to read:**35A-14-102. Definitions.**

As used in this chapter:

(1) "Advisory board" means the Utah Data Research Advisory Board created in Section 35A-14-203.

(2) "Center" means the Utah Data Research Center.

(3) "Data" means any information about a person stored in a physical or electronic record.

(4) "Data research program" means the data maintained by the center in accordance with Section 35A-14-301.

(5) "De-identified data" means data about a person that cannot, without additional information, identify the person to another person or machine.

(6) "Director" means the director of the Workforce Research and Analysis Division.

(7) "Participating entity" means:

(a) the State Board of Education;

(b) the State Board of Regents;

(c) the Utah College of Applied Technology;

(d) the Department of Workforce Services; and

(e) the Department of Health.

Section 3. Section 35A-14-201 is enacted to read:**Part 2. Utah Data Research Authority Governance****35A-14-201. Utah Data Research Center -- Creation.**

The Utah Data Research Center is created within the Workforce Research and Analysis Division within the department.

Section 4. Section 35A-14-202 is enacted to read:

35A-14-202. Utah Data Research Center -- Powers.

The center may:

- (1) employ staff necessary to carry out the center's duties;
- (2) purchase, own, create, or maintain equipment necessary to:
 - (a) collect data from the participating entities;
 - (b) connect and de-identify data collected by the center;
 - (c) store connected and de-identified data; or
 - (d) conduct research on data stored or obtained by the center; or
- (3) contract with a private entity, another state or federal entity, or a political subdivision of the state to carry out the center's duties as provided in this chapter.

Section 5. Section 35A-14-203 is enacted to read:

35A-14-203. Utah Data Research Advisory Board -- Composition -- Appointment.

- (1) There is created the Utah Data Research Advisory Board in accordance with this section.
- (2) The Utah Data Research Advisory Board is composed of the following members:
 - (a) the state superintendent of the State Board of Education or the state superintendent's designee;
 - (b) the commissioner of higher education or the commissioner of higher education's designee;
 - (c) the commissioner of technical education or the commissioner's designee;
 - (d) the executive director of the Department of Workforce Services or the executive director's designee; and
 - (e) the director of the Department of Health or the director's designee.
- (3) The executive director shall serve as chair.
- (4) A member of the board:
 - (a) except to the extent a member's service on the board is related to the member's duties outside of the board, may not receive compensation or benefits for the member's service; and
 - (b) may receive per diem and travel expenses in accordance with:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

Section 6. Section 35A-14-204 is enacted to read:

35A-14-204. Director -- Additional staff -- Administrative support.

- (1) The director shall manage the day-to-day operations of the center.
- (2) The director may, with the department's approval, hire staff, including:
 - (a) data scientists;
 - (b) data technology experts; and
 - (c) data security experts.

Section 7. Section 35A-14-301 is enacted to read:

Part 3. Data Research Program

35A-14-301. Data research center.

- (1) The center shall establish a data research program for the purpose of analyzing data that is:
 - (a) collected over time;
 - (b) aggregated from multiple sources; and
 - (c) connected and de-identified.
- (2) The center may, in order to establish the data research program described in Subsection (1):
 - (a) acquire property or equipment in order to store aggregated, connected, and de-identified data derived from data contributed by the participating entities; or
 - (b) contract with a private entity in accordance with Title 63G, Chapter 6a, Utah Procurement Code, or with a state government entity to:
 - (i) store aggregated, connected, and de-identified data derived from data contributed by the participating entities; or
 - (ii) utilize existing aggregated, connected, and de-identified data maintained by a state government entity.
- (3) A participating entity shall contribute data to the data research program described in Subsection (1) within guidelines established by the center.

(4) The center may only release data maintained by the center in accordance with the procedures described in this chapter.

(5) The data research program is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

Section 8. Section 35A-14-302 is enacted to read:

35A-14-302. Center duties -- Data studies.

- (1) The center shall use data that the center maintains or that a participating entity contributes to the data research program under Section 35A-14-301 to conduct research for the purpose of developing public policy for the state.
- (2) The director, with consultation by the advisory board, shall create a prioritized list of data

research for the center to conduct using the data research program each year.

(3) (a) In developing the list described in Subsection (2), the center shall accept data research requests from:

(i) a legislative committee or a legislative staff office;

(ii) the governor or an executive branch agency;

(iii) the State Board of Education;

(iv) the State Board of Regents; and

(v) the Utah College of Applied Technology.

(b) The department shall begin accepting the data research requests described in Subsection (3)(a) on July 1, 2017.

(c) The center shall report the list described in Subsection (2) to the Education Interim Committee before December 1 of each year.

(4) In addition to conducting data research in accordance with the prioritized list described in Subsection (2), the center may use additional resources to prepare data research at the request of:

(a) a state government entity;

(b) a political subdivision of the state;

(c) a private entity; or

(d) a member of the public.

(5) The director, with approval by the board, shall determine, for a data research request described in Subsection (4):

(a) whether the center has the resources to complete the data research request;

(b) the order in which the center shall complete the data research request, if at all; and

(c) a reasonable estimated cost for the request.

(6) The center, after evaluating a request under Subsection (5), shall:

(a) provide the person that requested the data research with a cost estimate; and

(b) require, before accepting a data research request, that the person that submitted the data research request agree to pay, once the data research is complete, the full cost of completing the data research request as determined by the center under Subsection (5).

(7) The center shall make available to the public, on a website maintained by the center, any data research request that the center completes under this section.

(8) The center shall ensure that any data contained in a completed data research request is de-identified.

(9) The center shall:

(a) establish, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) procedures for submitting a data research request under this section;

(ii) criteria to determine how to prioritize data research requests; and

(iii) minimum standards for information a person is required to include in a data research request; and

(b) create a fee schedule in accordance with Section 63J-1-504 for completing a data research request.

(10) In addition to submitting a data research request under Subsection (4), a participating entity, executive branch agency, or legislative staff office may request, and the center may release, a data set from the data research program if the data set is:

(a) connected;

(b) aggregated; and

(c) de-identified.

(11) (a) The center shall use any fee the center collects under this section to cover the center's costs to administer this chapter.

(b) The center shall deposit any fee the center collects under this section not used to cover the center's costs into the General Fund.

Section 9. Section 35A-14-303 is enacted to read:

35A-14-303. Data visualization access.

(1) In addition to performing data research and responding to data research requests under Section 35A-14-302, the center shall create an online data visualization portal that provides access to the public to connected, aggregated, and de-identified data in the program.

(2) The data visualization portal described in Subsection (1) shall include role-based dashboards that:

(a) allow a user to query data in the program;

(b) integrate real-time data; and

(c) allow a user to view queried data in a customizable environment.

Section 10. Section 35A-14-304 is enacted to read:

35A-14-304. Reporting.

(1) The center shall report to the Education Interim Committee:

(a) before July 1 of each year regarding the center's:

(i) research priorities for the year; and

(ii) completed research from the previous year; and

(b) before December 1 of each year, the center's ongoing data research priority list described in Subsection 35A-14-302(2).

(2) The Education Interim Committee shall provide the center ongoing input regarding the center's data research priorities.

Section 11. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Utah Education and Telehealth Network

From Education Fund (\$645,000)

Schedule of Programs:

Statewide Data Alliance (\$645,000)

ITEM 2

To University of Utah

From Education Fund (\$310,000)

Schedule of Programs:

Education in General (\$310,000)

ITEM 3

To Department of Workforce Services -- Workforce Research and Analysis Division

From General Fund \$955,000

Schedule of Programs:

Utah Data Research Center \$955,000

Section 12. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 376**S. B. 204**

Passed March 9, 2017
 Approved March 24, 2017
 Effective May 9, 2017

PUBLIC-PRIVATE PARTNERSHIPS

Chief Sponsor: Ralph Okerlund
 House Sponsor: John Knotwell

LONG TITLE**General Description:**

This bill modifies provisions of the Utah Procurement Code relating to public-private partnerships.

Highlighted Provisions:

This bill:

- ▶ defines “public-private partnership”; and
- ▶ enacts language relating to the use of public-private partnerships in the procurement of projects.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 63G-6a-103, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 355
- 63G-6a-702, as last amended by Laws of Utah 2014, Chapter 196
- 63G-6a-703, as last amended by Laws of Utah 2016, Chapter 355
- 63G-6a-707, as last amended by Laws of Utah 2016, Chapters 237 and 355

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

Section 1. Section 63G-6a-103 is amended to read:**63G-6a-103. Definitions.**

As used in this chapter:

- (1) “Administrative law judge” means the same as that term is defined in Section 67-19e-102.
- (2) “Administrative law judge service” means service provided by an administrative law judge.
- (3) “Applicable rulemaking authority” means:
 - (a) for a legislative procurement unit, the Legislative Management Committee;
 - (b) for a judicial procurement unit, the Judicial Council;
 - (c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:
 - (A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;

(B) for the Office of the Attorney General, the attorney general; and

(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district’s own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education, the State Board of Regents;

(g) for a public transit district, the chief executive of the public transit district;

(h) for a local district other than a public transit district or for a special service district:

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules; or

(i) for any other procurement unit, the board.

(4) “Approved vendor” means a vendor who has been approved through the approved vendor list process.

(5) “Approved vendor list” means a list of approved vendors established under Section 63G-6a-507.

(6) “Approved vendor list process” means the procurement process described in Section 63G-6a-507.

(7) “Bidder” means a person who submits a bid or price quote in response to an invitation for bids.

(8) “Bidding process” means the procurement process described in Part 6, Bidding.

(9) “Board” means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(10) “Building board” means the State Building Board, created in Section 63A-5-101.

(11) “Change directive” means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

(12) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(13) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).

(14) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

(iv) selecting and recommending the person to be awarded a contract;

(v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and

(vi) contract administration.

(15) "Conservation district" means the same as that term is defined in Section 17D-3-102.

(16) "Construction":

(a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

(17) "Construction manager/general contractor":

(a) means a contractor who enters into a contract:

(i) for the management of a construction project; and

(ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and

(b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

(18) "Contract" means an agreement for a procurement.

(19) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

(b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;

(c) executing change orders;

(d) processing contract amendments;

(e) resolving, to the extent practicable, contract disputes;

(f) curing contract errors and deficiencies;

(g) terminating a contract;

(h) measuring or evaluating completed work and contractor performance;

(i) computing payments under the contract; and

(j) closing out a contract.

(20) "Contractor" means a person who is awarded a contract with a procurement unit.

(21) "Cooperative procurement" means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

(b) a procurement unit and a cooperative purchasing organization.

(22) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

(23) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.

(24) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(25) "Days" means calendar days, unless expressly provided otherwise.

(26) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

(27) "Design-build" means the procurement of design professional services and construction by the use of a single contract.

(28) "Design professional" means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or

(b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(29) “Design professional procurement process” means the procurement process described in Part 15, Design Professional Services.

(30) “Design professional services” means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102; or

(c) master planning and programming services.

(31) “Director” means the director of the division.

(32) “Division” means the Division of Purchasing and General Services, created in Section 63A-2-101.

(33) “Educational procurement unit” means:

(a) a school district;

(b) a public school, including a local school board and a charter school;

(c) the Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network; or

(e) an institution of higher education of the state.

(34) “Established catalogue price” means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(35) “Executive branch procurement unit” means a department, division, office, bureau, agency, or other organization within the state executive branch.

(36) “Fixed price contract” means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

(37) “Fixed price contract with price adjustment” means a fixed price contract that provides for an

upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

(38) “Grant” means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

(39) “Head of a procurement unit” means:

(a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) for an executive branch procurement unit:

(i) the director of the division; or

(ii) any other person designated by the board, by rule;

(c) for a judicial procurement unit:

(i) the Judicial Council; or

(ii) any other person designated by the Judicial Council, by rule;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) any other person designated by the local government procurement unit;

(e) for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;

(f) for a special service district, the governing body of the special service district or a designee of the governing body;

(g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;

(j) for a school district or any school or entity within a school district, the board of the school district, or the board’s designee;

(k) for a charter school, the individual or body with executive authority over the charter school, or the individual’s or body’s designee;

(l) for an institution of higher education of the state, the president of the institution of higher education, or the president’s designee; or

(m) for a public transit district, the board of trustees or a designee of the board of trustees.

- (40) "Immaterial error":
- (a) means an irregularity or abnormality that is:
- (i) a matter of form that does not affect substance; or
- (ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
- (b) includes:
- (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;
- (ii) a typographical error;
- (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- (iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.
- (41) "Indefinite quantity contract" means a fixed price contract that:
- (a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and
- (b) (i) does not require a minimum purchase amount; or
- (ii) provides a maximum purchase limit.
- (42) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).
- (43) "Invitation for bids":
- (a) means a document used to solicit:
- (i) bids to provide a procurement item to a procurement unit; or
- (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
- (b) includes all documents attached to or incorporated by reference in a document described in Subsection (43)(a).
- (44) "Issuing procurement unit" means a procurement unit that:
- (a) reviews a solicitation to verify that it is in proper form;
- (b) causes the notice of a solicitation to be published; and
- (c) negotiates and approves the terms and conditions of a contract.
- (45) "Judicial procurement unit" means:
- (a) the Utah Supreme Court;
- (b) the Utah Court of Appeals;
- (c) the Judicial Council;
- (d) a state judicial district; or
- (e) an office, committee, subcommittee, or other organization within the state judicial branch.
- (46) "Labor hour contract" is a contract under which:
- (a) the supplies and materials are not provided by, or through, the contractor; and
- (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.
- (47) "Legislative procurement unit" means:
- (a) the Legislature;
- (b) the Senate;
- (c) the House of Representatives;
- (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- (e) an office, committee, subcommittee, commission, or other organization within the state legislative branch.
- (48) "Local building authority" means the same as that term is defined in Section 17D-2-102.
- (49) "Local district" means the same as that term is defined in Section 17B-1-102.
- (50) "Local government procurement unit" means:
- (a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;
- (b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or
- (c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.
- (51) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.
- (52) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.
- (53) "Municipality" means a city, town, or metro township.
- (54) "Nonadopting local government procurement unit" means:
- (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (54)(a).

(55) "Offeror" means a person who submits a proposal in response to a request for proposals.

(56) "Person" means the same as that term is defined in Section 68-3-12.5, excluding a political subdivision and a government office, department, division, bureau, or other body of government.

(57) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(58) "Procure" means to acquire a procurement item through a procurement.

(59) "Procurement":

(a) means a procurement unit's acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership;

(b) includes all functions that pertain to the acquisition of a procurement item, including:

(i) preparing and issuing a solicitation; and

(ii) (A) conducting a standard procurement process; or

(B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and

(c) does not include a grant.

(60) "Procurement item" means a supply, a service, or construction.

(61) "Procurement officer" means:

(a) for a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(62) "Procurement unit":

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) a local government procurement unit;

(vi) a local district;

(vii) a special service district;

(viii) a local building authority;

(ix) a conservation district;

(x) a public corporation; or

(xi) a public transit district; and

(b) does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(63) "Professional service" means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

(a) accounting;

(b) architecture;

(c) construction design and management;

(d) engineering;

(e) financial services;

(f) information technology;

(g) the law;

(h) medicine;

(i) psychiatry; or

(j) underwriting.

(64) "Protest officer" means:

(a) for the division or a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee.

(65) "Public corporation" means the same as that term is defined in Section 63E-1-102.

(66) "Public entity" means any government entity of the state or political subdivision of the state, including:

(a) a procurement unit;

(b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and

(c) any other government entity located in the state that expends public funds.

(67) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

(68) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

(69) “Public-private partnership” means an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

[(69)] (70) “Public transit district” means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

[(70)] (71) “Qualified vendor” means a vendor who:

(a) is responsible; and

(b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.

[(71)] (72) “Real property” means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

[(72)] (73) “Request for information” means a nonbinding process through which a procurement unit requests information relating to a procurement item.

[(73)] (74) “Request for proposals” means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

[(74)] (75) “Request for proposals process” means the procurement process described in Part 7, Request for Proposals.

[(75)] (76) “Request for statement of qualifications” means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

[(76)] (77) “Requirements contract” means a contract:

(a) under which a contractor agrees to provide a procurement unit’s entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

[(77)] (78) “Responsible” means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

[(78)] (79) “Responsive” means conforming in all material respects to the requirements of a solicitation.

[(79)] (80) “Sealed” means manually or electronically secured to prevent disclosure.

[(80)] (81) “Service”:

(a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;

(b) includes a professional service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

[(81)] (82) “Small purchase process” means the procurement process described in Section 63G-6a-506.

[(82)] (83) “Sole source contract” means a contract resulting from a sole source procurement.

[(83)] (84) “Sole source procurement” means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.

[(84)] (85) “Solicitation” means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

[(85)] (86) “Solicitation response” means:

(a) a bid submitted in response to an invitation for bids;

(b) a proposal submitted in response to a request for proposals; or

(c) a statement of qualifications submitted in response to a request for statement of qualifications.

[(86)] (87) “Special service district” means the same as that term is defined in Section 17D-1-102.

[(87)] (88) “Specification” means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

(a) a requirement for inspecting or testing a procurement item; or

(b) preparing a procurement item for delivery.

[(88)] (89) “Standard procurement process” means:

(a) the bidding process;

(b) the request for proposals process;

(c) the approved vendor list process;

- (d) the small purchase process; or
- (e) the design professional procurement process.

[~~89~~] (90) “State cooperative contract” means a contract awarded by the division for and in behalf of all public entities.

[~~90~~] (91) “Statement of qualifications” means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

[~~91~~] (92) “Subcontractor”:

(a) means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction;

(b) includes a trade contractor or specialty contractor; and

(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

[~~92~~] (93) “Supply” means a good, material, technology, piece of equipment, or any other item of personal property.

[~~93~~] (94) “Tie bid” means that the lowest responsive bids of responsible bidders are identical in price.

[~~94~~] (95) “Time and materials contract” means a contract under which the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

[~~95~~] (96) “Transitional costs”:

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

[~~96~~] (97) “Trial use contract” means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.

[~~97~~] (98) “Vendor”:

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor; and

(iv) a design professional.

Section 2. Section 63G-6a-702 is amended to read:

63G-6a-702. Contracts awarded by request for proposals.

(1) A request for proposals standard procurement process may be used instead of bidding if the procurement officer determines, in writing, that the request for proposals standard procurement process will provide the best value to the procurement unit.

(2) The request for proposals standard procurement process is appropriate to use ~~for~~:

(a) for the procurement of professional services;

(b) for a design-build procurement;

(c) ~~when~~ if cost is not the most important factor to be considered in making the selection that is most advantageous to the procurement unit; ~~or~~

(d) ~~when~~ if factors, in addition to cost, are highly significant in making the selection that is most advantageous to the procurement unit~~[-]; or~~

(e) if the procurement unit anticipates entering into a public-private partnership.

(3) The procurement of architect-engineer services is governed by Part 15, Architect-Engineer Services.

Section 3. Section 63G-6a-703 is amended to read:

63G-6a-703. Request for proposals -- Requirements -- Publication of request.

(1) The request for proposals standard procurement process begins when the division or a procurement unit with independent procurement authority issues a request for proposals.

(2) A request for proposals shall:

(a) state the period of time during which a proposal will be accepted;

(b) describe the manner in which a proposal shall be submitted;

(c) state the place where a proposal shall be submitted;

(d) include, or incorporate by reference:

(i) a description of the procurement items sought;

(ii) a description of the subjective and objective criteria that will be used to evaluate the proposal; and

(iii) the standard contractual terms and conditions required by the authorized purchasing entity;

(e) state the relative weight that will be given to each score for the criteria described in Subsection (2)(d)(ii), including cost;

(f) state the formula that will be used to determine the score awarded for the cost of each proposal;

(g) if the request for proposals will be conducted in multiple stages, as described in Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be used to screen offerors at each stage; ~~and~~

(h) state that best and final offers may be allowed, as provided in Section 63G-6a-707.5, from responsible offerors who submit responsive proposals that meet minimum qualifications, evaluation criteria, or applicable score thresholds identified in the request for proposals~~[-]; and~~

(i) if the procurement unit anticipates the procurement process to result in a public-private partnership, state that the procurement unit anticipates entering into a public-private partnership.

(3) The division or a procurement unit with independent procurement authority shall publish a request for proposals in accordance with the requirements of Section 63G-6a-112.

Section 4. Section 63G-6a-707 is amended to read:

63G-6a-707. Evaluation of proposals -- Evaluation committee.

(1) To determine which proposal provides the best value to the procurement unit, the evaluation committee shall evaluate each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals, which may include:

- (a) experience;
- (b) performance ratings;
- (c) inspection;
- (d) testing;
- (e) quality;
- (f) workmanship;

(g) time, manner, or schedule of delivery;

(h) references;

(i) financial solvency;

(j) suitability for a particular purpose;

(k) management plans;

(l) the presence and quality of a work site safety program, including any requirement that the offeror imposes on subcontractors for a work site safety program;

(m) cost; ~~or~~

(n) if applicable, the offeror's willingness and capability to enter into a public-private partnership; or

~~(n)~~ (o) other subjective or objective criteria specified in the request for proposals.

(2) Criteria not described in the request for proposals may not be used to evaluate a proposal.

(3) (a) For a procurement of administrative law judge service, an evaluation committee shall consist of:

(i) the head of the conducting procurement unit, or the head's designee;

(ii) the head of an executive branch procurement unit other than the conducting procurement unit, appointed by the executive director of the Department of Human Resource Management, or the head's designee; and

(iii) the executive director of the Department of Human Resource Management, or the executive director's designee.

(b) For every other procurement requiring an evaluation by an evaluation committee, the conducting procurement unit shall:

(i) appoint an evaluation committee consisting of at least three individuals with at least a general familiarity with or basic understanding of:

(A) the technical requirements relating to the type of procurement item that is the subject of the procurement; or

(B) the need that the procurement item is intended to address; and

(ii) ensure that the evaluation committee and each individual participating in the evaluation committee process:

(A) does not have a conflict of interest with any of the offerors;

(B) can fairly evaluate each proposal;

(C) does not contact or communicate with an offeror concerning the procurement outside the official evaluation committee process; and

(D) conducts or participates in the evaluation in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(4) A conducting procurement unit may authorize an evaluation committee to receive assistance:

- (a) from an expert or consultant who:
 - (i) is not a member of the evaluation committee; and
 - (ii) does not participate in the evaluation scoring; and
- (b) to better understand a technical issue involved in the procurement.
- (5) (a) An evaluation committee may, with the approval of the head of the conducting procurement unit, enter into discussions or conduct interviews with, or attend presentations by, the offerors, for the purpose of clarifying information contained in proposals.
- (b) In a discussion, interview, or presentation under Subsection (5)(a), an offeror:
 - (i) may only explain, illustrate, or interpret the contents of the offeror's original proposal; and
 - (ii) may not:
 - (A) address criteria or specifications not contained in the offeror's original proposal;
 - (B) correct a deficiency, inaccuracy, or mistake in a proposal that is not an immaterial error;
 - (C) correct an incomplete submission of documents that the solicitation required to be submitted with the proposal;
 - (D) correct a failure to submit a timely proposal;
 - (E) substitute or alter a required form or other document specified in the solicitation;
 - (F) remedy a cause for an offeror being considered to be not responsible or a proposal not responsive; or
 - (G) correct a defect or inadequacy resulting in a determination that an offeror does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.
- (6) (a) Except as provided in Subsection (7)(b) relating to access to management fee information, and except as provided in Subsection (9), each member of the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.
- (b) The issuing procurement unit shall:
 - (i) if applicable, assign an individual who is not a member of the evaluation committee to calculate scores for cost based on the applicable scoring formula, weighting, and other scoring procedures contained in the request for proposals;
 - (ii) review the evaluation committee's scores and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter;
 - (iii) add the scores calculated for cost, if applicable, to the evaluation committee's final

- recommended scores on criteria other than cost to derive the total combined score for each responsive and responsible proposal; and
- (iv) provide to the evaluation committee the total combined score calculated for each responsive and responsible proposal, including any applicable cost formula, weighting, and scoring procedures used to calculate the total combined scores.
- (c) The evaluation committee may not:
 - (i) change its final recommended scores described in Subsection (6)(a) after the evaluation committee has submitted those scores to the issuing procurement unit; or
 - (ii) change cost scores calculated by the issuing procurement unit.
- (7) (a) As used in this Subsection (7), "management fee" includes only the following fees of the construction manager/general contractor:
 - (i) preconstruction phase services;
 - (ii) monthly supervision fees for the construction phase; and
 - (iii) overhead and profit for the construction phase.
- (b) When selecting a construction manager/general contractor for a construction project, the evaluation committee:
 - (i) may score a construction manager/general contractor based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;
 - (ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;
 - (iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and
 - (iv) except as provided in Subsection (9), may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.
- (8) (a) The deliberations of an evaluation committee may be held in private.
- (b) If the evaluation committee is a public body, as defined in Section 52-4-103, the evaluation committee shall comply with Section 52-4-205 in closing a meeting for its deliberations.
- (9) An issuing procurement unit is not required to comply with Subsection (6) or (7)(b)(iv), as applicable, if the head of the issuing procurement unit or a person designated by rule made by the applicable rulemaking authority:
 - (a) signs a written statement:

(i) indicating that, due to the nature of the proposal or other circumstances, it is in the best interest of the procurement unit to waive compliance with Subsection (6) or (7)(b)(iv), as the case may be; and

(ii) describing the nature of the proposal and the other circumstances relied upon to waive compliance with Subsection (6) or (7)(b)(iv); and

(b) makes the written statement available to the public, upon request.

CHAPTER 377**S. B. 215**

Passed March 7, 2017

Approved March 24, 2017

Effective May 9, 2017

MASTER OFFENSE LIST

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Marc K. Roberts

LONG TITLE**General Description:**

This bill modifies provisions related to the Sentencing Commission.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Sentencing Commission to:
 - create a master offense list;
 - update the master offense list annually; and
 - present the master offense list to the Law Enforcement and Criminal Justice Interim Committee; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63M-7-405, as last amended by Laws of Utah 2014, Chapter 387

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

Section 1. Section 63M-7-405 is amended to read:**63M-7-405. Compensation of members -- Reports to the Legislature, the courts, and the governor.**

(1) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(2) (a) The commission shall submit to the Legislature, the courts, and ~~to~~ the governor at least 60 days ~~prior to~~ before the annual general session of the Legislature ~~its~~ the commission's reports and recommendations for sentencing guidelines and amendments. ~~It is intended that the~~

(b) The commission ~~utilize~~ shall use existing data and resources from state criminal justice agencies. ~~The~~

(c) The commission ~~is authorized to~~ may employ professional assistance and other staff members as it considers necessary or desirable.

(3) The commission shall ~~be responsive to~~ assist and respond to questions from all three branches of government, but ~~be~~ is part of the Commission on Criminal and Juvenile Justice for coordination on criminal and juvenile justice issues, budget, and administrative support.

(4) (a) As used in this Subsection (4), "master offense list" means a document that contains all offenses that exist in statute and each offense's associated penalty.

(b) No later than May 1, 2017, the commission shall create a master offense list.

(c) No later than June 30 of each calendar year, the commission shall:

(i) after the last day of the general legislative session, update the master offense list; and

(ii) present the updated master offense list to the Law Enforcement and Criminal Justice Interim Committee.

CHAPTER 378**S. B. 220**

Passed March 8, 2017

Approved March 24, 2017

Effective July 1, 2017

(Exception clause in Section 42)

**STUDENT ASSESSMENT AND SCHOOL
ACCOUNTABILITY AMENDMENTS**

Chief Sponsor: Ann Millner

House Sponsor: Bradley G. Last

LONG TITLE**General Description:**

This bill amends and enacts provisions related to assessments and accountability in the public education system.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ repeals outdated references to the Utah Performance Assessment System for Students or “U-PASS”;
- ▶ amends provisions related to the administration of statewide assessments;
- ▶ enacts provisions related to a high school assessment;
- ▶ repeals and reenacts provisions related to:
 - State Board of Education duties related to assessments; and
 - standards assessments;
- ▶ amends other provisions related to assessments;
- ▶ establishes a school accountability system;
- ▶ enacts provisions related to the school accountability system, including provisions related to:
 - the indicators and calculation of points used to determine a school’s rating under the school accountability system;
 - required rulemaking by the board; and
 - required reports;
- ▶ repeals and reenacts, for technical purposes, provisions related to youth suicide prevention training; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:**AMENDS:**

- 53A-1-301, as last amended by Laws of Utah 2016, Chapter 348
- 53A-1-402.6, as last amended by Laws of Utah 2015, Chapter 415
- 53A-1-413, as last amended by Laws of Utah 2016, Chapter 144
- 53A-1-601, as last amended by Laws of Utah 2000, Chapter 219
- 53A-1-602, as last amended by Laws of Utah 2015, Chapters 222 and 415

- 53A-1-603.5, as enacted by Laws of Utah 2006, Chapter 147
- 53A-1-605, as last amended by Laws of Utah 2015, Chapter 222
- 53A-1-607, as last amended by Laws of Utah 2009, Chapter 299
- 53A-1-608, as enacted by Laws of Utah 1990, Chapter 267
- 53A-1-610, as enacted by Laws of Utah 1990, Chapter 267
- 53A-1-611, as last amended by Laws of Utah 2016, Chapter 203
- 53A-1-613, as enacted by Laws of Utah 2013, Chapter 161
- 53A-1-708, as last amended by Laws of Utah 2016, Chapters 144 and 221
- 53A-1-1202, as last amended by Laws of Utah 2016, Chapter 241
- 53A-1-1203, as last amended by Laws of Utah 2016, Chapter 241
- 53A-1-1206, as last amended by Laws of Utah 2016, Chapter 241
- 53A-1-1207, as last amended by Laws of Utah 2016, Chapter 241
- 53A-1-1209, as last amended by Laws of Utah 2016, Chapter 331
- 53A-1a-106, as last amended by Laws of Utah 2012, Chapter 315
- 53A-1a-504, as last amended by Laws of Utah 2016, Chapter 213
- 53A-1a-510, as last amended by Laws of Utah 2015, Chapter 449
- 53A-17a-166, as enacted by Laws of Utah 2011, Chapter 359
- 53A-25b-304, as last amended by Laws of Utah 2012, Chapter 291

ENACTS:

- 53A-1-611.5, Utah Code Annotated 1953
- 53A-1-1113.5, Utah Code Annotated 1953
- 53A-15-1303, Utah Code Annotated 1953

REPEALS AND REENACTS:

- 53A-1-603, as last amended by Laws of Utah 2016, Chapters 203 and 221
- 53A-1-604, as last amended by Laws of Utah 2013, Chapter 161
- 53A-1-1101, as enacted by Laws of Utah 2011, Chapter 417
- 53A-1-1102, as last amended by Laws of Utah 2015, Chapter 452
- 53A-1-1103, as last amended by Laws of Utah 2015, Chapter 415
- 53A-1-1104, as last amended by Laws of Utah 2015, Chapters 258 and 452
- 53A-1-1105, as last amended by Laws of Utah 2013, Chapter 478 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 478
- 53A-1-1106, as last amended by Laws of Utah 2013, Chapter 478
- 53A-1-1107, as last amended by Laws of Utah 2014, Chapter 403
- 53A-1-1108, as last amended by Laws of Utah 2014, Chapter 403
- 53A-1-1109, as enacted by Laws of Utah 2011, Chapter 417
- 53A-1-1110, as last amended by Laws of Utah 2016, Chapter 349

53A-1-1111, as enacted by Laws of Utah 2011, Chapter 417

53A-1-1112, as last amended by Laws of Utah 2013, Chapter 478

REPEALS:

53A-1-1104.5, as enacted by Laws of Utah 2014, Chapter 403

53A-1-1107.5, as last amended by Laws of Utah 2015, Chapter 452

53A-1-1113, as enacted by Laws of Utah 2011, Chapter 417

53A-3-601, as last amended by Laws of Utah 2000, Chapter 219

53A-3-602.5, as last amended by Laws of Utah 2015, Chapter 415

53A-3-603, as last amended by Laws of Utah 2016, Chapter 144 Utah Code Sections Affected by Revisor Instructions:

53A-1-413, as last amended by Laws of Utah 2016, Chapter 144

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

Section 1. Section 53A-1-301 is amended to read:

53A-1-301. Appointment -- Qualifications -- Duties.

(1) (a) The State Board of Education shall appoint a superintendent of public instruction, hereinafter called the state superintendent, who is the executive officer of the [board] State Board of Education and serves at the pleasure of the [board] State Board of Education.

(b) The [board] State Board of Education shall appoint the state superintendent on the basis of outstanding professional qualifications.

(c) The state superintendent shall administer all programs assigned to the State Board of Education in accordance with the policies and the standards established by the [board] State Board of Education.

(2) The State Board of Education shall, with the [appointed] state superintendent, develop a statewide education strategy focusing on core academics, including the development of:

(a) core standards for Utah public schools and graduation requirements;

(b) a process to select model instructional materials that best correlate [to] with the core standards for Utah public schools and graduation requirements that are supported by generally accepted scientific standards of evidence;

(c) professional development programs for teachers, superintendents, and principals;

(d) model remediation programs;

(e) a model method for creating individual student learning targets, and a method of measuring an individual student's performance toward those targets;

(f) progress-based assessments for ongoing performance evaluations of school districts and schools;

(g) incentives to achieve the desired outcome of individual student progress in core academics[, and which] that do not create disincentives for setting high goals for the students;

(h) an annual report card for school and school district performance, measuring learning and reporting progress-based assessments;

(i) a systematic method to encourage innovation in schools and school districts as [they strive] each strives to achieve improvement in [their] performance; and

(j) a method for identifying and sharing best demonstrated practices across school districts and schools.

(3) The state superintendent shall perform duties assigned by the [board] State Board of Education, including [the following]:

(a) investigating all matters pertaining to the public schools;

(b) adopting and keeping an official seal to authenticate the state superintendent's official acts;

(c) holding and conducting meetings, seminars, and conferences on educational topics;

(d) presenting to the governor and the Legislature each December a report of the public school system for the preceding year [to include] that includes:

(i) data on the general condition of the schools with recommendations considered desirable for specific programs;

(ii) a complete statement of fund balances;

(iii) a complete statement of revenues by fund and source;

(iv) a complete statement of adjusted expenditures by fund, the status of bonded indebtedness, the cost of new school plants, and school levies;

(v) a complete statement of state funds allocated to each school district and charter school by source, including supplemental appropriations, and a complete statement of expenditures by each school district and charter school, including supplemental appropriations, by function and object as outlined in the United States Department of Education publication "Financial Accounting for Local and State School Systems";

(vi) a complete statement, by school district and charter school, of the amount of and percentage increase or decrease in expenditures from the previous year attributed to:

(A) wage increases, with expenditure data for base salary adjustments identified separately from step and lane expenditures;

(B) medical and dental premium cost adjustments; and

(C) adjustments in the number of teachers and other staff;

(vii) a statement that includes data on:

(A) fall enrollments;

(B) average membership;

(C) high school graduates;

(D) licensed and classified employees, including data reported by school districts on educator ratings pursuant to Section 53A-8a-410;

(E) pupil-teacher ratios;

(F) average class sizes ~~[calculated in accordance with State Board of Education rules adopted under Subsection 53A-3-602.5(4)];~~

(G) average salaries;

(H) applicable private school data; and

(I) data from ~~[standardized norm-referenced tests in grades 5, 8, and 11 on] statewide assessments described in Section 53A-1-602 for each school and school district;~~

(viii) statistical information regarding incidents of delinquent activity in the schools or at school-related activities with separate categories for:

(A) alcohol and drug abuse;

(B) weapon possession;

(C) assaults; and

(D) arson;

(ix) information about:

(A) the development and implementation of the strategy of focusing on core academics;

(B) the development and implementation of competency-based education and progress-based assessments; and

(C) the results being achieved under Subsections (3)(d)(ix)(A) and (B), as measured by individual progress-based assessments and a comparison of Utah students' progress with the progress of students in other states using standardized norm-referenced tests as benchmarks; and

(x) other statistical and financial information about the school system ~~[which] that the state superintendent considers pertinent;~~

(e) collecting and organizing education data into an automated decision support system to facilitate school district and school improvement planning, accountability reporting, performance recognition, and the evaluation of educational policy and program effectiveness to include:

(i) data that are:

(A) comparable across schools and school districts;

(B) appropriate for use in longitudinal studies; and

(C) comprehensive with regard to the data elements required under applicable state or federal law or ~~[state board]~~ State Board of Education rule;

(ii) features that enable users, most particularly school administrators, teachers, and parents, to:

(A) retrieve school and school district level data electronically;

(B) interpret the data visually; and

(C) draw conclusions that are statistically valid; and

(iii) procedures for the collection and management of education data that:

(A) require the state superintendent ~~[of public instruction]~~ to:

(I) collaborate with school districts in designing and implementing uniform data standards and definitions;

(II) undertake or sponsor research to implement improved methods for analyzing education data;

(III) provide for data security to prevent unauthorized access to or contamination of the data; and

(IV) protect the confidentiality of data under state and federal privacy laws; and

(B) require all school districts and schools to comply with the data collection and management procedures established under Subsection (3)(e);

(f) administering and implementing federal educational programs in accordance with Title 53A, Chapter 1, Part 9, Implementing Federal or National Education Programs Act; and

(g) with the approval of the ~~board~~ State Board of Education, preparing and submitting to the governor a budget for the ~~board~~ State Board of Education to be included in the budget that the governor submits to the Legislature.

(4) The state superintendent shall distribute funds deposited in the Autism Awareness Restricted Account created in Section 53A-1-304 in accordance with the requirements of Section 53A-1-304.

(5) Upon leaving office, the state superintendent shall deliver to the state superintendent's successor all books, records, documents, maps, reports, papers, and other articles pertaining to the state superintendent's office.

(6) (a) For the ~~[purpose]~~ purposes of Subsection (3)(d)(vii):

(i) the pupil-teacher ratio for a school shall be calculated by dividing the number of students enrolled in a school by the number of full-time equivalent teachers assigned to the school, including regular classroom teachers, school-based specialists, and special education teachers;

(ii) the pupil-teacher ratio for a school district shall be the median pupil-teacher ratio of the schools within a school district;

(iii) the pupil-teacher ratio for charter schools aggregated shall be the median pupil-teacher ratio of charter schools in the state; and

(iv) the pupil-teacher ratio for the state's public schools aggregated shall be the median pupil-teacher ratio of public schools in the state.

(b) The printed copy of the report required by Subsection (3)(d) shall:

(i) include the pupil-teacher ratio for:

(A) each school district;

(B) the charter schools aggregated; and

(C) the state's public schools aggregated; and

(ii) ~~[indicate the Internet]~~ identify a website where pupil-teacher ratios for each school in the state may be accessed.

Section 2. Section 53A-1-402.6 is amended to read:

53A-1-402.6. Core standards for Utah public schools.

(1) (a) In establishing minimum standards related to curriculum and instruction requirements under Section 53A-1-402, the State Board of Education shall, in consultation with local school boards, school superintendents, teachers, employers, and parents implement core standards for Utah public schools that will enable students to, among other objectives:

(i) communicate effectively, both verbally and through written communication;

(ii) apply mathematics; and

(iii) access, analyze, and apply information.

(b) Except as provided in this title, the State Board of Education may recommend but may not require a local school board or charter school governing board to use:

(i) a particular curriculum or instructional material; or

(ii) a model curriculum or instructional material.

(2) The ~~[board]~~ State Board of Education shall, in establishing the core standards for Utah public schools:

(a) identify the basic knowledge, skills, and competencies each student is expected to acquire or master as the student advances through the public education system; and

(b) align with each other the core standards for Utah public schools and ~~[tests administered under the Utah Performance Assessment System for Students (U-PASS) with each other.]~~ the assessments described in Section 53A-1-604.

(3) The basic knowledge, skills, and competencies identified pursuant to Subsection (2)(a) shall

increase in depth and complexity from year to year and focus on consistent and continual progress within and between grade levels and courses in the basic academic areas of:

(a) English, including explicit phonics, spelling, grammar, reading, writing, vocabulary, speech, and listening; and

(b) mathematics, including basic computational skills.

(4) Before adopting core standards for Utah public schools, the State Board of Education shall:

(a) publicize draft core standards for Utah public schools on the State Board of Education's website and the Utah Public Notice website created under Section 63F-1-701;

(b) invite public comment on the draft core standards for Utah public schools for a period of not less than 90 days; and

(c) conduct three public hearings that are held in different regions of the state on the draft core standards for Utah public schools.

(5) Local school boards shall design their school programs, that are supported by generally accepted scientific standards of evidence, to focus on the core standards for Utah public schools with the expectation that each program will enhance or help achieve mastery of the core standards for Utah public schools.

(6) Except as provided in Section 53A-13-101, each school may select instructional materials and methods of teaching, that are supported by generally accepted scientific standards of evidence, that ~~[it]~~ the school considers most appropriate to meet the core standards for Utah public schools.

(7) The state may exit any agreement, contract, memorandum of understanding, or consortium that cedes control of the core standards for Utah public schools to any other entity, including a federal agency or consortium, for any reason, including:

(a) the cost of developing or implementing the core standards for Utah public schools;

(b) the proposed core standards for Utah public schools are inconsistent with community values; or

(c) the agreement, contract, memorandum of understanding, or consortium:

(i) was entered into in violation of Part 9, Implementing Federal or National Education Programs Act, or Title 63J, Chapter 5, Federal Funds Procedures Act;

(ii) conflicts with Utah law;

(iii) requires Utah student data to be included in a national or multi-state database;

(iv) requires records of teacher performance to be included in a national or multi-state database; or

(v) imposes curriculum, assessment, or data tracking requirements on home school or private school students.

(8) The State Board of Education shall annually report to the Education Interim Committee on the

development and implementation of the core standards for Utah public schools, including the time line established for the review of the core standards for Utah public schools by a standards review committee and the recommendations of a standards review committee established under Section 53A-1-402.8.

Section 3. Section 53A-1-413 is amended to read:

53A-1-413. Student Achievement Backpack -- Utah Student Record Store.

(1) As used in this section:

(a) "Authorized LEA user" means a teacher or other person who is:

(i) employed by an LEA that provides instruction to a student; and

(ii) authorized to access data in a Student Achievement Backpack through the Utah Student Record Store.

(b) "LEA" means a school district, charter school, or the Utah Schools for the Deaf and the Blind.

(c) "Statewide assessment" means the same as that term is defined in Section 53A-1-602.

(d) "Student Achievement Backpack" means, for a student from kindergarten through grade 12, a complete learner profile that:

(i) is in electronic format;

(ii) follows the student from grade to grade and school to school; and

(iii) is accessible by the student's parent or guardian or an authorized LEA user.

~~[(d) "U-PASS" means the Utah Performance Assessment System for Students established in Part 6, Achievement Tests.]~~

(e) "Utah Student Record Store" means a repository of student data collected from LEAs as part of the state's longitudinal data system that is:

(i) managed by the State Board of Education;

(ii) cloud-based; and

(iii) accessible via a web browser to authorized LEA users.

(2) (a) The State Board of Education shall use the State Board of Education's robust, comprehensive data collection system, which collects longitudinal student transcript data from LEAs and the unique student identifiers as described in Section 53A-1-603.5, to allow the following to access a student's Student Achievement Backpack:

(i) the student's parent or guardian; and

(ii) each LEA that provides instruction to the student.

(b) The State Board of Education shall ensure that a Student Achievement Backpack:

(i) provides a uniform, transparent reporting mechanism for individual student progress;

(ii) provides a complete learner history for postsecondary planning;

(iii) provides a teacher with visibility into a student's complete learner profile to better inform instruction and personalize education;

(iv) assists a teacher or administrator in diagnosing a student's learning needs through the use of data already collected by the State Board of Education;

(v) facilitates a student's parent or guardian taking an active role in the student's education by simplifying access to the student's complete learner profile; and

(vi) serves as additional disaster mitigation for LEAs by using a cloud-based data storage and collection system.

(3) Using existing information collected and stored in the State Board of Education's data warehouse, the State Board of Education shall create the Utah Student Record Store where an authorized LEA user may:

(a) access data in a Student Achievement Backpack relevant to the user's LEA or school; or

(b) request student records to be transferred from one LEA to another.

(4) The State Board of Education shall implement security measures to ensure that:

(a) student data stored or transmitted to or from the Utah Student Record Store is secure and confidential pursuant to the requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g; and

(b) an authorized LEA user may only access student data that is relevant to the user's LEA or school.

(5) A student's parent or guardian may request the student's Student Achievement Backpack from the LEA or the school in which the student is enrolled.

~~(6) [No later than June 30, 2014, an] An authorized LEA user [shall be able to] may access student data in a Student Achievement Backpack, which shall include the following data, or request that the data be transferred from one LEA to another:~~

~~(a) student demographics;~~

~~(b) course grades;~~

~~(c) course history; and~~

~~(d) results [for an] of a statewide assessment [administered under U-PASS].~~

~~(7) [No later than June 30, 2015, an] An authorized LEA user [shall be able to] may access student data in a Student Achievement Backpack, which shall include the data listed in Subsections (6)(a) through (d) and the following data, or request~~

that the data be transferred from one LEA to another:

- (a) section attendance;
- (b) the name of a student's teacher for classes or courses the student takes;
- (c) teacher qualifications for a student's teacher, including years of experience, degree, license, and endorsement;

(d) results of ~~[formative, interim, and summative computer adaptive assessments administered pursuant to Section 53A-1-603]~~ statewide assessments;

~~[(e) detailed data demonstrating a student's mastery of the core standards for Utah public schools and objectives as measured by computer adaptive assessments administered pursuant to Section 53A-1-603;]~~

~~[(f)]~~ (e) a student's writing sample that is written for ~~[an online]~~ a writing assessment administered pursuant to Section ~~[53A-1-603]~~ 53A-1-604;

~~[(g)]~~ (f) student growth scores ~~[for U-PASS tests]~~ on a statewide assessment, as applicable;

~~[(h)]~~ (g) a school's grade assigned pursuant to Part 11, School Grading Act;

~~[(i)]~~ (h) results of benchmark assessments of reading administered pursuant to Section 53A-1-606.6; and

~~[(j)]~~ (i) a student's reading level at the end of grade 3.

(8) No later than June 30, 2017, the State Board of Education shall ensure that data collected in the Utah Student Record Store for a Student Achievement Backpack ~~[shall be]~~ is integrated into each LEA's student information system and ~~[shall be]~~ is made available to a student's parent or guardian and an authorized LEA user in an easily accessible viewing format.

Section 4. Section 53A-1-601 is amended to read:

53A-1-601. Legislative intent.

(1) ~~[It is the intent of the Legislature in]~~ In enacting this part, the Legislature intends to determine the effectiveness of school districts and schools in assisting students to master the fundamental educational skills ~~[towards]~~ toward which instruction is directed.

(2) ~~[(a) The Utah Performance Assessment System for Students enacted under this part shall provide]~~ The board shall ensure that a statewide assessment provides the public, the Legislature, the [State Board of Education] board, school districts, public schools, and school teachers with:

(a) evaluative information regarding the various levels of proficiency achieved by students, so that they may have an additional tool to plan, measure, and evaluate the effectiveness of programs in the public schools~~[-];~~ and

~~(b) [The] information [may also be used] to recognize excellence and to identify the need for additional resources or to reallocate educational resources in a manner to [assure] ensure educational opportunities for all students and to improve existing programs.~~

Section 5. Section 53A-1-602 is amended to read:

53A-1-602. Definitions.

As used in this part:

~~[(1) "Basic academic subject" means a subject that requires mastery of specific functions, as defined under rules made by the State Board of Education, to include reading, language arts, mathematics, science in grades 4 through 12, and effectiveness of written expression.]~~

(1) "Board" means the State Board of Education.

(2) "Core standards for Utah public schools" means the standards ~~[developed and adopted by the State Board of Education that define the knowledge and skills students should have in kindergarten through grade 12 to enable students to be prepared for college or workforce training.]~~ established by the board as described in Section 53A-1-402.6.

(3) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

~~[(4) "Utah Performance Assessment System for Students" or "U-PASS" means:]~~

~~[(a) as determined by the State Board of Education, criterion-referenced achievement testing or online computer adaptive testing of students in grades 3 through 12 in basic academic subjects;]~~

~~[(b) an online writing assessment in grades 5 and 8;]~~

(4) "Statewide assessment" means one or more of the following, as applicable:

(a) a standards assessment described in Section 53A-1-604;

(b) a high school assessment described in Section 53A-1-611.5;

(c) a college readiness ~~[assessments as detailed]~~ assessment described in Section 53A-1-611; [and] or

(d) ~~[testing]~~ an assessment of students in grade 3 to measure reading grade level described in Section 53A-1-606.6.

Section 6. Section 53A-1-603 is repealed and reenacted to read:

53A-1-603. Statewide assessments -- Duties of State Board of Education.

(1) The board shall:

(a) require the state superintendent of public instruction to:

(i) submit and recommend statewide assessments to the board for adoption by the board; and

(ii) distribute the statewide assessments adopted by the board to a school district or charter school;

(b) provide for the state to participate in the National Assessment of Educational Progress state-by-state comparison testing program; and

(c) require a school district or charter school to administer statewide assessments.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules for the administration of statewide assessments.

(3) The board shall ensure that statewide assessments are administered in compliance with the requirements of Part 14, Student Data Protection Act, and Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act.

Section 7. Section 53A-1-603.5 is amended to read:

53A-1-603.5. Unique student identifier -- Coordination of higher education and public education information technology systems.

(1) As used in this section, “unique student identifier” means an alphanumeric code assigned to each public education student for identification purposes, which:

(a) is not assigned to any former or current student; and

(b) does not incorporate personal information, including a birth date or Social Security number.

(2) The [State Board of Education] board, through the superintendent of public instruction, shall assign each public education student a unique student identifier, which shall be used to track individual student performance on achievement tests administered under this part.

(3) The [State Board of Education] board and the State Board of Regents shall coordinate public education and higher education information technology systems to allow individual student academic achievement to be tracked through both education systems in accordance with this section and Section 53B-1-109.

(4) The [State Board of Education] board and the State Board of Regents shall coordinate access to the unique student identifier of a public education student who later attends an institution within the state system of higher education.

Section 8. Section 53A-1-604 is repealed and reenacted to read:

53A-1-604. Utah standards assessments -- Administration -- Review committee.

(1) As used in this section, “computer adaptive assessment” means an assessment that measures

the range of a student’s ability by adapting to the student’s responses, selecting more difficult or less difficult questions based on the student’s responses.

(2) The board shall:

(a) adopt a standards assessment that:

(i) measures a student’s proficiency in:

(A) mathematics for students in each of grades 3 through 8;

(B) English language arts for students in each of grades 3 through 8;

(C) science for students in each of grades 4 through 8; and

(D) writing for students in at least grades 5 and 8; and

(ii) except for the writing measurement described in Subsection (2)(a)(i)(D), is a computer adaptive assessment; and

(b) ensure that an assessment described in Subsection (2)(a) is:

(i) a criterion referenced assessment;

(ii) administered online;

(iii) aligned with the core standards for Utah public schools; and

(iv) adaptable to competency-based education as defined in Section 53A-15-1802.

(3) A school district or charter school shall annually administer the standards assessment adopted by the board under Subsection (2) to all students in the subjects and grade levels described in Subsection (2).

(4) A student’s score on the standards assessment adopted under Subsection (2) may not be considered in determining:

(a) the student’s academic grade for a course; or

(b) whether the student may advance to the next grade level.

(5) (a) The board shall establish a committee consisting of 15 parents of Utah public education students to review all standards assessment questions.

(b) The committee established in Subsection (5)(a) shall include the following parent members:

(i) five members appointed by the chair of the board;

(ii) five members appointed by the speaker of the House of Representatives or the speaker’s designee; and

(iii) five members appointed by the president of the Senate or the president’s designee.

(c) The board shall provide staff support to the parent committee.

(d) The term of office of each member appointed in Subsection (5)(b) is four years.

(e) The chair of the board, the speaker of the House of Representatives, and the president of the Senate shall adjust the length of terms to stagger the terms of committee members so that approximately half of the committee members are appointed every two years.

(f) No member may receive compensation or benefits for the member's service on the committee.

Section 9. Section 53A-1-605 is amended to read:

53A-1-605. Analysis of results -- Staff professional development.

(1) The ~~[State Board of Education]~~ board, through the state superintendent of public instruction, shall develop ~~[a plan]~~ an online data reporting tool to analyze the results of ~~[the U-PASS scores for all grade levels and courses required under Section 53A-1-603.]~~ statewide assessments.

(2) The ~~[plan]~~ online data reporting tool shall include components designed to:

(a) assist school districts and individual schools to use the results of the analysis in planning, evaluating, and enhancing programs; ~~[and]~~

(b) identify schools not achieving state-established acceptable levels of student performance in order to assist those schools in ~~[raising their]~~ improving student performance levels~~[(3) The plan shall include provisions]; and~~

(c) provide:

(i) for statistical reporting of ~~[criterion-referenced or online computer adaptive test]~~ statewide assessment results at state, school district, school, and grade or course levels~~]; and [shall include]~~

(ii) actual levels of performance on ~~[tests]~~ statewide assessments.

~~[(4) Each]~~ (3) A local school board ~~[and]~~ or charter school governing board shall provide for:

(a) evaluation of the ~~[U-PASS test]~~ statewide assessment results and use of the evaluations in setting goals and establishing programs; and

(b) a professional development program that provides teachers, principals, and other professional staff with the training required to successfully establish and maintain ~~[U-PASS]~~ statewide assessments.

Section 10. Section 53A-1-607 is amended to read:

53A-1-607. Scoring -- Reports of results.

(1) ~~[Each]~~ For a statewide assessment that requires the use of a student answer sheet, a local school board ~~[and]~~ or charter school governing board shall submit all answer sheets ~~[for the achievement tests administered under U-PASS]~~ on a per-school and per-class basis to the state superintendent of public instruction for scoring unless the ~~[test]~~ assessment requires scoring by a national testing service.

(2) The district, school, and class results of the ~~[U-PASS testing program]~~ statewide assessments, but not the score or relative position of individual students, shall be reported to each local school board or charter school governing board annually at a regularly scheduled meeting.

(3) ~~[Each local board and]~~ A local school board or charter school governing board:

(a) shall make copies of the report available to the general public upon request~~[(4) The board]; and~~

(b) may charge a fee for ~~[the copying costs]~~ the cost of copying the report.

~~[(5) The State Board of Education]~~

(4) (a) The board shall annually provide to school districts and charter schools a comprehensive report for each of ~~[their]~~ the school district's and charter school's students showing the student's ~~[U-PASS test]~~ statewide assessment results for each year that the student took a ~~[U-PASS test]~~. ~~[School districts and charter schools]~~ statewide assessment.

(b) A school district or charter school shall give a copy of the comprehensive report to the student's parents and make the report available to school staff, as appropriate.

Section 11. Section 53A-1-608 is amended to read:

53A-1-608. Preparation for tests.

(1) School district employees may not ~~[carry on]~~ conduct any specific instruction or preparation of students ~~[which]~~ that would be a breach of testing ethics, such as the teaching of specific test questions.

(2) School district employees who administer the test shall follow the standardization procedures in the ~~[publisher's]~~ test administration manual for an assessment and any additional specific instructions developed by the ~~[State Board of Education]~~ board.

(3) The ~~[State Board of Education]~~ board may revoke the certification of an individual who violates this section.

Section 12. Section 53A-1-610 is amended to read:

53A-1-610. Grade level specification change.

(1) ~~[The State Board of Education may replace the grade]~~ The board may change a grade level specification for the administration of specific ~~[tests]~~ assessments under this part ~~[with a specification of age or time elapsed since the student entered school if the replacement]~~ to a different grade level specification or a competency-based specification if the specification is more consistent with patterns of school organization.

(2) ~~[The]~~ (a) If the board changes a grade level specification described in Subsection (1), the board shall submit a report to the Legislature explaining the reasons for ~~[replacing]~~ changing the grade level specification.

(b) The board shall submit the report at least six months ~~prior to~~ before the anticipated change.

Section 13. Section 53A-1-611 is amended to read:

53A-1-611. College readiness assessments.

(1) The Legislature recognizes the need for the ~~[State Board of Education]~~ board to develop and implement standards and assessment processes to ensure that student progress is measured and that school boards and school personnel are accountable.

~~[(2) In addition to its responsibilities under Sections 53A-1-603 through 53A-1-605, the State Board of Education shall:]~~

~~[(a) adopt college readiness assessments for secondary students; and]~~

~~[(b) require a school district or charter school to administer the college readiness assessments adopted by the State Board of Education.]~~

~~[(3) A college readiness assessment adopted by the State Board of Education:]~~

~~[(a) shall include the college admissions test that includes an assessment of language arts, mathematics, and science that is]~~

(2) The board shall adopt a college readiness assessment for secondary students that:

(a) is the college readiness assessment most commonly submitted to local universities; and

(b) may include:

(i) the Armed Services Vocational Aptitude Battery; ~~and~~ or

(ii) a battery of assessments that are predictive of success in higher education.

~~[(4)] (3) (a) Except as provided in Subsection [(4)(b), the State Board of Education shall require] (3)(b), a school district or charter school [to] shall annually administer [a test] the college readiness assessment adopted under Subsection [(3)(a)] (2) to all students in grade 11.~~

(b) A student with an IEP may take an appropriate college readiness assessment other than ~~[a test]~~ the assessment adopted by the ~~[State Board of Education]~~ board under Subsection ~~[(3)(a)] (2)~~, as determined by the student's IEP.

Section 14. Section 53A-1-611.5 is enacted to read:

53A-1-611.5. High school assessments.

(1) The board shall adopt a high school assessment that:

(a) is predictive of a student's college readiness as measured by the college readiness assessment described in Section 53A-1-611; and

(b) provides a growth score for a student from grade 9 to 10.

(2) A school district or charter school shall annually administer the high school assessment adopted by the board under Subsection (1) to all students in grades 9 and 10.

Section 15. Section 53A-1-613 is amended to read:

53A-1-613. Online test preparation program.

(1) The ~~[State Board of Education]~~ board shall contract with a provider, selected through a request for proposals process, to provide an online ~~[program to prepare students to take the college admissions test that includes an assessment of language arts, mathematics, and science]~~ college readiness diagnostic tool that is aligned with the college readiness assessment that is most commonly submitted to local universities.

(2) An online test preparation program described in Subsection (1):

(a) (i) shall allow a student to independently access online materials and learn at the student's own pace; and

(ii) may be used to provide classroom and teacher-assisted instruction;

(b) shall provide online study materials, diagnostic exams, drills, and practice tests in an approach that is engaging to high school students;

(c) shall enable electronic reporting of student progress to administrators, teachers, parents, and other facilitators;

(d) shall record a student's progress in an online dashboard that provides diagnostic assessment of the content areas tested and identifies mastery of corresponding skill sets; and

(e) shall provide training and professional development to personnel in school districts and charter schools on how to utilize the online test preparation program and provide teacher-assisted instruction to students.

~~[(3) To be eligible to administer a college admissions test provided by the State Board of Education from funds appropriated for college readiness assessments, a school district or charter school shall:]~~

~~[(a) promote the use of the online test preparation program; and]~~

~~[(b) inform parents and students of the availability of, and how to access and use, the online test preparation program. (4) The State Board of Education,]~~

(3) The board, school districts, and charter schools shall make the online test preparation program available to a student:

(a) beginning in the 2013-14 school year; and

(b) for at least one full year ~~[, except a student in grade 11 in the 2013-14 school year shall have access to the online test preparation program as soon as the program can be made operational].~~

Section 16. Section 53A-1-708 is amended to read:

53A-1-708. Grants for online delivery of statewide assessments.

(1) As used in this section:

(a) "Adaptive tests" means tests administered during the school year using an online adaptive test system.

(b) "Core standards for Utah public schools" means the standards ~~[developed and adopted by the State Board of Education that define the knowledge and skills students should have in kindergarten through grade 12 to enable students to be prepared for college or workforce training.]~~ established by the State Board of Education as described in Section 53A-1-402.6.

(c) "Statewide assessment" means the same as that term is defined in Section 53A-1-602.

~~[(e)]~~ (d) "Summative tests" means tests administered near the end of a course to assess overall achievement of course goals.

~~[(d)]~~ (e) "Uniform online summative test system" means a single system for the online delivery of summative tests required ~~[under U-PASS]~~ as statewide assessments that:

(i) is coordinated by the State Board of Education;

(ii) ensures the reliability and security of ~~[U-PASS tests]~~ statewide assessments; and

(iii) is selected through collaboration between the State Board of Education and school district representatives with expertise in technology, assessment, and administration.

~~[(e) "U-PASS" means the Utah Performance Assessment System for Students.]~~

(2) The State Board of Education may award grants to school districts and charter schools to implement ~~[one or both of the following]:~~

(a) a uniform online summative test system to enable ~~[parents of students and]~~ school staff and parents of students to review ~~[U-PASS test]~~ statewide assessment scores by the end of the school year; or

(b) an online adaptive test system to enable parents of students and school staff to measure and monitor a student's academic progress during a school year.

(3) (a) Grant money may be used to pay for any of the following, provided it is directly related to implementing a uniform online summative test system, an online adaptive test system, or both:

(i) computer equipment and peripherals, including electronic data capture devices designed for electronic test administration and scoring;

(ii) software;

(iii) networking equipment;

(iv) upgrades of existing equipment or software;

(v) upgrades of existing physical plant facilities;

(vi) personnel to provide technical support or coordination and management; and

(vii) teacher professional development.

(b) Equipment purchased in compliance with Subsection (3)(a), when not in use for the online delivery of summative tests or adaptive tests required ~~[under U-PASS]~~ as statewide assessments, may be used for other purposes.

(4) ~~[The]~~ In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules:

(a) establishing procedures for applying for and awarding grants;

(b) specifying how grant money ~~[shall be]~~ is allocated among school districts and charter schools;

(c) requiring reporting of grant money expenditures and evidence showing that the grant money has been used to implement a uniform online summative test system, an online adaptive test system, or both;

(d) establishing technology standards for an online adaptive testing system;

(e) requiring a school district or charter school that receives a grant under this section to implement, in compliance with ~~[Chapter 1,]~~ Part 14, Student Data Protection Act, and Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act, an online adaptive test system by the 2014-15 school year that:

(i) meets the technology standards established under Subsection (4)(d); and

(ii) is aligned with the core standards for Utah public schools;

(f) requiring a school district or charter school to provide matching funds to implement a uniform online summative test system, an online adaptive test system, or both in an amount that is greater than or equal to the amount of a grant received under this section; and

(g) ensuring that student identifiable data is not released to any person, except as provided by ~~[Chapter 1,]~~ Part 14, Student Data Protection Act, Section 53A-13-301, and rules of the State Board of Education adopted under that section.

(5) If a school district or charter school uses grant money for purposes other than those stated in Subsection (3), the school district or charter school is liable for reimbursing the State Board of Education in the amount of the grant money improperly used.

(6) A school district or charter school may not use federal funds to provide the matching funds required to receive a grant under this section.

(7) A school district may not impose a tax rate above the certified tax rate for the purpose of generating revenue to provide matching funds for a grant under this section.

Section 17. Section 53A-1-1101 is repealed and reenacted to read:

Part 11. School Accountability System

53A-1-1101. Title.

This part is known as "School Accountability System."

Section 18. Section 53A-1-1102 is repealed and reenacted to read:

53A-1-1102. Definitions.

As used in this part:

- (1) "Board" means the State Board of Education.
- (2) "Individualized education program" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
- (3) "Lowest performing 25% of students" means the proportion of a school's students who scored in the lowest 25% of students in the school on a statewide assessment based on the prior school year's scores.

(4) "Statewide assessment" means one or more of the following, as applicable:

- (a) a standards assessment described in Section 53A-1-604;
- (b) a high school assessment described in Section 53A-1-611.5;
- (c) a college readiness assessment described in Section 53A-1-611; or
- (d) an alternate assessment administered to a student with a disability.

Section 19. Section 53A-1-1103 is repealed and reenacted to read:

53A-1-1103. Statewide school accountability system -- State Board of Education rulemaking.

- (1) There is established a statewide school accountability system.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules to implement the school accountability system in accordance with this part.

Section 20. Section 53A-1-1104 is repealed and reenacted to read:

53A-1-1104. Schools included in school accountability system -- Other indicators and point distribution for a school that serves a special student population.

- (1) Except as provided in Subsection (2), the board shall include all public schools in the state in the school accountability system established under this part.
- (2) The board shall exempt from the school accountability system:

(a) a school in which the number of students tested on a statewide assessment is lower than the minimum sample size necessary, based on acceptable professional practice for statistical reliability, or when release of the information would violate 20 U.S.C. Sec. 1232h, the prevention of the unlawful release of personally identifiable student data;

(b) a school in the school's first year of operations if the school's local school board or charter school governing board requests the exemption; or

(c) a high school in the school's second year of operations if the school's local school board or charter school governing board requests the exemption.

(3) Notwithstanding the provisions of this part, the board may use, to appropriately assess the educational impact of a school that serves a special student population:

- (a) other indicators in addition to the indicators described in Section 53A-1-1106 or 53A-1-1107; or
- (b) different point distribution than the point distribution described in Section 53A-1-1108.

Section 21. Section 53A-1-1105 is repealed and reenacted to read:

53A-1-1105. Rating schools.

(1) Except as provided in Subsection (3), and in accordance with this part, the board shall annually assign to each school an overall rating using an A through F letter grading scale where, based on the school's performance level on the indicators described in Subsection (2):

- (a) an A grade represents an exemplary school;
- (b) a B grade represents a commendable school;
- (c) a C grade represents a typical school;
- (d) a D grade represents a developing school; and
- (e) an F grade represents a critical needs school.

(2) A school's overall rating described in Subsection (1) shall be based on the school's performance on the indicators described in:

- (a) Section 53A-1-1106, for an elementary school or a middle school; or
- (b) Section 53A-1-1107, for a high school.

(3) (a) For a school year in which the board determines it is necessary to establish, due to a transition to a new assessment, a new baseline to determine student growth described in Section 53A-1-1111, the board is not required to assign an overall rating described in Subsection (1) to a school to which the new baseline applies.

(b) For the 2017-2018 school year, the board:

- (i) shall evaluate a school based on the school's performance level on the indicators described in Subsection (2) and in accordance with this part; and
- (ii) is not required to assign a school an overall rating described in Subsection (1).

Section 22. Section 53A-1-1106 is repealed and reenacted to read:

53A-1-1106. Indicators for elementary and middle schools.

For an elementary school or a middle school, the board shall assign the school's overall rating, in accordance with Section 53A-1-1108, based on the school's performance on the following indicators:

(1) academic achievement as measured by performance on a statewide assessment of English language arts, mathematics, and science;

(2) academic growth as measured by progress from year to year on a statewide assessment of English language arts, mathematics, and science; and

(3) equitable educational opportunity as measured by:

(a) academic growth of the lowest performing 25% of students as measured by progress of the lowest performing 25% of students on a statewide assessment of English language arts, mathematics, and science; and

(b) except as provided in Section 53A-1-1110, English learner progress as measured by performance on an English learner assessment established by the board.

Section 23. Section 53A-1-1107 is repealed and reenacted to read:

53A-1-1107. Indicators for high schools.

For a high school, in accordance with Section 53A-1-1108, the board shall assign the school's overall rating based on the school's performance on the following indicators:

(1) academic achievement as measured by performance on a statewide assessment of English language arts, mathematics, and science;

(2) academic growth as measured by progress from year to year on a statewide assessment of English language arts, mathematics, and science;

(3) equitable educational opportunity as measured by:

(a) academic growth of the lowest performing 25% of students as measured by progress of the lowest performing 25% of students on a statewide assessment of English language arts, mathematics, and science; and

(b) except as provided in Section 53A-1-1110, English learner progress as measured by performance on an English learner assessment established by the board; and

(4) postsecondary readiness as measured by:

(a) the school's graduation rate, as described in Section 53A-1-1108;

(b) student performance, as described in Section 53A-1-1108, on a college readiness assessment described in Section 53A-1-611; and

(c) student achievement in advanced course work, as described in Section 53A-1-1108.

Section 24. Section 53A-1-1108 is repealed and reenacted to read:

53A-1-1108. Calculation of points.

(1) (a) The board shall award to a school points for academic achievement described in Subsection 53A-1-1106(1) or 53A-1-1107(1) as follows:

(i) the board shall award a school points proportional to the percentage of the school's students who, out of all the school's students who take a statewide assessment of English language arts, score at or above the proficient level on the assessment;

(ii) the board shall award a school points proportional to the percentage of the school's students who, out of all the school's students who take a statewide assessment of mathematics, score at or above the proficient level on the assessment; and

(iii) the board shall award a school points proportional to the percentage of the school's students who, out of all the school's students who take a statewide assessment of science, score at or above the proficient level on the assessment.

(b) (i) The maximum number of total points possible for academic achievement described in Subsection (1)(a) is 56 points.

(ii) The maximum number of points possible for a component listed in Subsection (1)(a)(i), (ii), or (iii) is one-third of the number of points described in Subsection (1)(b)(i).

(2) (a) Subject to Subsection (2)(b), the board shall award to a school points for academic growth described in Subsection 53A-1-1106(2) or 53A-1-1107(2) as follows:

(i) the board shall award a school points for growth of the school's students on a statewide assessment of English language arts;

(ii) the board shall award a school points for growth of the school's students on a statewide assessment of mathematics; and

(iii) the board shall award a school points for growth of the school's students on a statewide assessment of science.

(b) The board shall determine points for growth awarded under Subsection (2)(a) by indexing the points based on:

(i) whether a student's performance on a statewide assessment is equal to or exceeds the student's academic growth target; and

(ii) the amount of a student's growth on a statewide assessment compared to other students with similar prior assessment scores.

(c) (i) The maximum number of total points possible for academic growth described in Subsection (2)(a) is 56 points.

(ii) The maximum number of points possible for a component listed in Subsection (2)(a)(i), (ii), or (iii)

is one-third of the number of points described in Subsection (2)(c)(i).

(3) (a) Subject to Subsection (3)(b), the board shall award to a school points for equitable educational opportunity described in Subsection 53A-1-1106(3) or 53A-1-1107(3) as follows:

(i) the board shall award a school points for growth of the school's lowest performing 25% of students on a statewide assessment of English language arts;

(ii) the board shall award a school points for growth of the school's lowest performing 25% of students on a statewide assessment of mathematics;

(iii) the board shall award a school points for growth of the school's lowest performing 25% of students on a statewide assessment of science; and

(iv) except as provided in Section 53A-1-1110, the board shall award to a school points proportional to the percentage of English learners who achieve adequate progress as determined by the board on an English learner assessment established by the board.

(b) The board shall determine points for academic growth awarded under Subsection (3)(a)(i), (ii), or (iii) by indexing the points based on the amount of a student's growth on a statewide assessment compared to other students with similar prior assessment scores.

(c) (i) The maximum number of total points possible for equitable educational opportunity described in Subsection (3)(a) is 38 points.

(ii) The maximum number of points possible for the components listed in Subsection (3)(a)(i), (ii), and (iii), combined, is 25 points.

(iii) The maximum number of points possible for a component listed in Subsection (3)(a)(i), (ii), or (iii) is one-third of the number of the combined points described in Subsection (3)(c)(ii).

(iv) The maximum number of points possible for the component listed in Subsection (3)(a)(iv) is 13 points.

(4) (a) The board shall award to a high school points for postsecondary readiness described in Subsection 53A-1-1107(4) as follows:

(i) the board shall award to a high school points proportional to the percentage of the school's students who, out of all the school's students who take a college readiness assessment described in Section 53A-1-611, receive a composite score of at least 18 on the assessment;

(ii) the board shall award to a high school points proportional to the percentage of the school's students who achieve at least one of the following:

(A) a C grade or better in an Advanced Placement course;

(B) a C grade or better in a concurrent enrollment course;

(C) a C grade or better in an International Baccalaureate course; or

(D) completion of a career and technical education pathway, as defined by the board; and

(iii) in accordance with Subsection (4)(c), the board shall award to a high school points proportional to the percentage of the school's students who graduate from the school.

(b) (i) The maximum number of total points possible for postsecondary readiness described in Subsection (4)(a) is 75 points.

(ii) The maximum number of points possible for a component listed in Subsection (4)(a)(i), (ii), or (iii) is one-third of the number of points described in Subsection (4)(b)(i).

(c) (i) In calculating the percentage of students who graduate described in Subsection (4)(a)(iii), except as provided in Subsection (4)(c)(ii), the board shall award to a high school points proportional to the percentage of the school's students who graduate from the school within four years.

(ii) The board may award up to 10% of the points allocated for high school graduation described in Subsection (4)(b)(ii) to a school for students who graduate from the school within five years.

Section 25. Section 53A-1-1109 is repealed and reenacted to read:

53A-1-1109. Calculation of total points awarded -- Maximum number of total points possible.

(1) Except as provided in Section 53A-1-1110, the board shall calculate the number of total points awarded to a school by totaling the number of points the board awards to the school in accordance with Section 53A-1-1108.

(2) The maximum number of total points possible under Subsection (1) is:

(a) for an elementary school or a middle school, 150 points; or

(b) for a high school, 225 points.

Section 26. Section 53A-1-1110 is repealed and reenacted to read:

53A-1-1110. Exclusion of English learner progress -- Calculation of total points awarded for a school with fewer than 10 English learners.

(1) For a school that has fewer than 10 English learners, the board shall:

(a) exclude the use of English learner progress in determining the school's overall rating by:

(i) awarding no points to the school for English learner progress described in Subsection 53A-1-1108(3)(a)(iv); and

(ii) excluding the points described in Subsection 53A-1-1108(3)(c)(iv) from the school's maximum points possible; and

(b) calculate the number of total points awarded to the school by totaling the number of points the

board awards to the school in accordance with Section 53A-1-1108 subject to the exclusion described in Subsection (1)(a).

(2) The maximum number of total points possible under Subsection (1) is:

(a) for an elementary school or a middle school, 137 points; or

(b) for a high school, 212 points.

Section 27. Section 53A-1-1111 is repealed and reenacted to read:

53A-1-1111. State Board of Education duties -- Proficient level -- Student growth -- English learner adequate progress.

(1) (a) For the purpose of determining whether a student scores at or above the proficient level on a statewide assessment, the board shall determine, through a process that evaluates student performance based on specific criteria, the minimum level that demonstrates proficiency for each statewide assessment.

(b) If the board adjusts the minimum level that demonstrates proficiency described in Subsection (1)(a), the board shall report the adjustment and the reason for the adjustment to the Education Interim Committee no later than 30 days after the day on which the board makes the adjustment.

(2) (a) For the purpose of determining whether a student's performance on a statewide assessment is equal to or exceeds the student's academic growth target, the board shall calculate, for each individual student, the amount of growth necessary to achieve or maintain proficiency by a future school year determined by the board.

(b) For the purpose of determining the amount of a student's growth on a statewide assessment compared to other students with similar prior assessment scores, the board shall calculate growth as a percentile for a student using appropriate statistical methods.

(3) For the purpose of determining whether an English learner achieves adequate progress on an English learner assessment established by the board, the board shall determine the minimum progress that demonstrates adequate progress.

Section 28. Section 53A-1-1112 is repealed and reenacted to read:

53A-1-1112. Reporting.

(1) The board shall annually publish on the board's website a report card that includes for each school:

(a) the school's overall rating described in Subsection 53A-1-1105(1);

(b) the school's performance on each indicator described in:

(i) Section 53A-1-1106, for an elementary school or a middle school; or

(ii) Section 53A-1-1107, for a high school;

(c) information comparing the school's performance on each indicator described in Subsection (1)(b) with:

(i) the average school performance; and

(ii) the school's performance in all previous years for which data is available;

(d) the percentage of students who participated in statewide assessments;

(e) for an elementary school, the percentage of students who read on grade level in grades 1 through 3; and

(f) for a high school, performance on Advanced Placement exams.

(2) A school may include in the school's report card described in Subsection (1) up to two self-reported school quality indicators that:

(a) are approved by the board for inclusion; and

(b) may include process or input indicators.

(3) (a) The board shall develop an individualized student achievement report that includes:

(i) information on the student's level of proficiency as measured by a statewide assessment; and

(ii) a comparison of the student's academic growth target and actual academic growth as measured by a statewide assessment.

(b) The board shall, subject to the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, make the individualized student achievement report described in Subsection (3)(a) available for a school district or charter school to access electronically.

(c) A school district or charter school shall distribute an individualized student achievement report to the parent or guardian of the student to whom the report applies.

Section 29. Section 53A-1-1113.5 is enacted to read:

53A-1-1113.5. Overall rating based on student performance -- Establishment of performance thresholds and criteria -- Report during interim.

(1) As used in this section, "statewide assessment" means one or more of the following, as applicable:

(a) a standards assessment described in Section 53A-1-604;

(b) a high school assessment described in Section 53A-1-611.5;

(c) a college readiness assessment described in Section 53A-1-611; or

(d) an alternate assessment administered to a student with a disability.

(2) (a) The board shall calculate a school's grade for the 2016-2017 school year in accordance with Part 11, School Grading Act.

(b) For the 2017-2018 school year, the board:

(i) shall evaluate a school based on the school's performance level on the indicators described in Subsection (7); and

(ii) is not required to assign a school an overall rating.

(c) The board shall assign a school an overall rating for the 2018-2019 school year or a school year thereafter in accordance with Subsection (3).

(3) The board shall assign a school an overall rating using an A through F letter grading scale where, based on the school's performance level on the indicators described in Subsection (7):

(a) an A grade represents an exemplary school;

(b) a B grade represents a commendable school;

(c) a C grade represents a typical school;

(d) a D grade represents a developing school; and

(e) an F grade represents a critical needs school.

(4) (a) The board shall engage in a criteria setting process to establish:

(i) performance thresholds for the overall ratings described in Subsection (3); and

(ii) a system for assigning a school an overall rating based on evaluating the school's performance against specific criteria.

(b) In establishing the performance thresholds described in Subsection (4)(a), the board shall solicit and consider input from:

(i) legislators;

(ii) the governor;

(iii) representatives from local school boards;

(iv) other representatives from school districts, including superintendents;

(v) representatives from charter school governing boards;

(vi) other representatives from charter schools;

(vii) teachers; and

(viii) parents.

(5) On or before the Education Interim Committee's September 2017 interim meeting, the board shall report to the Education Interim Committee:

(a) the performance thresholds and criteria described in Subsection (4), including rationale and documentation of the procedures used to develop the performance thresholds and criteria; and

(b) a sample report card for a school, including a sample display of:

(i) the school's overall rating described in Subsection (3);

(ii) the school's performance on each indicator described in Subsection (7);

(iii) information comparing the school's performance on each indicator described in Subsection (7) with:

(A) the average school performance; and

(B) the school's performance in all previous years for which data is available;

(iv) the percentage of students who participated in statewide assessments;

(v) for an elementary school, the percentage of students who read on grade level in grades 1 through 3;

(vi) for a high school, performance on Advanced Placement exams; and

(vii) up to two school-reported school quality indicators that may include process or input indicators.

(6) On or before October 31, 2017, the Education Interim Committee shall make recommendations related to the board's report described in Subsection (5) to the Legislative Management Committee.

(7) A school's overall rating described in Subsection (3) shall be based on the school's performance on the following indicators:

(a) for a school:

(i) academic achievement as measured by performance on a statewide assessment of English language arts, mathematics, and science;

(ii) academic growth as measured by progress from year to year on a statewide assessment of English language arts, mathematics, and science; and

(iii) equitable educational opportunity as measured by:

(A) academic growth of the lowest performing 25% of students as measured by progress of the lowest performing 25% of students on a statewide assessment of English language arts, mathematics, and science; and

(B) English learner progress as measured by performance on an English learner assessment established by the board; and

(b) for a high school, in addition to the indicators described in Subsection (7)(a), postsecondary readiness as measured by:

(i) the school's graduation rate;

(ii) student performance on a college readiness assessment described in Section 53A-1-611; and

(iii) student achievement in advanced course work.

Section 30. Section 53A-1-1202 is amended to read:

53A-1-1202. Definitions.

As used in this part:

(1) "Board" means the State Board of Education.

(2) "Charter school authorizer" means the same as that term is defined in Section 53A-1a-501.3.

(3) “District school” means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(4) “Educator” means the same as that term is defined in Section 53A-6-103.

(5) “Final remedial year” means the second school year following the initial remedial year.

(6) “Initial remedial year” means the school year a district school or charter school is designated as a low performing school under Section 53A-1-1203.

(7) “Low performing school” means a district school or charter school that has been designated as a low performing school by the board ~~[because the school is: (a) in the lowest performing 3% of schools statewide according to the percentage of possible points earned under the school grading system; and (b) a low performing school according to other outcome-based measures as may be defined in rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]~~ in accordance with Section 53A-1-1203.

(8) “School accountability system” means the school accountability system established in Part 11, School Accountability System.

~~[(8)]~~ (9) “School grade” or “grade” means the letter grade assigned to a school as the school’s overall rating under the school ~~[grading]~~ accountability system.

~~[(9)]~~ “School grading system” means the system established under Part 11, School Grading Act, of assigning letter grades to schools.]

~~[(10)]~~ “Statewide assessment” means a test of student achievement in basic academic subjects, including a test administered in a computer adaptive format that is administered statewide under Part 6, Achievement Tests.]

Section 31. Section 53A-1-1203 is amended to read:

53A-1-1203. State Board of Education to designate low performing schools.

~~[(1)]~~ (1) Except as provided in Subsection (2), on or before September 1, the board shall annually designate a school as a low performing school if the school is:

~~[(1)]~~ (a) in the lowest performing 3% of schools statewide according to the percentage of possible points earned under the school ~~[grading]~~ accountability system; and

~~[(2)]~~ (b) a low performing school according to other outcome-based measures as may be defined in rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) The board is not required to designate as a low performing school a school for which the board is not required to assign an overall rating in accordance with Section 53A-1-1105.

Section 32. Section 53A-1-1206 is amended to read:

53A-1-1206. State Board of Education to identify independent school turnaround experts -- Review and approval of school turnaround plans -- Appeals process.

(1) On or before August 30 each year, the board shall identify at least two ~~[or more]~~ approved independent school turnaround experts, through a request for proposals process, that a low performing school may select from to partner with to:

(a) collect and analyze data on the low performing school’s student achievement, personnel, culture, curriculum, assessments, instructional practices, governance, leadership, finances, and policies;

(b) recommend changes ~~[to the low performing school’s culture, curriculum, assessments, instructional practices, governance, finances, policies, or other areas]~~ based on data collected under Subsection (1)(a);

(c) develop and implement, in partnership with the school turnaround committee, a school turnaround plan that meets the criteria described in Subsection 53A-1-1204(3);

(d) monitor the effectiveness of a school turnaround plan through reliable means of evaluation, including on-site visits, observations, surveys, analysis of student achievement data, and interviews;

(e) provide ongoing implementation support and project management for a school turnaround plan;

(f) provide high-quality professional development personalized for school staff that is designed to build the:

(i) leadership capacity of the school principal; and

(ii) instructional capacity of school staff; and

(g) leverage support from community partners to coordinate an efficient delivery of supports to students both inside and outside the classroom.

(2) In identifying independent school turnaround experts under Subsection (1), the board shall identify experts that:

(a) have a credible track record of improving student academic achievement in public schools with various demographic characteristics, as measured by statewide assessments described in Section 53A-1-602;

(b) have experience designing, implementing, and evaluating data-driven instructional systems in public schools;

(c) have experience coaching public school administrators and teachers on designing data-driven school improvement plans;

(d) have experience working with the various education entities that govern public schools;

(e) have experience delivering high-quality professional development in instructional effectiveness to public school administrators and teachers;

(f) are willing to be compensated for professional services based on performance as described in Subsection (3); and

(g) are willing to partner with any low performing school in the state, regardless of location.

(3) (a) When awarding a contract to an independent school turnaround expert selected by a local school board under Subsection 53A-1-1204(2) or by a charter school governing board under Subsection 53A-1-1205(4)(b), the board shall ensure that a contract between the board and the independent school turnaround expert specifies that the board will:

(i) pay an independent school turnaround expert no more than 50% of the expert's professional fees at the beginning of the independent school turnaround expert's work for the low performing school; and

(ii) pay the remainder of the independent school turnaround expert's professional fees upon completion of the independent school turnaround expert's work for the low performing school if:

(A) the independent school turnaround expert fulfills the terms of the contract; and

(B) the low performing school's grade improves by at least one letter grade, as determined by the board under Subsection (3)(b).

(b) The board shall determine whether a low performing school's grade has improved under Subsection (3)(a)(ii) by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade:

(i) for the final remedial year; or

(ii) for the last school year of the extension period if, as described in Section 53A-1-1207:

(A) a school is granted an extension; and

(B) the board extends the contract of the school's independent school turnaround expert.

(c) In negotiating a contract with an independent school turnaround expert, the board shall offer:

(i) differentiated amounts of funding based on student enrollment; and

(ii) a higher amount of funding for schools that are in the lowest performing 1% of schools statewide according to the percentage of possible points earned under the school [grading] accountability system.

(4) The board shall:

(a) review a school turnaround plan submitted for approval under Subsection 53A-1-1204(5)(b) or under Subsection 53A-1-1205(7)(b) within 30 days of submission;

(b) approve a school turnaround plan that:

(i) is timely;

(ii) is well-developed; and

(iii) meets the criteria described in Subsection 53A-1-1204(3); and

(c) subject to legislative appropriations, provide funding to a low performing school for interventions identified in an approved school turnaround plan if the local school board or charter school governing board provides matching funds or an in-kind contribution of goods or services in an amount equal to the funding the low performing school would receive from the board.

(5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules to establish an appeals process for:

(i) a low performing district school that is not granted approval from the district school's local school board under Subsection 53A-1-1204(5)(b);

(ii) a low performing charter school that is not granted approval from the charter school's charter school governing board under Subsection 53A-1-1205(7)(b); and

(iii) a local school board or charter school governing board that is not granted approval from the board under Subsection (4)(b).

(b) The board shall ensure that rules made under Subsection (5)(a) require an appeals process described in:

(i) Subsections (5)(a)(i) and (ii) to be resolved on or before April 1 of the initial remedial year; and

(ii) Subsection (5)(a)(iii) to be resolved on or before May 15 of the initial remedial year.

(6) (a) Subject to Subsection (6)(b), the board shall balance the need to prioritize funding appropriated by the Legislature to carry out the provisions of this part to contract with highly qualified independent school turnaround experts with the need to fund:

(i) interventions to facilitate the implementation of a school turnaround plan under Subsection (4)(c);

(ii) the School Recognition and Reward Program created under Section 53A-1-1208; and

(iii) the School Leadership Development Program created under Section 53A-1-1209.

(b) The board may use up to 4% of the funds appropriated by the Legislature to carry out the provisions of this part for administration if the amount for administration is approved by the board in an open meeting.

Section 33. Section 53A-1-1207 is amended to read:

53A-1-1207. Consequences for failing to improve the school grade of a low performing school.

(1) As used in this section, "high performing charter school" means a charter school that:

(a) satisfies all requirements of state law and board rules;

(b) meets or exceeds standards for student achievement established by the charter school's charter school authorizer; and

(c) has received at least a [~~"B"~~] B grade under the school [~~grading~~] accountability system in the previous two school years.

(2) (a) A low performing school may petition the board for an extension to continue school improvement efforts for up to two years if the low performing school's grade does not improve by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the final remedial year.

(b) The board may only grant an extension under Subsection (2)(a) if the low performing school has increased the number of points awarded under the school [~~grading~~] accountability system by at least:

(i) 25% for [~~a school that is not a high school; and~~] an elementary school or a middle school; or

(ii) 10% for a high school.

(c) The board shall determine whether a low performing school has increased the number of points awarded under the school [~~grading~~] accountability system by the percentages described in Subsection (2)(b) by comparing the number of points awarded for the school year prior to the initial remedial year to the number of points awarded for the final remedial year.

(d) The board may extend the contract of an independent school turnaround expert of a low performing school that is granted an extension under this Subsection (2).

(e) A school that has been granted an extension under this Subsection (2) is eligible for:

(i) continued funding under Subsection 53A-1-1206(4)(c); and

(ii) the School Recognition and Reward Program under Section 53A-1-1208.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing consequences for a low performing school that:

(a) (i) does not improve the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the final remedial year; and

(ii) is not granted an extension under Subsection (2); or

(b) (i) is granted an extension under Subsection (2); and

(ii) does not improve the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the last school year of the extension period.

(4) The board shall ensure that the rules established under Subsection (3) include a mechanism for:

(a) restructuring a district school that may include:

(i) contract management;

(ii) conversion to a charter school; or

(iii) state takeover; and

(b) restructuring a charter school that may include:

(i) termination of a school's charter;

(ii) closure of a charter school; or

(iii) transferring operation and control of the charter school to:

(A) a high performing charter school; or

(B) the school district in which the charter school is located.

Section 34. Section 53A-1-1209 is amended to read:

53A-1-1209. School Leadership Development Program.

(1) As used in this section, "school leader" means a school principal or assistant principal.

(2) There is created the School Leadership Development Program to increase the number of highly effective school leaders capable of:

(a) initiating, achieving, and sustaining school improvement efforts; and

(b) forming and sustaining community partnerships as described in Section 53A-4-303.

(3) The board shall identify one or more providers, through a request for proposals process, to develop or provide leadership development training for school leaders that:

(a) may provide in-depth training in proven strategies to turn around low performing schools;

(b) may emphasize hands-on and job-embedded learning;

(c) aligns with the state's leadership standards established by board rule;

(d) reflects the needs of a school district or charter school where a school leader serves;

(e) may include training on using student achievement data to drive decisions;

(f) may develop skills in implementing and evaluating evidence-based instructional practices;

(g) may develop skills in leading collaborative school improvement structures, including professional learning communities; and

(h) includes instruction on forming and sustaining community partnerships as described in Section 53A-4-303.

(4) Subject to legislative appropriations, the State Board of Education shall provide incentive pay to a school leader who:

(a) completes leadership development training under this section; and

(b) agrees to work, for at least five years, in a school that received an ~~["F"]~~ F grade or ~~["D"]~~ D grade under the school ~~[grading]~~ accountability system in the school year previous to the first year the school leader:

(i) completes leadership development training; and

(ii) begins to work, or continues to work, in a school described in this Subsection (4)(b).

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules specifying:

(a) eligibility criteria for a school leader to participate in the School Leadership Development Program;

(b) application procedures for the School Leadership Development Program;

(c) criteria for selecting school leaders from the application pool; and

(d) procedures for awarding incentive pay under Subsection (4).

Section 35. Section 53A-1a-106 is amended to read:

53A-1a-106. School district and individual school powers -- Student education/occupation plan (SEOP) definition.

(1) In order to acquire and develop the characteristics listed in Section 53A-1a-104, each school district and each public school within its respective district shall implement a comprehensive system of accountability in which students advance through public schools by demonstrating competency in ~~[required skills and mastery of required knowledge]~~ the core standards for Utah public schools through the use of diverse assessment instruments such as authentic ~~[and criterion-referenced tests]~~ assessments, projects, and portfolios.

(2) (a) Each school district and public school shall:

(i) develop and implement programs integrating technology into the curriculum, instruction, and student assessment;

(ii) provide for teacher and parent involvement in policymaking at the school site;

(iii) implement a public school choice program to give parents, students, and teachers greater flexibility in designing and choosing among programs with different focuses through schools within the same district and other districts, subject to space availability, demographics, and legal and performance criteria;

(iv) establish strategic planning at both the district and school level and site-based decision making programs at the school level;

(v) provide opportunities for each student to acquire and develop academic and occupational knowledge, skills, and abilities;

(vi) participate in ongoing research and development projects primarily at the school level aimed at improving the quality of education within the system; and

(vii) involve business and industry in the education process through the establishment of partnerships with the business community at the district and school level.

(b) (i) As used in this title, "student education/occupation plan" or "SEOP" means a plan developed by a student and the student's parent or guardian, in consultation with school counselors, teachers, and administrators that:

(A) is initiated at the beginning of grade 7;

(B) identifies a student's skills and objectives;

(C) maps out a strategy to guide a student's course selection; and

(D) links a student to post-secondary options, including higher education and careers.

(ii) Each local school board, in consultation with school personnel, parents, and school community councils or similar entities shall establish policies to provide for the effective implementation of a personalized student education plan (SEP) or student education/occupation plan (SEOP) for each student at the school site.

(iii) The policies shall include guidelines and expectations for:

(A) recognizing the student's accomplishments, strengths, and progress ~~[towards]~~ toward meeting student achievement standards as defined in ~~[U-PASS]~~ the core standards for Utah public schools;

(B) planning, monitoring, and managing education and career development; and

(C) involving students, parents, and school personnel in preparing and implementing SEPs and SEOPs.

(iv) A parent may request conferences with school personnel in addition to SEP or SEOP conferences established by local school board policy.

(v) Time spent during the school day to implement SEPs and SEOPs is considered part of the school term referred to in Subsection 53A-17a-103(4).

(3) A school district or public school may submit proposals to modify or waive rules or policies of a supervisory authority within the public education system in order to acquire or develop the characteristics listed in Section 53A-1a-104.

(4) (a) Each school district and public school shall make an annual report to its patrons on its activities under this section.

(b) The reporting process shall involve participation from teachers, parents, and the community at large in determining how well the district or school is performing.

Section 36. Section 53A-1a-504 is amended to read:

53A-1a-504. Charter school application -- Applicants -- Contents.

(1) (a) An application to establish a charter school may be submitted by:

- (i) an individual;
- (ii) a group of individuals; or
- (iii) a nonprofit legal entity organized under Utah law.

(b) An authorized charter school may apply under this chapter for a charter from another charter school authorizer.

(2) A charter school application shall include:

- (a) the purpose and mission of the school;
 - (b) except for a charter school authorized by a local school board, a statement that, after entering into a charter agreement, the charter school will be organized and managed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act;
- (c) a description of the governance structure of the school, including:
 - (i) a list of the governing board members that describes the qualifications of each member; and
 - (ii) an assurance that the applicant shall, within 30 days of authorization, provide the authorizer with the results of a background check for each member;
- (d) a description of the target population of the school that includes:
 - (i) the projected maximum number of students the school proposes to enroll;
 - (ii) the projected school enrollment for each of the first three years of school operation; and
 - (iii) the ages or grade levels the school proposes to serve;
- (e) academic goals;
- (f) qualifications and policies for school employees, including policies that:
 - (i) comply with the criminal background check requirements described in Section 53A-1a-512.5;
 - (ii) require employee evaluations; and
 - (iii) address employment of relatives within the charter school;
- (g) a description of how the charter school will provide, as required by state and federal law, special education and related services;

(h) for a public school converting to charter status, arrangements for:

(i) students who choose not to continue attending the charter school; and

(ii) teachers who choose not to continue teaching at the charter school;

(i) a statement that describes the charter school's plan for establishing the charter school's facilities, including:

(i) whether the charter school intends to lease or purchase the charter school's facilities; and

(ii) financing arrangements;

(j) a market analysis of the community the school plans to serve;

(k) a capital facility plan;

(l) a business plan;

(m) other major issues involving the establishment and operation of the charter school; and

(n) the signatures of the governing board members of the charter school.

(3) A charter school authorizer may require a charter school application to include:

(a) the charter school's proposed:

(i) curriculum;

(ii) instructional program; or

(iii) delivery methods;

(b) a method for assessing whether students are reaching academic goals, including, at a minimum, ~~participation in the Utah Performance Assessment System for Students under Chapter 1, Part 6, Achievement Tests~~ administering the statewide assessments described in Section 53A-1-602;

(c) a proposed calendar;

(d) sample policies;

(e) a description of opportunities for parental involvement;

(f) a description of the school's administrative, supervisory, or other proposed services that may be obtained through service providers; or

(g) other information that demonstrates an applicant's ability to establish and operate a charter school.

Section 37. Section 53A-1a-510 is amended to read:

53A-1a-510. Termination of a charter.

(1) Subject to the requirements of Subsection (3), a charter school authorizer may terminate a school's charter for any of the following reasons:

(a) failure of the charter school to meet the requirements stated in the charter;

(b) failure to meet generally accepted standards of fiscal management;

(c) subject to Subsection (8), failure to make adequate yearly progress under the No Child Left Behind Act of 2001, 20 U.S.C. Sec. 6301 et seq.;

(d) (i) designation as a low performing school under Chapter 1, ~~[Part 11, School Grading Act]~~ Part 12, School Turnaround and Leadership Development Act; and

(ii) failure to improve the school's grade under the conditions described in Chapter 1, Part 12, School Turnaround and Leadership Development Act;

(e) violation of requirements under this part or another law; or

(f) other good cause shown.

(2) (a) The authorizer shall notify the following of the proposed termination in writing, state the grounds for the termination, and stipulate that the governing board may request an informal hearing before the authorizer:

(i) the governing board of the charter school; and

(ii) if the charter school is a qualifying charter school with outstanding bonds issued in accordance with Chapter 20b, Part 2, Charter School Credit Enhancement Program, the Utah Charter School Finance Authority.

(b) Except as provided in Subsection (2)(e), the authorizer shall conduct the hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act, within 30 days after receiving a written request under Subsection (2)(a).

(c) If the authorizer, by majority vote, approves a motion to terminate a charter school, the governing board of the charter school may appeal the decision to the State Board of Education.

(d) (i) The State Board of Education shall hear an appeal of a termination made pursuant to Subsection (2)(c).

(ii) The State Board of Education's action is final action subject to judicial review.

(e) (i) If the authorizer proposes to terminate the charter of a qualifying charter school with outstanding bonds issued in accordance with Chapter 20b, Part 2, Charter School Credit Enhancement Program, the authorizer shall conduct a hearing described in Subsection (2)(b) 120 days or more after notifying the following of the proposed termination:

(A) the governing board of the qualifying charter school; and

(B) the Utah Charter School Finance Authority.

(ii) Prior to the hearing described in Subsection (2)(e)(i), the Utah Charter School Finance Authority shall meet with the authorizer to determine whether the deficiency may be remedied in lieu of termination of the qualifying charter school's charter.

(3) An authorizer may not terminate the charter of a qualifying charter school with outstanding

bonds issued in accordance with Chapter 20b, Part 2, Charter School Credit Enhancement Program, without mutual agreement of the Utah Charter School Finance Authority and the authorizer.

(4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules that require a charter school to report any threats to the health, safety, or welfare of its students to the State Charter School Board in a timely manner.

(b) The rules under Subsection (4)(a) shall also require the charter school report to include what steps the charter school has taken to remedy the threat.

(5) Subject to the requirements of Subsection (3), the authorizer may terminate a charter immediately if good cause has been shown or if the health, safety, or welfare of the students at the school is threatened.

(6) If a charter is terminated during a school year, the following entities may apply to the charter school's authorizer to assume operation of the school:

(a) the school district where the charter school is located;

(b) the governing board of another charter school; or

(c) a private management company.

(7) (a) If a charter is terminated, a student who attended the school may apply to and shall be enrolled in another public school under the enrollment provisions of Chapter 2, Part 2, District of Residency, subject to space availability.

(b) Normal application deadlines shall be disregarded under Subsection (7)(a).

(8) Subject to the requirements of Subsection (3), an authorizer may terminate a charter pursuant to Subsection (1)(c) under the same circumstances that local educational agencies are required to implement alternative governance arrangements under 20 U.S.C. Sec. 6316.

Section 38. Section 53A-15-1303 is enacted to read:

53A-15-1303. Youth suicide prevention training for employees.

(1) A school district or charter school shall require a licensed employee to complete two hours of professional development training on youth suicide prevention within the employee's license cycle described in Section 53A-6-104.

(2) The board shall:

(a) develop or adopt sample materials to be used by a school district or charter school for professional development training on youth suicide prevention; and

(b) in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, incorporate the training described in Subsection (1)

into professional development training described in Section 53A-6-104.

Section 39. Section 53A-17a-166 is amended to read:

53A-17a-166. Enhancement for At-Risk Students Program.

(1) (a) Subject to the requirements of Subsection (1)(b), the State Board of Education shall distribute money appropriated for the Enhancement for At-Risk Students Program to school districts and charter schools according to a formula adopted by the State Board of Education, after consultation with school districts and charter schools.

(b) (i) The State Board of Education shall appropriate \$1,200,000 from the appropriation for Enhancement for At-Risk Students for a gang prevention and intervention program designed to help students at-risk for gang involvement stay in school.

(ii) Money for the gang prevention and intervention program shall be distributed to school districts and charter schools through a request for proposals process.

(2) In establishing a distribution formula under Subsection (1)(a), the State Board of Education shall use the following criteria:

(a) low performance on [U-PASS tests] statewide assessments described in Section 53A-1-602;

(b) poverty;

(c) mobility; and

(d) limited English proficiency.

(3) A school district or charter school shall use money distributed under this section to improve the academic achievement of students who are at risk of academic failure.

(4) The State Board of Education shall develop performance criteria to measure the effectiveness of the Enhancement for At-Risk Students Program and make an annual report to the Public Education Appropriations Subcommittee on the effectiveness of the program.

Section 40. Section 53A-25b-304 is amended to read:

53A-25b-304. Administration of statewide assessments.

The Utah Schools for the Deaf and the Blind shall annually administer, as applicable, the [U-PASS tests specified] statewide assessments described in Section 53A-1-602, except a student may take an alternative test in accordance with the student's IEP.

Section 41. Repealer.

This bill repeals:

Section 53A-1-1104.5, Two school grades assigned to a combination school.

Section 53A-1-1107.5, Growth target established to determine whether a student demonstrates sufficient growth in a subject.

Section 53A-1-1113, Rules.

Section 53A-3-601, Legislative findings.

Section 53A-3-602.5, School performance report -- Components -- Annual filing.

Section 53A-3-603, State board models, guidelines, and training.

Section 42. Effective date.

(1) Except as provided in Subsections (2) and (3), this bill takes effect on July 1, 2017.

(2) The following sections take effect on November 1, 2017:

(a) Section 53A-1-1101;

(b) Section 53A-1-1102;

(c) Section 53A-1-1103;

(d) Section 53A-1-1104;

(e) Section 53A-1-1105;

(f) Section 53A-1-1106;

(g) Section 53A-1-1107;

(h) Section 53A-1-1108;

(i) Section 53A-1-1109;

(j) Section 53A-1-1110;

(k) Section 53A-1-1111;

(l) Section 53A-1-1112;

(m) Section 53A-1-1202;

(n) Section 53A-1-1203;

(o) Section 53A-1-1206;

(p) Section 53A-1-1207;

(q) Section 53A-1-1209; and

(r) Section 53A-1a-510.

(3) The following sections are repealed on November 1, 2017:

(a) Section 53A-1-1104.5;

(b) Section 53A-1-1107.5;

(c) Section 53A-1-1113;

(d) Section 53A-1-1113.5;

(e) Section 53A-3-601;

(f) Section 53A-3-602.5; and

(g) Section 53A-3-603.

Section 43. Revisor instructions.

The Legislature intends that, on November 1, 2017, the Office of Legislative Research and

General Counsel, in preparing the Utah Code database for publication, replace the reference in Subsection 53A-1-413(7)(g) to “Part 11, School Grading Act” with “Part 11, School Accountability System.”

CHAPTER 379**S. B. 225**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

**JUDGMENT INTEREST
RATE AMENDMENTS**

Chief Sponsor: Curtis S. Bramble

House Sponsor: V. Lowry Snow

LONG TITLE**General Description:**

This bill clarifies provisions relating to postjudgment interest rates.

Highlighted Provisions:

This bill:

- ▶ clarifies the postjudgment interest rate for a final judgment less than \$10,000; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

15-1-4, as last amended by Laws of Utah 2014, Chapter 281

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

Section 1. Section 15-1-4 is amended to read:**15-1-4. Interest on judgments.**

(1) As used in this section ~~[(a) "Federal], "federal~~ postjudgment interest rate" means the interest rate established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

~~[(b) "Final judgment" means the judgment rendered when all avenues of appeal have been exhausted.]~~

(2) (a) Except as provided in Subsection (2)(b), a judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment.

(b) A judgment rendered on a deferred deposit loan subject to Title 7, Chapter 23, Check Cashing and Deferred Deposit Lending Registration Act, shall bear interest at the rate imposed under Subsection (3)(a) on an amount not exceeding the sum of:

(i) the total of the principal balance of the deferred deposit loan;

(ii) interest at the rate imposed by the deferred deposit loan agreement for a period not exceeding 10 weeks as provided in Subsection 7-23-401(4);

(iii) costs;

(iv) attorney fees; and

(v) other amounts allowed by law and ordered by the court.

(3) (a) Except as otherwise provided by law, or as governed by Subsection (4), all other final civil and criminal judgments of the district court and justice court shall bear interest at the federal postjudgment interest rate as of January 1 of each year, plus 2%.

~~[(b) Except as otherwise provided by law or contract, all final judgments under \$10,000 in actions regarding the purchase of goods and services shall bear interest at the federal post judgment interest rate as of January 1 of each year, plus 10%.]~~

~~[(e) (b) The postjudgment interest rate in effect at the time of the judgment shall remain the interest rate for the duration of the judgment.~~

~~[(d) (c) The interest on criminal judgments shall be calculated on the total amount of the judgment.~~

~~[(e) (d) Interest paid on state revenue shall be deposited in accordance with Section 63A-3-505.~~

~~[(f) (e) Interest paid on revenue to a county or municipality shall be paid to the general fund of the county or municipality.~~

(4) A judgment under \$10,000 in an action regarding the purchase of goods and services shall bear interest from the date on which the district court or justice court enters the judgement at 10% plus the federal postjudgment interest rate.

CHAPTER 380**S. B. 226**

Passed March 7, 2017

Approved March 24, 2017

Effective May 9, 2017

**PERMANENT CRIMINAL STALKING
INJUNCTION AMENDMENTS**

Chief Sponsor: Todd Weiler

House Sponsor: Rebecca P. Edwards

LONG TITLE**General Description:**

This bill amends provisions related to offenses that serve as an application for a permanent criminal stalking injunction.

Highlighted Provisions:

This bill:

- ▶ extends an application for a permanent criminal stalking injunction against a person in the following instances:
 - a conviction of stalking;
 - a conviction of attempt to commit stalking; or
 - a plea to any of the above accepted by the court and held in abeyance.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-5-106.5, as last amended by Laws of Utah 2012, Chapter 383

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

Section 1. Section 76-5-106.5 is amended to read:**76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties.**

- (1) As used in this section:
- (a) "Conviction" means:
- (i) a verdict or conviction;
 - (ii) a plea of guilty or guilty and mentally ill;
 - (iii) a plea of no contest; or
 - (iv) the acceptance by the court of a plea in abeyance.
- (b) "Course of conduct" means two or more acts directed at or toward a specific person, including:
- (i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:
 - (A) directly, indirectly, or through any third party; and
 - (B) by any action, method, device, or means; or

(ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

- (A) approaches or confronts a person;
- (B) appears at the person's workplace or contacts the person's employer or coworkers;
- (C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;
- (D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;
- (E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or
- (F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

(c) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(d) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(e) "Reasonable person" means a reasonable person in the victim's circumstances.

(f) "Stalking" means an offense as described in Subsection (2) or (3).

(g) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

- (a) to fear for the person's own safety or the safety of a third person; or
 - (b) to suffer other emotional distress.
- (3) A person is guilty of stalking who intentionally or knowingly violates:

- (a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions; or
 - (b) a permanent criminal stalking injunction issued pursuant to this section.
- (4) In any prosecution under this section, it is not a defense that the actor:

(a) was not given actual notice that the course of conduct was unwanted; or

(b) did not intend to cause the victim fear or other emotional distress.

(5) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

(6) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(7) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9); or

(e) has been or is at the time of the offense a cohabitant, as defined in Section 78B-7-102, of the victim.

(8) Stalking is a second degree felony if the offender:

(a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (7)(a), (b), or (c);

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or

(f) has been previously convicted of an offense under Subsection (7)(d) or (e).

~~[(9) (a) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of~~

~~time serves as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim.]~~

(9) (a) The following serve as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim:

(i) a conviction for:

(A) stalking; or

(B) attempt to commit stalking; or

(ii) a plea to any of the offenses described in Subsection (9)(a)(i) accepted by the court and held in abeyance for a period of time.

(b) A permanent criminal stalking injunction shall be issued by the court at the time of the conviction. The court shall give the defendant notice of the right to request a hearing.

(c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the time of the conviction unless the victim requests otherwise, or for good cause.

(d) If the conviction was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance shall be filed by the victim in the district court as an application and request for a hearing for a permanent criminal stalking injunction.

(10) A permanent criminal stalking injunction shall be issued by the district court granting the following relief where appropriate:

(a) an order:

(i) restraining the defendant from entering the residence, property, school, or place of employment of the victim; and

(ii) requiring the defendant to stay away from the victim, except as provided in Subsection (11), and to stay away from any specified place that is named in the order and is frequented regularly by the victim;

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication, except as provided in Subsection (11), likely to cause annoyance or alarm to the victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim; and

(c) any other orders the court considers necessary to protect the victim and members of the victim's immediate family or household.

(11) If the victim and defendant have minor children together, the court may consider provisions regarding the defendant's exercise of custody and parent-time rights while ensuring the safety of the victim and any minor children. If the court issues a permanent criminal stalking injunction, but declines to address custody and

parent-time issues, a copy of the stalking injunction shall be filed in any action in which custody and parent-time issues are being considered and that court may modify the injunction to balance the parties' custody and parent-time rights.

(12) Except as provided in Subsection (11), a permanent criminal stalking injunction may be modified, dissolved, or dismissed only upon application of the victim to the court which granted the injunction.

(13) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(14) A permanent criminal stalking injunction issued pursuant to this section has effect statewide.

(15) (a) Violation of an injunction issued pursuant to this section constitutes a third degree felony offense of stalking under Subsection (7).

(b) Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(16) This section does not preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking injunction.

CHAPTER 381**S. B. 234**

Passed March 9, 2017
 Approved March 24, 2017
 Effective May 9, 2017

SCHOOL TURNAROUND AMENDMENTS

Chief Sponsor: Ann Millner
 House Sponsor: Bradley G. Last

LONG TITLE**General Description:**

This bill amends provisions of the School Turnaround and Leadership Development Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions related to the designation of a low performing school;
- ▶ requires a local school board of a low performing school, or a charter school governing board of a low performing charter school, to partner with the school turnaround committee to contract with a turnaround expert;
- ▶ specifies turnaround plan and turnaround expert contract requirements;
- ▶ repeals and enacts certain provisions related to funding;
- ▶ directs the State Board of Education to adopt rules establishing implications for a low performing school that fails to improve;
- ▶ amends provisions related to an extension granted to a low performing school;
- ▶ amends and provides a repeal date for the School Recognition and Reward Program;
- ▶ enacts the Turnaround School Teacher Recruitment and Retention Program; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

- 53A-1-1202, as last amended by Laws of Utah 2016, Chapter 241
 53A-1-1203, as last amended by Laws of Utah 2016, Chapter 241
 53A-1-1204, as last amended by Laws of Utah 2016, Chapter 241
 53A-1-1205, as last amended by Laws of Utah 2016, Chapter 241
 53A-1-1206, as last amended by Laws of Utah 2016, Chapter 241
 53A-1-1207, as last amended by Laws of Utah 2016, Chapter 241
 53A-1-1208, as last amended by Laws of Utah 2016, Chapter 241
 63I-2-253, as last amended by Laws of Utah 2016, Chapters 128, 229, 236, 271, and 318

ENACTS:

53A-1-1208.1, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

53A-1-1202, Utah Code Annotated 1953
 53A-1-1203, Utah Code Annotated 1953
 53A-1-1207, Utah Code Annotated 1953

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

Section 1. Section 53A-1-1202 is amended to read:**53A-1-1202. Definitions.**

As used in this part:

- (1) "Board" means the State Board of Education.
 (2) "Charter school authorizer" means the same as that term is defined in Section 53A-1a-501.3.

(3) "Charter school governing board" means the governing board, as defined in Section 53A-1a-501.3, that governs a charter.

~~(3)~~ (4) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

~~(4)~~ (5) "Educator" means the same as that term is defined in Section 53A-6-103.

~~(5)~~ (6) "Final remedial year" means the second school year following the initial remedial year.

(7) "Independent school turnaround expert" or "turnaround expert" means a person identified by the board under Section 53A-1-1206.

~~(6)~~ (8) "Initial remedial year" means the school year a district school or charter school is designated as a low performing school under Section 53A-1-1203.

(9) "Local education board" means a local school board or charter school governing board.

(10) "Local school board" means a board elected under Title 20A, Chapter 14, Part 2, Election of Members of Local Boards of Education.

~~(7)~~ (11) "Low performing school" means a district school or charter school that has been designated a low performing school by the board because the school is:

(a) for two consecutive school years in the lowest performing 3% of schools statewide according to the percentage of possible points earned under the school grading system; and

(b) a low performing school according to other outcome-based measures as may be defined in rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~(8)~~ (12) "School grade" or "grade" means the letter grade assigned to a school under the school grading system.

~~(9)~~ (13) "School grading system" means the system established under Part 11, School Grading Act, of assigning letter grades to schools.

(14) "School turnaround committee" means a committee established under:

- (a) for a district school, Section 53A-1-1204; or

(b) for a charter school, Section 53A-1-1205.

(15) "School turnaround plan" means a plan described in:

(a) for a district school, Section 53A-1-1204; or

(b) for a charter school, Section 53A-1-1205.

[40] (16) "Statewide assessment" means a test of student achievement in basic academic subjects, including a test administered in a computer adaptive format that is administered statewide under Part 6, Achievement Tests.

Section 2. Section 53A-1-1203 is amended to read:

53A-1-1203. State Board of Education to designate low performing schools -- Needs assessment.

(1) ~~[On or before September 1, the]~~ The board shall:

(a) annually designate a school as a low performing school ~~[if the school is:];~~ and

(b) conduct a needs assessment for a low performing school by thoroughly analyzing the root causes of the low performing school's low performance.

(2) The board may use up to 5% of the appropriation provided under this part to hire or contract with one or more individuals to conduct a needs assessment described in Subsection (1)(b).

~~[(1) in the lowest performing 3% of schools statewide according to the percentage of possible points earned under the school grading system; and]~~

~~[(2) a low performing school according to other outcome-based measures as may be defined in rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]~~

(3) A school that was designated as a low performing school based on 2015-2016 school year performance that is not in the lowest performing 3% of schools statewide following the 2016-2017 school year is exempt from the provisions of this part.

Section 3. Section 53A-1-1204 is amended to read:

53A-1-1204. Required action to turn around a low performing district school.

(1) ~~[On or before September 15 of an initial remedial year]~~ In accordance with deadlines established by the board, a local school board of a low performing school shall:

(a) establish a school turnaround committee composed of the following members:

~~[(a)]~~ (i) the local school board member who represents the voting district where the low performing school is located;

~~[(b)]~~ (ii) the school principal;

~~[(e)]~~ (iii) three parents of students enrolled in the low performing school appointed by the chair of the school community council;

~~[(d)]~~ (iv) one teacher at the low performing school appointed by the principal; ~~[and]~~

~~[(e)]~~ (v) one teacher at the low performing school appointed by the school district superintendent~~[-];~~ and

(vi) one school district administrator;

(b) solicit proposals from a turnaround expert identified by the board under Section 53A-1-1206;

(c) partner with the school turnaround committee to select a proposal;

(d) submit the proposal described in Subsection (1)(b) to the board for review and approval; and

(e) subject to Subsections (3) and (4), contract with a turnaround expert.

(2) A proposal described in Subsection (1)(b) shall include a:

(a) strategy to address the root causes of the low performing school's low performance identified through the needs assessment described in Section 53A-1-1203; and

(b) scope of work to facilitate implementation of the strategy that includes at least the activities described in Subsection (4)(b).

~~[(2) (a) Subject to Subsection (2)(b), on or before October 1 of an initial remedial year, a local school board of a low performing school shall partner with the school turnaround committee to select an independent school turnaround expert from the experts identified by the board under Section 53A-1-1206.]~~

~~[(b)]~~ (3) A local school board may not select ~~[an independent school]~~ a turnaround expert that is:

(i) the school district; or

(ii) an employee of the school district.

(4) A contract between a local school board and a turnaround expert:

(a) shall be based on an explicit stipulation of desired outcomes and consequences for not meeting goals, including cancellation of the contract;

(b) shall include a scope of work that requires the turnaround expert to at a minimum:

(i) develop and implement, in partnership with the school turnaround committee, a school turnaround plan that meets the criteria described in Subsection (5);

(ii) monitor the effectiveness of a school turnaround plan through reliable means of evaluation, including on-site visits, observations, surveys, analysis of student achievement data, and interviews;

(iii) provide ongoing implementation support and project management for a school turnaround plan;

(iv) provide high-quality professional development personalized for school staff that is designed to build:

(A) the leadership capacity of the school principal;

(B) the instructional capacity of school staff;

(C) educators' capacity with data-driven strategies by providing actionable, embedded data practices; and

(v) leverage support from community partners to coordinate an efficient delivery of supports to students inside and outside the classroom;

(c) may include a scope of work that requires the turnaround expert to:

(i) develop sustainable school district and school capacities to effectively respond to the academic and behavioral needs of students in high poverty communities; or

(ii) other services that respond to the needs assessment conducted under Section 53A-1-1203;

(d) shall include travel costs and payment milestones; and

(e) may include pay for performance provisions.

[~~3~~] (5) A school turnaround committee shall partner with the [~~independent school~~] turnaround expert selected under Subsection [~~2~~] (1) to develop and implement a school turnaround plan that [~~includes~~]:

[~~(a) the findings of the analysis conducted by the independent school turnaround expert described in Subsection 53A-1-1206(1)(a);~~]

(a) addresses the root causes of the low performing school's low performance identified through the needs assessment described in Section 53A-1-1203;

(b) includes recommendations regarding changes to the low performing school's personnel, culture, curriculum, assessments, instructional practices, governance, leadership, finances, policies, or other areas that may be necessary to implement the school turnaround plan;

(c) includes measurable student achievement goals and objectives and benchmarks by which to measure progress;

(d) includes a professional development plan that identifies a strategy to address problems of instructional practice;

(e) includes a detailed budget specifying how the school turnaround plan will be funded;

(f) includes a plan to assess and monitor progress;

(g) includes a plan to communicate and report data on progress to stakeholders; and

(h) includes a timeline for implementation.

[~~4~~] (6) A local school board of a low performing school shall:

(a) prioritize school district funding and resources to the low performing school; [~~and~~]

(b) grant the low performing school streamlined authority over staff, schedule, policies, budget, and academic programs to implement the school turnaround plan[.]; and

(c) assist the turnaround expert and the low performing school with:

(i) addressing the root cause of the low performing school's low performance; and

(ii) the development or implementation of a school turnaround plan.

[~~5~~] (7) (a) On or before [~~March~~] ~~June~~ 1 of an initial remedial year, a school turnaround committee shall submit the school turnaround plan to the local school board for approval.

(b) Except as provided in Subsection [~~5~~] (7)(c), on or before [~~April~~] ~~July~~ 1 of an initial remedial year, a local school board of a low performing school shall submit the school turnaround plan to the board for approval.

(c) If the local school board does not approve the school turnaround plan submitted under Subsection [~~5~~] (7)(a), the school turnaround committee may appeal the disapproval in accordance with rules made by the board as described in Subsection 53A-1-1206[~~5~~](6).

(8) A local school board, or a local school board's designee, shall annually report to the board progress toward the goals, benchmarks, and timetable in a low performing school's turnaround plan.

Section 4. Section 53A-1-1205 is amended to read:

53A-1-1205. Required action to terminate or turn around a low performing charter school.

(1) [~~On or before September 10 of an initial remedial year~~] ~~In accordance with deadlines established by the board,~~ a charter school authorizer of a low performing school shall initiate a review to determine whether the charter school is in compliance with the school's charter agreement described in Section 53A-1a-508, including the school's established minimum standards for student achievement.

(2) If a low performing school is found to be out of compliance with the school's charter agreement, the charter school authorizer may terminate the school's charter in accordance with Section 53A-1a-510.

(3) A charter school authorizer shall make a determination on the status of a low performing school's charter under Subsection (2) on or before [~~October 1 of~~] a date specified by the board in an initial remedial year.

(4) [~~If~~] ~~In accordance with deadlines established by the board,~~ if a charter school authorizer does not terminate a low performing school's charter under Subsection (2), a charter school governing board of a low performing school shall:

(a) ~~[on or before October 15 of an initial remedial year,]~~ establish a school turnaround committee composed of the following members:

(i) a member of the charter school governing board, appointed by the chair of the charter school governing board;

(ii) the school principal;

(iii) three parents of students enrolled in the low performing school, appointed by the chair of the charter school governing board; and

(iv) two teachers at the low performing school, appointed by the school principal; ~~[and]~~

~~[(b) subject to Subsection (5), on or before November 1 of an initial remedial year, in partnership with the school turnaround committee, select an independent school turnaround expert from the experts identified by the board under Section 53A-1-1206.]~~

(b) solicit proposals from a turnaround expert identified by the board under Section 53A-1-1206;

(c) partner with the school turnaround committee to select a proposal;

(d) submit the proposal described in Subsection (4)(b) to the board for review and approval; and

(e) subject to Subsections (6) and (7), contract with a turnaround expert.

(5) A proposal described in Subsection (4)(b) shall include a:

(a) strategy to address the root causes of the low performing school's low performance identified through the needs assessment described in Section 53A-1-1203; and

(b) scope of work to facilitate implementation of the strategy that includes at least the activities described in Subsection 53A-1-1204(4)(b).

~~[(5)]~~ (6) A charter school governing board may not select a ~~[school]~~ turnaround expert that:

(a) is a member of the charter school governing board;

(b) is an employee of the charter school; or

(c) has a contract to operate the charter school.

(7) A contract entered into between a charter school governing board and a turnaround expert shall include and reflect the requirements described in Subsection 53A-1-1204(4).

~~[(6)]~~ (8) (a) A school turnaround committee shall partner with the independent school turnaround expert selected under Subsection (4)~~[(b)]~~ to develop and implement a school turnaround plan that includes the elements described in Subsection 53A-1-1204~~[(3)]~~(5).

(b) A charter school governing board shall assist a turnaround expert and a low performing charter school with:

(i) addressing the root cause of the low performing school's low performance; and

(ii) the development or implementation of a school turnaround plan.

~~[(7)]~~ (9) (a) On or before ~~[March]~~ June 1 of an initial remedial year, a school turnaround committee shall submit the school turnaround plan to the charter school governing board for approval.

(b) Except as provided in Subsection ~~[(7)]~~ (9)(c), on or before ~~[April]~~ July 1 of an initial remedial year, a charter school governing board of a low performing school shall submit the school turnaround plan to the board for approval.

(c) If the charter school governing board does not approve the school turnaround plan submitted under Subsection ~~[(7)]~~ (9)(a), the school turnaround committee may appeal the disapproval in accordance with rules made by the board as described in Subsection 53A-1-1206~~[(5)]~~(6).

(10) The provisions of this part do not modify or limit a charter school authorizer's authority at any time to terminate a charter school's charter in accordance with Section 53A-1a-510.

(11) A charter school governing board or a charter school governing board's designee shall annually report to the board progress toward the goals, benchmarks, and timetable in a low performing school's turnaround plan.

Section 5. Section 53A-1-1206 is amended to read:

53A-1-1206. State Board of Education to identify turnaround experts -- Review and approval of school turnaround plans -- Appeals process.

(1) ~~[On or before August 30, the]~~ The board shall identify two or more approved independent school turnaround experts, through a ~~[request for proposals]~~ standard procurement process, that a low performing school may ~~[select from to partner]~~ contract with to:

(a) respond to the needs assessment conducted under Section 53A-1-1203; and

(b) provide the services described in Section 53A-1-1204 or 53A-1-1205, as applicable.

~~[(a) collect and analyze data on the low performing school's student achievement, personnel, culture, curriculum, assessments, instructional practices, governance, leadership, finances, and policies;]~~

~~[(b) recommend changes to the low performing school's culture, curriculum, assessments, instructional practices, governance, finances, policies, or other areas based on data collected under Subsection (1)(a);]~~

~~[(c) develop and implement, in partnership with the school turnaround committee, a school turnaround plan that meets the criteria described in Subsection 53A-1-1204(3);]~~

~~[(d) monitor the effectiveness of a school turnaround plan through reliable means of]~~

evaluation, including on-site visits, observations, surveys, analysis of student achievement data, and interviews;]

[~~(e) provide ongoing implementation support and project management for a school turnaround plan;~~]

[~~(f) provide high-quality professional development personalized for school staff that is designed to build the:~~]

[~~(i) leadership capacity of the school principal; and]~~

[~~(ii) instructional capacity of school staff; and]~~

[~~(g) leverage support from community partners to coordinate an efficient delivery of supports to students both inside and outside the classroom.~~]

(2) In identifying independent school turnaround experts under Subsection (1), the board shall identify experts that:

(a) have a credible track record of improving student academic achievement in public schools with various demographic characteristics, as measured by statewide assessments;

(b) have experience designing, implementing, and evaluating data-driven instructional systems in public schools;

(c) have experience coaching public school administrators and teachers on designing data-driven school improvement plans;

(d) have experience working with the various education entities that govern public schools;

(e) have experience delivering high-quality professional development in instructional effectiveness to public school administrators and teachers; and

[~~(f) are willing to be compensated for professional services based on performance as described in Subsection (3); and]~~

[~~(g) (f) are willing to partner with any low performing school in the state, regardless of location.~~]

[~~(3) (a) When awarding a contract to an independent school turnaround expert selected by a local school board under Subsection 53A-1-1204(2) or by a charter school governing board under Subsection 53A-1-1205(4)(b), the board shall ensure that a contract between the board and the independent school turnaround expert specifies that the board will:~~]

[~~(i) pay an independent school turnaround expert no more than 50% of the expert's professional fees at the beginning of the independent school turnaround expert's work for the low performing school; and]~~

[~~(ii) pay the remainder of the independent school turnaround expert's professional fees upon completion of the independent school turnaround expert's work for the low performing school if:~~]

[~~(A) the independent school turnaround expert fulfills the terms of the contract; and]~~

[~~(B) the low performing school's grade improves by at least one letter grade, as determined by the board under Subsection (3)(b).]~~

[~~(b) The board shall determine whether a low performing school's grade has improved under Subsection (3)(a)(ii) by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade;~~]

[~~(i) for the final remedial year; or]~~

[~~(ii) for the last school year of the extension period if, as described in Section 53A-1-1207;~~]

[~~(A) a school is granted an extension; and]~~

[~~(B) the board extends the contract of the school's independent school turnaround expert.~~]

[~~(c) In negotiating a contract with an independent school turnaround expert, the board shall offer:~~]

[~~(i) differentiated amounts of funding based on student enrollment; and]~~

[~~(ii) a higher amount of funding for schools that are in the lowest performing 1% of schools statewide according to the percentage of possible points earned under the school grading system.~~]

[~~(4) (3) (a) The board shall:~~]

[~~(i) review a proposal submitted for approval under Section 53A-17a-1204 or 53A-17a-1205 no later than 30 days after the day on which the proposal is submitted;~~]

[~~(a) (ii) review a school turnaround plan submitted for approval under Subsection 53A-1-1204(5)(7)(b) or under Subsection 53A-1-1205(7)(9)(b) within 30 days of submission; and]~~

[~~(b) (iii) approve a school turnaround plan that:~~]

[~~(i) (A) is timely;~~]

[~~(ii) (B) is well-developed; and]~~

[~~(iii) (C) meets the criteria described in Subsection 53A-1-1204(3); and(5).~~]

[~~(c) subject to legislative appropriations, provide funding to a low performing school for interventions identified in an approved school turnaround plan if the local school board or charter school governing board provides matching funds or an in-kind contribution of goods or services in an amount equal to the funding the low performing school would receive from the board.~~]

[~~(b) The board may not approve a school turnaround plan that is not aligned with the needs assessment conducted under Section 53A-1-1203.~~]

[~~(4) (a) Subject to legislative appropriations, when a school turnaround plan is approved by the board, the board shall distribute funds to each local education board with a low performing school to carry out the provisions of Sections 53A-1-1204 and 53A-1-1205.~~]

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing a distribution method and allowable uses of the funds described in Subsection (4)(a).

(5) The board shall:

(a) monitor and assess progress toward the goals, benchmarks and timetable in each school turnaround plan; and

(b) act as a liaison between a local school board, low performing school, and turnaround expert.

~~[(5)]~~ (6) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules to establish an appeals process for:

(i) a low performing district school that is not granted approval from the district school's local school board under Subsection 53A-1-1204~~(5)~~(7)(b);

(ii) a low performing charter school that is not granted approval from the charter school's charter school governing board under Subsection 53A-1-1205~~(7)~~(9)(b); and

(iii) a local school board or charter school governing board that is not granted approval from the board under Subsection ~~[(4)]~~ (3)(a) or (b).

(b) The board shall ensure that rules made under Subsection ~~[(5)]~~ (6)(a) require an appeals process described in:

(i) Subsections ~~[(5)]~~ (6)(a)(i) and (ii) to be resolved on or before ~~[April]~~ July 1 of the initial remedial year; and

(ii) Subsection ~~[(5)]~~ (6)(a)(iii) to be resolved on or before ~~[May]~~ August 15 of the initial remedial year.

~~[(6) (a) Subject to Subsection (6)(b), the board shall balance the need to prioritize funding appropriated by the Legislature to carry out the provisions of this part to contract with highly qualified independent school turnaround experts with the need to fund.]~~

~~[(i) interventions to facilitate the implementation of a school turnaround plan under Subsection (4)(e);]~~

~~[(ii) the School Recognition and Reward Program created under Section 53A-1-1208; and]~~

~~[(iii) the School Leadership Development Program created under Section 53A-1-1209.]~~

~~[(b) The board may use up to 4% of the funds appropriated by the Legislature to carry out the provisions of this part for administration if the amount for administration is approved by the board in an open meeting.]~~

~~[(7) The board may use up to 4% of the funds appropriated by the Legislature to carry out the provisions of this part for administration if the amount for administration is approved by the board in an open meeting.]~~

Section 6. Section 53A-1-1207 is amended to read:

53A-1-1207. Implications for failing to improve school performance.

(1) As used in this section, "high performing charter school" means a charter school that:

(a) satisfies all requirements of state law and board rules;

(b) meets or exceeds standards for student achievement established by the charter school's charter school authorizer; and

(c) has received at least a "B" grade under the school grading system in the previous two school years.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:

(i) exit criteria for a low performing school;

(ii) criteria for granting a school an extension as described in Subsection (3); and

(iii) implications for a low performing school that does not meet exit criteria after the school's final remedial year or the last school year of the extension period described in Subsection (3).

(b) In establishing exit criteria for a low performing school the board shall:

(i) determine for each low performing school the number of points awarded under the school grading system in the final remedial year that represent a substantive and statistically significant improvement over the number of points awarded under the school grading system in the school year immediately preceding the initial remedial year;

(ii) establish a method to estimate the exit criteria after a low performing school's first remedial year to provide a target for each low performing school; and

(iii) use generally accepted statistical practices.

(c) The board shall through a competitively awarded contract engage a third party with expertise in school accountability and assessments to verify the criteria adopted under this Subsection (2).

~~[(2)]~~ (3) (a) A low performing school may petition the board for an extension to continue school improvement efforts for up to two years if the low performing [school's grade does not improve by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the final remedial year.] school does not meet the exit criteria established by the board as described in Subsection (2).

~~[(b) The board may only grant an extension under Subsection (2)(a) if the low performing school has increased the number of points awarded under the school grading system by at least:]~~

~~[(i) 25% for a school that is not a high school; and]~~

~~[(ii) 10% for a high school.]~~

~~[(c) The board shall determine whether a low performing school has increased the number of points awarded under the school grading system by the percentages described in Subsection (2)(b) by comparing the number of points awarded for the school year prior to the initial remedial year to the number of points awarded for the final remedial year.]~~

~~[(d) The board may extend the contract of an independent school turnaround expert of a low performing school that is granted an extension under this Subsection (2).]~~

~~[(e) (b) A school that has been granted an extension under this Subsection [(2)] (3) is eligible for:~~

~~(i) continued funding under [Subsection 53A-1-1206(4)(e)] Section 53A-1-1212; and~~

~~(ii) (A) the school teacher recruitment and retention incentive under Section 53A-1-1208.1; or~~

~~[(iii) (B) the School Recognition and Reward Program under Section 53A-1-1208.~~

~~[(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing consequences for a low performing school that:~~

~~[(a) (i) does not improve the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the final remedial year; and]~~

~~[(ii) is not granted an extension under Subsection (2); or]~~

~~[(b) (i) is granted an extension under Subsection (2); and]~~

~~[(ii) does not improve the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the last school year of the extension period.]~~

~~[(4) The board shall ensure that the rules established under Subsection (3) include a mechanism for:]~~

~~(4) If a low performing school does not meet exit criteria after the school's final remedial year or the last school year of the extension period, the board may intervene by:~~

~~(a) restructuring a district school [that], which may include:~~

~~(i) contract management;~~

~~(ii) conversion to a charter school; or~~

~~(iii) state takeover; [and]~~

~~(b) restructuring a charter school [that may include] by:~~

~~(i) [termination of] terminating a school's charter;~~

~~(ii) [closure of] closing a charter school; or~~

~~(iii) transferring operation and control of the charter school to:~~

~~(A) a high performing charter school; or~~

~~(B) the school district in which the charter school is located[.]; or~~

~~(c) other appropriate action as determined by the board.~~

Section 7. Section 53A-1-1208 is amended to read:

53A-1-1208. School Recognition and Reward Program.

(1) As used in this section, "eligible school" means a low performing school that:

(a) was designated as a low performing school based on 2014-2015 school year performance; and

[(a)] (b) (i) improves the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the final remedial year; or

[(b) (i)] (ii) (A) has been granted an extension under Subsection 53A-1-1207[(2)](3); and

[(iii)] (B) improves the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the last school year of the extension period.

(2) The School Recognition and Reward Program is created to provide incentives to schools and educators to improve the school grade of a low performing school.

(3) Subject to appropriations by the Legislature, upon the release of school grades by the board, the board shall distribute a reward equal to:

(a) for an eligible school that improves the eligible school's grade one letter grade:

(i) \$100 per tested student; and

(ii) \$1,000 per educator;

(b) for an eligible school that improves the eligible school's grade two letter grades:

(i) \$200 per tested student; and

(ii) \$2,000 per educator;

(c) for an eligible school that improves the eligible school's grade three letter grades:

(i) \$300 per tested student; and

(ii) \$3,000 per educator; and

(d) for an eligible school that improves the eligible school's grade four letter grades:

(i) \$500 per tested student; and

(ii) \$5,000 per educator.

(4) The principal of an eligible school that receives a reward under Subsection (3), in consultation with the educators at the eligible school, may determine how to use the money in the best interest of the school, including providing bonuses to educators.

(5) If the number of qualifying eligible schools exceeds available funds, the board may reduce the amounts specified in Subsection (3).

(6) A local school board of an eligible school, in coordination with the eligible school's turnaround committee, may elect to receive a reward under this section or receive funds described in Section 53A-1-1208.1 but not both.

Section 8. Section 53A-1-1208.1 is enacted to read:

53A-1-1208.1. Turnaround school teacher recruitment and retention.

(1) As used in this section, "plan" means a teacher recruitment and retention plan.

(2) On a date specified by the board, a local education board of a low performing school shall submit to the board for review and approval a plan to address teacher recruitment and retention in a low performing school.

(3) The board shall:

(a) review a plan submitted under Subsection (2);

(b) approve a plan if the plan meets criteria established by the board in rules made in accordance with Chapter 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(c) subject to legislative appropriations, provide funding to a local education board for teacher recruitment and retention efforts identified in an approved plan if the local education board provides matching funds in an amount equal to at least the funding the low performing school would receive from the board.

(4) The money distributed under this section may only be expended to fund teacher recruitment and retention efforts identified in an approved plan.

Section 9. Section 63I-2-253 is amended to read:

63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.

(1) Section 53A-1-403.5 is repealed July 1, 2017.

(2) Section 53A-1-411 is repealed July 1, 2017.

(3) Section 53A-1-709 is repealed July 1, 2020.

(4) Subsection 53A-1-1207(3)(b)(ii)(B) is repealed July 1, 2020.

(5) Section 53A-1-1208 is repealed July 1, 2020.

[4] (6) Subsection 53A-1a-513(4) is repealed July 1, 2017.

[45] (7) Section 53A-1a-513.5 is repealed July 1, 2017.

[46] (8) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2019.

[47] (9) Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is repealed July 1, 2017.

[48] (10) Sections 53A-24-601 and 53A-24-602 are repealed January 1, 2018.

[49] (11) (a) Subsections 53B-2a-103(2) and (4) are repealed July 1, 2019.

(b) When repealing Subsections 53B-2a-103(2) and (4), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

[410] (12) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project, is repealed July 1, 2023.

Section 10. Coordinating S.B. 234 with S.B. 220 -- Substantive and technical amendments.

If this S.B. 234 and S.B. 220, Student Assessment and School Accountability Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) Subsection 53A-1-1202(11) be amended to read:

"[(7)] (11) "Low performing school" means a district school or charter school that has been designated a low performing school by the board because the school is:

(a) for two consecutive school years in the lowest performing 3% of schools statewide according to the percentage of possible points earned under the school [grading] accountability system; and

(b) a low performing school according to other outcome-based measures as may be defined in rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.;"

(2) Section 53A-1-1203 be amended to read:

"(1) [On or before September 1] Except as provided in Subsection (4), the board shall:

(a) annually designate a school as a low performing school [if the school is:]; and

(b) conduct a needs assessment for a low performing school by thoroughly analyzing the root causes of the low performing school's low performance.

[1] in the lowest performing 3% of schools statewide according to the percentage of possible points earned under the school grading system; and]

~~[(2) a low performing school according to other outcome-based measures as may be defined in rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.]~~

~~(2) The board may use up to 5% of the appropriation provided under this part to hire or contract with one or more individuals to conduct a needs assessment described in Subsection (1)(b).~~

~~(3) A school that was designated as a low performing school based on 2015-2016 school year performance that is not in the lowest performing 3% of schools statewide following the 2016-2017 school year is exempt from the provisions of this part.~~

~~(4) The board is not required to designate as a low performing school a school for which the board is not required to assign an overall rating in accordance with Section 53A-1-1105.”; and~~

~~(3) Subsection 53A-1-1207(2)(b) be modified to read:~~

~~“(b) In establishing exit criteria for a low performing school the board shall:~~

~~(i) determine for each low performing school the number of points awarded under the school accountability system in the final remedial year that represent a substantive and statistically significant improvement over the number of points awarded under the school accountability system in the school year immediately preceding the initial remedial year;~~

~~(ii) establish a method to estimate the exit criteria after a low performing school’s first remedial year to provide a target for each low performing school; and~~

~~(iii) use generally accepted statistical practices.”.~~

CHAPTER 382**S. B. 238**

Passed March 9, 2017

Approved March 24, 2017

Effective July 1, 2017

(Exception clause in Section 69)

**HIGHER EDUCATION
GOVERNANCE REVISIONS**

Chief Sponsor: Ann Millner

House Sponsor: Brad R. Wilson

LONG TITLE**General Description:**

This bill amends provisions related to higher education governance.

Highlighted Provisions:

This bill:

- ▶ renames the Utah College of Applied Technology the Utah System of Technical Colleges;
- ▶ changes the name of each member college of the Utah System of Technical Colleges from an applied technology college to a technical college;
- ▶ amends the institutions that comprise the state system of higher education by:
 - removing the Utah College of Applied Technology;
 - adding the Utah System of Technical Colleges Board of Trustees; and
 - adding each technical college;
- ▶ removes the nonvoting members from the State Board of Regents;
- ▶ amends the powers and authority of the State Board of Regents;
- ▶ amends the membership of the State Board of Regents;
- ▶ requires coordination between state entities involved in education;
- ▶ amends a list of institutions of higher education that are bodies corporate to:
 - remove the Utah College of Applied Technology; and
 - add each technical college;
- ▶ amends the process for the State Board of Regents to appoint a president of an institution of higher education;
- ▶ amends requirements of the commissioner of technical education;
- ▶ removes the nonvoting members from the Utah System of Technical Colleges Board of Trustees;
- ▶ prohibits an individual from serving simultaneously on the Utah System of Technical Colleges Board of Trustees and a technical college board of directors;
- ▶ provides that the Utah System of Technical Colleges is a continuation of the Utah College of Applied Technology and that each technical college is a continuation of an applied technology college;
- ▶ describes the primary institutional roles for institutions of higher education;
- ▶ modifies provisions related to the approval of new programs of instruction;
- ▶ repeals the Salt Lake Community College School of Applied Technology Board of Directors;

- ▶ amends definitions related to the Utah System of Technical Colleges in Title 63G, Chapter 6a, Utah Procurement Code; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides coordination clauses.

This bill provides revisor instructions.

Utah Code Sections Affected:**AMENDS:**

- 35A-1-206, as last amended by Laws of Utah 2016, Chapters 236, 271, and 296
- 35A-5-402, as last amended by Laws of Utah 2016, Chapter 236
- 35A-5-403, as enacted by Laws of Utah 2015, Chapter 273
- 53A-1-203, as last amended by Laws of Utah 2015, Chapter 415
- 53A-1-402, as last amended by Laws of Utah 2016, Chapter 236
- 53A-1-403.5, as last amended by Laws of Utah 2016, Chapters 144, 188, and 271
- 53A-1a-501.3, as last amended by Laws of Utah 2016, Chapter 236
- 53A-1a-521, as last amended by Laws of Utah 2016, Chapter 236
- 53A-13-101.5, as last amended by Laws of Utah 1998, Chapter 297
- 53A-15-102, as last amended by Laws of Utah 2016, Chapters 236 and 415
- 53A-15-202, as last amended by Laws of Utah 2016, Chapter 236
- 53A-17a-114, as last amended by Laws of Utah 2016, Chapter 236
- 53B-1-101, as last amended by Laws of Utah 1991, Chapter 58
- 53B-1-101.5, as last amended by Laws of Utah 2009, Chapter 346
- 53B-1-102, as last amended by Laws of Utah 2013, Chapter 10
- 53B-1-103, as last amended by Laws of Utah 2016, Chapter 236
- 53B-1-104, as last amended by Laws of Utah 2011, Third Special Session, Chapter 5
- 53B-2-101, as last amended by Laws of Utah 2013, Chapter 10
- 53B-2-103, as last amended by Laws of Utah 1991, Chapter 58
- 53B-2-104, as last amended by Laws of Utah 2016, Chapter 236
- 53B-2-106, as last amended by Laws of Utah 2016, Chapter 236
- 53B-2a-101, as last amended by Laws of Utah 2016, Chapter 236
- 53B-2a-102, as last amended by Laws of Utah 2016, Chapter 236
- 53B-2a-103, as last amended by Laws of Utah 2016, Chapter 236
- 53B-2a-104, as last amended by Laws of Utah 2016, Chapter 236
- 53B-2a-105, as last amended by Laws of Utah 2016, Chapter 236
- 53B-2a-106, as last amended by Laws of Utah 2016, Chapter 236

53B-2a-107, as last amended by Laws of Utah 2016, Chapter 236

53B-2a-108, as last amended by Laws of Utah 2016, Chapter 236

53B-2a-109, as last amended by Laws of Utah 2016, Chapter 236

53B-2a-110, as last amended by Laws of Utah 2016, Chapter 236

53B-2a-111, as last amended by Laws of Utah 2009, Chapter 346

53B-2a-112, as last amended by Laws of Utah 2016, Chapter 236

53B-2a-113, as last amended by Laws of Utah 2016, Chapter 236

53B-2a-114, as enacted by Laws of Utah 2012, Chapter 181

53B-3-102, as last amended by Laws of Utah 2013, Chapter 10

53B-6-106, as last amended by Laws of Utah 2016, Chapter 236

53B-7-101, as last amended by Laws of Utah 2015, Chapter 361

53B-8-101, as last amended by Laws of Utah 2013, Chapters 10, 23, and 465

53B-8d-102, as last amended by Laws of Utah 2016, Chapter 236

53B-16-101, as enacted by Laws of Utah 1987, Chapter 167

53B-16-102, as last amended by Laws of Utah 2016, Chapter 236

53B-16-103, as last amended by Laws of Utah 1988, Chapter 137

53B-16-107, as last amended by Laws of Utah 2016, Chapter 188

53B-16-201, as last amended by Laws of Utah 2010, Chapter 211

53B-16-209, as enacted by Laws of Utah 2009, Chapter 346

53B-16-401, as enacted by Laws of Utah 1996, Chapter 73

53B-17-105, as last amended by Laws of Utah 2016, Chapters 144 and 236

53B-21-101, as enacted by Laws of Utah 1987, Chapter 167

53B-26-102, as enacted by Laws of Utah 2016, Chapter 338

53B-26-103, as enacted by Laws of Utah 2016, Chapter 338

58-22-302, as last amended by Laws of Utah 2011, Chapter 367

59-12-102, as last amended by Laws of Utah 2016, Third Special Session, Chapter 6

59-12-702, as last amended by Laws of Utah 2016, Chapter 344

63A-2-402, as renumbered and amended by Laws of Utah 2011, Chapter 207

63A-9-101, as last amended by Laws of Utah 2016, Chapters 144 and 236

63F-2-102, as last amended by Laws of Utah 2016, Chapter 144

63G-2-305, as last amended by Laws of Utah 2015, Chapters 147, 283, and 411

63G-6a-103, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 355

63J-3-103, as last amended by Laws of Utah 2016,

Chapter 183

63N-12-203, as last amended by Laws of Utah 2016, Chapters 139 and 236

63N-12-212, as last amended by Laws of Utah 2016, Chapters 139 and 236

63N-12-213, as enacted by Laws of Utah 2016, Chapter 335

67-1-12, as last amended by Laws of Utah 2016, Chapter 236

ENACTS:

53B-1-112, Utah Code Annotated 1953

53B-2a-100.5, Utah Code Annotated 1953

53B-2a-115, Utah Code Annotated 1953

REPEALS AND REENACTS:

53B-2-102, as last amended by Laws of Utah 1991, Chapter 58

REPEALS:

53B-6-101, as last amended by Laws of Utah 2011, Chapter 73

53B-6-103, as enacted by Laws of Utah 1987, Chapter 167

53B-16-106, as enacted by Laws of Utah 2010, Chapter 400

53B-16-210, as last amended by Laws of Utah 2013, Chapter 310

Utah Code Sections Affected by Coordination Clause:

35A-14-102, Utah Code Annotated 1953

49-11-102, as last amended by Laws of Utah 2016, Chapters 84 and 310

49-12-203, as last amended by Laws of Utah 2015, Chapters 315 and 364

49-12-204, as last amended by Laws of Utah 2014, Chapter 15

49-13-203, as last amended by Laws of Utah 2015, Chapters 315 and 364

49-13-204, as last amended by Laws of Utah 2014, Chapter 15

49-22-203, as last amended by Laws of Utah 2015, Chapters 315 and 364

49-22-204, as last amended by Laws of Utah 2014, Chapter 15

53B-1-112, Utah Code Annotated 1953

53B-7-702, Utah Code Annotated 1953

53B-7-703, Utah Code Annotated 1953

53B-7-705, Utah Code Annotated 1953

53B-7-707, Utah Code Annotated 1953

53B-8a-201, Utah Code Annotated 1953

53B-8a-204, Utah Code Annotated 1953

63G-6a-103, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 355

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

Section 1. Section 35A-1-206 is amended to read:**35A-1-206. State Workforce Development Board -- Appointment -- Membership -- Terms of members -- Compensation.**

(1) There is created within the department the State Workforce Development Board in accordance with the provisions of the Workforce Innovation and Opportunity Act, 29 U.S.C. Sec. 3101 et seq.

(2) The board shall consist of the following 39 members:

- (a) the governor or the governor's designee;
 - (b) one member of the Senate, appointed by the president of the Senate;
 - (c) one representative of the House of Representatives, appointed by the speaker of the House of Representatives;
 - (d) the executive director or the executive director's designee;
 - (e) the executive director of the Department of Human Services or the executive director's designee;
 - (f) the executive director of the Utah State Office of Rehabilitation or the executive director's designee;
 - (g) the state superintendent of [~~the State Board of Education~~] public instruction or the superintendent's designee;
 - (h) the commissioner of higher education or the commissioner's designee;
 - (i) [~~the commissioner of technical education of the Utah [College of Applied Technology] System of Technical Colleges~~] commissioner of technical education or the commissioner of technical education's designee;
 - (j) the executive director of the Governor's Office of Economic Development or the executive director's designee;
 - (k) the executive director of the Department of Veterans' and Military Affairs or the executive director's designee;
- (l) the following members appointed by the governor:
- (i) 20 representatives of business in the state, selected among the following:
 - (A) owners of businesses, chief executive or operating officers of businesses, or other business executives or employers with policymaking or hiring authority;
 - (B) representatives of businesses, including small businesses, that provide employment opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the state; and
 - (C) representatives of businesses appointed from among individuals nominated by state business organizations or business trade associations;
 - (ii) six representatives of the workforce within the state, which:
 - (A) shall include at least two representatives of labor organizations who have been nominated by state labor federations;

(B) shall include at least one representative from a registered apprentice program;

(C) may include one or more representatives from a community-based organization that has demonstrated experience and expertise in addressing the employment, training, or educational needs of individuals with barriers to employment; and

(D) may include one or more representatives from an organization that has demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including organizations that serve out of school youth; and

(iii) two elected officials that represent a city or a county.

(3) (a) The governor shall appoint one of the appointed business representatives as chair of the board.

(b) The chair shall serve at the pleasure of the governor.

(4) (a) The governor shall ensure that members appointed to the board represent diverse geographic areas of the state, including urban, suburban, and rural areas.

(b) A member appointed by the governor shall serve a term of four years and may be reappointed to one additional term.

(c) A member shall continue to serve until the member's successor has been appointed and qualified.

(d) Except as provided in Subsection (4)(e), as terms of board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(e) Notwithstanding the requirements of Subsection (4)(d), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately one half of the board is appointed every two years.

(f) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(g) The executive director shall terminate the term of any governor-appointed member of the board if the member leaves the position that qualified the member for the appointment.

(5) A majority of members constitutes a quorum for the transaction of business.

(6) (a) A member of the board who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(7) The department shall provide staff and administrative support to the board at the direction of the executive director.

(8) The board has the duties, responsibilities, and powers described in 29 U.S.C. Sec. 3111, including:

(a) identifying opportunities to align initiatives in education, training, workforce development, and economic development;

(b) developing and implementing the state workforce services plan described in Section 35A-1-207;

(c) utilizing strategic partners to ensure the needs of industry are met, including the development of expanded strategies for partnerships for in-demand occupations and understanding and adapting to economic changes;

(d) developing strategies for staff training;

(e) developing and improving employment centers; and

(f) performing other responsibilities within the scope of workforce services as requested by:

(i) the Legislature;

(ii) the governor; or

(iii) the executive director.

Section 2. Section 35A-5-402 is amended to read:

35A-5-402. Career and Technical Education Board creation -- Membership.

(1) There is created the Career and Technical Education Board, within the department, composed of the following members:

(a) the state superintendent of public instruction or the state superintendent of public instruction's designee;

(b) the commissioner of higher education or the commissioner of higher education's designee;

(c) the Utah [~~College of Applied Technology~~] System of Technical Colleges commissioner of technical education or the Utah [~~College of Applied Technology~~] System of Technical Colleges commissioner of technical education's designee;

(d) the executive director of the department or the executive director of the department's designee;

(e) the executive director of the Governor's Office of Economic Development or the executive director of the Governor's Office of Economic Development's designee;

(f) one member of the governor's staff, appointed by the governor;

(g) five private sector members, representing business or industry that employs individuals who

hold certificates issued by a CTE program, appointed by the governor;

(h) a member of the Senate, appointed by the president of the Senate; and

(i) a member of the House of Representatives, appointed by the speaker of the House of Representatives.

(2) The CTE Board shall select a chair and vice chair from among the members of the CTE Board.

(3) The CTE Board shall meet at least quarterly.

(4) Attendance of a simple majority of the members of the CTE Board constitutes a quorum for the transaction of official CTE Board business.

(5) Formal action by the CTE Board requires the majority vote of a quorum.

(6) A member of the CTE Board:

(a) may not receive compensation or benefits for the member's service; and

(b) may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 3. Section 35A-5-403 is amended to read:

35A-5-403. Career and Technical Education Board -- Duties.

(1) The CTE Board shall conduct a comprehensive study of CTE in Utah that includes:

(a) an inventory of all CTE programs in Utah, including, for each CTE program:

(i) a description of the program;

(ii) the number of students the program has the capacity to serve each year;

(iii) the number of students the program has served since October 1, 2010, by school year;

(iv) the number of certificates the program has issued since October 1, 2010, by school year;

(v) a materials and equipment inventory for the program;

(vi) the amount of funding dedicated to the program;

(vii) the program's geographic location;

(viii) employment information for students who have completed the program since October 1, 2010, if practical and feasible; and

(ix) the extent to which overlap or duplication exists between the program and other CTE or private programs;

(b) a description of CTE funding in the state, including:

(i) the total amount of state CTE funding provided to:

- (A) the public education system;
- (B) the ~~[higher education system]~~ Utah System of Higher Education; and
- (C) the Utah ~~[College of Applied Technology]~~ System of Technical Colleges; and
- (ii) for each CTE program:
- (A) total CTE funding received; and
- (B) the cost per student served;
- (c) an assessment of Utah business and industry needs for employees with skills taught in CTE classes, including:
- (i) the number of current and anticipated jobs in Utah, by geographic region, and the CTE skills required for the jobs;
- (ii) the starting and average salary, by geographic region and type of CTE skills, for an individual who has skills taught in a CTE program; and
- (iii) the extent to which current CTE programs can meet the employment needs of Utah business and industry; and
- (d) any other information the CTE Board considers relevant to the study.
- (2) In conducting the comprehensive study described in Subsection (1), the CTE Board shall coordinate with the Office of the Legislative Auditor General and, to the extent possible, use data collected by the Office of the Legislative Auditor General to complete the study.
- (3) (a) The State Board of Education, the State Board of Regents, and ~~[Utah College of Applied Technology]~~ the Utah System of Technical Colleges Board of Trustees shall:
- (i) provide data that the department requests for the study; and
- (ii) coordinate with the department to conduct the study.
- (b) Notwithstanding the requirements in Subsection (3)(a), the board shall have discretion to gather and report information as part of the comprehensive study of CTE that is readily accessible through current financial and data systems.
- (4) The CTE Board may:
- (a) contract with a third party, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, to conduct the comprehensive study described in Subsection (1); and
- (b) as funding allows, hire staff.
- (5) Based on the comprehensive study described in Subsection (1), the CTE Board shall make recommendations to the Legislature related to:
- (a) CTE funding;
- (b) CTE governance and administration;

- (c) benchmarks or criteria for a CTE program to demonstrate that the CTE program fills:
- (i) an educational need for a student;
- (ii) a school's need to offer a particular CTE program; or
- (iii) an employment need for a Utah business or industry; and
- (d) any other CTE related recommendations.
- (6) (a) On or before November 1, 2015, the CTE Board shall report on the progress of the comprehensive study described in Subsection (1).
- (b) On or before November 1, 2016, the CTE Board shall report on the final results of the comprehensive study described in Subsection (1); and
- (c) On or before November 1, 2017, the CTE Board shall report on the recommendations described in Subsection (5).
- (d) The CTE Board shall make the reports described in this Subsection (6) to:
- (i) the Education Interim Committee;
- (ii) the Executive Appropriations Committee;
- (iii) the governor;
- (iv) the State Board of Education;
- (v) the State Board of Regents; and
- (vi) the Utah ~~[College of Applied Technology]~~ System of Technical Colleges Board of Trustees.

Section 4. Section 53A-1-203 is amended to read:

53A-1-203. State board meetings -- Quorum requirements.

(1) The State Board of Education shall meet at the call of the chairman and at least 11 times each year.

~~[(2) The State Board of Education shall, at least quarterly, meet with and receive recommendations from:]~~

~~[(a) two members of the State Board of Regents, appointed by the chair of the State Board of Regents;]~~

~~[(b) one member of the Utah College of Applied Technology Board of Trustees, appointed by the chair of the board of trustees; and]~~

~~[(c) one member of the State Charter School Board, appointed by the chair of the State Charter School Board.]~~

~~[(3)] (2) A majority of all members is required to validate an act of the [board] State Board of Education.~~

Section 5. Section 53A-1-402 is amended to read:

53A-1-402. Board to establish minimum standards for public schools.

(1) The State Board of Education shall establish rules and minimum standards for the public schools

that are consistent with this title, including rules and minimum standards governing the following:

(a) (i) the qualification and certification of educators and ancillary personnel who provide direct student services;

(ii) required school administrative and supervisory services; and

(iii) the evaluation of instructional personnel;

(b) (i) access to programs;

(ii) attendance;

(iii) competency levels;

(iv) graduation requirements; and

(v) discipline and control;

(c) (i) school accreditation;

(ii) the academic year;

(iii) alternative and pilot programs;

(iv) curriculum and instruction requirements;

(v) school libraries; and

(vi) services to:

(A) persons with a disability as defined by and covered under:

(I) the Americans with Disabilities Act of 1990, 42 U.S.C. 12102;

(II) the Rehabilitation Act of 1973, 29 U.S.C. 705(20)(A); and

(III) the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3); and

(B) other special groups;

(d) (i) state reimbursed bus routes;

(ii) bus safety and operational requirements; and

(iii) other transportation needs; and

(e) (i) school productivity and cost effectiveness measures;

(ii) federal programs;

(iii) school budget formats; and

(iv) financial, statistical, and student accounting requirements.

(2) The ~~board~~ State Board of Education shall determine if:

(a) the minimum standards have been met; and

(b) required reports are properly submitted.

(3) The ~~board~~ State Board of Education may apply for, receive, administer, and distribute to eligible applicants funds made available through programs of the federal government.

(4) (a) ~~[An applied technology]~~ A technical college ~~[within the Utah College of Applied Technology]~~ listed in Section 53B-2a-105 shall provide

competency-based career and technical education courses that fulfill high school graduation requirements, as requested and authorized by the State Board of Education.

(b) A school district may grant a high school diploma to a student participating in ~~[courses described under]~~ a course described in Subsection (4)(a) that ~~[are]~~ is provided by ~~[an applied technology college within the Utah College of Applied Technology]~~ a technical college listed in Section 53B-2a-105.

Section 6. Section 53A-1-403.5 is amended to read:

53A-1-403.5. Education of persons in custody of the Utah Department of Corrections -- Contracting for services -- Recidivism reduction plan -- Collaboration among state agencies.

(1) The State Board of Education and the Utah Department of Corrections, subject to legislative appropriation, are responsible for the education of persons in the custody of the Utah Department of Corrections.

(2) (a) To fulfill the responsibility under Subsection (1), the State Board of Education and the Utah Department of Corrections shall, where feasible, contract with appropriate private or public agencies to provide educational and related administrative services. Contracts for postsecondary education and training shall be under Subsection (2)(b).

(b) (i) The contract under Subsection (2)(a) to provide postsecondary education and training shall be with a community college if the correctional facility is located within the service region of a community college, except under Subsection (2)(b)(ii).

(ii) If the community college under Subsection (2)(b)(i) declines to provide the education and training or cannot meet reasonable contractual terms for providing the education and training as specified by the Utah Department of Corrections, postsecondary education and training under Subsection (2)(a) may be procured through other appropriate private or public agencies.

(3) (a) As its corrections education program, the State Board of Education and the Utah Department of Corrections shall develop and implement a recidivism reduction plan, including the following components:

(i) inmate assessment;

(ii) cognitive problem-solving skills;

(iii) basic literacy skills;

(iv) career skills;

(v) job placement;

(vi) postrelease tracking and support;

(vii) research and evaluation;

(viii) family involvement and support; and

(ix) multiagency collaboration.

(b) The plan shall be developed and implemented through the State Board of Education and the Utah Department of Corrections in collaboration with the following entities:

- (i) the State Board of Regents;
- (ii) the ~~Utah College of Applied Technology~~ Utah System of Technical Colleges Board of Trustees;
- (iii) local boards of education;
- (iv) the Department of Workforce Services;
- (v) the Department of Human Services;
- (vi) the Board of Pardons and Parole;
- (vii) the Utah State Office of Rehabilitation; and
- (viii) the Governor’s Office.

(4) By July 1, 2014, and every three years thereafter, the Utah Department of Corrections shall make a report to the State Board of Education and the Law Enforcement and Criminal Justice Interim Committee evaluating the impact of corrections education programs on recidivism.

Section 7. Section 53A-1a-501.3 is amended to read:

53A-1a-501.3. Definitions.

As used in this part:

(1) “Asset” means property of all kinds, real and personal, tangible and intangible, and includes:

- (a) cash;
- (b) stock or other investments;
- (c) real property;
- (d) equipment and supplies;
- (e) an ownership interest;
- (f) a license;
- (g) a cause of action; and
- (h) any similar property.

(2) “Board of trustees of a higher education institution” or “board of trustees” means:

- (a) the board of trustees of:
 - (i) the University of Utah;
 - (ii) Utah State University;
 - (iii) Weber State University;
 - (iv) Southern Utah University;
 - (v) Snow College;
 - (vi) Dixie State University;
 - (vii) Utah Valley University; or
 - (viii) Salt Lake Community College; or

(b) the board of directors of ~~an applied technology college within the Utah College of Applied~~

~~Technology~~ a technical college described in Section 53B-2a-108.

(3) “Charter agreement” or “charter” means an agreement made in accordance with Section 53A-1a-508[,] that authorizes the operation of a charter school.

(4) “Charter school authorizer” or “authorizer” means the State Charter School Board, a local school board, or a board of trustees of a higher education institution that authorizes the establishment of a charter school.

(5) “Governing board” means the board that operates a charter school.

Section 8. Section 53A-1a-521 is amended to read:

53A-1a-521. Charter schools authorized by a board of trustees of a higher education institution -- Application process -- Board of trustees responsibilities.

(1) Subject to the approval of the State Board of Education and except as provided in Subsection (8), an applicant identified in Section 53A-1a-504 may enter into an agreement with a board of trustees of a higher education institution authorizing the applicant to establish and operate a charter school.

(2) (a) An applicant applying for authorization from a board of trustees to establish and operate a charter school shall provide a copy of the application to the State Charter School Board and the local school board of the school district in which the proposed charter school ~~shall~~ will be located either before or at the same time the applicant files the application with the board of trustees.

(b) The State Charter School Board and the local school board may review the application and offer suggestions or recommendations to the applicant or the board of trustees before acting on the application.

(c) The board of trustees shall give due consideration to suggestions or recommendations made by the State Charter School Board or the local school board under Subsection (2)(b).

(3) (a) If a board of trustees approves an application to establish and operate a charter school, the board of trustees shall submit the application to the State Board of Education.

(b) The State Board of Education shall, by majority vote, within 60 days of receipt of the application, approve or deny an application approved by a board of trustees.

(c) The State Board of Education’s action under Subsection (3)(b) is final action subject to judicial review.

(4) The State Board of Education shall make a rule providing a timeline for the opening of a charter school following the approval of a charter school application by a board of trustees.

(5) After approval of a charter school application, the applicant and the board of trustees shall set forth the terms and conditions for the operation of the charter school in a written charter agreement.

(6) (a) The school's charter may include a provision that the charter school pay an annual fee for the board of trustees' costs in providing oversight of, and technical support to, the charter school in accordance with Subsection (7).

(b) In the first two years that a charter school is in operation, an annual fee described in Subsection (6)(a) may not exceed the product of 3% of the revenue the charter school receives from the state in the current fiscal year.

(c) Beginning with the third year that a charter school is in operation, an annual fee described in Subsection (6)(a) may not exceed the product of 1% of the revenue a charter school receives from the state in the current fiscal year.

(d) An annual fee described in Subsection (6)(a) shall be:

(i) paid to the board of trustees' higher education institution; and

(ii) expended as directed by the board of trustees.

(7) A board of trustees shall:

(a) annually review and evaluate the performance of charter schools authorized by the board of trustees and hold the schools accountable for their performance;

(b) monitor charter schools authorized by the board of trustees for compliance with federal and state laws, rules, and regulations; and

(c) provide technical support to charter schools authorized by the board of trustees to assist them in understanding and performing their charter obligations.

(8) (a) In addition to complying with the requirements of this section, a technical college board of directors [of an applied technology college within the Utah College of Applied Technology] described in Section 53B-2a-108 shall obtain the approval of the Utah [College of Applied Technology] System of Technical Colleges Board of Trustees before entering into an agreement to establish and operate a charter school.

(b) If a technical college board of directors [of an applied technology college within the Utah College of Applied Technology] approves an application to establish and operate a charter school, the [applied technology] technical college board of directors shall submit the application to the [Utah College of Applied Technology] Utah System of Technical Colleges Board of Trustees.

(c) The Utah [College of Applied Technology] System of Technical Colleges Board of Trustees shall, by majority vote, within 60 days of receipt of [the] an application described in Subsection (8)(b), approve or deny the application [approved by the applied technology college board of directors].

(d) The Utah [College of Applied Technology] System of Technical Colleges Board of Trustees may deny an application approved by [an applied technology] a technical college board of directors if the proposed charter school does not accomplish a

purpose of charter schools as provided in Section 53A-1a-503.

(e) A charter school application may not be denied on the basis that the establishment of the charter school will have any or all of the following impacts on a public school, including another charter school:

(i) an enrollment decline;

(ii) a decrease in funding; or

(iii) a modification of programs or services.

(9) (a) Subject to the requirements of this part, ~~[an applied technology]~~ a technical college board of directors may establish:

(i) procedures for submitting applications to establish and operate a charter school; ~~and~~ or

(ii) criteria for approval of an application to establish and operate a charter school.

(b) The Utah ~~[College of Applied Technology]~~ System of Technical Colleges Board of Trustees may not establish policy governing the procedures or criteria described in Subsection (9)(a).

(10) Before ~~[an applied technology]~~ a technical college board of directors accepts a charter school application, the ~~[applied technology]~~ technical college board of directors shall, in accordance with State Board of Education rules, establish and make public:

(a) application requirements, in accordance with Section 53A-1a-504;

(b) the application process, including timelines, in accordance with this section; and

(c) minimum academic, financial, and enrollment standards.

Section 9. Section 53A-13-101.5 is amended to read:

53A-13-101.5. Teaching of American sign language.

(1) The Legislature recognizes that American sign language is a fully developed, autonomous, natural language with distinct grammar, syntax, and art forms.

(2) American sign language shall be accorded equal status with other linguistic systems in the state's public and higher education systems.

(3) The State Board of Education, in consultation with the state's school districts and members of the deaf and hard of hearing community, shall develop and implement policies and procedures for the teaching of American sign language in the state's public education system at least at the middle school or high school level.

(4) A student may count credit received for completion of a course in American sign language at the middle school or high school level ~~[towards]~~ toward the satisfaction of a foreign language requirement in the public education system under rules made by the State Board of Education.

(5) The State Board of Regents, in consultation with the state's public institutions of higher

education and members of the state's deaf and hard of hearing community, shall develop and implement policies and procedures for offering instruction in American sign language in the state's system of higher education [~~consistent with the master plan for higher education under Section 53B-6-101~~].

(6) The Joint Liaison Committee, in consultation with members of the state's deaf and hard of hearing community, shall review any policies and procedures developed under this section and make recommendations to either or both boards regarding the policies.

Section 10. Section 53A-15-102 is amended to read:

53A-15-102. Early graduation incentives -- Incentive to school district -- Partial tuition scholarship for student -- Payments.

(1) Any secondary public school student who has completed all required courses or demonstrated mastery of required skills and competencies may, with the approval of the student, the student's parent or guardian, and an authorized local school official, graduate at any time.

(2) Each public high school shall receive an amount equal to 1/2 of the scholarship awarded to each student who graduates from the school at or prior to the conclusion of ~~[the eleventh]~~ grade 11, or a proportionately lesser amount for any student who graduates after the conclusion of ~~[the eleventh]~~ grade 11 but prior to the conclusion of ~~[the twelfth]~~ grade 12.

(3) (a) A student who graduates from high school at or prior to the conclusion of ~~[the eleventh]~~ grade 11 shall receive a centennial scholarship in the lesser amount of full tuition for one year or \$1,000 to be used for full time enrollment at a Utah public college, university, community college, ~~[applied technology]~~ technical college ~~[within the Utah College of Applied Technology]~~ described in Section 53B-2a-105, or any other institution in the state of Utah, accredited by the Northwest Association of Schools and Colleges that offers postsecondary courses of the student's choice upon verification that the student has registered at the institution during the fiscal year following graduation from high school.

(b) In the case of a student who graduates after the conclusion of ~~[the eleventh]~~ grade 11 but prior to the conclusion of ~~[the twelfth]~~ grade 12, the student shall receive a centennial scholarship of a proportionately lesser amount.

(4) (a) The payments authorized in Subsections (2) and (3)(a) shall be made during the fiscal year that follows the student's graduation.

(b) The payments authorized in Subsection (3)(b) may be made during the fiscal year in which the student graduates or the fiscal year following the student's graduation.

(5) (a) The State Board of Education shall administer the payment program authorized in Subsections (2), (3), and (4).

(b) The Legislature shall make an annual appropriation from the Education Fund to the State Board of Education for the costs associated with the Centennial Scholarship Program based on the projected number of students who will graduate before the conclusion of ~~[the twelfth]~~ grade 12 in any given year.

Section 11. Section 53A-15-202 is amended to read:

53A-15-202. Powers of the board.

The State Board of Education:

(1) shall establish minimum standards for career and technical education programs in the public education system;

(2) may apply for, receive, administer, and distribute funds made available through programs of federal and state governments to promote and aid career and technical education;

(3) shall cooperate with federal and state governments to administer programs ~~[which]~~ that promote and maintain career and technical education;

(4) shall cooperate with the Utah ~~[College of Applied Technology]~~ System of Technical Colleges Board of Trustees, Salt Lake Community College's School of Applied Technology, Snow College, and Utah State University Eastern to ensure that students in the public education system have access to career and technical education at Utah ~~[College of Applied Technology]~~ applied technology System of Technical Colleges technical colleges, Salt Lake Community College's School of Applied Technology, Snow College, and Utah State University Eastern;

(5) shall require that before a minor student may participate in clinical experiences as part of a health care occupation program at a high school or other institution to which the student has been referred, the student's parent or legal guardian has:

(a) been first given written notice through appropriate disclosure when registering and prior to participation that the program contains a clinical experience segment in which the student will observe and perform specific health care procedures that may include personal care, patient bathing, and bathroom assistance; and

(b) provided specific written consent for the student's participation in the program and clinical experience; and

(6) shall, after consulting with school districts, charter schools, the Utah ~~[College of Applied Technology]~~ System of Technical Colleges Board of Trustees, Salt Lake Community College's School of Applied Technology, Snow College, and Utah State University Eastern, prepare and submit an annual report to the governor and to the Legislature's Education Interim Committee by October 31 of each year detailing:

(a) how the career and technical education needs of secondary students are being met; and

(b) ~~[what]~~ the access secondary students have to programs offered:

(i) at ~~[applied technology]~~ technical colleges; and

(ii) within the regions served by Salt Lake Community College's School of Applied Technology, Snow College, and Utah State University Eastern.

Section 12. Section 53A-17a-114 is amended to read:

53A-17a-114. Career and technical education program alternatives.

(1) A secondary student may attend ~~[an applied technology college within the Utah College of Applied Technology]~~ a technical college described in Section 53B-2a-105 if the secondary student's career and technical education goals are better achieved by attending ~~[an applied technology]~~ a technical college as determined by:

(a) the secondary student; and

(b) if the secondary student is a minor, the secondary student's parent or legal guardian.

(2) A secondary student served under this section by ~~[an applied technology college within the Utah College of Applied Technology]~~ a technical college described in Section 53B-2a-105 shall be counted in the average daily membership of the sending school district or charter school.

Section 13. Section 53B-1-101 is amended to read:

53B-1-101. Purpose of title.

It is the purpose of this title:

(1) to provide a high quality, efficient, and economical public system of higher education and technical education through ~~[centralized]~~ strategic direction and ~~[master]~~ planning ~~[which]~~ that:

~~[(a) avoids unnecessary duplication;]~~

(a) provides for the economic vitality of the state;

(b) provides for the systematic and orderly development of facilities and quality programs;

(c) provides for coordination and consolidation; and

(d) ~~[provides for]~~ establishes systematic development of the role or roles of each institution ~~[within the system of higher education consistent with the historical heritage and tradition of each institution]~~ higher education;

~~[(2) to vest in the State Board of Regents the power to govern the state system of higher education consistent with state law and delegate certain powers to institutional boards of trustees and institutional presidents, and to vest certain powers in institutional boards of trustees and institutional presidents.]~~

(2) to vest in the State Board of Regents and the Utah System of Technical Colleges Board of Trustees power and authority to govern and coordinate, consistent with state law; and

(3) to provide for the delegation of certain powers to:

(a) institution of higher education boards of trustees;

(b) technical college boards of directors; and

(c) presidents of higher education institutions and technical colleges.

Section 14. Section 53B-1-101.5 is amended to read:

53B-1-101.5. Definitions.

As used in this title:

(1) "Board" means the State Board of Regents established in Section 53B-1-103.

(2) "Career and technical education" means organized educational programs offering sequences of courses or skill sets directly related to preparing individuals for paid or unpaid employment in current or emerging occupations that generally do not require a baccalaureate or advanced degree.

(3) "Commissioner" means the commissioner of higher education appointed in accordance with Section 53B-1-105.

(4) "Technical college" means, except as provided in Section 53B-26-102, a member college of the Utah System of Technical Colleges listed in Section 53B-2a-105.

Section 15. Section 53B-1-102 is amended to read:

53B-1-102. State system of higher education.

(1) The state system of higher education consists of ~~[the following institutions]:~~

(a) the Utah System of Higher Education, which consists of the following institutions:

~~[(a)]~~ (i) the State Board of Regents;

~~[(b)]~~ (ii) the University of Utah;

~~[(c)]~~ (iii) Utah State University;

~~[(d)]~~ (iv) Weber State University;

~~[(e)]~~ (v) Southern Utah University;

~~[(f)]~~ (vi) Snow College;

~~[(g)]~~ (vii) Dixie State University;

~~[(h)]~~ (viii) Utah Valley University; and

~~[(i)]~~ (ix) Salt Lake Community College;

~~[(j) the Utah College of Applied Technology; and]~~

(b) the Utah System of Technical Colleges, which consists of the following institutions:

(i) the Utah System of Technical Colleges Board of Trustees;

(ii) Bridgerland Technical College;

(iii) Davis Technical College;

(iv) Dixie Technical College;

- (v) Mountainland Technical College;
- (vi) Ogden-Weber Technical College;
- (vii) Southwest Technical College;
- (viii) Tooele Technical College; and
- (ix) Uintah Basin Technical College; and

~~[(k)]~~ (c) other public post-high school educational institutions as the Legislature may designate.

(2) A change in the name of an institution within the ~~[system of higher education]~~ Utah System of Higher Education shall not be considered a change in the role or mission of the institution, unless otherwise authorized by the State Board of Regents.

(3) It is not the intent of the Legislature to increase the number of research universities in the state beyond the University of Utah and Utah State University.

(4) ~~[These institutions are]~~ An institution described in Subsection (1) is empowered to sue and be sued and to contract and be contracted with.

Section 16. Section 53B-1-103 is amended to read:

53B-1-103. Establishment of State Board of Regents -- Powers, duties, and authority.

(1) There is established a State Board of Regents.

(2) (a) Except as provided in Subsection (2)(b), the board ~~[is vested with the]~~ shall control, ~~[management]~~ manage, and ~~[supervision of]~~ supervise the institutions of higher education designated in Section 53B-1-102 in a manner consistent with the policy and purpose of this title and the specific powers and responsibilities granted to ~~[it]~~ the board.

(b) The board may only exercise powers relating to the ~~[Utah College of Applied Technology and applied technology colleges within the Utah College of Applied Technology]~~ Utah System of Technical Colleges Board of Trustees, the Utah System of Technical Colleges, or a technical college that are specifically provided in this title.

(3) The board shall, for the Utah System of Higher Education:

(a) provide strategic leadership and link system capacity to the economy and workforce needs;

(b) enhance the impact and efficiency of the system;

(c) establish measurable goals and metrics and delineate the expected contributions of individual institutions of higher education toward these goals;

(d) evaluate presidents based on institutional performance;

(e) delegate to presidents the authority to manage the presidents' institutions of higher education;

(f) administer statewide functions including system data collection and reporting;

(g) establish unified budget, finance, and capital funding priorities and practices; and

(h) provide system leadership on issues that have a system-wide impact, including:

(i) statewide college access and college preparedness initiatives;

(ii) learning opportunities drawn from multiple campuses or online learning options, including new modes of delivery of content at multiple locations;

(iii) degree program requirement guidelines including credit hour limits, articulation agreements, and transfer across institutions;

(iv) alignment of general education requirements across institutions of higher education;

(v) incorporation of evidence-based practices that increase college completion; and

(vi) monitoring of workforce needs, with an emphasis on credentials that build upon one another.

~~[(e)]~~ (4) The board shall coordinate and support articulation agreements between the Utah ~~[College of Applied Technology or applied technology colleges within the Utah College of Applied Technology]~~ System of Technical Colleges or a technical college and other institutions of higher education.

~~[(d)]~~ (5) The board shall prepare and submit an annual report detailing ~~[its]~~ the board's progress and recommendations on career and technical education issues and addressing workforce needs to the governor and to the Legislature's Education Interim Committee by October 31 of each year, which shall include information detailing:

(i) (a) how the career and technical education needs of secondary students are being met by institutions of higher education ~~[other than applied technology colleges within the Utah College of Applied Technology]~~ described in Subsection 53B-1-102(1)(a), including ~~[what]~~ the access secondary students have to programs offered by Salt Lake Community College's School of Applied Technology, Snow College, and Utah State University Eastern;

(ii) (b) how the emphasis on high demand, high wage, and high skill jobs in business and industry is being provided;

(iii) (c) performance outcomes, including:

~~[(A)]~~ (i) entered employment;

~~[(B)]~~ (ii) job retention; and

~~[(C)]~~ (iii) earnings; ~~[and]~~

(d) an analysis of workforce needs and efforts to meet workforce needs; and

~~[(iv)]~~ (e) student tuition and fees.

~~[(e)]~~ (6) ~~[Except for the Utah College of Applied Technology, the]~~ The board may modify the name of an institution ~~[under its control and management, as designated in Section 53B-1-102,]~~ described in

Subsection 53B-1-102(1)(a) to reflect the role and general course of study of the institution.

~~[(4)] (7) The board may not conduct a feasibility study or perform another act relating to merging [any of the following institutions] a technical college with another institution of higher education[.].~~

~~[(i) Bridgerland Applied Technology College;]~~

~~[(ii) Ogden-Weber Applied Technology College;]~~

~~[(iii) Davis Applied Technology College;]~~

~~[(iv) Tooele Applied Technology College;]~~

~~[(v) Mountainland Applied Technology College;]~~

~~[(vi) Uintah Basin Applied Technology College;]~~

~~[(vii) Southwest Applied Technology College; and]~~

~~[(viii) Dixie Applied Technology College.]~~

~~[(3)] (8) This section does not affect the power and authority vested in the State Board of Education to apply for, accept, and manage federal appropriations for the establishment and maintenance of career and technical education.~~

~~[(4) The board shall conduct a study regarding the feasibility of providing a veterans' walk-in center or services at each state institution of higher education. The study shall include:]~~

~~[(a) an implementation plan for providing a walk-in center or services at each institution of higher education;]~~

~~[(b) criteria, based upon the size of the institution, to determine whether the institution should be required to provide a walk-in center or services;]~~

~~[(c) responsibilities of the walk-in center or services;]~~

~~[(d) a notification process about the walk-in center or services to veterans upon their application for admission;]~~

~~[(e) the possibility of staffing a veterans walk-in center or services with veterans, including through work-study positions to be filled by veterans;]~~

~~[(f) annual reports from each walk-in center and services to the board which includes summary information of veterans served; and]~~

~~[(g) funding requirements for a veterans walk-in center and services.]~~

~~[(5) Presentation of the study, including the implementation plan with funding and other recommendations, shall be made to a legislative committee, commission, or task force upon request no later than the October 2014 interim meeting.]~~

Section 17. Section 53B-1-104 is amended to read:

53B-1-104. Membership of the board -- Student appointee -- Terms -- Oath -- Officers -- Committees -- Bylaws -- Meetings -- Quorum -- Vacancies -- Compensation.

~~[(1) (a) The board shall consist of 19 residents of the state.]~~

~~[(b) (i) Fifteen members shall be appointed by the governor with the consent of the Senate.]~~

~~[(ii) (A) One additional member shall be appointed by the governor from nominations of the student body presidents council.]~~

~~[(B) The student body presidents council shall nominate three qualified, matriculated students enrolled in the state institutions of higher education.]~~

~~[(C) Student body presidents are not eligible for nomination.]~~

~~[(iii) All appointments to the board shall be made on a nonpartisan basis.]~~

~~[(iv) In making appointments to the board, the governor shall select:]~~

~~[(A) at least two individuals who reside within a county of the fourth, fifth, or sixth class;]~~

~~[(B) no more than six individuals who reside within a county of the first class;]~~

~~[(C) the remaining individuals from the state at large with due consideration for geographical representation and diversity of exposure to the various institutions in the Utah System of Higher Education; and]~~

~~[(D) at least three individuals with personal experience in career and technical education, which could include service on a campus board of directors.]~~

~~[(e) (i) In addition to the members designated under Subsection (1)(b), two members of the State Board of Education, appointed by the chair of the State Board of Education, shall serve as nonvoting members of the board.]~~

~~[(ii) A nonvoting State Board of Education member shall continue to serve as a member without a set term until the member is replaced by the chair of the State Board of Education.]~~

~~[(d) (i) In addition to the members designated under Subsection (1)(b), one member of the Utah College of Applied Technology Board of Trustees, appointed by the chair of the Utah College of Applied Technology Board of Trustees, shall serve as a nonvoting member of the board.]~~

~~[(ii) A nonvoting Utah College of Applied Technology Board of Trustees member shall continue to serve as a member without a set term until the member is replaced by the chair of the Utah College of Applied Technology Board of Trustees.]~~

~~[(2) (a) Five members of the board, other than the student member, the State Board of Education members, and the Utah College of Applied Technology Board of Trustees member, shall be appointed during each odd-numbered year to six-year staggered terms which commence on July 1 of the year of appointment.]~~

~~[(b) (i) The student member shall be appointed for a one-year term and may be reappointed for one additional term.]~~

~~[(ii) The student member has full voting rights and may vote on selection of a board chair or vice chair, but not serve in either office.]~~

~~[(c) Board members shall hold office until their successors have been appointed and qualified.]~~

(1) Except as provided in Subsection (2), the board consists of 17 residents of the state appointed by the governor with the consent of the Senate, as follows:

(a) eight at large members;

(b) eight members, each of whom is:

(i) selected from three nominees presented to the governor by a higher education institution board of trustees; and

(ii) a current or former member of the institution of higher education board of trustees that nominates the member; and

(c) one member, selected from three nominees presented to the governor by the student body presidents of the institutions of higher education, who:

(i) is a fully matriculated student enrolled in an institution of higher education; and

(ii) is not serving as a student body president at the time of the nomination.

(2) (a) (i) An individual appointed to the board on or before May 8, 2017, may serve on the board, even if the individual does not fulfill a requirement for the composition of the board described in Subsection (1).

(ii) The governor may reappoint a member described in Subsection (2)(a)(i) when the member's term expires.

(b) An individual appointed to the board on or before May 8, 2017, who is a current or former member of an institution of higher education board of trustees is the board member for the institution of higher education described in Subsection (1)(b).

(c) (i) Subject to Subsection (2)(c)(ii), as positions on the board become vacant, the governor shall ensure that newly appointed members move the board toward the composition described in Subsection (1).

(ii) In appointing a new member to the board, the governor shall first appoint a member described in Subsection (1)(b) until the eight positions described in Subsection (1)(b) are filled.

(3) (a) All appointments to the board shall be made on a nonpartisan basis.

(b) In making appointments to the board, the governor shall consider:

(i) geographic representation of members;

(ii) diversity;

(iii) experience in higher education governance;

(iv) experience in economic development; and

(v) exposure to institutions of higher education.

(c) An individual may not serve simultaneously on the State Board of Regents and an institution of higher education board of trustees.

(4) (a) Except as provided in Subsection (4)(b), members of the board shall be appointed to six-year staggered terms, which begin on July 1 of the year of appointment.

(b) A student member described in Subsection (1)(c) shall be appointed to a one-year term.

~~[(3)] (5) (a) [Each] A member of the board shall take the official oath of office before entering upon the duties of office.~~

(b) The oath shall be filed with the Division of Archives and Records Services.

~~[(4)] (6) The board shall elect a chair and vice chair from [its] among the board's members who shall serve terms of two years and until their successors are chosen and qualified.~~

~~[(5)] (7) (a) The board shall appoint a secretary from the staff of [its] the board's chief executive to serve at [its] the board's discretion.~~

(b) The secretary [shall be] is a full-time employee who receives a salary set by the board.

(c) The secretary shall record and maintain a record of all board meetings and perform other duties as the board directs.

~~[(6) The board shall appoint a treasurer who serves at the discretion of the board.]~~

~~[(7)] (8) (a) The board may establish advisory committees.~~

(b) The powers and authority of the board are nondelegable, except as specifically provided for in this title.

(c) All matters requiring board determination shall be addressed in a properly convened meeting of the board or [its] the board's executive committee.

~~[(8)] (9) The board shall enact bylaws for [its] the board's own government not inconsistent with the constitution or the laws of this state.~~

~~[(9)] (10) (a) The board shall meet regularly upon [its] the board's own determination.~~

(b) The board may also meet, in full or executive session, at the request of [its] the chair, [its] the executive officer, or five members of the board.

~~[(10)] (11) A quorum of the voting members of the board is required to conduct [its] the board's business and consists of nine members.~~

~~[(11)] (12) (a) A vacancy in the board occurring before the expiration of a voting member's full term shall be immediately filled by appointment by the governor with the consent of the Senate.~~

(b) [The appointee] An individual appointed under Subsection (12)(a) serves for the remainder of the unexpired term.

~~[(12)] (13) A board member may not receive compensation or benefits for the member's service,~~

but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 18. Section 53B-1-112 is enacted to read:

53B-1-112. Coordination for education.

(1) At least quarterly, in order to coordinate education services, individuals who have responsibilities related to Utah's education system shall meet, including:

- (a) the state superintendent of public instruction described in Section 53A-1-301;
- (b) the commissioner;
- (c) the commissioner of technical education described in Section 53B-2a-102;
- (d) the executive director of the Department of Workforce Services described in Section 35A-1-201;
- (e) the executive director of the Governor's Office of Economic Development described in Section 63N-1-202;
- (f) the chair of the State Board of Education;
- (g) the chair of the State Board of Regents;
- (h) the chair of the Utah System of Technical Colleges Board of Trustees described in Section 53B-2a-103; and
- (i) the chairs of the Education Interim Committee.

(2) A meeting described in this section is not subject to Title 52, Chapter 4, Open and Public Meetings Act.

Section 19. Section 53B-2-101 is amended to read:

53B-2-101. Institutions of higher education -- Corporate bodies -- Powers.

(1) The following institutions of higher education are bodies politic and corporate with perpetual succession and with all rights, immunities, and franchises necessary to function as such:

- (a) the University of Utah;
- (b) Utah State University;
- (c) Weber State University;
- (d) Southern Utah University;
- (e) Snow College;
- (f) Dixie State University;
- (g) Utah Valley University;
- (h) Salt Lake Community College; [and]
- (i) the Utah College of Applied Technology.]

- (i) Bridgerland Technical College;
- (j) Davis Technical College;
- (k) Dixie Technical College;
- (l) Mountainland Technical College;
- (m) Ogden-Weber Technical College;
- (n) Southwest Technical College;
- (o) Tooele Technical College; and
- (p) Uintah Basin Technical College.

(2) (a) [Each] An institution of higher education may have and use a corporate seal and may, subject to [Section 53B-20-103] this title, take, hold, lease, sell, and convey real and personal property as the interest of the institution requires.

(b) [Each] An institution of higher education is vested with all the property, franchises, and endowments of, and is subject to, all the contracts, obligations, and liabilities of [its] the institution's respective predecessor.

(c) (i) [Each] An institution of higher education may enter into business relationships or dealings with private seed or venture capital entities or partnerships consistent with Utah Constitution Article VI, Section 29, Subsection (2).

(ii) A business dealing or relationship entered into under Subsection (2)(c)(i) does not preclude the private entity or partnership from participating in or receiving benefits from a venture capital program authorized or sanctioned by the laws of this state, unless otherwise precluded by the specific law that authorizes or sanctions the program.

[(iii) Subsections (2)(c)(i) and (ii) also apply to the Utah College of Applied Technology created in Title 53B, Chapter 2a, Utah College of Applied Technology.]

Section 20. Section 53B-2-102 is repealed and reenacted to read:

53B-2-102. Board to appoint president for each institution.

(1) As used in this section:

(a) "Institution of higher education" means an institution that is part of the Utah System of Higher Education described in Subsection 53B-1-102(1)(a).

(b) "Search committee" means a committee that selects finalists for a position as an institution of higher education president.

(2) The board shall appoint a president for each institution of higher education.

(3) An institution of higher education president serves at the pleasure of the board.

(4) (a) To appoint an institution of higher education president, the board shall establish a search committee that includes representatives of faculty, staff, students, the institution of higher education board of trustees, alumni, the outgoing

institution of higher education president's executive council or cabinet, and the board.

(b) A search committee shall be cochaired by a member of the board and the institution of higher education board of trustees.

(c) A search committee described in Subsection (4)(a) shall forward three to five finalists to the board to consider for a position as an institution of higher education president.

(d) A search committee may not forward an individual to the board as a finalist unless two-thirds of the search committee members, as verified by the commissioner, find the individual to be qualified and likely to succeed as an institution of higher education president.

(5) (a) The board shall select an institution of higher education president from among the finalists presented by a search committee.

(b) If the board is not satisfied with the finalists forwarded by a search committee, the board may direct the search committee to resume the search process until the search committee has forwarded three finalists with which the board is satisfied.

(6) The board, through the commissioner, shall create a comprehensive, active recruiting plan to ensure a strong, diverse pool of potential candidates for institution of higher education presidents.

(7) (a) Except as provided in Subsection (7)(b), a record or information gathered or generated during the search process, including a candidate's application and the search committee's deliberations, is confidential and is a protected record under Section 63G-2-305.

(b) Application materials for a publicly named finalist described in Subsection (5)(a) are not protected records under Section 63G-2-305.

Section 21. Section 53B-2-103 is amended to read:

53B-2-103. Boards of trustees -- Powers and duties.

(1) Each college ~~and~~ or university has a board of trustees ~~which~~ that may act ~~in~~ on behalf of ~~its institution~~ the college or university in performing duties, responsibilities, and functions as may be specifically authorized to the board of trustees by the State Board of Regents.

(2) A board of trustees has the following powers and duties:

(a) ~~facilitates~~ to facilitate communication between the institution and the community;

(b) ~~assists~~ to assist in planning, implementing, and executing fund raising and development projects aimed at supplementing institutional appropriations;

(c) ~~perpetuates and strengthens~~ to perpetuate and strengthen alumni and community identification with the ~~institution's~~ college or university's tradition and goals; ~~and~~

(d) ~~selects~~ to select recipients of honorary degrees~~;~~; and

(e) to approve changes to the institution of higher education's programs, in accordance with Section 53B-16-102.

Section 22. Section 53B-2-104 is amended to read:

53B-2-104. Memberships of board of trustees -- Terms -- Vacancies -- Oath -- Officers -- Bylaws -- Quorum -- Committees -- Compensation -- Applicability to technical colleges.

(1) (a) ~~The~~ Except as provided in Subsection (10), the board of trustees of an institution of higher education consists of the following:

(i) except as provided in Subsection 53B-18-1201(3)(b), eight ~~persons~~ individuals appointed by the governor ~~and approved by~~ with the consent of the Senate; and

(ii) two ex officio members who are the president of the institution's alumni association, and the president of the associated students of the institution.

(b) The appointed members of the boards of trustees for Utah Valley University and Salt Lake Community College shall be representative of the interests of business, industry, and labor.

(2) (a) The governor shall appoint four members of each board of trustees during each odd-numbered year to four-year terms commencing on July 1 of the year of appointment.

(b) An appointed member holds office until a successor is appointed and qualified.

(c) The ex officio members serve for the same period as they serve as presidents and until their successors have qualified.

(3) When a vacancy occurs in the membership of a board of trustees for any reason, the replacement shall be appointed for the unexpired term.

(4) (a) Each member of a board of trustees shall take the official oath of office prior to assuming the office.

(b) The oath shall be filed with the Division of Archives and Records Services.

(5) ~~Each~~ A board of trustees shall elect a chair and vice chair, who serve for two years and until their successors are elected and qualified.

(6) (a) ~~Each~~ A board of trustees may enact bylaws for ~~its~~ the board of trustees' own government, including ~~provision~~ provisions for regular meetings.

(b) (i) ~~The~~ A board of trustees may provide for an executive committee in ~~its~~ the board of trustees' bylaws.

(ii) If established, ~~the~~ an executive committee shall have full authority of the board of trustees to act upon routine matters during the interim between board of trustees meetings.

(iii) ~~[The]~~ An executive committee may act on nonroutine matters only under extraordinary and emergency circumstances.

(iv) ~~[The]~~ An executive committee shall report ~~[its]~~ the executive committee's activities to the board of trustees at ~~[its]~~ the board of trustees' next regular meeting following the action.

(c) Copies of ~~[the]~~ a board of trustees' bylaws shall be filed with the board.

(7) A quorum is required to conduct business and consists of six members.

(8) A board of trustees may establish advisory committees.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) This section does not apply to a technical college board of directors ~~[of an applied technology college within the Utah College of Applied Technology]~~ described in Section 53B-2a-108.

Section 23. Section 53B-2-106 is amended to read:

53B-2-106. Duties and responsibilities of the president of an institution of higher education -- Approval by board of trustees -- Applicability to a technical college president.

(1) (a) ~~[The]~~ Except as provided in Subsection (5), the president of each institution of higher education described in Section 53B-2-101 may exercise grants of power and authority as delegated by the board, as well as the necessary and proper exercise of powers and authority not specifically denied to the institution[, its] of higher education or the institution of higher education's administration, faculty, or students by the board or by law, to [assure] ensure the effective and efficient administration and operation of the institution of higher education consistent with the statewide master plan for higher education.

(b) The president of each institution of higher education may, after consultation with the [institution's] institution of higher education's board of trustees, exercise powers relating to the [institution's] institution of higher education's employees, including faculty and persons under contract with the institution of higher education, by implementing [any of the following]:

(i) furloughs;

(ii) reductions in force;

(iii) benefit adjustments;

(iv) program reductions or discontinuance;

(v) early retirement incentives that provide cost savings to the institution[; and] of higher education;
or

(vi) other measures that provide cost savings to the institution of higher education.

(2) Except as provided by the board, the president of each institution of higher education, with the approval of the [institution's] institution of higher education's board of trustees, may:

(a) (i) appoint a secretary, a treasurer, administrative officers, deans, faculty members, and other professional personnel, prescribe their duties, and determine their salaries;

(ii) appoint support personnel, prescribe their duties, and determine their salaries from the [institution's] institution of higher education's position classification plan, which may:

(A) be based upon similarity of duties and responsibilities within the institution of higher education; and

(B) as funds permit, provide salary and benefits comparable with private enterprise;

(iii) adopt policies for:

(A) employee sick leave use and accrual; and

(B) service recognition for employees with more than 15 years of employment with the institution of higher education; and

(iv) subject to the authority of, the policy established by, and the approval of the board [of regents], and recognizing the status of the institutions within the state system of higher education as bodies politic and corporate, appoint attorneys to provide legal advice to the [institution's] institution of higher education's administration and to coordinate legal affairs within the institution of higher education. The board [of regents] shall coordinate activities of attorneys at the institutions of higher education. The institutions of higher education shall provide an annual report to the board [of regents] on the activities of appointed attorneys. These appointed attorneys may not conduct litigation, settle claims covered by the State Risk Management Fund, or issue formal legal opinions, but shall, in all respects, cooperate with the Office of the Attorney General in providing legal representation to the institution of higher education;

(b) provide for the constitution, government, and organization of the faculty and administration, and enact implementing rules, including the establishment of a prescribed system of tenure;

(c) authorize the faculty to determine the general initiation and direction of instruction and of the examination, admission, and classification of students. In recognition of the diverse nature and traditions of the various institutions governed by the board, the systems of faculty government need not be identical but should be designed to further faculty identification with and involvement in the institution's pursuit of achievement and excellence and in fulfillment of the institution's role as

established in the statewide master plan for higher education; and

(d) enact rules for administration and operation of the institution which are consistent with the prescribed role established by the board, rules enacted by the board, or the laws of the state. The rules may provide for administrative, faculty, student, and joint committees with jurisdiction over specified institutional matters, for student government and student affairs organization, for the establishment of institutional standards in furtherance of the ideals of higher education fostered and subscribed to by the institution~~[, its]~~ of higher education, the institution of higher education's administration, faculty, and students, and for the holding of classes on legal holidays, other than Sunday.

(3) Compensation costs and related office expenses for appointed attorneys shall be funded within existing budgets.

(4) The State Board of Regents shall establish guidelines relating to the roles and relationships between institutional presidents and boards of trustees, including those matters which must be approved by a board of trustees before implementation by the president.

(5) This section does not apply to a technical college president ~~[of an applied technology college within the Utah College of Applied Technology].~~

Section 24. Section 53B-2a-100.5 is enacted to read:

CHAPTER 2a. UTAH SYSTEM OF TECHNICAL COLLEGES

53B-2a-100.5. Title.

This chapter is known as "Utah System of Technical Colleges."

Section 25. Section 53B-2a-101 is amended to read:

53B-2a-101. Definitions.

As used in this chapter:

~~[(1) "Applied technology college" means a member college of the Utah College of Applied Technology.]~~

~~[(2) (1) "Board of trustees" means the Utah [College of Applied Technology] System of Technical Colleges Board of Trustees.~~

~~[(3) (2) "Commissioner of technical education" means the Utah [College of Applied Technology] System of Technical Colleges commissioner of technical education.~~

~~[(4) (3) "Competency-based" means mastery of subject matter or skill level, as demonstrated through business and industry approved standards and assessments, achieved through participation in a hands-on learning environment, and which is tied to observable, measurable performance objectives.~~

~~[(5) (4) "Member" means a member of the board of trustees.~~

~~[(6) (5) "Open-entry, open-exit" means:~~

~~(a) a method of instructional delivery that allows for flexible scheduling in response to individual student needs or requirements and demonstrated competency when knowledge and skills have been mastered;~~

~~(b) students have the flexibility to begin or end study at any time, progress through course material at their own pace, and demonstrate competency when knowledge and skills have been mastered; and~~

~~(c) if competency is demonstrated in a program of study, a credential, certificate, or diploma may be awarded.~~

Section 26. Section 53B-2a-102 is amended to read:

53B-2a-102. Commissioner of technical education -- Appointment -- Duties.

(1) (a) The board of trustees, upon approval from the governor and with the consent of the Senate, shall appoint a commissioner of technical education to serve as the board of trustees' chief executive officer.

(b) The commissioner of technical education shall:

(i) have an appropriate and relevant educational background, including, at a minimum, a master's degree; and

(ii) have extensive experience in career and technical education.

(c) The commissioner of technical education shall serve at the board of trustees' discretion and may be terminated by:

(i) the board of trustees; or

(ii) the governor, after consultation with the board of trustees.

(d) If the board of trustees intends to appoint an interim or acting commissioner of technical education during a leave of absence of the commissioner of technical education, the board of trustees shall appoint the interim or acting commissioner of technical education with the consent of the Senate.

(e) The name of each final candidate for commissioner of technical education shall be publicly disclosed.

(2) The board of trustees shall:

(a) set the salary of the commissioner of technical education;

(b) prescribe the duties and functions of the commissioner of technical education; and

(c) select a commissioner of technical education on the basis of outstanding professional qualifications.

(3) The commissioner of technical education is responsible to the board of trustees to:

(a) ensure that the policies and programs of the board of trustees are properly executed;

(b) furnish information about the Utah ~~[College of Applied Technology]~~ System of Technical Colleges and make recommendations regarding the information to the board of trustees;

(c) provide state-level leadership in an activity affecting ~~[an applied technology]~~ a technical college; and

(d) perform other duties as assigned by the board of trustees in carrying out the board of trustees' duties and responsibilities.

Section 27. Section 53B-2a-103 is amended to read:

53B-2a-103. Utah System of Technical Colleges Board of Trustees -- Membership -- Terms -- Vacancies -- Oath -- Officers -- Quorum -- Committees -- Compensation.

(1) There is created the Utah ~~[College of Applied Technology]~~ System of Technical Colleges Board of Trustees.

(2) Except as provided in Subsections (3) and (4), the board of trustees is composed of the following members:

~~[(a) one member of the State Board of Education appointed by the chair of the State Board of Education, to serve as a nonvoting member;]~~

~~[(b) one member of the State Board of Regents appointed by the chair of the State Board of Regents, to serve as a nonvoting member;]~~

~~[(e) (a) one member, representing business and industry employers from each [applied technology] technical college board of directors, appointed by a majority vote of the business and industry employer members of the [applied technology] technical college board of directors;~~

~~[(d) (b) one member representing business and industry employers from the Snow College Economic Development and Workforce Preparation Advisory Committee appointed by a majority of the business and industry employer members of the advisory committee;~~

~~[(e) (c) one member representing business and industry employers from the Utah State University Eastern career and technical education advisory committee appointed by a majority of the business and industry employer members of the advisory committee;~~

~~[(f) (d) one member representing business and industry employers from the Salt Lake Community College School of Applied Technology Board of Directors appointed by a majority of the business and industry employer members of the board of directors;~~

~~[(g) (e) one business or industry employer representative appointed by the governor with the~~

consent of the Senate from nominations submitted by the speaker of the House of Representatives and president of the Senate;

~~[(h) (f) one representative of union craft, trade, or apprenticeship programs that prepare workers for employment in career and technical education fields, appointed by the governor with the consent of the Senate;~~

~~[(i) (g) one representative of non-union craft, trade, or apprenticeship programs that prepare workers for employment in career and technical education fields, appointed by the governor with the consent of the Senate; and~~

~~[(j) (h) the executive director of the Governor's Office of Economic Development or the executive director's designee.~~

(3) (a) Beginning on July 1, 2019, the board of trustees is composed of 15 ~~[voting]~~ members appointed by the governor with the consent of the Senate, as follows:

(i) one member ~~[representing each applied technology college,]~~ selected from at least two nominees presented to the governor by the board of directors of each ~~[applied technology college]~~ technical college, for a total of eight members; and

(ii) one member ~~[representing]~~ who is employed in and represents each of the following sectors:

(A) information technology;

(B) manufacturing;

(C) life sciences;

(D) health care;

(E) transportation;

(F) union craft, trade, or apprenticeship; and

(G) non-union craft, trade, or apprenticeship.

(b) The seven members described in Subsection (3)(a)(ii) shall be selected from the state at large, subject to the following conditions:

(i) at least four members shall reside in a geographic area served by ~~[an applied technology college described in Section 53B-2a-105]~~ a technical college; and

(ii) no more than two members may reside in a single geographic area served by ~~[an applied technology college described in Section 53B-2a-105]~~ a technical college.

~~[(e) (i) In addition to the 15 voting members described in Subsection (3)(a), one member of the Board of Regents, appointed by the chair of the Board of Regents, shall serve as a nonvoting member of the board of trustees.]~~

~~[(ii) The nonvoting member from the Board of Regents is not subject to the term limit described in Subsection (5)(b).]~~

~~[(d) (c) The governor shall make appointments to the board of trustees on a nonpartisan basis.~~

~~(d) An individual may not serve on the board of trustees and a technical college board of directors simultaneously.~~

(4) (a) ~~Except as provided in Subsection (4)(d), to~~ To transition from the composition of the board of trustees described in Subsection (2) to the composition described in Subsection (3), for a member who was appointed to the board of trustees on or before May 10, 2016, the governor shall appoint a replacement:

(i) when the member's current term expires, for a member who, on May 10, 2016, has served less than two consecutive full terms on the board of trustees; or

(ii) on May 10, 2016, for a member who, on May 10, 2016, has served two or more consecutive full terms on the board of trustees.

(b) In replacing a member who was appointed under Subsection (2)~~(e)~~(a), the governor shall appoint a member ~~to represent the applied technology~~ for the technical college represented by the member whose term expires by:

(i) soliciting the ~~applied technology~~ technical college's board of directors to nominate at least two individuals for the position; and

(ii) selecting from the nominees presented.

(c) In replacing a member who was appointed under Subsections (2)~~(d)~~(b) through (2)~~(j)~~(h), the governor shall appoint a new member at large, ensuring representation from the sectors described in Subsection (3)(a)(ii).

~~(d) (i) A member appointed under Subsection (2)(a) shall remain on the board of trustees until June 30, 2019.]~~

~~(ii) A member appointed under Subsection (2)(b) may remain on the board following the transition to the board composition described in Subsection (3).]~~

~~(e)~~ (d) In making an appointment under this Subsection (4), the governor:

(i) shall appoint a member on a nonpartisan basis; and

(ii) may not reappoint the member who is being replaced if the member has served on the board of trustees for at least two consecutive full terms.

(5) (a) (i) Except as provided under Subsection (5)(a)(ii), a member shall be appointed commencing on July 1 of each odd-numbered year to a four-year term.

(ii) The governor shall ensure that member terms are staggered so that approximately one-half of the members' terms expire in any odd-numbered year.

(b) A member may not hold office for more than two consecutive full terms.

(6) When a vacancy occurs on the board of trustees for any reason, the governor shall appoint a replacement for the unexpired term.

(7) (a) Each member shall take the official oath of office prior to assuming the office.

(b) The oath shall be filed with the Division of Archives and Records Services.

(8) (a) The board of trustees shall elect a chair and vice chair, who serve for two years and until their successors are elected and qualified.

(b) A member may not serve more than two consecutive terms as the chair or vice chair.

(9) (a) The board of trustees shall enact bylaws for the board of trustees' own government, including provisions for regular meetings.

(b) (i) The board of trustees shall provide for an executive committee in the board of trustees' bylaws.

(ii) The executive committee shall have full authority of the board of trustees to act upon routine matters during the interim between board of trustees meetings.

(iii) The executive committee may act on nonroutine matters only under extraordinary and emergency circumstances.

(iv) The executive committee shall report ~~its~~ the executive committee's activities to the board of trustees at the board of trustees' next regular meeting following the executive committee's ~~action~~ activities.

(10) A quorum shall be required to conduct business which shall consist of a majority of ~~voting~~ board of trustee members.

(11) The board of trustees may establish advisory committees.

(12) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 28. Section 53B-2a-104 is amended to read:

53B-2a-104. Utah System of Technical Colleges Board of Trustees -- Powers and duties.

(1) The ~~Utah College of Applied Technology Board of Trustees~~ board of trustees is vested with the control, management, and supervision of ~~applied technology colleges within the Utah College of Applied Technology~~ technical colleges in a manner consistent with the policy and purpose of this title and the specific powers and responsibilities granted to the board of trustees.

(2) The board of trustees shall:

(a) ensure that ~~an applied technology~~ a technical college complies with the requirements in Section 53B-2a-106;

(b) appoint the commissioner of technical education in accordance with Section 53B-2a-102;

(c) advise the commissioner of technical education and the State Board of Regents on issues related to career and technical education, including

articulation with institutions of higher education and public education;

(d) ensure that a secondary student in the public education system has access to career and technical education through ~~[an applied technology]~~ a technical college in the secondary student's service region;

(e) in consultation with the State Board of Education, the State Board of Regents, and ~~[applied technology]~~ technical college presidents, develop strategies for providing career and technical education in rural areas, considering distances between rural career and technical education providers;

(f) receive budget requests from each ~~[applied technology]~~ technical college, compile and prioritize the requests, and submit the request to:

(i) the Legislature; and

(ii) the Governor's Office of Management and Budget;

(g) receive funding requests pertaining to capital facilities and land purchases from each ~~[applied technology]~~ technical college, ensure that the requests comply with Section 53B-2a-112, prioritize the requests, and submit the prioritized requests to the State Building Board;

(h) in conjunction with the commissioner of technical education, establish benchmarks, provide oversight, evaluate program performance, and obtain independent audits to ensure that ~~[an applied technology]~~ a technical college follows the noncredit career and technical education mission described in this part;

(i) approve programs for the Utah ~~[College of Applied Technology]~~ System of Technical Colleges;

(j) approve the tuition rates for ~~[applied technology]~~ technical colleges ~~[within the Utah College of Applied Technology];~~

(k) prepare and submit an annual report detailing the board of trustees' progress and recommendations on career and technical education issues to the governor and to the Legislature's Education Interim Committee by October 31 of each year, which shall include information detailing:

(i) how the career and technical education needs of secondary students are being met, including what access secondary students have to programs offered at ~~[applied technology]~~ technical colleges;

(ii) how the emphasis on high demand, high wage, and high skill jobs in business and industry described in Section 53B-2a-106 is being provided;

(iii) performance outcomes, including:

(A) entered employment;

(B) job retention; and

(C) earnings; and

(iv) student tuition and fees; and

(l) collaborate with the State Board of Regents, the State Board of Education, ~~[the state system of public education, the state system of higher education,]~~ the Department of Workforce Services, and the Governor's Office of Economic Development on the delivery of career and technical education.

(3) The board of trustees, the commissioner of technical education, or ~~[an applied technology]~~ a technical college~~;~~ president~~;~~ or board of directors may not conduct a feasibility study or perform another act relating to offering a degree or awarding credit.

Section 29. Section 53B-2a-105 is amended to read:

53B-2a-105. Utah System of Technical Colleges -- Composition.

The Utah ~~[College of Applied Technology]~~ System of Technical Colleges is composed of the following ~~[applied technology]~~ technical colleges:

(1) Bridgerland ~~[Applied Technology]~~ Technical College, which serves the geographic area encompassing:

- (a) the Box Elder School District;
- (b) the Cache School District;
- (c) the Logan School District; and
- (d) the Rich School District;

(2) Ogden-Weber ~~[Applied Technology]~~ Technical College, which serves the geographic area encompassing:

- (a) the Ogden City School District; and
- (b) the Weber School District;

(3) Davis ~~[Applied Technology]~~ Technical College, which serves the geographic area encompassing:

- (a) the Davis School District; and
- (b) the Morgan School District;

(4) Tooele ~~[Applied Technology]~~ Technical College, which serves the geographic area encompassing the Tooele County School District;

(5) Mountainland ~~[Applied Technology]~~ Technical College, which serves the geographic area encompassing:

- (a) the Alpine School District;
- (b) the Nebo School District;
- (c) the Provo School District;
- (d) the South Summit School District;
- (e) the North Summit School District;
- (f) the Wasatch School District; and
- (g) the Park City School District;

(6) Uintah Basin ~~[Applied Technology]~~ Technical College, which serves the geographic area encompassing:

- (a) the Daggett School District;
- (b) the Duchesne School District; and

- (c) the Uintah School District;
- (7) Southwest ~~[Applied Technology]~~ Technical College, which serves the geographic area encompassing:
- the Beaver School District;
 - the Garfield School District;
 - the Iron School District; and
 - the Kane School District; and
- (8) Dixie ~~[Applied Technology]~~ Technical College, which serves the geographic area encompassing the Washington School District.

Section 30. Section 53B-2a-106 is amended to read:

53B-2a-106. Technical colleges -- Duties.

(1) Each ~~[applied technology]~~ technical college ~~[within the Utah College of Applied Technology]~~ shall, within the geographic area served by the ~~[applied technology]~~ technical college:

(a) offer a noncredit ~~[post-secondary]~~ postsecondary and secondary career and technical education curriculum;

(b) offer that curriculum at:

(i) low cost to adult students, as approved by the board of trustees; and

(ii) no tuition to secondary students;

(c) provide career and technical education that will result in:

(i) appropriate licensing, certification, or other evidence of completion of training; and

(ii) qualification for specific employment, with an emphasis on high demand, high wage, and high skill jobs in business and industry;

(d) develop cooperative agreements with school districts, charter schools, other higher education institutions, businesses, industries, and community and private agencies to maximize the availability of instructional facilities within the geographic area served by the ~~[applied technology]~~ technical college; and

(e) after consulting with school districts and charter schools within the geographic area served by the ~~[applied technology]~~ technical college:

(i) ensure that secondary students in the public education system have access to career and technical education at the ~~[applied technology]~~ technical college; and

(ii) prepare and submit an annual report to the board of trustees detailing:

(A) how the career and technical education needs of secondary students within the region are being met;

(B) what access secondary students within the region have to programs offered at the ~~[applied technology]~~ technical college;

(C) how the emphasis on high demand, high wage, high skill jobs in business and industry described in Subsection (1)(c)(ii) is being provided; and

(D) student tuition and fees.

(2) ~~[An applied technology]~~ A technical college may offer:

(a) a competency-based high school diploma approved by the State Board of Education in accordance with Section 53A-1-402;

(b) noncredit, basic instruction in areas such as reading, language arts, and mathematics that are necessary for student success in a chosen career and technical education or job-related program;

(c) noncredit courses of interest when similar offerings to the community are limited and courses are financially self-supporting; and

(d) secondary school level courses through the Statewide Online Education Program in accordance with Section 53A-15-1205.

(3) Except as provided in Subsection (2)(d), ~~[an applied technology]~~ a technical college may not:

(a) offer courses other than noncredit career and technical education or the noncredit, basic instruction described in Subsections (2)(b) and (c);

(b) offer a degree;

(c) offer career and technical education or basic instruction outside the geographic area served by the ~~[applied technology]~~ technical college without a cooperative agreement between an affected institution, except as provided in Subsection (6);

(d) provide tenure or academic rank for its instructors; or

(e) participate in intercollegiate athletics.

(4) The mission of ~~[an applied technology]~~ a technical college is limited to noncredit career and technical education and may not expand to include credit-based academic programs typically offered by community colleges or other institutions of higher education.

(5) ~~[An applied technology]~~ A technical college shall be recognized as a member ~~[applied technology college]~~ of the Utah ~~[College of Applied Technology]~~ System of Technical Colleges, and regional affiliation shall be retained and recognized through local designations such as "Bridgerland ~~[Applied Technology]~~ Technical College: A member ~~[applied technology]~~ technical college of the Utah ~~[College of Applied Technology]~~ System of Technical Colleges."

(6) (a) ~~[An applied technology]~~ A technical college may offer career and technical education or basic instruction outside the geographic area served by the ~~[applied technology]~~ technical college without a cooperative agreement, as required in Subsection (3)(c), if:

(i) the career and technical education or basic instruction is specifically requested by:

(A) an employer; or

(B) a craft, trade, or apprenticeship program;

(ii) the ~~[applied technology]~~ technical college notifies the affected institution about the request; and

(iii) the affected institution is given an opportunity to make a proposal, prior to any contract being finalized or training being initiated by the ~~[applied technology]~~ technical college, to the employer, craft, trade, or apprenticeship program about offering the requested career and technical education or basic instruction, provided that the proposal shall be presented no later than one business week from the delivery of the notice described under Subsection (6)(a)(ii).

(b) The requirements under Subsection (6)(a)(iii) do not apply if there is a prior training relationship.

Section 31. Section 53B-2a-107 is amended to read:

53B-2a-107. Technical college presidents -- Appointments -- Duties.

(1) (a) The board of trustees shall, after consultation with ~~[an applied technology]~~ a technical college board of directors, appoint ~~[an applied technology college]~~ a president for ~~[an applied technology]~~ the technical college.

(b) The board of trustees shall establish a policy for appointing ~~[an applied technology]~~ a technical college president that:

(i) requires the board of trustees to create a search committee that:

(A) ~~[shall include]~~ includes an equal number of board of ~~[trustee]~~ trustees members and members from the ~~[applied technology]~~ technical college board of directors; and

(B) may include ~~[applied technology]~~ technical college faculty, students, or other individuals;

(ii) requires the search committee to seek nominations, interview candidates, and forward qualified candidates to the board of trustees for consideration;

(iii) provides for at least two members of the ~~[applied technology]~~ technical college board of directors to participate in board of trustees' interviews of finalists; and

(iv) provides for the board of trustees to vote to appoint ~~[an applied technology]~~ a technical college president in a meeting that complies with Title 52, Chapter 4, Open and Public Meetings Act.

(2) (a) ~~[An applied technology]~~ A technical college president shall serve as the chief ~~[administrative]~~ executive officer of the technical college ~~[campus]~~.

(b) ~~[An applied technology]~~ A technical college president does not need to have a doctorate degree, but shall have extensive experience in career and technical education.

(c) ~~[An applied technology]~~ A technical college president is subject to regular review and evaluation administered by the board of trustees, in cooperation with the ~~[applied technology]~~ technical college board of directors, through a process approved by the board of trustees.

(d) ~~[An applied technology]~~ A technical college president serves at the discretion of the board of trustees, in cooperation with the ~~[applied technology]~~ technical college board of directors.

(e) The board of trustees, in cooperation with ~~[an applied technology]~~ a technical college board of directors, shall set the compensation for ~~[an applied technology college president]~~ the technical college president using market survey information.

(3) ~~[An applied technology]~~ A technical college president shall:

(a) serve as the executive officer of the ~~[applied technology]~~ technical college board of directors;

(b) administer the day-to-day operations of the ~~[applied technology]~~ technical college;

(c) consult with the ~~[applied technology]~~ technical college board of directors; and

(d) administer human resource policies and employee compensation plans in accordance with the requirements of the board of trustees.

Section 32. Section 53B-2a-108 is amended to read:

53B-2a-108. Technical college boards of directors -- Membership -- Appointments.

~~[An applied technology college shall have an applied technology college board of directors appointed as follows:]~~

(1) The Bridgerland ~~[Applied Technology]~~ Technical College Board of Directors ~~[shall be]~~ is composed of the following 12 members:

(a) one elected local school board member appointed by the board of education for the Box Elder School District;

(b) one elected local school board member appointed by the board of education for the Cache School District;

(c) one elected local school board member appointed by the board of education for the Logan School District;

(d) one elected local school board member appointed by the board of education for the Rich School District;

(e) one member of the Utah State University board of trustees; and

(f) seven representatives of business or industry employers within the region appointed jointly by the members appointed under Subsections (1)(a) through (e)[;].

(2) The Ogden-Weber ~~[Applied Technology]~~ Technical College Board of Directors ~~[shall be]~~ is composed of the following 10 members:

(a) one elected local school board member appointed by the board of education for the Ogden City School District;

(b) one elected local school board member appointed by the board of education for the Weber School District;

(c) one member of the Weber State University board of trustees; and

(d) seven representatives of business or industry employers within the region appointed jointly by the members appointed under Subsections (2)(a) through (c)[5].

(3) The Davis ~~[Applied Technology]~~ Technical College Board of Directors [shall be] is composed of the following 10 members:

(a) one elected local school board member appointed by the board of education for the Davis School District;

(b) one elected local school board member appointed by the board of education for the Morgan School District;

(c) one member of the Weber State University board of trustees; and

(d) seven representatives of business or industry employers within the region appointed jointly by the members appointed under Subsections (3)(a) through (c)[5].

(4) The Tooele ~~[Applied Technology]~~ Technical College Board of Directors [shall be] is composed of the following 12 members:

(a) one elected local school board member appointed by the board of education for the Tooele County School District;

(b) one member of the Utah State University board of trustees; and

(c) 10 representatives of business or industry employers within the region appointed jointly by the members appointed under Subsections (4)(a) and (b)[5].

(5) The Mountainland ~~[Applied Technology]~~ Technical College Board of Directors [shall be] is composed of the following 18 members:

(a) one elected local school board member appointed by the board of education for the Alpine School District;

(b) one elected local school board member appointed by the board of education for the Nebo School District;

(c) one elected local school board member appointed by the board of education for the Provo School District;

(d) one elected local school board member appointed by the board of education for the South Summit School District;

(e) one elected local school board member appointed by the board of education for the North Summit School District;

(f) one elected local school board member appointed by the board of education for the Wasatch School District;

(g) one elected local school board member appointed by the board of education for the Park City School District;

(h) one member of the Utah Valley University board of trustees; and

(i) 10 representatives of business or industry employers within the region appointed jointly by the members appointed under Subsections (5)(a) through (h)[5].

(6) The Uintah Basin ~~[Applied Technology]~~ Technical College Board of Directors [shall be] is composed of the following 10 members:

(a) one elected local school board member appointed by the board of education for the Daggett School District;

(b) one elected local school board member appointed by the board of education for the Duchesne School District;

(c) one elected local school board member appointed by the board of education for the Uintah School District;

(d) one member of the Utah State University board of trustees; and

(e) six representatives of business or industry employers within the region appointed jointly by the members appointed under Subsections (6)(a) through (d)[5].

(7) The Southwest ~~[Applied Technology]~~ Technical College Board of Directors [shall be] is composed of the following 12 members:

(a) one elected local school board member appointed by the board of education for the Beaver School District;

(b) one elected local school board member appointed by the board of education for the Garfield School District;

(c) one elected local school board member appointed by the board of education for the Iron School District;

(d) one elected local school board member appointed by the board of education for the Kane School District;

(e) one member of the Southern Utah University board of trustees; and

(f) seven representatives of business or industry employers within the region appointed jointly by the members appointed under Subsections (7)(a) through (e)[5].

(8) The Dixie ~~[Applied Technology]~~ Technical College Board of Directors [shall be] is composed of the following 10 members:

(a) one elected local school board member appointed by the board of education for the Washington School District;

(b) one member of the Dixie State University board of trustees; and

(c) eight representatives of business or industry employers within the region appointed jointly by the members appointed under Subsections (8)(a) and (b); and.

(9) The representatives of business or industry employers ~~shall be~~ on a technical college board of directors are:

(a) appointed jointly by the designated members of a technical college board of directors from a list of names provided by local organizations or associations whose members employ workers with career and technical education;

(b) individuals recognized for their knowledge and expertise;

(c) individuals who represent current and emerging business and industry sectors of the state; and

(d) appointed on a nonpartisan basis.

Section 33. Section 53B-2a-109 is amended to read:

53B-2a-109. Technical college boards of directors -- Terms -- Quorum -- Chair -- Compensation.

(1) (a) At the first meeting of ~~[an applied technology]~~ a technical college board of directors after July 1, 2009:

(i) the representatives from the local school boards shall divide up their positions so that approximately half of them serve for two-year terms and half serve for four-year terms; and

(ii) the representatives from business and industry employers shall divide up their positions so that approximately half of them serve for two-year terms and half serve for four-year terms.

(b) Except as provided in Subsection (1)(a), individuals appointed to ~~[an applied technology]~~ a technical college board of directors shall serve four-year terms.

(2) The original appointing authority shall fill any vacancies that occur on ~~[an applied technology]~~ a technical college board of directors.

(3) A majority of ~~[an applied technology]~~ a technical college board of directors is a quorum.

(4) ~~[An applied technology]~~ A technical college board of directors shall elect a chair from ~~[its]~~ the technical college board of directors' membership.

(5) A member of ~~[an applied technology]~~ a technical college board of directors may not receive compensation or benefits for the ~~[member's]~~ member of the technical college board of director's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) (a) ~~[An applied technology]~~ A technical college board of directors may enact bylaws for the ~~[applied technology college's]~~ technical college board of directors' own government, including ~~[provision]~~ provisions for regular meetings, that are in accordance with the policies of the board of trustees.

(b) (i) ~~[An applied technology]~~ A technical college board of directors may provide for an executive committee in the ~~[applied technology]~~ technical college board of directors' bylaws.

(ii) If established, an executive committee shall have the full authority of the ~~[applied technology]~~ technical college board of directors to act upon routine matters during the interim between board of directors' meetings.

(iii) An executive committee may act on nonroutine matters only under extraordinary and emergency circumstances.

(iv) An executive committee shall report the executive committee's activities to the ~~[applied technology]~~ technical college board of directors at the ~~[applied technology]~~ technical college board of directors' next regular meeting following the ~~[action]~~ activities.

(7) ~~[An applied technology]~~ A technical college board of directors may establish advisory committees.

Section 34. Section 53B-2a-110 is amended to read:

53B-2a-110. Technical college board of directors' powers and duties.

(1) ~~[An applied technology]~~ A technical college board of directors shall:

(a) assist the ~~[applied technology]~~ technical college president in preparing a budget request for the ~~[applied technology]~~ technical college's annual operations to the board of trustees;

(b) after consulting with the board of trustees, other higher education institutions, school districts, and charter schools within the ~~[applied technology]~~ technical college's region, prepare a comprehensive strategic plan for delivering career and technical education within the region;

(c) consult with business, industry, the Department of Workforce Services, the Governor's Office of Economic Development, and the Governor's Office of Management and Budget on an ongoing basis to determine what workers and skills are needed for employment in Utah businesses and industries;

(d) develop programs based upon the information gathered in accordance with Subsection (1)(c), including expedited program approval and termination procedures to meet market needs;

(e) adopt an annual budget and fund balances;

(f) develop policies for the operation of career and technical education facilities under the ~~[applied technology]~~ technical college board of directors' jurisdiction;

(g) establish human resources and compensation policies for all employees in accordance with policies of the board of trustees;

(h) approve credentials for employees and assign employees to duties in accordance with board of trustees policies and accreditation guidelines;

(i) conduct annual program evaluations;

(j) appoint program advisory committees and other advisory groups to provide counsel, support, and recommendations for updating and improving the effectiveness of training programs and services;

(k) approve regulations, both regular and emergency, to be issued and executed by the ~~[applied technology]~~ technical college president;

(l) coordinate with local school boards, school districts, and charter schools to meet the career and technical education needs of secondary students; and

(m) develop policies and procedures for the admission, classification, instruction, and examination of students in accordance with the policies and accreditation guidelines of the board of trustees and the State Board of Education.

(2) A policy described in Subsection (1)(g) does not apply to ~~[an applied technology]~~ compensation for a technical college president.

(3) ~~[An applied technology]~~ A technical college board of directors may not exercise jurisdiction over career and technical education provided by a school district or charter school or provided by a higher education institution independently of ~~[an applied technology]~~ the technical college.

(4) If a program advisory committee or other advisory group submits a printed recommendation to ~~[an applied technology]~~ a technical college board of directors, the ~~[applied technology]~~ technical college board of directors shall acknowledge the recommendation with a printed response that explains the ~~[applied technology]~~ technical college board of directors' action regarding the recommendation and the reasons for the action.

Section 35. Section 53B-2a-111 is amended to read:

53B-2a-111. Board of Trustees -- Consultation with State Board of Regents.

The ~~[Utah College of Applied Technology Board of Trustees]~~ board of trustees shall consult with the State Board of Regents to coordinate the delivery of career and technical education.

Section 36. Section 53B-2a-112 is amended to read:

53B-2a-112. Technical colleges -- Relationships with other public and higher education institutions --

Agreements -- Priorities -- New capital facilities.

(1) As used in this section, "higher education institution" means, for each ~~[applied technology]~~ technical college, the higher education institution designated in Section 53B-2a-108 that has a representative on the ~~[applied technology]~~ technical college's board of directors.

(2) ~~[An applied technology]~~ A technical college shall avoid any unnecessary duplication of career and technical education instructional facilities, programs, administration, and staff between the ~~[applied technology]~~ technical college and other public and higher education institutions.

(3) ~~[An applied technology]~~ A technical college may enter into agreements:

(a) with other higher education institutions to cultivate cooperative relationships;

(b) with other public and higher education institutions to enhance career and technical education within its region; or

(c) to comply with Subsection (2).

(4) Before ~~[an applied technology]~~ a technical college develops new instructional facilities, the ~~[applied technology]~~ technical college shall give priority to:

(a) maintaining the ~~[applied technology]~~ technical college's existing instructional facilities for both secondary and adult students;

(b) coordinating with the president of a higher education institution and entering into any necessary agreements to provide career and technical education to both secondary and adult students that:

(i) maintain and support existing higher education career and technical education programs; and

(ii) maximize the use of existing higher education facilities; and

(c) developing cooperative agreements with school districts, charter schools, other higher education institutions, businesses, industries, and community and private agencies to maximize the availability of career and technical education instructional facilities for both secondary and adult students.

(5) (a) Before submitting a funding request pertaining to new capital facilities and land purchases to the board of trustees, ~~[an applied technology]~~ a technical college shall:

(i) ensure that all available instructional facilities are maximized in accordance with Subsections (4)(a) through (c); and

(ii) coordinate the request with the president of a higher education institution, if applicable.

(b) The State Building Board shall make a finding that the requirements of this section are met before the State Building Board may consider a funding

request from the board of trustees pertaining to new capital facilities and land purchases.

(c) ~~[An applied technology]~~ A technical college may not construct, approve the construction of, plan for the design or construction of, or consent to the construction of a career and technical education facility without approval of the Legislature.

(6) Before acquiring new fiscal and administrative support structures, ~~[an applied technology]~~ a technical college shall:

(a) review the use of existing public or higher education administrative and accounting systems, financial record systems, and student and financial aid systems for the delivery of career and technical education in the region;

(b) determine whether it is feasible to use those existing systems; and

(c) with the approval of the ~~[applied technology]~~ technical college board of directors and the board of trustees, use those existing systems.

Section 37. Section 53B-2a-113 is amended to read:

53B-2a-113. Technical colleges -- Leasing authority -- Lease-purchase agreements -- Report.

(1) In accordance with Subsection 53B-2a-112(2), ~~[an applied technology]~~ a technical college may enter into a lease with other higher education institutions, school districts, charter schools, state agencies, or business and industry for a term of:

(a) one year or less with the approval of the ~~[applied technology]~~ technical college board of directors; ~~[and] or~~

(b) more than one year with the approval of the board of trustees and:

(i) the approval of funding for the lease by the Legislature prior to ~~[an applied technology]~~ a technical college entering into the lease; or

(ii) the lease agreement includes language that allows termination of the lease without penalty.

(2) (a) In accordance with Subsection 53B-2a-112(2), ~~[an applied technology]~~ a technical college may enter into a lease-purchase agreement if:

(i) there is a long-term benefit to the state;

(ii) the project is included in both the ~~[applied technology]~~ technical college and Utah ~~[College of Applied Technology]~~ System of Technical Colleges master plans;

(iii) the lease-purchase agreement includes language that allows termination of the lease;

(iv) the lease-purchase agreement is approved by the ~~[applied technology]~~ technical college board of directors and the board of trustees; and

(v) the lease-purchase agreement is:

(A) reviewed by the Division of Facilities Construction and Management;

(B) reviewed by the State Building Board; and

(C) approved by the Legislature.

(b) An approval under Subsection (2)(a) shall include a recognition of:

(i) all parties, dates, and elements of the agreement;

(ii) the equity or collateral component that creates the benefit; and

(iii) the options dealing with the sale and division of equity.

(3) (a) Each ~~[applied technology]~~ technical college shall provide an annual lease report to the board of trustees that details each of the ~~[applied technology]~~ technical college's leases, annual costs, location, square footage, and recommendations for lease continuation.

(b) The board of trustees shall compile and distribute an annual combined lease report for all ~~[applied technology]~~ technical colleges to the Division of Facilities Construction and Management and to others upon request.

(4) The board of trustees shall use the annual combined lease report in determining planning, utilization, and budget requests.

Section 38. Section 53B-2a-114 is amended to read:

53B-2a-114. Educational program on the use of information technology.

(1) The Utah ~~[College of Applied Technology]~~ System of Technical Colleges shall offer an educational program on the use of information technology as provided in this section.

(2) An educational program on the use of information technology shall:

(a) provide instruction on skills and competencies essential for the workplace and requested by employers;

(b) include the following components:

(i) a curriculum;

(ii) online access to the curriculum;

(iii) instructional software for classroom and student use;

(iv) certification of skills and competencies most frequently requested by employers;

(v) professional development for faculty; and

(vi) deployment and program support, including integration with existing curriculum standards; and

(c) be made available to students, faculty, and staff of ~~[the Utah College of Applied Technology]~~ technical colleges.

Section 39. Section 53B-2a-115 is enacted to read:

53B-2a-115. Utah System of Technical Colleges -- Institutional name changes.

(1) Beginning July 1, 2017:

(a) the Utah College of Applied Technology shall be known as the Utah System of Technical Colleges;

(b) Bridgerland Applied Technology College shall be known as Bridgerland Technical College;

(c) Ogden-Weber Applied Technology College shall be known as Ogden-Weber Technical College;

(d) Davis Applied Technology College shall be known as Davis Technical College;

(e) Tooele Applied Technology College shall be known as Tooele Technical College;

(f) Mountainland Applied Technology College shall be known as Mountainland Technical College;

(g) Uintah Basin Applied Technology College shall be known as Uintah Basin Technical College;

(h) Southwest Applied Technology College shall be known as Southwest Technical College; and

(i) Dixie Applied Technology College shall be known as Dixie Technical College.

(2) (a) As described in Subsection (1), the Utah System of Technical Colleges is a continuation of the Utah College of Applied Technology and each technical college is a continuation of the applied technology college that preceded the technical college.

(b) An institution described in Subsection (1):

(i) possess all rights, title, privileges, powers, immunities, franchises, endowments, property, and claims of the institution that preceded the institution; and

(ii) shall fulfill and perform all obligations of the institution that preceded the institution, including obligations relating to outstanding bonds and notes.

Section 40. Section 53B-3-102 is amended to read:

53B-3-102. State institution of higher education defined.

(1) As used in this chapter, "state institution of higher education" means [the University of Utah, Utah State University, Southern Utah University, Weber State University, Snow College, Dixie State University, Utah Valley University, Salt Lake Community College, and] an institution described in Section 53B-2-101 or any other university or college [which may be] that is established and maintained by the state.

[~~(2) It includes any~~]

(2) A state institution of higher education includes:

(a) a branch or affiliated institution [~~and any~~]; or

(b) a campus or facilities owned, operated, or controlled by the governing board of the [~~university or college~~] state institution of higher education.

Section 41. Section 53B-6-106 is amended to read:

53B-6-106. Jobs Now and Economic Development Initiatives.

(1) (a) ~~The Utah [College of Applied Technology] System of Technical Colleges Board of Trustees shall develop, establish, and maintain a Jobs Now Initiative, to promote workforce preparation programs that meet critical needs and shortages throughout the state.~~

(b) The State Board of Regents shall develop, establish, and maintain economic development initiatives within the system of higher education.

(2) The initiatives specified in Subsection (1) shall provide support for technical training expansion that trains skilled potential employees within a period not to exceed 12 months for technical jobs in critical needs occupations and other innovative economic development policy initiatives.

(3) (a) Subject to future budget constraints, the Legislature shall provide an annual appropriation to the Utah [~~College of Applied Technology~~] System of Technical Colleges to fund the Jobs Now Initiative established in Subsection (1)(a).

(b) (i) ~~The Utah [College of Applied Technology] System of Technical Colleges Board of Trustees shall allocate the appropriation for the Jobs Now Initiative to [applied technology colleges within the Utah College of Applied Technology] technical colleges.~~

(ii) [~~An applied technology~~] A technical college shall use money received under Subsection (3)(b)(i) for technical training expansion referred to in Subsection (2).

(c) Subject to future budget constraints, the Legislature shall provide an annual appropriation to the State Board of Regents to fund economic development initiatives established pursuant Subsection (1)(b).

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) ~~the Utah [College of Applied Technology] System of Technical Colleges Board of Trustees shall make rules to implement the Jobs Now Initiative; and~~

(ii) ~~the board shall make rules to implement economic development initiatives.~~

Section 42. Section 53B-7-101 is amended to read:

53B-7-101. Combined requests for appropriations -- Board review of operating budgets -- Submission of budgets -- Recommendations -- Hearing request -- Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.

(1) As used in this section:

(a) (i) "Higher education institution" or "institution" means an institution of higher education listed in Section 53B-1-102.

(ii) "Higher education institution" or "institution" does not include:

(A) the Utah ~~[College of Applied Technology.]~~ System of Technical Colleges Board of Trustees; or

(B) a technical college.

(b) "Research university" means the University of Utah or Utah State University.

(2) (a) The board shall recommend a combined appropriation for the operating budgets of higher education institutions for inclusion in a state appropriations act.

(b) The board's combined budget recommendation shall include:

(i) employee compensation;

(ii) mandatory costs, including building operations and maintenance, fuel, and power;

~~[(iii) mission based funding described in Subsection (3);]~~

~~[(iv)]~~ (iii) performance funding described in Subsection ~~[(4)]~~ (3);

~~[(v)]~~ (iv) statewide and institutional priorities, including scholarships, financial aid, and technology infrastructure; and

~~[(vi)]~~ (v) unfunded historic growth.

(c) The board's recommendations shall be available for presentation to the governor and to the Legislature at least 30 days ~~[prior to]~~ before the convening of the Legislature, and shall include schedules showing the recommended amounts for each institution, including separately funded programs or divisions.

(d) The recommended appropriations shall be determined by the board only after it has reviewed the proposed institutional operating budgets, and has consulted with the various institutions and board staff in order to make appropriate adjustments.

~~[(3) (a) The board shall establish mission based funding.]~~

~~[(b) Mission based funding shall include:]~~

~~[(i) enrollment growth; and]~~

~~[(ii) up to three strategic priorities.]~~

~~[(c) The strategic priorities described in Subsection (3)(b)(ii) shall be:]~~

~~[(i) approved by the board; and]~~

~~[(ii) designed to improve the availability, effectiveness, or quality of higher education in the state.]~~

~~[(d) Concurrent with recommending mission based funding, the board shall also recommend to the Legislature ways to address funding any inequities for institutions as compared to institutions with similar missions.]~~

~~[(4)]~~ (3) (a) The board shall establish performance funding.

(b) Performance funding shall include metrics approved by the board, including:

(i) degrees and certificates granted;

(ii) services provided to traditionally underserved populations;

(iii) responsiveness to workforce needs;

(iv) institutional efficiency; and

(v) for a research university, graduate research metrics.

(c) The board shall:

(i) award performance funding appropriated by the Legislature to institutions based on the institution's success in meeting the metrics described in Subsection ~~[(4)]~~ (3)(b); and

(ii) reallocate funding that is not awarded to an institution under Subsection ~~[(4)]~~ (3)(c)(i) for distribution to other institutions that meet the metrics described in Subsection ~~[(4)]~~ (3)(b).

~~[(5)]~~ (4) (a) Institutional operating budgets shall be submitted to the board at least 90 days ~~[prior to]~~ before the convening of the Legislature in accordance with procedures established by the board.

(b) Funding requests pertaining to capital facilities and land purchases shall be submitted in accordance with procedures prescribed by the State Building Board.

~~[(6)]~~ (5) (a) The budget recommendations of the board shall be accompanied by full explanations and supporting data.

(b) The appropriations recommended by the board shall be made with the dual objective of:

(i) justifying for higher educational institutions appropriations consistent with their needs, and consistent with the financial ability of the state; and

(ii) determining an equitable distribution of funds among the respective institutions in accordance with the aims and objectives of the statewide master plan for higher education.

~~[(7)]~~ (6) (a) The board shall request a hearing with the governor on the recommended appropriations.

(b) After the governor delivers his budget message to the Legislature, the board shall request hearings on the recommended appropriations with the appropriate committees of the Legislature.

(c) If either the total amount of the state appropriations or its allocation among the institutions as proposed by the Legislature or ~~[its]~~ the Legislature's committees is substantially different from the recommendations of the board, the board may request further hearings with the Legislature or ~~[its]~~ the Legislature's appropriate committees to reconsider both the total amount and the allocation.

~~[(8)]~~ (7) The board may devise, establish, periodically review, and revise formulas for ~~[its]~~ the

board's use and for the use of the governor and the committees of the Legislature in making appropriation recommendations.

~~[(9)]~~ (8) (a) The board shall recommend to each session of the Legislature the minimum tuitions, resident and nonresident, for each institution which it considers necessary to implement the budget recommendations.

(b) The board may fix the tuition, fees, and charges for each institution at levels ~~[it]~~ the board finds necessary to meet budget requirements.

~~[(10)]~~ (9) (a) Money allocated to each institution by legislative appropriation may be budgeted in accordance with institutional work programs approved by the board, provided that the expenditures funded by appropriations for each institution are kept within the appropriations for the applicable period.

(b) ~~[A] Each year, a president of an institution of higher education shall~~~~[(4)]~~ establish initiatives for the president's institution ~~[each year]~~ of higher education that are~~[(A) aligned with the strategic priorities described in Subsection (3); and (B) consistent with the [institution's] institution of higher education's mission and role; and].~~

~~[(ii) allocate the institution's mission-based funding to the initiatives.]~~

~~[(11)]~~ (10) The dedicated credits, including revenues derived from tuitions, fees, federal grants, and proceeds from sales received by the institutions of higher education are appropriated to the respective institutions of higher education and used in accordance with institutional work programs.

~~[(12)]~~ (11) ~~[Each] An~~ institution of higher education may do ~~[its]~~ the institution's own purchasing, issue ~~[its]~~ the institution's own payrolls, and handle ~~[its]~~ the institution's own financial affairs under the general supervision of the board.

~~[(13)]~~ (12) (a) If the Legislature appropriates money in accordance with this section, ~~[it]~~ the money shall be distributed to the board and higher education institutions to fund the items described in Subsection (2)(b).

(b) During each general session of the Legislature following a fiscal year in which the Legislature provides an appropriation for ~~[mission-based funding or]~~ performance funding, the board and institutions of higher education shall report to the Legislature's Higher Education Appropriations Subcommittee on the use of the previous year's ~~[mission-based funding and]~~ performance funding~~[, including performance outcomes relating to the strategic initiatives approved by the board].~~

Section 43. Section 53B-8-101 is amended to read:

53B-8-101. Waiver of tuition.

(1) (a) The president of ~~[each institution]~~ an institution of higher education described in Section 53B-2-101 may waive all or part of the tuition in

behalf of meritorious or impecunious resident students to an amount not exceeding 10% of the total amount of tuition which, in the absence of the waivers, would have been collected from all Utah resident students at the institution of higher education.

(b) Two and a half percent of the waivers designated in Subsection (1)(a) shall be set aside for members of the Utah National Guard. Waivers shall be preserved by the student at least 60 days before the beginning of an academic term.

(2) (a) A president of an institution of higher education listed in Subsections 53B-2-101(1)(a) through (h) may waive all or part of the nonresident portion of tuition for a meritorious nonresident undergraduate student.

(b) In determining which students are meritorious for purposes of granting a tuition waiver under Subsection (2)(a), a president shall consider students who are performing above the average at the institution of higher education, including having an admissions index higher than the average for the institution, if an admissions index is used.

(c) A president may continue to waive the nonresident portion of tuition for a student described in Subsection (2)(a) for as long as the student is enrolled at the institution of higher education.

(d) In addition to waiving the nonresident portion of tuition for a meritorious nonresident student under Subsection (2)(a), a president may waive the resident portion of tuition after the meritorious nonresident student completes a year of full-time study at the institution of higher education.

(3) ~~[Upon recommendation of the board, a president shall grant additional full or partial tuition waivers to]~~ To encourage students to enroll for instruction in occupations critical to the state for which trained personnel are in short supply~~[-]~~, a president of an institution of higher education shall grant additional full or partial tuition waivers upon recommendation of:

(a) the board, for an institution of higher education described in Subsection (1)(a); or

(b) the Utah System of Technical Colleges Board of Trustees, for a technical college.

(4) A president may waive all or part of the difference between resident and nonresident tuition in the case of:

(a) meritorious graduate students; or

(b) nonresident summer school students.

(5) (a) The board shall submit an annual budget appropriation ~~[requests]~~ request for each institution~~[-, which]~~ of higher education described in Subsections 53B-2-101(1)(a) through (h).

(b) The Utah System of Technical Colleges Board of Trustees shall submit an annual budget appropriation request for each technical college.

(c) A request described in Subsection (5)(a) or (b) shall include requests for funds sufficient in amount to equal the estimated loss of dedicated credits that would be realized if all of the tuition waivers authorized by Subsection (2) were granted.

Section 44. Section 53B-8d-102 is amended to read:

53B-8d-102. Definitions.

As used in this chapter:

(1) "Division" means the Division of Child and Family Services.

(2) "Long-term foster care" means an individual who remains in the custody of the division, whether or not the individual resides:

(a) with licensed foster parents; or

(b) in independent living arrangements under the supervision of the division.

(3) "State institution of higher education" means:

(a) an institution designated in Section 53B-1-102; ~~and~~ or

(b) a public institution that offers postsecondary education in consideration of the payment of tuition or fees for the attainment of educational or vocational objectives leading to a degree or certificate, including:

(i) a business school;

(ii) a technical school;

~~[(iii) an applied technology college within the Utah College of Applied Technology;]~~

~~[(iv)]~~ (iii) a trade school; or

~~[(v)]~~ (iv) an institution offering related apprenticeship programs.

(4) "Tuition" means tuition at the rate for residents of the state.

(5) "Ward of the state" means an individual:

(a) who is:

(i) at least 17 years of age; and

(ii) not older than 26 years of age;

(b) who had a permanency goal in the individual's child and family plan, as described in Sections 62A-4a-205 and 78A-6-314, of long-term foster care while in the custody of the division; and

(c) for whom the custody of the division was not terminated as a result of adoption.

Section 45. Section 53B-16-101 is amended to read:

53B-16-101. Establishment of institutional roles and general courses of study.

(1) Except as institutional roles are specifically assigned by the Legislature, the board:

(a) may establish and define the roles of the various institutions of higher education under ~~its~~ the board's control and management; and

(b) shall, within each institution of higher education's primary role, prescribe the general course of study to be offered at ~~each~~ the institution~~[-]~~ of higher education, including for:

(i) research universities, which provide undergraduate, graduate, and research programs and include:

(A) the University of Utah; and

(B) Utah State University;

(ii) regional universities, which provide career and technical education, undergraduate associate and baccalaureate programs, and select master's degree programs to fill regional demands and include:

(A) Weber State University;

(B) Southern Utah University;

(C) Dixie State University; and

(D) Utah Valley University; and

(iii) comprehensive community colleges, which provide associate programs and include:

(A) Salt Lake Community College; and

(B) Snow College.

(2) Except for the University of Utah, each institution of higher education described in Subsection (1)(b) has career and technical education included in the institution of higher education's primary role.

~~[(2) In establishing and defining institutional roles, the board shall consider the traditional roles of the separate institutions.]~~

(3) The board may further clarify each institution of higher education's primary role.

Section 46. Section 53B-16-102 is amended to read:

53B-16-102. Changes in curriculum -- Substantial alterations in institutional operations -- Periodic review of programs -- Career and technical education curriculum changes.

(1) As used in this section:

(a) "Institution of higher education" means an institution described in Subsection 53B-1-102(1)(a).

(b) "Program of instruction" means a program of curriculum that leads to the completion of a degree, diploma, certificate, or other credential.

~~[(1)]~~ (2) Under procedures and policies approved by the board and developed in consultation with each institution of higher education, each institution of higher education may make such changes in ~~its~~ the institution of higher education's curriculum as necessary to better effectuate the

~~[institutional role previously approved by the board] institution of higher education's primary role.~~

~~[(2)] (3) [Notice of a change in the curriculum shall in all cases be promptly submitted to the board] An institution of higher education shall notify the board of a proposed new program of instruction.~~

~~(4) (a) Without the approval of the board, an institution of higher education may not:~~

~~(i) establish a branch, extension center, college, or professional school; or~~

~~(ii) establish a new program of instruction that is outside of the institution of higher education's primary role described in Section 53B-16-101.~~

~~(b) An institution of higher education may, with the approval of the institution of higher education's board of trustees, establish a new program of instruction that is within the institution of higher education's primary role described in Section 53B-16-101.~~

~~[(3)] (5) (a) The board shall establish procedures and [policies for considering institutional proposals for substantial alterations in the scope of existing institutional—operations] guidelines for institutional boards of trustees to consider an institutional proposal for a new program of instruction described in Subsection (4)(b).~~

~~(b) The guidelines described in Subsection (5)(a) shall provide that:~~

~~(i) prior to seeking approval from the institution of higher education's board of trustees, an institution of higher education that proposes a new program of instruction submit the proposal to the commissioner to conduct a peer review by other institutions of higher education;~~

~~(ii) the commissioner issue a report with the results of a peer review described in Subsection (5)(b)(i) to the board and the board of trustees of the institution of higher education proposing the new program of instruction; and~~

~~(iii) an institution of higher education that proposes a new program of instruction include:~~

~~(A) a fiscal analysis of the new program of instruction's initial and ongoing costs; and~~

~~(B) the institution of higher education's source of funding for the new program of instruction.~~

~~[(4) Alterations shall not be made without prior approval of the state board.]~~

~~[(5) For purposes of this section, "substantial alteration" means the establishment of a branch, extension center, college, professional school, division, institute, department, or a new program in instruction, research, or public services or a new degree, diploma, or certificate.]~~

~~(6) (a) The board shall conduct [periodic reviews] a periodic review of all new programs of instruction[, research, and public service at each~~

~~institution], including those funded by gifts, grants, and contracts, [and may require the modification or termination of any program] no later than two years after the first cohort to begin the program of instruction completes the program of instruction.~~

~~(b) The board may conduct a periodic review of any program of instruction at an institution of higher education, including a program of instruction funded by a gift, grant, or contract.~~

~~(c) Following a review described in this Subsection (6), the board may recommend that the institution of higher education modify or terminate the program of instruction.~~

~~(7) Prior to requiring modification or termination of a program, the board shall give the institution of higher education adequate opportunity for a hearing before the board.~~

~~(8) In making decisions related to career and technical education curriculum changes, the board shall [request] coordinate on behalf of the boards of trustees of higher education institutions a review of the proposed changes by the State Board of Education and the Utah [College of Applied Technology] System of Technical Colleges Board of Trustees to ensure an orderly and systematic career and technical education curriculum that eliminates overlap and duplication of course work with [the] high schools [and applied technology colleges within the Utah College of Applied Technology] and technical colleges.~~

Section 47. Section 53B-16-103 is amended to read:

53B-16-103. Granting of degrees, diplomas, or certifications -- Board approval -- Termination of previous approval.

~~(1) (a) An institution of higher education may not issue a degree, diploma, or certificate outside of the institution of higher education's primary role, as described in Section 53B-16-101, unless [it first] the institution of higher education receives approval from the board of the adequacy of the study for which the degree, diploma, or certificate is offered.~~

~~(b) A student shall demonstrate a reasonable understanding of the history, principles, form of government, and economic system of the United States [prior to] before receiving a bachelor's degree or teaching credential.~~

~~(2) Degrees, diplomas, and certificates issued prior to the effective date of this chapter do not require board approval.~~

~~(3) The board may terminate the granting of previously approved degrees, diplomas, and certificates if they are inconsistent with the primary role prescribed by the board for the affected institution of higher education.~~

Section 48. Section 53B-16-107 is amended to read:

53B-16-107. Credit for military service and training -- Notification -- Transferability -- Reporting.

(1) As used in this section, "credit" includes proof of equivalent noncredit course completion awarded by [the Utah College of Applied Technology] a technical college.

(2) An institution of higher education listed in Section 53B-2-101 shall provide written notification to each student applying for admission that the student is required to meet with a college counselor in order to receive credit for military service and training as recommended by a postsecondary accreditation agency or association designated by the [State Board of Regents] board or the Utah [College of Applied Technology] System of Technical Colleges Board of Trustees if:

(a) credit for military service and training is requested by the student; and

(b) the student has met with an advisor at an institution of higher education listed in Section 53B-2-101 at which the student intends to enroll to discuss applicability of credit to program requirements, possible financial aid implications, and other factors that may impact attainment of the student's educational goals.

(3) Upon transfer within the state system of higher education, a student may present a transcript to the receiving institution of higher education for evaluation and to determine the applicability of credit to the student's program of study, and the receiving institution of higher education shall evaluate the credit to be transferred pursuant to Subsection (2).

(4) The [State Board of Regents] board and the Utah [College of Applied Technology] System of Technical Colleges Board of Trustees shall annually report the number of credits awarded under this section by each institution of higher education to the Utah Department of Veterans' Affairs.

Section 49. Section 53B-16-201 is amended to read:

53B-16-201. Degrees and certificates that may be conferred.

(1) Utah State University, Snow College, and Salt Lake Community College may confer certificates of completion and degrees [as determined by the State Board of Regents] within each institution's primary role, as described in Section 53B-16-101.

(2) The board shall develop evaluative criteria as a means of carefully monitoring the impact of degree programs on the vocational mission of the [colleges] institutions of higher education described in Subsection (1).

Section 50. Section 53B-16-209 is amended to read:

53B-16-209. Salt Lake Community College -- School of Applied Technology -- Career and technical education -- Supervision and administration -- Institutional mission.

(1) (a) There is hereby established a School of Applied Technology at Salt Lake Community College.

(b) Beginning on July 1, 2009, the Salt Lake Skills Center and the Salt Lake County portion of the Salt Lake/Tooele Applied Technology College shall be established as Salt Lake Community College's School of Applied Technology.

(2) Salt Lake Community College's School of Applied Technology is a continuation of the Salt Lake Skills Center and the Salt Lake County portion of the Salt Lake/Tooele Applied Technology College and shall:

(a) possess all rights, title, privileges, powers, immunities, franchises, endowments, property, and claims of the Salt Lake Skills Center and the Salt Lake County portion of the Salt Lake/Tooele Applied Technology College; and

(b) fulfill and perform all obligations of the Salt Lake Skills Center and the Salt Lake County portion of the Salt Lake/Tooele Applied Technology College.

(3) Salt Lake Community College shall administer the School of Applied Technology [with the School of Applied Technology's Board of Directors as provided in Section 53B-16-210].

(4) Salt Lake Community College's School of Applied Technology shall:

(a) provide non-credit career and technical education for both secondary and adult students, with an emphasis primarily on open-entry, open-exit programs;

(b) ensure that economically disadvantaged, educationally disadvantaged, or other at-risk students have access to non-credit career and technical education;

(c) maintain a strong curriculum in non-credit career and technical education courses which can be articulated with credit career and technical education courses within the institution and within the state system of higher education;

(d) offer [non-credit] noncredit, basic instruction in areas such as reading, language arts, and mathematics that are necessary for student success in a chosen career and technical education or job-related program;

(e) offer the curriculum at:

(i) low cost to adult students, consistent with legislative appropriations to the School of Applied Technology; and

(ii) no tuition cost to secondary students;

(f) provide [non-credit] noncredit career and technical education that will result in:

(i) appropriate licensing, certification, or other evidence of completion of training; and

(ii) qualification for specific employment, with an emphasis on high demand, high wage, and high skill jobs in business and industry;

(g) develop cooperative agreements within the geographic area served by the School of Applied Technology with school districts, charter schools, and other higher education institutions,

businesses, industries, and community and private agencies to maximize the availability of instructional facilities; and

(h) after consulting with school districts and charter schools within the geographic area served:

(i) ensure that secondary students in the public education system have access to non-credit career and technical education at each School of Applied Technology location; and

(ii) prepare and submit an annual report to the State Board of Regents detailing:

(A) how the non-credit career and technical education needs of secondary students within the region are being met;

(B) what access secondary students within the region have to programs offered at School of Applied Technology locations;

(C) how the emphasis on high demand, high wage, and high skill jobs in business and industry is being provided; and

(D) student tuition and fees.

(5) Salt Lake Community College or ~~its~~ Salt Lake Community College's School of Applied Technology may not exercise any jurisdiction over career and technical education provided by a school district or charter school independently of Salt Lake Community College or ~~its~~ Salt Lake Community College's School of Applied Technology.

(6) Legislative appropriations to Salt Lake Community College's School of Applied Technology shall be made as a line item that separates it from other appropriations for Salt Lake Community College.

Section 51. Section 53B-16-401 is amended to read:

53B-16-401. Definitions.

As used in this part:

(1) "Cooperating employer" means a public or private entity which, as part of a work experience and career exploration program offered through an institution of higher education, provides interns with training and work experience in activities related to the entity's ongoing business activities.

(2) "Institution of higher education" means any component of the state system of higher education as defined under Section 53B-1-102 ~~which~~ that is authorized by the ~~State Board of Regents~~ board or the Utah System of Technical Colleges Board of Trustees to offer internship programs, and any private institution of higher education which offers internship programs under this part.

(3) "Intern" means a student enrolled in a work experience and career exploration program under Section 53B-16-402 ~~which~~ that is sponsored by an institution of higher education, involving both classroom instruction and work experience with a cooperating employer, for which the student receives no compensation.

(4) "Internship" means the work experience segment of an intern's work experience and career exploration program sponsored by an institution of higher education, performed under the direct supervision of a cooperating employer.

Section 52. Section 53B-17-105 is amended to read:

53B-17-105. Utah Education and Telehealth Network.

(1) There is created the Utah Education and Telehealth Network, or UETN.

(2) UETN shall:

(a) coordinate and support the telecommunications needs of public and higher education, public libraries, and entities affiliated with the state systems of public and higher education as approved by the Utah Education and Telehealth Network Board, including the statewide development and implementation of a network for education, which utilizes satellite, microwave, fiber-optic, broadcast, and other transmission media;

(b) coordinate the various telecommunications technology initiatives of public and higher education;

(c) provide high-quality, cost-effective Internet access and appropriate interface equipment for schools and school systems;

(d) procure, install, and maintain telecommunication services and equipment on behalf of public and higher education;

(e) develop or implement other programs or services for the delivery of distance learning and telehealth services as directed by law;

(f) apply for state and federal funding on behalf of:

(i) public and higher education; and

(ii) telehealth services;

(g) in consultation with health care providers from a variety of health care systems, explore and encourage the development of telehealth services as a means of reducing health care costs and increasing health care quality and access, with emphasis on assisting rural health care providers and special populations; and

(h) in consultation with the Utah Department of Health, advise the governor and the Legislature on:

(i) the role of telehealth in the state;

(ii) the policy issues related to telehealth;

(iii) the changing telehealth needs and resources in the state; and

(iv) state budgetary matters related to telehealth.

(3) In performing the duties under Subsection (2), UETN shall:

(a) provide services to schools, school districts, and the public and higher education systems through an open and competitive bidding process;

(b) work with the private sector to deliver high-quality, cost-effective services;

(c) avoid duplicating facilities, equipment, or services of private providers or public telecommunications service, as defined under Section 54-8b-2;

(d) utilize statewide economic development criteria in the design and implementation of the educational telecommunications infrastructure; and

(e) assure that public service entities, such as educators, public service providers, and public broadcasters, are provided access to the telecommunications infrastructure developed in the state.

(4) The University of Utah shall provide administrative support for UETN.

(5) (a) The Utah Education and Telehealth Network Board, which is the governing board for UETN, is created.

(b) The Utah Education and Telehealth Network Board shall have 13 members as follows:

(i) four members representing the state system of higher education appointed by the commissioner of higher education;

(ii) four members representing the state system of public education appointed by the State Board of Education;

(iii) one member representing ~~applied technology~~ technical colleges appointed by the Utah ~~College of Applied Technology~~ System of Technical Colleges commissioner of technical education;

(iv) one member representing the state library appointed by the state librarian;

(v) two members representing hospitals as follows:

(A) the members may not be employed by the same hospital system;

(B) one member shall represent a rural hospital;

(C) one member shall represent an urban hospital; and

(D) the chief administrator or the administrator's designee for each hospital licensed in this state shall select the two hospital representatives; and

(vi) one member representing the office of the governor, appointed by the governor.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(d) (i) The board shall elect a chair.

(ii) The chair shall set the agenda for the board meetings.

(6) A member of the board may not receive compensation or benefits for the member's service,

but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) The board:

(a) shall hire an executive director for UETN who may hire staff for UETN as permitted by the budget;

(b) may terminate the executive director's employment or assignment;

(c) shall determine the executive director's salary;

(d) shall annually conduct a performance evaluation of the executive director;

(e) shall establish policies the board determines are necessary for the operation of UETN and the administration of UETN's duties; and

(f) shall advise UETN in:

(i) the development and operation of a coordinated, statewide, multi-option telecommunications system to assist in the delivery of educational services and telehealth services throughout the state; and

(ii) acquiring, producing, and distributing instructional content.

(8) The executive director of UETN shall be an at-will employee.

(9) UETN shall locate and maintain educational and telehealth telecommunication infrastructure throughout the state.

(10) Educational institutions shall manage site operations under policy established by UETN.

(11) Subject to future budget constraints, the Legislature shall provide an annual appropriation to operate UETN.

(12) If the network operated by the Department of Technology Services is not available, UETN may provide network connections to the central administration of counties and municipalities for the sole purpose of transferring data to a secure facility for backup and disaster recovery.

Section 53. Section 53B-21-101 is amended to read:

53B-21-101. Financing of projects or buildings -- Issuance of bonds -- Sale price determined by board -- Payment of bonds -- Bonds exempt from income taxation.

(1) In order to pay all or part of the cost of the acquisition, purchase, construction, improvement, remodeling, addition to, extension, equipment, and furnishing of any project or building, including the acquisition of all necessary land, the board, on behalf of the institution for which this is to be done, may do the following: (a) borrow money on the credit

of the income and revenues to be derived from the operation of the building, the imposition of student building fees, land grant interest, and net profits from proprietary activities, or from sources other than by appropriations by the Legislature to issuing institutions and, in anticipation of the collection of this income and revenues, issue negotiable bonds of the institution in an amount as the board determines is necessary for these purposes; and (b) provide for the payment of these bonds and the rights of their holders as provided in this chapter.

(2) Bonds may: (a) be issued in one or more series; (b) bear any date or dates; (c) mature at any time or times not exceeding 40 years from their date; (d) be in any denominations; (e) be in any form, either coupon or registered; (f) carry registration and conversion privileges; (g) be executed in any manner; (h) be payable in any medium of payment at any place; (i) be subject to any terms of redemption with or without premium; and (j) bear interest at any rate or rates as provided by resolution adopted by the board at or ~~prior to~~ before the sale of the bonds.

(3) The bonds may be sold in a manner, at the lowest obtainable rate or rates of interest, and at a price or prices as determined by the board. These determinations are conclusive.

(4) The board may authorize one issue of bonds for the acquisition, purchase, construction, improvement, remodeling, adding to, extending, furnishing, or equipping of more than one building, including the acquisition of all necessary land, and may make the bonds payable from the combined revenues of all the buildings as well as from student building fees, land grant interest, net profits from proprietary activities, and from sources other than those derived from appropriations from the Legislature.

(5) The bonds issued under this chapter have all of the qualities and incidents of negotiable paper and are not subject to state or local income taxation.

(6) This section does not apply to a technical college.

Section 54. Section 53B-26-102 is amended to read:

53B-26-102. Definitions.

As used in this chapter:

~~(1) "College of applied technology" means:~~

~~(a) a college described in Section 53B-2a-105;~~

~~(b) the School of Applied Technology at Salt Lake Community College established under Section 53B-16-209;~~

~~(c) Utah State University Eastern established under Section 53B-18-1201; or~~

~~(d) the Snow College Richfield campus established under Section 53B-16-205.~~

~~(2) (1) "CTE" means career and technical education.~~

~~(3) (2) "CTE region" means an economic service area created in Section 35A-2-101.~~

~~(4) (3) "Eligible partnership" means a partnership:~~

~~(a) between at least two of the following:~~

~~(i) a ~~college of applied technology~~ technical college;~~

~~(ii) a school district or charter school; or~~

~~(iii) an institution of higher education; and~~

~~(b) that provides educational services within the same CTE region.~~

~~(5) (4) "Employer" means a private employer, public employer, industry association, the military, or a union.~~

~~(6) (5) "Industry advisory group" means:~~

~~(a) a group of at least five employers that represent the strategic industry cluster that a proposal submitted under Section 53B-26-103 is responsive to; and~~

~~(b) a representative of the Governor's Office of Economic Development, appointed by the executive director of the Governor's Office of Economic Development.~~

~~(7) (6) "Institution of higher education" means the University of Utah, Utah State University, Southern Utah University, Weber State University, Snow College, Dixie State University, Utah Valley University, ~~and~~ or Salt Lake Community College.~~

~~(8) (7) "Stackable sequence of credentials" means a sequence of credentials that:~~

~~(a) an individual can build upon to access an advanced job or higher wage;~~

~~(b) is part of a career pathway system;~~

~~(c) provides a pathway culminating in the equivalent of an associate's or bachelor's degree;~~

~~(d) facilitates multiple exit and entry points; and~~

~~(e) recognizes sub-goals or momentum points.~~

~~(8) "Technical college" means:~~

~~(a) a college described in Section 53B-2a-105;~~

~~(b) the School of Applied Technology at Salt Lake Community College established under Section 53B-16-209;~~

~~(c) Utah State University Eastern established under Section 53B-18-1201; or~~

~~(d) the Snow College Richfield campus established under Section 53B-16-205.~~

Section 55. Section 53B-26-103 is amended to read:

53B-26-103. GOED reporting requirement -- Proposals -- Funding.

(1) The Governor's Office of Economic Development shall publish, on a biannual basis, a

report detailing the high demand technical jobs projected to support economic growth in high need strategic industry clusters, including:

- (a) aerospace and defense;
- (b) energy and natural resources;
- (c) financial services;
- (d) life sciences;
- (e) outdoor products;
- (f) software development and information technology; or
- (g) any other strategic industry cluster designated by the Governor's Office of Economic Development.

(2) To receive funding under this section, an eligible partnership shall submit a proposal containing the elements described in Subsection (3) to the Legislature:

(a) on or before July 1, 2016, for fiscal year 2017; or

(b) on or before January 5 for fiscal year 2018 and any succeeding fiscal year.

(3) The proposal shall include:

(a) a program of study that:

(i) is responsive to the workforce needs of the CTE region in a high need strategic industry cluster as identified by the Governor's Office of Economic Development under Subsection (1);

(ii) leads to the attainment of a stackable sequence of credentials; and

(iii) includes a non-duplicative progression of courses that include both academic and CTE content;

(b) expected student enrollment, attainment rates, and job placement rates;

(c) evidence of input and support for the proposal from an industry advisory group;

(d) evidence of an official action in support of the proposal from:

(i) the Utah ~~[College of Applied Technology]~~ System of Technical Colleges Board of Trustees, if the eligible partnership includes a technical college ~~[described in Section 53B-2a-105]~~; or

(ii) the Board of Regents, if the eligible partnership includes:

(A) an institution of higher education; or

(B) a college described in Subsection 53B-26-102~~(4)~~(8)(b), (c), or (d); and

(e) a funding request, including justification for the request.

(4) The Legislature shall:

(a) review a proposal submitted under this section using the following criteria:

(i) the proposal contains the elements described in Subsection (3);

(ii) support for the proposal is widespread within the CTE region; and

(iii) the proposal expands the capacity to meet regional workforce needs;

(b) determine the extent to which to fund the proposal; and

(c) fund the proposal through the appropriations process.

Section 56. Section 58-22-302 is amended to read:

58-22-302. Qualifications for licensure.

(1) Each applicant for licensure as a professional engineer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory evidence of good moral character;

(d) (i) have graduated and received a bachelors or masters degree from an engineering program meeting criteria established by rule by the division in collaboration with the board; or

(ii) have completed the Transportation Engineering Technology and Fundamental Engineering College Program ~~[prior to] before July 1, 1998~~, under the direction of the Utah Department of Transportation and as certified by the Utah Department of Transportation;

(e) have successfully completed a program of qualifying experience established by rule by the division in collaboration with the board;

(f) have successfully passed examinations established by rule by the division in collaboration with the board; and

(g) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualification for licensure.

(2) Each applicant for licensure as a professional structural engineer shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory evidence of good moral character;

(d) have graduated and received an earned bachelors or masters degree from an engineering program meeting criteria established by rule by the division in collaboration with the board;

(e) have successfully completed three years of licensed professional engineering experience established by rule by the division in collaboration with the board, except that prior to January 1, 2009,

an applicant for licensure may submit a signed affidavit in a form prescribed by the division stating that the applicant is currently engaged in the practice of structural engineering;

(f) have successfully passed examinations established by rule by the division in collaboration with the board, except that prior to January 1, 2009, an applicant for licensure may submit a signed affidavit in a form prescribed by the division stating that the applicant is currently engaged in the practice of structural engineering; and

(g) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualification for licensure.

(3) Each applicant for licensure as a professional land surveyor shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory evidence of good moral character;

(d) (i) have graduated and received an associates, bachelors, or masters degree from a land surveying program, or an equivalent land surveying program, such as a program offered by [~~the Utah College of Applied Technology~~] a technical college described in Section 53B-2a-105, as approved by the State Board of Regents, established by rule by the division in collaboration with the board, and have successfully completed a program of qualifying experience in land surveying established by rule by the division in collaboration with the board; or

(ii) have successfully completed a program of qualifying experience in land surveying prior to January 1, 2007, in accordance with rules established by the division in collaboration with the board;

(e) have successfully passed examinations established by rule by the division in collaboration with the board; and

(f) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualification for licensure.

(4) Each applicant for licensure by endorsement shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) provide satisfactory evidence of good moral character;

(d) submit satisfactory evidence of:

(i) current licensure in good standing in a jurisdiction recognized by rule by the division in collaboration with the board;

(ii) having successfully passed an examination established by rule by the division in collaboration with the board; and

(iii) full-time employment as a principal for at least five of the last seven years immediately preceding the date of the application as a:

(A) licensed professional engineer for licensure as a professional engineer;

(B) licensed professional structural engineer for licensure as a structural engineer; or

(C) licensed professional land surveyor for licensure as a professional land surveyor; and

(e) meet with the board or representative of the division upon request for the purpose of evaluating the applicant's qualifications for license.

(5) The rules made to implement this section shall be in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 57. Section 59-12-102 is amended to read:

59-12-102. Definitions.

As used in this chapter:

(1) "800 service" means a telecommunications service that:

(a) allows a caller to dial a toll-free number without incurring a charge for the call; and

(b) is typically marketed:

(i) under the name 800 toll-free calling;

(ii) under the name 855 toll-free calling;

(iii) under the name 866 toll-free calling;

(iv) under the name 877 toll-free calling;

(v) under the name 888 toll-free calling; or

(vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the Federal Communications Commission.

(2) (a) "900 service" means an inbound toll telecommunications service that:

(i) a subscriber purchases;

(ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to the subscriber's:

(A) prerecorded announcement; or

(B) live service; and

(iii) is typically marketed:

(A) under the name 900 service; or

(B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal Communications Commission.

(b) "900 service" does not include a charge for:

(i) a collection service a seller of a telecommunications service provides to a subscriber; or

(ii) the following a subscriber sells to the subscriber's customer:

- (A) a product; or
- (B) a service.

(3) (a) "Admission or user fees" includes season passes.

(b) "Admission or user fees" does not include annual membership dues to private organizations.

(4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on November 12, 2002, including amendments made to the Streamlined Sales and Use Tax Agreement after November 12, 2002.

(5) "Agreement combined tax rate" means the sum of the tax rates:

- (a) listed under Subsection (6); and
- (b) that are imposed within a local taxing jurisdiction.

(6) "Agreement sales and use tax" means a tax imposed under:

- (a) Subsection 59-12-103(2)(a)(i)(A);
- (b) Subsection 59-12-103(2)(b)(i);
- (c) Subsection 59-12-103(2)(c)(i);
- (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- (e) Section 59-12-204;
- (f) Section 59-12-401;
- (g) Section 59-12-402;
- (h) Section 59-12-402.1;
- (i) Section 59-12-703;
- (j) Section 59-12-802;
- (k) Section 59-12-804;
- (l) Section 59-12-1102;
- (m) Section 59-12-1302;
- (n) Section 59-12-1402;
- (o) Section 59-12-1802;
- (p) Section 59-12-2003;
- (q) Section 59-12-2103;
- (r) Section 59-12-2213;
- (s) Section 59-12-2214;
- (t) Section 59-12-2215;
- (u) Section 59-12-2216;
- (v) Section 59-12-2217; or
- (w) Section 59-12-2218.

(7) "Aircraft" is as defined in Section 72-10-102.

(8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:

(a) except for:

(i) an airline as defined in Section 59-2-102; or

(ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group" includes a corporation that is qualified to do business but is not otherwise doing business in the state, of an airline; and

(b) that has the workers, expertise, and facilities to perform the following, regardless of whether the business entity performs the following in this state:

(i) check, diagnose, overhaul, and repair:

(A) an onboard system of a fixed wing turbine powered aircraft; and

(B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;

(ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft engine;

(iii) perform at least the following maintenance on a fixed wing turbine powered aircraft:

(A) an inspection;

(B) a repair, including a structural repair or modification;

(C) changing landing gear; and

(D) addressing issues related to an aging fixed wing turbine powered aircraft;

(iv) completely remove the existing paint of a fixed wing turbine powered aircraft and completely apply new paint to the fixed wing turbine powered aircraft; and

(v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that results in a change in the fixed wing turbine powered aircraft's certification requirements by the authority that certifies the fixed wing turbine powered aircraft.

(9) "Alcoholic beverage" means a beverage that:

(a) is suitable for human consumption; and

(b) contains .5% or more alcohol by volume.

(10) "Alternative energy" means:

(a) biomass energy;

(b) geothermal energy;

(c) hydroelectric energy;

(d) solar energy;

(e) wind energy; or

(f) energy that is derived from:

(i) coal-to-liquids;

(ii) nuclear fuel;

(iii) oil-impregnated diatomaceous earth;

(iv) oil sands;

(v) oil shale;

(vi) petroleum coke; or

- (vii) waste heat from:
- (A) an industrial facility; or
- (B) a power station in which an electric generator is driven through a process in which water is heated, turns into steam, and spins a steam turbine.
- (11) (a) Subject to Subsection (11)(b), “alternative energy electricity production facility” means a facility that:
- (i) uses alternative energy to produce electricity; and
- (ii) has a production capacity of two megawatts or greater.
- (b) A facility is an alternative energy electricity production facility regardless of whether the facility is:
- (i) connected to an electric grid; or
- (ii) located on the premises of an electricity consumer.
- (12) (a) “Ancillary service” means a service associated with, or incidental to, the provision of telecommunications service.
- (b) “Ancillary service” includes:
- (i) a conference bridging service;
- (ii) a detailed communications billing service;
- (iii) directory assistance;
- (iv) a vertical service; or
- (v) a voice mail service.
- (13) “Area agency on aging” is as defined in Section 62A-3-101.
- (14) “Assisted amusement device” means an amusement device, skill device, or ride device that is started and stopped by an individual:
- (a) who is not the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device; and
- (b) at the direction of the seller of the right to use the amusement device, skill device, or ride device.
- (15) “Assisted cleaning or washing of tangible personal property” means cleaning or washing of tangible personal property if the cleaning or washing labor is primarily performed by an individual:
- (a) who is not the purchaser of the cleaning or washing of the tangible personal property; and
- (b) at the direction of the seller of the cleaning or washing of the tangible personal property.
- (16) “Authorized carrier” means:
- (a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan and the International Fuel Tax Agreement;

- (b) in the case of aircraft, the holder of a Federal Aviation Administration operating certificate or air carrier’s operating certificate; or
- (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, a person who uses locomotives, freight cars, railroad work equipment, or other rolling stock in more than one state.
- (17) (a) Except as provided in Subsection (17)(b), “biomass energy” means any of the following that is used as the primary source of energy to produce fuel or electricity:
- (i) material from a plant or tree; or
- (ii) other organic matter that is available on a renewable basis, including:
- (A) slash and brush from forests and woodlands;
- (B) animal waste;
- (C) waste vegetable oil;
- (D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of wastewater residuals, or through the conversion of a waste material through a nonincineration, thermal conversion process;
- (E) aquatic plants; and
- (F) agricultural products.
- (b) “Biomass energy” does not include:
- (i) black liquor; or
- (ii) treated woods.
- (18) (a) “Bundled transaction” means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:
- (i) distinct and identifiable; and
- (ii) sold for one nonitemized price.
- (b) “Bundled transaction” does not include:
- (i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction;
- (ii) the sale of real property;
- (iii) the sale of services to real property;
- (iv) the retail sale of tangible personal property and a service if:
- (A) the tangible personal property:
- (I) is essential to the use of the service; and
- (II) is provided exclusively in connection with the service; and
- (B) the service is the true object of the transaction;
- (v) the retail sale of two services if:
- (A) one service is provided that is essential to the use or receipt of a second service;

(B) the first service is provided exclusively in connection with the second service; and

(C) the second service is the true object of the transaction;

(vi) a transaction that includes tangible personal property or a product subject to taxation under this chapter and tangible personal property or a product that is not subject to taxation under this chapter if the:

(A) seller's purchase price of the tangible personal property or product subject to taxation under this chapter is de minimis; or

(B) seller's sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(vii) the retail sale of tangible personal property that is not subject to taxation under this chapter and tangible personal property that is subject to taxation under this chapter if:

(A) that retail sale includes:

(I) food and food ingredients;

(II) a drug;

(III) durable medical equipment;

(IV) mobility enhancing equipment;

(V) an over-the-counter drug;

(VI) a prosthetic device; or

(VII) a medical supply; and

(B) subject to Subsection (18)(f):

(I) the seller's purchase price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price of that retail sale; or

(II) the seller's sales price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total sales price of that retail sale.

(c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a service that is distinct and identifiable does not include:

(A) packaging that:

(I) accompanies the sale of the tangible personal property, product, or service; and

(II) is incidental or immaterial to the sale of the tangible personal property, product, or service;

(B) tangible personal property, a product, or a service provided free of charge with the purchase of another item of tangible personal property, a product, or a service; or

(C) an item of tangible personal property, a product, or a service included in the definition of "purchase price."

(ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a product, or a

service is provided free of charge with the purchase of another item of tangible personal property, a product, or a service if the sales price of the purchased item of tangible personal property, product, or service does not vary depending on the inclusion of the tangible personal property, product, or service provided free of charge.

(d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price does not include a price that is separately identified by tangible personal property, product, or service on the following, regardless of whether the following is in paper format or electronic format:

(A) a binding sales document; or

(B) another supporting sales-related document that is available to a purchaser.

(ii) For purposes of Subsection (18)(d)(i), a binding sales document or another supporting sales-related document that is available to a purchaser includes:

(A) a bill of sale;

(B) a contract;

(C) an invoice;

(D) a lease agreement;

(E) a periodic notice of rates and services;

(F) a price list;

(G) a rate card;

(H) a receipt; or

(I) a service agreement.

(e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal property or a product subject to taxation under this chapter is de minimis if:

(A) the seller's purchase price of the tangible personal property or product is 10% or less of the seller's total purchase price of the bundled transaction; or

(B) the seller's sales price of the tangible personal property or product is 10% or less of the seller's total sales price of the bundled transaction.

(ii) For purposes of Subsection (18)(b)(vi), a seller:

(A) shall use the seller's purchase price or the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(B) may not use a combination of the seller's purchase price and the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis.

(iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service contract to determine if the sales price of tangible personal property or a product is de minimis.

(f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of the seller's purchase price and the seller's sales price to determine if tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales price of that retail sale.

(19) "Certified automated system" means software certified by the governing board of the agreement that:

(a) calculates the agreement sales and use tax imposed within a local taxing jurisdiction:

(i) on a transaction; and

(ii) in the states that are members of the agreement;

(b) determines the amount of agreement sales and use tax to remit to a state that is a member of the agreement; and

(c) maintains a record of the transaction described in Subsection (19)(a)(i).

(20) "Certified service provider" means an agent certified:

(a) by the governing board of the agreement; and

(b) to perform all of a seller's sales and use tax functions for an agreement sales and use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

(21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "clothing"; and

(ii) that are consistent with the list of items that constitute "clothing" under the agreement.

(22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

(23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (56) or residential use under Subsection (106).

(24) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(c) "Common carrier" does not include a person that provides transportation network services, as defined in Section 13-51-102.

(25) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(26) "Computer" means an electronic device that accepts information:

(a) (i) in digital form; or

(ii) in a form similar to digital form; and

(b) manipulates that information for a result based on a sequence of instructions.

(27) "Computer software" means a set of coded instructions designed to cause:

(a) a computer to perform a task; or

(b) automatic data processing equipment to perform a task.

(28) "Computer software maintenance contract" means a contract that obligates a seller of computer software to provide a customer with:

(a) future updates or upgrades to computer software;

(b) support services with respect to computer software; or

(c) a combination of Subsections (28)(a) and (b).

(29) (a) "Conference bridging service" means an ancillary service that links two or more participants of an audio conference call or video conference call.

(b) "Conference bridging service" may include providing a telephone number as part of the ancillary service described in Subsection (29)(a).

(c) "Conference bridging service" does not include a telecommunications service used to reach the ancillary service described in Subsection (29)(a).

(30) "Construction materials" means any tangible personal property that will be converted into real property.

(31) "Delivered electronically" means delivered to a purchaser by means other than tangible storage media.

(32) (a) "Delivery charge" means a charge:

(i) by a seller of:

(A) tangible personal property;

(B) a product transferred electronically; or

(C) services; and

(ii) for preparation and delivery of the tangible personal property, product transferred electronically, or services described in Subsection (32)(a)(i) to a location designated by the purchaser.

(b) “Delivery charge” includes a charge for the following:

- (i) transportation;
- (ii) shipping;
- (iii) postage;
- (iv) handling;
- (v) crating; or
- (vi) packing.

(33) “Detailed telecommunications billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

(34) “Dietary supplement” means a product, other than tobacco, that:

- (a) is intended to supplement the diet;
- (b) contains one or more of the following dietary ingredients:
 - (i) a vitamin;
 - (ii) a mineral;
 - (iii) an herb or other botanical;
 - (iv) an amino acid;
 - (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in Subsections (34)(b)(i) through (v);

(c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:

- (A) tablet form;
- (B) capsule form;
- (C) powder form;
- (D) softgel form;
- (E) gelcap form; or
- (F) liquid form; or

(ii) if the product is not intended for ingestion in a form described in Subsections (34)(c)(i)(A) through (F), is not represented:

- (A) as conventional food; and
- (B) for use as a sole item of:
 - (I) a meal; or
 - (II) the diet; and

(d) is required to be labeled as a dietary supplement:

(i) identifiable by the “Supplemental Facts” box found on the label; and

(ii) as required by 21 C.F.R. Sec. 101.36.

(35) “Digital audio–visual work” means a series of related images which, when shown in succession, imparts an impression of motion, together with accompanying sounds, if any.

(36) (a) “Digital audio work” means a work that results from the fixation of a series of musical, spoken, or other sounds.

(b) “Digital audio work” includes a ringtone.

(37) “Digital book” means a work that is generally recognized in the ordinary and usual sense as a book.

(38) (a) “Direct mail” means printed material delivered or distributed by United States mail or other delivery service:

(i) to:

(A) a mass audience; or

(B) addressees on a mailing list provided:

(I) by a purchaser of the mailing list; or

(II) at the discretion of the purchaser of the mailing list; and

(ii) if the cost of the printed material is not billed directly to the recipients.

(b) “Direct mail” includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material.

(c) “Direct mail” does not include multiple items of printed material delivered to a single address.

(39) “Directory assistance” means an ancillary service of providing:

(a) address information; or

(b) telephone number information.

(40) (a) “Disposable home medical equipment or supplies” means medical equipment or supplies that:

(i) cannot withstand repeated use; and

(ii) are purchased by, for, or on behalf of a person other than:

(A) a health care facility as defined in Section 26-21-2;

(B) a health care provider as defined in Section 78B-3-403;

(C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or

(D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).

(b) “Disposable home medical equipment or supplies” does not include:

(i) a drug;

- (ii) durable medical equipment;
- (iii) a hearing aid;
- (iv) a hearing aid accessory;
- (v) mobility enhancing equipment; or
- (vi) tangible personal property used to correct impaired vision, including:
 - (A) eyeglasses; or
 - (B) contact lenses.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes medical equipment or supplies.

(41) "Drilling equipment manufacturer" means a facility:

- (a) located in the state;
- (b) with respect to which 51% or more of the manufacturing activities of the facility consist of manufacturing component parts of drilling equipment;
- (c) that uses pressure of 800,000 or more pounds per square inch as part of the manufacturing process; and
- (d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the manufacturing process.

(42) (a) "Drug" means a compound, substance, or preparation, or a component of a compound, substance, or preparation that is:

- (i) recognized in:
 - (A) the official United States Pharmacopoeia;
 - (B) the official Homeopathic Pharmacopoeia of the United States;
 - (C) the official National Formulary; or
 - (D) a supplement to a publication listed in Subsections (42)(a)(i)(A) through (C);
- (ii) intended for use in the:
 - (A) diagnosis of disease;
 - (B) cure of disease;
 - (C) mitigation of disease;
 - (D) treatment of disease; or
 - (E) prevention of disease; or
- (iii) intended to affect:
 - (A) the structure of the body; or
 - (B) any function of the body.
- (b) "Drug" does not include:
 - (i) food and food ingredients;
 - (ii) a dietary supplement;
 - (iii) an alcoholic beverage; or

(iv) a prosthetic device.

(43) (a) Except as provided in Subsection (43)(c), "durable medical equipment" means equipment that:

- (i) can withstand repeated use;
 - (ii) is primarily and customarily used to serve a medical purpose;
 - (iii) generally is not useful to a person in the absence of illness or injury; and
 - (iv) is not worn in or on the body.
- (b) "Durable medical equipment" includes parts used in the repair or replacement of the equipment described in Subsection (43)(a).

(c) "Durable medical equipment" does not include mobility enhancing equipment.

(44) "Electronic" means:

- (a) relating to technology; and
- (b) having:
 - (i) electrical capabilities;
 - (ii) digital capabilities;
 - (iii) magnetic capabilities;
 - (iv) wireless capabilities;
 - (v) optical capabilities;
 - (vi) electromagnetic capabilities; or
 - (vii) capabilities similar to Subsections (44)(b)(i) through (vi).

(45) "Electronic financial payment service" means an establishment:

- (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and Clearinghouse Activities, of the 2012 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and
- (b) that performs electronic financial payment services.

(46) "Employee" is as defined in Section 59-10-401.

(47) "Fixed guideway" means a public transit facility that uses and occupies:

- (a) rail for the use of public transit; or
- (b) a separate right-of-way for the use of public transit.

(48) "Fixed wing turbine powered aircraft" means an aircraft that:

- (a) is powered by turbine engines;
- (b) operates on jet fuel; and
- (c) has wings that are permanently attached to the fuselage of the aircraft.

(49) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(50) (a) "Food and food ingredients" means substances:

(i) regardless of whether the substances are in:

- (A) liquid form;
- (B) concentrated form;
- (C) solid form;
- (D) frozen form;
- (E) dried form; or
- (F) dehydrated form; and

(ii) that are:

- (A) sold for:
- (I) ingestion by humans; or
- (II) chewing by humans; and
- (B) consumed for the substance's:
- (I) taste; or
- (II) nutritional value.

(b) "Food and food ingredients" includes an item described in Subsection (91)(b)(iii).

(c) "Food and food ingredients" does not include:

- (i) an alcoholic beverage;
- (ii) tobacco; or
- (iii) prepared food.

(51) (a) "Fundraising sales" means sales:

- (i) (A) made by a school; or
- (B) made by a school student;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (51)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(52) "Geothermal energy" means energy contained in heat that continuously flows outward from the earth that is used as the sole source of energy to produce electricity.

(53) "Governing board of the agreement" means the governing board of the agreement that is:

- (a) authorized to administer the agreement; and
- (b) established in accordance with the agreement.

(54) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

(i) the executive branch of the state, including all departments, institutions, boards, divisions, bureaus, offices, commissions, and committees;

(ii) the judicial branch of the state, including the courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iii) the legislative branch of the state, including the House of Representatives, the Senate, the Legislative Printing Office, the Office of Legislative Research and General Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal Analyst;

(iv) the National Guard;

(v) an independent entity as defined in Section 63E-1-102; or

(vi) a political subdivision as defined in Section 17B-1-102.

(b) "Governmental entity" does not include the state systems of public and higher education, including:

~~[(i) an applied technology college within the Utah College of Applied Technology;]~~

~~[(iii)] (i) a school;~~

~~[(iii)] (ii) the State Board of Education;~~

~~[(iv)] (iii) the State Board of Regents; or~~

~~[(iv)] (iv) an institution of higher education described in Section 53B-1-102.~~

(55) "Hydroelectric energy" means water used as the sole source of energy to produce electricity.

(56) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Section 41-1a-102 that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities;

(c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to

3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(d) by a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and

(ii) the new products under Subsection (56)(d)(i) would otherwise be made with nonrecycled materials; or

(e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a cogeneration facility as defined in Section 54-2-1.

(57) (a) Except as provided in Subsection (57)(b), “installation charge” means a charge for installing:

- (i) tangible personal property; or
- (ii) a product transferred electronically.

(b) “Installation charge” does not include a charge for:

(i) repairs or renovations of:

- (A) tangible personal property; or
- (B) a product transferred electronically; or

(ii) attaching tangible personal property or a product transferred electronically:

- (A) to other tangible personal property; and
- (B) as part of a manufacturing or fabrication process.

(58) “Institution of higher education” means an institution of higher education listed in Section 53B-2-101.

(59) (a) “Lease” or “rental” means a transfer of possession or control of tangible personal property or a product transferred electronically for:

- (i) (A) a fixed term; or
- (B) an indeterminate term; and
- (ii) consideration.

(b) “Lease” or “rental” includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue Code.

(c) “Lease” or “rental” does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title:

- (A) upon completion of required payments; and
- (B) if the payment of an option price does not exceed the greater of:

(I) \$100; or

(II) 1% of the total required payments; or

(iii) providing tangible personal property along with an operator for a fixed period of time or an indeterminate period of time if the operator is necessary for equipment to perform as designed.

(d) For purposes of Subsection (59)(c)(iii), an operator is necessary for equipment to perform as designed if the operator’s duties exceed the:

- (i) set-up of tangible personal property;
- (ii) maintenance of tangible personal property; or
- (iii) inspection of tangible personal property.

(60) “Life science establishment” means an establishment in this state that is classified under the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

(b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or

(c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

(61) “Life science research and development facility” means a facility owned, leased, or rented by a life science establishment if research and development is performed in 51% or more of the total area of the facility.

(62) “Load and leave” means delivery to a purchaser by use of a tangible storage media if the tangible storage media is not physically transferred to the purchaser.

(63) “Local taxing jurisdiction” means a:

(a) county that is authorized to impose an agreement sales and use tax;

(b) city that is authorized to impose an agreement sales and use tax; or

(c) town that is authorized to impose an agreement sales and use tax.

(64) “Manufactured home” is as defined in Section 15A-1-302.

(65) “Manufacturing facility” means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and

(ii) the new products under Subsection (65)(b)(i) would otherwise be made with nonrecycled materials; or

(c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is placed in service on or after May 1, 2006.

(66) "Member of the immediate family of the producer" means a person who is related to a producer described in Subsection 59-12-104(20)(a) as a:

(a) child or stepchild, regardless of whether the child or stepchild is:

- (i) an adopted child or adopted stepchild; or
- (ii) a foster child or foster stepchild;
- (b) grandchild or stepgrandchild;
- (c) grandparent or stepgrandparent;
- (d) nephew or stepnephew;
- (e) niece or stepniece;
- (f) parent or stepparent;
- (g) sibling or stepsibling;
- (h) spouse;

(i) person who is the spouse of a person described in Subsections (66)(a) through (g); or

(j) person similar to a person described in Subsections (66)(a) through (i) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(67) "Mobile home" is as defined in Section 15A-1-302.

(68) "Mobile telecommunications service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(69) (a) "Mobile wireless service" means a telecommunications service, regardless of the technology used, if:

(i) the origination point of the conveyance, routing, or transmission is not fixed;

(ii) the termination point of the conveyance, routing, or transmission is not fixed; or

(iii) the origination point described in Subsection (69)(a)(i) and the termination point described in Subsection (69)(a)(ii) are not fixed.

(b) "Mobile wireless service" includes a telecommunications service that is provided by a commercial mobile radio service provider.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define "commercial mobile radio service provider."

(70) (a) Except as provided in Subsection (70)(c), "mobility enhancing equipment" means equipment that is:

(i) primarily and customarily used to provide or increase the ability to move from one place to another;

(ii) appropriate for use in a:

- (A) home; or
- (B) motor vehicle; and

(iii) not generally used by persons with normal mobility.

(b) "Mobility enhancing equipment" includes parts used in the repair or replacement of the equipment described in Subsection (70)(a).

(c) "Mobility enhancing equipment" does not include:

- (i) a motor vehicle;
- (ii) equipment on a motor vehicle if that equipment is normally provided by the motor vehicle manufacturer;
- (iii) durable medical equipment; or
- (iv) a prosthetic device.

(71) "Model 1 seller" means a seller registered under the agreement that has selected a certified service provider as the seller's agent to perform all of the seller's sales and use tax functions for agreement sales and use taxes other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

(72) "Model 2 seller" means a seller registered under the agreement that:

(a) except as provided in Subsection (72)(b), has selected a certified automated system to perform the seller's sales tax functions for agreement sales and use taxes; and

(b) retains responsibility for remitting all of the sales tax:

- (i) collected by the seller; and

(ii) to the appropriate local taxing jurisdiction.

(73) (a) Subject to Subsection (73)(b), “model 3 seller” means a seller registered under the agreement that has:

(i) sales in at least five states that are members of the agreement;

(ii) total annual sales revenues of at least \$500,000,000;

(iii) a proprietary system that calculates the amount of tax:

(A) for an agreement sales and use tax; and

(B) due to each local taxing jurisdiction; and

(iv) entered into a performance agreement with the governing board of the agreement.

(b) For purposes of Subsection (73)(a), “model 3 seller” includes an affiliated group of sellers using the same proprietary system.

(74) “Model 4 seller” means a seller that is registered under the agreement and is not a model 1 seller, model 2 seller, or model 3 seller.

(75) “Modular home” means a modular unit as defined in Section 15A-1-302.

(76) “Motor vehicle” is as defined in Section 41-1a-102.

(77) “Oil sands” means impregnated bituminous sands that:

(a) contain a heavy, thick form of petroleum that is released when heated, mixed with other hydrocarbons, or otherwise treated;

(b) yield mixtures of liquid hydrocarbon; and

(c) require further processing other than mechanical blending before becoming finished petroleum products.

(78) “Oil shale” means a group of fine black to dark brown shales containing kerogen material that yields petroleum upon heating and distillation.

(79) “Optional computer software maintenance contract” means a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

(80) (a) “Other fuels” means products that burn independently to produce heat or energy.

(b) “Other fuels” includes oxygen when it is used in the manufacturing of tangible personal property.

(81) (a) “Paging service” means a telecommunications service that provides transmission of a coded radio signal for the purpose of activating a specific pager.

(b) For purposes of Subsection (81)(a), the transmission of a coded radio signal includes a transmission by message or sound.

(82) “Pawnbroker” is as defined in Section 13-32a-102.

(83) “Pawn transaction” is as defined in Section 13-32a-102.

(84) (a) “Permanently attached to real property” means that for tangible personal property attached to real property:

(i) the attachment of the tangible personal property to the real property:

(A) is essential to the use of the tangible personal property; and

(B) suggests that the tangible personal property will remain attached to the real property in the same place over the useful life of the tangible personal property; or

(ii) if the tangible personal property is detached from the real property, the detachment would:

(A) cause substantial damage to the tangible personal property; or

(B) require substantial alteration or repair of the real property to which the tangible personal property is attached.

(b) “Permanently attached to real property” includes:

(i) the attachment of an accessory to the tangible personal property if the accessory is:

(A) essential to the operation of the tangible personal property; and

(B) attached only to facilitate the operation of the tangible personal property;

(ii) a temporary detachment of tangible personal property from real property for a repair or renovation if the repair or renovation is performed where the tangible personal property and real property are located; or

(iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection (84)(c)(iii) or (iv).

(c) “Permanently attached to real property” does not include:

(i) the attachment of portable or movable tangible personal property to real property if that portable or movable tangible personal property is attached to real property only for:

(A) convenience;

(B) stability; or

(C) for an obvious temporary purpose;

(ii) the detachment of tangible personal property from real property except for the detachment described in Subsection (84)(b)(ii);

(iii) an attachment of the following tangible personal property to real property if the attachment to real property is only through a line that supplies water, electricity, gas, telecommunications, cable, or supplies a similar item as determined by the

commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (A) a computer;
- (B) a telephone;
- (C) a television; or

(D) tangible personal property similar to Subsections (84)(c)(iii)(A) through (C) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

- (iv) an item listed in Subsection (125)(c).

(85) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

- (86) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

(i) the residential street address of the customer; or

(ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(87) (a) "Postpaid calling service" means a telecommunications service a person obtains by making a payment on a call-by-call basis:

- (i) through the use of a:

- (A) bank card;
- (B) credit card;
- (C) debit card; or
- (D) travel card; or

(ii) by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

(b) "Postpaid calling service" includes a service, except for a prepaid wireless calling service, that would be a prepaid wireless calling service if the service were exclusively a telecommunications service.

(88) "Postproduction" means an activity related to the finishing or duplication of a medium described in Subsection 59-12-104(54)(a).

(89) "Prepaid calling service" means a telecommunications service:

(a) that allows a purchaser access to telecommunications service that is exclusively telecommunications service;

(b) that:

- (i) is paid for in advance; and
- (ii) enables the origination of a call using an:

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

(d) sold in predetermined units or dollars that decline:

(i) by a known amount; and

(ii) with use.

(90) "Prepaid wireless calling service" means a telecommunications service:

(a) that provides the right to utilize:

(i) mobile wireless service; and

(ii) other service that is not a telecommunications service, including:

(A) the download of a product transferred electronically;

(B) a content service; or

(C) an ancillary service;

(b) that:

(i) is paid for in advance; and

(ii) enables the origination of a call using an:

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

(d) sold in predetermined units or dollars that decline:

(i) by a known amount; and

(ii) with use.

(91) (a) "Prepared food" means:

(i) food:

(A) sold in a heated state; or

(B) heated by a seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) except as provided in Subsection (91)(c), food sold with an eating utensil provided by the seller, including a:

(A) plate;

- (B) knife;
 - (C) fork;
 - (D) spoon;
 - (E) glass;
 - (F) cup;
 - (G) napkin; or
 - (H) straw.
- (b) “Prepared food” does not include:
- (i) food that a seller only:
 - (A) cuts;
 - (B) repackages; or
 - (C) pasteurizes; or
 - (ii) (A) the following:
 - (I) raw egg;
 - (II) raw fish;
 - (III) raw meat;
 - (IV) raw poultry; or
 - (V) a food containing an item described in Subsections (91)(b)(ii)(A)(I) through (IV); and
- (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food and Drug Administration’s Food Code that a consumer cook the items described in Subsection (91)(b)(ii)(A) to prevent food borne illness; or
- (iii) the following if sold without eating utensils provided by the seller:
- (A) food and food ingredients sold by a seller if the seller’s proper primary classification under the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, is manufacturing in Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;
- (B) food and food ingredients sold in an unheated state:
- (I) by weight or volume; and
 - (II) as a single item; or
 - (C) a bakery item, including:
 - (I) a bagel;
 - (II) a bar;
 - (III) a biscuit;
 - (IV) bread;
 - (V) a bun;
 - (VI) a cake;
 - (VII) a cookie;
 - (VIII) a croissant;
 - (IX) a danish;

- (X) a donut;
 - (XI) a muffin;
 - (XII) a pastry;
 - (XIII) a pie;
 - (XIV) a roll;
 - (XV) a tart;
 - (XVI) a torte; or
 - (XVII) a tortilla.
- (c) An eating utensil provided by the seller does not include the following used to transport the food:
- (i) a container; or
 - (ii) packaging.
- (92) “Prescription” means an order, formula, or recipe that is issued:
- (a) (i) orally;
 - (ii) in writing;
 - (iii) electronically; or
 - (iv) by any other manner of transmission; and
- (b) by a licensed practitioner authorized by the laws of a state.
- (93) (a) Except as provided in Subsection (93)(b)(ii) or (iii), “prewritten computer software” means computer software that is not designed and developed:
- (i) by the author or other creator of the computer software; and
 - (ii) to the specifications of a specific purchaser.
- (b) “Prewritten computer software” includes:
- (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer software is not designed and developed:
 - (A) by the author or other creator of the computer software; and
 - (B) to the specifications of a specific purchaser;
 - (ii) computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or
 - (iii) except as provided in Subsection (93)(c), prewritten computer software or a prewritten portion of prewritten computer software:
 - (A) that is modified or enhanced to any degree; and
 - (B) if the modification or enhancement described in Subsection (93)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.
- (c) “Prewritten computer software” does not include a modification or enhancement described in Subsection (93)(b)(iii) if the charges for the modification or enhancement are:

- (i) reasonable; and
- (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the invoice or other statement of price provided to the purchaser at the time of sale or later, as demonstrated by:
- (A) the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes;
- (B) a preponderance of the facts and circumstances at the time of the transaction; and
- (C) the understanding of all of the parties to the transaction.
- (94) (a) "Private communications service" means a telecommunications service:
- (i) that entitles a customer to exclusive or priority use of one or more communications channels between or among termination points; and
- (ii) regardless of the manner in which the one or more communications channels are connected.
- (b) "Private communications service" includes the following provided in connection with the use of one or more communications channels:
- (i) an extension line;
- (ii) a station;
- (iii) switching capacity; or
- (iv) another associated service that is provided in connection with the use of one or more communications channels as defined in Section 59-12-215.
- (95) (a) Except as provided in Subsection (95)(b), "product transferred electronically" means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.
- (b) "Product transferred electronically" does not include:
- (i) an ancillary service;
- (ii) computer software; or
- (iii) a telecommunications service.
- (96) (a) "Prosthetic device" means a device that is worn on or in the body to:
- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct a physical deformity or physical malfunction; or
- (iii) support a weak or deformed portion of the body.
- (b) "Prosthetic device" includes:
- (i) parts used in the repairs or renovation of a prosthetic device;
- (ii) replacement parts for a prosthetic device;
- (iii) a dental prosthesis; or
- (iv) a hearing aid.
- (c) "Prosthetic device" does not include:
- (i) corrective eyeglasses; or
- (ii) contact lenses.
- (97) (a) "Protective equipment" means an item:
- (i) for human wear; and
- (ii) that is:
- (A) designed as protection:
- (I) to the wearer against injury or disease; or
- (II) against damage or injury of other persons or property; and
- (B) not suitable for general use.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:
- (i) listing the items that constitute "protective equipment"; and
- (ii) that are consistent with the list of items that constitute "protective equipment" under the agreement.
- (98) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or printed matter, other than a photocopy:
- (i) regardless of:
- (A) characteristics;
- (B) copyright;
- (C) form;
- (D) format;
- (E) method of reproduction; or
- (F) source; and
- (ii) made available in printed or electronic format.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "photocopy."
- (99) (a) "Purchase price" and "sales price" mean the total amount of consideration:
- (i) valued in money; and
- (ii) for which tangible personal property, a product transferred electronically, or services are:
- (A) sold;
- (B) leased; or
- (C) rented.
- (b) "Purchase price" and "sales price" include:
- (i) the seller's cost of the tangible personal property, a product transferred electronically, or services sold;

- (ii) expenses of the seller, including:
 - (A) the cost of materials used;
 - (B) a labor cost;
 - (C) a service cost;
 - (D) interest;
 - (E) a loss;
 - (F) the cost of transportation to the seller; or
 - (G) a tax imposed on the seller;
- (iii) a charge by the seller for any service necessary to complete the sale; or
- (iv) consideration a seller receives from a person other than the purchaser if:
 - (A) (I) the seller actually receives consideration from a person other than the purchaser; and
 - (II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;
 - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
 - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and
 - (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and
 - (Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
 - (II) the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, except that a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount; or
 - (III) the price reduction or discount is identified as a third party price reduction or discount on the:
 - (Aa) invoice the purchaser receives; or
 - (Bb) certificate, coupon, or other documentation the purchaser presents.
 - (c) "Purchase price" and "sales price" do not include:
 - (i) a discount:
 - (A) in a form including:
 - (I) cash;
 - (II) term; or
 - (III) coupon;
 - (B) that is allowed by a seller;

- (C) taken by a purchaser on a sale; and
- (D) that is not reimbursed by a third party; or
- (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of sale or later, as demonstrated by the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes, by a preponderance of the facts and circumstances at the time of the transaction, and by the understanding of all of the parties to the transaction:
 - (A) the following from credit extended on the sale of tangible personal property or services:
 - (I) a carrying charge;
 - (II) a financing charge; or
 - (III) an interest charge;
 - (B) a delivery charge;
 - (C) an installation charge;
 - (D) a manufacturer rebate on a motor vehicle; or
 - (E) a tax or fee legally imposed directly on the consumer.
- (100) "Purchaser" means a person to whom:
 - (a) a sale of tangible personal property is made;
 - (b) a product is transferred electronically; or
 - (c) a service is furnished.
- (101) "Qualifying enterprise data center" means an establishment that will:
 - (a) own and operate a data center facility that will house a group of networked server computers in one physical location in order to centralize the dissemination, management, and storage of data and information;
 - (b) be located in the state;
 - (c) be a new operation constructed on or after July 1, 2016;
 - (d) consist of one or more buildings that total 150,000 or more square feet;
 - (e) be owned or leased by:
 - (i) the establishment; or
 - (ii) a person under common ownership, as defined in Section 59-7-101, of the establishment; and
 - (f) be located on one or more parcels of land that are owned or leased by:
 - (i) the establishment; or
 - (ii) a person under common ownership, as defined in Section 59-7-101, of the establishment.
- (102) "Regularly rented" means:
 - (a) rented to a guest for value three or more times during a calendar year; or

(b) advertised or held out to the public as a place that is regularly rented to guests for value.

(103) “Rental” is as defined in Subsection (59).

(104) (a) Except as provided in Subsection (104)(b), “repairs or renovations of tangible personal property” means:

(i) a repair or renovation of tangible personal property that is not permanently attached to real property; or

(ii) attaching tangible personal property or a product transferred electronically to other tangible personal property or detaching tangible personal property or a product transferred electronically from other tangible personal property if:

(A) the other tangible personal property to which the tangible personal property or product transferred electronically is attached or from which the tangible personal property or product transferred electronically is detached is not permanently attached to real property; and

(B) the attachment of tangible personal property or a product transferred electronically to other tangible personal property or detachment of tangible personal property or a product transferred electronically from other tangible personal property is made in conjunction with a repair or replacement of tangible personal property or a product transferred electronically.

(b) “Repairs or renovations of tangible personal property” does not include:

(i) attaching prewritten computer software to other tangible personal property if the other tangible personal property to which the prewritten computer software is attached is not permanently attached to real property; or

(ii) detaching prewritten computer software from other tangible personal property if the other tangible personal property from which the prewritten computer software is detached is not permanently attached to real property.

(105) “Research and development” means the process of inquiry or experimentation aimed at the discovery of facts, devices, technologies, or applications and the process of preparing those devices, technologies, or applications for marketing.

(106) (a) “Residential telecommunications services” means a telecommunications service or an ancillary service that is provided to an individual for personal use:

(i) at a residential address; or

(ii) at an institution, including a nursing home or a school, if the telecommunications service or ancillary service is provided to and paid for by the individual residing at the institution rather than the institution.

(b) For purposes of Subsection (106)(a)(i), a residential address includes an:

(i) apartment; or

(ii) other individual dwelling unit.

(107) “Residential use” means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(108) “Retail sale” or “sale at retail” means a sale, lease, or rental for a purpose other than:

(a) resale;

(b) sublease; or

(c) subrent.

(109) (a) “Retailer” means any person engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) “Retailer” includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(110) (a) “Sale” means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) “Sale” includes:

(i) installment and credit sales;

(ii) any closed transaction constituting a sale;

(iii) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(iv) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(111) “Sale at retail” is as defined in Subsection (108).

(112) “Sale-leaseback transaction” means a transaction by which title to tangible personal property or a product transferred electronically that is subject to a tax under this chapter is transferred:

(a) by a purchaser-lessee;

(b) to a lessor;

(c) for consideration; and

(d) if:

(i) the purchaser-lessee paid sales and use tax on the purchaser-lessee’s initial purchase of the tangible personal property or product transferred electronically;

(ii) the sale of the tangible personal property or product transferred electronically to the lessor is intended as a form of financing:

(A) for the tangible personal property or product transferred electronically; and

(B) to the purchaser-lessee; and

(iii) in accordance with generally accepted accounting principles, the purchaser-lessee is required to:

(A) capitalize the tangible personal property or product transferred electronically for financial reporting purposes; and

(B) account for the lease payments as payments made under a financing arrangement.

(113) "Sales price" is as defined in Subsection (99).

(114) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

(i) sales that are directly related to the school's educational functions or activities including:

(A) the sale of:

(I) textbooks;

(II) textbook fees;

(III) laboratory fees;

(IV) laboratory supplies; or

(V) safety equipment;

(B) the sale of a uniform, protective equipment, or sports or recreational equipment that:

(I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and

(II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(C) sales of the following if the net or gross revenues generated by the sales are deposited into a school district fund or school fund dedicated to school meals:

(I) food and food ingredients; or

(II) prepared food; or

(D) transportation charges for official school activities; or

(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

(b) "Sales relating to schools" does not include:

(i) bookstore sales of items that are not educational materials or supplies;

(ii) except as provided in Subsection (114)(a)(i)(B):

(A) clothing;

(B) clothing accessories or equipment;

(C) protective equipment; or

(D) sports or recreational equipment; or

(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:

(A) other than a:

(I) school;

(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

(III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and

(B) that is required to collect sales and use taxes under this chapter.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."

(115) For purposes of this section and Section 59-12-104, "school":

(a) means:

(i) an elementary school or a secondary school that:

(A) is a:

(I) public school; or

(II) private school; and

(B) provides instruction for one or more grades kindergarten through 12; or

(ii) a public school district; and

(b) includes the Electronic High School as defined in Section 53A-15-1002.

(116) "Seller" means a person that makes a sale, lease, or rental of:

(a) tangible personal property;

(b) a product transferred electronically; or

(c) a service.

(117) (a) "Semiconductor fabricating, processing, research, or development materials" means tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor.

(b) "Semiconductor fabricating, processing, research, or development materials" includes:

(i) parts used in the repairs or renovations of tangible personal property or a product transferred electronically described in Subsection (117)(a); or

(ii) a chemical, catalyst, or other material used to:

(A) produce or induce in a semiconductor a:

(I) chemical change; or

(II) physical change;

(B) remove impurities from a semiconductor; or

(C) improve the marketable condition of a semiconductor.

(118) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(119) (a) Subject to Subsections (119)(b) and (c), "short-term lodging consumable" means tangible personal property that:

(i) a business that provides accommodations and services described in Subsection 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services to a purchaser;

(ii) is intended to be consumed by the purchaser; and

(iii) is:

(A) included in the purchase price of the accommodations and services; and

(B) not separately stated on an invoice, bill of sale, or other similar document provided to the purchaser.

(b) "Short-term lodging consumable" includes:

(i) a beverage;

(ii) a brush or comb;

(iii) a cosmetic;

(iv) a hair care product;

(v) lotion;

(vi) a magazine;

(vii) makeup;

(viii) a meal;

(ix) mouthwash;

(x) nail polish remover;

(xi) a newspaper;

(xii) a notepad;

(xiii) a pen;

(xiv) a pencil;

(xv) a razor;

(xvi) saline solution;

(xvii) a sewing kit;

(xviii) shaving cream;

(xix) a shoe shine kit;

(xx) a shower cap;

(xxi) a snack item;

(xxii) soap;

(xxiii) toilet paper;

(xxiv) a toothbrush;

(xxv) toothpaste; or

(xxvi) an item similar to Subsections (119)(b)(i) through (xxv) as the commission may provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) "Short-term lodging consumable" does not include:

(i) tangible personal property that is cleaned or washed to allow the tangible personal property to be reused; or

(ii) a product transferred electronically.

(120) "Simplified electronic return" means the electronic return:

(a) described in Section 318(C) of the agreement; and

(b) approved by the governing board of the agreement.

(121) "Solar energy" means the sun used as the sole source of energy for producing electricity.

(122) (a) "Sports or recreational equipment" means an item:

(i) designed for human use; and

(ii) that is:

(A) worn in conjunction with:

(I) an athletic activity; or

(II) a recreational activity; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute “sports or recreational equipment”; and

(ii) that are consistent with the list of items that constitute “sports or recreational equipment” under the agreement.

(123) “State” means the state of Utah, its departments, and agencies.

(124) “Storage” means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(125) (a) Except as provided in Subsection (125)(d) or (e), “tangible personal property” means personal property that:

(i) may be:

(A) seen;

(B) weighed;

(C) measured;

(D) felt; or

(E) touched; or

(ii) is in any manner perceptible to the senses.

(b) “Tangible personal property” includes:

(i) electricity;

(ii) water;

(iii) gas;

(iv) steam; or

(v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.

(c) “Tangible personal property” includes the following regardless of whether the item is attached to real property:

(i) a dishwasher;

(ii) a dryer;

(iii) a freezer;

(iv) a microwave;

(v) a refrigerator;

(vi) a stove;

(vii) a washer; or

(viii) an item similar to Subsections (125)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) “Tangible personal property” does not include a product that is transferred electronically.

(e) “Tangible personal property” does not include the following if attached to real property, regardless of whether the attachment to real property is only through a line that supplies water, electricity, gas, telephone, cable, or supplies a similar item as

determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) a hot water heater;

(ii) a water filtration system; or

(iii) a water softener system.

(126) (a) “Telecommunications enabling or facilitating equipment, machinery, or software” means an item listed in Subsection (126)(b) if that item is purchased or leased primarily to enable or facilitate one or more of the following to function:

(i) telecommunications switching or routing equipment, machinery, or software; or

(ii) telecommunications transmission equipment, machinery, or software.

(b) The following apply to Subsection (126)(a):

(i) a pole;

(ii) software;

(iii) a supplementary power supply;

(iv) temperature or environmental equipment or machinery;

(v) test equipment;

(vi) a tower; or

(vii) equipment, machinery, or software that functions similarly to an item listed in Subsections (126)(b)(i) through (vi) as determined by the commission by rule made in accordance with Subsection (126)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (126)(b)(i) through (vi).

(127) “Telecommunications equipment, machinery, or software required for 911 service” means equipment, machinery, or software that is required to comply with 47 C.F.R. Sec. 20.18.

(128) “Telecommunications maintenance or repair equipment, machinery, or software” means equipment, machinery, or software purchased or leased primarily to maintain or repair one or more of the following, regardless of whether the equipment, machinery, or software is purchased or leased as a spare part or as an upgrade or modification to one or more of the following:

(a) telecommunications enabling or facilitating equipment, machinery, or software;

(b) telecommunications switching or routing equipment, machinery, or software; or

(c) telecommunications transmission equipment, machinery, or software.

(129) (a) “Telecommunications service” means the electronic conveyance, routing, or transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

(b) "Telecommunications service" includes:

(i) an electronic conveyance, routing, or transmission with respect to which a computer processing application is used to act:

(A) on the code, form, or protocol of the content;

(B) for the purpose of electronic conveyance, routing, or transmission; and

(C) regardless of whether the service:

(I) is referred to as voice over Internet protocol service; or

(II) is classified by the Federal Communications Commission as enhanced or value added;

(ii) an 800 service;

(iii) a 900 service;

(iv) a fixed wireless service;

(v) a mobile wireless service;

(vi) a postpaid calling service;

(vii) a prepaid calling service;

(viii) a prepaid wireless calling service; or

(ix) a private communications service.

(c) "Telecommunications service" does not include:

(i) advertising, including directory advertising;

(ii) an ancillary service;

(iii) a billing and collection service provided to a third party;

(iv) a data processing and information service if:

(A) the data processing and information service allows data to be:

(I) (Aa) acquired;

(Bb) generated;

(Cc) processed;

(Dd) retrieved; or

(Ee) stored; and

(II) delivered by an electronic transmission to a purchaser; and

(B) the purchaser's primary purpose for the underlying transaction is the processed data or information;

(v) installation or maintenance of the following on a customer's premises:

(A) equipment; or

(B) wiring;

(vi) Internet access service;

(vii) a paging service;

(viii) a product transferred electronically, including:

(A) music;

(B) reading material;

(C) a ring tone;

(D) software; or

(E) video;

(ix) a radio and television audio and video programming service:

(A) regardless of the medium; and

(B) including:

(I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;

(II) cable service as defined in 47 U.S.C. Sec. 522(6); or

(III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;

(x) a value-added nonvoice data service; or

(xi) tangible personal property.

(130) (a) "Telecommunications service provider" means a person that:

(i) owns, controls, operates, or manages a telecommunications service; and

(ii) engages in an activity described in Subsection (130)(a)(i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (130)(a) is a telecommunications service provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

(ii) the telecommunications service that the person owns, controls, operates, or manages.

(131) (a) "Telecommunications switching or routing equipment, machinery, or software" means an item listed in Subsection (131)(b) if that item is purchased or leased primarily for switching or routing:

(i) an ancillary service;

(ii) data communications;

(iii) voice communications; or

(iv) telecommunications service.

(b) The following apply to Subsection (131)(a):

(i) a bridge;

(ii) a computer;

(iii) a cross connect;

(iv) a modem;

(v) a multiplexer;

(vi) plug in circuitry;

(vii) a router;

(viii) software;

(ix) a switch; or

(x) equipment, machinery, or software that functions similarly to an item listed in Subsections (131)(b)(i) through (ix) as determined by the commission by rule made in accordance with Subsection (131)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (131)(b)(i) through (ix).

(132) (a) "Telecommunications transmission equipment, machinery, or software" means an item listed in Subsection (132)(b) if that item is purchased or leased primarily for sending, receiving, or transporting:

- (i) an ancillary service;
 - (ii) data communications;
 - (iii) voice communications; or
 - (iv) telecommunications service.
- (b) The following apply to Subsection (132)(a):
- (i) an amplifier;
 - (ii) a cable;
 - (iii) a closure;
 - (iv) a conduit;
 - (v) a controller;
 - (vi) a duplexer;
 - (vii) a filter;
 - (viii) an input device;
 - (ix) an input/output device;
 - (x) an insulator;
 - (xi) microwave machinery or equipment;
 - (xii) an oscillator;
 - (xiii) an output device;
 - (xiv) a pedestal;
 - (xv) a power converter;
 - (xvi) a power supply;
 - (xvii) a radio channel;
 - (xviii) a radio receiver;
 - (xix) a radio transmitter;
 - (xx) a repeater;
 - (xxi) software;
 - (xxii) a terminal;
 - (xxiii) a timing unit;

(xxiv) a transformer;

(xxv) a wire; or

(xxvi) equipment, machinery, or software that functions similarly to an item listed in Subsections (132)(b)(i) through (xxv) as determined by the commission by rule made in accordance with Subsection (132)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (132)(b)(i) through (xxv).

(133) (a) "Textbook for a higher education course" means a textbook or other printed material that is required for a course:

(i) offered by an institution of higher education; and

(ii) that the purchaser of the textbook or other printed material attends or will attend.

(b) "Textbook for a higher education course" includes a textbook in electronic format.

(134) "Tobacco" means:

- (a) a cigarette;
- (b) a cigar;
- (c) chewing tobacco;
- (d) pipe tobacco; or
- (e) any other item that contains tobacco.

(135) "Unassisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device.

(136) (a) "Use" means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to the ownership or the leasing of that tangible personal property, product transferred electronically, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of tangible personal property, a product transferred electronically, or a service in the regular course of business and held for resale.

(137) "Value-added nonvoice data service" means a service:

(a) that otherwise meets the definition of a telecommunications service except that a computer processing application is used to act primarily for a purpose other than conveyance, routing, or transmission; and

(b) with respect to which a computer processing application is used to act on data or information:

- (i) code;
- (ii) content;

(iii) form; or

(iv) protocol.

(138) (a) Subject to Subsection (138)(b), “vehicle” means the following that are required to be titled, registered, or titled and registered:

(i) an aircraft as defined in Section 72-10-102;

(ii) a vehicle as defined in Section 41-1a-102;

(iii) an off-highway vehicle as defined in Section 41-22-2; or

(iv) a vessel as defined in Section 41-1a-102.

(b) For purposes of Subsection 59-12-104(33) only, “vehicle” includes:

(i) a vehicle described in Subsection (138)(a); or

(ii) (A) a locomotive;

(B) a freight car;

(C) railroad work equipment; or

(D) other railroad rolling stock.

(139) “Vehicle dealer” means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection (138).

(140) (a) “Vertical service” means an ancillary service that:

(i) is offered in connection with one or more telecommunications services; and

(ii) offers an advanced calling feature that allows a customer to:

(A) identify a caller; and

(B) manage multiple calls and call connections.

(b) “Vertical service” includes an ancillary service that allows a customer to manage a conference bridging service.

(141) (a) “Voice mail service” means an ancillary service that enables a customer to receive, send, or store a recorded message.

(b) “Voice mail service” does not include a vertical service that a customer is required to have in order to utilize a voice mail service.

(142) (a) Except as provided in Subsection (142)(b), “waste energy facility” means a facility that generates electricity:

(i) using as the primary source of energy waste materials that would be placed in a landfill or refuse pit if it were not used to generate electricity, including:

(A) tires;

(B) waste coal;

(C) oil shale; or

(D) municipal solid waste; and

(ii) in amounts greater than actually required for the operation of the facility.

(b) “Waste energy facility” does not include a facility that incinerates:

(i) hospital waste as defined in 40 C.F.R. 60.51c; or

(ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

(143) “Watercraft” means a vessel as defined in Section 73-18-2.

(144) “Wind energy” means wind used as the sole source of energy to produce electricity.

(145) “ZIP Code” means a Zoning Improvement Plan Code assigned to a geographic location by the United States Postal Service.

Section 58. Section 59-12-702 is amended to read:

59-12-702. Definitions.

As used in this part:

(1) “Administrative unit” means a division of a private nonprofit organization or institution that:

(a) would, if it were a separate entity, be a botanical organization or cultural organization; and

(b) consistently maintains books and records separate from those of its parent organization.

(2) “Aquarium” means a park or building where a collection of water animals and plants is kept for study, conservation, and public exhibition.

(3) “Aviary” means a park or building where a collection of birds is kept for study, conservation, and public exhibition.

(4) “Botanical organization” means:

(a) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of plant science through horticultural display, botanical research, and community education; or

(b) an administrative unit.

(5) “Cultural facility” means the same as that term is defined in Section 59-12-602.

(6) (a) “Cultural organization”:

(i) means:

(A) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of:

(I) natural history;

(II) art;

(III) music;

(IV) theater;

(V) dance; or

(VI) cultural arts, including literature, a motion picture, or storytelling;

(B) an administrative unit; and

(ii) includes, for purposes of Subsections 59-12-704(1)(d) and (6) only:

(A) a private nonprofit organization or institution having as its primary purpose the advancement and preservation of history; or

(B) a municipal or county cultural council having as its primary purpose the advancement and preservation of:

- (I) history;
- (II) natural history;
- (III) art;
- (IV) music;
- (V) theater; or
- (VI) dance.

(b) "Cultural organization" does not include:

- (i) an agency of the state;
- (ii) except as provided in Subsection (6)(a)(ii)(B), a political subdivision of the state;
- (iii) an educational institution whose annual revenues are directly derived more than 50% from state funds; or
- (iv) in a county of the first or second class, a radio or television broadcasting network or station, cable communications system, newspaper, or magazine.

(7) "Institution" means an institution of higher education listed in [Subsections] Subsection 53B-1-102(1)(~~b~~) through (~~k~~)(a).

(8) "Recreational facility" means a publicly owned or operated park, campground, marina, dock, golf course, playground, athletic field, gymnasium, swimming pool, trail system, or other facility used for recreational purposes.

(9) "Rural radio station" means a nonprofit radio station based in a county of the third, fourth, fifth, or sixth class.

(10) In a county of the first class, "zoological facility" means a public, public-private partnership, or private nonprofit building, exhibit, utility and infrastructure, walkway, pathway, roadway, office, administration facility, public service facility, educational facility, enclosure, public viewing area, animal barrier, animal housing, animal care facility, and veterinary and hospital facility related to the advancement, exhibition, or preservation of a mammal, bird, reptile, fish, or an amphibian.

(11) (a) (i) Except as provided in Subsection (11)(a)(ii), "zoological organization" means a public, public-private partnership, or private nonprofit organization having as its primary purpose the advancement and preservation of zoology.

(ii) In a county of the first class, "zoological organization" means a nonprofit organization having as its primary purpose the advancement and exhibition of a mammal, bird, reptile, fish, or an

amphibian to an audience of 75,000 or more persons annually.

(b) "Zoological organization" does not include an agency of the state, educational institution, radio or television broadcasting network or station, cable communications system, newspaper, or magazine.

(12) "Zoological park" means a park or garden where a collection of wild animals is kept for study, conservation, and public exhibition.

Section 59. Section 63A-2-402 is amended to read:

63A-2-402. State surplus property program -- Participation by institutions of higher education.

[The] (1) Except as provided in Subsection (2), the State Board of Regents shall:

[4] (a) implement a policy requiring each institution of higher education to submit to the division a listing of surplus property available for sale outside the institution, at least 15 days prior to the intended sale date;

[2] (b) supervise and assist compliance by the institutions of higher education with the requirement of this part; and

[3] (c) encourage institutions of higher education to acquire federal surplus property from the division to reduce expenditures.

(2) The Utah System of Technical Colleges Board of Trustees shall conduct the activities described in Subsection (1) for a technical college described in Section 53B-2a-105.

Section 60. Section 63A-9-101 is amended to read:

63A-9-101. Definitions.

(1) (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "Agency" includes the State Board of Education~~], an applied technology college within the Utah College of Applied Technology, the board of regents, the institutional councils of each higher education institution,]~~ and each higher education institution described in Section 53B-1-102.

(c) "Agency" includes the legislative and judicial branches.

(2) "Committee" means the Motor Vehicle Review Committee created by this chapter.

(3) "Director" means the director of the division.

(4) "Division" means the Division of Fleet Operations created by this chapter.

(5) "Executive director" means the executive director of the Department of Administrative Services.

(6) "Local agency" means:

- (a) a county;
- (b) a municipality;
- (c) a school district;
- (d) a local district;
- (e) a special service district;
- (f) an interlocal entity as defined under Section 11-13-103; or

(g) any other political subdivision of the state, including a local commission, board, or other governmental entity that is vested with the authority to make decisions regarding the public's business.

(7) (a) "Motor vehicle" means a self-propelled vehicle capable of carrying passengers.

(b) "Motor vehicle" includes vehicles used for construction and other nontransportation purposes.

(8) "State vehicle" means each motor vehicle owned, operated, or in the possession of an agency.

Section 61. Section 63F-2-102 is amended to read:

63F-2-102. Data Security Management Council -- Membership -- Duties.

(1) There is created the Data Security Management Council composed of nine members as follows:

(a) the chief information officer appointed under Section 63F-1-201, or the chief information officer's designee;

(b) one individual appointed by the governor;

(c) one individual appointed by the speaker of the House of Representatives and the president of the Senate from the Legislative Information Technology Steering Committee; and

(d) the highest ranking information technology official, or the highest ranking information technology official's designee, from each of:

- (i) the Judicial Council;
- (ii) the State Board of Regents;
- (iii) the State Board of Education;

(iv) the Utah [College of Applied Technology] System of Technical Colleges Board of Trustees;

(v) the State Tax Commission; and

(vi) the Office of the Attorney General.

(2) The council shall elect a chair of the council by majority vote.

(3) (a) A majority of the members of the council constitutes a quorum.

(b) Action by a majority of a quorum of the council constitutes an action of the council.

(4) The Department of Technology Services shall provide staff to the council.

(5) The council shall meet monthly, or as often as necessary, to:

(a) review existing state government data security policies;

(b) assess ongoing risks to state government information technology;

(c) create a method to notify state and local government entities of new risks;

(d) coordinate data breach simulation exercises with state and local government entities; and

(e) develop data security best practice recommendations for state government that include recommendations regarding:

(i) hiring and training a chief information security officer for each government entity;

(ii) continuous risk monitoring;

(iii) password management;

(iv) using the latest technology to identify and respond to vulnerabilities;

(v) protecting data in new and old systems; and

(vi) best procurement practices.

(6) A member who is not a member of the Legislature may not receive compensation or benefits for the member's service but may receive per diem and travel expenses as provided in:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

Section 62. Section 63G-2-305 is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations

in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (a) an invitation for bids;
- (b) a request for proposals;
- (c) a request for quotes;
- (d) a grant; or
- (e) other similar document;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or

records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator

elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the

providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf

of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the

central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

- (a) the safety of the general public; or
- (b) the security of:
 - (i) governmental property;
 - (ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

- (i) the nature of the law, ordinance, rule, or order; and
- (ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge;

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the 911 Division under Section 63H-7a-302;

(59) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated

to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(61) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4);

(63) a record described in Section 63G-12-210;

(64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003; ~~and~~

(65) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund[-]; and

(66) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist.

Section 63. Section 63G-6a-103 is amended to read:

63G-6a-103. Definitions.

As used in this chapter:

(1) "Administrative law judge" means the same as that term is defined in Section 67-19e-102.

(2) "Administrative law judge service" means service provided by an administrative law judge.

(3) "Applicable rulemaking authority" means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;

(B) for the Office of the Attorney General, the attorney general; and

(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education described in:

(i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or

(ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of Trustees;

(g) for a public transit district, the chief executive of the public transit district;

(h) for a local district other than a public transit district or for a special service district:

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules; or

(i) for any other procurement unit, the board.

(4) "Approved vendor" means a vendor who has been approved through the approved vendor list process.

(5) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

(6) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.

(7) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.

(8) "Bidding process" means the procurement process described in Part 6, Bidding.

(9) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(10) "Building board" means the State Building Board, created in Section 63A-5-101.

(11) “Change directive” means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

(12) “Change order” means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(13) “Chief procurement officer” means the chief procurement officer appointed under Subsection 63G-6a-302(1).

(14) “Conducting procurement unit” means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

(iv) selecting and recommending the person to be awarded a contract;

(v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit’s approval; and

(vi) contract administration.

(15) “Conservation district” means the same as that term is defined in Section 17D-3-102.

(16) “Construction”:

(a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

(17) “Construction manager/general contractor”:

(a) means a contractor who enters into a contract:

(i) for the management of a construction project; and

(ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor’s cost proposal submitted at the time of the procurement of the contractor’s services; and

(b) does not include a contractor whose only subcontract work not included in the contractor’s cost proposal submitted as part of the procurement of the contractor’s services is to meet subcontracted portions of change orders approved within the scope of the project.

(18) “Contract” means an agreement for a procurement.

(19) “Contract administration” means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

(b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;

(c) executing change orders;

(d) processing contract amendments;

(e) resolving, to the extent practicable, contract disputes;

(f) curing contract errors and deficiencies;

(g) terminating a contract;

(h) measuring or evaluating completed work and contractor performance;

(i) computing payments under the contract; and

(j) closing out a contract.

(20) “Contractor” means a person who is awarded a contract with a procurement unit.

(21) “Cooperative procurement” means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

(b) a procurement unit and a cooperative purchasing organization.

(22) “Cooperative purchasing organization” means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

(23) “Cost-plus-a-percentage-of-cost contract” means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor’s actual expenses or costs.

(24) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(25) “Days” means calendar days, unless expressly provided otherwise.

(26) “Definite quantity contract” means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

(27) “Design-build” means the procurement of design professional services and construction by the use of a single contract.

(28) “Design professional” means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or

(b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(29) “Design professional procurement process” means the procurement process described in Part 15, Design Professional Services.

(30) “Design professional services” means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102; or

(c) master planning and programming services.

(31) “Director” means the director of the division.

(32) “Division” means the Division of Purchasing and General Services, created in Section 63A-2-101.

(33) “Educational procurement unit” means:

(a) a school district;

(b) a public school, including a local school board ~~and~~ or a charter school;

(c) the Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network; or

(e) an institution of higher education of the state described in Section 53B-1-102.

(34) “Established catalogue price” means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(35) “Executive branch procurement unit” means a department, division, office, bureau, agency, or other organization within the state executive branch.

(36) “Fixed price contract” means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

(37) “Fixed price contract with price adjustment” means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

(38) “Grant” means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

(39) “Head of a procurement unit” means:

(a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) for an executive branch procurement unit:

(i) the director of the division; or

(ii) any other person designated by the board, by rule;

(c) for a judicial procurement unit:

(i) the Judicial Council; or

(ii) any other person designated by the Judicial Council, by rule;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) any other person designated by the local government procurement unit;

(e) for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;

(f) for a special service district, the governing body of the special service district or a designee of the governing body;

(g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;

(j) for a school district or any school or entity within a school district, the board of the school district, or the board’s designee;

(k) for a charter school, the individual or body with executive authority over the charter school, or the individual’s or body’s designee;

(l) for an institution of higher education [~~of the state~~] described in Section 53B-2-101, the president of the institution of higher education, or the president's designee; or

(m) for a public transit district, the board of trustees or a designee of the board of trustees.

(40) "Immaterial error":

(a) means an irregularity or abnormality that is:

(i) a matter of form that does not affect substance; or

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the solicitation; and

(iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.

(41) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(42) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).

(43) "Invitation for bids":

(a) means a document used to solicit:

(i) bids to provide a procurement item to a procurement unit; or

(ii) quotes for a price of a procurement item to be provided to a procurement unit; and

(b) includes all documents attached to or incorporated by reference in a document described in Subsection (43)(a).

(44) "Issuing procurement unit" means a procurement unit that:

(a) reviews a solicitation to verify that it is in proper form;

(b) causes the notice of a solicitation to be published; and

(c) negotiates and approves the terms and conditions of a contract.

(45) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

(e) an office, committee, subcommittee, or other organization within the state judicial branch.

(46) "Labor hour contract" is a contract under which:

(a) the supplies and materials are not provided by, or through, the contractor; and

(b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.

(47) "Legislative procurement unit" means:

(a) the Legislature;

(b) the Senate;

(c) the House of Representatives;

(d) a staff office of the Legislature, the Senate, or the House of Representatives; or

(e) an office, committee, subcommittee, commission, or other organization within the state legislative branch.

(48) "Local building authority" means the same as that term is defined in Section 17D-2-102.

(49) "Local district" means the same as that term is defined in Section 17B-1-102.

(50) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or

(c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

(51) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.

(52) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

(53) "Municipality" means a city, town, or metro township.

(54) “Nonadopting local government procurement unit” means:

(a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (54)(a).

(55) “Offeror” means a person who submits a proposal in response to a request for proposals.

(56) “Person” means the same as that term is defined in Section 68-3-12.5, excluding a political subdivision and a government office, department, division, bureau, or other body of government.

(57) “Preferred bidder” means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(58) “Procure” means to acquire a procurement item through a procurement.

(59) “Procurement”:

(a) means a procurement unit’s acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds;

(b) includes all functions that pertain to the acquisition of a procurement item, including:

(i) preparing and issuing a solicitation; and

(ii) (A) conducting a standard procurement process; or

(B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and

(c) does not include a grant.

(60) “Procurement item” means a supply, a service, or construction.

(61) “Procurement officer” means:

(a) for a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(62) “Procurement unit”:

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) a local government procurement unit;

(vi) a local district;

(vii) a special service district;

(viii) a local building authority;

(ix) a conservation district;

(x) a public corporation; or

(xi) a public transit district; and

(b) does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(63) “Professional service” means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

(a) accounting;

(b) architecture;

(c) construction design and management;

(d) engineering;

(e) financial services;

(f) information technology;

(g) the law;

(h) medicine;

(i) psychiatry; or

(j) underwriting.

(64) “Protest officer” means:

(a) for the division or a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer’s designee.

(65) “Public corporation” means the same as that term is defined in Section 63E-1-102.

(66) “Public entity” means any government entity of the state or political subdivision of the state, including:

(a) a procurement unit;

(b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and

(c) any other government entity located in the state that expends public funds.

(67) “Public facility” means a building, structure, infrastructure, improvement, or other facility of a public entity.

(68) “Public funds” means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

(69) “Public transit district” means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(70) “Qualified vendor” means a vendor who:

(a) is responsible; and

(b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.

(71) “Real property” means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

(72) “Request for information” means a nonbinding process through which a procurement unit requests information relating to a procurement item.

(73) “Request for proposals” means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

(74) “Request for proposals process” means the procurement process described in Part 7, Request for Proposals.

(75) “Request for statement of qualifications” means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

(76) “Requirements contract” means a contract:

(a) under which a contractor agrees to provide a procurement unit’s entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(77) “Responsible” means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(78) “Responsive” means conforming in all material respects to the requirements of a solicitation.

(79) “Sealed” means manually or electronically secured to prevent disclosure.

(80) “Service”:

(a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;

(b) includes a professional service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

(81) “Small purchase process” means the procurement process described in Section 63G-6a-506.

(82) “Sole source contract” means a contract resulting from a sole source procurement.

(83) “Sole source procurement” means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.

(84) “Solicitation” means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

(85) “Solicitation response” means:

(a) a bid submitted in response to an invitation for bids;

(b) a proposal submitted in response to a request for proposals; or

(c) a statement of qualifications submitted in response to a request for statement of qualifications.

(86) “Special service district” means the same as that term is defined in Section 17D-1-102.

(87) “Specification” means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

(a) a requirement for inspecting or testing a procurement item; or

(b) preparing a procurement item for delivery.

(88) “Standard procurement process” means:

(a) the bidding process;

(b) the request for proposals process;

(c) the approved vendor list process;

(d) the small purchase process; or

(e) the design professional procurement process.

(89) “State cooperative contract” means a contract awarded by the division for and in behalf of all public entities.

(90) “Statement of qualifications” means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

(91) “Subcontractor”:

(a) means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction;

(b) includes a trade contractor or specialty contractor; and

(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(92) “Supply” means a good, material, technology, piece of equipment, or any other item of personal property.

(93) “Tie bid” means that the lowest responsive bids of responsible bidders are identical in price.

(94) “Time and materials contract” means a contract under which the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

(95) “Transitional costs”:

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

(96) “Trial use contract” means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.

(97) “Vendor”:

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor; and

(iv) a design professional.

Section 64. Section 63J-3-103 is amended to read:

63J-3-103. Definitions.

As used in this chapter:

(1) (a) “Appropriations” means actual unrestricted capital and operating appropriations from unrestricted General Fund and Education Fund sources.

(b) “Appropriations” includes appropriations that are contingent upon available surpluses in the General Fund and Education Fund.

(c) “Appropriations” does not mean:

(i) public education expenditures;

(ii) Utah Education and Telehealth Network expenditures in support of public education;

(iii) Utah [~~College of Applied Technology~~] System of Technical Colleges expenditures in support of public education;

(iv) State Tax Commission expenditures related to collection of income taxes in support of public education;

(v) debt service expenditures;

(vi) emergency expenditures;

(vii) expenditures from all other fund or subfund sources;

(viii) transfers or appropriations from the Education Fund to the Uniform School Fund;

(ix) transfers into, or appropriations made to, the General Fund Budget Reserve Account established in Section 63J-1-312;

(x) transfers into, or appropriations made to, the Education Budget Reserve Account established in Section 63J-1-313;

(xi) transfers in accordance with Section 63J-1-314 into, or appropriations made to the Wildland Fire Suppression Fund created in Section 65A-8-204 or the State Disaster Recovery Restricted Account created in Section 53-2a-603;

(xii) money appropriated to fund the total one-time project costs for the construction of capital developments as defined in Section 63A-5-104;

(xiii) transfers or deposits into or appropriations made to the Centennial Highway Fund created by Section 72-2-118;

(xiv) transfers or deposits into or appropriations made to the Transportation Investment Fund of 2005 created by Section 72-2-124;

(xv) transfers or deposits into or appropriations made to:

(A) the Department of Transportation from any source; or

(B) any transportation-related account or fund from any source; or

(xvi) supplemental appropriations from the General Fund to the Division of Forestry, Fire, and State Lands to provide money for wildland fire control expenses incurred during the current or previous fire years.

(2) "Base year real per capita appropriations" means the result obtained for the state by dividing the fiscal year 1985 actual appropriations of the state less debt money by:

(a) the state's July 1, 1983 population; and

(b) the fiscal year 1983 inflation index divided by 100.

(3) "Calendar year" means the time period beginning on January 1 of any given year and ending on December 31 of the same year.

(4) "Fiscal emergency" means an extraordinary occurrence requiring immediate expenditures and includes the settlement under Laws of Utah 1988, Fourth Special Session, Chapter 4.

(5) "Fiscal year" means the time period beginning on July 1 of any given year and ending on June 30 of the subsequent year.

(6) "Fiscal year 1985 actual base year appropriations" means fiscal year 1985 actual capital and operations appropriations from General Fund and non-Uniform School Fund income tax revenue sources, less debt money.

(7) "Inflation index" means the change in the general price level of goods and services as measured by the Gross National Product Implicit Price Deflator of the Bureau of Economic Analysis, U.S. Department of Commerce calculated as provided in Section 63J-3-202.

(8) (a) "Maximum allowable appropriations limit" means the appropriations that could be, or could have been, spent in any given year under the limitations of this chapter.

(b) "Maximum allowable appropriations limit" does not mean actual appropriations spent or actual expenditures.

(9) "Most recent fiscal year's inflation index" means the fiscal year inflation index two fiscal years previous to the fiscal year for which the maximum allowable inflation and population appropriations limit is being computed under this chapter.

(10) "Most recent fiscal year's population" means the fiscal year population two fiscal years previous to the fiscal year for which the maximum allowable inflation and population appropriations limit is being computed under this chapter.

(11) "Population" means the number of residents of the state as of July 1 of each year as calculated by the Governor's Office of Management and Budget according to the procedures and requirements of Section 63J-3-202.

(12) "Revenues" means the revenues of the state from every tax, penalty, receipt, and other monetary exaction and interest connected with it that are recorded as unrestricted revenue of the General Fund and from non-Uniform School Fund income tax revenues, except as specifically exempted by this chapter.

(13) "Security" means any bond, note, warrant, or other evidence of indebtedness, whether or not the bond, note, warrant, or other evidence of indebtedness is or constitutes an "indebtedness" within the meaning of any provision of the constitution or laws of this state.

Section 65. Section 63N-12-203 is amended to read:

63N-12-203. STEM Action Center Board creation -- Membership.

(1) There is created the STEM Action Center Board within the office, composed of the following members:

(a) six private sector members who represent business, appointed by the governor;

(b) the state superintendent of public instruction or the state superintendent of public instruction's designee;

(c) the commissioner of higher education or the commissioner of higher education's designee;

(d) one member appointed by the governor;

(e) a member of the State Board of Education, chosen by the chair of the State Board of Education;

(f) the executive director of the office or the executive director's designee;

(g) the Utah [~~College of Applied Technology~~] System of Technical Colleges commissioner of technical education or the Utah [~~College of Applied Technology~~] System of Technical Colleges commissioner of technical education's designee;

(h) the executive director of the Department of Workforce Services or the executive director of the Department of Workforce Services' designee; and

(i) one member who has a degree in engineering and experience working in a government military installation, appointed by the governor.

(2) (a) The private sector members appointed by the governor in Subsection (1)(a) shall represent a business or trade association whose primary focus is science, technology, or engineering.

(b) Except as required by Subsection (2)(c), members appointed by the governor shall be appointed to four-year terms.

(c) The length of terms of the members shall be staggered so that approximately half of the committee is appointed every two years.

(d) The members may not serve more than two full consecutive terms except where the governor determines that an additional term is in the best interest of the state.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(3) Attendance of a simple majority of the members constitutes a quorum for the transaction of official committee business.

(4) Formal action by the committee requires a majority vote of a quorum.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(6) The governor shall select the chair of the board to serve a two-year term.

(7) The executive director of the office or the executive director's designee shall serve as the vice chair of the board.

Section 66. Section 63N-12-212 is amended to read:

63N-12-212. High school STEM education initiative.

(1) Subject to legislative appropriations, after consulting with State Board of Education staff, the STEM Action Center shall award grants to school districts and charter schools to fund STEM related certification for high school students.

(2) (a) A school district or charter school may apply for a grant from the STEM Action Center, through a competitive process, to fund the school district's or charter school's STEM related certification training program.

(b) A school district's or charter school's STEM related certification training program shall:

(i) prepare high school students to be job ready for available STEM related positions of employment; and

(ii) when a student completes the program, result in the student gaining an industry-recognized employer STEM related certification.

(3) A school district or charter school may partner with one or more of the following to provide a STEM related certification program:

[~~(a) an applied technology college within the Utah College of Applied Technology;~~]

(a) a technical college described in Section 53B-2a-105;

- (b) Salt Lake Community College;
- (c) Snow College;

(d) Utah State University Eastern; or

(e) a private sector employer.

Section 67. Section 63N-12-213 is amended to read:

63N-12-213. Computer science initiative for public schools.

(1) As used in this section:

(a) "Computational thinking" means the set of problem-solving skills and techniques that software engineers use to write programs that underlie computer applications, including decomposition, pattern recognition, pattern generalization, and algorithm design.

(b) "Computer coding" means the process of writing script for a computer program or mobile device.

(c) "Educator" means the same as that term is defined in Section 53A-6-103.

(d) "Endorsement" means a stipulation, authorized by the State Board of Education and appended to a license, that specifies the areas of practice to which the license applies.

(e) (i) "Institution of higher education" means the same as that term is defined in Section 53B-3-102.

(ii) "Institution of higher education" includes ~~the Utah College of Applied Technology~~ a technical college described in Section 53B-2a-105.

(f) "Employer" means a private employer, public employer, industry association, union, or the military.

(g) "License" means the same as that term is defined in Section 53A-6-103.

(2) Subject to legislative appropriations, on behalf of the board, the staff of the board and the staff of the State Board of Education shall collaborate to develop and implement a computer science initiative for public schools by:

(a) creating an online repository that:

(i) is available for school districts and charter schools to use as a resource; and

(ii) includes high quality computer science instructional resources that are designed to teach students in all grade levels:

- (A) computational thinking skills; and
- (B) computer coding skills;

(b) providing for professional development on teaching computer science by:

(i) including resources for educators related to teaching computational thinking and computer coding in the STEM education high quality professional development application described in Section 63N-12-210; and

(ii) providing statewide or regional professional development institutes; and

(c) awarding grants to a school district or charter school, on a competitive basis, that may be used to

provide incentives for an educator to earn a computer science endorsement.

(3) A school district or charter school may enter into an agreement with one or more of the following entities to jointly apply for a grant under Subsection (2)(c):

- (a) a school district;
- (b) a charter school;
- (c) an employer;
- (d) an institution of higher education; or
- (e) a non-profit organization.

(4) To apply for a grant described in Subsection (2)(c), a school district or charter school shall submit a plan to the State Board of Education for the use of the grant, including a statement of purpose that describes the methods the school district or charter school proposes to use to incentivize an educator to earn a computer science endorsement.

(5) The board and the State Board of Education shall encourage schools to independently pursue computer science and coding initiatives, subject to local school board or charter school governing board approval, based on the unique needs of the school's students.

(6) The board shall include information on the status of the computer science initiative in the annual report described in Section 63N-12-208.

Section 68. Section 67-1-12 is amended to read:

67-1-12. Displaced defense workers.

(1) The governor, through the Department of Workforce Services, may use funds specifically appropriated by the Legislature to benefit, in a manner prescribed by Subsection (2):

(a) Department of Defense employees within the state who lose their employment because of reductions in defense spending by the federal government;

(b) persons dismissed by a defense-related industry employer because of reductions in federal government defense contracts received by the employer; and

(c) defense-related businesses in the state that have been severely and adversely impacted because of reductions in defense spending.

(2) Funds appropriated under this section before fiscal year 1999-2000 but not expended shall remain with the agency that possesses the funds and shall be used in a manner consistent with this section. Any amount appropriated under this section in fiscal year 1999-2000 or thereafter may be used to:

(a) provide matching or enhancement funds for grants, loans, or other assistance received by the state from the United States Department of Labor, Department of Defense, or other federal agency to

assist in retraining, community assistance, or technology transfer activities;

(b) fund or match available private or public funds from the state or local level to be used for retraining, community assistance, technology transfer, or educational projects coordinated by state or federal agencies;

(c) provide for retraining, upgraded services, and programs at ~~applied technology~~ technical colleges, public schools, higher education institutions, or any other appropriate public or private entity that are designed to teach specific job skills requested by a private employer in the state or required for occupations that are in demand in the state;

(d) aid public or private entities that provide assistance in locating new employment;

(e) inform the public of assistance programs available for persons who have lost their employment;

(f) increase funding for assistance and retraining programs;

(g) provide assistance for small start-up companies owned or operated by persons who have lost their employment;

(h) enhance the implementation of dual-use technologies programs, community adjustment assistance programs, or other relevant programs under Pub. L. No. 102-484; and

(i) coordinate local and national resources to protect and enhance current Utah defense installations and related operations and to facilitate conversion or enhancement efforts by:

(i) creating and operating state information clearinghouse operations that monitor relevant activities on the federal, state, and local level;

(ii) identifying, seeking, and matching funds from federal and other public agencies and private donors;

(iii) identifying and coordinating needs in different geographic areas;

(iv) coordinating training and retraining centers;

(v) coordinating technology transfer efforts between public entities, private entities, and institutions of higher education;

(vi) facilitating the development of local and national awareness and support for Utah defense installations;

(vii) studying the creation of strategic alliances, tax incentives, and relocation and consolidation assistance; and

(viii) exploring feasible alternative uses for the physical and human resources at defense installations and in related industries should reductions in mission occur.

(3) The governor, through the Department of Workforce Services, may coordinate and administer the expenditure of money under this section and collaborate with applied technology centers, public

institutions of higher learning, or other appropriate public or private entities to provide retraining and other services described in Subsection (2).

Section 69. Effective date.

This bill takes effect on July 1, 2017, except that:

(1) the amendments to Section 53B-1-104 take effect on May 9, 2017; and

(2) the amendments to Section 53B-16-102 take effect on September 1, 2017.

Section 70. Repealer.

This bill repeals:

Section 53B-6-101, Additional responsibilities of the board -- Studies and evaluations -- Master plan for higher education -- Productivity -- Institutional student assessment -- Biennial accountability report to the Legislature.

Section 53B-6-103, Cooperation with nonmember institutions within the state.

Section 53B-16-106, Board to establish electronics engineering program at Weber State University.

Section 53B-16-210, Salt Lake Community College -- School of Applied Technology Board of Directors -- Membership -- Duties.

Section 71. Coordinating S.B. 238 with H.B. 24 -- Changing terminology.

If this S.B. 238 and H.B. 24, Student Prosperity Savings Program - Tax Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, change the terminology in Subsections 53B-8a-201(8)(c) and 53B-8a-204(5)(b)(i)(C) from "a college within the Utah College of Applied Technology" to "a technical college".

Section 72. Coordinating S.B. 238 with H.B. 100 -- Substantive and technical amendments.

If this S.B. 238 and H.B. 100, Institutions of Higher Education Disclosure Requirements, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, modify Subsection 53B-1-112(1)(b)(iii) to read:

"(iii) "Institution" does not include a technical college."

Section 73. Coordinating S.B. 238 with H.B. 165 -- Substantive and technical amendments -- Changing terminology.

If this S.B. 238 and H.B. 165, Higher Education Retirement Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication:

(1) modify Subsection 49-11-102(9) to read:

"(9) "Technical college" means the same as that term is defined in Section 53B-1-101.5."; and

(2) change the terminology from "applied technology" to "technical" in the following sections:

(a) Section 49-12-203;

(b) Section 49-12-204;

(c) Section 49-13-203;

(d) Section 49-13-204;

(e) Section 49-22-203; and

(f) Section 49-22-204.

Section 74. Coordinating S.B. 238 with H.B. 398 -- Substantive and technical amendments.

If this S.B. 238 and H.B. 398, Procurement Code Amendments, both pass and become law, it is the intent of the Legislature that when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication, the amendments to the following definitions in Section 63G-6a-103 from S.B. 238 supersede the amendments to the definitions in Section 63G-6a-103 from H.B. 398:

(1) "Applicable rulemaking authority";

(2) "Educational procurement unit"; and

(3) "Head of procurement unit".

Section 75. Coordinating S.B. 238 with S.B. 117 -- Substantive and technical amendments -- Changing terminology.

If this S.B. 238 and S.B. 117, Higher Education Performance Funding, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication:

(1) modify Section 53B-7-702 by deleting Subsection 53B-7-702(2);

(2) change the terminology from "applied technology" to "technical" in the following sections:

(a) Section 53B-7-702;

(b) Section 53B-7-703;

(c) Section 53B-7-705; and

(d) Section 53B-7-707; and

(3) change the terminology from "Utah College of Applied Technology" to "Utah System of Technical Colleges" in the following sections:

(a) Section 53B-7-702;

(b) Section 53B-7-703;

(c) Section 53B-7-705; and

(d) Section 53B-7-707.

Section 76. Coordinating S.B. 238 with S.B. 194 -- Changing terminology.

If this S.B. 238 and S.B. 194, Utah Data Research Center Act, both pass and become law, it is the intent of the Legislature that the Office of

Legislative Research and General Counsel, in preparing the Utah Code database for publication, change the language in Subsection 35A-14-102(7)(c) from “the Utah College of Applied Technology” to “the Utah System of Technical Colleges Board of Trustees”.

Section 77. Revisor instructions.

The Legislature intends that on July 1, 2017, the Office of Legislative Research and General Counsel shall, in preparing the Utah Code database for publication:

(1) coordinate this S.B. 238 with other bills as described in Sections 71 through 76; and

(2) in addition to the Office of Legislative Research and General Counsel’s authority under Subsection 36-12-12(3), make additions, deletions, and other modifications necessary to ensure that sections and subsections are complete sentences and grammatically correct to accurately reflect the office’s perception of the Legislature’s intent.

CHAPTER 383**S. B. 245**

Passed March 7, 2017
 Approved March 24, 2017
 Effective October 1, 2017

**SECOND AMENDMENT
 SPECIAL LICENSE PLATES**

Chief Sponsor: Howard A. Stephenson
 House Sponsor: A. Cory Maloy

LONG TITLE**General Description:**

This bill authorizes a Support the 2nd Amendment and State-Owned Shooting Ranges support special group license plate.

Highlighted Provisions:

This bill:

- ▶ creates a Support the 2nd Amendment and State-Owned Shooting Ranges support special group license plate to facilitate the construction of new outdoor shooting ranges owned by the Division of Wildlife Resources;
- ▶ requires applicants for the plate to make a \$25 annual donation to the Support for State-Owned Shooting Ranges Restricted Account;
- ▶ creates the Support for State-Owned Shooting Ranges Restricted Account;
- ▶ requires the Division of Wildlife Resources to distribute funds in the Support for State-Owned Shooting Ranges Restricted Account to facilitate the construction of new outdoor firearm shooting ranges; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

41-1a-422, as last amended by Laws of Utah 2016, Chapters 46, 52, 70, and 71

63J-1-602.1, as last amended by Laws of Utah 2016, Chapters 46, 70, 71, and 202

ENACTS:

23-14-13.5, Utah Code Annotated 1953

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

Section 1. Section 23-14-13.5 is enacted to read:**23-14-13.5. Support for State-Owned Shooting Ranges Restricted Account.**

(1) There is created in the General Fund a restricted account known as the "Support for State-Owned Shooting Ranges Restricted Account."

(2) The account shall be funded by:

(a) contributions deposited into the account in accordance with Section 41-1a-422;

(b) private contributions; and

(c) donations or grants from public or private entities.

(3) Upon appropriation by the Legislature, the division shall distribute funds in the account to facilitate construction of new firearm shooting ranges, and operation and maintenance of existing ranges, that are:

(a) built on land owned or leased by the state;

(b) owned by the division; and

(c) operated by the division or the division's contractors.

(4) The division shall only expend the funds to:

(a) construct, operate, and maintain firearm shooting ranges described in Subsection (3); and

(b) pay the costs of issuing or reordering Support the 2nd Amendment and State-Owned Shooting Ranges support special group license plate decals.

(5) In accordance with Section 63J-1-602.1, appropriations from the account are nonlapsing.

Section 2. Section 41-1a-422 is amended to read:**41-1a-422. Support special group license plates -- Contributor -- Voluntary contribution collection procedures.**

(1) As used in this section:

(a) (i) Except as provided in Subsection (1)(a)(ii), "contributor" means a person who has donated or in whose name at least \$25 has been donated to:

(A) a scholastic scholarship fund of a single named institution;

(B) the Department of Veterans' and Military Affairs for veterans' programs;

(C) the Division of Wildlife Resources for the Wildlife Resources Account created in Section 23-14-13, for conservation of wildlife and the enhancement, preservation, protection, access, and management of wildlife habitat;

(D) the Department of Agriculture and Food for the benefit of conservation districts;

(E) the Division of Parks and Recreation for the benefit of snowmobile programs;

(F) the Guardian Ad Litem Services Account and the Children's Museum of Utah, with the donation evenly divided between the two;

(G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America council as specified by the contributor;

(H) No More Homeless Pets in Utah for distribution to organizations or individuals that provide spay and neuter programs that subsidize the sterilization of domestic animals;

(I) the Utah Alliance of Boys and Girls Clubs, Inc. to provide and enhance youth development programs;

(J) the Utah Association of Public School Foundations to support public education;

(K) the Utah Housing Opportunity Restricted Account created in Section 61-2-204 to assist people who have severe housing needs;

(L) the Public Safety Honoring Heroes Restricted Account created in Section 53-1-118 to support the families of fallen Utah Highway Patrol troopers and other Department of Public Safety employees;

(M) the Division of Parks and Recreation for distribution to organizations that provide support for Zion National Park;

(N) the Firefighter Support Restricted Account created in Section 53-7-109 to support firefighter organizations;

(O) the Share the Road Bicycle Support Restricted Account created in Section 72-2-127 to support bicycle operation and safety awareness programs;

(P) the Cancer Research Restricted Account created in Section 26-21a-302 to support cancer research programs;

(Q) Autism Awareness Restricted Account created in Section 53A-1-304 to support autism awareness programs;

(R) Humanitarian Service and Educational and Cultural Exchange Restricted Account created in Section 9-17-102 to support humanitarian service and educational and cultural programs;

(S) Prostate Cancer Support Restricted Account created in Section 26-21a-303 for programs that conduct or support prostate cancer awareness, screening, detection, or prevention;

(T) the Choose Life Adoption Support Restricted Account created in Section 62A-4a-608 to support programs that promote adoption;

(U) the Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102;

(V) the National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 62A-1-202;

(W) the Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120;

(X) the Children with Cancer Support Restricted Account created in Section 26-21a-304 for programs that provide assistance to children with cancer;

(Y) the National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102; [øø]

(Z) the Children with Heart Disease Support Restricted Account created in Section 26-58-102[-]; or

(AA) the Division of Wildlife Resources for the Support for State-Owned Shooting Ranges Restricted Account created in Section 23-14-13.5, for the creation of new, and operation and

maintenance of existing, state-owned firearm shooting ranges.

(ii) (A) For a veterans' special group license plate, "contributor" means a person who has donated or in whose name at least a \$25 donation at the time of application and \$10 annual donation thereafter has been made.

(B) For a Utah Housing Opportunity special group license plate, "contributor" means a person who:

(I) has donated or in whose name at least \$30 has been donated at the time of application and annually after the time of application; and

(II) is a member of a trade organization for real estate licensees that has more than 15,000 Utah members.

(C) For an Honoring Heroes special group license plate, "contributor" means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually thereafter.

(D) For a firefighter support special group license plate, "contributor" means a person who:

(I) has donated or in whose name at least \$15 has been donated at the time of application and annually after the time of application; and

(II) is a currently employed, volunteer, or retired firefighter.

(E) For a cancer research special group license plate, "contributor" means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually after the time of application.

(F) For a Martin Luther King, Jr. Civil Rights Support special group license plate, "contributor" means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually thereafter.

(G) For a Utah Law Enforcement Memorial Support special group license plate, "contributor" means a person who has donated or in whose name at least \$35 has been donated at the time of application and annually thereafter.

(b) "Institution" means a state institution of higher education as defined under Section 53B-3-102 or a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(2) (a) An applicant for original or renewal collegiate special group license plates under Subsection (1)(a)(i) must be a contributor to the institution named in the application and present the original contribution verification form under Subsection (2)(b) or make a contribution to the division at the time of application under Subsection (3).

(b) An institution with a support special group license plate shall issue to a contributor a

verification form designed by the commission containing:

- (i) the name of the contributor;
- (ii) the institution to which a donation was made;
- (iii) the date of the donation; and
- (iv) an attestation that the donation was for a scholastic scholarship.

(c) The state auditor may audit each institution to verify that the money collected by the institutions from contributors is used for scholastic scholarships.

(d) After an applicant has been issued collegiate license plates or renewal decals, the commission shall charge the institution whose plate was issued, a fee determined in accordance with Section 63J-1-504 for management and administrative expenses incurred in issuing and renewing the collegiate license plates.

(e) If the contribution is made at the time of application, the contribution shall be collected, treated, and deposited as provided under Subsection (3).

(3) (a) An applicant for original or renewal support special group license plates under this section must be a contributor to the sponsoring organization associated with the license plate.

(b) This contribution shall be:

(i) unless collected by the named institution under Subsection (2), collected by the division;

(ii) considered a voluntary contribution for the funding of the activities specified under this section and not a motor vehicle registration fee;

(iii) deposited into the appropriate account less actual administrative costs associated with issuing the license plates; and

(iv) for a firefighter special group license plate, deposited into the appropriate account less:

(A) the costs of reordering firefighter special group license plate decals; and

(B) the costs of replacing recognition special group license plates with new license plates under Subsection 41-1a-1211(13).

(c) The donation described in Subsection (1)(a) must be made in the 12 months prior to registration or renewal of registration.

(d) The donation described in Subsection (1)(a) shall be a one-time donation made to the division when issuing original:

- (i) snowmobile license plates; or
- (ii) conservation license plates.

(4) Veterans' license plates shall display one of the symbols representing the Army, Navy, Air Force, Marines, Coast Guard, or American Legion.

Section 3. Section 63J-1-602.1 is amended to read:

63J-1-602.1. List of nonlapsing accounts and funds -- General authority and Title 1 through Title 30.

(1) Appropriations made to the Legislature and its committees.

(2) The Percent-for-Art Program created in Section 9-6-404.

(3) The Martin Luther King, Jr. Civil Rights Support Restricted Account created in Section 9-18-102.

(4) The National Professional Men's Soccer Team Support of Building Communities Restricted Account created in Section 9-19-102.

(5) The LeRay McAllister Critical Land Conservation Program created in Section 11-38-301.

(6) The Support for State-Owned Shooting Ranges Restricted Account created in Section 23-14-13.5.

~~(6)~~ (7) An appropriation made to the Division of Wildlife Resources for the appraisal and purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.

~~(7)~~ (8) Award money under the State Asset Forfeiture Grant Program, as provided under Section 24-4-117.

~~(8)~~ (9) Funds collected from the program fund for local health department expenses incurred in responding to a local health emergency under Section 26-1-38.

~~(9)~~ (10) Funds collected from the emergency medical services grant program, as provided in Section 26-8a-207.

~~(10)~~ (11) The primary care grant program created in Section 26-10b-102.

~~(11)~~ (12) The Prostate Cancer Support Restricted Account created in Section 26-21a-303.

~~(12)~~ (13) The Children with Cancer Support Restricted Account created in Section 26-21a-304.

~~(13)~~ (14) State funds appropriated for matching federal funds in the Children's Health Insurance Program as provided in Section 26-40-108.

~~(14)~~ (15) The Utah Health Care Workforce Financial Assistance Program created in Section 26-46-102.

~~(15)~~ (16) The Rural Physician Loan Repayment Program created in Section 26-46a-103.

~~(16)~~ (17) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.

~~(17)~~ (18) The Children with Heart Disease Support Restricted Account created in Section 26-58-102.

Section 4. Effective date.

This bill takes effect on October 1, 2017.

CHAPTER 384**S. B. 246**

Passed March 7, 2017

Approved March 24, 2017

Effective May 9, 2017

(Exception clause in Section 5)

**PHARMACY PRACTICE
ACT AMENDMENTS**

Chief Sponsor: Evan J. Vickers

House Sponsor: Paul Ray

LONG TITLE**General Description:**

This bill amends the Pharmacy Practice Act.

Highlighted Provisions:

This bill:

- ▶ requires certain Utah-licensed nonresident pharmacies to submit to an inspection as a prerequisite for licensure;
- ▶ excludes drugs administered under certain conditions from certain drug-container labeling requirements;
- ▶ permits certain pharmacists to administer long-acting injectable drugs intramuscularly under certain conditions; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

58-17b-306, as last amended by Laws of Utah 2009, Chapter 183

58-17b-308, as last amended by Laws of Utah 2015, Chapter 258

58-17b-602, as last amended by Laws of Utah 2014, Chapter 72

ENACTS:

58-17b-625, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 58-17b-306 is amended to read:****58-17b-306. Qualifications for licensure as a pharmacy.**

(1) Each applicant for licensure under this section, except for those applying for a class D license, shall:

(a) submit a written application in the form prescribed by the division;

(b) pay a fee as determined by the department under Section 63J-1-504;

(c) satisfy the division that the applicant, and each owner, officer, or manager of the applicant have not engaged in any act, practice, or omission, which when considered with the duties and responsibilities of a licensee under this section indicates there is cause to believe that issuing a

license to the applicant is inconsistent with the interest of the public's health, safety, or welfare;

(d) demonstrate the licensee's operations will be in accordance with all federal, state, and local laws relating to the type of activity engaged in by the licensee, including regulations of the Federal Drug Enforcement Administration and Food and Drug Administration;

(e) maintain operating standards established by division rule made in collaboration with the board; and

(f) acknowledge the division's authority to inspect the licensee's business premises pursuant to Section 58-17b-103.

(2) Each applicant applying for a class D license shall:

(a) submit a written application in the form prescribed by the division;

(b) pay a fee as determined by the department under Section 63J-1-504;

(c) present to the division verification of licensure in the state where physically located and verification that such license is in good standing;

(d) provide a statement of the scope of pharmacy services that will be provided and a detailed description of the protocol as described by rule by which pharmacy care will be provided, including any collaborative practice arrangements with other health care practitioners;

(e) sign an affidavit attesting that any healthcare practitioners employed by the applicant and physically located in Utah have the appropriate license issued by the division and in good standing; ~~and~~

(f) sign an affidavit attesting that the applicant will abide by the pharmacy laws and regulations of the jurisdiction in which the pharmacy is located[-]; and

(g) if an applicant engages in compounding, submit the most recent inspection report:

(i) conducted within two years before the application for licensure; and

(ii) (A) conducted as part of the National Association of Boards of Pharmacy Verified Pharmacy Program; or

(B) performed by the state licensing agency of the state in which the applicant is a resident and in accordance with the National Association of Boards of Pharmacy multistate inspection blueprint program.

(3) Each license issued under this section shall be issued for a single, specific address, and is not transferable or assignable.

Section 2. Section 58-17b-308 is amended to read:**58-17b-308. Term of license -- Expiration -- Renewal.**

(1) Except as provided in Subsection (2), each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle. Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

(2) The duration of a pharmacy intern license may be no longer than:

(a) one year for a license issued under Subsection 58-17b-304(7)(b); or

(b) five years for a license issued under Subsection 58-17b-304(7)(a).

(3) A pharmacy intern license issued under this chapter may not be renewed, but may be extended by the division in collaboration with the board.

(4) As a prerequisite for renewal of a class D pharmacy license of a pharmacy that engages in compounding, a licensee shall submit the most recent inspection report:

(a) conducted within two years before the application for renewal; and

(b) (i) conducted as part of the National Association of Boards of Pharmacy Verified Pharmacy Program; or

(ii) performed by the state licensing agency of the state in which the applicant is a resident and in accordance with the National Association of Boards of Pharmacy multistate inspection blueprint program.

Section 3. Section 58-17b-602 is amended to read:

58-17b-602. Prescription orders -- Information required -- Alteration -- Labels -- Signatures -- Dispensing in pharmacies.

(1) Except as provided in Section 58-1-501.3, the minimum information that shall be included in a prescription order, and that may be defined by rule, is:

(a) the prescriber's name, address, and telephone number, and, if the order is for a controlled substance, the patient's age and the prescriber's DEA number;

(b) the patient's name and address or, in the case of an animal, the name of the owner and species of the animal;

(c) the date of issuance;

(d) the name of the medication or device prescribed and dispensing instructions, if necessary;

(e) the directions, if appropriate, for the use of the prescription by the patient or animal and any refill, special labeling, or other instructions;

(f) the prescriber's signature if the prescription order is written;

(g) if the order is an electronically transmitted prescription order, the prescribing practitioner's electronic signature; and

(h) if the order is a hard copy prescription order generated from electronic media, the prescribing practitioner's electronic or manual signature.

(2) The requirement of Subsection (1)(a) does not apply to prescription orders dispensed for inpatients by hospital pharmacies if the prescriber is a current member of the hospital staff and the prescription order is on file in the patient's medical record.

(3) Unless it is for a Schedule II controlled substance, a prescription order may be dispensed by a pharmacist or pharmacy intern upon an oral prescription of a practitioner only if the oral prescription is promptly reduced to writing.

(4) (a) Except as provided under Subsection (4)(b), a pharmacist or pharmacy intern may not dispense or compound any prescription of a practitioner if the prescription shows evidence of alteration, erasure, or addition by any person other than the person writing the prescription.

(b) A pharmacist or pharmacy intern dispensing or compounding a prescription may alter or make additions to the prescription after receiving permission of the prescriber and may make entries or additions on the prescription required by law or necessitated in the compounding and dispensing procedures.

(5) (a) Each drug dispensed shall have a label securely affixed to the container indicating the following minimum information:

~~(a)~~ (i) the name, address, and telephone number of the pharmacy;

~~(b)~~ (ii) the serial number of the prescription as assigned by the dispensing pharmacy;

~~(c)~~ (iii) the filling date of the prescription or its last dispensing date;

~~(d)~~ (iv) the name of the patient, or in the case of an animal, the name of the owner and species of the animal;

~~(e)~~ (v) the name of the prescriber;

~~(f)~~ (vi) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;

~~(g)~~ (vii) except as provided in Subsection (7), the trade, generic, or chemical name, amount dispensed and the strength of dosage form, but if multiple ingredient products with established proprietary or nonproprietary names are prescribed, those products' names may be used; and

~~(h)~~ (viii) the beyond use date.

(b) The requirements described in Subsections ~~(5)(a)(i) through (vi)~~ do not apply to a label on the container of a drug that a health care provider administers to a patient at:

- (i) a pharmaceutical administration facility; or
- (ii) a hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(6) A hospital pharmacy that dispenses a prescription drug that is packaged in a multidose container to a hospital patient may provide the drug in the multidose container to the patient when the patient is discharged from the hospital if:

- (a) the pharmacy receives a discharge order for the patient; and
- (b) the pharmacy labels the drug with the:
 - (i) patient's name;
 - (ii) drug's name and strength;
 - (iii) directions for use of the drug, if applicable; and
 - (iv) pharmacy's name and phone number.

(7) If the prescriber specifically indicates the name of the prescription product should not appear on the label, then any of the trade, generic, chemical, established proprietary, and established nonproprietary names and the strength of dosage form may not be included.

(8) Prescribers are encouraged to include on prescription labels the information described in Section 58-17b-602.5 in accordance with the provisions of that section.

(9) A pharmacy may only deliver a prescription drug to a patient or a patient's agent:

- (a) in person at the pharmacy; or
- (b) via the United States Postal Service, a licensed common carrier, or supportive personnel, if the pharmacy takes reasonable precautions to ensure the prescription drug is:
 - (i) delivered to the patient or patient's agent; or
 - (ii) returned to the pharmacy.

Section 4. Section 58-17b-625 is enacted to read:

58-17b-625. Administration of a long-acting injectable drug therapy.

(1) A pharmacist may, in accordance with this section, administer a drug described in Subsection (2).

(2) Notwithstanding the provisions of Subsection 58-17b-102(57)(c)(ii)(B), the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing training for a pharmacist to administer the following long-acting injectables intramuscularly:

- (a) aripiprazole;
- (b) paliperidone;
- (c) risperidone;
- (d) olanzapine;
- (e) naltrexone;

(f) naloxone; and

(g) drugs approved and regulated by the United States Food and Drug Administration for the treatment of the Human Immunodeficiency Virus.

(3) A pharmacist may not administer a drug listed under Subsection (2) unless the pharmacist:

(a) completes the training described in Subsection (2);

(b) administers the drug at a clinic or community pharmacy, as those terms are defined by the division, by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(c) is directed by the physician, as that term is defined in Section 58-67-102 or Section 58-68-102, who issues the prescription to administer the drug.

Section 5. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on May 9, 2017.

(2) The amendments to Sections 58-17b-306 and 58-17b-308 take effect on October 1, 2017.

CHAPTER 385**S. B. 247**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

**MODIFICATIONS TO DISTRIBUTION
OF LOCAL SALES TAX REVENUES**

Chief Sponsor: Ralph Okerlund

House Sponsor: Michael E. Noel

LONG TITLE**General Description:**

This bill addresses the distribution of local sales and use tax revenue.

Highlighted Provisions:

This bill:

- ▶ removes the repeal date for an eligible county, city, or town to receive a minimum distribution of certain local sales and use tax revenue.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

59-12-205, as last amended by Laws of Utah 2016, Chapter 364

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

Section 1. Section 59-12-205 is amended to read:**59-12-205. Ordinances to conform with statutory amendments -- Distribution of tax revenue -- Determination of population.**

(1) A county, city, or town, in order to maintain in effect sales and use tax ordinances adopted pursuant to Section 59-12-204, shall, within 30 days of an amendment to an applicable provision of Part 1, Tax Collection, adopt amendments to the county's, city's, or town's sales and use tax ordinances as required to conform to the amendments to Part 1, Tax Collection.

(2) Except as provided in Subsections (3) through (6) and subject to Subsection (7):

(a) 50% of each dollar collected from the sales and use tax authorized by this part shall be distributed to each county, city, and town on the basis of the percentage that the population of the county, city, or town bears to the total population of all counties, cities, and towns in the state; and

(b) (i) except as provided in Subsection (2)(b)(ii), 50% of each dollar collected from the sales and use tax authorized by this part shall be distributed to each county, city, and town on the basis of the location of the transaction as determined under Sections 59-12-211 through 59-12-215; and

(ii) 50% of each dollar collected from the sales and use tax authorized by this part within a project area

described in a project area plan adopted by the military installation development authority under Title 63H, Chapter 1, Military Installation Development Authority Act, shall be distributed to the military installation development authority created in Section 63H-1-201.

(3) (a) Beginning on July 1, 2011, and ending on June 30, 2016, the commission shall each year distribute to a county, city, or town the distribution required by this Subsection (3) if:

(i) the county, city, or town is a:

(A) county of the third, fourth, fifth, or sixth class;

(B) city of the fifth class; or

(C) town;

(ii) the county, city, or town received a distribution under this section for the calendar year beginning on January 1, 2008, that was less than the distribution under this section that the county, city, or town received for the calendar year beginning on January 1, 2007;

(iii) (A) for a county described in Subsection (3)(a)(i)(A), the county had located within the unincorporated area of the county for one or more days during the calendar year beginning on January 1, 2008, an establishment described in NAICS Industry Group 2121, Coal Mining, or NAICS Code 213113, Support Activities for Coal Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; or

(B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection (3)(a)(i)(C), the city or town had located within the city or town for one or more days during the calendar year beginning on January 1, 2008, an establishment described in NAICS Industry Group 2121, Coal Mining, or NAICS Code 213113, Support Activities for Coal Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(iv) (A) for a county described in Subsection (3)(a)(i)(A), at least one establishment described in Subsection (3)(a)(iii)(A) located within the unincorporated area of the county for one more days during the calendar year beginning on January 1, 2008, was not the holder of a direct payment permit under Section 59-12-107.1; or

(B) for a city described in Subsection (3)(a)(i)(B) or a town described in Subsection (3)(a)(i)(C), at least one establishment described in Subsection (3)(a)(iii)(B) located within a city or town for one or more days during the calendar year beginning on January 1, 2008, was not the holder of a direct payment permit under Section 59-12-107.1.

(b) The commission shall make the distribution required by this Subsection (3) to a county, city, or town described in Subsection (3)(a):

(i) from the distribution required by Subsection (2)(a); and

(ii) before making any other distribution required by this section.

(c) (i) For purposes of this Subsection (3), the distribution is the amount calculated by multiplying the fraction calculated under Subsection (3)(c)(ii) by \$333,583.

(ii) For purposes of Subsection (3)(c)(i):

(A) the numerator of the fraction is the difference calculated by subtracting the distribution a county, city, or town described in Subsection (3)(a) received under this section for the calendar year beginning on January 1, 2008, from the distribution under this section that the county, city, or town received for the calendar year beginning on January 1, 2007; and

(B) the denominator of the fraction is \$333,583.

(d) A distribution required by this Subsection (3) is in addition to any other distribution required by this section.

(4) (a) For fiscal years beginning with fiscal year 1983-84 and ending with fiscal year 2005-06, a county, city, or town may not receive a tax revenue distribution less than .75% of the taxable sales within the boundaries of the county, city, or town.

(b) The commission shall proportionally reduce monthly distributions to any county, city, or town that, but for the reduction, would receive a distribution in excess of 1% of the sales and use tax revenue collected within the boundaries of the county, city, or town.

(5) (a) As used in this Subsection (5):

(i) "Eligible county, city, or town" means a county, city, or town that receives \$2,000 or more in tax revenue distributions in accordance with Subsection (4) for each of the following fiscal years:

- (A) fiscal year 2002-03;
- (B) fiscal year 2003-04; and
- (C) fiscal year 2004-05.

(ii) "Minimum tax revenue distribution" means the greater of:

(A) the total amount of tax revenue distributions an eligible county, city, or town receives from a tax imposed in accordance with this part for fiscal year 2000-01; or

(B) the total amount of tax revenue distributions an eligible county, city, or town receives from a tax imposed in accordance with this part for fiscal year 2004-05.

(b) (i) Except as provided in Subsection (5)(b)(ii), beginning with fiscal year 2006-07 and ending with fiscal year 2012-13, an eligible county, city, or town shall receive a tax revenue distribution for a tax imposed in accordance with this part equal to the greater of:

- (A) the payment required by Subsection (2); or
- (B) the minimum tax revenue distribution.

(ii) If the tax revenue distribution required by Subsection (5)(b)(i) for an eligible county, city, or town is equal to the amount described in Subsection (5)(b)(i)(A) for three consecutive fiscal years, for fiscal years beginning with the fiscal year immediately following that three consecutive fiscal year period, the eligible county, city, or town shall receive the tax revenue distribution equal to the payment required by Subsection (2).

(c) For a fiscal year beginning with fiscal year 2013-14 and ending with fiscal year 2015-16, an eligible county, city, or town shall receive the minimum tax revenue distribution for that fiscal year if for fiscal year 2012-13 the payment required by Subsection (2) to that eligible county, city, or town is less than or equal to the product of:

- (i) the minimum tax revenue distribution; and
- (ii) .90.

(6) (a) As used in this Subsection (6):

(i) "Eligible county, city, or town" means a county, city, or town that:

(A) receives, in accordance with Subsection (4), \$2,000 or more in tax revenue distributions for fiscal year 2002-03;

(B) receives, in accordance with Subsection (4), \$2,000 or more in tax revenue distributions for fiscal year 2003-04;

(C) receives, in accordance with Subsection (4), \$2,000 or more in tax revenue distributions for fiscal year 2004-05;

(D) for a fiscal year beginning with fiscal year 2012-13 and ending with fiscal year 2015-16, does not receive a tax revenue distribution described in Subsection (5) equal to the amount described in Subsection (5)(b)(i)(A) for three consecutive fiscal years; and

(E) does not impose a sales and use tax under Section 59-12-2103 on or before July 1, 2016.

(ii) "Minimum tax revenue distribution" means the total amount of tax revenue distributions an eligible county, city, or town receives from a tax imposed in accordance with this part for fiscal year 2004-05.

(b) Beginning with fiscal year 2016-17 [~~and ending with fiscal year 2020-21~~], an eligible county, city, or town shall receive a tax revenue distribution for a tax imposed in accordance with this part equal to the greater of:

- (i) the payment required by Subsection (2); or
- (ii) the minimum tax revenue distribution.

(7) (a) Population figures for purposes of this section shall be based on the most recent official census or census estimate of the United States Census Bureau.

(b) If a needed population estimate is not available from the United States Census Bureau, population figures shall be derived from the estimate from the Utah Population Estimates

Committee created by executive order of the governor.

(c) The population of a county for purposes of this section shall be determined only from the unincorporated area of the county.

CHAPTER 386**S. B. 256**

Passed March 8, 2017
 Approved March 24, 2017
 Effective May 9, 2017

REGENTS' SCHOLARSHIP AMENDMENTS

Chief Sponsor: Lyle W. Hillyard
 House Sponsor: Daniel McCay

LONG TITLE**General Description:**

This bill amends provisions related to the Regents' Scholarship Program.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the Regents' Scholarship Program for students who graduate from high school after July 1, 2018;
- ▶ enacts provisions related to the modified Regents' Scholarship Program, including provisions related to:
 - the distribution process for Regents' Scholarship Program money;
 - student eligibility for a Regents' scholarship; and
 - required rulemaking of the State Board of Regents; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 53B-8-105, as last amended by Laws of Utah 2013, Chapter 64
 63G-12-402, as last amended by Laws of Utah 2015, Chapter 370
 63I-2-253, as last amended by Laws of Utah 2016, Chapters 128, 229, 236, 271, and 318

ENACTS:

53B-8-201, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

- 53B-8-202, (Renumbered from 53B-8-108, as last amended by Laws of Utah 2016, Chapter 188)
 53B-8-203, (Renumbered from 53B-8-109, as last amended by Laws of Utah 2013, Chapter 64)
 53B-8-204, (Renumbered from 53B-8-110, as last amended by Laws of Utah 2010, Chapter 6)
 53B-8-205, (Renumbered from 53B-8-111, as last amended by Laws of Utah 2013, Chapter 64)

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

Section 1. Section 53B-8-105 is amended to read:**53B-8-105. New Century scholarships -- High school requirements.**

(1) As used in this section, "complete the requirements for an associate degree" means that a student:

(a) (i) completes all the required courses for an associate degree from a higher education institution within the state system of higher education that offers associate degrees; and

(ii) applies for the associate degree from the institution; or

(b) completes equivalent requirements described in Subsection (1)(a)(i) from a higher education institution within the state system of higher education that offers baccalaureate degrees but does not offer associate degrees.

(2) (a) The board shall award New Century scholarships.

(b) The board shall develop and approve the math and science curriculum described under Subsection (3)(a)(ii).

(3) (a) In order to qualify for a New Century scholarship, a student in Utah schools shall complete the requirements for an:

(i) associate degree; or

(ii) approved math and science curriculum.

(b) The requirements under Subsection (3)(a) shall be completed:

(i) (A) for a student whose class graduates from high school in 2010 or before, by September 1 of the year the student's class graduates from high school; or

(B) for a student whose class graduates from high school in 2011 or after, by the day on which the student's class graduates from high school; and

(ii) with at least a 3.0 grade point average.

(c) In addition to the requirements in Subsection (3)(a), a student in Utah schools whose class graduates from high school in 2011 or after shall:

(i) complete the high school graduation requirements of:

(A) a public high school established by the State Board of Education and the student's school district or charter school; or

(B) a private high school in the state that is accredited by a regional accrediting body approved by the board; and

(ii) complete high school with at least a 3.5 cumulative high school grade point average.

(4) Notwithstanding Subsection (3), for a student who does not receive a high school grade point average, the student shall:

(a) complete the requirements for an associate degree:

(i) (A) for a student who completes high school in 2010 or before, by September 1 of the year the student completes high school; or

(B) for a student who completes high school in 2011 or after, by June 15 of the year the student completes high school; and

(ii) with at least a 3.0 grade point average; and

(b) score a composite ACT score of 26 or higher.

(5) To be eligible for the scholarship, a student:

(a) shall submit an application to the board with:

(i) an official college transcript showing college courses the student has completed to complete the requirements for an associate degree; and

(ii) (A) if applicable, an official high school transcript; or

(B) if applicable, a copy of the student's ACT scores;

(b) shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid;

(c) may not have a criminal record, with the exception of a misdemeanor traffic citation; and

(d) if applicable, shall meet the application deadlines as established by the board under Subsection (10).

(6) (a) The scholarship may be used at a:

(i) higher education institution within the state system of higher education that offers baccalaureate programs; or

(ii) private, nonprofit college or university in the state accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

(b) For a student whose class graduates from high school in 2010 and who completes the requirements under Subsection (3)(a) by September 1, 2010:

(i) if used at an institution described in Subsection (6)(a)(i), the value of the scholarship is up to 75% of the tuition costs at the selected institution; or

(ii) if used at an institution described in Subsection (6)(a)(ii), the value of the scholarship is up to 75% of the tuition costs at the institution, not to exceed 75% of the average tuition costs at the institutions referred in Subsection (6)(a)(i).

(c) (i) For a student whose class graduates in 2011 or after and who completes the requirements under this section, the total value of the scholarship is up to \$5,000, allocated over a time period described in Subsection (6)(d), as prescribed by the board.

(ii) The board may increase the scholarship amount described in Subsection (6)(c)(i) by an amount not to exceed the average percentage

tuition increase approved by the board for institutions in the state system of higher education.

(d) The scholarship is valid for the shortest of the following time periods:

(i) two years of full-time equivalent enrollment;

(ii) 60 credit hours; or

(iii) until the student meets the requirements for a baccalaureate degree.

(e) (i) A scholarship holder shall enroll full-time at a higher education institution by no later than the fall term immediately following the student's high school graduation date or receive an approved deferral from the board.

(ii) The board may grant a deferral or leave of absence to a scholarship holder, but the student may only receive scholarship money within five years of the student's high school graduation date.

~~[(7) (a) The board may cancel a New Century scholarship at any time if the student fails to:]~~

~~[(i) register as a full-time student;]~~

~~[(ii) maintain at least a 3.0 grade point average for two consecutive semesters; or]~~

~~[(iii) make reasonable progress towards the completion of a baccalaureate degree.]~~

~~[(b) Beginning July 1, 2013, the]~~

~~(7) The board may cancel a New Century scholarship at any time if the student fails to:~~

~~[(i) (a) register for at least 15 credit hours per semester;~~

~~[(iii) (b) maintain a 3.3 grade point average for two consecutive semesters; or~~

~~[(iii) (c) make reasonable progress [towards] toward the completion of a baccalaureate degree.~~

(8) (a) Subject to future budget constraints, the Legislature shall make an annual appropriation from the General Fund to the board for the costs associated with the New Century Scholarship Program authorized under this section.

(b) It is understood that the appropriation is offset in part by the state money that would otherwise be required and appropriated for these students if they were enrolled in a four-year postsecondary program at a state-operated institution.

(c) Notwithstanding Subsections (2)(a) and (6), if the appropriation under Subsection (8)(a) is insufficient to cover the costs associated with the New Century Scholarship Program, the board may reduce the scholarship amount.

(9) (a) The board shall adopt policies establishing an application process and an appeal process for a New Century scholarship.

(b) The board shall disclose on all applications and related materials that the amount of the scholarship is subject to funding and may be reduced, in accordance with Subsection (8)(c).

(c) The board shall require an applicant for a New Century scholarship to certify under penalty of perjury that:

- (i) the applicant is a United States citizen; or
- (ii) the applicant is a noncitizen who is eligible to receive federal student aid.
- (d) The certification under this Subsection (9) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.

(10) The board may set deadlines for receiving New Century scholarship applications and supporting documentation.

(11) A student may not receive both a New Century scholarship and a Regents' scholarship established in [Section 53B-8-108] Part 2, Regents' Scholarship Program.

Section 2. Section 53B-8-201 is enacted to read:

**Part 2. Regents' Scholarship Program
53B-8-201. Regents' Scholarship Program.**

- (1) As used in this section:
- (a) "Eligible institution" means:
 - (i) a credit-granting institution of higher education within the state system of higher education described in Section 53B-1-102; or
 - (ii) a private, nonprofit college or university in the state that is accredited by the Northwest Commission on Colleges and Universities.
 - (b) "Eligible student" means a student who:
 - (i) applies to the board in accordance with the rules described in Subsection (6);
 - (ii) is enrolled in an eligible institution; and
 - (iii) meets the criteria established by the board in rules described in Subsection (6).
 - (c) "Program" means the Regents' Scholarship Program described in this section.
- (2) (a) A student who graduates from high school after July 1, 2018:
- (i) may receive a Regents' scholarship in accordance with this section; and
 - (ii) may not may receive a scholarship in accordance with Sections 53B-8-202 through 53B-8-205.
- (b) A student who graduates from high school on or before July 1, 2018:
- (i) may receive a scholarship in accordance with Sections 53B-8-202 through 53B-8-205; and
 - (ii) may not receive a Regents' scholarship in accordance with this section.
- (3) (a) Subject to legislative appropriations and Subsection (3)(d), beginning with an appropriation

for fiscal year 2019, the board shall annually distribute money for the Regents' Scholarship Program described in this section to each eligible institution to award as Regents' scholarships to eligible students.

(b) The board shall annually determine the amount of a Regents' scholarship based on:

- (i) the number of eligible students in the state; and
- (ii) money available for the program.

(c) The board shall annually determine the total amount of money to distribute to an eligible institution based on the eligible institution's share of all eligible students in the state.

(d) An eligible institution that is a private, nonprofit college or university shall, to receive money distributed by the board described in Subsection (3)(a), enter into a written agreement with the board in which the eligible institution agrees to:

- (i) provide the board with access to information and data necessary for the purposes of the program; and
- (ii) comply with an audit by the board described in Subsection (5) if the board conducts an audit.

(4) (a) Except as provided in Subsection (4)(b), an eligible institution shall provide to an eligible student a Regents' scholarship in the amount determined by the board described in Subsection (3)(b).

(b) An eligible institution may reduce the amount of a Regents' scholarship provided to an eligible student based on other state aid awarded to the eligible student for tuition and fees.

(5) The board may:

- (a) audit an eligible institution's administration of Regents' scholarships; and
- (b) require an eligible institution to repay to the board money distributed to the eligible institution under this section that is not provided to an eligible student as a Regents' scholarship.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules that establish:

- (a) requirements related to an eligible institution's administration of Regents' scholarships;
- (b) a process for a student to apply to the board to determine the student's eligibility for a Regents' scholarship;
- (c) criteria to determine a student's eligibility for a Regents' scholarship, including:
 - (i) minimum secondary education academic performance standards;
 - (ii) the completion of secondary core curriculum and graduation requirements;

(iii) the completion of a Free Application for Federal Student Aid;

(iv) need-based measures that address college affordability and access; and

(v) minimum enrollment requirements in an eligible institution; and

(d) a requirement for each eligible institution to annually report to the board on all Regents' scholarships awarded by the eligible institution.

(7) The board shall annually report on the program to the Higher Education Appropriations Subcommittee.

(8) (a) The State Board of Education, a school district, or a public high school shall cooperate with the board and eligible institutions to facilitate the program, including by exchanging relevant data where allowed by law.

(b) The State Board of Education shall annually provide to the board a list of directory information, including name and address, for each grade 8 student in the state.

Section 3. Section 53B-8-202, which is renumbered from Section 53B-8-108 is renumbered and amended to read:

[53B-8-108]. 53B-8-202. Regents' Scholarship Program -- General provisions -- Board policies.

(1) This section only applies to a student who graduates from high school on or before July 1, 2018.

[4] (2) The Regents' Scholarship Program is created to award merit scholarships to students who complete a rigorous core course of study in high school.

[2] (3) (a) A student who is awarded the Base Regents' scholarship established in Section [53B-8-109] 53B-8-203 may also be awarded each of the supplemental awards established in Sections [53B-8-110 and 53B-8-111] 53B-8-204 and 53B-8-205.

(b) A student may not receive both a Regents' scholarship and a New Century scholarship established in Section 53B-8-105.

[3] (4) A Regents' scholarship may only be used at a:

(a) credit-granting higher education institution within the state system of higher education; or

(b) private, nonprofit college or university in the state that is accredited by the Northwest [Association of Schools and Colleges] Commission on Colleges and Universities.

[4] (5) (a) A scholarship holder shall enroll full-time at a higher education institution described in Subsection [(3)] (4) by no later than the fall term immediately following the student's high school graduation date or receive an approved deferral from the board.

(b) The board may grant a deferral or leave of absence to a scholarship holder, but the student may only receive scholarship money within five years of the student's high school graduation date.

[4] (6) (a) The board shall annually report on the Regents' Scholarship Program at the beginning of each school year to the Higher Education Appropriations Subcommittee.

(b) The board shall ensure that the report includes the number of students in each school district and public high school who meet the academic criteria for the Base Regents' scholarship and for the Exemplary Academic Achievement Scholarship.

(c) The State Board of Education, school districts, and public high schools shall cooperate with the board to facilitate the collection and distribution of Regents' Scholarship Program data.

[6] (7) The State Board of Education shall annually provide the board a complete list of directory information, including student name and address, for all grade 8 students in the state.

[7] (8) The board shall adopt policies establishing:

(a) the high school and college course requirements described in Subsection [53B-8-109(1)(d)(i)] 53B-2-203(2)(d)(i);

(b) the additional weights assigned to grades earned in certain courses described in Subsections [53B-8-109(4) and 53B-8-111(7)] 53B-8-203(5) and 53B-8-205(8);

(c) the regional accrediting bodies that may accredit a private high school described in Subsection [53B-8-109(1)(a)(ii)] 53B-8-203(2)(a)(ii);

(d) (i) the application process and an appeal process for a Regents' scholarship, including procedures to allow a student to apply for the scholarship on-line; and

(ii) a disclosure on all applications and related materials that the amount of the awards is subject to funding and may be reduced, in accordance with Subsection [(8)] (9)(b); and

(e) how college credits correlate to high school units for purposes of Subsection [53B-8-109(1)(d)(i)] 53B-8-203(2)(d)(i).

[8] (9) (a) Subject to future budget constraints, the Legislature shall make an annual appropriation from the Education Fund to the board for the costs associated with the Regents' Scholarship Program authorized under this section and Sections [53B-8-109, 53B-8-110, and 53B-8-111] 53B-8-203, 53B-8-204, and 53B-8-205.

(b) Notwithstanding the provisions of this section and Sections [53B-8-109, 53B-8-110, and 53B-8-111] 53B-8-203, 53B-8-204, and 53B-8-205, if the appropriation under Subsection [(8)] (9)(a) is insufficient to cover the costs associated with the Regents' Scholarship Program,

the board may reduce the amount of the Base Regents' scholarships and supplemental awards.

~~(9)~~ (10) The board may set deadlines for receiving Regents' scholarship applications and supporting documentation.

Section 4. Section 53B-8-203, which is renumbered from Section 53B-8-109 is renumbered and amended to read:

[53B-8-109]. 53B-8-203. Regents' Scholarship Program -- Base Regents' Scholarship -- Qualifications -- Application.

(1) This section only applies to a student who graduates from high school on or before July 1, 2018.

~~(1)~~ (2) A student qualifies for a Base Regents' scholarship if the student:

(a) completes the high school graduation requirements of:

(i) a public school established by the State Board of Education and the student's school district or charter school; or

(ii) a private high school in the state that is accredited by a regional accrediting body approved by the board;

(b) completes high school with at least a 3.0 cumulative grade point average;

(c) has at least one reported ACT test score; and

(d) (i) completes the following high school or college credit in grades 9[-] through 12:

(A) four units of credit of English;

(B) four units of credit of mathematics;

(C) three and one-half units of credit of social science;

(D) three units of credit of lab-based natural science; and

(E) two units of credit of sequential world or classical language other than English; and

(ii) except as provided in Subsection ~~[(4)]~~ (5), earns a course grade on a transcript of "C" or above in each individual course listed in Subsection ~~[(1)]~~ (2)(d)(i).

~~(2)~~ (3) The board shall establish policies to determine specific courses that meet the requirements under Subsection ~~[(1)]~~ (2)(d)(i).

~~(3)~~ (4) To be eligible for the scholarship, a student:

(a) shall submit an application to the board with:

(i) a copy of the student's official high school transcript and ACT scores; and

(ii) if applicable, a college transcript showing a college course the student has completed to meet the requirements of Subsection ~~[(1)]~~ (2)(d);

(b) shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid;

(c) may not have a criminal record, with the exception of a misdemeanor traffic citation; and

(d) if applicable, shall meet the application deadlines as established by the board under Subsection ~~[53B-8-108(9)]~~ 53B-8-202(10).

~~(4)~~ (5) For purposes of determining if a student meets the grade requirements of Subsection ~~[(1)]~~ (2)(d)(ii), the board shall assign additional weights to grades earned in courses described in Subsection ~~[(1)]~~ (2)(d)(i) that are advanced placement, concurrent enrollment, or International Baccalaureate program courses.

~~(5)~~ (6) (a) The amount of the Base Regents' scholarship is \$1,000.

(b) The board may adjust the amount of the Base Regents' scholarship by up to a percentage of the average percentage tuition increase approved by the board for institutions in the system of higher education.

~~(6)~~ (7) (a) The board shall require an applicant for a Regents' scholarship to certify under penalty of perjury that:

(i) the applicant is a United States citizen; or

(ii) the applicant is a noncitizen who is eligible to receive federal student aid.

(b) The certification under this Subsection ~~[(6)]~~ (7) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.

Section 5. Section 53B-8-204, which is renumbered from Section 53B-8-110 is renumbered and amended to read:

[53B-8-110]. 53B-8-204. Regents' Scholarship Program -- Supplemental award to encourage college savings.

(1) This section only applies to a student who graduates from high school on or before July 1, 2018.

~~(1)~~ (2) A student who qualifies for the Base Regents' Scholarship in accordance with the provisions of Section ~~[53B-8-109]~~ 53B-8-203 may be awarded up to an additional \$400 as provided in this section.

~~(2)~~ (3) A student who qualifies for the Base Regents' Scholarship shall be awarded \$100 for a year that:

(a) the student was 14, 15, 16, or 17 years of age; and

(b) at least \$100 in contributions, excluding transfers, investment earnings, and interest, was deposited in a Utah Educational Savings Plan account that designated the student as the beneficiary.

Section 6. Section 53B-8-205, which is renumbered from Section 53B-8-111 is renumbered and amended to read:

[53B-8-111]. 53B-8-205. Supplemental scholarship award -- Exemplary academic achievement -- Regents' diploma.

(1) This section only applies to a student who graduates from high school on or before July 1, 2018.

[4] (2) A student who qualifies for the Base Regents' scholarship in accordance with the provisions of Section ~~[53B-8-109]~~ 53B-8-203 shall qualify for an additional Exemplary Academic Achievement scholarship if the student:

(a) completes high school with a cumulative grade point average of 3.5 or higher;

(b) except as provided in Subsection ~~[(7)]~~ (8), earns a course grade on a transcript of "B" or above in each individual course listed in Subsection ~~[53B-8-109(1)(d)(i)]~~ 53B-8-203(2)(d)(i); and

(c) (i) scores a composite ACT score of 26 or higher; and

(ii) if determined by the board's policies, achieves additional ACT college readiness benchmark scores in English, mathematics, reading, and science.

[2] (3) For a student who graduates from high school in the 2009-10 school year:

(a) if used at a higher education institution described in Subsection ~~[53B-8-108(3)(a)]~~ 53B-8-202(4)(a), the value of an Exemplary Academic Achievement scholarship is up to 75% of the tuition costs at the selected institution; or

(b) if used at a higher education institution described in Subsection ~~[53B-8-108(3)(b)]~~ 53B-8-202(4)(b), the value of an Exemplary Academic Achievement scholarship is up to 75% of the tuition costs at the institution, not to exceed 75% of the average tuition costs at the institutions described in Subsection ~~[53B-8-108(3)(a)]~~ 53B-8-202(4)(a).

[3] (4) (a) For a student who graduates from high school in or after the 2010-11 school year, the total value of an Exemplary Academic Achievement scholarship is up to \$5,000, allocated over a time period described in Subsection ~~[(4)]~~ (5), as prescribed by the board.

(b) The board may adjust the amount of the Exemplary Academic Achievement scholarship by up to a percentage of the average percentage tuition increase approved by the board for institutions in the state system of higher education.

[4] (5) An Exemplary Academic Achievement scholarship is valid for the shortest of the following time periods:

(a) two years of full-time equivalent enrollment;

(b) 65 credit hours; or

(c) until the student meets the requirements for a baccalaureate degree.

~~[(5) (a) The board may cancel an Exemplary Academic Achievement scholarship at any time if the student fails to:]~~

~~[(i) register as a full-time student;]~~

~~[(ii) maintain a 3.0 grade point average for two consecutive semesters; or]~~

~~[(iii) make reasonable progress towards the completion of a baccalaureate degree.]~~

~~[(b) Beginning July 1, 2013, the]~~

(6) The board may cancel an Exemplary Academic Achievement scholarship at any time if the student fails to:

(4) (a) register for at least 15 credit hours per semester;

~~[(ii) (b) maintain a 3.3 grade point average for two consecutive semesters; or]~~

~~[(iii) (c) make reasonable progress [towards] toward the completion of a baccalaureate degree.]~~

~~[(6) (7) A student who qualifies for the Exemplary Academic Achievement scholarship under this section may also receive a Regents' diploma endorsement to be issued by the board.]~~

~~[(7) (8) For purposes of determining if a student meets the grade requirements of Subsection [(1)] (2)(b), the board shall assign additional weights to grades earned in courses described in Subsection [53B-8-109(1)(d)(i)] 53B-8-203(2)(d)(i) that are advanced placement, concurrent enrollment, or International Baccalaureate program courses.]~~

Section 7. Section 63G-12-402 is amended to read:

63G-12-402. Receipt of state, local, or federal public benefits -- Verification -- Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.

(1) (a) Except as provided in Subsection (3) or when exempted by federal law, an agency or political subdivision of the state shall verify the lawful presence in the United States of an individual at least 18 years of age who applies for:

(i) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or

(ii) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered by an agency or political subdivision of this state.

(b) For purpose of a license issued under Title 58, Chapter 55, Utah Construction Trades Licensing Act, to an applicant that is an unincorporated entity, the Department of Commerce shall verify in accordance with this Subsection (1) the lawful presence in the United States of each individual who:

(i) owns an interest in the contractor that is an unincorporated entity; and

(ii) engages, or will engage, in a construction trade in Utah as an owner of the contractor described in Subsection (1)(b)(i).

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) Verification of lawful presence under this section is not required for:

(a) any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

(b) assistance for health care items and services that:

(i) are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Sec. 1396b(v)(3), of the individual involved; and

(ii) are not related to an organ transplant procedure;

(c) short-term, noncash, in-kind emergency disaster relief;

(d) public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by the communicable disease;

(e) programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter, specified by the United States Attorney General, in the sole and unreviewable discretion of the United States Attorney General after consultation with appropriate federal agencies and departments, that:

(i) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient; and

(iii) are necessary for the protection of life or safety;

(f) the exemption for paying the nonresident portion of total tuition as set forth in Section 53B-8-106;

(g) an applicant for a license under Section 61-1-4, if the applicant:

(i) is registered with the Financial Industry Regulatory Authority; and

(ii) files an application with the state Division of Securities through the Central Registration Depository;

(h) a state public benefit to be given to an individual under Title 49, Utah State Retirement and Insurance Benefit Act;

(i) a home loan that will be insured, guaranteed, or purchased by:

(i) the Federal Housing Administration, the Veterans Administration, or any other federal agency; or

(ii) an enterprise as defined in 12 U.S.C. Sec. 4502;

(j) a subordinate loan or a grant that will be made to an applicant in connection with a home loan that does not require verification under Subsection (3)(i);

(k) an applicant for a license issued by the Department of Commerce or individual described in Subsection (1)(b), if the applicant or individual provides the Department of Commerce:

(i) certification, under penalty of perjury, that the applicant or individual is:

(A) a United States citizen;

(B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or

(C) lawfully present in the United States; and

(ii) (A) the number assigned to a driver license or identification card issued under Title 53, Chapter 3, Uniform Driver License Act; or

(B) the number assigned to a driver license or identification card issued by a state other than Utah if, as part of issuing the driver license or identification card, the state verifies an individual's lawful presence in the United States; and

(l) an applicant for:

(i) a Regents' scholarship described in ~~Section 53B-8-109~~ Title 53B, Chapter 8, Part 2, Regents' Scholarship Program;

(ii) a New Century scholarship described in Section 53B-8-105; or

(iii) a privately funded scholarship:

(A) for an individual who is a graduate of a high school located within Utah; and

(B) administered by an institution of higher education as defined in Section 53B-2-101.

(4) (a) An agency or political subdivision required to verify the lawful presence in the United States of an applicant under this section shall require the applicant to certify under penalty of perjury that:

(i) the applicant is a United States citizen; or

(ii) the applicant is:

(A) a qualified alien as defined in 8 U.S.C. Sec. 1641; and

(B) lawfully present in the United States.

(b) The certificate required under this Subsection (4) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.

(5) An agency or political subdivision shall verify a certification required under Subsection (4)(a)(ii) through the federal SAVE program.

(6) (a) An individual who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in a certification under Subsection (3)(k) or (4) is subject to the criminal penalties applicable in this state for:

(i) making a written false statement under Subsection 76-8-504(2); and

(ii) fraudulently obtaining:

(A) public assistance program benefits under Sections 76-8-1205 and 76-8-1206; or

(B) unemployment compensation under Section 76-8-1301.

(b) If the certification constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, the agency or political subdivision shall file a complaint with the United States Attorney General for the applicable district based upon the venue in which the application was made.

(c) If an agency or political subdivision receives verification that a person making an application for a benefit, service, or license is not a qualified alien, the agency or political subdivision shall provide the information to the Office of the Attorney General unless prohibited by federal mandate.

(7) An agency or political subdivision may adopt variations to the requirements of this section that:

(a) clearly improve the efficiency of or reduce delay in the verification process; or

(b) provide for adjudication of unique individual circumstances where the verification procedures in this section would impose an unusual hardship on a legal resident of Utah.

(8) It is unlawful for an agency or a political subdivision of this state to provide a state, local, or federal benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in violation of this section.

(9) A state agency or department that administers a program of state or local public benefits shall:

(a) provide an annual report to the governor, the president of the Senate, and the speaker of the House regarding its compliance with this section; and

(b) (i) monitor the federal SAVE program for application verification errors and significant delays;

(ii) provide an annual report on the errors and delays to ensure that the application of the federal SAVE program is not erroneously denying a state or local benefit to a legal resident of the state; and

(iii) report delays and errors in the federal SAVE program to the United States Department of Homeland Security.

Section 8. Section 63I-2-253 is amended to read:

63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.

(1) Section 53A-1-403.5 is repealed July 1, 2017.

(2) Section 53A-1-411 is repealed July 1, 2017.

(3) Section 53A-1-709 is repealed July 1, 2020.

(4) Subsection 53A-1a-513(4) is repealed July 1, 2017.

(5) Section 53A-1a-513.5 is repealed July 1, 2017.

(6) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2019.

(7) Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is repealed July 1, 2017.

(8) Sections 53A-24-601 and 53A-24-602 are repealed January 1, 2018.

(9) (a) Subsections 53B-2a-103(2) and (4) are repealed July 1, 2019.

(b) When repealing Subsections 53B-2a-103(2) and (4), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

(10) (a) The following sections are repealed on July 1, 2023:

(i) Section 53B-8-202;

(ii) Section 53B-8-203;

(iii) Section 53B-8-204; and

(iv) Section 53B-8-205.

(b) (i) Subsection 53B-8-201(2) is repealed on July 1, 2023.

(ii) When repealing Subsection 53B-8-201(2), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

~~[(40)]~~ (11) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project, is repealed July 1, 2023.

CHAPTER 387**S. B. 257**

Passed March 9, 2017

Approved March 24, 2017

Effective May 9, 2017

CASE STATUS UPDATES

Chief Sponsor: Todd Weiler

House Sponsor: Mike K. McKell

LONG TITLE**General Description:**

This bill addresses the attorney general's reports to the Legislature.

Highlighted Provisions:

This bill:

- requires the attorney general to report to the Legislature on lawsuits that challenge the constitutionality of state law.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

67-5-1, as last amended by Laws of Utah 2016, Chapter 120

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

Section 1. Section 67-5-1 is amended to read:**67-5-1. General duties.**

The attorney general shall:

(1) perform all duties in a manner consistent with the attorney-client relationship under Section 67-5-17;

(2) except as provided in Sections 10-3-928 and 17-18a-403, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board, or commission of the state in an official capacity is a party, and take charge, as attorney, of all civil legal matters in which the state is interested;

(3) after judgment on any cause referred to in Subsection (2), direct the issuance of process as necessary to execute the judgment;

(4) account for, and pay over to the proper officer, all money that comes into the attorney general's possession that belongs to the state;

(5) keep a file of all cases in which the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment and of any process

issued if satisfied, and if not satisfied, documentation of the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, the reason for the delay or prevention; and

(c) deliver this information to the attorney general's successor in office;

(6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(7) give the attorney general's opinion in writing and without fee to the Legislature or either house and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;

(8) when required by the public service or directed by the governor, assist any county, district, or city attorney in the discharge of county, district, or city attorney's duties;

(9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in the attorney general's opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate

powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107;

(16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4a, Constitutional and Federalism Defense Act;

(17) pursue any appropriate legal action to implement the state's public lands policy established in Section 63C-4a-103;

(18) investigate and prosecute violations of all applicable state laws relating to fraud in connection with the state Medicaid program and any other medical assistance program administered by the state, including violations of Title 26, Chapter 20, Utah False Claims Act;

(19) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at:

(a) health care facilities that receive payments under the state Medicaid program; and

(b) board and care facilities, as defined in the federal Social Security Act, 42 U.S.C. Sec. 1396b(q)(4)(B), regardless of the source of payment to the board and care facility;

(20) (a) report at least twice per year to the Legislative Management Committee on any pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

(i) cost the state more than \$500,000; or

(ii) require the state to take legally binding action that would cost more than \$500,000 to implement; and

(b) if the meeting is closed, include an estimate of the state's potential financial or other legal exposure in that report; ~~and~~

(21) (a) submit a written report to the committees described in Subsection (21)(b) that summarizes the status and progress of any lawsuits that challenge the constitutionality of state law that were pending at the time the attorney general submitted the attorney general's last report under this Subsection (21), including any:

(i) settlements reached;

(ii) consent decrees entered; or

(iii) judgments issued; and

(b) at least 30 days before the Legislature's May and November interim meetings, submit the report described in Subsection (21)(a) to:

(i) the Legislative Management Committee;

(ii) the Judiciary Interim Committee; and

(iii) the Law Enforcement and Criminal Justice Interim Committee; and

~~[(21)]~~ (22) if the attorney general operates the Office of the Attorney General or any portion of the Office of the Attorney General as an internal service fund agency in accordance with Section 67-5-4, submit to the rate committee established in Section 67-5-34:

(a) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4); and

(b) any other information or analysis requested by the rate committee.

CHAPTER 388**H. B. 17**

Passed March 7, 2017

Approved March 25, 2017

Effective May 9, 2017

**OFFENSES AGAINST THE
PERSON AMENDMENTS**

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies the Utah Criminal Code regarding aggravated assault and child abuse.

Highlighted Provisions:

This bill:

- ▶ amends the crime of aggravated assault to include the act of impeding the breathing or blood circulation of another person by the use of unlawful force that is likely to result in a loss of consciousness;
- ▶ provides that the commission of the aggravated assault offense of impeding breathing or blood circulation is the offense of strangulation, and is a second degree felony if action results in a loss of consciousness; and
- ▶ modifies the crime of child abuse to include the act of impeding the breathing or circulation of blood by applying pressure to the neck or throat, or by obstructing the nose, mouth, or airway, in a manner that is likely to cause unconsciousness.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-5-103, as last amended by Laws of Utah 2015, Chapter 430

76-5-109, as last amended by Laws of Utah 2015, Chapter 258

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

Section 1. Section 76-5-103 is amended to read:**76-5-103. Aggravated assault -- Penalties.**

- (1) Aggravated assault is an actor's conduct:
- (a) that is:
- (i) an attempt, with unlawful force or violence, to do bodily injury to another;
- (ii) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or
- (iii) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another; and
- (b) that includes the use of:
- (i) a dangerous weapon as defined in Section 76-1-601; [or]

(ii) any act that impedes the breathing or the circulation of blood of another person by the actor's use of unlawful force or violence that is likely to produce a loss of consciousness by:

(A) applying pressure to the neck or throat of a person; or

(B) obstructing the nose, mouth, or airway of a person; or

[~~(ii)~~ (iii) other means or force likely to produce death or serious bodily injury.

[~~(2) (a) A violation of Subsection (1) is a third degree felony, except under Subsection (2)(b).]~~

[~~(b) A violation of Subsection (1) that results in serious bodily injury is a second degree felony.]~~

(2) Any act under this section is punishable as a third degree felony, except that an act under this section is punishable as a second degree felony if:

(a) the act results in serious bodily injury; or

(b) an act under Subsection (1)(b)(ii) produces a loss of consciousness.

Section 2. Section 76-5-109 is amended to read:**76-5-109. Child abuse -- Child abandonment.**

(1) As used in this section:

(a) "Child" means a human being who is under 18 years of age.

(b) (i) "Child abandonment" means that a parent or legal guardian of a child:

(A) intentionally ceases to maintain physical custody of the child;

(B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and

(C) (I) intentionally fails to provide the child with food, shelter, or clothing;

(II) manifests an intent to permanently not resume physical custody of the child; or

(III) for a period of at least 30 days:

(Aa) intentionally fails to resume physical custody of the child; and

(Bb) fails to manifest a genuine intent to resume physical custody of the child.

(ii) "Child abandonment" does not include:

(A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or

(B) giving legal consent to a court order for termination of parental rights:

(I) in a legal adoption proceeding; or

(II) in a case where a petition for the termination of parental rights, or the termination of a guardianship, has been filed.

(c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in Section 76-5-109.1.

(d) "Enterprise" is as defined in Section 76-10-1602.

(e) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:

- (i) a bruise or other contusion of the skin;
- (ii) a minor laceration or abrasion;
- (iii) failure to thrive or malnutrition; or

(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(f).

(f) (i) "Serious physical injury" means any physical injury or set of injuries that:

- (A) seriously impairs the child's health;
- (B) involves physical torture;
- (C) causes serious emotional harm to the child; or
- (D) involves a substantial risk of death to the child.

(ii) "Serious physical injury" includes:

- (A) fracture of any bone or bones;
- (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;

(C) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;

(D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

(E) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;

(F) any damage to internal organs of the body;

(G) any conduct toward a child that results in severe emotional harm, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function;

(H) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

~~[(4) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or]~~

(I) any impediment of the breathing or the circulation of blood by application of pressure to the neck, throat, or chest, or by the obstruction of the nose or mouth, that is likely to produce a loss of consciousness;

(J) any conduct that results in starvation or failure to thrive or malnutrition that jeopardizes the child's life[-]; or

(K) unconsciousness caused by the unlawful infliction of a brain injury or unlawfully causing any deprivation of oxygen to the brain.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a felony of the second degree;

(b) if done recklessly, the offense is a felony of the third degree; or

(c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;

(b) if done recklessly, the offense is a class B misdemeanor; or

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) A person who commits child abandonment, or encourages or causes another to commit child abandonment, or an enterprise that encourages, commands, or causes another to commit child abandonment, is:

(a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or

(b) guilty of a felony of the second degree, if, as a result of the child abandonment:

(i) the child suffers a serious physical injury; or

(ii) the person or enterprise receives, directly or indirectly, any benefit.

(5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (5)(b).

(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to criminal or civil forfeiture pursuant to Title 24, Forfeiture and Disposition of Property Act.

(6) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to have committed an offense under this section.

(7) A parent or guardian of a child does not violate this section by selecting a treatment option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

(8) A person is not guilty of an offense under this section for conduct that constitutes:

(a) reasonable discipline or management of a child, including withholding privileges;

(b) conduct described in Section 76-2-401; or

(c) the use of reasonable and necessary physical restraint or force on a child:

(i) in self-defense;

(ii) in defense of others;

(iii) to protect the child; or

(iv) to remove a weapon in the possession of a child for any of the reasons described in Subsections (8)(c)(i) through (iii).

CHAPTER 389**H. B. 24**

Passed March 7, 2017

Approved March 25, 2017

Effective March 25, 2017

(Retrospective operation to January 1, 2017)

STUDENT PROSPERITY SAVINGS PROGRAM - TAX AMENDMENTSChief Sponsor: Jeremy A. Peterson
Senate Sponsor: Deidre M. Henderson**LONG TITLE****General Description:**

This bill creates the Student Prosperity Savings Program and related corporate and individual tax benefits.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Student Prosperity Savings Program;
- ▶ provides a method for donating to the Student Prosperity Savings Program and obtaining proof of the donation;
- ▶ provides a process for certain high school students to obtain tax-advantaged college savings accounts;
- ▶ permits a corporation to subtract a donation to the Student Prosperity Savings Program from unadjusted income;
- ▶ creates an individual tax credit for a donation to the Student Prosperity Savings Program; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2018:

- ▶ to the Board of Regents -- Administration, as a one-time appropriation:
 - from the General Fund, \$40,000.
- ▶ to the Board of Regents -- Administration, as an ongoing appropriation:
 - from the General Fund, \$10,000.

Other Special Clauses:

This bill provides a special effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

- 53B-8a-102, as last amended by Laws of Utah 2015, Chapter 94
- 59-7-105, as last amended by Laws of Utah 2015, Chapter 30
- 59-7-106, as last amended by Laws of Utah 2015, Chapters 30 and 94
- 59-10-114, as last amended by Laws of Utah 2016, Chapter 263
- 59-10-202, as last amended by Laws of Utah 2010, Chapter 6
- 59-10-1017, as last amended by Laws of Utah 2015, Chapter 94

ENACTS:

- 53B-8a-102.5, Utah Code Annotated 1953
- 53B-8a-201, Utah Code Annotated 1953
- 53B-8a-202, Utah Code Annotated 1953
- 53B-8a-203, Utah Code Annotated 1953

- 53B-8a-204, Utah Code Annotated 1953
- 53B-8a-205, Utah Code Annotated 1953
- 59-10-1017.1, Utah Code Annotated 1953

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

Section 1. Section 53B-8a-102 is amended to read:**Part 1. Utah Educational Savings Plan****53B-8a-102. Definitions for chapter.**

As used in this chapter:

(1) "Account agreement" means an agreement between an account owner and the Utah Educational Savings Plan entered into under this chapter.

(2) "Account owner" means a person, estate, or trust, if that person, estate, or trust has entered into an account agreement under this chapter to save for the higher education costs on behalf of a beneficiary.

~~[(3) "Administrative fund" means the money used to administer the Utah Educational Savings Plan.]~~

[4] (3) "Beneficiary" means the individual designated in an account agreement to benefit from the amount saved for higher education costs.

~~[(5) "Board" means the board of directors of the Utah Educational Savings Plan which is the state Board of Regents acting in its capacity as the Utah Higher Education Assistance Authority under Title 53B, Chapter 12, Higher Education Assistance Authority.]~~

~~[(6) "Endowment fund" means the endowment fund established under Section 53B-8a-107 which is held as a separate fund within the Utah Educational Savings Plan.]~~

~~[(7) "Executive director" means the administrator appointed to administer and manage the Utah Educational Savings Plan.]~~

~~[(8) "Federally insured depository institution" means an institution whose deposits and accounts are to any extent insured by a federal deposit insurance agency, including the Federal Deposit Insurance Corporation and the National Credit Union Administration.]~~

~~[(9) "Grantor trust" means a trust, the income of which is for the benefit of the grantor under Section 677, Internal Revenue Code.]~~

~~[(10) "Higher education costs" means qualified higher education expenses as defined in Section 529(e)(3), Internal Revenue Code.]~~

~~[(11) "Owner of the grantor trust" means one or more individuals who are treated as an owner of a trust under Section 677, Internal Revenue Code, if that trust is a grantor trust.]~~

~~[(12)] (4) "Plan" means the Utah Educational Savings Plan created in Section 53B-8a-103.~~

~~[(13) "Program fund" means the program fund created under Section 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.]~~

[(14) “Qualified investment” means an amount invested in accordance with an account agreement established under this chapter.]

[(15) “Tuition and fees” means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.]

Section 2. Section 53B-8a-102.5 is enacted to read:

53B-8a-102.5. Definitions for part.

As used in this part:

(1) “Administrative fund” means the money used to administer the Utah Educational Savings Plan.

(2) “Board” means the board of directors of the Utah Educational Savings Plan, which is the State Board of Regents acting in the State Board of Regents’ capacity as the Utah Higher Education Assistance Authority under Title 53B, Chapter 12, Higher Education Assistance Authority.

(3) “Endowment fund” means the endowment fund established under Section 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.

(4) “Executive director” means the administrator appointed to administer and manage the Utah Educational Savings Plan.

(5) “Federally insured depository institution” means an institution whose deposits and accounts are to any extent insured by a federal deposit insurance agency, including the Federal Deposit Insurance Corporation and the National Credit Union Administration.

(6) “Grantor trust” means a trust, the income of which is for the benefit of the grantor under Section 677, Internal Revenue Code.

(7) “Higher education costs” means qualified higher education expenses as defined in Section 529(e)(3), Internal Revenue Code.

(8) “Owner of the grantor trust” means one or more individuals who are treated as an owner of a trust under Section 677, Internal Revenue Code, if that trust is a grantor trust.

(9) “Program fund” means the program fund created under Section 53B-8a-107, which is held as a separate fund within the Utah Educational Savings Plan.

(10) “Qualified investment” means an amount invested in accordance with an account agreement established under this part.

(11) “Tuition and fees” means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

Section 3. Section 53B-8a-201 is enacted to read:

Part 2. Student Prosperity Savings Program 53B-8a-201. Definitions.

As used in this part:

(1) “529 savings account” means a tax-advantaged method of saving for higher education costs on behalf of a particular individual that:

(a) meets the requirements of Section 529, Internal Revenue Code; and

(b) is managed by the plan.

(2) “Child” means an individual less than 20 years of age.

(3) “Community partner” means a nonprofit organization that provide services to a child who is economically disadvantaged or a family member, legal guardian, or legal custodian of a child who is economically disadvantaged.

(4) “Donation” means a gift, grant, donation, or any other conveyance of money by a person other than the Legislature that is not made directly for the benefit or on behalf of a particular individual.

(5) “Economically disadvantaged” means that a child is:

(a) experiencing intergenerational poverty;

(b) a member or foster child of a family with an annual income at or below 185% of the federal poverty level; or

(c) living with a legal custodian or legal guardian with an annual family income at or below 185% of the federal poverty level.

(6) “Eligible individual” means an individual who:

(a) is at least 15 years of age and under 20 years of age;

(b) is a student in grade 10, grade 11, or grade 12 in Utah;

(c) is economically disadvantaged; and

(d) receives, or has a family member, a foster family member, or a legal custodian or legal guardian who receives, services from a community partner.

(7) “Federal poverty level” means the poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services in the Federal Register.

(8) “Higher education costs” means the same as that term is defined in Section 53B-8a-102.5, except that the expenses must be incurred at:

(a) a credit-granting institution of higher education within the state system of higher education;

(b) a private, nonprofit college or university in the state that is accredited by the Northwestern Association of Schools and Colleges; or

(c) a college within the Utah College of Applied Technology.

(9) "Intergenerational poverty" means the same as that term is defined in Section 35A-9-102.

(10) "Program" means the Student Prosperity Savings Program created in Section 53B-8a-202.

Section 4. Section 53B-8a-202 is enacted to read:

53B-8a-202. Student Prosperity Savings Program.

(1) There is created the Student Prosperity Savings Program.

(2) The program is funded by:

(a) appropriations from the Legislature; and

(b) donations made in accordance with Section 53B-8a-203.

(3) (a) The plan shall administer the program.

(b) The plan shall use the program to create 529 savings accounts in accordance with this part.

Section 5. Section 53B-8a-203 is enacted to read:

53B-8a-203. Donations to the program.

(1) (a) A person may make a donation to the program by:

(i) sending the donation to the plan; and

(ii) including with the donation, direction that the donation benefit the program.

(b) A person making a donation shall include the person's name and mailing address with the donation.

(2) (a) The plan shall mail a receipt to the person that makes the donation.

(b) The receipt described in Subsection (2)(a) shall state:

(i) the name of the person that made the donation;

(ii) the amount of the donation; and

(iii) the date on which the person makes the donation.

(c) The date on which the person makes a donation to the program is the date on which the plan receives the donation, unless the plan receives the donation on a Saturday, a Sunday, or a holiday, in which case the date on which the person makes the donation shall be the first business day after the day on which the plan receives the donation.

(d) A person that receives a receipt described in Subsection (2)(a) shall retain the receipt for the same time period a person is required to keep books and records under Section 59-1-1406.

Section 6. Section 53B-8a-204 is enacted to read:

53B-8a-204. Distribution of program money -- Application process -- Prioritization -- Account agreements.

(1) The plan shall distribute money in the program by creating a 529 savings account for an eligible individual identified by a community partner.

(2) (a) (i) The plan shall carry out the responsibility described in Subsection (1) by establishing a process in which a community partner may apply for an allocation of program money to designate for eligible individuals.

(ii) The State Board of Regents shall establish the application process for a community partner to apply for an allocation of program money.

(iii) The application process described in Subsection (2)(a)(ii) shall include:

(A) the criteria for a community partner to apply for an allocation of program money;

(B) the criteria that the plan will use to prioritize applications if the dollar amounts requested in the applications exceed the dollar amount available;

(C) the requirements for establishing a 529 savings account in the name of an eligible individual; and

(D) the roles and responsibilities of a community partner that makes a successful application for an allocation of program money.

(b) (i) A community partner that receives an allocation of program money shall enter into a contract with the plan.

(ii) The contract described in Subsection (2)(b)(i) shall:

(A) define the roles and responsibilities of the community partner and the plan with regard to the community partner's allocation of program money; and

(B) specify that the individual the community partner identifies to receive a portion of the community partner's allocation is an eligible individual.

(3) If the plan approves a community partner's application for an allocation of program money, the plan may not promise or otherwise encumber the allocation to any other person unless the allocation is forfeited under Subsection (5)(b)(ii).

(4) (a) A community partner shall identify each eligible individual who will receive a portion of the community partner's allocation of program money.

(b) After a community partner identifies an eligible individual to receive a portion of the community partner's allocation, the community partner shall notify the plan of:

(i) the amount of the community partner's allocation that shall transfer to a 529 savings account in the name of the identified eligible individual; and

(ii) the amount, if any, that the community partner will be contributing in accordance with Part 1, Utah Educational Savings Plan, to the 529 savings account on behalf of the identified eligible individual.

(5) (a) Upon receiving the information described in Subsection (4)(b), the plan shall establish a 529 savings account for the identified eligible individual, with the community partner as the account owner.

(b) The community partner shall inform the beneficiary that:

(i) within three years after the day on which the beneficiary graduates from high school, the beneficiary shall enroll in:

(A) a credit-granting institution of higher education within the state system of higher education;

(B) a private, nonprofit college or university in the state that is accredited by the Northwestern Association of Schools and Colleges; or

(C) a college within the Utah College of Applied Technology; and

(ii) if the beneficiary fails to enroll within three years after the day on which the beneficiary graduates from high school, any money that remains in the 529 savings account shall be returned to the program.

(c) After entering into the account agreement described in Subsection (5)(a), the plan shall deposit into the beneficiary's 529 savings account the amount of the allocation described in Subsection (4)(b)(i).

Section 7. Section 53B-8a-205 is enacted to read:

53B-8a-205. Application of other provisions of this chapter.

The provisions of Part 1, Utah Educational Savings Plan, except Subsection 53B-8a-109(3), govern the 529 savings accounts established under the Student Prosperity Savings Program.

Section 8. Section 59-7-105 is amended to read:

59-7-105. Additions to unadjusted income.

In computing adjusted income the following amounts shall be added to unadjusted income:

(1) interest from bonds, notes, and other evidences of indebtedness issued by any state of the United States, including any agency and instrumentality of a state of the United States;

(2) the amount of any deduction taken on a corporation's federal return for taxes paid by a corporation:

(a) to Utah for taxes imposed by this chapter; and

(b) to another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico for taxes imposed for

the privilege of doing business, or exercising its corporate franchise, including income, franchise, corporate stock and business and occupation taxes;

(3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and (2)(a);

(4) capital losses that have been deducted on a Utah corporate return in previous years;

(5) any deduction on the federal return that has been previously deducted on the Utah return;

(6) charitable contributions, to the extent deducted on the federal return when determining federal taxable income;

(7) the amount of gain or loss determined under Section 59-7-114 relating to a target corporation under Section 338, Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(8) the amount of gain or loss determined under Section 59-7-115 relating to corporations treated for federal purposes as having disposed of its assets under Section 336(e), Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(9) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107;

(10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a corporation that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the corporation that is the account owner:

(a) is not expended for:

(i) higher education costs as defined in Section [53B-8a-102] 53B-8a-102.5; or

(ii) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(b) is subtracted by the corporation:

(i) that is the account owner; and

(ii) in accordance with Subsection 59-7-106 (1)(r); and

(11) the amount of the deduction for dividends paid, as defined in Section 561, Internal Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in computing the taxable income of a captive real estate investment trust, if that captive real estate investment trust is subject to federal income taxation.

Section 9. Section 59-7-106 is amended to read:

59-7-106. Subtractions from unadjusted income.

(1) In computing adjusted income, the following amounts shall be subtracted from unadjusted income:

(a) the foreign dividend gross-up included in gross income for federal income tax purposes under Section 78, Internal Revenue Code;

(b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct the net capital loss on the return filed under this chapter for the taxable year for which the net capital loss is incurred;

(c) the decrease in salary expense deduction for federal income tax purposes due to claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

(d) the decrease in qualified research and basic research expense deduction for federal income tax purposes due to claiming the federal credit for increasing research activities under Section 41, Internal Revenue Code;

(e) the decrease in qualified clinical testing expense deduction for federal income tax purposes due to claiming the federal credit for clinical testing expenses for certain drugs for rare diseases or conditions under Section 45C, Internal Revenue Code;

(f) any decrease in any expense deduction for federal income tax purposes due to claiming any other federal credit;

(g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and (2)(b);

(h) any income on the federal corporation income tax return that has been previously taxed by Utah;

(i) an amount included in federal taxable income that is due to a refund of a tax, including a franchise tax, an income tax, a corporate stock and business tax, or an occupation tax:

(i) if that tax is imposed for the privilege of:

(A) doing business; or

(B) exercising a corporate franchise;

(ii) if that tax is paid by the corporation to:

(A) Utah;

(B) another state of the United States;

(C) a foreign country;

(D) a United States possession; or

(E) the Commonwealth of Puerto Rico; and

(iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

(j) a charitable contribution, to the extent the charitable contribution is allowed as a subtraction under Section 59-7-109;

(k) subject to Subsection (3), 50% of a dividend considered to be received or received from a subsidiary that:

(i) is a member of the unitary group;

(ii) is organized or incorporated outside of the United States; and

(iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

(l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a foreign operating company;

(m) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, if an election has been made in accordance with Section 338(h)(10), Internal Revenue Code;

(n) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal Revenue Code, has been made for federal purposes;

(o) subject to Subsection (5), an adjustment to the following due to a difference between basis for federal purposes and basis as computed under Section 59-7-107:

(i) an amortization expense;

(ii) a depreciation expense;

(iii) a gain;

(iv) a loss; or

(v) an item similar to Subsections (1)(o)(i) through (iv);

(p) an interest expense that is not deducted on a federal corporation income tax return under Section 265(b) or 291(e), Internal Revenue Code;

(q) 100% of dividends received from a subsidiary that is an insurance company if that subsidiary that is an insurance company is:

(i) exempt from this chapter under Subsection 59-7-102(1)(c); and

(ii) under common ownership;

(r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as defined in Section 53B-8a-102 [~~shall subtract~~], the amount of a qualified investment as defined in Section [~~53B-8a-102~~] 53B-8a-102.5:

(i) that the corporation or a person other than the corporation makes into an account owned by the corporation during the taxable year;

(ii) to the extent that neither the corporation nor the person other than the corporation described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax return; and

(iii) to the extent the qualified investment does not exceed the maximum amount of the qualified investment that may be subtracted from unadjusted income for a taxable year in accordance with Subsection 53B-8a-106(1);

(s) for a corporation that makes a donation, as that term is defined in Section 53B-8a-201, to the

Student Prosperity Savings Program created in Section 53B-8a-202, the amount of the donation to the extent that the corporation did not deduct the donation on a federal income tax return;

~~[(s)]~~ (t) for purposes of income included in a combined report under Part 4, Combined Reporting, the entire amount of the dividends a member of a unitary group receives or is considered to receive from a captive real estate investment trust; and

~~[(+)]~~ (u) the increase in income for federal income tax purposes due to claiming a:

(i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

(ii) qualified zone academy bond under Section 1397E, Internal Revenue Code.

(2) For purposes of Subsection (1)(b):

(a) the subtraction shall be made by claiming the subtraction on a return filed:

(i) under this chapter for the taxable year for which the net capital loss is incurred; and

(ii) by the due date of the return, including extensions; and

(b) a net capital loss for a taxable year shall be:

(i) subtracted for the taxable year for which the net capital loss is incurred; or

(ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue Code.

(3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a taxpayer shall first subtract from a dividend considered to be received or received an expense directly attributable to that dividend.

(b) For purposes of Subsection (3)(a), the amount of an interest expense that is considered to be directly attributable to a dividend is calculated by multiplying the interest expense by a fraction:

(i) the numerator of which is the taxpayer's average investment in the dividend paying subsidiaries; and

(ii) the denominator of which is the taxpayer's average total investment in assets.

(c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in determining income apportionable to this state, a portion of the factors of a foreign subsidiary that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the combined report factors as provided in this Subsection (3)(c).

(ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be included in the combined report factors is calculated by

multiplying each factor of the foreign subsidiary by a fraction:

(A) not to exceed 100%; and

(B) (I) the numerator of which is the amount of the dividend paid by the foreign subsidiary that is included in adjusted income; and

(II) the denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code.

(4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under Subsection (1)(l):

(i) if the taxpayer elects to file a worldwide combined report as provided in Section 59-7-403; or

(ii) for the following:

(A) income generated from intangible property; or

(B) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.

(b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating company:

(i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

(ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a transaction that occurs between members of a unitary group.

(c) For purposes of the subtraction provided for in Subsection (1)(l), in determining income apportionable to this state, the factors for a foreign operating company shall be included in the combined report factors in the same percentages as the foreign operating company's adjusted income is included in the combined adjusted income.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes:

(i) income generated from intangible property; or

(ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.

(5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax credit is claimed if:

(i) there is a reduction in federal basis for a federal tax credit; and

(ii) there is no corresponding tax credit allowed in this state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes an item similar to Subsections (1)(o)(i) through (iv).

Section 10. Section 59-10-114 is amended to read:

59-10-114. Additions to and subtractions from adjusted gross income of an individual.

(1) There shall be added to adjusted gross income of a resident or nonresident individual:

(a) a lump sum distribution that the taxpayer does not include in adjusted gross income on the taxpayer's federal individual income tax return for the taxable year;

(b) the amount of a child's income calculated under Subsection (4) that:

(i) a parent elects to report on the parent's federal individual income tax return for the taxable year; and

(ii) the parent does not include in adjusted gross income on the parent's federal individual income tax return for the taxable year;

(c) (i) a withdrawal from a medical care savings account and any penalty imposed for the taxable year if:

(A) the resident or nonresident individual does not deduct the amounts on the resident or nonresident individual's federal individual income tax return under Section 220, Internal Revenue Code;

(B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

(C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a return the resident or nonresident individual files under this chapter;

(ii) a disbursement required to be added to adjusted gross income in accordance with Subsection 31A-32a-105(3); or

(iii) an amount required to be added to adjusted gross income in accordance with Subsection 31A-32a-105(5)(c);

(d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident individual who is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the resident or nonresident individual who is the account owner:

(i) is not expended for:

(A) higher education costs as defined in Section ~~53B-8a-102~~ 53B-8a-102.5; or

(B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(ii) is:

(A) subtracted by the resident or nonresident individual:

(I) who is the account owner; and

(II) on the resident or nonresident individual's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) used as the basis for the resident or nonresident individual who is the account owner to claim a tax credit under Section 59-10-1017;

(e) except as provided in Subsection (5), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:

(i) a state other than this state;

(ii) the District of Columbia;

(iii) a political subdivision of a state other than this state; or

(iv) an agency or instrumentality of an entity described in Subsections (1)(e)(i) through (iii);

(f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a resident trust of income that was taxed at the trust level for federal tax purposes, but was subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);

(g) any distribution received by a resident beneficiary of a nonresident trust of undistributed distributable net income realized by the trust on or after January 1, 2004, if that undistributed distributable net income was taxed at the trust level for federal tax purposes, but was not taxed at the trust level by any state, with undistributed distributable net income considered to be distributed from the most recently accumulated undistributed distributable net income; and

(h) any adoption expense:

(i) for which a resident or nonresident individual receives reimbursement from another person; and

(ii) to the extent to which the resident or nonresident individual subtracts that adoption expense:

(A) on a return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) from federal taxable income on a federal individual income tax return.

(2) There shall be subtracted from adjusted gross income of a resident or nonresident individual:

(a) the difference between:

(i) the interest or a dividend on an obligation or security of the United States or an authority, commission, instrumentality, or possession of the United States, to the extent that interest or dividend is:

(A) included in adjusted gross income for federal income tax purposes for the taxable year; and

(B) exempt from state income taxes under the laws of the United States; and

(ii) any interest on indebtedness incurred or continued to purchase or carry the obligation or security described in Subsection (2)(a)(i);

(b) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

(i) during a time period that the Ute tribal member resides on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation;

(c) an amount received by a resident or nonresident individual or distribution received by a resident or nonresident beneficiary of a resident trust:

(i) if that amount or distribution constitutes a refund of taxes imposed by:

(A) a state; or

(B) the District of Columbia; and

(ii) to the extent that amount or distribution is included in adjusted gross income for that taxable year on the federal individual income tax return of the resident or nonresident individual or resident or nonresident beneficiary of a resident trust;

(d) the amount of a railroad retirement benefit:

(i) paid:

(A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;

(B) to a resident or nonresident individual; and

(C) for the taxable year; and

(ii) to the extent that railroad retirement benefit is included in adjusted gross income on that resident or nonresident individual's federal individual income tax return for that taxable year; and

(e) an amount:

(i) received by an enrolled member of an American Indian tribe; and

(ii) to the extent that the state is not authorized or permitted to impose a tax under this part on that amount in accordance with:

(A) federal law;

(B) a treaty; or

(C) a final decision issued by a court of competent jurisdiction.

(3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:

(i) the taxpayer is a Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (3).

(b) The agreement described in Subsection (3)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(b); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(b);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (3) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how adjusted gross income derived from Utah sources is determined under Section 59-10-117.

(4) (a) For purposes of this Subsection (4), "Form 8814" means:

(i) the federal individual income tax Form 8814, Parents' Election To Report Child's Interest and Dividends; or

(ii) (A) a form designated by the commission in accordance with Subsection (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814; and

(B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act, the commission may make rules designating a form as being substantially similar to 2000 Form 8814 if for purposes of federal individual income taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814.

(b) The amount of a child's income added to adjusted gross income under Subsection (1)(b) is equal to the difference between:

(i) the lesser of:

(A) the base amount specified on Form 8814; and

(B) the sum of the following reported on Form 8814:

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

(III) the child's capital gain distributions; and

(ii) the amount not taxed that is specified on Form 8814.

(5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(e)(i) through (iv) may not be added to adjusted gross income of a resident or nonresident individual if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(e)(i) or (ii), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(e)(iii) or (iv), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

Section 11. Section 59-10-202 is amended to read:

59-10-202. Additions to and subtractions from unadjusted income of a resident or nonresident estate or trust.

(1) There shall be added to unadjusted income of a resident or nonresident estate or trust:

(a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in determining adjusted gross income;

(b) except as provided in Subsection (3), for bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more of the following entities:

(i) a state other than this state;

(ii) the District of Columbia;

(iii) a political subdivision of a state other than this state; or

(iv) an agency or instrumentality of an entity described in Subsections (1)(b)(i) through (iii);

(c) any portion of federal taxable income for a taxable year if that federal taxable income is derived from stock:

(i) in an S corporation; and

(ii) that is held by an electing small business trust;

(d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a resident or nonresident estate or trust that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or trust that is the account owner:

(i) is not expended for:

(A) higher education costs as defined in Section ~~53B-8a-102~~ 53B-8a-102.5; or

(B) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(ii) is:

(A) subtracted by the resident or nonresident estate or trust:

(I) that is the account owner; and

(II) on the resident or nonresident estate's or trust's return filed under this chapter for a taxable year beginning on or before December 31, 2007; or

(B) used as the basis for the resident or nonresident estate or trust that is the account owner to claim a tax credit under Section 59-10-1017; and

(e) any fiduciary adjustments required by Section 59-10-210.

(2) There shall be subtracted from unadjusted income of a resident or nonresident estate or trust:

(a) the interest or a dividend on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent that interest or dividend is included in gross income for federal income tax purposes for the taxable year but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2) to the extent that such expenses, including

amortizable bond premiums, are deductible in determining federal taxable income;

(b) income of an irrevocable resident trust if:

(i) the income would not be treated as state taxable income derived from Utah sources under Section 59-10-204 if received by a nonresident trust;

(ii) the trust first became a resident trust on or after January 1, 2004;

(iii) no assets of the trust were held, at any time after January 1, 2003, in another resident irrevocable trust created by the same settlor or the spouse of the same settlor;

(iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

(v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the settlor or any other person is treated as an owner of any portion of the trust under Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and

(vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on indebtedness incurred or continued to purchase or carry the assets generating the income described in this Subsection (2)(b), and by any expenses incurred in the production of income described in this Subsection (2)(b), to the extent that those expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or nonresident estate or trust derived from a deceased Ute tribal member:

(i) during a time period that the Ute tribal member resided on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation;

(d) any amount:

(i) received by a resident or nonresident estate or trust;

(ii) that constitutes a refund of taxes imposed by:

(A) a state; or

(B) the District of Columbia; and

(iii) to the extent that amount is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts for that taxable year;

(e) the amount of a railroad retirement benefit:

(i) paid:

(A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;

(B) to a resident or nonresident estate or trust derived from a deceased resident or nonresident individual; and

(C) for the taxable year; and

(ii) to the extent that railroad retirement benefit is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts;

(f) an amount:

(i) received by a resident or nonresident estate or trust if that amount is derived from a deceased enrolled member of an American Indian tribe; and

(ii) to the extent that the state is not authorized or permitted to impose a tax under this part on that amount in accordance with:

(A) federal law;

(B) a treaty; or

(C) a final decision issued by a court of competent jurisdiction;

(g) the amount that a qualified nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for the taxable year; and

(h) any fiduciary adjustments required by Section 59-10-210.

(3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(b)(i) through (iv) may not be added to unadjusted income of a resident or nonresident estate or trust if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(b)(i) or (ii), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(b)(iii) or (iv), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

(4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:

(i) the income is derived from a deceased Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the requirements of this Subsection (4).

(b) The agreement described in Subsection (4)(a):

(i) may not:

(A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

(B) provide a subtraction under this section greater than or different from the subtraction described in Subsection (2)(c); or

(C) affect the power of the state to establish rates of taxation; and

(ii) shall:

(A) provide for the implementation of the subtraction described in Subsection (2)(c);

(B) be in writing;

(C) be signed by:

(I) the governor; and

(II) the chair of the Business Committee of the Ute tribe;

(D) be conditioned on obtaining any approval required by federal law; and

(E) state the effective date of the agreement.

(c) (i) The governor shall report to the commission by no later than February 1 of each year regarding whether or not an agreement meeting the requirements of this Subsection (4) is in effect.

(ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or after the January 1 following the termination of the agreement.

(d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) for determining whether income is derived from a source within the Uintah and Ouray Reservation; and

(ii) that are substantially similar to how adjusted gross income derived from Utah sources is determined under Section 59-10-117.

Section 12. Section 59-10-1017 is amended to read:

59-10-1017. Utah Educational Savings Plan tax credit.

(1) As used in this section:

(a) "Account owner" means the same as that term is defined in Section 53B-8a-102.

(b) "Grantor trust" means the same as that term is defined in Section ~~[53B-8a-102]~~ 53B-8a-102.5.

(c) "Higher education costs" means the same as that term is defined in Section ~~[53B-8a-102]~~ 53B-8a-102.5.

(d) "Maximum amount of a qualified investment for the taxable year" means, for a taxable year, the product of 5% and:

(i) subject to Subsection (1)(d)(iii), for a claimant, estate, or trust that is an account owner, if that claimant, estate, or trust is other than husband and

wife account owners who file a single return jointly, the maximum amount of a qualified investment:

(A) listed in Subsection 53B-8a-106(1)(e)(ii); and

(B) increased or kept for that taxable year in accordance with Subsections 53B-8a-106(1)(f) and (g);

(ii) subject to Subsection (1)(d)(iii), for claimants who are husband and wife account owners who file a single return jointly, the maximum amount of a qualified investment:

(A) listed in Subsection 53B-8a-106(1)(e)(iii); and

(B) increased or kept for that taxable year in accordance with Subsections 53B-8a-106(1)(f) and (g); or

(iii) for a grantor trust:

(A) if the owner of the grantor trust has a single filing status or head of household filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(i); or

(B) if the owner of the grantor trust has a joint filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(ii).

(e) "Owner of the grantor trust" means the same as that term is defined in Section ~~[53B-8a-102]~~ 53B-8a-102.5.

(f) "Qualified investment" means the same as that term is defined in Section ~~[53B-8a-102]~~ 53B-8a-102.5.

(2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of this section, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax credit equal to the product of:

(a) the amount of a qualified investment made:

(i) during the taxable year; and

(ii) into an account owned by the claimant, estate, or trust; and

(b) 5%.

(3) A claimant, estate, or trust, or a person other than the claimant, estate, or trust, may make a qualified investment described in Subsection (2).

(4) A claimant, estate, or trust that is an account owner may not claim a tax credit under this section ~~[may not be claimed]~~ with respect to any portion of a qualified investment described in Subsection (2) that a claimant, estate, trust, or person described in Subsection (3) deducts on a federal income tax return.

(5) A tax credit under this section may not exceed the maximum amount of a qualified investment for the taxable year.

(6) A claimant, estate, or trust that is an account owner may not carry forward or carry back the tax credit under this section ~~[may not be carried forward or carried back]~~.

(7) A claimant, estate, or trust may claim a tax credit under this section in addition to the tax credit described in Section 59-10-1017.1.

Section 13. Section 59-10-1017.1 is enacted to read:

59-10-1017.1. Student Prosperity Savings Program tax credit.

(1) As used in this section, "qualified donation" means an amount donated, in accordance with Section 53B-8a-203, to the Student Prosperity Savings Program created in Section 53B-8a-202.

(2) A claimant, estate, or trust may claim a nonrefundable tax credit for a qualified donation.

(3) The tax credit equals the product of:

- (a) the qualified donation; and
- (b) 5%.

(4) A claimant, estate, or trust may not claim a tax credit under this section with respect to any portion of a qualified donation that a claimant, estate, or trust deducts on a federal income tax return.

(5) A claimant, estate, or trust may not carry forward or carry back the portion of the tax credit allowed by this section that exceeds the claimant's, estate's, or trust's tax liability for the taxable year in which the claimant, estate, or trust claims the tax credit.

(6) A claimant, estate, or trust may claim a tax credit under this section in addition to the tax credit described in Section 59-10-1017.

Section 14. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To the Board of Regents

From General Fund, One-time \$40,000

Schedule of Programs:

Administration \$40,000

ITEM 2

To the Board of Regents

From General Fund \$10,000

Schedule of Programs:

Administration \$10,000

The Legislature intends that the Board of Regents use the appropriation under this section to carry out the requirements described in Sections 53B-8a-202 through 53B-8a-204.

Section 15. Effective date and retrospective operation.

(1) Except as provided in Subsection (2), if approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

(2) The amendments to Sections 59-7-105, 59-7-106, 59-10-114, 59-10-202, and 59-10-1017 and the enactment of Section 59-10-1017.1 have retrospective operation for a taxable year beginning on or after January 1, 2017.

CHAPTER 390**H. B. 26**

Passed February 16, 2017

Approved March 25, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

**REVENUE AND
TAXATION MODIFICATIONS**Chief Sponsor: Daniel McCay
Senate Sponsor: Deidre M. Henderson**LONG TITLE****General Description:**

This bill amends provisions related to property taxes.

Highlighted Provisions:

This bill:

- ▶ amends the definition of locally assessed new growth to exclude a change in assessed value that occurs due to assessment under the Farmland Assessment Act or the Urban Farming Assessment Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

59-2-924, as last amended by Laws of Utah 2016, Chapters 350 and 367

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

Section 1. Section 59-2-924 is amended to read:**59-2-924. Definitions -- Report of valuation of property to county auditor and commission -- Transmittal by auditor to governing bodies -- Calculation of certified tax rate -- Rulemaking authority -- Adoption of tentative budget -- Notice provided by the commission.**

(1) As used in this section:

(a) (i) "Ad valorem property tax revenue" means revenue collected in accordance with this chapter.

(ii) "Ad valorem property tax revenue" does not include:

- (A) interest;
- (B) penalties;
- (C) collections from redemptions; or

(D) revenue received by a taxing entity from personal property that is semiconductor manufacturing equipment assessed by a county assessor in accordance with Part 3, County Assessment.

(b) (i) "Aggregate taxable value of all property taxed" means:

(A) the aggregate taxable value of all real property a county assessor assesses in accordance with Part 3, County Assessment, for the current year;

(B) the aggregate taxable value of all real and personal property the commission assesses in accordance with Part 2, Assessment of Property, for the current year; and

(C) the aggregate year end taxable value of all personal property a county assessor assesses in accordance with Part 3, County Assessment, contained on the prior year's tax rolls of the taxing entity.

(ii) "Aggregate taxable value of all property taxed" does not include the aggregate year end taxable value of personal property that is:

(A) semiconductor manufacturing equipment assessed by a county assessor in accordance with Part 3, County Assessment; and

(B) contained on the prior year's tax rolls of the taxing entity.

(c) "Centrally assessed benchmark value" means an amount equal to the highest year end taxable value of real and personal property the commission assesses in accordance with Part 2, Assessment of Property, for a previous calendar year that begins on or after January 1, 2015, adjusted for taxable value attributable to:

(i) an annexation to a taxing entity; or

(ii) an incorrect allocation of taxable value of real or personal property the commission assesses in accordance with Part 2, Assessment of Property.

(d) (i) "Centrally assessed new growth" means the greater of:

(A) zero; or

(B) the amount calculated by subtracting the centrally assessed benchmark value adjusted for prior year end incremental value from the taxable value of real and personal property the commission assesses in accordance with Part 2, Assessment of Property, for the current year, adjusted for current year incremental value.

(ii) "Centrally assessed new growth" does not include a change in value as a result of a change in the method of apportioning the value prescribed by the Legislature, a court, or the commission in an administrative rule or administrative order.

(e) "Certified tax rate" means a tax rate that will provide the same ad valorem property tax revenue for a taxing entity as was budgeted by that taxing entity for the prior year.

(f) "Eligible new growth" means the greater of:

(i) zero; or

(ii) the sum of:

(A) locally assessed new growth;

(B) centrally assessed new growth; and

(C) project area new growth.

(g) “Incremental value” means the same as that term is defined in Section 17C-1-102.

(h) (i) “Locally assessed new growth” means the greater of:

(A) zero; or

(B) the amount calculated by subtracting the year end taxable value of real property the county assessor assesses in accordance with Part 3, County Assessment, for the previous year, adjusted for prior year end incremental value from the taxable value of real property the county assessor assesses in accordance with Part 3, County Assessment, for the current year, adjusted for current year incremental value.

(ii) “Locally assessed new growth” does not include a change in:

(A) value as a result of factoring in accordance with Section 59-2-704, reappraisal, or another adjustment; [øæ]

(B) assessed value based on whether a property is allowed a residential exemption for a primary residence under Section 59-2-103[-];

(C) assessed value based on whether a property is assessed under Part 5, Farmland Assessment Act; or

(D) assessed value based on whether a property is assessed under Part 17, Urban Farming Assessment Act.

(i) “Project area” means the same as that term is defined in Section 17C-1-102.

(j) “Project area new growth” means an amount equal to the incremental value that is no longer provided to an agency as tax increment.

(2) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission the following statements:

(a) a statement containing the aggregate valuation of all taxable real property a county assessor assesses in accordance with Part 3, County Assessment, for each taxing entity; and

(b) a statement containing the taxable value of all personal property a county assessor assesses in accordance with Part 3, County Assessment, from the prior year end values.

(3) The county auditor shall, on or before June 8, transmit to the governing body of each taxing entity:

(a) the statements described in Subsections (2)(a) and (b);

(b) an estimate of the revenue from personal property;

(c) the certified tax rate; and

(d) all forms necessary to submit a tax levy request.

(4) (a) Except as otherwise provided in this section, the certified tax rate shall be calculated by

dividing the ad valorem property tax revenue that a taxing entity budgeted for the prior year by the amount calculated under Subsection (4)(b).

(b) For purposes of Subsection (4)(a), the legislative body of a taxing entity shall calculate an amount as follows:

(i) calculate for the taxing entity the difference between:

(A) the aggregate taxable value of all property taxed; and

(B) any adjustments for current year incremental value;

(ii) after making the calculation required by Subsection (4)(b)(i), calculate an amount determined by increasing or decreasing the amount calculated under Subsection (4)(b)(i) by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year;

(iii) after making the calculation required by Subsection (4)(b)(ii), calculate the product of:

(A) the amount calculated under Subsection (4)(b)(ii); and

(B) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(iv) after making the calculation required by Subsection (4)(b)(iii), calculate an amount determined by subtracting eligible new growth from the amount calculated under Subsection (4)(b)(iii).

(5) A certified tax rate for a taxing entity described in this Subsection (5) shall be calculated as follows:

(a) except as provided in Subsection (5)(b), for a new taxing entity, the certified tax rate is zero;

(b) for a municipality incorporated on or after July 1, 1996, the certified tax rate is:

(i) in a county of the first, second, or third class, the levy imposed for municipal-type services under Sections 17-34-1 and 17-36-9; and

(ii) in a county of the fourth, fifth, or sixth class, the levy imposed for general county purposes and such other levies imposed solely for the municipal-type services identified in Section 17-34-1 and Subsection 17-36-3(22); and

(c) for debt service voted on by the public, the certified tax rate is the actual levy imposed by that section, except that a certified tax rate for the following levies shall be calculated in accordance with Section 59-2-913 and this section:

(i) a school levy provided for under Section 53A-16-113, 53A-17a-133, or 53A-17a-164; and

(ii) a levy to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-1602.

(6) (a) A judgment levy imposed under Section 59-2-1328 or 59-2-1330 may be imposed at a rate

that is sufficient to generate only the revenue required to satisfy one or more eligible judgments.

(b) The ad valorem property tax revenue generated by a judgment levy described in Subsection (6)(a) may not be considered in establishing a taxing entity's aggregate certified tax rate.

(7) (a) For the purpose of calculating the certified tax rate, the county auditor shall use:

(i) the taxable value of real property:

(A) the county assessor assesses in accordance with Part 3, County Assessment; and

(B) contained on the assessment roll;

(ii) the year end taxable value of personal property:

(A) a county assessor assesses in accordance with Part 3, County Assessment; and

(B) contained on the prior year's assessment roll; and

(iii) the taxable value of real and personal property the commission assesses in accordance with Part 2, Assessment of Property.

(b) For purposes of Subsection (7)(a), taxable value does not include eligible new growth.

(8) (a) On or before June 22, a taxing entity shall annually adopt a tentative budget.

(b) If a taxing entity intends to exceed the certified tax rate, the taxing entity shall notify the county auditor of:

(i) the taxing entity's intent to exceed the certified tax rate; and

(ii) the amount by which the taxing entity proposes to exceed the certified tax rate.

(c) The county auditor shall notify property owners of any intent to levy a tax rate that exceeds the certified tax rate in accordance with Sections 59-2-919 and 59-2-919.1.

(9) (a) Subject to Subsection (9)(d), the commission shall provide notice, through electronic means on or before July 31, to a taxing entity and the Revenue and Taxation Interim Committee if:

(i) the amount calculated under Subsection (9)(b) is 10% or more of the year end taxable value of the real and personal property the commission assesses in accordance with Part 2, Assessment of Property, for the previous year, adjusted for prior year end incremental value; and

(ii) the amount calculated under Subsection (9)(c) is 50% or more of the total year end taxable value of the real and personal property of a taxpayer the commission assesses in accordance with Part 2, Assessment of Property, for the previous year.

(b) For purposes of Subsection (9)(a)(i), the commission shall calculate an amount by subtracting the taxable value of real and personal property the commission assesses in accordance

with Part 2, Assessment of Property, for the current year, adjusted for current year incremental value, from the year end taxable value of the real and personal property the commission assesses in accordance with Part 2, Assessment of Property, for the previous year, adjusted for prior year end incremental value.

(c) For purposes of Subsection (9)(a)(ii), the commission shall calculate an amount by subtracting the total taxable value of real and personal property of a taxpayer the commission assesses in accordance with Part 2, Assessment of Property, for the current year, from the total year end taxable value of the real and personal property of a taxpayer the commission assesses in accordance with Part 2, Assessment of Property, for the previous year.

(d) The notification under Subsection (9)(a) shall include a list of taxpayers that meet the requirement under Subsection (9)(a)(ii).

Section 2. Retrospective operation.

This bill has retrospective operation to January 1, 2017.

CHAPTER 391**H. B. 64**

Passed February 16, 2017

Approved March 25, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

PROPERTY TAX RELIEF AMENDMENTS

Chief Sponsor: Jeremy A. Peterson
Senate Sponsor: Deidre M. Henderson

LONG TITLE**General Description:**

This bill modifies taxation provisions to address property tax relief.

Highlighted Provisions:

This bill:

- ▶ addresses when a surviving spouse may claim property tax relief; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

59-2-1202, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 59-2-1202 is amended to read:**59-2-1202. Definitions.**

As used in this part:

(1) (a) "Claimant" means a homeowner or renter who:

- (i) ~~has filed~~ files a claim under this part;
- (ii) is domiciled in this state for the entire calendar year for which a claim for relief is filed under this part; and
- (iii) on or before the December 31 of the year for which a claim for relief is filed under this part, is:

(A) 65 years of age or older if the person was born on or before December 31, 1942;

(B) 66 years of age or older if the person was born on or after January 1, 1943, but on or before December 31, 1959; or

(C) 67 years of age or older if the person was born on or after January 1, 1960.

~~[(b) A surviving spouse, who otherwise qualifies under this section, is an eligible claimant regardless of age.]~~

(b) Notwithstanding Subsection (1)(a), "claimant" includes a surviving spouse:

(i) regardless of:

(A) the age of the surviving spouse; or

(B) the age of the deceased spouse at the time of death;

(ii) if the surviving spouse meets the requirements of this part except for the age requirement;

(iii) if the surviving spouse is part of the same household of the deceased spouse at the time of death of the deceased spouse; and

(iv) if the surviving spouse is unmarried at the time the surviving spouse files the claim.

(c) If two or more individuals of a household are able to meet the qualifications for a claimant, they may determine among them as to who the claimant shall be, but if they are unable to agree, the matter shall be referred to the county legislative body for a determination of the claimant of an owned residence and to the commission for a determination of the claimant of a rented residence.

(2) (a) "Gross rent" means rental actually paid in cash or its equivalent solely for the right of occupancy, at arm's-length, of a residence, exclusive of charges for any utilities, services, furniture, furnishings, or personal appliances furnished by the landlord as a part of the rental agreement.

(b) If a claimant occupies two or more residences in the year and does not own the residence as of the lien date, "gross rent" means the total rent paid for the residences during the one-year period for which the renter files a claim under this part.

(3) "Homeowner's credit" means a credit against a claimant's property tax liability.

(4) "Household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(5) "Household income" means all income received by all persons of a household in:

- (a) the calendar year preceding the calendar year in which property taxes are due; or
- (b) for purposes of the renter's credit authorized by this part, the year for which a claim is filed.

(6) (a) (i) "Income" means the sum of:

(A) federal adjusted gross income as defined in Section 62, Internal Revenue Code; and

(B) all nontaxable income as defined in Subsection (6)(b).

(ii) "Income" does not include:

(A) aid, assistance, or contributions from a tax-exempt nongovernmental source;

(B) surplus foods;

(C) relief in kind supplied by a public or private agency; or

(D) relief provided under this part, Section 59-2-1108, or Section 59-2-1109.

(b) For purposes of Subsection (6)(a)(i), "nontaxable income" means amounts excluded from

adjusted gross income under the Internal Revenue Code, including:

- (i) capital gains;
 - (ii) loss carry forwards claimed during the taxable year in which a claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109;
 - (iii) depreciation claimed pursuant to the Internal Revenue Code by a claimant on the residence for which the claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109;
 - (iv) support money received;
 - (v) nontaxable strike benefits;
 - (vi) cash public assistance or relief;
 - (vii) the gross amount of a pension or annuity, including benefits under the Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq., and veterans disability pensions;
 - (viii) payments received under the Social Security Act;
 - (ix) state unemployment insurance amounts;
 - (x) nontaxable interest received from any source;
 - (xi) workers' compensation;
 - (xii) the gross amount of "loss of time" insurance; and
 - (xiii) voluntary contributions to a tax-deferred retirement plan.
- (7) (a) "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest, and charges for service, levied on a claimant's residence in this state.
- (b) For a mobile home, "property taxes accrued" includes taxes imposed on both the land upon which the home is situated and on the structure of the home itself, whether classified as real property or personal property taxes.
- (c) (i) Beginning on January 1, 1999, for a claimant who owns a residence, "property taxes accrued" are the property taxes described in Subsection (7)(a) levied for the calendar year on 35% of the fair market value of the residence as reflected on the assessment roll.
- (ii) The amount described in Subsection (7)(c)(i) constitutes:
- (A) a tax abatement for the poor in accordance with Utah Constitution, Article XIII, Section 3; and
 - (B) the residential exemption provided for in Section 59-2-103.
- (d) (i) For purposes of this Subsection (7) property taxes accrued are levied on the lien date.
- (ii) If a claimant owns a residence on the lien date, property taxes accrued mean taxes levied on the

lien date, even if that claimant does not own a residence for the entire year.

(e) When a household owns and occupies two or more different residences in this state in the same calendar year, property taxes accrued shall relate only to the residence occupied on the lien date by the household as its principal place of residence.

(f) (i) If a residence is an integral part of a large unit such as a farm or a multipurpose or multidwelling building, property taxes accrued shall be the same percentage of the total property taxes accrued as the value of the residence is of the total value.

(ii) For purposes of this Subsection (7)(f), "unit" refers to the parcel of property covered by a single tax statement of which the residence is a part.

(8) (a) As used in this section, "rental assistance payment" means any payment that:

(i) is made by a:

(A) governmental entity; or

(B) (I) charitable organization; or

(II) religious organization; and

(ii) is specifically designated for the payment of rent of a claimant:

(A) for the calendar year for which the claimant seeks a renter's credit under this part; and

(B) regardless of whether the payment is made to the:

(I) claimant; or

(II) landlord; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the terms:

(i) "governmental entity";

(ii) "charitable organization"; or

(iii) "religious organization."

(9) (a) "Residence" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built and includes a mobile home or houseboat.

(b) "Residence" does not include personal property such as furniture, furnishings, or appliances.

(c) For purposes of this Subsection (9), "owned" includes a vendee in possession under a land contract or one or more joint tenants or tenants in common.

Section 2. Retrospective operation.

This bill has retrospective operation to January 1, 2017.

CHAPTER 392**H. B. 66**

Passed February 16, 2017

Approved March 25, 2017

Effective May 9, 2017

**OPIATE OVERDOSE
RESPONSE ACT AMENDMENTS**

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Brian E. Shiozawa

LONG TITLE**General Description:**

This bill amends civil liability in the Opiate Overdose Response Act.

Highlighted Provisions:

This bill:

- ▶ identifies the persons who are not civilly liable when administering an opiate antagonist under certain circumstances;
- ▶ permits an overdose outreach provider to furnish an opiate antagonist to another overdose outreach provider; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-55-102, as last amended by Laws of Utah 2016, Chapters 127, 202, 207, and 208

26-55-104, as last amended by Laws of Utah 2016, Chapters 202, 207, 208 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 202

26-55-106, as enacted by Laws of Utah 2016, Chapter 207 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 202

58-17b-501, as last amended by Laws of Utah 2013, Chapter 262

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

Section 1. Section 26-55-102 is amended to read:**26-55-102. Definitions.**

As used in this chapter:

(1) "Controlled substance" means the same as that term is defined in Title 58, Chapter 37, Utah Controlled Substances Act.

(2) "Dispense" means the same as that term is defined in Section 58-17b-102.

(3) "Health care facility" means a hospital, a hospice inpatient residence, a nursing facility, a dialysis treatment facility, an assisted living residence, an entity that provides home- and community-based services, a hospice or home health care agency, or another facility that provides or contracts to provide health care services, which

facility is licensed under Chapter 21, Health Care Facility Licensing and Inspection Act.

(4) "Health care provider" means:

- (a) a physician, as defined in Section 58-67-102;
- (b) an advanced practice registered nurse, as defined in Section 58-31b-102;

(c) a physician assistant, as defined in Section 58-70a-102; or

(d) an individual licensed to engage in the practice of dentistry, as defined in Section 58-69-102.

(5) "Increased risk" means risk exceeding the risk typically experienced by an individual who is not using, and is not likely to use, an opiate.

(6) "Local health department" means:

(a) a local health department, as defined in Section 26A-1-102; or

(b) a multicounty local health department, as defined in Section 26A-1-102.

(7) "Opiate" means the same as that term is defined in Section 58-37-2.

(8) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that is not a controlled substance and that is approved by the federal Food and Drug Administration for the diagnosis or treatment of an opiate-related drug overdose.

(9) "Opiate-related drug overdose event" means an acute condition, including a decreased level of consciousness or respiratory depression resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a person would reasonably believe to require medical assistance.

(10) "Overdose outreach provider" means:

(a) a law enforcement agency;

(b) a fire department;

(c) an emergency medical service provider, as defined in Section 26-8a-102;

(d) emergency medical service personnel, as defined in Section 26-8a-102;

(e) an organization providing treatment or recovery services for drug or alcohol use;

(f) an organization providing support services for an individual, or a family of an individual, with a substance use disorder;

(g) an organization providing substance use or mental health services under contract with a local substance abuse authority, as defined in Section 62A-15-102, or a local mental health authority, as defined in Section 62A-15-102;

(h) an organization providing services to the homeless;

(i) a local health department; [øø]

(j) an individual licensed to practice pharmacy under Title 58, Chapter 17b, Pharmacy Practice Act; or

~~[(j)]~~ (k) an individual.

(11) "Patient counseling" means the same as that term is defined in Section 58-17b-102.

(12) "Pharmacist" means the same as that term is defined in Section 58-17b-102.

(13) "Pharmacy intern" means the same as that term is defined in Section 58-17b-102.

(14) "Prescribe" means the same as that term is defined in Section 58-17b-102.

Section 2. Section 26-55-104 is amended to read:

26-55-104. Prescribing, dispensing, and administering an opiate antagonist -- Immunity from liability.

(1) (a) (i) For purposes of Subsection (1)(a)(ii), "a person other than a health care facility or health care provider" includes the following, regardless of whether the person has received funds from the department through the Opiate Overdose Outreach Pilot Program created in Section 26-55-107:

(A) a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F); or

(B) an organization, defined by department rule made under Subsection 26-55-107(7)(e), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event.

~~(ii) Except as provided in Subsection (1)(b), [a person, including an overdose outreach provider, but not including a health care facility or health care provider, that] the following persons are not liable for any civil damages for acts or omissions made as a result of administering an opiate antagonist when the person acts in good faith to administer [an] the opiate antagonist to an individual whom the person believes to be experiencing an opiate-related drug overdose event [is not liable for any civil damages for acts or omissions made as a result of administering the opiate antagonist.]:~~

(A) an overdose outreach provider; or

(B) a person other than a health care facility or health care provider.

(b) A health care provider:

(i) ~~[does] is not [have immunity] immune~~ from liability under Subsection (1)(a) when the health care provider is acting within the scope of the health care provider's responsibilities or duty of care; and

(ii) ~~[does have immunity] is immune~~ from liability under Subsection (1)(a) if the health care provider is under no legal duty to respond and otherwise complies with Subsection (1)(a).

(2) Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502, a health care

provider who is licensed to prescribe an opiate antagonist may prescribe, including by a standing prescription drug order issued in accordance with Subsection 26-55-105(2), or dispense an opiate antagonist:

(a) (i) to an individual who is at increased risk of experiencing an opiate-related drug overdose event;

(ii) for an individual described in Subsection (2)(a)(i), to a family member ~~[of]~~, friend ~~[of]~~, or other person, including a person described in Subsections 26-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist ~~[an] the individual [who is at increased risk of experiencing an opiate-related drug overdose event]; or~~

(iii) to an overdose outreach provider for:

(A) furnishing the opiate antagonist to an individual ~~[who is at increased risk of experiencing an opiate-related drug overdose event, or to a family member of, friend of, or other individual who is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event] described in Subsection (2)(a)(i) or (ii), as provided in Section 26-55-106; or~~

(B) administering to an individual experiencing an opiate-related drug overdose event;

(b) without a prescriber-patient relationship; and

(c) without liability for any civil damages for acts or omissions made as a result of prescribing or dispensing the opiate antagonist in good faith.

(3) A health care provider who dispenses an opiate antagonist to an individual or an overdose outreach provider under Subsection (2)(a) shall provide education to the individual or overdose provider that includes written instruction on how to:

(a) recognize an opiate-related drug overdose event; and

(b) respond appropriately to an opiate-related drug overdose event, including how to:

(i) administer an opiate antagonist; and

(ii) ensure that an individual to whom an opiate antagonist has been administered receives, as soon as possible, additional medical care and a medical evaluation.

Section 3. Section 26-55-106 is amended to read:

26-55-106. Overdose outreach providers.

Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502:

(1) an overdose outreach provider may:

(a) obtain an opiate antagonist dispensed on prescription by:

(i) a health care provider, in accordance with Subsections 26-55-104(2) and (3); or

(ii) a pharmacist or pharmacy intern, as otherwise authorized by Title 58, Chapter 17b, Pharmacy Practice Act;

(b) store the opiate antagonist; and

(c) furnish the opiate antagonist:

(i) (A) to an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(B) to a family member [øf], friend [øf], overdose outreach provider, or other individual who is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; and

(ii) without liability for any civil damages for acts or omissions made as a result of furnishing the opiate antagonist in good faith; and

(2) when furnishing an opiate antagonist under Subsection (1), an overdose outreach provider:

(a) shall also furnish to the recipient of the opiate antagonist:

(i) the written instruction under Subsection 26-55-104(3) received by the overdose outreach provider from the health care provider at the time the opiate antagonist was dispensed to the overdose outreach provider; or

(ii) if the opiate antagonist was dispensed to the overdose outreach provider by a pharmacist or pharmacy intern, any written patient counseling under Section 58-17b-613 received by the overdose outreach provider at the time of dispensing; and

(b) may provide additional instruction on how to recognize and respond appropriately to an opiate-related drug overdose event.

Section 4. Section 58-17b-501 is amended to read:

58-17b-501. Unlawful conduct.

“Unlawful conduct” includes:

(1) knowingly preventing or refusing to permit an authorized agent of the division to conduct an inspection pursuant to Section 58-17b-103;

(2) failing to deliver the license, permit, or certificate to the division upon demand, if it has been revoked, suspended, or refused;

(3) (a) using the title “pharmacist,” “druggist,” “pharmacy intern,” “pharmacy technician,” or a term having similar meaning, except by a person licensed as a pharmacist, pharmacy intern, or pharmacy technician; or

(b) conducting or transacting business under a name that contains, as part of that name, the words “drugstore,” “pharmacy,” “drugs,” “medicine store,” “medicines,” “drug shop,” “apothecary,” “prescriptions,” or a term having a similar meaning, or in any manner advertising, otherwise describing, or referring to the place of the conducted business or profession, unless the place is a pharmacy issued a license by the division, except an establishment

selling nonprescription drugs and supplies may display signs bearing the words “packaged drugs,” “drug sundries,” or “nonprescription drugs,” and is not considered to be a pharmacy or drugstore by reason of the display;

(4) buying, selling, causing to be sold, or offering for sale, a drug or device that bears, or the package bears or originally did bear, the inscription “sample,” “not for resale,” “for investigational or experimental use only,” or other similar words, except when a cost is incurred in the bona fide acquisition of an investigational or experimental drug;

(5) using to a person’s own advantages or revealing to anyone other than the division, board, and its authorized representatives, or to the courts, when relevant to a judicial or administrative proceeding under this chapter, information acquired under authority of this chapter or concerning a method of process that is a trade secret;

(6) procuring or attempting to procure a drug or to have someone else procure or attempt to procure a drug:

(a) by fraud, deceit, misrepresentation, or subterfuge;

(b) by forgery or alteration of a prescription or a written order;

(c) by concealment of a material fact;

(d) by use of a false statement in a prescription, chart, order, or report; or

(e) by theft;

(7) filling, refilling, or advertising the filling or refilling of prescriptions for a consumer or patient residing in this state if the person is not licensed:

(a) under this chapter; or

(b) in the state from which he is dispensing;

(8) requiring an employed pharmacist, pharmacy intern, pharmacy technician, or authorized supportive personnel to engage in conduct in violation of this chapter;

(9) being in possession of a prescription drug for an unlawful purpose;

(10) dispensing a prescription drug to a person who does not have a prescription from a practitioner, except as permitted under Title 26, Chapter 55, Opiate Overdose Response Act, or to a person who the person dispensing the drug knows or should know is attempting to obtain drugs by fraud or misrepresentation;

(11) selling, dispensing, distributing, or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure; and

(12) a person using a prescription drug or controlled substance that was not lawfully prescribed for the person by a practitioner.

CHAPTER 393**H. B. 82**

Passed March 8, 2017
 Approved March 25, 2017
 Effective May 9, 2017

**STREET-LEGAL ALL-TERRAIN
 VEHICLE AMENDMENTS**

Chief Sponsor: Michael E. Noel
 Senate Sponsor: Lincoln Fillmore

LONG TITLE**General Description:**

This bill amends provisions related to the operation of a street-legal all-terrain vehicle.

Highlighted Provisions:

This bill:

- ▶ amends provisions in the Traffic Code relating to operation of a street-legal all-terrain vehicle; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-6a-1509, as last amended by Laws of Utah 2015, Chapters 412 and 454

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

Section 1. Section 41-6a-1509 is amended to read:**41-6a-1509. Street-legal all-terrain vehicle -- Operation on highways -- Registration and licensing requirements -- Equipment requirements.**

(1) (a) [~~Except as provided in Subsection (1)(b), an~~] An all-terrain type I vehicle, utility type vehicle, or full-sized all-terrain vehicle that meets the requirements of this section may be operated as a street-legal ATV on a street or highway unless [~~the highway~~];

(i) the highway is an interstate freeway as defined in Section 41-6a-102[-]; or

[~~(b) Unless a street or highway is designated as open for street-legal ATV use by the controlling highway authority in accordance with Section 41-22-10.5, a person may not operate a street-legal ATV on a street or highway in accordance with Subsection (1)(a) if the highway is under the jurisdiction of:~~]

[~~(i) a county of the first class; or~~]

[~~(ii) a municipality that is within a county of the first class.~~]

(ii) (A) the highway is in a county of the first class;

(B) the highway is near a grade separated portion of the highway;

(C) the highway has a posted speed limit of 50 miles per hour or greater; and

(D) the highway authority with jurisdiction over the highway has designated a portion of a highway as closed to street-legal ATVs.

(b) The restriction to street-legal ATVs described in Subsection (1)(a)(ii) is effective when appropriate signs giving notice are erected on the highway or portion of the highway.

(c) Nothing in this section authorizes the operation of a street-legal ATV in an area that is not open to motor vehicle use.

(2) A street-legal ATV shall comply with the same requirements as:

(a) a motorcycle for:

(i) traffic rules under Title 41, Chapter 6a, Traffic Code;

(ii) registration, titling, odometer statement, vehicle identification, license plates, and registration fees under Title 41, Chapter 1a, Motor Vehicle Act;

(iii) fees in lieu of property taxes or in lieu of fees under Section 59-2-405.2; and

(iv) the county motor vehicle emissions inspection and maintenance programs under Section 41-6a-1642;

(b) a motor vehicle for:

(i) driver licensing under Title 53, Chapter 3, Uniform Driver License Act;

(ii) motor vehicle insurance under Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act; and

(iii) safety inspection requirements under Title 53, Chapter 8, Part 2, Motor Vehicle Safety Inspection Act, except that a street-legal ATV shall be subject to a safety inspection:

(A) when registered for the first time; and

(B) subsequently, on the same frequency as described in Subsection 53-8-205(2) based on the age of the vehicle as determined by the model year identified by the manufacturer; and

(c) an all-terrain type I or type II vehicle for off-highway vehicle provisions under Title 41, Chapter 22, Off-Highway Vehicles, and Title 41, Chapter 3, Motor Vehicle Business Regulation Act, unless otherwise specified in this section.

(3) (a) An all-terrain type I vehicle and a utility type vehicle being operated as a street-legal ATV shall be equipped with:

(i) one or more headlamps that meet the requirements of Section 41-6a-1603;

(ii) one or more tail lamps;

(iii) a tail lamp or other lamp constructed and placed to illuminate the registration plate with a white light;

(iv) one or more red reflectors on the rear;

- (v) one or more stop lamps on the rear;
- (vi) amber or red electric turn signals, one on each side of the front and rear;
- (vii) a braking system, other than a parking brake, that meets the requirements of Section 41-6a-1623;
- (viii) a horn or other warning device that meets the requirements of Section 41-6a-1625;
- (ix) a muffler and emission control system that meets the requirements of Section 41-6a-1626;
- (x) rearview mirrors on the right and left side of the driver in accordance with Section 41-6a-1627;
- (xi) a windshield, unless the operator wears eye protection while operating the vehicle;
- (xii) a speedometer, illuminated for nighttime operation;
- (xiii) for vehicles designed by the manufacturer for carrying one or more passengers, a seat designed for passengers, including a footrest and handhold for each passenger;
- (xiv) for vehicles with side-by-side seating, seatbelts for each vehicle occupant; and
- (xv) tires that:
- (A) are not larger than the tires that the all-terrain vehicle manufacturer made available for the all-terrain vehicle model; and
- (B) have at least 2/32 inches or greater tire tread.
- (b) A full-sized all-terrain vehicle being operated as a street-legal all-terrain vehicle shall be equipped with:
- (i) two headlamps that meet the requirements of Section 41-6a-1603;
- (ii) two tail lamps;
- (iii) a tail lamp or other lamp constructed and placed to illuminate the registration plate with a white light;
- (iv) one or more red reflectors on the rear;
- (v) two stop lamps on the rear;
- (vi) amber or red electric turn signals, one on each side of the front and rear;
- (vii) a braking system, other than a parking brake, that meets the requirements of Section 41-6a-1623;
- (viii) a horn or other warning device that meets the requirements of Section 41-6a-1625;
- (ix) a muffler and emission control system that meets the requirements of Section 41-6a-1626;
- (x) rearview mirrors on the right and left side of the driver in accordance with Section 41-6a-1627;
- (xi) a windshield, unless the operator wears eye protection while operating the vehicle;
- (xii) a speedometer, illuminated for nighttime operation;
- (xiii) for vehicles designed by the manufacturer for carrying one or more passengers, a seat designed for passengers, including a footrest and handhold for each passenger;
- (xiv) for vehicles with side-by-side seating, seatbelts for each vehicle occupant; and
- (xv) tires that:
- (A) do not exceed 44 inches in height; and
- (B) have at least 2/32 inches or greater tire tread.
- (c) A street-legal all-terrain vehicle is not required to be equipped with wheel covers, mudguards, flaps, or splash aprons.
- (4) (a) Subject to the requirement in Subsection (4)(b), an operator of a street-legal all-terrain vehicle, when operating a street-legal all-terrain vehicle on a highway, may not exceed the lesser of:
- (i) the posted speed limit; or
- (ii) 50 miles per hour.
- (b) An operator of a street-legal all-terrain vehicle, when operating a street-legal all-terrain vehicle on a highway with a posted speed limit higher than 50 miles per hour, shall:
- (i) operate the street-legal all-terrain vehicle on the extreme right hand side of the roadway; and
- (ii) equip the street-legal all-terrain vehicle with a reflector or reflective tape to the front and back of both sides of the vehicle.
- (5) (a) A nonresident operator of an off-highway vehicle that is authorized to be operated on the highways of another state has the same rights and privileges as a street-legal ATV that is granted operating privileges on the highways of this state, subject to the restrictions under this section and rules made by the Board of Parks and Recreation, if the other state offers reciprocal operating privileges to Utah residents.
- (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Board of Parks and Recreation shall establish eligibility requirements for reciprocal operating privileges for nonresident users granted under Subsection (5)(a).
- (6) Nothing in this chapter shall restrict the operation of an off-highway vehicle in accordance with Section 41-22-10.5.
- (7) A violation of this section is an infraction.

CHAPTER 394**H. B. 89**

Passed February 10, 2017

Approved March 25, 2017

Effective May 9, 2017

**IMPACT FEE REPORTING
REQUIREMENTS**Chief Sponsor: John Knotwell
Senate Sponsor: Daniel Hemmert**LONG TITLE****General Description:**

This bill amends provisions related to impact fees.

Highlighted Provisions:

This bill:

- ▶ modifies the reporting requirements for a local political subdivision that collects an impact fee; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**11-36a-601, as enacted by Laws of Utah 2011,
Chapter 47*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 11-36a-601 is amended to read:****11-36a-601. Accounting of impact fees.**

A local political subdivision that collects an impact fee shall:

(1) establish a separate interest bearing ledger account for each type of public facility for which an impact fee is collected;

(2) deposit a receipt for an impact fee in the appropriate ledger account established under Subsection (1);

(3) retain the interest earned on each fund or ledger account in the fund or ledger account;

(4) at the end of each fiscal year, prepare a report ~~on~~ that:(a) for each fund or ledger account ~~showing~~, shows:~~(a)~~ (i) the source and amount of all money collected, earned, and received by the fund or ledger account during the fiscal year; and~~(b)~~ (ii) each expenditure from the fund or ledger account; ~~and~~~~(5) produce a report that:~~

(b) accounts for all impact fee funds that the local political subdivision has on hand at the end of the fiscal year;

~~(a)~~ (c) identifies the impact fee funds described in Subsection (4)(b) by:(i) the year in which ~~they~~ the impact fee funds were received~~;~~;(ii) the project from which the impact fee funds were collected~~;~~ ~~the impact fee projects~~;(iii) the project for which the impact fee funds ~~were~~ are budgeted~~;~~; and

(iv) the projected schedule for expenditure; and

~~(b)~~ (d) is:

(i) in a format developed by the state auditor;

~~(e) is~~ (ii) certified by the local political subdivision's chief financial officer; and~~(d) is~~ (iii) transmitted ~~annually~~ to the state auditor within 180 days after the day on which the fiscal year ends.

CHAPTER 395**H. B. 96**

Passed February 17, 2017

Approved March 25, 2017

Effective May 9, 2017

**PETROLEUM VAPOR
RECOVERY AMENDMENTS**

Chief Sponsor: Steve Eliason

Senate Sponsor: Curtis S. Bramble

Cosponsor: Mike Winder

LONG TITLE**General Description:**

This bill addresses vapor recovery systems for a gasoline cargo tank.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the operator of a gasoline cargo tank to meet certain requirements to control the emission of gasoline vapors; and
- ▶ establishes penalties.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

19-2-128, Utah Code Annotated 1953

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

Section 1. Section 19-2-128 is enacted to read:**19-2-128. Gasoline vapor recovery -- Penalties.**

(1) As used in this section:

(a) "Gasoline cargo tank" means a tank that:

(i) is intended to hold gasoline;

(ii) has a capacity of 1,000 gallons or more; and

(iii) is attached to or intended to be drawn by a motor vehicle.

(b) "Operator" means an individual who controls a motor vehicle:

(i) to which a gasoline cargo tank is attached; or

(ii) that draws a gasoline cargo tank.

(c) "Underground storage tank" means the same as that term is defined in Section 19-6-102.

(2) The operator of a gasoline cargo tank shall comply with requirements of this section if the operator:

(a) permits the loading of gasoline into the gasoline cargo tank; or

(b) loads an underground storage tank with gasoline from the gasoline cargo tank.

(3) Except as provided in Subsection (6), the operator of a gasoline cargo tank may permit the loading of gasoline into a tank described in Subsection (2) or load an underground storage tank with gasoline from the gasoline cargo tank described in Subsection (1) only if:

(a) emissions from the tank that dispenses 10,000 gallons or more in any one calendar month are controlled by the use of:

(i) a properly installed and maintained vapor collection and control system that is equipped with fittings that:

(A) make a vapor tight connection; and

(B) prevent the release of gasoline vapors by automatically closing upon disconnection; and

(ii) submerged filling or bottom filling methods; and

(b) the resulting vapor emitted into the air does not exceed the levels described in Subsection (4).

(4) Vapor emitted into the air as a result of the loading of a tank under Subsection (3) may not exceed 0.640 pounds per 1,000 gallons transferred.

(5) (a) The department may fine an operator who violates this section:

(i) up to \$1,000 for a first offense; or

(ii) up to \$2,000 for a second offense.

(b) An operator who violates this section is guilty of a class C misdemeanor for a third or subsequent offense.

(6) If a facility at which an underground storage tank is located does not have the equipment necessary for an operator of a gasoline cargo tank to comply with Subsection (3), the operator is excused from the requirements of Subsections (3) and (4) and may not be fined or penalized under Subsection (5).

CHAPTER 396**H. B. 109**

Passed February 17, 2017

Approved March 25, 2017

Effective July 1, 2017

**PUBLIC UTILITY REGULATORY
RESTRICTED ACCOUNT AMENDMENTS**Chief Sponsor: Dixon M. Pitcher
Senate Sponsor: Brian E. Shiozawa**LONG TITLE****General Description:**

This bill creates a restricted account within the General Fund.

Highlighted Provisions:

This bill:

- ▶ creates a restricted account known as the Public Utility Regulatory Restricted Account in the Department of Commerce;
- ▶ provides that the Department of Commerce shall deposit special regulation fees into the Public Utility Regulatory Restricted Account;
- ▶ provides that funds in the Public Utility Regulatory Restricted Account may be used to fund the Division of Public Utilities, the Office of Consumer Services, and the Public Service Commission;
- ▶ designates appropriations from the Public Utility Regulatory Restricted Account as nonlapsing; and
- ▶ transfers public utility regulatory fees designated as nonlapsing into the Public Utility Regulatory Restricted Account.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

54-5-1.5, as last amended by Laws of Utah 2009, Chapter 183

63J-1-602.3, as last amended by Laws of Utah 2016, Chapters 52 and 271

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 54-5-1.5 is amended to read:**54-5-1.5. Special regulation fee --
Supplemental Levy Committee --
Supplemental fee -- Fee for electrical
cooperatives.**

(1) (a) A special fee to defray the cost of regulation is imposed upon all public utilities subject to the jurisdiction of the Public Service Commission.

(b) The special fee is in addition to any charge now assessed, levied, or required by law.

(2) (a) The executive director of the Department of Commerce shall determine the special fee for the Department of Commerce.

(b) The chair of the Public Service Commission shall determine the special fee for the Public Service Commission.

(c) The fee shall be assessed as a uniform percentage of the gross operating revenue for the preceding calendar year derived from each public utility's business and operations during that period within this state, excluding income derived from interstate business. Gross operating revenue shall not include income to a wholesale electric cooperative derived from the sale of power to a rural electric cooperative which resells that power within the state.

(3) (a) The executive director of the Department of Commerce shall notify each public utility subject to the provisions of this chapter of the amount of the fee.

(b) The fee is due and payable on or before July 1 of each year.

(4) (a) There is created a restricted account within the General Fund known as the Public Utility Regulatory Restricted Account.

(b) Notwithstanding Subsection 13-1-2(3)(c), the Department of Commerce shall deposit a fee assessed under this section into the Public Utility Regulatory Restricted Account.

(c) Within appropriations by the Legislature:

(i) the Department of Commerce may use the funds in the Public Utility Regulatory Restricted Account to administer:

(A) the Division of Public Utilities; and

(B) the Office of Consumer Services; and

(ii) the Public Service Commission may use the funds in the Public Utility Regulatory Restricted Account to administer the Public Service Commission.

(d) At the end of each fiscal year, the director of the Division of Finance shall transfer into the General Fund any balance in the Public Utility Regulatory Restricted Account in excess of \$3,000,000.

~~[(4)]~~ (5) (a) ~~[It is the intent of the]~~ The Legislature intends that the public utilities provide all of the funds for the administration, support, and maintenance of:

(i) the Public Service Commission;

(ii) state agencies within the Department of Commerce involved in the regulation of public utilities; and

(iii) expenditures by the attorney general for utility regulation.

(b) Notwithstanding Subsection ~~[(4)]~~ (5)(a), the fee imposed by Subsection (1) shall not exceed the greater of:

(i) (A) for a public utility other than an electrical cooperative, .3% of the public utility's gross operating revenues for the preceding calendar year; or

(B) for an electrical cooperative, .15% of the electrical cooperative's gross operating revenues for the preceding calendar year; or

(ii) \$50.

~~[(45)]~~ (6) (a) There is created a Supplemental Levy Committee to levy additional assessments on public utilities when unanticipated costs of regulation occur in any fiscal year.

(b) The Supplemental Levy Committee shall consist of:

(i) one member selected by the executive director of the Department of Commerce;

(ii) one member selected by the chairman of the Public Service Commission;

(iii) two members selected by the three public utilities that paid the largest percent of the current regulatory fee; and

(iv) one member selected by the four appointed members.

(c) (i) The members of the Supplemental Levy Committee shall be selected within 10 working days after the executive director of the Department of Commerce gives written notice to the Public Service Commission and the public utilities that a supplemental levy committee is needed.

(ii) If the members of the Supplemental Levy Committee have not been appointed within the time prescribed, the governor shall appoint the members of the Supplemental Levy Committee.

(d) (i) During any state fiscal year, the Supplemental Levy Committee, by a majority vote and subject to audit by the state auditor, may impose a supplemental fee on the regulated utilities for the purpose of defraying any increased cost of regulation.

(ii) The supplemental fee imposed upon the utilities shall equal a percentage of their gross operating revenue for the preceding calendar year.

(iii) The aggregate of all fees, including any supplemental fees assessed, shall not exceed .3% of the gross operating revenue of the utilities assessed for the preceding calendar year.

(iv) Payment of the supplemental fee is due within 30 days after receipt of the assessment.

(v) The utility may, within 10 days after receipt of assessment, request a hearing before the Public Service Commission if it questions the need for, or the reasonableness of, the supplemental fee.

(e) (i) Any supplemental fee collected to defray the cost of regulation shall be transferred to the state treasurer as a departmental collection according to the provisions of Section 63J-1-104.

(ii) Supplemental fees are excess collections, credited according to the procedures of Section 63J-1-104.

(iii) Charges billed to the Department of Commerce by any other state department,

institution, or agency for services rendered in connection with regulation of a utility shall be credited by the state treasurer from the special or supplemental fees collected to the appropriations account of the entity providing that service according to the procedures provided in Title 63J, Chapter 1, Budgetary Procedures Act.

~~[(46)]~~ (7) (a) For purposes of this section, "electrical cooperative" means:

(i) a distribution electrical cooperative; or

(ii) a wholesale electrical cooperative.

(b) Subject to Subsection ~~[(46)]~~ (7)(c), if the regulation of one or more electrical cooperatives causes unanticipated costs of regulation in a fiscal year, the commission may impose a supplemental fee on the one or more electrical cooperatives in this state responsible for the increased cost of regulation.

(c) The aggregate of all fees imposed under this section on an electrical cooperative in a calendar year shall not exceed the greater of:

(i) .3% of the electrical cooperative's gross operating revenues for the preceding calendar year; or

(ii) \$50.

Section 2. Section 63J-1-602.3 is amended to read:

63J-1-602.3. List of nonlapsing funds and accounts -- Title 46 through Title 60.

(1) The Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120.

(2) Funding for the Search and Rescue Financial Assistance Program, as provided in Section 53-2a-1102.

(3) Appropriations made to the Division of Emergency Management from the State Disaster Recovery Restricted Account, as provided in Section 53-2a-603.

(4) Appropriations made to the Department of Public Safety from the Department of Public Safety Restricted Account, as provided in Section 53-3-106.

(5) Appropriations to the Motorcycle Rider Education Program, as provided in Section 53-3-905.

(6) Appropriations from the Utah Highway Patrol Aero Bureau Restricted Account created in Section 53-8-303.

(7) Appropriations from the DNA Specimen Restricted Account created in Section 53-10-407.

(8) The Canine Body Armor Restricted Account created in Section 53-16-201.

(9) The School Readiness Restricted Account created in Section 53A-1b-104.

(10) Appropriations to the State Board of Education, as provided in Section 53A-17a-105.

(11) Money received by the Utah State Office of Rehabilitation for the sale of certain products or services, as provided in Section 35A-13-202.

(12) Certain funds appropriated from the General Fund to the State Board of Regents for teacher preparation programs, as provided in Section 53B-6-104.

(13) Funding for the Medical Education Program administered by the Medical Education Council, as provided in Section 53B-24-202.

(14) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

(15) Subject to Subsection 54-5-1.5(4)(d), appropriations from the Public Utility Regulatory Restricted Account created in Section 54-5-1.5.

[(15)] (16) Certain surcharges on residential and business telephone numbers imposed by the Public Service Commission, as provided in Section 54-8b-10.

[(16)] (17) Certain fines collected by the Division of Occupational and Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

[(17)] (18) Certain fines collected by the Division of Occupational and Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

[(18)] (19) Appropriations from the Relative Value Study Restricted Account created in Section 59-9-105.

[(19)] (20) The Cigarette Tax Restricted Account created in Section 59-14-204.

Section 3. Legislative intent.

The Legislature intends that:

(1) public utility regulatory fee balances designated as nonlapsing at the close of fiscal year 2017 for the Division of Public Utilities, the Office of Consumer Services, and the Public Service Commission be transferred to the newly created Public Utility Regulatory Restricted Account; and

(2) the Division of Finance transfer any fees assessed under Section 54-5-1.5 that are recorded as revenue in fiscal year 2018 in the Commerce Service Fund to the newly created Public Utility Regulatory Restricted Account.

Section 4. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 397**H. B. 123**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

JUVENILE OFFENSES AMENDMENTS

Chief Sponsor: Marc K. Roberts

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill makes changes to juvenile sex offenses when both juveniles are under 18 years of age.

Highlighted Provisions:

This bill:

- ▶ creates a new provision for unlawful adolescent sexual activity between persons under 18 years of age;
- ▶ creates penalties; and
- ▶ makes technical and conforming corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-3-406, as last amended by Laws of Utah 2011, Chapter 366

76-5-401, as last amended by Laws of Utah 2016, Chapter 372

77-2-9, as last amended by Laws of Utah 2009, Chapter 146

ENACTS:

76-5-401.3, Utah Code Annotated 1953

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

Section 1. Section 76-3-406 is amended to read:**76-3-406. Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.**

(1) Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, except as provided in Section 76-5-406.5, probation ~~shall~~ may not be granted, the execution or imposition of sentence ~~shall~~ may not be suspended, the court ~~shall~~ may not enter a judgment for a lower category of offense, and hospitalization ~~shall~~ may not be ordered, the effect of which would in any way shorten the prison sentence for any person who commits a capital felony or a first degree felony involving:

[(4)] (a) Section 76-5-202, aggravated murder;

[(2)] (b) Section 76-5-203, murder;

[(3)] (c) Section 76-5-301.1, child kidnaping;

[(4)] (d) Section 76-5-302, aggravated kidnaping;

[(5)] (e) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);

[(6)] (f) Section 76-5-402.1, rape of a child;

[(7)] (g) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-5-402.2(1)(b), (1)(c), or (2);

[(8)] (h) Section 76-5-402.3, object rape of a child;

[(9)] (i) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection 76-5-403(4)(b), (4)(c), or (5);

[(10)] (j) Section 76-5-403.1, sodomy on a child;

[(11)] (k) Section 76-5-404, forcible sexual abuse, if the person is sentenced under Subsection 76-5-404(2)(b) or (3);

[(12)] (l) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;

[(13)] (m) Section 76-5-405, aggravated sexual assault; or

[(14)] (n) any attempt to commit a felony listed in Subsection [(6), (8), or (10)] (f), (h), or (j).

(2) The provisions of this section do not apply if the sentencing court finds that the defendant was under the age of 18 at the time of the offense and could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information, unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703.

Section 2. Section 76-5-401 is amended to read:**76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties -- Evidence of age raised by defendant.**

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person 18 years of age or older commits unlawful sexual activity with a minor if, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in violation of Section 76-5-405, the actor:

(a) has sexual intercourse with the minor;

(b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(3) (a) Except under Subsection (3)(b), a violation of Subsection (2) is a third degree felony.

(b) If the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, the offense is a class B misdemeanor. An offense under this Subsection (3)(b) is not subject to registration under Subsection 77-41-102(17)(a)(iii).

Section 3. Section 76-5-401.3 is enacted to read:

76-5-401.3. Unlawful adolescent sexual activity.

(1) As used in this section:

(a) "Adolescent" means a person in the transitional phase of human physical and psychological growth and development between childhood and adulthood who is 12 years of age or older, but under 18 years of age.

(b) "Unlawful adolescent sexual activity" means sexual activity between adolescents under circumstances not amounting to:

- (i) rape, in violation of Section 76-5-402;
- (ii) rape of a child, in violation of Section 76-5-402.1;
- (iii) object rape, in violation of Section 76-5-402.2;
- (iv) object rape of a child, in violation of Section 76-5-402.3;
- (v) forcible sodomy, in violation of Section 76-5-403;
- (vi) sodomy on a child, in violation of Section 76-5-403.1;
- (vi) aggravated sexual assault, in violation of Section 76-5-405;
- (vii) sexual abuse of a child, in violation of Section 76-5-404; or
- (viii) incest, in violation of Section 76-7-102.

(2) Unlawful adolescent sexual activity is punishable as a:

- (a) third degree felony if an adolescent who is 17 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years of age;
- (b) third degree felony if an adolescent who is 16 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 years of age;
- (c) class A misdemeanor if an adolescent who is 16 years of age engages in unlawful adolescent sexual activity with an adolescent who is 13 years of age;
- (d) class A misdemeanor if an adolescent who is 14 or 15 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 years of age;

(e) class B misdemeanor if an adolescent who is 17 years of age engages in unlawful adolescent sexual activity with an adolescent who is 14 years of age;

(f) class B misdemeanor if an adolescent who is 15 years of age engages in unlawful adolescent sexual activity with an adolescent who is 13 years of age;

(g) class C misdemeanor if an adolescent who is 12 or 13 years of age engages in unlawful adolescent sexual activity with an adolescent who is 12 or 13 years of age; and

(h) class C misdemeanor if an adolescent who is 14 years of age engages in unlawful adolescent sexual activity with an adolescent who is 13 years of age.

(3) Offenses under this section are not eligible for nonjudicial adjustment under

Section 78A-6-602 or referral to youth court under Section 78A-6-1203.

(4) Unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703, the district court may enter any sentence or combination of sentences which would have been available in juvenile court but for the delayed reporting or delayed filing of the information in district court.

(5) An offense under this section is not subject to registration under Subsection 77-41-102(17).

Section 4. Section 77-2-9 is amended to read:

77-2-9. Offenses ineligible for diversion.

(1) Except as provided in Subsection (2), diversion may not be granted by a magistrate for:

- (a) a capital felony;
- (b) a felony in the first degree;
- (c) any case involving a sexual offense against a victim who is under the age of 14;
- (d) any motor vehicle related offense involving alcohol or drugs;
- (e) any case involving using a motor vehicle in the commission of a felony;
- (f) driving a motor vehicle or commercial motor vehicle on a revoked or suspended license;
- (g) any case involving operating a commercial motor vehicle in a negligent manner causing the death of another including the offenses of:
 - (i) manslaughter under Section 76-5-205; or
 - (ii) negligent homicide under Section 76-5-206; or
- (h) a crime of domestic violence as defined in Section 77-36-1.

(2) When a person [~~under the age of 16~~] is alleged to have committed any violation of Title 76, Chapter 5, Part 4, Sexual Offenses, while under the age of 16, the court may enter a diversion in the matter if the court enters on the record its findings that:

- (a) the offenses could have been adjudicated in juvenile court but for the delayed reporting or

delayed filing of the information in district court, unless the offenses are before the court pursuant to Section 78A-6-701, 78A-6-702, or 78A-6-703;

~~[(a)]~~ (b) the person did not use coercion or force;

~~[(b)]~~ (c) there is no more than ~~[two]~~ three years' difference between the ages of the participants; and

~~[(e)]~~ (d) it would be in the best interest of the person to grant diversion.

CHAPTER 398**H. B. 130**

Passed March 8, 2017
 Approved March 25, 2017
 Effective March 25, 2017

CANNABINOID RESEARCH

Chief Sponsor: Brad M. Daw
 Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill enacts provisions related to research of cannabis and cannabinoid products.

Highlighted Provisions:

This bill:

- ▶ allows a person to possess cannabis, a cannabinoid product, and an expanded cannabinoid product, and to distribute the cannabis, a cannabinoid product, or an expanded cannabinoid product to a patient pursuant to an institutional review board-approved study;
- ▶ allows a person conducting an institutional review board-approved study to import and distribute cannabis, a cannabinoid product, and an expanded cannabinoid product under certain circumstances; and
- ▶ creates the Cannabinoid Product Board within the Department of Health.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**ENACTS:**

26-59-101, Utah Code Annotated 1953
 26-59-102, Utah Code Annotated 1953
 26-59-103, Utah Code Annotated 1953
 26-59-201, Utah Code Annotated 1953
 26-59-202, Utah Code Annotated 1953
 58-37-3.6, Utah Code Annotated 1953

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

Section 1. Section 26-59-101 is enacted to read:**CHAPTER 59. CANNABINOID RESEARCH ACT****26-59-101. Title.**

This chapter is known as "Cannabinoid Research Act."

Section 2. Section 26-59-102 is enacted to read:**26-59-102. Definitions.**

As used in this chapter:

(1) "Approved study" means a medical research study:

(a) the purpose of which is to investigate the medical benefits and risks of cannabinoid products; and

(b) that is approved by an IRB.

(2) "Board" means the Cannabinoid Product Board created in Section 26-59-201.

(3) "Cannabinoid product" means the same as that term is defined in Section 58-37-3.6.

(4) "Cannabis" means the same as that term is defined in Section 58-37-3.6.

(5) "Expanded cannabinoid product" means the same as that term is defined in Section 58-37-3.6.

(6) "Institutional review board" or "IRB" means an institutional review board that is registered for human subject research by the United States Department of Health and Human Services.

Section 3. Section 26-59-103 is enacted to read:**26-59-103. Institutional review board -- Approved study of cannabis, a cannabinoid product, or an expanded cannabinoid product.**

(1) A person conducting an approved study may, for the purposes of the study:

(a) process a cannabinoid product or an expanded cannabinoid product;

(b) possess a cannabinoid product or an expanded cannabinoid product; and

(c) administer a cannabinoid product, or an expanded cannabinoid product to an individual in accordance with the approved study.

(2) A person conducting an approved study may:

(a) import cannabis, a cannabinoid product, or an expanded cannabinoid product from another state if:

(i) the importation complies with federal law; and

(ii) the person uses the cannabis, cannabinoid product, or expanded cannabinoid product in accordance with the approved study; or

(b) obtain cannabis, a cannabinoid product, or an expanded cannabinoid product from the National Institute on Drug Abuse.

(3) A person conducting an approved study may distribute cannabis, a cannabinoid product, or an expanded cannabinoid product outside the state if:

(a) the distribution complies with federal law; and

(b) the distribution is for the purposes of, and in accordance with, the approved study.

Section 4. Section 26-59-201 is enacted to read:**26-59-201. Cannabinoid Product Board.**

(1) There is created the Cannabinoid Product Board within the department.

(2) The department shall appoint, in consultation with a professional association based in the state that represents physicians, seven members to the Cannabinoid Product Board as follows:

(a) three individuals who are medical research professionals; and

(b) four physicians.

(3) The department shall appoint board members under Subsection (2) such that three of the board members are members of the Controlled Substances Advisory Committee created in Section 58-38a-201.

(4) (a) Four of the board members appointed under Subsection (2) shall serve an initial term of two years and three of the board members appointed under Subsection (2) shall serve an initial term of four years.

(b) Successor board members shall each serve a term of four years.

(5) The department may remove a board member without cause.

(6) The board shall nominate a board member to serve as chairperson of the board by a majority vote of the board members.

(7) The board shall meet as often as necessary to accomplish the duties assigned to the board under this chapter.

(8) Each board member, including the chair, has one vote.

(9) (a) A majority of board members constitutes a quorum.

(b) A vote of a majority of the quorum at any board meeting is necessary to take action on behalf of the board.

(10) A board member may not receive compensation for the member's service on the board, but may, in accordance with rules adopted by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, receive:

(a) per diem at the rate established under Section 63A-3-106; and

(b) travel expenses at the rate established under Section 63A-3-107.

Section 5. Section 26-59-202 is enacted to read:

26-59-202. Cannabinoid Product Board -- Duties.

(1) The board shall review any available research related to the human use of a cannabinoid product that:

(a) was conducted under a study approved by an IRB; or

(b) was conducted or approved by the federal government.

(2) Based on the research described in Subsection (1), the board shall evaluate the safety and efficacy of cannabinoid products, including:

(a) medical conditions that respond to cannabinoid products;

(b) cannabinoid dosage amounts and medical dosage forms; and

(c) interaction of cannabinoid products with other treatments.

(3) Based on the board's evaluation under Subsection (2), the board shall develop guidelines for a physician recommending treatment with a cannabinoid product that includes a list of medical conditions, if any, that the board determines are appropriate for treatment with a cannabinoid product.

(4) The board shall submit the guidelines described in Subsection (3) to:

(a) the director of the Division of Occupational and Professional Licensing; and

(b) the Health and Human Services Interim Committee.

(5) The board shall report the board's findings before November 1 of each year to the Health and Human Services Interim Committee.

Section 6. Section 58-37-3.6 is enacted to read:

58-37-3.6. Exemption for possession or distribution of a cannabinoid product or expanded cannabinoid product pursuant to an approved study.

(1) As used in this section:

(a) "Cannabinoid product" means a product intended for human ingestion that:

(i) contains an extract or concentrate that is obtained from cannabis;

(ii) is prepared in a medicinal dosage form; and

(iii) contains at least 10 units of cannabidiol for every one unit of tetrahydrocannabinol.

(b) "Cannabis" means any part of the plant cannabis sativa, whether growing or not.

(c) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.

(d) "Expanded cannabinoid product" means a product intended for human ingestion that:

(i) contains an extract or concentrate that is obtained from cannabis;

(ii) is prepared in a medicinal dosage form; and

(iii) contains less than 10 units of cannabidiol for every one unit of tetrahydrocannabinol.

(e) "Medicinal dosage form" means:

(i) a tablet;

(ii) a capsule;

(iii) a concentrated oil;

(iv) a liquid suspension;

(v) a transdermal preparation; or

(vi) a sublingual preparation.

(f) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the description in Subsection 58-37-4(2)(a)(iii)(AA).

(2) Notwithstanding any other provision of this chapter, an individual who possesses or distributes a cannabinoid product or an expanded cannabinoid product is not subject to the penalties described in this title for the possession or distribution of marijuana or tetrahydrocannabinol to the extent that the individual's possession or distribution of the cannabinoid product or expanded cannabinoid product complies with Title 26, Chapter 59, Cannabinoid Research Act.

Section 7. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 399**H. B. 141**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

**UNBORN CHILD
PROTECTION AMENDMENTS**

Chief Sponsor: Keven J. Stratton
 Senate Sponsor: Curtis S. Bramble
 Cosponsors: Kay J. Christofferson
 Kim F. Coleman
 Brian M. Greene
 Timothy D. Hawkes
 Ken Ivory
 Michael S. Kennedy
 Karianne Lisonbee
 A. Cory Maloy
 Michael E. Noel
 Derrin R. Owens
 Lee B. Perry
 Val L. Peterson
 Tim Quinn
 Norman K Thurston
 Raymond P. Ward

LONG TITLE**General Description:**

This bill amends the information that is required to be given to ensure that a woman gives informed consent before the performance of an abortion procedure.

Highlighted Provisions:

This bill:

- ▶ requires specified medical personnel to inform a woman seeking an abortion of the options and consequences of aborting a medication-induced abortion; and
- ▶ requires the Department of Health to include in its published, printed materials an explanation of the options and consequences of aborting a medication-induced abortion.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-7-305, as last amended by Laws of Utah 2016, Chapter 362

76-7-305.5, as last amended by Laws of Utah 2016, Chapter 362

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

Section 1. Section 76-7-305 is amended to read:**76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory -- Exceptions.**

(1) A person may not perform an abortion, unless, before performing the abortion, the physician who will perform the abortion obtains a voluntary and

informed written consent from the woman on whom the abortion is performed, that is consistent with:

(a) Section 8.08 of the American Medical Association's Code of Medical Ethics, Current Opinions; and

(b) the provisions of this section.

(2) Except as provided in Subsection (9), consent to an abortion is voluntary and informed only if:

(a) at least 72 hours before the abortion, the physician who is to perform the abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or physician's assistant, in a face-to-face consultation in any location in the state, orally informs the woman:

(i) consistent with Subsection (3)(a), of:

(A) the nature of the proposed abortion procedure;

(B) specifically how the procedure described in Subsection (2)(a)(i)(A) will affect the fetus; ~~and~~

(C) the risks and alternatives to an abortion procedure or treatment; and

(D) the options and consequences of aborting a medication-induced abortion;

(ii) of the probable gestational age and a description of the development of the unborn child at the time the abortion would be performed;

(iii) of the medical risks associated with carrying her child to term; and

(iv) if the abortion is to be performed on an unborn child who is at least 20 weeks gestational age:

(A) that substantial medical evidence from studies concludes that an unborn child who is at least 20 weeks gestational age may be capable of experiencing pain during an abortion procedure; and

(B) the measures that shall be taken in accordance with Section 76-7-308.5;

(b) at least 72 hours prior to the abortion the physician who is to perform the abortion, the referring physician, or, as specifically delegated by either of those physicians, a physician, a registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation in any location in the state, informs the pregnant woman that:

(i) the Department of Health, in accordance with Section 76-7-305.5, publishes printed material and an informational video that:

(A) provides medically accurate information regarding all abortion procedures that may be used;

(B) describes the gestational stages of an unborn child; and

(C) includes information regarding public and private services and agencies available to assist her through pregnancy, at childbirth, and while the child is dependent, including private and agency adoption alternatives;

(ii) the printed material and a viewing of or a copy of the informational video shall be made available to her, free of charge, on the Department of Health's website;

(iii) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of that assistance is contained in the printed materials and the informational video published by the Department of Health;

(iv) except as provided in Subsection (3)(b):

(A) the father of the unborn child is legally required to assist in the support of her child, even if he has offered to pay for the abortion; and

(B) the Office of Recovery Services within the Department of Human Services will assist her in collecting child support; and

(v) she has the right to view an ultrasound of the unborn child, at no expense to her, upon her request;

(c) the information required to be provided to the pregnant woman under Subsection (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face consultation, prior to performance of the abortion, unless the attending or referring physician is the individual who provides the information required under Subsection (2)(a);

(d) a copy of the printed materials published by the Department of Health has been provided to the pregnant woman;

(e) the informational video, published by the Department of Health, has been provided to the pregnant woman in accordance with Subsection (4); and

(f) the pregnant woman has certified in writing, prior to the abortion, that the information required to be provided under Subsections (2)(a) through (e) was provided, in accordance with the requirements of those subsections.

(3) (a) The alternatives required to be provided under Subsection (2)(a)(i) include:

(i) a description of adoption services, including private and agency adoption methods; and

(ii) a statement that it is legal for adoptive parents to financially assist in pregnancy and birth expenses.

(b) The information described in Subsection (2)(b)(iv) may be omitted from the information required to be provided to a pregnant woman under this section if the woman is pregnant as the result of rape.

(c) Nothing in this section shall be construed to prohibit a person described in Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv), informing a woman of the person's own opinion regarding the capacity of an unborn child to experience pain.

(4) When the informational video described in Section 76-7-305.5 is provided to a pregnant woman, the person providing the information shall:

(a) request that the woman view the video at that time or at another specifically designated time and location; or

(b) if the woman chooses not to view the video at a time described in Subsection (4)(a), inform the woman that she can access the video on the Department of Health's website.

(5) When a serious medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary.

(6) If an ultrasound is performed on a woman before an abortion is performed, the person who performs the ultrasound, or another qualified person, shall:

(a) inform the woman that the ultrasound images will be simultaneously displayed in a manner to permit her to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(b) simultaneously display the ultrasound images in order to permit the woman to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(c) inform the woman that, if she desires, the person performing the ultrasound, or another qualified person shall provide a detailed description of the ultrasound images, including:

(i) the dimensions of the unborn child;

(ii) the presence of cardiac activity in the unborn child, if present and viewable; and

(iii) the presence of external body parts or internal organs, if present and viewable; and

(d) provide the detailed description described in Subsection (6)(c), if the woman requests it.

(7) The information described in Subsections (2), (3), (4), and (6) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:

(a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician concur, in writing, that the abortion is necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed; or

(b) Subsection 76-7-302(3)(b)(ii).

(8) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:

(a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102; and

(b) shall be subject to:

(i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and

(ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

(9) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2), or for failing to comply with Subsection (6), if:

(a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;

(b) in the physician's professional judgment, the abortion was necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(c) the pregnancy was the result of rape or rape of a child, as defined in Sections 76-5-402 and 76-5-402.1;

(d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(10) and Section 76-7-102; or

(e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

(10) A physician who complies with the provisions of this section and Section 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain informed consent under Section 78B-3-406.

(11) (a) The Department of Health shall provide an ultrasound, in accordance with the provisions of Subsection (2)(b), at no expense to the pregnant woman.

(b) A local health department shall refer a person who requests an ultrasound described in Subsection (11)(a) to the Department of Health.

(12) A physician is not guilty of violating this section if:

(a) the physician provides the information described in Subsection (2) less than 72 hours before performing the abortion; and

(b) in the physician's professional judgment, the abortion was necessary in a case where:

(i) a ruptured membrane, documented by the attending or referring physician, will cause a serious infection; or

(ii) a serious infection, documented by the attending or referring physician, will cause a ruptured membrane.

Section 2. Section 76-7-305.5 is amended to read:

76-7-305.5. Requirements for printed materials and informational video.

(1) In order to ensure that a woman's consent to an abortion is truly an informed consent, the Department of Health shall, in accordance with the requirements of this section:

(a) publish printed materials; and

(b) produce an informational video.

(2) The printed materials and the informational video described in Subsection (1) shall:

(a) be scientifically accurate, comprehensible, and presented in a truthful, nonmisleading manner;

(b) present adoption as a preferred and positive choice and alternative to abortion;

(c) be printed and produced in a manner that conveys the state's preference for childbirth over abortion;

(d) state that the state prefers childbirth over abortion;

(e) state that it is unlawful for any person to coerce a woman to undergo an abortion;

(f) state that any physician who performs an abortion without obtaining the woman's informed consent or without providing her a private medical consultation in accordance with the requirements of this section, may be liable to her for damages in a civil action at law;

(g) provide information on resources and public and private services available to assist a pregnant woman, financially or otherwise, during pregnancy, at childbirth, and while the child is dependent, including:

(i) medical assistance benefits for prenatal care, childbirth, and neonatal care;

(ii) services and supports available under Section 35A-3-308;

(iii) other financial aid that may be available during an adoption; and

(iv) services available from public adoption agencies, private adoption agencies, and private attorneys whose practice includes adoption;

(h) describe the adoption-related expenses that may be paid under Section 76-7-203;

(i) describe the persons who may pay the adoption related expenses described in Subsection (2)(h);

(j) describe the legal responsibility of the father of a child to assist in child support, even if the father has agreed to pay for an abortion;

(k) describe the services available through the Office of Recovery Services, within the Department of Human Services, to establish and collect the support described in Subsection (2)(j);

(l) state that private adoption is legal;

(m) in accordance with Subsection (3), describe the probable anatomical and physiological characteristics of an unborn child at two-week gestational increments from fertilization to full term, including:

(i) brain and heart function; and

(ii) the presence and development of external members and internal organs;

(n) describe abortion procedures used in current medical practice at the various stages of growth of the unborn child, including:

(i) the medical risks associated with each procedure;

(ii) the risk related to subsequent childbearing that are associated with each procedure; and

(iii) the consequences of each procedure to the unborn child at various stages of fetal development;

(o) describe the possible detrimental psychological effects of abortion;

(p) describe the medical risks associated with carrying a child to term; and

(q) include relevant information on the possibility of an unborn child's survival at the two-week gestational increments described in Subsection (2)(m).

(3) The information described in Subsection (2)(m) shall be accompanied by the following for each gestational increment described in Subsection (2)(m):

(a) pictures or video segments that accurately represent the normal development of an unborn child at that stage of development; and

(b) the dimensions of the fetus at that stage of development.

(4) The printed material and video described in Subsection (1) may include a toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and description of services, agencies, and adoption attorneys in the locality of the caller.

(5) In addition to the requirements described in Subsection (2), the printed material described in Subsection (1)(a) shall:

(a) be printed in a typeface large enough to be clearly legible;

(b) in accordance with Subsection (6), include a geographically indexed list of public and private services and agencies available to assist a woman, financially or otherwise, through pregnancy, at childbirth, and while the child is dependent; ~~and~~

(c) except as provided in Subsection (7), include a separate brochure that contains truthful, nonmisleading information regarding:

(i) substantial medical evidence from studies concluding that an unborn child who is at least 20 weeks gestational age may be capable of experiencing pain during an abortion procedure; and

(ii) the measures that shall be taken in accordance with Section 76-7-308.5[-];

(d) explain the options and consequences of aborting a medication-induced abortion; and

(e) include the following statement, "Research indicates that mifepristone alone is not always effective in ending a pregnancy. You may still have a viable pregnancy after taking mifepristone. If you have taken mifepristone but have not yet taken the second drug and have questions regarding the health of your fetus or are questioning your decision to terminate your pregnancy, you should consult a physician immediately."

(6) The list described in Subsection (5)(b) shall include:

(a) private attorneys whose practice includes adoption; and

(b) the names, addresses, and telephone numbers of each person listed under Subsection (5)(b) or (6)(a).

(7) A person or facility is not required to provide the information described in Subsection (5)(c) to a patient or potential patient, if the abortion is to be performed:

(a) on an unborn child who is less than 20 weeks gestational age at the time of the abortion; or

(b) on an unborn child who is at least 20 weeks gestational age at the time of the abortion, if:

(i) the abortion is being performed for a reason described in Subsection 76-7-302(3)(b)(i) or (ii); and

(ii) due to a serious medical emergency, time does not permit compliance with the requirement to provide the information described in Subsection (5)(c).

(8) In addition to the requirements described in Subsection (2), the video described in Subsection (1)(b) shall:

(a) make reference to the list described in Subsection (5)(b); and

(b) show an ultrasound of the heartbeat of an unborn child at:

(i) four weeks from conception;

- (ii) six to eight weeks from conception; and
- (iii) each month after 10 weeks gestational age, up to 14 weeks gestational age.

CHAPTER 400**H. B. 197**

Passed March 9, 2017
 Approved March 25, 2017
 Effective March 25, 2017

CUSTODY AND ADOPTION AMENDMENTS

Chief Sponsor: Timothy D. Hawkes
 Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill addresses the grant of custody, adoption, or foster parent license to adults who commit certain offenses.

Highlighted Provisions:

This bill:

- ▶ prohibits custody being granted to a person who is not a biological or adoptive parent and has committed certain offenses unless certain conditions are met;
- ▶ addresses prospective foster parents and prospective adoptive parents;
- ▶ prohibits adoption by a person who has committed certain offenses unless certain conditions are met; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.
 This bill provides revisor instructions.

Utah Code Sections Affected:**AMENDS:**

- 30-5a-103, as enacted by Laws of Utah 2008, Chapter 272
 62A-2-120, as last amended by Laws of Utah 2016, Chapter 122
 78B-6-117, as enacted by Laws of Utah 2008, Chapter 3
 Utah Code Sections Affected by Revisor Instructions:
 30-5a-103, as enacted by Laws of Utah 2008, Chapter 272
 78B-6-117, as enacted by Laws of Utah 2008, Chapter 3

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

Section 1. Section 30-5a-103 is amended to read:**30-5a-103. Custody and visitation for persons other than a parent.**

(1) In accordance with Section 62A-4a-201, it is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children. There is a rebuttable presumption that a parent's decisions are in the child's best interests.

(2) A court may find the presumption in Subsection (1) rebutted and grant custodial or visitation rights to a person other than a parent

who, by clear and convincing evidence, has established all of the following:

(a) the person has intentionally assumed the role and obligations of a parent;

(b) the person and the child have formed an emotional bond and created a parent-child type relationship;

(c) the person contributed emotionally or financially to the child's well being;

(d) assumption of the parental role is not the result of a financially compensated surrogate care arrangement;

(e) continuation of the relationship between the person and the child would be in the child's best interests;

(f) loss or cessation of the relationship between the person and the child would be detrimental to the child; and

(g) the parent:

(i) is absent; or

(ii) is found by a court to have abused or neglected the child.

(3) A proceeding under this chapter may be commenced by filing a verified petition, or petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district court in the county in which the child:

(a) currently resides; or

(b) lived with a parent or a person other than a parent who acted as a parent within six months before the commencement of the action.

(4) A proceeding under this chapter may be filed in a pending divorce, parentage action, or other proceeding, including a proceeding in the juvenile court, involving custody of or visitation with a child.

(5) The petition shall include detailed facts supporting the petitioner's right to file the petition including the criteria set forth in Subsection (2) and residency information as set forth in Section 78B-13-209.

(6) A proceeding under this chapter may not be filed against a parent who is actively serving outside the state in any branch of the military.

(7) Notice of a petition filed pursuant to this chapter shall be served in accordance with the rules of civil procedure on all of the following:

(a) the child's biological, adopted, presumed, declarant, and adjudicated parents;

(b) any person who has court-ordered custody or visitation rights;

(c) the child's guardian;

(d) the guardian ad litem, if one has been appointed;

(e) a person or agency that has physical custody of the child or that claims to have custody or visitation rights; and

(f) any other person or agency that has previously appeared in any action regarding custody of or visitation with the child.

(8) The court may order a custody evaluation to be conducted in any action brought under this chapter.

(9) The court may enter temporary orders in an action brought under this chapter pending the entry of final orders.

(10) Except as provided in Subsection (11), a court may not grant custody of a child under this section to an individual who is not the biological or adoptive parent of the child and who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest to a felony or attempted felony involving conduct that constitutes any of the following:

(a) child abuse, as described in Section 76-5-109;

(b) child abuse homicide, as described in Section 76-5-208;

(c) child kidnapping, as described in Section 76-5-301.1;

(d) human trafficking of a child, as described in Section 76-5-308.5;

(e) sexual abuse of a minor, as described in Section 76-5-401.1;

(f) rape of a child, as described in Section 76-5-402.1;

(g) object rape of a child, as described in Section 76-5-402.3;

(h) sodomy on a child, as described in Section 76-5-403.1;

(i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section 76-5-404.1;

(j) sexual exploitation of a minor, as described in Section 76-5b-201; or

(k) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (10).

(11) (a) For purpose of this Subsection (11), "disqualifying offense" means an offense listed in Subsection (10) that prevents a court from granting custody except as provided in this Subsection (11).

(b) A person described in Subsection (10) may only be considered for custody of a child if the following criteria are met by clear and convincing evidence:

(i) the person is a relative, as defined in Section 78A-6-307, of the child;

(ii) at least 10 years have elapsed from the day on which the person is successfully released from prison, jail, parole, or probation related to a disqualifying offense;

(iii) during the 10 years before the day on which the person files a petition with the court seeking custody the person has not been convicted, plead guilty, or plead no contest to an offense greater than

an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;

(iv) the person can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;

(v) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any time in the future when considering all of the following:

(A) the child's age;

(B) the child's gender;

(C) the child's development;

(D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a child 12 years of age or older;

(F) any available assessments, including custody evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(vi) the person can provide evidence of the following:

(A) the relationship with the child is of long duration;

(B) that an emotional bond exists with the child; and

(C) that custody by the person who has committed the disqualifying offense ensures the best interests of the child are met;

(vii) (A) there is no other responsible relative known to the court who has or likely could develop an emotional bond with the child and does not have a disqualifying offense; or

(B) if there is a responsible relative known to the court that does not have a disqualifying offense, Subsection (11)(d) applies; and

(viii) that the continuation of the relationship between the person with the disqualifying offense and the child could not be sufficiently maintained through any type of visitation if custody were given to the relative with no disqualifying offense described in Subsection (11)(d).

(c) The person with the disqualifying offense bears the burden of proof regarding why placement with that person is in the best interest of the child over another responsible relative or equally situated person who does not have a disqualifying offense.

(d) If, as provided in Subsection (11)(b)(vii)(B), there is a responsible relative known to the court who does not have a disqualifying offense:

(i) preference for custody is given to a relative who does not have a disqualifying offense; and

(ii) before the court may place custody with the person who has the disqualifying offense over another responsible, willing, and able relative:

(A) an impartial custody evaluation shall be completed; and

(B) a guardian ad litem shall be assigned.

(12) Subsections (10) and (11) apply to a case pending on the effective date of this bill for which a final decision on custody has not been made and to a case filed on or after the effective date of this bill.

Section 2. Section 62A-2-120 is amended to read:

62A-2-120. Background check -- Direct access to children or vulnerable adults.

(1) As used in this section:

(a) "Applicant" means:

(i) a person described in Section 62A-2-101;

(ii) an individual who:

(A) is associated with a licensee; and

(B) has or will likely have direct access to a child or a vulnerable adult;

(iii) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;

(iv) a department contractor; or

(v) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and:

(A) resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or

(B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).

(b) "Application" means a background screening application to the office.

(c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.

(d) "Personal identifying information" means:

(i) current name, former names, nicknames, and aliases;

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

(v) driver license number or other government-issued identification number;

(vi) social security number;

(vii) only for applicants who are 18 years of age or older, fingerprints, in a form specified by the office; and

(viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) (a) Except as provided in Subsection (14), an applicant shall submit the following to the office:

(i) personal identifying information;

(ii) a fee established by the office under Section 63J-1-504; and

(iii) a form, specified by the office, for consent for:

(A) an initial background check upon submission of the information described under Subsection (2)(a);

(B) a background check at the applicant's annual renewal;

(C) a background check when the office determines that reasonable cause exists; and

(D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).

(b) In addition to the requirements described in Subsection (2)(a), if an applicant spent time outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (2)(a) is submitted to the office, the office may require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant spent outside of the United States or its territories.

(3) The office:

(a) shall perform the following duties as part of a background check of an applicant:

(i) check state and regional criminal background databases for the applicant's criminal history by:

(A) submitting personal identifying information to the Bureau for a search; or

(B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;

(ii) submit the applicant's personal identifying information and fingerprints to the Bureau for a criminal history search of applicable national criminal background databases;

(iii) search the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006;

(iv) search the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(v) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 78A-6-323; and

(vi) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

(b) shall conduct a background check of an applicant for an initial background check upon submission of the information described under Subsection (2)(a);

(c) may conduct all or portions of a background check of an applicant, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) for an annual renewal; or

(ii) when the office determines that reasonable cause exists;

(d) may submit an applicant's personal identifying information, including fingerprints, to the Bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;

(e) shall track the status of an approved applicant under this section to ensure that an approved applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:

(i) more than one license;

(ii) direct access to a child or a vulnerable adult in more than one human services program; or

(iii) direct access to a child or a vulnerable adult under a contract with the department;

(f) shall track the status of each license and each individual with direct access to a child or a vulnerable adult and notify the Bureau when the license has expired or the individual's direct access to a child or a vulnerable adult has ceased;

(g) shall adopt measures to strictly limit access to personal identifying information solely to the office employees responsible for processing the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3); and

(h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.

(4) (a) With the personal identifying information the office submits to the Bureau under Subsection (3), the Bureau shall check against state and regional criminal background databases for the applicant's criminal history.

(b) With the personal identifying information and fingerprints the office submits to the Bureau under Subsection (3), the Bureau shall check against national criminal background databases for the applicant's criminal history.

(c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the Bureau under Subsection (3)(d), the Bureau shall:

(i) maintain a separate file of the fingerprints for search by future submissions to the local and

regional criminal records databases, including latent prints; and

(ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.

(d) The Bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

(i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and

(ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.

(e) The Bureau shall notify and release to the office all information of criminal activity associated with the applicant.

(f) Upon notice from the office that a license has expired or an individual's direct access to a child or a vulnerable adult has ceased, the Bureau shall:

(i) discard and destroy any retained fingerprints; and

(ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.

(5) (a) After conducting the background check described in Subsections (3) and (4), the office shall deny an application to an applicant who, within 10 years before the day on which the applicant submits information to the office under Subsection (2) for a background check, has been convicted of any of the following, regardless of whether the offense is a felony, a misdemeanor, or an infraction:

(i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;

(ii) a violation of any pornography law, including sexual exploitation of a minor;

(iii) prostitution;

(iv) an offense included in:

(A) Title 76, Chapter 5, Offenses Against the Person;

(B) Section 76-5b-201, Sexual Exploitation of a Minor; or

(C) Title 76, Chapter 7, Offenses Against the Family;

(v) aggravated arson, as described in Section 76-6-103;

(vi) aggravated burglary, as described in Section 76-6-203;

(vii) aggravated robbery, as described in Section 76-6-302;

(viii) identity fraud crime, as described in Section 76-6-1102; or

(ix) a conviction for a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (5)(a)(i) through (viii).

(b) If the office denies an application to an applicant based on a conviction described in Subsection (5)(a), the applicant is not entitled to a comprehensive review described in Subsection (6).

(6) (a) The office shall conduct a comprehensive review of an applicant's background check if the applicant has:

(i) a conviction for any felony offense, not described in Subsection (5)(a), regardless of the date of the conviction;

(ii) a conviction for a misdemeanor offense, not described in Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the conviction is within five years before the day on which the applicant submits information to the office under Subsection (2) for a background check;

(iii) a conviction for any offense described in Subsection (5)(a) that occurred more than 10 years before the day on which the applicant submitted information under Subsection (2)(a);

(iv) pleaded no contest to or is currently subject to a plea in abeyance or diversion agreement for any offense described in Subsection (5)(a);

(v) a listing in the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006;

(vi) a listing in the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(vii) a record in the juvenile court of a substantiated finding of severe child abuse or neglect described in Section 78A-6-323;

(viii) a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:

(A) under 28 years of age; or

(B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a); or

(ix) a pending charge for an offense described in Subsection (5)(a).

(b) The comprehensive review described in Subsection (6)(a) shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(A) actual or threatened, nonaccidental physical or mental harm;

(B) sexual abuse;

(C) sexual exploitation; or

(D) negligent treatment;

(vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed; and

(viii) any other pertinent information.

(c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely create a risk of harm to a child or a vulnerable adult.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, to establish procedures for the comprehensive review described in this Subsection (6).

(7) Subject to Subsection (10), the office shall approve an application to an applicant who is not denied under Subsection (5), (6), or (13).

(8) (a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant under Subsection (12), without requiring that the applicant be directly supervised, if the office:

(i) is awaiting the results of the criminal history search of national criminal background databases; and

(ii) would otherwise approve an application of the applicant under Subsection (7).

(b) Upon receiving the results of the criminal history search of national criminal background databases, the office shall approve or deny the application of the applicant in accordance with Subsections (5) through (7).

(9) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult unless, subject to Subsection (10):

(a) the individual is associated with the licensee or department contractor and:

(i) the individual's application is approved by the office under this section;

(ii) the individual's application is conditionally approved by the office under Subsection (8); or

(iii) (A) the individual has submitted the background check information described in Subsection (2) to the office;

(B) the office has not determined whether to approve the applicant's application; and

(C) the individual is directly supervised by an individual who has a current background screening approval issued by the office under this section and is associated with the licensee or department contractor;

(b) (i) the individual is associated with the licensee or department contractor;

(ii) the individual has a current background screening approval issued by the office under this section;

(iii) one of the following circumstances, that the office has not yet reviewed under Subsection (6), applies to the individual:

(A) the individual was charged with an offense described in Subsection (5)(a);

(B) the individual is listed in the Licensing Information System, described in Section 62A-4a-1006;

(C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation database, described in Section 62A-3-311.1;

(D) the individual has a record in the juvenile court of a substantiated finding of severe child abuse or neglect, described in Section 78A-6-323; or

(E) the individual has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or a misdemeanor; and

(iv) the individual is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this section; and

(B) is associated with the licensee or department contractor;

(c) the individual:

(i) is not associated with the licensee or department contractor; and

(ii) is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this section; and

(B) is associated with the licensee or department contractor;

(d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;

(e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult; or

(f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit.

(10) An individual may not have direct access to a child or a vulnerable adult if the individual is prohibited by court order from having that access.

(11) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have supervised or unsupervised direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.

(12) (a) Within 30 days after the day on which the office receives the background check information for an applicant, the office shall give written notice to:

(i) the applicant, and the licensee or department contractor, of the office's decision regarding the background check and findings; and

(ii) the applicant of any convictions and potentially disqualifying charges and adjudications found in the search.

(b) With the notice described in Subsection (12)(a), the office shall also give the applicant the details of any comprehensive review conducted under Subsection (6).

(c) If the notice under Subsection (12)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

(i) defining procedures for the challenge of its background check decision described in Subsection (12)(c); and

(ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

(13) This section does not apply to a department contractor, or an applicant for an initial license, or license renewal, regarding a substance abuse program that provides services to adults only.

(14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody, the office shall:

(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the

applicant applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (14)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(b) The requirements described in Subsection (14)(a) do not apply to the extent that:

(i) federal law or rule permits otherwise; or

(ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:

(A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

(B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (5).

(c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a license renewal to a prospective foster parent or a prospective adoptive parent if the applicant has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Section 76-5-109;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-109.1;

(C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

(D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

(E) aggravated murder, as described in Section 76-5-202;

(F) murder, as described in Section 76-5-203;

(G) manslaughter, as described in Section 76-5-205;

(H) child abuse homicide, as described in Section 76-5-208;

(I) homicide by assault, as described in Section 76-5-209;

(J) kidnapping, as described in Section 76-5-301;

(K) child kidnapping, as described in Section 76-5-301.1;

(L) aggravated kidnapping, as described in Section 76-5-302;

(M) human trafficking of a child, as described in Section 76-5-308.5;

~~[(M)]~~ (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

~~[(N)]~~ (O) sexual exploitation of a minor, as described in Section 76-5b-201;

~~[(O)]~~ (P) aggravated arson, as described in Section 76-6-103;

~~[(P)]~~ (Q) aggravated burglary, as described in Section 76-6-203;

~~[(Q)]~~ (R) aggravated robbery, as described in Section 76-6-302; or

~~[(R)]~~ (S) domestic violence, as described in Section 77-36-1; or

(ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).

(d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:

(i) aggravated assault, as described in Section 76-5-103;

(ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

(iii) mayhem, as described in Section 76-5-105;

(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

Section 3. Section 78B-6-117 is amended to read:

78B-6-117. Who may adopt -- Adoption of minor.

(1) A minor child may be adopted by an adult person, in accordance with ~~the provisions and requirements of~~ this section and this part.

(2) A child may be adopted by:

(a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or

(b) subject to Subsection (4), ~~any~~ a single adult, except as provided in Subsection (3).

(3) A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.

(4) ~~[In order to]~~ To provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a man and a woman who are married to each other, unless:

(a) there are no qualified married couples who:

(i) have applied to adopt a child;

(ii) are willing to adopt the child; and

(iii) are an appropriate placement for the child;

(b) the child is placed with a relative of the child;

(c) the child is placed with a person who has already developed a substantial relationship with the child;

(d) the child is placed with a person who:

(i) is selected by a parent or former parent of the child, if the parent or former parent consented to the adoption of the child; and

(ii) the parent or former parent described in Subsection (4)(d)(i):

(A) knew the person with whom the child is placed before the parent consented to the adoption; or

(B) became aware of the person with whom the child is placed through a source other than the division or the child-placing agency that assists with the adoption of the child; or

(e) it is in the best interests of the child to place the child with a single person.

(5) Notwithstanding Subsection (6), an adult may not adopt a child if, before adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony or attempted felony involving conduct that constitutes any of the following:

(a) child abuse, as described in Section 76-5-109;

(b) child abuse homicide, as described in Section 76-5-208;

(c) child kidnapping, as described in Section 76-5-301.1;

(d) human trafficking of a child, as described in Section 76-5-308.5;

(e) sexual abuse of a minor, as described in Section 76-5-401.1;

(f) rape of a child, as described in Section 76-5-402.1;

(g) object rape of a child, as described in Section 76-5-402.3;

(h) sodomy on a child, as described in Section 76-5-403.1;

(i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section 76-5-404.1;

(j) sexual exploitation of a minor, as described in Section 76-5b-201; or

(k) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (5).

(6) (a) For purpose of this Subsection (6), “disqualifying offense” means an offense listed in Subsection (5) that prevents a court from considering a person for adoption of a child except as provided in this Subsection (6).

(b) A person described in Subsection (5) may only be considered for adoption of a child if the following criteria are met by clear and convincing evidence:

(i) at least 10 years have elapsed from the day on which the person is successfully released from prison, jail, parole, or probation related to a disqualifying offense;

(ii) during the 10 years before the day on which the person files a petition with the court seeking adoption, the person has not been convicted, pleaded guilty, or pleaded no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;

(iii) the person can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;

(iv) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any time in the future when considering all of the following:

(A) the child’s age;

(B) the child’s gender;

(C) the child’s development;

(D) the nature and seriousness of the disqualifying offense;

(E) the preferences of a child 12 years of age or older;

(F) any available assessments, including custody evaluations, homes studies, pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and

(G) any other relevant information;

(v) the person can provide evidence of all of the following:

(A) the relationship with the child is of long duration;

(B) that an emotional bond exists with the child; and

(C) that adoption by the person who has committed the disqualifying offense ensures the best interests of the child are met; and

(vi) the adoption is by:

(A) a stepparent whose spouse is the adoptee's parent and consents to the adoption;

(B) subject to Subsection (6)(d), a relative of the child as defined in Section 78A-6-307 and there is not another relative without a disqualifying offense filing an adoption petition.

(c) The person with the disqualifying offense bears the burden of proof regarding why adoption with that person is in the best interest of the child over another responsible relative or equally situated person who does not have a disqualifying offense.

(d) If there is an alternative responsible relative who does not have a disqualifying offense filing an adoption petition, the following applies:

(i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and

(ii) before the court may grant adoption to the person who has the disqualifying offense over another responsible, willing, and able relative:

(A) an impartial custody evaluation shall be completed; and

(B) a guardian ad litem shall be assigned.

(7) Subsections (5) and (6) apply to a case pending on the effective date of this bill for which a final decision on adoption has not been made and to a case filed on or after the effective date of this bill.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 5. Revisor instructions.

It is the intent of the Legislature that, in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall replace the phrase "the effective date of this bill" in Subsection 30-5a-103(12) and Subsection 78B-6-117(7) with the bill's actual effective date.

CHAPTER 401**H. B. 199**

Passed March 8, 2017

Approved March 25, 2017

Effective May 9, 2017

**HIGH NEEDS CHILDREN
ADOPTION AMENDMENTS**

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill enacts provisions related to the adoption and placement of high needs children.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies terms;
- ▶ requires a child placing agency to provide certain information and training for a prospective adoptive parent of a high needs child;
- ▶ prohibits a person from engaging in an unregulated custody transfer; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-4a-208, as last amended by Laws of Utah 2009, Chapter 75

62A-4a-601, as last amended by Laws of Utah 2006, Chapter 281

78A-6-105, as last amended by Laws of Utah 2016, Chapters 109 and 351

ENACTS:

62A-4a-609, Utah Code Annotated 1953

62A-4a-711, Utah Code Annotated 1953

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

Section 1. Section 62A-4a-208 is amended to read:**62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.**

(1) As used in this section:

(a) "Complainant" means a person who initiates a complaint with the ombudsman.

(b) "Ombudsman" means the child protection ombudsman appointed pursuant to this section.

(2) (a) There is created within the department the position of child protection ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive director.

(b) The ombudsman shall be:

(i) an individual of recognized executive and administrative capacity;

(ii) selected solely with regard to qualifications and fitness to discharge the duties of ombudsman; and

(iii) have experience in child welfare, and in state laws and policies governing abused, neglected, and dependent children.

(c) The ombudsman shall devote full time to the duties of office.

(3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a complaint from any person, investigate whether an act or omission of the division with respect to a particular child:

(i) is contrary to statute, rule, or policy;

(ii) places a child's health or safety at risk;

(iii) is made without an adequate statement of reason; or

(iv) is based on irrelevant, immaterial, or erroneous grounds.

(b) The ombudsman may decline to investigate any complaint. If the ombudsman declines to investigate a complaint or continue an investigation, the ombudsman shall notify the complainant and the division of the decision and of the reasons for that decision.

(c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

(4) The ombudsman shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern the following:

(i) receiving and processing complaints;

(ii) notifying complainants and the division regarding a decision to investigate or to decline to investigate a complaint;

(iii) prioritizing workload;

(iv) maximum time within which investigations shall be completed;

(v) conducting investigations;

(vi) notifying complainants and the division regarding the results of investigations; and

(vii) making recommendations based on the findings and results of recommendations;

(b) report findings and recommendations in writing to the complainant and the division, in accordance with the provisions of this section;

(c) within appropriations from the Legislature, employ staff as may be necessary to carry out the ombudsman's duties under this part;

(d) provide information regarding the role, duties, and functions of the ombudsman to public agencies, private entities, and individuals;

(e) annually report to the:

(i) Child Welfare Legislative Oversight Panel;

(ii) governor;

- (iii) Division of Child and Family Services;
- (iv) executive director of the department; and
- (v) director of the division; and

(f) as appropriate, make recommendations to the division regarding individual cases, and the rules, policies, and operations of the division.

(5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify the complainant and the division of that decision.

(b) The ombudsman may advise a complainant to pursue all administrative remedies or channels of complaint before pursuing a complaint with the ombudsman. Subsequent to processing a complaint, the ombudsman may conduct further investigations upon the request of the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a complainant from making a complaint directly to the ombudsman before pursuing an administrative remedy.

(c) If the ombudsman finds that an individual's act or omission violates state or federal criminal law, the ombudsman shall immediately report that finding to the appropriate county or district attorney or to the attorney general.

(d) The ombudsman shall immediately notify the division if the ombudsman finds that a child needs protective custody~~], as that term is defined in Section 78A-6-105].~~

(e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect Reporting Requirements.

(6) (a) All records of the ombudsman regarding individual cases shall be classified in accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records Access and Management Act. The ombudsman may make public a report prepared pursuant to this section in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

(b) The ombudsman shall have access to all of the department's written and electronic records and databases, including those regarding individual cases. In accordance with Title 63G, Chapter 2, Government Records Access and Management Act, all documents and information received by the ombudsman shall maintain the same classification that was designated by the department.

(7) (a) The ombudsman shall prepare a written report of the findings and recommendations, if any, of each investigation.

(b) The ombudsman shall make recommendations to the division if the ombudsman finds that:

(i) a matter should be further considered by the division;

(ii) an administrative act should be addressed, modified, or canceled;

(iii) action should be taken by the division with regard to one of its employees; or

(iv) any other action should be taken by the division.

Section 2. Section 62A-4a-601 is amended to read:

62A-4a-601. Definitions.

For purposes of this part:

(1) "Child placing" means:

(a) receiving, accepting, or providing custody or care for a child, temporarily or permanently, for the purpose of finding a person to adopt the child; or

(b) placing a child, temporarily or permanently, in a home for adoption or substitute care.

(2) "Child placing agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing.

(3) "High needs child" means a child:

(a) with an attachment or trauma-related disorder;

(b) who suffered from prenatal exposure to alcohol or drugs;

(c) who is the subject of an intercountry adoption;

(d) who was previously adopted; or

(e) who is in foster care.

Section 3. Section 62A-4a-609 is enacted to read:

62A-4a-609. Preplacement disclosure and training before high needs child adoption.

Before referring a high needs child for adoption or entering into a contract to provide adoption services to a prospective adoptive parent of a high needs child, the child placing agency shall ensure that the prospective adoptive parent receives:

(1) at a minimum, to the extent available, the following information:

(a) a social history of the high needs child to be adopted, including:

(i) a history of the high needs child's cultural, racial, religious, ethnic, linguistic, and educational background; and

(ii) any conditions in the high needs child's country of origin, if applicable, to which the child may have been exposed and that may have an impact on the child's physical or mental health; and

(b) a record, if available, of the high needs child's:

(i) physical health, mental health, behavioral issues, or exposure to trauma, including whether the child placing agency knows or suspects that the high needs child has been exposed to alcohol or drugs in utero; and

(ii) history of institutionalization or previous adoptive or foster placements and, if applicable, the reason a previous placement was terminated; and

(2) at a minimum, training on the following issues:

(a) the impact leaving familiar ties and surroundings may have on a high needs child, and the grief, loss, and identity issues that a high needs child may experience in adoption;

(b) the potential impact of an institutional setting on a high needs child;

(c) attachment disorders, trauma-related disorders, fetal alcohol spectrum disorders, and other emotional problems that a high needs child may suffer, particularly when the high needs child has been institutionalized, traumatized, or cared for by multiple caregivers;

(d) the general characteristics of a successful adoption placement, including information on the financial resources, time, and insurance coverage necessary for handling the adoptive family's and the high needs child's adjustment following placement;

(e) the medical, therapeutic, and educational needs a high needs child may require, including language acquisition training;

(f) how to access post-placement and post-adoption services that may assist the family to respond effectively to adjustment, behavioral, and other difficulties that may arise after the high needs child is placed or adopted;

(g) issues that may lead to the disruption of an adoptive placement or the dissolution of an adoption, including how an adoptive parent may access resources to avoid disruption or dissolution;

(h) the long-term implications for a family that becomes multicultural through adoption;

(i) for a prospective adoptive parent who is seeking to adopt two or more unrelated children, the differing needs of children based on their respective ages, backgrounds, length of time outside of family care, and the time management requirements and other challenges that may be presented in a multi-child adoption; and

(j) the prohibition against an unregulated custody transfer of a child.

Section 4. Section 62A-4a-711 is enacted to read:

62A-4a-711. Penalty.

An individual or entity that knowingly engages in an unregulated custody transfer, as defined in Subsection 78A-6-105(48), is guilty of a class B misdemeanor.

Section 5. Section 78A-6-105 is amended to read:

78A-6-105. Definitions.

As used in this chapter:

(1) (a) "Abuse" means:

(i) nonaccidental harm of a child;

(ii) threatened harm of a child;

(iii) sexual exploitation;

(iv) sexual abuse; or

(v) human trafficking of a child in violation of Section 76-5-308.5.

(b) that a child's natural parent:

(i) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(ii) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(iii) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(c) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved. A finding of not competent to proceed pursuant to Section 78A-6-1302 is not an adjudication.

(4) "Adult" means a person 18 years of age or over, except that a person 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78A-6-120 shall be referred to as a minor.

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means a person under 18 years of age.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years of age, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Dependent child" includes a child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(13) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

(b) while under the continuing jurisdiction of the court.

(14) "Division" means the Division of Child and Family Services.

(15) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(16) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(17) "Guardianship of the person" includes the authority to consent to:

(a) marriage;

(b) enlistment in the armed forces;

(c) major medical, surgical, or psychiatric treatment; or

(d) legal custody, if legal custody is not vested in another person, agency, or institution.

(18) "Habitual truant" means the same as that term is defined in Section 53A-11-101.

(19) "Harm" means:

(a) physical or developmental injury or damage;

(b) emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(c) sexual abuse; or

(d) sexual exploitation.

(20) (a) "Incest" means engaging in sexual intercourse with a person whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection (20)(a) include:

(i) blood relationships of the whole or half blood, without regard to legitimacy;

(ii) relationships of parent and child by adoption; and

(iii) relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(21) "Intellectual disability" means:

(a) significantly subaverage intellectual functioning, an IQ of approximately 70 or below on an individually administered IQ test, for infants, a clinical judgment of significantly subaverage intellectual functioning;

(b) concurrent deficits or impairments in present adaptive functioning, the person's effectiveness in meeting the standards expected for his or her age by the person's cultural group, in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety; and

(c) the onset is before the person reaches the age of 18 years.

(22) "Legal custody" means a relationship embodying the following rights and duties:

(a) the right to physical custody of the minor;

(b) the right and duty to protect, train, and discipline the minor;

(c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

(d) the right to determine where and with whom the minor shall live; and

(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(23) "Mental disorder" means a serious emotional and mental disturbance that severely limits a minor's development and welfare over a significant period of time.

(24) "Minor" means:

(a) a child; or

(b) a person who is:

(i) at least 18 years of age and younger than 21 years of age; and

(ii) under the jurisdiction of the juvenile court.

(25) "Molestation" means that a person, with the intent to arouse or gratify the sexual desire of any person:

(a) touches the anus or any part of the genitals of a child;

(b) takes indecent liberties with a child; or

(c) causes a child to take indecent liberties with the perpetrator or another.

(26) “Natural parent” means a minor’s biological or adoptive parent, and includes the minor’s noncustodial parent.

(27) (a) “Neglect” means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child’s health, safety, morals, or well-being; [øø]

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused[-]; or

(v) abandonment of a child through an unregulated custody transfer.

(b) The aspect of neglect relating to education, described in Subsection (27)(a)(iii), means that, after receiving a notice of compulsory education violation under Section 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) (i) Notwithstanding Subsection (27)(a), a health care decision made for a child by the child’s parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(ii) Nothing in Subsection (27)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion and from pursuing care and treatment pursuant to the second health care opinion, as described in Section 78A-6-301.5.

(28) “Neglected child” means a child who has been subjected to neglect.

(29) “Nonjudicial adjustment” means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor’s parent, legal guardian, or custodian.

(30) “Not competent to proceed” means that a minor, due to a mental disorder, intellectual disability, or related condition as defined, lacks the ability to:

(a) understand the nature of the proceedings against them or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against them with a reasonable degree of rational understanding.

(31) “Physical abuse” means abuse that results in physical injury or damage to a child.

(32) “Probation” means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor’s home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

(33) “Protective supervision” means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor’s home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(34) “Related condition” means a condition closely related to intellectual disability in accordance with 42 C.F.R. Part 435.1010 and further defined in Rule R539-1-3, Utah Administrative Code.

(35) (a) “Residual parental rights and duties” means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(i) the responsibility for support;

(ii) the right to consent to adoption;

(iii) the right to determine the child’s religious affiliation; and

(iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, “residual parental rights and duties” also include the right to consent to:

(i) marriage;

(ii) enlistment; and

(iii) major medical, surgical, or psychiatric treatment.

(36) “Secure facility” means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

(37) “Severe abuse” means abuse that causes or threatens to cause serious harm to a child.

(38) “Severe neglect” means neglect that causes or threatens to cause serious harm to a child.

(39) “Sexual abuse” means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

(i) there is an indication of force or coercion;

(ii) the children are related, as defined in Subsections (20)(a) and (20)(b);

(iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years of age or older; or

(iv) there is a disparity in chronological age of four or more years between the two children; or

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7.

(40) “Sexual exploitation” means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any person; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any person; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

(41) “Shelter” means the temporary care of a child in a physically unrestricted facility pending court disposition or transfer to another jurisdiction.

(42) “State supervision” means a disposition that provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

(43) “Substance abuse” means the misuse or excessive use of alcohol or other drugs or substances.

(44) “Substantiated” means the same as that term is defined in Section 62A-4a-101.

(45) “Supported” means the same as that term is defined in Section 62A-4a-101.

(46) “Termination of parental rights” means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(47) “Therapist” means:

(a) a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(48) “Unregulated custody transfer” means the placement of a child:

(a) with a person who is not the child’s parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with whom the child is familiar, or a member of the child’s federally recognized tribe;

(b) with the intent of severing the child’s existing parent-child or guardian-child relationship; and

(c) without taking:

(i) reasonable steps to ensure the safety of the child and permanency of the placement; and

(ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or guardianship to the person taking custody of the child.

[48] (49) “Unsubstantiated” means the same as that term is defined in Section 62A-4a-101.

[49] (50) “Without merit” means the same as that term is defined in Section 62A-4a-101.

CHAPTER 402**H. B. 211**

Passed March 6, 2017

Approved March 25, 2017

Effective May 9, 2017

STATE WORK OF ART

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: Peter C. Knudson

LONG TITLE**General Description:**

This bill modifies provisions relating to state symbols.

Highlighted Provisions:

This bill:

- ▶ designates the Spiral Jetty as the state work of land art.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-1-601, as last amended by Laws of Utah 2014, Chapter 46

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

Section 1. Section 63G-1-601 is amended to read:**63G-1-601. State symbols.**

- (1) Utah's state animal is the elk.
- (2) Utah's state bird is the sea gull.
- (3) Utah's state centennial astronomical symbol is the Beehive Cluster located in the constellation of Cancer the Crab.
- (4) Utah's state centennial star is Dubhe, one of the seven bright stars composing the Big Dipper in the constellation Ursa Major.
- (5) Utah's state centennial tartan, which honors the first Scots known to have been in Utah and those Utahns of Scottish heritage, shall have a pattern or repeating-half-sett of white-2, blue-6, red-6, blue-4, red-6, green-18, red-6, and white-4 to represent the tartan worn anciently by the Logan and Skene clans, with the addition of a white stripe.
- (6) Utah's state cooking pot is the dutch oven.
- (7) Utah's state emblem is the beehive.
- (8) Utah's state emblem of service and sacrifice of lives lost by members of the military in defense of our freedom is the "Honor and Remember" flag, which consists of:
 - (a) a red field covering the top two-thirds of the flag;
 - (b) a white field covering the bottom one-third of the flag, which contains the words "honor" and "remember";

(c) a blue star overlaid by a gold star with a thin white border in the center of the flag spanning the red field and the white field; and

(d) a representation of a folded United States flag beneath the blue and gold stars with three tongues of flame emanating from its top point into the center of the gold star.

(9) Utah's state firearm is the John M. Browning designed M1911 automatic pistol.

(10) Utah's state fish is the Bonneville cutthroat trout.

(11) Utah's state flower is the sego lily.

(12) Utah's state folk dance is the square dance, the folk dance that is called, cued, or prompted to the dancers and includes squares, rounds, clogging, contra, line, and heritage dances.

(13) Utah's state fossil is the Allosaurus.

(14) Utah's state fruit is the cherry.

(15) Utah's state vegetable is the Spanish sweet onion.

(16) Utah's historic state vegetable is the sugar beet.

(17) Utah's state gem is topaz, as is prominently found in the Thomas Mountain Range in Juab County, Utah.

(18) Utah's state grass is Indian rice grass.

(19) Utah's state hymn is "Utah We Love Thee" by Evan Stephens.

(20) Utah's state insect is the honeybee.

(21) Utah's state mineral is copper.

(22) Utah's state motto is "Industry."

(23) Utah's state railroad museum is Ogden Union Station.

(24) Utah's state rock is coal.

(25) Utah's state song is "Utah This is the Place" by Sam and Gary Francis.

(26) Utah's state tree is the quaking aspen.

(27) Utah's state winter sports are skiing and snowboarding.

(28) Utah's state work of land art is the Spiral Jetty.

CHAPTER 403**H. B. 214**

Passed March 8, 2017

Approved March 25, 2017

Effective May 9, 2017

PROBATE CODE AMENDMENTS

Chief Sponsor: Kelly B. Miles

Senate Sponsor: Lyle W. Hillyard

LONG TITLE**General Description:**

This bill amends probate related provisions.

Highlighted Provisions:

This bill:

- ▶ modifies how letters upon estates jointly may be granted;
- ▶ modifies guardian and conservator provisions, including:
 - modifying provisions related to limited guardianships;
 - addressing emergency guardians;
 - modifying powers and duties of guardians;
 - addressing reporting requirements of conservators; and
 - providing sanctions for not honoring a conservator's or guardian's authority; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 75-3-109, as enacted by Laws of Utah 1977, Chapter 194
- 75-3-402, as last amended by Laws of Utah 2013, Chapter 364
- 75-5-304, as last amended by Laws of Utah 1988, Chapter 104
- 75-5-309, as last amended by Laws of Utah 1988, Chapter 104
- 75-5-310, as last amended by Laws of Utah 2014, Chapter 142
- 75-5-312, as last amended by Laws of Utah 2016, Chapter 293
- 75-5-418, as last amended by Laws of Utah 2012, Chapter 274
- 75-5-421, as enacted by Laws of Utah 1975, Chapter 150
- 75-5-424, as last amended by Laws of Utah 2014, Chapter 142
- 75-5-425, as last amended by Laws of Utah 2012, Chapter 274

*Be it enacted by the Legislature of the state of Utah:***Section 1. Section 75-3-109 is amended to read:****75-3-109. Letters upon several estates jointly.**

(1) Upon application or petition by any person interested in two or more estates, the registrar may,

in an informal proceeding without a hearing, or the court may, in a formal proceeding after notice and hearing, grant letters upon these estates jointly if administration has not commenced with respect to [~~any such~~] the estate and if:

(a) [~~All~~] all or any part of the estate of one decedent has descended from another decedent; or

(b) [~~Two~~] two or more decedents held any property during their lifetimes as tenants-in-common and if the persons entitled under the wills of these decedents or under the law of intestate succession to receive the estates of these decedents are the same.

(2) If letters are granted upon two or more estates jointly under this section, these estates shall be administered the same as if they were but one estate except that claims may be enforced only against the estate to which they relate.

Section 2. Section 75-3-402 is amended to read:**75-3-402. Formal testacy or appointment proceedings -- Petition -- Contents.**

(1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, shall be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

(a) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(b) contains the statements required for informal applications as stated in Subsection 75-3-301(2) and the statements required by Subsections 75-3-301(3)(b) and (c), and, if the petition requests appointment of a personal representative, the statements required by Subsection 75-3-301(4); and

(c) states whether the original of the last will of the decedent is in the possession of the court, accompanies the petition, or was presented to the court for electronic storage or electronic filing and is [~~not~~] in the possession of the petitioner or the petitioner's attorney.

(2) If the original will is not in the possession of the court, has not been presented to the court for electronic storage or electronic filing, does not accompany the petition, and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also shall state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(3) A petition for adjudication of intestacy and appointment of an administrator in intestacy shall request a judicial finding and order that the decedent left no will and, determining the heirs, contain the statements required by Subsections 75-3-301(2) and 75-3-301(5) and indicate whether supervised administration is sought. A petition may request an order determining intestacy and

heirs without requesting the appointment of an administrator, in which case, the statements required by Subsection 75-3-301(5)(b) may be omitted.

Section 3. Section 75-5-304 is amended to read:

75-5-304. Findings -- Limited guardianship preferred -- Order of appointment.

(1) The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person.

(2) (a) The court shall prefer a limited guardianship and may only grant a full guardianship if no other alternative exists. If the court does not grant a limited guardianship, a specific finding shall be made that nothing less than a full guardianship is adequate.

(b) An order of appointment of a limited guardianship shall state the limitations of the guardianship. Letters of guardianship for a limited guardianship shall state the limitations of the guardianship unless the court determines for good cause shown that a limitation should not be listed in the letters.

(3) A guardian appointed by will or written instrument, under Section 75-5-301, whose appointment has not been prevented or nullified under Subsection 75-5-301(4), has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the appointment within 30 days after notice of the guardianship proceeding. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

Section 4. Section 75-5-309 is amended to read:

75-5-309. Notices in guardianship proceedings.

(1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of ~~[a temporary]~~ an emergency guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and spouse, parents, and adult children of the ward or person;

(b) any person who is serving as guardian or conservator or who has care and custody of the ward or person;

(c) in case no other person is notified under Subsection (1)(a), at least one of the closest adult relatives, if any can be found; and

(d) any guardian appointed by the will of the parent who died later or spouse of the incapacitated person.

(2) The notice shall be in plain language and large type and the form shall have the final approval of the Judicial Council. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the person receiving notice of rights, a list of rights, including the person's own or a court appointed counsel, and a copy of the petition.

(3) Notice shall be served personally on the alleged incapacitated person and the person's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in Section 75-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends the hearing or the person's waiver of notice is confirmed in an interview with the visitor appointed pursuant to Section 75-5-303.

Section 5. Section 75-5-310 is amended to read:

75-5-310. Emergency guardians.

(1) If an incapacitated person has no guardian and an emergency exists or if an appointed guardian is not effectively performing the guardian's duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, without notice, appoint an emergency guardian for the person for a specified period not to exceed 30 days pending notice and hearing.

(2) [The] Upon request by an interested person after the appointment of an emergency guardian, the court shall, in all cases in which an emergency guardian is appointed, hold a hearing within 14 days pursuant to Section 75-5-303.

Section 6. Section 75-5-312 is amended to read:

75-5-312. General powers and duties of guardian -- Penalties.

(1) A guardian of an incapacitated person has only the powers, rights, and duties respecting the ward granted in the order of appointment under Section 75-5-304.

(2) Except as provided in Subsection (4), a guardian has the same powers, rights, and duties respecting the ward that a parent has respecting the parent's unemancipated minor child.

(3) In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, the guardian is entitled to custody of the person of the ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of the ward the guardian shall provide for the care, comfort, and

maintenance of the ward and, whenever appropriate, arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward is in need of protection.

(c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) A guardian may not unreasonably restrict visitation with the ward by family, relatives, or friends.

(e) If no conservator for the estate of the ward has been appointed, the guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform that duty;

(ii) compel the production of the ward's estate documents, including the ward's will, trust, power of attorney, and any advance health care directive; and

(iii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but the guardian may not use funds from the ward's estate for room and board which the guardian, the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one adult relative in the nearest degree of kinship to the ward in which there is an adult. The guardian shall exercise care to conserve any excess for the ward's needs.

(f) (i) A guardian is required to report the condition of the ward and of the estate which has been subject to the guardian's possession or control, as required by the court or court rule.

(ii) A guardian is required to immediately notify all interested persons if the guardian reasonably believes that the ward's death is likely to occur within the next 30 days, based on:

(A) the guardian's own observations; or

(B) information from the ward's physician or other medical care providers.

(iii) A guardian is required to immediately notify all interested persons of the ward's death.

(iv) Unless emergency conditions exist, a guardian is required to file with the court a notice of the guardian's intent to move the ward and to serve the notice on all interested persons at least 10 days before the move. The guardian shall take reasonable steps to notify all interested persons and to file the notice with the court as soon as practicable following the earlier of the move or the date when the guardian's intention to move the

ward is made known to the ward, the ward's care giver, or any other third party.

(v) ~~[The]~~ (A) If no conservator for the estate of the ward has been appointed, the guardian shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis.

(B) For estates less than \$50,000, excluding the residence owned by the ward, the guardian shall fill out an informal annual report and mail the report to the court.

(C) ~~[The]~~ A report under Subsection (3)(f)(v)(A) or (B) shall include ~~[the following:]~~ a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The guardian shall also report the physical conditions of the ward, the place of residence, and a list of others living in the same household. The court may require additional information.

(D) The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the Judicial Council. ~~[This]~~

(E) An annual report shall be examined and approved by the court.

(F) If the ward's income is limited to a federal or state program requiring an annual accounting report, a copy of that report may be submitted to the court in lieu of the required annual report.

(vi) Corporate fiduciaries are not required to petition the court, but shall submit their internal report annually to the court. The report shall be examined and approved by the court.

(vii) The guardian shall also render an annual accounting of the status of the person to the court which shall be included in the petition or the informal annual report as required under Subsection (3)(f). If a fee is paid for an accounting of an estate, no fee shall be charged for an accounting of the status of a person.

(viii) If a guardian:

(A) makes a substantial misstatement on filings of annual reports;

(B) is guilty of gross impropriety in handling the property of the ward; or

(C) willfully fails to file the report required by this subsection, after receiving written notice from the court of the failure to file and after a grace period of two months has elapsed, the court may impose a penalty in an amount not to exceed \$5,000. The court may also order restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the guardian and may not be paid by the estate.

(ix) ~~[These]~~ The provisions and penalties in this Subsection (3)(f) governing annual reports do not apply if the guardian or a coguardian is the parent of the ward.

(x) For the purposes of Subsections (3)(f)(i), (ii), (iii), and (iv), “interested persons” means those persons required to receive notice in guardianship proceedings as set forth in Section 75-5-309.

(g) If a conservator has been appointed^[,]:

(i) all of the ward’s estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward shall be paid to the conservator for management as provided in this code; and

(ii) the guardian shall account to the conservator for funds expended.

(4) (a) A court may, in the order of appointment, place specific limitations on the guardian’s power.

(b) A guardian may not prohibit or place restrictions on association with a relative or qualified acquaintance of an adult ward, unless permitted by court order under Section 75-5-312.5.

(c) A guardian is not liable to a third person for acts of the guardian’s ward solely by reason of the relationship described in Subsection (2).

(5) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward’s estate by payment to third persons or institutions for the ward’s care and maintenance.

(6) A person who refuses to accept the authority of a guardian with authority over financial decisions to transact business with the assets of the protected person after receiving a certified copy of letters of guardianship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the guardian.

Section 7. Section 75-5-418 is amended to read:

75-5-418. Inventory and records.

(1) Within 90 days after appointment of a conservator, the conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with an oath or affirmation that it is complete and accurate so far as the conservator is informed. The estate of the protected person does not include the assets of a trust.

(2) The conservator shall provide a copy of the inventory to the protected person if the person:

(a) can be located;

(b) has attained the age of 14 years; and

(c) has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.

(3) The conservator shall keep suitable ~~administrative~~ financial records and produce them upon the request of any interested person.

Section 8. Section 75-5-421 is amended to read:

75-5-421. Recording of conservator’s letters.

(1) (a) Letters of conservatorship are evidence of transfer of ~~all~~ the assets of a protected person to the conservator.

(b) An order terminating a conservatorship is evidence of transfer of ~~all~~ the assets of the estate from the conservator to the protected person or ~~his~~ the protected person’s successors.

(c) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title as between the conservator and the protected person.

(2) A person who refuses to accept the authority of a conservator to transact business with the assets of the protected person after receiving a certified copy of letters of conservatorship is liable for costs, expenses, attorney fees, and damages if the court determines that the person did not act in good faith in refusing to accept the authority of the conservator.

Section 9. Section 75-5-424 is amended to read:

75-5-424. Powers of conservator in administration.

(1) A conservator has all of the powers conferred in this chapter and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in Section 75-5-209 until the minor attains majority or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Part 2, Guardians of Minors.

(2) (a) A conservator has the power to compel the production of the protected person’s estate documents, including the protected person’s will, trust, power of attorney, and any advance health care directives.

(b) If a guardian is also appointed for the ward, the conservator shall share with the guardian the estate documents the conservator receives.

(3) A conservator has power without court authorization or confirmation to invest and reinvest funds of the estate as would a trustee.

(4) A conservator, acting reasonably in efforts to accomplish the purpose for which the conservator was appointed, may act without court authorization or confirmation, to:

(a) collect, hold, and retain assets of the estate, including land in another state, until, in ~~his~~ the

conservator's judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which [he] the conservator is personally interested;

- (b) receive additions to the estate;
- (c) continue or participate in the operation of any business or other enterprise;
- (d) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;
- (e) invest and reinvest estate assets in accordance with Subsection [(2)] (3);
- (f) deposit estate funds in a bank including a bank operated by the conservator;
- (g) acquire or dispose of an estate asset, including land in another state, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- (i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; and dedicate easements to public use without consideration;
- (j) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;
- (k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (l) grant an option involving disposition of an estate asset or take an option for the acquisition of any asset;
- (m) vote a security, in person or by general or limited proxy;
- (n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (o) (i) sell or exercise stock subscription or conversion rights; and
 - (ii) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for

any act of the nominee in connection with the stock so held;

- (q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;
- (r) (i) borrow money to be repaid from estate assets or otherwise; and
 - (ii) advance money for the protection of the estate or the protected person, and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances so made;
- (s) (i) pay or contest any claim;
 - (ii) settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and
 - (iii) release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
- (t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (v) pay any sum distributable to a protected person or dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the distributee's guardian, or if none, to a relative or other person with custody of the person;
- (w) (i) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties;
 - (ii) act upon [their] a recommendation made by a person listed in Subsection (4)(w)(i) without independent investigation; and
 - (iii) instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
- (x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of the conservator's duties;
- (y) act as a qualified beneficiary of any trust in which the protected person is a qualified beneficiary; and
- (z) execute and deliver [all] the instruments [which] that will accomplish or facilitate the exercise of the powers vested in the conservator.

Section 10. Section 75-5-425 is amended to read:

75-5-425. Distributive duties and powers of conservator.

(1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and [his] the protected person's dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. [He] A conservator may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless [he] the conservator knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to:

(i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage the protected person's affairs and the estate which has been conserved for the protected person;

(ii) the accustomed standard of living of the protected person and members of the protected person's household; and

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves and who are in need of support.

(d) Funds expended under this Subsection (1) may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by Subsection (1), a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make, in amounts

which do not exceed in total for any year 20% of the income from the estate.

(3) When a person who is a minor and who has not been adjudged to have a disability under Subsection 75-5-401(2)(a) attains the age of majority, the person's conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(4) When the conservator is satisfied that a protected person's disability[4], other than minority[3], has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(5) If a protected person dies, the conservator:

(a) shall:

(i) deliver to the court for safekeeping any will of the deceased protected person that may have come into the conservator's possession;

(ii) inform the [executor] personal representative or a beneficiary named in the will that the conservator has done so; and

(iii) retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled to it;

(b) may continue to pay the obligations lawfully due against the estate and to protect the estate from waste, injury, or damages that might reasonably be foreseeable; and

(c) may apply to exercise the powers and duties of a personal representative so that the conservator may proceed to administer and distribute the decedent's estate without additional or further appointment, provided that at least 40 days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court.

(6) Upon application for an order granting the powers of a personal representative to a conservator as provided in Subsection (5)(c) and after notice as provided in Section 75-3-310, the court may order the conferral of the power upon determining that there is no objection and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Section 75-3-308 and Chapter 3, Part 6, Personal Representative - Appointment, Control, and Termination of Authority, Part 7, Duties and Powers of Personal Representatives, Part 8, Creditors' Claims, Part 9, Special Provisions Relating to Distribution, and Part 10, Closing Estates, except that the estate in the name of the conservator, after administration, may be distributed to the decedent's successors

without prior retransfer to the conservator as personal representative.

CHAPTER 404**H. B. 229**

Passed March 9, 2017

Approved March 25, 2017

Effective March 25, 2017

**AMENDMENTS RELATING
TO LOCAL DISTRICTS**Chief Sponsor: Daniel McCay
Senate Sponsor: Lincoln Fillmore**LONG TITLE****General Description:**

This bill modifies provisions relating to local districts that provide fire protection, paramedic, and emergency services or law enforcement service.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to the withdrawal of a municipality from a local district that provides fire protection, paramedic, and emergency services or law enforcement service;
- ▶ allows for withdrawal if the municipality and district agree;
- ▶ requires a feasibility study of a proposed withdrawal under certain circumstances;
- ▶ requires voter approval of a withdrawal under certain circumstances;
- ▶ eliminates the requirement for voter approval of the creation of a local district to provide fire protection, paramedic, and emergency services or law enforcement service if the municipality previously received that service from another local district and withdrew from that local district without the necessity of an election;
- ▶ modifies a provision relating to certifying a withdrawal from a local district; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

17B-1-214, as last amended by Laws of Utah 2014, Chapter 405

17B-1-505, as last amended by Laws of Utah 2016, Chapter 140

17B-1-512, as last amended by Laws of Utah 2016, Chapter 140

ENACTS:

17B-1-505.5, Utah Code Annotated 1953

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

Section 1. Section 17B-1-214 is amended to read:**17B-1-214. Election -- Exceptions.**

(1) (a) Except as provided in Subsection (3) and in Subsection 17B-1-213(3)(a), an election on the question of whether the local district should be created shall be held by:

(i) if the proposed local district is located entirely within a single county, the responsible clerk; or

(ii) except as provided under Subsection (1)(b), if the proposed local district is located within more than one county, the clerk of each county in which part of the proposed local district is located, in cooperation with the responsible clerk.

(b) Notwithstanding Subsection (1)(a)(ii), if the proposed local district is located within more than one county and the only area of a county that is included within the proposed local district is located within a single municipality, the election for that area shall be held by the municipal clerk or recorder, in cooperation with the responsible clerk.

(2) Each election under Subsection (1) shall be held at the next special or regular general election date that is:

(a) for an election pursuant to a property owner or registered voter petition, more than 45 days after certification of the petition under Subsection 17B-1-209(3)(a); or

(b) for an election pursuant to a resolution, more than 60 days after the latest hearing required under Section 17B-1-210.

(3) The election requirement of Subsection (1) does not apply to:

(a) a petition filed under Subsection 17B-1-203(1)(a) if it contains the signatures of the owners of private real property that:

(i) is located within the proposed local district;

(ii) covers at least 67% of the total private land area within the proposed local district as a whole and within each applicable area; and

(iii) is equal in value to at least 50% of the value of all private real property within the proposed local district as a whole and within each applicable area;

(b) a petition filed under Subsection 17B-1-203(1)(b) if it contains the signatures of registered voters residing within the proposed local district as a whole and within each applicable area, equal in number to at least 67% of the number of votes cast in the proposed local district as a whole and in each applicable area, respectively, for the office of governor at the last general election prior to the filing of the petition;

(c) a groundwater right owner petition filed under Subsection 17B-1-203(1)(c) if the petition contains the signatures of the owners of groundwater rights that:

(i) are diverted within the proposed local district; and

(ii) cover at least 67% of the total amount of groundwater diverted in accordance with groundwater rights within the proposed local district as a whole and within each applicable area;

(d) a resolution adopted under Subsection 17B-1-203(1)(d) on or after May 5, 2003, that proposes the creation of a local district to provide

fire protection, paramedic, and emergency services or law enforcement service, if the proposed local district:

(i) includes the unincorporated area, whether in whole or in part, of one or more counties; or

(ii) consists of an area that:

(A) has a boundary that is the same as the boundary of the municipality whose legislative body adopts the resolution proposing the creation of the local district;

(B) previously received fire protection, paramedic, and emergency services or law enforcement service from another local district; and

(C) may be withdrawn from the other local district under Section 17B-1-505 without an election because the withdrawal is pursuant to an agreement under Subsection 17B-1-505(5)(a)(ii)(A) or (5)(b);

(e) a resolution adopted under Subsection 17B-1-203(1)(d) or (e) if the resolution proposes the creation of a local district that has no registered voters within its boundaries;

(f) a resolution adopted under Subsection 17B-1-203(1)(d) on or after May 11, 2010, that proposes the creation of a local district described in Subsection 17B-1-202(1)(a)(xiii); or

(g) a resolution adopted under Section 17B-2a-1105 to create a municipal services district.

(4) (a) If the proposed local district is located in more than one county, the responsible clerk shall coordinate with the clerk of each other county and the clerk or recorder of each municipality involved in an election under Subsection (1) so that the election is held on the same date and in a consistent manner in each jurisdiction.

(b) The clerk of each county and the clerk or recorder of each municipality involved in an election under Subsection (1) shall cooperate with the responsible clerk in holding the election.

(c) Except as otherwise provided in this part, each election under Subsection (1) shall be governed by Title 20A, Election Code.

Section 2. Section 17B-1-505 is amended to read:

17B-1-505. Withdrawal of municipality from certain districts providing fire protection, paramedic, and emergency services or law enforcement service or municipal services.

(1) As used in this section, "first responder district" means a local district, other than a municipal services district, that provides:

(a) fire protection, paramedic, and emergency services; or

(b) law enforcement service.

(2) This section applies to the withdrawal of a municipality that is entirely within the boundary of a first responder district or municipal services district that was created without the necessity of an election because of Subsection 17B-1-214(3)(d) or (g).

(1) (3) (a) The process to withdraw [an area] a municipality from a [local] first responder district or municipal services district may be initiated by a resolution adopted by the legislative body of [a] the municipality, subject to Subsection [(1) (3)(b)], that is entirely within the boundaries of a local district;.

(i) that provides:

[(A) fire protection, paramedic, and emergency services;]

[(B) law enforcement service; or]

[(C) municipal services, as defined in Section 17B-2a-1102; and]

[(ii) in the creation of which an election was not required because of Subsection 17B-1-214(3)(d) or (g).]

(b) [A municipal] The legislative body of a municipality that is within a municipal services district [established under Chapter 2a, Part 11, Municipal Services District Act,] may not adopt a resolution under Subsection [(1) (3)(a)] to withdraw from the municipal services district unless the municipality has conducted a feasibility study in accordance with Section 17B-2a-1110.

(c) Within 10 days after adopting a resolution under Subsection [(1) (3)(a)], the municipal legislative body shall submit to the board of trustees of the [local] first responder district or municipal services district written notice of the adoption of the resolution, accompanied by a copy of the resolution.

[(2) (4)] If a resolution is adopted under Subsection [(1) (3)(a)] by the legislative body of a municipality within a municipal services district, the municipal legislative body shall hold an election at the next municipal general election that is more than 60 days after adoption of the resolution on the question of whether the municipality should withdraw from the [local] municipal services district.

(5) (a) A municipality shall be withdrawn from a first responder district if:

(i) the legislative body of the municipality adopts a resolution initiating the withdrawal under Subsection (3)(a); and

(ii) (A) whether before or after the effective date of this section, the municipality and first responder district agree in writing to the withdrawal; or

(B) except as provided in Subsection (5)(b) and subject to Subsection (6), the voters of the municipality approve the withdrawal at an election held for that purpose.

(b) An election under Subsection (5)(a)(ii)(B) is not required if, after a feasibility study is conducted under Section 17B-1-505.5 and a public hearing is held under Subsection 17B-1-505.5(14), the

municipality and first responder district agree in writing to the withdrawal.

(6) An election under Subsection (5)(a)(ii)(B) may not be held unless:

(a) a feasibility study is conducted under Section 17B-1-505.5; and

(b) (i) the feasibility study concludes that the withdrawal is functionally and financially feasible for the municipality and the first responder district; or

(ii) (A) the feasibility study concludes that the withdrawal would be functionally and financially feasible for the municipality and the first responder district if conditions specified in the feasibility study are met; and

(B) the legislative body of the municipality adopts a resolution irrevocably committing the municipality to satisfying the conditions specified in the feasibility study, if the withdrawal is approved by the municipality's voters.

[3] (7) If a majority of those voting on the question of withdrawal at an election held under Subsection [2] (4) or (5)(a)(ii)(B) vote in favor of withdrawal, the municipality shall be withdrawn from the local district.

[4] (8) (a) Within 10 days after the canvass of an election at which a withdrawal under this section is submitted to voters, the municipal legislative body shall send written notice to the board of the [local] first responder district or municipal services district from which the municipality is proposed to withdraw.

(b) Each notice under Subsection [4] (8)(a) shall:

(i) state the results of the withdrawal election; and

(ii) if the withdrawal was approved by voters, be accompanied by a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

[5] (9) The effective date of a withdrawal under this section is governed by Subsection 17B-1-512(2)(a).

Section 3. Section 17B-1-505.5 is enacted to read:

17B-1-505.5. Feasibility study for a municipality's withdrawal from a local district providing fire protection, paramedic, and emergency services or law enforcement service.

(1) As used in this section:

(a) "Feasibility consultant" means a person with expertise in:

(i) the processes and economics of local government; and

(ii) the economics of providing fire protection, paramedic, and emergency services or law enforcement service.

(b) "Feasibility study" means a study to determine the functional and financial feasibility of a municipality's withdrawal from a first responder local district.

(c) "First responder district" means a local district, other than a municipal services district, that provides:

(i) fire protection, paramedic, and emergency services; or

(ii) law enforcement service.

(d) "Withdrawing municipality" means a municipality whose legislative body has adopted a resolution under Subsection 17B-1-505(3)(a) to initiate the process of the municipality's withdrawal from a first responder district.

(2) This section applies and a feasibility study shall be conducted, as provided in this section, if:

(a) the legislative body of a municipality has adopted a resolution under Subsection 17B-1-505(3)(a) to initiate the process of the municipality's withdrawal from a first responder district;

(b) the municipality and first responder district have not agreed in writing to the withdrawal; and

(c) a feasibility study is a condition under Subsection 17B-1-505(6)(a) for an election to be held approving the withdrawal.

(3) (a) As provided in this Subsection (3), the withdrawing municipality and first responder district shall choose and engage a feasibility consultant to conduct a feasibility study.

(b) The withdrawing municipality and first responder district shall jointly choose and engage a feasibility consultant according to applicable municipal or local district procurement procedures.

(c) (i) If the withdrawing municipality and first responder district cannot agree on and have not engaged a feasibility consultant under Subsection (3)(b) within 45 days after the legislative body of the withdrawing municipality submits written notice to the first responder district under Subsection 17B-1-505(3)(c), the withdrawing municipality and first responder district shall, as provided in this Subsection (3)(c), choose a feasibility consultant from a list of at least eight feasibility consultants provided by the Utah Association of Certified Public Accountants.

(ii) A list of feasibility consultants under Subsection (3)(c)(i) may not include a feasibility consultant that has had a contract to provide services to the withdrawing municipality or first responder district at any time during the two-year period immediately preceding the date the list is provided under Subsection (3)(c)(i).

(iii) (A) Beginning with the first responder district, the first responder district and withdrawing municipality shall alternately eliminate one feasibility consultant each from the list of feasibility consultants until one feasibility consultant remains.

(B) Within five days after receiving the list of consultants from the Utah Association of Certified Public Accountants, the first responder district shall make the first elimination of a feasibility consultant from the list and notify the withdrawing municipality in writing of the elimination.

(C) After the first elimination of a feasibility consultant from the list, the withdrawing municipality and first responder district shall each, within three days after receiving the written notification of the preceding elimination, notify the other in writing of the elimination of a feasibility consultant from the list.

(d) If a withdrawing municipality and first responder district do not engage a feasibility consultant under Subsection (3)(b), the withdrawing municipality and first responder district shall engage the feasibility consultant that has not been eliminated from the list at the completion of the process described in Subsection (3)(c).

(4) A feasibility consultant that conducts a feasibility study under this section shall be independent of and unaffiliated with the withdrawing municipality and first responder district.

(5) In conducting a feasibility study under this section, the feasibility consultant shall consider:

(a) population and population density within the withdrawing municipality;

(b) current and five-year projections of demographics and economic base in the withdrawing municipality, including household size and income, commercial and industrial development, and public facilities;

(c) projected growth in the withdrawing municipality during the next five years;

(d) subject to Subsection (6)(a), the present and five-year projections of the cost, including overhead, of providing the same service in the withdrawing municipality as is provided by the first responder district, including:

(i) the estimated cost if the first responder district continues to provide service; and

(ii) the estimated cost if the withdrawing municipality provides service;

(e) subject to Subsection (6)(a), the present and five-year projections of the cost, including overhead, of the first responder district providing service with:

(i) the municipality included in the first responder district's service area; and

(ii) the withdrawing municipality excluded from the first responder district's service area;

(f) a projection of any new taxes per household that may be levied within the withdrawing municipality within five years after the withdrawal;

(g) the fiscal impact that the withdrawing municipality's withdrawal has on other municipalities and unincorporated areas served by the first responder district, including any rate increase that may become necessary to maintain required coverage ratios for the first responder district's debt;

(h) the physical and other assets that will be required by the withdrawing municipality to provide, without interruption or diminution of service, the same service that is being provided by the first responder district;

(i) the physical and other assets that will no longer be required by the first responder district to continue to provide the current level of service to the remainder of the first responder district, excluding the withdrawing municipality, and could be transferred to the withdrawing municipality;

(j) subject to Subsection (6)(b), a fair and equitable allocation of the first responder district's assets between the first responder district and the withdrawing municipality, effective upon the withdrawal of the withdrawing municipality from the first responder district;

(k) a fair and equitable allocation of the debts, liabilities, and obligations of the first responder district and any local building authority of the first responder district, between the withdrawing municipality and the remaining first responder district, taking into consideration:

(i) any requirement to maintain the excludability of interest from the income of the holder of the debt, liability, or obligation for federal income tax purposes; and

(ii) any first responder district assets that have been purchased with the proceeds of bonds issued by the first responder district that the first responder district will retain and any of those assets that will be transferred to the withdrawing municipality;

(l) the number and classification of first responder district employees who will no longer be required to serve the remaining portions of the first responder district after the withdrawing municipality withdraws from the first responder district, including the dollar amount of the wages, salaries, and benefits attributable to the employees and the estimated cost associated with termination of the employees if the withdrawing municipality does not employ the employees;

(m) maintaining as a base, for a period of three years after withdrawal, the existing schedule of pay and benefits for first responder district employees who are transferred to the employment of the withdrawing municipality; and

(n) any other factor that the feasibility consultant considers relevant to the question of the withdrawing municipality's withdrawal from the first responder district.

(6) (a) For purposes of Subsections (5)(d) and (e):

(i) the feasibility consultant shall assume a level and quality of service to be provided in the future to

the withdrawing municipality that fairly and reasonably approximates the level and quality of service that the first responder district provides to the withdrawing municipality at the time of the feasibility study;

(ii) in determining the present value cost of a service that the first responder district provides, the feasibility consultant shall consider:

(A) the cost to the withdrawing municipality of providing the service for the first five years after the withdrawal; and

(B) the first responder district's present and five-year projected cost of providing the same service within the withdrawing municipality; and

(iii) the feasibility consultant shall consider inflation and anticipated growth in calculating the cost of providing service.

(b) The feasibility consultant may not consider an allocation of first responder district assets or a transfer of first responder district employees to the extent that the allocation or transfer would impair the first responder district's ability to continue to provide the current level of service to the remainder of the first responder district without the withdrawing municipality, unless the first responder district consents to the allocation or transfer.

(7) A feasibility consultant may retain an architect, engineer, or other professional, as the feasibility consultant considers prudent and as provided in the agreement with the withdrawing municipality and first responder district, to assist the feasibility consultant to conduct a feasibility study.

(8) The withdrawing municipality and first responder district shall require the feasibility consultant to:

(a) complete the feasibility study within a time established by the withdrawing municipality and first responder district;

(b) prepare and submit a written report communicating the results of the feasibility study, including a one-page summary of the results; and

(c) attend all public hearings relating to the feasibility study under Subsection (14).

(9) A written report of the results of a feasibility study under this section shall:

(a) contain a recommendation concerning whether a withdrawing municipality's withdrawal from a first responder district is functionally and financially feasible for both the first responder district and the withdrawing municipality; and

(b) include any conditions the feasibility consultant determines need to be satisfied in order to make the withdrawal functionally and financially feasible, including:

(i) first responder district assets and liabilities to be allocated to the withdrawing municipality; and

(ii) (A) first responder district employees to become employees of the withdrawing municipality; and

(B) sick leave, vacation, and other accrued benefits and obligations relating to the first responder district employees that the withdrawing municipality needs to assume.

(10) The withdrawing municipality and first responder district shall equally share the feasibility consultant's fees and costs, as specified in the agreement between the withdrawing municipality and first responder district and the feasibility consultant.

(11) (a) Upon completion of the feasibility study and preparation of a written report, the feasibility consultant shall deliver a copy of the report to the withdrawing municipality and first responder district.

(b) (i) A withdrawing municipality or first responder district that disagrees with any aspect of a feasibility study report may, within 20 business days after receiving a copy of the report under Subsection (11)(a), submit to the feasibility consultant a written objection detailing the disagreement.

(ii) (A) A withdrawing municipality that submits a written objection under Subsection (11)(b)(i) shall simultaneously deliver a copy of the objection to the first responder district.

(B) A first responder district that submits a written objection under Subsection (11)(b)(i) shall simultaneously deliver a copy of the objection to the withdrawing municipality.

(iii) A withdrawing municipality or first responder district may, within 10 business days after receiving an objection under Subsection (11)(b)(ii), submit to the feasibility consultant a written response to the objection.

(iv) (A) A withdrawing municipality that submits a response under Subsection (11)(b)(iii) shall simultaneously deliver a copy of the response to the first responder district.

(B) A first responder district that submits a response under Subsection (11)(b)(iii) shall simultaneously deliver a copy of the response to the withdrawing municipality.

(v) If an objection is filed under Subsection (11)(b)(i), the feasibility consultant shall, within 20 business days after the expiration of the deadline under Subsection (11)(b)(iii) for submitting a response to an objection:

(A) modify the feasibility study report or explain in writing why the feasibility consultant is not modifying the feasibility study report; and

(B) deliver the modified feasibility study report or written explanation to the withdrawing municipality and first responder local district.

(12) Within seven days after the expiration of the deadline under Subsection (11)(b)(i) for submitting an objection or, if an objection is submitted, within

seven days after receiving a modified feasibility study report or written explanation under Subsection (11)(b)(v), but at least 30 days before a public hearing under Subsection (14), the withdrawing municipality shall:

(a) make a copy of the report available to the public at the primary office of the withdrawing municipality; and

(b) if the withdrawing municipality has a website, post a copy of the report on the municipality's website.

(13) A feasibility study report or, if a feasibility study report is modified under Subsection (11), a modified feasibility study report may not be challenged unless the basis of the challenge is that the report results from collusion or fraud.

(14) (a) Following the expiration of the deadline under Subsection (11)(b)(i) for submitting an objection, or, if an objection is submitted under Subsection (11)(b)(i), following the withdrawing municipality's receipt of the modified feasibility study report or written explanation under Subsection (11)(b)(v), the legislative body of the withdrawing municipality shall, at the legislative body's next regular meeting, schedule at least one public hearing to be held:

(i) within the following 60 days; and

(ii) for the purpose of allowing:

(A) the feasibility consultant to present the results of the feasibility study; and

(B) the public to become informed about the feasibility study results, to ask the feasibility consultant questions about the feasibility study, and to express the public's views about the proposed withdrawal.

(b) At a public hearing under Subsection (14)(a), the legislative body of the withdrawing municipality shall:

(i) provide a copy of the feasibility study for public review; and

(ii) allow the public to:

(A) ask the feasibility consultant questions about the feasibility study; and

(B) express the public's views about the withdrawing municipality's proposed withdrawal from the first responder district.

(15) (a) The clerk or recorder of the withdrawing municipality shall publish notice of a hearing under Subsection (14):

(i) at least once a week for three successive weeks in a newspaper of general circulation within the withdrawing municipality, with the last publication occurring no less than three days before the first public hearing held under Subsection (14); and

(ii) on the Utah Public Notice Website created in Section 63F-1-701, for three consecutive weeks immediately before the public hearing.

(b) A notice under Subsection (15)(a) shall state:

(i) the date, time, and location of the public hearing; and

(ii) that a copy of the feasibility study report may be obtained, free of charge, at the office of the withdrawing municipality or on the withdrawing municipality's website.

(16) Unless the withdrawing municipality and first responder district agree otherwise, conditions that a feasibility study report indicates are necessary to be met for a withdrawal to be functionally and financially feasible for the withdrawing municipality and first responder district are binding on the withdrawing municipality and first responder district if the withdrawal occurs.

Section 4. Section 17B-1-512 is amended to read:

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

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

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

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

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

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

(ii) on or before January 31 of the year following the board of trustees' receipt of a notice or copy described in Subsection (1)(c), if the board of trustees receives the notice or copy between July 1 and December 31; or

(iii) on or before the July 31 following the board of trustees' receipt of a notice or copy described in Subsection (1)(c), if the board of trustees receives the notice or copy between January 1 and June 30.

(c) The board of trustees shall comply with the requirements described in Subsection (1)(b)(ii) or (iii) after:

(i) receiving:

[4] (A) a notice under Subsection 10-2-425(2) of an automatic withdrawal under Subsection 17B-1-502(2);

[4ii] (B) a copy of the municipal legislative body's resolution approving an automatic withdrawal under Subsection 17B-1-502(3)(a); or

[4iii] (C) notice of a withdrawal of a municipality from a local district under Section 17B-1-502[-]; or

(ii) entering into an agreement with a municipality under Subsection 17B-1-505(5)(a)(ii)(A) or (5)(b).

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

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

- (A) the original;
- (I) notice of an impending boundary action;
- (II) certificate of withdrawal; and
- (III) approved final local entity plat; and

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

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

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

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

(2) (a) Upon the lieutenant governor's issuance of the certificate of withdrawal under Section 67-1a-6.5 for a withdrawal under Section 17B-1-510, for an automatic withdrawal under Subsection 17B-1-502(3), or for the withdrawal of a municipality from a local district under Section 17B-1-505, the withdrawal shall be effective, subject to the conditions of the withdrawal resolution, if applicable.

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

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

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

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

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

- (i) the name of the local district;
- (ii) a description of the area proposed for withdrawal;
- (iii) a brief explanation of the grounds on which the board of trustees determined to approve or deny the withdrawal; and
- (iv) the times and place where a copy of the resolution may be examined, which shall be at the place of business of the local district, identified in the notice, during regular business hours of the

local district as described in the notice and for a period of at least 30 days after the publication of the notice.

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

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

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

- (i) the board of trustees' decision to withdraw an area from the local district;
- (ii) the terms and conditions of a withdrawal; or
- (iii) the board's decision to deny a withdrawal.

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

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

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

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

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

- (i) the court finds the board of trustees' decision to be arbitrary or capricious; or
- (ii) the court finds that the board materially failed to follow the procedures set forth in this part.

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

(7) After the applicable contest period under Subsection (4) or (6), no person may contest the

board of trustees' approval or denial of withdrawal for any cause.

Section 5. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 405**H. B. 243**

Passed March 8, 2017

Approved March 25, 2017

Effective May 9, 2017

COMMON AREA LAND USE AMENDMENTS

Chief Sponsor: R. Curt Webb
Senate Sponsor: D. Gregg Buxton

LONG TITLE**General Description:**

This bill modifies provisions related to common areas and land use.

Highlighted Provisions:

This bill:

- ▶ addresses ownership, conveyance, and modification of a parcel designated as a common area or a common area and facility on a recorded plat;
- ▶ reduces the percentage of landowners required to approve certain conveyances;
- ▶ amends requirements for recording a certain subdivision plat; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-9a-604, as last amended by Laws of Utah 2010, Chapter 381
10-9a-606, as last amended by Laws of Utah 2015, Chapter 327
17-27a-604, as last amended by Laws of Utah 2015, Chapter 465
17-27a-606, as last amended by Laws of Utah 2015, Chapter 327
57-8-32, as enacted by Laws of Utah 1963, Chapter 111

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

Section 1. Section 10-9a-604 is amended to read:**10-9a-604. Subdivision plat approval procedure -- Effect of not complying.**

(1) A person may not submit a subdivision plat to the county recorder's office for recording unless:

(a) the person has complied with the requirements of Subsection 10-9a-603(4)(a);

(b) the plat has been approved by:

(i) the land use authority of the municipality in which the land described in the plat is located; and

(ii) other officers that the municipality designates in its ordinance; ~~and~~

(c) all approvals described in Subsection (1)(b) are entered in writing on the plat by the designated officers~~[-];~~ and

(d) if the person submitting the plat intends the plat to be or if the plat is part of a community association subject to Title 57, Chapter 8a, Community Association Act, the plat includes language conveying to the association, as that term is defined in Section 57-8a-102, all common areas, as that term is defined in Section 57-8a-102.

(2) A subdivision plat recorded without the signatures required under this section is void.

(3) A transfer of land pursuant to a void plat is voidable.

Section 2. Section 10-9a-606 is amended to read:**10-9a-606. Common area parcels on a plat -- No separate ownership -- Ownership interest equally divided among other parcels on plat and included in description of other parcels.**

(1) As used in this section:

(a) "Association" means the same as that term is defined in:

(i) regarding a common area, Section 57-8a-102; and

(ii) regarding a common area and facility, Section 57-8-3.

(b) "Common area" means the same as that term is defined in Section 57-8a-102.

(c) "Common area and facility" means the same as that term is defined in Section 57-8-3.

(d) "Declarant" means the same as that term is defined in:

(i) regarding a common area, Section 57-8a-102; and

(ii) regarding a common area and facility, Section 57-8-3.

(e) "Declaration," regarding a common area and facility, means the same as that term is defined in Section 57-8-3.

(f) "Period of administrative control" means the same as that term is defined in:

(i) regarding a common area, Section 57-8a-102; and

(ii) regarding a common area and facility, Section 57-8-3.

~~(1)-(a)~~ (2) A person may not separately own, convey, or modify a parcel designated as a common ~~or community~~ area or common area and facility, on a plat recorded in compliance with this part ~~may not be separately owned or conveyed~~, independent of the other lots, units, or parcels created by the plat unless:

(a) an association holds in trust the parcel designated as a common area for the owners of the other lots, units, or parcels created by the plat; or

(b) the conveyance or modification is approved under Subsection (5).

~~[(i) the parcel is being acquired by a municipality for a governmental purpose; and]~~

~~[(ii) the conveyance is approved by the owners of at least 75% of the lots, units, or parcels on the plat, after the municipality gives its approval.]~~

~~[(b) A notice of the owner approval described in Subsection (1)(a)(ii) shall be:]~~

~~(3) If a conveyance or modification of a common area or common area and facility is approved in accordance with Subsection (5), the person who presents the instrument of conveyance to a county recorder shall:~~

~~[(i) (a) [attached] attach a notice of the approval described in Subsection (5) as an exhibit to the document of conveyance; or~~

~~[(ii) (b) [recorded] record a notice of the approval described in Subsection (5) concurrently with the conveyance as a separate document.~~

~~[(2) The ownership interest in a parcel described in Subsection (1) shall:]~~

~~(4) When a plat contains a common area or common area and facility:~~

~~(a) for purposes of assessment, [be divided equally among all parcels created by the plat] each parcel that the plat creates has an equal ownership interest in the common area or common area and facility within the plat, unless the plat or an accompanying recorded document indicates a different division of interest for assessment purposes [is indicated on the plat or an accompanying recorded document]; and~~

~~(b) [be considered to be included in the description of] each instrument describing a parcel on the plat by [its] the parcel's identifying plat number implicitly includes the ownership interest in the common area or common area and facility, even if [the common or community area] that ownership interest is not explicitly stated in the instrument.~~

~~[(3) A parcel designated as common or community area on a plat before, on, or after May 12, 2015, may be modified in size and location if the modification:]~~

~~[(a) is approved as part of a subdivision plat amendment by the local government;]~~

~~[(b) is approved by at least 75%]~~

~~(5) Notwithstanding Subsection (2), a person may modify the size or location of or separately convey a common area or common area and facility if the following approve the conveyance or modification:~~

~~(a) the local government;~~

~~(b) (i) for a common area that an association owns, 67% of the voting interests in [a homeowners] the association [having an interest in the common or community area, if any]; or~~

~~[(c) is approved by at least 75% of the owners of lots, units, or parcels on the plat if there is no homeowners association having an interest in the common or community area, if any; and]~~

~~(ii) for a common area that an association does not own, or for a common area and facility, 67% of the owners of lots, units, and parcels designated on a plat that is subject to a declaration and on which the common area or common area and facility is included; and~~

~~(c) during the period of administrative control, the declarant.~~

~~[(d) does not create a new buildable lot.]~~

~~[(4) A parcel designated as common or community area on a plat before, on, or after May 12, 2015, may be modified in size without a subdivision plat amendment approval by the local government, if the modification:]~~

~~[(a) is a lot line adjustment approved by at least 75% of the voting interests in a homeowners association having an interest in the common or community area, if any;]~~

~~[(b) is approved by at least 75% of the owners of lots, units, or parcels on the plat if there is no homeowners association having an interest in the common or community area, if any; and]~~

~~[(c) does not create a new buildable lot.]~~

Section 3. Section 17-27a-604 is amended to read:

17-27a-604. Subdivision plat approval procedure -- Effect of not complying.

(1) A person may not submit a subdivision plat to the county recorder's office for recording unless:

(a) the person has complied with the requirements of Subsection 17-27a-603(4)(a);

(b) the plat has been approved by:

(i) the land use authority of the:

(A) county in whose unincorporated area the land described in the plat is located; or

(B) mountainous planning district in whose area the land described in the plat is located; and

(ii) other officers that the county designates in its ordinance; [and]

(c) all approvals described in Subsection (1)(b) are entered in writing on the plat by designated officers[;]; and

(d) if the person submitting the plat intends the plat to be or if the plat is part of a community association subject to Title 57, Chapter 8a, Community Association Act, the plat includes language conveying to the association, as that term is defined in Section 57-8a-102, all common areas, as that term is defined in Section 57-8a-102.

(2) An owner of a platted lot is the owner of record sufficient to re-subdivide the lot if the owner's platted lot is not part of a community association subject to Title 57, Chapter 8a, Community Association Act.

(3) A plat recorded without the signatures required under this section is void.

(4) A transfer of land pursuant to a void plat is voidable.

Section 4. Section 17-27a-606 is amended to read:

17-27a-606. Common area parcels on a plat -- No separate ownership -- Ownership interest equally divided among other parcels on plat and included in description of other parcels.

(1) As used in this section:

(a) "Association" means the same as that term is defined in:

(i) regarding a common area, Section 57-8a-102; and

(ii) regarding a common area and facility, Section 57-8-3.

(b) "Common area" means the same as that term is defined in Section 57-8a-102.

(c) "Common area and facility" means the same as that term is defined in Section 57-8-3.

(d) "Declarant" means the same as that term is defined in:

(i) regarding a common area, Section 57-8a-102; and

(ii) regarding a common area and facility, Section 57-8-3.

(e) "Declaration," regarding a common area and facility, means the same as that term is defined in Section 57-8-3.

(f) "Period of administrative control" means the same as that term is defined in:

(i) regarding a common area, Section 57-8a-102; and

(ii) regarding a common area and facility, Section 57-8-3.

~~(1) (a) (2)~~ A person may not separately own, convey, or modify a parcel designated as a common ~~or community~~ area or common area and facility on a plat recorded in compliance with this part ~~may not be separately owned or conveyed~~, independent of the other lots, units, or parcels created by the plat unless:

~~(i) the parcel is being acquired by a county for a governmental purpose; and~~

~~(ii) the conveyance is approved by~~

(a) an association holds in trust the parcel designated as a common area for the owners of the other lots, units, or parcels created by the plat; or

(b) the conveyance or modification is approved under Subsection (5).

~~(b) A notice of the approval required in Subsection (1)(a)(ii) shall be:~~

(3) If a conveyance or modification of a common area or common area and facility is approved in accordance with Subsection (5), the person who presents the instrument of conveyance to a county recorder shall:

~~(4) (a) [attached] attach a notice of the approval described in Subsection (5) as an exhibit to the document of conveyance; or~~

~~(4) (b) [recorded] record a notice of the approval described in Subsection (5) concurrently with the conveyance as a separate document.~~

~~(2) The ownership interest in a parcel described in Subsection (1) shall:~~

(4) When a plat contains a common area or common area and facility:

(a) ~~[for purposes of assessment, be divided equally among all parcels created by the plat, unless] each parcel that the plat creates has an equal ownership interest in the common area or common area and facility within the plat, unless the plat or an accompanying recorded document indicates a different division of interest for assessment purposes [is indicated on the plat or an accompanying recorded document]; and~~

(b) ~~[be considered to be included in the description of] each instrument describing a parcel on the plat by [its] the parcel's identifying plat number implicitly includes the ownership interest in the common area or common area and facility within the plat, even if [the common or community area] that ownership interest is not explicitly stated in the instrument.~~

~~(3) A parcel designated as common or community area on a plat before, on, or after May 12, 2015, may be modified in size and location if the modification:~~

(5) Notwithstanding Subsection (2), a person may modify the size or location of or separately convey a common area or common area and facility if the following approve the conveyance or modification:

~~(a) is approved as part of a subdivision plat amendment by the local government;~~

(a) the local government;

~~(b) is approved by at least 75%~~

(b) (i) for a common area that an association owns, 67% of the voting interests in ~~[a homeowners] the association [having an interest in the common or community area, if any]; or~~

~~(c) is approved by at least 75% of the owners of lots, units, or parcels on the plat if there is no homeowners association having an interest in the common or community area, if any; and~~

(ii) for a common area that an association does not own, or for a common area and facility, 67% of the owners of lots, units, and parcels designated on a plat that is subject to a declaration and on which the common area or common area and facility is included; and

(c) during the period of administrative control, the declarant.

~~(d) does not create a new buildable lot.]~~

~~(4) A parcel designated as common or community area on a plat before, on, or after May 12, 2015, may be modified in size without a subdivision plat amendment approval by the local government, if the modification:~~

~~[(a) is a lot line adjustment approved by at least 75% of the voting interests in a homeowners association having an interest in the common or community area, if any;]~~

~~[(b) is approved by at least 75% of the owners of lots, units, or parcels on the plat if there is no homeowners association having an interest in the common or community area, if any; and]~~

~~[(c) does not create a new buildable lot.]~~

Section 5. Section 57-8-32 is amended to read:

57-8-32. Sale of property.

(1) Unless otherwise provided in the declaration or bylaws, and notwithstanding the provisions of Sections 57-8-30 and 57-8-31, the unit owners may, at a meeting of unit owners called for the purpose of voting, by an affirmative vote of at least ~~[three-fourths of such]~~ 67% of unit owners, ~~[at a meeting of unit owners duly called for such purpose,]~~ elect to sell or otherwise dispose of the property. ~~[Such action shall be]~~

(2) An affirmative vote described in Subsection (1) is binding upon all unit owners, and ~~[it shall thereupon become the duty of every]~~ each unit owner ~~[to]~~ shall execute and deliver ~~[such]~~ the appropriate instruments and ~~[to]~~ perform all acts as ~~[in manner and form may be]~~ necessary to effect the sale.

CHAPTER 406**H. B. 265**

Passed March 9, 2017
 Approved March 25, 2017
 Effective January 1, 2018

SAFETY INSPECTION AMENDMENTS

Chief Sponsor: Daniel McCay
 Senate Sponsor: Deidre M. Henderson
 Cosponsors: Walt Brooks
 Kay J. Christofferson
 Kim F. Coleman
 Steve Eliason
 Justin L. Fawson
 Timothy D. Hawkes
 Michael S. Kennedy
 John Knotwell
 Jefferson Moss
 Val L. Peterson
 Paul Ray
 Mike Schultz

LONG TITLE**General Description:**

This bill modifies provisions relating to motor vehicle safety equipment and inspection programs and increases motor vehicle registration fees.

Highlighted Provisions:

This bill:

- ▶ repeals the requirement that certain vehicles obtain a safety inspection certificate in order to be registered and to operate on a highway;
- ▶ repeals a provision making a seat belt violation a secondary offense;
- ▶ increases registration fees for certain vehicles;
- ▶ creates the Motor Vehicle Safety Impact Restricted Account and allows expenditure of the funds by the Utah Highway Patrol to:
 - hire new Highway Patrol troopers;
 - pay overtime for Highway Patrol troopers; and
 - acquire equipment to improve motor vehicle safety impacts and enforcement; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates for the fiscal year beginning July 1, 2017, and ending June 30, 2018:

- ▶ to the Department of Public Safety -- Programs and Operations as a one-time appropriation:
 - from the General Fund;
 - from the Department of Public Safety Restricted Account;
- ▶ to the Department of Public Safety -- Programs and Operations as an ongoing appropriation:
 - from the General Fund;
 - from the Department of Public Safety Restricted Account.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

13-51-107, as enacted by Laws of Utah 2015, Chapter 461
 41-1a-203, as last amended by Laws of Utah 2010, Chapter 295
 41-1a-205, as last amended by Laws of Utah 2015, Chapter 412
 41-1a-217, as last amended by Laws of Utah 2005, Chapter 2
 41-1a-226, as last amended by Laws of Utah 2015, Chapter 400
 41-1a-1201, as last amended by Laws of Utah 2012, Chapters 207, 356, 397 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 397
 41-1a-1206, as last amended by Laws of Utah 2016, Chapter 303
 41-3-303, as last amended by Laws of Utah 2013, Chapter 207
 41-6a-1508, as last amended by Laws of Utah 2015, Chapter 412
 41-6a-1509, as last amended by Laws of Utah 2015, Chapters 412 and 454
 41-6a-1642, as last amended by Laws of Utah 2015, Chapter 258
 41-6a-1803, as last amended by Laws of Utah 2015, Chapter 59
 41-6a-1805, as last amended by Laws of Utah 2015, Chapter 59
 53-8-205, as last amended by Laws of Utah 2015, Chapter 412
 53-8-206, as last amended by Laws of Utah 2015, Chapter 429

ENACTS:

53-8-214, Utah Code Annotated 1953

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

Section 1. Section 13-51-107 is amended to read:**13-51-107. Driver requirements.**

(1) Before a transportation network company allows an individual to use the transportation network company's software application as a transportation network driver, the transportation network company shall:

(a) require the individual to submit to the transportation network company:

- (i) the individual's name, address, and age;
- (ii) a copy of the individual's driver license, including the driver license number; and
- (iii) proof that the vehicle that the individual will use to provide transportation network services is registered with the Division of Motor Vehicles;

(b) require the individual to consent to a criminal background check of the individual by the transportation network company or the transportation network company's designee; and

(c) obtain and review a report that lists the individual's driving history.

(2) A transportation company may not allow an individual to provide transportation network services as a transportation network driver if the individual:

(a) has committed more than three moving violations in the three years before the day on which the individual applies to become a transportation network driver;

(b) has been convicted, in the seven years before the day on which the individual applies to become a transportation network driver, of:

- (i) driving under the influence of alcohol or drugs;
- (ii) fraud;
- (iii) a sexual offense;
- (iv) a felony involving a motor vehicle;
- (v) a crime involving property damage;
- (vi) a crime involving theft;
- (vii) a crime of violence; or
- (viii) an act of terror;

(c) is required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry;

- (d) does not have a valid Utah driver license; or
- (e) is not at least 19 years of age.

(3) A transportation network company shall prohibit a transportation network driver from accepting a request for a prearranged ride if the motor vehicle that the transportation network driver uses to provide transportation network services fails to comply with:

~~[(a) safety and inspection requirements described in Section 53-8-205;]~~

~~[(b) (a) equipment standards described in Section 41-6a-1601; and~~

~~[(e) (b) emission requirements adopted by a county under Section 41-6a-1642.~~

(4) A transportation network driver, while providing transportation network services, shall carry proof, in physical or electronic form, that the transportation network driver is covered by insurance that satisfies the requirements of Section 13-51-108.

Section 2. Section 41-1a-203 is amended to read:

41-1a-203. Prerequisites for registration, transfer of ownership, or registration renewal.

(1) Except as otherwise provided, ~~[(prior to) before~~ registration of a vehicle, an owner shall:

(a) obtain an identification number inspection under Section 41-1a-204;

~~[(b) obtain a safety inspection certificate, if required in the current year, as provided under Sections 41-1a-205 and 53-8-205;]~~

~~[(e) (b) obtain a certificate of emissions inspection, if required in the current year, as provided under Section 41-6a-1642;~~

~~[(d) (c) pay property taxes, the in lieu fee, or receive a property tax clearance under Section 41-1a-206 or 41-1a-207;~~

~~[(e) (d) pay the automobile driver education tax required by Section 41-1a-208;~~

~~[(f) (e) pay the applicable registration fee under Part 12, Fee and Tax Requirements;~~

~~[(g) (f) pay the uninsured motorist identification fee under Section 41-1a-1218, if applicable;~~

~~[(h) (g) pay the motor carrier fee under Section 41-1a-1219, if applicable;~~

~~[(i) (h) pay any applicable local emissions compliance fee under Section 41-1a-1223; and~~

~~[(j) (i) pay the taxes applicable under Title 59, Chapter 12, Sales and Use Tax Act.~~

(2) In addition to the requirements in Subsection (1), an owner ~~[(whose) of a vehicle that has not been previously registered or that is currently registered under a previous owner's name shall [also] apply for a valid certificate of title in the owner's name [prior to] before~~ registration.

(3) ~~[(A) The division may not issue a new registration, transfer of ownership, or registration renewal under Section 73-18-7 [may not be issued] for a vessel or outboard motor that is subject to [the title provisions of] this chapter unless a certificate of title has been or is in the process of being issued in the same owner's name.~~

(4) ~~[(A) The division may not issue a new registration, transfer of ownership, or registration renewal under Section 41-22-3 [may not be issued] for an off-highway vehicle that is subject to [the titling provisions of] this chapter unless a certificate of title has been or is in the process of being issued in the same owner's name.~~

Section 3. Section 41-1a-205 is amended to read:

41-1a-205. Safety inspection certificate required for commercial motor vehicles and initial registration of street-legal ATVs and salvage vehicles.

~~[(1) If required in the current year, a safety inspection certificate, as required by Section 53-8-205, or proof of exemption from safety inspection shall be presented at the time of, and as a condition of, registration or renewal of registration of a motor vehicle.]~~

~~[(2) (a) Except as provided in Subsections (2)(b), (e), and (d), the safety inspection required under this section may be made no more than two months prior to the renewal of registration.]~~

~~[(b) (i) If the title of a used motor vehicle is being transferred, a safety inspection certificate issued for the motor vehicle during the previous 11 months may be used to satisfy the requirement under Subsection (1).]~~

~~[(ii) If the transferor is a licensed and bonded used motor vehicle dealer, a safety inspection certificate issued for the motor vehicle in a licensed and~~

bonded motor vehicle dealer's name during the previous 11 months may be used to satisfy the requirement under Subsection (1).]

~~[(c) If the title of a leased vehicle is being transferred to the lessee of the vehicle, a safety inspection certificate issued during the previous 11 months may be used to satisfy the requirement under Subsection (1).]~~

~~[(d) If the motor vehicle is part of a fleet of 101 or more vehicles, the safety inspection required under this section may be made no more than 11 months prior to the renewal of registration.]~~

~~[(e) If the application for renewal of registration is for a six-month registration period under Section 41-1a-215.5, a safety inspection certificate issued during the previous eight months may be used to satisfy the requirement under Subsection (1).]~~

~~[(3) (a) The following motor vehicles are exempt from this section:]~~

~~[(i) except as provided in Subsection (3)(b), a new motor vehicle when registered the first time, if:]~~

~~[(A) a new car pre-delivery inspection has been made by a dealer;]~~

~~[(B) the dealer provides a written disclosure statement listing any known deficiency, existing with the new motor vehicle at the time of delivery, that would cause the motor vehicle to fail a safety inspection given in accordance with Section 53-8-205; and]~~

~~[(C) the buyer signs the disclosure statement to acknowledge that the buyer has read and understands the listed deficiencies;]~~

~~[(ii) a motor vehicle required to be registered under this chapter that bears a dealer plate or other special plate under Title 41, Chapter 3, Part 5, Special Dealer License Plates, except that if the motor vehicle is propelled by its own power and is not being moved for repair or dismantling, the motor vehicle shall comply with Section 41-6a-1601 regarding safe mechanical condition; and]~~

~~[(iii) a vintage vehicle as defined in Section 41-21-1.]~~

~~[(b) (1) A street-legal all-terrain vehicle registered in accordance with Section 41-6a-1509 is subject to a safety inspection[: (i)] the first time that a person registers an off-highway vehicle as a street-legal all-terrain vehicle[: and].]~~

~~[(ii) subsequently, on the same frequency as described in Subsection 53-8-205(2) based on the age of the vehicle as determined by the model year identified by the manufacturer.]~~

~~(2) A salvage vehicle as defined in Section 41-1a-1001 is subject to a safety inspection when the owner makes the initial application to register the vehicle as a salvage vehicle.~~

~~[(4) (a) (3) A safety inspection certificate shall be displayed on:~~

~~[(i) (a) all registered commercial [motor] vehicles [with a gross vehicle weight rating of 26,000 pounds or more] as defined in Section 72-9-102;~~

~~[(ii) (b) a motor vehicle with three or more axles, pulling a trailer, or pulling a trailer with multiple axles;~~

~~[(iii) (c) a combination unit; [and]~~

~~[(iv) (d) a bus or van for hire[:];]~~

~~(e) a taxicab; and~~

~~(f) a motor vehicle operated by a ground transportation service provider as defined in Section 72-10-601.~~

~~[(b) A commercial vehicle under Subsection (4)(a) is exempt from the requirements of Subsection (1).]~~

~~[(5) A motor vehicle may be sold and the title assigned to the new owner without a valid safety inspection, but the motor vehicle may not be registered in the new owner's name until the motor vehicle complies with this section.]~~

~~[(6) (4) A violation of this section is an infraction.~~

Section 4. Section 41-1a-217 is amended to read:

41-1a-217. Application for renewal of registration.

(1) ~~[Renewal of]~~ An applicant may renew a vehicle registration ~~[shall be made by the owner upon]~~ by:

(a) filing an application for registration renewal; and ~~[by payment of]~~

(b) paying the fees or taxes required under Subsection 41-1a-203(1).

(2) The applicant shall ensure that the application for registration renewal and the payment for applicable fees or taxes ~~[shall be]~~ is accompanied by ~~a[: (a) safety inspection certificate as required under Section 41-1a-205; and (b)]~~ certificate of emissions inspection ~~[as]~~ if required under Section 41-6a-1642.

(3) The division shall issue a new registration card ~~[issued shall show]~~ that contains:

(a) the identical information with respect to the owner and the vehicle description required by Section 41-1a-213; and

(b) the new expiration date.

Section 5. Section 41-1a-226 is amended to read:

41-1a-226. Vintage vehicle -- Signed statement -- Registration.

(1) The owner of a vintage vehicle who applies for registration under this part shall provide a signed statement that the vintage vehicle:

(a) is owned and operated for the purposes described in Section 41-21-1; and

(b) is safe to operate on the highways of this state as described in Section 41-21-4.

(2) The signed statement described in Subsection (1) is in lieu of: ~~(a) a safety inspection, from which a vintage vehicle is exempt under Subsection 41-1a-205(3); and (b)] an emissions inspection, from which a vintage vehicle is exempt under Subsection 41-6a-1642(3).~~

Section 6. Section 41-1a-1201 is amended to read:

41-1a-1201. Disposition of fees.

(1) All fees received and collected under this part shall be transmitted daily to the state treasurer.

(2) Except as provided in Subsections (3), (6), ~~and~~ (7), and (8) and Sections 41-1a-422, 41-1a-1220, ~~41-1a-1221~~, and 41-1a-1223 all fees collected under this part shall be deposited in the Transportation Fund.

(3) Funds generated under Subsections 41-1a-1211(1)(b)(ii), (6)(b)(ii), and (7) and Section 41-1a-1212 may be used by the commission to cover the costs incurred in issuing license plates under Part 4, License Plates and Registration Indicia.

(4) In accordance with Section 63J-1-602.2, all funds available to the commission for the purchase and distribution of license plates and decals are nonlapsing.

(5) (a) Except as provided in Subsections (3) and (5)(b) and Section 41-1a-1205, the expenses of the commission in enforcing and administering this part shall be provided for by legislative appropriation from the revenues of the Transportation Fund.

(b) Three dollars of the registration fees imposed under Subsections 41-1a-1206(2)(a) and (b) for each vehicle registered for a six-month registration period under Section 41-1a-215.5 may be used by the commission to cover the costs incurred in enforcing and administering this part.

(6) (a) The following portions of the registration fees imposed under Section 41-1a-1206 for each vehicle shall be deposited in the Transportation Investment Fund of 2005 created under Section 72-2-124:

(i) \$30 of the registration fees imposed under Subsections 41-1a-1206(1)(a), (1)(b), (1)(f), (3), and (6);

(ii) \$21 of the registration fees imposed under Subsections 41-1a-1206(1)(c)(i) and (1)(c)(ii);

(iii) \$2.50 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(ii);

(iv) \$23 of the registration fee imposed under Subsection 41-1a-1206(1)(d)(i);

(v) \$24.50 of the registration fee imposed under Subsection 41-1a-1206(1)(e)(i); and

(vi) \$1 of the registration fee imposed under Subsection 41-1a-1206(1)(d)(ii).

(b) The following portions of the registration fees collected for each vehicle registered for a six-month registration period under Section 41-1a-215.5

shall be deposited in the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) \$23.25 of each registration fee collected under Subsection 41-1a-1206(2)(a); and

(ii) \$23 of each registration fee collected under Subsection 41-1a-1206(2)(b).

(7) (a) Ninety-four cents of each registration fee imposed under Subsections 41-1a-1206(1)(a) and (b) for each vehicle shall be deposited in the Public Safety Restricted Account created in Section 53-3-106.

(b) Seventy-one cents of each registration fee imposed under Subsections 41-1a-1206(2)(a) and (b) for each vehicle registered for a six-month registration period under Section 41-1a-215.5 shall be deposited in the Public Safety Restricted Account created in Section 53-3-106.

(8) (a) One dollar of each registration fee imposed under Subsections 41-1a-1206(1)(a) and (b) for each vehicle shall be deposited into the Motor Vehicle Safety Impact Restricted Account created in Section 53-3-214.

(b) One dollar of each registration fee imposed under Subsections 41-1a-1206(2)(a) and (b) for each vehicle registered for a six-month registration period under Section 41-1a-215.5 shall be deposited into the Motor Vehicle Safety Impact Restricted Account created in Section 53-3-214.

Section 7. Section 41-1a-1206 is amended to read:

41-1a-1206. Registration fees -- Fees by gross laden weight.

(1) Except as provided in Subsections (2) and (3), at the time application is made for registration or renewal of registration of a vehicle or combination of vehicles under this chapter, a registration fee shall be paid to the division as follows:

(a) ~~[\$44.50]~~ \$45.50 for each motorcycle;

(b) ~~[\$43]~~ \$44 for each motor vehicle of 12,000 pounds or less gross laden weight, excluding motorcycles;

(c) unless the semitrailer or trailer is exempt from registration under Section 41-1a-202 or is registered under Section 41-1a-301:

(i) \$31 for each trailer or semitrailer over 750 pounds gross unladen weight; or

(ii) \$28.50 for each commercial trailer or commercial semitrailer of 750 pounds or less gross unladen weight;

(d) (i) \$53 for each farm truck over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) \$9 for each 2,000 pounds over 14,000 pounds gross laden weight;

(e) (i) \$69.50 for each motor vehicle or combination of motor vehicles, excluding farm trucks, over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) \$19 for each 2,000 pounds over 14,000 pounds gross laden weight;

(f) (i) \$69.50 for each park model recreational vehicle over 12,000 pounds, but not exceeding 14,000 pounds gross laden weight; plus

(ii) \$19 for each 2,000 pounds over 14,000 pounds gross laden weight; and

(g) \$45 for each vintage vehicle that is less than 40 years old.

(2) At the time application is made for registration or renewal of registration of a vehicle under this chapter for a six-month registration period under Section 41-1a-215.5, a registration fee shall be paid to the division as follows:

(a) ~~[\$33.50]~~ \$34.50 for each motorcycle; and

(b) ~~[\$32.50]~~ \$33.50 for each motor vehicle of 12,000 pounds or less gross laden weight, excluding motorcycles.

(3) (a) The initial registration fee for a vintage vehicle that is 40 years old or older is \$40.

(b) A vintage vehicle that is 40 years old or older is exempt from the renewal of registration fees under Subsection (1).

(c) A vehicle with a Purple Heart special group license plate issued in accordance with Section 41-1a-421 is exempt from the registration fees under Subsection (1).

(d) A camper is exempt from the registration fees under Subsection (1).

(4) If a motor vehicle is operated in combination with a semitrailer or trailer, each motor vehicle shall register for the total gross laden weight of all units of the combination if the total gross laden weight of the combination exceeds 12,000 pounds.

(5) (a) Registration fee categories under this section are based on the gross laden weight declared in the licensee's application for registration.

(b) Gross laden weight shall be computed in units of 2,000 pounds. A fractional part of 2,000 pounds is a full unit.

(6) The owner of a commercial trailer or commercial semitrailer may, as an alternative to registering under Subsection (1)(c), apply for and obtain a special registration and license plate for a fee of \$130.

(7) Except as provided in Section 41-6a-1642, a truck may not be registered as a farm truck unless:

(a) the truck meets the definition of a farm truck under Section 41-1a-102; and

(b) (i) the truck has a gross vehicle weight rating of more than 12,000 pounds; or

(ii) the truck has a gross vehicle weight rating of 12,000 pounds or less and the owner submits to the division a certificate of emissions inspection or a waiver in compliance with Section 41-6a-1642.

(8) A violation of Subsection (7) is an infraction that shall be punished by a fine of not less than \$200.

(9) Trucks used exclusively to pump cement, bore wells, or perform crane services with a crane lift capacity of five or more tons, are exempt from 50% of the amount of the fees required for those vehicles under this section.

Section 8. Section 41-3-303 is amended to read:

**41-3-303. Temporary permits --
Inspections required before issuance.**

(1) [A] Except as provided in Subsections (2) and (3), a dealer licensed in accordance with this chapter may not issue a temporary permit for a motor vehicle under Section 41-3-302 unless ~~(a) (i) the motor vehicle for which the temporary permit is issued has received and passed the safety inspection if required in the current year under Section 53-8-205 within the previous 11 months; (ii) the safety inspection certificate was issued in the name of a licensed and bonded dealer; and (iii) a copy of the safety inspection certificate is given to the customer; and (b) the motor vehicle passed [the emission] an emissions inspection test if required by Section 41-6a-1642.~~

~~(2) Notwithstanding Subsection (1)(a), a dealer may issue a temporary permit without a safety inspection certificate if the motor vehicle complies with the safety inspection as provided in Section 41-1a-205.]~~

~~(3) Notwithstanding Subsection (1)(b), a]~~

(2) A dealer may issue a temporary permit without proof of an ~~[emission]~~ emissions inspection if:

(a) the motor vehicle is exempt from ~~[emission]~~ an emissions inspection ~~[as provided in]~~ under Section 41-6a-1642;

(b) the purchaser is a resident of a county that does not require ~~[emission]~~ emissions inspections; or

(c) the motor vehicle is otherwise exempt from ~~[emission]~~ emissions inspections.

~~(4) Notwithstanding Subsection (1), a]~~

(3) A dealer may sell a motor vehicle as is without ~~[having it safety or emission inspected provided that no]~~ an emissions inspection if the dealer does not issue a temporary permit ~~[is issued].~~

Section 9. Section 41-6a-1508 is amended to read:

41-6a-1508. Low-speed vehicle.

(1) Except as otherwise provided in this section, a low-speed vehicle is considered a motor vehicle for purposes of the Utah Code including requirements for:

(a) traffic rules under Title 41, Chapter 6a, Traffic Code;

(b) driver licensing under Title 53, Chapter 3, Uniform Driver License Act;

(c) motor vehicle insurance under Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act;

(d) vehicle registration, titling, vehicle identification numbers, license plates, and registration fees under Title 41, Chapter 1a, Motor Vehicle Act;

(e) vehicle taxation under Title 59, Chapter 13, Motor and Special Fuel Tax Act, and fee in lieu of property taxes or in lieu fees under Section 59-2-405;

(f) motor vehicle dealer licensing under Title 41, Chapter 3, Motor Vehicle Business Regulation Act; and

~~[(g) motor vehicle safety inspection requirements under Section 53-8-205; and]~~

~~[(h) (g) safety belt requirements under [Title 41, Chapter 6a,] Part 18, Motor Vehicle Safety Belt Usage Act.~~

(2) (a) [A] The owner of a low-speed vehicle shall ~~comply~~ ensure that the low-speed vehicle:

(i) complies with federal safety standards established in 49 C.F.R. 571.500; and ~~[shall be]~~

(ii) is equipped with:

~~[(i)]~~ (A) headlamps;

~~[(iii)]~~ (B) front and rear turn signals, tail lamps, and stop lamps;

~~[(iii)]~~ (C) turn signal lamps;

~~[(iv)]~~ (D) reflex reflectors one on the rear of the vehicle and one on the left and right side and as far to the rear of the vehicle as practical;

~~[(v)]~~ (E) a parking brake;

~~[(vi)]~~ (F) a windshield that meets the standards under Section 41-6a-1635, including a device for cleaning rain, snow, or other moisture from the windshield; and

~~[(vii)]~~ (G) an exterior rearview mirror on the driver's side and either an interior rearview mirror or an exterior rearview mirror on the passenger side.

(b) A low-speed vehicle that complies with this Subsection (2) and Subsection (3) and that is not altered from the manufacturer is considered to comply with equipment requirements under Part 16, Vehicle Equipment.

(3) A person may not operate a low-speed vehicle that has been structurally altered from the original manufacturer's design.

(4) A low-speed vehicle is exempt from a motor vehicle emissions inspection and maintenance program requirements under Section 41-6a-1642.

(5) (a) Except to cross a highway at an intersection, a low-speed vehicle may not be operated on a highway with a posted speed limit of more than 35 miles per hour.

(b) In addition to the restrictions under Subsection (5)(a), a highway authority, may prohibit or restrict the operation of a low-speed vehicle on any highway under its jurisdiction, if the highway authority determines the prohibition or restriction is necessary for public safety.

(6) A person may not operate a low-speed vehicle on a highway without displaying on the rear of the low-speed vehicle, a slow-moving vehicle identification emblem that complies with the Society of Automotive Engineers standard SAE J943.

(7) A person who violates Subsection (2), (3), (5), or (6) is guilty of an infraction.

Section 10. Section 41-6a-1509 is amended to read:

41-6a-1509. Street-legal all-terrain vehicle -- Operation on highways -- Registration and licensing requirements -- Equipment requirements.

(1) (a) Except as provided in Subsection (1)(b), an all-terrain type I vehicle, utility type vehicle, or full-sized all-terrain vehicle that meets the requirements of this section may be operated as a street-legal ATV on a street or highway unless the highway is an interstate freeway as defined in Section 41-6a-102.

(b) Unless a street or highway is designated as open for street-legal ATV use by the controlling highway authority in accordance with Section 41-22-10.5, a person may not operate a street-legal ATV on a street or highway in accordance with Subsection (1)(a) if the highway is under the jurisdiction of:

(i) a county of the first class; or

(ii) a municipality that is within a county of the first class.

(2) A street-legal ATV shall comply with Subsection 41-1a-205(1), Subsection 53-8-205(1)(b), and the same requirements as:

(a) a motorcycle for:

(i) traffic rules under Title 41, Chapter 6a, Traffic Code;

(ii) registration, titling, odometer statement, vehicle identification, license plates, and registration fees under Title 41, Chapter 1a, Motor Vehicle Act;

(iii) fees in lieu of property taxes or in lieu of fees under Section 59-2-405.2; and

(iv) the county motor vehicle emissions inspection and maintenance programs under Section 41-6a-1642;

(b) a motor vehicle for:

(i) driver licensing under Title 53, Chapter 3, Uniform Driver License Act; and

(ii) motor vehicle insurance under Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators Act; and

~~[(iii) safety inspection requirements under Title 53, Chapter 8, Part 2, Motor Vehicle Safety Inspection Act, except that a street-legal ATV shall be subject to a safety inspection: (A) when registered for the first time; and]~~

~~[(B) subsequently, on the same frequency as described in Subsection 53-8-205(2) based on the age of the vehicle as determined by the model year identified by the manufacturer; and]~~

(c) an all-terrain type I or type II vehicle for off-highway vehicle provisions under Title 41, Chapter 22, Off-Highway Vehicles, and Title 41, Chapter 3, Motor Vehicle Business Regulation Act, unless otherwise specified in this section.

(3) (a) ~~[An] The owner of an all-terrain type I vehicle [and] or a utility type vehicle being operated as a street-legal ATV shall [be] ensure that the vehicle is equipped with:~~

(i) one or more headlamps that meet the requirements of Section 41-6a-1603;

(ii) one or more tail lamps;

(iii) a tail lamp or other lamp constructed and placed to illuminate the registration plate with a white light;

(iv) one or more red reflectors on the rear;

(v) one or more stop lamps on the rear;

(vi) amber or red electric turn signals, one on each side of the front and rear;

(vii) a braking system, other than a parking brake, that meets the requirements of Section 41-6a-1623;

(viii) a horn or other warning device that meets the requirements of Section 41-6a-1625;

(ix) a muffler and emission control system that meets the requirements of Section 41-6a-1626;

(x) rearview mirrors on the right and left side of the driver in accordance with Section 41-6a-1627;

(xi) a windshield, unless the operator wears eye protection while operating the vehicle;

(xii) a speedometer, illuminated for nighttime operation;

(xiii) for vehicles designed by the manufacturer for carrying one or more passengers, a seat designed for passengers, including a footrest and handhold for each passenger;

(xiv) for vehicles with side-by-side seating, seatbelts for each vehicle occupant; and

(xv) tires that:

(A) are not larger than the tires that the all-terrain vehicle manufacturer made available for the all-terrain vehicle model; and

(B) have at least 2/32 inches or greater tire tread.

(b) ~~[A] The owner of a full-sized all-terrain vehicle being operated as a street-legal all-terrain~~

vehicle shall ~~[be] ensure that the vehicle is~~ equipped with:

(i) two headlamps that meet the requirements of Section 41-6a-1603;

(ii) two tail lamps;

(iii) a tail lamp or other lamp constructed and placed to illuminate the registration plate with a white light;

(iv) one or more red reflectors on the rear;

(v) two stop lamps on the rear;

(vi) amber or red electric turn signals, one on each side of the front and rear;

(vii) a braking system, other than a parking brake, that meets the requirements of Section 41-6a-1623;

(viii) a horn or other warning device that meets the requirements of Section 41-6a-1625;

(ix) a muffler and emission control system that meets the requirements of Section 41-6a-1626;

(x) rearview mirrors on the right and left side of the driver in accordance with Section 41-6a-1627;

(xi) a windshield, unless the operator wears eye protection while operating the vehicle;

(xii) a speedometer, illuminated for nighttime operation;

(xiii) for vehicles designed by the manufacturer for carrying one or more passengers, a seat designed for passengers, including a footrest and handhold for each passenger;

(xiv) for vehicles with side-by-side seating, seatbelts for each vehicle occupant; and

(xv) tires that:

(A) do not exceed 44 inches in height; and

(B) have at least 2/32 inches or greater tire tread.

(c) ~~[A] The owner of a street-legal all-terrain vehicle is not required to [be equipped] equip the vehicle with wheel covers, mudguards, flaps, or splash aprons.~~

(4) (a) Subject to the ~~[requirement in] requirements of Subsection (4)(b), an operator of a street-legal all-terrain vehicle, when operating a street-legal all-terrain vehicle on a highway, may not exceed the lesser of:~~

(i) the posted speed limit; or

(ii) 50 miles per hour.

(b) An operator of a street-legal all-terrain vehicle, when operating a street-legal all-terrain vehicle on a highway with a posted speed limit higher than 50 miles per hour, shall:

(i) operate the street-legal all-terrain vehicle on the extreme right hand side of the roadway; and

(ii) equip the street-legal all-terrain vehicle with a reflector or reflective tape to the front and back of both sides of the vehicle.

(5) (a) A nonresident operator of an off-highway vehicle that is authorized to be operated on the highways of another state has the same rights and privileges as a street-legal ATV that is granted operating privileges on the highways of this state, subject to the restrictions under this section and rules made by the Board of Parks and Recreation, if the other state offers reciprocal operating privileges to Utah residents.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Board of Parks and Recreation shall establish eligibility requirements for reciprocal operating privileges for nonresident users granted under Subsection (5)(a).

(6) Nothing in this chapter [~~shall restrict the operation of~~] restricts the owner of an off-highway vehicle from operating the off-highway vehicle in accordance with Section 41-22-10.5.

(7) A violation of this section is an infraction.

Section 11. Section 41-6a-1642 is amended to read:

41-6a-1642. Emissions inspection -- County program.

(1) The legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard shall require:

(a) a certificate of emissions inspection, a waiver, or other evidence the motor vehicle is exempt from emissions inspection and maintenance program requirements be presented:

(i) as a condition of registration or renewal of registration; and

(ii) at other times as the county legislative body may require to enforce inspection requirements for individual motor vehicles, except that the county legislative body may not routinely require a certificate of emission inspection, or waiver of the certificate, more often than required under Subsection (6); and

(b) compliance with this section for a motor vehicle registered or principally operated in the county and owned by or being used by a department, division, instrumentality, agency, or employee of:

(i) the federal government;

(ii) the state and any of its agencies; or

(iii) a political subdivision of the state, including school districts.

(2) (a) The legislative body of a county identified in Subsection (1), in consultation with the Air Quality Board created under Section 19-1-106, shall make regulations or ordinances regarding:

(i) emissions standards;

(ii) test procedures;

(iii) inspections stations;

(iv) repair requirements and dollar limits for correction of deficiencies; and

(v) certificates of emissions inspections.

(b) The regulations or ordinances shall:

(i) be made to attain or maintain ambient air quality standards in the county, consistent with the state implementation plan and federal requirements;

(ii) may allow for a phase-in of the program by geographical area; and

(iii) be compliant with the analyzer design and certification requirements contained in the state implementation plan prepared under Title 19, Chapter 2, Air Conservation Act.

(c) The county legislative body and the Air Quality Board shall give preference to an inspection and maintenance program that is:

(i) decentralized, to the extent the decentralized program will attain and maintain ambient air quality standards and meet federal requirements;

(ii) the most cost effective means to achieve and maintain the maximum benefit with regard to ambient air quality standards and to meet federal air quality requirements as related to vehicle emissions; and

(iii) providing a reasonable phase-out period for replacement of air pollution emission testing equipment made obsolete by the program.

(d) The provisions of Subsection (2)(c)(iii) apply only to the extent the phase-out:

(i) may be accomplished in accordance with applicable federal requirements; and

(ii) does not otherwise interfere with the attainment and maintenance of ambient air quality standards.

(3) The following vehicles are exempt from the provisions of this section:

(a) an implement of husbandry;

(b) a motor vehicle that:

(i) meets the definition of a farm truck under Section 41-1a-102; and

(ii) has a gross vehicle weight rating of 12,001 pounds or more;

(c) a vintage vehicle as defined in Section 41-21-1;

(d) a custom vehicle as defined in Section 41-6a-1507; and

(e) to the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42 U.S.C. Sec. 7401, et seq., a motor vehicle that is less than two years old on January 1 based on the age of the vehicle as determined by the model year identified by the manufacturer.

(4) (a) The legislative body of a county identified in Subsection (1) shall exempt a pickup truck, as

defined in Section 41-1a-102, with a gross vehicle weight of 12,000 pounds or less from the emission inspection requirements of this section, if the registered owner of the pickup truck provides a signed statement to the legislative body stating the truck is used:

(i) by the owner or operator of a farm located on property that qualifies as land in agricultural use under Sections 59-2-502 and 59-2-503; and

(ii) exclusively for the following purposes in operating the farm:

(A) for the transportation of farm products, including livestock and its products, poultry and its products, floricultural and horticultural products; and

(B) in the transportation of farm supplies, including tile, fence, and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production and maintenance.

(b) The county shall provide to the registered owner who signs and submits a signed statement under this section a certificate of exemption from emission inspection requirements for purposes of registering the exempt vehicle.

(5) (a) Subject to Subsection (5)(c), the legislative body of each county required under federal law to utilize a motor vehicle emissions inspection and maintenance program or in which an emissions inspection and maintenance program is necessary to attain or maintain any national ambient air quality standard may require each college or university located in a county subject to this section to require its students and employees who park a motor vehicle not registered in a county subject to this section to provide proof of compliance with an emissions inspection accepted by the county legislative body if the motor vehicle is parked on the college or university campus or property.

(b) College or university parking areas that are metered or for which payment is required per use are not subject to the requirements of this Subsection (5).

(c) The legislative body of a county shall make the reasons for implementing the provisions of this Subsection (5) part of the record at the time that the county legislative body takes its official action to implement the provisions of this Subsection (5).

(6) (a) An emissions inspection station shall issue a certificate of emissions inspection for each motor vehicle that meets the inspection and maintenance program requirements established in rules made under Subsection (2).

(b) The frequency of the emissions inspection shall be determined based on the age of the vehicle as determined by model year and shall be required annually subject to the provisions of Subsection (6)(c).

(c) (i) To the extent allowed under the current federally approved state implementation plan, in accordance with the federal Clean Air Act, 42

U.S.C. Sec. 7401 et seq., the legislative body of a county identified in Subsection (1) shall only require the emissions inspection every two years for each vehicle.

(ii) The provisions of Subsection (6)(c)(i) apply only to a vehicle that is less than six years old on January 1.

(iii) For a county required to implement a new vehicle emissions inspection and maintenance program on or after December 1, 2012, under Subsection (1), but for which no current federally approved state implementation plan exists, a vehicle shall be tested at a frequency determined by the county legislative body, in consultation with the Air Quality Board created under Section 19-1-106, that is necessary to comply with federal law or attain or maintain any national ambient air quality standard.

(iv) If a county legislative body establishes or changes the frequency of a vehicle emissions inspection and maintenance program under Subsection (6)(c)(iii), the establishment or change shall take effect on January 1 if the Tax Commission receives notice meeting the requirements of Subsection (6)(c)(v) from the county ~~[prior to]~~ before October 1.

(v) The notice described in Subsection (6)(c)(iv) shall:

(A) state that the county will establish or change the frequency of the vehicle emissions inspection and maintenance program under this section;

(B) include a copy of the ordinance establishing or changing the frequency; and

(C) if the county establishes or changes the frequency under this section, state how frequently the emissions testing will be required.

(d) If an emissions inspection is only required every two years for a vehicle under Subsection (6)(c), the inspection shall be required for the vehicle in:

(i) odd-numbered years for vehicles with odd-numbered model years; or

(ii) in even-numbered years for vehicles with even-numbered model years.

~~[(7) The emissions inspection shall be required within the same time limit applicable to a safety inspection under Section 41-1a-205.]~~

(7) (a) Except as provided in Subsections (7)(b), (c), and (d), the emissions inspection required under this section may be made no more than two months before the renewal of registration.

(b) (i) If the title of a used motor vehicle is being transferred, the owner may use an emissions inspection certificate issued for the motor vehicle during the previous 11 months to satisfy the requirement under this section.

(ii) If the transferor is a licensed and bonded used motor vehicle dealer, the owner may use an emissions inspection certificate issued for the motor vehicle in a licensed and bonded motor vehicle

dealer's name during the previous 11 months to satisfy the requirement under this section.

(c) If the title of a leased vehicle is being transferred to the lessee of the vehicle, the lessee may use an emissions inspection certificate issued during the previous 11 months to satisfy the requirement under this section.

(d) If the motor vehicle is part of a fleet of 101 or more vehicles, the owner may not use an emissions inspection made more than 11 months before the renewal of registration to satisfy the requirement under this section.

(e) If the application for renewal of registration is for a six-month registration period under Section 41-1a-215.5, the owner may use an emissions inspection certificate issued during the previous eight months to satisfy the requirement under this section.

(8) (a) A county identified in Subsection (1) shall collect information about and monitor the program.

(b) A county identified in Subsection (1) shall supply this information to an appropriate legislative committee, as designated by the Legislative Management Committee, at times determined by the designated committee to identify program needs, including funding needs.

(9) If approved by the county legislative body, a county that had an established emissions inspection fee as of January 1, 2002, may increase the established fee that an emissions inspection station may charge by \$2.50 for each year that is exempted from emissions inspections under Subsection (6)(c) up to a \$7.50 increase.

(10) (a) A county identified in Subsection (1) may impose a local emissions compliance fee on each motor vehicle registration within the county in accordance with the procedures and requirements of Section 41-1a-1223.

(b) A county that imposes a local emissions compliance fee shall use revenues generated from the fee for the establishment and enforcement of an emissions inspection and maintenance program in accordance with the requirements of this section.

Section 12. Section 41-6a-1803 is amended to read:

41-6a-1803. Driver and passengers -- Seat belt or child restraint device required.

(1) (a) The operator of a motor vehicle operated on a highway shall:

(i) wear a properly adjusted and fastened safety belt;

(ii) provide for the protection of each person younger than eight years of age by using a child restraint device to restrain each person in the manner prescribed by the manufacturer of the device; and

(iii) provide for the protection of each person eight years of age up to 16 years of age by securing, or

causing to be secured, a properly adjusted and fastened safety belt on each person.

(b) Notwithstanding the requirement under Subsection (1)(a)(ii), a child under eight years of age who is 57 inches tall or taller:

(i) is exempt from the requirement in Subsection (1)(a)(ii) to be in a child restraint device; and

(ii) shall use a properly adjusted and fastened safety belt as required in Subsection (1)(a)(iii).

(2) A person 16 years of age or older who is a passenger in a motor vehicle operated on a highway shall wear a properly adjusted and fastened safety belt.

(3) If more than one person is not using a child restraint device or wearing a safety belt in violation of Subsection (1), it is considered only one offense, and the driver may receive only one citation for that offense.

~~[(4) Beginning on July 1, 2018, and for a person 19 years of age or older who violates Subsection (1)(a)(i) or (2), enforcement by a state or local law enforcement officer shall be only as a secondary action when the person has been detained for a suspected violation of Title 41, Motor Vehicles, other than Subsection (1)(a)(i) or (2), or for another offense.]~~

Section 13. Section 41-6a-1805 is amended to read:

41-6a-1805. Penalty for violation.

(1) (a) A person who violates Section 41-6a-1803 is guilty of an infraction and shall be fined a maximum of \$45.

(b) Until July 1, 2018, a peace officer may not issue a citation to an individual for a violation of Section 41-6a-1803 if the person has not previously been warned for a violation of Section 41-6a-1803 but shall issue the individual a warning informing the individual that operating or being a passenger in a vehicle without wearing a properly adjusted and fastened safety belt is prohibited.

(c) The court shall waive all of the fine for a violation of ~~[Section 41-6a-1803 if a person: (i) shows evidence of completion of a 30-minute course approved by the commissioner of the Department of Public Safety that includes education on the benefits of using a safety belt or child restraint device; and (ii) if the violation is for an offense under]~~ Subsection 41-6a-1803(1)(b), ~~if the person submits proof of acquisition, rental, or purchase of a child restraint device.~~

(2) Points for a motor vehicle reportable violation, as defined under Section 53-3-102, may not be assessed against a person for a violation of Section 41-6a-1803.

Section 14. Section 53-8-205 is amended to read:

53-8-205. Safety inspection required for certain vehicles -- Out-of-state permits.

~~[(1) (a) Except as provided in Subsection (1)(b), a person may not operate on a highway a motor~~

vehicle required to be registered in this state unless the motor vehicle has passed a safety inspection if required in the current year.]

~~[(b) Subsection (1)(a) does not apply to:]~~

~~[(i) a vehicle that is exempt from registration under Section 41-1a-205;]~~

~~[(ii) an off-highway vehicle, unless the off-highway vehicle is being registered as a street-legal all-terrain vehicle in accordance with Section 41-6a-1509;]~~

~~[(iii) a vintage vehicle as defined in Section 41-21-1;]~~

~~[(iv) a commercial vehicle with a gross vehicle weight rating over 26,000 pounds that:]~~

~~[(A) is operating with an apportioned registration under Section 41-1a-301; and]~~

~~[(B) has a valid annual federal inspection that complies with the requirements of 49 C.F.R. Sec. 396.17; and]~~

~~[(v) a trailer, semitrailer, or trailering equipment attached to a commercial motor vehicle described in Subsection (1)(b)(iv) that has a valid annual federal inspection that complies with the requirements of 49 C.F.R. Sec. 396.17.]~~

~~[(2) Except as provided in Subsection (3), the frequency of the safety inspection shall be determined based on the age of the vehicle determined by model year and shall:]~~

~~[(a) be required each year for a vehicle that is 10 or more years old on January 1; or]~~

~~[(b) for each vehicle that is less than 10 years old on January 1, be required in the fourth year and the eighth year;]~~

~~[(c) be made by a safety inspector certified by the division at a safety inspection station authorized by the division;]~~

~~[(d) cover an inspection of the motor vehicle mechanism, brakes, and equipment to ensure proper adjustment and condition as required by department rules; and]~~

~~[(e) include an inspection for the display of license plates in accordance with Section 41-1a-404.]~~

~~[(3) (a) (i)] (1) (a) A salvage vehicle as defined in Section 41-1a-1001 is required to pass a safety inspection when an application is made for initial registration as a salvage vehicle.~~

~~[(ii) After initial registration as a salvage vehicle, the frequency of the safety inspection shall correspond with the model year, as provided in Subsection (2).]~~

(b) An off-highway vehicle being registered for the first time as a street-legal all-terrain vehicle as described in Section 41-6a-1509 is required to pass a safety inspection when the owner makes the initial application to register the vehicle as a street-legal all-terrain vehicle.

~~[(b)] (c) [Beginning on the date that the Motor Vehicle Division has implemented the Motor Vehicle Division's GenTax system,] The owner of a commercial vehicle, as defined in Section 41-1a-102, with a gross vehicle weight rating of 10,001 pounds or more is required to pass] 72-9-102, shall:~~

~~(i) ensure that the commercial vehicle passes a safety inspection annually [or comply with Subsection (1)(b)(iv)(B)]; or~~

~~(ii) provide evidence of a valid annual federal inspection that complies with the requirements of 49 C.F.R. Sec. 396.17.~~

~~(d) The owner of a vehicle operated by a ground transportation service provider as defined in Section 72-10-601 shall ensure that the vehicle passes a safety inspection annually.~~

~~(e) An owner of one or more of the following types of vehicles shall ensure that the vehicle passes a safety inspection annually:~~

~~(i) a motor vehicle with three or more axles, pulling a trailer, or pulling a trailer with multiple axles;~~

~~(ii) a combination unit;~~

~~(iii) a bus or van for hire; or~~

~~(iv) a taxicab.~~

~~[(4) (a) (2) A safety inspection station shall issue two safety inspection certificates to the owner of:~~

~~[(i) (a) each motor vehicle that passes a safety inspection under this section; and~~

~~[(ii) (b) a street-legal all-terrain vehicle that meets all the equipment requirements in Section 41-6a-1509.~~

~~[(b) A safety inspection station shall use one safety inspection certificate issued under this Subsection (4) for processing the vehicle registration.]~~

~~[(c) A person operating a motor vehicle shall have in the person's immediate possession a safety inspection certificate or other evidence of compliance with the requirement to obtain a safety inspection under this section.]~~

~~(3) A person operating a motor vehicle required to have an annual safety inspection shall have in the person's immediate possession a safety inspection certificate or other evidence of compliance.~~

~~[(5) (4) The division may[:-(a)] authorize the acceptance [in this state] of a safety inspection certificate issued in another state having a safety inspection law similar to [this state; and] Utah's law.~~

~~[(b) extend the time within which a safety inspection certificate must be obtained by the resident owner of a vehicle that was not in this state during the time a safety inspection was required.]~~

~~[(6) (5) A violation of this section is an infraction.~~

Section 15. Section 53-8-206 is amended to read:

53-8-206. Safety inspection -- Station requirements -- Permits not transferable

**-- Certificate of inspection -- Fees --
Unused certificates -- Suspension or
revocation of permits.**

(1) The safety inspection required under ~~[Section 53-8-205]~~ this part may only be performed:

(a) by a person certified by the division as a safety inspector; and

(b) at a safety inspection station with a valid safety inspection station permit issued by the division.

(2) (a) A safety inspection station permit may not be assigned, or transferred, or used at any location other than a designated location~~[-, and every].~~

(b) The holder of a safety inspection station permit shall ~~[be posted]~~ post the permit in a conspicuous place at the location designated in the permit.

(3) If required by the division, the safety inspector shall keep a record and file a report [shall be made] of every safety inspection and every safety inspection certificate issued.

(4) A safety inspection station holding a safety inspection station permit issued by the division may charge a reasonable fee for labor in performing safety inspections, not to exceed:

(a) \$7 or less for motorcycles and street-legal all-terrain vehicles;

(b) unless Subsection (4)(a) or (c) applies, \$15 or less for motor vehicles; or

(c) \$20 or less for 4-wheel drive, split axle, and any motor vehicles that necessitate disassembly of front hub or removal of rear axle for inspection.

(5) (a) A safety inspection station may return to the division unused safety inspection certificates in a quantity of 10 or more ~~[and].~~

(b) The division shall ~~[be reimbursed by the division]~~ reimburse the station for the cost of [the] the returned safety inspection certificates.

(6) (a) Upon receiving notice of the suspension or revocation of a safety inspection station permit and after the conclusion of any adjudicative proceedings upholding the suspension or revocation, the safety inspection station permit holder shall:

(i) immediately terminate all safety inspection activities; and

(ii) return all safety inspection certificates and the safety inspection station permit to the division.

(b) The division shall issue a receipt for all unused safety inspection certificates.

Section 16. Section 53-8-214 is enacted to read:

53-8-214. Creation of the Motor Vehicle Safety Impact Restricted Account.

(1) There is created a restricted account within the General Fund known as the Motor Vehicle Safety Impact Restricted Account.

(2) The account includes:

(a) deposits made to the restricted account from registration fees as described in Subsection 41-1a-1201(8);

(b) donations or deposits made to the account; and

(c) any interest earned on the account.

(3) Upon appropriation, the division may use funds in the account to improve motor vehicle safety, mitigate impacts, and enforce safety provisions, including the following:

(a) hiring new Highway Patrol troopers;

(b) payment of overtime for Highway Patrol troopers; and

(c) acquisition of equipment to improve motor vehicle safety impacts and enforcement.

(4) The division shall annually report to the Executive Offices and Criminal Justice Appropriations Subcommittee to justify expenditures and use of funds in the account.

Section 17. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Department of Public Safety —
Programs and Operations

From General Fund \$199,800

From General Fund, One-time \$99,900

From Department of Public Safety
Restricted Account (\$684,100)

From Department of Public Safety
Restricted Account, One-time \$342,100

Schedule of Programs:

Highway Patrol —
Safety Inspections (\$441,900)

ITEM 2

To Department of Public Safety —
Programs and Operations

From General Fund \$199,800

From General Fund, One-time (\$99,900)

From Department of Public Safety
Restricted Account \$684,100

From Department of Public Safety
Restricted Account, One-time (\$342,100)

Schedule of Programs:

Highway Patrol -- Field
Operations \$441,900

Section 18. Effective date.

This bill takes effect on January 1, 2018.

CHAPTER 407**H. B. 283**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

CHILD HOMELESSNESS PREVENTION

Chief Sponsor: Robert M. Spendlove

Senate Sponsor: Evan J. Vickers

Cosponsors: Carl R. Albrecht

Walt Brooks

Adam Gardiner

Sandra Hollins

Kelly B. Miles

Angela Romero

Christine F. Watkins

Mike Winder

LONG TITLE**General Description:**

This bill modifies provisions of the Utah Workforce Services Code.

Highlighted Provisions:

This bill:

- ▶ provides that an additional purpose of the cash assistance available under the Family Employment Program is to prevent families with children from becoming homeless; and
- ▶ provides additional duties of the Utah Intergenerational Welfare Reform Commission related to reducing and preventing homelessness for children.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

35A-3-301, as last amended by Laws of Utah 2015, Chapter 221

35A-9-303, as enacted by Laws of Utah 2013, Chapter 59

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

Section 1. Section 35A-3-301 is amended to read:**35A-3-301. Purpose -- Legislative findings.**

(1) The Legislature finds that:

(a) employment improves the quality of life for parents, children, and individuals by increasing family income, developing job skills, and improving self-esteem; and

(b) the purpose of the cash assistance provided under this part is to assist a parent recipient to obtain employment that is sufficient to sustain a family, to ensure the dignity of those receiving assistance, and to prevent families with children from becoming homeless, and to strengthen families.

(2) The Legislature recognizes that even with assistance, some recipients may be unable to attain complete self-sufficiency.

Section 2. Section 35A-9-303 is amended to read:**35A-9-303. Purpose and duties of commission.**

(1) The commission's purpose is to:

(a) collaborate in sharing and analyzing data and information regarding intergenerational poverty in the state with a primary focus on data and information regarding children who are at risk of continuing the cycle of poverty and welfare dependency unless outside intervention is made;

(b) examine and analyze shared data and information regarding intergenerational poverty, including the data provided by the intergenerational poverty report described in Section 35A-9-201, to identify and develop effective and efficient plans, programs, and recommendations to help at-risk children in the state escape the cycle of poverty and welfare dependency[;], which may include avoiding homelessness among children at risk of remaining in poverty;

(c) implement data-driven policies and programs addressing poverty, public assistance, education, and other areas as needed to measurably reduce the incidence of children in the state who remain in the cycle of poverty and welfare dependency as they become adults;

(d) establish and facilitate improved cooperation between state agencies down to the case worker level in rescuing children from intergenerational poverty and welfare dependency; and

(e) encourage participation and input from the Intergenerational Poverty Advisory Committee established in Section 35A-9-304 and other community resources, including academic experts, advocacy groups, nonprofit corporations, local governments, and religious institutions in exploring strategies and solutions to help children in the state who are victims of intergenerational poverty escape the cycle of poverty and welfare dependency.

(2) The commission shall:

(a) fulfill the commission's purposes as listed in Subsection (1);

(b) study, evaluate, and report on the status and effectiveness of policies, procedures, and programs that provide services to children in the state affected by intergenerational poverty and welfare dependency;

(c) study and evaluate the policies, procedures, and programs implemented by other states and nongovernmental entities that address the needs of children affected by intergenerational poverty and welfare dependency;

(d) (i) identify policies, procedures, and programs, including any lack of interagency data sharing, lack of policy coordination, or current federal

requirements, that are impeding efforts to help children in the state affected by intergenerational poverty escape the poverty cycle and welfare dependency; and

(ii) implement and recommend changes to those policies and procedures;

(e) create an ongoing five- and ten-year plan, which is updated annually, containing:

(i) measurable goals and benchmarks, including future action needed to attain those goals and benchmarks, for:

(A) decreasing the incidence of intergenerational poverty among the state's children, including reducing the incidence of homelessness among children affected by intergenerational poverty; and

(B) increasing the number of the state's children who escape the poverty cycle and welfare dependency;

(ii) implement policy, procedure, and program changes to address the needs of children affected by intergenerational poverty and help those children escape the poverty cycle and welfare dependency, including, as available over time, data to track the effectiveness of each change; and

(iii) recommend policy, procedure, and program changes to address the needs of children affected by intergeneration poverty and to help those children escape the poverty cycle and welfare dependency, including the steps that will be required to make the recommended changes and whether further action is required by the Legislature or the federal government;

(f) ensure that each change and recommended change to a policy, procedure, or program, which is made by the commission, is supported by verifiable data;

(g) protect the privacy of individuals living in poverty by using and distributing the data it collects or examines in compliance with:

(i) federal requirements; and

(ii) the provisions of Title 63G, Chapter 2, Government Records Access and Management Act; and

(h) provide a forum for public comment and participation in efforts to help children in the state escape the cycle of poverty and welfare dependency.

(3) To accomplish its duties, the commission may:

(a) request and receive from any state or local governmental agency or institution, information relating to poverty in the state, including:

(i) reports;

(ii) audits;

(iii) data;

(iv) projections; and

(v) statistics; and

(b) appoint special committees, in addition to the advisory committee described in Section 35A-9-304, to advise and assist the commission.

(4) (a) Members of a special committee described in Subsection (3)(b):

(i) shall be appointed by the commission;

(ii) may be:

(A) members of the commission; or

(B) individuals from the private or public sector; and

(iii) notwithstanding Section 35A-9-305, may not receive reimbursement or pay for work done in relation to the special committee.

(b) A special committee described in Subsection (3)(b) shall report to the commission on the progress of the special committee.

CHAPTER 408**H. B. 286**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

**ESSENTIAL TREATMENT
AND INTERVENTION ACT**

Chief Sponsor: LaVar Christensen

Senate Sponsor: J. Stuart Adams

Cosponsors: Kay J. Christofferson

Kim F. Coleman

James A. Dunnigan

Gage Froerer

Francis D. Gibson

Gregory H. Hughes

Eric K. Hutchings

Karianne Lisonbee

A. Cory Maloy

Kelly B. Miles

Carol Spackman Moss

Michael E. Noel

Derrin R. Owens

Lee B. Perry

Dixon M. Pitcher

Tim Quinn

Edward H. Redd

Keven J. Stratton

R. Curt Webb

LONG TITLE**General Description:**

This bill establishes a process for an individual suffering from a substance use disorder to receive court-ordered essential treatment and intervention.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts the Essential Treatment and Intervention Act; and
- ▶ establishes a system for court-ordered essential treatment and intervention for an individual suffering from a substance use disorder.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-15-602, as last amended by Laws of Utah 2012, Chapter 248

62A-15-641, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8

ENACTS:

62A-15-1201, Utah Code Annotated 1953

62A-15-1202, Utah Code Annotated 1953

62A-15-1203, Utah Code Annotated 1953

62A-15-1204, Utah Code Annotated 1953

62A-15-1205, Utah Code Annotated 1953

62A-15-1206, Utah Code Annotated 1953

62A-15-1207, Utah Code Annotated 1953

62A-15-1208, Utah Code Annotated 1953

62A-15-1209, Utah Code Annotated 1953

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

Section 1. Section 62A-15-602 is amended to read:**62A-15-602. Definitions.**

As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, ~~and~~ Part 10, Declaration for Mental Health Treatment, and Part 12, Essential Treatment and Intervention Act:

(1) "Adult" means a person 18 years of age or older.

(2) "Approved treatment facility or program" means a treatment provider that meets the standards described in Subsection 62A-15-103(2)(a)(v).

~~(3)~~ (3) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area in which the proposed patient resides or is found.

~~(4)~~ (4) "Designated examiner" means a licensed physician familiar with severe mental illness, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness or another licensed mental health professional designated by the division as specially qualified by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section 62A-15-631 may be a designated examiner in the same case.

~~(5)~~ (5) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of an agency that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.

(6) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.

~~(6)~~ (7) "Harmful sexual conduct" means any of the following conduct upon an individual without the individual's consent, or upon an individual who cannot legally consent to the conduct including under the circumstances described in Subsections 76-5-406(1) through (12):

(a) sexual intercourse;

(b) penetration, however slight, of the genital or anal opening of the individual;

(c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or

(d) any sexual act causing substantial emotional injury or bodily pain.

[46] (8) "Institution" means a hospital, or a health facility licensed under the provisions of Section 26-21-9.

[47] (9) "Licensed physician" means an individual licensed under the laws of this state to practice medicine, or a medical officer of the United States government while in this state in the performance of official duties.

[48] (10) "Local comprehensive community mental health center" means an agency or organization that provides treatment and services to residents of a designated geographic area, operated by or under contract with a local mental health authority, in compliance with state standards for local comprehensive community mental health centers.

(11) "Local substance abuse authority" means the same as that term is defined in Section 62A-15-102 and described in Section 17-43-201.

[49] (12) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.

[40] (13) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to interact with and transport persons to any mental health facility.

[41] (14) "Mental illness" means a psychiatric disorder as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association which substantially impairs a person's mental, emotional, behavioral, or related functioning.

[42] (15) "Patient" means an individual who is:

(a) under commitment to the custody or to the treatment services of a local mental health authority[-]; or

(b) undergoing essential treatment and intervention.

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

[44] (17) "Substantial danger" means the person, by his or her behavior, due to mental illness:

(a) is at serious risk to:

(i) commit suicide;

(ii) inflict serious bodily injury on himself or herself; or

(iii) because of his or her actions or inaction, suffer serious bodily injury because he or she is incapable of providing the basic necessities of life, such as food, clothing, and shelter; or

(b) is at serious risk to cause or attempt to cause serious bodily injury or engage in harmful sexual conduct.

[45] (18) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, and other medical treatments that are generally accepted medical and psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

Section 2. Section 62A-15-641 is amended to read:

62A-15-641. Restrictions and limitations -- Civil rights and privileges.

(1) Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to:

(a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside the facility;

(b) receive visitors; and

(c) exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity.

(2) When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division ~~[or to]~~, the appropriate local mental health authority~~[-]~~, the appropriate local substance abuse authority, or an approved treatment facility or program, whichever is most applicable to the patient.

(3) Notwithstanding any limitations authorized under this section on the right of communication, each patient is entitled to communicate by sealed mail with the appropriate local mental health authority, the appropriate local substance abuse authority, an approved treatment facility or program, the division, [his] the patient's attorney, and the court, if any, that ordered [his] the patient's commitment or essential treatment. In no case may the patient be denied a visit with the legal counsel or clergy of the patient's choice.

(4) Local mental health authorities, local substance abuse authorities, and approved

treatment facilities or programs shall provide reasonable means and arrangements for informing involuntary patients of their right to release as provided in this chapter, and for assisting them in making and presenting requests for release.

(5) Mental health facilities, local substance abuse authorities, and approved treatment facilities or programs shall post a statement, [promulgated] created by the division, describing a patient's rights under Utah law.

(6) Notwithstanding Section 53B-17-303, [any person] an individual committed under this chapter has the right to determine the final disposition of [his] that individual's body after death.

Section 3. Section 62A-15-1201 is enacted to read:

Part 12. Essential Treatment and Intervention Act

62A-15-1201. Statement of legislative intent.

To address the serious public health crisis of substance use disorder related deaths and life-threatening opioid addiction, and to allow and enable caring relatives to seek essential treatment and intervention, as may be necessary, on behalf of a sufferer of a substance use disorder, the Legislature enacts the Essential Treatment and Intervention Act.

Section 4. Section 62A-15-1202 is enacted to read:

62A-15-1202. Definitions.

As used in this part:

(1) "Essential treatment examiner" means:

(a) a licensed physician, preferably a psychiatrist, who is designated by the division as specifically qualified by training or experience in the diagnosis of substance use disorder; or

(b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of substance use disorder.

(2) "Relative" means an adult who is a spouse, parent, stepparent, grandparent, child, or sibling of an individual.

(3) "Serious harm" means the individual, due to substance use disorder, is at serious risk of:

(a) drug overdose;

(b) suicide;

(c) serious bodily self-injury;

(d) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter; or

(e) causing or attempting to cause serious bodily injury to another individual.

(4) "Substance use disorder" means the same as that term is defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Section 5. Section 62A-15-1203 is enacted to read:

62A-15-1203. Petition for essential treatment -- Contents -- Guarantee for costs.

(1) A relative seeking essential treatment and intervention for a sufferer of a substance use disorder may file a petition with the district court of the county in which the sufferer of the substance use disorder resides or is found.

(2) The petition shall include:

(a) the respondent's:

(i) legal name;

(ii) date of birth, if known;

(iii) social security number, if known; and

(iv) residence and current location, if known;

(b) the petitioner's relationship to the respondent;

(c) the name and residence of the respondent's legal guardian, if any and if known;

(d) a statement that the respondent:

(i) is suffering from a substance use disorder; and

(ii) if not treated for the substance use disorder presents a serious harm to self or others;

(e) the factual basis for the statement described in Subsection (4)(d); and

(f) at least one specified local substance abuse authority or approved treatment facility or program where the respondent may receive essential treatment.

(3) Any petition filed under this section:

(a) may be accompanied by proof of health insurance to provide for the respondent's essential treatment; and

(b) shall be accompanied by a financial guarantee, signed by the petitioner or another individual, obligating the petitioner or other individual to pay all treatment costs beyond those covered by the respondent's health insurance policy for court-ordered essential treatment for the respondent.

(4) Nothing in this section alters the contractual relationship between a health insurer and an insured individual.

Section 6. Section 62A-15-1204 is enacted to read:

62A-15-1204. Criteria for essential treatment and intervention.

A district court shall order an individual to undergo essential treatment for a substance use

disorder when the district court determines by clear and convincing evidence that the individual:

- (1) suffers from a substance use disorder;
- (2) can reasonably benefit from the essential treatment;
- (3) is unlikely to substantially benefit from a less-restrictive alternative treatment; and
- (4) presents a serious harm to self or others.

Section 7. Section 62A-15-1205 is enacted to read:

62A-15-1205. Proceeding for essential treatment -- Duties of court -- Disposition.

(1) A district court shall review the assertions contained in the verified petition described in Section 62A-15-1203.

(2) If the court determines that the assertions, if true, are sufficient to order the respondent to undergo essential treatment, the court shall:

(a) set an expedited date for a time-sensitive hearing to determine whether the court should order the respondent to undergo essential treatment for a substance use disorder;

(b) provide notice of:

(i) the contents of the petition, including all assertions made;

(ii) a copy of any order for detention or examination;

(iii) the date of the hearing;

(iv) the purpose of the hearing;

(v) the right of the respondent to be represented by legal counsel; and

(vi) the right of the respondent to request a preliminary hearing before submitting to an order for examination;

(c) provide notice to:

(i) the respondent;

(ii) the respondent's guardian, if any; and

(iii) the petitioner; and

(d) subject to the right described in Subsection (2)(b)(vi), order the respondent to be examined before the hearing date by two essential treatment examiners.

(3) The essential treatment examiners shall examine the respondent to determine:

(a) whether the respondent meets each of the criteria described in Section 62A-15-1204;

(b) the severity of the respondent's substance use disorder, if any;

(c) what forms of treatment would substantially benefit the respondent, if the examiner determines that the respondent has a substance use disorder; and

(d) the appropriate duration for essential treatment, if essential treatment is recommended.

(4) An essential treatment examiner shall certify the examiner's findings to the court within 24 hours after completion of the examination.

(5) The court may, based upon the findings of the essential treatment examiners, terminate the proceedings and dismiss the petition.

(6) The parties may, at any time, make a binding stipulation to an essential treatment plan and submit that plan to the court for court order.

(7) At the hearing, the petitioner and the respondent may testify and may cross-examine witnesses.

(8) If, upon completion of the hearing, the court finds that the criteria in Section 62A-15-1204 are met, the court shall order essential treatment for an initial period that:

(a) does not exceed 360 days, subject to periodic review as provided in Section 62A-15-1206; and

(b) (i) is recommended by an essential treatment examiner; or

(ii) is otherwise agreed to at the hearing.

(9) The court shall designate the facility for the essential treatment, as:

(a) described in the petition;

(b) recommended by an essential treatment examiner; or

(c) agreed to at the hearing.

(10) The court shall issue an order that includes the court's findings and the reasons for the court's determination.

(11) The court may order the petitioner to be the respondent's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the respondent's essential treatment.

Section 8. Section 62A-15-1206 is enacted to read:

62A-15-1206. Periodic review -- Discharge.

A local substance abuse authority or an approved treatment facility or program that provides essential treatment shall:

(1) at least every 90 days after the day on which a patient is admitted, unless a court orders otherwise, examine or cause to be examined a patient who has been ordered to receive essential treatment;

(2) notify the patient and the patient's personal representative or guardian, if any, of the substance and results of the examination;

(3) discharge an essential treatment patient if the examination determines that the conditions justifying essential treatment and intervention no longer exist; and

(4) after discharging an essential treatment patient, send a report describing the reasons for

discharge to the clerk of the court where the proceeding for essential treatment was held and to the patient's personal representative or guardian, if any.

Section 9. Section 62A-15-1207 is enacted to read:

62A-15-1207. Seventy-two-hour emergency treatment.

(1) A court may order a respondent to be hospitalized for up to 72 hours if:

(a) an essential treatment examiner has examined the respondent and certified that the respondent meets the criteria described in Section 62A-15-1204; and

(b) the court finds by clear and convincing evidence that the respondent presents an imminent threat of serious harm to self or others as a result of a substance use disorder.

(2) An individual who is admitted to a hospital under this section shall be released from the hospital within 72 hours after admittance, unless a treating physician or essential treatment examiner determines that the individual continues to pose an imminent threat of serious harm to self or others.

(3) If a treating physician or essential treatment examiner makes the determination described in Subsection (2), the individual may be detained for as long as the threat of serious harm remains imminent, but not more than 10 days after the day on which the individual was hospitalized, unless a court orders otherwise.

(4) A treating physician or an essential treatment examiner shall, as frequently as practicable, examine an individual hospitalized under this section and release the individual if the examination determines that a threat of imminent serious harm no longer exists.

Section 10. Section 62A-15-1208 is enacted to read:

62A-15-1208. Confidentiality.

(1) The purpose of Title 62A, Chapter 15, Part 12, Essential Treatment and Intervention Act, is to provide a process for essential treatment and intervention to save lives, preserve families, and reduce substance use disorder, including opioid addiction.

(2) An essential treatment petition and any other document filed in connection with the petition for essential treatment is confidential and protected.

(3) A hearing on an essential treatment petition is closed to the public, and only the following individuals and their legal counsel may be admitted to the hearing:

(a) parties to the petition;

(b) the essential treatment examiners who completed the court-ordered examination under Subsection 62A-15-1205(3);

(c) individuals who have been asked to give testimony; and

(d) individuals to whom notice of the hearing is required to be given under Subsection 62A-15-1205(2)(c).

(4) Testimony, medical evaluations, the petition, and other documents directly related to the adjudication of the petition and presented to the court in the interest of the respondent may not be construed or applied as an admission of guilt to a criminal offense.

(5) A court may, if applicable, enforce a previously existing warrant for a respondent or a warrant for a charge that is unrelated to the essential treatment petition filed under this part.

Section 11. Section 62A-15-1209 is enacted to read:

62A-15-1209. Essential treatment for substance use disorder -- Rights of patient.

All applicable rights guaranteed to a patient by Sections 62A-15-641 and 62A-15-642 shall be guaranteed to an individual who is ordered to undergo essential treatment for a substance use disorder.

CHAPTER 409**H. B. 297**

Passed March 8, 2017

Approved March 25, 2017

Effective May 9, 2017

RENEWABLE ENERGY AMENDMENTS

Chief Sponsor: Stephen G. Handy

Senate Sponsor: J. Stuart Adams

LONG TITLE**General Description:**

This bill amends provisions related to renewable energy contracts.

Highlighted Provisions:

This bill:

- ▶ defines terms.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

54-17-801, as last amended by Laws of Utah 2016,
Chapter 393

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

Section 1. Section 54-17-801 is amended to read:**54-17-801. Definitions.**

As used in this part:

(1) "Contract customer" means a person who executes or will execute a renewable energy contract with a qualified utility.

(2) "Qualified utility" means an electric corporation that serves more than 200,000 retail customers in the state.

(3) "Renewable energy contract" means a contract under this part for the delivery of electricity from one or more renewable energy facilities to a contract customer requiring the use of a qualified utility's transmission or distribution system to deliver the electricity from a renewable energy facility to the contract customer.

(4) (a) "Renewable energy facility"~~[-(a) except as provided in Subsection (4)(b),]~~ means a renewable energy source as defined in Section 54-17-601 that [is]:

(i) is located in the state[; and]; or

(ii) (A) is located outside the state; and

(B) provides energy from baseload renewable resources.

(b) "Renewable energy facility" does not include an electric generating facility ~~[whose costs have been]~~ for which the electric generating facility's costs are included in a qualified utility's rates as a

facility ~~[providing]~~ that provides electric service to the qualified utility's system.

(5) "Renewable energy tariff" means a tariff offered by a qualified utility that allows the qualified utility to procure renewable generation on behalf of and to serve its customers.

CHAPTER 410**H. B. 301**

Passed March 8, 2017

Approved March 25, 2017

Effective May 9, 2017

CANAL SAFETY AMENDMENTSChief Sponsor: Scott D. Sandall
Senate Sponsor: Margaret Dayton**LONG TITLE****General Description:**

This bill modifies provisions regarding notice to canal owners about land use applications.

Highlighted Provisions:

This bill:

- ▶ removes the requirement that a canal owner receive notice as a condition to rights vesting in a land use application;
- ▶ requires a land use authority to send notice to certain canal owners and operators about a land use application;
- ▶ requires a land use authority to wait for a period of days before acting on a land use application in order to allow input from the canal owners and operators;
- ▶ identifies a canal owner or operator who is entitled to notice from a land use authority regarding certain land use applications; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-9a-211, as enacted by Laws of Utah 2010, Chapter 332
- 10-9a-509, as last amended by Laws of Utah 2014, Chapter 136
- 10-9a-603, as last amended by Laws of Utah 2015, Chapter 327
- 17-27a-211, as enacted by Laws of Utah 2010, Chapter 332
- 17-27a-508, as last amended by Laws of Utah 2014, Chapter 136
- 17-27a-603, as last amended by Laws of Utah 2015, Chapter 327
- 73-5-7, as last amended by Laws of Utah 2014, Chapter 355

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

Section 1. Section 10-9a-211 is amended to read:**10-9a-211. Canal owner or operator -- Notice to municipality.**

(1) ~~[For purposes of Subsection 10-9a-509(1)(b)(iv), a]~~ A canal company or a canal operator shall ~~[provide on or before July 1, 2010, any]~~ ensure that each municipality in which the canal company or canal operator owns or operates a

canal has on file, regarding the canal company or canal operator:

- (a) a current mailing address and phone number;
- (b) a contact name; and
- (c) a general description of the location of each canal owned or operated by the canal owner or canal operator.

(2) If the information described in Subsection (1) changes after a canal company or a canal operator has provided the information to the municipality, the canal company or canal operator shall provide the correct information within 30 days of the day on which the information ~~[was changed]~~ changes.

Section 2. Section 10-9a-509 is amended to read:**10-9a-509. Applicant's entitlement to land use application approval -- Exceptions -- Application relating to land in a high priority transportation corridor -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.**

(1) (a) (i) An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use laws in effect on the date that the application is complete and as further provided in this section.

(ii) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, a municipal specification for public improvements applicable to a subdivision or development, and an applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:

(A) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(B) in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A municipality shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or

registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a municipality may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for a building permit; or

(B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for any land use other than a building permit.

~~[(iv) (A) If an application is an application for a subdivision approval, including any land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal, the land use authority shall:]~~

~~[(I) within 30 days after the day on which the application is filed, notify the canal company or canal operator responsible for the canal, if the canal company or canal operator has provided information under Section 10-9a-211; and]~~

~~[(II) wait at least 10 days after the day on which the land use authority notifies a canal company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the subdivision application described in Subsection (1)(b)(iv)(A).]~~

~~[(B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by certified or registered mail to the canal company or canal operator contact described in Section 10-9a-211.]~~

~~[(C) The location of land described in Subsection (1)(b)(iv)(A) shall be:]~~

~~[(I) provided by a canal company or canal operator to the land use authority; and]~~

~~[(II) (Aa) determined by use of mapping-grade global positioning satellite units; or]~~

~~[(Bb) digitized from the most recent aerial photo available to the canal company or canal operator.]~~

(c) (i) A land use application is exempt from the requirements of Subsections (1)(b)(i) and (ii) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(ii) A municipality may approve a land use application without making the required notifications under Subsection (1)(b)(ii)(A) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(d) After a municipality has complied with the requirements of Subsection (1)(b) for a land use application, the municipality may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The municipality shall process an application without regard to proceedings initiated to amend the municipality's ordinances as provided in Subsection (1)(a)(ii)(B) if:

(i) 180 days have passed since the proceedings were initiated; and

(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.

(f) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

(g) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

(h) A municipality may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed in:

(i) this chapter;

(ii) a municipal ordinance; or

(iii) a municipal specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

(i) A municipality may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:

(i) in a land use permit;

(ii) on the subdivision plat;

(iii) in a document on which the land use permit or subdivision plat is based;

(iv) in the written record evidencing approval of the land use permit or subdivision plat;

(v) in this chapter; or

(vi) in a municipal ordinance.

(j) A municipality may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the municipality's ordinances.

(2) A municipality is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.

(3) A municipality may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 10-9a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the municipality's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ordinances in effect on the date of submission.

Section 3. Section 10-9a-603 is amended to read:

10-9a-603. Plat required when land is subdivided -- Approval of plat -- Owner acknowledgment, surveyor certification, and underground utility facility owner verification of plat -- Recording plat.

(1) Unless exempt under Section 10-9a-605 or excluded from the definition of subdivision under Section 10-9a-103, whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

(a) a subdivision name that is distinct from any subdivision name on a plat recorded in the county recorder's office;

(b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;

(c) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and

(d) every existing right-of-way and easement grant of record for an underground facility, as defined in Section 54-8a-2, and for any other utility facility.

(2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's ordinances and this part and has been approved by the culinary water authority, the sanitary sewer authority, and the local health department, as defined in Section 26A-1-102, if the local health department and the municipality consider the local health department's approval necessary, the municipality shall approve the plat.

(b) Municipalities are encouraged to receive a recommendation from the fire authority before approving a plat.

(c) A municipality may not require that a plat be approved or signed by a person or entity who:

(i) is not an employee or agent of the municipality; or

(ii) does not:

(A) have a legal or equitable interest in the property within the proposed subdivision;

(B) provide a utility or other service directly to a lot within the subdivision;

(C) own an easement or right-of-way adjacent to the proposed subdivision who signs for the purpose of confirming the accuracy of the location of the easement or right-of-way in relation to the plat; or

(D) provide culinary public water service whose source protection zone designated as provided in Section 19-4-113 is included, in whole or in part, within the proposed subdivision[; or].

~~(iii) is not entitled to notice of the subdivision pursuant to Subsection 10-9a-509(1)(b)(iv) for the purpose of determining the accuracy of the information depicted on the plat.]~~

(d) For a subdivision application that includes land located within a notification zone, as determined under Subsection (2)(e), the land use authority shall:

(i) within 20 days after the day on which a complete subdivision application is filed, provide written notice of the application to the canal owner or associated canal operator contact described in:

(A) Section 10-9a-211;

(B) Subsection 73-5-7(2); or

(C) Subsection (4)(c); and

(ii) wait to approve or reject the subdivision application for at least 20 days after the day on which the land use authority mails the notice described in Subsection (2)(d)(i) in order to receive input from the canal owner or associated canal operator, including input regarding:

(A) access to the canal;

(B) maintenance of the canal;

(C) canal protection; and

(D) canal safety.

(e) The land use authority shall provide the notice described in Subsection (2)(d) to a canal owner or associated canal operator if:

(i) the canal's centerline is located within 100 feet of a proposed subdivision; and

(ii) the centerline alignment is available to the land use authority:

(A) from information provided by the canal company under Section 10-9a-211, using mapping-grade global positioning satellite units or

digitized data from the most recent aerial photo available to the canal owner or associated canal operator;

(B) using the state engineer's inventory of canals under Section 73-5-7; or

(C) from information provided by a surveyor under Subsection (4)(c).

(3) The municipality may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(4) (a) A plat may not be submitted to a county recorder for recording unless:

(i) prior to recordation, each owner of record of land described on the plat has signed the owner's dedication as shown on the plat; and

(ii) the signature of each owner described in Subsection (4)(a)(i) is acknowledged as provided by law.

(b) The surveyor making the plat shall certify that the surveyor:

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c) (i) To the extent possible, the surveyor shall consult with the owner or operator of an existing or proposed underground facility or utility facility within the proposed subdivision, or a representative designated by the owner or operator, to verify the accuracy of the surveyor's depiction of the:

(A) boundary, course, dimensions, and intended use of the public rights-of-way, a public or private easement, or grants of record;

(B) location of an existing underground facility and utility facility; and

(C) physical restrictions governing the location of the underground facility and utility facility within the subdivision.

(ii) The cooperation of an owner or operator under Subsection (4)(c)(i):

(A) indicates only that the plat approximates the location of the existing underground and utility facilities but does not warrant or verify their precise location; and

(B) does not affect a right that the owner or operator has under:

(I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

(II) a recorded easement or right-of-way;

(III) the law applicable to prescriptive rights; or

(IV) any other provision of law.

(5) (a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated.

(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

Section 4. Section 17-27a-211 is amended to read:

17-27a-211. Canal owner or operator -- Notice to county.

(1) ~~[For purposes of Subsection 17-27a-508(1)(b)(iv), a]~~ A canal company or a canal operator shall ~~[provide on or before July 1, 2010, any]~~ ensure that each county in which the canal company or canal operator owns or operates a canal has on file, regarding the canal company or canal operator:

(a) a current mailing address and phone number;

(b) a contact name; and

(c) a general description of the location of each canal owned or operated by the canal owner or canal operator.

(2) If the information described in Subsection (1) changes after a canal company or a canal operator has provided the information to the county, the canal company or canal operator shall provide the correct information within 30 days of the day on which the information ~~[was changed]~~ changes.

Section 5. Section 17-27a-508 is amended to read:

17-27a-508. Applicant's entitlement to land use application approval -- Exceptions -- Application relating to land in a high priority transportation corridor -- County's requirements and limitations -- Vesting upon submission of development plan and schedule.

(1) (a) (i) An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use laws in effect on the date that the application is complete and as further provided in this section.

(ii) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the county's land use maps, zoning map, and applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:

(A) the land use authority, on the record, finds that a compelling, countervailing public interest

would be jeopardized by approving the application; or

(B) in the manner provided by local ordinance and before the application is submitted, the county has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b)(i) and Subsection (1)(b)(ii) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A county shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a county may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for a building permit; or

(B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for any land use other than a building permit.

~~[(iv) (A) If an application is an application for a subdivision approval, including any land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal, the land use authority shall:]~~

~~[(I) within 30 days after the day on which the application is filed, notify the canal company or canal operator responsible for the canal, if the canal company or canal owner has provided information under Section 17-27a-211; and]~~

~~[(II) wait at least 10 days after the day on which the land use authority notifies a canal company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the subdivision application described in Subsection (1)(b)(iv)(A).]~~

~~[(B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by certified or registered mail to the canal company or canal operator contact described in Section 17-27a-211.]~~

~~[(C) The location of land described in Subsection (1)(b)(iv)(A) shall be:]~~

~~[(I) provided by a canal company or canal operator to the land use authority; and]~~

~~[(II) (Aa) determined by use of mapping-grade global positioning satellite units; or]~~

~~[(Bb) digitized from the most recent aerial photo available to the canal company or canal operator.]~~

(c) (i) A land use application is exempt from the requirements of Subsection (1)(b)(i) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(ii) A county may approve a land use application without making the required notifications under Subsections (1)(b)(i) and (ii) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(d) After a county has complied with the requirements of Subsection (1)(b) for a land use application, the county may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The county shall process an application without regard to proceedings initiated to amend the county's ordinances as provided in Subsection (1)(a)(ii)(B) if:

(i) 180 days have passed since the proceedings were initiated; and

(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.

(f) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

(g) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

(h) A county may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed:

(i) in this chapter;

(ii) in a county ordinance; or

(iii) in a county specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

(i) A county may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:

- (i) in a land use permit;
- (ii) on the subdivision plat;
- (iii) in a document on which the land use permit or subdivision plat is based;
- (iv) in the written record evidencing approval of the land use permit or subdivision plat;
- (v) in this chapter; or
- (vi) in a county ordinance.

(j) A county may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

- (i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the building permit or subdivision plat; or
- (ii) in this chapter or the county's ordinances.

(2) A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.

(3) A county may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 17-27a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the county's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ordinances in effect on the date of submission.

Section 6. Section 17-27a-603 is amended to read:

17-27a-603. Plat required when land is subdivided -- Approval of plat -- Owner acknowledgment, surveyor certification, and underground utility facility owner verification of plat -- Recording plat.

(1) Unless exempt under Section 17-27a-605 or excluded from the definition of subdivision under Section 17-27a-103, whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

- (a) a subdivision name that is distinct from any subdivision name on a plat recorded in the county recorder's office;
- (b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner

proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;

(c) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and

(d) every existing right-of-way and easement grant of record for an underground facility, as defined in Section 54-8a-2, and for any other utility facility.

(2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the county's ordinances and this part and has been approved by the culinary water authority, the sanitary sewer authority, and the local health department, as defined in Section 26A-1-102, if the local health department and the county consider the local health department's approval necessary, the county shall approve the plat.

(b) Counties are encouraged to receive a recommendation from the fire authority before approving a plat.

(c) A county may not require that a plat be approved or signed by a person or entity who:

- (i) is not an employee or agent of the county; or
- (ii) does not:

(A) have a legal or equitable interest in the property within the proposed subdivision;

(B) provide a utility or other service directly to a lot within the subdivision;

(C) own an easement or right-of-way adjacent to the proposed subdivision who signs for the purpose of confirming the accuracy of the location of the easement or right-of-way in relation to the plat; or

(D) provide culinary public water service whose source protection zone designated as provided in Section 19-4-113 is included, in whole or in part, within the proposed subdivision[; or].

~~[(iii) is not entitled to notice of the subdivision pursuant to Subsection 17-27a-508(1)(b)(iv) for the purpose of determining the accuracy of the information depicted on the plat.]~~

(d) For a subdivision application that includes land located within a notification zone, as determined under Subsection (2)(e), the land use authority shall:

(i) within 20 days after the day on which a complete subdivision application is filed, provide written notice of the application to the canal owner or associated canal operator contact described in:

(A) Section 17-27a-211;

(B) Subsection 73-5-7(2); or

(C) Subsection (4)(c); and

(ii) wait to approve or reject the subdivision application for at least 20 days after the day on

which the land use authority mails the notice under Subsection (2)(d)(i) in order to receive input from the canal owner or associated canal operator, including input regarding:

- (A) access to the canal;
- (B) maintenance of the canal;
- (C) canal protection; and
- (D) canal safety.

(e) The land use authority shall provide the notice described in Subsection (2)(d) to a canal owner or associated canal operator if:

(i) the canal's centerline is located within 100 feet of a proposed subdivision; and

(ii) the centerline alignment is available to the land use authority:

(A) from information provided by the canal company under Section 17-27a-211 using mapping-grade global positioning satellite units or digitized data from the most recent aerial photo available to the canal owner or canal operator;

(B) using the state engineer's inventory of canals under Section 73-5-7; or

(C) from information provided by a surveyor under Subsection (4)(c).

(3) The county may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(4) (a) A plat may not be submitted to a county recorder for recording unless, subject to Subsection 17-27a-604(2):

(i) prior to recordation, each owner of record of land described on the plat has signed the owner's dedication as shown on the plat; and

(ii) the signature of each owner described in Subsection (4)(a)(i) is acknowledged as provided by law.

(b) The surveyor making the plat shall certify that the surveyor:

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c) (i) To the extent possible, the surveyor shall consult with the owner or operator of an existing or proposed underground facility or utility facility within the proposed subdivision, or a representative designated by the owner or operator, to verify the accuracy of the surveyor's depiction of the:

(A) boundary, course, dimensions, and intended use of the public rights-of-way, a public or private easement, or grants of record;

(B) location of an existing underground facility and utility facility; and

(C) physical restrictions governing the location of the underground facility and utility facility within the subdivision.

(ii) The cooperation of an owner or operator under Subsection (4)(c)(i):

(A) indicates only that the plat approximates the location of the existing underground and utility facilities but does not warrant or verify their precise location; and

(B) does not affect a right that the owner or operator has under:

(I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

(II) a recorded easement or right-of-way;

(III) the law applicable to prescriptive rights; or

(IV) any other provision of law.

(5) (a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated.

(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

Section 7. Section 73-5-7 is amended to read:

73-5-7. Inspection of ditches and diverting works by engineer.

(1) (a) The state engineer shall have authority to examine and inspect any ditch or other diverting works, and at the time of such inspection, the state engineer may order the owners thereof to make any addition or alteration that the state engineer considers necessary for the security of such works, the safety of persons, or the protection of property.

(b) If any person, firm, copartnership, association, or corporation refuses or neglects to comply with the requirements of the state engineer as described in Subsection (1)(a), the state engineer may bring action in the name of the state in the district court to enforce the order.

(2) (a) The state engineer shall, to the extent reasonably practicable, by July 1, ~~2017~~ 2019, inventory and maintain a list of all open, human-made water conveyance systems that carry 5 cubic feet per second or more in the state, including the following information on each conveyance system:

~~(a)~~ (i) alignment;

~~(b)~~ (ii) contact information of the owner;

[~~(e)~~] (iii) maximum flow capacity in cubic feet per second;

[~~(d)~~] (iv) whether the conveyance system is used for flood or storm water management; and

[~~(e)~~] (v) notice of the adoption of a management plan for the conveyance system as reported to the Division of Water Resources under Section 73-10-33.

(b) In counties of the first or second class, the state engineer shall include in the inventory described in Subsection (2)(a) any enclosed segments of each open, human-made water conveyance system.

(3) The owner of an open, human-made water conveyance system that carries 5 cubic feet per second or more shall inform the state engineer if the information described in Subsection (2) changes.

(4) The state engineer:

(a) may contract with a local conservation district created in Title 17D, Chapter 3, Conservation District Act, to fulfill the duties described in Subsection (2); and

(b) may contract a local conservation district created in Title 17D, Chapter 3, Conservation District Act, to provide technical support for a canal owner who is adopting a management plan, as described in Section 73-10-33.

CHAPTER 411**H. B. 313**

Passed March 9, 2017
 Approved March 25, 2017
 Effective May 9, 2017

LICENSURE CHANGES

Chief Sponsor: Mike Schultz
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies the Utah Construction Trades Licensing Act (the act).

Highlighted Provisions:

This bill:

- ▶ defines terms related to certain electrical contractors, plumbing contractors, and prelicensure course providers under the act;
- ▶ modifies the testing and work experience requirements for licensure as a specialty contractor under the act;
- ▶ modifies continuing education requirements for certain contractors; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 58-55-102, as last amended by Laws of Utah 2016, Chapter 268
 58-55-301, as last amended by Laws of Utah 2010, Chapter 227
 58-55-302, as last amended by Laws of Utah 2016, Chapters 238 and 268
 58-55-302.5, as last amended by Laws of Utah 2016, Chapter 260

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

Section 1. Section 58-55-102 is amended to read:**58-55-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) (a) "Alarm business or company" means a person engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system, except as provided in Subsection (1)(b).

(b) "Alarm business or company" does not include:

(i) a person engaged in the manufacture or sale of alarm systems unless:

(A) that person is also engaged in the installation, maintenance, alteration, repair, replacement, servicing, or monitoring of alarm systems;

(B) the manufacture or sale occurs at a location other than a place of business established by the person engaged in the manufacture or sale; or

(C) the manufacture or sale involves site visits at the place or intended place of installation of an alarm system; or

(ii) an owner of an alarm system, or an employee of the owner of an alarm system who is engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring of the alarm system owned by that owner.

(2) "Alarm company agent":

(a) except as provided in Subsection (2)(b), means any individual employed within this state by an alarm business; and

(b) does not include an individual who:

(i) is not engaged in the sale, installation, maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system; and

(ii) does not, during the normal course of the individual's employment with an alarm business, use or have access to sensitive alarm system information.

(3) "Alarm system" means equipment and devices assembled for the purpose of:

(a) detecting and signaling unauthorized intrusion or entry into or onto certain premises; or

(b) signaling a robbery or attempted robbery on protected premises.

(4) "Apprentice electrician" means a person licensed under this chapter as an apprentice electrician who is learning the electrical trade under the immediate supervision of a master electrician, residential master electrician, a journeyman electrician, or a residential journeyman electrician.

(5) "Apprentice plumber" means a person licensed under this chapter as an apprentice plumber who is learning the plumbing trade under the immediate supervision of a master plumber, residential master plumber, journeyman plumber, or a residential journeyman plumber.

(6) "Approved continuing education" means instruction provided through courses under a program established under Subsection 58-55-302.5(2).

(7) (a) "Approved prelicensure course provider" means a provider that is approved by the commission with the concurrence of the director, and that meets the requirements established by rule by the commission with the concurrence of the director, to teach the 25-hour course described in Subsection 58-55-302(1)(e)(iii).

(b) "Approved prelicensure course provider" may only include a provider that, in addition to any other locations, offers the 25-hour course described in Subsection 58-55-302(1)(e)(iii) at least six times each year in one or more counties other than Salt Lake County, Utah County, Davis County, or Weber County.

[47] (8) “Board” means the Electrician Licensing Board, Alarm System Security and Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

[48] (9) “Combustion system” means an assembly consisting of:

(a) piping and components with a means for conveying, either continuously or intermittently, natural gas from the outlet of the natural gas provider’s meter to the burner of the appliance;

(b) the electric control and combustion air supply and venting systems, including air ducts; and

(c) components intended to achieve control of quantity, flow, and pressure.

[49] (10) “Commission” means the Construction Services Commission created under Section 58-55-103.

[40] (11) “Construction trade” means any trade or occupation involving:

(a) (i) construction, alteration, remodeling, repairing, wrecking or demolition, addition to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation or other project, development, or improvement to other than personal property; and

(ii) constructing, remodeling, or repairing a manufactured home or mobile home as defined in Section 15A-1-302; or

(b) installation or repair of a residential or commercial natural gas appliance or combustion system.

[41] (12) “Construction trades instructor” means a person licensed under this chapter to teach one or more construction trades in both a classroom and project environment, where a project is intended for sale to or use by the public and is completed under the direction of the instructor, who has no economic interest in the project.

[42] (13) (a) “Contractor” means any person who for compensation other than wages as an employee undertakes any work in the construction, plumbing, or electrical trade for which licensure is required under this chapter and includes:

(i) a person who builds any structure on the person’s own property for the purpose of sale or who builds any structure intended for public use on the person’s own property;

(ii) any person who represents that the person is a contractor, or will perform a service described in this Subsection [42] (13), by advertising on a website or social media, or any other means;

(iii) any person engaged as a maintenance person, other than an employee, who regularly engages in activities set forth under the definition of “construction trade”;

(iv) any person engaged in, or offering to engage in, any construction trade for which licensure is required under this chapter; or

(v) a construction manager, construction consultant, construction assistant, or any other person who, for a fee:

(A) performs or offers to perform construction consulting;

(B) performs or offers to perform management of construction subcontractors;

(C) provides or offers to provide a list of subcontractors or suppliers; or

(D) provides or offers to provide management or counseling services on a construction project.

(b) “Contractor” does not include:

(i) an alarm company or alarm company agent; or

(ii) a material supplier who provides consulting to customers regarding the design and installation of the material supplier’s products.

[43] (14) (a) “Electrical trade” means the performance of any electrical work involved in the installation, construction, alteration, change, repair, removal, or maintenance of facilities, buildings, or appendages or appurtenances.

(b) “Electrical trade” does not include:

(i) transporting or handling electrical materials;

(ii) preparing clearance for raceways for wiring; or

(iii) work commonly done by unskilled labor on any installations under the exclusive control of electrical utilities.

(c) For purposes of Subsection [43] (14)(b):

(i) no more than one unlicensed person may be so employed unless more than five licensed electricians are employed by the shop; and

(ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio permitted by this Subsection [43] (14)(c).

[44] (15) “Elevator” means the same as that term is defined in Section 34A-7-202, except that for purposes of this chapter it does not mean a stair chair, a vertical platform lift, or an incline platform lift.

[45] (16) “Elevator contractor” means a sole proprietor, firm, or corporation licensed under this chapter that is engaged in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator.

[46] (17) “Elevator mechanic” means an individual who is licensed under this chapter as an elevator mechanic and who is engaged in erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator under the immediate supervision of an elevator contractor.

[47] (18) “Employee” means an individual as defined by the division by rule giving consideration to the definition adopted by the Internal Revenue Service and the Department of Workforce Services.

[48] (19) “Engage in a construction trade” means to:

(a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged in a construction trade; or

(b) use the name “contractor” or “builder” or in any other way lead a reasonable person to believe one is or will act as a contractor.

~~(19)~~ (20) (a) “Financial responsibility” means a demonstration of a current and expected future condition of financial solvency evidencing a reasonable expectation to the division and the board that an applicant or licensee can successfully engage in business as a contractor without jeopardy to the public health, safety, and welfare.

(b) Financial responsibility may be determined by an evaluation of the total history concerning the licensee or applicant including past, present, and expected condition and record of financial solvency and business conduct.

~~(20)~~ (21) “Gas appliance” means any device that uses natural gas to produce light, heat, power, steam, hot water, refrigeration, or air conditioning.

~~(21)~~ (22) (a) “General building contractor” means a person licensed under this chapter as a general building contractor qualified by education, training, experience, and knowledge to perform or superintend construction of structures for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind or any of the components of that construction except plumbing, electrical work, mechanical work, work related to the operating integrity of an elevator, and manufactured housing installation, for which the general building contractor shall employ the services of a contractor licensed in the particular specialty, except that a general building contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

(b) The division may by rule exclude general building contractors from engaging in the performance of other construction specialties in which there is represented a substantial risk to the public health, safety, and welfare, and for which a license is required unless that general building contractor holds a valid license in that specialty classification.

(23) (a) “General electrical contractor” means a person licensed under this chapter as a general electrical contractor qualified by education, training, experience, and knowledge to perform the fabrication, construction, and installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus that uses electrical energy.

(b) The scope of work of a general electrical contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~(22)~~ (24) (a) “General engineering contractor” means a person licensed under this chapter as a general engineering contractor qualified by education, training, experience, and knowledge to perform construction of fixed works in any of the following: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring specialized engineering knowledge and skill, piers, and foundations, or any of the components of those works.

(b) A general engineering contractor may not perform construction of structures built primarily for the support, shelter, and enclosure of persons, animals, and chattels.

(25) (a) “General plumbing contractor” means a person licensed under this chapter as a general plumbing contractor qualified by education, training, experience, and knowledge to perform the fabrication or installation of material and fixtures to create and maintain sanitary conditions in a building by providing permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and a safe and adequate supply of gases for lighting, heating, and industrial purposes.

(b) The scope of work of a general plumbing contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~(23)~~ (26) “Immediate supervision” means reasonable direction, oversight, inspection, and evaluation of the work of a person:

(a) as the division specifies in rule;

(b) by, as applicable, a qualified electrician or plumber;

(c) as part of a planned program of training; and

(d) to ensure that the end result complies with applicable standards.

~~(24)~~ (27) “Individual” means a natural person.

~~(25)~~ (28) “Journeyman electrician” means a person licensed under this chapter as a journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

~~(26)~~ (29) “Journeyman plumber” means a person licensed under this chapter as a journeyman plumber having the qualifications, training, experience, and technical knowledge to engage in the plumbing trade.

~~(27)~~ (30) “Master electrician” means a person licensed under this chapter as a master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise

the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes.

~~[(28)]~~ (31) “Master plumber” means a person licensed under this chapter as a master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade.

~~[(29)]~~ (32) “Person” means a natural person, sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

~~[(30)]~~ (33) (a) “Plumbing trade” means the performance of any mechanical work pertaining to the installation, alteration, change, repair, removal, maintenance, or use in buildings, or within three feet beyond the outside walls of buildings, of pipes, fixtures, and fittings for the:

- (i) delivery of the water supply;
- (ii) discharge of liquid and water carried waste; ~~[or]~~
- (iii) ~~[the]~~ building drainage system within the walls of the building~~[.];~~ and
- (iv) delivery of gases for lighting, heating, and industrial purposes.

(b) “Plumbing trade” includes work pertaining to the water supply, distribution pipes, fixtures and fixture traps, soil, waste and vent pipes, ~~[and]~~ the building drain and roof drains, and the safe and adequate supply of gases, together with their devices, appurtenances, and connections where installed within the outside walls of the building.

~~[(31)]~~ (34) (a) “Ratio of apprentices” means, for the purpose of determining compliance with the requirements for planned programs of training and electrician apprentice licensing applications, the shop ratio of apprentice electricians to journeyman or master electricians shall be one journeyman or master electrician to one apprentice on industrial and commercial work, and one journeyman or master electrician to three apprentices on residential work.

(b) On-the-job training shall be under circumstances in which the ratio of apprentices to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to three apprentices to one supervisor on residential projects.

~~[(32)]~~ (35) “Residential and small commercial contractor” means a person licensed under this chapter as a residential and small commercial contractor qualified by education, training, experience, and knowledge to perform or superintend the construction of single-family residences, multifamily residences up to four units, and commercial construction of not more than three stories above ground and not more than 20,000 square feet, or any of the components of that construction except plumbing, electrical work, mechanical work, and manufactured housing installation, for which the residential and small

commercial contractor shall employ the services of a contractor licensed in the particular specialty, except that a residential and small commercial contractor engaged in the construction of single-family and multifamily residences up to four units may perform the mechanical work and hire a licensed plumber or electrician as an employee.

~~[(33)]~~ (36) “Residential building,” as it relates to the license classification of residential journeyman plumber and residential master plumber, means a single or multiple family dwelling of up to four units.

(37) (a) “Residential electrical contractor” means a person licensed under this chapter as a residential electrical contractor qualified by education, training, experience, and knowledge to perform the fabrication, construction, and installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances, and fixtures in a residential unit.

(b) The scope of work of a residential electrical contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(34)]~~ (38) “Residential journeyman electrician” means a person licensed under this chapter as a residential journeyman electrician having the qualifications, training, experience, and knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes on buildings using primarily nonmetallic sheath cable.

~~[(35)]~~ (39) “Residential journeyman plumber” means a person licensed under this chapter as a residential journeyman plumber having the qualifications, training, experience, and knowledge to engage in the plumbing trade as limited to the plumbing of residential buildings.

~~[(36)]~~ (40) “Residential master electrician” means a person licensed under this chapter as a residential master electrician having the qualifications, training, experience, and knowledge to properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment for light, heat, power, and other purposes on residential projects.

~~[(37)]~~ (41) “Residential master plumber” means a person licensed under this chapter as a residential master plumber having the qualifications, training, experience, and knowledge to properly plan and layout projects and supervise persons in the plumbing trade as limited to the plumbing of residential buildings.

(42) (a) “Residential plumbing contractor” means a person licensed under this chapter as a general plumbing contractor qualified by education, training, experience, and knowledge to perform the fabrication or installation of material and fixtures to create and maintain sanitary conditions in residential buildings by providing permanent means for a supply of safe and pure water, a means for the timely and complete removal from the

premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and a safe and adequate supply of gases for lighting, heating, and industrial purposes.

(b) The scope of work of a residential plumbing contractor may be further defined by rules made by the commission, with the concurrence of the director, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

[~~(38)~~] (43) “Residential project,” as it relates to an electrician or electrical contractor, means buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules and regulations governing this work, including the National Electrical Code, and in which the voltage does not exceed 250 volts line to line and 125 volts to ground.

[~~(39)~~] (44) “Sensitive alarm system information” means:

(a) a pass code or other code used in the operation of an alarm system;

(b) information on the location of alarm system components at the premises of a customer of the alarm business providing the alarm system;

(c) information that would allow the circumvention, bypass, deactivation, or other compromise of an alarm system of a customer of the alarm business providing the alarm system; and

(d) any other similar information that the division by rule determines to be information that an individual employed by an alarm business should use or have access to only if the individual is licensed as provided in this chapter.

[~~(40)~~] (45) (a) “Specialty contractor” means a person licensed under this chapter under a specialty contractor classification established by rule, who is qualified by education, training, experience, and knowledge to perform those construction trades and crafts requiring specialized skill, the regulation of which are determined by the division to be in the best interest of the public health, safety, and welfare.

(b) A specialty contractor may perform work in crafts or trades other than those in which the specialty contractor is licensed if they are incidental to the performance of the specialty contractor’s licensed craft or trade.

[~~(41)~~] (46) “Unincorporated entity” means an entity that is not:

- (a) an individual;
- (b) a corporation; or
- (c) publicly traded.

[~~(42)~~] (47) “Unlawful conduct” means the same as that term is defined in Sections 58-1-501 and 58-55-501.

[~~(43)~~] (48) “Unprofessional conduct” means the same as that term is defined in Sections 58-1-501

and 58-55-502 and as may be further defined by rule.

[~~(44)~~] (49) “Wages” means amounts due to an employee for labor or services whether the amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating the amount.

Section 2. Section 58-55-301 is amended to read:

58-55-301. License required -- License classifications.

(1) (a) A person engaged in the construction trades licensed under this chapter, as a contractor regulated under this chapter, as an alarm business or company, or as an alarm company agent, shall become licensed under this chapter before engaging in that trade or contracting activity in this state unless specifically exempted from licensure under Section 58-1-307 or 58-55-305.

(b) The license issued under this chapter and the business license issued by the local jurisdiction in which the licensee has its principal place of business shall be the only licenses required for the licensee to engage in a trade licensed by this chapter, within the state.

(c) Neither the state nor any of its political subdivisions may require of a licensee any additional business licenses, registrations, certifications, contributions, donations, or anything else established for the purpose of qualifying a licensee under this chapter to do business in that local jurisdiction, except for contract prequalification procedures required by state agencies, or the payment of any fee for the license, registration, or certification established as a condition to do business in that local jurisdiction.

(2) The division shall issue licenses under this chapter to qualified persons in the following classifications:

- (a) general engineering contractor;
- (b) general building contractor;
- (c) residential and small commercial contractor;
- (d) elevator contractor;
- (e) general plumbing contractor;
- (f) residential plumbing contractor;
- (g) general electrical contractor;
- (h) residential electrical contractor;
- [~~(e)~~] (i) specialty contractor;
- [~~(f)~~] (j) master plumber;
- [~~(g)~~] (k) residential master plumber;
- [~~(h)~~] (l) journeyman plumber;
- [~~(i)~~] (m) apprentice plumber;
- [~~(j)~~] (n) residential journeyman plumber;
- [~~(k)~~] (o) master electrician;
- [~~(l)~~] (p) residential master electrician;

- ~~(m)~~ (q) journeyman electrician;
- ~~(n)~~ (r) residential journeyman electrician;
- ~~(o)~~ (s) apprentice electrician;
- ~~(p)~~ (t) construction trades instructor:
 - (i) general engineering classification;
 - (ii) general building classification;
 - (iii) electrical classification;
 - (iv) plumbing classification; and
 - (v) mechanical classification;
- ~~(q)~~ (u) alarm company;
- ~~(r)~~ (v) alarm company agent; and
- ~~(s)~~ (w) elevator mechanic.

(3) (a) An applicant may apply for a license in one or more classification or specialty contractor subclassification.

(b) A license shall be granted in each classification or subclassification for which the applicant qualifies.

(c) A separate application and fee must be submitted for each license classification or subclassification.

Section 3. Section 58-55-302 is amended to read:

58-55-302. Qualifications for licensure.

(1) Each applicant for a license under this chapter shall:

(a) submit an application prescribed by the division;

(b) pay a fee as determined by the department under Section 63J-1-504;

(c) (i) meet the examination requirements established by rule by the commission with the concurrence of the director, except [for the classifications of apprentice plumber and apprentice electrician for whom no examination is required] that no examination, other than an examination as part of a 25-hour course described in Subsection (1)(e)(iii), is required for licensure as an apprentice electrician, apprentice plumber, or specialty contractor; or

(ii) if required in Section 58-55-304, the individual qualifier must pass the required examination if the applicant is a business entity;

(d) if an apprentice, identify the proposed supervisor of the apprenticeship;

(e) if an applicant for a contractor's license:

(i) produce satisfactory evidence of financial responsibility, except for a construction trades instructor for whom evidence of financial responsibility is not required;

(ii) produce satisfactory evidence of:

(A) except as provided in Subsection (2)(a), and except that no employment experience is required for licensure as a specialty contractor, two years full-time paid employment experience in the construction industry, which [experience, unless more specifically described in this section,] employment experience may be related to any contracting classification unless more specifically described in this section; and

(B) knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare;

(iii) except as otherwise provided by rule by the commission with the concurrence of the director, complete a [20-hour] 25-hour course established by rule by the commission with the concurrence of the director, which is taught by an approved prelicensure course provider, and which course may include:

(A) construction business practices;

(B) bookkeeping fundamentals;

(C) mechanics lien fundamentals; ~~and~~

(D) other aspects of business and construction principles considered important by the commission with the concurrence of the director; and

(E) for no additional fee, an examination at the end of the 25-hour course;

(iv) (A) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license;

(B) be a licensed master plumber if an applicant for a plumbing contractor's license or a licensed master residential plumber if an applicant for a residential plumbing contractor's license; or

(C) be a licensed elevator mechanic and produce satisfactory evidence of three years experience as an elevator mechanic if an applicant for an elevator contractor's license; and

(v) when the applicant is an unincorporated entity, provide a list of the one or more individuals who hold an ownership interest in the applicant as of the day on which the application is filed that includes for each individual:

(A) the individual's name, address, birth date, and social security number; and

(B) whether the individual will engage in a construction trade; and

(f) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.

(2) (a) If the applicant for a contractor's license described in Subsection (1) is a building inspector, the applicant may satisfy Subsection (1)(e)(ii)(A) by producing satisfactory evidence of two years full-time paid employment experience as a building inspector, which shall include at least one year

full-time experience as a licensed combination inspector.

(b) After approval of an applicant for a contractor's license by the applicable board and the division, the applicant shall file the following with the division before the division issues the license:

(i) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;

(ii) proof of public liability insurance in coverage amounts and form established by rule except for a construction trades instructor for whom public liability insurance is not required; and

(iii) proof of registration as required by applicable law with the:

(A) Department of Commerce;

(B) Division of Corporations and Commercial Code;

(C) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(D) State Tax Commission; and

(E) Internal Revenue Service.

(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

(a) (i) A master plumber shall produce satisfactory evidence that the applicant:

(A) has been a licensed journeyman plumber for at least two years and had two years of supervisory experience as a licensed journeyman plumber in accordance with division rule;

(B) has received at least an associate of applied science degree or similar degree following the completion of a course of study approved by the division and had one year of supervisory experience as a licensed journeyman plumber in accordance with division rule; or

(C) meets the qualifications determined by the division in collaboration with the board to be equivalent to Subsection (3)(a)(i)(A) or (B).

(ii) An individual holding a valid Utah license as a journeyman plumber, based on at least four years of practical experience as a licensed apprentice under the supervision of a licensed journeyman plumber and four years as a licensed journeyman plumber, in effect immediately prior to May 5, 2008, is on and after May 5, 2008, considered to hold a current master plumber license under this chapter, and satisfies the requirements of this Subsection (3)(a) for the purpose of renewal or reinstatement of that license under Section 58-55-303.

(iii) An individual holding a valid plumbing contractor's license or residential plumbing contractor's license, in effect immediately prior to May 5, 2008, is on or after May 5, 2008:

(A) considered to hold a current master plumber license under this chapter if licensed as a plumbing contractor and a journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303; and

(B) considered to hold a current residential master plumber license under this chapter if licensed as a residential plumbing contractor and a residential journeyman plumber, and satisfies the requirements of this Subsection (3)(a) for purposes of renewal or reinstatement of that license under Section 58-55-303.

(b) A master residential plumber applicant shall produce satisfactory evidence that the applicant:

(i) has been a licensed residential journeyman plumber for at least two years and had two years of supervisory experience as a licensed residential journeyman plumber in accordance with division rule; or

(ii) meets the qualifications determined by the division in collaboration with the board to be equivalent to Subsection (3)(b)(i).

(c) A journeyman plumber applicant shall produce satisfactory evidence of:

(i) successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed master plumber or journeyman plumber and in accordance with a planned program of training approved by the division;

(ii) at least eight years of full-time experience approved by the division in collaboration with the Plumbers Licensing Board; or

(iii) satisfactory evidence of meeting the qualifications determined by the board to be equivalent to Subsection (3)(c)(i) or (c)(ii).

(d) A residential journeyman plumber shall produce satisfactory evidence of:

(i) completion of the equivalent of at least three years of full-time training and instruction as a licensed apprentice plumber under the supervision of a licensed residential master plumber, licensed residential journeyman plumber, or licensed journeyman plumber in accordance with a planned program of training approved by the division;

(ii) completion of at least six years of full-time experience in a maintenance or repair trade involving substantial plumbing work; or

(iii) meeting the qualifications determined by the board to be equivalent to Subsection (3)(d)(i) or (d)(ii).

(e) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with the following:

(i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be under the immediate supervision of a licensed master plumber, licensed residential master plumber,

licensed journeyman plumber, or a licensed residential journeyman plumber; and

(ii) a licensed apprentice plumber in the fourth through tenth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period, but if the apprentice does not become a licensed journeyman plumber or licensed residential journeyman plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer applies.

(f) A master electrician applicant shall produce satisfactory evidence that the applicant:

(i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;

(ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;

(iii) has four years of practical experience as a journeyman electrician; or

(iv) meets the qualifications determined by the board to be equivalent to Subsection (3)(f)(i), (ii), or (iii).

(g) A master residential electrician applicant shall produce satisfactory evidence that the applicant:

(i) has at least two years of practical experience as a residential journeyman electrician; or

(ii) meets the qualifications determined by the board to be equivalent to this practical experience.

(h) A journeyman electrician applicant shall produce satisfactory evidence that the applicant:

(i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;

(ii) has at least eight years of full-time experience approved by the division in collaboration with the Electricians Licensing Board; or

(iii) meets the qualifications determined by the board to be equivalent to Subsection (3)(h)(i) or (ii).

(i) A residential journeyman electrician applicant shall produce satisfactory evidence that the applicant:

(i) has successfully completed two years of training in an electrical training program approved by the division;

(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master,

journeyman, residential master, or residential journeyman electrician; or

(iii) meets the qualifications determined by the division and applicable board to be equivalent to Subsection (3)(i)(i) or (ii).

(j) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with the following:

(i) A licensed apprentice electrician shall be under the immediate supervision of a licensed master, journeyman, residential master, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.

(ii) A licensed master, journeyman, residential master, or residential journeyman electrician may have under immediate supervision on a residential project up to three licensed apprentice electricians.

(iii) A licensed master or journeyman electrician may have under immediate supervision on nonresidential projects only one licensed apprentice electrician.

(k) An alarm company applicant shall:

(i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of the applicant who:

(A) demonstrates 6,000 hours of experience in the alarm company business;

(B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm company business or in a construction business; and

(C) passes an examination component established by rule by the commission with the concurrence of the director;

(ii) if a corporation, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall not be required if the stock is publicly listed and traded;

(iii) if a limited liability company, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all individuals owning 5% or more of the equity of the company;

(iv) if a partnership, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(v) if a proprietorship, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vi) if a trust, provide the names, addresses, dates of birth, social security numbers, and fingerprint cards of the trustee, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vii) be of good moral character in that officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(viii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, trustees, and responsible management personnel have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(ix) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;

(x) file and maintain with the division evidence of:

(A) comprehensive general liability insurance in form and in amounts to be established by rule by the commission with the concurrence of the director;

(B) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law; and

(C) registration as is required by applicable law with the:

(I) Division of Corporations and Commercial Code;

(II) Unemployment Insurance Division in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(III) State Tax Commission; and

(IV) Internal Revenue Service; and

(xi) meet with the division and board.

(l) Each applicant for licensure as an alarm company agent shall:

(i) submit an application in a form prescribed by the division accompanied by fingerprint cards;

(ii) pay a fee determined by the department under Section 63J-1-504;

(iii) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company agent is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(iv) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(v) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and

(vi) meet with the division and board if requested by the division or the board.

(m) (i) Each applicant for licensure as an elevator mechanic shall:

(A) provide documentation of experience and education credits of not less than three years work experience in the elevator industry, in construction, maintenance, or service and repair; and

(B) satisfactorily complete a written examination administered by the division established by rule under Section 58-1-203; or

(C) provide certificates of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of this chapter and registered with the United States Department of Labor Bureau Apprenticeship and Training or a state apprenticeship council.

(ii) (A) If an elevator contractor licensed under this chapter cannot find a licensed elevator mechanic to perform the work of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator, the contractor may:

(I) notify the division of the unavailability of licensed personnel; and

(II) request the division issue a temporary elevator mechanic license to an individual certified by the contractor as having an acceptable combination of documented experience and education to perform the work described in this Subsection (3)(m)(ii)(A).

(B) (I) The division may issue a temporary elevator mechanic license to an individual certified under Subsection (3)(m)(ii)(A)(II) upon application by the individual, accompanied by the appropriate fee as determined by the department under Section 63J-1-504.

(II) The division shall specify the time period for which the license is valid and may renew the license

for an additional time period upon its determination that a shortage of licensed elevator mechanics continues to exist.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau of Investigation records shall be checked for applicants as an alarm company or alarm company agent.

(5) To determine if an applicant meets the qualifications of Subsections (3)(k)(vii) and (3)(l)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure as an alarm company or alarm company agent and each applicant's officers, directors, shareholders described in Subsection (3)(k)(ii)(B), partners, proprietors, and responsible management personnel; and

(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the Federal Bureau of Investigation for criminal history information under this section.

(6) The Department of Public Safety shall send to the division:

(a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and

(b) the results of the Federal Bureau of Investigation review concerning an applicant in a timely manner after receipt of information from the Federal Bureau of Investigation.

(7) (a) The division shall charge each applicant for licensure as an alarm company or alarm company agent a fee, in accordance with Section 63J-1-504, equal to the cost of performing the records reviews under this section.

(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the Federal Bureau of Investigation the costs of records reviews under this section.

(8) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the Federal Bureau of Investigation shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure as an alarm company or alarm company agent is qualified for licensure.

(9) (a) An application for licensure under this chapter shall be denied if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked within two years before the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked within two years before the date of the applicant's application;

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within two years before the date of the applicant's application; or

(iv) (A) the applicant includes an individual who was an owner, director, or officer of an unincorporated entity at the time the entity's license under this chapter was revoked; and

(B) the application for licensure is filed within 60 months after the revocation of the unincorporated entity's license.

(b) An application for licensure under this chapter shall be reviewed by the appropriate licensing board prior to approval if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked more than two years before the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked more than two years before the date of the applicant's application; or

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked more than two years before the date of the applicant's application.

(10) (a) (i) A licensee that is an unincorporated entity shall file an ownership status report with the

division every 30 days after the day on which the license is issued if the licensee has more than five owners who are individuals who:

(A) own an interest in the contractor that is an unincorporated entity;

(B) own, directly or indirectly, less than an 8% interest, as defined by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in the unincorporated entity; and

(C) engage, or will engage, in a construction trade in the state as owners of the contractor described in Subsection (10)(a)(i)(A).

(ii) If the licensee has five or fewer owners described in Subsection (10)(a)(i), the licensee shall provide the ownership status report with an application for renewal of licensure.

(b) An ownership status report required under this Subsection (10) shall:

(i) specify each addition or deletion of an owner:

(A) for the first ownership status report, after the day on which the unincorporated entity is licensed under this chapter; and

(B) for a subsequent ownership status report, after the day on which the previous ownership status report is filed;

(ii) be in a format prescribed by the division that includes for each owner, regardless of the owner's percentage ownership in the unincorporated entity, the information described in Subsection(1)(e)(v);

(iii) list the name of:

(A) each officer or manager of the unincorporated entity; and

(B) each other individual involved in the operation, supervision, or management of the unincorporated entity; and

(iv) be accompanied by a fee set by the division in accordance with Section 63J-1-504 if the ownership status report indicates there is a change described in Subsection (10)(b)(i).

(c) The division may, at any time, audit an ownership status report under this Subsection (10):

(i) to determine if financial responsibility has been demonstrated or maintained as required under Section 58-55-306; and

(ii) to determine compliance with Subsection 58-55-501(24), (25), or (27) or Subsection 58-55-502(8) or (9).

(11) (a) An unincorporated entity that provides labor to an entity licensed under this chapter by providing an individual who owns an interest in the unincorporated entity to engage in a construction trade in Utah shall file with the division:

(i) before the individual who owns an interest in the unincorporated entity engages in a construction trade in Utah, a current list of the one or more individuals who hold an ownership interest in the

unincorporated entity that includes for each individual:

(A) the individual's name, address, birth date, and social security number; and

(B) whether the individual will engage in a construction trade; and

(ii) every 30 days after the day on which the unincorporated entity provides the list described in Subsection (11)(a)(i), an ownership status report containing the information that would be required under Subsection (10) if the unincorporated entity were a licensed contractor.

(b) When filing an ownership list described in Subsection (11)(a)(i) or an ownership status report described in Subsection (11)(a)(ii), an unincorporated entity shall pay a fee set by the division in accordance with Section 63J-1-504.

(12) This chapter may not be interpreted to create or support an express or implied independent contractor relationship between an unincorporated entity described in Subsection (10) or (11) and the owners of the unincorporated entity for any purpose, including income tax withholding.

(13) A social security number provided under Subsection (1)(e)(v) is a private record under Subsection 63G-2-302(1)(i).

Section 4. Section 58-55-302.5 is amended to read:

58-55-302.5. Continuing education requirements for contractor licensees -- Continuing education courses.

(1) Each contractor licensee under a license issued under this chapter shall complete six hours of approved continuing education during each two-year renewal cycle established by rule under Subsection 58-55-303(1).

(2) (a) The commission shall, with the concurrence of the division, establish by rule a program of approved continuing education for contractor licensees.

(b) Except as provided in Subsection (2)(e), beginning on or after June 1, 2015, only courses offered by any of the following may be included in the program of approved continuing education for contractor licensees:

(i) the Associated General Contractors of Utah;

(ii) Associated Builders and Contractors, Utah Chapter;

(iii) the Home Builders Association of Utah;

(iv) the National Electrical Contractors Association Intermountain Chapter;

(v) the Utah Plumbing & Heating Contractors Association;

(vi) the Independent Electrical Contractors of Utah;

(vii) the Rocky Mountain Gas Association;

(viii) the Utah Mechanical Contractors Association;

- (ix) the Sheet Metal Contractors Association;
- (x) the Intermountain Electrical Association;
- (xi) the Builders Bid Service of Utah; or
- (xii) Utah Roofing Contractors Association.

(c) An approved continuing education program for a contractor licensee may include a course approved by an entity described in Subsections (2)(b)(i) through (2)(b)(iii).

(d) (i) Except as provided in Subsections (2)(d)(ii) and (iii), an entity listed in Subsections (2)(b)(iv) through (2)(b)(xii) may only offer and market continuing education courses to a licensee who is a member of the entity.

(ii) An entity described in Subsection (2)(b)(iv), (vi), or (x) may offer and market a continuing education course that the entity offers to satisfy the continuing education requirement described in Subsection 58-55-302.7(2)(a) to a contractor in the electrical trade.

(iii) An entity described in Subsection (2)(b)(v) or (viii) may offer and market a continuing education course that the entity offers to satisfy the continuing education requirement described in Subsection 58-55-302.7(2)(b) to a contractor in the plumbing trade.

(e) On or after June 1, 2015, an approved continuing education program for a contractor licensee may include a course offered and taught by:

- (i) a state executive branch agency;
- (ii) the Workers' Compensation Fund created in Section 31A-33-102; or
- (iii) a nationally or regionally accredited college or university that has a physical campus in the state.

(f) On or after June 1, 2017, for a contractor licensee that is licensed in the specialty contractor classification of HVAC contractor, at least three of the six hours described in Subsection (1) shall include continuing education directly related to the installation, repair, or replacement of a heating, ventilation, or air conditioning system.

(3) The division may contract with a person to establish and maintain a continuing education registry to include:

(a) a list of courses that the division has approved for inclusion in the program of approved continuing education; and

(b) a list of courses that:

(i) a contractor licensee has completed under the program of approved continuing education; and

(ii) the licensee may access to monitor the licensee's compliance with the continuing education requirement established under Subsection (1).

(4) The division may charge a fee, as established by the division under Section 63J-1-504, to administer the requirements of this section.

CHAPTER 412**H. B. 315**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

AQUACULTURE AMENDMENTS

Chief Sponsor: Gage Froerer
Senate Sponsor: D. Gregg Buxton

LONG TITLE**General Description:**

This bill modifies provisions regarding aquaculture.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ creates the Private Aquaculture Advisory Council;
- ▶ states that the Department of Agriculture and Food shall consider the recommendations of the Private Aquaculture Advisory Council when adopting rules;
- ▶ modifies the documentation requirements for a transfer or shipment of live aquatic animals;
- ▶ states that the Division of Wildlife Resources may authorize:
 - an aquaculture facility, public aquaculture facility, or fee fishing facility upon a natural lake or reservoir constructed on a natural stream channel under certain circumstances; and
 - a private fish pond on a natural lake or reservoir constructed on a natural stream channel under certain circumstances; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 4-37-103, as last amended by Laws of Utah 2008, Chapter 69
- 4-37-104, as last amended by Laws of Utah 1998, Chapter 302
- 4-37-105, as last amended by Laws of Utah 1998, Chapter 302
- 4-37-108, as last amended by Laws of Utah 1998, Chapter 302
- 4-37-109, as last amended by Laws of Utah 2010, Chapter 378
- 4-37-111, as enacted by Laws of Utah 1994, Chapter 153
- 4-37-201, as last amended by Laws of Utah 2009, Chapter 183
- 4-37-203, as last amended by Laws of Utah 2010, Chapter 378
- 4-37-204, as last amended by Laws of Utah 2010, Chapter 378
- 4-37-301, as last amended by Laws of Utah 2009, Chapter 183
- 23-13-2, as last amended by Laws of Utah 2011, Chapter 297

23-14-3, as last amended by Laws of Utah 1995, Chapter 211

23-15-10, as last amended by Laws of Utah 2008, Chapter 69

ENACTS:

23-14-2.8, Utah Code Annotated 1953

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

Section 1. Section 4-37-103 is amended to read:**4-37-103. Definitions.**

As used in this chapter:

(1) "Aquaculture" means the controlled cultivation of aquatic animals.

(2) (a) (i) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture.

(ii) "Aquaculture facility" does not include any public aquaculture facility or fee fishing facility.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain to, different drainages, are considered separate aquaculture facilities regardless of ownership.

(3) (a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete of any species listed in Subsection (3)(a).

(4) "Fee fishing facility" means a body of water used for holding or rearing fish for the purpose of providing fishing for a fee or for pecuniary consideration or advantage.

(5) "Natural flowing stream" means the same as that term is defined in Section 23-13-2.

(6) "Natural lake" means the same as that term is defined in Section 23-13-2.

~~[(4)-(a)] (7) "Private fish pond" means [a body of water where privately owned fish are propagated or kept for a noncommercial purpose] the same as that term is defined in Section 23-13-2.~~

~~[(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.]~~

~~[(6)] (8) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture by the Division of Wildlife Resources, U.S. Fish and Wildlife Service, a mosquito abatement district, or an institution of higher education.~~

~~[(7)] (9) "Public fishery resource" means fish produced in public aquaculture facilities and wild and free ranging populations of fish in the surface waters of the state.~~

(10) "Reservoir constructed on a natural stream channel" means the same as that term is defined in Section 23-13-2.

(11) "Short-term fishing event" means the same as that term is defined in Section 23-13-2.

Section 2. Section 4-37-104 is amended to read:

4-37-104. Department's responsibilities.

(1) The department is responsible for^[.] enforcing laws and rules made by the Wildlife Board governing species of aquatic animals which may be imported into the state or possessed or transported within the state that are applicable to aquaculture or fee fishing facilities and the promotion of the state's aquaculture industry.

~~[(a) the marketing and promotion of the state's aquaculture industry; and]~~

~~[(b) enforcing laws and rules made by the Wildlife Board governing species of aquatic animals which may be imported into the state or possessed or transported within the state that are applicable to aquaculture or fee fishing facilities.]~~

(2) Subject to the policies and rules of the Fish Health Policy Board, the department shall:

(a) act to prevent the outbreak and act to control the spread of disease-causing pathogens among aquatic animals in aquaculture and fee fishing facilities; and

(b) act to prevent the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from aquaculture or fee fishing facilities to wild aquatic [wildlife] animals, other animals, and humans.

Section 3. Section 4-37-105 is amended to read:

4-37-105. Responsibilities of Wildlife Board and Division of Wildlife Resources.

(1) The Wildlife Board and Division of Wildlife Resources are responsible for determining the species of aquatic animals which may be imported into, possessed, and transported within the state.

(2) Subject to the policies and rules of the Fish Health Policy Board, the Wildlife Board and the Division of Wildlife Resources shall:

(a) act to prevent the outbreak and act to control the spread of disease-causing pathogens among aquatic animals in public aquaculture facilities; and

(b) act to prevent the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from public aquaculture facilities and private ponds to wild aquatic [wildlife] animals, other animals, and humans.

Section 4. Section 4-37-108 is amended to read:

4-37-108. Prohibited activities.

(1) Except as provided in this chapter, in the rules of the department made pursuant to Section 4-37-109, rules of the Fish Health Policy Board made pursuant to Section 4-37-503, or in the rules of the Wildlife Board governing species of aquatic animals which may be imported into, possessed, ~~or~~

transported, or released within the state, a person may not:

(a) acquire, import, or possess aquatic animals intended for use in an aquaculture or fee fishing facility;

(b) transport aquatic animals to or from an aquaculture or fee fishing facility;

(c) stock or propagate aquatic animals in an aquaculture or fee fishing facility; ~~or~~

(d) harvest, transfer, or sell aquatic animals from an aquaculture or fee fishing facility~~[-];~~ or

(e) release aquatic animals into the waters of the state.

(2) If a person commits an act in violation of Subsection (1) and that same act constitutes wanton destruction of protected wildlife as provided in Section 23-20-4, the person is guilty of a violation of Section 23-20-4.

Section 5. Section 4-37-109 is amended to read:

4-37-109. Department to make rules.

(1) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) specifying procedures for the application and renewal of certificates of registration for operating an aquaculture or fee fishing facility; and

(b) governing the disposal or removal of aquatic animals from an aquaculture or fee fishing facility for which the certificate of registration has lapsed or been revoked.

(2) (a) The department may make other rules consistent with its responsibilities set forth in Section 4-37-104.

(b) Except as provided by this chapter, the rules authorized by Subsection (2)(a) shall be consistent with the suggested procedures for the detection and identification of pathogens published by the American Fisheries Society's Fish Health Section.

(3) (a) The department shall consider the recommendations of the Private Aquaculture Advisory Council established in Section 23-14-2.8 when adopting rules under Subsection (1).

(b) If the Private Aquaculture Advisory Council recommends a position or action to the department pursuant to Section 23-14-2.8 and the department rejects the recommendation, the department shall provide a written explanation to the council.

Section 6. Section 4-37-111 is amended to read:

4-37-111. Prohibited sites.

~~[Aquaculture and fee fishing facilities]~~ (1) Except as provided in Subsection (2), an aquaculture facility or a fee fishing facility may not be developed on:

~~[(1)]~~ (a) a natural ~~[lakes]~~ lake;

~~[(2)]~~ (b) a natural flowing ~~[streams]~~ stream; or

~~[(3) reservoirs]~~ (c) a reservoir constructed on a natural stream ~~[channels]~~ channel.

(2) The Division of Wildlife Resources may authorize an aquaculture facility, public aquaculture facility, or fee fishing facility on a natural lake or reservoir constructed on a natural stream channel upon inspecting and determining:

(a) the facility and inlet source of the facility neither contain wild game fish nor are likely to support such species in the future;

(b) the facility and the facility's intended use will not jeopardize conservation of aquatic wildlife or lead to the privatization or commercialization of aquatic wildlife;

(c) the facility is properly screened as provided in Subsection 23-15-10(3)(c) and otherwise in compliance with the requirements of this title, rules of the Wildlife Board, and applicable law; and

(d) the facility is not vulnerable to flood or high water events capable of compromising the facility's inlet or outlet screens and allowing escapement of privately owned fish into waters of the state.

(3) Any authorization issued by the Division of Wildlife Resources under Subsection (2) shall be in the form of a certificate of registration.

Section 7. Section 4-37-201 is amended to read:

4-37-201. Certificate of registration required to operate an aquaculture facility.

(1) A person may not operate an aquaculture facility without first obtaining a certificate of registration from the department.

(2) (a) Each application for a certificate of registration to operate an aquaculture facility shall be accompanied by a fee.

(b) The fee shall be established by the department in accordance with Section 63J-1-504.

(3) The department shall coordinate with the Division of Wildlife Resources:

(a) on the suitability of the proposed site relative to potential impacts on adjacent wild aquatic ~~[wildlife]~~ animal populations; and

(b) in determining which species the holder of the certificate of registration may propagate, possess, transport, or sell.

(4) The department shall list on the certificate of registration the species which the holder may propagate, possess, transport, or sell.

Section 8. Section 4-37-203 is amended to read:

4-37-203. Transportation of aquatic animals to or from aquaculture facilities.

(1) Any person holding a certificate of registration for an aquaculture facility may transport the live aquatic animals specified on the certificate of registration to the facility or to any

person who has been issued a certificate of registration or who is otherwise authorized by law to possess those aquatic animals.

(2) Each transfer or shipment of live aquatic animals from or to an aquaculture facility within the state shall be accompanied by documentation of the source and destination of the fish, including:

(a) name, address, certificate of registration number and health approval number of the source;

(b) number and weight being shipped, by species; ~~[and]~~

~~(c) [name, address, and certificate of registration number]~~ name of the recipient;

(d) address of the destination~~[-];~~ and

(e) (i) certificate of registration number of the receiving facility; or

(ii) location of the private fish pond or short-term fishing event when authorized to receive the aquatic animal without a certificate of registration under Division of Wildlife Resources rules.

Section 9. Section 4-37-204 is amended to read:

4-37-204. Sale of aquatic animals from aquaculture facilities.

(1) (a) Except as provided by Subsection (1)(b), a person holding a certificate of registration for an aquaculture facility may take an aquatic animal as approved on the certificate of registration from the facility at any time and offer the aquatic animal for sale; however, live aquatic animals may be sold within Utah only to a person who:

(i) has been issued a certificate of registration to possess the aquatic animal~~[-];~~ or

(ii) is eligible to receive the aquatic animal without a certificate of registration under Division of Wildlife Resources rules.

(b) A person who owns or operates an aquaculture facility may stock a live ~~[aquatic animal]~~ fish in a private fish pond or at a short-term fishing event if the person:

(i) obtains a health approval number for the aquaculture facility;

(ii) provides the ~~[private fish pond's owner]~~ buyer with a brochure published by the Division of Wildlife Resources that summarizes the statutes and rules related to a private fish pond or short-term fishing event and the possession of ~~[an aquatic animal]~~ fish;

(iii) inspects the ~~[private fish]~~ pond or holding facility to verify that the ~~[private fish]~~ pond or facility is in compliance with Subsections 23-15-10(2) and (3)(c); and

(iv) stocks the species, strain, and reproductive capability of ~~[aquatic animal]~~ fish authorized by the Wildlife Board in accordance with Section 23-15-10 for stocking in the area where the ~~[private fish]~~ pond or holding facility is located.

(2) An aquatic animal sold or transferred by the owner or operator of an aquaculture facility shall be

accompanied by the seller's receipt that contains the following information:

- (a) date of transaction;
 - (b) name, address, certificate of registration number, health approval number, and signature of seller;
 - (c) number and weight of aquatic animal by:
 - (i) species;
 - (ii) strain; and
 - (iii) reproductive capability; and
 - (d) name and address of the receiver.
- (3) (a) A person holding a certificate of registration for an aquaculture facility shall submit to the department an annual report of each sale of live aquatic animals or each transfer of live aquatic animals to:
- (i) another aquaculture facility; or
 - (ii) a fee fishing facility.
- (b) The report shall contain the following information:
- (i) name, address, and certificate of registration number of the seller or supplier;
 - (ii) number and weight by species;
 - (iii) date of sale or transfer; and
 - (iv) name, address, phone number, and certificate of registration number of the receiver.
- (4) (a) A person who owns or operates an aquaculture facility shall submit to the Division of Wildlife Resources an annual report of each sale or transfer of a live ~~[aquatic animal]~~ fish to a private fish pond or short-term fishing event.
- (b) The report shall contain:
- (i) the name, address, and health approval number of the person;
 - (ii) the name, address, and phone number of the private fish pond's owner or short-term fishing event's operator;
 - (iii) the number and weight of ~~[aquatic animal]~~ fish by:
 - (A) species;
 - (B) strain; and
 - (C) reproductive capability;
 - (iv) date of sale or transfer;
 - (v) the location of the private fish pond's ~~[location]~~ or short-term fishing event's holding facility; and
 - (vi) verification that the private fish pond or short-term fishing event's holding facility was inspected and is in compliance with Subsections 23-15-10(2) and (3)(c).
- (5) The reports required by Subsections (3) and (4) shall be submitted before:

(a) a certificate of registration is renewed or a subsequent certificate of registration is issued for an aquaculture facility in the state; or

(b) a health approval number is issued for an out-of-state source.

Section 10. Section 4-37-301 is amended to read:

4-37-301. Certificate of registration required to operate a fee fishing facility.

(1) A person may not operate a fee fishing facility without first obtaining a certificate of registration from the department.

(2) (a) Each application for a certificate of registration to operate a fee fishing facility shall be accompanied by a fee.

(b) The fee shall be established by the department in accordance with Section 63J-1-504.

(3) The department shall coordinate with the Division of Wildlife Resources:

(a) on the suitability of the proposed site relative to potential impacts on adjacent wild aquatic ~~[wildlife]~~ animal populations; and

(b) in determining which species the holder of the certificate of registration may possess or transport to or stock into the facility.

(4) The department shall list on the certificate of registration the species which the holder may possess or transport to or stock into the facility.

(5) A person holding a certificate of registration for an aquaculture facility may also operate a fee fishing facility without obtaining an additional certificate of registration, if the fee fishing facility:

(a) is in a body of water meeting the criteria of Section 4-37-111 which is connected with the aquaculture facility;

(b) contains only those aquatic animals specified on the certificate of registration for the aquaculture facility; and

(c) is designated on the certificate of registration for the aquaculture facility.

Section 11. Section 23-13-2 is amended to read:

23-13-2. Definitions.

As used in this title:

(1) "Activity regulated under this title" means any act, attempted act, or activity prohibited or regulated under any provision of Title 23, Wildlife Resources Code of Utah, or the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

(a) fishing;

(b) hunting;

(c) trapping;

(d) taking;

(e) permitting any dog, falcon, or other domesticated animal to take;

- (f) transporting;
- (g) possessing;
- (h) selling;
- (i) wasting;
- (j) importing;
- (k) exporting;
- (l) rearing;
- (m) keeping;
- (n) utilizing as a commercial venture; and
- (o) releasing to the wild.

[4] (2) "Aquaculture facility" ~~[has the meaning provided]~~ means the same as that term is defined in Section 4-37-103.

[2] (3) "Aquatic animal" ~~[has the meaning provided]~~ means the same as that term is defined in Section 4-37-103.

[3] (4) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or amphibians.

(5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(6) "Big game" means species of hoofed protected wildlife.

(7) "Carcass" means the dead body of an animal or its parts.

(8) "Certificate of registration" means a document issued under this title, or any rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit, or tag.

(9) "Closed season" means the period of time during which the taking of protected wildlife is prohibited.

(10) "Conservation officer" means a full-time, permanent employee of the Division of Wildlife Resources who is POST certified as a peace or a special function officer.

(11) "Dedicated hunter program" means a program that provides:

- (a) expanded hunting opportunities;
- (b) opportunities to participate in projects that are beneficial to wildlife; and
- (c) education in hunter ethics and wildlife management principles.

(12) "Division" means the Division of Wildlife Resources.

(13) (a) "Domicile" means the place:

(i) where an individual has a fixed permanent home and principal establishment;

(ii) to which the individual if absent, intends to return; and

(iii) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home.

(b) To create a new domicile an individual shall:

(i) abandon the old domicile; and

(ii) be able to prove that a new domicile has been established.

(14) "Endangered" means wildlife designated as endangered according to Section 3 of the federal Endangered Species Act of 1973.

(15) "Fee fishing facility" ~~[has the meaning provided]~~ means the same as that term is defined in Section 4-37-103.

(16) "Feral" means an animal that is normally domesticated but has reverted to the wild.

(17) "Fishing" means to take fish or crayfish by any means.

(18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and Castoridae families, except coyote and cougar.

(19) "Game" means wildlife normally pursued, caught, or taken by sporting means for human use.

(20) "Guide" means a person who receives compensation or advertises services for assisting another person to take protected wildlife, including the provision of food, shelter, or transportation, or any combination of these.

(21) "Guide's agent" means a person who is employed by a guide to assist another person to take protected wildlife.

(22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any means.

(23) "Intimidate or harass" means to physically interfere with or impede, hinder, or diminish the efforts of an officer in the performance of the officer's duty.

(24) (a) "Natural flowing stream" means a topographic low where water collects and perennially or intermittently flows with a perceptible current in a channel formed exclusively by forces of nature.

(b) "Natural flowing stream" includes perennial or intermittent water flows in a:

(i) realigned or modified channel that replaces the historic, natural flowing stream channel; and

(ii) dredged natural flowing stream channel.

(c) "Natural flowing stream" does not include a human-made ditch, canal, pipeline, or other water delivery system that diverts and conveys water to an approved place of use pursuant to a certificated water right.

(25) (a) "Natural lake" means a perennial or intermittent body of water that collects on the

surface of the earth exclusively through the forces of nature and without human assistance.

(b) “Natural lake” does not mean a lake where all surface water sources supplying the body of water originate from groundwater springs no more than 100 yards upstream.

[(24)] (26) “Nonresident” means a person who does not qualify as a resident.

[(25)] (27) “Open season” means the period of time during which protected wildlife may be legally taken.

[(26)] (28) “Pecuniary gain” means the acquisition of money or something of monetary value.

[(27)] (29) “Permit” means a document, including a stamp, that grants authority to engage in specified activities under this title or a rule or proclamation of the Wildlife Board.

[(28)] (30) “Person” means an individual, association, partnership, government agency, corporation, or an agent of the foregoing.

[(29)] (31) “Possession” means actual or constructive possession.

[(30)] (32) “Possession limit” means the number of bag limits one individual may legally possess.

[(31)] (33) (a) “Private fish pond” means a pond, reservoir, or other body of water, including a fish culture system, located on privately owned land where privately owned, protected aquatic wildlife fish:

(i) are propagated or kept for a private noncommercial purpose[-]; and

(ii) may be taken without a fishing license.

(b) “Private fish pond” does not include an aquaculture facility [øf], fee fishing facility[-], short-term fishing event, or private stocking.

(34) (a) “Private stocking” means an authorized release of privately owned, live fish in the waters of the state not eligible as a private fish pond under Section 23-15-10 or aquaculture facility or fee fishing facility under Title 4, Chapter 37, Aquaculture Act.

(b) Fish released under private stocking become the property of the state and subject to the fishing regulations set forth in this title and the rules and proclamations of the Wildlife Board.

[(32)] (35) “Private wildlife farm” means an enclosed place where privately owned birds or furbearers are propagated or kept and that restricts the birds or furbearers from:

(a) commingling with wild birds or furbearers; and

(b) escaping into the wild.

[(33)] (36) “Proclamation” means the publication used to convey a statute, rule, policy, or pertinent information as it relates to wildlife.

[(34)] (37) (a) “Protected aquatic wildlife” means aquatic wildlife as defined in Subsection (3), except as provided in Subsection [(34)] (37)(b).

(b) “Protected aquatic wildlife” does not include aquatic insects.

[(35)] (38) (a) “Protected wildlife” means wildlife as defined in Subsection [(49)] (54), except as provided in Subsection [(35)] (38)(b).

(b) “Protected wildlife” does not include coyote, field mouse, gopher, ground squirrel, jack rabbit, muskrat, and raccoon.

[(36)] (39) “Released to the wild” means to be turned loose from confinement.

(40) (a) “Reservoir constructed on a natural stream channel” means a body of water collected and stored on the course of a natural flowing stream by impounding the stream through excavation or diking.

(b) “Reservoir constructed on a natural stream channel” does not mean an impoundment on a natural flowing stream where all surface water sources supplying the impoundment originate from groundwater springs no more than 100 yards upstream.

[(37)] (41) (a) “Resident” means a person who:

(i) has been domiciled in the state for six consecutive months immediately preceding the purchase of a license; and

(ii) does not claim residency for hunting, fishing, or trapping in any other state or country.

(b) A Utah resident retains Utah residency if that person leaves this state:

(i) to serve in the armed forces of the United States or for religious or educational purposes; and

(ii) the person complies with Subsection [(37)] (41)(a)(ii).

(c) (i) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(A) is not on temporary duty in this state; and

(B) complies with Subsection [(37)] (41)(a)(ii).

(ii) A copy of the assignment orders shall be presented to a wildlife division office to verify the member’s qualification as a resident.

(d) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(i) has been present in this state for 60 consecutive days immediately preceding the purchase of the license; and

(ii) complies with Subsection [(37)] (41)(a)(ii).

(e) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(f) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

[(38)] (42) “Sell” means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging, or trading.

(43) (a) “Short-term fishing event” means any event where privately acquired fish are held or confined for a period not to exceed 10 days for the purpose of providing fishing or recreational opportunity and where no fee is charged as a requirement to fish.

(b) A fishing license is not required to take fish at a short-term fishing event.

[(39)] (44) “Small game” means species of protected wildlife:

(a) commonly pursued for sporting purposes; and

(b) not classified as big game, aquatic wildlife, or furbearers and excluding turkey, cougar, and bear.

[(40)] (45) “Spoiled” means impairment of the flesh of wildlife which renders it unfit for human consumption.

[(41)] (46) “Spotlighting” means throwing or casting the rays of any spotlight, headlight, or other artificial light on any highway or in any field, woodland, or forest while having in possession a weapon by which protected wildlife may be killed.

[(42)] (47) “Tag” means a card, label, or other identification device issued for attachment to the carcass of protected wildlife.

[(43)] (48) “Take” means to:

(a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected wildlife; or

(b) attempt any action referred to in Subsection [(43)] (48)(a).

[(44)] (49) “Threatened” means wildlife designated as such pursuant to Section 3 of the federal Endangered Species Act of 1973.

[(45)] (50) “Trapping” means taking protected wildlife with a trapping device.

[(46)] (51) “Trophy animal” means an animal described as follows:

(a) deer - a buck with an outside antler measurement of 24 inches or greater;

(b) elk - a bull with six points on at least one side;

(c) bighorn, desert, or rocky mountain sheep - a ram with a curl exceeding half curl;

(d) moose - a bull with at least one antler exceeding five inches in length;

(e) mountain goat - a male or female;

(f) pronghorn antelope - a buck with horns exceeding 14 inches; or

(g) bison - a bull.

[(47)] (52) “Waste” means to abandon protected wildlife or to allow protected wildlife to spoil or to be

used in a manner not normally associated with its beneficial use.

[(48)] (53) “Water pollution” means the introduction of matter or thermal energy to waters within this state that:

(a) exceeds state water quality standards; or

(b) could be harmful to protected wildlife.

[(49)] (54) “Wildlife” means:

(a) crustaceans, including brine shrimp and crayfish;

(b) mollusks; and

(c) vertebrate animals living in nature, except feral animals.

Section 12. Section 23-14-2.8 is enacted to read:

23-14-2.8. Private Aquaculture Advisory Council.

(1) The executive director of the department may establish a Private Aquaculture Advisory Council to give advice and make recommendations to the:

(a) commissioner of the Department of Agriculture and Food on rules adopted under Subsection 4-37-109(1); and

(b) Wildlife Board on rules adopted concerning the regulation of:

(i) private fish ponds;

(ii) private stocking;

(iii) short-term fishing events; and

(iv) aquatic animal species authorized for importation or use in aquaculture facilities, fee fishing facilities, private fish ponds, short-term fishing events, and private stocking.

(2) The advisory council shall consist of 10 members appointed to four-year terms by the governor, in consultation with the executive director of the department, the commissioner of the Department of Agriculture and Food, and the director of the division, as follows:

(a) two members representing the division selected from four or more names submitted by the director of the division;

(b) two members representing the Department of Agriculture and Food selected from four or more names submitted by the commissioner of the Department of Agriculture and Food;

(c) one member representing angling interests selected from two or more names submitted by a nonprofit corporation that promotes sport fishing;

(d) two members representing the private aquaculture industry selected from four or more names submitted by a nonprofit corporation that promotes the aquaculture industry; and

(e) three members representing private ponds or fee fishing facilities selected from six or more names submitted by a nonprofit corporation that promotes the aquaculture industry.

(3) Notwithstanding the requirements of Subsection (2), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of advisory council members are staggered so that approximately half of the advisory council is appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) Six members of the advisory council shall constitute a quorum.

(b) A quorum is necessary for the advisory council to act.

(c) Advisory council recommendations to the commissioner and Wildlife Board pursuant to Subsection (1) shall be supported by majority vote.

(d) The advisory council shall elect a chair and vice chair from the advisory council's membership.

(e) The advisory council shall determine:

(i) the time and place of meetings, not to exceed four meetings per calendar year; and

(ii) other procedural matters not specified in this Subsection (5).

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 13. Section 23-14-3 is amended to read:

23-14-3. Powers of division to determine facts -- Policymaking powers of Wildlife Board.

(1) The Division of Wildlife Resources may determine the facts relevant to the wildlife resources of this state.

(2) (a) Upon a determination of these facts, the Wildlife Board shall establish the policies best designed to accomplish the purposes and fulfill the intent of all laws pertaining to wildlife and the preservation, protection, conservation, perpetuation, introduction, and management of wildlife.

(b) In establishing policy, the Wildlife Board shall:

(i) recognize that wildlife and its habitat are an essential part of a healthy, productive environment;

(ii) recognize the impact of wildlife on man, his economic activities, private property rights, and local economies;

(iii) seek to balance the habitat requirements of wildlife with the social and economic activities of man;

(iv) recognize the social and economic values of wildlife, including fishing, hunting, and other uses; and

(v) seek to maintain wildlife on a sustainable basis.

(c) (i) The Wildlife Board shall consider the recommendations of the regional advisory councils established in Section 23-14-2.6 and the Private Aquaculture Advisory Council established in Section 23-14-2.8.

(ii) If a regional advisory council or the Private Aquaculture Advisory Council recommends a position or action to the Wildlife Board, and the Wildlife Board rejects the recommendation, the Wildlife Board shall provide a written explanation to the [regional] advisory council recommending the opposing position.

(3) No authority conferred upon the Wildlife Board by this title shall supersede the administrative authority of the executive director of the Department of Natural Resources or the director of the Division of Wildlife Resources.

Section 14. Section 23-15-10 is amended to read:

23-15-10. Private fish pond.

(1) A private fish pond is not required to obtain a certificate of registration from the division to receive [an aquatic animal] fish from an aquaculture facility[-] if:

(a) the pond is properly screened as provided in Subsection (3)(c); and

(b) the fish species being stocked is authorized by this chapter or rules of the Wildlife Board.

(2) (a) [A] Except as provided in Subsection (2)(b), a private fish pond or a short-term fishing event may not be developed or held on:

[~~(a)~~] (i) a natural lake;

[~~(b)~~] (ii) a natural flowing stream; or

[~~(c)~~] (iii) a reservoir constructed on a natural stream channel.

(b) The division may authorize a private fish pond on a natural lake or reservoir constructed on a natural stream channel upon inspecting and determining:

(i) the pond and inlet source of the pond neither contain wild game fish nor are likely to support such species in the future;

(ii) the pond and the pond's intended use will not jeopardize conservation of aquatic wildlife populations or lead to the privatization or commercialization of aquatic wildlife;

(iii) the pond is properly screened as provided in Subsection (3)(c) and otherwise in compliance with the requirements of this title, rules of the Wildlife Board, and applicable law; and

(iv) the pond is not vulnerable to flood or high water events capable of compromising the pond's inlet or outlet screens allowing escapement of privately owned fish into waters of the state.

(c) Any authorization issued by the division under Subsection (2)(b) shall be in the form of a certificate of registration.

(3) A person who owns or operates a private fish pond may receive ~~[an aquatic animal]~~ a fish from an aquaculture facility if:

(a) the aquaculture facility has a health approval number required by Section 4-37-501;

(b) the species, strain, and reproductive capability of the ~~[aquatic animal]~~ fish is authorized by the Wildlife Board in accordance with Subsection (4) for stocking in the area where the private fish pond is located;

(c) the private fish pond is screened in accordance with the Wildlife Board's rule to prevent ~~[an aquatic animal]~~ the fish from moving into or out of the private fish pond;

(d) the ~~[aquatic animal]~~ fish is not:

(i) released from the private fish pond; or

(ii) transported live to another location; and

(e) the person provides the aquaculture facility with a signed statement that the private fish pond is in compliance with this section.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Wildlife Board may make rules that:

(a) specify the screen requirements to prevent the movement of ~~[an aquatic animal]~~ fish into or out of the private fish pond;

(b) specify the ~~[aquatic animal]~~ fish species that may not be stocked in a private fish pond located in the state; ~~[and]~~

(c) establish a location or region where a specified species, strain, and reproductive capability of ~~[aquatic animal]~~ fish may be stocked in a private fish pond~~[-]~~; and

(d) specify procedures and requirements for authorizing development of a private fish pond, fee fishing facility, or aquaculture facility on a natural lake, natural flowing stream, or reservoir on a natural stream channel pursuant to Subsection (2) and Section 4-37-111.

(5) The division may inspect a private fish pond to verify compliance with this section and rules of the Wildlife Board.

CHAPTER 413**H. B. 345**

Passed March 8, 2017

Approved March 25, 2017

Effective May 9, 2017

TELEHEALTH PILOT PROJECT

Chief Sponsor: Rebecca P. Edwards
Senate Sponsor: Brian E. Shiozawa

LONG TITLE**General Description:**

This bill establishes the Telehealth Pilot Project.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Health to issue a request for proposals to contract with one or more persons to develop and implement one or more telehealth pilot projects in the state;
- ▶ describes the purpose of the pilot project;
- ▶ describes requirements for the request for proposals;
- ▶ requires the Department of Health to report to the Health and Human Services Interim Committee regarding the pilot project; and
- ▶ repeals the provisions of this bill on January 1, 2020.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2018:

- ▶ to Department of Health Family Health and Preparedness, as a one-time appropriation:
 - From General Fund, One-time, \$350,000.

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

631-2-226, as last amended by Laws of Utah 2016, Chapter 345

ENACTS:

26-59-101, Utah Code Annotated 1953

26-59-102, Utah Code Annotated 1953

26-59-103, Utah Code Annotated 1953

26-59-104, Utah Code Annotated 1953

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

Section 1. Section 26-59-101 is enacted to read:**CHAPTER 59. TELEHEALTH PILOT PROGRAM****26-59-101. Title.**

This chapter is known as "Telehealth Pilot Program."

Section 2. Section 26-59-102 is enacted to read:**26-59-102. Definitions.**

As used in this section:

(1) "Grant" means a grant awarded by the department under this chapter to a person to develop and implement a project.

(2) "Project" means a telehealth pilot project described in Section 26-59-103.

(3) "Telehealth services" means providing health care remotely through the use of telecommunications technology.

Section 3. Section 26-59-103 is enacted to read:**26-59-103. Telehealth Pilot Project Grant Program.**

(1) (a) On or before July 1, 2017, the department shall issue a request for proposals, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, to award a grant to one or more persons to develop and implement one or more telehealth pilot projects in the state.

(b) A project described in this section shall run for two years.

(2) The purpose of a project is to:

(a) determine how telehealth services can best be used in the state to:

(i) increase access or convenience to health care, including specialized health care;

(ii) increase timeliness in crisis intervention;

(iii) reduce costs associated with obtaining health care; and

(iv) increase access to health care by rural populations and other underserved populations;

(b) determine the best practices for providing telehealth services in the state; and

(c) identify the types of health care services for which telehealth services may be most beneficial.

(3) A person who applies for a grant under this section shall:

(a) identify the population to which the person will provide telehealth services;

(b) explain how the population described in Subsection (3)(a):

(i) is currently underserved; and

(ii) will benefit from the provision of telehealth services;

(c) provide details regarding:

(i) how the person will provide the telehealth services;

(ii) the projected costs of providing the telehealth services;

(iii) the sustainability of the proposed project; and

(iv) the methods that the person will use to:

(A) protect the privacy of patients;

(B) collect nonidentifying data relating to the project; and

(C) provide transparency on the costs and operation of the project; and

(d) provide other information that the department requests to ensure that the proposed project satisfies the criteria described in Subsection (4).

(4) In evaluating a proposal for a grant, the department shall consider:

(a) the extent to which the proposal will fulfill the purposes described in Subsection (2);

(b) the extent to which the population that will be served by the proposed project:

(i) is currently underserved; and

(ii) is likely to benefit from the proposed project;

(c) the cost of the proposed project;

(d) the viability and innovation of the proposed project; and

(e) the extent to which the proposed project will yield useful data to evaluate the effectiveness of the proposed project.

Section 4. Section 26-59-104 is enacted to read:

26-59-104. Reporting requirements.

(1) The department shall, before June 30, 2018, report to the Health and Human Services Interim Committee regarding:

(a) each person who received a grant for a project;

(b) the details of the project; and

(c) the duration of the project.

(2) The department shall, before June 30, 2019, report to the Health and Human Services Interim Committee regarding:

(a) the success of each project for which the department awarded a grant;

(b) data gathered in relation to each project;

(c) knowledge gained relating to the provision of telehealth services;

(d) proposals for the future use of telehealth services in the state;

(e) obstacles encountered in the provision of telehealth services; and

(f) changes needed in the law to overcome obstacles to providing telehealth services.

Section 5. Section 63I-2-226 is amended to read:

63I-2-226. Repeal dates -- Title 26.

(1) Title 26, Chapter 46, Utah Health Care Workforce Financial Assistance Program, is repealed July 1, 2017.

[(2) Section 26-18-412 is repealed December 31, 2016.]

(2) Title 26, Chapter 59, Telehealth Pilot Program, is repealed January 1, 2020.

Section 6. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

To Department of Health -- Family Health and Preparedness

<u>From General Fund, One-time</u>	<u>\$350,000</u>
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Schedule of Programs:

<u>Telehealth Pilot Program</u>	<u>\$350,000</u>
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The Legislature intends that \$300,000 of this appropriation be used for telehealth grants to be awarded through a request for proposals. The remaining \$50,000 shall be used for program administration as described in Section 26-59-103. Under Section 63J-1-603 the Legislature intends that appropriations provided in this section not lapse at the end of fiscal year 2018. The use of any nonlapsing funds is limited to the administration of Title 26, Chapter 59, Telehealth Pilot Program and funding the Telehealth Pilot Project Grant Program described in Section 26-59-103.

CHAPTER 414**H. B. 376**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

LANDLORD-TENANT RIGHTS

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies provisions related to forcible entry and detainer.

Highlighted Provisions:

This bill:

- ▶ addresses timing of an evidentiary hearing;
- ▶ repeals exemption involving commercial tenants;
- ▶ amends provisions related to an order of restitution; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78B-6-810, as last amended by Laws of Utah 2009, Chapters 184 and 298

78B-6-812, as last amended by Laws of Utah 2013, Chapter 206

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

Section 1. Section 78B-6-810 is amended to read:**78B-6-810. Court procedures.**

(1) In an action under this chapter in which the tenant remains in possession of the property:

(a) the court shall expedite the proceedings, including the resolution of motions and trial;

(b) the court shall begin the trial within 60 days after the day on which the complaint is served, unless the parties agree otherwise; and

(c) if this chapter requires a hearing to be held within a specified time, the time may be extended to the first date thereafter on which a judge is available to hear the case in a jurisdiction in which a judge is not always available.

(2) (a) In an action for unlawful detainer ~~[where the claim is for nonpayment of rent or for occupancy of a property after a forced sale as described in Section 78B-6-802.5],~~ the court shall hold an evidentiary hearing, upon request of either party, within 10 business days after the day on which the defendant files ~~[the defendant's answer.]~~ an answer or response.

(b) At the evidentiary hearing held in accordance with Subsection (2)(a):

(i) the court shall determine who has the right of occupancy during the litigation's pendency; and

(ii) if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges an act that would be considered criminal under the laws of this state, the court shall hold an evidentiary hearing within 10 days after the day on which the complaint is filed to determine whether the alleged act occurred.

(b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is filed and notice of the hearing shall be served upon the defendant with the summons at least three calendar days before the scheduled time of the hearing.

(c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a), determines that it is more likely than not that the alleged act occurred, the court shall issue an order of restitution.

(d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(e) The court may allow a period of up to 72 hours before restitution may be made under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.

(f) At the evidentiary hearing held in accordance with Subsection (3)(a), if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(g) "An act that would be considered criminal under the laws of this state" under Subsection (3)(a) includes only the following:

(i) an act that would be considered a felony under the laws of this state;

(ii) an act that would be considered criminal affecting the health or safety of a tenant, the landlord, the landlord's agent, or other person on the landlord's property;

(iii) an act that would be considered criminal that causes damage or loss to any tenant's property or the landlord's property;

(iv) a drug- or gang-related act that would be considered criminal;

(v) an act or threat of violence against any tenant or other person on the premises, or against the landlord or the landlord's agent; and

(vi) any other act that would be considered criminal that the court determines directly impacts the peaceful enjoyment of the premises by any tenant.

(4) (a) At any hearing held in accordance with this chapter in which the tenant after receiving notice fails to appear, the court shall issue an order of restitution.

(b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(5) A court adjudicating matters under this chapter may make other orders as are appropriate and proper.

~~[(6) The expedited hearing provisions in this section do not apply to actions involving commercial tenants.]~~

Section 2. Section 78B-6-812 is amended to read:

78B-6-812. Order of restitution -- Service -- Enforcement -- Disposition of personal property -- Hearing.

(1) ~~[Each]~~ An order of restitution shall:

(a) direct the defendant to vacate the premises, remove the defendant's personal property, and restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or constable;

(b) advise the defendant of the time limit set by the court for the defendant to vacate the premises, which shall be three calendar days following service of the order, unless the court determines that a longer or shorter period is appropriate ~~[under the]~~ after a finding of extenuating circumstances; and

(c) advise the defendant of the defendant's right to a hearing to contest the manner of its enforcement.

(2) (a) A copy of the order of restitution and a form for the defendant to request a hearing as listed on the form shall be served in accordance with Section 78B-6-805 by a person authorized to serve process pursuant to Subsection 78B-8-302(1). If personal service is impossible or impracticable, service may be made by:

(i) mailing a copy of the order and the form by first class mail to the defendant's last-known address and posting a copy of the order and the form at a conspicuous place on the premises; or

(ii) mailing a copy of the order and the form to the commercial tenant defendant's last-known place of business and posting a copy of the order and the form at a conspicuous place on the business premises.

(b) A request for hearing by the defendant may not stay enforcement of the restitution order unless:

(i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property bond to the clerk of the court in an amount approved by the court according to the formula set forth in Subsection 78B-6-808(4)(b); and

(ii) the court orders that the restitution order be stayed.

(c) The date of service, the name, title, signature, and telephone number of the person serving the order and the form shall be legibly endorsed on the copy of the order and the form served on the defendant.

(d) The person serving the order and the form shall file proof of service in accordance with Rule 4(e), Utah Rules of Civil Procedure.

(3) (a) If the defendant fails to comply with the order within the time prescribed by the court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the least destructive means possible to remove the defendant.

(b) Personal property of the defendant may be removed from the premises by the sheriff or constable and transported to a suitable location for safe storage. The sheriff or constable may delegate responsibility for inventory, moving, and storage to the plaintiff, who shall store the personal property in a suitable place and in a reasonable manner.

(c) A tenant may not access the property until the removal and storage costs have been paid in full, except that the tenant shall be provided reasonable access within five business days to retrieve:

(i) clothing;

(ii) identification;

(iii) financial documents, including all those related to the tenant's immigration status, employment status;

(iv) documents pertaining to receipt of public services; and

(v) medical information, prescription medications, and any medical equipment required for maintenance of medical needs.

(d) The personal property removed and stored shall, after 15 calendar days, be considered abandoned property and subject to Section 78B-6-816.

(4) In the event of a dispute concerning the manner of enforcement of the restitution order, the defendant may file a request for a hearing. The court shall set the matter for hearing within 10 calendar days from the filing of the request, or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.

(5) The Judicial Council shall draft the forms necessary to implement this section.

CHAPTER 415**H. B. 435**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

**HEALTH CARE PATIENT
PRIVACY AMENDMENTS**Chief Sponsor: Francis D. Gibson
Senate Sponsor: Brian E. Shiozawa**LONG TITLE****General Description:**

This bill amends provisions related to the use of body-worn cameras by law enforcement in health care settings.

Highlighted Provisions:

This bill:

- ▶ amends the Government Records Access and Management Act to classify an audio or video recording created by a body-worn camera in a health care setting as a protected record under the Government Records Access and Management Act; and
- ▶ amends Title 77, Chapter 7a, Law Enforcement Use of Body-Worn Cameras, to:
 - require certain notice to a health care provider if a body-worn camera is activated in a health care setting or in certain human service programs; and
 - prohibits the activation of a body-worn camera in a health care setting or certain human service programs unless the body-worn camera is activated for a law enforcement encounter.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-2-305, as last amended by Laws of Utah 2015, Chapters 147, 283, and 411

77-7a-102, as enacted by Laws of Utah 2016, Chapter 410

77-7a-104, as enacted by Laws of Utah 2016, Chapter 410

77-7a-105, as enacted by Laws of Utah 2016, Chapter 410

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

Section 1. Section 63G-2-305 is amended to read:**63G-2-305. Protected records.**

The following records are protected if properly classified by a governmental entity:

- (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;
- (2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (a) an invitation for bids;
- (b) a request for proposals;
- (c) a request for quotes;
- (d) a grant; or
- (e) other similar document;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under

consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals,

and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or

any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

- (i) unpublished lecture notes;
- (ii) unpublished notes, data, and information:
 - (A) relating to research; and
 - (B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

- (II) a sponsor of sponsored research;
- (iii) unpublished manuscripts;
- (iv) creative works in process;
- (v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

- (a) a production facility; or
- (b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

- (a) the safety of the general public; or
- (b) the security of:
 - (i) governmental property;
 - (ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge;

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the 911 Division under Section 63H-7a-302;

(59) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(61) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4);

(63) a record described in Section 63G-12-210;

(64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003; ~~and~~

(65) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund[.]; and

(66) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Subsection 62A-2-101(19)(a)(vi), except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(d); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

Section 2. Section 77-7a-102 is amended to read:

77-7a-102. Body-worn cameras -- Written policies and procedures.

(1) Any law enforcement agency that uses body-worn cameras shall have a written policy governing the use of body-worn cameras that is consistent with the provisions of this chapter.

(2) (a) Any written policy regarding the use of body-worn cameras by a law enforcement agency shall, at a minimum:

(i) comply with and include the requirements in this chapter; and

(ii) address the security, storage, and maintenance of data collected from body-worn cameras.

(b) [This] Except as provided in Subsection 77-7a-104(11), this chapter does not prohibit a law enforcement agency from adopting body-worn camera policies that are more expansive than the minimum guidelines provided in this chapter.

(3) This chapter does not require an officer to jeopardize the safety of the public, other law enforcement officers, or himself or herself in order to activate or deactivate a body-worn camera.

Section 3. Section 77-7a-104 is amended to read:

77-7a-104. Activation and use of body-worn cameras.

(1) An officer using a body-worn camera shall verify that the equipment is properly functioning as is reasonably within the officer's ability.

(2) An officer shall report any malfunctioning equipment to the officer's supervisor if:

(a) the body-worn camera issued to the officer is not functioning properly upon initial inspection; or

(b) an officer determines that the officer's body-worn camera is not functioning properly at any time while the officer is on duty.

(3) An officer shall wear the body-worn camera so that it is clearly visible to the person being recorded.

(4) An officer shall activate the body-worn camera prior to any law enforcement encounter, or as soon as reasonably possible.

(5) An officer shall record in an uninterrupted manner until after the conclusion of a law enforcement encounter, except as an interruption of a recording is allowed under this section.

(6) When going on duty and off duty, an officer who is issued a body-worn camera shall record the officer's name, identification number, and the current time and date, unless the information is already available due to the functionality of the body-worn camera.

(7) If a body-worn camera was present during a law enforcement encounter, the officer shall document the presence of the body-worn camera in any report or other official record of a contact.

(8) When a body-worn camera has been activated, the officer may not deactivate the body-worn camera until the officer's direct participation in the law enforcement encounter is complete, except as provided in Subsection (9).

(9) An officer may deactivate a body-worn camera:

(a) to consult with a supervisor or another officer;

(b) during a significant period of inactivity; and

(c) during a conversation with a sensitive victim of crime, a witness of a crime, or an individual who wishes to report or discuss criminal activity if:

(i) the individual who is the subject of the recording requests that the officer deactivate the officer's body-worn camera; and

(ii) the officer believes that the value of the information outweighs the value of the potential recording and records the request by the individual to deactivate the body-worn camera.

(10) If an officer deactivates a body-worn camera, the officer shall document the reason for deactivating a body-worn camera in a written report.

(11) (a) For purposes of this Subsection (11):

(i) "Health care facility" means the same as that term is defined in Section 78B-3-403.

(ii) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(iii) "Hospital" means the same as that term is defined in Section 78B-3-403.

(iv) "Human service program" means the same as that term is defined in Subsection 62A-2-101(19)(a)(vi).

(b) An officer may not activate a body-worn camera in a hospital, health care facility, human service program, or the clinic of a health care provider, except during a law enforcement encounter, and with notice under Section 77-7a-105.

Section 4. Section 77-7a-105 is amended to read:

77-7a-105. Notice and privacy.

(1) ~~[When an]~~ An officer with a body-worn camera ~~[enters a private residence, the officer]~~ shall give notice, when reasonable under the circumstances[;]:

(a) to:

(i) the occupants of [the] a private residence [that] in which the officer enters and in which a body-worn camera is in use; or

(ii) a health care provider present at a hospital, a health care facility, human service program, or a health care provider's clinic in which the officer enters and in which a body-worn camera is in use; and

(b) either by:

[(a)] (i) wearing a body-worn camera in a clearly visible manner; or

[(b)] (ii) giving an audible notice that the officer is using a body-worn camera.

(2) An agency shall make the agency's policies regarding the use of body-worn cameras available to the public, and shall place the policies on the agency's public website when possible.

CHAPTER 416**S. B. 50**

Passed March 9, 2017
 Approved March 25, 2017
 Effective May 9, 2017

**AUTOMOBILE INSURANCE
 REGISTRY AMENDMENTS**

Chief Sponsor: Lincoln Fillmore
 House Sponsor: Norman K Thurston

LONG TITLE**General Description:**

This bill amends provisions related to motor vehicle insurance.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to the seizure of a vehicle if the owner or operator does not have security in effect;
- ▶ amends provisions related to evidence of a motor vehicle owner's or operator's security; and
- ▶ amends post-accident security requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 41-1a-1101, as last amended by Laws of Utah 2014, Chapter 382
 41-12a-303.2, as last amended by Laws of Utah 2016, Chapters 303 and 356
 41-12a-501, as last amended by Laws of Utah 2005, Chapter 2

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

Section 1. Section 41-1a-1101 is amended to read:**41-1a-1101. Seizure -- Circumstances where permitted -- Impound lot standards.**

(1) The division or any peace officer, without a warrant, may seize and take possession of any vehicle, vessel, or outboard motor:

(a) that the division or the peace officer has reason to believe has been stolen;

(b) on which any identification number has been defaced, altered, or obliterated;

(c) that has been abandoned in accordance with Section 41-6a-1408;

(d) for which the applicant has written a check for registration or title fees that has not been honored by the applicant's bank and that is not paid within 30 days;

(e) that is placed on the water with improper registration;

(f) that is being operated on a highway:

(i) with registration that has been expired for more than three months;

(ii) having never been properly registered by the current owner; or

(iii) with registration that is suspended or revoked; or

(g) (i) that the division or the peace officer has reason to believe has been involved in an accident described in Section 41-6a-401, 41-6a-401.3, or 41-6a-401.5; and

(ii) whose operator did not remain at the scene of the accident until the operator fulfilled the requirements described in Section 41-6a-401 or 41-6a-401.7.

(2) (a) Subject to the restriction in Subsection (2)(b), the division or any peace officer, without a warrant^[5]:

(i) shall seize and take possession of any vehicle that is being operated on a highway without owner's or operator's security in effect for the vehicle as required under Section 41-12a-301 ~~unless~~ and the vehicle was involved in an accident; or

(ii) may seize and take possession of any vehicle that is being operated on a highway without owner's or operator's security in effect for the vehicle as required under Section 41-12a-301 if the division or any peace officer makes a reasonable determination that:

~~[(4)]~~ (A) the seizure of the vehicle would present a public safety concern to the operator or any of the occupants in the vehicle; or

~~[(4)]~~ (B) the impoundment of the vehicle would prevent the division or the peace officer from addressing other public safety considerations.

(b) The division or any peace officer may not seize and take possession of a vehicle under Subsection (2)(a):

(i) if the operator of the vehicle is not carrying evidence of owner's or operator's security as defined in Section 41-12a-303.2 in the vehicle unless the division or peace officer verifies that owner's or operator's security is not in effect for the vehicle through the Uninsured Motorist Identification Database created in accordance with Section 41-12a-803; or

(ii) if the operator of the vehicle is carrying evidence of owner's or operator's security as defined in Section 41-12a-303.2 in the vehicle and the Uninsured Motorist Identification Database created in accordance with Section 41-12a-803 indicates that the owner's or operator's security is not in effect for the vehicle, unless the division or a peace officer makes a reasonable attempt to independently verify that owner's or operator's security is not in effect for the vehicle.

(3) If necessary for the transportation of a seized vessel, the vessel's trailer may be seized to transport and store the vessel.

(4) Any peace officer seizing or taking possession of a vehicle, vessel, or outboard motor under this

section shall comply with the provisions of Section 41-6a-1406.

(5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules setting standards for public garages, impound lots, and impound yards that may be used by peace officers and the division.

(b) The standards shall be equitable, reasonable, and unrestrictive as to the number of public garages, impound lots, or impound yards per geographical area.

(6) (a) Except as provided under Subsection (6)(b), a person may not operate or allow to be operated a vehicle stored in a public garage, impound lot, or impound yard regulated under this part without prior written permission of the owner of the vehicle.

(b) Incidental and necessary operation of a vehicle to move the vehicle from one parking space to another within the facility and that is necessary for the normal management of the facility is not prohibited under Subsection (6)(a).

(7) A person who violates the provisions of Subsection (6) is guilty of a class C misdemeanor.

(8) The division or the peace officer who seizes a vehicle shall record the mileage shown on the vehicle's odometer at the time of seizure, if:

(a) the vehicle is equipped with an odometer; and

(b) the odometer reading is accessible to the division or the peace officer.

Section 2. Section 41-12a-303.2 is amended to read:

41-12a-303.2. Evidence of owner's or operator's security to be carried when operating motor vehicle -- Defense -- Penalties.

(1) As used in this section:

(a) "Division" means the Motor Vehicle Division of the State Tax Commission.

(b) "Registration materials" means the evidences of motor vehicle registration, including all registration cards, license plates, temporary permits, and nonresident temporary permits.

(2) (a) (i) A person operating a motor vehicle shall:

(A) have in the person's immediate possession evidence of owner's or operator's security for the motor vehicle the person is operating; and

(B) display it upon demand of a peace officer.

(ii) A person is exempt from the requirements of Subsection (2)(a)(i) if the person is operating:

(A) a government-owned or leased motor vehicle; or

(B) an employer-owned or leased motor vehicle and is driving it with the employer's permission.

(iii) A person operating a vehicle that is owned by a rental company, as defined in Section

31A-22-311, may comply with Subsection (2)(a)(i) by having in the person's immediate possession, or displaying, the rental vehicle's rental agreement, as defined in Section 31A-22-311.

(b) Evidence of owner's or operator's security includes any one of the following:

(i) a copy of the operator's valid:

(A) insurance policy;

(B) insurance policy declaration page;

(C) binder notice;

(D) renewal notice; or

(E) card issued by an insurance company as evidence of insurance;

(ii) a certificate of insurance issued under Section 41-12a-402;

(iii) a certified copy of a surety bond issued under Section 41-12a-405;

(iv) a certificate of the state treasurer issued under Section 41-12a-406;

(v) a certificate of self-funded coverage issued under Section 41-12a-407; or

(vi) information that the vehicle or driver is insured from the Uninsured Motorist Identification Database Program created under Title 41, Chapter 12a, Part 8, Uninsured Motorist Identification Database Program.

(c) A card issued by an insurance company as evidence of owner's or operator's security under Subsection (2)(b)(i)(E) on or after July 1, 2014, may not display the owner's or operator's address on the card.

(d) (i) A person may provide to a peace officer evidence of owner's or operator's security described in this Subsection (2) in:

(A) a hard copy format; or

(B) an electronic format using a mobile electronic device.

(ii) If a person provides evidence of owner's or operator's security in an electronic format using a mobile electronic device under this Subsection (2)(d), the peace officer viewing the owner's or operator's security on the mobile electronic device may not view any other content on the mobile electronic device.

(iii) Notwithstanding any other provision under this section, a peace officer is not subject to civil liability or criminal penalties under this section if the peace officer inadvertently views content other than the evidence of owner's or operator's security on the mobile electronic device.

(e) (i) Evidence of owner's or operator's security from the Uninsured Motorist Identification Database Program described under Subsection (2)(b)(vi) supercedes any evidence of owner's or operator's security described under Subsection (2)(b)(i)(D) or (E).

(ii) A peace officer may not cite or arrest a person for a violation of Subsection (2)(a) if the Uninsured

Motorist Identification Database Program created under Title 41, Chapter 12a, Part 8, Uninsured Motorist Identification Database Program, information indicates that the vehicle or driver is insured.

(3) It is an affirmative defense to a charge or in an administrative action under this section that the person had owner's or operator's security in effect for the vehicle the person was operating at the time of the person's citation or arrest.

~~(4) (a) Evidence of owner's or operator's security as defined under Subsection (2)(b) or a written statement from an insurance producer or company verifying that the person had the required motor vehicle insurance coverage on the date specified is considered proof of owner's or operator's security for purposes of Subsection (3) and Section 41-12a-804.~~

(4) (a) The following are considered proof of owner's or operator's security for purposes of Subsection (3) and Section 41-12a-804:

(i) evidence defined in Subsection (2)(b);

(ii) a written statement from an insurance producer or company verifying that the person had the required motor vehicle insurance coverage on the date specified; or

(iii) a written statement from an insurance producer or company, or provision in an insurance policy, indicating that the policy provides coverage for a newly purchased car and the coverage extended to the date specified.

(b) The court considering a citation issued under this section shall allow the evidence or a written statement under Subsection (4)(a) and a copy of the citation to be faxed or mailed to the clerk of the court to satisfy Subsection (3).

(c) The notice under Section 41-12a-804 shall specify that the written statement under Subsection (4)(a) and a copy of the notice shall be faxed or mailed to the designated agent to satisfy the proof of owner's or operator's security required under Section 41-12a-804.

(5) A violation of this section is an infraction, and the fine shall be not less than:

(a) \$400 for a first offense; and

(b) \$1,000 for a second and subsequent offense within three years of a previous conviction or bail forfeiture.

(6) Upon receiving notification from a court of a conviction for a violation of this section, the department:

(a) shall suspend the person's driver license; and

(b) may not renew the person's driver license or issue a driver license to the person until the person gives the department proof of owner's or operator's security.

(i) This proof of owner's or operator's security shall be given by any of the ways required under Section 41-12a-401.

(ii) This proof of owner's or operator's security shall be maintained with the department for a three-year period.

(iii) An insurer that provides a certificate of insurance as provided under Section 41-12a-402 or 41-12a-403 may not terminate the insurance policy unless notice of termination is filed with the department no later than 10 days after termination as required under Section 41-12a-404.

(iv) If a person who has canceled the certificate of insurance applies for a license within three years from the date proof of owner's or operator's security was originally required, the department shall refuse the application unless the person reestablishes proof of owner's or operator's security and maintains the proof for the remainder of the three-year period.

Section 3. Section 41-12a-501 is amended to read:

41-12a-501. Post-accident security.

(1) (a) Unless excepted under Subsection (2), the operator of a motor vehicle involved in an accident in the state and any owner who has not previously satisfied the requirement of security under Section 41-12a-301 shall file post-accident security with the department for the benefit of persons obtaining judgments against the operator on account of bodily injury, death, or property damage caused by the accident.

(b) The security shall be in an amount determined by the department to be sufficient to satisfy judgments arising from bodily injury, death, or property damage resulting from the accident that may be recovered against the operator, but may not exceed the minimum single limit under Subsection 31A-22-304(2).

(c) The department shall determine the amount of post-accident security on the basis of reports and other evidence submitted to the department by interested parties, including officials investigating the accident.

(d) In setting the amount of post-accident security, the department may not take into account alleged damages resulting from pain and suffering.

(e) Persons who fail to file required post-accident security are subject to the penalties under Subsection (3).

(2) The operator is exempted from the post-accident requirement under Subsection (1) if any of the following conditions are satisfied:

(a) No bodily injury, death, or damage to the property of one person in excess of the damage limit specified under Section 41-6a-401 resulted from the accident.

(b) No injury, death, or property damage was suffered by any person other than the owner or operator.

(c) The owner of the motor vehicle was in compliance with the owner's security requirement under Section 41-12a-301 at the time of the accident and the operator had permission from the owner to operate the motor vehicle.

(d) The operator was in compliance with the operator's security requirement under Section 41-12a-301 at the time of the accident.

(e) The operator has filed satisfactory evidence with the department that the operator has been released from liability, has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident and is not in default on that agreement.

(f) The motor vehicle involved in the accident was operated by a nonresident who had an insurance policy or bond covering the accident, but not fully complying with the policy provision requirements under Section 31A-22-302, if the policy or bond is sufficient to provide full recovery for claimants and the policy or bond is issued by an insurer licensed in the state.

(g) The operator at the time of the accident was operating a motor vehicle owned or leased by the operator's employer and driven with the employer's permission.

(h) Evidence as to the extent of injuries or property damage caused by the accident has not been submitted by or on behalf of any person affected by the accident within [~~six months~~] three years following the date of the accident.

(i) The motor vehicle was legally parked at the time of the accident.

(j) The motor vehicle was an emergency vehicle acting in the line of duty at the time of the accident.

(k) The motor vehicle involved in the accident is owned by the United States, this state, or any political subdivision of this state, if the operator was using the vehicle with the permission of the owner.

(l) The motor vehicle was legally stopped at a stop sign, traffic signal, or at the direction of a peace officer at the time of the accident.

(3) (a) If an operator who is required to file post-accident security under Subsection (1) does not do so within 10 days after receiving notice of the requirement of security, the department shall suspend the driver's license of the operator and all registrations of the owner, if he is a resident of the state.

(b) If the operator is not a resident of Utah, the department shall suspend the privilege of operating a motor vehicle within the state and of using, in the state, any owned motor vehicle.

(c) Notice of these suspensions shall be sent to the owner or operator no less than 15 days prior to the effective date of the suspension.

CHAPTER 417**S. B. 54**

Passed March 7, 2017
Approved March 25, 2017
Effective May 9, 2017

ADOPTION REVISIONS

Chief Sponsor: Todd Weiler
House Sponsor: Craig Hall

LONG TITLE**General Description:**

This bill amends the Utah Adoption Act.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to a birth mother's declaration regarding potential birth fathers;
- ▶ provides that, under certain circumstances, a court may allow a prospective adoptive parent to adopt a child without releasing the pre-existing parent from parental rights and duties;
- ▶ provides that any documents filed in connection with a petition for adoption are sealed; and
- ▶ permits a child-placing agency to provide certain information, except identifying information, to an adult adoptee.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

78B-6-103, as last amended by Laws of Utah 2015, Chapters 137 and 194
78B-6-110.5, as enacted by Laws of Utah 2014, Chapter 410
78B-6-138, as last amended by Laws of Utah 2010, Chapter 237
78B-6-141, as last amended by Laws of Utah 2015, Chapters 137 and 322
78B-6-143, as last amended by Laws of Utah 2012, Chapter 340

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

Section 1. Section 78B-6-103 is amended to read:**78B-6-103. Definitions.**

As used in this part:

- (1) "Adoptee" means a person who:
 - (a) is the subject of an adoption proceeding; or
 - (b) has been legally adopted.
- (2) "Adoption" means the judicial act that:
 - (a) creates the relationship of parent and child where it did not previously exist; and
 - (b) except as provided in [Subsection] Subsections 78B-6-138(2) and (4), terminates the parental rights of any other person with respect to the child.

(3) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.

(4) "Adoption service provider" means a:

- (a) child-placing agency; or
- (b) licensed counselor who has at least one year of experience providing professional social work services to:
 - (i) adoptive parents;
 - (ii) prospective adoptive parents; or
 - (iii) birth parents.

(5) "Adoptive parent" means a person who has legally adopted an adoptee.

(6) "Adult" means a person who is 18 years of age or older.

(7) "Adult adoptee" means an adoptee who is 18 years of age or older and was adopted as a minor.

(8) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.

(9) "Birth mother" means the biological mother of a child.

(10) "Birth parent" means:

- (a) a birth mother;
- (b) a man whose paternity of a child is established;
- (c) a man who:
 - (i) has been identified as the father of a child by the child's birth mother; and
 - (ii) has not denied paternity; or
- (d) an unmarried biological father.

(11) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.

(12) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.

(13) "Division" means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.

(14) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.

(15) "Genetic and social history" means a comprehensive report, when obtainable, on an adoptee's birth parents, aunts, uncles, and grandparents, which contains the following information:

- (a) medical history;
- (b) health status;

- (c) cause of and age at death;
- (d) height, weight, and eye and hair color;
- (e) ethnic origins;
- (f) where appropriate, levels of education and professional achievement; and
- (g) religion, if any.

(16) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.

(17) "Identifying information" means information in the possession of the office, which contains the name and address of a pre-existing parent or adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify that person, including information on a birth certificate or in an adoption document.

(18) "Licensed counselor" means a person who is licensed by the state, or another state, district, or territory of the United States as a:

- (a) certified social worker;
- (b) clinical social worker;
- (c) psychologist;
- (d) marriage and family therapist;
- (e) professional counselor; or

(f) an equivalent licensed professional of another state, district, or territory of the United States.

(19) "Man" means a male individual, regardless of age.

(20) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

(21) "Office" means the Office of Vital Records and Statistics within the Department of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

(22) "Parent," for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

(23) "Potential birth father" means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (23)(a) at the time of the child's conception or birth.

(24) "Pre-existing parent" means:

- (a) a birth parent; or

(b) a person who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

(25) "Prospective adoptive parent" means a person who seeks to adopt an adoptee.

(26) "Relative" means:

(a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or first cousin of the child's parent; and

(b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, an "extended family member" as defined by that statute.

(27) "Unmarried biological father" means a person who:

(a) is the biological father of a child; and

(b) was not married to the biological mother of the child described in Subsection (27)(a) at the time of the child's conception or birth.

Section 2. Section 78B-6-110.5 is amended to read:

78B-6-110.5. Out-of-state birth mothers and adoptive parents -- Declaration regarding potential birth fathers.

The procedural and substantive requirements of this section shall be required only to the extent that they do not exceed the requirements of the state of conception or the birth mother's state of residence.

(1) (a) For a child who is six months of age or less at the time the child is placed with prospective adoptive parents, the birth mother shall sign, and the adoptive parents shall file with the court, a declaration regarding each potential birth father, in accordance with this section, before or at the time a petition for adoption is filed with the court, if, at any point during the time period beginning at the conception of the child and ending at the time the mother executes consent to adoption or relinquishment of the child for adoption, neither the birth mother ~~nor~~ at least one of the adoptive parents has ~~not~~ resided in the state for 90 total days or more, as described in Subsection (1)(c) ~~, the birth mother shall file with the court a declaration regarding each potential birth father, in accordance with this section, before or at the time a petition for adoption is filed with the court.~~

(b) The ~~birth mother~~ child-placing agency or prospective adoptive parents shall search the putative father registry of each state where the birth mother believes the child may have been conceived and each state where the birth mother lived during her pregnancy, if the state has a putative father registry, to determine whether a potential birth father registered with the state's putative father registry.

(c) In determining whether the 90-day requirement is satisfied, the following apply:

- (i) the 90 days are not required to be consecutive;

(ii) no absence from the state may be for more than seven consecutive days;

(iii) any day on which the individual is absent from the state does not count toward the total 90-day period; and

(iv) the 90-day period begins and ends during a period that is no more than 120 consecutive days.

(2) The declaration filed under Subsection (1) regarding a potential birth father shall include, for each potential birth father, the following information:

(a) if known, the potential birth father's name, date of birth, social security number, and address;

(b) with regard to a state's putative father registry in each state described in Subsection (1)(b):

(i) whether the state has a putative father registry; and

(ii) for each state that has a putative father registry, with the declaration, a certificate or written statement from the state's putative father registry that a search of the state's putative father registry was made and disclosing the results of the search;

(c) whether the potential birth father was notified of:

(i) the birth mother's pregnancy;

(ii) the fact that he is a potential birth father; or

(iii) the fact that the birth mother intends to consent to adoption or relinquishment of the child for adoption, in Utah;

(d) each state where the birth mother lived during the pregnancy;

(e) if known, the state in which the child was conceived;

(f) whether the birth mother informed the potential birth father that she was traveling to or planning to reside in Utah;

(g) whether the birth mother has contacted the potential birth father while she was located in Utah;

(h) whether, and for how long, the potential birth father has ever lived with the child;

(i) whether the potential birth father has given the birth mother money or offered to pay for any of her expenses during pregnancy or the child's birth;

(j) whether the potential birth father has offered to pay child support;

(k) if known, whether the potential birth father has taken any legal action to establish paternity of the child, either in Utah or in any other state, and, if known, what action he has taken; and

(l) whether the birth mother has ever been involved in a domestic violence matter with the potential birth father.

(3) ~~Based~~ Except as provided in Subsection (5), based on the declaration regarding the potential birth father, the court shall order the birth mother to serve a potential birth father notice that she intends to consent or has consented to adoption or relinquishment of the child for adoption, if the court finds that the potential birth father:

(a) has taken sufficient action to demonstrate an interest in the child;

(b) has taken sufficient action to attempt to preserve his legal rights as a birth father, including by filing a legal action to establish paternity or filing with a state's putative father registry; or

(c) does not know, and does not have a reason to know, that:

(i) the mother or child are present in Utah;

(ii) the mother intended to give birth to the child in Utah;

(iii) the child was born in Utah; or

(iv) the mother intends to consent to adoption or relinquishment of the child for adoption in Utah.

(4) Notice under this section shall be made in accordance with Subsections 78B-6-110(7) through (12).

(5) A court may only order the notice requirements in Subsection (3) to the extent that they do not exceed the notice requirements of:

(a) the state of conception; or

(b) the birth mother's state of residence.

Section 3. Section 78B-6-138 is amended to read:

78B-6-138. Pre-existing parent's rights and duties dissolved.

(1) A pre-existing parent of an adopted child is released from all parental rights and duties toward and all responsibilities for the adopted child, including residual parental rights and duties as defined in Section 78A-6-105, and has no further parental rights or duties with regard to that adopted child at the earlier of:

(a) the time the pre-existing parent's parental rights are terminated; or

(b) except as provided in Subsection (2), and subject to ~~Subsection~~ Subsections (3) and (4), the time the final decree of adoption is entered.

(2) The parental rights and duties of a pre-existing parent ~~described in Subsection (1)~~ who, at the time the child is adopted, is lawfully married to the person adopting the child are not released ~~or terminated~~ under Subsection (1)(b).

(3) The parental rights and duties of a pre-existing parent ~~described in Subsection (1)~~ who, at the time the child is adopted, is not lawfully married to the person adopting the child are ~~terminated~~ released ~~as provided in~~ under Subsection (1)(b).

(4) (a) Notwithstanding the provisions of this section, the court may allow a prospective adoptive

parent to adopt a child without releasing the pre-existing parent from parental rights and duties under Subsection (1)(b), if:

(i) the pre-existing parent and the prospective adoptive parent were lawfully married at some time during the child's life;

(ii) the pre-existing parent consents to the prospective adoptive parent's adoption of the child, or is unable to consent because the pre-existing parent is deceased or incapacitated;

(iii) notice of the adoption proceeding is provided in accordance with Section 78B-6-110;

(iv) consent to the adoption is provided in accordance with Section 78B-6-120; and

(v) the court finds that it is in the best interest of the child to grant the adoption without releasing the pre-existing parent from parental rights and duties.

(b) This Subsection (4) does not permit a child to have more than two natural parents, as that term is defined in Section 78A-6-105.

Section 4. Section 78B-6-141 is amended to read:

78B-6-141. Court hearings may be closed -- Petition, report, and documents sealed -- Exceptions.

(1) Notwithstanding Section 78A-6-114, court hearings in adoption cases may be closed to the public upon request of a party to the adoption petition and upon court approval. In a closed hearing, only the following individuals may be admitted:

(a) a party to the proceeding;

(b) the adoptee;

(c) a representative of an agency having custody of the adoptee;

(d) in a hearing to relinquish parental rights, the individual whose rights are to be relinquished and invitees of that individual to provide emotional support;

(e) in a hearing on the termination of parental rights, the individual whose rights may be terminated;

(f) in a hearing on a petition to intervene, the proposed intervenor;

(g) in a hearing to finalize an adoption, invitees of the petitioner; and

(h) other individuals for good cause, upon order of the court.

[(4)] (2) An adoption document [is], the written report described in Section 78B-6-135, and any other documents filed in connection with a petition for adoption are sealed.

[(2) An adoption document]

(3) The documents described in Subsection (2) may only be open to inspection and copying [as follows]:

(a) in accordance with Subsection [(4)] (5)(a), by a party to the adoption proceeding:

(i) while the proceeding is pending; or

(ii) within six months after the day on which the adoption decree is entered;

(b) subject to Subsection [(4)] (5)(b), if a court enters an order permitting access to the documents by [a person] an individual who has appealed the denial of that [person's] individual's motion to intervene;

(c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;

(d) as provided under Section 78B-6-144;

(e) when the adoption document becomes public on the one hundredth anniversary of the date the final decree of adoption was entered;

(f) when the birth certificate becomes public on the one hundredth anniversary of the date of birth;

(g) to a mature adoptee or a parent who adopted the mature adoptee, without a court order, unless the final decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b); or

(h) to an adult adoptee, to the extent permitted under Subsection [(3)] (4).

[(3)] (4) (a) For an adoption finalized on or after January 1, 2016, a birth parent may elect, on a written consent form provided by the office, to permit identifying information about the birth parent to be made available for inspection by an adult adoptee.

(b) A birth parent may, at any time, file a written document with the office to:

(i) change the election described in Subsection [(3)] (4)(a); or

(ii) elect to make other information about the birth parent, including an updated medical history, available for inspection by an adult adoptee.

(c) A birth parent may not access any identifying information or an adoption document under this Subsection [(3)] (4).

[(4) (a) A person]

(5) (a) An individual who files a motion to intervene in an adoption proceeding:

(i) is not a party to the adoption proceeding, unless the motion to intervene is granted; and

(ii) may not be granted access to the documents described in Subsection [(4)] (2), unless the motion to intervene is granted.

(b) An order described in Subsection [(2)] (3)(b) shall:

(i) prohibit the [person] individual described in Subsection [(2)] (3)(b) from inspecting a document

described in Subsection [(4)] (2) that contains identifying information of the adoptive or prospective adoptive parent; and

(ii) permit the [person] individual described in Subsection [(4)] (5)(b)(i) to review a copy of a document described in Subsection [(4)] (5)(b)(i) after the identifying information described in Subsection [(4)] (5)(b)(i) is redacted from the document.

Section 5. Section 78B-6-143 is amended to read:

78B-6-143. Nonidentifying health history of adoptee filed with office -- Limited availability.

(1) (a) Upon finalization of an adoption in this state, the person who proceeded on behalf of the petitioner for adoption, or a child-placing agency if an agency is involved in the adoption, shall file a report with the office, in the form established by the office. [~~That report~~]

(b) The report described in Subsection (1)(a) shall include a detailed health history, and a genetic and social history of the adoptee.

(2) The report [~~filed under~~] described in Subsection (1)(a) may not contain identifying information or any information [which] that identifies the adoptee's birth parents or members of their families.

(3) When the report described in Subsection (1)(a) is filed, a duplicate report shall be provided to the adoptive parents.

(4) The report [~~filed with the office under~~] described in Subsection (1)(a) shall only be available upon request, and upon presentation of positive identification, to the following persons:

- (a) the adoptive parents;
- (b) in the event of the death of the adoptive parents, the adoptee's legal guardian;
- (c) the adoptee;
- (d) in the event of the death of the adoptee, the adoptee's spouse, if the spouse is the parent or guardian of the adoptee's child;
- (e) the adoptee's child or descendant;
- (f) the adoptee's birth parent; and
- (g) the adoptee's adult sibling.

(5) No identifying information or information [which] that identifies a birth parent or [his] the birth parent's family may be disclosed under this section.

(6) The actual cost of providing information under this section shall be paid by the person requesting the information.

(7) A child-placing agency may provide a copy of the report described in Subsection (1)(a) and information in the child-placing agency's files, except identifying information, to an adult adoptee, a birth parent, or an adoptive parent.

(8) Notwithstanding Subsection (7), identifying information may be released to the extent that the individual who is the subject of the information provides written authorization of the information's release.

CHAPTER 418**S. B. 94**

Passed March 7, 2017
 Approved March 25, 2017
 Effective January 1, 2018

LOCAL DISTRICT REVISIONS

Chief Sponsor: Lincoln Fillmore
 House Sponsor: Steve Eliason
 Cosponsors: Curtis S. Bramble
 Howard A. Stephenson

LONG TITLE**General Description:**

This bill modifies provisions related to property taxes levied by a local district.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the circumstances under which a local district may levy or collect a property tax that exceeds the certified tax rate;
- ▶ imposes requirements for a member of an appointed board of trustees to report the property tax increase to the legislative body that appointed or nominated the member to the board of trustees; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

17B-1-1001, as last amended by Laws of Utah 2013, Chapter 415

17B-2a-1009, as last amended by Laws of Utah 2013, Chapter 415

ENACTS:

17B-1-1003, Utah Code Annotated 1953

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

Section 1. Section 17B-1-1001 is amended to read:**17B-1-1001. Provisions applicable to property tax levy.**

(1) Each local district that levies and collects property taxes shall levy and collect them according to the provisions of Title 59, Chapter 2, Property Tax Act.

(2) As used in this section[, “elected official” means a local district board of trustees member who]:

~~[(a) is elected to the board of trustees by local district voters at an election held for that purpose, including a member elected under Subsection (4);]~~

~~[(b) holds, at the time of appointment to the board of trustees, an elected position with a municipality, county, or another local district that is partially or~~

~~completely included within the boundaries of the local district;]~~

~~[(c) is appointed in accordance with Subsection 17B-1-303(5) or 17B-1-306(4)(f); or]~~

~~[(d) is considered to be elected in accordance with Subsection 17B-1-306(4)(g).]~~

(a) “Appointed board of trustees” means a board of trustees of a local district that includes a member who is appointed to the board of trustees in accordance with Section 17B-1-304, Subsection 17B-1-303(5), Subsection 17B-1-306(4)(f), or any of the applicable provisions in Title 17B, Chapter 2a, Provisions Applicable to Different Types of Local Districts.

(b) “Elected board of trustees” means a board of trustees of a local district that consists entirely of members who are elected to the board of trustees in accordance with Subsection (4), Section 17B-1-306, or any of the applicable provisions in Title 17B, Chapter 2a, Provisions Applicable to Different Types of Local Districts.

~~[(3) (a) Except as provided in Subsection (3)(b), a local district may not levy or collect property tax revenue that exceeds the certified tax rate during a taxable year that begins on or after January 1, 2011.]~~

[(b)] (3) (a) [Notwithstanding Subsection (3)(a)] For a taxable year beginning on or after January 1, 2018, a local district may not levy or collect property tax revenue that exceeds the certified tax rate [during a taxable year that begins on or after January 1, 2011, if] unless:

(i) [and] to the extent that the revenue from the property tax was pledged before January 1, [2011,] 2018, the local district pledges the property tax revenue to pay for bonds or other obligations of the local district; or

~~[(ii) the members of the board of trustees are all elected officials;]~~

~~[(iii) the majority of the board of trustees are elected officials; or]~~

~~[(iv)] (ii) the proposed tax or increase in the property tax rate has been approved by:~~

(A) an elected board of trustees;

(B) subject to Subsection (3)(b), an appointed board of trustees;

~~[(A)] (C) a majority of the registered voters within the local district [at] who vote in an election held for that purpose on a date specified in Section 20A-1-204;~~

~~[(B)] (D) the legislative body of the appointing authority; or~~

~~[(C)] (E) the legislative body of:~~

(I) a majority of the municipalities partially or completely included within the boundary of the specified local district; or

(II) the county in which the specified local district is located, if the county has some or all of its

unincorporated area included within the boundary of the specified local district.

(b) For a local district with an appointed board of trustees, each appointed member of the board of trustees shall comply with the trustee reporting requirements described in Section 17B-1-1003 before the local district may impose a property tax levy that exceeds the certified tax rate.

(4) (a) Notwithstanding provisions to the contrary in Title 17B, Chapter 2a, Provisions Applicable to Different Types of Local Districts, and ~~for purposes of Subsection (3)(b),~~ subject to Subsection (4)(b), members of the board of trustees of a local district shall be elected, if, ~~subject to Subsection (4)(b):~~

(i) two-thirds of all members of the board of trustees of the local district vote in favor of changing to an elected board of trustees; and

(ii) the legislative body of each municipality or county that appoints a member to the board of trustees adopts a resolution approving the change to an elected board of trustees.

(b) A change to an elected board of trustees under Subsection (4)(a) may not shorten the term of any member of the board of trustees serving at the time of the change.

(5) Subsections (2), (3), and (4) do not apply to:

(a) Title 17B, Chapter 2a, Part 6, Metropolitan Water District Act;

(b) Title 17B, Chapter 2a, Part 10, Water Conservancy District Act; or

(c) a local district in which:

(i) the board of trustees consists solely of:

(A) land owners or the land owners' agents; or

(B) as described in Subsection 17B-1-302(1)(c), land owners or the land owners' agents or officers; and

(ii) there are no residents within the local district at the time a property tax is levied.

Section 2. Section 17B-1-1003 is enacted to read:

17B-1-1003. Trustee reporting requirement.

(1) As used in this section:

(a) "Appointed board of trustees" means a board of trustees of a local district that includes a member who is appointed to the board of trustees in accordance with Section 17B-1-304, Subsection 17B-1-303(5), Subsection 17B-1-306(4)(f), or any of the applicable provisions in Title 17B, Chapter 2a, Provisions Applicable to Different Types of Local Districts.

(b) "Legislative entity" means:

(i) the member's appointing authority, if the appointing authority is a legislative body; or

(ii) the member's nominating entity, if the appointing authority is not a legislative body.

(c) (i) "Member" means an individual who is appointed to a board of trustees for a local district in accordance with Section 17B-1-304, Subsection 17B-1-303(5), Subsection 17B-1-306(4)(f), or any of the applicable provisions in Title 17B, Chapter 2a, Provisions Applicable to Different Types of Local Districts.

(ii) "Member" includes a member of the board of trustees who holds an elected position with a municipality, county, or another local district that is partially or completely included within the boundaries of the local district.

(d) "Nominating entity" means the legislative body that submits nominees for appointment to the board of trustees to an appointing authority.

(e) "Property tax increase" means a property tax levy that exceeds the certified tax rate for the taxable year.

(2) (a) If a local district board of trustees adopts a tentative budget that includes a property tax increase, each member shall report to the member's legislative entity on the property tax increase.

(b) (i) The local district shall request that each of the legislative entities that appoint or nominate a member to the local district's board of trustees hear the report required by Subsection (2)(a) at a public meeting of each legislative entity.

(ii) The request to make a report may be made by:

(A) the member appointed or nominated by the legislative entity; or

(B) another member of the board of trustees.

(c) The member appointed or nominated by the legislative entity shall make the report required by Subsection (2)(a) at a public meeting that:

(i) complies with Title 52, Chapter 4, Open and Public Meetings Act;

(ii) includes the report as a separate agenda item; and

(iii) is held within 40 days after the day on which the legislative entity receives a request to hear the report.

(d) (i) If the legislative entity does not have a scheduled meeting within 40 days after the day on which the legislative entity receives a request to hear the report required by Subsection (2)(a), the legislative entity shall schedule a meeting for that purpose.

(ii) If the legislative entity fails to hear the report at a public meeting that meets the criteria described in Subsection (2)(c), the trustee reporting requirements under this section shall be considered satisfied.

(3) (a) A report on a property tax increase at a legislative entity's public meeting shall include:

(i) a statement that the local district intends to levy a property tax at a rate that exceeds the certified tax rate for the taxable year;

(ii) the dollar amount of and purpose for additional ad valorem tax revenue that would be

generated by the proposed increase in the certified tax rate;

(iii) the approximate percentage increase in ad valorem tax revenue for the local district based on the proposed property tax increase; and

(iv) any other information requested by the legislative entity.

(b) The legislative entity shall allow time during the meeting for comment from the legislative entity and members of the public on the property tax increase.

(4) (a) If more than one member is appointed to the board of trustees by the same legislative entity, a majority of the members appointed or nominated by the legislative entity shall be present to provide the report required by Subsection (2) and described in Subsection (3).

(b) The chair of the board of trustees shall appoint another member of the board of trustees to provide the report described in Subsection (3) to the legislative entity if:

(i) the member appointed or nominated by the legislative entity is unable or unwilling to provide the report at a public meeting that meets the requirements of Subsection (3)(a); and

(ii) the absence of the member appointed or nominated by the legislative entity results in:

(A) no member who was appointed or nominated by the legislative entity being present to provide the report; or

(B) an inability to comply with Subsection (4)(a).

(5) A local district board of trustees may approve a property tax increase only after the conditions of this section have been satisfied or considered satisfied for each member of the board of trustees.

Section 3. Section 17B-2a-1009 is amended to read:

17B-2a-1009. Limit on property tax authority -- Exceptions.

(1) As used in this section[, “elected official” means a water conservancy district board of trustee member who]:

(a) “Appointed board of trustees” means a board of trustees of a water conservancy district that includes a member who is appointed to the board of trustees in accordance with this part.

(b) “Elected board of trustees” means a board of trustees of a water conservancy district that consists entirely of members who are elected to the board of trustees in accordance with this part.

[(a) is elected to the board of trustees by water conservancy district voters at an election held for that purpose;]

[(b) holds, at the time of appointment to the board of trustees, an elected position with a municipality, county, or local district that is partially or

completely included within the boundaries of the water conservancy district; or]

[(e) is appointed in accordance with Subsection 17B-1-303(5) or 17B-1-306(4)(f) or (g).]

(2) (a) [The board of trustees of] For a taxable year beginning on or after January 1, 2018, a water conservancy district may not collect property tax revenue [in a tax year beginning on or after January 1, 2015,] that would exceed the certified tax rate under Section 59-2-924 unless the proposed tax levy has been previously approved by:

[(a) the members of the board of trustees are all elected officials;]

[(b) the majority of the board of trustees are elected officials; or]

[(c) the proposed tax levy has previously been approved by:]

(i) an elected board of trustees;

(ii) subject to Subsection (2)(b), an appointed board of trustees;

[(4) (iii) a majority of the water conservancy district voters [at] who vote in an election held for that purpose on a date specified in Section 20A-1-204; or

[(4) (iv) for a district described in Subsection 17B-2a-1005(2)(b), the appointing authority.

(b) For a water conservancy district with an appointed board of trustees, each appointed member of the board of trustees shall comply with the trustee reporting requirements described in Section 17B-1-1003 before the water conservancy district may impose a property tax levy that exceeds the certified tax rate.

Section 4. Effective date.

This bill takes effect on January 1, 2018.

CHAPTER 419**S. B. 95**

Passed February 22, 2017

Approved March 25, 2017

Effective May 9, 2017

AIR AMBULANCE AMENDMENTS

Chief Sponsor: Wayne A. Harper

House Sponsor: Paul Ray

LONG TITLE**General Description:**

This bill amends air ambulance provisions in the Utah Health Code.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to establish an Air Ambulance Committee;
- ▶ establishes the membership of the Air Ambulance Committee;
- ▶ establishes the duties of the Air Ambulance Committee;
- ▶ sunsets the Air Ambulance Committee on July 1, 2019;
- ▶ authorizes the State Emergency Medical Services Committee to coordinate with the Health Data Committee to report air ambulance charges in the state;
- ▶ specifies the data that should be reported;
- ▶ requires the publication of certain data regarding air ambulance charges; and
- ▶ amends the duties of the Health Data Committee to assist the State Emergency Medical Services Committee with the reporting of the air ambulance charge data.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

26-1-7, as last amended by Laws of Utah 2014, Chapters 322 and 384

26-8a-203, as last amended by Laws of Utah 2011, Chapter 297

26-33a-106.1, as last amended by Laws of Utah 2014, Chapters 118, 425 and last amended by Coordination Clause, Laws of Utah 2014, Chapter 425

63I-2-226, as last amended by Laws of Utah 2016, Chapter 345

ENACTS:

26-8a-107, Utah Code Annotated 1953

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

Section 1. Section 26-1-7 is amended to read:**26-1-7. Committees within department.**

(1) There are created within the department the following committees:

- (a) Health Facility Committee;

(b) State Emergency Medical Services Committee;

(c) Air Ambulance Committee;

(e) (d) Health Data Committee;

(d) (e) Utah Health Care Workforce Financial Assistance Program Advisory Committee;

(e) (f) Residential Child Care Licensing Advisory Committee;

(f) (g) Child Care Center Licensing Committee; and

(g) (h) Primary Care Grant Committee.

(2) The department shall:

~~(a) review all committees and advisory groups in existence before July 1, 2003 that are not listed in Subsection (1) or Section 26-1-7.5, and not required by state or federal law; and~~

~~(b) beginning no later than July 1, 2003;~~

(i) (a) consolidate ~~those~~ advisory groups and committees with other committees or advisory groups as appropriate to create greater efficiencies and budgetary savings for the department; and

(ii) (b) create in writing, time-limited and subject-limited duties for the advisory groups or committees as necessary to carry out the responsibilities of the department.

Section 2. Section 26-8a-107 is enacted to read:**26-8a-107. Air Ambulance Committee -- Membership -- Duties.**

(1) The Air Ambulance Committee created by Section 26-1-7 shall be composed of the following members:

(a) the state emergency medical services medical director;

(b) one physician who:

(i) is licensed under:

(A) Title 58, Chapter 67, Utah Medical Practice Act;

(B) Title 58, Chapter 67b, Interstate Medical Licensure Compact; or

(C) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(ii) actively provides trauma or emergency care at a Utah hospital; and

(iii) has experience and is actively involved in state and national air medical transport issues;

(c) one member from each level 1 and level 2 trauma center in the state of Utah, selected by the trauma center the member represents;

(d) one registered nurse who:

(i) is licensed under Title 58, Chapter 31b, Nurse Practice Act; and

(ii) currently works as a flight nurse for an air medical transport provider in the state of Utah;

(e) one paramedic who:

(i) is licensed under Title 26, Chapter 8a, Utah Emergency Medical Services System Act; and

(ii) currently works for an air medical transport provider in the state of Utah; and

(f) one member from a for-profit air medical transport company operating in the state of Utah.

(2) The state emergency medical services medical director shall appoint the physician member under Subsection (1)(b), and the physician shall serve as the chair of the Air Ambulance Committee.

(3) The chair of the Air Ambulance Committee shall:

(a) appoint the Air Ambulance Committee members under Subsections (1)(c) through (f);

(b) designate the member of the Air Ambulance Committee to serve as the vice chair of the committee; and

(c) set the agenda for Air Ambulance Committee meetings.

(4) (a) Except as provided in Subsection (4)(b), members shall be appointed to a two-year term.

(b) Notwithstanding Subsection (4)(a), the Air Ambulance Committee chair shall, at the time of appointment or reappointment, adjust the length of the terms of committee members to ensure that the terms of the committee members are staggered so that approximately half of the committee is reappointed every two years.

(5) (a) A majority of the members of the Air Ambulance Committee constitutes a quorum.

(b) The action of a majority of a quorum constitutes the action of the Air Ambulance Committee.

(6) The Air Ambulance Committee shall, before November 30, 2017, provide recommendations to the Health and Human Services Interim Committee regarding the development of state standards and requirements related to:

(a) air medical transport provider licensure and accreditation;

(b) air medical transport medical personnel qualifications and training; and

(c) other standards and requirements to ensure patients receive appropriate and high-quality medical attention and care by air medical transport providers operating in the state of Utah.

(7) An Air Ambulance Committee member may not receive compensation, benefits, per diem, or travel expenses for the member's service on the committee.

(8) The Office of the Attorney General shall provide staff support to the Air Ambulance Committee.

(9) The Air Ambulance Committee shall report to the Health and Human Services Interim Committee before November 30, 2018, regarding the sunset of this section in accordance with Section 63I-2-226.

Section 3. Section 26-8a-203 is amended to read:

26-8a-203. Data collection.

(1) The committee shall specify the information that shall be collected for the emergency medical services data system established pursuant to Subsection (2).

(2) (a) The department shall establish an emergency medical services data system which shall provide for the collection of information, as defined by the committee, relating to the treatment and care of patients who use or have used the emergency medical services system.

(b) Beginning July 1, 2017, the committee shall coordinate with the Health Data Authority created in Chapter 33a, Utah Health Data Authority Act, to create a report of data collected by the Health Data Committee under Section 26-33a-106.1 regarding:

(i) appropriate analytical methods;

(ii) the total amount of air ambulance flight charges in the state for a one-year period; and

(iii) of the total number of flights in a one-year period under Subsection (2)(b)(i):

(A) the number of flights for which a patient had no personal responsibility for paying part of the flight charges;

(B) the number of flights for which a patient had personal responsibility to pay all or part of the flight charges;

(C) the range of flight charges for which patients had personal responsibility under Subsection (2)(b)(iii)(B), including the median amount for paid patient personal responsibility; and

(D) the name of any air ambulance provider that received a median paid amount for patient responsibility in excess of the median amount for all paid patient personal responsibility during the reporting year.

(3) (a) The department shall, beginning October 1, 2017, and on or before each October 1 thereafter, make the information in Subsection (2)(b) public and send the information in Subsection (2)(b) to:

(i) the Health and Human Services Interim Committee; and

(ii) public safety dispatchers and first responders in the state.

(b) Before making the information in Subsection (2)(b) public, the committee shall provide the air ambulance providers named in the report with the opportunity to respond to the accuracy of the information in the report under Section 26-33a-107.

{~~3~~} (4) Persons providing emergency medical services:

(a) shall provide information to the department for the emergency medical services data system established pursuant to Subsection (2)(a);

(b) are not required to provide information to the department under Subsection (2)(b); and

(c) may provide information to the department under Subsection (2)(b) or (3)(b).

Section 4. Section 26-33a-106.1 is amended to read:

26-33a-106.1. Health care cost and reimbursement data.

(1) The committee shall, as funding is available:

(a) establish a plan for collecting data from data suppliers, as defined in Section 26-33a-102, to determine measurements of cost and reimbursements for risk-adjusted episodes of health care;

(b) share data regarding insurance claims and an individual's and small employer group's health risk factor and characteristics of insurance arrangements that affect claims and usage with the Insurance Department, only to the extent necessary for:

(i) risk adjusting; and

(ii) the review and analysis of health insurers' premiums and rate filings; and

(c) assist the Legislature and the public with awareness of, and the promotion of, transparency in the health care market by reporting on:

(i) geographic variances in medical care and costs as demonstrated by data available to the committee; and

(ii) rate and price increases by health care providers:

(A) that exceed the Consumer Price Index - Medical as provided by the United States Bureau of Labor Statistics;

(B) as calculated yearly from June to June; and

(C) as demonstrated by data available to the committee; ~~and~~

(d) provide on at least a monthly basis, enrollment data collected by the committee to a not-for-profit, broad-based coalition of state health care insurers and health care providers that are involved in the standardized electronic exchange of health data as described in Section 31A-22-614.5, to the extent necessary:

(i) for the department or the Medicaid Office of the Inspector General to determine insurance enrollment of an individual for the purpose of determining Medicaid third party liability;

(ii) for an insurer that is a data supplier, to determine insurance enrollment of an individual for the purpose of coordination of health care benefits; and

(iii) for a health care provider, to determine insurance enrollment for a patient for the purpose of claims submission by the health care provider[-]; and

(e) coordinate with the State Emergency Medical Services Committee to publish data regarding air ambulance charges under Section 26-8a-203.

(2) (a) The Medicaid Office of Inspector General shall annually report to the Legislature's Health and Human Services Interim Committee regarding how the office used the data obtained under Subsection (1)(d)(i) and the results of obtaining the data.

(b) A data supplier shall not be liable for a breach of or unlawful disclosure of the data obtained by an entity described in Subsection (1)(b).

(3) The plan adopted under Subsection (1) shall include:

(a) the type of data that will be collected;

(b) how the data will be evaluated;

(c) how the data will be used;

(d) the extent to which, and how the data will be protected; and

(e) who will have access to the data.

Section 5. Section 63I-2-226 is amended to read:

63I-2-226. Repeal dates -- Title 26.

(1) Section 26-8a-107 is repealed July 1, 2019.

~~(4)~~ (2) Title 26, Chapter 46, Utah Health Care Workforce Financial Assistance Program, is repealed July 1, 2017.

~~(2)~~ (3) Section 26-18-412 is repealed December 31, 2016.

CHAPTER 420**S. B. 100**

Passed March 7, 2017

Approved March 25, 2017

Effective May 9, 2017

**EARLY CHILDHOOD SERVICES
COORDINATION AMENDMENTS**

Chief Sponsor: Ann Millner

House Sponsor: Rebecca P. Edwards

LONG TITLE**General Description:**

This bill modifies provisions related to the Office of Child Care within the Department of Workforce Services.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Workforce Services and the Office of Child Care to conduct a study concerning services and resources for children five years old and younger and their families;
- ▶ describes the information that should be included in the study;
- ▶ describes the deadline for providing the study to certain legislative committees; and
- ▶ provides a sunset date.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2017:

- ▶ to the Department of Workforce Services -- Operations and Policy, as a one-time appropriation:
 - from the General Fund, \$50,000.

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

631-2-235, as last amended by Laws of Utah 2016, Chapter 278

ENACTS:

35A-3-208, Utah Code Annotated 1953

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

Section 1. Section 35A-3-208 is enacted to read:**35A-3-208. Early childhood services study.**

(1) The department and the office shall complete a one-time study and analysis of:

(a) the services and resources currently available in the state for children five years old and younger and their families; and

(b) the beneficial services and resources not readily available or affordable for children five years old and younger and their families.

(2) The study and analysis of the services and resources currently available for children five years old and younger and their families shall include:

(a) an inventory of current services and resources available from the department, other government

agencies and entities, and, subject to the discretion of the department and the office, private entities;

(b) an analysis of the sources and uses of money that fund the current services and resources;

(c) an analysis of the coordination and communication between providers of the services and resources, including identifying potential opportunities to increase coordination between providers, better align services, and more efficiently use resources; and

(d) a description of where information regarding services and resources currently available for children five years old and younger and their families is located, including recommendations for potentially improving access to and awareness of the availability of such services and resources.

(3) The study and analysis described in this section shall include a needs assessment for children five years old and younger and their families with an emphasis on:

(a) what services and resources at-risk children need to successfully overcome problems associated with poverty, hunger, trauma, and lack of educational opportunities, including recommendations for potential improvements in providing access to such services and resources; and

(b) describing the different needs, challenges, and any suggested improvements related to the availability of services to at-risk children living in areas with various demographic characteristics, including at-risk children in both urban and rural counties.

(4) The department shall obtain information from and cooperate with other state agencies to complete the study and analysis, including the:

(a) Department of Health;

(b) Department of Human Services;

(c) State Board of Education; and

(d) state system of higher education.

(5) Subject to other provisions of state or federal law, if contacted by the department, other state agencies, including those listed in Subsection (4), shall share information and cooperate with the department to assist the department in completing the study and analysis.

(6) The department may obtain information from and cooperate with federal and nonprofit entities to complete the study and analysis, including the:

(a) 2-1-1 program; and

(b) Head Start program.

(7) On or before October 31, 2017, the department shall complete the data gathering and research for the study and analysis described in this section and provide a preliminary report to the:

(a) Economic Development and Workforce Services Interim Committee; and

(b) Education Interim Committee.

(8) On or before January 1, 2018, the department shall provide a final version of the study and analysis described in this section to the:

- (a) Economic Development and Workforce Services Interim Committee; and
- (b) Education Interim Committee.

Section 2. Section 63I-2-235 is amended to read:

63I-2-235. Repeal dates -- Title 35A.

- (1) Section 35A-3-208 is repealed July 1, 2019.
- [~~(4)~~ (2) Subsection 35A-8-604(6) is repealed October 1, 2020.
- [~~(2)~~ Title 35A, Chapter 8, Part 11, Methamphetamine Housing Reconstruction and Rehabilitation Account Act, is repealed July 1, 2015.]
- [~~(3)~~ Section 35A-12-402 is repealed December 31, 2015.]

Section 3. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2016, and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

To the Department of Workforce Services -- Operations and Policy

From General Fund, One-time	\$50,000
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Schedule of Programs:

Workforce Development	\$50,000
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The Legislature intends that:

- (1) the Department of Workforce Services use the appropriation under this section to carry out the study and analysis described in Section 35A-3-208; and
- (2) under Section 63I-1-603, appropriations provided under this section not lapse at the close of fiscal year 2017 and be available for use by the Department of Workforce Services during fiscal year 2018.

CHAPTER 421**S. B. 113**

Passed March 7, 2017

Approved March 25, 2017

Effective July 1, 2017

NATURAL RESOURCES MODIFICATIONS

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE**General Description:**

This bill modifies the use of sales and use tax revenue.

Highlighted Provisions:

This bill:

- ▶ decreases the percentage of sales and use tax revenue received by the Division of Water Resources; and
- ▶ increases the percentage of sales and use tax revenue received by the Division of Water Rights.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

35A-8-308, as enacted by Laws of Utah 2016, Chapter 184

35A-8-309, as enacted by Laws of Utah 2016, Chapter 184

59-12-103, as last amended by Laws of Utah 2016, Chapters 184, 291, 348 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 291

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

Section 1. Section 35A-8-308 is amended to read:**35A-8-308. Throughput Infrastructure Fund.**

(1) There is created an enterprise fund known as the Throughput Infrastructure Fund.

(2) The fund consists of money generated from the following revenue sources:

(a) all amounts transferred to the fund under Subsection 59-12-103~~(14)~~(12);

(b) any voluntary contributions received;

(c) appropriations made to the fund by the Legislature; and

(d) all amounts received from the repayment of loans made by the impact board under Section 35A-8-309.

(3) The state treasurer shall:

(a) invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

(b) deposit all interest or other earnings derived from those investments into the fund.

Section 2. Section 35A-8-309 is amended to read:**35A-8-309. Throughput Infrastructure Fund administered by impact board --****Uses -- Review by board -- Annual report.**

(1) The impact board shall:

(a) make grants and loans from the Throughput Infrastructure Fund created in Section 35A-8-308 for a throughput infrastructure project;

(b) use money transferred to the Throughput Infrastructure Fund in accordance with Subsection 59-12-103~~(14)~~(12) to provide a loan or grant to finance the cost of acquisition or construction of a throughput infrastructure project to one or more local political subdivisions, including a Utah interlocal entity created under ~~[the Interlocal Cooperation Act,]~~ Title 11, Chapter 13, Interlocal Cooperation Act;

(c) administer the Throughput Infrastructure Fund in a manner that will keep a portion of the fund revolving;

(d) determine provisions for repayment of loans;

(e) establish criteria for awarding loans and grants; and

(f) establish criteria for determining eligibility for assistance under this section.

(2) The cost of acquisition or construction of a throughput infrastructure project includes amounts for working capital, reserves, transaction costs, and other amounts determined by the impact board to be allocable to a throughput infrastructure project.

(3) The impact board may restructure or forgive all or part of a local political subdivision's or interlocal entity's obligation to repay loans for extenuating circumstances.

(4) In order to receive assistance under this section, a local political subdivision or an interlocal entity shall submit a formal application containing the information that the impact board requires.

(5) (a) The impact board shall:

(i) review the proposed uses of the Throughput Infrastructure Fund for a loan or grant before approving the loan or grant and may condition its approval on whatever assurances the impact board considers necessary to ensure that proceeds of the loan or grant will be used in accordance with this section;

(ii) ensure that each loan specifies terms for interest deferments, accruals, and scheduled principal repayment; and

(iii) ensure that repayment terms are evidenced by bonds, notes, or other obligations of the appropriate local political subdivision or interlocal entity issued to the impact board and payable from the net revenues of a throughput infrastructure project.

(b) An instrument described in Subsection (5)(a)(iii) may be:

(i) non-recourse to the local political subdivision or interlocal entity; and

(ii) limited to a pledge of the net revenues from a throughput infrastructure project.

(6) (a) Subject to the restriction in Subsection (6)(b), the impact board shall allocate from the Throughput Infrastructure Fund to the board those amounts that are appropriated by the Legislature for the administration of the Throughput Infrastructure Fund.

(b) The amount described in Subsection (6)(a) may not exceed 2% of the annual receipts to the fund.

(7) The board shall include in the annual written report described in Section 35A-1-109:

(a) the number and type of loans and grants made under this section; and

(b) a list of local political subdivisions or interlocal entities that received assistance under this section.

Section 3. Section 59-12-103 is amended to read:

59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), regardless of whether:

(A) any parts are actually used in the repairs or renovations of that tangible personal property; or

(B) the particular parts used in the repairs or renovations of that tangible personal property are exempt from a tax under this chapter;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for assisted cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) consumed; and

(m) amounts paid or charged for a sale:

(i) (A) of a product transferred electronically; or

(B) of a repair or renovation of a product transferred electronically; and

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or

(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and

(II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; and

(B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) If an optional computer software maintenance contract is a bundled transaction that consists of taxable and nontaxable products that are not separately itemized on an invoice or similar billing document, the purchase of the optional computer software maintenance contract is 40% taxable under this chapter and 60% nontaxable under this chapter.

(iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i) or (ii):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to

taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii) and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental of tangible personal property, other property, a product, or a service that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:

(A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(ii) A purchaser and a seller may correct the taxability of a transaction if:

(A) after the transaction occurs, the purchaser and the seller discover that the portion of the transaction that is not subject to taxation under this chapter was not separately stated on an invoice, bill of sale, or similar document provided to the purchaser because of an error or ignorance of the law; and

(B) the seller is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(f) (i) If the sales price of a transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate unless the seller, at the time of the transaction:

(A) separately states the items subject to taxation under this chapter at each of the different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business.

(ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i)(A);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i); or

(iv) Subsection (2)(d)(i)(A)(I).

(h) (i) A tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing statement for the billing period is rendered on or after the effective date of the repeal of the tax or the tax rate decrease imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2)(i)(i) applies to the tax rates described in the following:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term “catalogue sale.”

(3) (a) The following state taxes shall be deposited into the General Fund:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); or

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

(i) the tax imposed by Subsection (2)(a)(ii);

(ii) the tax imposed by Subsection (2)(b)(ii);

(iii) the tax imposed by Subsection (2)(c)(ii); and

(iv) the tax imposed by Subsection (2)(d)(i)(B).

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b) through (g):

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

(A) by a 1/16% tax rate on the transactions described in Subsection (1); and

(B) for the fiscal year; or

(ii) \$17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund created in Section 4-18-106.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(B) fund state required dam safety improvements; and

(C) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited into the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection

(4)(a) shall be deposited into the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2006, the difference between the following amounts shall be expended as provided in this Subsection (5), if that difference is greater than \$1:

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

(ii) \$17,500,000.

(b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Department of Natural Resources as dedicated credits; and

(B) expended by the Department of Natural Resources for watershed rehabilitation or restoration.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the remaining difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Division of Water Resources as dedicated credits; and

(B) expended by the Division of Water Resources for cloud-seeding projects authorized by Title 73, Chapter 15, Modification of Weather.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(d) After making the transfers required by Subsections (5)(b) and (c), [94%] 85% of the remaining difference described in Subsection (5)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources for:

(i) preconstruction costs:

(A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter 26, Bear River Development Act; and

(B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

(ii) the cost of employing a civil engineer to oversee any project authorized by Title 73, Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

(e) After making the transfers required by Subsections (5)(b) and (c) and subject to Subsection (5)(f), [6%] 15% of the remaining difference described in Subsection (5)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred for employing additional technical staff for the administration of water rights.

(f) At the end of each fiscal year, any unexpended dedicated credits described in Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(6) Notwithstanding Subsection (3)(a) and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited as follows:

(a) for fiscal year 2016-17 only, 100% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124;

(b) for fiscal year 2017-18 only:

(i) 80% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 20% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(c) for fiscal year 2018-19 only:

(i) 60% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 40% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(d) for fiscal year 2019-20 only:

(i) 40% of the revenue described in this Subsection (6) shall be deposited into the

Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 60% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(e) for fiscal year 2020-21 only:

(i) 20% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 80% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103; and

(f) for a fiscal year beginning on or after July 1, 2021, 100% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103.

(7) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(A) the tax imposed by Subsection (2)(a)(i)(A);

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

(b) (i) Subject to Subsections (7)(b)(ii) and (iii), in any fiscal year that the portion of the sales and use taxes deposited under Subsection (7)(a) represents an amount that is a total lower percentage of the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) generated in the current fiscal year than the total percentage of sales and use taxes deposited in the previous fiscal year, the Division of Finance shall deposit an amount under Subsection (7)(a) equal to the product of:

(A) the total percentage of sales and use taxes deposited under Subsection (7)(a) in the previous fiscal year; and

(B) the total sales and use tax revenue generated by the taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year.

(ii) In any fiscal year in which the portion of the sales and use taxes deposited under Subsection (7)(a) would exceed 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year, the Division of Finance shall deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) for the current fiscal year under Subsection (7)(a).

(iii) In all subsequent fiscal years after a year in which 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) was deposited under Subsection (7)(a), the Division of Finance shall annually deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year under Subsection (7)(a).

(8) (a) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$64,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(b) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$63,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(c) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for a fiscal year beginning on or after July 1, 2018, the Division of Finance shall annually deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to 3.68% of the revenues collected from the following taxes:

(i) the tax imposed by Subsection (2)(a)(i)(A);

(ii) the tax imposed by Subsection (2)(b)(i);

(iii) the tax imposed by Subsection (2)(c)(i); and

(iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(9) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

(10) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), in addition to any amounts deposited under Subsections (6), (7), and (8), and for the 2016-17 fiscal year only, the Division of Finance shall deposit into the

Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(b) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), and in addition to any amounts deposited under Subsections (6), (7), and (8), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of revenue described as follows:

(i) for fiscal year 2017-18 only, 83.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(ii) for fiscal year 2018-19 only, 66.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iii) for fiscal year 2019-20 only, 50% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iv) for fiscal year 2020-21 only, 33.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1); and

(v) for fiscal year 2021-22 only, 16.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(c) For purposes of Subsections (10)(a) and (b), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(d).

(11) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the fiscal year during which the Division of Finance receives notice under Section 63N-2-510 that construction on a qualified hotel, as defined in Section 63N-2-502, has begun, the Division of Finance shall, for two consecutive fiscal years, annually deposit \$1,900,000 of the revenue generated by the taxes listed under Subsection (3)(a) into the Hotel Impact Mitigation Fund, created in Section 63N-2-512.

(12) (a) Notwithstanding Subsection (3)(a), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$26,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

(b) Notwithstanding Subsection (3)(a), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$27,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

(13) Notwithstanding Subsections (4) through (12), an amount required to be expended or deposited in accordance with Subsections (4)

through (12) may not include an amount the Division of Finance deposits in accordance with Section 59-12-103.2.

Section 4. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 422**S. B. 119**

Passed February 15, 2017

Approved March 25, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

SALES AND USE TAX CHANGES

Chief Sponsor: Wayne A. Harper

House Sponsor: Steve Eliason

LONG TITLE**General Description:**

This bill makes amendments related to sales and use tax.

Highlighted Provisions:

This bill:

- ▶ adds a local option sales and use tax to the definition of “agreement sales and use tax”; and
- ▶ incorporates the defined terms “purchase price” and “sales price” into the sections that authorize imposition of a sales and use tax.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

59-12-102, as last amended by Laws of Utah 2016, Third Special Session, Chapter 6

59-12-103, as last amended by Laws of Utah 2016, Chapters 184, 291, 348 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 291

59-12-401, as last amended by Laws of Utah 2013, Chapter 362

59-12-402, as last amended by Laws of Utah 2010, Chapter 9

59-12-402.1, as enacted by Laws of Utah 2015, Chapter 182

59-12-703, as last amended by Laws of Utah 2016, Chapters 344 and 364

59-12-802, as last amended by Laws of Utah 2016, Chapter 364

59-12-804, as last amended by Laws of Utah 2016, Chapter 364

59-12-1302, as last amended by Laws of Utah 2016, Chapter 364

59-12-1402, as last amended by Laws of Utah 2016, Chapter 364

59-12-2003, as last amended by Laws of Utah 2010, Chapter 263

59-12-2103, as last amended by Laws of Utah 2016, Chapter 364

59-12-2204, as enacted by Laws of Utah 2010, Chapter 263

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

Section 1. Section 59-12-102 is amended to read:**59-12-102. Definitions.**

As used in this chapter:

(1) “800 service” means a telecommunications service that:

(a) allows a caller to dial a toll-free number without incurring a charge for the call; and

(b) is typically marketed:

(i) under the name 800 toll-free calling;

(ii) under the name 855 toll-free calling;

(iii) under the name 866 toll-free calling;

(iv) under the name 877 toll-free calling;

(v) under the name 888 toll-free calling; or

(vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the Federal Communications Commission.

(2) (a) “900 service” means an inbound toll telecommunications service that:

(i) a subscriber purchases;

(ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to the subscriber’s:

(A) prerecorded announcement; or

(B) live service; and

(iii) is typically marketed:

(A) under the name 900 service; or

(B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal Communications Commission.

(b) “900 service” does not include a charge for:

(i) a collection service a seller of a telecommunications service provides to a subscriber; or

(ii) the following a subscriber sells to the subscriber’s customer:

(A) a product; or

(B) a service.

(3) (a) “Admission or user fees” includes season passes.

(b) “Admission or user fees” does not include annual membership dues to private organizations.

(4) “Agreement” means the Streamlined Sales and Use Tax Agreement adopted on November 12, 2002, including amendments made to the Streamlined Sales and Use Tax Agreement after November 12, 2002.

(5) “Agreement combined tax rate” means the sum of the tax rates:

(a) listed under Subsection (6); and

(b) that are imposed within a local taxing jurisdiction.

(6) “Agreement sales and use tax” means a tax imposed under:

(a) Subsection 59-12-103(2)(a)(i)(A);

(b) Subsection 59-12-103(2)(b)(i);

<p>(c) Subsection 59-12-103(2)(c)(i);</p> <p>(d) Subsection 59-12-103(2)(d)(i)(A)(I);</p> <p>(e) Section 59-12-204;</p> <p>(f) Section 59-12-401;</p> <p>(g) Section 59-12-402;</p> <p>(h) Section 59-12-402.1;</p> <p>(i) Section 59-12-703;</p> <p>(j) Section 59-12-802;</p> <p>(k) Section 59-12-804;</p> <p>(l) Section 59-12-1102;</p> <p>(m) Section 59-12-1302;</p> <p>(n) Section 59-12-1402;</p> <p>(o) Section 59-12-1802;</p> <p>(p) Section 59-12-2003;</p> <p>(q) Section 59-12-2103;</p> <p>(r) Section 59-12-2213;</p> <p>(s) Section 59-12-2214;</p> <p>(t) Section 59-12-2215;</p> <p>(u) Section 59-12-2216;</p> <p>(v) Section 59-12-2217; [œ]</p> <p>(w) Section 59-12-2218[-]; or</p> <p>(x) Section 59-12-2219.</p> <p>(7) "Aircraft" is as defined in Section 72-10-102.</p> <p>(8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:</p> <p>(a) except for:</p> <p>(i) an airline as defined in Section 59-2-102; or</p> <p>(ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group" includes a corporation that is qualified to do business but is not otherwise doing business in the state, of an airline; and</p> <p>(b) that has the workers, expertise, and facilities to perform the following, regardless of whether the business entity performs the following in this state:</p> <p>(i) check, diagnose, overhaul, and repair:</p> <p>(A) an onboard system of a fixed wing turbine powered aircraft; and</p> <p>(B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;</p> <p>(ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft engine;</p> <p>(iii) perform at least the following maintenance on a fixed wing turbine powered aircraft:</p> <p>(A) an inspection;</p> <p>(B) a repair, including a structural repair or modification;</p>	<p>(C) changing landing gear; and</p> <p>(D) addressing issues related to an aging fixed wing turbine powered aircraft;</p> <p>(iv) completely remove the existing paint of a fixed wing turbine powered aircraft and completely apply new paint to the fixed wing turbine powered aircraft; and</p> <p>(v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that results in a change in the fixed wing turbine powered aircraft's certification requirements by the authority that certifies the fixed wing turbine powered aircraft.</p> <p>(9) "Alcoholic beverage" means a beverage that:</p> <p>(a) is suitable for human consumption; and</p> <p>(b) contains .5% or more alcohol by volume.</p> <p>(10) "Alternative energy" means:</p> <p>(a) biomass energy;</p> <p>(b) geothermal energy;</p> <p>(c) hydroelectric energy;</p> <p>(d) solar energy;</p> <p>(e) wind energy; or</p> <p>(f) energy that is derived from:</p> <p>(i) coal-to-liquids;</p> <p>(ii) nuclear fuel;</p> <p>(iii) oil-impregnated diatomaceous earth;</p> <p>(iv) oil sands;</p> <p>(v) oil shale;</p> <p>(vi) petroleum coke; or</p> <p>(vii) waste heat from:</p> <p>(A) an industrial facility; or</p> <p>(B) a power station in which an electric generator is driven through a process in which water is heated, turns into steam, and spins a steam turbine.</p> <p>(11) (a) Subject to Subsection (11)(b), "alternative energy electricity production facility" means a facility that:</p> <p>(i) uses alternative energy to produce electricity; and</p> <p>(ii) has a production capacity of two megawatts or greater.</p> <p>(b) A facility is an alternative energy electricity production facility regardless of whether the facility is:</p> <p>(i) connected to an electric grid; or</p> <p>(ii) located on the premises of an electricity consumer.</p> <p>(12) (a) "Ancillary service" means a service associated with, or incidental to, the provision of telecommunications service.</p> <p>(b) "Ancillary service" includes:</p>
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- (i) a conference bridging service;
- (ii) a detailed communications billing service;
- (iii) directory assistance;
- (iv) a vertical service; or
- (v) a voice mail service.

(13) “Area agency on aging” is as defined in Section 62A-3-101.

(14) “Assisted amusement device” means an amusement device, skill device, or ride device that is started and stopped by an individual:

(a) who is not the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device; and

(b) at the direction of the seller of the right to use the amusement device, skill device, or ride device.

(15) “Assisted cleaning or washing of tangible personal property” means cleaning or washing of tangible personal property if the cleaning or washing labor is primarily performed by an individual:

(a) who is not the purchaser of the cleaning or washing of the tangible personal property; and

(b) at the direction of the seller of the cleaning or washing of the tangible personal property.

(16) “Authorized carrier” means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan and the International Fuel Tax Agreement;

(b) in the case of aircraft, the holder of a Federal Aviation Administration operating certificate or air carrier’s operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, a person who uses locomotives, freight cars, railroad work equipment, or other rolling stock in more than one state.

(17) (a) Except as provided in Subsection (17)(b), “biomass energy” means any of the following that is used as the primary source of energy to produce fuel or electricity:

- (i) material from a plant or tree; or
- (ii) other organic matter that is available on a renewable basis, including:
 - (A) slash and brush from forests and woodlands;
 - (B) animal waste;
 - (C) waste vegetable oil;
 - (D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of wastewater residuals, or through the conversion of a waste material through a nonincineration, thermal conversion process;
 - (E) aquatic plants; and

(F) agricultural products.

(b) “Biomass energy” does not include:

- (i) black liquor; or
- (ii) treated woods.

(18) (a) “Bundled transaction” means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:

(i) distinct and identifiable; and

(ii) sold for one nonitemized price.

(b) “Bundled transaction” does not include:

(i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction;

(ii) the sale of real property;

(iii) the sale of services to real property;

(iv) the retail sale of tangible personal property and a service if:

(A) the tangible personal property:

(I) is essential to the use of the service; and

(II) is provided exclusively in connection with the service; and

(B) the service is the true object of the transaction;

(v) the retail sale of two services if:

(A) one service is provided that is essential to the use or receipt of a second service;

(B) the first service is provided exclusively in connection with the second service; and

(C) the second service is the true object of the transaction;

(vi) a transaction that includes tangible personal property or a product subject to taxation under this chapter and tangible personal property or a product that is not subject to taxation under this chapter if the:

(A) seller’s purchase price of the tangible personal property or product subject to taxation under this chapter is de minimis; or

(B) seller’s sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(vii) the retail sale of tangible personal property that is not subject to taxation under this chapter and tangible personal property that is subject to taxation under this chapter if:

(A) that retail sale includes:

(I) food and food ingredients;

(II) a drug;

(III) durable medical equipment;

- (IV) mobility enhancing equipment;
- (V) an over-the-counter drug;
- (VI) a prosthetic device; or
- (VII) a medical supply; and
- (B) subject to Subsection (18)(f):
- (I) the seller's purchase price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price of that retail sale; or
- (II) the seller's sales price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total sales price of that retail sale.
- (c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a service that is distinct and identifiable does not include:
- (A) packaging that:
- (I) accompanies the sale of the tangible personal property, product, or service; and
- (II) is incidental or immaterial to the sale of the tangible personal property, product, or service;
- (B) tangible personal property, a product, or a service provided free of charge with the purchase of another item of tangible personal property, a product, or a service; or
- (C) an item of tangible personal property, a product, or a service included in the definition of "purchase price."
- (ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a product, or a service is provided free of charge with the purchase of another item of tangible personal property, a product, or a service if the sales price of the purchased item of tangible personal property, product, or service does not vary depending on the inclusion of the tangible personal property, product, or service provided free of charge.
- (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price does not include a price that is separately identified by tangible personal property, product, or service on the following, regardless of whether the following is in paper format or electronic format:
- (A) a binding sales document; or
- (B) another supporting sales-related document that is available to a purchaser.
- (ii) For purposes of Subsection (18)(d)(i), a binding sales document or another supporting sales-related document that is available to a purchaser includes:
- (A) a bill of sale;
- (B) a contract;
- (C) an invoice;
- (D) a lease agreement;

- (E) a periodic notice of rates and services;
- (F) a price list;
- (G) a rate card;
- (H) a receipt; or
- (I) a service agreement.
- (e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal property or a product subject to taxation under this chapter is de minimis if:
- (A) the seller's purchase price of the tangible personal property or product is 10% or less of the seller's total purchase price of the bundled transaction; or
- (B) the seller's sales price of the tangible personal property or product is 10% or less of the seller's total sales price of the bundled transaction.
- (ii) For purposes of Subsection (18)(b)(vi), a seller:
- (A) shall use the seller's purchase price or the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and
- (B) may not use a combination of the seller's purchase price and the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis.
- (iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service contract to determine if the sales price of tangible personal property or a product is de minimis.
- (f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of the seller's purchase price and the seller's sales price to determine if tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales price of that retail sale.
- (19) "Certified automated system" means software certified by the governing board of the agreement that:
- (a) calculates the agreement sales and use tax imposed within a local taxing jurisdiction:
- (i) on a transaction; and
- (ii) in the states that are members of the agreement;
- (b) determines the amount of agreement sales and use tax to remit to a state that is a member of the agreement; and
- (c) maintains a record of the transaction described in Subsection (19)(a)(i).
- (20) "Certified service provider" means an agent certified:
- (a) by the governing board of the agreement; and
- (b) to perform all of a seller's sales and use tax functions for an agreement sales and use tax other

than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

(21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "clothing"; and

(ii) that are consistent with the list of items that constitute "clothing" under the agreement.

(22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

(23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (56) or residential use under Subsection (106).

(24) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person who, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(c) "Common carrier" does not include a person that provides transportation network services, as defined in Section 13-51-102.

(25) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;

(b) baling ties and twine used in the baling of hay and straw;

(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(26) "Computer" means an electronic device that accepts information:

(a) (i) in digital form; or

(ii) in a form similar to digital form; and

(b) manipulates that information for a result based on a sequence of instructions.

(27) "Computer software" means a set of coded instructions designed to cause:

(a) a computer to perform a task; or

(b) automatic data processing equipment to perform a task.

(28) "Computer software maintenance contract" means a contract that obligates a seller of computer software to provide a customer with:

(a) future updates or upgrades to computer software;

(b) support services with respect to computer software; or

(c) a combination of Subsections (28)(a) and (b).

(29) (a) "Conference bridging service" means an ancillary service that links two or more participants of an audio conference call or video conference call.

(b) "Conference bridging service" may include providing a telephone number as part of the ancillary service described in Subsection (29)(a).

(c) "Conference bridging service" does not include a telecommunications service used to reach the ancillary service described in Subsection (29)(a).

(30) "Construction materials" means any tangible personal property that will be converted into real property.

(31) "Delivered electronically" means delivered to a purchaser by means other than tangible storage media.

(32) (a) "Delivery charge" means a charge:

(i) by a seller of:

(A) tangible personal property;

(B) a product transferred electronically; or

(C) services; and

(ii) for preparation and delivery of the tangible personal property, product transferred electronically, or services described in Subsection (32)(a)(i) to a location designated by the purchaser.

(b) "Delivery charge" includes a charge for the following:

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

(33) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(34) "Dietary supplement" means a product, other than tobacco, that:

(a) is intended to supplement the diet;

(b) contains one or more of the following dietary ingredients:

(i) a vitamin;

- (ii) a mineral;
 - (iii) an herb or other botanical;
 - (iv) an amino acid;
 - (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in Subsections (34)(b)(i) through (v);
- (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:
- (A) tablet form;
 - (B) capsule form;
 - (C) powder form;
 - (D) softgel form;
 - (E) gelcap form; or
 - (F) liquid form; or
- (ii) if the product is not intended for ingestion in a form described in Subsections (34)(c)(i)(A) through (F), is not represented:
- (A) as conventional food; and
 - (B) for use as a sole item of:
 - (I) a meal; or
 - (II) the diet; and
 - (d) is required to be labeled as a dietary supplement:
 - (i) identifiable by the "Supplemental Facts" box found on the label; and
 - (ii) as required by 21 C.F.R. Sec. 101.36.
- (35) "Digital audio-visual work" means a series of related images which, when shown in succession, imparts an impression of motion, together with accompanying sounds, if any.
- (36) (a) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds.
- (b) "Digital audio work" includes a ringtone.
- (37) "Digital book" means a work that is generally recognized in the ordinary and usual sense as a book.
- (38) (a) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service:
- (i) to:
 - (A) a mass audience; or
 - (B) addressees on a mailing list provided:
 - (I) by a purchaser of the mailing list; or
 - (II) at the discretion of the purchaser of the mailing list; and

- (ii) if the cost of the printed material is not billed directly to the recipients.
 - (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material.
 - (c) "Direct mail" does not include multiple items of printed material delivered to a single address.
- (39) "Directory assistance" means an ancillary service of providing:
- (a) address information; or
 - (b) telephone number information.
- (40) (a) "Disposable home medical equipment or supplies" means medical equipment or supplies that:
- (i) cannot withstand repeated use; and
 - (ii) are purchased by, for, or on behalf of a person other than:
 - (A) a health care facility as defined in Section 26-21-2;
 - (B) a health care provider as defined in Section 78B-3-403;
 - (C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or
 - (D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).
 - (b) "Disposable home medical equipment or supplies" does not include:
 - (i) a drug;
 - (ii) durable medical equipment;
 - (iii) a hearing aid;
 - (iv) a hearing aid accessory;
 - (v) mobility enhancing equipment; or
 - (vi) tangible personal property used to correct impaired vision, including:
 - (A) eyeglasses; or
 - (B) contact lenses.
 - (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes medical equipment or supplies.
- (41) "Drilling equipment manufacturer" means a facility:
- (a) located in the state;
 - (b) with respect to which 51% or more of the manufacturing activities of the facility consist of manufacturing component parts of drilling equipment;
 - (c) that uses pressure of 800,000 or more pounds per square inch as part of the manufacturing process; and
 - (d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the manufacturing process.

(42) (a) “Drug” means a compound, substance, or preparation, or a component of a compound, substance, or preparation that is:

(i) recognized in:

(A) the official United States Pharmacopoeia;

(B) the official Homeopathic Pharmacopoeia of the United States;

(C) the official National Formulary; or

(D) a supplement to a publication listed in Subsections (42)(a)(i)(A) through (C);

(ii) intended for use in the:

(A) diagnosis of disease;

(B) cure of disease;

(C) mitigation of disease;

(D) treatment of disease; or

(E) prevention of disease; or

(iii) intended to affect:

(A) the structure of the body; or

(B) any function of the body.

(b) “Drug” does not include:

(i) food and food ingredients;

(ii) a dietary supplement;

(iii) an alcoholic beverage; or

(iv) a prosthetic device.

(43) (a) Except as provided in Subsection (43)(c), “durable medical equipment” means equipment that:

(i) can withstand repeated use;

(ii) is primarily and customarily used to serve a medical purpose;

(iii) generally is not useful to a person in the absence of illness or injury; and

(iv) is not worn in or on the body.

(b) “Durable medical equipment” includes parts used in the repair or replacement of the equipment described in Subsection (43)(a).

(c) “Durable medical equipment” does not include mobility enhancing equipment.

(44) “Electronic” means:

(a) relating to technology; and

(b) having:

(i) electrical capabilities;

(ii) digital capabilities;

(iii) magnetic capabilities;

(iv) wireless capabilities;

(v) optical capabilities;

(vi) electromagnetic capabilities; or

(vii) capabilities similar to Subsections (44)(b)(i) through (vi).

(45) “Electronic financial payment service” means an establishment:

(a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and Clearinghouse Activities, of the 2012 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(b) that performs electronic financial payment services.

(46) “Employee” is as defined in Section 59-10-401.

(47) “Fixed guideway” means a public transit facility that uses and occupies:

(a) rail for the use of public transit; or

(b) a separate right-of-way for the use of public transit.

(48) “Fixed wing turbine powered aircraft” means an aircraft that:

(a) is powered by turbine engines;

(b) operates on jet fuel; and

(c) has wings that are permanently attached to the fuselage of the aircraft.

(49) “Fixed wireless service” means a telecommunications service that provides radio communication between fixed points.

(50) (a) “Food and food ingredients” means substances:

(i) regardless of whether the substances are in:

(A) liquid form;

(B) concentrated form;

(C) solid form;

(D) frozen form;

(E) dried form; or

(F) dehydrated form; and

(ii) that are:

(A) sold for:

(I) ingestion by humans; or

(II) chewing by humans; and

(B) consumed for the substance’s:

(I) taste; or

(II) nutritional value.

(b) “Food and food ingredients” includes an item described in Subsection (91)(b)(iii).

(c) “Food and food ingredients” does not include:

(i) an alcoholic beverage;

- (ii) tobacco; or
- (iii) prepared food.
- (51) (a) “Fundraising sales” means sales:
- (i) (A) made by a school; or
- (B) made by a school student;
- (ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and
- (iii) that are part of an officially sanctioned school activity.
- (b) For purposes of Subsection (51)(a)(iii), “officially sanctioned school activity” means a school activity:
- (i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;
- (ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and
- (iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.
- (52) “Geothermal energy” means energy contained in heat that continuously flows outward from the earth that is used as the sole source of energy to produce electricity.
- (53) “Governing board of the agreement” means the governing board of the agreement that is:
- (a) authorized to administer the agreement; and
- (b) established in accordance with the agreement.
- (54) (a) For purposes of Subsection 59-12-104(41), “governmental entity” means:
- (i) the executive branch of the state, including all departments, institutions, boards, divisions, bureaus, offices, commissions, and committees;
- (ii) the judicial branch of the state, including the courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;
- (iii) the legislative branch of the state, including the House of Representatives, the Senate, the Legislative Printing Office, the Office of Legislative Research and General Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal Analyst;
- (iv) the National Guard;
- (v) an independent entity as defined in Section 63E-1-102; or
- (vi) a political subdivision as defined in Section 17B-1-102.
- (b) “Governmental entity” does not include the state systems of public and higher education, including:
- (i) an applied technology college within the Utah College of Applied Technology;
- (ii) a school;
- (iii) the State Board of Education;
- (iv) the State Board of Regents; or
- (v) an institution of higher education.
- (55) “Hydroelectric energy” means water used as the sole source of energy to produce electricity.
- (56) “Industrial use” means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:
- (a) in mining or extraction of minerals;
- (b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:
- (i) commercial greenhouses;
- (ii) irrigation pumps;
- (iii) farm machinery;
- (iv) implements of husbandry as defined in Section 41-1a-102 that are not registered under Title 41, Chapter 1a, Part 2, Registration; and
- (v) other farming activities;
- (c) in manufacturing tangible personal property at an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;
- (d) by a scrap recycler if:
- (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:
- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and
- (ii) the new products under Subsection (56)(d)(i) would otherwise be made with nonrecycled materials; or
- (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a cogeneration facility as defined in Section 54-2-1.
- (57) (a) Except as provided in Subsection (57)(b), “installation charge” means a charge for installing:

- (i) tangible personal property; or
 - (ii) a product transferred electronically.
- (b) “Installation charge” does not include a charge for:
- (i) repairs or renovations of:
 - (A) tangible personal property; or
 - (B) a product transferred electronically; or
 - (ii) attaching tangible personal property or a product transferred electronically:
 - (A) to other tangible personal property; and
 - (B) as part of a manufacturing or fabrication process.
- (58) “Institution of higher education” means an institution of higher education listed in Section 53B-2-101.
- (59) (a) “Lease” or “rental” means a transfer of possession or control of tangible personal property or a product transferred electronically for:
- (i) (A) a fixed term; or
 - (B) an indeterminate term; and
 - (ii) consideration.
- (b) “Lease” or “rental” includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue Code.
- (c) “Lease” or “rental” does not include:
- (i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
 - (ii) a transfer of possession or control of property under an agreement that requires the transfer of title:
 - (A) upon completion of required payments; and
 - (B) if the payment of an option price does not exceed the greater of:
 - (I) \$100; or
 - (II) 1% of the total required payments; or
 - (iii) providing tangible personal property along with an operator for a fixed period of time or an indeterminate period of time if the operator is necessary for equipment to perform as designed.
 - (d) For purposes of Subsection (59)(c)(iii), an operator is necessary for equipment to perform as designed if the operator’s duties exceed the:
 - (i) set-up of tangible personal property;
 - (ii) maintenance of tangible personal property; or
 - (iii) inspection of tangible personal property.

(60) “Life science establishment” means an establishment in this state that is classified under the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

(b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or

(c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

(61) “Life science research and development facility” means a facility owned, leased, or rented by a life science establishment if research and development is performed in 51% or more of the total area of the facility.

(62) “Load and leave” means delivery to a purchaser by use of a tangible storage media if the tangible storage media is not physically transferred to the purchaser.

(63) “Local taxing jurisdiction” means a:

(a) county that is authorized to impose an agreement sales and use tax;

(b) city that is authorized to impose an agreement sales and use tax; or

(c) town that is authorized to impose an agreement sales and use tax.

(64) “Manufactured home” is as defined in Section 15A-1-302.

(65) “Manufacturing facility” means:

(a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (65)(b)(i) would otherwise be made with nonrecycled materials; or

(c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is placed in service on or after May 1, 2006.

(66) “Member of the immediate family of the producer” means a person who is related to a producer described in Subsection 59-12-104(20)(a) as a:

(a) child or stepchild, regardless of whether the child or stepchild is:

- (i) an adopted child or adopted stepchild; or
- (ii) a foster child or foster stepchild;
- (b) grandchild or stepgrandchild;
- (c) grandparent or stepgrandparent;
- (d) nephew or stepnephew;
- (e) niece or stepniece;
- (f) parent or stepparent;
- (g) sibling or stepsibling;
- (h) spouse;

(i) person who is the spouse of a person described in Subsections (66)(a) through (g); or

(j) person similar to a person described in Subsections (66)(a) through (i) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(67) “Mobile home” is as defined in Section 15A-1-302.

(68) “Mobile telecommunications service” is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(69) (a) “Mobile wireless service” means a telecommunications service, regardless of the technology used, if:

(i) the origination point of the conveyance, routing, or transmission is not fixed;

(ii) the termination point of the conveyance, routing, or transmission is not fixed; or

(iii) the origination point described in Subsection (69)(a)(i) and the termination point described in Subsection (69)(a)(ii) are not fixed.

(b) “Mobile wireless service” includes a telecommunications service that is provided by a commercial mobile radio service provider.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define “commercial mobile radio service provider.”

(70) (a) Except as provided in Subsection (70)(c), “mobility enhancing equipment” means equipment that is:

(i) primarily and customarily used to provide or increase the ability to move from one place to another;

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle; and

(iii) not generally used by persons with normal mobility.

(b) “Mobility enhancing equipment” includes parts used in the repair or replacement of the equipment described in Subsection (70)(a).

(c) “Mobility enhancing equipment” does not include:

(i) a motor vehicle;

(ii) equipment on a motor vehicle if that equipment is normally provided by the motor vehicle manufacturer;

(iii) durable medical equipment; or

(iv) a prosthetic device.

(71) “Model 1 seller” means a seller registered under the agreement that has selected a certified service provider as the seller’s agent to perform all of the seller’s sales and use tax functions for agreement sales and use taxes other than the seller’s obligation under Section 59-12-124 to remit a tax on the seller’s own purchases.

(72) “Model 2 seller” means a seller registered under the agreement that:

(a) except as provided in Subsection (72)(b), has selected a certified automated system to perform the seller’s sales tax functions for agreement sales and use taxes; and

(b) retains responsibility for remitting all of the sales tax:

(i) collected by the seller; and

(ii) to the appropriate local taxing jurisdiction.

(73) (a) Subject to Subsection (73)(b), “model 3 seller” means a seller registered under the agreement that has:

(i) sales in at least five states that are members of the agreement;

(ii) total annual sales revenues of at least \$500,000,000;

(iii) a proprietary system that calculates the amount of tax:

(A) for an agreement sales and use tax; and

(B) due to each local taxing jurisdiction; and

(iv) entered into a performance agreement with the governing board of the agreement.

(b) For purposes of Subsection (73)(a), “model 3 seller” includes an affiliated group of sellers using the same proprietary system.

(74) “Model 4 seller” means a seller that is registered under the agreement and is not a model 1 seller, model 2 seller, or model 3 seller.

(75) “Modular home” means a modular unit as defined in Section 15A-1-302.

(76) "Motor vehicle" is as defined in Section 41-1a-102.

(77) "Oil sands" means impregnated bituminous sands that:

(a) contain a heavy, thick form of petroleum that is released when heated, mixed with other hydrocarbons, or otherwise treated;

(b) yield mixtures of liquid hydrocarbon; and

(c) require further processing other than mechanical blending before becoming finished petroleum products.

(78) "Oil shale" means a group of fine black to dark brown shales containing kerogen material that yields petroleum upon heating and distillation.

(79) "Optional computer software maintenance contract" means a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

(80) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(81) (a) "Paging service" means a telecommunications service that provides transmission of a coded radio signal for the purpose of activating a specific pager.

(b) For purposes of Subsection (81)(a), the transmission of a coded radio signal includes a transmission by message or sound.

(82) "Pawnbroker" is as defined in Section 13-32a-102.

(83) "Pawn transaction" is as defined in Section 13-32a-102.

(84) (a) "Permanently attached to real property" means that for tangible personal property attached to real property:

(i) the attachment of the tangible personal property to the real property:

(A) is essential to the use of the tangible personal property; and

(B) suggests that the tangible personal property will remain attached to the real property in the same place over the useful life of the tangible personal property; or

(ii) if the tangible personal property is detached from the real property, the detachment would:

(A) cause substantial damage to the tangible personal property; or

(B) require substantial alteration or repair of the real property to which the tangible personal property is attached.

(b) "Permanently attached to real property" includes:

(i) the attachment of an accessory to the tangible personal property if the accessory is:

(A) essential to the operation of the tangible personal property; and

(B) attached only to facilitate the operation of the tangible personal property;

(ii) a temporary detachment of tangible personal property from real property for a repair or renovation if the repair or renovation is performed where the tangible personal property and real property are located; or

(iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection (84)(c)(iii) or (iv).

(c) "Permanently attached to real property" does not include:

(i) the attachment of portable or movable tangible personal property to real property if that portable or movable tangible personal property is attached to real property only for:

(A) convenience;

(B) stability; or

(C) for an obvious temporary purpose;

(ii) the detachment of tangible personal property from real property except for the detachment described in Subsection (84)(b)(ii);

(iii) an attachment of the following tangible personal property to real property if the attachment to real property is only through a line that supplies water, electricity, gas, telecommunications, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(A) a computer;

(B) a telephone;

(C) a television; or

(D) tangible personal property similar to Subsections (84)(c)(iii)(A) through (C) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(iv) an item listed in Subsection (125)(c).

(85) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(86) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

(i) the residential street address of the customer; or

(ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(87) (a) “Postpaid calling service” means a telecommunications service a person obtains by making a payment on a call-by-call basis:

(i) through the use of a:

- (A) bank card;
- (B) credit card;
- (C) debit card; or
- (D) travel card; or

(ii) by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

(b) “Postpaid calling service” includes a service, except for a prepaid wireless calling service, that would be a prepaid wireless calling service if the service were exclusively a telecommunications service.

(88) “Postproduction” means an activity related to the finishing or duplication of a medium described in Subsection 59-12-104(54)(a).

(89) “Prepaid calling service” means a telecommunications service:

(a) that allows a purchaser access to telecommunications service that is exclusively telecommunications service;

(b) that:

- (i) is paid for in advance; and
- (ii) enables the origination of a call using an:
 - (A) access number; or
 - (B) authorization code;
 - (c) that is dialed:
 - (i) manually; or
 - (ii) electronically; and
 - (d) sold in predetermined units or dollars that decline:
 - (i) by a known amount; and
 - (ii) with use.

(90) “Prepaid wireless calling service” means a telecommunications service:

- (a) that provides the right to utilize:
 - (i) mobile wireless service; and
 - (ii) other service that is not a telecommunications service, including:

(A) the download of a product transferred electronically;

- (B) a content service; or

(C) an ancillary service;

(b) that:

- (i) is paid for in advance; and
- (ii) enables the origination of a call using an:
 - (A) access number; or
 - (B) authorization code;
 - (c) that is dialed:
 - (i) manually; or
 - (ii) electronically; and
 - (d) sold in predetermined units or dollars that decline:
 - (i) by a known amount; and
 - (ii) with use.

(91) (a) “Prepared food” means:

(i) food:

- (A) sold in a heated state; or
- (B) heated by a seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) except as provided in Subsection (91)(c), food sold with an eating utensil provided by the seller, including a:

- (A) plate;
- (B) knife;
- (C) fork;
- (D) spoon;
- (E) glass;
- (F) cup;
- (G) napkin; or
- (H) straw.

(b) “Prepared food” does not include:

- (i) food that a seller only:
 - (A) cuts;
 - (B) repackages; or
 - (C) pasteurizes; or
 - (ii) (A) the following:
 - (I) raw egg;
 - (II) raw fish;
 - (III) raw meat;
 - (IV) raw poultry; or

(V) a food containing an item described in Subsections (91)(b)(ii)(A)(I) through (IV); and

(B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food and Drug Administration’s Food Code that a consumer cook the items described in Subsection (91)(b)(ii)(A) to prevent food borne illness; or

(iii) the following if sold without eating utensils provided by the seller:

(A) food and food ingredients sold by a seller if the seller's proper primary classification under the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, is manufacturing in Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;

(B) food and food ingredients sold in an unheated state:

(I) by weight or volume; and

(II) as a single item; or

(C) a bakery item, including:

(I) a bagel;

(II) a bar;

(III) a biscuit;

(IV) bread;

(V) a bun;

(VI) a cake;

(VII) a cookie;

(VIII) a croissant;

(IX) a danish;

(X) a donut;

(XI) a muffin;

(XII) a pastry;

(XIII) a pie;

(XIV) a roll;

(XV) a tart;

(XVI) a torte; or

(XVII) a tortilla.

(c) An eating utensil provided by the seller does not include the following used to transport the food:

(i) a container; or

(ii) packaging.

(92) "Prescription" means an order, formula, or recipe that is issued:

(a) (i) orally;

(ii) in writing;

(iii) electronically; or

(iv) by any other manner of transmission; and

(b) by a licensed practitioner authorized by the laws of a state.

(93) (a) Except as provided in Subsection (93)(b)(ii) or (iii), "prewritten computer software" means computer software that is not designed and developed:

(i) by the author or other creator of the computer software; and

(ii) to the specifications of a specific purchaser.

(b) "Prewritten computer software" includes:

(i) a prewritten upgrade to computer software if the prewritten upgrade to the computer software is not designed and developed:

(A) by the author or other creator of the computer software; and

(B) to the specifications of a specific purchaser;

(ii) computer software designed and developed by the author or other creator of the computer software to the specifications of a specific purchaser if the computer software is sold to a person other than the purchaser; or

(iii) except as provided in Subsection (93)(c), prewritten computer software or a prewritten portion of prewritten computer software:

(A) that is modified or enhanced to any degree; and

(B) if the modification or enhancement described in Subsection (93)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.

(c) "Prewritten computer software" does not include a modification or enhancement described in Subsection (93)(b)(iii) if the charges for the modification or enhancement are:

(i) reasonable; and

(ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the invoice or other statement of price provided to the purchaser at the time of sale or later, as demonstrated by:

(A) the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes;

(B) a preponderance of the facts and circumstances at the time of the transaction; and

(C) the understanding of all of the parties to the transaction.

(94) (a) "Private communications service" means a telecommunications service:

(i) that entitles a customer to exclusive or priority use of one or more communications channels between or among termination points; and

(ii) regardless of the manner in which the one or more communications channels are connected.

(b) "Private communications service" includes the following provided in connection with the use of one or more communications channels:

(i) an extension line;

(ii) a station;

(iii) switching capacity; or

(iv) another associated service that is provided in connection with the use of one or more communications channels as defined in Section 59-12-215.

(95) (a) Except as provided in Subsection (95)(b), “product transferred electronically” means a product transferred electronically that would be subject to a tax under this chapter if that product was transferred in a manner other than electronically.

(b) “Product transferred electronically” does not include:

- (i) an ancillary service;
- (ii) computer software; or
- (iii) a telecommunications service.

(96) (a) “Prosthetic device” means a device that is worn on or in the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct a physical deformity or physical malfunction; or
- (iii) support a weak or deformed portion of the body.

(b) “Prosthetic device” includes:

(i) parts used in the repairs or renovation of a prosthetic device;

- (ii) replacement parts for a prosthetic device;
- (iii) a dental prosthesis; or
- (iv) a hearing aid.

(c) “Prosthetic device” does not include:

- (i) corrective eyeglasses; or
- (ii) contact lenses.

(97) (a) “Protective equipment” means an item:

- (i) for human wear; and
- (ii) that is:

(A) designed as protection:

- (I) to the wearer against injury or disease; or
- (II) against damage or injury of other persons or property; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute “protective equipment”; and

(ii) that are consistent with the list of items that constitute “protective equipment” under the agreement.

(98) (a) For purposes of Subsection 59-12-104(41), “publication” means any written or printed matter, other than a photocopy:

(i) regardless of:

- (A) characteristics;
- (B) copyright;
- (C) form;
- (D) format;
- (E) method of reproduction; or
- (F) source; and

(ii) made available in printed or electronic format.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term “photocopy.”

(99) (a) “Purchase price” and “sales price” mean the total amount of consideration:

- (i) valued in money; and
- (ii) for which tangible personal property, a product transferred electronically, or services are:

- (A) sold;
- (B) leased; or
- (C) rented.

(b) “Purchase price” and “sales price” include:

(i) the seller’s cost of the tangible personal property, a product transferred electronically, or services sold;

(ii) expenses of the seller, including:

- (A) the cost of materials used;
- (B) a labor cost;
- (C) a service cost;
- (D) interest;
- (E) a loss;
- (F) the cost of transportation to the seller; or
- (G) a tax imposed on the seller;

(iii) a charge by the seller for any service necessary to complete the sale; or

(iv) consideration a seller receives from a person other than the purchaser if:

(A) (I) the seller actually receives consideration from a person other than the purchaser; and

(II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and

(D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and

(Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

(II) the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, except that a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount; or

(III) the price reduction or discount is identified as a third party price reduction or discount on the:

(Aa) invoice the purchaser receives; or

(Bb) certificate, coupon, or other documentation the purchaser presents.

(c) "Purchase price" and "sales price" do not include:

(i) a discount:

(A) in a form including:

(I) cash;

(II) term; or

(III) coupon;

(B) that is allowed by a seller;

(C) taken by a purchaser on a sale; and

(D) that is not reimbursed by a third party; or

(ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of sale or later, as demonstrated by the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes, by a preponderance of the facts and circumstances at the time of the transaction, and by the understanding of all of the parties to the transaction:

(A) the following from credit extended on the sale of tangible personal property or services:

(I) a carrying charge;

(II) a financing charge; or

(III) an interest charge;

(B) a delivery charge;

(C) an installation charge;

(D) a manufacturer rebate on a motor vehicle; or

(E) a tax or fee legally imposed directly on the consumer.

(100) "Purchaser" means a person to whom:

(a) a sale of tangible personal property is made;

(b) a product is transferred electronically; or

(c) a service is furnished.

(101) "Qualifying enterprise data center" means an establishment that will:

(a) own and operate a data center facility that will house a group of networked server computers in one physical location in order to centralize the dissemination, management, and storage of data and information;

(b) be located in the state;

(c) be a new operation constructed on or after July 1, 2016;

(d) consist of one or more buildings that total 150,000 or more square feet;

(e) be owned or leased by:

(i) the establishment; or

(ii) a person under common ownership, as defined in Section 59-7-101, of the establishment; and

(f) be located on one or more parcels of land that are owned or leased by:

(i) the establishment; or

(ii) a person under common ownership, as defined in Section 59-7-101, of the establishment.

(102) "Regularly rented" means:

(a) rented to a guest for value three or more times during a calendar year; or

(b) advertised or held out to the public as a place that is regularly rented to guests for value.

(103) "Rental" is as defined in Subsection (59).

(104) (a) Except as provided in Subsection (104)(b), "repairs or renovations of tangible personal property" means:

(i) a repair or renovation of tangible personal property that is not permanently attached to real property; or

(ii) attaching tangible personal property or a product transferred electronically to other tangible personal property or detaching tangible personal property or a product transferred electronically from other tangible personal property if:

(A) the other tangible personal property to which the tangible personal property or product transferred electronically is attached or from which the tangible personal property or product transferred electronically is detached is not permanently attached to real property; and

(B) the attachment of tangible personal property or a product transferred electronically to other tangible personal property or detachment of tangible personal property or a product transferred electronically from other tangible personal property is made in conjunction with a repair or

replacement of tangible personal property or a product transferred electronically.

(b) "Repairs or renovations of tangible personal property" does not include:

(i) attaching prewritten computer software to other tangible personal property if the other tangible personal property to which the prewritten computer software is attached is not permanently attached to real property; or

(ii) detaching prewritten computer software from other tangible personal property if the other tangible personal property from which the prewritten computer software is detached is not permanently attached to real property.

(105) "Research and development" means the process of inquiry or experimentation aimed at the discovery of facts, devices, technologies, or applications and the process of preparing those devices, technologies, or applications for marketing.

(106) (a) "Residential telecommunications services" means a telecommunications service or an ancillary service that is provided to an individual for personal use:

(i) at a residential address; or

(ii) at an institution, including a nursing home or a school, if the telecommunications service or ancillary service is provided to and paid for by the individual residing at the institution rather than the institution.

(b) For purposes of Subsection (106)(a)(i), a residential address includes an:

(i) apartment; or

(ii) other individual dwelling unit.

(107) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(108) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

(a) resale;

(b) sublease; or

(c) subrent.

(109) (a) "Retailer" means any person engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(110) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) "Sale" includes:

(i) installment and credit sales;

(ii) any closed transaction constituting a sale;

(iii) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(iv) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(111) "Sale at retail" is as defined in Subsection (108).

(112) "Sale-leaseback transaction" means a transaction by which title to tangible personal property or a product transferred electronically that is subject to a tax under this chapter is transferred:

(a) by a purchaser-lessee;

(b) to a lessor;

(c) for consideration; and

(d) if:

(i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase of the tangible personal property or product transferred electronically;

(ii) the sale of the tangible personal property or product transferred electronically to the lessor is intended as a form of financing:

(A) for the tangible personal property or product transferred electronically; and

(B) to the purchaser-lessee; and

(iii) in accordance with generally accepted accounting principles, the purchaser-lessee is required to:

(A) capitalize the tangible personal property or product transferred electronically for financial reporting purposes; and

(B) account for the lease payments as payments made under a financing arrangement.

(113) "Sales price" is as defined in Subsection (99).

(114) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

(i) sales that are directly related to the school's educational functions or activities including:

(A) the sale of:

(I) textbooks;

(II) textbook fees;

(III) laboratory fees;

<p>(IV) laboratory supplies; or</p> <p>(V) safety equipment;</p> <p>(B) the sale of a uniform, protective equipment, or sports or recreational equipment that:</p> <p>(I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and</p> <p>(II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;</p> <p>(C) sales of the following if the net or gross revenues generated by the sales are deposited into a school district fund or school fund dedicated to school meals:</p> <p>(I) food and food ingredients; or</p> <p>(II) prepared food; or</p> <p>(D) transportation charges for official school activities; or</p> <p>(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.</p> <p>(b) "Sales relating to schools" does not include:</p> <p>(i) bookstore sales of items that are not educational materials or supplies;</p> <p>(ii) except as provided in Subsection (114)(a)(i)(B):</p> <p>(A) clothing;</p> <p>(B) clothing accessories or equipment;</p> <p>(C) protective equipment; or</p> <p>(D) sports or recreational equipment; or</p> <p>(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:</p> <p>(A) other than a:</p> <p>(I) school;</p> <p>(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or</p> <p>(III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and</p> <p>(B) that is required to collect sales and use taxes under this chapter.</p> <p>(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."</p> <p>(115) For purposes of this section and Section 59-12-104, "school":</p>	<p>(a) means:</p> <p>(i) an elementary school or a secondary school that:</p> <p>(A) is a:</p> <p>(I) public school; or</p> <p>(II) private school; and</p> <p>(B) provides instruction for one or more grades kindergarten through 12; or</p> <p>(ii) a public school district; and</p> <p>(b) includes the Electronic High School as defined in Section 53A-15-1002.</p> <p>(116) "Seller" means a person that makes a sale, lease, or rental of:</p> <p>(a) tangible personal property;</p> <p>(b) a product transferred electronically; or</p> <p>(c) a service.</p> <p>(117) (a) "Semiconductor fabricating, processing, research, or development materials" means tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is:</p> <p>(i) used primarily in the process of:</p> <p>(A) (I) manufacturing a semiconductor;</p> <p>(II) fabricating a semiconductor; or</p> <p>(III) research or development of a:</p> <p>(Aa) semiconductor; or</p> <p>(Bb) semiconductor manufacturing process; or</p> <p>(B) maintaining an environment suitable for a semiconductor; or</p> <p>(ii) consumed primarily in the process of:</p> <p>(A) (I) manufacturing a semiconductor;</p> <p>(II) fabricating a semiconductor; or</p> <p>(III) research or development of a:</p> <p>(Aa) semiconductor; or</p> <p>(Bb) semiconductor manufacturing process; or</p> <p>(B) maintaining an environment suitable for a semiconductor.</p> <p>(b) "Semiconductor fabricating, processing, research, or development materials" includes:</p> <p>(i) parts used in the repairs or renovations of tangible personal property or a product transferred electronically described in Subsection (117)(a); or</p> <p>(ii) a chemical, catalyst, or other material used to:</p> <p>(A) produce or induce in a semiconductor a:</p> <p>(I) chemical change; or</p> <p>(II) physical change;</p> <p>(B) remove impurities from a semiconductor; or</p>
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(C) improve the marketable condition of a semiconductor.

(118) “Senior citizen center” means a facility having the primary purpose of providing services to the aged as defined in Section 62A-3-101.

(119) (a) Subject to Subsections (119)(b) and (c), “short-term lodging consumable” means tangible personal property that:

(i) a business that provides accommodations and services described in Subsection 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services to a purchaser;

(ii) is intended to be consumed by the purchaser; and

(iii) is:

(A) included in the purchase price of the accommodations and services; and

(B) not separately stated on an invoice, bill of sale, or other similar document provided to the purchaser.

(b) “Short-term lodging consumable” includes:

(i) a beverage;

(ii) a brush or comb;

(iii) a cosmetic;

(iv) a hair care product;

(v) lotion;

(vi) a magazine;

(vii) makeup;

(viii) a meal;

(ix) mouthwash;

(x) nail polish remover;

(xi) a newspaper;

(xii) a notepad;

(xiii) a pen;

(xiv) a pencil;

(xv) a razor;

(xvi) saline solution;

(xvii) a sewing kit;

(xviii) shaving cream;

(xix) a shoe shine kit;

(xx) a shower cap;

(xxi) a snack item;

(xxii) soap;

(xxiii) toilet paper;

(xxiv) a toothbrush;

(xxv) toothpaste; or

(xxvi) an item similar to Subsections (119)(b)(i) through (xxv) as the commission may provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) “Short-term lodging consumable” does not include:

(i) tangible personal property that is cleaned or washed to allow the tangible personal property to be reused; or

(ii) a product transferred electronically.

(120) “Simplified electronic return” means the electronic return:

(a) described in Section 318(C) of the agreement; and

(b) approved by the governing board of the agreement.

(121) “Solar energy” means the sun used as the sole source of energy for producing electricity.

(122) (a) “Sports or recreational equipment” means an item:

(i) designed for human use; and

(ii) that is:

(A) worn in conjunction with:

(I) an athletic activity; or

(II) a recreational activity; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute “sports or recreational equipment”; and

(ii) that are consistent with the list of items that constitute “sports or recreational equipment” under the agreement.

(123) “State” means the state of Utah, its departments, and agencies.

(124) “Storage” means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(125) (a) Except as provided in Subsection (125)(d) or (e), “tangible personal property” means personal property that:

(i) may be:

(A) seen;

(B) weighed;

(C) measured;

(D) felt; or

(E) touched; or

(ii) is in any manner perceptible to the senses.

(b) “Tangible personal property” includes:

- (i) electricity;
- (ii) water;
- (iii) gas;
- (iv) steam; or

(v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.

(c) "Tangible personal property" includes the following regardless of whether the item is attached to real property:

- (i) a dishwasher;
- (ii) a dryer;
- (iii) a freezer;
- (iv) a microwave;
- (v) a refrigerator;
- (vi) a stove;
- (vii) a washer; or

(viii) an item similar to Subsections (125)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) "Tangible personal property" does not include a product that is transferred electronically.

(e) "Tangible personal property" does not include the following if attached to real property, regardless of whether the attachment to real property is only through a line that supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (i) a hot water heater;
- (ii) a water filtration system; or
- (iii) a water softener system.

(126) (a) "Telecommunications enabling or facilitating equipment, machinery, or software" means an item listed in Subsection (126)(b) if that item is purchased or leased primarily to enable or facilitate one or more of the following to function:

(i) telecommunications switching or routing equipment, machinery, or software; or

(ii) telecommunications transmission equipment, machinery, or software.

(b) The following apply to Subsection (126)(a):

- (i) a pole;
- (ii) software;
- (iii) a supplementary power supply;
- (iv) temperature or environmental equipment or machinery;
- (v) test equipment;
- (vi) a tower; or

(vii) equipment, machinery, or software that functions similarly to an item listed in Subsections (126)(b)(i) through (vi) as determined by the commission by rule made in accordance with Subsection (126)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (126)(b)(i) through (vi).

(127) "Telecommunications equipment, machinery, or software required for 911 service" means equipment, machinery, or software that is required to comply with 47 C.F.R. Sec. 20.18.

(128) "Telecommunications maintenance or repair equipment, machinery, or software" means equipment, machinery, or software purchased or leased primarily to maintain or repair one or more of the following, regardless of whether the equipment, machinery, or software is purchased or leased as a spare part or as an upgrade or modification to one or more of the following:

(a) telecommunications enabling or facilitating equipment, machinery, or software;

(b) telecommunications switching or routing equipment, machinery, or software; or

(c) telecommunications transmission equipment, machinery, or software.

(129) (a) "Telecommunications service" means the electronic conveyance, routing, or transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

(b) "Telecommunications service" includes:

(i) an electronic conveyance, routing, or transmission with respect to which a computer processing application is used to act:

(A) on the code, form, or protocol of the content;

(B) for the purpose of electronic conveyance, routing, or transmission; and

(C) regardless of whether the service:

(I) is referred to as voice over Internet protocol service; or

(II) is classified by the Federal Communications Commission as enhanced or value added;

(ii) an 800 service;

(iii) a 900 service;

(iv) a fixed wireless service;

(v) a mobile wireless service;

(vi) a postpaid calling service;

(vii) a prepaid calling service;

(viii) a prepaid wireless calling service; or

(ix) a private communications service.

(c) "Telecommunications service" does not include:

(i) advertising, including directory advertising;

(ii) an ancillary service;

(iii) a billing and collection service provided to a third party;

(iv) a data processing and information service if:

(A) the data processing and information service allows data to be:

(I) (Aa) acquired;

(Bb) generated;

(Cc) processed;

(Dd) retrieved; or

(Ee) stored; and

(II) delivered by an electronic transmission to a purchaser; and

(B) the purchaser's primary purpose for the underlying transaction is the processed data or information;

(v) installation or maintenance of the following on a customer's premises:

(A) equipment; or

(B) wiring;

(vi) Internet access service;

(vii) a paging service;

(viii) a product transferred electronically, including:

(A) music;

(B) reading material;

(C) a ring tone;

(D) software; or

(E) video;

(ix) a radio and television audio and video programming service:

(A) regardless of the medium; and

(B) including:

(I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;

(II) cable service as defined in 47 U.S.C. Sec. 522(6); or

(III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;

(x) a value-added nonvoice data service; or

(xi) tangible personal property.

(130) (a) "Telecommunications service provider" means a person that:

(i) owns, controls, operates, or manages a telecommunications service; and

(ii) engages in an activity described in Subsection (130)(a)(i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (130)(a) is a telecommunications service provider whether or not the Public Service Commission of Utah regulates:

(i) that person; or

(ii) the telecommunications service that the person owns, controls, operates, or manages.

(131) (a) "Telecommunications switching or routing equipment, machinery, or software" means an item listed in Subsection (131)(b) if that item is purchased or leased primarily for switching or routing:

(i) an ancillary service;

(ii) data communications;

(iii) voice communications; or

(iv) telecommunications service.

(b) The following apply to Subsection (131)(a):

(i) a bridge;

(ii) a computer;

(iii) a cross connect;

(iv) a modem;

(v) a multiplexer;

(vi) plug in circuitry;

(vii) a router;

(viii) software;

(ix) a switch; or

(x) equipment, machinery, or software that functions similarly to an item listed in Subsections (131)(b)(i) through (ix) as determined by the commission by rule made in accordance with Subsection (131)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (131)(b)(i) through (ix).

(132) (a) "Telecommunications transmission equipment, machinery, or software" means an item listed in Subsection (132)(b) if that item is purchased or leased primarily for sending, receiving, or transporting:

(i) an ancillary service;

(ii) data communications;

(iii) voice communications; or

(iv) telecommunications service.

(b) The following apply to Subsection (132)(a):

(i) an amplifier;

(ii) a cable;

(iii) a closure;

(iv) a conduit;

(v) a controller;

(vi) a duplexer;

(vii) a filter;

(viii) an input device;

(ix) an input/output device;

(x) an insulator;

(xi) microwave machinery or equipment;

(xii) an oscillator;

(xiii) an output device;

(xiv) a pedestal;

(xv) a power converter;

(xvi) a power supply;

(xvii) a radio channel;

(xviii) a radio receiver;

(xix) a radio transmitter;

(xx) a repeater;

(xxi) software;

(xxii) a terminal;

(xxiii) a timing unit;

(xxiv) a transformer;

(xxv) a wire; or

(xxvi) equipment, machinery, or software that functions similarly to an item listed in Subsections (132)(b)(i) through (xxv) as determined by the commission by rule made in accordance with Subsection (132)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (132)(b)(i) through (xxv).

(133) (a) "Textbook for a higher education course" means a textbook or other printed material that is required for a course:

(i) offered by an institution of higher education; and

(ii) that the purchaser of the textbook or other printed material attends or will attend.

(b) "Textbook for a higher education course" includes a textbook in electronic format.

(134) "Tobacco" means:

(a) a cigarette;

(b) a cigar;

(c) chewing tobacco;

(d) pipe tobacco; or

(e) any other item that contains tobacco.

(135) "Unassisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device.

(136) (a) "Use" means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to the ownership or the leasing of that tangible personal property, product transferred electronically, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of tangible personal property, a product transferred electronically, or a service in the regular course of business and held for resale.

(137) "Value-added nonvoice data service" means a service:

(a) that otherwise meets the definition of a telecommunications service except that a computer processing application is used to act primarily for a purpose other than conveyance, routing, or transmission; and

(b) with respect to which a computer processing application is used to act on data or information:

(i) code;

(ii) content;

(iii) form; or

(iv) protocol.

(138) (a) Subject to Subsection (138)(b), "vehicle" means the following that are required to be titled, registered, or titled and registered:

(i) an aircraft as defined in Section 72-10-102;

(ii) a vehicle as defined in Section 41-1a-102;

(iii) an off-highway vehicle as defined in Section 41-22-2; or

(iv) a vessel as defined in Section 41-1a-102.

(b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

(i) a vehicle described in Subsection (138)(a); or

(ii) (A) a locomotive;

(B) a freight car;

(C) railroad work equipment; or

(D) other railroad rolling stock.

(139) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection (138).

(140) (a) "Vertical service" means an ancillary service that:

(i) is offered in connection with one or more telecommunications services; and

(ii) offers an advanced calling feature that allows a customer to:

- (A) identify a caller; and
- (B) manage multiple calls and call connections.

(b) "Vertical service" includes an ancillary service that allows a customer to manage a conference bridging service.

(141) (a) "Voice mail service" means an ancillary service that enables a customer to receive, send, or store a recorded message.

(b) "Voice mail service" does not include a vertical service that a customer is required to have in order to utilize a voice mail service.

(142) (a) Except as provided in Subsection (142)(b), "waste energy facility" means a facility that generates electricity:

(i) using as the primary source of energy waste materials that would be placed in a landfill or refuse pit if it were not used to generate electricity, including:

- (A) tires;
- (B) waste coal;
- (C) oil shale; or
- (D) municipal solid waste; and

(ii) in amounts greater than actually required for the operation of the facility.

(b) "Waste energy facility" does not include a facility that incinerates:

(i) hospital waste as defined in 40 C.F.R. 60.51c; or

(ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

(143) "Watercraft" means a vessel as defined in Section 73-18-2.

(144) "Wind energy" means wind used as the sole source of energy to produce electricity.

(145) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic location by the United States Postal Service.

Section 2. Section 59-12-103 is amended to read:

59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenue.

(1) A tax is imposed on the purchaser as provided in this part on the purchase price or sales price for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

- (b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

- (i) gas;
- (ii) electricity;
- (iii) heat;
- (iv) coal;
- (v) fuel oil; or
- (vi) other fuels;

(d) sales of the following for residential use:

- (i) gas;
- (ii) electricity;
- (iii) heat;
- (iv) coal;
- (v) fuel oil; or
- (vi) other fuels;
- (e) sales of prepared food;

(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

- (i) the tangible personal property; and
- (ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), regardless of whether:

(A) any parts are actually used in the repairs or renovations of that tangible personal property; or

(B) the particular parts used in the repairs or renovations of that tangible personal property are exempt from a tax under this chapter;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for assisted cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

- (i) stored;
- (ii) used; or
- (iii) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

- (i) stored;
- (ii) used; or
- (iii) consumed; and

(m) amounts paid or charged for a sale:

(i) (A) of a product transferred electronically; or
(B) of a repair or renovation of a product transferred electronically; and

(ii) regardless of whether the sale provides:

(A) a right of permanent use of the product; or
(B) a right to use the product that is less than a permanent use, including a right:

(I) for a definite or specified length of time; and
(II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax is imposed on a transaction described in Subsection (1) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate equal to the sum of:

(A) 4.70%; and

(B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through

59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on a transaction described in Subsection (1)(d) equal to the sum of:

(i) a state tax imposed on the transaction at a tax rate of 2%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax is imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) If an optional computer software maintenance contract is a bundled transaction that consists of taxable and nontaxable products that are not separately itemized on an invoice or similar billing document, the purchase of the optional computer software maintenance contract is 40% taxable under this chapter and 60% nontaxable under this chapter.

(iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i) or (ii):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii) and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental of tangible personal property, other property, a product, or a service that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:

(A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(ii) A purchaser and a seller may correct the taxability of a transaction if:

(A) after the transaction occurs, the purchaser and the seller discover that the portion of the transaction that is not subject to taxation under this chapter was not separately stated on an invoice, bill of sale, or similar document provided to the purchaser because of an error or ignorance of the law; and

(B) the seller is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(f) (i) If the sales price of a transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate unless the seller, at the time of the transaction:

(A) separately states the items subject to taxation under this chapter at each of the different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business.

(ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i)(A);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i); or

(iv) Subsection (2)(d)(i)(A)(I).

(h) (i) A tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(d)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing statement for

the billing period is rendered on or after the effective date of the repeal of the tax or the tax rate decrease imposed under:

- (A) Subsection (2)(a)(i)(A);
- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

(i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

- (A) on the first day of a calendar quarter; and
- (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2)(i)(i) applies to the tax rates described in the following:

- (A) Subsection (2)(a)(i)(A);
- (B) Subsection (2)(b)(i);
- (C) Subsection (2)(c)(i); or
- (D) Subsection (2)(d)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(3) (a) The following state taxes shall be deposited into the General Fund:

- (i) the tax imposed by Subsection (2)(a)(i)(A);
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); or
- (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

- (i) the tax imposed by Subsection (2)(a)(ii);
- (ii) the tax imposed by Subsection (2)(b)(ii);
- (iii) the tax imposed by Subsection (2)(c)(ii); and
- (iv) the tax imposed by Subsection (2)(d)(i)(B).

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b) through (g):

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

- (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
- (B) for the fiscal year; or
- (ii) \$17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection

(4)(a) shall be transferred each year as dedicated credits to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

(iii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund created in Section 4-18-106.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended dedicated credits shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources

Conservation and Development Fund may also be used to:

(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

(B) fund state required dam safety improvements; and

(C) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited into the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited into the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2006, the difference between the following amounts shall be expended as provided in this Subsection (5), if that difference is greater than \$1:

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

(ii) \$17,500,000.

(b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Department of Natural Resources as dedicated credits; and

(B) expended by the Department of Natural Resources for watershed rehabilitation or restoration.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the remaining difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Division of Water Resources as dedicated credits; and

(B) expended by the Division of Water Resources for cloud-seeding projects authorized by Title 73, Chapter 15, Modification of Weather.

(ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(d) After making the transfers required by Subsections (5)(b) and (c), 94% of the remaining difference described in Subsection (5)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources for:

(i) preconstruction costs:

(A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter 26, Bear River Development Act; and

(B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

(ii) the cost of employing a civil engineer to oversee any project authorized by Title 73, Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

(e) After making the transfers required by Subsections (5)(b) and (c) and subject to Subsection (5)(f), 6% of the remaining difference described in Subsection (5)(a) shall be transferred each year as dedicated credits to the Division of Water Rights to cover the costs incurred for employing additional technical staff for the administration of water rights.

(f) At the end of each fiscal year, any unexpended dedicated credits described in Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(6) Notwithstanding Subsection (3)(a) and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited as follows:

(a) for fiscal year 2016-17 only, 100% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124;

(b) for fiscal year 2017-18 only:

(i) 80% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 20% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(c) for fiscal year 2018-19 only:

(i) 60% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 40% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(d) for fiscal year 2019-20 only:

(i) 40% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 60% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103;

(e) for fiscal year 2020-21 only:

(i) 20% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 80% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103; and

(f) for a fiscal year beginning on or after July 1, 2021, 100% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103.

(7) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(A) the tax imposed by Subsection (2)(a)(i)(A);

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

(b) (i) Subject to Subsections (7)(b)(ii) and (iii), in any fiscal year that the portion of the sales and use taxes deposited under Subsection (7)(a) represents an amount that is a total lower percentage of the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) generated in the current fiscal year than the total percentage of sales and use taxes deposited in the previous fiscal year, the Division of Finance shall deposit an amount under Subsection (7)(a) equal to the product of:

(A) the total percentage of sales and use taxes deposited under Subsection (7)(a) in the previous fiscal year; and

(B) the total sales and use tax revenue generated by the taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year.

(ii) In any fiscal year in which the portion of the sales and use taxes deposited under Subsection (7)(a) would exceed 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year, the Division of Finance shall deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) for the current fiscal year under Subsection (7)(a).

(iii) In all subsequent fiscal years after a year in which 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) was deposited under Subsection (7)(a), the Division of Finance shall annually deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year under Subsection (7)(a).

(8) (a) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$64,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(b) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$63,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(c) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for a fiscal year beginning

on or after July 1, 2018, the Division of Finance shall annually deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to 3.68% of the revenues collected from the following taxes:

- (i) the tax imposed by Subsection (2)(a)(i)(A);
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); and
- (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

(9) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

(10) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), in addition to any amounts deposited under Subsections (6), (7), and (8), and for the 2016-17 fiscal year only, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(b) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), and in addition to any amounts deposited under Subsections (6), (7), and (8), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of revenue described as follows:

(i) for fiscal year 2017-18 only, 83.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(ii) for fiscal year 2018-19 only, 66.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iii) for fiscal year 2019-20 only, 50% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iv) for fiscal year 2020-21 only, 33.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1); and

(v) for fiscal year 2021-22 only, 16.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(c) For purposes of Subsections (10)(a) and (b), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(d).

(11) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the fiscal year during which the Division of Finance receives

notice under Section 63N-2-510 that construction on a qualified hotel, as defined in Section 63N-2-502, has begun, the Division of Finance shall, for two consecutive fiscal years, annually deposit \$1,900,000 of the revenue generated by the taxes listed under Subsection (3)(a) into the Hotel Impact Mitigation Fund, created in Section 63N-2-512.

(12) (a) Notwithstanding Subsection (3)(a), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$26,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

(b) Notwithstanding Subsection (3)(a), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$27,000,000 of the revenues generated by the taxes listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

(13) Notwithstanding Subsections (4) through (12), an amount required to be expended or deposited in accordance with Subsections (4) through (12) may not include an amount the Division of Finance deposits in accordance with Section 59-12-103.2.

Section 3. Section 59-12-401 is amended to read:

59-12-401. Resort communities tax authority for cities, towns, and military installation development authority -- Base -- Rate -- Collection fees.

(1) (a) In addition to other sales and use taxes, a city or town in which the transient room capacity as defined in Section 59-12-405 is greater than or equal to 66% of the municipality's permanent census population may impose a sales and use tax of up to 1.1% on the transactions described in Subsection 59-12-103(1) located within the city or town.

(b) Notwithstanding Subsection (1)(a), a city or town may not impose a tax under this section on:

- (i) the sale of:
 - (A) a motor vehicle;
 - (B) an aircraft;
 - (C) a watercraft;
 - (D) a modular home;
 - (E) a manufactured home; or
 - (F) a mobile home;

(ii) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(iii) except as provided in Subsection (1)(d), amounts paid or charged for food and food ingredients.

(c) For purposes of this Subsection (1), the location of a transaction shall be determined in

accordance with Sections 59-12-211 through 59-12-215.

(d) A city or town imposing a tax under this section shall impose the tax on the purchase price or the sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(2) (a) An amount equal to the total of any costs incurred by the state in connection with the implementation of Subsection (1) which exceed, in any year, the revenues received by the state from its collection fees received in connection with the implementation of Subsection (1) shall be paid over to the state General Fund by the cities and towns which impose the tax provided for in Subsection (1).

(b) Amounts paid under Subsection (2)(a) shall be allocated proportionally among those cities and towns according to the amount of revenue the respective cities and towns generate in that year through imposition of that tax.

(3) (a) Subject to Section 63H-1-203, the military installation development authority created in Section 63H-1-201 may impose a tax under this section on the transactions described in Subsection 59-12-103(1) located within a project area described in a project area plan adopted by the authority under Title 63H, Chapter 1, Military Installation Development Authority Act, as though the authority were a city or a town.

(b) For purposes of calculating the permanent census population within a project area, the board as defined in Section 63H-1-102 shall:

(i) use the actual number of permanent residents within the project area as determined by the board;

(ii) adopt a resolution verifying the population number; and

(iii) provide the commission any information required in Section 59-12-405.

(c) Notwithstanding Subsection (1)(a), a board as defined in Section 63H-1-102 may impose the sales and use tax under this section if there are no permanent residents.

Section 4. Section 59-12-402 is amended to read:

59-12-402. Additional resort communities sales and use tax -- Base -- Rate -- Collection fees -- Resolution and voter approval requirements -- Election requirements -- Notice requirements -- Ordinance requirements -- Prohibition of military installation development authority imposition of tax.

(1) (a) Subject to Subsections (2) through (6), the governing body of a municipality in which the transient room capacity as defined in Section 59-12-405 is greater than or equal to 66% of the municipality's permanent census population may,

in addition to the sales tax authorized under Section 59-12-401, impose an additional resort communities sales tax in an amount that is less than or equal to .5% on the transactions described in Subsection 59-12-103(1) located within the municipality.

(b) Notwithstanding Subsection (1)(a), the governing body of a municipality may not impose a tax under this section on:

(i) the sale of:

(A) a motor vehicle;

(B) an aircraft;

(C) a watercraft;

(D) a modular home;

(E) a manufactured home; or

(F) a mobile home;

(ii) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(iii) except as provided in Subsection (1)(d), amounts paid or charged for food and food ingredients.

(c) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(d) A municipality imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(2) (a) An amount equal to the total of any costs incurred by the state in connection with the implementation of Subsection (1) which exceed, in any year, the revenues received by the state from its collection fees received in connection with the implementation of Subsection (1) shall be paid over to the state General Fund by the cities and towns which impose the tax provided for in Subsection (1).

(b) Amounts paid under Subsection (2)(a) shall be allocated proportionally among those cities and towns according to the amount of revenue the respective cities and towns generate in that year through imposition of that tax.

(3) To impose an additional resort communities sales tax under this section, the governing body of the municipality shall:

(a) pass a resolution approving the tax; and

(b) except as provided in Subsection (6), obtain voter approval for the tax as provided in Subsection (4).

(4) To obtain voter approval for an additional resort communities sales tax under Subsection (3)(b), a municipality shall:

(a) hold the additional resort communities sales tax election during:

- (i) a regular general election; or
- (ii) a municipal general election; and
- (b) publish notice of the election:

(i) 15 days or more before the day on which the election is held; and

(ii) (A) in a newspaper of general circulation in the municipality; and

(B) as required in Section 45-1-101.

(5) An ordinance approving an additional resort communities sales tax under this section shall provide an effective date for the tax as provided in Section 59-12-403.

(6) (a) Except as provided in Subsection (6)(b), a municipality is not subject to the voter approval requirements of Subsection (3)(b) if, on or before January 1, 1996, the municipality imposed a license fee or tax on businesses based on gross receipts pursuant to Section 10-1-203.

(b) The exception from the voter approval requirements in Subsection (6)(a) does not apply to a municipality that, on or before January 1, 1996, imposed a license fee or tax on only one class of businesses based on gross receipts pursuant to Section 10-1-203.

(7) A military installation development authority authorized to impose a resort communities tax under Section 59-12-401 may not impose an additional resort communities sales tax under this section.

Section 5. Section 59-12-402.1 is amended to read:

59-12-402.1. State correctional facility sales and use tax -- Base -- Rate -- Collection fees -- Imposition -- Prohibition of military installation development authority imposition of tax.

(1) As used in this section, "new state correctional facility" means a new prison in the state:

- (a) that is operated by the Department of Corrections;
- (b) the construction of which begins on or after May 12, 2015; and
- (c) that provides a capacity of 2,500 or more inmate beds.

(2) Subject to the other provisions of this part, a city or town legislative body may impose a tax under this section if the construction of a new state correctional facility has begun within the boundaries of the city or town.

(3) For purposes of this section, the tax rate may not exceed .5%.

(4) Except as provided in Subsection (5), a tax under this section shall be imposed on the

transactions described in Subsection 59-12-103(1) within the city or town.

(5) A city or town may not impose a tax under this section on:

- (a) the sale of:
 - (i) a motor vehicle;
 - (ii) an aircraft;
 - (iii) a watercraft;
 - (iv) a modular home;
 - (v) a manufactured home; or
 - (vi) a mobile home;

(b) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt under Section 59-12-104; and

(c) except as provided in Subsection (7), amounts paid or charged for food and food ingredients.

(6) For purposes of this section, the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(7) A city or town that imposes a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(8) A city or town may impose a tax under this section by majority vote of the members of the city or town legislative body.

(9) A city or town that imposes a tax under this section is not subject to Section 59-12-405.

(10) A military installation development authority may not impose a tax under this section.

Section 6. Section 59-12-703 is amended to read:

59-12-703. Opinion question election -- Base -- Rate -- Imposition of tax -- Expenditure of revenues -- Administration -- Enactment or repeal of tax -- Effective date -- Notice requirements.

(1) (a) Subject to the other provisions of this section, a county legislative body may submit an opinion question to the residents of that county, by majority vote of all members of the legislative body, so that each resident of the county, except residents in municipalities that have already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, has an opportunity to express the resident's opinion on the imposition of a local sales and use tax of .1% on the transactions described in Subsection 59-12-103(1) located within the county, to:

- (i) fund cultural facilities, recreational facilities, and zoological facilities, botanical organizations, cultural organizations, and zoological

organizations, and rural radio stations, in that county; or

(ii) provide funding for a botanical organization, cultural organization, or zoological organization to pay for use of a bus or facility rental if that use of the bus or facility rental is in furtherance of the botanical organization's, cultural organization's, or zoological organization's primary purpose.

(b) The opinion question required by this section shall state:

"Shall (insert the name of the county), Utah, be authorized to impose a .1% sales and use tax for (list the purposes for which the revenue collected from the sales and use tax shall be expended)?"

(c) A county legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104;

(ii) sales and uses within a municipality that has already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities; and

(iii) except as provided in Subsection (1)(e), amounts paid or charged for food and food ingredients.

(d) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(e) A county legislative body imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(f) The election shall follow the procedures outlined in Title 11, Chapter 14, Local Government Bonding Act.

(2) (a) If the county legislative body determines that a majority of the county's registered voters voting on the imposition of the tax have voted in favor of the imposition of the tax as prescribed in Subsection (1), the county legislative body may impose the tax by a majority vote of all members of the legislative body on the transactions:

(i) described in Subsection (1); and

(ii) within the county, including the cities and towns located in the county, except those cities and towns that have already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities.

(b) A county legislative body may revise county ordinances to reflect statutory changes to the

distribution formula or eligible recipients of revenue generated from a tax imposed under Subsection (2)(a) without submitting an opinion question to residents of the county.

(3) Subject to Section 59-12-704, revenue collected from a tax imposed under Subsection (2) shall be expended:

(a) to fund cultural facilities, recreational facilities, and zoological facilities located within the county or a city or town located in the county, except a city or town that has already imposed a sales and use tax under Part 14, City or Town Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities;

(b) to fund ongoing operating expenses of:

(i) recreational facilities described in Subsection (3)(a);

(ii) botanical organizations, cultural organizations, and zoological organizations within the county; and

(iii) rural radio stations within the county; and

(c) as stated in the opinion question described in Subsection (1).

(4) (a) A tax authorized under this part shall be:

(i) except as provided in Subsection (4)(b), administered, collected, and enforced in accordance with:

(A) the same procedures used to administer, collect, and enforce the tax under:

(I) Part 1, Tax Collection; or

(II) Part 2, Local Sales and Use Tax Act; and

(B) Chapter 1, General Taxation Policies; and

(ii) levied for a period of 10 years and may be reauthorized at the end of the ten-year period in accordance with this section.

(b) A tax under this part is not subject to Subsections 59-12-205(2) through (7).

(5) (a) For purposes of this Subsection (5):

(i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Part 2, County Annexation.

(ii) "Annexing area" means an area that is annexed into a county.

(b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a county enacts or repeals a tax under this part, the enactment or repeal shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(b)(ii) from the county.

(ii) The notice described in Subsection (5)(b)(i)(B) shall state:

(A) that the county will enact or repeal a tax under this part;

(B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

(D) if the county enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the tax.

(c) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.

(ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.

(d) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(b)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this part for an annexing area, the enactment or repeal shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(e)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (5)(e)(i)(B) shall state:

(A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or repeal of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and

(D) the rate of the tax described in Subsection (5)(e)(ii)(A).

(f) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.

(ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is rendered on or after the effective date of the repeal of the tax imposed under this section.

(g) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(e)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

Section 7. Section 59-12-802 is amended to read:

59-12-802. Imposition of rural county health care facilities tax -- Expenditure of tax revenue -- Base -- Rate -- Administration, collection, and enforcement of tax -- Administrative charge.

(1) (a) A county legislative body of a county of the third, fourth, fifth, or sixth class may impose a sales and use tax of up to 1% on the transactions described in Subsection 59-12-103(1) located within the county.

(b) Subject to Subsection (3), the money collected from a tax under this section may be used to fund:

(i) for a county of the third or fourth class, rural county health care facilities in that county; or

(ii) for a county of the fifth or sixth class:

(A) rural emergency medical services in that county;

(B) federally qualified health centers in that county;

(C) freestanding urgent care centers in that county;

(D) rural county health care facilities in that county;

(E) rural health clinics in that county; or

(F) a combination of Subsections (1)(b)(ii)(A) through (E).

(c) Notwithstanding Subsection (1)(a), a county legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104;

(ii) a transaction to the extent a rural city hospital tax is imposed on that transaction in a city that imposes a tax under Section 59-12-804; and

(iii) except as provided in Subsection (1)(e), amounts paid or charged for food and food ingredients.

(d) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(e) A county legislative body imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(2) (a) Before imposing a tax under Subsection (1), a county legislative body shall obtain approval to impose the tax from a majority of the:

- (i) members of the county's legislative body; and
- (ii) county's registered voters voting on the imposition of the tax.

(b) The county legislative body shall conduct the election according to the procedures and requirements of Title 11, Chapter 14, Local Government Bonding Act.

(3) (a) The money collected from a tax imposed under Subsection (1) by a county legislative body of a county of the third or fourth class may only be used for the financing of:

- (i) ongoing operating expenses of a rural county health care facility within that county;
- (ii) the acquisition of land for a rural county health care facility within that county; or
- (iii) the design, construction, equipping, or furnishing of a rural county health care facility within that county.

(b) The money collected from a tax imposed under Subsection (1) by a county of the fifth or sixth class may only be used to fund:

- (i) ongoing operating expenses of a center, clinic, or facility described in Subsection (1)(b)(ii) within that county;
- (ii) the acquisition of land for a center, clinic, or facility described in Subsection (1)(b)(ii) within that county;
- (iii) the design, construction, equipping, or furnishing of a center, clinic, or facility described in Subsection (1)(b)(ii) within that county; or
- (iv) rural emergency medical services within that county.

(4) (a) A tax under this section shall be:

(i) except as provided in Subsection (4)(b), administered, collected, and enforced in accordance with:

(A) the same procedures used to administer, collect, and enforce the tax under:

- (I) Part 1, Tax Collection; or
- (II) Part 2, Local Sales and Use Tax Act; and

(B) Chapter 1, General Taxation Policies; and

(ii) levied for a period of 10 years and may be reauthorized at the end of the ten-year period by the county legislative body as provided in Subsection (1).

(b) A tax under this section is not subject to Subsections 59-12-205(2) through (7).

(c) A county legislative body shall distribute money collected from a tax under this section quarterly.

(5) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenue the commission collects from a tax under this section.

Section 8. Section 59-12-804 is amended to read:

59-12-804. Imposition of rural city hospital tax -- Base -- Rate -- Administration, collection, and enforcement of tax -- Administrative charge.

(1) (a) A city legislative body may impose a sales and use tax of up to 1%:

- (i) on the transactions described in Subsection 59-12-103(1) located within the city; and
- (ii) to fund rural city hospitals in that city.

(b) Notwithstanding Subsection (1)(a)(i), a city legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(ii) except as provided in Subsection (1)(d), amounts paid or charged for food and food ingredients.

(c) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(d) A city legislative body imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(2) (a) Before imposing a tax under Subsection (1)(a), a city legislative body shall obtain approval to impose the tax from a majority of the:

- (i) members of the city legislative body; and
- (ii) city's registered voters voting on the imposition of the tax.

(b) The city legislative body shall conduct the election according to the procedures and requirements of Title 11, Chapter 14, Local Government Bonding Act.

(3) The money collected from a tax imposed under Subsection (1) may only be used to fund:

(a) ongoing operating expenses of a rural city hospital;

(b) the acquisition of land for a rural city hospital; or

(c) the design, construction, equipping, or furnishing of a rural city hospital.

(4) (a) A tax under this section shall be:

(i) except as provided in Subsection (4)(b), administered, collected, and enforced in accordance with:

(A) the same procedures used to administer, collect, and enforce the tax under:

(I) Part 1, Tax Collection; or

(II) Part 2, Local Sales and Use Tax Act; and

(B) Chapter 1, General Taxation Policies; and

(ii) levied for a period of 10 years and may be reauthorized at the end of the ten-year period by the city legislative body as provided in Subsection (1).

(b) A tax under this section is not subject to Subsections 59-12-205(2) through (7).

(5) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenue the commission collects from a tax under this section.

Section 9. Section 59-12-1302 is amended to read:

59-12-1302. Imposition of tax -- Base -- Rate -- Enactment or repeal of tax -- Tax rate change -- Effective date -- Notice requirements -- Administration, collection, and enforcement of tax -- Administrative charge.

(1) Beginning on or after January 1, 1998, the governing body of a town may impose a tax as provided in this part in an amount that does not exceed 1%.

(2) A town may impose a tax as provided in this part if the town imposed a license fee or tax on businesses based on gross receipts under Section 10-1-203 on or before January 1, 1996.

(3) A town imposing a tax under this section shall:

(a) except as provided in Subsection (4), impose the tax on the transactions described in Subsection 59-12-103(1) located within the town; and

(b) provide an effective date for the tax as provided in Subsection (5).

(4) (a) A town may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(ii) except as provided in Subsection (4)(c), amounts paid or charged for food and food ingredients.

(b) For purposes of this Subsection (4), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(c) A town imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(5) (a) For purposes of this Subsection (5):

(i) "Annexation" means an annexation to a town under Title 10, Chapter 2, Part 4, Annexation.

(ii) "Annexing area" means an area that is annexed into a town.

(b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a town enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(b)(ii) from the town.

(ii) The notice described in Subsection (5)(b)(i)(B) shall state:

(A) that the town will enact or repeal a tax or change the rate of a tax under this part;

(B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

(D) if the town enacts the tax or changes the rate of the tax described in Subsection (5)(b)(ii)(A), the rate of the tax.

(c) (i) If the billing period for the transaction begins before the effective date of the enactment of the tax or the tax rate increase imposed under Subsection (1), the enactment of the tax or the tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax or the tax rate increase.

(ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax or the tax rate decrease imposed under Subsection (1).

(d) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax described in Subsection (5)(b)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment, repeal, or change in the rate of the tax under Subsection (5)(b)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term “catalogue sale.”

(e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment, repeal, or change in the rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(e)(ii) from the town that annexes the annexing area.

(ii) The notice described in Subsection (5)(e)(i)(B) shall state:

(A) that the annexation described in Subsection (5)(e)(i) will result in an enactment, repeal, or change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and

(D) if the town enacts the tax or changes the rate of the tax described in Subsection (5)(e)(ii)(A), the rate of the tax.

(f) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax or the tax rate increase imposed under Subsection (1), the enactment of the tax or the tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax or the tax rate increase.

(ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax or the tax rate decrease imposed under Subsection (1).

(g) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax described in Subsection (5)(e)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment, repeal, or change in the rate of the tax under Subsection (5)(e)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term “catalogue sale.”

(6) The commission shall:

(a) distribute the revenue generated by the tax under this section to the town imposing the tax; and

(b) except as provided in Subsection (8), administer, collect, and enforce the tax authorized under this section in accordance with:

(i) the same procedures used to administer, collect, and enforce the tax under:

(A) Part 1, Tax Collection; or

(B) Part 2, Local Sales and Use Tax Act; and

(ii) Chapter 1, General Taxation Policies.

(7) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenue the commission collects from a tax under this part.

(8) A tax under this section is not subject to Subsections 59-12-205(2) through (7).

Section 10. Section 59-12-1402 is amended to read:

59-12-1402. Opinion question election -- Base -- Rate -- Imposition of tax -- Expenditure of revenue -- Enactment or repeal of tax -- Effective date -- Notice requirements.

(1) (a) Subject to the other provisions of this section, a city or town legislative body subject to this part may submit an opinion question to the residents of that city or town, by majority vote of all members of the legislative body, so that each resident of the city or town has an opportunity to express the resident’s opinion on the imposition of a local sales and use tax of .1% on the transactions described in Subsection 59-12-103(1) located within the city or town, to:

(i) fund cultural facilities, recreational facilities, and zoological facilities and botanical organizations, cultural organizations, and zoological organizations in that city or town; or

(ii) provide funding for a botanical organization, cultural organization, or zoological organization to pay for use of a bus or facility rental if that use of the bus or facility rental is in furtherance of the botanical organization’s, cultural organization’s, or zoological organization’s primary purpose.

(b) The opinion question required by this section shall state:

”Shall (insert the name of the city or town), Utah, be authorized to impose a .1% sales and use tax for (list the purposes for which the revenue collected from the sales and use tax shall be expended)?”

(c) A city or town legislative body may not impose a tax under this section:

(i) if the county in which the city or town is located imposes a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities;

(ii) on the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(iii) except as provided in Subsection (1)(e), on amounts paid or charged for food and food ingredients.

(d) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(e) A city or town legislative body imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(f) Except as provided in Subsection (6), the election shall be held at a regular general election or a municipal general election, as those terms are defined in Section 20A-1-102, and shall follow the procedures outlined in Title 11, Chapter 14, Local Government Bonding Act.

(2) If the city or town legislative body determines that a majority of the city's or town's registered voters voting on the imposition of the tax have voted in favor of the imposition of the tax as prescribed in Subsection (1), the city or town legislative body may impose the tax by a majority vote of all members of the legislative body.

(3) Subject to Section 59-12-1403, revenue collected from a tax imposed under Subsection (2) shall be expended:

(a) to finance cultural facilities, recreational facilities, and zoological facilities within the city or town or within the geographic area of entities that are parties to an interlocal agreement, to which the city or town is a party, providing for cultural facilities, recreational facilities, or zoological facilities;

(b) to finance ongoing operating expenses of:

(i) recreational facilities described in Subsection (3)(a) within the city or town or within the geographic area of entities that are parties to an interlocal agreement, to which the city or town is a party, providing for recreational facilities; or

(ii) botanical organizations, cultural organizations, and zoological organizations within the city or town or within the geographic area of entities that are parties to an interlocal agreement, to which the city or town is a party, providing for the support of botanical organizations, cultural organizations, or zoological organizations; and

(c) as stated in the opinion question described in Subsection (1).

(4) (a) Except as provided in Subsection (4)(b), a tax authorized under this part shall be:

(i) administered, collected, and enforced in accordance with:

(A) the same procedures used to administer, collect, and enforce the tax under:

(I) Part 1, Tax Collection; or

(II) Part 2, Local Sales and Use Tax Act; and

(B) Chapter 1, General Taxation Policies; and

(ii) (A) levied for a period of eight years; and

(B) may be reauthorized at the end of the eight-year period in accordance with this section.

(b) (i) If a tax under this part is imposed for the first time on or after July 1, 2011, the tax shall be levied for a period of 10 years.

(ii) If a tax under this part is reauthorized in accordance with Subsection (4)(a) on or after July 1, 2011, the tax shall be reauthorized for a ten-year period.

(c) A tax under this section is not subject to Subsections 59-12-205(2) through (7).

(5) (a) For purposes of this Subsection (5):

(i) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part 4, Annexation.

(ii) "Annexing area" means an area that is annexed into a city or town.

(b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a city or town enacts or repeals a tax under this part, the enactment or repeal shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(b)(ii) from the city or town.

(ii) The notice described in Subsection (5)(b)(i)(B) shall state:

(A) that the city or town will enact or repeal a tax under this part;

(B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

(D) if the city or town enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the tax.

(c) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.

(ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.

(d) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(b)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term “catalogue sale.”

(e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this part for an annexing area, the enactment or repeal shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (5)(e)(ii) from the city or town that annexes the annexing area.

(ii) The notice described in Subsection (5)(e)(i)(B) shall state:

(A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or repeal a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);

(C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and

(D) the rate of the tax described in Subsection (5)(e)(ii)(A).

(f) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax under this section, the enactment of the tax takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax.

(ii) The repeal of a tax applies to a billing period if the billing statement for the billing period is produced on or after the effective date of the repeal of the tax imposed under this section.

(g) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment or repeal under Subsection (5)(e)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term “catalogue sale.”

(6) (a) Before a city or town legislative body submits an opinion question to the residents of the city or town under Subsection (1), the city or town legislative body shall:

(i) submit to the county legislative body in which the city or town is located a written notice of the intent to submit the opinion question to the residents of the city or town; and

(ii) receive from the county legislative body:

(A) a written resolution passed by the county legislative body stating that the county legislative body is not seeking to impose a tax under Part 7,

County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities; or

(B) a written statement that in accordance with Subsection (6)(b) the results of a county opinion question submitted to the residents of the county under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, permit the city or town legislative body to submit the opinion question to the residents of the city or town in accordance with this part.

(b) (i) Within 60 days after the day the county legislative body receives from a city or town legislative body described in Subsection (6)(a) the notice of the intent to submit an opinion question to the residents of the city or town, the county legislative body shall provide the city or town legislative body:

(A) the written resolution described in Subsection (6)(a)(ii)(A); or

(B) written notice that the county legislative body will submit an opinion question to the residents of the county under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, for the county to impose a tax under that part.

(ii) If the county legislative body provides the city or town legislative body the written notice that the county legislative body will submit an opinion question as provided in Subsection (6)(b)(i)(B), the county legislative body shall submit the opinion question by no later than, from the date the county legislative body sends the written notice, the later of:

(A) a 12-month period;

(B) the next regular primary election; or

(C) the next regular general election.

(iii) Within 30 days of the date of the canvass of the election at which the opinion question under Subsection (6)(b)(ii) is voted on, the county legislative body shall provide the city or town legislative body described in Subsection (6)(a) written results of the opinion question submitted by the county legislative body under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, indicating that:

(A) (I) the city or town legislative body may not impose a tax under this part because a majority of the county's registered voters voted in favor of the county imposing the tax and the county legislative body by a majority vote approved the imposition of the tax; or

(II) for at least 12 months from the date the written results are submitted to the city or town legislative body, the city or town legislative body may not submit to the county legislative body a written notice of the intent to submit an opinion question under this part because a majority of the county's registered voters voted against the county imposing the tax and the majority of the registered

voters who are residents of the city or town described in Subsection (6)(a) voted against the imposition of the county tax; or

(B) the city or town legislative body may submit the opinion question to the residents of the city or town in accordance with this part because although a majority of the county's registered voters voted against the county imposing the tax, the majority of the registered voters who are residents of the city or town voted for the imposition of the county tax.

(c) Notwithstanding Subsection (6)(b), at any time a county legislative body may provide a city or town legislative body described in Subsection (6)(a) a written resolution passed by the county legislative body stating that the county legislative body is not seeking to impose a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, which permits the city or town legislative body to submit under Subsection (1) an opinion question to the city's or town's residents.

Section 11. Section 59-12-2003 is amended to read:

59-12-2003. Imposition -- Base -- Rate -- Revenue distributed to certain public transit districts.

(1) Subject to the other provisions of this section and except as provided in Subsection (2) or (4), beginning on July 1, 2008, the state shall impose a tax under this part on the transactions described in Subsection 59-12-103(1) within a city, town, or the unincorporated area of a county of the first or second class if, on January 1, 2008, there is a public transit district within any portion of that county of the first or second class.

(2) The state may not impose a tax under this part within a county of the first or second class if within all of the cities, towns, and the unincorporated area of the county of the first or second class there is imposed a sales and use tax of:

- (a) .30% under Section 59-12-2213;
- (b) .30% under Section 59-12-2215; or
- (c) .30% under Section 59-12-2216.

(3) (a) Subject to Subsection (3)(b), if the state imposes a tax under this part, the tax rate imposed within a city, town, or the unincorporated area of a county of the first or second class is a percentage equal to the difference between:

- (i) .30%; and
- (ii) (A) for a city within the county of the first or second class, the highest tax rate imposed within that city under:

- (I) Section 59-12-2213;
- (II) Section 59-12-2215; or
- (III) Section 59-12-2216;

(B) for a town within the county of the first or second class, the highest tax rate imposed within that town under:

- (I) Section 59-12-2213;
- (II) Section 59-12-2215; or
- (III) Section 59-12-2216; or

(C) for the unincorporated area of the county of the first or second class, the highest tax rate imposed within that unincorporated area under:

- (I) Section 59-12-2213;
- (II) Section 59-12-2215; or
- (III) Section 59-12-2216.

(b) For purposes of Subsection (3)(a), if for a city, town, or the unincorporated area of a county of the first or second class, the highest tax rate imposed under Section 59-12-2213, 59-12-2215, or 59-12-2216 within that city, town, or unincorporated area of the county of the first or second class is .30%, the state may not impose a tax under this part within that city, town, or unincorporated area.

(4) (a) The state may not impose a tax under this part on:

- (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; or
- (ii) except as provided in Subsection (4)(b), amounts paid or charged for food and food ingredients.

(b) The state shall impose a tax under this part on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and ingredients and tangible personal property other than food and food ingredients.

(5) For purposes of Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(6) The commission shall distribute the revenues the state collects from the sales and use tax under this part, after subtracting amounts a seller retains in accordance with Section 59-12-108, to the public transit districts within the cities, towns, and unincorporated areas:

- (a) within which the state imposes a tax under this part; and
- (b) in proportion to the revenues collected from the sales and use tax under this part within each city, town, and unincorporated area within which the state imposes a tax under this part.

Section 12. Section 59-12-2103 is amended to read:

59-12-2103. Imposition of tax -- Base -- Rate -- Expenditure of revenue collected from the tax -- Administration, collection, and enforcement of tax by commission --

Administrative charge -- Enactment or repeal of tax -- Annexation -- Notice.

(1) (a) Subject to the other provisions of this section and except as provided in Subsection (2) or (3), beginning on January 1, 2009 and ending on June 30, 2016, if a city or town receives a distribution for the 12 consecutive months of fiscal year 2005-06 because the city or town would have received a tax revenue distribution of less than .75% of the taxable sales within the boundaries of the city or town but for Subsection 59-12-205(4)(a), the city or town legislative body may impose a sales and use tax of up to .20% on the transactions:

- (i) described in Subsection 59-12-103(1); and
- (ii) within the city or town.

(b) A city or town legislative body that imposes a tax under Subsection (1)(a) shall expend the revenue collected from the tax for the same purposes for which the city or town may expend the city's or town's general fund revenue.

(c) For purposes of this Subsection (1), the location of a transaction shall be determined in accordance with Sections 59-12-211 through 59-12-215.

(2) (a) A city or town legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(ii) except as provided in Subsection (2)(b), amounts paid or charged for food and food ingredients.

(b) A city or town legislative body imposing a tax under this section shall impose the tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

(3) (a) Beginning on January 1, 2009, and ending on June 30, 2016, to impose a tax under this part, a city or town legislative body shall obtain approval from a majority of the members of the city or town legislative body.

(b) If, on June 30, 2016, a city or town is not imposing a tax under this part, the city or town legislative body may not impose a tax under this part beginning on or after July 1, 2016.

(c) (i) If, on June 30, 2016, a city or town imposes a tax under this part, the city or town shall repeal the tax on July 1, 2016, unless, on or after July 1, 2012, but on or before March 31, 2016, the city or town legislative body obtains approval from a majority vote of the members of the city or town legislative body to continue to impose the tax.

(ii) If a city or town obtains approval under Subsection (3)(c)(i) from a majority vote of the members of the city or town legislative body to

continue to impose a tax under this part on or after July 1, 2016, the city or town may impose the tax until no later than June 30, 2030.

(4) The commission shall transmit revenue collected within a city or town from a tax under this part:

- (a) to the city or town legislative body;
- (b) monthly; and
- (c) by electronic funds transfer.

(5) (a) Except as provided in Subsection (5)(b), the commission shall administer, collect, and enforce a tax under this part in accordance with:

(i) the same procedures used to administer, collect, and enforce the tax under:

- (A) Part 1, Tax Collection; or
- (B) Part 2, Local Sales and Use Tax Act; and
- (ii) Chapter 1, General Taxation Policies.

(b) A tax under this part is not subject to Subsections 59-12-205(2) through (7).

(6) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenue the commission collects from a tax under this part.

(7) (a) (i) Except as provided in Subsection (7)(b) or (c), if, on or after January 1, 2009, a city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (7)(a)(i) from the city or town.

(ii) The notice described in Subsection (7)(a)(i)(B) shall state:

(A) that the city or town will enact or repeal a tax or change the rate of the tax under this part;

(B) the statutory authority for the tax described in Subsection (7)(a)(ii)(A);

(C) the effective date of the tax described in Subsection (7)(a)(ii)(A); and

(D) if the city or town enacts the tax or changes the rate of the tax described in Subsection (7)(a)(ii)(A), the rate of the tax.

(b) (i) If the billing period for a transaction begins before the enactment of the tax or the tax rate increase under Subsection (1), the enactment of the tax or the tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax or the tax rate increase.

(ii) If the billing period for a transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under Subsection (1), the repeal of the tax or the tax rate decrease applies to a billing period if the billing statement for the

billing period is rendered on or after the effective date of the repeal of the tax or the tax rate decrease.

(c) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax described in Subsection (7)(a)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment, repeal, or change in the rate of the tax under Subsection (7)(a)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(d) (i) Except as provided in Subsection (7)(e) or (f), if, for an annexation that occurs on or after January 1, 2009, the annexation will result in the enactment, repeal, or change in the rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 90-day period beginning on the date the commission receives notice meeting the requirements of Subsection (7)(d)(ii) from the city or town that annexes the annexing area.

(ii) The notice described in Subsection (7)(d)(i)(B) shall state:

(A) that the annexation described in Subsection (7)(d)(i)(B) will result in the enactment, repeal, or change in the rate of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (7)(d)(ii)(A);

(C) the effective date of the tax described in Subsection (7)(d)(ii)(A); and

(D) if the city or town enacts the tax or changes the rate of the tax described in Subsection (7)(d)(ii)(A), the rate of the tax.

(e) (i) If the billing period for a transaction begins before the effective date of the enactment of the tax or a tax rate increase under Subsection (1), the enactment of a tax or a tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the enactment of the tax or the tax rate increase.

(ii) If the billing period for a transaction begins before the effective date of the repeal of the tax or the tax rate decrease imposed under Subsection (1), the repeal of the tax or the tax rate decrease applies to a billing period if the billing statement for the billing period is rendered on or after the effective date of the repeal of the tax or the tax rate decrease.

(f) (i) If a tax due under this part on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of a tax described in Subsection (7)(d)(i) takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the enactment, repeal, or change under Subsection (7)(d)(i).

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

Section 13. Section 59-12-2204 is amended to read:

59-12-2204. Transactions that may not be subject to taxation under this part -- Exception for food and food ingredients sold as part of a bundled transaction.

(1) A county, city, or town may not impose a sales and use tax under this part on:

(a) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(b) except as provided in Subsection (2), amounts paid or charged for food and food ingredients.

(2) A county, city, or town imposing a sales and use tax under this part shall impose the sales and use tax on the purchase price or sales price for amounts paid or charged for food and food ingredients if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients.

Section 14. Retrospective operation.

This bill has retrospective operation to January 1, 2017.

CHAPTER 423**S. B. 130**

Passed March 9, 2017
 Approved March 25, 2017
 Effective July 1, 2017

**UNIVERSAL SERVICE
 FUND AMENDMENTS**

Chief Sponsor: David P. Hinkins
 House Sponsor: Francis D. Gibson

LONG TITLE**General Description:**

This bill amends provisions related to the Universal Public Telecommunications Service Support Fund.

Highlighted Provisions:

This bill:

- ▶ provides that a telecommunications provider that establishes and maintains a network capable of providing access lines, connections, or wholesale broadband Internet access service may qualify for payments from the Universal Public Telecommunications Service Support Fund for use in carrier of last resort areas;
- ▶ requires each access line or connection provider in the state to contribute to the Universal Public Telecommunications Service Support Fund;
- ▶ requires the Public Service Commission to develop a method for calculating the amount of each contribution charge assessed to an access line or connection provider;
- ▶ combines a surcharge and funding for administering the hearing and speech impaired program with the Universal Public Telecommunications Service Support Fund and surcharge;
- ▶ provides for a depreciation method and rate-of-return for a carrier of last resort that receives support from the Universal Public Telecommunications Service Support Fund;
- ▶ provides that a wireless telecommunications provider is eligible for a distribution from the Universal Public Telecommunications Service Support Fund for providing lifeline service under certain circumstances; and
- ▶ defines terms.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 54-8b-2, as last amended by Laws of Utah 2005, Chapter 5
 54-8b-10, as last amended by Laws of Utah 2016, Chapter 271
 54-8b-15, as last amended by Laws of Utah 2013, Chapter 400
 63J-1-602.3, as last amended by Laws of Utah 2016, Chapters 52 and 271

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

Section 1. Section 54-8b-2 is amended to read:

54-8b-2. Definitions.

As used in this chapter:

(1) "Access line" means a circuit-switched connection, or the functional equivalent of a circuit-switched connection, from an end-user to the public switched network.

~~[(4)]~~ (2) (a) "Aggregator" means any person or entity that:

- (i) is not a telecommunications corporation;
- (ii) in the ordinary course of its business makes operator assisted services available to the public or to customers and transient users of its business or property through an operator service provider; and
- (iii) receives from an operator service provider by contract, tariff, or otherwise, commissions or compensation for calls delivered from the aggregator's location to the operator service provider.

(b) "Aggregator" may include any hotel, motel, hospital, educational institution, government agency, or coin or coinless telephone service provider so long as that entity qualifies under Subsection ~~[(4)]~~ (2)(a).

~~[(2)]~~ (3) "Basic residential service" means a local exchange service for a residential customer consisting of:

- (a) a single line with access to the public switched network;
- (b) touch-tone or the functional equivalent;
- (c) local flat-rate unlimited usage, exclusive of extended area service;
- (d) single-party service;
- (e) a free phone number listing in directories received for free;
- (f) access to operator services;
- (g) access to directory assistance;
- (h) access to lifeline and telephone relay assistance;
- (i) access to 911 and E911 emergency services;
- (j) access to long-distance carriers;
- (k) access to toll limitations services;
- (l) other services as may be determined by the commission; and
- (m) no feature.

~~[(3)]~~ (4) "Certificate" means a certificate of public convenience and necessity issued by the commission authorizing a telecommunications corporation to provide specified public telecommunications services within a defined geographic service territory in the state.

~~[(4)]~~ (5) "Division" means the Division of Public Utilities established in Section 54-4a-1.

~~[(5)]~~ (6) "Essential facility or service" means any portion, component, or function of the network or service offered by a provider of local exchange services:

(a) that is necessary for a competitor to provide a public telecommunications service;

(b) that cannot be reasonably duplicated; and

(c) for which there is no adequate economic alternative to the competitor in terms of quality, quantity, and price.

~~(6)~~ (7) (a) "Feature" means a custom calling service available from the central office switch, including call waiting, call forwarding, three-way calling, and similar services.

(b) "Feature" does not include long distance calling.

~~(7)~~ (8) "Federal Telecommunications Act" means the Communications Act of 1934, as amended, and the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

~~(8)~~ (9) "Incumbent telephone corporation" means a telephone corporation, its successors or assigns, which, as of May 1, 1995, held a certificate to provide local exchange services in a defined geographic service territory in the state.

~~(9)~~ (10) "Intrastate telecommunications service" means any public telecommunications service in which the information transmitted originates and terminates within the boundaries of this state.

~~(10)~~ (11) "Local exchange service" means the provision of telephone lines to customers with the associated transmission of two-way interactive, switched voice communication within the geographic area encompassing one or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.

~~(11)~~ (12) "Mobile telecommunications service" means a mobile telecommunications service:

(a) that is defined as a mobile telecommunications service in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124; and

(b) in which the information transmitted originates and terminates in one state.

~~(12)~~ (13) (a) "New public telecommunications service" means a service offered by a telecommunications corporation which that corporation has never offered before.

(b) "New public telecommunications service" does not include:

(i) a tariff, price list, or competitive contract that involves a new method of pricing any existing public telecommunications service;

(ii) a package of public telecommunications services that includes an existing public telecommunications service; or

(iii) a public telecommunications service that is a direct replacement for:

(A) a fully regulated service;

(B) an existing service offered pursuant to a tariff, price list, or competitive contract; or

(C) an essential facility or an essential service.

~~(13)~~ (14) "Operator assisted services" means services which assist callers in the placement or charging of a telephone call, either through live intervention or automated intervention.

~~(14)~~ (15) "Operator service provider" means any person or entity that provides, for a fee to a caller, operator assisted services.

~~(15)~~ (16) "Price-regulated service" means any public telecommunications service governed by Section 54-8b-2.3.

(17) "Public switched network" means the same as that term is defined in 47 C.F.R. Sec. 20.3.

~~(16)~~ (18) "Public telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

~~(17)~~ (19) "Substantial compliance" with reference to a rule or order of the commission means satisfaction of all material obligations in a manner consistent with the rule or order.

~~(18)~~ (20) "Telecommunications corporation" means any corporation or person, and their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling, operating, managing, or reselling a public telecommunications service.

~~(19)~~ (21) (a) "Total service long-run incremental cost" means the forward-looking incremental cost to a telecommunications corporation caused by providing the entire quantity of a public telecommunications service, network function, or group of public telecommunications services or network functions, by using forward-looking technology, reasonably available, without assuming relocation of existing plant and equipment.

(b) The "long-run" means a period of time long enough so that cost estimates are based on the assumption that all inputs are variable.

Section 2. Section 54-8b-10 is amended to read:

54-8b-10. Imposing a surcharge to provide hearing and speech impaired persons with telecommunication devices -- Definitions -- Procedures for establishing program -- Surcharge -- Administration and disposition of surcharge money.

(1) As used in this section:

(a) "Certified deaf or severely hearing or speech impaired person" means any state resident who:

(i) is so certified by:

(A) a licensed physician;

(B) an otolaryngologist;

(C) a speech language pathologist;

(D) an audiologist; or

(E) a qualified state agency; and

(ii) qualifies for assistance under any low income public assistance program administered by a state agency.

(b) “Certified interpreter” means a person who is a certified interpreter under Title 35A, Chapter 13, Part 6, Interpreter Services for the Deaf and Hard of Hearing Act.

(c) (i) “Telecommunication device” means any mechanical adaptation device that enables a deaf or severely hearing or speech impaired person to use the telephone.

(ii) “Telecommunication device” includes:

(A) telecommunication devices for the deaf (TDD);

(B) telephone amplifiers;

(C) telephone signal devices;

(D) artificial larynxes; and

(E) adaptive equipment for TDD keyboard access.

(2) The commission shall [hold hearings to] establish a program whereby a certified deaf or severely hearing or speech impaired customer of a telecommunications corporation that provides service through a local exchange or of a wireless telecommunications provider may obtain a telecommunication device capable of serving the customer at no charge to the customer beyond the rate for basic service.

(3) (a) The program described in Subsection (2) shall provide a dual party relay system using third party intervention to connect a certified deaf or severely hearing or speech impaired person with a normal hearing person by way of telecommunication devices designed for that purpose.

(b) The commission may, by rule, establish the type of telecommunications device to be provided to ensure functional equivalence.

[~~(4) (a) The commission shall impose a surcharge on each residential and business access line of each customer of local exchange telephone service in this state, and each residential and business telephone number of each customer of mobile telephone service in this state, not including a telephone number used exclusively to transfer data to and from a mobile device, which shall be collected by the telecommunications corporation providing public telecommunications service to the customer, to cover the costs of:~~

[~~(i) the program described in Subsection (2); and~~

[~~(ii) payments made under Subsection (5).]~~

[~~(b) The commission shall establish by rule the amount to be charged under this section, provided that:~~

~~(i) the surcharge does not exceed 20 cents per month for each residential and business access line for local exchange telephone service, and for each residential and business telephone number for mobile telephone service, not including a telephone number used exclusively to transfer data to and from a mobile device; and]~~

~~(ii) if the surcharge is related to a mobile telecommunications service, the surcharge may be imposed, billed, and collected only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.]~~

~~(c) The telecommunications corporation shall collect the surcharge from its customers and transfer the money collected to the commission under rules adopted by the commission.]~~

~~(d) The surcharge shall be separately identified on each bill to a customer.]~~

~~(5) (a) Money collected from the surcharge imposed under Subsection (4) shall be deposited in the state treasury as dedicated credits to be administered as determined by the commission.]~~

~~(b) These dedicated credits may be used only:]~~

(4) The commission shall cover the costs of the program described in this section from the Universal Public Telecommunications Service Support Fund created in Section 54-8b-15.

(5) In administering the program described in this section, the commission may use funds from the Universal Public Telecommunications Service Support Fund:

(i) (a) for the purchase, maintenance, repair, and distribution of telecommunication devices;

(ii) (b) for the acquisition, operation, maintenance, and repair of a dual party relay system;

~~(iii) to reimburse telephone corporations for the expenses incurred in collecting and transferring to the commission the surcharge imposed by the commission;]~~

(iv) (c) for the general administration of the program;

(v) (d) to train [persons] individuals in the use of telecommunications devices; and

(vi) (e) [by the commission] to contract, in compliance with Title 63G, Chapter 6a, Utah Procurement Code, with:

(A) (i) an institution within the state system of higher education listed in Section 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as certified interpreters; or

(B) (ii) the Utah State Office of Rehabilitation created in Section 35A-1-202 for a program that trains persons to qualify as certified interpreters.

(c) (i) (6) The commission [shall make rules] may create disbursement criteria and procedures by rule made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for [the

~~administration of money under Subsection (5)(b)(vi)] administering funds under Subsection (5).~~

~~[(ii) In the initial rulemaking to determine the administration of money under Subsection (5)(b)(vi), the commission shall give notice and hold a public hearing.]~~

~~[(d) Money received by the commission under Subsection (4) is nonlapsing.]~~

~~[(6) (a) The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of the collection.]~~

~~[(b) If Subsection (6)(a) applies, the telecommunications corporation shall submit to the commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection, showing that the costs exceed the revenue.]~~

~~(7) The commission shall solicit [the] advice, counsel, and physical assistance [of severely hearing or speech impaired persons and the organizations serving them] from deaf, hard of hearing, or severely speech impaired individuals and the organizations serving deaf, hard of hearing, or severely speech impaired individuals in the design and implementation of the program.~~

Section 3. Section 54-8b-15 is amended to read:

54-8b-15. Universal Public Telecommunications Service Support Fund -- Commission duties -- Charges -- Lifeline program.

(1) For purposes of this section:

~~[(a) "Basic telephone service" means local exchange service and may include such other functions and elements, if any, as the commission determines to be eligible for support by the fund.]~~

~~(a) "Broadband Internet access service" means the same as that term is defined in 47 C.F.R. Sec. 8.2.~~

~~(b) "Carrier of last resort" means:~~

~~(i) an incumbent telephone corporation; or~~

~~(ii) a telecommunications corporation that, under Section 54-8b-2.1:~~

~~(A) has a certificate of public convenience and necessity to provide local exchange service; and~~

~~(B) has an obligation to provide public telecommunications service to any customer or class of customers that requests service within the local exchange.~~

~~(c) "Connection" means an authorized session that uses Internet protocol or a functionally equivalent technology standard to enable an end-user to initiate or receive a call from the public switched network.~~

~~[(b)] (d) "Fund" means the Universal Public Telecommunications Service Support Fund established in this section.~~

~~(e) "Non-rate-of-return regulated" means having price flexibility under Section 54-8b-2.3.~~

~~(f) "Rate-of-return regulated" means subject to regulation under Section 54-4-4.~~

~~(g) "Wholesale broadband Internet access service" means the end-user loop component of Internet access provided by a rate-of-return regulated carrier of last resort that is used to provide, at retail:~~

~~(i) combined consumer voice and broadband Internet access; or~~

~~(ii) stand-alone, consumer, broadband-only Internet access.~~

~~[(2) The commission shall establish]~~

~~(2) (a) There is established an expendable special revenue fund known as the "Universal Public Telecommunications Service Support Fund[₅]." [which is to be implemented by January 1, 1998.]~~

~~(b) The fund shall provide a mechanism for a qualifying carrier of last resort to obtain specific, predictable, and sufficient funds to deploy and manage, for the purpose of providing service to end-users, networks capable of providing:~~

~~(i) access lines;~~

~~(ii) connections; or~~

~~(iii) wholesale broadband Internet access service.~~

~~(c) The commission shall develop, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, policies and procedures to govern the administration of the fund.~~

~~[(3) The commission shall:]~~

~~[(a) institute a proceeding within 30 days of the effective date of this section to establish rules governing the administration of the fund; and]~~

~~[(b) issue those rules by October 1, 1997.]~~

~~[(4) The rules in Subsection (3) shall be consistent with the Federal Telecommunications Act.]~~

~~[(5) Operation of the fund shall be nondiscriminatory and competitively and technologically neutral in the collection and distribution of funds, neither providing a competitive advantage for, nor imposing a competitive disadvantage upon, any telecommunications provider operating in the state.]~~

~~[(6) The fund shall be designed to:]~~

~~[(a) promote equitable cost recovery of basic telephone service through the imposition of just and reasonable rates for telecommunications access and usage; and]~~

~~[(b) preserve and promote universal service within the state by ensuring that customers have access to affordable basic telephone service.]~~

~~[(7) To the extent not funded by a federal universal service fund or other federal jurisdictional revenues, the fund shall be used to defray the costs, as determined by the commission, of any qualifying telecommunications corporation in providing public telecommunications services to:]~~

~~[(a) customers that qualify for a commission-approved lifeline program; and]~~

~~[(b) customers, where]~~

~~[the basic telephone service rate considered affordable by the commission in a particular geographic area is less than the costs, as determined by the commission for that geographic area, of basic telephone service.]~~

~~[(8) The fund shall be portable among qualifying telecommunications corporations. Requirements to qualify for funds under this section shall be defined by rules established by the commission.]~~

(3) Subject to this section, the commission shall use funds in the Universal Public Telecommunications Service Support Fund to:

(a) fund the hearing and speech impaired program described in Section 54-8b-10;

(b) fund a lifeline program that covers the reasonable cost to an eligible telecommunications carrier, as determined by the commission, to offer lifeline service consistent with the Federal Communications Commission's lifeline program for low-income consumers;

(c) fund, for the purpose of providing service to end-users, a rate-of-return regulated or non-rate-of-return regulated carrier of last resort's deployment and management of networks capable of providing:

(i) access lines;

(ii) connections; or

(iii) wholesale broadband Internet access service that is consistent with Federal Communications Commission rules; and

(d) fund one-time distributions from the Universal Public Telecommunications Service Support Fund for a non-rate-of-return regulated carrier of last resort's deployment and management of networks capable of providing:

(i) access lines;

(ii) connections; or

(iii) broadband Internet access service.

(4) (a) A rate-of-return regulated carrier of last resort is eligible for payment from the Universal Public Telecommunications Service Support Fund if:

(i) the rate-of-return regulated carrier of last resort provides the services described in Subsections (3)(c)(i) through (iii); and

(ii) the rate-of-return regulated carrier of last resort's reasonable costs, as determined by the

commission, to provide public telecommunications service and wholesale broadband Internet access service are greater than the sum of:

(A) the rate-of-return regulated carrier of last resort's revenue from basic residential service considered affordable by the commission;

(B) the rate-of-return regulated carrier of last resort's regulated revenue derived from providing other public telecommunications service;

(C) the rate-of-return regulated carrier of last resort's revenue from rates approved by the Federal Communications Commission for wholesale broadband Internet access service; and

(D) the amount the rate-of-return regulated carrier of last resort receives from federal universal service funds.

(b) A non-rate-of-return regulated carrier of last resort is eligible for payment from the Universal Public Telecommunications Service Support Fund for reimbursement of reasonable costs as determined by the commission if the non-rate-of-return regulated carrier meets criteria that are:

(i) consistent with Subsections (2) and (3); and

(ii) developed by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) A rate-of-return regulated carrier of last resort that qualifies for funds under this section:

(a) is entitled to a rate of return equal to the weighted average cost of capital rate of return prescribed by the Federal Communications Commission for rate-of-return regulated carriers; and

(b) may use any depreciation method allowed by the Federal Communications Commission.

(6) (a) The commission shall determine if a rate-of-return regulated carrier of last resort is correctly applying a depreciation method described in Subsection (5)(b).

(b) If the commission determines under Subsection (6)(a) that a rate-of-return regulated carrier of last resort is incorrectly applying a depreciation method or that the rate-of-return regulated carrier of last resort is not using a depreciation method allowed by the Federal Communications Commission, the commission shall issue an order that provides corrections to the rate-of-return regulated carrier of last resort's method of depreciation.

~~[(9) As necessary to accomplish the purposes of this section, the fund shall provide a mechanism for specific, predictable, and sufficient funds in addition to those provided under the federal universal service fund.]~~

(7) A carrier of last resort that receives funds from the Universal Public Telecommunications Service Support Fund may only use the funds in accordance with this section within the area for which the carrier of last resort has a carrier of last resort obligation.

(8) Each access line provider and each connection provider shall contribute to the Universal Public Telecommunications Service Support Fund through an explicit charge assessed by the commission on the access line provider or connection provider.

(9) The commission shall calculate the amount of each explicit charge described in Subsection (8) using a method developed by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(a) does not discriminate against:

(i) any access line or connection provider; or
(ii) the technology used by any access line or connection provider;

(b) is competitively neutral; and

(c) is a function of an access line or connection provider's:

(i) annual intrastate revenue;
(ii) number of access lines or connections in the state; or
(iii) a combination of an access line or connection provider's annual intrastate revenue and number of access lines or connections in the state.

(10) The commission shall develop the method described in Subsection (9) before January 1, 2018.

~~[(10) (a) Subject to Subsection (10) (b);]~~

~~[(i) each telecommunications corporation that provides intrastate public telecommunication service shall contribute to the fund on an equitable and nondiscriminatory basis;]~~

~~[(ii) for purposes of funding the fund, the commission shall have the authority to require all corporations that provide intrastate telecommunication services in this state to contribute money to the fund through explicit charges determined by the commission;]~~

~~[(iii) any charge described in Subsection (10)(a)(ii) may not apply to wholesale services, including access and interconnection; and]~~

~~[(iv) charges associated with being a provider of public telecommunications service shall be in the form of end-user surcharges applied to intrastate retail rates.]~~

~~[(b) A telecommunications corporation]~~ (11) An access line or connection provider that provides mobile telecommunications service shall contribute to the ~~[fund]~~ Universal Public Telecommunications Service Support Fund only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

~~[(11)]~~ (12) Nothing in this section shall be construed to enlarge or reduce the commission's jurisdiction or authority, as provided in other provisions of this title.

~~[(12) Any telecommunications corporation failing to make contributions to this fund or failing]~~

(13) A person that fails to make a required contribution to the fund created by this section, or that fails to comply with ~~[the directives of the]~~ a commission directive concerning ~~[its]~~ the person's books, records, or other information required by the commission to administer this section ~~[shall be]~~, is subject to applicable penalties.

~~[(13) The commission shall have a bill prepared for the 1998 General Session of the Legislature to place in statute as much of the regulation implemented by rule pursuant to the act the commission believes is practicable.]~~

(14) Nothing in this section gives the commission the authority:

(a) to regulate broadband Internet access service;
(b) to require a carrier of last resort to provide broadband Internet access service; or

(c) assess a contribution in violation of the Internet Tax Freedom Act, 47 U.S.C. Sec. 151 note.

(15) (a) A facilities-based or nonfacilities-based wireless telecommunication provider is eligible for distributions from the Universal Telecommunications Service Support Fund under the lifeline program described in Subsection (3)(b) for providing lifeline service that is consistent with the Federal Communications Commission's lifeline program for low-income consumers.

(b) Except as provided in Subsection (15)(c), the commission may impose reasonable conditions for providing a distribution to a wireless telecommunication provider under the lifeline program described in Subsection (3)(b).

(c) The commission may not require a wireless telecommunication provider to offer unlimited local calling to a lifeline customer as a condition of receiving a distribution under the lifeline program described in Subsection (3)(b).

(16) The commission shall report to the Public Utilities, Energy, and Technology Interim Committee each year before November 1 regarding:

(a) the contribution method described in Subsection (9);

(b) the amount of distributions from and contributions to the Universal Public Telecommunications Service Support Fund during the last fiscal year;

(c) the availability of services for which Subsection (3) permits Universal Public Telecommunications Service Support Fund funds to be used; and

(d) the effectiveness and efficiency of the Universal Public Telecommunications Service Support Fund.

Section 4. Section 63J-1-602.3 is amended to read:

63J-1-602.3. List of nonlapsing funds and accounts -- Title 46 through Title 60.

(1) The Utah Law Enforcement Memorial Support Restricted Account created in Section 53-1-120.

(2) Funding for the Search and Rescue Financial Assistance Program, as provided in Section 53-2a-1102.

(3) Appropriations made to the Division of Emergency Management from the State Disaster Recovery Restricted Account, as provided in Section 53-2a-603.

(4) Appropriations made to the Department of Public Safety from the Department of Public Safety Restricted Account, as provided in Section 53-3-106.

(5) Appropriations to the Motorcycle Rider Education Program, as provided in Section 53-3-905.

(6) Appropriations from the Utah Highway Patrol Aero Bureau Restricted Account created in Section 53-8-303.

(7) Appropriations from the DNA Specimen Restricted Account created in Section 53-10-407.

(8) The Canine Body Armor Restricted Account created in Section 53-16-201.

(9) The School Readiness Restricted Account created in Section 53A-1b-104.

(10) Appropriations to the State Board of Education, as provided in Section 53A-17a-105.

(11) Money received by the Utah State Office of Rehabilitation for the sale of certain products or services, as provided in Section 35A-13-202.

(12) Certain funds appropriated from the General Fund to the State Board of Regents for teacher preparation programs, as provided in Section 53B-6-104.

(13) Funding for the Medical Education Program administered by the Medical Education Council, as provided in Section 53B-24-202.

(14) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

~~[(15) Certain surcharges on residential and business telephone numbers imposed by the Public Service Commission, as provided in Section 54-8b-10.]~~

[(16)] (15) Certain fines collected by the Division of Occupational and Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

[(17)] (16) Certain fines collected by the Division of Occupational and Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

[(18)] (17) Appropriations from the Relative Value Study Restricted Account created in Section 59-9-105.

[(19)] (18) The Cigarette Tax Restricted Account created in Section 59-14-204.

Section 5. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 424**S. B. 154**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

SOLAR ACCESS AMENDMENTS

Chief Sponsor: Lincoln Fillmore

House Sponsor: Francis D. Gibson

LONG TITLE**General Description:**

This bill enacts provisions related to restrictions on solar energy systems.

Highlighted Provisions:

This bill:

- ▶ provides that, for real property governed by a community association, a governing document may not prohibit or restrict an owner's installation of a solar energy system under certain circumstances;
- ▶ provides that a declaration may prohibit or restrict the size, location, or manner of placement of a solar energy system under certain circumstances;
- ▶ provides that an association may, by association rule restrict an owner's installation of a solar energy system under certain circumstances;
- ▶ provides for attorney fees in an action brought under an enacted part; and
- ▶ provides an applicability date.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

57-8a-102, as last amended by Laws of Utah 2015, Chapters 22, 34, 213, 325, and 387

ENACTS:

57-8a-701, Utah Code Annotated 1953

57-8a-702, Utah Code Annotated 1953

57-8a-703, Utah Code Annotated 1953

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

Section 1. Section 57-8a-102 is amended to read:**57-8a-102. Definitions.**

As used in this chapter:

(1) (a) "Assessment" means a charge imposed or levied:

- (i) by the association;
- (ii) on or against a lot or a lot owner; and
- (iii) pursuant to a governing document recorded with the county recorder.

(b) "Assessment" includes:

- (i) a common expense; and
- (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).

(2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or other legal entity, any member of which:

(i) is an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents; and

(ii) by virtue of membership or ownership of a residential lot is obligated to pay:

(A) real property taxes;

(B) insurance premiums;

(C) maintenance costs; or

(D) for improvement of real property not owned by the member.

(b) "Association" or "homeowner association" does not include an association created under Title 57, Chapter 8, Condominium Ownership Act.

(3) "Board of directors" or "board" means the entity, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property that the association:

(a) owns;

(b) maintains;

(c) repairs; or

(d) administers.

(5) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.

(6) "Declarant":

(a) means the person who executes a declaration and submits it for recording in the office of the recorder of the county in which the property described in the declaration is located; and

(b) includes the person's successor and assign.

(7) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

(8) "Gas corporation" means the same as that term is defined in Section 54-2-1.

(9) (a) "Governing documents" means a written instrument by which the association may:

(i) exercise powers; or

(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association.

(b) "Governing documents" includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

(iv) a declaration of covenants, conditions, and restrictions; and

(v) rules of the association.

(10) "Independent third party" means a person that:

(a) is not related to the owner of the residential lot;

(b) shares no pecuniary interests with the owner of the residential lot; and

(c) purchases the residential lot in good faith and without the intent to defraud a current or future lienholder.

(11) "Judicial foreclosure" means a foreclosure of a lot:

(a) for the nonpayment of an assessment; and

(b) (i) in the manner provided by law for the foreclosure of a mortgage on real property; and

(ii) as provided in Part 3, Collection of Assessments.

(12) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

(a) by a person or persons other than the owner; and

(b) for which the owner receives a consideration or benefit, including a fee, service, gratuity, or emolument.

(13) "Limited common areas" means common areas described in the declaration and allocated for the exclusive use of one or more lot owners.

(14) "Lot" means:

(a) a lot, parcel, plot, or other division of land:

(i) designated for separate ownership or occupancy; and

(ii) (A) shown on a recorded subdivision plat; or

(B) the boundaries of which are described in a recorded governing document; or

(b) (i) a unit in a condominium association if the condominium association is a part of a development; or

(ii) a unit in a real estate cooperative if the real estate cooperative is part of a development.

(15) (a) "Means of electronic communication" means an electronic system that allows individuals to communicate orally in real time.

(b) "Means of electronic communication" includes:

(i) web conferencing;

(ii) video conferencing; and

(iii) telephone conferencing.

(16) "Meeting" means a gathering of a board, whether in person or by means of electronic communication, at which the board can take binding action.

(17) "Mixed-use project" means a project under this chapter that has both residential and commercial lots in the project.

(18) "Nonjudicial foreclosure" means the sale of a lot:

(a) for the nonpayment of an assessment; and

(b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through 57-1-34; and

(ii) as provided in Part 3, Collection of Assessments.

(19) "Period of administrative control" means the period during which the person who filed the association's governing documents or the person's successor in interest retains authority to:

(a) appoint or remove members of the association's board of directors; or

(b) exercise power or authority assigned to the association under the association's governing documents.

(20) "Residential lot" means a lot, the use of which is limited by law, covenant, or otherwise to primarily residential or recreational purposes.

(21) "Solar energy system" means:

(a) a system that is used to produce electric energy from sunlight; and

(b) the components of the system described in Subsection (21)(a).

Section 2. Section 57-8a-701 is enacted to read:

Part 7. Solar Access

57-8a-701. Solar energy system --

Prohibition or restriction in declaration or association rule.

(1) As used in this section, "detached dwelling" means a detached dwelling for which the association does not have an ownership interest in the detached dwelling's roof.

(2) (a) A governing document other than a declaration may not prohibit an owner of a lot with a detached dwelling from installing a solar energy system.

(b) A governing document other than a declaration or an association rule may not restrict an owner of a lot with a detached dwelling from installing a solar energy system on the owner's lot.

(3) A declaration may, for a lot with a detached dwelling:

(a) prohibit a lot owner from installing a solar energy system; or

(b) impose a restriction other than a prohibition on a solar energy system's size, location, or manner of placement if the restriction:

(i) decreases the solar energy system's production by 5% or less;

(ii) increases the solar energy system's cost of installation by 5% or less; and

(iii) complies with Subsection (6).

(4) (a) If a declaration does not expressly prohibit the installation of a solar energy system on a lot with a detached dwelling, an association may not amend the declaration to impose a prohibition on the installation of a solar energy system unless the association approves the prohibition by a vote of greater than 67% of the allocated voting interests of the lot owners in the association.

(b) An association may amend an existing provision in a declaration that prohibits the installation of a solar energy system on a lot with a detached dwelling if the association approves the amendment by a vote of greater than 67% of the allocated voting interests of the lot owners in the association.

(5) An association may, by association rule, for a lot with a detached dwelling, impose a restriction other than a prohibition on a lot owner's installation of a solar energy system if the restriction:

(a) complies with Subsection (6);

(b) decreases the solar energy system's production by 5% or less; and

(c) increases the solar energy system's cost of installation by 5% or less.

(6) A declaration or an association rule may require an owner of a detached dwelling that installs a solar energy system on the owner's lot:

(a) to install a solar energy system that, or install the solar energy system in a manner that:

(i) complies with applicable health, safety, and building requirements established by the state or a political subdivision of the state;

(ii) if the solar energy system is used to heat water, is certified by:

(A) the Solar Rating and Certification Corporation; or

(B) a nationally recognized solar certification entity;

(iii) if the solar energy system is used to produce electricity, complies with applicable safety and performance standards established by:

(A) the National Electric Code;

(B) the Institute of Electrical and Electronics Engineers;

(C) Underwriters Laboratories;

(D) an accredited electrical testing laboratory; or

(E) the state or a political subdivision of the state;

(iv) if the solar energy system is mounted on a roof:

(A) does not extend above the roof line; or

(B) has panel frame, support bracket, or visible piping or wiring that has a color or texture that is similar to the roof material; or

(v) if the solar energy system is mounted on the ground, is not visible from the street that a lot fronts;

(b) to pay any reasonable cost or expense incurred by the association to review an application to install a solar energy system;

(c) be responsible, jointly and severally with any subsequent owner of the lot while the violation of the rule or requirement occurs, for any cost or expense incurred by the association to enforce a declaration requirement or association rule; or

(d) as a condition of installing a solar energy system, to record a deed restriction against the owner's lot that runs with the land that requires the current owner of the lot to indemnify or reimburse the association or a member of the association for any loss or damage caused by the installation, maintenance, or use of the solar energy system, including costs and reasonable attorney fees incurred by the association or a member of the association.

Section 3. Section 57-8a-702 is enacted to read:

57-8a-702. Attorney fees.

In an action to enforce this part, the court may award the prevailing party, in addition to any other available relief, an amount equal to the prevailing party's costs and reasonable attorney fees.

Section 4. Section 57-8a-703 is enacted to read:

57-8a-703. Applicability.

(1) Except as provided in Subsection (2), this part applies to a declaration or official association action regardless of when the declaration was recorded or the official association action was taken.

(2) This part does not apply to an express prohibition or an express restriction on a lot owner's installation of a solar energy system:

(a) described in a declaration recorded before January 1, 2017; or

(b) created by official association action taken before January 1, 2017.

(3) This part does not apply during the period of administrative control.

CHAPTER 425**S. B. 157**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

(Retrospective operation to January 1, 2017)

CHANGES TO PROPERTY TAX

Chief Sponsor: Curtis S. Bramble

House Sponsor: Daniel McCay

LONG TITLE**General Description:**

This bill amends provisions in the Property Tax Act related to the assessment of aircraft.

Highlighted Provisions:

This bill:

- ▶ provides a method for determining the fair market value of centrally assessed aircraft.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

59-2-201, as last amended by Laws of Utah 2015, Chapter 139

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

Section 1. Section 59-2-201 is amended to read:

59-2-201. Assessment by commission -- Determination of value of mining property -- Determination of value of aircraft -- Notification of assessment -- Local assessment of property assessed by the unitary method -- Commission may consult with county.

(1) (a) By May 1 of each year, the following property, unless otherwise exempt under the Utah Constitution or under Part 11, Exemptions, Deferrals, and Abatements, shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:

(i) except as provided in Subsection (2), all property [which] that operates as a unit across county lines, if the values must be apportioned among more than one county or state;

(ii) all property of public utilities;

(iii) all operating property of an airline, air charter service, and air contract service;

(iv) all geothermal fluids and geothermal resources;

(v) all mines and mining claims except in cases, as determined by the commission, where the mining claims are used for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located; and

(vi) all machinery used in mining, all property or surface improvements upon or appurtenant to mines or mining claims. For the purposes of assessment and taxation, all processing plants, mills, reduction works, and smelters [which] that are primarily used by the owner of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or mining claim shall be considered appurtenant to that mine or mining claim, regardless of actual location.

(b) (i) For purposes of Subsection (1)(a)(iii), operating property of an air charter service does not include an aircraft that is:

(A) used by the air charter service for air charter; and

(B) owned by a person other than the air charter service.

(ii) For purposes of this Subsection (1)(b):

(A) "person" means a natural person, individual, corporation, organization, or other legal entity; and

(B) a person does not qualify as a person other than the air charter service as described in Subsection (1)(b)(i)(B) if the person is:

(I) a principal, owner, or member of the air charter service; or

(II) a legal entity that has a principal, owner, or member of the air charter service as a principal, owner, or member of the legal entity.

(2) The commission shall assess and collect property tax on state-assessed commercial vehicles at the time of original registration or annual renewal.

(a) The commission shall assess and collect property tax annually on state-assessed commercial vehicles [which] that are registered pursuant to Section 41-1a-222 or 41-1a-228.

(b) State-assessed commercial vehicles brought into the state [which] that are required to be registered in Utah shall, as a condition of registration, be subject to ad valorem tax unless all property taxes or fees imposed by the state of origin have been paid for the current calendar year.

(c) Real property, improvements, equipment, fixtures, or other personal property in this state owned by the company shall be assessed separately by the local county assessor.

(d) The commission shall adjust the value of state-assessed commercial vehicles as necessary to comply with 49 U.S.C. Sec. 14502, and the commission shall direct the county assessor to apply the same adjustment to any personal property, real property, or improvements owned by the company and used directly and exclusively in their commercial vehicle activities.

(3) (a) The method for determining the fair market value of productive mining property is the capitalized net revenue method or any other valuation method the commission believes, or the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of the fair market value of the mining property.

(b) The commission shall determine the rate of capitalization applicable to mines ~~[shall be determined by the commission]~~, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions.

(c) In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property.

(4) (a) As used in this Subsection (4), "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are:

- (i) identified by year, make, and model; and
- (ii) in average condition typical for the aircraft's type and vintage.

(b) (i) Except as provided in Subsection (4)(d), the commission shall use an aircraft pricing guide, adjusted as provided in Subsection (4)(c), to determine the fair market value of aircraft assessed under this part.

(ii) The commission shall use the Airliner Price Guide as the aircraft pricing guide, except that:

(A) if the Airliner Price Guide is no longer published or the commission determines that another aircraft pricing guide more reasonably reflects the fair market value of aircraft, the commission, after consulting with the airlines operating in the state, shall select an alternative aircraft pricing guide;

(B) if an aircraft is not listed in the Airliner Price Guide, the commission shall use the Aircraft Bluebook Price Digest as the aircraft pricing guide; and

(C) if the Aircraft Bluebook Price Digest is no longer published or the commission determines that another aircraft pricing guide more reasonably reflects the fair market value of aircraft, the commission, after consulting with the airlines operating in the state, shall select an alternative aircraft pricing guide.

(c) (i) To reflect the value of an aircraft fleet that is used as part of the operating property of an airline, air charter service, or air contract service, the fair market value of the aircraft shall include a fleet adjustment as provided in this Subsection (4)(c).

(ii) If the aircraft pricing guide provides a method for making a fleet adjustment, the commission shall use the method described in the aircraft pricing guide.

(iii) If the aircraft pricing guide does not provide a method for making a fleet adjustment, the commission shall make a fleet adjustment by reducing the aircraft pricing guide value of each aircraft in the fleet by .5% for each aircraft over three aircraft up to a maximum 20% reduction.

(d) The commission may use an alternative method for valuing aircraft of an airline, air charter service, or air contract service if the commission:

(i) has clear and convincing evidence that the aircraft values reflected in the aircraft pricing guide do not reasonably reflect fair market value of the aircraft; and

(ii) cannot identify an alternative aircraft pricing guide from which the commission may determine aircraft value.

~~[(4)]~~ (5) Immediately following the assessment, the commission shall send, by certified mail, notice of the assessment to the owner or operator of the assessed property ~~[shall be notified of the assessment by certified mail. The]~~ and the assessor of the county in which the property is located ~~[shall also be immediately notified of the assessment by certified mail].~~

~~[(5)]~~ (6) The commission may consult with a county in valuing property in accordance with this part.

~~[(6) Property]~~ (7) The local county assessor shall separately assess property that is assessed by the unitary method~~[, which]~~ if the commission determines that the property:

(a) is not necessary to the conduct of the business; and

(b) does not contribute to the income of the business ~~[as determined by the commission, shall be assessed separately by the local county assessor].~~

Section 2. Retrospective operation.

This bill has retrospective operation to January 1, 2017.

CHAPTER 426**S. B. 165**

Passed March 7, 2017

Approved March 25, 2017

Effective May 9, 2017

**REIMBURSEMENTS FOR
PUBLIC SAFETY OFFICERS**Sponsor: Chief Sponsor: Karen Mayne
House Sponsor: Lee B. Perry**LONG TITLE****General Description:**

This bill creates the Peace Officer Career Advancement Reimbursement program under the State Board of Regents.

Highlighted Provisions:

This bill:

- ▶ creates the Peace Officer Career Advancement Reimbursement program to provide up to \$5,000 annually for qualified applicants;
- ▶ appropriates funds for the Peace Officer Career Advancement Reimbursement program;
- ▶ dedicates a portion of the reimbursement funds for officers currently employed in smaller counties;
- ▶ requires that an individual who receives a reimbursement through the Peace Officer Career Advancement Reimbursement Program continue to be employed with the individual's current law enforcement agency for an additional year for each year that the individual applies for and receives reimbursement funds; and
- ▶ requires the board to annually report on the reimbursement program to the Higher Education Appropriations Subcommittee.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2018:

- ▶ to the State Board of Regents Student Assistance, as an ongoing appropriation:
 - from the Education Fund, \$200,000.

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

53B-8-112, Utah Code Annotated 1953

53B-8-113, Utah Code Annotated 1953

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

Section 1. Section 53B-8-112 is enacted to read:**53B-8-112. Public Safety Officer Career Advancement Scholarship.**

(1) The Public Safety Officer Career Advancement Reimbursement Program is created.

(2) Subject to legislative appropriations and Subsection (7) the board shall reimburse an applicant who:

(a) is a certified peace officer, currently employed by a law enforcement agency within the state;

(b) has been employed as a certified peace officer for three or more consecutive years;

(c) is seeking a post-secondary degree in the area of criminal justice from a credit-granting higher education institution within the state system of higher education, described in Section 53B-1-102; and

(d) is employed as a peace officer for one year following completion of the academic year for which the individual is seeking reimbursement.

(3) Individuals who qualify for reimbursement from the Public Safety Officer Career Advancement Reimbursement program may apply for reimbursement by July 1 one year after each academic year for which they are requesting reimbursement.

(4) Subject to Legislative appropriations, of the funds appropriated for the Peace Officer Career Advancement Reimbursement Program:

(a) 25% of the annual appropriation shall be designated for applicants who are currently employed by a law enforcement agency with jurisdiction in a county of the third or fourth class; and

(b) 12% of the annual appropriation shall be designated for applicants who are currently employed by a law enforcement agency with jurisdiction in a county of the fifth or sixth class.

(5) (a) A qualified applicant may be reimbursed up to half of the cost of tuition and fees.

(b) A reimbursement under Subsection (5)(a) is limited to:

- (i) a maximum of \$5,000 each academic year; and
- (ii) a maximum of eight academic years.

(6) (a) The board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(i) set deadlines for receiving reimbursement applications and supporting documentation; and

(ii) establish the application process and an appeal process for a reimbursement from the Peace Officer Career Advancement Reimbursement Program, including procedures to allow for online application submittals.

(b) The board shall include a disclosure on all applications and related materials that the amount of the awarded reimbursements may be subject to funding or be reduced, in accordance with Subsection (7).

(7) (a) Subject to future budget constraints, the Legislature shall make an annual appropriation from the Education Fund to the board for the costs associated with the Peace Officer Career Advancement Reimbursement Program authorized under this section.

(b) Notwithstanding the provisions of this section, if the appropriation under this section is insufficient to cover the costs associated with the Peace Officer Career Advancement

Reimbursement Program, the board may reduce the amount of a reimbursement.

(c) Any individual who is denied reimbursement because of insufficient funds appropriated may re-apply for reimbursement up to two years after the first year of eligibility.

Section 2. Section 53B-8-113 is enacted to read:

53B-8-113. Reporting.

No later than December 1, the board shall report annually on the Public Safety Officer Career Advancement Reimbursement program to the Higher Education Appropriations Subcommittee regarding the following information for the previous calendar year:

- (1) the number of certified peace officer applicants for reimbursement;
- (2) the number of reimbursements awarded from the Peace Officer Career Advancement Reimbursement Program; and
- (3) the total amount in reimbursements awarded.

Section 3. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

To State Board of Regents -- Student Assistance

From Education Fund \$200,000

Schedule of Programs:

<u>Public Safety Officer Career</u>	
<u>Advancement Reimbursement</u>	<u>\$200,000</u>

CHAPTER 427**S. B. 174**

Passed March 8, 2017

Approved March 25, 2017

Effective May 9, 2017

PUBLIC TRANSIT AND TRANSPORTATION GOVERNANCE AMENDMENTS

Chief Sponsor: Wayne A. Harper

House Sponsor: Mike Schultz

LONG TITLE**General Description:**

This bill amends the governance of certain public transit districts, restricts powers of some public transit districts, and creates a task force.

Highlighted Provisions:

This bill:

- ▶ amends provisions relating to the authority of a public service district that serves a population over 200,000 people to develop transit oriented developments;
- ▶ requires a public transit district that serves a population over 200,000 people to have a citizens' advisory board, an office of constituent services, and an office of coordinated mobility;
- ▶ creates the Transportation Governance and Funding Task Force;
- ▶ provides an automatic repeal date for the task force; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

17B-2a-804, as last amended by Laws of Utah 2016, Chapter 387

63I-2-272, as last amended by Laws of Utah 2016, Fourth Special Session, Chapter 2

ENACTS:

17B-2a-826, Utah Code Annotated 1953

72-14-101, Utah Code Annotated 1953

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

Section 1. Section 17B-2a-804 is amended to read:**17B-2a-804. Additional public transit district powers.**

(1) In addition to the powers conferred on a public transit district under Section 17B-1-103, a public transit district may:

(a) provide a public transit system for the transportation of passengers and their incidental baggage;

(b) notwithstanding Subsection 17B-1-103(2)(g) and subject to Section 17B-2a-817, levy and collect property taxes only for the purpose of paying:

(i) principal and interest of bonded indebtedness of the public transit district; or

(ii) a final judgment against the public transit district if:

(A) the amount of the judgment exceeds the amount of any collectable insurance or indemnity policy; and

(B) the district is required by a final court order to levy a tax to pay the judgment;

(c) insure against:

(i) loss of revenues from damage to or destruction of some or all of a public transit system from any cause;

(ii) public liability;

(iii) property damage; or

(iv) any other type of event, act, or omission;

(d) acquire, contract for, lease, construct, own, operate, control, or use:

(i) a right-of-way, rail line, monorail, bus line, station, platform, switchyard, terminal, parking lot, or any other facility necessary or convenient for public transit service; or

(ii) any structure necessary for access by persons and vehicles;

(e) (i) hire, lease, or contract for the supplying or management of a facility, operation, equipment, service, employee, or management staff of an operator; and

(ii) provide for a sublease or subcontract by the operator upon terms that are in the public interest;

(f) operate feeder bus lines and other feeder or ridesharing services as necessary;

(g) accept a grant, contribution, or loan, directly through the sale of securities or equipment trust certificates or otherwise, from the United States, or from a department, instrumentality, or agency of the United States;

(h) study and plan transit facilities in accordance with any legislation passed by Congress;

(i) cooperate with and enter into an agreement with the state or an agency of the state or otherwise contract to finance to establish transit facilities and equipment or to study or plan transit facilities;

(j) issue bonds as provided in and subject to Chapter 1, Part 11, Local District Bonds, to carry out the purposes of the district;

(k) from bond proceeds or any other available funds, reimburse the state or an agency of the state for an advance or contribution from the state or state agency;

(l) do anything necessary to avail itself of any aid, assistance, or cooperation available under federal law, including complying with labor standards and making arrangements for employees required by the United States or a department, instrumentality, or agency of the United States;

(m) sell or lease property;

(n) except as provided in Subsection (2)(b), assist in or operate transit-oriented or transit-supportive developments;

(o) establish, finance, participate as a limited partner or member in a development with limited liabilities in accordance with Subsection (1)(p), construct, improve, maintain, or operate transit facilities, equipment, and, in accordance with Subsection (3), transit-oriented developments or transit-supportive developments; and

(p) subject to the ~~[restriction in Subsection]~~ restrictions and requirements in Subsections (2) and (3), assist in a transit-oriented development or a transit-supportive development in connection with economic development or community development as defined in Section 17C-1-102 by:

(i) investing in a project as a limited partner or a member, with limited liabilities; or

(ii) subordinating an ownership interest in real property owned by the public transit district.

(2) (a) A public transit district may only assist in the development of areas under Subsection (1)(p):

(i) in the manner described in Subsection (1)(p)(i) or (ii); and

(ii) on no more than eight transit-oriented developments or transit-supportive developments selected by the board of trustees.

(b) A public transit district may not invest in a transit-oriented development or transit-supportive development as a limited partner or other limited liability entity under the provisions of Subsection (1)(p)(i), unless the partners, developer, or other investor in the entity, makes an equity contribution equal to no less than 25% of the appraised value of the property to be contributed by the public transit district.

(c) (i) For transit-oriented development projects, a public transit district shall adopt transit-oriented development policies and guidelines that include provisions on affordable housing.

(ii) For transit-supportive development projects, a public transit district shall work with the metropolitan planning organization and city and county governments where the project is located to collaboratively seek to create joint plans for the areas within one-half mile of transit stations, including plans for affordable housing.

(d) A current board member of a public transit district to which the board member is appointed may not have any interest in the transactions engaged in by the public transit district pursuant to Subsection (1)(p)(i) or (ii), except as may be required by the board member's fiduciary duty as a board member.

(3) For any transit-oriented development or transit-supportive development authorized in this section, the public transit district shall:

(a) perform a cost-benefit analysis of the monetary investment and expenditures of the development, including effect on:

(i) service and ridership;

(ii) regional plans made by the metropolitan planning agency;

(iii) the local economy;

(iv) the environment and air quality;

(v) affordable housing; and

(vi) integration with other modes of transportation; and

(b) provide evidence to the public of a quantifiable positive return on investment, including improvements to public transit service.

~~[(3)]~~ (4) A public transit district may be funded from any combination of federal, state, local, or private funds.

~~[(4)]~~ (5) A public transit district may not acquire property by eminent domain.

Section 2. Section 17B-2a-826 is enacted to read:

17B-2a-826. Public transit district office of constituent services, citizens' advisory board, and office of coordinated mobility.

(1) (a) The board of trustees of a public transit district serving a population over 200,000 people shall create and employ an office of constituent services.

(b) The duties of the office of constituent services described in Subsection (1)(a) shall include:

(i) establishing a central call number to hear and respond to complaints, requests, comments, concerns, and other communications from customers and citizens within the district;

(ii) keeping a log of the complaints, comments, concerns, and other communications from customers and citizens within the district; and

(iii) reporting complaints, comments, concerns, and other communications to management and to the citizens' advisory board created in Subsection (2).

(2) (a) A public transit district serving a population over 200,000 people shall create and oversee a citizens' advisory board.

(b) (i) The board of trustees of the public transit district shall select up to 12 members for the public transit district citizens' advisory board with membership representing the diversity of the public transit district area.

(ii) The board of trustees shall ensure that each member of the citizens' advisory board regularly uses the public transit district services.

(c) The public transit district citizens' advisory board shall meet as needed or quarterly in a meeting open to the public for comment, to discuss the service, operations, and any concerns with the public transit district operations and functionality.

(d) The public transit district management shall meet at least quarterly with and consult with the citizens' advisory board and take into consideration

the input of the citizens' advisory board in managing and operating the public transit district.

(3) (a) A public transit district serving a population over 200,000 people shall create and employ an office of coordinated mobility.

(b) The duties of the office of coordinated mobility shall include:

(i) establishing a central call number to facilitate human services transportation;

(ii) coordinating all human services transportation needs within the public transit district;

(iii) receiving requests and other communications regarding human services transportation;

(iv) receiving requests and other communications regarding vans, buses, and other vehicles available for use from the public transit district to maximize the utility of and investment in those vehicles; and

(v) supporting local efforts and applications for additional funding.

Section 3. Section 63I-2-272 is amended to read:

63I-2-272. Repeal dates -- Title 72.

(1) On July 1, 2018:

(a) in Subsection 72-2-108(2), the language that states "and except as provided in Subsection (10)" is repealed;

(b) in Subsection 72-2-108(4)(c)(ii)(A), the language that states ", excluding any amounts appropriated as additional support for class B and class C roads under Subsection (10)," is repealed; and

(c) Subsection 72-2-108(10) is repealed.

(2) Section 72-3-113 is repealed January 1, 2020.

(3) Section 72-14-101 is repealed on March 31, 2018.

Section 4. Section 72-14-101 is enacted to read:

72-14-101. Creation of the Transportation Governance and Funding Task Force.

(1) As used in this section:

(a) "Task force" means the Transportation Governance and Funding Task Force created in Subsection (2).

(b) "Transportation" includes:

(i) state transportation systems as defined in Section 72-1-102;

(ii) public transit as defined in Section 17B-2a-802;

(iii) active transportation, including walking, cycling, and other modes of human powered transportation; and

(iv) any other modes of transportation in this state.

(2) There is created the Transportation Governance and Funding Task Force consisting of the following members:

(a) (i) two members of the Senate appointed by the president of the Senate; and

(ii) one member representing the private sector appointed by the president of the Senate;

(b) (i) two members of the House of Representatives appointed by the speaker of the House of Representatives; and

(ii) one member representing the private sector appointed by the speaker of the House of Representatives;

(c) three members appointed by the governor, with at least one member representing the private sector;

(d) one member designated by the Transportation Commission;

(e) one member designated by the board of trustees of any public transit district serving a population over 200,000 people;

(f) one member designated by the Utah League of Cities and Towns;

(g) two members designated by the Utah Association of Counties, with one member representing a rural county;

(h) one member who is an elected member of the Mountainland Association of Governments; and

(i) one member who is the elected chair of the Wasatch Front Regional Council.

(3) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(a)(i) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(b)(i) as a cochair of the task force.

(4) (a) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 2, Lodging, Meal, and Transportation Expenses, and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(b) A member of the task force who is not a legislator may not receive compensation for the member's work associated with the task force, but may receive per diem and reimbursement for travel expenses incurred as a member of the task force at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(5) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

(6) (a) A vacancy shall be filled by appointing a replacement member in the same manner as the

member creating the vacancy was appointed under Subsection (2).

(b) Each member of the task force shall serve until a successor is appointed and qualified.

(7) (a) A majority of the members of the task force constitutes a quorum.

(b) The action of a majority of a quorum constitutes the action of the task force.

(8) The task force shall review, evaluate, study, prepare a report, and make recommendations on transportation and related topics, including:

(a) evaluation of statewide governance, configuration, and organization strategies to coordinate management and oversight of all forms of transportation in this state;

(b) evaluation of and implementation of best practices in:

(i) functionality, funding, and operations of transportation in this state and other states;

(ii) governance, coordination, oversight, and operational structures of transportation in this state and other states;

(iii) meeting funding needs, including consideration of current state and local transportation funding sources, and future projections; and

(iv) evaluating the interrelationship of growth, land use, capital development, and transportation;

(c) evaluation of alternative transportation revenue mechanisms available or currently in use in this state and around the country, including an evaluation of:

(i) existing sales and use tax funding; and

(ii) other funding sources, including taxes, fees, and user charges, as part of the transportation funding balance;

(d) evaluation and study of best practices to meet multimodal mobility and safety needs in this state that support economic growth and quality of life;

(e) impacts of transportation on economic development; and

(f) evaluation of best practices in prioritization of transportation projects.

(9) The task force may designate and assign subgroups within the task force to address, study, evaluate, and discuss certain issues, including:

(a) improvement in governance and transparency of transportation agencies and districts; and

(b) allocation of resources based on population, including consideration of previously underserved areas.

(10) The task force shall report the task force's findings and recommendations to the Transportation Interim Committee and the governor before December 1, 2017.

CHAPTER 428**S. B. 181**

Passed March 7, 2017

Approved March 25, 2017

Effective May 9, 2017

**HIGH PRIORITY TRANSPORTATION
CORRIDORS AMENDMENTS**

Chief Sponsor: Wayne A. Harper

House Sponsor: R. Curt Webb

LONG TITLE**General Description:**

This bill modifies provisions related to certain required notices regarding land use applications affecting high priority transportation corridors and canals.

Highlighted Provisions:

This bill:

- ▶ modifies the circumstances under which a municipality or county is required to notify the Department of Transportation or a canal owner or operator when the municipality or county receives a land use application that relates to land located within the boundaries of a high priority transportation corridor or canal, respectively;
- ▶ removes notice to the department or a canal owner or operator as a condition to rights vesting in a land use application; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-9a-206, as enacted by Laws of Utah 2005, Chapter 254
- 10-9a-211, as enacted by Laws of Utah 2010, Chapter 332
- 10-9a-509, as last amended by Laws of Utah 2014, Chapter 136
- 10-9a-603, as last amended by Laws of Utah 2015, Chapter 327
- 17-27a-206, as enacted by Laws of Utah 2005, Chapter 254
- 17-27a-211, as enacted by Laws of Utah 2010, Chapter 332
- 17-27a-508, as last amended by Laws of Utah 2014, Chapter 136
- 17-27a-603, as last amended by Laws of Utah 2015, Chapter 327

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

Section 1. Section 10-9a-206 is amended to read:**10-9a-206. Third party notice -- High priority transportation corridor notice.**

(1) (a) If a municipality requires notice to adjacent property owners, the municipality shall:

~~(a)~~ (i) mail notice to the record owner of each parcel within parameters specified by municipal ordinance; or

~~(b)~~ (ii) post notice on the property with a sign of sufficient size, durability, print quality, and location that is reasonably calculated to give notice to passers-by.

~~(2)~~ (b) If a municipality mails notice to third party property owners under Subsection (1)(a), it shall mail equivalent notice to property owners within an adjacent jurisdiction.

(2) (a) As used in this Subsection (2), "high priority transportation corridor" means a transportation corridor identified as a high priority transportation corridor under Section 72-5-403.

(b) The Department of Transportation may request, in writing, that a municipality provide the department with electronic notice of each land use application received by the municipality that may adversely impact the development of a high priority transportation corridor.

(c) If the municipality receives a written request as provided in Subsection (2)(b), the municipality shall provide the Department of Transportation with timely electronic notice of each land use application that the request specifies.

Section 2. Section 10-9a-211 is amended to read:**10-9a-211. Canal owner or operator -- Notice to municipality.**

(1) ~~[For purposes of Subsection 10-9a-509(1)(b)(iv), a]~~ A canal company or a canal operator shall provide on or before July 1, 2010, any municipality in which the canal company or canal operator owns or operates a canal:

- (a) a current mailing address and phone number;
- (b) a contact name; and
- (c) a general description of the location of each canal owned or operated by the canal owner or canal operator.

(2) If the information described in Subsection (1) changes after a canal company or a canal operator has provided the information to the municipality, the canal company or canal operator shall provide the correct information within 30 days of the day on which the information was changed.

Section 3. Section 10-9a-509 is amended to read:**10-9a-509. Applicant's entitlement to land use application approval -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.**

(1) (a) (i) An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use laws in effect on the date that the application is complete and as further provided in this section.

(ii) ~~[Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, a municipal specification for public improvements applicable to a subdivision or development, and an applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:~~

~~(A) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or~~

~~(B) in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.~~

~~[(b) (i) Except as provided in Subsection (1)(e), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.]~~

~~[(ii) (A) A municipality shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.]~~

~~[(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.]~~

~~[(iii) Except as provided in Subsection (1)(e), a municipality may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:]~~

~~[(A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for a building permit; or]~~

~~[(B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for any land use other than a building permit.]~~

~~[(iv) (A) If an application is an application for a subdivision approval, including any land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal, the land use authority shall:]~~

~~[(L) within 30 days after the day on which the application is filed, notify the canal company or canal operator responsible for the canal, if the canal company or canal operator has provided information under Section 10-9a-211; and]~~

~~[(II) wait at least 10 days after the day on which the land use authority notifies a canal company or~~

~~canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the subdivision application described in Subsection (1)(b)(iv)(A).]~~

~~[(B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by certified or registered mail to the canal company or canal operator contact described in Section 10-9a-211.]~~

~~[(C) The location of land described in Subsection (1)(b)(iv)(A) shall be:]~~

~~[(I) provided by a canal company or canal operator to the land use authority; and]~~

~~[(II) (Aa) determined by use of mapping-grade global positioning satellite units; or]~~

~~[(Bb) digitized from the most recent aerial photo available to the canal company or canal operator.]~~

~~[(e) (i) A land use application is exempt from the requirements of Subsections (1)(b)(i) and (ii) if:]~~

~~[(A) the land use application relates to land that was the subject of a previous land use application; and]~~

~~[(B) the previous land use application described under Subsection (1)(e)(i)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).]~~

~~[(ii) A municipality may approve a land use application without making the required notifications under Subsection (1)(b)(ii)(A) if:]~~

~~[(A) the land use application relates to land that was the subject of a previous land use application; and]~~

~~[(B) the previous land use application described under Subsection (1)(e)(ii)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).]~~

~~[(d) After a municipality has complied with the requirements of Subsection (1) (b) for a land use application, the municipality may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).]~~

~~[(e) (b) The municipality shall process an application without regard to proceedings initiated to amend the municipality's ordinances as provided in Subsection (1)(a)(ii)(B) if:~~

~~(i) 180 days have passed since the proceedings were initiated; and~~

~~(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.~~

~~[(f) (c) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.~~

~~[(g) (d) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.~~

~~[(h) (e) A municipality may not impose on an applicant who has submitted a complete~~

application for preliminary subdivision approval a requirement that is not expressed in:

- (i) this chapter;
- (ii) a municipal ordinance; or
- (iii) a municipal specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

~~(4)~~ (f) A municipality may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:

- (i) in a land use permit;
- (ii) on the subdivision plat;
- (iii) in a document on which the land use permit or subdivision plat is based;
- (iv) in the written record evidencing approval of the land use permit or subdivision plat;

(v) in this chapter; or

(vi) in a municipal ordinance.

~~(4)~~ (g) A municipality may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the municipality's ordinances.

(2) A municipality is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.

(3) A municipality may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 10-9a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the municipality's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ordinances in effect on the date of submission.

Section 4. Section 10-9a-603 is amended to read:

10-9a-603. Plat required when land is subdivided -- Approval of plat -- Owner acknowledgment, surveyor certification,

and underground utility facility owner verification of plat -- Recording plat.

(1) Unless exempt under Section 10-9a-605 or excluded from the definition of subdivision under Section 10-9a-103, whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

(a) a subdivision name that is distinct from any subdivision name on a plat recorded in the county recorder's office;

(b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;

(c) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and

(d) every existing right-of-way and easement grant of record for an underground facility, as defined in Section 54-8a-2, and for any other utility facility.

(2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's ordinances and this part and has been approved by the culinary water authority, the sanitary sewer authority, and the local health department, as defined in Section 26A-1-102, if the local health department and the municipality consider the local health department's approval necessary, the municipality shall approve the plat.

(b) Municipalities are encouraged to receive a recommendation from the fire authority before approving a plat.

(c) A municipality may not require that a plat be approved or signed by a person or entity who:

(i) is not an employee or agent of the municipality; and

(ii) does not:

(A) have a legal or equitable interest in the property within the proposed subdivision;

(B) provide a utility or other service directly to a lot within the subdivision;

(C) own an easement or right-of-way adjacent to the proposed subdivision who signs for the purpose of confirming the accuracy of the location of the easement or right-of-way in relation to the plat; or

(D) provide culinary public water service whose source protection zone designated as provided in Section 19-4-113 is included, in whole or in part, within the proposed subdivision[; or].

~~(iii) is not entitled to notice of the subdivision pursuant to Subsection 10-9a-509(1)(b)(iv) for the purpose of determining the accuracy of the information depicted on the plat.]~~

(d) For a subdivision application that includes land located within a notification zone, as determined under Subsection (2)(e), the land use authority shall:

(i) within 20 days after the day on which a complete subdivision application is filed, provide written notice of the application to the canal owner or associated canal operator contact described in:

- (A) Section 10-9a-211;
- (B) Subsection 73-5-7(2); or
- (C) Subsection (4)(c); and

(ii) wait to approve or reject the subdivision application for at least 20 days after the day on which the land use authority mails the notice described in Subsection (2)(d)(i) in order to receive input from the canal owner or associated canal operator, including input regarding:

- (A) access to the canal;
- (B) maintenance of the canal;
- (C) canal protection; and
- (D) canal safety.

(e) The land use authority shall provide the notice described in Subsection (2)(d) to a canal owner or associated canal operator if:

(i) the canal's centerline is located within 100 feet of a proposed subdivision; and

(ii) the centerline alignment is available to the land use authority:

(A) from information provided by the canal company under Section 10-9a-211, using mapping-grade global positioning satellite units or digitized data from the most recent aerial photo available to the canal owner or associated canal operator;

(B) using the state engineer's inventory of canals under Section 73-5-7; or

(C) from information provided by a surveyor under Subsection (4)(c).

(3) The municipality may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(4) (a) A plat may not be submitted to a county recorder for recording unless:

(i) prior to recordation, each owner of record of land described on the plat has signed the owner's dedication as shown on the plat; and

(ii) the signature of each owner described in Subsection (4)(a)(i) is acknowledged as provided by law.

(b) The surveyor making the plat shall certify that the surveyor:

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c) (i) To the extent possible, the surveyor shall consult with the owner or operator of an existing or proposed underground facility or utility facility within the proposed subdivision, or a representative designated by the owner or operator, to verify the accuracy of the surveyor's depiction of the:

(A) boundary, course, dimensions, and intended use of the public rights-of-way, a public or private easement, or grants of record;

(B) location of an existing underground facility and utility facility; and

(C) physical restrictions governing the location of the underground facility and utility facility within the subdivision.

(ii) The cooperation of an owner or operator under Subsection (4)(c)(i):

(A) indicates only that the plat approximates the location of the existing underground and utility facilities but does not warrant or verify their precise location; and

(B) does not affect a right that the owner or operator has under:

(I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

(II) a recorded easement or right-of-way;

(III) the law applicable to prescriptive rights; or

(IV) any other provision of law.

(5) (a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated.

(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

Section 5. Section 17-27a-206 is amended to read:

17-27a-206. Third party notice -- High priority transportation corridor notice.

(1) (a) If a county requires notice to adjacent property owners, the county shall:

~~[(a)]~~ (i) mail notice to the record owner of each parcel within parameters specified by county ordinance; or

~~[(b)]~~ (ii) post notice on the property with a sign of sufficient size, durability, print quality, and

location that is reasonably calculated to give notice to passers-by.

~~[(2)]~~ (b) If a county mails notice to third party property owners under Subsection (1), it shall mail equivalent notice to property owners within an adjacent jurisdiction.

(2) (a) As used in this Subsection (2), "high priority transportation corridor" means a transportation corridor identified as a high priority transportation corridor under Section 72-5-403.

(b) The Department of Transportation may request, in writing, that a county provide the department with electronic notice of each land use application received by the county that may adversely impact the development of a high priority transportation corridor.

(c) If the county receives a written request as provided in Subsection (2)(b), the county shall provide the Department of Transportation with timely electronic notice of each land use application that the request specifies.

Section 6. Section 17-27a-211 is amended to read:

17-27a-211. Canal owner or operator -- Notice to county.

(1) ~~[For purposes of Subsection 17-27a-508(1)(b)(iv), a]~~ A canal company or a canal operator shall provide on or before July 1, 2010, any county in which the canal company or canal operator owns or operates a canal:

- (a) a current mailing address and phone number;
- (b) a contact name; and

(c) a general description of the location of each canal owned or operated by the canal owner or canal operator.

(2) If the information described in Subsection (1) changes after a canal company or a canal operator has provided the information to the county, the canal company or canal operator shall provide the correct information within 30 days of the day on which the information was changed.

Section 7. Section 17-27a-508 is amended to read:

17-27a-508. Applicant's entitlement to land use application approval -- Application relating to land in a high priority transportation corridor -- County's requirements and limitations -- Vesting upon submission of development plan and schedule.

(1) (a) (i) An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use laws in effect on the date that the application is complete and as further provided in this section.

(ii) ~~[Except as provided in Subsection (1)(b), an]~~ An applicant is entitled to approval of a land use application if the application conforms to the

requirements of the county's land use maps, zoning map, and applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:

(A) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(B) in the manner provided by local ordinance and before the application is submitted, the county has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

~~[(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b)(i) and Subsection (1)(b)(ii) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.]~~

~~[(ii) (A) A county shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.]~~

~~[(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.]~~

~~[(iii) Except as provided in Subsection (1)(c), a county may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:]~~

~~[(A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for a building permit; or]~~

~~[(B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for any land use other than a building permit.]~~

~~[(iv) (A) If an application is an application for a subdivision approval, including any land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal, the land use authority shall:]~~

~~[(I) within 30 days after the day on which the application is filed, notify the canal company or canal operator responsible for the canal, if the canal company or canal owner has provided information under Section 17-27a-211; and]~~

~~[(II) wait at least 10 days after the day on which the land use authority notifies a canal company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the subdivision application described in Subsection (1)(b)(iv)(A).]~~

~~[(B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by certified or registered mail to the canal company or~~

~~canal operator contact described in Section 17-27a-211.]~~

~~[(C) The location of land described in Subsection (1)(b)(iv)(A) shall be:]~~

~~[(I) provided by a canal company or canal operator to the land use authority; and]~~

~~[(II) (Aa) determined by use of mapping-grade global positioning satellite units; or]~~

~~[(Bb) digitized from the most recent aerial photo available to the canal company or canal operator.]~~

~~[(e) (i) A land use application is exempt from the requirements of Subsection (1)(b)(i) if:]~~

~~[(A) the land use application relates to land that was the subject of a previous land use application; and]~~

~~[(B) the previous land use application described under Subsection (1)(e)(i)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).]~~

~~[(ii) A county may approve a land use application without making the required notifications under Subsections (1)(b)(i) and (ii) if:]~~

~~[(A) the land use application relates to land that was the subject of a previous land use application; and]~~

~~[(B) the previous land use application described under Subsection (1)(e)(ii)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).]~~

~~[(d) After a county has complied with the requirements of Subsection (1)(b) for a land use application, the county may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).]~~

~~[(e) (b) The county shall process an application without regard to proceedings initiated to amend the county's ordinances as provided in Subsection (1)(a)(ii)(B) if:~~

~~(i) 180 days have passed since the proceedings were initiated; and~~

~~(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.~~

~~[(f) (c) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.~~

~~[(g) (d) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.~~

~~[(h) (e) A county may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed:~~

~~(i) in this chapter;~~

(ii) in a county ordinance; or

(iii) in a county specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

~~[(4) (f) A county may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:~~

~~(i) in a land use permit;~~

~~(ii) on the subdivision plat;~~

~~(iii) in a document on which the land use permit or subdivision plat is based;~~

~~(iv) in the written record evidencing approval of the land use permit or subdivision plat;~~

~~(v) in this chapter; or~~

~~(vi) in a county ordinance.~~

~~[(j) (g) A county may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:~~

~~(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the building permit or subdivision plat; or~~

~~(ii) in this chapter or the county's ordinances.~~

~~(2) A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.~~

~~(3) A county may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.~~

~~(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 17-27a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the county's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ordinances in effect on the date of submission.~~

Section 8. Section 17-27a-603 is amended to read:

17-27a-603. Plat required when land is subdivided -- Approval of plat -- Owner acknowledgment, surveyor certification, and underground utility facility owner verification of plat -- Recording plat.

(1) Unless exempt under Section 17-27a-605 or excluded from the definition of subdivision under Section 17-27a-103, whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

(a) a subdivision name that is distinct from any subdivision name on a plat recorded in the county recorder's office;

(b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;

(c) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and

(d) every existing right-of-way and easement grant of record for an underground facility, as defined in Section 54-8a-2, and for any other utility facility.

(2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the county's ordinances and this part and has been approved by the culinary water authority, the sanitary sewer authority, and the local health department, as defined in Section 26A-1-102, if the local health department and the county consider the local health department's approval necessary, the county shall approve the plat.

(b) Counties are encouraged to receive a recommendation from the fire authority before approving a plat.

(c) A county may not require that a plat be approved or signed by a person or entity who:

- (i) is not an employee or agent of the county; and
- (ii) does not:

(A) have a legal or equitable interest in the property within the proposed subdivision;

(B) provide a utility or other service directly to a lot within the subdivision;

(C) own an easement or right-of-way adjacent to the proposed subdivision who signs for the purpose of confirming the accuracy of the location of the easement or right-of-way in relation to the plat; or

(D) provide culinary public water service whose source protection zone designated as provided in Section 19-4-113 is included, in whole or in part, within the proposed subdivision~~[-or].~~

~~[(iii) is not entitled to notice of the subdivision pursuant to Subsection 17-27a-508(1)(b)(iv) for the purpose of determining the accuracy of the information depicted on the plat.]~~

(d) For a subdivision application that includes land located within a notification zone, as determined under Subsection (2)(e), the land use authority shall:

(i) within 20 days after the day on which a complete subdivision application is filed, provide written notice of the application to the canal owner or associated canal operator contact described in:

(A) Section 17-27a-211;

(B) Subsection 73-5-7(2); or

(C) Subsection (4)(c); and

(ii) wait to approve or reject the subdivision application for at least 20 days after the day on which the land use authority mails the notice under Subsection (2)(d)(i) in order to receive input from the canal owner or associated canal operator, including input regarding:

(A) access to the canal;

(B) maintenance of the canal;

(C) canal protection; and

(D) canal safety.

(e) The land use authority shall provide the notice described in Subsection (2)(d) to a canal owner or associated canal operator if:

(i) the canal's centerline is located within 100 feet of a proposed subdivision; and

(ii) the centerline alignment is available to the land use authority:

(A) from information provided by the canal company under Section 17-27a-211 using mapping-grade global positioning satellite units or digitized data from the most recent aerial photo available to the canal owner or canal operator;

(B) using the state engineer's inventory of canals under Section 73-5-7; or

(C) from information provided by a surveyor under Subsection (4)(c).

(3) The county may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(4) (a) A plat may not be submitted to a county recorder for recording unless, subject to Subsection 17-27a-604(2):

(i) prior to recordation, each owner of record of land described on the plat has signed the owner's dedication as shown on the plat; and

(ii) the signature of each owner described in Subsection (4)(a)(i) is acknowledged as provided by law.

(b) The surveyor making the plat shall certify that the surveyor:

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c) (i) To the extent possible, the surveyor shall consult with the owner or operator of an existing or proposed underground facility or utility facility within the proposed subdivision, or a representative designated by the owner or

operator, to verify the accuracy of the surveyor's depiction of the:

(A) boundary, course, dimensions, and intended use of the public rights-of-way, a public or private easement, or grants of record;

(B) location of an existing underground facility and utility facility; and

(C) physical restrictions governing the location of the underground facility and utility facility within the subdivision.

(ii) The cooperation of an owner or operator under Subsection (4)(c)(i):

(A) indicates only that the plat approximates the location of the existing underground and utility facilities but does not warrant or verify their precise location; and

(B) does not affect a right that the owner or operator has under:

(I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

(II) a recorded easement or right-of-way;

(III) the law applicable to prescriptive rights; or

(IV) any other provision of law.

(5) (a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated.

(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

CHAPTER 429**S. B. 197**

Passed March 8, 2017

Approved March 25, 2017

Effective January 1, 2018

**REFINERY SALES AND USE
TAX EXEMPTION AMENDMENTS**

Chief Sponsor: J. Stuart Adams

House Sponsor: Brad R. Wilson

LONG TITLE**General Description:**

This bill modifies provisions relating to a sales and use tax exemption for certain refineries.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides a sales and use tax exemption for amounts paid or charged for a purchase or lease of machinery, equipment, normal operating repair or replacement parts, catalysts, chemicals, reagents, solutions, or supplies by a refiner;
- ▶ provides that beginning on a certain date, a refiner that seeks to be eligible for the sales and use tax exemption shall annually report certain information to the Office of Energy Development;
- ▶ requires the Office of Energy Development to annually certify that the refiner is eligible for the sales and use tax exemption if the refiner's refinery that is located within the state meets certain fuel standards;
- ▶ grants the Office of Energy Development rulemaking authority to administer the certification requirements; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

59-12-104, as last amended by Laws of Utah 2016, Third Special Session, Chapter 6

ENACTS:

63M-4-701, Utah Code Annotated 1953

63M-4-702, Utah Code Annotated 1953

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

Section 1. Section 59-12-104 is amended to read:**59-12-104. Exemptions.**

Exemptions from the taxes imposed by this chapter are as follows:

- (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax under Chapter 13, Motor and Special Fuel Tax Act;
- (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political subdivisions; however, this exemption does not apply to sales of:

(a) construction materials except:

(i) construction materials purchased by or on behalf of institutions of the public education system as defined in Utah Constitution, Article X, Section 2, provided the construction materials are clearly identified and segregated and installed or converted to real property which is owned by institutions of the public education system; and

(ii) construction materials purchased by the state, its institutions, or its political subdivisions which are installed or converted to real property by employees of the state, its institutions, or its political subdivisions; or

(b) tangible personal property in connection with the construction, operation, maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities providing additional project capacity, as defined in Section 11-13-103;

(3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

(i) the proceeds of each sale do not exceed \$1; and

(ii) the seller or operator of the vending machine reports an amount equal to 150% of the cost of the item described in Subsection (3)(b) as goods consumed; and

(b) Subsection (3)(a) applies to:

(i) food and food ingredients; or

(ii) prepared food;

(4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

(i) alcoholic beverages;

(ii) food and food ingredients; or

(iii) prepared food;

(b) sales of tangible personal property or a product transferred electronically:

(i) to a passenger;

(ii) by a commercial airline carrier; and

(iii) during a flight for in-flight consumption or in-flight use by the passenger; or

(c) services related to Subsection (4)(a) or (b);

(5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts and equipment:

(A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(II) for:

(Aa) installation in an aircraft, including services relating to the installation of parts or equipment in the aircraft;

(Bb) renovation of an aircraft; or

(Cc) repair of an aircraft; or

(B) for installation in an aircraft operated by a common carrier in interstate or foreign commerce; or

(ii) beginning on October 1, 2008, sales of parts and equipment for installation in an aircraft operated by a common carrier in interstate or foreign commerce; and

(b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

(ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before September 30, 2011;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal property if the cleaning or washing of the tangible personal property is not assisted cleaning or washing of tangible personal property;

(b) if a seller that sells at the same business location assisted cleaning or washing of tangible personal property and cleaning or washing of tangible personal property that is not assisted cleaning or washing of tangible personal property, the exemption described in Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning or washing of the tangible personal property; and

(c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) governing the circumstances under which sales are at the same business location; and

(ii) establishing the procedures and requirements for a seller to separately account for sales of assisted cleaning or washing of tangible personal property;

(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are fulfilled;

(9) sales of a vehicle of a type required to be registered under the motor vehicle laws of this state if the vehicle is:

(a) not registered in this state; and

(b) (i) not used in this state; or

(ii) used in this state:

(A) if the vehicle is not used to conduct business, for a time period that does not exceed the longer of:

(I) 30 days in any calendar year; or

(II) the time period necessary to transport the vehicle to the borders of this state; or

(B) if the vehicle is used to conduct business, for the time period necessary to transport the vehicle to the borders of this state;

(10) (a) amounts paid for an item described in Subsection (10)(b) if:

(i) the item is intended for human use; and

(ii) (A) a prescription was issued for the item; or

(B) the item was purchased by a hospital or other medical facility; and

(b) (i) Subsection (10)(a) applies to:

(A) a drug;

(B) a syringe; or

(C) a stoma supply; and

(ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the terms:

(A) "syringe"; or

(B) "stoma supply";

(11) purchases or leases exempt under Section 19-12-201;

(12) (a) sales of an item described in Subsection (12)(c) served by:

(i) the following if the item described in Subsection (12)(c) is not available to the general public:

(A) a church; or

(B) a charitable institution;

(ii) an institution of higher education if:

(A) the item described in Subsection (12)(c) is not available to the general public; or

(B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan offered by the institution of higher education; or

(b) sales of an item described in Subsection (12)(c) provided for a patient by:

(i) a medical facility; or

(ii) a nursing facility; and

(c) Subsections (12)(a) and (b) apply to:

(i) food and food ingredients;

(ii) prepared food; or

(iii) alcoholic beverages;

(13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property or a product transferred electronically by a person:

(i) regardless of the number of transactions involving the sale of that tangible personal property or product transferred electronically by that person; and

(ii) not regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(b) this Subsection (13) does not apply if:

(i) the sale is one of a series of sales of a character to indicate that the person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(ii) the person holds that person out as regularly engaged in the business of selling that type of tangible personal property or product transferred electronically;

(iii) the person sells an item of tangible personal property or product transferred electronically that the person purchased as a sale that is exempt under Subsection (25); or

(iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of this state in which case the tax is based upon:

(A) the bill of sale or other written evidence of value of the vehicle or vessel being sold; or

(B) in the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel being sold at the time of the sale as determined by the commission; and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules establishing the circumstances under which:

(i) a person is regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;

(ii) a sale of tangible personal property or a product transferred electronically is one of a series of sales of a character to indicate that a person is regularly engaged in the business of selling that type of tangible personal property or product transferred electronically; or

(iii) a person holds that person out as regularly engaged in the business of selling a type of tangible personal property or product transferred electronically;

(14) (a) amounts paid or charged for a purchase or lease:

(i) by a manufacturing facility located in the state; and

(ii) of machinery, equipment, or normal operating repair or replacement parts if the machinery, equipment, or normal operating repair or replacement parts have an economic life of three or more years and are used:

(A) in the manufacturing process to manufacture an item sold as tangible personal property; or

(B) for a scrap recycler, to process an item sold as tangible personal property;

(b) amounts paid or charged for a purchase or lease:

(i) by an establishment:

(A) described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(B) located in the state; and

(ii) of machinery, equipment, or normal operating repair or replacement parts if the machinery, equipment, or normal operating repair or replacement parts have an economic life of three or more years and are used in:

(A) the production process to produce an item sold as tangible personal property;

(B) research and development;

(C) transporting, storing, or managing tailings, overburden, or similar waste materials produced from mining;

(D) developing or maintaining a road, tunnel, excavation, or similar feature used in mining; or

(E) preventing, controlling, or reducing dust or other pollutants from mining;

(c) amounts paid or charged for a purchase or lease:

(i) by an establishment:

(A) described in NAICS Code 518112, Web Search Portals, of the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(B) located in the state; and

(ii) of machinery, equipment, or normal operating repair or replacement parts if the machinery, equipment, or normal operating repair or replacement parts:

(A) are used in the operation of the web search portal; and

(B) have an economic life of three or more years; and

(d) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission:

(i) shall by rule define the term "establishment"; and

(ii) may by rule define what constitutes:

(A) processing an item sold as tangible personal property;

(B) the production process, to produce an item sold as tangible personal property; or

(C) research and development;

(15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

(i) tooling;

(ii) special tooling;

(iii) support equipment;

(iv) special test equipment; or

(v) parts used in the repairs or renovations of tooling or equipment described in Subsections (15)(a)(i) through (iv); and

(b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

(i) the tooling, equipment, or parts are used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States government or any subcontract under that contract; and

(ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i), title to the tooling, equipment, or parts is vested in the United States government as evidenced by:

(A) a government identification tag placed on the tooling, equipment, or parts; or

(B) listing on a government-approved property record if placing a government identification tag on the tooling, equipment, or parts is impractical;

(16) sales of newspapers or newspaper subscriptions;

(17) (a) except as provided in Subsection (17)(b), tangible personal property or a product transferred electronically traded in as full or part payment of the purchase price, except that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and the tax is based upon:

(i) the bill of sale or other written evidence of value of the vehicle being sold and the vehicle being traded in; or

(ii) in the absence of a bill of sale or other written evidence of value, the then existing fair market value of the vehicle being sold and the vehicle being traded in, as determined by the commission; and

(b) Subsection (17)(a) does not apply to the following items of tangible personal property or products transferred electronically traded in as full or part payment of the purchase price:

(i) money;

(ii) electricity;

(iii) water;

(iv) gas; or

(v) steam;

(18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property or a product transferred electronically used or consumed primarily and directly in farming operations, regardless of whether the tangible personal property or product transferred electronically:

(A) becomes part of real estate; or

(B) is installed by a:

(I) farmer;

(II) contractor; or

(III) subcontractor; or

(ii) sales of parts used in the repairs or renovations of tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is exempt under Subsection (18)(a)(i); and

(b) amounts paid or charged for the following are subject to the taxes imposed by this chapter:

(i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is incidental to farming:

(I) machinery;

(II) equipment;

(III) materials; or

(IV) supplies; and

(B) tangible personal property that is considered to be used in a manner that is incidental to farming includes:

(I) hand tools; or

(II) maintenance and janitorial equipment and supplies;

(ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is used in an activity other than farming; and

(B) tangible personal property or a product transferred electronically that is considered to be used in an activity other than farming includes:

(I) office equipment and supplies; or

(II) equipment and supplies used in:

(Aa) the sale or distribution of farm products;

(Bb) research; or

(Cc) transportation; or

(iii) a vehicle required to be registered by the laws of this state during the period ending two years after the date of the vehicle's purchase;

(19) sales of hay;

(20) exclusive sale during the harvest season of seasonal crops, seedling plants, or garden, farm, or other agricultural produce if the seasonal crops are,

seedling plants are, or garden, farm, or other agricultural produce is sold by:

(a) the producer of the seasonal crops, seedling plants, or garden, farm, or other agricultural produce;

(b) an employee of the producer described in Subsection (20)(a); or

(c) a member of the immediate family of the producer described in Subsection (20)(a);

(21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;

(22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer;

(23) a product stored in the state for resale;

(24) (a) purchases of a product if:

(i) the product is:

(A) purchased outside of this state;

(B) brought into this state:

(I) at any time after the purchase described in Subsection (24)(a)(i)(A); and

(II) by a nonresident person who is not living or working in this state at the time of the purchase;

(C) used for the personal use or enjoyment of the nonresident person described in Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and

(D) not used in conducting business in this state; and

(ii) for:

(A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of the product for a purpose for which the product is designed occurs outside of this state;

(B) a boat, the boat is registered outside of this state; or

(C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;

(b) the exemption provided for in Subsection (24)(a) does not apply to:

(i) a lease or rental of a product; or

(ii) a sale of a vehicle exempt under Subsection (33); and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (24)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (24) as in Subsection (63);

(ii) the first use of a product if that phrase has the same meaning in this Subsection (24) as in Subsection (63); or

(iii) a purpose for which a product is designed if that phrase has the same meaning in this Subsection (24) as in Subsection (63);

(25) a product purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(26) a product upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax Act;

(27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under the subsections;

(28) purchases made in accordance with the special supplemental nutrition program for women, infants, and children established in 42 U.S.C. Sec. 1786;

(29) sales or leases of rolls, rollers, refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

(a) not registered in this state; and

(b) (i) not used in this state; or

(ii) used in this state:

(A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a time period that does not exceed the longer of:

(I) 30 days in any calendar year; or

(II) the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state; or

(B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time period necessary to transport the boat, boat trailer, or outboard motor to the borders of this state;

(31) sales of aircraft manufactured in Utah;

(32) amounts paid for the purchase of telecommunications service for purposes of providing telecommunications service;

(33) sales, leases, or uses of the following:

(a) a vehicle by an authorized carrier; or
 (b) tangible personal property that is installed on a vehicle:

(i) sold or leased to or used by an authorized carrier; and

(ii) before the vehicle is placed in service for the first time;

(34) (a) 45% of the sales price of any new manufactured home; and

(b) 100% of the sales price of any used manufactured home;

(35) sales relating to schools and fundraising sales;

(36) sales or rentals of durable medical equipment if:

(a) a person presents a prescription for the durable medical equipment; and

(b) the durable medical equipment is used for home use only;

(37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in Section 72-11-102; and

(b) the commission shall by rule determine the method for calculating sales exempt under Subsection (37)(a) that are not separately metered and accounted for in utility billings;

(38) sales to a ski resort of:

(a) snowmaking equipment;

(b) ski slope grooming equipment;

(c) passenger ropeways as defined in Section 72-11-102; or

(d) parts used in the repairs or renovations of equipment or passenger ropeways described in Subsections (38)(a) through (c);

(39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;

(40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for amusement, entertainment, or recreation an unassisted amusement device as defined in Section 59-12-102;

(b) if a seller that sells or rents at the same business location the right to use or operate for amusement, entertainment, or recreation one or more unassisted amusement devices and one or more assisted amusement devices, the exemption described in Subsection (40)(a) applies if the seller separately accounts for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for the assisted amusement devices; and

(c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(i) governing the circumstances under which sales are at the same business location; and

(ii) establishing the procedures and requirements for a seller to separately account for the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for assisted amusement devices;

(41) (a) sales of photocopies by:

(i) a governmental entity; or

(ii) an entity within the state system of public education, including:

(A) a school; or

(B) the State Board of Education; or

(b) sales of publications by a governmental entity;

(42) amounts paid for admission to an athletic event at an institution of higher education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq.;

(43) (a) sales made to or by:

(i) an area agency on aging; or

(ii) a senior citizen center owned by a county, city, or town; or

(b) sales made by a senior citizen center that contracts with an area agency on aging;

(44) sales or leases of semiconductor fabricating, processing, research, or development materials regardless of whether the semiconductor fabricating, processing, research, or development materials:

(a) actually come into contact with a semiconductor; or

(b) ultimately become incorporated into real property;

(45) an amount paid by or charged to a purchaser for accommodations and services described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section 59-12-104.2;

(46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary sports event registration certificate in accordance with Section 41-3-306 for the event period specified on the temporary sports event registration certificate;

(47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff adopted by the Public Service Commission only for purchase of electricity produced from a new alternative energy source built after January 1, 2016, as designated in the tariff by the Public Service Commission;

(b) for a residential use customer only, the exemption under Subsection (47)(a) applies only to the portion of the tariff rate a customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

(48) sales or rentals of mobility enhancing equipment if a person presents a prescription for the mobility enhancing equipment;

<p>(49) sales of water in a:</p> <ul style="list-style-type: none"> (a) pipe; (b) conduit; (c) ditch; or (d) reservoir; <p>(50) sales of currency or coins that constitute legal tender of a state, the United States, or a foreign nation;</p> <p>(51) (a) sales of an item described in Subsection (51)(b) if the item:</p> <ul style="list-style-type: none"> (i) does not constitute legal tender of a state, the United States, or a foreign nation; and (ii) has a gold, silver, or platinum content of 50% or more; and <p>(b) Subsection (51)(a) applies to a gold, silver, or platinum:</p> <ul style="list-style-type: none"> (i) ingot; (ii) bar; (iii) medallion; or (iv) decorative coin; <p>(52) amounts paid on a sale-leaseback transaction;</p> <p>(53) sales of a prosthetic device:</p> <ul style="list-style-type: none"> (a) for use on or in a human; and (b) (i) for which a prescription is required; or (ii) if the prosthetic device is purchased by a hospital or other medical facility; <p>(54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) if the machinery or equipment is primarily used in the production or postproduction of the following media for commercial distribution:</p> <ul style="list-style-type: none"> (i) a motion picture; (ii) a television program; (iii) a movie made for television; (iv) a music video; (v) a commercial; (vi) a documentary; or (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the commission by administrative rule made in accordance with Subsection (54)(d); or <p>(b) purchases, leases, or rentals of machinery or equipment by an establishment described in Subsection (54)(c) that is used for the production or postproduction of the following are subject to the taxes imposed by this chapter:</p> <ul style="list-style-type: none"> (i) a live musical performance; (ii) a live news program; or 	<ul style="list-style-type: none"> (iii) a live sporting event; <p>(c) the following establishments listed in the 1997 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, apply to Subsections (54)(a) and (b):</p> <ul style="list-style-type: none"> (i) NAICS Code 512110; or (ii) NAICS Code 51219; and <p>(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule:</p> <ul style="list-style-type: none"> (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi); or (ii) define: <ul style="list-style-type: none"> (A) “commercial distribution”; (B) “live musical performance”; (C) “live news program”; or (D) “live sporting event”; <p>(55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2027, of tangible personal property that:</p> <ul style="list-style-type: none"> (i) is leased or purchased for or by a facility that: <ul style="list-style-type: none"> (A) is an alternative energy electricity production facility; (B) is located in the state; and (C) (I) becomes operational on or after July 1, 2004; or (II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the tangible personal property; (ii) has an economic life of five or more years; and (iii) is used to make the facility or the increase in capacity of the facility described in Subsection (55)(a)(i) operational up to the point of interconnection with an existing transmission grid including: <ul style="list-style-type: none"> (A) a wind turbine; (B) generating equipment; (C) a control and monitoring system; (D) a power line; (E) substation equipment; (F) lighting; (G) fencing; (H) pipes; or (I) other equipment used for locating a power line or pole; and <p>(b) this Subsection (55) does not apply to:</p> <ul style="list-style-type: none"> (i) tangible personal property used in construction of: <ul style="list-style-type: none"> (A) a new alternative energy electricity production facility; or
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(B) the increase in the capacity of an alternative energy electricity production facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the tangible personal property is used or acquired for an increase in capacity of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or acquired after:

(A) the alternative energy electricity production facility described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

(B) the increased capacity described in Subsection (55)(a)(i) is operational as described in Subsection (55)(a)(iii);

(56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but on or before June 30, 2027, of tangible personal property that:

(i) is leased or purchased for or by a facility that:

(A) is a waste energy production facility;

(B) is located in the state; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its generation capacity increased by one or more megawatts on or after July 1, 2004, as a result of the use of the tangible personal property;

(ii) has an economic life of five or more years; and

(iii) is used to make the facility or the increase in capacity of the facility described in Subsection (56)(a)(i) operational up to the point of interconnection with an existing transmission grid including:

(A) generating equipment;

(B) a control and monitoring system;

(C) a power line;

(D) substation equipment;

(E) lighting;

(F) fencing;

(G) pipes; or

(H) other equipment used for locating a power line or pole; and

(b) this Subsection (56) does not apply to:

(i) tangible personal property used in construction of:

(A) a new waste energy facility; or

(B) the increase in the capacity of a waste energy facility;

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the tangible personal property is used or acquired for an increase in capacity described in

Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:

(A) the waste energy facility described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii); or

(B) the increased capacity described in Subsection (56)(a)(i) is operational as described in Subsection (56)(a)(iii);

(57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on or before June 30, 2027, of tangible personal property that:

(i) is leased or purchased for or by a facility that:

(A) is located in the state;

(B) produces fuel from alternative energy, including:

(I) methanol; or

(II) ethanol; and

(C) (I) becomes operational on or after July 1, 2004; or

(II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as a result of the installation of the tangible personal property;

(ii) has an economic life of five or more years; and

(iii) is installed on the facility described in Subsection (57)(a)(i);

(b) this Subsection (57) does not apply to:

(i) tangible personal property used in construction of:

(A) a new facility described in Subsection (57)(a)(i); or

(B) the increase in capacity of the facility described in Subsection (57)(a)(i); or

(ii) contracted services required for construction and routine maintenance activities; and

(iii) unless the tangible personal property is used or acquired for an increase in capacity described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:

(A) the facility described in Subsection (57)(a)(i) is operational; or

(B) the increased capacity described in Subsection (57)(a)(i) is operational;

(58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a product transferred electronically to a person within this state if that tangible personal property or product transferred electronically is subsequently shipped outside the state and incorporated pursuant to contract into and becomes a part of real property located outside of this state;

(b) the exemption under Subsection (58)(a) is not allowed to the extent that the other state or political entity to which the tangible personal property is shipped imposes a sales, use, gross receipts, or other similar transaction excise tax on the transaction

against which the other state or political entity allows a credit for sales and use taxes imposed by this chapter; and

(c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund, a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a refund:

(i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;

(ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on which the sale is made;

(iii) if the person did not claim the exemption allowed by this Subsection (58) for the sale prior to filing for the refund;

(iv) for sales and use taxes paid under this chapter on the sale;

(v) in accordance with Section 59-1-1410; and

(vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if the person files for the refund on or before June 30, 2011;

(59) purchases:

(a) of one or more of the following items in printed or electronic format:

(i) a list containing information that includes one or more:

(A) names; or

(B) addresses; or

(ii) a database containing information that includes one or more:

(A) names; or

(B) addresses; and

(b) used to send direct mail;

(60) redemptions or repurchases of a product by a person if that product was:

(a) delivered to a pawnbroker as part of a pawn transaction; and

(b) redeemed or repurchased within the time period established in a written agreement between the person and the pawnbroker for redeeming or repurchasing the product;

(61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

(i) is purchased or leased by, or on behalf of, a telecommunications service provider; and

(ii) has a useful economic life of one or more years; and

(b) the following apply to Subsection (61)(a):

(i) telecommunications enabling or facilitating equipment, machinery, or software;

(ii) telecommunications equipment, machinery, or software required for 911 service;

(iii) telecommunications maintenance or repair equipment, machinery, or software;

(iv) telecommunications switching or routing equipment, machinery, or software; or

(v) telecommunications transmission equipment, machinery, or software;

(62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible personal property or a product transferred electronically that are used in the research and development of alternative energy technology; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may, for purposes of Subsection (62)(a), make rules defining what constitutes purchases of tangible personal property or a product transferred electronically that are used in the research and development of alternative energy technology;

(63) (a) purchases of tangible personal property or a product transferred electronically if:

(i) the tangible personal property or product transferred electronically is:

(A) purchased outside of this state;

(B) brought into this state at any time after the purchase described in Subsection (63)(a)(i)(A); and

(C) used in conducting business in this state; and

(ii) for:

(A) tangible personal property or a product transferred electronically other than the tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property for a purpose for which the property is designed occurs outside of this state; or

(B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered outside of this state;

(b) the exemption provided for in Subsection (63)(a) does not apply to:

(i) a lease or rental of tangible personal property or a product transferred electronically; or

(ii) a sale of a vehicle exempt under Subsection (33); and

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (63)(a), the commission may by rule define what constitutes the following:

(i) conducting business in this state if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(ii) the first use of tangible personal property or a product transferred electronically if that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

(iii) a purpose for which tangible personal property or a product transferred electronically is designed if that phrase has the same meaning in this Subsection (63) as in Subsection (24);

(64) sales of disposable home medical equipment or supplies if:

(a) a person presents a prescription for the disposable home medical equipment or supplies;

(b) the disposable home medical equipment or supplies are used exclusively by the person to whom the prescription described in Subsection (64)(a) is issued; and

(c) the disposable home medical equipment and supplies are listed as eligible for payment under:

(i) Title XVIII, federal Social Security Act; or

(ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

(65) sales:

(a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act; or

(b) of tangible personal property to a subcontractor of a public transit district, if the tangible personal property is:

(i) clearly identified; and

(ii) installed or converted to real property owned by the public transit district;

(66) sales of construction materials:

(a) purchased on or after July 1, 2010;

(b) purchased by, on behalf of, or for the benefit of an international airport:

(i) located within a county of the first class; and

(ii) that has a United States customs office on its premises; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the international airport described in Subsection (66)(b); and

(B) located at the international airport described in Subsection (66)(b);

(67) sales of construction materials:

(a) purchased on or after July 1, 2008;

(b) purchased by, on behalf of, or for the benefit of a new airport:

(i) located within a county of the second class; and

(ii) that is owned or operated by a city in which an airline as defined in Section 59-2-102 is headquartered; and

(c) if the construction materials are:

(i) clearly identified;

(ii) segregated; and

(iii) installed or converted to real property:

(A) owned or operated by the new airport described in Subsection (67)(b);

(B) located at the new airport described in Subsection (67)(b); and

(C) as part of the construction of the new airport described in Subsection (67)(b);

(68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;

(69) purchases and sales described in Section 63H-4-111;

(70) (a) sales of tangible personal property to an aircraft maintenance, repair, and overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other than this state as the location of registry of the fixed wing turbine powered aircraft; or

(b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration lists a state or country other than this state as the location of registry of the fixed wing turbine powered aircraft;

(71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:

(a) to a person admitted to an institution of higher education; and

(b) by a seller, other than a bookstore owned by an institution of higher education, if 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a textbook for a higher education course;

(72) a license fee or tax a municipality imposes in accordance with Subsection 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced level of municipal services;

(73) amounts paid or charged for construction materials used in the construction of a new or expanding life science research and development facility in the state, if the construction materials are:

(a) clearly identified;

(b) segregated; and

(c) installed or converted to real property;

(74) amounts paid or charged for:

(a) a purchase or lease of machinery and equipment that:

(i) are used in performing qualified research:

(A) as defined in Section 41(d), Internal Revenue Code; and

(B) in the state; and

(ii) have an economic life of three or more years; and

(b) normal operating repair or replacement parts:

(i) for the machinery and equipment described in Subsection (74)(a); and

(ii) that have an economic life of three or more years;

(75) a sale or lease of tangible personal property used in the preparation of prepared food if:

(a) for a sale:

(i) the ownership of the seller and the ownership of the purchaser are identical; and

(ii) the seller or the purchaser paid a tax under this chapter on the purchase of that tangible personal property prior to making the sale; or

(b) for a lease:

(i) the ownership of the lessor and the ownership of the lessee are identical; and

(ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible personal property prior to making the lease;

(76) (a) purchases of machinery or equipment if:

(i) the purchaser is an establishment described in NAICS Subsector 713, Amusement, Gambling, and Recreation Industries, of the 2012 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;

(ii) the machinery or equipment:

(A) has an economic life of three or more years; and

(B) is used by one or more persons who pay admission or user fees described in Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and

(iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:

(A) amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f); and

(B) subject to taxation under this chapter; and

(b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for verifying that 51% of a purchaser's sales revenue for the previous calendar quarter is:

(i) amounts paid or charged as admission or user fees described in Subsection 59-12-103(1)(f); and

(ii) subject to taxation under this chapter;

(77) purchases of a short-term lodging consumable by a business that provides accommodations and services described in Subsection 59-12-103(1)(i);

(78) amounts paid or charged to access a database:

(a) if the primary purpose for accessing the database is to view or retrieve information from the database; and

(b) not including amounts paid or charged for a:

(i) digital audiowork;

(ii) digital audio-visual work; or

(iii) digital book;

(79) amounts paid or charged for a purchase or lease made by an electronic financial payment service, of:

(a) machinery and equipment that:

(i) are used in the operation of the electronic financial payment service; and

(ii) have an economic life of three or more years; and

(b) normal operating repair or replacement parts that:

(i) are used in the operation of the electronic financial payment service; and

(ii) have an economic life of three or more years;

(80) beginning on April 1, 2013, sales of a fuel cell as defined in Section 54-15-102;

(81) amounts paid or charged for a purchase or lease of tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically:

(a) is stored, used, or consumed in the state; and

(b) is temporarily brought into the state from another state:

(i) during a disaster period as defined in Section 53-2a-1202;

(ii) by an out-of-state business as defined in Section 53-2a-1202;

(iii) for a declared state disaster or emergency as defined in Section 53-2a-1202; and

(iv) for disaster- or emergency-related work as defined in Section 53-2a-1202;

(82) sales of goods and services at a morale, welfare, and recreation facility, as defined in Section 39-9-102, made pursuant to Title 39, Chapter 9, State Morale, Welfare, and Recreation Program;

(83) amounts paid or charged for a purchase or lease of molten magnesium;

(84) (a) except as provided in Subsection (84)(b), amounts paid or charged for a purchase or lease made by a drilling equipment manufacturer of machinery, equipment, materials, or normal operating repair or replacement parts:

(i) that are used or consumed exclusively in the drilling equipment manufacturer's manufacturing process; and

(ii) except for office:

(A) equipment; or

(B) supplies; and

(b) beginning on July 1, 2015, and ending on June 30, 2017, a person may claim an exemption described in Subsection (84)(a) only by filing for a refund:

(i) of 50% of the tax paid on the amounts paid or charged; and

(ii) in accordance with Section 59-1-1410; ~~and~~

(85) amounts paid or charged for a purchase or lease made by a qualifying enterprise data center of machinery, equipment, or normal operating repair or replacement parts, if the machinery, equipment, or normal operating repair or replacement parts:

(a) are used in the operation of the establishment; and

(b) have an economic life of one or more years[-]; and

(86) amounts paid or charged for a purchase or lease of machinery, equipment, normal operating repair or replacement parts, catalysts, chemicals, reagents, solutions, or supplies used or consumed:

(a) by a refiner who owns, leases, operates, controls, or supervises a refinery as defined in Section 63M-4-701 located in the state;

(b) if the machinery, equipment, normal operating repair or replacement parts, catalysts, chemicals, reagents, solutions, or supplies are used or consumed in:

(i) the production process to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel;

(ii) research and development;

(iii) transporting, storing, or managing raw materials, work in process, finished products, and waste materials produced from refining gasoline or diesel fuel, or adding blendstock to gasoline or diesel fuel;

(iv) developing or maintaining a road, tunnel, excavation, or similar feature used in refining; or

(v) preventing, controlling, or reducing pollutants from refining; and

(c) beginning on July 1, 2021, if the person has obtained a form certified by the Office of Energy Development under Subsection 63M-4-702(2).

Section 2. Section 63M-4-701 is enacted to read:

Part 7. Refiner Gasoline Sulfur Standard Sales and Use Tax Exemption Reporting

63M-4-701. Definitions.

As used in this part:

(1) "Blending stock," "blendstock," or "component" means any liquid compound that is blended with other liquid compounds to produce gasoline.

(2) "Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.

(3) "Refinery" means a facility where gasoline or diesel fuel is produced, including a facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.

Section 3. Section 63M-4-702 is enacted to read:

63M-4-702. Refiner gasoline standard reporting -- Office of Energy Development certification of sales and use tax exemption eligibility.

(1) (a) Beginning on July 1, 2021, a refiner that seeks to be eligible for a sales and use tax exemption under Subsection 59-12-104(86) shall annually report to the office whether the refiner's facility that is located within the state will have an average gasoline sulfur level of 10 parts per million (ppm) or less using the formulas prescribed in 40 C.F.R. Sec. 80.1603, excluding the offset for credit use and transfer as prescribed in 40 C.F.R. Sec. 80.1616.

(b) Fuels for which a final destination outside Utah can be demonstrated or that are not subject to the standards and requirements of 40 C.F.R. Sec. 80.1603 as specified in 40 C.F.R. Sec. 80.1601 are not subject to the reporting provisions under Subsection (1)(a).

(2) (a) Beginning on July 1, 2021, the office shall annually certify that the refiner is eligible for the sales and use tax exemption under Subsection 59-12-104(86):

(i) on a form provided by the State Tax Commission that shall be retained by the refiner claiming the sales and use tax exemption under Subsection 59-12-104(86);

(ii) if the refiner's refinery that is located within the state had an average sulfur level of 10 parts per million (ppm) or less as reported under Subsection (1) in the previous calendar year; and

(iii) before a taxpayer is allowed the sales and use tax exemption under Subsection 59-12-104(86).

(b) The certification provided by the office under Subsection (2)(a) shall be renewed annually.

(c) The office:

(i) shall accept a copy of a report submitted by a refiner to the Environmental Protection Agency under 40 C.F.R. Sec. 80.1652 as sufficient evidence of the refiner's average gasoline sulfur level; or

(ii) may establish another reporting mechanism through rules made under Subsection (3).

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules to implement this section.

Section 4. Effective date.

This bill takes effect on January 1, 2018.

CHAPTER 430**S. B. 198**

Passed March 9, 2017

Approved March 25, 2017

Effective July 1, 2017

**UTAH COMMUNICATIONS AUTHORITY
AMENDMENTS**Chief Sponsor: Wayne A. Harper
House Sponsor: Stephen G. Handy**LONG TITLE****General Description:**

This bill amends provisions related to providing 911 emergency service.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ repeals a 911 emergency service charge;
- ▶ modifies the composition of the Utah Communications Authority Board;
- ▶ modifies the duties of the Utah Communications Authority;
- ▶ creates regional advisory committees that report to the Utah Communications Authority Board;
- ▶ creates an operations advisory committee;
- ▶ repeals certain provisions that gave the Utah Communications Authority bonding authority;
- ▶ imposes certain charges on each access line within the state, and provides for the collection of the charges and the distribution of the proceeds of the charges;
- ▶ directs the State Tax Commission to distribute the proceeds of a 911 emergency service charge to public safety answering points within the state according to a formula based on a public safety answering point's proportion of total 911 emergency communications;
- ▶ provides that a public agency may not establish a new public safety answering point after a certain day;
- ▶ directs the State Tax Commission to report on access line providers that are delinquent in paying emergency service charges;
- ▶ requires the Utah Communications Authority to meet with stakeholders to identify existing communications sites and develop a plan for the public safety communications network;
- ▶ provides future repeal dates;
- ▶ provides future effective dates;
- ▶ designates appropriations from certain restricted accounts as nonlapsing;
- ▶ repeals certain advisory committees within the Utah Communications Authority;
- ▶ requires a county to conduct an audit of the county's emergency services under certain circumstances; and
- ▶ delegates, to the executive director of the Utah Communications Authority, certain duties formerly assigned to divisions within the Utah Communications Authority.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 59-1-306, as enacted by Laws of Utah 2011, Chapter 309
- 59-1-401, as last amended by Laws of Utah 2015, Chapter 369
- 59-1-402, as last amended by Laws of Utah 2012, Chapter 357
- 59-1-403, as last amended by Laws of Utah 2015, Chapters 411 and 451
- 59-1-1402, as last amended by Laws of Utah 2016, Chapter 326
- 59-12-107, as last amended by Laws of Utah 2012, Chapters 178, 312, and 399
- 59-12-108, as last amended by Laws of Utah 2013, Chapter 50
- 59-12-128, as last amended by Laws of Utah 2011, Chapters 285 and 309
- 63H-7a-102, as renumbered and amended by Laws of Utah 2015, Chapter 411
- 63H-7a-103, as last amended by Laws of Utah 2016, Chapter 179
- 63H-7a-201, as renumbered and amended by Laws of Utah 2015, Chapter 411
- 63H-7a-202, as renumbered and amended by Laws of Utah 2015, Chapter 411
- 63H-7a-203, as last amended by Laws of Utah 2016, Chapter 123
- 63H-7a-204, as last amended by Laws of Utah 2016, Chapters 123 and 179
- 63H-7a-205, as last amended by Laws of Utah 2016, Chapter 123
- 63H-7a-302, as last amended by Laws of Utah 2016, Chapters 123 and 179
- 63H-7a-303, as renumbered and amended by Laws of Utah 2015, Chapter 411
- 63H-7a-304, as renumbered and amended by Laws of Utah 2015, Chapter 411
- 63H-7a-403, as last amended by Laws of Utah 2016, Chapter 123
- 63H-7a-404, as enacted by Laws of Utah 2015, Chapter 411
- 63H-7a-502, as last amended by Laws of Utah 2016, Chapters 123 and 179
- 63H-7a-601, as enacted by Laws of Utah 2015, Chapter 411
- 63H-7a-603, as last amended by Laws of Utah 2016, Chapter 348
- 63H-7a-803, as last amended by Laws of Utah 2016, Chapter 123
- 63I-1-269, as last amended by Laws of Utah 2014, Chapter 320
- 63I-2-263, as last amended by Laws of Utah 2016, Third Special Session, Chapter 2
- 63J-1-602.4, as last amended by Laws of Utah 2016, Chapters 193 and 240

ENACTS:

- 63H-7a-207, Utah Code Annotated 1953
- 63H-7a-208, Utah Code Annotated 1953
- 69-2-202, Utah Code Annotated 1953
- 69-2-203, Utah Code Annotated 1953
- 69-2-301, Utah Code Annotated 1953
- 69-2-302, Utah Code Annotated 1953
- 69-2-401, Utah Code Annotated 1953

69-2-402, Utah Code Annotated 1953
69-2-404, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

69-2-101, (Renumbered from 69-2-1, as enacted by Laws of Utah 1986, Chapter 33)
69-2-102, (Renumbered from 69-2-2, as last amended by Laws of Utah 2016, Chapter 179)
69-2-201, (Renumbered from 69-2-3, as last amended by Laws of Utah 2014, Chapter 320)
69-2-303, (Renumbered from 69-2-5.8, as enacted by Laws of Utah 2012, Chapter 326)
69-2-403, (Renumbered from 69-2-5.6, as last amended by Laws of Utah 2016, Chapter 179)
69-2-405, (Renumbered from 69-2-5.7, as last amended by Laws of Utah 2016, Chapter 179)
69-2-501, (Renumbered from 69-2-6, as enacted by Laws of Utah 1986, Chapter 33)
69-2-502, (Renumbered from 69-2-7, as last amended by Laws of Utah 2015, Chapter 411)
69-2-503, (Renumbered from 69-2-8, as last amended by Laws of Utah 2014, Chapter 36)

REPEALS AND REENACTS:

63H-7a-206, as last amended by Laws of Utah 2016, Chapters 123 and 179
63H-7a-602, as renumbered and amended by Laws of Utah 2015, Chapter 411
63H-7a-701, as last amended by Laws of Utah 2016, Chapter 123

REPEALS:

63H-7a-305, as renumbered and amended by Laws of Utah 2015, Chapter 411
63H-7a-306, as renumbered and amended by Laws of Utah 2015, Chapter 411
63H-7a-307, as last amended by Laws of Utah 2016, Chapter 123
63H-7a-405, as last amended by Laws of Utah 2016, Chapter 123
63H-7a-504, as last amended by Laws of Utah 2016, Chapter 123
63H-7a-700, as enacted by Laws of Utah 2015, Chapter 411
63H-7a-702, as renumbered and amended by Laws of Utah 2015, Chapter 411
63H-7a-703, as renumbered and amended by Laws of Utah 2015, Chapter 411
63H-7a-704, as renumbered and amended by Laws of Utah 2015, Chapter 411
63H-7a-705, as renumbered and amended by Laws of Utah 2015, Chapter 411
63H-7a-706, as renumbered and amended by Laws of Utah 2015, Chapter 411
69-2-4, as last amended by Laws of Utah 2014, Chapter 320
69-2-5, as last amended by Laws of Utah 2016, Chapter 179
69-2-5.5, as last amended by Laws of Utah 2016, Chapter 179

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

Section 1. Section 59-1-306 is amended to read:

59-1-306. Definition -- State Tax Commission Administrative Charge Account -- Amount of administrative charge -- Deposit of revenues into the restricted account -- Interest deposited into General Fund -- Expenditure of money deposited into the restricted account.

(1) As used in this section, "qualifying tax, fee, or charge" means a tax, fee, or charge the commission administers under:

~~(b)~~ (a) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

~~(c)~~ (b) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

~~(d)~~ (c) Section 19-6-714;

~~(e)~~ (d) Section 19-6-805;

~~(a)~~ (e) Chapter 12, Sales and Use Tax Act, other than a tax under Chapter 12, Part 1, Tax Collection, or Chapter 12, Part 18, Additional State Sales and Use Tax Act;

(f) Section 59-27-105; or

~~(g) Section 69-2-5;~~

~~(h) Section 69-2-5.5; or~~

~~(i) Section 69-2-5.6.~~

(g) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges.

(2) There is created a restricted account within the General Fund known as the "State Tax Commission Administrative Charge Account."

(3) Subject to the other provisions of this section, the restricted account shall consist of administrative charges the commission retains and deposits in accordance with this section.

(4) For purposes of this section, the administrative charge is a percentage of revenues the commission collects from each qualifying tax, fee, or charge of not to exceed the lesser of:

(a) 1.5%; or

(b) an equal percentage of revenues the commission collects from each qualifying tax, fee, or charge sufficient to cover the cost to the commission of administering the qualifying taxes, fees, or charges.

(5) The commission shall deposit an administrative charge into the restricted account.

(6) Interest earned on the restricted account shall be deposited into the General Fund.

(7) The commission shall expend money appropriated by the Legislature to the commission from the restricted account to administer qualifying taxes, fees, or charges.

Section 2. Section 59-1-401 is amended to read:

59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute of limitations -- Commission authority to waive, reduce, or compromise penalty or interest.

(1) As used in this section:

(a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the commission:

(i) has implemented the commission's GenTax system; and

(ii) at least 30 days before implementing the commission's GenTax system as described in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website stating:

(A) the date the commission will implement the GenTax system with respect to the tax, fee, or charge; and

(B) that, at the time the commission implements the GenTax system with respect to the tax, fee, or charge:

(I) a person that files a return after the due date as described in Subsection (2)(a) is subject to the penalty described in Subsection (2)(c)(ii); and

(II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is subject to the penalty described in Subsection (3)(b)(ii).

(b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or charge, the later of:

(i) the date on which the commission implements the commission's GenTax system with respect to the tax, fee, or charge; or

(ii) 30 days after the date the commission provides the notice described in Subsection (1)(a)(ii) with respect to the tax, fee, or charge.

(c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

(A) a tax, fee, or charge the commission administers under:

(I) this title;

(II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(IV) Section 19-6-410.5;

(V) Section 19-6-714;

(VI) Section 19-6-805;

(VII) Section 32B-2-304;

(VIII) Section 34A-2-202;

(IX) Section 40-6-14; or

~~[(X) Section 69-2-5;]~~

~~[(XI) Section 69-2-5.5; or]~~

~~[(XII) Section 69-2-5.6; or]~~

(X) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or

(B) another amount that by statute is subject to a penalty imposed under this section.

(ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

(A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

(B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

(C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

(D) Chapter 3, Tax Equivalent Property Act; or

(E) Chapter 4, Privilege Tax.

(d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated tax, fee, or charge.

(2) (a) The due date for filing a return is:

(i) if the person filing the return is not allowed by law an extension of time for filing the return, the day on which the return is due as provided by law; or

(ii) if the person filing the return is allowed by law an extension of time for filing the return, the earlier of:

(A) the date the person files the return; or

(B) the last day of that extension of time as allowed by law.

(b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a return after the due date described in Subsection (2)(a).

(c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

(i) if the return described in Subsection (2)(b) is filed with respect to an unactivated tax, fee, or charge:

(A) \$20; or

(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

(ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax, fee, or charge, beginning on the activation date for the tax, fee, or charge:

(A) \$20; or

(B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is filed no later than five days after the due date described in Subsection (2)(a);

(II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed more than five

days after the due date but no later than 15 days after the due date described in Subsection (2)(a); or

(III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is filed more than 15 days after the due date described in Subsection (2)(a).

(d) This Subsection (2) does not apply to:

(i) an amended return; or

(ii) a return with no tax due.

(3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

(i) the person files a return on or before the due date for filing a return described in Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due date;

(ii) the person:

(A) is subject to a penalty under Subsection (2)(b); and

(B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the due date for filing a return described in Subsection (2)(a);

(iii) (A) the person is subject to a penalty under Subsection (2)(b); and

(B) the commission estimates an amount of tax due for that person in accordance with Subsection 59-1-1406(2);

(iv) the person:

(A) is mailed a notice of deficiency; and

(B) within a 30-day period after the day on which the notice of deficiency described in Subsection (3)(a)(iv)(A) is mailed:

(I) does not file a petition for redetermination or a request for agency action; and

(II) fails to pay the tax, fee, or charge due on a return;

(v) (A) the commission:

(I) issues an order constituting final agency action resulting from a timely filed petition for redetermination or a timely filed request for agency action; or

(II) is considered to have denied a request for reconsideration under Subsection 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed request for agency action; and

(B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period after the date the commission:

(I) issues the order constituting final agency action described in Subsection (3)(a)(v)(A)(I); or

(II) is considered to have denied the request for reconsideration described in Subsection (3)(a)(v)(A)(II); or

(vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date of a final judicial decision resulting from a timely filed petition for judicial review.

(b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:

(i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an unactivated tax, fee, or charge:

(A) \$20; or

(B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

(ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with respect to an activated tax, fee, or charge, beginning on the activation date:

(A) \$20; or

(B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid no later than five days after the due date for filing a return described in Subsection (2)(a);

(II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid more than five days after the due date for filing a return described in Subsection (2)(a) but no later than 15 days after that due date; or

(III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a return described in Subsection (2)(a).

(4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there shall be added a penalty in an amount determined by applying the interest rate provided under Section 59-1-402 plus four percentage points to the amount of the underpayment for the period of the underpayment.

(b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(ii) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:

(A) the original due date of the tax return, without extensions, for the taxable year; or

(B) with respect to any portion of the underpayment, the date on which that portion is paid.

(iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited against unpaid required installments in the order in which the installments are required to be paid.

(5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a person allowed by law an extension of time for filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not including the extension of time, the person fails to pay:

(i) for a person filing a corporate franchise or income tax return under Chapter 7, Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

(ii) for a person filing an individual income tax return under Chapter 10, Individual Income Tax Act, the payment required by Subsection 59-10-516(2).

(b) For purposes of Subsection (5)(a), the penalty per month during the period of the extension of time for filing the return is an amount equal to 2% of the tax due on the return, unpaid as of the day on which the return is due as provided by law.

(6) If a person does not file a return within an extension of time allowed by Section 59-7-505 or 59-10-516, the person:

(a) is not subject to a penalty in the amount described in Subsection (5)(b); and

(b) is subject to a penalty in an amount equal to the sum of:

(i) a late file penalty in an amount equal to the greater of:

(A) \$20; or

(B) 10% of the tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time; and

(ii) a late pay penalty in an amount equal to the greater of:

(A) \$20; or

(B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is due as provided by law, not including the extension of time.

(7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided in this Subsection (7)(a).

(i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax, fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that is due to negligence.

(ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire underpayment.

(iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge, the penalty is

the greater of \$500 per period or 50% of the entire underpayment.

(iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

(b) If the commission determines that a person is liable for a penalty imposed under Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed penalty.

(i) The notice of proposed penalty shall:

(A) set forth the basis of the assessment; and

(B) be mailed by certified mail, postage prepaid, to the person's last-known address.

(ii) Upon receipt of the notice of proposed penalty, the person against whom the penalty is proposed may:

(A) pay the amount of the proposed penalty at the place and time stated in the notice; or

(B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

(iii) A person against whom a penalty is proposed in accordance with this Subsection (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with the commission.

(iv) (A) If the commission determines that a person is liable for a penalty under this Subsection (7), the commission shall assess the penalty and give notice and demand for payment.

(B) The commission shall mail the notice and demand for payment described in Subsection (7)(b)(iv)(A):

(I) to the person's last-known address; and

(II) in accordance with Section 59-1-1404.

(c) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

(i) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

(A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); and

(B) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); or

(ii) the commission issues a final unappealable administrative order determining that:

(A) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); and

(B) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d).

(d) A seller that voluntarily collects a tax under Subsection 59-12-107(2)(d) is not subject to the penalty under Subsection (7)(a)(ii) if:

(i) (A) a court of competent jurisdiction issues a final unappealable judgment or order determining that:

(I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); and

(II) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); or

(B) the commission issues a final unappealable administrative order determining that:

(I) the seller meets one or more of the criteria described in Subsection 59-12-107(2)(a) or is a seller required to pay or collect and remit sales and use taxes under Subsection 59-12-107(2)(b); and

(II) the commission or a county, city, or town may require the seller to collect a tax under Subsections 59-12-103(2)(a) through (d); and

(ii) the seller's intentional disregard of law or rule is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(8) (a) Subject to Subsections (8)(b) and (c), the penalty for failure to file an information return, information report, or a complete supporting schedule is \$50 for each information return, information report, or supporting schedule up to a maximum of \$1,000.

(b) If an employer is subject to a penalty under Subsection (13), the employer may not be subject to a penalty under Subsection (8)(a).

(c) If an employer is subject to a penalty under this Subsection (8) for failure to file a return in accordance with Subsection 59-10-406(3) on or before the due date described in Subsection 59-10-406(3)(b)(ii), the commission may not impose a penalty under this Subsection (8) unless the return is filed more than 14 days after the due date described in Subsection 59-10-406(3)(b)(ii).

(9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of a law relating to a tax, fee, or charge and files a purported return that fails to contain information from which the correctness of reported tax, fee, or charge liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is substantially incorrect, the penalty is \$500.

(10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by Subsection 59-12-108(1)(a):

(i) is subject to a penalty described in Subsection (2); and

(ii) may not retain the percentage of sales and use taxes that would otherwise be allowable under Subsection 59-12-108(2).

(b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as required by Subsection 59-12-108(1)(a)(ii)(B):

(i) is subject to a penalty described in Subsection (2); and

(ii) may not retain the percentage of sales and use taxes that would otherwise be allowable under Subsection 59-12-108(2).

(11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

(i) commits an act described in Subsection (11)(b) with respect to one or more of the following documents:

(A) a return;

(B) an affidavit;

(C) a claim; or

(D) a document similar to Subsections (11)(a)(i)(A) through (C);

(ii) knows or has reason to believe that the document described in Subsection (11)(a)(i) will be used in connection with any material matter administered by the commission; and

(iii) knows that the document described in Subsection (11)(a)(i), if used in connection with any material matter administered by the commission, would result in an understatement of another person's liability for a tax, fee, or charge.

(b) The following acts apply to Subsection (11)(a)(i):

(i) preparing any portion of a document described in Subsection (11)(a)(i);

(ii) presenting any portion of a document described in Subsection (11)(a)(i);

(iii) procuring any portion of a document described in Subsection (11)(a)(i);

(iv) advising in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i);

(v) aiding in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i);

(vi) assisting in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i); or

(vii) counseling in the preparation or presentation of any portion of a document described in Subsection (11)(a)(i).

(c) For purposes of Subsection (11)(a), the penalty:

(i) shall be imposed by the commission;

(ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which the

person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

(iii) is in addition to any other penalty provided by law.

(d) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection (11).

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the documents that are similar to Subsections (11)(a)(i)(A) through (C).

(12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as provided in Subsections (12)(b) through (e).

(b) (i) A person who is required by this title or any laws the commission administers or regulates to register with or obtain a license or permit from the commission, who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the penalty may not:

- (A) be less than \$500; or
- (B) exceed \$1,000.

(c) (i) With respect to a tax, fee, or charge, a person who knowingly and intentionally, and without a reasonable good faith basis, fails to make, render, sign, or verify a return within the time required by law or to supply information within the time required by law, or who makes, renders, signs, or verifies a false or fraudulent return or statement, or who supplies false or fraudulent information, is guilty of a third degree felony.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the penalty may not:

- (A) be less than \$1,000; or
- (B) exceed \$5,000.

(d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law, guilty of a second degree felony.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the penalty may not:

- (A) be less than \$1,500; or
- (B) exceed \$25,000.

(e) (i) A person is guilty of a second degree felony if that person commits an act:

(A) described in Subsection (12)(e)(ii) with respect to one or more of the following documents:

(I) a return;

(II) an affidavit;

(III) a claim; or

(IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

(B) subject to Subsection (12)(e)(iii), with knowledge that the document described in Subsection (12)(e)(i)(A):

(I) is false or fraudulent as to any material matter; and

(II) could be used in connection with any material matter administered by the commission.

(ii) The following acts apply to Subsection (12)(e)(i):

(A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

(B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

(C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

(D) advising in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A);

(E) aiding in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A);

(F) assisting in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A); or

(G) counseling in the preparation or presentation of any portion of a document described in Subsection (12)(e)(i)(A).

(iii) This Subsection (12)(e) applies:

(A) regardless of whether the person for which the document described in Subsection (12)(e)(i)(A) is prepared or presented:

(I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

(II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

(B) in addition to any other penalty provided by law.

(iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the penalty may not:

- (A) be less than \$1,500; or
- (B) exceed \$25,000.

(v) The commission may seek a court order to enjoin a person from engaging in conduct that is subject to a penalty under this Subsection (12)(e).

(vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the

documents that are similar to Subsections (12)(e)(i)(A)(I) through (III).

(f) The statute of limitations for prosecution for a violation of this Subsection (12) is the later of six years:

(i) from the date the tax should have been remitted; or

(ii) after the day on which the person commits the criminal offense.

(13) (a) Subject to Subsection (13)(b), an employer that is required to file a form with the commission in accordance with Subsection 59-10-406(8) is subject to a penalty described in Subsection (13)(b) if the employer:

(i) fails to file the form with the commission in an electronic format approved by the commission as required by Subsection 59-10-406(8);

(ii) fails to file the form on or before the due date provided in Subsection 59-10-406(8);

(iii) fails to provide accurate information on the form; or

(iv) fails to provide all of the information required by the Internal Revenue Service to be contained on the form.

(b) For purposes of Subsection (13)(a), the penalty is:

(i) \$30 per form, not to exceed \$75,000 in a calendar year, if the employer files the form in accordance with Subsection 59-10-406(8), more than 14 days after the due date provided in Subsection 59-10-406(8) but no later than 30 days after the due date provided in Subsection 59-10-406(8);

(ii) \$60 per form, not to exceed \$200,000 in a calendar year, if the employer files the form in accordance with Subsection 59-10-406(8), more than 30 days after the due date provided in Subsection 59-10-406(8) but on or before June 1; or

(iii) \$100 per form, not to exceed \$500,000 in a calendar year, if the employer:

(A) files the form in accordance with Subsection 59-10-406(8) after June 1; or

(B) fails to file the form.

(14) Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

Section 3. Section 59-1-402 is amended to read:

59-1-402. Definitions -- Interest.

(1) As used in this section:

(a) "Final judicial decision" means a final ruling by a court of this state or the United States for which the time for any further review or proceeding has expired.

(b) "Retroactive application of a judicial decision" means the application of a final judicial decision that:

(i) invalidates a state or federal taxation statute; and

(ii) requires the state to provide a refund for an overpayment that was made:

(A) prior to the final judicial decision; or

(B) during the 180-day period after the final judicial decision.

(c) (i) Except as provided in Subsection (1)(c)(ii), "tax, fee, or charge" means:

(A) a tax, fee, or charge the commission administers under:

(I) this title;

(II) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(III) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(IV) Section 19-6-410.5;

(V) Section 19-6-714;

(VI) Section 19-6-805;

(VII) Section 32B-2-304;

(VIII) Section 34A-2-202;

(IX) Section 40-6-14; or

~~(X) Section 69-2-5;~~

~~(XI) Section 69-2-5.5; or~~

~~(XII) Section 69-2-5.6; or~~

(X) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or

(B) another amount that by statute is subject to interest imposed under this section.

(ii) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

(A) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

(B) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

(C) Chapter 2, Property Tax Act, except for Section 59-2-1309;

(D) Chapter 3, Tax Equivalent Property Act;

(E) Chapter 4, Privilege Tax; or

(F) Chapter 13, Part 5, Interstate Agreements.

(2) Except as otherwise provided for by law, the interest rate for a calendar year for a tax, fee, or charge administered by the commission shall be calculated based on the federal short-term rate determined by the Secretary of the Treasury under Section 6621, Internal Revenue Code, in effect for the preceding fourth calendar quarter.

(3) The interest rate calculation shall be as follows:

(a) except as provided in Subsection (7), in the case of an overpayment or refund, simple interest shall be calculated at the rate of two percentage points above the federal short-term rate; or

(b) in the case of an underpayment, deficiency, or delinquency, simple interest shall be calculated at the rate of two percentage points above the federal short-term rate.

(4) Notwithstanding Subsection (2) or (3), the interest rate applicable to certain installment sales for purposes of a tax under Chapter 7, Corporate Franchise and Income Taxes, shall be determined in accordance with Section 453A, Internal Revenue Code, as provided in Section 59-7-112.

(5) (a) Except as provided in Subsection (5)(c), interest may not be allowed on an overpayment of a tax, fee, or charge if the overpayment of the tax, fee, or charge is refunded within:

(i) 45 days after the last date prescribed for filing the return with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, if the return is filed electronically; or

(ii) 90 days after the last date prescribed for filing the return:

(A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or

(B) if the return is not filed electronically.

(b) Except as provided in Subsection (5)(c), if the return is filed after the last date prescribed for filing the return, interest may not be allowed on the overpayment if the overpayment is refunded within:

(i) 45 days after the date the return is filed:

(A) with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; and

(B) if the return is filed electronically; or

(ii) 90 days after the date the return is filed:

(A) with respect to a tax, fee, or charge, except for a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act; or

(B) if the return is not filed electronically.

(c) (i) In the case of an amended return, interest on an overpayment shall be allowed:

(A) for a time period:

(I) that begins on the later of:

(Aa) the date the original return was filed; or

(Bb) the due date for filing the original return not including any extensions for filing the original return; and

(II) that ends on the date the commission receives the amended return; and

(B) if the commission does not make a refund of an overpayment under this Subsection (5)(c):

(I) if the amended return is with respect to a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, and is filed electronically, within a 45-day period after the date the commission receives the amended return, for a time period:

(Aa) that begins 46 days after the commission receives the amended return; and

(Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission completes processing the refund of the overpayment; or

(II) if the amended return is with respect to a tax, fee, or charge except for a tax under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, or is not filed electronically, within a 90-day period after the date the commission receives the amended return, for a time period:

(Aa) that begins 91 days after the commission receives the amended return; and

(Bb) subject to Subsection (5)(c)(ii), that ends on the date that the commission completes processing the refund of the overpayment.

(ii) For purposes of Subsection (5)(c)(i)(B)(I)(Bb) or (5)(c)(i)(B)(II)(Bb), interest shall be calculated forward from the preparation date of the refund document to allow for processing.

(6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

(7) Interest on a refund relating to a tax, fee, or charge may not be paid on any overpayment that arises from a statute that is determined to be invalid under state or federal law or declared unconstitutional under the constitution of the United States or Utah if the basis for the refund is the retroactive application of a judicial decision upholding the claim of unconstitutionality or the invalidation of a statute.

Section 4. Section 59-1-403 is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

(i) a tax commissioner;

(ii) an agent, clerk, or other officer or employee of the commission; or

(iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

(i) in accordance with judicial order;

(ii) on behalf of the commission in any action or proceeding under:

(A) this title; or

(B) other law under which persons are required to file returns with the commission;

(iii) on behalf of the commission in any action or proceeding to which the commission is a party; or

(iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (1)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(2) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review a tax based on the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

(iii) against whom the state has an unsatisfied money judgment.

(3) (a) Notwithstanding Subsection (1) and for purposes of administration, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and other written

statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (1) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (1), the commission shall provide to the director of the Division of Environmental Response and Remediation, as defined in Section 19-6-402, as requested by the director of the Division of Environmental Response and Remediation, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(e) Notwithstanding Subsection (1), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

(i) Chapter 13, Part 2, Motor Fuel; or

(ii) Chapter 13, Part 4, Aviation Fuel.

(f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

(g) Notwithstanding Subsection (1), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

(h) Notwithstanding Subsection (1), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request, provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (1), the commission shall, at the request of a committee of the Legislature, the Office of the Legislative Fiscal Analyst, or the Governor's Office of Management and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (1), the commission shall make the directory required by Section 59-14-603 available for public inspection.

(k) Notwithstanding Subsection (1), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).

(l) (i) Notwithstanding Subsection (1), the commission shall provide the Office of Recovery Services within the Department of Human Services any relevant information obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has become obligated to the Office of Recovery Services.

(ii) The information described in Subsection (3)(l)(i) may be provided by the Office of Recovery Services to any other state's child support collection agency involved in enforcing that support obligation.

(m) (i) Notwithstanding Subsection (1), upon request from the state court administrator, the commission shall provide to the state court administrator, the name, address, telephone number, county of residence, and social security number on resident returns filed under Chapter 10, Individual Income Tax Act.

(ii) The state court administrator may use the information described in Subsection (3)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

(n) Notwithstanding Subsection (1), the commission shall at the request of a committee, commission, or task force of the Legislature provide to the committee, commission, or task force of the Legislature any information relating to a tax imposed under Chapter 9, Taxation of Admitted Insurers, relating to the study required by Section 59-9-101.

(o) (i) As used in this Subsection (3)(o), "office" means the:

(A) Office of the Legislative Fiscal Analyst; or

(B) Office of Legislative Research and General Counsel.

(ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(o)(iii), the commission

shall at the request of an office provide to the office all information:

(A) gained by the commission; and

(B) required to be attached to or included in returns filed with the commission.

(iii) (A) An office may not request and the commission may not provide to an office a person's:

(I) address;

(II) name;

(III) social security number; or

(IV) taxpayer identification number.

(B) The commission shall in all instances protect the privacy of a person as required by Subsection (3)(o)(iii)(A).

(iv) An office may provide information received from the commission in accordance with this Subsection (3)(o) only:

(A) as:

(I) a fiscal estimate;

(II) fiscal note information; or

(III) statistical information; and

(B) if the information is classified to prevent the identification of a particular return.

(v) (A) A person may not request information from an office under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, if that office received the information from the commission in accordance with this Subsection (3)(o).

(B) An office may not provide to a person that requests information in accordance with Subsection (3)(o)(v)(A) any information other than the information the office provides in accordance with Subsection (3)(o)(iv).

(p) Notwithstanding Subsection (1), the commission may provide to the governing board of the agreement or a taxing official of another state, the District of Columbia, the United States, or a territory of the United States:

(i) the following relating to an agreement sales and use tax:

(A) information contained in a return filed with the commission;

(B) information contained in a report filed with the commission;

(C) a schedule related to Subsection (3)(p)(i)(A) or (B); or

(D) a document filed with the commission; or

(ii) a report of an audit or investigation made with respect to an agreement sales and use tax.

(q) Notwithstanding Subsection (1), the commission may provide information concerning a taxpayer's state income tax return or state income tax withholding information to the Driver License Division if the Driver License Division:

- (i) requests the information; and
- (ii) provides the commission with a signed release form from the taxpayer allowing the Driver License Division access to the information.

(r) Notwithstanding Subsection (1), the commission shall provide to the Utah Communications Authority, or a division of the Utah Communications Authority, the information requested by the authority under Sections 63H-7a-302, 63H-7a-402, and 63H-7a-502.

(s) Notwithstanding Subsection (1), the commission shall provide to the Utah Educational Savings Plan information related to a resident or nonresident individual's contribution to a Utah Educational Savings Plan account as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1313.

(t) Notwithstanding Subsection (1), for the purpose of verifying eligibility under Sections 26-18-2.5 and 26-40-105, the commission shall provide an eligibility worker with the Department of Health or its designee with the adjusted gross income of an individual if:

(i) an eligibility worker with the Department of Health or its designee requests the information from the commission; and

(ii) the eligibility worker has complied with the identity verification and consent provisions of Sections 26-18-2.5 and 26-40-105.

(u) Notwithstanding Subsection (1), the commission may provide to a county, as determined by the commission, information declared on an individual income tax return in accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103.

(v) Notwithstanding Subsection (1), the commission shall provide a report regarding any access line provider that is over 90 days delinquent in payment to the commission of amounts the access line provider owes under Title 69, Chapter 2, Part 4, 911 Emergency Service Charges, to:

(i) the board of the Utah Communications Authority created in Section 63H-7a-201; and

(ii) the Public Utilities, Energy, and Technology Interim Committee.

(4) (a) Each report and return shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (4)(a) the commission may destroy a report or return.

(5) (a) Any person who violates this section is guilty of a class A misdemeanor.

(b) If the person described in Subsection (5)(a) is an officer or employee of the state, the person shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in accordance with Subsection (3)(o)(iii) or a person that requests information in accordance with Subsection (3)(o)(v):

(i) is not guilty of a class A misdemeanor; and

(ii) is not subject to:

(A) dismissal from office in accordance with Subsection (5)(b); or

(B) disqualification from holding public office in accordance with Subsection (5)(b).

(6) Except as provided in Section 59-1-404, this part does not apply to the property tax.

Section 5. Section 59-1-1402 is amended to read:

59-1-1402. Definitions.

As used in this part:

(1) "Administrative cost" means a fee imposed to cover:

(a) the cost of filing;

(b) the cost of administering a garnishment;

(c) the amount the commission pays to a depository institution in accordance with ~~[Title 59, Chapter 1,]~~ Part 17, Depository Institution Data Match System and Levy Act; or

(d) a cost similar to Subsections (1)(a) through (c) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) "Books and records" means the following made available in printed or electronic format:

(a) an account;

(b) a book;

(c) an invoice;

(d) a memorandum;

(e) a paper;

(f) a record; or

(g) an item similar to Subsections (2)(a) through (f) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) "Deficiency" means:

(a) the amount by which a tax, fee, or charge exceeds the difference between:

(i) the sum of:

(A) the amount shown as the tax, fee, or charge by a person on the person's return; and

(B) any amount previously assessed, or collected without assessment, as a deficiency; and

(ii) any amount previously abated, credited, refunded, or otherwise repaid with respect to that tax, fee, or charge; or

(b) if a person does not show an amount as a tax, fee, or charge on the person's return, or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:

(i) the amount previously assessed, or collected without assessment, as a deficiency; and

(ii) any amount previously abated, credited, refunded, or otherwise repaid with respect to that tax, fee, or charge.

(4) "Garnishment" means any legal or equitable procedure through which one or more of the following are required to be withheld for payment of an amount a person owes:

(a) an asset of the person held by another person; or

(b) the earnings of the person.

(5) "Liability" means the following that a person is required to remit to the commission:

(a) a tax, fee, or charge;

(b) an addition to a tax, fee, or charge;

(c) an administrative cost;

(d) interest that accrues in accordance with Section 59-1-402; or

(e) a penalty that accrues in accordance with Section 59-1-401.

(6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section 6213(g)(2), Internal Revenue Code.

(b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a) means:

(i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable year; or

(ii) a corresponding or comparable provision of the Internal Revenue Code as amended, redesignated, or reenacted.

(7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means:

(i) a tax, fee, or charge the commission administers under:

(A) this title;

(B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(D) Section 19-6-410.5;

(E) Section 19-6-714;

(F) Section 19-6-805;

(G) Section 32B-2-304;

(H) Section 34A-2-202;

(I) Section 40-6-14; or

~~(J) Section 69-2-5;~~

~~[~~(K) Section 69-2-5.5; or~~~~

~~[~~(L) Section 69-2-5.6; or~~~~

(J) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or

(ii) another amount that by statute is administered by the commission.

(b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:

(i) Title 41, Chapter 1a, Motor Vehicle Act, except for Section 41-1a-301;

(ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

(iii) Chapter 2, Property Tax Act;

(iv) Chapter 3, Tax Equivalent Property Act;

(v) Chapter 4, Privilege Tax; or

(vi) Chapter 13, Part 5, Interstate Agreements.

(8) "Transferee" means:

(a) a devisee;

(b) a distributee;

(c) a donee;

(d) an heir;

(e) a legatee; or

(f) a person similar to Subsections (8)(a) through (e) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 6. Section 59-12-107 is amended to read:

59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties and interest.

(1) As used in this section:

(a) "Ownership" means direct ownership or indirect ownership through a parent, subsidiary, or affiliate.

(b) "Related seller" means a seller that:

(i) meets one or more of the criteria described in Subsection (2)(a)(i); and

(ii) delivers tangible personal property, a service, or a product transferred electronically that is sold:

(A) by a seller that does not meet one or more of the criteria described in Subsection (2)(a)(i); and

(B) to a purchaser in the state.

(c) "Substantial ownership interest" means an ownership interest in a business entity if that ownership interest is greater than the degree of ownership of equity interest specified in 15 U.S.C.

Sec. 78p, with respect to a person other than a director or an officer.

(2) (a) Except as provided in Subsection (2)(e), Section 59-12-107.1, or Section 59-12-123, and subject to Subsection (2)(f), each seller shall pay or collect and remit the sales and use taxes imposed by this chapter if within this state the seller:

(i) has or utilizes:

(A) an office;

(B) a distribution house;

(C) a sales house;

(D) a warehouse;

(E) a service enterprise; or

(F) a place of business similar to Subsections (2)(a)(i)(A) through (E);

(ii) maintains a stock of goods;

(iii) regularly solicits orders, regardless of whether or not the orders are accepted in the state, unless the seller's only activity in the state is:

(A) advertising; or

(B) solicitation by:

(I) direct mail;

(II) electronic mail;

(III) the Internet;

(IV) telecommunications service; or

(V) a means similar to Subsection (2)(a)(iii)(A) or (B);

(iv) regularly engages in the delivery of property in the state other than by:

(A) common carrier; or

(B) United States mail; or

(v) regularly engages in an activity directly related to the leasing or servicing of property located within the state.

(b) A seller is considered to be engaged in the business of selling tangible personal property, a service, or a product transferred electronically for use in the state, and shall pay or collect and remit the sales and use taxes imposed by this chapter if:

(i) the seller holds a substantial ownership interest in, or is owned in whole or in substantial part by, a related seller; and

(ii) (A) the seller sells the same or a substantially similar line of products as the related seller and does so under the same or a substantially similar business name; or

(B) the place of business described in Subsection (2)(a)(i) of the related seller or an in state employee of the related seller is used to advertise, promote, or facilitate sales by the seller to a purchaser.

(c) A seller that does not meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection (2)(b):

(i) except as provided in Subsection (2)(c)(ii), may voluntarily:

(A) collect a tax on a transaction described in Subsection 59-12-103(1); and

(B) remit the tax to the commission as provided in this part; or

(ii) notwithstanding Subsection (2)(c)(i), shall collect a tax on a transaction described in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.

(d) The collection and remittance of a tax under this chapter by a seller that is registered under the agreement may not be used as a factor in determining whether that seller is required by Subsection (2) to:

(i) pay a tax, fee, or charge under:

(A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(C) Section 19-6-714;

(D) Section 19-6-805;

~~(E) Section 69-2-5;~~

~~(F) Section 69-2-5.5;~~

~~(G) Section 69-2-5.6; or~~

(E) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or

~~(H)~~ (F) this title; or

(ii) collect and remit a tax, fee, or charge under:

(A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(C) Section 19-6-714;

(D) Section 19-6-805;

~~(E) Section 69-2-5;~~

~~(F) Section 69-2-5.5;~~

~~(G) Section 69-2-5.6; or~~

(E) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or

~~(H)~~ (F) this title.

(e) A person shall pay a use tax imposed by this chapter on a transaction described in Subsection 59-12-103(1) if:

(i) the seller did not collect a tax imposed by this chapter on the transaction; and

(ii) the person:

(A) stores the tangible personal property or product transferred electronically in the state;

(B) uses the tangible personal property or product transferred electronically in the state; or

(C) consumes the tangible personal property or product transferred electronically in the state.

(f) The ownership of property that is located at the premises of a printer's facility with which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being considered to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(3) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be collected from a purchaser.

(b) A seller may not collect as tax an amount, without regard to fractional parts of one cent, in excess of the tax computed at the rates prescribed by this chapter.

(c) (i) Each seller shall:

(A) give the purchaser a receipt for the tax collected; or

(B) bill the tax as a separate item and declare the name of this state and the seller's sales and use tax license number on the invoice for the sale.

(ii) The receipt or invoice is prima facie evidence that the seller has collected the tax and relieves the purchaser of the liability for reporting the tax to the commission as a consumer.

(d) A seller is not required to maintain a separate account for the tax collected, but is considered to be a person charged with receipt, safekeeping, and transfer of public money.

(e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the benefit of the state and for payment to the commission in the manner and at the time provided for in this chapter.

(f) If any seller, during any reporting period, collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales allowed under this chapter, the seller shall remit to the commission the full amount of the tax imposed under this chapter, plus any excess.

(g) If the accounting methods regularly employed by the seller in the transaction of the seller's business are such that reports of sales made during a calendar month or quarterly period will impose unnecessary hardships, the commission may accept reports at intervals that will, in the commission's opinion, better suit the convenience of the taxpayer or seller and will not jeopardize collection of the tax.

(h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1, and until such time as the commission accepts specie legal tender

for the payment of a tax under this chapter, if the commission requires a seller to remit a tax under this chapter in legal tender other than specie legal tender, the seller shall state on the seller's books and records and on an invoice, bill of sale, or similar document provided to the purchaser:

(A) the purchase price in specie legal tender and in the legal tender the seller is required to remit to the commission;

(B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie legal tender and in the legal tender the seller is required to remit to the commission;

(C) the tax rate under this chapter applicable to the purchase; and

(D) the date of the purchase.

(ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the specie legal tender the purchaser paid.

(B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for determining the amount of tax due under Subsection (3)(h)(i) if the London fixing price is not available for a particular day.

(4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the sales or use tax imposed by this chapter is due and payable to the commission quarterly on or before the last day of the month next succeeding each calendar quarterly period.

(b) (i) Each seller shall, on or before the last day of the month next succeeding each calendar quarterly period, file with the commission a return for the preceding quarterly period.

(ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the tax required under this chapter to be collected or paid for the period covered by the return.

(c) Except as provided in Subsection (5)(c), a return shall contain information and be in a form the commission prescribes by rule.

(d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be based on the total nonexempt sales made during the period for which the return is filed, including both cash and charge sales.

(ii) For a sale that includes the delivery or installation of tangible personal property at a location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery or installation is separately stated on an invoice or receipt, a seller may compute the tax due on the sale for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that sale during each period for which the seller receives payment for the sale.

(e) (i) The use tax as computed in the return shall be based on the total amount of purchases for

storage, use, or other consumption in this state made during the period for which the return is filed, including both cash and charge purchases.

(ii) (A) As used in this Subsection (4)(e)(ii), “qualifying purchaser” means a purchaser who is required to remit taxes under this chapter, but is not required to remit taxes monthly in accordance with Section 59-12-108, and who converts tangible personal property into real property.

(B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the taxes due under this chapter on tangible personal property for which the qualifying purchaser claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C), for the conversion of the tangible personal property into real property.

(C) A qualifying purchaser remitting taxes due under this chapter in accordance with Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the qualifying purchaser’s purchase of the tangible personal property that was converted into real property multiplied by a fraction, the numerator of which is the payment received in the period for the qualifying purchaser’s sale of the tangible personal property that was converted into real property and the denominator of which is the entire sales price for the qualifying purchaser’s sale of the tangible personal property that was converted into real property.

(D) A qualifying purchaser may remit taxes due under this chapter in accordance with this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in the qualifying purchaser’s regular course of business identify by reasonable and verifiable standards that the tangible personal property was converted into real property.

(f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule extend the time for making returns and paying the taxes.

(ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days.

(g) The commission may require returns and payment of the tax to be made for other than quarterly periods if the commission considers it necessary in order to ensure the payment of the tax imposed by this chapter.

(h) (i) The commission may require a seller that files a simplified electronic return with the commission to file an additional electronic report with the commission.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing:

(A) the information required to be included in the additional electronic report described in Subsection (4)(h)(i); and

(B) one or more due dates for filing the additional electronic report described in Subsection (4)(h)(i).

(5) (a) As used in this Subsection (5) and Subsection (6)(b), “remote seller” means a seller that is:

- (i) registered under the agreement;
- (ii) described in Subsection (2)(c); and
- (iii) not a:
 - (A) model 1 seller;
 - (B) model 2 seller; or
 - (C) model 3 seller.

(b) (i) Except as provided in Subsection (5)(b)(ii), a tax a remote seller collects in accordance with Subsection (2)(c) is due and payable:

- (A) to the commission;
- (B) annually; and

(C) on or before the last day of the month immediately following the last day of each calendar year.

(ii) The commission may require that a tax a remote seller collects in accordance with Subsection (2)(c) be due and payable:

- (A) to the commission; and
- (B) on the last day of the month immediately following any month in which the seller accumulates a total of at least \$1,000 in agreement sales and use tax.

(c) (i) If a remote seller remits a tax to the commission in accordance with Subsection (5)(b), the remote seller shall file a return:

- (A) with the commission;
- (B) with respect to the tax;
- (C) containing information prescribed by the commission; and
- (D) on a form prescribed by the commission.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules prescribing:

(A) the information required to be contained in a return described in Subsection (5)(c)(i); and

(B) the form described in Subsection (5)(c)(i)(D).

(d) A tax a remote seller collects in accordance with this Subsection (5) shall be calculated on the basis of the total amount of taxable transactions under Subsection 59-12-103(1) the remote seller completes, including:

- (i) a cash transaction; and
- (ii) a charge transaction.

(6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified electronic return

collects in accordance with this chapter is due and payable:

(i) monthly on or before the last day of the month immediately following the month for which the seller collects a tax under this chapter; and

(ii) for the month for which the seller collects a tax under this chapter.

(b) A tax a remote seller that files a simplified electronic return collects in accordance with this chapter is due and payable as provided in Subsection (5).

(7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to titling or registration under the laws of this state.

(b) The commission shall collect the tax described in Subsection (7)(a) when the vehicle is titled or registered.

(8) If any sale of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale and the retailer is responsible for the collection or payment of the tax imposed on the sale if:

(a) the retailer represents that the personal property is purchased by the retailer for resale; and

(b) the personal property is not subsequently resold.

(9) If any sale of property or service subject to the tax is made to a person prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a contractor or subcontractor of that person, the person to whom such payment or consideration is payable is not responsible for the collection or payment of the sales or use tax and the person prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid as sales or use tax has not been fully credited against sales or use tax due and payable under the rules promulgated by the commission.

(10) (a) For purposes of this Subsection (10):

(i) Except as provided in Subsection (10)(a)(ii), "bad debt" is as defined in Section 166, Internal Revenue Code.

(ii) Notwithstanding Subsection (10)(a)(i), "bad debt" does not include:

(A) an amount included in the purchase price of tangible personal property, a product transferred electronically, or a service that is:

(I) not a transaction described in Subsection 59-12-103(1); or

(II) exempt under Section 59-12-104;

(B) a financing charge;

(C) interest;

(D) a tax imposed under this chapter on the purchase price of tangible personal property, a product transferred electronically, or a service;

(E) an uncollectible amount on tangible personal property or a product transferred electronically that:

(I) is subject to a tax under this chapter; and

(II) remains in the possession of a seller until the full purchase price is paid;

(F) an expense incurred in attempting to collect any debt; or

(G) an amount that a seller does not collect on repossessed property.

(b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax under this chapter is calculated on a return.

(ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on the qualifying purchaser's purchase of tangible personal property converted into real property to the extent that:

(A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal property converted into real property;

(B) the qualifying purchaser's sale of that tangible personal property converted into real property later becomes bad debt; and

(C) the books and records that the qualifying purchaser keeps in the qualifying purchaser's regular course of business identify by reasonable and verifiable standards that the tangible personal property was converted into real property.

(c) A seller may file a refund claim with the commission if:

(i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same time period; and

(ii) as provided in Section 59-1-1410.

(d) A bad debt deduction under this section may not include interest.

(e) A bad debt may be deducted under this Subsection (10) on a return for the time period during which the bad debt:

(i) is written off as uncollectible in the seller's books and records; and

(ii) would be eligible for a bad debt deduction:

(A) for federal income tax purposes; and

(B) if the seller were required to file a federal income tax return.

(f) If a seller recovers any portion of bad debt for which the seller makes a deduction or claims a

refund under this Subsection (10), the seller shall report and remit a tax under this chapter:

(i) on the portion of the bad debt the seller recovers; and

(ii) on a return filed for the time period for which the portion of the bad debt is recovered.

(g) For purposes of reporting a recovery of a portion of bad debt under Subsection (10)(f), a seller shall apply amounts received on the bad debt in the following order:

(i) in a proportional amount:

(A) to the purchase price of the tangible personal property, product transferred electronically, or service; and

(B) to the tax due under this chapter on the tangible personal property, product transferred electronically, or service; and

(ii) to:

(A) interest charges;

(B) service charges; and

(C) other charges.

(h) A seller's certified service provider may make a deduction or claim a refund for bad debt on behalf of the seller:

(i) in accordance with this Subsection (10); and

(ii) if the certified service provider credits or refunds the entire amount of the bad debt deduction or refund to the seller.

(i) A seller may allocate bad debt among the states that are members of the agreement if the seller's books and records support that allocation.

(11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full amount of tax required by this chapter.

(b) A violation of this section is punishable as provided in Section 59-1-401.

(c) Each person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts determined to be due by the commission under Chapter 1, Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time required by this chapter, or who fails to file any return as required by this chapter, shall pay, in addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

(d) For purposes of prosecution under this section, each quarterly tax period in which a seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the tax required to be remitted, constitutes a separate offense.

Section 7. Section 59-12-108 is amended to read:

59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --

Certain amounts allocated to local taxing jurisdictions.

(1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this chapter of \$50,000 or more for the previous calendar year shall:

(i) file a return with the commission:

(A) monthly on or before the last day of the month immediately following the month for which the seller collects a tax under this chapter; and

(B) for the month for which the seller collects a tax under this chapter; and

(ii) except as provided in Subsection (1)(b), remit with the return required by Subsection (1)(a)(i) the amount the person is required to remit to the commission for each tax, fee, or charge described in Subsection (1)(c):

(A) if that seller's tax liability under this chapter for the previous calendar year is less than \$96,000, by any method permitted by the commission; or

(B) if that seller's tax liability under this chapter for the previous calendar year is \$96,000 or more, by electronic funds transfer.

(b) A seller shall remit electronically with the return required by Subsection (1)(a)(i) the amount the seller is required to remit to the commission for each tax, fee, or charge described in Subsection (1)(c) if that seller:

(i) is required by Section 59-12-107 to file the return electronically; or

(ii) (A) is required to collect and remit a tax under Section 59-12-107; and

(B) files a simplified electronic return.

(c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:

(i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(ii) a fee under Section 19-6-714;

(iii) a fee under Section 19-6-805;

(iv) a charge under ~~[Section 69-2-5;]~~ Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or

~~[(v) a charge under Section 69-2-5.5;]~~

~~[(vi) a charge under Section 69-2-5.6; or]~~

~~[(vii)]~~ (v) a tax under this chapter.

(d) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for a method for making same-day payments other than by electronic funds transfer if making payments by electronic funds transfer fails.

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall establish by rule procedures and requirements for determining the amount a seller is

required to remit to the commission under this Subsection (1).

(2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month the amount allowed by this Subsection (2).

(b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month 1.31% of any amounts the seller is required to remit to the commission:

(i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax and a local tax imposed in accordance with the following, for the month for which the seller is filing a return in accordance with Subsection (1):

- (A) Subsection 59-12-103(2)(a);
 - (B) Subsection 59-12-103(2)(b); and
 - (C) Subsection 59-12-103(2)(d); and
- (ii) for an agreement sales and use tax.

(c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(c).

(ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount equal to the sum of:

(A) 1.31% of any amounts the seller is required to remit to the commission for:

(I) the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(c);

(II) the month for which the seller is filing a return in accordance with Subsection (1); and

(III) an agreement sales and use tax; and

(B) 1.31% of the difference between:

(I) the amounts the seller would have been required to remit to the commission:

(Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

(Bb) for the month for which the seller is filing a return in accordance with Subsection (1); and

(Cc) for an agreement sales and use tax; and

(II) the amounts the seller is required to remit to the commission for:

(Aa) the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(c);

(Bb) the month for which the seller is filing a return in accordance with Subsection (1); and

(Cc) an agreement sales and use tax.

(d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain each month 1% of any amounts the seller is required to remit to the commission:

(i) for the month for which the seller is filing a return in accordance with Subsection (1); and

(ii) under:

(A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(B) Subsection 59-12-603(1)(a)(i)(A); or

(C) Subsection 59-12-603(1)(a)(i)(B).

(3) A state government entity that is required to remit taxes monthly in accordance with Subsection (1) may not retain any amount under Subsection (2).

(4) A seller that has a tax liability under this chapter for the previous calendar year of less than \$50,000 may:

(a) voluntarily meet the requirements of Subsection (1); and

(b) if the seller voluntarily meets the requirements of Subsection (1), retain the amounts allowed by Subsection (2).

(5) (a) Subject to Subsections (5)(b) through (d), a seller that voluntarily collects and remits a tax in accordance with Subsection 59-12-107(2)(c)(i) may retain an amount equal to 18% of any amounts the seller would otherwise remit to the commission:

(i) if the seller obtains a license under Section 59-12-106 for the first time on or after January 1, 2014; and

(ii) for:

(A) an agreement sales and use tax; and

(B) the time period for which the seller files a return in accordance with this section.

(b) If a seller retains an amount under this Subsection (5), the seller may not retain any other amount under this section.

(c) If a seller retains an amount under this Subsection (5), the commission may require the seller to file a return by:

(i) electronic means; or

(ii) a means other than electronic means.

(d) A seller may not retain an amount under this Subsection (5) if the seller is required to collect or remit a tax under this section in accordance with Section 59-12-103.1.

(6) Penalties for late payment shall be as provided in Section 59-1-401.

(7) (a) Except as provided in Subsection (7)(c), for any amounts required to be remitted to the commission under this part, the commission shall each month calculate an amount equal to the difference between:

(i) the total amount retained for that month by all sellers had the percentages listed under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and

(ii) the total amount retained for that month by all sellers at the percentages listed under Subsections (2)(b) and (2)(c)(ii).

(b) The commission shall each month allocate the amount calculated under Subsection (7)(a) to each county, city, and town on the basis of the proportion of agreement sales and use tax that the commission distributes to each county, city, and town for that month compared to the total agreement sales and use tax that the commission distributes for that month to all counties, cities, and towns.

(c) The amount the commission calculates under Subsection (7)(a) may not include an amount collected from a tax that:

(i) the state imposes within a county, city, or town, including the unincorporated area of a county; and

(ii) is not imposed within the entire state.

Section 8. Section 59-12-128 is amended to read:

59-12-128. Amnesty.

(1) As used in this section, "amnesty" means that a seller is not required to pay the following amounts that the seller would otherwise be required to pay:

(a) a tax, fee, or charge under:

(i) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(iii) Section 19-6-714;

(iv) Section 19-6-805;

(v) Chapter 26, Multi-Channel Video or Audio Service Tax Act;

~~[(vi) Section 69-2-5;]~~

~~[(vii) Section 69-2-5.5;]~~

~~[(viii) Section 69-2-5.6; or]~~

(vi) Title 69, Chapter 2, Part 4, 911 Emergency Service Charges; or

~~[(ix)] (vii) this chapter;~~

(b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or

(c) interest on a tax, fee, or charge described in Subsection (1)(a).

(2) (a) Except as provided in Subsections (2)(b) and (3) and subject to Subsections (4) and (5), the commission shall grant a seller amnesty if the seller:

(i) obtains a license under Section 59-12-106; and

(ii) is registered under the agreement.

(b) The commission is not required to grant a seller amnesty under this section beginning 12 months after the date the state becomes a full member under the agreement.

(3) A seller may not receive amnesty under this section for a tax, fee, or charge:

(a) the seller collects;

(b) the seller remits to the commission;

(c) that the seller is required to remit to the commission on the seller's purchase; or

(d) arising from a transaction that occurs within a time period that is under audit by the commission if:

(i) the seller receives notice of the commencement of the audit prior to obtaining a license under Section 59-12-106; and

(ii) (A) the audit described in Subsection (3)(d)(i) is not complete; or

(B) the seller has not exhausted all administrative and judicial remedies in connection with the audit described in Subsection (3)(d)(i).

(4) (a) Except as provided in Subsection (4)(b), amnesty the commission grants to a seller under this section:

(i) applies to the time period during which the seller is not licensed under Section 59-12-106; and

(ii) remains in effect if, for a period of three years, the seller:

(A) remains registered under the agreement;

(B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge described in Subsection (1)(a); and

(C) remits to the commission the taxes, fees, and charges the seller collects in accordance with Subsection (4)(a)(ii)(B).

(b) The commission may not grant a seller amnesty under this section if, with respect to a tax, fee, or charge for which the seller would otherwise be granted amnesty under this section, the seller commits:

(i) fraud; or

(ii) an intentional misrepresentation of a material fact.

(5) (a) If a seller does not meet a requirement of Subsection (4)(a)(ii), the commission shall require the seller to pay the amounts described in Subsection (1) that the seller would have otherwise been required to pay.

(b) Notwithstanding Section 59-1-1410, for purposes of requiring a seller to pay an amount in accordance with Subsection (5)(a), the time period for the commission to make an assessment under Section 59-1-1410 is extended for a time period beginning on the date the seller does not meet a requirement of Subsection (4)(a)(ii) and ends three years after that date.

Section 9. Section 63H-7a-102 is amended to read:

63H-7a-102. Utah Communications Authority -- Purpose.

~~[The purpose of this]~~ (1) This chapter ~~[is to establish an independent state agency and a board to administer the creation, administration, and maintenance of]~~ establishes the Utah Communications Authority ~~[to provide a public safety communications network, facilities, and 911 emergency services on a statewide basis for the benefit and use of public agencies, and state and federal agencies.]~~ as an independent state agency.

(2) The Utah Communications Authority shall:

(a) provide administrative and financial support for statewide 911 emergency services; and

(b) establish and maintain a statewide public safety communications network.

Section 10. Section 63H-7a-103 is amended to read:

63H-7a-103. Definitions.

As used in this chapter:

(1) “Association of governments” means an association of political subdivisions of the state, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act.

~~[(4)]~~ (2) “Authority” means the Utah Communications Authority, ~~[an independent state agency]~~ created in Section 63H-7a-201.

~~[(2)]~~ (3) “Board” means the Utah Communications Authority Board created in Section 63H-7a-203.

~~[(3)]~~ “Bonds” means bonds, notes, certificates, debentures, contracts, lease purchase agreements, or other evidences of indebtedness or borrowing issued or incurred by the authority pursuant to this chapter.]

(4) “Dispatch center” means an entity that receives and responds to an emergency or nonemergency communication transferred to the entity from a public safety answering point.

~~[(4)]~~ (5) “FirstNet” means the federal First Responder Network Authority [created by Congress in the Middle Class Tax Relief and Job Creation Act of 2012] established in 47 U.S.C. Sec. 1424.

~~[(5)]~~ (6) “Lease” means any lease, lease purchase, sublease, operating, management, or similar agreement.

~~[(6)]~~ “Local entity” means a county, city, town, local district, special service district, or interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act.]

~~[(7)]~~ “Member” means a public agency which:]

~~[(a)]~~ adopts a membership resolution to be included within the authority; and]

~~[(b)]~~ submits an originally executed copy of an authorizing resolution to the authority’s office.]

~~[(8)]~~ “Member representative” means a person or that person’s designee appointed by the governing body of each member.]

~~[(9)]~~ (7) “Public agency” means any political subdivision of the state[, including cities, towns, counties, school districts, local districts, and special service districts,] dispatched by a public safety answering point.

~~[(10)]~~ (8) “Public safety answering point” or “PSAP” means an entity that:

(a) receives, as a first point of contact, direct 911 emergency and nonemergency communications requesting a public safety service;

(b) has a facility with the equipment and staff necessary to receive the communication;

(c) assesses, classifies, and prioritizes the communication; and

(d) ~~[transfers]~~ dispatches the communication to the proper responding agency.

~~[(11)]~~ (9) “Public safety communications network” means:

(a) a regional or statewide public safety governmental communications network and related facilities, including real property, improvements, and equipment necessary for the acquisition, construction, and operation of the services and facilities; and

(b) 911 emergency services, including radio communications, connectivity, and computer aided dispatch systems.

~~[(12)]~~ “State” means the state of Utah.]

~~[(13)]~~ “State representative” means the six appointees of the governor or their designees and the Utah State Treasurer or his designee.]

Section 11. Section 63H-7a-201 is amended to read:

Part 2. Utah Communications Authority Governance

63H-7a-201. Utah Communications Authority established.

(1) This part is known as ~~[the]~~ “Utah Communications Authority [and the Board] Governance.”

(2) There is established the Utah Communications Authority~~[, formerly known as the Utah Communications Agency Network, which shall assume the operations of the Utah Communications Agency Network and shall perform the functions as provided in this chapter.~~

~~(3) The Utah Communications Authority is]~~ as an independent state agency and not a division within any other department of the state.

~~[(4) The initial offices of the]~~ (3) (a) The authority shall [be] maintain an office in Salt Lake County[, but branches of the office may be established in other areas of the state upon approval of the board].

(b) The authority may establish additional branch offices outside of Salt Lake County with the approval of the board.

Section 12. Section 63H-7a-202 is amended to read:

63H-7a-202. Powers of the authority.

(1) The authority [shall have] has the power to:

(1) (a) sue and be sued in [its] the authority's own name;

(2) (b) have an official seal and power to alter that seal at will;

(3) (c) make and execute contracts and all other instruments necessary or convenient for the performance of [its] the authority's duties and the exercise of [its] the authority's powers and functions under this chapter, including contracts with [private companies licensed under Title 26, Chapter 8a, Utah Emergency Medical Services System Act] public and private providers;

(4) (d) own, acquire, design, construct, operate, maintain, repair, and dispose of any portion of a public safety communications network utilizing technology that is fiscally prudent, upgradable, technologically advanced, redundant, and secure;

(5) (e) borrow money and incur indebtedness;

(6) issue bonds as provided in this chapter;

(7) (f) enter into agreements with public agencies, private entities, the state, and federal government to provide public safety communications network services on terms and conditions [it] the authority considers to be in the best interest of [its members] the authority;

(8) (g) acquire, by gift, grant, purchase, or by exercise of eminent domain, any real property or personal property in connection with the acquisition and construction of a public safety communications network and all related facilities and rights-of-way [which it] that the authority owns, operates, and maintains;

(h) sell public safety communications network capacity to a state agency or a political subdivision of the state if the sale is:

(i) for a public safety purpose;

(ii) consistent with the authority's duties under this chapter; or

(iii) pursuant to:

(A) an agreement entered into by the authority before January 1, 2017; or

(B) a renewal of an agreement described in Subsection (1)(h)(iii)(A);

(9) contract with other public agencies, the state, or federal government to provide public safety communications network services in excess of those required to meet the needs or requirements of its members and the state and federal government if:

(a) it is determined by the board to be necessary to accomplish the purposes and realize the benefits of this chapter; and]

(b) any excess is sold to other public agencies, the state, or federal government and is sold on terms that assure:]

(i) that the excess services will be used only for the purposes and benefits authorized by the authority under Section 63H-7a-102; and]

(ii) that the cost of providing the excess service will be received by the authority;]

(10) provide and maintain the public safety communications network for all state and local governmental agencies:]

(a) within the current authority network for the state and local governmental agencies that currently subscribe to the authority; and]

(b) in a manner that:]

(i) promotes high quality, cost effective services; and]

(ii) evaluates the benefits, costs, existing facilities and equipment, and services of public and private providers;]

(iii) where economically feasible, utilizes existing infrastructure to avoid duplication of facilities, equipment, and services of providers of communication services.]

(11) maintain the current VHF and 800 MHz radio networks;]

(12) (i) review, approve, disapprove, or revise recommendations regarding the expenditure of funds [under Sections 69-2-5.5 and 69-2-5.6 that are made by:] disbursed by the authority under this chapter; and

(a) the 911 Division;]

(b) the Radio Network Division; and]

(c) the Interoperability Division; and]

(13) (j) perform all other duties authorized by this chapter.

(2) The authority may not intentionally overbuild the public safety communications network for the purpose of competing with a public or private provider of a telecommunications service.

Section 13. Section 63H-7a-203 is amended to read:

63H-7a-203. Board established -- Terms -- Vacancies.

(1) There is created the[⁴]Utah Communications Authority Board.[²]

(2) The board shall consist of [the following individuals, who may not be employed by the authority or any office or division of the authority:] nine board members as follows:

(a) the member representatives elected as follows:]

~~[(i) one representative elected from each county of the first and second class, who;]~~

~~[(A) is in law enforcement, fire service, or a public safety answering point; and]~~

~~[(B) has a leadership position with public safety communication experience;]~~

~~[(ii) one representative elected from each of the seven associations of government who;]~~

~~[(A) is in law enforcement, fire service, or a public safety answering point; and]~~

~~[(B) has a leadership position with public safety communication experience;]~~

~~[(iii) one representative of the Native American tribes elected by the representative of tribal governments listed in Subsection 9-9-104.5(2);]~~

~~[(iv) one representative elected by the Utah National Guard;]~~

~~[(v) one representative elected by an association that represents fire chiefs;]~~

~~[(vi) one representative elected by an association that represents sheriffs;]~~

~~[(vii) one representative elected by an association that represents chiefs of police; and]~~

~~[(viii) one member elected by the 911 Advisory Committee created in Section 63H-7a-307;]~~

~~[(b) seven state representatives appointed in accordance with Subsection (3); and]~~

~~[(c) two members of the public selected as follows:]~~

~~[(i) one member who;]~~

~~[(A) may not have financial ties to a provider of telecommunication services;]~~

~~[(B) may not have a relationship to a user of public safety telecommunications services; and]~~

~~[(C) is selected by the speaker of the House of Representatives; and]~~

~~[(ii) one member who;]~~

~~[(A) may not have financial ties to a provider of telecommunication services;]~~

~~[(B) may not have a relationship to a user of public safety telecommunications services; and]~~

~~[(C) is selected by the president of the Senate.]~~

~~[(3) (a) (i) Six of the state representatives shall be appointed by the governor, with two of the positions having an initial term of two years, two having an initial term of three years, and two having an initial term of four years.]~~

~~[(ii) Successor state representatives shall each serve for a term of four years.]~~

~~[(iii) The six governor-appointed state representatives shall consist of:]~~

~~[(A) the executive director of the Utah Department of Transportation or the director's designee;]~~

~~[(B) the commissioner of public safety or the commissioner's designee;]~~

~~[(C) the executive director of the Department of Natural Resources or the director's designee;]~~

~~[(D) the executive director of the Department of Corrections or the director's designee;]~~

~~[(E) the chief information officer of the Department of Technology Services, or the officer's designee; and]~~

~~[(F) the executive director of the Department of Health or the director's designee.]~~

~~[(b) The seventh state representative shall be the Utah State Treasurer or the treasurer's designee.]~~

~~[(c) A vacancy on the board for a state representative shall be filled for the unexpired term by the director of the department or the director's designee as described in Subsection (3)(a)(iii).]~~

~~[(d) An employee of the authority may not be a member of the board.]~~

~~[(a) three individuals appointed by the governor with the advice and consent of the Senate;~~

~~[(b) one individual appointed by the speaker of the House of Representatives;~~

~~[(c) one individual appointed by the president of the Senate;~~

~~[(d) two individuals nominated by an association that represents cities and towns in the state and appointed by the governor with the advice and consent of the Senate; and]~~

~~[(e) two individuals nominated by an association that represents counties in the state and appointed by the governor with the advice and consent of the Senate.]~~

~~[(3) Subject to this section, an individual is eligible for appointment under Subsection (2) if the individual has knowledge of at least one of the following:~~

~~[(a) law enforcement;~~

~~[(b) public safety;~~

~~[(c) fire service;~~

~~[(d) telecommunications;~~

~~[(e) finance;~~

~~[(f) management; and]~~

~~[(g) government.]~~

~~[(4) An individual may not serve as a board member if the individual is a current public safety communications network:~~

~~[(a) user; or]~~

~~[(b) vendor.]~~

~~[(4)] (5) (a) (i) [One-half of the positions for member representatives selected] Five of the board~~

members appointed under Subsection (2) shall ~~[have] serve an initial term of two years and [one-half of the positions shall have] four of the board members appointed under Subsection (2) shall serve an initial term of four years.~~

~~[(ii) Successor member representatives of the board shall each serve for a term of four years, so that the term of office for six of the member representatives expires every two years.]~~

~~[(b) The member representatives of the board shall be removable, with or without cause, by the entity that selected the member. A vacancy on the board for a member representative shall be filled for the unexpired term by the entity the member represents.]~~

~~(ii) Successor board members shall each serve a term of four years.~~

~~(b) (i) The governor may remove a board member with cause.~~

~~(ii) If the governor removes a board member the entity that appointed the board member under Subsection (2) shall appoint a replacement board member in the same manner as described in Subsection (2).~~

~~[(5)] (6) (a) The governor shall, [in accordance with Subsection (5)(b) and] after consultation with the board, appoint [the] a board member as chair of the board with the advice and consent of the Senate. [The chair shall serve a two-year term and the appointment as chair will automatically extend the term of the board member to coincide with the appointment as chair.]~~

~~[(b) The governor shall make the initial selection of a chair from one of the members described in Subsection (2). After the initial selection of a chair, the governor shall alternate the selection of the chair between a local member described in Subsection (2)(a) and a state member described in Subsection (2)(b).]~~

~~[(c) The chair shall serve at the pleasure of the governor.]~~

~~(b) The chair shall serve a two-year term.~~

~~[(6)] (7) The board shall meet on an as-needed basis and as provided in the bylaws.~~

~~[(7) The board shall also elect a vice chair, secretary, and treasurer to perform those functions provided in the bylaws.]~~

~~(8) (a) The board shall elect one of the board members to serve as vice chair [shall be a member of the board].~~

~~(b) (i) The board may elect a secretary and treasurer [need not be] who are not members of the board[, but shall not have voting powers if they are not members of the board].~~

~~(ii) If the board elects a secretary or treasurer who is not a member of the board, the secretary or treasurer does not have voting power.~~

~~(c) [The] A separate individual shall hold the offices of chair, vice chair, secretary, and treasurer [shall be held by separate individuals].~~

~~[(8) Each member representative and state representative shall have one vote, including the chair, at all meetings of the board.]~~

~~(9) Each board member, including the chair, has one vote.~~

~~[(9) A constitutional majority of the members of the board constitutes a quorum.]~~

~~(10) A vote of a majority of the [quorum at any meeting of the] board members is necessary to take action on behalf of the board.~~

~~[(10)] (11) A board member may not receive compensation for the member's service on the board, but may, in accordance with [administrative] rules adopted by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, receive:~~

~~(a) a per diem at the rate established under Section 63A-3-106; and~~

~~(b) travel expenses at the rate established under Section 63A-3-107.~~

Section 14. Section 63H-7a-204 is amended to read:

63H-7a-204. Board -- Powers and duties.

The board shall:

(1) manage the affairs and business of the authority consistent with this chapter [including adopting bylaws by a majority vote of its members];

(2) adopt bylaws;

~~[(2)] (3) appoint an executive director to administer the authority;~~

~~[(3)] (4) receive and act upon reports covering the operations of the public safety communications network and funds administered by the authority;~~

~~[(4)] (5) ensure that the public safety communications network and funds are administered according to law;~~

~~[(5)] (6) examine and approve an annual operating budget for the authority;~~

~~[(6)] (7) receive and act upon recommendations of the director;~~

~~[(7)] (8) recommend to the governor and Legislature [any necessary or desirable changes in the statutes governing] legislation involving the public safety communications network;~~

~~[(8)] (9) develop [broad] policies for the long-term operation of the authority [for] and the performance of [its] the authority's functions;~~

~~[(9) make and execute contracts and other instruments on behalf of the authority, including agreements with members and other entities;]~~

~~(10) authorize the executive director to enter into agreements on behalf of the authority;~~

~~[(10) authorize the borrowing of money, the incurring of indebtedness, and the issuance of bonds as provided in this chapter;]~~

~~[(11) adopt rules consistent with this chapter and] provide for the management and administration of the public safety communications network by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[, for the management of the public safety communications network in order to carry out the purposes of this chapter, and perform all other acts necessary for the administration of the public safety communications network];~~

~~[(12) exercise the powers and perform the duties conferred on [it] the board by this chapter;~~

~~[(13) provide for audits of the authority; and]~~

~~[(14) establish the following divisions within the authority:~~

~~(a) 911 Division;~~

~~(b) Radio Network Division;~~

~~(c) Interoperability Division; and]~~

~~(d) Administrative Services Division[;].~~

~~[(15) establish a 911 advisory committee to the 911 Division in accordance with Section 63H-7a-307;]~~

~~[(16) establish one or more advisory committees to the Radio Network Division in accordance with Section 63H-7a-405;]~~

~~[(17) establish one or more advisory committees to the Interoperability Division in accordance with Section 63H-7a-504;]~~

~~[(18) create, maintain and review annually a statewide, comprehensive multi-year strategic plan in consultation with state and local stakeholders, the 911 Advisory Committee created under Section 63H-7a-307, the Radio Network Advisory Committee created under Section 63H-7a-405, and the Interoperability Advisory Committee created under Section 63H-7a-504 that:]~~

~~[(a) coordinates the authority's activities and duties in the:]~~

~~[(i) 911 Division;]~~

~~[(ii) Radio Network Division;]~~

~~[(iii) Interoperability Division; and]~~

~~[(iv) Administrative Services Division; and]~~

~~[(b) includes a plan for:]~~

~~[(i) the communications network;]~~

~~[(ii) developing new systems;]~~

~~[(iii) expanding existing systems, including microwave and fiber optics based systems;]~~

~~[(iv) statewide interoperability;]~~

~~[(v) statewide coordination; and]~~

~~[(vi) FirstNet standards; and]~~

~~[(e) the board updates before July 1 of each year;]~~

~~[(19) each year, after the board submits the strategic plan described in Subsection (18) to the Legislature, issue a request for proposals if a request for proposals is necessary to carry out the strategic plan; and]~~

~~[(20) on or before November 30, 2016, and on or before each November 30 thereafter, submit the state's strategic plan to the Executive Offices and Criminal Justice Appropriations Subcommittee and the Legislative Management Committee.]~~

Section 15. Section 63H-7a-205 is amended to read:

63H-7a-205. Executive director -- Appointment -- Powers and duties.

The executive director shall:

(1) (a) serve at the pleasure of the board; and

(b) act as the executive officer of the authority;

(2) administer the [various acts, systems, plans] duties, programs, and functions assigned to the [office] authority;

(3) recommend administrative rules and policies to the board[, which are within the authority granted by this title for the administration of the authority];

(4) execute contracts on behalf of the authority;

[4] (5) recommend to the board any changes in [the] statutes affecting the authority;

[5] (6) recommend to the board an annual administrative budget covering administration, management, and operations of the [public safety communications network and, upon approval of the board, direct and control the subsequent expenditures of the budget;] authority;

(7) with board approval, direct and control authority expenditures;

[6] (8) within the limitations of the budget, employ [staff] personnel, consultants, a financial officer, and legal counsel to provide professional services and advice regarding the administration of the authority; and

[7] (9) submit [an annual report, on or before November 1 of each year, to the Executive Offices and] and make available to the public a report before December of each year to the board, the Executive Offices and Criminal Justice Appropriations Subcommittee, and the Legislative Management Committee[, which shall be available to the public and shall include] that includes:

(a) the total aggregate surcharge collected by [local entities in] the state in the last fiscal year under [Sections 69-2-5 and 69-2-5.6] Title 69, Chapter 2, Part 4, 911 Emergency Service Charges;

(b) the amount of each disbursement from the restricted accounts[;] described in:

- (i) Section 63H-7a-303;
- (ii) Section 63H-7a-304; and
- (iii) Section 63H-7a-403;

(c) the recipient of each disbursement, [or] the goods and services received, [describing] and a description of the project [for which money was disbursed, or goods and services provided] funded by the disbursement;

(d) [the conditions, if any, placed by a division, the authority, the executive director, or the board on] any conditions placed by the authority on the disbursements from a restricted account;

(e) the anticipated expenditures from the restricted accounts described in this chapter for the next fiscal year;

(f) the amount of any unexpended funds carried forward;

(g) the goals for implementation of the authority strategic plan and the progress report of accomplishments and updates to the plan[, and a progress report of implementation of statewide 911 emergency services, including:]; and

[(i) fund balance or balance sheet from the emergency telephone service fund of each agency that has imposed a levy under Section 69-2-5;]

[(ii) a report from each public safety answering point of annual call activity separating wireless and land-based 911 call volumes; and]

[(iii)] (h) other relevant justification for ongoing support from the restricted accounts created by Sections 63H-7a-303, 63H-7a-304, and 63H-7a-403[; and].

[(h) the anticipated expenditures from the restricted accounts.]

Section 16. Section 63H-7a-206 is repealed and reenacted to read:

63H-7a-206. Strategic plan -- Report.

(1) The authority shall create, maintain and review annually a statewide, comprehensive multiyear strategic plan in consultation with state and local stakeholders and the regional advisory committees created in Section 63H-7a-208 that:

(a) coordinates the authority's activities and duties in the:

- (i) 911 Division;
- (ii) Radio Network Division;
- (iii) Interoperability Division; and
- (iv) Administrative Services Division; and

(b) includes a plan for:

- (i) the public safety communications network;
- (ii) developing new systems;
- (iii) expanding existing systems, including microwave and fiber optics based systems;

(iv) statewide interoperability;

(v) statewide coordination; and

(vi) FirstNet standards.

(2) The executive director shall update the strategic plan described in Subsection (1) before July 1 of each year.

(3) The executive director shall, before December 1 of each year, report on the strategic plan described in Subsection (1) to:

- (a) the board;
- (b) the Executive Offices and Criminal Justice Appropriations Subcommittee; and
- (c) the Legislative Management Committee.

(4) The authority shall consider the strategic plan described in Subsection (1) before spending funds in the restricted accounts created by this chapter.

Section 17. Section 63H-7a-207 is enacted to read:

63H-7a-207. Operations advisory committee.

(1) The board shall appoint an operations advisory committee composed of 19 members as follows:

(a) one representative each from:

(i) an association that represents fire chiefs in the state;

(ii) an association that represents police chiefs in the state;

(iii) an association that represents sheriffs in the state;

(iv) an association that represents emergency medical service personnel in the state; and

(v) an association that represents public safety answering point professionals in the state;

(b) the commissioner of public safety or the commissioner's designee;

(c) the executive director of the Department of Transportation or the executive director's designee;

(d) the chief information officer of the Department of Technology Services or the chief information officer's designee;

(e) the chair of each regional advisory committee created in Section 63H-7a-208;

(f) an individual nominated by the representatives of tribal governments elected under Section 9-9-104.5; and

(g) three individuals from the telecommunications or public safety communications industry.

(2) The operations advisory committee shall:

(a) review recommendations from the regional advisory committees described in Section 63H-7a-208; and

(b) make recommendations to the board regarding:

(i) the authority operations and policies;

(ii) the authority strategic plan; and

(iii) the operation, maintenance, and capital development of the public safety communications network.

(3) The operations advisory committee shall report to the board:

(a) at least once each year; and

(b) as often as necessary.

Section 18. Section 63H-7a-208 is enacted to read:

63H-7a-208. Regional advisory committees.

(1) There are established seven regional advisory committees composed of at most 12 members each, with one regional advisory committee each for:

(a) the region composed of Box Elder, Cache, and Rich counties;

(b) the region composed of Beaver, Garfield, Iron, Kane, and Washington counties;

(c) the region composed of Summit, Utah, and Wasatch counties;

(d) the region composed of Juab, Millard, Piute, Sanpete, Sevier, and Wayne counties;

(e) the region composed of Carbon, Emery, Grand, and San Juan counties;

(f) the region composed of Daggett, Duchesne, and Uintah counties; and

(g) the region composed of Davis, Weber, Morgan, Salt Lake, and Tooele counties.

(2) For each regional advisory committee described in Subsection (1), an association of governments representing the region served by the regional advisory committee shall appoint members to the regional advisory committee in accordance with Subsection (3).

(3) An association of governments may appoint an individual to a regional advisory committee if the individual:

(a) is at least one of the following:

(i) a user of:

(A) the statewide public safety communications network; or

(B) a public safety radio system;

(ii) an individual with experience:

(A) in law enforcement;

(B) in fire service; or

(C) at a public safety answering point; or

(iii) an individual in a leadership position that involves public safety communication; and

(b) is knowledgeable about the region of the state served by the regional advisory committee.

(4) In addition to the individuals appointed under Subsection (3), each association of government shall appoint to each regional advisory committee at least one and up to two individuals that represent the telecommunications or public safety communications industry.

(5) Each regional advisory committee shall review, discuss, and make recommendations to the executive director regarding:

(a) the public safety communications network;

(b) the interoperability of emergency response systems;

(c) the trends and standards in the public safety industry and in public safety technology;

(d) the statewide strategic plan described in Section 63H-7a-206; and

(e) the development of cooperative partnerships.

(6) Each regional advisory committee shall meet:

(a) as necessary to discuss the items described in Subsection (5); and

(b) no fewer than two times in each year.

(7) Each regional advisory committee shall report to the board:

(a) before September 1 at least once each year regarding:

(i) the regional advisory committee's findings during the year; and

(ii) any recommendations from the regional advisory committee to the board; and

(b) at any board meeting at which the regional advisory committee requests an opportunity to report to the board.

Section 19. Section 63H-7a-302 is amended to read:

63H-7a-302. 911 Division duties and powers.

(1) The 911 Division shall:

~~[(a) review and make recommendations to the executive director:]~~

~~[(i) regarding:]~~

~~[(A)] (a) develop and report to the director minimum standards and best practices for public safety answering points in the state, including minimum technical, administrative, fiscal, network, and operational standards [for the implementation of unified statewide 911 emergency services] for public safety answering points and dispatch centers in the state;~~

~~[(B)] (b) investigate and report to the director on emerging technology; [and]~~

~~[(C) expenditures from the restricted accounts created in Section 69-2-5.6 by the 911 Division on behalf of local public safety answering points in the~~

state, with an emphasis on efficiencies and coordination in a regional manner;]

~~[(ii) to assure]~~ (c) monitor and coordinate the implementation of [a] the unified statewide 911 emergency services network;

~~[(iii) to establish standards of operation throughout the state; and]~~

~~[(iv) regarding]~~ (d) investigate and recommend to the director mapping systems and technology necessary to implement the unified statewide 911 emergency services network;

~~[(b)]~~ (e) prepare and submit to the executive director for approval by the board:

(i) an annual budget for the 911 Division;

(ii) an annual plan for the ~~[programs]~~ projects funded by the Computer Aided Dispatch Restricted Account created in Section 63H-7a-303 and the Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304; and

(iii) information required by the director to contribute to the ~~[comprehensive]~~ strategic plan described in [Subsection 63H-7a-204(18)] Section 63H-7a-206;

~~[(c) assist local Utah public safety answering points with the implementation and coordination of the 911 Division responsibilities as approved by the executive director and the board;]~~

~~[(d) reimburse the state's Automated Geographic Reference Center in the Division of Integrated Technology of the Department of Technology Services, an amount equal to 1 cent per month levied on telecommunications service under Section 69-2-5.6 to enhance and upgrade digital mapping standards for unified statewide 911 emergency service as required by the division; and]~~

~~[(c) fulfill all other duties imposed on the 911 Division by this chapter.]~~

(f) assist public safety answering points implementing and coordinating the unified statewide 911 emergency services network; and

(g) coordinate the development of an interoperable computer aided dispatch platform:

(i) for public safety answering points; and

(ii) where needed, to assist public safety answering points with the creation or integration of the interoperable computer aided dispatch system.

(2) The 911 Division may recommend to the executive director to sell, lease, or otherwise dispose of equipment or personal property purchased, leased, or belonging to the authority that is related to funds expended from the ~~[restricted account created in Sections 69-2-5.5 and 69-2-5.6]~~ Computer Aided Dispatch Restricted Account created in Section 63H-7a-303 or the Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304, the proceeds from

which shall return to the respective restricted accounts.

(3) The 911 Division may make recommendations to the executive director ~~[to own, operate, or enter into contracts]~~ for the use of the funds expended from the ~~[restricted account created in Section 69-2-5.5]~~ Computer Aided Dispatch Restricted Account created in Section 63H-7a-303.

(4) (a) The 911 Division shall review information regarding:

(i) in aggregate, the number of service subscribers by service type in a political subdivision;

(ii) network costs;

(iii) public safety answering point costs;

(iv) system engineering information; and

(v) [a] connectivity between public safety answering point computer aided dispatch [system] systems.

(b) In accordance with Subsection (4)(a) the 911 Division may request:

(i) information as described in Subsection (4)(a)(i) from the State Tax Commission; and

(ii) information from public safety answering points related to the computer aided dispatch system.

(c) The information requested by and provided to the 911 Division under Subsection (4) is a protected record in accordance with Section 63G-2-305.

(5) The 911 Division shall recommend to the executive director, for approval by the board, rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) administer the program funded by the Unified Statewide 911 Emergency Service restricted account created in Section 63H-7a-304, including rules that establish the criteria, standards, technology, and equipment that a public safety answering point ~~[in Utah must]~~ is required to adopt in order to qualify for goods or services that are funded from the restricted account; and

(b) administer the Computer Aided Dispatch Restricted Account created in Section 63H-7a-303, including rules that establish the criteria, standards, technology, and equipment that a public safety answering point ~~[must]~~ is required to adopt in order to qualify as a recipient of goods or services that are funded from the restricted account.

(6) The board may authorize the 911 Division to employ an outside consultant to study and advise the division on matters related to the 911 Division duties regarding the public safety communications network.

(7) This section does not expand the authority of the State Tax Commission to request additional information from a telecommunication service provider.

Section 20. Section 63H-7a-303 is amended to read:

63H-7a-303. Computer Aided Dispatch Restricted Account -- Creation -- Administration -- Permitted uses.

(1) There is created a restricted account within the General Fund known as the "Computer Aided Dispatch Restricted Account," consisting of:

~~[(a) proceeds from the fee imposed in Section 69-2-5.5;]~~

~~[(b)] (a) money appropriated or otherwise made available by the Legislature; and~~

~~[(e)] (b) contributions of money from federal agencies, political subdivisions of the state, persons, or corporations.~~

~~[(2) The money in this restricted account shall be used exclusively for the following statewide public purposes:]~~

~~(2) Subject to this Subsection (2) and appropriations by the Legislature, the authority may expend funds in the Computer Aided Dispatch Restricted Account for the following purposes:~~

~~(a) enhancing public safety as provided in this chapter; and~~

~~(b) creating a shared computer aided dispatch system including:~~

~~(i) an interoperable computer aided dispatch platform that will be selected, shared, or hosted on a statewide or regional basis;~~

~~(ii) an interoperable computer aided dispatch platform selected by a county of the first class, when:~~

~~(A) authorized through an interlocal agreement between the county's two primary public safety answering points; and~~

~~(B) the county's computer aided dispatch platform is capable of interfacing with the platform described in Subsection (2)(b)(i); and~~

~~(iii) a statewide computer aided dispatch system data sharing platform to provide interoperability of systems.~~

~~[(3) (a) The 911 Division shall coordinate the development of an interoperable CAD to CAD platform:]~~

~~[(i) for public safety answering points; and]~~

~~[(ii) where needed, to assist public safety answering points with the creation or integration of the interoperable computer aided dispatch system.]~~

~~[(b) The Administrative Services Division shall, in accordance with Section 63H-7a-602:]~~

~~[(i) annually report to the executive director the 911 Division's authorized disbursements from the restricted account;]~~

~~[(ii) be responsible for the care, custody, safekeeping, collection, and accounting for disbursements; and]~~

~~[(iii) submit an annual report to the executive director, which shall include:]~~

~~[(A) the amount of each disbursement from the restricted account;]~~

~~[(B) the recipient of each disbursement and a description of the project for which money was disbursed;]~~

~~[(C) the conditions, if any, placed by the 911 Division, the board, or the Administrative Services Division on disbursements from the amount appropriated from the restricted account;]~~

~~[(D) the planned expenditures from the restricted account for the next fiscal year; and]~~

~~[(E) the amount of any unexpended funds carried forward.]~~

~~[(4) (a) The Administrative Services Division may request information from a public safety answering point as necessary to prepare the report required by this section.]~~

~~[(b) A recipient of goods or services under this section shall provide the information requested pursuant to Subsection (4)(a).]~~

~~[(5) Subject to appropriation, the Administrative Services Division, created in Section 63H-7a-601, may charge the administrative costs incurred in discharging the responsibilities imposed by this section.]~~

~~[(6) Subject to an annual legislative appropriation from the restricted account to the Administrative Services Division, the Administrative Services Division shall disburse the money in the fund, based on the authorization of the board and the 911 Division under Subsection 63H-7a-302(5).]~~

~~(3) Subject to an appropriation by the Legislature and approval by the board, the Administrative Services Division may expend funds from the Computer Aided Dispatch Restricted Account to cover the Administrative Services Division's administrative costs related to the Computer Aided Dispatch Restricted Account.~~

~~(4) On July 1, 2022, all funds in the Computer Aided Dispatch Restricted Account shall automatically transfer to the Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304.~~

Section 21. Section 63H-7a-304 is amended to read:

63H-7a-304. Unified Statewide 911 Emergency Service Account -- Creation -- Administration -- Permitted uses.

(1) There is created a restricted account within the General Fund known as the "Unified Statewide 911 Emergency Service Account," consisting of:

(a) proceeds from the fee imposed in Section ~~[69-2-5.6]~~ 69-2-403;

(b) money appropriated or otherwise made available by the Legislature; and

(c) contributions of money, property, or equipment from federal agencies, political subdivisions of the state, persons, or corporations.

~~[(2) The money in this restricted account shall be used exclusively for the statewide public]~~

~~(2) (a) Except as provided in Subsection (4) and subject to Subsection (3) and appropriations by the Legislature, the authority may disburse funds in the Unified Statewide 911 Emergency Service Account for the purpose of enhancing the statewide public safety communications network [related to the rapid and efficient delivery of] in order to rapidly and efficiently deliver 911 services in the state.~~

~~(b) In expending funds in the Unified Statewide 911 Emergency Service Account, the authority shall give a higher priority to an expenditure that:~~

- ~~(i) best promotes statewide public safety;~~
- ~~(ii) best promotes interoperability;~~
- ~~(iii) impacts the largest service territory;~~
- ~~(iv) impacts a densely populated area; or~~
- ~~(v) impacts an underserved area.~~

~~(c) The authority shall expend funds in the Unified Statewide 911 Emergency Service Account in accordance with the authority strategic plan described in Section 63H-7a-206.~~

~~(d) The executive director shall recommend to the board expenditures for the authority to make from the Unified Statewide 911 Emergency Service Account in accordance with this Subsection (2).~~

~~(3) Subject to an [annual legislative] appropriation [from the restricted account to the Administrative Services Division] by the Legislature and approval by the board, the Administrative Services Division [shall disburse the money] may use funds in the [fund, based on the authorization of the board and the 911 Division under Subsection 63H-7a-302(5).] Unified Statewide 911 Emergency Service Account to cover the Administrative Services Division's administrative costs related to the Unified Statewide 911 Emergency Service Account.~~

~~(4) (a) The authority shall reimburse from the Unified Statewide 911 Emergency Service Account to the Automated Geographic Reference Center created in Section 63F-1-506 an amount equal to up to 1 cent of each unified statewide 911 emergency service charge deposited into the Unified Statewide 911 Emergency Service Account under Section 69-2-403.~~

~~(b) The Automated Geographic Reference Center shall use the funds reimbursed to the Automated Geographic Reference Center under Subsection (4)(a) to:~~

~~(i) enhance and upgrade digital mapping standards; and~~

~~(ii) maintain a statewide geospatial database for unified statewide 911 emergency service.~~

Section 22. Section 63H-7a-403 is amended to read:

63H-7a-403. Utah Statewide Radio System Restricted Account -- Creation -- Administration.

(1) There is created a restricted account within the General Fund known as the "Utah Statewide Radio System Restricted Account," consisting of:

(a) money appropriated or otherwise made available by the Legislature; and

(b) contributions of money from federal agencies, political subdivisions of the state, persons, or corporations.

~~[(2) The money in this restricted account shall be used exclusively for the statewide]~~

~~(2) (a) Subject to appropriations by the Legislature and subject to this Subsection (2), the authority may expend funds in the Utah Statewide Radio System Restricted Account for the purpose of acquiring, constructing, operating, maintaining, and repairing a statewide radio system public safety communications network as authorized in Section 63H-7a-202, including:~~

~~[(a) a] (i) public safety communications network and related facilities, real property, improvements, and equipment necessary for the acquisition, construction, and operation of services and facilities;~~

~~[(b) b] (ii) installation, implementation, and maintenance of the public safety communications network;~~

~~[(c) c] (iii) maintaining [the] and upgrading VHF and 800 MHz radio networks; and~~

~~[(d) d] (iv) an operating budget to include personnel costs not otherwise covered by funds from another account.~~

~~(b) For each radio network charge that is deposited into the Utah Statewide Radio System Restricted Account under Section 69-2-404, the authority shall spend, subject to an appropriation by the Legislature and this Subsection (2):~~

~~(i) on and after July 1, 2017, 18 cents of each total radio network charge to maintain the public safety communications network, including:~~

~~(A) the 800 MHz and VHF radio networks;~~

~~(B) radio console network connectivity;~~

~~(C) funding a statewide interoperability coordinator; and~~

~~(D) supplementing costs formerly offset by public safety communications network user fees assessed by the authority before July 1, 2017; and~~

~~(ii) on and after January 1, 2018, 34 cents of each total radio network charge to acquire, construct, equip, and install property for, and to make improvements to, the 800 MHz radio system, including debt service costs.~~

(c) In expending funds in the Utah Statewide Radio System Restricted Account, the authority shall give a higher priority to an expenditure that:

- (i) best promotes statewide public safety;
- (ii) best promotes interoperability;
- (iii) impacts the largest service territory;
- (iv) impacts a densely populated area; or
- (v) impacts an underserved area.

(d) The authority shall expend funds in the Utah Statewide Radio System Restricted Account in accordance with the authority strategic plan described in Section 63H-7a-206.

(e) The executive director shall recommend to the board expenditures for the authority to make from the Utah Statewide Radio System Restricted Account in accordance with this Subsection (2).

(3) ~~[(a)] Subject to [appropriation] appropriations by the Legislature, the Administrative Services Division, [created in Section 63H-7a-601 may charge the] may expend funds in the Utah Statewide Radio System Restricted Account for administrative costs [incurred in discharging the responsibilities imposed by this section] that the Administrative Services Division incurs related to the Utah Statewide Radio System Restricted Account.~~

~~[(b)] Subject to an annual legislative appropriation from the restricted account to the Administrative Services Division, the Administrative Services Division shall disburse the money in the fund, based on the authorization of the board and the Radio Network Division under Subsection 63H-7a-402(1)(d).]~~

Section 23. Section 63H-7a-404 is amended to read:

63H-7a-404. Public safety communications network -- Maintenance -- Upgrade -- Comprehensive plan -- Stakeholder meeting -- Report.

(1) The Radio Network Division shall ~~[(a) (i)]~~ administer the development, installation, implementation, and maintenance of the ~~[Utah Statewide Public Safety Communications network system]~~ public safety communications network for the authority~~;~~, for the benefit of state government entities and political subdivisions of the state that use the public safety communications network.

~~[(ii)] spend up to \$1,500,000 of the one-time appropriation in fiscal year 2015-16 for a study, the scope of which shall be determined by the board based on the advice of the Radio Network Division, the 911 Division, and the executive director, to complete a detailed design and planning proposal for the upgrade and expansion of all phases of the public safety communication network, which shall include at least:]~~

~~[(A) the system design for the state backbone and the implications of local coverage;]~~

~~[(B) whether other public safety communications networks can be integrated with the state backbone;]~~

~~[(C) estimates of the full cost of completing the state backbone to specified standards, local subsystems, and the potential advantages of using a request for proposal approach to solicit private and public sector participation in the project;]~~

~~[(D) a financial analysis estimating funds necessary to cover debt service of revenue bonds issued to finance the cost of completing the statewide radio system upgrade and expansion; and]~~

~~[(E) a review of the project governance and implementation; and]~~

~~[(iii)] spend the remainder of the one-time appropriation in the 2015-16 fiscal year:]~~

~~[(A) for exigent circumstances related to the public safety communications network;]~~

~~[(B) to purchase dispatch radio consoles; and]~~

~~[(C) for other needs identified within the detailed design proposal.]~~

~~[(b) The one-time appropriation in the 2015-16 fiscal year to the Radio Network Division is non-lapsing.]~~

~~[(c) (i) When the study under Subsection (1)(a) is complete, the board shall report to the Legislative Executive Appropriations Committee, which shall study appropriate funding mechanisms for upgrade and maintenance of the statewide radio system network.]~~

~~[(ii) The division shall annually report to the executive director and the board the Radio Network Division's authorized disbursements from the restricted account.]~~

~~[(2) Current radio user fees imposed by the authority may be repealed on July 1, 2016, contingent upon an ongoing funding source being established for the construction of a new public safety communications network and the operation and maintenance of the authority.]~~

~~[(3) In accordance with Section 63H-7a-603, the Administrative Services Division is responsible for the care, custody, safekeeping, collection, and accounting for disbursements from the Utah Statewide Radio System Restricted Account and shall submit an annual report to the executive director for approval by the board.]~~

~~(2) In developing and maintaining the public safety communications network as described in Subsection (1), the Radio Network Division shall:~~

~~(a) maintain and upgrade existing VHF and 800 MHz radio networks;~~

~~(b) coordinate with state government entities, political subdivisions of the state, and public and private providers; and~~

~~(c) contract for facilities, equipment, and services for the public safety communications network in a manner that:~~

(i) complies with Title 63G, Chapter 6a, Utah Procurement Code;

(ii) promotes high-quality, cost-effective services for public safety communications network users;

(iii) evaluates the costs and benefits of using existing public or private facilities, equipment, or services or developing or establishing new facilities, equipment, or services;

(iv) where economically beneficial without compromising quality or reliability of service, avoids duplicating existing private or public facilities, equipment, or services; and

(v) considers the plan developed under Subsection (3).

(3) The Radio Network Division and the executive director shall, before January 15, 2018, meet with all public safety communications network stakeholders, including public and private providers in the state, to:

(a) identify the locations and functional capabilities of existing public and private communications facilities in the state; and

(b) develop a detailed, comprehensive plan for:

(i) repairing and maintaining the existing public safety communications network; and

(ii) upgrading the public safety communications network.

(4) The plan described in Subsection (3) shall include:

(a) a statewide system design;

(b) anticipated coverage maps;

(c) any public and private communications facilities that can be integrated with the public safety communications network; and

(d) a detailed cost estimate for maintaining or upgrading the public safety communications network.

(5) In addition to meeting with stakeholders under Subsection (3), the authority shall issue a request for information for maintaining or upgrading the public safety communications network such that the authority receives all request for information responses before January 15, 2018.

(6) Any radio user fee that the authority assessed on a user of the public safety communications network before July 1, 2017, is repealed.

Section 24. Section 63H-7a-502 is amended to read:

63H-7a-502. Interoperability Division duties.

(1) The Interoperability Division shall:

(a) review and make recommendations to the executive director, for approval by the board, regarding:

(i) statewide interoperability coordination and FirstNet standards;

(ii) technical, administrative, fiscal, technological, network, and operational issues for the implementation of statewide interoperability, coordination, and FirstNet;

(iii) assisting ~~local~~ public agencies with the implementation and coordination of the Interoperability Division responsibilities; and

(iv) training for the public safety communications network and unified statewide 911 emergency services;

(b) review information and records regarding:

(i) aggregate information of the number of service subscribers by service type in a political subdivision;

(ii) matters related to statewide interoperability coordination;

(iii) matters related to FirstNet including advising the governor regarding FirstNet; and

(iv) training needs;

(c) prepare and submit to the executive director for approval by the board:

(i) an annual plan for the Interoperability Division; and

(ii) information required by the director to contribute to the comprehensive strategic plan described in ~~Subsection 63H-7a-204(18)~~ Section 63H-7a-206; and

(d) fulfill all other duties imposed on the Interoperability Division by this chapter.

(2) The Interoperability Division may:

(a) recommend to the executive director to own, operate, or enter into contracts related to statewide interoperability, FirstNet, and training;

(b) request information needed under Subsection (1)(b)(i) from:

(i) the State Tax Commission; and

(ii) public safety agencies; and

(c) employ an outside consultant to study and advise the Interoperability Division on:

(i) issues of statewide interoperability;

(ii) FirstNet; and

(iii) training~~;~~ and

~~[(d) request the board to appoint an advisory committee in accordance with Section 63H-7a-504.]~~

(3) The information requested by and provided to the Interoperability Division under Subsection (1)(b)(i) is a protected record in accordance with Section 63G-2-305.

(4) This section does not expand the authority of the State Tax Commission to request additional

information from a telecommunication service provider.

Section 25. Section 63H-7a-601 is amended to read:

63H-7a-601. Administrative Services Division -- Creation -- Legal services.

(1) This part is known as ~~the~~ “Administrative Services Division.”

(2) There is created within the authority the Administrative Services Division.

(3) The Administrative Services Division shall provide financial and human resources assistance to the authority under the direction of the board and the executive director.

(4) At the board’s request and with the board’s approval, the Administrative Services Division ~~shall~~ may establish or contract for legal services for the authority.

Section 26. Section 63H-7a-602 is repealed and reenacted to read:

63H-7a-602. Duties -- Administrative Services Division -- Accounting for authority disbursements.

The Administrative Services Division is responsible for the care, custody, safekeeping, collection, and accounting for disbursements made by the authority under:

(1) Section 63H-7a-303;

(2) Section 63H-7a-304; and

(3) Section 63H-7a-403.

Section 27. Section 63H-7a-603 is amended to read:

63H-7a-603. Financial officer -- Duties.

(1) The executive director shall appoint a financial officer for the Administrative Services Division with the approval of the board.

(2) The financial officer shall be responsible for accounting for the authority, including:

(a) safekeeping and investment of public funds of the authority, including the funds expended from the restricted accounts created in ~~[Sections 69-2-5.5, 69-2-5.6, 69-2-5.7, and 69-2-5.8]~~ this chapter;

(b) the proper collection, deposit, disbursement, and management of the public funds of the authority in accordance with Title 51, Chapter 7, State Money Management Act;

(c) having authority to sign all bills payable, notes, checks, drafts, warrants, or other negotiable instruments in the absence of the executive director and the executive director’s designated employee;

(d) providing to the board and the executive director a statement of the condition of the finances of the authority, at least annually and at such other times as shall be requested by the board; and

(e) performing all other duties incident to the financial officer.

~~[(2)]~~ (3) The financial officer shall:

(a) be bonded in an amount established by the State Money Management Council; and

(b) file written reports with the State Money Management Council pursuant to Section 51-7-15.

Section 28. Section 63H-7a-701 is repealed and reenacted to read:

Part 7. Investment of Authority Funds

63H-7a-701. Investment of authority funds.

(1) The state treasurer shall invest all money held on deposit by or on behalf of the authority.

(2) The board may provide advice to the state treasurer concerning investment of the money of the authority.

Section 29. Section 63H-7a-803 is amended to read:

63H-7a-803. Relation to certain acts -- Participation in Risk Management Fund.

(1) The Utah Communications Authority is exempt from:

(a) Title 63A, Utah Administrative Services Code, except as provided in Section 63A-4-205.5;

(b) Title 63G, Chapter 4, Administrative Procedures Act; and

~~[(c) Title 63J, Chapter 1, Budgetary Procedures Act; and]~~

~~[(d)]~~ (c) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) (a) The board shall adopt budgetary procedures, accounting, and personnel and human resource policies substantially similar to those from which they have been exempted in Subsection (1).

(b) The authority, the board, and the committee members are subject to Title 67, Chapter 16, Utah Public Officers’ and Employees’ Ethics Act.

(c) The authority is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(d) The authority is subject to Title 63G, Chapter 6a, Utah Procurement Code.

(e) The authority is subject to Title 63J, Chapter 1, Budgetary Procedures Act.

(3) Subject to the requirements of Subsection 63E-1-304(2), the administration may participate in coverage under the Risk Management Fund created by Section 63A-4-201.

Section 30. Section 63I-1-269 is amended to read:

63I-1-269. Repeal dates, Title 69.

Section ~~[69-2-5.6]~~ 69-2-403, emergency services telecommunications charge to fund unified statewide 911 emergency service, is repealed July 1, 2021.

Section 31. Section 63I-2-263 is amended to read:

63I-2-263. Repeal dates, Title 63A to Title 63N.

(1) Section 63A-5-227 is repealed on January 1, 2018.

(2) Section 63H-7a-303 is repealed on July 1, 2022.

~~[(2)]~~ (3) Subsection 63N-3-109(2)(f)(i)(B) is repealed July 1, 2020.

~~[(3)]~~ (4) Section 63N-3-110 is repealed July 1, 2020.

Section 32. Section 63J-1-602.4 is amended to read:

63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63N.

(1) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

(2) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

(3) Certain funds donated to the Department of Human Services, as provided in Section 62A-1-111.

(4) Appropriations from the National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 62A-1-202.

(5) Certain funds donated to the Division of Child and Family Services, as provided in Section 62A-4a-110.

(6) Appropriations from the Choose Life Adoption Support Restricted Account created in Section 62A-4a-608.

(7) Appropriations to the Division of Services for People with Disabilities, as provided in Section 62A-5-102.

(8) Appropriations to the Division of Fleet Operations for the purpose of upgrading underground storage tanks under Section 63A-9-401.

(9) A portion of the funds appropriated to the Utah Seismic Safety Commission, as provided in Section 63C-6-104.

(10) Funds appropriated or collected for publishing the Office of Administrative Rules' publications, as provided in Section 63G-3-402.

(11) The Immigration Act Restricted Account created in Section 63G-12-103.

(12) Money received by the military installation development authority, as provided in Section 63H-1-504.

(13) Appropriations from the Computer Aided Dispatch Restricted Account created in Section 63H-7a-303.

(14) Appropriations from the Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304.

(15) Appropriations from the Utah Statewide Radio System Restricted Account created in Section 63H-7a-403.

~~[(13)]~~ (16) Appropriations to the Utah Science Technology and Research Initiative created in Section 63M-2-301.

~~[(14)]~~ (17) Appropriations to fund the Governor's Office of Economic Development's Enterprise Zone Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.

~~[(15)]~~ (18) The Motion Picture Incentive Account created in Section 63N-8-103.

~~[(16)]~~ (19) Certain money payable for commission expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63N-10-301.

Section 33. Section 69-2-101, which is renumbered from Section 69-2-1 is renumbered and amended to read:

CHAPTER 2. 911 EMERGENCY SERVICE

Part 1. General Provisions

[69-2-1]. 69-2-101. Title.

This chapter is known as [the "Emergency Telephone Service Law"] "911 Emergency Service."

Section 34. Section 69-2-102, which is renumbered from Section 69-2-2 is renumbered and amended to read:

[69-2-2]. 69-2-102. Definitions.

As used in this chapter:

(1) "911 emergency communication" means a direct 911 communication received by a public safety answering point.

~~[(4)]~~ (2) "911 emergency service" means a unified statewide communication system [which provides citizens with rapid] that provides a user with direct access to a public safety answering [points] point by dialing or accessing["911" with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services] 911.

(3) (a) "Access line" means a circuit-switched connection, or the functional equivalent of a circuit-switched connection, from an end user to the public switched network.

(b) "Access line" includes:

(i) a local exchange service switched access line within the state;

(ii) a revenue producing radio communications access line with a billing address within the state; and

(iii) a line provided by a service, including voice over Internet protocol, to a user with an address within the state, that allows the user to receive a call that originates on the public switched network and terminate a call to the public switched network.

(4) "Commission" means the State Tax Commission.

(5) "Dispatch center" means the same as that term is defined in Section 63H-7a-103.

(6) "Local exchange service" means the provision of public telecommunications services by a wireline common carrier to customers within a geographic area encompassing one or more local communities as described in the carrier's service territory maps, tariffs, price lists, or rate schedules filed with and approved by the Public Service Commission.

(7) "Local exchange service switched access line" means the transmission facility and local switching equipment used by a wireline common carrier to connect a customer location to a carrier's local exchange switching network for providing two-way interactive voice, or voice capable, services.

(8) "Mobile telecommunications service" [is as defined in Section 54-8b-2] means the same as that term is defined in 4 U.S.C. Sec. 124.

(9) "Public agency" means [any county, city, town, special service district, or public authority located within the state which] a state government entity, a political subdivision of the state, a special service district, or an entity created by interlocal agreement that provides or has authority to provide fire fighting, law enforcement, ambulance, medical, or other emergency services.

(10) "Public safety agency" means a functional division of a public agency which provides fire fighting, law enforcement, medical, or other emergency services.

(11) "Public safety answering point" means the same as that term is defined in Section 63H-7a-203.

(12) "Public switched [telecommunications] network" [means the network of equipment, lines, and controls assembled to establish communication paths between calling and called parties in North America] means the same as that term is defined in 47 C.F.R. Sec. 20.3.

(13) "Radio communications access line" means the radio equipment and assigned customer identification number used to connect a mobile or fixed radio customer in Utah to a radio communication service provider's network for two-way interactive voice, or voice capable, services.

(14) (a) "Radio communications service" means a public telecommunications service providing the capability of two-way interactive telecommunications between mobile and fixed radio customers, and between mobile or fixed radio

customers and the local exchange service network customers of a wireline common carrier.

(b) "Radio communications service" [~~providers include corporations, persons or entities offering~~] includes:

(i) cellular telephone service[;];

(ii) enhanced specialized mobile radio service[;];

(iii) rural radio service[;];

(iv) a radio common carrier [~~services~~];

(v) a personal communications [~~services, and any equivalent~~] service; and

(vi) any wireless public telecommunications service equivalent to the services described in this Subsection (14)(b), as defined in 47 CFR, parts 20, 22, 24, and 90.

(15) "Voice over Internet protocol service" [~~is as~~] means the same as that term is defined in Section 54-19-102.

(16) "Wireline common carrier" means a public telecommunications service provider that primarily uses metallic or nonmetallic cables and wires for connecting customers to its local exchange service networks.

Section 35. Section 69-2-201, which is renumbered from Section 69-2-3 is renumbered and amended to read:

Part 2. Public Safety Answering Points and Dispatch Centers

[69-2-3]. 69-2-201. Public safety answering point -- Establishment -- Administration -- Consolidation.

[The governing authority of any]

(1) (a) A public agency may [~~establish a 911 emergency service~~]:

(i) operate a public safety answering point to provide 911 emergency service to any part [~~or all~~] of the [~~territory lying within the geographical~~] geographic area [~~of such~~] within the public [~~agency and may join with the governing authority of~~] agency's jurisdiction;

(ii) subject to Subsection (1)(b), operate a public safety answering point with any other contiguous public agency to provide 911 emergency service to any part [~~or all of the territory lying within their respective~~] of the geographic area within the public agencies' jurisdictions[.]; or [~~A county may provide 911 emergency service within other public safety agency jurisdictions only upon agreement with the governing authority of such public safety agency.~~]

(iii) operate a public safety answering point under an agreement with another public agency that existed before January 1, 2017, to provide 911 emergency service to any part of the geographic area within the public agencies' jurisdictions.

(b) A public agency that operates a public safety answering point in connection with a contiguous public agency shall:

(i) provide for the operation of the public safety answering point by interlocal agreement between the public agencies; and

(ii) submit a copy of the interlocal agreement to the director of the Utah Communications Authority.

(2) Except as provided in Subsection (3), a public agency may not establish a dispatch center or a public safety answering point after January 1, 2017.

(3) (a) A public agency that operates a public safety answering point established before January 1, 2017, may:

(i) continue to operate the public safety answering point; or

(ii) physically consolidate the public safety answering point with another public safety answering point operated by another contiguous public agency.

(b) A county may establish a public safety answering point on or after January 1, 2017, if no public safety answering point exists in the county.

(4) A public agency may, in order to provide funding for operating a public safety answering point:

(a) seek funds from the federal or state government;

(b) seek funds appropriated by local governmental taxing authorities to fund a public safety agency; or

(c) seek gifts, donations, or grants from a private entity.

(5) Before July 1, 2017, each dispatch center in the state shall enter into an interlocal agreement with the governing authority of a public safety answering point that serves the county where the dispatch center is located that provides for:

(a) functional consolidation of the dispatch center with the public safety answering point; and

(b) a plan for the public safety answering point to provide 911 emergency service to the geographic area served by the dispatch center.

(6) A special service district that operates a public safety answering point or a dispatch center:

(a) shall administer the public safety answering point or dispatch center in accordance with Title 17D, Chapter 1, Special Service District Act; and

(b) may raise funds, borrow money, or incur indebtedness for the purpose of maintaining the public safety answering point or the dispatch center in accordance with:

(i) Section 17D-1-105; and

(ii) Section 17D-1-103.

Section 36. Section 69-2-202 is enacted to read:

69-2-202. Dispatch services -- Public safety answering point -- Department of Public Safety.

(1) A public safety answering point shall, before providing dispatch services to the Department of Public Safety:

(a) enter into a written agreement with the Department of Public Safety for providing dispatch services that specifies:

(i) the scope of the services that the public safety answering point will provide; and

(ii) the rate that the public safety answering point will charge the Department of Public Safety for dispatch services; and

(b) submit a copy of the agreement to:

(i) the director of the Utah Communications Authority; and

(ii) the commissioner of the Department of Public Safety.

(2) The Department of Public Safety shall, before providing dispatch services to a public agency as a public safety answering point:

(a) enter into a written agreement with the public agency for providing dispatch services that specifies:

(i) the scope of the services that the Department of Public Safety will provide; and

(ii) the rate that the Department of Public Safety will charge the public agency for dispatch services; and

(b) submit a copy of the agreement to:

(i) the director of the Utah Communications Authority; and

(ii) the commissioner of the Department of Public Safety.

Section 37. Section 69-2-203 is enacted to read:

69-2-203. Audit to assess emergency services -- County.

Before January 1, 2018, each county in the state that is not served by a single, consolidated public safety answering point shall conduct an audit to determine:

(1) how best to provide emergency services within the county; and

(2) whether the county could provide more cost efficient emergency service or improve public safety by establishing a single public safety answering point for the county.

Section 38. Section 69-2-301 is enacted to read:

Part 3. Funding for 911 Emergency Service
69-2-301. Public safety answering point -- 911 emergency service account -- Permitted uses of funds.

(1) A public safety answering point shall maintain in a separate emergency telecommunications service fund any funds dispersed to the public safety answering point from the commission under Section 69-2-302, from proceeds of the 911 emergency services charge levied under Section 69-2-402.

(2) A public safety answering point may expend the money in the emergency telecommunications service fund described in Subsection (1) to pay the costs of:

(a) establishing, installing, maintaining, and operating a 911 emergency service system;

(b) receiving and processing emergency communications from the 911 system or other communications or requests for emergency services;

(c) integrating a 911 emergency service system into an established public safety answering point, including contracting with an access line provider or a vendor of appropriate terminal equipment as necessary to implement the 911 emergency services; or

(d) indirect costs associated with the maintaining and operating of a 911 emergency services system.

(3) A public safety answering point may expend revenue derived from the emergency telecommunications service fund described in Subsection (1) for personnel costs associated with receiving and processing communications and deploying emergency response resources.

(4) Any unexpended funds at the end of a fiscal year in a public safety answering point's emergency telecommunications service fund described in Subsection (1) do not lapse.

Section 39. Section 69-2-302 is enacted to read:

69-2-302. Distribution of 911 emergency service charge revenue.

(1) As used in this section:

(a) "Proportional distribution" means the amount of a public safety answering point's proportion of 911 emergency service charge revenue calculated under Subsection (3).

(b) "Proportion of total call volume" means the number of 911 emergency communications that a public safety answering point receives in a year divided by the number of total 911 emergency communications for the state for the year.

(2) The commission shall transmit funds collected under Section 69-2-402 each month to a public safety answering point as follows:

(a) for fiscal years 2018 and 2019 only, an amount equal to the greater of:

(i) the amount of 911 emergency service charge revenue distributed to the public safety answering point for the same month in fiscal year 2017; or

(ii) the public safety answering point's proportional distribution for the month; and

(b) for a fiscal year after fiscal year 2019, the public safety answering point's proportional distribution for the month.

(3) A public safety answering point's proportion of 911 emergency service charge revenue is an amount equal to the total funds collected under Section 69-2-402 for the current month multiplied by the average proportion of total call volume for the public safety answering point over the three years previous to the current year.

(4) (a) For the purpose of the calculation described in Subsection (3), the Utah Communications Authority shall determine for each year:

(i) the number of total 911 emergency communications for the state;

(ii) the number of 911 emergency communications received by each public safety answering point; and

(iii) the average per year, over the last three years before the current year, of total 911 emergency communications for the state and 911 emergency communications received by each public safety answering point in the state.

(b) The Utah Communications Authority shall report the numbers described in Subsection (4)(a) to the commission on or before January 15 of each year.

Section 40. Section 69-2-303, which is renumbered from Section 69-2-5.8 is renumbered and amended to read:

[69-2-5.8]. 69-2-303. State Tax Commission -- Redistribution of emergency service charges revenue.

(1) As used in this section:

(a) ~~"Commission" means the State Tax Commission.~~

~~(4)~~ (a) ~~["Secondary] Alternate recipient [political subdivision] public safety answering point" means a [county, city, or town] public safety answering point that the commission determines should receive a redistribution.~~

(b) "Eligible portion of qualifying telecommunications charge revenues" means the portion of qualifying telecommunications charge revenues that:

(i) were part of an original distribution; and

(ii) the commission determines should have been transmitted:

(A) to ~~a secondary] an alternate recipient [political subdivision] public safety answering point; and~~

(B) during the redistribution period.

(c) "Original distribution" means that the commission:

(i) collects an amount of qualifying telecommunications charge revenues; and

(ii) transmits the amount of qualifying telecommunications charge revenues to an original recipient ~~[political subdivision]~~ public safety answering point.

(d) “Original recipient ~~[political subdivision]~~ public safety answering point” means a ~~[county, city, or town]~~ public safety answering point to which the commission makes an original distribution.

(e) “Qualifying telecommunications charge revenues” means revenues the commission collects from a charge under^[2] Part 4, 911 Emergency Service Charges.

~~[(i) Section 69-2-5;]~~

~~[(ii) Section 69-2-5.5;]~~

~~[(iii) Section 69-2-5.6; or]~~

~~[(iv) Section 69-2-5.7.]~~

(f) “Redistribution” means that the commission:

(i) makes an original distribution of qualifying telecommunications charge revenues to an original recipient ~~[political subdivision]~~ public safety answering point;

(ii) after the commission makes the original distribution of qualifying telecommunications charge revenues to the original recipient ~~[political subdivision]~~ public safety answering point, determines that an eligible portion of qualifying telecommunications charge revenues should have been transmitted to ~~[a secondary]~~ an alternate recipient ~~[political subdivision]~~ public safety answering point as a result of:

(A) a ~~[county, city, or town]~~ public safety answering point providing written notice to the commission that qualifying telecommunications charge revenues that the commission distributed to an original recipient ~~[political subdivision]~~ public safety answering point should have been transmitted to ~~[a secondary recipient political subdivision]~~ an alternate recipient public safety answering point; or

(B) the commission finding that an extraordinary circumstance, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, exists that requires the commission to make a redistribution without receiving the notice described in Subsection (1)(f)(ii)(A); and

(iii) in accordance with this section, transmits to the ~~[secondary]~~ alternate recipient ~~[political subdivision]~~ public safety answering point the eligible portion of qualifying telecommunications charge revenues for the redistribution period.

(g) “Redistribution determination date” means the date the commission determines that ~~[a secondary]~~ an alternate recipient ~~[political subdivision]~~ public safety answering point should have received a redistribution, regardless of the

date the commission actually transmits the redistribution to the ~~[secondary]~~ alternate recipient ~~[political subdivision]~~ public safety answering point.

(h) “Redistribution period” means the time period:

(i) if the commission determines that an eligible portion of qualifying telecommunications charge revenues should have been transmitted to ~~[a secondary]~~ an alternate recipient ~~[political subdivision]~~ public safety answering point beginning on a date that is 90 or more days before the redistribution determination date:

(A) beginning 90 days before the redistribution determination date; and

(B) ending on the redistribution determination date; or

(ii) if the commission determines that an eligible portion of qualifying telecommunications charge revenues should have been transmitted to ~~[a secondary]~~ an alternate recipient ~~[political subdivision]~~ public safety answering point beginning on a date that is less than 90 days before the redistribution determination date:

(A) beginning on the date the eligible portion of qualifying telecommunications charge revenues should have been transmitted to the ~~[secondary]~~ alternate recipient ~~[political subdivision]~~ public safety answering point; and

(B) ending on the redistribution determination date.

(2) Subject to Subsection (3), the commission may make a redistribution to ~~[a secondary]~~ an alternate recipient ~~[political subdivision]~~ public safety answering point in an amount equal to the eligible portion of qualifying telecommunications charge revenues if:

(a) the commission provides written notice to the following within 15 days after the commission determines to make the redistribution:

(i) the original recipient ~~[political subdivision]~~ public safety answering point; and

(ii) the ~~[secondary]~~ alternate recipient ~~[political subdivision]~~ public safety answering point; and

(b) the commission obtains:

(i) an amended return from each person that reports a transaction that will be subject to the redistribution; or

(ii) if the commission determines that an amended return described in Subsection (2)(b)(i) is not required to make the redistribution, information:

(A) supporting the redistribution; and

(B) supplied by a person who collects ~~[a]~~ qualifying telecommunications charge revenues, a ~~[county, city, or town]~~ public safety answering point, or the commission.

(3) The commission shall make a redistribution within 60 days after the requirements of Subsection (2) are met.

(4) This section does not limit the commission's authority to make a distribution of revenues under this chapter for a time period other than the redistribution period.

Section 41. Section 69-2-401 is enacted to read:

Part 4. 911 Emergency Service Charges

69-2-401. State Tax Commission -- Administration of 911 emergency service charges.

(1) The commission shall collect, enforce, and administer the charges levied under this part using the same procedures used in the administration, collection, and enforcement of state sales and use taxes under:

(a) Title 59, Chapter 1, General Taxation Policies; and

(b) Title 59, Chapter 12, Part 1, Tax Collection, except for:

(i) Section 59-12-104;

(ii) Section 59-12-104.1;

(iii) Section 59-12-104.2;

(iv) Section 59-12-104.6;

(v) Section 59-12-107.1; and

(vi) Section 59-12-123.

(2) The commission shall act on a provider that is delinquent in remitting a charge levied under this part in accordance with Title 59, Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

(3) The commission may determine by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements and procedures for administering, collecting, and enforcing the charges levied under this part.

(4) The commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the funds that the commission collects from the charges levied under this part.

(5) The charges levied under this part are subject to Section 69-2-303.

Section 42. Section 69-2-402 is enacted to read:

69-2-402. 911 emergency service charge.

(1) As used in this section, "911 emergency service charge" means the 911 emergency service charge levied by the state under Subsection (2).

(2) (a) Subject to Subsection (6), there is imposed on each access line in the state a 911 emergency service charge of 71 cents per month.

(b) An access line is within the state for the purposes of Subsection (2)(a) if the telecommunications services provided over the access line are located within the state:

(i) for the purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax Act; and

(ii) as determined in accordance with Section 59-12-215.

(3) (a) Subject to Subsection (6), the person that provides service to an access line shall bill and collect the 911 emergency service charge.

(b) A person that bills and collects the 911 emergency service charge shall, except for costs retained under Subsection (3)(g)(iii), remit the 911 emergency service charge to the commission:

(i) monthly on or before the last day of the month immediately following the last day of the previous month if:

(A) the person is required to file a sales and use tax return with the commission monthly under Section 59-12-108; or

(B) the person is not required to file a sales and use tax return under Title 59, Chapter 12, Sales and Use Tax Act; or

(ii) quarterly on or before the last day of the month immediately following the last day of the previous quarter if the person is required to file a sales and use tax return with the commission quarterly under Section 59-12-107.

(c) Except as provided in Subsections (3)(d) and (e), if an access line user is not required to pay for the service, the access line provider shall collect the 911 emergency service charge from the person that is required to pay for the access line.

(d) The 911 emergency service charge is not imposed on a provider of a consumer of federal wireless lifeline service if the consumer does not pay the provider for the service.

(e) A consumer of federal wireless lifeline service shall pay, and the provider of the service shall collect and remit, the 911 emergency service charge when the consumer purchases from the provider optional services in addition to the federally funded lifeline benefit.

(f) The 911 emergency service charge is not imposed on an access line provided for public pay telecommunications service.

(g) The person that bills and collects the 911 emergency service charge:

(i) shall remit the 911 emergency service charge along with a form prescribed by the commission;

(ii) may bill the 911 emergency service charge in combination with the charges levied under Sections 69-2-403 and 69-2-404 as one line item charge for 911 emergency service; and

(iii) may retain an amount not to exceed 1.5% of the 911 emergency service charge as reimbursement for the cost of billing, collecting, and remitting the 911 emergency service charge.

(4) The commission shall transmit the funds the commission collects from the 911 emergency service charge monthly to a public safety answering point in accordance with Section 69-2-302.

(5) An access line provider that fails to comply with this section is subject to penalties and interest as provided in Sections 59-1-401 and 59-1-402.

(6) The state may impose, bill, and collect the 911 emergency service charge on a mobile telecommunications service only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

Section 43. Section 69-2-403, which is renumbered from Section 69-2-5.6 is renumbered and amended to read:

[69-2-5.6]. 69-2-403. Unified statewide 911 emergency service charge to fund Unified Statewide 911 Emergency Service Account.

(1) As used in this section, "unified statewide 911 emergency service charge" means the unified statewide 911 emergency service charge imposed under Subsection (2).

[~~(1)~~] (2) (a) Subject to Subsection [69-2-5(3)(g)] (6), there is imposed on each access line in the state a unified statewide 911 emergency service charge of 9 cents per month [on each local exchange service switched access line and each revenue producing radio communications access line that is subject to a 911 emergency services charge levied by a county, city, town, or metro township under Section 69-2-5].

(b) An access line is within the state for the purposes of Subsection (2)(a) if the telecommunications services provided over the access line are located within the state:

(i) for the purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax Act; and

(ii) as determined in accordance with Section 59-12-215.

[~~(2)(a)~~] (3) (a) The person that provides service to an access line shall bill and collect the unified statewide 911 emergency [services] service charge [imposed under this section shall be]:

(i) subject to Subsection 69-2-5(3)(g); and

(ii) billed and collected by the person that provides;

[~~(A) local exchange service switched access line services;~~

[~~(B) radio communications access line services; or~~

[~~(C) service described in Subsection 69-2-5(3)(a)(i)(C).]~~

(b) A person that [pays a charge under this section] bills and collects the unified statewide 911 emergency service charge shall pay the unified statewide 911 emergency service charge to the commission:

(i) monthly on or before the last day of the month immediately following the last day of the previous month if:

(A) the person is required to file a sales and use tax return with the commission monthly under Section 59-12-108; or

(B) the person is not required to file a sales and use tax return under Title 59, Chapter 12, Sales and Use Tax Act; or

(ii) quarterly on or before the last day of the month immediately following the last day of the previous quarter if the person is required to file a sales and use tax return with the commission quarterly under Section 59-12-107.

[~~(c) A charge imposed under this section shall be deposited into the Unified Statewide 911 Emergency Service Account created by Section 63H-7a-304.~~

[~~(d) If a subscriber of a service subject to a charge described in Subsection (1):~~

(c) If an access line user is not required to pay for the [service] access line, the access line provider [of the service] shall collect the unified statewide 911 emergency service charge from the person that is required to pay for the [service] access line.

[~~(3)~~] (d) The person that bills and collects the [charges levied by this section pursuant to Subsections (2)(b) and (c)] may unified statewide 911 emergency service charge:

(i) shall remit the unified statewide 911 emergency service charge along with a form prescribed by the commission;

[~~(a)~~] (ii) may bill the [charge imposed by this section] unified statewide 911 emergency service charge in combination with the [charge] charges levied under [Section 69-2-5] Sections 69-2-402 and 69-2-404 as one line item charge for 911 emergency service; and

[~~(b)~~] (iii) may retain an amount not to exceed 1.5% of the [charges] unified statewide 911 emergency service charge collected under this section as reimbursement for the cost of billing, collecting, and remitting the [levy] unified statewide 911 emergency service charge.

(4) The commission shall deposit any unified 911 emergency service charge remitted to the commission into the Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304.

[~~(4) The State Tax Commission shall collect, enforce, and administer the charges imposed under Subsection (1) using the same procedures used in the administration, collection, and enforcement of the emergency services telecommunications charge to fund the Computer Aided Dispatch Restricted Account under Section 63H-7a-303.~~

[~~(5) Notwithstanding Section 63H-7a-304, the State Tax Commission shall retain and deposit an administrative charge in accordance with Section 59-1-306 from the revenues the State Tax Commission collects from a charge under this section.~~

[~~(6) A charge under this section is subject to Section 69-2-5.8.~~

(5) An access line provider that fails to comply with this section is subject to penalties and interest as provided in Sections 59-1-401 and 59-1-402.

(6) The state may impose, bill, and collect an emergency services telecommunications charge under this section on a mobile telecommunications service only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(7) This section sunsets in accordance with Section 63I-1-269.

Section 44. Section 69-2-404 is enacted to read:

69-2-404. Radio network charge to fund the Utah Statewide Radio System Restricted Account.

(1) As used in this section, "radio network charge" means the radio network charge imposed under Subsection (2).

(2) (a) Subject to Subsection (6), there is imposed on each access line in the state a radio network charge of:

(i) on and after July 1, 2017, and before January 1, 2018, 18 cents per month; and

(ii) on and after January 1, 2018, 52 cents per month.

(b) An access line is within the state for the purposes of Subsection (2)(a) if the telecommunications services provided over the access line are located within the state:

(i) for the purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax Act; and

(ii) as determined in accordance with Section 59-12-215.

(3) (a) The person that provides service to an access line shall bill and collect the radio network charge.

(b) A person that bills and collects the radio network charge shall pay the radio network charge to the commission:

(i) monthly on or before the last day of the month immediately following the last day of the previous month if:

(A) the person is required to file a sales and use tax return with the commission monthly under Section 59-12-108; or

(B) the person is not required to file a sales and use tax return under Title 59, Chapter 12, Sales and Use Tax Act; or

(ii) quarterly on or before the last day of the month immediately following the last day of the previous quarter if the person is required to file a sales and use tax return with the commission quarterly under Section 59-12-107.

(c) If an access line user is not required to pay for the access line, the access line provider shall collect

the radio network charge from the person that is required to pay for the access line.

(d) The person that bills and collects a radio network charge:

(i) shall remit the radio network charge along with a form prescribed by the commission; and

(ii) may bill the radio network charge in combination with the charges levied under Sections 69-2-402 and 69-2-403 as one line item charge for 911 emergency service.

(4) The commission shall deposit any radio network charge remitted to the commission into the Utah Statewide Radio System Restricted Account created in Section 63H-7a-403.

(5) An access line provider that fails to comply with this section is subject to penalties and interest as provided in Sections 59-1-401 and 59-1-402.

(6) The state may impose, bill, and collect the radio network charge under this section on a mobile telecommunications service only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

Section 45. Section 69-2-405, which is renumbered from Section 69-2-5.7 is renumbered and amended to read:

[69-2-5.7]. 69-2-405. Prepaid wireless 911 service charge to fund 911 emergency service.

(1) As used in this section:

(a) "Consumer" means a person who purchases prepaid wireless telecommunications service in a transaction.

(b) "Prepaid wireless 911 service charge" means the charge that is required to be collected by a seller from a consumer in the amount established under Subsection (2).

(c) (i) "Prepaid wireless telecommunications service" means a wireless telecommunications service that:

(A) is paid for in advance;

(B) is sold in predetermined units of time or dollars that decline with use in a known amount or provides unlimited use of the service for a fixed amount or time; and

(C) allows a caller to access 911 emergency service.

(ii) "Prepaid wireless telecommunications service" does not include a wireless telecommunications service that is billed:

(A) to a customer on a recurring basis; and

(B) in a manner that includes the [emergency services telecommunications charges, described in] charges levied under Sections [69-2-5, 69-2-5.5, and 69-2-5.6] 69-2-402, 69-2-403, and 69-2-404, for each radio communication access line assigned to the customer.

(d) "Seller" means a person that sells prepaid wireless telecommunications service to a consumer.

(e) "Transaction" means each purchase of prepaid wireless telecommunications service from a seller.

(f) "Wireless telecommunications service" means commercial mobile radio service as defined by 47 C.F.R. Sec. 20.3, as amended.

(2) There is imposed a prepaid wireless 911 service charge of ~~[1.9%]~~:

(a) before January 1, 2018, 2.45% of the sales price per transaction; and

(b) on and after January 1, 2018, 3.30% of the sales price per transaction.

(3) (a) The prepaid wireless 911 service charge shall be collected by the seller from the consumer for each transaction occurring in this state.

(b) (i) Except as provided in Subsections (3)(b)(ii) and (iii), if a user of a service subject to a charge described in Subsection (2) is not the consumer, the seller shall collect the charge from the consumer for the service.

(ii) The charge described in Subsection (2) is not imposed on a seller or a consumer of federal wireless lifeline service if the consumer does not pay the seller for the service.

(iii) A consumer of federal wireless lifeline service shall pay, and the seller of the service shall collect and remit, the charge described in Subsection (2) when the consumer purchases from the seller optional services in addition to the federally funded lifeline benefit.

(4) The prepaid wireless 911 service charge shall be separately stated on an invoice, receipt, or similar document that is provided by the seller to the consumer.

(5) For purposes of Subsection (3), the location of a transaction is determined in accordance with Sections 59-12-211 through 59-12-215.

(6) When prepaid wireless telecommunications service is sold with one or more other products or services for a single non-itemized price, then the percentage specified in Section (2) shall apply to the entire non-itemized price.

(7) A seller may retain 3% of prepaid wireless 911 service charges that are collected by the seller from consumers as reimbursement for the cost of billing, collecting, and remitting the charge.

(8) ~~[Prepaid wireless 911 service charges collected by a seller]~~ A person that collects a prepaid wireless 911 service charge, except as retained under Subsection (7), shall ~~[be remitted]~~ remit the prepaid wireless 911 service charge to the ~~[State Tax Commission]~~ commission at the same time ~~[as]~~ that the seller remits to the ~~[State Tax Commission]~~ commission money collected by the person under Title 59, Chapter 12, Sales and Use Tax Act.

~~[(9) The State Tax Commission:]~~

~~[(a) shall collect, enforce, and administer the charge imposed under this section using the same procedures used in the administration, collection, and enforcement of the state sales and use taxes under:]~~

~~[(i) Title 59, Chapter 1, General Taxation Policies; and]~~

~~[(ii) Title 59, Chapter 12, Part 1, Tax Collection, except for:]~~

~~[(A) Section 59-12-104;]~~

~~[(B) Section 59-12-104.1;]~~

~~[(C) Section 59-12-104.2;]~~

~~[(D) Section 59-12-107.1; and]~~

~~[(E) Section 59-12-123;]~~

~~[(b) may retain up to 1.5% of the prepaid wireless 911 service charge revenue collected under Subsection (9)(a) as reimbursement for administering this section;]~~

~~[(c) shall distribute the prepaid wireless 911 service charge revenue, except as retained under Subsection (9)(b), as follows:]~~

~~[(i) 80.3% of the revenue shall be distributed to each county, city, town, or metro township in the same percentages and in the same manner as the entities receive money to fund 911 emergency telecommunications services under Section 69-2-5;]~~

~~[(ii) 7.9% of the revenue shall be distributed to fund the Computer Aided Dispatch Restricted Account created in Section 63H-7a-303;]~~

~~[(iii) 11.8% of the revenue shall be distributed to fund the unified statewide 911 emergency service as in Section 69-2-5.6; and]~~

~~[(d) may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer, collect, and enforce the charges imposed under this section.]~~

~~[(10) A charge under this section is subject to Section 69-2-5.8.]~~

(9) The commission shall distribute:

(a) on and after July 1, 2017, and before January 1, 2018:

(i) 72.4% of the prepaid wireless 911 service charge revenue to a public safety answering point in accordance with Section 69-2-302;

(ii) 9.2% of the prepaid wireless 911 service charge revenue to the Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304; and

(iii) 18.4% of the revenue to the Utah Statewide Radio System Restricted Account; and

(b) on and after January 1, 2018:

(i) 53.8% of the prepaid wireless 911 service charge revenue to a public safety answering point in accordance with Section 69-2-302;

(ii) 6.8% of the prepaid wireless 911 service charge revenue to the Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304; and

(iii) 39.4% of the revenue to the Utah Statewide Radio System Restricted Account.

Section 46. Section 69-2-501, which is renumbered from Section 69-2-6 is renumbered and amended to read:

Part 5. Liability and Immunity

[69-2-6]. 69-2-501. Jurisdiction and employee immunity.

(1) In implementing [a] 911 emergency [telephone] service, [the] any public agency and public safety [agencies and their employees] agency shall cooperate in establishing [the service and in its day-to-day provision] and providing 911 emergency service.

(2) Any employee of any public safety agency which is a participant in [a] 911 emergency [telephone] service may respond and take any action to any call whether within or without the authorized territorial jurisdiction of the public safety agency.

(3) In response to [~~emergency calls, employees of public safety agencies~~] an emergency communication, an employee of a public safety agency shall have the same immunity for any acts performed in the line of duty outside [~~their~~] the public safety agency's authorized [~~jurisdictions as they enjoy within their authorized jurisdictions~~] jurisdiction as the public safety agency employee has within the public safety agency's authorized jurisdiction.

(4) No cause of action is created by any incorrect dispatch or response by any system or any public safety agency or by reason of elapsed response time.

Section 47. Section 69-2-502, which is renumbered from Section 69-2-7 is renumbered and amended to read:

[69-2-7]. 69-2-502. Limitation of duties and liabilities.

Except as provided in Section [~~69-2-8~~] 69-2-503, nothing contained in this chapter imposes any duties or liabilities beyond those otherwise specified by law upon any provider of local exchange service, radio communications service, voice over Internet protocol service, or terminal equipment needed to implement 911 emergency [telephone] service and the Utah statewide radio system and public safety communication network, created in Title 63H, Chapter 7a, Utah Communications Authority Act.

Section 48. Section 69-2-503, which is renumbered from Section 69-2-8 is renumbered and amended to read:

[69-2-8]. 69-2-503. Liabilities of providers.

(1) A provider of local exchange service, radio communications service, or voice over Internet

protocol service may by tariff or agreement with a customer provide for the customer's release of any claim, suit, or demand against the provider based upon a disclosure or a nondisclosure of an unlisted or nonpublished telephone number and address, and the related address, if a call for any 911 emergency [telephone] service is made from the customer's telephone.

(2) A provider of local exchange service, radio communications service, voice over Internet protocol service, or telephone terminal equipment needed to implement or enhance 911 emergency [telephone] service, and their employees and agents, are not liable for any damages in a civil action for injuries, death, or loss to person or property incurred as a result of any act or omission of the provider, employee, or agent, in connection with developing, adopting, implementing, maintaining, enhancing, or operating a 911 emergency [telephone] service, except for damages or injury intentionally caused by or resulting from gross negligence of the provider or person.

Section 49. Repealer.

This bill repeals:

Section 63H-7a-305, 911 Division expenses -- Responsibilities.

Section 63H-7a-306, 911 Division to report annually.

Section 63H-7a-307, 911 Advisory Committee -- Membership -- Duties.

Section 63H-7a-405, Radio network advisory committees.

Section 63H-7a-504, Interoperability advisory committees.

Section 63H-7a-700, Title.

Section 63H-7a-702, Bonds to be authorized by resolution -- Form -- Sale -- Negotiability -- Validity presumed.

Section 63H-7a-703, Bonds and other obligations -- Additional powers of the authority.

Section 63H-7a-704, Reserve funds for debt service.

Section 63H-7a-705, Investment of the authority funds.

Section 63H-7a-706, Publication of notice, resolution, or other proceeding -- Period for contesting.

Section 69-2-4, Administration.

Section 69-2-5, Funding for 911 emergency service -- Administrative charge.

Section 69-2-5.5, Emergency services telecommunications charge to fund the Computer Aided Dispatch Restricted Account -- Administrative charge.

Section 50. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 431**S. B. 208**

Passed March 1, 2017
 Approved March 25, 2017
 Effective May 9, 2017

**UTAH UNIFORM COMMERCIAL
 REAL ESTATE RECEIVERSHIP ACT**

Chief Sponsor: Lyle W. Hillyard
 House Sponsor: Brian S. King

LONG TITLE**General Description:**

This bill enacts provisions related to commercial real estate receivership.

Highlighted Provisions:

This bill:

- ▶ provides for the appointment of a receiver to dispose of commercial property subject to dispute under certain circumstances;
- ▶ provides rules of conduct for a court-appointed receiver;
- ▶ provides rules of conduct for an owner of property subject to receivership;
- ▶ provides an applicability date; and
- ▶ defines terms.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

78B-21-101, Utah Code Annotated 1953
 78B-21-102, Utah Code Annotated 1953
 78B-21-103, Utah Code Annotated 1953
 78B-21-104, Utah Code Annotated 1953
 78B-21-105, Utah Code Annotated 1953
 78B-21-106, Utah Code Annotated 1953
 78B-21-107, Utah Code Annotated 1953
 78B-21-108, Utah Code Annotated 1953
 78B-21-109, Utah Code Annotated 1953
 78B-21-110, Utah Code Annotated 1953
 78B-21-111, Utah Code Annotated 1953
 78B-21-112, Utah Code Annotated 1953
 78B-21-113, Utah Code Annotated 1953
 78B-21-114, Utah Code Annotated 1953
 78B-21-115, Utah Code Annotated 1953
 78B-21-116, Utah Code Annotated 1953
 78B-21-117, Utah Code Annotated 1953
 78B-21-118, Utah Code Annotated 1953
 78B-21-119, Utah Code Annotated 1953
 78B-21-120, Utah Code Annotated 1953
 78B-21-121, Utah Code Annotated 1953
 78B-21-122, Utah Code Annotated 1953
 78B-21-123, Utah Code Annotated 1953
 78B-21-124, Utah Code Annotated 1953
 78B-21-125, Utah Code Annotated 1953
 78B-21-126, Utah Code Annotated 1953
 78B-21-127, Utah Code Annotated 1953
 78B-21-128, Utah Code Annotated 1953
 78B-21-129, Utah Code Annotated 1953

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

Section 1. Section 78B-21-101 is enacted to read:

**CHAPTER 21. UNIFORM COMMERCIAL
 REAL ESTATE RECEIVERSHIP ACT**

78B-21-101. Title.

This chapter is known as the “Uniform Commercial Real Estate Receivership Act.”

Section 2. Section 78B-21-102 is enacted to read:

78B-21-102. Definitions.

(1) “Affiliate” means:

(a) with respect to an individual:

(i) a companion of the individual;

(ii) a lineal ancestor or descendant, whether by blood or adoption, of:

(A) the individual; or

(B) a companion of the individual;

(iii) a companion of an ancestor or descendant described in Subsection (1)(a)(ii);

(iv) a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual; or

(v) any other individual occupying the residence of the individual; and

(b) with respect to a person other than an individual:

(i) another person that directly or indirectly controls, is controlled by, or is under common control with the person;

(ii) an officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person; or

(iii) a companion of, or an individual occupying the residence of, an individual described in Subsection (1)(b)(i) or (ii).

(2) “Companion” means:

(a) the spouse of an individual;

(b) the domestic partner of an individual; or

(c) another individual in a civil union with an individual.

(3) “Court” means a district court in the state.

(4) “Executory contract” means a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach.

(5) “Governmental unit” means an office, department, division, bureau, board, commission,

or other agency of this state or a subdivision of this state.

(6) “Lien” means an interest in property that secures payment or performance of an obligation.

(7) “Mortgage” means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if the mortgage also creates or provides for a lien on personal property.

(8) “Mortgagee” means a person entitled to enforce an obligation secured by a mortgage.

(9) “Mortgagor” means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage.

(10) “Owner” means the person for whose property a receiver is appointed.

(11) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(12) “Proceeds” means the following property:

(a) whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property;

(b) whatever is collected on, or distributed on account of, receivership property;

(c) rights arising out of receivership property;

(d) to the extent of the value of receivership property, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the property; or

(e) to the extent of the value of receivership property and to the extent payable to the owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the property.

(13) “Property” means all of a person’s right, title, and interest, both legal and equitable, in real and personal property, tangible and intangible, wherever located and however acquired. The term includes proceeds, products, offspring, rents, or profits of or from the property.

(14) “Receiver” means a person appointed by the court as the court’s agent, and subject to the court’s direction, to take possession of, manage, and, if authorized by this chapter or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

(15) “Receivership” means a proceeding in which a receiver is appointed.

(16) “Receivership property” means the property of an owner that is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.

(17) “Record” means, when used as a noun, information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(18) “Rents” means:

(a) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(b) sums payable to a mortgagor under a policy of rental-interruption insurance covering real property;

(c) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(d) sums payable to terminate an agreement to possess or occupy real property of another person;

(e) sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property; or

(f) other sums payable under an agreement relating to the real property of another person which constitute rents under law of the state other than this chapter.

(19) “Secured obligation” means an obligation the payment or performance of which is secured by a security agreement.

(20) “Security agreement” means an agreement that creates or provides for a lien.

(21) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

Section 3. Section 78B-21-103 is enacted to read:

78B-21-103. Notice and opportunity for a hearing.

(1) Except as otherwise provided in Subsection (2), the court may issue an order under this chapter only after notice and opportunity for a hearing, as appropriate in the circumstances.

(2) The court may issue an order under this chapter:

(a) without prior notice if the circumstances require issuance of an order before notice is given;

(b) after notice and without a prior hearing if the circumstances require issuance of an order before a hearing is held; or

(c) after notice and without a hearing if no interested party timely requests a hearing.

Section 4. Section 78B-21-104 is enacted to read:

78B-21-104. Scope -- Exclusions.

(1) Except as otherwise provided in Subsection (2) or (3), this chapter applies to a receivership for an interest in real property and any personal property related to or used in operating the real property.

(2) This chapter does not apply to a receivership for an interest in real property improved by one to four dwelling units unless:

(a) the interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner's primary residence;

(b) the interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes;

(c) the owner planned or is planning to develop the property into one or more dwelling units to be sold or leased in the ordinary course of the owner's business; or

(d) the owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner.

(3) This chapter does not apply to a receivership authorized by law of this state other than this chapter in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the governmental unit.

(4) This chapter does not limit the authority of a court to appoint a receiver under other state law.

(5) Unless displaced by a particular provision of this chapter, the principles of law and equity supplement this chapter.

Section 5. Section 78B-21-105 is enacted to read:

78B-21-105. Power of court.

The court that appoints a receiver under this chapter has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

Section 6. Section 78B-21-106 is enacted to read:

78B-21-106. Appointment of receiver.

(1) The court may appoint a receiver:

(a) before judgment, to protect a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if the property or the property's revenue-producing potential:

(i) is being subjected to or is in danger of waste, loss, dissipation, or impairment; or

(ii) has been or is about to be the subject of a voidable transaction;

(b) after judgment:

(i) to carry the judgment into effect; or

(ii) to preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment;

(c) in an action in which a receiver for real property may be appointed on equitable grounds; or

(d) during the time allowed for redemption, to preserve a property sold in an execution or foreclosure sale and secure the property's rents to the person entitled to the property's rents.

(2) In connection with the foreclosure or other enforcement of a mortgage, a mortgagee is entitled to appointment of a receiver for the mortgaged property if:

(a) appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment;

(b) the mortgagor agreed in a signed record to appointment of a receiver on default;

(c) the owner agreed, after default and in a signed record, to appointment of a receiver;

(d) the property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation;

(e) the owner fails to turn over to the mortgagee proceeds or rents the mortgagee was entitled to collect; or

(f) the holder of a subordinate lien obtains appointment of a receiver for the property.

(3) (a) The court may condition appointment of a receiver without prior notice under Subsection 78B-21-103(2)(a) or without a prior hearing under Subsection 78B-21-103(2)(b) on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified.

(b) If the court later concludes that the appointment described in Subsection (3)(a) was justified, the court shall release the security.

Section 7. Section 78B-21-107 is enacted to read:

78B-21-107. Disqualification from appointment as receiver -- Disclosure of interest.

(1) The court may not appoint a person as receiver unless the person submits to the court a statement under penalty of perjury that the person is not disqualified.

(2) Except as otherwise provided in Subsection (3), a person is disqualified from appointment as receiver if the person:

(a) is an affiliate of a party;

(b) has an interest materially adverse to an interest of a party;

(c) has a material financial interest in the outcome of the action, other than the compensation the court may allow the receiver;

(d) has a debtor-creditor relationship with a party; or

(e) holds an equity interest in a party, other than a noncontrolling interest in a publicly traded company.

(3) A person is not disqualified from appointment as receiver solely because the person:

(a) was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership;

(b) is an individual obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes; or

(c) maintains with a party a deposit account as defined in Section 70A-9a-102.

(4) A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

Section 8. Section 78B-21-108 is enacted to read:

78B-21-108. Receiver's bond -- Alternative security.

(1) Except as otherwise provided in Subsection (2), a receiver shall post with the court a bond that:

(a) is conditioned on the faithful discharge of the receiver's duties;

(b) has one or more sureties approved by the court;

(c) is in an amount the court specifies; and

(d) is effective as of the date of the receiver's appointment.

(2) (a) The court may approve the posting by a receiver with the court of alternative security, such as a letter of credit or deposit of funds.

(b) The receiver may not use receivership property as alternative security.

(c) Interest that accrues on deposited funds must be paid to the receiver on the receiver's discharge.

(3) The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this section.

(4) A claim against a receiver's bond or alternative security must be made not later than one year after the date the receiver is discharged.

Section 9. Section 78B-21-109 is enacted to read:

78B-21-109. Status of receiver as lien creditor.

On appointment of a receiver, the receiver has the status of a lien creditor under:

(1) Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, as to receivership property that is personal property or fixtures; and

(2) Title 57, Chapter 9, Marketable Record Title, as to receivership property that is real property.

Section 10. Section 78B-21-110 is enacted to read:

78B-21-110. Security agreement covering after-acquired property.

Except as otherwise provided by law of this state other than this chapter, property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

Section 11. Section 78B-21-111 is enacted to read:

78B-21-111. Collection and turnover of receivership property.

(1) Unless the court orders otherwise, on demand by a receiver:

(a) a person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment; and

(b) subject to Subsection (3), a person that has possession, custody, or control of receivership property shall turn the property over to the receiver.

(2) A person that has notice of the appointment of a receiver and owes a debt that is receivership property may not satisfy the debt by payment to the owner.

(3) If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

(4) Unless a bona fide dispute exists about a receiver's right to possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn the property over when required by this section.

Section 12. Section 78B-21-112 is enacted to read:

78B-21-112. Powers and duties of receiver.

(1) Except as limited by court order or law of this state other than this chapter, a receiver may:

(a) collect, control, manage, conserve, and protect receivership property;

(b) operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business;

(c) in the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property;

(d) assert a right, claim, cause of action, or defense of the owner that relates to receivership property;

(e) seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties;

(f) on subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership;

(g) engage a professional as provided in Section 78B-21-115;

(h) apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state; and

(i) exercise any power conferred by court order, this chapter, or a law of the state other than this chapter.

(2) With court approval, a receiver may:

(a) incur debt for the use or benefit of receivership property other than in the ordinary course of business;

(b) make improvements to receivership property;

(c) use or transfer receivership property other than in the ordinary course of business as provided in Section 78B-21-116;

(d) adopt or reject an executory contract of the owner as provided in Section 78B-21-117;

(e) pay compensation to the receiver as provided in Section 78B-21-121, and to each professional engaged by the receiver as provided in Section 78B-21-115;

(f) recommend allowance or disallowance of a claim of a creditor as provided in Section 78B-21-120; and

(g) make a distribution of receivership property as provided in Section 78B-21-120.

(3) A receiver shall:

(a) prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property;

(b) account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property;

(c) file with the county recorder of the county where the property is located a copy of the order appointing the receiver and, if a legal description of the real property is not included in the order, the legal description;

(d) disclose to the court any fact arising during the receivership that would disqualify the receiver under Section 78B-21-107; and

(e) perform any duty imposed by court order, this chapter, or a law of the state other than this chapter.

(4) The powers and duties of a receiver may be expanded, modified, or limited by court order.

Section 13. Section 78B-21-113 is enacted to read:

78B-21-113. Duties of owner.

(1) An owner shall:

(a) assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties;

(b) preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control;

(c) identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control;

(d) on subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property, liabilities, and financial condition of the owner or any matter relating to the receivership property or the receivership; and

(e) perform any duty imposed by court order, this chapter, or a law of the state other than this chapter.

(2) If an owner is a person other than an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the owner.

(3) If a person knowingly fails to perform a duty imposed by this section, the court may:

(a) award the receiver actual damages caused by the person's failure, reasonable attorney fees, and costs; and

(b) sanction the failure as civil contempt.

Section 14. Section 78B-21-114 is enacted to read:

78B-21-114. Stay -- Injunction.

(1) Except as otherwise provided in Subsection (4) or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action, or proceeding:

(a) to obtain possession of, exercise control over, or enforce a judgment against receivership property; and

(b) to enforce a lien against receivership property to the extent the lien secures a claim against the owner that arose before entry of the order.

(2) Except as otherwise provided in Subsection (4), the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect the property or facilitate administration of the receivership.

(3) A person whose act, action, or proceeding is stayed or enjoined under this section may apply to the court for relief from the stay or injunction for cause.

(4) An order under Subsection (1) or (2) does not operate as a stay or injunction of:

(a) an act, action, or proceeding to foreclose or otherwise enforce a mortgage by the person seeking appointment of the receiver;

(b) an act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property;

(c) commencement or continuation of a criminal proceeding;

(d) commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce the governmental unit's police or regulatory power;

(e) establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability.

(5) The court may void an act that violates a stay or injunction under this section.

(6) If a person knowingly violates a stay or injunction under this section, the court may:

(a) award actual damages caused by the violation, reasonable attorney fees, and costs; and

(b) sanction the violation as civil contempt.

Section 15. Section 78B-21-115 is enacted to read:

78B-21-115. Engagement and compensation of professional.

(1) (a) With court approval, a receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing a duty or exercising a power of the receiver.

(b) The receiver shall disclose to the court:

(i) the identity and qualifications of the professional;

(ii) the scope and nature of the proposed engagement;

(iii) any potential conflict of interest; and

(iv) the proposed compensation.

(2) (a) A person is not disqualified from engagement under this section solely because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or a party.

(b) This chapter does not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law.

(3) (a) A receiver or professional engaged under Subsection (1) shall file with the court an itemized statement of the time spent, work performed, and billing rate of each person that performed the work and an itemized list of expenses.

(b) The receiver shall pay the amount approved by the court.

Section 16. Section 78B-21-116 is enacted to read:

78B-21-116. Use or transfer of receivership property not in ordinary course of business.

(1) As used in this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(2) With court approval, a receiver may use receivership property other than in the ordinary course of business.

(3) (a) With court approval, a receiver may transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition.

(b) Unless the agreement of sale provides otherwise, a sale under this section is:

(i) free and clear of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption; and

(ii) subject to a senior lien.

(4) A lien on receivership property that is extinguished by a transfer under Subsection (3) attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.

(5) (a) A transfer under Subsection (3) may occur by means other than a public auction sale.

(b) A creditor holding a valid lien on the property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien, if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

(6) A reversal or modification of an order approving a transfer under Subsection (3) does not affect the validity of the transfer to a person that acquired the property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer.

Section 17. Section 78B-21-117 is enacted to read:

78B-21-117. Executory contract.

(1) As used in this section, "timeshare interest" means the same as that term is defined in Section 57-19-2.

(2) (a) Except as otherwise provided in Subsection (8), with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property.

(b) The court may condition the receiver's adoption and continued performance of the contract on terms appropriate under the circumstances.

(c) If the receiver does not request court approval to adopt or reject the executory contract within a reasonable time after the receiver's appointment, the receiver is deemed to have rejected the executory contract.

(3) A receiver's performance of an executory contract before court approval under Subsection (2) of the executory contract's adoption or rejection is not an adoption of the executory contract and does not preclude the receiver from seeking approval to reject the executory contract.

(4) A provision in an executory contract that requires or permits a forfeiture, modification, or termination of the executory contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under Subsection (2) to adopt the executory contract.

(5) (a) A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the executory contract under Subsection (2).

(b) Rejection is a breach of the executory contract effective immediately before appointment of the receiver.

(c) A claim for damages for rejection of the executory contract must be submitted by the later of:

(i) the time set for submitting a claim in the receivership; or

(ii) 30 days after the court approves the rejection.

(6) If at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under law of this state other than this chapter, the receiver may assign the executory contract with court approval.

(7) If a receiver rejects an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest under Subsection (2), the purchaser may:

(a) treat the rejection as a termination of the executory contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid; or

(b) retain the purchaser's right to possession under the executory contract, and in that case the purchaser shall continue to perform all obligations arising under the executory contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim

against other receivership property or the receiver on account of the damages.

(8) A receiver may not reject an unexpired lease of real property under which the owner is the landlord if:

(a) the tenant occupies the leased premises as the tenant's primary residence;

(b) the receiver was appointed at the request of a person other than a mortgagee; or

(c) the receiver was appointed at the request of a mortgagee and:

(i) the lease is superior to the lien of the mortgage;

(ii) the tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs the tenant's obligations under the lease;

(iii) the mortgagee has consented to the lease, either in a signed record or by the mortgagee's failure to timely object that the lease violated the mortgage; or

(iv) the terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

Section 18. Section 78B-21-118 is enacted to read:

78B-21-118. Defenses and immunities of receiver.

(1) A receiver is entitled to all defenses and immunities provided by law of this state other than this chapter for an act or omission within the scope of the receiver's appointment.

(2) A receiver may be sued personally for an act or omission in administering receivership property only with approval of the court that appointed the receiver.

Section 19. Section 78B-21-119 is enacted to read:

78B-21-119. Interim report of receiver.

A receiver may file, or if ordered by the court shall file, an interim report that includes:

(1) the activities of the receiver since appointment or a previous report;

(2) receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver;

(3) receipts and dispositions of receivership property;

(4) fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses; and

(5) any other information required by the court.

Section 20. Section 78B-21-120 is enacted to read:

78B-21-120. Notice of appointment -- Claim against receivership -- Distribution to creditors.

(1) Except as otherwise provided in Subsection (6), a receiver shall give notice of appointment of the receiver to creditors of the owner by:

(a) deposit for delivery through first-class mail or other commercially reasonable delivery method to the last known address of each creditor; and

(b) publication as directed by the court.

(2) (a) Except as otherwise provided in Subsection (6), the notice required by Subsection (1) must specify the date by which each creditor holding a claim against the owner that arose before appointment of the receiver must submit the claim to the receiver.

(b) The date specified must be at least 90 days after the later of the notice under Subsection (1)(a) or the last publication under Subsection (1)(b).

(c) The court may extend the period for submitting the claim.

(d) Unless the court orders otherwise, a claim that is not submitted timely is not entitled to a distribution from the receivership.

(3) A claim submitted by a creditor under this section must:

(a) state the name and address of the creditor;

(b) state the amount and basis of the claim;

(c) identify any property securing the claim;

(d) be signed by the creditor under penalty of perjury; and

(e) include a copy of any record on which the claim is based.

(4) An assignment by a creditor of a claim against the owner is effective against the receiver only if the assignee gives timely notice of the assignment to the receiver in a signed record.

(5) (a) At any time before entry of an order approving a receiver's final report, the receiver may file with the court an objection to a claim of a creditor, stating the basis for the objection.

(b) The court shall allow or disallow the claim according to law of this state other than this chapter.

(6) If the court concludes that receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court may order that:

(a) the receiver need not give notice under Subsection (1) of the appointment to all creditors of the owner, but only such creditors as the court directs; and

(b) unsecured creditors need not submit claims under this section.

(7) Subject to Section 78B-21-121:

(a) a distribution of receivership property to a creditor holding a perfected lien on the property must be made in accordance with the creditor's

priority under law of this state other than this chapter; and

(b) a distribution of receivership property to a creditor with an allowed unsecured claim must be made as the court directs according to law of this state other than this chapter.

Section 21. Section 78B-21-121 is enacted to read:

78B-21-121. Fees and expenses.

(1) The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the powers of the receiver.

(2) The court may order one or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney fees and costs:

(a) a person that requested the appointment of the receiver, if the receivership does not produce sufficient funds to pay the fees and expenses; or

(b) a person whose conduct justified or would have justified the appointment of the receiver under Subsection 78B-21-106(1)(a).

Section 22. Section 78B-21-122 is enacted to read:

78B-21-122. Removal of receiver -- Replacement -- Termination of receivership.

(1) The court may remove a receiver for cause.

(2) The court shall replace a receiver that dies, resigns, or is removed.

(3) If the court finds that a receiver that resigns or is removed, or the representative of a receiver that is deceased, has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver is discharged.

(4) (a) The court may discharge a receiver and terminate the court's administration of the receivership property if the court finds that appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership.

(b) If the court finds that the appointment was sought wrongfully or in bad faith, the court may assess against the person that sought the appointment:

(i) the fees and expenses of the receivership, including reasonable attorney fees and costs; and

(ii) actual damages caused by the appointment, including reasonable attorney fees and costs.

Section 23. Section 78B-21-123 is enacted to read:

78B-21-123. Final report of receiver -- Discharge.

(1) On completion of a receiver's duties, the receiver shall file a final report including:

(a) a description of the activities of the receiver in the conduct of the receivership;

(b) a list of receivership property at the commencement of the receivership and any receivership property received during the receivership;

(c) a list of disbursements, including payments to professionals engaged by the receiver;

(d) a list of dispositions of receivership property;

(e) a list of distributions made or proposed to be made from the receivership for creditor claims;

(f) if not filed separately, a request for approval of the payment of fees and expenses of the receiver; and

(g) any other information required by the court.

(2) If the court approves a final report filed under Subsection (1) and the receiver distributes all receivership property, the receiver is discharged.

Section 24. Section 78B-21-124 is enacted to read:

78B-21-124. Receivership in another state -- Ancillary proceeding.

(1) The court may appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this state or subject to the jurisdiction of the court for which a receiver could be appointed under this chapter, if:

(a) the person or nominee would be eligible to serve as receiver under Section 78B-21-107; and

(b) the appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.

(2) The court may issue an order that gives effect to an order entered in another state appointing or directing a receiver.

(3) Unless the court orders otherwise, an ancillary receiver appointed under Subsection (1) has the rights, powers, and duties of a receiver appointed under this chapter.

Section 25. Section 78B-21-125 is enacted to read:

78B-21-125. Effect of enforcement by mortgagee.

(1) A request by a mortgagee for appointment of a receiver, the appointment of a receiver, or application by a mortgagee of receivership property or proceeds to the secured obligation does not:

(a) make the mortgagee a mortgagee in possession of the real property;

(b) make the mortgagee an agent of the owner;

(c) constitute an election of remedies that precludes a later action to enforce the secured obligation;

(d) make the secured obligation unenforceable;

(e) limit any right available to the mortgagee with respect to the secured obligation;

(f) constitute an action within the meaning of Section 78B-6-901; or

(g) except as otherwise provided in Subsection (2), bar a deficiency judgment pursuant to law of this state other than this chapter governing or relating to a deficiency judgment.

(2) If a receiver sells receivership property that pursuant to Subsection 78B-21-116(3) is free and clear of a lien, the ability of a creditor to enforce an obligation that had been secured by the lien is subject to law of the state other than this chapter relating to a deficiency judgment.

Section 26. Section 78B-21-126 is enacted to read:

78B-21-126. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to the law's subject matter among states that enact it.

Section 27. Section 78B-21-127 is enacted to read:

78B-21-127. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Section 28. Section 78B-21-128 is enacted to read:

78B-21-128. Transition.

This chapter does not apply to a receivership for which the receiver was appointed before May 9, 2017.

Section 29. Section 78B-21-129 is enacted to read:

78B-21-129. Finality of orders.

A court order that is entered pursuant to this chapter and that resolves a discrete factual dispute or legal issue is a final appealable order within the meaning of Utah Rules of Civil Procedure, Rule 54(a), unless expressly stated otherwise in the court order.

CHAPTER 432**S. B. 219**

Passed March 2, 2017

Approved March 25, 2017

Effective May 9, 2017

**PHARMACEUTICAL
PRODUCT AMENDMENTS**

Chief Sponsor: Brian E. Shiozawa

House Sponsor: Edward H. Redd

LONG TITLE**General Description:**

This bill amends a provision related to controlled substances.

Highlighted Provisions:

This bill:

- ▶ provides a schedule in the state Controlled Substances Act for cannabidiol in a drug product approved by the United States Food and Drug Administration.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

58-37-4, as last amended by Laws of Utah 2015, Chapter 258

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

Section 1. Section 58-37-4 is amended to read:**58-37-4. Schedules of controlled substances -- Schedules I through V -- Findings required -- Specific substances included in schedules.**

(1) There are established five schedules of controlled substances known as Schedules I, II, III, IV, and V which consist of substances listed in this section.

(2) Schedules I, II, III, IV, and V consist of the following drugs or other substances by the official name, common or usual name, chemical name, or brand name designated:

(a) Schedule I:

(i) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(B) Acetylmethadol;

(C) Allylprodine;

(D) Alphacetylmethadol, except levo-alphacetylmethadol also known as

levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(E) Alphameprodine;

(F) Alphamethadol;

(G) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(H) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(I) Benzylpiperazine;

(J) Benzethidine;

(K) Betacetylmethadol;

(L) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(M) Beta-hydroxy-3-methylfentanyl, other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(N) Betameprodine;

(O) Betamethadol;

(P) Betaprodine;

(Q) Clonitazene;

(R) Dextromoramide;

(S) Diampromide;

(T) Diethylthiambutene;

(U) Difenoxin;

(V) Dimenoxadol;

(W) Dimepheptanol;

(X) Dimethylthiambutene;

(Y) Dioxaphetyl butyrate;

(Z) Dipipanone;

(AA) Ethylmethylthiambutene;

(BB) Etonitazene;

(CC) Etoxidine;

(DD) Furethidine;

(EE) Hydroxypethidine;

(FF) Ketobemidone;

(GG) Levomoramide;

(HH) Levophenacymorphan;

(II) Morpheridine;

(JJ) MPPP (1-methyl-4-phenyl-4-propionoxy piperidine);

(KK) Noracymethadol;

(LL) Norlevorphanol;

(MM) Normethadone;

(NN) Norpipanone;

(OO) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

(PP) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(QQ) Phenadoxone;

(RR) Phenampromide;

(SS) Phenomorphan;

(TT) Phenoperidine;

(UU) Piritramide;

(VV) Proheptazine;

(WW) Propерidine;

(XX) Propiram;

(YY) Racemoramide;

(ZZ) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]- propanamide);

(AAA) Tilidine;

(BBB) Trimeperidine;

(CCC) 3-methylfentanyl, including the optical and geometric isomers (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide); and

(DDD) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide]).

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Acetorphine;

(B) Acetyldihydrocodeine;

(C) Benzylmorphine;

(D) Codeine methylbromide;

(E) Codeine-N-Oxide;

(F) Cyprenorphine;

(G) Desomorphine;

(H) Dihydromorphine;

(I) Drotebanol;

(J) Etorphine (except hydrochloride salt);

(K) Heroin;

(L) Hydromorphanol;

(M) Methyldesorphine;

(N) Methylhydromorphine;

(O) Morphine methylbromide;

(P) Morphine methylsulfonate;

(Q) Morphine-N-Oxide;

(R) Myrophine;

(S) Nicocodeine;

(T) Nicomorphine;

(U) Normorphine;

(V) Pholcodine; and

(W) Thebacon.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation; as used in this Subsection (2)(a)(iii) only, "isomer" includes the optical, position, and geometric isomers:

(A) Alpha-ethyltryptamine, some trade or other names: etryptamine; Monase; α -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; α -ET; and AET;

(B) 4-bromo-2,5-dimethoxy-amphetamine, some trade or other names: 4-bromo-2,5-dimethoxy- α -methylphenethylamine; 4-bromo-2,5-DMA;

(C) 4-bromo-2,5-dimethoxyphenethylamine, some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

(D) 2,5-dimethoxyamphetamine, some trade or other names: 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA;

(E) 2,5-dimethoxy-4-ethylamphetamine, some trade or other names: DOET;

(F) 4-methoxyamphetamine, some trade or other names: 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine, PMA;

(G) 5-methoxy-3,4-methylenedioxyamphetamine;

(H) 4-methyl-2,5-dimethoxy-amphetamine, some trade and other names: 4-methyl-2,5-dimethoxy- α -methylphenethylamine; "DOM"; and "STP";

(I) 3,4-methylenedioxy amphetamine;

(J) 3,4-methylenedioxymethamphetamine (MDMA);

(K) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl- α -methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

(L) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

(M) 3,4,5-trimethoxy amphetamine;

(N) Bufotenine, some trade and other names: 3-(Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(O) Diethyltryptamine, some trade and other names: N,N-Diethyltryptamine; DET;

(P) Dimethyltryptamine, some trade or other names: DMT;

(Q) Ibogaine, some trade and other names: 7-Ethyl-6,6,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; Tabernanthe iboga;

(R) Lysergic acid diethylamide;

(S) Marijuana;

(T) Mescaline;

(U) Parahexyl, some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl;

(V) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12));

(W) N-ethyl-3-piperidyl benzilate;

(X) N-methyl-3-piperidyl benzilate;

(Y) Psilocybin;

(Z) Psilocyn;

(AA) Tetrahydrocannabinols, naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: 1 cis or trans tetrahydrocannabinol, and their optical isomers 6 cis or trans tetrahydrocannabinol, and their optical isomers 3,4 cis or trans tetrahydrocannabinol, and its optical isomers, and since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered;

(BB) Ethylamine analog of phencyclidine, some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

(CC) Pyrrolidine analog of phencyclidine, some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(DD) Thiophene analog of phencyclidine, some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP; and

(EE) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, some other names: TCPy.

(iv) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Mecloqualone; and

(B) Methaqualone.

(v) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(A) Aminorex, some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(B) Cathinone, some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(C) Fenethylamine;

(D) Methcathinone, some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432, its salts, optical isomers, and salts of optical isomers;

(E) (̄n)cis-4-methylaminorex ((̄n)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(F) N-ethylamphetamine; and

(G) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

(vi) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their optical isomers, salts, and salts of isomers, subject to temporary emergency scheduling:

(A)

N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl); and

(B)

N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl).

(vii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any

quantity of gamma hydroxy butyrate (gamma hydrobutyric acid), including its salts, isomers, and salts of isomers.

(b) Schedule II:

(i) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including:

- (I) Raw opium;
- (II) Opium extracts;
- (III) Opium fluid;
- (IV) Powdered opium;
- (V) Granulated opium;
- (VI) Tincture of opium;
- (VII) Codeine;
- (VIII) Ethylmorphine;
- (IX) Etorphine hydrochloride;
- (X) Hydrocodone;
- (XI) Hydromorphone;
- (XII) Metopon;
- (XIII) Morphine;
- (XIV) Oxycodone;
- (XV) Oxymorphone; and
- (XVI) Thebaine;

(B) Any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of the substances referred to in Subsection (2)(b)(i)(A), except that these substances may not include the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation which is chemically equivalent or identical with any of these substances, and includes cocaine and ecgonine, their salts, isomers, derivatives, and salts of isomers and derivatives, whether derived from the coca plant or synthetically produced, except the substances may not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(E) Concentrate of poppy straw, which means the crude extract of poppy straw in either liquid, solid,

or powder form which contains the phenanthrene alkaloids of the opium poppy.

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation, except dextrorphan and levopropoxyphene:

- (A) Alfentanil;
- (B) Alphaprodine;
- (C) Anileridine;
- (D) Bezitramide;
- (E) Bulk dextropropoxyphene (nondosage forms);
- (F) Carfentanil;
- (G) Dihydrocodeine;
- (H) Diphenoxylate;
- (I) Fentanyl;
- (J) Isomethadone;
- (K) Levo-alpha-acetylmethadol, some other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
- (L) Levomethorphan;
- (M) Levorphanol;
- (N) Metazocine;
- (O) Methadone;
- (P) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (Q) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (R) Pethidine (meperidine);
- (S) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (T) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (U) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (V) Phenazocine;
- (W) Piminodine;
- (X) Racemethorphan;
- (Y) Racemorphan;
- (Z) Remifentanil; and
- (AA) Sufentanil.

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) Methamphetamine, its salts, isomers, and salts of its isomers;

(C) Phenmetrazine and its salts; and

(D) Methylphenidate.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Amobarbital;

(B) Glutethimide;

(C) Pentobarbital;

(D) Phencyclidine;

(E) Phencyclidine immediate precursors: 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC); and

(F) Secobarbital.

(v) (A) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of Phenylacetone.

(B) Some of these substances may be known by trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone.

(vi) Nabilone, another name for nabilone: (ñ)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

(c) Schedule III:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II, which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the Code of Federal Regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Clortermine; and

(E) Phendimetrazine.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of them, and one or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any salt of any of these drugs which is approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid or any salt of any of them;

(D) Chlorhexadol;

(E) Buprenorphine;

(F) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under the federal Food, Drug, and Cosmetic Act, Section 505;

(G) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine: ñ-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(H) Lysergic acid;

(I) Lysergic acid amide;

(J) Methyprylon;

(K) Sulfondiethylmethane;

(L) Sulfonethylmethane;

(M) Sulfonmethane; and

(N) Tiletamine and zolazepam or any of their salts, some trade or other names for a tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrzapon.

(iii) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product, some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

(iv) Nalorphine.

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or

their salts calculated as the free anhydrous base or alkaloid:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts; and

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(vi) Unless specifically excepted or unless listed in another schedule, anabolic steroids including any of the following or any isomer, ester, salt, or derivative of the following that promotes muscle growth:

- (A) Boldenone;
- (B) Chlorotestosterone (4-chlortestosterone);
- (C) Clostebol;
- (D) Dehydrochlormethyltestosterone;
- (E) Dihydrotestosterone (4-dihydrotestosterone);
- (F) Drostanolone;
- (G) Ethylestrenol;
- (H) Fluoxymesterone;
- (I) Formebolone (formebolone);
- (J) Mesterolone;

- (K) Methandienone;
- (L) Methandranone;
- (M) Methandriol;
- (N) Methandrostenolone;
- (O) Methenolone;
- (P) Methyltestosterone;
- (Q) Mibolerone;
- (R) Nandrolone;
- (S) Norethandrolone;
- (T) Oxandrolone;
- (U) Oxymesterone;
- (V) Oxymetholone;
- (W) Stanolone;
- (X) Stanozolol;
- (Y) Testolactone;
- (Z) Testosterone; and
- (AA) Trenbolone.

(vii) Anabolic steroids expressly intended for administration through implants to cattle or other nonhuman species, and approved by the Secretary of Health and Human Services for use, may not be classified as a controlled substance.

(d) Schedule IV:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, or any salts of any of them.

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Alprazolam;
- (B) Barbital;
- (C) Bromazepam;
- (D) Butorphanol;
- (E) Camazepam;
- (F) Carisoprodol;
- (G) Chloral betaine;
- (H) Chloral hydrate;
- (I) Chlordiazepoxide;
- (J) Clobazam;
- (K) Clonazepam;
- (L) Clorazepate;
- (M) Clotiazepam;

(N) Cloxazolam;
(O) Delorazepam;
(P) Diazepam;
(Q) Dichloralphenazone;
(R) Estazolam;
(S) Ethchlorvynol;
(T) Ethinamate;
(U) Ethyl loflazepate;
(V) Fludiazepam;
(W) Flunitrazepam;
(X) Flurazepam;
(Y) Halazepam;
(Z) Haloxazolam;
(AA) Ketazolam;
(BB) Loprazolam;
(CC) Lorazepam;
(DD) Lormetazepam;
(EE) Mebutamate;
(FF) Medazepam;
(GG) Meprobamate;
(HH) Methohexital;
(II) Methyphenobarbital (mephobarbital);
(JJ) Midazolam;
(KK) Nimetazepam;
(LL) Nitrazepam;
(MM) Nordiazepam;
(NN) Oxazepam;
(OO) Oxazolam;
(PP) Paraldehyde;
(QQ) Pentazocine;
(RR) Petrichloral;
(SS) Phenobarbital;
(TT) Pinazepam;
(UU) Prazepam;
(VV) Quazepam;
(WW) Temazepam;
(XX) Tetrazepam;
(YY) Triazolam;
(ZZ) Zaleplon; and
(AAA) Zolpidem.

(iii) Any material, compound, mixture, or preparation of fenfluramine which contains any quantity of the following substances, including its

salts, isomers whether optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible.

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers whether optical, position, or geometric isomers, and salts of the isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Cathine ((+)-norpseudoephedrine);

(B) Diethylpropion;

(C) Fencamfamine;

(D) Fenproporex;

(E) Mazindol;

(F) Mefenorex;

(G) Modafinil;

(H) Pemoline, including organometallic complexes and chelates thereof;

(I) Phentermine;

(J) Pipradrol;

(K) Sibutramine; and

(L) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(v) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane), including its salts.

(e) Schedule V:

(i) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, which includes one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(i) (A) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(ii) (B) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(iii) (C) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(iv) (D) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(v) (E) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

~~(vi)~~ (F) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

~~(vii)~~ (G) unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains Pyrovalerone having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers; and

~~(viii)~~ (H) all forms of Tramadol.

(ii) Cannabidiol in a drug product that is approved by the United States Food and Drug Administration.

CHAPTER 433**S. B. 230**

Passed March 7, 2017

Approved March 25, 2017

Effective May 9, 2017

SOLICITATION AMENDMENTS

Chief Sponsor: Todd Weiler
House Sponsor: Mike Winder

LONG TITLE**General Description:**

This bill makes changes to simplify the prosecution of prostitution.

Highlighted Provisions:

This bill:

- ▶ renames “house of prostitution” to “place of prostitution”;
- ▶ updates the definition of “sexual activity”;
- ▶ adds arranging a meeting for the purpose of sexual activity to the crime of prostitution;
- ▶ increases some penalties;
- ▶ requires the maximum fine be ordered upon conviction; and
- ▶ prohibits waiving or suspending the fine.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-10-1301, as last amended by Laws of Utah 2013, Chapter 196

76-10-1302, as last amended by Laws of Utah 2016, Chapter 109

76-10-1303, as last amended by Laws of Utah 2015, Chapter 363

76-10-1304, as last amended by Laws of Utah 2012, Chapter 56

76-10-1305, as last amended by Laws of Utah 2000, Chapter 1

76-10-1306, as last amended by Laws of Utah 2013, Chapter 196

76-10-1313, as last amended by Laws of Utah 2015, Chapter 363

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

Section 1. Section 76-10-1301 is amended to read:**76-10-1301. Definitions.**

For the purposes of this part:

(1) “Child” is a person younger than 18 years of age.

[3] (2) “Inmate” means a person who engages in prostitution in or through the agency of a [house] place of prostitution.

[2] (3) [“House”] “Place of prostitution” means a place or business where prostitution or promotion of prostitution is arranged, regularly carried on, or attempted by one or more persons under the control, management, or supervision of another.

(4) “Public place” means any place to which the public or any substantial group of the public has access.

(5) “Sexual activity” means, regardless of the gender of either participant:

(a) acts of masturbation, sexual intercourse, or any sexual act involving the genitals of one person and the mouth or anus of another person[; regardless of the sex of either participant]; or

(b) touching the genitals, female breast, or anus of one person with any other body part of another person with the intent to sexually arouse or gratify either person.

Section 2. Section 76-10-1302 is amended to read:**76-10-1302. Prostitution.**

(1) An individual is guilty of prostitution when the individual:

(a) engages, offers, or agrees to engage in any sexual activity with another individual for a fee, or the functional equivalent of a fee;

~~[(b) is an inmate of a house of prostitution; or]~~

(b) takes steps in arranging a meeting through any form of advertising, agreeing to meet, and meeting at an arranged place for the purpose of sexual activity in exchange for a fee or the functional equivalent of a fee; or

(c) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

(2) (a) Except as provided in Subsection (2)(b) or Section 76-10-1309, prostitution is a class B misdemeanor.

(b) Except as provided in Section 76-10-1309, an individual who is convicted a second time, and on all subsequent convictions, of a subsequent offense of prostitution under this section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor.

(3) (a) As used in this Subsection (3):

(i) “Child” means the same as that term is defined in Section 76-10-1301.

(ii) “Child engaged in prostitution” means a child who engages in conduct described in Subsection (1).

(iii) “Child engaged in sexual solicitation” means a child who offers or agrees to commit or engage in any sexual activity with another person for a fee or the functional equivalent of a fee under Subsection 76-10-1313(1)(a) or (c).

(iv) “Division” means the Division of Child and Family Services created in Section 62A-4a-103.

(v) “Receiving center” means the same as that term is defined in Section 62A-7-101.

(b) Upon encountering a child engaged in prostitution or sexual solicitation, a law enforcement officer shall:

(i) conduct an investigation;

- (ii) refer the child to the division;
 - (iii) if an arrest is made, bring the child to a receiving center, if available; and
 - (iv) contact the child's parent or guardian, if practicable.
- (c) When law enforcement has referred the child to the division under Subsection (3)(b)(ii):
- (i) the division shall provide services to the child under Title 62A, Chapter 4a, Child and Family Services; and
 - (ii) the child may not be subjected to delinquency proceedings under Title 62A, Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

Section 3. Section 76-10-1303 is amended to read:

76-10-1303. Patronizing a prostitute.

- (1) A person is guilty of patronizing a prostitute when the person:
- (a) pays or offers or agrees to pay another person a fee, or the functional equivalent of a fee, for the purpose of engaging in an act of sexual activity; or
 - (b) enters or remains in a [house] place of prostitution for the purpose of engaging in sexual activity.
- (2) Patronizing a prostitute is a class [B] A misdemeanor, except as provided in Subsection (3) [or], (4), or (5) and Section 76-10-1309.
- (3) A violation of this section that is preceded by a conviction under this section or a conviction under local ordinance adopted under Section 76-10-1307 is a class A misdemeanor.
- (4) A third violation of this section or a local ordinance adopted under Section 76-10-1307 is a third degree felony.
- [4] (5) If the patronizing of a prostitute under Subsection (1)(a) involves a child as the other person, a violation of Subsection (1)(a) is a third degree felony.
- (6) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Section 4. Section 76-10-1304 is amended to read:

76-10-1304. Aiding prostitution.

- (1) A person is guilty of aiding prostitution if the person:
- (a) (i) solicits a person to patronize a prostitute;
 - (ii) procures or attempts to procure a prostitute for a patron; or
 - (iii) leases, operates, or otherwise permits a place controlled by the actor, alone or in association with another, to be used for prostitution or the promotion of prostitution; or

(iv) provides any service or commits any act that enables another person to commit a violation of this Subsection (1)(a) or facilitates another person's ability to commit any violation of this Subsection (1)(a); or

(b) solicits, receives, or agrees to receive any benefit for committing any of the acts prohibited by Subsection (1)(a).

(2) Aiding prostitution is a class [B] A misdemeanor. However, a person who is convicted a second time, and on all subsequent convictions, under this section or under a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a [~~class A misdemeanor~~] third degree felony.

(3) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Section 5. Section 76-10-1305 is amended to read:

76-10-1305. Exploiting prostitution.

- (1) A person is guilty of exploiting prostitution if [he] the person:
- (a) procures [~~an inmate~~] a person for a [house] place of prostitution [~~or place in a house of prostitution for one who would be an inmate~~];
 - (b) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;
 - (c) transports a person into or within this state with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with that purpose;
 - (d) not being a child or legal dependent of a prostitute, shares the proceeds of prostitution with a prostitute pursuant to their understanding that he is to share therein; or
 - (e) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a [house] place of prostitution or a business where prostitution [business] occurs or is arranged, encouraged, supported, or promoted.
- (2) Exploiting prostitution is a felony of the third degree.
- (3) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Section 6. Section 76-10-1306 is amended to read:

76-10-1306. Aggravated exploitation of prostitution.

- (1) A person is guilty of aggravated exploitation if:
- (a) in committing an act of exploiting prostitution, as defined in Section 76-10-1305, the person uses any force, threat, or fear against any person;
 - (b) the person procured, transported, or persuaded or with whom the person shares the proceeds of prostitution is a child or is the spouse of the actor; or

(c) in the course of committing exploitation of prostitution, a violation of Section 76-10-1305, the person commits human trafficking or human smuggling, a violation of Section 76-5-308.

(2) Aggravated exploitation of prostitution is a second degree felony, except under Subsection (3).

(3) Aggravated exploitation of prostitution involving a child is a first degree felony.

(4) Upon a conviction for a violation of this section, the court shall order the maximum fine amount and may not waive or suspend the fine.

Section 7. Section 76-10-1313 is amended to read:

76-10-1313. Sexual solicitation -- Penalty.

(1) A person is guilty of sexual solicitation when the person:

(a) offers or agrees to commit any sexual activity with another person for a fee, or the functional equivalent of a fee;

(b) pays or offers or agrees to pay a fee or the functional equivalent of a fee to another person to commit any sexual activity; or

(c) with intent to engage in sexual activity for a fee or the functional equivalent of a fee or to pay another person to commit any sexual activity for a fee or the functional equivalent of a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any of the following acts:

(i) exposure of a person's genitals, the buttocks, the anus, the pubic area, or the female breast below the top of the areola;

(ii) masturbation;

(iii) touching of a person's genitals, the buttocks, the anus, the pubic area, or the female breast; or

(iv) any act of lewdness.

(2) An intent to engage in sexual activity for a fee may be inferred from a person's engaging in, offering or agreeing to engage in, or requesting or directing another to engage in any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

(3) (a) Sexual solicitation is a class B misdemeanor, except under Subsection (3)(b).

(b) Any person who is convicted a second or subsequent time under this section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

(4) If a person commits an act of sexual solicitation and the person solicited is a child, the offense is a third degree felony if the solicitation does not amount to human trafficking or human smuggling, a violation of Section 76-5-308, or aggravated human trafficking or aggravated human smuggling, a violation of Section 76-5-310.

CHAPTER 434**S. B. 232**

Passed March 7, 2017
 Approved March 25, 2017
 Effective May 9, 2017

CYBER EXPLOITATION AMENDMENTS

Chief Sponsor: Curtis S. Bramble
 House Sponsor: Steve Eliason

LONG TITLE**General Description:**

This bill amends and enacts provisions related to criminal sexual offenses.

Highlighted Provisions:

This bill:

- ▶ defines the crimes of sexual extortion and aggravated sexual extortion;
- ▶ provides criminal penalties for the crimes of sexual extortion and aggravated sexual extortion;
- ▶ provides that aggravated sexual extortion is a registerable offense under the Sex and Kidnap Offender Registry; and
- ▶ defines terms.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

77-41-102, as last amended by Laws of Utah 2016, Chapter 372
 77-41-106, as last amended by Laws of Utah 2015, Chapter 210

ENACTS:

76-5b-204, Utah Code Annotated 1953

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

Section 1. Section 76-5b-204 is enacted to read:**76-5b-204. Sexual extortion -- Penalties.**

(1) As used in this section:

(a) "Adult" means an individual 18 years of age or older.

(b) "Child" means any individual under the age of 18.

(c) "Distribute" means the same as that term is defined in Section 76-5b-203.

(d) "Intimate image" means the same as that term is defined in Section 76-5b-203.

(e) "Position of special trust" means the same as that term is defined in Section 76-5-401.1.

(f) "Sexually explicit conduct" means the same as that term is defined in Subsection 76-5b-203(1)(c).

(g) "Simulated sexually explicit conduct" means the same as that term is defined in Section 76-5b-203.

(h) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.

(2) An individual who is 18 years old or older commits the offense of sexual extortion if the individual:

(a) with an intent to coerce a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an image, video, or other recording of any individual naked or engaged in sexually explicit conduct, communicates in person or by electronic means a threat:

(i) to the victim's person, property, or reputation; or

(ii) to distribute an intimate image or video of the victim; or

(b) knowingly causes a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute any image, video, or other recording of any individual naked or engaged in sexually explicit conduct by means of a threat:

(i) to the victim's person, property, or reputation; or

(ii) to distribute an intimate image or video of the victim.

(3) (a) Sexual extortion is a third degree felony.

(b) Aggravated sexual extortion of an adult is a second degree felony.

(c) Aggravated sexual extortion of a child or a vulnerable adult is a first degree felony.

(4) An individual commits aggravated sexual extortion when, in conjunction with the offense described in Subsection (2), any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) the victim is a child or vulnerable adult;

(b) the offense was committed by the use of a dangerous weapon, as defined in Section 76-1-601, or by violence, intimidation, menace, fraud, or threat of physical harm, or was committed during the course of a kidnapping;

(c) the individual caused bodily injury or severe psychological injury to the victim during or as a result of the offense;

(d) the individual was a stranger to the victim or became a friend of the victim for the purpose of committing the offense;

(e) the individual, before sentencing for the offense, was previously convicted of any sexual offense;

(f) the individual occupied a position of special trust in relation to the victim;

(g) the individual encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other individual, or sexual performance by the victim before any other

individual, human trafficking, or human smuggling; or

(h) the individual caused the penetration, however slight, of the genital or anal opening of the victim by any part or parts of the human body, or by any other object.

(5) An individual commits a separate offense under this section:

(a) for each victim the individual subjects to the offense outlined in Subsection (2); and

(b) for each separate time the individual subjects a victim to the offense outlined Subsection (2).

(6) This section does not preclude an individual from being charged and convicted of a separate criminal act if the individual commits the separate criminal act while the individual violates or attempts to violate this section.

(7) An interactive computer service, as defined in 47 U.S.C. Sec. 230, is not subject to liability under this section related to content provided by a user of the interactive computer service.

Section 2. Section 77-41-102 is amended to read:

77-41-102. Definitions.

As used in this chapter:

(1) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in section 53-10-201.

(2) "Business day" means a day on which state offices are open for regular business.

(3) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification showing that the offender has met the requirements of Section 77-41-112.

(4) "Department" means the Department of Corrections.

(5) "Division" means the Division of Juvenile Justice Services.

(6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(7) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

(c) all Indian allotments, including the Indian allotments to which the Indian titles have not been

extinguished, including rights-of-way running through the allotments.

(8) "Jurisdiction" means any state, Indian Country, United States Territory, or any property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.

(9) "Kidnap offender" means any person other than a natural parent of the victim who:

(a) has been convicted in this state of a violation of:

(i) Subsection 76-5-301(1)(c) or (d), kidnapping;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-302, aggravated kidnapping;

(iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

(v) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i) through (iv);

(b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (9)(a) and who is:

(i) a Utah resident; or

(ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(c) (i) is required to register as a kidnap offender in any other jurisdiction of original conviction, who is required to register as a kidnap offender by any state, federal, or military court, or who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d) is a nonresident regularly employed or working in this state, or who is a student in this state, and was convicted of one or more offenses listed in Subsection (9), or any substantially equivalent offense in another jurisdiction, or as a result of the conviction, is required to register in the person's state of residence;

(e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (9); or

(f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days prior to the person's 21st birthday.

(10) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender as defined in Subsection (17).

(12) "Online identifier" or "Internet identifier":

(a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and

(b) does not include date of birth, social security number, PIN number, or Internet passwords.

(13) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.

(14) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

(15) "Registration website" means the Sex and Kidnap Offender Notification and Registration website described in Section 77-41-110 and the information on the website.

(16) "Secondary residence" means any real property that the offender owns or has a financial interest in, or any location where, in any 12-month period, the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.

(17) "Sex offender" means any person:

(a) convicted in this state of:

(i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

(ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10, 2011;

(iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

(iv) Section 76-5-401.1, sexual abuse of a minor, except under Subsection 76-5-401.1(3)(a);

(v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

(vi) Section 76-5-402, rape;

(vii) Section 76-5-402.1, rape of a child;

(viii) Section 76-5-402.2, object rape;

(ix) Section 76-5-402.3, object rape of a child;

(x) a felony violation of Section 76-5-403, forcible sodomy;

(xi) Section 76-5-403.1, sodomy on a child;

(xii) Section 76-5-404, forcible sexual abuse;

(xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

(xiv) Section 76-5-405, aggravated sexual assault;

(xv) Section 76-5-412, custodial sexual relations, when the person in custody is younger than 18 years of age, if the offense is committed on or after May 10, 2011;

(xvi) Section 76-5b-201, sexual exploitation of a minor;

(xvii) Section 76-5b-204, sexual extortion or aggravated sexual extortion;

~~(xvii)~~ (xviii) Section 76-7-102, incest;

~~(xviii)~~ (xix) Section 76-9-702, lewdness, if the person has been convicted of the offense four or more times;

~~(xix)~~ (xx) Section 76-9-702.1, sexual battery, if the person has been convicted of the offense four or more times;

~~(xx)~~ (xxi) any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1, sexual battery, that total four or more convictions;

~~(xxi)~~ (xxii) Section 76-9-702.5, lewdness involving a child;

~~(xxii)~~ (xxiii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;

~~(xxiii)~~ (xxiv) Section 76-10-1306, aggravated exploitation of prostitution; or

~~(xxiv)~~ (xxv) attempting, soliciting, or conspiring to commit any felony offense listed in Subsection (17)(a);

(b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (17)(a) and who is:

(i) a Utah resident; or

(ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;

(c) (i) who is required to register as a sex offender in any other jurisdiction of original conviction, who is required to register as a sex offender by any state, federal, or military court, or who would be required to register as a sex offender if residing in the jurisdiction of the original conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) who, in any 12-month period, is in the state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d) who is a nonresident regularly employed or working in this state or who is a student in this state and was convicted of one or more offenses listed in Subsection (17)(a), or any substantially equivalent

offense in any jurisdiction, or as a result of the conviction, is required to register in the person's jurisdiction of residence;

(e) who is found not guilty by reason of insanity in this state, or in any other jurisdiction of one or more offenses listed in Subsection (17)(a); or

(f) who is adjudicated delinquent based on one or more offenses listed in Subsection (17)(a) and who has been committed to the division for secure confinement for that offense and remains in the division's custody 30 days prior to the person's 21st birthday.

(18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.

Section 3. Section 77-41-106 is amended to read:

77-41-106. Registerable offenses.

Offenses referred to in Subsection 77-41-105(3)(c)(i) are:

(1) any offense listed in Subsection 77-41-102(9) or (17) if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection 77-41-102(9) or (17) or has previously been required to register as a sex offender for an offense committed as a juvenile;

(2) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:

(a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of the victim;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403.1, sodomy on a child;

(g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or

(h) Section 76-5-405, aggravated sexual assault;

(3) Section 76-4-401, a felony violation of enticing a minor over the Internet;

(4) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent of the victim;

(5) Section 76-5-403, forcible sodomy;

(6) Section 76-5-404.1, sexual abuse of a child;

(7) Section 76-5b-201, sexual exploitation of a minor; [ø]

(8) Subsection 76-5b-204(4), aggravated sexual extortion; or

[ø] (9) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10, 2011.

CHAPTER 435**S. B. 242**

Passed March 9, 2017

Approved March 25, 2017

Effective May 9, 2017

**GOVERNMENT RECORDS ACCESS
AND MANAGEMENT ACT AMENDMENTS**Chief Sponsor: Curtis S. Bramble
House Sponsor: James A. Dunnigan**LONG TITLE****General Description:**

This bill modifies provisions of the Government Records Access and Management Act.

Highlighted Provisions:

This bill:

- ▶ provides that a governmental entity is not required to respond to a record request from an individual who is confined in a correctional facility following conviction, with an exception;
- ▶ modifies the time a chief administrative officer has to make a decision on an appeal;
- ▶ prohibits a court from remanding to the State Records Committee a petition for review of a State Records Committee order; and
- ▶ modifies qualifications of members of a political subdivision appeals board.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63G-2-201, as last amended by Laws of Utah 2016, Chapter 410

63G-2-204, as last amended by Laws of Utah 2011, Chapter 340

63G-2-401, as last amended by Laws of Utah 2015, Chapter 335

63G-2-404, as last amended by Laws of Utah 2015, Chapter 335

63G-2-701, as last amended by Laws of Utah 2015, Chapter 335

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

Section 1. Section 63G-2-201 is amended to read:**63G-2-201. Right to inspect records and receive copies of records.**

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.

(2) A record is public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and

(b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.

(b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:

(i) there is no interest in restricting access to the record; or

(ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.

(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305(51) if:

(i) the head of the governmental entity, or a designee, determines that the disclosure:

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

(III) the public; and

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

(ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.

(6) (a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect it;

(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

(8) (a) In response to a request, a governmental entity is not required to:

(i) create a record;

(ii) compile, format, manipulate, package, summarize, or tailor information;

(iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;

(iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

(v) fill a person's records request if:

(A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;

(B) the governmental entity provides the person requesting the record with the public publication or product; and

(C) the governmental entity specifies where the record can be found in the public publication or product.

(b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:

(i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with Section 63G-2-203.

(9) (a) Notwithstanding any other provision of this chapter, and subject to Subsection (9)(b), a governmental entity is not required to respond to, or provide a record in response to, a record request if the request is submitted by or in behalf of an individual who is confined in a jail or other correctional facility following the individual's conviction.

(b) Subsection (9)(a) does not apply to:

(i) the first five record requests submitted to the governmental entity by or in behalf of an individual described in Subsection (9)(a) during any calendar year requesting only a record that contains a specific reference to the individual; or

(ii) a record request that is submitted by an attorney of an individual described in Subsection (9)(a).

[(9)] (10) (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

(i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and

(ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

(b) [When] If the requirements of Subsection [(9)] (10)(a) are met, the governmental entity may:

(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or

(ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

[(10)] (11) (a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the intellectual property right.

[(11)] (12) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.

[(12)] (13) Subject to the requirements of Subsection (8), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

(a) the person making the request requests or states a preference for an electronic copy;

(b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and

(c) the electronic copy of the record:

(i) does not disclose other records that are exempt from disclosure; or

(ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.

[(13)] (14) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals board, or court shall consider and weigh:

(a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and

(b) any public interests served by disclosure.

Section 2. Section 63G-2-204 is amended to read:

63G-2-204. Requests -- Time limit for response and extraordinary circumstances.

(1) A person making a request for a record shall furnish the governmental entity with a written request containing:

(a) the person's name, mailing address, and daytime telephone number, if available; and

(b) a description of the record requested that identifies the record with reasonable specificity.

(2) (a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.

(b) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit.

(c) If a governmental entity is prohibited from providing a record under Subsection (2)(b), it shall:

(i) deny the records request; and

(ii) inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, or retains the record.

(d) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(3) After receiving a request for a record, a governmental entity shall:

(a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and

(b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request benefits the public rather than the person:

(i) approve the request and provide a copy of the record;

(ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;

(iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or

(iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and include with the notice:

(A) a description of the circumstances that constitute the extraordinary circumstances; and

(B) the date when the records will be available, consistent with the requirements of Subsection (6).

(4) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

(5) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (6) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):

(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;

(b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;

(c) (i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or

(ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;

(d) the governmental entity is currently processing a large number of records requests;

(e) the request requires the governmental entity to review a large number of records to locate the records requested;

(f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;

(g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or

(h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

(6) If one of the extraordinary circumstances listed in Subsection (5) precludes approval or denial within the time specified in Subsection (3), the following time limits apply to the extraordinary circumstances:

(a) for claims under Subsection (5)(a), the governmental entity currently in possession of the

record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;

(b) for claims under Subsection (5)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;

(c) for claims under Subsections (5)(c), (d), and (e), the governmental entity shall:

(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request;

(iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible; and

(iv) for any person that does not establish a right to an expedited response as authorized by Subsection (3), a governmental entity may choose to:

(A) require the person to provide for copying of the records as provided in Subsection 63G-2-201~~(9)~~(10); or

(B) treat a request for multiple records as separate record requests, and respond sequentially to each request;

(d) for claims under Subsection (5)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;

(e) for claims under Subsection (5)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or

(f) for claims under Subsection (5)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.

(7) (a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall promptly forward the request to the appropriate office.

(b) If the request is forwarded promptly, the time limit for response begins when the record is received by the office specified by rule.

(8) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

Section 3. Section 63G-2-401 is amended to read:

63G-2-401. Appeal to chief administrative officer -- Notice of the decision of the appeal.

(1) (a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:

(i) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or

(ii) the record request is considered denied under Subsection 63G-2-204(8), if that subsection applies.

(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the date specified is unreasonable, the requester may appeal the governmental entity's claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a "determination" or its equivalent under Subsection 63G-2-204(8).

(2) A notice of appeal shall contain:

(a) the name, mailing address, and daytime telephone number of the requester or interested party; and

(b) the relief sought.

(3) The requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4) (a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:

(i) send notice of the appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and

(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester or interested party within three business days after receiving notice of the appeal.

(b) The business confidentiality claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5) (a) The chief administrative officer shall make a decision on the appeal within:

(i) (A) 10 business days after the chief administrative officer's receipt of the notice of appeal; or

(B) five business days after the chief administrative officer's receipt of the notice of appeal, if the requester or interested party demonstrates that an expedited decision benefits the public rather than the requester or interested party; or

(ii) 12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.

(b) (i) If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the access denial.

(ii) If the chief administrative officer fails to make a decision on an appeal under Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the claim of extraordinary circumstances or the reasonableness of the date specified when the records will be available.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

(6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.

(7) (a) The governmental entity shall send written notice of the chief administrative officer's decision to all participants.

(b) If the chief administrative officer's decision is to affirm the access denial in whole or in part, the notice under Subsection (7)(a) shall include:

(i) a statement that the requester or interested party has the right to appeal the decision, as provided in Section 63G-2-402, to:

(A) the records committee or district court; or

(B) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;

(ii) the time limits for filing an appeal; and

(iii) the name and business address of:

(A) the executive secretary of the records committee; and

(B) the individual designated as the contact individual for the appeals board, if the

governmental entity is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c).

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the decision on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The duties of the chief administrative officer under this section may be delegated.

Section 4. Section 63G-2-404 is amended to read:

63G-2-404. Judicial review.

(1) (a) A petition for judicial review of an order or decision, as allowed under this part or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days after the date of the order or decision.

(b) The records committee is a necessary party to a petition for judicial review of a records committee order.

(c) The executive secretary of the records committee shall be served with notice of a petition for judicial review of a records committee order, in accordance with the Utah Rules of Civil Procedure.

(2) A petition for judicial review is a complaint governed by the Utah Rules of Civil Procedure and shall contain:

(a) the petitioner's name and mailing address;

(b) a copy of the records committee order from which the appeal is taken, if the petitioner is seeking judicial review of an order of the records committee;

(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;

(d) a request for relief specifying the type and extent of relief requested; and

(e) a statement of the reasons why the petitioner is entitled to relief.

(3) If the appeal is based on the denial of access to a protected record based on a claim of business confidentiality, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.

(4) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(5) The district court may review the disputed records. The review shall be in camera.

(6) (a) The court shall:

~~[(a)]~~ (i) make ~~[its]~~ the court's decision de novo, but, for a petition seeking judicial review of a records committee order, allow introduction of evidence presented to the records committee;

~~(f)~~ (ii) determine all questions of fact and law without a jury; and

(e) (iii) decide the issue at the earliest practical opportunity.

(b) In a court's review and decision of a petition seeking judicial review of a records committee order, the court may not remand the petition to the records committee for any additional proceedings.

(7) (a) Except as provided in Section 63G-2-406, the court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access is greater than or equal to the interest favoring restriction of access.

(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of other protected records.

Section 5. Section 63G-2-701 is amended to read:

63G-2-701. Political subdivisions may adopt ordinances in compliance with chapter -- Appeal process.

(1) As used in this section:

(a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

(b) "Interested party" means the same as that term is defined in Section 63G-2-400.5.

(c) "Requester" means the same as that term is defined in Section 63G-2-400.5.

(2) (a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.

(b) The ordinance or policy shall comply with the criteria set forth in this section.

(c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.

(d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

(e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.

(f) The political subdivision shall also report to the state archives all retention schedules, and all designations and classifications applied to record series maintained by the political subdivision.

(g) The report required by Subsection (2)(f) is notification to state archives of the political subdivision's retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state's retention schedule for the records and shall maintain the records if requested to do so under Subsection 63A-12-105(2).

(3) Each ordinance or policy relating to information practices shall:

(a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3, Classification;

(b) require the classification of the records of the political subdivision in accordance with those standards;

(c) provide guidelines for establishment of fees in accordance with Section 63G-2-203; and

(d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63A-12-103.

(4) (a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.

(b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63G-2-204 and Part 4, Appeals, if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.

(5) (a) A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions.

(b) A political subdivision's appeals process shall include a process for a requester or interested party to appeal an access denial to a person designated by the political subdivision as the chief administrative officer for purposes of an appeal under Section 63G-2-401.

(c) (i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief administrative officer affirming an access denial.

(ii) An appeals board established by a political subdivision shall be composed of three members:

(A) one of whom shall be an employee of the political subdivision; and

(B) two of whom shall be members of the public who are not employed by or officials of a

governmental entity, at least one of whom shall have professional experience with requesting or managing records.

(iii) If a political subdivision establishes an appeals board, any appeal of a decision of a chief administrative officer shall be made to the appeals board.

(iv) If a political subdivision does not establish an appeals board, the political subdivision's appeals process shall provide for an appeal of a chief administrative officer's decision to the records committee, as provided in Section 63G-2-403.

(6) (a) A political subdivision or requester may appeal an appeals board decision:

(i) to the records committee, as provided in Section 63G-2-403; or

(ii) by filing a petition for judicial review with the district court.

(b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.

(c) A person who appeals an appeals board decision to the records committee does not lose or waive the right to seek judicial review of the decision of the records committee.

(7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall forward to state archives a copy and summary description of the ordinance or policy.

CHAPTER 436**S. B. 277**

Passed March 7, 2017

Approved March 25, 2017

Effective July 1, 2017

**HIGHWAY GENERAL OBLIGATION
BONDS AUTHORIZATION**

Chief Sponsor: Wayne A. Harper
 House Sponsor: Francis D. Gibson
 Cosponsors: J. Stuart Adams

Jacob L. Anderegg
 D. Gregg Buxton
 Lincoln Fillmore
 Daniel Hemmert
 David P. Hinkins
 Don L. Ipson
 Peter C. Knudson
 Karen Mayne
 Wayne L. Niederhauser
 Ralph Okerlund
 Daniel W. Thatcher
 Kevin T. Van Tassel
 Evan J. Vickers

LONG TITLE**General Description:**

This bill enacts and amends provisions relating to transportation funding.

Highlighted Provisions:

This bill:

- ▶ authorizes the issuance of general obligation bonds to pay for certain state highway construction or reconstruction projects;
- ▶ authorizes the issuance of general obligation bonds to pay for certain state or local highway construction or reconstruction projects, transportation facilities, or multimodal transportation projects in a county of the first class;
- ▶ specifies the use of general obligation bond proceeds and the manner of issuance;
- ▶ exempts certain general obligation bonds from certain debt limitation provisions;
- ▶ requires the Department of Transportation and the Transportation Commission to report the amount of bonds needed to fund certain projects in the next fiscal year to the Executive Appropriations Committee of the Legislature before the bonds may be issued; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 63B-1-306, as last amended by Laws of Utah 2009, Chapters 241 and 275
 63J-3-402, as last amended by Laws of Utah 2009, Chapters 241 and 275
 72-2-121, as last amended by Laws of Utah 2016, Chapter 12
 72-2-124, as last amended by Laws of Utah 2016, Chapters 137 and 291

ENACTS:

- 63B-27-101, Utah Code Annotated 1953
 63B-27-102, Utah Code Annotated 1953

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

Section 1. Section 63B-1-306 is amended to read:**63B-1-306. Obligations issued by authority -- Limitation of liability on obligations -- Limitation on amount of obligations issued.**

(1) (a) All obligations issued by the authority under this part shall be limited obligations of the authority and may not constitute, nor give rise to, a general obligation or liability of, nor a charge against the general credit or taxing power of, this state or any of its political subdivisions.

(b) This limitation shall be plainly stated upon all obligations.

(2) (a) No authority obligations incurred under this section may be issued in an amount exceeding the difference between the total indebtedness of the state and an amount equal to 1-1/2% of the value of the taxable property of the state.

(b) Debt issued under authority of the following parts or sections may not be included as part of the total indebtedness of the state of Utah in determining the debt limit established by this Subsection (2):

(i) Title 63B, Chapter 6, Part 2, 1997 Highway General Obligation Bond Authorization;

(ii) Title 63B, Chapter 6, Part 3, 1997 Highway Bond Anticipation Note Authorization;

(iii) Title 63B, Chapter 7, Part 2, 1998 Highway General Obligation Bond Authorization;

(iv) Title 63B, Chapter 7, Part 3, 1998 Highway Bond Anticipation Note Authorization;

(v) Title 63B, Chapter 8, Part 2, 1999 Highway General Obligation Bond Authorization;

(vi) Title 63B, Chapter 8, Part 3, 1999 Highway Bond Anticipation Note Authorization;

(vii) Title 63B, Chapter 9, Part 2, 2000 Highway General Obligation Bond;

(viii) Title 63B, Chapter 10, Part 1, 2001 Highway General Obligation Bonds;

(ix) Title 63B, Chapter 10, Part 2, 2001 Highway General Obligation Bond Anticipation Notes Authorization;

(x) Title 63B, Chapter 11, Part 5, 2002 Highway General Obligation Bonds for Salt Lake County;

(xi) Title 63B, Chapter 11, Part 6, 2002 Highway General Obligation Bond Anticipation Notes for Salt Lake County;

(xii) Section 63B-13-102;

(xiii) Section 63B-16-101;

(xiv) Section 63B-16-102;

(xv) Section 63B-18-401; ~~and~~

(xvi) Section 63B-18-402[-]; and

(xvii) Title 63B, Chapter 27, Part 1, 2017 Highway General Obligation Bonds.

(c) Debt issued under authority of Section 63B-7-503 may not be included as part of the total indebtedness of the state in determining the debt limit established by this Subsection (2).

(3) The obligations shall be authorized by resolution of the authority, following approval of the Legislature, and may:

(a) be executed and delivered at any time, and from time to time, as the authority may determine;

(b) be sold at public or private sale in the manner and at the prices, either at, in excess of, or below their face value and at the times that the authority determines;

(c) be in the form and denominations that the authority determines;

(d) be of the tenor that the authority determines;

(e) be in registered or bearer form either as to principal or interest or both;

(f) be payable in those installments and at the times that the authority determines;

(g) be payable at the places, either within or without this state, that the authority determines;

(h) bear interest at the rate or rates, payable at the place or places, and evidenced in the manner, that the authority determines;

(i) be redeemable before maturity, with or without premium;

(j) contain any other provisions not inconsistent with this part that are considered to be for the best interests of the authority and provided for in the proceedings of the authority under which the bonds are authorized to be issued; and

(k) bear facsimile signatures and seals.

(4) The authority may pay any expenses, premiums, or commissions, that it considers necessary or advantageous in connection with the authorization, sale, and issuance of these obligations, from the proceeds of the sale of the obligations or from the revenues of the projects involved.

Section 2. Section 63B-27-101 is enacted to read:

CHAPTER 27. 2017 BONDING AND FINANCING AUTHORIZATIONS

Part 1. 2017 Highway General Obligation Bonds

63B-27-101. Highway bonds -- Maximum amount -- Use of proceeds for highway projects.

(1) (a) Subject to the restriction in Subsection (1)(c), the total amount of bonds issued under this section may not exceed \$1,000,000,000.

(b) When the Department of Transportation certifies to the commission that the requirements of Subsection 72-2-124(5) have been met and certifies the amount of bond proceeds that the commission needs to provide funding for the projects described in Subsection (2) for the current or next fiscal year, the commission may issue and sell general obligation bonds in an amount equal to the certified amount plus costs of issuance.

(c) The commission may not issue general obligation bonds authorized under this section if the issuance of the general obligation bonds would result in the total current outstanding general obligation debt of the state exceeding 50% of the limitation described in the Utah Constitution, Article XIV, Section 1.

(2) Except as provided in Subsection (3), proceeds from the issuance of bonds shall be provided to the Department of Transportation to pay all or part of the costs of the following state highway construction or reconstruction projects:

(a) state and federal highways prioritized by the Transportation Commission through the prioritization process for new transportation capacity projects adopted under Section 72-1-304, giving priority consideration for projects with a regional significance or that support economic development within the state, including:

(i) projects that are prioritized but exceed available cash flow beyond the normal programming horizon; or

(ii) projects prioritized in the state highway construction program; and

(b) \$100,000,000 to be used by the Department of Transportation for transportation improvements as prioritized by the Transportation Commission for projects that:

(i) have a significant economic development impact associated with recreation and tourism within the state; and

(ii) address significant needs for congestion mitigation.

(3) Nineteen million dollars of the bond proceeds issued under this section shall be provided to the Transportation Infrastructure Loan Fund created by Section 72-2-202 to make funds available for a transportation infrastructure loan or transportation infrastructure assistance under

Title 72, Chapter 2, Part 2, Transportation Infrastructure Loan Fund, as follows:

(a) \$10,000,000 to the military installation development authority created in Section 63H-1-201;

(b) \$5,000,000 for right-of-way acquisition and highway construction in Davis County; and

(c) \$4,000,000 for pedestrian access and crossings by a public transit fixed guideway rail station and an institution of higher education.

(4) The bond proceeds issued under this section shall be provided to the Department of Transportation.

(5) The costs under Subsection (2) may include the costs of studies necessary to make transportation infrastructure improvements, the costs of acquiring land, interests in land, and easements and rights-of-way, the costs of improving sites, and making all improvements necessary, incidental, or convenient to the facilities, and the costs of interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, interest estimated to accrue on any bond anticipation notes issued under the authority of this title, and all related engineering, architectural, and legal fees.

(6) The commission or the state treasurer may make any statement of intent relating to a reimbursement that is necessary or desirable to comply with federal tax law.

(7) The Department of Transportation may enter into agreements related to the projects described in Subsection (2) before the receipt of proceeds of bonds issued under this section.

Section 3. Section 63B-27-102 is enacted to read:

63B-27-102. Highway bonds -- Maximum amount -- Use of proceeds for highway projects.

(1) (a) Subject to the restriction in Subsection (1)(c), the total amount of bonds issued under this section may not exceed \$47,000,000.

(b) When the Department of Transportation certifies to the commission the amount of bond proceeds that the commission needs to provide funding for the projects described in Subsection (2), the commission may issue and sell general obligation bonds in an amount equal to the certified amount plus costs of issuance.

(c) The commission may not issue general obligation bonds authorized under this section if the issuance of the general obligation bonds would result in the total current outstanding general obligation debt of the state exceeding 50% of the limitation described in the Utah Constitution, Article XIV, Section 1.

(2) (a) Proceeds from the bonds issued under this section shall be provided to the Department of Transportation to pay for or to provide funds to a municipality or county to pay for the costs of right-of-way acquisition, construction, reconstruction, renovations, or improvements to highways, transportation facilities, or multimodal transportation projects described in Subsection (2)(b).

(b) Bond proceeds described under Subsection (2)(a) shall be used to pay for state and local highway projects or transportation facilities or multimodal transportation projects described in Subsection 72-2-121(4)(c) in Salt Lake County prioritized by the county.

(c) The costs under this Subsection (2) may include the costs of acquiring land, interests in land, and easements and rights-of-way, the costs of improving sites, and making all improvements necessary, incidental, or convenient to the facilities, and the costs of interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, interest estimated to accrue on any bond anticipation notes issued under the authority of this title, and all related engineering, architectural, and legal fees.

(3) The commission or the state treasurer may make any statement of intent relating to a reimbursement that is necessary or desirable to comply with federal tax law.

(4) The Department of Transportation may enter into agreements related to the project before the receipt of proceeds of bonds issued under this chapter.

Section 4. Section 63J-3-402 is amended to read:

63J-3-402. Debt limitation -- Vote requirement needed to exceed limitation -- Exceptions.

(1) (a) Except as provided in Subsection (1)(b), the outstanding general obligation debt of the state may not exceed 45% of the maximum allowable appropriations limit unless approved by more than a two-thirds vote of both houses of the Legislature.

(b) Notwithstanding the limitation contained in Subsection (1)(a), debt issued under the authority of the following parts or sections is not subject to the debt limitation established by this section:

(i) Title 63B, Chapter 6, Part 2, 1997 Highway General Obligation Bond Authorization;

(ii) Title 63B, Chapter 6, Part 3, 1997 Highway Bond Anticipation Note Authorization;

(iii) Title 63B, Chapter 7, Part 2, 1998 Highway General Obligation Bond Authorization;

(iv) Title 63B, Chapter 7, Part 3, 1998 Highway Bond Anticipation Note Authorization;

(v) Title 63B, Chapter 8, Part 2, 1999 Highway General Obligation Bond Authorization;

(vi) Title 63B, Chapter 8, Part 3, 1999 Highway Bond Anticipation Note Authorization;

(vii) Title 63B, Chapter 9, Part 2, 2000 Highway General Obligation Bond;

(viii) Title 63B, Chapter 10, Part 1, 2001 Highway General Obligation Bonds;

(ix) Title 63B, Chapter 10, Part 2, 2001 Highway General Obligation Bond Anticipation Notes Authorization;

(x) Title 63B, Chapter 11, Part 5, 2002 Highway General Obligation Bonds for Salt Lake County;

(xi) Title 63B, Chapter 11, Part 6, 2002 Highway General Obligation Bond Anticipation Notes for Salt Lake County [~~Authorization~~];

(xii) Section 63B-13-102;

(xiii) Section 63B-16-101;

(xiv) Section 63B-16-102;

(xv) Section 63B-18-401; [~~and~~]

(xvi) Section 63B-18-402[-]; and

(xvii) Title 63B, Chapter 27, Part 1, 2017 Highway General Obligation Bonds.

(2) This section does not apply if contractual rights will be impaired.

Section 5. Section 72-2-121 is amended to read:

72-2-121. County of the First Class Highway Projects Fund.

(1) There is created a special revenue fund within the Transportation Fund known as the "County of the First Class Highway Projects Fund."

(2) The fund consists of money generated from the following revenue sources:

(a) any voluntary contributions received for new construction, major renovations, and improvements to highways within a county of the first class;

(b) the portion of the sales and use tax described in Subsection 59-12-2214(3)(b) deposited in or transferred to the fund;

(c) the portion of the sales and use tax described in Subsection 59-12-2217(2)(b) and required by Subsection 59-12-2217(8)(b) to be deposited in or transferred to the fund; and

(d) a portion of the local option highway construction and transportation corridor preservation fee imposed in a county of the first class under Section 41-1a-1222 deposited in or transferred to the fund.

(3) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(4) The executive director shall use the fund money only:

(a) to pay debt service and bond issuance costs for bonds issued under Sections 63B-16-102 [~~and~~], 63B-18-402, and 63B-27-102;

(b) for right-of-way acquisition, new construction, major renovations, and improvements to highways within a county of the first class and to pay any debt service and bond issuance costs related to those projects, including improvements to a highway located within a municipality in a county of the first class where the municipality is located within the boundaries of more than a single county;

(c) for the construction, acquisition, use, maintenance, or operation of:

(i) an active transportation facility for nonmotorized vehicles;

(ii) multimodal transportation that connects an origin with a destination; or

(iii) a facility that may include a:

(A) pedestrian or nonmotorized vehicle trail;

(B) nonmotorized vehicle storage facility;

(C) pedestrian or vehicle bridge; or

(D) vehicle parking lot or parking structure;

(d) for fiscal year 2012-13 only, to pay for or to provide funds to a municipality or county to pay for a portion of right-of-way acquisition, construction, reconstruction, renovations, and improvements to highways described in Subsections 72-2-121.4(7), (8), and (9);

(e) to transfer to the 2010 Salt Lake County Revenue Bond Sinking Fund created by Section 72-2-121.3 the amount required in Subsection 72-2-121.3(4)(c) minus the amounts transferred in accordance with Subsection 72-2-124(4)(a)(iv);

(f) for a fiscal year beginning on or after July 1, 2013, to pay debt service and bond issuance costs for \$30,000,000 of the bonds issued under Section 63B-18-401 for the projects described in Subsection 63B-18-401(4)(a);

(g) for a fiscal year beginning on or after July 1, 2013, and after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund, to transfer an amount equal to 50% of the revenue generated by the local option highway construction and transportation corridor preservation fee imposed under Section 41-1a-1222 in a county of the first class:

(i) to the legislative body of a county of the first class; and

(ii) to be used by a county of the first class for:

(A) highway construction, reconstruction, or maintenance projects; or

(B) the enforcement of state motor vehicle and traffic laws;

(h) for fiscal year 2015 only, and after the department has verified that the amount required

under Subsection 72-2-121.3(4)(c) is available in the fund and the transfer under Subsection (4)(f) has been made, to transfer an amount equal to the remainder of the revenue available in the fund for the 2015 fiscal year:

(i) to the legislative body of a county of the first class; and

(ii) to be used by a county of the first class for:

(A) highway construction, reconstruction, or maintenance projects; or

(B) the enforcement of state motor vehicle and traffic laws;

(i) for fiscal year 2015-16 only, and after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund and the transfer under Subsection (4)(f) has been made, to transfer an amount equal to \$25,000,000:

(i) to the legislative body of a county of the first class; and

(ii) to be used by the county for the purposes described in this section;

(j) for a fiscal year beginning on or after July 1, 2015, after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund and the transfer under Subsection (4)(f) has been made, to annually transfer an amount equal to up to 42.5% of the sales and use tax revenue imposed in a county of the first class and deposited into the fund in accordance with Subsection 59-12-2214(3)(b) to:

(i) the appropriate debt service or sinking fund for the repayment of bonds issued under Section 63B-27-102; and

(ii) the Transportation Investment Fund of 2005 created in Section 72-2-124 until \$28,079,000 has been deposited into the Transportation Investment Fund of 2005; and

(k) for a fiscal year beginning after the amount described in Subsection (4)(j) has been repaid to the Transportation Investment Fund of 2005 until fiscal year 2030, ~~and~~ after the department has verified that the amount required under Subsection 72-2-121.3(4)(c) is available in the fund and the transfer under Subsection (4)(f) has been made, and after the bonds under Section 63B-27-102 have been repaid, to annually transfer an amount equal to up to 42.5% of the sales and use tax revenue imposed in a county of the first class and deposited into the fund in accordance with Subsection 59-12-2214(3)(b):

(i) to the legislative body of a county of the first class; and

(ii) to be used by the county for the purposes described in this section.

(5) The revenues described in Subsections (2)(b), (c), and (d) that are deposited in the fund and bond proceeds from bonds issued under Sections 63B-16-102 ~~and~~, 63B-18-402, and 63B-27-102

are considered a local matching contribution for the purposes described under Section 72-2-123.

(6) The additional administrative costs of the department to administer this fund shall be paid from money in the fund.

(7) Notwithstanding any statutory or other restrictions on the use or expenditure of the revenue sources deposited into this fund, the Department of Transportation may use the money in this fund for any of the purposes detailed in Subsection (4).

Section 6. Section 72-2-124 is amended to read:

72-2-124. Transportation Investment Fund of 2005.

(1) There is created a capital projects fund entitled the Transportation Investment Fund of 2005.

(2) The fund consists of money generated from the following sources:

(a) any voluntary contributions received for the maintenance, construction, reconstruction, or renovation of state and federal highways;

(b) appropriations made to the fund by the Legislature;

(c) the sales and use tax revenues deposited into the fund in accordance with Section 59-12-103;

(d) registration fees designated under Section 41-1a-1201; and

(e) revenues transferred to the fund in accordance with Section 72-2-106.

(3) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(4) (a) Except as provided in Subsection (4)(b), the executive director may use fund money only to pay:

(i) the costs of maintenance, construction, reconstruction, or renovation to state and federal highways prioritized by the Transportation Commission through the prioritization process for new transportation capacity projects adopted under Section 72-1-304;

(ii) the costs of maintenance, construction, reconstruction, or renovation to the highway projects described in Subsections 63B-18-401(2), (3), and (4);

(iii) principal, interest, and issuance costs of bonds authorized by Section 63B-18-401 minus the costs paid from the County of the First Class Highway Projects Fund in accordance with Subsection 72-2-121(4)(f);

(iv) for a fiscal year beginning on or after July 1, 2013, to transfer to the 2010 Salt Lake County Revenue Bond Sinking Fund created by Section 72-2-121.3 the amount certified by Salt Lake County in accordance with Subsection 72-2-121.3(4)(c) as necessary to pay the debt service on \$30,000,000 of the revenue bonds issued by Salt Lake County;

(v) principal, interest, and issuance costs of bonds authorized by Section 63B-16-101 for projects prioritized in accordance with Section 72-2-125;

(vi) all highway general obligation bonds that are intended to be paid from revenues in the Centennial Highway Fund created by Section 72-2-118; and

(vii) for fiscal year 2015-16 only, to transfer \$25,000,000 to the County of the First Class Highway Projects Fund created in Section 72-2-121 to be used for the purposes described in Section 72-2-121.

(b) The executive director may use fund money to exchange for an equal or greater amount of federal transportation funds to be used as provided in Subsection (4)(a).

(5) (a) Before bonds authorized by Section 63B-18-401 or 63B-27-101 may be issued in any fiscal year, the department and the commission shall appear before the Executive Appropriations Committee of the Legislature and present the amount of bond proceeds that the department needs to provide funding for the projects identified in Subsections 63B-18-401(2), (3), and (4) or Subsection 63B-27-101(2) for the current or next fiscal year.

(b) The Executive Appropriations Committee of the Legislature shall review and comment on the amount of bond proceeds needed to fund the projects.

(6) The Division of Finance shall, from money deposited into the fund, transfer the amount of funds necessary to pay principal, interest, and issuance costs of bonds authorized by Section 63B-18-401 or 63B-27-101 in the current fiscal year to the appropriate debt service or sinking fund.

Section 7. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 437

H.B. 3

Passed March 7, 2017
Approved March 28, 2017
Effective March 28, 2017

CURRENT FISCAL YEAR
SUPPLEMENTAL APPROPRIATIONS

Chief Sponsor: Dean Sanpei
Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill supplements or reduces appropriations previously provided for the use and operation of state government for the fiscal year beginning July 1, 2016 and ending June 30, 2017.

Highlighted Provisions:

This bill:

- provides appropriations for the use and support of higher education and certain state agencies;
provides appropriations for other purposes as described; and
provides intent language.

Money Appropriated in this Bill:

This bill appropriates \$211,182,600 in operating and capital budgets for fiscal year 2017, including:

- (\$3,984,700) from the General Fund;
\$215,167,300 from various sources as detailed in this bill.

This bill appropriates (\$3,144,400) in expendable funds and accounts for fiscal year 2017.

This bill appropriates \$46,682,500 in capital project funds for fiscal year 2017.

Other Special Clauses:

This bill takes effect immediately.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2017 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2016 and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

EXECUTIVE OFFICES AND
CRIMINAL JUSTICE

GOVERNOR'S OFFICE

Item 1

To Governor's Office
From General Fund, One-Time 175,000

From Dedicated Credits Revenue,
One-Time 12,500
Schedule of Programs:
Lt. Governor's Office 175,000
Literacy Projects 12,500

Under section 63J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$600,000 provided for the Governor's Office in Item 7 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any funds is limited to one-time expenditures of the Governor and Lieutenant Governors Offices.

Item 2

To Governor's Office - Constitutional Defense Council

Under section 63J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$300,000 provided for the Governor's Office - Constitutional Defense Council in Item 27 of Chapter 417 Laws of Utah 2012 not lapse at the close of Fiscal Year 2017. The use of any funds is limited to one-time expenditures related to the Constitutional Defense Council.

Item 3

To Governor's Office - Character Education

Under section of 63J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$300,000 provided for the Governor's Office - Character Education in Item 8 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any funds is limited to grants awarded by the Commission on Civic and Character Education.

Item 4

To Governor's Office - Indigent Defense Commission

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Commission on Criminal and Juvenile Justice Indigent Defense Commission in Chapter 177 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. Indigent Defense Appropriations are non-lapsing under 77-32-805 (2) (b).

Item 5

To Governor's Office - Emergency Fund

Under section of 63J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$100,100 provided for the Governor's Office - Emergency Fund in Item 9 or Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any funds is limited to emergency expenditures.

Item 6

To Governor's Office - School Readiness Initiative

Under section 63J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$5,000,000 provided for the Governor's Office - School Readiness Initiative in Item 10 of Chapter 4 Laws of Utah 2016 not lapse

at the close of Fiscal Year 2017. The use of any funds is limited to expenditures for the school readiness and pay for success program including grants, administration, evaluation, and investor repayment.

Item 7

To Governor’s Office – Governor’s Office of Management and Budget
From General Fund, One-Time 150,000
Schedule of Programs:
Administration 50,000
Prison Relocation 100,000

Under section 63J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$1,300,000 provided for the Governor’s Office – Governor’s Office of Management and Budget in Item 11 or Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any funds is limited to one-time expenditures of the Governors Office of Management and Budget.

Under section 63J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$250,000 provided for the Governor’s Office – Governor’s Office of Management and Budget in Item 2 of Chapter 395 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any funds is limited to the same purposes of the original appropriation.

Item 8

To Governor’s Office – Commission on Criminal and Juvenile Justice

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations of up to \$2,422,000 provided for the Commission on Criminal and Juvenile Justice in item 13 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. These funds will be limited to employee incentives, one-time remodeling costs, equipment purchases, one-time DTS projects, research and development contracts, extradition costs, meeting and travel costs, state pass through grant programs.

Item 9

To Governor’s Office – CCJJ Factual Innocence Payments

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Commission on Criminal and Juvenile Justice – Factual Innocence payments in Item 14 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. Factual Innocence are non-lapsing under 78B-9-405 (2) (b), and may only be used for court ordered and legislatively appropriated factual Innocence payments.

Item 10

To Governor’s Office – CCJJ Jail Reimbursement

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$300,000 of the ongoing General Funds provided for the Commission on Criminal and Juvenile

Justice – Jail Reimbursement in Item 15 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. These funds will be limited to Jail Reimbursement payments to counties.

OFFICE OF THE STATE AUDITOR

Item 11

To Office of the State Auditor – State Auditor

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Office of the State Auditor in Item 16, Chapter 4, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017.

STATE TREASURER

Item 12

To State Treasurer

Under Section 63-J-1-603 of the Utah Code, the Legislature intends that appropriations of up to \$400,000 provided for the Office of the State Treasurer in Item 17 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to Computer Equipment/Software, Equipment/Supplies, Special Projects and Unclaimed Property Outreach.

ATTORNEY GENERAL

Item 13

To Attorney General
From General Fund, One-Time 250,000
Schedule of Programs:
Child Protection 250,000

Under Section 63-J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$2,000,000 provided to the Attorney General’s Office in Item 18 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to purchase of Information Technology (IT) systems and specific program development/operation, pass-thru funds appropriated by the Legislature and other one-time operational expenses.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for Staff Increases for Attorney General Priorities in Item 18, Chapter 4, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for Mortgage and Financial Fraud Unit Continuation in Item 18, Chapter 4, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature

intends that any unexpended funds from the appropriation for 24/7 Sobriety Pilot Program in Item 18, Chapter 4, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Item 14

To Attorney General - Contract Attorneys

Under Section 63-J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$60,000 provided to the Attorney General's Office for Contract Attorneys in Item 19 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to professional services for attorneys under contract with the Office of the Attorney General and other litigation expenses.

Item 15

To Attorney General - Children's Justice Centers From Dedicated Credits Revenue,

One-Time 148,000
Schedule of Programs:

Children's Justice Centers 148,000

Under Section 63-J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$450,000 provided for Children's Justice Centers in Item 20 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to costs passed-thru to operate the local CJC's.

Item 16

To Attorney General - Prosecution Council

Under Section 63-J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$110,000 provided for the Prosecution Council in Item 21 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to expense associated with providing training and technical assistance to prosecutors.

Item 17

To Attorney General - Domestic Violence

Under Section 63-J-1-603 of the Utah Code, the Legislature intends that appropriations up to \$30,000 provided to the Attorney General's Office for Domestic Violence in Item 22 of Chapter 4 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to expense associated with providing domestic violence training.

UTAH DEPARTMENT OF CORRECTIONS

Item 18

To Utah Department of Corrections -

Programs and Operations
From General Fund, One-Time (4,840,400)
Schedule of Programs:

Prison Operations Draper
Facility (3,792,700)
Prison Operations Central
Utah/Gunnison (1,047,700)

Under Section 63J-1-603 of the Utah Code, the Legislature intends that the appropriations of up to \$13,500,000 for the Utah Department of Corrections - Programs and Operations in item 23 of chapter 4, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to stab & ballistic vests, radio supplies & equipment, authorized vehicle purchases, inmate support & food costs, inmate programming, firearms & ammunition, computer equipment/software & support, equipment/supplies, employee training & development, building & office remodeling, furniture, and special projects.

The Legislature intends that, if the Department of Corrections is able to reallocate resources internally to fund additional Adult Probation and Parole agents, for every two agents hired, the Legislature grants authority to purchase one vehicle with Department funds.

The Legislature grants authority to the Department of Corrections, Law Enforcement Bureau, to purchase two vehicles with Department funds.

Item 19

To Utah Department of Corrections -

Department Medical Services
From General Fund, One-Time 2,055,000
Schedule of Programs:
Medical Services 2,055,000

Under Section 63J-1-603 of the Utah Code, the Legislature intends that the appropriations of up to \$1,500,000 for the Utah Department of Corrections - Medical Services in item 24 of chapter 4, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to pharmaceuticals, medical supplies & equipment, computer equipment/software, and employee training & development.

Item 20

To Utah Department of Corrections -

Jail Contracting
From General Fund, One-Time (3,074,700)
Schedule of Programs:
Jail Contracting (3,074,700)

Under Section 63J-1-603 of the Utah Code, the Legislature intends that the appropriations of up to \$4,900,000 for the Utah Department of Corrections - Jail Contracting in item 25 of chapter 4, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to jail housing & treatment programming.

BOARD OF PARDONS AND PAROLE

Item 21

To Board of Pardons and Parole

From General Fund, One-Time (10,000)
Schedule of Programs:
Board of Pardons and Parole (10,000)

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations

of up to \$250,000 provided for the Board of Pardons and Parole in Item 26 of Chapter 1 Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds shall be limited to capital improvements, computer equipment/electronic records development, employee training, and psychological evaluation of inmates.

**DEPARTMENT OF HUMAN SERVICES -
DIVISION OF JUVENILE JUSTICE
SERVICES**

Item 22

To Department of Human Services - Division of Juvenile Justice Services - Programs and Operations
From General Fund, One-Time (1,000,000)
Schedule of Programs:
Administration (1,000,000)

Under Section 63-J-1-603 of the Utah Code, the Legislature intends that appropriations of up to \$4,000,000 provided for the Department of Human Services - Division of Juvenile Justice Services in Item 27 of Chapter 4, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to expenditures for data processing and technology based expenditures; facility repairs, maintenance, and improvements; other charges and pass through expenditures; and, short-term projects and studies that promote efficiency and service improvement. The unused funds may also be used toward construction costs for the Weber Valley Multi-Use Youth Center.

The Legislature intends that Division of Juvenile Justice Services non-lapsing funds from FY 2016, its FY 2017 appropriated budget, or its FY 2017 non-lapsing balance may be used toward construction cost overruns for the Weber Valley Multi-Use Youth Center.

**JUDICIAL COUNCIL/STATE
COURT ADMINISTRATOR**

Item 23

To Judicial Council/State Court Administrator - Administration
From General Fund, One-Time (474,000)
Schedule of Programs:
Administrative Office (474,000)

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided to the Judicial Council/State Court Administrator-Administration in Laws of Utah 2016 Chapter 4, Item 28 and in Chapter 396, Items 42, 43, 44, 46, and 48 shall not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to computer equipment and software, employee training and incentives, equipment and supplies, special projects and studies,

temporary employees (law clerks), judicial service representatives, juvenile community service programs, senior judge assistance, grant match, and Law Library fund carry forward: \$2,500,000.

Item 24

To Judicial Council/State Court Administrator - Contracts and Leases

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided to the Judicial Council/State Court Administrator-Contracts and Leases in Laws of Utah 2016 Chapter 4, Item 30 shall not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to contractual obligations and support: \$100,000.

Item 25

To Judicial Council/State Court Administrator - Jury and Witness Fees
From General Fund, One-Time 919,900
Schedule of Programs:
Jury, Witness, and Interpreter 919,900

Item 26

To Judicial Council/State Court Administrator - Guardian ad Litem
From General Fund, One-Time (5,800)
Schedule of Programs:
Guardian ad Litem (5,800)

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided to the Judicial Council/State Court Administrator-Guardian ad Litem in Laws of Utah 2016 Chapter 4, Item 32 shall not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to computer equipment and software, employee training and incentives, and equipment and supplies for offices opening in FY 2018, special projects and studies, and temporary employees: \$510,000.

DEPARTMENT OF PUBLIC SAFETY

Item 27

To Department of Public Safety - Programs & Operations

Appropriations provided for The Department of Public Safety - Programs and Operations line item not lapse at the close of Fiscal Year 2017. Funds shall be limited to training, equipment, computers, software purchase and/or maintenance, and other operating expenses.

Item 28

To Department of Public Safety - Emergency Management

Appropriations provided for The Department of Public Safety - Emergency Management line item not lapse at the close of Fiscal Year 2017. Funds shall be limited to equipment and computer replacement, training, etc.

Item 29

To Department of Public Safety - Emergency Management - National Guard Response

Appropriations provided for The Department of Public Safety - National Guard Response line item not lapse at the close of Fiscal Year 2017. Funds shall be limited to reimbursement for emergency costs.

Item 30

To Department of Public Safety - Peace Officers' Standards and Training

Appropriations provided for The Department of Public Safety - Peace Officers' Standards and Training line item not lapse at the close of Fiscal Year 2017. Funds shall be limited to equipment, software, and operating costs.

Item 31

To Department of Public Safety - Driver License

Appropriations provided The Department of Public Safety - Driver License line item not lapse at the close of Fiscal Year 2017.

Item 32

To Department of Public Safety - Highway Safety

Appropriations provided for The Department of Public Safety - Highway Safety line item not lapse at the close of Fiscal Year 2017. Funds shall be limited to programs costs that are associated with the carryover balances.

UTAH COMMUNICATIONS AUTHORITY

Item 33

To Utah Communications Authority - Administrative Services Division
From General Fund Restricted - Statewide Unified E-911 Emergency Account,

One-Time 220,800

Schedule of Programs:

911 Division 220,800

The Legislature intends that appropriations of up to \$4,720,800 provided for the Utah Communications Authority not lapse at the close of Fiscal Year 2017. The use of any unused funds is limited to: \$2,500,000 - radio system equipment; \$2,000,000 - equipment, phone maintenance, training, travel, contracts, 911 coordination employee salaries and benefits, and supplies; and \$220,800 maintenance of public-safety answering points (PSAPs).

INFRASTRUCTURE AND GENERAL GOVERNMENT

TRANSPORTATION

Item 34

To Transportation - Support Services
From Transportation Fund, One-Time ... 60,000
From Closing Nonlapsing Balances (800,000)
Schedule of Programs:

Building and Grounds (500,000)

Data Processing (300,000)

Community Relations 60,000

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that appropriations provided for Support Services in Item 2, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to computer software development projects: \$300,000; and building improvements: \$500,000.

Item 35

To Transportation - Engineering Services

From Transportation Fund,

One-Time 3,049,300

From Federal Funds, One-Time 2,000,200

From Closing Nonlapsing Balances (300,000)

Schedule of Programs:

Program Development 4,700,000

Structures (30,000)

Engineering Services 79,500

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that appropriations provided for Engineering Services in Item 3, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to engineering services special projects: \$300,000.

Item 36

To Transportation - Operations/

Maintenance Management

From Transportation Fund,

One-Time 1,853,200

From Closing Nonlapsing Balances ... (2,000,000)

Schedule of Programs:

Maintenance Administration (30,000)

Field Crews (37,300)

Maintenance Planning (79,500)

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that appropriations provided for Operations/Maintenance Management in Item 4, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to highway maintenance: \$2,000,000.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the one-time appropriation of \$6,000,000 from the Transportation Fund to Operations/Maintenance Management in Item 20, Chapter 395, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to avalanche control.

Under terms of Utah Code Annotated Section 72-5-111(1)(d), the Legislature allows that the proceeds from the sale of a maintenance facility may be used by the department for the purchase or improvement of another maintenance facility. The department received \$1,102,700 from a sale of

the Cottonwood Heights shed that will be used in FY 2018; the Legislature intends that these funds shall not lapse at the close of FY 2017.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that appropriations provided for Equipment Management in Item 7, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to equipment purchases: \$200,000.

Item 37

To Transportation - Construction Management
From Transportation Fund,
One-Time 45,350,300
From Federal Funds, One-Time 130,696,300
From Designated Sales Tax,
One-Time (46,682,500)
Schedule of Programs:
Federal Construction - New 129,364,100

Item 38

To Transportation - Region Management
From Transportation Fund, One-Time .. 732,700
From Federal Funds, One-Time (695,400)
From Closing Nonlapsing Balances (200,000)
Schedule of Programs:
Region 1 (200,000)
Region 2 37,300

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that appropriations provided for Region Management in Item 6, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to region management: \$200,000.

Item 39

To Transportation - Equipment Management
From Closing Nonlapsing Balances (200,000)
Schedule of Programs:
Equipment Purchases (200,000)

Item 40

To Transportation - Aeronautics

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the one-time appropriation of \$5,000,000 from the Aeronautics Restricted Account to Airport Construction in Item 22, Chapter 282, Laws of Utah 2014, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to airport construction projects.

Item 41

To Transportation - Mineral Lease
From General Fund Restricted -
Mineral Lease, One-Time (26,754,800)
Schedule of Programs:
Mineral Lease Payments (27,537,700)
Payment in Lieu 782,900

DEPARTMENT OF ADMINISTRATIVE SERVICES

Item 42

To Department of Administrative Services -
Executive Director
From Dedicated Credits Revenue,
One-Time 29,500
From Closing Nonlapsing Balances (75,000)
Schedule of Programs:
Executive Director (45,500)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Executive Director in Item 14, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to customer service and Department optimization projects, shared services, IT security auditing and prevention, internal auditing, website maintenance, and marketing, security improvements, and space utilization needs: \$175,000.

Item 43

To Department of Administrative Services -
Inspector General of Medicaid Services
From Closing Nonlapsing Balances (400,100)
Schedule of Programs:
Inspector General of Medicaid
Services (400,100)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Inspector General of Medicaid Services in Item 15, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to monitor compliance with State and Federal Regulations and implement measures to identify, prevent and reduce fraud, waste, and abuse, and monitor the quality and reliability of Utah Medicaid providers service delivery and accuracy of billing: \$750,000.

Item 44

To Department of Administrative
Services - DFCM Administration
From Closing Nonlapsing Balances ... (1,147,400)
Schedule of Programs:
DFCM Administration (1,147,400)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for DFCM Administration in Item 17, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to information technology projects, customer service, optimization efficiency projects, time limited FTEs, and Governor's Mansion maintenance: \$1,000,000; and, Energy Program operations: \$500,000.

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that any amount remaining of the appropriation of \$3,417,000 provided to the Department of Administrative Services - DFCM Administration in Chapter 9, Laws of Utah

2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to prison relocation purposes as stated in the intent language following the appropriation in Chapter 211, Laws of Utah 2014.

The Legislature intends that the Department of Corrections - Programs and Operations transfer \$1,027,800 to the Division of Facilities and Construction Management to be used for expenses related to construction of the new prison. This funding comes from unexpended appropriations in previous years for the retrofit of the Fortitude Parole Violator Center.

Item 45

To Department of Administrative Services - Building Board Program
From Closing Nonlapsing Balances (183,200)
Schedule of Programs:
Building Board Program (183,200)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Building Board Program in Item 18, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to facilities/infrastructure condition assessments, and O & M database program needs: \$200,000.

Item 46

To Department of Administrative Services - State Archives
From Closing Nonlapsing Balances (24,800)
Schedule of Programs:
Archives Administration (24,800)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for State Archives in Item 19, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to regional repository program support, electronic archives preservation, management, building security improvements, and GRAMA transparency improvements: \$200,000.

Item 47

To Department of Administrative Services - Finance Administration
From Closing Nonlapsing Balances . . . (2,709,300)
Schedule of Programs:
Financial Information Systems (2,709,300)

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that appropriations provided for Finance Administration in Item 31, Chapter 395, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to costs associated with federal funds accountability: \$550,000.

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Finance Administration in Item 20, Chapter 9, Laws

of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to maintenance and operation of statewide systems and websites, studies, training, and information technology support and hardware: \$3,400,000.

Item 48

To Department of Administrative Services - Finance - Mandated - Parental Defense
From Closing Nonlapsing Balances (74,400)
Schedule of Programs:
Parental Defense (74,400)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Parental Defense in Item 39, Chapter 468, Laws of Utah 2015, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to child welfare parental defense expenses: \$75,000.

Item 49

To Department of Administrative Services - Finance - Mandated - Ethics Commission
From Closing Nonlapsing Balances (5,100)
Schedule of Programs:
Executive Branch Ethics Commission . . (5,100)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Ethics Commission in Item 24, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to Ethics Commission investigations and Commission and staff expenses: \$50,000.

Item 50

To Department of Administrative Services - Post Conviction Indigent Defense
From Beginning Nonlapsing Balances 85,900
From Closing Nonlapsing Balances (175,900)
Schedule of Programs:
Post Conviction Indigent
Defense Fund (90,000)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Post-Conviction Indigent Defense in Item 25, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to legal costs for death row inmates: \$197,500.

Item 51

To Department of Administrative Services - Judicial Conduct Commission
From Closing Nonlapsing Balances (100,000)
Schedule of Programs:
Judicial Conduct Commission (100,000)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Judicial Conduct Commission in Item 26, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to professional services for investigations: \$100,000.

DEPARTMENT OF TECHNOLOGY SERVICES

Item 52

To Department of Technology Services -
 Chief Information Officer
 From Closing Nonlapsing Balances . . . (2,230,000)
 Schedule of Programs:
 Chief Information Officer (2,230,000)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Chief Information Officer in Item 28, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to costs associated with DTS rate study and/or optimization initiatives: \$30,000.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for Single Sign-on Business Database (House Bill 96, 2016 General Session) in Item 70, Chapter 396, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation provided for Chief Information Officer in Item 69, Chapter 396, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to costs associated with a data coordination system.

Item 53

To Department of Technology Services -
 Integrated Technology Division
 From Federal Funds, One-Time 47,300
 From Closing Nonlapsing Balances (500,000)
 Schedule of Programs:
 Automated Geographic Reference
 Center (452,700)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Integrated Technology Division in Item 29, Chapter 9, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to Geographic Reference Center projects, Global Positioning System Reference Network upgrades and maintenance, and grant obligations to local government: \$500,000.

CAPITAL BUDGET

Item 54

To Capital Budget - Capital Development -
 Other State Government

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the

appropriation for DJJS Weber Valley Multi-use Youth Center in Item 36, Chapter 395, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for USDC ASH Building Completion in Item 72, Chapter 396, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Item 55

To Capital Budget - Capital Improvements

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for USU Botanical Center in Item 37, Chapter 395, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Item 56

To Capital Budget - Pass-Through

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for Restoration of Historic Enola Gay Hangar at Wendover Airfield in Item 38, Chapter 395, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for Tess Avenue School Sidewalk Project in Item 75, Chapter 396, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for Soldier Hollow Critical Repairs in Item 75, Chapter 396, Laws of Utah 2016, shall not lapse at the close of FY 2017.

STATE BOARD OF BONDING COMMISSIONERS - DEBT SERVICE

Item 57

To State Board of Bonding Commissioners -
 Debt Service - Debt Service

The Legislature intends that in the event that sequestration or other federal action reduces the anticipated Build America Bond subsidy payments that are deposited into the Debt Service line item as federal funds, the Division of Finance, acting on behalf of the State Board of Bonding Commissioners, shall reduce the appropriated transfer from Nonlapsing Balances Debt Service to the General Fund, one-time proportionally to the reduction in subsidy payment received, thus holding the Debt Service fund harmless.

BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR

DEPARTMENT OF HERITAGE AND ARTS

Item 58

To Department of Heritage and Arts - Administration

Under section 63J-1-603, Legislature intends that up to \$537,800 of the General Fund provided by Item 9, Chapter 7, Laws of Utah 2016 for the Department of Heritage and Arts - Administration not lapse at the close of Fiscal Year 2017. These funds are to be used for digitization projects and maintenance.

Under Section 63J-1-603, Legislature intends that up to \$350,000 of the General Fund provided by Item 9, Chapter 7, Laws of Utah 2016 for the Department of Heritage and Arts - Administration not lapse at the close of Fiscal Year 2017. These funds are to be used for building maintenance, renovation, security, and planning efforts for the new museum.

Under Section 63J-1-603, Legislature intends that up to \$268,300 of the General Fund provided by Item 9, Chapter 7, Laws of Utah 2016 for the Department of Heritage and Arts - Administration not lapse at the close of Fiscal Year 2017.

Item 59

To Department of Heritage and Arts - Historical Society

Under Section 63J-1-603, Legislature intends that up to \$133,800 of the Dedicated Credits provided by Item 10, Chapter 7, Laws of Utah 2016 for the Department of Heritage and Arts - State Historical Society not lapse at the close of Fiscal Year 2017. These funds are to be used for publishing and promotion of the Historical Quarterly magazine.

Item 60

To Department of Heritage and Arts - State History

Under section 63J-1-603, Legislature intends that up to \$60,000 of the General Fund provided by Item 11, Chapter 7, Laws of Utah 2016 for the Department of Heritage and Arts - State History not lapse at the close of Fiscal Year 2017. These funds are to be used for application development.

Item 61

To Department of Heritage and Arts - Division of Arts and Museums

From General Fund Restricted -

National Professional Men's Soccer Team Support of Building

Communities, One-Time 40,600

Schedule of Programs:

Grants to Non-profits 40,600

Under Section 63J-1-603, Legislature intends that up to \$350,000 of the General Fund provided by Item 3, Chapter 3, Laws of Utah 2016 for the Department of Heritage

and Arts - Division of Arts and Museums not lapse at the close of Fiscal Year 2017. These funds will be used for cultural outreach.

Item 62

To Department of Heritage and Arts - State Library

Under Section 63J-1-603, Legislature intends that up to \$230,000 of the General Fund provided by Item 6, Chapter 3, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The State Library shall use the funds for CLEF (Community Library Enhancement Fund) grants in Fiscal Year 2017.

Item 63

To Department of Heritage and Arts - Indian Affairs

Under Section 63J-1-603, Legislature intends that up to \$242,500 of the General Fund and \$25,000 Dedicated Credits provided by Item 15, Chapter 7, Laws of Utah 2016 For the Department of Heritage and Arts - Indian Affairs not lapse at the close of Fiscal Year 2017.

Item 64

To Department of Heritage and Arts - Pass-Through

From General Fund, One-Time 1,920,000

Schedule of Programs:

Pass-Through 1,920,000

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Item 65

To Governor's Office of Economic Development - Administration

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up to \$675,000 of ongoing General Fund appropriation provided for Governor's Office of Economic Development - Administration, Item 17, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to \$350,000 for system management enhancements, \$250,000 for business marketing, \$75,000 for health system program operations and support.

Item 66

To Governor's Office of Economic Development - STEM Action Center

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up to \$4,600,000 of ongoing General Fund appropriation provided for COA Governor's Office of Economic Development - STEM Action Center, Item 18, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to contractual obligations and support.

Item 67

To Governor's Office of Economic Development - Office of Tourism

From General Fund, One-Time (36,300)

Schedule of Programs:

Operations and Fulfillment (36,300)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up to \$350,000 of ongoing General Fund appropriation provided for CLA Governor’s Office of Economic Development - Tourism, Item 19, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to contractual obligations and support.

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up to \$4,500,000 of ongoing General Fund appropriation provided for CLA Governors Office of Economic Development - Tourism - Tourism Marketing Performance program, Item 19, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to contractual obligations and support.

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up to \$125,000 of appropriation provided for the Motion Picture Incentive fund shall not lapse at the close of FY 2017.

Item 68

To Governor’s Office of Economic Development - Business Development
From General Fund, One-Time 65,000
Schedule of Programs:

Corporate Recruitment and Business Services 65,000

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up to \$4,350,000 of ongoing General Fund appropriation provided for CMA Governor’s Office of Economic Development - Business Development, Item 20, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to \$75,000 for business resource centers, \$3,000,000 for Technology Commercialization and Innovation Program contracts, \$200,000 for business cluster support, \$500,000 for international development contracts and support, \$75,000 for Procurement and technical Assistance Center contract, \$300,000 for system management, \$100,000 for corporate recruitment, compliance contracts, \$100,000 for rural development contracts and support.

Item 69

To Governor’s Office of Economic Development - Pete Suazo Utah Athletics Commission

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up to \$150,000 of ongoing General Fund appropriation provided for CJA Governor’s Office of Economic Development - Pete Suazo Utah Athletic Commission, Item 21, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to the Pete Suazo Utah Athletic program.

Item 70

To Governor’s Office of Economic Development - Utah Broadband Outreach Center

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up to \$35,000 of ongoing General Fund appropriation provided for CNA Governors Office of Economic Development - Utah Broadband Outreach Center, Item 23, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of any non-lapsing funds is limited to contractual obligations and support.

Item 71

To Governor’s Office of Economic Development - Pass-Through
From General Fund, One-Time 515,000
Schedule of Programs:
Pass-Through 515,000

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up to \$1,000,000 of one-time General Fund appropriation provided for Governors Office of Economic Development - Pass Through in the 2016 General Session not lapse at the close of Fiscal Year 2017. The use of the non-lapsing funds is limited to the Utah Advanced Materials & Manufacturing Initiative.

UTAH STATE TAX COMMISSION

Item 72

To Utah State Tax Commission - Tax Administration
From Closing Nonlapsing Balances (668,500)
Schedule of Programs:
Administration Division (668,500)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Tax Commission in Item 24, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. These funds are to be used to protect and enhance the State’s tax and motor vehicle systems and processes; to continue to protect the State’s revenues from tax fraud, identity theft, and security intrusions; and for litigation and related costs.

Item 73

To Utah State Tax Commission - License Plates Production
From Closing Nonlapsing Balances (525,100)
Schedule of Programs:
License Plates Production (525,100)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Tax Commission - License Plates Production in Item 25, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. Ending balances from funds provided to the Tax Commission for the purchase and distribution of license plates and decals are nonlapsing under 63J-1-602.2.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Item 74

To Department of Alcoholic Beverage Control - Parents Empowered

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Underage Drinking Prevention Media and Education Campaign Restricted Account created in Section 32B-2-306 not lapse at close of FY 2017. These funds are to be used to direct and fund one or more media and education campaigns designed to reduce underage drinking in cooperation with advisory council.

LABOR COMMISSION

Item 75

To Labor Commission
From Closing Nonlapsing Balances (450,000)
Schedule of Programs:
Industrial Accidents (450,000)

Under section 63J-1-603 of the Utah Code, the Legislature intends that the one-time appropriation provided to the Labor Commission from the Industrial Accident Restricted Account in 2016 General Session HB2 Item 52 shall not lapse at the close of Fiscal Year 2017. Such nonlapsing funds shall be used for the electronic data interchange project.

DEPARTMENT OF COMMERCE

Item 76

To Department of Commerce - Commerce General Regulation

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Office of Consumer Services in Item 34 of Chapter 7, Laws of Utah 2016, lapse to the Offices' Professional and Technical Services Fund at the close of Fiscal Year 2017.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Department of Commerce, Division of Public Utilities in Item 34 of Chapter 7, Laws of Utah 2016, lapse to the Divisions' Professional and Technical Services Fund at the close of Fiscal Year 2017.

Under Section 63J-1-603 of the Utah Code, the Legislature intends that up to \$250,000 of appropriations provided for the Department of Commerce Administration Division, in Item 34 of Chapter 7, Laws of Utah 2016, if unspent may be used to offset the agency expense imposed by DTS on Telephony line replacement upgrades.

Item 77

To Department of Commerce - Building Inspector Training

To Department of Commerce - Building Inspector Training Under Section 63J-1-603

of the Utah Code, the Legislature intends that appropriations provided for the Building Codes Education Funds received by the Division of Occupational and Professional Licensing under the authority of Section 15A-1-209-5 of the Utah Code Item 35 of Chapter 7, Laws of Utah 2016, shall not lapse at the close of Fiscal Year 2017.

Item 78

To Department of Commerce - Public Utilities Professional and Technical Services

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Division of Public Utilities Technical Services Fund in Item 36 of Chapter 7, Laws of Utah 2016, shall not lapse at the close of Fiscal Year 2017.

Item 79

To Department of Commerce - Office of Consumer Services Professional and Technical Services

Under Section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Professional and Technical Services Fund of the Office of Consumer Services in Item 37 of Chapter 7, Laws of Utah 2016, shall not lapse at the close of Fiscal Year 2017.

INSURANCE DEPARTMENT

Item 80

To Insurance Department - Insurance Department Administration
From Federal Funds, One-Time 500,000
From General Fund Restricted - Insurance Fraud Investigation Acct, One-Time . . . 322,300
Schedule of Programs:
Administration 500,000
Insurance Fraud Program 322,300

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that up \$100,000 of the ongoing Insurance Department Restricted Account appropriation provided for the Utah Insurance Department in Item 39, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017.

PUBLIC SERVICE COMMISSION

Item 81

To Public Service Commission
From Closing Nonlapsing Balances (145,500)
Schedule of Programs:
Administration (145,500)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Public Service Commission in Item 43, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. The use of nonlapsing funds is limited to maintenance, upgrades, and licensing for the Public Service Commission's document management system; computer equipment and software upgrades; employee training and incentives; and special

projects/studies that might require consultants or temporary employees.

Item 82

To Public Service Commission - Speech and Hearing Impaired
 From Closing Nonlapsing Balances . . . (1,151,200)
 Schedule of Programs:
 Speech and Hearing Impaired (1,151,200)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Public Service Commission - Speech and Hearing Impaired in Item 44, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. Ending balances for the Speech and Hearing Impaired program are non-lapsing under 54-8b-10(5)(d).

SOCIAL SERVICES

DEPARTMENT OF HEALTH

Item 83

To Department of Health - Executive Director's Operations
 From Closing Nonlapsing Balances (10,000)
 Schedule of Programs:
 Program Operations (10,000)

The Legislature intends that the Department of Health prepare proposed performance measures for all new funding of \$10,000 or more for building blocks and give this information to the Office of the Legislative Fiscal Analyst by June 1, 2017. At a minimum the proposed measures should include those presented to the Subcommittee during the requests for funding. If the same measures are not included, a detailed explanation as to why should be included. The Department of Health shall provide its first report on its performance measures to the Office of the Legislative Fiscal Analyst by October 31, 2017 with another report two months after the close of the fiscal year where the funding was provided.

Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$100,000 funds not otherwise designated as nonlapsing to the Department of Health - Executive Director's Operations line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is for the Traumatic Brain Injury Fund.

Item 84

To Department of Health - Family Health and Preparedness
 From Closing Nonlapsing Balances (5,000)
 Schedule of Programs:
 Child Development (5,000)

Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$50,000 funds not otherwise designated as nonlapsing to the Department of Health - Family Health and Preparedness line item shall not lapse at the close of Fiscal Year 2017. The use of any

nonlapsing funds is for the Traumatic Brain Injury Fund.

Item 85

To Department of Health - Disease Control and Prevention
 From General Fund, One-Time 88,600
 From General Fund Restricted - State Lab Drug Testing Account, One-Time 21,900
 From General Fund Restricted - Tobacco Settlement Account, One-Time (88,600)
 From Closing Nonlapsing Balances (7,500)
 Schedule of Programs:
 Epidemiology (7,500)
 Laboratory Operations and Testing 21,900

Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$75,000 funds not otherwise designated as nonlapsing to the Department of Health - Disease Control and Prevention line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is for the Traumatic Brain Injury Fund.

Item 86

To Department of Health - Medicaid and Health Financing
 From Closing Nonlapsing Balances (55,000)
 Schedule of Programs:
 Financial Services (55,000)

Under Section 63J-1-603 of the Utah Code the Legislature intends that up to \$550,000 funds not otherwise designated as nonlapsing to the Department of Health - Medicaid and Health Financing line item shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is for the Traumatic Brain Injury Fund.

The Legislature intends that the Medicaid accountable care organizations report to the Executive Appropriations Committee in May 2017 on their current efforts and future plans to convert their payments to direct-care providers to value-based payment arrangements. The Legislature also intends that the Department of Health work with the Medicaid accountable care organizations to prepare a proposal for modifying the Utah Medicaid accountable care organization structure effective January 1, 2019 to qualify as an "Other Payer Advanced Alternative Payment Model" under federal Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) standards.

Item 87

To Department of Health - Children's Health Insurance Program
 From Federal Funds, One-Time 21,000,000
 From General Fund Restricted - Medicaid Restricted Account, One-Time 9,000,000
 Schedule of Programs:
 Children's Health Insurance Program 30,000,000

The Legislature intends that the Department of Health may use up to a

combined maximum of \$9,000,000 from the General Fund Restricted - Medicaid Restricted Account and associated federal matching funds provided across the entire agency. The funding is limited to unanticipated costs for state match.

Item 88

To Department of Health - Medicaid
Mandatory Services

From General Fund, One-Time	2,500,000
From Federal Funds, One-Time	21,000,000
From General Fund Restricted - Medicaid Restricted Account, One-Time	9,000,000
From Closing Nonlapsing Balances	(400,000)
Schedule of Programs:	
Other Mandatory Services	32,100,000

The Department of Health may use up to a combined maximum of \$9,000,000 from the General Fund Restricted - Medicaid Restricted Account and associated federal matching funds provided for Medicaid Mandatory Services and Medicaid Optional Services only in the case that non-federal fund appropriations provided for FY 2017 in all other items of appropriation for Medicaid are insufficient to pay appropriate Medicaid claims for FY 2017 when combined with federal matching funds.

Under Section 63J-1-603 of the Utah Code, the Legislature intends up to an additional \$800,000 (for a total not to exceed \$8,124,200) of Item 34 of Chapter 5, Laws of Utah 2016 in the Department of Health's Medicaid Mandatory Services line item shall not lapse at the close of Fiscal Year 2017. The use of nonlapsing funds is limited to the redesign and replacement of the Medicaid Management Information System.

Item 89

To Department of Health - Medicaid
Optional Services

From General Fund, One-Time	(5,000,000)
From Federal Funds, One-Time	21,000,000
From General Fund Restricted - Medicaid Restricted Account, One-Time	9,000,000
From General Fund Restricted - Tobacco Settlement Account, One-Time	(1,447,300)
From Closing Nonlapsing Balances	(400,000)
Schedule of Programs:	
Other Optional Services	23,152,700

Under Section 63J-1-603 of the Utah Code, the Legislature intends up to an additional \$800,000 (for a total not to exceed \$8,124,200) of Item 35 of Chapter 5, Laws of Utah 2016 in the Department of Health's Medicaid Optional Services line item shall not lapse at the close of Fiscal Year 2017. The use of nonlapsing funds is limited to the redesign and replacement of the Medicaid Management Information System.

The Department of Health may use up to a combined maximum of \$9,000,000 from the General Fund Restricted - Medicaid Restricted Account and associated federal matching funds provided for Medicaid Mandatory Services and Medicaid Optional Services only in the case that non-federal fund appropriations provided for FY 2017 in all other items of appropriation for Medicaid are insufficient to pay appropriate Medicaid claims for FY 2017 when combined with federal matching funds.

Under Section 63J-1-603 of the Utah Code, the Legislature intends up to \$500,000 provided for the Department of Health's Medicaid Optional Services line item in Item 132 of Chapter 396, Laws of Utah 2016 shall not lapse at the close of Fiscal Year 2017. The use of any nonlapsing funds is limited to the provision of dental services to newly-eligible clients.

**DEPARTMENT OF
WORKFORCE SERVICES**

Item 90

To Department of Workforce Services -
Administration

From Federal Funds, One-Time	5,000,000
From General Fund Restricted - Office of Rehabilitation Transition Restricted Account, One-Time	5,000,000
Schedule of Programs:	
Administrative Support	10,000,000

Item 91

To Department of Workforce Services -
Operations and Policy

From Federal Funds, One-Time	5,000,000
From General Fund Restricted - Office of Rehabilitation Transition Restricted Account, One-Time	5,000,000
Schedule of Programs:	
Information Technology	10,000,000

The Legislature intends that the Department of Workforce Services prepare proposed performance measures for all new funding of \$10,000 or more for building blocks and give this information to the Office of the Legislative Fiscal Analyst by June 1, 2017. At a minimum the proposed measures should include those presented to the Subcommittee during the requests for funding. If the same measures are not included, a detailed explanation as to why should be included. The Department of Workforce Services shall provide its first report on its performance measures to the Office of the Legislative Fiscal Analyst by October 31, 2017 with another report two months after the close of the fiscal year where the funding was provided.

Item 92

To Department of Workforce Services -
General Assistance

From General Fund, One-Time	(856,200)
From Closing Nonlapsing Balances	856,200

Item 93

To Department of Workforce Services -
 Unemployment Insurance
 From Federal Funds, One-Time 5,000,000
 From General Fund Restricted -
 Office of Rehabilitation Transition
 Restricted Account, One-Time 5,000,000
 Schedule of Programs:
 Unemployment Insurance
 Administration 10,000,000

Item 94

To Department of Workforce Services -
 State Office of Rehabilitation

 The Legislature intends that the fiscal year 2017 ending balances in the General Fund Restricted - Office of Rehabilitation Transition Restricted Account (Fund 1288) not lapse at the close of fiscal year 2017.

DEPARTMENT OF HUMAN SERVICES

Item 95

To Department of Human Services -
 Executive Director Operations

 The Legislature intends that the Department of Human Services prepare proposed performance measures for all new funding of \$10,000 or more for building blocks and give this information to the Office of the Legislative Fiscal Analyst by June 1, 2017. At a minimum the proposed measures should include those presented to the Subcommittee during the requests for funding. If the same measures are not included, a detailed explanation as to why should be included. The Department of Human Services shall provide its first report on its performance measures to the Office of the Legislative Fiscal Analyst by October 31, 2017 with another report two months after the close of the fiscal year where the funding was provided.

Item 96

To Department of Human Services - Division
 of Child and Family Services
 From General Fund Restricted -
 National Professional Men’s Basketball
 Team Support of Women and
 Children Issues, One-Time 37,500
 Schedule of Programs:
 Administration - DCFS 37,500

HIGHER EDUCATION

UNIVERSITY OF UTAH

Item 97

To University of Utah - School of Medicine
 From General Fund Restricted -
 Cigarette Tax Restricted Account,
 One-Time 2,800,000
 Schedule of Programs:
 School of Medicine 2,800,000

Item 98

To University of Utah - Cancer Research
 and Treatment

From General Fund, One-Time 1,500,000
 From General Fund Restricted -
 Cigarette Tax Restricted Account,
 One-Time (2,800,000)
 From General Fund Restricted -
 Tobacco Settlement Account,
 One-Time (1,500,000)
 Schedule of Programs:
 Cancer Research and Treatment . . . (2,800,000)

**NATURAL RESOURCES, AGRICULTURE,
 AND ENVIRONMENTAL QUALITY**

DEPARTMENT OF NATURAL RESOURCES

Item 99

To Department of Natural Resources -
 Administration

 Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for DNR Administration in Item 1, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Capital Projects \$25,000; Operating Budget Items \$200,000.

Item 100

To Department of Natural Resources -
 Species Protection

 Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Species Protection program in Item 2, Chapter 8, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to projects started in 2016: \$200,000.

Item 101

To Department of Natural Resources -
 DNR Pass Through

 Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for DNR Pass Through in Item 147, Chapter 468, Laws of Utah 2015, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Richfield Building \$1,100,000; Utah Lake and Jordan River improvements \$275,000; and Bonneville Shoreline Trail \$150,000.

Item 102

To Department of Natural Resources - Watershed

 Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Watershed program in Item 5, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to projects started in 2016: \$700,000.

Item 103

To Department of Natural Resources -
 Forestry, Fire and State Lands

 Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Division of Forestry, Fire, and State Lands in Item 6,

Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Sovereign Lands Related Projects \$3,973,000; Little Willow Water Line \$27,000.

Item 104

To Department of Natural Resources - Oil, Gas and Mining

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Division of Oil, Gas, and Mining in Item 7, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Mining Special Projects/Studies \$250,000; Computer Equipment/Software \$50,000; Employee Training/Incentives \$50,000; Equipment/Supplies \$50,000.

Item 105

To Department of Natural Resources - Wildlife Resources
From General Fund Restricted - Wildlife Resources, One-Time 800,000
Schedule of Programs:
Wildlife Section 800,000

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Wildlife Resources line item in Item 8, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: projects funded from the Mule Deer Protection Restricted Account \$200,000; projects funded from the Predator Control Restricted Account \$200,000, and prevent aquatic invasive species spread into Bear Lake \$200,000, with at least \$100,000 to be spent on check stations for boats entering Bear Lake Valley, boat decontamination, public education, and related activities; and \$350,000 for the implementation of the Prairie Dog Management Plan.

The Legislature intends that up to \$180,000 be spent on livestock damage. \$90,000 will be from the General Fund and up to \$90,000 will be from the General Fund Restricted - Wildlife Resources account. The Legislature also intends that this appropriation shall not lapse at the close of FY 2017.

The Legislature intends that up to \$900,000 of Wildlife Resources budget may be used for big game depredation expenses in FY 2017. The Legislature further intends that up to \$550,000 of these funds be from the General Fund Restricted - Wildlife Resources account and up to \$350,000 from the General Fund. The Legislature also intends that this appropriation shall not lapse at the close of FY 2017.

The Legislature intends that up to \$700,000 of Wildlife Resources budget may be used for big game depredation expenses in FY 2018. The Legislature further intends that half of these funds be from the General Fund

Restricted - Wildlife Resources account and the other half from the General Fund.

Item 106

To Department of Natural Resources - Wildlife Resources Capital Budget

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Wildlife Resources Capital line item in Item 12, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to Operations and Maintenance of the Hatchery Systems in the state: \$649,400.

Item 107

To Department of Natural Resources - Parks and Recreation
From General Fund, One-Time (20,000)
Schedule of Programs:
Park Operation Management (20,000)

Item 108

To Department of Natural Resources - Utah Geological Survey
From Federal Funds, One-Time 252,000
From General Fund Restricted - Land Exchange Distribution Account, One-Time 25,000
Schedule of Programs:
Energy and Minerals 25,000
Ground Water and Paleontology 252,000

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Utah Geological Survey in Item 15, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Mineral Lease Projects \$830,000; Computer Equipment/Software \$60,000; Equipment/Supplies \$40,000; Employee Training/Incentives \$30,000.

Item 109

To Department of Natural Resources - Water Resources

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Division of Water Resources in Item 16, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Current Expenses \$50,000; Computer Equipment/Software \$25,000; Special Projects/Studies \$125,000.

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Division of Water Resources in Item 154, Chapter 468, Laws of Utah 2015, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: dam safety construction projects \$7,300,000.

Item 110

To Department of Natural Resources - Water Rights

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that

appropriations provided for the Division of Water Rights in Item 17, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Computer Equipment/Software \$40,000; Adjudication \$50,000, Special Projects/Studies \$150,000; Employee Incentive/Training \$30,000, Equipment/Supplies \$50,000, Current Expense \$30,000.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Item 111

To Department of Environmental Quality - Executive Director's Office

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Executive Directors Office in Item 18, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to high level nuclear waste opposition \$127,200; capital improvements/maintenance, DP Software, and equipment \$450,000; administrative law judge \$150,000; enterprise-wide land information initiative \$416,700.

Item 112

To Department of Environmental Quality - Air Quality

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Division of Air Quality in Item 19, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to reducing future operating permit fees \$100,000; air monitoring equipment \$200,000; air quality research \$230,000.

Item 113

To Department of Environmental Quality - Environmental Response and Remediation

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Environmental Response and Remediation, Item 20, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to data processing equipment and software/programming \$25,000.

Item 114

To Department of Environmental Quality - Water Quality

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Water Quality in Item 21, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to environmental monitoring/lab equipment \$30,000; peer review \$50,000.

Item 115

To Department of Environmental Quality - Drinking Water

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Drinking Water in Item 22, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to water use study \$500,000.

Item 116

To Department of Environmental Quality - Clean Air Retrofit, Replacement, and Off-road Technology

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Clean Air Retrofit, Replacement, and Off-road Technology in Item 161, Chapter 468, Laws of Utah 2015 and in Item 163, Chapter 469, Laws of Utah 2015, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to grants, rebates, exchanges, or low-cost purchase program awards \$395,900.

Item 117

To Department of Environmental Quality - Waste Management and Radiation Control

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Waste Management and Radiation Control in Item 23, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to public outreach \$125,000; program and database upgrades and improvements \$150,000; antifreeze collection program \$125,000.

PUBLIC LANDS POLICY COORDINATING OFFICE

Item 118

To Public Lands Policy Coordinating Office

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for Rural Utah Alliance in Item 27, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for Rural Public Lands Attorney and Assistant in Item 25, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Under terms of Utah Code Annotated Section 63J-1-603(3)(a), the Legislature intends that any unexpended funds from the appropriation for Public Lands Attorney in Item 25, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017.

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Public Lands

Policy Coordinating Office in Item 25, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to litigation and operation expenses: \$2,408,500.

GOVERNOR'S OFFICE

Item 119

To Governor's Office - Office of Energy Development

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Office of Energy Development in Item 28, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to commercial and industrial energy efficiency and renewable energy programs involving building improvements, infrastructure, transportation and agriculture \$126,800; and, programs aimed at accomplishing the Governors 10-year strategic energy plan \$20,300.

DEPARTMENT OF AGRICULTURE AND FOOD

Item 120

To Department of Agriculture and Food - Administration

From General Fund, One-Time 300,000
From Dedicated Credits Revenue,
One-Time (300,000)
From Beginning Nonlapsing Balances . . . 213,600
Schedule of Programs:
General Administration 213,600

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the General Administration line item in Item 29, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Computer Equipment/Software \$126,000; Employee Training/Incentives \$103,500; Equipment/Supplies \$55,400; Special Projects/Studies \$84,600.

Item 121

To Department of Agriculture and Food - Animal Health

From General Fund, One-Time 250,000
From Dedicated Credits Revenue,
One-Time (250,000)
From Beginning Nonlapsing Balances . . . 340,600
Schedule of Programs:
Animal Health 340,600

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Animal Health line item in Item 30, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Computer Equipment/Software \$100,000 Employee Training/Incentives \$139,100; Special Projects/Studies \$317,100.

Item 122

To Department of Agriculture and Food - Plant Industry

From General Fund, One-Time (550,000)
From Dedicated Credits Revenue,
One-Time 550,000
From Beginning Nonlapsing
Balances (576,700)
Schedule of Programs:
Plant Industry (576,700)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Plant Industry line item in Item 31, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Capital Equipment or Improvements \$27,800; Computer Equipment/Software \$352,800; Employee Training/ Incentives \$63,300; Equipment/Supplies \$105,500; Vehicles \$120,000; Special Projects/Studies \$333,300.

Item 123

To Department of Agriculture and Food - Regulatory Services

From Beginning Nonlapsing Balances 22,500
Schedule of Programs:
Regulatory Services 22,500

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Regulatory Services line item in Item 32, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Computer Equipment/Software \$132,300; Employee Training/Incentives \$51,700; Equipment/Supplies \$64,600; Special Projects/Studies \$235,700.

Item 124

To Department of Agriculture and Food - Marketing and Development

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Marketing and Development line item in Item 33, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Employee Training/Incentives \$13,500; Equipment/Supplies \$16,900; Special Projects/Studies \$37,100.

Item 125

To Department of Agriculture and Food - Predatory Animal Control

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Predatory Animal Control in Item 35, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Employee Training/Incentives \$23,300; Equipment/Supplies \$29,100; Special Projects/Studies \$133,600.

Item 126

To Department of Agriculture and Food - Resource Conservation

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Resource Conservation in Item 36, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to: Capital Equipment or Improvements \$14,500; Computer Equipment/Software \$12,100; Employee Training/Incentives \$9,700; Equipment/Supplies \$9,700; Special Projects/Studies \$50,700.

Item 127

To Department of Agriculture and Food - Invasive Species Mitigation

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Invasive Species Mitigation in Item 37, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to invasive species mitigation projects \$899,900.

Item 128

To Department of Agriculture and Food - Rangeland Improvement

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Rangeland Improvement in Item 38, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to rangeland improvement projects \$899,900.

EXECUTIVE APPROPRIATIONS

CAPITOL PRESERVATION BOARD

Item 129

To Capitol Preservation Board
 From General Fund, One-Time 594,200
 Schedule of Programs:
 Capitol Preservation Board 594,200

Under terms of Section 63J-1-603(3)(a) Utah Code Annotated, the Legislature intends that appropriations provided for the Capitol Preservation Board in item 1, Chapter 10, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017.

UTAH NATIONAL GUARD

Item 130

To Utah National Guard
 From Dedicated Credits Revenue,
 One-Time 25,000
 Schedule of Programs:
 Operations and Maintenance 25,000

DEPARTMENT OF VETERANS' AND MILITARY AFFAIRS

Item 131

To Department of Veterans' and Military Affairs - Veterans' and Military Affairs

From General Fund, One-Time 600,000
 From Federal Funds, One-Time 62,400
 From Dedicated Credits Revenue,
 One-Time 50,000
 Schedule of Programs:
 Administration 625,000
 Cemetery 77,400
 State Approving Agency 10,000

Under terms of Section 63J-1-603(3)(a) Utah Code Annotated, the Legislature intends that appropriations provided for the Department of Veterans' and Military Affairs in Item 3, Chapter 10, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017. Use of any nonlapsing funds is limited to: Purchase of up to two vehicles and departmental one-time operations costs.

LEGISLATURE

Item 132

To Legislature - Senate
 From General Fund, One-Time (70,000)
 Schedule of Programs:
 Administration (70,000)

Item 133

To Legislature - House of Representatives
 From General Fund, One-Time (75,000)
 Schedule of Programs:
 Administration (75,000)

Item 134

To Legislature - Office of Legislative
 Research and General Counsel
 From General Fund, One-Time 55,000
 Schedule of Programs:
 Administration 55,000

Item 135

To Legislature - Legislative Services
 From General Fund, One-Time 90,000
 Schedule of Programs:
 Administration 90,000

Subsection 1(b). Expendable Funds and

Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account's applicable authorizing statute.

BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR

INSURANCE DEPARTMENT

Item 136

To Insurance Department - Insurance
 Fraud Victim Restitution Fund
 From Licenses/Fees, One-Time (322,300)
 Schedule of Programs:
 Insurance Fraud Victim Restitution
 Fund (322,300)

PUBLIC SERVICE COMMISSION

Item 137

To Public Service Commission -
Universal Telecommunications Support Fund
From Closing Fund Balance (2,832,100)
Schedule of Programs:
Universal Telecom Service Fund . . . (2,832,100)

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Public Service Commission - Universal Service Fund in Item 63, Chapter 7, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017.

EXECUTIVE APPROPRIATIONS

DEPARTMENT OF VETERANS' AND MILITARY AFFAIRS

Item 138

To Department of Veterans' and Military Affairs -
Utah Veterans' Nursing Home Fund
From Federal Funds, One-Time 10,000
Schedule of Programs:
Veterans' Nursing Home Fund 10,000

Subsection 1(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

EXECUTIVE OFFICES AND CRIMINAL JUSTICE

UTAH DEPARTMENT OF CORRECTIONS

Item 139

To Utah Department of Corrections -
Utah Correctional Industries

Under Section 63J-1-603 of the Utah Code, the Legislature intends that the appropriations for the Utah Department of Corrections - Utah Correctional Industries in item 48 of chapter 4, Laws of Utah 2016 not lapse at the close of Fiscal Year 2017.

INFRASTRUCTURE AND GENERAL GOVERNMENT

DEPARTMENT OF ADMINISTRATIVE SERVICES INTERNAL SERVICE FUNDS

Item 140

To Department of Administrative Services Internal Service Funds - Division of Fleet Operations

The Legislature intends that appropriations for Fleet Operations not lapse capital outlay authority granted within FY

2017 for vehicles not delivered by the end of FY 2017 in which vehicle purchase orders were issued obligating capital outlay funds.

Subsection 1(d). Capital Project Funds. The Legislature has reviewed the following capital project funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

INFRASTRUCTURE AND GENERAL GOVERNMENT

TRANSPORTATION

Item 141

To Transportation - Transportation
Investment Fund of 2005
From Designated Sales Tax,
One-Time 46,682,500
Schedule of Programs:
Transportation Investment Fund . . . 46,682,500

Section 2. Effective Date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the Governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override.

CHAPTER 438

H.B. 8

Passed March 7, 2017
 Approved March 28, 2017
 Effective July 1, 2017

**STATE AGENCY AND HIGHER EDUCATION
 COMPENSATION APPROPRIATIONS**

Chief Sponsor: Bradley G. Last
 Senate Sponsor: Kevin T. Van Tassel

LONG TITLE

General Description:

This bill supplements or reduces appropriations previously provided for the use and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides funding for a 2.0% labor market adjustment for certain state and higher education employees;
- ▶ provides funding equivalent to a 2.0% labor market adjustment for discretionary salary changes in the legislative and judicial branches and constitutional offices;
- ▶ provides funding for targeted compensation increases in the Department of Corrections and the Department of Alcoholic Beverage Control;
- ▶ provides funding for other Tier 1 targeted compensation increases as recommended by the Department of Human Resource Management;
- ▶ adjusts funding allocations for approved compensation funding mix exceptions;
- ▶ provides funding for a 8.0% increase in health insurance benefits rates for state and higher education employees;
- ▶ provides funding for retirement rate changes for certain state employees;
- ▶ provides funding for an up-to \$26 per pay period match for qualifying state employees enrolled in a defined contribution plan; and
- ▶ provides funding for other compensation adjustments as authorized.

Money Appropriated in this Bill:

This bill appropriates \$93,626,500 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$28,346,300 from the General Fund;
- ▶ \$29,292,500 from the Education Fund;
- ▶ \$35,987,700 from various sources as detailed in this bill.

This bill appropriates \$158,300 in expendable funds and accounts for fiscal year 2018.

This bill appropriates \$302,300 in business-like activities for fiscal year 2018.

Other Special Clauses:

This bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2018 Appropriations. Under provisions of Section 67-19-43, Utah Code

Annotated, the employer defined contribution match for the fiscal year beginning July 1, 2017 and ending June 30, 2018 shall be \$26 per pay period. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of

Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

**EXECUTIVE OFFICES AND
 CRIMINAL JUSTICE**

GOVERNOR'S OFFICE

Item 1

To Governor's Office

From General Fund	75,600
From General Fund, One-Time	10,100
From Dedicated Credits Revenue	12,600
From Dedicated Credits Revenue, One-Time	2,300
Schedule of Programs:	
Administration	61,100
Governor's Residence	6,900
Washington Funding	5,600
Lt. Governor's Office	26,200
Literacy Projects	800

Under provisions of Section 67-22-1, Utah Code Annotated, the Governors salary for the fiscal year beginning July 1, 2017 and ending June 30, 2018 shall be \$153,000. Other constitutional offices shall be calculated in accordance with the formula set forth in Section 67-22-1.

Item 2

To Governor's Office - Character Education

From General Fund	800
Schedule of Programs:	
Character Education	800

Item 3

To Governor's Office - Indigent Defense Commission

From General Fund	4,700
From General Fund Restricted - Indigent Defense Resources Account	11,500
From General Fund Restricted - Indigent Defense Resources Account, One-Time	2,500
Schedule of Programs:	
Indigent Defense Commission	18,700

Item 4

To Governor's Office - Governor's Office of Management and Budget

From General Fund	68,000
From General Fund, One-Time	10,800
From Dedicated Credits Revenue	500
Schedule of Programs:	
Administration	21,000
Planning and Budget Analysis	41,200

Operational Excellence	17,100
Item 5	
To Governor's Office - Commission on Criminal and Juvenile Justice	
From General Fund	54,500
From General Fund, One-Time	10,800
From Federal Funds	37,800
From Federal Funds, One-Time	6,800
From Crime Victim Reparations Fund	47,700
From Crime Victim Reparations Fund, One-Time	8,500
From General Fund Restricted - Criminal Forfeiture Restricted Account	1,100
From General Fund Restricted - Law Enforcement Operations	1,200
Schedule of Programs:	
CCJJ Commission	57,700
Utah Office for Victims of Crime	87,900
Extraditions	1,100
Substance Use and Mental Health Advisory Council	4,300
Sentencing Commission	4,200
State Task Force Grants	1,200
State Asset Forfeiture Grant Program	1,100
Judicial Performance Evaluation Commission	10,900

OFFICE OF THE STATE AUDITOR

Item 6	
To Office of the State Auditor - State Auditor	
From General Fund	66,900
From General Fund, One-Time	18,200
From Dedicated Credits Revenue	39,000
From Dedicated Credits Revenue, One-Time	10,400
Schedule of Programs:	
State Auditor	134,500

STATE TREASURER

Item 7	
To State Treasurer	
From General Fund	20,500
From General Fund, One-Time	3,800
From Dedicated Credits Revenue	10,800
From Dedicated Credits Revenue, One-Time	2,000
From Unclaimed Property Trust	27,700
From Unclaimed Property Trust, One-Time	7,800
Schedule of Programs:	
Treasury and Investment	34,000
Unclaimed Property	35,400
Money Management Council	3,200

ATTORNEY GENERAL

Item 8	
To Attorney General	
From General Fund	786,300
From General Fund, One-Time	138,100
From Federal Funds	40,900
From Federal Funds, One-Time	7,500
From Dedicated Credits Revenue	479,500
From Dedicated Credits Revenue, One-Time	80,300

From Attorney General Litigation Fund	300
From General Fund Restricted - Constitutional Defense	1,100
From General Fund Restricted - Constitutional Defense, One-Time	200
From Revenue Transfers	16,700
From Revenue Transfers, One-Time	3,000
Schedule of Programs:	
Administration	126,000
Child Protection	236,600
Criminal Prosecution	497,900
Civil	693,400

Item 9

To Attorney General - Children's Justice Centers	
From General Fund	5,800
From General Fund, One-Time	200
From Federal Funds	9,300
From Federal Funds, One-Time	400
From Dedicated Credits Revenue	900
Schedule of Programs:	
Children's Justice Centers	16,600

Item 10

To Attorney General - Prosecution Council	
From Dedicated Credits Revenue	1,500
From Dedicated Credits Revenue, One-Time	400
From General Fund Restricted - Public Safety Support	7,100
From General Fund Restricted - Public Safety Support, One-Time	2,100
From Revenue Transfers	6,500
From Revenue Transfers, One-Time	2,000
Schedule of Programs:	
Prosecution Council	19,600

UTAH DEPARTMENT OF CORRECTIONS

Item 11

To Utah Department of Corrections - Programs and Operations	
From General Fund	10,500,400
From General Fund, One-Time	1,526,600
From Federal Funds	2,100
From Federal Funds, One-Time	500
From Dedicated Credits Revenue	88,900
From Dedicated Credits Revenue, One-Time	28,100
From G.F.R. - Interstate Compact for Adult Offender Supervision	700
From G.F.R. - Interstate Compact for Adult Offender Supervision, One-Time ...	100
Schedule of Programs:	
Department Executive Director	267,100
Department Administrative Services ..	410,300
Department Training	66,700
Adult Probation and Parole Administration	21,800
Adult Probation and Parole Programs	2,799,300
Prison Operations Administration	25,100
Prison Operations Draper Facility ...	4,833,200
Prison Operations Central Utah/Gunnison	2,786,400
Prison Operations Inmate Placement	180,500
Programming Administration	10,900
Programming Treatment	168,900

Programming Skill Enhancement 577,200

Item 12

To Utah Department of Corrections -
 Department Medical Services
 From General Fund 436,500
 From General Fund, One-Time 204,400
 From Dedicated Credits Revenue 7,700
 From Dedicated Credits Revenue,
 One-Time 4,000
 Schedule of Programs:
 Medical Services 652,600

BOARD OF PARDONS AND PAROLE

Item 13

To Board of Pardons and Parole
 From General Fund 130,600
 From General Fund, One-Time 23,600
 Schedule of Programs:
 Board of Pardons and Parole 154,200

**DEPARTMENT OF HUMAN SERVICES -
 DIVISION OF JUVENILE JUSTICE
 SERVICES**

Item 14

To Department of Human Services -
 Division of Juvenile Justice Services -
 Programs and Operations
 From General Fund 2,336,900
 From General Fund, One-Time 388,900
 From Federal Funds 75,900
 From Federal Funds, One-Time 14,100
 From Dedicated Credits Revenue 25,600
 From Dedicated Credits Revenue,
 One-Time 5,600
 From Revenue Transfers 26,100
 From Revenue Transfers, One-Time 3,400
 Schedule of Programs:
 Administration 113,000
 Early Intervention Services 831,400
 Community Programs 301,800
 Correctional Facilities 663,900
 Rural Programs 950,600
 Youth Parole Authority 15,800

**JUDICIAL COUNCIL/STATE
 COURT ADMINISTRATOR**

Item 15

To Judicial Council/State Court Administrator -
 Administration
 From General Fund 2,739,400
 From General Fund, One-Time 515,000
 From Federal Funds 4,700
 From Federal Funds, One-Time 1,200
 From Dedicated Credits Revenue 64,500
 From Dedicated Credits Revenue,
 One-Time 13,900
 From General Fund Restricted -
 Children's Legal Defense 11,200
 From General Fund Restricted -
 Children's Legal Defense, One-Time 2,300
 From General Fund Restricted -
 Court Security Account 2,200
 From General Fund Restricted -
 Court Security Account, One-Time 700

From General Fund Restricted -
 Court Trust Interest 4,400
 From General Fund Restricted -
 Court Trust Interest, One-Time 1,100
 From General Fund Restricted -
 Dispute Resolution Account 14,200
 From General Fund Restricted -
 Dispute Resolution Account,
 One-Time 2,900
 From General Fund Restricted -
 DNA Specimen Account 6,900
 From General Fund Restricted -
 DNA Specimen Account, One-Time 1,300
 From General Fund Rest. - Justice
 Court Tech., Security & Training 18,000
 From General Fund Rest. - Justice
 Court Tech., Security & Training,
 One-Time 3,800
 From General Fund Restricted -
 Nonjudicial Adjustment Account 26,700
 From General Fund Restricted -
 Nonjudicial Adjustment Account,
 One-Time 5,300
 From General Fund Restricted -
 Online Court Assistance Account 3,600
 From General Fund Restricted -
 Online Court Assistance Account,
 One-Time 700
 From General Fund Restricted -
 State Court Complex Account 8,200
 From General Fund Restricted -
 State Court Complex Account,
 One-Time 1,700
 From General Fund Restricted -
 Substance Abuse Prevention 14,300
 From General Fund Restricted -
 Substance Abuse Prevention,
 One-Time 3,000
 From Revenue Transfers 10,300
 From Revenue Transfers, One-Time 2,400
 Schedule of Programs:
 Supreme Court 93,500
 Law Library 26,300
 Court of Appeals 119,500
 District Courts 1,465,600
 Juvenile Courts 1,279,000
 Justice Courts 24,800
 Courts Security 2,900
 Administrative Office 320,700
 Judicial Education 12,000
 Data Processing 130,100
 Grants Program 9,500

Item 16

To Judicial Council/State Court Administrator -
 Contracts and Leases
 From General Fund 3,300
 From General Fund, One-Time 500
 From General Fund Restricted -
 State Court Complex Account 1,000
 From General Fund Restricted -
 State Court Complex Account,
 One-Time 100
 Schedule of Programs:
 Contracts and Leases 4,900

Item 17

To Judicial Council/State Court Administrator -
 Jury and Witness Fees

From General Fund 9,800
 From General Fund, One-Time 7,900
 Schedule of Programs:
 Jury, Witness, and Interpreter 17,700

Item 18

To Judicial Council/State Court Administrator -
 Guardian ad Litem
 From General Fund 173,100
 From General Fund, One-Time 42,600
 From Dedicated Credits Revenue 1,900
 From Dedicated Credits Revenue,
 One-Time 400
 From General Fund Restricted -
 Children's Legal Defense 11,200
 From General Fund Restricted -
 Children's Legal Defense, One-Time 2,900
 From General Fund Restricted -
 Guardian Ad Litem Services 9,000
 From General Fund Restricted -
 Guardian Ad Litem Services,
 One-Time 2,200
 Schedule of Programs:
 Guardian ad Litem 243,300

DEPARTMENT OF PUBLIC SAFETY

Item 19

To Department of Public Safety -
 Programs & Operations
 From General Fund 1,558,300
 From General Fund, One-Time 339,700
 From Federal Funds 15,900
 From Federal Funds, One-Time 1,100
 From Dedicated Credits Revenue 456,700
 From Dedicated Credits Revenue,
 One-Time 76,400
 From General Fund Restricted -
 Concealed Weapons Account 156,900
 From General Fund Restricted -
 Concealed Weapons Account,
 One-Time 12,400
 From Department of Public Safety
 Restricted Account 60,500
 From Department of Public Safety
 Restricted Account, One-Time 17,100
 From General Fund Restricted -
 DNA Specimen Account 28,700
 From General Fund Restricted -
 DNA Specimen Account, One-Time 6,100
 From General Fund Restricted -
 Fire Academy Support 54,400
 From General Fund Restricted -
 Fire Academy Support, One-Time 15,100
 From General Fund Restricted -
 Reduced Cigarette Ignition Propensity
 & Firefighter Protection Account 1,200
 From General Fund Restricted -
 Reduced Cigarette Ignition
 Propensity & Firefighter Protection
 Account, One-Time 500
 From General Fund Restricted -
 Statewide Warrant Operations 7,700
 From General Fund Restricted -
 Statewide Warrant Operations,
 One-Time 2,200
 From Revenue Transfers 6,400
 From Revenue Transfers, One-Time 900

From General Fund Restricted -
 Utah Highway Patrol Aero Bureau 1,500
 From General Fund Restricted -
 Utah Highway Patrol Aero Bureau,
 One-Time 300
 From Pass-through 60,800
 From Pass-through, One-Time 17,400
 Schedule of Programs:
 Department Commissioner's Office 75,300
 Aero Bureau 8,000
 Department Intelligence Center 39,400
 Department Grants 23,700
 Department Fleet Management 2,200
 CITS Administration 11,100
 CITS Bureau of Criminal
 Identification 603,600
 CITS Communications 235,600
 CITS State Crime Labs 132,800
 CITS State Bureau of Investigation 98,000
 Highway Patrol - Administration 27,300
 Highway Patrol - Field
 Operations 1,118,000
 Highway Patrol - Commercial
 Vehicle 124,000
 Highway Patrol - Safety Inspections 37,300
 Highway Patrol - Protective
 Services 137,100
 Highway Patrol - Special Services 106,300
 Highway Patrol - Special
 Enforcement 17,300
 Highway Patrol - Technology
 Services 23,600
 Fire Marshall - Fire Operations 63,900
 Fire Marshall - Fire Fighter Training 13,700

Item 20

To Department of Public Safety -
 Emergency Management
 From General Fund 8,700
 From General Fund, One-Time 2,100
 From Federal Funds 97,500
 From Federal Funds, One-Time 23,400
 From Dedicated Credits Revenue 100
 Schedule of Programs:
 Emergency Management 131,800

Item 21

To Department of Public Safety -
 Peace Officers' Standards and Training
 From General Fund 1,500
 From General Fund, One-Time 900
 From Dedicated Credits Revenue 800
 From Dedicated Credits Revenue,
 One-Time 400
 From General Fund Restricted -
 Public Safety Support 46,000
 From General Fund Restricted -
 Public Safety Support, One-Time 22,300
 Schedule of Programs:
 Basic Training 27,600
 Regional/Inservice Training 16,700
 POST Administration 27,600

Item 22

To Department of Public Safety -
 Driver License
 From Federal Funds 1,400
 From Dedicated Credits Revenue 100

From Department of Public Safety Restricted Account	626,500
From Department of Public Safety Restricted Account, One-Time	140,500
From Public Safety Motorcycle Education Fund	2,300
From Public Safety Motorcycle Education Fund, One-Time	700
From Pass-through	1,200
From Pass-through, One-Time	300
Schedule of Programs:	
Driver License Administration	57,900
Driver Services	519,400
Driver Records	191,300
Motorcycle Safety	3,000
DL Federal Grants	1,400

Item 23

To Department of Public Safety - Highway Safety From General Fund	300
From General Fund, One-Time	100
From Federal Funds	27,900
From Federal Funds, One-Time	7,600
Schedule of Programs:	
Highway Safety	35,900

**INFRASTRUCTURE AND
GENERAL GOVERNMENT**

TRANSPORTATION

Item 24

To Transportation - Support Services From Transportation Fund	297,500
From Transportation Fund, One-Time ..	120,800
From Federal Funds	44,600
From Federal Funds, One-Time	13,200
Schedule of Programs:	
Administrative Services	39,100
Risk Management	14,900
Human Resources Management	24,200
Procurement	39,500
Comptroller	82,400
Data Processing	7,200
Internal Auditor	25,200
Community Relations	17,600
Ports of Entry	226,000

Item 25

To Transportation - Engineering Services From Transportation Fund	601,700
From Transportation Fund, One-Time ..	203,200
From Dedicated Credits Revenue	28,500
From Dedicated Credits Revenue, One-Time	7,000
Schedule of Programs:	
Program Development	194,000
Preconstruction Admin	47,000
Environmental	62,300
Structures	95,600
Materials Lab	125,700
Engineering Services	82,200
Right-of-Way	76,600
Research	35,200
Construction Management	49,000
Civil Rights	10,600
Engineer Development Pool	52,400

Highway Project Management Team	9,800
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Item 26

To Transportation - Operations/ Maintenance Management From Transportation Fund	2,036,700
From Transportation Fund, One-Time ..	652,300
From Dedicated Credits Revenue	17,700
From Dedicated Credits Revenue, One-Time	6,100
Schedule of Programs:	
Region 1	331,600
Region 2	508,100
Region 3	302,600
Region 4	638,100
Field Crews	354,900
Traffic Safety/Tramway	96,200
Traffic Operations Center	193,100
Maintenance Planning	49,200
Shops	239,000

Item 27

To Transportation - Region Management From Transportation Fund	654,100
From Transportation Fund, One-Time ..	183,700
From Dedicated Credits Revenue	31,200
From Dedicated Credits Revenue, One-Time	8,700
Schedule of Programs:	
Region 1	192,300
Region 2	295,100
Region 3	159,500
Region 4	209,300
Richfield	2,900
Price	9,200
Cedar City	9,400

Item 28

To Transportation - Aeronautics From Dedicated Credits Revenue	6,700
From Dedicated Credits Revenue, One-Time	1,500
From Aeronautics Restricted Account	20,600
From Aeronautics Restricted Account, One-Time	7,700
Schedule of Programs:	
Administration	15,200
Airplane Operations	21,300

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

Item 29

To Department of Administrative Services - Executive Director From General Fund	19,600
From General Fund, One-Time	4,900
Schedule of Programs:	
Executive Director	24,500

Item 30

To Department of Administrative Services - Inspector General of Medicaid Services From General Fund	32,700
From General Fund, One-Time	8,900
From Revenue Transfers	34,600
From Revenue Transfers, One-Time	9,300
Schedule of Programs:	
Inspector General of Medicaid Services	85,500

Item 31

To Department of Administrative Services -
 Administrative Rules
 From General Fund 8,500
 From General Fund, One-Time 2,000
 Schedule of Programs:
 DAR Administration 10,500

Item 32

To Department of Administrative Services -
 DFCM Administration
 From General Fund 39,600
 From General Fund, One-Time 18,000
 From Dedicated Credits Revenue 23,400
 From Dedicated Credits Revenue,
 One-Time 7,500
 From Capital Projects Fund 32,500
 From Capital Projects Fund, One-Time ... 14,700
 From Capital Project Fund -
 Contingency Reserve 1,400
 From Capital Project Fund -
 Contingency Reserve, One-Time 700
 From Capital Project Fund -
 Project Reserve 3,500
 From Capital Project Fund -
 Project Reserve, One-Time 1,500
 Schedule of Programs:
 DFCM Administration 131,600
 Energy Program 11,200

Item 33

To Department of Administrative Services -
 Building Board Program
 From Capital Projects Fund 9,800
 From Capital Projects Fund, One-Time ... 2,500
 Schedule of Programs:
 Building Board Program 12,300

Item 34

To Department of Administrative
 Services - State Archives
 From General Fund 46,800
 From General Fund, One-Time 15,300
 From Federal Funds 1,100
 From Federal Funds, One-Time 400
 From Dedicated Credits Revenue 1,500
 From Dedicated Credits Revenue,
 One-Time 300
 Schedule of Programs:
 Archives Administration 13,300
 Records Analysis 9,100
 Preservation Services 9,600
 Patron Services 19,100
 Records Services 6,100
 Open Records 8,200

Item 35

To Department of Administrative Services -
 Finance Administration
 From General Fund 74,100
 From General Fund, One-Time 46,600
 From Transportation Fund 2,400
 From Transportation Fund, One-Time ... 1,900
 From Dedicated Credits Revenue 28,500
 From Dedicated Credits Revenue,
 One-Time 16,200
 From General Fund Restricted -
 Internal Service Fund Overhead 7,100

From General Fund Restricted -
 Internal Service Fund Overhead,
 One-Time 5,700
 Schedule of Programs:
 Finance Director's Office 17,400
 Payroll 21,700
 Payables/Disbursing 48,200
 Financial Reporting 59,100
 Financial Information Systems 36,100

Item 36

To Department of Administrative Services -
 Finance - Mandated
 From General Fund, One-Time (4,500,000)
 Schedule of Programs:
 State Employee Benefits (4,500,000)

Item 37

To Department of Administrative Services -
 Judicial Conduct Commission
 From General Fund 5,400
 From General Fund, One-Time 700
 Schedule of Programs:
 Judicial Conduct Commission 6,100

Item 38

To Department of Administrative Services -
 Purchasing
 From General Fund 15,400
 From General Fund, One-Time 4,200
 Schedule of Programs:
 Purchasing and General Services 19,600

**DEPARTMENT OF
 TECHNOLOGY SERVICES**

Item 39

To Department of Technology Services -
 Chief Information Officer
 From General Fund 14,200
 From General Fund, One-Time 1,400
 Schedule of Programs:
 Chief Information Officer 15,600

Item 40

To Department of Technology Services -
 Integrated Technology Division
 From General Fund 11,500
 From General Fund, One-Time 3,200
 From Federal Funds 6,600
 From Federal Funds, One-Time 1,700
 From Dedicated Credits Revenue 12,900
 From Dedicated Credits Revenue,
 One-Time 3,500
 From General Fund Restricted - Statewide
 Unified E-911 Emergency Account 4,600
 From General Fund Restricted - Statewide
 Unified E-911 Emergency Account,
 One-Time 1,200
 Schedule of Programs:
 Automated Geographic Reference
 Center 45,200

**BUSINESS, ECONOMIC
 DEVELOPMENT, AND LABOR**

DEPARTMENT OF HERITAGE AND ARTS

Item 41

To Department of Heritage and Arts -
 Administration

From General Fund	43,000
From General Fund, One-Time	11,500
From Dedicated Credits Revenue	900
From Dedicated Credits Revenue, One-Time	200
Schedule of Programs:	
Executive Director's Office	12,500
Information Technology	7,300
Administrative Services	29,300
Utah Multicultural Affairs Office	6,500

Item 42

To Department of Heritage and Arts - State History	
From General Fund	40,600
From General Fund, One-Time	10,200
From Federal Funds	15,100
From Federal Funds, One-Time	7,300
From Dedicated Credits Revenue	1,600
From Dedicated Credits Revenue, One-Time	600
Schedule of Programs:	
Administration	8,100
Library and Collections	12,700
Public History, Communication and Information	13,800
Historic Preservation and Antiquities ...	40,800

Item 43

To Department of Heritage and Arts - Division of Arts and Museums	
From General Fund	35,000
From General Fund, One-Time	7,300
From Federal Funds	2,200
From Federal Funds, One-Time	600
From Dedicated Credits Revenue	800
From Dedicated Credits Revenue, One-Time	200
Schedule of Programs:	
Administration	8,200
Community Arts Outreach	37,900

Item 44

To Department of Heritage and Arts - State Library	
From General Fund	48,800
From General Fund, One-Time	12,400
From Federal Funds	20,900
From Federal Funds, One-Time	4,000
From Dedicated Credits Revenue	38,200
From Dedicated Credits Revenue, One-Time	8,200
Schedule of Programs:	
Administration	7,200
Blind and Disabled	55,400
Library Development	48,000
Library Resources	21,900

Item 45

To Department of Heritage and Arts - Indian Affairs	
From General Fund	4,900
From General Fund, One-Time	600
From Dedicated Credits Revenue	1,000
From Dedicated Credits Revenue, One-Time	100
Schedule of Programs:	
Indian Affairs	6,600

Item 46

To Department of Heritage and Arts - Commission on Service and Volunteerism	
From General Fund	5,500
From General Fund, One-Time	100
From Federal Funds	15,400
From Federal Funds, One-Time	2,400
From Dedicated Credits Revenue	300
From Dedicated Credits Revenue, One-Time	100
Schedule of Programs:	
Commission on Service and Volunteerism	23,800

**GOVERNOR'S OFFICE OF
ECONOMIC DEVELOPMENT**

Item 47

To Governor's Office of Economic Development - Administration	
From General Fund	44,100
From General Fund, One-Time	8,200
From Dedicated Credits Revenue	10,700
From Dedicated Credits Revenue, One-Time	2,000
Schedule of Programs:	
Administration	65,000

Item 48

To Governor's Office of Economic Development - STEM Action Center	
From General Fund	17,300
From General Fund, One-Time	1,000
From Dedicated Credits Revenue	5,700
From Dedicated Credits Revenue, One-Time	300
Schedule of Programs:	
STEM Action Center	24,300

Item 49

To Governor's Office of Economic Development - Office of Tourism	
From General Fund	50,100
From General Fund, One-Time	10,000
From Dedicated Credits Revenue	4,100
From Dedicated Credits Revenue, One-Time	1,000
Schedule of Programs:	
Administration	20,200
Operations and Fulfillment	30,200
Film Commission	14,800

Item 50

To Governor's Office of Economic Development - Business Development	
From General Fund	85,800
From General Fund, One-Time	15,500
From Federal Funds	8,500
From Federal Funds, One-Time	1,800
From Dedicated Credits Revenue	4,400
From Dedicated Credits Revenue, One-Time	1,000
From General Fund Restricted - Industrial Assistance Account	2,900
From General Fund Restricted - Industrial Assistance Account, One-Time	500
Schedule of Programs:	
Outreach and International Trade	46,300
Corporate Recruitment and Business Services	74,100

Item 51

To Governor's Office of Economic Development -
 Pete Suazo Utah Athletics Commission

From General Fund	3,800
From General Fund, One-Time	500
From Dedicated Credits Revenue	1,500
From Dedicated Credits Revenue, One-Time	200
Schedule of Programs:	
Pete Suazo Utah Athletics Commission	6,000

Item 52

To Governor's Office of Economic Development -
 Utah Broadband Outreach Center

From General Fund	4,100
From General Fund, One-Time	1,400
Schedule of Programs:	
Utah Broadband Outreach Center	5,500

UTAH STATE TAX COMMISSION

Item 53

To Utah State Tax Commission -
 Tax Administration

From General Fund	557,500
From General Fund, One-Time	128,500
From Education Fund	437,900
From Education Fund, One-Time	103,100
From Federal Funds	14,600
From Federal Funds, One-Time	3,300
From Dedicated Credits Revenue	140,300
From Dedicated Credits Revenue, One-Time	31,900
From General Fund Restricted - Motor Vehicle Enforcement Division Temporary Permit Account	78,900
From General Fund Restricted - Motor Vehicle Enforcement Division Temporary Permit Account, One-Time	13,300
From General Fund Restricted - Sales and Use Tax Admin Fees	210,400
From General Fund Restricted - Sales and Use Tax Admin Fees, One-Time	48,800
From Revenue Transfers	4,000
From Revenue Transfers, One-Time	900
From Uninsured Motorist Identification Restricted Account	3,300
From Uninsured Motorist Identification Restricted Account, One-Time	700
Schedule of Programs:	
Administration Division	231,800
Auditing Division	361,500
Tax Processing Division	165,500
Seasonal Employees	3,000
Tax Payer Services	343,800
Property Tax Division	157,000
Motor Vehicles	419,800
Motor Vehicle Enforcement Division	95,000

**UTAH SCIENCE TECHNOLOGY AND
 RESEARCH GOVERNING AUTHORITY**

Item 54

To Utah Science Technology and Research
 Governing Authority - USTAR Administration

From General Fund	10,600
From General Fund, One-Time	1,400

Schedule of Programs:

Administration	12,000
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**DEPARTMENT OF ALCOHOLIC
 BEVERAGE CONTROL**

Item 55

To Department of Alcoholic Beverage Control -
 DABC Operations

From Liquor Control Fund	1,629,900
From Liquor Control Fund, One-Time	110,200
Schedule of Programs:	
Executive Director	108,700
Administration	22,000
Warehouse and Distribution	125,700
Stores and Agencies	1,483,700

LABOR COMMISSION

Item 56

To Labor Commission

From General Fund	111,100
From General Fund, One-Time	34,300
From Federal Funds	66,700
From Federal Funds, One-Time	18,700
From Dedicated Credits Revenue	2,300
From Dedicated Credits Revenue, One-Time	400
From Employers' Reinsurance Fund	1,500
From Employers' Reinsurance Fund, One-Time	200
From General Fund Restricted - Industrial Accident Rest. Account	67,900
From General Fund Restricted - Industrial Accident Rest. Account, One-Time	13,800
From General Fund Restricted - Workplace Safety Account	9,700
From General Fund Restricted - Workplace Safety Account, One-Time	3,000
Schedule of Programs:	
Administration	29,900
Industrial Accidents	47,600
Adjudication	36,900
Boiler, Elevator and Coal Mine Safety Division	40,200
Workplace Safety	800
Antidiscrimination and Labor	63,400
Utah Occupational Safety and Health	110,800

DEPARTMENT OF COMMERCE

Item 57

To Department of Commerce - Commerce
 General Regulation

From General Fund	800
From General Fund, One-Time	200
From Federal Funds	5,600
From Federal Funds, One-Time	1,600
From Dedicated Credits Revenue	29,200
From Dedicated Credits Revenue, One-Time	7,200
From General Fund Restricted - Commerce Service Account - Public Utilities Regulatory Fee	84,500
From General Fund Restricted - Commerce Service Account - Public Utilities Regulatory Fee, One-Time	22,000

From General Fund Restricted -
 Commerce Service Account 359,800
 From General Fund Restricted - Commerce
 Service Account, One-Time 95,100
 From General Fund Restricted -
 Factory Built Housing Fees 1,700
 From General Fund Restricted - Factory
 Built Housing Fees, One-Time 500
 From General Fund Restricted -
 Geologist Education and Enforcement
 Account 100
 From General Fund Restricted - Nurse
 Education & Enforcement Account 300
 From General Fund Restricted -
 Pawnbroker Operations 2,900
 From General Fund Restricted -
 Pawnbroker Operations, One-Time 800
 From General Fund Restricted - Utah
 Housing Opportunity Restricted Account .. 400
 From General Fund Restricted - Utah
 Housing Opportunity Restricted
 Account, One-Time 100
 From Pass-through 1,000
 From Pass-through, One-Time 200
 Schedule of Programs:
 Administration 53,700
 Occupational and Professional
 Licensing 209,200
 Securities 63,300
 Consumer Protection 55,700
 Corporations and Commercial Code 65,800
 Real Estate 49,700
 Public Utilities 99,700
 Office of Consumer Services 16,900

Item 58

To Department of Commerce - Building
 Inspector Training
 From Dedicated Credits Revenue 1,600
 From Dedicated Credits Revenue,
 One-Time 600
 Schedule of Programs:
 Building Inspector Training 2,200

FINANCIAL INSTITUTIONS**Item 59**

To Financial Institutions - Financial
 Institutions Administration
 From General Fund Restricted -
 Financial Institutions 153,000
 From General Fund Restricted -
 Financial Institutions, One-Time 37,200
 Schedule of Programs:
 Administration 190,200

INSURANCE DEPARTMENT**Item 60**

To Insurance Department - Insurance
 Department Administration
 From Federal Funds 18,700
 From Federal Funds, One-Time 4,900
 From Dedicated Credits Revenue 100
 From General Fund Restricted - Captive
 Insurance 20,700
 From General Fund Restricted -
 Captive Insurance, One-Time 3,400

From General Fund Restricted -
 Insurance Department Account 124,100
 From General Fund Restricted -
 Insurance Department Account,
 One-Time 32,400
 From General Fund Restricted - Insurance
 Fraud Investigation Acct 26,700
 From General Fund Restricted - Insurance
 Fraud Investigation Acct, One-Time 6,200
 Schedule of Programs:
 Administration 178,200
 Insurance Fraud Program 34,900
 Captive Insurers 24,100

Item 61

To Insurance Department - Bail Bond Program
 From General Fund Restricted - Bail
 Bond Surety Administration 700
 From General Fund Restricted - Bail Bond
 Surety Administration, One-Time 100
 Schedule of Programs:
 Bail Bond Program 800

Item 62

To Insurance Department - Title
 Insurance Program
 From General Fund Restricted - Title
 Licensee Enforcement Account 2,000
 From General Fund Restricted - Title
 Licensee Enforcement Account,
 One-Time 600
 Schedule of Programs:
 Title Insurance Program 2,600

PUBLIC SERVICE COMMISSION**Item 63**

To Public Service Commission
 From General Fund Restricted - Commerce
 Service Account - Public Utilities
 Regulatory Fee 53,800
 From General Fund Restricted - Commerce
 Service Account - Public Utilities
 Regulatory Fee, One-Time 10,800
 Schedule of Programs:
 Administration 64,600

Item 64

To Public Service Commission - Speech
 and Hearing Impaired
 From Dedicated Credits Revenue 3,900
 From Dedicated Credits Revenue,
 One-Time 700
 Schedule of Programs:
 Speech and Hearing Impaired 4,600

SOCIAL SERVICES**DEPARTMENT OF HEALTH****Item 65**

To Department of Health - Executive
 Director's Operations
 From General Fund 97,500
 From General Fund, One-Time 26,100
 From Federal Funds 97,000
 From Federal Funds, One-Time 26,500
 From Dedicated Credits Revenue 40,200
 From Dedicated Credits Revenue,
 One-Time 11,200

From Revenue Transfers	11,200
From Revenue Transfers, One-Time	3,200
Schedule of Programs:	
Executive Director	57,800
Center for Health Data and Informatics	131,900
Program Operations	86,000
Office of Internal Audit	37,200

Item 66

To Department of Health - Family Health and Preparedness	
From General Fund	145,800
From General Fund, One-Time	35,900
From Federal Funds	353,200
From Federal Funds, One-Time	92,800
From Dedicated Credits Revenue	61,900
From Dedicated Credits Revenue, One-Time	19,000
From General Fund Restricted - Children's Hearing Aid Pilot Program Account	1,800
From General Fund Restricted - Children's Hearing Aid Pilot Program Account, One-Time	700
From General Fund Restricted - K. Oscarson Children's Organ Transplant	1,700
From General Fund Restricted - K. Oscarson Children's Organ Transplant, One-Time	600
From Revenue Transfers	96,400
From Revenue Transfers, One-Time	30,700
Schedule of Programs:	
Director's Office	30,400
Maternal and Child Health	119,300
Child Development	156,200
Children with Special Health Care Needs	196,600
Public Health and Health Care Preparedness	68,400
Health Facility Licensing and Certification	175,900
Primary Care	30,000
Emergency Medical Services and Preparedness	63,700

Item 67

To Department of Health - Disease Control and Prevention	
From General Fund	192,600
From General Fund, One-Time	39,000
From Federal Funds	389,100
From Federal Funds, One-Time	89,600
From Dedicated Credits Revenue	104,300
From Dedicated Credits Revenue, One-Time	19,600
From Department of Public Safety Restricted Account	1,700
From Department of Public Safety Restricted Account, One-Time	200
From General Fund Restricted - State Lab Drug Testing Account	8,900
From General Fund Restricted - State Lab Drug Testing Account, One-Time	1,800
From Revenue Transfers	31,500
From Revenue Transfers, One-Time	7,400
Schedule of Programs:	
General Administration	37,000

Health Promotion	301,200
Epidemiology	262,100
Laboratory Operations and Testing	167,200
Office of the Medical Examiner	105,700
Clinical and Environmental Laboratory Certification Programs	12,500

Item 68

To Department of Health - Rural Physicians Loan Repayment Assistance	
From General Fund	300
Schedule of Programs:	
Rural Physicians Loan Repayment Program	300

Item 69

To Department of Health - Primary Care Workforce Financial Assistance	
From General Fund	300
Schedule of Programs:	
Primary Care Workforce Financial Assistance	300

Item 70

To Department of Health - Medicaid and Health Financing	
From General Fund	56,800
From General Fund, One-Time	21,600
From Federal Funds	294,600
From Federal Funds, One-Time	111,600
From Dedicated Credits Revenue	118,500
From Dedicated Credits Revenue, One-Time	45,900
From General Fund Restricted - Nursing Care Facilities Account	9,000
From General Fund Restricted - Nursing Care Facilities Account, One-Time	3,400
From Revenue Transfers	11,900
From Revenue Transfers, One-Time	4,500
Schedule of Programs:	
Director's Office	58,400
Financial Services	79,600
Managed Health Care	133,800
Medicaid Operations	144,200
Authorization and Community Based Services	98,300
Eligibility Policy	87,100
Coverage and Reimbursement Policy	76,400

Item 71

To Department of Health - Children's Health Insurance Program	
From General Fund	700
From General Fund, One-Time	(700)
From Federal Funds	11,100
From Federal Funds, One-Time	4,000
From Dedicated Credits Revenue	800
From Dedicated Credits Revenue, One-Time	(800)
Schedule of Programs:	
Children's Health Insurance Program	15,100

Item 72

To Department of Health - Medicaid Services	
From General Fund	64,200
From General Fund, One-Time	23,200
From Federal Funds	93,500
From Federal Funds, One-Time	26,600
From Dedicated Credits Revenue	36,300

From Dedicated Credits Revenue,	
One-Time	14,300
From Revenue Transfers	19,900
From Revenue Transfers, One-Time	7,900
Schedule of Programs:	
Home and Community Based	
Waivers	14,600
Other Services	167,600
Pharmacy	15,300
Provider Reimbursement Information	
System for Medicaid	88,400

DEPARTMENT OF WORKFORCE SERVICES

Item 73

To Department of Workforce Services - Administration	
From General Fund	52,800
From General Fund, One-Time	20,500
From Federal Funds	114,700
From Federal Funds, One-Time	43,400
From Dedicated Credits Revenue	3,000
From Dedicated Credits Revenue, One-Time	1,100
From Permanent Community Impact Loan Fund	2,700
From Permanent Community Impact Loan Fund, One-Time	1,100
From General Fund Restricted - Special Admin. Expense Account	200
From Revenue Transfers	32,400
From Revenue Transfers, One-Time	11,000
Schedule of Programs:	
Executive Director's Office	21,500
Communications	32,400
Administrative Support	211,600
Internal Audit	17,400

Item 74

To Department of Workforce Services - Operations and Policy	
From General Fund	635,400
From General Fund, One-Time	167,900
From Federal Funds	1,530,400
From Federal Funds, One-Time	415,200
From Dedicated Credits Revenue	11,100
From Dedicated Credits Revenue, One-Time	3,100
From General Fund Restricted - Special Admin. Expense Account	500
From Revenue Transfers	696,500
From Revenue Transfers, One-Time	180,900
Schedule of Programs:	
Workforce Development	1,607,000
Workforce Research and Analysis	72,700
Eligibility Services	1,961,300

Item 75

To Department of Workforce Services - General Assistance	
From General Fund	21,200
From General Fund, One-Time	3,600
From Dedicated Credits Revenue	1,200
From Dedicated Credits Revenue, One-Time	200
Schedule of Programs:	
General Assistance	26,200

Item 76

To Department of Workforce Services - Unemployment Insurance	
From General Fund	12,500
From General Fund, One-Time	4,600
From Federal Funds	459,400
From Federal Funds, One-Time	139,100
From Dedicated Credits Revenue	24,500
From Dedicated Credits Revenue, One-Time	6,800
From General Fund Restricted - Special Admin. Expense Account	400
From General Fund Restricted - Special Admin. Expense Account, One-Time	100
From Revenue Transfers	19,700
From Revenue Transfers, One-Time	6,600
Schedule of Programs:	
Unemployment Insurance	
Administration	574,400
Adjudication	99,300

Item 77

To Department of Workforce Services - State Office of Rehabilitation	
From General Fund	229,400
From General Fund, One-Time	70,900
From Federal Funds	567,500
From Federal Funds, One-Time	171,100
From Dedicated Credits Revenue	12,800
From Dedicated Credits Revenue, One-Time	4,200
From Revenue Transfers	8,700
From Revenue Transfers, One-Time	2,800
Schedule of Programs:	
Executive Director	28,600
Blind and Visually Impaired	74,300
Rehabilitation Services	624,400
Disability Determination	240,700
Deaf and Hard of Hearing	70,300
Aspire Grant	29,100

Item 78

To Department of Workforce Services - Housing and Community Development	
From General Fund	8,100
From General Fund, One-Time	2,200
From Federal Funds	66,700
From Federal Funds, One-Time	17,600
From Dedicated Credits Revenue	6,400
From Dedicated Credits Revenue, One-Time	2,100
From General Fund Restricted - Pamela Atkinson Homeless Account	4,200
From General Fund Restricted - Pamela Atkinson Homeless Account, One-Time	1,300
From General Fund Restricted - Homeless Housing Reform Restricted Account	5,400
From General Fund Restricted - Homeless Housing Reform Restricted Account, One-Time	1,300
From Permanent Community Impact Loan Fund	13,300
From Permanent Community Impact Loan Fund, One-Time	6,200
Schedule of Programs:	
Community Development	
Administration	15,900

HEAT	16,300
Housing Development	15,700
Weatherization Assistance	14,300
Homeless to Housing Reform Program ...	6,700
Community Development	38,600
Homeless Committee	22,200
Community Services	5,100

Item 79

To Department of Workforce Services - Office of Child Care	
From General Fund	2,300
From General Fund, One-Time	700
Schedule of Programs:	
Intergenerational Poverty School	
Readiness Scholarship	3,000

DEPARTMENT OF HUMAN SERVICES

Item 80

To Department of Human Services - Executive Director Operations	
From General Fund	176,400
From General Fund, One-Time	29,900
From Federal Funds	114,800
From Federal Funds, One-Time	18,700
From Dedicated Credits Revenue	1,200
From Dedicated Credits Revenue, One-Time	200
From Revenue Transfers	56,000
From Revenue Transfers, One-Time	7,000
Schedule of Programs:	
Executive Director's Office	103,200
Legal Affairs	13,000
Information Technology	7,100
Fiscal Operations	100,500
Office of Services Review	45,500
Office of Licensing	118,000
Utah Developmental Disabilities Council	16,300
Utah Marriage Commission	600

Item 81

To Department of Human Services - Division of Substance Abuse and Mental Health	
From General Fund	1,044,400
From General Fund, One-Time	158,800
From Federal Funds	44,400
From Federal Funds, One-Time	7,900
From Dedicated Credits Revenue	50,700
From Dedicated Credits Revenue, One-Time	7,600
From Revenue Transfers	339,600
From Revenue Transfers, One-Time	52,200
Schedule of Programs:	
Administration - DSAMH	94,900
Community Mental Health Services	15,400
State Hospital	1,579,800
State Substance Abuse Services	15,500

Item 82

To Department of Human Services - Division of Services for People with Disabilities	
From General Fund	417,600
From General Fund, One-Time	72,700
From Federal Funds	8,300
From Federal Funds, One-Time	1,900
From Dedicated Credits Revenue	43,200

From Dedicated Credits Revenue, One-Time	6,000
From Revenue Transfers	810,100
From Revenue Transfers, One-Time ...	123,300
Schedule of Programs:	
Administration - DSPD	125,000
Service Delivery	187,800
Utah State Developmental Center ...	1,170,300

Item 83

To Department of Human Services - Office of Recovery Services	
From General Fund	241,400
From General Fund, One-Time	61,000
From Federal Funds	347,200
From Federal Funds, One-Time	89,200
From Dedicated Credits Revenue	189,000
From Dedicated Credits Revenue, One-Time	43,500
From Revenue Transfers	50,100
From Revenue Transfers, One-Time	12,100
Schedule of Programs:	
Administration - ORS	33,900
Financial Services	74,000
Electronic Technology	72,900
Child Support Services	740,700
Children in Care Collections	20,300
Medical Collections	91,700

Item 84

To Department of Human Services - Division of Child and Family Services	
From General Fund	1,704,700
From General Fund, One-Time	362,600
From Federal Funds	584,200
From Federal Funds, One-Time	123,500
From Dedicated Credits Revenue	1,500
From Dedicated Credits Revenue, One-Time	200
From General Fund Restricted - Victims of Domestic Violence Services Account	2,500
From General Fund Restricted - Victims of Domestic Violence Services Account, One-Time	700
From Revenue Transfers	1,500
From Revenue Transfers, One-Time	300
Schedule of Programs:	
Administration - DCFS	145,600
Service Delivery	2,512,200
Facility-based Services	4,600
Minor Grants	46,500
Domestic Violence	25,600
Child Welfare Management Information System	47,200

Item 85

To Department of Human Services - Division of Aging and Adult Services	
From General Fund	99,300
From General Fund, One-Time	34,700
From Federal Funds	19,700
From Federal Funds, One-Time	5,600
Schedule of Programs:	
Administration - DAAS	44,700
Adult Protective Services	105,200
Aging Waiver Services	6,400
Aging Alternatives	3,000

Item 86

To Department of Human Services - Office
of Public Guardian
From General Fund 9,900
From General Fund, One-Time 2,800
From Federal Funds 900
From Federal Funds, One-Time 300
From Revenue Transfers 7,100
From Revenue Transfers, One-Time 2,000
Schedule of Programs:
Office of Public Guardian 23,000

HIGHER EDUCATION**UNIVERSITY OF UTAH****Item 87**

To University of Utah - Education and General
From Education Fund 8,016,700
From Dedicated Credits Revenue 2,672,300
Schedule of Programs:
Education and General 10,656,700
Operations and Maintenance 32,300

Item 88

To University of Utah -
Educationally Disadvantaged
From Education Fund 6,900
Schedule of Programs:
Educationally Disadvantaged 6,900

Item 89

To University of Utah - School of Medicine
From Education Fund 727,300
From Dedicated Credits Revenue 242,400
Schedule of Programs:
School of Medicine 969,700

Item 90

To University of Utah - University Hospital
From Education Fund 132,000
Schedule of Programs:
University Hospital 122,800
Miners' Hospital 9,200

Item 91

To University of Utah - School of Dentistry
From Education Fund 41,600
From Dedicated Credits Revenue 13,800
Schedule of Programs:
School of Dentistry 55,400

Item 92

To University of Utah - Public Service
From Education Fund 46,000
Schedule of Programs:
Seismograph Stations 14,600
Natural History Museum of Utah 28,600
State Arboretum 2,800

Item 93

To University of Utah - Statewide
TV Administration
From Education Fund 57,600
Schedule of Programs:
Public Broadcasting 57,600

Item 94

To University of Utah - Poison Control Center
From General Fund 52,500

Schedule of Programs:

Poison Control Center 52,500

Item 95

To University of Utah - Center on Aging
From General Fund 2,500
Schedule of Programs:
Center on Aging 2,500

Item 96

To University of Utah - Rocky Mountain Center for
Occupational and Environmental Health
From General Fund Restricted - Workplace
Safety Account 4,200
Schedule of Programs:
Center for Occupational and
Environmental Health 4,200

UTAH STATE UNIVERSITY**Item 97**

To Utah State University - Education
and General
From Education Fund 3,866,400
From Dedicated Credits Revenue 1,288,800
Schedule of Programs:
Education and General 5,059,600
USU - School of Veterinary Medicine ... 68,900
Operations and Maintenance 26,700

Item 98

To Utah State University - USU -
Eastern Education and General
From Education Fund 221,200
From Dedicated Credits Revenue 73,700
Schedule of Programs:
USU - Eastern Education and
General 294,900

Item 99

To Utah State University - USU - Eastern
Career and Technical Education
From Education Fund 31,700
Schedule of Programs:
USU - Eastern Career and Technical
Education 31,700

Item 100

To Utah State University - Uintah Basin
Regional Campus
From Education Fund 93,600
From Dedicated Credits Revenue 31,200
Schedule of Programs:
Uintah Basin Regional Campus 124,800

Item 101

To Utah State University -
Southeastern Continuing Education Center
From Education Fund 27,900
From Dedicated Credits Revenue 9,300
Schedule of Programs:
Southeastern Continuing Education
Center 37,200

Item 102

To Utah State University - Brigham
City Regional Campus
From Education Fund 206,600
From Dedicated Credits Revenue 68,800
Schedule of Programs:
Brigham City Regional Campus 275,400

Item 103

To Utah State University - Tooele
 Regional Campus
 From Education Fund 151,900
 From Dedicated Credits Revenue 50,700
 Schedule of Programs:
 Tooele Regional Campus 202,600

Item 104

To Utah State University - Water
 Research Laboratory
 From Education Fund 95,900
 Schedule of Programs:
 Water Research Laboratory 95,900

Item 105

To Utah State University - Agriculture
 Experiment Station
 From Education Fund 308,700
 Schedule of Programs:
 Agriculture Experiment Station 308,700

Item 106

To Utah State University - Cooperative
 Extension
 From Education Fund 389,200
 Schedule of Programs:
 Cooperative Extension 389,200

Item 107

To Utah State University - Prehistoric
 Museum
 From Education Fund 11,500
 Schedule of Programs:
 Prehistoric Museum 11,500

Item 108

To Utah State University - Blanding Campus
 From Education Fund 69,700
 From Dedicated Credits Revenue 23,300
 Schedule of Programs:
 Blanding Campus 93,000

WEBER STATE UNIVERSITY

Item 109

To Weber State University - Education
 and General
 From Education Fund 2,295,900
 From Dedicated Credits Revenue 765,200
 Schedule of Programs:
 Education and General 3,042,100
 Operations and Maintenance 19,000

Item 110

To Weber State University -
 Educationally Disadvantaged
 From Education Fund 9,600
 Schedule of Programs:
 Educationally Disadvantaged 9,600

SOUTHERN UTAH UNIVERSITY

Item 111

To Southern Utah University - Education
 and General
 From Education Fund 1,182,900
 From Dedicated Credits Revenue 394,300
 Schedule of Programs:
 Education and General 1,572,600

Operations and Maintenance 4,600

Item 112

To Southern Utah University -
 Educationally Disadvantaged
 From Education Fund 1,200
 Schedule of Programs:
 Educationally Disadvantaged 1,200

Item 113

To Southern Utah University - Rural
 Development
 From Education Fund 2,500
 Schedule of Programs:
 Rural Development 2,500

UTAH VALLEY UNIVERSITY

Item 114

To Utah Valley University - Education and General
 From Education Fund 3,701,200
 From Dedicated Credits Revenue 1,233,700
 Schedule of Programs:
 Education and General 4,867,400
 Operations and Maintenance 67,500

Item 115

To Utah Valley University -
 Educationally Disadvantaged
 From Education Fund 4,500
 Schedule of Programs:
 Educationally Disadvantaged 4,500

SNOW COLLEGE

Item 116

To Snow College - Education and General
 From Education Fund 527,700
 From Dedicated Credits Revenue 175,900
 Schedule of Programs:
 Education and General 694,700
 Operations and Maintenance 8,900

Item 117

To Snow College - Career and Technical Education
 From Education Fund 28,500
 Schedule of Programs:
 Career and Technical Education 28,500

DIXIE STATE UNIVERSITY

Item 118

To Dixie State University - Education and General
 From Education Fund 961,000
 From Dedicated Credits Revenue 320,400
 Schedule of Programs:
 Education and General 1,271,100
 Operations and Maintenance 10,300

Item 119

To Dixie State University -
 Zion Park Amphitheater
 From Education Fund 1,100
 From Dedicated Credits Revenue 400
 Schedule of Programs:
 Zion Park Amphitheater 1,500

SALT LAKE COMMUNITY COLLEGE

Item 120

To Salt Lake Community College - Education
 and General

From Education Fund 2,248,000
 From Dedicated Credits Revenue 749,300
 Schedule of Programs:
 Education and General 2,990,700
 Operations and Maintenance 6,600

Item 121

To Salt Lake Community College - School
 of Applied Technology
 From Education Fund 175,300
 Schedule of Programs:
 School of Applied Technology 175,300

STATE BOARD OF REGENTS**Item 122**

To State Board of Regents - Administration
 From General Fund 57,500
 Schedule of Programs:
 Administration 57,500

Item 123

To State Board of Regents - Student Assistance
 From Education Fund 9,200
 Schedule of Programs:
 Regents' Scholarship 9,100
 Western Interstate Commission for
 Higher Education 100

Item 124

To State Board of Regents - Student Support
 From Education Fund 17,800
 Schedule of Programs:
 Concurrent Enrollment 9,800
 Articulation Support 6,200
 Campus Compact 1,800

Item 125

To State Board of Regents - Economic Development
 From Education Fund 5,600
 Schedule of Programs:
 Economic Development Initiatives 5,600

Item 126

To State Board of Regents - Education Excellence
 From Education Fund 7,500
 Schedule of Programs:
 Education Excellence 7,500

Item 127

To State Board of Regents - Math
 Competency Initiative
 From Education Fund 200
 Schedule of Programs:
 Math Competency Initiative 200

Item 128

To State Board of Regents - Medical
 Education Council
 From General Fund 17,100
 Schedule of Programs:
 Medical Education Council 17,100

**UTAH COLLEGE OF APPLIED
 TECHNOLOGY****Item 129**

To Utah College of Applied Technology -
 Administration
 From General Fund 4,000
 From Education Fund 31,200

Schedule of Programs:
 Administration 35,200

Item 130

To Utah College of Applied Technology -
 Bridgerland Applied Technology College
 From General Fund 104,000
 From Education Fund 232,300
 Schedule of Programs:
 Bridgerland Applied Technology
 College 336,300

Item 131

To Utah College of Applied Technology -
 Davis Applied Technology College
 From General Fund 92,500
 From Education Fund 251,600
 Schedule of Programs:
 Davis Applied Technology College 344,100

Item 132

To Utah College of Applied Technology -
 Dixie Applied Technology College
 From General Fund 1,400
 From Education Fund 108,600
 Schedule of Programs:
 Dixie Applied Technology College 110,000

Item 133

To Utah College of Applied Technology -
 Mountainland Applied Technology College
 From Education Fund 233,600
 Schedule of Programs:
 Mountainland Applied Technology
 College 233,600

Item 134

To Utah College of Applied Technology -
 Ogden/Weber Applied Technology College
 From General Fund 94,300
 From Education Fund 194,100
 Schedule of Programs:
 Ogden/Weber Applied Technology
 College 288,400

Item 135

To Utah College of Applied Technology -
 Southwest Applied Technology College
 From General Fund 2,800
 From Education Fund 81,600
 Schedule of Programs:
 Southwest Applied Technology
 College 84,400

Item 136

To Utah College of Applied Technology -
 Tooele Applied Technology College
 From General Fund 19,500
 From Education Fund 62,900
 Schedule of Programs:
 Tooele Applied Technology College 82,400

Item 137

To Utah College of Applied Technology -
 Uintah Basin Applied Technology College
 From General Fund 25,900
 From Education Fund 129,100
 Schedule of Programs:
 Uintah Basin Applied Technology
 College 155,000

**NATURAL RESOURCES, AGRICULTURE,
AND ENVIRONMENTAL QUALITY**

DEPARTMENT OF NATURAL RESOURCES

Item 138

To Department of Natural Resources - Administration

From General Fund	38,500
From General Fund, One-Time	25,600
Schedule of Programs:	
Executive Director	25,400
Administrative Services	29,000
Public Information Office	6,200
Law Enforcement	3,500

Item 139

To Department of Natural Resources - Species Protection

From General Fund Restricted - Species Protection	4,300
From General Fund Restricted - Species Protection, One-Time	6,400
Schedule of Programs:	
Species Protection	10,700

Item 140

To Department of Natural Resources - Watershed

From General Fund	600
From General Fund, One-Time	1,700
From General Fund Restricted - Sovereign Land Management	700
From General Fund Restricted - Sovereign Land Management, One-Time	2,000
Schedule of Programs:	
Watershed	5,000

Item 141

To Department of Natural Resources - Forestry, Fire and State Lands

From General Fund	11,600
From General Fund, One-Time	5,600
From Federal Funds	48,900
From Federal Funds, One-Time	14,600
From Dedicated Credits Revenue	108,800
From Dedicated Credits Revenue, One-Time	36,200
From General Fund Restricted - Sovereign Land Management	74,600
From General Fund Restricted - Sovereign Land Management, One-Time	27,600
Schedule of Programs:	
Division Administration	26,100
Fire Management	21,800
Fire Suppression Emergencies	2,700
Lands Management	27,200
Forest Management	14,700
Program Delivery	156,100
Lone Peak Center	79,300

Item 142

To Department of Natural Resources - Oil, Gas and Mining

From General Fund	52,300
From General Fund, One-Time	14,200
From Federal Funds	81,600
From Federal Funds, One-Time	21,500
From Dedicated Credits Revenue	6,300
From Dedicated Credits Revenue, One-Time	1,800

From General Fund Restricted - Oil & Gas Conservation Account	72,200
From General Fund Restricted - Oil & Gas Conservation Account, One-Time	19,400
Schedule of Programs:	
Administration	61,300
Oil and Gas Program	87,500
Minerals Reclamation	34,500
Coal Program	55,100
Abandoned Mine	30,900

Item 143

To Department of Natural Resources - Wildlife Resources

From General Fund	129,500
From General Fund, One-Time	32,900
From Federal Funds	275,600
From Federal Funds, One-Time	75,700
From Dedicated Credits Revenue	1,200
From Dedicated Credits Revenue, One-Time	900
From General Fund Restricted - Boating	9,200
From General Fund Restricted - Boating, One-Time	2,800
From General Fund Restricted - Mule Deer Protection Account	3,900
From General Fund Restricted - Mule Deer Protection Account, One-Time	1,000
From General Fund Restricted - Predator Control Account	6,300
From General Fund Restricted - Predator Control Account, One-Time	1,500
From Revenue Transfers	1,200
From Revenue Transfers, One-Time	900
From General Fund Restricted - Wildlife Conservation Easement Account	300
From General Fund Restricted - Wildlife Conservation Easement Account, One-Time	100
From General Fund Restricted - Wildlife Habitat	400
From General Fund Restricted - Wildlife Habitat, One-Time	100
From General Fund Restricted - Wildlife Resources	620,200
From General Fund Restricted - Wildlife Resources, One-Time	166,700

Schedule of Programs:

Director's Office	49,900
Administrative Services	126,000
Conservation Outreach	111,300
Law Enforcement	361,500
Habitat Section	168,600
Wildlife Section	217,400
Aquatic Section	295,700

Item 144

To Department of Natural Resources - Cooperative Agreements

From Federal Funds	56,600
From Federal Funds, One-Time	7,800
From Dedicated Credits Revenue	4,900
From Dedicated Credits Revenue, One-Time	700
From Revenue Transfers	24,800
From Revenue Transfers, One-Time	3,400
Schedule of Programs:	

Cooperative Agreements 98,200

Item 145

To Department of Natural Resources -
Parks and Recreation

From General Fund 42,400
From General Fund, One-Time 13,400
From Federal Funds 23,600
From Federal Funds, One-Time 9,900
From Dedicated Credits Revenue 13,000
From Dedicated Credits Revenue,
One-Time 3,700
From General Fund Restricted -
Boating 59,700
From General Fund Restricted -
Boating, One-Time 17,500
From General Fund Restricted -
Off-highway Access and Education 300
From General Fund Restricted -
Off-highway Access and Education,
One-Time 100
From General Fund Restricted -
Off-highway Vehicle 78,700
From General Fund Restricted -
Off-highway Vehicle, One-Time 22,900
From General Fund Restricted -
State Park Fees 223,200
From General Fund Restricted -
State Park Fees, One-Time 63,500
From Revenue Transfers 400
From Revenue Transfers, One-Time 100
Schedule of Programs:
Executive Management 16,900
Park Operation Management 468,400
Planning and Design 10,600
Support Services 33,100
Recreation Services 43,400

Item 146

To Department of Natural Resources -
Utah Geological Survey

From General Fund 78,700
From General Fund, One-Time 24,500
From Federal Funds 19,800
From Federal Funds, One-Time 5,800
From Dedicated Credits Revenue 29,200
From Dedicated Credits Revenue,
One-Time 8,700
From General Fund Restricted -
Mineral Lease 36,600
From General Fund Restricted -
Mineral Lease, One-Time 10,900
Schedule of Programs:
Administration 17,100
Geologic Hazards 34,400
Geologic Mapping 29,400
Energy and Minerals 46,200
Ground Water and Paleontology 43,800
Information and Outreach 43,300

Item 147

To Department of Natural Resources -
Water Resources

From General Fund 51,800
From General Fund, One-Time 20,900
From Federal Funds 8,700
From Federal Funds, One-Time 3,200
From Water Resources Conservation
and Development Fund 56,400

From Water Resources Conservation
and Development Fund, One-Time 20,000
Schedule of Programs:
Administration 15,900
Interstate Streams 3,700
Planning 77,100
Construction 64,300

Item 148

To Department of Natural Resources -
Water Rights

From General Fund 163,000
From General Fund, One-Time 49,100
From Federal Funds 2,800
From Federal Funds, One-Time 1,100
From Dedicated Credits Revenue 44,800
From Dedicated Credits Revenue,
One-Time 13,300
Schedule of Programs:
Administration 20,700
Applications and Records 136,500
Dam Safety 31,600
Field Services 37,400
Adjudication 20,000
Technical Services 27,300
Canal Safety 600

**DEPARTMENT OF
ENVIRONMENTAL QUALITY**

Item 149

To Department of Environmental Quality -
Executive Director's Office

From General Fund 45,100
From General Fund, One-Time 13,300
From Federal Funds 7,200
From Federal Funds, One-Time 2,200
From General Fund Restricted -
Environmental Quality 23,000
From General Fund Restricted -
Environmental Quality, One-Time 6,900
Schedule of Programs:
Executive Director's Office 97,700

Item 150

To Department of Environmental Quality -
Air Quality

From General Fund 91,500
From General Fund, One-Time 18,800
From Federal Funds 94,700
From Federal Funds, One-Time 19,400
From Dedicated Credits Revenue 91,900
From Dedicated Credits Revenue,
One-Time 18,900
From Clean Fuel Conversion Fund 1,800
From Clean Fuel Conversion Fund,
One-Time 400
Schedule of Programs:
Air Quality 337,400

Item 151

To Department of Environmental Quality -
Environmental Response and Remediation

From General Fund 16,200
From General Fund, One-Time 3,400
From Federal Funds 87,500
From Federal Funds, One-Time 18,100
From Dedicated Credits Revenue 14,700
From Dedicated Credits Revenue,
One-Time 3,100

From General Fund Restricted -	
Petroleum Storage Tank	1,000
From General Fund Restricted -	
Petroleum Storage Tank, One-Time	200
From Petroleum Storage Tank	
Trust Fund	36,300
From Petroleum Storage Tank	
Trust Fund, One-Time	7,500
From General Fund Restricted -	
Voluntary Cleanup	13,400
From General Fund Restricted -	
Voluntary Cleanup, One-Time	2,800
Schedule of Programs:	
Environmental Response and	
Remediation	204,200

Item 152

To Department of Environmental Quality -	
Water Quality	
From General Fund	52,200
From General Fund, One-Time	11,200
From Federal Funds	88,000
From Federal Funds, One-Time	19,100
From Dedicated Credits Revenue	25,800
From Dedicated Credits Revenue,	
One-Time	5,600
From Revenue Transfers	8,900
From Revenue Transfers, One-Time	1,900
From General Fund Restricted -	
Underground Wastewater System	1,200
From General Fund Restricted -	
Underground Wastewater System,	
One-Time	300
From Water Dev. Security Fund -	
Utah Wastewater Loan Program	23,200
From Water Dev. Security Fund -	
Utah Wastewater Loan Program,	
One-Time	5,000
From Water Dev. Security Fund -	
Water Quality Origination Fee	1,600
From Water Dev. Security Fund -	
Water Quality Origination Fee,	
One-Time	400
Schedule of Programs:	
Water Quality	244,400

Item 153

To Department of Environmental Quality -	
Drinking Water	
From General Fund	19,900
From General Fund, One-Time	4,300
From Federal Funds	69,400
From Federal Funds, One-Time	14,700
From Dedicated Credits Revenue	3,500
From Dedicated Credits Revenue,	
One-Time	700
From Revenue Transfers	300
From Revenue Transfers, One-Time	100
From Water Dev. Security Fund -	
Drinking Water Loan Program	17,300
From Water Dev. Security Fund -	
Drinking Water Loan Program,	
One-Time	3,600
From Water Dev. Security Fund -	
Drinking Water Origination Fee	3,600
From Water Dev. Security Fund -	
Drinking Water Origination Fee,	
One-Time	900

Schedule of Programs:	
Drinking Water	138,300

Item 154

To Department of Environmental Quality -	
Waste Management and Radiation Control	
From General Fund	11,800
From General Fund, One-Time	2,700
From Federal Funds	21,900
From Federal Funds, One-Time	5,000
From Dedicated Credits Revenue	34,400
From Dedicated Credits Revenue,	
One-Time	7,900
From General Fund Restricted -	
Environmental Quality	97,700
From General Fund Restricted -	
Environmental Quality, One-Time	22,400
From General Fund Restricted -	
Used Oil Collection Administration	13,000
From General Fund Restricted -	
Used Oil Collection Administration,	
One-Time	2,900
From Waste Tire Recycling Fund	2,500
From Waste Tire Recycling Fund,	
One-Time	500
Schedule of Programs:	
Waste Management and Radiation	
Control	222,700

**PUBLIC LANDS POLICY
COORDINATING OFFICE**

Item 155

To Public Lands Policy Coordinating Office	
From General Fund	42,100
From General Fund, One-Time	3,500
From General Fund Restricted -	
Constitutional Defense	6,300
From General Fund Restricted -	
Constitutional Defense, One-Time	500
Schedule of Programs:	
Public Lands Policy Coordinating	
Office	52,400

GOVERNOR'S OFFICE

Item 156

To Governor's Office - Office	
of Energy Development	
From General Fund	27,300
From General Fund, One-Time	5,700
From Federal Funds	7,500
From Federal Funds, One-Time	1,600
From Dedicated Credits Revenue	1,800
From Dedicated Credits Revenue,	
One-Time	400
From General Fund Rest. -	
Stripper Well-Petroleum Violation	
Escrow	300
From General Fund Rest. -	
Stripper Well-Petroleum Violation	
Escrow, One-Time	100
From Utah State Energy Program	
Revolving Loan Fund (ARRA)	2,100
From Utah State Energy Program	
Revolving Loan Fund (ARRA),	
One-Time	400
Schedule of Programs:	
Office of Energy Development	47,200

**DEPARTMENT OF
AGRICULTURE AND FOOD**

Item 157

To Department of Agriculture and Food - Administration	
From General Fund	44,800
From General Fund, One-Time	16,400
From Federal Funds	11,600
From Federal Funds, One-Time	5,600
From Dedicated Credits Revenue	4,800
From Dedicated Credits Revenue, One-Time	2,300
From General Fund Restricted - Cat and Dog Community Spay and Neuter Program Restricted Account	300
From General Fund Restricted - Cat and Dog Community Spay and Neuter Program Restricted Account, One-Time	100
Schedule of Programs:	
General Administration	56,300
Chemistry Laboratory	29,600

Item 158

To Department of Agriculture and Food - Animal Health	
From General Fund	47,700
From General Fund, One-Time	15,500
From Federal Funds	35,000
From Federal Funds, One-Time	11,300
From Dedicated Credits Revenue	3,400
From Dedicated Credits Revenue, One-Time	1,300
From General Fund Restricted - Livestock Brand	25,400
From General Fund Restricted - Livestock Brand, One-Time	5,600
Schedule of Programs:	
Animal Health	33,400
Brand Inspection	48,600
Meat Inspection	63,200

Item 159

To Department of Agriculture and Food - Plant Industry	
From General Fund	27,200
From General Fund, One-Time	6,300
From Federal Funds	15,300
From Federal Funds, One-Time	3,100
From Dedicated Credits Revenue	52,000
From Dedicated Credits Revenue, One-Time	14,800
From Agriculture Resource Development Fund	3,700
From Agriculture Resource Development Fund, One-Time	800
From Revenue Transfers	900
From Revenue Transfers, One-Time	200
Schedule of Programs:	
Environmental Quality	4,100
Grain Inspection	10,400
Insect Infestation	12,100
Plant Industry	75,400
Grazing Improvement Program	22,300

Item 160

To Department of Agriculture and Food - Regulatory Services	
From General Fund	50,400

From General Fund, One-Time	10,600
From Federal Funds	13,500
From Federal Funds, One-Time	2,900
From Dedicated Credits Revenue	46,600
From Dedicated Credits Revenue, One-Time	9,800
From Pass-through	1,400
From Pass-through, One-Time	300
Schedule of Programs:	
Regulatory Services	135,500

Item 161

To Department of Agriculture and Food - Marketing and Development	
From General Fund	10,600
From General Fund, One-Time	2,700
Schedule of Programs:	
Marketing and Development	13,300

Item 162

To Department of Agriculture and Food - Predatory Animal Control	
From General Fund	12,100
From General Fund, One-Time	3,900
From Revenue Transfers	10,200
From Revenue Transfers, One-Time	3,400
From General Fund Rest. - Agriculture and Wildlife Damage Prevention	9,700
From General Fund Rest. - Agriculture and Wildlife Damage Prevention, One-Time	3,000
Schedule of Programs:	
Predatory Animal Control	42,300

Item 163

To Department of Agriculture and Food - Resource Conservation	
From General Fund	28,500
From General Fund, One-Time	4,100
From Federal Funds	11,600
From Federal Funds, One-Time	1,700
From Agriculture Resource Development Fund	15,500
From Agriculture Resource Development Fund, One-Time	2,300
From Revenue Transfers	7,900
From Revenue Transfers, One-Time	1,200
From Utah Rural Rehabilitation Loan State Fund	2,700
From Utah Rural Rehabilitation Loan State Fund, One-Time	200
Schedule of Programs:	
Resource Conservation Administration	8,800
Resource Conservation	66,900

Item 164

To Department of Agriculture and Food - Invasive Species Mitigation	
From General Fund Restricted - Invasive Species Mitigation Account	2,800
From General Fund Restricted - Invasive Species Mitigation Account, One-Time	700
Schedule of Programs:	
Invasive Species Mitigation	3,500

Item 165

To Department of Agriculture and Food - Rangeland Improvement	
From General Fund Restricted - Rangeland Improvement Account	3,500

From General Fund Restricted - Rangeland Improvement Account, One-Time	700
Schedule of Programs: Rangeland Improvement	4,200

**SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION**

Item 166

To School and Institutional Trust Lands Administration	
From Land Grant Management Fund	201,000
From Land Grant Management Fund, One-Time	31,200
Schedule of Programs:	
Board	1,700
Director	10,700
External Relations	6,300
Administration	10,900
Accounting	14,700
Auditing	12,800
Oil and Gas	22,400
Mining	15,100
Surface	49,600
Development - Operating	33,500
Legal/Contracts	15,000
Information Technology Group	29,900
Grazing and Forestry	9,600

Item 167

To School and Institutional Trust Lands Administration - Land Stewardship and Restoration	
From Land Grant Management Fund	4,900
From Land Grant Management Fund, One-Time	700
Schedule of Programs: Land Stewardship and Restoration	5,600

PUBLIC EDUCATION

STATE BOARD OF EDUCATION

Item 168

To State Board of Education - State Administrative Office	
From General Fund	2,600
From General Fund, One-Time	500
From Education Fund	290,900
From Education Fund, One-Time	57,200
From Federal Funds	310,900
From Federal Funds, One-Time	53,800
From Dedicated Credits Revenue	18,200
From Dedicated Credits Revenue, One-Time	3,200
From General Fund Restricted - Mineral Lease	13,200
From General Fund Restricted - Mineral Lease, One-Time	2,300
From Uniform School Fund Restricted Trust Distribution Account	10,400
From Uniform School Fund Restricted Trust Distribution Account, One-Time ...	1,300
From General Fund Restricted - Land Exchange Distribution Account	300
From General Fund Restricted - Substance Abuse Prevention	1,600

From General Fund Restricted - Substance Abuse Prevention, One-Time ..	200
From Revenue Transfers	61,600
From Revenue Transfers, One-Time	12,600
Schedule of Programs:	
Assessment and Accountability	120,100
Educational Equity	37,900
Board and Administration	184,700
Business Services	38,200
Career and Technical Education	79,200
District Computer Services	121,900
Federal Elementary and Secondary Education Act	44,500
Law and Legislation	7,100
School Trust	13,100
Special Education	87,700
Teaching and Learning	99,400
Statewide Online Education Program	7,000

Item 169

To State Board of Education - MSP Categorical Program Administration	
From Education Fund	33,000
From Education Fund, One-Time	4,800
Schedule of Programs:	
CTE Comprehensive Guidance	10,500
Enhancement for At-Risk Students	8,100
Youth-in-Custody	10,900
Adult Education	5,000
Dual Immersion	2,600
Beverly Taylor Sorenson Elementary Arts	700

Item 170

To State Board of Education - Initiative Programs	
From General Fund	1,800
From General Fund, One-Time	400
From Education Fund	5,100
Schedule of Programs:	
Carson Smith Scholarships	2,200
School Turnaround and Leadership Development Act	2,900
Partnerships for Student Success	2,200

Item 171

To State Board of Education - State Charter School Board	
From Education Fund	20,200
From Education Fund, One-Time	4,100
Schedule of Programs: State Charter School Board	24,300

Item 172

To State Board of Education - Educator Licensing	
From Education Fund	34,600
From Professional Practices Restricted Subfund, One-Time	5,600
Schedule of Programs: Educator Licensing	40,200

Item 173

To State Board of Education - Child Nutrition	
From Education Fund	100
From Federal Funds	54,100
From Federal Funds, One-Time	10,300
From Dedicated Credit - Liquor Tax	12,100
From Dedicated Credit - Liquor Tax, One-Time	2,500
Schedule of Programs: Child Nutrition	79,100

Item 174

To State Board of Education - Education Contracts
 From Education Fund 2,600
 From Education Fund, One-Time 400
 Schedule of Programs:
 Corrections Institutions 3,000

Item 175

To State Board of Education - Utah Schools
 for the Deaf and the Blind
 From Education Fund 947,200
 From Education Fund, One-Time 94,200
 From Federal Funds 2,000
 From Federal Funds, One-Time 300
 From Dedicated Credits Revenue 26,800
 From Dedicated Credits Revenue,
 One-Time 5,900
 From Revenue Transfers 84,200
 From Revenue Transfers, One-Time 20,800
 Schedule of Programs:
 Educational Services 843,400
 Support Services 338,000

Item 176

To State Board of Education - Teaching
 and Learning
 From Education Fund 2,900
 Schedule of Programs:
 Student Access to High Quality School
 Readiness Programs 2,900

**SCHOOL AND INSTITUTIONAL
 TRUST FUND OFFICE**

Item 177

To School and Institutional Trust Fund Office
 From School and Institutional Trust
 Fund Management Account 13,300
 From School and Institutional Trust
 Fund Management Account, One-Time ... 700
 Schedule of Programs:
 School and Institutional Trust Fund
 Office 14,000

**RETIREMENT AND
 INDEPENDENT ENTITIES**

CAREER SERVICE REVIEW OFFICE

Item 178

To Career Service Review Office
 From General Fund 6,200
 From General Fund, One-Time 1,400
 Schedule of Programs:
 Career Service Review Office 7,600

**UTAH EDUCATION AND TELEHEALTH
 NETWORK**

Item 179

To Utah Education and Telehealth Network
 From General Fund 12,100
 From Education Fund 247,100
 From Federal Funds 54,800
 From Dedicated Credits Revenue 26,600
 From Other Financing Sources 1,500
 Schedule of Programs:
 Administration 47,200
 Instructional Support 64,700

KUEN Broadcast 8,200
 Public Information 6,700
 Technical Services 184,800
 Utah Telehealth Network 30,500

EXECUTIVE APPROPRIATIONS

CAPITOL PRESERVATION BOARD

Item 180

To Capitol Preservation Board
 From General Fund 19,900
 From General Fund, One-Time 2,700
 Schedule of Programs:
 Capitol Preservation Board 22,600

UTAH NATIONAL GUARD

Item 181

To Utah National Guard
 From General Fund 53,100
 From General Fund, One-Time 10,500
 From Federal Funds 349,700
 From Federal Funds, One-Time 107,600
 From Dedicated Credits Revenue 100
 Schedule of Programs:
 Administration 32,300
 Operations and Maintenance 488,700

**DEPARTMENT OF VETERANS'
 AND MILITARY AFFAIRS**

Item 182

To Department of Veterans' and Military Affairs -
 Veterans' and Military Affairs
 From General Fund 37,400
 From General Fund, One-Time 9,000
 From Federal Funds 8,900
 From Federal Funds, One-Time 2,200
 From Dedicated Credits Revenue 1,700
 From Dedicated Credits Revenue,
 One-Time 400
 Schedule of Programs:
 Administration 13,100
 Cemetery 14,000
 State Approving Agency 4,900
 Outreach Services 24,300
 Military Affairs 3,300

LEGISLATURE

Item 183

To Legislature - Senate
 From General Fund 49,700
 From General Fund, One-Time 3,200
 Schedule of Programs:
 Administration 52,900

Item 184

To Legislature - House of Representatives
 From General Fund 90,400
 From General Fund, One-Time 4,500
 Schedule of Programs:
 Administration 94,900

Item 185

To Legislature - Legislative Printing
 From General Fund 6,300
 From General Fund, One-Time 1,800
 From Dedicated Credits Revenue 2,800

From Dedicated Credits Revenue, One-Time 800
 Schedule of Programs:
 Administration 11,700

Item 186

To Legislature - Office of Legislative Research
 and General Counsel
 From General Fund 181,500
 From General Fund, One-Time 43,800
 Schedule of Programs:
 Administration 225,300

Item 187

To Legislature - Office of the Legislative
 Fiscal Analyst
 From General Fund 61,800
 From General Fund, One-Time 10,900
 Schedule of Programs:
 Administration and Research 72,700

Item 188

To Legislature - Office of the Legislative
 Auditor General
 From General Fund 83,000
 From General Fund, One-Time 14,800
 Schedule of Programs:
 Administration 97,800

Subsection 1(b). Expendable Funds and Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account's applicable authorizing statute.

**EXECUTIVE OFFICES
 AND CRIMINAL JUSTICE**

DEPARTMENT OF PUBLIC SAFETY

Item 189

To Department of Public Safety - Alcoholic
 Beverage Control Act Enforcement Fund
 From Dedicated Credits Revenue 79,900
 From Dedicated Credits Revenue,
 One-Time 16,000
 Schedule of Programs:
 Alcoholic Beverage Control Act
 Enforcement Fund 95,900

**INFRASTRUCTURE AND
 GENERAL GOVERNMENT**

**DEPARTMENT OF
 ADMINISTRATIVE SERVICES**

Item 190

To Department of Administrative Services -
 State Debt Collection Fund
 From Dedicated Credits Revenue 10,400
 From Dedicated Credits Revenue,
 One-Time 4,300
 From Other Financing Sources 9,000

From Other Financing Sources,
 One-Time 3,800
 Schedule of Programs:
 State Debt Collection Fund 27,500

**BUSINESS, ECONOMIC
 DEVELOPMENT, AND LABOR**

DEPARTMENT OF COMMERCE

Item 191

To Department of Commerce - Real Estate
 Education, Research, and Recovery Fund
 From Licenses/Fees 3,700
 From Licenses/Fees, One-Time 900
 Schedule of Programs:
 Real Estate Education, Research, and
 Recovery Fund 4,600

Item 192

To Department of Commerce -
 Residential Mortgage Loan Education,
 Research, and Recovery Fund
 From Licenses/Fees 2,700
 From Licenses/Fees, One-Time 100
 Schedule of Programs:
 RMLERR Fund 2,800

SOCIAL SERVICES

**DEPARTMENT OF
 WORKFORCE SERVICES**

Item 193

To Department of Workforce Services -
 Uintah Basin Revitalization Fund
 From Restricted Revenue 1,000
 Schedule of Programs:
 Uintah Basin Revitalization Fund 1,000

Item 194

To Department of Workforce Services -
 Navajo Revitalization Fund
 From Restricted Revenue 1,000
 Schedule of Programs:
 Navajo Revitalization Fund 1,000

Item 195

To Department of Workforce Services -
 Qualified Emergency Food Agencies Fund
 From Designated Sales Tax 700
 From Designated Sales Tax, One-Time 200
 Schedule of Programs:
 Emergency Food Agencies Fund 900

EXECUTIVE APPROPRIATIONS

UTAH NATIONAL GUARD

Item 196

To Utah National Guard - National Guard
 MWR Fund
 From Dedicated Credits Revenue 3,100
 From Dedicated Credits Revenue,
 One-Time 1,300
 Schedule of Programs:
 National Guard MWR Fund 4,400

DEPARTMENT OF VETERANS' AND MILITARY AFFAIRS

Item 197

To Department of Veterans' and Military Affairs - Utah Veterans' Nursing Home Fund

From Federal Funds	14,700
From Federal Funds, One-Time	5,500
Schedule of Programs:	
Veterans' Nursing Home Fund	20,200

Subsection 1(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

EXECUTIVE OFFICES AND CRIMINAL JUSTICE

UTAH DEPARTMENT OF CORRECTIONS

Item 198

To Utah Department of Corrections - Utah Correctional Industries

From Dedicated Credits Revenue	219,400
From Dedicated Credits Revenue, One-Time	57,500
Schedule of Programs:	
Utah Correctional Industries	276,900

INFRASTRUCTURE AND GENERAL GOVERNMENT

DEPARTMENT OF ADMINISTRATIVE SERVICES INTERNAL SERVICE FUNDS

Item 199

To Department of Administrative Services Internal Service Funds - Division of Purchasing and General Services

From Dedicated Credits Revenue	3,200
Schedule of Programs:	
ISF - Cooperative Contracting	3,200

DEPARTMENT OF TECHNOLOGY SERVICES INTERNAL SERVICE FUNDS

Item 200

To Department of Technology Services Internal Service Funds - Enterprise Technology Division

From Dedicated Credits Revenue	14,000
Schedule of Programs:	
ISF - Enterprise Technology Division ...	14,000

SOCIAL SERVICES

DEPARTMENT OF WORKFORCE SERVICES

Item 201

To Department of Workforce Services - State Small Business Credit Initiative Program Fund

From Federal Funds	200
Schedule of Programs:	
State Small Business Credit Initiative Program Fund	200

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENTAL QUALITY

DEPARTMENT OF AGRICULTURE AND FOOD

Item 202

To Department of Agriculture and Food - Agriculture Loan Programs

From Agriculture Resource Development Fund	4,200
From Agriculture Resource Development Fund, One-Time	900
From Utah Rural Rehabilitation Loan State Fund	2,400
From Utah Rural Rehabilitation Loan State Fund, One-Time	500
Schedule of Programs:	
Agriculture Loan Program	8,000

Section 2. Effective Date.

This bill takes effect on July 1, 2017.

CHAPTER 439**H. B. 41**

Passed February 17, 2017

Approved March 28, 2017

Effective May 9, 2017

UTAH REVISED BUSINESS CORPORATION ACT MODIFICATIONS

Chief Sponsor: Val L. Peterson
Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill modifies provisions regulating business corporations.

Highlighted Provisions:

This bill:

- ▶ amends the provision addressing general standards of conduct for directors and officers;
- ▶ enacts provisions related to business combinations; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

16-10a-840, as last amended by Laws of Utah 1993, Chapter 266

ENACTS:

16-10a-1801, Utah Code Annotated 1953

16-10a-1802, Utah Code Annotated 1953

16-10a-1803, Utah Code Annotated 1953

16-10a-1804, Utah Code Annotated 1953

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

Section 1. Section 16-10a-840 is amended to read:**16-10a-840. General standards of conduct for directors and officers.**

(1) Each director shall discharge [his] the director's duties as a director, including duties as a member of a committee, and each officer with discretionary authority shall discharge [his] the officer's duties under that authority:

- (a) in good faith;
- (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) in a manner the director or officer reasonably believes to be in the best interests of the corporation.

(2) In discharging [his] the director's or officer's duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation, or of any other corporation of which at least 50% of the outstanding shares of stock entitling the holder of the shares to vote in the election of directors is owned directly or indirectly by the corporation, whom the director or officer reasonably believes to be reliable and competent in the matters presented;

(b) legal counsel, public accountants, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence; or

(c) in the case of a director, a committee of the board of directors of which [he] the director is not a member[-];

(i) if the committee is designated in accordance with the articles of incorporation or the bylaws;

(ii) if the information, opinion, report, or statement is within the committee's designated authority;

(iii) if the director reasonably believes the committee merits confidence[-]; and

(iv) subject to Subsection (3), so long as in so relying the director is acting in good faith with the degree of care contemplated by Subsection (1)(b).

(3) A director or officer is not acting in good faith if [he] the director or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by Subsection (2) unwarranted.

(4) A director or officer is not liable to the corporation, its shareholders, or any conservator or receiver, or any assignee or successor-in-interest thereof, for any action taken, or any failure to take any action, as an officer or director, as the case may be, unless:

(a) the director or officer has breached or failed to perform the duties of the office in compliance with this section; and

(b) the breach or failure to perform constitutes gross negligence, willful misconduct, or intentional infliction of harm on the corporation or the shareholders.

(5) (a) For purposes of this Subsection (5) and notwithstanding Section 16-10a-102, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the corporation whether through the ownership of voting stock, by contract, or otherwise.

(b) In taking action, including action that may involve or relate to a change or potential change in the control of the corporation, the director is entitled to consider:

(i) both the long-term and the short-term interests of the corporation and the corporation's shareholders; and

(ii) the effects that the corporation's actions may have in the long-term or short-term on any of the following:

(A) the prospects for potential growth, development, productivity, and profitability of the corporation;

(B) the corporation's current employees;

(C) the corporation's retired employees and other beneficiaries receiving or entitled to receive retirement, welfare, or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the corporation;

(D) the corporation's customers and creditors; and

(E) the ability of the corporation to provide, as a going concern, goods, services, employment opportunities, employment benefits, and otherwise contribute to the communities in which the corporation does business.

(c) This Subsection (5) does not create any duty owed by a director to any person to consider or afford any particular weight to any factor listed in Subsection (5)(b) or abrogate any duty of the director, either statutory or recognized by common law or court decisions.

Section 2. Section 16-10a-1801 is enacted to read:

Part 18. Business Combinations

16-10a-1801. Title.

This part is known as "Business Combinations."

Section 3. Section 16-10a-1802 is enacted to read:

16-10a-1802. Definitions.

As used in this part:

(1) "Affiliate" means the same as that term is defined in Section 16-10a-102.

(2) "Announcement date," when used in reference to a business combination, means the date of the first public announcement of the final, definitive proposal for the business combination.

(3) "Associate," when used to indicate a relationship with a person, means:

(a) a corporation or organization of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of 10% or more of any class of voting stock;

(b) a trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity; and

(c) a relative or spouse of the person, or any relative of the spouse, who has the same home as the person.

(4) "Beneficial owner," when used with respect to stock, means a person:

(a) that, individually or with or through any of its affiliates or associates, beneficially owns the stock, directly or indirectly;

(b) that, individually or with or through any of its affiliates or associates, has:

(i) the right to acquire the stock;

(A) whether the right is exercisable immediately or only after the passage of time, pursuant to an agreement, arrangement, or understanding, whether or not in writing; or

(B) upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise, except that a person may not be considered the beneficial owner of stock tendered pursuant to a tender or exchange offer made by the person or an affiliate or associate of the person until the tendered stock is accepted for purchase or exchange; or

(ii) the right to vote the stock pursuant to an agreement, arrangement, or understanding, whether or not in writing, except that a person may not be considered the beneficial owner of any stock under this Subsection (4)(b)(ii) if the agreement, arrangement, or understanding to vote the stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable regulations under the Exchange Act and is not then reportable on a Schedule 13D under the Exchange Act, or any comparable or successor report; or

(c) that has an agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in Subsection (4)(b)(ii), or disposing of the stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the stock.

(5) "Business combination," when used in reference to any domestic corporation and an interested shareholder of the corporation, means:

(a) a merger or consolidation of the corporation or any subsidiary of the corporation with:

(i) the interested shareholder; or

(ii) any other corporation, whether or not that corporation is an interested shareholder of the corporation, that is, or after the merger or consolidation would be, an affiliate or associate of the interested shareholder;

(b) any sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, to or with the interested shareholder or any affiliate or associate of the interested shareholder of assets of the corporation or any subsidiary of the corporation:

(i) having an aggregate market value equal to 10% or more of the aggregate market value of all the assets, determined on a consolidated basis, of the corporation;

(ii) having an aggregate market value equal to 10% or more of the aggregate market value of all the outstanding stock of the corporation; or

(iii) representing 10% or more of the earning power or net income, determined on a consolidated basis, of the corporation;

(c) the issuance or transfer by the corporation or any subsidiary of the corporation, in one transaction or a series of transactions, of any stock of the corporation or any subsidiary of the corporation that has an aggregate market value equal to 5% or more of the aggregate market value of all the outstanding stock of the corporation to the interested shareholder or any affiliate or associate of the interested shareholder except pursuant to the exercise of warrants or rights to purchase stock offered, or a dividend or distribution paid or made, pro rata to all shareholders of the corporation;

(d) the adoption of any plan or proposal for the liquidation or dissolution of the corporation proposed by, or pursuant to any agreement, arrangement, or understanding, whether or not in writing, with, the interested shareholder or any affiliate or associate of the interested shareholder;

(e) any reclassification of securities, including a stock split, stock dividend, or other distribution of stock in respect of stock, or any reverse stock split, or recapitalization of the corporation, or any merger or consolidation of the corporation with any subsidiary of the corporation, or any other transaction, whether or not with, into, or otherwise involving the interested shareholder;

(i) proposed by, or pursuant to any agreement, arrangement, or understanding, whether or not in writing, with, the interested shareholder or any affiliate or associate of the interested shareholder; and

(ii) that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting stock or securities convertible into voting stock of the corporation or any subsidiary of the corporation that is directly or indirectly owned by the interested shareholder or any affiliate or associate of the interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(f) a receipt by the interested shareholder or an affiliate or associate of the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the corporation, of a loan, advance, guarantee, pledge, or other financial assistance or any tax credit or other tax advantage provided by or through the corporation.

(6) “Common stock” means stock other than preferred stock.

(7) “Consummation date,” with respect to a business combination, means:

(a) the date of consummation of the business combination; or

(b) in the case of a business combination as to which a shareholder vote is taken, the later of:

(i) the business day before the vote; or

(ii) 20 days before the date of consummation of the business combination.

(8) (a) “Control,” including the terms “controlling,” “controlled by,” and “under common control with,” means the same as that term is defined in Section 16-10a-102.

(b) A person’s beneficial ownership of 10% or more of a corporation’s outstanding voting stock creates a presumption that the person has control of the corporation.

(c) Notwithstanding the other provisions of this Subsection (8), a person may not be considered to have control of a corporation if the person holds voting stock, in good faith and not for the purpose of circumventing this part, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners that do not individually or as a group have control of the corporation.

(9) “Exchange Act” means the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq. as amended.

(10) (a) “Interested shareholder,” when used in reference to a domestic corporation, means a person, other than the corporation or a subsidiary of the corporation, that:

(i) is the beneficial owner, directly or indirectly, of 20% or more of the outstanding voting stock of the corporation; or

(ii) is an affiliate or associate of the corporation and at any time within the five-year period immediately before the date in question was the beneficial owner, directly or indirectly, of 20% or more of the then outstanding voting stock of the corporation.

(b) For the purpose of determining whether a person is an interested shareholder, the number of shares of voting stock of the corporation considered to be outstanding shall include shares considered to be beneficially owned by the person through application of Subsection (4), but may not include any other unissued shares of voting stock of the corporation that may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

(11) “Market value,” when used in reference to stock or property of a domestic corporation, means:

(a) in the case of stock:

(i) the highest closing sale price during the 30-day period immediately preceding the date in question of a share of the stock on the composite tape for New York stock exchange-listed stocks;

(ii) if the stock is not quoted on the composite tape or listed on the exchange described in Subsection (11)(a)(i), the highest closing sale price during the 30-day period immediately preceding the date in question on the principal United States securities exchange registered under the Exchange Act on which the stock is listed; or

(iii) if no quotation is available under Subsection (11)(a)(i) or (ii), the fair market value on the date in question of a share of the stock as determined by the board of directors of the corporation in good faith; and

(b) in the case of property other than cash or stock, the fair market value of the property on the date in question as determined by the board of directors of the corporation in good faith.

(12) "Preferred stock" means a class or series of stock of a domestic corporation that under the bylaws or articles of incorporation of the corporation:

(a) is entitled to receive payment of dividends before any payment of dividends on some other class or series of stock; or

(b) is entitled in the event of a voluntary liquidation, dissolution, or winding up of the corporation to receive payment or distribution of a preferential amount before a payment or distribution is received by some other class or series of stock.

(13) "Stock" means:

(a) a stock or similar security, a certificate of interest, any participation in a profit sharing agreement, a voting trust certificate, or a certificate of deposit for stock;

(b) a security convertible, with or without consideration, into stock;

(c) a warrant, call, or other option or privilege of buying stock without being bound to do so; or

(d) any other security carrying a right to acquire, subscribe to, or purchase stock.

(14) "Stock acquisition date," with respect to a person and a domestic corporation, means the date that the person first becomes an interested shareholder of the corporation.

(15) "Subsidiary" of a person means any other corporation of which a majority of the voting stock is owned, directly or indirectly, by the person.

(16) "Voting stock" means shares of capital stock of a corporation entitled to vote generally in the election of directors.

Section 4. Section 16-10a-1803 is enacted to read:

16-10a-1803. Business combinations.

(1) Notwithstanding anything to the contrary in this chapter, except Section 16-10a-1804, a domestic corporation may not engage in a business combination with an interested shareholder of the corporation for a period of five years following the interested shareholder's stock acquisition date unless the business combination or the purchase of stock made by the interested shareholder on the interested shareholder's stock acquisition date is approved by the board of directors of the corporation before the interested shareholder's stock acquisition date.

(2) (a) If a good faith proposal is made in writing to the board of directors of the corporation regarding a business combination, the board of directors shall respond in writing, within 30 days or such shorter period, if any, as may be required by the Exchange

Act, setting forth the board of directors' reasons for the board of directors' decision regarding the proposal.

(b) If a good faith proposal to purchase stock is made in writing to the board of directors of the corporation, unless the board of directors responds affirmatively in writing within 30 days or such shorter period, if any, as may be required by the Exchange Act, the board of directors is considered to have disapproved the proposal.

(3) Notwithstanding anything to the contrary in this chapter, except Subsection (2) and Section 16-10a-1804, a domestic corporation may not engage at any time in any business combination with an interested shareholder of the corporation other than a business combination specified in Subsection (4), (5), or (6).

(4) A domestic corporation may engage in a business combination with an interested shareholder of the corporation if:

(a) the business combination is approved by the board of directors of the corporation before the interested shareholder's stock acquisition date; or

(b) the purchase of stock made by the interested shareholder on the interested shareholder's stock acquisition date is approved by the board of directors of the corporation before the interested shareholder's stock acquisition date.

(5) A domestic corporation may engage in a business combination with an interested shareholder of the corporation if the business combination is approved by the affirmative vote of the holders of a majority of the outstanding voting stock not beneficially owned by the interested shareholder or an affiliate or associate of the interested shareholder at a meeting called for that purpose no earlier than five years after the interested shareholder's stock acquisition date.

(6) A domestic corporation may engage in a business combination with an interested shareholder of the corporation if the business combination meets all of the following conditions:

(a) the aggregate amount of the cash and the market value as of the consummation date of consideration, other than cash to be received per share by holders of outstanding shares of common stock of the corporation in the business combination, is at least equal to the higher of the following:

(i) the sum of:

(A) the highest per share price paid by the interested shareholder at a time when the interested shareholder was the beneficial owner, directly or indirectly, of 5% or more of the outstanding voting stock of the corporation, for any shares of common stock of the same class or series acquired by the interested shareholder within the five-year period immediately before the announcement date with respect to the business combination, or within the five-year period immediately before, or in, the transaction in which

the interested shareholder became an interested shareholder, whichever is higher; and

(B) interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since the earliest date, up to the amount of the interest; and

(ii) the sum of:

(A) the higher of the market value per share of common stock on the announcement date with respect to the business combination or on the interested shareholder's stock acquisition date; and

(B) interest compounded annually from the acquisition date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common stock since the acquisition date, up to the amount of the interest;

(b) the aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of stock, other than common stock, of the corporation is at least equal to the highest of the following, whether or not the interested shareholder has previously acquired any shares of the class or series of stock:

(i) the sum of:

(A) the higher of the highest per share price paid by the interested shareholder at a time when the interested shareholder was the beneficial owner, directly or indirectly, of 5% or more of the outstanding voting stock of the corporation, for any shares of the class or series of stock acquired by the interested shareholder within the five-year period immediately before the announcement date with respect to the business combination, or within the five-year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher; and

(B) interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series of stock since the earliest date, up to the amount of the interest;

(ii) the sum of:

(A) the highest preferential amount per share to which the holders of shares of the class or series of

stock are entitled in the event of a voluntary liquidation, dissolution, or winding up of the corporation; and

(B) the aggregate amount of any dividends declared or due as to which the holders are entitled before payment of dividends on some other class or series of stock, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) the sum of:

(A) the market value per share of the class or series of stock on the announcement date with respect to the business combination or on the interested shareholder's stock acquisition date, whichever is higher; and

(B) interest compounded annually from the acquisition date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series of stock since the acquisition date, up to the amount of the interest;

(c) the consideration to be received by holders of a particular class or series of outstanding stock, including common stock of the corporation, in the business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of the class or series of stock previously acquired by the interested shareholder, and the consideration shall be distributed promptly;

(d) the holders of all outstanding shares of stock of the corporation not beneficially owned by the interested shareholder immediately before the consummation of the business combination are entitled to receive in the business combination cash or other consideration for the shares in compliance with Subsections (6)(a), (b), and (c); and

(e) after the interested shareholder's stock acquisition date and before the consummation date with respect to the business combination, the interested shareholder has not become the beneficial owner of any additional shares of voting stock of the corporation except:

(i) as part of the transaction that resulted in the interested shareholder becoming an interested shareholder;

(ii) by virtue of proportionate stock splits, stock dividends, or other distributions of stock in respect of stock not constituting a business combination under Subsection 16-10a-1802(5)(e);

(iii) through a business combination meeting the conditions of Subsection (5); or

(iv) through purchase by the interested shareholder at any price that, if the price is paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of the purchase, would have satisfied the requirements of Subsections (4) and (5) and this Subsection (6).

Section 5. Section 16-10a-1804 is enacted to read:**16-10a-1804. Scope of part.**

This part does not apply to:

(1) a business combination of a domestic corporation that does not have a class of voting stock registered with the Securities and Exchange Commission pursuant to Exchange Act, Sec. 12, 15 U.S.C. Sec. 78l, unless the articles of incorporation provide otherwise;

(2) a business combination of a domestic corporation whose articles of incorporation are amended to provide that the domestic corporation is subject to this part that:

(a) did not have a class of voting stock registered with the Securities and Exchange Commission pursuant to Exchange Act, Sec. 12, 15 U.S.C. Sec. 78l, on the effective date of the amendment; and

(b) is a business combination with an interested shareholder whose stock acquisition date is before the effective date of the amendment;

(3) a business combination of a domestic corporation:

(a) the original articles of incorporation of which contain a provision expressly electing not to be governed by this part;

(b) that adopts an amendment to the corporation's bylaws before December 31, 2017, expressly electing not to be governed by this part; or

(c) that adopts an amendment to the corporation's bylaws, approved by the affirmative vote of a majority of votes of the outstanding voting stock of the corporation, excluding the voting stock of interested shareholders and the interested shareholders' affiliates and associates, expressly electing not to be governed by this part, provided that the amendment to the bylaws:

(i) may not be effective until 18 months after the vote of the corporation's shareholders; and

(ii) may not apply to a business combination of the corporation with an interested shareholder whose stock acquisition date is on or before the effective date of the amendment;

(4) a domestic corporation in the mineral extractive industry, including exploration, development, sand and gravel, mining, smelting, or refining of mineral properties;

(5) any business combination of a domestic corporation with an interested shareholder of the corporation that became an interested shareholder inadvertently, if the interested shareholder:

(a) as soon as practicable, divests itself of a sufficient amount of the voting stock of the corporation so that it no longer is the beneficial owner, directly or indirectly, of 20% or more of the outstanding voting stock of the corporation; and

(b) would not at any time within the five-year period preceding the announcement date with

respect to the business combination have been an interested shareholder but for the inadvertent acquisition; or

(6) any business combination with an interested shareholder who was the beneficial owner, directly or indirectly, of 5% or more of the outstanding voting stock of the corporation on May 9, 2017, and remained so to the interested shareholder's stock acquisition date.

CHAPTER 440**H. B. 54**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

CAMPUS FREE SPEECH AMENDMENTS

Chief Sponsor: Kim F. Coleman

Senate Sponsor: Todd Weiler

Cosponsors: Justin L. Fawson

Adam Gardiner

Timothy D. Hawkes

Ken Ivory

Michael S. Kennedy

Karianne Lisonbee

Jeremy A. Peterson

Susan Pulsipher

Marc K. Roberts

Mike Schultz

Logan Wilde

Mike Winder

LONG TITLE**General Description:**

This bill enacts provisions related to expressive activity at an institution of higher education.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ designates outdoor areas of campuses at institutions of higher education as traditional public forums;
- ▶ creates requirements for institutions of higher education related to expressive activity;
- ▶ creates a cause of action related to a violation of expressive rights at an institution of higher education; and
- ▶ enacts other provisions related to expressive activity at an institution of higher education.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

53B-27-101, Utah Code Annotated 1953

53B-27-102, Utah Code Annotated 1953

53B-27-201, Utah Code Annotated 1953

53B-27-202, Utah Code Annotated 1953

53B-27-203, Utah Code Annotated 1953

53B-27-204, Utah Code Annotated 1953

53B-27-205, Utah Code Annotated 1953

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

Section 1. Section 53B-27-101 is enacted to read:

CHAPTER 27. CAMPUS INDIVIDUAL RIGHTS ACT

Part 1. General Provisions

53B-27-101. Title.

(1) This chapter is known as the "Campus Individual Rights Act."

(2) This part is known as "General Provisions."

Section 2. Section 53B-27-102 is enacted to read:

53B-27-102. Definitions.

As used in this chapter, "institution" means an institution of higher education listed in Section 53B-1-102.

Section 3. Section 53B-27-201 is enacted to read:

Part 2. Campus Free Expression Act

53B-27-201. Title.

This part is known as the "Campus Free Expression Act."

Section 4. Section 53B-27-202 is enacted to read:

53B-27-202. Definitions.

As used in this part, "expressive activity" includes:

- (1) peacefully assembling, protesting, or speaking;
- (2) distributing literature;
- (3) carrying a sign; or
- (4) circulating a petition.

Section 5. Section 53B-27-203 is enacted to read:

53B-27-203. Expressive activities at an institution.

(1) An outdoor area of an institution's campus is a traditional public forum.

(2) An institution may maintain and enforce reasonable time, place, or manner restrictions on an expressive activity in an outdoor area of the institution's campus, if the restrictions:

- (a) are narrowly tailored to serve a significant institutional interest;
- (b) are based on published, content-neutral, and viewpoint-neutral criteria; and
- (c) leave open ample alternative channels for communication.

(3) Subject to Subsection (2), an institution may not prohibit:

(a) a member of the institution's community or the public from spontaneously and contemporaneously assembling in an outdoor area of the institution's campus; or

(b) a person from freely engaging in noncommercial expressive activity in an outdoor area of the institution's campus if the person's conduct is lawful.

(4) This part does not apply to expressive activity in an area on an institution's campus other than an outdoor area.

Section 6. Section 53B-27-204 is enacted to read:

53B-27-204. Cause of action.

(1) The following persons may bring an action in a state court of competent jurisdiction to enjoin a violation of this part or to recover compensatory damages, reasonable court costs, or reasonable attorney fees:

(a) the attorney general; or

(b) a person claiming that the person's expressive rights, as described in this part, were violated.

(2) In an action brought under this part, if the court finds a violation of this part, the court:

(a) shall enjoin the violation;

(b) shall, if a person whose expressive rights were violated brought the action, award the person:

(i) at least \$500 for an initial violation; and

(ii) if the person notifies the institution of the violation, \$50 for each day the violation continues after the notification; and

(c) may award a prevailing plaintiff:

(i) compensatory damages;

(ii) reasonable court costs; or

(iii) reasonable attorney fees.

(3) Notwithstanding Title 63G, Chapter 7, Governmental Immunity Act of Utah, an institution that violates this part is not immune from suit or liability for the violation.

Section 7. Section 53B-27-205 is enacted to read:

53B-27-205. Statute of limitations.

(1) Except as provided in Subsection (3), an action under this part may not be brought later than one year after the day on which the cause of action accrues.

(2) Each day that a violation continues after an initial violation, and each day that an institution's policy in violation of this part remains in effect, shall constitute a continuing violation of this part.

(3) For a continuing violation described in Subsection (2), the limitation described in Subsection (1) shall extend to one year after the day on which the most recent violation occurs.

CHAPTER 441**H. B. 55**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

**GOVERNMENTAL NONPROFIT
ENTITY COMPLIANCE AMENDMENTS**Chief Sponsor: Kim F. Coleman
Senate Sponsor: Curtis S. Bramble**LONG TITLE****General Description:**

This bill enacts provisions relating to governmental nonprofit corporations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ adds a sunset date for a portion of a definition;
- ▶ imposes requirements on the board of a governmental nonprofit corporation;
- ▶ requires a governmental nonprofit corporation to comply with certain meeting requirements;
- ▶ subjects a governmental nonprofit corporation to:
 - certain fiscal procedures;
 - the Open and Public Meetings Act; and
 - the Government Records Access and Management Act; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 11-13-501, as enacted by Laws of Utah 2015, Chapter 265
- 51-2a-102, as last amended by Laws of Utah 2015, Chapters 138 and 407
- 51-2a-403, as enacted by Laws of Utah 2004, Chapter 206
- 52-4-103, as last amended by Laws of Utah 2016, Chapter 77
- 63G-2-103, as last amended by Laws of Utah 2015, Chapter 265
- 63I-2-211, as enacted by Laws of Utah 2015, Chapter 250

ENACTS:

- 11-13a-101, Utah Code Annotated 1953
- 11-13a-102, Utah Code Annotated 1953
- 11-13a-103, Utah Code Annotated 1953
- 11-13a-104, Utah Code Annotated 1953

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

Section 1. Section 11-13-501 is amended to read:**11-13-501. Definitions.**

As used in this part:

(1) "Appropriation" means an allocation of money by the governing board in a budget for a specific purpose.

(2) "Budget" means a plan of financial operations for a fiscal year that embodies estimates of proposed expenditures for given purposes and the proposed means of financing them, and may refer to the budget of a particular fund for which a budget is required by law or may refer collectively to the budgets for all required funds.

(3) "Budget officer" means the person appointed by an interlocal entity governing board to prepare the budget for the interlocal entity.

(4) "Budget year" means the fiscal year for which a budget is prepared.

(5) "Calendar year entity" means an interlocal entity whose fiscal year begins January 1 and ends December 31 of each calendar year as described in Section 11-13-503.

(6) "Current year" means the fiscal year in which a budget is prepared and adopted, and which is the fiscal year immediately preceding the budget year.

(7) "Deficit" means the occurrence when expenditures exceed revenues.

(8) "Enterprise fund" has the meaning provided in generally accepted accounting principles.

(9) "Estimated revenue" means the amount of revenue estimated to be received from all sources during the budget year in each fund for which a budget is being prepared.

(10) "Fiscal year" means the annual period for accounting for fiscal operations in an interlocal entity.

(11) "Fiscal year entity" means an interlocal entity whose fiscal year begins July 1 of each year and ends on June 30 of the following year as described in Section 11-13-503.

(12) "Fund" has the meaning provided in generally accepted accounting principles.

(13) "Fund balance" has the meaning provided in generally accepted accounting principles.

(14) "General fund" has the meaning provided in generally accepted accounting principles.

(15) "Generally accepted accounting principles" means the accounting principles and standards promulgated from time to time by authoritative bodies in the United States.

(16) "Governmental fund" has the meaning provided in generally accepted accounting principles.

(17) "Interfund loan" means a transfer of assets from one fund to another, subject to future repayment.

(18) "Interlocal entity" includes a governmental nonprofit corporation, as that term is defined in Section 11-13a-102.

~~(18)~~ (19) "Interlocal entity general fund" means the general fund of an interlocal entity.

[419] (20) “Internal service funds” has the meaning provided in generally accepted accounting principles.

[420] (21) “Last completed fiscal year” means the fiscal year immediately preceding the current fiscal year.

[424] (22) “Proprietary fund” means enterprise funds and the internal service funds of an interlocal entity.

[422] (23) “Public funds” means any money or payment collected or received by an interlocal entity, including money or payment for services or goods provided by the interlocal entity.

[423] (24) “Retained earnings” has the meaning provided in generally accepted accounting principles.

[424] (25) “Special fund” means an interlocal entity fund other than the interlocal entity general fund.

Section 2. Section 11-13a-101 is enacted to read:

**CHAPTER 13. GOVERNMENTAL
NONPROFIT CORPORATIONS ACT**

11-13a-101. Title.

This chapter is known as the “Governmental Nonprofit Corporations Act.”

Section 3. Section 11-13a-102 is enacted to read:

11-13a-102. Definitions.

As used in this chapter:

(1) “Controlling interest” means that one or more governmental entities collectively represent a majority of the board’s voting power as outlined in the nonprofit corporation’s governing documents.

(2) (a) “Governing board” means the body that governs a governmental nonprofit corporation.

(b) “Governing board” includes a board of directors.

(3) “Governmental entity” means the state, a county, a municipality, a local district, a special service district, a school district, a state institution of higher education, or any other political subdivision or administrative unit of the state.

(4) (a) “Governmental nonprofit corporation” means:

(i) a nonprofit corporation that is wholly owned or wholly controlled by one or more governmental entities, unless the nonprofit corporation receives no operating funding or other financial support from any governmental entity; or

(ii) a nonprofit corporation in which one or more governmental entities exercise a controlling interest and:

(A) that exercises taxing authority;

(B) that imposes a mandatory fee for association or participation with the nonprofit corporation where that association or participation is mandated by law; or

(C) that receives a majority of the nonprofit corporation’s operating funding from one or more governmental entities under the nonprofit corporation’s governing documents, except where voluntary membership fees, dues, or assessments compose the operating funding.

(b) “Governmental nonprofit corporation” does not include a water company, as that term is defined in Section 16-4-102, unless the water company is wholly owned by one or more governmental entities.

(5) “Municipality” means a city, town, or metro township.

Section 4. Section 11-13a-103 is enacted to read:

11-13a-103. Governance -- Powers of governing body.

(1) A governing board shall manage and direct the business and affairs of a governmental nonprofit corporation.

(2) Each member of a governing board has and owes a fiduciary duty to the governmental nonprofit corporation.

(3) A governing board:

(a) shall elect a chair from the members of the board; and

(b) subject to Subsection (4), may elect other officers as the board considers appropriate.

(4) (a) One person may not hold, at the same time, the offices of chair and treasurer, chair and clerk, or treasurer and clerk.

(b) An officer serves at the pleasure of the governing board.

(c) The governing board may designate a set term for each office.

Section 5. Section 11-13a-104 is enacted to read:

11-13a-104. Quorum of the governing board -- Meetings of the governing board.

(1) (a) A majority of the governing board constitutes a quorum for the transaction of governing board business.

(b) Action by a majority of a quorum constitutes action of the governing board.

(2) The governing board shall hold regular and special meetings as the governing board determines at a location that the governing board determines.

(3) (a) The governing board shall ensure that each meeting of the governing board complies with Title 52, Chapter 4, Open and Public Meetings Act.

(b) Subject to Title 52, Chapter 4, Open and Public Meetings Act, a governing board shall:

(i) adopt rules of order and procedure to govern a public meeting of the governing board;

(ii) conduct a public meeting in accordance with the governing board's rules of order and procedure; and

(iii) make the governing board's rules of order and procedure available to the public:

(A) at each meeting of the governing board; and

(B) on the governmental nonprofit corporation's public website, if available.

(4) The governing board shall comply with:

(a) Title 11, Chapter 13, Part 5, Fiscal Procedures for Interlocal Entities; and

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

Section 6. Section 51-2a-102 is amended to read:

51-2a-102. Definitions.

As used in this chapter:

(1) "Accounting reports" means an audit, a review, a compilation, or a fiscal report.

(2) "Audit" means an examination that:

(a) is performed in accordance with generally accepted government auditing standards, or for a nonprofit ~~[corporations described in Subsection (6)(f)]~~ corporation or a governmental nonprofit corporation, in accordance with generally accepted auditing standards; and

(b) conforms to the uniform classification of accounts established or approved by the state auditor or any other classification of accounts established by any federal government agency.

(3) "Audit report" means:

(a) the financial statements presented in conformity with generally accepted accounting principles;

(b) the auditor's opinion on the financial statements;

(c) a statement by the auditor expressing positive assurance of compliance with state fiscal laws identified by the state auditor;

(d) a copy of the auditor's letter to management that identifies any material weakness in internal controls discovered by the auditor and other financial issues related to the expenditure of funds received from federal, state, or local governments to be considered by management; and

(e) management's response to the specific recommendations.

(4) "Compilation" means information presented in the form of financial statements presented in conformity with generally accepted accounting principles that are the representation of management without the accountant undertaking to express any assurances on the statements.

(5) "Fiscal report" means providing information detailing revenues and expenditures of all funds in a format prescribed by the state auditor.

(6) "Governing board" means:

(a) the governing board of each political subdivision;

(b) the governing board of each interlocal organization having the power to tax or to expend public funds;

(c) the governing board of any local mental health authority established under the authority of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(d) the governing board of any substance abuse authority established under the authority of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(e) the governing board of any area agency established under the authority of Title 62A, Chapter 3, Aging and Adult Services;

(f) the ~~[governing]~~ board of directors of any nonprofit corporation that receives an amount of money requiring an accounting report under Section 51-2a-201.5;

(g) the governing board, as that term is defined in Section 11-13a-102, of a governmental nonprofit corporation;

~~(g)~~ (h) the governing board of any other entity established by a local governmental unit that receives tax exempt status for bonding or taxing purposes; and

~~(h)~~ (i) in municipalities organized under an optional form of municipal government, the municipal legislative body.

(7) "Governmental nonprofit corporation" means the same as that term is defined in Section 11-13a-102.

(8) "Nonprofit corporation" does not include a governmental nonprofit corporation.

~~(7)~~ (9) "Review" means performing inquiry and analytical procedures that provide the accountant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements for them to be in conformity with generally accepted accounting principles.

Section 7. Section 51-2a-403 is amended to read:

51-2a-403. General Fund reimbursed for accounting report of nonappropriated activities -- Amount of reimbursement.

(1) The General Fund shall be reimbursed by the entity for which an audit, review, or compilation are in whole or in part performed, whenever the state auditor or legislative auditor general is required by law or constitutional provision to perform that audit, review, or compilation or cause that audit, review, or compilation to be made for any office, department, division, board, agency, commission,

council, authority, institution, hospital, school, college, university, or other instrumentality of the state or any of its political subdivisions for nonappropriated activities, including associated students' accounts, auxiliary enterprise funds, nonprofit corporations, governmental nonprofit corporations, contracts with the federal government, federal grants-in-aid, and federal assistance programs.

(2) (a) The reimbursement amount shall be a pro rata share of that auditor's total cost, based upon a time-spent factor.

(b) An audit includes an audit of state-appropriated funds.

(i) If state-appropriated funds are not involved in the accounting report, the reimbursement may not be less than the average hourly cost of the operations of that auditor's office nor more than the average rate attainable from certified public accounting firms performing similar services for this state.

(ii) Reimbursement charges may be negotiated with that auditor's office within these limitations.

Section 8. Section 52-4-103 is amended to read:

52-4-103. Definitions.

As used in this chapter:

(1) "Anchor location" means the physical location from which:

- (a) an electronic meeting originates; or
- (b) the participants are connected.

(2) "Capitol hill complex" means the grounds and buildings within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.

(3) "Convening" means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

(4) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

(5) "Electronic message" means a communication transmitted electronically, including:

- (a) electronic mail;
- (b) instant messaging;
- (c) electronic chat;

(d) text messaging as defined in Section 76-4-401; or

(e) any other method that conveys a message or facilitates communication electronically.

(6) (a) "Meeting" means the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session,

whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body or specific body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

(i) a chance gathering or social gathering; or

(ii) a convening of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405.

(c) "Meeting" does not mean the convening of a public body that has both legislative and executive responsibilities if:

(i) no public funds are appropriated for expenditure during the time the public body is convened; and

(ii) the public body is convened solely for the discussion or implementation of administrative or operational matters:

(A) for which no formal action by the public body is required; or

(B) that would not come before the public body for discussion or action.

(7) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(8) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(9) (a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(ii) consists of two or more persons;

(iii) expends, disburses, or is supported in whole or in part by tax revenue; and

(iv) is vested with the authority to make decisions regarding the public's business.

(b) "Public body" includes[₅]:

(i) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking[.]; and

(ii) as defined in Section 11-13a-102, a governmental nonprofit corporation.

(c) "Public body" does not include a:

(i) political party, political group, or political caucus;

(ii) conference committee, rules committee, or sifting committee of the Legislature; or

(iii) school community council or charter trust land council as defined in Section 53A-1a-108.1.

(10) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(11) (a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

(12) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

(13) "Specified body":

(a) means an administrative, advisory, executive, or legislative body that:

- (i) is not a public body;
- (ii) consists of three or more members; and
- (iii) includes at least one member who is:

(A) a legislator; and

(B) officially appointed to the body by the president of the Senate, speaker of the House of Representatives, or governor; and

(b) does not include a body listed in Subsection (9)(c)(ii).

(14) "Transmit" means to send, convey, or communicate an electronic message by electronic means.

Section 9. Section 63G-2-103 is amended to read:

63G-2-103. Definitions.

As used in this chapter:

(1) "Audit" means:

(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or

(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.

(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:

(a) the time and general nature of police, fire, and paramedic calls made to the agency; and

(b) any arrests or jail bookings made by the agency.

(3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(4) (a) "Computer program" means:

(i) a series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and

(ii) any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(5) (a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.

(7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.

(9) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustible units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the

compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(10) "Government audit agency" means any governmental entity that conducts an audit.

(11) (a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business; ~~and~~

(ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking~~[-]; and~~

(iii) as defined in Section 11-13a-102, a governmental nonprofit corporation.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.

(12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(13) "Individual" means a human being.

(14) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(15) "Legislative body" means the Legislature.

(16) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.

(17) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) other type of business organization; or

(f) any combination acting in concert with one another.

(18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(19) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.

(20) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.

(21) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

(22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:

(A) in a capacity other than the employee's or officer's governmental capacity; or

(B) that is unrelated to the conduct of the public's business;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity;

(iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(v) proprietary software;

(vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

(vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

(viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

(x) a computer program that is developed or purchased by or for any governmental entity for its own use;

(xi) a note or internal memorandum prepared as part of the deliberative process by:

(A) a member of the judiciary;

(B) an administrative law judge;

(C) a member of the Board of Pardons and Parole; or

(D) a member of any other body charged by law with performing a quasi-judicial function;

(xii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;

(xiii) information provided by the Public Employees' Benefit and Insurance Program, created in Section 49-20-103, to a county to enable the county to calculate the amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

(xiv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205; or

(xv) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102.

(23) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

(24) "Records committee" means the State Records Committee created in Section 63G-2-501.

(25) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

(26) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.

(27) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:

(a) conducted:

(i) by an institution within the state system of higher education defined in Section 53B-1-102; and

(ii) through an office responsible for sponsored projects or programs; and

(b) funded or otherwise supported by an external:

(i) person that is not created or controlled by the institution within the state system of higher education; or

(ii) federal, state, or local governmental entity.

(28) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.

(29) "State archivist" means the director of the state archives.

(30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Section 10. Section 63I-2-211 is amended to read:

63I-2-211. Repeal dates -- Title 11.

(1) (a) On July 1, 2019, Subsection 11-13a-102(4)(b) is repealed.

(b) When repealing Subsection 11-13a-102(4)(b), the Office of Legislative Research and General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

(2) Title 11, Chapter 53, Residential Property Reimbursement, is repealed on January 1, 2020.

CHAPTER 442**H. B. 99**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

BIGAMY OFFENSE AMENDMENTS

Chief Sponsor: Michael E. Noel
 Senate Sponsor: Kevin T. Van Tassell

LONG TITLE**General Description:**

This bill modifies the Utah Criminal Code regarding the offense of bigamy.

Highlighted Provisions:

This bill:

- ▶ revises the definitions of bigamy and child bigamy.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-7-101, as last amended by Laws of Utah 1997, Chapter 296

76-7-101.5, as enacted by Laws of Utah 2003, Chapter 6

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

Section 1. Section 76-7-101 is amended to read:**76-7-101. Bigamy -- Penalty -- Defense.**

(1) A person is guilty of bigamy when, knowing ~~[he]~~ the person has a husband or wife or knowing the other person has a husband or wife, the person purports to marry ~~[another person or cohabits with another]~~ and cohabitates with the other person.

(2) Bigamy is a third degree felony ~~[of the third degree]~~.

(3) Bigamy is a second degree felony if the accused is also convicted during the same prosecution of the following:

(a) inducing marriage or bigamy under false pretenses;

(b) fraud;

(c) domestic abuse;

(d) child abuse;

(e) sexual abuse;

(f) human trafficking; or

(g) human smuggling.

~~[(3)]~~ (4) It [shall be] is a defense to bigamy that:

(a) the accused reasonably believed ~~[he]~~ the accused and the other person were legally eligible to ~~[remarry.]~~ marry;

(b) the accused is a person who, under reasonable fear of coercion or bodily harm, left a bigamous relationship as defined in Subsection (1);

(c) the accused is a minor who left a bigamous relationship as defined in Subsection (1); or

(d) the accused has taken steps to protect the safety and welfare of any minor child of a bigamous relationship.

Section 2. Section 76-7-101.5 is amended to read:**76-7-101.5. Child bigamy -- Penalty.**

(1) An actor 18 years of age or older is guilty of child bigamy when, knowing he or she has a wife or husband, or knowing that a person under 18 years of age has a wife or husband, the actor carries out the following with the person who is under 18 years of age:

(a) purports to marry the person who is under 18 years of age; ~~[or]~~ and

(b) ~~[cohabits]~~ cohabitates with the person who is under 18 years of age.

(2) A violation of Subsection (1) is a second degree felony.

CHAPTER 443**H. B. 113**

Passed March 7, 2017

Approved March 28, 2017

Effective July 1, 2017

NURSING CARE FACILITY AMENDMENTS

Chief Sponsor: Francis D. Gibson

Senate Sponsor: Evan J. Vickers

LONG TITLE**General Description:**

This bill amends provisions in the Utah Health Code related to nursing care facilities.

Highlighted Provisions:

This bill:

- ▶ allows the Department of Health to consider the quality of nursing care facilities in a county when determining whether to certify additional Medicaid beds in the county;
- ▶ makes technical changes;
- ▶ changes the Nursing Care Facilities Account to an expendable special revenue fund; and
- ▶ removes the sunset review for the certification of Medicaid beds in nursing care facilities.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

26-18-503, as last amended by Laws of Utah 2016, Chapter 276

26-18-504, as last amended by Laws of Utah 2008, Chapters 347 and 382

26-18-505, as last amended by Laws of Utah 2016, Chapter 276

26-21-23, as last amended by Laws of Utah 2016, Chapters 276 and 357

26-35a-104, as enacted by Laws of Utah 2004, Chapter 284

26-35a-106, as last amended by Laws of Utah 2016, Chapter 276

26-35a-107, as last amended by Laws of Utah 2011, Chapter 297

63I-1-226, as last amended by Laws of Utah 2016, Chapters 89, 170, 279, and 327

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 26-18-503 is amended to read:**26-18-503. Authorization to renew, transfer, or increase Medicaid certified programs -- Reimbursement methodology.**

(1) (a) The division may renew Medicaid certification of a certified program if the program, without lapse in service to Medicaid recipients, has its nursing care facility program certified by the division at the same physical facility as long as the licensed and certified bed capacity at the facility has

not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

(b) The division may renew Medicaid certification of a nursing care facility program that is not currently certified if:

(i) since the day on which the program last operated with Medicaid certification:

(A) the physical facility where the program operated has functioned solely and continuously as a nursing care facility; and

(B) the owner of the program has not, under this section or Section 26-18-505, transferred to another nursing care facility program the license for any of the Medicaid beds in the program; and

(ii) the number of beds granted renewed Medicaid certification does not exceed the number of beds certified at the time the program last operated with Medicaid certification, excluding a period of time where the program operated with temporary certification under Subsection 26-18-504(4).

(2) (a) The division may issue a Medicaid certification for a new nursing care facility program if a current owner of the Medicaid certified program transfers its ownership of the Medicaid certification to the new nursing care facility program and the new nursing care facility program meets all of the following conditions:

(i) the new nursing care facility program operates at the same physical facility as the previous Medicaid certified program;

(ii) the new nursing care facility program gives a written assurance to the director in accordance with Subsection (4);

(iii) the new nursing care facility program receives the Medicaid certification within one year of the date the previously certified program ceased to provide medical assistance to a Medicaid recipient; and

(iv) the licensed and certified bed capacity at the facility has not been expanded, unless the director has approved additional beds in accordance with Subsection (5).

(b) A nursing care facility program that receives Medicaid certification under the provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing care facility program if the new nursing care facility program:

(i) is not owned in whole or in part by the previous nursing care facility program; or

(ii) is not a successor in interest of the previous nursing care facility program.

(3) The division may issue a Medicaid certification to a nursing care facility program that was previously a certified program but now resides in a new or renovated physical facility if the nursing care facility program meets all of the following:

(a) the nursing care facility program met all applicable requirements for Medicaid certification at the time of closure;

(b) the new or renovated physical facility is in the same county or within a five-mile radius of the original physical facility;

(c) the time between which the certified program ceased to operate in the original facility and will begin to operate in the new physical facility is not more than three years;

(d) if Subsection (3)(c) applies, the certified program notifies the department within 90 days after ceasing operations in its original facility, of its intent to retain its Medicaid certification;

(e) the provider gives written assurance to the director in accordance with Subsection (4) that no third party has a legitimate claim to operate a certified program at the previous physical facility; and

(f) the bed capacity in the physical facility has not been expanded unless the director has approved additional beds in accordance with Subsection (5).

(4) (a) The entity requesting Medicaid certification under Subsections (2) and (3) shall give written assurances satisfactory to the director or the director's designee that:

(i) no third party has a legitimate claim to operate the certified program;

(ii) the requesting entity agrees to defend and indemnify the department against any claims by a third party who may assert a right to operate the certified program; and

(iii) if a third party is found, by final agency action of the department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

(b) If a finding is made under the provisions of Subsection (4)(a)(iii):

(i) the certified program shall immediately surrender its Medicaid certification and comply with division rules regarding billing for Medicaid and the provision of services to Medicaid patients; and

(ii) the department shall transfer the surrendered Medicaid certification to the third party who prevailed under Subsection (4)(a)(iii).

(5) (a) As provided in Subsection 26-18-502(2)(b), the director may approve additional nursing care facility programs for Medicaid certification, or additional beds for Medicaid certification within an existing nursing care facility program, if a nursing care facility or other interested party requests Medicaid certification for a nursing care facility program or additional beds within an existing nursing care facility program, and the nursing care facility program or other interested party complies with this section.

(b) The nursing care facility or other interested party requesting Medicaid certification for a

nursing care facility program or additional beds within an existing nursing care facility program under Subsection (5)(a) shall submit to the director:

(i) proof of the following as reasonable evidence that bed capacity provided by Medicaid certified programs within the county or group of counties impacted by the requested additional Medicaid certification is insufficient:

(A) nursing care facility occupancy levels for all existing and proposed facilities will be at least 90% for the next three years;

(B) current nursing care facility occupancy is 90% or more; or

(C) there is no other nursing care facility within a 35-mile radius of the nursing care facility requesting the additional certification; and

(ii) an independent analysis demonstrating that at projected occupancy rates the nursing care facility's after-tax net income is sufficient for the facility to be financially viable.

(c) Any request for additional beds as part of a renovation project are limited to the maximum number of beds allowed in Subsection (7).

~~[(e)]~~ (d) The director shall determine whether to issue additional Medicaid certification by considering:

(i) whether bed capacity provided by certified programs within the county or group of counties impacted by the requested additional Medicaid certification is insufficient, based on the information submitted to the director under Subsection (5)(b);

(ii) whether the county or group of counties impacted by the requested additional Medicaid certification is underserved by specialized or unique services that would be provided by the nursing care facility;

(iii) whether any Medicaid certified beds are subject to a claim by a previous certified program that may reopen under the provisions of Subsections (2) and (3); ~~and~~

~~(iv) how additional bed capacity should be added to the long-term care delivery system to best meet the needs of Medicaid recipients[, which may include the renovation of aging nursing care facilities, as permitted by Subsection (7).]; and~~

(v) (A) whether the existing certified programs within the county or group of counties have provided services of sufficient quality to merit at least a two-star rating in the Medicare Five-Star Quality Rating System over the previous three-year period; and

(B) information obtained under Subsection (9).

(6) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility property reimbursement methodology to:

(a) only pay that portion of the property component of rates, representing actual bed usage by Medicaid clients as a percentage of the greater of:

(i) actual occupancy; or

(ii) (A) for a nursing care facility other than a facility described in Subsection (6)(a)(ii)(B), 85% of total bed capacity; or

(B) for a rural nursing care facility, 65% of total bed capacity; and

(b) not allow for increases in reimbursement for property values without major renovation or replacement projects as defined by the department by rule.

(7) (a) Notwithstanding Subsection 26-18-504(4), if a nursing care facility does not seek Medicaid certification for a bed under Subsections (1) through (6), the department shall grant Medicaid certification for additional beds in an existing Medicaid certified nursing care facility that has 90 or fewer licensed beds, including Medicaid certified beds, in the facility if:

(i) the nursing care facility program was previously a certified program for all beds but now resides in a new facility or in a facility that underwent major renovations involving major structural changes, ~~and~~ with 50% or greater facility square footage design changes, requiring review and approval by the department;

(ii) the nursing care facility meets the quality of care regulations issued by the Center for Medicare and Medicaid Services; and

(iii) the total number of additional beds in the facility granted Medicaid certification under this section does not exceed 10% of the number of licensed beds in the facility.

(b) The department may not revoke the Medicaid certification of a bed under this Subsection (7) as long as the provisions of Subsection (7)(a)(ii) are met.

(8) (a) If a nursing care facility or other interested party indicates in its request for additional Medicaid certification under Subsection (5)(a) that the facility will offer specialized or unique services, but the facility does not offer those services after receiving additional Medicaid certification, the director ~~may~~ shall revoke the additional Medicaid certification.

~~[(b) If a nursing care facility or other interested party obtains Medicaid certification for a nursing care facility program or additional beds within an existing nursing care facility program under Subsection (5), but Medicaid reimbursement is not received for a bed within three years of the date on which Medicaid certification was obtained for the bed under Subsection (5), Medicaid certification for the bed is revoked.]~~

(b) The nursing care facility program shall obtain Medicaid certification for any additional Medicaid beds approved under Subsection (5) or (7) within three years of the date of the director's approval, or the approval is void.

(9) (a) If the director makes an initial determination that quality standards under Subsection (5)(d)(v) have not been met in a rural county or group of rural counties over the previous three-year period, the director shall, before approving certification of additional Medicaid beds in the rural county or group of counties:

(i) notify the certified program that has not met the quality standards in Subsection (5)(d)(v) that the director intends to certify additional Medicaid beds under the provisions of Subsection (5)(d)(v); and

(ii) consider additional information submitted to the director by the certified program in a rural county that has not met the quality standards under Subsection (5)(d)(v).

(b) The notice under Subsection (9)(a) does not give the certified program that has not met the quality standards under Subsection (5)(d)(v), the right to legally challenge or appeal the director's decision to certify additional Medicaid beds under Subsection (5)(d)(v).

Section 2. Section 26-18-504 is amended to read:

26-18-504. Appeals of division decision -- Rulemaking authority -- Application of act.

(1) A decision by the director under this part to deny Medicaid certification for a nursing care facility program or to deny additional bed capacity for an existing certified program is subject to review under the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(2) The department shall make rules to administer and enforce this part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(3) A nursing care facility may receive Medicaid certification under the rules in effect prior to July 1, 2004 if the nursing care facility, prior to May 4, 2004:]~~

~~[(a) (i) paid applicable fees to the department; and]~~

~~[(ii) submits construction plans to the department; or]~~

~~[(b) is in a current phase of construction approved by the department.]~~

[4] (3) (a) In the event the department is at risk for a federal disallowance with regard to a Medicaid recipient being served in a nursing care facility program that is not Medicaid certified, the department may grant temporary Medicaid certification to that facility for up to 24 months.

(b) (i) The department may extend a temporary Medicaid certification granted to a facility under Subsection [4] (3)(a):

(A) for the number of beds in the nursing care facility occupied by a Medicaid recipient; and

(B) for the period of time during which the Medicaid recipient resides at the facility.

(ii) A temporary Medicaid certification granted under this Subsection [(4)] (3) is revoked upon:

(A) the discharge of the patient from the facility; or

(B) the patient no longer residing at the facility for any reason.

(c) The department may place conditions on the temporary certification granted under Subsections [(4)] (3)(a) and (b), such as:

(i) not allowing additional admissions of Medicaid recipients to the program; and

(ii) not paying for the care of the patient after October 1, 2008, with state only dollars.

Section 3. Section 26-18-505 is amended to read:

26-18-505. Authorization to sell or transfer licensed Medicaid beds -- Duties of transferor -- Duties of transferee -- Duties of division.

(1) This section provides a method to transfer or sell the license for a Medicaid bed from a nursing care facility program to another entity that is in addition to the authorization to transfer under Section 26-18-503.

(2) (a) A nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds in accordance with Subsection (2)(b) if:

(i) at the time of the transfer, and with respect to the license for the Medicaid bed that will be transferred, the nursing care facility program that will transfer the Medicaid license meets all applicable regulations for Medicaid certification;

(ii) [30 days prior to the transfer,] the nursing care facility program gives a written assurance, which is postmarked or has proof of delivery 30 days before the transfer, to the director and to the transferee in accordance with Subsection 26-18-503(4);

(iii) [30 days prior to the transfer,] the nursing care facility program that will transfer the license for a Medicaid bed notifies the division in writing, which is postmarked or has proof of delivery 30 days before the transfer, of:

(A) the number of bed licenses that will be transferred;

(B) the date of the transfer; and

(C) the identity and location of the entity receiving the transferred licenses; and

(iv) if the nursing care facility program for which the license will be transferred or purchased is located in an urban county with a nursing care facility average annual occupancy rate over the previous two years less than or equal to 75%, the nursing care facility program transferring or selling the license demonstrates to the satisfaction of the director that the sale or transfer:

(A) will not result in an excessive number of Medicaid certified beds within the county or group of counties that would be impacted by the transfer or sale; and

(B) best meets the needs of Medicaid recipients.

(b) Except as provided in Subsection (2)(c), a nursing care facility program may transfer or sell one or more of its licenses for Medicaid beds to:

(i) a nursing care facility program that has the same owner or successor in interest of the same owner;

(ii) a nursing care facility program that has a different owner; or

~~[(iii) notwithstanding Section 26-18-502, an entity that intends to establish a nursing care facility program; or]~~

~~[(iv) notwithstanding Section 26-18-502,]~~

(iii) a related-party nonnursing-care-facility entity that wants to hold one or more of the licenses for a [future] nursing care facility program not yet identified, as long as:

(A) the licenses are subsequently transferred or sold to a nursing care facility program within three years; and

(B) the nursing care facility program notifies the director of the transfer or sale in accordance with Subsection (2)(a)(iii).

(c) A nursing care facility program may not transfer or sell one or more of its licenses for Medicaid beds to an entity under Subsection (2)(b)(i), (ii), or (iii)[, or (iv)] that is located in a rural county unless the entity requests, and the director issues, Medicaid certification for the beds under Subsection 26-18-503(5).

(3) [An] A nursing care facility program or entity under Subsection (2)(b)(i), (ii), or (iii)[, or (iv)] that receives or purchases a license for a Medicaid bed under Subsection (2)(b):

(a) may receive a license for a Medicaid bed from more than one nursing care facility program;

~~[(b) within 14 days of seeking Medicaid certification of beds in the nursing care facility program, give the division notice of the total number of licenses]~~

(b) shall give the division notice, which is postmarked or has proof of delivery within 14 days of the nursing care facility program or entity seeking Medicaid certification of beds in the nursing care facility program or entity, of the total number of licenses for Medicaid beds that the entity received and who it received the licenses from;

(c) may only seek Medicaid certification for the number of licensed beds in the nursing care facility program equal to the total number of licenses for Medicaid beds received by the entity;

(d) [notwithstanding Section 26-18-502,] does not have to demonstrate need or seek approval for the Medicaid licensed bed under Subsection 26-18-503(5), except as provided in Subsections (2)(a)(iv) and (2)(c);

(e) shall meet the standards for Medicaid certification other than those in Subsection 26-18-503(5), including personnel, services, contracts, and licensing of facilities under Chapter 21, Health Care Facility Licensing and Inspection Act; and

(f) shall obtain Medicaid certification for the licensed Medicaid beds within three years of the date of transfer as documented under Subsection (2)(a)(iii)(B).

(4) (a) When the division receives notice of a transfer of a license for a Medicaid bed under Subsection (2)(a)(iii)(A), the department shall reduce the number of licenses for Medicaid beds at the transferring nursing care facility:

(i) equal to the number of licenses transferred; and

(ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).

(b) For purposes of Section 26-18-502, the division shall approve Medicaid certification for the receiving nursing care facility program or entity:

(i) in accordance with the formula established in Subsection (3)(c); and

(ii) if:

(A) the nursing care facility seeks Medicaid certification for the transferred licenses within the time limit required by Subsection (3)(f); and

(B) the nursing care facility program meets other requirements for Medicaid certification under Subsection (3)(e).

(c) A license for a Medicaid bed may not be approved for Medicaid certification without meeting the requirements of Sections 26-18-502 and 26-18-503 if:

(i) the license for a Medicaid bed is transferred under this section but the receiving entity does not obtain Medicaid certification for the licensed bed within the time required by Subsection (3)(f); or

(ii) the license for a Medicaid bed is transferred under this section but the license is no longer eligible for Medicaid certification [~~as a result of the conversion factor established in Subsection (3)(e)].~~

Section 4. Section 26-21-23 is amended to read:

26-21-23. Licensing of a new nursing care facility -- Approval for a licensed bed in an existing nursing care facility -- Fine for excess Medicare inpatient revenue.

(1) Notwithstanding Section 26-21-2, as used in this section:

(a) "Medicaid" means the Medicaid program, as that term is defined in Section 26-18-2.

(b) "Medicaid certification" means the same as that term is defined in Section 26-18-501.

(c) "Nursing care facility" and "small health care facility":

(i) mean the following facilities licensed by the department under this chapter:

(A) a skilled nursing facility;

(B) an intermediate care facility; or

(C) a small health care facility with four to 16 beds functioning as a skilled nursing facility; and

(ii) do not mean:

(A) an intermediate care facility for the intellectually disabled;

(B) a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998);

(C) a small health care facility that is hospital based; or

(D) a small health care facility other than a skilled nursing care facility with no more than 16 beds.

(d) "Rural county" means the same as that term is defined in Section 26-18-501.

(2) Except as provided in Subsection (6) and Section 26-21-28, a new nursing care facility shall be approved for a health facility license only if:

(a) under the provisions of Section 26-18-503 the facility's nursing care facility program has received Medicaid certification or will receive Medicaid certification for each bed in the facility;

(b) the facility's nursing care facility program has received or will receive approval for Medicaid certification under Subsection 26-18-503(5), if the facility is located in a rural county; or

(c) (i) the applicant submits to the department the information described in Subsection (3); and

(ii) based on that information, and in accordance with Subsection (4), the department determines that approval of the license best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility.

(3) A new nursing care facility seeking licensure under Subsection (2) shall submit to the department the following information:

(a) proof of the following as reasonable evidence that bed capacity provided by nursing care facilities within the county or group of counties that would be impacted by the facility is insufficient:

(i) nursing care facility occupancy within the county or group of counties:

(A) has been at least 75% during each of the past two years for all existing facilities combined; and

(B) is projected to be at least 75% for all nursing care facilities combined that have been approved for licensure but are not yet operational;

(ii) there is no other nursing care facility within a 35-mile radius of the new nursing care facility seeking licensure under Subsection (2); and

(b) a feasibility study that:

(i) shows the facility's annual Medicare inpatient revenue, including Medicare Advantage revenue, will not exceed 49% of the facility's annual total revenue during each of the first three years of operation;

(ii) shows the facility will be financially viable if the annual occupancy rate is at least 88%;

(iii) shows the facility will be able to achieve financial viability;

(iv) shows the facility will not:

(A) have an adverse impact on existing or proposed nursing care facilities within the county or group of counties that would be impacted by the facility; or

(B) be within a three-mile radius of an existing nursing care facility or a new nursing care facility that has been approved for licensure but is not yet operational;

(v) is based on reasonable and verifiable demographic and economic assumptions;

(vi) is based on data consistent with department or other publicly available data; and

(vii) is based on existing sources of revenue.

(4) When determining under Subsection (2)(c) whether approval of a license for a new nursing care facility best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility, the department shall consider:

(a) whether the county or group of counties that would be impacted by the facility is underserved by specialized or unique services that would be provided by the facility; and

(b) how additional bed capacity should be added to the long-term care delivery system to best meet the needs of current and future nursing care facility patients within the impacted area.

(5) The [division] department may approve the addition of a licensed bed in an existing nursing care facility only if:

(a) each time the facility seeks approval for the addition of a licensed bed, the facility satisfies each requirement for licensure of a new nursing care facility in Subsections (2)(c), (3), and (4); or

(b) the bed has been approved for Medicaid certification under Section 26-18-503 or 26-18-505.

(6) Subsection (2) does not apply to a nursing care facility that:

(a) has, by the effective date of this act, submitted to the department schematic drawings, and paid applicable fees, for a particular site or a site within a three-mile radius of that site;

(b) before July 1, 2016:

(i) filed an application with the department for licensure under this section and paid all related fees due to the department; and

(ii) submitted to the department architectural plans and specifications, as defined by the department by administrative rule, for the facility;

(c) applies for a license within three years of closing for renovation;

(d) replaces a nursing care facility that:

(i) closed within the past three years; or

(ii) is located within five miles of the facility;

(e) is undergoing a change of ownership, even if a government entity designates the facility as a new nursing care facility; or

(f) is a state-owned veterans home, regardless of who operates the home.

(7) (a) For each year the annual Medicare inpatient revenue, including Medicare Advantage revenue, of a nursing care facility approved for a health facility license under Subsection (2)(c) exceeds 49% of the facility's total revenue for the year, the facility shall be subject to a fine of \$50,000, payable to the department.

(b) A nursing care facility approved for a health facility license under Subsection (2)(c) shall submit to the department the information necessary for the department to annually determine whether the facility is subject to the fine in Subsection (7)(a).

(c) The department:

(i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the information a nursing care facility shall submit to the department under Subsection (7)(b);

(ii) shall annually determine whether a facility is subject to the fine in Subsection (7)(a);

(iii) may take one or more of the actions in Section 26-21-11 or 26-23-6 against a facility for nonpayment of a fine due under Subsection (7)(a); and

(iv) shall deposit fines paid to the department under Subsection (7)(a) into the Nursing Care Facilities [Account] Provider Assessment Fund, created by Section 26-35a-106.

Section 5. Section 26-35a-104 is amended to read:

26-35a-104. Collection, remittance, and payment of nursing care facilities assessment.

(1) (a) Beginning July 1, 2004, an assessment is imposed upon each nursing care facility in the amount designated in Subsection (1)(c).

(b) (i) The department shall establish by rule, a uniform rate per non-Medicare patient day that may not exceed 6% of the total gross revenue for services provided to patients of all nursing care facilities licensed in this state.

(ii) For purposes of Subsection (1)(b)(i), total revenue does not include charitable contribution received by a nursing care facility.

(c) The department shall calculate the assessment imposed under Subsection (1)(a) by multiplying the total number of patient days of care provided to non-Medicare patients by the nursing care facility, as provided to the department pursuant to Subsection (3)(a), by the uniform rate established by the department pursuant to Subsection (1)(b).

(2) (a) The assessment imposed by this chapter is due and payable on a monthly basis on or before the last day of the month next succeeding each monthly period.

(b) The collecting agent for this assessment shall be the department which is vested with the administration and enforcement of this chapter, including the right to audit records of a nursing care facility related to patient days of care for the facility.

(c) The department shall forward proceeds from the assessment imposed by this chapter to the state treasurer for deposit in the ~~restricted account~~ expendable special revenue fund as specified in Section 26-35a-106.

(3) Each nursing care facility shall, on or before the end of the month next succeeding each calendar monthly period, file with the department:

(a) a report which includes:

(i) the total number of patient days of care the facility provided to non-Medicare patients during the preceding month;

(ii) the total gross revenue the facility earned as compensation for services provided to patients during the preceding month; and

(iii) any other information required by the department; and

(b) a return for the monthly period, and shall remit with the return the assessment required by this chapter to be paid for the period covered by the return.

(4) Each return shall contain information and be in the form the department prescribes by rule.

(5) The assessment as computed in the return is an allowable cost for Medicaid reimbursement purposes.

(6) The department may by rule, extend the time for making returns and paying the assessment.

(7) Each nursing care facility that fails to pay any assessment required to be paid to the state, within the time required by this chapter, or that fails to file a return as required by this chapter, shall pay, in addition to the assessment, penalties and interest as provided in Section 26-35a-105.

Section 6. Section 26-35a-106 is amended to read:

26-35a-106. Nursing Care Facilities Provider Assessment Expendable Revenue Fund -- Creation -- Deposits -- Uses.

(1) ~~(a)~~ There is created ~~[a restricted account in the General Fund]~~ an expendable special revenue fund known as the "Nursing Care Facilities ~~[Account]~~ Provider Assessment Fund" consisting of:

~~(i) proceeds from the assessment imposed by Section 26-35a-104 which shall be deposited in the restricted account to be used for the purpose described in Subsection (1)(b);]~~

~~(a) the assessments collected by the department under this chapter;~~

~~(ii) (b) fines paid by nursing care facilities for excessive Medicare inpatient revenue under Section ~~[26-18-506]~~ 26-21-23;~~

~~(iii) (c) money appropriated or otherwise made available by the Legislature; and]~~

~~(iv) (d) any interest earned on the ~~[account.]~~ fund; and]~~

~~(e) penalties levied with the administration of this chapter.~~

~~(b) (i) (2) Money in the ~~[account]~~ fund shall only be used by the Medicaid program:~~

~~(A) (a) to the extent authorized by federal law, to obtain federal financial participation in the Medicaid program;~~

~~(B) (b) to provide the increased level of hospice reimbursement resulting from the nursing care facilities assessment imposed under Section 26-35a-104;~~

~~(C) (c) for the Medicaid program to make quality incentive payments to nursing care facilities, subject to approval of a Medicaid state plan amendment to do so by the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services; and]~~

~~(D) in the manner described in Subsection (1)(b)(ii).]~~

~~(ii) The money appropriated from the restricted account to the department:]~~

~~(A) (d) [shall be used only] to increase the rates paid ~~[prior to]~~ before July 1, 2004, to nursing care facilities for providing services pursuant to the Medicaid program ~~[and for administrative expenses as described in Subsection (1)(b)(ii)(C)]; and]~~~~

~~(B) may not be used to replace existing state expenditures paid to nursing care facilities for providing services pursuant to the Medicaid program, except for increased costs due to hospice reimbursement under Subsection (1)(b)(i)(B); and]~~

~~(C) (e) [may be used] for administrative expenses, if the administrative expenses for the fiscal year do not exceed 3% of the money deposited into the ~~[restricted account]~~ fund during the fiscal year.~~

(3) The department may not spend the money in the fund to replace existing state expenditures paid to nursing care facilities for providing services under the Medicaid program, except for increased costs due to hospice reimbursement under Subsection (2)(b).

~~[(2) Money shall be appropriated from the restricted account to the department for the purposes described in Subsection (1)(b) in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.]~~

Section 7. Section 26-35a-107 is amended to read:

26-35a-107. Adjustment to nursing care facility Medicaid reimbursement rates.

If federal law or regulation prohibits the money in the Nursing Care Facilities ~~[Account]~~ Provider Assessment Fund from being used in the manner set forth in Subsection 26-35a-106(1)(b), the rates paid to nursing care facilities for providing services pursuant to the Medicaid program shall be changed ~~[as follows]:~~

(1) except as otherwise provided in Subsection (2), to the rates paid to nursing care facilities on June 30, 2004; or

(2) if the Legislature or the department has on or after July 1, 2004, changed the rates paid to facilities through a manner other than the use of expenditures from the Nursing Care Facilities ~~[Account]~~ Provider Assessment Fund, to the rates provided for by the Legislature or the department.

Section 8. Section 63I-1-226 is amended to read:

63I-1-226. Repeal dates, Title 26.

(1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2025.

(2) Section 26-10-11 is repealed July 1, 2020.

~~[(3) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed July 1, 2018.]~~

~~[(4) (3) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.]~~

~~[(5) (4) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1, 2019.]~~

~~[(6) (5) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1, 2021.]~~

~~[(7) (6) Section 26-38-2.5 is repealed July 1, 2017.]~~

~~[(8) (7) Section 26-38-2.6 is repealed July 1, 2017.]~~

~~[(9) (8) Title 26, Chapter 52, Autism Treatment Account, is repealed July 1, 2016.]~~

~~[(10) (9) Title 26, Chapter 56, Hemp Extract Registration Act, is repealed July 1, 2021.]~~

Section 9. Transfer of funds into Expendable Special Revenue Account.

The Department of Finance shall transfer the remaining fund balance in the "Nursing Care

Facilities Account" at fiscal year-end 2017 into the "Nursing Care Facilities Provider Assessment Fund."

Section 10. Effective date.

This bill takes effect on July 1, 2017.

CHAPTER 444**H. B. 126**

Passed February 24, 2017

Approved March 28, 2017

Effective May 9, 2017

**STUDENT PLAN FOR COLLEGE
AND CAREER READINESS REVISIONS**Chief Sponsor: Mike Winder
Senate Sponsor: Luz Escamilla**LONG TITLE****General Description:**

This bill amends references to student education plans and college and career readiness plans.

Highlighted Provisions:

This bill:

► replaces references to:

- “student education/occupation plan” or “SEOP” to “plan for college and career readiness”; and
- “student education plan” or “SEP” with “individual learning plan.”

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-1a-106, as last amended by Laws of Utah 2012, Chapter 315

53A-3-602.5, as last amended by Laws of Utah 2015, Chapter 415

53A-15-1204, as last amended by Laws of Utah 2012, Chapter 238

53A-15-1208, as last amended by Laws of Utah 2012, Chapter 238

53A-15-1209, as last amended by Laws of Utah 2012, Chapter 238

53A-15-1702, as enacted by Laws of Utah 2016, Chapter 200

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

Section 1. Section 53A-1a-106 is amended to read:**53A-1a-106. School district and individual school powers -- Plan for college and career readiness definition.**

(1) In order to acquire and develop the characteristics listed in Section 53A-1a-104, each school district and each public school within its respective district shall implement a comprehensive system of accountability in which students advance through public schools by demonstrating competency in required skills and mastery of required knowledge through the use of diverse assessment instruments such as authentic and criterion referenced tests, projects, and portfolios.

(2) (a) Each school district and public school shall:

(i) develop and implement programs integrating technology into the curriculum, instruction, and student assessment;

(ii) provide for teacher and parent involvement in policymaking at the school site;

(iii) implement a public school choice program to give parents, students, and teachers greater flexibility in designing and choosing among programs with different focuses through schools within the same district and other districts, subject to space availability, demographics, and legal and performance criteria;

(iv) establish strategic planning at both the district and school level and site-based decision making programs at the school level;

(v) provide opportunities for each student to acquire and develop academic and occupational knowledge, skills, and abilities;

(vi) participate in ongoing research and development projects primarily at the school level aimed at improving the quality of education within the system; and

(vii) involve business and industry in the education process through the establishment of partnerships with the business community at the district and school level.

(b) (i) As used in this title, [~~“student education/occupation plan” or “SEOP”~~] “plan for college and career readiness” means a plan developed by a student and the student’s parent or guardian, in consultation with school counselors, teachers, and administrators that:

(A) is initiated at the beginning of grade 7;

(B) identifies a student’s skills and objectives;

(C) maps out a strategy to guide a student’s course selection; and

(D) links a student to post-secondary options, including higher education and careers.

(ii) Each local school board, in consultation with school personnel, parents, and school community councils or similar entities shall establish policies to provide for the effective implementation of [~~a personalized student education plan (SEP) or student education/occupation plan (SEOP)~~] an individual learning plan or a plan for college and career readiness for each student at the school site.

(iii) The policies shall include guidelines and expectations for:

(A) recognizing the student’s accomplishments, strengths, and progress towards meeting student achievement standards as defined in U-PASS;

(B) planning, monitoring, and managing education and career development; and

(C) involving students, parents, and school personnel in preparing and implementing [~~SEPs and SEOPs~~] an individual learning plan and a plan for college and career readiness.

(iv) A parent may request [~~conferences~~] a conference with school personnel in addition to

~~[SEP or SEOP conferences]~~ an individual learning plan or a plan for college and career readiness conference established by local school board policy.

(v) Time spent during the school day to implement ~~[SEPs and SEOPs]~~ an individual learning plan or a plan for college and career readiness is considered part of the school term referred to in Subsection 53A-17a-103(4).

(3) A school district or public school may submit proposals to modify or waive rules or policies of a supervisory authority within the public education system in order to acquire or develop the characteristics listed in Section 53A-1a-104.

(4) (a) Each school district and public school shall make an annual report to its patrons on its activities under this section.

(b) The reporting process shall involve participation from teachers, parents, and the community at large in determining how well the district or school is performing.

Section 2. Section 53A-3-602.5 is amended to read:

53A-3-602.5. School performance report -- Components -- Annual filing.

(1) For a school year beginning with or after the 2010-11 school year, the State Board of Education in collaboration with the state's school districts and charter schools shall develop a school performance report to inform the state's residents of the quality of schools and the educational achievement of students in the state's public education system.

(2) The report described in Subsection (1) shall be written and include the following statistical data for each school in a school district and each charter school, as applicable, except as provided by Subsection (2)(g), and shall also aggregate the data at the school district and state level:

(a) test scores over the previous year on:

(i) criterion-referenced or online computer adaptive tests to include the scores aggregated for all students:

(A) by grade level or course for the previous two years and an indication of whether there was a sufficient magnitude of gain in the scores between the two years; and

(B) by class;

(ii) online writing assessments required under Section 53A-1-603; and

(iii) college readiness assessments required under Section 53A-1-603;

(b) college entrance examinations data, including the number and percentage of each graduating class taking the examinations for the previous four years;

(c) advanced placement and concurrent enrollment data, including:

(i) the number of students taking advanced placement and concurrent enrollment courses;

(ii) the number and percent of students taking a specific advanced placement course who take advanced placement tests to receive college credit for the course;

(iii) of those students taking the test referred to in Subsection (2)(c)(ii), the number and percent who pass the test; and

(iv) of those students taking a concurrent enrollment course, the number and percent of those who receive college credit for the course;

(d) the number and percent of students in grade 3 reading at or above grade level;

(e) the number and percent of students who were absent from school 10 days or more during the school year;

(f) achievement gaps that reflect the differences in achievement of various student groups as defined by State Board of Education rule;

(g) the number and percent of "student dropouts" within the school district as defined by State Board of Education rule;

(h) course-taking patterns and trends in secondary schools;

(i) student mobility;

(j) staff qualifications, to include years of professional service and the number and percent of staff who have a degree or endorsement in their assigned teaching area and the number and percent of staff who have a graduate degree;

(k) the number and percent of parents who participate in ~~[SEP, SEOP,]~~ an individual learning plan, a plan for college and career readiness, and parent-teacher conferences;

(l) average class size calculated in accordance with State Board of Education rule adopted under Subsection (4);

(m) average daily attendance as defined by State Board of Education rule, including every period in secondary schools; and

(n) enrollment totals disaggregated with respect to race, ethnicity, gender, limited English proficiency, and those students who qualify for free or reduced price school lunch.

(3) For a school year beginning with or after the 2010-11 school year, the State Board of Education, in collaboration with the state's school districts and charter schools, shall provide for the collection and electronic reporting of the following data for a school in each school district and each charter school:

(a) test scores and trends over the previous four years on the tests referred to in Subsection (2)(a);

(b) the average grade given in each math, science, and English course in grades 9 through 12 for which criterion-referenced or online computer adaptive tests are required under Section 53A-1-603;

(c) incidents of student discipline as defined by State Board of Education rule, including suspensions, expulsions, and court referrals; and

(d) the number and percent of students receiving fee waivers and the total dollar amount of fees waived.

(4) (a) The State Board of Education shall adopt common definitions and data collection procedures for local school boards and charter schools to use in collecting and forwarding the data required under Subsections (2) and (3) to the state superintendent of public instruction.

(b) (i) In accordance with Subsections (4)(b)(ii) through (4)(b)(iv), the State Board of Education shall adopt rules specifying how average class size shall be calculated.

(ii) (A) Except as provided by Subsections (4)(b)(ii)(B) through (4)(b)(ii)(D) or for nontraditional classes identified by rule, average class size at the elementary school level shall:

(I) be calculated by grade level; and

(II) indicate the average number of students who are assigned to a teacher for instruction together during a designated time period.

(B) If students at the elementary school level receive instruction in basic academic classes from different teachers, average class size may be calculated as provided by Subsection (4)(b)(iii) for secondary school students.

(C) An elementary school class that includes students from multiple grade levels shall be counted as a single class.

(D) An extended day class in which a portion of the class arrives early and the other portion stays late shall be counted as a single class.

(iii) (A) Except as provided by Subsection (4)(b)(iii)(B) or for nontraditional classes identified by rule, average class size at the secondary school level shall:

(I) be calculated for core language arts, mathematics, and science courses; and

(II) indicate the average number of students who are assigned to a teacher for instruction together during a designated time period.

(B) A secondary school class in which a teacher provides instruction in multiple courses shall be counted as a single class.

(iv) Special education classes and online classes shall be excluded when determining average class size by grade at the elementary school level or the average class size of core language arts, mathematics, and science courses at the secondary level.

(c) The State Board of Education, through the state superintendent of public instruction, shall adopt standard reporting forms and provide a common template for collecting and reporting the

data, which shall be used by all school districts and charter schools.

(d) The state superintendent shall use the automated decision support system referred to in Section 53A-1-301 to collect and report the data required under Subsections (2) and (3).

(5) (a) For a school year beginning with or after the 2010-11 school year, the State Board of Education, through the state superintendent of public instruction, shall issue its report annually by October 1 to include the required data from the previous school year or years as indicated in Subsections (2) and (3).

(b) The State Board of Education shall publish on the State Board of Education's website U-PASS school reports for the 2009-10 school year that indicate the academic proficiency and progress of a school's students and whether the school meets state standards of performance.

(6) (a) Each local school board and each charter school shall receive a written or an electronic copy of the report from the state superintendent of public instruction containing the data for that school district or charter school in a clear summary format and have it distributed, on a one per household basis, to the residence of students enrolled in the school district or charter school before November 30th of each year.

(b) Each local school board, each charter school, and the State Board of Education shall have a complete report of the statewide data available for copying or in an electronic format at their respective offices.

Section 3. Section 53A-15-1204 is amended to read:

53A-15-1204. Option to enroll in online courses offered through the Statewide Online Education Program.

(1) Subject to the course limitations provided in Subsection (2), an eligible student may enroll in an online course offered through the Statewide Online Education Program if:

(a) the student meets the course prerequisites;

(b) the course is open for enrollment;

(c) the online course is aligned with the student's [~~student education/occupation plan (SEOP)~~] plan for college and career readiness;

(d) the online course is consistent with the student's individual education plan (IEP), if the student has an IEP; and

(e) the online course is consistent with the student's international baccalaureate program, if the student is participating in an international baccalaureate program.

(2) An eligible student may enroll in online courses for no more than the following number of credits:

(a) in the 2011-12 and 2012-13 school years, two credits;

- (b) in the 2013-14 school year, three credits;
- (c) in the 2014-15 school year, four credits;
- (d) in the 2015-16 school year, five credits; and
- (e) beginning with the 2016-17 school year, six credits.

(3) Notwithstanding Subsection (2):

(a) a student's primary LEA of enrollment may allow an eligible student to enroll in online courses for more than the number of credits specified in Subsection (2); or

(b) upon the request of an eligible student, the State Board of Education may allow the student to enroll in online courses for more than the number of credits specified in Subsection (2), if the online courses better meet the academic goals of the student.

(4) An eligible student's primary LEA of enrollment:

(a) in conjunction with the student and the student's parent or legal guardian, is responsible for preparing and implementing a [student education/occupation plan (SEOP)] plan for college and career readiness for the eligible student, as provided in Section 53A-1a-106; and

(b) shall assist an eligible student in scheduling courses in accordance with the student's [SEOP] plan for college and career readiness, graduation requirements, and the student's post-secondary plans.

(5) An eligible student's primary LEA of enrollment may not:

(a) impose restrictions on a student's selection of an online course that fulfills graduation requirements and is consistent with the student's [SEOP] plan for college and career readiness or post-secondary plans; or

(b) give preference to an online course or online course provider.

(6) The State Board of Education, including an employee of the State Board of Education, may not give preference to an online course or online course provider.

(7) (a) Except as provided in Subsection (7)(b), a person may not provide an inducement or incentive to a public school student to participate in the Statewide Online Education Program.

(b) For purposes of Subsection (7)(a):

(i) "Inducement or incentive" does not mean:

(A) instructional materials or software necessary to take an online course; or

(B) access to a computer or digital learning device for the purpose of taking an online course.

(ii) "Person" does not include a relative of the public school student.

Section 4. Section 53A-15-1208 is amended to read:

53A-15-1208. Course credit acknowledgment.

(1) A student's primary LEA of enrollment and the student's online course provider shall enter into a course credit acknowledgment in which the primary LEA of enrollment and the online course provider acknowledge that the online course provider is responsible for the instruction of the student in a specified online course.

(2) The terms of the course credit acknowledgment shall provide that:

(a) the online course provider shall receive a payment in the amount provided under Section 53A-15-1206; and

(b) the student's primary LEA of enrollment acknowledges that the State Board of Education will deduct funds allocated to the LEA under Chapter 17a, Minimum School Program Act, in the amount and at the time the online course provider qualifies to receive payment for the online course as provided in Subsection 53A-15-1206(4).

(3) (a) A course credit acknowledgment may originate with either an online course provider or primary LEA of enrollment.

(b) The originating entity shall submit the course credit acknowledgment to the State Board of Education who shall forward it to the primary LEA of enrollment for course selection verification or the online course provider for acceptance.

(c) (i) A primary LEA of enrollment may only reject a course credit acknowledgment if:

(A) the online course is not aligned with the student's [SEOP] plan for college and career readiness;

(B) the online course is not consistent with the student's IEP, if the student has an IEP;

(C) the online course is not consistent with the student's international baccalaureate program, if the student participates in an international baccalaureate program; or

(D) the number of online course credits exceeds the maximum allowed for the year as provided in Section 53A-15-1204.

(ii) Verification of alignment of an online course with a student's [SEOP] plan for college and career readiness does not require a meeting with the student.

(d) An online course provider may only reject a course credit acknowledgment if:

(i) the student does not meet course prerequisites; or

(ii) the course is not open for enrollment.

(e) A primary LEA of enrollment or online course provider shall submit an acceptance or rejection of a course credit acknowledgment to the State Board of Education within 72 business hours of the receipt of

a course credit acknowledgment from the State Board of Education pursuant to Subsection (3)(b).

(f) If an online course provider accepts a course credit acknowledgment, the online course provider shall forward to the primary LEA of enrollment the online course start date as established under Section 53A-15-1206.5.

(g) If an online course provider rejects a course credit acknowledgment, the online course provider shall include an explanation which the State Board of Education shall forward to the primary LEA of enrollment for the purpose of assisting a student with future online course selection.

(h) If a primary LEA of enrollment does not submit an acceptance or rejection of a course credit acknowledgment to the State Board of Education within 72 business hours of the receipt of a course credit acknowledgment from the State Board of Education pursuant to Subsection (3)(b), the State Board of Education shall consider the course credit acknowledgment accepted.

(i) (i) Upon acceptance of a course credit acknowledgment, the primary LEA of enrollment shall notify the student of the acceptance and the start date for the online course as established under Section 53A-15-1206.5.

(ii) Upon rejection of a course credit acknowledgment, the primary LEA of enrollment shall notify the student of the rejection and provide an explanation of the rejection.

(j) If the online course student has an individual education plan (IEP) or 504 accommodations, the primary LEA of enrollment shall forward the IEP or description of 504 accommodations to the online course provider within 72 business hours after the primary LEA of enrollment receives notice that the online course provider accepted the course credit acknowledgment.

(4) (a) A primary LEA of enrollment may not reject a course credit acknowledgment, because the LEA is negotiating, or intends to negotiate, an online course fee with the online course provider pursuant to Subsection 53A-15-1206(6).

(b) If a primary LEA of enrollment negotiates an online course fee with an online course provider before the start date of an online course, a course credit acknowledgment may be amended to reflect the negotiated online course fee.

Section 5. Section 53A-15-1209 is amended to read:

53A-15-1209. Online course credit hours included in daily membership -- Limitation.

(1) Subject to Subsection (2), a student's primary LEA of enrollment shall include online course credit hours in calculating daily membership.

(2) A student may not count as more than one FTE, unless the student intends to complete high school graduation requirements, and exit high school, early, in accordance with the student's

[education/occupation plan (SEOP)] plan for college and career readiness.

(3) A student who enrolls in an online course may not be counted in membership for a released-time class, if counting the student in membership for a released-time class would result in the student being counted as more than one FTE.

(4) Except as provided in Subsection (5), a student enrolled in an online course may earn no more credits in a year than the number of credits a student may earn in a year by taking a full course load during the regular school day in the student's primary LEA of enrollment.

(5) A student enrolled in an online course may earn more credits in a year than the number of credits a student may earn in a year by taking a full course load during the regular school day in the student's primary LEA of enrollment:

(a) if the student intends to complete high school graduation requirements, and exit high school, early, in accordance with the student's [education/occupation plan (SEOP)] plan for college and career readiness; or

(b) if allowed under local school board or charter school governing board policy.

Section 6. Section 53A-15-1702 is amended to read:

53A-15-1702. Definitions.

(1) "Concurrent enrollment" means enrollment in a course offered through the concurrent enrollment program described in Section 53A-15-1703.

(2) "Educator" means the same as that term is defined in Section 53A-6-103.

(3) "Eligible instructor" means an instructor who is:

(a) employed as faculty by an institution of higher education; or

(b) (i) employed by an LEA;

(ii) licensed by the State Board of Education under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act;

(iii) (A) approved as adjunct faculty by an institution of higher education; or

(B) a mathematics educator who has an upper level mathematics endorsement; and

(iv) supervised by an institution of higher education.

(4) "Eligible student" means a student who:

(a) is enrolled in, and counted in average daily membership in, a high school within the state;

(b) has a [student education occupation plan] plan for college and career readiness, as described in Section 53A-1a-106, on file at a high school within the state; and

(c) (i) is a grade 11 or grade 12 student; or

(ii) is a grade 9 or grade 10 student who qualifies by exception as described in Section 53A-15-1703.

(5) “Endorsement” means a stipulation, authorized by the State Board of Education and appended to a license, that specifies an area of practice to which the license applies.

(6) “Institution of higher education” means the same as that term is defined in Section 53B-3-102.

(7) “License” means the same as that term is defined in Section 53A-6-103.

(8) “Local education agency” or “LEA” means a school district or charter school.

(9) “Participating eligible student” means an eligible student enrolled in a concurrent enrollment course.

(10) “Upper level mathematics endorsement” means an endorsement required by the State Board of Education for an educator to teach calculus.

(11) “Value of the weighted pupil unit” means the same as that term is defined in Section 53A-1a-703.

CHAPTER 445**H. B. 162**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

**DRIVING UNDER THE INFLUENCE
CLASSIFICATION AND SENTENCING
REVISIONS**Chief Sponsor: Steve Eliason
Senate Sponsor: Curtis S. Bramble**LONG TITLE****General Description:**

This bill modifies provisions related to classification of crimes and sentencing of individuals convicted of driving under the influence.

Highlighted Provisions:

This bill:

- ▶ modifies sentencing requirements for an individual convicted of driving under the influence; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

41-6a-505, as last amended by Laws of Utah 2016, Chapter 148

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

Section 1. Section 41-6a-505 is amended to read:**41-6a-505. Sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both violations.**

(1) As part of any sentence for a first conviction of Section 41-6a-502:

(a) the court shall:

(i) (A) impose a jail sentence of not less than 48 consecutive hours; or

(B) require the person to work in a compensatory-service work program for not less than 48 hours; ~~[or]~~

~~[(C) require the person to participate in home confinement of not fewer than 48 consecutive hours through the use of electronic monitoring in accordance with Section 41-6a-506;]~~

(ii) order the person to participate in a screening;

(iii) order the person to participate in an assessment, if it is found appropriate by a screening under Subsection (1)(a)(ii);

(iv) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (1)(b);

(v) impose a fine of not less than \$700;

(vi) order probation for the person in accordance with Section 41-6a-507, if there is admissible evidence that the person had a blood alcohol level of .16 or higher;

(vii) (A) order the person to pay the administrative impound fee described in Section 41-6a-1406; or

(B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; or

(viii) (A) order the person to pay the towing and storage fees described in Section 72-9-603; or

(B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; and

(b) the court may:

(i) order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate; or

(ii) order probation for the person in accordance with Section 41-6a-507.

(2) If a person has a prior conviction as defined in Subsection 41-6a-501(2) that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based:

(a) the court shall:

(i) (A) impose a jail sentence of not less than 240 ~~[consecutive]~~ hours; or

~~[(B) require the person to work in a compensatory-service work program for not less than 240 hours; or]~~

~~[(C) require the person to participate in home confinement of not fewer than 240 consecutive hours through the use of electronic monitoring in accordance with Section 41-6a-506;]~~

(B) impose a jail sentence of not less than 120 hours in addition to home confinement of not fewer than 720 consecutive hours through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506;

(ii) order the person to participate in a screening;

(iii) order the person to participate in an assessment, if it is found appropriate by a screening under Subsection (2)(a)(ii);

(iv) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (2)(b);

(v) impose a fine of not less than \$800;

(vi) order probation for the person in accordance with Section 41-6a-507;

(vii) (A) order the person to pay the administrative impound fee described in Section 41-6a-1406; or

(B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; or

(viii) (A) order the person to pay the towing and storage fees described in Section 72-9-603; or

(B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; and

(b) the court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(3) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison sentence and places the defendant on probation~~[-(a)]~~, the court shall impose:

~~[(i)]~~ (a) a fine of not less than \$1,500;

~~[(ii)]~~ (b) a jail sentence of not less than 1,500 hours; and

~~[(iii)]~~ (c) supervised probation~~[-and]~~.

~~[(b) in lieu of Subsection (3)(a)(ii), the court may require the person to participate in home confinement of not fewer than 1,500 hours through the use of electronic monitoring in accordance with Section 41-6a-506.]~~

(4) For Subsection (3)(a) or Subsection 41-6a-503(2)(b), the court shall impose an order requiring the person to obtain a screening and assessment for alcohol and substance abuse, and treatment as appropriate.

(5) (a) The requirements of Subsections (1)(a), (2)(a), (3)(a), and (4) may not be suspended.

(b) Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(6) If a person is convicted of a violation of Section 41-6a-502 and there is admissible evidence that the person had a blood alcohol level of .16 or higher, the court shall order the following, or describe on record why the order or orders are not appropriate:

(a) treatment as described under Subsection (1)(b), (2)(b), or (4); and

(b) one or more of the following:

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6a-518;

(ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device as a condition of probation for the person; or

(iii) the imposition of home confinement through the use of electronic monitoring in accordance with Section 41-6a-506.

CHAPTER 446**H. B. 250**

Passed March 7, 2017

Approved March 28, 2017

Effective July 1, 2017

**DRIVING UNDER THE INFLUENCE
PROGRAM AMENDMENTS**

Chief Sponsor: Justin L. Fawson

Senate Sponsor: D. Gregg Buxton

LONG TITLE**General Description:**

This bill modifies provisions relating to driving under the influence programs.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ authorizes a court to order a person convicted of certain driving under the influence violations to participate in a 24-7 sobriety program;
- ▶ authorizes a court to order a person convicted of a violation of driving with any measurable controlled substance in the body to participate in a 24-7 sobriety program;
- ▶ requires the Driver License Division to shorten certain driver license suspension periods if the division receives notice from a court that a person is participating in a 24-7 sobriety program;
- ▶ requires the Department of Public Safety to establish and administer a 24-7 sobriety program as a pilot program;
- ▶ specifies procedures and requirements for a 24-7 sobriety program;
- ▶ grants the Department of Public Safety rulemaking authority to make rules to administer the 24-7 sobriety program; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2017:

- ▶ to the Attorney General -- Administration, as a one-time appropriation:
 - from the General Fund, (\$100,000); and
- ▶ to the Department of Public Safety -- Department Commissioner's Office, as a one-time appropriation:
 - from the General Fund, \$100,000.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 41-6a-505, as last amended by Laws of Utah 2016, Chapter 148
- 41-6a-509, as last amended by Laws of Utah 2013, Chapter 333
- 41-6a-517, as last amended by Laws of Utah 2013, Chapter 333
- 53-3-223, as last amended by Laws of Utah 2014, Chapter 7

ENACTS:

- 41-6a-515.5, Utah Code Annotated 1953

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

Section 1. Section 41-6a-505 is amended to read:**41-6a-505. Sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both violations.**

(1) As part of any sentence for a first conviction of Section 41-6a-502:

(a) the court shall:

(i) (A) impose a jail sentence of not less than 48 consecutive hours;

(B) require the person to work in a compensatory-service work program for not less than 48 hours; or

(C) require the person to participate in home confinement of not fewer than 48 consecutive hours through the use of electronic monitoring in accordance with Section 41-6a-506;

(ii) order the person to participate in a screening;

(iii) order the person to participate in an assessment, if it is found appropriate by a screening under Subsection (1)(a)(ii);

(iv) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (1)(b);

(v) impose a fine of not less than \$700;

(vi) order probation for the person in accordance with Section 41-6a-507, if there is admissible evidence that the person had a blood alcohol level of .16 or higher;

(vii) (A) order the person to pay the administrative impound fee described in Section 41-6a-1406; or

(B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; or

(viii) (A) order the person to pay the towing and storage fees described in Section 72-9-603; or

(B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; and

(b) the court may:

(i) order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate; ~~or~~

(ii) order probation for the person in accordance with Section 41-6a-507~~[-]~~;

(iii) order the person to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the person is 21 years of age or older; or

(iv) order a combination of Subsections (1)(b)(i) through (iii).

(2) If a person has a prior conviction as defined in Subsection 41-6a-501(2) that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based:

(a) the court shall:

(i) (A) impose a jail sentence of not less than 240 consecutive hours;

(B) require the person to work in a compensatory-service work program for not less than 240 hours; or

(C) require the person to participate in home confinement of not fewer than 240 consecutive hours through the use of electronic monitoring in accordance with Section 41-6a-506;

(ii) order the person to participate in a screening;

(iii) order the person to participate in an assessment, if it is found appropriate by a screening under Subsection (2)(a)(ii);

(iv) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (2)(b);

(v) impose a fine of not less than \$800;

(vi) order probation for the person in accordance with Section 41-6a-507;

(vii) (A) order the person to pay the administrative impound fee described in Section 41-6a-1406; or

(B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; or

(viii) (A) order the person to pay the towing and storage fees described in Section 72-9-603; or

(B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; and

(b) the court may:

(i) order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate[-];

(ii) order the person to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the person is 21 years of age or older; or

(iii) order a combination of Subsections (2)(b)(i) and (ii).

(3) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison sentence and places the defendant on probation:

(a) the court shall impose:

(i) a fine of not less than \$1,500;

(ii) a jail sentence of not less than 1,500 hours; and

(iii) supervised probation; and

(b) in lieu of Subsection (3)(a)(ii), the court may require the person to participate in home confinement of not fewer than 1,500 hours through the use of electronic monitoring in accordance with Section 41-6a-506.

(4) For Subsection (3)(a) or Subsection 41-6a-503(2)(b), the court:

(a) shall impose an order requiring the person to obtain a screening and assessment for alcohol and substance abuse, and treatment as appropriate[-]; and

(b) may impose an order requiring the person to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the person is 21 years of age or older.

(5) (a) The requirements of Subsections (1)(a), (2)(a), (3)(a), and (4) may not be suspended.

(b) Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(6) If a person is convicted of a violation of Section 41-6a-502 and there is admissible evidence that the person had a blood alcohol level of .16 or higher, the court shall order the following, or describe on record why the order or orders are not appropriate:

(a) treatment as described under Subsection (1)(b), (2)(b), or (4); and

(b) one or more of the following:

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6a-518;

(ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device as a condition of probation for the person; or

(iii) the imposition of home confinement through the use of electronic monitoring in accordance with Section 41-6a-506.

Section 2. Section 41-6a-509 is amended to read:

41-6a-509. Driver license suspension or revocation for a driving under the influence violation.

(1) The Driver License Division shall, if the person is 21 years of age or older at the time of arrest:

(a) suspend for a period of 120 days the operator's license of a person convicted for the first time under Section 41-6a-502 of an offense committed on or after July 1, 2009; or

(b) revoke for a period of two years the license of a person if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current driving under the influence violation under Section 41-6a-502 is committed:

(A) within a period of 10 years from the date of the prior violation; and

(B) on or after July 1, 2009.

(2) The Driver License Division shall, if the person is 19 years of age or older but under 21 years of age at the time of arrest:

(a) suspend the person's driver license until the person is 21 years of age or for a period of one year, whichever is longer, if the person is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense that was committed on or after July 1, 2011;

(b) deny the person's application for a license or learner's permit until the person is 21 years of age or for a period of one year, whichever is longer, if the person:

(i) is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense committed on or after July 1, 2011; and

(ii) has not been issued an operator license;

(c) revoke the person's driver license until the person is 21 years of age or for a period of two years, whichever is longer, if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current driving under the influence violation under Section 41-6a-502 is committed on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; or

(d) deny the person's application for a license or learner's permit until the person is 21 years of age or for a period of two years, whichever is longer, if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2);

(ii) the current driving under the influence violation under Section 41-6a-502 is committed on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; and

(iii) the person has not been issued an operator license.

(3) The Driver License Division shall, if the person is under 19 years of age at the time of arrest:

(a) suspend the person's driver license until the person is 21 years of age if the person is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense that was committed on or after July 1, 2009;

(b) deny the person's application for a license or learner's permit until the person is 21 years of age if the person:

(i) is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense committed on or after July 1, 2009; and

(ii) has not been issued an operator license;

(c) revoke the person's driver license until the person is 21 years of age if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current driving under the influence violation under Section 41-6a-502 is committed on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; or

(d) deny the person's application for a license or learner's permit until the person is 21 years of age if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2);

(ii) the current driving under the influence violation under Section 41-6a-502 is committed on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; and

(iii) the person has not been issued an operator license.

(4) The Driver License Division shall suspend or revoke the license of a person as ordered by the court under Subsection (10).

(5) The Driver License Division shall:

(a) deny, suspend, or revoke the operator's license of a person convicted under Section 41-6a-502 of an offense that was committed prior to July 1, 2009, for the denial, suspension, or revocation periods in effect prior to July 1, 2009; or

(b) deny, suspend, or revoke the operator's license of a person for the denial, suspension, or revocation periods in effect from July 1, 2009, through June 30, 2011, if:

(i) the person was 20 years of age or older but under 21 years of age at the time of arrest; and

(ii) the conviction under Section 41-6a-502 is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011.

(6) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(7) If a conviction recorded as impaired driving is amended to a driving under the influence conviction under Section 41-6a-502 in accordance with Subsection 41-6a-502.5(3)(a)(ii), the Driver License Division:

(a) may not subtract from any suspension or revocation any time for which a license was previously suspended or revoked under Section 53-3-223 or 53-3-231; and

(b) shall start the suspension or revocation time under Subsection (1) on the date of the amended conviction.

(8) A court that reported a conviction of a violation of Section 41-6a-502 for a violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b) prior to completion of the suspension period if the person:

(a) completes at least six months of the license suspension;

(b) completes a screening;

(c) completes an assessment, if it is found appropriate by a screening under Subsection (8)(b);

(d) completes substance abuse treatment if it is found appropriate by the assessment under Subsection (8)(c);

(e) completes an educational series if substance abuse treatment is not required by an assessment under Subsection (8)(c) or the court does not order substance abuse treatment;

(f) has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b);

(g) has complied with all the terms of the person's probation or all orders of the court if not ordered to probation; and

(h) (i) is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b); or

(ii) is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b).

(9) If the court shortens a person's license suspension period in accordance with the requirements of Subsection (8), the court shall forward the order shortening the person's suspension period prior to the completion of the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b) to the Driver License Division.

(10) (a) (i) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Section 41-6a-502 to be suspended or revoked for an additional period of 90 days, 120 days, 180 days, one year, or two years to remove from the highways those persons who have shown they are safety hazards.

(ii) The additional suspension or revocation period provided in this Subsection (10) shall begin the date on which the individual would be eligible to reinstate the individual's driving privilege for a violation of Section 41-6a-502.

(b) If the court suspends or revokes the person's license under this Subsection (10), the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

(11) (a) The court shall notify the Driver License Division if a person fails to:

(i) complete all court ordered:

(A) screening;

(B) assessment;

(C) educational series;

(D) substance abuse treatment; and

(E) hours of work in a compensatory-service work program; or

(ii) pay all fines and fees, including fees for restitution and treatment costs.

(b) Upon receiving the notification described in Subsection (11)(a), the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(12) (a) A court that reported a conviction of a violation of Section 41-6a-502 to the Driver License Division may shorten the suspension period imposed under Subsection (1) before completion of the suspension period if the person is participating in or has successfully completed a 24-7 sobriety program as defined in Section 41-6a-515.5.

(b) If the court shortens a person's license suspension period in accordance with the requirements of this Subsection (12), the court shall forward to the Driver License Division the order shortening the person's suspension period.

(c) The court shall notify the Driver License Division if a person fails to complete all requirements of a 24-7 sobriety program.

(d) Upon receiving the notification described in Subsection (12)(c), the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

Section 3. Section 41-6a-515.5 is enacted to read:

41-6a-515.5. Sobriety program for DUI.

(1) As used in this section:

(a) "24-7 sobriety program" means a 24 hours a day, seven days a week sobriety and drug monitoring program that:

(i) requires an individual to abstain from alcohol or drugs for a period of time;

(ii) requires an individual to submit to random drug testing; and

(iii) requires the individual to be subject to testing to determine the presence of alcohol:

(A) twice a day at a central location where immediate sanctions may be applied;

(B) by continuous remote sensing or transdermal alcohol monitoring by means of an electronic

monitoring device that allows timely sanctions to be applied; or

(C) by an alternate method that is approved by the National Highway Traffic Safety Administration.

(b) (i) "Testing" means a procedure for determining the presence and level of alcohol or a drug in an individual's breath or body fluid, including blood, urine, saliva, or perspiration.

(ii) "Testing" includes any combination of the use of:

(A) breath testing;

(B) drug patch testing;

(C) urinalysis testing;

(D) saliva testing;

(E) continuous remote sensing;

(F) transdermal alcohol monitoring; or

(G) alternate body fluids approved for testing by the commissioner of the department.

(2) (a) The department shall establish and administer a 24-7 sobriety program as a pilot program.

(b) The department shall establish one pilot program with a law enforcement agency that is able to meet the 24-7 sobriety program qualifications and requirements under this section.

(3) (a) The 24-7 sobriety program shall include use of a primary testing methodology for the presence of alcohol or drugs that:

(i) best facilitates the ability to apply immediate sanctions for noncompliance;

(ii) is available at an affordable cost; and

(iii) provides for positive, behavioral reinforcement for program compliance.

(b) Primary testing methods include twice a day, in person breath testing for alcohol at a central location, random drug testing, and other methodologies approved by the commissioner of the department.

(c) In cases of hardship, testing methodologies with timely sanctions for noncompliance may be used.

(d) Hardship testing methodologies under Subsection (3)(c) include:

(i) the use of transdermal alcohol monitoring devices;

(ii) remote breath test devices; and

(iii) other commissioner approved methods for hardship exceptions.

(e) The commissioner shall consider the following factors to determine whether a hardship exception applies under Subsection (3)(c):

(i) whether a device is available;

(ii) whether the participant is capable of paying the fees and costs associated with transdermal alcohol monitoring or remote breath testing; and

(iii) whether the participant qualifies for a hardship exception from twice-daily breath testing because of one or more of the following:

(A) the participant lives more than a 25-mile radius from a testing site, and submitting to twice-daily breath tests would be unduly burdensome;

(B) the participant's employment requires job performance at a location that is more than a 25-mile radius from a testing site and submitting to twice-daily breath tests would be unduly burdensome;

(C) the participant's schooling is at a location that is more than a 25-mile radius from a testing site and submitting to twice-daily breath tests would be unduly burdensome; or

(D) the participant lives in a county where twice-daily breath testing is not available.

(4) (a) The 24-7 sobriety program shall be supported by evidence of effectiveness and satisfy at least two of the following categories:

(i) the program is included in the federal registry of evidence-based programs and practices;

(ii) the program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or

(iii) the program has been documented as effective by informed experts and other sources.

(b) If a law enforcement agency participates in a 24-7 sobriety program, the department shall assist in the creation and administration of the program in the manner provided in this section.

(c) A 24-7 sobriety program shall have at least one testing location and two daily testing times approximately 12 hours apart.

(d) If a person has a prior conviction as defined in Subsection 41-6a-501(2) that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based, the person shall be required to participate in a 24-7 sobriety program for at least one year.

(5) (a) If a law enforcement agency participates in a 24-7 sobriety program, the law enforcement agency may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the law enforcement agency pursuant to this section, except that the law enforcement agency's designee may not determine whether an individual is required to participate in the 24-7 sobriety program.

(b) Subject to the requirement in Subsection (4)(c), the law enforcement agency shall establish the testing locations and times for the county.

(6) (a) The commissioner of the department shall establish a data management technology plan for data collection on 24-7 sobriety program participants.

(b) All required data related to participants in the 24-7 sobriety program shall be received into the data management technology plan.

(c) The data collected under this Subsection (6) is owned by the state.

(7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to implement this section.

(b) The rules under Subsection (7)(a) shall:

(i) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;

(ii) establish reasonable participation and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;

(iii) require and provide for the approval of a 24-7 sobriety program data management technology plan that shall be used by the department and participating law enforcement agencies to manage testing, data access, fees and fee payments, and any required reports;

(iv) establish a model sanctioning schedule for program noncompliance; and

(v) establish a process for piloting alternate components of the 24-7 sobriety program.

Section 4. Section 41-6a-517 is amended to read:

41-6a-517. Definitions -- Driving with any measurable controlled substance in the body -- Penalties -- Arrest without warrant.

(1) As used in this section:

(a) “Controlled substance” [has the same meaning as] means the same as that term is defined in Section 58-37-2.

(b) “Practitioner” [has the same meaning as] means the same as that term is defined in Section 58-37-2.

(c) “Prescribe” [has the same meaning as] means the same as that term is defined in Section 58-37-2.

(d) “Prescription” [has the same meaning as] means the same as that term is defined in Section 58-37-2.

(2) In cases not amounting to a violation of Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

(3) It is an affirmative defense to prosecution under this section that the controlled substance was:

(a) involuntarily ingested by the accused;

(b) prescribed by a practitioner for use by the accused; or

(c) otherwise legally ingested.

(4) (a) A person convicted of a violation of Subsection (2) is guilty of a class B misdemeanor.

(b) A person who violates this section is subject to conviction and sentencing under both this section and any applicable offense under Section 58-37-8.

(5) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in the officer's presence, and if the officer has probable cause to believe that the violation was committed by the person.

(6) The Driver License Division shall, if the person is 21 years of age or older on the date of arrest:

(a) suspend, for a period of 120 days, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2009; or

(b) revoke, for a period of two years, the driver license of a person if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and within a period of 10 years after the date of the prior violation.

(7) The Driver License Division shall, if the person is 19 years of age or older but under 21 years of age on the date of arrest:

(a) suspend, until the person is 21 years of age or for a period of one year, whichever is longer, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2011; or

(b) revoke, until the person is 21 years of age or for a period of two years, whichever is longer, the driver license of a person if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and within a period of 10 years after the date of the prior violation.

(8) The Driver License Division shall, if the person is under 19 years of age on the date of arrest:

(a) suspend, until the person is 21 years of age, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2009; or

(b) revoke, until the person is 21 years of age, the driver license of a person if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and within a period of 10 years after the date of the prior violation.

(9) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

(10) The Driver License Division shall:

(a) deny, suspend, or revoke a person's license for the denial and suspension periods in effect prior to July 1, 2009, for a conviction of a violation under Subsection (2) that was committed prior to July 1, 2009; or

(b) deny, suspend, or revoke the operator's license of a person for the denial, suspension, or revocation periods in effect from July 1, 2009, through June 30, 2011, if:

(i) the person was 20 years of age or older but under 21 years of age at the time of arrest; and

(ii) the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011.

(11) A court that reported a conviction of a violation of this section for a violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension period imposed under Subsection (7)(a) or (8)(a) prior to completion of the suspension period if the person:

(a) completes at least six months of the license suspension;

(b) completes a screening;

(c) completes an assessment, if it is found appropriate by a screening under Subsection (11)(b);

(d) completes substance abuse treatment if it is found appropriate by the assessment under Subsection (11)(c);

(e) completes an educational series if substance abuse treatment is not required by the assessment under Subsection (11)(c) or the court does not order substance abuse treatment;

(f) has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle during the suspension period imposed under Subsection (7)(a) or (8)(a);

(g) has complied with all the terms of the person's probation or all orders of the court if not ordered to probation; and

(h) (i) is 18 years of age or older and provides a sworn statement to the court that the person has not consumed a controlled substance not prescribed by a practitioner for use by the person or unlawfully

consumed alcohol during the suspension period imposed under Subsection (7)(a) or (8)(a); or

(ii) is under 18 years of age and has the person's parent or legal guardian provide an affidavit or other sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not consumed a controlled substance not prescribed by a practitioner for use by the person or unlawfully consumed alcohol during the suspension period imposed under Subsection (7)(a) or (8)(a).

(12) If the court shortens a person's license suspension period in accordance with the requirements of Subsection (11), the court shall forward the order shortening the person's license suspension period prior to the completion of the suspension period imposed under Subsection (7)(a) or (8)(a) to the Driver License Division.

(13) (a) The court shall notify the Driver License Division if a person fails to:

(i) complete all court ordered screening and assessment, educational series, and substance abuse treatment; or

(ii) pay all fines and fees, including fees for restitution and treatment costs.

(b) Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(14) The court:

(a) shall order supervised probation in accordance with Section 41-6a-507 for a person convicted under Subsection (2); and

(b) may order a person convicted under Subsection (2) to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the person is 21 years of age or older.

(15) (a) A court that reported a conviction of a violation of this section to the Driver License Division may shorten the suspension period imposed under Subsection (6) before completion of the suspension period if the person is participating in or has successfully completed a 24-7 sobriety program as defined in Section 41-6a-515.5.

(b) If the court shortens a person's license suspension period in accordance with the requirements of this Subsection (15), the court shall forward to the Driver License Division the order shortening the person's suspension period.

(c) The court shall notify the Driver License Division if a person fails to complete all requirements of a 24-7 sobriety program.

(d) Upon receiving the notification described in Subsection (15)(c), the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

Section 5. Section 53-3-223 is amended to read:

53-3-223. Chemical test for driving under the influence -- Temporary license --

Hearing and decision -- Suspension and fee -- Judicial review.

(1) (a) If a peace officer has reasonable grounds to believe that a person may be violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a certain blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or combination of a drug and alcohol or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517, the peace officer may, in connection with arresting the person, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6a-520.

(b) In this section, a reference to Section 41-6a-502 includes any similar local ordinance adopted in compliance with Subsection 41-6a-510(1).

(2) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Section 41-6a-502 or 41-6a-517 shall, and the existence of a blood alcohol content sufficient to render the person incapable of safely driving a motor vehicle may, result in suspension or revocation of the person's license to drive a motor vehicle.

(3) If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of arrest, give notice of the division's intention to suspend the person's license to drive a motor vehicle.

(4) (a) When a peace officer gives notice on behalf of the division, the peace officer shall:

(i) take the Utah license certificate or permit, if any, of the driver;

(ii) issue a temporary license certificate effective for only 29 days from the date of arrest; and

(iii) supply to the driver, in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the division.

(b) A citation issued by a peace officer may, if provided in a manner specified by the division, also serve as the temporary license certificate.

(5) As a matter of procedure, a peace officer shall send to the division within 10 calendar days after the day on which notice is provided:

(a) the person's license certificate;

(b) a copy of the citation issued for the offense;

(c) a signed report in a manner specified by the division indicating the chemical test results, if any; and

(d) any other basis for the peace officer's determination that the person has violated Section 41-6a-502 or 41-6a-517.

(6) (a) Upon request in a manner specified by the division, the division shall grant to the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within 10 calendar days of the day on which notice is provided under Subsection (5).

(b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the division in:

(A) the county in which the arrest occurred; or

(B) a county that is adjacent to the county in which the arrest occurred.

(ii) The division may hold a hearing in some other county if the division and the person both agree.

(c) The hearing shall be documented and shall cover the issues of:

(i) whether a peace officer had reasonable grounds to believe the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

(ii) whether the person refused to submit to the test; and

(iii) the test results, if any.

(d) (i) In connection with a hearing the division or its authorized agent:

(A) may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers; or

(B) may issue subpoenas for the attendance of necessary peace officers.

(ii) The division shall pay witness fees and mileage from the Transportation Fund in accordance with the rates established in Section 78B-1-119.

(e) The division may designate one or more employees to conduct the hearing.

(f) Any decision made after a hearing before any designated employee is as valid as if made by the division.

(7) (a) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the notice, or if a hearing is not requested under this section, the division shall:

(i) if the person is 21 years of age or older at the time of arrest and the arrest was made on or after July 1, 2009, suspend the person's license or permit to operate a motor vehicle for a period of:

(A) 120 days beginning on the 30th day after the date of arrest for a first suspension; or

(B) two years beginning on the 30th day after the date of arrest for a second or subsequent suspension

for an offense that occurred within the previous 10 years; or

(ii) if the person is under 21 years of age at the time of arrest and the arrest was made on or after May 14, 2013:

(A) suspend the person's license or permit to operate a motor vehicle:

(I) for a period of six months, beginning on the 30th day after the date of arrest for a first suspension; or

(II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or

(B) deny the person's application for a license or learner's permit:

(I) for a period of six months for a first suspension, if the person has not been issued an operator license; or

(II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years.

(b) The division shall deny or suspend a person's license for the denial and suspension periods in effect:

(i) prior to July 1, 2009, for an offense that was committed prior to July 1, 2009;

(ii) from July 1, 2009, through June 30, 2011, if:

(A) the person was 20 years 6 months of age or older but under 21 years of age at the time of arrest; and

(B) the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011; or

(iii) prior to May 14, 2013, for an offense that was committed prior to May 14, 2013.

(c) (i) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division shall reinstate a person's license prior to completion of the 120 day suspension period imposed under Subsection (7)(a)(i)(A):

(A) immediately upon receiving written verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the suspension period; or

(B) no sooner than 60 days beginning on the 30th day after the date of arrest upon receiving written verification of the person's reduction of a charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the suspension period.

(ii) Notwithstanding the provisions in Subsection (7)(a)(i)(A) or (7)(b), the division shall reinstate a person's license prior to completion of the 120-day suspension period imposed under Subsection (7)(a)(i)(A) immediately upon receiving written verification of the person's conviction of impaired driving under Section 41-6a-502.5 if:

(A) the written verification is received prior to completion of the suspension period; and

(B) the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed the program of a driving under the influence court as defined in Section 41-6a-501.

(iii) If a person's license is reinstated under this Subsection (7)(c), the person is required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).

(iv) The driver license reinstatements authorized under this Subsection (7)(c) only apply to a 120 day suspension period imposed under Subsection (7)(a)(i)(A).

(8) (a) Notwithstanding the provisions in Subsection (7)(b)(iii), the division shall shorten a person's two-year license suspension period that is currently in effect to a six-month suspension period if:

(i) the driver was under the age of 19 at the time of arrest;

(ii) the offense was a first offense that was committed prior to May 14, 2013; and

(iii) the suspension under Subsection (7)(b)(iii) was based on the same occurrence upon which the following written verifications are based:

(A) a court order shortening the driver license suspension for a violation of Section 41-6a-502 pursuant to Subsection 41-6a-509(8);

(B) a court order shortening the driver license suspension for a violation of Section 41-6a-517 pursuant to Subsection 41-6a-517(11);

(C) a court order shortening the driver license suspension for a violation of Section 32B-4-409;

(D) a dismissal for a violation of Section 41-6a-502, Section 41-6a-517, or Section 32B-4-409;

(E) a notice of declination to prosecute for a charge under Section 41-6a-502, Section 41-6a-517, or Section 32B-4-409;

(F) a reduction of a charge under Section 41-6a-502, Section 41-6a-517, or Section 32B-4-409; or

(G) other written documentation acceptable to the division.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules establishing requirements for acceptable written documentation to shorten a person's driver license suspension period under Subsection (8)(a)(iii)(G).

CHAPTER 447**H. B. 274**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

HUMAN TRAFFICKING MODIFICATIONS

Chief Sponsor: Angela Romero
Senate Sponsor: Wayne A. Harper

LONG TITLE**General Description:**

This bill modifies provisions regarding human trafficking.

Highlighted Provisions:

This bill:

- ▶ authorizes the court to vacate a conviction for specified offenses if the individual convicted is found to have acted under force, fraud, or coercion;
- ▶ provides the process by which an individual may petition the court for vacatur of a conviction for specified crimes; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-5-308, as last amended by Laws of Utah 2016, Chapter 231

77-22-2.5, as last amended by Laws of Utah 2015, Chapter 99

77-38-15, as enacted by Laws of Utah 2014, Chapter 140

77-40-112, as renumbered and amended by Laws of Utah 2010, Chapter 283

78B-9-104, as last amended by Laws of Utah 2010, Chapter 153

78B-9-105, as last amended by Laws of Utah 2008, Chapter 288 and renumbered and amended by Laws of Utah 2008, Chapter 3

78B-9-106, as last amended by Laws of Utah 2010, Chapter 48

78B-9-107, as last amended by Laws of Utah 2008, Chapters 288, 358 and renumbered and amended by Laws of Utah 2008, Chapter 3

78B-9-108, as last amended by Laws of Utah 2008, Chapter 288 and renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

77-40-108.5, Utah Code Annotated 1953

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

Section 1. Section 76-5-308 is amended to read:**76-5-308. Human trafficking -- Human smuggling.**

(1) An actor commits human trafficking for forced labor or forced sexual exploitation if the actor recruits, harbors, transports, obtains, patronizes, or solicits a person through the use of force, fraud, or coercion [~~by means of~~], which may include:

(a) threatening serious harm to, or physical restraint against, that person or a third person;

(b) destroying, concealing, removing, confiscating, or possessing any passport, immigration document, or other government-issued identification document;

(c) abusing or threatening abuse of the law or legal process against the person or a third person;

(d) using a condition of a person being a debtor due to a pledge of the debtor's personal services or the personal services of a person under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined; [~~or~~]

(e) using a condition of servitude by means of any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint, or would be threatened with abuse of legal process[~~;~~]; or

(f) creating or exploiting a relationship where the person is dependent on the actor.

(2) (a) Human trafficking for forced labor includes forced labor in industrial facilities, sweatshops, households, agricultural enterprises, and any other workplace.

(b) Human trafficking for forced sexual exploitation includes all forms of forced commercial sexual activity, [~~including~~] which may include the following conduct when the person acts under force, fraud, or coercion:

(i) [~~forced~~] sexually explicit performance[~~;~~];

(ii) [~~forced~~] prostitution[~~;~~];

(iii) [~~forced~~] participation in the production of pornography[~~;~~];

(iv) [~~forced~~] performance in strip clubs[~~;~~]; and

(v) [~~forced~~] exotic dancing or display.

(3) A person commits human smuggling by transporting or procuring the transportation for one or more persons for a commercial purpose, knowing or having reason to know that the person or persons transported or to be transported are not:

(a) citizens of the United States;

(b) permanent resident aliens; or

(c) otherwise lawfully in this state or entitled to be in this state.

Section 2. Section 77-22-2.5 is amended to read:

77-22-2.5. Court orders for criminal investigations for records concerning an electronic communications system or service or remote computing service -- Content -- Fee for providing information.

(1) As used in this section:

(a) (i) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

(ii) "Electronic communication" does not include:

(A) any wire or oral communication;

(B) any communication made through a tone-only paging device;

(C) any communication from a tracking device; or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(b) "Electronic communications service" means any service which provides for users the ability to send or receive wire or electronic communications.

(c) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.

(d) "Internet service provider" has the same definition as in Section 76-10-1230.

(e) "Prosecutor" has the same definition as in Section 77-22-2.

(f) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(g) "Sexual offense against a minor" means:

(i) sexual exploitation of a minor as defined in Section 76-5b-201 or attempted sexual exploitation of a minor;

(ii) a sexual offense or attempted sexual offense committed against a minor in violation of Title 76, Chapter 5, Part 4, Sexual Offenses;

(iii) dealing in or attempting to deal in material harmful to a minor in violation of Section 76-10-1206; ~~or~~

(iv) enticement of a minor or attempted enticement of a minor in violation of Section 76-4-401[-]; or

(v) human trafficking of a child in violation of Section 76-5-308.5.

(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense, a law enforcement agent shall:

(a) articulate specific facts showing reasonable grounds to believe that the records or other information sought, as designated in Subsections (1)(c)(i) through (v), are relevant and material to an ongoing investigation;

(b) present the request to a prosecutor for review and authorization to proceed; and

(c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. 2703 and 18 U.S.C. 2702, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, email address, or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the court order the Internet protocol address, email address, telephone number, or other identifier, and the dates and times the address, telephone number, or other identifier was suspected of being used in the commission of the offense:

(i) names of subscribers, service customers, and users;

(ii) addresses of subscribers, service customers, and users;

(iii) records of session times and durations;

(iv) length of service, including the start date and types of service utilized; and

(v) telephone or other instrument subscriber numbers or other subscriber identifiers, including any temporarily assigned network address.

(3) A court order issued under this section shall state that the electronic communications system or service or remote computing service provider shall produce any records under Subsections (2)(c)(i) through (v) that are reasonably relevant to the investigation of the suspected criminal activity or offense as described in the court order.

(4) (a) An electronic communications system or service or remote computing service provider that provides information in response to a court order issued under this section may charge a fee, not to exceed the actual cost, for providing the information.

(b) The law enforcement agency conducting the investigation shall pay the fee.

(5) The electronic communications system or service or remote computing service provider served with or responding to the court order may

not disclose the court order to the account holder identified pursuant to the court order for a period of 90 days.

(6) If the electronic communications system or service or remote computing service provider served with the court order does not own or control the Internet protocol address, websites, or email address, or provide service for the telephone number that is the subject of the court order, the provider shall notify the investigating law enforcement agency that it does not have the information.

(7) There is no cause of action against any provider or wire or electronic communication service, or its officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of the court order issued under this section or statutory authorization.

(8) (a) A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

(b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b, Access to Electronic Communications, apply to providers and subscribers subject to a court order issued under this section.

(9) Every prosecutorial agency shall annually on or before February 15 report to the Commission on Criminal and Juvenile Justice:

(a) the number of requests for court orders authorized by the prosecutorial agency;

(b) the number of orders issued by the court and the criminal offense, pursuant to Subsection (2), each order was used to investigate; and

(c) if the court order led to criminal charges being filed, the type and number of offenses charged.

Section 3. Section 77-38-15 is amended to read:

77-38-15. Civil action against human traffickers and human smugglers.

(1) A victim of a person that commits the offense of human trafficking or human smuggling under Section 76-5-308, human trafficking of a child under Section 76-5-308.5, or aggravated human trafficking or aggravated human smuggling under Section 76-5-310, may bring a civil action against that person.

(2) (a) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.

(b) The court may award treble damages on proof of actual damages if the court finds that the person's acts were willful and malicious.

(3) In an action under this section, the court shall award a prevailing victim reasonable attorney fees and costs.

(4) An action under this section shall be commenced no later than 10 years after the later of:

(a) the day on which the victim was freed from the human trafficking or human smuggling situation;

(b) the day on which the victim attains 18 years of age; or

(c) if the victim was unable to bring an action due to a disability, the day on which the victim's disability ends.

(5) The time period described in Subsection (4) is tolled during a period of time when the victim fails to bring an action due to the person:

(a) inducing the victim to delay filing the action;

(b) preventing the victim from filing the action; or

(c) threatening and causing duress upon the victim in order to prevent the victim from filing the action.

(6) The court shall offset damages awarded to the victim under this section by any restitution paid to the victim under Title 77, Chapter 38a, Crime Victims Restitution Act.

(7) A victim may bring an action described in this section in any court of competent jurisdiction where:

(a) a violation described in Subsection (1) occurred;

(b) the victim resides; or

(c) the person that commits the offense resides or has a place of business.

(8) If the victim is deceased or otherwise unable to represent the victim's own interests in court, a legal guardian, family member, representative of the victim, or court appointee may bring an action under this section on behalf of the victim.

(9) This section does not preclude any other remedy available to the victim under the laws of this state or under federal law.

Section 4. Section 77-40-108.5 is enacted to read:

77-40-108.5. Distribution for order for vacatur.

(1) A person who receives an order for vacatur under Subsection 78B-9-108(2) shall be responsible for delivering a copy of the order for vacatur to all affected criminal justice agencies and officials including the court, arresting agency, booking agency, prosecuting agency, Department of Corrections, and the bureau.

(2) In order to complete delivery of the order for vacatur to the bureau, the petitioner shall complete and attach to the order for vacatur an application for a certificate of eligibility for expungement, including identifying information and fingerprints, as provided in Subsection 77-40-103(1).

(3) The bureau shall treat the order for vacatur and attached certificate of eligibility for

expungement the same as a valid order for expungement under Section 77-40-108, except as provided in this section.

(4) Unless otherwise provided by law or ordered by a court of competent jurisdiction to respond differently, a person who has received a vacatur of conviction under Section 78B-9-108(2), may respond to any inquiry as though the conviction did not occur.

(5) The bureau shall forward a copy of the order for vacatur to the Federal Bureau of Investigation.

(6) An agency receiving an order for vacatur shall expunge the petitioner's identifying information contained in records in the agency's possession relating to the incident for which vacatur is ordered.

(7) A government agency or official may not divulge information contained in a record of arrest, investigation, detention, or conviction after receiving an order for vacatur to any person or agency, except for:

(a) the petitioner for whom vacatur was ordered; or

(b) Peace Officer Standards and Training, pursuant to Section 53-6-203 and Subsection 77-40-109(2)(b)(ii).

(8) The bureau may not count vacated convictions against any future expungement eligibility.

Section 5. Section 77-40-112 is amended to read:

77-40-112. Penalty.

[~~Any person who willfully violates any prohibition in this chapter is guilty of a class A misdemeanor unless the prohibition specifically indicates a different penalty.~~] An employee or agent of an agency that is prohibited from disseminating information from expunged, vacated, or pardoned records under Section 77-27-5.1 or 77-40-109 who knowingly or intentionally discloses identifying information from the expunged, vacated, or pardoned record that has been pardoned, vacated, or expunged, unless allowed by law, is guilty of a class A misdemeanor.

Section 6. Section 78B-9-104 is amended to read:

78B-9-104. Grounds for relief -- Retroactivity of rule.

(1) Unless precluded by Section 78B-9-106 or 78B-9-107, a person who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for post-conviction relief to vacate or modify the conviction or sentence upon the following grounds:

(a) the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution;

(b) the conviction was obtained or the sentence was imposed under a statute that is in violation of the United States Constitution or Utah Constitution, or the conduct for which the

petitioner was prosecuted is constitutionally protected;

(c) the sentence was imposed or probation was revoked in violation of the controlling statutory provisions;

(d) the petitioner had ineffective assistance of counsel in violation of the United States Constitution or Utah Constitution;

(e) newly discovered material evidence exists that requires the court to vacate the conviction or sentence, because:

(i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or post-conviction proceeding, and the evidence could not have been discovered through the exercise of reasonable diligence;

(ii) the material evidence is not merely cumulative of evidence that was known;

(iii) the material evidence is not merely impeachment evidence; and

(iv) viewed with all the other evidence, the newly discovered material evidence demonstrates that no reasonable trier of fact could have found the petitioner guilty of the offense or subject to the sentence received; or

(f) the petitioner can prove entitlement to relief under a rule announced by the United States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction and sentence became final on direct appeal, and that:

(i) the rule was dictated by precedent existing at the time the petitioner's conviction or sentence became final; or

(ii) the rule decriminalizes the conduct that comprises the elements of the crime for which the petitioner was convicted.

(g) the petitioner committed any of the following offenses while subject to force, fraud, or coercion, as defined in Section 76-5-308:

(i) Section 58-37-8, possession of a controlled substance;

(ii) Section 76-10-1304, aiding prostitution;

(iii) Section 76-6-206, criminal trespass;

(iv) Section 76-6-413, theft;

(v) Section 76-6-502, possession of forged writing or device for writing;

(vi) Sections 76-6-602 through 76-6-608, retail theft;

(vii) Subsection 76-6-1105(2)(a)(i), unlawful possession of another's identification document;

(viii) Section 76-9-702, lewdness;

(ix) Section 76-10-1302, prostitution; or

(x) Section 76-10-1313, sexual solicitation.

(2) The court may not grant relief from a conviction or sentence unless the petitioner establishes that there would be a reasonable likelihood of a more favorable outcome in light of the facts proved in the post-conviction proceeding, viewed with the evidence and facts introduced at trial or during sentencing.

(3) The court may not grant relief from a conviction based on a claim that the petitioner is innocent of the crime for which convicted except as provided in Title 78B, Chapter 9, Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence. Claims under Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination of Factual Innocence of this chapter may not be filed as part of a petition under this part, but shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination of Factual Innocence.

Section 7. Section 78B-9-105 is amended to read:

78B-9-105. Burden of proof.

(1) [The] (a) Except for claims raised under Subsection 78B-9-104(1)(g), the petitioner has the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief.

(b) For claims raised under Subsection 78B-9-104(1)(g), the petitioner has the burden of pleading and proving by clear and convincing evidence the facts necessary to entitle the petitioner to relief.

(c) The court may not grant relief without determining that the petitioner is entitled to relief under the provisions of this chapter and in light of the entire record, including the record from the criminal case under review.

(2) The respondent has the burden of pleading any ground of preclusion under Section 78B-9-106, but once a ground has been pled, the petitioner has the burden to disprove its existence by a preponderance of the evidence.

Section 8. Section 78B-9-106 is amended to read:

78B-9-106. Preclusion of relief -- Exception.

(1) A person is not eligible for relief under this chapter upon any ground that:

(a) may still be raised on direct appeal or by a post-trial motion;

(b) was raised or addressed at trial or on appeal;

(c) could have been but was not raised at trial or on appeal;

(d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief; or

(e) is barred by the limitation period established in Section 78B-9-107.

(2) (a) The state may raise any of the procedural bars or time bar at any time, including during the state's appeal from an order granting post-conviction relief, unless the court determines that the state should have raised the time bar or procedural bar at an earlier time.

(b) Any court may raise a procedural bar or time bar on its own motion, provided that it gives the parties notice and an opportunity to be heard.

(3) (a) Notwithstanding Subsection (1)(c), a person may be eligible for relief on a basis that the ground could have been but was not raised at trial or on appeal, if the failure to raise that ground was due to ineffective assistance of counsel[-]; or

(b) Notwithstanding Subsections (1)(c) and (1)(d), a person may be eligible for relief on a basis that the ground could have been but was not raised at trial, on appeal, or in a previous request for post-conviction relief, if the failure to raise that ground was due to force, fraud, or coercion as defined in Section 76-5-308.

(4) This section authorizes a merits review only to the extent required to address the exception set forth in Subsection (3).

Section 9. Section 78B-9-107 is amended to read:

78B-9-107. Statute of limitations for postconviction relief.

(1) A petitioner is entitled to relief only if the petition is filed within one year after the cause of action has accrued.

(2) For purposes of this section, the cause of action accrues on the latest of the following dates:

(a) the last day for filing an appeal from the entry of the final judgment of conviction, if no appeal is taken;

(b) the entry of the decision of the appellate court which has jurisdiction over the case, if an appeal is taken;

(c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or the United States Supreme Court, if no petition for writ of certiorari is filed;

(d) the entry of the denial of the petition for writ of certiorari or the entry of the decision on the petition for certiorari review, if a petition for writ of certiorari is filed;

(e) the date on which petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based; or

(f) the date on which the new rule described in Subsection 78B-9-104(1)(f) is established.

(3) The limitations period is tolled for any period during which the petitioner was prevented from filing a petition due to state action in violation of the United States Constitution, [ø] due to physical or

mental incapacity, or for claims arising under Subsection 78B-9-104(1)(g), due to force, fraud, or coercion as defined in Section 76-5-308. The petitioner has the burden of proving by a preponderance of the evidence that the petitioner is entitled to relief under this Subsection (3).

(4) The statute of limitations is tolled during the pendency of the outcome of a petition asserting:

(a) exoneration through DNA testing under Section 78B-9-303; or

(b) factual innocence under Section 78B-9-401.

(5) Sections 77-19-8, 78B-2-104, and 78B-2-111 do not extend the limitations period established in this section.

Section 10. Section 78B-9-108 is amended to read:

78B-9-108. Effect of granting relief -- Notice.

(1) If the court grants the petitioner's request for relief, except requests for relief under Subsection 78B-9-104(1)(g), it shall either:

(a) modify the original conviction or sentence; or

(b) vacate the original conviction or sentence and order a new trial or sentencing proceeding as appropriate.

(2) If the court grants the petitioner's request for relief under Subsection 78B-9-104(1)(g), the court shall:

(a) vacate the original conviction and sentence; and

(b) order the petitioner's records expunged pursuant to Section 77-40-108.5.

~~[(2)]~~ (3) (a) If the petitioner is serving a felony sentence, the order shall be stayed for five days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the order, or take no action.

(b) If the respondent fails to provide notice or gives notice at any time during the stay period that it intends to take no action, the court shall lift the stay and deliver the order to the custodian of the petitioner.

(c) If the respondent gives notice of intent to appeal the court's decision, the stay provided for by Subsection ~~[(2)]~~ (3)(a) shall remain in effect until the appeal concludes, including any petitions for rehearing or for discretionary review by a higher court. The court may lift the stay if the petitioner can make the showing required for a certificate of probable cause under Section 77-20-10 and URCP 27.

(d) If the respondent gives notice that it intends to retry or resentence the petitioner, the trial court may order any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary.

CHAPTER 448**H. B. 293**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

**MOUNTAINOUS PLANNING
DISTRICT AMENDMENTS**

Chief Sponsor: Mike Schultz

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill modifies provisions relating to mountainous planning districts.

Highlighted Provisions:

This bill:

- ▶ addresses municipal jurisdiction over mountainous planning districts;
- ▶ modifies the number of board members of a planning commission that are required to have ties to a mountainous planning district;
- ▶ reduces the areas that a municipal legislative body may designate as a mountainous planning district;
- ▶ enacts and amends repeal dates for provisions relating to mountainous planning districts; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides revisor instructions.

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

10-9a-304, as last amended by Laws of Utah 2015, Chapter 465

17-27a-301, as last amended by Laws of Utah 2016, Chapter 411

17-27a-901, as last amended by Laws of Utah 2016, Chapter 411

63I-2-210, as last amended by Laws of Utah 2016, Chapter 14

63I-2-217, as last amended by Laws of Utah 2016, Chapters 348 and 411 Utah Code Sections Affected by Revisor Instructions:

63I-2-217, as last amended by Laws of Utah 2016, Chapters 348 and 411

Utah Code Sections Affected by Coordination Clause:

63I-2-210, as last amended by Laws of Utah 2016, Chapter 14

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

Section 1. Section 10-9a-304 is amended to read:**10-9a-304. State and federal property -- Mountainous planning district.**

(1) Unless otherwise provided by law, nothing contained in this chapter may be construed as giving a municipality jurisdiction over property owned by the state or the United States.

(2) (a) Except as provided in Subsection (2)(b), for purposes of this chapter, a municipality, a municipal planning commission, or a municipal land use authority does not have jurisdiction over property located within a mountainous planning district, as that term is defined in Section 17-27a-103.

(b) Subsection (2)(a) does not apply to a municipality if:

(i) (A) the municipality is wholly located within the boundaries of a mountainous planning district; and

(B) the municipality was incorporated before 1971;

(ii) the municipality exercises the municipality's extraterritorial jurisdiction under Section 10-8-15; or

(iii) subject to Subsection (2)(c), a local health authority has granted the municipality joint authority to regulate the municipality's watershed areas.

(c) The exception under Subsection (2)(b)(iii) applies only for matters related to regulation of the watershed within a watershed area.

Section 2. Section 17-27a-301 is amended to read:**17-27a-301. Ordinance establishing planning commission required -- Exception -- Ordinance requirements -- Planning advisory area planning commission -- Compensation.**

(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a planning advisory area.

(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

(i) municipalities;

(ii) planning advisory areas with their own planning commissions; and

(iii) mountainous planning districts.

(c) (i) Notwithstanding Subsection (1)(a), and except as provided in Subsection (1)(c)(ii), a county that designates a mountainous planning district shall enact an ordinance, subject to Subsection (1)(c)(ii), establishing a planning commission that has jurisdiction over the entire mountainous planning district, including areas of the mountainous planning district that are also located within a municipality or are unincorporated.

(ii) A planning commission described in Subsection (1)(c)(i):

(A) does not have jurisdiction over a municipality described in Subsection 10-9a-304(2)(b); and

(B) has jurisdiction subject to a local health department exercising its authority in accordance with Title 26A, Chapter 1, Local Health

Departments and a municipality exercising the municipality's authority in accordance with Section 10-8-15.

(iii) The ordinance shall require that:

(A) members of the planning commission represent areas located in the unincorporated and incorporated county;

(B) members of the planning commission be registered voters who reside either in the unincorporated or incorporated county;

(C) at least one member of the planning commission resides within the mountainous planning district and another member either resides or owns property within the mountainous planning district; and

(D) the county designate up to four seats on the planning commission, and fill each vacancy in the designated seats in accordance with the procedure described in Subsection (7).

(2) (a) The ordinance described in Subsection (1)(a) or (c) shall define:

(i) the number and terms of the members and, if the county chooses, alternate members;

(ii) the mode of appointment;

(iii) the procedures for filling vacancies and removal from office;

(iv) the authority of the planning commission;

(v) subject to Subsection (2)(b), the rules of order and procedure for use by the planning commission in a public meeting; and

(vi) other details relating to the organization and procedures of the planning commission.

(b) Subsection (2)(a)(v) does not affect the planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(3) (a) (i) If the county establishes a planning advisory area planning commission, the county legislative body shall enact an ordinance that defines:

(A) appointment procedures;

(B) procedures for filling vacancies and removing members from office;

(C) subject to Subsection (3)(a)(ii), the rules of order and procedure for use by the planning advisory area planning commission in a public meeting; and

(D) details relating to the organization and procedures of each planning advisory area planning commission.

(ii) Subsection (3)(a)(i)(C) does not affect the planning advisory area planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.

(b) The planning commission for each planning advisory area shall consist of seven members who shall be appointed by:

(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice and consent of the county legislative body; or

(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

(c) (i) Members shall serve four-year terms and until their successors are appointed and qualified.

(ii) Notwithstanding the provisions of Subsection (3)(c)(i), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

(d) (i) Each member of a planning advisory area planning commission shall be a registered voter residing within the planning advisory area.

(ii) Subsection (3)(d)(i) does not apply to a member described in Subsection (4)(a) if that member was, prior to May 12, 2015, authorized to reside outside of the planning advisory area.

(4) (a) A member of a planning commission who was elected to and served on a planning commission on May 12, 2015, shall serve out the term to which the member was elected.

(b) Upon the expiration of an elected term described in Subsection (4)(a), the vacant seat shall be filled by appointment in accordance with this section.

(5) Upon the appointment of all members of a planning advisory area planning commission, each planning advisory area planning commission under this section shall begin to exercise the powers and perform the duties provided in Section 17-27a-302 with respect to all matters then pending that previously had been under the jurisdiction of the countywide planning commission or planning advisory area planning and zoning board.

(6) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

(7) (a) Subject to Subsection (7)(f), a county shall fill a vacancy in a planning commission seat described in Subsection (1)(c)(iii)(D) in accordance with this Subsection (7).

(b) If a county designates one or more planning commission seats under Subsection (1)(c)(iii)(D), the county shall identify at least one and up to four cities that:

(i) (A) are adjacent to the mountainous planning district; and

(B) border the entrance to a canyon that is located within the boundaries of the mountainous planning district and accessed by a paved road maintained by the county or the state; or

(ii) exercise extraterritorial jurisdiction in accordance with Section 10-8-15.

(c) When there is a vacancy in a planning commission seat described in Subsection (1)(c)(iii)(D), the county shall send a written request to one of the cities described in Subsection (7)(b), on a rotating basis, if applicable, for a list of three individuals, who satisfy the requirements described in Subsection (1)(c)(iii)(B), to fill the vacancy.

(d) The city shall respond to a written request described in Subsection (7)(c) within 60 days after the day on which the city receives the written request.

(e) After the county receives the city's list of three individuals, the county shall submit one of the individuals on the list for appointment to the vacant planning commission seat in accordance with county ordinance.

(f) The county shall fill the vacancy in accordance with the county's standard procedure if the city fails to timely respond to the written request.

Section 3. Section 17-27a-901 is amended to read:

17-27a-901. Mountainous planning district.

(1) (a) The legislative body of a county of the first class may adopt an ordinance designating an area located within the county as a mountainous planning district if the legislative body determines that:

(i) the area is primarily used for recreational purposes, including canyons, foothills, ski resorts, wilderness areas, lakes and reservoirs, campgrounds, or picnic areas within the Wasatch Range;

(ii) the area is used by residents of the county who live inside and outside the limits of a municipality;

(iii) the total resident population in the proposed mountainous planning district is equal to or less than 5% of the population of the county; ~~and~~

(iv) the area is within the unincorporated area of the county or was within the unincorporated area of the county before May 12, 2015[~~;~~ and

(v) the area includes land designated as part of a national forest on or before May 9, 2017.

(b) (i) A mountainous planning district may include within its boundaries a municipality, whether in whole or in part.

(ii) Except as provided in Subsection (1)(b)(iv), if a mountainous planning district includes within its boundaries an unincorporated area, and that area subsequently incorporates as a municipality:

(A) the area of the incorporated municipality that is located in the mountainous planning district is included within the mountainous planning district boundaries; and

(B) property within the municipality that is also within the mountainous planning district is subject

to the authority of the mountainous planning district.

(iii) A subdivision and zoning ordinance that governs property located within a mountainous planning district shall control over any subdivision or zoning ordinance, as applicable, that a municipality may adopt.

(iv) A county shall allow an area within the boundaries of a mountainous planning district to withdraw from the mountainous planning district if:

(A) the area contains less than 100 acres;

(B) the area is annexed to a city in accordance with Title 10, Chapter 2, Part 4, Annexation;

(C) the county determines that the area does not contain United States Forest Service land or land that is designated as watershed; and

(D) the county determines that the area is not used by individuals for recreational purposes.

(v) An area described in Subsection (1)(b)(iv) that withdraws from a mountainous planning district is not subject to the authority of the mountainous planning district.

(c) The population figure under Subsection (1)(a)(iii) shall be derived from a population estimate by the Utah Population Estimates Committee.

(d) If any portion of a proposed mountainous planning district includes a municipality with a land base of five square miles or less, the county shall ensure that all of that municipality is wholly located within the boundaries of the mountainous planning district.

(2) (a) Notwithstanding Subsection 10-9a-102(2), 17-34-1(2)(a), or 17-50-302(1)(b), or Section 17-50-314, a county may adopt a general plan and adopt a zoning or subdivision ordinance for a property that is located within:

(i) a mountainous planning district; and

(ii) a municipality.

(b) A county plan or zoning or subdivision ordinance governs a property described in Subsection (2)(a).

(3) A planning commission with jurisdiction over a mountainous planning district in a county of the first class shall submit a report that summarizes actions the planning commission has taken and any recommendations regarding the mountainous planning district to the Legislature's Natural Resources, Agriculture, and Environment Interim Committee by no later than November 30 of each year.

Section 4. Section 63I-2-210 is amended to read:

63I-2-210. Repeal dates -- Title 10.

~~[(1) Subsection 10-2a-106(2), the language that states "including a township incorporation procedure as defined in Section 10-2a-105," is repealed July 1, 2016.]~~

~~[(2) Subsection 10-2a-410(3)(d)(ii) is repealed January 1, 2017.]~~

~~[(3) Section 10-2a-105 is repealed July 1, 2016.]~~

[(4)] (1) Subsection 10-9a-304(2) is repealed June 1, ~~[2016]~~ 2020.

(2) When repealing Subsection 10-9a-304(2), the Office of Legislative Research and General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

Section 5. Section 63I-2-217 is amended to read:

63I-2-217. Repeal dates -- Title 17.

(1) Subsection 17-27a-102(1)(b), the language that states "or a designated mountainous planning district" is repealed June 1, ~~[2017]~~ 2020.

(2) (a) Subsection 17-27a-103(15)(b) is repealed June 1, ~~[2017]~~ 2020.

(b) Subsection 17-27a-103(34) is repealed June 1, ~~[2017]~~ 2020.

(3) Subsection 17-27a-210(2)(a), the language that states "or the mountainous planning district area" is repealed June 1, ~~[2017]~~ 2020.

(4) (a) Subsection 17-27a-301(1)(b)(iii) is repealed June 1, ~~[2017]~~ 2020.

(b) Subsection 17-27a-301(1)(c) is repealed June 1, ~~[2017]~~ 2020.

(c) Subsection 17-27a-301(2)(a), the language that states "described in Subsection (1)(a) or (c)" is repealed June 1, ~~[2017]~~ 2020.

(5) Subsection 17-27a-302(1), the language that states "or mountainous planning district" and "or the mountainous planning district," is repealed June 1, ~~[2017]~~ 2020.

(6) Subsection 17-27a-305(1)(a), the language that states "a mountainous planning district or" and "as applicable" is repealed June 1, ~~[2017]~~ 2020.

(7) (a) Subsection 17-27a-401(1)(b)(ii) is repealed June 1, ~~[2017]~~ 2020.

(b) Subsection 17-27a-401(6) is repealed June 1, ~~[2017]~~ 2020.

(8) (a) Subsection 17-27a-403(1)(b)(ii) is repealed June 1, ~~[2017]~~ 2020.

(b) Subsection 17-27a-403(1)(c)(iii) is repealed June 1, ~~[2017]~~ 2020.

(c) Subsection (2)(a)(iii), the language that states "or the mountainous planning district" is repealed June 1, ~~[2017]~~ 2020.

(d) Subsection 17-27a-403(2)(c)(i), the language that states "or mountainous planning district" is repealed June 1, ~~[2017]~~ 2020.

(9) Subsection 17-27a-502(1)(d)(i)(B) is repealed June 1, ~~[2017]~~ 2020.

(10) Subsection 17-27a-505.5(2)(a)(iii) is repealed June 1, ~~[2017]~~ 2020.

(11) Subsection 17-27a-602(1)(b), the language that states "or, in the case of a mountainous planning district, the mountainous planning district" is repealed June 1, ~~[2017]~~ 2020.

(12) Subsection 17-27a-604(1)(b)(i)(B) is repealed June 1, ~~[2017]~~ 2020.

(13) Subsection 17-27a-605(1), the language that states "or mountainous planning district land" is repealed June 1, ~~[2017]~~ 2020.

(14) Title 17, Chapter 27a, Part 9, Mountainous Planning District, is repealed June 1, ~~[2017]~~ 2020.

(15) On June 1, ~~[2016]~~ 2020, when making the changes in this section, the Office of Legislative Research and General Counsel shall:

(a) in addition to its authority under Subsection 36-12-12(3), make corrections necessary to ensure that sections and subsections identified in this section are complete sentences and accurately reflect the office's ~~[perception]~~ understanding of the Legislature's intent; and

(b) identify the text of the affected sections and subsections based upon the section and subsection numbers used in ~~[Laws of Utah 2015, Chapter 465]~~ this bill.

Section 6. Revisor instructions.

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, replace the language "this bill" in Subsection 63I-2-217(15)(b) with the bill's designated chapter number in the Laws of Utah.

Section 7. Coordinating H.B. 293 with H.B. 193 -- Superseding technical and substantive amendments.

If this H.B. 293 and H.B. 193, Revisor's Technical Corrections to Utah Code, both pass and become law, it is the intent of the Legislature that the amendments to Section 63I-2-210 in this bill supersede the amendments to Section 63I-2-210 in H.B. 193, when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.

CHAPTER 449**H. B. 369**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

**CRIMINAL PENALTY ENHANCEMENTS
FOR SEXUAL OFFENSES**

Chief Sponsor: Justin L. Fawson

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill enacts provisions to enhance penalties related to sexual offenses without the consent of the victim when the actor is infected with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C.

Highlighted Provisions:

This bill:

- ▶ enacts provisions to enhance the classification of a sexual offense if the actor was infected with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

76-3-203.12, Utah Code Annotated 1953

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

Section 1. Section 76-3-203.12 is enacted to read:**76-3-203.12. Enhanced penalty for sexual offenses committed by a person with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C.**

(1) A person convicted of a sexual offense described in Chapter 5, Part 4, Sexual Offenses, is subject to an enhanced penalty if at the time of the sexual offense the person was infected with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C and the person knew of the infection.

(2) (a) Except as provided in Subsection (2)(b), the enhancement of a penalty described in Subsection (1) shall be an enhancement of one classification higher than the root offense for which the person was convicted.

(b) A felony of the first degree is not enhanced under this section.

CHAPTER 450**H. B. 380**

Passed March 8, 2017

Approved March 28, 2017

Effective May 9, 2017

SEX OFFENDER REGISTRY AMENDMENTS

Chief Sponsor: Craig Hall
Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill allows the Department of Corrections to receive notification of the actions that affect a person's registry requirements.

Highlighted Provisions:

This bill:

- ▶ specifies that a court may accept a guilty plea only if it is in conformity with the statute;
- ▶ requires a court that modifies a conviction for a sex or kidnap offense to notify the department; and
- ▶ allows the department to intervene in matters that affect a person's registration requirement.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

77-41-103, as last amended by Laws of Utah 2015, Chapter 210

78B-9-102, as last amended by Laws of Utah 2008, Chapter 288 and renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 77-41-103 is amended to read:**77-41-103. Department duties.**

(1) The department, to assist in investigating kidnapping and sex-related crimes, and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders and sex and kidnap offenses;

(b) make information listed in Subsection 77-41-110(4) available to the public; and

(c) share information provided by an offender under this chapter that may not be made available to the public under Subsection 77-41-110(4), but only:

(i) for the purposes under this chapter; or

(ii) in accordance with Section 63G-2-206.

(2) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

(a) the receipt of a report or complaint of an offense listed in Subsection 77-41-102(9) or (17), within three business days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection 77-41-102(9) or (17), within five business days.

(3) Upon convicting a person of any of the offenses listed in Subsection 77-41-102(9) or (17), the convicting court shall within three business days forward a signed copy of the judgment and sentence to the Sex and Kidnap Offender Registry office within the Department of Corrections.

(4) Upon modifying, withdrawing, setting aside, vacating, or otherwise altering a conviction for any offense listed in Subsection 77-41-102(9) or (17), the court shall, within three business days, forward a signed copy of the order to the Sex and Kidnap Offender Registry office within the Department of Corrections.

(5) The department may intervene in any matter, including a criminal action, where the matter purports to affect a person's lawfully entered registration requirement.

[~~4~~] (6) The department shall:

(a) provide the following additional information when available:

(i) the crimes the offender has been convicted of or adjudicated delinquent for;

(ii) a description of the offender's primary and secondary targets; and

(iii) any other relevant identifying information as determined by the department;

(b) maintain the Sex Offender and Kidnap Offender Notification and Registration website; and

(c) ensure that the registration information collected regarding an offender's enrollment or employment at an educational institution is:

(i) (A) promptly made available to any law enforcement agency that has jurisdiction where the institution is located if the educational institution is an institution of higher education; or

(B) promptly made available to the district superintendent of the school district where the offender is enrolled if the educational institution is an institution of primary education; and

(ii) entered into the appropriate state records or data system.

Section 2. Section 78B-9-102 is amended to read:**78B-9-102. Replacement of prior remedies.**

(1) (a) This chapter establishes the sole remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal except as provided in Subsection (2). This chapter replaces all prior remedies for review, including extraordinary or common law writs.

Proceedings under this chapter are civil and are governed by the rules of civil procedure. Procedural provisions for filing and commencement of a petition are found in Rule 65C, Utah Rules of Civil Procedure.

(b) A court may not enter an order to withdraw, modify, vacate or otherwise set aside a plea unless it is in conformity with this chapter or Section 77-13-6.

(2) This chapter does not apply to:

(a) habeas corpus petitions that do not challenge a conviction or sentence for a criminal offense;

(b) motions to correct a sentence pursuant to Rule 22(e), Utah Rules of Criminal Procedure; or

(c) actions taken by the Board of Pardons and Parole.

CHAPTER 451**H. B. 407**

Passed March 9, 2017
 Approved March 28, 2017
 Effective May 9, 2017

**UTAH PUBLIC LAND
 MANAGEMENT ACT AMENDMENTS**

Chief Sponsor: Michael E. Noel
 Senate Sponsor: Margaret Dayton

LONG TITLE**General Description:**

This bill modifies provisions in the Utah Public Land Management Act.

Highlighted Provisions:

This bill:

- ▶ states that public land shall be managed, as much as possible, to promote multiple uses of the land, including hunting;
- ▶ describes the process to sell or exchange a parcel of public land;
- ▶ states that a county sheriff is the primary law enforcement authority on public land;
- ▶ creates the prospective Department of Land Management;
- ▶ describes the procedure to select the director of the Department of Land Management; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 63L-8-102, as enacted by Laws of Utah 2016, Chapter 317
 63L-8-103, as enacted by Laws of Utah 2016, Chapter 317
 63L-8-104, as enacted by Laws of Utah 2016, Chapter 317
 63L-8-105, as enacted by Laws of Utah 2016, Chapter 317
 63L-8-302, as enacted by Laws of Utah 2016, Chapter 317
 63L-8-304, as enacted by Laws of Utah 2016, Chapter 317
 63L-8-308, as enacted by Laws of Utah 2016, Chapter 317
 63L-8-402, as enacted by Laws of Utah 2016, Chapter 317
 63L-8-602, as enacted by Laws of Utah 2016, Chapter 317
 79-2-201, as last amended by Laws of Utah 2016, Chapter 317

ENACTS:

63L-8-204, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

- 63L-9-101, (Renumbered from 79-6-101, as enacted by Laws of Utah 2016, Chapter 317)
 63L-9-102, (Renumbered from 79-6-102, as enacted by Laws of Utah 2016, Chapter 317)

- 63L-9-103, (Renumbered from 79-6-103, as enacted by Laws of Utah 2016, Chapter 317)
 63L-9-104, (Renumbered from 79-6-104, as enacted by Laws of Utah 2016, Chapter 317)
 63L-9-105, (Renumbered from 79-6-105, as enacted by Laws of Utah 2016, Chapter 317)

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

Section 1. Section 63L-8-102 is amended to read:**63L-8-102. Definitions.**

As used in this chapter:

- (1) "Board" means the board created in Section 79-6-104.
- (2) "Commissioner" means the commissioner of the Department of Agriculture and Food, or the commissioner's designee.
- (3) "DAF" means the Department of Agriculture and Food.
- (4) "Director" means the director of the ~~Division~~ Department of Land Management or the director's designee.
- (5) "DLM" means the ~~Division~~ Department of Land Management, ~~a division~~ created ~~within the Department of Natural Resources~~ in Section ~~[79-6-102]~~ 63L-9-102.
- (6) "Grazing permit" means a document, issued by the ~~Division~~ Department of Land Management, authorizing use of public land for the purpose of grazing domestic livestock.
- (7) "Land use authorization" means an easement, lease, permit, or license to occupy, use, or traverse public land granted for a particular purpose.
- (8) "Minerals" means all classes of inorganic material upon, within, or beneath the surface of public land, including silver, gold, copper, lead, zinc, uranium, gemstones, potash, gypsum, clay, salts, sand, rock, gravel, oil, oil shale, oil sands, gas, coal, and all carboniferous materials.
- (9) "Multiple use" means:
 - (a) the management of the public land and the public land's various resource values so resources are best utilized in the combination that will meet the present and future needs of the citizens of Utah;
 - (b) making the most judicious use of land for some or all of the resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;
 - (c) a combination of balanced and diverse resource uses that take into account the long-term needs of future generations for renewable and nonrenewable resources, including recreation, hunting, fishing, trapping, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historic values; and

(d) harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources.

(10) "Public land" means any land or land interest:

(a) acquired by the state from the federal government pursuant to Section 63L-6-103, except:

~~(a)~~ (i) areas subsequently designated as a protected wilderness area, as described in Title 63L, Chapter 7, Utah Wilderness Act; and

~~(b)~~ (ii) lands managed by the School and Institutional Trust Lands Administration pursuant to Title 53C, School and Institutional Trust Lands Management Act~~[-,];~~ or

(b) for which the state is given management responsibility from the federal government.

(11) "Rangeland" means open public land used for grazing domestic livestock.

(12) "Sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public land consistent with multiple use.

(13) "Wilderness" means the same as that term is defined in Section 63L-7-103.

Section 2. Section 63L-8-103 is amended to read:

63L-8-103. Principal or major use.

Each parcel of public land in this state shall be managed, as much as possible, to promote the following principal or major uses of the land, consistent with the principles of multiple use and sustained yield:

- (1) domestic livestock grazing;
- (2) fish and wildlife development and utilization, including hunting, fishing, and trapping;
- (3) mineral exploration and production;
- (4) rights-of-way;
- (5) outdoor recreation;
- (6) timber production; and
- (7) wilderness conservation.

Section 3. Section 63L-8-104 is amended to read:

63L-8-104. Declaration of policy -- Sales and exchanges.

(1) The Legislature declares that it is the policy of the state that:

(a) public land be retained in state ownership consistent with the provisions of this chapter for the enjoyment and betterment of the public and the state;

(b) public land may not be sold, except:

(i) as consistent with Section 63L-8-204 and the other provisions of this chapter;

(ii) as consistent with local land use plans;

(iii) with the approval of the director and the board;

(iv) after sufficient opportunity for public comment; and

(v) for an important public interest;

(c) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield, unless otherwise provided by statute; and

(d) the public land be managed in a manner that will:

(i) recognize the state's need for domestic sources of minerals, food, timber, and fiber;

(ii) protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values;

(iii) where appropriate, preserve and protect certain public land in its natural condition;

(iv) provide food and habitat for fish, wildlife, and domestic animals; and

(v) provide for hunting, fishing, trapping, outdoor recreation, human occupancy, and other human use, including the general enjoyment of nature and solitude.

(2) All rules made to effectuate the purposes of this chapter shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 4. Section 63L-8-105 is amended to read:

63L-8-105. Interdepartmental cooperation.

(1) The director, subject to periodic review of the Legislature, may establish programs to conduct projects, planning, permitting, leasing, contracting and other activities on public land.

(2) (a) The director shall provide management policies and programs for all uses of public land, including the principal or major uses described in Section 63L-8-103.

(b) The director shall consult with the commissioner, who may make recommendations to the director on rangeland management issues on public land, including:

(i) determining the number of domestic animals that may be sustained on a tract of land while maintaining that land for wildlife and fish use and future grazing use; and

(ii) issuing grazing permits.

(c) The director shall consult with other state agencies having management responsibility over

natural resources that may be impacted by management decisions and actions on public land, including the Department of Natural Resources, the Department of Agriculture and Food, and the Division of Wildlife Resources.

Section 5. Section 63L-8-204 is enacted to read:

63L-8-204. Exchanges and sales.

(1) (a) It is the policy of this state that exchanges of public land are preferred to any sale of public land, and that when pursuing an exchange, an exchange with the School and Institutional Trust Lands Administration is preferred to an exchange with any other party.

(b) If the DLM proposes an exchange of public land for a different parcel of land, the land the DLM seeks to acquire shall be larger in acreage or considered more valuable for one or more of the principal or major uses described in Section 63L-8-103 than the land the DLM is offering in exchange.

(c) The state may exchange a parcel of public land with the federal government, the School and Institutional Trust Lands Administration, or a private party for a similarly valued parcel of land if:

(i) no more than 1,000 acres of public land is exchanged with the federal government, the School and Institutional Trust Lands Administration, or the private party in one calendar year; or

(ii) the exchange is approved by a two-thirds vote of the Legislature.

(2) The DLM may execute a sale of a parcel of public land if:

(a) the requirements of Subsection 63L-8-104(1)(b) have been met;

(b) the following information is made available on the DLM's website for 30 days before the day on which the director executes the sale:

(i) the legal description of the parcel;

(ii) the local land use plan governing the parcel;

(iii) the proposed purchaser of the parcel;

(iv) the DLM's findings that the sale will further an important public objective, including expansion of a local community;

(v) the minutes or a recording of a meeting in which the public comment was taken on the proposed sale; and

(vi) the purchase price, which may not be less than fair market value;

(c) the director, having completed the land use planning process described in Section 63L-8-202, has determined that the parcel in question:

(i) is not suitable for long-term management by the DLM or another state agency because of the parcel's location or other characteristics; and

(ii) has minimal value for hunting, fishing, or other outdoor recreation;

(d) the parcel is 100 acres or smaller;

(e) the director has determined an exchange, as described in Subsection (1), is not possible;

(f) a competitive bidding process is used to determine the purchaser of the parcel;

(g) the sale is approved by a two-thirds vote of the Legislature; and

(h) the sale is approved by the governor.

(3) All proceeds of a sale under Subsection (2) shall be:

(a) deposited in the Public Land Management Fund created in Section 63L-8-308; and

(b) used to:

(i) acquire additional land that the DLM has determined would be appropriate for public purposes;

(ii) improve existing public land for one or more principal or major uses, as described in Section 63L-8-103; and

(iii) increase the utilization of the public land by the public.

Section 6. Section 63L-8-302 is amended to read:

63L-8-302. Department of Land Management.

Except as otherwise provided by law, the [Division] Department of Land Management, created in Section [79-6-102] 63L-9-102, shall provide necessary staff support for the implementation of this chapter.

Section 7. Section 63L-8-304 is amended to read:

63L-8-304. Enforcement authority.

(1) The director shall issue rules as necessary to implement the provisions of this chapter with respect to the management, use, and protection of the public land and property located on the public land.

(2) At the request of the director, the attorney general may institute a civil action in a district court for an injunction or other appropriate remedy to prevent any person from utilizing public land in violation of this chapter or rules issued by the director under this chapter.

(3) The use, occupancy, or development of any portion of the public land contrary to any rule issued by the DLM in accordance with this chapter, and without proper authorization, is unlawful and prohibited.

(4) (a) [~~Except as provided in Subsections (4)(b) and (c), the local~~] The locally elected county sheriff is the primary law enforcement authority with jurisdiction on public land to enforce:

(i) all the laws of this state; and

(ii) this chapter and rules issued by the director pursuant to Subsection (1).

~~[(b) The director may employ and utilize within the DLM certified peace officers that, if and when deployed, will be the primary law enforcement authority with jurisdiction on public land to enforce this chapter and rules issued pursuant to Subsection (1).]~~

(b) The governor may utilize the Department of Public Safety for the purposes of assisting the county sheriff in enforcing:

(i) all the laws of this state and this chapter; and

(ii) rules issued by the director pursuant to Subsection (1).

(c) Conservation officers employed by the Division of Wildlife Resources [are the primary law enforcement authority with jurisdiction on public land] have authority to enforce the laws and regulations under Title 23, Wildlife Resources Code of Utah, for the sake of any protected wildlife.

(d) A conservation officer shall work cooperatively with the locally elected county sheriff to enforce the laws and regulations under Title 23, Wildlife Resources Code of Utah, for the sake of protected wildlife.

(d) Nothing herein shall be construed as enlarging or diminishing the responsibility or authority of a state certified peace officer in performing the officer's duties on public land.

Section 8. Section 63L-8-308 is amended to read:

63L-8-308. Public Land Management Fund.

(1) There is created an expendable special revenue fund known as the "Public Land Management Fund."

(2) The fund shall consist of:

(a) fees collected by the DLM under this chapter;

(b) money appropriated to the fund by the Legislature;

(c) money collected under Section 63L-8-505;

(d) money voluntarily donated or contributed to the fund; ~~and~~

(e) proceeds, as described in Subsection 63L-8-104(3); and

[(e)] (f) interest earned on the fund.

(3) The DLM may expend money in the fund on:

(a) administration costs;

(b) project planning;

(c) a payment authorized by this chapter; and

(d) other duties required under this chapter, including the acquisition and improvement of public land, as described in Section 63L-8-104.

(4) The DLM shall annually expend money in the fund to pay a county in lieu of taxes the county cannot levy on public land owned by the state:

(a) in an amount no less than the highest amount ever fully authorized by Congress for payment to the county under the federal Payments in Lieu of Taxes and Secure Rural Schools programs, according to the most recent federal formulas before the effective date of this chapter, as described in Section 63L-8-602; and

(b) as funding allows.

Section 9. Section 63L-8-402 is amended to read:

63L-8-402. Grazing fees -- Feasibility study -- Contents -- Submission of report -- Annual distribution and use of range betterment funds -- Nature of distributions.

(1) As used in this section:

(a) "Animal unit" means one mature 1,000 pound cow and the cow's suckling calf.

(b) "Animal unit month" means the amount of forage needed by an animal unit grazing for one month.

(c) "Forage" means the food and water necessary to sustain a cow, according to the cow's metabolic weight.

[(1)] (2) The Legislature finds that, as of 2016, a substantial amount of the rangelands on the public land is deteriorating in quality due to federal mismanagement, and that installation of additional range improvements could arrest much of the continuing deterioration and lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production.

[(2)] (3) The director, in consultation with the commissioner, shall ~~[(a) conduct a study to determine necessary range improvements on public land; and (b)]~~ establish a fee, in accordance with Section 63J-1-504, to be charged for domestic livestock grazing on public land that is equitable to the:

[(4)] (a) state and the state's citizens; and

[(4)] (b) holders of grazing permits and leases on rangeland.

[(3) The director shall report the result of the study described in Subsection (2)(a) to the Natural Resources, Agriculture, and Environment Interim Committee, together with recommendations to implement a reasonable grazing fee schedule.]

(4) Subject to Subsection (5), the fee described in Subsection (3) shall be:

(a) determined using the following indices:

(i) the rental charge of pasturing cattle on private rangeland, or the forage value index (FVI);

(ii) the average annual sales price of beef cattle, or the beef cattle price index (BCPI); and

(iii) the cost of livestock production, or the prices paid index (PPI); and

(b) calculated as follows: $((FVI + BCPI - PPI)/100)$.

(5) (a) The minimum grazing fee shall be \$1.35 per animal unit month.

(b) The annual fee adjustment may not exceed 25% of the grazing fee from the previous fiscal year.

[4] (6) (a) Fifty percent of all money received by the state as fees for grazing domestic livestock on public land shall be deposited into the Grazing Land Fund created in Section 63L-8-310.

(b) Fifty percent of money received by the state as fees for grazing domestic livestock on the public land shall be deposited into the Public Land Management Fund created in Section 63L-8-308.

Section 10. Section 63L-8-602 is amended to read:

63L-8-602. Effective date.

This chapter becomes effective upon the day the state receives title to at least ~~[100,000]~~ 250,000 acres of public land from the federal government pursuant to Section 63L-6-103.

Section 11. Section 63L-9-101, which is renumbered from Section 79-6-101 is renumbered and amended to read:

CHAPTER 9. DEPARTMENT OF LAND MANAGEMENT

[79-6-101]. 63L-9-101. Title.

This chapter is known as the “[~~Division~~] Department of Land Management.”

Section 12. Section 63L-9-102, which is renumbered from Section 79-6-102 is renumbered and amended to read:

[79-6-102]. 63L-9-102. Creation of the Department of Land Management.

(1) There is created a [~~Division of Land Management within the Department of Natural Resources, created in Section 79-2-201~~] Department of Land Management.

(2) The [~~division~~] department shall be staffed:

(a) upon the state receiving title to at least ~~[100,000]~~ 250,000 acres of public land from the federal government pursuant to Section 63L-6-103; and

(b) as funding [~~is~~] appropriated by the Legislature [~~and~~] allows[~~;~~ and].

[~~(c) as determined by the director of the Department of Natural Resources.~~]

(3) The [~~division~~] department may sue and be sued as required to carry out the purposes of this chapter and Title 63L, Chapter 8, Utah Public Land Management Act.

Section 13. Section 63L-9-103, which is renumbered from Section 79-6-103 is renumbered and amended to read:

[79-6-103]. 63L-9-103. Director.

(1) Upon the requirements described in Subsection ~~[79-6-102]~~ 63L-9-102(2) being fulfilled, the [~~executive director of the Department of Natural Resources~~] governor shall, with the consent of the Senate, appoint a director of the [~~Division~~] Department of Land Management[~~, and thereafter hire personnel to staff the division~~].

(2) The director shall:

(a) be the executive and administrative head of the [~~Division~~] Department of Land Management;

(b) have demonstrated ability and experience in the administration and management of state or federal lands; [~~and~~]

(c) not hold any other public office or be involved in a political party or organization[~~;~~ and]

(d) hire personnel to staff the department.

(3) The director [~~of the Division of Land Management, under administrative direction of the executive director,~~] shall have:

(a) executive authority and control of the [~~Division~~] Department of Land Management; and

(b) authority over all personnel matters.

Section 14. Section 63L-9-104, which is renumbered from Section 79-6-104 is renumbered and amended to read:

[79-6-104]. 63L-9-104. Public Land Management Advisory Board.

(1) There is created the Public Land Management Advisory Board.

(2) The board consists of the following 11 members:

(a) the lieutenant governor, or the lieutenant governor’s designee;

(b) one representative, appointed by the governor, who represents the interests of oil, gas, and mining;

(c) one representative, appointed by the governor, who represents the interests of agriculture;

(d) one representative, appointed by the governor, who represents the interests of outdoor recreation;

(e) one representative, appointed by the governor, who represents the interests of environmental groups;

(f) three representatives, appointed by the governor, who represent the interests of county commissioners;

(g) one representative, appointed by the governor, who represents the interests of rural transportation;

(h) one representative, appointed by the governor, who represents the interests of wildlife management; and

(i) one representative, appointed by the governor, who represents the interests of forest management.

(3) (a) Members shall be appointed for a term of four years.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms of the members described in Subsections (2)(b) through (i) to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

(4) A member may serve more than one term.

(5) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.

(6) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the unexpired term.

(7) The board shall elect annually a chair and a vice chair from the board's members.

(8) (a) The board shall meet at least quarterly.

(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.

(c) Three days' notice shall be given to each member of the board before a meeting.

(9) Six members constitute a quorum at a meeting, and the action of a majority of members present is the action of the board.

(10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 15. Section 63L-9-105, which is renumbered from Section 79-6-105 is renumbered and amended to read:

[79-6-105]. 63L-9-105. Department of Land Management duties.

~~[Under the direct supervision of the executive director and in consultation with the board, the division]~~ The department shall manage and administer all public land, as defined in Section 63L-8-102, consistent with the procedures, policies, and directives in Title 63L, Chapter 8, Utah Public Land Management Act.

Section 16. Section 79-2-201 is amended to read:

79-2-201. Department of Natural Resources created.

(1) There is created the Department of Natural Resources.

(2) The department comprises the following:

(a) Board of Water Resources, created in Section 73-10-1.5;

(b) Board of Oil, Gas, and Mining, created in Section 40-6-4;

(c) Board of Parks and Recreation, created in Section 79-4-301;

(d) Wildlife Board, created in Section 23-14-2;

(e) Board of the Utah Geological Survey, created in Section 79-3-301;

(f) Water Development Coordinating Council, created in Section 73-10c-3;

(g) Division of Water Rights, created in Section 73-2-1.1;

(h) Division of Water Resources, created in Section 73-10-18;

(i) Division of Forestry, Fire, and State Lands, created in Section 65A-1-4;

(j) Division of Oil, Gas, and Mining, created in Section 40-6-15;

(k) Division of Parks and Recreation, created in Section 79-4-201;

(l) Division of Wildlife Resources, created in Section 23-14-1;

~~[(m) Division of Land Management, created in Section 79-6-102;]~~

~~[(n)]~~ (m) Utah Geological Survey, created in Section 79-3-201;

~~[(o)]~~ (n) Heritage Trees Advisory Committee, created in Section 65A-8-306;

~~[(p)]~~ (o) Recreational Trails Advisory Council, authorized by Section 79-5-201;

~~[(q)]~~ (p) Boating Advisory Council, authorized by Section 73-18-3.5;

~~[(r)]~~ (q) Wildlife Board Nominating Committee, created in Section 23-14-2.5; and

~~[(s)]~~ (r) Wildlife Regional Advisory Councils, created in Section 23-14-2.6.

CHAPTER 452**H. B. 415**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

INCORPORATION FILING AMENDMENTS

Chief Sponsor: John R. Westwood

Senate Sponsor: Don L. Ipson

LONG TITLE**General Description:**

This bill relates to the process by which a town is incorporated.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ reorders the requirements that individuals must meet to file a town incorporation petition;
- ▶ requires the sponsors of a town incorporation petition to:
 - file an application with the lieutenant governor; and
 - conduct a public hearing before collecting signatures for the petition;
- ▶ requires that at least 50% of the voting-eligible population within a proposed town be registered voters;
- ▶ expands a provision to allow certain property owners to remove property from a proposed town incorporation;
- ▶ creates standards and a process by which the lieutenant governor may reject a town incorporation petition;
- ▶ modifies requirements related to the selection of a feasibility consultant;
- ▶ provides repeal dates for certain provisions that this bill makes obsolete; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 10-2-403, as last amended by Laws of Utah 2015, Chapter 352
- 10-2a-106, as enacted by Laws of Utah 2015, Chapter 157 and further amended by Revisor Instructions, Laws of Utah 2015, Chapters 157 and last amended by Coordination Clause, Laws of Utah 2015, Chapter 352
- 10-2a-302, as last amended by Laws of Utah 2015, Chapter 157 and renumbered and amended by Laws of Utah 2015, Chapter 352
- 10-2a-303, as last amended by Laws of Utah 2015, Chapter 157 and renumbered and amended by Laws of Utah 2015, Chapter 352

10-2a-304, as last amended by Laws of Utah 2015, Chapters 96, 111, 157 and renumbered and amended by Laws of Utah 2015, Chapter 352 and last amended by Coordination Clause, Laws of Utah 2015, Chapter 352

20A-11-101, as last amended by Laws of Utah 2016, Chapter 95

63I-2-210, as last amended by Laws of Utah 2016, Chapter 14

63I-2-220, as last amended by Laws of Utah 2016, Chapters 28 and 348

ENACTS:

10-2a-302.5, Utah Code Annotated 1953

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

Section 1. Section 10-2-403 is amended to read:**10-2-403. Annexation petition -- Requirements -- Notice required before filing.**

(1) Except as provided in Section 10-2-418, the process to annex an unincorporated area to a municipality is initiated by a petition as provided in this section.

(2) (a) (i) Before filing a petition under Subsection (1) with respect to the proposed annexation of an area located in a county of the first class, the person or persons intending to file a petition shall:

(A) file with the city recorder or town clerk of the proposed annexing municipality a notice of intent to file a petition; and

(B) send a copy of the notice of intent to each affected entity.

(ii) Each notice of intent under Subsection (2)(a)(i) shall include an accurate map of the area that is proposed to be annexed.

(b) (i) Subject to Subsection (2)(b)(ii), the county in which the area proposed to be annexed is located shall:

(A) mail the notice described in Subsection (2)(b)(iii) to:

(I) each owner of real property located within the area proposed to be annexed; and

(II) each owner of real property located within 300 feet of the area proposed to be annexed; and

(B) send to the proposed annexing municipality a copy of the notice and a certificate indicating that the notice has been mailed as required under Subsection (2)(b)(i)(A).

(ii) The county shall mail the notice required under Subsection (2)(b)(i)(A) within 20 days after receiving from the person or persons who filed the notice of intent:

(A) a written request to mail the required notice; and

(B) payment of an amount equal to the county's expected actual cost of mailing the notice.

(iii) Each notice required under Subsection (2)(b)(i)(A) shall:

(A) be in writing;

(B) state, in bold and conspicuous terms, substantially the following:

“Attention: Your property may be affected by a proposed annexation.

Records show that you own property within an area that is intended to be included in a proposed annexation to (state the name of the proposed annexing municipality) or that is within 300 feet of that area. If your property is within the area proposed for annexation, you may be asked to sign a petition supporting the annexation. You may choose whether or not to sign the petition. By signing the petition, you indicate your support of the proposed annexation. If you sign the petition but later change your mind about supporting the annexation, you may withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk of (state the name of the proposed annexing municipality) within 30 days after (state the name of the proposed annexing municipality) receives notice that the petition has been certified.

There will be no public election on the proposed annexation because Utah law does not provide for an annexation to be approved by voters at a public election. Signing or not signing the annexation petition is the method under Utah law for the owners of property within the area proposed for annexation to demonstrate their support of or opposition to the proposed annexation.

You may obtain more information on the proposed annexation by contacting (state the name, mailing address, telephone number, and email address of the official or employee of the proposed annexing municipality designated to respond to questions about the proposed annexation), (state the name, mailing address, telephone number, and email address of the county official or employee designated to respond to questions about the proposed annexation), or (state the name, mailing address, telephone number, and email address of the person who filed the notice of intent under Subsection (2)(a)(i)(A), or, if more than one person filed the notice of intent, one of those persons). Once filed, the annexation petition will be available for inspection and copying at the office of (state the name of the proposed annexing municipality) located at (state the address of the municipal offices of the proposed annexing municipality).”; and

(C) be accompanied by an accurate map identifying the area proposed for annexation.

(iv) A county may not mail with the notice required under Subsection (2)(b)(i)(A) any other information or materials related or unrelated to the proposed annexation.

(c) (i) After receiving the certificate from the county as provided in Subsection (2)(b)(i)(B), the proposed annexing municipality shall, upon request from the person or persons who filed the notice of intent under Subsection (2)(a)(i)(A), provide an annexation petition for the annexation proposed in the notice of intent.

(ii) An annexation petition provided by the proposed annexing municipality may be duplicated for circulation for signatures.

(3) Each petition under Subsection (1) shall:

(a) be filed with the city recorder or town clerk, as the case may be, of the proposed annexing municipality;

(b) contain the signatures of, if all the real property within the area proposed for annexation is owned by a public entity other than the federal government, the owners of all the publicly owned real property, or the owners of private real property that:

(i) is located within the area proposed for annexation;

(ii) (A) subject to Subsection (3)(b)(ii)(C), covers a majority of the private land area within the area proposed for annexation;

(B) covers 100% of rural real property as that term is defined in Section 17B-2a-1107 within the area proposed for annexation; and

(C) covers 100% of the private land area within the area proposed for annexation, if the area is within an agriculture protection area created under Title 17, Chapter 41, Agriculture and Industrial Protection Areas, or a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area; and

(iii) is equal in value to at least 1/3 of the value of all private real property within the area proposed for annexation;

(c) be accompanied by:

(i) an accurate and recordable map, prepared by a licensed surveyor, of the area proposed for annexation; and

(ii) a copy of the notice sent to affected entities as required under Subsection (2)(a)(i)(B) and a list of the affected entities to which notice was sent;

(d) if the area proposed to be annexed is located in a county of the first class, contain on each signature page a notice in bold and conspicuous terms that states substantially the following:

“Notice:

- There will be no public election on the annexation proposed by this petition because Utah law does not provide for an annexation to be approved by voters at a public election.

- If you sign this petition and later decide that you do not support the petition, you may withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk of (state the name of the proposed annexing municipality). If you choose to withdraw your signature, you shall do so no later than 30 days after (state the name of the proposed annexing municipality) receives notice that the petition has been certified.”;

(e) if the petition proposes the annexation of an area located in a county that is not the county in which the proposed annexing municipality is

located, be accompanied by a copy of the resolution, required under Subsection 10-2-402(6), of the legislative body of the county in which the area is located; and

(f) designate up to five of the signers of the petition as sponsors, one of whom shall be designated as the contact sponsor, and indicate the mailing address of each sponsor.

(4) A petition under Subsection (1) may not propose the annexation of all or part of an area proposed for annexation to a municipality in a previously filed petition that has not been denied, rejected, or granted.

(5) A petition under Subsection (1) proposing the annexation of an area located in a county of the first class may not propose the annexation of an area that includes some or all of an area proposed to be incorporated in a request for a feasibility study under Section 10-2a-202 or a petition under Section 10-2a-302 or 10-2a-302.5 if:

(a) the request or petition was filed before the filing of the annexation petition; and

(b) the request, a petition under Section 10-2a-208 based on that request, or a petition under Section 10-2a-302 or 10-2a-302.5 is still pending on the date the annexation petition is filed.

(6) If practicable and feasible, the boundaries of an area proposed for annexation shall be drawn:

(a) along the boundaries of existing local districts and special service districts for sewer, water, and other services, along the boundaries of school districts whose boundaries follow city boundaries or school districts adjacent to school districts whose boundaries follow city boundaries, and along the boundaries of other taxing entities;

(b) to eliminate islands and peninsulas of territory that is not receiving municipal-type services;

(c) to facilitate the consolidation of overlapping functions of local government;

(d) to promote the efficient delivery of services; and

(e) to encourage the equitable distribution of community resources and obligations.

(7) On the date of filing, the petition sponsors shall deliver or mail a copy of the petition to the clerk of the county in which the area proposed for annexation is located.

(8) A property owner who signs an annexation petition proposing to annex an area located in a county of the first class may withdraw the owner's signature by filing a written withdrawal, signed by the property owner, with the city recorder or town clerk no later than 30 days after the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(c)(i).

Section 2. Section 10-2a-106 is amended to read:

10-2a-106. Feasibility study or petition to incorporate filed before May 12, 2015.

(1) If a request for a feasibility study to incorporate a city is filed under Section 10-2a-202 before May 12, 2015, the request and a subsequent feasibility study, petition, public hearing, election, and any other city incorporation action applicable to that request shall be filed with and be acted upon, held, processed, or paid for by the county legislative body or county clerk, as applicable, as designated, directed, or authorized before Laws of Utah 2015, Chapter 157, takes effect.

(2) If a petition to incorporate a town is filed under Section 10-2a-302 or 10-2a-302.5 before May 12, 2015, the petition and a subsequent feasibility study, petition, public hearing, election, and any other town incorporation action applicable to that petition to incorporate shall be filed with and be acted upon, held, processed, or paid for by the county legislative body or county clerk, as applicable, as designated, directed, or authorized before Laws of Utah 2015, Chapter 157, takes effect.

Section 3. Section 10-2a-302 is amended to read:

10-2a-302. Incorporation of a town -- Petition.

(1) As used in this section:

(a) "Assessed value," with respect to agricultural land, means the value at which the land would be assessed without regard to a valuation for agricultural use under Section 59-2-503.

(b) "Feasibility consultant" means a person or firm:

(i) with expertise in the processes and economics of local government; and

(ii) who is independent of and not affiliated with a county or sponsor of a petition to incorporate.

(c) "Financial feasibility study" means a study described in Subsection (7).

(d) "Municipal service" means a publicly provided service that is not provided on a countywide basis.

(e) "Nonurban" means having a residential density of less than one unit per acre.

(2) (a) This section applies to individuals who seek to initiate the process of incorporating a town before May 9, 2017.

(b) (i) A contiguous area of a county not within a municipality, with a population of at least 100 but less than 1,000, may incorporate as a town as provided in this section.

(ii) An area within a county of the first class is not contiguous for purposes of Subsection (2)(a)(i) if:

(A) the area includes a strip of land that connects geographically separate areas; and

(B) the distance between the geographically separate areas is greater than the average width of the strip of land connecting the geographically separate areas.

~~(4b)~~ (c) The population figure under Subsection (2)~~(a)~~~~(b)~~ shall be determined:

(i) as of the date the incorporation petition is filed; and

(ii) by the Utah Population Estimates Committee within 20 days after the county clerk's certification under Subsection (6) of a petition filed under Subsection (4).

(3) (a) ~~[The] Individuals may initiate the process to incorporate an area as a town [is initiated by filing a] by circulating a petition to incorporate the area as a town.~~

(b) The individuals must file the petition with the Office of the Lieutenant Governor no later than January 2, 2018 for the petition to be valid.

~~(4b)~~ (c) A petition under Subsection (3)~~(a)~~~~(b)~~ shall:

(i) be signed by:

(A) the owners of private real property that:

(I) is located within the area proposed to be incorporated; and

(II) is equal in assessed value to more than 1/5 of the assessed value of all private real property within the area; and

(B) 1/5 of all registered voters within the area proposed to be incorporated as a town, according to the official voter registration list maintained by the county on the date the petition is filed;

(ii) designate as sponsors at least five of the property owners who have signed the petition, one of whom shall be designated as the contact sponsor, with the mailing address of each owner signing as a sponsor;

(iii) be accompanied by and circulated with an accurate map or plat, prepared by a licensed surveyor, showing a legal description of the boundary of the proposed town; and

(iv) substantially comply with and be circulated in the following form:

PETITION FOR INCORPORATION OF (insert the proposed name of the proposed town)

To the Honorable Lieutenant Governor:

We, the undersigned owners of real property and registered voters within the area described in this petition, respectfully petition the lieutenant governor to direct the county legislative body to submit to the registered voters residing within the area described in this petition, at the next regular general election, the question of whether the area should incorporate as a town. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property or a registered voter residing within the described

area, and that the current residence address of each is correctly written after the signer's name. The area proposed to be incorporated as a town is described as follows: (insert an accurate description of the area proposed to be incorporated).

~~(4e)~~ (d) A petition under this Subsection (3) may not describe an area that includes some or all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:

(i) was filed before the filing of the petition; and

(ii) is still pending on the date the petition is filed.

~~(4d)~~ (e) A petition may not be filed under this section if the private real property owned by the petition sponsors, designated under Subsection (3)~~(4b)~~~~(c)~~(ii), cumulatively exceeds 40% of the total private land area within the area proposed to be incorporated as a town.

~~(4e)~~ (f) A signer of a petition under this Subsection (3) may withdraw or, after withdrawn, reinstate the signer's signature on the petition:

(i) at any time until the lieutenant governor certifies the petition under Subsection (5); and

(ii) by filing a signed, written withdrawal or reinstatement with the lieutenant governor.

(4) (a) If a petition is filed under Subsection (3)~~(4a)~~~~(b)~~ proposing to incorporate as a town an area located within a county of the first class, the lieutenant governor shall deliver written notice of the proposed incorporation:

(i) to each owner of private real property owning more than 1% of the assessed value of all private real property within the area proposed to be incorporated as a town; and

(ii) within seven calendar days after the date on which the petition is filed.

(b) A private real property owner described in Subsection (4)(a)(i) may exclude all or part of the owner's property from the area proposed to be incorporated as a town by filing a notice of exclusion:

(i) with the lieutenant governor; and

(ii) within 10 calendar days after receiving the clerk's notice under Subsection (4)(a).

(c) The lieutenant governor shall exclude from the area proposed to be incorporated as a town the property identified in the notice of exclusion under Subsection (4)(b) if:

(i) the property:

(A) is nonurban; and

(B) does not and will not require a municipal service; and

(ii) exclusion will not leave an unincorporated island within the proposed town.

(d) If the lieutenant governor excludes property from the area proposed to be incorporated as a town, the lieutenant governor shall send written notice of the exclusion to the contact sponsor within five days after the exclusion.

(5) No later than 20 days after the filing of a petition under Subsection (3), the lieutenant governor shall:

(a) with the assistance of other county officers of the county in which the incorporation is proposed from whom the lieutenant governor requests assistance, determine whether the petition complies with the requirements of Subsection (3); and

(b) (i) if the lieutenant governor determines that the petition complies with those requirements:

(A) certify the petition; and

(B) mail or deliver written notification of the certification to:

(I) the contact sponsor; and

(II) the Utah Population Estimates Committee; or

(ii) if the lieutenant governor determines that the petition fails to comply with any of those requirements, reject the petition and notify the contact sponsor in writing of the rejection and the reasons for the rejection.

(6) (a) (i) A petition that is rejected under Subsection (5)(b)(ii) may be amended to correct a deficiency for which it was rejected and then refiled with the lieutenant governor.

(ii) A valid signature on a petition filed under Subsection (3)(~~a~~)(b) may be used toward fulfilling the signature requirement of Subsection (3)(~~b~~)(c) for the same petition that is amended under Subsection (6)(a)(i) and then refiled with the lieutenant governor.

(b) If a petition is amended and refiled under Subsection (6)(a)(i) after having been rejected by the lieutenant governor under Subsection (5)(b)(ii):

(i) the amended petition shall be considered as a newly filed petition; and

(ii) the amended petition's processing priority is determined by the date on which it is refiled.

(7) (a) (i) If a petition is filed under Subsection (4) and certified under Subsection [(6)] (5), the lieutenant governor shall commission and pay for a financial feasibility study.

(ii) The feasibility consultant shall be chosen:

(A) (I) by the contact sponsor of the incorporation petition, as described in Subsection (3)(~~b~~)(c)(ii), with the consent of the lieutenant governor; or

(II) by the lieutenant governor if the contact sponsor states, in writing, that the sponsor defers selection of the feasibility consultant to the lieutenant governor; and

(B) in accordance with applicable county procurement procedure.

(iii) The lieutenant governor shall require the feasibility consultant to complete the financial feasibility study and submit written results of the

study to the lieutenant governor no later than 30 days after the feasibility consultant is engaged to conduct the financial feasibility study.

(b) The financial feasibility study shall consider the:

(i) population and population density within the area proposed for incorporation and the surrounding area;

(ii) current and five-year projections of demographics and economic base in the proposed town and surrounding area, including household size and income, commercial and industrial development, and public facilities;

(iii) projected growth in the proposed town and in adjacent areas during the next five years;

(iv) subject to Subsection (7)(c), the present and five-year projections of the cost, including overhead, of governmental services in the proposed town, including:

(A) culinary water;

(B) secondary water;

(C) sewer;

(D) law enforcement;

(E) fire protection;

(F) roads and public works;

(G) garbage;

(H) weeds; and

(I) government offices;

(v) assuming the same tax categories and tax rates as currently imposed by the county and all other current service providers, the present and five-year projected revenue for the proposed town; and

(vi) a projection of any new taxes per household that may be levied within the incorporated area within five years of incorporation.

(c) (i) For purposes of Subsection (7)(b)(iv), the feasibility consultant shall assume a level and quality of governmental services to be provided to the proposed town in the future that fairly and reasonably approximate the level and quality of governmental services being provided to the proposed town at the time of the feasibility study.

(ii) In determining the present cost of a governmental service, the feasibility consultant shall consider:

(A) the amount it would cost the proposed town to provide governmental service for the first five years after incorporation; and

(B) the county's present and five-year projected cost of providing governmental service.

(iii) The costs calculated under Subsection (7)(b)(iv), shall take into account inflation and anticipated growth.

(d) If the five year projected revenues under Subsection (7)(b)(v) exceed the five-year projected

costs under Subsection (7)(b)(iv) by more than 10%, the feasibility consultant shall project and report the expected annual revenue surplus to the contact sponsor and the lieutenant governor.

(e) The lieutenant governor shall post a copy of the feasibility study on the lieutenant governor's website and make a copy available for public review at the Office of the Lieutenant Governor.

(f) The lieutenant governor shall approve a certified petition proposing the incorporation of a town and hold a public hearing as provided in Section 10-2a-303.

Section 4. Section 10-2a-302.5 is enacted to read:

10-2a-302.5. Incorporation of a town -- Petition.

(1) As used in this section:

(a) "Assessed value," with respect to agricultural land, means the value at which the land would be assessed without regard to a valuation for agricultural use under Section 59-2-503.

(b) (i) "Municipal services" means any of the following that are publicly provided:

(A) culinary water;

(B) secondary water;

(C) sewer service;

(D) law enforcement service;

(E) fire protection;

(F) roads;

(G) refuse collection; or

(H) weed control.

(ii) "Municipal services" includes the physical facilities required to provide a service described in Subsection (1)(b)(i).

(2) (a) This section applies to individuals who seek to initiate the process of incorporating a town on or after May 9, 2017.

(b) Individuals who reside in a contiguous area of a county that is not within a municipality may incorporate as a town as provided in this section if:

(i) the area has a population of at least 100 people, but less than 1,000 people; and

(ii) at least 50% of the voting eligible population in the area are registered voters.

(c) An area within a county of the first class is not contiguous for purposes of Subsection (2)(b) if:

(i) the area includes a strip of land that connects geographically separate areas; and

(ii) the distance between the geographically separate areas is greater than the average width of the strip of land connecting the geographically separate areas.

(3) (a) Individuals described in Subsection (2) may initiate the process of incorporating a town by filing an application for an incorporation petition with the lieutenant governor that contains:

(i) the name and residential address of at least five sponsors of the petition who meet the qualifications described in Subsection (3)(b) for a sponsor and Subsection (7) for a petition signer;

(ii) a statement certifying that each of the sponsors:

(A) is a resident of the state; and

(B) has voted in a regular general election or municipal general election in the state within the last three years;

(iii) the signature of each sponsor, attested to by a notary public;

(iv) the name of a sponsor who is designated as the contact sponsor;

(v) consistent with the requirements described in Subsection (3)(c), an accurate map or plat, prepared by a licensed surveyor, showing a legal description of the boundary of the proposed town; and

(vi) a statement indicating whether persons may be paid for gathering signatures for the petition.

(b) Sponsors may not file a petition under this section if the cumulative private real property that the petition sponsors own exceeds 40% of the total private land area within the boundaries of the proposed town.

(c) A map described in Subsection (3)(a)(v) may not include an area proposed for annexation in an annexation petition described in Section 10-2-403 that is pending on the day on which the application for the incorporation petition is filed.

(4) (a) If the lieutenant governor determines that an incorporation petition application complies with the requirements described in Subsection (3)(a), the lieutenant governor shall accept the application and mail or transmit written notification of the acceptance to:

(i) the contact sponsor; and

(ii) the Utah Population Estimates Committee.

(b) If the lieutenant governor determines that an application does not comply with the requirements described in Subsection (3)(a), the lieutenant governor shall reject the application and mail or transmit written notification of the rejection, including the reason for the rejection, to the contact sponsor.

(5) (a) Within 20 days after the day on which the lieutenant governor accepts an application under Subsection (4)(a), the Utah Population Estimates Committee shall:

(i) determine the population of the proposed town as of the date the application was filed under Subsection (3) for the proposed town; and

(ii) provide that determination to the lieutenant governor.

(b) If the Utah Population Estimates Committee determines that the population of the proposed town does not meet the requirements described in Subsection (2)(b)(i), the lieutenant governor shall rescind the acceptance described in Subsection (4)(a) and reject the application in accordance with Subsection (4)(b).

(6) Within 30 days after the day on which the lieutenant governor receives the determination described in Subsection (5)(b) but before collecting signatures under Subsection (7), the sponsors of the incorporation petition shall hold a public hearing at which the public may:

(a) review the map or plat of the proposed town described in Subsection (3)(a)(v);

(b) ask questions and receive information about the incorporation of the proposed town; and

(c) express views about the proposed incorporation, including views regarding the boundary of the proposed town.

(7) (a) If, after holding the public hearing described in Subsection (6), the sponsors wish to proceed with the proposed incorporation, the sponsors shall circulate an incorporation petition that, in order to be declared sufficient under Subsection (8)(b)(i), must be signed by:

(i) the owners of private real property that:

(A) is located within the boundaries of the proposed town; and

(B) is collectively greater than or equal to 20% of the assessed value of all private real property within the boundaries of the proposed town; and

(ii) 20% of the registered voters residing within the boundaries of the proposed town, as of the day on which the petition is filed.

(b) The petition sponsors shall ensure that the petition is:

(i) accompanied by and circulated with a copy of the map described in Subsection (3)(a)(v); and

(ii) printed in substantially the following form:

“PETITION FOR INCORPORATION OF (insert the proposed name of the proposed town)

To the Honorable Lieutenant Governor:

We, the undersigned, respectfully petition the lieutenant governor to direct the county to submit to the registered voters residing within the area described in this petition, in an election, the question of whether the area should incorporate as a town. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property located within, or is a registered voter residing within, the described area, and that the current residence address of each is correctly written after the signer’s name. The area we propose for incorporation as a town is described as follows: (insert an accurate description of the area proposed to be incorporated).”

(c) An individual who signs a petition described in this Subsection (7) may withdraw or reinstate the individual’s signature by filing a written, signed statement with the lieutenant governor before the lieutenant governor certifies the petition signatures under Subsection (8).

(d) The petition sponsors shall submit a completed petition to the lieutenant governor no later than 316 days after the day on which the sponsors submit the application described in Subsection (3)(a) to the lieutenant governor.

(8) No later than 20 days after the day on which the sponsors submit the petition to the lieutenant governor under Subsection (7)(d), the lieutenant governor shall:

(a) determine whether the petition complies with the requirements described in Subsection (7); and

(b) (i) if the lieutenant governor determines that the petition complies with the requirements described in Subsection (7):

(A) certify the petition as sufficient; and

(B) mail or deliver written notification of the certification to the contact sponsor; or

(ii) if the lieutenant governor determines that the petition does not comply with the requirements described in Subsection (7):

(A) reject the petition; and

(B) notify the contact sponsor in writing of the rejection and the reasons for the rejection.

(9) (a) Petition sponsors may amend a petition that the lieutenant governor rejected under Subsection (8)(b)(ii) by:

(i) correcting the reason for which the lieutenant governor rejects the petition; and

(ii) submitting an amended petition to the lieutenant governor no later than the deadline described in Subsection (7)(d).

(b) A valid signature on a petition that the lieutenant governor rejects under Subsection (8)(b)(ii) is valid for an amended petition that the petition sponsors submit to the lieutenant governor under Subsection (9)(a).

(c) The lieutenant governor shall review an amended petition in accordance with Subsection (8).

(d) The sponsors of an incorporation petition may not amend the petition more than once.

(10) (a) If the lieutenant governor certifies an incorporation petition as sufficient under Subsection (8), the lieutenant governor shall, within seven days after the day on which the lieutenant governor certifies the petition, mail or transmit written notice of the proposed incorporation to each person who owns private real property that:

(i) is located within the boundaries of the proposed town; and

(i) has a value that is greater than or equal to 1% of the assessed value of all private real property within the boundaries of the proposed town.

(b) A person described in Subsection (10)(a) may request that the lieutenant governor exclude all or part of the person's property from boundaries of the proposed town if:

(i) the property does not require, and is not expected to require, a municipal service that the proposed town will provide; and

(ii) exclusion of the property will not leave an unincorporated island within the proposed town.

(c) (i) To request exclusion under this Subsection (10), a person described in Subsection (10)(a) shall file a written request with the lieutenant governor within 10 days after the day on which the person receives the notice described in Subsection (10)(a).

(ii) The notice shall describe the property for which the person requests exclusion.

(d) (i) The lieutenant governor shall exclude property from the boundaries of the proposed town if the property is described in a written request filed under Subsection (10)(c) and meets the requirements described in Subsection (10)(b).

(ii) Within five days after the lieutenant governor excludes the property, the lieutenant governor shall mail or transmit written notice of the exclusion to the person who filed the request and to the contact sponsor.

(11) (a) If the lieutenant governor certifies an incorporation petition as sufficient under Subsection (8), the lieutenant governor shall, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, procure the services of a feasibility consultant to conduct a financial feasibility study on the proposed incorporation.

(b) The lieutenant governor shall ensure that a feasibility consultant selected under Subsection (11)(a):

(i) has expertise in the processes and economics of local government; and

(ii) is not affiliated with:

(A) a sponsor of the incorporation petition to which the feasibility study relates; or

(B) the county in which the proposed town is located.

(c) The lieutenant governor shall require the feasibility consultant to complete the financial feasibility study and submit written results of the study to the lieutenant governor no later than 60 days after the day on which the lieutenant governor procures the services of the feasibility consultant.

(d) The financial consultant shall ensure that the financial feasibility study includes:

(i) an analysis of the population and population density within the boundaries of the proposed town and the surrounding area;

(ii) the current and projected five-year demographics of, and tax base within, the boundaries of the proposed town and the surrounding area, including household size and income, commercial and industrial development, and public facilities;

(iii) subject to Subsection (11)(e), the current and five-year projected cost of providing municipal services to the proposed town, including administrative costs;

(iv) assuming the same tax categories and tax rates as currently imposed by the county and all other current municipal services providers, the present and five-year projected revenue for the proposed town;

(v) a projection of the tax burden per household of any new taxes that may be levied within the proposed town within five years of the town's incorporation; and

(vi) if the lieutenant governor excludes property from the proposed town under Subsection (10)(d), an update to the map and legal description described in Subsection (3)(a)(v).

(e) (i) For purposes of Subsection (11)(d)(iii), the feasibility consultant shall assume that the proposed town will provide a level and quality of municipal services that fairly and reasonably approximate the level and quality of municipal services that are provided to the proposed town at the time the feasibility consultant conducts the feasibility study.

(ii) In determining the present cost of municipal services, the feasibility consultant shall consider:

(A) the amount it would cost the proposed town to provide the municipal services for the first five years after the town's incorporation; and

(B) the current municipal services provider's present and five-year projected cost of providing the municipal services.

(iii) In calculating the costs described in Subsection (11)(d)(iii), the feasibility consultant shall account for inflation and anticipated growth.

(f) If the five-year projected revenues described in Subsection (11)(d)(iv) exceed the five-year projected costs described in Subsection (11)(d)(iii) by more than 10%, the feasibility consultant shall project and report the expected annual revenue surplus to the contact sponsor and the lieutenant governor.

(g) The lieutenant governor shall publish the feasibility study on the lieutenant governor's website and make a copy of the feasibility study available for public review at the Office of the Lieutenant Governor.

(12) After the lieutenant governor conducts the feasibility study, the lieutenant governor shall hold a public hearing in accordance with Section 10-2a-303.

Section 5. Section 10-2a-303 is amended to read:

10-2a-303. Incorporation of a town -- Public hearing on feasibility.

(1) If, in accordance with Section 10-2a-302 or 10-2a-302.5, the lieutenant governor certifies a petition for incorporation or an amended petition for incorporation, the lieutenant governor shall, after completion of the feasibility study, schedule a public hearing ~~[tø]~~:

(a) ~~[be held]~~ that takes place no later than 60 days after the day on which the feasibility study is completed; and

(b) to consider, in accordance with Subsection (3)(b), the feasibility of incorporation for the proposed town.

(2) (a) The lieutenant governor shall give notice of the public hearing on the proposed incorporation by:

(i) (A) publishing notice of the public hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the proposed town; or

(B) if there is no newspaper of general circulation within the proposed town, posting notice of the public hearing in at least five conspicuous public places within the proposed town; and

(ii) publishing notice of the public hearing on the Utah Public Notice Website created in Section 63F-1-701.

(b) The county in which the incorporation is proposed shall post the notice described in Subsection (2)(a)(ii) on the county's website, if the county has a website, for at least two consecutive weeks before the day of the public hearing.

(3) At the public hearing scheduled in accordance with Subsection (1), the lieutenant governor shall:

(a) (i) provide a copy of the feasibility study; and

(ii) present the results of the feasibility study to the public; and

(b) allow the public to:

(i) review the map or plat of the boundary of the proposed town;

(ii) ask questions and become informed about the proposed incorporation; and

(iii) express its views about the proposed incorporation, including their views about the boundary of the area proposed to be incorporated.

(4) A county under the direction of the lieutenant governor may not hold an election on the incorporation of a town in accordance with Section 10-2a-304 if the results of the feasibility study show that the five-year projected revenues under Subsection 10-2a-302(7)(b)(v) or 10-2a-302.5(11)(d)(iv) exceed the five-year projected costs under Subsection 10-2a-302(7)(b)(iv) or 10-2a-302.5(11)(d)(iii) by more than 10%.

Section 6. Section 10-2a-304 is amended to read:

10-2a-304. Incorporation of a town -- Election to incorporate -- Ballot form.

(1) (a) Upon ~~[receipt of a certified petition or a certified amended petition under Section 10-2a-302]~~ the completion of a feasibility study described in Section 10-2a-302 or 10-2a-302.5 and the public hearing described in Section 10-2a-303, the lieutenant governor shall: (i) determine and set an election date for the schedule an incorporation election ~~[that is: (A) on]~~ for the proposed town on:

(i) the date of a regular general election ~~[date under]~~ described in Section 20A-1-201 or on the date of a local special election ~~[date under]~~ described in Section 20A-1-203; and

~~[(B)]~~ (ii) a date that is at least 65 days after the day ~~[that the legislative body receives the certified petition; and]~~ on which the lieutenant governor certifies the petition under Subsection 10-2a-302(5) or Section 10-2a-302.5.

~~[(ii)]~~ (b) The lieutenant governor shall direct the county ~~[legislative body of the county]~~ in which the ~~[incorporation is]~~ proposed town is located to hold the incorporation election on the date ~~[determined by]~~ that the lieutenant governor ~~[in accordance with]~~ schedules under Subsection (1)(a)~~[(i)]~~.

~~[(b)]~~ (c) The county described in Subsection (1)(b) shall hold the incorporation election as directed by the lieutenant governor in accordance with Subsection (1)~~[(a)]~~~~[(ii)]~~(b).

~~[(e)]~~ (d) ~~[Unless a person]~~ An individual may not vote in an incorporation election under this section unless the individual is a registered voter who resides, as defined in Section 20A-1-102, within the boundaries of the proposed town~~[; the person may not vote on the proposed incorporation].~~

(2) (a) The county clerk shall publish notice of the election:

(i) in a newspaper of general circulation, within the area proposed to be incorporated, at least once a week for three successive weeks; and

(ii) in accordance with Section 45-1-101 for three weeks.

(b) The notice required by Subsection (2)(a) shall contain:

(i) a statement of the contents of the petition;

(ii) a description of the area proposed to be incorporated as a town;

(iii) a statement of the date and time of the election and the location of polling places; and

(iv) the lieutenant governor's Internet website address, if applicable, and the address of the Office of the Lieutenant Governor where the feasibility study is available for review.

(c) The last publication of notice required under Subsection (2)(a) shall occur at least one day but no more than seven days before the election.

(d) (i) In accordance with Subsection (2)(a)(i), if there is no newspaper of general circulation within

the proposed town, the county clerk shall post at least one notice of the election per 100 population in conspicuous places within the proposed town that are most likely to give notice of the election to the voters of the proposed town.

(ii) The clerk shall post the notices under Subsection (2)(d)(i) at least seven days before the election under Subsection (1)(a).

(3) The ballot at the incorporation election shall pose the incorporation question substantially as follows:

Shall the area described as (insert a description of the proposed town) be incorporated as the town of (insert the proposed name of the proposed town)?

(4) The ballot shall provide a space for the voter to answer yes or no to the question in Subsection (3).

(5) If a majority of those casting votes within the area boundaries of the proposed town vote to incorporate as a town, the area shall incorporate.

Section 7. Section 20A-11-101 is amended to read:

20A-11-101. Definitions.

As used in this chapter:

(1) "Address" means the number and street where an individual resides or where a reporting entity has its principal office.

(2) "Agent of a reporting entity" means:

(a) a person acting on behalf of a reporting entity at the direction of the reporting entity;

(b) a person employed by a reporting entity in the reporting entity's capacity as a reporting entity;

(c) the personal campaign committee of a candidate or officeholder;

(d) a member of the personal campaign committee of a candidate or officeholder in the member's capacity as a member of the personal campaign committee of the candidate or officeholder; or

(e) a political consultant of a reporting entity.

(3) "Ballot proposition" includes initiatives, referenda, proposed constitutional amendments, and any other ballot propositions submitted to the voters that are authorized by the Utah Code Annotated 1953.

(4) "Candidate" means any person who:

(a) files a declaration of candidacy for a public office; or

(b) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination or election to a public office.

(5) "Chief election officer" means:

(a) the lieutenant governor for state office candidates, legislative office candidates,

officeholders, political parties, political action committees, corporations, political issues committees, state school board candidates, judges, and labor organizations, as defined in Section 20A-11-1501; and

(b) the county clerk for local school board candidates.

(6) (a) "Contribution" means any of the following when done for political purposes:

(i) a gift, subscription, donation, loan, advance, or deposit of money or anything of value given to the filing entity;

(ii) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to the filing entity;

(iii) any transfer of funds from another reporting entity to the filing entity;

(iv) compensation paid by any person or reporting entity other than the filing entity for personal services provided without charge to the filing entity;

(v) remuneration from:

(A) any organization or its directly affiliated organization that has a registered lobbyist; or

(B) any agency or subdivision of the state, including school districts;

(vi) a loan made by a candidate deposited to the candidate's own campaign; and

(vii) in-kind contributions.

(b) "Contribution" does not include:

(i) services provided by individuals volunteering a portion or all of their time on behalf of the filing entity if the services are provided without compensation by the filing entity or any other person;

(ii) money lent to the filing entity by a financial institution in the ordinary course of business; or

(iii) goods or services provided for the benefit of a candidate or political party at less than fair market value that are not authorized by or coordinated with the candidate or political party.

(7) "Coordinated with" means that goods or services provided for the benefit of a candidate or political party are provided:

(a) with the candidate's or political party's prior knowledge, if the candidate or political party does not object;

(b) by agreement with the candidate or political party;

(c) in coordination with the candidate or political party; or

(d) using official logos, slogans, and similar elements belonging to a candidate or political party.

(8) (a) "Corporation" means a domestic or foreign, profit or nonprofit, business organization that is

registered as a corporation or is authorized to do business in a state and makes any expenditure from corporate funds for:

(i) the purpose of expressly advocating for political purposes; or

(ii) the purpose of expressly advocating the approval or the defeat of any ballot proposition.

(b) "Corporation" does not mean:

(i) a business organization's political action committee or political issues committee; or

(ii) a business entity organized as a partnership or a sole proprietorship.

(9) "County political party" means, for each registered political party, all of the persons within a single county who, under definitions established by the political party, are members of the registered political party.

(10) "County political party officer" means a person whose name is required to be submitted by a county political party to the lieutenant governor in accordance with Section 20A-8-402.

(11) "Detailed listing" means:

(a) for each contribution or public service assistance:

(i) the name and address of the individual or source making the contribution or public service assistance, except to the extent that the name or address of the individual or source is unknown;

(ii) the amount or value of the contribution or public service assistance; and

(iii) the date the contribution or public service assistance was made; and

(b) for each expenditure:

(i) the amount of the expenditure;

(ii) the person or entity to whom it was disbursed;

(iii) the specific purpose, item, or service acquired by the expenditure; and

(iv) the date the expenditure was made.

(12) (a) "Donor" means a person that gives money, including a fee, due, or assessment for membership in the corporation, to a corporation without receiving full and adequate consideration for the money.

(b) "Donor" does not include a person that signs a statement that the corporation may not use the money for an expenditure or political issues expenditure.

(13) "Election" means each:

(a) regular general election;

(b) regular primary election; and

(c) special election at which candidates are eliminated and selected.

(14) "Electioneering communication" means a communication that:

(a) has at least a value of \$10,000;

(b) clearly identifies a candidate or judge; and

(c) is disseminated through the Internet, newspaper, magazine, outdoor advertising facility, direct mailing, broadcast, cable, or satellite provider within 45 days of the clearly identified candidate's or judge's election date.

(15) (a) "Expenditure" means any of the following made by a reporting entity or an agent of a reporting entity on behalf of the reporting entity:

(i) any disbursement from contributions, receipts, or from the separate bank account required by this chapter;

(ii) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value made for political purposes;

(iii) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value for political purposes;

(iv) compensation paid by a filing entity for personal services rendered by a person without charge to a reporting entity;

(v) a transfer of funds between the filing entity and a candidate's personal campaign committee; or

(vi) goods or services provided by the filing entity to or for the benefit of another reporting entity for political purposes at less than fair market value.

(b) "Expenditure" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a reporting entity;

(ii) money lent to a reporting entity by a financial institution in the ordinary course of business; or

(iii) anything listed in Subsection (15)(a) that is given by a reporting entity to candidates for office or officeholders in states other than Utah.

(16) "Federal office" means the office of president of the United States, United States Senator, or United States Representative.

(17) "Filing entity" means the reporting entity that is required to file a financial statement required by this chapter or Chapter 12, Part 2, Judicial Retention Elections.

(18) "Financial statement" includes any summary report, interim report, verified financial statement, or other statement disclosing contributions, expenditures, receipts, donations, or disbursements that is required by this chapter or Chapter 12, Part 2, Judicial Retention Elections.

(19) "Governing board" means the individual or group of individuals that determine the candidates and committees that will receive expenditures from a political action committee, political party, or corporation.

(20) "Incorporation" means the process established by Title 10, Chapter 2a, Municipal Incorporation, by which a geographical area becomes legally recognized as a city, town, or metro township.

(21) "Incorporation election" means the election authorized by Section 10-2a-210, 10-2a-304, or 10-2a-404.

(22) "Incorporation petition" means a petition authorized by Section 10-2a-208 [øf], 10-2a-302, or 10-2a-302.5.

(23) "Individual" means a natural person.

(24) "In-kind contribution" means anything of value, other than money, that is accepted by or coordinated with a filing entity.

(25) "Interim report" means a report identifying the contributions received and expenditures made since the last report.

(26) "Legislative office" means the office of state senator, state representative, speaker of the House of Representatives, president of the Senate, and the leader, whip, and assistant whip of any party caucus in either house of the Legislature.

(27) "Legislative office candidate" means a person who:

(a) files a declaration of candidacy for the office of state senator or state representative;

(b) declares oneself to be a candidate for, or actively campaigns for, the position of speaker of the House of Representatives, president of the Senate, or the leader, whip, and assistant whip of any party caucus in either house of the Legislature; or

(c) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination, election, or appointment to a legislative office.

(28) "Major political party" means either of the two registered political parties that have the greatest number of members elected to the two houses of the Legislature.

(29) "Officeholder" means a person who holds a public office.

(30) "Party committee" means any committee organized by or authorized by the governing board of a registered political party.

(31) "Person" means both natural and legal persons, including individuals, business organizations, personal campaign committees, party committees, political action committees, political issues committees, and labor organizations, as defined in Section 20A-11-1501.

(32) "Personal campaign committee" means the committee appointed by a candidate to act for the candidate as provided in this chapter.

(33) "Personal use expenditure" has the same meaning as provided under Section 20A-11-104.

(34) (a) "Political action committee" means an entity, or any group of individuals or entities within or outside this state, a major purpose of which is to:

(i) solicit or receive contributions from any other person, group, or entity for political purposes; or

(ii) make expenditures to expressly advocate for any person to refrain from voting or to vote for or against any candidate or person seeking election to a municipal or county office.

(b) "Political action committee" includes groups affiliated with a registered political party but not authorized or organized by the governing board of the registered political party that receive contributions or makes expenditures for political purposes.

(c) "Political action committee" does not mean:

(i) a party committee;

(ii) any entity that provides goods or services to a candidate or committee in the regular course of its business at the same price that would be provided to the general public;

(iii) an individual;

(iv) individuals who are related and who make contributions from a joint checking account;

(v) a corporation, except a corporation a major purpose of which is to act as a political action committee; or

(vi) a personal campaign committee.

(35) (a) "Political consultant" means a person who is paid by a reporting entity, or paid by another person on behalf of and with the knowledge of the reporting entity, to provide political advice to the reporting entity.

(b) "Political consultant" includes a circumstance described in Subsection (35)(a), where the person:

(i) has already been paid, with money or other consideration;

(ii) expects to be paid in the future, with money or other consideration; or

(iii) understands that the person may, in the discretion of the reporting entity or another person on behalf of and with the knowledge of the reporting entity, be paid in the future, with money or other consideration.

(36) "Political convention" means a county or state political convention held by a registered political party to select candidates.

(37) (a) "Political issues committee" means an entity, or any group of individuals or entities within or outside this state, a major purpose of which is to:

(i) solicit or receive donations from any other person, group, or entity to assist in placing a ballot proposition on the ballot, assist in keeping a ballot proposition off the ballot, or to advocate that a voter refrain from voting or vote for or vote against any ballot proposition;

(ii) make expenditures to expressly advocate for any person to sign or refuse to sign a ballot

proposition or incorporation petition or refrain from voting, vote for, or vote against any proposed ballot proposition or an incorporation in an incorporation election; or

(iii) make expenditures to assist in qualifying or placing a ballot proposition on the ballot or to assist in keeping a ballot proposition off the ballot.

(b) "Political issues committee" does not mean:

(i) a registered political party or a party committee;

(ii) any entity that provides goods or services to an individual or committee in the regular course of its business at the same price that would be provided to the general public;

(iii) an individual;

(iv) individuals who are related and who make contributions from a joint checking account;

(v) a corporation, except a corporation a major purpose of which is to act as a political issues committee; or

(vi) a group of individuals who:

(A) associate together for the purpose of challenging or supporting a single ballot proposition, ordinance, or other governmental action by a county, city, town, local district, special service district, or other local political subdivision of the state;

(B) have a common liberty, property, or financial interest that is directly impacted by the ballot proposition, ordinance, or other governmental action;

(C) do not associate together, for the purpose described in Subsection (37)(b)(vi)(A), via a legal entity;

(D) do not receive funds for challenging or supporting the ballot proposition, ordinance, or other governmental action from a person other than an individual in the group; and

(E) do not expend a total of more than \$5,000 for the purpose described in Subsection (37)(b)(vi)(A).

(38) (a) "Political issues contribution" means any of the following:

(i) a gift, subscription, unpaid or partially unpaid loan, advance, or deposit of money or anything of value given to a political issues committee;

(ii) an express, legally enforceable contract, promise, or agreement to make a political issues donation to influence the approval or defeat of any ballot proposition;

(iii) any transfer of funds received by a political issues committee from a reporting entity;

(iv) compensation paid by another reporting entity for personal services rendered without charge to a political issues committee; and

(v) goods or services provided to or for the benefit of a political issues committee at less than fair market value.

(b) "Political issues contribution" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political issues committee; or

(ii) money lent to a political issues committee by a financial institution in the ordinary course of business.

(39) (a) "Political issues expenditure" means any of the following when made by a political issues committee or on behalf of a political issues committee by an agent of the reporting entity:

(i) any payment from political issues contributions made for the purpose of influencing the approval or the defeat of:

(A) a ballot proposition; or

(B) an incorporation petition or incorporation election;

(ii) a purchase, payment, distribution, loan, advance, deposit, or gift of money made for the express purpose of influencing the approval or the defeat of:

(A) a ballot proposition; or

(B) an incorporation petition or incorporation election;

(iii) an express, legally enforceable contract, promise, or agreement to make any political issues expenditure;

(iv) compensation paid by a reporting entity for personal services rendered by a person without charge to a political issues committee; or

(v) goods or services provided to or for the benefit of another reporting entity at less than fair market value.

(b) "Political issues expenditure" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political issues committee; or

(ii) money lent to a political issues committee by a financial institution in the ordinary course of business.

(40) "Political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any:

(a) candidate or a person seeking a municipal or county office at any caucus, political convention, or election; or

(b) judge standing for retention at any election.

(41) (a) "Poll" means the survey of a person regarding the person's opinion or knowledge of an individual who has filed a declaration of candidacy

for public office, or of a ballot proposition that has legally qualified for placement on the ballot, which is conducted in person or by telephone, facsimile, Internet, postal mail, or email.

(b) "Poll" does not include:

(i) a ballot; or

(ii) an interview of a focus group that is conducted, in person, by one individual, if:

(A) the focus group consists of more than three, and less than thirteen, individuals; and

(B) all individuals in the focus group are present during the interview.

(42) "Primary election" means any regular primary election held under the election laws.

(43) "Publicly identified class of individuals" means a group of 50 or more individuals sharing a common occupation, interest, or association that contribute to a political action committee or political issues committee and whose names can be obtained by contacting the political action committee or political issues committee upon whose financial statement the individuals are listed.

(44) "Public office" means the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, state school board member, state senator, state representative, speaker of the House of Representatives, president of the Senate, and the leader, whip, and assistant whip of any party caucus in either house of the Legislature.

(45) (a) "Public service assistance" means the following when given or provided to an officeholder to defray the costs of functioning in a public office or aid the officeholder to communicate with the officeholder's constituents:

(i) a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to an officeholder; or

(ii) goods or services provided at less than fair market value to or for the benefit of the officeholder.

(b) "Public service assistance" does not include:

(i) anything provided by the state;

(ii) services provided without compensation by individuals volunteering a portion or all of their time on behalf of an officeholder;

(iii) money lent to an officeholder by a financial institution in the ordinary course of business;

(iv) news coverage or any publication by the news media; or

(v) any article, story, or other coverage as part of any regular publication of any organization unless substantially all the publication is devoted to information about the officeholder.

(46) "Receipts" means contributions and public service assistance.

(47) "Registered lobbyist" means a person registered under Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act.

(48) "Registered political action committee" means any political action committee that is required by this chapter to file a statement of organization with the Office of the Lieutenant Governor.

(49) "Registered political issues committee" means any political issues committee that is required by this chapter to file a statement of organization with the Office of the Lieutenant Governor.

(50) "Registered political party" means an organization of voters that:

(a) participated in the last regular general election and polled a total vote equal to 2% or more of the total votes cast for all candidates for the United States House of Representatives for any of its candidates for any office; or

(b) has complied with the petition and organizing procedures of Chapter 8, Political Party Formation and Procedures.

(51) (a) "Remuneration" means a payment:

(i) made to a legislator for the period the Legislature is in session; and

(ii) that is approximately equivalent to an amount a legislator would have earned during the period the Legislature is in session in the legislator's ordinary course of business.

(b) "Remuneration" does not mean anything of economic value given to a legislator by:

(i) the legislator's primary employer in the ordinary course of business; or

(ii) a person or entity in the ordinary course of business:

(A) because of the legislator's ownership interest in the entity; or

(B) for services rendered by the legislator on behalf of the person or entity.

(52) "Reporting entity" means a candidate, a candidate's personal campaign committee, a judge, a judge's personal campaign committee, an officeholder, a party committee, a political action committee, a political issues committee, a corporation, or a labor organization, as defined in Section 20A-11-1501.

(53) "School board office" means the office of state school board.

(54) (a) "Source" means the person or entity that is the legal owner of the tangible or intangible asset that comprises the contribution.

(b) "Source" means, for political action committees and corporations, the political action committee and the corporation as entities, not the contributors to the political action committee or the owners or shareholders of the corporation.

(55) "State office" means the offices of governor, lieutenant governor, attorney general, state auditor, and state treasurer.

(56) "State office candidate" means a person who:

(a) files a declaration of candidacy for a state office; or

(b) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination, election, or appointment to a state office.

(57) "Summary report" means the year end report containing the summary of a reporting entity's contributions and expenditures.

(58) "Supervisory board" means the individual or group of individuals that allocate expenditures from a political issues committee.

Section 8. Section 63I-2-210 is amended to read:

63I-2-210. Repeal dates -- Title 10.

(1) Subsection 10-2a-106(2), the language that states "including a township incorporation procedure as defined in Section 10-2a-105," is repealed July 1, 2016.

(2) On July 1, 2018, the following are repealed:

(a) in Subsection 10-2-403(5), the language that states "10-2a-302 or";

(b) in Subsection 10-2-403(5)(b), the language that states "10-2a-302 or";

(c) in Subsection 10-2a-106(2), the language that states "10-2a-302 or";

(d) Section 10-2a-302;

(e) Subsection 10-2a-302.5(2)(a);

(f) in Subsection 10-2a-303(1), the language that states "10-2a-302 or";

(g) in Subsection 10-2a-303(4), the language that states "10-2a-302(7)(b)(v) or" and "10-2a-302(7)(b)(iv) or";

(h) in Subsection 10-2a-304(1)(a), the language that states "10-2a-302 or"; and

(i) in Subsection 10-2a-304(1)(a)(ii), the language that states "Subsection 10-2a-302(5) or".

~~[(2)]~~ (3) Subsection 10-2a-410(3)(d)(ii) is repealed January 1, 2017.

~~[(3)]~~ (4) Section 10-2a-105 is repealed July 1, 2016.

~~[(4)]~~ (5) Subsection 10-9a-304(2) is repealed June 1, 2016.

Section 9. Section 63I-2-220 is amended to read:

63I-2-220. Repeal dates, Title 20A.

~~[On January 1, 2017:]~~

~~[(1) in Subsection 20A-1-102(71), the language that states "State Board of Education and" is repealed;]~~

~~[(2) in Subsection 20A-9-201(4)(a), the language that states "and State Board of Education candidates" is repealed;]~~

~~[(3) Subsection 20A-9-201(9) is repealed;]~~

~~[(4) in Subsection 20A-9-403(4)(c), the language that states "State Board of Education and" is repealed;]~~

~~[(5) in Subsection 20A-9-403(5)(a), the language that states "State Board of Education or" is repealed; and]~~

~~[(6) Section 20A-14-104 is repealed.]~~

On July 1, 2018, in Subsection 20A-11-101(21), the language that states "10-2a-302," is repealed.

CHAPTER 453**H. B. 429**

Passed March 9, 2017

Approved March 28, 2017

Effective March 28, 2017

COUNTY FUND AMENDMENTS

Chief Sponsor: Lynn N. Hemingway

Senate Sponsor: Gene Davis

Cosponsors: Patrice M. Arent

Rebecca Chavez-Houck

Sandra Hollins

Brian S. King

Karen Kwan

Carol Spackman Moss

Marie H. Poulson

Angela Romero

Elizabeth Weight

Mark A. Wheatley

LONG TITLE**General Description:**

This bill amends provisions related to a remaining balance in certain special funds.

Highlighted Provisions:

This bill:

- ▶ allows a certain county to use a remaining balance in certain special funds to benefit the area from which the county derived the special fund; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

17-36-29, as last amended by Laws of Utah 2014, Chapter 176

63G-7-704, as last amended by Laws of Utah 2016, Chapter 386

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

Section 1. Section 17-36-29 is amended to read:**17-36-29. Special fund ceases -- Transfer.**

(1) (a) ~~Except as provided in Subsection (1)(b), if a county legislative body determines that the purpose no longer exists for which the legislative body created a special fund [was created no longer exists and a balance remains in the fund, the governing body shall] or any portion of the special fund, the legislative body may authorize the transfer of the remaining balance or a portion of the remaining balance to the fund balance account in the county general fund.~~

(b) ~~The legislative body may redistribute the remaining balance or a portion of the remaining balance described in Subsection (1)(a) in accordance with Subsection (1)(c) if:~~

(i) ~~the county levied the fund primarily on property in the unincorporated areas of the county;~~

(ii) ~~the county established a municipal services fund to provide municipal services under Sections 17-34-1 and 17-36-9; and~~

(iii) ~~the area from which the county levied the fund has since incorporated as a city, town, or metro township.~~

(c) ~~The legislative body of a county described in Subsection (1)(b) may set aside the remaining balance or a portion of the remaining balance described in Subsection (1)(a) in a fund from which the county may make disbursements to support and benefit the area and the residents in the area from which the county originally derived the special fund.~~

(2) Any balance which remains in a special assessment fund and any unrequired balance in a special improvement guaranty fund shall be treated as provided in Subsection 11-42-701(5).

(3) Any balance which remains in a capital projects fund shall be transferred to the appropriate debt service fund or such other fund as the bond ordinance requires or to the county general fund balance account.

Section 2. Section 63G-7-704 is amended to read:**63G-7-704. Tax levy by political subdivisions for payment of claims, judgments, or insurance premiums.**

(1) Notwithstanding any provision of law to the contrary, a political subdivision may levy an annual property tax sufficient to pay:

(a) any claim, settlement, or judgment, including interest payments and issuance costs for bonds issued under Subsection 11-14-103(1)(d) to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000;

(b) the costs to defend against any claim, settlement, or judgment; or

(c) for the establishment and maintenance of a reserve fund for the payment of claims, settlements, or judgments that may be reasonably anticipated.

(2) (a) The payments authorized to pay for punitive damages or to pay the premium for authorized insurance is money spent for a public purpose within the meaning of this section and Utah Constitution, Article XIII, Sec. 5, ~~[Utah Constitution,]~~ even though, as a result of the levy, the maximum levy as otherwise restricted by law is exceeded.

(b) (i) Except as provided in Subsection (2)(b)(ii), a levy under this section may not exceed .0001 per dollar of taxable value of taxable property.

(ii) A levy under Subsection (1)(a) to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000 may not exceed .001 per dollar of taxable value of taxable property.

(c) ~~[The] Except as provided in Subsection 17-36-29(1), the revenues derived from this levy may not be used for any purpose other than those specified in this section.~~

(3) Beginning January 1, 2012, a local school board may not levy a tax in accordance with this section.

(4) A political subdivision that levies an annual property tax under Subsection (1)(a) to pay the portion of any claim, settlement, or judgment that exceeds \$3,000,000:

(a) shall comply with the notice and public hearing requirements under Section 59-2-919; and

(b) may levy the annual property tax until the bonds' maturity dates expire.

Section 3. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 454**H. B. 433**

Passed March 9, 2017
 Approved March 28, 2017
 Effective May 9, 2017

**PENALTY FOR TARGETING
 LAW ENFORCEMENT OFFICER**

Chief Sponsor: Paul Ray
 Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill creates a specific penalty for targeting a law enforcement officer.

Highlighted Provisions:

This bill:

- ▶ defines “targeting a law enforcement officer”;
- ▶ adds targeting a law enforcement officer to the aggravating factors for aggravated murder; and
- ▶ makes aggravated assault a first degree felony if a law enforcement officer is targeted.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-5-103, as last amended by Laws of Utah 2015, Chapter 430
 76-5-202, as last amended by Laws of Utah 2013, Chapter 81

ENACTS:

76-5-210, Utah Code Annotated 1953

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

Section 1. Section 76-5-103 is amended to read:**76-5-103. Aggravated assault -- Penalties.**

- (1) Aggravated assault is an actor’s conduct:
- (a) that is:
- (i) an attempt, with unlawful force or violence, to do bodily injury to another;
- (ii) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or
- (iii) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another; and
- (b) that includes the use of:
- (i) a dangerous weapon as defined in Section 76-1-601; or
- (ii) other means or force likely to produce death or serious bodily injury.
- (2) (a) A violation of Subsection (1) is a third degree felony, except under Subsection (2)(b).

(b) A violation of Subsection (1) that results in serious bodily injury is a second degree felony.

(c) Aggravated assault that is a violation of Section 76-5-210, Targeting a law enforcement officer, and results in serious bodily injury is a first degree felony.

Section 2. Section 76-5-202 is amended to read:**76-5-202. Aggravated murder.**

(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

- (a) the homicide was committed by a person who is confined in a jail or other correctional institution;
- (b) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;
- (c) the actor knowingly created a great risk of death to a person other than the victim and the actor;
- (d) the homicide was committed incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

(e) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as defined in Subsection 76-9-704(2)(e);

(f) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant’s or another’s escape from lawful custody;

(g) the homicide was committed for pecuniary gain;

(h) the defendant committed, or engaged or employed another person to commit the homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;

(i) the actor previously committed or was convicted of:

- (i) aggravated murder under this section;
- (ii) attempted aggravated murder under this section;
- (iii) murder, Section 76-5-203;

- (iv) attempted murder, Section 76-5-203; or
- (v) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(i);
- (j) the actor was previously convicted of:
- (i) aggravated assault, Subsection 76-5-103(2);
- (ii) mayhem, Section 76-5-105;
- (iii) kidnapping, Section 76-5-301;
- (iv) child kidnapping, Section 76-5-301.1;
- (v) aggravated kidnapping, Section 76-5-302;
- (vi) rape, Section 76-5-402;
- (vii) rape of a child, Section 76-5-402.1;
- (viii) object rape, Section 76-5-402.2;
- (ix) object rape of a child, Section 76-5-402.3;
- (x) forcible sodomy, Section 76-5-403;
- (xi) sodomy on a child, Section 76-5-403.1;
- (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- (xiii) aggravated sexual assault, Section 76-5-405;
- (xiv) aggravated arson, Section 76-6-103;
- (xv) aggravated burglary, Section 76-6-203;
- (xvi) aggravated robbery, Section 76-6-302;
- (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- (xviii) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(j);
- (k) the homicide was committed for the purpose of:
- (i) preventing a witness from testifying;
- (ii) preventing a person from providing evidence or participating in any legal proceedings or official investigation;
- (iii) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or
- (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- (l) the victim is or has been a local, state, or federal public official, or a candidate for public office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;
- (m) the victim is or has been a peace officer, law enforcement officer, executive officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation officer, or parole officer, and the victim is either on duty or the

homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position;

(n) the homicide was committed:

(i) by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered; ~~or~~

(ii) by means of any weapon of mass destruction as defined in Section 76-10-401; or

(iii) to target a law enforcement officer as defined in Section 76-5-210;

(o) the homicide was committed during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force with intent to obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard, or to direct the route or movement of the public conveyance or otherwise exert control over the public conveyance;

(p) the homicide was committed by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

(q) the victim was a person held or otherwise detained as a shield, hostage, or for ransom;

(r) the homicide was committed in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death;

(s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or after death, in a manner demonstrating the actor's depravity of mind; or

(t) the victim, at the time of the death of the victim:

(i) was younger than 14 years of age; and

(ii) was not an unborn child.

(2) Criminal homicide constitutes aggravated murder if the actor, with reckless indifference to human life, causes the death of another incident to an act, scheme, course of conduct, or criminal episode during which the actor is a major participant in the commission or attempted commission of:

(a) child abuse, Subsection 76-5-109(2)(a);

(b) child kidnapping, Section 76-5-301.1;

(c) rape of a child, Section 76-5-402.1;

(d) object rape of a child, Section 76-5-402.3;

(e) sodomy on a child, Section 76-5-403.1; or

(f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

(3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder is a capital felony.

(b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty. The notice shall be served on the defendant or defense counsel and filed with the court.

(ii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the arraignment upon written stipulation of the parties or upon a finding by the court of good cause.

(d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first degree felony aggravated murder during the period in which the prosecutor may file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

(e) If the defendant was younger than 18 years of age at the time the offense was committed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(4) (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the defendant caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(c) This affirmative defense reduces charges only as follows:

(i) aggravated murder to murder; and

(ii) attempted aggravated murder to attempted murder.

(5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense does not merge with the crime of aggravated murder.

(b) A person who is convicted of aggravated murder, based on an aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Section 3. Section 76-5-210 is enacted to read:

76-5-210. Targeting a law enforcement officer defined.

“Targeting a law enforcement officer” means the commission of any offense involving the unlawful use of force and violence against a law enforcement officer, causing serious bodily injury or death in furtherance of political or social objectives in order to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government.

CHAPTER 455**H. B. 442**

Passed March 8, 2017

Approved March 28, 2017

Effective May 9, 2017

(Exception clause in Section 75)

ALCOHOL AMENDMENTS

Chief Sponsor: Brad R. Wilson

Senate Sponsor: Jerry W. Stevenson

LONG TITLE**General Description:**

This bill modifies provisions related to the regulation of alcoholic beverages.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the name of certain retail licenses;
- ▶ provides that a local authority may issue a business license to a retail licensee only if the licensee is lawfully present in the United States;
- ▶ provides that a licensee or permittee may only engage in behavior expressly allowed by Title 32B, Alcoholic Beverage Control Act, or local ordinance;
- ▶ requires the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Commission to implement and enforce the provisions of Title 32B, Alcoholic Beverage Control Act, in accordance with its express language and stated policy purpose;
- ▶ reduces the permissible proximity of a restaurant licensee to a community location;
- ▶ removes the commission's authority to grant a variance to the proximity requirements;
- ▶ modifies the calculation of the money from the sale of a bottle or individual portion of wine by a retail licensee or sublicensee in determining the percentage of gross receipts from the sale of food or an alcoholic product;
- ▶ requires electronic age verification of certain individuals who procure an alcoholic product in a dispensing area in a restaurant;
- ▶ modifies the application requirements for approval of the label and packaging of a malted beverage;
- ▶ modifies the labeling and packaging requirements for certain malted beverages;
- ▶ reduces and modifies the membership of the Alcoholic Beverage Control Advisory Board;
- ▶ provides that every three years the Legislature's general counsel shall:
 - conduct a review of each rule made by the commission for compliance with current statute; and
 - prepare and submit a report to the president of the Senate and the speaker of the House of Representatives;
- ▶ upon prioritization by the Audit Subcommittee, provides that the Office of the Legislative Auditor General may:
 - review a current practice of the commission or department for compliance with current statute; and

- prepare and submit a report to the Audit Subcommittee;
- ▶ increases the markup on alcoholic beverages;
- ▶ requires a presiding officer to consider any aggravating circumstances or mitigating circumstances when imposing a fine;
- ▶ provides that each retail licensee shall submit a responsible alcohol service plan to the department upon application for or renewal of a retail license;
- ▶ prohibits more than one type of retail license for the same room, unless the licenses are a combination of two or more of the following:
 - a restaurant license;
 - an on-premise beer retailer license that is not a tavern; and
 - an on-premise banquet license or reception center license;
- ▶ states that a retail licensee may provide wine service for a bottled wine carried onto the licensed premises or purchased at the licensed premises;
- ▶ requires the department to develop the following training programs:
 - a training program for retail managers;
 - a training program for off-premise retail managers; and
 - a training program for an individual who commits a violation related to service to an intoxicated individual or a minor;
- ▶ enacts a process for the Department of Public Safety to track violations of each retail licensee involving the sale of an alcoholic product to a minor;
- ▶ establishes a flat renewal fee for a full-service restaurant licensee;
- ▶ provides that beginning on July 1, 2017, and no later than July 1, 2018, a restaurant licensee that does not have a grandfathered bar structure shall designate a dispensing area within which:
 - the restaurant licensee may store and dispense alcoholic product at a dispensing structure;
 - an individual 21 years of age or older may consume food and beverages; and
 - except under certain circumstances, a minor may not be present;
- ▶ removes grandfathered bar structures beginning on July 1, 2022;
- ▶ extends the hours during which a restaurant licensee may sell, offer for sale, or furnish an alcoholic product on a weekend or a state or federal legal holiday;
- ▶ provides that a restaurant licensee may sell, offer for sale, or furnish an alcoholic product to a patron only if:
 - the patron is seated in a dispensing area and furnished no more than one portion or an alcoholic product while waiting for a seat in the dining area where the patron intends to order and consume food; or
 - the patron is seated at a table, counter, or dispensing structure, and the patron intends to order and consume food in the same location where the patron is seated;
- ▶ provides that a restaurant licensee may not transfer, dispense, or serve an alcoholic product from a movable cart;

- ▶ addresses the retention of certain records for restaurant licensees;
- ▶ requires a restaurant licensee or a bar licensee to display a sign that states whether the licensee is a restaurant or a bar;
- ▶ prohibits the commission from issuing or renewing a dining club license on or after July 1, 2017;
- ▶ provides that effective July 1, 2018, each dining club licensee converts to a full-service restaurant licensee or a bar licensee;
- ▶ provides a phased transition for a dining club licensee that converts to a full-service restaurant licensee;
- ▶ beginning July 1, 2018, establishes an off-premise beer retailer state license, including an application process, fees, and renewal procedures;
- ▶ provides that an off-premise beer retailer shall display beer in no more than two locations that are separate from any nonalcoholic beverage;
- ▶ addresses notification to the department if an off-premise beer retailer changes ownership;
- ▶ modifies and repeals certain provisions related to local authority enforcement of off-premise beer retailers to correspond with the state enforcement mechanisms available under the off-premise beer retailer state license;
- ▶ creates the Underage Drinking Prevention Program that consists of a school-based prevention presentation for students in grade 8 and grade 10;
- ▶ requires each local education agency to offer the Underage Drinking Prevention Program each school year to each student in grade 8 and grade 10;
- ▶ creates the Underage Drinking Prevention Program Advisory Council to provide input to the State Board of Education in administering the Underage Drinking Prevention Program;
- ▶ provides that the State Board of Education shall qualify one or more providers to provide the Underage Drinking Prevention Program;
- ▶ creates the Underage Drinking Prevention Program Restricted Account, funded by:
 - money from the markup on alcoholic beverages;
 - appropriations made by the Legislature; and
 - interest earned on money in the account;
- ▶ provides that the State Board of Education may use money in the Underage Drinking Prevention Program Restricted Account for the Underage Drinking Prevention Program; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 11-10-1, as last amended by Laws of Utah 2010, Chapter 276
- 11-10-2, as last amended by Laws of Utah 1990, Chapter 23
- 26-38-2, as last amended by Laws of Utah 2012, Chapter 171

- 32B-1-102, as last amended by Laws of Utah 2016, Chapters 80, 176, and 348
- 32B-1-104, as enacted by Laws of Utah 2010, Chapter 276
- 32B-1-201, as last amended by Laws of Utah 2013, Chapter 349
- 32B-1-202, as last amended by Laws of Utah 2016, Chapter 176
- 32B-1-207, as enacted by Laws of Utah 2011, Chapter 334
- 32B-1-305, as last amended by Laws of Utah 2015, Chapter 351
- 32B-1-407, as last amended by Laws of Utah 2011, Chapters 297 and 334
- 32B-1-505, as last amended by Laws of Utah 2011, Chapter 297
- 32B-1-604, as enacted by Laws of Utah 2010, Chapter 276
- 32B-1-605, as last amended by Laws of Utah 2011, Chapters 307 and 334
- 32B-1-606, as enacted by Laws of Utah 2010, Chapter 276
- 32B-2-202, as last amended by Laws of Utah 2016, Chapter 80
- 32B-2-210, as last amended by Laws of Utah 2016, Chapter 158
- 32B-2-304, as last amended by Laws of Utah 2012, Chapter 357
- 32B-3-102, as enacted by Laws of Utah 2010, Chapter 276
- 32B-3-205, as enacted by Laws of Utah 2010, Chapter 276
- 32B-4-410, as last amended by Laws of Utah 2015, Chapter 165
- 32B-4-415, as last amended by Laws of Utah 2016, Chapters 80, 245, and 348
- 32B-4-501, as last amended by Laws of Utah 2016, Chapter 80
- 32B-5-201, as enacted by Laws of Utah 2010, Chapter 276
- 32B-5-202, as enacted by Laws of Utah 2010, Chapter 276
- 32B-5-307, as last amended by Laws of Utah 2016, Chapter 82
- 32B-5-402, as enacted by Laws of Utah 2010, Chapter 276
- 32B-5-403, as last amended by Laws of Utah 2016, Chapter 176
- 32B-5-404, as enacted by Laws of Utah 2010, Chapter 276
- 32B-6-202, as last amended by Laws of Utah 2011, Chapter 334
- 32B-6-204, as last amended by Laws of Utah 2012, Fourth Special Session, Chapter 1
- 32B-6-205, as last amended by Laws of Utah 2013, Chapter 353
- 32B-6-302, as last amended by Laws of Utah 2011, Chapter 334
- 32B-6-305, as last amended by Laws of Utah 2013, Chapter 353
- 32B-6-401, as enacted by Laws of Utah 2010, Chapter 276
- 32B-6-403, as last amended by Laws of Utah 2016, Chapter 80
- 32B-6-404, as last amended by Laws of Utah 2016, Chapter 348

32B-6-405, as last amended by Laws of Utah 2011, Chapters 307 and 334
 32B-6-406, as last amended by Laws of Utah 2011, Chapter 334
 32B-6-406.1, as enacted by Laws of Utah 2010, Chapter 276
 32B-6-407, as last amended by Laws of Utah 2013, Chapter 349
 32B-6-408, as enacted by Laws of Utah 2010, Chapter 276
 32B-6-703, as last amended by Laws of Utah 2016, Chapter 82
 32B-6-706, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
 32B-6-902, as last amended by Laws of Utah 2011, Second Special Session, Chapter 2
 32B-6-905, as last amended by Laws of Utah 2013, Chapter 353
 32B-7-202, as last amended by Laws of Utah 2011, Chapter 307
 32B-7-305, as enacted by Laws of Utah 2010, Chapter 276 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 276
 32B-8-102, as last amended by Laws of Utah 2015, Chapter 258
 32B-8-304, as last amended by Laws of Utah 2011, Chapters 297 and 334
 32B-8a-302, as last amended by Laws of Utah 2016, Chapter 82
 32B-8b-102, as enacted by Laws of Utah 2016, Chapter 80
 32B-8b-201, as enacted by Laws of Utah 2016, Chapter 80
 53-10-305, as last amended by Laws of Utah 2010, Chapter 276
 62A-15-401, as last amended by Laws of Utah 2011, Chapter 334
 63I-2-232, as renumbered and amended by Laws of Utah 2008, Chapter 382

ENACTS:

32B-2-211, Utah Code Annotated 1953
 32B-5-207, Utah Code Annotated 1953
 32B-5-405, Utah Code Annotated 1953
 32B-5-406, Utah Code Annotated 1953
 32B-6-205.2, Utah Code Annotated 1953
 32B-6-205.3, Utah Code Annotated 1953
 32B-6-305.2, Utah Code Annotated 1953
 32B-6-305.3, Utah Code Annotated 1953
 32B-6-404.1, Utah Code Annotated 1953
 32B-6-905.1, Utah Code Annotated 1953
 32B-6-905.2, Utah Code Annotated 1953
 32B-7-401, Utah Code Annotated 1953
 32B-7-402, Utah Code Annotated 1953
 32B-7-403, Utah Code Annotated 1953
 32B-7-404, Utah Code Annotated 1953
 32B-7-405, Utah Code Annotated 1953
 53A-13-113, Utah Code Annotated 1953
 53A-13-114, Utah Code Annotated 1953

REPEALS:

32B-6-205.1, as enacted by Laws of Utah 2010, Chapter 276
 32B-6-305.1, as enacted by Laws of Utah 2010, Chapter 276

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

Section 1. Section 11-10-1 is amended to read:**11-10-1. Business license required -- Authorization for issuance, denial, suspension, or revocation by local authority.**

(1) As used in this chapter, the following have the meaning set forth in Section 32B-1-102:

- (a) "alcoholic product";
- (b) "[~~club~~] bar establishment license";
- (c) "local authority"; and
- (d) "restaurant."

(2) A person may not operate an association, a restaurant, a bar, or a business similar to a business operated under a [~~club~~] bar establishment license, or other similar business that allows a person to possess or consume an alcoholic product on the premises of the association, restaurant, [~~club~~] bar, or similar business premises without a business license.

(3) (a) A local authority may issue a business license to a person who owns or operates an association, restaurant, [~~club~~] bar, or similar business that allows a person to hold, store, possess, or consume an alcoholic product on the premises.

(b) A business license issued under this Subsection (3) does not permit a person to hold, store, possess, or consume an alcoholic product on the premises other than as provided in Title 32B, Alcoholic Beverage Control Act.

(4) A local authority may suspend or revoke a business license for a violation of Title 32B, Alcoholic Beverage Control Act.

(5) A local authority shall set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking a business license issued under this chapter.

(6) A business license issued under this section does not constitute written consent of the local authority within the meaning of Title 32B, Alcoholic Beverage Control Act.

Section 2. Section 11-10-2 is amended to read:**11-10-2. Qualifications of licensee.**

(1) A license may not be granted:

(a) unless the licensee is of good moral character, over the age of 21 years, and [~~a citizen of~~] lawfully present in the United States;

(b) to anyone who has been convicted of a felony or misdemeanor involving moral turpitude;

(c) to any partnership or association, any member of which lacks any of the qualifications set out in this section; or

(d) to any corporation, if any of its directors or officers lacks any qualification set out in this section.

(2) The local authority shall, before issuing licenses, satisfy itself by written evidence executed by the applicant that the applicant meets the standards set forth.

Section 3. Section 26-38-2 is amended to read:

26-38-2. Definitions.

As used in this chapter:

(1) "E-cigarette":

(a) means any electronic oral device:

(i) that provides a vapor of nicotine or other substance; and

(ii) which simulates smoking through its use or through inhalation of the device; and

(b) includes an oral device that is:

(i) composed of a heating element, battery, or electronic circuit; and

(ii) marketed, manufactured, distributed, or sold as:

(A) an e-cigarette;

(B) e-cigar;

(C) e-pipe; or

(D) any other product name or descriptor, if the function of the product meets the definition of Subsection (1)(a).

(2) "Place of public access" means any enclosed indoor place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the place of public access have general and regular access or which the public uses, including:

(a) buildings, offices, shops, elevators, or restrooms;

(b) means of transportation or common carrier waiting rooms;

(c) restaurants, cafes, or cafeterias;

(d) taverns as defined in Section 32B-1-102, or cabarets;

(e) shopping malls, retail stores, grocery stores, or arcades;

(f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas;

(g) barber shops, hair salons, or laundromats;

(h) sports or fitness facilities;

(i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any of these;

(j) (i) any child care facility or program subject to licensure or certification under this title, including those operated in private homes, when any child cared for under that license is present; and

(ii) any child care, other than child care as defined in Section 26-39-102, that is not subject to licensure or certification under this title, when any child cared for by the provider, other than the child of the provider, is present;

(k) public or private elementary or secondary school buildings and educational facilities or the property on which those facilities are located;

(l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families;

(m) any facility rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor;

(n) any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner-operators of the business;

(o) any area where the proprietor or manager of the area has posted a conspicuous sign stating "no smoking", "thank you for not smoking", or similar statement; and

(p) a holder of a ~~club~~ bar establishment license, as defined in Section 32B-1-102.

(3) "Publicly owned building or office" means any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county, or municipal taxes.

(4) "Smoking" means:

(a) the possession of any lighted or heated tobacco product in any form;

(b) inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine intended for inhalation through a cigar, cigarette, pipe, or hookah;

(c) except as provided in Section 26-38-2.6, using an e-cigarette; or

(d) using an oral smoking device intended to circumvent the prohibition of smoking in this chapter.

Section 4. Section 32B-1-102 is amended to read:

32B-1-102. Definitions.

As used in this title:

(1) "Airport lounge" means a business location:

(a) at which an alcoholic product is sold at retail for consumption on the premises; and

(b) that is located at an international airport with a United States Customs office on the premises of the international airport.

(2) “Airport lounge license” means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 5, Airport Lounge License.

(3) “Alcoholic beverage” means the following:

- (a) beer; or
- (b) liquor.

(4) (a) “Alcoholic product” means a product that:

(i) contains at least .5% of alcohol by volume; and

(ii) is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than .5% of alcohol by volume.

(b) “Alcoholic product” includes an alcoholic beverage.

(c) “Alcoholic product” does not include any of the following common items that otherwise come within the definition of an alcoholic product:

- (i) except as provided in Subsection (4)(d), an extract;
- (ii) vinegar;
- (iii) cider;
- (iv) essence;
- (v) tincture;
- (vi) food preparation; or
- (vii) an over-the-counter medicine.

(d) “Alcoholic product” includes an extract containing alcohol obtained by distillation when it is used as a flavoring in the manufacturing of an alcoholic product.

(5) “Alcohol training and education seminar” means a seminar that is:

(a) required by Chapter 5, Part 4, Alcohol Training and Education Act; and

(b) described in Section 62A-15-401.

(6) “Banquet” means an event:

(a) that is held at one or more designated locations approved by the commission in or on the premises of a:

- (i) hotel;
- (ii) resort facility;
- (iii) sports center; or
- (iv) convention center;

(b) for which there is a contract:

(i) between a person operating a facility listed in Subsection (6)(a) and another person; and

(ii) under which the person operating a facility listed in Subsection (6)(a) is required to provide an alcoholic product at the event; and

(c) at which food and alcoholic products may be sold, offered for sale, or furnished.

~~[(7) (a) “Bar” means a surface or structure:]~~

~~[(i) at which an alcoholic product is:]~~

~~[(A) stored; or]~~

~~[(B) dispensed; or]~~

~~[(ii) from which an alcoholic product is served.]~~

~~[(b) (7) “Bar structure” means a surface or structure on a licensed premises if on or at any place of the surface or structure an alcoholic product is:~~

~~[(i) (a) stored; or]~~

~~[(ii) (b) dispensed.]~~

~~[(18) (8) (a) “[Club] Bar establishment license” means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, [Club] Bar Establishment License.~~

~~(b) “[Club] Bar establishment license” includes:~~

- ~~(i) a dining club license;~~
- ~~(ii) an equity [club] license;~~
- ~~(iii) a fraternal [club] license; or~~
- ~~(iv) a [social club] bar license.~~

~~[(102) (9) “[Social club] Bar license” means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, [Club License, that is designated by the commission as a social club license] Bar Establishment License.~~

~~[(8) (10) (a) Subject to Subsection [(8) (10)(d), “beer” means a product that:~~

~~(i) contains at least .5% of alcohol by volume, but not more than 4% of alcohol by volume or 3.2% by weight; and~~

~~(ii) is obtained by fermentation, infusion, or decoction of malted grain.~~

~~(b) “Beer” may or may not contain hops or other vegetable products.~~

~~(c) “Beer” includes a product that:~~

~~(i) contains alcohol in the percentages described in Subsection [(8) (10)(a)]; and~~

~~(ii) is referred to as:~~

- ~~(A) beer;~~
- ~~(B) ale;~~
- ~~(C) porter;~~
- ~~(D) stout;~~
- ~~(E) lager; or~~
- ~~(F) a malt or malted beverage.~~

~~(d) “Beer” does not include a flavored malt beverage.~~

~~[(9) (11) “Beer-only restaurant license” means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 9, Beer-Only Restaurant License.~~

~~[(40)]~~ (12) “Beer retailer” means a business that:

(a) ~~[that]~~ is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the business premises; and

~~[(b) to whom a license is issued:]~~

(b) is licensed as:

(i) ~~[for]~~ an off-premise beer retailer, in accordance with Chapter 7, Part 2, Off-Premise Beer Retailer Local Authority; or

(ii) ~~[for]~~ an on-premise beer retailer, in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-Premise Beer Retailer License.

~~[(41)]~~ (13) “Beer wholesaling license” means a license:

(a) issued in accordance with Chapter 13, Beer Wholesaling License Act; and

(b) to import for sale, or sell beer in wholesale or jobbing quantities to one or more retail licensees or off-premise beer retailers.

~~[(42)]~~ (14) “Billboard” means a public display used to advertise, including:

- (a) a light device;
- (b) a painting;
- (c) a drawing;
- (d) a poster;
- (e) a sign;
- (f) a signboard; or
- (g) a scoreboard.

~~[(43)]~~ (15) “Brewer” means a person engaged in manufacturing:

- (a) beer;
- (b) heavy beer; or
- (c) a flavored malt beverage.

~~[(44)]~~ (16) “Brewery manufacturing license” means a license issued in accordance with Chapter 11, Part 5, Brewery Manufacturing License.

~~[(45)]~~ (17) “Certificate of approval” means a certificate of approval obtained from the department under Section 32B-11-201.

~~[(46)]~~ (18) “Chartered bus” means a passenger bus, coach, or other motor vehicle provided by a bus company to a group of persons pursuant to a common purpose:

- (a) under a single contract;
- (b) at a fixed charge in accordance with the bus company’s tariff; and
- (c) to give the group of persons the exclusive use of the passenger bus, coach, or other motor vehicle, and a driver to travel together to one or more specified destinations.

~~[(47)]~~ (19) “Church” means a building:

- (a) set apart for worship;
- (b) in which religious services are held;
- (c) with which clergy is associated; and
- (d) that is tax exempt under the laws of this state.

~~[(49)]~~ (20) “Commission” means the Alcoholic Beverage Control Commission created in Section 32B-2-201.

~~[(20)]~~ (21) “Commissioner” means a member of the commission.

~~[(21)]~~ (22) “Community location” means:

- (a) a public or private school;
- (b) a church;
- (c) a public library;
- (d) a public playground; or
- (e) a public park.

~~[(22)]~~ (23) “Community location governing authority” means:

(a) the governing body of the community location; or

(b) if the commission does not know who is the governing body of a community location, a person who appears to the commission to have been given on behalf of the community location the authority to prohibit an activity at the community location.

~~[(23)]~~ (24) “Container” means a receptacle that contains an alcoholic product, including:

- (a) a bottle;
- (b) a vessel; or
- (c) a similar item.

~~[(24)]~~ (25) “Convention center” means a facility that is:

- (a) in total at least 30,000 square feet; and
- (b) otherwise defined as a “convention center” by the commission by rule.

~~[(25)]~~ (26) (a) ~~[Subject to Subsection (25)(b), “counter”]~~ “Counter” means a surface or structure in a dining area of a licensed premises where seating is provided to a patron for service of food.

(b) “Counter” does not include ~~[a surface or structure if on or at any point of the surface or structure an alcoholic product is:]~~ a dispensing structure.

~~[(i) stored; or]~~

~~[(ii) dispensed.]~~

~~[(26)]~~ (27) “Department” means the Department of Alcoholic Beverage Control created in Section 32B-2-203.

~~[(27)]~~ (28) “Department compliance officer” means an individual who is:

- (a) an auditor or inspector; and
- (b) employed by the department.

~~[(28)]~~ (29) "Department sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling.

~~[(29)]~~ (30) "Dining club license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, ~~[Club]~~ Bar Establishment License, that is designated by the commission as a dining club license.

~~[(30)]~~ (31) "Director," unless the context requires otherwise, means the director of the department.

~~[(31)]~~ (32) "Disciplinary proceeding" means an adjudicative proceeding permitted under this title:

- (a) against a person subject to administrative action; and
- (b) that is brought on the basis of a violation of this title.

~~[(32)]~~ (33) (a) Subject to Subsection ~~[(32)]~~ (33)(b), "dispense" means:

- (i) drawing of an alcoholic product:
 - (A) from an area where it is stored; or
 - (B) as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii); and
- (ii) using the alcoholic product described in Subsection ~~[(32)]~~ (33)(a)(i) on the premises of the licensed premises to mix or prepare an alcoholic product to be furnished to a patron of the retail licensee.

(b) The definition of "dispense" in this Subsection ~~[(32)]~~ (33) applies only to:

- (i) a full-service restaurant license;
- (ii) a limited-service restaurant license;
- (iii) a reception center license; and
- (iv) a beer-only restaurant license.

(34) "Dispensing structure" means a surface or structure on a licensed premises:

- (a) where an alcoholic product is stored or dispensed; or
- (b) from which an alcoholic product is served.

~~[(33)]~~ (35) "Distillery manufacturing license" means a license issued in accordance with Chapter 11, Part 4, Distillery Manufacturing License.

~~[(34)]~~ (36) "Distressed merchandise" means an alcoholic product in the possession of the department that is saleable, but for some reason is unappealing to the public.

~~[(35)]~~ (37) "Educational facility" includes:

- (a) a nursery school;
- (b) an infant day care center; and
- (c) a trade and technical school.

~~[(36)]~~ (38) "Equity ~~[club]~~ license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, ~~[Club]~~ Bar Establishment License, that is designated by the commission as an equity ~~[club]~~ license.

~~[(37)]~~ (39) "Event permit" means:

- (a) a single event permit; or
- (b) a temporary beer event permit.

~~[(38)]~~ (40) "Exempt license" means a license exempt under Section 32B-1-201 from being considered in determining the total number of retail licenses that the commission may issue at any time.

~~[(39)]~~ (41) (a) "Flavored malt beverage" means a beverage:

- (i) that contains at least .5% alcohol by volume;
- (ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer as described in 27 C.F.R. Sec. 25.55;
- (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract; and
- (iv) (A) for which the producer is required to file a formula for approval with the federal Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 C.F.R. Sec. 25.55; or

(B) that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55.

(b) "Flavored malt beverage" is considered liquor for purposes of this title.

~~[(40)]~~ (42) "Fraternal ~~[club]~~ license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 4, ~~[Club]~~ Bar Establishment License, that is designated by the commission as a fraternal ~~[club]~~ license.

~~[(41)]~~ (43) "Full-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 2, Full-Service Restaurant License.

~~[(42)]~~ (44) (a) "Furnish" means by any means to provide with, supply, or give an individual an alcoholic product, by sale or otherwise.

(b) "Furnish" includes to:

- (i) serve;
- (ii) deliver; or
- (iii) otherwise make available.

~~[(43)]~~ (45) "Guest" means an individual who meets the requirements of Subsection 32B-6-407(9).

~~[(44)]~~ (46) "Health care practitioner" means:

- (a) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- (b) an optometrist licensed under Title 58, Chapter 16a, Utah Optometry Practice Act;
- (c) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

(d) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act;

(e) a nurse or advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;

(f) a recreational therapist licensed under Title 58, Chapter 40, Recreational Therapy Practice Act;

(g) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act;

(h) a nurse midwife licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(i) a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;

(j) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act;

(k) an osteopath licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(l) a dentist or dental hygienist licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act; and

(m) a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Act.

[445] (47) (a) "Heavy beer" means a product that:

- (i) contains more than 4% alcohol by volume; and
- (ii) is obtained by fermentation, infusion, or decoction of malted grain.

(b) "Heavy beer" is considered liquor for the purposes of this title.

[446] (48) "Hotel" is as defined by the commission by rule.

[447] (49) "Hotel license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8b, Hotel License Act.

[448] (50) "Identification card" means an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act.

[449] (51) "Industry representative" means an individual who is compensated by salary, commission, or other means for representing and selling an alcoholic product of a manufacturer, supplier, or importer of liquor.

[450] (52) "Industry representative sample" means liquor that is placed in the possession of the department for testing, analysis, and sampling by a local industry representative on the premises of the department to educate the local industry representative of the quality and characteristics of the product.

[451] (53) "Interdicted person" means a person to whom the sale, offer for sale, or furnishing of an alcoholic product is prohibited by:

- (a) law; or
- (b) court order.

[452] (54) "Intoxicated" means that a person:

(a) is significantly impaired as to the person's mental or physical functions as a result of the use of:

- (i) an alcoholic product;
- (ii) a controlled substance;
- (iii) a substance having the property of releasing toxic vapors; or
- (iv) a combination of Subsections [452] (54)(a)(i) through (iii); and

(b) exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the overconsumption of an alcoholic product.

[453] (55) "Investigator" means an individual who is:

- (a) a department compliance officer; or
- (b) a nondepartment enforcement officer.

[454] (56) "Invitee" means the same as that term is defined in Section 32B-8-102.

[455] (57) "License" means:

- (a) a retail license;
- (b) a license issued in accordance with Chapter 11, Manufacturing and Related Licenses Act;
- (c) a license issued in accordance with Chapter 12, Liquor Warehousing License Act; or
- (d) a license issued in accordance with Chapter 13, Beer Wholesaling License Act.

[456] (58) "Licensee" means a person who holds a license.

[457] (59) "Limited-service restaurant license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 3, Limited-Service Restaurant License.

[458] (60) "Limousine" means a motor vehicle licensed by the state or a local authority, other than a bus or taxicab:

- (a) in which the driver and a passenger are separated by a partition, glass, or other barrier;
- (b) that is provided by a business entity to one or more individuals at a fixed charge in accordance with the business entity's tariff; and
- (c) to give the one or more individuals the exclusive use of the limousine and a driver to travel to one or more specified destinations.

[459] (61) (a) (i) "Liquor" means a liquid that:

- (A) is:
 - (I) alcohol;
 - (II) an alcoholic, spirituous, vinous, fermented, malt, or other liquid;
 - (III) a combination of liquids a part of which is spirituous, vinous, or fermented; or
 - (IV) other drink or drinkable liquid; and

(B) (I) contains at least .5% alcohol by volume; and

(II) is suitable to use for beverage purposes.

(ii) "Liquor" includes:

(A) heavy beer;

(B) wine; and

(C) a flavored malt beverage.

(b) "Liquor" does not include beer.

[~~60~~] (62) "Liquor Control Fund" means the enterprise fund created by Section 32B-2-301.

[~~61~~] (63) "Liquor warehousing license" means a license that is issued:

(a) in accordance with Chapter 12, Liquor Warehousing License Act; and

(b) to a person, other than a licensed manufacturer, who engages in the importation for storage, sale, or distribution of liquor regardless of amount.

[~~62~~] (64) "Local authority" means:

(a) for premises that are located in an unincorporated area of a county, the governing body of a county; or

(b) for premises that are located in an incorporated city, town, or metro township, the governing body of the city, town, or metro township.

[~~63~~] (65) "Lounge or bar area" is as defined by rule made by the commission.

[~~64~~] (66) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

[~~65~~] (67) "Member" means an individual who, after paying regular dues, has full privileges in an equity [club] licensee or fraternal [club] licensee.

[~~66~~] (68) (a) "Military installation" means a base, air field, camp, post, station, yard, center, or homeport facility for a ship:

(i) (A) under the control of the United States Department of Defense; or

(B) of the National Guard;

(ii) that is located within the state; and

(iii) including a leased facility.

(b) "Military installation" does not include a facility used primarily for:

(i) civil works;

(ii) a rivers and harbors project; or

(iii) a flood control project.

[~~67~~] (69) "Minor" means an individual under the age of 21 years.

[~~68~~] (70) "Nondepartment enforcement agency" means an agency that:

(a) (i) is a state agency other than the department; or

(ii) is an agency of a county, city, town, or metro township; and

(b) has a responsibility to enforce one or more provisions of this title.

[~~69~~] (71) "Nondepartment enforcement officer" means an individual who is:

(a) a peace officer, examiner, or investigator; and

(b) employed by a nondepartment enforcement agency.

[~~70~~] (72) (a) "Off-premise beer retailer" means a beer retailer who is:

(i) licensed in accordance with Chapter 7, [Part 2,] Off-Premise Beer Retailer [Local Authority] Act; and

(ii) engaged in the retail sale of beer to a patron for consumption off the beer retailer's premises.

(b) "Off-premise beer retailer" does not include an on-premise beer retailer.

(73) "Off-premise beer retailer state license" means a state license issued in accordance with Chapter 7, Part 4, Off-Premise Beer Retailer State License.

[~~71~~] (74) "On-premise banquet license" means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 6, On-Premise Banquet License.

[~~72~~] (75) "On-premise beer retailer" means a beer retailer who is:

(a) authorized to sell, offer for sale, or furnish beer under a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-Premise Beer Retailer License; and

(b) engaged in the sale of beer to a patron for consumption on the beer retailer's premises:

(i) regardless of whether the beer retailer sells beer for consumption off the licensed premises; and

(ii) on and after March 1, 2012, operating:

(A) as a tavern; or

(B) in a manner that meets the requirements of Subsection 32B-6-703(2)(e)(i).

[~~73~~] (76) "Opaque" means impenetrable to sight.

[~~74~~] (77) "Package agency" means a retail liquor location operated:

(a) under an agreement with the department; and

(b) by a person:

(i) other than the state; and

(ii) who is authorized by the commission in accordance with Chapter 2, Part 6, Package Agency, to sell packaged liquor for consumption off the premises of the package agency.

[~~75~~] (78) "Package agent" means a person who holds a package agency.

~~[(76)]~~ (79) "Patron" means an individual to whom food, beverages, or services are sold, offered for sale, or furnished, or who consumes an alcoholic product including:

- (a) a customer;
- (b) a member;
- (c) a guest;
- (d) an attendee of a banquet or event;
- (e) an individual who receives room service;
- (f) a resident of a resort;

(g) a public customer under a resort spa sublicense, as defined in Section 32B-8-102; or

- (h) an invitee.

~~[(77)]~~ (80) "Permittee" means a person issued a permit under:

- (a) Chapter 9, Event Permit Act; or
- (b) Chapter 10, Special Use Permit Act.

~~[(78)]~~ (81) "Person subject to administrative action" means:

- (a) a licensee;
- (b) a permittee;
- (c) a manufacturer;
- (d) a supplier;
- (e) an importer;
- (f) one of the following holding a certificate of approval:
 - (i) an out-of-state brewer;
 - (ii) an out-of-state importer of beer, heavy beer, or flavored malt beverages; or
 - (iii) an out-of-state supplier of beer, heavy beer, or flavored malt beverages; or
- (g) staff of:
 - (i) a person listed in Subsections ~~[(78)]~~ (81)(a) through (f); or
 - (ii) a package agent.

~~[(79)]~~ (82) "Premises" means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined in this title or rules made by the commission.

~~[(80)]~~ (83) "Prescription" means an order issued by a health care practitioner when:

- (a) the health care practitioner is licensed under Title 58, Occupations and Professions, to prescribe a controlled substance, other drug, or device for medicinal purposes;
- (b) the order is made in the course of that health care practitioner's professional practice; and

(c) the order is made for obtaining an alcoholic product for medicinal purposes only.

~~[(81)]~~ (84) (a) "Private event" means a specific social, business, or recreational event:

(i) for which an entire room, area, or hall is leased or rented in advance by an identified group; and

(ii) that is limited in attendance to people who are specifically designated and their guests.

(b) "Private event" does not include an event to which the general public is invited, whether for an admission fee or not.

~~[(82)]~~ (85) (a) "Proof of age" means:

(i) an identification card;

(ii) an identification that:

(A) is substantially similar to an identification card;

(B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;

(C) includes date of birth; and

(D) has a picture affixed;

(iii) a valid driver license certificate that:

(A) includes date of birth;

(B) has a picture affixed; and

(C) is issued:

(I) under Title 53, Chapter 3, Uniform Driver License Act; or

(II) in accordance with the laws of the state in which it is issued;

(iv) a military identification card that:

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

(b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.

~~[(83)]~~ (86) (a) "Public building" means a building or permanent structure that is:

(i) owned or leased by:

(A) the state; or

(B) a local government entity; and

(ii) used for:

(A) public education;

(B) transacting public business; or

(C) regularly conducting government activities.

(b) "Public building" does not include a building owned by the state or a local government entity when the building is used by a person, in whole or in part, for a proprietary function.

~~[(84)]~~ (87) “Public conveyance” means a conveyance that the public or a portion of the public has access to and a right to use for transportation, including an airline, railroad, bus, boat, or other public conveyance.

~~[(85)]~~ (88) “Reception center” means a business that:

(a) operates facilities that are at least 5,000 square feet; and

(b) has as its primary purpose the leasing of the facilities described in Subsection ~~[(85)]~~ (88)(a) to a third party for the third party’s event.

~~[(86)]~~ (89) “Reception center license” means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 8, Reception Center License.

~~[(87)]~~ (90) (a) “Record” means information that is:

(i) inscribed on a tangible medium; or

(ii) stored in an electronic or other medium and is retrievable in a perceivable form.

(b) “Record” includes:

(i) a book;

(ii) a book of account;

(iii) a paper;

(iv) a contract;

(v) an agreement;

(vi) a document; or

(vii) a recording in any medium.

~~[(88)]~~ (91) “Residence” means a person’s principal place of abode within Utah.

~~[(89)]~~ (92) “Resident,” in relation to a resort, means the same as that term is defined in Section 32B-8-102.

~~[(90)]~~ (93) “Resort” means the same as that term is defined in Section 32B-8-102.

~~[(91)]~~ (94) “Resort facility” is as defined by the commission by rule.

~~[(92)]~~ (95) “Resort license” means a license issued in accordance with Chapter 5, Retail License Act, and Chapter 8, Resort License Act.

(96) “Responsible alcohol service plan” means a written set of policies and procedures that outlines measures to prevent employees from:

(a) over-serving alcoholic beverages to customers;

(b) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(c) serving alcoholic beverages to minors.

~~[(93)]~~ (97) “Restaurant” means a business location:

(a) at which a variety of foods are prepared;

(b) at which complete meals are served to the general public; and

(c) that is engaged primarily in serving meals to the general public.

~~[(94)]~~ (98) “Retail license” means one of the following licenses issued under this title:

(a) a full-service restaurant license;

(b) a master full-service restaurant license;

(c) a limited-service restaurant license;

(d) a master limited-service restaurant license;

(e) a ~~[club]~~ bar establishment license;

(f) an airport lounge license;

(g) an on-premise banquet license;

(h) an on-premise beer license;

(i) a reception center license;

(j) a beer-only restaurant license;

(k) a resort license; or

(l) a hotel license.

~~[(95)]~~ (99) “Room service” means furnishing an alcoholic product to a person in a guest room of a:

(a) hotel; or

(b) resort facility.

~~[(96)]~~ (100) (a) “School” means a building used primarily for the general education of minors.

(b) “School” does not include an educational facility.

~~[(97)]~~ (101) “Sell” or “offer for sale” means a transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered, delivered for value, or by a means or under a pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this title or the rules made by the commission.

~~[(98)]~~ (102) “Serve” means to place an alcoholic product before an individual.

~~[(99)]~~ (103) “Sexually oriented entertainer” means a person who while in a state of seminudity appears at or performs:

(a) for the entertainment of one or more patrons;

(b) on the premises of:

(i) a ~~[social club]~~ bar licensee; or

(ii) a tavern;

(c) on behalf of or at the request of the licensee described in Subsection ~~[(99)]~~ (103)(b);

(d) on a contractual or voluntary basis; and

(e) whether or not the person is designated as:

(i) an employee;

(ii) an independent contractor;

<p>(iii) an agent of the licensee; or</p> <p>(iv) a different type of classification.</p> <p>[(100)] (104) "Single event permit" means a permit issued in accordance with Chapter 9, Part 3, Single Event Permit.</p> <p>[(101)] (105) "Small brewer" means a brewer who manufactures less than 60,000 barrels of beer, heavy beer, and flavored malt beverages per year.</p> <p>[(103)] (106) "Special use permit" means a permit issued in accordance with Chapter 10, Special Use Permit Act.</p> <p>[(104)] (107) (a) "Spirituous liquor" means liquor that is distilled.</p> <p>(b) "Spirituous liquor" includes an alcoholic product defined as a "distilled spirit" by 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 5.11 through 5.23.</p> <p>[(105)] (108) "Sports center" is as defined by the commission by rule.</p> <p>[(106)] (109) (a) "Staff" means an individual who engages in activity governed by this title:</p> <p>(i) on behalf of a business, including a package agent, licensee, permittee, or certificate holder;</p> <p>(ii) at the request of the business, including a package agent, licensee, permittee, or certificate holder; or</p> <p>(iii) under the authority of the business, including a package agent, licensee, permittee, or certificate holder.</p> <p>(b) "Staff" includes:</p> <p>(i) an officer;</p> <p>(ii) a director;</p> <p>(iii) an employee;</p> <p>(iv) personnel management;</p> <p>(v) an agent of the licensee, including a managing agent;</p> <p>(vi) an operator; or</p> <p>(vii) a representative.</p> <p>[(107)] (110) "State of nudity" means:</p> <p>(a) the appearance of:</p> <p>(i) the nipple or areola of a female human breast;</p> <p>(ii) a human genital;</p> <p>(iii) a human pubic area; or</p> <p>(iv) a human anus; or</p> <p>(b) a state of dress that fails to opaquely cover:</p> <p>(i) the nipple or areola of a female human breast;</p> <p>(ii) a human genital;</p> <p>(iii) a human pubic area; or</p> <p>(iv) a human anus.</p>	<p>[(108)] (111) "State of seminudity" means a state of dress in which opaque clothing covers no more than:</p> <p>(a) the nipple and areola of the female human breast in a shape and color other than the natural shape and color of the nipple and areola; and</p> <p>(b) the human genitals, pubic area, and anus:</p> <p>(i) with no less than the following at its widest point:</p> <p>(A) four inches coverage width in the front of the human body; and</p> <p>(B) five inches coverage width in the back of the human body; and</p> <p>(ii) with coverage that does not taper to less than one inch wide at the narrowest point.</p> <p>[(109)] (112) (a) "State store" means a facility for the sale of packaged liquor:</p> <p>(i) located on premises owned or leased by the state; and</p> <p>(ii) operated by a state employee.</p> <p>(b) "State store" does not include:</p> <p>(i) a package agency;</p> <p>(ii) a licensee; or</p> <p>(iii) a permittee.</p> <p>[(110)] (113) (a) "Storage area" means an area on licensed premises where the licensee stores an alcoholic product.</p> <p>(b) "Store" means to place or maintain in a location an alcoholic product from which a person draws to prepare an alcoholic product to be furnished to a patron, except as provided in Subsection 32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii), 32B-6-805(15)(b)(ii), or 32B-6-905(12)(b)(ii).</p> <p>[(111)] (114) "Sublicense" means the same as that term is defined in Section 32B-8-102 or 32B-8b-102.</p> <p>[(112)] (115) "Supplier" means a person who sells an alcoholic product to the department.</p> <p>[(113)] (116) "Tavern" means an on-premise beer retailer who is:</p> <p>(a) issued a license by the commission in accordance with Chapter 5, Retail License Act, and Chapter 6, Part 7, On-Premise Beer Retailer License; and</p> <p>(b) designated by the commission as a tavern in accordance with Chapter 6, Part 7, On-Premise Beer Retailer License.</p> <p>[(114)] (117) "Temporary beer event permit" means a permit issued in accordance with Chapter 9, Part 4, Temporary Beer Event Permit.</p> <p>[(115)] (118) "Temporary domicile" means the principal place of abode within Utah of a person who does not have a present intention to continue residency within Utah permanently or indefinitely.</p>
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~~[(116)]~~ (119) “Translucent” means a substance that allows light to pass through, but does not allow an object or person to be seen through the substance.

~~[(117)]~~ (120) “Unsaleable liquor merchandise” means a container that:

- (a) is unsaleable because the container is:
 - (i) unlabeled;
 - (ii) leaky;
 - (iii) damaged;
 - (iv) difficult to open; or
 - (v) partly filled;
- (b) (i) has faded labels or defective caps or corks;
- (ii) has contents that are:
 - (A) cloudy;
 - (B) spoiled; or
 - (C) chemically determined to be impure; or
- (iii) contains:
 - (A) sediment; or
 - (B) a foreign substance; or
- (c) is otherwise considered by the department as unfit for sale.

~~[(118)]~~ (121) (a) “Wine” means an alcoholic product obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or other like substance, whether or not another ingredient is added.

(b) “Wine” is considered liquor for purposes of this title, except as otherwise provided in this title.

~~[(119)]~~ (122) “Winery manufacturing license” means a license issued in accordance with Chapter 11, Part 3, Winery Manufacturing License.

Section 5. Section 32B-1-104 is amended to read:

32B-1-104. Exercise of police powers -- Severability.

(1) (a) This title is an exercise of the police powers of the state for the protection of the public health, peace, safety, welfare, and morals, and regulates the storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product.

(b) This title governs alcoholic product control unless otherwise provided in this title.

(2) (a) A licensee or permittee has the rights and privileges described in this title that are applicable to the licensee’s or permittee’s license or permit.

(b) A licensee or permittee may engage in an activity related to the storage, sale, offer for sale, furnishing, consumption, manufacture, or distribution of an alcoholic product only if the activity is expressly permitted under this title or a

rule authorized under this title and made by the commission.

(3) The department and the commission:

(a) shall implement and enforce the provisions of this title in accordance with the express language of the provisions of this title and in a manner consistent with the policy described in Section 32B-1-103; and

(b) may not waive any provision of this title.

~~[(2)]~~ (4) If a provision of this title or the application of a provision to a person or circumstance is held invalid, the remainder of this title shall be given effect without the invalid provision or application. The provisions of this title are severable.

Section 6. Section 32B-1-201 is amended to read:

32B-1-201. Restrictions on number of retail licenses that may be issued -- Determining population -- Exempt licenses.

(1) As used in this section:

(a) “Alcohol-related law enforcement officer” means a law enforcement officer employed by the Department of Public Safety that has as a primary responsibility:

(i) the enforcement of this title; or

(ii) the enforcement of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(b) “Enforcement ratio” is the number calculated as follows:

(i) determine the quotient equal to the sum of the total number of quota retail licenses available and the total number of licensed premises operating under a master full-service restaurant license or under a master limited-service restaurant license divided by the total number of alcohol-related law enforcement officers; and

(ii) round the number determined in accordance with Subsection (1)(b)(i) up to the nearest whole number.

(c) “Quota retail license” means:

(i) a full-service restaurant license;

(ii) a limited-service restaurant license;

(iii) a ~~club~~ bar establishment license;

(iv) an on-premise banquet license;

(v) an on-premise beer retailer operating as a tavern; and

(vi) a reception center license.

(d) “Total number of alcohol-related law enforcement officers” means the total number of positions designated as alcohol-related law enforcement officers that are funded as of a specified date as certified by the Department of Public Safety to the department.

(e) “Total number of quota retail licenses available” means the number calculated by:

(i) determining as of a specified date for each quota retail license the number of licenses that the commission may not exceed calculated by dividing the population of the state by the number specified in the relevant provision for the quota retail license; and

(ii) adding together the numbers determined under Subsection (1)(e)(i).

(2) (a) Beginning on July 1, 2012, the department shall annually determine the enforcement ratio as of July 1 of that year.

(b) If, beginning on July 1, 2012, the enforcement ratio is greater than 52, the commission may not issue a quota retail license for the 12-month period beginning on the July 1 for which the enforcement ratio is greater than 52.

(c) Notwithstanding Subsection (2)(b), the commission may issue a quota retail license during the 12-month period described in Subsection (2)(b) beginning on the day on which a sufficient number of alcohol-related law enforcement officers are employed so that if the enforcement ratio is calculated, the enforcement ratio would be equal to or less than 52.

(d) Once the Department of Public Safety certifies under Subsection (1)(d) the total number of positions designated as alcohol-related law enforcement officers that are funded as of July 1, the Department of Public Safety may not use the funding for the designated alcohol-related law enforcement officers for a purpose other than funding those positions.

(3) For purposes of determining the number of state stores that the commission may establish or the number of package agencies or retail licenses that the commission may issue, the commission shall determine population by:

(a) the most recent United States decennial or special census; or

(b) another population determination made by the United States or state governments.

(4) The commission may not consider a retail license that meets the following conditions in determining the total number of licenses available for that type of retail license that the commission may issue at any time:

(a) the retail license was issued to a club licensee designated as a dining club as of July 1, 2011; and

(b) the dining club license is converted to another type of retail license in accordance with Section 32B-6-409.

Section 7. Section 32B-1-202 is amended to read:

32B-1-202. Proximity to community location.

(1) ~~[For purposes of]~~ As used in this section, "outlet" means:

(a) (i) "Outlet" means:

~~[(a)]~~ (A) a state store;

~~[(b)]~~ (B) a package agency; or

~~[(c)]~~ (C) a retail licensee~~], except an airport lounge licensee].~~

(ii) "Outlet" does not include:

(A) an airport lounge licensee; or

(B) a restaurant.

(b) "Restaurant" means:

(i) a full-service restaurant licensee;

(ii) a limited-service restaurant licensee; or

(iii) a beer-only restaurant licensee.

(2) (a) ~~[Except as otherwise provided in this section, the]~~ The premises of an outlet may not be located:

~~[(a)]~~ (i) within 600 feet of a community location, as measured from the nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the property boundary of the community location; or

~~[(b)]~~ (ii) within 200 feet of a community location, measured in a straight line from the nearest entrance of the outlet to the nearest property boundary of the community location.

(b) The premises of a restaurant may not be located:

(i) within 300 feet of a community location, as measured from the nearest entrance of the restaurant by following the shortest route of ordinary pedestrian travel to the property boundary of the community location; or

(ii) within 200 feet of a community location, measured in a straight line from the nearest entrance of the restaurant to the nearest property boundary of the community location.

~~[(3) With respect to the location of an outlet, the commission may authorize a variance to reduce the proximity requirement of Subsection (2) if:]~~

~~[(a) when the variance reduces the proximity requirement of Subsection (2)(b), the community location at issue is:]~~

~~[(i) a public library; or]~~

~~[(ii) a public park;]~~

~~[(b) except with respect to a state store, the local authority gives its written consent to the variance;]~~

~~[(c) the commission finds that alternative locations for locating that type of outlet in the community are limited;]~~

~~[(d) a public hearing is held in the city, town, metro township, or county, and when practical in the neighborhood concerned;]~~

~~[(e) after giving full consideration to the attending circumstances and the policies stated in Subsections 32B-1-103(3) and (4), the commission determines that locating the outlet in that location~~

would not be detrimental to the public health, peace, safety, and welfare of the community;]

~~[(f) (i) the community location governing authority gives its written consent to the variance; or]~~

~~[(ii) if the community location governing authority does not give its written consent to a variance, the commission finds the following for a state store, or if the outlet is a package agency or retail licensee, the commission finds that the applicant establishes the following:]~~

~~[(A) there is substantial unmet public demand to consume an alcoholic product;]~~

~~[(I) within the geographic boundary of the local authority in which the outlet is to be located; and]~~

~~[(II) for an outlet that is a retail licensee, in a public setting;]~~

~~[(B) there is no reasonably viable alternative for satisfying the substantial unmet demand other than through locating that type of outlet in that location; and]~~

~~[(C) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the outlet is to be located for locating that type of outlet to satisfy the unmet demand.]~~

~~[(4) With respect to the premises of a package agency or retail licensee that undergoes a change of ownership, the commission may waive or vary the proximity requirements of Subsection (2) in considering whether to issue the package agency or same type of retail license to the new owner of the premises if:]~~

~~[(a) the premises previously received a variance reducing the proximity requirement of Subsection (2)(a);]~~

~~[(b) the premises received a variance reducing the proximity requirement of Subsection (2)(b) on or before May 4, 2008; or]~~

~~[(c) a variance from proximity requirements was otherwise allowed under this title.]~~

(3) (a) For an outlet or a restaurant that holds a license on May 9, 2017, and operates under a previously approved variance to one or more proximity requirements in effect before May 9, 2017, subject to the other provisions in this title, the outlet or restaurant may continue to operate under the variance if the property on which the outlet or restaurant is located is used to operate an outlet or a restaurant under the same type of license for which the commission previously approved the variance, regardless of whether:

(i) the outlet or restaurant changes ownership;

(ii) the property on which the outlet or restaurant is located changes ownership; or

(iii) except as provided in Subsection (3)(b), there is a lapse in the use of the property as an outlet or a

restaurant with the same type of license for which the commission previously approved the variance.

(b) An outlet or a restaurant may not operate under a previously approved variance if:

(i) there is a lapse in the use of the property as an outlet or a restaurant with the same type of license for which the commission previously approved the variance; and

(ii) during the lapse, the property is used for a purpose other than an outlet or a restaurant with the same type of license for which the commission previously approved the variance.

~~[(5)] (4) Nothing in this section prevents the commission from considering the proximity of an educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location of an outlet or a restaurant.~~

Section 8. Section 32B-1-207 is amended to read:

32B-1-207. Calculation of ratio of gross receipts of food to alcoholic product.

In calculating the annual gross receipts of a retail license or sublicense for purposes of determining the percentage of gross receipts from the sale, offer for sale, or furnishing of food or an alcoholic product, a retail licensee may not include in the calculation the money from the sale of:

(1) a bottle of wine by the retail licensee or under a sublicense that is in excess of ~~[\$250.] \$175; or~~

(2) an individual portion of wine, as described in Subsection 32B-5-304(2)(a), by the retail licensee or under a sublicense that is in excess of \$30.

Section 9. Section 32B-1-305 is amended to read:

32B-1-305. Requirement for a background check.

(1) The department shall require an individual listed in Subsection (2), in accordance with this part, to:

(a) provide a signed waiver from the individual whose fingerprints may be registered in the Federal Bureau of Investigation Rap Back system that notifies the signee:

(i) that a criminal history background check will be conducted;

(ii) who will see the information; and

(iii) how the information will be used;

(b) submit to a background check in a form acceptable to the department; and

(c) consent to a background check by:

(i) the Utah Bureau of Criminal Identification; and

(ii) the Federal Bureau of Investigation.

(2) The following shall comply with Subsection (1):

(a) an individual applying for employment with the department if:

(i) the department makes the decision to offer the individual employment with the department; and

(ii) once employed, the individual will receive benefits;

(b) an individual applying to the commission to operate a package agency;

(c) an individual applying to the commission for a license, unless the license is an off-premise beer retailer state license;

(d) an individual who with regard to an entity that is applying to the commission to operate a package agency or for a license is:

(i) a partner;

(ii) a managing agent;

(iii) a manager;

(iv) an officer;

(v) a director;

(vi) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporation;

(vii) a member who owns at least 20% of a limited liability company; or

(viii) an individual employed to act in a supervisory or managerial capacity; or

(e) an individual who becomes involved with an entity that operates a package agency or holds a license, if the individual is in a capacity listed in Subsection (2)(d) on or after the day on which the entity:

(i) is approved to operate a package agency; or

(ii) is licensed by the commission.

(3) The department shall require compliance with Subsection (2)(e) as a condition of an entity's:

(a) continued operation of a package agency; or

(b) renewal of a license.

(4) The department may require as a condition of continued employment that a department employee:

(a) submit to a background check in a form acceptable to the department; and

(b) consent to a fingerprint criminal background check by:

(i) the Utah Bureau of Criminal Identification; and

(ii) the Federal Bureau of Investigation.

Section 10. Section 32B-1-407 is amended to read:

32B-1-407. Verification of proof of age by applicable licensees.

(1) As used in this section, "applicable licensee" means:

(a) a dining club;

(b) a ~~[social club; or]~~ bar;

(c) a tavern[-];

(d) a full-service restaurant;

(e) a limited-service restaurant; or

(f) a beer-only restaurant.

(2) Notwithstanding any other provision of this part, an applicable licensee shall require that an authorized person for the applicable licensee verify proof of age as provided in this section.

(3) An authorized person is required to verify proof of age under this section before an individual who appears to be 35 years of age or younger:

(a) gains admittance to the premises of a ~~[social club]~~ bar licensee or tavern; ~~[or]~~

(b) procures an alcoholic product on the premises of a dining club licensee[-]; or

(c) procures an alcoholic product in a dispensing area in the premises of a full-service restaurant licensee, a limited-service restaurant licensee, or a beer-only restaurant licensee.

(4) To comply with Subsection (3), an authorized person shall:

(a) request the individual present proof of age; and

(b) (i) verify the validity of the proof of age electronically under the verification program created in Subsection (5); or

(ii) if the proof of age cannot be electronically verified as provided in Subsection (4)(b)(i), request that the individual comply with a process established by the commission by rule.

(5) The commission shall establish by rule an electronic verification program that includes the following:

(a) the specifications for the technology used by the applicable licensee to electronically verify proof of age, including that the technology display to the person described in Subsection (2) no more than the following for the individual who presents the proof of age:

(i) the name;

(ii) the age;

(iii) the number assigned to the individual's proof of age by the issuing authority;

(iv) the birth date;

(v) the gender; and

(vi) the status and expiration date of the individual's proof of age; and

(b) the security measures that shall be used by an applicable licensee to ensure that information obtained under this section is:

(i) used by the applicable licensee only for purposes of verifying proof of age in accordance with this section; and

(ii) retained by the applicable licensee for seven days after the day on which the applicable licensee obtains the information.

(6) (a) An applicable licensee may not disclose information obtained under this section except as provided under this title.

(b) Information obtained under this section is considered a record for any purpose under Chapter 5, Part 3, Retail Licensee Operational Requirements.

Section 11. Section 32B-1-505 is amended to read:

32B-1-505. Sexually oriented entertainer.

(1) Subject to the requirements of this part, live entertainment is permitted on premises or at an event regulated by the commission.

(2) Notwithstanding Subsection (1), a retail licensee or permittee may not permit a person to:

- (a) appear or perform in a state of nudity;
- (b) perform or simulate an act of:
 - (i) sexual intercourse;
 - (ii) masturbation;
 - (iii) sodomy;
 - (iv) bestiality;
 - (v) oral copulation;
 - (vi) flagellation; or
 - (vii) a sexual act that is prohibited by Utah law; or

(c) touch, caress, or fondle the breast, buttocks, anus, or genitals.

(3) A sexually oriented entertainer may perform in a state of seminudity:

- (a) only in:
 - (i) a tavern; or
 - (ii) a ~~social club~~ bar license premises; and
- (b) only if:

(i) the windows, doors, and other apertures to the premises are darkened or otherwise constructed to prevent anyone outside the premises from seeing the performance; and

(ii) the outside entrance doors of the premises remain unlocked.

(4) A sexually oriented entertainer may perform only upon a stage or in a designated performance area that is:

- (a) approved by the commission in accordance with rules made by the commission;
- (b) configured so as to preclude a patron from:

(i) touching the sexually oriented entertainer; or

(ii) placing any money or object on or within the performance attire or the person of the sexually oriented entertainer; and

(c) configured so as to preclude the sexually oriented entertainer from touching a patron.

(5) A sexually oriented entertainer may not touch a patron:

(a) during the sexually oriented entertainer's performance; or

(b) while the sexually oriented entertainer is dressed in performance attire.

(6) A sexually oriented entertainer, while in the portion of the premises used by patrons, shall be dressed in opaque clothing which covers and conceals the sexually oriented entertainer's performance attire from the top of the breast to the knee.

(7) A patron may not be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area.

(8) A patron may not:

(a) touch a sexually oriented entertainer:

(i) during the sexually oriented entertainer's performance; or

(ii) while the sexually oriented entertainer is dressed in performance attire; or

(b) place money or any other object on or within the performance attire or the person of the sexually oriented entertainer.

(9) A minor may not be on premises described in Subsection (3).

(10) A person who appears or performs for the entertainment of patrons on premises or at an event regulated by the commission that is not a tavern or ~~social club~~ bar licensee:

(a) may not appear or perform in a state of nudity or a state of seminudity; and

(b) may appear or perform in opaque clothing that completely covers the person's genitals, pubic area, and anus if the covering:

(i) is not less than the following at its widest point:

(A) four inches coverage width in the front of the human body; and

(B) five inches coverage width in the back of the human body;

(ii) does not taper to less than one inch wide at the narrowest point; and

(iii) if covering a female, completely covers the breast below the top of the areola.

Section 12. Section 32B-1-604 is amended to read:

32B-1-604. Requirements for labeling and packaging -- Authority of the commission and department.

(1) A manufacturer may not distribute or sell a malted beverage:

(a) unless the label and packaging of the malted beverage:

(i) complies with the federal label requirements of 27 C.F.R. Parts 7, 13, and 16; and

(ii) clearly gives notice to the public that the malted beverage is an alcoholic product; and

(b) until the day on which the department in accordance with this title and rules of the commission approves the label and packaging of the malted beverage.

(2) The department shall review the label and packaging of a malted beverage to ensure that the label and packaging meet the requirements of Subsection (1)(a).

(3) [A] Except as otherwise required under Section 32B-1-606, a manufacturer may comply with the requirement of Subsection (1)(a)(ii) by including on a label and packaging for a malted beverage any of the following terms:

- (a) beer;
- (b) ale;
- (c) porter;
- (d) stout;
- (e) lager;
- (f) lager beer; or

(g) another class or type designation commonly applied to a malted beverage that conveys by a recognized term that the product contains alcohol.

(4) (a) As used in this section, “previously approved malted beverage” means a malted beverage for which the manufacturer holds approval for the label and packaging under Subsection (1)(b) on May 9, 2017.

(b) Beginning May 9, 2017, the department shall review the label and packaging of each previously approved malted beverage for compliance with the provisions of this part.

(c) If, during the review described in Subsection (4)(b), the department determines that a previously approved malted beverage does not comply with the provisions of this part on or after May 9, 2017:

(i) the department shall send written notice to the manufacturer that states:

(A) that the manufacturer shall reapply for approval of the label and packaging of the malted beverage;

(B) an explanation, including each specific reason, the label or packaging of the manufacturer’s previously approved malted beverage does not comply with the provisions of this part;

(C) how the manufacturer can comply with the provisions of this part; and

(D) the date by which the manufacturer shall submit an application to the department for approval; and

(ii) the manufacturer shall reapply for approval of the label and packaging of the malted beverage in accordance with the written notice and the provisions of this part.

(d) (i) A manufacturer, wholesaler, or retailer may distribute or sell a previously approved malted beverage in accordance with the manufacturer’s most recent approval from the department through the later of:

(A) April 30, 2018; or

(B) six months after the day on which the manufacturer receives written notice from the department under Subsection (4)(c)(i).

(ii) After the applicable date described in Subsection (4)(d)(i), a manufacturer, wholesaler, or retailer may not distribute or sell a previously approved malted beverage that does not comply with the provisions of this part.

(e) The department shall ensure that the department notifies and takes action on each timely application submitted under this Subsection (4) before January 1, 2018.

Section 13. Section 32B-1-605 is amended to read:

32B-1-605. General procedure for approval.

(1) To obtain approval of the label and packaging of a malted beverage, the manufacturer of the malted beverage shall submit an application to the department for approval.

(2) The application described in Subsection (1) shall be on a form approved by the department and include the following for each brand and label for which the manufacturer seeks approval:

(a) (i) a copy of a federal certificate of label approval from the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau, ~~for each brand and label for which the manufacturer is seeking approval~~; or

(ii) if the Bureau does not require label approval, a copy of formula approval from the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau;

(b) a complete set of original labels for each size of container of the malted beverage;

(c) a description of the size of the container on which a label will be placed;

(d) a description of each type of container of the malted beverage; and

(e) a description of any packaging for the malted beverage.

(3) The department may assess a reasonable fee for reviewing a label and packaging for approval.

(4) (a) The department shall notify a manufacturer within 30 days after the day on which the manufacturer submits an application whether the label and packaging is approved or denied.

(b) If the department determines that an unusual circumstance requires additional time, the department may extend the time period described in Subsection (4)(a).

(5) A manufacturer shall obtain the approval of the department of a revision of a previously approved label and packaging before a malted beverage using the revised label and packaging may be distributed or sold in this state.

(6) (a) The department may revoke a label and packaging previously approved upon a finding that the label and packaging is not in compliance with this title or rules of the commission.

(b) The department shall notify the person who applies for the approval of a label and packaging at least five business days before the day on which a label and packaging approval is considered revoked.

(c) After receiving notice under Subsection (6)(b), a manufacturer may present written argument or evidence to the department on why the revocation should not occur.

(7) A manufacturer that applies for approval of a label and packaging may appeal a denial or revocation of a label and packaging approval to the commission.

Section 14. Section 32B-1-606 is amended to read:

32B-1-606. Special procedure for certain malted beverages.

~~[(1) If a flavored malt beverage is labeled or packaged in a manner that is similar to a label or packaging used for a nonalcoholic beverage, a]~~

(1) A manufacturer of ~~[the flavored malt]~~ a malted beverage may not distribute or sell the ~~[flavored malt]~~ malted beverage in ~~[this]~~ the state until the day on which the manufacturer receives approval of the labeling and packaging from the department in accordance with:

(a) Sections 32B-1-604 and 32B-1-605; and

(b) this section~~[-]~~, if the malted beverage is labeled or packaged in a manner that is:

(i) similar to a label or packaging used for a nonalcoholic beverage; or

(ii) likely to confuse or mislead a patron to believe the malted beverage is a nonalcoholic beverage.

(2) The department may not approve the labeling and packaging of a ~~[flavored malt]~~ malted beverage described in Subsection (1) unless in addition to the requirements of Section 32B-1-604 the labeling and packaging complies with the following:

(a) ~~[The]~~ the front label on the ~~[flavored malt]~~ malted beverage ~~[shall bear]~~ bears a prominently displayed label or a firmly affixed sticker that provides the following information in a font that measures at least three millimeters high:

(i) the statement:

(A) “alcoholic beverage”; or

(B) “contains alcohol”; and

(ii) the alcohol content of the flavored malt beverage~~[-]~~;

~~(b) [Packaging of a flavored malt beverage shall prominently include]~~ the front of the packaging of the malted beverage prominently includes, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging in a font that measures at least three millimeters high, the statement:

(i) “alcoholic beverage”; or

(ii) “contains alcohol”~~[-]~~;

(c) a statement required by Subsection (2)(a) or (b) ~~[shall appear]~~ appears in a format required by rule made by the commission~~[-]~~; and

(d) a statement of alcohol content required by Subsection (2)(a)(ii):

(i) ~~[shall state]~~ states the alcohol content as a percentage of alcohol by volume or by weight; and

~~[(ii) may not use an abbreviation, but shall use the complete words “alcohol,” “volume,” or “weight”; and]~~

~~[(iii) (i) shall be]~~ (ii) ~~[shall be]~~ is in a format required by rule made by the commission.

(3) The department may reject a label or packaging that appears designed to obscure the information required by Subsection (2).

(4) To determine whether a ~~[flavored malt]~~ malted beverage is described in Subsection (1) and subject to this section, the department may consider in addition to other factors one or more of the following factors:

(a) whether the coloring, carbonation, and packaging of the ~~[flavored malt]~~ malted beverage:

(i) is similar to those of a nonalcoholic beverage or product; or

(ii) can be confused with a nonalcoholic beverage;

(b) whether the ~~[flavored malt]~~ malted beverage possesses a character and flavor distinctive from a traditional malted beverage;

(c) whether the ~~[flavored malt]~~ malted beverage:

(i) is prepackaged;

(ii) contains high levels of caffeine and other additives; and

(iii) is marketed as a beverage that is specifically designed to provide energy;

(d) whether the ~~[flavored malt]~~ malted beverage contains added sweetener or sugar substitutes; or

(e) whether the ~~[flavored malt]~~ malted beverage contains an added fruit flavor or other flavor that masks the taste of a traditional malted beverage.

Section 15. Section 32B-2-202 is amended to read:

32B-2-202. Powers and duties of the commission.

- (1) The commission shall:
- (a) consistent with the policy established by the Legislature by statute, act as a general policymaking body on the subject of alcoholic product control;
- (b) adopt and issue policies, rules, and procedures;
- (c) set policy by written rules that establish criteria and procedures for:
- (i) issuing, denying, not renewing, suspending, or revoking a package agency, license, permit, or certificate of approval; and
- (ii) determining the location of a state store, package agency, or retail licensee;
- (d) decide within the limits, and under the conditions imposed by this title, the number and location of state stores, package agencies, and retail licensees in the state;
- (e) issue, deny, suspend, revoke, or not renew the following package agencies, licenses, permits, or certificates of approval for the purchase, storage, sale, offer for sale, furnishing, consumption, manufacture, and distribution of an alcoholic product:
- (i) a package agency;
- (ii) a full-service restaurant license;
- (iii) a master full-service restaurant license;
- (iv) a limited-service restaurant license;
- (v) a master limited-service restaurant license;
- (vi) a ~~club~~ bar establishment license;
- (vii) an airport lounge license;
- (viii) an on-premise banquet license;
- (ix) a resort license, under which at least four or more sublicenses may be included;
- (x) an on-premise beer retailer license;
- (xi) a reception center license;
- (xii) a beer-only restaurant license;
- (xiii) a hotel license, under which at least three or more sublicenses may be included;
- (xiv) subject to Subsection (4), a single event permit;
- (xv) subject to Subsection (4), a temporary beer event permit;
- (xvi) a special use permit;
- (xvii) a manufacturing license;
- (xviii) a liquor warehousing license;
- (xix) a beer wholesaling license; and
- (xx) one of the following that holds a certificate of approval:
- (A) an out-of-state brewer;
- (B) an out-of-state importer of beer, heavy beer, or flavored malt beverages; and
- (C) an out-of-state supplier of beer, heavy beer, or flavored malt beverages;
- (f) in accordance with Section 32B-5-205, issue, deny, suspend, or revoke conditional licenses for the purchase, storage, sale, furnishing, consumption, manufacture, and distribution of an alcoholic product;
- (g) prescribe the duties of the department in assisting the commission in issuing a package agency, license, permit, or certificate of approval under this title;
- (h) to the extent a fee is not specified in this title, establish a fee allowed under this title in accordance with Section 63J-1-504;
- (i) fix prices at which liquor is sold that are the same at all state stores, package agencies, and retail licensees;
- (j) issue and distribute price lists showing the price to be paid by a purchaser for each class, variety, or brand of liquor kept for sale by the department;
- (k) (i) require the director to follow sound management principles; and
- (ii) require periodic reporting from the director to ensure that:
- (A) sound management principles are being followed; and
- (B) policies established by the commission are being observed;
- (l) (i) receive, consider, and act in a timely manner upon the reports, recommendations, and matters submitted by the director to the commission; and
- (ii) do the things necessary to support the department in properly performing the department's duties;
- (m) obtain temporarily and for special purposes the services of an expert or person engaged in the practice of a profession, or a person who possesses a needed skill if:
- (i) considered expedient; and
- (ii) approved by the governor;
- (n) prescribe the conduct, management, and equipment of premises upon which an alcoholic product may be stored, sold, offered for sale, furnished, or consumed;
- (o) make rules governing the credit terms of beer sales within the state to retail licensees; and
- (p) in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, take disciplinary action against a person subject to administrative action.
- (2) Consistent with the policy established by the Legislature by statute, the power of the commission to do the following is plenary, except as otherwise provided by this title, and not subject to review:

- (a) establish a state store;
- (b) issue authority to act as a package agent or operate a package agency; and
- (c) issue or deny a license, permit, or certificate of approval.

(3) If the commission is authorized or required to make a rule under this title, the commission shall make the rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) Notwithstanding Subsections (1)(e)(xiv) and (xv), the director or deputy director may issue an event permit in accordance with Chapter 9, Event Permit Act.

Section 16. Section 32B-2-210 is amended to read:

32B-2-210. Alcoholic Beverage Control Advisory Board.

(1) There is created within the department an advisory board known as the "Alcoholic Beverage Control Advisory Board."

(2) The advisory board shall consist of ~~[12 members]~~ eight voting members and one nonvoting member as follows:

(a) ~~[the following]~~ four voting members appointed by the commission~~[, a representative of]:~~

~~[(i) a full-service restaurant licensee;]~~

~~[(ii) a limited-service restaurant licensee;]~~

~~[(iii) a beer-only restaurant licensee;]~~

~~[(iv) a social club licensee;]~~

~~[(v) a fraternal club licensee;]~~

~~[(vi) a dining club licensee;]~~

~~[(vii) a wholesaler licensee;]~~

~~[(viii) an on-premise banquet licensee;]~~

~~[(ix) an on-premise beer retailer licensee; and]~~

~~[(x) a reception center licensee;]~~

(i) one of whom represents the retail alcohol industry;

(ii) one of whom represents the wholesale alcohol industry;

(iii) one of whom represents the alcohol manufacturing industry; and

(iv) one of whom represents the restaurant industry;

(b) two voting members appointed by the commission, each of whom represents an organization that addresses alcohol or drug abuse prevention, alcohol or drug related enforcement, or alcohol or drug related education;

(c) the director of the Division of Substance Abuse and Mental Health or the director's designee who serves as a voting member;

~~[(b)]~~ (d) the chair of the Utah Substance Use and Mental Health Advisory Council, or the chair's designee, who serves as a voting member; and

~~[(e)]~~ (e) the chair of the commission or the chair's designee from the members of the commission, who ~~[shall serve]~~ serves as a nonvoting member.

(3) (a) Except as required by Subsection (3)(b), as terms of current voting members of the advisory board expire, the commission shall appoint each new member or reappointed member to a four-year term beginning July 1 and ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the commission shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of voting advisory board members are staggered so that approximately half of the advisory board is appointed every two years.

(c) No two members of the board may be employed by the same company or nonprofit organization.

(4) (a) When a vacancy occurs in the membership for any reason, the commission shall appoint a replacement for the unexpired term.

(b) The commission shall terminate the term of a voting advisory board member who ceases to be representative as designated by the member's original appointment.

(5) The advisory board shall meet no more than quarterly as called by the chair for the purpose of advising the commission and the department, with discussion limited to administrative rules made under this title.

(6) The chair of the commission or the chair's designee shall serve as the chair of the advisory board and call the necessary meetings.

(7) (a) ~~[Six]~~ Five members of the board constitute a quorum of the board.

(b) An action of the majority when a quorum is present is the action of the board.

(8) The department shall provide staff support to the advisory board.

(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 17. Section 32B-2-211 is enacted to read:

32B-2-211. Review and audit of commission rules.

(1) (a) In 2019 and every third year thereafter, the Legislature's general counsel shall review each current rule made by the commission for compliance with current statute.

(b) On or before December 15 of each year in which the Legislature's general counsel completes a

compliance review described in Subsection (1)(a), the Legislature's general counsel shall prepare and submit a report to the president of the Senate and the speaker of the House of Representatives that describes the Legislature's general counsel's findings.

(2) (a) Subject to the prioritization of the Audit Subcommittee created in Section 36-12-8, the Office of the Legislative Auditor General may review one or more current practices of the commission or the department for compliance with current statute or rule.

(b) Following a review described in Subsection (2)(a), the Office of the Legislative Auditor General shall prepare and submit a report to the Audit Subcommittee that describes the Office of the Legislative Auditor General's findings and recommendations.

Section 18. Section 32B-2-304 is amended to read:

32B-2-304. Liquor price -- School lunch program -- Remittance of markup.

(1) For purposes of this section:

(a) (i) "Landed case cost" means:

(A) the cost of the product; and

(B) inbound shipping costs incurred by the department.

(ii) "Landed case cost" does not include the outbound shipping cost from a warehouse of the department to a state store.

(b) "Proof gallon" [has] means the same [meaning as] as that term is defined in 26 U.S.C. Sec. 5002.

(c) Notwithstanding Section 32B-1-102, "small brewer" means a brewer who manufactures in a calendar year less than 40,000 barrels of beer, heavy beer, and flavored malt beverage.

(2) Except as provided in Subsection (3):

(a) spirituous liquor sold by the department within the state shall be marked up in an amount not less than [86%] 88% above the landed case cost to the department;

(b) wine sold by the department within the state shall be marked up in an amount not less than [86%] 88% above the landed case cost to the department;

(c) heavy beer sold by the department within the state shall be marked up in an amount not less than [64.5%] 66.5% above the landed case cost to the department; and

(d) a flavored malt beverage sold by the department within the state shall be marked up in an amount not less than [86%] 88% above the landed case cost to the department.

(3) (a) Liquor sold by the department to a military installation in Utah shall be marked up in an amount not less than [15%] 17% above the landed case cost to the department.

(b) Except for spirituous liquor sold by the department to a military installation in Utah, spirituous liquor that is sold by the department within the state shall be marked up [47%] 49% above the landed case cost to the department if:

(i) the spirituous liquor is manufactured by a manufacturer producing less than 30,000 proof gallons of spirituous liquor in a calendar year; and

(ii) the manufacturer applies to the department for a reduced markup.

(c) Except for wine sold by the department to a military installation in Utah, wine that is sold by the department within the state shall be marked up [47%] 49% above the landed case cost to the department if:

(i) the wine is manufactured by a manufacturer producing less than 20,000 gallons of wine in a calendar year; and

(ii) the manufacturer applies to the department for a reduced markup.

(d) Except for heavy beer sold by the department to a military installation in Utah, heavy beer that is sold by the department within the state shall be marked up [30%] 32% above the landed case cost to the department if:

(i) a small brewer manufactures the heavy beer; and

(ii) the small brewer applies to the department for a reduced markup.

(e) The department shall verify an amount described in Subsection (3)(b), (c), or (d) pursuant to a federal or other verifiable production report.

(4) The department shall deposit 10% of the total gross revenue from sales of liquor with the state treasurer to be credited to the Uniform School Fund and used to support the school lunch program administered by the State Board of Education under Section 53A-19-201.

(5) This section does not prohibit the department from selling discontinued items at a discount.

(6) (a) [The] Except as provided in Section 53A-13-114, the department shall collect the markup and remit the markup collected by the department under this section:

(i) to the State Tax Commission monthly on or before the last day of the month immediately following the last day of the previous month; and

(ii) using a form prescribed by the State Tax Commission.

(b) For liquor provided to a package agency on consignment, the department shall remit the markup to the State Tax Commission for the month during which the liquor is provided to the package agency regardless of when the package agency pays the department for the liquor provided to the package agency.

(c) The State Tax Commission shall deposit revenues remitted to it under Subsection (6)(a) into

the Markup Holding Fund created in Section 32B-2-301.

(d) The assessment, collection, and refund of a markup under this section shall be in accordance with Title 59, Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

(e) The department, if it fails to comply with this Subsection (6), is subject to penalties as provided in Section 59-1-401 and interest as provided in Section 59-1-402.

(f) The State Tax Commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures under this Subsection (6).

Section 19. Section 32B-3-102 is amended to read:

32B-3-102. Definitions.

As used in this chapter[, ~~“final”~~]:

(1) “Aggravating circumstances” means:

(a) prior warnings about compliance problems;

(b) a prior violation history;

(c) a lack of written policies governing employee conduct;

(d) multiple violations during the course of an investigation;

(e) efforts to conceal a violation;

(f) an intentional violation;

(g) the violation involved more than one patron or employee; or

(h) a violation that results in injury or death.

(2) “Final adjudication” means an adjudication for which a final judgment or order is issued that:

~~(1)~~ (a) is not appealed, and the time to appeal the judgment has expired; or

~~(2)~~ (b) is appealed, and is affirmed, in whole or in part, on appeal.

(3) “Mitigating circumstances” means:

(a) no prior violation history for the licensee or permittee;

(b) no prior violation history for the individual who committed the violation;

(c) motive for the individual who engaged in or allowed the violation to retaliate against the licensee; or

(d) extraordinary cooperation with the investigation of the violation that demonstrates that the licensee or permittee and the individual who committed the violation accept responsibility for the violation.

Section 20. Section 32B-3-205 is amended to read:

32B-3-205. Penalties.

(1) If the commission is satisfied that a person subject to administrative action violates this title or the commission's rules, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the commission may:

(a) suspend or revoke the person's license, permit, or certificate of approval;

(b) subject to Subsection (2), impose a fine against the person, including individual staff of a licensee, permittee, or certificate holder;

(c) assess the administrative costs of a disciplinary proceeding to the person if the person is a licensee, permittee, or certificate holder; or

(d) take a combination of actions described in this Subsection (1).

(2) (a) A fine imposed may not exceed \$25,000 in the aggregate for:

(i) a single notice of agency action; or

(ii) a single action against a package agency.

(b) The commission shall by rule establish a schedule setting forth a range of fines for each violation.

(c) When a presiding officer imposes a fine, the presiding officer shall consider any aggravating circumstances or mitigating circumstances in deciding where within the applicable range to set the fine.

(3) The commission shall transfer the costs assessed under this section into the General Fund in accordance with Section 32B-2-301.

(4) (a) If a license or permit is suspended under this section, the licensee or permittee shall prominently display a sign provided by the department:

(i) during the suspension; and

(ii) at the entrance of the premises of the licensee or permittee.

(b) The sign required by this Subsection (4) shall:

(i) read “The Utah Alcoholic Beverage Control Commission has suspended the alcoholic product license or permit of this establishment. An alcoholic product may not be sold, offered for sale, furnished, or consumed on these premises during the period of suspension.”; and

(ii) include the dates of the suspension period.

(c) A licensee or permittee may not remove, alter, obscure, or destroy a sign required to be displayed under this Subsection (4) during the suspension period.

(5) (a) If a license or permit is revoked, the commission may order the revocation of a bond posted by the licensee or permittee under this title.

(b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a licensee or permittee for money owed the department under this title without the commission first revoking the license or permit.

(6) A licensee or permittee whose license or permit is revoked may not reapply for a license or permit under this title for three years from the date on which the license or permit is revoked.

(7) If a staff member of a licensee, permittee, or certificate holder is found to have violated this title, in addition to imposing another penalty authorized by this title, the commission may prohibit the staff member from handling, selling, furnishing, distributing, manufacturing, wholesaling, or warehousing an alcoholic product in the course of acting as staff with a licensee, permittee, or certificate holder under this title for a period determined by the commission.

(8) (a) If the commission makes the finding described in Subsection (8)(b), in addition to other penalties prescribed by this title, the commission may order:

(i) the removal of an alcoholic product of the manufacturer's, supplier's, or importer's from the department's sales list; and

(ii) a suspension of the department's purchase of an alcoholic product described in Subsection (8)(a)(i) for a period determined by the commission.

(b) The commission may take the action described in Subsection (8)(a) if:

(i) a manufacturer, supplier, or importer of liquor or its staff or representative violates this title; and

(ii) the manufacturer, supplier, or importer:

(A) directly commits the violation; or

(B) solicits, requests, commands, encourages, or intentionally aids another to engage in the violation.

(9) If the commission makes a finding that the brewer holding a certificate of approval violates this title or rules of the commission, the commission may take an action against the brewer holding a certificate of approval that the commission could take against a licensee including:

(a) suspension or revocation of the certificate of approval; and

(b) imposition of a fine.

(10) Notwithstanding the other provisions of this title, the commission may not order a disciplinary action or fine in accordance with this section if the disciplinary action or fine is ordered on the basis of a violation:

(a) of a provision in this title related to intoxication or becoming intoxicated; and

(b) if the violation is first investigated by a law enforcement officer, as defined in Section 53-13-103, who has not received training regarding the requirements of this title related to responsible alcoholic product sale or service.

Section 21. Section 32B-4-410 is amended to read:

32B-4-410. Unlawful admittance or attempt to gain admittance by minor.

(1) It is unlawful for a minor to gain admittance or attempt to gain admittance to the premises of:

(a) a tavern; or

(b) a [social club] bar licensee, except to the extent authorized by Section 32B-6-406.1.

(2) A minor who violates this section is guilty of a class C misdemeanor.

(3) (a) If a minor is found by a court to have violated this section and the violation is the minor's first violation of this section, the court may:

(i) order the minor to complete a screening as defined in Section 41-6a-501;

(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.

(b) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court shall:

(i) order the minor to complete a screening as defined in Section 41-6a-501;

(ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

(iii) order the minor to complete an educational series as defined in Section 41-6a-501 or substance abuse treatment as indicated by an assessment.

(4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, except as provided in Section 32B-4-411, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.

(b) Notwithstanding the provision in Subsection (4)(a), the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's first violation of this section; and

(ii) (A) the minor completes an educational series as defined in Section 41-6a-501; or

(B) the minor demonstrates substantial progress in substance abuse treatment.

(c) Notwithstanding the requirement in Subsection (4)(a) and in accordance with the requirements of Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's second or subsequent violation of this section;

(ii) the minor has completed an educational series as defined in Section 41-6a-501 or demonstrated substantial progress in substance abuse treatment; and

(iii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a); or

(B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol or drugs for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a).

(5) When a minor who is at least 13 years old, but younger than 18 years old, is found by a court to have violated this section, Section 78A-6-606 applies to the violation.

(6) When a court issues an order suspending a person's driving privileges for a violation of this section, the Driver License Division shall suspend the person's license under Section 53-3-219.

(7) When the Department of Public Safety receives the arrest or conviction record of a person for a driving offense committed while the person's license is suspended pursuant to this section, the Department of Public Safety shall extend the suspension for an additional like period of time.

Section 22. Section 32B-4-415 is amended to read:

32B-4-415. Unlawful bringing onto premises for consumption.

(1) Except as provided in Subsection (4), a person may not bring an alcoholic product for on-premise consumption onto the premises of:

(a) a retail licensee or person required to be licensed under this title as a retail licensee;

(b) an establishment that conducts a business similar to a retail licensee;

(c) an event where an alcoholic product is sold, offered for sale, or furnished under a single event permit or temporary beer event permit issued under this title;

(d) an establishment open to the general public; or

(e) the capitol hill complex.

(2) Except as provided in Subsection (4), the following may not allow a person to bring onto its premises an alcoholic product for on-premise consumption or allow consumption of an alcoholic product brought onto its premises in violation of this section:

(a) a retail licensee or a person required to be licensed under this title as a retail licensee;

(b) an establishment that conducts a business similar to a retail licensee;

(c) a single event permittee or temporary beer event permittee;

(d) an establishment open to the general public;

(e) the State Capitol Preservation Board created in Section 63C-9-201; or

(f) staff of a person listed in Subsections (2)(a) through (e).

(3) Except as provided in Subsection (4)(c)(i)(A), a person may not consume an alcoholic product in a limousine or chartered bus if the limousine or chartered bus drops off a passenger at:

(a) a location from which the passenger departs in a private vehicle; or

(b) the capitol hill complex.

(4) (a) A person may bring bottled wine onto the premises of the following and consume the wine pursuant to Section 32B-5-307:

(i) a full-service restaurant licensee;

(ii) a limited restaurant licensee;

(iii) a ~~club~~ bar establishment licensee; or

(iv) a person operating under a resort spa sublicense.

(b) A passenger of a limousine may bring onto, possess, and consume an alcoholic product in the limousine if:

(i) the travel of the limousine begins and ends at:

(A) the residence of the passenger;

(B) the hotel of the passenger, if the passenger is a registered guest of the hotel; or

(C) the temporary domicile of the passenger;

(ii) the driver of the limousine is separated from the passengers by partition or other means approved by the department; and

(iii) the limousine is not located on the capitol hill complex.

(c) A passenger of a chartered bus may bring onto, possess, and consume an alcoholic product on the chartered bus:

(i) (A) but may consume only during travel to a specified destination of the chartered bus and not during travel back to the place where the travel begins; or

(B) if the travel of the chartered bus begins and ends at:

(I) the residence of the passenger;

(II) the hotel of the passenger, if the passenger is a registered guest of the hotel; or

(III) the temporary domicile of the passenger;

(ii) if the chartered bus has a nondrinking designee other than the driver traveling on the chartered bus to monitor consumption; and

(iii) if the chartered bus is not located on the capitol hill complex.

(5) A person may bring onto any premises, possess, and consume an alcoholic product at a private event.

(6) Notwithstanding Subsection (5), private and public facilities may prohibit the possession or consumption of alcohol on their premises.

(7) The restrictions of Subsections (2) and (3) apply to a resort licensee or hotel licensee or person operating under a sublicense in relationship to:

(a) the boundary of a resort building or boundary of a hotel in an area that is open to the public; or

(b) except as provided in Subsection (4), a sublicense premises.

Section 23. Section 32B-4-501 is amended to read:

32B-4-501. Operating without a license or permit.

(1) A person may not operate the following businesses without first obtaining a license under this title if the business allows a person to purchase or consume an alcoholic product on the premises of the business:

(a) a restaurant;

(b) an airport lounge;

(c) a business operated in the same manner as a [club] bar establishment licensee;

(d) a resort;

(e) a business operated to sell, offer for sale, or furnish beer for on-premise consumption;

(f) a business operated as an on-premise banquet licensee;

(g) a hotel; or

(h) a business similar to one listed in Subsections (1)(a) through (g).

(2) A person conducting an event that is open to the general public may not directly or indirectly sell, offer for sale, or furnish an alcoholic product to a person attending the event without first obtaining an event permit under this title.

(3) A person conducting a private event may not directly or indirectly sell or offer for sale an alcoholic product to a person attending the private event without first obtaining an event permit under this title.

(4) A person may not operate the following businesses in this state without first obtaining a license under this title:

(a) a winery manufacturer;

(b) a distillery manufacturer;

(c) a brewery manufacturer;

(d) a local industry representative of:

(i) a manufacturer of an alcoholic product;

(ii) a supplier of an alcoholic product; or

(iii) an importer of an alcoholic product;

(e) a liquor warehouser; or

(f) a beer wholesaler.

(5) A person may not operate a public conveyance in this state without first obtaining a public service permit under this title if that public conveyance allows a person to purchase or consume an alcoholic product:

(a) on the public conveyance; or

(b) on the premises of a hospitality room located within a depot, terminal, or similar facility at which a service is provided to a patron of the public conveyance.

Section 24. Section 32B-5-201 is amended to read:

32B-5-201. Application requirements for retail license.

(1) (a) Before a person may store, sell, offer for sale, furnish, or permit consumption of an alcoholic product on licensed premises as a retail licensee, the person shall first obtain a retail license issued by the commission, notwithstanding whether the person holds a local license or a permit issued by a local authority.

(b) Violation of this Subsection (1) is a class B misdemeanor.

(2) To obtain a retail license under this title, a person shall submit to the department:

(a) a written application in a form prescribed by the department;

(b) a nonrefundable application fee in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying;

(c) an initial license fee:

(i) in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license for which the person is applying; and

(ii) that is refundable if a retail license is not issued;

(d) written consent of the local authority;

(e) a copy of the person's current business license;

(f) evidence of proximity to any community location, with proximity requirements being governed by Section 32B-1-202;

(g) a bond as specified by Section 32B-5-204;

(h) a floor plan, and boundary map where applicable, of the premises of the retail license, including any:

(i) consumption area; and

(ii) area where the person proposes to store, sell, offer for sale, or furnish an alcoholic beverage;

(i) evidence that the retail licensee is carrying public liability insurance in an amount and form satisfactory to the department;

(j) evidence that the retail licensee is carrying dramshop insurance coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(k) a signed consent form stating that the retail licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the premises of the retail licensee;

(l) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; ~~and~~

(m) a responsible alcohol service plan; and

~~(n)~~ (n) any other information the commission or department may require.

(3) The commission may not issue a retail license to a person who:

(a) is disqualified under Section 32B-1-304; or

(b) is not lawfully present in the United States.

(4) Unless otherwise provided in the relevant part under Chapter 6, Specific Retail License Act, the commission may not issue a retail license to a person if the licensed premises does not meet the proximity requirements of Section 32B-1-202.

Section 25. Section 32B-5-202 is amended to read:

32B-5-202. Renewal requirements.

(1) A retail license expires each year on the day specified in the relevant part under Chapter 6, Specific Retail License Act, for that type of retail license.

(2) To renew a person's retail license, a retail licensee shall, by no later than the day specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being renewed, submit:

(a) a completed renewal application that includes a responsible alcohol service plan to the department in a form prescribed by the department; and

(b) a renewal fee in the amount specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license that is being renewed.

(3) Failure to meet the renewal requirements results in an automatic forfeiture of the retail license effective on the date the existing retail license expires.

Section 26. Section 32B-5-207 is enacted to read:

32B-5-207. Multiple retail licenses on same premises.

(1) (a) (i) The commission may not issue and one or more licensees may not hold more than one type of retail license for the same room.

(ii) The commission may define "room" by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) Notwithstanding Subsection (1)(a), the commission may issue and one or more licensees may hold more than one type of retail license for the same room if:

(i) the applicant or licensee satisfies the requirements for each retail license;

(ii) the types of retail licenses issued or held are two or more of the following:

(A) a restaurant license;

(B) an on-premise beer retailer license that is not a tavern; and

(C) an on-premise banquet license or a reception center license; and

(iii) the retail licenses do not operate at the same time on the same day.

(2) When one or more licensees hold more than one type of retail license for the same room under Subsection (1)(b), the one or more licensees shall post in a conspicuous location at the entrance of the room a sign that:

(a) measures 8-1/2 inches by 11 inches; and

(b) states whether the premises is currently operating as:

(i) a restaurant;

(ii) an on-premise beer retailer that is not a tavern; or

(iii) a banquet or a reception center.

(3) (a) If, on May 9, 2017, one or more licensees hold more than one type of retail license for the same room in violation of Subsection (1), the one or more licensees may operate under the different types of retail licenses through June 30, 2018.

(b) A licensee may not operate in violation of Subsection (1) on or after July 1, 2018.

(c) Before July 1, 2018, each licensee described in Subsection (3)(a) shall notify the commission of each retail license that the licensee will surrender effective July 1, 2018, to comply with the provisions of Subsection (1).

(d) The commission shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a procedure by which a licensee surrenders a retail license under this Subsection (3).

Section 27. Section 32B-5-307 is amended to read:

32B-5-307. Bringing alcoholic product onto or removing alcoholic product from premises.

(1) Except as provided in Subsection (3):

(a) A person may not bring onto the licensed premises of a retail licensee an alcoholic product for on-premise consumption.

(b) A retail licensee may not allow a person to:

(i) bring onto licensed premises an alcoholic product for on-premise consumption; or

(ii) consume an alcoholic product brought onto the licensed premises by a person other than the retail licensee.

(c) A retail licensee may not sell, offer for sale, or furnish an alcoholic product through a window or door to a location off the licensed premises or to a vehicular traffic area.

(2) Except as provided in Subsection (3):

(a) A person may not carry from a licensed premises of a retail licensee an open container that:

(i) is used primarily for drinking purposes; and

(ii) contains an alcoholic product.

(b) A retail licensee may not permit a patron to carry from the licensed premises an open container described in Subsection (2)(a).

(c) Except as provided in Subsection (3)(d) or Subsection 32B-4-415(5):

(i) a person may not carry from a licensed premises of a retail licensee a sealed container of liquor that has been purchased from the retail licensee; and

(ii) a retail licensee may not permit a patron to carry from the licensed premises a sealed container of liquor that has been purchased from the retail licensee.

(3) (a) A patron may bring a bottled wine onto the premises of a retail licensee for on-premise consumption if:

(i) permitted by the retail licensee; and

(ii) the retail licensee is authorized to sell, offer for sale, or furnish wine.

(b) If a patron carries bottled wine onto the licensed premises of a retail licensee, the patron shall deliver the bottled wine to a server or other representative of the retail licensee upon entering the licensed premises.

(c) A retail licensee authorized to sell, offer for sale, or furnish wine, may provide a wine service for a bottled wine carried onto the licensed premises in accordance with this Subsection (3) or a bottled wine purchased at the licensed premises.

(d) A patron may remove from a licensed premises the unconsumed contents of a bottle of wine purchased ~~in~~ at the licensed premises, or brought onto the licensed premises in accordance with this Subsection (3), only if before removal the bottle is recorked or recapped.

Section 28. Section 32B-5-402 is amended to read:

32B-5-402. Definitions.

[Reserved]

As used in this part:

(1) “Off-premise retail manager” means an individual who:

(a) manages operations at a premises that is licensed under Chapter 7, Off-Premise Beer Retailer Act; or

(b) supervises the sale of beer at a premises that is licensed under Chapter 7, Off-Premise Beer Retailer Act.

(2) (a) “Off-premise retail staff” means an individual who sells beer at a premises that is licensed under Chapter 7, Off-Premise Beer Retailer Act.

(b) “Off-premise retail staff” does not include an off-premise retail manager.

(3) “Retail manager” means an individual who:

(a) manages operations at a premises that is licensed under this chapter; or

(b) supervises the furnishing of an alcoholic product at a premises that is licensed under this chapter.

(4) (a) “Retail staff” means an individual who serves an alcoholic product at a premises licensed under this chapter.

(b) “Retail staff” does not include a retail manager.

Section 29. Section 32B-5-403 is amended to read:

32B-5-403. Alcohol training and education -- Revocation, suspension, or nonrenewal of retail license.

(1) The commission may suspend, revoke, or not renew a license of a retail licensee if any of the following individuals~~, as defined in Section 62A-15-401,~~ fail to complete an alcohol training and education seminar:

~~[(a) an individual who manages operations at the licensed premises for consumption on the licensed premises;]~~

~~[(b) an individual who supervises the furnishing of an alcoholic product to a patron for consumption on the licensed premises; or]~~

~~[(c) an individual who serves an alcoholic product to a patron for consumption on the licensed premises.]~~

(a) a retail manager; or

(b) retail staff.

(2) A city, town, metro township, or county in which a retail licensee conducts ~~its~~ business may suspend, revoke, or not renew the business license of the retail licensee if ~~[an individual described in Subsection (1)]~~ a retail manager or retail staff fails

to complete an alcohol training and education seminar.

(3) A local authority that issues an off-premise beer retailer license to a business that is engaged in the retail sale of beer for consumption off the beer retailer's premises may immediately suspend the off-premise beer retailer license if any of the following individuals fails to complete an alcohol training and education seminar[~~—an individual who~~]:

~~[(a) directly supervises the sale of beer to a patron for consumption off the premises of the off-premise beer retailer; or]~~

~~[(b) sells beer to a patron for consumption off the premises of the off-premise beer retailer.]~~

(a) an off-premise retail manager; or

(b) off-premise retail staff.

Section 30. Section 32B-5-404 is amended to read:

32B-5-404. Alcohol training and education for off-premise consumption.

(1) (a) A local authority that issues an off-premise beer retailer license to a business to sell beer at retail for off-premise consumption shall require the following to have a valid record that the individual completed an alcohol training and education seminar in the time periods required by Subsection (1)(b)[~~—an individual who~~]:

~~[(i) directly supervises the sale of beer to a patron for consumption off the premises of the off-premise beer retailer; or]~~

~~[(ii) sells beer to a patron for consumption off the premises of the off-premise beer retailer.]~~

(i) an off-premise retail manager; or

(ii) off-premise retail staff.

(b) If an individual on the date the individual becomes staff to an off-premise beer retailer does not have a valid record that the individual has completed an alcohol training and education seminar for purposes of this part, the individual shall complete an alcohol training and education seminar within 30 days of the day on which the individual becomes staff of an off-premise beer retailer.

(c) Section 62A-15-401 governs the validity of a record that an individual has completed an alcohol training and education seminar required by this part.

(2) In accordance with Section 32B-5-403, a local authority may immediately suspend the license of an off-premise beer retailer that allows ~~[staff to directly supervise the sale of beer or to sell beer to a patron]~~ an individual to work as an off-premise retail manager without having a valid record that the individual completed an alcohol training and education seminar in accordance with Subsection (1).

Section 31. Section 32B-5-405 is enacted to read:

32B-5-405. Department training programs.

(1) No later than January 1, 2018, the department shall develop the following training programs that are provided either in-person or online:

(a) a training program for retail managers that addresses:

(i) the statutes and rules that govern alcohol sales and consumption in the state;

(ii) the requirements for operating as a retail licensee;

(iii) using compliance assistance from the department; and

(iv) any other topic the department determines beneficial to a retail manager; and

(b) a training program for an individual employed by a retail licensee or an off-premise beer retailer who violates a provision of this title related to the sale, service, or furnishing of an alcoholic beverage to an intoxicated individual or a minor, that addresses:

(i) the statutes and rules that govern the most common types of violations under this title;

(ii) how to avoid common violations; and

(iii) any other topic the department determines beneficial to the training program.

(2) No later than January 1, 2019, the department shall develop a training program for off-premise retail managers that is provided either in-person or online and addresses:

(a) the statutes and rules that govern sales at an off-premise beer retailer;

(b) the requirements for operating an off-premise beer retailer;

(c) using compliance assistance from the department; and

(d) any other topic the department determines beneficial to an off-premise retail manager.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the provisions of this section, the department shall make rules to develop and implement the training programs described in this section, including rules that establish:

(a) the requirements for each training program described in this section;

(b) measures that accurately identify each individual who takes and completes a training program;

(c) measures that ensure an individual taking a training program is focused and actively engaged in the training material throughout the training program;

(d) a record that certifies that an individual has completed a training program; and

(e) a fee for participation in a training program to cover the department's cost of providing the training program.

(4) (a) Except as provided in Subsection (5), each retail manager shall:

(i) complete the training described in Subsection (1)(a) no later than the earlier of:

(A) 30 days after the day on which the retail manager is hired; or

(B) before the day on which the retail licensee obtains a retail license under this chapter; and

(ii) retake the training program described in Subsection (1)(a) once every three years.

(b) Except as provided in Subsection (5), each off-premise retail manager shall:

(i) complete the training described in Subsection (2) no later than the earlier of:

(A) 30 days after the day on which the off-premise retail manager is hired; or

(B) before the day on which the off-premise beer retailer obtains an off-premise beer retailer state license; and

(ii) retake the training program described in Subsection (2) once every three years.

(c) (i) If the commission finds that an individual employed by a retail licensee violated a provision of this title related to the sale, service, or furnishing of an alcoholic beverage to an intoxicated individual or a minor for a second time while employed by the same retail licensee, the violator, all retail staff, and each retail manager shall complete the training program described in Subsection (1)(b).

(ii) If the commission finds that an individual employed by an off-premise beer retailer violated a provision of this title related to the sale, service, or furnishing of an alcoholic beverage to an intoxicated individual or a minor for a second time while employed by the same off-premise beer retailer, the violator and each off-premise retail manager shall complete the training program described in Subsection (1)(b).

(5) For a person who holds a retail license on January 1, 2018, each retail manager shall complete the training program described in Subsection (1)(a) for the first time as a condition of renewing the licensee's retail license in 2018.

(6) If an individual fails to complete a required training program under this section:

(a) the commission may suspend, revoke, or not renew the retail license or off-premise beer retailer state license;

(b) a city, town, metro township, or county in which the retail licensee or off-premise beer retailer is located may suspend, revoke, or not

renew the retail licensee's or off-premise beer retailer's business license; or

(c) a local authority may suspend, revoke, or not renew the off-premise beer retailer's license.

Section 32. Section 32B-5-406 is enacted to read:

32B-5-406. Tracking certain enforcement actions.

(1) For each violation of a provision of this title involving the sale of an alcoholic product to a minor that staff of a retail licensee commits, the commission shall:

(a) maintain a record of the violation until the record is expunged in accordance with Subsection (3);

(b) include in the record described in Subsection (1)(a):

(i) the name of the individual who committed the violation;

(ii) the name of the retail licensee; and

(iii) the date of the adjudication of the violation; and

(c) provide the information described in Subsection (1)(b) to the Department of Public Safety within 30 days after the day on which the violation is adjudicated.

(2) (a) The Department of Public Safety shall develop and operate a system to collect, analyze, maintain, track, and disseminate the information that the Department of Public Safety receives in accordance with Subsection (1).

(b) The Department of Public Safety shall make the system described in Subsection (2)(a) available to:

(i) assist the commission in assessing penalties under this title; and

(ii) inform a retail licensee of an individual who has a violation history in the system.

(3) The commission and the Department of Public Safety shall expunge each record in the system described in Subsection (2) that relates to an individual if the individual does not violate a provision of this title related to the sale of an alcoholic product to a minor for a period of 36 consecutive months from the day on which the individual was last found to have violated a provision of this title related to the sale of an alcoholic product to a minor.

Section 33. Section 32B-6-202 is amended to read:

32B-6-202. Definitions.

As used in this part:

(1) (a) "Dining area" means an area in the licensed premises of a full-service restaurant licensee that is primarily used for the service and consumption of food by one or more patrons.

(b) “Dining area” does not include a dispensing area.

(2) (a) “Dispensing area” means an area in the licensed premises of a full-service restaurant licensee where a dispensing structure is located and that:

(i) is physically separated from the dining area and any waiting area by a structure or other barrier that prevents a patron seated in the dining area or a waiting area from viewing the dispensing of alcoholic product;

(ii) except as provided in Subsection (2)(b), measures at least 10 feet from any area where alcoholic product is dispensed to the dining area and any waiting area, measured from the point of the area where alcoholic product is dispensed that is closest to the dining area or waiting area; or

(iii) is physically separated from the dining area and any waiting area by a permanent physical structure that complies with the provisions of Title 15A, State Construction and Fire Codes Act, and, to the extent allowed under Title 15A, State Construction and Fire Codes Act, measures:

(A) at least 42 inches high; and

(B) at least 60 inches from the inside edge of the barrier to the nearest edge of the dispensing structure.

(b) “Dispensing area” does not include any area described in Subsection (2)(a)(ii) that is less than 10 feet from an area where alcoholic product is dispensed, but from which a patron seated at a table or counter cannot view the dispensing of alcoholic product.

[4] (3) (a) “Grandfathered bar structure” means a bar structure in a licensed premises of a full-service restaurant licensee that:

(i) as of May 11, 2009, has:

(A) patron seating at the bar structure;

(B) a partition at one or more locations on the bar structure that is along:

(I) the width of the bar structure; or

(II) the length of the bar structure; and

(C) facilities for the dispensing or storage of an alcoholic product:

(I) on the portion of the bar structure that is separated by the partition described in Subsection [4] (3)(a)(i)(B); or

(II) if the partition as described in Subsection [4] (3)(a)(i)(B)(II) is adjacent to the bar structure in a manner visible to a patron sitting at the bar structure;

(ii) is not operational as of May 12, 2009, if:

(A) a person applying for a full-service restaurant license:

(I) has as of May 12, 2009, a building permit to construct the restaurant;

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued the full-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure described in Subsection [4] (3)(a)(i);

(iii) as of May 12, 2009, has no patron seating at the bar structure; or

(iv) is not operational as of May 12, 2009, if:

(A) a person applying for a full-service restaurant license:

(I) has as of May 12, 2009, a building permit to construct the restaurant;

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued a full-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure with no patron seating.

(b) “Grandfathered bar structure” does not include a grandfathered bar structure described in Subsection [4] (3)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.

(c) Subject to Subsection [4] (3)(b), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.

[2] (4) “Seating grandfathered bar structure” means:

(a) a grandfathered bar structure described in Subsection [4] (3)(a)(i) or (ii); or

(b) a bar structure grandfathered under Section 32B-6-409.

(5) “Waiting area” includes a lobby.

Section 34. Section 32B-6-204 is amended to read:

32B-6-204. Specific licensing requirements for full-service restaurant license.

(1) To obtain a full-service restaurant license a person shall comply with Chapter 5, Part 2, Retail Licensing Process.

(2) (a) A full-service restaurant license expires on October 31 of each year.

(b) To renew a person’s full-service restaurant license, a person shall comply with the renewal requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than September 30.

(3) (a) The nonrefundable application fee for a full-service restaurant license is \$330.

(b) The initial license fee for a full-service restaurant license is \$2,200.

(c) The renewal fee for a full-service restaurant license is ~~[in the following amount:]~~ \$1,650.

[Gross Cost of Liquor in Previous License Year for the Licensee]	Renewal Fee
under \$5,000	-\$935
equals or exceeds \$5,000 but less than \$10,000	-\$1,155
equals or exceeds \$10,000 but less than \$25,000	-\$1,650
equals or exceeds \$25,000	-\$1,925

(4) The bond amount required for a full-service restaurant license is the penal sum of \$10,000.

Section 35. Section 32B-6-205 is amended to read:

32B-6-205. Specific operational requirements for a full-service restaurant license -- Before July 1, 2018 or July 1, 2022.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a full-service restaurant licensee and staff of the full-service restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a full-service restaurant licensee;
- (ii) individual staff of a full-service restaurant licensee; or
- (iii) both a full-service restaurant licensee and staff of the full-service restaurant licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a full-service restaurant licensee shall:

- (a) display in a prominent place in the restaurant a list of the types and brand names of liquor being furnished through the full-service restaurant licensee's calibrated metered dispensing system~~[-]; and~~
- (b) display in a conspicuous place at the entrance to the licensed premises a sign approved by the commission that:
 - (i) measures at least 8-1/2 inches long and 11 inches wide; and
 - (ii) clearly states that the full-service restaurant licensee is a restaurant and not a bar.

(3) In addition to complying with Section 32B-5-303, a full-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves an alcoholic product in a full-service restaurant licensee's premises shall make a written beverage tab for each

table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a full-service restaurant licensee.

(6) (a) A full-service restaurant licensee may ~~[not]~~ sell, offer for sale, or furnish liquor at the licensed premises ~~[on any day during the period that]~~ during the following time periods only:

- (i) ~~[begins at midnight; and]~~ on a weekday, during the period that begins at 11:30 a.m. and ends at 11:59 p.m.; or
- (ii) ~~[ends at 11:29 a.m.]~~ on a weekend or a state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 11:59 p.m.

(b) A full-service restaurant licensee may sell, offer for sale, or furnish beer ~~[during the hours specified in Part 7, On-Premise Beer Retailer License, for an on-premise beer retailer, except that a full-service restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.]~~ at the licensed premises during the following time periods only:

- (i) on a weekday, during the period that begins at 11:30 a.m. and ends at 12:59 a.m.; or
- (ii) on a weekend or a state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 12:59 a.m.

(7) A full-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include:

- (a) mix for an alcoholic product; or
- (b) a service charge.

(8) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except after the full-service restaurant licensee confirms that the patron has the intent to order food prepared, sold, and furnished at the licensed premises.

(b) A full-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have more than one spirituous liquor drink at a time before the patron.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) A patron may consume an alcoholic product only:

- (a) at:
 - (i) the patron's table;
 - (ii) a counter; or
 - (iii) a seating grandfathered bar structure; and
- (b) where food is served.

(11) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

- (i) sit;
- (ii) be furnished an alcoholic product; and
- (iii) consume an alcoholic product.

(c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a full-service restaurant licensee may not permit a minor to, and a minor may not:

- (i) sit; or
- (ii) consume food or beverages.

(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a full-service restaurant licensee:

- (A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the full-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a full-service restaurant licensee's premises in which the minor is permitted to be.

(12) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee may dispense an alcoholic product only if:

- (a) the alcoholic product is dispensed from:
 - (i) a grandfathered bar structure;
 - (ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or
 - (iii) an area that is:
 - (A) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:
 - (I) not readily visible to a patron; and
 - (II) not accessible by a patron; and
 - (B) apart from an area used:
 - (I) for dining;

(II) for staging; or

(III) as a lobby or waiting area;

(b) the full-service restaurant licensee uses an alcoholic product that is:

(i) stored in an area described in Subsection (12)(a); or

(ii) in an area not described in Subsection (12)(a) on the licensed premises and:

(A) immediately before the alcoholic product is dispensed it is in an unopened container; (B) the unopened container is taken to an area described in Subsection (12)(a) before it is opened; and (C) once opened, the container is stored in an area described in Subsection (12)(a); and

(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).

(13) A full-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of liquor including:

- (a) a set-up charge;
- (b) a service charge; or
- (c) a chilling fee.

(14) Beginning on July 1, 2018, a minor may not sit, remain, or consume food or beverages within 10 feet of a grandfathered bar structure, unless:

(a) seating within 10 feet of the grandfathered bar structure is the only seating available in the licensed premises; and

(b) the minor is accompanied by an individual who is 21 years of age or older.

(15) Except as provided in Subsection 32B-6-205.2(18) and Section 32B-6-205.3, the provisions of this section apply before July 1, 2018.

Section 36. Section 32B-6-205.2 is enacted to read:

32B-6-205.2. Specific operational requirements for a full-service restaurant license -- On and after July 1, 2018 or July 1, 2022.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a full-service restaurant licensee and staff of the full-service restaurant licensee shall comply with this section.

(b) Failure to comply with Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a full-service restaurant licensee;
- (ii) individual staff of a full-service restaurant licensee; or
- (iii) both a full-service restaurant licensee and staff of the full-service restaurant licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a full-service restaurant licensee

shall display in a conspicuous place at the entrance to the licensed premises a sign approved by the commission that:

(a) measures at least 8-1/2 inches long and 11 inches wide; and

(b) clearly states that the full-service restaurant licensee is a restaurant and not a bar.

(3) In addition to complying with Section 32B-5-303, a full-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (13)(a).

(4) (a) An individual who serves an alcoholic product in a full-service restaurant licensee's premises shall make a beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab described in this Subsection (4) shall state the type and amount of each alcoholic product ordered or consumed.

(5) A full-service restaurant licensee may not make an individual's willingness to serve an alcoholic product a condition of employment with a full-service restaurant licensee.

(6) (a) A full-service restaurant licensee may sell, offer for sale, or furnish liquor at the licensed premises during the following time periods only:

(i) on a weekday, during the period that begins at 11:30 a.m. and ends at 11:59 p.m.; or

(ii) on a weekend or a state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 11:59 p.m.

(b) A full-service restaurant licensee may sell, offer for sale, or furnish beer at the licensed premises during the following time periods only:

(i) on a weekday, during the period that begins at 11:30 a.m. and ends at 12:59 a.m.; or

(ii) on a weekend or a state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 12:59 a.m.

(7) A full-service restaurant licensee shall maintain at least 70% of the full-service restaurant licensee's total restaurant business from the sale of food, which does not include:

(a) mix for an alcoholic product; or

(b) a service charge.

(8) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except after:

(i) the patron to whom the full-service restaurant licensee sells, offers for sale, or furnishes the alcoholic product is seated at:

(A) a table that is located in a dining area or a dispensing area;

(B) a counter that is located in a dining area or a dispensing area; or

(C) a dispensing structure that is located in a dispensing area; and

(ii) the full-service restaurant licensee confirms that the patron intends to:

(A) order food prepared, sold, and furnished at the licensed premises; and

(B) except as provided in Subsection (8)(b), consume the food at the same location where the patron is seated and sold, offered for sale, or furnished the alcoholic product.

(b) (i) While a patron waits for a seat at a table or counter in the dining area of a full-service restaurant licensee, the full-service restaurant licensee may sell, offer for sale, or furnish to the patron one drink that contains a single portion of an alcoholic product as described in Section 32B-5-304 if:

(A) the patron is in a dispensing area and seated at a table, counter, or dispensing structure; and

(B) the full-service restaurant licensee first confirms that after the patron is seated in the dining area, the patron intends to order food prepared, sold, and furnished at the licensed premises.

(ii) If the patron does not finish the patron's alcoholic product before moving to a seat in the dining area, an employee of the full-service restaurant licensee who is qualified to sell and serve an alcoholic product under Section 32B-5-306 shall transport any unfinished portion of the patron's alcoholic product to the patron's seat in the dining area.

(iii) For purposes of Subsection (8)(b)(i) a single portion of wine is 5 ounces or less.

(c) A full-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) A patron may consume an alcoholic product only if the patron is seated at:

(a) a table that is located in a dining area or dispensing area;

(b) a counter that is located in a dining area or dispensing area; or

(c) a dispensing structure located in a dispensing area.

(10) (a) Subject to the other provisions of this Subsection (10), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have more than one spirituous liquor drink at a time before the patron.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (10)(a).

(11) In accordance with the provisions of this section, an individual who is at least 21 years of age may consume food and beverages in a dispensing area.

(12) (a) Except as provided in Subsection (12)(b), a minor may not sit, remain, or consume food or beverages in a dispensing area.

(b) (i) A minor may be in a dispensing area if the minor is employed by the full-service restaurant licensee:

(A) in accordance with Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services when the full-service restaurant licensee is not open for business.

(ii) If there is no alternative route available, a minor may momentarily pass through a dispensing area without remaining or sitting in the dispensing area en route to an area of the full-service restaurant licensee's premises in which the minor is permitted to be.

(13) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee may dispense an alcoholic product only if:

(a) the alcoholic product is dispensed from:

(i) a dispensing structure that is located in a dispensing area;

(ii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are not readily visible to a patron and not accessible by a patron; and

(B) apart from an area used for dining, for staging, or as a lobby or waiting area; or

(iii) the premises of a bar licensee that is:

(A) owned by the same person or persons as the full-service restaurant licensee; and

(B) located immediately adjacent to the premises of the full-service restaurant licensee;

(b) the full-service restaurant licensee uses an alcoholic product that is stored in an area described in Subsection (13)(a) or in accordance with Section 32B-5-303; and

(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (13)(a).

(14) (a) A full-service restaurant licensee may have more than one dispensing area in the licensed premises.

(b) Each dispensing area in a licensed premises may satisfy the requirements for a dispensing area under Subsection 32B-6-202(2)(a)(i), (ii), or (iii), regardless of how any other dispensing area in the licensed premises satisfies the requirements for a dispensing area.

(15) A full-service restaurant licensee may not:

(a) transfer, dispense, or serve an alcoholic product on or from a movable cart; or

(b) display an alcoholic product or a product intended to appear like an alcoholic product by moving a cart or similar device around the licensed premises.

(16) A full-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of liquor, including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

(17) (a) In addition to the requirements described in Section 32B-5-302, a full-service restaurant licensee shall maintain each of the following records for at least three years:

(i) a record required by Section 32B-5-302; and

(ii) a record that the commission requires a full-service restaurant licensee to use or maintain under a rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The department shall audit the records of a full-service restaurant licensee at least once each calendar year.

(18) (a) In accordance with Section 32B-6-205.3, a full-service restaurant licensee:

(i) may comply with the provisions of this section beginning on or after July 1, 2017; and

(ii) shall comply with the provisions of this section:

(A) for a full-service restaurant licensee that does not have a grandfathered bar structure, on and after July 1, 2018; or

(B) for a full-service restaurant licensee that has a grandfathered bar structure, on and after July 1, 2022.

(b) A full-service restaurant licensee that elects to comply with the provisions of this section before the latest applicable date described in Subsection (18)(a)(ii):

(i) shall comply with each provision of this section; and

(ii) is not required to comply with the provisions of Section 32B-6-205.

Section 37. Section 32B-6-205.3 is enacted to read:

32B-6-205.3. Transition process for full-service restaurant licensees.

(1) For a full-service restaurant license issued on or after July 1, 2017, the full-service restaurant licensee shall comply with the provisions of Section 32B-6-205.2.

(2) For a full-service restaurant license issued before July 1, 2017, before the full-service restaurant licensee changes the full-service restaurant licensee's approved location for storage, dispensing, or consumption to comply with the

provisions of Section 32B-6-205.2, the full-service restaurant licensee shall submit an application for approval to the department in accordance with Subsection 32B-5-303(3).

(3) (a) Except as provided in Subsection (4), a person who holds a full-service restaurant license issued before July 1, 2017, shall comply with the provisions of Section 32B-6-205.2 on or before July 1, 2018.

(b) A full-service restaurant licensee described in Subsection (3)(a) that cannot comply with the provisions of Section 32B-6-205.2 without a change to the full-service restaurant licensee's approved location for storage, dispensing, or consumption:

(i) may submit an application for approval described in Subsection (2) on or after May 9, 2017; and

(ii) shall submit an application for approval described in Subsection (2) on or before May 1, 2018.

(c) If a full-service restaurant licensee described in Subsection (3)(a) submits an application for approval described in Subsection (2) on May 9, 2017, the department shall take action on the application on or before July 1, 2017.

(4) (a) A person who holds a full-service restaurant license issued before July 1, 2017, and has a grandfathered bar structure shall comply with the provisions of Section 32B-6-205.2 on or before the earlier of:

(i) July 1, 2022;

(ii) the date on which the full-service restaurant licensee remodels, as defined by commission rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the full-service restaurant licensee's grandfathered bar structure or dining area; or

(iii) the date on which the full-service restaurant licensee experiences a change of ownership described in Subsection 32B-8a-202(1).

(b) A full-service restaurant licensee described in Subsection (4)(a) that cannot comply with the provisions of Section 32B-6-205.2 without a change to the full-service restaurant licensee's approved location for storage, dispensing, or consumption:

(i) may submit an application for approval described in Subsection (2) on or after May 9, 2017; and

(ii) shall submit an application for approval described in Subsection (2) on or before May 1, 2022.

Section 38. Section 32B-6-302 is amended to read:

32B-6-302. Definitions.

As used in this part:

(1) (a) "Dining area" means an area in the licensed premises of a limited-service restaurant

licensee that is primarily used for the service and consumption of food by one or more patrons.

(b) "Dining area" does not include a dispensing area.

(2) (a) "Dispensing area" means an area in the licensed premises of a limited-service restaurant licensee where a dispensing structure is located and that:

(i) is physically separated from the dining area and any waiting area by a structure or other barrier that prevents a patron seated in the dining area or a waiting area from viewing the dispensing of alcoholic product;

(ii) except as provided in Subsection (2)(b), measures at least 10 feet from any area where alcoholic product is dispensed to the dining area and any waiting area, measured from the point of the area where alcoholic product is dispensed that is closest to the dining area or waiting area; or

(iii) is physically separated from the dining area and any waiting area by a permanent physical structure that complies with the provisions of Title 15A, State Construction and Fire Codes Act, and, to the extent allowed under Title 15A, State Construction and Fire Codes Act, measures:

(A) at least 42 inches high; and

(B) at least 60 inches from the inside edge of the barrier to the nearest edge of the dispensing structure.

(b) "Dispensing area" does not include any area described in Subsection (2)(a)(ii) that is less than 10 feet from an area where alcoholic product is dispensed, but from which a patron seated at a table or counter cannot view the dispensing of alcoholic product.

[4] (3) (a) "Grandfathered bar structure" means a bar structure in a licensed premises of a limited-service restaurant licensee that:

(i) as of May 11, 2009, has:

(A) patron seating at the bar structure;

(B) a partition at one or more locations on the bar structure that is along:

(I) the width of the bar structure; or

(II) the length of the bar structure; and

(C) facilities for the dispensing or storage of an alcoholic product:

(I) on the portion of the bar structure that is separated by the partition described in Subsection [4] (3)(a)(i)(B); or

(II) if the partition as described in Subsection [4] (3)(a)(i)(B)(II) is adjacent to the bar structure in a manner visible to a patron sitting at the bar structure;

(ii) is not operational as of May 12, 2009, if:

(A) a person applying for a limited-service restaurant license:

(I) has as of May 12, 2009, a building permit to construct the restaurant;

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued the limited-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure described in Subsection [(4)] (3)(a)(i);

(iii) as of May 12, 2009, has no patron seating at the bar structure; or

(iv) is not operational as of May 12, 2009, if:

(A) a person applying for a limited-service restaurant license:

(I) has as of May 12, 2009, a building permit to construct the restaurant;

(II) is as of May 12, 2009, actively engaged in the construction of the restaurant, as defined by rule made by the commission; and

(III) is issued a limited-service restaurant license by no later than December 31, 2009; and

(B) once constructed, the licensed premises has a bar structure with no patron seating.

(b) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection [(4)] (3)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.

(c) Subject to Subsection [(4)] (3)(b), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.

[(2)] (4) "Seating grandfathered bar structure" means:

(a) a grandfathered bar structure described in Subsection [(4)] (3)(a)(i) or (ii); or

(b) a bar structure grandfathered under Section 32B-6-409.

(5) "Waiting area" includes a lobby.

[(3)] (6) "Wine" includes an alcoholic beverage defined as wine under 27 U.S.C. Sec. 211 and 27 C.F.R. Sec. 4.10, including the following alcoholic beverages made in the manner of wine containing not less than 7% and not more than 24% of alcohol by volume:

- (a) sparkling and carbonated wine;
- (b) wine made from condensed grape must;
- (c) wine made from other agricultural products than the juice of sound, ripe grapes;
- (d) imitation wine;
- (e) compounds sold as wine;
- (f) vermouth;

(g) cider;

(h) perry; and

(i) sake.

Section 39. Section 32B-6-305 is amended to read:

32B-6-305. Specific operational requirements for a limited-service restaurant license -- Before July 1, 2018 or July 1, 2022.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a limited-service restaurant licensee and staff of the limited-service restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a limited-service restaurant licensee;

(ii) individual staff of a limited-service restaurant licensee; or

(iii) both a limited-service restaurant licensee and staff of the limited-service restaurant licensee.

(2) (a) A limited-service restaurant licensee on the licensed premises may not sell, offer for sale, furnish, or allow consumption of:

(i) spirituous liquor; or

(ii) a flavored malt beverage.

(b) A product listed in Subsection (2)(a) may not be on the premises of a limited-service restaurant licensee except for use:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert.

(3) In addition to complying with Section 32B-5-303, a limited-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves an alcoholic product in a limited-service restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of an alcoholic product ordered or consumed.

(5) A person's willingness to serve an alcoholic product may not be made a condition of employment as a server with a limited-service restaurant licensee.

(6) (a) A limited-service restaurant licensee may ~~not~~ sell, offer for sale, or furnish wine or heavy beer at the licensed premises ~~on any day during the period that~~ during the following time periods only:

(i) ~~begins at midnight, and~~ on a weekday, during the period that begins at 11:30 a.m. and ends at 11:59 p.m.; or

(ii) ~~[ends at 11:29 a.m.]~~ on a weekend or a state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 11:59 p.m.

(b) A limited-service restaurant licensee may sell, offer for sale, or furnish beer ~~[during the hours specified in Part 7, On-Premise Beer Retailer License, for an on-premise beer retailer, except that a limited-service restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.]~~ at the licensed premises during the following time periods only:

(i) on a weekday, during the period that begins at 11:30 a.m. and ends at 12:59 a.m.; or

(ii) on a weekend or state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 12:59 a.m.

(7) A limited-service restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include a service charge.

(8) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except after the limited-service restaurant licensee confirms that the patron has the intent to order food prepared, sold, and furnished at the licensed premises.

(b) A limited-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) (a) Subject to the other provisions of this Subsection (9), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) An individual portion of wine is considered to be one alcoholic product under Subsection (9)(a).

(10) A patron may consume an alcoholic product only:

(a) at:

(i) the patron's table;

(ii) a counter; or

(iii) a seating grandfathered bar structure; and

(b) where food is served.

(11) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product to a patron, and a patron may not consume an alcoholic product at a bar structure that is not a seating grandfathered bar structure.

(b) At a seating grandfathered bar structure a patron who is 21 years of age or older may:

(i) sit;

(ii) be furnished an alcoholic product; and

(iii) consume an alcoholic product.

(c) Except as provided in Subsection (11)(d), at a seating grandfathered bar structure a limited-service restaurant licensee may not permit a minor to, and a minor may not:

(i) sit; or

(ii) consume food or beverages.

(d) (i) A minor may be at a seating grandfathered bar structure if the minor is employed by a limited-service restaurant licensee:

(A) as provided in Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services during an hour when the limited-service restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a seating grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a limited-service restaurant licensee's premises in which the minor is permitted to be.

(12) Except as provided in Subsection 32B-5-307(3), a limited-service restaurant licensee may dispense an alcoholic product only if:

(a) the alcoholic product is dispensed from:

(i) a grandfathered bar structure;

(ii) an area adjacent to a grandfathered bar structure that is visible to a patron sitting at the grandfathered bar structure if that area is used to dispense an alcoholic product as of May 12, 2009; or

(iii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are:

(I) not readily visible to a patron; and

(II) not accessible by a patron; and

(B) apart from an area used:

(I) for dining;

(II) for staging; or

(III) as a lobby or waiting area;

(b) the limited-service restaurant licensee uses an alcoholic product that is:

(i) stored in an area described in Subsection (12)(a); or

(ii) in an area not described in Subsection (12)(a) on the licensed premises and:

(A) immediately before the alcoholic product is dispensed it is in an unopened container;

(B) the unopened container is taken to an area described in Subsection (12)(a) before it is opened; and

(C) once opened, the container is stored in an area described in Subsection (12)(a); and

(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (12)(a).

(13) A limited-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of wine or heavy beer including:

- (a) a set-up charge;
- (b) a service charge; or
- (c) a chilling fee.

(14) In addition to complying with Subsection 32B-5-301(3), a limited-service restaurant licensee shall display in a conspicuous place at the entrance to the licensed premises a sign approved by the commission that:

(a) measures at least 8-1/2 inches long and 11 inches wide; and

(b) clearly states that the limited-service restaurant licensee is a restaurant and not a bar.

(15) Beginning on July 1, 2018, a minor may not sit, remain, or consume food or beverages within 10 feet of a grandfathered bar structure, unless:

(a) seating within 10 feet of the grandfathered bar structure is the only seating available in the licensed premises; and

(b) the minor is accompanied by an individual who is 21 years of age or older.

(16) Except as provided in Subsection 32B-6-305.2(18) and Section 32B-6-305.3, the provisions of this section apply before July 1, 2018.

Section 40. Section 32B-6-305.2 is enacted to read:

32B-6-305.2. Specific operational requirements for a limited-service restaurant license -- On and after July 1, 2018 or July 1, 2022.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a limited-service restaurant licensee and staff of the limited-service restaurant licensee shall comply with this section.

(b) Failure to comply with Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a limited-service restaurant licensee;
- (ii) individual staff of a limited-service restaurant licensee; or
- (iii) both a limited-service restaurant licensee and staff of the limited-service restaurant licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a limited-service restaurant licensee shall display in a conspicuous place at the entrance to the licensed premises a sign approved by the commission that:

(a) measures at least 8-1/2 inches long and 11 inches wide; and

(b) clearly states that the limited-service restaurant licensee is a restaurant and not a bar.

(3) In addition to complying with Section 32B-5-303, a limited-service restaurant licensee shall store an alcoholic product in a storage area described in Subsection (13)(a).

(4) (a) An individual who serves an alcoholic product in a limited-service restaurant licensee's premises shall make a beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab described in this Subsection (4) shall state the type and amount of each alcoholic product ordered or consumed.

(5) A limited-service restaurant licensee may not make an individual's willingness to serve an alcoholic product a condition of employment with a limited-service restaurant licensee.

(6) (a) A limited-service restaurant licensee may sell, offer for sale, or furnish wine or heavy beer at the licensed premises during the following time periods only:

(i) on a weekday, during the period that begins at 11:30 a.m. and ends at 11:59 p.m.; or

(ii) on a weekend or a state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 11:59 p.m.

(b) A limited-service restaurant licensee may sell, offer for sale, or furnish beer at the licensed premises during the following time periods only:

(i) on a weekday, during the period that begins at 11:30 a.m. and ends at 12:59 a.m.; or

(ii) on a weekend or a state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 12:59 a.m.

(7) A limited-service restaurant licensee shall maintain at least 70% of the limited-service restaurant licensee's total restaurant business from the sale of food, which does not include a service charge.

(8) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an alcoholic product except after:

(i) the patron to whom the limited-service restaurant licensee sells, offers for sale, or furnishes the alcoholic product is seated at:

(A) a table that is located in a dining area or a dispensing area;

(B) a counter that is located in a dining area or a dispensing area; or

(C) a dispensing structure that is located in a dispensing area; and

(ii) the limited-service restaurant licensee confirms that the patron intends to:

(A) order food prepared, sold, and furnished at the licensed premises; and

(B) except as provided in Subsection (8)(b), consume the food at the same location where the patron is seated and sold, offered for sale, or furnished the alcoholic product.

(b) (i) While a patron waits for a seat at a table or counter in the dining area of a limited-service restaurant licensee, the limited-service restaurant licensee may sell, offer for sale, or furnish to the patron one drink that contains a single portion of an alcoholic product as described in Section 32B-5-304 if:

(A) the patron is in a dispensing area and seated at a table, counter, or dispensing structure; and

(B) the limited-service restaurant licensee first confirms that after the patron is seated in the dining area, the patron intends to order food prepared, sold, and furnished at the licensed premises.

(ii) If the patron does not finish the patron's alcoholic product before moving to a seat in the dining area, an employee of the limited-service restaurant licensee who is qualified to sell and serve an alcoholic product under Section 32B-5-306 shall transport any unfinished portion of the patron's alcoholic product to the patron's seat in the dining area.

(iii) For purposes of Subsection (8)(b)(i) a single portion of wine is 5 ounces or less.

(c) A limited-service restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) A patron may consume an alcoholic product only if the patron is seated at:

(a) a table that is located in a dining area or a dispensing area;

(b) a counter that is located in a dining area or a dispensing area; or

(c) a dispensing structure located in a dispensing area.

(10) (a) Subject to the other provisions of this Subsection (10), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) An individual portion of wine is considered to be one alcoholic product under Subsection (10)(a).

(11) In accordance with the provisions of this section, an individual who is at least 21 years of age may consume food and beverages in a dispensing area.

(12) (a) Except as provided in Subsection (12)(b), a minor may not sit, remain, or consume food or beverages in a dispensing area.

(b) (i) A minor may be in a dispensing area if the minor is employed by the limited-service restaurant licensee:

(A) in accordance with Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services when the limited-service restaurant licensee is not open for business.

(ii) If there is no alternative route available, a minor may momentarily pass through a dispensing area without remaining or sitting in the dispensing area en route to an area of the limited-service restaurant licensee's premises in which the minor is permitted to be.

(13) Except as provided in Subsection 32B-5-307(3), a limited-service restaurant licensee may dispense an alcoholic product only if:

(a) the alcoholic product is dispensed from:

(i) a dispensing structure that is located in a dispensing area;

(ii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are not readily visible to a patron and not accessible by a patron; and

(B) apart from an area used for dining, for staging, or as a lobby or waiting area; or

(iii) the premises of a bar licensee that is:

(A) owned by the same person or persons as the limited-service restaurant licensee; and

(B) located immediately adjacent to the premises of the limited-service restaurant licensee;

(b) the limited-service restaurant licensee uses an alcoholic product that is stored in an area described in Subsection (13)(a) or in accordance with Section 32B-5-303; and

(c) any instrument or equipment used to dispense alcoholic product is located in an area described in Subsection (13)(a).

(14) (a) A limited-service restaurant licensee may have more than one dispensing area in the licensed premises.

(b) Each dispensing area in a licensed premises may satisfy the requirements for a dispensing area under Subsection 32B-6-202(2)(a)(i), (ii), or (iii), regardless of how any other dispensing area in the licensed premises satisfies the requirements for a dispensing area.

(15) A limited-service restaurant licensee may not:

(a) transfer, dispense, or serve an alcoholic product on or from a movable cart; or

(b) display an alcoholic product or a product intended to appear like an alcoholic product by moving a cart or similar device around the licensed premises.

(16) A limited-service restaurant licensee may state in a food or alcoholic product menu a charge or fee made in connection with the sale, service, or consumption of wine or heavy beer, including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

(17) (a) In addition to the requirements described in Section 32B-5-302, a limited-service restaurant licensee shall maintain each of the following records for at least three years:

(i) a record required by Section 32B-5-302; and

(ii) a record that the commission requires a limited-service restaurant licensee to use or maintain under a rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The department shall audit the records of a limited-service restaurant licensee at least once each calendar year.

(18) (a) In accordance with Section 32B-6-305.3, a limited-service restaurant licensee:

(i) may comply with the provisions of this section beginning on or after July 1, 2017; and

(ii) shall comply with the provisions of this section:

(A) for a limited-service restaurant licensee that does not have a grandfathered bar structure, on and after July 1, 2018; or

(B) for a limited-service restaurant licensee that has a grandfathered bar structure, on and after July 1, 2022.

(b) A limited-service restaurant licensee that elects to comply with the provisions of this section before the latest applicable date described in Subsection (18)(a)(ii):

(i) shall comply with each provision of this section; and

(ii) is not required to comply with the provisions of Section 32B-6-305.

Section 41. Section 32B-6-305.3 is enacted to read:

32B-6-305.3. Transition process for limited-service restaurant licensees.

(1) For a limited-service restaurant license issued on or after July 1, 2017, the limited-service restaurant licensee shall comply with the provisions of Section 32B-6-305.2.

(2) For a limited-service restaurant license issued before July 1, 2017, before the limited-service restaurant licensee changes the limited-service restaurant licensee's approved location for storage, dispensing, or consumption to comply with the provisions of Section 32B-6-305.2, the limited-service restaurant licensee shall submit an application for approval to the department in accordance with Subsection 32B-5-303(3).

(3) (a) Except as provided in Subsection (4), a person who holds a limited-service restaurant license issued before July 1, 2017, shall comply with the provisions of Section 32B-6-305.2 on or before July 1, 2018.

(b) A limited-service restaurant licensee described in Subsection (3)(a) that cannot comply with the provisions of Section 32B-6-305.2 without a change to the limited-service restaurant licensee's approved location for storage, dispensing, or consumption:

(i) may submit an application for approval described in Subsection (2) on or after May 9, 2017; and

(ii) shall submit an application for approval described in Subsection (2) on or before May 1, 2018.

(c) If a limited-service restaurant licensee described in Subsection (3)(a) submits an application for approval described in Subsection (2) on May 9, 2017, the department shall take action on the application on or before July 1, 2017.

(4) (a) A person who holds a limited-service restaurant license issued before July 1, 2017, and has a grandfathered bar structure shall comply with the provisions of Section 32B-6-305.2 on or before the earlier of:

(i) July 1, 2022;

(ii) the date on which the limited-service restaurant licensee remodels, as defined by commission rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the limited-service restaurant licensee's grandfathered bar structure or dining area; or

(iii) the date on which the limited-service restaurant licensee experiences a change of ownership described in Subsection 32B-8a-202(1).

(b) A limited-service restaurant licensee described in Subsection (4)(a) that cannot comply with the provisions of Section 32B-6-305.2 without a change to the limited-service restaurant licensee's approved location for storage, dispensing, or consumption:

(i) may submit an application for approval described in Subsection (2) on or after May 9, 2017; and

(ii) shall submit an application for approval described in Subsection (2) on or before May 1, 2022.

Section 42. Section 32B-6-401 is amended to read:

Part 4. Bar Establishment License

32B-6-401. Title.

This part is known as "[Club] Bar Establishment License."

Section 43. Section 32B-6-403 is amended to read:

32B-6-403. Commission's power to issue bar establishment license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a [club] bar establishment licensee, the person shall first obtain a [club] bar establishment license from the commission in accordance with this part.

(2) The commission may issue a [club] bar establishment license to establish [club] bar establishment licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated by a [club] bar establishment licensee.

(3) Subject to Section 32B-1-201:

(a) (i) [The] before July 1, 2018, the commission may not issue a total number of [club] bar establishment licenses that at any time exceeds the number determined by dividing the population of the state by 7,850[-]; and

(ii) beginning on July 1, 2018, the commission may not issue a total number of bar establishment licenses that at any time exceeds the number determined by dividing the population of the state by 10,538;

(b) the commission may issue a seasonal [club] bar establishment license in accordance with Section 32B-5-206 to:

(i) a dining club licensee; or

(ii) a [social-club] bar licensee[-];

(c) (i) if the location, design, and construction of a hotel may require more than one dining club license or [social-club] bar license location within the hotel to serve the public convenience, the commission may authorize as many as three [club] bar establishment license locations within the hotel under one [club] bar establishment license if:

(A) the hotel has a minimum of 150 guest rooms;

(B) all locations under the [club] bar establishment license are:

(I) within the same hotel; and

(II) on premises that are managed or operated, and owned or leased, by the [club] bar establishment licensee; and

(C) the locations under the [club] bar establishment license operate under the same type of [club] bar establishment license[-]; and

(ii) a facility other than a hotel shall have a separate [club] bar establishment license for each [club] bar establishment license location where an alcoholic product is sold, offered for sale, or furnished[-];

(d) when a business establishment undergoes a change of ownership, the commission may issue a [club] bar establishment license to the new owner of the business establishment notwithstanding that there is no [club] bar establishment license available under Subsection (3)(a) if:

(i) the primary business activity at the business establishment before and after the change of ownership is not the sale, offer for sale, or furnishing of an alcoholic product;

(ii) before the change of ownership there are two or more licensed premises on the business establishment that operate under a retail license,

with at least one of the retail licenses being a [club] bar establishment license;

(iii) subject to Subsection (3)(e), the licensed premises of the [club] bar establishment license issued under this Subsection (3)(d) is at the same location where the [club] bar establishment license licensed premises was located before the change of ownership; and

(iv) the person who is the new owner of the business establishment qualifies for the [club] bar establishment license, except for there being no [club] bar establishment license available under Subsection (3)(a)[-]; and

(e) if a [club] bar establishment licensee of a [club] bar establishment license issued under Subsection (3)(d) requests a change of location, the [club] bar establishment licensee may retain the [club] bar establishment license after the change of location only if on the day on which the [club] bar establishment licensee seeks a change of location a [club] bar establishment license is available under Subsection (3)(a).

Section 44. Section 32B-6-404 is amended to read:

32B-6-404. Types of bar license.

(1) To obtain an equity [club] license, in addition to meeting the other requirements of this part, a person shall:

(a) whether incorporated or unincorporated:

(i) be organized and operated solely for a social, recreational, patriotic, or fraternal purpose;

(ii) have members;

(iii) limit access to its licensed premises to a member or a guest of the member; and

(iv) desire to maintain premises upon which an alcoholic product may be stored, sold to, offered for sale to, furnished to, and consumed by a member or a guest of a member;

(b) own, maintain, or operate a substantial recreational facility in conjunction with a club house such as:

(i) a golf course; or

(ii) a tennis facility;

(c) have at least 50% of the total membership having:

(i) full voting rights; and

(ii) an equal share of the equity of the [club] entity or a right to redemption or refund at the equal value; and

(d) if there is more than one class of membership, have at least one class of membership that entitles each member in that class to:

(i) full voting rights; and

(ii) an equal share of the equity of the [club] entity or a right to redemption or equal value.

(2) To obtain a fraternal [club] license, in addition to meeting the other requirements of this part, a person shall:

- (a) whether incorporated or unincorporated:
- (i) be organized and operated solely for a social, recreational, patriotic, or fraternal purpose;
 - (ii) have members;
 - (iii) limit access to its licensed premises to a member or a guest of the member; and
 - (iv) desire to maintain premises upon which an alcoholic product may be stored, sold to, offered for sale to, furnished to, and consumed by a member or a guest of a member;
- (b) have no capital stock;
- (c) exist solely for:
- (i) the benefit of its members and their beneficiaries; and
 - (ii) a lawful social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purpose for the benefit of its members or the public, carried on through voluntary activity of its members in their local lodges;
- (d) have a representative form of government;
- (e) have a lodge system in which:
- (i) there is a supreme governing body;
 - (ii) subordinate to the supreme governing body are local lodges, however designated, into which individuals are admitted as members in accordance with the laws of the fraternal;
 - (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at least monthly; and
 - (iv) the local lodges regularly engage in one or more programs involving member participation to implement the purposes of Subsection (2)(c); and
- (f) own or lease a building or space in a building used for lodge activities.
- (3) To obtain a dining club license, in addition to meeting the other requirements of this part, a person shall:
- (a) maintain at least the following percentages of its total club business from the sale of food, not including mix for alcoholic products, or service charges:
 - (i) for a dining club license that is issued as an original license on or after July 1, 2011, 60%; and
 - (ii) for a dining club license that is issued on or before June 30, 2011:
 - (A) 50% on or before June 30, 2012; and
 - (B) 60% on and after July 1, 2012; and
 - (b) obtain a determination by the commission that the person will operate as a dining club licensee, as part of which the commission may consider:
 - (i) the square footage and seating capacity of the premises;

- (ii) what portion of the square footage and seating capacity will be used for a dining area in comparison to the portion that will be used as a lounge or bar area;
 - (iii) whether full meals including appetizers, main courses, and desserts are served;
 - (iv) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person who is located on the premise of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;
 - (v) whether the entertainment provided at the ~~club~~ premises is suitable for minors; and
 - (vi) the club management's ability to manage and operate a dining club license including:
 - (A) management experience;
 - (B) past dining club licensee or restaurant management experience; and
 - (C) the type of management scheme used by the dining club license.
- (4) To obtain a ~~social club~~ bar license, a person is required to meet the requirements of this part except those listed in Subsection (1), (2), or (3).
- (5) (a) At the time that the commission issues a ~~club~~ bar establishment license, the commission shall designate the type of ~~club~~ bar establishment license for which the person qualifies.
- (b) If requested by a ~~club~~ bar establishment licensee, the commission may approve a change in the type of ~~club~~ bar establishment license in accordance with rules made by the commission.
- (6) To the extent not prohibited by law, this part does not prevent a dining club licensee or ~~social club~~ bar licensee from restricting access to the ~~club's~~ licensed premises on the basis of an individual:
- (a) paying a fee; or
 - (b) agreeing to being on a list of individuals who have access to the ~~club's~~ licensed premises.
- (7) (a) (i) On or after July 1, 2017, the commission may not issue or renew a dining club license.
- (ii) Effective July 1, 2018, the department shall convert each dining club license to a full-service restaurant license or a bar license in accordance with the provisions of this Subsection (7).
- (b) (i) (A) A person licensed as a dining club on July 1, 2017, shall notify the department no later than May 31, 2018, whether effective July 1, 2018, the person elects to be licensed as a full-service restaurant or a bar.
- (B) Effective July 1, 2018, the department shall convert a dining club license to a full-service restaurant license or a bar license in accordance with the dining club licensee's election under Subsection (7)(b)(i)(A).
- (ii) If a dining club licensee fails to timely notify the department in accordance with Subsection

(7)(b)(i), the dining club license is automatically converted to a full-service restaurant license on July 1, 2018.

(c) Subject to Section 32B-6-404.1, after a dining club license converts to a full-service restaurant license or a bar license, the retail licensee shall operate under the provisions that govern the full-service restaurant license or the bar license, as applicable.

(d) After a dining club license converts to a full-service restaurant license or a bar license in accordance with this Subsection (7):

(i) the full-service restaurant license is not considered in determining the total number of full-service restaurant licenses available under Section 32B-6-203; or

(ii) the bar license is not considered in determining the total number of bar establishment licenses available under Section 32B-6-403.

(e) Before July 1, 2018, the commission may not issue a full-service restaurant license, a limited-service restaurant license, or a beer-only restaurant license to a person who holds a dining club license on May 9, 2017, for the same premises.

(f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules establishing a procedure by which a dining club licensee elects and converts to a full-service restaurant licensee or a bar licensee under this Subsection (7).

Section 45. Section 32B-6-404.1 is enacted to read:

32B-6-404.1. Transition from dining club license to full-service restaurant license.

(1) As used in this section:

(a) "Converted full-service restaurant licensee" means a dining club licensee that converts to a full-service restaurant licensee on July 1, 2018, in accordance with Subsection 32B-6-404(7).

(b) "Grandfathered bar structure" means the same as that term is defined in Section 32B-6-202.

(2) (a) Except as provided in Subsection (2)(c), beginning on July 1, 2018, a converted full-service restaurant licensee shall operate under the provisions that govern a full-service restaurant licensee that has a grandfathered bar structure.

(b) For purposes of applying the provisions that govern a full-service restaurant licensee with a grandfathered bar structure, a converted full-service restaurant licensee's bar structure is considered a grandfathered bar structure.

(c) The provisions of Section 32B-6-205.3 do not apply to a converted full-service restaurant licensee.

(3) (a) A converted full-service restaurant licensee shall comply with the provisions of Section 32B-6-205.2 on or before the earlier of:

(i) July 1, 2022;

(ii) the date on which the converted full-service restaurant licensee remodels, as defined by commission rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the converted full-service restaurant licensee's bar structure or dining area; or

(iii) the date on which the converted full-service restaurant licensee experiences a change of ownership described in Subsection 32B-8a-202(1).

(b) Before a converted full-service restaurant licensee changes the converted full-service restaurant licensee's approved location for storage, dispensing, or consumption to comply with the provisions of Section 32B-6-205.2, the converted full-service restaurant licensee shall submit an application for approval to the department in accordance with Subsection 32B-5-303(3).

(c) A converted full-service restaurant licensee that cannot comply with the provisions of Section 32B-6-205.2 without a change to the converted full-service restaurant licensee's approved location for storage, dispensing, or consumption shall submit an application for approval described in Subsection (3)(b) on or before May 1, 2022.

(4) (a) Notwithstanding any provision to the contrary, a converted full-service restaurant licensee shall maintain at least the following percentage of the converted full-service restaurant licensee's total restaurant business from the sale of food:

(i) beginning July 1, 2018, and ending June 30, 2019, 64%;

(ii) beginning July 1, 2019, and ending June 30, 2020, 68%; and

(iii) on and after July 1, 2021, 70%.

(b) For purposes of Subsection (4)(a), a converted full-service restaurant licensee's restaurant business from the sale of food does not include:

(i) mix for an alcoholic product; or

(ii) a service charge.

Section 46. Section 32B-6-405 is amended to read:

32B-6-405. Specific licensing requirements for bar establishment license.

(1) To obtain a [club] bar establishment license, in addition to complying with Chapter 5, Part 2, Retail Licensing Process, a person shall submit with the written application:

(a) (i) a statement as to whether the person is seeking to qualify as:

(A) an equity [club] licensee;

(B) a fraternal [club] licensee;

(C) a dining club licensee; or

(D) a [social club] bar licensee; and

(ii) evidence that the person meets the requirements for the type of [club] bar establishment license for which the person is applying;

(b) evidence that the person operates [club] a premises where a variety of food is prepared and served in connection with dining accommodations; and

(c) if the person is applying for an equity [club] license or fraternal [club] license, a copy of the [club's] entity's bylaws or house rules, and an amendment to those records.

(2) The commission may refuse to issue a [club] bar establishment license to a person for an equity [club] license or fraternal [club] license if the commission determines that a provision of the person's bylaws or house rules, or amendments to those records is not:

- (a) reasonable; and
- (b) consistent with:

(i) the declared nature and purpose of the [club] bar establishment licensee; and

(ii) the purposes of this part.

(3) (a) A [club] bar establishment license expires on June 30 of each year.

(b) To renew a [club] bar establishment license, a person shall comply with the requirements of Chapter 5, Part 2, Retail Licensing Process, by no later than May 31.

(4) (a) The nonrefundable application fee for a [club] bar establishment license is \$300.

(b) The initial license fee for a [club] bar establishment license is \$2,750.

(c) The renewal fee for a [club] bar establishment license is \$2,000.

(5) The bond amount required for a [club] bar establishment license is the penal sum of \$10,000.

Section 47. Section 32B-6-406 is amended to read:

32B-6-406. Specific operational requirements for a bar establishment license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a [club] bar establishment licensee and staff of the [club] bar establishment licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a [club] bar establishment licensee;
- (ii) individual staff of a [club] bar establishment licensee; or
- (iii) both a [club] bar establishment licensee and staff of the [club] bar establishment licensee.

(2) In addition to complying with Subsection 32B-5-301(3), a [club] bar licensee shall display in a [prominent place in the club] conspicuous place at the entrance to the licensed premises a [list of the

~~types and brand names of liquor being furnished through the club licensee's calibrated metered dispensing system.] sign approved by the commission that:~~

(a) measures at least 8-1/2 inches long and 11 inches wide; and

(b) clearly states that the bar licensee is a bar and not a restaurant.

(3) (a) In addition to complying with Section 32B-5-302, a [club] bar establishment licensee shall maintain for a minimum of three years:

- (i) a record required by Section 32B-5-302; and
- (ii) a record maintained or used by the [club] bar establishment licensee, as the department requires.

(b) Section 32B-1-205 applies to a record required to be made, maintained, or used in accordance with this Subsection (3).

(c) The department shall audit the records of a [club] bar establishment licensee at least once annually.

(4) (a) A [club] bar establishment licensee may not sell, offer for sale, or furnish liquor on the licensed premises on any day during a period that:

- (i) begins at 1 a.m.; and
- (ii) ends at 9:59 a.m.

(b) A [club] bar establishment licensee may sell, offer for sale, or furnish beer during the hours specified in Part 7, On-Premise Beer Retailer License, for an on-premise beer retailer license.

(c) (i) Notwithstanding Subsections (4)(a) and (b), a [club] bar establishment licensee shall keep its licensed premises open for one hour after the [club] bar establishment licensee ceases the sale and furnishing of an alcoholic product during which time a patron of the [club] bar establishment licensee may finish consuming:

- (A) a single drink containing spirituous liquor;
- (B) a single serving of wine not exceeding five ounces;
- (C) a single serving of heavy beer;
- (D) a single serving of beer not exceeding 26 ounces; or
- (E) a single serving of a flavored malt beverage.

(ii) A [club] bar establishment licensee is not required to remain open:

- (A) after all patrons have vacated the premises; or
- (B) during an emergency.

(5) (a) A minor may not be admitted into, use, or be in:

- (i) a lounge or bar area of the premises of:
 - (A) an equity [club] licensee;
 - (B) a fraternal [club] licensee; or

(C) a dining club licensee; or

(ii) the premises of:

(A) a dining club licensee unless accompanied by an individual who is 21 years of age or older; or

(B) a ~~[social club]~~ bar licensee, except to the extent provided for under Section 32B-6-406.1.

(b) Notwithstanding Section 32B-5-308, a ~~[club]~~ bar establishment licensee may not employ a minor to:

(i) work in a lounge or bar area of an equity ~~[club]~~ licensee, fraternal ~~[club]~~ licensee, or dining club licensee; or

(ii) handle an alcoholic product.

(c) Notwithstanding Section 32B-5-308, a minor may not be employed on the licensed premises of a ~~[social club]~~ bar licensee.

(d) Nothing in this part or Section 32B-5-308 precludes a local authority from being more restrictive of a minor's admittance to, use of, or presence on the licensed premises of a ~~[club]~~ bar establishment licensee.

(6) A ~~[club]~~ bar establishment licensee shall have food available at all times when an alcoholic product is sold, offered for sale, furnished, or consumed on the licensed premises.

(7) (a) Subject to the other provisions of this Subsection (7), a patron may not have more than two alcoholic products of any kind at a time before the patron.

(b) A patron may not have two spirituous liquor drinks before the ~~[club]~~ bar establishment licensee patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.

(c) An individual portion of wine is considered to be one alcoholic product under Subsection (7)(a).

(8) A ~~[club]~~ bar establishment licensee shall have available on the premises for a patron to review at the time that the patron requests it, a written alcoholic product price list or a menu containing the price of an alcoholic product sold, offered for sale, or furnished by the ~~[club]~~ bar establishment licensee including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

(9) Subject to Section 32B-5-309, a ~~[club]~~ bar establishment licensee may not temporarily rent or otherwise temporarily lease its premises to a person unless:

(a) the person to whom the ~~[club]~~ bar establishment licensee rents or leases the premises agrees in writing to comply with this title as if the person is the ~~[club]~~ bar establishment licensee, except for a requirement related to making or maintaining a record; and

(b) the ~~[club]~~ bar establishment licensee takes reasonable steps to ensure that the person complies with this section as provided in Subsection (9)(a).

(10) If a ~~[club]~~ bar establishment licensee is an equity ~~[club]~~ licensee or fraternal ~~[club]~~ licensee, the ~~[club]~~ bar establishment licensee shall comply with Section 32B-6-407.

(11) If a ~~[club]~~ bar establishment licensee is a dining club licensee or ~~[social club]~~ bar licensee, the ~~[club]~~ bar establishment licensee shall comply with Section 32B-1-407.

(12) (a) A ~~[club]~~ bar establishment licensee shall own or lease premises suitable for the ~~[club]~~ bar establishment licensee's activities.

(b) A ~~[club]~~ bar establishment licensee may not maintain licensed premises in a manner that barricades or conceals the ~~[club]~~ bar establishment licensee's operation.

Section 48. Section 32B-6-406.1 is amended to read:

32B-6-406.1. Specific operational restrictions related to dance or concert hall.

(1) A minor who is at least 18 years of age may be admitted into, use, or be on the premises of a dance or concert hall if:

(a) the dance or concert hall is located:

(i) on the licensed premises of a ~~[social club]~~ bar licensee; or

(ii) on the property that immediately adjoins the licensed premises of and is operated by a ~~[social club]~~ bar licensee; and

(b) the ~~[social club]~~ bar licensee holds a permit to operate a dance or concert hall that was issued on or before May 11, 2009:

(i) on the basis of the operational requirements described in Subsection (2); and

(ii) when the ~~[social club]~~ bar licensee was licensed as a class D private club.

(2) A ~~[social club]~~ bar licensee that holds a dance or concert hall permit shall operate in such a way that:

(a) the ~~[social club]~~ bar licensee's lounge, ~~[bar]~~ dispensing structure, or other area for alcoholic product consumption is:

(i) not accessible to a minor;

(ii) clearly defined; and

(iii) separated from the dance or concert hall area by one or more walls, multiple floor levels, or other substantial physical barriers;

(b) ~~[a bar or dispensing]~~ a dispensing structure or area where alcoholic product is dispensed is not visible to a minor;

(c) consumption of an alcoholic product may not occur in:

(i) the dance or concert hall area; or

(ii) an area of the ~~[social club]~~ bar license premises accessible to a minor;

(d) the ~~[social club]~~ bar licensee maintains sufficient security personnel to prevent the passing of beverages from the ~~[social club]~~ bar licensee's lounge, ~~[bar]~~ dispensing structure, or other area for alcoholic product consumption to:

(i) the dance or concert hall area; or

(ii) an area of the ~~[social club]~~ bar licensee premises accessible to a minor;

(e) there are one or more separate entrances, exits, and restroom facilities from the ~~[social club]~~ bar licensee's lounge, ~~[bar]~~ dispensing structure, or other area for alcoholic product consumption than for:

(i) the dance or concert hall area; or

(ii) an area accessible to a minor; and

(f) the ~~[social club]~~ bar licensee complies with any other requirements imposed by the commission by rule.

(3) (a) A minor under 18 years of age who is accompanied at all times by a parent or legal guardian may be admitted into, use, or be on the premises of a concert hall described in Subsection (1) if:

(i) the requirements of Subsection (2) are met; and

(ii) signage, product, and dispensing equipment containing recognition of an alcoholic product is not visible to the minor.

(b) A minor under 18 years of age but who is 14 years of age or older who is not accompanied by a parent or legal guardian may be admitted into, use, or be on the premises of a concert hall described in Subsection (1) if:

(i) the requirements of Subsections (2) and (3)(a) are met; and

(ii) there is no alcoholic product, sales, furnishing, or consumption on the premises of the ~~[social club]~~ bar licensee.

(4) The commission may suspend or revoke a dance or concert permit issued to a ~~[social club]~~ bar licensee and suspend or revoke the license of the ~~[social club]~~ bar licensee if:

(a) the ~~[social club]~~ bar licensee fails to comply with the requirements in this section;

(b) the ~~[social club]~~ bar licensee sells, offers for sale, or furnishes an alcoholic product to a minor;

(c) the ~~[social club]~~ bar licensee or a supervisory or managerial level staff of the ~~[social club]~~ bar licensee is convicted under Title 58, Chapter 37, Utah Controlled Substances Act, on the basis of an activity that occurs on:

(i) the licensed premises; or

(ii) the dance or concert hall that is located on property that immediately adjoins the licensed

premises of and is operated by the ~~[social club]~~ bar licensee;

(d) there are three or more convictions of patrons of the ~~[social club]~~ bar licensee under Title 58, Chapter 37, Utah Controlled Substances Act, on the basis of activities that occur on:

(i) the licensed premises; or

(ii) the dance or concert hall that is located on property that immediately adjoins the licensed premises of and is operated by the ~~[social club]~~ bar licensee;

(iii) there is more than one conviction:

(A) of:

(I) the ~~[social club]~~ bar licensee;

(II) staff of the ~~[social club]~~ bar licensee;

(III) an entertainer contracted by the ~~[social club]~~ bar licensee; or

(IV) a patron of the ~~[social club]~~ bar licensee; and

(B) made on the basis of a lewd act or lewd entertainment prohibited by this title that occurs on:

(I) the licensed premises; or

(II) the dance or concert hall that is located on property that immediately adjoins the licensed premises of and is operated by the ~~[social club]~~ bar licensee; or

(e) the commission finds acts or conduct contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by this title that occurs on:

(i) the licensed premises; or

(ii) the dance or concert hall that is located on property that immediately adjoins the licensed premises of and is operated by the ~~[social club]~~ bar licensee.

(5) Nothing in this section prohibits a ~~[social club]~~ bar licensee from selling, offering for sale, or furnishing an alcoholic product in a dance or concert area located on the ~~[social club]~~ bar licensed premises on days and times when the ~~[social club]~~ bar licensee does not allow a minor into those areas.

Section 49. Section 32B-6-407 is amended to read:

32B-6-407. Specific operational requirements for equity license or fraternal license.

(1) ~~[For purposes of]~~ As used in this section ~~[only:~~ (a) "Club", "equity or fraternal licensee" means an equity ~~[club]~~ licensee or fraternal ~~[club]~~ licensee.

~~[(b) "Club licensee" does not include a dining club licensee or social club licensee.]~~

(2) (a) ~~[A club]~~ An equity or fraternal licensee shall have a governing body that:

(i) consists of three or more members of the ~~[club]~~ equity or fraternal licensee; and

(ii) holds regular meetings to:

(A) review membership applications; and

(B) conduct other business as required by the bylaws or house rules of the [club] equity or fraternal licensee.

(b) (i) [A-club] An equity or fraternal licensee shall maintain a minute book that is posted currently by the [club] equity or fraternal licensee.

(ii) The minute book required by this Subsection (2) shall contain the minutes of a regular or special meeting of the governing body.

(3) [A-club] An equity or fraternal licensee may admit an individual as a member only on written application signed by the person, subject to:

(a) the person paying an application fee; and

(b) investigation, vote, and approval of a quorum of the governing body.

(4) [A-club] An equity or fraternal licensee shall:

(a) record an admission of a member in the official minutes of a regular meeting of the governing body; and

(b) whether approved or disapproved, file an application as a part of the official records of the [club] equity or fraternal licensee.

(5) The spouse of a member of [a-club] an equity or fraternal licensee has the rights and privileges of the member:

(a) to the extent permitted by the bylaws or house rules of the [club] equity or fraternal licensee; and

(b) except to the extent restricted by this title.

(6) A minor child of a member of [a-club] an equity or fraternal licensee has the rights and privileges of the member:

(a) to the extent permitted by the bylaws or house rules of the [club] equity or fraternal licensee; and

(b) except to the extent restricted by this title.

(7) [A-club] An equity or fraternal licensee shall maintain:

(a) a current and complete membership record showing:

(i) the date of application of a proposed member;

(ii) a member's address;

(iii) the date the governing body approved a member's admission;

(iv) the date initiation fees and dues are assessed and paid; and

(v) the serial number of the membership card issued to a member;

(b) a membership list; and

(c) a current record indicating when a member is removed as a member or resigns.

(8) (a) [A-club] An equity or fraternal licensee shall have bylaws or house rules that include provisions respecting the following:

(i) standards of eligibility for members;

(ii) limitation of members, consistent with the nature and purpose of the [club] equity or fraternal licensee;

(iii) the period for which dues are paid, and the date upon which the period expires;

(iv) provisions for removing a member from the [club] equity or fraternal licensee's membership for the nonpayment of dues or other cause;

(v) provisions for guests; and

(vi) application fees and membership dues.

(b) [A-club] An equity or fraternal licensee shall maintain a current copy of the [club] equity or fraternal licensee's current bylaws and current house rules.

(c) [A-club] An equity or fraternal licensee shall maintain its bylaws or house rules, and any amendments to those records, on file with the department at all times.

(9) [A-club] An equity or fraternal licensee may, in its discretion, allow an individual to be admitted to or use the [club] licensed premises as a guest subject to the following conditions:

(a) the individual is allowed to use the [club] equity or fraternal licensee premises only to the extent permitted by the [club] equity or fraternal licensee's bylaws or house rules;

(b) the individual shall be previously authorized by a member of the [club] equity or fraternal licensee who agrees to host the individual as a guest ~~into the club~~;

(c) the individual has only those privileges derived from the individual's host for the duration of the individual's visit to the [club] equity or fraternal licensee premises; and

(d) [a-club] an equity or fraternal licensee or staff of the [club] equity or fraternal licensee may not enter into an agreement or arrangement with a [club] member of the equity or fraternal licensee to indiscriminately host a member of the general public into the [club] equity or fraternal licensee premises as a guest.

(10) Notwithstanding Subsection (9), an individual may be allowed as a guest in [a-club] an equity or fraternal licensed premises without a host if:

(a) (i) the [club] equity or fraternal licensee is an equity [club] licensee; and

(ii) the individual is a member of an equity [club] licensee that has reciprocal guest privileges with the equity [club] licensee for which the individual is a guest;

(b) (i) the [club] equity or fraternal licensee is a fraternal [club] licensee; and

(ii) the individual is a member of the same fraternal organization as the fraternal [club] licensee for which the individual is a guest; or

(c) (i) the [club] equity or fraternal licensee is a fraternal [club] licensee that holds the fraternal [club] license on July 1, 2013;

(ii) the [club] equity or fraternal licensee's bylaws permit guests in the [club] equity or fraternal licensed premises without a host except that a minor may not be admitted as a guest without a host; and

(iii) the [club] equity or fraternal licensee maintains 60% of its total [club] business from the sale of food, not including mix for alcoholic products, or service charges.

(11) Unless the patron is a member or guest, [a club] an equity or fraternal licensee may not:

(a) sell, offer for sale, or furnish an alcoholic product to the patron; or

(b) allow the patron to be admitted to or use the licensed premises.

(12) A minor may not be a member, officer, director, or trustee of [a club] an equity or fraternal licensee.

Section 50. Section 32B-6-408 is amended to read:

32B-6-408. Information obtained by investigator.

(1) Subject to Subsection (2), if an investigator is permitted by another provision of this title to inspect a record of a [club] bar establishment licensee, in addition to any other rights under this title, the investigator may inspect, have a copy of, or otherwise review any record of the [club] bar establishment licensee that is a visual recording of the operations of the [club] bar establishment licensee.

(2) An investigator who is a peace officer may not inspect, have a copy of, or otherwise review a visual recording described in Subsection (1) without probable cause.

Section 51. Section 32B-6-703 is amended to read:

32B-6-703. Commission's power to issue on-premise beer retailer license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of beer on the premises as an on-premise beer retailer, the person shall first obtain an on-premise beer retailer license from the commission in accordance with this part.

(2) (a) The commission may issue an on-premise beer retailer license to establish on-premise beer retailer licensed premises at places and in numbers as the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as an on-premise beer retailer.

(b) At the time that the commission issues an on-premise beer retailer license, the commission shall designate whether the on-premise beer retailer is a tavern.

(c) The commission may change its designation of whether an on-premise beer retailer is a tavern in accordance with rules made by the commission.

(d) (i) In determining whether an on-premise beer retailer is a tavern, the commission shall determine whether the on-premise beer retailer will engage primarily in the retail sale of beer for consumption on the establishment's premises.

(ii) In making a determination under this Subsection (2)(d), the commission shall consider:

(A) whether the on-premise beer retailer will operate as one of the following:

(I) a beer bar;

(II) a parlor;

(III) a lounge;

(IV) a cabaret; or

(V) a nightclub;

(B) if the on-premise beer retailer will operate as described in Subsection (2)(d)(ii)(A):

(I) whether the on-premise beer retailer will sell food in the establishment; and

(II) if the on-premise beer retailer sells food, whether the revenue from the sale of beer will exceed the revenue of the sale of food;

(C) whether full meals including appetizers, main courses, and desserts will be served;

(D) the square footage and seating capacity of the premises;

(E) what portion of the square footage and seating capacity will be used for a dining area in comparison to the portion that will be used as a lounge or bar area;

(F) whether the person will maintain adequate on-premise culinary facilities to prepare full meals, except a person that is located on the premises of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;

(G) whether the entertainment provided on the premises of the beer retailer will be suitable for minors; and

(H) the beer retailer management's ability to manage and operate an on-premise beer retailer license including:

(I) management experience;

(II) past beer retailer management experience; and

(III) the type of management scheme that will be used by the beer retailer.

(e) On or after March 1, 2012:

(i) To be licensed as an on-premise beer retailer that is not a tavern, a person shall:

(A) maintain at least 70% of the person's total gross revenues from business directly related to a recreational amenity on or directly adjoining the licensed premises of the beer retailer, except that a person may include gross revenue from business directly related to a recreational amenity that is owned or operated by a political subdivision if the person has a contract meeting the requirements of Subsection (2)(e)(v) with the political subdivision; or

(B) have a recreational amenity on or directly adjoining the licensed premises of the beer retailer and maintain at least 70% of the person's total gross revenues from the sale of food.

(ii) The commission may not license a person as an on-premise beer retailer if the person does not:

(A) meet the requirements of Subsection (2)(e)(i); or

(B) operate as a tavern.

~~[(iii) (A) A person licensed as an on-premise beer retailer that is not a tavern as of July 1, 2011 shall notify the department by no later than August 1, 2011, whether effective March 1, 2012, the person will seek to be licensed as a beer-only restaurant licensee, a tavern, or an on-premise beer retailer that meets the requirements of Subsection (2)(e)(i).]~~

~~[(B) If an on-premise beer retailer fails to notify the department as required by Subsection (2)(e)(iii)(A), the on-premise beer retailer's license expires as of February 29, 2012, and to operate as an on-premise beer retailer after February 29, 2012, the on-premise beer retailer is required to apply as a new licensee, and any bar or bar structure on the premises of an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i) will not be grandfathered under Subsection 32B-6-902(1).]~~

~~[(iv)] (iii) A person who, after August 1, 2011, applies for an on-premise beer retailer license that is not a tavern and does not meet the requirements of Subsection (2)(e)(i), may not have or construct facilities for the dispensing or storage of an alcoholic product that do not meet the requirements of Subsection 32B-6-905(12)(a)(ii).~~

~~[(v)] (iv) A contract described in Subsection (2)(e)(i)(A) shall:~~

(A) allow the beer retailer to include the total gross revenue from operations of the recreational amenity in the beer retailer's total gross receipts for purposes of Subsection (2)(e)(i)(A); and

(B) give the department the authority to audit financial information of the political subdivision to the extent necessary to confirm that the requirements of Subsection (2)(e)(i)(A) are met.

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of on-premise beer retailer licenses that are taverns that at any time exceeds the number determined by dividing the population of the state by 73,666.

(b) The commission may issue a seasonal on-premise beer retailer license for a tavern in accordance with Section 32B-5-206.

(4) (a) Unless otherwise provided in Subsection (4)(b):

(i) only one on-premise beer retailer license is required for each building or resort facility owned or leased by the same person; and

(ii) a separate license is not required for each retail beer dispensing location in the same building or on the same resort premises owned or operated by the same person.

(b) (i) Subsection (4)(a) applies only if each retail beer dispensing location in the building or resort facility operates in the same manner.

(ii) If each retail beer dispensing location does not operate in the same manner:

(A) one on-premise beer retailer license designated as a tavern is required for the locations in the same building or on the same resort premises that operate as a tavern; and

(B) one on-premise beer retailer license is required for the locations in the same building or on the same resort premises that do not operate as a tavern.

Section 52. Section 32B-6-706 is amended to read:

32B-6-706. Specific operational requirements for on-premise beer retailer license.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, an on-premise beer retailer and staff of the on-premise beer retailer shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) an on-premise beer retailer;

(ii) individual staff of an on-premise beer retailer; or

(iii) both an on-premise beer retailer and staff of the on-premise beer retailer.

(2) (a) An on-premise beer retailer is not subject to Section 32B-5-302, but shall make and maintain the records the department requires.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (2).

(3) Notwithstanding Section 32B-5-303, an on-premise beer retailer may not store or sell liquor on its licensed premises.

(4) Beer sold in a sealed container by an on-premise beer retailer may be removed from the on-premise beer retailer premises in the sealed container.

(5) (a) An on-premise beer retailer may not sell, offer for sale, or furnish beer at its licensed premises during a period that:

- (i) begins at 1 a.m.; and
- (ii) ends at 9:59 a.m.

(b) (i) Notwithstanding Subsection (5)(a), a tavern shall remain open for one hour after the tavern ceases the sale and furnishing of beer during which time a patron of the tavern may finish consuming a single serving of beer not exceeding 26 ounces.

(ii) A tavern is not required to remain open:

(A) after all patrons have vacated the premises; or

(B) during an emergency.

(6) Notwithstanding Section 32B-5-308, a minor may not be on the premises of a tavern.

(7) (a) (i) An on-premise beer retailer may not purchase, acquire, possess for the purpose of resale, or sell beer except beer that the on-premise beer retailer lawfully purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) Violation of Subsection (7)(a)(i) is a class A misdemeanor.

(b) (i) If an on-premise beer retailer purchases beer under this Subsection (7) from a beer wholesaler licensee, the on-premise beer retailer shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the ~~off-premise~~ on-premise beer retailer is located, unless an alternate wholesaler is authorized by the department to sell to the ~~off-premise~~ on-premise beer retailer as provided in Section 32B-13-301.

(ii) Violation of Subsection (7)(b)(i) is a class B misdemeanor.

(8) A tavern shall comply with Section 32B-1-407.

Section 53. Section 32B-6-902 is amended to read:

32B-6-902. Definitions.

(1) As used in this part:

(a) (i) "Dining area" means an area in the licensed premises of a beer-only restaurant licensee that is primarily used for the service and consumption of food by one or more patrons.

(ii) "Dining area" does not include a dispensing area.

(b) (i) "Dispensing area" means an area in the licensed premises of a beer-only restaurant licensee where a dispensing structure is located and that:

(A) is physically separated from the dining area and any waiting area by a structure or other barrier

that prevents a patron seated in the dining area or a waiting area from viewing the dispensing of beer;

(B) except as provided in Subsection (1)(b)(ii), measures at least 10 feet from any area where beer is dispensed to the dining area and any waiting area, measured from the point of the area where beer is dispensed that is closest to the dining area or waiting area; or

(C) is physically separated from the dining area and any waiting area by a permanent physical structure that complies with the provisions of Title 15A, State Construction and Fire Codes Act, and, to the extent allowed under Title 15A, State Construction and Fire Codes Act, measures at least 42 inches high, and at least 60 inches from the inside edge of the barrier to the nearest edge of the dispensing structure.

(ii) "Dispensing area" does not include any area described in Subsection (2)(a)(i)(B) that is less than 10 feet from an area where alcoholic product is dispensed, but from which a patron seated at a table or counter cannot view the dispensing of alcoholic product.

~~(1)(a) As used in this part, "grandfathered]~~

(c) "Grandfathered bar structure" means a bar structure in a licensed premises of a beer-only restaurant licensee that:

(i) was licensed as an on-premise beer retailer as of August 1, 2011, and as of August 1, 2011:

(A) is operational;

(B) has facilities for the dispensing or storage of an alcoholic product that do not meet the requirements of Subsection 32B-6-905(12)(a)(ii); and

(C) in accordance with Subsection 32B-6-703(2)(e), notifies the department that effective March 1, 2012, the on-premise beer retailer licensee will seek to be licensed as a beer-only restaurant; or

(ii) is a bar structure grandfathered under Section 32B-6-409.

~~(b)] (d) "Grandfathered bar structure" does not include a grandfathered bar structure described in Subsection (1)(a) on or after the day on which a restaurant remodels the grandfathered bar structure, as defined by rule made by the commission.~~

(e) "Waiting area" includes a lobby.

(2) Subject to Subsection (1)(b)](d), a grandfathered bar structure remains a grandfathered bar structure notwithstanding whether a restaurant undergoes a change of ownership.

Section 54. Section 32B-6-905 is amended to read:

32B-6-905. Specific operational requirements for a beer-only restaurant license -- Before July 1, 2018 or July 1, 2022.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a beer-only restaurant licensee and staff of the beer-only restaurant licensee shall comply with this section.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a beer-only restaurant licensee;
- (ii) individual staff of a beer-only restaurant licensee; or
- (iii) both a beer-only restaurant licensee and staff of the beer-only restaurant licensee.

(2) (a) A beer-only restaurant licensee on the licensed premises may not sell, offer for sale, furnish, or allow consumption of liquor.

(b) Liquor may not be on the premises of a beer-only restaurant licensee except for use:

- (i) as a flavoring on a dessert; and
- (ii) in the preparation of a flaming food dish, drink, or dessert.

(3) In addition to complying with Section 32B-5-303, a beer-only restaurant licensee shall store beer in a storage area described in Subsection (12)(a).

(4) (a) An individual who serves beer in a beer-only restaurant licensee's premises shall make a written beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab required by this Subsection (4) shall list the type and amount of beer ordered or consumed.

(5) A person's willingness to serve beer may not be made a condition of employment as a server with a beer-only restaurant licensee.

(6) A beer-only restaurant licensee may sell, offer for sale, or furnish beer ~~[during the hours specified in Part 7, On-Premise Beer Retailer License, for an on-premise beer retailer, except that a beer-only restaurant licensee may not sell, offer for sale, or furnish beer before 11:30 a.m. on any day.]~~ at the licensed premises during the following time periods only:

(a) on a weekday, during the period that begins at 11:30 a.m. and ends at 12:59 a.m.; or

(b) on a weekend or a state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 12:59 a.m.

(7) A beer-only restaurant licensee shall maintain at least 70% of its total restaurant business from the sale of food, which does not include a service charge.

(8) (a) A beer-only restaurant may not sell, offer for sale, or furnish beer except after the beer-only restaurant licensee confirms that the patron has

the intent to order food prepared, sold, and furnished at the licensed premises.

(b) A beer-only restaurant shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) A patron may not have more than two beers at a time before the patron.

(10) A patron may consume a beer only: (a) at:

- (i) the patron's table;
 - (ii) a grandfathered bar structure; or
 - (iii) a counter; and
- (b) where food is served.

(11) (a) A beer-only restaurant licensee may not sell, offer for sale, or furnish a beer to a patron, and a patron may not consume an alcoholic product at a bar structure.

(b) Notwithstanding Subsection (11)(a), at a grandfathered bar structure, a patron who is 21 years of age or older may:

- (i) sit;
- (ii) be furnished a beer; and
- (iii) consume a beer.

(c) Except as provided in Subsection (11)(d), at a grandfathered bar structure, a beer-only restaurant licensee may not permit a minor to, and a minor may not:

- (i) sit; or
- (ii) consume food or beverages.

(d) (i) A minor may be at a grandfathered bar structure if the minor is employed by a beer-only restaurant licensee:

- (A) as provided in Subsection 32B-5-308(2); or
- (B) to perform maintenance and cleaning services during an hour when the beer-only restaurant licensee is not open for business.

(ii) A minor may momentarily pass by a grandfathered bar structure without remaining or sitting at the bar structure en route to an area of a beer-only restaurant licensee's premises in which the minor is permitted to be.

(12) A beer-only restaurant licensee may dispense a beer only if:

- (a) the beer is dispensed from an area that is:
 - (i) a grandfathered bar structure; or

(ii) separated from an area for the consumption of food by a patron by a solid, translucent, permanent structural barrier such that the facilities for the storage or dispensing of an alcoholic product are not readily visible to a patron, not accessible by a patron, and apart from an area used for dining, for staging, or as a lobby or waiting area;

(b) the beer-only restaurant licensee uses a beer that is:

- (i) stored in an area described in Subsection (12)(a); or

(ii) in an area not described in Subsection (12)(a) on the licensed premises and:

(A) immediately before the beer is dispensed it is in an unopened container;

(B) the unopened container is taken to an area described in Subsection (12)(a) before it is opened; and

(C) once opened, the container is stored in an area described in Subsection (12)(a); and

(c) any instrument or equipment used to dispense the beer is located in an area described in Subsection (12)(a).

(13) In addition to complying with Subsection 32B-5-301(3), a beer-only restaurant licensee shall display in a conspicuous place at the entrance to the licensed premises a sign approved by the commission that:

(a) measures at least 8-1/2 inches long and 11 inches wide; and

(b) clearly states that the beer-only restaurant licensee is a restaurant and not a bar.

(14) Beginning on July 1, 2018, a minor may not sit, remain, or consume food or beverages within 10 feet of a grandfathered bar structure, unless:

(a) seating within 10 feet of the grandfathered bar structure is the only seating available in the licensed premises; and

(b) the minor is accompanied by an individual who is 21 years of age or older.

(15) Except as provided in Subsection 32B-6-905.1(18) and Section 32B-6-905.2, the provisions of this section apply before July 1, 2018.

Section 55. Section 32B-6-905.1 is enacted to read:

32B-6-905.1. Specific operational requirements for a beer-only restaurant license -- On and after July 1, 2018 or July 1, 2022.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a beer-only restaurant licensee and staff of the beer-only restaurant licensee shall comply with this section.

(b) Failure to comply with Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a beer-only restaurant licensee;

(ii) individual staff of a beer-only restaurant licensee; or

(iii) both a beer-only restaurant licensee and staff of the beer-only restaurant licensee.

(2) (a) A beer-only restaurant licensee on the licensed premises may not sell, offer for sale, furnish, or allow consumption of liquor.

(b) Liquor may not be on the premises of a beer-only restaurant licensee except for use:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert.

(3) In addition to complying with Section 32B-5-303, a beer-only restaurant licensee shall store beer in a storage area described in Subsection (13)(a).

(4) (a) An individual who serves beer in a beer-only restaurant licensee's premises shall make a beverage tab for each table or group that orders or consumes an alcoholic product on the premises.

(b) A beverage tab described in this Subsection (4) shall state the type and amount of each alcoholic product ordered or consumed.

(5) A beer-only restaurant licensee may not make an individual's willingness to serve beer a condition of employment as a server with a beer-only restaurant licensee.

(6) A beer-only restaurant licensee may sell, offer for sale, or furnish beer at the licensed premises during the following time periods only:

(a) on a weekday, during the period that begins at 11:30 a.m. and ends at 12:59 a.m.; or

(b) on a weekend or a state or federal legal holiday or for a private event, during the period that begins at 10:30 a.m. and ends at 12:59 a.m.

(7) A beer-only restaurant licensee shall maintain at least 70% of the beer-only restaurant licensee's total restaurant business from the sale of food, which does not include a service charge.

(8) (a) A beer-only restaurant licensee may not sell, offer for sale, or furnish beer except after:

(i) the patron to whom the beer-only restaurant licensee sells, offers for sale, or furnishes the beer is seated at:

(A) a table that is located in a dining area or a dispensing area;

(B) a counter that is located in a dining area or a dispensing area; or

(C) a dispensing structure that is located in a dispensing area; and

(ii) the beer-only restaurant licensee confirms that the patron intends to:

(A) order food prepared, sold, and furnished at the licensed premises; and

(B) except as provided in Subsection (8)(b), consume the food at the same location where the patron is seated and sold, offered for sale, or furnished the beer.

(b) (i) While a patron waits for a seat at a table or counter in the dining area of a beer-only restaurant licensee, the beer-only restaurant licensee may sell, offer for sale, or furnish to the patron one portion of beer as described in Section 32B-5-304 if:

(A) the patron is in a dispensing area and seated at a table, counter, or dispensing structure; and

(B) the beer-only restaurant licensee first confirms that after the patron is seated in the dining area, the patron intends to order food prepared, sold, and furnished at the licensed premises.

(ii) If the patron does not finish the patron's beer before moving to a seat in the dining area, an employee of the beer-only restaurant licensee who is qualified to sell and serve an alcoholic product under Section 32B-5-306 shall transport any unfinished portion of the patron's beer to the patron's seat in the dining area.

(c) A beer-only restaurant licensee shall maintain on the licensed premises adequate culinary facilities for food preparation and dining accommodations.

(9) A patron may consume a beer only at:

(a) a table that is located in a dining area or a dispensing area;

(b) a counter that is located in a dining area or a dispensing area; or

(c) a dispensing structure located in a dispensing area.

(10) A patron may not have more than two beers at a time before the patron.

(11) In accordance with the provisions of this section, an individual who is at least 21 years of age may consume food and beverages in a dispensing area.

(12) (a) Except as provided in Subsection (12)(b), a minor may not sit, remain, or consume food or beverages in a dispensing area.

(b) (i) A minor may be in a dispensing area if the minor is employed by the beer-only restaurant licensee:

(A) in accordance with Subsection 32B-5-308(2); or

(B) to perform maintenance and cleaning services when the beer-only restaurant licensee is not open for business.

(ii) If there is no alternative route available, a minor may momentarily pass through a dispensing area without remaining or sitting in the dispensing area en route to an area of the beer-only restaurant licensee's premises in which the minor is permitted to be.

(13) A beer-only restaurant licensee may dispense a beer only if:

(a) the beer is dispensed from:

(i) a dispensing structure that is located in a dispensing area;

(ii) an area that is:

(A) separated from an area for the consumption of food by a patron by a solid, translucent, permanent

structural barrier such that the facilities for the storage or dispensing of an alcoholic product are not readily visible to a patron, not accessible by a patron; and

(B) apart from an area used for dining, for staging, or as a lobby or waiting area; or

(iii) the premises of a bar licensee that is:

(A) owned by the same person or persons as the beer-only restaurant licensee; and

(B) located immediately adjacent to the premises of the beer-only restaurant licensee;

(b) the beer-only restaurant licensee uses a beer that is stored in an area described in Subsection (13)(a) or in accordance with Section 32B-5-303; and

(c) any instrument or equipment used to dispense the beer is located in an area described in Subsection (13)(a).

(14) (a) A beer-only restaurant licensee may have more than one dispensing area in the licensed premises.

(b) Each dispensing area in a licensed premises may satisfy the requirements for a dispensing area under Subsection 32B-6-202(1)(b)(i)(A), (B), or (C), regardless of how any other dispensing area in the licensed premises satisfies the requirements for a dispensing area.

(15) A beer-only restaurant licensee may not transfer, dispense, or serve beer on or from a movable cart.

(16) (a) In addition to the requirements described in Section 32B-5-302, a beer-only restaurant licensee shall maintain each of the following records for at least three years:

(i) a record required by Section 32B-5-302; and

(ii) a record that the commission requires a beer-only restaurant licensee to use or maintain under a rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The department shall audit the records of a beer-only restaurant licensee at least once each calendar year.

(17) A beer-only restaurant licensee shall display in a conspicuous place at the entrance to the licensed premises a sign approved by the commission that:

(a) measures at least 8-1/2 inches long and 11 inches wide; and

(b) clearly states that the beer-only restaurant licensee is a restaurant and not a bar.

(18) (a) In accordance with Section 32B-6-905.2, a beer-only restaurant licensee:

(i) may comply with the provisions of this section beginning on or after July 1, 2017; and

(ii) shall comply with the provisions of this section:

(A) for a beer-only restaurant licensee that does not have a grandfathered bar structure, on and after July 1, 2018; or

(B) for a beer-only restaurant licensee that has a grandfathered bar structure, on and after July 1, 2022.

(b) A beer-only restaurant licensee that elects to comply with the provisions of this section before the latest applicable date described in Subsection (18)(a)(ii):

(i) shall comply with each provision of this section; and

(ii) is not required to comply with the provisions of Section 32B-6-905.

Section 56. Section 32B-6-905.2 is enacted to read:

32B-6-905.2. Transition process for beer-only restaurant licensees.

(1) For a beer-only restaurant license issued on or after July 1, 2017, the beer-only restaurant licensee shall comply with the provisions of Section 32B-6-905.1.

(2) For a beer-only restaurant license issued before July 1, 2017, before the beer-only restaurant licensee changes the beer-only restaurant licensee's approved location for storage, dispensing, or consumption to comply with the provisions of Section 32B-6-901.1, the beer-only restaurant licensee shall submit an application for approval to the department in accordance with Subsection 32B-5-303(3).

(3) (a) Except as provided in Subsection (4), a person who holds a beer-only restaurant license issued before July 1, 2017, shall comply with the provisions of Section 32B-6-901.1 on or before July 1, 2018.

(b) A beer-only restaurant licensee described in Subsection (3)(a) that cannot comply with the provisions of Section 32B-6-901.1 without a change to the beer-only restaurant licensee's approved location for storage, dispensing, or consumption:

(i) may submit an application for approval described in Subsection (2) on or after May 9, 2017; and

(ii) shall submit an application for approval described in Subsection (2) on or before May 1, 2018.

(c) If a beer-only restaurant licensee described in Subsection (3)(a) submits an application for approval described in Subsection (2) on May 9, 2017, the department shall take action on the application on or before July 1, 2017.

(4) (a) A person who holds a beer-only restaurant license issued before July 1, 2017, and has a grandfathered bar structure shall comply with the provisions of Section 32B-6-901.1 on or before the earlier of:

(i) July 1, 2022;

(ii) the date on which the beer-only restaurant licensee remodels, as defined by commission rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the beer-only

restaurant licensee's grandfathered bar structure or dining area; or

(iii) the date on which the beer-only restaurant licensee experiences a change of ownership described in Subsection 32B-8a-202(1).

(b) A beer-only restaurant licensee described in Subsection (4)(a) that cannot comply with the provisions of Section 32B-6-901.1 without a change to the beer-only restaurant licensee's approved location for storage, dispensing, or consumption:

(i) may submit an application for approval described in Subsection (2) on or after May 9, 2017; and

(ii) shall submit an application for approval described in Subsection (2) on or before May 1, 2022.

Section 57. Section 32B-7-202 is amended to read:

32B-7-202. General operational requirements for off-premise beer retailer.

(1) (a) An off-premise beer retailer or staff of the off-premise beer retailer shall comply with ~~this section~~ the provisions of this title and any applicable rules made by the commission.

(b) Failure to comply with this section may result in a suspension or revocation of a local license and, on or after July 1, 2018, disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act.

(2) (a) (i) An off-premise beer retailer may not purchase, acquire, possess for the purpose of resale, or sell beer, except beer that the off-premise beer retailer lawfully purchases from:

(A) a beer wholesaler licensee; or

(B) a small brewer that manufactures the beer.

(ii) A violation of Subsection (2)(a) is a class A misdemeanor.

(b) (i) If an off-premise beer retailer purchases beer under this Subsection (2) from a beer wholesaler licensee, the off-premise beer retailer shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

(ii) A violation of Subsection (2)(b) is a class B misdemeanor.

(3) An off-premise beer retailer may not possess, sell, offer for sale, or furnish beer in a container larger than two liters.

(4) A minor may not sell beer on the licensed premises of an off-premise beer retailer unless:

(a) the sale is done under the supervision of a person 21 years of age or older who is on the licensed premises; and

(b) the minor is at least 16 years of age.

(5) (a) Subject to the other provisions of this Subsection (5), an off-premise beer retailer shall:

(i) ~~display all beer [sold by the off-premise beer retailer in an area that is visibly separate and distinct from the area where nonalcoholic beverages are displayed; and] accessible by and visible to a patron in no more than two locations on the retail sales floor, each of which is:~~

(A) a display cabinet, cooler, aisle, floor display, or room where beer is the only beverage displayed; and

(B) not adjacent to a display of nonalcoholic beverages, unless the location is a cooler with a door from which the nonalcoholic beverages are not accessible, or the beer is separated from the display of nonalcoholic beverages by a display of one or more nonbeverage products or another physical divider; and

(ii) display a sign in the area described in Subsection (5)(a)(i) that:

(A) is prominent;

(B) is easily readable by a consumer;

(C) meets the requirements for format established by the commission by rule; and

(D) reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully."

(b) Notwithstanding Subsection (5)(a), a nonalcoholic beer may be displayed with beer if the nonalcoholic beer is labeled, packaged, or advertised as a nonalcoholic beer.

(c) The requirements of this Subsection (5) apply to beer notwithstanding that it is labeled, packaged, or advertised as:

(i) a malt cooler; or

(ii) a beverage that may provide energy.

~~[(d) The commission shall define by rule what constitutes an "area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed."]~~

~~[(e)] (d) A violation of this Subsection (5) is an infraction.~~

(e) (i) Except as provided in Subsection (5)(d)(ii), the provisions of Subsection (5)(a)(i) apply on and after May 9, 2017.

(ii) For a beer retailer that operates two or more off-premise beer retailers, the provisions of Subsection (5)(a)(i) apply on and after August 1, 2017.

(6) (a) Staff of an off-premise beer retailer who directly supervises the sale of beer or who sells beer to a patron for consumption off the premises of the off-premise beer retailer shall wear a unique identification badge:

(i) on the front of the staff's clothing;

(ii) visible above the waist;

(iii) bearing the staff's:

(A) first or last name;

(B) initials; or

(C) unique identification in letters or numbers; and

(iv) with the number or letters on the unique identification badge being sufficiently large to be clearly visible and identifiable while engaging in or directly supervising the retail sale of beer.

(b) An off-premise beer retailer shall make and maintain a record of each current staff's unique identification badge assigned by the off-premise beer retailer that includes the staff's:

(i) full name;

(ii) address; and

(iii) (A) driver license number; or

(B) similar identification number.

(c) An off-premise beer retailer shall make available a record required to be made or maintained under this Subsection (6) for immediate inspection by:

(i) a peace officer; ~~or~~

(ii) a representative of the local authority that issues the off-premise beer retailer license[-]; or

(iii) for an off-premise beer retailer state license, a representative of the commission or department.

(d) A local authority may impose a fine of up to \$250 against an off-premise beer retailer that does not comply or require its staff to comply with this Subsection (6).

Section 58. Section 32B-7-305 is amended to read:

32B-7-305. Tracking of enforcement actions -- Costs of enforcement actions.

(1) A local authority that pursuant to this part adjudicates an administrative penalty for a violation of a law involving the sale of an alcoholic product to a minor, shall:

(a) maintain a record of an adjudicated violation until the record is expunged under Subsection (3);

(b) include in the record described in Subsection (1)(a):

(i) the name of the individual who commits the violation;

(ii) the name of the off-premise beer retailer for whom the individual is a staff member at the time of the violation; and

(iii) the date of the adjudication of the violation; and

(c) provide the information described in Subsection (1)(b) to ~~the Highway Safety Office of~~ the Department of Public Safety within 30 days of the date on which a violation is adjudicated.

(2) (a) The ~~[Highway Safety Office]~~ Department of Public Safety shall develop and operate a system to collect, analyze, maintain, track, and disseminate the violation history information received under Subsection (1).

(b) The ~~[Highway Safety Office]~~ Department of Public Safety shall make the system described in Subsection (2)(a) available to:

(i) assist a local authority in assessing administrative penalties under Section 32B-7-303; and

(ii) inform an off-premise beer retailer of an individual who has an administrative violation history under Section 32B-7-303.

(c) The ~~[Highway Safety Office]~~ Department of Public Safety shall maintain a record of violation history information received pursuant to Subsection (1) until the record is expunged under Subsection (3).

(3) (a) A local authority and the ~~[Highway Safety Office]~~ Department of Public Safety shall expunge from the records maintained an administrative penalty imposed under Section 32B-7-303 for purposes of determining future administrative penalties under Section 32B-7-303 if the individual has not been found in violation of any law involving the sale of an alcoholic product to a minor for a period of 36 consecutive months from the day on which the individual is last adjudicated as violating a law involving the sale of an alcoholic product to a minor.

(b) A local authority shall expunge from the records maintained by the local authority an administrative penalty imposed under Section 32B-7-303 against an off-premise beer retailer for purposes of determining future administrative penalties under Section 32B-7-303 if the off-premise beer retailer or any staff of that off-premise beer retailer has not been found in violation of any law involving the sale of an alcoholic product to a minor for a period of 36 consecutive months from the day on which the off-premise beer retailer or staff of the off-premise beer retailer is last adjudicated as violating a law involving the sale of an alcoholic product to a minor.

(4) The ~~[Highway Safety Office]~~ Department of Public Safety shall administer a program to reimburse a municipal or county law enforcement agency:

(a) for the actual costs of an alcohol-related compliance check investigation conducted pursuant to Section 77-39-101 on the premises of an off-premise beer retailer;

(b) for administrative costs associated with reporting the compliance check investigation described in Subsection (4)(a);

(c) if the municipal or county law enforcement agency completes and submits to the ~~[Highway Safety Office]~~ Department of Public Safety a report within 90 days of the compliance check investigation described in Subsection (4)(a) in a

format required by the ~~[Highway Safety Office]~~ Department of Public Safety; and

(d) in the order that the municipal or county law enforcement agency submits the report required by Subsection (4)(c) until the amount allocated by the ~~[Highway Safety Office]~~ Department of Public Safety to reimburse a municipal or county law enforcement agency is spent.

(5) The ~~[Highway Safety Office]~~ Department of Public Safety shall report to the Utah Substance Abuse Advisory Council by no later than October 1 following a fiscal year on the following funded during the prior fiscal year:

(a) compliance check investigations reimbursed under Subsection (4); and

(b) the collection, analysis, maintenance, tracking, and dissemination of violation history information described in Subsection (2).

Section 59. Section 32B-7-401 is enacted to read:

Part 4. Off-Premise Beer Retailer State License

32B-7-401. Commission's power to issue off-premise beer retailer state license.

(1) Beginning on July 1, 2018, and except as provided in Subsection (3), before a person may purchase, store, sell, or offer for sale beer for consumption off the person's premises, the person shall obtain an off-premise beer retailer state license in accordance with this part.

(2) The commission may issue an off-premise beer retailer state license for the retail sale of beer for consumption off the beer retailer's premises.

(3) (a) A person who operates as an off-premise beer retailer on July 1, 2018, shall obtain an off-premise beer retailer state license on or before March 1, 2019.

(b) (i) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall establish a deadline for each off-premise beer retailer described in Subsection (3)(a) to submit to the department an application for an off-premise beer retailer state license.

(ii) The commission shall act upon each timely application submitted in accordance with this Subsection (3) on or before February 28, 2019.

(c) An off-premise beer retailer described in Subsection (3)(a) may continue to operate without an off-premise beer retailer state license through February 28, 2019.

Section 60. Section 32B-7-402 is enacted to read:

32B-7-402. Application for off-premise beer retailer state license -- Qualifications.

To obtain an off-premise beer retailer state license, a person shall submit to the department:

(1) a written application in a form prescribed by the department;

(2) a nonrefundable application fee of \$75;

(3) an initial license fee of \$250 that is refundable if the commission does not issue the off-premise beer retailer state license;

(4) written consent of the local authority;

(5) a copy of the person's current business license;

(6) a floor plan of the premises that outlines the location of each beer display;

(7) a signed consent form stating the person will permit any authorized representative of the commission or the department or any law enforcement officer to have unrestricted right to enter the licensed premises;

(8) if the person is an entity, proper verification evidencing that the individual who signs the application is authorized to sign on behalf of the entity; and

(9) any other information that the commission or department requires.

Section 61. Section 32B-7-403 is enacted to read:

32B-7-403. Renewal of off-premise beer retailer state license.

(1) An off-premise beer retailer state license expires on the last day of February each year.

(2) To renew an off-premise beer retailer state license, an off-premise beer retailer state licensee shall, no later than January 31, submit:

(a) a completed renewal application to the department in a form prescribed by the department; and

(b) a renewal fee of \$175.

(3) An off-premise beer retailer state licensee automatically forfeits the off-premise beer retailer state license if the off-premise beer retailer state licensee fails to satisfy the renewal requirements described in this section.

Section 62. Section 32B-7-404 is enacted to read:

32B-7-404. Duties of commission and department before issuing off-premise beer retailer state license.

(1) (a) Before the commission issues an off-premise beer retailer state license, the department shall conduct an investigation and may hold one or more public hearings to gather information and make recommendations to the commission regarding whether the commission should issue an off-premise beer retailer state license.

(b) The department shall forward the information the department gathers and the department's recommendations to the commission.

(2) Before the commission issues an off-premise beer retailer state license, the commission shall:

(a) determine that the person filed a complete application and is in compliance with the provisions of this chapter;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) consider the physical characteristics of the premises where the beer is displayed; and

(d) consider any other factor that the commission considers necessary.

Section 63. Section 32B-7-405 is enacted to read:

32B-7-405. Notifying department of change of ownership.

The commission may suspend or revoke an off-premise beer retailer state license if an off-premise beer retailer state licensee does not immediately notify the department of a change in:

(1) ownership of the licensee's business;

(2) for a corporate owner, a shareholder holding at least 20% of the total issued and outstanding stock of the corporation; or

(3) for a limited liability company, a member owning at least 20% of the limited liability company.

Section 64. Section 32B-8-102 is amended to read:

32B-8-102. Definitions.

As used in this chapter:

(1) "Boundary of a resort building" means the physical boundary of the land reasonably related to a resort building and any structure or improvement to that land as determined by the commission.

(2) "Dwelling" means a portion of a resort building:

(a) owned by one or more individuals;

(b) that is used or designated for use as a residence by one or more persons; and

(c) that may be rented, loaned, leased, or hired out for a period of no longer than 30 consecutive days by a person who uses it for a residence.

(3) "Engaged in the management of the resort" may be defined by the commission by rule.

(4) "Invitee" means an individual who in accordance with Subsection 32B-8-304(11) is authorized to use a resort spa by a host who is:

(a) a resident; or

(b) a public customer.

(5) "Provisions applicable to a sublicense" means:

(a) for a full-service restaurant sublicense, Chapter 6, Part 2, Full-Service Restaurant License;

(b) for a limited-service restaurant sublicense, Chapter 6, Part 3, Limited-Service Restaurant License;

(c) for a [club] bar establishment sublicense, Chapter 6, Part 4, [Club] Bar Establishment License;

(d) for an on-premise banquet sublicense, Chapter 6, Part 6, On-Premise Banquet License;

(e) for an on-premise beer retailer sublicense, Chapter 6, Part 7, On-Premise Beer Retailer License; and

(f) for a resort spa sublicense, Part 3, Resort Spa Sublicense.

(6) "Public customer" means an individual who holds a customer card in accordance with Subsection 32B-8-304(12).

(7) "Resident" means an individual who:

(a) owns a dwelling located within a resort building; or

(b) rents lodging accommodations for 30 consecutive days or less from:

(i) an owner of a dwelling described in Subsection (7)(a); or

(ii) the resort licensee.

(8) "Resort" means a location:

(a) on which is located one resort building; and

(b) that is affiliated with a ski area that physically touches the boundary of the resort building.

(9) "Resort building" means a building:

(a) that is primarily operated to provide dwellings or lodging accommodations;

(b) that has at least 150 units that consist of a dwelling or lodging accommodations;

(c) that consists of at least 400,000 square feet:

(i) including only the building itself; and

(ii) not including areas such as above ground surface parking; and

(d) of which at least 50% of the units described in Subsection (9)(b) consist of dwellings owned by a person other than the resort licensee.

(10) "Resort spa" means a spa, as defined by rule by the commission, that is within the boundary of a resort building.

(11) "Sublicense" means:

(a) a full-service restaurant sublicense;

(b) a limited-service restaurant sublicense;

(c) a [club] bar establishment sublicense;

(d) an on-premise banquet sublicense;

(e) an on-premise beer retailer sublicense; and

(f) a resort spa sublicense.

(12) "Sublicense premises" means a building, enclosure, or room used pursuant to a sublicense in connection with the storage, sale, furnishing, or consumption of an alcoholic product, unless

otherwise defined in this title or in the rules made by the commission.

Section 65. Section 32B-8-304 is amended to read:

32B-8-304. Specific operational requirements for resort spa sublicense.

(1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational Requirements, a resort licensee, staff of the resort licensee, or a person otherwise related to a resort spa sublicense shall comply with this section.

(b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(i) a retail licensee;

(ii) staff of the retail licensee;

(iii) a person otherwise related to a resort spa sublicense; or

(iv) any combination of the persons listed in this Subsection (1)(b).

(2) (a) For purposes of the resort spa sublicense, the resort licensee shall ensure that a record required by this title is maintained, and a record is maintained or used for the resort spa sublicense:

(i) as the department requires; and

(ii) for a minimum period of three years.

(b) A record is subject to inspection by an authorized representative of the commission and the department.

(c) A resort licensee shall allow the department, through an auditor or examiner of the department, to audit the records for a resort spa sublicense at the times the department considers advisable.

(d) The department shall audit the records for a resort spa sublicense at least once annually.

(e) Section 32B-1-205 applies to a record required to be made, maintained, or used in accordance with this Subsection (2).

(3) (a) A person operating under a resort spa sublicense may not sell, offer for sale, or furnish liquor at a resort spa during a period that:

(i) begins at 1 a.m.; and

(ii) ends at 9:59 a.m.

(b) A person operating under a resort spa sublicense may sell, offer for sale, or furnish beer during the hours specified in Chapter 6, Part 7, On-Premise Beer Retailer License, for an on-premise beer retailer.

(c) (i) Notwithstanding Subsections (3)(a) and (b), a resort spa shall remain open for one hour after the resort spa ceases the sale and furnishing of an alcoholic product during which time a person at the resort spa may finish consuming:

(A) a single drink containing spirituous liquor;

(B) a single serving of wine not exceeding five ounces;

- (C) a single serving of heavy beer;
- (D) a single serving of beer not exceeding 26 ounces; or
- (E) a single serving of a flavored malt beverage.
- (ii) A resort spa is not required to remain open:
- (A) after all persons have vacated the resort spa sublicense premises; or
- (B) during an emergency.
- (4) A minor may not be admitted into, use, or be on:
- (a) the sublicense premises of a resort spa unless accompanied by a person 21 years of age or older; or
- (b) a lounge or bar area of the resort spa sublicense premises.
- (5) A resort spa shall have food available at all times when an alcoholic product is sold, offered for sale, furnished, or consumed on the resort spa sublicense premises.
- (6) (a) Subject to the other provisions of this Subsection (6), a patron may not have more than two alcoholic products of any kind at a time before the patron.
- (b) A resort spa patron may not have two spirituous liquor drinks before the resort spa patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.
- (c) An individual portion of wine is considered to be one alcoholic product under this Subsection (6).
- (7) (a) An alcoholic product may only be consumed at a table or counter.
- (b) An alcoholic product may not be served to or consumed by a patron at a ~~[bar]~~ dispensing structure.
- (8) (a) A person operating under a resort spa sublicense shall have available on the resort spa sublicense premises for a patron to review at the time that the patron requests it, a written alcoholic product price list or a menu containing the price of an alcoholic product sold or furnished by the resort spa including:
- (i) a set-up charge;
- (ii) a service charge; or
- (iii) a chilling fee.
- (b) A charge or fee made in connection with the sale, service, or consumption of liquor may be stated in food or alcoholic product menus including:
- (i) a set-up charge;
- (ii) a service charge; or
- (iii) a chilling fee.
- (9) (a) A resort licensee shall own or lease premises suitable for the resort spa's activities.

(b) A resort licensee may not maintain premises in a manner that barricades or conceals the resort spa sublicense's operation.

(10) Subject to the other provisions of this section, a person operating under a resort spa sublicense may not sell an alcoholic product to or allow a person to be admitted to or use the resort spa sublicense premises other than:

(a) a resident;

(b) a public customer who holds a valid customer card issued under Subsection (12); or

(c) an invitee.

(11) A person operating under a resort spa sublicense may allow an individual to be admitted to or use the resort spa sublicense premises as an invitee subject to the following conditions:

(a) the individual shall be previously authorized by one of the following who agrees to host the individual as an invitee into the resort spa:

(i) a resident; or

(ii) a public customer as described in Subsection (10);

(b) the individual has only those privileges derived from the individual's host for the duration of the invitee's visit to the resort spa; and

(c) a resort licensee, resort spa, or staff of the resort licensee or resort spa may not enter into an agreement or arrangement with a resident or public customer to indiscriminately host a member of the general public into the resort spa as an invitee.

(12) A person operating under a resort spa sublicense may issue a customer card to allow an individual to enter and use the resort spa sublicense premises on a temporary basis under the following conditions:

(a) the resort spa may not issue a customer card for a time period that exceeds three weeks;

(b) the resort spa shall assess a fee to a public customer for a customer card;

(c) the resort spa may not issue a customer card to a minor; and

(d) a public customer may not host more than seven invitees at one time.

Section 66. Section 32B-8a-302 is amended to read:

32B-8a-302. Application -- Approval process.

(1) To obtain the transfer of a retail license from a retail licensee, the transferee shall file a transfer application with the department that includes:

(a) an application in the form provided by the department;

(b) a statement as to whether the consideration, if any, to be paid to the transferor includes payment for transfer of the retail license;

(c) a statement executed under penalty of perjury that the consideration as set forth in the escrow

agreement required by Section 32B-8a-401 is deposited with the escrow holder; and

(d) (i) an application fee of \$300; and

(ii) a transfer fee determined in accordance with Section 32B-8a-303.

(2) If the intended transfer of a retail license involves consideration, at least 10 days before the commission may approve the transfer, the department shall post a notice of the intended transfer on the Public Notice Website created in Section 63F-1-701 that states the following:

(a) the name of the transferor;

(b) the name and address of the business currently associated with the retail license;

(c) instructions for filing a claim with the escrow holder; and

(d) the projected date that the commission may consider the transfer application.

(3) (a) (i) Before the commission may approve the transfer of a retail license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether the transfer of the retail license should be approved.

(ii) The department shall forward the information and recommendations described in this Subsection (3)(a) to the commission to aid in the commission's determination.

(b) Before approving a transfer, the commission shall:

(i) determine that the transferee filed a complete application;

(ii) determine that the transferee is eligible to hold the type of retail license that is to be transferred at the premises to which the retail license would be transferred;

(iii) determine that the transferee is not delinquent in the payment of an amount described in Subsection 32B-8a-201(3);

(iv) determine that the transferee is not disqualified under Section 32B-1-304;

(v) consider the locality within which the proposed licensed premises is located, including the factors listed in Section 32B-5-203 for the issuance of a retail license;

(vi) consider the transferee's ability to manage and operate the retail license to be transferred, including the factors listed in Section 32B-5-203 for the issuance of a retail license;

(vii) consider the nature or type of retail licensee operation of the transferee, including the factors listed in Section 32B-5-203 for the issuance of a retail license;

(viii) if the transfer involves consideration, determine that the transferee and transferor have complied with Part 4, Protection of Creditors; and

(ix) consider any other factor the commission considers necessary.

(4) ~~[(a)]~~ Except as provided in Subsection ~~[(4)(b)]~~ 32B-1-202(3), the commission may not approve the transfer of a retail license to premises that do not meet the proximity requirements of Section 32B-1-202.

~~[(b) If after a transfer of a retail license the transferee operates the same type of retail license at the same location as did the transferor, the commission may waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to approve the transfer under the same circumstances that the commission may waive or vary the proximity requirements in accordance with Subsection 32B-1-202(4) when considering whether to issue a retail license.]~~

Section 67. Section 32B-8b-102 is amended to read:

32B-8b-102. Definitions.

As used in this chapter:

(1) "Boundary of a hotel" means the physical boundary of the contiguous parcels of real estate owned by the same person on which is located one or more buildings and any structure or improvement to that real estate as determined by the commission.

(2) "Hotel" means one or more buildings that:

(a) constitute a hotel, as defined by the commission;

(b) are owned by the same person or by a person who has a majority interest in and can direct or exercise control over the management or policy of the person who owns any other building under the hotel license within the boundary of the hotel;

(c) primarily operate to provide lodging accommodations;

(d) provide room service within the boundary of the hotel meeting the requirements of this title;

(e) have on-premise banquet space and provide on-premise banquet service within the boundary of the hotel meeting the requirements of this title;

(f) have a restaurant or ~~[club]~~ bar establishment within the boundary of the hotel meeting the requirements of this title; and

(g) have at least 40 guest rooms.

(3) "Provisions applicable to a sublicense" means:

(a) for a full-service restaurant sublicense, Chapter 6, Part 2, Full-Service Restaurant License;

(b) for a limited-service restaurant sublicense, Chapter 6, Part 3, Limited-Service Restaurant License;

(c) for a ~~[club]~~ bar establishment sublicense, Chapter 6, Part 4, ~~[Club]~~ Bar Establishment License;

(d) for an on-premise banquet sublicense, Chapter 6, Part 6, On-Premise Banquet License;

(e) for an on-premise beer retailer sublicense, Chapter 6, Part 7, On-Premise Beer Retailer License; and

(f) for a beer-only restaurant sublicense, Chapter 6, Part 9, Beer-Only Restaurant License.

(4) "Sublicense" means:

(a) a full-service restaurant sublicense;

(b) a limited-service restaurant sublicense;

(c) a [club] bar establishment sublicense;

(d) an on-premise banquet sublicense;

(e) an on-premise beer retailer sublicense; and

(f) a beer-only restaurant sublicense.

(5) "Sublicense premises" means a building, enclosure, or room used pursuant to a sublicense in connection with the storage, sale, furnishing, or consumption of an alcoholic product, unless otherwise defined in this title or in the rules made by the commission, except that sublicense premises may have only one sublicense within a room or an enclosure that is separate from a room.

Section 68. Section 32B-8b-201 is amended to read:

32B-8b-201. Commission's power to issue a hotel license.

(1) Before a person as a hotel under a single license may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on sublicense premises, the person shall first obtain a hotel license from the commission in accordance with this part.

(2) (a) The commission may issue to a person a hotel license to allow the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product in connection with a hotel designated in the hotel license if the person operates at least three sublicenses under the hotel license one of which is an on-premise banquet license and one of which is a sublicense for a restaurant or [club] bar establishment.

(b) A hotel license shall:

(i) consist of:

(A) a general hotel license; and

(B) three or more sublicenses meeting the requirements of Subsection (2)(a); and

(ii) designate the boundary of the hotel and sublicenses.

(c) This chapter does not prohibit an alcoholic product on the boundary of the hotel to the extent otherwise permitted by this title.

(d) The commission may not issue a sublicense that is separate from a hotel license.

(3) (a) The commission may not issue a total number of hotel licenses that at any time totals more than 80.

(b) Subject to Subsection (3)(c), when determining the total number of licenses the commission has issued for each type of retail license, the commission may not include a sublicense as one of the retail licenses issued under the provisions applicable to the sublicense.

(c) If a hotel license issued under this chapter includes a [club] bar establishment sublicense that before the issuance of the hotel license was a [club] bar establishment license, the commission shall include the [club] bar establishment sublicense as one of the [club] bar establishment licenses in determining if the total number of licenses issued under the provisions applicable to the [club] bar establishment license exceeds the number calculated by dividing the population of the state by the number specified in the provisions applicable to the [club] bar establishment license.

(d) A person may not transfer a [club] bar establishment license under Chapter 8a, Transfer of Retail License Act, in a manner that circumvents the limitations of Subsection (3)(c).

Section 69. Section 53-10-305 is amended to read:

53-10-305. Duties of bureau chief.

The bureau chief, with the consent of the commissioner, shall do the following:

(1) conduct in conjunction with the state boards of education and higher education in state schools, colleges, and universities, an educational program concerning alcoholic beverages and alcoholic products, and work in conjunction with civic organizations, churches, local units of government, and other organizations in the prevention of alcoholic beverage, alcoholic product, and drug violations;

(2) coordinate law enforcement programs throughout the state and accumulate and disseminate information related to the prevention, detection, and control of violations of this chapter and Title 32B, Alcoholic Beverage Control Act, as it relates to storage or consumption of an alcoholic beverage or alcoholic product on premises maintained by a [club] bar establishment licensee, or a person required to obtain a [club] bar establishment license, as defined in Section 32B-1-102;

(3) make inspections and investigations as required by the commission and the Department of Alcoholic Beverage Control;

(4) perform other acts as may be necessary or appropriate concerning control of the use of an alcoholic beverage or alcoholic product and drugs; and

(5) make reports and recommendations to the Legislature, the governor, the commissioner, the commission, and the Department of Alcoholic Beverage Control as may be required or requested.

Section 70. Section 53A-13-113 is enacted to read:

53A-13-113. Underage Drinking Prevention Program -- State Board of Education rules.

(1) As used in this section:

(a) "Advisory council" means the Underage Drinking Prevention Program Advisory Council created in this section.

(b) "Board" means the State Board of Education.

(c) "LEA" means:

(i) a school district;

(ii) a charter school; or

(iii) the Utah Schools for the Deaf and the Blind.

(d) "Program" means the Underage Drinking Prevention Program created in this section.

(e) "School-based prevention presentation" means an evidence-based program intended for students aged 13 and older that:

(i) is aimed at preventing underage consumption of alcohol;

(ii) is delivered by methods that engage students in storytelling and visualization;

(iii) addresses the behavioral risk factors associated with underage drinking; and

(iv) provides practical tools to address the dangers of underage drinking.

(2) There is created the Underage Drinking Prevention Program that consists of:

(a) a school-based prevention presentation for students in grade 8; and

(b) a school-based prevention presentation for students in grade 10 that increases awareness of the dangers of driving under the influence of alcohol.

(3) (a) Beginning with the 2018-19 school year, an LEA shall offer the program each school year to each student in grade 8 and grade 10.

(b) An LEA shall select from the providers qualified by the board under Subsection (6) to offer the program.

(4) The board shall administer the program with input from the advisory council.

(5) There is created the Underage Drinking Prevention Program Advisory Council comprised of the following members:

(a) the executive director of the Department of Alcoholic Beverage Control or the executive director's designee;

(b) the executive director of the Department of Health or the executive director's designee;

(c) the director of the Division of Substance Abuse and Mental Health or the director's designee;

(d) the director of the Division of Child and Family Services or the director's designee;

(e) the director of the Division of Juvenile Justice Services or the director's designee;

(f) the state superintendent of public instruction or the state superintendent of public instruction's designee; and

(g) two members of the State Board of Education, appointed by the chair of the State Board of Education.

(6) (a) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the board shall qualify one or more providers to provide the program to an LEA.

(b) In selecting a provider described in Subsection (6)(a), the board shall consider:

(i) whether the provider's program complies with the requirements described in this section;

(ii) the extent to which the provider's underage drinking prevention program aligns with core standards for Utah public schools; and

(iii) the provider's experience in providing a program that is effective at reducing underage drinking.

(7) (a) The board shall use money from the Underage Drinking Prevention Program Restricted Account described in Section 53A-13-114 for the program.

(b) The board may use money from the Underage Drinking Prevention Program Restricted Account to fund up to .5 of a full-time equivalent position to administer the program.

(8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules that:

(a) beginning with the 2018-19 school year, require an LEA to offer the Underage Drinking Prevention Program each school year to each student in grade 8 and grade 10; and

(b) establish criteria for the board to use in selecting a provider described in Subsection (6).

Section 71. Section 53A-13-114 is enacted to read:

53A-13-114. Underage Drinking Prevention Program Restricted Account.

(1) As used in this section, "account" means the Underage Drinking Prevention Program Restricted Account created in this section.

(2) There is created within the Education Fund a restricted account known as the "Underage Drinking Prevention Program Restricted Account."

(3) (a) Before the Department of Alcoholic Beverage Control remits any portion of the markup collected under Section 32B-2-304 to the State Tax Commission, the department shall deposit into the account:

(i) for the fiscal year that begins July 1, 2017, \$1,750,000; or

(ii) for each fiscal year that begins on or after July 1, 2018, an amount equal to the amount that the department deposited into the account during the preceding fiscal year increased or decreased by a percentage equal to the percentage difference between the Consumer Price Index for the preceding calendar year and the Consumer Price Index for calendar year 2017.

(b) For purposes of this Subsection (3), the department shall calculate the Consumer Price Index in accordance with 26 U.S.C. Secs. 1(f)(4) and 1(f)(5).

(4) The account shall be funded:

(a) in accordance with Subsection (3);

(b) by appropriations made to the account by the Legislature; and

(c) by interest earned on money in the account.

(5) The State Board of Education shall use money in the account for the Underage Drinking Prevention Program described in Section 53A-13-113.

Section 72. Section 62A-15-401 is amended to read:

62A-15-401. Alcohol training and education seminar.

(1) As used in this part:

(a) "Instructor" means a person that directly provides the instruction during an alcohol training and education seminar for a seminar provider.

(b) "Licensee" means a person who is:

(i) (A) a new or renewing licensee under Title 32B, Alcoholic Beverage Control Act; and

(B) engaged in the retail sale of an alcoholic product for consumption on the premises of the licensee; or

(ii) a business that is:

(A) a new or renewing licensee licensed by a city, town, or county; and

(B) engaged in the retail sale of beer for consumption off the premises of the licensee.

(c) "Off-premise beer retailer" is as defined in Section 32B-1-102.

(d) "Seminar provider" means a person other than the division who provides an alcohol training and education seminar meeting the requirements of this section.

(2) (a) This section applies to ~~[an individual who, as defined by the division by rule]:~~

~~[(i) manages operations at the premises of a licensee engaged in the retail sale of an alcoholic product for consumption on the premises of the licensee;]~~

~~[(ii) supervises the serving of an alcoholic product to a customer for consumption on the premises of a licensee;]~~

~~[(iii) serves an alcoholic product to a customer for consumption on the premises of a licensee;]~~

(i) a retail manager as defined in Section 32B-5-402;

(ii) retail staff as defined in Section 32B-5-402; and

(iii) an individual who, as defined by division rule:

~~[(iv)]~~ (A) directly supervises the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or

~~[(v)]~~ (B) sells beer to a customer for consumption off the premises of an off-premise beer retailer.

(b) If the individual does not have a valid record that the individual has completed an alcohol training and education seminar, an individual described in Subsection (2)(a) shall:

(i) (A) complete an alcohol training and education seminar within 30 days of the following if the individual is described in Subsections (2)(a)(i) through (iii):

(I) if the individual is an employee, the day the individual begins employment;

(II) if the individual is an independent contractor, the day the individual is first hired; or

(III) if the individual holds an ownership interest in the licensee, the day that the individual first engages in an activity that would result in that individual being required to complete an alcohol training and education seminar; or

(B) complete an alcohol training and education seminar within the time periods specified in Subsection 32B-5-404(1) if the individual is described in Subsections (2)(a)(iv) and (v); and

(ii) pay a fee:

(A) to the seminar provider; and

(B) that is equal to or greater than the amount established under Subsection (4)(h).

(c) An individual shall have a valid record that the individual completed an alcohol training and education seminar within the time period provided in this Subsection (2) to engage in an activity described in Subsection (2)(a).

(d) A record that an individual has completed an alcohol training and education seminar is valid for:

(i) three years from the day on which the record is issued for an individual described in Subsection (2)(a)(i), (ii), or (iii); and

(ii) five years from the day on which the record is issued for an individual described in Subsection (2)(a)(iv) or (v).

(e) On and after July 1, 2011, to be considered as having completed an alcohol training and education seminar, an individual shall:

(i) attend the alcohol training and education seminar and take any test required to demonstrate completion of the alcohol training and education

seminar in the physical presence of an instructor of the seminar provider; or

(ii) complete the alcohol training and education seminar and take any test required to demonstrate completion of the alcohol training and education seminar through an online course or testing program that meets the requirements described in Subsection (2)(f).

(f) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish one or more requirements for an online course or testing program described in Subsection (2)(e) that are designed to inhibit fraud in the use of the online course or testing program. In developing the requirements by rule the division shall consider whether to require:

(i) authentication that the an individual accurately identifies the individual as taking the online course or test;

(ii) measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(iii) measures to track the actual time an individual taking the online course or test is actively engaged online;

(iv) a seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(v) a test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(vi) a seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(vii) measures for the division to audit online courses or tests;

(viii) measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(ix) a seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;

(x) an individual who takes an online course or test to use an e-signature; or

(xi) a seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.

(3) (a) A licensee may not permit an individual who is not in compliance with Subsection (2) to:

(i) serve or supervise the serving of an alcoholic product to a customer for consumption on the premises of the licensee;

(ii) engage in any activity that would constitute managing operations at the premises of a licensee that engages in the retail sale of an alcoholic product for consumption on the premises of the licensee;

(iii) directly supervise the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or

(iv) sell beer to a customer for consumption off the premises of an off-premise beer retailer.

(b) A licensee that violates Subsection (3)(a) is subject to Section 32B-5-403.

(4) The division shall:

(a) (i) provide alcohol training and education seminars; or

(ii) certify one or more seminar providers;

(b) establish the curriculum for an alcohol training and education seminar that includes the following subjects:

(i) (A) alcohol as a drug; and

(B) alcohol's effect on the body and behavior;

(ii) recognizing the problem drinker or signs of intoxication;

(iii) an overview of state alcohol laws related to responsible beverage sale or service, as determined in consultation with the Department of Alcoholic Beverage Control;

(iv) dealing with the problem customer, including ways to terminate sale or service; and

(v) for those supervising or engaging in the retail sale of an alcoholic product for consumption on the premises of a licensee, alternative means of transportation to get the customer safely home;

(c) recertify each seminar provider every three years;

(d) monitor compliance with the curriculum described in Subsection (4)(b);

(e) maintain for at least five years a record of every person who has completed an alcohol training and education seminar;

(f) provide the information described in Subsection (4)(e) on request to:

(i) the Department of Alcoholic Beverage Control;

(ii) law enforcement; or

(iii) a person licensed by the state or a local government to sell an alcoholic product;

(g) provide the Department of Alcoholic Beverage Control on request a list of any seminar provider certified by the division; and

(h) establish a fee amount for each person attending an alcohol training and education

seminar that is sufficient to offset the division's cost of administering this section.

(5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) define what constitutes under this section an individual who:

(i) manages operations at the premises of a licensee engaged in the retail sale of an alcoholic product for consumption on the premises of the licensee;

(ii) supervises the serving of an alcoholic product to a customer for consumption on the premises of a licensee;

(iii) serves an alcoholic product to a customer for consumption on the premises of a licensee;

(iv) directly supervises the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or

(v) sells beer to a customer for consumption off the premises of an off-premise beer retailer;

(b) establish criteria for certifying and recertifying a seminar provider; and

(c) establish guidelines for the manner in which an instructor provides an alcohol education and training seminar.

(6) A seminar provider shall:

(a) obtain recertification by the division every three years;

(b) ensure that an instructor used by the seminar provider:

(i) follows the curriculum established under this section; and

(ii) conducts an alcohol training and education seminar in accordance with the guidelines established by rule;

(c) ensure that any information provided by the seminar provider or instructor of a seminar provider is consistent with:

(i) the curriculum established under this section; and

(ii) this section;

(d) provide the division with the names of all persons who complete an alcohol training and education seminar provided by the seminar provider;

(e) (i) collect a fee for each person attending an alcohol training and education seminar in accordance with Subsection (2); and

(ii) forward to the division the portion of the fee that is equal to the amount described in Subsection (4)(h); and

(f) issue a record to an individual that completes an alcohol training and education seminar provided by the seminar provider.

(7) (a) If after a hearing conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division finds that a seminar provider violates this section or that an instructor of the seminar provider violates this section, the division may:

(i) suspend the certification of the seminar provider for a period not to exceed 90 days;

(ii) revoke the certification of the seminar provider;

(iii) require the seminar provider to take corrective action regarding an instructor; or

(iv) prohibit the seminar provider from using an instructor until such time that the seminar provider establishes to the satisfaction of the division that the instructor is in compliance with Subsection (6)(b).

(b) The division may certify a seminar provider whose certification is revoked:

(i) no sooner than 90 days from the date the certification is revoked; and

(ii) if the seminar provider establishes to the satisfaction of the division that the seminar provider will comply with this section.

Section 73. Section 63I-2-232 is amended to read:

63I-2-232. Repeal dates -- Title 32B.

(1) Subsection 32B-1-102(7) is repealed July 1, 2022.

(2) Subsection 32B-1-102(33)(a)(i)(B), the language that states "32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii)," and " , or 32B-6-905(12)(b)(ii)" is repealed July 1, 2022.

(3) Subsection 32B-1-102(114)(b), the language that states "32B-6-205(12)(b)(ii), 32B-6-305(12)(b)(ii)," and " , or 32B-6-905(12)(b)(ii)" is repealed July 1, 2022.

(4) Subsection 32B-1-604(4) is repealed June 1, 2018.

(5) Subsections 32B-6-202(3) and (4) are repealed July 1, 2022.

(6) Section 32B-6-205 is repealed July 1, 2022.

(7) Subsection 32B-6-205.2(17) is repealed July 1, 2022.

(8) Section 32B-6-205.3 is repealed July 1, 2022.

(9) Subsections 32B-6-302(3) and (4) are repealed July 1, 2022.

(10) Section 32B-6-305 is repealed July 1, 2022.

(11) Subsection 32B-6-305.2(17) is repealed July 1, 2022.

(12) Section 32B-6-305.3 is repealed July 1, 2022.

(13) Section 32B-6-404.1 is repealed July 1, 2022.

(14) Section 32B-6-409 is repealed July 1, 2022.

(15) Subsection 32B-6-703(2)(e)(iv) is repealed July 1, 2022.

(16) Subsections 32B-6-902(1)(c), (1)(d), and (2) are repealed July 1, 2022.

(17) Section 32B-6-905 is repealed July 1, 2022.

(18) Subsection 32B-6-905.1(17) is repealed July 1, 2022.

(19) Section 32B-6-905.2 is repealed July 1, 2022.

(20) Section 32B-7-303 is repealed March 1, 2019.

(21) Section 32B-7-304 is repealed March 1, 2019.

(22) Subsection 32B-8-402(1)(b) is repealed July 1, 2022.

Section 74. Repealer.

This bill repeals:

Section 32B-6-205.1, Credit for grandfathered bar structures of full-service restaurant licensee.

Section 32B-6-305.1, Credit for grandfathered bar structures for limited-service restaurant licensee.

Section 75. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on May 9, 2017.

(2) The actions affecting Section 32B-2-304 take effect on July 1, 2017.

CHAPTER 456**H. B. 448**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

COMMUNITY**REINVESTMENT AMENDMENTS**

Chief Sponsor: Jeremy A. Peterson

Senate Sponsor: Curtis S. Bramble

LONG TITLE**General Description:**

This bill amends provisions related to eminent domain in Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act.

Highlighted Provisions:

This bill:

- ▶ authorizes a community reinvestment agency to amend a community reinvestment project area that is subject to an interlocal agreement for the purpose of acquiring property within the community reinvestment project area by eminent domain; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 17C-1-102, as last amended by Laws of Utah 2016, Chapter 350
- 17C-1-902, as renumbered and amended by Laws of Utah 2016, Chapter 350
- 17C-1-904, as renumbered and amended by Laws of Utah 2016, Chapter 350
- 17C-5-103, as enacted by Laws of Utah 2016, Chapter 350
- 17C-5-104, as enacted by Laws of Utah 2016, Chapter 350
- 17C-5-112, as enacted by Laws of Utah 2016, Chapter 350
- 17C-5-202, as enacted by Laws of Utah 2016, Chapter 350
- 17C-5-203, as enacted by Laws of Utah 2016, Chapter 350
- 17C-5-306, as enacted by Laws of Utah 2016, Chapter 350
- 17C-5-402, as enacted by Laws of Utah 2016, Chapter 350
- 17C-5-403, as enacted by Laws of Utah 2016, Chapter 350

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

Section 1. Section 17C-1-102 is amended to read:**17C-1-102. Definitions.**

As used in this title:

(1) "Active project area" means a project area that has not been dissolved in accordance with Section 17C-1-702.

(2) "Adjusted tax increment" means the percentage of tax increment, if less than 100%, that an agency is authorized to receive:

(a) for a pre-July 1, 1993, project area plan, under Section 17C-1-403, excluding tax increment under Subsection 17C-1-403(3);

(b) for a post-June 30, 1993, project area plan, under Section 17C-1-404, excluding tax increment under Section 17C-1-406;

(c) under a project area budget approved by a taxing entity committee; or

(d) under an interlocal agreement that authorizes the agency to receive a taxing entity's tax increment.

(3) "Affordable housing" means housing owned or occupied by a low or moderate income family, as determined by resolution of the agency.

(4) "Agency" or "community reinvestment agency" means a separate body corporate and politic, created under Section 17C-1-201.5 or as a redevelopment agency or community development and renewal agency under previous law:

(a) that is a political subdivision of the state;

(b) that is created to undertake or promote project area development as provided in this title; and

(c) whose geographic boundaries are coterminous with:

(i) for an agency created by a county, the unincorporated area of the county; and

(ii) for an agency created by a municipality, the boundaries of the municipality.

(5) "Agency funds" means money that an agency collects or receives for the purposes of agency operations or implementing a project area plan, including:

(a) project area funds;

(b) income, proceeds, revenue, or property derived from or held in connection with the agency's undertaking and implementation of project area development; or

(c) a contribution, loan, grant, or other financial assistance from any public or private source.

(6) "Annual income" means the same as that term is defined in regulations of the United States Department of Housing and Urban Development, 24 C.F.R. Sec. 5.609, as amended or as superseded by replacement regulations.

(7) "Assessment roll" means the same as that term is defined in Section 59-2-102.

(8) "Base taxable value" means, unless otherwise adjusted in accordance with provisions of this title, a property's taxable value as shown upon the assessment roll last equalized during the base year.

(9) “Base year” means, except as provided in Subsection 17C-1-402(4)(c), the year during which the assessment roll is last equalized:

(a) for a pre-July 1, 1993, urban renewal or economic development project area plan, before the project area plan’s effective date;

(b) for a post-June 30, 1993, urban renewal or economic development project area plan, or a community reinvestment project area plan that is subject to a taxing entity committee:

(i) before the date on which the taxing entity committee approves the project area budget; or

(ii) if taxing entity committee approval is not required for the project area budget, before the date on which the community legislative body adopts the project area plan;

(c) for a project on an inactive airport site, after the later of:

(i) the date on which the inactive airport site is sold for remediation and development; or

(ii) the date on which the airport that operated on the inactive airport site ceased operations; or

(d) for a community development project area plan or a community reinvestment project area plan that is subject to an interlocal agreement, as described in the interlocal agreement.

(10) “Basic levy” means the portion of a school district’s tax levy constituting the minimum basic levy under Section 59-2-902.

(11) “Blight” or “blighted” means the condition of an area that meets the requirements described in Subsection 17C-2-303(1) for an urban renewal project area or Section 17C-5-405 for a community reinvestment project area.

(12) “Blight hearing” means a public hearing regarding whether blight exists within a proposed:

(a) urban renewal project area under Subsection 17C-2-102(1)(a)(i)(C) and Section 17C-2-302; or

(b) community reinvestment project area under Section 17C-5-405.

(13) “Blight study” means a study to determine whether blight exists within a survey area as described in Section 17C-2-301 for an urban renewal project area or Section 17C-5-403 for a community reinvestment project area.

(14) “Board” means the governing body of an agency, as described in Section 17C-1-203.

(15) “Budget hearing” means the public hearing on a proposed project area budget required under Subsection 17C-2-201(2)(d) for an urban renewal project area budget, Subsection 17C-3-201(2)(d) for an economic development project area budget, or Subsection 17C-5-302(2)(e) for a community reinvestment project area budget.

(16) “Closed military base” means land within a former military base that the Defense Base Closure and Realignment Commission has voted to close or

realign when that action has been sustained by the president of the United States and Congress.

(17) “Combined incremental value” means the combined total of all incremental values from all project areas, except project areas that contain some or all of a military installation or inactive industrial site, within the agency’s boundaries under project area plans and project area budgets at the time that a project area budget for a new project area is being considered.

(18) “Community” means a county or municipality.

(19) “Community development project area plan” means a project area plan adopted under Chapter 4, Part 1, Community Development Project Area Plan.

(20) “Community legislative body” means the legislative body of the community that created the agency.

(21) “Community reinvestment project area plan” means a project area plan adopted under Chapter 5, Part 1, Community Reinvestment Project Area Plan.

(22) “Contest” means to file a written complaint in the district court of the county in which the agency is located.

(23) “Economic development project area plan” means a project area plan adopted under Chapter 3, Part 1, Economic Development Project Area Plan.

(24) “Fair share ratio” means the ratio derived by:

(a) for a municipality, comparing the percentage of all housing units within the municipality that are publicly subsidized income targeted housing units to the percentage of all housing units within the county in which the municipality is located that are publicly subsidized income targeted housing units; or

(b) for the unincorporated part of a county, comparing the percentage of all housing units within the unincorporated county that are publicly subsidized income targeted housing units to the percentage of all housing units within the whole county that are publicly subsidized income targeted housing units.

(25) “Family” means the same as that term is defined in regulations of the United States Department of Housing and Urban Development, 24 C.F.R. Section 5.403, as amended or as superseded by replacement regulations.

(26) “Greenfield” means land not developed beyond agricultural, range, or forestry use.

(27) “Hazardous waste” means any substance defined, regulated, or listed as a hazardous substance, hazardous material, hazardous waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as hazardous to human health or the environment, under state or federal law or regulation.

(28) “Housing allocation” means tax increment allocated for housing under Section 17C-2-203,

17C-3-202, or 17C-5-307 for the purposes described in Section 17C-1-412.

(29) "Housing fund" means a fund created by an agency for purposes described in Section 17C-1-411 or 17C-1-412 that is comprised of:

(a) project area funds allocated for the purposes described in Section 17C-1-411; or

(b) an agency's housing allocation.

(30) (a) "Inactive airport site" means land that:

(i) consists of at least 100 acres;

(ii) is occupied by an airport:

(A) (I) that is no longer in operation as an airport; or

(II) (Aa) that is scheduled to be decommissioned; and

(Bb) for which a replacement commercial service airport is under construction; and

(B) that is owned or was formerly owned and operated by a public entity; and

(iii) requires remediation because:

(A) of the presence of hazardous waste or solid waste; or

(B) the site lacks sufficient public infrastructure and facilities, including public roads, electric service, water system, and sewer system, needed to support development of the site.

(b) "Inactive airport site" includes a perimeter of up to 2,500 feet around the land described in Subsection (30)(a).

(31) (a) "Inactive industrial site" means land that:

(i) consists of at least 1,000 acres;

(ii) is occupied by an inactive or abandoned factory, smelter, or other heavy industrial facility; and

(iii) requires remediation because of the presence of hazardous waste or solid waste.

(b) "Inactive industrial site" includes a perimeter of up to 1,500 feet around the land described in Subsection (31)(a).

(32) "Income targeted housing" means housing that is owned or occupied by a family whose annual income is at or below 80% of the median annual income for a family within the county in which the housing is located.

(33) "Incremental value" means a figure derived by multiplying the marginal value of the property located within a project area on which tax increment is collected by a number that represents the adjusted tax increment from that project area that is paid to the agency.

(34) "Loan fund board" means the Olene Walker Housing Loan Fund Board, established under Title

35A, Chapter 8, Part 5, Olene Walker Housing Loan Fund.

(35) (a) "Local government building" means a building owned and operated by a community for the primary purpose of providing one or more primary community functions, including:

(i) a fire station;

(ii) a police station;

(iii) a city hall; or

(iv) a court or other judicial building.

(b) "Local government building" does not include a building the primary purpose of which is cultural or recreational in nature.

(36) "Marginal value" means the difference between actual taxable value and base taxable value.

(37) "Military installation project area" means a project area or a portion of a project area located within a federal military installation ordered closed by the federal Defense Base Realignment and Closure Commission.

(38) "Municipality" means a city, town, or metro township as defined in Section 10-2a-403.

(39) "Participant" means one or more persons that enter into a participation agreement with an agency.

(40) "Participation agreement" means a written agreement between a person and an agency that:

(a) includes a description of:

(i) the project area development that the person will undertake;

(ii) the amount of project area funds the person may receive; and

(iii) the terms and conditions under which the person may receive project area funds; and

(b) is approved by resolution of the board.

(41) "Plan hearing" means the public hearing on a proposed project area plan required under Subsection 17C-2-102(1)(a)(vi) for an urban renewal project area plan, Subsection 17C-3-102(1)(d) for an economic development project area plan, Subsection 17C-4-102(1)(d) for a community development project area plan, or Subsection 17C-5-104(3)(e) for a community reinvestment project area plan.

(42) "Post-June 30, 1993, project area plan" means a project area plan adopted on or after July 1, 1993, and before May 10, 2016, whether or not amended subsequent to the project area plan's adoption.

(43) "Pre-July 1, 1993, project area plan" means a project area plan adopted before July 1, 1993, whether or not amended subsequent to the project area plan's adoption.

(44) "Private," with respect to real property, means:

(a) not owned by a public entity or any other governmental entity; and

(b) not dedicated to public use.

(45) “Project area” means the geographic area described in a project area plan within which the project area development described in the project area plan takes place or is proposed to take place.

(46) “Project area budget” means a multiyear projection of annual or cumulative revenues and expenses and other fiscal matters pertaining to a project area prepared in accordance with:

(a) for an urban renewal project area, Section 17C-2-202;

(b) for an economic development project area, Section 17C-3-202;

(c) for a community development project area, Section 17C-4-204; or

(d) for a community reinvestment project area, Section 17C-5-302.

(47) “Project area development” means activity within a project area that, as determined by the board, encourages, promotes, or provides development or redevelopment for the purpose of implementing a project area plan, including:

(a) promoting, creating, or retaining public or private jobs within the state or a community;

(b) providing office, manufacturing, warehousing, distribution, parking, or other facilities or improvements;

(c) planning, designing, demolishing, clearing, constructing, rehabilitating, or remediating environmental issues;

(d) providing residential, commercial, industrial, public, or other structures or spaces, including recreational and other facilities incidental or appurtenant to the structures or spaces;

(e) altering, improving, modernizing, demolishing, reconstructing, or rehabilitating existing structures;

(f) providing open space, including streets or other public grounds or space around buildings;

(g) providing public or private buildings, infrastructure, structures, or improvements;

(h) relocating a business;

(i) improving public or private recreation areas or other public grounds;

(j) eliminating blight or the causes of blight;

(k) redevelopment as defined under the law in effect before May 1, 2006; or

(l) any activity described in Subsections (47)(a) through (k) outside of a project area that the board determines to be a benefit to the project area.

(48) “Project area funds” means tax increment or sales and use tax revenue that an agency receives

under a project area budget adopted by a taxing entity committee or an interlocal agreement.

(49) “Project area funds collection period” means the period of time that:

(a) begins the day on which the first payment of project area funds is distributed to an agency under a project area budget adopted by a taxing entity committee or an interlocal agreement; and

(b) ends the day on which the last payment of project area funds is distributed to an agency under a project area budget adopted by a taxing entity committee or an interlocal agreement.

(50) “Project area plan” means an urban renewal project area plan, an economic development project area plan, a community development project area plan, or a community reinvestment project area plan that, after the project area plan’s effective date, guides and controls the project area development.

(51) (a) “Property tax” means each levy on an ad valorem basis on tangible or intangible personal or real property.

(b) “Property tax” includes a privilege tax imposed under Title 59, Chapter 4, Privilege Tax.

(52) “Public entity” means:

(a) the United States, including an agency of the United States;

(b) the state, including any of the state’s departments or agencies; or

(c) a political subdivision of the state, including a county, municipality, school district, local district, special service district, or interlocal cooperation entity.

(53) “Publicly owned infrastructure and improvements” means water, sewer, storm drainage, electrical, natural gas, telecommunication, or other similar systems and lines, streets, roads, curb, gutter, sidewalk, walkways, parking facilities, public transportation facilities, or other facilities, infrastructure, and improvements benefitting the public and to be publicly owned or publicly maintained or operated.

(54) “Record property owner” or “record owner of property” means the owner of real property, as shown on the records of the county in which the property is located, to whom the property’s tax notice is sent.

(55) “Sales and use tax revenue” means revenue that is:

(a) generated from a tax imposed under Title 59, Chapter 12, Sales and Use Tax Act; and

(b) distributed to a taxing entity in accordance with Sections 59-12-204 and 59-12-205.

(56) “Superfund site”:

(a) means an area included in the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sec. 9605; and

(b) includes an area formerly included in the National Priorities List, as described in Subsection (56)(a), but removed from the list following remediation that leaves on site the waste that caused the area to be included in the National Priorities List.

(57) "Survey area" means a geographic area designated for study by a survey area resolution to determine whether:

(a) one or more project areas within the survey area are feasible; or

(b) blight exists within the survey area.

(58) "Survey area resolution" means a resolution adopted by a board ~~[under Subsection 17C-2-101.5(1) or 17C-5-103(1) designating a survey area]~~ that designates a survey area.

(59) "Taxable value" means:

(a) the taxable value of all real property a county assessor assesses in accordance with Title 59, Chapter 2, Part 3, County Assessment, for the current year;

(b) the taxable value of all real and personal property the commission assesses in accordance with Title 59, Chapter 2, Part 2, Assessment of Property, for the current year; and

(c) the year end taxable value of all personal property a county assessor assesses in accordance with Title 59, Chapter 2, Part 3, County Assessment, contained on the prior year's tax rolls of the taxing entity.

(60) (a) "Tax increment" means the difference between:

(i) the amount of property tax revenue generated each tax year by a taxing entity from the area within a project area designated in the project area plan as the area from which tax increment is to be collected, using the current assessed value of the property; and

(ii) the amount of property tax revenue that would be generated from that same area using the base taxable value of the property.

(b) "Tax increment" does not include taxes levied and collected under Section 59-2-1602 on or after January 1, 1994, upon the taxable property in the project area unless:

(i) the project area plan was adopted before May 4, 1993, whether or not the project area plan was subsequently amended; and

(ii) the taxes were pledged to support bond indebtedness or other contractual obligations of the agency.

(61) "Taxing entity" means a public entity that:

(a) levies a tax on property located within a project area; or

(b) imposes a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act.

(62) "Taxing entity committee" means a committee representing the interests of taxing entities, created in accordance with Section 17C-1-402.

(63) "Unincorporated" means not within a municipality.

(64) "Urban renewal project area plan" means a project area plan adopted under Chapter 2, Part 1, Urban Renewal Project Area Plan.

Section 2. Section 17C-1-902 is amended to read:

17C-1-902. Use of eminent domain -- Conditions.

(1) Except as provided in Subsection (2), an agency may not use eminent domain to acquire property.

(2) Subject to the provisions of this part, an agency may, in accordance with Title 78B, Chapter 6, Part 5, Eminent Domain, use eminent domain to acquire an interest in property:

(a) within an urban renewal project area if:

(i) the board makes a finding of blight under Chapter 2, Part 3, Blight Determination in Urban Renewal Project Areas; and

(ii) the urban renewal project area plan provides for the use of eminent domain;

(b) that is owned by an agency board member or officer and located within a project area, if the board member or officer consents;

(c) within a community reinvestment project area if:

(i) the board makes a finding of blight ~~[under Section 17C-5-405]~~ in accordance with Chapter 5, Part 4, Blight Determination in a Community Reinvestment Project Area;

(ii) (A) the original community reinvestment project area plan provides for the use of eminent domain; or

(B) the community reinvestment project area plan is amended in accordance with Subsection 17C-5-112(4); and

(iii) the agency creates a taxing entity committee in accordance with Section 17C-1-402;

(d) that:

(i) is owned by a participant or a property owner that is entitled to receive tax increment or other assistance from the agency;

(ii) is within a project area, regardless of when the project area is created, for which the agency made a finding of blight under Section 17C-2-102 or 17C-5-405; and

(iii) (A) the participant or property owner described in Subsection (2)(d)(i) fails to develop or improve in accordance with the participation agreement or the project area plan; or

(B) for a period of 36 months does not generate the amount of tax increment that the agency projected to receive under the project area budget; or

(e) if a property owner requests in writing that the agency exercise eminent domain to acquire the property owner's property within a project area.

(3) An agency shall, in accordance with the provisions of this part, commence the acquisition of property described in Subsections (2)(a) through (c) by eminent domain within five years after the day on which the project area plan is effective.

Section 3. Section 17C-1-904 is amended to read:

17C-1-904. Acquiring single family owner occupied residential property or commercial property -- Acquiring property already devoted to a public use -- Relocation assistance requirement.

(1) As used in this section:

(a) "Commercial property" means real property used, in whole or in part, by the owner or possessor of the property for a commercial, industrial, retail, or other business purpose, regardless of the identity of the property owner.

(b) "Owner occupied property" means private real property that is:

(i) used for a single-family residential or commercial purpose; and

(ii) occupied by the owner of the property.

(c) "Relevant area" means:

(i) except as provided in Subsection (1)(c)(ii), the project area; or

(ii) (A) the area included within a phase of a project under a project area plan if the phase and the area included within the phase are described in the project area plan; or

(B) the parcel or parcels that are the subject of a community reinvestment project area plan amendment under Subsection 17C-5-112(4).

(2) An agency may not initiate an action in district court to acquire by eminent domain a residential owner occupied property unless:

(a) (i) a written petition requesting the agency to use eminent domain to acquire the property is submitted by the owners of at least 80% of the residential owner occupied property within the relevant area representing at least 70% of the value of residential owner occupied property within the relevant area; or

(ii) a written petition of 90% of the owners of real property, including property owned by the agency or a public entity within the project area, is submitted to the agency, requesting the use of eminent domain to acquire the property; and

(b) at least two-thirds of all board members vote in favor of using eminent domain to acquire the property.

(3) An agency may not initiate an action in district court to acquire commercial owner occupied property by eminent domain unless:

(a) a written petition requesting the agency to use eminent domain to acquire the property is submitted by the owners of at least 75% of the commercial property within the relevant area representing at least 60% of the value of commercial property within the relevant area; and

(b) at least two-thirds of all board members vote in favor of using eminent domain to acquire the property.

(4) For purposes of this section an owner is considered to have signed a petition if:

(a) owners representing a majority ownership interest in the property sign the petition; or

(b) if the property is owned by joint tenants or tenants by the entirety, 50% of the number of owners of the property sign the petition.

(5) An agency may not acquire by eminent domain any real property on which an existing building is to be continued on the building's present site and in the building's present form and use unless:

(a) the building requires structural alteration, improvement, modernization, or rehabilitation;

(b) the site or lot on which the building is situated requires modification in size, shape, or use; or

(c) (i) it is necessary to impose upon the property a standard, restriction, or control of the project area plan; and

(ii) the owner fails or refuses to agree to participate in the project area plan.

(6) An agency may not acquire by eminent domain property that is owned by a public entity.

(7) An agency that acquires property by eminent domain shall comply with Title 57, Chapter 12, Utah Relocation Assistance Act.

Section 4. Section 17C-5-103 is amended to read:

17C-5-103. Initiating a community reinvestment project area plan.

(1) [A] Subject to Subsection (2), a board shall initiate the process of adopting a community reinvestment project area plan by adopting a survey area resolution that:

(a) designates a geographic area located within the agency's boundaries as a survey area;

(b) contains a description or map of the boundaries of the survey area;

(c) contains a statement that the survey area requires study to determine whether project area development is feasible within one or more proposed community reinvestment project areas within the survey area; and

(d) authorizes the agency to:

(i) prepare a proposed community reinvestment project area plan for each proposed community reinvestment project area; and

(ii) conduct any examination, investigation, or negotiation regarding the proposed community

reinvestment project area that the agency considers appropriate.

(2) If an agency anticipates ~~[an activity described in Subsection 17C-5-402(1)]~~ using eminent domain to acquire property within the survey area, the resolution described in Subsection (1) shall include:

(a) a statement that the survey area requires study to determine whether blight exists within the survey area; and

(b) authorization for the agency to conduct a blight study in accordance with Section 17C-5-403.

Section 5. Section 17C-5-104 is amended to read:

17C-5-104. Process for adopting a community reinvestment project area plan -- Prerequisites -- Restrictions.

(1) An agency may not propose a community reinvestment project area plan unless the community in which the proposed community reinvestment project area plan is located:

(a) has a planning commission; and

(b) has adopted a general plan under:

(i) if the community is a municipality, Title 10, Chapter 9a, Part 4, General Plan; or

(ii) if the community is a county, Title 17, Chapter 27a, Part 4, General Plan.

(2) (a) Before an agency may adopt a proposed community reinvestment project area plan, the agency shall conduct a blight study and make a blight determination in accordance with ~~[Section 17C-5-402]~~ Part 4, Blight Determination in a Community Reinvestment Project Area, if the agency anticipates ~~[an activity described in Subsection 17C-5-402(1) for which a blight determination is required]~~ using eminent domain to acquire property within the proposed community reinvestment project area.

(b) If applicable, an agency may not approve a community reinvestment project area plan more than one year after the ~~[adoption of a]~~ agency adopts a resolution making a finding of blight under Section 17C-5-402.

(3) To adopt a community reinvestment project area plan, an agency shall:

(a) prepare a proposed community reinvestment project area plan in accordance with Section 17C-5-105;

(b) make the proposed community reinvestment project area plan available to the public at the agency's office during normal business hours for at least 30 days before the plan hearing described in Subsection (3)(e);

(c) before holding the plan hearing described in Subsection (3)(e), provide an opportunity for the State Board of Education and each taxing entity that levies or imposes a tax within the proposed community reinvestment project area to consult

with the agency regarding the proposed community reinvestment project area plan;

(d) provide notice of the plan hearing in accordance with Chapter 1, Part 8, Hearing and Notice Requirements;

(e) hold a plan hearing on the proposed community reinvestment project area plan and, at the plan hearing:

(i) allow public comment on:

(A) the proposed community reinvestment project area plan; and

(B) whether the agency should revise, approve, or reject the proposed community reinvestment project area plan; and

(ii) receive all written and oral objections to the proposed community reinvestment project area plan; and

(f) following the plan hearing described in Subsection (3)(e), or at a subsequent agency meeting:

(i) consider:

(A) the oral and written objections to the proposed community reinvestment project area plan and evidence and testimony for and against adoption of the proposed community reinvestment project area plan; and

(B) whether to revise, approve, or reject the proposed community reinvestment project area plan;

(ii) adopt a resolution in accordance with Section 17C-5-108 that approves the proposed community reinvestment project area plan, with or without revisions, as the community reinvestment project area plan; and

(iii) submit the community reinvestment project area plan to the community legislative body for adoption.

(4) (a) Except as provided in Subsection (4)(b), an agency may not modify a proposed community reinvestment project area plan to add a parcel to the proposed community reinvestment project area unless the agency holds a plan hearing to consider the addition and gives notice of the plan hearing in accordance with Chapter 1, Part 8, Hearing and Notice Requirements.

(b) The notice and hearing requirements described in Subsection (4)(a) do not apply to a proposed community reinvestment project area plan being modified to add a parcel to the proposed community reinvestment project area if:

(i) the parcel is contiguous to one or more parcels already included in the proposed community reinvestment project area under the proposed community reinvestment project area plan;

(ii) the record owner of the parcel consents to adding the parcel to the proposed community reinvestment project area; and

(iii) the parcel is located within the survey area.

Section 6. Section 17C-5-112 is amended to read:

17C-5-112. Amending a community reinvestment project area plan.

(1) An agency may amend a community reinvestment project area plan in accordance with this section.

(2) (a) If an amendment proposes to enlarge a community reinvestment project area's geographic area, the agency shall:

(i) comply with this part as though the agency were creating a community reinvestment project area;

(ii) if the agency anticipates receiving project area funds from the area proposed to be added to the community reinvestment project area, before the agency may collect project area funds:

(A) for a community reinvestment project area plan that is subject to a taxing entity committee, obtain approval to receive tax increment from the taxing entity committee; or

(B) for a community reinvestment project area plan that is subject to an interlocal agreement, obtain the approval of the taxing entity that is a party to the interlocal agreement; and

(iii) if the agency anticipates ~~activity within the area proposed to be added to the community reinvestment project area that requires a finding of blight under Subsection 17C-5-402(1)~~ acquiring property in the area proposed to be added to the community reinvestment project area by eminent domain, follow the procedures described in Section 17C-5-402.

(b) The base year for the area proposed to be added to the community reinvestment project area shall be determined using the date of:

(i) the taxing entity committee's consent as described in Subsection (2)(a)(ii)(A); or

(ii) the taxing entity's consent as described in Subsection (2)(a)(ii)(B).

(3) If an amendment does not propose to enlarge a community reinvestment project area's geographic area, the board may adopt a resolution approving the amendment after the agency:

(a) if the amendment does not propose to allow the agency to receive a greater amount of project area funds or to extend a project area funds collection period:

(i) gives notice in accordance with Section 17C-1-806; and

(ii) holds a public hearing on the proposed amendment that meets the requirements described in ~~[Subsection 17C-5-104(2)]~~ Section 17C-1-808; or

(b) if the amendment proposes to also allow the agency to receive a greater amount of project area funds or to extend a project area funds collection period:

(i) complies with Subsection (3)(a)(i) and (ii); and

(ii) (A) for a community reinvestment project area plan that is subject to a taxing entity committee, obtains approval from the taxing entity committee; or

(B) for a community reinvestment project area plan that is subject to an interlocal agreement, obtains approval to receive project area funds from the taxing entity that is a party to the interlocal agreement.

(4) (a) An agency may amend a community reinvestment project area plan for a community reinvestment project area that is subject to an interlocal agreement for the purpose of using eminent domain to acquire one or more parcels within the community reinvestment project area.

(b) To amend a community reinvestment project area plan as described in Subsection (4)(a), an agency shall:

(i) adopt a survey area resolution that identifies each parcel that the agency intends to study to determine whether blight exists;

(ii) in accordance with Part 4, Blight Determination in a Community Reinvestment Project Area, conduct a blight study within the survey area and make a blight determination;

(iii) create a taxing entity committee whose sole purpose is to approve any finding of blight in accordance with Subsection 17C-5-402(3); and

(iv) obtain approval to amend the community reinvestment project area plan from each taxing entity that is party to an interlocal agreement.

(c) Amending a community reinvestment project area plan as described in this Subsection (4) does not affect:

(i) the base year of the parcel or parcels that are the subject of an amendment under this Subsection (4); and

(ii) any interlocal agreement under which the agency is authorized to receive project area funds from the community reinvestment project area.

~~[(4)]~~ (5) An agency may amend a community reinvestment project area plan without obtaining the consent of a taxing entity or a taxing entity committee and without providing notice or holding a public hearing if the amendment:

(a) makes a minor adjustment in the community reinvestment project area boundary that is requested by a county assessor or county auditor to avoid inconsistent property boundary lines; or

(b) removes a parcel from a community reinvestment project area because the agency determines that the parcel is:

(i) tax exempt;

(ii) no longer blighted; or

(iii) no longer necessary or desirable to the project area.

~~[(5)]~~ (6) (a) An amendment approved by board resolution under this section may not take effect

until the community legislative body adopts an ordinance approving the amendment.

(b) Upon the community legislative body adopting an ordinance approving an amendment under Subsection ~~[(4)]~~ (6)(a), the agency shall comply with the requirements described in Sections 17C-5-110 and 17C-5-111 as if the amendment were a community reinvestment project area plan.

~~[(4)]~~ (7) (a) Within 30 days after the day on which an amendment to a project area plan becomes effective, a person may contest the amendment to the project area plan or the procedure used to adopt the amendment to the project area plan if the amendment or procedure fails to comply with a provision of this title.

(b) After the 30-day period described in Subsection ~~[(4)]~~ (7)(a) expires, a person may not contest the amendment to the project area plan or procedure used to adopt the amendment to the project area plan for any cause.

Section 7. Section 17C-5-202 is amended to read:

17C-5-202. Community reinvestment project area funding options.

(1) (a) Except as provided in Subsection ~~[(1)(b)]~~ (2), for the purpose of receiving project area funds for use within a community reinvestment project area, an agency shall negotiate and enter into an interlocal agreement with a taxing entity in accordance with Section 17C-5-204 to receive all or a portion of the taxing entity's tax increment or sales and use tax revenue in accordance with the interlocal agreement.

(b) If a community reinvestment project area is subject to an interlocal agreement under Subsection (1)(a) and the agency subsequently amends the community reinvestment project area plan as described in Subsection 17C-5-112(4), the agency shall continue to receive project area funds under the interlocal agreement.

~~[(b)]~~ (2) If an agency plans ~~[to use]~~ to create a community reinvestment project area and adopt a community reinvestment project area plan that provides for the use of eminent domain to acquire property within ~~[a]~~ the community reinvestment project area, the agency shall create a taxing entity committee as described in Section 17C-1-402 and receive tax increment in accordance with Section 17C-5-203.

~~[(2)]~~ (3) An agency shall comply with Chapter 5, Part 3, Community Reinvestment Project Area Budget, regardless of whether an agency enters into an interlocal agreement under Subsection (1)~~[(a)]~~ or creates a taxing entity committee under Subsection ~~[(1)(b)]~~ (2).

Section 8. Section 17C-5-203 is amended to read:

17C-5-203. Community reinvestment project area subject to taxing entity committee -- Tax increment.

(1) This section applies to a community reinvestment project area that is subject to a taxing entity committee under Subsection 17C-5-202~~[(1)(b)]~~(2).

(2) Subject to the taxing entity committee's approval of a community reinvestment project area budget under Section 17C-5-304, and for the purpose of implementing a community reinvestment project area plan, an agency may receive up to 100% of a taxing entity's tax increment, or any specified dollar amount of tax increment, for any period of time.

(3) Notwithstanding Subsection (2), an agency that adopts a community reinvestment project area plan that is subject to a taxing entity committee may negotiate and enter into an interlocal agreement with a taxing entity and receive all or a portion of the taxing entity's sales and use tax revenue for any period of time.

Section 9. Section 17C-5-306 is amended to read:

17C-5-306. Amending a community reinvestment project area budget.

(1) Before a project area funds collection period ends, an agency may amend a community reinvestment project area budget in accordance with this section.

(2) To amend a community reinvestment project area budget, an agency shall:

(a) provide notice and hold a public hearing on the proposed amendment in accordance with Chapter 1, Part 8, Hearing and Notice Requirements;

(b) (i) if the community reinvestment project area budget required approval from a taxing entity committee, obtain the taxing entity committee's approval; or

(ii) if the community reinvestment project area budget required an interlocal agreement with a taxing entity, obtain approval from the taxing entity that is a party to the interlocal agreement; and

(c) at the public hearing described in Subsection (2)(a) or at a subsequent board meeting, by resolution, adopt the community reinvestment project area budget amendment.

(3) If an agency proposes a community reinvestment project area budget amendment under which the agency is paid a greater proportion of tax increment from the community reinvestment project area than provided under the community reinvestment project area budget, the notice described in Subsection (2)(a) shall state:

(a) the percentage of tax increment paid under the community reinvestment project area budget; and

(b) the proposed percentage of tax increment paid under the community reinvestment project area budget amendment.

(4) (a) If an agency proposes a community reinvestment project area budget amendment that

extends a project area funds collection period, before a taxing entity committee or taxing entity may provide the taxing entity committee's or taxing entity's approval described in Subsection (2)(b), the agency shall provide to the taxing entity committee or taxing entity:

- (i) the reasons why the extension is required;
- (ii) a description of the project area development for which project area funds received by the agency under the extension will be used;
- (iii) a statement of whether the project area funds received by the agency under the extension will be used within an active project area or a proposed project area; and
- (iv) a revised community reinvestment project area budget that includes:
 - (A) the annual and total amounts of project area funds that the agency receives under the extension; and
 - (B) the number of years that are added to each project area funds collection period under the extension.
- (b) With respect to an amendment described in Subsection (4)(a), a taxing entity committee or taxing entity may consent to:
 - (i) allow an agency to use project area funds received under an extension within a different project area from which the project area funds are generated; or
 - (ii) alter the base taxable value in connection with a community reinvestment project area budget extension.
- (5) If an agency proposes a community reinvestment project area budget amendment that reduces the base taxable value of the project area due to the removal of a parcel under Subsection 17C-5-112(4)(5)(b), an agency may amend a project area budget without:
 - (a) complying with Subsection (2)(a); and
 - (b) obtaining taxing entity committee or taxing entity approval described in Subsection (2)(b).
- (6) (a) A person may contest an agency's adoption of a community reinvestment project area budget amendment within 30 days after the day on which the agency adopts the community reinvestment project area budget amendment.
 - (b) After the 30-day period described in Subsection (6)(a), a person may not contest:
 - (i) the agency's adoption of the community reinvestment project area budget amendment;
 - (ii) a payment to the agency under the community reinvestment project area budget amendment; or
 - (iii) the agency's use of project area funds received under the community reinvestment project area budget amendment.

Section 10. Section 17C-5-402 is amended to read:

17C-5-402. Blight determination in a community reinvestment project area -- Prerequisites -- Restrictions.

- (1) An agency shall comply with the provisions of this section before the agency may use eminent domain to acquire property under Chapter 1, Part 9, Eminent Domain.
- (2) An agency shall, after adopting a survey area resolution as described in Section 17C-5-103:
 - (a) cause a blight study to be conducted within the survey area in accordance with Section 17C-5-403;
 - (b) provide notice and hold a blight hearing in accordance with Chapter 1, Part 8, Hearing and Notice Requirements; and
 - (c) after the blight hearing, at the same or at a subsequent meeting:
 - (i) consider[:(A)] the issue of blight and the evidence and information relating to the existence or nonexistence of blight; and
 - [:(B) whether the agency should pursue adoption of one or more community reinvestment project area plans; and]
 - (ii) by resolution, make a finding regarding whether blight exists in [the proposed community reinvestment project] all or part of the survey area.
- (3) (a) If an agency makes a finding of blight under Subsection (2), the agency may not adopt [the] an original community reinvestment project area plan or an amendment to a community reinvestment project area plan under Subsection 17C-5-112(4) until the taxing entity committee approves the finding of blight.
 - (b) (i) A taxing entity committee shall approve an agency's finding of blight unless the taxing entity committee demonstrates that the conditions the agency found to exist in the [community reinvestment project] survey area that support the agency's finding of blight:
 - (A) do not exist; or
 - (B) do not constitute blight under Section 17C-5-405.
 - (ii) (A) If the taxing entity committee questions or disputes the existence of some or all of the blight conditions that the agency found to exist in the [proposed community reinvestment project] survey area, the taxing entity committee may hire a consultant, mutually agreed upon by the taxing entity committee and the agency, with the necessary expertise to assist the taxing entity committee in making a determination as to the existence of the questioned or disputed blight conditions.
 - (B) The agency shall pay the fees and expenses of each consultant hired under Subsection (3)(b)(ii)(A).
 - (C) The findings of a consultant hired under Subsection (3)(b)(ii)(A) are binding on the taxing entity committee and the agency.

Section 11. Section 17C-5-403 is amended to read:

17C-5-403. Blight study -- Requirements -- Deadline.

(1) A blight study shall:

(a) undertake a parcel by parcel survey of the survey area;

(b) provide data so the board and taxing entity committee may determine:

(i) whether the conditions described in Subsection 17C-5-405:

(A) exist in part or all of the survey area; and

(B) meet the qualifications for a finding of blight in all or part of the survey area; and

(ii) whether the survey area contains all or part of a superfund site;

(c) include a written report that states:

(i) the conclusions reached;

(ii) any area within the survey area that meets the statutory criteria of blight under Section 17C-5-405; and

(iii) any other information requested by the agency to determine whether blight exists within the survey area; and

(d) be completed within one year after the day on which the survey area resolution is adopted.

(2) (a) If a blight study is not completed within the time described in Subsection (1)(d), the agency may not approve a community reinvestment project area plan or an amendment to a community reinvestment project area plan under Subsection 17C-5-112(4) based on a blight study unless the agency first adopts a new resolution under Subsection 17C-5-103(1).

(b) A new resolution described in Subsection (2)(a) shall in all respects be considered to be a resolution under Subsection 17C-5-103(1) adopted for the first time, except that any actions taken toward completing a blight study under the resolution that the new resolution replaces shall be considered to have been taken under the new resolution.

(3) (a) For the purpose of making a blight determination under Subsection 17C-5-402(2)(c)(ii), a blight study is valid for one year from the day on which the blight study is completed.

(b) (i) Except as provided in Subsection (3)(b)(ii), an agency that makes a blight determination under a valid blight study and subsequently adopts a community reinvestment project area plan in accordance with Section 17C-5-104 may amend the community reinvestment project area plan without conducting a new blight study.

(ii) An agency shall conduct a supplemental blight study for the area proposed to be added to the community reinvestment project area if the agency

proposes an amendment to a community reinvestment project area plan that:

(A) increases the community reinvestment project area's geographic boundary and the area proposed to be added was not included in the original blight study; and

(B) provides for the use of eminent domain within the area proposed to be added to the community reinvestment project area.

CHAPTER 457

S.B. 3

Passed March 9, 2017
 Approved March 28, 2017
 Effective July 1, 2017
 (Line Items 73, 90, 95, and 149 vetoed)

APPROPRIATIONS ADJUSTMENTS

Chief Sponsor: Jerry W. Stevenson
 House Sponsor: Dean Sanpei

LONG TITLE

General Description:

This bill supplements or reduces appropriations previously provided for the use and support of state government for the fiscal years beginning July 1, 2016 and ending June 30, 2017 and beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides budget increases and decreases for the use and support of certain state agencies;
- ▶ provides budget increases and decreases for the use and support of certain public education programs;
- ▶ provides budget increases and decreases for the use and support of certain institutions of higher education;
- ▶ provides funds for the bills with fiscal impact passed in the 2017 General Session;
- ▶ provides budget increases and decreases for other purposes as described;
- ▶ provides a mathematical formula for the annual appropriations limit; and,
- ▶ provides intent language.

Money Appropriated in this Bill:

This bill appropriates (\$30,101,100) in operating and capital budgets for fiscal year 2017, including:

- ▶ \$15,645,100 from the General Fund;
- ▶ (\$20,001,000) from the Education Fund;
- ▶ (\$25,745,200) from various sources as detailed in this bill.

This bill appropriates \$1,473,000 in expendable funds and accounts for fiscal year 2017, including:

- ▶ \$1,333,000 from the General Fund;
- ▶ \$140,000 from various sources as detailed in this bill.

This bill appropriates \$104,100 in business-like activities for fiscal year 2017, all of which is from the General Fund.

This bill appropriates \$728,900 in restricted fund and account transfers for fiscal year 2017, all of which is from the General Fund.

This bill appropriates \$1,666,000 in transfers to unrestricted funds for fiscal year 2017.

This bill appropriates \$72,144,400 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$43,129,300 from the General Fund;
- ▶ \$8,000,000 from the Uniform School Fund;
- ▶ (\$20,522,700) from the Education Fund;
- ▶ \$41,537,800 from various sources as detailed in this bill.

This bill appropriates \$34,055,500 in expendable funds and accounts for fiscal year 2018, including:

- ▶ (\$3,409,900) from the General Fund;
- ▶ \$37,465,400 from various sources as detailed in this bill.

This bill appropriates \$118,700 in business-like activities for fiscal year 2018.

This bill appropriates \$1,926,500 in restricted fund and account transfers for fiscal year 2018, including:

- ▶ \$176,500 from the General Fund;
- ▶ \$1,750,000 from various sources as detailed in this bill.

Other Special Clauses:

Section 1 of this bill takes effect immediately. Sections 2 and 3 of this bill take effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2017 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2016 and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017.

Subsection 1(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

EXECUTIVE OFFICES AND CRIMINAL JUSTICE

GOVERNOR'S OFFICE

Item 1

To Governor's Office
 From General Fund, One-Time (155,000)
 Schedule of Programs:
 Lt. Governor's Office (155,000)

Item 2

To Governor's Office - Commission on Criminal and Juvenile Justice
 From Dedicated Credits Revenue,
 One-Time 181,800
 Schedule of Programs:
 CCJJ Commission 181,800

ATTORNEY GENERAL

Item 3

To Attorney General
 From Federal Funds, One-Time 319,000
 Schedule of Programs:
 Criminal Prosecution 319,000

Item 4

To Attorney General - State Settlement Agreements
 From General Fund, One-Time 155,000
 Schedule of Programs:
 State Settlement Agreements 155,000

**DEPARTMENT OF HUMAN SERVICES -
DIVISION OF JUVENILE JUSTICE
SERVICES**

Item 5

To Department of Human Services - Division of
Juvenile Justice Services - Programs and
Operations
From Federal Funds, One-Time 359,600
Schedule of Programs:
Administration 359,600

DEPARTMENT OF PUBLIC SAFETY

Item 6

To Department of Public Safety -
Programs & Operations
From Federal Funds, One-Time 733,000
Schedule of Programs:
CITS Bureau of Criminal
Identification 45,000
CITS State Bureau of Investigation 428,000
Fire Marshall - Fire Operations 260,000

**INFRASTRUCTURE AND
GENERAL GOVERNMENT**

TRANSPORTATION

Item 7

To Transportation - Equipment Management

Under terms of Utah Code Annotated
Section 63J-1-603(3)(a), the Legislature
intends that appropriations provided for
Equipment Management in Item 7, Chapter
9, Laws of Utah 2016, shall not lapse at the
close of FY 2017 and that the nonlapsing
amount be moved to the
Operations/Maintenance Management -
Equipment Purchases program.
Expenditures of these funds are limited to
equipment purchases: \$200,000.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

Item 8

To Department of Administrative Services -
Administrative Rules
From General Fund, One-Time 8,000
Schedule of Programs:
DAR Administration 8,000

To implement the provisions of Regulatory
Impact Amendments (House Bill 272, 2017
General Session).

Item 9

To Department of Administrative Services -
Finance - Mandated
From Education Fund, One-Time (1,000)
Schedule of Programs:
Strategic Workforce Investments (1,000)

**BUSINESS, ECONOMIC
DEVELOPMENT, AND LABOR**

DEPARTMENT OF HERITAGE AND ARTS

Item 10

To Department of Heritage and Arts -
Pass-Through
From General Fund, One-Time 32,000
Schedule of Programs:
Pass-Through 32,000

**GOVERNOR'S OFFICE OF ECONOMIC
DEVELOPMENT**

Item 11

To Governor's Office of Economic Development -
Administration
From General Fund, One-Time 50,000
Schedule of Programs:
Administration 50,000

SOCIAL SERVICES

DEPARTMENT OF HEALTH

Item 12

To Department of Health - Executive
Director's Operations
From General Fund, One-Time 3,800
From Federal Funds, One-Time 1,400
Schedule of Programs:
Executive Director 5,200

To implement the provisions of
Cannabinoid Medicine Research (House Bill
130, 2017 General Session).

Item 13

To Department of Health - Disease Control
and Prevention
From General Fund, One-Time 45,000
Schedule of Programs:
Epidemiology 45,000

Under Section 63J-1-603 of the Utah Code,
the Legislature intends that up to \$45,000 of
the money provided in this item for the
Department of Health's Disease Control and
Prevention line item shall not lapse at the
close of Fiscal Year 2017. The use of any
nonlapsing funds is limited to conducting an
infertility study and related activities.

Item 14

To Department of Health - Disease Control
and Prevention
From General Fund, One-Time 3,700
Schedule of Programs:
Health Promotion 3,700

To implement the provisions of Addiction
Recovery Amendments (Senate Bill 258, 2017
General Session).

Item 15

To Department of Health - Medicaid and Health
Financing
From General Fund, One-Time 6,000
From Federal Funds, One-Time 18,000
Schedule of Programs:
Financial Services 24,000

To implement the provisions of Opioid Abuse Prevention and Treatment Amendments (House Bill 175, 2017 General Session).

Item 16

To Department of Health - Children's Health Insurance Program
 From General Fund Restricted - Tobacco Settlement Account,
 One-Time (1,083,200)
 Schedule of Programs:
 Children's Health Insurance Program (1,083,200)

Item 17

To Department of Health - Medicaid Mandatory Services
 From General Fund, One-Time 1,408,700
 From Federal Funds, One-Time 10,453,700
 Schedule of Programs:
 Other Mandatory Services 11,862,400

Item 18

To Department of Health - Medicaid Optional Services
 From General Fund, One-Time (5,408,700)
 From Federal Funds, One-Time ... (23,214,200)
 Schedule of Programs:
 Other Optional Services (28,622,900)

Item 19

To Department of Health - Medicaid Optional Services
 From General Fund, One-Time (500,000)
 From Federal Funds, One-Time (1,200,000)
 Schedule of Programs:
 Dental Services (1,700,000)
 To implement the provisions of Medicaid Dental Waiver Amendments (Senate Bill 274, 2017 General Session).

Item 20

To Department of Health - Medicaid Expansion 2017
 From Federal Funds, One-Time ... (29,195,800)
 Schedule of Programs:
 Medicaid Expansion 2017 (29,195,800)

DEPARTMENT OF HUMAN SERVICES

Item 21

To Department of Human Services - Executive Director Operations
 From Federal Funds, One-Time 1,306,900
 Schedule of Programs:
 Executive Director's Office 1,306,900

Item 22

To Department of Human Services - Division of Substance Abuse and Mental Health
 From Federal Funds, One-Time 3,168,600
 Schedule of Programs:
 Administration - DSAMH 3,168,600

Item 23

To Department of Human Services - Division of Services for People with Disabilities
 From Federal Funds, One-Time 250,000
 Schedule of Programs:
 Service Delivery 250,000

Item 24

To Department of Human Services - Office of Recovery Services
 From Federal Funds, One-Time 391,200
 Schedule of Programs:
 Administration - ORS 391,200

Item 25

To Department of Human Services - Division of Child and Family Services
 From General Fund, One-Time 100,000
 From Federal Funds, One-Time 3,624,600
 Schedule of Programs:
 Administration - DCFS 3,624,600
 Domestic Violence 100,000

Item 26

To Department of Human Services - Division of Aging and Adult Services
 From Federal Funds, One-Time 2,106,800
 Schedule of Programs:
 Administration - DAAS 2,106,800

HIGHER EDUCATION

UNIVERSITY OF UTAH

Item 27

To University of Utah - Education and General
 From General Fund, One-Time 20,000,000
 From Education Fund, One-Time .. (20,000,000)

UTAH STATE UNIVERSITY

Item 28

To Utah State University - Education and General
 From General Fund, One-Time 4,000
 Schedule of Programs:
 Education and General 4,000
 The Legislature intends that Utah State University use \$4,000 from this appropriation for mapping access to streambeds in the state.

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENTAL QUALITY

DEPARTMENT OF NATURAL RESOURCES

Item 29

To Department of Natural Resources - Forestry, Fire and State Lands
 From General Fund Restricted - Sovereign Land Management, One-Time 2,200,000
 Schedule of Programs:
 Project Management 2,200,000
 The Legislature intends that the \$2.2 million appropriation from the Sovereign Lands Management Restricted Account to the Division of Forestry, Fire, and State Lands not lapse at the close of Fiscal Year 2017. The Legislature intends that the division use the appropriation to engage the Division of Facilities Construction and Management to design and build an Interagency Fire Dispatch Center in Richfield. The Legislature further intends the return of funds to the Sovereign Lands Management Restricted Account be

accomplished by entities occupying the Interagency Fire Dispatch Center paying their proportionate share of leased space based on the construction cost amortized over a 25-year period.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Item 30

To Department of Environmental Quality - Executive Director's Office
From General Fund, One-Time (117,200)
From Federal Funds, One-Time 53,400
From Closing Nonlapsing Balances 117,200
Schedule of Programs:
Executive Director's Office 53,400

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Executive Director's Office in Item 18, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to funding the one time general fund reductions for personnel savings \$82,000.

Notwithstanding the intent language included in House Bill 3, item 111, Under the terms of 63J1-603 of the Utah Code, the Legislature intends that appropriations provided for Executive Directors Office in Item 18, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to high level nuclear waste opposition \$10,000; capital improvements/maintenance, DP Software, and equipment \$450,000; administrative law judge \$150,000.

Item 31

To Department of Environmental Quality - Air Quality
From Federal Funds, One-Time 1,951,100
Schedule of Programs:
Air Quality 1,951,100

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Division of Air Quality in Item 19, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited funding the one time general fund reductions for personnel savings \$56,500.

Item 32

To Department of Environmental Quality - Environmental Response and Remediation
From Federal Funds, One-Time 77,500
Schedule of Programs:
Environmental Response and Remediation 77,500

Item 33

To Department of Environmental Quality - Water Quality
From Federal Funds, One-Time 1,631,000
Schedule of Programs:

Water Quality 1,631,000

Under the terms of 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for Water Quality in Item 21, Chapter 3, Laws of Utah 2016, shall not lapse at the close of FY 2017. Expenditures of these funds are limited to funding the one time general fund reductions for personnel savings \$65,000.

Item 34

To Department of Environmental Quality - Drinking Water
From Federal Funds, One-Time 3,200
Schedule of Programs:
Drinking Water 3,200

EXECUTIVE APPROPRIATIONS

LEGISLATURE

Item 35

To Legislature - Senate
From General Fund, One-Time 3,000
Schedule of Programs:
Administration 3,000

To implement the provisions of Joint Resolution Authorizing Pay of In-session Employees (House Joint Resolution 10, 2017 General Session).

Item 36

To Legislature - Senate
From General Fund, One-Time 1,600
Schedule of Programs:
Administration 1,600

To implement the provisions of Workers' Compensation Workgroup (Senate Bill 170, 2017 General Session).

Item 37

To Legislature - House of Representatives
From General Fund, One-Time 3,600
Schedule of Programs:
Administration 3,600

To implement the provisions of Joint Resolution Authorizing Pay of In-session Employees (House Joint Resolution 10, 2017 General Session).

Item 38

To Legislature - House of Representatives
From General Fund, One-Time 1,600
Schedule of Programs:
Administration 1,600

To implement the provisions of Workers' Compensation Workgroup (Senate Bill 170, 2017 General Session).

Subsection 1(b). Expensible Funds and

Accounts. The Legislature has reviewed the following expensible funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further

legislative action according to a fund or account's applicable authorizing statute.

**EXECUTIVE OFFICES AND
CRIMINAL JUSTICE**

DEPARTMENT OF PUBLIC SAFETY

Item 39

To Department of Public Safety - Alcoholic Beverage Control Act Enforcement Fund From Dedicated Credits Revenue, One-Time 140,000
Schedule of Programs:

Alcoholic Beverage Control Act Enforcement Fund 140,000

To implement the provisions of Alcohol Amendments (House Bill 442, 2017 General Session).

**BUSINESS, ECONOMIC
DEVELOPMENT, AND LABOR**

**GOVERNOR'S OFFICE OF
ECONOMIC DEVELOPMENT**

Item 40

To Governor's Office of Economic Development - Industrial Assistance Account From General Fund, One-Time 833,000
Schedule of Programs:
Industrial Assistance Fund 833,000

Item 41

To Governor's Office of Economic Development - Outdoor Recreation Infrastructure Account From General Fund, One-Time 500,000
Schedule of Programs:

Outdoor Recreation Infrastructure Account 500,000

The Legislature intends that the Governor's Office of Economic Development use \$200,000 of the \$500,000 allocated to the Outdoor Recreation grant program, for the Kanab Trail and Jackson Flat Reservoir.

PUBLIC SERVICE COMMISSION

Item 42

To Public Service Commission - Universal Telecommunications Support Fund

The Legislature intends that the Division of Finance transfer at FY 2017 year-end to the Universal Public Telecommunications Service Support Fund any amounts remaining from surcharges on residential and business telephone numbers imposed by the Public Service Commission, as provided in UCA 54-8b-10, prior to May 9, 2017, including any nonlapsing amounts per UCA 63J1-602.3.

Subsection 1(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent

positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

**EXECUTIVE OFFICES AND
CRIMINAL JUSTICE**

DEPARTMENT OF PUBLIC SAFETY

Item 43

To Department of Public Safety - Local Government Emergency Response Loan Fund From General Fund, One-Time 104,100
Schedule of Programs:

Local Government Emergency Response Loan Fund 104,100

Subsection 1(d). Restricted Fund and Account Transfers.

The Legislature authorizes the State Division of Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere in an appropriations act.

**INFRASTRUCTURE AND
GENERAL GOVERNMENT**

Item 44

To State Disaster Recovery Restricted Account From General Fund, One-Time 728,900
Schedule of Programs:
State Disaster Recovery Restricted Account 728,900

Subsection 1(e). Transfers to Unrestricted Funds.

The Legislature authorizes the State Division of Finance to transfer the following amounts to the unrestricted General, Education, or Uniform School Fund as indicated from the restricted funds or accounts indicated. Expenditures and outlays from the General, Education, or Uniform School Fund must be authorized elsewhere in an appropriations act.

**NATURAL RESOURCES, AGRICULTURE,
AND ENVIRONMENTAL QUALITY**

Item 45

To General Fund From Wildland Fire Suppression Fund, One-Time 1,666,000
Schedule of Programs:
General Fund, One-time 1,666,000

Section 2. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018.

Subsection 2(a). Operating and Capital Budgets. Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from

the funds or fund accounts indicated for the use and support of the government of the State of Utah.

**EXECUTIVE OFFICES AND
CRIMINAL JUSTICE**

GOVERNOR'S OFFICE

Item 46

To Governor's Office
From General Fund 65,000
From General Fund, One-Time 135,000
Schedule of Programs:
Administration 135,000
Lt. Governor's Office 65,000

Item 47

To Governor's Office - Indigent
Defense Commission
From General Fund (4,700)
Schedule of Programs:
Indigent Defense Commission (4,700)

Item 48

To Governor's Office - Indigent
Defense Commission
From General Fund Restricted - Indigent
Defense Resources Account 155,500
From General Fund Restricted - Indigent
Defense Resources Account, One-Time .. 2,200
Schedule of Programs:
Indigent Defense Commission 157,700
To implement the provisions of Indigent
Defense Commission Amendments (Senate
Bill 134, 2017 General Session).

Item 49

To Governor's Office - Governor's Office
of Management and Budget

The Legislature intends that, when preparing the Fiscal Year 2019 base budget bills, the Legislative Fiscal Analyst shall include \$9,000,000 one-time from the General Fund in the Employability to Careers Program Restricted Account and \$9,000,000 one-time from the Employability to Careers Program Restricted Account in the Governor's Office of Management and Budget line item and (\$9,000,000) one-time from the General Fund in the Capital Development - Higher Education line item.

Item 50

To Governor's Office - Governor's Office
of Management and Budget
From General Fund 10,000
Schedule of Programs:
Planning and Budget Analysis 10,000
To implement the provisions of Federal
Grants Management Amendments (House
Bill 194, 2017 General Session).

Item 51

To Governor's Office - Governor's Office
of Management and Budget
From General Fund 150,000
Schedule of Programs:
Planning and Budget Analysis 150,000

To implement the provisions of Regulatory
Impact Amendments (House Bill 272, 2017
General Session).

Item 52

To Governor's Office - Governor's Office
of Management and Budget
From General Fund 4,800
Schedule of Programs:
Planning and Budget Analysis 4,800
To implement the provisions of Budgeting
Revisions (Senate Bill 209, 2017 General
Session).

Item 53

To Governor's Office - Commission on Criminal
and Juvenile Justice
From General Fund (2,218,700)
Schedule of Programs:
County Incentive Grant Program ... (2,218,700)

Item 54

To Governor's Office - Commission on Criminal
and Juvenile Justice
From General Fund 221,500
From General Fund, One-Time (221,500)
To implement the provisions of Juvenile
Justice Amendments (House Bill 239, 2017
General Session).

Item 55

To Governor's Office - Commission on Criminal
and Juvenile Justice
From General Fund 9,800
Schedule of Programs:
Judicial Performance Evaluation
Commission 9,800
To implement the provisions of Judicial
Performance Evaluation Commission
Modifications (Senate Bill 193, 2017 General
Session).

Item 56

To Governor's Office - Commission on Criminal
and Juvenile Justice
From General Fund 500
Schedule of Programs:
Substance Use and Mental Health
Advisory Council 500
To implement the provisions of Utah
Substance Use and Mental Health Advisory
Council (Senate Bill 213, 2017 General
Session).

ATTORNEY GENERAL

Item 57

To Attorney General
From General Fund 250,000
From General Fund, One-Time 500,000
Schedule of Programs:
Administration 125,000
Civil 625,000

Item 58

To Attorney General
From General Fund 44,600
Schedule of Programs:
Civil 44,600
To implement the provisions of Child Abuse
Offender Registry (House Bill 149, 2017
General Session).

Item 59

To Attorney General
 From General Fund 178,200
 From General Fund, One-Time (178,200)

To implement the provisions of Driving Under the Influence and Public Safety Revisions (House Bill 155, 2017 General Session).

Item 60

To Attorney General
 From General Fund, One-Time 178,200
 Schedule of Programs:
 Civil 178,200

To implement the provisions of Juvenile Justice Amendments (House Bill 239, 2017 General Session).

Item 61

To Attorney General
 From General Fund 136,900
 Schedule of Programs:
 Civil 136,900

To implement the provisions of Alcohol Amendments (House Bill 442, 2017 General Session).

Item 62

To Attorney General
 From General Fund, One-Time 1,300
 Schedule of Programs:
 Administration 1,300

To implement the provisions of Statewide Crisis Line (Senate Bill 37, 2017 General Session).

Item 63

To Attorney General
 From Other Financing Sources 98,000
 Schedule of Programs:
 Criminal Prosecution 98,000

To implement the provisions of Asset Forfeiture Transparency Amendments (Senate Bill 70, 2017 General Session).

Item 64

To Attorney General
 From General Fund 44,600
 Schedule of Programs:
 Criminal Prosecution 44,600

To implement the provisions of Post-conviction DNA Testing Amendments (Senate Bill 76, 2017 General Session).

Item 65

To Attorney General
 From General Fund, One-Time 267,300
 Schedule of Programs:
 Civil 267,300

To implement the provisions of Universal Service Fund Amendments (Senate Bill 130, 2017 General Session).

Item 66

To Attorney General
 From General Fund (17,600)
 From Federal Funds (2,900)

From Dedicated Credits Revenue (8,300)
 From Revenue Transfers (1,200)
 Schedule of Programs:

Criminal Prosecution (30,000)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 67

To Attorney General - Prosecution Council
 From General Fund 182,800
 Schedule of Programs:
 Prosecution Council 182,800

To implement the provisions of Sexual Assault Kit Processing Amendments (House Bill 200, 2017 General Session).

UTAH DEPARTMENT OF CORRECTIONS

Item 68

To Utah Department of Corrections - Programs and Operations
 From General Fund (313,400)
 Schedule of Programs:
 Programming Education (313,400)

Item 69

To Utah Department of Corrections - Programs and Operations
 From General Fund 222,700
 From General Fund, One-Time (133,600)
 Schedule of Programs:
 Prison Operations Draper Facility 89,100

To implement the provisions of Offenses Against the Person Amendments (House Bill 17, 2017 General Session).

Item 70

To Utah Department of Corrections - Programs and Operations
 From General Fund 61,600
 Schedule of Programs:
 Adult Probation and Parole Administration 61,600

To implement the provisions of Child Abuse Offender Registry (House Bill 149, 2017 General Session).

Item 71

To Utah Department of Corrections - Programs and Operations
 From General Fund 835,500
 From General Fund, One-Time (835,500)

To implement the provisions of Driving Under the Influence and Public Safety Revisions (House Bill 155, 2017 General Session).

Item 72

To Utah Department of Corrections - Programs and Operations
 From General Fund 188,500
 From General Fund, One-Time (74,500)
 Schedule of Programs:
 Prison Operations Draper Facility 114,000

To implement the provisions of Domestic Violence -- Weapons Restrictions (House Bill 206, 2017 General Session).

Item 73

To Utah Department of Corrections -
 Programs and Operations
 From General Fund 66,000
 Schedule of Programs:
 Prison Operations Draper Facility 66,000
 To implement the provisions of Homeless
 Resource Center Zone Amendments (House
 Bill 365, 2017 General Session).

Item 74

To Utah Department of Corrections -
 Programs and Operations
 From General Fund (26,000)
 Schedule of Programs:
 Department Administrative Services . (26,000)
 To implement the provisions of Criminal
 Accounts Receivable Amendments (Senate
 Bill 71, 2017 General Session).

Item 75

To Utah Department of Corrections -
 Programs and Operations
 From General Fund (635,200)
 From Federal Funds (900)
 From Dedicated Credits Revenue (22,600)
 From G.F.R. - Interstate Compact
 for Adult Offender Supervision (100)
 Schedule of Programs:
 Department Executive Director (33,100)
 Department Administrative
 Services (49,400)
 Department Training (4,700)
 Adult Probation and Parole
 Administration (900)
 Adult Probation and Parole
 Programs (224,800)
 Prison Operations Administration (11,200)
 Prison Operations Draper Facility ... (178,400)
 Prison Operations Central
 Utah/Gunnison (107,000)
 Programming Skill Enhancement (49,300)
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

Item 76

To Utah Department of Corrections -
 Programs and Operations
 From General Fund 132,000
 From General Fund, One-Time (99,000)
 Schedule of Programs:
 Prison Operations Draper Facility 33,000
 To implement the provisions of Cyber
 Exploitation Amendments (Senate Bill 232,
 2017 General Session).

Item 77

To Utah Department of Corrections -
 Department Medical Services
 From General Fund, One-Time 100,000
 Schedule of Programs:
 Medical Services 100,000

Item 78

To Utah Department of Corrections -
 Department Medical Services
 From General Fund (23,600)

From Dedicated Credits Revenue (500)
 Schedule of Programs:
 Medical Services (24,100)
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

BOARD OF PARDONS AND PAROLE

Item 79

To Board of Pardons and Parole
 From General Fund 4,200
 From General Fund, One-Time (2,500)
 Schedule of Programs:
 Board of Pardons and Parole 1,700
 To implement the provisions of Offenses
 Against the Person Amendments (House Bill
 17, 2017 General Session).

Item 80

To Board of Pardons and Parole
 From General Fund 11,500
 From General Fund, One-Time (11,500)
 To implement the provisions of Driving
 Under the Influence and Public Safety
 Revisions (House Bill 155, 2017 General
 Session).

**JUDICIAL COUNCIL/STATE
 COURT ADMINISTRATOR**

Item 81

To Judicial Council/State Court Administrator -
 Administration
 From General Fund 100,000
 From General Fund, One-Time 150,000
 From General Fund Restricted -
 Tobacco Settlement Account 174,700
 Schedule of Programs:
 District Courts 78,000
 Juvenile Courts 96,700
 Administrative Office 250,000

Notwithstanding intent language passed in
 Senate Bill 2 item 18, the Legislature intends
 that under provisions of Section 67-8-2, Utah
 Code Annotated, salaries for District Court
 judges for the fiscal year beginning July 1,
 2017 and ending June 30, 2018 shall be
 \$162,250. Other judicial salaries shall be
 calculated in accordance with the formula set
 forth in Section 67-8-2 and rounded to the
 nearest \$50.

Item 82

To Judicial Council/State Court Administrator -
 Administration
 From General Fund 433,000
 Schedule of Programs:
 District Courts 433,000

To implement the provisions of Fifth
 District Court Judge (House Bill 77, 2017
 General Session).

Item 83

To Judicial Council/State Court Administrator -
 Administration
 From General Fund 248,600
 From General Fund, One-Time (248,600)

To implement the provisions of Driving Under the Influence and Public Safety Revisions (House Bill 155, 2017 General Session).

Item 84

To Judicial Council/State Court Administrator - Administration
 From General Fund 10,600
 Schedule of Programs:
 Administrative Office 10,600

To implement the provisions of Trespass Amendments (House Bill 202, 2017 General Session).

Item 85

To Judicial Council/State Court Administrator - Administration
 From General Fund 33,600
 Schedule of Programs:
 Administrative Office 33,600

To implement the provisions of Domestic Violence -- Weapons Restrictions (House Bill 206, 2017 General Session).

Item 86

To Judicial Council/State Court Administrator - Administration
 From General Fund 98,200
 Schedule of Programs:
 Administrative Office 98,200

To implement the provisions of Jail Release Orders Amendments (House Bill 208, 2017 General Session).

Item 87

To Judicial Council/State Court Administrator - Administration
 From General Fund, One-Time 20,000
 Schedule of Programs:
 Data Processing 20,000

To implement the provisions of Automated Traffic Enforcement Safety Devices (House Bill 235, 2017 General Session).

Item 88

To Judicial Council/State Court Administrator - Administration
 From General Fund 912,800
 From General Fund, One-Time 87,200
 Schedule of Programs:
 Juvenile Courts 1,000,000

To implement the provisions of Juvenile Justice Amendments (House Bill 239, 2017 General Session).

Item 89

To Judicial Council/State Court Administrator - Administration
 From General Fund 11,900
 Schedule of Programs:
 District Courts 11,900

To implement the provisions of Essential Treatment and Intervention Act (House Bill 286, 2017 General Session).

Item 90

To Judicial Council/State Court Administrator - Administration
 From General Fund 24,000
 Schedule of Programs:
 Juvenile Courts 24,000

To implement the provisions of Grandparent Visitation Amendments (House Bill 289, 2017 General Session).

Item 91

To Judicial Council/State Court Administrator - Administration
 From General Fund 33,800
 Schedule of Programs:
 Administrative Office 33,800

To implement the provisions of Expungement Amendments (Senate Bill 12, 2017 General Session).

Item 92

To Judicial Council/State Court Administrator - Administration
 From General Fund 8,900
 Schedule of Programs:
 District Courts 8,900

To implement the provisions of Rental Amendments (Senate Bill 52, 2017 General Session).

Item 93

To Judicial Council/State Court Administrator - Administration
 From General Fund, One-Time 5,000
 Schedule of Programs:
 Juvenile Courts 5,000

To implement the provisions of Adoption Revisions (Senate Bill 54, 2017 General Session).

Item 94

To Judicial Council/State Court Administrator - Contracts and Leases
 From General Fund 325,700
 Schedule of Programs:
 Contracts and Leases 325,700

Item 95

To Judicial Council/State Court Administrator - Guardian ad Litem
 From General Fund 5,800
 Schedule of Programs:
 Guardian ad Litem 5,800

To implement the provisions of Grandparent Visitation Amendments (House Bill 289, 2017 General Session).

DEPARTMENT OF PUBLIC SAFETY

Item 96

To Department of Public Safety - Programs & Operations
 From Transportation Fund,
 One-Time (862,900)
 From Department of Public Safety
 Restricted Account, One-Time 862,900

Item 97

To Department of Public Safety - Programs & Operations

From General Fund 1,022,300
 From Revenue Transfers, One-Time 125,000
 Schedule of Programs:
 CITS State Crime Labs 1,147,300
 To implement the provisions of Sexual
 Assault Kit Processing Amendments (House
 Bill 200, 2017 General Session).

Item 98

To Department of Public Safety -
 Programs & Operations
 From General Fund Restricted - Motor
 Vehicle Safety Impact Acct. 2,600,000
 From General Fund Restricted - Motor Veh.
 Safety Impact Acct., One-Time (1,300,000)
 Schedule of Programs:
 Highway Patrol - Field Operations . . 1,300,000
 To implement the provisions of Safety
 Inspection Amendments (House Bill 265,
 2017 General Session).

Item 99

To Department of Public Safety -
 Programs & Operations
 From Dedicated Credits Revenue 2,000
 From Dedicated Credits Revenue,
 One-Time 18,000
 Schedule of Programs:
 CITS Bureau of Criminal
 Identification 20,000
 To implement the provisions of Vehicle
 Towing Amendments (House Bill 393, 2017
 General Session).

Item 100

To Department of Public Safety -
 Programs & Operations
 From General Fund 25,600
 From Dedicated Credits Revenue 11,200
 Schedule of Programs:
 CITS Bureau of Criminal
 Identification 36,800
 To implement the provisions of
 Expungement Amendments (Senate Bill 12,
 2017 General Session).

Item 101

To Department of Public Safety -
 Programs & Operations
 From Dedicated Credits Revenue 14,000
 Schedule of Programs:
 CITS Bureau of Criminal
 Identification 14,000
 To implement the provisions of Child Care
 Licensing Amendments (Senate Bill 124,
 2017 General Session).

Item 102

To Department of Public Safety -
 Programs & Operations
 From General Fund (451,700)
 From Dedicated Credits Revenue (89,000)
 From Department of Public Safety
 Restricted Account (8,100)
 From General Fund Restricted -
 Fire Academy Support (5,400)

From General Fund Restricted -
 Reduced Cigarette Ignition Propensity
 & Firefighter Protection Account (100)
 From Revenue Transfers (100)
 Schedule of Programs:
 CITS Communications (161,500)
 CITS State Bureau of Investigation . . . (41,900)
 Highway Patrol - Field
 Operations (334,600)
 Highway Patrol - Protective
 Services (10,300)
 Fire Marshall - Fire Operations (6,100)
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

Item 103

To Department of Public Safety -
 Emergency Management
 From General Fund (1,000)
 From Federal Funds (11,200)
 Schedule of Programs:
 Emergency Management (12,200)
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

Item 104

To Department of Public Safety - Peace
 Officers' Standards and Training
 From General Fund (200)
 From General Fund Restricted -
 Public Safety Support (5,400)
 Schedule of Programs:
 POST Administration (5,600)
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

UTAH COMMUNICATIONS AUTHORITY**Item 105**

To Utah Communications Authority -
 Administrative Services Division
 From General Fund (760,000)
 From General Fund Restricted - Utah
 Statewide Radio System Acct. 7,000,000
 Schedule of Programs:
 Administrative Services Division 6,240,000
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

**INFRASTRUCTURE AND
GENERAL GOVERNMENT****TRANSPORTATION****Item 106**

To Transportation - Support Services
 From General Fund 2,500,000
 From General Fund, One-Time (1,400,000)
 Schedule of Programs:
 Administrative Services 1,100,000
 Building and Grounds (500,000)
 Ports of Entry 500,000
 The Legislature intends that the
 \$2,500,000 ongoing and (\$1,400,000)

one-time provided by this item be used to assist the Utah Transit Authority in establishing a Clean Natural Gas/Alternative Fuel Depot District.

Item 107

To Transportation - Operations/
Maintenance Management
From Transportation Fund (185,500)
From Transportation Fund,
One-Time (53,500)
Schedule of Programs:
Shops (239,000)

Item 108

To Transportation - Operations/
Maintenance Management
From Transportation Fund, One-Time ... 23,600
Schedule of Programs:
Maintenance Administration 23,600

To implement the provisions of Vehicle Towing Amendments (House Bill 393, 2017 General Session).

Item 109

To Transportation - Operations/
Maintenance Management
From Transportation Fund 84,000
Schedule of Programs:
Maintenance Administration 84,000

To implement the provisions of State Highway System Amendments (Senate Bill 41, 2017 General Session).

Item 110

To Transportation - Operations/
Maintenance Management
From Transportation Fund (3,100)
Schedule of Programs:
Shops (3,100)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 111

To Transportation - Construction Management
From General Fund, One-Time 40,000
Schedule of Programs:
Federal Construction - New 40,000

The Legislature intends that \$2,400,000 from FY 2018 Transportation Fund appropriations to the Construction Management - Federal Construction - New program be directed to Davis County and Taylorsville City as lead agencies for roadway-related environmental, design, engineering and improvements for proposed bus rapid transit routes with Davis County and Taylorsville City each receiving \$1,200,000.

Item 112

To Transportation - Construction Management
From Transportation Fund (447,800)
Schedule of Programs:
Federal Construction - New (447,800)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 113

To Transportation - B and C Roads
From Transportation Fund 1,271,000
From Transportation Fund,
One-Time (1,271,000)

To implement the provisions of Transportation Funding Modifications (Senate Bill 276, 2017 General Session).

DEPARTMENT OF ADMINISTRATIVE SERVICES

Item 114

To Department of Administrative Services - DFCM Administration
From General Fund 460,000
Schedule of Programs:
Energy Program 460,000

Item 115

To Department of Administrative Services - Finance Administration
From Transportation Fund (2,400)
From Transportation Fund, One-Time .. (1,900)
From Dedicated Credits Revenue 9,500
From Dedicated Credits Revenue,
One-Time (46,400)
From General Fund Restricted - Internal Service Fund Overhead (7,100)
From General Fund Restricted - Internal Service Fund Overhead, One-Time 48,300

Item 116

To Department of Administrative Services - Finance Administration
From Dedicated Credits Revenue (26,000)
Schedule of Programs:
Financial Reporting (26,000)

To implement the provisions of Department of Administrative Services Amendments (House Bill 98, 2017 General Session).

Item 117

To Department of Administrative Services - Finance Administration
From State Debt Collection Fund 52,000
From State Debt Collection Fund,
One-Time 48,000
Schedule of Programs:
Finance Director's Office 100,000

To implement the provisions of Criminal Accounts Receivable Amendments (Senate Bill 71, 2017 General Session).

Item 118

To Department of Administrative Services - Finance Administration
From Dedicated Credits Revenue 15,000
Schedule of Programs:
Financial Information Systems 15,000

To implement the provisions of Collection Process Amendments (Senate Bill 126, 2017 General Session).

Item 119

To Department of Administrative Services - Finance - Mandated

From Education Fund (495,000)
 Schedule of Programs:
 Strategic Workforce Investments (495,000)

**DEPARTMENT OF
 TECHNOLOGY SERVICES**

Item 120

To Department of Technology Services -
 Chief Information Officer

Notwithstanding Senate Bill 8, the Legislature intends that the Department of Technology Services rate titled "IT Architect (per hour)" found on line 2410 of said bill, shall instead be titled "Application Services Tier 4 (per hour)".

Item 121

To Department of Technology Services -
 Chief Information Officer

From General Fund, One-Time 9,700
 Schedule of Programs:

Chief Information Officer 9,700

To implement the provisions of Data Security Management (House Bill 319, 2017 General Session).

Item 122

To Department of Technology Services -
 Chief Information Officer

From General Fund 74,700
 From General Fund, One-Time 72,100
 Schedule of Programs:

Chief Information Officer 146,800

To implement the provisions of Postal Facilities and Government Services (Senate Bill 65, 2017 General Session).

CAPITAL BUDGET

Item 123

To Capital Budget - Capital Development -
 Higher Education

From Education Fund, One-Time 4,475,100
 Schedule of Programs:

Uintah Basin ATC Welding Technology Building 4,475,100

The Legislature intends that, when preparing the Fiscal Year 2019 base budget bills, the Legislative Fiscal Analyst shall include \$9,000,000 one-time from the General Fund in the Employability to Careers Program Restricted Account and \$9,000,000 one-time from the Employability to Careers Program Restricted Account in the Governor's Office of Management and Budget line item and (\$9,000,000) one-time from the General Fund in the Capital Development - Higher Education line item.

The Legislature intends that construction for the Weber State University Social Science Building Renovation project proceed as soon as practicable following signature of the governor on Senate Bill 2. If construction-related payments for this project are necessary prior to Fiscal Year

2018, such payments may be made from the portion of the project budgeted from gifts to Weber State University.

Item 124

To Capital Budget - Property Acquisition

From Education Fund, One-Time 555,000
 Schedule of Programs:

Snow College Land Banking 555,000

Item 125

To Capital Budget - Pass-Through

From General Fund 500,000
 Schedule of Programs:

Olympic Park Improvement 500,000

**BUSINESS, ECONOMIC
 DEVELOPMENT, AND LABOR**

DEPARTMENT OF HERITAGE AND ARTS

Item 126

To Department of Heritage and Arts - State Library
 From General Fund, One-Time 50,000
 Schedule of Programs:

Library Resources 50,000

To implement the provisions of Library Technology Use Amendments (Senate Bill 82, 2017 General Session).

Item 127

To Department of Heritage and Arts -
 Indian Affairs

From General Fund Restricted - Native American Repatriation Restricted Account 20,000

From General Fund Restricted - Native American Repatriation Restricted Account, One-Time 20,000
 Schedule of Programs:

Indian Affairs 40,000

To implement the provisions of Native American Remains Repatriation (House Bill 394, 2017 General Session).

Item 128

To Department of Heritage and Arts -
 Pass-Through

From General Fund 300,000
 From General Fund, One-Time 770,000
 Schedule of Programs:

Pass-Through 1,070,000

**GOVERNOR'S OFFICE OF
 ECONOMIC DEVELOPMENT**

Item 129

To Governor's Office of Economic Development -
 Administration

From General Fund, One-Time 50,000
 Schedule of Programs:

Administration 50,000

The Legislature intends that \$50,000 of the General Fund one-time allocated to the Governors Office of Economic Development Administration be utilized to conduct or contract an analysis of the life sciences industry.

Item 130

To Governor’s Office of Economic Development - Administration
 From General Fund, One-Time (375,000)
 Schedule of Programs:
 Administration (375,000)
 To implement the provisions of Health Reform Amendments (House Bill 336, 2017 General Session).

Item 131

To Governor’s Office of Economic Development - STEM Action Center
 From General Fund 1,255,000
 Schedule of Programs:
 STEM Action Center 1,255,000
 To implement the provisions of Education Computing Pathways (Senate Bill 190, 2017 General Session).

Item 132

To Governor’s Office of Economic Development - Business Development
 From General Fund, One-Time (300,000)
 Schedule of Programs:
 Corporate Recruitment and Business Services (300,000)

Item 133

To Governor’s Office of Economic Development - Business Development
 From Dedicated Credits Revenue 50,000
 Schedule of Programs:
 Corporate Recruitment and Business Services 50,000
 To implement the provisions of Utah Rural Jobs Act (Senate Bill 267, 2017 General Session).

Item 134

To Governor’s Office of Economic Development - Pass-Through
 From General Fund 300,000
 From General Fund, One-Time 2,407,000
 Schedule of Programs:
 Pass-Through 2,707,000
 The Legislature intends that \$1,400,000 of the one-time provided by this item be used to further state economic development via infrastructure for fixed rail manufacturing in Davis County.

UTAH STATE TAX COMMISSION

Item 135

To Utah State Tax Commission - Tax Administration
 From Dedicated Credits Revenue (47,500)
 From General Fund Restricted - Sales and Use Tax Admin Fees 47,500

Item 136

To Utah State Tax Commission - Tax Administration
 From Dedicated Credits Revenue, One-Time 7,500
 Schedule of Programs:
 Motor Vehicles 7,500

To implement the provisions of Agricultural and Leadership Education Support Special Group License Plate (House Bill 343, 2017 General Session).

Item 137

To Utah State Tax Commission - Tax Administration
 From General Fund (400)
 From Education Fund (300)
 From Dedicated Credits Revenue (500)
 From General Fund Restricted - Motor Vehicle Enforcement Division
 Temporary Permit Account (17,900)
 From General Fund Restricted - Sales and Use Tax Admin Fees (300)
 Schedule of Programs:
 Administration Division (1,000)
 Motor Vehicle Enforcement Division . . (18,400)
 To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 138

To Utah State Tax Commission - Tax Administration
 From Dedicated Credits Revenue, One-Time 10,800
 Schedule of Programs:
 Motor Vehicles 10,800
 To implement the provisions of Second Amendment Special License Plates (Senate Bill 245, 2017 General Session).

Item 139

To Utah State Tax Commission - Tax Administration
 From Education Fund (51,600)
 From Education Fund, One-Time 25,800
 Schedule of Programs:
 Tax Processing Division (25,800)
 To implement the provisions of Tax E-Filing Amendments (Senate Bill 249, 2017 General Session).

Item 140

To Utah State Tax Commission - Rural Health Care Facilities Distribution
 From General Fund Restricted - Rural Healthcare Facilities Account 100
 Schedule of Programs:
 Rural Health Care Facilities Distribution 100

UTAH SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY

Item 141

To Utah Science Technology and Research Governing Authority - Research Capacity Building
 From General Fund, One-Time 500,000
 Schedule of Programs:
 USU Legacy Salary 500,000

Item 142

To Utah Science Technology and Research Governing Authority - Grant Programs
 From General Fund, One-Time (500,000)
 Schedule of Programs:

University Technology Acceleration Grant (500,000)

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Item 143

To Department of Alcoholic Beverage Control - DABC Operations

The Legislature intends that the Department of Alcoholic Beverage Control use \$974,400 ongoing Liquor Control Fund appropriated to the Department of Alcoholic Beverage Control - DABC Operations in State Agency and Higher Education Compensation Appropriations (House Bill 8, 2017 General Session) to implement the provisions of Alcohol Beverage Control Budget Amendments (Senate Bill 155, 2017 General Session).

Item 144

To Department of Alcoholic Beverage Control - DABC Operations
From Liquor Control Fund 498,400
Schedule of Programs:
Executive Director 498,400

To implement the provisions of Alcohol Amendments (House Bill 442, 2017 General Session).

DEPARTMENT OF COMMERCE

Item 145

To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Commerce Service Account - Public Utilities Regulatory Fee (5,080,400)
From General Fund Restricted - Commerce Service Account - Public Utilities Regulatory Fee, One-Time (22,000)
From General Fund Restricted - Public Utility Restricted Account 5,080,400
From General Fund Restricted - Public Utility Restricted Account, One-Time ... 22,000

Item 146

To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Commerce Service Account, One-Time 40,000
Schedule of Programs:
Occupational and Professional

Licensing 40,000
To implement the provisions of Administration of Anesthesia Amendments (House Bill 142, 2017 General Session).

Item 147

To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Commerce Service Account, One-Time 4,500
Schedule of Programs:

Occupational and Professional Licensing 4,500

To implement the provisions of Partial Filling of a Schedule II Controlled Substance Prescription (House Bill 146, 2017 General Session).

Item 148

To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Commerce Service Account 5,200
Schedule of Programs:

Occupational and Professional Licensing 5,200

To implement the provisions of Telehealth Amendments (House Bill 154, 2017 General Session).

Item 149

To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Commerce Service Account 10,800
From General Fund Restricted - Commerce Service Account, One-Time (5,400)
Schedule of Programs:

Occupational and Professional Licensing 5,400

To implement the provisions of Health Insurance Amendments (House Bill 395, 2017 General Session).

Item 150

To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Commerce Service Account 5,600
Schedule of Programs:

Occupational and Professional Licensing 5,600

To implement the provisions of Nurse Licensure Compact (Senate Bill 48, 2017 General Session).

Item 151

To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Commerce Service Account 7,400
From General Fund Restricted - Commerce Service Account, One-Time 17,700
Schedule of Programs:

Occupational and Professional Licensing 25,100

To implement the provisions of Psychology Interjurisdictional Compact (Senate Bill 106, 2017 General Session).

Item 152

To Department of Commerce - Commerce General Regulation
From General Fund Restricted - Public Utility Restricted Account 101,700
Schedule of Programs:

Public Utilities 101,700

To implement the provisions of Universal Service Fund Amendments (Senate Bill 130, 2017 General Session).

Item 153

To Department of Commerce - Commerce
 General Regulation
 From General Fund Restricted - Commerce
 Service Account 10,600
 From General Fund Restricted - Commerce
 Service Account, One-Time 1,800
 Schedule of Programs:
 Occupational and Professional
 Licensing 12,400
 To implement the provisions of Division of
 Occupational and Professional Licensing
 (Senate Bill 184, 2017 General Session).

Item 154

To Department of Commerce - Commerce
 General Regulation
 From General Fund Restricted - Commerce
 Service Account 3,400
 From General Fund Restricted - Commerce
 Service Account, One-Time 1,800
 Schedule of Programs:
 Occupational and Professional
 Licensing 5,200
 To implement the provisions of Pharmacy
 Practice Act Amendments (Senate Bill 246,
 2017 General Session).

Item 155

To Department of Commerce - Commerce
 General Regulation
 From Dedicated Credits Revenue 4,000
 From General Fund Restricted - Commerce
 Service Account 19,100
 From General Fund Restricted - Commerce
 Service Account, One-Time 12,000
 Schedule of Programs:
 Occupational and Professional
 Licensing 35,100
 To implement the provisions of Physical
 Therapy Licensure Compact (Senate Bill 248,
 2017 General Session).

Item 156

To Department of Commerce - Public Utilities
 Professional and Technical Services
 From General Fund Restricted - Commerce
 Service Account - Public Utilities
 Regulatory Fee (150,000)
 From General Fund Restricted -
 Public Utility Restricted Account 150,000

Item 157

To Department of Commerce - Office of Consumer
 Services Professional and Technical Services
 From General Fund Restricted - Commerce
 Service Account - Public Utilities
 Regulatory Fee (503,100)
 From General Fund Restricted -
 Public Utility Restricted Account 503,100

INSURANCE DEPARTMENT

Item 158

To Insurance Department - Insurance
 Department Administration
 From Federal Funds (200)
 From General Fund Restricted -
 Insurance Fraud Investigation Acct (3,800)

Schedule of Programs:

Insurance Fraud Program (4,000)
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

PUBLIC SERVICE COMMISSION

Item 159

To Public Service Commission
 From General Fund Restricted - Commerce
 Service Account - Public Utilities
 Regulatory Fee (2,519,500)
 From General Fund Restricted - Commerce
 Service Account - Public Utilities
 Regulatory Fee, One-Time (10,800)
 From General Fund Restricted -
 Public Utility Restricted Account 2,519,500
 From General Fund Restricted - Public
 Utility Restricted Account, One-Time ... 10,800

SOCIAL SERVICES

DEPARTMENT OF HEALTH

Item 160

To Department of Health - Executive
 Director's Operations
 From General Fund 15,100
 From Federal Funds 5,500
 Schedule of Programs:
 Executive Director 20,600
 To implement the provisions of
 Cannabinoid Medicine Research (House Bill
 130, 2017 General Session).

Item 161

To Department of Health - Family Health
 and Preparedness
 From General Fund 50,000
 From General Fund, One-Time 60,000
 Schedule of Programs:
 Primary Care 110,000

Item 162

To Department of Health - Family Health
 and Preparedness
 From Federal Funds 1,000
 Schedule of Programs:
 Health Facility Licensing and
 Certification 1,000
 To implement the provisions of Nursing
 Care Facility Amendments (House Bill 113,
 2017 General Session).

Item 163

To Department of Health - Family Health
 and Preparedness
 From General Fund, One-Time 60,000
 Schedule of Programs:
 Director's Office 60,000
 To implement the provisions of
 Administration of Anesthesia Amendments
 (House Bill 142, 2017 General Session).

Item 164

To Department of Health - Family Health
 and Preparedness
 From General Fund 6,000

Schedule of Programs:
 Child Development 6,000
 To implement the provisions of Child Care
 Licensing Amendments (Senate Bill 124,
 2017 General Session).

Item 165

To Department of Health - Family Health
 and Preparedness
 From Federal Funds (18,500)
 Schedule of Programs:
 Public Health and Health Care
 Preparedness (18,500)
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

Item 166

To Department of Health - Disease
 Control and Prevention
 From General Fund 100,000
 From General Fund, One-Time (100,000)

Item 167

To Department of Health - Disease
 Control and Prevention
 From General Fund 25,000
 Schedule of Programs:
 Epidemiology 25,000
 To implement the provisions of Public
 Health Education Module (House Bill 308,
 2017 General Session).

Item 168

To Department of Health - Disease Control
 and Prevention
 From General Fund, One-Time 3,700
 Schedule of Programs:
 Health Promotion 3,700
 To implement the provisions of Addiction
 Recovery Amendments (Senate Bill 258, 2017
 General Session).

Item 169

To Department of Health - Medicaid and
 Health Financing
 From Federal Funds 2,155,800
 From Revenue Transfers 718,600
 Schedule of Programs:
 Department of Workforce Services'
 Seeded Services 2,874,400

Item 170

To Department of Health - Medicaid and
 Health Financing
 From Nursing Care Facilities Provider
 Assessment Fund 841,400
 From General Fund Restricted - Nursing
 Care Facilities Account (841,400)
 To implement the provisions of Nursing
 Care Facility Amendments (House Bill 113,
 2017 General Session).

Item 171

To Department of Health - Medicaid and
 Health Financing
 From General Fund 4,800
 From Federal Funds 4,800
 Schedule of Programs:

Financial Services 9,600
 To implement the provisions of Federal
 Grants Management Amendments (House
 Bill 194, 2017 General Session).

Item 172

To Department of Health - Children's
 Health Insurance Program
 From Federal Funds (4,502,400)
 From Federal Funds, One-Time 15,000,000
 Schedule of Programs:
 Children's Health Insurance
 Program 10,497,600

Item 173

To Department of Health - Medicaid Services
 From General Fund (500,000)
 From General Fund, One-Time (1,900,000)
 From Federal Funds 16,485,300
 From Medicaid Expansion Fund
 One-Time (4,035,600)
 From General Fund Restricted -
 Tobacco Settlement Account (6,049,600)
 From General Fund Restricted -
 Tobacco Settlement Account,
 One-Time 6,049,600
 Schedule of Programs:
 Accountable Care Organizations (500,000)
 Other Services 14,091,900
 Outpatient Hospital (1,900,000)
 Medicaid Expansion 2017 2,393,400

The Legislature intends that all the
 nonlapsing authority approved for retaining
 funds in FY 2018 that were appropriated in
 FY 2017 for the Department of Health's
 Medicaid Optional Services, Medicaid
 Mandatory Services, and Medicaid
 Expansion 2017 line items be authorized for
 use in the new line item in the Department of
 Health in FY 2018 entitled Medicaid
 Services.

Item 174

To Department of Health - Medicaid Services
 From Nursing Care Facilities Provider Assessment
 Fund 31,013,800
 From General Fund Restricted -
 Nursing Care Facilities Account .. (31,013,800)
 To implement the provisions of Nursing
 Care Facility Amendments (House Bill 113,
 2017 General Session).

Item 175

To Department of Health - Medicaid Services
 From General Fund 500
 From Federal Funds 1,700
 Schedule of Programs:
 Inpatient Hospital 2,200
 To implement the provisions of Utah
 Educational Savings Plan Medicaid
 Exemptions (House Bill 172, 2017 General
 Session).

Item 176

To Department of Health - Medicaid Services
 From General Fund 20,000
 From General Fund, One-Time 3,000
 From Federal Funds 40,000

From Federal Funds, One-Time 27,000
 Schedule of Programs:
 Physician and Osteopath 60,000
 Provider Reimbursement Information
 System for Medicaid 30,000
 To implement the provisions of Opioid
 Abuse Prevention and Treatment
 Amendments (House Bill 175, 2017 General
 Session).

**DEPARTMENT OF
 WORKFORCE SERVICES**

Item 177

To Department of Workforce Services -
 Operations and Policy
 From General Fund, One-Time 1,260,000
 Schedule of Programs:
 Workforce Development 1,260,000

Item 178

To Department of Workforce Services -
 Operations and Policy
 From General Fund 100
 From General Fund, One-Time (100)
 From Federal Funds 1,700
 From Federal Funds, One-Time (1,700)
 From Revenue Transfers 100
 From Revenue Transfers, One-Time (100)
 To implement the provisions of Higher
 Education Performance Funding (Senate Bill
 117, 2017 General Session).

Item 179

To Department of Workforce Services -
 State Office of Rehabilitation
 From General Fund, One-Time 100,000
 Schedule of Programs:
 Blind and Visually Impaired 100,000
 The Legislature intends that the fiscal year
 2018 ending balances in the General Fund
 Restricted - Office of Rehabilitation
 Transition Restricted Account (Fund 1288)
 not lapse at the close of fiscal year 2018. The
 Legislature further intends the Division of
 Finance transfer any remaining balances in
 the General Fund Restricted - Office of
 Rehabilitation Transition Restricted Account
 (Fund 1288) into the Department of
 Workforce Services - State Office of
 Rehabilitation line item at the time the Office
 of Rehabilitation Transition Restricted
 Account is repealed (July 1, 2018).

DEPARTMENT OF HUMAN SERVICES

Item 180

To Department of Human Services -
 Executive Director Operations
 From General Fund 650,000
 Schedule of Programs:
 Executive Director's Office 650,000

Item 181

To Department of Human Services - Division
 of Substance Abuse and Mental Health
 From General Fund 1,204,200
 From General Fund, One-Time 1,109,900

From General Fund Restricted -
 Tobacco Settlement Account (1,204,200)
 Schedule of Programs:
 Community Mental Health Services ... 200,000
 Mental Health Centers 20,500
 State Substance Abuse Services 409,900
 Local Substance Abuse Services 479,500

Item 182

To Department of Human Services - Division
 of Services for People with Disabilities
 From General Fund 150,000
 From Revenue Transfers 352,800
 Schedule of Programs:
 Community Supports Waiver 502,800

Item 183

To Department of Human Services - Division
 of Child and Family Services
 From General Fund, One-Time 100,000
 Schedule of Programs:
 Out-of-Home Care 100,000

Item 184

To Department of Human Services - Division
 of Child and Family Services
 From General Fund 17,000
 From General Fund, One-Time 300
 Schedule of Programs:
 Service Delivery 9,100
 Child Welfare Management Information
 System 8,200
 To implement the provisions of Child
 Welfare Amendments (Senate Bill 75, 2017
 General Session).

Item 185

To Department of Human Services - Division
 of Child and Family Services
 From General Fund 70,800
 From General Fund, One-Time 677,700
 From Federal Funds 8,700
 From Federal Funds, One-Time 83,700
 Schedule of Programs:
 Service Delivery 161,800
 Child Welfare Management Information
 System 679,100
 To implement the provisions of Division of
 Child and Family Services Appeals (Senate
 Bill 266, 2017 General Session).

HIGHER EDUCATION

UNIVERSITY OF UTAH

Item 186

To University of Utah - Education and General
 From General Fund 14,500,000
 From General Fund, One-Time 12,000,000
 From Education Fund (14,500,000)
 From Education Fund,
 One-Time (12,000,000)
 The Legislature intends that the
 \$2,000,000 General Fund, one-time
 appropriation made in Senate Bill 2, New
 Fiscal Year Supplemental Appropriations
 Act, Item 94, be used toward the Fiscal Year
 2018 bond payment for phase 1 of the cancer
 clinical research hospital facility as
 authorized in 63B-10-301(4).

Item 187

To University of Utah - Education and General
 From Education Fund (10,300)
 From Dedicated Credits Revenue (11,000)
 Schedule of Programs:
 Education and General (21,300)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 188

To University of Utah - Cancer Research and Treatment

The Legislature intends that the Division of Finance consolidate the appropriations made in House Bill 1, Higher Education Base Budget, Item 12, and those made in Senate Bill 2, New Fiscal Year Supplemental Appropriations Act, Item 96, in so doing, rename the "University of Utah - Health Sciences" line item "University of Utah - Cancer Research and Treatment."

UTAH STATE UNIVERSITY

Item 189

To Utah State University -
 Southeastern Continuing Education Center
 From Education Fund 113,000
 Schedule of Programs:
 Southeastern Continuing Education
 Center 113,000

WEBER STATE UNIVERSITY

Item 190

To Weber State University - Education and General
 From Education Fund 285,000
 Schedule of Programs:
 Education and General 285,000

Item 191

To Weber State University - Education and General
 From Education Fund (5,300)
 From Dedicated Credits Revenue (4,700)
 Schedule of Programs:
 Education and General (10,000)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

SOUTHERN UTAH UNIVERSITY

Item 192

To Southern Utah University - Education and General
 From Education Fund 50,000
 Schedule of Programs:
 Education and General 50,000

DIXIE STATE UNIVERSITY

Item 193

To Dixie State University - Education and General
 From Education Fund 50,000
 Schedule of Programs:

Education and General 50,000

The Legislature intends that Dixie State University use \$100,000 ongoing appropriated to Dixie State University Education and General in Senate Bill 2, New Fiscal Year Supplemental Appropriations Act, Item 108 and \$50,000 ongoing appropriated in this line item for Dixie State University to foster interest in, and develop a pipeline of students for science, technology, engineering, and math (STEM).

Item 194

To Dixie State University - Education and General
 From Education Fund (1,200)
 From Dedicated Credits Revenue (1,000)
 Schedule of Programs:
 Education and General (2,200)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

SALT LAKE COMMUNITY COLLEGE

Item 195

To Salt Lake Community College - Education and General
 From General Fund 313,400
 From Education Fund 272,300
 From Education Fund, One-Time 250,600
 Schedule of Programs:
 Education and General 836,300

Item 196

To Salt Lake Community College - Education and General
 From Education Fund (1,100)
 From Dedicated Credits Revenue (800)
 Schedule of Programs:
 Education and General (1,900)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

STATE BOARD OF REGENTS

Item 197

To State Board of Regents - Economic Development

The Legislature intends that the funds appropriated for the Engineering Initiative be allocated to institutions based on the increases in graduates from engineering, computer science, and technology degree programs since Fiscal Year 2014. The Legislature further intends that Engineering Initiative funds support undergraduate programs that meet workforce needs for the highest demand occupations. Recommendations for appropriation and follow up reporting on program success are to be reviewed by the Business, Economic Development, and Labor Appropriations Subcommittee and the Higher Education Appropriations Subcommittee.

Item 198

To State Board of Regents - Education Excellence
 From Education Fund 855,300
 From Education Fund, One-Time (591,200)

Schedule of Programs:
 Education Excellence 264,100

Item 199

To State Board of Regents - Education Excellence
 From Education Fund, One-Time 6,500,000
 From Education Fund Restricted - Performance Funding Restricted Account 16,500,000
 From Education Fund Restricted - Perform. Funding Rest. Acct., One-Time (16,500,000)
 Schedule of Programs:
 Performance Funding 6,500,000
 To implement the provisions of Higher Education Performance Funding (Senate Bill 117, 2017 General Session).

UTAH COLLEGE OF APPLIED TECHNOLOGY

Item 200

To Utah College of Applied Technology - Ogden/Weber Applied Technology College
 From Education Fund 220,400
 From Education Fund, One-Time 340,600
 Schedule of Programs:
 Ogden/Weber Applied Technology College 561,000

Item 201

To Utah College of Applied Technology - Tooele Applied Technology College
 From Education Fund 250,000
 Schedule of Programs:
 Tooele Applied Technology College 250,000

Item 202

To Utah College of Applied Technology - Uintah Basin Applied Technology College
 From Education Fund 97,300
 From Education Fund, One-Time (97,300)

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENTAL QUALITY

DEPARTMENT OF NATURAL RESOURCES

Item 203

To Department of Natural Resources - Administration
 From General Fund 35,000
 Schedule of Programs:
 Public Information Office 35,000

Item 204

To Department of Natural Resources - DNR Pass Through
 From General Fund, One-Time 1,530,000
 Schedule of Programs:
 DNR Pass Through 1,530,000

The Legislature intends that the Department of Natural Resources use the appropriation to satisfy any outstanding obligations on the existing sage grouse contract. Any funds not required for the existing contract shall be used, at the discretion of the department and consistent

with state procurement requirements, for any renewal or extension of services relating to the sage grouse, and for the issues of wolves, wild horses, and other public lands issues. The Legislature also intends that the department obtain a financial report of the expenditures of the sage grouse contractor and make that report available to the Executive Appropriations Committee.

Item 205

To Department of Natural Resources - Watershed
 From General Fund 40,000
 Schedule of Programs:
 Watershed 40,000

Item 206

To Department of Natural Resources - Forestry, Fire and State Lands
 From General Fund (100)
 From Federal Funds (21,400)
 From Dedicated Credits Revenue (34,900)
 From General Fund Restricted - Sovereign Land Management (26,800)
 Schedule of Programs:
 Program Delivery (83,200)
 To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 207

To Department of Natural Resources - Wildlife Resources
 From General Fund (508,200)
 Schedule of Programs:
 Director's Office 141,800
 Habitat Section (650,000)

Item 208

To Department of Natural Resources - Wildlife Resources
 From General Fund (18,700)
 From Federal Funds (1,900)
 From General Fund Restricted - Wildlife Resources (49,700)
 Schedule of Programs:
 Law Enforcement (70,300)
 To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 209

To Department of Natural Resources - Wildlife Resources
 From General Fund Restricted - Support for State-owned Shooting Ranges Restricted Account 25,000
 Schedule of Programs:
 Conservation Outreach 25,000
 To implement the provisions of Second Amendment Special License Plates (Senate Bill 245, 2017 General Session).

Item 210

To Department of Natural Resources - Parks and Recreation
 From General Fund Restricted - State Park Fees, One-Time 10,000
 Schedule of Programs:
 Executive Management 10,000

To implement the provisions of Native American Remains Repatriation (House Bill 394, 2017 General Session).

Item 211

To Department of Natural Resources -
Parks and Recreation

From General Fund	(2,600)
From Dedicated Credits Revenue	(1,500)
From General Fund Restricted - Boating	(12,400)
From General Fund Restricted - Off-highway Vehicle	(17,200)
From General Fund Restricted - State Park Fees	(28,200)
Schedule of Programs: Support Services	(61,900)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 212

To Department of Natural Resources -
Utah Geological Survey

From General Fund	(1,100)
From Dedicated Credits Revenue	(100)
From General Fund Restricted - Mineral Lease	(500)
Schedule of Programs: Administration	(1,700)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 213

To Department of Natural Resources -
Water Resources

From General Fund	805,000
From General Fund, One-Time	100,000
Schedule of Programs: Planning	805,000
Construction	100,000

Item 214

To Department of Natural Resources -
Water Rights

From General Fund	55,000
Schedule of Programs: Administration	55,000

Item 215

To Department of Natural Resources -
Water Rights

From Dedicated Credits Revenue	1,895,600
From Dedicated Credits Revenue, One-Time	(168,100)
Schedule of Programs: Adjudication	1,727,500

To implement the provisions of Natural Resources Modifications (Senate Bill 113, 2017 General Session).

**DEPARTMENT OF
ENVIRONMENTAL QUALITY**

Item 216

To Department of Environmental Quality -
Executive Director's Office

Notwithstanding the Radioactive Waste Disposal Annual fee in Senate Bill 8 under "Radioactive Waste Disposal (licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of commercial disposal by land by the licensee)" with an annual fee of \$2,099,200, the Legislature intends to reduce the Radioactive Waste Disposal Annual fee from \$2,099,200 to \$1,982,000 for Fiscal Year 2018 and that \$117,200 of the Fiscal Year 2017 nonlapsing balance from the Executive Directors Office be used to reimburse the Division of Waste Management and Radiation Control for the reduction in revenue from the fee.

Item 217

To Department of Environmental Quality -
Air Quality

From General Fund	169,000
From General Fund, One-Time	1,500,000
Schedule of Programs: Air Quality	1,669,000

Item 218

To Department of Environmental Quality -
Air Quality

From General Fund	30,300
Schedule of Programs: Air Quality	30,300

To implement the provisions of Air Quality Policy Advisory Board (House Bill 392, 2017 General Session).

Item 219

To Department of Environmental Quality -
Environmental Response and Remediation

From General Fund	(300)
From Federal Funds	(1,700)
From Dedicated Credits Revenue	(300)
From Petroleum Storage Tank Trust Fund	(700)
From General Fund Restricted - Voluntary Cleanup	(300)
Schedule of Programs: Environmental Response and Remediation	(3,300)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 220

To Department of Environmental Quality -
Waste Management and Radiation Control

From General Fund, One-Time	117,200
Schedule of Programs: Waste Management and Radiation Control	117,200

Item 221

To Department of Environmental Quality -
Waste Management and Radiation Control

From General Fund Restricted - Environmental Quality	(3,500)
Schedule of Programs: Waste Management and Radiation Control	(3,500)

To implement the provisions of Radioactive and Hazardous Waste Account Amendments (House Bill 296, 2017 General Session).

**PUBLIC LANDS POLICY
COORDINATING OFFICE**

Item 222

To Public Lands Policy Coordinating Office
From General Fund 200,000
Schedule of Programs:
Public Lands Policy Coordinating
Office 200,000

The Legislature intends that the appropriation of \$300,000 to the Constitutional Defense Restricted Account in Senate Bill 2, item 178 be used for settlement of disputed lands in Duchesne County

GOVERNOR’S OFFICE

Item 223

To Governor’s Office - Office of Energy Development
From General Fund 133,700
From General Fund, One-Time 50,000
Schedule of Programs:
Office of Energy Development 183,700

Item 224

To Governor’s Office - Office of Energy Development
From General Fund 1,000
From General Fund, One-Time 2,500
Schedule of Programs:
Office of Energy Development 3,500

To implement the provisions of Manufacturing Amendments (Senate Bill 197, 2017 General Session).

Item 225

To Governor’s Office - Office of Energy Development
From General Fund, One-Time 96,500
From Federal Funds, One-Time (96,500)
From Dedicated Credits Revenue, One-Time 109,400
Schedule of Programs:
Office of Energy Development 109,400

To implement the provisions of Energy Amendments (Senate Bill 253, 2017 General Session).

**DEPARTMENT OF
AGRICULTURE AND FOOD**

Item 226

To Department of Agriculture and Food - Administration
From General Fund, One-Time 22,300
Schedule of Programs:
General Administration 22,300

To implement the provisions of Direct Food Sales Amendments (House Bill 58, 2017 General Session).

Item 227

To Department of Agriculture and Food - Administration
From General Fund 22,800
Schedule of Programs:
General Administration 22,800

To implement the provisions of Local Food Advisory Council (House Bill 121, 2017 General Session).

Item 228

To Department of Agriculture and Food - Animal Health
From General Fund (1,700)
From General Fund Restricted - Livestock Brand (3,000)
Schedule of Programs:
Brand Inspection (4,700)

To implement the provisions of Utah Communications Authority Amendments (Senate Bill 198, 2017 General Session).

Item 229

To Department of Agriculture and Food - Utah State Fair Corporation
From General Fund, One-Time 500,000
Schedule of Programs:
State Fair Corporation 500,000

**SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION**

Item 230

To School and Institutional Trust Lands Administration
From Land Grant Management Fund 4,900
From Land Grant Management Fund, One-Time 700
Schedule of Programs:
Administration 5,600

Item 231

To School and Institutional Trust Lands Administration - Land Stewardship and Restoration
From Land Grant Management Fund (4,900)
From Land Grant Management Fund, One-Time (700)
Schedule of Programs:
Land Stewardship and Restoration (5,600)

PUBLIC EDUCATION

**STATE BOARD OF EDUCATION -
MINIMUM SCHOOL PROGRAM**

Item 232

To State Board of Education - Minimum School Program - Basic School Program
From Uniform School Fund 4,500,000
From Uniform School Fund, One-Time 3,500,000
From Education Fund (4,500,000)
From Education Fund, One-Time (3,500,000)

Item 233

To State Board of Education - Minimum School Program - Related to Basic School Programs
From Education Fund 55,700
Schedule of Programs:

Early Graduation from Competency-Based Education 55,700
 To implement the provisions of Competency-based Education Funding (Senate Bill 34, 2017 General Session).

STATE BOARD OF EDUCATION

Item 234

To State Board of Education - State Administrative Office
 From Education Fund, One-Time 450,000
 Schedule of Programs:
 Assessment and Accountability (140,600)
 Educational Equity (166,100)
 Board and Administration (9,046,100)
 Business Services (1,339,200)
 Career and Technical Education (2,583,100)
 District Computer Services (6,428,100)
 Policy and Communication 1,276,100
 Federal Elementary and Secondary Education Act (112,933,600)
 Law and Legislation (47,700)
 Public Relations (162,500)
 Special Education 178,100
 Teaching and Learning (213,600)
 Student Achievement 251,500
 Statewide Online Education Program (49,000)
 Indirect Cost Pool 6,222,600
 Data and Statistics 2,067,000
 Student Advocacy Services 116,801,800
 Financial Operations 2,771,900
 Information Technology 3,990,600

The Legislature intends that the State Board of Education use \$2,642,000 ongoing Education Fund appropriated to the State Board of Education - State Administrative Office in Public Education Budget Amendments (House Bill 2, 2017 General Session) to implement the provisions of Student Assessment and School Accountability Amendments (Senate Bill 220, 2017 General Session).

The Legislature intends that the State Board of Education use \$125,000 ongoing Education Fund appropriated to the State Board of Education - State Administrative Office in Public Education Budget Amendments (House Bill 2, 2017 General Session) to implement the provisions of Suicide Prevention Programs (House Bill 346, 2017 General Session).

The Legislature intends that the State Board of Education use \$50,000 one-time of the funds appropriated in this line item for the Utah Anti-Bullying Coalition.

Item 235

To State Board of Education - State Administrative Office
 From GFR - Underage Drinking Prevention Media and Education Campaign Restricted Account 1,750,000
 Schedule of Programs:

Teaching and Learning 1,750,000
 To implement the provisions of Alcohol Amendments (House Bill 442, 2017 General Session).

Item 236

To State Board of Education - State Administrative Office
 From Education Fund 11,200
 From Education Fund, One-Time 30,000
 Schedule of Programs:
 Special Education 41,200
 To implement the provisions of Students with Disabilities Accommodations Funding (Senate Bill 61, 2017 General Session).

Item 237

To State Board of Education - State Administrative Office
 From Education Fund (5,900)
 Schedule of Programs:
 Board and Administration (5,900)
 To implement the provisions of Education Reporting Amendments (Senate Bill 186, 2017 General Session).

Item 238

To State Board of Education - Initiative Programs
 From Education Fund, One-Time 350,000
 Schedule of Programs:
 Contracts and Grants 350,000
 The Legislature intends that the State Board of Education develop remedial targets and probation guidelines to assist schools in increasing usage fidelity in implementing the Early Intervention - K-3 Reading Program appropriated in Public Education Base Budget Amendments (Senate Bill 1, 2017 General Session) and Public Education Budget Amendments (House Bill 2, 2017 General Session).

Item 239

To State Board of Education - Educator Licensing
 From Professional Practices Restricted Subfund (1,000)
 Schedule of Programs:
 Educator Licensing (1,000)
 To implement the provisions of Education Reporting Amendments (Senate Bill 186, 2017 General Session).

SCHOOL AND INSTITUTIONAL TRUST FUND OFFICE

Item 240

To School and Institutional Trust Fund Office
 From School and Institutional Trust Fund Management Account (200)
 Schedule of Programs:
 School and Institutional Trust Fund Office (200)
 To implement the provisions of School and Institutional Trust Fund Amendments (House Bill 166, 2017 General Session).

**RETIREMENT AND
INDEPENDENT ENTITIES**

**UTAH EDUCATION AND
TELEHEALTH NETWORK**

Item 241

To Utah Education and Telehealth Network
 From Education Fund (800)
 From Federal Funds (600)
 Schedule of Programs:
 Administration (1,400)

To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

EXECUTIVE APPROPRIATIONS

**DEPARTMENT OF VETERANS'
AND MILITARY AFFAIRS**

Item 242

To Department of Veterans' and Military Affairs -
 Veterans' and Military Affairs
 From General Fund, One-Time 175,000
 Schedule of Programs:
 Administration 175,000

Item 243

To Department of Veterans' and Military Affairs -
 Veterans' and Military Affairs
 From General Fund 600
 From Federal Funds 200
 Schedule of Programs:
 Administration 800

To implement the provisions of Veterans'
 and Military Affairs Commission
 Amendments (Senate Bill 10, 2017 General
 Session).

LEGISLATURE

Item 244

To Legislature - Senate
 From General Fund 3,100
 Schedule of Programs:
 Administration 3,100

To implement the provisions of Air Quality
 Policy Advisory Board (House Bill 392, 2017
 General Session).

Item 245

To Legislature - Senate
 From General Fund 3,000
 Schedule of Programs:
 Administration 3,000

To implement the provisions of Joint
 Resolution Authorizing Pay of In-session
 Employees (House Joint Resolution 10, 2017
 General Session).

Item 246

To Legislature - Senate
 From General Fund, One-Time 1,600
 Schedule of Programs:
 Administration 1,600

To implement the provisions of Statewide
 Crisis Line (Senate Bill 37, 2017 General
 Session).

Item 247

To Legislature - Senate
 From General Fund, One-Time 6,200
 Schedule of Programs:

 Administration 6,200

To implement the provisions of Public
 Transit and Transportation Governance
 Amendments (Senate Bill 174, 2017 General
 Session).

Item 248

To Legislature - House of Representatives
 From General Fund 4,700
 Schedule of Programs:

 Administration 4,700

To implement the provisions of Air Quality
 Policy Advisory Board (House Bill 392, 2017
 General Session).

Item 249

To Legislature - House of Representatives
 From General Fund 3,600
 Schedule of Programs:

 Administration 3,600

To implement the provisions of Joint
 Resolution Authorizing Pay of In-session
 Employees (House Joint Resolution 10, 2017
 General Session).

Item 250

To Legislature - House of Representatives
 From General Fund, One-Time 1,600
 Schedule of Programs:

 Administration 1,600

To implement the provisions of Statewide
 Crisis Line (Senate Bill 37, 2017 General
 Session).

Item 251

To Legislature - House of Representatives
 From General Fund, One-Time 6,200
 Schedule of Programs:

 Administration 6,200

To implement the provisions of Public
 Transit and Transportation Governance
 Amendments (Senate Bill 174, 2017 General
 Session).

Item 252

To Legislature - Office of Legislative Research
 and General Counsel
 From General Fund, One-Time 24,300
 Schedule of Programs:

 Administration 24,300

To implement the provisions of Public
 Transit and Transportation Governance
 Amendments (Senate Bill 174, 2017 General
 Session).

Item 253

To Legislature - Office of the Legislative
 Fiscal Analyst

The Legislature intends that, when
 preparing the Fiscal Year 2019 base budget
 bills, the Legislative Fiscal Analyst shall

include \$9,000,000 one-time from the General Fund in the Employability to Careers Program Restricted Account and \$9,000,000 one-time from the Employability to Careers Program Restricted Account in the Governors Office of Management and Budget line item and (\$9,000,000) one-time from the General Fund in the Capital Development - Higher Education line item.

The Legislature intends that, when preparing the Fiscal Year 2019 base budget and compensation bills, the Legislative Fiscal Analyst shall include in the base budget bills \$1,158,200 ongoing from the General and Education Funds to replace one-time compensation appropriations of the same amount made in the Fiscal Year 2018 budget.

The Legislature intends that, when preparing the Fiscal Year 2019 base budget and compensation bills, the Legislative Fiscal Analyst shall include in the compensation bill a 75% General Fund-Education Fund / 25% Dedicated Credits mix for each Education and General line item and other instructional line items containing General Fund, Education Fund, and Dedicated Credits, with the exception that the Salt Lake Community College School of Applied Technology line item shall include 100% General Fund-Education Fund. The Legislature also intends that the Legislative Fiscal Analyst shall include in the compensation bill for the Utah College of Applied Technology 100% General Fund-Education Fund.

Item 254

To Legislature - Office of the Legislative Fiscal Analyst
From General Fund 4,800
Schedule of Programs:
Administration and Research 4,800

To implement the provisions of Budgeting Revisions (Senate Bill 209, 2017 General Session).

Subsection 2(b). Expendable Funds and Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account's applicable authorizing statute.

EXECUTIVE OFFICES AND CRIMINAL JUSTICE

DEPARTMENT OF PUBLIC SAFETY

Item 255

To Department of Public Safety - Alcoholic Beverage Control Act Enforcement Fund
From Dedicated Credits Revenue 12,500
Schedule of Programs:

Alcoholic Beverage Control Act
Enforcement Fund 12,500
To implement the provisions of Alcohol Amendments (House Bill 442, 2017 General Session).

BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Item 256

To Governor's Office of Economic Development - Outdoor Recreation Infrastructure Account
From Dedicated Credits Revenue 4,958,100
From Dedicated Credits Revenue,
One-Time (730,300)
Schedule of Programs:
Outdoor Recreation Infrastructure
Account 4,227,800

PUBLIC SERVICE COMMISSION

Item 257

To Public Service Commission - Universal Telecommunications Support Fund
From Universal Public Telecommunications Service Support Fund 1,100,000
Schedule of Programs:
Universal Telecom Service Fund 1,100,000
To implement the provisions of Universal Service Fund Amendments (Senate Bill 130, 2017 General Session).

SOCIAL SERVICES

DEPARTMENT OF HEALTH

Item 258

To Department of Health - Medicaid Expansion Fund
From General Fund, One-Time (3,409,900)
Schedule of Programs:
Medicaid Expansion Fund (3,409,900)

Item 259

To Department of Health - Nursing Care Facilities Provider Assessment Fund
From Dedicated Credits Revenue 31,855,200
Schedule of Programs:
Nursing Care Facilities Provider
Assessment Fund 31,855,200
To implement the provisions of Nursing Care Facility Amendments (House Bill 113, 2017 General Session).

PUBLIC EDUCATION

STATE BOARD OF EDUCATION

Item 260

To State Board of Education - Hospitality and Tourism Management Education Account
From Dedicated Credits Revenue 316,500
From Dedicated Credits Revenue,
One-Time (46,600)
Schedule of Programs:

Hospitality and Tourism Management
 Education Account 269,900

Subsection 2(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

**EXECUTIVE OFFICES AND
 CRIMINAL JUSTICE**

UTAH DEPARTMENT OF CORRECTIONS

Item 261

To Utah Department of Corrections -
 Utah Correctional Industries
 From Dedicated Credits Revenue (18,300)
 Schedule of Programs:
 Utah Correctional Industries (18,300)
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

**INFRASTRUCTURE AND
 GENERAL GOVERNMENT**

**DEPARTMENT OF ADMINISTRATIVE
 SERVICES INTERNAL SERVICE FUNDS**

Item 262

To Department of Administrative Services Internal
 Service Funds - Risk Management
 From Dedicated Credits Revenue 25,000
 Schedule of Programs:
 Risk Management - Liability 25,000
 To implement the provisions of Excess
 Damages Claims (Senate Bill 98, 2017
 General Session).

Item 263

To Department of Administrative Services Internal
 Service Funds - Division of Facilities
 Construction and Management - Facilities
 Management
 From Dedicated Credits Revenue (38,200)
 Schedule of Programs:
 ISF - Facilities Management (38,200)
 To implement the provisions of Utah
 Communications Authority Amendments
 (Senate Bill 198, 2017 General Session).

**DEPARTMENT OF TECHNOLOGY
 SERVICES INTERNAL SERVICE FUNDS**

Item 264

To Department of Technology Services Internal
 Service Funds - Enterprise Technology Division

From Technology Services Internal
 Service Fund 150,200
 Schedule of Programs:
 ISF - Enterprise Technology Division .. 150,200

To implement the provisions of Emergency
 Telephone Service Amendments (Senate Bill
 14, 2017 General Session).

**Subsection 2(d). Restricted Fund and
 Account Transfers.**

The Legislature authorizes the State Division of Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere in an appropriations act.

**EXECUTIVE OFFICES AND
 CRIMINAL JUSTICE**

Item 265

To General Fund Restricted - Indigent Defense
 Resources Account
 From General Fund 16,200
 From General Fund, One-Time 2,500
 Schedule of Programs:
 Indigent Defense Resources Account 18,700

Item 266

To General Fund Restricted - Indigent
 Defense Resources Account
 From General Fund 155,500
 From General Fund, One-Time 2,200
 Schedule of Programs:
 Indigent Defense Resources Account ... 157,700
 To implement the provisions of Indigent
 Defense Commission Amendments (Senate
 Bill 134, 2017 General Session).

**BUSINESS, ECONOMIC
 DEVELOPMENT, AND LABOR**

Item 267

To General Fund Restricted - Rural
 Health Care Facilities Fund
 From General Fund 100
 Schedule of Programs:
 GFR - Rural Health Care Facilities
 Fund 100

HIGHER EDUCATION

Item 268

To Performance Funding Restricted Account
 From Education Fund 16,500,000
 From Education Fund, One-Time .. (16,500,000)
 To implement the provisions of Higher
 Education Performance Funding (Senate Bill
 117, 2017 General Session).

PUBLIC EDUCATION

Item 269

To Underage Drinking Prevention Program
 Restricted Account
 From Liquor Control Fund 1,750,000
 Schedule of Programs:
 Underage Drinking Prevention
 Program Restricted Account 1,750,000

To implement the provisions of Alcohol Amendments (House Bill 442, 2017 General Session).

Section 3. FY 2018 Appropriations Limit Formula.

The state appropriations limit for a given fiscal year, FY, shall be calculated by

$$AppropLimit_{FY} = PerCapitaBase_{1985} \times Pop_{FY-2} \times Inflation_{FY-2} \times SumAdjust_{FY}$$

, where:

$$(a) \quad Inflation_{Base} = \frac{GNPIndex_{int,qy,1983}}{GNPIndex_{int,qy,1989}} = \frac{(100.8+101.7+102.5+103.3)/4}{(121.9+123.3+124.5+125.9)/4} = \frac{102.075}{123.900}$$

$$(b) \quad Inflation_{FY-2} = \frac{GNPIndex_{FY-2} \times Inflation_{Base}}{GNPIndex_{1983}}$$

$$(c) \quad PerCapitaBase_{1985} = \frac{Appropriations_{1985} - Debt_{1985}}{Pop_{1983} \times Inflation_{Base}} = \frac{734,333,000 - 52,273,100}{1,594,943 \times \left(\frac{102.075}{123.900}\right)}$$

$$(d) \quad SumAdjust_{FY} = \sum_{i=1985}^{FY} \left[Adjust_i \times \left(\frac{Inflation_{FY-2}}{Inflation_{i-2}} \right) \times \left(\frac{Pop_{FY-2}}{Pop_{i-2}} \right) \right]$$

; and

(e) as used in the state appropriations limit formula:

(i) i is a variable representing a given fiscal year;

(ii) $Adjust_i$ is the net adjustments to the state appropriations limit for a given fiscal year due to program or service adjustments, as required under Section 63J-3-203;

(iii) $Appropriations_{1985}$ is the state capital and operations appropriations from the General Fund and non-Uniform School fund in fiscal year 1985;

(iv) $Debt_{1985}$ is the amount the state paid in debt payments in fiscal year 1985;

(v) $GNPIndex_{FY-2}$ is the average of the quarterly values of the Gross National Product Implicit Price Deflator for the fiscal year two fiscal years before FY, as published by the United States Federal Reserve by January 31 of each year;

(vi) $GNPIndex_{int,qy,i}$ is the average of the quarterly values of the Gross National Product Implicit Price Deflator for a given fiscal year, as measured by the Gross National Product Implicit Price Deflator from the vintage series published by the United States Department of Commerce on January 26, 1990;

(vii) $Inflation_{i-2}$ is the change in the general price level of goods and services nationally from 1983 to two fiscal years before a given fiscal year, as measured by the most current Gross National Product Implicit Price Deflator series published by the United States Federal Reserve, adjusted to a 1989 basis;

(viii) $PerCapitaBase_{1985}$ is the amount of real per capita state appropriations for fiscal year 1985; and

(ix) Pop_{i-2} is:

(A) the population as of July 1 in the fiscal year two fiscal years before a given fiscal year, as

estimated by the United States Census Bureau by January 31 of each year; or

(B) if the estimate described in Subsection (3)(e)(ix)(A) is not available, an amount determined by the Governor's Office of Management and Budget, estimated by adjusting an available April 1 decennial census count or by adjusting a fiscal year population estimate available from the United States Census Bureau.

Section 4. Effective Date.

If approved by two-thirds of all the members elected to each house, Section 1 of this bill takes effect upon approval by the Governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8 without the Governor's signature, or in the case of a veto, the date of override. Sections 2 and 3 of this bill take effect on July 1, 2017.

CHAPTER 458

S.B. 8

Passed March 7, 2017
 Approved March 28, 2017
 Effective July 1, 2017

STATE AGENCY FEES AND INTERNAL SERVICE FUND RATE AUTHORIZATION AND APPROPRIATIONS

Chief Sponsor: Kevin T. Van Tassell
 House Sponsor: Bradley G. Last

LONG TITLE

Committee Note:

The Executive Appropriations Committee recommended this bill.

General Description:

This bill supplements or reduces appropriations previously provided for the use and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides budget increases and decreases for the use and support of certain state agencies and institutions of higher education;
- ▶ authorizes certain state agency fees;
- ▶ authorizes internal service fund rates;
- ▶ adjusts funding for the impact of Internal Service Fund rate changes; and,
- ▶ provides budget increases and decreases for other purposes as described.

Money Appropriated in this Bill:

This bill appropriates \$1,326,300 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$693,800 from the General Fund;
- ▶ \$147,000 from the Education Fund;
- ▶ \$485,500 from various sources as detailed in this bill.

This bill appropriates \$800 in expendable funds and accounts for fiscal year 2018.

This bill appropriates \$150,100 in business-like activities for fiscal year 2018, including:

- ▶ \$148,600 from the General Fund;
- ▶ \$1,500 from various sources as detailed in this bill.

This bill appropriates \$100 in fiduciary funds for fiscal year 2018.

Other Special Clauses:

This bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2018 Appropriations. The following sums of money are appropriated for Internal Service Fund rate adjustments for the fiscal year beginning July 1, 2017 and ending

June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018.

Subsection 1(a). Operating and Capital Budgets.

Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

EXECUTIVE OFFICES AND CRIMINAL JUSTICE

GOVERNOR'S OFFICE

Item 1

To Governor's Office	
From General Fund	12,000
From Dedicated Credits Revenue	(6,200)
Schedule of Programs:	
Administration	19,500
Governor's Residence	200
Lt. Governor's Office	(13,900)

Item 2

To Governor's Office - Governor's Office of Management and Budget	
From General Fund	8,800
From General Fund Restricted - School Readiness Account	1,100
Schedule of Programs:	
Administration	6,400
Planning and Budget Analysis	2,600
Operational Excellence	700
State and Local Planning	200

Item 3

To Governor's Office - Commission on Criminal and Juvenile Justice	
From General Fund	1,400
From Federal Funds	1,000
From Dedicated Credits Revenue	100
From Crime Victim Reparations Fund	1,300
Schedule of Programs:	
CCJJ Commission	600
Utah Office for Victims of Crime	2,200
Extraditions	300
Substance Use and Mental Health	
Advisory Council	100
Sentencing Commission	200
Judicial Performance Evaluation	
Commission	400

OFFICE OF THE STATE AUDITOR

Item 4

To Office of the State Auditor - State Auditor	
From General Fund	(7,700)
From Dedicated Credits Revenue	(4,400)
Schedule of Programs:	
State Auditor	(12,100)

STATE TREASURER

Item 5

To State Treasurer	
From General Fund	(1,500)
From Dedicated Credits Revenue	(700)
From Unclaimed Property Trust	13,200
Schedule of Programs:	

Treasury and Investment	(2,000)
Unclaimed Property	13,200
Money Management Council	(200)

ATTORNEY GENERAL

Item 6

To Attorney General	
From General Fund	56,200
From Federal Funds	200
From Dedicated Credits Revenue	1,900
From Revenue Transfers	200
Schedule of Programs:	
Administration	68,500
Child Protection	4,300
Criminal Prosecution	2,600
Civil	(16,900)

Item 7

To Attorney General - Prosecution Council	
From General Fund Restricted - Public	
Safety Support	100
From Revenue Transfers	100
Schedule of Programs:	
Prosecution Council	200

UTAH DEPARTMENT OF CORRECTIONS

Item 8

To Utah Department of Corrections - Programs and Operations	
From General Fund	(57,000)
From Dedicated Credits Revenue	500
Schedule of Programs:	
Department Executive Director	(148,100)
Department Administrative Services ..	112,000
Department Training	(400)
Adult Probation and Parole	
Administration	3,500
Adult Probation and Parole	
Programs	(15,300)
Prison Operations Administration	300
Prison Operations Draper Facility	(12,700)
Prison Operations Central	
Utah/Gunnison	5,600
Prison Operations Inmate Placement ..	(1,300)
Programming Treatment	(300)
Programming Skill Enhancement	200

Item 9

To Utah Department of Corrections - Department Medical Services	
From General Fund	10,400
From Dedicated Credits Revenue	100
Schedule of Programs:	
Medical Services	10,500

BOARD OF PARDONS AND PAROLE

Item 10

To Board of Pardons and Parole	
From General Fund	1,900
Schedule of Programs:	
Board of Pardons and Parole	1,900

DEPARTMENT OF HUMAN SERVICES - DIVISION OF JUVENILE JUSTICE SERVICES

Item 11

To Department of Human Services - Division of Juvenile Justice Services - Programs and Operations	
From General Fund	120,200
From Federal Funds	5,200
From Dedicated Credits Revenue	1,700
From Revenue Transfers	1,300
Schedule of Programs:	
Administration	8,200
Early Intervention Services	48,200
Community Programs	28,600
Correctional Facilities	29,500
Rural Programs	13,600
Youth Parole Authority	300

JUDICIAL COUNCIL/STATE COURT ADMINISTRATOR

Item 12

To Judicial Council/State Court Administrator - Administration	
From General Fund	84,400
From Federal Funds	100
From Dedicated Credits Revenue	2,300
From General Fund Restricted - Children's Legal Defense	300
From General Fund Restricted - Court Trust Interest	600
From General Fund Restricted - Dispute Resolution Account	700
From General Fund Restricted - DNA Specimen Account	400
From General Fund Rest. - Justice Court Tech., Security & Training	200
From General Fund Restricted - Nonjudicial Adjustment Account	1,400
From General Fund Restricted - State Court Complex Account	100
From General Fund Restricted - Substance Abuse Prevention	800
From Revenue Transfers	100
Schedule of Programs:	
Supreme Court	300
Law Library	300
Court of Appeals	700
District Courts	22,700
Juvenile Courts	56,000
Administrative Office	11,400

Item 13

To Judicial Council/State Court Administrator - Contracts and Leases	
From General Fund	59,100
From Dedicated Credits Revenue	900
From General Fund Restricted - State Court Complex Account	17,000
Schedule of Programs:	
Contracts and Leases	77,000

Item 14

To Judicial Council/State Court Administrator - Jury and Witness Fees	
From General Fund	7,200
Schedule of Programs:	

Jury, Witness, and Interpreter 7,200

DEPARTMENT OF PUBLIC SAFETY

Item 15

To Department of Public Safety -
 Programs & Operations
 From General Fund (102,300)
 From Federal Funds 100
 From Dedicated Credits Revenue 800
 From General Fund Restricted -
 Concealed Weapons Account 1,400
 From Department of Public Safety
 Restricted Account (2,300)
 From General Fund Restricted -
 Fire Academy Support 2,400
 From General Fund Restricted -
 Statewide Warrant Operations 400
 From Revenue Transfers 100
 From Pass-through 1,900
 Schedule of Programs:
 Department Commissioner’s Office ... (40,400)
 Department Intelligence Center 1,900
 Department Grants 300
 Department Fleet Management 100
 CITS Administration (1,500)
 CITS Bureau of Criminal
 Identification 6,800
 CITS Communications 3,700
 CITS State Crime Labs 100
 CITS State Bureau of Investigation 2,100
 Highway Patrol - Administration 1,300
 Highway Patrol - Field Operations (5,600)
 Highway Patrol - Commercial
 Vehicle (1,100)
 Highway Patrol - Safety Inspections 900
 Highway Patrol - Federal/State
 Projects (200)
 Highway Patrol - Protective Services .. (2,300)
 Highway Patrol - Special Enforcement ... (100)
 Highway Patrol - Technology
 Services (15,000)
 Information Management -
 Operations (51,200)
 Fire Marshall - Fire Operations 2,800
 Fire Marshall - Fire Fighter Training ... (100)

Item 16

To Department of Public Safety -
 Emergency Management
 From General Fund 700
 From Federal Funds 7,200
 Schedule of Programs:
 Emergency Management 7,900

Item 17

To Department of Public Safety - Peace
 Officers’ Standards and Training
 From General Fund 100
 From Dedicated Credits Revenue (100)
 From General Fund Restricted -
 Public Safety Support 100
 Schedule of Programs:
 Basic Training (1,600)
 Regional/Inservice Training (3,700)
 POST Administration 5,400

Item 18

To Department of Public Safety - Driver License
 From Federal Funds 500
 From Department of Public Safety
 Restricted Account 53,700
 From Pass-through 300
 Schedule of Programs:
 Driver License Administration 29,800
 Driver Services 74,800
 Driver Records (50,600)
 DL Federal Grants 500

Item 19

To Department of Public Safety - Highway Safety
 From Federal Funds 600
 Schedule of Programs:
 Highway Safety 600

**INFRASTRUCTURE AND
 GENERAL GOVERNMENT**

TRANSPORTATION

Item 20

To Transportation - Support Services
 From Transportation Fund 291,100
 Schedule of Programs:
 Administrative Services 12,400
 Risk Management 233,500
 Human Resources Management (29,900)
 Comptroller 100
 Data Processing 75,000

Item 21

To Transportation - Operations/
 Maintenance Management
 From Transportation Fund 28,500
 Schedule of Programs:
 Region 1 200
 Region 2 (200)
 Region 3 100
 Region 4 300
 Traffic Operations Center 100
 Shops 28,000

Item 22

To Transportation - Region Management
 From Transportation Fund 21,300
 From Dedicated Credits Revenue 700
 Schedule of Programs:
 Region 1 7,100
 Region 2 1,400
 Region 3 7,100
 Price 6,400

Item 23

To Transportation - Aeronautics
 From Aeronautics Restricted Account (2,200)
 Schedule of Programs:
 Administration (2,200)

**DEPARTMENT OF
 ADMINISTRATIVE SERVICES**

Item 24

To Department of Administrative Services -
 Executive Director
 From General Fund (11,000)
 Schedule of Programs:

Executive Director	(11,000)
Item 25	
To Department of Administrative Services - Inspector General of Medicaid Services	
From General Fund	(100)
From Revenue Transfers	(100)
Schedule of Programs:	
Inspector General of Medicaid Services ..	(200)
Item 26	
To Department of Administrative Services - Administrative Rules	
From General Fund	300
Schedule of Programs:	
DAR Administration	300
Item 27	
To Department of Administrative Services - DFCM Administration	
From General Fund	(3,200)
From Dedicated Credits Revenue	(1,200)
From Capital Projects Fund	(2,500)
From Capital Project Fund - Contingency Reserve	(100)
From Capital Project Fund - Project Reserve	(300)
Schedule of Programs:	
DFCM Administration	(7,300)
Item 28	
To Department of Administrative Services - Building Board Program	
From Capital Projects Fund	100
Schedule of Programs:	
Building Board Program	100
Item 29	
To Department of Administrative Services - State Archives	
From General Fund	1,900
Schedule of Programs:	
Archives Administration	2,000
Records Analysis	(100)
Preservation Services	(100)
Patron Services	(100)
Records Services	200
Item 30	
To Department of Administrative Services - Finance Administration	
From General Fund	(95,900)
From Dedicated Credits Revenue	(46,000)
From General Fund Restricted - Internal Service Fund Overhead	(54,000)
Schedule of Programs:	
Finance Director's Office	(400)
Payroll	(4,800)
Payables/Disbursing	(60,000)
Technical Services	(21,600)
Financial Reporting	500
Financial Information Systems	(109,600)
Item 31	
To Department of Administrative Services - Judicial Conduct Commission	
From General Fund	800
Schedule of Programs:	
Judicial Conduct Commission	800

Item 32	
To Department of Administrative Services - Purchasing	
From General Fund	1,900
Schedule of Programs:	
Purchasing and General Services	1,900

DEPARTMENT OF TECHNOLOGY SERVICES

Item 33	
To Department of Technology Services - Integrated Technology Division	
From General Fund	200
From Federal Funds	100
From Dedicated Credits Revenue	200
From General Fund Restricted - Statewide Unified E-911 Emergency Account	100
Schedule of Programs:	
Automated Geographic Reference Center ..	600

CAPITAL BUDGET

Item 34	
To Capital Budget - Capital Improvements	
From General Fund	100
From Education Fund	100
Schedule of Programs:	
Capital Improvements	200

BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR

DEPARTMENT OF HERITAGE AND ARTS

Item 35	
To Department of Heritage and Arts - Administration	
From General Fund	23,600
From Dedicated Credits Revenue	1,200
Schedule of Programs:	
Executive Director's Office	(800)
Information Technology	25,600

Item 36	
To Department of Heritage and Arts - Historical Society	
From Dedicated Credits Revenue	2,300
Schedule of Programs:	
State Historical Society	2,300

Item 37	
To Department of Heritage and Arts - State History	
From General Fund	51,200
From Federal Funds	(200)
Schedule of Programs:	
Administration	51,700
Library and Collections	(100)
Public History, Communication and Information	(200)
Historic Preservation and Antiquities	(400)

Item 38	
To Department of Heritage and Arts - Division of Arts and Museums	
From General Fund	4,400
Schedule of Programs:	
Administration	4,600
Community Arts Outreach	(200)

Item 39

To Department of Heritage and Arts -
 State Library
 From General Fund 3,600
 From Federal Funds 200
 From Dedicated Credits Revenue 800
 Schedule of Programs:
 Administration 5,500
 Blind and Disabled (1,400)
 Library Development 700
 Library Resources (200)

Item 40

To Department of Heritage and Arts -
 Indian Affairs
 From General Fund 100
 Schedule of Programs:
 Indian Affairs 100

Item 41

To Department of Heritage and Arts -
 Commission on Service and Volunteerism
 From Federal Funds (100)
 Schedule of Programs:
 Commission on Service and Volunteerism (100)

**GOVERNOR'S OFFICE OF
 ECONOMIC DEVELOPMENT**

Item 42

To Governor's Office of Economic Development -
 Administration
 From General Fund (10,300)
 From Dedicated Credits Revenue (2,400)
 Schedule of Programs:
 Administration (12,700)

Item 43

To Governor's Office of Economic Development -
 STEM Action Center
 From General Fund 200
 From Dedicated Credits Revenue 100
 Schedule of Programs:
 STEM Action Center 300

Item 44

To Governor's Office of Economic Development -
 Office of Tourism
 From General Fund 3,400
 From Dedicated Credits Revenue 400
 Schedule of Programs:
 Administration 1,300
 Operations and Fulfillment 2,300
 Film Commission 200

Item 45

To Governor's Office of Economic Development -
 Business Development
 From General Fund 1,500
 From Federal Funds 200
 From Dedicated Credits Revenue 100
 Schedule of Programs:
 Outreach and International Trade 500
 Corporate Recruitment and Business
 Services 1,300

Item 46

To Governor's Office of Economic Development -
 Pete Suazo Utah Athletics Commission
 From General Fund 100

Schedule of Programs:

Pete Suazo Utah Athletics Commission ... 100

Item 47

To Governor's Office of Economic Development -
 Utah Broadband Outreach Center
 From General Fund 500
 Schedule of Programs:
 Utah Broadband Outreach Center 500

UTAH STATE TAX COMMISSION

Item 48

To Utah State Tax Commission -
 Tax Administration
 From General Fund 87,700
 From Education Fund 150,800
 From Federal Funds (300)
 From Dedicated Credits Revenue 14,200
 From General Fund Restricted - Motor
 Vehicle Enforcement Division
 Temporary Permit Account (3,700)
 From General Fund Restricted - Sales
 and Use Tax Admin Fees (7,500)
 From Uninsured Motorist Identification
 Restricted Account (700)
 Schedule of Programs:
 Administration Division (39,800)
 Auditing Division (5,900)
 Technology Management 45,000
 Tax Processing Division 326,500
 Tax Payer Services 4,800
 Property Tax Division (1,800)
 Motor Vehicles (84,500)
 Motor Vehicle Enforcement Division ... (3,800)

Item 49

To Utah State Tax Commission -
 License Plates Production
 From Dedicated Credits Revenue 1,100
 Schedule of Programs:
 License Plates Production 1,100

**UTAH SCIENCE TECHNOLOGY AND
 RESEARCH GOVERNING AUTHORITY**

Item 50

To Utah Science Technology and
 Research Governing Authority -
 Technology Outreach and Innovation
 From General Fund 200
 Schedule of Programs:
 East 100
 Salt Lake SBIR-STTR Resource Center ... 100

Item 51

To Utah Science Technology and
 Research Governing Authority -
 USTAR Administration
 From General Fund 800
 Schedule of Programs:
 Administration 800

**DEPARTMENT OF ALCOHOLIC
 BEVERAGE CONTROL**

Item 52

To Department of Alcoholic Beverage Control -
 DABC Operations
 From Liquor Control Fund 326,000
 Schedule of Programs:

Executive Director	(500)
Administration	(41,800)
Operations	25,700
Warehouse and Distribution	3,100
Stores and Agencies	339,500

LABOR COMMISSION

Item 53

To Labor Commission	
From General Fund	600
From Federal Funds	2,100
From Dedicated Credits Revenue	100
From Employers' Reinsurance Fund	200
From General Fund Restricted - Industrial Accident Rest. Account	7,300
From General Fund Restricted - Workplace Safety Account	300
Schedule of Programs:	
Administration	(3,300)
Industrial Accidents	6,300
Adjudication	1,300
Boiler, Elevator and Coal Mine Safety Division	1,900
Antidiscrimination and Labor	1,600
Utah Occupational Safety and Health	2,800

DEPARTMENT OF COMMERCE

Item 54

To Department of Commerce - Commerce General Regulation	
From Federal Funds	100
From Dedicated Credits Revenue	(1,400)
From General Fund Restricted - Commerce Service Account - Public Utilities Regulatory Fee	(300)
From General Fund Restricted - Commerce Service Account	(64,200)
From General Fund Restricted - Factory Built Housing Fees	(100)
From General Fund Restricted - Pawnbroker Operations	200
Schedule of Programs:	
Administration	(26,800)
Occupational and Professional Licensing	(10,900)
Securities	1,200
Consumer Protection	1,700
Corporations and Commercial Code ...	(31,100)
Real Estate	400
Office of Consumer Services	(200)

FINANCIAL INSTITUTIONS

Item 55

To Financial Institutions - Financial Institutions Administration	
From General Fund Restricted - Financial Institutions	300
Schedule of Programs:	
Administration	300

INSURANCE DEPARTMENT

Item 56

To Insurance Department - Insurance Department Administration	
--	--

From Federal Funds	(5,600)
From General Fund Restricted - Captive Insurance	(100)
From General Fund Restricted - Insurance Department Account	(39,900)
From General Fund Restricted - Insurance Fraud Investigation Acct	(2,600)
From General Fund Restricted - Technology Development	(1,600)
Schedule of Programs:	
Administration	(45,400)
Insurance Fraud Program	(2,700)
Captive Insurers	(100)
Electronic Commerce Fee	(1,600)

PUBLIC SERVICE COMMISSION

Item 57

To Public Service Commission	
From General Fund Restricted - Commerce Service Account - Public Utilities Regulatory Fee	(6,900)
Schedule of Programs:	
Administration	(6,900)

Item 58

To Public Service Commission - Speech and Hearing Impaired	
From Dedicated Credits Revenue	900
Schedule of Programs:	
Speech and Hearing Impaired	900

SOCIAL SERVICES

DEPARTMENT OF HEALTH

Item 59

To Department of Health - Executive Director's Operations	
From General Fund	16,500
From Federal Funds	16,200
From Dedicated Credits Revenue	1,200
From Revenue Transfers	800
Schedule of Programs:	
Executive Director	32,800
Center for Health Data and Informatics	3,100
Program Operations	(1,800)
Adoption Records Access	600

Item 60

To Department of Health - Family Health and Preparedness	
From General Fund	7,400
From Federal Funds	17,600
From Dedicated Credits Revenue	(400)
From General Fund Restricted - Children's Hearing Aid Pilot Program Account	900
From General Fund Restricted - K. Oscarson Children's Organ Transplant	800
From Revenue Transfers	42,700
Schedule of Programs:	
Director's Office	(1,100)
Maternal and Child Health	2,000
Child Development	4,900
Children with Special Health Care Needs	75,500
Public Health and Health Care Preparedness	(7,400)

Health Facility Licensing and Certification	(200)
Primary Care	300
Emergency Medical Services and Preparedness	(5,000)

Item 61

To Department of Health - Disease Control and Prevention	
From General Fund	96,300
From Federal Funds	2,400
From Dedicated Credits Revenue	4,800
From Department of Public Safety Restricted Account	100
From Revenue Transfers	300
Schedule of Programs:	
General Administration	95,500
Health Promotion	3,500
Epidemiology	(300)
Laboratory Operations and Testing	(400)
Office of the Medical Examiner	5,600

Item 62

To Department of Health - Medicaid and Health Financing	
From General Fund	(16,300)
From Federal Funds	(138,000)
From Dedicated Credits Revenue	(34,100)
From General Fund Restricted - Nursing Care Facilities Account	(2,600)
From Revenue Transfers	(3,400)
Schedule of Programs:	
Director's Office	(1,000)
Financial Services	(154,700)
Managed Health Care	(2,300)
Medicaid Operations	300
Eligibility Policy	200
Coverage and Reimbursement Policy	400
Contracts	(37,300)

Item 63

To Department of Health - Children's Health Insurance Program	
From General Fund	200
From General Fund, One-Time	(200)
From Federal Funds	3,200
From Federal Funds, One-Time	400
From Dedicated Credits Revenue	200
From Dedicated Credits Revenue, One-Time	(200)
Schedule of Programs:	
Children's Health Insurance Program	3,600

Item 64

To Department of Health - Medicaid Services	
From General Fund	1,300
From Federal Funds	(6,200)
From Dedicated Credits Revenue	3,200
From Revenue Transfers	1,700
Schedule of Programs:	
Other Services	8,700
Provider Reimbursement Information System for Medicaid	(8,700)

DEPARTMENT OF WORKFORCE SERVICES

Item 65

To Department of Workforce Services - Administration	
From General Fund	24,500
From Federal Funds	47,900
From Dedicated Credits Revenue	500
From Permanent Community Impact Loan Fund	1,600
From Revenue Transfers	22,300
Schedule of Programs:	
Executive Director's Office	(100)
Communications	37,400
Human Resources	(41,300)
Administrative Support	100,800

Item 66

To Department of Workforce Services - Operations and Policy	
From General Fund	(27,000)
From Federal Funds	(101,000)
From Dedicated Credits Revenue	2,100
From Revenue Transfers	(123,000)
Schedule of Programs:	
Facilities and Pass-Through	34,000
Workforce Development	26,400
Workforce Research and Analysis	(100)
Eligibility Services	(92,700)
Information Technology	(216,500)

Item 67

To Department of Workforce Services - Nutrition Assistance - SNAP	
From Federal Funds	(6,300)
Schedule of Programs:	
Nutrition Assistance - SNAP	(6,300)

Item 68

To Department of Workforce Services - General Assistance	
From General Fund	(400)
Schedule of Programs:	
General Assistance	(400)

Item 69

To Department of Workforce Services - Unemployment Insurance	
From General Fund	(700)
From Federal Funds	(39,800)
From Dedicated Credits Revenue	(1,500)
From Revenue Transfers	(2,100)
Schedule of Programs:	
Unemployment Insurance Administration	(44,000)
Adjudication	(100)

Item 70

To Department of Workforce Services - State Office of Rehabilitation	
From General Fund	6,900
From Federal Funds	21,700
From Dedicated Credits Revenue	700
Schedule of Programs:	
Rehabilitation Services	19,400
Disability Determination	4,000
Deaf and Hard of Hearing	1,400
Aspire Grant	4,500

Item 71

To Department of Workforce Services - Housing and Community Development	
From General Fund	100
From Federal Funds	(7,200)
From Dedicated Credits Revenue	200
From General Fund Restricted - Pamela Atkinson Homeless Account	100
From Permanent Community Impact Loan Fund	1,000
Schedule of Programs:	
Community Development	
Administration	900
HEAT	(8,500)
Housing Development	400
Weatherization Assistance	400
Community Development	900
Homeless Committee	300
Community Services	(200)

DEPARTMENT OF HUMAN SERVICES**Item 72**

To Department of Human Services - Executive Director Operations	
From General Fund	4,700
From Federal Funds	2,600
From Revenue Transfers	1,400
Schedule of Programs:	
Executive Director's Office	2,600
Legal Affairs	500
Information Technology	(3,100)
Fiscal Operations	3,600
Office of Services Review	1,400
Office of Licensing	2,800
Utah Developmental Disabilities Council	500
Utah Marriage Commission	400

Item 73

To Department of Human Services - Division of Substance Abuse and Mental Health	
From General Fund	25,800
From Federal Funds	7,300
From Dedicated Credits Revenue	1,200
From Revenue Transfers	8,600
Schedule of Programs:	
Administration - DSAMH	2,500
Community Mental Health Services	6,400
State Hospital	33,600
State Substance Abuse Services	300
Drug Courts	100

Item 74

To Department of Human Services - Division of Services for People with Disabilities	
From General Fund	24,600
From Federal Funds	800
From Dedicated Credits Revenue	1,200
From Revenue Transfers	33,700
Schedule of Programs:	
Administration - DSPD	13,500
Service Delivery	17,400
Utah State Developmental Center	29,400

Item 75

To Department of Human Services - Office of Recovery Services	
From General Fund	(15,500)
From Federal Funds	(30,500)

From Dedicated Credits Revenue	5,300
From Revenue Transfers	(700)
Schedule of Programs:	
Administration - ORS	100
Financial Services	(73,400)
Electronic Technology	14,200
Child Support Services	18,100
Children in Care Collections	(200)
Attorney General Contract	(300)
Medical Collections	100

Item 76

To Department of Human Services - Division of Child and Family Services	
From General Fund	88,600
From Federal Funds	50,400
From Dedicated Credits Revenue	100
From General Fund Restricted - Victims of Domestic Violence Services Account	100
From Revenue Transfers	100
Schedule of Programs:	
Administration - DCFS	6,100
Service Delivery	81,500
Facility-based Services	200
Minor Grants	3,600
Domestic Violence	700
Child Welfare Management Information System	47,200

Item 77

To Department of Human Services - Division of Aging and Adult Services	
From General Fund	9,100
From Federal Funds	900
Schedule of Programs:	
Administration - DAAS	1,700
Adult Protective Services	8,100
Aging Waiver Services	200

Item 78

To Department of Human Services - Office of Public Guardian	
From General Fund	300
From Revenue Transfers	200
Schedule of Programs:	
Office of Public Guardian	500

HIGHER EDUCATION**UNIVERSITY OF UTAH****Item 79**

To University of Utah - Education and General	
From Education Fund	(84,200)
From Dedicated Credits Revenue	(89,600)
Schedule of Programs:	
Education and General	(173,800)

UTAH STATE UNIVERSITY**Item 80**

To Utah State University - Education and General	
From Education Fund	18,900
From Dedicated Credits Revenue	12,600
Schedule of Programs:	
Education and General	31,500

Item 81

To Utah State University - USU - Eastern Education and General	
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From Education Fund 4,200
 From Dedicated Credits Revenue 900
 Schedule of Programs:
 USU - Eastern Education and
 General 5,100

WEBER STATE UNIVERSITY

Item 82

To Weber State University - Education
 and General
 From Education Fund (2,800)
 From Dedicated Credits Revenue (2,300)
 Schedule of Programs:
 Education and General (5,100)

SOUTHERN UTAH UNIVERSITY

Item 83

To Southern Utah University - Education
 and General
 From Education Fund (700)
 From Dedicated Credits Revenue (600)
 Schedule of Programs:
 Education and General (1,300)

UTAH VALLEY UNIVERSITY

Item 84

To Utah Valley University - Education and General
 From Education Fund 18,300
 From Dedicated Credits Revenue 19,700
 Schedule of Programs:
 Education and General 38,000

SNOW COLLEGE

Item 85

To Snow College - Education and General
 From Education Fund (4,800)
 From Dedicated Credits Revenue (2,600)
 Schedule of Programs:
 Education and General (7,400)

DIXIE STATE UNIVERSITY

Item 86

To Dixie State University - Education and General
 From Education Fund 700
 From Dedicated Credits Revenue 500
 Schedule of Programs:
 Education and General 1,200

SALT LAKE COMMUNITY COLLEGE

Item 87

To Salt Lake Community College - Education
 and General
 From Education Fund (7,100)
 From Dedicated Credits Revenue (5,000)
 Schedule of Programs:
 Education and General (12,100)

STATE BOARD OF REGENTS

Item 88

To State Board of Regents - Administration
 From General Fund (11,500)
 Schedule of Programs:
 Administration (11,500)

**UTAH COLLEGE OF APPLIED
 TECHNOLOGY**

Item 89

To Utah College of Applied Technology -
 Administration
 From General Fund 2,000
 From Education Fund 14,200
 Schedule of Programs:
 Administration 16,200

Item 90

To Utah College of Applied Technology -
 Bridgerland Applied Technology College
 From General Fund 10,500
 From Education Fund 58,900
 From Dedicated Credits Revenue 4,400
 Schedule of Programs:
 Bridgerland Applied Technology
 College 73,800

Item 91

To Utah College of Applied Technology -
 Davis Applied Technology College
 From General Fund (4,000)
 From Education Fund (8,900)
 From Dedicated Credits Revenue (1,600)
 Schedule of Programs:
 Davis Applied Technology College (14,500)

Item 92

To Utah College of Applied Technology -
 Dixie Applied Technology College
 From Education Fund 3,400
 From Dedicated Credits Revenue 100
 Schedule of Programs:
 Dixie Applied Technology College 3,500

Item 93

To Utah College of Applied Technology -
 Mountainland Applied Technology College
 From Education Fund 4,700
 From Dedicated Credits Revenue 500
 Schedule of Programs:
 Mountainland Applied Technology
 College 5,200

Item 94

To Utah College of Applied Technology -
 Ogden/Weber Applied Technology College
 From General Fund (1,900)
 From Education Fund (3,300)
 From Dedicated Credits Revenue (600)
 Schedule of Programs:
 Ogden/Weber Applied Technology
 College (5,800)

Item 95

To Utah College of Applied Technology -
 Southwest Applied Technology College
 From General Fund 100
 From Education Fund 1,300
 From Dedicated Credits Revenue 100
 Schedule of Programs:
 Southwest Applied Technology College 1,500

Item 96

To Utah College of Applied Technology -
 Tooele Applied Technology College
 From General Fund (2,200)
 From Education Fund (6,600)
 From Dedicated Credits Revenue (500)

Schedule of Programs:

Tooele Applied Technology College (9,300)

Item 97

To Utah College of Applied Technology -

 Uintah Basin Applied Technology College

From General Fund 1,800

From Education Fund 8,800

From Dedicated Credits Revenue 700

Schedule of Programs:

 Uintah Basin Applied Technology

 College 11,300

**NATURAL RESOURCES, AGRICULTURE,
AND ENVIRONMENTAL QUALITY**

DEPARTMENT OF NATURAL RESOURCES**Item 98**

To Department of Natural Resources -

 Administration

From General Fund 66,900

Schedule of Programs:

 Executive Director 66,000

 Administrative Services 700

 Public Information Office 100

 Law Enforcement 100

Item 99

To Department of Natural Resources -

 Species Protection

From General Fund Restricted -

Species Protection 200

Schedule of Programs:

 Species Protection 200

Item 100

To Department of Natural Resources -

 Forestry, Fire and State Lands

From General Fund (35,300)

From Federal Funds 3,500

From Dedicated Credits Revenue 7,300

From General Fund Restricted -

 Sovereign Land Management (42,300)

Schedule of Programs:

 Division Administration (82,100)

 Fire Management 400

 Lands Management 300

 Forest Management 100

 Program Delivery 12,400

 Lone Peak Center 2,100

Item 101

To Department of Natural Resources -

 Oil, Gas and Mining

From General Fund (400)

From Federal Funds (900)

Schedule of Programs:

 Administration (5,500)

 Oil and Gas Program 2,900

 Minerals Reclamation (200)

 Coal Program 1,500

Item 102

To Department of Natural Resources -

 Wildlife Resources

From General Fund (2,400)

From Federal Funds 6,300

From Dedicated Credits Revenue (300)

From General Fund Restricted - Boating 200

From General Fund Restricted -

 Mule Deer Protection Account 100

From General Fund Restricted -

 Predator Control Account 200

From Revenue Transfers (300)

From General Fund Restricted -

 Wildlife Resources (31,400)

Schedule of Programs:

 Director's Office (5,500)

 Administrative Services (43,300)

 Conservation Outreach 7,900

 Law Enforcement (200)

 Habitat Section 3,900

 Wildlife Section 4,100

 Aquatic Section 5,500

Item 103

To Department of Natural Resources -

 Parks and Recreation

From General Fund 10,900

From Federal Funds 300

From Dedicated Credits Revenue 6,200

From General Fund Restricted -

 Boating 49,600

From General Fund Restricted -

 Off-highway Vehicle 68,900

From General Fund Restricted -

 State Park Fees 113,600

Schedule of Programs:

 Executive Management 300

 Park Operation Management 5,200

 Planning and Design 100

 Support Services 243,500

 Recreation Services 400

Item 104

To Department of Natural Resources -

 Utah Geological Survey

From General Fund 2,400

From Dedicated Credits Revenue (100)

From General Fund Restricted -

 Mineral Lease 600

Schedule of Programs:

 Administration (100)

 Technical Services 3,400

 Geologic Hazards (200)

 Geologic Mapping (200)

 Energy and Minerals (200)

 Ground Water and Paleontology 200

Item 105

To Department of Natural Resources -

 Water Resources

From General Fund 70,800

From Federal Funds 100

From Water Resources Conservation

 and Development Fund 2,100

Schedule of Programs:

 Administration 70,400

 Interstate Streams 100

 Planning 1,700

 Construction 800

Item 106

To Department of Natural Resources -

 Water Rights

From General Fund 1,900

From Federal Funds 100

From Dedicated Credits Revenue 1,100

Schedule of Programs:

Administration	(900)
Applications and Records	3,000
Dam Safety	300
Field Services	400
Adjudication	100
Technical Services	200

DEPARTMENT OF ENVIRONMENTAL QUALITY

Item 107

To Department of Environmental Quality - Executive Director's Office	
From General Fund	(34,700)
From Federal Funds	(5,500)
From General Fund Restricted - Environmental Quality	(17,800)
Schedule of Programs:	
Executive Director's Office	(58,000)

Item 108

To Department of Environmental Quality - Air Quality	
From General Fund	(1,600)
From Federal Funds	(1,700)
From Dedicated Credits Revenue	(1,600)
Schedule of Programs:	
Air Quality	(4,900)

Item 109

To Department of Environmental Quality - Environmental Response and Remediation	
From General Fund	200
From Federal Funds	1,300
From Dedicated Credits Revenue	100
From Petroleum Storage Tank Trust Fund ..	500
From General Fund Restricted - Voluntary Cleanup	100
Schedule of Programs:	
Environmental Response and Remediation	2,200

Item 110

To Department of Environmental Quality - Water Quality	
From General Fund	700
From Federal Funds	1,300
From Dedicated Credits Revenue	400
From Revenue Transfers	100
From Water Dev. Security Fund - Utah Wastewater Loan Program	400
From Water Dev. Security Fund - Water Quality Origination Fee	100
Schedule of Programs:	
Water Quality	3,000

Item 111

To Department of Environmental Quality - Drinking Water	
From General Fund	1,400
From Federal Funds	4,600
From Dedicated Credits Revenue	300
From Water Dev. Security Fund - Drinking Water Loan Program	1,200
From Water Dev. Security Fund - Drinking Water Origination Fee	300
Schedule of Programs:	
Drinking Water	7,800

Item 112

To Department of Environmental Quality - Waste Management and Radiation Control	
From General Fund	400
From Federal Funds	600
From Dedicated Credits Revenue	1,100
From General Fund Restricted - Environmental Quality	2,800
From General Fund Restricted - Used Oil Collection Administration	400
From Waste Tire Recycling Fund	100
Schedule of Programs:	
Waste Management and Radiation Control	5,400

PUBLIC LANDS POLICY COORDINATING OFFICE

Item 113

To Public Lands Policy Coordinating Office	
From General Fund	(6,800)
From General Fund Restricted - Constitutional Defense	(1,000)
Schedule of Programs:	
Public Lands Policy Coordinating Office	(7,800)

Item 114

To Public Lands Policy Coordinating Office - Public Lands Litigation	
From General Fund Restricted - Constitutional Defense	300
Schedule of Programs:	
Public Lands Litigation	300

GOVERNOR'S OFFICE

Item 115

To Governor's Office - Office of Energy Development	
From General Fund	600
From Federal Funds	200
From Utah State Energy Program Revolving Loan Fund (ARRA)	100
Schedule of Programs:	
Office of Energy Development	900

DEPARTMENT OF AGRICULTURE AND FOOD

Item 116

To Department of Agriculture and Food - Administration	
From General Fund	7,500
From Federal Funds	3,900
From Dedicated Credits Revenue	1,600
From General Fund Restricted - Cat and Dog Community Spay and Neuter Program Restricted Account	100
Schedule of Programs:	
General Administration	13,200
Chemistry Laboratory	(100)

Item 117

To Department of Agriculture and Food - Animal Health	
From General Fund	1,000
From Federal Funds	1,700
From General Fund Restricted - Livestock Brand	500

Schedule of Programs:	
Animal Health	(100)
Brand Inspection	800
Meat Inspection	2,500

Item 118

To Department of Agriculture and Food - Plant Industry	
From General Fund	(300)
From Federal Funds	(400)
From Agriculture Resource Development Fund	(100)
Schedule of Programs:	
Environmental Quality	(200)
Grain Inspection	100
Insect Infestation	(200)
Grazing Improvement Program	(500)

Item 119

To Department of Agriculture and Food - Regulatory Services	
From General Fund	(100)
From Dedicated Credits Revenue	(100)
Schedule of Programs:	
Regulatory Services	(200)

Item 120

To Department of Agriculture and Food - Predatory Animal Control	
From General Fund	(400)
From Revenue Transfers	(400)
From General Fund Rest. - Agriculture and Wildlife Damage Prevention	(300)
Schedule of Programs:	
Predatory Animal Control	(1,100)

Item 121

To Department of Agriculture and Food - Resource Conservation	
From General Fund	(100)
From Agriculture Resource Development Fund	(100)
From Utah Rural Rehabilitation Loan State Fund	(100)
Schedule of Programs:	
Resource Conservation Administration ..	(400)
Resource Conservation	100

**SCHOOL AND INSTITUTIONAL
TRUST LANDS ADMINISTRATION**

Item 122

To School and Institutional Trust Lands Administration	
From Land Grant Management Fund	21,800
Schedule of Programs:	
Administration	18,100
Oil and Gas	200
Mining	200
Surface	700
Development - Operating	(400)
Legal/Contracts	(200)
Information Technology Group	3,200

PUBLIC EDUCATION

STATE BOARD OF EDUCATION

Item 123

To State Board of Education - State Administrative Office	
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From General Fund	(1,100)
From Education Fund	(37,600)
From Federal Funds	(3,100)
From Dedicated Credits Revenue	(1,200)
From General Fund Restricted - Mineral Lease	(13,400)
From Uniform School Fund Restricted Trust Distribution Account	300
From General Fund Restricted - Land Exchange Distribution Account	(1,200)
From Revenue Transfers	(22,200)
Schedule of Programs:	
Assessment and Accountability	(500)
Educational Equity	(100)
Board and Administration	(75,700)
Business Services	(200)
Career and Technical Education	(700)
District Computer Services	(900)
Federal Elementary and Secondary Education Act	(300)
School Trust	300
Special Education	(900)
Teaching and Learning	(500)

Item 124

To State Board of Education - Initiative Programs	
From General Fund	(200)
Schedule of Programs:	
Carson Smith Scholarships	(200)

Item 125

To State Board of Education - State Charter School Board	
From Education Fund	(100)
Schedule of Programs:	
State Charter School Board	(100)

Item 126

To State Board of Education - Educator Licensing From Professional Practices Restricted Subfund	(300)
Schedule of Programs:	
Educator Licensing	(300)

Item 127

To State Board of Education - Child Nutrition From Federal Funds	(300)
From Dedicated Credit - Liquor Tax	(100)
Schedule of Programs:	
Child Nutrition	(400)

Item 128

To State Board of Education - Utah Schools for the Deaf and the Blind	
From Education Fund	18,800
From Dedicated Credits Revenue	1,900
From Revenue Transfers	6,000
Schedule of Programs:	
Educational Services	(200)
Support Services	26,900

**SCHOOL AND INSTITUTIONAL
TRUST FUND OFFICE**

Item 129

To School and Institutional Trust Fund Office From School and Institutional Trust Fund Management Account	700
Schedule of Programs:	
School and Institutional Trust Fund Office	700

**RETIREMENT AND
INDEPENDENT ENTITIES**

CAREER SERVICE REVIEW OFFICE

Item 130

To Career Service Review Office
From General Fund 600
Schedule of Programs:
Career Service Review Office 600

EXECUTIVE APPROPRIATIONS

UTAH NATIONAL GUARD

Item 131

To Utah National Guard
From General Fund 100,700
From Dedicated Credits Revenue 100
Schedule of Programs:
Operations and Maintenance 100,800

**DEPARTMENT OF VETERANS'
AND MILITARY AFFAIRS**

Item 132

To Department of Veterans' and Military Affairs -
Veterans' and Military Affairs
From General Fund 5,900
From Federal Funds 2,300
From Dedicated Credits Revenue 800
Schedule of Programs:
Administration 3,800
Cemetery 5,400
State Approving Agency (100)
Outreach Services (100)

LEGISLATURE

Item 133

To Legislature - Senate
From General Fund 1,000
Schedule of Programs:
Administration 1,000

Item 134

To Legislature - House of Representatives
From General Fund 2,700
Schedule of Programs:
Administration 2,700

Item 135

To Legislature - Legislative Printing
From General Fund 400
From Dedicated Credits Revenue 200
Schedule of Programs:
Administration 600

Item 136

To Legislature - Office of Legislative Research
and General Counsel
From General Fund 2,700
Schedule of Programs:
Administration 2,700

Item 137

To Legislature - Office of the Legislative
Fiscal Analyst
From General Fund 200
Schedule of Programs:

Administration and Research 200

Item 138

To Legislature - Office of the Legislative
Auditor General
From General Fund 800
Schedule of Programs:
Administration 800

**Subsection 1(b). Expendable Funds and
Accounts.**

The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account's applicable authorizing statute.

**EXECUTIVE OFFICES
AND CRIMINAL JUSTICE**

DEPARTMENT OF PUBLIC SAFETY

Item 139

To Department of Public Safety -
Alcoholic Beverage Control Act
Enforcement Fund
From Dedicated Credits Revenue (800)
Schedule of Programs:
Alcoholic Beverage Control Act
Enforcement Fund (800)

**INFRASTRUCTURE AND
GENERAL GOVERNMENT**

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

Item 140

To Department of Administrative Services -
State Debt Collection Fund
From Dedicated Credits Revenue (1,400)
From Other Financing Sources (1,200)
Schedule of Programs:
State Debt Collection Fund (2,600)

**BUSINESS, ECONOMIC
DEVELOPMENT, AND LABOR**

DEPARTMENT OF COMMERCE

Item 141

To Department of Commerce - Securities
Investor Education/Training/Enforcement Fund
From Licenses/Fees 100
Schedule of Programs:
Securities Investor
Education/Training/Enforcement Fund .. 100

EXECUTIVE APPROPRIATIONS

CAPITOL PRESERVATION BOARD

Item 142

To Capitol Preservation Board - State
Capitol Restricted Special Revenue Fund
From Dedicated Credits Revenue (1,800)
Schedule of Programs:

State Capitol Fund (1,800)

DEPARTMENT OF VETERANS' AND MILITARY AFFAIRS

Item 143

To Department of Veterans' and Military Affairs - Utah Veterans' Nursing Home Fund

From Federal Funds 5,900

Schedule of Programs:

Veterans' Nursing Home Fund 5,900

Subsection 1(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

EXECUTIVE OFFICES AND CRIMINAL JUSTICE

ATTORNEY GENERAL

Item 144

To Attorney General - ISF - Attorney General

From General Fund 148,600

Schedule of Programs:

ISF - Attorney General 148,600

UTAH DEPARTMENT OF CORRECTIONS

Item 145

To Utah Department of Corrections - Utah Correctional Industries

From Dedicated Credits Revenue 1,600

Schedule of Programs:

Utah Correctional Industries 1,600

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENTAL QUALITY

DEPARTMENT OF AGRICULTURE AND FOOD

Item 146

To Department of Agriculture and Food - Agriculture Loan Programs

From Agriculture Resource Development Fund (100)

Schedule of Programs:

Agriculture Loan Program (100)

Subsection 1(d). Fiduciary Funds. The

Legislature has reviewed proposed revenues,

expenditures, fund balances and changes in fund balances for the following fiduciary funds.

INFRASTRUCTURE AND GENERAL GOVERNMENT

DEPARTMENT OF ADMINISTRATIVE SERVICES

Item 147

To Department of Administrative Services - Utah Navajo Royalties Holding Fund

From Other Financing Sources 100

Schedule of Programs:

Utah Navajo Royalties Holding Fund 100

Section 2. Fees. Under the terms and conditions of Utah Code Title 63J Chapter 1 and other fee statutes as applicable, the following fees and rates are approved for the use and support of the government of the State of Utah for the Fiscal Year beginning July 1, 2017 and ending June 30, 2018.

EXECUTIVE OFFICES AND CRIMINAL JUSTICE

GOVERNOR'S OFFICE

Lt. Governor's Office

Lobbyist Disclosure and Regulation

Lobbyist Badge Replacement 10.00

Government Records Access and Management Act

Copy of Lobbyist List 10.00

Copy of Election Results 35.00

Copy of Complete Voter Information

Database 1,050.00

Custom Voter Registration Report

(per hour) 90.00

Photocopies (per page) 0.25

International Postage 10.00

Certifications

Notary

Notary Commission Filing 45.00

Duplicate Notary Commission 5.00

Special Certificate 5.00

Notary Testing 30.00

Apostille

Apostille 15.00

Non Apostille 15.00

Authentication

Expedited Processing

Within two hours if presented

before 3:00 p.m. 50.00

End of next business day 25.00

GOVERNOR'S OFFICE OF MANAGEMENT AND BUDGET

Operational Excellence

Conference Registration (per unit / day) 75.00

COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

CCJJ Commission

Judicial Nominating Committee

Background Check Fee 10.00

Utah Office for Victims of Crime

Utah Crime Victims Conference 150.00

Sundry Collections Variable

Utah Victim Assistance Academy 500.00

Extraditions
 Extraditions Services-Restitution Court Ordered

OFFICE OF THE STATE AUDITOR

STATE AUDITOR

Training (per hour) 20.00
 Professional Services Actual Cost

This fee is to reimburse the State Auditor for the actual costs of audit services provided.
 Record Access Fee Actual Cost

ATTORNEY GENERAL

Administration
 Government Records Access and Management Act
 Document certification 2.00
 CD Duplication (per CD) 5.00

Plus actual staff costs
 DVD Duplication (per DVD) 10.00

Plus actual staff costs
 Photocopies
 Non-color (per page) 0.25
 Color (per page) 0.40
 11 x 17 (per page) 1.00
 Odd size Actual cost
 Document faxing (per page) 1.00
 Long distance faxing for over 10 pages 1.00
 Record preparation Actual cost
 Record preparation 2.00

Plus actual postage costs
 Other media Actual cost
 Other services Actual cost

ISF - ATTORNEY GENERAL

Hourly Attorney Rate in CSRO Disputes ... 97.00

UTAH DEPARTMENT OF CORRECTIONS

PROGRAMS AND OPERATIONS

Department Executive Director
 Government Records Access and Management Act (GRAMA) Fees (GRAMA fees apply to the entire Department of Corrections)

Odd size photocopies (per page) Actual cost
 Fee entitled "Odd size photocopies" applies to the entire Department of Corrections.

Document Certification 2.00
 Fee entitled "Document Certification" applies to the entire Department of Corrections.

Local document faxing (per page) 0.50
 Fee entitled "Local Document Faxing" applies to the entire Department of Corrections.

Long distance document faxing (per page) 2.00
 Fee entitled "Long Distance Document Faxing" applies to the entire Department Of Corrections.

Staff time to search, compile, and otherwise prepare record Actual cost

Fee entitled "Staff time to search, compile, and otherwise prepare record" applies to the entire Department of Corrections.

Mail and ship preparation, plus actual postage costs Actual cost

Fee entitled "Mail and ship preparation, plus actual postage costs" applies to the entire Department of Corrections.

CD Duplication (per CD) 5.00

Fee entitled "CD Duplication" applies to the entire Department of Corrections.

DVD Duplication (per DVD) 10.00

Fee entitled "DVD Duplication" applies to the entire Department of Corrections.

Other media Actual cost

Fee entitled "Other Media" applies to the entire Department of Corrections.

Other services Actual cost

Fee entitled "Other Services" applies to the entire Department of Corrections.

8.5 x 11 photocopy (per page) 0.25

Fee entitled "8.5 x 11 photocopy" applies to the entire Department of Corrections.

Parole/Probation Supervision
 OSDC Supervision Collection 30.00

Fee entitled "OSDC Supervision Collection" applies for the entire Department of Corrections.

Resident Support 6.00

Fee entitled "Resident Support" applies for the entire Department of Corrections.

Department Wide
 Restitution for Prisoner Damages .. Actual cost

Fee entitled "Restitution for Prisoner Damages" applies for the entire Department of Corrections.

False Information Fines .. Range: \$1 - \$84,200

Fee entitled "False Information Fines" applies for the entire Department of Corrections.

Sale of Services Actual cost

Fee entitled "Sale of Services" applies for the entire Department of Corrections.

Inmate Leases & Concessions 11.00

Fee entitled "Inmate Leases & Concessions" applies for the entire Department of Corrections.

Patient Social Security Benefits
 Collections Amount Based on Actual Collected

Fee entitled "Patient Social Security Benefits Collections" applies for the entire Department of Corrections.

Sale of Goods and Materials Actual cost

Fee entitled "Sale of Goods & Materials" applies for the entire Department of Corrections.

Buildings Rental Contractual

Fee entitled "Building Rental" applies for the entire Department of Corrections.

Victim Rep Inmate Withheld Range: \$1 - \$50,000

Fee entitled "Victim Rep Inmate Withheld" applies for the entire Department of Corrections.

Sundry Revenue Collection Miscellaneous collections

Fee entitled "Sundry Revenue Collection" applies for the entire Department of Corrections.
 Offender Tuition
 Offender Tuition Payments Actual cost
 Fee entitled "Offender Tuition Payments" applies to the entire Department of Corrections.

DEPARTMENT MEDICAL SERVICES

Medical Services
 Medical
 Prisoner Various Prostheses Co-pay ... 1/2 cost
 Inmate Support Collections Actual cost

UTAH CORRECTIONAL INDUSTRIES

UCi
 Sale of Goods and Materials .. Cost plus profit
 Sale of Services Cost plus profit

BOARD OF PARDONS AND PAROLE

Records Copies (per page) 0.25
 Audiotape of Hearing 10.00
 Government Records Access and Management Act Response Actual cost
 Copies over 100 pages
 CD 10.00

DEPARTMENT OF HUMAN SERVICES - DIVISION OF JUVENILE JUSTICE SERVICES

PROGRAMS AND OPERATIONS

Administration
 Government Records Access and Management Act Paper (per side of sheet) 0.25
 Audio tape (per tape) 5.00
 Video tape (per tape) 15.00
 Mailing Actual cost
 Compiling and reporting in another format (per hour) 25.00
 Programmer/analyst assistance required (per hour) 50.00

JUDICIAL COUNCIL/STATE COURT ADMINISTRATOR

ADMINISTRATION

Administrative Office
 Email
 Up to 10 pages 5.00
 After 10 pages (per page) 0.50
 Audio tape 10.00
 Video tape 15.00
 CD 10.00
 Reporter Text (per half day) 25.00
 Personnel time after 15 min (per 15 minutes) Cost of Employee Time
 Electronic copy of Court Proceeding (per half day) 10.00
 Court Records Online Subscription

Over 200 records (per search) 0.10
 200 records (per month) 30.00
 Online Services Setup 25.00
 Fax
 Up to 10 pages 5.00
 After 10 pages (per page) 0.50
 Mailings Actual cost
 Preprinted Forms Cost based on number and size
 State Court Administrator
 Copies (per page) 0.25
 Microfiche (per card) 1.00

DEPARTMENT OF PUBLIC SAFETY

PROGRAMS & OPERATIONS

Department Commissioner's Office
 Courier Delivery Actual cost
 Fax (per page) 1.00
 Mailing Actual cost
 Audio/Video/Photos (per CD) 25.00
 Developed photo negatives (per photo) 1.00
 Printed Digital Photos (per paper) 2.00
 1, 2, or 4 photos per sheet (8x11) based on request
 Department Sponsored Conferences
 Registration (per registrant) 275.00
 Late Registration (per registrant) 300.00
 Vendor Fee (per Vendor) 700.00
 Copies
 Color (per page) 1.00
 Over 50 pages (per page) 0.50
 1-10 pages 5.00
 11-50 pages 25.00
 Miscellaneous Computer Processing (per hour) Cost of Employee Time
 CITS Bureau of Criminal Identification
 Concealed Firearm Permit Instructor
 Registration 35.00
 Replication Fee for Rap Back
 Enrollment (per Individual) 10.00
 Record Challenge Fee (per Request) 15.00
 Paper Arrest (OTN) Fingerprint Card
 Packets (per card packet) 15.00
 Board of Pardons Expungement
 Processing 50.00
 TAC Conference Registration 100.00
 Fingerprint Services 15.00
 Print Other State Agency Cards 5.00
 State Agency ID set up 50.00
 Child ID Kits 1.00
 Extra Copies Rap Sheet 15.00
 Extra Fingerprint Cards 5.00
 Automated Fingerprint Identification
 System Database Retention 5.00
 Concealed weapons permit renewal
 Utah Interactive Convenience Fee 0.75
 Photos 15.00
 Application for Removal From White Collar Crime Registry 120.00
 Application for Removal From White Collar Crime Registry
 Sex Offender Kidnap Registry
 Application for removal from registry ... 168.00
 Eligibility Certificate for removal from registry 25.00
 Expungements

Special certificates of eligibility	56.00
Application	50.00
Certificate of Eligibility	56.00
CITS State Crime Labs	
Additional DNA Casework per sample -	
full analysis	894.00
DNA Casework per sample -	
Quantitation only	459.00
Drugs - controlled substances per item	
of evidence	355.00
Fingerprints per item of evidence	345.00
Serology/Biology per item of evidence	335.00
Training Course Materials	
Reimbursement (per Person)	250.00
Training Course Materials Reimbursement	
Highway Patrol - Administration	
Online Traffic Reports Utah	
Interactive Convenience Fee	2.50
UHP Conference Registration Fee	250.00
Photogramatry	100.00
Cessna (per hour)	155.00
Plus meals and lodging	
Helicopter (per hour)	1,350.00
Plus meals and lodging	
Court order requesting blood samples be	
sent to outside agency	40.00
Highway Patrol - Safety Inspections	
Safety Inspection Program	
Inspection Station	
Permit application fee	100.00
Station physical address change	100.00
Replacement of lost permit	2.25
Safety Inspection Manual	5.50
Stickers (book of 25)	4.50
Sticker reports (book of 25)	3.00
Inspection certificates for passenger/light	
truck (book of 50)	3.00
Inspection certificates for ATV	
(book of 25)	3.00
Inspector	
Certificate application fee	7.00
Valid for 5 years	
Certificate renewal fee	4.50
Replacement of lost certificate	1.00
Highway Patrol - Federal/State Projects	
Transportation and Security Details	
(per hour)	100.00
Plus mileage	
Fire Marshall - Fire Operations	
Inspection For Fire Clearance	
Re-Inspection Fee (per	
Re-Inspection)	250.00
Liquid Petroleum Gas	
License	
Class I	450.00
Class II	450.00
Class III	105.00
Class IV	150.00
Branch Office	338.00
Duplicate	30.00
Examination	30.00
Re-examination	30.00
Five Year Examination	30.00
Certificate	40.00
Dispenser Operator B	20.00

Plan Reviews	
More than 5000 gallons	150.00
5000 water gallons or less	75.00
Special inspections (per hour)	50.00
Re-inspection	250.00
3rd inspection or more	
Private Container Inspection	
More than one container	150.00
One container	75.00
Portable Fire Extinguisher and Automatic	
Fire Suppression Systems	
License	300.00
Combination	150.00
Branch Office License	150.00
Certificate of Registration	40.00
Duplicate Certificate of Registration	40.00
License Transfer	50.00
Application for exemption	150.00
Examination	30.00
Re-examination	30.00
Five year examination	30.00
Automatic Fire Sprinkler Inspection and Testing	
Certificate of Registration	30.00
Examination	20.00
Re-examination	20.00
Three year extension	20.00
Fire Alarm Inspection and Testing	
Certificate of Registration	40.00
Examination	30.00
Re-examination	30.00
Three year extension	30.00

EMERGENCY MANAGEMENT

PIO Conference Registration Fees	225.00
PIO Conference Late Registration Fee	250.00
PIO Half Conference Registration Fee	100.00
PIO Conference Guest Fee	200.00
Utah Expo Registration Fee	5.00
Utah Certified Emergency Manager	
(per Application)	100.00

PEACE OFFICERS' STANDARDS AND TRAINING

Basic Training	
Cadet Application	
Satellite Academy Technology Fee	25.00
Online Application Processing Fee	35.00
Rental	
Pursuit Interventions Technique	
Training Vehicles	100.00
Firing Range	300.00
Shoot House	150.00
Camp William Firing Range	200.00
Dorm Room	10.00
K-9 Training (out of state agencies)	2,175.00
Duplicate POST Certification	5.00
Duplicate Certificate, Wallet Card	5.00
Duplicate Radar or Intox Card	2.00
Peace Officers' Standards and Training (POST)	
Reactivation/Waiver	75.00
Supervisor Class	50.00
West Point Class	150.00
Law Enforcement Officials and Judges	
Firearms Course	1,000.00

DRIVER LICENSE

Driver License Administration	
Commercial Driver School	
License	
Original	100.00
Annual Renewal	100.00
Duplicate	10.00
Instructor	30.00
Annual Instructor Renewal	20.00
Duplicate Instructor	6.00
Branch Office Original	30.00
Branch Office Annual Renewal	30.00
Branch Office Reinstatement	75.00
Instructor/Operation Reinstatement	75.00
School Reinstatement	75.00
Commercial Driver License Intra-state	
Medical Waiver	25.00
Certified Record	
first 15 pages	10.75
Includes Motor Vehicle Record	
16 to 30 pages	15.75
Includes Motor Vehicle Record	
31 to 45 pages	20.75
Includes Motor Vehicle Record	
46 or more pages	25.75
Includes Motor Vehicle Record	
Copy of Full Driver History	7.00
Copies of any other record	5.00
Includes tape recording, letter, medical copy, arrests	
Verification	
Driver Address Record Verification	3.00
Validate Service	0.75
Pedestrian Vehicle Permit	13.00
Citation Monitoring Verification	0.06
Ignition Interlock System	
License	
Provider	
Original	100.00
Annual Renewal	100.00
Duplicate	10.00
Provider Branch Office Inspection	30.00
Provider Branch Office Annual Inspection	30.00
Installer	
Original	30.00
Annual Renewal	30.00
Duplicate	6.00
Provider	
Reinstatement	75.00
Installer	75.00
Driver Services	
Commercial Driver License third party testing	
License	
Original Tester	100.00
Annual Tester Renewal	100.00
Duplicate Tester	10.00
Original Examiner	30.00
Annual Examiner Renewal	20.00
Duplicate Examiner	6.00
Examiner Reinstatement	75.00
Tester Reinstatement	75.00
Driver Records	
Online services	3.00

Utah Interactive Convenience Fee

INFRASTRUCTURE AND GENERAL GOVERNMENT**TRANSPORTATION****SUPPORT SERVICES**

Administrative Services	
Express Lane - Administrative Fee	2.85
Tow Truck Driver Certification	200.00
Access Management Application	
Type 1	75.00
Type 2	475.00
Type 3	1,000.00
Type 4	2,300.00
Access Violation Fine (per day)	100.00
Encroachment Permits	
Landscaping	30.00
Manhole Access	30.00
Inspection (per hour)	60.00
Overtime Inspection (per hour)	80.00
Utility Permits	
Low Impact	30.00
Medium Impact	135.00
High Impact	300.00
Excess Impact	500.00
Express Lanes	
Variable priced toll	Between \$0.25 - \$1.00

OPERATIONS/MAINTENANCE MANAGEMENT

Region 4	
Lake Powell Ferry Rates	
Foot passengers	10.00
Motorcycles	15.00
Vehicles under 20'	25.00
Vehicles over 20' (per additional foot)	1.50
Traffic Safety/Tramway	
Tramway Registration	
Two-car or Multicar Aerial Passenger Tramway	
Aerial Tramway - 101 Horse Power or over	2,030.00
Aerial Tramway - 100 Horse Power or under	1,010.00
Tramway Surcharge for winter and summer use	15%
This is a surcharge to the registration fee for passenger ropeways that are operated year round. 15% will be added to the registration fee for those ropeways.	
Chair Lift	
Fixed Grip	
2 passenger	630.00
3 passenger	750.00
4 passenger	875.00
Conveyor, Rope Tow	260.00
Funicular - single or double reversible	2,030.00
Rope Tow, J-bar, T-bar, or platter pull	260.00
Detachable Grip Chair or Gondola	
3 passenger	1,510.00
4 passenger	1,625.00
6 passenger	1,750.00
8 passenger	1,880.00
Gondola - cabin capacity from 5 to 8	1,010.00

Gondola – cabin capacity greater than 8 2,030.00

AERONAUTICS

Airplane Operations

Aircraft Rental

Cessna (per hour) 195.00
 King Air C90B (per hour) 935.00
 King Air B200 (per hour) 1,200.00

DOT NON-BUDGETARY

XYD DOT MISCELLANEOUS REVENUE

Event Coordination, Inspection and Monitoring (Regular Hours) (per Hour) 60.00
 Event Coordination, Inspection and Monitoring (NonRegular Hours) (per Hour) 80.00
 Special Event Application Review (Single Region) (per Event) 250.00
 Special Event Application Review (Multi-Region) (per Event) 500.00
 Expedited Review Fee (per Event) 600.00
Outdoor Advertising
 New Permit (R299 Form) (per year) 950.00
 Permit Renewal & Admin Services Fee .. 90.00
 Permit Renewal Late Fee (per Sign) 300.00
 Sign Alteration Permit (R407 Form) (per Sign) 950.00
 Transfer of Ownership Permit 250.00
 Retroactive Permit Fee Penalty (per Sign) 250.00
 Impound and Storage Fees 25.00

DEPARTMENT OF ADMINISTRATIVE SERVICES

EXECUTIVE DIRECTOR

Government Records Access and Management Act
 Electronic copies, material cost (per DVD) 0.30
 Photocopies, black & white (per Copy) 0.10
 Photocopies, color (per Copy) 0.25
 Photocopy labor cost (per Utah Statute 63G-2-203(2)) (per page) Actual Cost
 Certified copy of a document (per certification) 4.00
 Long distance fax within US (per fax number) 2.00
 Long distance fax outside US (per fax number) 5.00
 Electronic Documents (per USB (GB)) .. Actual Cost
 Mail within US (per address) 2.00
 Mail outside US (per address) 5.00
 Research or services Actual cost
 Extended research or service Actual cost
 Electronic Copies, Material cost (per CD) 0.30

DFCM ADMINISTRATION

Program Management
 Non-state Funded Project Fees

Projects <\$100K (per Project) 3.5%
 Projects >= \$100K and <\$500K (per Project) .. \$3500 + 1.5% over \$100,000
 Projects >= \$500K and <\$2.5M (per Project) . \$9500 + 0.75% over \$500,000
 Projects >= \$2.5M and <10M (per Project) \$24,500 + 0.5% over \$2,500,000
 Projects >= \$10M and <\$50M (per Project) \$62,000 + .15% over \$10,000,000
 Projects >= \$50M (per Project) \$122,000 + 0.1% over \$50,000,000

STATE ARCHIVES

Archives Administration
 Data Base Download (plus Work Setup Fee) (per Record) 0.10
 Preservation Services
 Work Setup Fee (WSF) 17.00
 Microfiche production fee per image plus (WSF) (per image) 0.045
 Newspaper filming per page plus (WSF) (per image) 0.30
General
 16mm master film 13.00
Digital Copies of Electronic Rolls of
 Microfilm plus medium cost 10.00
 35mm master film 35.00
 16mm diazo duplicate copy 12.00
 35mm diazo duplicate copy 14.00
 16mm silver duplicate copy 30.00
 35mm silver duplicate copy 24.00
 Frames filmed (Standard) 0.05
 Frames filmed (Custom) 0.08
 Books filmed (per Page) 0.15
 Electronic image to microfilm (per Reel) 45.00
 Microfilm to CD/DVD/USB (per reel) 40.00
 Microfilm Lab Processing Setup Fee 5.00
 Microfilm to digital PDF conversion 5.00
Patron Services
 Copy – Paper to PDF (copier use by patron) 0.05
 Digital Collection Setup Host fee 300.00
 Local Commercial License 10.00
 National Commercial License 50.00
 Copy – Paper to PDF (copier use by staff) ... 0.25
General
 Certified Copy of a Document 4.00
Photo Reproductions
 Digital Imaging 300 dpi or higher 10.00
Mailing and Fax Charges
Within USA
 Mailing in USA – 1 to 10 Pages 3.00
 Mailing in USA – Microfilm 1 to 2 Reels 4.00
 Mailing in USA – Each additional Microfilm Reel 1.00
 Mailing in USA – CD/DVD/USB 4.00
 Mailing in USA – Add Postage for each 10 pages 1.00
International
 Mailing International – 1 to 10 pages ... 5.00
 Mailing International – Each additional 10 pages 1.00
 Mailing International – Microfilm 1 to 2 Reels 6.00

Mailing International - Each additional Microfilm Reel	2.00
Mailing International - CD/DVD/ USB	6.00
Fax	
International Fax Fee (plus copy charge)	5.00
Plus copy charge	
Long Distance Fax (plus copy charge) ...	2.00
Plus copy charge	
Local Fax (plus copy charge)	1.00
Plus copy charge	
Copy Charges	
Audio	
Copy Charges - Audio Recordings	10.00
Price excludes cost of medium	
Documents	
Copy Charges - 11 x 14 and 11 x 17 by staff, limit 50	0.50
Copy Charges - 11 x 14 and 11 x 17 by patron	0.25
8.5x11	
Copy - 8.5 x 11 by staff, limit 50	0.25
Copy - 8.5 x 11 by patron	0.10
Microfilm/Microfiche	
Digital	
Copy - Digital by staff, limit 25	1.00
Copy - Digital by patron	0.15
Paper	
Copy Microfilm - Paper by staff, limit 25	1.00
Copy Microfilm - Paper by patron ...	0.25
Video	
Copy Video - Video Recording (excludes cost of medium)	20.00
Price excludes cost of medium	
Other	
Archivist Handling fee (per hr.) (per hour)	At Cost
Special Request	At Cost
Supplies	
Supplies - USB Flash Drive (per gigabyte)	5.00
Supplies - CD (per disk)	0.30
Supplies - DVD (per disk)	0.40
Electronic File on-line (per File)	2.50

FINANCE ADMINISTRATION

Finance Director's Office	
Transparency	
Utah Public Finance Website large data download	1.00
Revenue kept by Utah Interactive up to \$10,000. \$1 per download	
Payroll	
Duplicate W-2	5.00
SAP E-learn Services	90,000.00
Payables/Disbursing	
Disbursements	
Tax Garnishment Request	10.00
Payroll Garnishment Request	25.00
Collection Service	15.00
IRS Collection Service	25.00
Technical Services	

Financial Transparency Database	
Subscription Fee (per Actual Costs)	Actual Costs
Financial Reporting	
Loan Servicing	125.00
ISF Accounting Services	Actual cost
Cash Mgt Improvement Act Interest	
Calculation	Actual cost
Bond Accounting Services	Actual cost
Single Audit Billing to State	
Auditor's Office	Actual Cost
Financial Information Systems	
Credit Card Payments	Variable
Contract rebates	
Automated Payables (per Invoice Page)	0.25
UDOT	Actual cost

FINANCE - MANDATED - PARENTAL DEFENSE

Parental Defense	
Parental Defense Fund - Parental Defense Conference Fee (per Person) ...	150.00

STATE DEBT COLLECTION FUND

Attorney / Legal fee	\$100 per hour
Office of State Debt Collection	
Collection Penalty	6.0%
Labor Commission Wage Claim Attorney Fees	
Labor Commission Wage Claims	Variable
10% of partial payments; 1/3 of claim or \$500, whichever is greater for full payments	
Collection Interest	Prime + 2%
Post Judgment Interest	Variable
Administrative Collection	18%
18% of amount collected (21.95% effective rate)	
Non sufficient Check Collection	20.00
Non sufficient Check Service Charge ...	20.00
Garnishment Request	Actual cost
Legal Document Service	Actual cost
Greater of \$20 or Actual	
Credit card processing fee charged to collection vendors	1.75%
Court Filing, Deposition/Transcript	
/Skip Tracing	Actual cost

DEPARTMENT OF ADMINISTRATIVE SERVICES INTERNAL SERVICE FUNDS

DIVISION OF FINANCE

ISF - Purchasing Card	
Purchasing Card	Variable
Contract rebates	
ISF - Consolidated Budget and Accounting	
Basic Accounting and Transactions (per hour)	37.00
Financial Management (per hour)	66.00

DIVISION OF PURCHASING AND GENERAL SERVICES

ISF - Central Mailing	
State Mail	
Courier	
Courier - Zone 1	2.26

Courier - Zone 2	3.88
Courier - Zone 3	8.04
Courier - Zone 4	9.70
Courier - Zone 5	14.35
Courier - Zone 6	17.79
Courier - Zone 7	21.73
Courier - Zone 8	26.42
Courier - Zone 9	28.49
Courier - Zone 10	33.22
Courier - Zone 11	36.02
Courier - Zone 12	39.87
Production	
Incoming OCR Sort	0.103
Business Reply/Postage Due	0.54
Special Handling/Labor (per hour)	85.00
Auto Fold	0.021
Label Generate	0.155
Label Apply	0.15
Auto Tab	0.35
Meter/Seal	0.024
Optical Character Reader	0.024
Additional Insert	0.01
Accountable Mail	1.45
Intelligent Inserting	0.03
ISF - Cooperative Contracting	
Cooperative Contracts	
Administrative	Up to 1.0%
ISF - Print Services	
Contract Management (per impression)	0.005
Self Service Copy Rates	0.004
Cost computed by: (Depreciation + Maintenance + Supplies)/Impressions + copy multiplied impressions results	
ISF - State Surplus Property	
Surplus	
Surcharge for use of a Financial Transaction Card	
Transaction Card	Up to 3%
Surcharge applies only to the amount charged to a financial transaction card	
Online Sales Non-Vehicle	
Vehicle	50% of net proceeds
Miscellaneous Property Pick-up Process	
State Agencies	
Total Sales Proceeds	See formula
Less prorated rebate of retained earnings	
Handheld Devices (PDAs and wireless phones)	
Less than 1 year old	75% of actual cost
\$30 minimum	
1 year and older	50% of cost - \$30 minimum
Unique Property	
Processing	Negotiated % of sales price
Electronic/Hazardous Waste	
Recycling	Actual cost
Vehicles and Heavy Equipment	
. 6.5% of Net Sale Price plus \$100 per Vehicle	
Default Auction Bids	10% of sales price
Labor (per hour)	26.00
Half hour minimum	
Copy Rates (per copy)	0.10
Semi Truck and Trailer Service	
(per mile)	1.08
Two-ton Flat Bed Service (per mile)	0.61
Forklift Service (per hour)	23.00
4-6000 lbs	
On-site sale away from Utah State Agency	
Surplus Property yard	7% of net sale price
Storage	

Building (per cubic foot per month)	0.43
Fenced lot (per square foot per month)	0.23
Accounts receivable late fees	
Past 30 days	5% of balance
Past 60 days	10% of balance
ISF - Federal Surplus Property	
Surplus	
Federal Shipping and handling charges	
See formula	
Not to exceed 20% of federal acquisition cost plus freight/shipping charges	
Accounts receivable late fees	
Past 30 days	5% of balance
Past 60 days	10% of balance

DIVISION OF FLEET OPERATIONS

ISF - Motor Pool	
Telematics GPS tracking	Actual cost
Commercial Equipment	
Rental	Cost plus \$12 Fee
Administrative Fee for Do-Not Replace Vehicles (per Month)	
Replace Vehicles (per Month)	51.29
Service Fee (per 12)	\$12 Service Fee
General MP Info Research Fee (per 12)	
	\$12 Per Hour
Lost or damaged fuel/maint card replacement fee (per 2)	
	\$2 Fee
Vehicle Complaint Processing	
Fee (per 20)	\$20 Fee
Operator negligence and vehicle abuse fees (per 0)	
Varies (abuse or driver neglect cases only)	
Lease Rate	
Sedans (per month, per vehicle)	
See formula	
Model Year 2013 contract price less 18% salvage value divided by current adjusted life cycle + admin fee + fleet MIS fee + mileage fee.)	
Select trucks, vans, SUVs (per month, per vehicle)	
See formula	
Model Year 2013 contract price less 21% salvage value divided by current adjusted life cycle + admin fee + fleet MIS fee + mileage fee.	
All other vehicles (per month, per vehicle)	
See formula	
Model Year 2013 contract price less 17% salvage value divided by current adjusted lifecycle + admin fee + fleet MIS fee + mileage fee.	
Mileage	
See formula	
Maintenance and repair costs for a particular class of vehicle, divided by total miles for that class	
Fuel Pass-through	
Actual cost	
Equipment rate for Public Safety vehicles	
Actual cost	
Fees for agency owned vehicles	
Seasonal Mgt Information System and Alternative Fuel Vehicle only (per month)	
	10.90
Management Information System and Alternative Fuel Vehicle only (per month)	
	10.90
Management Information System only (per month)	
	2.72
Additional Management	
Daily Pool Rates - Actual Cost From Vendor Contract - Actual Cost	
	Actual Cost

Administrative Fee for Overhead	48.57
Management Information System (per month)	2.72
Vehicle Feature and Miscellaneous Equipment Upgrade	Actual cost
Vehicle Class Differential Upgrade	Actual cost
Bad Odometer Research	50.00
Operator fault	
Vehicle Detail Cleaning Service	40.00
Excessive Maintenance, Accessory Fee	Variable
Accounts receivable late fee	
Past 30-days	5% of balance
Past 60-days	10% of balance
Past 90-days	15% of balance
Accident deductible rate charged (per accident)	Actual cost
Operator negligence and vehicle abuse	Variable
Higher Ed Mgt. Info Sys. & Alternative Fuel Vehicle Mo. (per vehicle)	6.33
Statutory Maintenance Non-Compliance	
10 days late (per vehicle per month)	100.00
20 days late (per vehicle per month)	200.00
30+ days late (per vehicle per month)	300.00
Seasonal Use Vehicle Lease	155.02
ISF - Fuel Network	
Charge (per gallon)	0.065
greater than or equal to 60,000 gal./yr	
Charge at low volume sites (per gallon)	0.105
less than 60,000 gal./yr.	
Percentage of transaction value at all sites	3.0%
Accounts receivable late fee	
Past 30 days	5% of balance
Past 60 days	10% of balance
Past 90 days	15% of balance
CNG Maintenance and Depreciation (per gallon)	1.15
ISF - Travel Office	
Travel	
Travel Agency Service	
Regular	26.00
Online	16.00
State Agent	21.00
Group	
16-25 people	23.50
26-45 people	21.00
46+ people	18.50
School District Agent	16.00

RISK MANAGEMENT

ISF - Risk Management Administration	
Liability Premiums	
Administrative Services	373,946.00
Agriculture	43,338.00
Alcoholic Beverage Control	79,709.00
Attorney General's Office	146,963.00
Auditor	9,968.00
Board of Pardons	11,610.67
Capitol Preservation Board	9,518.00
Career Service Review Office	952.00
Commerce	79,709.00
Commission on Criminal and Juvenile Justice	4,812.92
Heritage and Arts	31,750.00
Corrections	688,045.33

Courts	280,858.00
Utah Office for Victims of Crime	3,379.39
Education	213,385.00
Deaf and Blind School	67,385.00
Environmental Quality	103,374.00
Fair Park	22,077.00
Financial Institutions	13,986.00
Governor	24,048.43
Governor's Office of Management and Budget	21,248.44
Governor's Office of Economic Development	69,978.83
Health	360,856.00
Heber Valley Railroad	3,116.00
House of Representatives	8,891.00
Human Resource Management	28,202.00
Human Services	817,255.00
Labor Commission	26,808.00
Insurance	104,083.00
Legislative Fiscal Analyst	7,977.00
Legislative Auditor	7,034.00
Legislative Printing	1,091.00
Legislative Research & General Counsel	16,749.00
Medical Education Council	
National Guard	105,351.00
Natural Resources	411,971.00
Public Lands	11,415.00
Public Safety	498,267.00
Public Service Commission	9,531.00
School and Institutional Trust Fund	1,613.00
School and Institutional Trust Lands	39,875.00
Senate	5,324.00
Tax Commission	144,047.00
Technology Services	197,919.00
Treasurer	6,277.00
Utah Communications Network	7,909.00
Utah Science and Technology and Research	7,324.00
Veteran's Affairs	7,227.00
Workforce Services	453,414.00
Transportation	2,526,000.00
Board of Regents	52,297.00
Dixie State University	130,846.00
Salt Lake Community College	228,491.00
Snow College	70,571.00
Southern Utah University	112,927.00
Bridgerland Applied Technology College	21,829.00
Davis Applied Technology College	24,810.00
Ogden Weber Applied Technology College	25,803.00
Uintah Basin Applied Technology College	16,898.00
Tooele Applied Technology College	5,937.00
Dixie Applied Technology College	10,425.00
Mountainland Applied Technology College	18,331.00
Southwest Applied Technology College	8,453.00
University of Utah	1,178,583.00
Utah State University	493,690.00
Utah Valley University	372,678.00
Weber State University	238,608.00
School Districts	5,324,781.00
Property Insurance Rates	

Net Estimated Premium 16,267,079.53
 Gross Premium for Buildings
 Existing Insured Buildings
 Existing Insured Buildings See formula

Building value as determined by Risk Mgt. & owner as of Statement of Values year end review multiplied by the Marshall & Swift Valuation Service rates associated w/ Building Construction Class, Occupancy Type, Building Quality, & Fire Protection Code

Newly Insured Buildings
 Newly Insured Buildings See formula

Building value as determined by Risk Mgt. & owner as of Statement of Values year end review multiplied by the Marshall & Swift Valuation Service rates associated w/ Building Construction Class, Occupancy Type, Building Quality, & Fire Protection Code

Building Demographic Discounts
 Fire Suppression
 Sprinklers 15% discount
 Smoke alarm/Fire detectors . . . 5% discount
 Flexible water/Gas connectors 1% discount

Surcharges
 Lack of compliance with Risk Mgt. recommendations . . . 10% surcharge
 Building built prior to 1950 10% surcharge
 Agency Discount1 (REAF) . . . 63.5% discount
 Agency Discount2 See formula
 Agency specific discount negotiated w/ Risk Mgt

Gross Premium for Contents
 Existing Insured Buildings
 Existing Insured Buildings See formula

Content value as determined by Risk Mgt. & owner as of Statement of Values year end review multiplied by the Marshall & Swift Valuation Service rates associated w/ Building Construction Class, Occupancy Type, Building Quality, & Fire Protection Code

Newly Insured Buildings
 Newly Insured Buildings See formula

Content value as determined by Risk Mgt. & owner as of Statement of Values year end review multiplied by the Marshall & Swift Valuation Service rates associated w/ Building Construction Class, Occupancy Type, Building Quality, & Fire Protection Code

Gross Premium Discounts/Penalties
 Non-Compliance Penalty - Meeting
 Minutes 5% Penalty

Up to 5% penalty for non-compliance with Risk loss control activities, namely submitting Risk control meeting minutes on a quarterly basis.

Non-Compliance Penalty - Self
 Inspection Survey 10% Penalty
 Up to 10% penalty for non-compliance with Risk loss control activities, namely

submitting the annual Self Inspection Survey.

Liability Premiums
 Specialized Lines of Coverage See Formula
 Specialized lines of insurance outside of typical coverage lines. Pass through costs direct from insurance provider.

Automobile/Physical Damage Premiums
 Public Safety rate for value less than \$35,000 (per vehicle) 175.00
 Higher Education rate for value less than \$35,000 (per vehicle) 125.00
 Other state agency rate for value less than \$35,000 (per vehicle) 150.00
 School bus rate (per vehicle) 200.00
 School district rate for value less than \$35,000 (per vehicle) 50.00
 Rate for value more than \$35,000 (per \$100 of value) 0.80
 Other vehicles or related equipment
 State and Higher Education (per vehicle) 75.00
 School District (per vehicle) 50.00
 Standard deductible (per incident) . . . 1,500.00
 Up to this amount with discounts available for compliance with specifically identified Risk Management loss control activities.

Course of Construction Premiums
 Rate per \$100 of value 0.053
 Charged once per project (unless scope changes)

Charter Schools
 Liability (\$2 million coverage)
 Charter School Pre-opening Liability
 Coverage (per School) 1,000.00
 Charter School Liability (\$1,000 minimum) (per student) 9.00
 Property (\$1,000 deductible per occurrence)
 Cost per \$100 in value, \$100 minimum 0.10
 Comprehensive/Collision (\$750 deductible per occurrence)
 Cost per year per vehicle 150.00

ISF - Workers' Compensation
 Workers Compensation Rates
 UDOT 1.25% per \$100 wages
 State Agencies 0.70% (except UDOT)
 Aviation (per PILOT-YEAR) \$2,200

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT - FACILITIES MANAGEMENT

Unified Lab #2 865,836.54
 Cedar City DNR 62,790.16
 Ivins VA Nursing Hom 83,064.39
 Spanish Fork Veterinary Lab 35,716.03
 Payson VA Nursing Home 79,105.70
 Vernal Drivers License 18,250.37
 Ogden VA Nursing Home 52,945.37

Alcoholic Beverage Control
 Stores 1,607,681.50
 Price Public Safety 65,897.00
 Ogden Juvenile Court - New 444,038.00
 Garage-Administrative Staff 48.00
 Garage - Apprentice Maintenance 41.00
 Garage-Electronic Resource 44.00
 Garage-Facilities Manager 54.00

Garage-Groundskeeper II	33.00	Ogden Court	467,740.00
Garage - Grounds Manager	38.00	Ogden Juvenile Court-Old	166,045.00
Garage-Grounds Supervisor	37.00	Ogden Regional Center	646,299.44
Garage-Journey Electrician	51.00	Orem Circuit Court	90,792.00
Garage-Journey HVAC	49.00	Orem Public Safety	105,640.00
Garage-Journey Maintenance	46.00	Orem Region Three Department of Transportation	141,192.00
Garage-Maintenance Supervisor	48.00	Provo Court	299,400.00
Garage-Mechanic	38.00	Provo Juvenile Courts	173,940.00
Garage-Office Technician	37.00	Provo Regional Center	664,011.00
Garage-Temp Groundskeeper	19.00	Public Safety Depot Ogden	27,236.00
Wasatch Courts	9,577.00	Richfield Court	84,669.68
Chase Home	17,428.00	Richfield Dept. of Technology Services Center	39,000.00
Vernal DNR	80,394.00	Richfield Regional Center	75,499.00
Clearfield Warehouse C6 - Archives	167,010.00	Rio Grande Depot	397,565.00
Clearfield Warehouse C7 - DNR/DPS	102,837.00	Salt Lake Court	1,868,160.00
Cedar City A P & P	28,444.00	Salt Lake Government Building #1 ...	972,934.00
N UT Fire Dispatch Center	30,438.66	Salt Lake Regional Center - 1950 West	250,492.00
UCAT Admin	47,882.00	St. George Courts	465,353.00
Veteran's Memorial Cemetery	24,464.00	St. George DPS	49,572.00
Alcoholic Beverage Control Administration	685,415.00	St. George Tax Commission	64,224.00
Juab County Court	50,826.00	State Library	183,714.00
Agriculture	356,706.00	State Library State Mail	156,261.00
Adult Probation and Parole Freemont Office Building	192,375.00	State Library visually impaired	124,027.00
Archives	110,619.00	Taylorsville Center for the Deaf	138,681.00
Brigham City Court	169,400.00	Taylorsville Office Building	185,250.00
Brigham City Regional Center	573,808.00	Tooele Courts	311,351.00
Calvin Rampton Complex	1,602,863.00	Unified Lab	883,894.00
Cannon Health	960,515.00	Utah Arts Collection	43,900.00
Capitol Hill Complex	3,809,700.00	Utah State Office of Education	410,669.00
Cedar City Courts	103,520.00	Utah State Tax Commission	970,200.00
Cedar City Regional Center	72,008.00	Vernal 8th District Court	248,649.00
Department of Administrative Services Surplus Property	59,747.00	Vernal Division of Services for People with Disabilities	31,330.00
Department of Public Safety DPS Crime Lab	42,000.00	Vernal Juvenile Courts	20,256.00
Drivers License	185,577.00	West Jordan Courts	557,835.00
Farmington Public Safety	68,425.00	West Valley 3rd District Court	118,350.00
Fairpark Driver's License Division	61,571.00	Work Force Services 1385 South State	292,390.00
Dixie Drivers License	62,928.00	Administration	685,930.00
Driver License West Valley	98,880.00	DWS Brigham City	46,304.00
Division of Services for the Blind and Visually Impaired Training Housing	49,736.00	Call Center	200,317.00
Farmington 2nd District Courts	537,465.00	Cedar City	78,461.00
Glendinning Fine Arts Center	45,000.00	Clearfield/Davis Co.	180,633.00
Governor's Residence	152,156.00	Logan	110,088.00
Heber M. Wells	858,321.00	Metro Employment Center	252,776.00
Highland Regional Center	331,766.40	Midvale	135,640.00
Human Services Clearfield East	127,306.00	Ogden	153,748.00
Ogden Academy Square	299,834.00	Provo	144,970.00
DHS - Vernal	74,117.00	Richfield	58,072.00
Layton Court	80,896.00	South County Employment Center	176,196.00
Logan 1st District Court	379,267.00	St. George	66,452.00
Medical Drive Complex	379,294.00	Vernal	73,702.00
Moab Regional Center	112,533.00	Ogden Division of Motor Vehicles and Drivers License	71,964.00
Murray Highway Patrol	141,738.00	Ogden Radio Shop	16,434.00
National Guard Armories	390,721.00		
Natural Resources	745,072.00		
Natural Resources Price	96,414.00		
Natural Resources Richfield (Forestry)	1,000.00		
Navajo Trust Fund Administration ..	132,640.00		
Office of Rehabilitation Services	204,156.00		

**DEPARTMENT OF
TECHNOLOGY SERVICES**

INTEGRATED TECHNOLOGY DIVISION

Automated Geographic Reference Center AGRC	
GPS Subscriptions (per year)	600.00

AGRC Plots (AGRC) (per Linear Foot) 6.00
 GIT Professional Labor (per hour) Table
 Application Maintenance Tiered Rate: Tier
 1 65.26 Tier 2 78.91 Tier 3 89.33 IT Architect
 103.48

**DEPARTMENT OF TECHNOLOGY
 SERVICES INTERNAL SERVICE FUNDS**

ENTERPRISE TECHNOLOGY DIVISION

ISF - Enterprise Technology Division
 Network Services
 Network Services (per device/month) 47.15
 Network Services - 10
 GB (per Connection/month) 188.60
 Network Services (other State
 agencies) (per device/month) 52.20
 Other Network Services Direct cost + 10%
 Miscellaneous Data
 Circuits Direct cost + 10%
 Security (per device/month) 21.66
 Other Security Services SBA
 Security Assessment/Insurance
 (per Tier) Table
 Server Count: 0-4 \$12,750 5-34 \$25,500
 35-85 \$51,000 >85 \$102,000
 Desktop Services
 Desktop Support (per device/month) 67.39
 On-Call Support (per Hour) Actual Cost
 Hosted Email (per Account/month) 4.97
 Email Encryption (per Acct/Month) 1.58
 Google Vault (per Acct/month) 2.60
 Google Unlimited (per Acct/Month) 1.00
 Software Resale Direct cost + 6%
 Equipment Maintenance Direct cost + 10%
 Virtual Applications SBA
 Communication Services
 Telephone Technician Labor (per hour) . . 73.53
 Universal Telecom Rate
 (per Line/month) 32.41
 Long Distance Service (per minute) 0.031
 1-800 Usage (per minute) 0.031
 Jabber (per User/month) 1.35
 Other Voice Services Direct cost + 10%
 International Long Distance . Direct cost + 10%
 Call Management Systems SBA
 Print Services
 High Speed Laser Print (per image) 0.0325
 Other Print Services Direct cost + 10%
 Hosting Services
 Oracle Database Hosting Core
 Model (per Core/month) 1,113.15
 Oracle Database Hosting Shared
 Model (per GB/month) 48.71
 SQL Database Hosting Core
 Model (per Core/month) 777.06
 SQL Database Hosting Shared
 Model (per GB/month) 38.44
 Database Consulting (per hour) 78.91
 Application Services Tier 2
 Server Administration
 (per OS/month) 410.14
 Processing (CPU) (per CPU
 Core/month) 85.64
 Storage (per GB/month) 0.1294

Back-up & Archive Storage
 (per GB/month) 0.1231
 File-Share (per GB/month) 0.1294
 Storage Rate
 Low-Cost Storage (HNAS)
 (per GB/month) 0.0949
 Object Storage (per GB/month) 0.0198
 Public Cloud Administration SBA
 Other Hosting Services SBA
 Web Application Hosting
 (per instance/month) 43.45
 Data Center Rack Space - Full
 Rack (per Rack/month) 471.68
 Data Center Rack Space -
 Rack U (per Rack U/month) 15.73
 Mainframe Services
 Mainframe Disk (per MB/month) 0.006
 Mainframe Tape (per MB/month) 0.0008
 Mainframe Consulting (per hour) 78.91
 Application Services Tier 2
 Mainframe Computing SBA
 Application Services
 Application Services Tier 1 (per Hour) . . . 65.26
 Application Services Tier 2 (per Hour) . . . 78.91
 Application Services Tier 3 (per Hour) . . . 89.33
 IT Architect (per Hour) 103.48
 Master Engineer/Consultant/Other SBA
 Miscellaneous
 DTS Consulting Charge (per hour) 78.91
 Application Services Tier 2

**BUSINESS, ECONOMIC
 DEVELOPMENT, AND LABOR**

**DEPARTMENT OF HERITAGE AND ARTS
 ADMINISTRATION**

Information Technology
 Preservation Pro (per unit 1-20,
 depending on usage) 50.00
 CommunityGrants App User - State
 of Utah Executive Branch Agencies
 (per User) 72.00
 CommunityGrants App User - Tier 1
 (per User) 480.00
 CommunityGrants App User - Tier 2
 (per User) 420.00
 CommunityGrants App User - Tier 3 360.00
 CommunityGrants App User - Tier 4
 (per User) 300.00
 CommunityGrants App User - Tier 5
 (per User) 240.00
 CommunityGrants Customer Portal -
 100 Members (per 100) 3,000.00
 CommunityGrants Customer
 Community - Minimum - 100
 Members (per 100) 900.00
 CommunityGrants Customer
 Community - Minimum - 500
 Member (per 100) 2,000.00
 CommunityGrants Customer
 Community - Wholesale - 100
 Members (per 100) 1,200.00
 CommunityGrants Customer
 Community - Wholesale - 500
 Members (per 100) 2,400.00
 CommunityGrants Customer Community -
 Retail - 100 Members (per 100) 1,800.00

CommunityGrants Customer Community - Retail - 500 Members (per 100)	3,720.00	Conference Level 2 - Vendor/Display Table - registration not included (per Table)	100.00
Administrative Services		Fee entitled "Conference" applies for the entire Department of Heritage and Arts.	
Department Merchandise		Conference Level 3 - Student/Group/ Change Leader Registration (per Person)	70.00
General Merchandise - Level 1 (per Item)	5.00	Fee entitled "Conference" applies for the entire Department of Heritage and Arts.	
Fee entitled "General Merchandise" applies for the entire Department of Heritage and Arts.		Conference Level 3 - Early Registration (per Person)	80.00
General Merchandise - Level 2 (per Item)	10.00	Fee entitled "Conference" applies for the entire Department of Heritage and Arts.	
Fee entitled "General Merchandise" applies for the entire Department of Heritage and Arts.		Conference Level 3 - Regular Registration (per Person)	95.00
General Merchandise - Level 3 (per Item)	15.00	Fee entitled "Conference" applies for the entire Department of Heritage and Arts.	
Fee entitled "General Merchandise" applies for the entire Department of Heritage and Arts.		Conference Level 3 - Late Registration (per Person)	100.00
General Merchandise - Level 4 (per Item)	20.00	Fee entitled "Conference" applies for the entire Department of Heritage and Arts.	
Fee entitled "General Merchandise" applies for the entire Department of Heritage and Arts.		Conference Level 3 - Vendor/Display Table Fee - registration not included (per Table)	150.00
General Merchandise - Level 5 (per Item)	50.00	Fee entitled "Conference" applies for the entire Department of Heritage and Arts.	
Fee entitled "General Merchandise" applies for the entire Department of Heritage and Arts.		Conference Sponsorship	
General Merchandise - Level 6 (per Item)	100.00	Conference Sponsorship Level 1	350.00
Fee entitled "General Merchandise" applies for the entire Department of Heritage and Arts.		Fee entitled "Conference Sponsorship" applies for the entire Department of Heritage and Arts.	
Department Conference		Conference Sponsorship Level 2	500.00
Conference Level 1 - Early Registration (per Person)	20.00	Fee entitled "Conference Sponsorship" applies for the entire Department of Heritage and Arts.	
Fee entitled "Conference" applies for the entire Department of Heritage and Arts.		Conference Sponsorship Level 3	650.00
Conference Level 1 - Regular Registration (per Person)	25.00	Fee entitled "Conference Sponsorship" applies for the entire Department of Heritage and Arts.	
Fee entitled "Conference" applies for the entire Department of Heritage and Arts.		Conference Sponsorship Level 4	1,000.00
Conference Level 1 - Late Registration (per Person)	30.00	Fee entitled "Conference Sponsorship" applies for the entire Department of Heritage and Arts.	
Fee entitled "Conference" applies for the entire Department of Heritage and Arts.		Conference Sponsorship Level 5	2,500.00
Conference Level 1 - Vendor/Display Table - registration not included (per Table)	50.00	Fee entitled "Conference Sponsorship" applies for the entire Department of Heritage and Arts.	
Fee entitled "Conference" applies for the entire Department of Heritage and Arts.		Conference Sponsorship Level 6	5,000.00
Conference Level 2 - Early Registration (per Person)	45.00	Fee entitled "Conference Sponsorship" applies for the entire Department of Heritage and Arts.	
Fee entitled "Conference" applies for the entire Department of Heritage and Arts.		Conference Sponsorship Level 7	10,000.00
Conference Level 2 - Regular Registration (per Person)	50.00	Fee entitled "Conference Sponsorship" applies for the entire Department of Heritage and Arts.	
Fee entitled "Conference" applies for the entire Department of Heritage and Arts.		General Training and Workshop	
Conference Level 2 - Late Registration (per Person)	55.00	General Training/Workshop Participation - Level 1 (per Person)	5.00
Fee entitled "Conference" applies for the entire Department of Heritage and Arts.		Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.	
		General Training/Workshop Participation - Level 2 (per Person)	10.00

Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

General Training/Workshop Participation -
Level 3 (per Person) 15.00
Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

General Training/Workshop Participation -
Level 4 (per Person) 25.00
Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

General Training/Workshop Participation -
Level 5 (per Person) 30.00
Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

General Training/Workshop Participation -
Level 6 (per Person) 40.00
Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

General Training/Workshop Participation -
Level 7 (per Person) 50.00
Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

General Training/Workshop Participation -
Level 8 (per Person) 60.00
Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

General Training/Workshop Participation -
Level 9 (per Person) 125.00
Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

General Training/Workshop Participation -
Level 10 (per Person) 300.00
Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

General Training/Workshop Materials
Fee (per Person) 15.00
Fee entitled "General Training/Workshop" applies for the entire Department of Heritage and Arts.

Government Records Access and Management Act
Photocopies (per page) 0.25
GRAMA fees apply for the entire Department of Heritage and Arts

HISTORICAL SOCIETY

State Historical Society

Utah Historical Society Annual Membership
Student/Senior 25.00
Individual 30.00
Business/Sustaining 40.00
Patron 60.00
Sponsor 100.00
Lifetime 500.00
Utah Historical Quarterly (per issue) 7.00
Publication Royalties 1.00

STATE HISTORY

Library and Collections
B/W Historic Photo
4x5 B/W Historic Photo 7.00
5x7 B/W Historic Photo 10.00
8x10 B/W Historic Photo 15.00
Self Serve Photo 0.50
Digital Image 300 dpi> 10.00
Expedited Photo Processing 2.00
Historic Collection Use 10.00
Research Center
Self Copy 8.5x11 0.10
Self Copy 11x17 0.25
Staff Copy 8.5x11 0.25
Staff Copy 11x17 0.50
Digital Self Scan/Save (per Page) 0.05
Digital Staff Scan/Save (per Page) 0.25
Microfilm Self Copy (per page) 0.25
Microfilm Self Scan/Save (per Page) 0.15
Microfilm Staff Scan/Save or Copy (per page) 1.00
Audio Recording (per item) 10.00
Video Recording (per item) 20.00
Diaz print
16 mm diazo print (per roll) 10.00
35 mm diazo print (per roll) 12.00
Silver print
16 mm silver print (per roll) 18.00
35 mm silver print (per roll) 20.00
Microfilm Digitization 40.00
Digital Format Conversion 5.00
Surplus Photo 1.00
Mailing Charges 1.00
Fax Request 1.00
Historic Preservation and Antiquities
Anthropological Remains Recovery (per Recovery or Analysis and reporting) 2,500.00
Fee is for recovery or analysis and reporting services.
Literature Search - Self Service w/ Scans (per 1/2 Hour) 25.00
Literature Search - Staff Performed w/ Scans (per 1/2 Hour) 50.00
GIS Search - Staff Performed (per 1/4 Hour) 15.00
Literature Search/GIS Search - no show fee (per incident) 60.00
GIS Data Cut and Transfer (per Section) ... 15.00

DIVISION OF ARTS AND MUSEUMS

Community Arts Outreach
Change Leader Registration Level 5 500.00
Community Outreach
Traveling Exhibit Fees 125.00
Traveling Exhibit Fees Title I Schools .. 100.00
Mountain West Arts Conference Registration
MWAC Governor's Leadership in the Arts Luncheon 55.00
MWAC Governor's Leadership in the Arts Luncheon Late Registrant 60.00
Community/State Partnership Change Leader Registration
Change Leader Registration Level 1 100.00

Change Leader Registration Level 2	200.00
Change Leader Registration Level 3	300.00
Change Leader Registration Level 4	400.00

**DIVISION OF ARTS AND MUSEUMS -
OFFICE OF MUSEUM SERVICES**

Office of Museum Services	
Museum Environmental Monitoring	
Kit Rental/Shipping (per Period)	40.00
Museum Environmental Monitoring	
Kit Deposit	150.00

STATE LIBRARY

Blind and Disabled	
Full Library Services to States With	
Machines	150.00
Lost Library Book Charge	500.00
Basic Braille Services to States	85.00
Full Library Services to States Without	
Machines	145.00
Braille and Audio Service to LDS Church . . .	2.25
Library of Congress Contract (MSCW)	
(per Annual)	999,600.00
Library Development	
Bookmobile Services (per Annual)	856,700.00
Average fee of bookmobile services over the nine service areas.	
Library Resources	
Cataloging Services	7,000.00
Catalog Express Utilization	0.58
Catalog Express Overage	1.17

**GOVERNOR'S OFFICE OF
ECONOMIC DEVELOPMENT**

ADMINISTRATION

Avenue H Technology Provider Renewal . . .	14.00
Health Exchange Call Center	2.50

OFFICE OF TOURISM

Operations and Fulfillment	
Calendars	
Calendar sales: Individual (purchases	
of less than 30)	10.00
Calendar sales: Bulk (non state	
agencies)	8.00
Calendar sales: Bulk (state agencies)	6.00
Calendar sales: Office of Tourism, Film,	
and Global Branding employees	5.00
These fees may apply to one or more programs within the Office of Tourism Line Item.	
Calendar Envelopes	0.50
Posters	
Posters: Framed wall posters	55.00
Posters: Non framed wall posters	2.99
Shirts	
T-shirt sales (cost per shirt)	10.00
Commissions	
Tourism promotional items re-seller	
commission	12%
UDOT Signage Commissions	54,000.00

BUSINESS DEVELOPMENT

Corporate Recruitment and Business Services	
Market Tax Credit Fee	100,000.00
Annual fee to certify a proposed equity investment or long-term debt security as a qualified equity investment.	
Private Activity Bond	
Confirmation per million volume cap	
(per million of allocated	
volume cap)	300.00
Original application: under	
\$3 million	1,500.00
Original application: \$3-\$5 million . . .	2,000.00
Original application: over	
\$5 million	3,000.00
Private Activity Bond Re-application	
Re-application: under \$3 million	750.00
Re-application: \$3-\$5 million	1,000.00
Re-application: over \$5 million	1,500.00
Private Activity Bond Extension	
Second 90 Day Extension	2,000.00
Third 90 Day Extension	4,000.00
Each Additional 90 Day Extension . . .	4,000.00

**PETE SUAZO UTAH
ATHLETICS COMMISSION**

Boxing Events	
Boxing Event: <500 Seats	500.00
Boxing Event: 500 - 1,000 Seats	500.00
Boxing Event: 1,000 - 3,000 Seats	750.00
Boxing Event: 3,000 - 5,000 seats	1,500.00
Boxing Event: 5,000 - 10,000 Seats . . .	1,500.00
Boxing Event: >10,000 Seats	1,500.00
Unarmed Combat Event	
Unarmed Combat Event: <500 Seats	500.00
Unarmed Combat Event: 500 -	
1,000 Seats	500.00
Unarmed Combat Event: 1,000 -	
3,000 Seats	750.00
Unarmed Combat Event: 3,000 -	
5,000 seats	1,500.00
Unarmed Combat Event: 5,000 -	
10,000 Seats	1,500.00
Unarmed Combat Event: >10,000	
Seats	1,500.00
Licenses and Badges	
Promoter (per License)	250.00
Official, Manager, Matchmaker	
(per License)	50.00
Judge, Referee, Matchmaker, Contestant	
Manager Licenses	
Contestant, Second (Corner)	
(per License)	30.00
Amateur, Professional, Second (Corner),	
Timekeeper Licenses	
ID Badges (per Badge)	10.00
Drug Tests, Fight Fax, Contestant ID	
Badge	
Additional Inspector	100.00
Event Registration	100.00
Fee to reserve a date on the Pete Suazo Utah Athletic Commission event calendar	
Broadcast Revenue	3,000.00
3% of the first \$500,000 and 1% of the next \$1,000,000 of the total gross receipts from the	

sale, lease or other exploitation of internet, broadcasting, television, and motion picture rights for any contest or exhibition thereof without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or charges, except in no case shall the fee be more than \$25,000, nor less than \$100.

UTAH STATE TAX COMMISSION

TAX ADMINISTRATION

Administration Division	
Administration	
Liquor Profit Distribution	6.00
All Divisions	
Certified Document	5.00
Faxed Document Processing	
(per page)	1.00
Record Research	6.50
Photocopies, over 10 copies (per page)	0.10
Research, special requests (per hour)	20.00
Technology Management	
Administration	
All Divisions	
Custom Programming (per hour)	85.00
Tax Processing Division	
Administration	
All Divisions	
Convenience Fee	Not to exceed 3%
Convenience fee for tax payments and other authorized transactions	
Tax Payer Services	
Administration	
Lien Subordination	Not to exceed 300.00
Tax Clearance	50.00
Motor Vehicles	
Aeronautics	
Aircraft Registration	3.00
Administration	
Sample License Plates	5.00
All Divisions	
Data Processing Set-Up	55.00
Parks and Recreation	
Parks & Recreation Decal Replacement	4.00
Motor Vehicle	
Motor Vehicle Information	3.00
Motor Vehicle Information Via Internet	1.00
Motor Vehicle Transaction (per standard unit)	1.51
Motor Carrier	
Cab Card	3.00
Duplicate Registration	3.00
Temporary Permit	
Individual permit	6.00
Electronic Payment	
Authorized Motor Vehicle Registrations	Not to exceed 4.00
License Plates	
Reflectorized Plate	6.00
Special Group Plate Programs	
Inventory ordered before July 1, 2003	
Extra Plate Costs	5.50
Plus \$5 standard plate fee	
New Programs or inventory reorders after July 1, 2003	

Start-up or significant program changes (per program)	3,900.00
Extra Plate Costs (per decal set ordered)	3.50
Plus \$5 standard plate fee	
Extra Handling Cost (per decal set ordered)	2.40
Special Group Logo Decals	Variable
Special Group Slogan Decals	Variable
Motor and Special Fuel	
International Fuel Tax Administration	
Decal (per set)	4.00
Reinstatement	100.00
Motor Vehicle Enforcement Division	
Temporary Permit Restricted Fund	
Temporary Permit	Not to exceed 12.00
Sold to dealers in bulk, not to exceed approved fee amount	
Temporary Sports Event Registration Certificate	Not to exceed 12.00
MV Business Regulation	
Dismantler's Retitling Inspection	50.00
Salvage Vehicle Inspection	50.00
Electronic Payment	
Temporary Permit Books (per book)	Not to exceed 4.00
Dealer Permit Penalties (per penalty)	Not to exceed 1.00
Salvage Buyer's License (per license)	Not to exceed 3.00
Licenses	
Motor Vehicle Manufacturer License	102.00
Motor Vehicle Remanufacturer License	102.00
New Motor Vehicle Dealer	127.00
Transporter	51.00
Body Shop	112.00
Used Motor Vehicle Dealer	127.00
Dismantler	102.00
Salesperson	31.00
Salesperson's License Transfer Fee	31.00
Salesperson's License Reissue	5.00
Crusher	102.00
Used Motor Cycle, Off-Highway Vehicle, and Small Trailer Dealer	51.00
New Motor Cycle, Off-Highway Vehicle, and Small Trailer Dealer	51.00
Representative	26.00
Distributor or Factory Branch and Distributor Branch's	61.00
Additional place of business	
Temporary	26.00
Permanent	Variable
Variable rate - same rate as the original license fee (based on license type)	
License Plates	
Purchase	
Manufacturer	10.00
Dealer	12.00
Dismantler	10.00
Transporter	10.00
Renewal	
Manufacturer	8.50
Dealer	10.50
Dismantler	8.50
Transporter	8.50

In-transit Permit 2.50

LICENSE PLATES PRODUCTION

License Plates Production

Decal Replacement 1.00
 ReflectORIZED Plate 6.00
 Plate Mailing Charge (per Plate Set) 4.00

UTAH SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY

RESEARCH CAPACITY BUILDING

U of U Start Up, Carry Over, Commercialization
 USTAR Core Facility Incubation (per sq ft) . 28.00

SUPPORT PROGRAMS

SBIR/STTR Assistance Center
 SBIR/STTR Assistance Center
 (SSAC) Search Fee 75.00
 SBIR/STTR Assistance Center
 (SSAC) 4-8 hour seminar/workshop 75.00
 SBIR/STTR Assistance Center (SSAC)
 4-8 hour seminar/workshop:
 non-client 50.00
 SBIR/STTR Assistance Center (SSAC)
 4-8 hour seminar/workshop: client 25.00
 SBIR/STTR Assistance Center
 (SSAC) 2-4 hour seminar/workshop 25.00
 SBIR/STTR Assistance Center
 (SSAC) 1-4 hour seminar/workshop 10.00
 SBIR/STTR Assistance Center Seminar:
 Outside speakers: all day event 225.00
 SBIR/STTR Assistance Center Seminar:
 Outside speakers: all day event
 (early bird) 150.00
 SBIR/STTR Assistance Center Seminar:
 Outside speakers: all day event
 (search client) 100.00
 Regional Outreach
 Regional Outreach Seminar: Outside
 speakers - all day event 225.00
 Regional Outreach Seminar: Outside speakers -
 all day event (early bird) 150.00
 Regional Outreach 4-8 hour seminar/
 workshop 75.00
 Regional Outreach 4-8 hour seminar /
 workshop 50.00
 Regional Outreach 4 - 8 hour seminar/
 workshop 25.00
 Regional Outreach 2-4 hour seminar/
 workshop 25.00
 Regional Outreach 1-4 hour seminar/
 workshop 10.00
 Incubation Programs
 Incubation Program Pro Membership 300.00
 Incubation Program Co-Working
 Membership 150.00
 Incubation Program Walk-In
 Membership 45.00

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

DABC OPERATIONS

Executive Director

Compliance Licensee Lists 10.00
 Licensee Rules 20.00
 Utah Code 30.00
 Label Approval Fee 30.00
 Administration
 Customized Reports Produced by
 Request (per hour) 50.00
 Stock Location Report 25.00
 Photocopies 0.15
 Returned Check Fee 20.00
 Application to Relocate Alcoholic Beverages
 Due to Change or Residence 20.00
 Research (per hour) 30.00
 Video/DVD 25.00
 Price Lists
 Master Category 8.00
 \$96 Yearly
 Alpha by Product 8.00
 \$96 Yearly
 Numeric by Code 8.00
 \$96 Yearly
 Military 8.00
 \$96 Yearly

LABOR COMMISSION

Administration
 Industrial Accidents Division
 Workers Compensation
 Coverage Waiver 50.00
 Seminar Fee (alternate years)
 (per registrant) Not to exceed 500.00
 Premium Assessment
 Workplace Safety Fund
 (per premium) 0.25%
 Employers Reinsurance Fund
 (per premium) 3.00%
 Uninsured Employers Fund
 (per premium) 0.35%
 Industrial Accidents Restricted Account (per
 premium) 0.50%
 Certificate to Self-Insured
 New Self-Insured Certificate 1,200.00
 Self Insured Certificate Renewal 650.00
 Boiler, Elevator and Coal Mine Safety Division
 Boiler and Pressure Vessel Inspections
 Owner
 User Inspection Agency Certification 250.00
 Certificate of Competency
 Original Exam 25.00
 Renewal 20.00
 Jacketed Kettles and Hot Water Supply
 Consultation
 Witness special inspection (per hour) . 60.00
 Boilers
 Existing
 <250,000 BTU 30.00
 > 250,000 BTU but <4,000,000
 BTU 60.00
 > 4,000,001 BTU but <20,000,000
 BTU 150.00
 > 20,000,000 BTU 300.00
 New
 <250,000 BTU 45.00
 > 250,000 BTU but <4,000,000
 BTU 90.00

> 4,000,001 BTU but <20,000,000 BTU	225.00
> 20,000,000 BTU	450.00
Pressure Vessel	
Existing	30.00
New	45.00
Pressure Vessel Inspection by Owner-user	
25 or less on single statement	
(per vessel)	5.00
26 through 100 on single statement	
(per statement)	100.00
101 through 500 on single statement	
(per statement)	200.00
over 500 on single statement	
(per statement)	400.00
Elevator Inspections Existing Elevators	
Hydraulic	85.00
Electric	85.00
Handicapped	85.00
Other Elevators	85.00
Elevator Inspections New Elevators	
Hydraulic	300.00
Electric	700.00
Handicapped	200.00
Other Elevators	200.00
Consultation and Review (per hour) . . .	60.00
Escalators/Moving Walks	700.00
Remodeled Electric	500.00
Roped Hydraulic	500.00
Coal Mine Certification	
Mine Foreman	50.00
Temporary Mine Foreman	35.00
Fire Boss	50.00
Surface Foreman	50.00
Temporary Surface Foreman	35.00
Hoistman	50.00
Electrician	
Underground	50.00
Surface	50.00
Certification Retest	
Per section	20.00
Maximum fee charge	50.00
Hydrocarbon Mine Certifications	
Hoistman	50.00
Certification Retest	
Per section	20.00
Maximum fee charge	50.00
Gilsonite	
Mine Examiner	50.00
Shot Firer	50.00
Mine Foreman	
Certificate	50.00
Temporary	35.00
Photocopies, Search, Printing	
Black and White no special handling	0.25
Research, redacting, unstapling, restapling (per hour)	15.00
More than 1 hour (per hour)	20.00
Color Printing (per page)	0.50
Certified Copies (per certification)	2.00
Plus search fees if applicable	
Electronic documents CD or DVD	2.00
Fax, plus telephone costs	0.50

DEPARTMENT OF COMMERCE

COMMERCE GENERAL REGULATION

Administration	
Commerce Department	
All Divisions	
Booklets	Variable
Administrative Expungement	
Application	200.00
Priority Processing	75.00
List of Licensees/Business Entities	25.00
Photocopies (per copy)	0.30
Verification of Licensure/Custodian	
of Record	20.00
Returned Check Charge	20.00
FBI Fingerprint File Search	15.00
BCI Fingerprint File Search	20.00
Fingerprint Processing for	
non-department	10.00
Government Records and Management	
Act Requested Information	
Booklet	10.00
Duplication Charge CD	12.00
Government Records and Management Act	
record	
Administration	
Motor Vehicle Franchise Act	
Application	83.00
Renewal	83.00
Powersport Vehicle Franchise Act	
Application	83.00
Renewal	83.00
Application in addition to MVFA	27.00
Renewal in addition to MVFA	27.00
Administration Late Renewal	20.00
Employer Legal Status Voluntary	
Certification (Bi-annual)	3.00
Property Rights Ombudsman	
Filing Request for Advisory Opinion	150.00
Land Use Seminar Continuing	
Education	25.00
Books	
Citizens Guide to Land Use	
Single copy	15.00
Six or more copies	9.00
Case of 22 books	132.00
Administration	
Home Owner Associations	
HOA Registration	37.00
Change in HOA Registration	10.00
Occupational and Professional Licensing	
Cosmetologist/Barber	
Apprentice Registration / Renewal	20.00
Deception Detection	
Deception Detection Examiner	
Administrator Application	50.00
Deception Detection Examiner	
Administrator Renewal	32.00
Commercial Interior Design	
Commercial Interior Design Certification	
New Application	70.00

Commercial Interior Design		Agent Temporary Permit	20.00
Certification Renewal	40.00	Architect	
Acupuncturist		New Application Filing	110.00
New Application Filing	110.00	License Renewals	63.00
Dentist Educator		Education and Enforcement	
New Application	110.00	Surcharge	10.00
New Application Filing		Armored Car	
Renewal	63.00	Registration	330.00
Electrician		Renewal	203.00
Apprentice Electrician tracking		Security Officer Registration	60.00
per credit hour	0.24	Security Officer Renewal	42.00
Massage		Education Approval	300.00
Apprentice Renewal	20.00	Education Renewal	103.00
Plumber		Athletic Agents	
Plumber CE Course approval	40.00	New Application Filing	510.00
Plumber CE Course Attendee Tracking /		License Renewal	510.00
per hour	1.00	Athletic Trainer	
Apprentice Plumber CE attendance		New Application Filing	70.00
tracking/ per hour	0.24	License Renewal	47.00
Substance Use Disorder Counselor (Licensed)		Building Inspector	
Licensed Advanced New Application	85.00	New Application Filing	85.00
Licensed Advanced Renewal	78.00	License Renewal	63.00
Substance Use Disorder Counselor (Certified)		Certified Court Reporter	
Certified Advanced Counselor	70.00	New Application Filing	45.00
Certified Advanced Counselor Intern	70.00	License Renewal	42.00
Pharmacy		Certified Dietician	
Dispensing Medical Practitioner		New Application Filing	60.00
New Application Filing	110.00	License Renewals	37.00
Dispensing Medical Practitioner		Certified Nurse Midwife	
License Renewal	63.00	New Application Filing	100.00
Dispensing Medical Practitioner		License Renewal	63.00
Clinic Pharmacy New Application	200.00	Intern-New Application Filing	35.00
Dispensing Medical Practitioner		Certified Public Accountant	
Clinic Pharmacy License Renewal	103.00	Individual CPA Application Filing	85.00
Pharmacy Technician Trainee	50.00	Individual License/Certificate Renewal	63.00
Music Therapy		CPA Firm Application for Registration	90.00
Certified Music Therapist New		CPA Firm Registration Renewal	52.00
Application	70.00	Chiropractic Physician	
Certified Music Therapist Application		New Application Filing	200.00
Renewal	47.00	License Renewal	103.00
Physical Therapy		Contractor	
Dry Needle Registration	50.00	New Application Filing-Primary	
Psychologist		Classification	210.00
Behavioral Analyst New Application		License Renewals	113.00
Filing	120.00	New Application Filing-Secondary	
Behavioral Analyst License Renewal	93.00	Classification	110.00
Assistant Behavioral Analyst New		Change Qualifier	50.00
Application Filing	120.00	Corporation Conversion	35.00
Assistant Behavioral Analyst		Continuing Education Course	
License Renewal	93.00	Approval	40.00
Behavioral Specialist License Renewal	78.00	Continuing Education (per credit	
Assistant Behavioral Specialist New		hour tracking)	1.00
Application Filing	85.00	Controlled Substance	
Assistant Behavioral Specialist		New Application Filing	100.00
License Renewal	78.00	License Renewal	78.00
Physician and Surgeon		Controlled Substance Handler	
Physician and Surgeon Compact		Facility New Application Filing	90.00
Existing Licensee Fee	40.00	Facility License Renewal	68.00
Interstate Compact New License		Individual New Application Filing	90.00
Application Filing	200.00	Individual License Renewal	68.00
Interstate Compact License Renewal	183.00	Controlled Substance Precursor	
Acupuncturist		Distributor New Application Filing	210.00
License Renewal	63.00	License Renewal	113.00
Alarm Company		Cosmetologist/Barber	
Company Application Filing	330.00	New Application Filing	60.00
Company License Renewal	203.00	License Renewal	52.00
Agent Application Filing	60.00	Instructor Certificate	60.00
Agent License Renewal	42.00	School New Application Filing	110.00

School License Renewal 110.00
 Barber New Application 60.00
 School License Renewal 52.00
 Barber Instructor Certificate 60.00
Deception Detection
 Examiner New Application Filing 50.00
 Examiner License Renewal 32.00
 Intern New Application Filing 35.00
 Intern License Renewal 32.00
Dentist
 New Application Filing 110.00
 License Renewals 63.00
 Anesthesia Upgrade New Application ... 60.00
Dental Hygienist
 New Application Filing 60.00
 License Renewal 37.00
 Anesthesia Upgrade New Application ... 35.00
Direct Entry Midwife
 New Application Filing 100.00
 License Renewal 63.00
Electrician
 New Application Filing 110.00
 License Renewal 63.00
 Continuing Education Course Approval .. 40.00
 Continuing Education (per credit
 hour tracking) 1.00
Electrologist
 New Application Filing 50.00
 License Renewals 32.00
 Instructor Certificate 60.00
 School New Application Filing 110.00
 School License Renewal 110.00
Elevator Mechanic
 New Application Filing 110.00
 License Renewal 63.00
 Continuing Education Course
 Approval 40.00
 Continuing Education (per credit
 hour tracking) 1.00
Engineer, Professional
 New Application Filing 110.00
 Engineer License Renewal 63.00
 Structural Engineer New Application
 Filing 110.00
 Structural Engineer License Renewal ... 63.00
Engineer
 Education and Enforcement Surcharge .. 10.00
Environmental Health Scientist
 New Application Filing 60.00
 License Renewal 37.00
 New Application Filing 60.00
 In training
Esthetician
 New Application Filing 60.00
 License Renewals 52.00
 Instructor Certificate 60.00
 Master Esthetician New Application
 Filing 85.00
 Master Esthetician License Renewal 68.00
 School New Application Filing 110.00
 School License Renewal 110.00
Factory Built Housing
 Dealer New Application Filing 30.00
 Dealer License Renewal 30.00
 On-site Plant Inspection
 (per hour) \$50 per hour plus expenses

Factory Built Housing Education
 and Enforcement 75.00
Funeral Services
 Director New Application Filing 160.00
 Director License Renewal 88.00
 Intern New Application Filing 85.00
 Establishment New Application
 Filing 250.00
 Establishment License Renewal 250.00
Genetic Counselor
 New Application Filing 150.00
 License Renewal 138.00
Geologist
 New Application Filing 150.00
 License Renewal 123.00
 Education and Enforcement Fund 15.00
Handyman Affirmation
 Handyman Exemption Registration/
 Renewal 35.00
Health Facility Administrator
 New Application Filing 120.00
 License Renewals 83.00
Hearing Instrument Specialist
 New Application Filing 150.00
 License Renewal 103.00
 Intern New Application Filing 35.00
Hunting Guide
 New Application Filing 75.00
 License Renewal 50.00
Landscape Architect
 New Application Filing 110.00
 License Renewal 63.00
 Examination Record 30.00
 Education and Enforcement Fund 10.00
Land Surveyor
 New Application Filing 110.00
 License Renewals 63.00
 Education and Enforcement Surcharge .. 10.00
Marriage and Family Therapist
 Therapist New Application Filing 120.00
 Therapist License Renewal 93.00
 Associate New Application Filing 85.00
 Externship New Application Filing 85.00
Massage
 Therapist New Application Filing 60.00
 Therapist License Renewal 52.00
 Apprentice New Application Filing 35.00
Medical Language Interpreter
 New Application Filing 50.00
 Interpreter Renewal 25.00
Nail Technician
 New Application Filing 60.00
 License Renewal 52.00
 Instructor Certificate 60.00
 School New Application Filing 110.00
 School License Renewal 110.00
Naturopathic Physician
 New Application Filing 200.00
 License Renewals 103.00
Nursing
 Licensed Practical Nurse New
 Application Filing 60.00
 Licensed Practical Nurse License
 Renewal 58.00
 Registered Nurse New Application
 Filing 60.00

Registered Nurse License Renewal	58.00	Physical Therapy Assistant	
Advanced Practice RN New Application		New Application Filing	60.00
Filing	100.00	License Renewal	47.00
Advanced Practice RN License		Physician/Surgeon	
Renewal	68.00	New Application Filing	200.00
Advanced Practice RN-Intern New		License Renewal	183.00
Application Filing	35.00	Physician Assistant	
Certified Nurse Anesthetist New		New Application Filing	180.00
Application Filing	100.00	License Renewals	123.00
Certified Nurse Anesthetist License		Physician Online Prescriber	
Renewal	68.00	New Application	200.00
Educational Program Approval-		License Renewal	183.00
Initial Visit	500.00	Plumber	
Educational Program Approval-		New Application Filing	110.00
Follow-up	250.00	License Renewals	63.00
Medication Aide Certified New		Podiatric Physician	
Application Filing	50.00	New Application Filing	200.00
Medication Aide Certified License		License Renewal	103.00
Renewal	42.00	Pre-Need Funeral Arrangement	
Occupational Therapist		Sales Agent New Application Filing	85.00
Occupational Therapist New		Sales Agent License Renewal	73.00
Application Filing	70.00	Private Probation Provider	
Occupational Therapist License		New Application Filing	85.00
Renewal	47.00	License Renewal	63.00
Occupational Therapist Assistant		Clinical Mental Health Counselor	
New Application Filing	70.00	New Application Filing	120.00
Occupational Therapist Assistants		License Renewals	93.00
License Renewal	47.00	Professional Counselor Associate	
Online Contract Pharmacy		New Application Filing	85.00
New Application	200.00	Associate Clinical Mental Health	
Renewal	103.00	Extern New Application	85.00
Online Internet Facilitator		Psychologist	
New Application	7,000.00	New Application Filing	200.00
Renewal	7,000.00	License Renewal	128.00
Optometrist		Certified Psychology Resident New	
New Application Filing	140.00	App Filing	85.00
License Renewal	93.00	Radiology	
Osteopathic Physician Online Prescriber		Radiology Technologist New Application	
New Application	200.00	Filing	70.00
License Renewal	183.00	Radiology Technologist License	
Outfitter		Renewal	47.00
New License Filing	150.00	Radiology Practical Technologist	
Renewal License	50.00	New Application Filing	70.00
Osteopathic Physician and Surgeon		Radiology Practical Technologist	
New Application Filing	200.00	License Renewal	47.00
License Renewals	183.00	Recreation Therapy	
Pharmacy		Master Therapeutic Recreational Specialist	
Pharmacist New Application Filing	110.00	New Application Filing	70.00
Pharmacist License Renewal	63.00	Master Therapeutic Recreational	
Pharmacy Intern New Application		Specialist License Renewal	47.00
Filing	100.00	Therapeutic Recreational Specialist	
Pharmacy Technician New Application		New Application Filing	70.00
Filing	60.00	Therapeutic Recreational Specialist	
Pharmacy Technician License		License Renewal	47.00
Renewal	47.00	Therapeutic Recreational Technical New	
Class A New Application Filing	200.00	License Application	70.00
Class A License Renewal	103.00	Therapeutic Recreational Technician	
Class B New Application	200.00	License Renewal	47.00
Class B License Renewal	103.00	Residence Lien Recovery Fund	
Class C New Application	200.00	Initial Assessment	195.00
Class C License Renewal	103.00	Registration Processing	
Class D New Application	200.00	Fee-Voluntary Registrants	25.00
Class D License Renewal	103.00	Post-claim Laborer Assessment	20.00
Class E New Application	200.00	Beneficiary Claim	120.00
Class E License Renewal	103.00	Laborer Beneficiary Claim	15.00
Physical Therapy		Reinstatement of Lapsed Registration	50.00
New Application Filing	70.00	Late	20.00
License Renewal	47.00	Certificate of Compliance	30.00

Respiratory Care Practitioner	
New Application Filing	60.00
License Renewal	52.00
Security Services	
Contract Security Company Application	
Filing	330.00
Contract Security Company Renewal ..	203.00
Replace/Change Qualifier	50.00
Education Program Approval	300.00
Education Program Approval	
Renewal	103.00
Armed Security Officer New	
Application Filing	60.00
Armed Security Officer New License	
Renewal	42.00
Unarmed Security Officer New	
Application Filing	60.00
Unarmed Security Officer New	
License Renewal	42.00
Social Worker	
Clinical Social Worker New	
Application Filing	120.00
Clinical Social Worker License	
Renewal	93.00
Certified Social Worker New	
Application Filing	120.00
Certified Social Worker License	
Renewal	93.00
Certified Social Worker Intern New ..	85.00
Certified Social Worker Externship ..	85.00
Social Service Worker New Application	
Filing	85.00
Social Service Worker License	
Renewal	78.00
Speech Language Pathologist/Audiologist	
Speech Language Pathologist New	
Application Filing	70.00
Speech Language Pathologist License	
Renewal	47.00
Audiologist New Application Filing ..	70.00
Audiologist License Renewal	47.00
Speech Language Pathologist / Audiologist	
Speech Language Pathologist and	
Audiologist New Application Filing ..	70.00
Speech Language Pathologist and	
Audiologist License Renewal	47.00
Substance Use Disorder Counselor (Licensed)	
New Application Filing	85.00
License Renewal	78.00
Substance Use Disorder Counselor (Certified)	
Certified Substance Counselor	70.00
Certified Counselor Intern	70.00
Certified Substance Extern	70.00
Veterinarian	
New Application Filing	150.00
License Renewal	73.00
Intern New Application Filing	35.00
Vocational Rehab Counselor	
New Application Filing	70.00
License Renewal	47.00
Other	
Inactive/Reactivation/Emeritus	
License	50.00
Temporary License	50.00
Late Renewal	20.00
License/Registration Reinstatement ..	50.00
Duplicate License	10.00

Disciplinary File Search (per order	
document)	12.00
Change Qualifier	50.00
UBC Seminar	Variable
surcharge of 1% of Building Permits in	
accordance w/ UCA-15a-1-209-5-a	
UBC Building Permit surcharge	Variable
State Construction Registry	
Online	
Notice of Commencement	7.50
Appended Notice of Commencement	
online	7.50
Preliminary Notice	1.00
Notice of Completion	7.50
Required Notifications	Variable
Requested Notifications	10.00
Receipt Retrieval	
Within 2 years	1.00
Beyond 2 years	5.00
Public Search	1.00
Annual account set up	
Auto bill to credit card	60.00
Invoice	100.00
Notice of Construction Loan	8.00
Notice of Intent to Complete	8.00
Notice of Retention	1.25
Notice of Remaining to Complete	1.25
Offline	
Notice of Commencement	15.00
Appended Notice of Commencement -	
On-line	15.00
Preliminary Notice	6.00
Notice of Completion	15.00
Required Notifications	6.00
Requested Notifications	25.00
Receipt Retrieval	
Within 2 years	6.00
Beyond 2 years	12.50
Public Search	Variable
Annual account set up	
Auto bill to credit card	75.00
Invoice	125.00
Notice of Construction Loan	15.00
Notice of Intent to Complete	16.00
Notice of Retention	8.00
Notice of Remaining to Complete	6.00
Notice of Loan Default	Variable
Building Permit	Variable
Filed by city	
Withdrawal of Preliminary	
Notice	Variable
Construction Ownership	
Ownership Status Report	20.00
Ownership Listing/Change	20.00
Physician Educator	
Physician Educator I new application ..	200.00
Physician Educator I renewal	183.00
Physician Educator II new	
application	200.00
Physician Educator I renewal	183.00
Radiologist Assistant	
New Application Filing	70.00
License Renewal	47.00
Residence Lien Recovery Fund	
Special Assessment	105.00
Securities	

Title III Crowd Funding Timely Notice Filing	100.00	Exempt	100.00
Title III Crowd Funding Notice Filing Late Fee	500.00	Approved	200.00
Securities Registration Qualification Registration	300.00	Child Protection Register	
Covered Securities Notice Filings Regulation A timely Securities Filing	100.00	Child Protection Registry (per email)	0.005
Late Fee Regulation A Filing	500.00	Rate up to 20,000 and 40,000 units per calendar month, discounted thereafter.	
Securities Registration Coordinated Registration	300.00	Child Protection Registry Step Volume 20,000-40,000 units in a month (\$.00485)	Variable
Transactional Exemptions Transactional Exemptions	60.00	Previous fee is \$.005. 3% discount off previous step for each additional 20,000 units in calendar month. 3% discount for transactions 40-60K & each 20K step thereafter in a calendar month.	
No-action and Interpretative Opinions	120.00	3% discount off previous step for each additional 20,000 units in calendar month	Variable
Licensing Agent	60.00	Pawnshop Registry	
Broker/Dealer	200.00	Out of State Pawnshop Database Request	750.00
Investment Advisor New and renewal	100.00	Pawnshop/2nd hand store Registration	300.00
Investment Advisor Representative New and renewal	50.00	Law Enforcement Registration	2.00
Certified Dealer New and Renewal	500.00	Proprietary Schools Initial Application	500.00
Certified Adviser New and Renewal	500.00	Renewal Application	1% of gross revenue
Covered Securities Notice Filings Investment Companies	600.00	Registration Review	1% of gross revenue
All Other Covered Securities	100.00	Miscellaneous Fees Late Renewal (per month)	25.00
Late Fee Rule 506 Notice Filing Less than 15 days after sale	500.00	Miscellaneous Microcassette Copying (per tape)	Variable
Federal Covered Adviser New and Renewal	100.00	Proprietary Schools Registration Application	1% of gross revenue
Securities Exemptions Securities Exemptions	60.00	\$500 min; \$2,500 max	
Other Late Renewal	20.00	Proprietary Schools Accredited Institution Certificate of Exemption Registration/Renewal	1% of gross revenue
Fairness Hearing	1,500.00	Up to \$2,500 or \$1,500 min	
Statute Booklet	Variable	Non-Profit Exemption Certificate Registration/Renewal	1,500.00
Small Corp. Offering Registration (SCOR)	Variable	Corporations and Commercial Code Articles of Incorporation Domestic Profit	70.00
Rules and form booklet Excluding SCOR	Variable	Partnerships General Partnerships	22.00
Postage and Handling	Variable	5 year renewal	
Consumer Protection Charitable Solicitation Act Charity	75.00	Other Statement Authority	15.00
Transportation Network Company Transportation network Company Registration	5,000.00	One time registration or as changes are needed	
Transportation Network Company License Renewal	5,000.00	Partnerships Limited Liability Partnership	70.00
Immigration Consultants Initial Registration Fee	200.00	Previously under Limited Partnership, now LLP's	
License Renewal Fee	200.00	Other Pharmacy Benefit Manager	100.00
Pawnshop Registry Pawnbroker Late Fee	50.00	Articles of Incorporation Domestic Nonprofit	30.00
Charitable Solicitation Act Professional Fund Raiser	250.00	Foreign Profit	70.00
Telephone Solicitation Telemarketing Registration	500.00	Foreign Nonprofit	30.00
Health Spa Health Spa	100.00	Reinstatement Profit	70.00
Credit Services Organization Credit Services Organization	250.00	Requalification/Reinstatement Nonprofit	30.00
Debt Management Services Organizations	250.00	Changes of Corporate Status Amend/Restate/Merge-Profit	37.00
Business Opportunity Disclosure Register		Amend/Restate/Merge-Nonprofit	17.00
		Amendment-Foreign	37.00

Pre-authorization of document	25.00
Statement of Correction	12.00
Conversion	37.00
Annual Report	
Profit	15.00
Nonprofit	10.00
Limited Partnership	15.00
Limited Liability Company	15.00
On-line	15.00
Change Form	15.00
Certification	
Corporate Standing	12.00
Corporate Standing-Long Form	20.00
Commercial Registered Agent	
Registration	52.00
Changes	52.00
Terminations	52.00
Corporation Search	
In House	10.00
Limited Partnership	
Certificate/Qualification	70.00
Reinstate	70.00
Amend/Restate/Merge	37.00
Statement of Correction	12.00
Conversion	37.00
DBA	
Registration	22.00
Renewals	22.00
Business/Real Estate Investment	
Trust	22.00
Trademark/Electronic Trademark	
Initial Application and 1st Class Code	50.00
Each Additional Class Code	25.00
Renewals	50.00
Assignments	25.00
Unincorporated Cooperative Association	
Articles of Incorporation/Qualification	22.00
Annual Report	7.00
Limited Liability Company	
Articles of Organization/Qualification	70.00
Reinstate	70.00
Amend/Merge	37.00
Statement of Correction	12.00
Conversion	37.00
Other	
Late Renewal	10.00
Out of State Motorist Summons	12.00
Collection Agency Bond	32.00
Unregistered Foreign Business	12.00
Foreign Name Registration	22.00
Statement of Certification	12.00
Name Reservation	22.00
Telecopier Transmittal	5.00
Telecopier Transmittal (per page)	1.00
Commercial Code Lien Filing	
UCC I Filings (per page)	12.00
UCC Addendum (per page)	12.00
UCC III Assignment/Amendment	12.00
UCC III Continuation	12.00
UCC III Termination	Variable
CFS-1	12.00
CFS Addendum	12.00
CFS-3	12.00
CFS-2	12.00
CFS Registrant	25.00
Master List	25.00
Lien Search	
Search	12.00

Transactions Through Utah Interactive	
Registered Principal Search	3.00
Business Entity Search Principals	1.00
Certificate of Good Standing	12.00
Subscription	75.00
UCC Searches	12.00
List Compilation Customized	Variable
One Stop Business Registration	Variable
Real Estate	
Appraisers	
Licensed and Certified	
Application	250.00
Mortgage Broker	
Mortgage Loan Originator New	
Application	100.00
Mortgage Loan Originator Renewal	30.00
Sales Agent	
New Application (2 year)	100.00
Renewal	48.00
Education	
Real Estate Education Broker	18.00
Continuing Education Registration	10.00
Real Estate Education Agent	12.00
Appraisers	
Licensed and Certified	
Renewal	350.00
National Register	80.00
Certifications	
Real Estate Prelicense School	
Certification	100.00
Real Estate Prelicense Instructor	
Certification	75.00
Appraisers	
Temporary Permit	100.00
Appraiser Trainee Registration	100.00
Real Estate Education	
Real Estate Continuing Education	
Course Certification	75.00
Real Estate Continuing Education	
Instructor Certification	50.00
Appraisers	
Appraiser expert witness	200.00
Appraiser Trainee Renewal	100.00
Certifications	
Real Estate Branch Schools	100.00
Appraiser Prelicense Course	
Certification	70.00
Appraisers	
Appraiser Pre-License School	
Application	100.00
Appraiser Pre-License Instructor	
Application	75.00
Certifications	
Appraiser CE Instructor Application/	
Renewal	75.00
Appraisers	
Appraiser CE Course Application/	
Renewal	75.00
Appraiser Temporary Permit	
Extension	100.00
One time only	
Appraisal Management Company	
Appraisal Management Company	350.00
Appraisal Management Company	
Renewal	350.00
Appraisal Management Company Late	50.00
Broker	
New Application	100.00

2 year	
Renewal	48.00
Broker/Sales Agent	
Activation	15.00
New Company	200.00
Company Broker Change	50.00
Company Name Change	100.00
Verification (per copy)	20.00
General Division	
Duplicate License	10.00
Certifications/Computer Histories	20.00
Late Renewal	50.00
Reinstatement	100.00
Branch Office	200.00
No Action Letter	120.00
Trust Account Seminar	5.00
Continuing Education Instructor/ Course Late	25.00
Mortgage Broker	
Mortgage Lending Manager	
Application	100.00
Renewal	30.00
Mortgage Lender Entities	
Application	200.00
Renewal	200.00
Mortgage DBA	200.00
Activation	15.00
Subdivided Land	
Exemption	
HUD	100.00
Water Corporation	50.00
Temporary Permit	100.00
Application	500.00
Charge over 30	3.00
Inspection Deposit	300.00
Consolidation	200.00
Charge	3.00
Renewal Report	203.00
Timeshare and Camp Resort	
Salesperson	100.00
New and renewal	
Registration	500.00
Per unit charge over 100	3.00
Inspection Deposit	300.00
Consolidation	200.00
Per unit charge	3.00
Temporary Permit	100.00
Renewal Reports	203.00
Supplementary Filing	
Supplementary Filing	200.00
Mortgage Education	
Individual	36.00
Entity	50.00
Mortgage Prelicense School	
Certification	100.00
Mortgage Prelicense	
Instructor Certification/Renewal	75.00
Mortgage Branch Schools	100.00
Mortgage Continuing Education	
Course Certification Application	
Renewal	75.00
Mortgage Continuing Education	
Instructor Certification	50.00
Mortgage Out of State Records	
Inspection	500.00

FINANCIAL INSTITUTIONS**FINANCIAL INSTITUTIONS
ADMINISTRATION**

Administration	
Photocopies	0.25

INSURANCE DEPARTMENT**INSURANCE DEPARTMENT
ADMINISTRATION**

Administration	
Global license fees for Admitted Insurers	
Certificate of Authority	
Initial License Application	1,000.00
Independent Review - Initial	
Application	250.00
Initial individual license (per 35.00)	2,800.00
Renewal individual license (per 35.00)	35.00
Reinstatement individual license	
(per 60.00)	60.00
Initial agency license (per 40.00)	800.00
Renewal agency license (per 40.00)	40.00
Reinstatement agency license	
(per 65.00)	65.00
Continuing Care Provider - Initial	
registration application	6,900.00
Continuing Care Provider - Disclosure	
Statement	600.00
Continuing Care Provider - Annual	
Registration Renewal	6,900.00
Continuing Care Provider - Annual	
Renewal Disclosure Statement	600.00
Continuing Care Provider -	
Reinstatement Fee	6,950.00
Non-electronic payment processing	
fee (per 25.00)	25.00
Insurance removal of public access	
to administrative actions (per 185.00)	185.00
Renewal	300.00
Late Renewal	350.00
Reinstatement	1,000.00
Amendment	250.00
Orderly Plan of Withdrawal	50,000.00
Form A Filing	2,000.00
Redomestication Filing	2,000.00
Organizational Permit for Mutual	
Insurer	1,000.00
Insurer Examinations	72.00
Agency cost	
Global Service Fees for Admitted Insurers	
Zero premium volume	Insurance Rule
R590-102-5(4)(d)(i)	
More than \$0 to less than \$1M	
premium volume	700.00
\$1M to less than \$3M premium	
volume	1,100.00
\$3M to less than \$6 M premium	
volume	1,550.00
\$6M to less than \$11M premium	
volume	2,100.00
\$11M to less than \$15M premium	
volume	2,750.00
\$15M to less than \$20M premium	
volume	3,500.00

\$20M or more in premium volume	4,350.00
Global license fees for Surplus Lines	
Insurers, Accredited/Trusteed Reinsurer	
Surplus Lines Insurers, Accredited/Trusteed	
Reinsurers, Employee Welfare Fund	
Initial	1,000.00
Annual	500.00
Late Annual	550.00
Reinstatement	1,000.00
Global license fees for Other Organizations	
Other Organizations	
Initial License Application	250.00
Renewal	200.00
Late Renewal	250.00
Reinstatement	250.00
Annual Service	200.00
Life Settlement Provider	
Initial license application	1,000.00
Renewal	300.00
Late Renewal	350.00
Reinstatement	1,000.00
Annual service	600.00
Global Individual License	
Res/non-res full line producer license or	
renewal per two-year license period	
Initial, or renewal if renewed prior to	
renewal deadline	70.00
Reinstatement of Lapsed License	120.00
Res/non-res limited line producer	
license or renewal per two-year	
licensing period	
Initial or renewal if renewed prior to	
renewal deadline	45.00
Reinstatement of lapsed license	95.00
Res/non-res full line producer license or	
renewal per two-year license period	
Dual Title License Form Filing	25.00
Addition of producer classification	
or line of authority to individual	
producer license	25.00
Global Full Line and Limited Line	
Agency License	
Res/non-res initial or renewal license if	
renewed prior to renewal deadline	75.00
Reinstatement of lapsed license	125.00
Addition of agency class or line of	
authority to agency license	25.00
Resident Title initial or renewal license if	
renewed prior to renewal deadline	100.00
Resident Title Reinstatement of	
Lapsed License	150.00
Health Insurance Purchasing Alliance	
Res/non-res initial or renewal license if	
renewed prior to renewal deadline	500.00
Per annual license period	
Late Renewal	550.00
Reinstatement of lapsed license	550.00
Continuing Education	
CE provider initial or renewal license	
prior to renewal deadline	250.00
CE provider reinstatement of lapsed	
license	300.00
CE provider post approval or	
\$5 per hour, whichever is more	25.00
Other	
Photocopy (per page)	0.50
Copy Complete Annual Statement	40.00

Accepting Service of legal process	10.00
Returned check charge	20.00
Workers' Comp schedule	5.00
Address Correction	35.00
Production of Lists	
Printed (per page)	1.00
Information already in list format	
Electronic	
Base fee	50.00
1 CD and up to 30 minutes of staff time	
Additional fee billed by invoice	50.00
For each additional 30 minutes or	
fraction thereof	
Additional CD (per CD)	1.00
Restricted Special Revenue Fees	
Title Insurance Recovery, Education,	
and Research Fund	
Initial Title Agency License	1,000.00
Renewal Title Agency License	
Band A-\$0-\$1 million premium	
volume	125.00
Band B->\$1-\$10 million premium	
volume	250.00
Band C->\$10-\$20 million premium	
volume	375.00
Band D->\$20 million premium	
volume	500.00
Individual Title Licensee Initial	
or Renewal License	15.00
Professional Employers Organization	
Standard - Initial/Renewal	2,000.00
Standard - Late Renewal or	
Reinstatement	2,050.00
Certified by an Assurance Organization -	
Initial	2,000.00
Certified by an Assurance Organization -	
Renewal	1,000.00
Certified Late Renewal or	
Reinstatement	1,050.00
Small Operator	
Small Operator - Initial	2,000.00
Small Operator - Renewal	1,000.00
Small Operator - Late Renewal	
or Reinstatement	1,050.00
Relative Value Study	
Restricted Revenue	
Relative Value Study	
Relative Value Study Book	10.00
Code Books	57.00
Cost to agency	
Mailing fee for books	3.00
Insurance Fraud Program	
Restricted Revenue	
Fraud Investigation Division	
Zero to \$1M premium volume	200.00
>\$1M to less than \$2.5M premium	
volume	450.00
\$2.5M to less than \$5M premium	
volume	800.00
\$5M to less than \$10M premium	
volume	1,600.00
\$10M to less than \$50M premium	
volume	6,100.00
\$50M or more in premium volume	15,000.00
Fraud Division Investigative	
Recovery	Variable

Fraud division assessment late fee	50.00
Captive Insurers	
Captive Insurer	
Initial license application	200.00
Captive Cell Initial Application	
(per 200)	200.00
Captive Cell Initial License	
(per 1000)	1,000.00
Captive Cell License Renewal	
(per 1000)	1,000.00
Captive Cell Late Renewal (per 50)	50.00
Initial license application	
review	Captive - Actual cost
Initial license issuance	5,000.00
Renewal	5,000.00
Late Renewal	5,050.00
Reinstatement	5,050.00
Captive Insurer Examination	
Reimbursements	Variable
Electronic Commerce Fee	
Electronic Commerce Restricted	
E-commerce and internet technology services	
Insurer: admitted, surplus lines	75.00
Captive Insurer	250.00
Other organization and life settlement	
provider	50.00
CE Provider	20.00
Agency and Health Insurance	
Purchasing Alliance	10.00
Individual	5.00
Access to rate and form filing database	
Base	45.00
1 DVD and up to 30 minutes access and staff	
help	
Additional requests	45.00
Each additional 30 minutes or fraction	
thereof	
Additional DVD (per DVD)	2.00
Electronic Commerce Restricted	
Database access	3.00
Paper filing process	5.00
Paper Application Processing	25.00
GAP Waiver Program	
Restricted Revenue	
Guaranteed Asset Protection Waiver	
Registration/Annual	1,000.00
GAP Waiver Assessment	50.00
Criminal Background Checks	
Fingerprinting	
Bureau of Criminal Investigation	20.00
Federal Bureau of Investigation	12.00

HEALTH INSURANCE ACTUARY

Restricted Revenue	
Health Insurance Actuarial Review Assessment	
Assessment for Actuary	150,000.00

BAIL BOND PROGRAM

Restricted Revenue	
Bail Bond Agency	
Resident initial or renewal license if	
renewed prior to renewal deadline ..	250.00
Annual license period	
Reinstatement of lapsed license	300.00

Annual license period

TITLE INSURANCE PROGRAM

Restricted Revenue	
Title Insurance Regulation	
Assessment	100,000.00

INDIVIDUAL & SMALL EMPLOYER RISK ADJUSTMENT ENTERPRISE FUND

Risk Adjustment (per 0.96)	0.96
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PUBLIC SERVICE COMMISSION

Administration	
Application for Certificates of Convenience	
and Necessity	\$600 total
The fee and amount are found in Title	
54-7-6 (Fees).	

SOCIAL SERVICES

DEPARTMENT OF HEALTH

EXECUTIVE DIRECTOR'S OPERATIONS

Executive Director	
All the fees in this section apply for the entire	
Department of Health	
Clinic Fees Tied to Medicaid	
Reimbursement Levels	variable
The Department of Health benchmarks	
many of its charges in its medical and dental	
clinics to Medicaid reimbursement rates. If	
the Legislature authorizes reimbursement	
increases during the General Session, then	
the Legislature authorizes a proportional	
increase in effected clinic fees.	
Conference Registrations	100.00
Non-sufficient Check Collection Fee	20.00
Non-sufficient Check Service Charge	20.00
Testimony	
Expert Testimony Fee for those without	
a PhD/MD (per hour)	78.75
Includes preparation, consultation, and	
appearance on criminal and civil cases. Portal	
to portal, including travel and waiting time.	
Per hour charge, plus travel costs.	
Expert Testimony Fee for those with	
a PhD/MD (per hour)	250.00
Includes preparation, consultation, and	
appearance on criminal and civil cases. Portal	
to portal, including travel and waiting time.	
Per hour charge, plus travel costs.	
Government Records Access and Management	
Act (GRAMA)	
Mailing or shipping	
cost	Actual cost up to a \$100.00
Staff time for file search and/or information	
compilation	
Department of Technology Services	
(per hour)	70.00
For Department of Technology Services	
or programmer/analyst staff time.	
Department of Health (per hour)	35.00

For Department of Health staff time; first 15 minutes free, additional time.

Copy

11 x 8.5 Black and White (per page) . . . 0.15

11x17 or color (per page) 0.40

Information on disk (per kilobyte) 0.02

Administrative Fee, 1-15 copies 25.00

Administrative Fee, each additional copy 1.00

Fax (per page) 0.50

Center for Health Data and Informatics

Data Access Base Fees

Healthcare Facilities Data Series

Fee Discounts - Healthcare Facilities

Data Series Note

Note: (1) The Following Discounts Apply: Healthcare Facility with <5,000 discharges (80% for Standard Limited Data Set); Healthcare Facility with 5,000-35,000 discharges (50% for Standard Limited Data Set); Prior Years (50% for any data set); Student (75% for any standard data set); Public University or Not for Profit Entity (50% for any standard data series); Geographic Subset (discount proportional to percent of records required from limited data set); Redistribution (30% for any data set); On-time Renewal (15% for any data series). (2) Pricing for client-based partnership: The development fee is 50% of the actual cost of data provided to the partner. The per-client fee is to be negotiated with the partner based on the volume and level of data provided to each client, but may not exceed 70% of the actual cost of the data used.

Standard Annual Limited

Data Set 3,150.00

Standard Annual Research

Data set 6,000.00

Quarterly Preliminary Feeds 4,500.00

Federal Annual Database 4,500.00

Enhanced Annual Summary Report . . . 500.00

All Payer Claims Data Standard Limited

Data Series

Fee Discounts - All Payer Claims

Data Standard Limited Data Series . . Note

Notes: (1) The following discounts apply: Contributing Carrier (50% for standard limited data sets); Student (75% for any standard data set); Single Use and Single User License (50% for any standard limited data set); Geographic Subset (discount proportional to percent of records required from limited data set); Redistribution (30% for any data set); On-time Renewal (15% for any data series). (2) Pricing for client-based partnership: The development fee is 50% of the actual cost of data provided to the partner. The per-client fee is to be negotiated with the partner based on the volume and level of data provided to each client, but may not exceed 70% of the actual cost of the data used.

Single Year 8,000.00

Two Years 12,000.00

Three Years 16,000.00

Sample File 2,000.00

Two-Year Public Use File 4,000.00

All Payer Claims Data Standard Research

Data Series

Fee Discounts - All Payer Claims

Data Standard Research

Data Series Note

Note: The following discounts apply: Student (50% for any standard research data set); Single Use and Single User License (50% for any standard research data set); Redistribution (30% for any data set); On-time Renewal (15% for any data series)

Single Year 20,000.00

Two Years 30,000.00

Three Years 40,000.00

Special Purpose Series 4,000.00

Other Data Series and Licenses

Fee Discounts - Other Data Series and Licenses Note

Note: The following discounts apply: Non-Contributing Carrier (50% for CAHPS Data Set); Contributing Carrier (75% for CAHPS Data Set); Prior Year (20% for HEDIS & CAHPS Data Set); Years before Current and Prior Year (35% for HEDIS & CAHPS Data Set); Student (75% for HEDIS & CAHPS Data Set or Survey Responses); Public University or Not for Profit Entity (35% for HEDIS & CAHPS Data Set or Survey Responses); On-time Renewal (15% for any data series)

Institutional License 150,000.00

HEDIS Data Set 1,575.00

CAHPS Data Set 1,575.00

CAHPS Survey Responses 2,000.00

Other Fees and Services

Custom data services (per hour) 87.02

Note: This hourly fee applies to all custom work, including data extraction analytics; aggregate patient-risk profiles for clinics, payers or systems; data management reprocessing; data matching; and creation of samples or subsets.

Additional Fields to create a custom data set - (cost per field added) 225.00

Individual Information Extract

(per person) 100.00

Application Fee (non-refundable) 50.00

Note: application fees are non-refundable but may be credited towards a data fee if the application is approved.

Expedited Shipping Fee 15.00

Convenience Fee (for Credit or Debit Card payment) Not to exceed 3%

Birth Certificate

Initial Copy 20.00

Additional Copies 10.00

Stillbirth 18.00

Affidavit 25.00

Book Copy of Birth Certificate 25.00

Adoption 60.00

Death Certificate

Initial Copy 18.00

Additional Copies 10.00

Burial Transit Permit 7.00

Disinterment Permit 25.00

Death Certificate Reprint Fee 3.00

Specialized Services

Paternity Search (one hour minimum)	
(per hour)	18.00
Delayed Registration	60.00
Marriage and Divorce Abstracts	18.00
Legitimation	60.00
Death Research (one hour minimum)	
(per hour)	20.00
Death Notification Subscription	
Fee (organization less than or	
equal to 100,000 lives)	500.00
Death Notification Subscription	
Fee (organizations greater than	
100,000 lives)	1,000.00
Death Notification Fee, per matched	
death	1.00
Court Order Name Changes	25.00
Court Order Paternity	60.00
Online Access to Computerized Vital	
Records (per month)	12.00
Utah Plant Extract Registry	200.00
Utah Plant Extract Registration	
Renewal	50.00
Ad-hoc Statistical Requests (per hour) ...	45.00
Delay of File Fee (charged for every	
birth/death certificate registered	
30 days or more after the event)	50.00
Expedite Fee	15.00
Expedited Shipping Fee	15.00
Online Convenience Fee	4.00
Online Identity Verification	1.39
Adoption Registry	25.00
Adoption Expedite Fee	25.00
Adoption Records Access	
Specialized Services	
Birth Parent Information Registration ...	25.00
Adoption Records Access Fee	25.00
Adoption Records Amendment Fee	10.00

FAMILY HEALTH AND PREPAREDNESS

Director's Office

These fees apply for the entire Division of Family Health and Preparedness

Background Screening Fee -

Public Safety

This fee should be the same as that charged by the Department of Public Safety. If the Legislature changes the fee charged by Department of Public Safety, then the Legislature also approves the same change for the Department of Health. Fees collected by Family Health and Preparedness are passed through to Public Safety.

Fingerprints

Child Development

Background Screening Card Replacement ...

This fee will be assessed to child care licensing providers requesting a replacement background check card.

Background checks

Conditional Monitoring Inspections

Center-based providers (per visit)

Charge per extra visit begins with the second additional visit required due to non-compliance.

Home-based providers (per visit)

Charge per extra visit begins with the second additional visit required due to non-compliance.

Annual License

Annual Licensed Child Care

Facility Base

Plus the appropriate fee as listed below to any new or renewal license

Change in license or certificate during the

license period more than twice a year ...

Child Care Center Facilities (per child) ...

Late Fee

Within 1 - 30 days after expiration of license facility will be assessed 50% of scheduled fee. For centers, \$15.50 plus \$0.75 per child in the requested capacity. For homes, \$15.50.

New Provider/Change in Ownership

New Provider/Change in Ownership Applications for Child Care center facilities

A fee will be assessed for services rendered to providers seeking initial licensure or change of ownership to cover the cost of processing the application, staff consultation, review of facility policies, initial inspection. This fee will be due at the time of application.

Other

Non-compliant facilities and

additional inspections for

non-compliant facilities

Children with Special Health Care Needs

Evaluation of Speech

92521 Fluency

92522 Sound Production

92523 Sound Production w/ Evaluation

of Language Comprehension

Special Otorhinolaryngologic Services

92524 Behavioral and Qualitative Analysis

of Voice and Resonance

Physical Medicine and Rehabilitation

Therapeutic Procedures

97116 Gait training

97112 Neuromuscular reeducation

97542 Wheelchair Assessment

fitting/training

97755 Assistive Technology

Assessment

Office Visit, New Patient

99201 Problem focused,

straightforward

99202 Expanded problem,

straightforward

99203 Detailed, low complexity

99204 Comprehensive, Moderate

complexity

99205 Comprehensive, high

complexity

Office Visit, Established Patient

99211 Minimal Service or non-

Medical Doctor

99212 Problem focused,

straightforward

99213 Expanded problem,

low complexity

99214 Detailed, moderate

complexity

99215 Comprehensive, high complexity	151.00
Office Consultation, New or Established Patient	
99241 Problem focused, straightforward	60.00
99242 Expanded problem focused, straightforward	110.00
99243 Detailed exam, low complexity ..	151.00
99244 Comprehensive, moderate complexity	223.00
99245 Comprehensive, high complexity	275.00
95974 Cranial Neurostimulation evaluation	160.00
99354 Prolonged, face to face	114.00
First hour	
99355 Prolonged, face to face	112.00
Additional 30 minutes	
99358 Prolonged, non face to face	93.00
First hour	
99359 Prolonged, non face to face	51.00
Additional 30 minutes	
T1013 Sign Language oral interview	13.00
Nutrition	
97802 Medical Assessment	22.00
97803 Reassessment	22.00
Psychology	
96101 Testing	136.00
96102 Testing by technician	65.00
96103 Testing with computer	60.00
96110 Developmental Testing	136.00
96111 Extended Developmental Testing	136.00
90791 Psychiatric Diagnostic Evaluation	94.00
90792 Psychiatric Diagnostic Evaluation With Medical Services	94.00
90804 Psychotherapy, face to face, 20-30 minutes	68.00
90806 Psychotherapy, face to face, 50 minutes	130.00
90846 Family Medical Psychotherapy, 30 minutes	90.00
90847 Family Medical Psychotherapy, conjoint 30 minutes	130.00
90882 Environmental Intervention with Agencies, Employers	49.00
90882-52 Environmental Intervention Reduced Procedures	23.00
90885 Evaluation of hospital records	40.00
90889 Preparation of reports	40.00
Physical and Occupational Therapy	
97001 Physical Therapy Evaluation	90.00
97002 Physical Therapy Re-evaluation	52.00
97003 Occupational Therapy Evaluation	90.00
97004 Occupational Therapy Re-evaluation	52.00
97110 Therapeutic Physical Therapy	33.00
97530 Therapeutic Activity	40.00
97535 Self Care Management	30.00
97760 Orthotic Management	38.00
97762 Orthotic/prosthetic Use Management	38.00

G9012 Wheelchair Measurement/ Fitting	312.00
Ophthalmology	
92002 Exam and evaluation, intermediate, new patient	81.00
92012 Exam and evaluation, intermediate, established patient	85.00
92015 Determination of refractive state	51.00
Audiology	
92550 Tympanometry and Acoustic Reflex Threshold Testing	71.00
92551 Audiometry, Pure Tone Screen	33.00
92552 Audiometry, Pure Tone Threshold	36.00
92553 Audiometry, Air and Bone	44.00
92555 Speech Audiometry threshold testing	28.00
92556 Speech Audiometry threshold/ speech recognition testing	40.00
92557 Basic Comprehension, Audiometry	80.00
92567 Tympanometry	26.00
92568 Acoustic reflex testing, threshold	45.00
92570 Tympanometry and Acoustic Reflex Threshold	80.00
Acoustic Reflex Decay Testing	
92579 Visual reinforcement audiometry	57.00
92579-52 Visual reinforcement audiometry, limited	47.00
92582 Conditioning Play Audiometry	80.00
92585 Auditory Evoked Potentials testing	125.00
92587 Evoked Otoacoustic emissions testing	58.00
92590 Hearing Aid Exam	53.00
92591 Hearing Aid Exam, Binaural	108.00
92592-52 Hearing aid check, monaural	31.00
92593-52 Hearing aid check, binaural	44.00
92620 Evaluation of Central Auditory Function	87.00
92621 Evaluation of Central Auditory Function	22.00
Each additional 15 minutes	
V5008 Hearing Check, Patient Under 3 Years Old	38.00
V5257 Hearing Aid, Digital Monaural	2,000.00
V5261 Hearing Aid, Digital Binaural	1,100.00
V5264 Ear Mold Insert	75.00
V5266 Hearing Aid battery	1.00
BabyWatch / Early Intervention	
Monthly charges based on a sliding fee schedule	From \$10 - \$200

**FAMILY HEALTH AND PREPAREDNESS DIVISION
SLIDING FEE SCHEDULE and CHIP**

Patient's Financial Responsibility (PFR) % of Federal Poverty Guideline	0%	0%	20%	40%	60%	100%	CHIP	
	100%	0% to 133%	133% to 150%	150% to 185%	185% to 225%	>225%	200%	
FAMILY SIZE .			MONTHLY FAMILY INCOME					
1	\$1,005.00	\$0.00 - \$1,336.65	\$1,336.66- \$1,507.50	\$1,507.51- \$1,859.25	\$1,859.26- \$2,261.25	\$2,261.26 and up	\$2,010.00	
2	\$1,353.33	\$0.00 - \$1,799.93	\$1,799.94- \$2,030.00	\$2,030.01- \$2,503.67	\$2,503.68- \$3,045.00	\$3,045.01 and up	\$2,706.67	
3	\$1,701.67	\$0.00 - \$2,263.22	\$2,263.23- \$2,552.50	\$2,552.51- \$3,148.08	\$3,148.09- \$3,828.75	\$3,828.76 and up	\$3,403.33	
4	\$2,050.00	\$0.00 - \$2,726.50	\$2,726.51- \$3,075.00	\$3,075.01- \$3,792.50	\$3,792.51- \$4,612.50	\$4,612.51 and up	\$4,100.00	
5	\$2,398.33	\$0.00 - \$3,189.78	\$3,189.79- \$3,597.50	\$3,597.51- \$4,436.92	\$4,436.93- \$5,396.25	\$5,396.26 and up	\$4,796.67	
6	\$2,746.67	\$0.00 - \$3,653.07	\$3,653.08- \$4,120.00	\$4,120.01- \$5,081.33	\$5,081.34- \$6,180.00	\$6,180.01 and up	\$5,493.33	
7	\$3,095.00	\$0.00 - \$4,116.35	\$4,116.36- \$4,642.50	\$4,642.51- \$5,725.75	\$5,725.76- \$6,963.75	\$6,963.76 and up	\$6,190.00	
8	\$3,443.33	\$0.00 - \$4,579.63	\$4,579.64- \$5,165.00	\$5,165.01- \$6,370.17	\$6,370.18- \$7,747.50	\$7,747.51 and up	\$6,886.67	
Each Additional Family Member	\$348.33	\$463.28	\$522.50	\$644.42	\$783.75	\$783.75	\$696.67	

NOTE: This Division of Family Health and Preparedness sliding fee schedule is based on the Federal Poverty Guidelines published in the Federal Register January 31, 2017 see <https://www.federalregister.gov/articles/2017/01/31/2017-02076/annual-update-of-the-hhs-poverty-guidelines>. The fee scale will be changed in July each year in accordance with these guidelines, which are published annually by the Department of Health and Human Services, Office of the Secretary.

**FAMILY HEALTH AND PREPAREDNESS DIVISION
 Baby Watch Early Intervention Program
 2017-2018 Sliding Fee Schedule
 Monthly Family Fee, Effective July 1, 2017**

FAMILY SIZE	Federal Poverty	100% Exempt	186% \$10.00	200% \$20.00	250% \$30.00	300% \$40.00
2	\$16,240.00	\$0.00 - \$30,206.39	\$30,206.40- \$32,479.99	\$32,480.00- \$40,599.99	\$40,600.00- \$48,719.99	\$48,720.00- \$64,959.99
3	\$20,420.00	\$0.00 - \$37,981.19	\$37,981.20- \$40,839.99	\$40,840.00- \$51,049.99	\$51,050.00- \$61,259.99	\$61,260.00- \$81,679.99
4	\$24,600.00	\$0.00 - \$45,755.99	\$45,756.00- \$49,199.99	\$49,200.00- \$61,499.99	\$61,500.00- \$73,799.99	\$73,800.00- \$98,399.99
5	\$28,780.00	\$0.00 - \$53,530.79	\$53,530.80- \$57,559.99	\$57,560.00- \$71,949.99	\$71,950.00- \$86,339.99	\$86,340.00- \$115,119.99
6	\$32,960.00	\$0.00 - \$61,305.59	\$61,305.60- \$65,919.99	\$65,920.00- \$82,399.99	\$82,400.00- \$98,879.99	\$98,880.00- \$131,839.99
7	\$37,140.00	\$0.00 - \$69,080.39	\$69,080.40- \$74,279.99	\$74,280.00- \$92,849.99	\$92,850.00- \$111,419.99	\$111,420.00- \$14,559.99
8	\$41,320.00	\$0.00 - \$76,855.19	\$76,855.20- \$82,639.99	\$82,640.00- \$103,299.99	\$103,300.00- \$123,959.99	\$123,960.00- \$165,279.99
9	\$45,500.00	\$0.00 - \$84,629.99	\$84,630.00- \$90,999.99	\$90,999.99- \$113,749.99	\$113,750.00- \$136,499.99	\$136,500.00- \$181,999.99
10	\$49,680.00	\$0.00 - \$92,404.79	\$92,404.80- \$99,359.99	\$99,359.99- \$124,199.99	\$124,200.00- \$149,039.99	\$149,040.00- \$198,719.99
11	\$53,860.00	\$0.00 - \$100,179.59	\$100,179.60- \$107,719.99	\$107,720.00- \$134,649.99	\$134,650.00- \$161,579.99	\$161,580.00- \$215,439.99
12	\$58,040.00	\$0.00 - \$107,954.39	\$107,954.40- \$116,079.99	\$116,080.00- \$145,099.99	\$145,100.00- \$174,119.99	\$174,120.00- \$232,159.99
13	\$62,220.00	\$0.00 - \$115,729.19	\$115,729.20- \$124,439.99	\$124,440.00- \$155,549.99	\$155,550.00- \$186,659.99	\$186,660.00- \$248,879.99
14	\$66,400.00	\$0.00 - \$123,503.99	\$123,504.00- \$132,799.99	\$132,800.00- \$165,999.99	\$166,000.00- \$199,199.99	\$199,200.00- \$265,599.99
15	\$70,580.00	\$0.00 - \$131,278.79	\$131,278.80- \$141,159.99	\$141,160.00- \$176,449.99	\$176,450.00- \$211,739.99	\$211,740.00- \$282,319.99
16	\$74,760.00	\$0.00 - \$139,053.59	\$139,053.60- \$149,519.99	\$149,520.00- \$186,899.99	\$186,900.00- \$224,279.99	\$224,280.00- \$299,039.99
17	\$78,940.00	\$0.00 - \$146,828.39	\$146,828.40- \$157,879.99	\$157,880.00- \$197,349.99	\$197,350.00- \$236,819.99	\$236,820.00- \$315,759.99
18	\$83,120.00	\$0.00 - \$154,603.19	\$154,603.20- \$166,239.99	\$166,240.00- \$207,799.99	\$207,800.00- \$249,359.99	\$249,360.00- \$332,479.99
Increment	+\$4,180	100%	186%	200%	250%	300%

**Baby Watch Early Intervention Program
2017-2018 Sliding Fee Schedule, Continued
Monthly Family Fee, Effective July 1, 2017**

FAMILY SIZE	Federal Poverty	400% \$50.00	500% \$60.00	600% \$80.00	700% \$100.00	800% \$120.00
2	\$16,240.00	\$64,960.00- \$81,199.99	\$81,200.00- \$97,439.99	\$97,440.00- \$113,679.99	\$113,680.00- \$129,919.99	\$129,920.00- \$146,159.99
3	\$20,420.00	\$81,680.00- \$102,099.99	\$102,100.00- \$122,519.99	\$122,520.00- \$142,939.99	\$142,940.00- \$163,359.99	\$163,360.00- \$183,779.99
4	\$24,600.00	\$98,400.00- \$122,999.99	\$123,000.00- \$147,599.99	\$147,600.00- \$172,199.99	\$172,200.00- \$196,799.99	\$196,800.00- \$221,399.99
5	\$28,780.00	\$115,120.00- \$143,899.99	\$143,900.00- \$172,679.99	\$172,680.00- \$201,459.99	\$201,460.00- \$230,239.99	\$230,240.00- \$259,019.99
6	\$32,960.00	\$131,840.00- \$164,799.99	\$164,800.00- \$197,759.99	\$197,760.00- \$230,719.99	\$230,720.00- \$263,679.99	\$263,680.00- \$296,639.99
7	\$37,140.00	\$148,560.00- \$185,699.99	\$185,700.00- \$222,839.99	\$222,840.00- \$259,979.99	\$259,980.00- \$297,119.99	\$297,120.00- \$334,259.99
8	\$41,320.00	\$165,280.00- \$206,599.99	\$206,600.00- \$247,919.99	\$247,920.00- \$289,239.99	\$289,240.00- \$330,559.99	\$330,560.00- \$371,879.99
9	\$45,500.00	\$182,000.00- \$227,499.99	\$227,500.00- \$272,999.99	\$273,000.00- \$318,499.99	\$318,500.00- \$363,999.99	\$364,000.00- \$409,499.99
10	\$49,680.00	\$198,720.00- \$248,399.99	\$248,400.00- \$298,079.99	\$298,080.00- \$347,759.99	\$347,760.00- \$397,439.99	\$397,440.00- \$447,119.99
11	\$53,860.00	\$215,440.00- \$269,299.99	\$269,300.00- \$323,159.99	\$323,160.00- \$377,019.99	\$377,020.00- \$430,879.99	\$430,880.00- \$484,739.99
12	\$58,040.00	\$232,160.00- \$290,199.99	\$290,200.00- \$348,239.99	\$348,240.00- \$406,279.99	\$406,280.00- \$464,319.99	\$464,320.00- \$522,359.99
13	\$62,220.00	\$248,880.00- \$311,099.99	\$311,100.00- \$373,319.99	\$373,320.00- \$435,539.99	\$435,540.00- \$497,759.99	\$497,760.00- \$559,979.99
14	\$66,400.00	\$265,600.00- \$331,999.99	\$332,000.00- \$398,399.99	\$398,400.00- \$464,799.99	\$464,800.00- \$531,199.99	\$531,200.00- \$597,599.99
15	\$70,580.00	\$282,320.00- \$352,899.99	\$352,900.00- \$423,479.99	\$423,480.00- \$494,059.99	\$494,060.00- \$564,639.99	\$564,640.00- \$635,219.99
16	\$74,760.00	\$299,040.00- \$373,79.99	\$373,800.00- \$448,559.99	\$448,560.00- \$523,319.99	\$523,320.00- \$598,079.99	\$598,080.00- \$672,839.99
17	\$78,940.00	\$315,760.00- \$394,699.99	\$394,700.00- \$473,639.99	\$473,640.00- \$552,579.99	\$552,580.00- \$631,519.99	\$631,520.00- \$710,459.99
18	\$83,12.000	\$332,480.00- \$415,599.99	\$415,600.00- \$498,719.99	\$498,720.00- \$581,839.99	\$581,840.00- \$664,959.99	\$664,960.00- \$748,079.99
Increment	+\$4,160	400%	500%	600%	700%	800%

**Baby Watch Early Intervention Program
2017-2018 Sliding Fee Schedule, Continued
Monthly Family Fee, Effective July 1, 2017**

FAMILY SIZE	Federal Poverty	900% \$140.00	1000% \$160.00	1100% \$180.00	1200% \$200.00
2	\$16,240.00	\$146,160.00- \$162,399.99	\$162,400.00- \$178,639.99	\$178,640.00- \$194,879.99	\$194,880.00 and above
3	\$20,420.00	\$183,780.00- \$204,199.99	\$204,200.00- \$224,619.99	\$224,620.00- \$245,039.99	\$245,040.00 and above
4	\$24,600.00	\$221,400.00- \$245,999.99	\$246,000.00- \$270,599.99	\$270,600.00- \$295,199.99	\$295,200.00 and above
5	\$28,780.00	\$259,020.00- \$287,799.99	\$287,800.00- \$316,579.99	\$316,580.00- \$345,359.99	\$345,360.00 and above
6	\$32,960.00	\$296,640.00- \$329,599.99	\$329,600.00- \$362,559.99	\$362,560.00- \$395,519.99	\$395,520.00 and above
7	\$37,140.00	\$334,260.00- \$371,399.99	\$371,400.00- \$408,539.99	\$408,540.00- \$445,679.99	\$445,680.00 and above
8	\$41,320.00	\$371,880.00- \$413,199.99	\$413,200.00- \$454,519.99	\$454,520.00- \$495,839.99	\$495,840.00 and above
9	\$45,500.00	\$409,500.00- \$454,999.99	\$455,000.00- \$500,499.99	\$500,500.00- \$545,999.99	\$546,000.00 and above
10	\$49,680.00	\$447,120.00- \$496,799.99	\$496,800.00- \$546,479.99	\$546,480.00- \$596,159.99	\$596,160.00 and above
11	\$53,860.00	\$484,740.00- \$538,599.99	\$538,600.00- \$592,459.99	\$592,460.00- \$646,319.99	\$646,320.00 and above
12	\$58,040.00	\$522,360.00- \$580,399.99	\$580,400.00- \$638,439.99	\$638,440.00- \$696,479.99	\$696,480.00 and above
13	\$62,220.00	\$559,980.00- \$622,199.99	\$622,200.00- \$684,419.99	\$684,420.00- \$746,639.99	\$746,640.00 and above
14	\$66,400.00	\$597,600.00- \$663,999.99	\$664,000.00- \$730,399.99	\$730,400.00- \$796,799.99	\$796,800.00 and above
15	\$70,580.00	\$635,220.00- \$705,799.99	\$705,800.00- \$776,379.99	\$776,380.00- \$846,959.99	\$846,960.00 and above
16	\$74,760.00	\$672,840.00- \$747,599.99	\$747,600.00- \$822,359.99	\$822,360.00- \$897,199.99	\$897,120.00 and above
17	\$78,940.00	\$710,460.00- \$789,399.99	\$789,400.00- \$868,339.99	\$868,340.00- \$947,279.99	\$947,280.00 and above
18	\$83,120.00	\$748,080.00- \$831,199.99	\$831,200.00- \$914,319.99	\$914,320.00- \$997,439.99	\$997,440.00 and above
Increment	+\$4,180.00	900%	1000%	1100%	1200%

NOTE: This sliding fee schedule is based on 186% of the Federal Poverty Guidelines published in the Federal Register January 31, 2017.

<http://www.federalregister.gov/documents/2017/01/31/2017-02076/annual-update-of-the-hhs-poverty-guidelines>. The fee scale will be changed in July each year in accordance with these guidelines, which are published annually by the Department of Health and Human Services, Office of the Secretary.

Health Facility Licensing and Certification
Annual License

Health Facilities base 260.00

A base fee for health facilities plus the appropriate fee as indicated below applies to any new or renewal license.

Facility Initial or Change of Ownership (per 100) 100.00

Direct Access Clearance System

Initial Clearance 18.00

Facility Renewal 200.00

Contractor Access 100.00

Annual License

Abortion Clinics 1,800.00

Two Year Licensing Base

Plus the appropriate fee as listed below to any new or renewal license

Health Care Facility 520.00

Every other year

Health Care Providers

Change Fee

Health Care Providers 130.00

Charged to health care providers making changes to their existing license.

Hospitals

Hospital Licensed Bed 39.00

Nursing Care Facilities, and Small Health Care Facilities Licensed Bed 31.20

Residential Treatment Facilities

Licensed Bed 26.00

End Stage Renal Disease Centers

Licensed Station 182.00

Freestanding Ambulatory Surgery

Centers (per facility) 2,990.00

Birthing Centers (per licensed unit) 520.00

Hospice Agencies 1,495.00

Home Health Agencies 1,495.00

Personal Care Agencies 1,000.00

Mammography Screening Facilities 520.00

Assisted Living Facilities

Type I (per licensed bed) 26.00

Type II (per licensed bed) 26.00

The fee for each satellite and branch office of current licensed facility 260.00

Late Fee

Within 1 to 14 days after expiration of license 50% of scheduled fee

Within 15 to 30 days after expiration of license 75% of scheduled fee

New Provider/Change in Ownership

Applications for health care facilities ... 747.50

Assessed for services rendered providers seeking initial licensure to or change of ownership to cover the cost of processing the application, staff consultation, review of facility policies, initial inspection.

Assisted Living and Small Health Care Type-N (nursing focus) Limited Capacity

Applications: 325.00

Assessed for services rendered to providers seeking initial licensure or change of ownership to cover the cost of processing the application, staff consultation and initial inspection.

Application Termination or Delay

If a health care facility application is terminated or delayed during the application process, a fee based on services rendered will be retained as follows:

Policy and Procedure

Review 50% of total fee

On-site inspections 90% of total fee

Plan Review and Inspection

Hospitals

Number of Beds

Up to 16 3,445.00

17 to 50 6,890.00

51 to 100 10,335.00

101 to 200 12,870.00

201 to 300 15,470.00

301 to 400 17,192.50

Over 400, base 17,192.50

Over 400, each additional bed 37.50

In the case of complex or unusual hospital plans, the Bureau will negotiate with the provider an appropriate plan review fee at the start of the review process based on the best estimate of the review time involved and the standard hourly review rate.

Nursing Care Facilities and Small Health Care Facilities

Number of Beds

Up to 5 1,118.00

6 to 16 1,716.00

17 to 50 3,900.00

51 to 100 6,890.00

101 to 200 8,580.00

Freestanding Ambulatory Surgical

Facilities (per operating room) 1,722.50

Other Freestanding Ambulatory

Facilities (per service unit) 442.00

Includes Birthing Centers, Abortion Clinics, and similar facilities.

End Stage Renal Disease Facilities

(per service unit) 175.50

Assisted Living Type I and Type II

Number of Beds

Up to 5 598.00

6 to 16 1,196.00

17 to 50 2,762.50

51 to 100 5,167.50

101 to 200 7,247.50

Each additional inspection required (beyond the two covered by the fees listed above) or each additional inspection requested by the facility shall cost \$559.00 plus mileage reimbursement at the approved state rate, for travel to and from the site by a Department representative.

Remodels of Licensed Facilities

Hospitals, Freestanding Surgery

Facilities (per square foot) 0.29

All others excluding Home Health

Agencies (per square foot) 0.25

Each additional required on-site inspection 559.00

Other Plan - Review Fee Policies Variable

If an existing facility has obtained an exemption from the requirement to submit preliminary and working drawings, or other info regarding compliance with applicable

construction rules, the Department may conduct a detailed on-site inspection in lieu of the plan review. The fee for this will be \$559.00 per inspection, plus mileage reimbursement at the approved state rate. A facility that uses plans and specifications previously reviewed and approved by the Department will be charged 60 percent of the scheduled plan review fee. Fifty-two cents per square foot will be charged for review of facility additions or remodels that house special equipment such as CAT (Computer Assisted Tomography) scanner or linear accelerator. If a project is terminated or delayed during the plan review process, a fee based on services rendered will be retained as follows: Preliminary drawing review - 25% of the total fee. Working drawings and specifications review - 80% of the total fee. If the project is delayed beyond 12 months from the date of the State's last review the applicant must re-submit plans and pay a new plan review fee in order to renew the review action.

Health Care Facility Licensing Rules Actual cost
 Plus mailing

Certificate of Authority
 Health Maintenance Organization
 Review of Application 650.00

Emergency Medical Services and Preparedness
 Registration and Certification
 Certification/Recertification Fee
 Course Coordinator Extension Fee 40.00
 Training Officer Extension Fee 40.00

Quality Assurance Designation Review
 Air Ambulance Quality Assurance
 Review 5,000.00

Registration and Certification
 Certification Fee
 Blood Draw Permit 35.00
 Initial and Reciprocity Certification
 Quality Assurance Review Fee for
 All Levels Late Fee 75.00

Certification/Recertification Fee
 Initial, Reciprocity, and Recertification
 Quality Assurance Review Fee for
 All Levels Except Emergency
 Medical Dispatcher 60.00
 Initial, Reciprocity, and Recertification
 Quality Assurance Review Fee for All Levels
 Except Emergency Medical Dispatcher
 Initial, Reciprocity, and Recertification
 Quality Assurance Review Fee
 for Emergency Medical Dispatcher ... 45.00
 ID Card Replacement 10.00
 Decal for purchase for All Levels 2.00
 Patches for purchase for All Levels 5.00
 Course Audit Fee 40.00
 Instructor Certification Extension
 Fee 75.00
 Recertification Fee
 Lapsed Certification 30.00
 Course Request Fee
 Course for All Levels 300.00
 Late Course Request fee per Day 10.00

Ground Ambulance - Emergency
 Medical Technician
 Inspection

Quality Assurance Review
 (per vehicle) 100.00
 Advanced (per vehicle) 130.00

Interfacility Transfer Ambulance
 Inspection
 Emergency Medical Technician
 Quality Assurance Review
 (per vehicle) 100.00
 Advanced (per vehicle) 130.00

Paramedic
 Inspection
 Rescue (per vehicle) 165.00
 Tactical Response (per vehicle) 165.00
 Ambulance (per vehicle) 170.00
 Interfacility Transfer Service
 (per vehicle) 170.00

Fleet fee (per fleet) 3,200.00
 Agency with 20 or more vehicles

Quick Response Unit
 Inspection
 Emergency Medical Technician
 Quality Assurance Review
 (per vehicle) 65.00
 Advanced (per vehicle) 65.00

Air Ambulance
 Inspection
 Advanced Air Ambulance
 (per vehicle) 130.00
 Specialized (per vehicle) 165.00
 Out of State (per vehicle) 200.00

Emergency Medical Dispatch Center
 (per center) 65.00

Quality Assurance Designation Review
 Resource Hospital (per hospital) 150.00
 Trauma Center Verification/Quality
 Assurance Review 5,000.00
 Trauma Designation Consultation
 Quality Assurance Review 750.00
 Focused Quality Assurance Review ... 3,000.00
 Emergency Patient Receiving
 Facility Re-designation 150.00
 Emergency Patient Receiving Facility
 Initial Designation 500.00

Quality Assurance Application Reviews
 Newspaper Publications
 Original Air Ambulance License 850.00
 Original Ground Ambulance/Paramedic
 License Non Contested 850.00
 Original Ambulance/Paramedic
 License Contested Variable
 Original Designation 135.00
 Renewal Ambulance/Paramedic/Air
 License 135.00
 Renewal Designation 135.00
 Upgrade in Ambulance Service Level ... 125.00

Change in ownership/operator
 Non-contested 850.00
 Contested Up to actual cost

Change in geographic service area
 Non-contested 850.00
 Contested Up to actual cost

Quality Assurance Course Review
 Course Coordinator
 Seminar Registration 50.00
 Seminar Registration Late 25.00

Emergency Medical
 Training and Testing Program
 Designation 125.00

Instructor Seminar	
Registration	150.00
Registration Late	25.00
Vendor	200.00
New Course Coordinator	
Course Coordination Certification	75.00
Course Coordination Registration Late	25.00
New Instructor	
Course Certification	150.00
Course Registration Late	25.00
New Training Officer	
Course Certification	75.00
Course Registration Late	25.00
Pediatric	
Advanced Life Support Course	170.00
Education for Prehospital Professionals Course	170.00
Training Officer	
Seminar Registration	50.00
Seminar Registration Late	25.00
Training and Seminars	
Additional Lunch	15.00
Trainings and Seminars	
Course Quality Assurance Review Late	25.00
Less than 30 days	
Emergency Vehicle Operations	
Instructor Course	40.00
Medical Director's Course	50.00
Management/Leadership Seminar	50.00
Prehospital Trauma Life Support Course	175.00
Pediatric Advanced Life Support Course Renewal	85.00
Equipment Delivery	
Strike Team BLU-MED Mobile Field Response Tent Support	6,000.00
Rental of pediatric course equipment to for-profit agency	150.00
Registration and Certification	
Pediatric Education for Prehospital Professionals Course Renewal	85.00
Background Checks	
Name only	15.00
Fee	67.00
Data	
Pre-hospital	
Non-profits Users	800.00
Academic, non-profit, and other government users	
For-profit Users	1,600.00
Trauma Registry	
Non-profits Users	800.00
Academic, non-profit, and other government users	
For-profit Users	1,600.00

DISEASE CONTROL AND PREVENTION

General Administration	
These fees apply for the entire Division of Disease Control and Prevention	
Administrative retrieval and copy	
1-15 copies	20.00
each additional copy	1.00

Laboratory General

Fee Discounts for Large Volume Customers

High volume customers may receive discounts on individual testing fees. Tests available for discount are listed on the laboratory's posted Fee Schedule at www.health.utah.gov/lab.

Discounts Reflected on Invoices

The discounts will be reflected on the invoices of customers that meet established volume criteria.

Discount Levels Clarified

The discount levels are: 5% for customers spending more than \$1,000 per month, 12% for customers spending more than \$7,500 per month, and 25% for customers spending more than \$15,000 per month.

Emergency Waiver

Under certain conditions of public health import (e.g., disease outbreak, terrorist event, or environmental catastrophe) fees may be reduced or waived.

Handling

Total cost of shipping and testing of referral samples to be rebilled to customer (per Referral lab's invoice)

Repeat Testing - normal fee will be charged if repeat testing is required due to poor quality sample

per sample, per each reanalysis

Health Promotion

Baby Your Baby Program

Health Keepsake books

Non-adapted version

Based on quantity for \$4.00 to

\$5.00 (per copy)

5.00

Adapted version

Based on quantity for \$3.00 to

\$6.50 (per copy)

6.50

Epidemiology

Utah Statewide Immunization Information System

Non-Financial Contributing Partners

Match on Immunization Records in Database

(per record)

12.00

File Format Conversion (per hour)

30.00

Laboratory Operations and Testing

Infectious Disease

Immunology

Hepatitis

B (Anti-Hepatitis B Virus)

Antibody

22.00

B (Anti-Hepatitis B Virus)

Antigen

22.00

B (Anti-Hepatitis B Virus)

Confirmation

44.00

C (Anti-Hepatitis C Virus)

Antibody

28.00

C (Anti-Hepatitis C Virus) by

PCR (Polymerase

Chain Reaction)

300.00

HIV (Human Immunodeficiency Virus)

1/2 and O, Antigen/Antibody

Combo

35.00

Supplemental Testing

(HIV-1/HIV-2 differentiation)

89.00

Hantavirus

40.00

Syphilis

Immunoglobulin G (IgG) Antibody (including reflex Rapid Plasma Reagin titer)	13.00
TP-PA (Treponema Pallidum - Particle Agglutination) Confirmation	26.00
Quantiferon Tuberculosis In Tube-Gold	63.00
Virology	
Herpesvirus (Herpes Simplex Virus-1, Herpes Simplex Virus-2, Varicella Zoster Virus) Detection and Differentiation by Polymerase Chain Reaction	65.00
Rabies - Not epidemiological indicated or pre-authorized	180.00
Influenza PCR (Polymerase Chain Reaction)	150.00
C. trachomatis and N. gonorrhoeae detection by Nucleic Acid Test	25.00
Bacteriology	
Mycobacteriology	
Culture	100.00
Tuberculosis Culture Susceptibilities (sendout)	170.00
Identification and Susceptibility by GeneExpert	100.00
Newborn Screening, Laboratory Testing and Follow-up Services	112.16
Chemistry	
Drinking Water Tests	
Inorganics	
Alkalinity (Total) Standard Method 2320B	10.00
Bromide 300.1	27.50
Bromate 300.1	27.50
Chlorate 300.1	27.50
Chlorite 300.1	27.50
Chloride 300.0	19.00
Fluoride 300.0	19.00
Sulfate 300.0	19.00
Chromium (Hexavalent) 218.7	55.00
Cyanide 335.4	50.00
Nitrate 353.2	22.00
Nitrite 353.2	22.00
Nitrate + Nitrite 353.2	13.20
Perchlorate 314.0	55.00
pH (Test of acidity or alkalinity) 150.1	11.00
Sulfate 375.2	16.50
Turbidity 180.1	11.00
Ultraviolet Absorption Standard Method 5910B	33.00
Total Organic Carbon Standard Method 5910B	22.00
Carboxylic Acids (Oxalate, Formate, Acetate)	42.00
Dissolved Organic Carbon	22.00
Metals	
Standard Metals	
EPA 3010 Digestion	27.00
if required, add this fee to the metal package selected	
Mercury 245.1 - may include a digestion fee	27.50
Selenium by Selenium Hydride - Atomic Absorption - Standard	

Method 3114C - may include a digestion fee	42.00
Lead and Copper (Type Metals-8) 200.8	27.00
Aluminum 200.8	13.00
Antimony 200.8	13.00
Arsenic 200.8	13.00
Barium 200.8	13.00
Beryllium 200.8	13.00
Cadmium 200.8	13.00
Chromium 200.8	13.00
Copper 200.8	13.00
Lead 200.8	13.00
Manganese 200.8	13.00
Molybdenum 200.8	13.00
Nickel 200.8	13.00
Selenium 200.8	13.00
Silver 200.8	13.00
Thallium 200.8	13.00
Zinc 200.8	13.00
Boron 200.7	10.00
Calcium 200.7	10.00
Iron 200.7	10.00
Magnesium 200.7	10.00
Potassium 200.7	10.00
Sodium 200.7	10.00
Langelier Index	5.50
Calculation: pH (Test acidity or alkalinity), calcium, TDS (Total Dissolved Solids), alkalinity	
Organic Contaminants	
Trihalomethanes Method 524.2 ...	82.70
Haloacetic Acids Method 6251B ...	165.00
Volatile Organic Carbons 524.2 ...	209.00
Perchloroethylene 524.2	83.00
Maximum Total Potential Trihalomethanes Method 524.2	88.20
Pesticides	
Phase II/V Semi Volatile Organic Analytes and Pesticide 4 methods	919.00
Environmental Protection Agency 525.2	367.50
Herbicide 515.1	210.00
Carbamate 531.1	185.00
Water Bacteriology	
Environmental Legionella Standard Methods 9260 J	70.00
Liter of water	
Water Microbiology (Drinking Water and Surface Water) Colilert E. Coli 9223B	20.00
Heterotrophic Plate Count by 9215 B Pour Plate	13.00
Water Radiochemistry (Drinking Water and Surface Water) Uranium by 200.8 - Inductive Coupling Plasma-Mass Spectrometry (ICP/MS) - a digestion fee may be added	51.00
Inorganic Surface Water (Lakes, Rivers, Streams) Tests	
Alkalinity for Bi-Carbonate, Additional Fee	1.00
Alkalinity for Carbonate, Additional Fee	1.00

Internal Review of Costs and Descriptions	
Alkalinity for Carbonate Solids,	
Additional Fee	1.00
Alkalinity for Carbon dioxide,	
Additional Fee	1.00
Alkalinity for Hydroxide,	
Additional Fee	1.00
Ammonia 350.3	22.00
Biochemical Oxygen Demand	
(BOD) 5 day test 405.1	33.00
Chlorophyll A Standard Method	
10200H - Chlorophyll-A	22.00
Phosphorus, Total 365.1	20.00
Silica 370.1	16.50
Total Dissolved Solids (TDS)	
Standard Method 3540C	16.50
Total Suspended Solids	
(TSS) 160.2	16.50
Specific Conductance 120.1	10.00
Sulfate 300.1	16.50
Sulfide 376.2	44.00
Solid and Hazardous Waste Organics Tests	
Benzene, Toluene, Ethylbenzene,	
Xylene, Naphthalene (BTEXN)	83.00
Environmental Protection Agency	
8270 Semi Volatiles	441.00
Environmental Protection Agency	
8260 (volatile organic compounds) ..	440.00
Total Petroleum Hydrocarbons	
8015	138.00
Volatiles Purgeables	
Environmental Protection Agency	
Method 1666	400.00
Office of the Medical Examiner	
Autopsy	
Non-jurisdictional Case	2,500.00
Plus cost of body transportation	
External Examination, Non-	
jurisdictional Case	500.00
Plus transportation	
Use of Medical Examiner facilities and assistants	
Autopsies	500.00
External exams	300.00
Reports	
First copy	No charge
No charge to next of kin, treating	
physicians, and investigative or prosecutorial	
agencies.	
All other requestors and additional	
copies	35.00
Miscellaneous Office of Medical Examiner case file	
papers	
First copy	No charge
No charge to next of kin, treating	
physicians, and investigative or prosecutorial	
agencies.	
All other requestors and additional	
copies	35.00
Miscellaneous non-Office of Medical	
Examiner case file papers	
All requestors cost for copies (per file	
request)	50.00
Cremation Authorization	
Review and authorize	100.00
\$10.00 per permit payable to Vital Records	
for processing.	
Court for Medical Examiner	
Preparation, consultation and appearance; Portal	
to portal expenses including travel costs and	
waiting time to improve/provide adequate	
compensation to State of Utah for services	
provided by State employees	
Criminal cases out of state	
(per hour)	500.00
Non-jurisdictional criminal and all	
civil cases (per hour)	500.00
Consultation on non-Medical Examiner	
cases (per hour)	500.00
Photographic, Slide, and Digital Services	
Glass Slides	20.00
Digital Image	
X-ray from Digital Source - Flat fee	
per X-ray image	10.00
Copied from Digital source, flat fee for	
up to 30 requested images	
(per image)	10.00
Copied from Digital source, per image	
cost for request over 30 images	1.00
Copied from color slide negatives	5.00
Use of Tissue Harvest Room for Acquisition	
Skin Graft	132.83
Bone	265.65
Heart Valve	69.30
Eye	34.65
Saphenous vein	69.30
Body Storage	
Daily charge for use of Medical Examiner	
Storage Facilities	30.00
Beginning 24 hours after notification that	
body is ready for release.	
Biologic samples requests	
Handling and storage of requested	
samples by outside sources	25.00
Clinical and Environmental Laboratory	
Certification Programs	
Parameter Category Fees charge for each	
testing act	
Atomic Absorption/Atomic Emission	300.00
Radiological chemistry - Alpha	
spectrometry	200.00
Radiological chemistry - Beta	200.00
Calculation of Analytical Results	50.00
Organic Clean Up	100.00
Toxicity/Synthetic Extractions	
Characteristics Procedure	200.00
Radiological chemistry - Gamma	200.00
Gas Chromatography	
Simple	300.00
Complex	600.00
Semivolatile	500.00
Volatile	500.00
Radiological chemistry - Gas	
Proportional Counter	200.00
Gravimetric	100.00
High Pressure Liquid	
Chromatography	300.00
Inductively Coupled Plasma Metals	
Analysis	400.00
Inductively Coupled Plasma Mass	
Spectrometry	500.00
Ion Chromatography	200.00
Ion Selective Electrode base methods ...	100.00
Radiological chemistry - Liquid	
Scintillation	200.00

Metals Digestion	100.00
Simple Microbiological Testing	100.00
Complex Microbiological Testing	300.00
Organic Extraction	100.00
Physical Properties	100.00
Titrimetric	100.00
Spectrometry	200.00
While Effluent Toxicity	600.00
Environmental Laboratory Certification	
Certification Clarification	
Note: Laboratories applying for	
certification are subject to the annual	
certification fee, plus the fee listed, for each	
category in which they are to be certified.	
Annual certification fee (chemistry and/or	
microbiology)	
Utah laboratories	825.00
Out-of-state laboratories	5,000.00
Plus reimbursement of all travel expenses	
National Environmental Accreditation	
Program (NELAP) recognition	825.00
Certification change	100.00
Performance Based Method Review -	
per method fee	250.00
Primary Method Addition for	
Recognition Laboratories	1,000.00

MEDICAID AND HEALTH FINANCING

Contracts	
Provider Enrollment	
Medicaid application fee for prospective	
or re-enrolling providers	600.00

CHILDREN'S HEALTH INSURANCE PROGRAM

Quarterly Premium	
Plan B	30.00
138%-150% of Poverty Level	
Plan C	75.00
150%-200% of Poverty Level	
Late	15.00

MEDICAID MANDATORY SERVICES

Other Mandatory Services	
Health Clinics	
G0402 Welcome to Medicare Preventive	
Physical Exam	130.00
G0438 Annual Wellness Check	
Medicare New Patient	175.00
G0439 Annual Wellness Check	
Medicare Established Patient	120.00
Avulsion	
11740 Toenail	26.00
11730 Nail Plate Single	68.00
11731 Nail Second	42.00
11732 Nail Each Additional Nail	30.00
11750 Excision for Nail/Matrix	
Permanent Removal	175.00
11765 Wedge Excision of Skin of	
Nail Fold Ingrown	60.00
Repair	
Simple	

12001 Superficial Wound 2.5 cm	
or Less	192.00
12002 Wound 2.6-7.5 cm	203.00
12004 Wound 7.6-12.5 cm	133.00
12005 Wound 12.6-20.0 cm	166.00
12011 Face/Ear/Nose/Lip 2.5 cm	
or Less	234.00
12032 Layer Closure Scalp/Extremities/	
Trunk 2.6-7.5 cm	151.00
12035 Layer Closure Scalp/Extremities/	
Trunk 12.6-20 cm	227.00
13120 Complex Scalp/Arms/Legs	146.00
16020 Burn Dress without	
Anesthesia Office/Hospital Small ..	35.00
16025 Burn Dress without	
Anesthesia Medical Face/	
Extremities	68.00
Destruction	
17000 Any Method Benign First	
Lesion	100.00
17003 Add-on Benign/Pre-	
malignant	47.00
17004 Benign Lesion 15 or More ...	182.00
17110 Flat Wart for Up to 15	125.00
17111 Flat Warts for 15 and More ..	150.00
Malignant	
17260 Trunk/Arm/Leg 0.5 or Less ...	58.00
17280 Lesion Face 0.5 cm Less	76.00
17281 Lesion Face 0.6-1	109.00
20520 Foreign Body Removal	120.00

Simple	
20550 Injection for Trigger	
Point Tendon/Ligament/Ganglion ...	57.00
20552 Trigger Point Injection (TPI) ...	65.00
Arthrocentesis	
20600 Small Joint/Ganglion Fingers/	
Toes	50.00
20610 Major Joint/Bursa	
Shoulder/Knee	104.00
20605 Intermediate	
Joint/Bursa Ankle/Elbow	52.00
211 Community Service	52.00
28190 Foreign Body Removal	
for Foot Subcutaneous	125.00
30901 Cauterize (Limited) for Control	
Nasal Hemorrhage/Anterior/	
Simple	60.00
36415 Venipuncture	6.00
44641 Excision for Malignant	
Lesion	131.00
46083 Incision for Thrombosed	
Hemorrhoid, External	104.00
46600 Anoscope	23.00
52000 Cystoscopy	125.00
53670 Catheterization, Urinary,	
Simple	30.00
Colposcopy	
57421 Biopsy of Vagina/Cervix	156.00
57455 Cervix With Biopsy	156.00
57456 Cervix With Electrocautery	
conization	146.00
57511 Cryocautery Cervix for Initial or	
Repeat	83.00
58300 Insertion of Intrauterine	
Device	104.00
58301 Removal of Intrauterine	
Device	163.00

60001 Aspiration/Injection Thyroid Gland	81.00	87088 Bacterial Urine Identification and Quantification	12.00
Removal Foreign Body, External		87102 Fungal	16.00
65025 Eye, Superficial	173.00	87106 Yeast	8.00
65220 Eye, Corneal	215.00	87110 Chlamydia	16.00
69200 Auditory Canal without General Anesthesia	150.00	87220 Potassium Hydroxide for Wet Prep	10.00
69210 Cerumen Removal/One or Both Ears	78.00	87804 Influenza A	23.00
80048 Basic Metabolic Profile	6.00	Quick Test	
80053 Metabolic Panel Labs	6.00	87880 Strep	26.00
Comprehensive		Quick Test	
80061 Lipid Panel Labs	6.00	87880 Quick Strep for Test for Medicaid/Medicare	26.00
80061 Quick Lipid Panel	6.00	88147 Papanicolaou (PAP) Smear for Cervical or Vaginal	42.00
80076 Hepatic Function Panel	6.00	88164 Cytopathology, Slides, Cervical or Vagina	26.00
80100 Drug Screen for Multiple Drug Classes	26.00	90471 Immunization Administration for One Vaccine	25.00
80101 Drug Screen for Single Drug Class	26.00	90472 Immunization Administration for Additional Vaccine	12.00
80176 Xylocaine 0-55 cc	29.00	90620 Supplemental Security Income Exam Initial Consult	133.00
Urine Analysis		Immunization	
81000 with Microscope	10.00	Hepatitis	
81002	10.00	90632 A for 19+ Years	78.00
81003 Automated and without Microscope	10.00	90634 A for Pediatric-Adolescent	42.00
81025 Human Chorionic Gonadotropin	22.00	90636 A and B Adult	90.00
Urine		90645 Haemophilus Influenza B	47.00
82043 Microalbumin	16.00	90649 Gardasil Human Papillomavirus Vaccine	156.00
82055 Alcohol Screen	21.00	90658 Influenza Virus Vaccine	21.00
82270 Hemocult	7.00	90669 Pneumococcal > 5 years old Only	104.00
Feces Screening		90701 Diphtheria Tetanus Pertussis	42.00
82570 Creatinine	12.00	90702 Diphtheria Tetanus	14.00
82728 Ferritin	26.00	90703 Tetanus	26.00
82948 Glucose for Blood, Regent Strip	6.00	90707 Measles Mumps Rubella	42.00
82962 Glucose for Monitoring Device	6.00	90715 Adacel - Tetanus Diphtheria Vaccine	73.00
83036 Hemoglobin A1C (long-term blood sugar test)	23.00	90716 Varicella	8.00
83540 Iron	31.00	90732 Pneumovax Shot	36.00
84443 Thyroid Stimulating Hormone Labs	10.00	90734 Meningitis	5.00
84460 Alanine Amino Test	15.00	90744 Hepatitis B/Newborn-18 Years	73.00
85013 Hematocrit	5.00	90746 Hepatitis B 19+ Years	88.00
85025 Complete Blood Count Labs	5.00	Adult	
85610 Prothrombin Time	10.00	90772 Injection	18.00
85651 Erythrocyte Sedimentation Test	11.00	Therapeutic, Diagnosis	
85652 Sedimentation Rate	11.00	90805 Psychiatric Diagnosis Interview Follow-up Visit	68.00
86308 Mononucleosis test	15.00	92552 Audiometry	19.00
86318 Helicobacter Pylori test	23.00	93000 Electrocardiogram	36.00
86318 Quick Helicobacter Pylori test	23.00	93015 Cardiovascular Stress Test	130.00
86403 Monospot	18.00	Treadmill	
85680 Purified Protein Derivative/Tuberculosis Test	9.00	93926 Duplex Scan Limited Study	130.00
Culture		93965 Doppler of Extremity	132.00
87060 Strep	17.00	94010 Spirometry	52.00
Bacterial		94060 Spirometry with Bronchodilators	64.00
87070 Any Other Source	16.00	94200 Peak Flow	21.00
87077 Incision and Drainage	16.00	94640 Intermittent Pause Pressure Breathing Device - Nebulizer Breathing	42.00
87081 Single Organism	14.00		
87082 Presumptive, Pathogenic Organism Screen	16.00		
87086 Bacterial Urine	12.00		

94760 Pulse Oximetry - Oxygen Saturation	10.00	99396 Medical Evaluation for Adult 40-64	155.00
95115 Injections for Allergy Only 1	15.00	99397 Medical Evaluation for 65 Years and Over	170.00
95117 Injections for Allergy 2 or More	16.00	99402 Preventive Medicine Counseling 30-44 Minutes	468.00
95860 Electromyogram 1	81.00	99432 Newborn Normal Care - In Office	42.00
95861 Electromyogram 2	139.00	A4460 Ace Wrap (per roll)	7.00
95900 Nerve Conduction Velocity Motor	42.00	A4550 Surgical Tray	42.00
95904 Nerve Conduction Velocity Sensory	35.00	A4565 Sling	21.00
97035 Ultrasound	16.00	A4570 Splint	23.00
97110 Therapy	24.00	Complete Blood Count	5.00
97124 Massage	13.00	Complete Metabolic Panel	6.00
97260 Manipulate for Spinal 1 Area	16.00	Cornell Well Child Check Visits Form 21	36.00
99050 After Hours	24.00	Disability Exam	73.00
99058 Emergency Visit	36.00	Federal Aviation Administration Exam	52.00
99070 Supplies for Above and Beyond Customary	19.00	G0008 Flu Shot Administration for Medicare	8.00
99080 Form 20 Disability Exam	88.00	G0009 Injection Administration for Pneumonia without Physician for Medicare	4.00
99173 Visual Acuity Screening Test New Patient	10.00	G0010 Hepatitis B Vaccine Administration	5.00
99201 Brief	47.00	G0101 Papanicolaou (PAP) with Breast Exam Cervical/Vaginal Screen Medicare	42.00
99201N Brief Night	47.00	G0107 Hemocult	10.00
99202 Limited	81.00	G0179 Physician Re-certification for Home Health	83.00
99202N Limited Night	81.00	G0180 Physician Certification for Home Health	83.00
99203 Intermediate	120.00	J0170 Injection for Epinephrine	10.00
99203N Intermediate Night	120.00	J0290 Injection for Ampicillin Sodium 500 mg	8.00
99204 Extended	182.00	J0540 Bicillin 1.2 million units	38.00
99204N Extended Night	182.00	J0696 Rocephin 250 mg	47.00
99205 Comprehensive	229.00	J0702 Injection for Celestone 3 mg	12.00
99205N Comprehensive Night	229.00	J0704 Injection for Celestone 4 mg	12.00
Established Patient		J0780 Compazine up to 10 mg	16.00
99211 Brief	28.00	J0810 Solu Medrol 150 mg	21.00
99211N Brief Night	28.00	J1000 Estradiol	12.00
99212 Limited	47.00	J1055 Depo-Provera	88.00
99212N Limited Night	47.00	J1200 Benadryl up to 50 mg	10.00
99213 Intermediate	73.00	J1390 Estrogen	31.00
99213N Intermediate Night	73.00	J1470 Gamma Globulin 2 cc	21.00
99214 Extended	110.00	J1820 Insulin up to 100 units	10.00
99214N Extended Night	110.00	J1885 Toradol 15 mg	21.00
99215 Comprehensive	151.00	J2000 Xylocaine 0-55 cc	5.00
99215N Comprehensive Night	151.00	J2550 Phenergan up to 50 mg	10.00
Consult With Another Physician		J3130 Testosterone	31.00
99241 History, Exam, Straightforward	36.00	J3301 Kenalog-10 Per 10 mg	31.00
99242 Expanded History and Exam Straightforward	57.00	J3401 Vistaril 25 mg	12.00
99243 Detailed History, Exam Low Complexity	79.00	J3420 Injection B-12	10.00
99244 Comprehensive History, Exam Moderate Complexity	99.00	J7300 Intrauterine copper contraceptive contraception	600.00
99245 Office Consult for New or Established Patient	426.00	J7302 Levonorgestrel-releasing intrauterine contraceptive	800.00
99354 Prolonged Services for one Hour	73.00	J7320 Hyalgan, Synvisc Knee Injection	281.00
99361 Medical Conference by Physicians	52.00	J7620 Albuterol Per ml, Inhalation Solution Durable Medical Equipment	3.00
Check		J7625 Albuterol Sulfate 0.5%/ml Inhalation Solution Administration	4.00
99381 New Patient Under 1	140.00	L3908 Wrist Splint	44.00
99382 New Patient Age 1-4	145.00		
99383 New Patient Age 5-11	150.00		
99384 Age 12-17	165.00		
99385 Age 18-20	160.00		
99391 Under 1	125.00		
99392 Age 1-4	130.00		
99393 Age 5-11	130.00		
99394 Age 12-17	145.00		
99395 Age 18-20	150.00		

Liver Function Test	6.00	10060 Abscess Simple/Single	68.00
Lipid	17.00	10061 Complicated or Multiple	125.00
PSATE0000 Prostate Specific Antigen Test	42.00	10080 Pilonidal Cyst	73.00
Residual Functional Capacity Questionnaire	52.00	Simple	
S0020 Marcaine up to 30 ml	18.00	10120 Incision and Removal	
S9981 Medical Records Copying Fee, Administration	6.00	Foreign Object-Simple	73.00
Supplemental Security Insurance		10140 Incision and Drainage of Cyst, Hematoma or Seroma	130.00
Exam	113.00	10160 Puncture Aspiration of Abscess, Hematoma	52.00
Thin Prep	140.00	Debridement	
Thyroid Stimulating Hormone	19.00	11000 Infected Skin up to 10%	57.00
Y4600 Injection for Pediatric		11040 Skin Partial Thickness	44.00
Immunization Only	11.00	11041 Skin Full Thickness	52.00
10040 Acne Surgery	48.00	11042 Skin and Subcutaneous Tissue	110.00
Y9051 Records Sent to Case Worker	16.00	11044 Skin, Tissue, Muscle, Bone	218.00
Artificial Insemination 58321	250.00	11100 Biopsy for Skin Lesion	
Malignant lesion removal 0.5 cm or less 11600	120.00	Subcutaneous	62.00
Typhoid 90691	75.00	11101 Biopsy for Skin Subcutaneous Each Separate/Additional Lesion	32.00
IV Monitoring each additional hour 96361	20.00	11200 Removal Skin Tags 1-15	105.00
Health Clinics		11201 Removal Skin tag any area, Each Add 10 Lesion	14.00
76801 Ultrasound, pregnancy uterus, first trimester trans- abdominal approach	130.00	11300 Shave Biopsy for Epidermal/ Dermal Lesion 1 Trunk-Neck	47.00
10006 Same Day Cancellation, Established Patient	35.00	11305 Shave Excision and Electrocautery	67.00
10007 No Show Fee, Established Patient	35.00	11310 Surgery by Electrocautery	42.00
10008 No Show Fee, Established Patient, Endodontist Appointment	75.00	Excision	
10009 No Show Fee, Established Patient, Hospital Sedation	100.00	Benign	
International Normalized Ratio home testing review G0250	8.00	Trunk/Arm/Leg	
90791 Psychiatric diagnosis evaluation w/o medical service (per 15 minutes)	40.00	11400 Lesion 0.5cm or Less	90.00
A6402 Gauze, less than 16 square inch	1.00	11401 Lesion 0.6-1cm	110.00
58100 Colposcopy w/ or w/o endocervical sampling	130.00	11402 Lesion 1.1-2.0 cm	122.00
76815 Ultrasound, pregnancy uterus, with image limited	100.00	11403 2.1-3.0 cm	142.00
58110 Endometrial sampling in conjunction with colposcopy	65.00	11404 3.1-4.0 cm	160.00
31505 Laryngoscopy	70.00	11420 Scalp/Neck/Genital 0.5 or less	90.00
1000cc normal saline J7030	10.00	11421 Lesion 0.6-1.0 cm	125.00
IV Monitoring 1st half hour 96360	60.00	11422 Subcutaneous/Neck/ Genital/Feet 1.1-2.0 cm	140.00
Arterial Studies		11423 Cyst	150.00
93923	182.00	11440 Benign Face/Ear/Eyelid 0.5cm/less	100.00
93924	221.00	11441 Benign Lesion Face/Ear/Eye/Nose 0.6-1.0 cm	125.00
93922	120.00	11602 Malignant Trunk/Arm/Leg 1.1-2.0 cm	112.00
A6403 Gauze, 16-48 square inch	2.00	11604 3.1-4.0 cm	166.00
96372 Injection administration	25.00	Malignant	
Wood filler/paste A6261	40.00	11622 Lesion Scalp/Neck/Hand/ Feet/Genital 1.1-2.0 cm	166.00
Viscous Lidocaine J8499	5.00	11641 Face/Nose/Ear 0.6-1.0 cm	131.00
Progesterone J2675	4.00	11642 Face/Nose/Ears 1.1-2.0 cm	172.00
99188 App Topical Fluoride Varnish	20.00	11720 Debridement for Nails 1-5	27.00
76805 Ultrasound, pregnancy uterus, after first trimester trans-abdominal approach	150.00	11721 Debridement for Nails 6 or More	55.00
99386 New patient well exam	185.00	Family Dental Plan	
99387 New patient well exam	200.00	D1352 Preventive Resin Restoration in a Moderate to High Caries Risk Patient	30.00
Incision and Drainage		D2940 Protective Restoration	50.00
		D2952 Post and Core in Addition to Crown	190.00
		D6930 Recement a Three Unit Bridge	65.00

D7530 Surgical Incision	240.00	D2150 Two surface	102.00
D7910 Suture of Recent Small Wounds up to 5 cm	192.00	D2160 Three surface	121.00
D9420 Hospital or Ambulatory Surgical Center Call	75.00	D2161 4 or more surface	146.00
D9440 After Hours Office Visit	66.00	Resin	
D9910 Application of Desensitizing Medicament	20.00	D2330 One surface, anterior	97.00
D9930 Treatment of Complications	65.00	D2331 Two surface, anterior	121.00
Preventive		D2332 Three surface, anterior	144.00
D1110 Prophylaxis-adult	61.00	D2335 4 or more surface-can be incisal angle, anterior	172.00
D1120 Prophylaxis-child	42.00	D2390 Resin-Based Composite Crown, Anterior	224.00
D1203 Topical application of fluoride excluding prophyl	20.00	D2391 One surface, posterior	108.00
D1206 Topical Fluoride Varnish; Therapeutic Application High Risk	23.00	D2392 Resin-Based Composite - Two Surfaces, Posterior	144.00
D1208 Topical Application of Fluoride	23.00	D2393 Resin-Based Composite - Three Surfaces, Posterior	174.00
D1351 Sealant (per tooth)	34.00	D2394 Resin-Based Composite - Four or More Surfaces, Posterior	210.00
D4341 Periodontal Scaling and Root Planning Four or More Contiguous Teeth or Bounded Teeth Spaces, per Quadrant	188.00	Root Canal Therapy	
D4342 Periodontal Scaling and Root Planning 1-3 teeth, Per Quadrant	110.00	D3310 Anterior	533.00
D4355 Full mouth debridement	121.00	D3320 Bicuspid	562.00
D4910 Periodontal Maintenance	115.00	D3330 1st molar	841.00
D4921 - Gingival Irrigation/ Per Quadrant	5.00	D3110 Pulp Cap-Direct (Excluding Final Restoration)	48.00
Oral Evaluation		D3120 Pulp Cap-Indirect (Excluding Final Restoration)	48.00
D0120 Periodic	31.00	D3220 Therapeutic pulpotomy	98.00
D0140 Limited	50.00	D3221 Open and Medicate	109.00
D0150 Comprehensive	52.00	D3230 Pulpal Therapy-Anterior Primary Tooth	120.00
D0170 Re-evaluation - Limited, Problem Focused (Established Patient)	42.00	D3240 Pulpal Therapy-Posterior Primary Tooth	150.00
D0180 Comprehensive Periodontal Evaluation	44.00	Apicoectomy/periradicular surgery	
D0190 Screening of Patient	13.00	D3410 - bicuspid	478.00
D0191 Assessment of Patient	13.00	D3421 - bicuspid (1st root)	502.00
D0210 Intraoral - complete series including Bitewings	88.00	D3425 - molar (1st root)	600.00
D0220 Intraoral periapical	17.00	D3426 - (Each additional root)	192.00
First film		D3430 Retrograde filling	145.00
D0230 Intraoral periapical	13.00	2700 Fee, Dental - Crown, Rush Procedure	60.00
Additional film		D2740 Crown, Porcelain/Ceramic Substrate	650.00
D0240 Intraoral Occlusal Radiographic Image	14.00	D2750 Crown, Porcelain fused to High Noble Metal	650.00
D0270 Bitewing	17.00	D2751 Crown, Porcelain fused to Predominantly Base Metal	650.00
Cost of single film		D2752 Crown, Porcelain fused to Noble Metal	650.00
D0272 Bitewing	28.00	D2751 Crown-porcelain fused to majority base metal	650.00
Cost of two film		D2980 Crown Repair, By Report	120.00
D0273 Bitewings - Three Films	32.00	D2920 Recement Crown	59.00
D0274 Bitewing	40.00	D2930 Refabricated stainless steel crown-primary	160.00
Cost of four film		D2931 Refabricated stainless steel crown-permanent	181.00
D0330 Panoramic Film	77.00	D2950 Core build-up	152.00
D9110 Palliative (Emergency) Treatment for Pain - Minor Procedure	72.00	D2951 Pin retention (per tooth)	35.00
Space Maintainer		D2954 Prefabricated post and core	193.00
D1510 Fixed unilateral	204.00	D6240 Pontic, Porcelain fused to High Noble Metal	650.00
D1515 Fixed bilateral	269.00	D6245 Pontic, Porcelain/Ceramic	650.00
D1520 Removable unilateral	245.00	D6740 Crown, Porcelain/Ceramic	650.00
D1525 Removable bilateral	346.00	D6242 Pontic, Porcelain fused to Noble Metal	650.00
D1550 Recement	46.00	D6750 Pontic, Porcelain fused to High Noble Metal	650.00
Amalgam			
D2140 One surface	78.00		

D6751 Pontic, Porcelain fused to Predominantly Base Metal	650.00
D6752 Pontic, Porcelain fused to Noble Metal	650.00
D6930 Recement Bridge	78.00
Surgical Procedure	
D4210 Gingivectomy or Gingivoplasty	360.00
D7111 Coronal Remnants	74.00
D7140 Single tooth extraction	94.00
D7210 Surgical removal erupted tooth	167.00
D7270 Tooth re-implantation with stabilization	187.00
D7286 Biopsy of oral tissue	125.00
D7410 Excision of benign tumor	218.00
D7510 Incision and drainage of abscess	126.00
D7960 Frenulectomy	178.00
D9230 Nitrous sedation/inhalation	55.00
D9248 Non-intravenous Conscious Sedation	120.00
Denture	
D5110 Complete upper	734.00
D5120 Complete lower	734.00
D5130 Immediate upper	801.00
D5140 Immediate lower	801.00
D5211 Upper partial-resin base	621.00
D5212 Lower partial-resin base	720.00
D5213 Upper partial-cast metal frame with resin base	811.00
D5214 Lower partial-cast metal frame with resin base	811.00
D5410 Adjust complete upper	66.00
D5411 Adjust complete lower	66.00
D5421 Adjust partial upper	66.00
D5422 Adjust partial lower	66.00
D5510 Repair broken complete base	224.00
D5520 Replace missing/broken teeth complete	125.00
D5610 Repair resin base-partial	156.00
D5620 Repair cast framework	180.00
D5650 Add tooth to existing partial	144.00
D5630 Repair or replace broken clasp	168.00
D5640 Replace broken teeth (per tooth)	89.00
D5750 Reline complete upper	270.00
D5751 Reline complete lower	270.00
D5760 Reline upper partial	269.00
D5761 Reline lower partial	269.00
D5850 Tissue Conditioning Maxillary	120.00
D5851 Tissue Conditioning Mandibular	120.00
D6241 Pontic, Porcelain fused to Predominantly Base Metal	650.00
D5660 Add Clasp to Existing Partial Denture	140.00

DEPARTMENT OF WORKFORCE SERVICES

ADMINISTRATION

Executive Director's Office
 Government Records Access and Management Act (GRAMA) Fees - these GRAMA fees apply for the entire Department of Workforce Services

Photocopies (for all copies after the first 10)	0.10
Fax Pages Local, All Pages	2.00
Fax Pages Long Distance, All Pages	2.00
Research (per hour)	20.00

UNEMPLOYMENT INSURANCE

Unemployment Insurance Administration	
Debt Collection Information Disclosure Fee (per Report)	15.00
Fee for employment information research and report for creditors providing a court order for employment information of a specific debtor.	

STATE OFFICE OF REHABILITATION

Deaf and Hard of Hearing Interpreter	
Standard Late Fee (per Assessment)	80.00
Annual Maintenance/Recognition (per Individual)	70.00
Interpreter Certification	
Knowledge Exam (per Exam)	60.00
Novice Exam (per Exam)	150.00
Professional Exam (per Exam)	150.00
Professional Re-test, per component (per Test)	30.00
Temporary Permit (per Permit)	150.00
Student Permit (per Permit)	15.00
Out-of-State Interpreter Certification	
Utah Novice Level Certificate	300.00
Utah Professional Level Re-test, per component	60.00
Utah Professional Level Certificate	300.00
Knowledge Exam	120.00

HOUSING AND COMMUNITY DEVELOPMENT

Weatherization Assistance	
Weatherization Laboratory (per day)	250.00
Heating Ventilation and Air Conditioning (HVAC) Laboratory Fee (per day)	250.00
Insulation Laboratory (per day)	250.00
Weatherization Classroom (per day)	50.00
Demonstration House (per day)	250.00
Consumer/Small Contractor (per hour)	10.00
Materials (per person)	300.00
Trainers Basic	50.00
Trainers Advanced	100.00
Homeless Committee	
State Community Services Office	
Homeless Summit	35.00

STATE SMALL BUSINESS CREDIT INITIATIVE PROGRAM FUND

Loan Origination Fee for Loan Participation Program (per 1.00)	0.04
This is a variable fee and the department may charge at a rate that is less than or equal to 4% of the loan amount based on participation & risk level.	
Loan Origination Fee for Loan Guarantee Program (per 1.00)	0.04

This is a variable fee and the department may charge at a rate that is less than or equal to 4% of the loan amount based on participation & risk level.

**DEPARTMENT OF HUMAN SERVICES
EXECUTIVE DIRECTOR OPERATIONS**

Executive Director's Office
 Government Records Access and Management Act (GRAMA) Fees - these GRAMA fees apply for the entire Department of Human Services
 Paper (per side of sheet) 0.25
 Audio tape (per tape) 5.00
 Video tape (per tape) 15.00
 Compiling and Reporting
 In another format (per hour) 25.00
 If programmer/analyst assistance is required (per hour) 50.00
 Mailing Actual cost
 Office of Licensing
 Licensing
 Initial license 900.00
 Any new Human Service license excluding recovery residences, outdoor youth program, and child placing.
 FBI Rapback 13.00
 Western Identification Network (WIN)
 States Rapback 5.00
 Recovery Residences
 Initial license fee 1,295.00
 Renewal fee 500.00
 Child Placing Adoption 750.00
 Child Placing Foster 250.00
 Initial license fee and renewal fee.
 Day Treatment 450.00
 Outpatient Treatment 300.00
 Residential Support 300.00
 Adult Day Care
 0-50 consumers per program 300.00
 More than 50 consumers per program 600.00
 Per licensed capacity 9.00
 Residential Treatment
 Basic 600.00
 Per licensed capacity 9.00
 Social Detoxification 600.00
 Life Safety Pre-inspection 600.00
 One time initial fee to verify life/fire safety
 Outdoor Youth Program
 Basic 1,408.00
 Initial license fee and renewal fee.
 Federal Bureau of Investigation Fingerprint Check
 Fingerprinting 34.75
 Intermediate Secure Treatment
 Basic 750.00
 Per licensed capacity 9.00
 Therapeutic School Program
 Basic 600.00
 Per licensed capacity 9.00

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Administration - DSAMH
 Administration
 Alcoholic Beverage Server

On Premise Sales 3.50
 Off Premise Sales 3.50
 State Hospital
 Photo Shoots (per 2 hours) 20.00
 Use of USH Facilities
 Groups up to 50 people (per day) 75.00
 Groups over 50 people (per day) 150.00
 State Substance Abuse Services
 Alcoholic Beverage Server
 On Premise Sales 3.50
 Off Premise Sales 3.50

**DIVISION OF SERVICES
FOR PEOPLE WITH DISABILITIES**

Utah State Developmental Center
 USDC Theater Rental
 Full Day (per square foot) 0.10
 Theater Technician (per hour) 20.00
 Hourly (per square foot) 0.0175
 Half Day (per square foot) 0.07
 Physical Disabilities Waiver
 Graduated 630.00
 Critical Support Services for People with Disabilities who are non-Medicaid matched. The fee ranges between 1 percent and 3 percent of Gross Family Income.

OFFICE OF RECOVERY SERVICES

Child Support Services
 Automated Credit Card Convenience Fee ... 2.00
 Fee for self-serve payments made online or through the automated phone system (IVR).
 Collections Processing 12.00
 6 percent of payment disbursed up to a maximum of \$12 per month.
 Assisted Credit Card Convenience Fee 6.00
 Fee for phone payments made with the assistance of an accounting worker.
 Federal Offset 25.00
 Annual Collection Fee 25.00

DIVISION OF CHILD AND FAMILY SERVICES

Service Delivery
 Live Scan Testing 10.00

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENTAL QUALITY

DEPARTMENT OF NATURAL RESOURCES

FORESTRY, FIRE AND STATE LANDS

Division Administration
 Administrative
 Application
 Mineral Lease 40.00
 Special Lease Agreement 40.00
 Mineral Unit/Communitization Agreement 40.00
 Special Use Lease Agreement (SULA) 300.00
 Grazing Permit 50.00

Materials Permit	200.00	Personnel Time (per hour)	50.00
Easement	150.00	Sovereign Lands	
Right of Entry	50.00	Easements	
Exchange of Land	1,000.00	Minimum Easement	225.00
Sovereign Land General Permit		Canal	
Private	50.00	Existing	
Public		<=33' wide (per rod)	15.00
Assignment		>33' but <=66' wide (per rod)	30.00
Mineral Lease		>66' but <=100' wide (per rod)	45.00
Total Assignment	50.00	>100' wide (per rod)	60.00
Interest Assignment	50.00	New	
Operating Right Assignment	50.00	<=33' wide (per rod)	30.00
Overriding Royalty Assignment	50.00	>33' but <=66' wide (per rod)	45.00
Partial Assignment	50.00	>66' but <=100' wide (per rod)	60.00
Collateral Assignment	50.00	>100' wide (per rod)	75.00
Special Use Lease Agreement (SULA)	50.00	Roads	
Grazing Permit per AUM (Animal		Existing	
Unit Month)	2.00	<=33' wide (per rod)	5.50
Grazing Sublease per AUM (Animal		>33' but <=66' wide (per rod)	11.00
Unit Month)	2.00	>66' but <=100' wide (per rod)	16.50
Materials Permits	50.00	>100' wide (per rod)	22.00
Easement	50.00	New	
Right of Entry (ROE)	50.00	<=33' wide (per rod)	8.50
Sovereign Land General Permit	50.00	>33' but <=66' wide (per rod)	17.00
Grazing Non-use (per lease)	10%	>66' but <=100' wide (per rod)	25.50
Special Use Lease Agreement		>100' wide (per rod)	34.00
(SULA) non-use	10%	Power lines, Telephone Cables, Retaining walls	
ROE, Easement, Grazing amendment	50.00	and jetties	
SULA, general permit, mineral lease,		<=30' wide (per rod)	14.00
materials permit amendment	125.00	>30' but <=60' wide (per rod)	20.00
Reinstatement	150.00	>60' but <=100' wide (per rod)	26.00
Surface leases & permits per		>100' but <=200' wide (per rod)	32.00
reinstatement/per lease or permit		>200' but <=300' wide (per rod)	42.00
Bioprospecting - Registration	50.00	>300' wide (per rod)	52.00
Oral Auction Administration	Actual cost	Pipelines	
Affidavit of Lost Document		<=2" (per rod)	7.00
(per document)	25.00	>2" but <=13" (per rod)	14.00
Certified Document (per document)	10.00	>13" but <=25" (per rod)	20.00
Research on Leases or Title Records		>25" but <=37" (per rod)	26.00
(per hour)	50.00	>37" (per rod) (per rod)	52.00
Reproduction of Records		Special Use Lease Agreements (SULA)	
Self service (per copy)	0.10	SULA Lease Rate	450.00
By staff (per copy)	0.40	Minimum \$450 or market rate per	
Change on Name of Division		R652-30-400	
Records (per occurrence)	20.00	Grazing Permits	3.00
Fax copy (per page)	1.00	Annual rate per AUM (Animal Unit Month)	
Send only		Special Use Lease Agreements	Market rate
Late Fee	6% or \$30	General Permits	
Returned check charge	30.00	Mooring Bouys: 3 yr max term	50.00
Sovereign Lands		Renewal - Mooring Bouys; 3 yr	
Rights of Entry		max term	50.00
Seismic Survey Fees		Floating Dock, Wheeled Pier, Seasonal	
Primacord (per mile)	200.00	Use; 3 year max	250.00
Surface Vibrators (per mile)	200.00	Dock/pier, Single Upland Owner	
Shothole >50 ft (per hole)	50.00	Use; 3 year max	350.00
Shothole <50 ft (per mile)	200.00	Boat Ramp, Temporary, Metal;	
Pattern Shotholes (per pattern)	200.00	3 year max	250.00
Commercial	200.00	Boat Ramp, Concrete, Gravel;	
Commercial Recreation Event (per		10 year max	700.00
person over 150 people)	2.00	Irrigation Pump - Pump Head Only;	
Minimum ROE of \$200 plus per person		15 year max	50.00
royalty		Irrigation Pump - Structure;	
Data Processing		15 year max	150.00
Production Time (per hour)	55.00	Storm Water Outfall, Drain;	
Programming Time (per hour)	75.00	10 year max	150.00
Geographic Information System		Other	450.00
Processing Time (per hour)	55.00		

Minimum \$450 or market rate per R652-30-400	
Mineral Lease	
Rental Rate 1st ten years (per acre)	1.10
Rental Rate Renewals (per acre)	2.20

OIL, GAS AND MINING

Administration	
New Coal Mine Permit Application	5.00
Copy	
Bid Specifications	20.00
Telefax of material (per page)	0.25
Staff Copy (per page)	0.25
Self Copy (per page)	0.10
Color	
Staff Copy (per page)	0.50
Self Copy (per page)	0.25
Prints from Microfilm	
Staff Copy (per paper-foot)	0.55
Self Copy (per paper-foot)	0.40
Print of Microfiche	
Staff Copy (per page)	0.25
Self Copy (per page)	0.10
CD	
Mailed	23.00
Picked up	20.00
Well Logs	
Staff Copy (per paper-foot)	0.75
Self Copy (per paper-foot)	0.50
Print of computer screen (per screen)	0.50
Compiling or Photocopying Records	
Actual time spent compiling or copying	Current personnel rate
Actual time spent on data entry or records segregation	Current personnel rate
Third Party Services	
Copying maps or charts	Actual cost
Copying odd sized documents	Actual cost
Specific Reports	
Monthly Notice of Intent to Drill/Well Completion Report	
Picked Up	0.50
Mailed	1.00
Annual Subscription	6.00
Mailed Notice of Board Hearings	
List (per year)	20.00
Current Administrative Rules -	
Oil and Gas, Coal, Non-Coal, Abandoned Mine Lease (first copy is free)	
Picked up	10.00
Mailed	13.00
Custom-tailored data reports	
Diskettes/Tapes	Current personnel rate
Custom Maps	
(per linear foot) (per variable)	Variable
Minimum Charges	
Color Plot	25.00
Laser Print	5.00
Minerals Reclamation	
Mineral Program	
Exploration Permit	150.00
Annual Permit	
Small Mining Operations	150.00
Large Mining Operations	
10 to 50 acres	500.00
over 50 acres	1,000.00

WILDLIFE RESOURCES

Director's Office	
Fishing Licenses	
Resident	
Youth Fishing (12-13)	5.00
Resident Youth Fishing Ages 14-17 (365 Day)	16.00
Resident Fishing Ages 18-64 (365 day)	34.00
Resident Multi Year License (Up to 5 years) for Ages 18-64 \$33/year.	
Age 65 Or Older (365 day)	25.00
Disabled Veteran (365 day)	12.00
Resident Fishing 3 day any age	16.00
7-Day (Any Age)	20.00
Nonresident	
Youth Fishing (12-13)	5.00
Nonresident Youth Fishing	
Ages 14-17 (365 day)	25.00
Nonresident Fishing age 18 Or	
Older (365 day)	75.00
Nonresident Multi Year (Up to 5 Years) for Ages 18 or Older \$74/year.	
Nonresident Fishing 3 day any age	24.00
7-Day (Any Age)	40.00
Set Line Fishing License	20.00
Season Fishing Licenses not	
Combinations	Up to 20% discount
Game Licenses	
Introductory Hunting License	4.00
Upon successful completion of Hunter Education - add to registration fee	
Resident Introductory Combination license (hunter's ed completion)	6.00
Nonresident Introductory Combination license (hunter's ed completion)	6.00
Resident	
Hunting License (up to 13)	11.00
Resident Hunting License	
Ages 14-17	16.00
Resident Hunting License	
Ages 18-64	34.00
Resident Multi Year license (Up to 5 years) for Ages 18-64 \$33/year	
Resident Hunting License Ages 65 Or Older	25.00
Resident Youth Combination	
License Ages 14-17	20.00
Resident Combination license	
Ages 18-64	38.00
Resident Multi Year License (Up to 5 Years) for ages 18-64 \$37/year	
Resident Combination Ages 65 or Older	29.00
Dedicated Hunter Certificate of Registration (COR)	
1 yr. (12-17)	40.00
1 Yr. (18+)	65.00
3 Yr. (12-17)	120.00
3 Yr. (18+)	195.00
Lifetime License Dedicated Hunter Certificate of Registration (COR)	
1 Yr. (12-17)	12.50
1 Yr. (18+)	25.00
3 Yr. (12-17)	37.50
3 Yr. (18+)	75.00

Nonresident	Deer
Nonresident Youth Hunting License	Resident
Ages 17 and Under 25.00	Limited Entry 80.00
Nonresident Hunting License	Multi Season Limited Entry Buck ... 145.00
Age 18 or Older (365 day) 65.00	Premium Limited Entry 168.00
Nonresident Multi Year Hunting	Multi Season Premium Limited
License 64.00	Entry Buck 305.00
(Up to 5 Years)	Co-Operative Wildlife Management
Nonresident Youth Combination	Unit (CWMU)/Landowner
license Ages 17 and under 29.00	Buck 40.00
Nonresident Combination license	Limited Entry 80.00
Ages 18 Or Older 85.00	Premium Limited Entry 168.00
Nonresident Multi Year License (Up to 5	Antlerless 30.00
Years) for Ages 18 or Older \$84/year.	Two Doe Antlerless 45.00
Small Game - 3 Day 32.00	Nonresident
Falconry Meet 15.00	Limited Entry 468.00
Dedicated Hunter Certificate of Registration	Includes season fishing license
(COR)	Multi Season Limited Entry Buck ... 845.00
1 Yr. (14-17) 268.00	Premium Limited Entry 568.00
Includes season fishing license	Includes season fishing license
1 Yr. (18+) 349.00	Multi Season Premium Limited
Includes season fishing license	Entry Buck 1,025.00
3 Yr. (12-17) 814.00	Co-Operative Wildlife Management
Includes season fishing license	Unit (CWMU)/Landowner
3 Yr. (18+) 1,047.00	Buck 268.00
Includes season fishing license	Includes season fishing license
General Season Permits	Limited Entry 468.00
Resident	Includes season fishing license
Youth General Season Turkey 25.00	Premium Limited Entry 568.00
Turkey 35.00	Includes season fishing license
General Season Deer 40.00	Antlerless 93.00
Antlerless Deer 30.00	Two Doe Antlerless 171.00
Two Doe Antlerless 45.00	Elk
Depredation - Antlerless 30.00	Resident
Archery Bull Elk 50.00	Limited Entry Bull 285.00
General Bull Elk 50.00	Multi Season Limited Entry Bull ... 513.00
Multi Season General Bull Elk 150.00	Depredation 50.00
Antlerless Elk 50.00	Depredation - Bull Elk - With Current
Control Antlerless Elk 30.00	Year Unused Bull Permit 235.00
Resident Two Cow Elk permit 80.00	Depredation - Bull Elk - Without
Resident Landowner Mitigation	Current Year Unused
Deer - Antlerless 30.00	Bull Permit 285.00
Elk - Antlerless 30.00	Co-Operative Wildlife Management
Pronghorn - Doe 30.00	Unit (CWMU)/Landowner
Nonresident	Any Bull 285.00
Turkey 100.00	Antlerless 50.00
General Season Deer 268.00	Nonresident
Includes season fishing license	Limited Entry Bull 800.00
Depredation - Antlerless 93.00	Includes season fishing license
Antlerless Deer 93.00	Multi Season Limited
Two Doe Antlerless 171.00	Entry Bull 1,505.00
Archery Bull Elk 393.00	Includes fishing license
Includes season fishing license	Depredation - Antlerless 218.00
General Bull 393.00	Co-Operative Wildlife Management
Includes season fishing license	Unit (CWMU)/Landowner
Multi Season General Bull Elk 700.00	Any Bull 800.00
Antlerless Elk 218.00	Includes fishing license
Control Antlerless Elk 93.00	Antlerless 218.00
Nonresident Two Cow Elk permit 350.00	Pronghorn
Nonresident Landowner Mitigation	Resident
Deer - Antlerless 93.00	Limited Buck 55.00
Elk - Antlerless 218.00	Limited Doe 30.00
Pronghorn - Doe 93.00	Limited Two Doe 45.00
Stamps	Co-Operative Wildlife Management
Wyoming Flaming Gorge 10.00	Unit (CWMU)/Landowner
Arizona Lake Powell 8.00	Buck 55.00
Limited Entry Game Permits	

Doe	30.00	Bear	308.00
Depredation Doe	30.00	Premium Bear	475.00
Archery Buck	55.00	Cougar Pursuit	135.00
Nonresident		Bear Pursuit	135.00
Limited Buck	293.00	Wolf	
Includes season fishing license		Resident	20.00
Limited Doe	93.00	Nonresident	80.00
Limited Two Doe	171.00	Cougar/Bear	
Archery Buck	293.00	Cougar or Bear Damage	30.00
Includes season fishing license		Wild Turkey	
Depredation Doe	93.00	Resident Limited Entry	35.00
Co-Operative Wildlife Management		Nonresident Limited Entry	100.00
Unit (CWMU)/Landowner		Waterfowl	
Buck	293.00	Swan	
Includes season fishing license		Resident	15.00
Doe	93.00	Nonresident	15.00
Moose		Sandhill Crane	
Resident		Resident	15.00
Bull	413.00	Nonresident	15.00
Antlerless	213.00	Sportsman Permits	
Co-Operative Wildlife Management		Resident	
Unit (CWMU)/Landowner		Bull Moose	413.00
Bull	413.00	Hunter's Choice Bison	413.00
Antlerless	213.00	Desert Bighorn Ram	513.00
Nonresident		Bull Elk	513.00
Bull	1,518.00	Buck Deer	168.00
Includes season fishing license		Buck Pronghorn	55.00
Antlerless	713.00	Bear	83.00
Co-Operative Wildlife Management		Cougar	58.00
Unit (CWMU)/Landowner		Rocky Mountain Goat	413.00
Bull	1,518.00	Rocky Mountain Sheep	513.00
Includes season fishing license		Turkey	35.00
Antlerless	713.00	Other	
Bison		Falconry Permits	
Resident	413.00	Resident	
Resident Antelope Island	1,110.00	Capture	
Nonresident	1,518.00	Apprentice Class	30.00
Includes season fishing license		General Class	50.00
Nonresident Antelope Island	2,615.00	Master Class	50.00
Includes season fishing license		Nonresident	
Bighorn Sheep		Capture	
Resident		Apprentice Class	115.00
Desert	513.00	General Class	115.00
Rocky Mountain	513.00	Master Class	115.00
Resident Rocky Mtn/Desert Bighorn		Handling	10.00
Sheep Ewe permit	100.00	Includes licenses, Certificate	
Nonresident		of Registration, and exchanges	
Desert	1,518.00	Drawing Application	10.00
Includes season fishing license		Landowner Association Application	150.00
Rocky Mountain	1,518.00	Nonrefundable	
Includes season fishing license		Resident/Nonresident Dedicated Hunter	
Nonresident Rocky Mtn/Desert		Hourly Labor Buyout Rate	20.00
Bighorn Sheep Ewe permit	1,000.00	Bird Bands	0.25
Goats		Furbearer/Trap Registration	
Resident Rocky Mountain	413.00	Resident Furbearer	29.00
Nonresident Rocky Mountain	1,518.00	Any age	
Includes season fishing license		Nonresident Furbearer	154.00
Cougar/Bear		Any age	
Resident		Resident Bobcat Temporary	
Cougar	58.00	Possession	15.00
Bear	83.00	Nonresident Bobcat Temporary	
Premium Bear	166.00	Possession	45.00
Bear Archery	83.00	Resident Trap Registration	10.00
Cougar Pursuit	30.00	Nonresident Trap Registration	10.00
Bear Pursuit	30.00	Duplicate Licenses, Permits and Tags	
Nonresident		Hunter Education cards	10.00
Cougar	258.00	Furharvester Education cards	10.00

Duplicate Vouchers CWMU/ Conservation/Mitigation	25.00
Refund of Hunting Draw License	25.00
Application Amendment	25.00
Late Harvest Reporting	50.00
Exchange	10.00
Wildlife Management Area Access (without a valid license)	10.00
Division Programs Participation fee ..	Variable
Fees shall be determined by the division using the estimated costs of materials and supplies needed for participation in the event.	
Wood Products on Division Land	
Firewood (2 Cords)	10.00
Christmas Tree	5.00
Ornamentals	
Conifers (per tree)	5.00
Maximum \$60.00 per permit	
Deciduous (per tree)	3.00
Maximum \$60.00 per permit	
Posts	0.40
Maximum \$60.00 per permit	
Hunter Education	
Hunter Education Training	6.00
Hunter Education Home Study	6.00
Furharvester Education Training	6.00
Bowhunter Education Class	6.00
Long Distance Verification	2.00
Becoming an Outdoors Woman	150.00
Special Needs Rates Available	
Hunter Education Range	
Adult	5.00
Market price up to \$10.	
Youth	2.00
Ages 15 and under. Market price up to \$5.	
Group for organized groups and not for special passes	
	50% discount
Spotting Scope Rental	2.00
Trap, Skeet or Riverside Skeet (per round)	5.00
Market price up to \$10	
Five Stand - Multi-Station Birds	7.00
Market price up to \$10	
Ten Punch Pass	
Ten Punch Pass Shooting Ranges	
Youth (Rifle/Archery/ Handgun)	Up to \$45
Market price up to \$45.00	
Ten Punch Pass Shooting Ranges (Shotgun)	Up to \$95
Market price up to \$95.00	
Ten Punch Pass Shooting Ranges	
Adult (Rifle/Archery/ Handgun)	Up to \$95
Market price up to \$95.00	
Sportsmen Club Meetings	20.00
Shooting Center RV	
Camping	\$10.00 to \$50.00
Reproduction of Records	
Self Service (per copy)	0.10
Staff Service (per copy)	0.25
Geographic Information System	
Personnel Time (per hour)	50.00
Processing (per hour)	55.00
Data Processing	
Programming Time (per hour)	75.00
Production (per hour)	55.00
License Agency	

Application	20.00
Other Services to be reimbursed at actual time and materials	
Postage	Current rate
Lost license paper by license agents (per page)	10.00
Return check charge	20.00
Hardware Ranch Sleigh Ride	
Adult	5.00
Age 4-8	3.00
Age 0-3	No charge
Education Groups (per person)	1.00
Easement and Leases Schedule	
Application for Leases	
Leases	250.00
Nonrefundable Easements	
Rights-of-way	750.00
Nonrefundable Rights-of-entry	50.00
Nonrefundable Easements Oil and Gas Pipelines ...	250.00
Amendment to lease, easement, right-of-way	400.00
Nonrefundable Amendment to right of entry	50.00
Certified document	5.00
Nonrefundable Research on leases or title records (per hour)	50.00
Rights-of-Way	
Leases and Easements - Resulting in Long-Term Uses of Habitat	Variable
Fees shall be determined on a case-by-case basis by the division, using the estimated fair market value of the property, or other legislatively established fees, whichever is greater, plus the cost of administering the lease, right-of-way, or easement. Fair market value shall be determined by customary market valuation practices.	
Special Use Permits for non-depleting land uses of < 1 year	Variable
A nonrefundable application of \$50 shall be assessed for any commercial use. Fees for approved special uses will be based on the fair market value of the use, determined by customary practices which may include: an assessment of comparable values for similar properties, comparable fees for similar land uses, or fee schedules. If more than one fee determination applies, the highest fee will be selected.	
Width of Easement	
0' - 30' Initial	12.00
0' - 30' Renewal	8.00
31' - 60' Initial	18.00
31' - 60' Renewal	12.00
61' - 100' Initial	24.00
61' - 100' Renewal	16.00
101' - 200' Initial	30.00
101' - 200' Renewal	20.00
201' - 300' Initial	40.00
201' - 300' Renewal	28.00
>300' Initial	50.00
>300' Renewal	34.00

Outside Diameter of Pipe	
<2.0" Initial	9.40
<2.0" Renewal	4.00
2.0" - 13" Initial	19.00
2.0" - 13" Renewal	8.00
13.1"-37" Initial	38.00
13.1" - 25" Renewal	12.00
25.1" - 37" Renewal	16.00
>37" Initial	75.00
>37" Renewal	32.00
Roads, Canals	
Permanent loss of habitat plus high maintenance disturbance	18.00
1' - 33' New Construction	
Permanent loss of habitat plus high maintenance disturbance	12.00
1' - 33' Existing	
Permanent loss of habitat plus high maintenance disturbance	24.00
33.1' - 66' New Construction	
Permanent loss of habitat plus high maintenance disturbance	18.00
33.1' - 66' Existing	
Assignments: Easements, Grazing	
Permits, Right-of-entry, Special Use	250.00
Certificates of Registration	
Initial - Personal Use	75.00
Initial - Commercial	150.00
TYPE I	
Certificate of Registration (COR)	
Fishing Contest	
Small, Under 50	20.00
Medium, 50 to 100	100.00
Large, over 200	250.00
Amendment	10.00
Certificate of Registration (COR)	
Handling	10.00
Renewal	30.00
Late fee for failure to renew Certificates of Registration when due: greater of \$10 or 20% of fee.	Variable
Required Inspections	100.00
Failure to Submit Required Annual Activity Report When Due	10.00
Request for Species Reclassification	200.00
Request for Variance	200.00
Commercial Fishing and	
Dealing Commercially in Aquatic Wildlife	
Dealer in Live/Dead Bait	75.00
Helper Cards - Live/Dead Bait	15.00
Commercial Seiner	1,000.00
Helper Cards - Commercial Seiner	100.00
Commercial Brine Shrimper	15,000.00
Helper Cards - Commercial Brine Shrimper	1,500.00
Upland Game Cooperative	
Wildlife Management Units	
New Application	250.00
Annual	150.00
Big Game Cooperative Wildlife Management Unit	
New Application	250.00
Annual	150.00
Falconry	
Three year	45.00

Five Year	75.00
Commercial Hunting Areas	
New Application	150.00
Renewal Application	150.00

PARKS AND RECREATION

Park Operation Management	
Boat Dealer Number and Registration Fee	
All fees for the Division of Parks and Recreation may not exceed, but may be less than, the amounts stated in the division's fee schedule.	
Golf Course Fees RENTALS	
Motorized cart, per 9 holes	16.00
Driving Range	9.00
Golf Course Fees GREENS FEES	
Promotional Pass	1,100.00
9 holes	18.00
Reservation Fee	10.65
Camping Extra Vehicle Fees	15.00
Camping Fees	28.00
Group Site Day-Use Fees	250.00
Group Camping Fees	400.00
Boating Fees	
Boat Mooring	
In/Off Season with or without Utilities (per foot)	7.00
Boat storage	200.00
Dry Storage	
Boating Season, Overnight until 2:00 pm, Off-Season, Unsecured	75.00
Application Fees	250.00
Easement, Grazing permit, Construction/Maintenance, Special Use Permit, Waiting List, Events	
Assessment and Assignment Fees	
Repository Fees	
Curation (per storage unit)	700.00
Annual Repository Agreement (per storage unit)	80.00
Annual Agreement Fee	50.00
Entrance Fees	
Motor Vehicles	
Day Use Annual Pass	75.00
Commercial Dealer Demo Pass	200.00
Commercial Groups - per person	3.00
Parking Fee	5.00
Entrance Fees	15.00
Fee collection, return checks, and duplicate document	30.00
Staff or researcher time per hour	50.00
Equipment and building rental per hour	100.00
OHV and Boating Program Fees	
OHV Program Fee	
Statewide OHV Registration Fee	22.00
State issued permit to non-resident OHVs, in which there is no reciprocity	30.00
OHV Education Fee	
Division's Off-highway Vehicle Program Safety Certificate	30.00
State Issued and Replacement OHV Safety Certificate	2.00
Boating Section Fees	
Statewide Boat Registration Fee	25.00
Carrying Passengers for Hire Fee	200.00
Boat Livery Registration Fee	100.00

Boating Education Fee	
Division's Personal Watercraft	
Course	12.00
State Issued and Replacement	
Boating Education Certificate	5.00
new rule passed by board, will take effect in	
July	
Lodging Fees	
Cabins and Yurts	80.00

UTAH GEOLOGICAL SURVEY

Administration	
Editorial	
Color Plots	
Set-Up	3.00
Regular Paper (per square foot)	3.00
Special Paper (per square foot)	4.50
Color Scanning (per scan)	9.00
Sample Library	
Cutting Thin Section Blanks	10.00
Core Plug < 1 inch (per plug)	10.00
Core Plugs > 1 inch diameter	25.00
Layout-Cuttings, Core, Coal,	
Oil/Water (per box)	5.00
Binocular/Petrographic Microscopes	
(per day)	25.00
Workshop Fee - Building Use	
(per day)	250.00
Workshop - Saturday/Sunday/	
Holiday Surcharge	320.00
Research Fee (per hour)	50.00
XRF High Resolution Scanning	
(per Hour)	15.00
XRF Analysis - Discreet Sample	
(per Sample)	10.00
Core Slabbing	
1.8" Diameter or Smaller (per foot)	10.00
1.8"-3.5" Diameter (per foot)	14.00
Larger Diameter	Negotiated
Core Photographing	
Box/Closeup 8x10 color/Thin	
Section (per Photo)	5.00
Geologic Hazards	
School Site Reviews	
Review Geologic Hazards Report for	
New School Sites	
School Site Review	500.00
Plus travel	
Preliminary Screening of a Proposed School	
Site	
One School	550.00
Plus travel	
Paleontology	
File Search Requests	
Minimum Charge	30.00
Up to 15 minutes	
Standard rate (per hour)	60.00
More than 15 minutes	
Miscellaneous	
Copies, Self-Serve (per copy)	0.10
Copies, Staff (per copy)	0.25
Research and Professional Services	
(per hour)	50.00
Media Charges	
Compact Disk (650 MB) (per CD)	3.00
Paper Printout (per page)	0.10

WATER RESOURCES

Administration	
Color Plots	
Existing (per linear foot)	2.00
Custom Orders	Current staff rate
Plans and Specifications	
Small Set	10.00
Average Size Set	25.00
Large Set	35.00
Cloud Seeding License	Variable
Copies, Staff (per hour)	Current staff rate

WATER RIGHTS

Administration	
Applications	
Appropriation	Variable see below

For any application that proposes to appropriate or recharge by both direct flow and storage, there shall be charged the fee for quantity, by cubic feet per second (cfs), or volume, by acre-feet (af), whichever is greater, but not both:

Flow - cubic feet per second (cfs)	
More than 0, not to exceed 0.1	150.00
More than 0.1, not to exceed 0.5	200.00
More than 0.5, not to exceed 1.0	250.00
More than 1.0, not to exceed 2.0	300.00
More than 2.0, not to exceed 3.0	350.00
More than 3.0, not to exceed 4.0	400.00
More than 4.0, not to exceed 5.0	430.00
More than 5.0, not to exceed 6.0	460.00
More than 6.0, not to exceed 7.0	490.00
More than 7.0, not to exceed 8.0	520.00
More than 8.0, not to exceed 9.0	550.00
More than 9.0, not to exceed 10.0	580.00
More than 10.0, not to exceed 11.0	610.00
More than 11.0, not to exceed 12.0	640.00
More than 12.0, not to exceed 13.0	670.00
More than 13.0, not to exceed 14.0	700.00
More than 14.0, not to exceed 15.0	730.00
More than 15.0, not to exceed 16.0	760.00
More than 16.0, not to exceed 17.0	790.00
More than 17.0, not to exceed 18.0	820.00
More than 18.0, not to exceed 19.0	850.00
More than 19.0, not to exceed 20.0	880.00
More than 20.0, not to exceed 21.0	910.00
More than 21.0, not to exceed 22.0	940.00
More than 22.0, not to exceed 23.0	970.00
More than 23.0	1,000.00
Volume - acre-feet (af)	
More than 0, not to exceed 20	150.00
More than 20, not to exceed 100	200.00
More than 100, not to exceed 500	250.00
More than 500, not to exceed 1,000	300.00
More than 1,000, not to	
exceed 1,500	350.00
More than 1,500, not to	
exceed 2,000	400.00
More than 2,000, not to	
exceed 2,500	430.00
More than 2,500, not to	
exceed 3,000	460.00
More than 3,000, not to	
exceed 3,500	490.00

More than 3,500, not to exceed 4,000	520.00
More than 4,000, not to exceed 4,500	550.00
More than 4,500, not to exceed 5,000	580.00
More than 5,000, not to exceed 5,500	610.00
More than 5,500, not to exceed 6,000	640.00
More than 6,000, not to exceed 6,500	670.00
More than 6,500, not to exceed 7,000	700.00
More than 7,000, not to exceed 7,500	730.00
More than 7,500, not to exceed 8,000	760.00
More than 8,000, not to exceed 8,500	790.00
More than 8,500, not to exceed 9,000	820.00
More than 9,000, not to exceed 9,500	850.00
More than 9,500, not to exceed 10,000	880.00
More than 10,000, not to exceed 10,500	910.00
More than 10,500, not to exceed 11,000	940.00
More than 11,000, not to exceed 11,500	970.00
More than 11,500	1,000.00
Extension Requests for Submitting a Proof of Appropriation	
Less than 14 years after the date of approval of the application	50.00
14 years or more after the date of approval of the application	150.00
Fixed time periods	150.00
For each certification of copies	10.00
A reasonable charge for preparing copies of any and all documents	Variable
Application to segregate a water right	50.00
Groundwater Recovery Permit	2,500.00
Fee Changed from Recharge to Recovery	
Notification for the use of sewage effluent or to change the point of discharge	750.00
Diligence claim investigation	500.00
Report of Water Right Conveyance	
Submission	40.00
Protest Filings	15.00
Livestock Watering Certificate	150.00
Well Driller	
Permit	
Initial	350.00
Renewal (Annual) (per year)	100.00
Late renewal (Annual) (per year)	50.00
Drill Rig Operator Registration	
Initial	100.00
Renewal (Annual) (per year)	50.00
Late Renewal (Annual) (per year)	50.00
Pump Installer License	
Initial	200.00
Renewal (Annual) (per year)	75.00
Late renewal (Annual) (per year)	50.00
Pump Rig Operator Registration	

Initial	75.00
Renewal (Annual) (per year)	25.00
Late renewal (Annual) (per year)	25.00
Stream Alteration	
Commercial	2,000.00
Government	500.00
Non-Commercial	100.00

DEPARTMENT OF ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S OFFICE

All Divisions	
Request for copies over 10 pages (per page)	0.25
Copies made by the requestor-over 10 pages (per page)	0.05
Compiling, tailoring, searching, etc., a record in another format. Actual cost after 1st 1/4 hour	
Charged at rate of lowest paid staff employee who has necessary skill/training to perform the request.	
Special computer data requests (per hour)	90.00
CDs (per disk)	10.00
DVDs (per disk)	8.00
Contract Services	Actual Cost

To be charged in order to efficiently utilize department resources, protect dept permitting processes, address extraordinary or unanticipated requests on the permitting processes, or make use of specialized expertise. In providing these services, department may not provide service in a manner that impairs any other person's service from the department.

AIR QUALITY

Emission Inventory Workshop	15.00
Attendance	
Air Emissions (per ton)	77.71
Major and Minor Source Compliance	
Inspection	Actual cost
Annual Aggregate Compliance	
20 or less (per tons per year)	180.00
21-79 (per tons per year)	360.00
80-99 (per tons per year)	900.00
100 or more (per tons per year)	1,260.00
Asbestos and Lead-Based Paint (LBP) Abatement	
Course Accreditation Fee (per hour)	90.00
Asbestos Company/LBP Firm	
Certification Application (per year)	250.00
LBP Renovation Firm Certification	
Application (per year)	100.00
Asbestos individual (employee) certification Application	125.00
Asbestos/Lead-Based Paint individual certification surcharge, non-Utah certified training provider	30.00
LBP Abatement Worker	
Certification Application (per year)	100.00
LBP Inspector, Dust Sampling Technician Certification Application (per year)	125.00

LBP Risk Assessor, Supervisor, Project Designer Certification Application (per year)	200.00
LBP Renovator Certification Application (per year)	100.00
Lost certification card replacement	30.00
Annual asbestos notification	500.00
Asbestos/LBP abatement project notification base fee	150.00
Asbestos/LBP abatement project notification base fee for owner-occupied residential structures	50.00
Abatement unit /100 units (square feet/linear feet/cubic feet) (times 3)(up to 10,000 units) School building Asbestos Hazard Emergency Response Act (AHERA) abatement fees will be waived	7.00
Abatement unit /100 units (square feet/linear feet/cubic feet) (times 3)(10,000 units or more) School building Asbestos Hazard Emergency Response Act (AHERA) abatement fees will be waived	3.50
Demolition Notification Base	75.00
Demolition unit per 5,000 square feet above initial 5,000 square feet	50.00
Alternative Work Practice Review Application <10 day training provider/private residence	100.00
Non-National Emission Standards for Hazardous Air Pollutants (NESHAP) requests	
All other requests	250.00
Permit Category	
Filing Fees	
Name Changes	100.00
Small Sources Exemptions and Soil Remediation	250.00
New non-PSD sources, minor & major modifications to existing sources	500.00
Any unpermitted sources at an existing facility	1,500.00
New major prevention of significant deterioration (PSD) sources	5,000.00
Monitoring plan review and site visit	
Application Review Fees	
New major source or modifications to major source in nonattainment area	40,500.00
Up to 450 hours	
New major source or modifications to major source in attainment area	27,000.00
Up to 300 hours	
New minor source or modifications to minor source	1,800.00
Up to 20 hours	
Generic permit for minor source or modifications of minor sources	720.00
Up to 8 hours (sources for which engineering review/Bact standardized)	
Temporary Relocations	630.00
Minor sources (new or modified) with <3 tpy uncoltrolled emissions	450.00
Up to 5 hours	

Permitting cost for additional hours (per hour)	90.00
Technical review of and assistance given (per hour)	90.00
I.e. appeals, sales/use tax exemptions, soils exemptions, soils remediations, experimental approvals, impact analyses, etc.	
Air Quality Training	Actual Cost
Clean Fuel Vehicle Fund	
Loan/Grant Application Fee	
Vehicle loans	140.00
Infrastructure loans	350.00
Grants	280.00

ENVIRONMENTAL RESPONSE AND REMEDIATION

Professional and Technical services or assistance (per hour)	90.00
Including but not limited to EPCRA Technical Assistance, PST Claim Preparation Assistance, Oversight for Tanks Failing to pay UST fee, UST Compliance follow-up Inspection, apportionment of Liability requested by responsible parties, prepare, administer or conduct administrative process, environmental covenants.	
Voluntary Environmental Cleanup Program Application Fee	2,500.00
Review/Oversight/Participation in Voluntary Agreements (per hour)	90.00
Annual Underground Storage Tank Tanks on Petroleum Storage Tank (PST) Fund	110.00
Tanks not on PST Fund	220.00
Tanks at Facilities significantly out of compliance with leak prevention or leak detection requirements	300.00
PST Fund Reapplication, Certification of Compliance Reapplication Fee, or both	300.00
Initial Approval of Alternate UST Financial Assurance Mechanisms	420.00
(Non-PST Participants)	
Approval of alternate UST financial assurance mechanisms after initial year	240.00
(with no Mechanism changes)	
Certification or Certification Renewal for UST Consultants	
UST installers, removers, groundwater & soil samplers, & non-government UST inspectors & testers	225.00
Consultant Recertification Class	150.00
Clandestine Drug Lab Decontamination Specialist Certification	
Certification and Recertification	225.00
Retest of Certification Exam	100.00
Enforceable Written Assurance Letters	
Written letter	500.00
Flat fee for up to 8 hours	
Additional charge if over original 8 hours (per hour)	90.00
Environmental Response and Remediation Program Training	Actual cost
UST Operators Registration	50.00

UST Red Tag Replacement	500.00
Applied only when a Red Tag is removed without authorization	
UST Installation Base Fee	500.00
UST Installation Tank Fee(Applied only when State Inspectors conduct Inspections)	200.00

WATER QUALITY

305(b) Water Quality Report	20.00
Report: Utah's Lakes and Reservoirs-	
Inventory and Classification of Utah's Priority Lakes and Reservoirs	50.00
Operator Certification	
Certification Examination	50.00
Renewal of Certificate	25.00
Renewal of Lapsed Certificate plus renewal (per month)	25.00
\$75 maximum	
Duplicate Certificate	25.00
New Certificate change in status	25.00
Certification by reciprocity with another state	50.00
Grandfather Certificate	20.00
Underground Wastewater Disposal Systems	
New Systems	25.00
Certificate Issuance	25.00
Utah Pollutant Discharge Elimination System (UPDES) Permits, Surface Water	
Cement Manufacturing	
Major	871.00
Minor	218.00
Coal Mining and Preparation	
General Permit	436.00
Individual Major	1,307.00
Individual Minor	871.00
Concentrated Animal Feeding Operations (CAFO) General Permit	110.00
Construction Dewatering/Hydrostatic Testing General Permit	150.00
Dairy Products	
Major	871.00
Minor	436.00
Electric	
Major	1,089.00
Minor	436.00
Fish Hatcheries General Permit	121.00
Food and Kindred Products	
Major	1,089.00
Minor	436.00
Hazardous Waste Clean-up Sites	2,614.00
Geothermal	
Major	871.00
Minor	436.00
Inorganic Chemicals	
Major	1,307.00
Minor	653.00
Iron and Steel Manufacturing	
Major	2,614.00
Minor	653.00
Leaking Underground Storage Tank (LUST) Cleanup	
General Permit	436.00
LUST Cleanup Individual Permit	871.00
Meat Products	
Major	1,307.00
Minor	436.00

Metal Finishing and Products	
Major	1,307.00
Minor	653.00
Mineral Mining and Processing	
Sand and Gravel	242.00
Salt Extraction	242.00
Other	
Other Majors	871.00
Other Minors	436.00
Manufacturing	
Major	1,742.00
Minor	653.00
Oil and Gas Extraction	
flow rate <=0.5 million gallons per day (MGD)	436.00
flow rate > 0.5 MGD	653.00
Ore Mining	
Major	1,307.00
Minor	653.00
Major w/ concentration process	10,000.00
Organic Chemicals Manufacturing	
Major	2,178.00
Minor	653.00
Petroleum Refining	
Major	1,742.00
Minor	653.00
Pharmaceutical Preparations	
Major	1,742.00
Minor	653.00
Rubber and Plastic Products	
Major	1,089.00
Minor	653.00
Space Propulsion	
Major	2,420.00
Minor	653.00
Steam and/or Power Electric Plants	
Major	871.00
Minor	436.00
Water Treatment Plants (Except Political Subdivisions)	
General Permit	121.00
Annual UPDES Publicly Owned Treatment Works (POTW)	
Large >10 million gallons per day (mgd) flow design (per year)	8,800.00
Medium >3 mgd but <10 mgd flow design (per year)	5,500.00
Small <3mgd but >1mgd (per year)	1,100.00
Very Small <1 mgd (per year)	550.00
Annual UPDES Pesticide Applicator Fee	
Small Applicator	200.00
Medium Applicator	500.00
Large Applicator	1,650.00
Groundwater Remediation Treatment Plant	5,500.00
Biosolids Annual Fee (Domestic Sludge)	
Small Systems (per year) 1-4,000 connections	385.00
Medium Systems (per year) 4,001 to 15,000 connections	1,117.00
Large Systems (per year) greater than 15,000 connections	1,623.00
Non-contact Cooling Water	
Flow rate <= 10,000 gallons per day (gpd) (per year)	110.00

10,000 gpd <Flow rate 100,000 gpd (per year)	220.00
\$500 up to \$1000	
100,000 gpd <Flow rate <1.0 pgd (per year)	440.00
\$1000 up to \$2000	
Flow Rate > 1.0 mgd (per year)	660.00
Fee amount is prorated based on flow rate	
Stormwater Permits	
General Multi-Sector Industrial Storm Water Permit (per year)	150.00
Industrial Stormwater No Exposure Certificate (per 5 years)	100.00
General Construction Storm Water Permit > 1 Acre (per year)	150.00
Construction Stormwater Low Erosivity Waiver Fee (one time project based fee) (per project)	50.00
Municipal Storm Water	
0-5,000 Population (per year)	550.00
5,001 - 10,000 Population (per year)	880.00
10,001 - 50,000 Population (per year)	1,320.00
50,001 - 125,000 Population (per year)	2,200.00
> 125,000 Population (per year)	3,300.00
Annual Ground Water Permit Administration Fee	
Tailings/Evaporation/Process Ponds; Heaps (per Each)	Actual cost
0-1 Acre	385.00
>1-15 Acres	770.00
>15-50 Acres	1,540.00
>50-300 Acres	2,310.00
>300-500 Acres	6,140.00
>500 Acres	12,280.00
Non-discharging municipal and commercial treatment facilities	350.00
Underground Injection Control Permit Application Fee	
Class I Hazardous Waste Disposal ...	25,000.00
One time fee	
Class I Non-Hazardous Waste Disposal	9,000.00
One time fee	
Class III Solution Mining	7,200.00
One time fee	
Class V Aquifer Storage and Recovery	5,400.00
One time fee	
All Other Permits	
Base (per facility)	770.00
Each additional regulated facility (per facility)	770.00
Multi-celled pond system or grouping of facilities with common compliance point is considered one facility	
UPDES, ground water, underground injection control, & construction permits not listed above & permit modifications, except projects of political subdivisions funded by the Division of Water Quality (per hour)	90.00
Complex facilities where the anticipated permit issuance costs will exceed the above categorical fees by 25% (per hour)	90.00

Permittee to be notified upon receipt of application	
Water Quality Cleanup Activities	
Corrective Action, Site Investigation/Remediation Oversight, Administration of Consent Orders and Agreements, and emergency response to spills and water pollution incidents (per hour)	90.00
Actual cost for sample analytical lab work	actual cost
Technical Review of and assistance given (per hour)	90.00
401 Certification reviews and issuance and compliance: permit appeals; and sales and use tax exemptions	
Water Quality Loan	
Origination	1.0% of Loan Amount

DRINKING WATER

Special Surveys	Actual cost
File Searches	Actual cost
Well Sealing Inspection (per hour)	90.00
Special Consulting/Technical	
Assistance (per hour)	90.00
Operator Certification Program	
Examination	100.00
Any level	
Renewal of certification	100.00
Every 3 years if applied for during designated period	
Reinstatement of lapsed certificate	200.00
Certificate of reciprocity with another state	100.00
Conversion	20.00
Specialist to Operator/Operator to Specialist	
Cross Connection Control Program	
Certification and Renewal	
Class I	175.00
Class II and III	225.00
Retest	145.00
Certificate of reciprocity with another state	225.00
Replacement Certificate	25.00
Cost Recovery - Construction Without Prior Approval (per Project)	1,000.00
Drinking Water Loan	
Origination	1.0% of Loan Amount

WASTE MANAGEMENT AND RADIATION CONTROL

Resource Conservation and Recovery	
Act (RCRA) Facility List	5.00
Solid and Hazardous Waste Program	
Administration (including Used Oil and Waste Tire Recycling Programs)	
Professional (per hour)	90.00
This fee includes but is not limited to: Review of Site Investigation and Site Remediation Plans, Review of Permit Applications, Permit Modifications and Permit Renewals; Review and Oversight of Administrative Consent Orders and Consent	

Agreements, Judicial Orders, and related compliance activities; Review and Oversight of Construction Activities; Review and Oversight of Corrective Action Activities; and Review and Oversight of Vehicle Manufacturer Mercury Switch Removal and Collection Plans

Hazardous Waste Permit Filing

Hazardous Waste Operation Plan
Renewal 1,000.00

Solid Waste Permit Filing (does not apply to Municipalities, Counties, or Special Service Distircts seeking review from the Division)

New Comm. Facility
Class V and Class VI Landfills 1,000.00
New Non-Commercial Facility 750.00

New Incinerator
Commercial 5,000.00
Industrial or Private 1,000.00

Plan Renewals and Plan Modifications 100.00

Variance Requests 500.00

Enforceable Written Assurance Letter
Flat fee for up to 8 hours
complete letter 500.00
Additional per hour charge if over
the original 8 hours 90.00

Waste Tire Recycling
Registration
Recycler (per year) 100.00
Transporter (per year) 100.00

Fees for registration applications received during the year will be prorated at \$8.30/month over the # of months remaining in the year.

Used Oil
Do It Your Selter and Used Oil Collection
Center Registration No charge
Permit filing fee for Transporter,
Transfer Facility, Processor/
Re-refiner, and Off-Spec Burner 100.00
Plan Review Filing Fee 100.00
Permit Modification Filing Fee 100.00
Annual Registration for Transporter,
Transfer Facility, Processor/
Re-refiner, Off-Spec Burner,
& Land Application (per year) 100.00

Marketer
Registration (per year) 50.00
Permit Filing 50.00

Vehicle Manufacturer Mercury Switch
Removal and Collection Plan
Mercury Switch Removal and Collection
Plan Filing 100.00

Non-Hazardous Solid Waste
Polychlorinated Biphenyl (PCBs)
(per ton) 4.75

Or fraction of a ton

Hazardous Waste Flat Fee
(per year) 2,444,800.00

Provides for implementation of waste management programs and oversight of the Hazardous Waste Industry in accordance with UCA 19-6-118.

Machine-Generated Radiation
Annual Registration Fee

Per control unit including first tube, plus annual fee for each additional tube connected to the control unit

Hospital/Therapy, Medical, Chiropractic, Podiatry, Veterinary, Dental 35.00

Industrial Facility with
High and/or Very High Radiation
Areas Accessible to Individuals ... 35.00
Cabinet X-Ray Units or Units
Designated for Other Purposes ... 35.00
Other 35.00

Division Conducted Inspection, Per Tube
Hospital/Therapy, Medical,
Chiropractic 105.00
Podiatry/Veterinary 75.00
Dental
First tube on a single control unit ... 45.00
Additional tubes on a control
unit (per Tube) 12.50

Industrial Facilities with
High and/or Very High Radiation
Areas Accessible to Individuals ... 105.00
Cabinet X-Ray Units or Units
Designated for Other Purposes 75.00

Other
Annual or Biennial Inspection
(per Tube) 105.00
Five year Inspection, per tube 75.00

Independent Qualified Experts Conducted Inspections or Registrants Using Qualified Experts
Inspection report (per Tube) 15.00

Radioactive Material
Special Nuclear Material
New License or Renewal License for:
Possession and use in sealed
sources contained in devices
used in industrial measuring
systems, 440.00

including X-ray fluorecence analyzers and neutron generators
Possession and use of less than
15 grams in usealed form for
research and development 730.00
Use as calibration and reference
sources 180.00
All other licenses 1,150.00

Annual Fee
Possession and use in sealed
sources contained in devices
used in industrial measuring
systems, 740.00

including X-ray fluorecence analyzers and neutron generators
Possession and use of less than
15 grams in usealed form for
research and development 740.00
Use as calibration and reference
sources 240.00
All other licenses 1,600.00

Source Material
New License or License Renewal
Licenses for concentrations of uranium from other areas for the production of uranium yellow cake 5,510.00

Regulation of source and byproduct material at uranium mills or commercial waste facilities	
Uranium mills or commercial sites disposing of or reprocessing byproduct material (per month)	8,540.00
Uranium mills the Director has determined that are on standby status	8,540.00
Licenses for possession and use of source material for shielding	230.00
All other source material licenses	1,000.00
Annual Fee	
Licenses for concentrations of uranium from other areas for the production of uranium yellow cake	4,810.00
Licenses for possession and use of source material for shielding	365.00
All other source material licenses	1,275.00
Radioactive Material other than Source Material and Special Nuclear Material	
New License or License Renewal for possession and use of radioactive material for:	
Broad scope for processing or manufacturing for commercial distribution	2,320.00
Others for processing or manufacturing for commercial distribution	1,670.00
Processing or manufacturing and distribution of radiopharmaceuticals, generators, reagent kits, or sources or devices containing radioactive material	2,320.00
The distribution or redistribution of radiopharmaceuticals, generators, reagent kits, or sources or devices not involving processing of radioactive material	860.00
Industrial radioactivity operations	1,670.00
Sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	700.00
Less than 10,000 curies of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	1,670.00
10,000 curies or more of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	3,340.00
Broad scope for research and development that do not authorize commercial distribution	2,320.00
Research and development that do not authorize commercial distribution	700.00
All other radioactive material	440.00
New License or License Renewal for:	
Licenses that authorize services for other licensees, except licenses that authorize leak testing or waste disposal services subject to the fees specified for the listed services	320.00
Licenses that authorize services for leak testing only	150.00
New License or License Renewal to distribute items containing radioactive material:	
To persons exempt from licensing requirements of R313-19, except specific licenses authorizing redistribution of items authorized for distribution to persons exempt from the licensing requirements of R313-19	700.00
To persons generally licensed under R313-21, except specific licenses authorizing redistribution of items authorized for distribution to persons generally licensed under R313-21	700.00
Annual license fee for possession and use of radioactive material for:	
Broad scope for processing or manufacturing for commercial distribution	2,960.00
Others for processing or manufacturing for commercial distribution	2,040.00
Processing or manufacturing and distribution of radiopharmaceuticals, generators, reagent kits, or sources or devices containing radioactive material	2,960.00
The distribution or redistribution of radiopharmaceuticals, generators, reagent kits, or sources or devices not involving processing of radioactive material	1,000.00
Industrial radioactivity operations	2,560.00
Sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	940.00
Less than 10,000 curies of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	1,740.00
10,000 curies or more of radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	3,480.00
Broad scope for research and development that do not authorize commercial distribution	2,960.00
Research and development that do not authorize commercial distribution	940.00
All other radioactive material	520.00
Annual fee for:	
Licenses that authorize services for other licensees, except licenses that authorize leak testing or waste disposal services subject to the fees specified for the listed services	420.00
Licenses that authorize services for leak testing only	160.00
Annual fee to distribute items containing radioactive material:	
To persons exempt from licensing requirements of R313-19, except specific licenses authorizing redistribution of items authorized for distribution to persons exempt from the licensing requirements of R313-19	580.00

To persons generally licensed under R313-21, except specific licenses authorizing redistribution of items authorized for distribution to persons generally licensed under R313-21 580.00

Radioactive Waste Disposal (licenses specifically authorizing the receipt of waste radioactive material from other persons for the purpose of commercial disposal by land by the licensee)
Annual 2,099,200.00

New Application

Siting application Actual costs up to \$250,000
License application Actual costs up to \$1,000,000

Renewal Actual costs up to \$1,000,000

Pre-licensing, operations review, and consultation on commercial low-level radioactive waste facilities (per hour) 90.00

Review of commercial low-level radioactive waste disposal and uranium recovery special projects. Applicable when the licensee and the Division agree that a review be conducted by a contractor in support of the efforts of Division staff Actual cost

Generator Site Access Permits

Non-Broker Generators transferring radioactive waste (per year) 2,500.00

Brokers (waste collectors or processors) (per year) 7,500.00

Review of licensing or permit actions, amendments, environmental monitoring reports, and miscellaneous reports for uranium recovery facilities (per hour) 90.00

Licenses authorizing receipt of waste radioactive material from others for packaging/repackaging the material

The licensee will dispose of the materials by transfer to another person authorized to receive or dispose of the material
New License/Renewal 3,190.00
Annual 2,760.00

Licenses authorizing receipt of prepackaged waste radioactive material from others

The licensee will dispose of the materials by transfer to another person authorized to receive or dispose of the material
New License/Renewal 700.00
Annual 1,100.00

Licenses authorizing packing of radioactive waste for shipment to waste disposal site where licensee does not take possession of waste material
New License/Renewal 440.00
Annual 520.00

Well Logging, Well Surveys, and Tracer Studies Licenses

for the possession and use of radioactive material for well logging, well surveys and tracer studies other than field flooding tracer studies
New License/Renewal 1,670.00
Annual 2,100.00

Licenses for possession and use of radioactive material for field flooding tracer studies
New License/Renewal Actual cost
Annual 4,000.00

Nuclear Laundries

Licenses for commercial collection and laundry of items contaminated with radioactive material
New License/Renewal 1,670.00
Annual 2,380.00

Human Use of Radioactive Material

License for human use of radioactive materials in sealed sources contained in gamma stereotactic radiosurgery or teletherapy devices
New License/Renewal 1,090.00
Annual 1,280.00

Licenses of broad scope issued to medical institutions or two or more physicians authorizing research and development including human use of radioactive material, except for licenses for radioactive material in sealed sources contained in gamma stereotactic radiosurgery or teletherapy devices
New License/Renewal 2,320.00
Annual 2,960.00

Other licenses issued for human use of radioactive material except for licenses for radioactive material in sealed sources contained in gamma stereotactic radiosurgery or teletherapy devices
New License/Renewal 700.00
Annual 1,100.00

Civil Defense

Licenses for possession and use of radioactive material for civil defense activities
New License/Renewal 700.00
Annual 380.00

Power Source

Licenses for the manufacture and distribution of encapsulated radioactive material wherein the decay energy of the material is used as a source for power
New License/Renewal 5,510.00
Annual 2,520.00

Plan Reviews

Review of plans for decommissioning, decontamination, reclamation, waste disposal pursuant to R313-15-1002, or site restoration activities 400.00

Plus added cost above 8 hours (per hour) 90.00

Investigation of a misadministration by a third party as defined in R313-30-5 or in R313-32-2, as applicable Actual cost

General License

Initial registration/renewal for first year

Measuring, gauging, and control devices as described in R313-21-22(4), 20.00

other than hydrogen-3 (tritium) devices and polonium-210 devices containing no more than 10 millicuries used for producing light or an ionized atmosphere

In Vitro testing 20.00

Depleted Uranium 20.00

Reciprocity - Licensees who conduct activities under the reciprocity provisions of R313-19-30 20.00

Annual fee after initial license/renewal

Measuring, gauging, and control devices as described in R313-21-22(4) 20.00

other than hydrogen-3 (tritium) and polonium-210 devices containing no more

than other than 10 millicuries used for producing light or an ionized atmosphere

In Vitro testing 20.00

Depleted Uranium 20.00

Reciprocity - Licensees who conduct activities under the reciprocity provisions of R313-19-30 (per type of license category) . Full annual fee

Publication costs for making public notice of required actions Actual cost

Expedited application review (per hour) ... 90.00

Applicable when, by mutual consent of the applicant and staff, an application request is taken out of date order and processed by staff.

Management and oversight of impounded radioactive material Actual cost

License amendment, for greater than three applications in a calendar year 200.00

Analytical costs for monitoring samples from radioactive materials facilities Actual cost

GOVERNOR'S OFFICE

OFFICE OF ENERGY DEVELOPMENT

Renewable energy Systems Tax

Credit and Qualifying Solar Projects

Tax Credit 15.00

Production Tax Credit 150.00

Alternative Energy Development

Tax Credit 150.00

High Cost Infrastructure Tax

Credit, private investment \$10 million or less 150.00

High Cost Infrastructure Tax

Credit, private investment more than \$10 million 250.00

DEPARTMENT OF AGRICULTURE AND FOOD

ADMINISTRATION

General Administration

General Administration

Produce Dealers

Produce Dealers 25.00

Dealer's Agent 10.00

Broker/Agent 25.00

Produce Broker 25.00

Livestock Dealer (per dealer) 250.00

Livestock Dealer/Agent (per Agent) 75.00

Livestock Auctions

Livestock Auction Market (per Market) 100.00

Auction Weigh Person (per Weigh Person) 25.00

Registered Farms Recording 10.00

Citations, Maximum per Violation 500.00

All Agriculture Divisions

Organic Certification

Annual registration of producers, handlers, processors or combination 300.00

Annual registration late fee (per Registration) 100.00

Fee for inspection (per hour) 65.00

Inspectors' time >40 hours per week (overtime) plus regular fees (per hour) 42.00

Major holidays and Sundays plus regular fees (per min. per hour) 42.00

Gross Sales

\$0 to \$5,000: Exempt Variable

\$10.00 min based on previous calendar year, applies to all Gross Sales Fees

\$5,001 to \$10,000 100.00

\$10,001 to \$15,000 180.00

\$15,001 to \$20,000 240.00

\$20,001 to \$25,000 300.00

\$25,001 to \$30,000 360.00

\$30,001 to \$35,000 420.00

\$35,001 to \$50,000 600.00

\$50,001 to \$75,000 900.00

\$75,001 to \$100,000 1,200.00

\$100,001 to \$150,000 1,800.00

\$150,001 to \$280,000 2,240.00

\$280,001 to \$375,000 3,000.00

\$375,001 to \$500,000 4,000.00

\$500,001 and up 5,000.00

Certified document 25.00

Copies of files

Per hour 10.00

Per copy 0.25

Duplicate 15.00

Internet Access 1.50

Late 25.00

Returned check 15.00

Mileage Variable

State rate

Chemistry Laboratory

Chemistry Laboratory

Seed, Feed, and Meat

Moisture 20.00

Fat 35.00

Fiber, Crude or ADF (Acid Detergent Fiber) 45.00

Proximate analysis (moisture, protein, fat, fiber, ash) 90.00

Proximate analysis (moisture, protein, fiber) 60.00

Protein 32.00

NPN (Non-Protein Nitrogen) 25.00

Ash 20.00

Water Activity 30.00

Salt 30.00

Fertilizer

Nitrogen 32.00

Available Phosphorous 35.00

Potash 30.00

Inorganics

Digested

Testing Variable

Ag, Al, As, B, Ba, Ca, Cd, Cl, Co, Cr, Cu, Fe, K, Mg, Mn, Mo, Na, Ni, P, Pb, S, Se, V, Zn

Prep and First Analyte 35.00

Additional Analytes 22.00

pH 20.00

Water Test I 250.00

Al, As, B, Ba, Ca, Cd, Cl, Co, Cr, Cu, Fe, K, Mg, Mn, Mo, Na, Ni, P, Pb, S, Se, Zn

Water Test II 180.00

Br, Cl, F, NO3, PO4, CO3, HCO3, CLO4, pH

Water Quality 180.00

Br, Cl, F, NO3, NO2, SO4, PO4, carbonate, bicarbonate, perchlorate	
Herbicides - Water	185.00
Insecticides/Fungicides - Water	205.00
Herbicides - Soil/Plants	305.00
Insecticides - Soil/Plants	265.00
Pesticide	
Water	
Single Test	205.00
Multiresidue Test	275.00
Non-water	
Single Test	305.00
Multiresidue Test	400.00
Formulation	305.00
Inorganics	
Undigested	
Testing	Variable
Ag, Al, As, B, Ba, Ca, Cd, Cl, Co, Cr, Cu, Fe, K, Mg, Mn, Mo, Na, Ni, P, Pb, S, Se, V, Zn	
Prep and First Analyte	25.00
Additional Analytes	12.00
Vitamin A	60.00
Mercury Analysis	85.00
Certification	
Milk Laboratory Evaluation Program	
Basic Lab	50.00
Number of Certified Analyst	30.00
3 x \$10.00	
Number of Approved Test	30.00
3 x \$10.00	
Total Yearly Assessed	90.00
Standard Plate Count	10.00
Coliform Count	15.00
Antibiotics Test	5.00
Phosphatase Test	15.00
Wisconsin Mastitis Test (WMT)	
Screening Test	5.00
Direct Microscopic Somatic Cell Count (DMSCC): Confirmation	10.00
Direct Somatic Cell Count (DSCC): Instrumentation	5.00
Coliform Confirmation	5.00
Container Rinse Test	10.00
H2O Coliform Confirmation Test	5.00
H2O Coliform Total Count	18.00
Butterfat %	10.00
Babcock method	
Added H2O in Raw Milk	5.00
Reactivated Phosphatase	
Confirmation	15.00
Antibiotics Confirmation Test	10.00
Salmonella Screen	40.00
E-Coli Screen (per Test)	40.00
E. coli confirmatory testing (per Test)	40.00
Salmonella confirmatory testing (per Test)	40.00
STEC confirmatory testing (per Test)	40.00
Listeria confirmatory testing (per Test)	40.00
Listeria Screen	30.00
All Other Services, per hour	40.00

The lab performs a variety of tests for other government agencies. The charges for these tests is determined according to the number of tests, and based on cost to the Laboratory and therefore may be different than the fee

schedule. Because of changing needs, the Laboratory may receive requests for test that are impossible to anticipate and list fully in a standard fee schedule. Charges for these tests are authorized and are to be based on costs.
Campylobacter Screen 40.00

Charges for other tests performed for other government agencies are authorized and are to be based on cost recovery.

Utah Horse Commission

Utah Horse Commission (fees are not to exceed the amounts identified)

Owner/Trainer	100.00
Owner	75.00
Organization	75.00
Trainer	75.00
Assistant trainer	75.00
Jockey	75.00
Jockey Agent	75.00
Veterinarian	75.00
Racing Official	75.00
Racing Organization Manager	
or Official	75.00
Authorized Agent	75.00
Farrier	75.00
Assistant to the Racing Manager	
or Official	75.00
Video Operator	75.00
Photo Finish Operator	75.00
Valet	50.00
Jockey Room Attendant or Custodian	50.00
Colors Attendant	50.00
Paddock Attendant	50.00
Pony Rider	50.00
Groom	50.00
Security Guard	50.00
Stable Gate Man	50.00
Security Investigator	50.00
Concessionaire	50.00
Application Processing	25.00

ANIMAL HEALTH

Animal Health

Inspection Service	39.00
Commercial Aquaculture Facility	150.00
Commercial Fishing Facility	30.00
Citation	
Per violation	200.00
Per head	2.00
If not paid within 15 days, two times the citation fee; if not paid within 30 days, four times the citation fee.	
Hatchery Operation (Poultry)	25.00
Poultry Dealer License (per dealer)	25.00
Health Certificate Book	50.00
Trichomoniasis Report Book	8.00
Auction Veterinary	
Cattle (per day)	200.00
Sheep (per day)	90.00
Service Fee for Veterinarians	
Per day	250.00
Dog food and brine shrimp, misc.	
Per mile	0.55
Dog food and brine shrimp, misc.	
Trichomoniasis Ear Tags	2.00
Brand Inspection	
Brand Inspection	

Farm Custom Slaughter	100.00
Estray Animals	Variable
Beef Promotion (per head)	1.50
Cattle only	
Citation (per violation)	200.00
Citation (per head)	2.00
If not paid within 15 days, two times citation fee. If not paid within 30 days, four times citation fee.	
Brand Inspection	
Special Sales	100.00
Cattle (per head)	0.75
Horse (per head)	1.00
Sheep (per head)	0.05
Brand Book	25.00
Show and Seasonal Permits	
Horse	15.00
Cattle	15.00
Horse Permit	
Lifetime	25.00
Duplicate Lifetime	10.00
Lifetime Transfer	10.00
Brand Recording	75.00
Certified copy of Recording (new brand card)	5.00
Minimum Charge (per certificate)	10.00
Cattle, Sheep, Hogs, and Horses	
Brand Transfer	50.00
Brand Renewal	50.00
5 year cycle	
Elk Farming	
Elk Inspection New License	300.00
Brand Inspection (per elk)	5.00
Service Charge (per stop, per owner)	15.00
Horn Inspection (per set)	1.00
Elk Hunting Permit	100.00
Elk License	
Renewal	300.00
Late	50.00
Meat Inspection	
Meat Inspection	
Inspection Service	39.00
Meat Packing	
Meat Packing Plant	150.00
Custom Exempt	150.00
T/A (Talmage-Aiken) Official	150.00
Packing/Processing Official	150.00

PLANT INDUSTRY

Grain Inspection	
Grain Inspection	
Regular hourly rate (per hour)	28.00
Overtime hourly rate (per hour)	42.00
Official Inspection Services (includes sampling, except where indicated)	
Railcar (per car)	20.50
Truck or trailer (per carrier)	10.50
Container Inspection	21.50
Submitted sample (per sample)	7.50
Re-inspection	
Based on new sample (per truck)	10.50
Basis file sample	7.50
Based on new sample rail	20.50
Protein test	
Original or file sample retest	8.00

Oil and starch	8.00
Basis new sample	5.50
Plus sample hourly	
Factor only determination (per factor)	3.00
Plus samplers hourly rate, if applicable	
Stowage examination services (per certificate)	10.00
A fee for applicant requested certification of specific factors (per request)	3.00
Malting barley analysis of non-malting class barley, HVAC or DHV percentage determination in durum or hard spring wheats, etc.	
Extra copies of certificates (per copy)	1.00
Insect damaged kernel, determination (weevil, bore)	2.75
Sampling only, same as original carrier fee, except hopper cars, 4 or more	14.00
Mailing sample handling charge	3.00
Plus actual cost	
Sealing rail cars or containers upon request over 5 seals per rail car	5.00
Request for services not covered by the above fees will be performed at the applicable hourly rate stated herein, plus mileage and travel time, if applicable. Actual travel time will be assessed outside of a 50 mile radius of Ogden.	
Falling number inspection, per sample (per Sample)	12.00
Class X Weighing inspection (per Inspection)	6.00
Non-Official Services	
Safflower Grading	13.00
Class II weighing (per carrier)	6.00
Dark Hard Vitreous kernels (DHV) percentage in Hard Red Wheat	4.00
Determination of hard kernel percentage in soft white wheat	4.00
Dry Hay Feed Analysis	14.00
Silages (corn or hay) Analysis	20.00
Feed grain Analysis	14.00
Black Light (Aflatoxin)	3.00
Aflatoxin Test	20.00
Strip quick test	
Grain grading instructions (per hour, per person)	20.00
Set of check Samples	25.00
Proteins-moisture, Set of 5	
Other Requests (per hour)	Variable
Good Agricultural Practices (GAP)	
Inspection (per hour)	Federal rate
Agricultural Inspection	
Shipping Point	
Fruit	
Packages, 19 lb. or less (per package)	0.02
20 to 29 lb. package (per package)	0.025
Over 29 lb. package (per package)	0.03
Bulk load (per hundredweight)	0.045
Vegetables	
Potatoes (per hundredweight)	0.06
Onions (per hundredweight)	0.065
Cucurbita (per hundredweight)	0.05

Cucurbita family includes: watermelon, muskmelon, squash (summer, fall, and winter), pumpkin, gourd and others.

Other Vegetables

Less than 60 lb. package (per package) 0.035

Over 60 lb. package (per package) 0.045

Phytosanitary Inspection (per inspection) 50.00

Phytosanitary Inspection with grade certification (per inspection) 15.00

Federal (per inspection) 16.00

One commodity (per certificate) 28.00

Except regular rate at continuous grading facilities

Mixed loads (per commodity) 28.00

For inspection of raw products at processing plants (per hour) 28.00

For inspectors' time over 40 hrs per week (overtime), plus regular fees (per hour) 42.00

For major holidays and Sundays (per hour) 42.00

4 hour minimum plus regular fees (Holidays include: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.)

All inspections shall include mileage which will be charged according to the current mileage rate of the State of Utah Variable

Export Compliance Agreements 50.00

Nursery

Gross Sales ((\$10.00 min) based on previous calendar year, applies to all Gross Sales Fees)

\$0 to \$5,000 40.00

\$5,001 to \$100,000 80.00

\$100,001 to \$250,000 120.00

\$250,001 to \$500,000 160.00

\$500,001 and up 200.00

Nursery Agency 50.00

Feed

Commercial Feed 25.00

Processing 35.00

Custom Formula Permit 75.00

Pesticide

Commercial Applicator Certification

4 or less Commercial Pesticide

Applicators 75.00

5-9 Commercial Pesticide

Applicators 150.00

10 or more Commercial Pesticide

Applicators 300.00

Triennial (3 year) Certification and License 45.00

Replacement of lost or stolen certificate/license 15.00

Failed examinations may be retaken two more times at no charge Variable

Additional re-testing 15.00

Two more times

Triennial (3 year) examination and educational materials 20.00

Product Registration 60.00

Processing Service 135.00

Dealer License

Triennial 100.00

Fertilizer

Blenders License 75.00

Assessment (per ton) 0.35

Minimum Semiannual Assessment (per Assessment) 20.00

Fertilizer Registration 25.00

Processing 35.00

Beekeepers

Insect Identification 10.00

License

0 to 20 hives 10.00

21 to 100 hives 25.00

101 to 500 hives 50.00

Inspection (per hour) 28.00

Salvage Wax Registration 10.00

Control Atmosphere 10.00

Seed Purity

Flowers 12.00

Grains 8.00

Grasses 17.00

Legumes 8.00

Trees and Shrubs 12.00

Vegetables 8.00

Seed Germination

Flowers 12.00

Grains 8.00

Grasses 12.00

Legumes 8.00

Trees and Shrubs 12.00

Vegetables 8.00

Seed Tetrazolium Test

Flowers 22.00

Grains 14.00

Grasses 22.00

Legumes 17.00

Trees and Shrubs 22.00

Vegetables 14.00

Embryo Analysis (Loose Smut Test) 11.00

Cutting Test 8.00

Mill Check (per hour) Variable

Examination of Extra Quantity for Other Crop or Weed Seed (per hour) Variable

Examination for Noxious Weeds

Only (per hour) Variable

Identification No charge

Inspection (per hour) 28.00

Additional Copies of Analysis Reports 1.00

Any other inspection service performed (per hour) 28.00

1 hour minimum. Mixtures will be charged based on the sum for each individual kind in excess of 5 percent. Samples which require excessive time, screenings, low grade, dirty, or unusually difficult sample will be charged at the hourly rate. Hourly charges may be made on seed treated with Highly Toxic Substances if special handling is necessary for the Analysts safety. Discount germination is a non-priority service intended for carry-over seed which is ideal for checking inventories from May through August. The discount service is available during the rest of the year, but delays in testing may result due to high test volume of priority samples. Ten or more samples receive a fifty percent discount off normal germination fees.

Emergency service for single component only (per sample) 42.00

Hay and Straw Weed Free Certification	
Bulk loads of hay up to 10 loads	30.00
Hourly rate	28.00
If time involved is 1 hour or less	28.00
Charge for each hay tag	0.10
Citations, maximum per violation	500.00

REGULATORY SERVICES

Regulatory Services

Bedding/Upholstered Furniture	
Manufacturers of Bedding and/or Upholstered Furniture	65.00
Wholesale Dealer	65.00
Supply Dealer	65.00
Manufacturers of Quilted Clothing	65.00
Upholsterer with employees	50.00
Upholsterer without employees	25.00
Processing /All Bedding Upholstery Licenses	40.00
Sterilization Fee	105.00

Dairy

Test milk for payment	40.00
Operate milk manufacturing plant (per Plant)	85.00
Make butter (per Operation)	40.00
Haul farm bulk milk (per Operation)	40.00
Make cheese (per Operation)	40.00
Operate a pasteurizer (per Operator)	40.00
Operate a milk processing plant (per Plant)	85.00

Dairy Products Distributor (per Distributor)	85.00
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Base Food Inspection

Small	50.00
Less than 1,000 sq. ft. / 4 or fewer employees	
Medium	150.00
1,000-5,000 sq. ft., with limited food processing	
Large	250.00
Food processor over 1,000 sq. ft. / Grocery store 1,000-50,000 sq. ft. and two or fewer food processing areas / Warehouse 1,000-50,000 sq. ft.	
Super	400.00
Food processor over 20,000 sq. ft. / Grocery store over 50,000 sq. ft. and more than two food processing areas / Warehouse over 50,000 sq. ft.	

Special Inspection

Food and Dairy Inspection	
Per hour	30.00
Overtime rate	40.00
Citations, maximum per violation	500.00

Weights and Measures

Weighing and measuring devices/ individual servicemen (per Serviceperson)	50.00
Metrology services (per hour)	50.00
Base Weights and Measures	
Small	50.00
1-3 scales, 1-12 fuel dispensers, 1 meter, 1 large scale, or 1-3 scanners	
Medium	150.00
4-15 scales, 13-24 fuel dispensers, 2-3 meters, 2-3 large scales, or 4-15 scanners	
Large	250.00

16-25 scales, 25-36 fuel dispensers, 4-6 meters, 4-5 large scales, or 16-25 scanners	
Super	400.00
26+ scales, 37+ fuel dispensers, 7+ meters, 6+ large scales, or 26+ scanners	
Special Scale Inspections	

Large Capacity Truck (Man Hour) (per hour)	25.00
Large Capacity Truck (per mile)	2.00
Large Capacity Truck (Equipment Hour) (per hour)	25.00

Equipment use	
Pickup Truck (per hour)	25.00
Pickup Truck (per mile)	1.00
Pickup Truck (per hour)	20.00

Equipment use	
Overnight Trip (per diem)	Variable
Plus cost of hotel	
Petroleum Refinery	

Gasoline	
Octane Rating	132.00
Benzene Level	88.00
Pensky-Martens Flash Point	22.00
Overtime charges (per hour)	33.00
Gravity	11.00
Distillation	28.00
Sulfur, X-ray	39.00
Reid Vapor Pressure (RVP)	28.00
Aromatics	55.00
Leads	22.00

Diesel	
Gravity	28.00
Distillation	28.00
Sulfur, X-ray	22.00
Cloud Point	22.00
Conductivity	28.00
Cetane	22.00

Citations, maximum per violation	500.00
Certificate of Free Sale	
Single Certificate	30.00
More than 3 pages	55.00

MARKETING AND DEVELOPMENT

Marketing/Utah's Own

Utah's Own Supporter	1,000.00
Utah's Own Year One Membership	25.00
Utah's Own Annual Membership	50.00

SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

Administration

Research on leases or title by staff (per hour)	75.00
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Reproduction of Records

Copies Made By Staff (per copy)	0.40
Copies - Self-service (per copy)	0.10

Name change on Administrative Records

Name Change on Admin. Records - Surface Document	15.00
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Name Change on Admin. Records - Lease (per lease)	15.00
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Late fee 6% or \$30, whichever is greater

Fax send only including cover (per page)	1.00
Certified Copies (per document)	10.00
Affidavit of Lost Document (per document)	25.00
Surface	
Easements	
Amendment	400.00
Application	750.00
Assignment Fees	250.00
Collateral	250.00
Reinstatement	400.00
Exchange	
Application	1,000.00
Grazing Permit	
Amendment	75.00
Application	75.00
Assignment Fees	30.00
Collateral	50.00
Reinstatement	100.00
Non-Use	20.00
Modified	
Amendment	50.00
Application	250.00
Assignment Fees	250.00
Collateral	50.00
Reinstatement	30.00
Letter of Intent	
Application	100.00
Right of Entry	
Amendment	50.00
Application	50.00
Assignment	250.00
Extension of Time	100.00
Processing	50.00
Right of Entry Trailing Permit	
Application plus AUM (Animal Unit Month) fees	50.00
Sales/Certificates	
Application	250.00
Assignment	250.00
Partial Conveyance	250.00
Patent Reissue	50.00
Processing	500.00
Special Use Agreements	
Amendment	400.00
Application	250.00
Assignment Fees	250.00
Collateral	250.00
Processing	700.00
Reinstatement	400.00
Timber Agreement	
Application	100.00
6 months or less	
Assignment	250.00
6 months or less	
Application	500.00
longer than 6 months	
Assignment	250.00
longer than 6 months	
Extension of Time	250.00
longer than 6 months	
Mineral	
Application	
Materials Permit (Sand and Gravel)	250.00
Mineral Materials Permit	100.00
Mineral Lease	30.00

Rockhounding Permit	
Association	200.00
Individual/Family	25.00
Collateral	50.00
Materials Permit (Sand and Gravel)	200.00
Operating Rights	50.00
Overriding Royalty	50.00
Record Title	50.00
Segregation	100.00
Processing	
Materials Permit (Sand/Gravel)	700.00
Transfer Active Oil and Gas Lease to Current Form	50.00
Utah Interactive Transaction	2.75
Cash Equivalent	3.00
Bank Charge (per incident)	3 percent

PUBLIC EDUCATION

STATE BOARD OF EDUCATION

STATE ADMINISTRATIVE OFFICE

Board and Administration	
Indirect Cost Pool	
Restricted Funds	
USOE percentage of personal service costs up to 18%	
Unrestricted Funds	
USOE percentage of personal service costs up to 24%	
District Computer Services	
ASPIRE	4.51
Teaching and Learning Conference or Professional Development Registration	50.00

**UTAH SCHOOLS FOR THE
DEAF AND THE BLIND**

Educational Services	
Instruction	
Teachers Aide	12.53
Student Education Services Aide	29.79
Educator	61.32
After-School Program	30.00
Pre-School Monthly Tuition	75.00
Out-of-State Tuition	50,600.00
Support Services	
Support Services	
Educator	61.32
Instruction	
Educational Interpreter	45.69
Support Services	
Conference Attendance	
Educator - Conference Attendance Fee	100.00
Parent - Conference Attendance Fee	25.00
Adult Lunch Tickets	2.00
Copy & Fax Machine	
Fax Machine	1.00
Copy Machine	
Color	1.00
Black/White	0.10
Athletic (per sport)	100.00
Room Rental	

Dormitory	19.00
Conference	94.00
Multipurpose	188.00

**RETIREMENT AND
INDEPENDENT ENTITIES**

**DEPARTMENT OF HUMAN
RESOURCE MANAGEMENT**

Statewide Management Liability Training Certified Public Manager Course Fee (per student)	750.00
Other Training Fee (per contact hour)	15.00

**HUMAN RESOURCES
INTERNAL SERVICE FUND**

ISF - Core HR Services Core HR (per FTE)	12.00
ISF - Field Services HR Services (per FTE)	723.00
Consulting Services (Non-Customer) (per Hour)	45.00
Billing for DHRM consultation with agencies who do not use DHRM HR services. ISF - Payroll Field Services Payroll Services (per FTE)	54.00

Per UCA 67-19-13.5, the following agencies are not required to use DHRM payroll services: State Treasurer's Office, State Auditor's Office, Dept. of Technology Services, Dept. of Public Safety, Dept. of Natural Resources, Dept. of Transportation, Utah Schools for the Deaf and the Blind.

EXECUTIVE APPROPRIATIONS

CAPITOL PRESERVATION BOARD

Capitol Hill Grounds Commercial Production Grounds/per event (per day)	2,500.00
Commercial Production White Chapel/per event	1,000.00
A, B, C, D A, B, C, and D/per event (per day) ..	2,500.00
A, B, C, and D/per hour	750.00
A-South Lawn A-South Lawn/per event	2,000.00
A-South Lawn/per hour	400.00
B-SE Outside of Oval B-SE Outside of Oval/per event	1,000.00
B-SE Outside of Oval/per hour	200.00
C-SW Outside of Oval C-SW Outside of Oval/per event	1,000.00
C-SW Outside of Oval/per hour	200.00
D-West Lawn D-West Lawn/per event	500.00
D-West Lawn/per hour	150.00
South Steps South Steps/per event (per event)	500.00
South Steps/per hour (per hour)	125.00
Capitol Hill - The State Capitol Preservation Board may establish the maximum amount of time a person may use a facility.	

Parking Lot Parking Space (per stall per day)	7.00
For events only	
Rotunda Commercial Production Rotunda/per event (per day)	5,000.00
Rotunda Rental Fee Monday- Thursday (per event)	2,000.00
Rotunda Rental Fee Friday-Sunday (per event)	2,300.00
Rotunda two hour block Mon-Fri during Leg Session (7 a.m.-5:30 p.m.) ..	No charge
Hall of Governors Hall of Governors	1,300.00
Hall of Governors - Two hour block Monday - Friday during Leg Session (7:00 a.m.-5:30 p.m.)	No charge
Plaza Plaza/per event	1,300.00
Plaza/per hour	200.00
Room 105 General Public, Commercial, & Private Groups Room #105/per hour	100.00
Room #105 Mon - Fri 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week)	No charge
Nonprofit, Gov't Nonofficial Business, K-12, & Higher Ed Room #105/per hour	50.00
Room #105 Mon - Fri 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week)	No charge
Room 170 General Public, Commercial, & Private Groups Room #170/per hour	100.00
Room #170 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week)	No charge
Nonprofit, Gov't Nonofficial Business, K-12, & Higher Ed Room #170/per hour	50.00
Room #170 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week)	No charge
Room 210 General Public, Commercial, & Private Groups Room #210/per hour	100.00
Room #210 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week)	No charge
Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Room #210/per hour	50.00
Room #210 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week)	No charge
State Room State Room/per event	1,000.00
State Room/per hour	125.00
Centennial Room General Public, Commercial, & Private Groups Centennial Room #130/per hour	100.00
Centennial Room #130 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week)	No charge
Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed	

Centennial Room #130/per hour 50.00
 Centennial Room #130 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

Board Room
 General Public, Commercial, & Private Groups Board Room/per hour 150.00
 Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Board Room/per hour 75.00

Olmsted Room
 General Public, Commercial, & Private Groups Olmsted Room/per hour 100.00
 Olmsted Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge
 Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Olmsted Room/per hour 50.00
 Olmsted Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

Kletting Room
 General Public, Commercial, & Private Groups Kletting Room/per hour 100.00
 Kletting Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge
 Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Kletting Room/per hour 50.00
 Kletting Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

Elk Room
 General Public, Commercial, & Private Groups Elk Room/per hour 100.00
 Elk Room Mon-Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge
 Nonprofit, Gov't Nonofficial Business, K-12, & Higher Ed Elk Room/per hour 50.00
 Elk Room Mon-Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

Seagull Room
 General Public, Commercial, & Private Groups Seagull Room/per hour 100.00
 Seagull Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge
 Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Seagull Room/per hour 50.00
 Seagull Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

Beehive Room
 General Public, Commercial, & Private Groups Beehive Room/per hour 100.00
 Beehive Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge
 Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Beehive Room/per hour 50.00

Beehive Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

Copper Room
 General Public, Commercial, & Private Groups Copper Room/per hour 100.00
 Copper Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge
 Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Copper Room/per hour 50.00
 Copper Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

Aspen Room
 General Public, Commercial, & Private Groups Aspen Room/per hour 100.00
 Aspen Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge
 Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Aspen Room/per hour 50.00
 Aspen Room Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

State Office Building - The State Capitol Preservation Board may establish the maximum amount of time a person may use a facility.

Auditorium
 General Public, Commercial, & Private Groups Auditorium/per hour 125.00
 Auditorium Mon - Fri, 7:00 a.m.-11 a.m. and 1:30 p.m.-5:30 p.m. during Leg Session (per hour) 125.00
 Auditorium Mon - Fri, 11:00 a.m.-1:30 p.m. during Leg Session with the use of preferred caterer No charge
 Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Auditorium/per hour 75.00
 Auditorium Mon - Fri, 7:00 a.m.-11:00 a.m. and 1:30 p.m.-5:30 p.m. during Leg Session (per hour) 75.00
 Auditorium Mon - Fri, 11 a.m.-1:30 p.m. during Leg Session with the use of preferred caterer No charge

Room 1112
 General Public, Commercial, & Private Groups Room #1112/per hour 100.00
 Room #1112 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge
 Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed Room #1112/per hour 50.00
 Room #1112 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

Room B110
 General Public, Commercial, & Private Groups Room #B110/per hour 100.00
 Room #B110 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week) No charge

Nonprofit, Gov't Nonofficial Business, K -12, & Higher Ed	
Room #B110/per hour	50.00
Room #B110 Mon - Fri, 7:00 a.m.-5:30 p.m. during Leg Session (no more than 8 hours/week)	No charge
White Community Memorial Chapel	
Per day of event	500.00
Noon-midnight rehearsal	250.00
Miscellaneous Other	
Access Badges	25.00
Additional Labor (per person, per 1/2 hr)	25.00
Additional Personnel (per person, per 1/2 hr)	25.00
Adjustment (per person, per 1/2 hr)	25.00
Administrative Fee	10.00
Baby Grand Piano	200.00
Chairs (per chair)	1.50
Change in set-up fee (per person, per 1/2 hr)	25.00
Easel	10.00
Event/Dance Floor 30x30	1,000.00
Event/Dance Floor 21x21	600.00
Event/Dance Floor 15x15	450.00
Event/Dance Floor 12x12	250.00
Event/Dance Floor 6x6	125.00
Extension Cords	5.00
Flags	No charge
Free Speech Public Space Useage	No charge
Garbage Can	No charge
Gold Formal Chair (per chair)	5.00
Insurance Coverage for Capitol Hill Facilities and Grounds	Coverage of \$1,000,000.00
Locker Rentals (per year)	40.00
PA System (Podium & Microphone) with one speaker	50.00
Additional speakers available at a cost of \$15.00 each.	
Podium	
With Microphone	35.00
Without Microphone	25.00
POLYCOM Phone Rental	10.00
Risers (per section)	25.00
Security (per officer, per hour)	50.00
Stanchion	10.00
Standing Microphone	15.00
Table (per table)	7.00
Table Pedestal Round 20" (per table)	10.00
Table Pedestal Round 42" (per table)	10.00
Upright Piano	50.00

UTAH NATIONAL GUARD

Operations and Maintenance	
Armory Rental	
Armory Rental (per hour)	25.00
Armory rental fee of \$25/hour is charged to pay for the additional operations and maintenance costs to the National Guard when an armory is rented to a group outside of the National Guard.	
Security Attendant (per hour)	15.00
Utah National Guard requires a security attendant to accompany an armory rental outside of business hours to ensure the security of facilities and equipment.	

Refundable Cleaning Deposit	100.00
This refundable fee is required to mitigate the liability of damage or additional cleaning requirement for National Guard armories during or after rental.	

DEPARTMENT OF VETERANS' AND MILITARY AFFAIRS

Cemetery	
Veterans' Burial	749.00
Spouse/Dependent Burial	749.00
Saturday Burial Surcharge	700.00
Lawn Vase	60.00
Disinterment	
Single Depth Disinterment	600.00
Double Depth Disinterment	900.00
Cremains Disinterment	150.00
Chapel Rental	150.00
Fee for renting the on-site chapel for funerals, memorials or other events.	

Section 3. Effective Date.
This bill takes effect on July 1, 2017.

CHAPTER 459**S. B. 75**

Passed March 7, 2017
 Approved March 28, 2017
 Effective May 9, 2017

CHILD WELFARE AMENDMENTS

Chief Sponsor: Lincoln Fillmore
 House Sponsor: Robert M. Spendlove

LONG TITLE**General Description:**

This bill amends and enacts provisions concerning child and family services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a chief of police or a sheriff may create a child protection unit;
- ▶ permits the Division of Child and Family Services (the division) to include members of a child protection unit as part of a child protection team when the division takes a child into custody or files a petition to commence proceedings in juvenile court alleging that a child is abused or neglected;
- ▶ permits the division to include members of a child protection unit in the child protection team that assists the division in the division's protective, diagnostic, assessment, treatment, and coordination services;
- ▶ establishes a child protection unit pilot program;
- ▶ provides for sunset review of the child protection unit pilot program before it is repealed on December 31, 2019; and
- ▶ ensures that the division may make records that are the result of a child abuse or neglect report available to members of a child protection unit.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-3-913, as last amended by Laws of Utah 2002, Chapter 219
 17-22-2, as last amended by Laws of Utah 2014, Chapter 366
 62A-4a-101, as last amended by Laws of Utah 2009, Chapter 75
 62A-4a-202.3, as last amended by Laws of Utah 2008, Chapter 3
 62A-4a-202.8, as last amended by Laws of Utah 2008, Chapter 3
 62A-4a-409, as last amended by Laws of Utah 2010, Chapter 239
 62A-4a-412, as last amended by Laws of Utah 2016, Chapter 144
 63I-1-262, as last amended by Laws of Utah 2016, Chapter 231
 78A-6-322, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

62A-4a-202.9, Utah Code Annotated 1953

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

Section 1. Section 10-3-913 is amended to read:**10-3-913. Authority of chief of police.**

(1) The chief of police has the same authority as the sheriff within the boundaries of the municipality of appointment. The chief has authority to:

- (a) suppress riots, disturbances, and breaches of the peace;
- (b) apprehend all persons violating state laws or city ordinances;
- (c) diligently discharge his duties and enforce all ordinances of the city to preserve the peace, good order, and protection of the rights and property of all persons; ~~and~~
- (d) attend the municipal justice court located within the city when required, provide security for the court, and obey its orders and directions[-]; and
- (e) create a child protection unit, as defined in Section 62A-4a-101.

(2) This section is not a limitation of a police chief's statewide authority as otherwise provided by law.

(3) The chief of police shall, on or before January 1, 2003, adopt a written policy that prohibits the stopping, detention, or search of any person when the action is solely motivated by considerations of race, color, ethnicity, age, or gender.

Section 2. Section 17-22-2 is amended to read:**17-22-2. Sheriff -- General duties.**

- (1) The sheriff shall:
 - (a) preserve the peace;
 - (b) make all lawful arrests;
 - (c) attend in person or by deputy the Supreme Court and the Court of Appeals when required or when the court is held within his county, all courts of record, and court commissioner and referee sessions held within his county, obey their lawful orders and directions, and comply with the court security rule, Rule 3-414, of the Utah Code of Judicial Administration;
 - (d) upon request of the juvenile court, aid the court in maintaining order during hearings and transport a minor to and from youth corrections facilities, other institutions, or other designated places;
 - (e) attend county justice courts if the judge finds that the matter before the court requires the sheriff's attendance for security, transportation, and escort of jail prisoners in his custody, or for the custody of jurors;
 - (f) command the aid of as many inhabitants of his county as he considers necessary in the execution of these duties;
 - (g) take charge of and keep the county jail and the jail prisoners;

(h) receive and safely keep all persons committed to his custody, file and preserve the commitments of those persons, and record the name, age, place of birth, and description of each person committed;

(i) release on the record all attachments of real property when the attachment he receives has been released or discharged;

(j) endorse on all process and notices the year, month, day, hour, and minute of reception, and, upon payment of fees, issue a certificate to the person delivering process or notice showing the names of the parties, title of paper, and the time of receipt;

(k) serve all process and notices as prescribed by law;

(l) if he makes service of process or notice, certify on the process or notices the manner, time, and place of service, or, if he fails to make service, certify the reason upon the process or notice, and return them without delay;

(m) extinguish fires occurring in the undergrowth, trees, or wooded areas on the public land within his county;

(n) perform as required by any contracts between the county and private contractors for management, maintenance, operation, and construction of county jails entered into under the authority of Section 17-53-311;

(o) for the sheriff of a county that enters into an interlocal agreement for law enforcement service under Title 11, Chapter 13, Interlocal Cooperation Act, provide law enforcement service as provided in the interlocal agreement;

(p) manage search and rescue services in his county;

(q) obtain saliva DNA specimens as required under Section 53-10-404;

(r) on or before January 1, 2003, adopt a written policy that prohibits the stopping, detention, or search of any person when the action is solely motivated by considerations of race, color, ethnicity, age, or gender; ~~and~~

(s) create a child protection unit, as defined in Section 62A-4a-101, if the sheriff determines that creation of a child protection unit is warranted; and

~~(t)~~ (t) perform any other duties that are required by law.

(2) Violation of Subsection (1)(j) is a class C misdemeanor. Violation of any other subsection under Subsection (1) is a class A misdemeanor.

(3) (a) As used in this Subsection (3):

(i) "Police interlocal entity" has the same meaning as defined in Sections 17-30-3 and 17-30a-102.

(ii) "Police local district" has the same meaning as defined in Section 17-30-3.

(b) A sheriff in a county which includes within its boundary a police local district or police interlocal entity, or both:

(i) serves as the chief executive officer of each police local district and police interlocal entity within the county with respect to the provision of law enforcement service within the boundary of the police local district or police interlocal entity, respectively; and

(ii) is subject to the direction of the police local district board of trustees or police interlocal entity governing body, as the case may be, as and to the extent provided by agreement between the police local district or police interlocal entity, respectively, and the sheriff.

(c) If a police interlocal entity or police local district enters an interlocal agreement with a public agency, as defined in Section 11-13-103, for the provision of law enforcement service, the sheriff:

(i) does not serve as the chief executive officer of any interlocal entity created under that interlocal agreement, unless the agreement provides for the sheriff to serve as the chief executive officer; and

(ii) shall provide law enforcement service under that interlocal agreement as provided in the agreement.

Section 3. Section 62A-4a-101 is amended to read:

62A-4a-101. Definitions.

As used in this chapter:

(1) "Abuse" ~~is as~~ means the same as that term is defined in Section 78A-6-105.

(2) "Adoption services" means:

(a) placing children for adoption;

(b) subsidizing adoptions under Section 62A-4a-105;

(c) supervising adoption placements until the adoption is finalized by the court;

(d) conducting adoption studies;

(e) preparing adoption reports upon request of the court; and

(f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

(3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of Children, a person under 18 years of age.

(4) "Child protection team" means a team consisting of:

(a) the caseworker assigned to the case;

(b) the caseworker who made the decision to remove the child;

(c) a representative of the school or school district where the child attends school;

(d) the peace officer who removed the child from the home;

(e) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;

(f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;

(g) members of a child protection unit; and

(h) any other individuals determined appropriate and necessary by the team coordinator and chair.

(5) "Child protection unit" means any unit created by a chief of police or a sheriff of a city, town, metro township, or county that is composed of at least the following individuals who are trained in the prevention, identification, and treatment of abuse or neglect:

(a) a law enforcement officer, as defined in Section 53-13-103; and

(b) a child advocate selected by the chief of police or a sheriff.

[45] (6) "Chronic abuse" means repeated or patterned abuse.

[46] (7) "Chronic neglect" means repeated or patterned neglect.

(8) "Consult" means an interaction between two persons in which the initiating person:

(a) provides information to another person;

(b) provides the other person an opportunity to respond; and

(c) takes the other person's response, if any, into consideration.

[44] (9) "Consumer" means a person who receives services offered by the division in accordance with this chapter.

[47] (10) "Custody," with regard to the division, means the custody of a minor in the division as of the date of disposition.

[48] (11) "Day-care services" means care of a child for a portion of the day which is less than 24 hours:

(a) in the child's own home by a responsible person; or

(b) outside of the child's home in a:

(i) day-care center;

(ii) family group home; or

(iii) family child care home.

[49] (12) "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

[40] (13) "Director" means the director of the Division of Child and Family Services.

[41] (14) "Division" means the Division of Child and Family Services.

[42] (15) "Domestic violence services" means:

(a) temporary shelter, treatment, and related services to:

(i) a person who is a victim of abuse, as defined in Section 78B-7-102; and

(ii) the dependent children of a person described in Subsection (12)(a)(i); and

(b) treatment services for a person who is alleged to have committed, has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

[43] (16) "Harm" [is-as] means the same as that term is defined in Section 78A-6-105.

[44] (17) "Homemaking service" means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.

[45] (18) "Incest" [is-as] means the same as that term is defined in Section 78A-6-105.

[46] (19) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of Children:

(a) a child; or

(b) a person:

(i) who is at least 18 years of age and younger than 21 years of age; and

(ii) for whom the division has been specifically ordered by the juvenile court to provide services.

[47] (20) "Molestation" [is-as] means the same as that term is defined in Section 78A-6-105.

(21) "Mutual case" means a case that has been:

(a) opened by the division under the division's discretion and procedures;

(b) opened by the law enforcement agency with jurisdiction over the case; and

(c) accepted for investigation by the child protection unit established by the chief of police or sheriff, as applicable.

[48] (22) "Natural parent" means a minor's biological or adoptive parent, and includes a minor's noncustodial parent.

[49] (23) "Neglect" [is-as] means the same as that term is defined in Section 78A-6-105.

[20] (24) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the earlier of:

(a) the shelter hearing; or

(b) the child's return home.

[21] (25) "Protective services" means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or dependency of a child;

(b) to a cohabitant who is neglecting or abusing a child, in order to:

(i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and

(ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

(c) in cases where the child's welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;

(ii) to cause a protective order to be issued for the protection of the child, when appropriate; and

(iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate:

(A) removal from the child's home;

(B) placement in substitute care; and

(C) petitioning the court for termination of parental rights.

[~~(22)~~] (26) "Severe abuse" [~~is as~~] means the same as that term is defined in Section 78A-6-105.

[~~(23)~~] (27) "Severe neglect" [~~is as~~] means the same as that term is defined in Section 78A-6-105.

[~~(24)~~] (28) "Sexual abuse" [~~is as~~] means the same as that term is defined in Section 78A-6-105.

[~~(25)~~] (29) "Sexual exploitation" [~~is as~~] means the same as that term is defined in Section 78A-6-105.

[~~(26)~~] (30) "Shelter care" means the temporary care of a minor in a nonsecure facility.

[~~(27)~~] (31) "State" means:

(a) a state of the United States;

(b) the District of Columbia;

(c) the Commonwealth of Puerto Rico;

(d) the Virgin Islands;

(e) Guam;

(f) the Commonwealth of the Northern Mariana Islands; or

(g) a territory or possession administered by the United States.

[~~(28)~~] (32) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

[~~(29)~~] (33) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

[~~(30)~~] (34) "Substance abuse" [~~is as~~] means the same as that term is defined in Section 78A-6-105.

[~~(31)~~] (35) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

[~~(32)~~] (36) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;

(b) services provided for a minor awaiting placement; and

(c) the licensing and supervision of a substitute care facility.

[~~(33)~~] (37) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

[~~(34)~~] (38) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

[~~(35)~~] (39) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

[~~(36)~~] (40) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

[~~(37)~~] (41) "Unsupported" means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

[~~(38)~~] (42) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

Section 4. Section 62A-4a-202.3 is amended to read:

62A-4a-202.3. Investigation -- Supported or unsupported reports -- Child in protective custody.

(1) When a child is taken into protective custody in accordance with Section 62A-4a-202.1, 78A-6-106, or 78A-6-302, or when the division takes any other action [which] that would require a shelter hearing under Subsection 78A-6-306(1), the division shall immediately initiate an investigation of the:

- (a) circumstances of the child; and
- (b) grounds upon which the decision to place the child into protective custody was made.
- (2) The division's investigation shall conform to reasonable professional standards, and shall include:
- (a) a search for and review of any records of past reports of abuse or neglect involving:
- (i) the same child;
 - (ii) any sibling or other child residing in the same household as the child; and
 - (iii) the alleged perpetrator;
- (b) with regard to a child who is five years of age or older, a personal interview with the child:
- (i) outside of the presence of the alleged perpetrator; and
 - (ii) conducted in accordance with the requirements of Subsection (7);
- (c) if a parent or guardian can be located, an interview with at least one of the child's parents or guardian;
- (d) an interview with the person who reported the abuse, unless the report was made anonymously;
- (e) where possible and appropriate, interviews with other third parties who have had direct contact with the child, including:
- (i) school personnel; and
 - (ii) the child's health care provider;
- (f) an unscheduled visit to the child's home, unless:
- (i) there is a reasonable basis to believe that the reported abuse was committed by a person who:
 - (A) is not the child's parent; and
 - (B) does not:
 - (I) live in the child's home; or
 - (II) otherwise have access to the child in the child's home; or
 - (ii) an unscheduled visit is not necessary to obtain evidence for the investigation; and
 - (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination, obtained no later than 24 hours after the child is placed in protective custody.

(3) The division may rely on a written report of a prior interview rather than conducting an additional interview, if:

 - (a) law enforcement:
 - (i) previously conducted a timely and thorough investigation regarding the alleged abuse, neglect, or dependency; and
 - (ii) produced a written report;

- (b) the investigation described in Subsection (3)(a)(i) included one or more of the interviews required by Subsection (2); and
 - (c) the division finds that an additional interview is not in the best interest of the child.
- (4) (a) The division's determination of whether a report is supported or unsupported may be based on the child's statements alone.
- (b) Inability to identify or locate the perpetrator may not be used by the division as a basis for:
- (i) determining that a report is unsupported; or
 - (ii) closing the case.
- (c) The division may not determine a case to be unsupported or identify a case as unsupported solely because the perpetrator was an out-of-home perpetrator.
- (d) Decisions regarding whether a report is supported, unsupported, or without merit shall be based on the facts of the case at the time the report was made.
- (5) The division should maintain protective custody of the child if it finds that one or more of the following conditions exist:
- (a) the child does not have a natural parent, guardian, or responsible relative who is able and willing to provide safe and appropriate care for the child;
 - (b) (i) shelter of the child is a matter of necessity for the protection of the child; and
 - (ii) there are no reasonable means by which the child can be protected in:
 - (A) the child's home; or
 - (B) the home of a responsible relative;
 - (c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction of the court; or
 - (d) the child has left a previously court ordered placement.
 - (6) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the division shall:
 - (i) convene a child protection team to review the circumstances regarding removal of the child from the child's home or school; and
 - (ii) prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78A-6-306.

~~[(b) The child protection team described in Subsection (6)(a)(i) shall include:]~~

 - ~~[(i) the caseworker assigned to the case;]~~
 - ~~[(ii) the caseworker who made the decision to remove the child;]~~
 - ~~[(iii) a representative of the school or school district where the child attends school;]~~
 - ~~[(iv) the peace officer who removed the child from the home;]~~

~~[(v) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;]~~

~~[(vi) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances; and]~~

~~[(vii) any other individuals determined appropriate and necessary by the team coordinator and chair.]]~~

(b) The child protection team may include members of a child protection unit.

(c) At the 24-hour meeting, the division shall have available for review and consideration the complete child protective services and foster care history of the child and the child's parents and siblings.

(7) (a) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be:

(i) except as provided in Subsection (7)(b), audio or video taped; and

(ii) except as provided in Subsection (7)(c), conducted with a support person of the child's choice present.

(b) (i) Subject to Subsection (7)(b)(ii), an interview described in Subsection (7)(a) may be conducted without being taped if the child:

(A) is at least nine years old;

(B) refuses to have the interview audio taped; and

(C) refuses to have the interview video taped.

(ii) If, pursuant to Subsection (7)(b)(i), an interview is conducted without being taped, the child's refusal shall be documented, as follows:

(A) the interviewer shall attempt to get the child's refusal on tape, including the reasons for the refusal; or

(B) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the interviewer shall:

(I) state on the tape that the child is present, but has refused to have the interview, refusal, or the reasons for the refusal taped; or

(II) if complying with Subsection (7)(b)(ii)(B)(I) will result in the child, who would otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall document, in writing, that the child refused to allow the interview to be taped and the reasons for that refusal.

(iii) The division shall track the number of interviews under this Subsection (7) that are not taped, and the number of refusals that are not taped, for each interviewer, in order to determine whether a particular interviewer has a higher

incidence of refusals, or taped refusals, than other interviewers.

(c) (i) Notwithstanding Subsection (7)(a)(ii), the support person who is present for an interview of a child may not be an alleged perpetrator.

(ii) Subsection (7)(a)(ii) does not apply if the child refuses to have a support person present during the interview.

(iii) If a child described in Subsection (7)(c)(ii) refuses to have a support person present in the interview, the interviewer shall document, in writing, the refusal and the reasons for the refusal.

(iv) The division shall track the number of interviews under this Subsection (7) where a child refuses to have a support person present for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals than other interviewers.

(8) The division shall cooperate with law enforcement investigations and with a child protection unit, if applicable, regarding the alleged perpetrator.

(9) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child until all reasonable efforts have been made to locate the child and family members including:

(a) visiting the home at times other than normal work hours;

(b) contacting local schools;

(c) contacting local, county, and state law enforcement agencies; and

(d) checking public assistance records.

Section 5. Section 62A-4a-202.8 is amended to read:

62A-4a-202.8. Child protection team meeting -- Timing.

(1) Subject to Subsection (2), if the division files a petition under Section 78A-6-304, the division shall convene a child protection team meeting to:

(a) review the circumstances of the filing of the petition; and

(b) develop or review implementation of a safety plan to protect the child from further abuse, neglect, or dependency.

(2) The child protection team meeting required under Subsection (1) shall be held within the shorter of:

(a) 14 days of the day on which the petition is filed under Section 78A-6-304 if the conditions of Subsection (2)(b) or (c) are not met;

(b) 24 hours of the filing of the petition under Section 78A-6-304, excluding weekends and holidays, if the child who is the subject of the petition will likely be taken into protective custody unless there is an expedited hearing and services ordered under the protective supervision of the court; or

(c) 24 hours after receipt of a child into protective custody, excluding weekends and holidays, if the child is taken into protective custody as provided in Section 62A-4a-202.3.

(3) The child protection team ~~[shall]~~ may include ~~[as many persons under Subsection 62A-4a-202.3(6)(b) as appropriate.]~~ members of a child protection unit.

(4) At its meeting the child protection team shall review the complete child protective services and foster care history of the child and the child's parents and siblings.

Section 6. Section 62A-4a-202.9 is enacted to read:

62A-4a-202.9. Child protection unit pilot program.

(1) The division shall establish and operate, as funding allows, a child protection unit pilot program in up to three areas of the state where a local government has established a child protection unit.

(2) The child protection unit pilot program is established to improve communications between a child protection unit and the division in the division's management of child welfare matters and to strengthen the state's child welfare system.

(3) The pilot program may include:

(a) involving a child protection unit in the child protection team during the division's investigation when a child is taken into protective custody, as described in Section 62A-4a-202.3;

(b) involving a child protection unit in the child protection team meetings, as described in Section 62A-4a-202.8;

(c) involving a child protection unit in the division's protective, diagnostic, assessment, treatment, and coordination services, as described in Section 62A-4a-409; or

(d) receiving referrals, reports, or other information from a child protection unit about a child protection unit's investigations of cases that may involve abuse, neglect, or dependency of a child.

(4) The division shall consult with a child protection unit before the division closes a mutual case.

(5) The child protection unit shall notify the division if the child protection unit closes an investigation related to a mutual case.

(6) The division and the child protection unit shall coordinate on mutual cases at least once every month.

(7) Subject to Section 62A-4a-412, while in meetings or while coordinating with the child protection unit about a mutual case, the division shall grant the child protection unit access to the division's information or records on the mutual case.

(8) A child protection unit may share case-specific information obtained from the division with members of a multidisciplinary team that is:

(a) assembled by the child protection unit for a particular case;

(b) assembled when a case demonstrates:

(i) the likelihood of severe child abuse or neglect; or

(ii) a high risk of repetition as evidenced by previous involvements with law enforcement;

(c) assembled for the purpose of information sharing and identification of resources, services, or actions that are in the best interest of the child or the child's family; and

(d) composed of:

(i) a victim advocate;

(ii) a therapist;

(iii) a representative of the child's school district; or

(iv) another individual that the child protection unit designates as valuable to provide necessary services to the child or the family of the child.

(9) The division and the child protection unit shall collect data on the effectiveness of the pilot program in strengthening the state's child welfare system and shall report the data to the Child Welfare Legislative Oversight Committee on or before November 30 of each year that the pilot program is in effect.

Section 7. Section 62A-4a-409 is amended to read:

62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval interviews of children.

(1) (a) The division shall make a thorough preremoval investigation upon receiving either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when there is reasonable cause to suspect that a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency exists.

(b) The primary purpose of the investigation described in Subsection (1)(a) shall be protection of the child.

(2) The preremoval investigation described in Subsection (1)(a) shall include the same investigative requirements described in Section 62A-4a-202.3.

(3) The division shall make a written report of its investigation that shall include a determination regarding whether the alleged abuse or neglect is supported, unsupported, or without merit.

(4) (a) The division shall use an interdisciplinary approach when appropriate in dealing with reports made under this part.

(b) ~~[For this purpose, the]~~ The division shall convene ~~[appropriate interdisciplinary]~~ a child protection ~~[teams]~~ team to assist ~~[it in its]~~ the division in the division's protective, diagnostic, assessment, treatment, and coordination services.

(c) The division may include members of a child protection unit in the division's protective, diagnostic, assessment, treatment, and coordination services.

~~[(e)]~~ (d) A representative of the division shall serve as the team's coordinator and chair. Members of the team shall serve at the coordinator's invitation. Whenever possible, the team shall include representatives of:

(i) health, mental health, education, and law enforcement agencies;

(ii) the child;

(iii) parent and family support groups unless the parent is alleged to be the perpetrator; and

(iv) other appropriate agencies or individuals.

(5) If a report of neglect is based upon or includes an allegation of educational neglect, the division shall immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103.

(6) When the division completes its initial investigation under this part, it shall give notice of that completion to the person who made the initial report.

(7) Division workers or other child protection team members have authority to enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged abuse or neglect, upon notice to parents of their rights under the Child Abuse Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

(8) With regard to any interview of a child prior to removal of that child from the child's home:

(a) except as provided in Subsection (8)(b) or (c), the division shall inform a parent of the child prior to the interview of:

(i) the specific allegations concerning the child; and

(ii) the time and place of the interview;

(b) if a child's parent or stepparent, or a parent's paramour has been identified as the alleged perpetrator, the division is not required to comply with Subsection (8)(a);

(c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family is unknown, the division may conduct a minimal interview or conversation, not to exceed 15 minutes, with the child prior to complying with Subsection (8)(a);

(d) in all cases described in Subsection (8)(b) or (c), a parent of the child shall be notified as soon as practicable after the child has been interviewed, but

in no case later than 24 hours after the interview has taken place;

(e) a child's parents shall be notified of the time and place of all subsequent interviews with the child; and

(f) the child shall be allowed to have a support person of the child's choice present, who:

(i) may include:

(A) a school teacher;

(B) an administrator;

(C) a guidance counselor;

(D) a child care provider;

(E) a family member;

(F) a family advocate; or

(G) clergy; and

(ii) may not be a person who is alleged to be, or potentially may be, the perpetrator.

(9) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through 62A-4a-202.3, a division worker or child protection team member may take a child into protective custody and deliver the child to a law enforcement officer, or place the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent to the child's removal from the child's original environment. Control and jurisdiction over the child is determined by the provisions of Title 78A, Chapter 6, Juvenile Court Act ~~[of 1996]~~, and as otherwise provided by law.

(10) With regard to cases in which law enforcement has or is conducting an investigation of alleged abuse or neglect of a child:

(a) the division shall coordinate with law enforcement to ensure that there is an adequate safety plan to protect the child from further abuse or neglect; and

(b) the division is not required to duplicate an aspect of the investigation that, in the division's determination, has been satisfactorily completed by law enforcement.

(11) With regard to a mutual case in which a child protection unit was involved in the investigation of alleged abuse or neglect of a child, the division shall consult with the child protection unit before closing the case.

Section 8. Section 62A-4a-412 is amended to read:

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63G, Chapter 2, Government Records Access and

Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected abuse or neglect, including members of a child protection unit;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a minor who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a minor who is the subject of a report;

(e) except as provided in Subsection 63G-2-202(10), a subject of the report, the natural parents of the child, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Board of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

(k) any person identified in the report as a perpetrator or possible perpetrator of abuse or neglect, after being advised of the screening prohibition in Subsection (2);

(l) except as provided in Subsection 63G-2-202(10), a person filing a petition for a child

protective order on behalf of a child who is the subject of the report; and

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Sections 78B-6-128 and 78B-6-130.

(2) (a) A person, unless listed in Subsection (1), may not request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) (a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(b) Notwithstanding any other provision of law, excluding Section 78A-6-317, but including this chapter and Title 63G, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in its possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:

(i) identify the referent;

(ii) impede a criminal investigation; or

(iii) endanger a person's safety.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

(6) A child-placing agency or person who receives a report in connection with a preplacement adoptive evaluation pursuant to Sections 78B-6-128 and 78B-6-130:

(a) may provide this report to the person who is the subject of the report; and

(b) may provide this report to a person who is performing a preplacement adoptive evaluation in accordance with the requirement of Sections 78B-6-128 and 78B-6-130, or to a licensed child-placing agency or to an attorney seeking to facilitate an adoption.

Section 9. Section 63I-1-262 is amended to read:

63I-1-262. Repeal dates, Title 62A.

(1) Section 62A-4a-213 is repealed July 1, 2019.

(2) Section 62A-4a-202.9 is repealed December 31, 2019.

~~[(2)]~~ (3) Subsection 62A-15-1101(5) is repealed July 1, 2018.

Section 10. Section 78A-6-322 is amended to read:

78A-6-322. Abuse, neglect, or dependency of child -- Coordination of proceedings.

(1) In each case where an information or indictment has been filed against a defendant concerning abuse, neglect, or dependency of a child, and a petition has been filed in juvenile court concerning the victim, the appropriate county attorney's or district attorney's office shall coordinate with the attorney general's office.

(2) Law enforcement personnel, Division of Child and Family Services personnel, the appointed guardian ad litem, pretrial services personnel, and corrections personnel shall make reasonable efforts to facilitate the coordination required by this section.

(3) Members of interdisciplinary child protection teams, established under Section 62A-4a-409, may participate in the coordination required by this section.

(4) Members of a child protection unit, established under Section 10-3-913 or 17-22-2, may coordinate with the attorney general's office, Division of Child and Family Services personnel, the appointed guardian ad litem, pretrial services personnel, and corrections personnel as appropriate.

CHAPTER 460**S. B. 93**

Passed March 1, 2017
 Approved March 28, 2017
 Effective January 1, 2018

**PROPERTY ASSESSMENT
 NOTICE AMENDMENTS**

Chief Sponsor: Wayne A. Harper
 House Sponsor: Craig Hall

LONG TITLE**General Description:**

This bill amends provisions relating to property assessment notices.

Highlighted Provisions:

This bill:

- ▶ requires a county treasurer to provide notice to an owner of property for which a municipality or a local district has incurred certain unpaid costs and expenses;
- ▶ requires the notice to include:
 - the amount of unpaid costs and expenses;
 - contact information for the property owner to contact the municipality or local district; and
 - notification of what will happen if the unpaid costs and expenses are not paid; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

10-11-4, as last amended by Laws of Utah 2011, Chapter 172
 17-24-1, as last amended by Laws of Utah 2012, Chapter 17
 17B-1-902, as last amended by Laws of Utah 2016, Chapter 353

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

Section 1. Section 10-11-4 is amended to read:**10-11-4. Costs of removal to be included in tax notice.**

(1) A municipality may certify to the treasurer of the county in which a property described in Section 10-11-3 is located, the unpaid costs and expenses that the municipality has incurred under Section 10-11-3 with regard to the property.

(2) If the municipality certifies with the treasurer of the county any costs or expenses incurred for a property under Section 10-11-3, the treasurer shall enter the amount of the costs and expenses on the assessment and tax rolls of the county in the column prepared for that purpose.

(3) If current tax notices have been mailed, the treasurer of the county may carry the costs and

expenses described in Subsection (2) on the assessment and tax rolls to the following year.

(4) After entry by the treasurer of the county, the amount entered:

(a) shall have the force and effect of a valid judgment of the district court;

(b) is a lien upon the property; and

(c) shall be collected by the treasurer of the county in which the property is located at the time of the payment of general taxes.

(5) Upon payment of the costs and expenses:

(a) the judgement is satisfied;

(b) the lien is released from the property; and

(c) receipt shall be acknowledged upon the general tax receipt issued by the treasurer.

(6) (a) If a municipality certifies unpaid costs and expenses under this section, the treasurer of the county shall provide a notice, in accordance with this Subsection (6), to the owner of the property for which the municipality has incurred the unpaid costs and expenses.

(b) In providing the notice required in Subsection (6)(a), the treasurer of the county shall:

(i) include the amount of unpaid costs and expenses that a municipality has certified on or before July 15 of the current year;

(ii) provide contact information, including a phone number, for the property owner to contact the municipality to obtain more information regarding the amount described in Subsection (6)(b)(i); and

(iii) notify the property owner that:

(A) if the amount described in Subsection (6)(b)(i) is not paid in full by September 15 of the current year, any unpaid amount will be included on the property tax notice required by Section 59-2-1317; and

(B) the failure to pay the amount described in Subsection (6)(b)(i) has resulted in a lien on the property in accordance with this section.

(c) The treasurer of the county shall provide the notice required by this Subsection (6) to a property owner on or before August 1.

[~~(6)~~] (7) This section does not apply to any public building, public structure, or public improvement.

Section 2. Section 17-24-1 is amended to read:**17-24-1. General duties of treasurer.**

The county treasurer shall:

(1) receive all money belonging to the county and all other money by law directed to be paid to the treasurer, including proceeds of bonds, notes, or other evidences of indebtedness issued under Title 11, Chapter 14, Local Government Bonding Act;

(2) deposit and invest all money received under Title 51, Chapter 7, State Money Management Act;

(3) keep a record of the receipts and expenditures of all such money;

(4) disburse county money:

(a) on a county warrant issued by the county auditor; or

(b) subject to Section 17-19a-301, by a county check or such other payment mechanism as may be adopted pursuant to Chapter 36, Uniform Fiscal Procedures Act for Counties;

(5) perform the duties assigned to the treasurer under Title 59, Chapter 2, Part 13, Collection of Taxes;

(6) perform the duties under Title 59, Chapter 2, Part 13, Collection of Taxes, that have been reassigned to the treasurer in an ordinance adopted under Section 17-16-5.5; ~~and~~

(7) provide the notice required under Section 10-11-4 or 17B-1-902; and

~~[(7)]~~ (8) perform other duties that are required by law or ordinance.

Section 3. Section 17B-1-902 is amended to read:

17B-1-902. Lien for past due service fees -- Notice -- Partial payment allocation.

(1) (a) A local district may file a lien on a customer's property for past due fees for commodities, services, or facilities that the district has provided to the customer's property by certifying, subject to Subsection ~~[(2)]~~ (3), to the treasurer of the county in which the customer's property is located the past due fees, including, subject to Section 17B-1-902.1, applicable interest and administrative costs.

(b) Upon certification under Subsection (1)(a), the past due fees, and if applicable, interest and administrative costs, become a lien on the customer's property to which the commodities, services, or facilities were provided.

(c) A lien filed in accordance with this section has the same priority as, but is separate and distinct from, a property tax lien.

(2) (a) If a local district certifies past due fees under Subsection (1)(a), the treasurer of the county shall provide a notice, in accordance with this Subsection (2), to the owner of the property for which the local district has incurred the past due fees.

(b) In providing the notice required in Subsection (2)(a), the treasurer of the county shall:

(i) include the amount of past due fees that a local district has certified on or before July 15 of the current year;

(ii) provide contact information, including a phone number, for the property owner to contact the local district to obtain more information regarding the amount described in Subsection (2)(b)(i); and

(iii) notify the property owner that:

(A) if the amount described in Subsection (2)(b)(i) is not paid in full by September 15 of the current year, any unpaid amount will be included on the property tax notice required by Section 59-2-1317; and

(B) the failure to pay the amount described in Subsection (2)(b)(i) has resulted in a lien on the property in accordance with this section.

(c) The treasurer of the county shall provide the notice required by this Subsection (2) to a property owner on or before August 1.

~~[(2)]~~ (3) (a) If a local district certifies past due fees under Subsection (1)(a), the county treasurer shall include on a property tax notice issued in accordance with Section 59-2-1317 an unpaid fee, administrative cost, or interest described in Subsection (1)(a).

(b) If an unpaid fee, administrative cost, or interest is included on a property tax notice in accordance with Subsection ~~[(2)]~~ (3)(a), the county treasurer shall on the property tax notice:

(i) clearly state that the unpaid fee, administrative cost, or interest is for a service provided by the local district; and

(ii) itemize the unpaid fee, administrative cost, or interest separate from any other tax, fee, interest, or penalty that is included on the property tax notice in accordance with Section 59-2-1317.

~~[(3)]~~ (4) A lien under Subsection (1) is not valid if certification under Subsection (1) is made after the filing for record of a document conveying title of the customer's property to a new owner.

~~[(4)]~~ (5) Nothing in this section may be construed to:

(a) waive or release the customer's obligation to pay fees that the district has imposed;

(b) preclude the certification of a lien under Subsection (1) with respect to past due fees for commodities, services, or facilities provided after the date that title to the property is transferred to a new owner; or

(c) nullify or terminate a valid lien.

~~[(5)]~~ (6) After all amounts owing under a lien established as provided in this section have been paid, the local district shall file for record in the county recorder's office a release of the lien.

Section 4. Effective date.

This bill takes effect on January 1, 2018.

CHAPTER 461**S. B. 104**

Passed February 27, 2017

Approved March 28, 2017

Effective May 9, 2017

**LABOR COMMISSION
ENFORCEMENT AMENDMENTS**Chief Sponsor: D. Gregg Buxton
House Sponsor: Jeremy A. Peterson**LONG TITLE****General Description:**

This bill modifies provisions related to enforcement of administrative orders from within the Utah Labor Commission.

Highlighted Provisions:

This bill:

- ▶ provides that a district court may renew as a judgment of the district court certain final administrative orders related to wage claims and workers' compensation; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

34-28-9, as last amended by Laws of Utah 2014, Chapter 188

34A-2-212, as last amended by Laws of Utah 2014, Chapter 192

34A-6-307, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section 34-28-9 is amended to read:**34-28-9. Enforcement of chapter --
Rulemaking authority.**

- (1) (a) The division shall:
- (i) ensure compliance with this chapter;
 - (ii) investigate any alleged violations of this chapter; and
 - (iii) determine the validity of a claim for any violation of this chapter that is filed with the division by an employee.
- (b) The commission may make rules consistent with this chapter governing wage claims and payment of wages.
- (c) The minimum wage claim that the division may accept is \$50.
- (d) The maximum wage claim that the division may accept is \$10,000.
- (e) A wage claim shall be filed within one year after the day on which the wages were earned.

(2) (a) The division may assess against an employer who fails to pay an employee in accordance with this chapter, a penalty of 5% of the unpaid wages owing to the employee which shall be assessed daily until paid for a period not to exceed 20 days.

(b) The division shall:

(i) retain 50% of the money received from a penalty payment under Subsection (2)(a) for the costs of administering this chapter;

(ii) pay all the sums retained under Subsection (2)(b)(i) to the state treasurer; and

(iii) pay the 50% not retained under Subsection (2)(b)(i) to the employee.

(c) Subsections (2)(a) and (b) do not apply to a violation of Subsection 34-28-3(5).

(3) (a) A person who violates Subsection 34-28-3(5) is subject to a civil fine of:

(i) \$50 for the first violation within a one-year period;

(ii) \$100 for the second violation within a one-year period;

(iii) \$100 for the third violation within a one-year period; and

(iv) \$500 for the fourth violation and each subsequent violation within a one-year period.

(b) The division shall deposit the money that the division receives under Subsection (3)(a) into the General Fund as a dedicated credit to the division to pay for the costs of administering this chapter.

(4) (a) An abstract of any final award under this section may be filed in the office of the clerk of the district court of any county in the state. If so filed, the abstract shall be docketed in the judgment docket of that district court.

(b) The time of the receipt of the abstract shall be noted by the clerk and entered in the judgment docket.

(c) Unless the award was previously satisfied, if an abstract is filed and docketed, the award constitutes a lien upon the employer's real property that is situated in the county in which the abstract is filed for a period of eight years after the day on which the award is granted.

(d) ~~[Execution may be issued]~~ The district court may issue an execution or a renewal on the [award] order within the same time and in the same manner and with the same effect as if the [award] order were a judgment [of] issued by the district court.

(5) (a) The commission may employ counsel, appoint a representative, or request the attorney general, or the county attorney for the county in which the final award is filed and docketed, to represent the commission on all appeals and to enforce judgments.

(b) The counsel employed by the commission, the attorney general, or the county representing the commission, shall be awarded:

(i) reasonable attorney fees, as specified by the commission; and

(ii) costs for:

(A) appeals when the plaintiff prevails; and

(B) judgment enforcement proceedings.

(6) (a) The commission may enter into reciprocal agreements with the labor department or a corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of that department or agency, for the collection in any other state of claims or judgments for wages and other demands based upon claims previously assigned to the commission.

(b) The commission may, to the extent provided by any reciprocal agreement entered into under Subsection (6)(a), or by the laws of any other state, maintain actions in the courts of the other states for the collection of any claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or an agency of any other state for collection to the extent that may be permitted or provided by the laws of that state or by reciprocal agreement.

(c) The commission may maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in any other state in the same manner and to the same extent that the actions by the commission are authorized when arising in this state if:

(i) the labor department or a corresponding agency of any other state or of any person, board, officer, or commission of that state authorized to act on behalf of the labor department or corresponding agency requests in writing that the commission commence and maintain the action; and

(ii) the other state by legislation or reciprocal agreement extends the same comity to this state.

Section 2. Section 34A-2-212 is amended to read:

34A-2-212. Docketing awards in district court -- Enforcing judgment.

(1) (a) Except as provided in Subsection (3), an abstract of a final order of the commission providing an award may be filed under this chapter or Chapter 3, Utah Occupational Disease Act, in the office of the clerk of the district court of any county in the state when all administrative and appellate remedies are exhausted.

(b) The abstract shall be docketed in the judgment docket of the district court where the abstract is filed. The time of the receipt of the abstract shall be noted on the abstract by the clerk of the district court and entered in the docket.

(c) When filed and docketed under Subsections (1)(a) and (b), the order shall constitute a lien from the time of the docketing upon the real property of the employer situated in the county, for a period of eight years from the date of the order unless the

award provided in the final order is satisfied during the eight-year period.

(d) ~~[Execution may be issued on the lien]~~ The district court may issue an execution or a renewal on the order within the same time and in the same manner and with the same effect as if the [award] order were a judgment [of] issued by the district court.

(2) (a) If the employer was uninsured at the time of the injury, the county attorney for the county in which the applicant or the employer resides, depending on the district in which the final order is docketed, shall enforce the judgment when requested by the commission or division on behalf of the commission.

(b) In an action to enforce an order docketed under Subsection (1), reasonable attorney fees and court costs shall be allowed in addition to the award.

(3) Unless stayed pursuant to Section 63G-4-405, or set aside by the court of appeals, a preliminary or final decision of the commissioner or Appeals Board awarding permanent total disability compensation under Section 34A-2-413 is enforceable by abstract filed in the office of the clerk of the district court of any county in the state.

Section 3. Section 34A-6-307 is amended to read:

34A-6-307. Civil and criminal penalties.

(1) The commission may assess civil penalties against any employer who has received a citation under Section 34A-6-302 as follows:

(a) Except as provided in Subsections (1)(b) through (d), the commission may assess up to \$7,000 for each cited violation.

(b) The commission may not assess less than \$250 nor more than \$7,000 for each cited serious violation. A violation is serious only if:

(i) it arises from a condition, practice, method, operation, or process in the workplace of which the employer knows or should know through the exercise of reasonable diligence; and

(ii) there is a substantial possibility that the condition, practice, method, operation, or process could result in death or serious physical harm.

(c) The commission may not assess less than \$5,000 nor more than \$70,000 for each cited willful violation.

(d) The commission may assess up to \$70,000 for each cited violation if the employer has previously been found to have violated the same standards, code, rule, or order.

(e) After the expiration of the time permitted to an employer to correct a cited violation, the commission may assess up to \$7,000 for each day the violation continues uncorrected.

(2) The commission may assess a civil penalty of up to \$7,000 for each violation of any posting requirement under this chapter.

(3) In deciding the amount to assess for a civil penalty, the commission shall consider all relevant factors, including:

- (a) the size of the employer's business;
 - (b) the nature of the violation;
 - (c) the employer's good faith or lack of good faith;
- and

(d) the employer's previous record of compliance or noncompliance with this chapter.

(4) Any civil penalty collected under this chapter shall be paid into the General Fund.

(5) Criminal penalties under this chapter are as follows:

(a) Any employer who willfully violates any standard, code, rule, or order issued under Section 34A-6-202, or any rule made under this chapter, is guilty of a class A misdemeanor if the violation caused the death of an employee. If the violation causes the death of more than one employee, each death is considered a separate offense.

(b) Any person who gives advance notice of any inspection conducted under this chapter without authority from the administrator or the administrator's representatives is guilty of a class A misdemeanor.

(c) Any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter is guilty of a class A misdemeanor.

(6) After a citation issued under this chapter and an opportunity for a hearing under Title 63G, Chapter 4, Administrative Procedures Act, the division may file an abstract for any uncollected citation penalty in the district court. The filed abstract shall have the effect of a judgment [øf] issued by that court. The abstract shall state the amount of the uncollected citation penalty, reasonable attorneys' fees as set by commission rule, and court costs.

CHAPTER 462**S. B. 118**

Passed March 3, 2017

Approved March 28, 2017

Effective May 9, 2017

CRIMINAL LAW AMENDMENTS

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Lee B. Perry

LONG TITLE**General Description:**

This bill amends criminal provisions relating to cybercrime and making a false report.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the elements, penalties, and defenses for computer crime;
- ▶ makes it a crime to interrupt or interfere with critical infrastructure;
- ▶ amends and enacts reporting requirements relating to computer crime or the interruption of, or interference with, critical infrastructure;
- ▶ amends provisions relating to raising a false alarm or filing a false report;
- ▶ amends the elements of electronic communication harassment; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-6-702, as last amended by Laws of Utah 2005, Chapter 72

76-6-703, as last amended by Laws of Utah 2010, Chapter 193

76-6-705, as last amended by Laws of Utah 1993, Chapter 38

76-9-105, as last amended by Laws of Utah 2002, Chapter 166

76-9-201, as last amended by Laws of Utah 2009, Chapter 326

76-9-202, as last amended by Laws of Utah 2002, Chapter 166

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

Section 1. Section 76-6-702 is amended to read:**76-6-702. Definitions.**

As used in this part:

(1) "Access" means to directly or indirectly use, attempt to use, instruct, communicate with, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, computer network, or any means of communication with any of them.

(2) "Authorization" means having the express or implied consent or permission of the owner, or of the person authorized by the owner to give consent or

permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.

(3) "Computer" means any electronic device or communication facility that stores, retrieves, processes, transmits, or facilitates the transmission of data.

(4) "Computer system" means a set of related, connected or unconnected, devices, software, or other related computer equipment.

(5) "Computer network" means:

(a) the interconnection of communication or telecommunication lines between:

(i) computers; or

(ii) computers and remote terminals; or

(b) the interconnection by wireless technology between:

(i) computers; or

(ii) computers and remote terminals.

(6) "Computer property" includes electronic impulses, electronically produced data, information, financial instruments, software, or programs, in either machine or human readable form, any other tangible or intangible item relating to a computer, computer system, computer network, and copies of any of them.

(7) "Computer technology" includes:

(a) a computer;

(b) a computer network;

(c) computer hardware;

(d) a computer system;

(e) a computer program;

(f) computer services;

(g) computer software; or

(h) computer data.

[7] (8) "Confidential" means data, text, or computer property that is protected by a security system that clearly evidences that the owner or custodian intends that it not be available to others without the owner's or custodian's permission.

(9) "Critical infrastructure" includes:

(a) a financial or banking system;

(b) any railroad, airline, airport, airway, highway, bridge, waterway, fixed guideway, or other transportation system intended for the transportation of persons or property;

(c) any public utility service, including a power, energy, gas, or water supply system;

(d) a sewage or water treatment system;

(e) a health care facility, as that term is defined in Section 26-21-2;

(f) an emergency fire, medical, or law enforcement response system;

- (g) a public health facility or system;
- (h) a food distribution system;
- (i) a government computer system or network;
- (j) a school; or
- (k) other government facilities, operations, or services.

(10) “Denial of service attack” means an attack or intrusion that is intended to disrupt legitimate access to, or use of, a network resource, a machine, or computer technology.

[42] (11) “Financial instrument” includes any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, electronic fund transfer, automated clearing house transaction, credit card, or marketable security.

[8] (12) “Information” does not include information obtained:

- (a) through use of:
 - (i) an electronic product identification or tracking system; or
 - (ii) other technology used by a retailer to identify, track, or price goods; and
 - (b) by a retailer through the use of equipment designed to read the electronic product identification or tracking system data located within the retailer’s location.

(13) “Interactive computer service” means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet or a system operated, or services offered, by a library or an educational institution.

[9] (14) “License or entitlement” includes:

- (a) licenses, certificates, and permits granted by governments;
- (b) degrees, diplomas, and grades awarded by educational institutions;
- (c) military ranks, grades, decorations, and awards;
- (d) membership and standing in organizations and religious institutions;
- (e) certification as a peace officer;
- (f) credit reports; and
- (g) another record or datum upon which a person may be reasonably expected to rely in making decisions that will have a direct benefit or detriment to another.

[40] (15) “Security system” means a computer, computer system, network, or computer property that has some form of access control technology implemented, such as encryption, password protection, other forced authentication, or access control designed to keep out unauthorized persons.

[41] (16) “Services” include computer time, data manipulation, and storage functions.

(17) “Service provider” means a telecommunications carrier, cable operator, computer hardware or software provider, or a provider of information service or interactive computer service.

[43] (18) “Software” or “program” means a series of instructions or statements in a form acceptable to a computer, relating to the operations of the computer, or permitting the functioning of a computer system in a manner designed to provide results including system control programs, application programs, or copies of any of them.

Section 2. Section 76-6-703 is amended to read:

76-6-703. Computer crimes and penalties -- Interfering with critical infrastructure.

~~[(1) A person who without authorization gains or attempts to gain access to and alters, damages, destroys, discloses, or modifies any computer, computer network, computer property, computer system, computer program, computer data or software, and thereby causes damage to another, or obtains money, property, information, or a benefit for any person without legal right, is guilty of:]~~

(1) It is unlawful for a person to:

(a) without authorization, or in excess of the person’s authorization, access or attempt to access computer technology if the access or attempt to access results in:

(i) the alteration, damage, destruction, copying, transmission, discovery, or disclosure of computer technology;

(ii) interference with or interruption of:

(A) the lawful use of computer technology; or

(B) the transmission of data;

(iii) physical damage to or loss of real, personal, or commercial property;

(iv) audio, video, or other surveillance of another person; or

(v) economic loss to any person or entity;

(b) after accessing computer technology that the person is authorized to access, knowingly take or attempt to take unauthorized or unlawful action that results in:

(i) the alteration, damage, destruction, copying, transmission, discovery, or disclosure of computer technology;

(ii) interference with or interruption of:

(A) the lawful use of computer technology; or

(B) the transmission of data;

(iii) physical damage to or loss of real, personal, or commercial property;

(iv) audio, video, or other surveillance of another person; or

- (v) economic loss to any person or entity; or
- (c) knowingly engage in a denial of service attack.

(2) A person who violates Subsection (1) is guilty of:

- (a) a class B misdemeanor when:
- (i) the economic loss or other loss or damage caused or the value of the money, property, or benefit obtained or sought to be obtained is less than \$500; or
- (ii) the information obtained is not confidential;
- (b) a class A misdemeanor when the economic loss or other loss or damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds \$500 but is less than \$1,500;
- (c) a third degree felony when the economic loss or other loss or damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds \$1,500 but is less than \$5,000;
- (d) a second degree felony when the economic loss or other loss or damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds \$5,000; or
- (e) a third degree felony when:
- (i) the property or benefit obtained or sought to be obtained is a license or entitlement;
- (ii) the damage is to the license or entitlement of another person; ~~or~~
- (iii) the information obtained is confidential; or
- (iv) in gaining access the person breaches or breaks through a security system.

~~[(2)]~~ (3) (a) ~~[Except as provided in Subsection (2)(b), a]~~ A person who intentionally or knowingly and without authorization gains or attempts to gain access to a computer, computer network, computer property, or computer system under circumstances not otherwise constituting an offense under this section is guilty of a class B misdemeanor.

(b) Notwithstanding Subsection ~~[(2)]~~ (3)(a), a retailer that uses an electronic product identification or tracking system, or other technology, to identify, track, or price goods is not guilty of a violation of Subsection ~~[(2)]~~ (3)(a) if the equipment designed to read the electronic product identification or tracking system data and used by the retailer to identify, track, or price goods is located within the retailer's location.

~~[(3)]~~ (4) A person who uses or knowingly allows another person to use any computer, computer network, computer property, or computer system, program, or software to devise or execute any artifice or scheme to defraud or to obtain money, property, services, or other things of value by false pretenses, promises, or representations, is guilty of an offense based on the value of the money, property, services, or things of value, in the degree set forth in Subsection 76-10-1801(1).

~~[(4)]~~ A person who intentionally or knowingly and without authorization, interferes with or interrupts computer services to another authorized to receive the services is guilty of a class A misdemeanor.]

(5) A person is guilty of a third degree felony if the person intentionally or knowingly, and without lawful authorization, interferes with or interrupts critical infrastructure.

~~[(5)]~~ (6) It is an affirmative defense to ~~[Subsections]~~ Subsection (1) ~~[and]~~, (2), or (3) that a person obtained access or attempted to obtain access:

(a) in response to, and for the purpose of protecting against or investigating, a prior attempted or successful breach of security of ~~[a computer, computer network, computer property, computer system]~~ computer technology whose security the person is authorized or entitled to protect, and the access attempted or obtained was no greater than reasonably necessary for that purpose~~[-]~~; or

(b) pursuant to a search warrant or a lawful exception to the requirement to obtain a search warrant.

(7) (a) An interactive computer service is not guilty of violating this section if a person violates this section using the interactive computer service and the interactive computer service did not knowingly assist the person to commit the violation.

(b) A service provider is not guilty of violating this section for:

(i) action taken in relation to a customer of the service provider, for a legitimate business purpose, to install software on, monitor, or interact with the customer's Internet or other network connection, service, or computer for network or computer security purposes, authentication, diagnostics, technical support, maintenance, repair, network management, updates of computer software or system firmware, or remote system management; or

(ii) action taken, including scanning and removing computer software, to detect or prevent the following:

(A) unauthorized or fraudulent use of a network, service, or computer software;

(B) illegal activity; or

(C) infringement of intellectual property rights.

Section 3. Section 76-6-705 is amended to read:

76-6-705. Reporting violations.

~~[Every person, except those to whom a statutory or common-law privilege applies,]~~

(1) Each person who has reason to believe that the provisions of Section 76-6-703 are being or have been violated shall report the suspected violation to:

(a) the attorney general, or county attorney, or, if within a prosecution district, the district attorney of

the county or prosecution district in which part or all of the violations occurred[.]; or

(b) a state or local law enforcement agency.

(2) Subsection (1) does not apply to the extent that the person is prohibited from reporting by a statutory or common law privilege.

Section 4. Section 76-9-105 is amended to read:

76-9-105. Making a false alarm -- Penalties.

(1) A person is guilty of making a false alarm if he initiates or circulates a report or warning of any fire, impending bombing, or other crime or catastrophe, knowing that the report or warning is false or baseless and is likely to cause evacuation of any building, place of assembly, or facility of public transport, to cause public inconvenience or alarm or action of any sort by any official or volunteer agency organized to deal with emergencies.

(2) (a) ~~[Making]~~ A person is guilty of a second degree felony if the person makes a false alarm relating to a weapon of mass destruction as defined in Section 76-10-401 ~~[is a second degree felony]~~.

(b) A person is guilty of a third degree felony if:

(i) the person makes a false alarm alleging on ongoing act or event, or an imminent threat; and

(ii) the false alarm causes or threatens to cause bodily harm, serious bodily injury, or death to another person.

~~[(b)]~~ (c) Making a false alarm other than under Subsection (2)(a) or (b) is a class B misdemeanor.

(3) In addition to any other penalty authorized by law, a court shall order any person convicted of a felony violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the court finds the reimbursement would be inappropriate.

Section 5. Section 76-9-201 is amended to read:

76-9-201. Electronic communication harassment -- Definitions -- Penalties.

(1) As used in this section:

(a) "Adult" means a person 18 years of age or older.

(b) "Electronic communication" means any communication by electronic, electro-mechanical, or electro-optical communication device for the transmission and reception of audio, image, or text but does not include broadcast transmissions or similar communications that are not targeted at any specific individual.

(c) "Electronic communication device" includes a telephone, a facsimile machine, electronic mail, ~~[or]~~ a pager, a computer, or any other device or medium that can be used to communicate electronically.

(d) "Minor" means a person who is younger than 18 years of age.

(e) "Personal identifying information" means the same as that term is defined in Section 76-6-1102.

(2) A person is guilty of electronic communication harassment and subject to prosecution in the jurisdiction where the communication originated or was received if with intent to ~~[annoy, alarm,]~~ intimidate, ~~[offend,]~~ abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person:

(a) (i) makes repeated contact by means of electronic communications, regardless of whether ~~[or not]~~ a conversation ensues; or

(ii) after the recipient has requested or informed the person not to contact the recipient, and the person repeatedly or continuously:

(A) contacts the electronic communication device of the recipient; or

(B) causes an electronic communication device of the recipient to ring or to receive other notification of attempted contact by means of electronic communication;

(b) makes contact by means of electronic communication and insults, taunts, or challenges the recipient of the communication or any person at the receiving location in a manner likely to provoke a violent or disorderly response;

(c) makes contact by means of electronic communication and threatens to inflict injury, physical harm, or damage to any person or the property of any person; ~~[or]~~

(d) causes disruption, jamming, or overload of an electronic communication system through excessive message traffic or other means utilizing an electronic communication device[.]; or

(e) electronically publishes, posts, or otherwise discloses personal identifying information of another person, in a public online site or forum, without that person's permission.

(3) (a) (i) Electronic communication harassment committed against an adult is a class B misdemeanor, except under Subsection (3)(a)(ii).

(ii) A second or subsequent offense under Subsection (3)(a)(i) is a:

(A) class A misdemeanor if all prior violations of this section were committed against adults; and

(B) a third degree felony if any prior violation of this section was committed against a minor.

(b) (i) Electronic communication harassment committed against a minor is a class A misdemeanor, except under Subsection (3)(b)(ii).

(ii) A second or subsequent offense under Subsection (3)(b)(i) is a third degree felony, regardless of whether any prior violation of this section was committed against a minor or an adult.

(4) (a) Except under Subsection (4)(b), criminal prosecution under this section does not affect an

individual's right to bring a civil action for damages suffered as a result of the commission of any of the offenses under this section.

(b) This section does not create any civil cause of action based on electronic communications made for legitimate business purposes.

Section 6. Section 76-9-202 is amended to read:

76-9-202. Emergency reporting -- Interference -- False report.

(1) As used in this section:

(a) "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property.

(b) "Party line" means a subscriber's line or telephone circuit ~~[consisting]~~:

(i) that consists of two or more connected main telephone stations ~~[connected therewith, each station with]~~; and

(ii) where each telephone station has a distinctive ring or telephone number.

(2) A person is guilty of emergency reporting abuse if ~~[he]~~ the person:

(a) intentionally refuses to yield or surrender the use of a party line or a public pay telephone to another person upon being informed that the telephone is needed to report a fire or summon police, medical, or other aid in case of emergency, unless the telephone is likewise being used for an emergency call;

(b) asks for or requests the use of a party line or a public pay telephone on the pretext that an emergency exists, knowing that no emergency exists; ~~[or]~~

(c) reports an emergency or causes an emergency to be reported to any public, private, or volunteer entity whose purpose is to respond to fire, police, or medical emergencies, when the ~~[aetər]~~ person knows the reported emergency does not exist~~[-]~~; or

(d) makes a false report, or intentionally aids, abets, or causes a third party to make a false report, to an emergency response service, including a law enforcement dispatcher or a 911 emergency response service, if the false report claims that:

(i) an ongoing emergency exists;

(ii) the emergency described in Subsection (2)(d)(i) currently involves, or involves an imminent threat of, serious bodily injury, serious physical injury, or death; and

(iii) the emergency described in Subsection (2)(d)(i) is occurring at a specified location.

(3) (a) A violation of Subsection (2)(a) or (b) is a class C misdemeanor.

(b) A violation of Subsection (2)(c) is a class B misdemeanor, except as provided under Subsection (3)(c).

(c) A violation of Subsection (2)(c) is a second degree felony if the report is regarding a weapon of mass destruction, as defined in Section 76-10-401.

(d) A violation of Subsection (2)(d):

(i) except as provided in Subsection (3)(d)(ii), is a third degree felony; or

(ii) is a second degree felony if, while acting in response to the report, the emergency responders cause physical injury to a person at the location described in Subsection (2)(d)(iii).

(4) (a) In addition to any other penalty authorized by law, a court shall order any person convicted of a violation of this section to reimburse:

(i) any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation~~[-, unless]~~; and

(ii) any person described in Subsection (3)(d)(ii) for the costs for the treatment of the physical injury and any psychological injury caused by the offense.

(b) The court may order that the defendant pay less than the full amount of the costs described in Subsection (4)(a) only if the court states on the record the reasons why the reimbursement would be inappropriate.

CHAPTER 463**S. B. 127**

Passed March 7, 2017

Approved March 28, 2017

Effective May 9, 2017

(Exception clause in Section 12)

**STATE BOARD OF
EDUCATION AMENDMENTS**

Chief Sponsor: Ann Millner

House Sponsor: Jefferson Moss

LONG TITLE**General Description:**

This bill modifies provisions relating to the State Board of Education.

Highlighted Provisions:

This bill:

- ▶ modifies a provision relating to the supervision of the director of the Division of Facilities Construction and Management over projects of the State Board of Education;
- ▶ includes the State Board of Education as an educational procurement unit that is a procurement unit with independent procurement authority;
- ▶ removes State Board of Education employees from certain overtime provisions;
- ▶ expands the category of State Board of Education employees who are exempt from certain classification provisions; and
- ▶ exempts certain State Board of Education employees from career service provisions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 4-18-105, as last amended by Laws of Utah 2016, Chapter 19
- 63A-2-103, as last amended by Laws of Utah 2015, Chapter 98
- 63A-5-206, as last amended by Laws of Utah 2016, Chapter 298
- 63G-6a-103, as last amended by Laws of Utah 2016, Chapters 176, 237, 355 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 355
- 67-19-3, as last amended by Laws of Utah 2015, Chapter 155
- 67-19-6.7, as last amended by Laws of Utah 2016, Chapter 144
- 67-19-12, as last amended by Laws of Utah 2015, Chapter 155
- 67-19-15, as last amended by Laws of Utah 2016, Chapter 230
- 67-19-15.6, as last amended by Laws of Utah 2013, Chapter 109
- 67-19-15.7, as last amended by Laws of Utah 2015, Chapter 155
- 73-5-1, as last amended by Laws of Utah 2015, Chapter 401

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

Section 1. Section 4-18-105 is amended to read:**4-18-105. Conservation Commission --
Functions and duties.**

(1) The commission shall:

(a) facilitate the development and implementation of the strategies and programs necessary to:

(i) protect, conserve, utilize, and develop the soil, air, and water resources of the state; and

(ii) promote the protection, integrity, and restoration of land for agricultural and other beneficial purposes;

(b) disseminate information regarding districts' activities and programs;

(c) supervise the formation, reorganization, or dissolution of districts according to the requirements of Title 17D, Chapter 3, Conservation District Act;

(d) prescribe uniform accounting and recordkeeping procedures for districts and require each district to submit annually an audit of its funds to the commission;

(e) approve and make loans for agricultural purposes, through the advisory board described in Section 4-18-106, from the Agriculture Resource Development Fund, for:

(i) rangeland improvement and management projects;

(ii) watershed protection and flood prevention projects;

(iii) agricultural cropland soil and water conservation projects;

(iv) programs designed to promote energy efficient farming practices; and

(v) programs or improvements for agriculture product storage or protections of a crop or animal resource;

(f) administer federal or state funds, including loan funds under this chapter, in accordance with applicable federal or state guidelines and make loans or grants from those funds to land occupiers for:

(i) conservation of soil or water resources;

(ii) maintenance of rangeland improvement projects;

(iii) development and implementation of coordinated resource management plans, as defined in Section 4-18-103, with conservation districts, as defined in Section 17D-3-102; and

(iv) control or eradication of noxious weeds and invasive plant species:

(A) in cooperation and coordination with local weed boards; and

(B) in accordance with Section 4-2-8.7;

(g) seek to coordinate soil and water protection, conservation, and development activities and programs of state agencies, local governmental units, other states, special interest groups, and federal agencies;

(h) plan watershed and flood control projects in cooperation with appropriate local, state, and federal authorities, and coordinate flood control projects in the state;

(i) assist other state agencies with conservation standards for agriculture when requested; and

(j) when assigned by the governor, when required by contract with the Department of Environmental Quality, or when required by contract with the United States Environmental Protection Agency:

(i) develop programs for the prevention, control, or abatement of new or existing pollution to the soil, water, or air of the state;

(ii) advise, consult, and cooperate with affected parties to further the purpose of this chapter;

(iii) conduct studies, investigations, research, and demonstrations relating to agricultural pollution issues;

(iv) give reasonable consideration in the exercise of its powers and duties to the economic impact on sustainable agriculture;

(v) meet the requirements of federal law related to water and air pollution in the exercise of its powers and duties; and

(vi) establish administrative penalties relating to agricultural discharges as defined in Section 4-18-103 that are proportional to the seriousness of the resulting environmental harm.

(2) The commission may:

(a) employ, with the approval of the department, an administrator and necessary technical experts and employees;

(b) execute contracts or other instruments necessary to exercise its powers;

(c) take necessary action to promote and enforce the purpose and findings of Section 4-18-102;

(d) sue and be sued; and

(e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out the powers and duties described in Subsection (1) and Subsections (2)(b) and (c).

(3) If, under Subsection (2)(a), the commission employs an individual who was formerly an employee of a conservation district or the Utah Association of Conservation Districts, the Department of Human Resource Management shall:

(a) recognize the employee's employment service credit from the conservation district or association in determining leave accrual in the employee's new position within the state; and

(b) set the initial wage rate for the employee at the level that the employee was receiving as an employee of the conservation district or association.

(4) An employee described in Subsection (3) is exempt from the career service provisions of Title 67, Chapter 19, Utah State Personnel Management Act, and shall be designated under schedule codes and parameters established by the Department of Human Resource Management under Subsection 67-19-15(1)(~~4~~)(q) until the commission, under parameters established by the Department of Human Resource Management, designates the employee under a different schedule recognized under Section 67-19-15.

(5) (a) For purposes of the report required by Subsection (5)(b), the commissioner shall study the organizational structure of the employees described in Subsection (3).

(b) The commissioner shall report to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee by no later than that subcommittee's November 2015 interim meeting regarding the study required by Subsection (5)(a).

Section 2. Section 63A-2-103 is amended to read:

63A-2-103. General services provided -- Subscription by state departments, state agencies, and certain local governmental entities -- Fee schedule.

(1) The purchasing director:

(a) shall operate, manage, and maintain:

(i) a central mailing service; and

(ii) an electronic central store system for procuring goods and services;

(b) shall, except when a state surplus property contractor administers the state's program for disposition of state surplus property, operate, manage, and maintain the state surplus property program;

(c) shall, when a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program in accordance with Part 4, Surplus Property Services; and

(d) may establish microfilming, duplicating, printing, addressograph, and other central services.

(2) (a) Each state agency shall subscribe to all of the services described in Subsection (1)(a), unless the director delegates the director's authority to a state agency under Section 63A-2-104.

(b) An institution of higher education, the State Board of Education, a school district, or a political subdivision of the state may subscribe to one or more of the services described in Subsection (1)(a).

(3) (a) The purchasing director shall:

(i) prescribe a schedule of fees to be charged for all services provided by the division after the purchasing director:

(A) submits the proposed rate, fees, or other amounts for services provided by the division's internal service fund to the Rate Committee established in Section 63A-1-114; and

(B) obtains the approval of the Legislature, as required by Section 63J-1-504;

(ii) ensure that the fees are approximately equal to the cost of providing the services; and

(iii) annually conduct a market analysis of fees.

(b) A market analysis under Subsection (3)(a)(iii) shall include a comparison of the division's rates with the fees of other public or private sector providers if comparable services and rates are reasonably available.

Section 3. Section 63A-5-206 is amended to read:

63A-5-206. Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations -- Notification to local governments for construction or modification of certain facilities.

(1) As used in this section:

(a) "Capital developments" and "capital improvements" have the same meaning as provided in Section 63A-5-104.

(b) "Compliance agency" has the same meaning as provided in Section 15A-1-202.

(c) (i) "Facility" means any building, structure, or other improvement that is constructed on property owned by the state, its departments, commissions, institutions, or agencies.

(ii) "Facility" does not mean an unoccupied structure that is a component of the state highway system.

(d) "Life cycle cost-effective" means, as provided for in rules adopted by the State Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the most prudent cost of owning and operating a facility, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.

(e) "Local government" means the county, municipality, or local school district that would have jurisdiction to act as the compliance agency if the property on which the project is being constructed were not owned by the state.

(f) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.

(2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if the total

project construction cost, regardless of the funding source, is greater than \$100,000, unless there is memorandum of understanding between the director and an institution of higher education or the State Board of Education that permits the institution of higher education or the State Board of Education to exercise direct supervision for a project with a total project construction cost of not greater than \$250,000.

(ii) A state entity may exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if:

(A) the total project construction cost, regardless of the funding sources, is \$100,000 or less; and

(B) the state entity assures compliance with the division's forms and contracts and the division's design, construction, alteration, repair, improvements, and code inspection standards.

(b) The director shall prepare or have prepared by private firms or individuals designs, plans, and specifications for the projects administered by the division.

(c) Before proceeding with construction, the director and the officials charged with the administration of the affairs of the particular agency shall approve the location, design, plans, and specifications.

(3) Projects for the construction of new facilities and alterations, repairs, and improvements to existing facilities are not subject to Subsection (2) if the project:

(a) occurs on property under the jurisdiction of the State Capitol Preservation Board;

(b) is within a designated research park at the University of Utah or Utah State University;

(c) occurs within the boundaries of This is the Place State Park and is administered by This is the Place Foundation except that This is the Place Foundation may request the director to administer the design and construction; or

(d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.

(4) (a) (i) The State Building Board may authorize the delegation of control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis or for projects within a particular dollar range and a particular project type.

(ii) The state entity to whom control is delegated shall assume fiduciary control over project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

(iii) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the State Building Board.

(iv) State entities that receive a delegated project may not access, for the delegated project, the division's statewide contingency reserve and project reserve authorized in Section 63A-5-209.

(b) For facilities that will be owned, operated, maintained, and repaired by an entity that is not a state agency and that are located on state property, the State Building Board may authorize the owner to administer the design and construction of the project instead of the division.

(5) Notwithstanding any other provision of this section, if a donor donates land to an eligible institution of higher education and commits to build a building or buildings on that land, and the institution agrees to provide funds for the operations and maintenance costs from sources other than state funds, and agrees that the building or buildings will not be eligible for state capital improvement funding, the higher education institution may:

(a) oversee and manage the construction without involvement, oversight, or management from the division; or

(b) arrange for management of the project by the division.

(6) (a) The role of compliance agency as provided in Title 15A, State Construction and Fire Codes Act, shall be provided by:

(i) the director, for projects administered by the division;

(ii) the entity designated by the State Capitol Preservation Board, for projects under Subsection (3)(a);

(iii) the local government, for projects exempt from the division's administration under Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c);

(iv) the state entity or local government designated by the State Building Board, for projects under Subsection (4); or

(v) the institution, for projects exempt from the division's administration under Subsection (5)(a).

(b) For the installation of art under Subsection (3)(d), the role of compliance agency shall be provided by the entity that is acting in this capacity for the balance of the project as provided in Subsection (6)(a).

(c) The local government acting as the compliance agency under Subsection (6)(a)(iii) may:

(i) only review plans and inspect construction to enforce the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act; and

(ii) charge a building permit fee of no more than the amount it could have charged if the land upon which the improvements are located were not owned by the state.

(d) (i) The use of state property and any improvements constructed on state property, including improvements constructed by nonstate entities, is not subject to the zoning authority of local governments as provided in Sections 10-9a-304 and 17-27a-304.

(ii) The state entity controlling the use of the state property shall consider any input received from the local government in determining how the property shall be used.

(7) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Subsection (4) to determine if the design:

(a) complies with any restrictions placed on the project by the State Building Board; and

(b) is appropriate for the purpose and setting of the project.

(8) The director shall ensure that state-owned facilities, except for facilities under the control of the State Capitol Preservation Board, are life cycle cost-effective.

(9) The director may expend appropriations for statewide projects from funds provided by the Legislature for those specific purposes and within guidelines established by the State Building Board.

(10) (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall develop standard forms to present capital development and capital improvement cost summary data.

(b) The director shall:

(i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of Legislative Fiscal Analyst; and

(ii) upon request, submit cost summary data for a capital improvement project to the Office of Legislative Fiscal Analyst on the standard form.

(11) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, the director may:

(a) accelerate the design of projects funded by any appropriation act passed by the Legislature in its annual general session;

(b) use any unencumbered existing account balances to fund that design work; and

(c) reimburse those account balances from the amount funded for those projects when the appropriation act funding the project becomes effective.

(12) (a) The director, the director's designee, or the state entity to whom control has been designated under Subsection (4), shall notify in writing the elected representatives of local government entities directly and substantively affected by any diagnostic, treatment, parole, probation, or other secured facility project exceeding \$250,000, if:

(i) the nature of the project has been significantly altered since prior notification;

(ii) the project would significantly change the nature of the functions presently conducted at the location; or

(iii) the project is new construction.

(b) At the request of either the state entity or the local government entity, representatives from the state entity and the affected local entity shall conduct or participate in a local public hearing or hearings to discuss these issues.

(13) (a) (i) Before beginning the construction of student housing on property owned by the state or a public institution of higher education, the director shall provide written notice of the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student housing buildings is within 300 feet of privately owned residential property.

(ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body and, if applicable, the mayor of:

(A) the county in whose unincorporated area the privately owned residential property is located; or

(B) the municipality in whose boundaries the privately owned residential property is located.

(b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a county or municipality entitled to the notice may submit a written request to the director for a public hearing on the proposed student housing construction.

(ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the director and the county or municipality shall jointly hold a public hearing to provide information to the public and to allow the director and the county or municipality to receive input from the public about the proposed student housing construction.

Section 4. Section 63G-6a-103 is amended to read:

63G-6a-103. Definitions.

As used in this chapter:

(1) "Administrative law judge" means the same as that term is defined in Section 67-19e-102.

(2) "Administrative law judge service" means service provided by an administrative law judge.

(3) "Applicable rulemaking authority" means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;

(B) for the Office of the Attorney General, the attorney general; and

(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education, the State Board of Regents;

(g) for the State Board of Education, the State Board of Education;

~~(g)~~ (h) for a public transit district, the chief executive of the public transit district;

~~(h)~~ (i) for a local district other than a public transit district or for a special service district:

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules; or

~~(i)~~ (j) for any other procurement unit, the board.

(4) "Approved vendor" means a vendor who has been approved through the approved vendor list process.

(5) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

(6) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.

(7) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.

(8) "Bidding process" means the procurement process described in Part 6, Bidding.

(9) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(10) "Building board" means the State Building Board, created in Section 63A-5-101.

(11) “Change directive” means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

(12) “Change order” means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(13) “Chief procurement officer” means the chief procurement officer appointed under Subsection 63G-6a-302(1).

(14) “Conducting procurement unit” means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

(iv) selecting and recommending the person to be awarded a contract;

(v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit’s approval; and

(vi) contract administration.

(15) “Conservation district” means the same as that term is defined in Section 17D-3-102.

(16) “Construction”:

(a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

(17) “Construction manager/general contractor”:

(a) means a contractor who enters into a contract:

(i) for the management of a construction project; and

(ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor’s cost proposal submitted at the time of the procurement of the contractor’s services; and

(b) does not include a contractor whose only subcontract work not included in the contractor’s cost proposal submitted as part of the procurement of the contractor’s services is to meet subcontracted portions of change orders approved within the scope of the project.

(18) “Contract” means an agreement for a procurement.

(19) “Contract administration” means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

(a) implementing the contract;

(b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;

(c) executing change orders;

(d) processing contract amendments;

(e) resolving, to the extent practicable, contract disputes;

(f) curing contract errors and deficiencies;

(g) terminating a contract;

(h) measuring or evaluating completed work and contractor performance;

(i) computing payments under the contract; and

(j) closing out a contract.

(20) “Contractor” means a person who is awarded a contract with a procurement unit.

(21) “Cooperative procurement” means procurement conducted by, or on behalf of:

(a) more than one procurement unit; or

(b) a procurement unit and a cooperative purchasing organization.

(22) “Cooperative purchasing organization” means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

(23) “Cost-plus-a-percentage-of-cost contract” means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor’s actual expenses or costs.

(24) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.

(25) “Days” means calendar days, unless expressly provided otherwise.

(26) “Definite quantity contract” means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

(27) "Design-build" means the procurement of design professional services and construction by the use of a single contract.

(28) "Design professional" means:

(a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or

(b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(29) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

(30) "Design professional services" means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102; or

(c) master planning and programming services.

(31) "Director" means the director of the division.

(32) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.

(33) "Educational procurement unit" means:

(a) a school district;

(b) a public school, including a local school board and a charter school;

(c) the Utah Schools for the Deaf and Blind;

(d) the Utah Education and Telehealth Network; [or]

(e) an institution of higher education of the state[-]; or

(f) the State Board of Education.

(34) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(35) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.

(36) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

(37) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

(38) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

(39) "Head of a procurement unit" means:

(a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) for an executive branch procurement unit:

(i) the director of the division; or

(ii) any other person designated by the board, by rule;

(c) for a judicial procurement unit:

(i) the Judicial Council; or

(ii) any other person designated by the Judicial Council, by rule;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) any other person designated by the local government procurement unit;

(e) for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;

(f) for a special service district, the governing body of the special service district or a designee of the governing body;

(g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;

(j) for a school district or any school or entity within a school district, the board of the school district, or the board's designee;

(k) for a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;

(l) for an institution of higher education of the state, the president of the institution of higher education, or the president's designee; [or]

(m) for a public transit district, the board of trustees or a designee of the board of trustees[.]; or

(n) for the State Board of Education, the State Board of Education or a designee of the State Board of Education.

(40) "Immaterial error":

(a) means an irregularity or abnormality that is:

(i) a matter of form that does not affect substance; or

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the solicitation; and

(iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.

(41) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(42) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).

(43) "Invitation for bids":

(a) means a document used to solicit:

(i) bids to provide a procurement item to a procurement unit; or

(ii) quotes for a price of a procurement item to be provided to a procurement unit; and

(b) includes all documents attached to or incorporated by reference in a document described in Subsection (43)(a).

(44) "Issuing procurement unit" means a procurement unit that:

(a) reviews a solicitation to verify that it is in proper form;

(b) causes the notice of a solicitation to be published; and

(c) negotiates and approves the terms and conditions of a contract.

(45) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

(e) an office, committee, subcommittee, or other organization within the state judicial branch.

(46) "Labor hour contract" is a contract under which:

(a) the supplies and materials are not provided by, or through, the contractor; and

(b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.

(47) "Legislative procurement unit" means:

(a) the Legislature;

(b) the Senate;

(c) the House of Representatives;

(d) a staff office of the Legislature, the Senate, or the House of Representatives; or

(e) an office, committee, subcommittee, commission, or other organization within the state legislative branch.

(48) "Local building authority" means the same as that term is defined in Section 17D-2-102.

(49) "Local district" means the same as that term is defined in Section 17B-1-102.

(50) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or

(c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

(51) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.

(52) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

(53) "Municipality" means a city, town, or metro township.

(54) "Nonadopting local government procurement unit" means:

(a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (54)(a).

(55) "Offeror" means a person who submits a proposal in response to a request for proposals.

(56) "Person" means the same as that term is defined in Section 68-3-12.5, excluding a political subdivision and a government office, department, division, bureau, or other body of government.

(57) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(58) "Procure" means to acquire a procurement item through a procurement.

(59) "Procurement":

(a) means a procurement unit's acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds;

(b) includes all functions that pertain to the acquisition of a procurement item, including:

- (i) preparing and issuing a solicitation; and
- (ii) (A) conducting a standard procurement process; or

(B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and

(c) does not include a grant.

(60) "Procurement item" means a supply, a service, or construction.

(61) "Procurement officer" means:

(a) for a procurement unit with independent procurement authority:

- (i) the head of the procurement unit;
- (ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(62) "Procurement unit":

- (a) means:
 - (i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

(iv) an educational procurement unit;

(v) a local government procurement unit;

(vi) a local district;

(vii) a special service district;

(viii) a local building authority;

(ix) a conservation district;

(x) a public corporation; or

(xi) a public transit district; and

(b) does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(63) "Professional service" means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

- (a) accounting;
- (b) architecture;
- (c) construction design and management;
- (d) engineering;
- (e) financial services;
- (f) information technology;
- (g) the law;
- (h) medicine;
- (i) psychiatry; or
- (j) underwriting.

(64) "Protest officer" means:

(a) for the division or a procurement unit with independent procurement authority:

- (i) the head of the procurement unit;
- (ii) a designee of the head of the procurement unit; or
- (iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee.

(65) "Public corporation" means the same as that term is defined in Section 63E-1-102.

(66) "Public entity" means any government entity of the state or political subdivision of the state, including:

- (a) a procurement unit;
- (b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and
- (c) any other government entity located in the state that expends public funds.

(67) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

(68) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

(69) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(70) "Qualified vendor" means a vendor who:

(a) is responsible; and

(b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.

(71) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

(72) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.

(73) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.

(74) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.

(75) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

(76) "Requirements contract" means a contract:

(a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(77) "Responsible" means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(78) "Responsive" means conforming in all material respects to the requirements of a solicitation.

(79) "Sealed" means manually or electronically secured to prevent disclosure.

(80) "Service":

(a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;

(b) includes a professional service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

(81) "Small purchase process" means the procurement process described in Section 63G-6a-506.

(82) "Sole source contract" means a contract resulting from a sole source procurement.

(83) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.

(84) "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

(85) "Solicitation response" means:

(a) a bid submitted in response to an invitation for bids;

(b) a proposal submitted in response to a request for proposals; or

(c) a statement of qualifications submitted in response to a request for statement of qualifications.

(86) "Special service district" means the same as that term is defined in Section 17D-1-102.

(87) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

(a) a requirement for inspecting or testing a procurement item; or

(b) preparing a procurement item for delivery.

(88) "Standard procurement process" means:

(a) the bidding process;

(b) the request for proposals process;

(c) the approved vendor list process;

(d) the small purchase process; or

(e) the design professional procurement process.

(89) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

(90) "Statement of qualifications" means a written statement submitted to a procurement unit

in response to a request for statement of qualifications.

(91) “Subcontractor”:

(a) means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction;

(b) includes a trade contractor or specialty contractor; and

(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(92) “Supply” means a good, material, technology, piece of equipment, or any other item of personal property.

(93) “Tie bid” means that the lowest responsive bids of responsible bidders are identical in price.

(94) “Time and materials contract” means a contract under which the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

(95) “Transitional costs”:

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

(96) “Trial use contract” means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine

whether the procurement item will benefit the procurement unit.

(97) “Vendor”:

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor; and

(iv) a design professional.

Section 5. Section 67-19-3 is amended to read:

67-19-3. Definitions.

As used in this chapter:

(1) “Agency” means any department or unit of Utah state government with authority to employ personnel.

(2) “Career service” means positions under schedule B as defined in Section 67-19-15.

(3) “Career service employee” means an employee who has successfully completed a probationary period of service in a position covered by the career service.

(4) “Career service status” means status granted to employees who successfully complete probationary periods for competitive career service positions.

(5) “Classified service” means those positions subject to the classification and compensation provisions of Section 67-19-12.

(6) “Controlled substance” means controlled substance as defined in Section 58-37-2.

(7) (a) “Demotion” means a disciplinary action resulting in a reduction of an employee’s current actual wage.

(b) “Demotion” does not mean:

(i) a nondisciplinary movement of an employee to another position without a reduction in the current actual wage; or

(ii) a reclassification of an employee’s position under the provisions of Subsection 67-19-12(3) and rules made by the department.

(8) “Department” means the Department of Human Resource Management.

(9) “Disability” means a physical or mental disability as defined and protected under the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.

(10) “Employee” means any individual in a paid status covered by the career service or classified service provisions of this chapter.

(11) “Examining instruments” means written or other types of proficiency tests.

(12) "Executive director," except where otherwise specified, means the executive director of the Department of Human Resource Management.

(13) "Human resource function" means those duties and responsibilities specified:

- (a) under Section 67-19-6;
- (b) under rules of the department; and
- (c) under other state or federal statute.

(14) "Market comparability adjustment" means a salary range adjustment determined necessary through a market survey of salary data and other relevant information.

(15) "Probationary employee" means an employee serving a probationary period in a career service position but who does not have career service status.

(16) "Probationary period" means that period of time determined by the department that an employee serves in a career service position as part of the hiring process before career service status is granted to the employee.

(17) "Probationary status" means the status of an employee between the employee's hiring and the granting of career service status.

(18) "Structure adjustment" means a department modification of salary ranges.

(19) "Temporary employee" means career service exempt employees described in Subsection 67-19-15(1)(p)(q).

(20) "Total compensation" means salaries and wages, bonuses, paid leave, group insurance plans, retirement, and all other benefits offered to state employees as inducements to work for the state.

Section 6. Section 67-19-6.7 is amended to read:

67-19-6.7. Overtime policies for state employees.

(1) As used in this section:

(a) "Accrued overtime hours" means:

(i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end of the fiscal year, have not been paid and have not been taken as time off by the nonexempt state employee who accrued them; and

(ii) for exempt employees, overtime hours earned during an overtime year.

(b) "Appointed official" means:

(i) each department executive director and deputy director, each division director, and each member of a board or commission; and

(ii) any other person employed by a department who is appointed by, or whose appointment is required by law to be approved by, the governor and who:

(A) is paid a salary by the state; and

(B) who exercises managerial, policy-making, or advisory responsibility.

(c) "Department" means the Department of Administrative Services, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Control, the Insurance Department, the Public Service Commission, the Labor Commission, the Department of Agriculture and Food, the Department of Human Services, ~~the State Board of Education,~~ the Department of Natural Resources, the Department of Technology Services, the Department of Transportation, the Department of Commerce, the Department of Workforce Services, the State Tax Commission, the Department of Heritage and Arts, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of Public Safety, the Department of Human Resource Management, the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General, merit employees in the Office of the State Treasurer, merit employees in the Office of the State Auditor, Department of Veterans' and Military Affairs, and the Board of Pardons and Parole.

(d) "Elected official" means any person who is an employee of the state because the person was elected by the registered voters of Utah to a position in state government.

(e) "Exempt employee" means a state employee who is exempt as defined by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq., by which a nonexempt employee elects the form of compensation the nonexempt employee will receive for overtime.

(h) "Nonexempt employee" means a state employee who is nonexempt as defined by the Department of Human Resource Management applying FLSA requirements.

(i) "Overtime" means actual time worked in excess of the employee's defined work period.

(j) "Overtime year" means the year determined by a department under Subsection (4)(b) at the end of which an exempt employee's accrued overtime lapses.

(k) "State employee" means every person employed by a department who is not:

(i) an appointed official;

(ii) an elected official; or

(iii) a member of a board or commission who is paid only for per diem or travel expenses~~[-or].~~

~~[(iv) employed on a contractual basis by the State Board of Education.]~~

(l) "Uniform annual date" means the date when an exempt employee's accrued overtime lapses.

(m) "Work period" means:

(i) for all nonexempt employees, except law enforcement and hospital employees, a consecutive seven day 24 hour work period of 40 hours;

(ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and

(iii) for nonexempt law enforcement and hospital employees, the period established by each department by rule for those employees according to the requirements of the Fair Labor Standards Act of 1978, 29 U.S.C. Sec. 201 et seq.

(2) Each department shall compensate each state employee who works overtime by complying with the requirements of this section.

(3) (a) Each department shall negotiate and obtain a signed FLSA agreement from each nonexempt employee.

(b) In the FLSA agreement, the nonexempt employee shall elect either to be compensated for overtime by:

(i) taking time off work at the rate of one and one-half hour off for each overtime hour worked; or

(ii) being paid for the overtime worked at the rate of one and one-half times the rate per hour that the state employee receives for nonovertime work.

(c) Any nonexempt employee who elects to take time off under this Subsection (3) shall be paid for any overtime worked in excess of the cap established by the Department of Human Resource Management.

(d) Before working any overtime, each nonexempt employee shall obtain authorization to work overtime from the employee's immediate supervisor.

(e) Each department shall:

(i) for employees who elect to be compensated with time off for overtime, allow overtime earned during a fiscal year to be accumulated; and

(ii) for employees who elect to be paid for overtime worked, pay them for overtime worked in the paycheck for the pay period in which the employee worked the overtime.

(f) If the department pays a nonexempt employee for overtime, the department shall charge that payment to the department's budget.

(g) At the end of each fiscal year, the Division of Finance shall total all the accrued overtime hours for nonexempt employees and charge that total against the appropriate fund or subfund.

(4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall compensate exempt employees who work overtime by granting them time off at the rate of one hour off for each hour of overtime worked.

(ii) The executive director of the Department of Human Resource Management may grant limited exceptions to this requirement, where work circumstances dictate, by authorizing a department to pay employees for overtime worked at the rate per hour that the employee receives for nonovertime work, if the department has funds available.

(b) (i) Each department shall:

(A) establish in its written human resource policies a uniform annual date for each division that is at the end of any pay period; and

(B) communicate the uniform annual date to its employees.

(ii) If any department fails to establish a uniform annual date as required by this Subsection (4), the executive director of the Department of Human Resource Management, in conjunction with the director of the Division of Finance, shall establish the date for that department.

(c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a benefit, and is not a vested right.

(ii) A court may not construe the overtime for exempt employees authorized by this Subsection (4) as an entitlement, a benefit, or as a vested right.

(d) At the end of the overtime year, upon transfer to another department at any time, and upon termination, retirement, or other situations where the employee will not return to work before the end of the overtime year:

(i) any of an exempt employee's overtime that is more than the maximum established by the Department of Human Resource Management rule lapses; and

(ii) unless authorized by the executive director of the Department of Human Resource Management under Subsection (4)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by paying the employee for the overtime or by granting the employee time off for the lapsed overtime.

(e) Before working any overtime, each exempt employee shall obtain authorization to work overtime from the exempt employee's immediate supervisor.

(f) If the department pays an exempt employee for overtime under authorization from the executive director of the Department of Human Resource Management, the department shall charge that payment to the department's budget in the pay period earned.

(5) The Department of Human Resource Management shall:

(a) ensure that the provisions of the FLSA and this section are implemented throughout state government;

(b) determine, for each state employee, whether that employee is exempt, nonexempt, law

enforcement, or has some other status under the FLSA;

(c) in coordination with modifications to the systems operated by the Division of Finance, make rules:

(i) establishing procedures for recording overtime worked that comply with FLSA requirements;

(ii) establishing requirements governing overtime worked while traveling and procedures for recording that overtime that comply with FLSA requirements;

(iii) establishing requirements governing overtime worked if the employee is "on call" and procedures for recording that overtime that comply with FLSA requirements;

(iv) establishing requirements governing overtime worked while an employee is being trained and procedures for recording that overtime that comply with FLSA requirements;

(v) subject to the FLSA, establishing the maximum number of hours that a nonexempt employee may accrue before a department is required to pay the employee for the overtime worked;

(vi) subject to the FLSA, establishing the maximum number of overtime hours for an exempt employee that do not lapse; and

(vii) establishing procedures for adjudicating appeals of any FLSA determinations made by the Department of Human Resource Management as required by this section;

(d) monitor departments for compliance with the FLSA; and

(e) recommend to the Legislature and the governor any statutory changes necessary because of federal government action.

(6) In coordination with the procedures for recording overtime worked established in rule by the Department of Human Resource Management, the Division of Finance shall modify its payroll and human resource systems to accommodate those procedures.

(a) Notwithstanding the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who is aggrieved by the FLSA designation made by the Department of Human Resource Management as required by this section may appeal that determination to the executive director of the Department of Human Resource Management by following the procedures and requirements established in Department of Human Resource Management rule.

(b) Upon receipt of an appeal under this section, the executive director shall notify the executive director of the employee's department that the appeal has been filed.

(c) If the employee is aggrieved by the decision of the executive director of the Department of Human Resource Management, the employee shall appeal that determination to the Department of Labor, Wage and Hour Division, according to the procedures and requirements of federal law.

Section 7. Section 67-19-12 is amended to read:

67-19-12. State pay plans -- Applicability of section -- Exemptions -- Duties of the executive director.

(1) (a) This section, and the rules adopted by the department to implement this section, apply to each career and noncareer employee not specifically exempted under Subsection (2).

(b) If not exempted under Subsection (2), an employee is considered to be in classified service.

(2) The following employees are exempt from this section:

(a) members of the Legislature and legislative employees;

(b) members of the judiciary and judicial employees;

(c) elected members of the executive branch and employees designated as schedule AC as provided under Subsection 67-19-15(1)(c);

(d) employees of the State Board of Education [~~who are licensed by the State Board of Education~~];

(e) officers, faculty, and other employees of state institutions of higher education;

(f) employees in a position that is specified by statute to be exempt from this Subsection (2);

(g) employees in the Office of the Attorney General;

(h) department heads and other persons appointed by the governor under statute;

(i) schedule AS employees as provided under Subsection 67-19-15(1)(~~(b)~~)(m);

(j) department deputy directors, division directors, and other employees designated as schedule AD as provided under Subsection 67-19-15(1)(d);

(k) employees that determine and execute policy designated as schedule AR as provided under Subsection 67-19-15(1)(~~(k)~~)(l);

(l) teaching staff, educational interpreters, and educators designated as schedule AH as provided under Subsection 67-19-15(1)(~~(f)~~)(g);

(m) temporary employees described in Subsection 67-19-15(1)(~~(p)~~)(q);

(n) patients and inmates designated as schedule AU as provided under Subsection 67-19-15(1)(~~(n)~~)(o) who are employed by state institutions; and

(o) members of state and local boards and councils and other employees designated as schedule AQ as provided under Subsection 67-19-15(1)(~~(j)~~)(k).

(3) (a) The executive director shall prepare, maintain, and revise a position classification plan for each employee position not exempted under Subsection (2) to provide equal pay for equal work.

(b) Classification of positions shall be based upon similarity of duties performed and responsibilities assumed, so that the same job requirements and the same salary range may be applied equitably to each position in the same class.

(c) The executive director shall allocate or reallocate the position of each employee in classified service to one of the classes in the classification plan.

(d) (i) The department shall conduct periodic studies and interviews to provide that the classification plan remains reasonably current and reflects the duties and responsibilities assigned to and performed by employees.

(ii) The executive director shall determine the need for studies and interviews after considering factors such as changes in duties and responsibilities of positions or agency reorganizations.

(4) (a) With the approval of the governor, the executive director shall develop and adopt pay plans for each position in classified service.

(b) The executive director shall design each pay plan to achieve, to the degree that funds permit, comparability of state salary ranges to the market using data obtained from private enterprise and other public employment for similar work.

(c) The executive director shall adhere to the following in developing each pay plan:

(i) Each pay plan shall consist of sufficient salary ranges to:

(A) permit adequate salary differential among the various classes of positions in the classification plan; and

(B) reflect the normal growth and productivity potential of employees in that class.

(ii) The executive director shall issue rules for the administration of pay plans.

(d) The establishing of a salary range is a nondelegable activity and is not appealable under the grievance procedures of Sections 67-19-30 through 67-19-32, Chapter 19a, Grievance Procedures, or otherwise.

(e) The executive director shall issue rules providing for:

(i) agency approved salary adjustments within approved salary ranges, including an administrative salary adjustment;

(ii) legislatively approved salary adjustments within approved salary ranges, including a merit increase, subject to Subsection (4)(f), or general increase; and

(iii) structure adjustments that modify salary ranges, including a cost of living adjustment or market comparability adjustment.

(f) A merit increase shall be granted on a uniform and consistent basis to each employee who receives a rating of "successful" or higher in an annual evaluation of the employee's productivity and performance.

(5) (a) By October 31 of each year, the executive director shall submit an annual compensation plan to the governor for consideration in the executive budget.

(b) The plan described in Subsection (5)(a) may include recommendations, including:

(i) salary increases that generally affect employees, including a general increase or merit increase;

(ii) salary increases that address compensation issues unique to an agency or occupation;

(iii) structure adjustments, including a cost of living adjustment or market comparability adjustment; or

(iv) changes to employee benefits.

(c) (i) (A) Subject to Subsection (5)(c)(i)(B) or (C), the executive director shall incorporate the results of a salary survey of a reasonable cross section of comparable positions in private and public employment in the state into the annual compensation plan.

(B) The salary survey for a law enforcement officer, as defined in Section 53-13-103, a correctional officer, as defined in Section 53-13-104, or a dispatcher, as defined in Section 53-6-102, shall at minimum include the three largest political subdivisions in the state that employ, respectively, comparable positions.

(C) The salary survey for an examiner or supervisor described in Title 7, Chapter 1, Part 2, Department of Financial Institutions, shall at minimum include the Federal Deposit Insurance Corporation, Federal Reserve, and National Credit Union Administration.

(ii) The executive director may cooperate with or participate in any survey conducted by other public and private employers.

(iii) The executive director shall obtain information for the purpose of constructing the survey from the Division of Workforce Information and Payment Services and shall include employer name, number of persons employed by the employer, employer contact information and job titles, county code, and salary if available.

(iv) The department shall acquire and protect the needed records in compliance with the provisions of Section 35A-4-312.

(d) The executive director may incorporate any other relevant information in the plan described in Subsection (5)(a), including information on staff turnover, recruitment data, or external market trends.

(e) The executive director shall:

(i) establish criteria to assure the adequacy and accuracy of data used to make recommendations described in this Subsection (5); and

(ii) when preparing recommendations use accepted methodologies and techniques similar to and consistent with those used in the private sector.

(f) (i) Upon request and subject to Subsection (5)(f)(ii), the department shall make available foundational information used by the department or director in the drafting of a plan described in Subsection (5)(a), including:

(A) demographic and labor market information;

(B) information on employee turnover;

(C) salary information;

(D) information on recruitment; and

(E) geographic data.

(ii) The department may not provide under Subsection (5)(f)(i) information or other data that is proprietary or otherwise protected under the terms of a contract or by law.

(g) The governor shall:

(i) consider salary and structure adjustments recommended under Subsection (5)(b) in preparing the executive budget and shall recommend the method of distributing the adjustments;

(ii) submit compensation recommendations to the Legislature; and

(iii) support the recommendation with schedules indicating the cost to individual departments and the source of funds.

(h) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment unless otherwise indicated.

(6) (a) The executive director shall issue rules for the granting of incentive awards, including awards for cost saving actions, awards for commendable actions by an employee, or a market-based award to attract or retain employees.

(b) An agency may not grant a market-based award unless the award is previously approved by the department.

(c) In accordance with Subsection (6)(b), an agency requesting the department's approval of a market-based award shall submit a request and documentation, subject to Subsection (6)(d), to the department.

(d) In the documentation required in Subsection (6)(c), the requesting agency shall identify for the department:

(i) any benefit the market-based award would provide for the agency, including:

(A) budgetary advantages; or

(B) recruitment advantages;

(ii) a mission critical need to attract or retain unique or hard to find skills in the market; or

(iii) any other advantage the agency would gain through the utilization of a market-based award.

(7) (a) The executive director shall regularly evaluate the total compensation program of state employees in the classified service.

(b) The department shall determine if employee benefits are comparable to those offered by other private and public employers using information from:

(i) a study conducted by a third-party consultant; or

(ii) the most recent edition of a nationally recognized benefits survey.

Section 8. Section 67-19-15 is amended to read:

67-19-15. Career service -- Exempt positions -- Schedules for civil service positions -- Coverage of career service provisions.

(1) Except as otherwise provided by law or by rules and regulations established for federally aided programs, the following positions are exempt from the career service provisions of this chapter and are designated under the following schedules:

(a) schedule AA includes the governor, members of the Legislature, and all other elected state officers;

(b) schedule AB includes appointed executives and board or commission executives enumerated in Section 67-22-2;

(c) schedule AC includes all employees and officers in:

(i) the office and at the residence of the governor;

(ii) the Utah Science Technology and Research Initiative (USTAR);

(iii) the Public Lands Policy Coordinating Council;

(iv) the Office of the State Auditor; and

(v) the Office of the State Treasurer;

(d) schedule AD includes employees who:

(i) are in a confidential relationship to an agency head or commissioner; and

(ii) report directly to, and are supervised by, a department head, commissioner, or deputy director of an agency or its equivalent;

(e) schedule AE includes each employee of the State Board of Education that the State Board of Education designates as exempt from the career service provisions of this chapter;

[~~e~~] (f) schedule AG includes employees in the Office of the Attorney General who are under their

own career service pay plan under Sections 67-5-7 through 67-5-13;

~~(f)~~ (g) schedule AH includes:

(i) teaching staff of all state institutions; and

(ii) employees of the Utah Schools for the Deaf and the Blind who are:

(A) educational interpreters as classified by the department; or

(B) educators as defined by Section 53A-25b-102;

~~(g)~~ (h) schedule AN includes employees of the Legislature;

~~(h)~~ (i) schedule AO includes employees of the judiciary;

~~(i)~~ (j) schedule AP includes all judges in the judiciary;

~~(j)~~ (k) schedule AQ includes:

(i) members of state and local boards and councils appointed by the governor and governing bodies of agencies;

(ii) a water commissioner appointed under Section 73-5-1;

(iii) other local officials serving in an ex officio capacity; and

(iv) officers, faculty, and other employees of state universities and other state institutions of higher education;

~~(k)~~ (l) schedule AR includes employees in positions that involve responsibility:

(i) for determining policy;

(ii) for determining the way in which a policy is carried out; or

(iii) of a type not appropriate for career service, as determined by the agency head with the concurrence of the executive director;

~~(l)~~ (m) schedule AS includes any other employee:

(i) whose appointment is required by statute to be career service exempt;

(ii) whose agency is not subject to this chapter; or

(iii) whose agency has authority to make rules regarding the performance, compensation, and bonuses for its employees;

~~(m)~~ (n) schedule AT includes employees of the Department of Technology Services, designated as executive/professional positions by the executive director of the Department of Technology Services with the concurrence of the executive director;

~~(n)~~ (o) schedule AU includes patients and inmates employed in state institutions;

~~(o)~~ (p) employees of the Department of Workforce Services, designated as schedule AW:

(i) who are temporary employees that are federally funded and are required to work under federally qualified merit principles as certified by the director; or

(ii) for whom substantially all of their work is repetitive, measurable, or transaction based, and who voluntarily apply for and are accepted by the Department of Workforce Services to work in a pay for performance program designed by the Department of Workforce Services with the concurrence of the executive director; and

~~(p)~~ (q) for employees in positions that are temporary, seasonal, time limited, funding limited, or variable hour in nature, under schedule codes and parameters established by the department by administrative rule.

(2) The civil service shall consist of two schedules as follows:

(a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

(ii) Removal from any appointive position under schedule A, unless otherwise regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

(b) Schedule B is the competitive career service schedule, consisting of:

(i) all positions filled through competitive selection procedures as defined by the executive director; or

(ii) positions filled through a department approved on-the-job examination intended to appoint a qualified person with a disability, or a veteran in accordance with Title 71, Chapter 10, Veteran's Preference.

(3) (a) The executive director, after consultation with the heads of concerned executive branch departments and agencies and with the approval of the governor, shall allocate positions to the appropriate schedules under this section.

(b) Agency heads shall make requests and obtain approval from the executive director before changing the schedule assignment and tenure rights of any position.

(c) Unless the executive director's decision is reversed by the governor, when the executive director denies an agency's request, the executive director's decision is final.

(4) (a) Compensation for employees of the Legislature shall be established by the directors of the legislative offices in accordance with Section 36-12-7.

(b) Compensation for employees of the judiciary shall be established by the state court administrator in accordance with Section 78A-2-107.

(c) Compensation for officers, faculty, and other employees of state universities and institutions of higher education shall be established as provided in Title 53B, Chapter 1, Governance, Powers, Rights, and Responsibilities, and Title 53B, Chapter 2, Institutions of Higher Education.

(d) Unless otherwise provided by law, compensation for all other schedule A employees shall be established by their appointing authorities, within ranges approved by, and after consultation with the executive director of the Department of Human Resource Management.

(5) An employee who is in a position designated schedule AC and who holds career service status on June 30, 2010, shall retain the career service status if the employee:

(a) remains in the position that the employee is in on June 30, 2010; and

(b) does not elect to convert to career service exempt status in accordance with a rule made by the department.

Section 9. Section 67-19-15.6 is amended to read:

67-19-15.6. Longevity salary increases.

(1) Except for those employees in schedule AB, as provided under Section 67-19-15, and employees described in Subsection 67-19-15(1)(p)(q), an employee shall receive an increase in salary of 2.75% if that employee:

(a) holds a position under schedule A or B as provided under Section 67-19-15;

(b) has reached the maximum of the salary range in the position classification;

(c) has been employed with the state for eight years; and

(d) is rated eligible in job performance under guidelines established by the executive director.

(2) Any employee who meets the criteria under Subsection (1) is entitled to the same increase in salary for each additional three years of employment if the employee maintains the eligibility standards established by the department.

Section 10. Section 67-19-15.7 is amended to read:

67-19-15.7. Promotion -- Reclassification -- Market adjustment.

(1) (a) If an employee is promoted or the employee's position is reclassified to a higher salary range maximum, the agency shall place the employee within the new range of the position.

(b) An agency may not set an employee's salary:

(i) higher than the maximum in the new salary range; and

(ii) lower than the minimum in the new salary range of the position.

(c) Except for an employee described in Subsection 67-19-15(1)(p)(q), the agency shall grant a salary increase of at least 5% to an employee who is promoted.

(2) An agency shall adjust the salary range for an employee whose salary range is approved by the

Legislature for a market comparability adjustment consistent with Subsection 67-19-12(5)(b)(i):

(a) at the beginning of the next fiscal year; and

(b) consistent with appropriations made by the Legislature.

(3) Department-initiated revisions in the state classification system that result in consolidation or reduction of class titles or broadening of pay ranges:

(a) may not be regarded as a reclassification of the position or promotion of the employee; and

(b) are exempt from the provisions of Subsection (1).

Section 11. Section 73-5-1 is amended to read:

73-5-1. Appointment of water commissioners -- Procedure.

(1) (a) If, in the judgment of the state engineer or the district court, it is necessary to appoint a water commissioner for the distribution of water from any river system or water source, the commissioner shall be appointed for a four-year term by the state engineer.

(b) The state engineer shall determine whether all or a part of a river system or other water source shall be served by a commissioner, and if only a part is to be served, the state engineer shall determine the boundaries of that part.

(c) The state engineer may appoint:

(i) more than one commissioner to distribute water from all or a part of a water source; or

(ii) a single commissioner to distribute water from several separate and distinct water sources.

(d) A water commissioner appointed by the state engineer under this section is:

(i) an employee of the Division of Water Rights;

(ii) career service exempt under Subsection 67-19-15(1)(j)(k); and

(iii) exempt under Subsection 67-19-12(2)(f) from the classified service provisions of Section 67-19-12.

(2) (a) The state engineer shall consult with the water users before appointing a commissioner. The form of consultation and notice to be given shall be determined by the state engineer so as to best suit local conditions, while providing for full expression of majority opinion.

(b) The state engineer shall act in accordance with the recommendation of a majority of the water users, if the majority of the water users:

(i) agree upon:

(A) a qualified individual to be appointed as a water commissioner;

(B) the duties the individual shall perform; and

(C) subject to the requirements of Title 49, Utah State Retirement and Insurance Benefit Act, the compensation the individual shall receive; and

(ii) submit a recommendation to the state engineer on the items described in Subsection (2)(b)(i).

(c) If a majority of water users do not agree on the appointment, duties, or compensation, the state engineer shall make a determination for them.

(3) (a) (i) The salary and expenses of the commissioner and all other expenses of distribution, including printing, postage, equipment, water users' expenses, and any other expenses considered necessary by the state engineer, shall be borne pro rata by the users of water from the river system or water source in accordance with a schedule to be fixed by the state engineer.

(ii) The schedule shall be based on the established rights of each water user, and the pro rata share shall be paid by each water user to the state engineer on or before May 1 of each year.

(b) The payments shall be deposited in the Water Commissioner Fund created in Section 73-5-1.5.

(c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state engineer may do any or all of the following:

(i) create a lien upon the water right affected by filing a notice of lien in the office of the county recorder in the county where the water is diverted and bring an action to enforce the lien;

(ii) forbid the use of water by the delinquent water user or the delinquent water user's successors or assignees, while the default continues; or

(iii) bring an action in the district court for the unpaid expense and salary.

(d) In any action brought to collect any unpaid assessment or to enforce any lien under this section, the delinquent water user shall be liable for the amount of the assessment, interest, any penalty, and for all costs of collection, including all court costs and a reasonable attorney fee.

(4) (a) A commissioner may be removed by the state engineer for cause.

(b) The users of water from any river system or water source may petition the district court for the removal of a commissioner and after notice and hearing, the court may order the removal of the commissioner and direct the state engineer to appoint a successor.

Section 12. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on May 9, 2017.

(2) The amendments in this bill to Section 63G-6a-103 take effect on July 1, 2017.

CHAPTER 464**S. B. 185**

Passed March 7, 2017
 Approved March 28, 2017
 Effective May 9, 2017

**CAUSE OF ACTION FOR MINORS
 INJURED BY PORNOGRAPHY**

Chief Sponsor: Todd Weiler
 House Sponsor: Keven J. Stratton

LONG TITLE**General Description:**

This bill amends the Judicial Code to provide for a cause of action for minors injured by pornography.

Highlighted Provisions:

This bill:

- ▶ enacts definitions;
- ▶ provides exemptions;
- ▶ establishes liability;
- ▶ provides a safe harbor; and
- ▶ addresses damages and class actions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

78B-6-2100, Utah Code Annotated 1953
 78B-6-2101, Utah Code Annotated 1953
 78B-6-2102, Utah Code Annotated 1953
 78B-6-2103, Utah Code Annotated 1953
 78B-6-2104, Utah Code Annotated 1953

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

Section 1. Section 78B-6-2100 is enacted to read:

Part 21. Cause of Action for Minors Injured by Pornographic Material

78B-6-2100. Title.

This part is known as "Cause of Action for Minors Injured by Pornographic Material."

Section 2. Section 78B-6-2101 is enacted to read:

78B-6-2101. Definitions.

As used in this part:

(1) "Minor" means an individual less than 18 years of age.

(2) "Pornographic material" means material that:

(a) the average person, applying contemporary community standards, finds that, taken as a whole, appeals to prurient interest in sex;

(b) is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, or excretion; and

(c) taken as a whole does not have serious literary, artistic, political, or scientific value.

Section 3. Section 78B-6-2102 is enacted to read:

78B-6-2102. Exemptions.

(1) If the conditions of Subsection (2) are met, this part does not apply to:

(a) the following, as defined in the Communications Act of 1934, as amended:

(i) an interactive computer service;

(ii) a telecommunications service, information service, or mobile service, including a commercial mobile service; or

(iii) a multichannel video programming distributor;

(b) an Internet service provider;

(c) a provider of an electronic communications service;

(d) a distributor of Internet-based video services;

(e) a host company as defined in Section 76-10-1230; or

(f) a distributor of electronic or computerized game software that users manipulate through interactive devices.

(2) This part does not apply to an entity described in Subsection (1) if:

(a) the distribution of pornographic material by the entity occurs only incidentally through the entity's function of:

(i) transmitting or routing data from one person to another person;

(ii) providing a connection between one person and another person; or

(iii) providing data storage space or data caching to a person;

(b) the entity does not intentionally aid or abet in the distribution of the pornographic material; and

(c) the entity does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the entity, as a specific condition for permitting the person to distribute the pornographic material.

Section 4. Section 78B-6-2103 is enacted to read:

78B-6-2103. Liability -- Safe harbor.

(1) A person who predominately distributes or otherwise predominately provides pornographic material to consumers is liable to a person if:

(a) at the time the pornographic material is viewed by the person, the person is a minor; and

(b) the pornographic material is the proximate cause for the person being harmed physically or

psychologically, or by emotional or medical illnesses as a result of that pornographic material.

(2) Nothing in this part affects any private right of action existing under other law, including contract.

(3) Notwithstanding Subsection (1), a person who distributes or otherwise provides pornographic material is not liable under this section if the person who distributes or otherwise provides pornographic material:

(a) provides a warning that:

(i) is conspicuous;

(ii) appears before the pornographic material can be accessed; and

(iii) consists of a good faith effort to warn persons accessing the pornographic material that the pornographic material may be harmful to minors; and

(b) makes a good faith effort to verify the age of a person accessing the pornographic material.

(4) Subsection (3) may not be interpreted as exempting a person from complying with Title 13, Chapter 39, Child Protection Registry.

Section 5. Section 78B-6-2104 is enacted to read:

78B-6-2104. Damages -- Class action.

(1) If a court finds that a person violates Section 78B-6-2103, the court may award the plaintiff:

(a) actual damages; and

(b) punitive damages, if it is proven that the person targeted minors.

(2) A class action may be brought under this part in accordance with Utah Rules of Civil Procedure, Rule 23.

CHAPTER 465**S. B. 203**

Passed March 7, 2017

Approved March 28, 2017

Effective May 9, 2017

REAL ESTATE TRUSTEE AMENDMENTS

Chief Sponsor: Gene Davis
House Sponsor: Brian S. King

LONG TITLE**General Description:**

This bill amends provisions related to real estate trustees.

Highlighted Provisions:

This bill:

- ▶ provides that an entity in good standing that provides licensed professional legal services, employs an active member of the Utah State Bar, and maintains an office in the state may act as a real estate trustee under certain circumstances;
- ▶ provides that a claimant may file a petition for adjudication of priority to trustee sale funds if the claimant pays the court clerk a filing fee; and
- ▶ modifies the number of days in which a person may contest a petition for adjudication of priority to trustee sale funds.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

57-1-21, as last amended by Laws of Utah 2008, Chapter 250

57-1-29, as last amended by Laws of Utah 2008, Chapter 230

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

Section 1. Section 57-1-21 is amended to read:**57-1-21. Trustees of trust deeds -- Qualifications.**

(1) (a) The trustee of a trust deed shall be:

(i) any individual who is an active member of the Utah State Bar, or any entity in good standing that is organized to provide licensed professional legal services and employs an active member of the Utah State Bar [who maintains a place within], if the individual or entity is able to do business in the state and maintains an office in the state where the trustor or other interested parties may meet with the trustee to:

(A) request information about what is required to reinstate or payoff the obligation secured by the trust deed;

(B) deliver written communications to the lender as required by both the trust deed and by law;

(C) deliver funds to reinstate or payoff the loan secured by the trust deed; or

(D) deliver funds by a bidder at a foreclosure sale to pay for the purchase of the property secured by the trust deed;

(ii) any depository institution as defined in Section 7-1-103, or insurance company authorized to do business and actually doing business in Utah under the laws of Utah or the United States;

(iii) any corporation authorized to conduct a trust business and actually conducting a trust business in Utah under the laws of Utah or the United States;

(iv) any title insurance company or agency that:

(A) holds a certificate of authority or license under Title 31A, Insurance Code, to conduct insurance business in the state;

(B) is actually doing business in the state; and

(C) maintains a bona fide office in the state;

(v) any agency of the United States government; or

(vi) any association or corporation that is licensed, chartered, or regulated by the Farm Credit Administration or its successor.

(b) For purposes of this Subsection (1), a person maintains a bona fide office within the state if that person maintains a physical office in the state:

(i) that is open to the public;

(ii) that is staffed during regular business hours on regular business days; and

(iii) at which a trustor of a trust deed may in person:

(A) request information regarding a trust deed; or

(B) deliver funds, including reinstatement or payoff funds.

(c) This Subsection (1) is not applicable to a trustee of a trust deed existing prior to May 14, 1963, nor to any agreement that is supplemental to that trust deed.

(d) The amendments in Laws of Utah 2002, Chapter 209, to this Subsection (1) apply only to a trustee that is appointed on or after May 6, 2002.

(e) For an entity that acts as a trustee under Subsection (1)(a)(i), only a member attorney of the entity who is currently licensed to practice law in the state may sign documents on behalf of the entity in the entity's capacity as trustee.

(2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).

(3) The power of sale conferred by Section 57-1-23 may only be exercised by the trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).

(4) A trust deed with an unqualified trustee or without a trustee shall be effective to create a lien on the trust property, but the power of sale and other trustee powers under the trust deed may be

exercised only if the beneficiary has appointed a qualified successor trustee under Section 57-1-22.

Section 2. Section 57-1-29 is amended to read:

**57-1-29. Proceeds of trustee's sale --
Disposition.**

(1) (a) The trustee shall apply the proceeds of a trustee's sale in the following order:

(i) first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney fees actually incurred not to exceed any amount provided for in the trust deed;

(ii) second, to payment of the obligation secured by the trust deed; and

(iii) (A) the balance, if any, to the person or persons legally entitled to the proceeds; or

(B) the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place.

(b) If the proceeds are deposited with the clerk of the district court, the trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses.

(c) Upon depositing the balance and filing the affidavit, the trustee is discharged from all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject to the order of the district court.

(2) The clerk shall give notice of the deposited funds to all claimants listed in the trustee's affidavit within 15 days of receiving the affidavit of deposit from the trustee.

(3) (a) ~~Any~~ A claimant may file a petition for adjudication of priority to the funds if the claimant pays to the court clerk a filing fee in the amount of \$50.

(b) A petitioner requesting funds under Subsection (3)(a) shall give notice of the petition to all claimants listed in the trustee's affidavit and to any other claimants known to the petitioner.

(c) The petitioner's notice under Subsection (3)(b) shall specify that all claimants have ~~45~~ 60 days to contest the petition by affidavit or counter-petition.

(d) If no affidavit or counter-petition is filed within ~~45~~ 60 days of the notice required by Subsection (3)(c), the court shall, without a hearing, enter an order directing the clerk of the court or the county treasurer to disburse the funds to the petitioner according to the petition.

(4) (a) If a petition for adjudication is contested by affidavit or counter-petition, the district court shall, within 20 days, conduct a hearing to establish the priorities of the parties to the deposited funds

and give notice to all known claimants of the date and time of the hearing.

(b) At a hearing under Subsection (4)(a), the court shall establish the priorities of the parties to the deposited funds and enter an order directing the clerk of the court or county treasurer to disburse the funds according to the court's determination.

(5) A person having or claiming to have an interest in the disposition of funds deposited with the court under Subsection (1) who fails to appear and assert the person's claim is barred from any claim to the funds after the entry of the court's order under Subsection (4).

CHAPTER 466**S. B. 209**

Passed March 7, 2017

Approved March 28, 2017

Effective May 9, 2017

BUDGETING REVISIONS

Chief Sponsor: Lincoln Fillmore

House Sponsor: Ken Ivory

LONG TITLE**General Description:**

This bill modifies provisions relating to budgeting requirements.

Highlighted Provisions:

This bill:

- ▶ requires the Office of Legislative Fiscal Analyst to include in the review and analysis of revenue estimates for existing and proposed revenue a comparison of current estimates of federal fund receipts to 15-year trends;
- ▶ requires the governor to include in the proposed budget submitted to the presiding officer of each house of the Legislature a projection of:
 - estimated federal fund receipts; and
 - 15-year trends for federal fund receipts; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

36-12-13, as last amended by Laws of Utah 2014, Chapters 344 and 430

63J-1-201, as last amended by Laws of Utah 2016, Chapter 298

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

Section 1. Section 36-12-13 is amended to read:**36-12-13. Office of Legislative Fiscal Analyst established -- Powers, functions, and duties -- Qualifications.**

(1) There is established an Office of Legislative Fiscal Analyst as a permanent staff office for the Legislature.

(2) The powers, functions, and duties of the Office of Legislative Fiscal Analyst under the supervision of the fiscal analyst are:

(a) to analyze in detail the state budget before the convening of each legislative session and make recommendations to the Legislature on each item or program appearing in the budget, including:

(i) funding for and performance of programs, acquisitions, and services currently undertaken by state government to determine whether each department, agency, institution, or program should:

(A) continue at its current level of expenditure;

(B) continue at a different level of expenditure; or

(C) be terminated; and

(ii) increases or decreases to spending authority and other resource allocations for the current and future fiscal years;

(b) to prepare cost estimates on all proposed bills that anticipate state government expenditures;

(c) to prepare cost estimates on all proposed bills that anticipate expenditures by county, municipal, local district, or special service district governments;

(d) to prepare cost estimates on all proposed bills that anticipate direct expenditures by any Utah resident or business, and the cost to the overall impacted Utah resident or business population;

(e) to prepare a review and analysis of revenue estimates for existing and proposed revenue acts, which shall include a comparison of:

(i) current estimates to 15-year trends by tax type; and

(ii) current federal fund receipt estimates to 15-year trends;

(f) to report instances in which the administration may be failing to carry out the expressed intent of the Legislature;

(g) to propose and analyze statutory changes for more effective operational economies or more effective administration;

(h) to prepare, before each annual general session of the Legislature, a summary showing the current status of the following as compared to the past nine fiscal years:

(i) debt;

(ii) long-term liabilities;

(iii) contingent liabilities;

(iv) General Fund borrowing;

(v) reserves;

(vi) fund and nonlapsing balances; and

(vii) cash funded capital investments;

(i) to make recommendations for addressing the items described in Subsection (2)(h) in the upcoming annual general session of the Legislature;

(j) to prepare, after each session of the Legislature, a summary showing the effect of the final legislative program on the financial condition of the state;

(k) to conduct organizational and management improvement studies;

(l) to prepare and deliver upon request of any interim committee or the Legislative Management Committee, reports on the finances of the state and on anticipated or proposed requests for appropriations;

(m) to recommend areas for research studies by the executive department or the interim committees;

(n) to appoint and develop a professional staff within budget limitations;

(o) to prepare and submit the annual budget request for the office;

(p) to develop a taxpayer receipt:

(i) available to taxpayers through a website; and

(ii) that allows a taxpayer to view on the website an estimate of how the taxpayer's tax dollars are expended for government purposes; and

(q) to publish or provide other information on taxation and government expenditures that may be accessed by the public.

(3) The Office of Legislative Fiscal Analyst shall report the review and analysis required under Subsection (2)(e) to the Executive Appropriations Committee of the Legislature before each upcoming annual general session of the Legislature.

(4) The legislative fiscal analyst shall have a master's degree in public administration, political science, economics, accounting, or the equivalent in academic or practical experience.

(5) In carrying out the duties provided for in this section, the legislative fiscal analyst may obtain access to all records, documents, and reports necessary to the scope of the legislative fiscal analyst's duties according to the procedures contained in Title 36, Chapter 14, Legislative Subpoena Powers.

Section 2. Section 63J-1-201 is amended to read:

63J-1-201. Governor's proposed budget to Legislature -- Contents -- Preparation -- Appropriations based on current tax laws and not to exceed estimated revenues.

(1) The governor shall deliver, not later than 30 days before the date the Legislature convenes in the annual general session, a confidential draft copy of the governor's proposed budget recommendations to the Office of the Legislative Fiscal Analyst according to the requirements of this section.

(2) (a) When submitting a proposed budget, the governor shall, within the first three days of the annual general session of the Legislature, submit to the presiding officer of each house of the Legislature:

(i) a proposed budget for the ensuing fiscal year;

(ii) a schedule for all of the proposed changes to appropriations in the proposed budget, with each change clearly itemized and classified; and

(iii) as applicable, a document showing proposed changes in estimated revenues that are based on changes in state tax laws or rates.

(b) The proposed budget shall include:

(i) a projection of:

(A) estimated revenues by major tax type;

(B) 15-year trends for each major tax type;

(C) estimated receipts of federal funds; ~~and~~

(D) 15-year trends for federal fund receipts; and

~~(D)~~ (E) appropriations for the next fiscal year;

(ii) the source of changes to all direct, indirect, and in-kind matching funds for all federal grants or assistance programs included in the budget;

(iii) changes to debt service;

(iv) a plan of proposed changes to appropriations and estimated revenues for the next fiscal year that is based upon the current fiscal year state tax laws and rates and considers projected changes in federal grants or assistance programs included in the budget;

(v) an itemized estimate of the proposed changes to appropriations for:

(A) the Legislative Department as certified to the governor by the president of the Senate and the speaker of the House;

(B) the Executive Department;

(C) the Judicial Department as certified to the governor by the state court administrator;

(D) changes to salaries payable by the state under the Utah Constitution or under law for lease agreements planned for the next fiscal year; and

(E) all other changes to ongoing or one-time appropriations, including dedicated credits, restricted funds, nonlapsing balances, grants, and federal funds;

(vi) for each line item, the average annual dollar amount of staff funding associated with all positions that were vacant during the last fiscal year;

(vii) deficits or anticipated deficits;

(viii) the recommendations for each state agency for new full-time employees for the next fiscal year, which shall also be provided to the State Building Board as required by Subsection 63A-5-103(3);

(ix) a written description and itemized report submitted by a state agency to the Governor's Office of Management and Budget under Section 63J-1-220, including:

(A) a written description and an itemized report provided at least annually detailing the expenditure of the state money, or the intended expenditure of any state money that has not been spent; and

(B) a final written itemized report when all the state money is spent;

(x) any explanation that the governor may desire to make as to the important features of the budget and any suggestion as to methods for the reduction of expenditures or increase of the state's revenue; and

(xi) information detailing certain fee increases as required by Section 63J-1-504.

(3) For the purpose of preparing and reporting the proposed budget:

(a) The governor shall require the proper state officials, including all public and higher education officials, all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditure of the state money, and all institutions applying for state money and appropriations, to provide itemized estimates of changes in revenues and appropriations.

(b) The governor may require the persons and entities subject to Subsection (3)(a) to provide other information under these guidelines and at times as the governor may direct, which may include a requirement for program productivity and performance measures, where appropriate, with emphasis on outcome indicators.

(c) The governor may require representatives of public and higher education, state departments and institutions, and other institutions or individuals applying for state appropriations to attend budget meetings.

(4) (a) The Governor's Office of Management and Budget shall provide to the Office of Legislative Fiscal Analyst, as soon as practicable, but no later than 30 days before the date the Legislature convenes in the annual general session, data, analysis, or requests used in preparing the governor's budget recommendations, notwithstanding the restrictions imposed on such recommendations by available revenue.

(b) The information under Subsection (4)(a) shall include:

(i) actual revenues and expenditures for the fiscal year ending the previous June 30;

(ii) estimated or authorized revenues and expenditures for the current fiscal year;

(iii) requested revenues and expenditures for the next fiscal year;

(iv) detailed explanations of any differences between the amounts appropriated by the Legislature in the current fiscal year and the amounts reported under Subsections (4)(b)(ii) and (iii);

(v) a statement of agency and program objectives, effectiveness measures, and program size indicators; and

(vi) other budgetary information required by the Legislature in statute.

(c) The budget information under Subsection (4)(a) shall cover:

(i) all items of appropriation, funds, and accounts included in appropriations acts for the current and previous fiscal years; and

(ii) any new appropriation, fund, or account items requested for the next fiscal year.

(d) The information provided under Subsection (4)(a) may be provided as a shared record under Section 63G-2-206 as considered necessary by the Governor's Office of Management and Budget.

(5) (a) In submitting the budget for the Department of Public Safety, the governor shall include a separate recommendation in the governor's budget for maintaining a sufficient number of alcohol-related law enforcement officers to maintain the enforcement ratio equal to or below the number specified in Subsection 32B-1-201(2).

(b) If the governor does not include in the governor's budget an amount sufficient to maintain the number of alcohol-related law enforcement officers described in Subsection (5)(a), the governor shall include a message to the Legislature regarding the governor's reason for not including that amount.

(6) (a) The governor may revise all estimates, except those relating to the Legislative Department, the Judicial Department, and those providing for the payment of principal and interest to the state debt and for the salaries and expenditures specified by the Utah Constitution or under the laws of the state.

(b) The estimate for the Judicial Department, as certified by the state court administrator, shall also be included in the budget without revision, but the governor may make separate recommendations on the estimate.

(7) The total appropriations requested for expenditures authorized by the budget may not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year.

(8) If any item of the budget as enacted is held invalid upon any ground, the invalidity does not affect the budget itself or any other item in it.

CHAPTER 467**S. B. 227**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

DOXING PROHIBITION AMENDMENTS

Chief Sponsor: Howard A. Stephenson

House Sponsor: Lee B. Perry

LONG TITLE**General Description:**

This bill prohibits the dissemination of personal information without authorization.

Highlighted Provisions:

This bill:

- ▶ prohibits the disclosure or dissemination of identifying information with the intent or knowledge that the information will be further disseminated;
- ▶ defines identifying information; and
- ▶ provides that if the information is used to harass the person, it is a second degree felony.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

76-6-702, as last amended by Laws of Utah 2005, Chapter 72

76-6-703, as last amended by Laws of Utah 2010, Chapter 193

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

Section 1. Section 76-6-702 is amended to read:**76-6-702. Definitions.**

As used in this part:

(1) "Access" means to directly or indirectly use, attempt to use, instruct, communicate with, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, computer network, or any means of communication with any of them.

(2) "Authorization" means having the express or implied consent or permission of the owner, or of the person authorized by the owner to give consent or permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.

(3) "Computer" means any electronic device or communication facility that stores, retrieves, processes, or transmits data.

~~[(5)]~~ (4) "Computer network" means:

(a) the interconnection of communication or telecommunication lines between:

- (i) computers; or
- (ii) computers and remote terminals; or

(b) the interconnection by wireless technology between:

- (i) computers; or
- (ii) computers and remote terminals.

~~[(6)]~~ (5) "Computer property" includes electronic impulses, electronically produced data, information, financial instruments, software, or programs, in either machine or human readable form, any other tangible or intangible item relating to a computer, computer system, computer network, and copies of any of them.

~~[(4)]~~ (6) "Computer system" means a set of related, connected or unconnected, devices, software, or other related computer equipment.

(7) "Confidential" means data, text, or computer property that is protected by a security system that clearly evidences that the owner or custodian intends that it not be available to others without the owner's or custodian's permission.

~~[(12)]~~ (8) "Financial instrument" includes any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, electronic fund transfer, automated clearing house transaction, credit card, or marketable security.

(9) (a) "Identifying information" means a person's:

- (i) social security number;
- (ii) driver license number;
- (iii) nondriver governmental identification number;
- (iv) bank account number;
- (v) student identification number;
- (vi) credit or debit card number;
- (vii) personal identification number;
- (viii) unique biometric data;
- (ix) employee or payroll number;
- (x) automated or electronic signature; or
- (xi) computer password.

(b) "Identifying information" does not include information that is lawfully available from publicly available information, or from federal, state, or local government records lawfully made available to the general public.

~~[(8)]~~ (10) "Information" does not include information obtained:

- (a) through use of:
 - (i) an electronic product identification or tracking system; or
 - (ii) other technology used by a retailer to identify, track, or price goods; and
- (b) by a retailer through the use of equipment designed to read the electronic product identification or tracking system data located within the retailer's location.

[49] (11) "License or entitlement" includes:

- (a) licenses, certificates, and permits granted by governments;
- (b) degrees, diplomas, and grades awarded by educational institutions;
- (c) military ranks, grades, decorations, and awards;
- (d) membership and standing in organizations and religious institutions;
- (e) certification as a peace officer;
- (f) credit reports; and
- (g) another record or datum upon which a person may be reasonably expected to rely in making decisions that will have a direct benefit or detriment to another.

[40] (12) "Security system" means a computer, computer system, network, or computer property that has some form of access control technology implemented, such as encryption, password protection, other forced authentication, or access control designed to keep out unauthorized persons.

[44] (13) "Services" include computer time, data manipulation, and storage functions.

[43] (14) "Software" or "program" means a series of instructions or statements in a form acceptable to a computer, relating to the operations of the computer, or permitting the functioning of a computer system in a manner designed to provide results including system control programs, application programs, or copies of any of them.

Section 2. Section 76-6-703 is amended to read:

76-6-703. Computer crimes and penalties.

(1) A person who without authorization gains or attempts to gain access to and alters, damages, destroys, discloses, or modifies any computer, computer network, computer property, computer system, computer program, computer data or software, and thereby causes damage to another, or obtains money, property, information, or a benefit for any person without legal right, is guilty of:

- (a) a class B misdemeanor when:
 - (i) the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is less than \$500; or
 - (ii) the information obtained is not confidential;
- (b) a class A misdemeanor when the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds \$500 but is less than \$1,500;
- (c) a third degree felony when the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds \$1,500 but is less than \$5,000;

(d) a second degree felony when the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds \$5,000; or

(e) a third degree felony when:

- (i) the property or benefit obtained or sought to be obtained is a license or entitlement;
- (ii) the damage is to the license or entitlement of another person; ~~or~~
- (iii) the information obtained is confidential or identifying information; or
- (iv) in gaining access the person breaches or breaks through a security system.

(2) (a) Except as provided in Subsection (2)(b), a person who intentionally or knowingly and without authorization gains or attempts to gain access to a computer, computer network, computer property, or computer system under circumstances not otherwise constituting an offense under this section is guilty of a class B misdemeanor.

(b) Notwithstanding Subsection (2)(a), a retailer that uses an electronic product identification or tracking system, or other technology to identify, track, or price goods is not guilty of a violation of Subsection (2)(a) if the equipment designed to read the electronic product identification or tracking system data and used by the retailer to identify, track, or price goods is located within the retailer's location.

(3) (a) A person who, with intent that electronic communication harassment occur, discloses or disseminates another person's identifying information with the expectation that others will further disseminate or use the person's identifying information is subject to the penalties outlined in Subsection (3)(b).

(b) If the disclosure or dissemination of another person's identifying information results in electronic communication harassment, as described in Section 76-9-201, of the person whose identifying information is disseminated, the person disseminating the information is guilty of:

(i) a class B misdemeanor if the person whose identifying information is disseminated is an adult; or

(ii) a class A misdemeanor if the person whose identifying information is disseminated is a minor.

(c) A second offense under Subsection (3)(b)(i) is a class A misdemeanor.

(d) A second offense under Subsection (3)(b)(ii), and a third or subsequent offense under this Subsection (3)(b), is a third degree felony.

[43] (4) A person who uses or knowingly allows another person to use any computer, computer network, computer property, or computer system, program, or software to devise or execute any artifice or scheme to defraud or to obtain money, property, services, or other things of value by false pretenses, promises, or representations, is guilty of

an offense based on the value of the money, property, services, or things of value, in the degree set forth in Subsection 76-10-1801(1).

[4] (5) A person who intentionally or knowingly and without authorization, interferes with or interrupts computer services to another authorized to receive the services is guilty of a class A misdemeanor.

[5] (6) It is an affirmative defense to Subsections (1) and (2) that a person obtained access or attempted to obtain access in response to, and for the purpose of protecting against or investigating, a prior attempted or successful breach of security of a computer, computer network, computer property, computer system whose security the person is authorized or entitled to protect, and the access attempted or obtained was no greater than reasonably necessary for that purpose.

(7) Subsections (3)(a) and (b) do not apply to a person who provides information in conjunction with a report under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, or Title 67, Chapter 21, Utah Protection of Public Employees Act.

(8) In accordance with 47 U.S.C.A. Sec. 230, this section may not apply to, and nothing in this section may be construed to impose liability or culpability on, an interactive computer service for content provided by another person.

(9) This section does not affect, limit, or apply to any activity or conduct that is protected by the constitution or laws of this state or by the constitution or laws of the United States.

CHAPTER 468**S. B. 262**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

UPSTART AMENDMENTS

Chief Sponsor: J. Stuart Adams

House Sponsor: Bradley G. Last

LONG TITLE**General Description:**

This bill amends provisions related to the UPSTART program.

Highlighted Provisions:

This bill:

- ▶ repeals provisions describing UPSTART as a pilot program, including provisions that would have repealed the UPSTART program;
- ▶ requires the State Board of Education to issue a request for two-year pilot proposals from certain educational technology providers;
- ▶ requires a contractor to work with the Department of Workforce Services and the State Board of Education to solicit certain families to participate in UPSTART;
- ▶ authorizes a contractor to request certain information to verify an individual's income; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 53A-1a-1001, as last amended by Laws of Utah 2014, Chapter 102
- 53A-1a-1002, as last amended by Laws of Utah 2014, Chapter 102
- 53A-1a-1003, as enacted by Laws of Utah 2008, Chapter 397
- 53A-1a-1004, as last amended by Laws of Utah 2014, Chapter 102
- 63I-2-253, as last amended by Laws of Utah 2016, Chapters 128, 229, 236, 271, and 318

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

Section 1. Section 53A-1a-1001 is amended to read:**53A-1a-1001. Definitions.**

As used in this part:

(1) "Contractor" means the educational technology provider selected by the State Board of Education under Section 53A-1a-1002.

(2) "Low income" means an income below 185% of the federal poverty guideline.

(3) "Preschool children" means children who are:

- (a) age four or five; and
- (b) have not entered kindergarten.

(4) "UPSTART" means the [pilot] project established by Section 53A-1a-1002 that uses a home-based educational technology program to develop school readiness skills of preschool children.

Section 2. Section 53A-1a-1002 is amended to read:**53A-1a-1002. UPSTART program to develop school readiness skills of preschool children.**

(1) UPSTART, a [pilot] project that uses a home-based educational technology program to develop school readiness skills of preschool children, is established within the public education system.

(2) UPSTART is created to:

(a) evaluate the effectiveness of giving preschool children access, at home, to interactive individualized instruction delivered by computers and the Internet to prepare them academically for success in school; and

(b) test the feasibility of scaling a home-based curriculum in reading, math, and science delivered by computers and the Internet to all preschool children in Utah.

(3) (a) The State Board of Education shall contract with an educational technology provider, selected through a request for proposals process, for the delivery of a home-based educational technology program for preschool children that meets the requirements of Subsection (4).

(b) (i) The State Board of Education shall, on or before July 1, 2019, issue a request for proposals for two-year pilot proposals from one or more educational technology providers that do not have an existing contract under this part with the state for the delivery of a home-based educational technology program for preschool children that meets the requirements of Subsection (4).

(ii) After the two-year pilots described in Subsection (3)(b)(i), the State Board of Education may enter into a contract with one or more educational technology providers that have participated in a Utah pilot.

(c) Every five years after July 1, 2021, the State Board of Education may issue a new request for proposals described in this section.

(4) A home-based educational technology program for preschool children shall meet the following standards:

(a) the contractor shall provide computer-assisted instruction for preschool children on a home computer connected by the Internet to a centralized file storage facility;

(b) the contractor shall:

(i) provide technical support to families for the installation and operation of the instructional software; and

(ii) provide for the installation of computer and Internet access in homes of low income families that cannot afford the equipment and service;

(c) the contractor shall have the capability of doing the following through the Internet:

- (i) communicating with parents;
 - (ii) updating the instructional software;
 - (iii) validating user access;
 - (iv) collecting usage data;
 - (v) storing research data; and
 - (vi) producing reports for parents, schools, and the Legislature;
- (d) the program shall include the following components:

(i) computer-assisted, individualized instruction in reading, mathematics, and science;

(ii) a multisensory reading tutoring program; and

(iii) a validated computer adaptive reading test that does not require the presence of trained adults to administer and is an accurate indicator of reading readiness of children who cannot read;

(e) the contractor shall have the capability to quickly and efficiently modify, improve, and support the product;

(f) the contractor shall work in cooperation with school district personnel who will provide administrative and technical support of the program as provided in Section 53A-1a-1003;

(g) the contractor shall solicit families to participate in the program as provided in Section 53A-1a-1004; and

(h) in implementing the home-based educational technology program, the contractor shall seek the advise and expertise of early childhood education professionals within the Utah System of Higher Education on issues such as:

(i) soliciting families to participate in the program;

(ii) providing training to families; and

(iii) motivating families to regularly use the instructional software.

(5) (a) ~~The contract shall provide funding for a home-based educational technology program for preschool children [for one year with an option to extend the contract for additional years or to expand the program to a greater number of preschool children], subject to the appropriation of money by the Legislature for UPSTART.~~

(b) An appropriation for a request for proposals described in Subsection (3)(b)(i) shall be separate from an appropriation described in Subsection (5)(a).

~~[(6) (a) The State Board of Education shall issue a request for proposals for a home-based educational technology program for preschool children that takes effect upon the expiration of the pilot project on July 1, 2019, provided that the Legislature reauthorizes and funds the program.]~~

~~[(6)] (6) The State Board of Education shall evaluate a proposal based on:~~

~~[(4)] (a) whether the home-based educational technology program meets the standards specified in Subsection (4);~~

~~[(iii)] (b) the results of an independent evaluation of the home-based educational technology program;~~

~~[(iii)] (c) the experience of the home-based educational technology program provider; and~~

~~[(iv)] (d) the per pupil cost of the home-based educational technology program.~~

Section 3. Section 53A-1a-1003 is amended to read:

53A-1a-1003. School district participation in UPSTART.

(1) A school district may participate in UPSTART if the local school board agrees to work in cooperation with the contractor to provide administrative and technical support for ~~[the pilot project]~~ UPSTART.

(2) Family participants in UPSTART shall be solicited from school districts that participate in UPSTART.

(3) A school district that participates in UPSTART shall:

(a) receive funding for:

(i) paraprofessional and technical support staff; and

(ii) travel, materials, and meeting costs of the program;

(b) participate in program training by the contractor; and

(c) agree to adopt standardized policies and procedures in implementing ~~[the pilot project]~~ UPSTART.

Section 4. Section 53A-1a-1004 is amended to read:

53A-1a-1004. Family participation in UPSTART -- Low income family verification.

(1) The contractor shall:

(a) solicit families to participate in UPSTART through a public information campaign and referrals from participating school districts~~[-];~~ and

(b) work with the Department of Workforce Services and the State Board of Education to solicit participation from families of children experiencing intergenerational poverty, as defined in Section 35A-9-102, to participate in UPSTART.

(2) (a) Preschool children who participate in UPSTART shall:

(i) be from families with diverse socioeconomic and ethnic backgrounds; ~~[and]~~

(ii) reside in different regions of the state in both urban and rural areas~~[-];~~ and

(iii) be given preference to participate if the preschool child's family resides in a rural area with limited prekindergarten services.

(b) (i) If the number of families who would like to participate in UPSTART exceeds the number of participants funded by the legislative appropriation, the contractor shall give priority to preschool children from low income families and preschool children who are English language learners.

(ii) At least 30% of the preschool children who participate in UPSTART shall be from low income families.

(3) A low income family that cannot afford a computer and Internet service to operate the instructional software may obtain a computer and peripheral equipment on loan and receive free Internet service for the duration of the family's participation in ~~[the pilot project]~~ UPSTART.

(4) (a) The contractor shall make the home-based educational technology program available to families at a cost agreed upon by the State Board of Education and the contractor if the number of families who would like to participate in UPSTART exceeds the number of participants funded by the legislative appropriation.

(b) The State Board of Education and the contractor shall annually post on their websites information on purchasing a home-based educational technology program as provided in Subsection (4)(a).

(5) (a) The contractor shall:

(i) determine if a family is a low income family for purposes of this part; and

(ii) use the same application form as described in Section 35A-9-401 or create an application form that requires an individual to provide and certify the information necessary for the contractor to make the determination described in Subsection (5)(a)(i).

(b) The contractor may:

(i) require an individual to submit supporting documentation; and

(ii) create a deadline for an individual to submit an application, if necessary.

Section 5. Section 63I-2-253 is amended to read:

63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.

(1) Section 53A-1-403.5 is repealed July 1, 2017.

(2) Section 53A-1-411 is repealed July 1, 2017.

(3) Section 53A-1-709 is repealed July 1, 2020.

(4) Subsection 53A-1a-513(4) is repealed July 1, 2017.

(5) Section 53A-1a-513.5 is repealed July 1, 2017.

~~[(6) Title 53A, Chapter 1a, Part 10, UPSTART, is repealed July 1, 2019.]~~

~~[(7)] (6) Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is repealed July 1, 2017.~~

~~[(8)] (7) Sections 53A-24-601 and 53A-24-602 are repealed January 1, 2018.~~

~~[(9)] (8) (a) Subsections 53B-2a-103(2) and (4) are repealed July 1, 2019.~~

(b) When repealing Subsections 53B-2a-103(2) and (4), the Office of Legislative Research and General Counsel shall, in addition to its authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

~~[(10)] (9) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project, is repealed July 1, 2023.~~

CHAPTER 469
S. B. 263

Passed March 9, 2017
Approved March 28, 2017
Effective May 9, 2017

WORK-BASED LEARNING AMENDMENTS

Chief Sponsor: Howard A. Stephenson
House Sponsor: Val L. Peterson
Cosponsor: Jacob L. Anderegg

LONG TITLE

General Description:

This bill amends provisions related to the Career and Technical Education Board.

Highlighted Provisions:

This bill:

- ▶ moves the Career and Technical Education Board from the Department of Workforce Services to the Governor's Office of Economic Development;
- ▶ amends membership of the Career and Technical Education Board;
- ▶ provides for the Career and Technical Education Board to study and make recommendations related to work-based learning; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates in fiscal year 2018:

- ▶ to the Governor's Office of Economic Development, as a one-time appropriation:
 - from the General Fund, \$9,500.

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63I-1-235, as last amended by Laws of Utah 2016, Chapter 43
63I-1-263, as last amended by Laws of Utah 2016, Chapters 65, 136, 156, 322, and 408

RENUMBERS AND AMENDS:

63N-12-401, (Renumbered from 35A-5-401, as enacted by Laws of Utah 2015, Chapter 273)
63N-12-402, (Renumbered from 35A-5-402, as last amended by Laws of Utah 2016, Chapter 236)
63N-12-403, (Renumbered from 35A-5-403, as enacted by Laws of Utah 2015, Chapter 273)

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

Section 1. Section 63I-1-235 is amended to read:

63I-1-235. Repeal dates, Title 35A.

[4] Subsection 35A-4-312(5)(p) is repealed July 1, 2017.

[2] Title 35A, Chapter 5, Part 4, Career and Technical Education Board, is repealed July 1, 2018.]

Section 2. Section 63I-1-263 is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63N.

(1) Subsection 63A-5-104(4)(h) is repealed on July 1, 2024.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2018.

(4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is repealed November 30, 2019.

(5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.

(6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(7) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

(8) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(9) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states "the Resource Development Coordinating Committee," is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read "(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.;"

(c) in Subsection 23-14-21(3), the language that states "and the Resource Development Coordinating Committee" is repealed;

(d) in Subsection 23-21-2.3(1), the language that states "the Resource Development Coordinating Committee created in Section 63J-4-501 and" is repealed;

(e) in Subsection 23-21-2.3(2), the language that states "the Resource Development Coordinating Committee and" is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word "and" is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed; and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

(10) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

(11) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2017.

(12) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.

(13) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection (13)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections (13)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

(14) Section 63N-2-512 is repealed on July 1, 2021.

(15) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection (15)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

(16) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed July 1, 2018.

(17) Title 63N, Chapter 12, Part 4, Career and Technical Education Board, is repealed July 1, 2018.

Section 3. Section 63N-12-401, which is renumbered from Section 35A-5-401 is renumbered and amended to read:

Part 4. Career and Technical Education Board

[35A-5-401]. 63N-12-401. Definitions.

As used in this part:

(1) "CTE" means career and technical education.

(2) "CTE Board" means the Career and Technical Education Board created in Section [35A-5-402] 63N-12-402.

Section 4. Section 63N-12-402, which is renumbered from Section 35A-5-402 is renumbered and amended to read:

[35A-5-402]. 63N-12-402. Career and Technical Education Board creation -- Membership.

(1) There is created the Career and Technical Education Board, within [the department] GOED, composed of the following members:

(a) the state superintendent of public instruction or the state superintendent of public instruction's designee;

(b) the commissioner of higher education or the commissioner of higher education's designee;

(c) the [~~Utah College of Applied Technology~~] commissioner of technical education, as defined in Section 53B-2a-101, or the [~~Utah College of Applied Technology~~] commissioner of technical education's designee;

(d) the executive director of the [department] Department of Workforce Services or the executive director of the department's designee;

(e) the executive director of [the Governor's Office of Economic Development] GOED or the executive director of [the Governor's Office of Economic Development's] GOED's designee;

(f) one member of the governor's staff, appointed by the governor;

(g) five private sector members, representing business or industry that employs individuals who hold certificates issued by a CTE program, appointed by the governor;

(h) [~~a member~~] two members of the Senate, appointed by the president of the Senate; and

(i) [~~a member~~] two members of the House of Representatives, appointed by the speaker of the House of Representatives.

(2) The CTE Board shall select a chair and vice chair from among the members of the CTE Board.

(3) The CTE Board shall meet at least quarterly.

(4) Attendance of a simple majority of the members of the CTE Board constitutes a quorum for the transaction of official CTE Board business.

(5) Formal action by the CTE Board requires the majority vote of a quorum.

(6) A member of the CTE Board:

(a) may not receive compensation or benefits for the member's service; and

(b) who is not a legislator may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 5. Section 63N-12-403, which is renumbered from Section 35A-5-403 is renumbered and amended to read:

[35A-5-403]. 63N-12-403. Career and Technical Education Board -- Duties.

(1) The CTE Board shall conduct a comprehensive study of CTE in Utah that includes:

(a) an inventory of all CTE programs in Utah, including, for each CTE program:

(i) a description of the program;

(ii) the number of students the program has the capacity to serve each year;

(iii) the number of students the program has served since October 1, 2010, by school year;

(iv) the number of certificates the program has issued since October 1, 2010, by school year;

(v) a materials and equipment inventory for the program;

(vi) the amount of funding dedicated to the program;

(vii) the program's geographic location;

(viii) employment information for students who have completed the program since October 1, 2010, if practical and feasible; and

(ix) the extent to which overlap or duplication exists between the program and other CTE or private programs;

(b) a description of CTE funding in the state, including:

(i) the total amount of state CTE funding provided to:

(A) the public education system;

(B) the higher education system; and

(C) the Utah College of Applied Technology; and

(ii) for each CTE program:

(A) total CTE funding received; and

(B) the cost per student served;

(c) an assessment of Utah business and industry needs for employees with skills taught in CTE classes, including:

(i) the number of current and anticipated jobs in Utah, by geographic region, and the CTE skills required for the jobs;

(ii) the starting and average salary, by geographic region and type of CTE skills, for an individual who has skills taught in a CTE program; and

(iii) the extent to which current CTE programs can meet the employment needs of Utah business and industry; and

(d) any other information the CTE Board considers relevant to the study.

(2) In conducting the comprehensive study described in Subsection (1), the CTE Board shall coordinate with the Office of the Legislative Auditor General and, to the extent possible, use data collected by the Office of the Legislative Auditor General to complete the study.

(3) (a) The State Board of Education, State Board of Regents, and Utah College of Applied Technology shall:

(i) provide data that the department requests for the study; and

(ii) coordinate with the department to conduct the study.

(b) Notwithstanding the requirements in Subsection (3)(a), the [board] State Board of Education shall have discretion to gather and report information as part of the comprehensive study of CTE that is readily accessible through current financial and data systems.

(4) The CTE Board may:

(a) contract with a third party, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, to conduct the comprehensive study described in Subsection (1); and

(b) as funding allows, hire staff.

(5) During 2017, the CTE Board shall study work-based learning, including:

(a) successful work-based learning programs or related programs in other states or countries for high school students that successfully align career and technical education with real-world skills, opportunities for high-paying jobs, and ongoing education opportunities upon graduation;

(b) the potential benefits and challenges of a statewide work-based learning program for high schools, including on-the-job training as part of a potential statewide program for high school students; and

(c) the opportunities for and challenges of cooperation between government agencies and the private business community in a statewide work-based learning program.

[~~(5)~~] (6) Based on the comprehensive study described in Subsection (1) and the study of work-based learning described in Section (5), the CTE Board shall make written recommendations to the Legislature related to:

- ~~[(a) CTE funding;]~~
- ~~[(b) CTE governance and administration;]~~
- ~~[(c) benchmarks or criteria for a CTE program to demonstrate that the CTE program fills;]~~
- ~~[(i) an educational need for a student;]~~
- ~~[(ii) a school's need to offer a particular CTE program; or]~~
- ~~[(iii) an employment need for a Utah business or industry; and]~~
- ~~[(d) any other CTE related recommendations.]~~

- (a) career and technical education; and
- (b) work-based learning programs.

~~[(6)]~~ (7) (a) On or before November 1, 2015, the CTE Board shall report on the progress of the comprehensive study described in Subsection (1).

(b) On or before November 1, 2016, the CTE Board shall report on the final results of the comprehensive study described in Subsection (1); ~~and~~.

(c) On or before ~~[November]~~ October 1, 2017, the CTE Board shall prepare a written report on the recommendations described in Subsection ~~[(5)]~~ (6).

(d) The CTE Board shall ~~[make]~~ provide the reports described in this Subsection ~~[(6)]~~ (7) to:

- (i) the Education Interim Committee;
- (ii) the Executive Appropriations Committee;
- (iii) the Economic Development and Workforce Services Interim Committee;
- ~~[(iii)]~~ (iv) the governor;
- ~~[(iv)]~~ (v) the State Board of Education;
- ~~[(v)]~~ (vi) the State Board of Regents; and
- ~~[(vi)]~~ (vii) the Utah College of Applied Technology Board of Trustees.

Section 6. Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

To the Governor's Office of Economic Development

From General Fund, One-time \$9,500

Schedule of Programs:

Administration \$9,500

The Legislature intends that the Governor's Office of Economic Development use the

appropriation under this section to administer the Career and Technical Education Board described in Title 63N, Chapter 12, Part 4, Career and Technical Education Board.

CHAPTER 470**S. B. 273**

Passed March 9, 2017

Approved March 28, 2017

Effective March 28, 2017

ENERGY DEVELOPMENT AMENDMENTS

Chief Sponsor: J. Stuart Adams
House Sponsor: Francis D. Gibson

LONG TITLE**General Description:**

This bill enacts the Commercial Property Assessed Clean Energy Act or C-PACE Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts the Commercial Property Assessed Clean Energy Act or C-PACE Act;
- ▶ repeals provisions related to energy assessments from the Assessment Area Act;
- ▶ limits the availability of judicial recourse to challenge or enjoin certain assessments and bonds;
- ▶ creates the C-PACE district;
- ▶ requires the Office of Energy Development (OED) to administer and direct the actions of the C-PACE district;
- ▶ allows OED to delegate OED's authority over the C-PACE district to a third party, subject to certain contractual provisions;
- ▶ provides for a local governing body to adopt an energy assessment resolution or ordinance to designate an energy assessment area and levy an energy assessment upon private property where the property owner consents to the assessment;
- ▶ allows a local entity to levy an assessment against government land under certain circumstances;
- ▶ allows a property owner to pay an energy assessment in installments;
- ▶ provides for the creation of an assessment fund and limits the use and investment of money in the fund;
- ▶ describes the characteristics of an energy assessment lien;
- ▶ allows a local entity to assign an energy assessment lien to a third-party lender to provide financing for certain improvements, subject to certain contractual provisions;
- ▶ provides for the enforcement of an energy assessment lien, including for delinquent assessment payments;
- ▶ provides for the release and discharge of an assessed property and an energy assessment area;
- ▶ allows a local entity to issue an energy assessment bond and a refunding assessment bond;
- ▶ limits the liability and obligation of a local entity issuing an energy assessment bond;
- ▶ provides for the reduction of assessments after the issuance of a refunding assessment bond;
- ▶ subjects a refunding assessment bond that a local entity has already issued to the provisions of this bill;

- ▶ adds funds that OED collects for directing and administering the C-PACE district to the list of nonlapsing funds and accounts in the Budgetary Procedures Act;
- ▶ enacts a sunset date, subject to review, for the nonlapsing status of OED's funds;
- ▶ allows OED to charge fees for the performance of OED's duties; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

- 11-42-102, as last amended by Laws of Utah 2016, Chapter 371
- 11-42-103, as last amended by Laws of Utah 2016, Chapter 371
- 11-42-202, as last amended by Laws of Utah 2016, Chapters 85 and 371
- 11-42-301, as last amended by Laws of Utah 2016, Chapter 371
- 11-42-408, as last amended by Laws of Utah 2016, Chapter 371
- 11-42-411, as last amended by Laws of Utah 2016, Chapter 371
- 63I-1-263, as last amended by Laws of Utah 2016, Chapters 65, 136, 156, 322, and 408
- 63J-1-505, as last amended by Laws of Utah 2014, Chapter 189
- 63J-1-602.4, as last amended by Laws of Utah 2016, Chapters 193 and 240
- 63M-4-401, as last amended by Laws of Utah 2015, Chapters 356 and 378

ENACTS:

- 11-42a-101, Utah Code Annotated 1953
- 11-42a-102, Utah Code Annotated 1953
- 11-42a-103, Utah Code Annotated 1953
- 11-42a-104, Utah Code Annotated 1953
- 11-42a-105, Utah Code Annotated 1953
- 11-42a-106, Utah Code Annotated 1953
- 11-42a-201, Utah Code Annotated 1953
- 11-42a-202, Utah Code Annotated 1953
- 11-42a-203, Utah Code Annotated 1953
- 11-42a-204, Utah Code Annotated 1953
- 11-42a-205, Utah Code Annotated 1953
- 11-42a-206, Utah Code Annotated 1953
- 11-42a-301, Utah Code Annotated 1953
- 11-42a-302, Utah Code Annotated 1953
- 11-42a-303, Utah Code Annotated 1953
- 11-42a-304, Utah Code Annotated 1953
- 11-42a-305, Utah Code Annotated 1953
- 11-42a-401, Utah Code Annotated 1953
- 11-42a-402, Utah Code Annotated 1953
- 11-42a-403, Utah Code Annotated 1953
- 11-42a-404, Utah Code Annotated 1953

REPEALS:

- 11-42-209, as last amended by Laws of Utah 2016, Chapter 371

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

Section 1. Section 11-42-102 is amended to read:**11-42-102. Definitions.**

(1) “Adequate protests” means timely filed, written protests under Section 11-42-203 that represent at least 40% of the frontage, area, taxable value, fair market value, lots, number of connections, or equivalent residential units of the property proposed to be assessed, according to the same assessment method by which the assessment is proposed to be levied, after eliminating:

(a) protests relating to:

(i) property that has been deleted from a proposed assessment area; or

(ii) an improvement that has been deleted from the proposed improvements to be provided to property within the proposed assessment area; and

(b) protests that have been withdrawn under Subsection 11-42-203(3).

(2) “Assessment area” means an area, or, if more than one area is designated, the aggregate of all areas within a local entity’s jurisdictional boundaries that is designated by a local entity under Part 2, Designating an Assessment Area, for the purpose of financing the costs of improvements, operation and maintenance, or economic promotion activities that benefit property within the area.

(3) “Assessment bonds” means bonds that are:

(a) issued under Section 11-42-605; and

(b) payable in part or in whole from assessments levied in an assessment area, improvement revenues, and a guaranty fund or reserve fund.

(4) “Assessment fund” means a special fund that a local entity establishes under Section 11-42-412.

(5) “Assessment lien” means a lien on property within an assessment area that arises from the levy of an assessment, as provided in Section 11-42-501.

(6) “Assessment method” means the method:

(a) by which an assessment is levied against benefitted property, whether by frontage, area, taxable value, fair market value, lot, parcel, number of connections, equivalent residential unit, any combination of these methods, or any other method; and

(b) that, when applied to a benefitted property, accounts for an assessment that meets the requirements of Section 11-42-409.

(7) “Assessment ordinance” means an ordinance adopted by a local entity under Section 11-42-404 that levies an assessment on benefitted property within an assessment area.

(8) “Assessment resolution” means a resolution adopted by a local entity under Section 11-42-404 that levies an assessment on benefitted property within an assessment area.

(9) “Benefitted property” means property within an assessment area that directly or indirectly benefits from improvements, operation and maintenance, or economic promotion activities.

(10) “Bond anticipation notes” means notes issued under Section 11-42-602 in anticipation of the issuance of assessment bonds.

(11) “Bonds” means assessment bonds and refunding assessment bonds.

(12) “Commercial area” means an area in which at least 75% of the property is devoted to the interchange of goods or commodities.

(13) (a) “Commercial or industrial real property” means real property used directly or indirectly or held for one of the following purposes or activities, regardless of whether the purpose or activity is for profit:

(i) commercial;

(ii) mining;

(iii) industrial;

(iv) manufacturing;

(v) governmental;

(vi) trade;

(vii) professional;

(viii) a private or public club;

(ix) a lodge;

(x) a business; or

(xi) a similar purpose.

(b) “Commercial or industrial real property” includes real property that:

(i) is used as or held for dwelling purposes; and

(ii) contains more than four rental units.

(14) “Connection fee” means a fee charged by a local entity to pay for the costs of connecting property to a publicly owned sewer, storm drainage, water, gas, communications, or electrical system, whether or not improvements are installed on the property.

(15) “Contract price” means:

(a) the cost of acquiring an improvement, if the improvement is acquired; or

(b) the amount payable to one or more contractors for the design, engineering, inspection, and construction of an improvement.

(16) “Designation ordinance” means an ordinance adopted by a local entity under Section 11-42-206 designating an assessment area.

(17) “Designation resolution” means a resolution adopted by a local entity under Section 11-42-206 designating an assessment area.

(18) “Economic promotion activities” means activities that promote economic growth in a commercial area of a local entity, including:

(a) sponsoring festivals and markets;

(b) promoting business investment or activities;

(c) helping to coordinate public and private actions; and

(d) developing and issuing publications designed to improve the economic well-being of the commercial area.

~~[(19) “Electric vehicle charging infrastructure” means equipment that is:]~~

~~[(a) permanently affixed to commercial or industrial real property; and]~~

~~[(b) designed to deliver electric energy to a qualifying electric vehicle or a qualifying plug-in hybrid vehicle as those terms are defined in Subsection 59-7-605(1).]~~

~~[(20) “Energy efficiency upgrade” means an improvement that is permanently affixed to commercial or industrial real property that is designed to reduce energy consumption, including:]~~

~~[(a) insulation in:]~~

~~[(i) a wall, roof, floor, or foundation; or]~~

~~[(ii) a heating and cooling distribution system;]~~

~~[(b) a window or door, including:]~~

~~[(i) a storm window or door;]~~

~~[(ii) a multiglazed window or door;]~~

~~[(iii) a heat absorbing window or door;]~~

~~[(iv) a heat reflective glazed and coated window or door;]~~

~~[(v) additional window or door glazing;]~~

~~[(vi) a window or door with reduced glass area; or]~~

~~[(vii) other window or door modifications;]~~

~~[(c) an automatic energy control system;]~~

~~[(d) in a building or a central plant, a heating, ventilation, or air conditioning and distribution system;]~~

~~[(e) caulk or weatherstripping;]~~

~~[(f) a light fixture that does not increase the overall illumination of a building unless an increase is necessary to conform with the applicable building code;]~~

~~[(g) an energy recovery system;]~~

~~[(h) a daylighting system;]~~

~~[(i) measures to reduce the consumption of water, through conservation or more efficient use of water, including:]~~

~~[(i) installation of low-flow toilets and showerheads;]~~

~~[(ii) installation of timer or timing systems for a hot water heater; or]~~

~~[(iii) installation of rain catchment systems; or]~~

~~[(j) a modified, installed, or remodeled fixture that is approved as a utility cost-saving measure by the governing body of a local entity.]~~

~~[(21) (19) “Environmental remediation activity” means a surface or subsurface enhancement, effort,~~

cost, initial or ongoing maintenance expense, facility, installation, system, earth movement, or change to grade or elevation ~~[which] that improves the use, function, aesthetics, or environmental condition of [publically or privately] publicly owned property.~~

~~[(22) (20) “Equivalent residential unit” means a dwelling, unit, or development that is equal to a single-family residence in terms of the nature of its use or impact on an improvement to be provided in the assessment area.~~

~~[(23) (21) “Governing body” means:~~

~~(a) for a county, city, or town, the legislative body of the county, city, or town;~~

~~(b) for a local district, the board of trustees of the local district;~~

~~(c) for a special service district:~~

~~(i) the legislative body of the county, city, or town that established the special service district, if no administrative control board has been appointed under Section 17D-1-301; or~~

~~(ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301; and~~

~~(d) for the military installation development authority created in Section 63H-1-201, the authority board, as defined in Section 63H-1-102.~~

~~[(24) (22) “Guaranty fund” means the fund established by a local entity under Section 11-42-701.~~

~~[(25) (23) “Improved property” means property upon which a residential, commercial, or other building has been built.~~

~~[(26) (24) “Improvement”:~~

~~(a) (i) means a publicly owned infrastructure, system, ~~[or other facility, a publicly or privately owned energy efficiency upgrade, a publicly or privately owned renewable energy system, or publicly or privately owned] or environmental remediation activity that:~~~~

~~(A) a local entity is authorized to provide;~~

~~(B) the governing body of a local entity determines is necessary or convenient to enable the local entity to provide a service that the local entity is authorized to provide; or~~

~~(C) a local entity is requested to provide through an interlocal agreement in accordance with Title 11, Chapter 13, Interlocal Cooperation Act; and~~

~~(ii) includes facilities in an assessment area, including a private driveway, an irrigation ditch, and a water turnout, that:~~

~~(A) can be conveniently installed at the same time as an infrastructure, system, or other facility described in Subsection ~~[(26) (24)](24)(a)(i); and~~~~

~~(B) are requested by a property owner on whose property or for whose benefit the infrastructure, system, or other facility is being installed; or~~

(b) for a local district created to assess groundwater rights in accordance with Section 17B-1-202, means a system or plan to regulate groundwater withdrawals within a specific groundwater basin in accordance with Sections 17B-1-202 and 73-5-15.

~~[(27)]~~ (25) "Improvement revenues":

(a) means charges, fees, impact fees, or other revenues that a local entity receives from improvements; and

(b) does not include revenue from assessments.

~~[(28)]~~ (26) "Incidental refunding costs" means any costs of issuing refunding assessment bonds and calling, retiring, or paying prior bonds, including:

(a) legal and accounting fees;

(b) charges of financial advisors, escrow agents, certified public accountant verification entities, and trustees;

(c) underwriting discount costs, printing costs, the costs of giving notice;

(d) any premium necessary in the calling or retiring of prior bonds;

(e) fees to be paid to the local entity to issue the refunding assessment bonds and to refund the outstanding prior bonds;

(f) any other costs that the governing body determines are necessary and proper to incur in connection with the issuance of refunding assessment bonds; and

(g) any interest on the prior bonds that is required to be paid in connection with the issuance of the refunding assessment bonds.

~~[(29)]~~ (27) "Installment payment date" means the date on which an installment payment of an assessment is payable.

~~[(30)]~~ (28) "Interim warrant" means a warrant issued by a local entity under Section 11-42-601.

~~[(31)]~~ (29) "Jurisdictional boundaries" means:

(a) for a county, the boundaries of the unincorporated area of the county; and

(b) for each other local entity, the boundaries of the local entity.

~~[(32)]~~ (30) "Local district" means a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts.

~~[(33)]~~ (31) "Local entity" means a county, city, town, special service district, local district, an interlocal entity as defined in Section 11-13-103, a military installation development authority created in Section 63H-1-201, or other political subdivision of the state.

~~[(34)]~~ (32) "Local entity obligations" means assessment bonds, refunding assessment bonds, interim warrants, and bond anticipation notes issued by a local entity.

~~[(35)]~~ (33) "Mailing address" means:

(a) a property owner's last-known address using the name and address appearing on the last completed real property assessment roll of the county in which the property is located; and

(b) if the property is improved property:

(i) the property's street number; or

(ii) the post office box, rural route number, or other mailing address of the property, if a street number has not been assigned.

~~[(36)]~~ (34) "Net improvement revenues" means all improvement revenues that a local entity has received since the last installment payment date, less all amounts payable by the local entity from those improvement revenues for operation and maintenance costs.

~~[(37)]~~ (35) "Operation and maintenance costs":

(a) means the costs that a local entity incurs in operating and maintaining improvements in an assessment area, whether or not those improvements have been financed under this chapter; and

(b) includes service charges, administrative costs, ongoing maintenance charges, and tariffs or other charges for electrical, water, gas, or other utility usage.

~~[(38)]~~ (36) "Overhead costs" means the actual costs incurred or the estimated costs to be incurred by a local entity in connection with an assessment area for appraisals, legal fees, filing fees, financial advisory charges, underwriting fees, placement fees, escrow, trustee, and paying agent fees, publishing and mailing costs, costs of levying an assessment, recording costs, and all other incidental costs.

~~[(39)]~~ (37) "Prior assessment ordinance" means the ordinance levying the assessments from which the prior bonds are payable.

~~[(40)]~~ (38) "Prior assessment resolution" means the resolution levying the assessments from which the prior bonds are payable.

~~[(41)]~~ (39) "Prior bonds" means the assessment bonds that are refunded in part or in whole by refunding assessment bonds.

~~[(42)]~~ (40) "Project engineer" means the surveyor or engineer employed by or the private consulting engineer engaged by a local entity to perform the necessary engineering services for and to supervise the construction or installation of the improvements.

~~[(43)]~~ (41) "Property" includes real property and any interest in real property, including water rights and leasehold rights.

~~[(44)]~~ (42) "Property price" means the price at which a local entity purchases or acquires by eminent domain property to make improvements in an assessment area.

~~[(45)]~~ (43) "Provide" or "providing," with reference to an improvement, includes the

acquisition, construction, reconstruction, renovation, maintenance, repair, operation, and expansion of an improvement.

[446] (44) "Public agency" means:

(a) the state or any agency, department, or division of the state; and

(b) a political subdivision of the state.

[447] (45) "Reduced payment obligation" means the full obligation of an owner of property within an assessment area to pay an assessment levied on the property after the assessment has been reduced because of the issuance of refunding assessment bonds, as provided in Section 11-42-608.

[448] (46) "Refunding assessment bonds" means assessment bonds that a local entity issues under Section 11-42-607 to refund, in part or in whole, assessment bonds.

[449] ~~"Renewable energy system" means a product, a system, a device, or an interacting group of devices that is permanently affixed to commercial or industrial real property and:~~

~~[(a) produces energy from renewable resources, including:]~~

~~[(i) a photovoltaic system;]~~

~~[(ii) a solar thermal system;]~~

~~[(iii) a wind system;]~~

~~[(iv) a geothermal system, including:]~~

~~[(A) a generation system;]~~

~~[(B) a direct-use system; or]~~

~~[(C) a ground source heat pump system;]~~

~~[(v) a microhydro system; or]~~

~~[(vi) any other renewable source system approved by the governing body of a local entity; or]~~

~~[(b) stores energy, including:]~~

~~[(i) a battery storage system; or]~~

~~[(ii) any other energy storing system approved by the governing body of a local entity.]~~

[450] (47) "Reserve fund" means a fund established by a local entity under Section 11-42-702.

[451] (48) "Service" means:

(a) water, sewer, storm drainage, garbage collection, library, recreation, communications, or electric service;

(b) economic promotion activities; or

(c) any other service that a local entity is required or authorized to provide.

[452] (49) "Special service district" means the same as that term is defined in Section 17D-1-102.

[453] (50) "Unassessed benefitted government property" means property that a local entity may not assess in accordance with Section 11-42-408

but is benefitted by an improvement, operation and maintenance, or economic promotion activities.

[454] (51) "Unimproved property" means property upon which no residential, commercial, or other building has been built.

[455] (52) "Voluntary assessment area" means an assessment area that contains only property whose owners have voluntarily consented to an assessment.

Section 2. Section 11-42-103 is amended to read:

11-42-103. Limit on effect of this chapter.

(1) Nothing in this chapter may be construed to authorize a local entity to provide an improvement or service that the local entity is not otherwise authorized to provide.

(2) Notwithstanding Subsection (1), a local entity may provide ~~[a renewable energy system, an energy efficiency upgrade, electric vehicle charging infrastructure, or]~~ an environmental remediation activity that the local entity finds or determines to be in the public interest.

Section 3. Section 11-42-202 is amended to read:

11-42-202. Requirements applicable to a notice of a proposed assessment area designation.

(1) Each notice required under Subsection 11-42-201(2)(a) shall:

(a) state that the local entity proposes to:

(i) designate one or more areas within the local entity's jurisdictional boundaries as an assessment area;

(ii) provide an improvement to property within the proposed assessment area; and

(iii) finance some or all of the cost of improvements by an assessment on benefitted property within the assessment area;

(b) describe the proposed assessment area by any reasonable method that allows an owner of property in the proposed assessment area to determine that the owner's property is within the proposed assessment area;

(c) describe, in a general and reasonably accurate way, the improvements to be provided to the assessment area, including:

(i) the nature of the improvements; and

(ii) the location of the improvements, by reference to streets or portions or extensions of streets or by any other means that the governing body chooses that reasonably describes the general location of the improvements;

(d) state the estimated cost of the improvements as determined by a project engineer;

(e) for the version of notice mailed in accordance with Subsection (4)(b), state the estimated total assessment specific to the benefitted property for which the notice is mailed;

(f) state that the local entity proposes to levy an assessment on benefitted property within the assessment area to pay some or all of the cost of the improvements according to the estimated benefits to the property from the improvements;

(g) if applicable, state that an unassessed benefitted government property will receive improvements for which the cost will be allocated proportionately to the remaining benefitted properties within the proposed assessment area and that a description of each unassessed benefitted government property is available for public review at the location or website described in Subsection (6);

(h) state the assessment method by which the governing body proposes to levy the assessment, including, if the local entity is a municipality or county, whether the assessment will be collected:

(i) by directly billing a property owner; or

(ii) by inclusion on a property tax notice issued in accordance with Section 59-2-1317 and in compliance with Section 11-42-401;

(i) state:

(i) the date described in Section 11-42-203 and the location at which protests against designation of the proposed assessment area or of the proposed improvements are required to be filed;

(ii) the method by which the governing body will determine the number of protests required to defeat the designation of the proposed assessment area or acquisition or construction of the proposed improvements; and

(iii) in large, boldface, and conspicuous type that a property owner must protest the designation of the assessment area in writing if the owner objects to the area designation or being assessed for the proposed improvements, operation and maintenance costs, or economic promotion activities;

(j) state the date, time, and place of the public hearing required in Section 11-42-204;

(k) if the governing body elects to create and fund a reserve fund under Section 11-42-702, include a description of:

(i) how the reserve fund will be funded and replenished; and

(ii) how remaining money in the reserve fund is to be disbursed upon full payment of the bonds;

(l) if the governing body intends to designate a voluntary assessment area, include a property owner consent form that:

(i) estimates the total assessment to be levied against the particular parcel of property;

(ii) describes any additional benefits that the governing body expects the assessed property to receive from the improvements;

(iii) designates the date and time by which the fully executed consent form is required to be submitted to the governing body; and

(iv) if the governing body intends to enforce an assessment lien on the property in accordance with Subsection 11-42-502.1(2)(c):

(A) appoints a trustee that satisfies the requirements described in Section 57-1-21;

(B) gives the trustee the power of sale; and

(C) explains that if an assessment or an installment of an assessment is not paid when due, the local entity may sell the property owner's property to satisfy the amount due plus interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances;

(m) if the local entity intends to levy an assessment to pay operation and maintenance costs or for economic promotion activities, include:

(i) a description of the operation and maintenance costs or economic promotion activities to be paid by assessments and the initial estimated annual assessment to be levied;

(ii) a description of how the estimated assessment will be determined;

(iii) a description of how and when the governing body will adjust the assessment to reflect the costs of:

(A) in accordance with Section 11-42-406, current economic promotion activities; or

(B) current operation and maintenance costs;

(iv) a description of the method of assessment if different from the method of assessment to be used for financing any improvement; and

(v) a statement of the maximum number of years over which the assessment will be levied for:

(A) operation and maintenance costs; or

(B) economic promotion activities;

(n) if the governing body intends to divide the proposed assessment area into classifications under Subsection 11-42-201(1)(b), include a description of the proposed classifications;

(o) if applicable, state the portion and value of the improvement that will be increased in size or capacity to serve property outside of the assessment area and how the increases will be financed; and

(p) state whether the improvements will be financed with a bond and, if so, the currently estimated interest rate and term of financing, subject to Subsection (2), for which the benefitted properties within the assessment area may be obligated.

(2) The estimated interest rate and term of financing in Subsection (1)(p) may not be interpreted as a limitation to the actual interest rate incurred or the actual term of financing as subject to the market rate at the time of the issuance of the bond.

(3) A notice required under Subsection 11-42-201(2)(a) may contain other information that the governing body considers to be appropriate, including:

(a) the amount or proportion of the cost of the improvement to be paid by the local entity or from sources other than an assessment;

(b) the estimated total amount of each type of assessment for the various improvements to be financed according to the method of assessment that the governing body chooses; and

(c) provisions for any improvements described in Subsection 11-42-102(26)(a)(ii) 11-42-102(24)(a)(ii).

(4) Each notice required under Subsection 11-42-201(2)(a) shall:

(a) (i) (A) be published in a newspaper of general circulation within the local entity's jurisdictional boundaries, once a week for four consecutive weeks, with the last publication at least five but not more than 20 days before the day of the hearing required in Section 11-42-204; or

(B) if there is no newspaper of general circulation within the local entity's jurisdictional boundaries, be posted in at least three public places within the local entity's jurisdictional boundaries at least 20 but not more than 35 days before the day of the hearing required in Section 11-42-204; and

(ii) be published on the Utah Public Notice Website described in Section 63F-1-701 for four weeks before the deadline for filing protests specified in the notice under Subsection (1)(i); and

(b) be mailed, postage prepaid, within 10 days after the first publication or posting of the notice under Subsection (4)(a) to each owner of property to be assessed within the proposed assessment area at the property owner's mailing address.

(5) (a) The local entity may record the version of the notice that is published or posted in accordance with Subsection (4)(a) with the office of the county recorder, by legal description and tax identification number as identified in county records, against the property proposed to be assessed.

(b) The notice recorded under Subsection (5)(a) expires and is no longer valid one year after the day on which the local entity records the notice if the local entity has failed to adopt the designation ordinance or resolution under Section 11-42-201 designating the assessment area for which the notice was recorded.

(6) A local entity shall make available on the local entity's website, or, if no website is available, at the local entity's place of business, the address and type of use of each unassessed benefitted government property described in Subsection (1)(g).

(7) If a governing body fails to provide actual or constructive notice under this section, the local entity may not assess a levy against a benefitted property omitted from the notice unless:

(a) the property owner gives written consent;

(b) the property owner received notice under Subsection 11-42-401(2)(a)(iii) and did not object to the levy of the assessment before the final hearing of the board of equalization; or

(c) the benefitted property is conveyed to a subsequent purchaser and, before the date of conveyance, the requirements of Subsections 11-42-206(3)(a)(i) and (ii), or, if applicable, Subsection 11-42-207(1)(d)(i) are met.

Section 4. Section 11-42-301 is amended to read:

11-42-301. Improvements made only under contract let to lowest responsive, responsible bidder -- Publishing notice -- Sealed bids -- Procedure -- Exceptions to contract requirement.

(1) Except as otherwise provided in this section, a local entity may make improvements in an assessment area only under contract let to the lowest responsive, responsible bidder for the kind of service, material, or form of construction that the local entity's governing body determines in compliance with any applicable local entity ordinances.

(2) A local entity may:

(a) divide improvements into parts;

(b) (i) let separate contracts for each part; or

(ii) combine multiple parts into the same contract; and

(c) let a contract on a unit basis.

(3) (a) A local entity may not let a contract until after publishing notice as provided in Subsection (3)(b):

(i) at least one time in a newspaper of general circulation within the boundaries of the local entity at least 15 days before the date specified for receipt of bids; and

(ii) in accordance with Section 45-1-101, at least 15 days before the date specified for receipt of bids.

(b) Each notice under Subsection (3)(a) shall notify contractors that the local entity will receive sealed bids at a specified time and place for the construction of the improvements.

(c) Notwithstanding a local entity's failure, through inadvertence or oversight, to publish the notice or to publish the notice within 15 days before the date specified for receipt of bids, the governing body may proceed to let a contract for the improvements if the local entity receives at least three sealed and bona fide bids from contractors by the time specified for the receipt of bids.

(d) A local entity may publish a notice required under this Subsection (3) at the same time as a notice under Section 11-42-202.

(4) (a) A local entity may accept as a sealed bid a bid that is:

(i) manually sealed and submitted; or

(ii) electronically sealed and submitted.

(b) The governing body or project engineer shall, at the time specified in the notice under Subsection (3), open and examine the bids.

(c) In open session, the governing body:

(i) shall declare the bids; and

(ii) may reject any or all bids if the governing body considers the rejection to be for the public good.

(d) The local entity may award the contract to the lowest responsive, responsible bidder even if the price bid by that bidder exceeds the estimated costs as determined by the project engineer.

(e) A local entity may in any case:

(i) refuse to award a contract;

(ii) obtain new bids after giving a new notice under Subsection (3);

(iii) determine to abandon the assessment area; or

(iv) not make some of the improvements proposed to be made.

(5) A local entity is not required to let a contract as provided in this section for:

(a) an improvement or part of an improvement the cost of which or the making of which is donated or contributed;

(b) an improvement that consists of furnishing utility service or maintaining improvements;

(c) labor, materials, or equipment supplied by the local entity;

(d) the local entity's acquisition of completed or partially completed improvements in an assessment area;

(e) design, engineering, and inspection costs incurred with respect to the construction of improvements in an assessment area; or

(f) additional work performed in accordance with the terms of a contract duly let to the lowest responsive, responsible bidder.

(6) A local entity may itself furnish utility service and maintain improvements within an assessment area.

(7) (a) A local entity may acquire completed or partially completed improvements in an assessment area, but may not pay an amount for those improvements that exceeds their fair market value.

(b) Upon the local entity's payment for completed or partially completed improvements, title to the improvements shall be conveyed to the local entity or another public agency.

(8) The provisions of Title 11, Chapter 39, Building Improvements and Public Works Projects, and Section 72-6-108 do not apply to improvements to be constructed in an assessment area.

~~[(9) (a) Except as provided in Subsection (9)(b), this section does not apply to a voluntary assessment area designated for the purpose of levying an assessment for an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure.]~~

~~[(b) (i) A local entity that designates a voluntary assessment area described in Subsection (9)(a) shall provide to each owner of property to be assessed a list of service providers authorized by the local entity to provide the energy efficiency upgrade, renewable energy system, or electric vehicle charging infrastructure.]~~

~~[(ii) A property owner described in Subsection (9)(b)(i) shall select a service provider from the list to provide the energy efficiency upgrade, renewable energy system, or electric vehicle charging infrastructure for the owner's property.]~~

Section 5. Section 11-42-408 is amended to read:

11-42-408. Assessment against government land prohibited -- Exception.

(1) (a) Except as provided in Subsection (2), a local entity may not levy an assessment against property owned by the federal government or a public agency, even if the property benefits from the improvement.

(b) Notwithstanding Subsection (1)(a), a public agency may contract with a local entity:

(i) for the local entity to provide an improvement to property owned by the public agency; and

(ii) to pay for the improvement provided by the local entity.

(c) Nothing in this section may be construed to prevent a local entity from imposing on and collecting from a public agency, or a public agency from paying, a reasonable charge for a service rendered or material supplied by the local entity to the public agency, including a charge for water, sewer, or lighting service.

(2) Notwithstanding Subsection (1):

(a) a local entity may continue to levy and enforce an assessment against property acquired by a public agency within an assessment area if the acquisition occurred after the assessment area was designated; and

(b) property that is subject to an assessment lien at the time it is acquired by a public agency continues to be subject to the lien and to enforcement of the lien if the assessment and interest on the assessment are not paid when due; and.

~~[(e) a local entity may levy an assessment against property owned by the federal government or a public agency if the federal government or public agency voluntarily enters into a voluntary assessment area for the purpose of financing an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure.]~~

Section 6. Section 11-42-411 is amended to read:

11-42-411. Installment payment of assessments.

(1) (a) In an assessment resolution or ordinance, the governing body may, subject to Subsection (1)(b) and except as provided in Subsection (2)(c), provide that some or all of the assessment be paid in installments over a period not to exceed 20 years from the effective date of the resolution or ordinance.

(b) If an assessment resolution or ordinance provides that some or all of the assessment be paid in installments for a period exceeding 10 years from the effective date of the resolution or ordinance, the governing body:

(i) shall make a determination that:

(A) the improvement for which the assessment is made has a reasonable useful life for the full period during which installments are to be paid; or

(B) it would be in the best interests of the local entity and the property owners for installments to be paid for more than 10 years; and

(ii) may provide in the resolution or ordinance that no assessment is payable during some or all of the period ending three years after the effective date of the resolution or ordinance.

(2) An assessment resolution or ordinance that provides for the assessment to be paid in installments may provide that the unpaid balance be paid over the period of time that installments are payable:

(a) in substantially equal installments of principal; or

(b) in substantially equal installments of principal and interest~~[, or]~~.

~~[(c) for an assessment levied for an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure:]~~

~~[(i) in accordance with the assessment resolution or ordinance; and]~~

~~[(ii) over a period not to exceed 30 years from the effective date of the resolution or ordinance.]~~

(3) (a) Each assessment resolution or ordinance that provides for the assessment to be paid in installments shall, subject to Subsections (3)(b) and (c), provide that the unpaid balance of the assessment bear interest at a fixed rate, variable rate, or a combination of fixed and variable rates, as determined by the governing body, from the effective date of the resolution or ordinance or another date specified in the resolution or ordinance.

(b) If the assessment is for operation and maintenance costs or for the costs of economic promotion activities:

(i) a local entity may charge interest only from the date each installment is due; and

(ii) the first installment of an assessment shall be due 15 days after the effective date of the assessment resolution or ordinance.

(c) If an assessment resolution or ordinance provides for the unpaid balance of the assessment to bear interest at a variable rate, the assessment resolution or ordinance shall specify:

(i) the basis upon which the rate is to be determined from time to time;

(ii) the manner in which and schedule upon which the rate is to be adjusted; and

(iii) a maximum rate that the assessment may bear.

(4) Interest payable on assessments may include:

(a) interest on assessment bonds;

(b) ongoing local entity costs incurred for administration of the assessment area; and

(c) any costs incurred with respect to:

(i) securing a letter of credit or other instrument to secure payment or repurchase of bonds; or

(ii) retaining a marketing agent or an indexing agent.

(5) Interest imposed in an assessment resolution or ordinance shall be paid in addition to the amount of each installment annually or at more frequent intervals as provided in the assessment resolution or ordinance.

(6) (a) Except for an assessment for operation and maintenance costs or for the costs of economic promotion activities, a property owner may pay some or all of the entire assessment without interest if paid within 25 days after the assessment resolution or ordinance takes effect.

(b) After the 25-day period stated in Subsection (6)(a), a property owner may at any time prepay some or all of the assessment levied against the owner's property.

(c) A local entity may require a prepayment of an installment to include:

(i) an amount equal to the interest that would accrue on the assessment to the next date on which interest is payable on bonds issued in anticipation of the collection of the assessment; and

(ii) the amount necessary, in the governing body's opinion or the opinion of the officer designated by the governing body, to assure the availability of money to pay:

(A) interest that becomes due and payable on those bonds; and

(B) any premiums that become payable on bonds that are called in order to use the money from the prepaid assessment installment.

Section 7. Section 11-42a-101 is enacted to read:

CHAPTER 42A. COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY ACT

Part 1. General Provisions

11-42a-101. Title.

This chapter is known as the “Commercial Property Assessed Clean Energy Act” or “C-PACE Act.”

Section 8. Section 11-42a-102 is enacted to read:

11-42a-102. Definitions.

(1) (a) “Assessment” means the assessment that a local entity or the C-PACE district levies on private property under this chapter to cover the costs of an energy efficiency upgrade, a renewable energy system, or an electric vehicle charging infrastructure.

(b) “Assessment” does not constitute a property tax but shares the same priority lien as a property tax.

(2) “Assessment fund” means a special fund that a local entity establishes under Section 11-42a-206.

(3) “Benefitted property” means private property within an energy assessment area that directly benefits from improvements.

(4) “Bond” means an assessment bond and a refunding assessment bond.

(5) (a) “Commercial or industrial real property” means private real property used directly or indirectly or held for one of the following purposes or activities, regardless of whether the purpose or activity is for profit:

- (i) commercial;
- (ii) mining;
- (iii) agricultural;
- (iv) industrial;
- (v) manufacturing;
- (vi) trade;
- (vii) professional;
- (viii) a private or public club;
- (ix) a lodge;
- (x) a business; or
- (xi) a similar purpose.

(b) “Commercial or industrial real property” includes private real property that:

- (i) is used as or held for dwelling purposes; and
- (ii) contains more than four rental units.

(6) “Contract price” means:

(a) up to 100% of the cost of installing, acquiring, refinancing, or reimbursing for an improvement, as

determined by the owner of the property benefitting from the improvement; or

(b) the amount payable to one or more contractors for the assessment, design, engineering, inspection, and construction of an improvement.

(7) “C-PACE” means commercial property assessed clean energy.

(8) “C-PACE district” means the statewide authority established in Section 11-42a-106 to implement the C-PACE Act in collaboration with governing bodies, under the direction of OED.

(9) “Electric vehicle charging infrastructure” means equipment that is:

(a) permanently affixed to commercial or industrial real property; and

(b) designed to deliver electric energy to a qualifying electric vehicle or a qualifying plug-in hybrid vehicle, as those terms are defined in Section 59-7-605.

(10) “Energy assessment area” means an area:

(a) within the jurisdictional boundaries of a local entity that approves an energy assessment area or, if the C-PACE district or a state interlocal entity levies the assessment, the C-PACE district or the state interlocal entity;

(b) containing only the commercial or industrial real property of owners who have voluntarily consented to an assessment under this chapter for the purpose of financing the costs of improvements that benefit property within the energy assessment area; and

(c) in which the proposed benefitted properties in the area are:

(i) contiguous; or

(ii) located on one or more contiguous or adjacent tracts of land that would be contiguous or adjacent property but for an intervening right-of-way, including a sidewalk, street, road, fixed guideway, or waterway.

(11) “Energy assessment bond” means a bond:

(a) issued under Section 11-42a-401; and

(b) payable in part or in whole from assessments levied in an energy assessment area.

(12) “Energy assessment lien” means a lien on property within an energy assessment area that arises from the levy of an assessment in accordance with Section 11-42a-301.

(13) “Energy assessment ordinance” means an ordinance that a local entity adopts under Section 11-42a-201 that:

(a) designates an energy assessment area;

(b) levies an assessment on benefitted property within the energy assessment area; and

(c) if applicable, authorizes the issuance of energy assessment bonds.

(14) “Energy assessment resolution” means one or more resolutions adopted by a local entity under Section 11-42a-201 that:

- (a) designates an energy assessment area;
- (b) levies an assessment on benefitted property within the energy assessment area; and
- (c) if applicable, authorizes the issuance of energy assessment bonds.
- (15) “Energy efficiency upgrade” means an improvement that is:
- (a) permanently affixed to commercial or industrial real property; and
- (b) designed to reduce energy or water consumption, including:
- (i) insulation in:
- (A) a wall, roof, floor, or foundation; or
- (B) a heating and cooling distribution system;
- (ii) a window or door, including:
- (A) a storm window or door;
- (B) a multiglazed window or door;
- (C) a heat-absorbing window or door;
- (D) a heat-reflective glazed and coated window or door;
- (E) additional window or door glazing;
- (F) a window or door with reduced glass area; or
- (G) other window or door modifications;
- (iii) an automatic energy control system;
- (iv) in a building or a central plant, a heating, ventilation, or air conditioning and distribution system;
- (v) caulk or weatherstripping;
- (vi) a light fixture that does not increase the overall illumination of a building, unless an increase is necessary to conform with the applicable building code;
- (vii) an energy recovery system;
- (viii) a daylighting system;
- (ix) measures to reduce the consumption of water, through conservation or more efficient use of water, including installation of:
- (A) low-flow toilets and showerheads;
- (B) timer or timing systems for a hot water heater; or
- (C) rain catchment systems;
- (x) a modified, installed, or remodeled fixture that is approved as a utility cost-saving measure by the governing body or executive of a local entity;
- (xi) measures or other improvements to effect seismic upgrades;

- (xii) structures, measures, or other improvements to provide automated parking or parking that reduces land use;
- (xiii) the extension of an existing natural gas distribution company line;
- (xiv) an energy efficient elevator, escalator, or other vertical transport device;
- (xv) any other improvement that the governing body or executive of a local entity approves as an energy efficiency upgrade; or
- (xvi) any improvement that relates physically or functionally to any of the improvements listed in Subsections (15)(b)(i) through (xv).
- (16) “Governing body” means:
- (a) for a county, city, town, or metro township, the legislative body of the county, city, town, or metro township;
- (b) for a local district, the board of trustees of the local district;
- (c) for a special service district:
- (i) if no administrative control board has been appointed under Section 17D-1-301, the legislative body of the county, city, town, or metro township that established the special service district; or
- (ii) if an administrative control board has been appointed under Section 17D-1-301, the administrative control board of the special service district; and
- (d) for the military installation development authority created in Section 63H-1-201, the board, as that term is defined in Section 63H-1-102.
- (17) “Improvement” means a publicly or privately owned energy efficiency upgrade, renewable energy system, or electric vehicle charging infrastructure that:
- (a) a property owner has requested; or
- (b) has been or is being installed on a property for the benefit of the property owner.
- (18) “Incidental refunding costs” means any costs of issuing a refunding assessment bond and calling, retiring, or paying prior bonds, including:
- (a) legal and accounting fees;
- (b) charges of financial advisors, escrow agents, certified public accountant verification entities, and trustees;
- (c) underwriting discount costs, printing costs, and the costs of giving notice;
- (d) any premium necessary in the calling or retiring of prior bonds;
- (e) fees to be paid to the local entity to issue the refunding assessment bond and to refund the outstanding prior bonds;
- (f) any other costs that the governing body determines are necessary and proper to incur in

connection with the issuance of a refunding assessment bond; and

(g) any interest on the prior bonds that is required to be paid in connection with the issuance of the refunding assessment bond.

(19) "Installment payment date" means the date on which an installment payment of an assessment is payable.

(20) "Jurisdictional boundaries" means:

(a) for the C-PACE district or any state interlocal entity, the boundaries of the state; and

(b) for each local entity, the boundaries of the local entity.

(21) "Local district" means a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts.

(22) (a) "Local entity" means:

(i) a county, city, town, or metro township;

(ii) a special service district, a local district, or an interlocal entity as that term is defined in Section 11-13-103;

(iii) a state interlocal entity;

(iv) the military installation development authority created in Section 63H-1-201; or

(v) any political subdivision of the state.

(b) "Local entity" includes the C-PACE district solely in connection with:

(i) the designation of an energy assessment area;

(ii) the levying of an assessment; and

(iii) the assignment of an energy assessment lien to a third-party lender under Section 11-42a-302.

(23) "Local entity obligations" means energy assessment bonds and refunding assessment bonds that a local entity issues.

(24) "OED" means the Office of Energy Development created in Section 63M-4-401.

(25) "Overhead costs" means the actual costs incurred or the estimated costs to be incurred in connection with an energy assessment area, including:

(a) appraisals, legal fees, filing fees, facilitation fees, and financial advisory charges;

(b) underwriting fees, placement fees, escrow fees, trustee fees, and paying agent fees;

(c) publishing and mailing costs;

(d) costs of levying an assessment;

(e) recording costs; and

(f) all other incidental costs.

(26) "Prior bonds" means the energy assessment bonds refunded in part or in whole by a refunding assessment bond.

(27) "Prior energy assessment ordinance" means the ordinance levying the assessments from which the prior bonds are payable.

(28) "Prior energy assessment resolution" means the resolution levying the assessments from which the prior bonds are payable.

(29) "Property" includes real property and any interest in real property, including water rights and leasehold rights.

(30) "Public electrical utility" means a large-scale electric utility as that term is defined in Section 54-2-1.

(31) "Reduced payment obligation" means the full obligation of an owner of property within an energy assessment area to pay an assessment levied on the property after the local entity has reduced the assessment because of the issuance of a refunding assessment bond, in accordance with Section 11-42a-403.

(32) "Refunding assessment bond" means an assessment bond that a local entity issues under Section 11-42a-403 to refund, in part or in whole, energy assessment bonds.

(33) (a) "Renewable energy system" means a product, system, device, or interacting group of devices that is permanently affixed to commercial or industrial real property not located in the certified service area of a distribution electrical cooperative, as that term is defined in Section 54-2-1, and:

(i) produces energy from renewable resources, including:

(A) a photovoltaic system;

(B) a solar thermal system;

(C) a wind system;

(D) a geothermal system, including a generation system, a direct-use system, or a ground source heat pump system;

(E) a microhydro system;

(F) a biofuel system; or

(G) any other renewable source system that the governing body of the local entity approves;

(ii) stores energy, including:

(A) a battery storage system; or

(B) any other energy storing system that the governing body or chief executive officer of a local entity approves; or

(iii) any improvement that relates physically or functionally to any of the products, systems, or devices listed in Subsection (33)(a)(i) or (ii).

(b) "Renewable energy system" does not include a system described in Subsection (33)(a)(i) if the system provides energy to property outside the energy assessment area, unless the system:

(i) (A) existed before the creation of the energy assessment area; and

(B) beginning before January 1, 2017, provides energy to property outside of the area that became the energy assessment area; or

(ii) provides energy to property outside the energy assessment area under an agreement with a public electrical utility that is substantially similar to agreements for other renewable energy systems that are not funded under this chapter.

(34) "Special service district" means the same as that term is defined in Section 17D-1-102.

(35) "State interlocal entity" means:

(a) an interlocal entity created under Title 11, Chapter 13, Interlocal Cooperation Act, by two or more counties, cities, towns, or metro townships that collectively represent at least a majority of the state's population; or

(b) an entity that another state authorized, before January 1, 2017, to issue bonds, notes, or other obligations or refunding obligations to finance or refinance projects in the state.

(36) "Third-party lender" means a trust company, savings bank, savings and loan association, bank, credit union, or any other entity that provides loans directly to property owners for improvements authorized under this chapter.

Section 9. Section 11-42a-103 is enacted to read:

11-42a-103. No limitation on other local entity powers -- Conflict with other statutory provisions.

(1) This chapter does not limit a power that a local entity has under other applicable law to:

- (a) make an improvement or provide a service;
- (b) create a district;
- (c) levy an assessment or tax; or
- (d) issue a bond or a refunding bond.

(2) If there is a conflict between a provision of this chapter and any other statutory provision, the provision of this chapter governs.

(3) After January 1, 2017, a local entity or the C-PACE district may create an energy assessment area within the certificated service territory of a public electrical utility for the installation of a renewable energy system with a nameplate rating of:

- (a) no more than 2.0 megawatts; or
- (b) more than 2.0 megawatts to serve load that the public electrical utility does not already serve.

Section 10. Section 11-42a-104 is enacted to read:

11-42a-104. Action to contest assessment or proceeding -- Requirements -- Exclusive remedy -- Bonds and assessment incontestable.

(1) (a) A person may commence a civil action against a local entity to contest an assessment, a

proceeding to designate an energy assessment area, or a proceeding to levy an assessment.

(b) The remedies available in a civil action described in Subsection (1)(a) are:

(i) setting aside the proceeding to designate an energy assessment area; or

(ii) enjoining the levy or collection of an assessment.

(2) (a) A person bringing an action under Subsection (1) shall bring the action in the district court with jurisdiction in the county in which the energy assessment area is located.

(b) A person may not begin the action against or serve a summons relating to the action on the local entity more than 30 days after the effective date of the energy assessment resolution, the energy assessment ordinance, or the written agreement between a local entity and a third-party lender, described in Section 11-42a-302.

(3) An action under Subsection (1) is the exclusive remedy of a person:

(a) claiming an error or irregularity in an assessment, a proceeding to designate an energy assessment area, or a proceeding to levy an assessment; or

(b) challenging a bondholder's or third-party lender's right to repayment.

(4) A court may not set aside, in part or in whole or declare invalid an assessment, a proceeding to designate an energy assessment area, or a proceeding to levy an assessment because of an error or irregularity that does not relate to the equity or justice of the assessment or proceeding.

(5) Except as provided in Subsection (6), after the expiration of the 30-day period described in Subsection (2)(b):

(a) the following become incontestable against any person that has not commenced an action and served a summons as provided in this section:

(i) the written agreement entered into or to be entered into under Section 11-42a-302;

(ii) the energy assessment bonds and refunding assessment bonds:

(A) that a local entity has issued or intends to issue; or

(B) with respect to the creation of an energy assessment area; and

(iii) assessments levied on property in the energy assessment area; and

(b) a court may not inquire into and a person may not bring a suit to enjoin or challenge:

(i) the issuance or payment of an energy assessment bond or a refunding assessment bond;

(ii) the payment under the written agreement between a local entity and a third-party lender described in Section 11-42a-302;

(iii) the levy, collection, or enforcement of an assessment;

(iv) the legality of an energy assessment bond, a refunding assessment bond, or a written agreement between a local entity and a third-party lender described in Section 11-42a-302; or

(v) an assessment.

(6) (a) A person may bring a claim of misuse of assessment funds through a mandamus action regardless of the expiration of the 30-day period described in Subsection (2)(b).

(b) This section does not prohibit the filing of criminal charges against or the prosecution of a party for the misuse of assessment funds.

Section 11. Section 11-42a-105 is enacted to read:

11-42a-105. Severability.

A court's invalidation of any provision of this chapter does not affect the validity of any other provision of this chapter.

Section 12. Section 11-42a-106 is enacted to read:

11-42a-106. C-PACE district established -- OED to direct and administer C-PACE district.

(1) There is created the C-PACE district.

(2) The C-PACE district may, subject to Subsection (3):

(a) designate an energy assessment area;

(b) levy an assessment;

(c) assign an energy assessment lien to a third-party lender; and

(d) collect an assessment within an energy assessment area in accordance with Section 11-42a-302.

(3) (a) The C-PACE district may only take the actions described in Subsection (2) if a governing body makes a written request of the C-PACE district to, in accordance with this chapter:

(i) create an energy assessment area within the jurisdiction of the governing body; and

(ii) finance an improvement within that energy assessment area.

(b) Before creating an energy assessment area under Subsection (3)(a), the C-PACE district shall enter into an agreement with the relevant public electrical utility to establish the scope of the improvement to be financed.

(4) (a) OED shall administer and direct the operation of the C-PACE district.

(b) OED may:

(i) adopt a fee schedule and charge fees, in accordance with Section 63J-1-504, to cover the cost of administering and directing the operation of the C-PACE district;

(ii) delegate OED's powers under this chapter to a third party to assist in administering and directing the operation of the C-PACE district; and

(iii) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures necessary to carry out the actions described in Subsection (2).

(c) If OED delegates OED's power under Subsection (4)(b)(ii), OED shall:

(i) delegate the authority through a written agreement with the third party; and

(ii) ensure that the written agreement includes provisions that:

(A) require the third party to be subject to an audit by the state auditor regarding the delegation;

(B) require the third party to submit to OED monthly reports, including information regarding the assessments the C-PACE district levies and the payments the C-PACE district receives; and

(C) insulate OED from liability for the actions of the third party and the C-PACE district while under the direction and administration of the third party.

(d) OED is subject to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(5) The state is not liable for the acts or omissions of the C-PACE district or the C-PACE district's directors, administrators, officers, agents, employees, third-party directors or administrators, or third-party lenders, including any obligation, expense, debt, or liability of the C-PACE district.

Section 13. Section 11-42a-201 is enacted to read:

Part 2. Energy Assessments

11-42a-201. Resolution or ordinance designation an energy assessment area, levying an assessment, and issuing an energy assessment bond.

(1) (a) Except as otherwise provided in this chapter, and subject to the requirements of this part, at the request of a property owner on whose property or for whose benefit an improvement is being installed or being reimbursed, a governing body of a local entity may adopt an energy assessment resolution or an energy assessment ordinance that:

(i) designates an energy assessment area;

(ii) levies an assessment within the energy assessment area; and

(iii) if applicable, authorizes the issuance of an energy assessment bond.

(b) The boundaries of a proposed energy assessment area may:

(i) include property that is not intended to be assessed; and

(ii) overlap, be coextensive with, or be substantially coterminous with the boundaries of

any other energy assessment area or an assessment area created under Title 11, Chapter 42, Assessment Area Act.

(c) The energy assessment resolution or ordinance described in Subsection (1)(a) is adequate for purposes of identifying the property to be assessed within the energy assessment area if the resolution or ordinance describes the property to be assessed by legal description and tax identification number.

(2) (a) A local entity that adopts an energy assessment resolution or ordinance under Subsection (1)(a) shall give notice of the adoption by:

(i) publishing a copy or a summary of the resolution or ordinance once in a newspaper of general circulation where the energy assessment area is located; or

(ii) if there is no newspaper of general circulation where the energy assessment area is located, posting a copy of the resolution or ordinance in at least three public places within the local entity's jurisdictional boundaries for at least 21 days.

(b) Except as provided in Subsection (2)(a), a local entity is not required to make any other publication or posting of the resolution or ordinance.

(3) Notwithstanding any other statutory provision regarding the effective date of a resolution or ordinance, each energy assessment resolution or ordinance takes effect:

(a) on the date of publication or posting of the notice under Subsection (2); or

(b) at a later date as provided in the resolution or ordinance.

(4) (a) The governing body of each local entity that has adopted an energy assessment resolution or ordinance under Subsection (1) shall, within five days after the effective date of the resolution or ordinance, file a notice of assessment interest with the recorder of the county in which the property to be assessed is located.

(b) Each notice of assessment interest under Subsection (4)(a) shall:

(i) state that the local entity has an assessment interest in the property to be assessed; and

(ii) describe the property to be assessed by legal description and tax identification number.

(c) A local entity's failure to file a notice of assessment interest under this Subsection (4) has no effect on the validity of an assessment levied under an energy assessment resolution or ordinance adopted under Subsection (1).

Section 14. Section 11-42a-202 is enacted to read:

11-42a-202. Designation of energy assessment area -- Requirements.

A local entity may not include property in an energy assessment area unless the owner of the

property located in the energy assessment area provides to the local entity:

(1) evidence that there are no existing delinquent taxes, special assessments, or water or sewer charges on the property;

(2) evidence that the property is not subject to a trust deed or other lien on which there is a recorded notice of default, foreclosure, or delinquency that has not been cured;

(3) evidence that there are no involuntary liens, including a lien on real property or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property; and

(4) the written consent of each person or institution holding a lien on the property.

Section 15. Section 11-42A-203 is enacted to read:

11-42A-203. Levying an assessment within an energy assessment area-- Prerequisites.

(1) If a local entity designates an energy assessment area in accordance with this chapter, the local entity may:

(a) levy an assessment within the energy assessment area; and

(b) collect the assessment by:

(i) directly billing the property owner; or

(ii) inclusion on a property tax notice issued in accordance with this section and Section 59-2-1317.

(2) If a local entity includes an assessment on a property tax notice as described in Subsection (1)(b) and bills for the assessment in the same manner as a property tax, the assessment constitutes a lien, is enforced, and is subject to other penalty provisions, in accordance with this chapter.

(3) If a local entity includes an assessment on a property tax notice, the county treasurer shall, on the property tax notice:

(a) clearly state that the assessment is for the improvement provided by the local entity; and

(b) itemize the assessment separately from any other tax, fee, charge, interest, or penalty that is included on the property tax notice in accordance with Section 59-2-1317.

Section 16. Section 11-42a-204 is enacted to read:

11-42a-204. Limit on amount of assessment.

(1) An assessment levied within an energy assessment area may not, in the aggregate, exceed the sum of:

(a) the contract price or estimated contract price;

(b) overhead costs not to exceed 15% of the sum of the contract price or estimated contract price;

(c) an amount for contingencies of not more than 10% of the sum of the contract price or estimated

contract price, if the assessment is levied before the completion of the construction of the improvements in the energy assessment area;

(d) capitalized interest; or

(e) an amount sufficient to fund a reserve fund.

(2) A local entity may only use the proceeds of an energy assessment bond or any third-party financing to refinance or reimburse the costs of improvements authorized under this chapter if the property owner incurred or financed the costs no earlier than three years before the day on which the local entity issues the energy assessment bond or assigns the energy assessment lien.

Section 17. Section 11-42a-205 is enacted to read:

11-42a-205. Installment payment of assessments.

(1) (a) In an energy assessment resolution or ordinance that a local entity adopts under Subsection 11-42a-201(1)(a), the governing body may provide that some or all of the assessment be paid in installments:

(i) in accordance with the resolution or ordinance; and

(ii) over a period not to exceed 30 years from the effective date of the resolution or ordinance.

(2) (a) Each governing body that adopts an energy assessment resolution or ordinance that provides for the assessment to be paid in installments shall ensure that the resolution or ordinance provides that the unpaid balance of the assessment bears interest at a fixed rate, a variable rate, or a combination of fixed and variable rates, as determined by the governing body, from the effective date of the resolution or ordinance or another date that the resolution or ordinance specifies.

(b) Each governing body that adopts an energy assessment resolution or ordinance that provides for the unpaid balance of the assessment to bear interest at a variable rate shall ensure that the resolution or ordinance specifies:

(i) the basis upon which the rate is to be determined from time to time;

(ii) the manner in which and schedule upon which the rate is to be adjusted; and

(iii) a maximum rate that the assessment may bear.

(3) Interest payable on assessments may include:

(a) interest on energy assessment bonds;

(b) ongoing costs that the local entity incurs for administration of the energy assessment area; and

(c) any costs that the local entity incurs with respect to:

(i) securing a letter of credit or other instrument to secure payment or repurchase of bonds; or

(ii) retaining a marketing agent or an indexing agent.

(4) A property owner shall pay interest imposed in an energy assessment resolution or ordinance annually or at more frequent intervals as the resolution or ordinance provides, in addition to the amount of each installment.

(5) (a) At any time, a property owner may prepay some or all of the assessment levied against the owner's property.

(b) A local entity may require that a prepayment of an installment include:

(i) an amount equal to the interest that would accrue on the assessment to the next date on which interest is payable on a bond issued or a loan made in anticipation of the collection of the assessment; and

(ii) the amount necessary, as determined by the governing body or the officer that the governing body designates, to ensure the availability of money to pay:

(A) interest that becomes due and payable on a bond or loan described in Subsection (5)(b)(i); and

(B) any premiums that become payable on a loan that is prepaid or on a bond that is called for redemption in order to use the money from the prepaid assessment installment.

Section 18. Section 11-42a-206 is enacted to read:

11-42a-206. Assessment fund -- Uses of money in the fund -- Treasurer's duties.

(1) Unless a local entity has assigned an energy assessment lien to a third-party lender under Section 11-42a-302, the governing body of each local entity that levies an assessment under this part on benefitted property within an energy assessment area, or the local entity's designee, may establish an assessment fund.

(2) The governing body or the local entity's designee, as applicable, shall deposit into the assessment fund all money paid to or for the benefit of the local entity from an assessment and interest on the assessment.

(3) The local entity may only expend money in an assessment fund for paying:

(a) local entity obligations; and

(b) costs that the local entity or the local entity's designee incurs with respect to the administration of the energy assessment area.

(4) (a) The treasurer of the local entity or the local entity's designee, as applicable, is the custodian of the assessment fund, subject to Subsection (4)(c)(i).

(b) The treasurer of the local entity or the local entity's designee, as applicable, shall:

(i) keep the assessment fund intact and separate from all other local entity funds and money;

(ii) invest money in the assessment fund in accordance with Title 51, Chapter 7, State Money Management Act; and

(iii) keep on deposit in the assessment fund any interest the local entity receives from the investment of money in the assessment fund and use the interest exclusively for the purposes for which the governing body or the local entity's designee established the assessment fund.

(c) The treasurer of the local entity or the local entity's designee, as applicable, may:

(i) arrange for a trustee bank to hold the assessment fund on behalf of the local entity; and

(ii) pay money out of the assessment fund subject to Subsection (3).

Section 19. Section 11-42a-301 is enacted to read:

Part 3. Energy Assessment Liens

11-42a-301. Assessment constitutes a lien -- Characteristics of an energy assessment lien.

(1) Each assessment levied under this chapter, including any installment of an assessment, interest, and any penalties and costs of collection, constitutes a lien against the assessed property, beginning on the effective date of the energy assessment resolution or ordinance that the local entity adopts under Subsection 11-42a-201(1)(a).

(2) An energy assessment lien under this section:

(a) is superior to the lien of a trust deed, mortgage, mechanic's or materialman's lien, or other encumbrances;

(b) has the same priority as, but is separate and distinct from:

(i) a lien for general property taxes; or

(ii) any other energy assessment lien levied under this chapter;

(c) applies to any reduced payment obligations without interruption, change in priority, or alteration in any manner; and

(d) continues until the assessment and any related reduced payment obligations, interest, penalties, and costs are paid, regardless of:

(i) a sale of the property for or on account of a delinquent general property tax, special tax, or other assessment; or

(ii) the issuance of a tax deed, an assignment of interest by the county, or a sheriff's certificate of sale or deed.

Section 20. Section 11-42a-302 is enacted to read:

11-42a-302. Assignment of energy assessment lien.

(1) (a) In lieu of issuing energy assessment bonds to finance the costs of improvements under this chapter, a third-party lender may provide financing to a property owner to finance, refinance, or reimburse the costs of improvements.

(b) A local entity, through the local entity's executive or administrator, as applicable, may assign to the third-party lender described in Subsection (1)(a) the local entity's rights in the energy assessment lien by entering into a written agreement with the third-party lender.

(2) (a) If a local entity assigns the local entity's rights in an energy assessment lien to a third-party lender under Subsection (1), the local entity's executive or administrator, as applicable, may authorize the designation of the energy assessment area and the levying of the assessment in lieu of the adoption of an energy assessment resolution or ordinance by the governing body of the local entity under Section 11-42a-201.

(b) If a local entity assigns the local entity's rights under Subsection (1)(b), the local entity shall ensure that the written agreement with the third-party lender:

(i) includes the information required to be included within an energy assessment resolution or ordinance described in Section 11-42a-201;

(ii) complies with Section 11-42a-201;

(iii) requires the third-party lender to be subject to an audit by the state auditor regarding the assigned energy assessment lien;

(iv) requires the third-party lender to submit to the local entity monthly reports, including information regarding the payments the third-party lender receives; and

(v) insulates the local entity from liability for the actions of the third-party lender.

(3) If a local entity assigns an energy assessment lien to a third-party lender, in accordance with Subsection (1), except as provided in Subsection 11-42a-303(2), the third-party lender has and possesses the same powers and rights at law or in equity to enforce the lien that the local entity creating the lien would have if the local entity did not assign the lien, including the rights and powers of the local entity under Sections 11-42a-303 and 11-42a-304.

(4) (a) Any financing in connection with the assignment of an energy assessment lien to a third-party lender under this section is not:

(i) an obligation of the local entity that assigns the lien; or

(ii) a charge against the general credit or taxing powers of the local entity that assigns the lien.

(b) A local entity may not obligate itself to pay any assessment levied or bond issued under this chapter.

(c) The assessments and the property upon which the energy assessment lien is recorded are the sole securities for the assignment of an energy assessment lien.

Section 21. Section 11-42a-303 is enacted to read:

11-42a-303. Enforcement of an energy assessment lien.

(1) If an assessment or an installment of an assessment is not paid when due, the local entity may sell the property on which the assessment has been levied for the amount due plus interest, penalties, and costs:

(a) in the manner provided in Title 59, Chapter 2, Part 13, Collection of Taxes, for the sale of property for delinquent general property taxes;

(b) by judicial foreclosure; or

(c) in the manner provided in Title 57, Chapter 1, Conveyances, as though the property were the subject of a trust deed in favor of the local entity if the owner of record of the property at the time the local entity initiates the process to sell the property in accordance with Title 57, Chapter 1, Conveyances, has executed a property owner's consent form that:

(i) estimates the total assessment to be levied against the particular parcel of property;

(ii) describes any additional benefits that the local entity expects the assessed property to receive from the improvements;

(iii) designates the date and time by which the fully executed consent form is required to be submitted to the local entity; and

(iv) (A) appoints a trustee that satisfies the requirements described in Section 57-1-21;

(B) gives the trustee the power of sale; and

(C) explains that if an assessment or an installment of an assessment is not paid when due, the local entity may sell the property owner's property to satisfy the amount due plus interest, penalties, and costs, in the manner described in Title 57, Chapter 1, Conveyances.

(2) If the local entity has assigned the local entity's rights to a third-party lender under Section 11-42a-302, the local entity shall provide written instructions to the third-party lender as to which method of enforcement the third-party lender shall pursue.

(3) Except as otherwise provided in this chapter, each tax sale under Subsection (1)(b) is governed by Title 59, Chapter 2, Part 13, Collection of Taxes, to the same extent as if the sale were for the sale of property for delinquent general property taxes.

(4) (a) In a foreclosure under Subsection (1)(c):

(i) the local entity may bid at the sale;

(ii) if no one bids at the sale and pays the local entity the amount due on the assessment, plus interest and costs, the property is considered sold to the local entity for those amounts; and

(iii) the local entity's chief financial officer may substitute and appoint one or more successor trustees, as provided in Section 57-1-22.

(b) (i) The local entity shall disclose the designation of a trustee under Subsection (4)(a)(ii) in the notice of default that the trustee gives to commence the foreclosure.

(ii) The local entity is not required to disclose the designation of a trustee under Subsection (4)(a)(ii) in an instrument separate from the notice described in Subsection (4)(b)(i).

(5) (a) The redemption of property that is the subject of a tax sale under Subsection (1)(b) is governed by Title 59, Chapter 2, Part 13, Collection of Taxes.

(b) The redemption of property that is the subject of a foreclosure proceeding under Subsection (1)(c) is governed by Title 57, Chapter 1, Conveyances.

(6) The remedies described in this part for the collection of an assessment and the enforcement of an energy assessment lien are cumulative, and the use of one or more of those remedies does not deprive the local entity of any other available remedy, means of collecting the assessment, or means of enforcing the energy assessment lien.

Section 22. Section 11-42a-304 is enacted to read:

11-42a-304. Default in the payment of an installment of an assessment -- Interest and costs -- Restoring the property owner to the right to pay installments.

(1) If an assessment is payable in installments and a default occurs in the payment of an installment when due:

(a) the local entity may:

(i) declare the delinquent amount to be immediately due and subject to collection as provided in this chapter;

(ii) if the financed improvements are not completed by the completion deadline to which the property owner agreed in the bond or financing documents, then within 60 days after the completion deadline, accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and the interest then due to be immediately due and payable; and

(iii) charge and collect all costs of collection, including attorney fees; and

(b) except as provided in Subsection (1)(a)(ii), the local entity may not accelerate payment of the total unpaid balance of the assessment.

(2) Delinquency interest accrues from the date of delinquency on all applicable amounts described in Subsection (1)(a) until the property owner pays the delinquency in full.

(3) A local entity shall ensure that any interest that the local entity assesses under this section and any collection costs that the local entity charges under this section are the same as for delinquent real property taxes for the year in which the balance of the fee or charge becomes delinquent unless the local entity determines otherwise.

(4) Notwithstanding Subsection (1), a property owner may regain the right to pay an assessment in installments as if no default had occurred if the owner pays the amount of all unpaid installments that are past due with interest, collection and

foreclosure costs, and administrative, redemption, and other fees, including attorney fees, before:

(a) the final date that payment may be legally made under a final sale or foreclosure of property to collect delinquent assessment installments, if the governing body enforces collection under Title 59, Chapter 2, Part 13, Collection of Taxes; or

(b) the end of the three-month reinstatement period provided in Section 57-1-31, if the governing body enforces collection through the method of foreclosing trust deeds.

Section 23. Section 11-42a-305 is enacted to read:

11-42a-305. Release and discharge of energy assessment lien -- Notice of dissolution of energy assessment area.

(1) (a) Upon payment in full of an assessment on a parcel of property, the local entity or third-party lender, in the event the local entity has assigned the energy assessment lien to the third-party lender, shall file a release and discharge of the energy assessment lien on the property in the office of the recorder of the county where the property is located.

(b) The local entity or third-party lender shall ensure that each release and discharge under Subsection (1)(a):

(i) includes a legal description of the affected property; and

(ii) complies with other applicable requirements for recording a document.

(2) (a) Upon payment in full of all assessments levied within an energy assessment area, or upon providing for payment in full, the local entity or third-party lender, in the event the local entity has assigned the energy assessment lien to the third-party lender, shall file a notice of the dissolution of the energy assessment area in the office of the recorder of the county where the property within the energy assessment area is located.

(b) The local entity or third-party lender shall ensure that each notice under Subsection (2)(a):

(i) includes a legal description of the property assessed within the energy assessment area; and

(ii) complies with all other applicable requirements for recording a document.

Section 24. Section 11-42a-401 is enacted to read:

Part 4. Energy Assessment Bonds and Refunding Assessment Bonds

11-42a-401. Local entity may authorize the issuance of energy assessment bonds -- Limit on amount of bonds -- Features of energy assessment bonds.

(1) A local entity may, subject to the requirements of this chapter, authorize the issuance of a bond to pay, refinance, or reimburse the costs of

improvements in an energy assessment area, and other related costs, against the funds that the local entity will receive because of an assessment in an energy assessment area.

(2) A local entity may, by resolution or ordinance, delegate to one or more officers of the issuer the authority to:

(a) in accordance with the parameters in the resolution or ordinance, approve the final interest rate or rates, price, principal amount, maturity or maturities, redemption features, and other terms of the bond; and

(b) approve and execute all documents relating to the issuance of a bond.

(3) The aggregate principal amount of a bond authorized under Subsection (1) may not exceed:

(a) the unpaid balance of assessments at the time the bond is issued; or

(b) if the property owner incurred the costs of improvements to be refinanced or reimbursed no earlier than three years before the date of issuance of the energy assessment bond, the total costs of the improvements to be refinanced or reimbursed.

(4) The issuer of an energy assessment bond issued under this section shall ensure that:

(a) the energy assessment bond:

(i) is fully negotiable for all purposes;

(ii) matures at a time that does not exceed the period that installments of assessments in the assessment area are due and payable, plus one year;

(iii) bears interest at the lowest rate or rates reasonably obtainable;

(iv) is issued in registered form as provided in Title 15, Chapter 7, Registered Public Obligations Act;

(v) provides that interest be paid semiannually, annually, or at another interval as specified by the governing body; and

(vi) is not dated earlier than the effective date of the assessment ordinance; and

(b) the resolution authorizing the issuance of the bond defines the place where the bond is payable, the form of the bond, and the manner in which the bond is sold.

(5) (a) A local entity may:

(i) (A) provide that an energy assessment bond may be called for redemption before maturity; and

(B) fix the terms and conditions of redemption, including the notice to be given and any premium to be paid;

(ii) subject to Subsection (5)(b), require an energy assessment bond to bear interest at a fixed or variable rate, or a combination of fixed and variable rates;

(iii) specify the terms and conditions under which:

(A) an energy assessment bond bearing interest at a variable interest rate may be converted to bear interest at a fixed interest rate; and

(B) the local entity agrees to repurchase the bonds;

(iv) engage a remarketing agent and indexing agent, subject to the terms and conditions to which the governing body agrees; and

(v) include all costs associated with an energy assessment bond, including any costs resulting from any of the actions the local entity is authorized to take under this section, in an assessment levied under Section 11-42a-203.

(b) If an energy assessment bond carries a variable interest rate, the local entity shall specify:

(i) the basis upon which the variable rate is to be determined over the life of the bond;

(ii) the manner in which and schedule upon which the rate is to be adjusted; and

(iii) a maximum rate that the bond may carry.

(6) A local entity may only use the proceeds of an energy assessment bond to refinance or reimburse costs of improvements authorized under this chapter if the property owner incurred the costs no earlier than three years before the date of issuance of the energy assessment bond.

Section 25. Section 11-42a-402 is enacted to read:

11-42a-402. Energy assessment bond not a local entity's general obligation -- Liability and responsibility of a local entity issuing an energy assessment bond -- No state liability.

(1) (a) An energy assessment bond that a local entity issues under this chapter:

(i) is a limited obligation of the local entity; and

(ii) does not constitute nor give rise to:

(A) a general obligation or liability of the local entity or the state; or

(B) a charge against the general credit or taxing powers of the local entity or the state.

(b) The local entity shall ensure that the limitation described in Subsection (1)(a) is plainly stated upon the face of the bond.

(c) The assessments and the property upon which the energy assessment lien is recorded are the sole securities for an energy assessment bond.

(2) (a) A local entity that issues an energy assessment bond is not liable and may not obligate itself for payment of the bond, except for a fund that the local entity creates and receives from assessments against which the bond is issued.

(b) Unless otherwise provided in this chapter, a local entity that issues an energy assessment bond is responsible for:

(i) the lawful levy of all assessments; and

(ii) the faithful accounting, collection, settlement, and payment of assessments.

Section 26. Section 11-42a-403 is enacted to read:

11-42a-403. Refunding assessment bonds.

(1) A local entity may, by a resolution adopted by the governing body, authorize the issuance of a refunding assessment bond as provided in this section, to repay prior bonds in whole or in part, whether at or before the maturity of the prior bonds, at stated maturity, upon redemption, or upon declaration of maturity.

(2) (a) Subject to Subsection (2)(b), the issuance of a refunding assessment bond is governed by Title 11, Chapter 27, Utah Refunding Bond Act.

(b) If there is a conflict between a provision of Title 11, Chapter 27, Utah Refunding Bond Act, and a provision of this part, the provision of this part governs.

(3) In issuing a refunding assessment bond, the local entity shall require the refunding assessment bond and interest on the bond to be payable from and secured, to the extent the prior bonds were payable from and secured, by:

(a) the same assessments; or

(b) the reduced assessments adopted by the governing body under Section 11-42a-404.

(4) A refunding assessment bond:

(a) is payable solely from the sources described in Subsection (3);

(b) matures no later than one year after the date of final maturity of the prior bonds;

(c) does not mature at a time or bear interest at a rate that will cause the local entity to be unable to pay the bond when due from the sources listed in Subsection (3);

(d) bears interest as the governing body determines and subject to the provisions relating to interest in Section 11-42a-401; and

(e) pays one or more issues of the issuing local entity's prior bonds.

(5) If the bond refunds two or more issues of a local entity's prior bonds, the local entity may issue the bond in one or more series.

Section 27. Section 11-42a-404 is enacted to read:

11-42a-404. Reducing assessments after issuance of refunding assessment bonds -- Retroactive effect.

(1) Each local entity that issues a refunding assessment bond shall adopt a resolution or ordinance amending the previously adopted energy assessment resolution or ordinance that:

(a) reduces, as determined by the local entity's governing body:

(i) the assessments levied under the previous resolution or ordinance;

(ii) the interest payable on the assessments levied under the previous resolution or ordinance; or

(iii) both the assessments levied under the previous resolution or ordinance and the interest payable on those assessments;

(b) allocates the reductions under Subsection (1)(a) so the then unpaid assessments levied against benefitted property within the assessment area and the unpaid interest on those assessments receive a proportionate share of the reductions;

(c) states the amounts of the reduced payment obligation for each property assessed in the prior resolution or ordinance; and

(d) states the effective date of any reduction in the assessment levied in the prior resolution or ordinance.

(2) In a resolution or ordinance described in Subsection (1), the local entity is not required to describe each block, lot, part of a block or lot, tract, or parcel of property assessed.

(3) The local entity shall ensure that each reduction under Subsection (1)(a) is equal to the amount by which the principal, interest, or combined principal and interest payable on the refunding assessment bond, after accounting for incidental refunding costs associated with the refunding assessment bond, is less than the amount of principal, interest, or combined principal and interest payable on the prior bonds.

(4) A reduction under Subsection (1)(a) does not apply to an assessment or interest paid before the reduction.

(5) A resolution or ordinance under Subsection (1) may not become effective before the date when any principal, interest, redemption premium on the prior bonds, and advances under Subsection 11-42-607(5)(a) are fully paid or legally considered to be paid.

(6) Except for the amount of reduction to a prior assessment or interest on a prior assessment, neither the issuance of a refunding assessment bond nor the adoption of a resolution or ordinance under Subsection (1) affects:

(a) the validity or continued enforceability of a prior assessment or interest on the assessment; or

(b) the validity, enforceability, or priority of an energy assessment lien.

(7) Each reduction of a prior assessment and the interest on the assessment continues to exist in favor of the refunding assessment bonds.

(8) Even after payment in full of the prior bonds that a refunding assessment bond refunds, an energy assessment lien continues to exist to secure payment of:

(a) the reduced payment obligations;

(b) the penalties and costs of collection of those obligations; and

(c) the refunding assessment bond.

(9) A lien securing a reduced payment obligation from which a refunding assessment bond is payable and by which the bond is secured is subordinate to an energy assessment lien that secures the original or prior assessment and prior bonds until the prior bonds are paid in full or legally considered to be paid in full.

(10) Unless prior bonds are paid in full simultaneously with the issuance of a refunding assessment bond, the local entity shall:

(a) irrevocably set aside the proceeds of the refunding assessment bond in an escrow or other separate account; and

(b) pledge the account described in Subsection (10)(a) as security for the payment of the prior bonds, the refunding assessment bond, or both.

(11) This part applies to any refunding assessment bond:

(a) regardless of whether the local entity already issued the bond; and

(b) regardless of whether the local entity issued the prior bonds that the bond refunded under prior law and regardless of whether that law is currently in effect.

Section 28. Section 63I-1-263 is amended to read:

63I-1-263. Repeal dates, Titles 63A to 63N.

(1) Subsection 63A-5-104(4)(h) is repealed on July 1, 2024.

(2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

(3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2018.

(4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is repealed November 30, 2019.

(5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.

(6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.

(7) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

(8) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

(9) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states "the Resource Development Coordinating Committee," is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read "(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.";

(c) in Subsection 23-14-21(3), the language that states “and the Resource Development Coordinating Committee” is repealed;

(d) in Subsection 23-21-2.3(1), the language that states “the Resource Development Coordinating Committee created in Section 63J-4-501 and” is repealed;

(e) in Subsection 23-21-2.3(2), the language that states “the Resource Development Coordinating Committee and” is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word “and” is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed; and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

(10) (a) Subsection 63J-1-602.4(15) is repealed July 1, 2022.

(b) When repealing Subsection 63J-1-602.4(15), the Office of Legislative Research and General Counsel shall, in addition to the office’s authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

[(40)] (11) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

[(41)] (12) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2017.

[(42)] (13) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.

[(43)] (14) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection [(13)] (14)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections [(43)] (14)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

[(44)] (15) Section 63N-2-512 is repealed on July 1, 2021.

[(45)] (16) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection [(45)] (16)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

[(46)] (17) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed July 1, 2018.

Section 29. Section 63J-1-505 is amended to read:

63J-1-505. Payment of fees prerequisite to service -- Exception.

(1) (a) State and county officers required by law to charge fees may not perform any official service unless the fees prescribed for that service are paid in advance.

(b) When the fee is paid, the officer shall perform the services required.

(c) An officer is liable upon the officer’s official bond for every failure or refusal to perform an official duty when the fees are tendered.

(2) (a) Except as provided in Subsection (2)(b), no fees may be charged:

(i) to the officer’s state, or any county or subdivision of the state;

(ii) to any public officer acting for the state, county, or subdivision;

(iii) in cases of habeas corpus;

(iv) in criminal causes before final judgment;

(v) for administering and certifying the oath of office;

(vi) for swearing pensioners and their witnesses; or

(vii) for filing and recording bonds of public officers.

(b) Fees may be charged for payment:

(i) of recording fees for assessment area recordings in compliance with ~~[Section]~~ Sections 11-42-205 and 11-42a-302;

(ii) of recording fees for judgments recorded in compliance with Sections 57-3-106 and 78A-7-105; and

(iii) to the state engineer under Section 73-2-14.

Section 30. Section 63J-1-602.4 is amended to read:

63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63N.

(1) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.

(2) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.

(3) Certain funds donated to the Department of Human Services, as provided in Section 62A-1-111.

(4) Appropriations from the National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account created in Section 62A-1-202.

(5) Certain funds donated to the Division of Child and Family Services, as provided in Section 62A-4a-110.

(6) Appropriations from the Choose Life Adoption Support Restricted Account created in Section 62A-4a-608.

(7) Appropriations to the Division of Services for People with Disabilities, as provided in Section 62A-5-102.

(8) Appropriations to the Division of Fleet Operations for the purpose of upgrading underground storage tanks under Section 63A-9-401.

(9) A portion of the funds appropriated to the Utah Seismic Safety Commission, as provided in Section 63C-6-104.

(10) Funds appropriated or collected for publishing the Office of Administrative Rules' publications, as provided in Section 63G-3-402.

(11) The Immigration Act Restricted Account created in Section 63G-12-103.

(12) Money received by the military installation development authority, as provided in Section 63H-1-504.

(13) Appropriations to the Utah Science Technology and Research Initiative created in Section 63M-2-301.

(14) Appropriations to fund the Governor's Office of Economic Development's Enterprise Zone Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.

(15) Funds collected for directing and administering the C-PACE district created in Section 11-42a-302.

~~[(45)]~~ (16) The Motion Picture Incentive Account created in Section 63N-8-103.

~~[(46)]~~ (17) Certain money payable for commission expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63N-10-301.

Section 31. Section 63M-4-401 is amended to read:

63M-4-401. Creation of Office of Energy Development -- Director -- Purpose -- Rulemaking regarding confidential information.

(1) There is created an Office of Energy Development.

(2) (a) The governor's energy advisor shall serve as the director of the office or appoint a director of the office.

(b) The director:

(i) shall, if the governor's energy advisor appoints a director under Subsection (2)(a), report to the governor's energy advisor; and

(ii) may appoint staff as funding within existing budgets allows.

(c) The office may consolidate energy staff and functions existing in the state energy program.

(3) The purposes of the office are to:

(a) serve as the primary resource for advancing energy and mineral development in the state;

(b) implement:

(i) the state energy policy under Section 63M-4-301; and

(ii) the governor's energy and mineral development goals and objectives;

(c) advance energy education, outreach, and research, including the creation of elementary, higher education, and technical college energy education programs;

(d) promote energy and mineral development workforce initiatives; and

(e) support collaborative research initiatives targeted at Utah-specific energy and mineral development.

(4) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:

(a) seek federal grants or loans;

(b) seek to participate in federal programs; and

(c) in accordance with applicable federal program guidelines, administer federally funded state energy programs.

(5) The office shall perform the duties required by Sections 11-42a-106, 59-7-614.7, 59-10-1029, Part 5, Alternative Energy Development Tax Credit Act, and Part 6, High Cost Infrastructure Development Tax Credit Act.

(6) (a) For purposes of administering this section, the office may make rules, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to maintain as confidential, and not as a public record, information that the office receives from any source.

(b) The office shall maintain information the office receives from any source at the level of confidentiality assigned by the source.

(7) The office may charge application, filing, and processing fees in amounts determined by the office in accordance with Section 63J-1-504 for performing office duties described in this part.

Section 32. Repealer.

This bill repeals:

Section 11-42-209, Designation of assessment area for an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure -- Requirements.

Section 33. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 471**S. B. 279**

Passed March 9, 2017

Approved March 28, 2017

Effective May 9, 2017

ALCOHOL MODIFICATIONS

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Brad R. Wilson

LONG TITLE**General Description:**

This bill modifies provisions related to alcohol regulation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ reduces the permissible proximity of a restaurant licensee to a community location;
- ▶ repeals the Alcoholic Beverage Control Commission's authority to grant a variance to a proximity requirement;
- ▶ addresses the effect of a previously approved variance to a proximity requirement;
- ▶ provides that a licensee may continue to operate, regardless of whether a person establishes a community location closer to the licensee than is otherwise permissible; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:**AMENDS:**

32B-1-202, as last amended by Laws of Utah 2016, Chapter 176

32B-6-203, as last amended by Laws of Utah 2016, Chapter 82

32B-6-303, as last amended by Laws of Utah 2016, Chapter 82

32B-6-903, as enacted by Laws of Utah 2011, Chapter 334

32B-8a-302, as last amended by Laws of Utah 2016, Chapter 82

Utah Code Sections Affected by Coordination Clause:

32B-1-202, as last amended by Laws of Utah 2016, Chapter 176

32B-8a-302, as last amended by Laws of Utah 2016, Chapter 82

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

Section 1. Section 32B-1-202 is amended to read:**32B-1-202. Proximity to community location.**

(1) ~~[For purposes of]~~ As used in this section, "outlet" means:

(a) (i) "Outlet" means:

~~[(a)]~~ (A) a state store;

~~[(b)]~~ (B) a package agency; or

~~[(e)]~~ (C) a retail licensee~~[, except an airport lounge licensee].~~

(ii) "Outlet" does not include:

(A) an airport lounge licensee; or

(B) a restaurant.

(b) "Restaurant" means:

(i) a full-service restaurant licensee;

(ii) a limited-service restaurant licensee; or

(iii) a beer-only restaurant licensee.

~~[(2) Except as otherwise provided in this section, the premises of an outlet may not be located:]~~

(2) (a) The commission may not issue a license for an outlet if, on the date the commission takes final action to approve or deny the application, there is a community location:

~~[(a)]~~ (i) within 600 feet of ~~[a community location]~~ the proposed outlet, as measured from the nearest entrance of the proposed outlet by following the shortest route of ordinary pedestrian travel to the property boundary of the community location; or

~~[(b)]~~ (ii) within 200 feet of ~~[a community location]~~ the proposed outlet, measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the community location.

(b) The commission may not issue a license for a restaurant if, on the date the commission takes final action to approve or deny the application, there is a community location:

(i) within 300 feet of the proposed restaurant, as measured from the nearest entrance of the proposed restaurant by following the shortest route of ordinary pedestrian travel to the property boundary of the community location; or

(ii) within 200 feet of the proposed restaurant, measured in a straight line from the nearest entrance of the proposed restaurant to the nearest property boundary of the community location.

~~[(3) With respect to the location of an outlet, the commission may authorize a variance to reduce the proximity requirement of Subsection (2) if:]~~

~~[(a) when the variance reduces the proximity requirement of Subsection (2)(b), the community location at issue is:]~~

~~[(i) a public library; or]~~

~~[(ii) a public park;]~~

~~[(b) except with respect to a state store, the local authority gives its written consent to the variance;]~~

~~[(c) the commission finds that alternative locations for locating that type of outlet in the community are limited;]~~

~~[(d) a public hearing is held in the city, town, metro township, or county, and when practical in the neighborhood concerned;]~~

~~[(e) after giving full consideration to the attending circumstances and the policies stated in Subsections 32B-1-103(3) and (4), the commission determines that locating the outlet in that location would not be detrimental to the public health, peace, safety, and welfare of the community;]~~

~~[(f) (i) the community location governing authority gives its written consent to the variance; or]~~

~~[(ii) if the community location governing authority does not give its written consent to a variance, the commission finds the following for a state store, or if the outlet is a package agency or retail licensee, the commission finds that the applicant establishes the following:]~~

~~[(A) there is substantial unmet public demand to consume an alcoholic product;]~~

~~[(I) within the geographic boundary of the local authority in which the outlet is to be located; and]~~

~~[(II) for an outlet that is a retail licensee, in a public setting;]~~

~~[(B) there is no reasonably viable alternative for satisfying the substantial unmet demand other than through locating that type of outlet in that location; and]~~

~~[(C) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the outlet is to be located for locating that type of outlet to satisfy the unmet demand.]~~

~~[(4) With respect to the premises of a package agency or retail licensee that undergoes a change of ownership, the commission may waive or vary the proximity requirements of Subsection (2) in considering whether to issue the package agency or same type of retail license to the new owner of the premises if:]~~

~~[(a) the premises previously received a variance reducing the proximity requirement of Subsection (2)(a);]~~

~~[(b) the premises received a variance reducing the proximity requirement of Subsection (2)(b) on or before May 4, 2008; or]~~

~~[(c) a variance from proximity requirements was otherwise allowed under this title.]~~

(3) For an outlet or a restaurant that holds a license on May 9, 2017, and operates under a previously approved variance to one or more proximity requirements in effect before May 9, 2017, subject to the other provisions of this title, that outlet or restaurant, or another outlet or restaurant with the same type of license as that outlet or restaurant, may operate under the previously approved variance regardless of whether:

(a) the outlet or restaurant changes ownership;

(b) the property on which the outlet or restaurant is located changes ownership; or

(c) there is a lapse in the use of the property as an outlet or a restaurant with the same type of license, unless during the lapse, the property is used for a different purpose.

(4) (a) If, after an outlet or a restaurant obtains a license under this title, a person establishes a community location on a property that puts the outlet or restaurant in violation of the proximity requirements in effect at the time the license is issued or a previously approved variance described in Subsection (3), subject to the other provisions of this title, that outlet or restaurant, or an outlet or a restaurant with the same type of license as that outlet or restaurant, may operate at the premises regardless of whether:

(i) the outlet or restaurant changes ownership;

(ii) the property on which the outlet or restaurant is located changes ownership; or

(iii) there is a lapse in the use of the property as an outlet or a restaurant with the same type of license, unless during the lapse the property is used for a different purpose.

(b) The provisions of this Subsection (4) apply regardless of when the outlet's or restaurant's license is issued.

(5) Nothing in this section prevents the commission from considering the proximity of an educational, religious, and recreational facility, or any other relevant factor in reaching a decision on a proposed location of an outlet.

Section 2. Section 32B-6-203 is amended to read:

32B-6-203. Commission's power to issue full-service restaurant license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on its premises as a full-service restaurant, the person shall first obtain a full-service restaurant license from the commission in accordance with this part.

(2) The commission may issue a full-service restaurant license to establish full-service restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of an alcoholic product on premises operated as a full-service restaurant.

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of full-service restaurant licenses that at any time exceeds the number determined by dividing the population of the state by 4,467.

(b) The commission may issue a seasonal full-service restaurant license in accordance with Section 32B-5-206.

(c) (i) If the location, design, and construction of a hotel may require more than one full-service restaurant sales location within the hotel to serve the public convenience, the commission may authorize the sale, offer for sale, or furnishing of an

alcoholic product at as many as three full-service restaurant locations within the hotel under one full-service restaurant license if:

(A) the hotel has a minimum of 150 guest rooms; and

(B) the locations under the full-service restaurant license are:

(I) within the same hotel; and

(II) on premises that are managed or operated, and owned or leased, by the full-service restaurant licensee.

(ii) A facility other than a hotel shall have a separate full-service restaurant license for each full-service restaurant where an alcoholic product is sold, offered for sale, or furnished.

(4) [(a)] Except as otherwise provided in [Subsection (4)(b)] Section 32B-1-202, the commission may not issue a full-service restaurant license for premises that do not meet the proximity requirements of [Section 32B-1-202] Subsection 32B-1-202(2).

~~[(b) With respect to the premises of a full-service restaurant license issued by the commission that undergoes a change of ownership, the commission shall waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a full-service restaurant license to the new owner of the premises if:]~~

~~[(i) when a full-service restaurant license was issued to a previous owner, the premises met the proximity requirements of Subsection 32B-1-202(2);]~~

~~[(ii) the premises has had a full-service restaurant license at all times since the full-service restaurant license described in Subsection (4)(b)(i) was issued without a variance; and]~~

~~[(iii) the community location was located within the proximity requirements of Subsection 32B-1-202(2) after the day on which the full-service restaurant license described in Subsection (4)(b)(i) was issued.]~~

Section 3. Section 32B-6-303 is amended to read:

32B-6-303. Commission's power to issue limited-service restaurant license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of wine, heavy beer, or beer on its premises as a limited-service restaurant, the person shall first obtain a limited-service restaurant license from the commission in accordance with this part.

(2) (a) The commission may issue a limited-service restaurant license to establish limited-service restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of wine, heavy beer, or

beer on premises operated as a limited-service restaurant.

(b) A person may not sell, offer for sale, furnish, or allow the consumption of the following on the licensed premises of a limited-service restaurant licensee:

(i) spirituous liquor; or

(ii) a flavored malt beverage.

(3) Subject to Section 32B-1-201:

(a) The commission may not issue a total number of limited-service restaurant licenses that at any time exceeds the number determined by dividing the population of the state by 6,817.

(b) The commission may issue a seasonal limited-service restaurant license in accordance with Section 32B-5-206.

(c) (i) If the location, design, and construction of a hotel may require more than one limited-service restaurant sales location within the hotel to serve the public convenience, the commission may authorize the sale of wine, heavy beer, and beer at as many as three limited-service restaurant locations within the hotel under one limited-service restaurant license if:

(A) the hotel has a minimum of 150 guest rooms; and

(B) the locations under the limited-service restaurant license are:

(I) within the same hotel; and

(II) on premises that are managed or operated, and owned or leased, by the limited-service restaurant licensee.

(ii) A facility other than a hotel shall have a separate limited-service restaurant license for each limited-service restaurant where wine, heavy beer, or beer is sold, offered for sale, or furnished.

(4) [(a)] Except as otherwise provided in [Subsection (4)(b)] Section 32B-1-202, the commission may not issue a limited-service restaurant license for premises that do not meet the proximity requirements of [Section 32B-1-202] Subsection 32B-1-202(2).

~~[(b) With respect to the premises of a limited-service restaurant license issued by the commission that undergoes a change of ownership, the commission shall waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a limited-service restaurant license to the new owner of the premises if:]~~

~~[(i) when a limited-service restaurant license was issued to a previous owner, the premises met the proximity requirements of Subsection 32B-1-202(2);]~~

~~[(ii) the premises has had a limited-service restaurant license at all times since the limited-service restaurant license described in Subsection (4)(b)(i) was issued without a variance; and]~~

~~[(iii) the community location was located within the proximity requirements of Subsection 32B-1-202(2) after the day on which the limited-service restaurant license described in Subsection (4)(b)(i) was issued.]~~

Section 4. Section 32B-6-903 is amended to read:

32B-6-903. Commission's power to issue beer-only restaurant license.

(1) Before a person may store, sell, offer for sale, furnish, or allow the consumption of beer on its premises as a beer-only restaurant, the person shall first obtain a beer-only restaurant license from the commission in accordance with this part.

(2) (a) The commission may issue a beer-only restaurant license to establish beer-only restaurant licensed premises at places and in numbers the commission considers proper for the storage, sale, offer for sale, furnishing, and consumption of beer on premises operated as a beer-only restaurant.

(b) A person may not sell, offer for sale, furnish, or allow the consumption of liquor on the licensed premises of a beer-only restaurant licensee.

(3) (a) Only one beer-only restaurant license is required for each building or resort facility owned or leased by the same person.

(b) A separate license is not required for each beer-only restaurant license dispensing location in the same building or on the same resort premises owned or operated by the same person.

(4) ~~[(a.) Except as otherwise provided in [Subsection (4)(b) or (e)] Section 32B-1-202, the commission may not issue a beer-only restaurant license for premises that do not meet the proximity requirements of [Section 32B-1-202] Subsection 32B-1-202(2).~~

~~[(b) With respect to the premises of a beer-only restaurant license issued by the commission that undergoes a change of ownership, the commission shall waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to issue a beer-only restaurant license to the new owner of the premises if:]~~

~~[(i) when a beer-only restaurant license was issued to a previous owner, the premises met the proximity requirements of Subsection 32B-1-202(2);]~~

~~[(ii) the premises has had a beer-only restaurant license at all times since the beer-only restaurant license described in Subsection (4)(b)(i) was issued without a variance; and]~~

~~[(iii) the community location was located within the proximity requirements of Subsection 32B-1-202(2) after the day on which the beer-only restaurant license described in Subsection (4)(b)(i) was issued.]~~

~~[(c) The location of the licensed premises of an on-premise beer retailer who is licensed as of July 1, 2011, is grandfathered and not required to meet~~

~~the proximity requirements of Section 32B-1-202 if the on-premise beer retailer obtains a beer-only restaurant license by not later than March 1, 2012. A location grandfathered under this Subsection (4)(c) is considered grandfathered notwithstanding that the beer-only restaurant license undergoes a change of ownership.]~~

Section 5. Section 32B-8a-302 is amended to read:

32B-8a-302. Application -- Approval process.

(1) To obtain the transfer of a retail license from a retail licensee, the transferee shall file a transfer application with the department that includes:

(a) an application in the form provided by the department;

(b) a statement as to whether the consideration, if any, to be paid to the transferor includes payment for transfer of the retail license;

(c) a statement executed under penalty of perjury that the consideration as set forth in the escrow agreement required by Section 32B-8a-401 is deposited with the escrow holder; and

(d) (i) an application fee of \$300; and

(ii) a transfer fee determined in accordance with Section 32B-8a-303.

(2) If the intended transfer of a retail license involves consideration, at least 10 days before the commission may approve the transfer, the department shall post a notice of the intended transfer on the Public Notice Website created in Section 63F-1-701 that states the following:

(a) the name of the transferor;

(b) the name and address of the business currently associated with the retail license;

(c) instructions for filing a claim with the escrow holder; and

(d) the projected date that the commission may consider the transfer application.

(3) (a) (i) Before the commission may approve the transfer of a retail license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether the transfer of the retail license should be approved.

(ii) The department shall forward the information and recommendations described in this Subsection (3)(a) to the commission to aid in the commission's determination.

(b) Before approving a transfer, the commission shall:

(i) determine that the transferee filed a complete application;

(ii) determine that the transferee is eligible to hold the type of retail license that is to be transferred at the premises to which the retail license would be transferred;

(iii) determine that the transferee is not delinquent in the payment of an amount described in Subsection 32B-8a-201(3);

(iv) determine that the transferee is not disqualified under Section 32B-1-304;

(v) consider the locality within which the proposed licensed premises is located, including the factors listed in Section 32B-5-203 for the issuance of a retail license;

(vi) consider the transferee's ability to manage and operate the retail license to be transferred, including the factors listed in Section 32B-5-203 for the issuance of a retail license;

(vii) consider the nature or type of retail licensee operation of the transferee, including the factors listed in Section 32B-5-203 for the issuance of a retail license;

(viii) if the transfer involves consideration, determine that the transferee and transferor have complied with Part 4, Protection of Creditors; and

(ix) consider any other factor the commission considers necessary.

(4) ~~[(a)]~~ Except as otherwise provided in ~~[Subsection (4)(b)]~~ Section 32B-1-202, the commission may not approve the transfer of a retail license to premises that do not meet the proximity requirements of ~~[Section 32B-1-202]~~ Subsection 32B-1-202(2).

~~[(b) If after a transfer of a retail license the transferee operates the same type of retail license at the same location as did the transferor, the commission may waive or vary the proximity requirements of Subsection 32B-1-202(2) in considering whether to approve the transfer under the same circumstances that the commission may waive or vary the proximity requirements in accordance with Subsection 32B-1-202(4) when considering whether to issue a retail license.]~~

Section 6. Coordinating S.B. 279 with H.B. 442 -- Superseding technical and substantive amendments.

If this S.B. 279 and H.B. 442, Alcohol Amendments, both pass and become law, it is the intent of the Legislature that the amendments to Sections 32B-1-202 and 32B-8a-302 in this bill supersede the amendments to Sections 32B-1-202 and 32B-8a-302 in H.B. 442, when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.

CHAPTER 472**H. B. 2**

Passed March 7, 2017
 Approved March 29, 2017
 Effective March 29, 2017
 (Exception clause in Section 8)

**PUBLIC EDUCATION
 BUDGET AMENDMENTS**

Chief Sponsor: Daniel McCay
 Senate Sponsor: Lyle W. Hillyard

LONG TITLE**General Description:**

This bill supplements or reduces appropriations previously provided for school districts, charter schools, and certain state education agencies for the fiscal year beginning July 1, 2016, and ending June 30, 2017, and for the fiscal year beginning July 1, 2017, and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ enacts language directing the Legislature to adjust the appropriation for the Statewide Online Education Program based on certain factors;
- ▶ sets the value of the weighted pupil unit at \$3,311 for fiscal year 2018;
- ▶ adjusts the number of weighted pupil units to reflect anticipated student enrollment in fall 2017;
- ▶ repeals the Professional Practices Restricted Subfund and appropriates funding to pay teacher licensing fees;
- ▶ provides appropriations for other purposes as described;
- ▶ provides intent language; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

This bill appropriates \$5,185,100 in operating and capital budgets for fiscal year 2017, including:

- ▶ \$191,000 from the General Fund;
- ▶ \$4,795,000 from the Education Fund; and
- ▶ \$199,100 from various sources as detailed in this bill.

This bill appropriates \$229,961,300 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$1,732,100 from the General Fund;
- ▶ \$203,013,600 from the Education Fund; and
- ▶ \$25,215,600 from various sources as detailed in this bill.

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:**AMENDS:**

53A-6-104.1, as last amended by Laws of Utah 2015, Chapter 389
 53A-6-305, as enacted by Laws of Utah 1999, Chapter 108
 53A-15-1207, as last amended by Laws of Utah 2012, Chapter 238

REPEALS:

53A-6-105, as last amended by Laws of Utah 2016, Chapter 144

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section 53A-6-104.1 is amended to read:**53A-6-104.1. Reinstatement of a license.**

(1) An educator who previously held a license and whose license has expired may have the license reinstated by:

(a) filing an application with the board on the form prescribed by the board; and

~~[(b) paying the fee required by Section 53A-6-105; and]~~

~~[(e)]~~ (b) submitting to a criminal background check as required by Section 53A-15-1504.

(2) Upon successful completion of the criminal background check and verification that the applicant's previous license had not been revoked, suspended, or surrendered, the board shall reinstate the license.

(3) An educator whose license is reinstated may not be required to obtain professional development not required of other educators with the same number of years of experience, except as provided in Subsection (4).

(4) The principal of the school at which an educator whose license is reinstated is employed shall provide information and training, based on the educator's experience and education, that will assist the educator in performing the educator's assigned position.

(5) The procedures for reinstating a license as provided in this section do not apply to an educator's license that expires while the educator is employed in a position requiring the license.

Section 2. Section 53A-6-305 is amended to read:**53A-6-305. Meetings and expenses of UPPAC members.**

(1) UPPAC shall meet at least quarterly and at the call of the chair or of a majority of the members.

(2) Members of UPPAC serve without compensation but are allowed reimbursement for actual and necessary expenses under the rules of the Division of Finance.

(3) The board shall pay reimbursement to UPPAC members out of the ~~[Professional Practices Restricted Subfund in the Uniform School Fund] Education Fund.~~

Section 3. Section 53A-15-1207 is amended to read:

53A-15-1207. State Board of Education to deduct funds and make payments -- Plan for the payment of online courses taken by private and home school students.

(1) For a fiscal year that begins on or after July 1, 2018, and subject to future budget constraints, the Legislature shall adjust the appropriation for the Statewide Online Education Program based on:

(a) the anticipated increase of eligible home school and private school students enrolled in the Statewide Online Education Program; and

(b) the value of the weighted pupil unit.

~~[(1)]~~ (2) (a) The State Board of Education shall deduct money from funds allocated to the student's primary LEA of enrollment under Chapter 17a, Minimum School Program Act, to pay for online course fees.

(b) Money shall be deducted under Subsection ~~[(1)]~~ (2) in the amount and at the time an online course provider qualifies to receive payment for an online course as provided in Subsection 53A-15-1206(4).

~~[(2)]~~ (3) From money deducted under Subsection ~~[(1)]~~ (2), the State Board of Education shall make payments to the student's online course provider as provided in Section 53A-15-1206.

~~[(3)]~~ (4) The Legislature shall establish a plan, which shall take effect beginning on July 1, 2013, for the payment of online courses taken by a private school or home school student.

Section 4. Repealer.

This bill repeals:

Section 53A-6-105, Licensing fees -- Credit to subfund -- Payment of expenses.

Section 5. Appropriation for classroom supplies.

(1) As used in this section, "classroom teacher" or "teacher" means permanent teacher positions filled by one teacher or two or more job-sharing teachers:

- (a) who are licensed personnel;
- (b) who are paid on the teacher's salary schedule;
- (c) who are hired for an entire contract period; and
- (d) whose primary function is to provide instructional or a combination of instructional and counseling services to students in public schools.

(2) (a) The State Board of Education shall distribute money appropriated for teacher supplies and materials to classroom teachers in school districts, charter schools, and the Utah Schools for

the Deaf and the Blind based on the number of classroom teachers in each school as compared to the total number of classroom teachers.

(b) Teachers shall receive up to the following amounts:

(i) \$250 for a teacher on salary schedule steps one through three teaching in grades kindergarten through 6 or preschool handicapped;

(ii) \$200 for a teacher on salary schedule steps one through three teaching in grades 7 through 12;

(iii) \$175 for a teacher on salary schedule step four or higher teaching in grades kindergarten through 6 or preschool handicapped; and

(iv) \$150 for a teacher on salary schedule step four or higher teaching in grades 7 through 12.

(c) If the appropriation is not sufficient to provide each teacher the full amount allowed under Subsection (2)(b), teachers on salary schedule steps one through three shall receive the full amount allowed with the remaining money apportioned to all other teachers.

(3) Teachers shall spend money appropriated for classroom supplies and materials for school supplies, materials, or field trips under rules adopted by the State Board of Education.

Section 6. Operating and capital budgets -- FY 2017 appropriations for state education agencies, school districts, and charter schools.

The following sums of money are appropriated for the fiscal year beginning July 1, 2016, and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

STATE BOARD OF EDUCATION - MINIMUM SCHOOL PROGRAM

ITEM 1 To State Board of Education - Minimum School Program - Basic School Program

From Education Fund, One-time 10,000,000
Schedule of Programs:

Grades 1 - 12 10,000,000

ITEM 2 To State Board of Education - Minimum School Program - Related to Basic School Programs

From Education Fund, One-time (1,785,000)
Schedule of Programs:

Charter School Local Replacement (5,000,000)

Educator Salary Adjustments 3,995,000

Digital Teaching and Learning Program (780,000)

ITEM 3 To State Board of Education - Minimum School Program - Voted and Board Local Levy Programs

From Education Fund, One-time	(5,000,000)
Schedule of Programs:	
Voted Local Levy Program	(2,500,000)
Board Local Levy Program	(2,500,000)
STATE BOARD OF EDUCATION	
ITEM 4 To State Board of Education - State Administrative Office	
From Education Fund, One-time	800,000
From Revenue Transfers, One-time	888,800
Schedule of Programs:	
Board and Administration	888,800
Business Services	800,000
Notwithstanding the fees in H.B. 8 G.S. 2016, State Agency Fees and Internal Service Fund Rate Authorization and Appropriations, the Legislature intends that the State Board of Education is authorized to charge an indirect cost pool rate of up to 15% for restricted funds and up to 26% for unrestricted funds where possible for FY 2017.	
ITEM 5 To State Board of Education - Minimum School Program Categorical Program Administration	
From Education Fund, One-time	780,000
From Revenue Transfers, One-time	(287,200)
Schedule of Programs:	
CTE Comprehensive Guidance	(35,000)
Enhancement for At-Risk Students	(50,000)
Youth-in-Custody	(150,000)
Adult Education	(22,200)
Dual Immersion	(30,000)
Digital Teaching and Learning	780,000
Notwithstanding the fees in H.B. 8 G.S. 2016, State Agency Fees and Internal Service Fund Rate Authorization and Appropriations, the Legislature intends that the State Board of Education is authorized to charge an indirect cost pool rate of up to 15% for restricted funds and up to 26% for unrestricted funds where possible for FY 2017.	
ITEM 6 To State Board of Education - Initiative Programs	
From General Fund, One-time	191,000
From Revenue Transfers, One-time	(37,200)
Schedule of Programs:	
Contracts and Grants	191,000
Carson Smith Scholarships	(22,400)
Partnerships for Student Success	(14,800)
Notwithstanding the fees in H.B. 8 G.S. 2016, State Agency Fees and Internal Service Fund Rate Authorization and Appropriations, the Legislature	

intends that the State Board of Education is authorized to charge an indirect cost pool rate of up to 15% for restricted funds and up to 26% for unrestricted funds where possible for FY 2017.

ITEM 7 To State Board of Education - State Charter School Board

From Revenue Transfers, One-time	(147,900)
Schedule of Programs:	
State Charter School Board	(147,900)

Notwithstanding the fees in H.B. 8 G.S. 2016, State Agency Fees and Internal Service Fund Rate Authorization and Appropriations, the Legislature intends that the State Board of Education is authorized to charge an indirect cost pool rate of up to 15% for restricted funds and up to 26% for unrestricted funds where possible for FY 2017.

ITEM 8 To State Board of Education - Educator Licensing

From Professional Practices Restricted Subfund, One-time	199,100
From Revenue Transfers, One-time	(213,900)
Schedule of Programs:	
Educator Licensing	(14,800)

Notwithstanding the fees in H.B. 8 G.S. 2016, State Agency Fees and Internal Service Fund Rate Authorization and Appropriations, the Legislature intends that the State Board of Education is authorized to charge an indirect cost pool rate of up to 15% for restricted funds and up to 26% for unrestricted funds where possible for FY 2017.

ITEM 9 To State Board of Education - Child Nutrition

From Revenue Transfers, One-time	(153,900)
Schedule of Programs:	
Child Nutrition	(153,900)

Notwithstanding the fees in H.B. 8 G.S. 2016, State Agency Fees and Internal Service Fund Rate Authorization and Appropriations, the Legislature intends that the State Board of Education is authorized to charge an indirect cost pool rate of up to 15% for restricted funds and up to 26% for unrestricted funds where possible for FY 2017.

ITEM 10 To State Board of Education - Education Contracts

From Revenue Transfers, One-time	(23,500)
Schedule of Programs:	
Corrections Institutions	(23,500)

Notwithstanding the fees in H.B. 8 G.S. 2016, State Agency Fees and Internal Service Fund Rate Authorization and Appropriations, the Legislature intends that the State Board of Education is authorized to charge an indirect cost pool rate of up to 15% for restricted funds and up to 26% for unrestricted funds where possible for FY 2017.

ITEM 11 To State Board of Education - Teaching and Learning

From Revenue Transfers, One-time	(25,200)
Schedule of Programs:	
Student Access to High Quality School	
Readiness Programs	(25,200)

Section 7. Operating and capital budgets -- FY 2018 appropriations for state education agencies, school districts, and charter schools.

(1) The following sums of money are appropriated for the fiscal year beginning July 1, 2017, and ending June 30, 2018. These are additions to amounts previously appropriated for fiscal year 2018. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

(2) The value of each weighted pupil unit (WPU) for fiscal year 2018 is increased from the value of the WPU for fiscal year 2018 established in S.B. 1, Public Education Base Budget Amendments, and set at \$3,311.

STATE BOARD OF EDUCATION - MINIMUM SCHOOL PROGRAM

ITEM 12 To State Board of Education - Minimum School Program - Basic School Program

From Education Fund	153,982,900
Schedule of Programs:	
Kindergarten (-430 WPUs)	2,072,500
Grades 1 - 12 (11,299 WPUs)	103,838,500
Foreign Exchange	41,600
Necessarily Existent Small Schools	1,208,300
Professional Staff (231 WPUs)	7,823,100
Administrative Costs (75 WPUs)	437,500
Special Education - Add-on (2,736 WPUs)	18,903,200
Special Education - Preschool (539 WPUs)	3,084,800
Special Education - Self-contained (4 WPUs)	1,783,600
Special Education - Extended School Year (10 WPUs)	87,600
Special Education - Impact Aid (-28 WPUs)	165,200
Special Education - Intensive Services (372 WPUs)	1,282,200
Special Education - Extended Year for Special Educators	115,400
Career and Technical Education - Add-on (440 WPUs)	5,017,900

Class Size Reduction (919 WPUs)	8,121,500
Item 13 To State Board of Education - Minimum School Program - Related to Basic School Programs	
From Education Fund	32,652,300
From Education Fund Restricted - Charter School Levy Account	22,100,000
From Uniform School Fund Restricted Trust Distribution Account	50,400,000
From Interest and Dividends Account	(45,000,000)
Schedule of Programs:	
To and From School - Pupil Transportation	4,464,900
Enhancement for At-Risk Students	1,495,100
Youth in Custody	1,211,200
Adult Education	595,100
Enhancement for Accelerated Students	268,400
Concurrent Enrollment	575,100
School LAND Trust Program	5,400,000
Charter School Local Replacement	35,223,200
Charter School Administration	361,900
Educator Salary Adjustments	3,995,000
USFR Teacher Salary Supplement Restricted Account	(6,799,900)
Critical Languages and Dual Immersion	600,000
Teacher Supplies and Materials	5,000,000
Beverley Taylor Sorenson Elementary Arts	1,000,000
Civics Education - State Capitol Field Trips	150,000
Digital Teaching and Learning Program	(187,600)
Teacher Salary Supplement	6,799,900

The Legislature intends that the Division of Finance transfer the fund balance in the Uniform School Fund Restricted - Teacher Salary Supplement Restricted Account to the Teacher Salary Supplement Program in the Minimum School Program - Related to Basic School Program when the fund is closed as provided in H.B. 35, Minimum School Program Amendments.

The Legislature intends that the Division of Finance transfer the fund balance in the Interest and Dividends Account to the Trust Distribution Account on July 1, 2017, pursuant to the Laws of Utah 2016, Volume 1, Chapter 172.

Item 14 To State Board of Education - Minimum School Program - Voted and Board Local Levy Programs

From Education Fund	373,900
Schedule of Programs:	
Voted Local Levy Program	1,048,100
Board Local Levy Program	(674,200)
State Board of Education	
Item 15 To State Board of Education - State Administrative Office	
From Education Fund	2,145,000
From Education Fund, One-time	400,000
From Uniform School Fund Restricted Trust Distribution Account	701,600
From Interest and Dividends Account	(635,100)
From Beginning Nonlapsing Balances	16,044,400
From Closing Nonlapsing Balances	(16,044,400)
Schedule of Programs:	
Assessment and Accountability	2,220,000
Business Services	329,000
Career and Technical Education	(50,000)
Math Teacher Training	(500,000)
School Trust	66,500
Teaching and Learning	375,000
Student Advocacy Services	171,000
<p>The Legislature intends that the State Board of Education use \$150,000 one-time of the funds appropriated in this line item for a dropout prevention program that utilizes a curriculum consisting of character development and enhancement of life skills delivered by certified trainers and is targeted at students who are at risk of dropping out.</p> <p>The Legislature intends that the Division of Finance transfer the fund balance in the Interest and Dividends Account to the Trust Distribution Account on July 1, 2017, pursuant to the Laws of Utah 2016, Volume 1, Chapter 172.</p> <p>The Legislature intends that the State Board of Education use any nonlapsing balances generated from the licensing of Student Assessment of Growth and Excellence (SAGE) assessment questions to develop additional assessment questions, to provide professional learning for Utah educators, and for risk mitigation expenditures.</p>	
Item 16 To State Board of Education - MSP Categorical Program Administration	
From Education Fund	707,600
Schedule of Programs:	
Digital Teaching and Learning	487,600
Special Education State Programs	220,000

The Legislature intends that the State Board of Education use \$300,000 of the funds appropriated for Digital Teaching [&] and Learning Administration to hire two full-time equivalent employees to provide program monitoring, evaluation, coaching for approved programs, and implementing the Board's Digital Teaching [&] and Learning master plan.

Item 17 To State Board of Education - Initiative
Programs

From General Fund	1,732,100
From Education Fund	5,797,400
From Education Fund, One-time	250,000
From General Fund Restricted - Autism Awareness Account	29,000
From Beginning Nonlapsing Balances	16,888,300
From Closing Nonlapsing Balances	(16,888,300)
Schedule of Programs:	
Electronic High School	(2,600)
UPSTART Early Childhood Education	1,500,000
ProStart Culinary Arts Program	250,000
General Financial Literacy	200,000
Carson Smith Scholarships	1,732,100
Autism Awareness	29,000
Early Intervention	3,000,000
Peer Assistance	(400,000)
IT Academy	500,000
Partnerships for Student Success	1,000,000

Item 18 To State Board of Education -
State Charter School Board

From Beginning Nonlapsing Balances	1,237,100
From Closing Nonlapsing Balances	(1,237,100)

Item 19 To State Board of Education -
Educator Licensing

From Education Fund	2,600,000
From Professional Practices Restricted Subfund	(2,400,900)
Schedule of Programs:	
Educator Licensing	199,100

The Legislature intends that the Division of Finance close the Professional Practices Restricted Subfund on June 30, 2018, and transfer any remaining balances to the Uniform School Fund.

Item 20 To State Board of Education -
Fine Arts Outreach

From Education Fund	700,000
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Schedule of Programs:	
Professional Outreach Programs	700,000
Item 21 To State Board of Education - Science Outreach	
From Education Fund	360,000
Schedule of Programs:	
Informal Science Education Enhancement	410,000
Integrated Student and New Facility Learning	(50,000)

The Legislature intends that the State Board of Education combine the grant awards for the Informal Science Education Enhancement (iSEE) program and the Integrated Student and New Facility Learning program into one grant for those organizations that participate in both grant programs.

Item 22 To State Board of Education - Education Contracts	
From Beginning Nonlapsing Balances	185,600
From Closing Nonlapsing Balances	(185,600)

Item 23 To State Board of Education - Utah Schools for the Deaf and the Blind	
From Education Fund	1,084,500
From Education Fund, One-time	(40,000)

Schedule of Programs:	
Educational Services	1,044,500

Item 24 To State Board of Education - Regional Service Centers	
From Education Fund	2,000,000

Schedule of Programs:	
Regional Service Centers	2,000,000

School and Institutional Trust Fund Office	
Item 25 To School and Institutional Trust Fund Office	
From School and Institutional Trust Fund Management Account	21,000

Schedule of Programs:	
School and Institutional Trust Fund Office	21,000

Section 8. Effective date.

(1) Except as provided in Subsections (2) and (3), this bill takes effect on July 1, 2017.

(2) On July 1, 2018:

(a) Sections 53A-6-104.1 and 53A-6-305 take effect; and

(b) Section 53A-6-105 is repealed.

(3) If approved by two-thirds of all the members elected to each house, Section 5, One-time appropriation for classroom supplies, takes effect

upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

CHAPTER 473**H. B. 136**

Passed March 8, 2017

(Passed into law without governor's signature)

Effective May 9, 2017

BOARD OF EDUCATION REVISIONS

Chief Sponsor: Michael S. Kennedy
 Senate Sponsor: Deidre M. Henderson

LONG TITLE**General Description:**

This bill amends provisions regarding implementing federal education programs.

Highlighted Provisions:

This bill:

- ▶ requires the State Board of Education to take certain actions before implementing a federal program that does not directly and simultaneously advance a state goal, objective, program need, or accountability system.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

53A-1-903, as last amended by Laws of Utah 2011, Chapter 342

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

Section 1. Section 53A-1-903 is amended to read:**53A-1-903. Federal programs -- School official duties.**

(1) School officials may:

(a) apply for, receive, and administer funds made available through programs of the federal government;

(b) only expend federal funds for the purposes for which they are received and are accounted for by the state, school district, or charter school; and

(c) reduce or eliminate a program created with or expanded by federal funds to the extent allowed by law when federal funds for that program are subsequently reduced or eliminated.

(2) School officials shall:

(a) prioritize resources, especially to resolve conflicts between federal provisions or between federal and state programs, including:

(i) providing first priority to meeting state goals, objectives, program needs, and accountability systems as they relate to federal programs; and

(ii) subject to Subsection (4), providing second priority to implementing federal goals, objectives, program needs, and accountability systems that do not directly and simultaneously advance state

goals, objectives, program needs, and accountability systems;

(b) interpret the provisions of federal programs in the best interest of students in this state;

(c) maximize local control and flexibility;

(d) minimize additional state resources that are diverted to implement federal programs beyond the federal money that is provided to fund the programs;

(e) request changes to federal educational programs, especially programs that are underfunded or provide conflicts with other state or federal programs, including:

(i) federal statutes;

(ii) federal regulations; and

(iii) other federal policies and interpretations of program provisions; and

(f) seek waivers from all possible federal statutes, requirements, regulations, and program provisions from federal education officials to:

(i) maximize state flexibility in implementing program provisions; and

(ii) receive reasonable time to comply with federal program provisions.

(3) The requirements of school officials under this part, including the responsibility to lobby federal officials, are not intended to mandate school officials to incur costs or require the hiring of lobbyists, but are intended to be performed in the course of school officials' normal duties.

(4) (a) As used in this Subsection (4):

(i) "Available Education Fund revenue surplus" means the Education Fund revenue surplus after the statutory transfers and set-asides described in Section 63J-1-313.

(ii) "Education Fund revenue surplus" means the same as that term is defined in Section 63J-1-313.

(b) Before prioritizing the implementation of a future federal goal, objective, program need, or accountability system that does not directly and simultaneously advance a state goal, objective, program need, or accountability system, the State Board of Education may:

(i) determine the financial impact of failure to implement the federal goal, objective, program need, or accountability system; and

(ii) if the State Board of Education determines that failure to implement the federal goal, objective, program need, or accountability system may result in a financial loss, request that the Legislature mitigate the financial loss.

(c) A mitigation requested under Subsection (4)(b)(ii) may include appropriating available Education Fund revenue surplus through an appropriations act, including an appropriations act passed during a special session called by the governor or a general session.

(d) This mitigation option is in addition to and does not restrict or conflict with the state's authority provided in this part.

CHAPTER 474**H. B. 244**

Passed March 8, 2017

Approved March 29, 2017

Effective May 9, 2017

**GENERAL FUND BUDGET
RESERVE ACCOUNT AMENDMENTS**Chief Sponsor: Ken Ivory
Senate Sponsor: Lincoln Fillmore**LONG TITLE****General Description:**

This bill modifies provisions relating to the General Fund Budget Reserve Account.

Highlighted Provisions:

This bill:

- ▶ authorizes the Legislature to appropriate money from the General Fund Budget Reserve Account to finance an existing federally funded program or activity in certain circumstances; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

63J-1-312, as last amended by Laws of Utah 2015, Chapter 214

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

Section 1. Section 63J-1-312 is amended to read:**63J-1-312. Establishing a General Fund Budget Reserve Account -- Providing for deposits and expenditures from the account -- Providing for interest generated by the account.**

(1) As used in this section:

(a) "Education Fund budget deficit" means a situation where appropriations made by the Legislature from the Education Fund for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the Education Fund in that fiscal year.

(b) "General Fund appropriations" means the sum of the spending authority for a fiscal year that is:

(i) granted by the Legislature in all appropriation acts and bills; and

(ii) identified as coming from the General Fund.

(c) "General Fund budget deficit" means a situation where General Fund appropriations made by the Legislature for a fiscal year exceed the estimated revenues adopted by the Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

(d) "General Fund revenue surplus" means a situation where actual General Fund revenues collected in a completed fiscal year exceed the estimated revenues for the General Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature.

(e) "Operating deficit" means that, at the end of the fiscal year, the unassigned fund balance in the General Fund is less than zero.

(2) There is created within the General Fund a restricted account to be known as the General Fund Budget Reserve Account, which is designated to receive the legislative appropriations and the surplus revenue required to be deposited into the account by this section.

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), at the end of any fiscal year in which the Division of Finance, in consultation with the Legislative Fiscal Analyst and in conjunction with the completion of the annual audit by the state auditor, determines that there is a General Fund revenue surplus, the Division of Finance shall transfer 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account.

(ii) If the transfer of 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account would cause the balance in the account to exceed 9% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 9% of General Fund appropriations for the fiscal year in which the General Fund revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(a):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Growth Reduction and Budget Stabilization Account, as provided in Section 63J-1-315;

(B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(C) excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(b) (i) Except as provided in Subsection (3)(b)(ii), in addition to Subsection (3)(a)(i), if a General Fund revenue surplus exists and if, within the last 10 years, the Legislature has appropriated any money from the General Fund Budget Reserve Account that has not been replaced by appropriation or as provided in this Subsection (3)(b), the Division of Finance shall transfer up to 25% more of the General Fund revenue surplus to the General Fund Budget Reserve Account to replace the amounts appropriated, until direct legislative appropriations, if any, and transfers from the General Fund revenue surplus under this Subsection (3)(b) have replaced the appropriations from the account.

(ii) If the transfer under Subsection (3)(b)(i) would cause the balance in the account to exceed 9% of General Fund appropriations for the fiscal year in which the revenue surplus occurred, the Division of Finance shall transfer only those funds necessary to ensure that the balance in the account equals 9% of General Fund appropriations for the fiscal year in which the revenue surplus occurred.

(iii) The Division of Finance shall calculate the amount to be transferred under this Subsection (3)(b):

(A) after making the transfer of General Fund revenue surplus to the Medicaid Growth Reduction and Budget Stabilization Account, as provided in Section 63J-1-315;

(B) before transferring from the General Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law; and

(C) excluding any direct legislative appropriation made to the General Fund Budget Reserve Account for the fiscal year.

(c) For appropriations made by the Legislature to the General Fund Budget Reserve Account, the Division of Finance shall treat those appropriations, unless otherwise specified in the appropriation, as replacement funds for appropriations made from the account if funds were appropriated from the General Fund Budget Reserve Account within the past 10 years and have not yet been replaced.

(4) The Legislature may appropriate money from the General Fund Budget Reserve Account only to:

(a) resolve a General Fund budget deficit, for the fiscal year in which the General Fund budget deficit occurs;

(b) pay some or all of state settlement agreements approved under Title 63G, Chapter 10, State Settlement Agreements Act;

(c) pay retroactive tax refunds; ~~or~~

(d) resolve an Education Fund budget deficit~~[-]~~; or

(e) finance an existing federally funded program or activity when:

(i) the federal funds expected to fund the federal program or activity are not available to fund the program or activity; and

(ii) the Legislature and governor concurrently determine that the program or activity is essential.

(5) Interest generated from investments of money in the General Fund Budget Reserve Account shall be deposited into the General Fund.

CHAPTER 475**H. B. 446**

Passed March 9, 2017

(Passed into law without governor's signature)

Effective May 9, 2017

SENTENCING GUIDELINES AMENDMENTS

Chief Sponsor: Ken Ivory
Senate Sponsor: Daniel Hemmert

LONG TITLE**General Description:**

This bill requires the Board of Pardons and Parole to develop a list of criteria as rationale for its decisions regarding a person's sentence.

Highlighted Provisions:

This bill:

- ▶ requires the Board of Pardons and Parole to develop and use a list of criteria in any decision it makes regarding whether:
 - an offender's sentence may be paroled or pardoned;
 - restitution should be ordered;
 - fines or forfeitures should be remitted; or
 - the sentence should be commuted or terminated; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

77-27-5, as last amended by Laws of Utah 2016, Chapter 223

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

Section 1. Section 77-27-5 is amended to read:**77-27-5. Board of Pardons and Parole authority.**

(1) (a) The Board of Pardons and Parole shall determine by majority decision when and under what conditions, subject to this chapter and other laws of the state, persons committed to serve sentences in class A misdemeanor cases at penal or correctional facilities which are under the jurisdiction of the Department of Corrections, and all felony cases except treason or impeachment or as otherwise limited by law, may be released upon parole, pardoned, ordered to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated.

(b) The board may sit together or in panels to conduct hearings. The chair shall appoint members to the panels in any combination and in accordance with rules promulgated by the board, except in hearings involving commutation and pardons. The chair may participate on any panel and when doing so is chair of the panel. The chair of the board may designate the chair for any other panel.

(c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole, pardon, or commutation granted or sentence terminated, except after a full hearing before the board or the board's appointed examiner in open session. Any action taken under this subsection other than by a majority of the board shall be affirmed by a majority of the board.

(d) A commutation or pardon may be granted only after a full hearing before the board.

(e) The board may determine restitution as provided in Section 77-27-6 and Subsection 77-38a-302(5)(d)(iii)(A).

(2) (a) In the case of original parole grant hearings, rehearings, and parole revocation hearings, timely prior notice of the time and location of the hearing shall be given to the defendant, the county or district attorney's office responsible for prosecution of the case, the sentencing court, law enforcement officials responsible for the defendant's arrest and conviction, and whenever possible, the victim or the victim's family.

(b) Notice to the victim, [his] the victim's representative, or [his] the victim's family shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section. This information shall be provided in terms that are reasonable for the lay person to understand.

(3) Decisions of the board in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil judgment, including restitution as provided in Section 77-27-6.

(4) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. However, respites or reprieves may not extend beyond the next session of the Board of Pardons and Parole and the board, at that session, shall continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as provided. In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at its next session. The Legislature shall then either pardon or commute the sentence, or direct its execution.

(5) In determining when, where, and under what conditions offenders serving sentences may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted, or their sentences commuted or terminated, the board shall:

(a) consider whether the persons have made or are prepared to make restitution as ascertained in accordance with the standards and procedures of Section 77-38a-302, as a condition of any parole, pardon, remission of fines or forfeitures, or commutation or termination of sentence[-]; and

(b) develop and use a list of criteria for making determinations under this Subsection (5).

(6) In determining whether parole may be terminated, the board shall consider the offense committed by the parolee, the parole period as provided in Section 76-3-202, and in accordance with Section 77-27-13.

CHAPTER 476
S.B. 2

Passed March 7, 2017
Approved March 29, 2017
Effective March 28, 2017

**NEW FISCAL YEAR SUPPLEMENTAL
APPROPRIATIONS ACT**

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Dean Sanpei

LONG TITLE

General Description:

This bill supplements or reduces appropriations previously provided for the use and operation of state government for the fiscal year beginning July 1, 2017 and ending June 30, 2018.

Highlighted Provisions:

This bill:

- ▶ provides budget increases and decreases for the use and support of certain state agencies;
- ▶ provides budget increases and decreases for the use and support of certain institutions of higher education;
- ▶ provides budget increases and decreases for other purposes as described;
- ▶ authorizes capital outlay amounts for certain internal service funds;
- ▶ authorizes full time employment levels for certain internal service funds; and
- ▶ provides intent language.

Money Appropriated in this Bill:

This bill appropriates \$516,337,412 in operating and capital budgets for fiscal year 2018, including:

- ▶ \$35,223,300 from the General Fund;
- ▶ \$86,612,200 from the Education Fund;
- ▶ \$394,501,912 from various sources as detailed in this bill.

This bill appropriates \$67,457,800 in expendable funds and accounts for fiscal year 2018, including:

- ▶ \$2,508,500 from the General Fund;
- ▶ \$64,949,300 from various sources as detailed in this bill.

This bill appropriates \$6,370,000 in restricted fund and account transfers for fiscal year 2018, including:

- ▶ \$28,204,200 from the General Fund;
- ▶ (\$21,834,200) from various sources as detailed in this bill.

This bill appropriates \$109,800 in transfers to unrestricted funds for fiscal year 2018.

Other Special Clauses:

This bill takes effect on July 1, 2017.

Utah Code Sections Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. FY 2018 Appropriations. The following sums of money are appropriated for the fiscal year beginning July 1, 2017 and ending June 30, 2018. These are additions to

amounts previously appropriated for fiscal year 2018.

Subsection 1(a). Operating and Capital Budgets.

Under the terms and conditions of Utah Code Title 63J, the Legislature appropriates the following sums of money from the funds or fund accounts indicated for the use and support of the government of the State of Utah.

**EXECUTIVE OFFICES AND
CRIMINAL JUSTICE**

GOVERNOR'S OFFICE

Item 2

To Governor's Office
From General Fund, One-Time (85,000)
From Dedicated Credits Revenue 1,000,000
Schedule of Programs:
Administration (160,000)
Literacy Projects 1,075,000

Item 3

To Governor's Office - Indigent
Defense Commission
From General Fund Restricted - Indigent
Defense Resources Account 550,000
From General Fund Restricted -
Indigent
Defense Resources Account,
One-Time 1,000,000
Schedule of Programs:
Indigent Defense Commission 1,550,000

Item 4

To Governor's Office - Governor's Office
of Management and Budget
From General Fund 140,000
Schedule of Programs:
State and Local Planning 140,000

Item 5

To Governor's Office - Quality Growth Commission
- LeRay McAllister Program
From General Fund, One-Time 500,000
Schedule of Programs:
LeRay McAllister Critical Land
Conservation Program 500,000

Item 6

To Governor's Office - Commission on
Criminal and Juvenile Justice
From General Fund (50,000)
From Dedicated Credits Revenue 272,700
Schedule of Programs:
CCJJ Commission 272,700
Extraditions (62,300)
Sentencing Commission 22,000
Judicial Performance Evaluation
Commission (9,700)

Item 7

To Governor's Office - CCJJ Jail Reimbursement
From General Fund, One-Time 1,725,000
Schedule of Programs:
Jail Reimbursement 1,725,000

Item 8

To Governor's Office - CCJJ Salt Lake County Jail
Bed Housing

From General Fund	2,420,000
From General Fund, One-Time	427,000
Schedule of Programs:	
Salt Lake County Jail Bed Housing ..	2,847,000

The Legislature intends that the appropriation of \$2,847,000 go to the Utah Commission on Criminal and Juvenile Justice to administer the contracting and payment of funds to any county that contracts with a county of the first class to house prisoners from a correctional facility in the county of first class. The Legislature intends that \$2,847,000 per year be used for housing up to 300 prisoners in county correctional facilities at \$26 per day, per prisoner, until FY2020. The funds shall be used only for county prisoners and not for state inmates, state probationary inmates, or state parole inmates. The Legislature intends that payment of these funds be contingent upon a recipient county first entering into a contract between the counties according to these terms.

OFFICE OF THE STATE AUDITOR

Item 9

To Office of the State Auditor - State Auditor	
From General Fund, One-Time	(200,000)
Schedule of Programs:	
State Auditor	(200,000)

STATE TREASURER

Item 10

To State Treasurer	
From General Fund	(7,500)
Schedule of Programs:	
Treasury and Investment	(7,500)

ATTORNEY GENERAL

Item 11

To Attorney General	
From General Fund	705,000
From General Fund, One-Time	1,000,000
From General Fund Restricted -	
Constitutional Defense	350,000
Schedule of Programs:	
Administration	455,000
Child Protection	250,000
Civil	1,350,000

The Legislature intends that the Attorney General's Office, Investigations Division, may purchase one additional vehicle with department funds in Fiscal Year 2017.

Item 12

To Attorney General - Children's Justice Centers	
From Dedicated Credits Revenue	148,000
Schedule of Programs:	
Children's Justice Centers	148,000

UTAH DEPARTMENT OF CORRECTIONS

Item 13

To Utah Department of Corrections - Programs and Operations	
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From General Fund	918,400
Schedule of Programs:	
Department Administrative Services ..	150,000
Adult Probation and Parole	
Programs	400,000
Programming Education	368,400

The Legislature intends that, if the Department of Corrections is able to reallocate resources internally to fund additional Adult Probation and Parole agents, for every two agents hired, the Legislature grants authority to purchase one vehicle with Department funds.

The Legislature grants authority to the Department of Corrections, Law Enforcement Bureau, to purchase two vehicles with Department funds.

Item 14

To Utah Department of Corrections -	
Department Medical Services	
From General Fund	515,000
Schedule of Programs:	
Medical Services	515,000

Item 15

To Utah Department of Corrections -	
Jail Contracting	
From General Fund	(193,000)
Schedule of Programs:	
Jail Contracting	(193,000)
Under Section 64-13e-105 the Legislature intends that the final state daily incarceration rate be set at \$72.38 for FY 2018.	

BOARD OF PARDONS AND PAROLE

Item 16

To Board of Pardons and Parole	
From General Fund	313,900
From General Fund, One-Time	340,800
Schedule of Programs:	
Board of Pardons and Parole	654,700

**DEPARTMENT OF HUMAN SERVICES -
DIVISION OF JUVENILE JUSTICE
SERVICES**

Item 17

To Department of Human Services - Division of Juvenile Justice Services - Programs and Operations	
From General Fund	(58,000)
Schedule of Programs:	
Administration	(58,000)

The Legislature intends that beginning in FY 2018 that the Division of Juvenile Justice Services fund the operation of the Weber Valley Detention facility through internal savings. Prior to FY 2018 facility operation was primarily funded with one-time, General Fund appropriations from the Legislature.

Contingent on passage of H.B. 239, Juvenile Justice Amendments, the Legislature intends that the Division of Juvenile Justice Services be authorized to increase their number of fleet vehicles by

fourteen to meet the expectations of increased in-home and day treatment services across the state. Funding for purchase and operation of these vehicles will come from internal savings and the reallocation of budget associated with H.B. 239.

JUDICIAL COUNCIL/STATE COURT ADMINISTRATOR

Item 18

To Judicial Council/State Court Administrator - Administration

From General Fund (24,000)
From General Fund, One-Time 549,100
From General Fund Restricted -
Tobacco Settlement Account (174,700)

Schedule of Programs:

District Courts (78,000)
Juvenile Courts (96,700)
Administrative Office (24,000)
Data Processing 549,100

The Legislature intends that salaries for District Court judges be increased by the same percentage as state employees generally. The salary for a District Court judge for the fiscal year beginning July 1, 2017 and ending June 30, 2018 shall be \$162,250 as established in Laws of Utah 2016 Chapter 396, Item 42. The Legislature intends that other judicial salaries shall be calculated in accordance with the formula set forth in UCA Title 67 Chapter 8 Section 2 and rounded to the nearest \$50.

Item 19

To Judicial Council/State Court Administrator - Contracts and Leases

From General Fund, One-Time (549,100)
Schedule of Programs:
Contracts and Leases (549,100)

Item 20

To Judicial Council/State Court Administrator - Guardian ad Litem

From General Fund (5,800)
Schedule of Programs:
Guardian ad Litem (5,800)

DEPARTMENT OF PUBLIC SAFETY

Item 21

To Department of Public Safety - Programs & Operations

From General Fund 860,000
From Transportation Fund, One-Time .. 862,900
From Dedicated Credits Revenue,
One-Time 500,000

From General Fund Restricted -
Fire Academy Support (3,100,000)
From General Fund Restricted -
Fire Academy Support, One-Time ... 3,100,000

From General Fund Restricted - Public
Safety Honoring Heroes Account 50,000

Schedule of Programs:

Department Commissioner's Office 50,000
CITS State Crime Labs 362,900
Highway Patrol - Field Operations 860,000

Highway Patrol - Technology

Services 1,000,000

The Department of Public Safety is authorized to increase its fleet by the same number of new officers authorized and funded by the legislature for FY 2018.

In accordance with Utah Code Ann. 24-3-103 the Legislature intends that the Department of Public Safety transfer all firearms received from court adjudications (Criminal Evidence) to the department for its use. These firearms will be transferred to the State Crime Laboratory and department training section for official use only. In addition, all ammunition received by the department with these firearms will be used by the State Crime Laboratory and training section for official use only. All other evidentiary property of value that has been adjudicated and received by the department will be transferred to State Surplus for auction.

The Legislature intends that any proceeds from the sale of the salvaged helicopter parts and any insurance reimbursements for helicopter repair be used by the department for its operations.

Item 22

To Department of Public Safety - Emergency Management

From General Fund (760,000)
Schedule of Programs:
Emergency Management (760,000)

Item 23

To Department of Public Safety - Peace Officers' Standards and Training

From Uninsured Motorist Identification
Restricted Account, One-Time 500,000
Schedule of Programs:
Basic Training 500,000

UTAH COMMUNICATIONS AUTHORITY

Item 24

To Utah Communications Authority - Administrative Services Division

From General Fund 760,000
Schedule of Programs:
Administrative Services Division 760,000

INFRASTRUCTURE AND GENERAL GOVERNMENT

TRANSPORTATION

Item 25

To Transportation - Support Services

From Transportation Fund 380,000
From Beginning Nonlapsing Balances ... 800,000
Schedule of Programs:

Building and Grounds 500,000
Human Resources Management 200,000
Data Processing 300,000
Internal Auditor 120,000
Community Relations 60,000

Item 26

To Transportation - Engineering Services

From Transportation Fund	3,549,300
From Federal Funds	2,000,200
From Beginning Nonlapsing Balances ...	300,000
Schedule of Programs:	
Program Development	5,300,000
Structures	(30,000)
Engineering Services	79,500
Right-of-Way	500,000

Item 27

To Transportation - Operations/ Maintenance Management	
From Transportation Fund	7,594,900
From Beginning Nonlapsing Balances	2,200,000
Schedule of Programs:	
Maintenance Administration	2,072,000
Field Crews	(37,300)
Maintenance Planning	(79,500)
Equipment Purchases	7,798,700
Shops	41,000

The Legislature intends that upon completion of the FY 2017 winter maintenance, unused fund in the Operations/Maintenance Management line item may be used by the Department of Transportation to meet unmet equipment needs.

The Legislature intends that the Department of Transportation use maintenance funds previously used on state highways that now qualify for Transportation Investment Funds of 2005 to address maintenance and preservation issues on other state highways.

Item 28

To Transportation - Construction Management	
From Transportation Fund	97,368,300
From Transportation Fund, One-Time	(40,300,000)
From Federal Funds	130,696,300
Schedule of Programs:	
Federal Construction - New	187,764,600

There is appropriated to the Department of Transportation from the Transportation Fund, not otherwise appropriated, a sum sufficient but not more than the surplus of the Transportation Fund, to be used by the department for the construction, rehabilitation, and preservation of State highways in Utah. The Legislature intends that the appropriation fund first, a maximum participation with the federal government for the construction of federally designated highways, as provided by law, and last the construction of State highways, as funding permits. No portion of the money appropriated by this item shall be used either directly or indirectly to enhance the appropriation otherwise made by this act to the Department of Transportation for other purposes.

Item 29

To Transportation - Region Management	
From Transportation Fund	732,700
From Federal Funds	(695,400)

From Beginning Nonlapsing Balances ...	200,000
Schedule of Programs:	
Region 1	200,000
Region 2	37,300

Item 30

To Transportation - Equipment Management	
From Transportation Fund	(1,639,700)
From Dedicated Credits Revenue ..	(27,593,700)
Schedule of Programs:	
Equipment Purchases	(6,620,900)
Shops	(22,612,500)

Item 31

To Transportation - B and C Roads	
From Transportation Fund	25,260,000
Schedule of Programs:	
B and C Roads	25,260,000

Item 32

To Transportation - Safe Sidewalk Construction

The Legislature intends that the funds appropriated from the Transportation Fund for pedestrian safety projects be used specifically to correct pedestrian hazards on State highways. The Legislature also intends that local authorities be encouraged to participate in the construction of pedestrian safety devices. The appropriated funds are to be used according to the criteria set forth in Section 72-8-104, Utah Code Annotated, 1953. The funds appropriated for sidewalk construction shall not lapse. If local governments cannot use their allocation of Sidewalk Safety Funds in two years, these funds will be available for other governmental entities which are prepared to use the resources. The Legislature intends that local participation in the Sidewalk Construction Program be on a 75% state and 25% local match basis.

Item 33

To Transportation - Mineral Lease From General Fund Restricted - Mineral Lease	(23,691,700)
Schedule of Programs:	
Mineral Lease Payments	(24,474,600)
Payment in Lieu	782,900

The Legislature intends that the funds appropriated from the Federal Mineral Lease Account shall be used for improvement or reconstruction of highways that have been heavily impacted by energy development. The Legislature further intends that if private industries engaged in developing the State's natural resources are willing to participate in the cost of the construction of highways leading to their facilities, that local governments consider that highway as a higher priority as they prioritize the use of Mineral Lease Funds received through 59-21-1(4)(C)(i). The funds appropriated for improvement or reconstruction of energy impacted highways are nonlapsing.

Item 34

To Transportation - Cooperative Agreements	
From Federal Funds	50,323,800
From Dedicated Credits Revenue	19,897,100

Schedule of Programs:
Cooperative Agreements 70,220,900

Item 35

To Transportation – Transportation
Investment Fund Capacity Program

There is appropriated to the Department of Transportation from the Transportation Investment Fund of 2005, not otherwise appropriated, a sum sufficient, but not more than the surplus of the Transportation Investment Fund of 2005, to be used by the department for the construction, rehabilitation, and preservation of State and Federal highways in Utah. No portion of the money appropriated by this item shall be used either directly or indirectly to enhance or increase the appropriations otherwise made by this act to the Department of Transportation for other purposes.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

Item 36

To Department of Administrative Services –
Executive Director
From Beginning Nonlapsing Balances . . . 127,100
Schedule of Programs:
Executive Director 127,100

Item 37

To Department of Administrative Services –
Inspector General of Medicaid Services
From Beginning Nonlapsing Balances . . . 504,500
Schedule of Programs:
Inspector General of Medicaid
Services 504,500

The Legislature intends that the Inspector General of Medicaid Services retain up to an additional \$60,000 of the states share of Medicaid collections during FY2018 to pay the Attorney Generals Office for the state costs of the one attorney FTE that the Office of the Inspector General is using.

Item 38

To Department of Administrative Services –
DFCM Administration
From Beginning Nonlapsing Balances . . . 957,600
Schedule of Programs:
DFCM Administration 957,600

The Legislature intends that any excess DFCM Project Reserve Funds or Contingency Reserve Funds, as determined by DFCM’s analysis of current balances and projected needs, will be transferred to the Utah State Correctional Facility project before any other uses of these funds.

Item 39

To Department of Administrative Services –
Building Board Program
From Beginning Nonlapsing Balances . . . 45,500
Schedule of Programs:
Building Board Program 45,500

Item 40

To Department of Administrative Services –
State Archives
From General Fund, One-Time (16,000)
From Beginning Nonlapsing Balances . . (16,300)
Schedule of Programs:
Archives Administration (32,300)

Item 41

To Department of Administrative Services –
Finance Administration
From Beginning Nonlapsing
Balances 2,212,500
Schedule of Programs:
Financial Information Systems 2,212,500

Item 42

To Department of Administrative Services –
Finance – Mandated
The Legislature intends that, if revenues deposited in the Land Exchange Distribution Account exceed appropriations from the account, the Division of Finance distribute the excess deposits according to the formula provided in UCA 53C-3-203(4).

Item 43

To Department of Administrative Services –
Finance – Mandated – Parental Defense
From Beginning Nonlapsing Balances . . . 36,400
Schedule of Programs:
Parental Defense 36,400

Item 44

To Department of Administrative Services –
Finance – Mandated – Ethics Commission
From Beginning Nonlapsing Balances 3,800
Schedule of Programs:
Executive Branch Ethics Commission . . . 3,800

Item 45

To Department of Administrative Services –
Post Conviction Indigent Defense
From Beginning Nonlapsing Balances . . . 50,000
Schedule of Programs:
Post Conviction Indigent
Defense Fund 50,000

Item 46

To Department of Administrative Services –
Judicial Conduct Commission
From Beginning Nonlapsing Balances . . . 89,100
Schedule of Programs:
Judicial Conduct Commission 89,100

Item 47

To Department of Administrative Services –
Purchasing
The Legislature intends that the Division of Purchasing & General Services may add one additional vehicle to its authorized level using a NASPO Valuepoint Cooperative Purchasing Organization grant. Any added vehicles must be reviewed and approved by the Legislature.

**DEPARTMENT OF
TECHNOLOGY SERVICES**

Item 48

To Department of Technology Services – Chief
Information Officer

From Beginning Nonlapsing Balances	2,230,000
Schedule of Programs:	
Chief Information Officer	2,230,000

Item 49

To Department of Technology Services - Integrated Technology Division

From General Fund	150,000
From Federal Funds	(235,000)
From Beginning Nonlapsing Balances ...	500,000
Schedule of Programs:	
Automated Geographic Reference Center	415,000

CAPITAL BUDGET

Item 50

To Capital Budget - Capital Development Fund

The Legislature intends that the Division of Facilities Construction and Management loan \$2,000,000 from the Capital Projects Fund for the purpose of Salt Lake County paying a portion of Salt Lake County's \$3,000,000 commitment to the Utah State Fairpark Arena, contingent upon Salt Lake County's repayment of the loan via a payment to the division of \$1,000,000 on January 30, 2018 and \$1,000,000 on January 30, 2019.

The Legislature intends that Utah State University transfer \$300,000 from its Contingency Reserve Fund from state-funded projects to its Project Reserve Fund.

Item 51

To Capital Budget - Capital Development - Higher Education

From General Fund	46,000,000
From General Fund, One-Time	(46,000,000)
From Education Fund, One-Time	27,000,000
Schedule of Programs:	
Weber State Social Sciences Building	14,000,000
Dixie State Human Performance Center	8,000,000
U of U Rehabilitation Hospital	5,000,000

The Legislature intends that, when preparing the Fiscal Year 2019 base budget bills, the Legislative Fiscal Analyst shall include (\$46,000,000) ongoing and \$46,000,000 one-time from the General Fund in the Capital Developments line item for one-time construction costs of the University of Utah Medical Education and Discovery / Rehabilitation Hospital, the Dixie State University Human Performance Center, and the Weber State University Social Sciences Building Renovation.

The Legislature intends that, when preparing the Fiscal Year 2019 base budget bills, the Legislative Fiscal Analyst shall include in the Capital Development line item \$20,000,000 ongoing from the Education Fund and \$5,000,000 one-time from the General Fund for the University of Utah Medical Education and Discovery /

Rehabilitation Hospital. The Legislature further intends that the ongoing appropriation for this purpose shall cease after fiscal year 2020 and that the Legislative Fiscal Analyst will shift ongoing state fund appropriations to the general Capital Developments line item in the fiscal year 2021 base budget bills for future state or higher education projects.

The Legislature intends that, when preparing the Fiscal Year 2019 base budget bills, the Legislative Fiscal Analyst shall include in the Capital Development line item \$17,000,000 one-time from the General or Education Fund for the Dixie State University Human Performance Center and \$15,940,000 one-time from the General or Education Fund for the Weber State University Social Science Building Renovation.

Item 52

To Capital Budget - Capital Development - Public Education

From Education Fund, One-Time	10,500,000
Schedule of Programs:	
USDB Springville	10,500,000

Item 53

To Capital Budget - Capital Improvements

From General Fund	1,244,500
Schedule of Programs:	
Capital Improvements	1,244,500

The Legislature intends that \$4,000,000 from appropriations to the Capital Budget - Capital Improvements - Capital Improvements program be used to extend utilities to the Utah National Guards property in Nephi.

STATE BOARD OF BONDING COMMISSIONERS - DEBT SERVICE

Item 54

To State Board of Bonding Commissioners - Debt Service - Debt Service

From General Fund	(46,000,000)
From General Fund, One-Time	48,000,000
Schedule of Programs:	
G.O. Bonds - State Govt	2,000,000

The Legislature intends that, when preparing the Fiscal Year 2019 base budget bills, the Legislative Fiscal Analyst shall include \$46,000,000 ongoing and (\$46,000,000) one-time from the General Fund in the Debt Service line item for future debt service payments on prison development bonds beginning in FY 2020.

BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR

DEPARTMENT OF HERITAGE AND ARTS

Item 55

To Department of Heritage and Arts - Administration

From General Fund	160,000
From Dedicated Credits Revenue	29,300

Schedule of Programs:
 Executive Director's Office 130,000
 Information Technology 29,300
 Utah Multicultural Affairs Office 30,000

Item 56

To Department of Heritage and Arts -
 Historical Society
 From Dedicated Credits Revenue 37,400
 Schedule of Programs:
 State Historical Society 37,400

Item 57

To Department of Heritage and Arts - Division of
 Arts and Museums - Office of Museum Services
 From Dedicated Credits Revenue 1,000
 Schedule of Programs:
 Office of Museum Services 1,000

Item 58

To Department of Heritage and Arts - Division
 of Arts and Museums
 From General Fund 250,000
 From Dedicated Credits Revenue 22,900
 From Pass-through 800,000
 Schedule of Programs:
 Grants to Non-profits 250,000
 Community Arts Outreach (180,100)
 One Percent for Arts 1,003,000

Item 59

To Department of Heritage and Arts -
 Pass-Through
 From General Fund 205,000
 From General Fund, One-Time 250,000
 Schedule of Programs:
 Pass-Through 455,000

**GOVERNOR'S OFFICE OF
 ECONOMIC DEVELOPMENT**

Item 60

To Governor's Office of Economic Development -
 Administration
 From General Fund (750,000)
 From General Fund, One-Time 900,000
 Schedule of Programs:
 Administration 150,000

Item 61

To Governor's Office of Economic Development -
 Office of Tourism
 From General Fund, One-Time (36,300)
 From General Fund Restricted - Motion
 Picture Incentive Account 1,500,000
 From General Fund Restricted -
 Tourism Marketing Performance 3,000,000
 Schedule of Programs:
 Operations and Fulfillment (36,300)
 Marketing and Advertising 3,000,000
 Film Commission 1,500,000

Item 62

To Governor's Office of Economic Development -
 Business Development
 From General Fund 1,825,000
 From Federal Funds 190,000
 Schedule of Programs:
 Outreach and International Trade 690,000

Corporate Recruitment and Business
 Services 1,325,000

Item 63

To Governor's Office of Economic Development -
 Pass-Through
 From General Fund 150,000
 From General Fund, One-Time 1,805,000
 Schedule of Programs:
 Pass-Through 1,955,000

UTAH STATE TAX COMMISSION

Item 64

To Utah State Tax Commission - Rural
 Health Care Facilities Distribution
 From General Fund Restricted - Rural
 Healthcare Facilities Account (336,200)
 From Lapsing Balance 336,200

Item 65

To Utah State Tax Commission - Liquor
 Profit Distribution
 From General Fund Restricted-Alcoholic
 Beverage Enforcement & Treatment,
 One-Time 191,000
 Schedule of Programs:
 Liquor Profit Distribution 191,000

**UTAH SCIENCE TECHNOLOGY AND
 RESEARCH GOVERNING AUTHORITY**

Item 66

To Utah Science Technology and Research
 Governing Authority - Grant Programs
 From General Fund (530,000)
 From General Fund, One-Time 500,000
 Schedule of Programs:
 University Technology Acceleration
 Grant 350,000
 Science and Technology Initiation
 Grants (10,000)
 Industry Partnership Program (125,000)
 Technology Acceleration Program ... (225,000)
 Energy Research Triangle (20,000)

**DEPARTMENT OF ALCOHOLIC
 BEVERAGE CONTROL**

Item 67

To Department of Alcoholic Beverage Control -
 DABC Operations
 From Liquor Control Fund 157,600
 From Liquor Control Fund,
 One-Time (198,600)
 Schedule of Programs:
 Stores and Agencies (41,000)

LABOR COMMISSION

Item 68

To Labor Commission
 From Beginning Nonlapsing Balances ... 450,000
 Schedule of Programs:
 Industrial Accidents 450,000

The Legislature intends that the Utah
 Labor Commission report by October 15, 2018
 on the following performance measures for
 the Labor Commission line item, whose
 mission is "To achieve safety in Utahs

workplaces and fairness in employment and housing”: (1) Number of wage claim case closures in the Utah Antidiscrimination and Labor Division (Target = 2,000 per year), (2) Number of interventions in the UOSH Division (Target = 2,000 per year), (3) Number of employers investigated to determine compliance with the state requirement to provide workers compensation insurance for their employees (Target = 900 employers investigated per year) to the Business, Economic Development, and Labor Appropriation Subcommittee.

DEPARTMENT OF COMMERCE

Item 69

To Department of Commerce - Commerce
 General Regulation
 From General Fund 21,600
 From Federal Funds 8,000
 Schedule of Programs:
 Occupational and Professional
 Licensing 21,600
 Public Utilities 8,000

Item 70

To Department of Commerce - Building
 Inspector Training
 From Dedicated Credits Revenue 232,800
 Schedule of Programs:
 Building Inspector Training 232,800

FINANCIAL INSTITUTIONS

Item 71

To Financial Institutions - Financial
 Institutions Administration
 From General Fund Restricted -
 Financial Institutions, One-Time 300,000
 Schedule of Programs:
 Administration 300,000

INSURANCE DEPARTMENT

Item 72

To Insurance Department - Insurance
 Department Administration
 From Federal Funds 500,000
 Schedule of Programs:
 Administration 500,000

PUBLIC SERVICE COMMISSION

Item 73

To Public Service Commission
 From Beginning Nonlapsing Balances ... 176,700
 Schedule of Programs:
 Administration 176,700

Item 74

To Public Service Commission - Speech
 and Hearing Impaired
 From Beginning Nonlapsing Balances ... 748,100
 Schedule of Programs:
 Speech and Hearing Impaired 748,100

SOCIAL SERVICES

DEPARTMENT OF HEALTH

Item 75

To Department of Health - Executive
 Director’s Operations

The Legislature intends that the Department of Health prepare proposed performance measures for all new funding of \$10,000 or more for building blocks and give this information to the Office of the Legislative Fiscal Analyst by June 1, 2017. At a minimum the proposed measures should include those presented to the Subcommittee during the requests for funding. If the same measures are not included, a detailed explanation as to why should be included. The Department of Health shall provide its first report on its performance measures to the Office of the Legislative Fiscal Analyst by October 31, 2017 with another report two months after the close of the fiscal year where the funding was provided.

Item 76

To Department of Health - Family Health
 and Preparedness
 From General Fund 2,782,600
 From General Fund, One-Time 760,000
 From Dedicated Credits Revenue 8,800
 Schedule of Programs:
 Child Development 2,672,800
 Health Facility Licensing and
 Certification 118,600
 Primary Care 760,000

Item 77

To Department of Health - Disease Control
 and Prevention
 From General Fund 358,700
 From General Fund, One-Time 100,000
 Schedule of Programs:
 Health Promotion 458,700

Item 78

To Department of Health - Primary
 Care Workforce Financial Assistance
 From General Fund, One-Time 350,000
 Schedule of Programs:
 Primary Care Workforce Financial
 Assistance 350,000

Item 79

To Department of Health - Medicaid and
 Health Financing
 The Legislature intends that the Department of Health report to the Office of the Legislative Fiscal Analyst by September 1, 2017 on the policies of Medicaid and the accountable care organizations regarding the coverage of long acting reversible contraceptives to ensure that covered services are not being denied to women during inpatient stays in the hospital. Further, if necessary, the report shall identify the required next steps and a proposed timeline to make improvements to coverage of long acting reversible contraceptives.

The Legislature intends that the Department of Health report to the Office of the Legislative Fiscal Analyst by October 1, 2017 on whether the policies of Medicaid and the accountable care organizations regarding opioid prescribing are in line with the 2016 Centers for Disease Control guidelines for prescribing opioids for chronic pain, and in line with the recommendations from the Utah opioid prescribing guidelines. Further, if necessary, the report shall identify the required next steps and a proposed timeline to make opioid prescribing policies more in line with referenced guidelines.

Item 80

To Department of Health - Children's Health Insurance Program

From General Fund, One-Time	..... (1,646,300)
From Federal Funds, One-Time	..... 27,049,600
From General Fund Restricted - Medicaid Restricted Account, One-Time	..... 9,000,000
From General Fund Restricted - Tobacco Settlement Account, One-Time	..... (4,403,300)
Schedule of Programs:	
Children's Health Insurance Program	..... 30,000,000

The Legislature intends that the Department of Health may use up to a combined maximum of \$9,000,000 from the General Fund Restricted - Medicaid Restricted Account and associated federal matching funds provided across the entire agency in both FY 2017 and FY 2018. The funding is limited to unanticipated costs for state match.

Item 81

To Department of Health - Medicaid Mandatory Services

From General Fund	..... (351,884,900)
From General Fund, One-Time	..... 9,309,600
From Federal Funds	..... (1,150,962,400)
From Federal Funds, One-Time	..... 7,668,600
From Dedicated Credits Revenue	.. (44,526,200)
From Ambulance Service Provider Assess Exp Rev Fund	..... (3,217,400)
From Hospital Provider Assessment Fund	..... (48,500,000)
From General Fund Restricted - Nursing Care Facilities Account	..... (24,947,100)
From General Fund Restricted - Tobacco Settlement Account	..... (6,049,600)
From Revenue Transfers	..... (2,478,000)
From Pass-through	..... (9,002,200)
From Beginning Nonlapsing Balances	..... (7,500,000)
Schedule of Programs:	
Managed Health Care	..... (1,035,756,400)
Nursing Home	..... (230,389,300)
Inpatient Hospital	..... (141,446,000)
Outpatient Hospital	..... (59,186,200)
Physician Services	..... (47,451,200)
Medicaid Management Information	
System Replacement	..... (21,554,400)
Crossover Services	..... (10,263,900)

Medical Supplies	..... (9,591,200)
Other Mandatory Services	..... (76,451,000)

Item 82

To Department of Health - Medicaid Optional Services

From General Fund	..... (118,844,500)
From Federal Funds	..... (624,484,300)
From Federal Funds, One-Time	..... 13,500,000
From Federal Funds - American Recovery and Reinvestment Act, One-Time	..... (13,500,000)
From Dedicated Credits Revenue	.. (204,334,700)
From General Fund Restricted - Nursing Care Facilities Account	.... (3,480,100)
From Revenue Transfers	..... (107,519,000)
From Beginning Nonlapsing Balances	..... (3,544,000)
Schedule of Programs:	
Home and Community Based Waiver Services	
.....	(271,724,800)
Capitated Mental Health Services	
.....	(241,296,000)
Pharmacy	..... (88,418,200)
Non-service Expenses	..... (84,135,100)
Intermediate Care Facilities for Intellectually Disabled	
.....	(84,545,400)
Dental Services	..... (62,947,200)
Buy-in/Buy-out	..... (56,582,300)
Clawback Payments	..... (36,208,500)
Disproportionate Share Hospital Payments	
.....	(33,604,300)
Hospice Care Services	..... (19,630,600)
Vision Care	..... (1,552,900)
Other Optional Services	..... (81,561,300)

Item 83

To Department of Health - Medicaid Expansion 2017

From Federal Funds	..... (64,592,500)
From Medicaid Expansion Fund	... (28,476,400)
Schedule of Programs:	
Medicaid Expansion 2017	..... (93,068,900)

Item 84

To Department of Health - Medicaid Services

From General Fund	..... 467,260,900
From General Fund, One-Time	..... (13,712,900)
From Federal Funds	..... 1,844,593,700
From Federal Funds, One-Time	... (21,168,600)
From Federal Funds - American Recovery and Reinvestment Act, One-Time	..... 13,500,000
From Dedicated Credits Revenue	... 249,110,900
From Ambulance Service Provider Assess Exp Rev Fund	..... 3,217,400
From Hospital Provider Assessment Fund	..... 48,500,000
From Medicaid Expansion Fund	..... 30,984,900
From General Fund Restricted - Nursing Care Facilities Account	.... 31,013,800
From General Fund Restricted - Tobacco Settlement Account	..... 6,049,600
From General Fund Restricted - Tobacco Settlement Account, One-Time	..... 4,403,300
From Revenue Transfers	..... 109,997,000
From Pass-through	..... 9,002,200
From Beginning Nonlapsing Balances	..... 11,844,000

Schedule of Programs:

Accountable Care	
Organizations	1,049,566,400
Dental	68,447,200
Expenditure Offsets from	
Collections	(12,505,000)
Home and Community Based	
Waivers	271,724,800
Home Health and Hospice	20,110,000
Inpatient Hospital	153,951,000
Intermediate Care Facilities for	
the Intellectually Disabled	86,455,400
Medical Transportation	1,552,900
Medicare Buy-In	56,582,300
Medicare Part D Clawback	
Payments	36,208,500
Mental Health and Substance	
Abuse	241,296,000
Nursing Home	238,581,000
Other Services	181,503,200
Outpatient Hospital	59,186,200
Pharmacy	88,418,200
Physician and Osteopath	51,451,200
Provider Reimbursement Information	
System for Medicaid	22,354,400
School Based Skills Development ...	84,135,100
Medicaid Expansion 2017	95,577,400

The Legislature intends that the Department of Health report quarterly to the Office of the Legislative Fiscal Analyst on the status of replacing the Medicaid Management Information System replacement beginning September 30, 2017. The reports should include, where applicable, the responses to any requests for proposals. At least one report during Fiscal Year 2018 should include an updated estimate of net ongoing impacts to the State from the new system. The Department of Health should work with other agencies to identify any impacts outside its agency.

The Legislature intends that the \$800,000 in beginning nonlapsing provided to the Department of Health's Medicaid Services line item for the redesign and replacement of the Medicaid Management Information System is dependent upon up to \$800,000 funds not otherwise designated as nonlapsing to the Department of Health's Medicaid Mandatory Services line item, Medicaid Optional Services line item, or a combination of both line items not to exceed a total of \$8,124,200 being retained as nonlapsing in Fiscal Year 2017 for this purpose.

The Legislature intends that the income eligibility ceiling for FY 2018 shall be the following percent of federal poverty level for UCA 26-18-411 Health Coverage Improvement Program: i. 0% for individuals who meet the additional criteria in 26-18-411 Subsection (3) ii. 55% for an individual with a dependent child.

The Legislature intends that the Department of Health report to the Office of the Legislative Fiscal Analyst by October 1, 2017 on access to care for Medicaid clients

served under dental managed care contracts. At a minimum the report shall address: (1) how utilization of services under managed care arrangements has compared to utilization under fee for service arrangements in the same counties prior to implementation of managed care, (2) What current contractual obligations exist regarding access to care for Medicaid clients, (3) what changes could be made to improve client access to care under dental managed care and (4) recommendations for any statutory changes that would improve Medicaid member access to dental care.

The Legislature intends that the Department of Health shall: 1) Direct funds to increase the salaries of direct care workers; 2) Increase only those rates which include a direct care service component; 3) Monitor providers to ensure that all funds appropriated are applied to direct care worker wages and that none of the funding goes to administrative functions or provider profits; In conjunction with Intermediate Care Facilities - Intellectually Disabled providers, report to the Office of the Legislative Fiscal Analyst no later than September 1, 2019 regarding the implementation and status of increasing salaries for direct care workers.

DEPARTMENT OF WORKFORCE SERVICES

Item 85

To Department of Workforce Services - Administration

From Federal Funds, One-Time	4,920,900
From General Fund Restricted - Office of Rehabilitation Transition Restricted Account, One-Time	5,000,000
From General Fund Restricted - Special Admin. Expense Account, One-Time	75,000
From Unemployment Compensation Fund, One-Time	79,100
Schedule of Programs:	
Administrative Support	10,075,000

The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Administration line item is limited to one-time projects associated with Unemployment Insurance modernization.

Item 86

To Department of Workforce Services - Operations and Policy

From Federal Funds	232,712
From Federal Funds, One-Time	4,045,500
From General Fund Restricted - Office of Rehabilitation Transition Restricted Account, One-Time	5,000,000
From General Fund Restricted - Special Admin. Expense Account, One-Time	2,925,000
From Unemployment Compensation Fund, One-Time	2,643,500
Schedule of Programs:	

Temporary Assistance for Needy Families	1,921,712
Other Assistance	2,925,000
Information Technology	10,000,000

The Legislature intends that the Department of Workforce Services (DWS) authorize TANF for three years up to \$232,712 per year to be used for Out of Wedlock Pregnancy Prevention. This TANF funding is dependent upon availability of TANF funding and expenditures meeting the necessary requirements to qualify for the federal TANF program. The Legislature further intends that the Department of Workforce Services report the status of this effort to the Office of the Legislative Fiscal Analyst no later than September 1, 2017.

The Legislature intends that up to \$750,000 in excess one-time TANF funds be used for Sexual Violence Prevention and Medical Care for Victims. The Legislature further intends that the Department of Workforce Services report the outcome of this TANF funding initiative to the Office of the Legislative Fiscal Analyst no later than September 1, 2017.

The Legislature intends that up to \$939,000 in Excess TANF funds one time be used for Domestic Violence Local Shelters. The Legislature further intends that the Department of Workforce Services report the outcome of this TANF funding initiative to the Office of the Legislative Fiscal Analyst no later than September 1, 2017.

The Legislature intends that the Department of Workforce Services prepare proposed performance measures for all new funding of \$10,000 or more for building blocks and give this information to the Office of the Legislative Fiscal Analyst by June 1, 2017. At a minimum the proposed measures should include those presented to the Subcommittee during the requests for funding. If the same measures are not included, a detailed explanation as to why should be included. The Department of Workforce Services shall provide its first report on its performance measures to the Office of the Legislative Fiscal Analyst by October 31, 2017 with another report two months after the close of the fiscal year where the funding was provided.

The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Operations and Policy line item is limited to one-time projects associated with Unemployment Insurance modernization.

Item 87

To Department of Workforce Services - Unemployment Insurance	
From Federal Funds, One-Time	4,322,600
From General Fund Restricted - Office of Rehabilitation Transition	
Restricted Account, One-Time	5,000,000

From General Fund Restricted - Special Admin. Expense Account, One-Time	1,000,000
From Unemployment Compensation Fund, One-Time	677,400

Schedule of Programs:

Unemployment Insurance Administration	11,000,000
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The Legislature intends that the American Recovery and Reinvestment Act appropriation provided for the Unemployment Insurance line item is limited to one-time projects associated with Unemployment Insurance modernization.

Item 88

To Department of Workforce Services - State Office of Rehabilitation	
From General Fund, One-Time	(20,259,200)
From General Fund Restricted - Office of Rehabilitation Transition	
Restricted Account, One-Time	21,834,200

Schedule of Programs:

Blind and Visually Impaired	300,000
Rehabilitation Services	1,275,000

The Legislature intends that the fiscal year 2018 ending balances in the General Fund Restricted - Office of Rehabilitation Transition Restricted Account (Fund 1288) not lapse at the close of fiscal year 2018. The Legislature further intends the Division of Finance transfer any remaining balances in the General Fund Restricted - Office of Rehabilitation Transition Restricted Account (Fund 1288) into the Department of Workforce Services - State Office of Rehabilitation Transition Restricted Account repealed (July 1, 2018).

Item 89

To Department of Workforce Services - Housing and Community Development	
From General Fund	210,000
From General Fund, One-Time	54,400
From General Fund Restricted - Pamela Atkinson Homeless Account, One-Time	356,200

Schedule of Programs:

Homeless to Housing Reform Program	264,400
Homeless Committee	356,200

DEPARTMENT OF HUMAN SERVICES

Item 90

To Department of Human Services - Executive Director Operations	
From General Fund, One-Time	150,000

Schedule of Programs:

Utah Marriage Commission	150,000
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The Legislature intends that the Department of Human Services prepare proposed performance measures for all new funding of \$10,000 or more for building blocks and give this information to the Office of the Legislative Fiscal Analyst by June 1, 2017. At a minimum the proposed measures should include those presented to the Subcommittee during the requests for funding. If the same

measures are not included, a detailed explanation as to why should be included. The Department of Human Services shall provide its first report on its performance measures to the Office of the Legislative Fiscal Analyst by October 31, 2017 with another report two months after the close of the fiscal year where the funding was provided.

Item 91

To Department of Human Services - Division of Substance Abuse and Mental Health
 From General Fund 20,400,000
 From General Fund, One-Time 1,000,000
 Schedule of Programs:
 Mental Health Centers 17,400,000
 State Hospital 3,000,000
 Local Substance Abuse Services 1,000,000

Item 92

To Department of Human Services - Division of Services for People with Disabilities
 From General Fund 3,505,600
 From General Fund, One-Time 3,627,700
 From Revenue Transfers 8,246,400
 From Revenue Transfers, One-Time .. 8,533,600
 Schedule of Programs:
 Community Supports Waiver 23,913,300

The Legislature intends that if funding is appropriated for the building block titled "DHS - DSPD Direct Care Staff Salary Increase Phase III," the Division of Services for People with Disabilities (DSPD) shall: (1) Direct funds to increase the salaries of direct care workers; (2) Increase only those rates which include a direct care service component, including respite; (3) Monitor providers to ensure that all funds appropriated are applied to direct care worker wages and that none of the funding goes to administrative functions or provider profits; (4) In conjunction with DSPD community providers, report to the Office of the Legislative Fiscal Analyst no later than September 1, 2017 regarding the implementation and status of increasing salaries for direct care workers.

Item 93

To Department of Human Services - Division of Child and Family Services
 From General Fund 500,000
 From Federal Funds 383,900
 From General Fund Restricted - National Professional Men's Basketball Team Support of Women and Children Issues 37,500
 Schedule of Programs:
 Administration - DCFS 37,500
 Out-of-Home Care 883,900

The Legislature intends that the Department of Human Services provide to the Office of the Legislative Fiscal Analyst no later than October 15, 2017 the following information for youth that are court-involved or at risk of court involvement, to assess the impact of juvenile justice reform efforts on the Division of Child and Family Services: (1) the

number of youth placed in each type of out-of-home setting, (2) the average length of out-of-home stay by setting, (3) the reasons for out-of-home placement, (4) the daily cost of each type of out-of-home setting, (5) the number of youth receiving services in the community, (6) the average length of community service provision, (7) a list of support services delivered in the community, including frequency of use and costs of each service, and (8) remaining barriers to implementing the reforms.

HIGHER EDUCATION

UNIVERSITY OF UTAH

Item 94

To University of Utah - Education and General
 From General Fund, One-Time 2,000,000
 From Education Fund 7,942,500
 From Education Fund, One-Time (473,400)
 Schedule of Programs:
 Education and General 9,469,100

The Legislature intends to authorize the University of Utah to purchase six new vehicles for its motor pool.

The Legislature intends that the University of Utah use \$467,000 appropriated by this item and Item 9, "Higher Education Base Budget", (House Bill 1, 2017 General Session) to provide demographic data and decision support to the Legislature as well as to the Governor's Office of Management and Budget and other state and local entities as funds allow.

Item 95

To University of Utah - School of Medicine
 From General Fund Restricted - Cigarette Tax Restricted Account 2,800,000
 Schedule of Programs:
 School of Medicine 2,800,000

Item 96

To University of Utah - Cancer Research and Treatment
 From General Fund 6,240,000
 From General Fund, One-Time (2,000,000)
 From General Fund Restricted - Cigarette Tax Restricted Account (2,800,000)
 From General Fund Restricted - Tobacco Settlement Account (4,000,000)
 Schedule of Programs:
 Cancer Research and Treatment ... (2,560,000)

Item 97

To University of Utah - Public Service
 From Education Fund 200,000
 Schedule of Programs:
 Natural History Museum of Utah 200,000

UTAH STATE UNIVERSITY

Item 98

To Utah State University - Education and General
 From Education Fund 3,256,700
 Schedule of Programs:
 Education and General 3,268,400

Operations and Maintenance (11,700)

The Legislature intends to authorize Utah State University to purchase five new vehicles for its motor pool.

Item 99

To Utah State University - Brigham City Regional Campus
 From Education Fund 1,242,400
 Schedule of Programs:
 Brigham City Regional Campus 1,242,400

Item 100

To Utah State University - Tooele Regional Campus
 From Education Fund (1,242,400)
 Schedule of Programs:
 Tooele Regional Campus (1,242,400)

Item 101

To Utah State University - Water Research Laboratory
 From Education Fund 200,000
 Schedule of Programs:
 Water Research Laboratory 200,000

Item 102

To Utah State University - Agriculture Experiment Station
 From Education Fund 366,000
 Schedule of Programs:
 Agriculture Experiment Station 366,000

Item 103

To Utah State University - Cooperative Extension
 From Education Fund 122,500
 Schedule of Programs:
 Cooperative Extension 122,500

WEBER STATE UNIVERSITY

Item 104

To Weber State University - Education and General
 From Education Fund 2,048,900
 From Education Fund, One-Time (432,200)
 Schedule of Programs:
 Education and General 1,616,700

SOUTHERN UTAH UNIVERSITY

Item 105

To Southern Utah University - Education and General
 From Education Fund 2,618,200
 Schedule of Programs:
 Education and General 2,618,200
 The Legislature intends to authorize Southern Utah University to purchase eight new vehicles for its motor pool.

UTAH VALLEY UNIVERSITY

Item 106

To Utah Valley University - Education and General
 From Education Fund 4,297,900
 Schedule of Programs:
 Education and General 4,297,900

The Legislature intends to authorize Utah Valley University to purchase three new vehicles for its motor pool.

SNOW COLLEGE

Item 107

To Snow College - Education and General
 From Education Fund 761,700
 Schedule of Programs:
 Education and General 761,700

DIXIE STATE UNIVERSITY

Item 108

To Dixie State University - Education and General
 From Education Fund 2,104,200
 From Education Fund, One-Time (595,000)
 Schedule of Programs:
 Education and General 1,509,200

SALT LAKE COMMUNITY COLLEGE

Item 109

To Salt Lake Community College - Education and General
 From Education Fund 2,170,500
 Schedule of Programs:
 Education and General 2,170,500

The Legislature intends to authorize Salt Lake Community College to purchase three new vehicles for its motor pool.

STATE BOARD OF REGENTS

Item 110

To State Board of Regents - Administration
 From Education Fund 86,900
 From Dedicated Credits Revenue (75,000)
 Schedule of Programs:
 Administration 11,900

Item 111

To State Board of Regents - Student Assistance
 From Education Fund 8,276,900
 Schedule of Programs:
 Regents' Scholarship 8,276,900

Item 112

To State Board of Regents - Student Support
 From Education Fund 26,700
 From Dedicated Credits Revenue 75,000
 Schedule of Programs:
 Services for Hearing Impaired
 Students 26,700
 Concurrent Enrollment 75,000

Item 113

To State Board of Regents - Technology
 From Education Fund 143,700
 Schedule of Programs:
 Higher Education Technology
 Initiative 143,700

Item 114

To State Board of Regents - Economic Development
 From Education Fund 4,000,000
 Schedule of Programs:
 Engineering Initiative 4,000,000

Item 115

To State Board of Regents - Education Excellence

From Education Fund 520,300
 Schedule of Programs:
 Education Excellence 520,300

Item 116

To State Board of Regents - Math
 Competency Initiative
 From Education Fund 38,500
 Schedule of Programs:
 Math Competency Initiative 38,500

Item 117

To State Board of Regents - Medical
 Education Council
 From General Fund 1,211,800
 Schedule of Programs:
 Medical Education Council 1,211,800

**UTAH COLLEGE OF
 APPLIED TECHNOLOGY**

Item 118

To Utah College of Applied Technology -
 Administration
 From Education Fund 120,400
 Schedule of Programs:
 Administration 38,000
 Equipment 3,200
 Custom Fit 79,200

The Legislature intends to authorize the Utah College of Applied Technology College to purchase one new vehicle for its motor pool.

Item 119

To Utah College of Applied Technology -
 Bridgerland Applied Technology College
 From Education Fund 791,100
 From Education Fund, One-Time 165,400
 Schedule of Programs:
 Bridgerland Applied Technology
 College 623,200
 Bridgerland ATC Equipment 333,300

Item 120

To Utah College of Applied Technology -
 Davis Applied Technology College
 From Education Fund 979,000
 From Education Fund, One-Time 193,800
 Schedule of Programs:
 Davis Applied Technology College 782,700
 Davis ATC Equipment 390,100

Item 121

To Utah College of Applied Technology -
 Dixie Applied Technology College
 From Education Fund 598,700
 From Education Fund, One-Time 76,700
 Schedule of Programs:
 Dixie Applied Technology College 519,500
 Dixie ATC Equipment 155,900

Item 122

To Utah College of Applied Technology -
 Mountainland Applied Technology College
 From Education Fund 865,400
 From Education Fund, One-Time 131,500
 Schedule of Programs:
 Mountainland Applied Technology
 College 731,400
 Mountainland ATC Equipment 265,500

The Legislature intends to authorize Mountainland Applied Technology College to purchase four new vehicles for its motor pool.

Item 123

To Utah College of Applied Technology -
 Ogden/Weber Applied Technology College
 From Education Fund 984,000
 From Education Fund, One-Time 180,800
 Schedule of Programs:
 Ogden/Weber Applied Technology
 College 800,700
 Ogden/Weber ATC Equipment 364,100

Item 124

To Utah College of Applied Technology -
 Southwest Applied Technology College
 From Education Fund 350,000
 From Education Fund, One-Time 68,900
 Schedule of Programs:
 Southwest Applied Technology
 College 278,600
 Southwest ATC Equipment 140,300

Item 125

To Utah College of Applied Technology -
 Tooele Applied Technology College
 From Education Fund 324,900
 From Education Fund, One-Time 71,000
 Schedule of Programs:
 Tooele Applied Technology College 251,400
 Tooele ATC Equipment 144,500

Item 126

To Utah College of Applied Technology -
 Uintah Basin Applied Technology College
 From Education Fund 517,200
 From Education Fund, One-Time 111,900
 Schedule of Programs:
 Uintah Basin Applied Technology
 College 402,800
 Uintah Basin ATC Equipment 226,300

The Legislature intends to authorize Uintah Basin Applied Technology College to purchase three new vehicles for its motor pool.

**NATURAL RESOURCES, AGRICULTURE,
 AND ENVIRONMENTAL QUALITY**

DEPARTMENT OF NATURAL RESOURCES

Item 127

To Department of Natural Resources -
 Administration
 From General Fund (35,000)
 Schedule of Programs:
 Public Information Office (35,000)

The Legislature intends that the Department of Natural Resources work with the Office of the Legislative Fiscal Analyst to identify ways to consolidate with the goal to better optimize the resources of its public relations operations, and report to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee by November 30, 2017.

The Legislature intends that the Department of Natural Resources transfer

\$50,000 to the Bear Lake Commission to be expended only as a one-to-one match with funds from the State of Idaho.

Item 128

To Department of Natural Resources -
 Species Protection
 From General Fund, One-Time 100,000
 From General Fund Restricted -
 Species Protection, One-Time 400,000
 Schedule of Programs:
 Species Protection 500,000

Item 129

To Department of Natural Resources -
 DNR Pass Through
 From General Fund (100,000)
 From General Fund, One-Time 673,300
 Schedule of Programs:
 DNR Pass Through 573,300

Item 130

To Department of Natural Resources - Watershed
 From General Fund (40,000)
 From General Fund, One-Time 2,000,000
 Schedule of Programs:
 Watershed 1,960,000

Item 131

To Department of Natural Resources -
 Forestry, Fire and State Lands
 From General Fund Restricted - Sovereign Land
 Management 249,900
 From General Fund Restricted - Sovereign
 Land Management, One-Time 2,230,000
 Schedule of Programs:
 Fire Management 229,900
 Project Management 2,250,000

The Legislature intends that all entities occupying the DNR Cedar City Office Complex and the DNR Richfield Office Complex pay annually their proportionate share of leased space based on the construction costs amortized over a 30-year period and deposit the funds into the Sovereign Lands Management Account.

The Legislature intends that the Division of Forestry, Fire, and State Lands purchase one new vehicle.

Item 132

To Department of Natural Resources - Oil,
 Gas and Mining
 From General Fund, One-Time (63,500)
 Schedule of Programs:
 Oil and Gas Program (63,500)

Item 133

To Department of Natural Resources -
 Wildlife Resources
 From General Fund 2,008,200
 Schedule of Programs:
 Director's Office (141,800)
 Habitat Section 1,150,000
 Wildlife Section 1,000,000

Item 134

To Department of Natural Resources -
 Parks and Recreation

From General Fund, One-Time (3,300)
 Schedule of Programs:
 Park Operation Management (3,300)

The Legislature intends that \$50,000 appropriation for This Is the Place Heritage Park be transferred to the park only after the park has received matching funds of at least \$50,000 from Salt Lake City and at least \$50,000 from Salt Lake County.

The Legislature intends that the Division of Parks and Recreation continue to build out and upgrade its heavily used state parks and to provide for more recreational opportunities, as well as to explore options for expanding the state parks in areas where parks are consistently sold out.

Item 135

To Department of Natural Resources -
 Utah Geological Survey
 From General Fund, One-Time (83,300)
 From Federal Funds 183,400
 From General Fund Restricted - Land
 Exchange Distribution Account 25,000
 Schedule of Programs:
 Administration (83,300)
 Geologic Hazards 183,400
 Energy and Minerals 25,000

Item 136

To Department of Natural Resources -
 Water Resources
 From General Fund (55,000)
 From Federal Funds, One-Time 1,100,000
 From Water Resources Conservation
 and Development Fund,
 One-Time 1,500,000
 Schedule of Programs:
 Planning 1,445,000
 Construction 1,100,000

Item 137

To Department of Natural Resources -
 Water Rights
 From General Fund (55,000)
 From General Fund, One-Time 100,000
 From Dedicated Credits Revenue,
 One-Time 100,000
 Schedule of Programs:
 Administration (55,000)
 Adjudication 100,000
 Canal Safety 100,000

The Legislature intends that the Division of Water Rights reports on the accuracy of the water-use data to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee by November 30, 2017.

The Legislature intends that the \$100,000 one-time appropriation for Canal Safety Mapping be used for the completion of the canal mapping in Utah by 2019 and the funding not lapse at the end of FY 2018. The Legislature further intends that the Division of Water Rights report to the Natural Resources, Agriculture, and Environmental Interim Committee by October 30, 2018.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Item 138

To Department of Environmental Quality - Executive Director's Office
 From General Fund, One-Time (82,000)
 Schedule of Programs:
 Executive Director's Office (82,000)

Item 139

To Department of Environmental Quality - Air Quality
 From General Fund (19,000)
 From General Fund, One-Time (56,500)
 Schedule of Programs:
 Air Quality (75,500)

Item 140

To Department of Environmental Quality - Environmental Response and Remediation
 From Dedicated Credits Revenue (162,600)
 From Petroleum Storage Tank Cleanup Fund 595,000
 Schedule of Programs:
 Environmental Response and Remediation 432,400

Item 141

To Department of Environmental Quality - Water Quality
 From General Fund, One-Time (65,000)
 From Water Dev. Security Fund - Utah Wastewater Loan Program 120,900
 Schedule of Programs:
 Water Quality 55,900

Item 142

To Department of Environmental Quality - Waste Management and Radiation Control
 From Dedicated Credits Revenue 162,600
 Schedule of Programs:
 Waste Management and Radiation Control 162,600

PUBLIC LANDS POLICY COORDINATING OFFICE

Item 143

To Public Lands Policy Coordinating Office
 From General Fund, One-Time 400,000
 From General Fund Restricted - Constitutional Defense 879,400
 Schedule of Programs:
 Public Lands Policy Coordinating Office 1,279,400

The Legislature intends that the Public Lands Policy Coordinating Office utilize existing funds to acquire a Sports Utility Vehicle to be utilized by attorneys and support staff located in Southern Utah.

The Legislature intends that the \$500,000 ongoing appropriation from the Constitutional Defense Restricted Account be used by the Public Lands Policy Coordinating Office to carry out its statutorily defined duties, and to disseminate information regarding and advance the transfer of certain

public lands to the state in accordance with 63L-6-101 et. seq. through: (1) Education; (2) Negotiation; (3) Legislation; and (4) Litigation, as applicable. The Public Lands Policy Coordinating Office shall report on its activities related to the foregoing to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee and the Natural Resources, Agriculture, and Environment Interim Committee by October 30, 2018.

GOVERNOR'S OFFICE

Item 144

To Governor's Office - Office of Energy Development
 From General Fund (28,700)
 From General Fund Rest. - Stripper Well-Petroleum Violation Escrow, One-Time 297,100
 Schedule of Programs:
 Office of Energy Development 268,400

DEPARTMENT OF AGRICULTURE AND FOOD

Item 145

To Department of Agriculture and Food - Administration
 From General Fund 300,000
 From Dedicated Credits Revenue (300,000)

Item 146

To Department of Agriculture and Food - Animal Health
 From General Fund 250,000
 From Dedicated Credits Revenue (230,000)
 From General Fund Restricted - Livestock Brand 39,800
 Schedule of Programs:
 Animal Health 20,000
 Brand Inspection 39,800

Item 147

To Department of Agriculture and Food - Plant Industry
 From General Fund (550,000)
 From Federal Funds 870,000
 From Dedicated Credits Revenue 550,000
 Schedule of Programs:
 Environmental Quality 870,000

Item 148

To Department of Agriculture and Food - Regulatory Services
 From Dedicated Credits Revenue 260,400
 From Dedicated Credits Revenue, One-Time 5,800
 Schedule of Programs:
 Regulatory Services 266,200

Item 149

To Department of Agriculture and Food - Marketing and Development
 From General Fund 75,000
 From Dedicated Credits Revenue 21,300
 Schedule of Programs:
 Marketing and Development 96,300

Item 150

To Department of Agriculture and Food -
 Resource Conservation
 From Agriculture Resource Development
 Fund 180,000
 From Agriculture Resource Development
 Fund, One-Time 500,000
 Schedule of Programs:
 Resource Conservation
 Administration 180,000
 Resource Conservation 500,000

Item 151

To Department of Agriculture and Food -
 Utah State Fair Corporation
 From General Fund, One-Time 675,000
 Schedule of Programs:
 State Fair Corporation 675,000

SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

Item 152

To School and Institutional Trust
 Lands Administration
 From Land Grant Management Fund 300,000
 From Land Grant Management Fund,
 One-Time 646,300
 Schedule of Programs:
 Director 600,000
 Surface 46,300
 Legal/Contracts 234,000
 Grazing and Forestry 66,000

Item 153

To School and Institutional Trust
 Lands Administration - Land Stewardship
 and Restoration
 From Land Grant Management
 Fund (986,300)
 From Land Grant Management Fund,
 One-Time (300,000)
 Schedule of Programs:
 Land Stewardship and
 Restoration (1,286,300)

RETIREMENT AND INDEPENDENT ENTITIES

UTAH EDUCATION AND TELEHEALTH NETWORK

Item 154

To Utah Education and Telehealth Network
 From Education Fund 1,900,000
 From Education Fund, One-Time 3,000,000
 Schedule of Programs:
 Course Management Systems 700,000
 Technical Services 4,200,000

EXECUTIVE APPROPRIATIONS

UTAH NATIONAL GUARD

Item 155

To Utah National Guard
 From Dedicated Credits Revenue 25,000
 Schedule of Programs:
 Operations and Maintenance 25,000

The Legislature intends that the Utah National Guard be allowed to increase its vehicle fleet by up to three vehicles with funding from existing appropriations.

DEPARTMENT OF VETERANS' AND MILITARY AFFAIRS

Item 156

To Department of Veterans' and Military Affairs -
 Veterans' and Military Affairs
 From Dedicated Credits Revenue 75,000
 Schedule of Programs:
 Administration 47,000
 Cemetery 28,000

The Legislature intends that the Department of Veterans' and Military Affairs be allowed to increase its vehicle fleet by up to three vehicles with funding from existing appropriations.

The Legislature intends that the Department of Veterans' and Military Affairs pursue the option of filing a federal grant application under the VA State Home Program to assist in funding the construction and operation of a Veterans' Adult Day Health Care Center at the current George E. Wahlen Ogden Veterans' Home. The department should submit any federal fund application under procedures outlined in 63J-5-201 through 205.

LEGISLATURE

Item 157

To Legislature - Senate
 From General Fund (31,000)
 Schedule of Programs:
 Administration (31,000)

Item 158

To Legislature - House of Representatives
 From General Fund (36,000)
 Schedule of Programs:
 Administration (36,000)

Item 159

To Legislature - Office of Legislative Research
 and General Counsel
 From General Fund 600,000
 From General Fund, One-Time 50,000
 Schedule of Programs:
 Administration 650,000

Item 160

To Legislature - Legislative Services
 From General Fund 157,000
 Schedule of Programs:
 Administration 157,000

Item 161

To Legislature - Office of the Legislative
 Auditor General
 From General Fund 294,000
 Schedule of Programs:
 Administration 294,000

Subsection 1(b). Expendable Funds and Accounts. The Legislature has reviewed the following expendable funds. Where applicable, the Legislature authorizes the State Division of

Finance to transfer amounts among funds and accounts as indicated. Outlays and expenditures from the recipient funds or accounts may be made without further legislative action according to a fund or account's applicable authorizing statute.

BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR

PUBLIC SERVICE COMMISSION

Item 162

To Public Service Commission -
 Universal Telecommunications Support Fund
 From Closing Fund Balance 2,832,100
 Schedule of Programs:
 Universal Telecom Service Fund 2,832,100

SOCIAL SERVICES

DEPARTMENT OF HEALTH

Item 163

To Department of Health - Medicaid
 Expansion Fund
 From General Fund 2,508,500
 Schedule of Programs:
 Medicaid Expansion Fund 2,508,500

Item 164

To Department of Health - Traumatic
 Brain Injury Fund
 From Beginning Fund Balance 77,500
 Schedule of Programs:
 Traumatic Brain Injury Fund 77,500

The Legislature intends that the \$100,000 in Beginning Nonlapsing provided to the Traumatic Brain Injury Fund is dependent upon up to \$100,000 funds not otherwise designated as nonlapsing to the Department of Health - Executive Director's Operations line item being retained as nonlapsing in Fiscal Year 2017.

The Legislature intends that the \$50,000 in Beginning Nonlapsing provided to the Traumatic Brain Injury Fund is dependent upon up to \$50,000 funds not otherwise designated as nonlapsing to the Department of Health - Family Health and Preparedness line item being retained as nonlapsing in Fiscal Year 2017.

The Legislature intends that the \$75,000 in Beginning Nonlapsing provided to the Traumatic Brain Injury Fund is dependent upon up to \$75,000 funds not otherwise designated as nonlapsing to the Department of Health - Disease Control and Prevention line item being retained as nonlapsing in Fiscal Year 2017.

The Legislature intends that the \$550,000 in Beginning Nonlapsing provided to the Traumatic Brain Injury Fund is dependent upon up to \$550,000 funds not otherwise designated as nonlapsing to the Department of Health - Medicaid and Health Financing

line item being retained as nonlapsing in Fiscal Year 2017.

DEPARTMENT OF WORKFORCE SERVICES

Item 165

To Department of Workforce Services -
 Permanent Community Impact Fund
 From Repayments, One-Time 61,639,700
 Schedule of Programs:
 Permanent Community Impact
 Fund 61,639,700

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENTAL QUALITY

DEPARTMENT OF ENVIRONMENTAL QUALITY

Item 166

To Department of Environmental Quality -
 Hazardous Substance Mitigation Fund
 From General Fund Restricted -
 Environmental Quality 400,000
 Schedule of Programs:
 Hazardous Substance Mitigation
 Fund 400,000

Subsection 1(c). Business-like Activities.

The Legislature has reviewed the following proprietary funds. Under the terms and conditions of Utah Code 63J-1-410, for any included Internal Service Fund the Legislature approves budgets, full-time permanent positions, and capital acquisition amounts as indicated, and appropriates to the funds as indicated estimated revenue from rates, fees, and other charges. Where applicable, the Legislature authorizes the State Division of Finance to transfer amounts among funds and accounts as indicated.

INFRASTRUCTURE AND GENERAL GOVERNMENT

DEPARTMENT OF ADMINISTRATIVE SERVICES INTERNAL SERVICE FUNDS

Item 167

To Department of Administrative Services Internal Service Funds - Division of Finance

The Legislature intends that the Finance Internal Service Fund Consolidated Budget & Accounting Program may add up to two FTE if new customers or tasks come on line. Any added FTE will be reviewed and may be approved by the Legislature in the next legislative session.

Item 168

To Department of Administrative Services Internal Service Funds - Risk Management
 Budgeted FTE 1.0

Item 169

To Department of Administrative Services Internal Service Funds - Division of Facilities Construction and Management - Facilities Management

The Legislature intends that the DFCM Internal Service Fund may add 16 FTEs to their current authorized level to provide the means to service the buildings recently added to their maintenance inventory.

The Legislature intends that the DFCM Internal Service Fund may add up to three FTE's and up to two vehicles beyond the authorized level if new facilities come on line or maintenance agreements are requested. Any added FTE's or vehicles will be reviewed and may be approved by the Legislature in the next legislative session.

The Legislature intends that the DFCM Internal Service Fund may add three vehicles to their current authorized level to provide the means to service the buildings recently added to their maintenance inventory.

Subsection 1(d). Restricted Fund and Account Transfers. The Legislature authorizes the State Division of Finance to transfer the following amounts among the following funds or accounts as indicated. Expenditures and outlays from the recipient funds must be authorized elsewhere in an appropriations act.

EXECUTIVE OFFICES AND CRIMINAL JUSTICE

Item 170

To General Fund Restricted - Indigent Defense Resources Account
From General Fund 550,000
From General Fund, One-Time 1,000,000
Schedule of Programs:
Indigent Defense Resources Account 1,550,000

INFRASTRUCTURE AND GENERAL GOVERNMENT

Item 171

To Risk Management Construction Fund
From Risk Management - Workers Compensation Fund, One-Time (396,900)
Schedule of Programs:
Owner Controlled Insurance Program (396,900)

Item 172

To Risk Management-Administration Fund
From Risk Management Construction Fund, One-Time 396,900
Schedule of Programs:
Risk Management-Administration Fund 396,900

BUSINESS, ECONOMIC DEVELOPMENT, AND LABOR

Item 173

To General Fund Restricted - Motion Picture Incentive Fund
From General Fund 1,500,000
Schedule of Programs:
Motion Picture Incentive Fund 1,500,000

Item 174

To General Fund Restricted - Rural Health Care Facilities Fund
From General Fund (336,200)
Schedule of Programs:
GFR - Rural Health Care Facilities Fund (336,200)

Item 175

To GFR - Tourism Marketing Performance Fund
From General Fund 3,000,000
Schedule of Programs:
GFR - Tourism Marketing Performance Fund 3,000,000

SOCIAL SERVICES

Item 176

To Office of Rehabilitation Transition Restricted Account
From General Fund, One-Time 21,834,200
From Pass-through, One-Time (21,834,200)

Item 177

To GFR - Homeless Account
From General Fund, One-Time 356,200
Schedule of Programs:
General Fund Restricted - Pamela Atkinson Homeless Account 356,200

NATURAL RESOURCES, AGRICULTURE, AND ENVIRONMENTAL QUALITY

Item 178

To General Fund Restricted - Constitutional Defense Restricted Account
From General Fund, One-Time 300,000
Schedule of Programs:
Constitutional Defense Restricted Account 300,000

Subsection 1(e). Transfers to Unrestricted Funds. The Legislature authorizes the State Division of Finance to transfer the following amounts to the unrestricted General, Education, or Uniform School Fund as indicated from the restricted funds or accounts indicated. Expenditures and outlays from the General, Education, or Uniform School Fund must be authorized elsewhere in an appropriations act.

SOCIAL SERVICES

Item 179

To General Fund
From Dedicated Credits Revenue 109,800
Schedule of Programs:
General Fund 109,800

Section 2. Effective Date.

This bill takes effect on July 1, 2017.

CHAPTER 477

S. B. 11

Passed February 23, 2017

(Passed into law without governor's signature)

Effective May 9, 2017

WATER DEVELOPMENT
COMMISSION AMENDMENTS

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE

General Description:

This bill renames and modifies the membership of the Legislative Water Development Commission.

Highlighted Provisions:

This bill:

- ▶ renames the State Water Development Commission to the Legislative Water Development Commission;
- ▶ modifies the membership of the Legislative Water Development Commission; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-27-102, as last amended by Laws of Utah 2016, Chapter 309

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

Section 1. Section 73-27-102 is amended to read:

73-27-102. Legislative Water Development Commission created.

(1) The [State] Legislative Water Development Commission is created to determine the state's role in the protection, conservation, and development of the state's water resources.

(2) The commission membership shall include:

(a) five members of the Senate, appointed by the president of the Senate, no more than four of whom may be from the same political party;

(b) eight members of the House of Representatives, appointed by the speaker of the House of Representatives, no more than six of whom may be from the same political party; and

~~[(c) the state treasurer, who shall be a nonvoting member; and]~~

~~[(d) the following]~~

~~[(c) nonvoting members, appointed by the [governor:] Legislative Management Committee, upon recommendation by the cochairs of the commission described in Subsection (5).~~

~~[(i) two representatives of the Office of the Governor, including one representative from the Governor's Office of Management and Budget;]~~

~~[(ii) a representative of the Green River District;]~~

~~[(iii) a representative of the Upper Colorado River District;]~~

~~[(iv) a representative of the Lower Colorado River District;]~~

~~[(v) a representative of the Lower Sevier River District;]~~

~~[(vi) a representative of the Upper Sevier River District;]~~

~~[(vii) a representative of the Provo River District;]~~

~~[(viii) a representative of the Salt Lake District;]~~

~~[(ix) a representative of the Weber River District;]~~

~~[(x) a representative of the Bear River District;]~~

~~[(xi) the executive director of the Department of Natural Resources;]~~

~~[(xii) the executive director of the Department of Environmental Quality;]~~

~~[(xiii) the commissioner of agriculture and food;]~~

~~[(xiv) a member of the Board of Water Resources;]~~

~~[(xv) a representative of an organized environmental group;]~~

~~[(xvi) a representative of agricultural production; and]~~

~~[(xvii) a representative with experience in finance and economics.]~~

(3) (a) ~~[Except as required by Subsection (3)(b), the] The~~ members appointed by the ~~[governor]~~ Legislative Management Committee under Subsection (2)~~[(d)](c)~~ shall be appointed or reappointed to a ~~[four-year] two-year~~ term.

~~[(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the nonvoting members of the commission are appointed every two years.]~~

~~[(e) (b) When a vacancy occurs in the membership for any reason, the [governor] Legislative Management Committee, in consultation with the cochairs of the commission, shall appoint a replacement for the unexpired term.~~

(4) The president of the Senate and the speaker of the House of Representatives shall, to the extent possible, appoint members under Subsections (2)(a) and (b) that represent both rural and urban areas of the state.

(5) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(a) as a cochair of the commission.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(b) as a cochair of the commission.

(6) Attendance by at least 50% of one legislative house and more than 50% of the other legislative house constitutes a quorum.

(7) (a) Compensation and expenses of a member of the commission who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(b) Commission members who are employees of the state shall receive no additional compensation.

(c) Other commission members shall receive no compensation or expenses for their service on the commission.

(8) The Office of Legislative Research and General Counsel shall provide staff support to the commission.

CHAPTER 478**S. B. 32**

Passed February 22, 2017

(Passed into law without governor's signature)

Effective May 9, 2017

**CHILD WELFARE
AUDITING AMENDMENTS**Chief Sponsor: Gene Davis
House Sponsor: Sandra Hollins**LONG TITLE****General Description:**

This bill amends provisions related to the auditing of Division of Child and Family Services' referrals and cases.

Highlighted Provisions:

This bill:

- ▶ requires the legislative auditor general to audit, subject to the prioritization of the Legislative Audit Subcommittee, a sample of child welfare referrals to and cases handled by the Division of Child and Family Services.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

62A-4a-118, as last amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section 62A-4a-118 is amended to read:**62A-4a-118. Annual review of child welfare referrals and cases by executive director -- Accountability to the Legislature -- Review by legislative auditor general.**

(1) The division shall use principles of quality management systems, including statistical measures of processes of service, and the routine reporting of performance data to employees.

(2) (a) In addition to development of quantifiable outcome measures and performance measures in accordance with Section 62A-4a-117, the executive director, or his designee, shall annually review a randomly selected sample of child welfare referrals to and cases handled by the division. The purpose of that review shall be to assess whether the division is adequately protecting children and providing appropriate services to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act. The review shall focus directly on the outcome of cases to children and families, and not simply on procedural compliance with specified criteria.

(b) The executive director shall report, regarding his review of those cases, to the legislative auditor general and the Child Welfare Legislative Oversight Panel.

(c) Information obtained as a result of the review shall be provided to caseworkers, supervisors, and division personnel involved in the respective cases, for purposes of education, training, and performance evaluation.

(3) The executive director's review and report to the Legislature shall include:

(a) the criteria used by the executive director, or his designee, in making the evaluation;

(b) findings regarding whether state statutes, division policy, and legislative policy were followed in each sample case;

(c) findings regarding whether, in each sample case, referrals, removals, or cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act, and division policy;

(d) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals; and

(e) an assessment of the appropriateness of the division's assignment of priority.

(4) (a) In addition to the ~~review conducted by the executive director, beginning July 1, 2004, the legislative auditor general shall audit~~ executive director's review under Subsection (2), the legislative auditor general shall audit, subject to the prioritization of the Legislative Audit Subcommittee, a sample of child welfare referrals to and cases handled by the division and report ~~his~~ the findings to the Child Welfare Legislative Oversight Panel.

~~(b) An audit under Subsection (4)(a) shall be conducted at least once every three years, but may be conducted more frequently pursuant to Subsection (4)(d).~~

(b) An audit under Subsection (4)(a) may be initiated by:

(i) the Audit Subcommittee of the Legislative Management Committee;

(ii) the Child Welfare Legislative Oversight Panel; or

(iii) the legislative auditor general, based on the results of the executive director's review under Subsection (2).

(c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor General's report may include:

(i) findings regarding whether state statutes, division policy, and legislative policy were followed by the division and its employees;

(ii) a determination regarding whether referrals, removals, and cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided for families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 5, Termination of Parental Rights Act, and division policy;

(iii) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals;

(iv) an assessment of the appropriateness of the division's assignment of priority;

(v) a determination regarding whether the department's review process is effecting beneficial change within the division and accomplishing the mission established by the Legislature and the department for that review process; and

(vi) findings regarding any other issues identified by the auditor or others under this Subsection (4)(d).

~~[(d) An audit under Subsection (4)(a) may be initiated by:]~~

~~[(i) the Audit Subcommittee of the Legislative Management Committee;]~~

~~[(ii) the Child Welfare Legislative Oversight Panel; or]~~

~~[(iii) the Legislative Auditor General, based on the results of the executive director's review under Subsection (2).]~~

CHAPTER 479**S. B. 109**

Passed March 8, 2017

(Passed into law without governor's signature)

Effective May 9, 2017

**SMALL EMPLOYER
RETIREMENT PROGRAM**Chief Sponsor: Todd Weiler
House Sponsor: Gage Froerer**LONG TITLE****General Description:**

This bill enacts provisions relating to tax credits for small employers.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ establishes an income tax credit for certain small employers that offer employees access to a qualified retirement plan.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:**

59-7-621, Utah Code Annotated 1953

59-10-1038, Utah Code Annotated 1953

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

Section 1. Section 59-7-621 is enacted to read:**59-7-621. Nonrefundable tax credit for small employer's participation in retirement.**

(1) As used in this section:

(a) "Participating employer" means a small employer that offers a qualified plan to the employer's employees for voluntary enrollment.

(b) "Qualified plan" means a retirement plan that meets the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.

(c) "Small employer" means an employer in the state that has at least 10, but fewer than 20 employees who work in the state.

(2) For a taxable year that begins on or after January 1, 2018, and before January 1, 2019, a participating employer may claim a \$500 nonrefundable tax credit for the taxable year in which the participating employer first offers a qualified plan.

(3) A participating employer may not carry forward or carry back a tax credit described in this section.

Section 2. Section 59-10-1038 is enacted to read:**59-10-1038. Nonrefundable tax credit for small employer's participation in retirement.**

(1) As used in this section:

(a) "Participating employer" means a small employer that offers a qualified plan to the employer's employees for voluntary enrollment.

(b) "Qualified plan" means a retirement plan that meets the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.

(c) "Small employer" means an employer in the state that has at least 10, but fewer than 20 employees who work in the state.

(2) For a taxable year that begins on or after January 1, 2018, and before January 1, 2019, a participating employer may claim a \$500 nonrefundable tax credit for the taxable year in which the participating employer first offers a qualified plan.

(3) A participating employer may not carry forward or carry back a tax credit described in this section.

CHAPTER 480**S. B. 214**

Passed March 7, 2017

(Passed into law without governor's signature)

Effective May 9, 2017

PUBLIC WATER SUPPLIER AMENDMENTSChief Sponsor: Jani Iwamoto
House Sponsor: Stewart E. Barlow**LONG TITLE****General Description:**

This bill addresses a study of the process for applications for an instream flow.

Highlighted Provisions:

This bill:

- ▶ encourages the Water Development Commission and the Executive Water Task Force to study the application process for an instream flow and to present their findings, conclusions, and conceptual outline for any suggested legislation to the Legislature before the 2018 General Session.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Study regarding entities that may file an application for instream flow.

(1) Utah Code Section 73-3-30 currently contains a restriction on which entities may file an application for an instream flow -- namely, the Division of Wildlife Resources, the Division of Parks and Recreation, and certain nonprofit fishing groups.

(2) Public water suppliers, which are defined in Section 73-1-4, are currently not able to apply for an instream flow.

(3) Some public water suppliers have expressed an interest in exploring the possibility of expanding the list of entities that can apply for an instream flow.

(4) This issue is very complex, and formulating a workable alternative to the current system will require the thoughtful participation of a number of stakeholders.

(5) The Legislature encourages the Water Development Commission and the Executive Water Task Force to study the possible options for expanding the potential groups that may file an application for an instream flow.

(6) The commission and task force should present their findings and conclusions and prepare a recommendation, with a conceptual outline of any suggested legislation, to the Legislature before the 2018 General Session.

**LEGISLATION AND LINE ITEMS
VETOED BY THE GOVERNOR**

H.B. 11

Passed February 21, 2017
Vetoed March 24, 2017

STATE BOARDS AND COMMISSIONS AMENDMENTS

Chief Sponsor: Norman K Thurston
Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill modifies provisions related to the membership requirements for certain state entities.

Highlighted Provisions:

This bill:

- ▶ removes the political party affiliation requirement for certain boards and commissions;
- ▶ requires certain board appointments to be made without considering political affiliation; and
- ▶ makes technical and conforming changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 4-30-2, as last amended by Laws of Utah 2010, Chapter 286
- 7-1-203, as last amended by Laws of Utah 2013, Chapter 73
- 11-38-201, as last amended by Laws of Utah 2013, Chapter 310
- 17-30a-202, as enacted by Laws of Utah 2014, Chapter 366
- 19-2-103, as last amended by Laws of Utah 2015, Chapter 154
- 19-4-103, as last amended by Laws of Utah 2012, Chapter 360
- 19-5-103, as last amended by Laws of Utah 2015, Chapter 234
- 19-6-103, as last amended by Laws of Utah 2015, Chapter 451
- 26-1-7.5, as last amended by Laws of Utah 2011, Chapter 297
- 26-33a-103, as last amended by Laws of Utah 2014, Chapter 118
- 32B-2-201, as last amended by Laws of Utah 2012, Chapter 365
- 34A-1-205, as last amended by Laws of Utah 2013, Chapter 428
- 35A-1-205, as last amended by Laws of Utah 2010, Chapter 286
- 36-12-20, as last amended by Laws of Utah 2014, Chapter 387
- 40-6-4, as last amended by Laws of Utah 2013, Chapter 243
- 51-7-16, as last amended by Laws of Utah 2010, Chapter 286
- 54-1-1.5, as last amended by Laws of Utah 2002, Chapter 176
- 54-10a-202, as last amended by Laws of Utah 2010, Chapter 286

- 62A-1-107, as last amended by Laws of Utah 2016, Chapter 300
- 63H-8-201, as renumbered and amended by Laws of Utah 2015, Chapter 226
- 63N-1-401, as renumbered and amended by Laws of Utah 2015, Chapter 283
- 63N-7-102, as renumbered and amended by Laws of Utah 2015, Chapter 283
- 72-4-302, as last amended by Laws of Utah 2015, Chapter 258
- 72-11-202, as renumbered and amended by Laws of Utah 1999, Chapter 195
- 73-10-2, as last amended by Laws of Utah 2010, Chapter 286
- 79-3-302, as last amended by Laws of Utah 2010, Chapter 286
- 79-4-302, as last amended by Laws of Utah 2010, Chapter 286

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

Section 1. Section 4-30-2 is amended to read:

4-30-2. Livestock Market Committee created -- Composition -- Terms-- Removal -- Compensation -- Duties.

(1) There is created a Livestock Market Committee which consists of the following seven members appointed to a four-year term of office by the commissioner:

- (a) one member recommended by the livestock market operators in the state;
- (b) one member recommended by the Utah Cattlemen's Association;
- (c) one member recommended by the Utah Dairymen's Association;
- (d) one member recommended by the Utah Woolgrowers' Association;
- (e) one member recommended by the horse industry;
- (f) one member recommended by the Utah Farm Bureau Federation; and
- (g) one member recommended by the Utah Farmers Union.

(2) Notwithstanding the requirements of Subsection (1), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

~~[(3) No more than four members shall be members of the same political party.]~~

(3) The commissioner may not consider or seek to discover the political affiliation of a person when considering the person for appointment or reappointment to the committee.

(4) (a) The commissioner may remove a member of the committee at the request of the association or group which recommended the member's appointment.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) The Livestock Market Committee shall elect a chair from its membership, who shall serve for a term of office of two years, but may be reelected for subsequent terms.

(6) (a) The chair is responsible for the call and conduct of meetings.

(b) Four members constitute a quorum for the transaction of official business.

(7) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) The Livestock Market Committee acts as advisor to the department with respect to the administration and enforcement of this chapter and makes recommendations necessary to carry out the intent of this chapter to the commissioner.

Section 2. Section 7-1-203 is amended to read:

7-1-203. Board of Financial Institutions.

(1) There is created a Board of Financial Institutions consisting of the commissioner and the following five members, who shall be qualified by training and experience in their respective fields and shall be appointed by the governor with the consent of the Senate:

(a) one representative from the commercial banking business;

(b) one representative from the consumer lending, money services business, or escrow agency business;

(c) one representative from the industrial bank business;

(d) one representative from the credit union business; and

(e) one representative of the general public who, as a result of education, training, experience, or interest, is well qualified to consider economic and financial issues and data as they may affect the public interest in the soundness of the financial systems of this state.

(2) The commissioner shall act as chair.

(3) (a) A member of the board shall be a resident of this state.

~~(b) No more than three members of the board may be from the same political party.]~~

(b) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(c) No more than two members of the board may be connected with the same financial institution or its holding company.

(d) A member may not participate in any matter involving an institution with which the member has a conflict of interest.

(4) (a) Except as required by Subsection (4)(b), the terms of office shall be four years each expiring on July 1.

(b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) A member serves until the member's successor is appointed and qualified.

(d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term.

(5) (a) The board shall meet at least quarterly on a date the board sets.

(b) The commissioner or any two members of the board may call additional meetings.

(c) Four members constitute a quorum for the transaction of business.

(d) Actions of the board require a vote of a majority of those present when a quorum is present.

(e) A meeting of the board and records of the board's proceedings are subject to Title 52, Chapter 4, Open and Public Meetings Act, except for discussion of confidential information pertaining to a particular financial institution.

(6) (a) A member of the board shall, by sworn or written statement filed with the commissioner, disclose any position of employment or ownership interest that the member has with respect to any institution subject to the jurisdiction of the department.

(b) The member shall:

(i) file the statement required by this Subsection (6) when first appointed to the board; and

(ii) subsequently file amendments to the statement if there is any material change in the matters covered by the statement.

(7) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) The board shall advise the commissioner with respect to:

(a) the exercise of the commissioner's duties, powers, and responsibilities under this title; and

(b) the organization and performance of the department and its employees.

(9) The board shall recommend annually to the governor and the Legislature a budget for the requirements of the department in carrying out its duties, functions, and responsibilities under this title.

Section 3. Section 11-38-201 is amended to read:

11-38-201. Quality Growth Commission -- Term of office -- Vacancy -- Organization -- Expenses -- Staff.

(1) (a) There is created a Quality Growth Commission consisting of:

(i) the director of the Department of Natural Resources;

(ii) the commissioner of the Department of Agriculture and Food;

(iii) six elected officials at the local government level, three of whom may not be residents of a county of the first or second class; and

~~(iv) five persons from the profit and nonprofit private sector, two of whom may not be residents of a county of the first or second class and no more than three of whom may be from the same political party and one of whom shall be from the residential construction industry, nominated by the Utah Home Builders Association, and one of whom shall be from the real estate industry, nominated by the Utah Association of Realtors.]~~

(iv) five individuals from the profit or nonprofit private sector, including:

(A) two individuals who are residents of a county of the third, fourth, fifth, or sixth class;

(B) one individual from the residential construction industry, nominated by the Utah Home Builders Association; and

(C) one individual from the real estate industry, nominated by the Utah Association of Realtors.

(b) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the commission.

~~(b)~~ (c) (i) The director of the Department of Natural Resources and the commissioner of the Department of Agriculture and Food may not assume their positions on the commission until:

(A) after May 1, 2005; and

(B) the term of the respective predecessor in office, who is a state government level appointee, expires.

(ii) The term of a commission member serving on May 1, 2005 as one of the six elected local officials or five private sector appointees may not be shortened because of application of the restriction under Subsections (1)(a)(iii) and (iv) on the number of appointees from counties of the first or second class.

(2) (a) Each commission member appointed under Subsection (1)(a)(iii) or (iv) shall be appointed by the governor with the consent of the Senate.

(b) The governor shall select three of the six members under Subsection (1)(a)(iii) from a list of names provided by the Utah League of Cities and Towns, and shall select the remaining three from a list of names provided by the Utah Association of Counties.

(c) Two of the persons appointed under Subsection (1) shall be from the agricultural community from a list of names provided by Utah farm organizations.

(3) (a) The term of office of each member is four years, except that the governor shall appoint one of the persons at the state government level, three of the persons at the local government level, and two of the persons under Subsection (1)(a)(iv) to an initial two-year term.

(b) No member of the commission may serve more than two consecutive four-year terms.

(4) Each mid-term vacancy shall be filled for the unexpired term in the same manner as an appointment under Subsection (2).

(5) Commission members shall elect a chair from their number and establish rules for the organization and operation of the commission.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) A member is not required to give bond for the performance of official duties.

(8) Staff services to the commission:

(a) shall be provided by the Governor's Office of Management and Budget; and

(b) may be provided by local entities through the Utah Association of Counties and the Utah League of Cities and Towns, with funds approved by the commission from those identified as available to local entities under Subsection 11-38-203(1)(a).

Section 4. Section 17-30a-202 is amended to read:

17-30a-202. Establishment of merit commission -- Appointment, qualifications, and compensation of members.

(1) (a) Except as provided in Subsection (1)(b), a county subject to this chapter shall establish a merit system commission consisting of three appointed members:

(i) two members appointed by the legislative body of the county; and

(ii) one member appointed by the governing body of a police interlocal entity.

(b) If there is no police interlocal entity within the county, the county legislative body shall appoint all three members of a commission described in Subsection (1)(a).

~~[(c) No more than two members of the commission may be affiliated with or members of the same political party.]~~

(c) The county legislative body described in Subsection (1)(a)(i) and the police interlocal entity governing body described in Subsection (1)(a)(ii) may not consider or seek to discover the political affiliation of a person when considering the person for appointment or reappointment to the commission.

(d) (i) Of the original appointees described in Subsection (1)(a) or (b), one member shall be appointed for a term ending February 1 of the first odd-numbered year after the date of appointment, and one each for terms ending two and four years thereafter.

(ii) For a term subsequent to a term described in Subsection (1)(d)(i), a commission member shall hold a term of six years.

(e) If an appointed position described in Subsection (1)(a) or (b) is vacated for a cause other than expiration of the member's term, the position is filled by appointment for the unexpired portion of the term only.

(2) A member of the commission:

(a) shall be a resident of the state;

(b) for at least five years preceding the date of appointment a resident of:

(i) the county; or

(ii) if applicable, the area served by the police interlocal entity from which appointed; and

(c) may not hold another office or employment with the county or, if applicable, in a municipality served by the police interlocal entity for which the member is appointed.

(3) The county legislative body or interlocal entity governing body may compensate a member for service on the commission and reimburse the member for necessary expenses incurred in the performance of the member's duties.

Section 5. Section 19-2-103 is amended to read:

19-2-103. Members of board -- Appointment -- Terms -- Organization-- Per diem and expenses.

(1) The board consists of the following nine members:

(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:

(i) the executive director; or

(ii) an employee of the department designated by the executive director; and

(b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:

(i) one representative who:

(A) is not connected with industry;

(B) is an expert in air quality matters; and

(C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience;

(ii) two government representatives who do not represent the federal government;

(iii) one representative from the mining industry;

(iv) one representative from the fuels industry;

(v) one representative from the manufacturing industry;

(vi) one representative from the public who represents:

(A) an environmental nongovernmental organization; or

(B) a nongovernmental organization that represents community interests and does not represent industry interests; and

(vii) one representative from the public who is trained and experienced in public health.

(2) A member of the board shall:

(a) be knowledgeable about air pollution matters, as evidenced by a professional degree, a professional accreditation, or documented experience;

(b) be a resident of Utah;

(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).

~~[(3) No more than five of the appointed members of the board shall belong to the same political party.]~~

(3) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(4) A majority of the members of the board may not derive any significant portion of their income from persons subject to permits or orders under this chapter.

(5) (a) Members shall be appointed for a term of four years.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

(6) A member may serve more than one term.

(7) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.

(8) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(9) The board shall elect annually a chair and a vice chair from its members.

(10) (a) The board shall meet at least quarterly.

(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.

(c) Three days' notice shall be given to each member of the board before a meeting.

(11) Five members constitute a quorum at a meeting, and the action of a majority of members present is the action of the board.

(12) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 6. Section 19-4-103 is amended to read:

19-4-103. Drinking Water Board -- Members -- Organization --Meetings -- Per diem and expenses.

(1) The board consists of the following nine members:

(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:

(i) the executive director; or

(ii) an employee of the department designated by the executive director; and

(b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:

(i) one representative who is a Utah-licensed professional engineer with expertise in civil or sanitary engineering;

(ii) two representatives who are elected officials from a municipal government that is involved in the management or operation of a public water system;

(iii) one representative from an improvement district, a water conservancy district, or a metropolitan water district;

(iv) one representative from an entity that manages or operates a public water system;

(v) one representative from:

(A) the state water research community; or

(B) an institution of higher education that has comparable expertise in water research to the state water research community;

(vi) one representative from the public who represents:

(A) an environmental nongovernmental organization; or

(B) a nongovernmental organization that represents community interests and does not represent industry interests; and

(vii) one representative from the public who is trained and experienced in public health.

(2) A member of the board shall:

(a) be knowledgeable about drinking water and public water systems,as evidenced by a professional degree, a professional accreditation, or documented experience;

(b) represent different geographical areas within the state insofar as practicable;

(c) be a resident of Utah;

(d) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

(e) comply with all applicable statutes, rules, and policies,including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).

~~[(3) No more than five appointed members of the board shall be from the same political party.]~~

(3) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(4) (a) As terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

(c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is appointed before May 1, 2013, shall expire on April 30, 2013.

(ii) On May 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(6) Each member holds office until the expiration of the member's term, and until a successor is

appointed, but not for more than 90 days after the expiration of the term.

(7) The board shall elect annually a chair and a vice chair from its members.

(8) (a) The board shall meet at least quarterly.

(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.

(c) Reasonable notice shall be given to each member of the board before any meeting.

(9) Five members constitute a quorum at any meeting and the action of the majority of the members present is the action of the board.

(10) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 7. Section 19-5-103 is amended to read:

19-5-103. Water Quality Board -- Members of board -- Appointment -- Terms -- Organization -- Meetings -- Per diem and expenses.

(1) The board consists of the following nine members:

(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:

(i) the executive director; or

(ii) an employee of the department designated by the executive director; and

(b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:

(i) one representative who:

(A) is an expert and has relevant training and experience in water quality matters;

(B) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience; and

(C) represents local and special service districts in the state;

(ii) two government representatives who do not represent the federal government;

(iii) one representative from the mineral industry;

(iv) one representative from the manufacturing industry;

(v) one representative who represents agricultural and livestock interests;

(vi) one representative from the public who represents:

(A) an environmental nongovernmental organization; or

(B) a nongovernmental organization that represents community interests and does not represent industry interests; and

(vii) one representative from the public who is trained and experienced in public health.

(2) A member of the board shall:

(a) be knowledgeable about water quality matters, as evidenced by a professional degree, a professional accreditation, or documented experience;

(b) be a resident of Utah;

(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).

~~[(3) No more than five of the appointed members may be from the same political party.]~~

(3) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the consent of the Senate.

(5) (a) A member shall be appointed for a term of four years and is eligible for reappointment.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

(c) (i) Notwithstanding Subsection (5)(a), the term of a board member who is appointed before March 1, 2013, shall expire on February 28, 2013.

(ii) On March 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.

(6) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, not to exceed 90 days after the formal expiration of the term.

(7) The board shall:

(a) organize and annually select one of its members as chair and one of its members as vice chair;

(b) hold at least four regular meetings each calendar year; and

(c) keep minutes of its proceedings which are open to the public for inspection.

(8) The chair may call a special meeting upon the request of three or more members of the board.

(9) Each member of the board and the director shall be notified of the time and place of each meeting.

(10) Five members of the board constitute a quorum for the transaction of business, and the action of a majority of members present is the action of the board.

(11) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 8. Section 19-6-103 is amended to read:

19-6-103. Waste Management and Radiation Control Board -- Members -- Terms -- Organization -- Meetings -- Per diem and expenses.

(1) The board consists of the following 12 members:

(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:

(i) the executive director; or

(ii) an employee of the department designated by the executive director; and

(b) the following 11 voting members appointed by the governor with the consent of the Senate:

(i) one representative who is:

(A) not connected with industry; and

(B) a Utah-licensed professional engineer;

(ii) two government representatives who do not represent the federal government;

(iii) one representative from the manufacturing, mining, or fuel industry;

(iv) one representative from the private solid or hazardous waste disposal industry;

(v) one representative from the private hazardous waste recovery industry;

(vi) one representative from the radioactive waste management industry;

(vii) one representative from the uranium milling industry;

(viii) one representative from the public who represents:

(A) an environmental nongovernmental organization; or

(B) a nongovernmental organization that represents community interests and does not represent industry interests;

(ix) one representative from the public who is trained and experienced in public health and a licensed:

(A) medical doctor; or

(B) dentist; and

(x) one representative who is:

(A) a medical physicist or a health physicist; or

(B) a professional employed in the field of radiation safety.

(2) A member of the board shall:

(a) be knowledgeable about solid and hazardous waste matters and radiation safety and protection as evidenced by a professional degree, a professional accreditation, or documented experience;

(b) be a resident of Utah;

(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department in accordance with Subsection 19-1-201(1)(d)(i)(B).

~~[(3) No more than six of the appointed members may be from the same political party.]~~

(3) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(4) (a) Members shall be appointed for terms of four years each.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

(c) (i) Notwithstanding Subsection (4)(a), the term of a board member who is appointed before March 1, 2013, shall expire on February 28, 2013.

(ii) On March 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.

(5) Each member is eligible for reappointment.

(6) Board members shall continue in office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

(7) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for

the unexpired term by the governor, after considering recommendations of the board and with the consent of the Senate.

(8) The board shall elect a chair and vice chair on or before April 1 of each year from its membership.

(9) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) (a) The board shall hold a meeting at least once every three months including one meeting during each annual general session of the Legislature.

(b) Meetings shall be held on the call of the chair, the director, or any three of the members.

(11) Six members constitute a quorum at any meeting, and the action of the majority of members present is the action of the board.

Section 9. Section 26-1-7.5 is amended to read:

26-1-7.5. Health advisory council.

(1) (a) There is created the Utah Health Advisory Council, comprised of nine persons appointed by the governor.

- (b) The governor shall ensure that:
 - (i) members of the council:
 - (A) broadly represent the public interest;
 - (B) have an interest in or knowledge of public health, environmental health, health planning, health care financing, or health care delivery systems;and
 - (C) include health professionals;
 - (ii) the majority of the [membership] members of the council are non health professionals; and
 - ~~(iii) no more than five persons are from the same political party; and~~
 - ~~(iv) (iii) the governor considers geography,sex, and ethnicity balance [are considered] when selecting the members.~~

(c) The governor may not consider or seek to discover the political affiliation of a person when considering the person for appointment or reappointment to the council.

(2) (a) Except as required by Subsection (2)(b), members of the council shall be appointed to four-year terms.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members

are staggered so that approximately half of the council is appointed every two years.

(c) Terms of office for subsequent appointments shall commence on July 1 of the year in which the appointment occurs.

(3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) No person shall be appointed to the council for more than two consecutive terms.

(c) The chair of the council shall be appointed by the governor from the membership of the council.

(4) The council shall meet at least quarterly or more frequently as determined necessary by the chair. A quorum for conducting business shall consist of four members of the council.

(5) A member may not receive compensation or benefits for themember's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) The council shall be empowered to advise the department on any subject deemed to be appropriate by the council except that the council may not become involved in administrative matters. The council shall also advise the department as requested by the executive director.

(7) The executive director shall ensure that the council has adequate staff support and shall provide any available information requested by the council necessary for their deliberations. The council shall observe confidential requirements placed on the department in the use of such information.

Section 10. Section 26-33a-103 is amended to read:

26-33a-103. Committee membership -- Terms -- Chair -- Compensation.

(1) The Health Data Committee created by Section 26-1-7 shall be composed of 15 members.

(2) (a) One member shall be:

(i) the commissioner of the Utah Insurance Department; or

(ii) the commissioner's designee who shall have knowledge regarding the health care system and characteristics and use of health data.

(b) (i) Fourteen members shall be appointed by the governor with the consent of the Senate in accordance with Subsection (3). ~~[No more than seven members of the committee appointed by the governor may be members of the same political party.]~~

(ii) The governor and the Senate may not consider or seek to discover the political affiliation of a

person when considering the person for appointment, reappointment, or confirmation to the committee.

(3) The members of the committee appointed under Subsection (2)(b) shall:

(a) be knowledgeable regarding the health care system and the characteristics and use of health data;

(b) be selected so that the committee at all times includes individuals who provide care;

(c) include one person employed by or otherwise associated with a general acute hospital as defined by Section 26-21-2, who is knowledgeable about the collection, analysis, and use of health care data;

(d) include two physicians, as defined in Section 58-67-102:

- (i) who are licensed to practice in this state;
- (ii) who actively practice medicine in this state;
- (iii) who are trained in or have experience with the collection, analysis, and use of health care data; and
- (iv) one of whom is selected by the Utah Medical Association;

(e) include three persons:

(i) who are:

(A) employed by or otherwise associated with a business that supplies health care insurance to its employees; and

(B) knowledgeable about the collection and use of health care data; and

(ii) at least one of whom represents an employer employing 50 or fewer employees;

(f) include three persons representing health insurers:

(i) at least one of whom is employed by or associated with a third-party payor that is not licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(ii) at least one of whom is employed by or associated with a third party payer that is licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans; and

(iii) who are trained in, or experienced with the collection, analysis, and use of health care data;

(g) include two consumer representatives:

(i) from organized consumer or employee associations; and

(ii) knowledgeable about the collection and use of health care data;

(h) include one person:

(i) representative of a neutral, non-biased entity that can demonstrate that it has the broad support of health care payers and health care providers; and

(ii) who is knowledgeable about the collection, analysis, and use of health care data; and

(i) include two persons representing public health who are trained in, or experienced with the collection, use, and analysis of health care data.

(4) (a) Except as required by Subsection (4)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) Members may serve after their terms expire until replaced.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(6) Committee members shall annually elect a chair of the committee from among their membership. The chair shall report to the executive director.

(7) The committee shall meet at least once during each calendar quarter. Meeting dates shall be set by the chair upon 10 working days notice to the other members, or upon written request by at least four committee members with at least 10 working days notice to other committee members.

(8) Eight committee members constitute a quorum for the transaction of business. Action may not be taken except upon the affirmative vote of a majority of a quorum of the committee.

(9) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) All meetings of the committee shall be open to the public, except that the committee may hold a closed meeting if the requirements of Sections 52-4-204, 52-4-205, and 52-4-206 are met.

Section 11. Section 32B-2-201 is amended to read:

32B-2-201. Alcoholic Beverage Control Commission created.

(1) There is created the "Alcoholic Beverage Control Commission." The commission is the governing board over the department.

(2) (a) The commission is composed of seven part-time commissioners appointed by the governor with the consent of the Senate.

~~(b) No more than four commissioners may be of the same political party.]~~

(b) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the commission.

(3) (a) Except as required by Subsection (3)(b), as terms of commissioners expire, the governor shall appoint each new commissioner or reappointed commissioner to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of no more than three commissioners expire in a fiscal year.

(4) (a) When a vacancy occurs on the commission for any reason, the governor shall appoint a replacement for the unexpired term with the consent of the Senate.

(b) Unless removed in accordance with Subsection (6), a commissioner shall remain on the commission after the expiration of a term until a successor is appointed by the governor, with the consent of the Senate.

(5) A commissioner shall take the oath of office.

(6) (a) The governor may remove a commissioner from the commission for cause, neglect of duty, inefficiency, or malfeasance after a public hearing conducted by:

(i) the governor; or

(ii) an impartial hearing examiner appointed by the governor to conduct the hearing.

(b) At least 10 days before the hearing described in Subsection (6)(a), the governor shall provide the commissioner notice of:

(i) the date, time, and place of the hearing; and

(ii) the alleged grounds for the removal.

(c) The commissioner shall have an opportunity to:

(i) attend the hearing;

(ii) present witnesses and other evidence; and

(iii) confront and cross examine witnesses.

(d) After a hearing under this Subsection (6):

(i) the person conducting the hearing shall prepare written findings of fact and conclusions of law; and

(ii) the governor shall serve a copy of the prepared findings and conclusions upon the commissioner.

(e) If a hearing under this Subsection (6) is held before a hearing examiner, the hearing examiner shall issue a written recommendation to the governor in addition to complying with Subsection (6)(d).

(f) A commissioner has five days from the day on which the commissioner receives the findings and conclusions described in Subsection (6)(d) to file written objections to the recommendation before the governor issues a final order.

(g) The governor shall:

(i) issue the final order under this Subsection (6) in writing; and

(ii) serve the final order upon the commissioner.

(7) A commissioner may not receive compensation or benefits for the commissioner's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(8) (a) The governor shall annually appoint the chair of the commission. A commissioner serves as chair to the commission at the pleasure of the governor. If removed as chair, the commissioner continues to serve as a commissioner unless removed as a commissioner under Subsection (6).

(b) The commission shall elect:

(i) another commissioner to serve as vice chair; and

(ii) other commission officers as the commission considers advisable.

(c) A commissioner elected under Subsection (8)(b) shall serve in the office to which the commissioner is elected at the pleasure of the commission.

(9) (a) Each commissioner has equal voting rights on a commission matter when in attendance at a commission meeting.

(b) Four commissioners is a quorum for conducting commission business.

(c) A majority vote of the quorum present at a meeting is required for the commission to act.

(10) (a) The commission shall meet at least monthly, but may hold other meetings at times and places as scheduled by:

(i) the commission;

(ii) the chair; or

(iii) three commissioners upon filing a written request for a meeting with the chair.

(b) Notice of the time and place of a commission meeting shall be given to each commissioner, and to the public in compliance with Title 52, Chapter 4, Open and Public Meetings Act. A commission meeting is open to the public, except for a commission meeting or portion of a commission meeting that is closed by the commission as authorized by Sections 52-4-204 and 52-4-205.

Section 12. Section 34A-1-205 is amended to read:

34A-1-205. Appeals Board -- Chair -- Appointment -- Compensation --Qualifications.

(1) There is created the Appeals Board within the commission consisting of three members. The board may call and preside at adjudicative proceedings to review an order or decision that is subject to review by the Appeals Board under this title.

(2) (a) The governor shall appoint the members with the consent of the Senate and in accordance with this section.

(b) One member of the board shall be appointed to represent employers, in making this appointment, the governor shall consider nominations from employer organizations.

(c) One member of the board shall be appointed to represent employees, in making this appointment, the governor shall consider nominations from employee organizations.

~~[(d) No more than two members may belong to the same political party.]~~

(d) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(e) The governor shall, at the time of appointment or reappointment, make appointments to the board so that at least two of the members of the board are members of the Utah State Bar in good standing or resigned from the Utah State Bar in good standing.

(3) (a) The term of a member shall be six years beginning on March 1 of the year the member is appointed, except that the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that one member is appointed every two years.

(b) The governor may remove a member only for inefficiency, neglect of duty, malfeasance or misfeasance in office, or other good and sufficient cause.

(c) A member shall hold office until a successor is appointed and has qualified.

(4) A member shall be part-time and receive compensation as provided by Title 67, Chapter 19, Utah State Personnel Management Act.

(5) (a) The chief officer of the board shall be the chair, who shall serve as the executive and administrative head of the board.

(b) The governor shall appoint and may remove at will the chair from the position of chair.

(6) A majority of the board shall constitute a quorum to transact business.

(7) (a) The commission shall provide the Appeals Board necessary staff support, except as provided in Subsection (7)(b).

(b) At the request of the Appeals Board, the attorney general shall act as an impartial aid to the Appeals Board in outlining the facts and the issues.

Section 13. Section 35A-1-205 is amended to read:

35A-1-205. Workforce Appeals Board -- Chair -- Appointment -- Compensation -- Qualifications.

(1) There is created the Workforce Appeals Board within the department consisting of one or more panels to hear and decide appeals from the decision of an administrative law judge.

(2) (a) A panel shall consist of three impartial members appointed by the governor as follows:

(i) the board chair, appointed in accordance with Subsection (5);

(ii) one member appointed to represent employers; and in making this appointment, the governor shall consider nominations from employer organizations; and

(iii) one member appointed to represent employees; and in making this appointment, the governor shall consider nominations from employee organizations.

~~[(b) No more than two members of a panel may belong to the same political party.]~~

(b) The governor may not consider or seek to discover the political affiliation of a person when considering the person for appointment or reappointment to the board.

(3) (a) (i) The term of a member shall be six years beginning on March 1 of the year the member is appointed, except as otherwise provided in Subsection (3)(a)(ii).

(ii) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately one third of the members are appointed every two years.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(c) The governor may remove a member for inefficiency, neglect of duty, malfeasance or misfeasance in office, or other good and sufficient cause.

(d) A member shall hold office until a successor is appointed and has qualified.

(4) (a) Except as provided in Subsection (4)(b), a member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(b) The member appointed as board chair in accordance with Subsection (5) shall be compensated at an hourly rate determined by the Department of Human Resource Management in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

(5) (a) The chief officer of the board shall be the chair, who shall serve as the executive and administrative head of the board.

(b) The chair shall be appointed by the governor to represent the public and may be removed from that position at the will of the governor.

(c) The chair shall be experienced in administration and possess any additional qualifications determined by the governor.

(6) (a) The chair shall designate an alternate from a panel appointed under this section:

(i) in the absence of a regular member or the chair; or

(ii) if the regular member or the chair has a conflict of interest.

(b) Each case shall be decided by a full three-member panel.

(7) The department shall provide the Workforce Appeals Board necessary staff support, except, the board may employ, retain, or appoint legal counsel.

Section 14. Section 36-12-20 is amended to read:

36-12-20. Development of proposed energy producer states' agreement-- Membership selection -- Agreements -- Goals -- Meetings -- Reports.

(1) (a) ~~The speaker of the House of Representatives shall appoint two members of the House of Representatives and the president of the Senate shall appoint two members of the Senate [of which no more than three of the four members shall be from the same political party,] to study and work with legislative members of other energy producing states for the purpose of developing a proposed energy producer states' agreement.~~

(b) The speaker of the House of Representatives and the president of the Senate may not consider the political affiliation of a House of Representatives or Senate member when considering the member for the appointment described in Subsection (1)(a).

(2) The proposed energy producer states' agreement shall have the following goals:

(a) to encourage domestic development of energy in the United States;

(b) to ensure the continued development of each state's domestic natural resources;

(c) to deliver a unified message to the federal government from energy producing states by:

(i) participating in the development of proposed federal legislation and regulations; and

(ii) making recommendations regarding existing federal law and regulations including the following:

(A) the Environmental Protection Act;

(B) the Endangered Species Act; and

(C) federal land access issues that affect the production of energy;

(d) to eliminate or reduce overly broad federal legislation; and

(e) to identify and address consequences of delays and cancellations of economically viable energy projects.

(3) Appointed members shall:

(a) produce a report with recommendations regarding an energy producer states' agreement; and

(b) present the report to the Natural Resources, Agriculture, and Environment Interim Committee on or before November 30 of each year.

(4) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(5) The Office of Legislative Research and General Counsel shall provide staff assistance as requested.

Section 15. Section 40-6-4 is amended to read:

40-6-4. Board of Oil, Gas, and Mining created -- Functions -- Appointment of members -- Terms -- Chair -- Quorum -- Expenses.

(1) (a) There is created within the Department of Natural Resources the Board of Oil, Gas, and Mining.

(b) The board shall be the policy making body for the Division of Oil, Gas, and Mining.

(2) (a) The board shall consist of seven members appointed by the governor with the consent of the Senate.

~~(b) No more than four members shall be from the same political party.~~

(b) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(c) In accordance with the requirements of Section 79-2-203, the members appointed under Subsection (2)(a) shall include the following:

(i) two members who are knowledgeable in mining matters;

(ii) two members who are knowledgeable in oil and gas matters;

(iii) one member who is knowledgeable in ecological and environmental matters;

(iv) one member who:

(A) is a private land owner;

(B) owns a mineral or royalty interest; and

(C) is knowledgeable in mineral or royalty interests; and

(v) one member who is knowledgeable in geological matters.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.

(4) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor with the consent of the Senate.

(b) The person appointed shall have the same qualifications as the person's predecessor.

(5) (a) The board shall appoint its chair from the membership.

(b) Four members of the board shall constitute a quorum for the transaction of business and the holding of hearings.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 16. Section 51-7-16 is amended to read:

51-7-16. State Money Management Council -- Members -- Terms -- Vacancies -- Chair and vice chair -- Executive secretary -- Meetings -- Quorum -- Members' disclosure of interests -- Per diem and expenses.

(1) (a) There is created a State Money Management Council composed of five members appointed by the governor after consultation with the state treasurer and with the consent of the Senate.

(b) The members of the council shall be qualified by training and experience in the field of investment or finance as follows:

(i) at least one member, but not more than two members, shall be experienced in the banking business;

(ii) at least one member, but not more than two members, shall be an elected treasurer;

(iii) at least one member, but not more than two members, shall be an appointed public treasurer; and

(iv) two members, but not more than two members, shall be experienced in the field of investment.

~~[(c) No more than three members of the council may be from the same political party.]~~

(c) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(2) (a) Except as required by Subsection (2)(b), the council members shall be appointed for terms of four years.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(d) All members shall serve until their successors are appointed and qualified.

(3) (a) The council members shall elect a chair and vice chair.

(b) The state treasurer shall serve as executive secretary of the council without vote.

(4) (a) The council shall meet at least once per quarter at a regular date to be fixed by the council and at other times at the call of the chair, the state treasurer, or any two members of the council.

(b) Three members are a quorum for the transaction of business.

(c) Actions of the council require a vote of a majority of those present.

(d) All meetings of the council and records of its proceedings are open for inspection by the public at the state treasurer's office during regular business hours except for:

(i) reports of the commissioner of financial institutions concerning the identity, liquidity, or financial condition of qualified depositories and the amount of public funds each is eligible to hold; and

(ii) reports of the director concerning the identity, liquidity, or financial condition of certified dealers.

(5) (a) Each member of the council shall file a sworn or written statement with the lieutenant governor that discloses any position or employment or ownership interest that he has in any financial institution or investment organization.

(b) Each member shall file the statement required by this Subsection (5) when he becomes a member of the council and when substantial changes in his position, employment, or ownership interests occur.

(6) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 17. Section 54-1-1.5 is amended to read:

54-1-1.5. Appointment of members -- Terms -- Qualifications --Chairman -- Quorum -- Removal -- Vacancies -- Compensation.

(1) The commission shall be composed of three members appointed by the governor with the consent of the Senate.

~~(2) The terms of the members shall be staggered so that one commissioner is appointed for a term of six years on March 1 of each odd-numbered year. [Not more than two members of the commission shall belong to the same political party. One member of the commission shall be designated by the governor as chairman of the commission. Any two]~~

(3) The governor shall designate one commissioner as the chair of the commission.

~~(4) Two commissioners constitute a quorum. [Any member of the commission may be removed for cause by the governor. Vacancies in the commission shall be filled for unexpired terms by appointment of the governor.]~~

(5) The governor:

(a) may remove a commissioner for cause; and

(b) shall fill any vacancy on the commission by appointing a member for the remainder of the unexpired term.

~~(6) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the commission.~~

(7) Commissioners shall receive compensation as established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation, and all actual and necessary expenses incurred in attending to official business.

(8) Each commissioner at the time of appointment and qualification shall be:

(a) a resident citizen of the United States and of the state of Utah; and ~~[shall be]~~

(b) not less than 30 years of age.

(9) Except as provided by law, [no] a commissioner may not hold any other office either under the government of the United States or of this state or of any municipal corporation within this state.

Section 18. Section 54-10a-202 is amended to read:

54-10a-202. Committee of Consumer Services.

(1) (a) There is created within the office a committee known as the "Committee of Consumer Services."

(b) A member of the committee shall maintain the member's principal residence within Utah.

(2) (a) The governor shall appoint nine members to the committee subject to Subsection (3).

(b) Except as required by Subsection (2)(c), as terms of current committee members expire, the governor shall appoint a new member or reappointed member to a four-year term.

(c) Notwithstanding the requirements of Subsection (2)(b), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term.

(3) Members of the committee shall represent the following geographic and consumer interests:

(a) one member shall be from Salt Lake City, Provo, or Ogden;

(b) one member shall be from a city other than Salt Lake City, Provo, or Ogden;

(c) one member shall be from an unincorporated area of the state;

(d) one member shall be a low-income resident;

(e) one member shall be a retired person;

(f) one member shall be a small commercial consumer;

(g) one member shall be a farmer or rancher who uses electric power to pump water in the member's farming or ranching operation;

(h) one member shall be a residential consumer; and

(i) one member shall be appointed to provide geographic diversity on the committee to ensure to the extent possible that all areas of the state are represented.

~~[(4) (a) No more than five members of the committee shall be from the same political party.]~~

(4) (a) The governor may not consider or seek to discover the political affiliation of a person when considering the person for appointment or reappointment to the committee.

(b) Subject to Subsection (3), for a member of the committee appointed on or after May 12, 2009, the governor shall appoint, to the extent possible, an individual with expertise or experience in:

(i) public utility matters related to consumers;

- (ii) economics;
- (iii) accounting;
- (iv) financing;
- (v) engineering; or
- (vi) public utilities law.

(5) The governor shall designate one member as chair of the committee.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) (a) The committee may hold monthly meetings.

(b) The committee may hold other meetings, at the times and places the chair and a majority of the committee determine.

(8) (a) Five members of the committee constitute a quorum of the committee.

(b) A majority of members voting when a quorum is present constitutes an action of the committee.

Section 19. Section 62A-1-107 is amended to read:

62A-1-107. Boards within department -- Members, appointment, terms, vacancies, chairperson, compensation, meetings, quorum.

(1) (a) This section applies only to the Board of Aging and Adult Services and the Board of Juvenile Justice Services described in Subsections 62A-1-105(1)(a) and (b).

(b) Each board shall have seven members who are appointed by the governor with the consent of the Senate.

(2) (a) Except as required by Subsection (2)(b), each member shall be appointed for a term of four years, and is eligible for one reappointment.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Board members shall continue in office until the expiration of their terms and until their successors are appointed, which may not exceed 90 days after the formal expiration of a term.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

[~~(3) No more than four members of any board may be from the same political party.~~]

(3) (a) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to a board under this section.

(b) Each board shall have diversity of gender, ethnicity, and culture; and members shall be chosen on the basis of their active interest, experience, and demonstrated ability to deal with issues related to their specific boards.

(4) Each board shall annually elect a chairperson from its membership. Each board shall hold meetings at least once every three months. Within budgetary constraints, meetings may be held from time to time on the call of the chairperson or of the majority of the members of any board. Four members of a board are necessary to constitute a quorum at any meeting, and, if a quorum exists, the action of the majority of members present shall be the action of the board.

(5) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) Each board shall adopt bylaws governing its activities. Bylaws shall include procedures for removal of a board member who is unable or unwilling to fulfill the requirements of his appointment.

(7) The board has program policymaking authority for the division over which it presides.

Section 20. Section 63H-8-201 is amended to read:

63H-8-201. Creation -- Trustees -- Terms -- Vacancies -- Chair -- Powers -- Quorum -- Per diem and expenses.

(1) (a) There is created an independent body politic and corporate, constituting a public corporation, known as the "Utah Housing Corporation."

(b) The corporation may also be known and do business as the:

- (i) Utah Housing Finance Association; and
- (ii) Utah Housing Finance Agency in connection with a contract entered into when that was the corporation's legal name.

(c) No other entity may use the names described in Subsections (1)(a) and (b) without the express approval of the corporation.

(2) The corporation is governed by a board of trustees composed of the following nine trustees:

- (a) the executive director of the Department of Workforce Services or the executive director's designee;

(b) the commissioner of the Department of Financial Institutions or the commissioner's designee;

(c) the state treasurer or the treasurer's designee; and

(d) six public trustees, who are private citizens of the state, as follows:

(i) two people who represent the mortgage lending industry;

(ii) two people who represent the home building and real estate industry; and

(iii) two people who represent the public at large.

(3) (a) The governor shall:

~~[(a)]~~ (i) appoint the six public trustees of the corporation with the consent of the Senate; and

~~[(b)]~~ (ii) ensure that ~~[(i)]~~ the six public trustees are from different counties and are residents of the state ~~[- and]~~.

(b) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board of trustees.

~~[(ii) not more than three of the public trustees are members of the same political party.]~~

(4) (a) Except as required by Subsection (4)(b), the governor shall appoint the six public trustees to terms of office of four years each.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of corporation trustees are staggered so that approximately half of the board is appointed every two years.

(5) (a) A public trustee of the corporation may be removed from office for cause either by the governor or by an affirmative vote of six trustees of the corporation.

(b) When a vacancy occurs in the board of trustees for any reason, the replacement shall be appointed for the unexpired term.

(c) A public trustee shall hold office for the term of appointment and until the trustee's successor has been appointed and qualified.

(d) A public trustee is eligible for reappointment but may not serve more than two full consecutive terms.

(6) (a) The governor shall select the chair of the corporation.

(b) The trustees shall elect from among their number a vice chair and other officers they may determine.

(7) (a) Five trustees of the corporation constitute a quorum for transaction of business.

(b) An affirmative vote of at least five trustees is necessary for any action to be taken by the corporation.

(c) A vacancy in the board of trustees does not impair the right of a quorum to exercise all rights and perform all duties of the corporation.

(8) A trustee may not receive compensation or benefits for the trustee's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

Section 21. Section 63N-1-401 is amended to read:

63N-1-401. Board of Business and Economic Development -- Membership-- Expenses.

(1) (a) There is created within the office the Board of Business and Economic Development, consisting of 15 members appointed by the governor to four-year terms of office with the consent of the Senate.

(b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) The members may not serve more than two full consecutive terms except where the governor determines that an additional term is in the best interest of the state.

(2) (a) In appointing members of the committee, the governor shall ensure that ~~[-(a) no more than eight members of the board are from one political party; and (b)]~~ members represent a variety of geographic areas and economic interests of the state.

(b) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) Eight members of the board constitute a quorum for conducting board business and exercising board power.

(5) The governor shall select one board member as the board's chair.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

Section 22. Section 63N-7-102 is amended to read:

63N-7-102. Members -- Meetings -- Expenses.

(1) (a) The board shall consist of 13 members appointed by the governor to four-year terms with the consent of the Senate.

(b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(2) The members may not serve more than two full consecutive terms unless the governor determines that an additional term is in the best interest of the state.

~~[(3) Not more than seven members of the board may be of the same political party.]~~

(3) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(4) (a) The members shall be representative of:

(i) all areas of the state with six being appointed from separate geographical areas as provided in Subsection (4)(b); and

(ii) a diverse mix of business ownership or executive management of tourism related industries.

(b) The geographical representatives shall be appointed as follows:

(i) one member from Salt Lake, Tooele, or Morgan County;

(ii) one member from Davis, Weber, Box Elder, Cache, or Rich County;

(iii) one member from Utah, Summit, Juab, or Wasatch County;

(iv) one member from Carbon, Emery, Grand, Duchesne, Daggett, or Uintah County;

(v) one member from San Juan, Piute, Wayne, Garfield, or Kane County; and

(vi) one member from Washington, Iron, Beaver, Sanpete, Sevier, or Millard County.

(c) The tourism industry representatives of ownership or executive management shall be appointed as follows:

(i) one member from ownership or executive management of the lodging industry, as recommended by the lodging industry for the governor's consideration;

(ii) one member from ownership or executive management of the restaurant industry, as

recommended by the restaurant industry for the governor's consideration;

(iii) one member from ownership or executive management of the ski industry, as recommended by the ski industry for the governor's consideration; and

(iv) one member from ownership or executive management of the motor vehicle rental industry, as recommended by the motor vehicle rental industry for the governor's consideration.

(d) One member shall be appointed at large from ownership or executive management of business, finance, economic policy, or the academic media marketing community.

(e) One member shall be appointed from the Utah Tourism Industry Coalition as recommended by the coalition for the governor's consideration.

(f) One member shall be appointed to represent the state's counties as recommended by the Utah Association of Counties for the governor's consideration.

(g) (i) The governor may choose to disregard a recommendation made for a board member under Subsections (4)(c), (e), and (f).

(ii) The governor shall request additional recommendations if recommendations are disregarded under Subsection (4)(g)(i).

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term from the same geographic area or industry representation as the member whose office was vacated.

(6) Seven members of the board constitute a quorum for conducting board business and exercising board powers.

(7) The governor shall select one of the board members as chair and one of the board members as vice chair, each for a four-year term as recommended by the board for the governor's consideration.

(8) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance under Sections 63A-3-106and 63A-3-107.

(9) The board shall meet monthly or as often as the board determines to be necessary at various locations throughout the state.

(10) Members who may have a potential conflict of interest inconsideration of fund allocation decisions shall identify the potential conflict prior to voting on the issue.

(11) (a) The board shall determine attendance requirements for maintaining a designated board seat.

(b) If a board member fails to attend according to the requirements established pursuant to

Subsection (11)(a), the board member shall be replaced upon written certification from the board chair or vice chair to the governor.

(c) A replacement appointed by the governor under Subsection (11)(b) shall serve for the remainder of the board member's unexpired term.

(12) The board's office shall be in Salt Lake City.

Section 23. Section 72-4-302 is amended to read:

72-4-302. Utah State Scenic Byway Committee -- Creation -- Membership -- Meetings -- Expenses.

(1) There is created the Utah State Scenic Byway Committee.

(2) (a) The committee shall consist of the following 15 members:

(i) a representative from each of the following entities appointed by the governor:

(A) the Governor's Office of Economic Development;

(B) the Utah Department of Transportation;

(C) the Department of Heritage and Arts;

(D) the Division of Parks and Recreation;

(E) the Federal Highway Administration;

(F) the National Park Service;

(G) the National Forest Service; and

(H) the Bureau of Land Management;

(ii) one local government tourism representative appointed by the governor;

(iii) a representative from the private business sector appointed by the governor;

(iv) three local elected officials from a county, city, or town within the state appointed by the governor;

(v) a member from the House of Representatives appointed by the speaker of the House of Representatives; and

(vi) a member from the Senate appointed by the president of the Senate.

(b) Except as provided in Subsection (2)(c), the members appointed in this Subsection (2) shall be appointed for a four-year term of office.

(c) The governor shall, at the time of appointment or reappointment for appointments made under Subsection (2)(a)(i), (ii), (iii), or (iv) adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

~~[(d) (i) The appointments made under Subsections (2)(a)(v) and (vi) by the speaker of the House and the president of the Senate may not be from the same political party.]~~

~~[(ii) The speaker of the House and the president of the Senate shall alternate the appointments made under Subsections (2)(a)(v) and (vi) as follows:]~~

~~[(A) if the speaker appoints a member under Subsection (2)(a)(v), the next appointment made by the speaker following the expiration of the existing member's four-year term of office shall be from a different political party; and]~~

~~[(B) if the president appoints a member under Subsection (2)(a)(vi), the next appointment made by the president following the expiration of the existing member's four-year term of office shall be from a different political party.]~~

(d) The governor, the speaker of the House of Representatives, and the president of the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment or reappointment to the board.

(3) (a) The representative from the Governor's Office of Economic Development shall chair the committee.

(b) The members appointed under Subsections (2)(a)(i)(E) through (H) serve as nonvoting, ex officio members of the committee.

(4) The Governor's Office of Economic Development and the department shall provide staff support to the committee.

(5) (a) The chair may call a meeting of the committee only with the concurrence of the department.

(b) A majority of the voting members of the committee constitute a quorum.

(c) Action by a majority vote of a quorum of the committee constitutes action by the committee.

(6) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Section 24. Section 72-11-202 is amended to read:

72-11-202. Passenger ropeways -- Creation of Passenger Ropeway Safety Committee within Department of Transportation -- Members.

(1) There is created within the Department of Transportation a Passenger Ropeway Safety Committee.

(2) The committee is comprised of six appointive members and one ex officio member who shall be appointed by the executive director of the Department of Transportation.

(3) The appointive members shall be appointed by the governor from persons representing the following interests:

- (a) two members to represent the industry;
- (b) two members to represent the public at large;
- (c) one member who is a licensed engineer in Utah; and
- (d) one member to represent the United States Forest Service.

(4) (a) Except as required by Subsection (4)(b), as terms of committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

~~[(c) No more than four members shall be of the same political party.]~~

(c) The governor may not consider or seek to discover the political affiliation of a person when considering the person for appointment or reappointment to the committee.

(5) The governor, in making the appointments, shall request and consider recommendations made to him by:

- (a) the membership of the particular interest from which the appointments are to be made; and
- (b) the Department of Transportation.

Section 25. Section 73-10-2 is amended to read:

73-10-2. Board of Water Resources -- Members -- Appointment -- Terms-- Vacancies.

(1) (a) The Board of Water Resources shall be comprised of eight members to be appointed by the governor with the consent of the Senate.

~~[(b) In addition to the requirements of Section 79-2-203, not more than four members shall be from the same political party.]~~

(b) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(2) ~~[(One)]~~ In addition to the requirements described in Section 79-2-203, one member of the board shall be appointed from each of the following districts:

- (a) Bear River District, comprising the counties of Box Elder, Cache, and Rich;
- (b) Weber District, comprising the counties of Weber, Davis, Morgan, and Summit;

(c) Salt Lake District, comprising the counties of Salt Lake and Tooele;

(d) Provo River District, comprising the counties of Juab, Utah, and Wasatch;

(e) Sevier River District, comprising the counties of Millard, Sanpete, Sevier, Piute, and Wayne;

(f) Green River District, comprising the counties of Daggett, Duchesne, and Uintah;

(g) Upper Colorado River District, comprising the counties of Carbon, Emery, Grand, and San Juan; and

(h) Lower Colorado River District, comprising the counties of Beaver, Garfield, Iron, Washington, and Kane.

(3) (a) Except as required by Subsection (3)(b), all appointments shall be for terms of four years.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the consent of the Senate and shall be from the same district as such person.

(4) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 26. Section 79-3-302 is amended to read:

79-3-302. Members of board -- Qualifications and appointment --Vacancies -- Organization -- Meetings -- Financial gain prohibited -- Expenses.

(1) The board consists of seven members appointed by the governor,with the consent of the Senate.

(2) In addition to the requirements of Section 79-2-203, the members shall have the following qualifications:

- (a) one member knowledgeable in the field of geology as applied to the practice of civil engineering;
- (b) four members knowledgeable and representative of various segments of the mineral industry throughout the state, such as hydrocarbons, solid fuels, metals, and industrial minerals;
- (c) one member knowledgeable of the economic or scientific interests of the mineral industry in the state; and
- (d) one member who is interested in the goals of the survey and from the public at large.

(3) The director of the School and Institutional Trust Lands Administration is an ex officio member of the board but without any voting privileges.

(4) (a) Except as required by Subsection (4)(b), members are appointed for terms of four years.

(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

~~[(c) No more than four members may be of the same political party.]~~

(c) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor with the consent of the Senate.

(5) The board shall select from its members a chair and such officers and committees as it considers necessary.

(6) (a) The board shall hold meetings at least quarterly on such dates as may be set by its chair.

(b) Special meetings may be held upon notice of the chair or by a majority of its members.

(c) A majority of the members of the board present at a meeting constitutes a quorum for the transaction of business.

(7) Members of the board may not obtain financial gain by reason of information obtained during the course of their official duties.

(8) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 27. Section 79-4-302 is amended to read:

79-4-302. Board appointment and terms of members -- Expenses.

(1) (a) The board is composed of nine members appointed by the governor, with the consent of the Senate, to four-year terms.

(b) In addition to the requirements of Section 79-2-203, the governor shall appoint:

(i) ~~appoint~~ one member from each judicial district~~and~~;

(ii) one member from the public at large; and

~~[(ii) ensure that not more than five members are from the same political party; and]~~

(iii) ~~appoint~~ persons who have an understanding of and demonstrated interest in parks and recreation.

(c) The governor and the Senate may not consider or seek to discover the political affiliation of a person when considering the person for appointment, reappointment, or confirmation to the board.

~~[(e) (d) Notwithstanding the term requirements of Subsection (1)(a), the governor may adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.~~

(2) When vacancies occur because of death, resignation, or other cause, the governor, with the consent of the Senate, shall:

(a) appoint a person to complete the unexpired term of the person whose office was vacated; and

(b) if the person was appointed from a judicial district, appoint the replacement from the judicial district from which the person whose office has become vacant was appointed.

(3) The board shall appoint its chair from its membership.

(4) A member may not receive compensation or benefits for themember's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.



STATE OF UTAH

GARY R. HERBERT
GOVERNOR

OFFICE OF THE GOVERNOR
SALT LAKE CITY, UTAH
84114-2220

SPENCER J. COX
LIEUTENANT GOVERNOR

March 24, 2017

The Honorable Greg Hughes
Speaker of the House

and

The Honorable Wayne Niederhauser
President of the Senate

Dear Speaker Hughes and President Niederhauser,

As required by Article VII, Section 8 of the Utah Constitution, I am writing to provide you my objections to House Bill 11, STATE BOARDS AND COMMISSIONS AMENDMENTS, and to explain my decision to veto the bill.

As I appoint individuals to boards and commissions, I am sometimes required by statute to consider partisanship in making those appointments. I feel that in most instances, this is contrary to the best interests of the public and public policy. The purpose of this bill was to allow for the appointment of the best and most qualified individuals outside of those partisanship considerations.

However, recognizing that some boards and commissions make decisions that may be viewed as partisan, and wanting to ensure that the public has confidence in their decisions, my office agreed to a negotiated version of this bill. That version of the bill maintained partisan appointments for the Air Quality Board, the Water Quality Board, the Public Service Commission, and the Alcoholic Beverage Control Commission. This agreement was reached with my office, the sponsor of the bill, and other concerned parties. However, the version of the bill we agreed upon was then subsequently amended in the Senate and the final version is now inconsistent with the agreement my office made during negotiations. Accordingly, I now feel obligated to veto this bill in its current form. Whether or not the perception is accurate, I believe that public confidence in these select boards and commissions may be increased through symbolic partisan makeup.

My commitment is to always appoint the best, most qualified person for any position and I expect those individuals, thus appointed, to act in the best interest of the state, in the interest of creating good policy.

For these reasons, I disapprove of and veto House Bill 11, STATE BOARDS AND COMMISSIONS AMENDMENTS, and return it to the House of Representatives.

Sincerely,

A handwritten signature in black ink, reading "Gary R. Herbert". The signature is written in a cursive style with a long horizontal stroke at the end.

Gary R. Herbert



STATE OF UTAH

GARY R. HERBERT
GOVERNOR

OFFICE OF THE GOVERNOR
SALT LAKE CITY, UTAH
84114-2220

SPENCER J. COX
LIEUTENANT GOVERNOR

March 28, 2017

The Honorable Wayne Niederhauser
President of the Senate

and

The Honorable Greg Hughes
Speaker of the House

Dear President Niederhauser and Speaker Hughes,

As required by Article VII, Section 8 of the Utah Constitution, I am writing to provide you my objections to certain Items within Senate Bill 3, APPROPRIATIONS ADJUSTMENTS, and to explain my decision to veto these items within the bill.

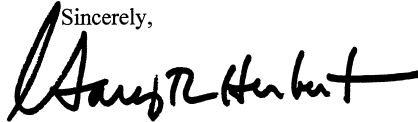
I am vetoing 4 items within the 2017 APPROPRIATIONS ADJUSTMENTS:

1. Item 73, which is \$66,000 to the Department of Corrections. This appropriation was intended to fund the policy associated with HB 365, HOMELESS RESOURCE CENTER ZONE AMENDMENTS, which did not pass the Legislature and will not become law.
2. Item 90, which is \$24,000 to the Judicial Council/State Court Administrator. This appropriation was intended to fund the policy associated with HB 289, GRANDPARENT VISITATION AMENDMENTS, which did not pass the Legislature and will not become law.
3. Item 95, which is \$5,800 to the Judicial Council/State Court Administrator-Guardian Ad Litem. This appropriation was intended to fund the policy associated with HB 289, GRANDPARENT VISITATION AMENDMENTS, which did not pass the Legislature and will not become law.

4. Item 149, which is \$10,800 to the Department of Commerce. This appropriation was intended to fund the policy associated with HB 395, HEALTH INSURANCE AMENDMENTS, which did not pass the Legislature and will not become law.

For these reasons, I disapprove of and veto Items 73, 90, 95, and 149 of Senate Bill Senate 3, APPROPRIATIONS ADJUSTMENTS, but otherwise sign and approve the bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary R. Herbert". The signature is written in a cursive style with a long horizontal stroke at the end.

Gary R. Herbert
Governor

Resolutions

passed at the
General Session
of the
Sixty-Second Legislature
2017

H.C.R. 1

Passed March 9, 2017
 Approved March 20, 2017
 Effective March 20, 2017

**CONCURRENT RESOLUTION TO
 SECURE THE PERPETUAL HEALTH
 AND VITALITY OF UTAH'S PUBLIC
 LANDS AND ITS STATUS AS A
 PREMIER PUBLIC LANDS STATE**

Chief Sponsor: Keven J. Stratton
 Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This concurrent resolution recognizes the state's commitment to remaining a public lands state and encourages the pursuit of federal executive and legislative action that would lead to both the retention and optimal management of public lands within the state of Utah.

Highlighted Provisions:

This resolution:

- ▶ states that Utah is a premier public lands state and is committed to remaining a public lands state; and
- ▶ asserts that local management responsibility of Utah's public lands would result in greater opportunities for outdoor recreation, including hunting, fishing, and access, as well as economic opportunities for rural Utah.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the state of Utah is a premier public lands state and is committed to remaining a public lands state;

WHEREAS, Utah's public lands provide unique opportunities for outdoor recreation, including skiing, camping, hunting, fishing, biking, rock climbing, and spelunking in addition to economic opportunities like responsible timber harvesting, mineral development, wind and solar energy development, and livestock grazing;

WHEREAS, Utah's leaders are focused on the conservation and improvement of public lands, and the state's concern over federal management is not an issue of the public lands themselves or the good federal employees who work in this area, but the historic and structural failure of the federal government to manage the public lands properly without meaningful state and local consultation and input;

WHEREAS, federal mismanagement jeopardizes Utah communities, our forests, wildlife, economies, recreational opportunities, and air quality;

WHEREAS, the state of Utah seeks greater management responsibility over the public lands

not to sell them, but to protect them in the way that they always should have been protected;

WHEREAS, if given greater management responsibility over the public lands within the state, Utah is devoted to:

- increasing public access for hunting, fishing, and outdoor recreation, as well as increasing public herds of wildlife like elk, deer, bison, bighorn, moose, and mountain goats;
- mitigating conflicts, when they occur, between ranching interests and wildlife interests;
- increasing opportunities for ranching interests, while also ensuring increased wildlife and sporting opportunities; and
- increasing economic opportunities for rural Utah communities;

WHEREAS, the state is committed to retaining public lands in public ownership and in improving the way the public lands are managed in the state;

WHEREAS, the state of Utah is regularly regarded as one of the best-managed states in the country and, because of this proven track record, seeks to obtain greater management responsibility over certain federally controlled public land within its borders; and

WHEREAS, by obtaining greater management responsibility over certain public lands in Utah, the state could ensure appropriate conservation, secure public access, encourage multiple use, grow the economy, and sustain proper land management:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, strongly urges all members of the Utah congressional delegation to work in concert with Utah's legislative leadership and the Commission for the Stewardship of Public Lands to draft and pass federal legislation creating a framework to ensure the retention of Utah's public lands in public ownership and to provide for greater state management responsibility over certain public lands.

BE IT FURTHER RESOLVED that the Legislature and the Governor strongly urge the President of the United States, together with the United States Congress, to support all efforts and actions necessary to draft, pass, and sign into law the federal legislative framework to ensure the retention of Utah's public lands in public ownership and to provide for greater state management responsibility over certain public lands in the state of Utah.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States, Utah's federal delegation, the Utah Attorney General, the State Board of Education, local school boards within the state of Utah, county commissioners within the state of Utah, and mayors and council members of all communities within the state of Utah.

H.C.R. 2

Passed February 24, 2017
 Approved March 17, 2017
 Effective March 17, 2017

**CONCURRENT RESOLUTION
 RECOGNIZING THE UNITED STATES AND
 UTAH'S PARTICIPATION IN WORLD WAR I**

Chief Sponsor: Stephen G. Handy
 Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This resolution recognizes the United States' and Utah's participation in World War I and urges the Utah Department of Veterans and Military Affairs to establish the Utah World War I Centennial Commission.

Highlighted Provisions:

This resolution:

- ▶ recognizes the centennial commemoration of World War I, which spanned from July 28, 1914, to November 11, 1918;
- ▶ urges the Governor, through the Utah Department of Veterans and Military Affairs and in coordination with the Utah Department of Heritage and Arts, to establish a Utah World War I Centennial Commission, modeled after the United States World War I Centennial Commission; and
- ▶ urges the future commission to develop a statewide awareness campaign to recognize the following:
 - the history of the war, including the causes, the reason for entry into the war by the United States, and the role of the United States military in the war;
 - the impact of the war on geopolitics through today;
 - the impact of the war on America's and Utah's society and culture -- including science, the arts, and the humanities -- to encompass immigrants, minority populations, and women;
 - the technological changes the war brought to transportation, industry, communication, and agriculture;
 - the search for peace up to, during, and after the war;
 - the World War I monuments and memorials scattered throughout the state; and
 - those who served and those who gave the ultimate sacrifice.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, World War I broke out in Europe on July 28, 1914, quickly became history's first worldwide war, and is the defining conflict of the modern era;

WHEREAS, total battlefield deaths or death from wounds for all nations was enormous, tabulating some seven million people;

WHEREAS, the United States declared war on the German Empire on April 6, 1917, as follows: "Whereas, the Imperial German Government has committed repeated acts of war against the Government and the people of the United States of America; therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the state of war between the United States and the Imperial German Government, which has thus been thrust upon the United States, is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States";

WHEREAS, after the declaration, President Woodrow Wilson called for the federalization and mobilization of National Guard troops into the regular army and a draft ensued;

WHEREAS, more than four million men and women from the United States served in uniform during World War I;

WHEREAS, the United States suffered 375,000 casualties, including 116,516 deaths;

WHEREAS, Utahns responded immediately to the call of duty, sending some 21,000 of their sons and daughters into the armed forces of the United States, with 11,000 being drafted and 10,000 volunteering;

WHEREAS, 655 Utahns lost their lives in the conflict, including 219 from battlefield injuries, 32 from accidents, and 414 from disease and other health-related issues, and another 864 were wounded;

WHEREAS, Utah's population in 1917 was between 400,000 and 450,000, meaning nearly 5% (4.94%) of the population served, and by comparison, 5% of Utah's 2016 population of three million would amount to 150,000 Utahns in uniform today;

WHEREAS, 43 Utah servicemen received the Distinguished Service Cross of the Navy Cross, the second highest military decoration for valor;

WHEREAS, at a time that some questioned the patriotism and loyalty of Utahns to the United States of America, Utah's contribution on the battlefield and on the home front was substantial, with about \$81 million in war bonds and donations to the American Red Cross recorded, averaging approximately \$190 for every man, woman, and child living in Utah at the time;

WHEREAS, Utahns viewed their participation and support of the war effort as a means to help end the horrors of war once and for all, and to demonstrate their fidelity and loyalty to the United States of America;

WHEREAS, Utah citizens volunteered countless hours in response to Governor Simon Bamberger’s call to serve as members of the Utah State Council of Defense and as members of county and community councils of defense to help mobilize, coordinate, and facilitate the war effort in the state;

WHEREAS, on March 24, 1917, Governor Bamberger, in anticipation of America’s entry into the war in Europe, called for volunteers to enlist in the Utah National Guard;

WHEREAS, on June 6, 1917, the U.S. War Department issued orders to the state of Utah to reorganize Utah forces into a regiment of light field artillery, which became the First Utah Field Artillery Regiment;

WHEREAS, on July 6, 1917, Adjutant General William G. Williams ordered that a campsite be organized west of the Jordan Narrows, which stands as present-day Camp Williams, for “intensive training in every duty that may be expected in an artillery regiment in active service against an enemy”;

WHEREAS, mobilization orders were issued by Adjutant General Williams, which stated that “under the proclamation of the president, the National Guard of Utah is drafted into federal service as of August 5, 1917”;

WHEREAS, the First Utah Field Artillery Regiment was drafted into federal service with a compliment of 350 to 400 men;

WHEREAS, the Utah Field Artillery Regiment reached Camp Kearney, Linda Vista, California, on October 13, 1917, to train with the 40th Division, also known as the “Sunshine Division”;

WHEREAS, the Utah Field Artillery Regiment was designated as the 145th Field Artillery Regiment of the 65th Artillery Brigade, and some members of the 145th Field Artillery Regiment were called up into active combat divisions in the American Expeditionary Force, seeing action along the front in the Argonne Forest, Chateau Thierry, St. Mihiel, and Verdun;

WHEREAS, the 145th Field Artillery Regiment arrived in France in early September 1918 and was preparing for an assault on Metz when the armistice was signed on November 11, 1918;

WHEREAS, on January 21, 1919, after parades in Ogden and Logan and an address by Governor Bamberger at the Utah State Agricultural College, the 145th Field Artillery Regiment was officially mustered out of service;

WHEREAS, the 159th Field Hospital was organized as the Utah Field Hospital of the 4th Division, remained in France as part of occupation forces, and returned to Utah and was mustered out of service on July 3, 1919;

WHEREAS, Governor Bamberger appointed B.H. Roberts to serve as Chaplain of the 145th Field Artillery Regiment; and

WHEREAS, Chaplain Roberts volunteered at age 60 to accompany the troops to France, requiring a special act of Congress to receive his appointment:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges the Utah Department of Veterans and Military Affairs, in coordination with the Utah Department of Heritage and Arts, to organize a Utah World War I Centennial Commission to accomplish the following purposes:

- to honor the more than 21,000 Utahns who served during World War I and the 665 Utahns who gave their lives for our country;
- to educate all Utahns, particularly school children, about this period in our history, including the causes, the reason for entry of the United States into the war, and the role of the United States military;
- to educate all Utahns on the impacts of the war on geopolitics, society, and culture in America and Utah, including science, the arts, and the humanities;
- to educate all Utahns on the impacts of the war on immigrants, minority populations, and women;
- to recognize the technological changes the war brought to transportation, industry, communication, and agriculture;
- to recognize the search for peace up to, during, and beyond the war;
- to remember and recognize the citizens of Utah who served, and honor this service and sacrifice by soldiers and their families;
- to identify and catalogue the more than 92 World War I memorials and monuments statewide and add them to the national database developed by the World War I Memorial Inventory Project; and
- to provide educational experiences designed to broaden and strengthen the commemoration.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Governor of the state of Utah, the Director of the Utah Department of Veterans and Military Affairs, the Veterans of Foreign Wars chapters in Utah, the American Legion chapters in Utah, the Utah State Historical Society, and the members of Utah’s congressional delegation.

H.C.R. 3

Passed February 16, 2017
 Approved March 17, 2017
 Effective March 17, 2017

**CONCURRENT RESOLUTION
 RECOGNIZING AND REMEMBERING
 THE FORGOTTEN PATIENTS OF THE
 UTAH STATE HOSPITAL**

Chief Sponsor: Edward H. Redd
 Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor supports efforts by the staff of the Utah State Hospital and individuals and private entities to build and maintain markers and monuments at the grave sites of former Utah State Hospital patients and support ongoing use of evidence-based best practices and interventions to treat Utahns suffering from mental illness and other complex diseases of the brain.

Highlighted Provisions:

This resolution:

- ▶ expresses support for current efforts by staff of the Utah State Hospital to partner with individuals and private entities to build and maintain appropriate markers and monuments at the grave sites of former patients of the Utah State Hospital as a tangible effort to appropriately recognize and remember their courageous and often lonely struggle with mental illness during an earlier era when effective treatments and hope for recovery were very limited and long-term institutionalization was often the only viable intervention; and
- ▶ honors the lives of these once-forgotten individuals who suffered immensely from mental illness by continuing to support ongoing use of evidence-based best practices and interventions to effectively treat citizens of Utah who are currently suffering from mental illness and other complex diseases of the brain.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the Utah State Hospital in Provo, Utah, began as the Territorial Insane Asylum and admitted its first patients in 1885;

WHEREAS, the Utah State Hospital patient census climbed from 69 in 1886 to 314 in 1900, 1,310 in 1946, and to its peak of 1,500 patients in 1955;

WHEREAS, during the 133 years of its existence, staff and providers at the Utah State Hospital have embraced and used resources and best practices available to do the best they could to address the needs of persons with severe mental illness and other complex disorders of the brain;

WHEREAS, during the 19th and early 20th centuries the science guiding the evaluation and treatment of mental disorders was in its infancy and there was a substantial lack of effective interventions to treat severe mental illness and other brain disorders;

WHEREAS, in the 19th and early 20th centuries the pervasive public perception was that a person diagnosed with a mental illness would never recover;

WHEREAS, due to the severe hardships and challenges inherent in caring for a person with uncontrolled severe mental illness, many families across the United States were encouraged to essentially give up the care of their family members

with mental illness and place them in large private or state-run hospitals where most of them remained until they died;

WHEREAS, during the 19th and early 20th centuries, transportation needed to make face-to-face visits was limited and arduous, and because of this, opportunities for personal contact by family members and friends with patients at the Utah State Hospital were very limited and this sometimes resulted in weakening of the emotional bonds that tie people and families together;

WHEREAS, as a result of these insidious and deleterious effects on outside relationships, some long-term institutionalized patients at the Utah State Hospital gradually lost outside support and contact with family and friends and sometimes died while still residing at the Utah State Hospital;

WHEREAS, during the 19th and early 20th centuries 474 such patients at the Utah State Hospital died mostly alone and forgotten and were given paupers' burials in unmarked graves located at the west end of the Provo City Cemetery;

WHEREAS, the names of these individuals and the locations of most of the graves are currently known, but the graves remain unmarked and unknown to the general public;

WHEREAS, the understanding of mental illness and the ability to effectively treat people with severe mental illness and other complex brain disorders such as epilepsy has progressed immensely during the past 75 years;

WHEREAS, public perception of mental illness has matured to the point where most of the general public see mental illnesses as brain disorders that can be successfully treated;

WHEREAS, with the advancement of science and the availability of effective treatments in the mental health arena, the Utah State Hospital is no longer a place for long-term custodial care of people with mental illness;

WHEREAS, the Utah State Hospital is now an institution dedicated to intensive treatment of individuals with severe mental illness with the goal of healing and integration back into the communities from whence they were referred; and

WHEREAS, had they been able to access and receive treatments and interventions currently available in the 21st century, including improved quality of life and integration back into their respective communities and families, many of the early patients at the Utah State Hospital who were institutionalized until death and largely forgotten by society would have experienced very different outcomes;

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, representing the citizens of Utah, expresses support for current efforts by staff of the Utah State Hospital to partner with individuals and private entities to build and maintain appropriate markers and monuments at the grave sites of these incredible people as a

tangible effort to appropriately recognize and remember their courageous and often lonely struggles with mental illness during an earlier era when effective treatments and hope for recovery were very limited and long-term institutionalization was often the only viable intervention.

BE IT FURTHER RESOLVED that the Legislature and the Governor honor the lives of these once-forgotten individuals who suffered immensely from mental illness by continuing to support ongoing use of evidence-based best practices and interventions to effectively treat citizens of Utah who are currently suffering from mental illness and other complex diseases of the brain.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah State Hospital and the Utah Department of Human Services.

H.C.R. 4

Passed February 13, 2017
 Approved February 17, 2017
 Effective February 17, 2017

**CONCURRENT RESOLUTION
 RECOGNIZING 50 YEARS OF
 PUBLIC TELEVISION**

Chief Sponsor: V. Lowry Snow
 Senate Sponsor: Todd Weiler
 Cosponsors: Patrice M. Arent
 Stewart E. Barlow
 Joel K. Briscoe
 Walt Brooks
 Scott H. Chew
 LaVar Christensen
 Kay J. Christofferson
 Kim F. Coleman
 Bruce R. Cutler
 Rebecca P. Edwards
 Justin L. Fawson
 Adam Gardiner
 Francis D. Gibson
 Stephen G. Handy
 Lynn N. Hemingway
 Sandra Hollins
 Brian S. King
 Karen Kwan
 A. Cory Maloy
 Kelly B. Miles
 Lee B. Perry
 Jeremy A. Peterson
 Dixon M. Pitcher
 Val K. Potter
 Marie H. Poulson
 Tim Quinn
 Paul Ray

Edward H. Redd
 Douglas V. Sagers
 Robert M. Spendlove
 Norman K Thurston
 Raymond P. Ward
 R. Curt Webb
 Elizabeth Weight
 John R. Westwood
 Mike Winder

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor recognizes the 50th anniversary of the Public Broadcasting Act.

Highlighted Provisions:

This resolution:

- ▶ recognizes the 50th anniversary of the Public Broadcasting Act and Utah's three public television stations; and
- ▶ recognizes the success and important services provided by KUEN, KUED, and KBYU.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, Utah public television stations deliver essential educational programs, resources, emergency alert services, and community engagement to all Utah residents;

WHEREAS, Utah public television stations provide programming for Utahns throughout all of life's stages, such as early childhood, elementary, middle and high school, postsecondary school, and beyond, in roles that include students, teachers, parents, caregivers, and lifelong learners;

WHEREAS, the services of Utah public television broadcasters continue to advance excellence through programs delivered over the air, online, and in-person that educate, engage, and inspire;

WHEREAS, 2017 marks the 50th anniversary of the Public Broadcasting Act enacted by the U.S. Congress and signed into law by President Lyndon B. Johnson "for the enlightenment of all the people";

WHEREAS, Utah has the highest number of over-the-air broadcast viewing households in the nation;

WHEREAS, Utah has the highest number of broadcast translators in the nation that relay signals across vast and varied terrain;

WHEREAS, Utah public television broadcasters collectively air 12 different digital channels designed to reach diverse audiences in all Utah communities;

WHEREAS, Utah public television broadcasters air more than 4,200 hours of educational programming each year for Utah's youngest learners as a safe harbor to prepare them for school;

WHEREAS, Utah public television broadcasters offer hundreds of workshops, educational

community events, websites, applications and tools, and local productions to parents, caregivers, educators, and community partner organizations to facilitate and impact learning;

WHEREAS, Utah public television broadcasters produce award-winning educational programs and services that respond to and reflect local issues and concerns independent of commercial interests;

WHEREAS, Utahns of all ages enjoy the benefits of three public television stations: KUEN licensed by the State Board of Regents, KUED licensed by the University of Utah, and KBYU licensed by Brigham Young University;

WHEREAS, at its inception and today, it is in the public interest to grow and develop public broadcasting services for instructional, educational, and cultural purposes;

WHEREAS, Utah has rich heritage as a crossroads of communication technologies from the invention of television by native son Philo T. Farnsworth, to telegraph operations along transcontinental railroad lines, to Fourth Node on ARPANET, predecessor to the Internet, to robust fiber-optic networks;

WHEREAS, the Public Broadcasting Act in 1967 further enabled growth of the Internet managed by Utah Education Network (KUEN) and the Utah Telehealth Network to connect all Utah schools, public libraries, telehealth clinics and hospitals, colleges, and universities;

WHEREAS, the Utah Legislature formally established the Utah Education Network as the statewide delivery system for education telecommunications in Utah in 1989;

WHEREAS, KUEN’s purpose is to connect people and technologies to improve education and healthcare in Utah;

WHEREAS, KUEN, one of the nation’s premier education networks, connects all Utah school districts, schools, and higher education institutions to a robust network and quality educational resources and services that have resulted in students earning higher education credits equivalent to more than 4,145 bachelor’s degrees since 2010 and over 5,000 Utah educators learning how to integrate education technology to enhance teaching and learning each year;

WHEREAS, KUED signed on the air in 1958 and is recognized as one of the leading public television stations in the country;

WHEREAS, KUED’s mission is to entertain, inform, and enrich its viewers with exceptional content and be a valued community resource;

WHEREAS, KUED is the first station to ever win the Rocky Mountain Emmy Award of Excellence for the Best Overall TV Station, a major recognition of the station’s commitment to serve the community through its award-winning productions and outreach programs that engage Utahns with more than 500 workshops and events annually;

WHEREAS, KBYU began broadcasts in 1965 and is a viewer-supported public television service of BYU Broadcasting and Brigham Young University;

WHEREAS, KBYU broadcasts to the state of Utah and parts of Idaho, Wyoming, and Montana, with nearly one million viewers tuning in each week;

WHEREAS, as part of its mission, KBYU airs family-focused and educational programs that educate, entertain, and uplift, and produces high-quality original content such as documentaries that capture the unique history and culture of our great state; and

WHEREAS, the three stations continue to innovate with new technologies and media delivery systems for the benefit of all Utahns:

NOW, THEREFORE, BE IT RESOLVED that the Public Broadcasting Act signed into law 50 years ago in 1967 “for the enlightenment of all people” has spawned and facilitated the success of public broadcasting television throughout the state, with the services of KUEN, KUED, and KBYU providing immeasurable impact on the education and enlightenment of Utah’s children, youth, students, parents, lifelong learners, and community members.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the governing boards of each station, the Federal Communications Commission, the Corporation for Public Broadcasting, and members of the Utah congressional delegation.

H.C.R. 5

Passed February 23, 2017
Approved March 17, 2017
Effective March 17, 2017

**CONCURRENT RESOLUTION
ON CLEAN FUEL SCHOOL BUSES**

Chief Sponsor: Stephen G. Handy
Senate Sponsor: J. Stuart Adams
Cosponsors: Patrice M. Arent
Stewart E. Barlow
Walt Brooks
LaVar Christensen
Rebecca P. Edwards
Gage Froerer
Dixon M. Pitcher
Douglas V. Sagers
V. Lowry Snow
Christine F. Watkins
R. Curt Webb
John R. Westwood
Mike Winder

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor supports the dedication of a portion of the funds allocated to the state from the Volkswagen settlement for the purpose of replacing at least a portion of the 433 dirty diesel school buses with clean fuel school buses.

Highlighted Provisions:

This resolution:

- ▶ supports the dedication of a portion of the funds allocated to the state from the Volkswagen settlement for the purpose of replacing at least a portion of the 433 dirty diesel school buses with clean fuel school buses; and
- ▶ supports qualified school districts in bringing a plan and a 100% match to obtain a portion of the funds, resulting in an initiative to replace all Utah dirty diesel school buses with one of the numerous clean fuel school bus alternatives.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, Utahns rank air quality with a high level of concern - 68% rated it four or five on a five-point scale in a recent survey, Wasatch Front residents had a slightly higher level of concern than rural residents, ranking air quality as their first priority on their top 10 list of priorities;

WHEREAS, Utahns' major concerns with air quality include ozone and very fine particulate matter, including PM2.5 and nitrogen oxide (NOx) emissions from fossil fuel exhaust that is exposed to high temperatures and sunlight;

WHEREAS, the Wasatch Front and Cache County are known to have some of the worst short-term PM2.5 and NOx pollution in the country;

WHEREAS, the Environmental Protection Agency (EPA) recently reclassified the Wasatch Front and Cache Valley from "moderate" to "serious" nonattainment areas, based on the Clean Air Act's air quality health standards.

WHEREAS, the Wasatch Front's and Cache Valley's unique geography are major contributors to serious air pollution during winter inversions as polluted colder air is trapped by warmer air and hemmed in by Utah's mountain ranges;

WHEREAS, although vehicles' contribution to air pollution has been shrinking over time and will continue to decline with the rapidly increasing fuel economy standards and the implementation of Tier III fuel and automobile standards from 2017 to 2025, fossil fuel combustion engines still cause 48% of pollutants;

WHEREAS, as Utah's population continues to grow, so will the challenges to reducing vehicle pollutants;

WHEREAS, as of the 2015-2016 school year, there are 2,895 school buses among the 41 school districts and public charter schools that travel a combined 31,935,834 miles within a school year;

WHEREAS, although numerous efforts have been undertaken over the past several years to remove dirty diesel school buses from the fleet, there are still 433 buses that are model year 2006 or older;

WHEREAS, diesel is a type of fuel derived from crude oil and is used in large engines, including those in many trucks, buses, trains, construction and farm equipment, generators, ships, and cars;

WHEREAS, the exhaust from diesel engines is made up of two main parts, gases and soot each of these in turn is made up of different substances:

- the gas portion of diesel exhaust is mostly carbon dioxide, carbon monoxide, nitric oxide, nitrogen dioxide, sulfur oxides, and hydrocarbons, including polycyclic aromatic hydrocarbons; and
- the soot (particulate) portion of diesel exhaust is made up of particles such as carbon, organic materials, and traces of metallic compounds;

WHEREAS, exposure to diesel exhaust is widespread in the modern world and diesel exhaust brings a complex mixture of soot and gases to roadways, cities, farms, and other places;

WHEREAS, health concerns about diesel exhaust relate not only to cancer, but also to other health problems such as lung and heart diseases;

WHEREAS, people are exposed to diesel exhaust by breathing in the soot and gases, which then enter the lungs;

WHEREAS, exposure to diesel exhaust may be higher in a vehicle, especially when traveling on roads with heavier truck or bus traffic;

WHEREAS, numerous studies have concluded that the younger a person is the more susceptible he or she is to dangerous diesel exhaust fumes;

WHEREAS, the concentration of numerous idling dirty diesel school buses around schools during early mornings and afternoons is especially harmful to young people and their developing brains and lungs;

WHEREAS, numerous efforts have been made over the past several years to remove older dirty diesel school buses in Utah and replace them with clean fuel alternatives such as compressed natural gas, clean diesel, electric, propane, or hybrid, but significant funding has been unavailable;

WHEREAS, the Utah Division of Air Quality in 2016 calculated that with the replacement of just 119 model year 1996 diesel school buses with the same number of clean fuel school buses, the yearly emissions would be reduced to 6.5 tons from 32.1 tons, an 80% reduction in PM2.5 per year assuming that each bus would travel approximately 10,930 miles per year;

WHEREAS, the EPA filed a complaint against Volkswagen Group of America (Volkswagen) alleging that the defendants violated the Clean Air Act with regard to approximately 580,000 model year 2009-to-2016 motor vehicles containing 2.0 and 3.0 liter engines;

WHEREAS, Volkswagen agreed to spend up to \$14.7 billion to settle allegations that Volkswagen cheated emissions;

WHEREAS, on June 28, 2016, the United States lodged with the court a settlement that partially

resolves allegations that Volkswagen violated the Clean Air Act by the sale of approximately 500,000 vehicles containing 2.0 liter diesel engines equipped with devices designated to circumvent emissions tests;

WHEREAS, the settlement consists of three major components:

- (1) buyback or emission modification on at least 85% of the subject vehicles;
- (2) \$2.7 billion to fully remediate the excess NOx; and
- (3) investment of \$2 billion to promote the use of zero emission vehicles and infrastructure;

WHEREAS, the \$2.7 billion will be placed in the Environmental Mitigation Trust, and will be allocated to beneficiaries, states, tribes, and certain territories based on the number of impacted Volkswagen vehicles in those jurisdictions;

WHEREAS, the Environmental Mitigation Trust will support projects that reduce NOx emissions where the Volkswagen vehicles were, are, or will be operated;

WHEREAS, the state of Utah is projected to receive \$32,356,471 of the \$2.7 billion;

WHEREAS, after being designated a beneficiary, the state must submit a high-level beneficiary mitigation plan that summarizes the following:

- (1) how the funds will be spent, including the state's overall goal for the use of funds, categories of anticipated eligible mitigation actions, and preliminary assessment of the percentages of funds anticipated to be used for each type of action;
- (2) how the proposed actions will impact air quality in areas that bear a disproportionate share of the air pollution burden within its jurisdiction; and
- (3) the expected range of emission benefits;

WHEREAS, one category of the Environmental Mitigation Trust includes 2006 model year or older Class 4-8 school buses, shuttles, or transit buses and stipulates that eligible buses must be scrapped and may be repowered or replaced with new diesel, alternative fuel, or all electric engine buses; and

WHEREAS, a beneficiary has up to 10 years to spend 80% of its allocation, and up to 15 years to spend 100% of its allocation, but may request up to one-third of its allocation during the first year, and up to two-thirds of its allocation during the first two years:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, supports the dedication of a portion of the funds allocated to the state from the Volkswagen settlement for the purpose of replacing at least a portion of the 433 school buses that are model year 2006 or older.

BE IT FURTHER RESOLVED THAT the Legislature and the Governor support qualified

school districts in bringing a plan and a 100% match to obtain a portion of the funds, resulting in an initiative to replace all Utah dirty diesel school buses with one of the numerous clean fuel school bus alternatives.

H.C.R. 6

Passed February 23, 2017

Approved March 23, 2017

Effective March 23, 2017

**CONCURRENT RESOLUTION
SUPPORTING THE RE-EMPOWERMENT
OF THE STATES AMENDMENT**

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This concurrent resolution supports the Re-Empowerment of the States Amendment.

Highlighted Provisions:

This resolution:

- ▶ asserts that federalism is an integral part of our American compound republic and is essential to the vitality of the Union; and
- ▶ supports the Re-Empowerment of the States Amendment.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the people of the United States, through their elected state delegates, established the Constitution of the United States, which created the federal government and defined its limited powers;

WHEREAS, the powers delegated to the federal government are "few and defined," while all other powers are reserved to the states and the people;

WHEREAS, the Constitution separates federal powers among three branches of government: the legislative, the executive, and the judiciary, each with checks on the powers of the others, to prevent the expansion or usurption of powers by any branch;

WHEREAS, over the past several decades, executive power has expanded through the creation of administrative agencies that enforce expansive federal laws and regulations upon the states and the people;

WHEREAS, the states, particularly since the passage of the 17th Amendment, have no effective check on this expansion of federal executive and regulatory power, resulting in a gradual erosion of the federalist system of government established by the Founders, thereby threatening state sovereignty and individual liberties; and

WHEREAS, restoring the balance of federalism will secure the blessings of liberty to ourselves and our posterity:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, reaffirms its position that federalism is an integral part of our American compound republic and is essential to the vitality of the Union.

BE IT FURTHER RESOLVED that the Legislature and the Governor support the Re-Empowerment of the States Amendment, which has been introduced in Congress by Representatives Rob Bishop and Cathy Rodgers as 2017-2018 H.J. Res. 32 and reads: "SECTION 1. The several States may repeal, in whole or in part, any Presidential Executive order, rule, regulation, other regulatory action, or administrative ruling issued by a department, agency, or instrumentality of the United States. Such repeal shall take effect upon approval by the legislatures of two-thirds of the several States of resolutions for this purpose that particularly describe the same whole or part of the Executive order, rule, regulation, other regulatory action, or administrative ruling to be repealed. SECTION 2. Congress shall have power to enforce this article by appropriate legislation."

BE IT FURTHER RESOLVED that the Legislature and the Governor call upon the legislatures of the several states to adopt similar resolutions in support of this proposed constitutional amendment.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Utah congressional delegation.

H.C.R. 7

Passed March 2, 2017

Approved March 17, 2017

Effective March 17, 2017

**CONCURRENT RESOLUTION
SUPPORTING RANCHERS GRAZING
LIVESTOCK ON PUBLIC LANDS**

Chief Sponsor: John R. Westwood

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This concurrent resolution expresses support for Utah ranchers grazing livestock on Utah's public lands.

Highlighted Provisions:

This concurrent resolution:

- ▶ highlights the positive impact ranching has on the state of Utah;
- ▶ expresses support for continued livestock grazing on public lands; and
- ▶ urges the federal government to implement policies supportive of grazing on public lands.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, ranchers have commercially grazed sheep and cattle across the Utah landscape since it was settled by pioneers more than 150 years ago;

WHEREAS, the sheep and cattle sectors of Utah's agriculture industry contribute approximately \$1 billion annually to the state's economy;

WHEREAS, livestock production is the dominant agricultural sector in 25 of Utah's 29 counties;

WHEREAS, approximately three quarters of the land in Utah is publicly owned;

WHEREAS, sheep and cattle ranches have had to combine private and public lands, coupled with privately held water rights, to establish economically viable and sustainable businesses;

WHEREAS, public lands are mandated by Congress to be managed under the principle of multiple use, which provides benefits to all Americans;

WHEREAS, public lands are intended to be managed in a manner that will provide food, energy, timber, recreation, and habitat for fish, wildlife, and domestic animals;

WHEREAS, the Federal Lands Policy and Management Act recognizes the importance of public lands to the future of the western states and mandates that these public lands be managed to meet the "nation's need for domestic sources of minerals, energy, food, timber, and fiber";

WHEREAS, the federal land management agencies need to meet their obligation under the Federal Lands Policy and Management Act as they evaluate agency policies and decisions related to livestock ranching in the state and recognize ranching's contribution to the history, culture, and economy of rural Utah;

WHEREAS, sheep and cattle grazing rights have been dramatically reduced, by more than 70%, by the United States Forest Service and Bureau of Land Management since the 1950s;

WHEREAS, cooperative planning and assessment between agencies and livestock ranchers provides a proactive approach to grazing allotment management, which maintains healthy rangelands and watershed and is beneficial to wildlife habitat;

WHEREAS, on many of Utah's public lands, the broad range of species, including both plants and animals, that exists in these western ecosystems persists in large part due to longstanding good stewardship practices by ranchers who are committed to a healthy and productive future for the state's rangelands;

WHEREAS, continued livestock grazing on Utah's public lands is vital to maintaining the historic and important way of life of many of the state's residents; and

WHEREAS, livestock grazing on public lands is a key component of the economic viability of rural Utah:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, expresses support for Utah ranchers grazing livestock on Utah's public lands.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge the federal government to implement policies that encourage grazing on public lands and reduce barriers to continued stewardship of Utah's rangelands by local ranchers.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the United States Department of the Interior, the United States Department of Agriculture, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and the members of Utah's congressional delegation.

H.C.R. 8

Passed March 7, 2017
 Approved March 17, 2017
 Effective March 17, 2017

CONCURRENT RESOLUTION REGARDING THE VOLKSWAGEN SETTLEMENT

Chief Sponsor: Timothy D. Hawkes
 Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

This concurrent resolution highlights provisions of the Volkswagen Partial Consent Decree and outlines the state of Utah's participation as a beneficiary of Volkswagen Environmental Mitigation Trust funds.

Highlighted Provisions:

This resolution:

- ▶ highlights provisions of the Volkswagen Partial Consent Decree; and
- ▶ outlines the state of Utah's participation as a beneficiary of Volkswagen Environmental Mitigation Trust funds.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, as used in this resolution:

(1) "Beneficiary" means the state of Utah as the governmental entity, identified in the Volkswagen Partial Consent Decree, that may seek environmental mitigation funds to mitigate excess nitrogen oxides emitted by noncompliant Volkswagen and Audi vehicles, and potentially by Porsche vehicles;

(2) "Beneficiary mitigation plan" means a plan prepared by the state of Utah as the beneficiary that

describes the beneficiary's goals for using mitigation trust funds, including identifying specific eligible mitigation actions, describing expected emission benefits, estimating the beneficial impacts on air quality in areas that bear a disproportionate share of the air pollution burden, and describing how the beneficiary will seek and consider public input;

(3) "Eligible mitigation actions" means any of the specific vehicle replacements or engine repowers identified in the Volkswagen Partial Consent Decree, Appendix D-2;

(4) "Mitigation trust" or "Volkswagen Environmental Mitigation Trust" means the trust established under the Volkswagen Partial Consent Decree to hold and disburse environmental mitigation trust funds paid by Volkswagen and potentially Porsche to mitigate the excess nitrogen oxides emitted from noncompliant Volkswagen, Audi, and potentially Porsche vehicles;

(5) "Mitigation trustee" or "trustee" means the trustee appointed by the U.S. District Court to administer the mitigation trust in accordance with the Volkswagen Partial Consent Decree; and

(6) "Volkswagen Partial Consent Decree" means the partial consent decree settling portions of Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, Case No: Multi-District Litigation No. 2672 CRB (JSC), approved October 25, 2016;

WHEREAS, on October 25, 2016, the U.S. District Court for the District of Northern California approved the Volkswagen Partial Consent Decree between the United States Environmental Protection Agency (EPA), the state of California, and defendants: Volkswagen AG; Audi AG; Volkswagen Group of America, Inc.; and Volkswagen Group of America Chattanooga Operations, LLC (collectively, Volkswagen) to settle a complaint alleging violations of the federal Clean Air Act from the operation of certain noncompliant Volkswagen and Audi 2.0-liter diesel vehicles;

WHEREAS, Volkswagen admitted that software in certain 2.0-liter and 3.0-liter diesel Volkswagen, Audi, and Porsche vehicles enables the vehicles' emission control module to operate emission control systems when undergoing emission testing but to render the emission control systems inoperative when not undergoing emission testing, resulting in emissions that exceed EPA-compliant levels for nitrogen oxides (NOx) when the vehicles are driven on the road;

WHEREAS, to fully mitigate the total lifetime excess NOx emissions from certain noncompliant 2.0-liter diesel Volkswagen and Audi vehicles, Volkswagen agreed to pay into the Volkswagen Environmental Mitigation Trust to fund eligible mitigation actions within the United States or its territories;

WHEREAS, 5,983 noncompliant 2.0-liter and 3.0-liter Volkswagen and Audi diesel vehicles and 1,030 noncompliant 3.0-liter Volkswagen, Audi, and Porsche diesel vehicles are registered in the state of Utah;

WHEREAS, seven counties in the state of Utah have been designated “nonattainment” for the federal National Ambient Air Quality Standards for pollutants that are formed by NOx;

WHEREAS, the State Implementation Plan imposes certain requirements and restrictions on the public so the air quality may reach attainment for those pollutants in the seven counties;

WHEREAS, in accordance with the terms of the Volkswagen Partial Consent Decree, the Governor of the state of Utah may seek a portion of the Volkswagen Environmental Mitigation Trust to fund specific eligible mitigation actions authorized by the U.S. District Court-appointed trustee to mitigate the lifetime excess NOx emissions in the state of Utah from the noncompliant Volkswagen and Audi 2.0-liter diesel vehicles;

WHEREAS, it is the intention of the Governor to elect to become a Volkswagen Environmental Mitigation Trust fund beneficiary by timely filing, with the U.S. District Court, the necessary certifications, including certifying that the state will agree to be bound by the terms of the Environmental Trust Agreement, only for purposes of requesting, obtaining, and expending funds from the Volkswagen Environmental Mitigation Trust;

WHEREAS, the Governor intends to designate the Utah Department of Environmental Quality to act on behalf of and legally bind the state regarding requests and expenditures from the Volkswagen Environmental Mitigation Trust;

WHEREAS, upon the trustee confirming the state of Utah as a beneficiary under the Volkswagen Partial Consent Decree, the Department of Environmental Quality and its Division of Air Quality, on behalf of the state, shall prepare and submit to the trustee the required Beneficiary Mitigation Plan;

WHEREAS, following submittal of the state’s Beneficiary Mitigation Plan, the Department of Environmental Quality and its Division of Air Quality, on behalf of the state, shall request funds from the trustee for specific eligible mitigation actions;

WHEREAS, on or about December 19, 2016, the EPA, the state of California, Volkswagen, and additional defendants: Dr. Ing, h.c. F.; Porsche AG; and Porsche Cars North America, Inc. (collectively, Porsche) agreed to a second partial consent decree to settle a complaint alleging violations of the federal Clean Air Act from the operation of certain noncompliant Volkswagen, Audi, and Porsche 3.0-liter diesel vehicles that are also equipped with software that results in emissions that exceed EPA-compliant levels for NOx when the vehicles are driven on the road;

WHEREAS, the settlement of federal Clean Air Act violations for noncompliant Volkswagen, Audi, and Porsche 3.0-liter diesel vehicles in the second partial consent decree will offer funds to the state to mitigate the lifetime excess NOx emissions pursuant to the procedures provided in the

Volkswagen Partial Consent Decree regarding 2.0-liter diesel vehicles; and

WHEREAS, it is the intention of the Governor to also seek funds to implement actions to mitigate the lifetime excess NOx emissions from noncompliant Volkswagen, Audi, and Porsche 3.0-liter diesel vehicles:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, believes that it is beneficial to the public at large and for the air quality of the state to implement eligible mitigation actions funded by the Volkswagen Environmental Mitigation Trust to mitigate the lifetime NOx emissions from noncompliant Volkswagen, Audi, and Porsche 2.0-liter and 3.0-liter diesel vehicles.

H.C.R. 10

Passed March 6, 2017
Approved March 22, 2017
Effective March 22, 2017

**CONCURRENT RESOLUTION
ENCOURAGING IDENTIFICATION
AND SUPPORT OF TRAUMATIC
CHILDHOOD EXPERIENCES SURVIVORS**

Chief Sponsor: Edward H. Redd
Senate Sponsor: Todd Weiler
Cosponsors: Patrice M. Arent
Joel K. Briscoe
Rebecca Chavez-Houck
Kay J. Christofferson
Brad M. Daw
Rebecca P. Edwards
Steve Eliason
Stephen G. Handy
Lynn N. Hemingway
Sandra Hollins
Ken Ivory
Brian S. King
Karen Kwan
Karianne Lisonbee
Carol Spackman Moss
Derrin R. Owens
Val K. Potter
Marie H. Poulson
Susan Pulsipher
Angela Romero
Raymond P. Ward
Elizabeth Weight
Mark A. Wheatley

LONG TITLE

General Description:

This concurrent resolution encourages state officers, agencies, and employees to promote interventions and practices to identify and treat child and adult survivors of severe emotional trauma and other adverse childhood experiences using interventions proven to help and develop resiliency in these survivors.

Highlighted Provisions:

This resolution:

- ▶ highlights recent advances in understanding the impact of adverse childhood experiences on an individual's future outcomes;
- ▶ encourages state officers, agencies, and employees to become informed regarding well-documented detrimental short-term and long-term impacts to children and adults from serious traumatic childhood experiences; and
- ▶ encourages state officers, agencies, and employees to implement evidence-based interventions and practices that are proven to be successful in developing resiliency in children and adults currently suffering from trauma-related disorders.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, there have been recent significant advances in neuroscience with increased understanding of how emotional neglect and exposure to serious trauma affect the way children perceive and interact with their world both during childhood and into adulthood;

WHEREAS, post-traumatic stress disorder and other trauma-related disorders in children and adults can be caused both by exposure to a single severe traumatic incident or by exposure to a cumulative series of serious traumatic events;

WHEREAS, such traumatic incidents and events include emotional and physical abuse and neglect, sexual abuse, separation from or loss of a parent due to divorce or other reasons, serious injury or death of a parent, exposure to family discord, domestic violence, parental mental illness, substance abuse, criminal activity in the home, and other traumatic and nonnurturing experiences and environments;

WHEREAS, abuse, neglect, and traumatic events compose part of what has been described in the medical literature as "adverse childhood experiences" or "ACEs," and the cumulative potential impact to a child who has a significant history of exposure to neglect and trauma can be calculated using what is called an ACE score;

WHEREAS, it is now understood that significant exposure to severe traumatic events as outlined above can negatively affect the neurobiology and anatomy of a child's developing brain and result in a substantially impaired ability to absorb new information, develop healthy coping skills, and adapt to life's challenges as the child becomes locked into a "fight-flight-or-freeze" mode that becomes the child's and future adult's default approach when interacting with the world around them;

WHEREAS, children and adults whose brains have been negatively affected by exposure to severe or repeated serious trauma, often experience persistent and sometimes overwhelming dysfunctional emotions of fear, anxiety, depression, hopelessness, and anger, and may exhibit socially inappropriate labile and aggressive behaviors, or

may exhibit socially inappropriate emotional detachment and avoidance behaviors;

WHEREAS, these negative coping behaviors and dysfunctional emotions limit a person's capacity to form healthy stable relationships, foster social capital, learn from experiences and mistakes, set and achieve short and long-term goals, and succeed in educational and vocational pursuits;

WHEREAS, in addition to the above negative outcomes, children and adults are more likely to attempt to self-medicate trauma-related "fight-flight-or-freeze" anxiety and emotional dysfunction by using available substances such as tobacco, alcohol, prescription medications, and street drugs, including heroin, methamphetamine, cocaine, and cannabis;

WHEREAS, because of the cumulative adverse effects of the above negative outcomes on their physical health and emotional and cognitive capabilities, children and adults affected by severe traumatic events, despite their sincere and best efforts to succeed in life, are more likely to:

1. perform poorly in school and other academic pursuits;
2. struggle with work performance and sustainable employment;
3. become chronically unemployed as adults, resulting in financial stress, reduced quality of life, and increased risk of experiencing long-term disability, homelessness, and other personal and family traumatic experiences;
4. become dependent on and addicted to tobacco, alcohol, prescription medications, illicit drugs, and other substances;
5. become directly engaged with law enforcement and the criminal justice system;
6. suffer from significant mental illness including depression, psychosis, and severe anxiety leading to suicides and attempted suicides that otherwise would not have occurred;
7. suffer from serious physical health problems with poor long-term outcomes that otherwise would not have occurred;
8. engage in high-risk sexual behaviors as adolescents and adults, including onset of sexual activity at an early age and multiple sexual partners, resulting in increased risks of adolescent pregnancy and paternity, other unintended pregnancies, and sexually transmitted diseases;
9. experience significant problems and failures in marriage and other intimate partner relationships;
10. become victims or perpetrators of intimate partner violence as adults;
11. struggle, despite their sincere efforts, to provide a stable and nurturing environment for their current and future children, resulting in increased likelihood of intergenerational trauma and intergenerational poverty; and
12. face a life expectancy shortened by as many as 20 years when compared to average life expectancy

for adults who did not experience severe trauma as children;

WHEREAS, with an increase in understanding about the impacts of trauma has come the development of evidence-based questionnaires that identify behaviors and health-related disorders in children and adults that can be indicative of possible trauma-related exposures;

WHEREAS, using these questionnaires can provide the opportunity to identify and refer a child or adult for appropriate additional evaluation and treatment;

WHEREAS, the mental health profession can effectively diagnose and treat trauma-related disorders following evidence-based approaches that have been proven to be successful;

WHEREAS, one example of a well-studied, highly effective and widely available therapy is trauma-focused cognitive behavior therapy;

WHEREAS, early childhood offers an important window of elevated opportunity to prevent, treat, and heal the impacts of adverse childhood experiences and toxic stress on a child's brain and body;

WHEREAS, a critical factor in buffering a child from the negative effects of toxic stress and adverse childhood experiences is the existence of at least one stable, supportive relationship between the child and a nurturing adult;

WHEREAS, with the increase in scientific understanding and ability to identify, prevent, and treat trauma-related disorders, there is great hope for thousands of Utah children and adults to begin healing from the negative effects of adverse childhood experiences, develop resiliency, and have brighter, more productive futures than was previously possible; and

WHEREAS, in order to maximize the potential for positive outcomes of evidence-based interventions in the treatment of severe trauma, it is imperative that employees of the state of Utah and other people who interface directly with vulnerable children and adults become informed regarding the effects of trauma on the human brain and available screening and assessment tools and treatment interventions that lead to increased resiliency in children and adults who struggle in life as the result of trauma-related disorders:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, encourages all officers, agencies, and employees of the state of Utah whose responsibilities include working with vulnerable children and adults, such as the Utah State Board of Education, the Utah Department of Human Services, the Department of Workforce Services, the Administrative Office of the Courts, and the Utah Department of Corrections, to:

1. become informed regarding well-documented detrimental short-term and long-term impacts to

children and adults from serious traumatic childhood experiences as outlined above; and

2. implement evidence-based interventions and practices that are proven to be successful in developing resiliency in children and adults currently suffering from trauma-related disorders to help them recover from their trauma and function at their full capacity and potential in school, the workplace, and community, family, and interpersonal relationships.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah Board of Education, the Utah Department of Human Services, the Department of Workforce Services, the Administrative Office of the Courts, the Utah Department of Corrections, and all political subdivisions of the state of Utah.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to all nonprofit agencies and other entities that contract with the state of Utah to provide services to vulnerable children and adults.

H.C.R. 11

Passed February 3, 2017
 Approved February 3, 2017
 Effective February 3, 2017

**CONCURRENT RESOLUTION URGING
 THE PRESIDENT TO RESCIND THE
 BEARS EARS NATIONAL MONUMENT
 DESIGNATION**

Chief Sponsor: Gregory H. Hughes
 Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This concurrent resolution urges the President of the United States to rescind the Bears Ears National Monument designation.

Highlighted Provisions:

This resolution:

- ▶ expresses strong opposition to the Bears Ears National Monument designation; and
- ▶ urges the President of the United States to rescind the Bears Ears National Monument.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the state of Utah is a public lands state, committed to conservation and continued recreational access for hunters, anglers, campers, and other recreationists, as well as allowing for productive uses, including agriculture, timber production, and energy and natural resource development;

WHEREAS, the Legislature and the Governor are committed to the health, protection, preservation, and productivity of, and access to, the public lands within our state;

WHEREAS, roughly 66% of the land within the sovereign state of Utah is presently controlled by the federal government;

WHEREAS, 38 non-western states in the Union govern and exercise their constitutional jurisdiction over virtually all the land within their borders, and the legislatures and the governors of those states tend to the health, safety, and welfare of their citizens;

WHEREAS, on December 28, 2016, President Barack Obama designated the Bears Ears National Monument, limiting public access to 1.35 million acres in San Juan County, Utah;

WHEREAS, every member of Utah's congressional delegation publically opposed the designation of the Bears Ears National Monument;

WHEREAS, the designation of the Bears Ears National Monument sets a dangerous precedent of allowing special interest groups to unduly influence the monument designation process and silence local voices;

WHEREAS, local Native American groups with historical ties to the area have passed resolutions opposing the designation of the Bears Ears National Monument;

WHEREAS, San Juan County Commissioner Rebecca Bennally, whose constituency includes members of the Navajo Nation who live in San Juan County, and the entire San Juan County Commission, opposed the monument designation and unanimously passed a resolution expressing their opposition;

WHEREAS, every city council in San Juan County has passed a resolution opposing the designation of the Bears Ears National Monument;

WHEREAS, counties across the state have passed resolutions standing unitedly with San Juan County in opposition to the Bears Ears National Monument;

WHEREAS, every member of the Utah State Legislature representing San Juan County opposed the designation of the Bears Ears National Monument;

WHEREAS, the Legislature passed a resolution last summer expressly opposing the creation of the Bears Ears National Monument, with the Governor concurring therein;

WHEREAS, Governor Gary R. Herbert wrote to the President of the United States in August 2015 and in February 2016 urging him not to use the Antiquities Act to designate another national monument in Utah;

WHEREAS, Governor Gary R. Herbert noted that another monument designation would "inflare passion, spur divisiveness, and ensure perpetual opposition";

WHEREAS, the Antiquities Act limits a presidential monument designation to the "smallest area compatible with proper care and management of the objects to be protected";

WHEREAS, the Bears Ears National Monument is almost twice the size of the state of Rhode Island;

WHEREAS, once-thriving rural Utah communities and their citizens are suffering economic deprivation at the hand of their own federal government, which a national monument tourism economy fails to alleviate;

WHEREAS, the power granted to the President to designate national monuments under the Antiquities Act has been exploited and abused by presidents of both parties for over a century;

WHEREAS, newly designated monuments averaged 15,573 acres in 1906 when the Antiquities Act was signed into law but, in the year 2016, have averaged 739,305 acres, which is more than 47 times the size of those created 110 years ago;

WHEREAS, because only western states have large areas of federal land within their borders, use of the Antiquities Act by presidents to designate millions of acres of land as national monuments disparately impacts western states;

WHEREAS, Utah is 50th in the nation in per pupil spending due to the large portion of the state that is held as federal land and not subject to property tax;

WHEREAS, considerable funding for the Utah public education system comes from the responsible development of our abundant natural resources and other economic uses of our public lands;

WHEREAS, continued opportunity for multiple uses of our public lands is vital to the economies of San Juan County and the state of Utah, providing tax revenue that supports students' education statewide;

WHEREAS, within the sweep of President Obama's Bears Ears National Monument designation is 109,000 acres of school and institutional trust land designated to produce funding for our school children;

WHEREAS, Utah is already home to five national parks and seven national monuments;

WHEREAS, all or part of four national monuments, one national park, and one national recreation area are located in San Juan County;

WHEREAS, San Juan County, despite the presence of these national monuments, parks, and recreation areas, is the poorest county in the state and among the most economically depressed in the nation;

WHEREAS, Navajos in San Juan County experience some of the highest rates of unemployment in the state;

WHEREAS, rural economies depend on multiple uses of our public lands for sustenance and growth;

WHEREAS, the Bears Ears National Monument designation will forever remove the possibility of economic development and decimate the economy of the region with impacts felt around the state;

WHEREAS, citizens in rural Utah deserve the equal opportunity to pursue happiness through the

protection of their life, liberty, property, and right to determine their own destiny unimpeded by their own federal government;

WHEREAS, San Juan County residents, including local Native American tribes, fear that woodcutting, pinion gathering, traditional religious and cultural practices, and a host of other historical uses of the area will be restricted or entirely prohibited;

WHEREAS, San Juan County's Natural Bridges National Monument prohibits woodcutting, and grazing has declined by almost a third in Grand Staircase-Escalante National Monument despite a presidential promise that grazing would "remain at historical levels";

WHEREAS, the United States Forest Service and Bureau of Land Management, which are charged with managing the Bears Ears National Monument, have a combined deferred maintenance backlog of almost \$6 billion;

WHEREAS, these federal land management agencies clearly do not have the funding to maintain the lands for which they are currently responsible; and

WHEREAS, Utahns are best positioned to care for and manage our public lands:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, strongly urges the President of the United States to rescind the Bears Ears National Monument designation.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States, Utah's congressional delegation, the Secretary of the Department of the Interior, and the Secretary of the United States Department of Agriculture.

H.C.R. 12

Passed February 8, 2017
Approved February 17, 2017
Effective February 17, 2017

**CONCURRENT RESOLUTION URGING
FEDERAL LEGISLATION TO REDUCE OR
MODIFY THE BOUNDARIES OF THE
GRAND STAIRCASE-ESCALANTE
NATIONAL MONUMENT**

Chief Sponsor: Michael E. Noel
Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This concurrent resolution urges Utah's congressional delegation to support legislative actions to reduce or modify boundaries of the Grand Staircase-Escalante National Monument.

Highlighted Provisions:

This resolution:

- ▶ expresses opposition to the manner in which the Grand Staircase-Escalante National Monument (GSENM) was designated;
- ▶ identifies the benefits resulting from modified or reduced boundaries of the GSENM; and
- ▶ urges Utah's congressional delegation to support legislative actions to reduce or modify the boundaries of the GSENM.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the Grand Staircase-Escalante National Monument (GSENM) was created in 1996 by Presidential Proclamation 6920 without any input or support from Garfield or Kane counties, their citizens, their public officials, or the state of Utah;

WHEREAS, the GSENM was created without consideration of roads, local economies, customs, culture, and heritage;

WHEREAS, the GSENM has resulted in diminished grazing rights, energy and mineral rights, public road access, state trust land properties, and resource use and preservation;

WHEREAS, for more than 20 years, the GSENM has had a negative impact on the prosperity, development, economy, custom, culture, heritage, educational opportunities, health, and well-being of local communities;

WHEREAS, establishment of the GSENM has resulted in a 44% reduction in Escalante High School enrollment (from 151 to 67) since September 1996;

WHEREAS, establishment of the GSENM has resulted in loss of business opportunity and out-migration of families, workers, and jobs;

WHEREAS, boundary adjustments are authorized by law and are needed to protect the prosperity, health, safety, and welfare of the citizens of Garfield and Kane counties;

WHEREAS, boundary adjustments identified by Garfield and Kane counties are essential to the protection of health, safety, welfare, prosperity, custom, culture, and commercial opportunities for their citizenry;

WHEREAS, boundary adjustments identified by Garfield and Kane counties are necessary for optimizing multiple use and sustained-yield, including:

- access to public lands;
- commerce;
- development and protection of natural resources;
- traditional recreational resource values;
- traditional cultural and historical values;
- agricultural livestock and forest products industries; and

- other activities vital to the custom, culture, and well-being of the area;

WHEREAS, the designation of lands as monuments has reduced the ability to actively manage for land health issues such as vegetation treatments, erosion control, water management, grazing management, wildlife management activities, and invasive plant control; and

WHEREAS, a myriad of federal laws enacted since the passage of the Antiquities Act of 1906, such as the Archaeological Resources Protection Act, the National Environmental Policy Act, the Federal Land Policy and Management Act, and the Endangered Species Act, can be used to protect and preserve the antiquities and other important resources in the GSENM:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges Utah's congressional delegation to support legislative action to reduce or modify boundaries of the GSENM to the minimum area necessary to protect antiquities identified in Presidential Proclamation 6920.

BE IT FURTHER RESOLVED that the Legislature and Governor direct Garfield and Kane counties to consult with the Bureau of Land Management and create mapping of the minimum acreage necessary to protect antiquities identified in Presidential Proclamation 6920.

H.C.R. 13

Passed March 8, 2017
 Approved March 23, 2017
 Effective March 23, 2017

**CONCURRENT RESOLUTION FOR
 PUBLIC EMPLOYEES' BENEFIT
 AND INSURANCE PROGRAM**

Chief Sponsor: James A. Dunnigan
 Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This concurrent resolution directs the Public Employees' Benefit and Insurance Program to maintain the current benefit design notwithstanding actuarial equivalency requirements, and to refund part of the excess dental reserves.

Highlighted Provisions:

This resolution:

- ▶ directs the Public Employees' Benefit and Insurance Program to maintain current benefit design for all plans notwithstanding requirements for actuarial equivalency;
- ▶ uses some of the medical renewal to reduce employee premium contribution; and
- ▶ refunds part of the excess dental reserves.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, in accordance with Utah Code Section 49-20-201, the state participates in the Public Employees' Benefit and Insurance Program (program);

WHEREAS, Utah Code Subsection 49-20-401(1)(g) provides that the program must "consult with the covered employers to evaluate employee benefit plans and develop recommendations for benefit changes";

WHEREAS, Utah Code Subsection 49-20-401(1)(j) provides that the program "submit in advance, its recommended benefit adjustments for state employees to . . . the Legislature; and . . . the executive director of the state Department of Human Resource Management";

WHEREAS, Utah Code Subsection 49-20-401(1)(l) provides that the program must "determine benefits and rates based on the total estimated costs and the employee premium share established by the Legislature, upon approval of the board, for state employees";

WHEREAS, Utah Code Subsection 49-20-410(3)(b) provides that the state's annual contribution to employee HSA accounts reflect "the difference in the actuarial value" between HSA-qualified plans and the Traditional Plan, "after taking into account any difference in employee premium contribution";

WHEREAS, Utah Code Subsection 49-20-402(2) provides that substantial excess reserves are to be refunded upon the determination of the Utah State Retirement Board; and

WHEREAS, the Utah State Retirement Board has determined that there should be a refund of excess reserves in the risk pool established to pay dental claims for state employees:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, directs the Public Employees' Benefit and Insurance Program to:

- (1) use \$3.75 million of the \$20 million medical renewal for FY 2017-18 to reduce the employee premium contribution by approximately 18%;
- (2) maintain the current benefit design for all plans for FY 2017-18, notwithstanding the actuarial equivalency requirement of Subsection 49-20-410(3)(b); and
- (3) refund to the state \$3.1 million for its share of excess dental reserves on or before June 30, 2017, so that the remaining pool reserves equal approximately 60 days of premium.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Public Employees' Benefit and Insurance Program.

H.C.R. 14

Passed February 24, 2017
 Approved March 17, 2017
 Effective March 17, 2017

**CONCURRENT RESOLUTION
 ON WILDFIRE ISSUES**

Chief Sponsor: Lee B. Perry
 Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This concurrent resolution urges Utah's congressional delegation to develop and support legislation to improve the federal wildfire funding process and management of the nation's forests.

Highlighted Provisions:

This resolution:

- ▶ expresses concern regarding the current federal funding process for wildfire issues and forest management; and
- ▶ urges support for federal legislation that would improve the federal wildfire funding process and management of the nation's forests.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, today's fire seasons are, on average, 78 days longer than they were in the 1970s, and are projected to become hotter, more unpredictable, and more expensive;

WHEREAS, over the last few decades, the portion of the United States Forest Service's budget dedicated to fire has increased from under 20% to more than 50% of the United States Forest Service's total budget;

WHEREAS, as wildfire management consumes a significantly larger share of the United States Forest Service's budget, critical funding that supports federal, state, and private forests is reduced;

WHEREAS, compounding the issue is a practice known as "fire borrowing," which occurs when the United States Forest Service takes money from nonwildfire programs to pay for the current year's fire suppression needs that exceed appropriated funding;

WHEREAS, fire borrowing has resulted in the cancellation of forest thinning activities, firefighter training, purchases of firefighting equipment, and recreation projects;

WHEREAS, in order to cover wildfire suppression costs in recent years, the United States Forest Service has been forced to dismiss employees early, cancel contracts, and halt plans to fill critical positions that conserve and protect our nation's public and private forests;

WHEREAS, if the nation does not have healthy and resilient forests, public benefits such as clean

air and water, wildlife habitat, places to recreate, and jobs are all at risk; and

WHEREAS, federal legislation is needed to enable more active forest management on all lands, both public and private, through budget process changes and federal forest reforms, including:

- a prohibition on late-season fire borrowing;
- increased funding for nonwildfire suppression programs; and
- significantly increased active, federal forest management, including rewarding collaboration, streamlining the National Environmental Policy Act process and expanding the use of categorical exclusions, and reforestation:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges Utah's congressional delegation to develop and support federal legislation to improve the federal wildfire funding process and management of the nation's forests.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Utah's congressional delegation, the Secretary of the United States Department of the Interior, the Secretary of the United States Department of Agriculture, and the Chief of the United States Forest Service.

H C.R. 15

Passed February 23, 2017
 Approved March 17, 2017
 Effective March 17, 2017

**CONCURRENT RESOLUTION ON
 SUSTAINABLE MANAGEMENT OF
 UTAH'S WATER QUALITY**

Chief Sponsor: Timothy D. Hawkes
 Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor expresses support for managing waste water treatment in a holistic and sustainable manner that allows for cost benefit analyses and contemplates ecological impacts associated with treatment.

Highlighted Provisions:

This resolution:

- ▶ encourages water quality standards to be based on the best available research and science to improve and protect Utah's water quality;
- ▶ encourages the Division of Water Quality, stakeholders, and local elected officials to conduct water quality research on a mutually agreed collaborative process; and
- ▶ urges the Division of Water Quality to work in partnership with the publicly owned treatment works and local elected officials to develop the best available science and research regarding Utah's unique water systems.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the state of Utah has delegated authority from the Environmental Protection Agency to implement the Clean Water Act;

WHEREAS, the state of Utah has a robust and protective statutory and regulatory framework to oversee Utah's water quality;

WHEREAS, the Utah Department of Environmental Quality has the responsibility to protect Utah's water, air, and land;

WHEREAS, the Great Salt Lake, Utah Lake, and the Jordan River have unique water quality constraints and each body of water has qualities that add value to Utah's economy, recreation opportunities, and wildlife habitat;

WHEREAS, the publicly owned treatment works are part of the solution to water pollution and play a vital role in assuring that waste water is treated before discharge;

WHEREAS, the state Division of Water Quality has flexibility in setting standards for nutrients and the Environmental Protection Agency supports adaptive management;

WHEREAS, the setting of water quality standards should be done under consideration of the effectiveness of the standards to improve water quality, water quantity, and the cost burden to Utah's citizens;

WHEREAS, standards should be set based on the best available research and science and such standards should have an acceptable level of certainty to improve and protect Utah's water quality;

WHEREAS, water quality research that informs policy should follow standard scientific protocols for study development, data collection and management, modeling, and analyses;

WHEREAS, water quality research should be conducted in a collaborative process among the Division of Water Quality, stakeholders, and local elected officials, and should be conducted using a mutually agreed upon collaborative process; and

WHEREAS, the cost of complying with potential new standards could be high for the publicly owned treatment works and could impact Utah's communities if compliance requires process upgrades or plant facility rebuilds, making it paramount that Utah's elected officials understand and participate in the decision-making process as appropriate:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, finds that having the Division of Water Quality work in partnership with the publicly owned treatment works and local elected

officials to develop the best available science and research regarding Utah's unique water systems is of paramount importance.

BE IT FURTHER RESOLVED that regulations to protect Utah's water quality should weigh water quality benefits against any resulting negative impact to Utah's land, water, or air resources.

BE IT FURTHER RESOLVED that local communities and the publicly owned treatment works are partners in addressing water quality through regulation, funding, and oversight.

BE IT FURTHER RESOLVED that the publicly owned treatment works and the Division of Water Quality need to establish mutually agreeable processes for conducting research.

BE IT FURTHER RESOLVED that future standards and permit requirements should be based on the best research and information produced from these joint processes.

BE IT FURTHER RESOLVED that when the costs of compliance with proposed standards are significant, the Legislature should be informed of the prospect

H.C.R. 16

Passed March 2, 2017
Approved March 20, 2017
Effective March 20, 2017

CONCURRENT RESOLUTION DECLARING MENTAL HEALTH ISSUES TO BE A PUBLIC HEALTH CRISIS AT UTAH HIGHER EDUCATION INSTITUTIONS

Chief Sponsor: Edward H. Redd
Senate Sponsor: Ann Millner

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor declares mental health issues to be a public health crisis at Utah higher education institutions and strongly urges Utah's government and community groups to seek productive, long-term solutions to address the crisis.

Highlighted Provisions:

This resolution:

- ▶ declares mental health issues to be a public health crisis at Utah higher education institutions;
- ▶ recognizes Utah's high rate of suicide and attempted suicide due to mental health issues; and
- ▶ strongly urges state agencies, local health authorities, non-profit groups, and higher education entities to seek productive, long-term solutions to address this crisis.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, mental health issues at Utah higher education institutions constitute a public health crisis;

WHEREAS, Utah ranks in the top 10 for most suicides in the nation;

WHEREAS, Utah ranks fifth in the nation for most youth suicides;

WHEREAS, over 100 students enrolled in Utah higher education institutions attempted suicide during the 2015 academic year;

WHEREAS, 15 of those higher education students who attempted suicide were tragically successful;

WHEREAS, many students who need mental health services are unable to access treatment from university-sponsored mental health services due to wait lists that can be as long as four to six weeks;

WHEREAS, the International Association of Counseling Services' (IACS) national recommendation is one full-time counselor per 1,000-1,500 students at institutions of higher education;

WHEREAS, Utah State University, the University of Utah, Utah Valley University, Weber State University, and Dixie State University do not meet IACS national recommendations;

WHEREAS, communities where state-run universities, colleges, and technical colleges are located may have mental health treatment and crisis intervention resources that are not readily available to students on campuses; and

WHEREAS, partnerships and collaboration between university-sponsored mental health services and community mental health treatment and crisis intervention resources may result in improved access to crisis and treatment interventions for students on campuses as well as the general public and result in a decrease in suicide attempts and improved mental health outcomes on campuses and in the community:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, declares mental health issues to be a public health crisis at Utah higher education institutions and strongly urges the Department of Health, Department of Human Services, Department of Public Safety, local health departments, local mental health authorities and providers, the Utah chapter of the National Alliance on Mental Illness, the Utah chapter of the American Foundation for Suicide Prevention, the Utah Board of Regents, and public institutions of higher education, including universities, colleges, and technical colleges to:

(1) form local coalitions and work collaboratively on a local, community, and statewide basis to identify, promote, and share available higher

education mental health services and local community mental health resources, including crisis prevention and interventions; and

(2) identify successes from collaborative efforts as well as ongoing deficiencies in mental health treatment and crisis prevention and interventions at institutions of higher education that cannot be adequately addressed through appropriate partnerships and sharing of community and higher education mental health resources.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge the student body leadership of the state's public institutions of higher education, including universities, colleges, and technical colleges, to lead the effort to provide a report, including specific findings of collaborative successes and ongoing mental health services deficiencies, and make recommendations for possible solutions to the Health and Human Services Interim Committee, the Higher Education Appropriations Subcommittee, and the Social Services Appropriations Subcommittee by October 31, 2017.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Utah's Department of Health, Department of Human Services, and Department of Public Safety; all county and local mental health authorities; the Utah National Alliance on Mental Illness; the Utah Chapter of the American Foundation for Suicide Prevention; the Utah Board of Regents; and each of the presidents of Utah's eight public higher education institutions.

H.C.R. 17

Passed March 7, 2017

Approved March 22, 2017

Effective March 22, 2017

**CONCURRENT RESOLUTION
DESIGNATING AUTISM AFTER 21 DAY**

Chief Sponsor: Rebecca P. Edwards
Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

This concurrent resolution designates "Autism After 21 Day."

Highlighted Provisions:

This resolution:

- ▶ calls attention to the many adults on the autism spectrum for whom federally mandated services have ended;
- ▶ recognizes the limited opportunities for adults on the autism spectrum and the need for residential services; and
- ▶ designates April 21 as "Autism After 21 Day."

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, every 11 minutes a child is born in the United States who will be diagnosed with autism;

WHEREAS, as things stand today, those autistic children will spend the majority of their lives as adults in a world of few opportunities;

WHEREAS, in the next four years, 200,000 people on the autism spectrum will turn 21, which is the age at which federally mandated services end;

WHEREAS, those autistic adults will join the millions of adults with disabilities who face decades-long waitlists for residential services, and little to no opportunity for employment or social interaction;

WHEREAS, some adults on the autism spectrum need few, if any, supports, and we continue to encourage their self-determination and independence;

WHEREAS, our attention is needed to acknowledge the many adults on the autism spectrum who are navigating adulthood and wanting to reach their full potential; and

WHEREAS, autistic adults deserve access to the goals established by the Americans With Disabilities Act, including equal opportunity, full participation, independent living, and economic self-sufficiency:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, designates April 21 as "Autism After 21 Day."

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the state legislatures of the other 49 states and members of Utah's congressional delegation.

H.C.R. 18

Passed March 2, 2017

Approved March 17, 2017

Effective March 17, 2017

**CONCURRENT RESOLUTION
ENCOURAGING UTAHNS TO
CONSIDER THE SMOG RATING
WHEN PURCHASING A VEHICLE**

Chief Sponsor: Patrice M. Arent
Senate Sponsor: Brian E. Shiozawa
Cosponsors: Carl R. Albrecht

Joel K. Briscoe
Walt Brooks
Rebecca Chavez-Houck
Kay J. Christofferson
Bruce R. Cutler
Brad M. Daw
Susan Duckworth
Rebecca P. Edwards
Steve Eliason
Gage Froerer

Adam Gardiner
Craig Hall
Stephen G. Handy
Timothy D. Hawkes
Lynn N. Hemingway
Sandra Hollins
Eric K. Hutchings
Brian S. King
Karen Kwan
A. Cory Maloy
Kelly B. Miles
Carol Spackman Moss
Jefferson Moss
Merrill F. Nelson
Derrin R. Owens
Lee B. Perry
Jeremy A. Peterson
Dixon M. Pitcher
Val K. Potter
Marie H. Poulson
Susan Pulsipher
Tim Quinn
Paul Ray
Edward H. Redd
Douglas V. Sagers
V. Lowry Snow
Robert M. Spendlove
Raymond P. Ward
Christine F. Watkins
R. Curt Webb
Elizabeth Weight
John R. Westwood
Mark A. Wheatley
Brad R. Wilson
Mike Winder

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor encourages the citizens of the state, when purchasing a vehicle, to consider the vehicle's smog rating and other environmental impacts.

Highlighted Provisions:

This resolution:

- ▶ recognizes how vehicle emissions impact Utah's air quality;
- ▶ acknowledges the air quality benefits of purchasing a vehicle with a smog rating of eight or higher; and
- ▶ encourages citizens of the state to:
 - consider a vehicle's smog rating; and
 - purchase a vehicle with a smog rating of eight or higher.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, many of Utah's residents live in areas that experience periods when fine particulate or ozone pollution exceeds federal air quality standards;

WHEREAS, the Wasatch Front's and Cache Valley's unique geography are major contributors to serious air pollution during winter inversions as

polluted colder air is trapped by warmer air and hemmed in by Utah's mountain ranges;

WHEREAS, according to the Utah Foundation, "Studies have shown that ozone and inversion-type particulate exposure can shorten life expectancy, exacerbate cardiovascular and respiratory issues, and increase infant mortality rates";

WHEREAS, as Utah's population continues to grow, so will the challenges to reducing vehicle pollutants;

WHEREAS, vehicle miles traveled in the state of Utah are expected to double between 2013 and 2040;

WHEREAS, areas that fail to comply with the National Ambient Air Quality Standards' pollutant standards are classified as "nonattainment" areas, and vehicle sources account for a large percentage of emissions in Utah's nonattainment counties;

WHEREAS, during the winter, 48% of the emissions that lead to fine particulate pollution along the Wasatch Front comes from mobile sources;

WHEREAS, vehicles account for 45% of the emissions that lead to summertime ozone formation;

WHEREAS, the United States Environmental Protection Agency (EPA) requires that a new vehicle be tested and its emissions analyzed before it is sold;

WHEREAS, the EPA provides a "smog rating" for vehicles that reflects tailpipe emissions that contribute to local and regional air pollution;

WHEREAS, smog ratings range from one to 10, with one being the most polluting to the environment and 10 being the least polluting;

WHEREAS, the average new vehicle sold has a smog rating of five;

WHEREAS, purchasing a vehicle with a smog rating of eight results in one-fifth the emissions of a vehicle with a smog rating of five;

WHEREAS, all new vehicles model year 2013 or newer are sold with a label featuring the vehicle's smog rating and other information regarding the vehicle's environmental impact;

WHEREAS, emissions standards for used vehicles can be identified by locating the Vehicle Emissions Control Information label on the underside of the vehicle's hood; and

WHEREAS, in 2013, at Governor Gary R. Herbert's request, Envision Utah convened a Clean Air Action Team that recommended as a first immediate action to "bring cleaner cars and fuel to Utah as soon as possible," and further recommended to encourage the sale and purchase of vehicles with a smog rating of eight or higher:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, encourages citizens of the state,

when purchasing a vehicle, to consider the vehicle's smog rating and other environmental impacts.

BE IT FURTHER RESOLVED that the Legislature and the Governor encourage automobile dealers to make a vehicle's smog rating known to customers when they are purchasing a vehicle, just as they would fuel economy.

BE IT FURTHER RESOLVED that the Legislature and the Governor encourage citizens to purchase a vehicle with a smog rating of eight or higher where such vehicle meets the purchaser's needs.

H.C.R. 20

Passed March 3, 2017

Approved March 17, 2017

Effective March 17, 2017

**CONCURRENT RESOLUTION
RECOGNIZING THOSE WHO SERVED AND
SACRIFICED DURING THE COLD WAR**

Chief Sponsor: Brian M. Greene

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor commends the members of the Armed Forces and civilian personnel serving from the state of Utah who contributed to the historic victory in the Cold War and encourages appropriate recognitions for their service.

Highlighted Provisions:

This resolution:

- ▶ commends the members of the Armed Forces and civilian personnel serving from the state of Utah who contributed to the historic victory in the Cold War and expresses gratitude and appreciation for their service and sacrifices that made victory possible; and
- ▶ encourages the Veterans' and Military Affairs Commission to explore and advance appropriate commemorative and recognition initiatives for Cold War service.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, from the end of WWII in 1945 until the collapse of the Soviet Union in 1991, the Armed Forces of the United States and its allies confronted expansionist communism, collectively known as the Cold War;

WHEREAS, this global struggle, potentially the most dangerous military confrontation in the history of mankind, ended successfully for the United States and the free world with the collapse of the Soviet Union and the easing of worldwide military tensions;

WHEREAS, millions of servicemen and women were deployed around the world, including Europe,

Asia, and the Middle East, to stand guard against aggression and advance the cause of freedom in the face of a hostile enemy;

WHEREAS, Department of Defense civilians, members of the intelligence community, foreign service officers, and support personnel in the United States made faithful and lasting contributions in the performance of their duties during the Cold War;

WHEREAS, periods of active armed conflict, including the wars in Korea, Vietnam, and the Middle East, resulted in heroic actions and individuals paying the ultimate sacrifice to help defeat those that would harm the United States and its allies;

WHEREAS, members of the Armed Forces served overseas under arduous conditions, isolated from family and friends in order to protect the United States and achieve a lasting peace;

WHEREAS, hundreds of thousands of Utahns answered the call to honorably serve across the globe in defense of freedom, whether on active duty or as members of the Utah National Guard or in the reserves;

WHEREAS, the United States Congress commended members of the Armed Forces and government civilian personnel who served during the Cold War and expressed gratitude and appreciation for their service and sacrifices;

WHEREAS, in accordance with Section 1084 of the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense approved awarding Cold War Recognition Certificates to all members of the Armed Forces and qualified federal government civilians who faithfully and honorably served during the Cold War era, defined as September 2, 1945, to December 26, 1991;

WHEREAS, a medal, commissioned by Veterans of Foreign Wars Post 4918 and endorsed by the Utah Veterans of Foreign Wars, commemorates those men and women from Utah whose service and sacrifice assisted in achieving the Cold War victory; and

WHEREAS, the State of Utah created the Veterans' and Military Affairs Commission to study and make recommendations to the Legislature on issues affecting servicemembers and veterans in Utah:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, commends the members of the Armed Forces and civilian personnel serving from the state of Utah who contributed to the historic victory in the Cold War and expresses gratitude and appreciation for their service and sacrifices that made victory possible.

BE IT FURTHER RESOLVED that the Legislature and the Governor encourage the Veterans' and Military Affairs Commission to further explore and advance appropriate

commemorative and recognition initiatives for Cold War service.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Secretary of Defense, all branches of the United States military, the Department of Defense, the Utah Veterans of Foreign Wars, the Utah Department of Veterans and Military Affairs, the Veterans' and Military Affairs Commission, and the members of Utah's congressional delegation.

H.C.R. 21

Passed March 8, 2017
Approved March 20, 2017
Effective March 20, 2017

**CONCURRENT RESOLUTION
ENCOURAGING NASA TO CONSIDER
TOOELE COUNTY FOR A TEST FACILITY**

Chief Sponsor: Douglas V. Sagers
Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This concurrent resolution supports the building of a NASA drone testing facility and Command Control Center in Tooele County, Utah.

Highlighted Provisions:

This resolution:

- ▶ recognizes the favorable conditions that make Tooele County, Utah, an ideal site to locate unmanned vehicle testing;
- ▶ acknowledges the positive economic impact that a NASA drone testing facility and Command Control Center would have on Tooele County and the state; and
- ▶ supports the building of a NASA drone testing facility and Command Control Center in Tooele County, Utah.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, Congress has directed the Federal Aviation Administration and the National Aeronautics and Space Administration (NASA) to select a single national test site for commercial drone testing;

WHEREAS, the landscape and topography of Tooele County, Utah, is ideal for testing airborne and land-based unmanned vehicles;

WHEREAS, Tooele County is a dedicated "friendly" unmanned vehicle testing county;

WHEREAS, airspace over portions of Tooele County is already dedicated to military testing, and there is substantial additional space available for nonmilitary, commercial drone testing;

WHEREAS, Tooele County has existing infrastructure in place from former, completed military missions;

WHEREAS, on behalf of the United States, Tooele County has historically been willing to conduct military missions involving chemical, biological, and other weapons testing, and undertake the destruction of nuclear missiles and other weapons under the Strategic Arms Reduction Treaty;

WHEREAS, over several decades, Tooele County has developed a vast military and commercial waste storage infrastructure, which is now declining;

WHEREAS, Tooele County must diversify its economy in order to meet future economic needs;

WHEREAS, the state of Utah is committed to developing a drone-friendly economic culture;

WHEREAS, bringing NASA into Utah creates significant new educational opportunities for students attending Utah's state and private institutions of higher learning;

WHEREAS, according to the state's economist, NASA's testing facility and Command Control Center operations would provide an economic benefit to the state of at least \$250 million annually; and

WHEREAS, Tooele County represents an extremely favorable site to locate advanced, nonwaste related open areas for unmanned vehicle testing;

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, supports the building of a NASA test facility and a subsequent Command Control Center in Tooele County.

BE IT FURTHER RESOLVED that the Legislature and the Governor request that the Governor's Office of Economic Development work in conjunction with Tooele County to develop a plan to expand Utah's unmanned vehicle infrastructure.

H.C.R. 26

Passed March 9, 2017

Approved March 22, 2017

Effective March 22, 2017

CONCURRENT RESOLUTION URGING RESTORATION OF UTAH LAKE

Chief Sponsor: Mike K. McKell
Senate Sponsor: Deidre M. Henderson

LONG TITLE

General Description:

This concurrent resolution addresses the condition of Utah Lake.

Highlighted Provisions:

This resolution:

- ▶ urges speedy and comprehensive solutions to restore Utah Lake and improve its water quality;
- ▶ emphasizes removing invasive plant species, restoring littoral zone plant communities, and

restoring native plant species on Utah Lake's shoreline; and

- ▶ seeks to ensure recreational opportunities on Utah Lake.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the state of Utah is committed to conserving Utah Lake, restoring Utah Lake's water quality, improving habitat for fish and wildlife, and enhancing recreational opportunities for Utah's citizens;

WHEREAS, Utah Lake is the largest natural freshwater lake in the state of Utah;

WHEREAS, Utah Lake has an extensive shoreline, offers prime recreational opportunities, and serves a vital water storage and supply function to residents of the Wasatch Front, which includes Utah County and Salt Lake County;

WHEREAS, multiple factors have presented significant challenges to Utah Lake, including algal blooms, loss of native vegetation, invasive fish and plant species, loss of littoral zone plants, suspended silt on the lake bottom, and reduced water clarity;

WHEREAS, the state of Utah has begun experimental restoration of various aspects of Utah Lake, including removing invasive phragmites, removing non-native carp, restoring the native June sucker, and other efforts, to improve water quality through partnerships between the Department of Natural Resources, the Division of Wildlife Resources, the Division of Water Quality, and the Utah Lake Commission;

WHEREAS, more comprehensive and extensive restoration investment, planning, and implementation are needed to address the issues facing Utah Lake; and

WHEREAS, the state of Utah is committed to work in collaboration with local stakeholders to speed the restoration of Utah Lake for the benefit of aquatic species, wildlife, and Utah's citizens:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges an acceleration of comprehensive solutions to restore Utah Lake and improve its water quality.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge solutions to address challenges to Utah Lake, including water clarity, water quality, invasive species, and preserving the storage and water supply functions.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge solutions to restore a vibrant fishery, including restoring the Bonneville cutthroat trout population and recovering the June sucker, while improving habitat for waterfowl and other wildlife species.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge solutions to

remove invasive plant species, restore littoral zone plant communities, and restore native plant species on Utah Lake’s shoreline should be accelerated.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge solutions to maximize and ensure recreational access and opportunities on Utah Lake, while also improving the use of the lake for Utah and its citizens.

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to the Department of Natural Resources, the Division of Wildlife Resources, the Division of Water Quality, and the Utah Lake Commission, to encourage pursuit of all reasonably available solutions to accelerate comprehensive and lasting restoration of Utah Lake.

H.J.R. 4

Passed February 16, 2017
Effective February 16, 2017

**JOINT RESOLUTION ON
MAINTENANCE-OF-EFFORT
REQUIREMENTS**

Chief Sponsor: Edward H. Redd
Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This joint resolution of the Legislature requests that Utah’s congressional delegation submit federal legislation amending federal block grant maintenance-of-effort requirements.

Highlighted Provisions:

This resolution:

- ▶ recognizes that federal maintenance-of-effort requirements can severely limit state budget flexibility; and
- ▶ requests that Utah’s congressional delegation submit federal legislation adding the following language to each maintenance-of-effort statutory requirement: “In nowise shall the state amount obligated as a maintenance-of-effort calculation exceed the amount of federal funding provided through the grant.”

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, block grants offered by the federal government often include maintenance-of-effort provisions specifying required state spending levels necessary to receive a grant;

WHEREAS, maintenance-of-effort requirements are intended to prevent supplantation of state efforts using federal funds;

WHEREAS, for some federal grants, calculated maintenance-of-effort requirements increase if

states voluntarily increase state spending on budget items that receive block grants;

WHEREAS, over time, maintenance-of-effort requirements can become several times larger than the amount of the federal block grant;

WHEREAS, if a state does not meet its maintenance-of-effort requirements in any fiscal year, the federal government will often reduce the state’s federal block grant in the following year by an amount equal to the two-year average of the maintenance-of-effort shortfall;

WHEREAS, this penalty for failing to meet maintenance-of-effort requirements occurs, even when a state spends more than the maintenance-of-effort requirement at the time the grant was originally awarded;

WHEREAS, these maintenance-of-effort requirements can severely limit state legislative budget flexibility, especially during economic downturns, because attempts to reduce state spending to address decreased state revenue can lead to additional decreases in revenue from reductions in federal block grant funds;

WHEREAS, in fiscal year 2015, Utah received a \$3.2 million Mental Health Block Grant that required a maintenance-of-effort obligation of \$29.3 million;

WHEREAS, in fiscal year 2015, Utah received a \$5 million Baby Watch Early Intervention Grant that required a maintenance-of-effort obligation of \$12 million;

WHEREAS, in fiscal year 2015, Utah received a \$16.5 million Substance Abuse Prevention and Treatment Block Grant that required a maintenance-of-effort obligation of \$19.2 million; and

WHEREAS, the state of Utah obligates hundreds of millions of dollars in maintenance-of-effort requirements:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah requests that Utah’s congressional delegation submit federal legislation amending federal block grant maintenance-of-effort requirements by adding the following language to each maintenance-of-effort statutory requirement: “In nowise shall the state amount obligated as a maintenance-of-effort calculation exceed the amount of federal funding provided through the grant.”

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and the members of Utah’s congressional delegation.

H.J.R. 5

Passed January 27, 2017
Effective January 27, 2017

**JOINT RESOLUTION RECOGNIZING
THE LUNAR NEW YEAR**

Chief Sponsor: Karen Kwan
Senate Sponsor: Jani Iwamoto
Cosponsors: Carl R. Albrecht
Patrice M. Arent
Joel K. Briscoe
Walt Brooks
Rebecca Chavez-Houck
Scott H. Chew
LaVar Christensen
Bruce R. Cutler
Brad M. Daw
Susan Duckworth
Rebecca P. Edwards
Francis D. Gibson
Stephen G. Handy
Lynn N. Hemingway
Sandra Hollins
Brian S. King
Karianne Lisonbee
A. Cory Maloy
Kelly B. Miles
Carol Spackman Moss
Jefferson Moss
Derrin R. Owens
Val K. Potter
Marie H. Poulson
Tim Quinn
Angela Romero
Douglas V. Sagers
Mike Schultz
Norman K Thurston
Raymond P. Ward
Christine F. Watkins
Elizabeth Weight
John R. Westwood
Mark A. Wheatley
Logan Wilde
Mike Winder

LONG TITLE

General Description:

This resolution recognizes the 2017 Lunar New Year holiday.

Highlighted Provisions:

This resolution:

- ▶ highlights the many Utah residents and communities that celebrate the Lunar New Year; and
- ▶ recognizes the 2017 Lunar New Year holiday.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the Lunar New Year will be celebrated by millions around the world on January 28, 2017, to welcome the year of the rooster;

WHEREAS, the Lunar New Year is the most important annual holiday in many Asian and

Southeast Asian cultures, including Chinese, Korean, Vietnamese, and Mongolian cultures;

WHEREAS, the 15-day holiday is a time to reunite with family, recognize traditions, honor ancestors, celebrate the past year, and invite good luck and prosperity for the coming year;

WHEREAS, Lunar New Year celebrations promote beloved traditions including: cleaning homes to prepare for the new year, family meals, giving children red envelopes containing money, visiting relatives, lion dances, and religious ceremonies;

WHEREAS, over 45,000 people across the state represent cultures that celebrate the Lunar New Year;

WHEREAS, people who represent these cultures have made significant contributions to Utah for over 150 years;

WHEREAS, in the middle of the nineteenth century, many Chinese laborers came to Utah to work on the Transcontinental Railroad and represented over 80% of the workforce that completed the railroad at Promontory Point, Utah;

WHEREAS, many of these workers stayed in Utah after the railroad was finished in 1869 to start businesses and raise families in the state;

WHEREAS, descendants of these workers live in and contribute to Utah to this day;

WHEREAS, thousands of southeast Asians came to Utah in the 1970s seeking asylum and became important members of Utah's workforce and business owner community;

WHEREAS, many people from Asia have come to Utah to study at its institutions of higher education and have remained in the state, providing valuable knowledge and skills to the state;

WHEREAS, over 7,500 Utah students are enrolled in the Utah Chinese Dual Language Immersion Program where, in addition to language instruction, they have the opportunity to learn about Chinese art and culture;

WHEREAS, the more than 4,500 Asian-owned businesses in the state have sales of over \$1 billion and employ more than 12,000 people;

WHEREAS, Asian immigrants in Utah earn approximately \$1.3 billion in income and pay \$311.8 million in taxes per year;

WHEREAS, Utah has a proud tradition of welcoming newcomers and recognizes that they bring with them opportunities for greater diversity in Utah's communities and economy;

WHEREAS, Utah's Asian community has shared its many varieties of art, cuisine, and music and has enriched the lives of all the state's residents; and

WHEREAS, Utahns of every race, color, creed, religion, and ethnicity will come together to celebrate the Lunar New Year in many locations across the state on January 28, 2017:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah recognizes the 2017

Lunar New Year and expresses admiration for and appreciation of the social, economic, and educational contributions of the people and cultures that celebrate the holiday, enriching our community.

H.J.R. 6

Passed February 16, 2017
Effective February 16, 2017

**JOINT RULES RESOLUTION
ON LEGISLATIVE PROCEDURES**

Chief Sponsor: James A. Dunnigan
Senate Sponsor: Deidre M. Henderson

LONG TITLE

General Description:

This resolution modifies the joint legislative rules.

Highlighted Provisions:

This resolution:

- ▶ modifies provisions governing the adoption of substitutes to permit substitutes to be adopted in non-numerical sequence, with certain restrictions;
- ▶ prohibits the rule on substitutes from being suspended; and
- ▶ modifies the legislative rules to accommodate the addition of salaried legislative training days as recommended by the Legislative Compensation Commission and adopted by the Legislative Management Committee.

Special Clauses:

None

Legislative Rules Affected:

AMENDS:

JR4-2-202
JR5-1-101
JR5-1-102

Be it resolved by the Legislature of the state of Utah:

Section 1. JR4-2-202 is amended to read:

JR4-2-202. Substitute bills or resolutions.

(1) (a) By following the procedures and requirements of Senate or House rule, a legislator may propose a committee substitute to any Senate or House legislation that is under consideration by a committee of which the legislator is a member.

(b) By following the procedures and requirements of Senate or House rule, a legislator may propose a floor substitute to any Senate or House legislation that is under consideration by the house of which the legislator is a member.

(2) To initiate drafting of a substitute, a legislator shall give drafting instructions to the attorney who drafted the legislation.

(3) After the substitute sponsor has approved the substitute, the Office of Legislative Research and General Counsel shall:

(a) electronically set the line numbers of the substitute; ~~and~~

(b) assign a version number to the substitute; and

~~(c)~~ (c) distribute the substitute according to the substitute sponsor's instructions.

(4) (a) Subject to the other provisions of this rule, after the original version of the legislation is introduced, a rules committee, standing committee, or the Senate or House of Representatives may adopt the original version of the legislation or any substitute version of the legislation, regardless of the version number.

(b) (i) If the version of the legislation being adopted was previously adopted, but replaced with a different version, the version of the legislation being adopted shall be adopted as it was previously introduced, without any amendments that may have been added to the introduced version.

(ii) An amendment described in Subsection (4)(b)(i), or any other amendment otherwise in order, may be proposed by a motion separate from the motion to adopt that substitute or original version of the legislation.

(c) A rules committee, a standing committee, the Senate, and the House of Representatives are prohibited from suspending the provisions of this Subsection (4).

Section 2. JR5-1-101 is amended to read:

JR5-1-101. Definitions.

As used in this title:

(1) "Authorized legislative day" means:

(a) a general session day, which includes any day during the period that begins on the day that the Legislature convenes in annual general session until midnight of the 45th day of the annual general session;

(b) a special session day;

(c) a veto override session day;

(d) an interim day designated by the Legislative Management Committee; ~~or~~

(e) an authorized legislative training day; or

~~(f)~~ (f) any other day that includes a meeting of a committee, subcommittee, commission, task force, or other legislative meeting, provided that:

(i) the committee, subcommittee, commission, task force, or other entity is created by statute or joint resolution;

(ii) the legislator's attendance at the meeting is approved by the Legislative Management Committee; and

(iii) service and payment for service by the legislator is not in violation of the Utah Constitution, including Article V and Article VI, Sections 6 and 7.

(2) "Authorized legislative training day" means a day, ~~other than an authorized legislative day, for~~

which the] that a Legislative Expenses Oversight Committee [approves the reimbursement of expenses for lodging, meals, or transportation for a legislator or legislator-elect to attend] designates as an authorized legislative day for training or informational purposes under JR5-1-102, including the following:

- (a) chair training;
 - (b) an issue briefing;
 - (c) legislative leadership instruction;
 - (d) legislative process training;
 - (e) legislative rules training;
 - (f) new legislator orientation; or
 - (g) another meeting to brief, instruct, orient, or train a legislator or legislator-elect in furtherance of the legislator's or legislator-elect's official duties.
- (3) "Reimbursement" means money paid to compensate a legislator for money spent by the legislator in furtherance of the legislator's official duties.

Section 3. JR5-1-102 is amended to read:

JR5-1-102. Legislative Expenses Oversight Committee.

(1) The presiding officer and the majority leader and minority leader of each house are the Legislative Expenses Oversight Committee for that house.

(2) Each committee shall:

(a) establish procedures to implement the rules on legislative expenses, including establishing systems and procedures for the reimbursement of legislative expenses;

(b) ensure that procedures are established for the purpose of avoiding duplicate or improper payments or reimbursements; and

(c) meet at least annually, or at the request of a majority of the committee, to review legislative expenses and travel budgets.

(3) Each committee may, for a calendar year, authorize[:(a)] up to [four] 10 authorized legislative training days for [a] each legislator[; and].

~~[(b) up to two additional authorized legislative training days for a:]~~

~~[(i) legislator-elect; or]~~

~~[(ii) legislator who is in the first year of office.]~~

(4) The presiding officer may authorize temporary emergency legislative expenses.

H.J.R. 7

Passed February 28, 2017
Effective date (if approved by voters)
January 1, 2019

PROPOSAL TO AMEND UTAH CONSTITUTION -- ACTIVE MILITARY PROPERTY TAX EXEMPTION

Chief Sponsor: Val L. Peterson
Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This joint resolution of the Legislature proposes to amend the Utah Constitution to modify a provision relating to a property tax exemption.

Highlighted Provisions:

This resolution proposes to amend the Utah Constitution to:

- ▶ modify a provision relating to a property tax exemption for a person in the military or the person's spouse; and
- ▶ modify a time of service required to qualify for a property tax exemption from 200 days in a calendar year to 200 days in a continuous 365-day period.

Special Clauses:

This resolution directs the lieutenant governor to submit this proposal to voters.

This resolution provides a contingent effective date of January 1, 2019 for this proposal.

Utah Constitution Sections Affected:

AMENDS:

ARTICLE XIII, SECTION 3

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

Section 1. It is proposed to amend Utah Constitution, Article XIII, Section 3, to read:

Article XIII, Section 3. [Property tax exemptions.]

(1) The following are exempt from property tax:

- (a) property owned by the State;
- (b) property owned by a public library;
- (c) property owned by a school district;

(d) property owned by a political subdivision of the State, other than a school district, and located within the political subdivision;

(e) property owned by a political subdivision of the State, other than a school district, and located outside the political subdivision unless the Legislature by statute authorizes the property tax on that property;

(f) property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes;

(g) places of burial not held or used for private or corporate benefit;

(h) farm equipment and farm machinery as defined by statute;

(i) water rights, reservoirs, pumping plants, ditches, canals, pipes, flumes, power plants, and transmission lines to the extent owned and used by an individual or corporation to irrigate land that is:

(i) within the State; and

(ii) owned by the individual or corporation, or by an individual member of the corporation; and

(j) (i) if owned by a nonprofit entity and used within the State to irrigate land, provide domestic water, as defined by statute, or provide water to a public water supplier:

(A) water rights; and

(B) reservoirs, pumping plants, ditches, canals, pipes, flumes, and, as defined by statute, other water infrastructure;

(ii) land occupied by a reservoir, ditch, canal, or pipe that is exempt under Subsection (1)(j)(i)(B) if the land is owned by the nonprofit entity that owns the reservoir, ditch, canal, or pipe; and

(iii) land immediately adjacent to a reservoir, ditch, canal, or pipe that is exempt under Subsection (1)(j)(i)(B) if the land is:

(A) owned by the nonprofit entity that owns the adjacent reservoir, ditch, canal, or pipe; and

(B) reasonably necessary for the maintenance or for otherwise supporting the operation of the reservoir, ditch, canal, or pipe.

(2) (a) The Legislature may by statute exempt the following from property tax:

(i) tangible personal property constituting inventory present in the State on January 1 and held for sale in the ordinary course of business;

(ii) tangible personal property present in the State on January 1 and held for sale or processing and shipped to a final destination outside the State within 12 months;

(iii) subject to Subsection (2)(b), property to the extent used to generate and deliver electrical power for pumping water to irrigate lands in the State;

(iv) up to 45% of the fair market value of residential property, as defined by statute;

(v) household furnishings, furniture, and equipment used exclusively by the owner of that property in maintaining the owner's home; and

(vi) tangible personal property that, if subject to property tax, would generate an inconsequential amount of revenue.

(b) The exemption under Subsection (2)(a)(iii) shall accrue to the benefit of the users of pumped water as provided by statute.

(3) The following may be exempted from property tax as provided by statute:

(a) property owned by a disabled person who, during military training or a military conflict, was disabled in the line of duty in the military service of the United States or the State;

(b) property owned by the unmarried surviving spouse or the minor orphan of a person who:

(i) is described in Subsection (3)(a); or

(ii) during military training or a military conflict, was killed in action or died in the line of duty in the military service of the United States or the State; and

(c) real property owned by a person in the military or the person's spouse, or both, and used as the person's primary residence, if the person serves under an order to federal active duty out of state for at least 200 days in a ~~calendar year or 200 consecutive days~~ continuous 365-day period.

(4) The Legislature may by statute provide for the remission or abatement of the taxes of the poor.

Section 2. Submittal to voters.

The lieutenant governor is directed to submit this proposed amendment to the voters of the state at the next regular general election in the manner provided by law.

Section 3. Effective date.

If the amendment proposed by this joint resolution is approved by a majority of those voting on it at the next regular general election, the amendment shall take effect on January 1, 2019.

H.J.R. 8

Passed March 2, 2017

Effective March 2, 2017

JOINT RESOLUTION SUPPORTING THE RETENTION OF PUBLIC EDUCATORS

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: Ann Millner

Cosponsor: LaVar Christensen

LONG TITLE

General Description:

This joint resolution supports the retention of public educators by directing revenue generated from public lands towards a fund to increase educator salaries.

Highlighted Provisions:

This resolution:

- ▶ recognizes the shortage of credentialed public educators in the state of Utah;
- ▶ acknowledges that public education is a critical component of Utah's prosperity; and
- ▶ directs that net revenue generated from the management of public lands that have been transferred to the state of Utah be deposited into a new fund for the purpose of increasing public educator salaries.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, in all states east of the state of Colorado, the federal government controls 4% of the land;

WHEREAS, the federal government still controls nearly 50% of the land in the states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming;

WHEREAS, the federal government still controls 66.5% of Utah's 54.3 million acres of land;

WHEREAS, the scarcity of state and private land in Utah severely constrains the size and diversity of the state's economy and educational opportunities, including options for funding education;

WHEREAS, in 2012 the Legislature passed H.B. 148, Transfer of Public Lands Act and Related Study, which seeks the transfer to the state of Utah the title of ordinary public lands in the state currently managed by the federal government;

WHEREAS, in Section 63L-6-102, the Transfer of Public Lands Act defines ordinary "public lands" to exclude certain federally controlled lands, such as national parks, national monuments, national historic sites, and federal wilderness areas, as well as tribal lands;

WHEREAS, the movement to assert control and ownership over public lands within the state's borders is, therefore, focused on ordinary public lands;

WHEREAS, a team of nationally renowned constitutional scholars and legal experts completed an extensive legal analysis in 2015, concluding that federal retention of ordinary public lands in Utah would have been rejected by the Founders, and should be rejected by the United States Supreme Court, as "unfair and unacceptable";

WHEREAS, the legal analysis concluded that "Utah has been treated as decidedly less than an equal sovereign, a result... the Constitution does not allow";

WHEREAS, in the event that these federally controlled lands are transferred to the state of Utah, the state would be the recipient of any revenue generated from the lands;

WHEREAS, public education is a critical component of Utah's prosperity, and state revenue invested in public schools is an investment in Utah's children and future economic success; and

WHEREAS, the state of Utah is experiencing a growing shortage of credentialed educators while the population of students in the public education system continues to grow:

NOW, THEREFORE, BE IT RESOLVED that 50% of any new, recurring net revenue derived from the management of transferred public lands shall be deposited into a new fund and disbursed for the purpose of increasing public primary and secondary educator salaries.

BE IT FURTHER RESOLVED that the revenue described above continue to be deposited into the fund and disbursed until educators' starting salaries have increased by a minimum of 25% from the average starting salary in the year in which the state receives control of at least 50% of the ordinary public lands in the state.

H.J.R. 9

Passed March 3, 2017

Effective March 3, 2017

**JOINT RESOLUTION ON THE
UTAH ATHLETIC FOUNDATION**

Chief Sponsor: Eric K. Hutchings
Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This joint resolution addresses issues related to the Utah Athletic Foundation, also known as the Utah Olympic Legacy Foundation.

Highlighted Provisions:

This resolution:

- ▶ urges the Utah Athletic Foundation to take on operating responsibilities of the Soldier Hollow Nordic Center; and
- ▶ supports the desire of the Utah Athletic Foundation to add representation to its board of directors of a resident of Wasatch County with knowledge and interest in the Soldier Hollow Nordic Center.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, as used in this resolution:

(1) "Foundation" means the Utah Athletic Foundation, also known as the Utah Olympic Legacy Foundation;

(2) "Soldier Hollow Nordic Center" means certain real property and improvements on the real property within a portion of the state's Wasatch State Park, including cross-country skiing trails, a biathlon range, the Courtland C. Nelson Lodge, and associated facilities; and

(3) "Winter Sports Park" means the Foundation's winter sports park and access road from State Highway 224 located in Summit County, Utah, consisting of certain real property and all improvements on the real property, including three separate venues, a nordic ski jump complex, a freestyle aerial jump and pool complex, and a bobsled and luge track together with associated facilities and all rights-of-way and other rights of ingress and egress that the Foundation owns;

WHEREAS, the Salt Lake Organizing Committee of the Olympic Winter Games of 2002 successfully hosted the Olympic Winter Games of 2002;

WHEREAS, the state contributed in significant ways to the success of the Olympic Winter Games of

2002, including building winter sports facilities used in hosting the Olympic Winter Games of 2002;

WHEREAS, because of the success of the Olympic Winter Games of 2002, the Foundation received over \$70,000,000 from the revenues of the Olympic Winter Games of 2002;

WHEREAS, 1994 General Session S.J.R. 17 and subsequent joint resolutions of the Legislature address the sale of the Winter Sports Park and payment of a legacy fund to the Foundation by the Salt Lake Organizing Committee for the operation and maintenance of certain Olympic venues operated by the Foundation;

WHEREAS, 1994 General Session S.J.R. 17 and subsequent joint resolutions of the Legislature address various aspects of the structure and governance of the Foundation;

WHEREAS, the citizens of Utah have an interest in the long-term financial and operational success of the Foundation because of the importance of winter sports to the state and because of the reversionary interest the state has in the Winter Sports Park under specified circumstances;

WHEREAS, the Soldier Hollow Nordic Center, which was a venue during the Olympic Winter Games of 2002, remains an important venue in this state for winter sports;

WHEREAS, the name "Soldier Hollow" has historical significance; and

WHEREAS, the Soldier Hollow Nordic Center has been operated by the Soldier Hollow Legacy Foundation since 2000, but currently the Division of Parks and Recreation is working with all parties to transfer operating responsibilities to the Utah Athletic Foundation:

NOW, THEREFORE, BE IT RESOLVED that, should efforts be completed between the state and the Foundation to transfer operation of the Soldier Hollow Nordic Center to the Foundation, the Legislature of the state of Utah urges the Foundation to amend its articles of incorporation and bylaws by no later than August 1, 2017, to do the following:

(1) add to the Foundation's purposes, language providing that the Foundation will operate and jointly maintain with the state the Soldier Hollow Nordic Center;

(2) add to the Foundation's purposes, language providing that the Foundation will equally support efforts and action steps within its owned or long-term leased venues to accomplish the Foundation's core missions and long-term goals;

(3) modify the membership of the board of directors to add a member as follows: "one member residing in Wasatch County who is familiar with the needs and interests of the Soldier Hollow Nordic Center"; and

(4) add the intention of the Foundation to ensure that the phrase "Soldier Hollow" remains a part of

the Soldier Hollow Nordic Center facility's official name.

BE IT FURTHER RESOLVED that the Foundation provide a copy of amended articles of incorporation and bylaws adopted by the board of directors that conform to this joint resolution to the Legislature through the Office of Legislative Research and General Counsel.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah Athletic Foundation.

H.J.R. 10

Passed January 31, 2017
Effective January 31, 2017

**JOINT RESOLUTION AUTHORIZING
PAY OF IN-SESSION EMPLOYEES**

Chief Sponsor: Brad R. Wilson
Senate Sponsor: Ralph Okerlund

LONG TITLE

General Description:

This joint resolution of the Legislature sets the compensation for legislative in-session employees for 2017.

Highlighted Provisions:

This resolution:

- ▶ sets the compensation for legislative in-session employees for the 2017 Legislative Session.

Special Clauses:

This resolution provides retrospective operation to January 3, 2017.

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the Legislature acting under authority of Section 36-2-2, Utah Code Annotated 1953, is required to set the compensation of its in-session employees by joint resolution:

NOW, THEREFORE, BE IT RESOLVED by the Legislature of the state of Utah that the compensation of the legislative in-session employees for actual hours worked be set as follows:

Employees shall be paid the hourly rate as specified in this resolution.

Employees who are working their first annual general session shall be paid under the "Level 1" scale.

Employees who are working their second annual general session shall be paid under the "Level 2" scale.

Employees who are working their third annual general session shall be paid under the "Level 3" scale.

Employees who are working their fourth annual general session shall be paid under the "Level 4" scale.

Employees who are working their fifth to ninth annual general session shall be paid under the "Level 5" scale.

Employees who are working their 10th to 14th annual general session shall be paid under the "Level 6" scale.

Employees who are working their 15th to 19th annual general session shall be paid under the "Level 7" scale.

Employees who are working their 20th or more annual general session shall be paid under the "Level 8" scale.

Senate employees are designated with an "S". House of Representatives employees are designated with an "H".

General Session - 2017

Employee Position	Level 1 Wage	Level 2 Wage	Level 3 Wage	Level 4 Wage	Level 5 Wage	Level 6 Wage	Level 7 Wage	Level 8 Wage
Admin. Asst. to Third House (H)	\$11.97	\$12.28	\$12.57	\$12.82	\$12.90	\$13.57	\$13.90	\$14.25
Amending Clerk (H-S)	\$13.27	\$13.66	\$13.96	\$14.28	\$14.63	\$14.96	\$15.31	\$15.69
Assistant Page Supervisor (H-S)	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90	\$13.22	\$13.57	\$13.90
Asst. Sergeant-at-Arms (H-S)	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90	\$13.22	\$13.57	\$13.90
Calendar/Voting System Specialist (H)	\$11.95	\$12.28	\$12.60	\$12.90	\$13.22	\$13.24	\$13.90	\$14.25
Committee Secretary (H-S)	\$13.04	\$13.34	\$13.66	\$13.94	\$14.28	\$14.63	\$14.96	\$15.31
Docket Clerk/Legislative Aide (H-S)	\$14.68	\$15.06	\$15.45	\$15.85	\$16.26	\$16.70	\$17.14	\$17.58
Reading Clerk (S)	\$10.85	\$11.12	\$11.41	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90
Kitchen Hostess (H-S)	\$10.85	\$11.12	\$11.41	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90
IT Technician (S)	\$13.24	\$13.90	\$14.25	\$14.63	\$14.99	\$15.37	\$15.78	\$16.17
Page (H-S)	\$10.85	\$11.12	\$11.41	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90
Page Supervisor (H-S)	\$13.24	\$13.90	\$14.25	\$14.63	\$14.99	\$15.37	\$15.78	\$16.17
Public Information Specialist (H-S)	\$10.85	\$11.12	\$11.41	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90
Receptionist (H-S)	\$10.85	\$11.12	\$11.41	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90
Receptionist and Legislative Aide (H-S)	\$11.97	\$12.28	\$12.60	\$12.90	\$13.22	\$13.57	\$13.90	\$14.25
Audio Specialist (H-S)	\$11.38	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90	\$13.22	\$13.57
Rules Committee Secretary (H-S)	\$13.61	\$13.94	\$14.29	\$14.67	\$15.03	\$15.41	\$15.82	\$16.22
Security (H-S)	\$10.85	\$11.12	\$11.41	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90
Sergeant-at-Arms (H-S)	\$13.24	\$13.90	\$14.25	\$14.63	\$14.99	\$15.37	\$15.78	\$16.17
Supply/Copy Room Specialist(H)	\$10.85	\$11.12	\$11.41	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90
Tour Liaison (H-S)	\$10.85	\$11.12	\$11.41	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90
Video Specialist (H-S)	\$10.85	\$11.12	\$11.41	\$11.69	\$11.97	\$12.28	\$12.60	\$12.90

The compensation schedule established by this resolution has retrospective operation to January 3, 2017.

H.J.R. 11

Passed February 23, 2017
Effective February 23, 2017

**JOINT RESOLUTION CALLING FOR
REFORM OF THE INTERNATIONAL
TRAFFIC IN ARMS REGULATIONS**

Chief Sponsor: Karianne Lisonbee
Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This joint resolution urges that gunsmith operations be removed from being labeled as manufacturing activities.

Highlighted Provisions:

This resolution:

- ▶ expresses concern over the Directorate of Defense Trade Controls' interpretation of gunsmith activities as manufacturing activities; and
- ▶ urges the President and Congress to take action to cease labeling gunsmithing activities and to define the term "engaged in business" as found in the Gun Control Act of 1968.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the United States Department of State's Directorate of Defense Trade Controls is responsible for the export and temporary import of defense articles and services governed by the Arms Export Control Act and Executive Order 13637;

WHEREAS, the International Traffic in Arms Regulations implements the Arms Export Control Act;

WHEREAS, the Arms Export Control Act requires a person engaged in manufacturing defense articles to register with the Directorate of Defense Trade Controls, pay an exorbitant fee, and be subject to onerous paperwork whether or not they import or export defense-related articles and services;

WHEREAS, gunsmiths have not previously been subject to the types of fees and paperwork required by the Directorate of Defense Trade Controls, such as the guidelines on the applicability of the International Traffic in Arms Regulations registration requirement, which were issued in a Directorate of Defense Trade Controls letter on July 22, 2016, to firearms manufacturers and gunsmiths;

WHEREAS, these guidelines define many common gunsmith operations as "manufacturing" when they clearly are not and subject gun owners to the regulations for performing these same common gunsmith operations on their privately owned guns, including such innocuous activities as drilling into the receiver of their gun to install a new sight;

WHEREAS, the Directorate of Defense Trade Controls began labeling commercial gunsmiths as

"manufacturers" for performing relatively simple work such as threading a barrel or fabricating a small custom part for an older firearm;

WHEREAS, under the Arms Export Control Act "manufacturers" are required to register with the Directorate of Defense Trade Controls at significant expense or risk onerous criminal penalties;

WHEREAS, the guidance letter states that the Directorate of Defense Trade Controls applies "the ordinary, contemporary, common meaning for manufacturing," however, it neglects to define manufacturing and instead lists a wide variety of gunsmith activities while declaring arbitrarily that they constitute manufacturing;

WHEREAS, none of these activities are considered manufacturing activities by common definition or by the Bureau of Alcohol, Tobacco, Firearms and Explosives;

WHEREAS, the International Traffic in Arms Regulations state that "deemed export" violations are committed by providing any regulated good or service or any regulated technical information to a "non-US-person," even within the United States, such that a gunsmith doing routine gunsmithing for a "non-US-person" would constitute a violation;

WHEREAS, neither ignorance of nor lack of intention to violate arcane and complicated provisions buried in over 100 pages of legal statute, with ever-changing lists of regulated materials and information, is a defense to any violation;

WHEREAS, violations of the International Traffic in Arms Regulations can result in civil penalties of more than \$1,000,000 per incident and criminal penalties of up to \$1,000,000 and 20 years in prison, both of which can be levied against individual gunsmithing business employees;

WHEREAS, the International Traffic in Arms Regulations have been applied in a manner not intended, such as regulating information related to general scientific, mathematical, or engineering principles that are commonly taught in schools and colleges or information that is in the public domain; and

WHEREAS, subjecting gunsmithing activities to the International Traffic in Arms Regulations will result in small gunsmith businesses being forced out of business due to regulatory costs and the significant risks of committing technical violations of extremely complex laws and regulations;

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urges the United States Congress to enact legislation to remove common gunsmithing activities listed on the July 22, 2016, Directorate of Defense Trade Controls letter as activities that constitute manufacturing under the International Traffic in Arms Regulations.

BE IT FURTHER RESOLVED that the President of the United States is urged to direct the United States Department of State's Directorate of Defense Trade Controls to cease labeling gunsmiths as manufacturers.

BE IT FURTHER RESOLVED that the United States Congress is urged to define the term “engaged in business” under the International Traffic in Arms Regulations as found in the Gun Control Act of 1968, which is “a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured.”

BE IT FURTHER RESOLVED that copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and the members of Utah’s congressional delegation.

H.J.R. 15

Passed March 9, 2017
Effective March 9, 2017

**JOINT RULES RESOLUTION CREATING
AND AMENDING APPROPRIATIONS
COMMITTEES RULES**

Chief Sponsor: Dean Sanpei
Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This rules resolution creates and amends committee rules for the Joint Appropriations Committee, the joint appropriations subcommittees, and the Executive Appropriations Committee.

Highlighted Provisions:

This resolution:

- ▶ defines terms;
- ▶ establishes the powers of a committee chair for the Executive Appropriations Committee and the joint appropriations subcommittees to:
 - preserve order and decorum;
 - adopt time restrictions for witnesses and presenters; and
 - enforce appropriations committee rules;
- ▶ clarifies that privileged motions:
 - take precedence over non-privileged motions;
 - are to be accepted in a specified priority; and
 - except for a motion to adjourn, do not dispose of other pending motions;
- ▶ establishes parliamentary procedures for appropriations committees; and
- ▶ moves rules on conference committees and legislative procedures to a new location without modification.

Special Clauses:

This resolution provides revisor instructions.

Legislative Rules Affected:

AMENDS:

- JR3-2-102
- JR3-2-302
- JR3-2-401
- JR3-2-402
- JR4-2-101

ENACTS:

- JR3-2-303
- JR3-2-403
- JR3-2-404
- JR3-2-405
- JR3-2-605
- JR3-2-606
- JR3-2-607
- JR3-2-608
- JR3-2-609
- JR3-2-610
- JR3-2-611
- JR3-2-612
- JR3-2-613
- JR3-2-701
- JR3-2-702
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- JR3-2-811
- JR3-2-901
- JR3-2-902
- JR3-2-903
- JR3-2-904
- JR4-3-102
- JR4-3-103
- JR4-3-104
- JR4-3-105
- JR4-3-106
- JR4-3-107
- JR4-3-108
- JR4-3-109
- JR4-3-202
- JR4-3-203
- JR4-4-301
- JR4-5-102
- JR4-5-103

REPEALS AND REENACTS:

- JR3-2-101
- JR3-2-201
- JR3-2-103
- JR3-2-601
- JR3-2-602
- JR3-2-603
- JR3-2-604

JR4-3-101
 JR4-3-201
 JR4-4-101
 JR4-4-201
 JR4-4-202
 JR4-4-203
 JR4-5-101
 JR4-5-201
 JR4-5-202

REPEALS:

JR4-4-102
 JR4-4-103
 JR4-4-104
 JR4-4-105
 JR4-4-106
 JR4-4-107
 JR4-4-108
 JR4-4-109
 JR4-5-301
 JR4-6-102
 JR4-6-103

Be it resolved by the Legislature of the state of Utah:

Section 1. JR3-2-101 is repealed and reenacted to read:

CHAPTER 2. JOINT COMMITTEES

Part 1. General Rules Governing Joint Committees

JR3-2-101. Definitions.

As used in this chapter:

- (1) "Chair" means:
 - (a) the chair of an appropriations subcommittee or the Executive Appropriations Committee; or
 - (b) a member of a joint appropriations subcommittee or the Executive Appropriations Committee member who is authorized to act as chair under JR3-2-303.
- (2) "Committee" means a joint appropriations subcommittee or the Executive Appropriations Committee.
- (3) "Majority vote" means a majority of a quorum as provided in JR3-2-404.
- (4) "Original motion" means a non-privileged motion that is accepted by the chair when no other motion is pending.
- (5) "Pending motion" refers to a motion starting when a chair accepts a motion and ending when the motion is withdrawn or when the chair calls for a vote on the motion.
- (6) (a) "Privileged motion" means a procedural motion to adjourn, set a time to adjourn, recess, end debate, extend debate, or limit debate.
- (b) "Privileged motions" are not substitute motions.
- (7) "Proposed budget item" means any item under consideration by an appropriations committee for inclusion in an appropriations bill.

(8) "Substitute motion" means a non-privileged motion that is made when a non-privileged motion is pending.

(9) "Under consideration" means the time starting when a chair opens a discussion on a subject or an appropriations request that is listed on a committee agenda and ending when the committee disposes of the subject or request, moves on to another item on the agenda, or adjourns.

Section 2. JR3-2-102 is amended to read:

JR3-2-102. Rules governing joint committees.

~~Each standing, appropriation, and interim committee, meeting jointly, shall have at least two senators and at least two representatives in its membership.~~

Committees of the Legislature meeting jointly shall be organized and operate under:

- (1) standing committee rules, for standing committees meeting jointly;
- (2) interim committee rules, for interim committees meeting jointly; and
- (3) the rules under this part, for joint appropriations subcommittee or the Executive Appropriations Committee.

Section 3. JR3-2-103 is repealed and reenacted to read:

JR3-2-103. Minimum membership.

Each standing, appropriation, and interim committee, meeting jointly, shall have at least two senators and at least two representatives in its membership.

Section 4. JR3-2-201 is repealed and reenacted to read:

Part 2. Standing Committees

JR3-2-201. Standing committees.

The chairs of similar standing committees in the House and Senate may convene a joint standing committee meeting to discuss legislation of common interest with the approval of both the speaker of the House and president of the Senate.

Section 5. JR3-2-302 is amended to read:

Part 3. Creation and Organization

JR3-2-302. Joint appropriations subcommittees -- Creation -- Membership.

~~(1)~~ The members of the Joint Appropriations Committee shall be divided into the following ~~[subcommittees]~~ joint appropriations subcommittees:

- ~~(a)~~ (1) Infrastructure and General Government;
- ~~(b)~~ (2) Business, Economic Development, and Labor;
- ~~(c)~~ (3) Executive Offices and Criminal Justice;
- ~~(d)~~ (4) Social Services;

~~[(e)] (5) Higher Education;~~

~~[(f)] (6) Natural Resources, Agriculture, and Environmental Quality;~~

~~[(g)] (7) Public Education; and~~

~~[(h)] (8) Retirement and Independent Entities.~~

~~[(2) (a) Subject to Subsection (3), the president of the Senate and speaker of the House shall appoint their respective members to each subcommittee.]~~

~~[(b) (i) The president of the Senate shall designate one senator in each subcommittee as the Senate chair.]~~

~~[(ii) The speaker of the House shall designate one representative in each subcommittee as the House chair and one representative in each subcommittee as the House vice chair.]~~

~~[(3) The Retirement and Independent Entities Subcommittee shall have the same members as the Retirement and Independent Entities Committee created in Utah Code Section 63E-1-201.]~~

~~[(4) (a) A majority of any appropriations subcommittee is a quorum for the transaction of business.]~~

~~[(b) In determining a subcommittee quorum, a majority is at least 50% in one house and more than 50% in the other.]~~

~~[(5) (a) In all decisions of the subcommittees, a majority vote prevails.]~~

~~[(b) A majority vote is at least 50% of the members of one house and more than 50% in the other house in attendance.]~~

Section 6. JR3-2-303 is enacted to read:

JR3-2-303. President and speaker to appoint committee members, chairs, and vice chairs.

(1) (a) Subject to Subsection (2), the president of the Senate and speaker of the House shall appoint their respective members to each committee.

(b) (i) The president of the Senate shall designate one senator in each committee as the Senate chair.

(ii) The speaker of the House shall designate one representative in each committee as the House chair and one representative in each committee as the House vice chair.

(2) The Retirement and Independent Entities subcommittee shall have the same members as the Retirement and Independent Entities Committee created in Utah Code Section 63E-1-201.

(3) A vice chair may perform the duties of a chair:

(a) as requested by the chair; or

(b) in the absence of the chair.

(4) The chair, or the vice chair as authorized under Subsection (3), may designate a member of the committee to conduct a committee meeting

when neither the chair nor the vice chair is able to attend a meeting.

(5) A committee member designated under Subsection (4) may conduct a committee meeting but may not perform the duties of a chair described in JR3-2-603 and JR3-2-604.

(6) The Office of the Legislative Fiscal Analyst shall staff the joint appropriations subcommittees.

Section 7. JR3-2-401 is amended to read:

JR3-2-401. Executive appropriations -- Creation -- Membership -- Staffing.

(1) There is created an Executive Appropriations Committee consisting of 20 members composed of:

(a) three members of the majority leadership of the Senate and four members of the majority leadership of the House;

(b) two members of the minority leadership of the Senate and three members of the minority leadership of the House;

(c) the chair and vice chair of the Senate Appropriations Committee and the chair and vice chair of the House Appropriations Committee; and

(d) (i) one member from the majority party of the Senate as appointed by the president of the Senate or as chosen by the Senate majority caucus;

(ii) two members from the minority party of the Senate as appointed by the Senate minority leader or as chosen by the Senate minority caucus; and

(iii) one member from the minority party of the House as appointed by the House minority leader or as chosen by the House minority caucus.

(2) A member of the Executive Appropriations Committee, whose membership is determined under Subsection (1)(a) or (b), may appoint a designee to permanently serve in that individual's place if:

(a) the [person] individual is a member of the majority party and the designee is approved by the speaker or the president; or

(b) the [person] individual is a member of the minority party and the designee is approved by the House or Senate minority party leader.

~~[(3) (a) A majority of the Executive Appropriations Committee is a quorum for the transaction of business.]~~

~~[(b) In determining a committee quorum, a majority is at least 50% in one house and more than 50% in the other.]~~

~~[(4) (a) In all decisions of the Executive Appropriations Committee, a majority vote prevails.]~~

~~[(b) A majority vote is at least 50% of the members of one house and more than 50% of the members of the other house in attendance.]~~

~~[(5) (3) The Office of the Legislative Fiscal Analyst shall staff the Executive Appropriations Committee [and its subcommittees].~~

Section 8. JR3-2-402 is amended to read:

JR3-2-402. Executive appropriations -- Duties -- Base budgets.

(1) As used in this rule:

(a) "Base budget" means amounts appropriated by the Legislature for each item of appropriation for the current fiscal year that:

(i) are not designated as one-time in an appropriation, regardless of whether the appropriation is covered by ongoing or one-time revenue sources; and

(ii) were not vetoed by the governor, unless the Legislature overrode the veto.

(b) "Base budget" includes:

(i) any changes to those amounts approved by the Executive Appropriations Committee; and

(ii) amounts appropriated for debt service.

(2) (a) The Executive Appropriations Committee shall meet no later than the third Wednesday in December to:

(i) direct staff as to what revenue estimate to use in preparing budget recommendations, to include a forecast for federal fund receipts;

(ii) consider treating above-trend revenue growth as one-time revenue for major tax types;

(iii) hear a report on the historical, current, and anticipated status of the following:

(A) debt;

(B) long term liabilities;

(C) contingent liabilities;

(D) General Fund borrowing;

(E) reserves;

(F) fund balances;

(G) nonlapsing appropriation balances;

(H) cash funded infrastructure investment; and

(I) changes in federal funds paid to the state;

(iv) hear a report on:

(A) the next fiscal year base budget appropriation for Medicaid accountable care organizations according to Section 26-18-405.5;

(B) an explanation of program funding needs;

(C) estimates of overall medical inflation in the state; and

(D) mandated program changes and their estimated cost impact on Medicaid accountable care organizations;

(v) decide whether to set aside special allocations for the end of the session, including allocations:

(A) to address any anticipated reduction in the amount of federal funds paid to the state; and

(B) of one-time revenue to pay down debt and other liabilities;

(vi) approve the appropriate amount for each subcommittee to use in preparing its budget;

(vii) set a budget figure; and

(viii) adopt a base budget in accordance with Subsection (2)(b) and direct the legislative fiscal analyst to prepare one or more appropriations acts appropriating one or more base budgets for the next fiscal year.

(b) In a base budget adopted under Subsection (2)(a), appropriations from the General Fund, the Education Fund, and the Uniform School Fund shall be set as follows:

(i) if the next fiscal year ongoing revenue estimates set under Subsection (2)(a)(i) are equal to or greater than the current fiscal year ongoing appropriations, the new fiscal year base budget is not changed;

(ii) if the next fiscal year ongoing revenue estimates set under Subsection (2)(a)(i) are less than the current fiscal year ongoing appropriations, the new fiscal year base budget is reduced by the same percentage that projected next fiscal year ongoing revenue estimates are lower than the total of current fiscal year ongoing appropriations;

(iii) in making a reduction under Subsection (2)(b)(ii), appropriated debt service shall not be reduced, and other ongoing appropriations shall be reduced, in an amount sufficient to make the total ongoing appropriations, including the unadjusted debt service, equal to the percentage calculated under Subsection (2)(b)(ii); and

(iv) the new fiscal year base budget shall include an appropriation to the Department of Health for Medicaid accountable care organizations in the amount required by Section 26-18-405.5.

(c) The chairs of each ~~[appropriation subcommittee]~~ joint appropriations subcommittee are invited to attend this meeting.

~~[(3) Appropriations subcommittees may not meet while the Senate or House is in session without special leave from the speaker of the House and the president of the Senate.]~~

~~[(4)]~~ (3) All proposed ~~[items of expenditure to be included in the appropriations bills]~~ budget items shall be submitted to one of the subcommittees named in JR3-2-302 for consideration and recommendation.

~~[(5)]~~ (4) (a) After receiving and reviewing subcommittee reports, the Executive Appropriations Committee may refer the report back to ~~[an appropriations subcommittee]~~ a joint appropriations subcommittee with any guidelines the Executive Appropriations Committee considers necessary to assist the subcommittee in producing a balanced budget.

(b) The subcommittee shall meet to review the new guidelines and report the adjustments to the chairs of the Executive Appropriations Committee as soon as possible.

[46] (5) (a) After receiving the reports, the Executive Appropriations Committee chairs will report them to the Executive Appropriations Committee.

(b) ~~[That committee]~~ The Executive Appropriations Committee shall:

(i) make any further adjustments necessary to balance the budget; and

(ii) complete all decisions necessary to draft the final appropriations ~~[bill]~~ bills no later than the 39th day of the annual general session.

Section 9. JR3-2-403 is enacted to read:

JR3-2-403. Quorum requirements.

A quorum of a joint appropriations subcommittee and the Executive Appropriations Committee is at least 50% in one house and more than 50% in the other.

Section 10. JR3-2-404 is enacted to read:

JR3-2-404. Voting requirements.

A majority vote of a joint appropriations subcommittee and the Executive Appropriations Committee is at least 50% of those in attendance in one house and more than 50% of those in attendance in the other.

Section 11. JR3-2-405 is enacted to read:

JR3-2-405. Committee order of business.

Unless a committee chair, or a committee by majority vote, determines otherwise, the order of business for an appropriations committee is:

- (1) call to order by the chair;
- (2) approval of the minutes of previous meetings;
- (3) announcement of the agenda;
- (4) announcement of time restrictions, if any, subject to the requirements of JR3-2-604; and
- (5) consideration of appropriations committee business.

Section 12. JR3-2-601 is repealed and reenacted to read:

Part 6. Duties of a Committee Chair

JR3-2-601. Chair to enforce legislative rules and procedures.

The chair shall ensure the integrity of the appropriations committee process by enforcing legislative rules and parliamentary procedure without delay.

Section 13. JR3-2-602 is repealed and reenacted to read:

JR3-2-602. Chair to set agenda -- Requirements.

The chair of an appropriations committee shall set the agenda for the committee meeting.

Section 14. JR3-2-603 is repealed and reenacted to read:

JR3-2-603. Chair to post notice and agenda -- Notification to sponsors of request for an appropriation.

(1) The chair shall cause a public notice and agenda to be posted at least 24 hours before each appropriations committee meeting as required under Utah Code Title 52, Chapter 4, Open and Public Meetings Act.

(2) The chair shall notify the sponsor of a request for appropriation that is listed on an agenda of the time and place of the committee meeting in which the request for appropriation will be considered not less than 24 hours before the committee meeting.

Section 15. JR3-2-604 is repealed and reenacted to read:

JR3-2-604. Chair may direct order of agenda -- Time restrictions.

The chair, or a committee by majority vote, may adopt committee procedures and time restrictions, including:

- (1) directing the order of the agenda;
- (2) directing the order in which a witness or presenter will be heard;
- (3) directing the number of witnesses or presenters that will be heard; and
- (4) limiting the time the committee will spend on:
 - (a) an item on the agenda; or
 - (b) an individual witness or presenter.

Section 16. JR3-2-605 is enacted to read:

JR3-2-605. Chair to preserve order -- Powers to preserve order.

(1) The chair shall preserve order and decorum during appropriations committee meetings by:

- (a) controlling outbursts and demonstrations; and
- (b) ensuring that committee members, presenters, witnesses, and visitors act in a dignified and respectful manner.

(2) To preserve order, the chair may:

- (a) clear the committee room of any person who engages in disorderly conduct;
- (b) recess an appropriations committee meeting; or
- (c) request assistance from:
 - (i) the sergeant-at-arms; or
 - (ii) the Utah Highway Patrol.

Section 17. JR3-2-606 is enacted to read:

JR3-2-606. Chair to recognize committee members -- Remarks to be germane -- Committee members may make motions

when recognized -- Permission to address committee.

(1) The chair shall recognize a committee member who desires to speak to a subject that is under consideration by an appropriations committee.

(2) Upon recognition by the chair, a committee member:

(a) shall ensure that the member's remarks are germane to the subject under consideration; and

(b) may make a motion that is authorized by this chapter.

(3) Presenters, witnesses, visitors, staff, and committee members may not speak to an appropriations committee unless recognized by the chair.

Section 18. JR3-2-607 is enacted to read:

JR3-2-607. Chair to accept all motions that are in order -- Once accepted, the motion is pending.

(1) The chair shall accept a motion requested by a member of an appropriations committee who has been properly recognized unless the motion is prohibited by this chapter or by parliamentary procedure.

(2) To properly accept a motion, the chair shall:

(a) restate each verbal motion; and

(b) distribute copies of each written motion to members of the committee.

(3) When a chair properly accepts a motion under Subsection (2), the motion is pending.

Section 19. JR3-2-608 is enacted to read:

JR3-2-608. Chair to allow response to motions before placing motions for a vote.

After a motion has been accepted, and before the chair places a motion for a vote, the chair shall permit:

(1) members of the committee to ask the committee member who placed the motion questions about the motion;

(2) members of the committee to debate the motion;

(3) the sponsor of a budget item or request for appropriation that is affected by the motion to respond to the motion; and

(4) the committee member who placed the motion to have the final word on the motion.

Section 20. JR3-2-609 is enacted to read:

JR3-2-609. Chair to place motion for vote.

After the chair has permitted a committee member to sum on a motion as required under JR3-2-608(4), the chair shall place the motion for a vote unless the motion is withdrawn subject to the requirements of JR3-2-811.

Section 21. JR3-2-610 is enacted to read:

JR3-2-610. Chair to verbally announce vote on motions -- Motions pass with majority vote of a quorum -- Exceptions.

(1) After an appropriations committee votes on a motion, the chair shall:

(a) determine whether the motion passed or failed;

(b) verbally announce that the motion passed or that the motion failed; and

(c) if the vote on the motion is not unanimous, verbally identify by name either the committee members who voted "yes" or the committee members who voted "no."

(2) Unless otherwise specifically indicated in this chapter, motions pass with a majority vote of a quorum as defined in JR3-2-404.

Section 22. JR3-2-611 is enacted to read:

JR3-2-611. Chair may direct a roll call vote.

Although most motions will be determined by a voice vote, the chair, or a committee by majority vote, may direct a roll call vote.

Section 23. JR3-2-612 is enacted to read:

JR3-2-612. Chair to decide points of order -- Committee may appeal chair's decision.

(1) A chair shall rule on a point of order without committee discussion or debate.

(2) As provided in JR3-2-806, a committee member may:

(a) make a point of order; or

(b) appeal the decision of the chair.

Section 24. JR3-2-613 is enacted to read:

JR3-2-613. Chair to ensure integrity of minutes -- Retention of minutes -- Content requirements.

(1) The chair shall:

(a) ensure that a secretary takes minutes of appropriation committee meetings; and

(b) present the minutes to the committee for approval.

(2) The chair shall ensure that committee minutes comply with the requirements of Utah Code Title 52, Chapter 4, Open and Public Meetings Act.

(3) The chair shall ensure that committee minutes include:

(a) the date, time, and place of each committee meeting;

(b) a list of committee members present;

(c) each motion made;

(d) the vote on each motion;

(e) points of order; and

(f) the outcome of each appeal of the decision of the chair.

Section 25. JR3-2-701 is enacted to read:

Part 7. Duties of an Appropriations Committee

JR3-2-701. Request for appropriation.

(1) A legislator wishing to obtain funding for a project, program, or entity that has not previously been funded, or to obtain additional or separate funding for a project, program, or entity, shall file a request for appropriation with the Office of the Legislative Fiscal Analyst.

(2) (a) Except as provided in Subsection (2)(b), a legislator may not file a request for appropriation with the Office of the Legislative Fiscal Analyst after noon on the 11th day of the annual general session.

(b) After the date established by this Subsection (2), a legislator may file a request for appropriation if:

(i) for a request by a House member, the representative makes a motion to file a request for appropriation and that motion is approved by a constitutional majority of the House; or

(ii) for a request by a senator, the senator makes a motion to file a request for appropriation and that motion is approved by a constitutional majority vote of the Senate.

(3) The request shall designate:

(a) the project, program, or entity to be funded;

(b) the source for the funding;

(c) the chief sponsor, who is knowledgeable about and responsible for providing pertinent information as the appropriation is processed;

(d) supporting legislators, if any, who wish to cosponsor the appropriation; and

(e) the joint appropriations subcommittee to which the sponsor wishes the request to be assigned, if any.

Section 26. JR3-2-702 is enacted to read:

JR3-2-702. Review and action on requests for appropriation.

(1) (a) The legislative fiscal analyst shall review each request for appropriation.

(b) If the request requires that a statute be enacted, amended, or repealed, the legislative fiscal analyst shall immediately transfer the request to the Office of Legislative Research and General Counsel as a request for legislation.

(c) If the request does not require that a statute be enacted, amended, or repealed, the legislative fiscal analyst shall number and title the request and refer the request to:

(i) the House chair of the Executive Appropriations Committee, if the sponsor is a House member; or

(ii) the Senate chair of the Executive Appropriations Committee, if the sponsor is a Senate member.

(2) The House or Senate chair of the Executive Appropriations Committee shall refer the request to the appropriate joint appropriations subcommittees or to the Executive Appropriations Committee.

(3) Each joint appropriations subcommittee that receives a request for appropriation shall:

(a) allow the sponsor to present and discuss the request with the subcommittee;

(b) discuss the request; and

(c) do one of the following:

(i) include all or part of the requested appropriation in the budget recommendation made by the subcommittee or the Executive Appropriations Committee;

(ii) reject the request; or

(iii) recommend that all or part of the requested appropriation be placed on a funding prioritization list.

Section 27. JR3-2-703 is enacted to read:

JR3-2-703. Amending proposed budget items -- Amendments must be germane.

(1) (a) Except as provided in Subsection (2), and if recognized by the chair, a committee member may make a motion to amend a proposed budget item or request for appropriation that is under consideration.

(b) (i) A committee member may propose a verbal amendment to a proposed budget item or request for appropriation under consideration if the amendment contains 15 or fewer words.

(ii) Before proposing a motion to amend, a committee member shall ensure that a proposed amendment that contains more than 15 words is printed and distributed to committee staff and to all committee members present.

(2) (a) A committee member may only make a motion to amend that is germane to the proposed budget item or request for appropriation under consideration.

(b) A committee member who believes that an amendment is not germane to the subject of the proposed budget item or request for appropriation may make a point of order or appeal as described in JR3-2-806.

Section 28. JR3-2-704 is enacted to read:

JR3-2-704. Reconsideration of action.

(1) Except as provided in Subsection (2), and if recognized by the chair, a committee member may make a motion to reconsider the committee's action on a proposed budget item or request for appropriation if the proposed budget item or request for appropriation is:

(a) assigned to the committee; and

(b) listed on the committee agenda as required by Utah Code Title 52, Chapter 4, Open and Public Meetings Act.

(2) A committee may not reconsider its action:

(a) more than once in a meeting; and

(b) until the committee has considered other committee business.

Section 29. JR3-2-705 is enacted to read:

JR3-2-705. Testimony may be taken under oath.

(1) At the direction of the chair, or upon a majority vote of the committee, the testimony of a witness, presenter, or visitor who speaks to a committee may be taken under oath.

(2) The chair or committee staff shall administer the oath.

Section 30. JR3-2-706 is enacted to read:

JR3-2-706. Additional committee meetings.

With permission from the president of the Senate and the speaker of the House, a chair may hold an appropriations committee meeting independent of the regularly scheduled committee meetings.

Section 31. JR3-2-707 is enacted to read:

JR3-2-707. Closed appropriations committee meetings.

An appropriations committee may close a committee meeting in accordance with the procedures and requirements of Utah Code Title 52, Chapter 4, Open and Public Meetings Act.

Section 32. JR3-2-708 is enacted to read:

JR3-2-708. Prohibited from meeting while House or Senate is in session -- Exceptions.

(1) An appropriations committee may not meet while the House or Senate is in session unless:

(a) (i) the House chair receives permission from the speaker to meet; and

(ii) the Senate chair receives permission from the president to meet; or

(b) (i) a majority of the House approves a motion for the committee to meet while the House is in session; and

(ii) a majority of the Senate approves a motion for the committee to meet while the Senate is in session.

(2) Unless a committee is authorized to meet as provided in Subsection (1), any action taken by a committee while the House or Senate is in session is invalid.

Section 33. JR3-2-801 is enacted to read:

Part 8. Appropriations Committee Parliamentary Procedures

JR3-2-801. Obtaining the floor in committee -- Remarks to be germane.

(1) As required in JR3-2-606, a chair shall recognize a committee member who desires to speak to the committee.

(2) A committee member who is recognized by the chair may make a motion consistent with the requirements of this chapter.

(3) A second to a motion is not required.

Section 34. JR3-2-802 is enacted to read:

JR3-2-802. Committee members shall vote.

A committee member shall vote on every motion placed for a vote while the committee member is present at a meeting.

Section 35. JR3-2-803 is enacted to read:

JR3-2-803. Privileged motions in committee -- General requirements, procedure, and priority.

(1) Privileged motions:

(a) are non-debatable; and

(b) take precedence over non-privileged motions.

(2) If a privileged motion is requested while another privileged motion is pending, the chair shall grant priority to the privileged motions in the following order:

(a) adjourn;

(b) set time to adjourn;

(c) recess;

(d) end debate or call the question;

(e) extend debate; and

(f) limit debate.

(3) Except for a motion to adjourn, a privileged motion, if adopted, does not dispose of other pending motions.

Section 36. JR3-2-804 is enacted to read:

JR3-2-804. Original motions in committee -- General requirements, procedure, and priority.

(1) Original motions:

(a) are debatable; and

(b) may be replaced with a substitute motion.

(2) A committee member may not make an original motion if:

(a) a privileged motion is pending; or

(b) a substitute motion is pending.

Section 37. JR3-2-805 is enacted to read:

JR3-2-805. Substitute motions in committee -- General requirements, procedure, and priority.

(1) Substitute motions:

(a) are debatable; and

(b) take precedence over original motions.

(2) (a) A committee member may make a substitute motion if an original motion is pending.

(b) A committee member may not make a substitute motion if:

(i) a privileged motion is pending; or

(ii) another substitute motion is pending.

(c) If a substitute motion is adopted, a substitute motion disposes of the original motion.

(d) If a substitute motion is not adopted, the original motion is pending.

Section 38. JR3-2-806 is enacted to read:

JR3-2-806. Point of order -- Appeal of chair's decision.

(1) A point of order is not a motion and, except during a vote, may be made by a member of an appropriations committee at any time during a committee meeting.

(2) If a member of an appropriations committee is concerned that legislative rules or procedures are not being followed, the committee member may make a point of order.

(3) When a point of order is made, the chair shall immediately allow the committee member to state the member's point.

(4) A chair shall rule on the point of order without committee discussion or debate as provided in JR3-2-612.

(5) An appeal of the decision of the chair is not a motion and may be made by a committee member after the chair has ruled on a point of order.

(6) (a) An appropriations committee may, by majority vote, override the decision of the chair on a point of order.

(b) If the committee overrides the decision of the chair, the ruling of a committee is final.

(c) If a committee does not override the decision of the chair, the ruling of a chair is final.

Section 39. JR3-2-807 is enacted to read:

JR3-2-807. Point of information.

(1) A point of information is not a motion and, except during summation or a vote, may be made by a member of an appropriations committee at any time during a committee meeting.

(2) If a member of an appropriations committee desires clarification on any aspect of a committee meeting, the committee member may make a point of information.

(3) When a point of information is made, the chair shall immediately allow the committee member to state the point.

Section 40. JR3-2-808 is enacted to read:

JR3-2-808. Division of a motion.

(1) A division is not a motion and, except during a vote, may be made by a member of an appropriations committee at any time during a committee meeting without being recognized by the chair.

(2) The committee member who divides a motion shall clearly state how the motion is to be divided.

(3) A committee member may not divide a motion in such a manner that could create an unintelligible or ambiguous result.

Section 41. JR3-2-809 is enacted to read:

JR3-2-809. Prohibited motions.

(1) (a) Except for a motion to adjourn, a committee member may not make a motion unless a quorum of the committee is present.

(b) When a quorum is not present, a motion to adjourn is passed with a majority vote of those present.

(2) No motion is in order during a vote.

(3) A point of order is not in order during a vote.

Section 42. JR3-2-810 is enacted to read:

JR3-2-810. Repeating defeated motion.

(1) Except as provided in Subsection (2), a motion that is defeated may not be made by a committee member until the committee has considered other committee business.

(2) A motion to postpone a proposed budget item or a request for appropriation to a day certain, if defeated, may not be made again by any committee member during the same committee meeting.

Section 43. JR3-2-811 is enacted to read:

JR3-2-811. Withdraw motion.

A pending motion may be withdrawn at any time before the motion is placed for a vote.

Section 44. JR3-2-901 is enacted to read:

Part 9. Conference Committees

JR3-2-901. Appointment and chairs -- Notice.

(1) (a) If the Senate refuses to concur in the House amendments to a Senate bill, the secretary of the Senate shall notify the House of the refusal and ask the House to recede from its amendments.

(b) Either house may recede from its position on any difference existing between the two houses by a majority vote of its members.

(c) (i) If the House refuses to recede, the speaker shall appoint a conference committee of three.

(ii) After making the appointment, the speaker shall:

(A) publicly announce the House members of the conference committee and the time and place that the conference committee will meet;

(B) ensure that no more than two of the appointees are members of the majority party; and

(C) direct House staff to provide electronic notice that identifies the House members of the conference committee and the time and place of the conference committee meeting.

(d) If the speaker does not immediately appoint a conference committee, the president may appoint a conference committee as provided in Subsection (2)(c).

(2) (a) If the House refuses to concur in the Senate amendments to a House bill, the chief clerk of the House shall notify the Senate of the refusal and ask the Senate to recede from its amendments.

(b) Either house may recede from its position on any difference existing between the two houses by a majority vote of its members.

(c) (i) If the Senate refuses to recede, the president shall appoint a conference committee of three.

(ii) After making the appointment, the president shall:

(A) publicly announce the Senate members of the conference committee and the time and place that the conference committee will meet;

(B) ensure that no more than two of the appointees are members of the majority party; and

(C) direct Senate staff to provide electronic notice that identifies the Senate members of the conference committee and the time and place of the conference committee meeting.

(d) If the president does not immediately appoint a conference committee, the speaker may appoint a conference committee as provided in Subsection (1)(c).

(3) (a) Whenever the president or speaker appoints a conference committee, the secretary of the Senate or chief clerk of the House shall:

(i) immediately notify the other house of the action taken; and

(ii) request the appointment of conference committee members from that other house.

(b) After receiving the notice and request, the presiding officer of the other house shall:

(i) appoint a conference committee of three;

(ii) publicly announce the members of the conference committee from that house and the time and place that the conference committee will meet; and

(iii) direct staff to provide electronic notice that identifies the members of the conference committee and the time and place of the conference committee meeting.

(4) (a) The first senator named on the conference committee is the Senate chair of the committee, and

the first representative named on the conference committee is the House chair.

(b) The conference committee chairs shall direct the preparation of the conference committee report.

Section 45 JR3-2-902 is enacted to read:

JR3-2-902. Conference committee procedures.

(1) The chair from the house of origin of the bill shall chair meetings of the committee.

(2) Staff from the Office of Legislative Research and General Counsel may attend the conference committee meeting to assist in the preparation of the committee report.

(3) (a) Subject to Subsection (3)(b), conference committee meetings are open to the public.

(b) Public comment may not be received or made during a conference committee meeting unless a majority of committee members from one house and at least 50% from the other house vote to receive public comment.

(4) (a) A majority of committee members from each house must approve a conference committee report in order for it to be presented to the Legislature.

(b) (i) If the conference committee cannot reach an agreement, the committee shall report the failure to agree to both houses.

(ii) Upon notice that a conference committee has failed to agree, the presiding officer of each house may either appoint a new committee by following the requirements of JR3-2-901 or reappoint the former committee and announce the time and place of the committee's meeting.

(5) Before a bill being considered by a conference committee is abandoned, not to be reviewed again by either house during the remainder of the session, each house shall vote to refuse further conferences by the same committee or a new committee.

Section 46. JR3-2-903 is enacted to read:

JR3-2-903. Conference committee report -- Contents -- Disposition.

(1) The conference committee's report shall:

(a) be in writing; and

(b) list the vote of each member of the conference committee by name.

(2) (a) Subject to Subsection (2)(b), the committee may report any modifications or amendments to the bill that it thinks advisable.

(b) A conference committee may not consider or report on any matter except those at issue between the two houses.

(3) (a) If the bill being discussed by the conference committee is a House bill, the Senate conference committee members shall present the conference committee report first to the Senate.

(b) If the bill being discussed by the conference committee is a Senate bill, the House conference

committee members shall present the conference committee report first to the House.

(4) (a) After a motion to adopt the conference committee report is approved, the bill shall be put at the top of the third reading calendar in the first house for consideration.

(b) When the first house has acted on the bill, it shall transmit the bill and the report to the other house, along with a letter explaining its action.

(c) Before a house's vote is taken on the conference committee report, the report shall be read.

Section 47. JR3-2-904 is enacted to read:

JR3-2-904. Failure to meet.

If the members of the conference committee do not meet in a timely manner after being appointed, the presiding officers of both houses may appoint a new conference committee and disband the original conference committee.

Section 48. JR4-2-101 is amended to read:

JR4-2-101. Requests for legislation -- Contents -- Timing.

(1) (a) A legislator wishing to introduce a bill or resolution shall file a Request for Legislation with the Office of Legislative Research and General Counsel within the time limits established by this rule.

(b) The request for legislation shall:

(i) designate the chief sponsor, who is knowledgeable about and responsible for providing pertinent information as the legislation is drafted;

(ii) designate any supporting legislators from the same house as the chief sponsor who wish to cosponsor the legislation; and

(iii) (A) provide specific or conceptual information concerning the change or addition to law or policy that the legislator intends the proposed legislation to make;

(B) identify the specific situation or concern that the legislator intends the legislation to address; or

(C) identify the general subject area within which the proposed legislation is likely to fall.

(2) (a) Any legislator may file a request for legislation beginning 60 days after the Legislature adjourns its annual general session sine die.

(b) A legislator-elect may file a request for legislation beginning on the November 15 after the annual general election at which the legislator was elected.

(c) (i) If an incumbent legislator does not file to run for reelection or is defeated in a political party convention, primary election, or general election, that legislator may not file any requests for legislation as of that date.

(ii) The Office of Legislative Research and General Counsel shall abandon each request for legislation from the legislator that is pending on

that date unless, within 30 days after that date, another member of the Legislature qualified to file a request for legislation assumes sponsorship of the legislation.

(d) (i) If, for any reason, a legislator who filed a request for legislation is unavailable to serve in the next annual general session, the former legislator shall seek another legislator to assume sponsorship of each request for legislation filed by the legislator who is unavailable to serve.

(ii) If the former legislator is unable to find another legislator to sponsor the legislation within 30 days, the Office of Legislative Research and General Counsel shall abandon each pending request for legislation from the legislator who is unavailable to serve.

(3) (a) Except as provided in Subsection (3)(c), a legislator may not file a Request for Legislation with the Office of Legislative Research and General Counsel after noon on the 11th day of the annual general session.

(b) Except as provided in Subsection (3)(c), by noon on the 11th day of the annual general session, each legislator shall, for each Request for Legislation on file with the Office of Legislative Research and General Counsel, either approve the request for numbering or abandon the request.

(c) After the date established by this Subsection (3), a legislator may file a Request for Legislation and automatically approve the legislation for numbering if:

(i) for House legislation, the representative makes a motion to request a bill or resolution for drafting and introduction and that motion is approved by a constitutional majority of the House; or

(ii) for Senate legislation, the senator makes a motion to request a bill or resolution for drafting and introduction and that motion is approved by a constitutional majority vote of the Senate.

(4) A legislator wishing to obtain funding for a project, program, or entity, when that funding request does not require that a statute be enacted, repealed, or amended, may not file a Request for Legislation but instead shall file a request for appropriation by following the procedures and requirements of ~~JR4-3-101~~ JR3-2-701.

Section 49. JR4-3-101 is repealed and reenacted to read:

CHAPTER 3. INTRODUCTION AND CONSIDERATION OF LEGISLATION

Part 1. Introduction and Consideration of Legislation

JR4-3-101. Introduction of legislation.

(1) The secretary of the Senate or chief clerk of the House shall inform the presiding officer about legislation ready for introduction.

(2) When directed to do so by the presiding officer, the reading clerk shall introduce the legislation by reading its number and short title, which constitutes the legislation's first reading.

Section 50. JR4-3-102 is enacted to read:

JR4-3-102. Reference of legislation.

(1) During an annual general or special session of the Legislature, after a piece of legislation has been introduced and read for the first time, it shall be referred to a committee or to the floor as provided in Senate or House Rules.

(2) The secretary of the Senate and the chief clerk of the House or their designees shall deliver all legislation assigned to a committee to the chair of that committee or to that chair's designee.

Section 51 JR4-3-103 is enacted to read:

JR4-3-103. Standing committee responsibilities.

(1) Each standing committee shall:

(a) examine legislation referred to it;
 (b) amend or substitute the legislation if necessary; and

(c) report the legislation back to the floor.

(2) If legislation is referred to an interim committee, the interim committee may examine and recommend to the sponsor any changes to it that the committee considers necessary.

Section 52. JR4-3-104 is enacted to read:

JR4-3-104. Floor action.

According to the procedures and requirements of Senate Rules and House Rules, each house shall consider legislation that is referred to it by a committee or that is otherwise in its possession.

Section 53. JR4-3-105 is enacted to read:

JR4-3-105. Calendaring legislation -- Preference for legislation of other chamber.

During the third and fourth days of each week:

(1) the Senate shall consider House legislation appearing on the Senate calendar; and

(2) the House shall consider Senate legislation appearing on the House calendar.

Section 54. JR4-3-106 is enacted to read:

JR4-3-106. Notice to other chamber that legislation has failed.

(1) When a piece of legislation that passed the Senate is rejected by the House, the chief clerk of the House shall transmit notice of the rejection to the Senate.

(2) When a piece of legislation that passed the House is rejected by the Senate, the secretary of the Senate shall transmit notice of the rejection to the House.

Section 55. JR4-3-107 is enacted to read:

JR4-3-107. Legislation transmitted to other house.

(1) The secretary of the Senate or chief clerk of the House shall:

(a) transmit notice of passage on third reading to the other house;

(b) comply with the requirements of Subsection (2) if necessary; and

(c) if sent to the other house, enter the date of transmission in the journal.

(2) The secretary of the Senate or chief clerk of the House shall, before transmitting a piece of legislation to the other house, ensure that, if the legislation passed with amendments or was substituted, the amendments or substitute are:

(a) retyped or reprinted in the typeface and on the color paper designated for each house; and

(b) transmitted with the legislation.

Section 56. JR4-3-108 is enacted to read:

JR4-3-108. Consideration and action on amendments to legislation made in the other chamber.

(1) (a) If the Senate amends and passes, or substitutes and passes, a piece of House legislation, the House must either "concur" or "refuse to concur" in the amendments or substitute.

(b) (i) If the House concurs, the legislation shall be voted on for final passage in the House.

(ii) If the legislation passes, the chief clerk of the House shall notify the Senate, obtain the signatures required by JR4-6-101, and send the legislation to the Office of Legislative Research and General Counsel for enrolling.

(c) If the House refuses to concur in the Senate amendments or substitute to a piece of House legislation, the chief clerk of the House and the House shall follow the procedures and requirements of Joint Rules Title 3, Chapter 2, Part 9, Conference Committees.

(2) (a) If the House amends and passes, or substitutes and passes, a piece of Senate legislation, the Senate must either "concur" or "refuse to concur" in the amendments or substitute.

(b) (i) If the Senate concurs, the legislation shall be voted on for final passage in the Senate.

(ii) If the legislation passes, the secretary of the Senate shall notify the House, obtain the signatures required by JR4-6-101, and send the legislation to the Office of Legislative Research and General Counsel for enrolling.

(c) If the Senate refuses to concur in the House amendments or substitute to a piece of Senate legislation, the secretary of the Senate and the Senate shall follow the procedures and requirements of Joint Rules Title 3, Chapter 2, Part 9, Conference Committees.

Section 57. JR4-3-109 is enacted to read:

JR4-3-109. Striking the enacting clause.

(1) (a) (i) Either house may strike the enacting clause on any piece of legislation by following the procedures and requirements of Subsection (1)(a)(ii).

(ii) To strike an enacting clause, a legislator shall make a motion on the floor to strike the enacting clause and a majority of the members of that house must approve the motion.

(b) If the enacting clause of a piece of legislation is struck:

(i) the action conclusively defeats the legislation; and

(ii) a motion to reconsider the action is out of order.

(2) The enacting clause of each piece of legislation that has not passed the Legislature before adjournment sine die of an annual general session or a special session is automatically stricken.

Section 58 JR4-3-201 is repealed and reenacted to read:

Part 2. Transmitting and Recording Receipt of Legislation and Notices from Other House

JR4-3-201. Transmittal letters.

The secretary of the Senate or the chief clerk of the House shall:

(1) attach a transmittal letter signed by the secretary or clerk to each piece of legislation to be transmitted to the opposite house; and

(2) ensure that the piece of legislation, with its transmittal letter, is sent to the opposite house.

Section 59. JR4-3-202 is enacted to read:

JR4-3-202. Memorializing formal receipt of legislation from other house.

(1) (a) Upon receipt of a transmittal letter from the Senate, the chief clerk of the House or the clerk's designee shall sign a receipt recording the House's receipt of the legislation.

(b) Once the receipt is signed, the legislation is in the possession of the House.

(2) (a) Upon receipt of a transmittal letter from the House, the secretary of the Senate or the secretary's designee shall sign a receipt recording the Senate's receipt of the legislation.

(b) Once the receipt is signed, the legislation is in the possession of the Senate.

Section 60. JR4-3-203 is enacted to read:

JR4-3-203. Possession of a bill -- Process for obtaining the return of legislation sent to the other house.

(1) A piece of legislation is in the possession of the house in which it has been receipted.

(2) A piece of legislation in the possession of one house may be returned to the other house only when:

(a) the house having possession of the legislation receives a written request from the opposite house requesting return of the legislation; and

(b) a majority of the house having possession of the legislation votes to return the legislation to the opposite house.

Section 61. JR4-4-101 is repealed and reenacted to read:

CHAPTER 4. DEADLINES FOR PASSAGE OF CERTAIN BILLS

Part 1. Bills Containing Fiscal Notes

JR4-4-101. Deadline for passing certain fiscal note bills.

(1) (a) The House shall refer any Senate bill with a fiscal note of \$10,000 or more to the House Rules Committee before giving that bill a third reading.

(b) The Senate shall table on third reading each House bill with a fiscal note of \$10,000 or more.

(2) (a) Before adjourning on the 43rd day of the annual general session, each legislator shall prioritize fiscal note bills and identify other projects or programs for new or one-time funding according to the process established by leadership.

(b) Before adjourning on the 44th day of the annual general session, the Legislature shall either pass or defeat each bill with a fiscal note of \$10,000 or more except constitutional amendment resolutions.

Section 62. JR4-4-201 is repealed and reenacted to read:

Part 2. Appropriations Bills

JR4-4-201. Deadline for passing base budget bills.

(1) Each legislator shall receive a copy of each base budget bill for the next fiscal year by calendared floor time on the first day of the annual general session.

(2) By noon on the 16th day, but not before the third day, of the annual general session, the Legislature shall either pass or defeat each base budget bill.

Section 63. JR4-4-202 is repealed and reenacted to read:

JR4-4-202. Deadline for passing certain appropriations bills and school finance bills.

(1) Each legislator shall receive a copy of any general appropriations bills, any supplemental appropriations bills, and any school finance bills by calendared floor time on the 42nd day of the annual general session.

(2) Before the calendared closing time of the 43rd day of the annual general session, the Legislature shall either pass or defeat those general appropriations bills, supplemental appropriations bills, and school finance bills.

Section 64. JR4-4-203 is repealed and reenacted to read:

JR4-4-203. Deadline for passing the final appropriations bill.

(1) Each legislator shall receive a copy of the final appropriations bill by calendared floor time on the 45th day of the annual general session.

(2) By noon on the 45th day of the annual general session, the Legislature shall either pass or defeat the final appropriations bill.

Section 65. JR4-4-301 is enacted to read:

Part 3. Bond Bills

JR4-4-301. Deadline for passing bond bills.

(1) Each legislator shall receive a copy of any bond bill by noon on the 42nd day of the annual general session.

(2) Before the calendared closing time of the 43rd day of the annual general session, the Legislature shall either pass or defeat each bond bill.

Section 66. JR4-5-101 is repealed and reenacted to read:

CHAPTER 5. DISPOSITION OF LEGISLATION AFTER PASSAGE

Part 1. Certifying and Enrolling the Legislation

JR4-5-101. Certification and signature.

(1) (a) When a piece of Senate legislation has passed both houses, the secretary of the Senate shall certify its final passage by identifying:

- (i) the date that the legislation passed the Senate;
- (ii) the number of senators voting for and against the legislation;
- (iii) the number of senators absent for the vote;
- (iv) the date that the legislation passed the House;
- (v) the number of representatives voting for and against the legislation; and
- (vi) the number of representatives absent for the vote.

(b) When a piece of House legislation has passed both houses, the chief clerk of the House shall certify its final passage by identifying:

- (i) the date that the legislation passed the House;
- (ii) the number of representatives voting for and against the legislation;
- (iii) the number of representatives absent for the vote;
- (iv) the date that the legislation passed the Senate;
- (v) the number of senators voting for and against the legislation; and
- (vi) the number of senators absent for the vote.

(2) (a) Except as provided in Subsection (2)(b), within one legislative day of final passage, each piece of legislation shall be signed:

(i) first by the presiding officer of the house in which it was last voted upon; and

(ii) second by the presiding officer of the other house.

(b) Within five days following the adjournment sine die of a legislative session, each piece of legislation passed on the final day of that legislative session shall be signed:

(i) first by the presiding officer of the house in which it was last voted upon; and

(ii) second by the presiding officer of the other house.

(c) Unless the session has adjourned sine die, the secretary of the Senate or chief clerk of the House shall note in the journal that the legislation was signed by the presiding officer.

Section 67. JR4-5-102 is enacted to read:

JR4-5-102. Enrollment and transmittal of legislation to the governor.

(1) (a) After a piece of legislation that has passed both houses has been signed by the presiding officers, the secretary or chief clerk shall deliver it to the Office of Legislative Research and General Counsel.

(b) The Office of Legislative Research and General Counsel shall:

- (i) examine and enroll the legislation;
- (ii) correct any technical errors as provided by Utah Code Section 36-12-12; and
- (iii) transmit a copy of the enrolled legislation to:
 - (A) the secretary of the Senate for legislation originating in the Senate; and
 - (B) the chief clerk of the House for legislation originating in the House.

(2) When enrolling the legislation, the Office of Legislative Research and General Counsel shall:

(a) include the name of the House floor sponsor for Senate legislation under the heading "House Sponsor:."; or

(b) include the name of the Senate floor sponsor for House legislation under the heading "Senate Sponsor:."

(3) The secretary of the Senate or chief clerk of the House shall:

- (a) certify each enrolled piece of legislation; and
- (b) ensure that a copy of the enrolled legislation is:

- (i) transmitted to the governor;
- (ii) filed with the secretary or chief clerk;
- (iii) transmitted to the chief sponsor upon request; and
- (iv) transmitted to the Office of Legislative Printing.

Section 68. JR4-5-103 is enacted to read:

JR4-5-103. Legislative general counsel to correct certain technical errors.

The legislative general counsel may correct technical errors in the code in preparing the database for publication.

Section 69. JR4-5-201 is repealed and reenacted to read:

Part 2. Recalling Legislation After Passage

JR4-5-201. Recalling legislation before it is signed by the speaker and president.

Legislation in the possession of the other house or the Office of Legislative Research and General Counsel may be recalled by a motion and a constitutional majority vote from the members of both houses.

Section 70. JR4-5-202 is repealed and reenacted to read:

JR4-5-202. Recalling legislation from the governor.

When a bill has passed both houses of the Legislature, been signed by the presiding officers, been enrolled, and has been sent to the governor for his approval, it can be recalled only if:

(1) a joint resolution requesting that the governor return the legislation is passed by a constitutional majority vote of both houses; and

(2) the governor elects to return it.

Section 71.

Repealer.

This resolution repeals:

JR4-4-102, Reference of legislation.

JR4-4-103, Committee responsibilities.

JR4-4-104, Floor action.

JR4-4-105, Calendaring legislation -- Preference for legislation of other chamber.

JR4-4-106, Notice to other chamber that legislation has failed.

JR4-4-107, Legislation transmitted to other house.

JR4-4-108, Consideration and action on amendments to legislation made in the other chamber.

JR4-4-109, Striking the enacting clause.

JR4-5-301, Deadline for passing bond bills.

JR4-6-102, Enrollment and transmittal of legislation to the governor.

JR4-6-103, Legislative general counsel to correct certain technical errors.

Section 72. Revisor instructions.

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Legislative Rules database for publication, renumber rules and correct cross references as necessary.

H.J.R. 17

Passed March 9, 2017

Effective March 9, 2017

JOINT RESOLUTION TO RESTORE THE DIVISION OF GOVERNMENTAL RESPONSIBILITIES BETWEEN THE NATIONAL GOVERNMENT AND THE STATES

Chief Sponsor: Ken Ivory

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This joint resolution of the Legislature urges the President of the United States and Congress to recognize state authority and take action to restore power to the states.

Highlighted Provisions:

This resolution:

- ▶ calls upon the President of the United States to reenact President Ronald Reagan's Executive Order 12612 and to create a national commission on federalism;
- ▶ urges Congress to pass and adhere to the Enumerated Powers Act;
- ▶ urges Congress to pass the Regulations from the Executive in Need of Scrutiny Act;
- ▶ urges Congress to pass the Intergenerational Financial Obligations Reform Act;
- ▶ urges Congress to direct the Government Accountability Office to conduct an audit of federal programs, rules, regulations, and laws that have federalism implications;
- ▶ demands that all branches of the federal government refrain from any activity that limits the policymaking discretion of the states; and
- ▶ encourages other states to join with the state of Utah in documenting issues of federal overreach.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the genius of the United States of America lies in the liberty of our people to govern ourselves at the most local level, to solve our unique problems, to foster prosperity through our liberty, and to cultivate our unique endowment of human, capital, and natural resources;

WHEREAS, America's unique structure of government known as federalism, secures the local voice and liberty of the people through clear divisions of responsibility between state and federal governments, as explained in Federalist 51, "the power surrendered by the people is divided between two distinct governments" state and national;

WHEREAS, the Tenth Amendment of the United States Constitution establishes the overarching theory and structure of our constitutional form of government to protect the people's liberty by stating, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people";

WHEREAS, former Utah Governor Scott Matheson stated “Federalism is neither a partisan issue, nor is it an issue dividing liberals and conservatives. It’s a philosophical concept of how the federal governmental system operates, an effort to determine the proper role of state and federal governments”;

WHEREAS, James Madison, the primary author of the Constitution, described these clear and certain constitutional divisions of responsibility most plainly in Federalist 45, saying the powers delegated to the national government are “few and defined,” over primarily “external objects,” and clarified that the powers reserved to the states concern “the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State,” and are “numerous and indefinite” (Federalist 45);

WHEREAS, in Federalist 47, Madison warned the “accumulation of all powers, legislative, executive, and judiciary, in the same hands may justly be pronounced the very definition of tyranny,” and the power delegated through the executive branch to unelected, unaccountable federal bureaucrats who make, enforce, and adjudicate their own rules, as if they were laws, fits the definition of tyranny that Madison described;

WHEREAS, Chief Justice of the Supreme Court John Roberts stated “If no enumerated power authorizes Congress to pass a certain law, that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution” Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2577 (2012);

WHEREAS, absent a clear and certain division of responsibility between state and national governments, the structure of federalism is undermined and the resulting power vacuum is, by nature, filled by the government with the most accumulated power;

WHEREAS, throughout the 20th and 21st centuries, regulations, laws, executive orders, and court rulings emanating from the federal government have proliferated, and have been met by agreement, acquiescence, or inaction of the states, which has blurred the divisions of responsibility between the federal government and the states, resulting in a power vacuum that has further distorted the constitutional divisions, separations, and limits on the “few and defined” powers constitutionally delegated to the national government;

WHEREAS, James Madison wisely noted, “There are more instances of the abridgement of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations”;

WHEREAS, the assumption of power that was never delegated to the federal government under the Constitution undermines the constitutional architecture of federalism instituted to “secure to citizens the liberties that derive from the diffusion

of sovereign power” Bond v. United States, 564 U.S. 211, 221 (2011);

WHEREAS, “The structure of our government is central to liberty, and when we destroy it, we place liberty at peril” Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2676-77 (2012) (Scalia, Thomas, Kennedy, and Alito dissenting);

WHEREAS, any activity that undermines the core federalism structure of our government also erodes the voice and liberty of the people in determining the destiny, opportunity, creativity, and dynamism of their own lives and their unique communities and states to the detriment of the nation as a whole;

WHEREAS, on October 26, 1987, President Ronald Reagan signed Executive Order 12612 on federalism “to restore the division of governmental responsibilities between the national government and the States that was intended by the framers of the Constitution and to ensure that the principles of federalism established by the framers guide the executive departments and agencies in the formulation and implementation of policies”;

WHEREAS, President Donald J. Trump declared in his 2017 Inaugural Address, we are not merely transferring power from one administration to another, or from one party to another but we are transferring power from Washington, D.C., and giving it back to you, the American People”;

WHEREAS, Rep. Jason Chaffetz, Chairman of the House Committee on Oversight and Government Reform, has reached out to state legislatures around the country to document their experiences with federal overreach and unfunded mandates with a view to restoring power to the states and to the people;

WHEREAS, in 2013, the Utah Legislature established the Utah Commission on Federalism (the Commission) to: assess overreaching federal actions; respond to actions through a measured dispute resolution process; coordinate with Utah’s congressional delegation and with other states; and report actions and results to the Legislature;

WHEREAS, at the request of Utah Senate President Wayne Niederhauser and Utah Speaker of the House of Representatives Greg Hughes, the Commission convened public hearings throughout the 2017 legislative session to receive reports from the various Senate and House standing and appropriation committee chairs, state officials, staff, and members of the public concerning federal actions that constitute examples of federal overreach, erode the structural guarantees of federalism, or restrain the right and liberty of our people to govern ourselves;

WHEREAS, the Commission received the following summary of federal overreach:

EDUCATION

- Recognize that education is not a power delegated to the federal government under the Constitution, it is reserved to the states;

- Abolish the United States Department of Education and block grant administration costs and federal appropriations to the state;
- Repeal the mandates of the Elementary and Secondary Education Act; and
- Relax the overly expansive interpretation of federal regulations, which increase costs and adversely affects education at all levels;

PUBLIC LANDS AND NATURAL RESOURCES

- Recognize and abide by the comprehensive federal study and 1962 General Services Administration Inventory Report on Jurisdictional Status of Federal areas within the States that concluded that the national government has no jurisdiction but merely a proprietorial interest over the vast majority of public lands within Utah;
- Repay to the state the nearly \$1 million appropriated by the Utah Legislature in 2013 to reopen the national parks, and forever refrain from closing or withdrawing public lands, without the consent of the Legislature.
- Relinquish control over public lands within the state of Utah consistent with the equal sovereignty and equal footing enjoyed by all other states;
- Acquire no new land within the state without the express consent of a state legislature (United States Constitution, Article I, Section 8, Cl. 17);
- Amend the Antiquities Act, 54 U.S.C. Sec. 320301, to require consent of a state legislature for any national monument designation;
- Recognize, restore, and respect state jurisdiction over free-roaming horses and burros, livestock management, wildlife, and wildlife management within the state, and provide state control over the use of federal funds for these purposes;
- Perform and finalize the maintenance backlog in the national parks, national monuments, national forests, congressionally designated wilderness areas, and congressionally designated wilderness study areas;
- Mitigate catastrophic fire risk on national forests and rangelands.
- Reinstate land use plans, policies, and practices that require public land management for multiple use and sustained yield consistent with local resource management plans.
- Restrict the Secretary of the Interior's broad discretion over coal, mineral, oil, and gas reservations, deferrals, and moratoriums;
- Revoke the United States Fish and Wildlife Service sage-grouse land use plans in favor of Utah's sage-grouse management plan that maintains or increases the animal's population within the state;
- Authorize and conduct a full Government Accountability Office audit of all legal fee awards

under the Equal Access to Justice Act and revise the act to require full disclosure and transparency, as was sought in the Open Book on Equal Access to Justice Act, which would require an annual report to Congress from the Chairman of the Administrative Conference of the United States, would describe the number, nature, and amount of the awards and the claims involved, and would be made available to the public;

- Authorize and conduct a full Government Accountability Office audit of the "sue and settle" court decisions that established new management criteria for public lands, and overrule all decisions lacking express ratification by Congress;
- End the federal prosecution of the Revised Statute 2477 road litigation and recognize state and county authority of Revised Statute 2477 roads over public lands as established since 1866 and reaffirmed in the Federal Land Policy and Management Act of 1976; and
- Repeal Bureau of Land Management Planning 2.0 rule, which shifts most public land use and planning decisions to Washington, D.C., and away from local officials and managers on the ground;

HEALTH AND HUMAN SERVICES

- Recognize, restore, and respect the jurisdiction of the state over "the conduct of public utilities, of banks, of insurance, of business, of agriculture, of education, of social welfare," which "have not been surrendered to the national government by the Constitution, or its amendments" Gov. Franklin D. Roosevelt, On State's Rights and Constitutional Authority, March 2, 1930;
- Restore, where possible, through federal health care reform, state regulatory control over the payment and delivery of health care;
- Reform Medicaid to (1) a block grant program, (2) eliminate the need for upfront federal approval of state innovations that could lead to better health outcomes and improved system performance, and (3) simplify and accelerate the approval process and expand the ability of states to tailor Medicaid benefits and eligibility;
- Revise Medicaid federal participation rate formulas that are biased against states with high performing, low-cost health care systems. Rates should reflect the health care needs of states with diverse populations;
- Remove rules, regulations, or laws that deter states from developing and using health claims data for health care cost and quality improvement initiatives;
- Eliminate unnecessary barriers to telemedicine and other health care reforms, while retaining adequate privacy safeguards for patients and providers by aligning health care information sharing restrictions under 42 C.F.R. with the Health Insurance Portability and Accountability Act of 1996;
- Eliminate rules, regulations, and laws that prohibit states from engaging in credible,

institution-based research on the medical use of cannabis and other Schedule I drugs;

- Restore state powers so that states can address the opioid addiction crisis within their borders, including the revision of U.S. Department of Health and Human Services regulations that prohibit certified outpatient opioid treatment programs from reporting methadone, suboxone, or buprenorphine use to state-run prescription drug monitoring programs; and

- Reform the federal financing of child welfare;

TRANSPORTATION

- Recognize, restore, and respect state and local authority over transportation matters that are not national in scope and provide state control over the use of federal funds for those purposes;

- Consolidate funding categories and block grant federal highway funding to the states;

- Expand nationwide waivers to Buy America requirements for certain commercially available off-the-shelf items;

- Rescind duplicative and overly burdensome rules and regulations, such as:

- guidance issued by the Federal Highway Administration that prohibits issuance of a Record of Decision under the National Environmental Policy Act (NEPA) until the project sponsor has fully identified project funding; and

- current rules for performance measures regarding greenhouse gas emissions to establish certain national performance management measures;

- Restore regulatory authority to “grandfather” highway and transit projects that previously demonstrated air conformity;

- Amend Sec. 319 of the Clean Air Act, 42 U.S.C. Sec. 7619(b), to include “stagnation of air masses or meteorological inversions” as an exceptional event for air quality monitoring purposes; and

- Require the Federal Transit Administration, the Federal Highway Administration, and the Federal Aviation Administration to develop the “one NEPA” platform;

LOCAL GOVERNMENT

- Recognize, restore, and respect the jurisdiction of the state over “the conduct of public utilities, of banks, of insurance, of business, of agriculture, of education, of social welfare,” which “have not been surrendered to the national government by the Constitution, or its amendments” Gov. Franklin D. Roosevelt, On State’s Rights and Constitutional Authority, March 2, 1930;

- Respect state authority to administer programs in the most cost-effective manner (e.g., eliminate the Davis-Bacon Act, eliminate the Disadvantaged Business Enterprise, and restore state control over storm water and waste water management, etc.);

- Recognize and respect local zoning and planning authorities and refrain from interfering with local government flexibility to address the housing needs of individuals within their communities;

- Review and restrain federal agencies from interfering in areas of traditional state jurisdiction, such as elections (e.g., the Elections Assistance Commission, originally established to assist states to comply with the Help America Vote Act, should not become a regulatory body in the area of elections); and

- Refrain from coercing state policy through the threat of withholding federal funds.

LAW ENFORCEMENT

- Recognize that the general power of governing, or the “police power,” is “possessed by the States but not by the Federal Government” see, e.g., Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2578 (2012); United States v. Morrison, 529 U.S. 598, 619 (2000);

- Recognize and abide by state jurisdiction related to road closures, patrols, and search and rescue operations and other enforcement activities not specifically under federal jurisdiction;

- Recognize and abide by the sheriff’s authority as the chief law enforcement officer in a county;

- Recognize and abide by the Utah Division of Wildlife Resources’ scope of authority on wildlife and hunting enforcement and protection of various game animals, fowl, or fish;

- Clarify the state versus the federal share of assets resulting from a federal asset seizure within the state;

- Reduce and consolidate federal law enforcement agencies to become more comparable and compatible with state law enforcement agencies;

- Pass and sign the Regulatory Agency Demilitarization Act, which stems the trend of federal regulatory agencies developing SWAT-like teams; and

- Prohibit executive activities that pursue “bulk collection” surveillance of American citizens;

REVENUE AND TAXATION

- Recognize that nonuniform federal tax policy threatens the structure of federalism.

- Enact legislation to solve the remote sales tax issue;

- Maintain the tax-exempt status of municipal bonds;

- Eliminate restrictions that prevent state legislatures from governing the sharing of state income tax return data;

- Fully fund federal mandates or release states from compliance with the federal mandates;

- Recognize all unreported liabilities in the federal financial statements and formally include all obligations in national debt computations;

WHEREAS, the increasing use of federal administrative action and laws consolidated absolute power of the federal government in a manner that the United States Constitution was designed to prevent; and

WHEREAS, the Commission engaged Utah Valley University's Center for Constitutional Studies to produce a federalism curriculum presented by a national assembly of constitutional experts, including George Washington School of Law Professor Jonathan Turley who warned of the consequences of federal overreach: "People have become reliant on the federal government. The result is that federalism seems like a quaint concept. What's dangerous about that is it's a protection of individual liberty. The degree to which people become passive about the increasing power of the federal government, they can watch the greatest protection of their individual liberty simply dissipate".

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah echoes the warning of Justice Anthony Kennedy that the increasing assumption and centralization of power to the national government is destroying the federalism structure of our government and placing the liberty of our people "at peril."

BE IT FURTHER RESOLVED that the Legislature of the state of Utah calls on President Donald J. Trump to reenact Executive Order 12612 with additional provisions sufficient to ensure and enforce compliance with the order.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah calls upon President Donald J. Trump to create a national commission on federalism, comprised of representatives of the 50 states (chosen by the state legislatures) and representatives of the federal government.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges Congress to pass and strictly adhere to the Enumerated Powers Act, which would require any bill introduced in Congress to specify the constitutional authority under which the bill would be enacted.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges Congress to direct the Government Accountability Office to conduct an audit of federal programs, rules, regulations, and laws that have federalism implications as provided in Executive Order 12612.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah calls upon Congress to pass, and the President to sign, the Regulations from the Executive in Need of Scrutiny Act, as the first step to restrict administrative agencies from exercising the Article I powers of Congress and the Article III powers of the Judiciary.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah recognizes that the increasing federal debt and unfunded obligations directly imperil the states and our citizens and urges Congress to pass the Intergenerational Financial Obligations Reform Act, which would

require the federal government to conduct fiscal gap accounting and generational accounting on an annual basis.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah demands that all branches of the federal government refrain from any action that limits the policymaking discretion of the states without clear and express constitutional authority for the action, and that any such action by the federal government must be necessitated by the presence of a problem of national scope, as provided in Executive Order 12612.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah invites and encourages the legislatures of all other states to join with the Utah Legislature to document the issues of federal overreach, to demand that actions be taken by the federal government to restore the divisions and limits of federal power, and to restore the vibrancy of American federalism for the protection of our people's liberty.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah recognizes that the restoration of our federalism structure will require extensive cooperation among the 50 states and with our federal counterparts, and calls upon all state and national government leaders to engage toward achieving a new nationwide consensus for decentralizing governmental power in the United States.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah views a restoration of American federalism and decentralization of power and authority from the federal government to states, local communities, neighborhoods, families, and individual citizens, beginning with the actions enumerated in this resolution, as essential to the structural protection of the liberties of our people.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the governor of each state outside of Utah, the Senate President or President Pro Tempore and the Speaker of the House as of March 1, 2017, of each state legislature outside of Utah, and to the members of Utah's congressional delegation.

H.R. 2

Passed February 27, 2017

Effective February 27, 2017

RESOLUTION MODIFYING HOUSE RULES

Chief Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This rules resolution modifies House rules.

Highlighted Provisions:

This resolution:

- ▶ simplifies language in the constitutional resolution related to the beginning of House sessions;
- ▶ modifies duties of the chief clerk of the House;
- ▶ removes a restriction on a representative's leaving the chamber during a vote;
- ▶ consolidates and modifies definitions for clarity;
- ▶ clarifies provisions that prohibit lobbying on the House floor;
- ▶ permits the House Rules Committee to review any type of legislation as a standing or interim committee;
- ▶ requires, with certain exceptions, legislation to have a favorable recommendation from a committee before the House Rules Committee may place the legislation directly on the third reading calendar;
- ▶ modifies rules on verbal amendments;
- ▶ modifies rules on the release of held legislation;
- ▶ modifies provisions relating to notifications relating to the consent calendar;
- ▶ prohibits certain actions during voting;
- ▶ prohibits reference to committee actions during floor debate, with exceptions; and
- ▶ modifies procedures relating to approved activities.

Special Clauses:

None

Legislative Rules Affected:

AMENDS:

- HR1-1-102
- HR1-4-102
- HR2-2-105
- HR2-4-101
- HR2-4-101.2
- HR2-4-101.3
- HR2-4-101.4
- HR2-4-102
- HR2-4-103
- HR3-1-101
- HR3-1-102
- HR3-1-103
- HR3-2-406
- HR4-3-301
- HR4-4-202
- HR4-4-301
- HR4-7-103
- HR5-4-101

ENACTS:

- HR4-6-105.5

Be it resolved by the House of Representatives of the state of Utah:

Section 1. HR1-1-102 is amended to read:

HR1-1-102. Constitutional motion.

At the beginning of each session of the House, before the reading of any piece of legislation, the House Rules Committee chair shall make the following motion:

“Mr. (Madam) Speaker, as allowed by the Utah Constitution [~~and the Joint Rules of the Legislature~~], I move that the House [~~continue its practice of reading~~] read only the short title of bills and resolutions as they are introduced or

considered [~~on a House calendar and not read the long title of the bills and resolutions~~] unless [~~a majority~~] two-thirds of the House directs the reading of the long title, short title, or both [~~of any House or Senate bill or resolution~~].”

Section 2. HR1-4-102 is amended to read:

HR1-4-102. Duties of the chief clerk.

The general duties of the chief clerk are to:

- (1) act as chief administrative officer of the House, subject to direction by the speaker of the House;
- (2) certify and transmit legislation to the Senate and inform the Senate of all House action;
- (3) assist in the preparation of the House Journal and certify it as an accurate reflection of House action;
- (4) make the following technical corrections to legislation either before or following final passage:
 - (a) correct the spelling of words;
 - (b) correct the erroneous division and hyphenation of words;
 - (c) correct mistakes in numbering sections and their references;
 - (d) capitalize words or change capitalized words to lower case;
 - (e) change numbers from words to figures or from figures to words; and
 - (f) underscore or remove underscoring in legislation without a motion to amend;
- (5) modify the long title of a piece of legislation to ensure that the long title accurately reflects any changes to the legislation made by amendment or substitute;
- (6) supervise all House of Representatives' non-partisan personnel during a session and assign them duties and responsibilities;
- (7) keep a record of the attendance of each in-session employee and ensure that each in-session employee is paid only for hours worked;
- (8) be the custodian of all official documents;
- (9) receive all numbered legislation from the Office of Legislative Research and General Counsel;
- (10) record the number, title, sponsor, each action, and final disposition of each piece of legislation on the legislation;
- (11) prepare and distribute the daily order of business each day;
- (12) advise the speaker on parliamentary procedure, constitutional requirements, and Joint and House Rules;
- (13) assist with amendments to legislation;
- (14) record votes and, if requested, present the results to the speaker;
- (15) transmit all enrolled House bills and House concurrent resolutions to the governor;

(16) approve material for placement on the representatives' desks if a representative has authorized that distribution;

(17) maintain all calendars for the House floor; and

(18) record the votes of any member who is present in the House chamber who requests assistance of the chief clerk.

Section 3. HR2-2-105 is amended to read:

HR2-2-105. Movement within the House chamber.

~~[(1) When the speaker or presiding officer is presenting a question, a representative may not leave the House chamber.]~~

[(2)] When a representative is speaking, no person may walk between the representative and the speaker or presiding officer.

Section 4. HR2-4-101 is amended to read:

HR2-4-101. Definitions.

As used in this chapter:

(1) "Former legislator" means a person who is not a current member of the Legislature, but who served in the Utah House or Utah Senate at one time.

(2) "Governor's staff" means:

(a) a person employed directly by the Office of the Governor or the Office of the Lieutenant Governor; and

(b) the director of the Office of Planning and Budget.

(3) (a) "Guest" means an individual who ~~[(a)]~~ is afforded access to the House space under a provision of this chapter ~~[- and], who is not an individual described in Subsection (3)(b) or a special guest as described under HR2-4-101.2(5).~~

(b) ~~[is not a]~~ "Guest" does not mean a legislator, a ~~[legislative employee]~~ member of House or Senate staff, a member of professional legislative staff, a House intern, a lobbyist, the governor, the lieutenant governor, the state attorney general, the state treasurer, or the state auditor.

(4) "House conference rooms" means one of the conference rooms adjacent to the House lounge, speaker's office, or the majority caucus room.

(5) "House halls" means the passageways that allow access to:

(a) the House chamber;

(b) the House lounge;

(c) the House offices; or

(d) any other nonpublic areas adjoining the House chamber.

(6) "House intern" means an individual who is:

(a) an official participant in the student intern program sponsored by the Utah Legislature and

administered by the Office of Legislative Research and General Counsel; and

(b) is assigned to a representative.

(7) "House offices" means:

(a) Representatives' offices adjacent to the House chamber;

(b) Representatives' offices on the third and fourth floors of the capitol building;

(c) Representatives' offices in the House building; and

(d) kitchens, restrooms, elevators, and any auxiliary rooms in the nonpublic areas connected with the offices listed above.

(8) "House or Senate staff" means an individual who is employed directly by the House or Senate.

~~[(8)]~~ (9) (a) "House space" means the House chamber, House lounge, House offices, House halls, and House conference rooms.

(b) "House space" does not mean the common public space outside the House chamber.

~~[(9)]~~ (10) "Immediate family" means any parent, spouse, child, grandparent, grandchild, great-grandparent, great-grandchild, sibling, aunt, uncle, niece, or nephew of a member of the House, provided that the individual is not a lobbyist.

~~[(10) "Legislative employee" means an individual who is employed directly by the House or Senate.]~~

(11) "Lobbying" means communicating with a legislator for the purpose of influencing the passage, defeat, amendment, or postponement of legislative action.

~~[(11) (a)]~~ (12) "Lobbyist" means ~~[either: (i)]~~ an individual who is required to register as a lobbyist by Utah Code Section 36-11-103 ~~[- or]~~.

~~[(ii) an individual who is seeking to influence any legislator to vote for or vote against any legislation.]~~

~~[(b) "Lobbyist" does not mean a legislator, the governor, the lieutenant governor, the state attorney general, the state treasurer, or the state auditor.]~~

~~[(12)]~~ (13) "Professional legislative staff" means an individual employed by one of the Legislature's profession-based staff offices, namely the Office of Legislative Research and General Counsel, the Office of the Legislative ~~[the]~~ Fiscal Analyst, the Office of the Legislative Auditor General, or the Office of Legislative Printing.

Section 5. HR2-4-101.2 is amended to read:

HR2-4-101.2. Admittance to House floor -- Prohibition against lobbying -- Rules for lobbyists on House floor.

(1) While the House is convened in annual general session or special session, the following individuals are permitted on the House floor:

(a) a legislator;

- ~~[(b)]~~ a legislative employee;]
- (b) a member of House or Senate staff;
- (c) a member of professional legislative staff;
- (d) a House intern;
- (e) a former legislator who is not a lobbyist; and
- (f) the governor, lieutenant governor, state attorney general, state treasurer, and state auditor.

(2) (a) While the House is convened in annual general session or special session, a representative may invite one of the following individuals as a guest to accompany the representative on the House floor:

- (i) a member of the representative's immediate family;
 - (ii) an administrative assistant other than a House intern; or
 - (iii) a constituent who resides in the member's district.
- (b) A representative may have no more than one guest on the House floor at any one time.

(c) A representative who invites a guest onto the House floor shall:

- (i) if the guest is not seated next to the representative as permitted under HR2-4-102, ensure that the guest sits on a bench on the House floor, provided that seating is available; and
- (ii) ensure that the guest stays only for a short visit not to exceed one hour.

(3) A lobbyist, a guest, or an individual described in Subsection (1)(e), Subsection (1)(f), or Subsection (2) is prohibited from lobbying on the House floor.

~~[(3)]~~ (4) (a) Except as provided in this Subsection [(3)] (4), a lobbyist is not permitted on the [floor of the] House floor.

(b) A representative sponsoring a piece of legislation being debated by the House may invite one lobbyist with expertise on the legislation being considered to be present on the House floor during the presentation and debate on the legislation, if:

- (i) the representative informs the sergeant-at-arms that the lobbyist is present on the House floor;
- (ii) the representative ensures that the lobbyist is seated on a bench on the House floor during the presentation and debate on the legislation;
- (iii) the representative ensures that the lobbyist does not ~~[lobby]~~ engage in lobbying on the House floor; and
- (iv) the lobbyist leaves the House floor when the House moves to another item of business.

(c) If the representative sponsoring the legislation needs the assistance of the lobbyist during the course of debate on the legislation, the representative may request permission of the

speaker to have the lobbyist approach the representative sponsoring the legislation to provide the needed information to the representative.

~~[(4)]~~ (5) The speaker or the speaker's designee may authorize special guests to be present in the House chamber or on the House floor.

~~[(5)]~~ (6) A representative who is visited by two or more guests shall arrange with the sergeant-at-arms for the guests to be seated in the House gallery.

Section 6. HR2-4-101.3 is amended to read:

HR2-4-101.3. Admittance to the House lounge.

(1) While the House is convened in annual general session or special session only the following individuals are permitted in the House lounge:

- (a) a legislator;
- ~~[(b)]~~ a legislative employee;]
- (b) a member of House or Senate staff;
- (c) a member of professional legislative staff;
- (d) a member of the representative's immediate family;
- (e) a House intern;
- (f) a former legislator who is not a lobbyist;
- (g) the governor, the lieutenant governor, the state attorney general, the state treasurer, and the state auditor;

(h) the governor's staff, or a staff member for the attorney general, the state treasurer, or the state auditor; and

(i) a lobbyist or guest as provided in Subsection (2).

(2) (a) A representative may invite a small number of lobbyists or guests to meet with the representative in the House lounge for the purpose of educating the lobbyists or guests about the legislative process or to discuss specific legislative issues.

(b) The representative shall ensure that the lobbyists and guests leave the House space when the meeting is over.

Section 7. HR2-4-101.4 is amended to read:

HR2-4-101.4. Admittance to the House offices, conference rooms, and halls.

(1) While the House is convened in annual general session or special session only the following individuals are permitted in the House offices:

- (a) a legislator;
- ~~[(b)]~~ a legislative employee;]
- (b) a member of House or Senate staff;
- (c) a member of professional legislative staff;
- (d) a House intern;

(e) a member of the representative's immediate family;

(f) a former legislator who is not a lobbyist; and

(g) a lobbyist or guest, as provided in Subsection (3).

(2) An administrative assistant who is not a House intern is permitted in:

(a) the office of the representative who is employing the administrative assistant;

(b) the common areas of the House offices;

(c) a conference room in the House space, when meeting to discuss legislative business with a representative; and

(d) the office of another representative with the consent of that representative.

(3) (a) A representative may invite a small number of lobbyists or guests to meet with the representative in the representative's House office or a House conference room to discuss specific legislative issues.

(b) The representative shall ensure that the lobbyists and guests leave the House space when the meeting is over.

(4) (a) While the House is convened as a body on the House floor, and except as provided in Subsection (4)(b), only the following individuals are allowed in the House halls:

(i) a legislator;

~~(ii) a legislative employee;~~

(ii) a member of House or Senate staff;

(iii) a member of professional legislative staff;

(iv) a House intern;

(v) an administrative assistant who is not a House intern;

(vi) a former legislator who is not a lobbyist; and

(vii) the governor, lieutenant governor, state attorney general, state treasurer, and state auditor.

(b) Immediate family of a representative, a lobbyist, a guest, an administrative assistant who is not a House intern, or any other authorized individual who is in transit to the House chamber, House lounge, or House offices may pass through the House halls when traveling to and from an authorized destination.

(5) An administrative assistant to a representative who is not a House intern is not permitted to use or be issued an access badge that grants access to the House floor, House lounge, House offices, House conference rooms, or House hallways.

Section 8. HR2-4-102 is amended to read:

HR2-4-102. Representatives' chairs and seating on the House floor.

(1) When the House is convened in session, no one other than the speaker or a representative may occupy the chair or use the desk of the speaker or any representative.

(2) A representative may invite one individual to sit next to the representative on the House floor, if the representative complies with the requirements of HR2-4-101.2 and the invited individual is:

(a) another legislator;

~~(b) a legislative employee;~~

(b) a member of House or Senate staff;

(c) a member of professional legislative staff;

(d) a House intern;

(e) a member of the representative's immediate family;

(f) a constituent who resides in the representative's district; or

(g) a special guest who is authorized to access the House floor under HR2-4-101.2~~(4)~~(5).

Section 9. HR3-1-101 is amended to read:

HR3-1-101. House Rules Committee -- Appointment -- General responsibilities.

(1) The speaker shall appoint members of the House of Representatives to serve on the House Rules Committee.

(2) The House Rules Committee shall perform the following functions as further elaborated in this part:

(a) receive introduced legislation from the House and recommend that the legislation be assigned to a House standing committee or to the House third reading calendar;

(b) receive legislation from the House that has been sent back to the House Rules Committee from the third reading calendar, and recommend to the House which legislation should be assigned to the third reading calendar and the order in which it should be heard; and

(c) function as a standing committee or interim committee when reviewing Joint Rules, Interim Rules, ~~and~~ House Rules, or other legislation.

Section 10. HR3-1-102 is amended to read:

HR3-1-102. House Rules Committee -- Assignment duties.

(1) The presiding officer shall submit all legislation introduced in the House of Representatives to the House Rules Committee.

(2) For all legislation not specified in HR3-1-103 that is referred to the House Rules Committee, the committee shall:

(a) examine the legislation for proper form, including fiscal note and interim committee note, if any; and

(b) either:

(i) refer legislation to the House with a recommendation:

(A) that the legislation be referred to a standing committee for consideration; or

(B) that the legislation be read the second time and placed on the third reading calendar~~[-; or]~~ if the legislation has received a favorable recommendation from:

(I) a House standing committee, except for those bills exempted from standing committee review requirements under HR3-2-401; or

(II) the House Rules Committee meeting as a standing committee as permitted under HR3-1-101; or

(ii) hold the legislation.

(c) If the chair of the House Rules Committee receives a summary report from the Occupational and Professional Licensure Review Committee related to newly regulating an occupation or profession within the two calendar years immediately preceding the session in which a piece of legislation is introduced related to the regulation by the Division of Occupational and Professional Licensing of that occupation or profession:

(i) the chair of the House Rules Committee shall ensure that the House Rules Committee is informed of the summary report before the House Rules Committee takes action on the legislation; and

(ii) if the House Rules Committee refers the legislation to the House as provided for in Subsection (2)(b)(i):

(A) the Office of Legislative Research and General Counsel shall make the summary report reasonably available to the public and to legislators; and

(B) if the legislation is referred to a standing committee, the House Rules Committee shall forward the summary report to the standing committee.

(3) In carrying out its functions and responsibilities under this rule, the House Rules Committee may not:

(a) table legislation without the written consent of the sponsor;

(b) report out any legislation that has been tabled by a standing committee;

(c) amend legislation without the written consent of the sponsor; or

(d) substitute legislation without the written consent of the sponsor.

(4) The House Rules Committee may recommend a time certain for floor consideration of any legislation when it is reported out of the House Rules Committee, or at any other time.

(5) When the committee is carrying out its functions and responsibilities under this rule, the committee shall:

(a) during a legislative session, give notice of its meetings by either:

(i) providing oral notice from the House floor of the time and place of its next meeting; or

(ii) when oral notice is impractical, post written notice of its next meeting;

(b) when the Legislature is not in session, post a notice of meeting at least 24 hours before the meeting convenes;

(c) have as its agenda all legislation in its possession for assignment to committee or to the House calendars; and

(d) prepare minutes that include a record, by individual representative, of votes taken.

(6) Anyone may attend a meeting of the rules committee, but comments and discussion are limited to members of the committee and the committee's staff.

Section 11. HR3-1-103 is amended to read:

HR3-1-103. House Rules Committee -- Standing and interim committee duties.

(1) The House Rules Committee has all the powers, functions, and duties of a standing committee or interim committee when it~~[- (a) prepares the House Rules, Interim Rules, and Joint Rules and presents them to the House before adjournment on the second day of each annual general session; or (b) reviews all]~~ reviews proposed House Rules, Interim Rules, ~~[or]~~ Joint Rules resolutions, or other legislation.

(2) Any rules resolutions or legislation reviewed and approved by the House Rules Committee may be reported directly to the House for its approval, amendment, or disapproval.

(3) When meeting as a standing committee or interim committee under this rule, persons other than committee members may address the committee at the discretion of the chair.

(4) When meeting as a standing committee or interim committee under this rule, the House Rules Committee shall comply with the provisions of Utah Code Title 52, Chapter 4, Open and Public Meetings Act.

Section 12. HR3-2-406 is amended to read:

HR3-2-406. Amending legislation -- Verbal amendments -- Amendments must be germane.

(1) (a) Except as provided in Subsection (2), and if recognized by the chair during the committee action phase, a committee member may make a motion to amend the legislation that is under consideration.

(b) (i) A committee member may propose a verbal amendment to the legislation under consideration if the amendment contains ~~[25]~~ 15 or fewer words.

(ii) Before proposing a motion to amend, a committee member shall ensure that a proposed amendment that contains more than ~~[25]~~ 15 words is printed and distributed to committee staff and to all committee members present.

(iii) Each word inserted shall count as one of the 15 words permitted under a verbal amendment, except that:

(A) numbering shall not be counted as a word;

(B) instructions to delete a word or words shall not count as a word; and

(C) a word or an exact phrase that is inserted in multiple locations shall only be counted for the first insertion.

(2) (a) A committee member may only make a motion to amend that is germane to the subject of the legislation under consideration.

(b) A committee member who believes that an amendment is not germane to the subject of the legislation may make a point of order or appeal as described in HR3-2-506.

Section 13. HR4-3-301 is amended to read:

HR4-3-301. Amendments in order on third reading -- 15 word rule -- Passage of amendments by a majority vote.

(1) A motion to amend a piece of legislation is in order on third reading.

(2) (a) A representative may verbally propose an amendment to legislation if the amendment contains 15 words or less.

(b) A representative shall ensure that a proposed amendment containing more than 15 words is printed on pink paper and available to the chief clerk and each representative present before the motion to amend is made.

(c) Each word inserted shall count as one of the 15 words permitted under a verbal amendment, except that:

(i) numbering shall not be counted as a word;

(ii) instructions to delete a word or words shall not count as a word; and

(iii) a word or an exact phrase that is inserted in multiple locations shall only be counted for the first insertion.

(3) A constitutional amendment, resolution, or bill requiring a constitutional two-thirds vote for final passage, may be amended by a majority vote.

(4) When legislation is amended by the House, the chief clerk shall:

(a) for each page of the legislation modified by a House amendment, cause a new page to be printed that clearly identifies each House amendment to that page; and

(b) print that new page on lilac-colored paper.

Section 14. HR4-4-202 is amended to read:

HR4-4-202. Disposition of legislation voted on third reading.

(1) Except as provided in Subsection (2), the chief clerk or the chief clerk's designee shall:

(a) for a piece of House legislation passed by the House on third reading but not yet acted upon by the Senate, transmit the House legislation to the Senate for its further action;

(b) for a piece of House legislation that fails to pass the House on third reading, file the legislation;

(c) for a piece of House legislation that has passed both houses, follow the procedures and requirements of JR4-6-101(1)(b);

(d) for a piece of Senate legislation passed by the House on third reading and not amended or substituted in the House, transmit the Senate legislation to the presiding officer of the House for the presiding officer's signature and return the legislation to the Senate for the signature of the president of the Senate;

(e) for a piece of Senate legislation passed by the House on third reading that was amended or substituted in the House, transmit the legislation to the Senate with the amendments or substitute for further action by the Senate; and

(f) for a piece of Senate legislation that fails to pass the House on third reading, transmit the legislation to the Senate with notice of the House's action.

(2) (a) The chief clerk shall ensure that the House retains possession of a piece of legislation for no more than one legislative day when:

(i) a representative gives notice of intention to move for reconsideration to the chief clerk;

(ii) a representative requests that the chief clerk hold the legislation; or

(iii) the House passes a motion to retain possession of the legislation.

(b) When a representative moves for reconsideration or requests a hold under Subsection (2)(a)(i) or (2)(a)(ii), the chief clerk shall give notice of the action to the speaker and to the sponsor of the legislation.

(c) Notwithstanding the requirements of Subsection (2)(a), a piece of legislation may be released earlier than 24 hours if the [~~House is given prior public notice of the release~~] hold is released.

Section 15. HR2-4-103 is amended to read:

HR2-4-103. Prohibitions on lobbying and fundraising.

(1) As used in this section[~~:(a)~~], "fundraising" means:

[~~(i)~~] (a) the solicitation of a monetary contribution for any purpose; or

[~~(ii)~~] (b) the announcement or promotion of an event that has as one of its purposes the collection of funds by means of a monetary contribution.

[~~(b) "Lobbying" is as defined in Utah Code Section 36-11-102.~~]

(2) Lobbying is [~~not permitted in the House chamber~~] prohibited on the House floor as provided under HR2-4-101.2.

(3) (a) Distribution of literature or any other information that announces or promotes fundraising is ~~not permitted~~ prohibited on the House floor.

(b) Notwithstanding Subsection (3)(a), a verbal announcement that involves or relates to fundraising is permitted on the House floor if the announcement is:

(i) publicly made to all members on the House floor; and

(ii) an official announcement from the third house or authorized by the speaker of the House.

Section 16. HR4-4-301 is amended to read:

HR4-4-301. Consent calendar.

(1) If a standing committee report recommends that a piece of legislation be placed on the consent calendar and the standing committee report is adopted by the House, the chief clerk or the chief clerk's designee shall place the legislation on the consent calendar.

~~[(2) (a) Whenever the consent calendar contains legislation, the presiding officer shall inform the House each day that:]~~

~~[(i) there are items on the consent calendar; and]~~

~~[(ii) if any representative objects to a piece of legislation on the consent calendar, that representative should inform the chief clerk.]~~

~~[(b)] (2) If the chief clerk receives written objections to a piece of legislation from six or more representatives, the chief clerk shall:~~

~~[(i)] (a) remove the legislation from the consent calendar;~~

~~[(ii)] (b) inform the sponsor that the legislation has been removed from the consent calendar; and~~

~~[(iii)] (c) place the legislation at the bottom of the third reading calendar.~~

(3) ~~[The presiding officer shall announce that the legislation has been]~~ When legislation is removed from the consent calendar, the presiding officer shall inform the House of its removal.

(4) (a) If, after two calendar days, no more than five members have registered written objections to the legislation with the chief clerk:

(i) the legislation shall be read the third time;

(ii) the presiding officer shall grant the sponsor of the legislation two minutes to introduce and explain the legislation; and

(iii) the presiding officer shall pose the question and take the final vote on the legislation.

(b) The presiding officer may not allow debate on legislation on the consent calendar.

(5) (a) If the representative sponsoring the legislation on the consent calendar is absent from the floor when the legislation is ready to be read for the third time and considered for passage, a

representative may make a motion to circle the legislation.

(b) If the motion to circle is successful and the representative sponsoring the legislation has not moved to uncircle the legislation before floor time is recessed or adjourned, the bill shall be placed on the bottom of the third reading calendar.

Section 17. HR4-6-105.5 is enacted to read:

HR4-6-105.5. Reference to committee action or debate prohibited.

During debate on the House floor, a representative may not allude to or discuss what was done or said in committee in relation to the legislation under debate, except that a representative may allude to or discuss information contained on a House or Senate committee report.

Section 18. HR4-7-103 is amended to read:

HR4-7-103. Voting -- Representatives required to vote -- Representatives must be present to vote.

(1) (a) A representative present within the House chamber when a vote is being taken shall vote.

(b) (i) The chief clerk may record the vote of any representative who is present in the House Chamber who requests assistance of the chief clerk.

(ii) The representative shall ensure that the electronic vote is recorded accurately.

(c) Each representative shall vote within the time limit fixed by the presiding officer.

(d) Immediately before an electronic vote or a roll call vote, a representative may, upon recognition by the presiding officer, make a brief statement explaining any conflict of interest.

(2) (a) A representative may not vote on a piece of legislation or motion unless the representative is present in the House chamber.

(b) No representative, or any other person, may vote on behalf of another representative. A representative is the only person authorized to use that representative's assigned voting device.

~~[(b)] (3) If the vote is by electronic vote or roll call vote, a representative entering the chamber after the question is posed, and before the presiding officer closes the vote or announces the result, may have the question stated and vote.~~

Section 19. HR5-4-101 is amended to read:

HR5-4-101. Approved activities.

(1) This rule governs the ~~[approval of a meeting or]~~ designation of an approved activity as authorized by Utah Code Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act, ~~which provides that travel to, lodging at, food or beverage served at, sponsorship of an official event of, official entertainment at, and admission to an approved meeting or activity are not expenditures regulated by the act].~~

(2) ~~[As provided by]~~ Consistent with Utah Code Section 36-11-102, an "approved [meeting or]

activity” means a ~~[meeting or an activity]~~ tour or meeting:

~~[(a) to which a representative is invited;]~~

~~[(b) the expenses for the representative’s attendance at which are paid by a lobbyist, principal, or state or federal government officer; and]~~

~~[(c) the legislator’s attendance at which]~~

(a) to which a representative is invited; and

(b) at which the representative’s attendance is approved by the speaker of the House.

~~[(3) The speaker of the House may only approve a meeting or an activity if:]~~

~~[(a) the primary purpose of the meeting or activity is to provide information on issues that the House may consider; and]~~

~~[(b) any sporting, recreational, or artistic event provided as an official event or entertainment of the meeting or activity is not the primary purpose of the meeting or activity.]~~

~~[(4) (a) A representative shall submit a written request for approval of a meeting or activity to the speaker of the House.]~~

~~[(b) A written request shall contain:]~~

~~[(i) the meeting’s or activity’s date and location;]~~

~~[(ii) a description of the meeting’s or activity’s primary purpose;]~~

~~[(iii) a list of any official event or entertainment provided as part of the meeting or activity; and]~~

~~[(iv) the name of a lobbyist, principal, or state or federal government officer paying for any item described in Subsection (1) and the estimated cost of the item.]~~

~~[(5) Within two business days of approving a meeting or activity, the written request and approval shall be posted on the House’s website.]~~

S.C.R. 1

Passed March 1, 2017

Approved March 23, 2017

Effective March 23, 2017

CONCURRENT RESOLUTION ON INCREASING PAY FOR CERTAIN PUBLIC SAFETY OFFICERS AND FIREFIGHTERS

Chief Sponsor: Todd Weiler

House Sponsor: Timothy D. Hawkes

LONG TITLE

General Description:

This concurrent resolution encourages a pay increase for the public safety officers and firefighters who are Tier II retirement system members.

Highlighted Provisions:

This resolution:

- ▶ recognizes the vital roles of public safety officers and firefighters;
- ▶ recognizes the necessity of creating the Tier II retirement system in order to stabilize participating employers’ pension funding obligations and control future retirement benefit costs;
- ▶ acknowledges that starting wages for public safety officers and firefighters are below market starting wages;
- ▶ acknowledges that the Tier II annual employers’ savings provide the opportunity and means to fund a pay increase; and
- ▶ encourages the state of Utah, as well as the other employers of public safety officers and firefighters throughout the state, to provide a pay increase for its public safety officer and firefighter employees who are Tier II members.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, public safety officers, including law enforcement officers, correctional officers, and special function officers, and firefighters perform vital roles in serving and protecting the public and property;

WHEREAS, performing these roles requires specialized training and strenuous activity, and puts officers’ and firefighters’ personal safety and lives at risk;

WHEREAS, retirement systems and plans:

- provide deferred compensation as part of a total employment compensation and benefits package;
- help employers attract and retain the required workforce;
- reward longevity related to years of service; and
- provide an income base for retirees that enhances economic security and income replacement in later years;

WHEREAS, in 2010, the Legislature passed S.B. 63, New Public Employees’ Tier II Contributory Retirement Act, which continued the participation of existing public employees in the Utah Retirement Systems’ Tier I defined benefits systems and plans, but created Tier II retirement systems and plans for public employees beginning employment on or after July 1, 2011, who did not have previous service credit with the Utah Retirement Systems;

WHEREAS, the Tier II retirement systems reduced the retirement benefits offered to new public employees in comparison to the retirement benefits previously offered to public employees, and these Tier II changes affected the retirement benefits for new public safety officers and firefighters;

WHEREAS, the reduction in retirement benefits under the Tier II systems was enacted as an important part of the long-term plan for stabilizing

the pension funding obligations and controlling benefits costs for the participating employers;

WHEREAS, while the total compensation package for public sector employees in Utah was generally considered competitive with the private sector when S.B. 63 passed, starting wages were approximately 30% below market starting wages;

WHEREAS, the concern was raised that a benefit reduction, when combined with lower starting wages, may discourage individuals from choosing public sector employment, and especially public safety and firefighter careers;

WHEREAS, proponents of S.B. 63 argued that controlling pension and future benefits costs would, over time, make more money available to systematically fund pay increases in order to close the public sector wage gap;

WHEREAS, since its implementation, the Tier II retirement systems are accomplishing S.B. 63's objectives and controlling public employers' pension and future benefits costs;

WHEREAS, the total savings for all of Utah's employers resulting from Tier II public safety officers and firefighters in 2015 was \$6.8 million, and these annual savings are steadily growing as the workforce shifts from Tier I to Tier II members; and

WHEREAS, the Tier II annual employers' savings provide the opportunity and means to fund a pay increase for the public safety officers and firefighters that are Tier II members:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, encourages the state of Utah, as well as the other employers of public safety officers and firefighters throughout the state, to provide a pay increase for its public safety officer and firefighter employees who are members of the New Public Safety and Firefighter Tier II Contributory Retirement System.

S C.R. 2

Passed February 8, 2017

Approved March 24, 2017

Effective March 24, 2017

**CONCURRENT RESOLUTION
ON AIR AMBULANCE PROVIDERS**

Chief Sponsor: Wayne A. Harper

House Sponsor: Paul Ray

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor urges Congress to authorize states to regulate air ambulance billing and collections of patient care costs.

Highlighted Provisions:

This resolution:

- ▶ urges the United States Congress to amend the Airline Deregulation Act of 1978 to authorize states to regulate air ambulance billing and collections of patient care costs.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the Airline Deregulation Act of 1978 declared that "States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier";

WHEREAS, as many rural hospitals have recently closed, air ambulance services have become increasingly necessary and are being used more frequently to transport patients to faraway hospitals in an emergency;

WHEREAS, over the past decade, many states are reporting that some air ambulance providers are not affiliated with a hospital and refuse to contract with an insurance carrier;

WHEREAS, this creates numerous situations in which air ambulances are being called to airlift individuals in emergency situations and are billing these individuals for out-of-network charges;

WHEREAS, these charges can cost patients tens of thousands of dollars out-of-pocket when companies do not accept a patient's insurance;

WHEREAS, emergency patients rarely are in a position, or have the capacity, to choose their own air ambulance carrier;

WHEREAS, some air ambulance carriers refuse to reveal actual costs to insurers, and some insurers are unwilling to pay billed charges for the service;

WHEREAS, for ground ambulance services, the Patient Protection and Affordable Care Act protects consumers from higher cost-sharing requirements for out-of-network providers and states can protect consumers from balance billing;

WHEREAS, in the case of air ambulances, however, the federal cost-sharing protections are only applied when the service is affiliated with a hospital and is considered an extension of the emergency room service;

WHEREAS, federal government Medicare reimbursements cover only a small portion of the actual cost of an air ambulance, forcing air ambulance companies to charge patients more;

WHEREAS, although the Airline Deregulation Act of 1978 was intended to increase competition, reduce rates, and improve airline passenger service, competition among air ambulance providers has the opposite effect;

WHEREAS, the air ambulance industry has high fixed costs, including aircraft, pilots, and trained medical staff;

WHEREAS, increased competition forces these costs to be recouped from a smaller number of flights, leading to higher prices;

WHEREAS, various states have attempted to pass laws to protect consumers from out-of-network air ambulance bills, but courts have determined that these laws are preempted by the Airline Deregulation Act of 1978;

WHEREAS, the Airline Deregulation Act of 1978 should be amended to allow states flexibility to protect consumers from excessive out-of-network charges by regulating how air ambulance carriers are reimbursed, participate in networks, balance bill, and make information transparent to consumers; and

WHEREAS, states should be given the authority to regulate air ambulance billing and collections of patient care costs in order to protect patients from overwhelming financial burdens for emergency medical services:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges the United States Congress to amend the Airline Deregulation Act of 1978 to authorize states to regulate air ambulance billing and collections of patient care costs.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge the United States Congress to pass this amendment to protect patients from overwhelming financial burdens for emergency medical services.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the United States Department of Transportation, the Federal Aviation Administration, the National Conference of State Legislatures, and the members of Utah's congressional delegation.

S.C.R. 3

Passed February 22, 2017

Approved March 21, 2017

Effective March 21, 2017

**CONCURRENT RESOLUTION
REQUESTING THE DEPARTMENT
OF ENERGY ADEQUATELY FUND
THE URANIUM MILL TAILINGS
REMEDIAL ACTION PROJECT**

Chief Sponsor: David P. Hinkins

House Sponsor: Christine F. Watkins

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor requests that the United States Department of Energy allocate adequate funding to complete the Moab Uranium Mill Tailings Remedial Action project by 2025.

Highlighted Provisions:

This resolution:

- ▶ urges the United States Department of Energy to allocate adequate funding for the expedited removal of the remaining eight million tons of uranium mill tailings from the banks of the Colorado River, formally known as the Moab Uranium Mill Tailings Remedial Action project; and
- ▶ urges the United States Department of Energy to allocate adequate funding to ensure that the tailings are safely transported to the Crescent Junction disposal cells by 2025.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, in October 2000, the Floyd D. Spence National Defense Authorization Act of 2001 assigned the United States Department of Energy (DOE) responsibility to establish a remedial action program and stabilize, dispose of, and control uranium mill tailings and other contaminated material at the Moab, Utah, uranium ore processing site and associated properties in the vicinity;

WHEREAS, the project involves the excavation of a 16 million-ton pile of uranium mill tailings from the Moab site near the Colorado River and transportation to and disposal at engineered disposal cells constructed at Crescent Junction, 30 miles north of Moab;

WHEREAS, in 2005, the DOE released the Record of Decision to move the 16 million tons of uranium mill tailings to Crescent Junction;

WHEREAS, the National Defense Authorization Act of 2008, passed by the United States Congress on January 28, 2008, established a target completion date for the Moab Uranium Mill Tailings Remedial Action (UMTRA) project of 2019;

WHEREAS, remediation of the Moab UMTRA project must be performed in accordance with Title I of the Uranium Mill Tailings Radiation Control Act and related federal cleanup standards;

WHEREAS, the United States Nuclear Regulatory Commission must concur with the remediation plan and sign off on the project when it is completed;

WHEREAS, DOE identified as its strategic goal meeting the challenges of the twenty-first century and the nation's Manhattan Project and Cold War legacy responsibilities and working aggressively to address cleanup at the Moab site;

WHEREAS, as of January 2016, the Moab UMTRA project had removed eight million tons from the Moab site to the disposal site, marking a 50% completion of the uranium mill tailings removal to Crescent Junction since the project began in 2009;

WHEREAS, this accomplishment elicited praise from a DOE official;

WHEREAS, in 2010 and 2011, the project was adequately funded, in part due to additional

funding provided in 2008 by the American Recovery and Reinvestment Act;

WHEREAS, if 2010 and 2011 funding levels had continued, the 2019 target date set by the National Defense Authorization Act of 2008 would have been met;

WHEREAS, after 2011, funding diminished to the point where the removal of tailings was reduced by half and created inadequate funds for maintenance of equipment and development of disposal cells;

WHEREAS, the fiscal year 2016 budget allocation of \$38.6 million is insufficient to keep the project on track;

WHEREAS, if funding continues at this level and the volume of tailings removed remains unchanged from current levels, it is estimated that the project cannot be completed before 2034 and will cost taxpayers an estimated \$250 million more than if the project were completed by 2025;

WHEREAS, the fiscal year 2017 reduction cut of \$3.86 million for the project exacerbates the problem;

WHEREAS, when funding is adequate, Grand County's unemployment decreases and cash flow to local businesses and service providers increases;

WHEREAS, cutbacks made in response to proposed funding decreases have already caused a significant impact on Grand County's rural economy;

WHEREAS, the risk and safety concerns associated with the Moab UMTRA project continue as long as the tailings remain at their current location on the Colorado River;

WHEREAS, major flooding of the Moab UMTRA site has the potential to damage equipment, intrude upon the mill tailings pile, and contaminate water for the 27 million water users downstream;

WHEREAS, in 2011, the Colorado River reached a high water episode of sustained runoff of almost 50,000 cubic feet per second for nearly two weeks, with water at least 10 feet high at the edge of the pile;

WHEREAS, in 2006, an extreme precipitation event occurred when four inches of rain fell directly on top of the Moab UMTRA site causing unexpected erosion and exposure of the tailings;

WHEREAS, each event slowed operations, which added to the project's cost;

WHEREAS, a portion of the Union Pacific Railroad that the Moab UMTRA project uses to transport and load tailings is located next to a steep slope that is susceptible to rockslides;

WHEREAS, in 2014, a rockslide covered the rail line with thousands of tons of debris, which interrupted tailings shipments for two months;

WHEREAS, mitigation costs of the rockslide reached \$1 million and prevented 80,000 tons of tailings from being shipped;

WHEREAS, the geologic hazards associated with the Moab UMTRA site will continue, which will increase the cost of the project to taxpayers;

WHEREAS, 485 acres of prime real estate cannot be used until the pile is removed and the land is remediated;

WHEREAS, until the project is completed, the acreage is a blight, rather than a benefit, to Grand County;

WHEREAS, the longer the project is delayed, the longer the tailings pile will be viewed by the more than one million people who annually visit Arches and Canyonlands National Parks;

WHEREAS, the Legislature and the Governor of the state of Utah are committed to the health, safety, and welfare of the citizens of Grand County, Utah, and all of the 27 million downstream water users of the Moab UMTRA site; and

WHEREAS, there is bipartisan support for prompt project completion from Utah's congressional delegation as well as congressional delegations from Arizona, California, and Nevada, who are the downstream states;

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, joins the states of Arizona, California, and Nevada in urging the United States Department of Energy to expedite and fully fund the removal of the remaining eight million tons of uranium mill tailings from the banks of the Colorado River.

BE IT FURTHER RESOLVED that the Legislature and the Governor urge the United States Department of Energy to allocate adequate funding, estimated at \$45 million annually, to ensure that the uranium mill tailings are safely transported to the Crescent Junction disposal cells by 2025.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the United States Department of Energy, the United States Nuclear Regulatory Commission, the Grand County Council, and the congressional delegations of Utah, Arizona, California, and Nevada.

S.C.R. 4

Passed February 15, 2017
 Approved March 17, 2017
 Effective March 17, 2017

**CONCURRENT RESOLUTION HONORING
 COLONEL GAIL SEYMOUR HALVORSEN**

Chief Sponsor: Deidre M. Henderson
 House Sponsor: Mike K. McKell
 Cosponsors: J. Stuart Adams
 Jacob L. Anderegg
 Curtis S. Bramble
 D. Gregg Buxton
 Allen M. Christensen
 Jim Dabakis
 Gene Davis
 Margaret Dayton
 Luz Escamilla
 Lincoln Fillmore
 Wayne A. Harper
 Daniel Hemmert
 Lyle W. Hillyard
 David P. Hinkins
 Don L. Ipson
 Jani Iwamoto
 Peter C. Knudson
 Karen Mayne
 Ann Millner
 Wayne L. Niederhauser
 Ralph Okerlund
 Brian E. Shiozawa
 Howard A. Stephenson
 Jerry W. Stevenson
 Daniel W. Thatcher
 Kevin T. Van Tassell
 Evan J. Vickers
 Todd Weiler

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor honors Colonel Gail Seymour Halvorsen for his service to the people of Germany during the Berlin Airlift.

Highlighted Provisions:

This resolution:

- ▶ honors Colonel Gail Seymour Halvorsen for his service to the people of Germany during the Berlin Airlift;
- ▶ recognizes Colonel Halvorsen for the hope and joy he brought to children during the Berlin Airlift; and
- ▶ recognizes Colonel Halvorsen's unselfish acts that brought honor to himself, his family, the United States Military, the citizens of the state of Utah, and the citizens of the United States.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, Gail Halvorsen -- also known as "Uncle Wiggly Wings," "The Chocolate Flyer," and the "Candy Bomber" -- was born in Salt Lake City and grew up on small farms in Utah and Idaho;

WHEREAS, Halvorsen earned a private pilot license under the Civilian Pilot Training Program in September 1941 and joined the Civil Air Patrol as a pilot;

WHEREAS, during the Berlin Airlift from 1948 to 1949, Halvorsen, moved by the gratitude and resilience of the children living in that devastated city, dropped tiny handkerchief-sized parachutes filled with candy from his C-54 for the children of Berlin to chase down and collect -- an act for which he was affectionately nicknamed the "candy bomber," and, though he was nearly court-martialed for doing so, Halvorsen continued to make his candy drops for several months;

WHEREAS, in the decades following the airlift, having achieved the rank of Colonel in the United States Air Force, Halvorsen continued his service in the Civilian Air Patrol, returning to Germany as a commander of the Tempelhof Central Airport in Berlin and as the United States Air Force Representative to the city of Berlin; and

WHEREAS, almost 70 years later, Halvorsen's service to the children of Berlin stands as one of the foremost examples of kindness and human compassion, bringing relief to a war-torn country and joy to children in need of a little bit of hope, and his continued participation in humanitarian air drops to children in Bosnia, Albania, Micronesia, and elsewhere has served as an inspiring example of dedicated service:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, honors Colonel Gail Seymour Halvorsen for his service to the people of Germany during the Berlin Airlift.

BE IT FURTHER RESOLVED that the Legislature and the Governor honor Colonel Gail Seymour Halvorsen for the hope and joy he brought to the children of Germany during the Berlin Airlift.

BE IT FURTHER RESOLVED that the Legislature and the Governor honor Colonel Gail Seymour Halvorsen for his unselfish acts that have brought honor to himself, his family, the United States Military, the citizens of the state of Utah, and the citizens of the United States.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Colonel Gail Seymour Halvorsen.

S.C.R. 5

Passed February 17, 2017
 Approved March 24, 2017
 Effective March 24, 2017

**CONCURRENT RESOLUTION
 RECOGNIZING SNOW REMOVAL
 CREWS THROUGHOUT UTAH**

Chief Sponsor: Ralph Okerlund
 House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This concurrent resolution of the Legislature recognizes the contributions of snow removal crews throughout the state of Utah in providing safe roads and enhanced quality of life for the state's residents.

Highlighted Provisions:

This resolution:

- ▶ acknowledges the hard work and long hours spent by snow removal crews to keep Utah roads safe in winter conditions;
- ▶ acknowledges cost savings achieved through snow removal efforts; and
- ▶ recognizes the efforts of snow removal crews, which enhance the safety, commerce, and overall quality of life of residents.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, snow removal crews work in extremely dangerous conditions;

WHEREAS, snow removal crews work long hours, nights, extended shifts, and holidays;

WHEREAS, snow removal crews make it possible for police and EMS to do their jobs;

WHEREAS, snow removal crews plow snow and apply road salt that saves lives by reducing crashes by 88%, thereby reducing both injuries and accident costs by 85%;

WHEREAS, snow removal pays for itself in 25 minutes;

WHEREAS, snow removal impacts air quality by reducing congested traffic, clogged roadways, and slow travelers;

WHEREAS, road closures due to winter roads impact Utahns' quality of life through lost wages, retail sales, and sales tax revenue, often impacting low-income wage earners most;

WHEREAS, the statewide cost of road closures due to winter weather can be up to \$66 million per day, more than triple the entire cost of the yearly UDOT winter maintenance budget; and

WHEREAS, more than 116,000 Americans are injured and 1,300 are killed annually due to winter road conditions:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, recognizes the efforts of snow removal crews throughout the state of Utah and their contribution to Utahns' safety and quality of life.

S.C.R. 6

Passed March 9, 2017
 Approved March 22, 2017
 Effective March 22, 2017

**CONCURRENT RESOLUTION ON
 GUARDING THE CIVIL LIBERTIES AND
 FREEDOMS FOR ALL AMERICAN PEOPLE**

Chief Sponsor: Brian E. Shiozawa
 House Sponsor: Patrice M. Arent
 Cosponsors: D. Gregg Buxton
 Allen M. Christensen
 Jim Dabakis
 Gene Davis
 Luz Escamilla
 Deidre M. Henderson
 David P. Hinkins
 Don L. Ipson
 Karen Mayne
 Ann Millner
 Ralph Okerlund
 Daniel W. Thatcher
 Kevin T. Van Tassell
 Evan J. Vickers

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor affirms their resolve to protect the civil liberties, religious freedoms, and dignity of all Americans, legal immigrants, and refugees seeking protection against persecution.

Highlighted Provisions:

This resolution:

- ▶ affirms the Legislature's and the Governor's commitment to protect the civil liberties, religious freedoms, and dignity of all Americans, legal immigrants, and refugees;
- ▶ expresses the Legislature's and the Governor's determination to protect the constitutional rights of all people; and
- ▶ welcomes any and all efforts to educate and promote understanding and good will among the pluralistic communities that are an integral part of Utah's rich history and heritage.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, since its inception, the United States of America has served as a refuge for oppressed people fleeing religious, ethnic, and/or political persecution;

WHEREAS, freedom and the rule of law are at the heart of civil liberties and democratic values;

WHEREAS, the Declaration of Independence enshrined the self-evident concept that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness";

WHEREAS, the freedoms enumerated in the Bill of Rights protect the fundamental rights of all Americans;

WHEREAS, the Fourteenth Amendment to the Constitution guarantees equal justice under law for all Americans regardless of race, religion, national origin, or other arbitrary factors;

WHEREAS, the United States is an open society enriched by the ethnic, religious, intellectual, scientific, and cultural heritage of humankind; and

WHEREAS, at a time when some seek to sow the seeds of discord and division, Americans must draw upon common strengths and humanity to reap peace, justice, and understanding:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, affirms its commitment to protect the civil liberties, religious freedoms, and dignity of all Americans and legal immigrants, and encourage compassion for refugees seeking protection in the state of Utah.

BE IT FURTHER RESOLVED that the Legislature and the Governor express their determination to protect the civil rights of all people within the state of Utah.

BE IT FURTHER RESOLVED that the Legislature and the Governor welcome any and all efforts to educate and promote understanding and good will among the pluralistic communities that are an integral part of Utah's rich history and heritage.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and the members of Utah's congressional delegation.

S.C.R. 7

Passed February 10, 2017
 Approved March 21, 2017
 Effective March 21, 2017

**CONCURRENT RESOLUTION URGING
 THE POSTMASTER GENERAL TO ISSUE
 A COMMEMORATIVE POSTAGE STAMP**

Chief Sponsor: Jani Iwamoto
 House Sponsor: Dean Sanpei
 Cosponsors: J. Stuart Adams
 Curtis S. Bramble
 D. Gregg Buxton
 Jim Dabakis
 Gene Davis
 Margaret Dayton
 Luz Escamilla
 Lincoln Fillmore
 Wayne A. Harper
 Daniel Hemmert
 Deidre M. Henderson
 Lyle W. Hillyard
 David P. Hinkins
 Don L. Ipson
 Karen Mayne
 Ann Millner

Ralph Okerlund
 Brian E. Shiozawa
 Jerry W. Stevenson
 Daniel W. Thatcher
 Kevin T. Van Tassell
 Evan J. Vickers

LONG TITLE

General Description:

This concurrent resolution urges the Postmaster General of the United States to issue a commemorative postage stamp telling the inspiring story of the patriotic service of Japanese Americans during World War II.

Highlighted Provisions:

This resolution:

- ▶ highlights the service of Japanese Americans during World War II; and
- ▶ urges the Postmaster General to issue a commemorative postage stamp that would feature the National Japanese American Memorial to Patriotism.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, over 33,000 Nisei (second-generation Japanese Americans), including citizens of Utah, served with honor in the United States Army during World War II;

WHEREAS, as described in the Civil Liberties Act of 1988, "race prejudice, war hysteria, and a failure of political leadership" led to over 120,000 Japanese Americans being forced from their homes in west-coast states and placed into "internment camps" such as the Topaz Relocation Center near Delta, Utah;

WHEREAS, in a show of their American loyalty, 451 individuals who were incarcerated at the Topaz Relocation Center enlisted in the United States Army, leaving family and friends behind barbed wire to serve in the war effort;

WHEREAS, these Americans served in the famed 100th Battalion/442nd Regimental Combat Team in Europe, which became the most decorated American unit of the war and one of the most decorated units in our nation's history;

WHEREAS, the 100th/442nd fought nobly at Monte Cassino, broke the German "Gothic Line," liberated French towns such as Bruyères, Biffontaine, and Belvédère, and helped to liberate and aid Holocaust survivors at Dachau;

WHEREAS, one of the key founders and original members of the 100th/442nd was Mike Masaoka of Salt Lake City, who graduated from the University of Utah and was a member of the Church of Jesus Christ of Latter-day Saints;

WHEREAS, Nisei also served in the United States Army's Military Intelligence Service (MIS) as military linguists in the war with Japan in the Pacific Theater;

WHEREAS, the MIS was credited by General MacArthur’s intelligence chief, Major General Charles Willoughby, with shortening the war with Japan by two years and saving countless lives as the “eyes and ears” of American and Allied forces in the Pacific;

WHEREAS, the MIS also served in key roles following the war during the Allied occupation of Japan and helped establish close relations between Japan and the United States that have lasted ever since;

WHEREAS, the MIS is considered to be among the founding organizations of the Defense Language Institute, the center that trains military linguists for the United States Armed Forces today;

WHEREAS, Nisei women rose to the call to action during the war and served in the Women’s Army Corps and Cadet Nurse Corps;

WHEREAS, the 100th/442nd and MIS were awarded the Congressional Gold Medal in 2011 for their exemplary service and patriotism;

WHEREAS, the United States Postal Service is considering a commemorative stamp proposal that would tell the inspiring story of the patriotic service of Japanese Americans during World War II through a stamp featuring the National Japanese American Memorial to Patriotism, located in Washington, D.C.;

WHEREAS, in a letter written in support of this commemorative stamp, the Utah chapters of the Japanese American Citizens League requested the Legislature’s assistance “to honor this important chapter, not only in Utah’s history, but in our nation’s history as well”;

WHEREAS, in a letter written in support of this commemorative stamp, Utah Governor Gary R. Herbert stated, “the issuance of this stamp would be a small, but important step in recognizing those worthy of praise, and in making certain the injustices of our past are never replicated in our nation’s future”;

WHEREAS, in a letter written in support of this commemorative stamp, Utah Attorney General and fourth generation Japanese American, Sean D. Reyes, said, “America is a stronger and richer nation because of the many significant contributions made to her by the patriotic and hard-working men and women of the Japanese American community. I think it is most fitting to recognize the greatness of America and Japanese Americans through this special issuance”;

WHEREAS, in a letter written in support of this commemorative stamp, the members of the Utah delegation to the United States House of Representatives declared that “this stamp would be an appropriate way to help our nation commemorate this important chapter in our nation’s history”;

WHEREAS, in a letter written in support of this commemorative stamp, United States Senator Orrin Hatch said this proposal “tells the patriotic

story, in part of the Americans of Japanese Ancestry who endured the internment camps and served in our nation’s military during World War II”; and

WHEREAS, in a letter written in support of this commemorative stamp, United States Senator Mike Lee said, “Japanese-Americans played an immeasurable role in defending the United States and defeating the Axis powers during the Second World War. Thousands were wounded and hundreds gave their lives to secure the blessings of freedom for future generations, even as their own families were being denied that same freedom at home. These Americans’ patriotism should continually be celebrated by our country, and the lessons of their sacrifices never forgotten”;

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges the Postmaster General to issue a commemorative postage stamp that would honor the American patriotism of the Nisei.

BE IT FURTHER RESOLVED that a copy of this resolution and the letters of support from Utah Governor Gary R. Herbert, Utah Attorney General Sean D. Reyes, the members of the Utah delegation to the United States House of Representatives, United States Senator Orrin Hatch, and United States Senator Mike Lee be sent to the Postmaster General of the United States, the members of Utah’s congressional delegation, and the President of the United States.

S.C.R. 8

Passed March 7, 2017
Approved March 22, 2017
Effective March 22, 2017

**HEALTH CARE FREEDOM
CONCURRENT RESOLUTION**

Chief Sponsor: Daniel Hemmert
House Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This concurrent resolution encourages the federal government to work with states to plan and implement state-tailored, innovative Medicaid programs that maximize states’ flexibility and choice.

Highlighted Provisions:

This resolution:

- ▶ asserts that Utah is best suited to make decisions regarding Medicaid policy for the residents of this state, including prioritizing state Medicaid spending to reflect the unique needs of Utah and setting eligibility standards that reflect state priorities; and
- ▶ calls upon the federal government to work with states to plan and implement state-tailored, innovative Medicaid programs that maximize states’ flexibility and choice.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the American governing principles of self government and federalism require that states, municipalities, and the private sector be empowered to pursue community-driven solutions that reflect the will of the people;

WHEREAS, the pursuit of community-driven solutions has proven to be the most effective way to create the elevated dialogue needed to find practical, sustainable solutions to pressing issues that involve strong political disagreement;

WHEREAS, the federal Medicaid program started in 1965 and in 2016, provided assistance to an average of over 310,000 Utah residents each month, of which 63% were children;

WHEREAS, the federal government is not situated well geographically, politically, or culturally to understand the specific health care needs of Utah families, individuals, and businesses;

WHEREAS, in 2016, total Medicaid spending in the United States exceeded \$530 billion and in the state of Utah exceeded \$2.5 billion;

WHEREAS, the share of federal Medicaid funding provided to the states is determined by a state-by-state matching percentage, and the actual amount of federal funds sent to the states is determined by how much states spend in order to get those matching dollars;

WHEREAS, Medicaid policy is heavily controlled by the federal government, requiring states to apply for waivers if they want the flexibility to reform Medicaid programs to better meet state needs;

WHEREAS, states are encouraged to expand Medicaid programs and spend more to get additional federal funds;

WHEREAS, the United States Government Accountability Office projects that Medicaid spending will grow by 224% between 2007 and 2032, and at the same time, Medicare and Social Security will put significant pressure on the federal budget;

WHEREAS, these cost trends and projections for Medicaid, Medicare, and Social Security are unsustainable and will likely lead to difficult cost shifting in the Medicaid program from the federal government to the states, which will result in states struggling to support their individual Medicaid programs without meaningful control over the policy;

WHEREAS, current Medicaid funding arrangements fail to reward states based on performance, but give states additional funding based on outright government appropriations;

WHEREAS, Medicaid growth is fueled by an interest in gaining additional federal funding, which also makes reductions in state Medicaid spending more difficult due to the accompanying loss of federal funding;

WHEREAS, welfare reform changed the way states managed welfare programs by giving states performance expectations, more policy control, and a set amount of money each year;

WHEREAS, because welfare reform has proven to be a success since its passage more than 20 years ago, states should ask for a similar arrangement with Medicaid that would give states more policy flexibility, a set state funding amount, and broad performance goals; and

WHEREAS, federal funding for the Children’s Health Insurance Program (CHIP) is allocated to states based on a matching rate up to a total set amount of federal funding determined by state need, providing clear precedent for giving states greater latitude in setting eligibility standards and a set amount of funding for similar programs:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, maintains that Utah is best suited to make decisions regarding Medicaid policy for the residents of this state, including prioritizing state Medicaid spending to reflect the unique needs of Utah and setting eligibility standards that reflect state priorities.

BE IT FURTHER RESOLVED that the Legislature and the Governor call upon the federal government to work with states to plan and implement state-tailored, innovative Medicaid programs, through means such as a federal block grant or a per capita allocation, that maximize states’ flexibility and choice.

BE IT FURTHER RESOLVED that copies of this resolution be sent to Utah’s congressional delegation, the President of the United States, the Speaker of the United States House of Representatives, the Majority Leader of the United States Senate, and the Secretary of the United States Department of Health and Human Services.

S.C.R. 9

Passed March 2, 2017
Approved March 21, 2017
Effective March 21, 2017

**CONCURRENT RESOLUTION
CONCERNING THE ORAL HEALTH
CARE OF UTAH’S AT-RISK POPULATIONS**

Chief Sponsor: Peter C. Knudson
House Sponsor: Marie H. Poulson

LONG TITLE

General Description:

This concurrent resolution addresses the oral health of the state’s at-risk populations and recognizes the valuable service contributed by Utah dental students.

Highlighted Provisions:

This resolution:

- ▶ urges cooperative efforts between the Utah American Student Dental Association Chapter and the Roseman American Student Dental

Association Chapter to continue improving the oral health of the state's at-risk populations; and

- ▶ recognizes the Utah American Student Dental Association Chapter and the Roseman American Student Dental Association Chapter as valuable resources to the state.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, oral health, as defined by the World Dental Federation, includes the ability to speak, smile, smell, taste, touch, chew, swallow, and convey a range of emotions through facial expressions with confidence and without pain, discomfort, and disease of the craniofacial complex;

WHEREAS, poor oral health can lead to systemic disease, loss of oral function, damage to bone or nerves, tooth loss, psychological distress, or death;

WHEREAS, oral health care is essential for comprehensive medical management, particularly in at-risk populations, including, but not limited to, children, the elderly, and socioeconomically disadvantaged citizens of Utah;

WHEREAS, many individuals comprising the at-risk populations of Utah suffer from poor oral health and its consequences due to poor access to quality care, insufficient understanding of oral health, and inadequate resources;

WHEREAS, according to the Utah Department of Health, 52% of six- to nine-year-old children experience caries, and 17% of children have untreated dental decay;

WHEREAS, the American Dental Association's Healthy Policy Institute states that approximately 25% of adults avoid smiling, feel embarrassed, or experience anxiety due to the condition of their mouth and teeth; and

WHEREAS, it is the mission of the Utah American Student Dental Association Chapter and Roseman American Student Dental Association Chapter to promote prevention of oral disease and provide access to quality dental intervention, specifically to at-risk populations:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, urges that oral health for the underserved population of Utah be addressed by the cooperative efforts of the Utah American Student Dental Association Chapter and Roseman American Student Dental Association Chapter.

BE IT FURTHER RESOLVED that the Legislature and the Governor recognize the Utah American Student Dental Association Chapter and the Roseman American Student Dental Association Chapter as resources the state can use to improve the oral health of the underserved populations in Utah.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the University of Utah School

of Dentistry, the Roseman University of Health Sciences College of Dental Medicine, the Utah Department of Health, the Utah Medical Association, the Utah Dental Association, the Utah Association of Independent Insurance Agents, and the members of Utah's congressional delegation.

S.C.R. 10

Passed March 9, 2017

Approved March 28, 2017

Effective March 28, 2017

**CONCURRENT RESOLUTION
RECOGNIZING THE 150TH ANNIVERSARY
OF THE FIRST TRANSCONTINENTAL
RAILROAD**

Chief Sponsor: Peter C. Knudson

House Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor recognizes the 150th anniversary of the first transcontinental railroad and requests that a committee be formed to plan a commemorative celebration.

Highlighted Provisions:

This resolution:

- ▶ recognizes the 150th anniversary of the completion of the United States' first transcontinental railroad; and
- ▶ requests that the Governor appoint a committee to plan a commemorative celebration.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

WHEREAS, the marrying of the Union Pacific and Central Pacific railroads on May 10, 1869, at Promontory Summit marked a significant accomplishment for the people of Utah and the nation;

WHEREAS, completion of the first transcontinental railroad made transporting passengers and goods coast to coast considerably faster, safer, and less expensive;

WHEREAS, completion of the railroad reduced travel time across the nation from six months or more down to just one week;

WHEREAS, completion of the railroad contributed to continued development of infrastructure, business growth, population growth, and interconnectivity for Utah and the nation;

WHEREAS, many workers hired by Union Pacific had served in the Union and Confederate armies during the U.S. Civil War, and the side-by-side collaboration between northern and southern laborers significantly contributed to the healing of the nation;

WHEREAS, Chinese, Irish, and other immigrant laborers were responsible for much of the labor necessary to complete the railroad; and

WHEREAS, Mormon settlers in Utah provided significant and substantive grading work to complete the Union Pacific westward portion of the transcontinental line:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the Governor concurring therein, recognizes the historical significance of the completion of the first transcontinental railroad and requests that the Governor appoint a committee to plan a celebration to commemorate its 150th anniversary.

BE IT FURTHER RESOLVED that the celebration be held on or around May 10, 2019.

BE IT FURTHER RESOLVED that the committee be comprised of the Governor or the Governor's designee; the Senate District 17 Senator; the House District 1 Representative; the Director of the Governor's Office of Economic Development (GOED); the Director of the Division of State History; GOED's Managing Director of Tourism, Film, and Global Branding; the Superintendent of the Golden Spike National Historic Site; a descendent of a Chinese railroad worker; representatives of the Union Pacific Railroad; and other local government officials as appropriate.

BE IT FURTHER RESOLVED that the committee report its progress regularly to the Legislative Management Committee.

S.J.R. 1

Passed February 22, 2017
Effective February 22, 2017

**JOINT RULES RESOLUTION
ON FUNDING MIX DETERMINATIONS**

Chief Sponsor: Jerry W. Stevenson
House Sponsor: Dean Sanpei

LONG TITLE

General Description:

This joint rules resolution addresses the allocation of funds for the purpose of state employee compensation adjustments and internal service fund rate impacts.

Highlighted Provisions:

This joint rules resolution:

- ▶ addresses processes for determining the mix of funding sources to be used for state employee compensation adjustments and internal service fund rate impacts; and
- ▶ provides for exceptions.

Special Clauses:

None

Legislative Rules Affected:

ENACTS:
JR3-2-403

Be it resolved by the Legislature of the state of Utah:

Section 1. JR3-2-403 is enacted to read:

JR3-2-403. Funding mix for state employee compensation adjustments and internal service fund rate impacts.

(1) The legislative fiscal analyst shall prepare a budget for state employee compensation adjustments and internal service fund rate impacts that minimizes costs to the unrestricted General Fund, Education Fund, and Uniform School Fund, by:

(a) using a mix of funding sources that is proportionate to that of the base budget, as defined under Joint Rule 3-2-402, at the appropriation unit level for the same budget year;

(b) including sources other than the unrestricted General Fund, Education Fund, and Uniform School Fund, regardless of the availability of additional revenue;

(c) adjusting the funding mix when the full or partial use of one or more sources is directed in statute, federal regulation, or the terms of a federal grant; and

(d) adjusting the funding mix based on the appropriate use of funding sources other than the unrestricted General Fund, Education Fund, and Uniform School Fund, transportation-related funds, federal funds, restricted accounts, and dedicated credits.

(2) When the legislative fiscal analyst adjusts the funding mix in accordance with Subsection (1)(c) or (d), the legislative fiscal analyst shall:

(a) eliminate the appropriate portion of the source from the funding mix;

(b) deduct the amount associated with the source from the base budget total;

(c) recalculate the proportional distribution among remaining sources; and

(d) distribute the appropriate budget adjustment amounts accordingly.

(3) If the legislative fiscal analyst identifies a funding mix that would provide additional spending authority for sources other than the unrestricted General Fund, Education Fund, and Uniform School Fund and additional revenue is unavailable, in accordance with Subsection (1)(b), an agency may make or request program reductions, reprioritizations, reallocations, or fee increases pursuant with Utah Code Title 63J, Chapter 1, Budgetary Procedures Act.

(4) The legislative fiscal analyst shall request that an internal service fund agency reflect state employee compensation adjustments and impacts from rate changes in other internal funds in the rates recommended by the internal service fund agency for a given budget cycle, either:

(a) on a prospective basis for the budget year, based on an estimated amount; or

(b) on a one-year lag basis, if the specific internal service fund has sufficient operating reserves to maintain the internal service fund's fiscal integrity.

(5) (a) The Executive Appropriations Committee may approve for one fiscal year exceptions to the budget preparation criteria described in Subsections (1) through (4).

(b) The legislative fiscal analyst shall prepare a budget that includes exceptions approved by the Executive Appropriations Committee under this Subsection (5).

(c) The Executive Appropriations Committee shall annually determine whether to re-approve an exception approved by the Executive Appropriations Committee under this Subsection (5).

S.J.R. 2

Passed February 22, 2017
Effective February 22, 2017

JOINT RESOLUTION ENCOURAGING THE EMPLOYMENT OF UTAH WORKERS FOR AIRPORT REDEVELOPMENT EFFORTS

Chief Sponsor: Karen Mayne
House Sponsor: Kay J. Christofferson

LONG TITLE

General Description:

This resolution of the Legislature encourages the Salt Lake City Department of Airports to procure services that will substantially employ Utah workers for the Salt Lake City International Airport Terminal Redevelopment Program.

Highlighted Provisions:

This resolution:

- ▶ acknowledges the vital role Salt Lake City International Airport plays in Utah's economy;
- ▶ recognizes the positive economic effects of the Salt Lake City International Airport Terminal Redevelopment Program; and
- ▶ encourages the Salt Lake City Department of Airports to procure services from Utah firms that will substantially employ Utah workers for the Terminal Redevelopment Program.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the Salt Lake City International Airport is the primary point of entry and departure for people and goods entering and exiting the state of Utah;

WHEREAS, the Salt Lake City International Airport is a vital connection between Utah's workers and resources and the rest of the world;

WHEREAS, the Salt Lake City International Airport Terminal Redevelopment Program will create jobs and be an economic engine for the state of Utah;

WHEREAS, the redevelopment of the terminals at Salt Lake City International Airport has the potential to employ a substantial number of workers, both in the construction itself and in the anticipated indirect economic development opportunities that may arise from the redevelopment;

WHEREAS, the Salt Lake City International Airport Terminal Redevelopment Program has the potential to use a substantial amount of local products and goods in the construction efforts;

WHEREAS, Salt Lake City International Airport is governed by the Utah Procurement Code and Salt Lake City procurement ordinances and practices;

WHEREAS, procurement processes that are fully transparent provide accountability for the public good; and

WHEREAS, the ingenuity and hard work of the Utah workforce is to be commended and should be further encouraged through increased employment opportunities:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah encourages Salt Lake City to procure services from Utah firms that will substantially employ Utah workers for the Salt Lake City International Airport Terminal Redevelopment Program.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges that Salt Lake City purchase local products and goods for the Salt Lake City International Airport Terminal Redevelopment Program.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges that Salt Lake City International Airport shall comply with the Utah procurement code and Salt Lake City procurement ordinances and practices to ensure full transparency and accountability.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the Board of Directors of the Associated General Contractors of Utah, the Salt Lake City Mayor, the Executive Director and Board of Directors of the Salt Lake City Department of Airports, and the Salt Lake City Council.

S.J.R. 3

Passed February 23, 2017
Effective February 23, 2017

JOINT RESOLUTION ON COMMERCIAL DRIVING

Chief Sponsor: Kevin T. Van Tassel
House Sponsor: Mike Schultz

LONG TITLE

General Description:

This resolution of the Legislature describes a voluntary compact between contiguous states that permits commercial drivers who are 18 to 21 years old to operate a commercial motor vehicle in a contiguous state.

Highlighted Provisions:

This resolution:

- ▶ describes a voluntary compact between contiguous states that permits commercial drivers who are 18 to 21 years old with a commercial driver license from a consenting state to operate a commercial motor vehicle in a consenting, contiguous state; and
- ▶ urges Congress to enact legislation permitting Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, and Wyoming to enter into a voluntary compact to establish a graduated commercial driver licensing program to allow drivers who are 18 to 21 years old with a commercial driver license from a consenting state to operate a commercial motor vehicle in a consenting, contiguous state.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, federal law requires drivers to be at least 21 years old to operate a commercial motor vehicle interstate;

WHEREAS, in Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, and Wyoming, drivers who are 18 to 21 years old may operate a commercial motor vehicle intrastate;

WHEREAS, commercial industry relies on the trucking industry to deliver the goods produced across state lines;

WHEREAS, it is difficult to recruit drivers who are 21 years old or older into the trucking industry when they have already started down another career path;

WHEREAS, in the next decade the trucking industry will face a severe shortage of drivers due to increased shipping demand and a high number of retiring drivers;

WHEREAS, the unemployment rate for the age group 18 to 21 years old is higher than that of other age groups;

WHEREAS, the safety performance statistics for passenger drivers who are 18 to 21 years old do not necessarily reflect the safety performance of the same age group for commercial drivers;

WHEREAS, the safety benefits of graduated licensing for young passenger vehicle drivers are well documented, and similar safety benefits may be possible with a graduated commercial licensing approach;

WHEREAS, a graduated commercial driver licensing program could include conditional

lowering of the 21-year-old age minimum requirement to allow drivers who are 18 to 21 years old with a commercial driver license from a consenting state to operate a commercial motor vehicle in a consenting, contiguous state, as mutually agreed between the two states; and

WHEREAS, consenting to a voluntary compact between Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, and Wyoming will allow these contiguous states to establish a graduated commercial driver licensing program to allow drivers who are 18 to 21 years old with a commercial driver license from a consenting state to operate a commercial motor vehicle in a consenting, contiguous state, as mutually agreed between the two states:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah urges Congress to enact legislation permitting Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, and Wyoming to enter into a voluntary compact to establish a graduated commercial driver licensing program to allow drivers who are 18 to 21 years old with a commercial driver license from a consenting state to operate a commercial motor vehicle in a consenting, contiguous state, as mutually agreed between the two states.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the legislative bodies of Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, and Wyoming; the Majority Leader of the United States Senate; the Speaker of the United States House of Representatives; and the members of Utah's congressional delegation.

S.J.R. 5

Passed February 22, 2017

Effective February 22, 2017

**JOINT RESOLUTION SUPPORTING
PROPOSED FEDERAL CHANGES TO
DISTRIBUTIONS TO UTAH NAVAJO
TRUST FUND**

Chief Sponsor: David P. Hinkins

House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This resolution supports the intended proposed United States House Bill to increase oil royalties to the Utah Navajo Trust Fund.

Highlighted Provisions:

This resolution:

- ▶ supports the "Utah Navajo Economic Development Act" that U.S. Representative Jason Chaffetz intends to introduce to Congress;
- ▶ supports the transfer of federal minerals located in the subsurface of the Aneth Extension of the Navajo Nation to the Utah Navajo Trust Fund with an increase in royalties collected and paid

on minerals produced on the extension from 37.5% to 62.5%; and

- ▶ supports the transfer of the minerals located in the subsurface of the McCracken Extension of the Navajo Nation to the Utah Navajo Trust Fund.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, Aneth Extension is located north of Montezuma Creek on the Navajo Indian Reservation in southeastern Utah;

WHEREAS, the Utah Navajo Trust Fund contains funds from oil royalties from production on the Aneth Extension of the Navajo Reservation;

WHEREAS, these royalties are paid to the trust fund for the health, education, and general welfare of the Navajo residents of San Juan County, Utah;

WHEREAS, in the 115th Congress, 1st Session, U.S. Representative Jason Chaffetz intends to introduce a bill known as the "Utah Navajo Economic Development Act" to transfer all rights, title, and interest in and to the federal minerals located in the subsurface of the Aneth Extension of the Navajo Nation to the Utah Navajo Trust Fund and increase the royalties collected and paid on minerals produced on the extension from 37.5% to 62.5%; and

WHEREAS, the Utah Navajo Economic Development Act intends to transfer all rights, title, and interest in and to the federal minerals located in the subsurface of the McCracken Extension of the Navajo Nation to the Utah Navajo Trust Fund:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah supports the above intended proposed bill to transfer all rights, title, and interest in and to the federal minerals located in the subsurface of the Aneth Extension of the Navajo Nation to the Utah Navajo Trust Fund and increase the royalties collected and paid on minerals produced on the extension from 37.5% to 62.5%.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah supports the proposed bill to transfer all rights, title, and interest in and to the federal minerals located in the subsurface of the McCracken Extension of the Navajo Nation to the Utah Navajo Trust Fund.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and members of Utah's congressional delegation.

S.J.R. 6

Passed March 7, 2017

Effective March 7, 2017

**JOINT RESOLUTION URGING
LEGISLATIVE APPROVAL FOR THE
LEASE OF WATER RIGHTS BY THE
STATE DEVELOPMENTAL CENTER**

Chief Sponsor: Margaret Dayton

House Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This joint resolution authorizes a portion of the Utah State Developmental Center's campus, including water rights, to be approved for a long-term lease.

Highlighted Provisions:

This resolution:

- ▶ recognizes the important role the Utah State Developmental Center (USDC) plays in the provision of resources and support for disabled individuals with complex or acute needs in Utah; and
- ▶ authorizes approximately 7.7 acres of land and water rights located in the northeast corner of the USDC's campus to be approved for a long-term lease.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, Utah Code Subsection 62A-5-206.6(5) requires that the Utah State Developmental Center's Governing Board obtain the approval of the Legislature before offering real property or water rights associated with the Utah State Developmental Center (USDC) for sale, exchange, or long-term lease;

WHEREAS, in 1929, the Legislature established the Utah State Training Center to assist with the care, protection, treatment, and education of individuals with mental disabilities;

WHEREAS, the Utah State Training Center, later known as the USDC, was established during an era when relatively little was known about the causes of mental disabilities;

WHEREAS, like other states, Utah built a public institution in a remote location and within a broad perimeter of land that provided a physical barrier between the institution and the nearest rural homes and communities;

WHEREAS, since its establishment in 1929, the USDC has evolved and improved regarding what public services should be provided for individuals with mental disabilities and how to provide those services;

WHEREAS, since state governments first acknowledged a public interest in and accepted some fiscal responsibility for citizens with disabilities, states have made sweeping changes in the philosophy and practice of providing public services to those citizens;

WHEREAS, these paradigm shifts have resulted from a growing knowledge about disabilities, including their causes, preventions, interventions, and accommodations;

WHEREAS, also contributing to the paradigm shifts was an improving regard for individuals who experience disabilities, as evidenced by public laws that affirm and promote their rights, an expansion of publicly funded services, and greater inclusion by their communities;

WHEREAS, the USDC's mission is "dedication to providing an array of resources and supports for individuals with disabilities with complex or acute needs in Utah"; and

WHEREAS, the USDC's vision is to "provide an effective, efficient array of critical services and supports that promote independence and quality of life for Utah's most vulnerable individuals with disabilities in partnership with families, guardians and the community";

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, in accordance with Utah Code Subsection 62A-5-206.6(5), authorizes the Utah State Developmental Center's governing board to approve a long-term lease for approximately 7.7 acres of land and water rights located in the northeast corner of the USDC's campus.

S.J.R. 8

Passed March 1, 2017
Effective March 1, 2017

JOINT RESOLUTION ENCOURAGING STUDY TO REDUCE FALL-RELATED INJURIES

Chief Sponsor: Jani Iwamoto
House Sponsor: Stewart E. Barlow

LONG TITLE

General Description:

This joint resolution of the Legislature encourages the Department of Health to convene a multi-stakeholder workgroup to develop recommendations for reducing fall-related injuries among Utahns.

Highlighted Provisions:

This resolution:

- ▶ sets forth the impacts of fall-related injuries among Utahns;
- ▶ encourages the Department of Health to convene a multi-stakeholder workgroup to develop recommendations for reducing fall-related injuries among Utahns; and
- ▶ encourages the workgroup to consider certain issues.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, in 2014, Utahns were hospitalized 5,300 times for the treatment of fall-related injuries;

WHEREAS, in 2014, more than \$186 million was spent on treating Utahns for fall-related injuries;

WHEREAS, from 2013 to 2015, 655 Utahns died as the result of fall-related injuries;

WHEREAS, more than 76% of fall-related deaths and more than 61% of fall-related hospitalizations are among individuals 65 years of age or older;

WHEREAS, the risk of death from fall-related injuries increases exponentially with age; and

WHEREAS, individuals 65 years of age or older are many times more likely to die from injuries related to falls than injuries related to traffic accidents, firearms, or other causes of unintentional injury;

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah encourages the Department of Health to convene a multi-stakeholder workgroup to develop recommendations for reducing fall-related injuries among Utahns.

BE IT FURTHER RESOLVED that the workgroup include the department's fall prevention specialist, an individual representing the elderly, an individual representing local health departments, an individual representing Utah physicians, an individual representing Utah emergency medical service providers, an individual representing Utah hospitals, an individual representing the Utah Health Information Network, an individual with expertise in the electronic exchange of clinical health information, and, as appropriate, others.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah encourages the workgroup to consider:

- (a) how to promote the identification of individuals at risk of fall-related injuries and the delivery of risk-reduction interventions;
- (b) how to promote the use of fall-risk assessments by primary care physicians and other medical practitioners who interact with persons at risk of fall-related injuries;
- (c) whether a primary care physician should be notified for appropriate follow-up when a patient of the physician is treated in a hospital emergency department or other emergency or urgent care setting for a fall-related injury;
- (d) how to increase the availability of funding for home modifications designed to reduce the risk of fall-related injuries; and
- (e) how to sustain efforts to reduce fall-related injuries in the state if federal funding for the efforts is reduced or eliminated.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Department of Health.

S.J.R. 11

Passed February 24, 2017
Effective February 24, 2017

**JOINT RESOLUTION URGING CONGRESS
TO PROVIDE THE NECESSARY FUNDING
FOR COMPLETION OF THE CENTRAL
UTAH PROJECT**

Chief Sponsor: Curtis S. Bramble
House Sponsor: Kay J. Christofferson

LONG TITLE

General Description:

This joint resolution of the Legislature urges that sufficient funding be budgeted to complete the Bonneville Unit of the Central Utah Project, as well as the entire Central Utah Project.

Highlighted Provisions:

This resolution:

- ▶ calls upon Utah’s congressional delegation to urge the new administration to budget sufficient funds to fund construction of the remaining portions of the Bonneville Unit of the Central Utah Project, including its environmental components; and
- ▶ urges the United States Congress to appropriate the budgeted funds to enable the Central Utah Project to be completed.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the Central Utah Project (CUP) was authorized as a participating project of the 1956 Colorado River Storage Project Act to enable development of a significant portion of Utah’s allocated share of the waters of the Colorado River;

WHEREAS, this water was allocated to Utah under the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact;

WHEREAS, the Central Utah Water Conservancy District (District), was created in 1964 to be the sponsoring entity for the CUP to market the water and to repay the reimbursable costs of the CUP;

WHEREAS, a project repayment contract was entered into in 1965, and amended and supplemented again in 1985, between the District and the United States to construct and pay the reimbursable costs of the CUP;

WHEREAS, the Central Utah Project Completion Act (CUPCA), enacted in 1992, terminated some features and units of the CUP and authorized certain replacement features for construction;

WHEREAS, among other things, CUPCA authorized the District to finish construction and

required the District to pay 35% of the costs of construction and the United States to provide the remaining 65% of construction funding, subject to repayment by the District;

WHEREAS, while many of the features of the Bonneville Unit (BU) of the CUP have been completed, lack of federal funding over the past several years has stalled construction of the remaining features of the CUP;

WHEREAS, because the contract purchasers of project water from the District need the CUP water in the immediate future, the District has felt compelled to advance its own funds to meet the unfunded federal cost share to keep some construction advancing;

WHEREAS, because the United States Congress has failed to make up the difference in funding in recent years, as well as not appropriating new construction funding, the CUP features cannot be completed in a timely manner;

WHEREAS, Utah’s population is projected to double by the year 2065;

WHEREAS, all of these new residents must have clean water to drink, food to eat, and water to support continued and sustainable economic development within Utah’s borders;

WHEREAS, completion of the CUP is critically important to meet the expanding demand for water;

WHEREAS, over \$3 billion have been expended for construction of the existing features of the BU so far;

WHEREAS, without completion of the remaining features of the BU the full water supply developed by the BU will not be available for use;

WHEREAS, until the water is available for use, the repayment obligation of the District for this remaining increment of project water does not mature; and

WHEREAS, CUPCA, in addition to construction, also authorized a significant amount of environmental restoration and rehabilitation, some of which has yet to be funded:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah agrees to collaborate with Utah’s congressional delegation in urging the new administration to budget sufficient funds to fund construction of the remaining portions of the BU, including its environmental components.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges the United States Congress to appropriate the budgeted funds to enable the CUP to be completed.

BE IT FURTHER RESOLVED that a copy of this resolution be delivered to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the United States Department of the Interior, and the members of Utah’s congressional delegation.

S.J.R. 12

Passed February 23, 2017
Effective February 23, 2017

**JOINT RESOLUTION DESIGNATING
POST-TRAUMATIC STRESS
INJURY AWARENESS DAY**

Chief Sponsor: Peter C. Knudson
House Sponsor: Edward H. Redd

LONG TITLE

General Description:

This joint resolution of the Legislature designates June 27, 2017, as Post-Traumatic Stress Injury Awareness Day.

Highlighted Provisions:

This resolution:

- ▶ designates June 27, 2017, as Post-Traumatic Stress Injury Awareness Day in the state of Utah; and
- ▶ urges the Department of Health and the Department of Veterans and Military Affairs to continue working to educate service members, veterans and their families, and victims of abuse, crime, and natural disaster, as well as the general public, about the causes, symptoms, and treatment of post-traumatic stress injury.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, all citizens of the United States possess the basic human right to the preservation of personal dignity;

WHEREAS, all citizens of the United States deserve the investment of every possible resource to ensure their lasting physical, mental, and emotional well-being;

WHEREAS, the brave men and women of the United States Armed Forces who proudly serve the United States risk their lives to protect our freedom;

WHEREAS, the diagnosis now known as Post-Traumatic Stress Disorder (PTSD) was first defined by the American Psychiatric Association in 1980 to commonly and more accurately understand and treat veterans who had endured severe traumatic combat stress;

WHEREAS, combat stress has historically been viewed as a mental illness caused by a pre-existing flaw of character and/or ability;

WHEREAS, the word “disorder” carries a stigma that perpetuates this misconception;

WHEREAS, post-traumatic stress injury (PTSI) can occur after experiencing a severely traumatic event to include, but not be exclusive to, sexual assault, child abuse, high-impact collisions and crashes, natural disasters, acts of terrorism, and military combat;

WHEREAS, PTSI is a very common injury to the brain that is treatable and repairable;

WHEREAS, referring to the complications from post-traumatic stress as a disorder perpetuates the stigma of and bias against mental illness, and this stigma can discourage the injured from seeking proper and timely medical treatment;

WHEREAS, making PTSI less stigmatizing and more honorable can favorably influence those affected and encourage them to seek help without fear of retribution or shame;

WHEREAS, proper and timely treatment can diminish suicide rates; and

WHEREAS, all citizens suffering from PTSI deserve compassion and consideration, and those who have received these wounds in action against an enemy of the United States deserve tribute and acknowledgment;

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah designates June 27, 2017, as Post-Traumatic Stress Injury Awareness Day in the state of Utah.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah urges the Department of Health and the Department of Veterans and Military Affairs to continue working to educate service members, veterans and their families, and victims of abuse, crime, and natural disaster, as well as the general public, about the causes, symptoms, and treatment of post-traumatic stress injury.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the Utah Department of Health and the Utah Department of Veterans and Military Affairs.

S.J.R. 13

Passed March 1, 2017
Effective March 1, 2017

**JOINT RESOLUTION SUPPORTING
CREATION OF CITIZENS EQUITY FUNDS**

Chief Sponsor: J. Stuart Adams
House Sponsor: Raymond P. Ward

LONG TITLE

General Description:

This joint resolution of the Legislature urges the United States Congress to authorize the creation of for profit corporations by the several states.

Highlighted Provisions:

This resolution:

- ▶ strongly urges Utah’s congressional delegation and the Governor to begin to work with Congress to authorize the creation of for profit corporations by the several states for the creation and replacement of needed infrastructure; and
- ▶ argues that these for profit corporations should be managed by a board of directors nominated by a governor and confirmed by the state legislature, with the governor serving as chair of the board of directors, and that such corporations be authorized to pay dividends on

earnings and issue debt bearing securities from a citizen equity fund in which individual citizens and corporations could invest.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the infrastructure of the United States of America is rapidly becoming obsolete;

WHEREAS, independent engineering studies confirm that, by 2050, it will require \$3.65 trillion for the United States to bring the decaying infrastructure within the 50 states to a condition suitable for maintaining the economic strength of the United States;

WHEREAS, neither the federal budget nor the several states' budgets have the resources to finance the necessary repairs to the current infrastructure or to finance the creation of new infrastructure facilities;

WHEREAS, the nation and its several states need to reduce their current debt levels;

WHEREAS, the aggregated overseas profits of United States multinational companies is estimated to be over \$2.1 trillion;

WHEREAS, many multinational American companies with overseas profits are taking legal steps to preserve profits from the oppressive burden of excess taxation by merger and acquisition strategies, which have the result of keeping billions of dollars outside of the United States;

WHEREAS, these funds could be invested by multinational American companies in restoring the nation's infrastructure;

WHEREAS, present federal and state permitting processes often cause years of delay in proceeding with construction of infrastructure improvements and badly needed new projects;

WHEREAS, the creation of a non-government, for profit corporate entity, whose securities would qualify for special tax status, would be an attractive investment for both individuals and corporations with overseas profits;

WHEREAS, the investment in upgrading present infrastructure and the creation of new infrastructure projects by a citizens equity fund would produce a significant increase in employment opportunities and economic benefits for the citizens of the several states;

WHEREAS, the respective governors and legislatures of the several states have a more dependable understanding of the priorities for infrastructure enhancement in their states than the federal government;

WHEREAS, the enactment of federal legislation enabling states to create a corporation using citizens equity funds under the direct control and supervision of a board of directors nominated by the governors and confirmed by the legislatures of the

respective states would make it possible to move expeditiously forward with projects that will save the infrastructure from its present decline into obsolescence; and

WHEREAS, citizens equity funds would not require supplemental funding from the federal government or the several states:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah strongly urges Utah's congressional delegation and the Governor to begin immediately to work with the United States Congress to authorize the creation of for profit corporations by the individual states, to be managed by a board of directors nominated by a governor and confirmed by the state legislature, with the governor serving as chair of the board of directors, and that such corporations be authorized to pay dividends on earnings and issue debt bearing securities from a citizens equity fund in which individual citizens and corporations of a state could invest, and thereby obtain the same tax benefit extended to the citizens equity fund, for the creation and replacement of needed infrastructure in the several states.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the leader of each legislative house in each of the several states, the governor of each of the several states, and the members of Utah's congressional delegation.

S.J.R. 14

Passed March 7, 2017

Effective March 7, 2017

**JOINT RESOLUTION REGARDING
JOBS IN RURAL UTAH**

Chief Sponsor: Kevin T. Van Tassell

House Sponsor: Scott H. Chew

LONG TITLE

General Description:

This joint resolution of the Legislature encourages business expansion and development in rural Utah.

Highlighted Provisions:

This resolution:

- ▶ encourages the creation of 25,000 new jobs over the next four years throughout 25 rural counties;
- ▶ encourages collaboration and partnership to address economic barriers and pro-business strategies in rural Utah; and
- ▶ urges businesses to consider the advantages of expansion into rural counties.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the Governor's Office of Management and Budget has projected an

obtainable goal of creating 25,000 new jobs over the next four years throughout 25 rural Utah counties;

WHEREAS, a blossoming, strong rural economy is beneficial for each county, the entire state, the citizens of Utah, and the greater economy;

WHEREAS, the state's economy is only as strong as its weakest county, and economic prosperity will not inevitably trickle down from the Wasatch Front to rural communities in Utah;

WHEREAS, Utah has received continued recognition and honors for its healthy and robust economy, management of the state, being pro-business, and having a technology concentration and dynamism;

WHEREAS, the potential to build Utah's strengths and develop an economy for the future to enhance the nation's most dynamic economy will not be reached without established and prolonged economic development in rural communities of the state;

WHEREAS, Utah's rural areas offer essential commodities, recreation and commercial activities, and natural resources, such as energy, agriculture, and mineral resources, that can provide economic benefits to the state;

WHEREAS, existing tax credit programs and grants provide lucrative incentives for infrastructure development and companies in rural Utah to further promote business and economic development;

WHEREAS, business expansion into rural Utah may ease pollution and traffic congestion along the Wasatch Front, while strengthening rural economies and providing families with opportunities to raise their children in a scenic rural environment;

WHEREAS, distributing Utah's workforce to encompass rural communities can lessen the impact along the Wasatch Front when an industry in the state's diverse and dynamic economy encounters hardships;

WHEREAS, rural communities throughout Utah offer hardworking candidates for employment, and businesses should consider hiring remote rural employees; and

WHEREAS, rural prosperity must be actively sought through collaborative efforts between business, state, and county leaders to foster a pro-business and infrastructure development friendly environment, with special consideration given to the core rural counties that have not been experiencing significant growth:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah encourages business expansion and development to be the driving economic forces in rural Utah and supports and encourages the creation of 25,000 new jobs over the next four years throughout 25 rural counties.

BE IT FURTHER RESOLVED that the Legislature of the state of Utah encourages state agencies to work in partnership with county and local officials, rural leaders, and businesses, to create strategies for addressing economic barriers and encouraging business expansion and growth in Utah's rural communities.

S.J.R. 15

Passed March 9, 2017
Effective March 9, 2017

**JOINT RULES RESOLUTION —
FEDERAL REVENUE CONSIDERATION**

Chief Sponsor: Lincoln Fillmore
House Sponsor: Ken Ivory

LONG TITLE

General Description:

This rules resolution modifies duties of the Executive Appropriations Committee.

Highlighted Provisions:

This resolution:

- ▶ requires the Executive Appropriations Committee to consider treating above-trend federal revenue in the same way as one-time revenue.

Special Clauses:

None

Legislative Rules Affected:

AMENDS:
JR3-2-402

Be it resolved by the Legislature of the state of Utah:

Section 12. JR3-2-402 is amended to read:

**JR3-2-402. Executive appropriations --
Duties -- Base budgets.**

(1) As used in this rule:

(a) "Base budget" means amounts appropriated by the Legislature for each item of appropriation for the current fiscal year that:

(i) are not designated as one-time in an appropriation, regardless of whether the appropriation is covered by ongoing or one-time revenue sources; and

(ii) were not vetoed by the governor, unless the Legislature overrode the veto.

(b) "Base budget" includes:

(i) any changes to those amounts approved by the Executive Appropriations Committee; and

(ii) amounts appropriated for debt service.

(2) (a) The Executive Appropriations Committee shall meet no later than the third Wednesday in December to:

(i) direct staff as to what revenue estimate to use in preparing budget recommendations, to include a forecast for federal fund receipts;

(ii) consider treating above-trend revenue growth as one-time revenue for major tax types and for federal funds;

(iii) hear a report on the historical, current, and anticipated status of the following:

- (A) debt;
- (B) long term liabilities;
- (C) contingent liabilities;
- (D) General Fund borrowing;
- (E) reserves;
- (F) fund balances;
- (G) nonlapsing appropriation balances;
- (H) cash funded infrastructure investment; and
- (I) changes in federal funds paid to the state;

(iv) hear a report on:

(A) the next fiscal year base budget appropriation for Medicaid accountable care organizations according to Section 26-18-405.5;

(B) an explanation of program funding needs;

(C) estimates of overall medical inflation in the state; and

(D) mandated program changes and their estimated cost impact on Medicaid accountable care organizations;

(v) decide whether to set aside special allocations for the end of the session, including allocations:

(A) to address any anticipated reduction in the amount of federal funds paid to the state; and

(B) of one-time revenue to pay down debt and other liabilities;

(vi) approve the appropriate amount for each subcommittee to use in preparing its budget;

(vii) set a budget figure; and

(viii) adopt a base budget in accordance with Subsection (2)(b) and direct the legislative fiscal analyst to prepare one or more appropriations acts appropriating one or more base budgets for the next fiscal year.

(b) In a base budget adopted under Subsection (2)(a), appropriations from the General Fund, the Education Fund, and the Uniform School Fund shall be set as follows:

(i) if the next fiscal year ongoing revenue estimates set under Subsection (2)(a)(i) are equal to or greater than the current fiscal year ongoing appropriations, the new fiscal year base budget is not changed;

(ii) if the next fiscal year ongoing revenue estimates set under Subsection (2)(a)(i) are less than the current fiscal year ongoing appropriations, the new fiscal year base budget is reduced by the same percentage that projected next fiscal year

ongoing revenue estimates are lower than the total of current fiscal year ongoing appropriations;

(iii) in making a reduction under Subsection (2)(b)(ii), appropriated debt service shall not be reduced, and other ongoing appropriations shall be reduced, in an amount sufficient to make the total ongoing appropriations, including the unadjusted debt service, equal to the percentage calculated under Subsection (2)(b)(ii); and

(iv) the new fiscal year base budget shall include an appropriation to the Department of Health for Medicaid accountable care organizations in the amount required by Section 26-18-405.5.

(c) The chairs of each appropriation subcommittee are invited to attend this meeting.

(3) Appropriations subcommittees may not meet while the Senate or House is in session without special leave from the speaker of the House and the president of the Senate.

(4) All proposed items of expenditure to be included in the appropriations bills shall be submitted to one of the subcommittees named in JR3-2-302 for consideration and recommendation.

(5) (a) After receiving and reviewing subcommittee reports, the Executive Appropriations Committee may refer the report back to an appropriations subcommittee with any guidelines the Executive Appropriations Committee considers necessary to assist the subcommittee in producing a balanced budget.

(b) The subcommittee shall meet to review the new guidelines and report the adjustments to the chairs of the Executive Appropriations Committee as soon as possible.

(6) (a) After receiving the reports, the Executive Appropriations Committee chairs will report them to the Executive Appropriations Committee.

(b) That committee shall:

(i) make any further adjustments necessary to balance the budget; and

(ii) complete all decisions necessary to draft the final appropriations bill no later than the 39th day of the annual general session.

S.J.R. 16

Passed March 2, 2017

Effective March 2, 2017

**JOINT RESOLUTION DESIGNATING
NATIONAL SPEECH AND DEBATE
EDUCATION DAY**

Chief Sponsor: Jani Iwamoto
House Sponsor: Susan Pulsipher

LONG TITLE

General Description:

This resolution of the Legislature designates March 3, 2017, as "National Speech and Debate Education Day" in Utah.

Highlighted Provisions:

This resolution:

- ▶ recognizes the benefits of speech and debate education for students;
- ▶ acknowledges the hard work and dedication of educators and their positive impact on students; and
- ▶ designates March 3, 2017, as “National Speech and Debate Education Day” in Utah.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, National Speech and Debate Education Day, established by the National Speech and Debate Association in conjunction with local partners, serves to promote better instruction in speech and debate across all grade levels and to highlight the pivotal roles these abilities play in personal advocacy, social movements, and public policy making;

WHEREAS, speech and debate education helps students develop important skills in communication, critical thinking, creativity, and collaboration through the practice of public speaking;

WHEREAS, participants in speech and debate education learn not only to analyze and express complex ideas effectively but also to listen, concur, question, or dissent with reason and compassion;

WHEREAS, countless educators across the country devote in-school, after-school, and weekend time to support students in speech and debate practices and competitions, and their hard work and dedication has a lasting and positive impact on their pupils;

WHEREAS, the skills learned through speech and debate serve students well throughout their lives; and

WHEREAS, National Speech and Debate Education Day presents a welcome opportunity to recognize such instruction as an essential component of a well-rounded curriculum:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah designates March 3, 2017, as National Speech and Debate Education Day in the state of Utah.

S.R. 2

Passed March 3, 2017
Effective March 3, 2017

**SENATE RULES RESOLUTION
ON FLOOR ACTIVITIES**

Chief Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This rules resolution modifies provisions related to access to the Senate floor.

Highlighted Provisions:

This resolution:

- ▶ permits a senator to invite a guest to accompany the senator on the Senate floor, under certain conditions; and
- ▶ specifies the conditions and decorum requirements for guests on the Senate floor.

Special Clauses:

None

Legislative Rules Affected:

AMENDS:
SR2-4-101

Be it resolved by the Senate of the state of Utah:

Section 1. SR2-4-101 is amended to read:

SR2-4-101. Admittance to the Senate chamber.

(1) (a) While the Senate is convened in annual general session or special session and except as ~~provided in Subsection (1)(b)]~~ specifically provided elsewhere in this section, only legislators, legislative officers and employees, professional staff, former legislators who are not registered as lobbyists, legal spouses of legislators, interns, and persons invited by senators are allowed in the Senate chamber, halls, and lounge.

(b) The president of the Senate may deny access to the Senate chamber, halls, and lounge to any person, other than a legislator, if the person uses that access to influence legislative decisions.

(2) (a) A senator or the senator’s intern shall accompany each visitor in the chamber, lounge, or hallways and is responsible for that visitor.

(b) After the visit, the senator or the senator’s intern shall ensure that the visitor leaves the chamber, lounge, or hallway.

(3) (a) A senator may invite a guest to accompany the senator on the Senate floor, provided that:

(i) the senator ensures that the guest does not encroach on a neighboring senator’s desk space, impede staff work, or distract from the work of the Senate, and no neighboring senator makes such an objection;

(ii) the guest complies with the requirements of SR2-4-102, SR2-4-103, and Senate Handbook policies on decorum and access; and

(iii) if the guest is an adult, the guest complies with rules and Senate Handbook policies that relate to dress requirements.

(b) A senator who believes that a guest is intruding on desk space, is impeding staff work, or is distracting from the work of the Senate may communicate the senator’s objection to the senator who has invited the guest, or through the majority leader, the minority leader, or the president of the Senate.

UTAH CODE SECTION INDEX

The following Code Section Index lists, in section order, each Utah Code section affected by bills passed during the 2017 General Session. The first column lists the section affected. The second column lists the action taken with the following abbreviations: A = Amends, E = Enacts, F = Former Section Number, N = Renumbered and Amended, R = Repeals, T = Technical Renumbers, X = Repeals and Reenacts. The third column lists the bill number. The fourth column lists either the former number or the new number, if applicable. The fifth column lists the chapter number.

See Technical Action Index (page 3083) for explanations and clarifications of sections that were technically renumbered.

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77-43-107	E	HB 149		282	78B-6-124	A	SB 89		148
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78B-21-113	E	SB 208		431	JR3-2-808	E	HJR 15		
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78B-21-115	E	SB 208		431	JR3-2-810	E	HJR 15		
78B-21-116	E	SB 208		431	JR3-2-811	E	HJR 15		
78B-21-117	E	SB 208		431	JR3-2-901	E	HJR 15		
78B-21-118	E	SB 208		431	JR3-2-902	E	HJR 15		
78B-21-119	E	SB 208		431	JR3-2-903	E	HJR 15		
78B-21-120	E	SB 208		431	JR3-2-904	E	HJR 15		
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78B-21-122	E	SB 208		431	JR4-2-202	A	HJR 6		
78B-21-123	E	SB 208		431	JR4-3-101	X	HJR 15		
78B-21-124	E	SB 208		431	JR4-3-102	E	HJR 15		
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TECHNICAL ACTION INDEX

Subsection 36-12-12(2)(g) of the Utah code grants the legislative general counsel the power to “correct any technical errors . . . in order to enroll the legislation and prepare the laws for publication;” The following Technical Action Index lists Utah Code sections that were modified by the Office of Legislative Research and General Counsel after the 2017 General Session to resolve technical errors identified by the office. The modified sections are listed in order by the section numbers used to identify them in the bills.

Section Number Used In Bill	Codified as Section Number	Action	Bill Number	Chapter Number	Additional Information
4-2-16	4-2-305	T	H.B. 280	086	Coordination clause direction to technically renumber.
11-55-101	11-56-101	T	S.B. 250	165	Technically renumbered to avoid duplication of section number also enacted in HB163, Chapter 70.
11-55-101	11-57-101	T	H.B. 431	354	Technically renumbered to avoid duplication of section number also enacted in HB163, Chapter 70.
11-55-102	11-56-102	T	S.B. 250	165	Technically renumbered to avoid duplication of section number also enacted in HB163, Chapter 70.
11-55-102	11-57-102	T	H.B. 431	354	Technically renumbered to avoid duplication of section number also enacted in HB163, Chapter 70.
11-55-103	11-56-103	T	S.B. 250	165	Technically renumbered to avoid duplication of section number also enacted in HB163, Chapter 70.
11-55-103	11-57-103	T	H.B. 431	354	Technically renumbered to avoid duplication of section number also enacted in HB163, Chapter 70.
11-55-104	11-56-104	T	S.B. 250	165	Technically renumbered to avoid duplication of section number also enacted in HB163, Chapter 70.
11-55-104	11-57-104	T	H.B. 431	354	Technically renumbered to avoid duplication of section number also enacted in HB163, Chapter 70.
11-55-105	11-56-105	T	S.B. 250	165	Technically renumbered for proper placement in title.
11-55-106	11-56-106	T	S.B. 250	165	Technically renumbered for proper placement in title.
19-2-128	19-2-129	T	H.B. 96	395	Technically renumbered to avoid duplication of section number also enacted in HB392, Chapter 140.
20A-3-308		A	H.B. 12	235	Coordination clause direction to modify language.
26-10-12	26-10-13	T	H.B. 414	351	Technically renumbered to avoid duplication of section number also enacted in SB135, Chapter 155.

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26-18-21	26-18-22	T	H.B. 175	180	Technically renumbered to avoid duplication of section number also enacted in HB194, Chapter 247.
26-18-21	26-18-23	T	H.B. 90	053	Technically renumbered to avoid duplication of section number also enacted in HB194, Chapter 247.
26-59-101	26-60-101	T	H.B. 154	241	Technically renumbered to avoid duplication of section number also enacted in HB345, Chapter 413.
26-59-101	26-61-101	T	H.B. 130	398	Technically renumbered to avoid duplication of section number also enacted in HB345, Chapter 413.
26-59-102	26-60-102	T	H.B. 154	241	Technically renumbered to avoid duplication of section number also enacted in HB345, Chapter 413.
26-59-102	26-61-102	T	H.B. 130	398	Technically renumbered to avoid duplication of section number also enacted in HB345, Chapter 413.
26-59-103	26-60-103	T	H.B. 154	241	Technically renumbered to avoid duplication of section number also enacted in HB345, Chapter 413.
26-59-103	26-61-103	T	H.B. 130	398	Technically renumbered to avoid duplication of section number also enacted in HB345, Chapter 413.
26-59-104	26-60-104	T	H.B. 154	241	Technically renumbered to avoid duplication of section number also enacted in HB345, Chapter 413.
26-59-105	26-60-105	T	H.B. 154	241	Technically renumbered for proper placement in title.
26-59-201	26-61-201	T	H.B. 130	398	Technically renumbered for proper placement in title.
26-59-202	26-61-202	T	H.B. 130	398	Technically renumbered for proper placement in title.
30-5a-103		A	H.B. 197	400	Revisor instruction to modify language.
31A-22-615	31A-22-615.5	T	H.B. 90	053	Technically renumbered to avoid duplication of section number repealed in 1986.

Section Number Used In Bill	Codified as Section Number	Action	Bill Number	Chapter Number	Additional Information
31A-22-645	31A-22-646	T	S.B. 44	101	Technically renumbered to avoid duplication of section number also enacted in HB42, Chapter 168.
31A-22-1001		A	S.B. 92	363	Revisor instruction to modify language.
31A-22-1014		A	S.B. 92	363	Revisor instruction to modify language.
35A-14-102		A	S.B. 194	375	Coordination clause direction to modify language in SB238, Chapter 382.
41-6a-515.5	41-6a-515.6	T	H.B. 155	283	Technically renumbered to avoid duplication of section number also enacted in HB250, Chapter 446.
49-11-102		A	H.B. 165	020	Coordination clause direction to modify language in SB238, Chapter 382.
49-11-624		A	S.B. 92	363	Revisor instruction to modify language.
49-12-204		A	H.B. 165	020	Coordination clause direction to modify language in SB238, Chapter 382.
49-13-204		A	H.B. 165	020	Coordination clause direction to modify language in SB238, Chapter 382.
49-20-414	49-20-415	T	H.B. 90	053	Technically renumbered to avoid duplication of section number also enacted in HB154, Chapter 241.
49-20-414	49-20-416	T	H.B. 175	180	Technically renumbered to avoid duplication of section number also enacted in HB154, Chapter 241.
49-20-414	49-20-417	T	H.B. 400	349	Technically renumbered to avoid duplication of section number also enacted in HB154, Chapter 241.
49-22-204		A	H.B. 165	020	Coordination clause direction to modify language in SB238, Chapter 382.

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53A-1-413		A	S.B. 220	378	Revisor instruction to modify language, effective 11/1/2017.
53A-1-415		A	H.B. 404	350	Coordination clause direction to modify language, effective 7/1/2017.
53A-1-1110		A	H.B. 193	181	Repealed and reenacted by SB220, Chapter 378, effective 11/1/2017.
53A-3-602.5		A	H.B. 126	444	Repealed by SB220, Chapter 378, effective 11/1/2017.
53A-6-105		A	S.B. 186	372	Repealed by HB2, Chapter 472, effective 7/1/2018.
53A-11-302		A	H.B. 27	278	Repealed and reenacted by HB308, Chapter 344, effective 7/1/2018.
53A-15-1303	53A-15-1304	T	S.B. 220	378	Technically renumbered to avoid duplication of section number also enacted in HB346, Chapter 346.
53A-17a-173	53A-17a-174	T	S.B. 34	202	Technically renumbered to avoid duplication of section number also enacted in HB212, Chapter 325.
53B-1-112	53B-1-113	T	H.B. 249	333	Technically renumbered to avoid duplication of section number also enacted in HB100, Chapter 171.
53B-1-112	53B-1-114	T	S.B. 238	382	Technically renumbered to avoid duplication of section number also enacted in HB100, Chapter 171.
53B-7-702		A	S.B. 117	365	Coordination clause direction to modify language in SB238, Chapter 382.
53B-7-703		A	S.B. 117	365	Coordination clause direction to modify language in SB238, Chapter 382.
53B-7-705		A	S.B. 117	365	Coordination clause direction to modify language in SB238, Chapter 382.
53B-7-707		A	S.B. 117	365	Coordination clause direction to modify language in SB238, Chapter 382.

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Section Number Used In Bill	Codified as Section Number	Action	Bill Number	Chapter Number	Additional Information
53B-8a-201		A	H.B. 24	389	Coordination clause direction to modify language in SB238, Chapter 382.
53B-8a-204		A	H.B. 24	389	Coordination clause direction to modify language in SB238, Chapter 382.
53B-27-101	53B-28-101	T	H.B. 251	188	Technically renumbered to avoid duplication of section number also enacted in HB54, Chapter 440.
53B-27-102	53B-28-102	T	H.B. 251	188	Technically renumbered to avoid duplication of section number also enacted in HB54, Chapter 440.
53B-27-201	53B-28-201	T	H.B. 251	188	Technically renumbered to avoid duplication of section number also enacted in HB54, Chapter 440.
53B-27-202	53B-28-202	T	H.B. 251	188	Technically renumbered to avoid duplication of section number also enacted in HB54, Chapter 440.
57-8a-228	57-8a-229	T	H.B. 157	284	Technically renumbered to avoid duplication of section number also enacted in HB201, Chapter 324.
58-17b-610.6	58-17b-610.7	T	H.B. 146	066	Technically renumbered to avoid duplication of section number also enacted in HB61, Chapter 44.
59-7-621	59-7-622	T	S.B. 109	479	Technically renumbered to avoid duplication of section number also enacted in SB267, Chapter 274.
59-10-1038	59-10-1039	T	H.B. 219	252	Technically renumbered to avoid duplication of section number also enacted in SB267, Chapter 274.
59-10-1038	59-10-1040	T	S.B. 109	479	Technically renumbered to avoid duplication of section number also enacted in SB267, Chapter 274.
62A-1-111.5		A	H.B. 239	330	Revisor instruction to modify language.
63B-27-101	63B-27-201	T	S.B. 9	355	Technically renumbered to avoid duplication of section number also enacted in SB277, Chapter 436.

Section Number Used In Bill	Codified as Section Number	Action	Bill Number	Chapter Number	Additional Information
63B-27-102	63B-27-202	T	S.B. 9	355	Technically renumbered to avoid duplication of section number also enacted in SB277, Chapter 436.
63B-27-201	63B-27-301	T	S.B. 9	355	Technically renumbered for proper placement in title.
72-14-101	72-15-101	T	S.B. 174	427	Section was also renumbered and amended in SB111, Chapter 364, to use the same enacted section number as this bill.
75-10-101	75-11-101	T	H.B. 13	016	Technically renumbered to avoid duplication of section number also enacted in HB21, Chapter 125.
75-10-102	75-11-102	T	H.B. 13	016	Technically renumbered to avoid duplication of section number also enacted in HB21, Chapter 125.
75-10-103	75-11-103	T	H.B. 13	016	Technically renumbered to avoid duplication of section number also enacted in HB21, Chapter 125.
75-10-104	75-11-104	T	H.B. 13	016	Technically renumbered to avoid duplication of section number also enacted in HB21, Chapter 125.
75-10-105	75-11-105	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-106	75-11-106	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-107	75-11-107	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-108	75-11-108	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-109	75-11-109	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-110	75-11-110	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-111	75-11-111	T	H.B. 13	016	Technically renumbered for proper placement.

Section Number Used In Bill	Codified as Section Number	Action	Bill Number	Chapter Number	Additional Information
75-10-112	75-11-112	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-113	75-11-113	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-114	75-11-114	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-115	75-11-115	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-116	75-11-116	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-117	75-11-117	T	H.B. 13	016	Technically renumbered for proper placement.
75-10-118	75-11-118	T	H.B. 13	016	Technically renumbered for proper placement.
78B-6-117		A	H.B. 197	400	Revisor instruction to modify language.
79-4-605	79-4-606	T	H.B. 95	134	Technically renumbered to avoid duplication of section number also enacted in HB63, Chapter 45.

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